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ABBREVIATIONS EXPLAINED.

Reports.

All. or A.	Indian Law Reports, Allahabad Series.
A.L.J.	Allahabad Law Journal.
A.I.R. 1929 All. or 1929 A. ..	All India Reporter, 1929 Allahabad.
A.I.Cr.R.	All India Criminal Reporter.
Bom. or B.	Indian Law Reports, Bombay Series.
Bom.L.R.	Bombay Law Reporter.
A.I.R. 1929 Bom. or 1929 Bom. ..	All India Reporter, 1929 Bombay.
Bur.L.T.	Burma Law Times.
Bur.L.J.	Burma Law Journal.
Cal. or C.	Indian Law Reports, Calcutta Series.
C.L.J.	Calcutta Law Journal.
1929 Cr. C.	Criminal Cases.
Cr.L.J.	Criminal Law Journal.
C.W.N.	Calcutta Weekly Notes.
A.I.R. 1929 Cal. or 1929 Cal. ..	All India Reporter, 1929 Calcutta.
I.A.	Law Reports, Indian Appeals.
I.C.	Indian Cases.
Lah. or L.	Indian Law Reports, Lahore Series.
A.I.R. 1929 Lah. or 1929 Lah. ..	All India Reporter, 1929 Lahore.
Lah.L.J. or L.L.J.	Lahore Law Journal.
L.R.	Law Reporter (Allahabad).
L.R.A.Civ.	Law Reporter, Allahabad, Civil.
L.R.A. (Cr.)	Law Reporter, Allahabad, Criminal.
L.B.R.	Lower Burma Rulings.
M.L.W.	Madras Law Weekly.
Luck.	Indian Law Reports, Lucknow Series.
Mad. or M.	Indian Law Reports, Madras Series.
M.L.J.	Madras Law Journal.
M.L.T.	Madras Law Times.
M.W.N.	Madras Weekly Notes.
A.I.R. 1929 Mad. or 1929 Mad. ..	All India Reporter, 1929 Madras.
Mys.L.J.	Mysore Law Journal.
N.L.J.	Nagpur Law Journal.
N.L.R.	Nagpur Law Reports.
A.I.R. 1929 Nag. or 1929 Nag. ..	All India Reporter, 1929 Nagpur.
O.C.	Oudh Cases.
A.I.R. 1929 Oudh or 1929 Oudh ..	All India Reporter, 1929 Oudh.
O.L.J.	Oudh Law Journal.
O.W.N.	Oudh Weekly Notes.
P.R.	Punjab Record.
P.L.R.	Punjab Law Reporter.
P.W.R.	Punjab Weekly Reporter.
Pat.	Indian Law Reports, Patna Series.

P.H.C.C.	.. .. ..	Patna Supplement to C. W. Notes.
A.I.R. 1929 P. or 1929 Pat.	..	All India Reporter, 1929 Patna.
A.I.R. 1929 P.C. or 1929 P.C.	..	All India Reporter, Privy Council Section.
Pat.L.J.	.. .. ..	Patna Law Journal.
Pat.L.R.	.. .. ..	Patna Law Reporter.
Pat.L.T.	.. .. ..	Patna Law Times.
R. or Rang.	.. .. ..	Indian Law Reports, Rangoon Series.
A.I.R. 1929 R. or 1929 Rang.	..	All India Reporter, 1929 Rangoon.
R.D.	.. .. ..	Revenue Decisions:
S.L.R.	.. .. ..	Sind Law Reporter.
A.I.R. 1929 S. or 1929 Sind	..	All India Reporter, 1929 Sind.
U.P.L.R.	.. .. ..	United Provinces Law Reporter.
U.B.R.	.. .. ..	Upper Burma Rulings.

Other Abbreviations.

Appl.	.. .. Applied.	Expl.	.. .. Explained.
Appr.	.. .. Approved.	Foll.	.. .. Followed.
Comm.	.. .. Commented.	F.B.	.. .. Full Bench.
Cons.	.. .. Considered.	P.C.	.. .. Privy Council.
Cr.	.. .. Criminal.	Ref.	.. .. Referred.
Dist.	.. .. Distinguished.	Rel.	.. .. Relied.
Disc.	.. .. Discussed.	Rev.	.. .. Revenue.
Diss.	.. .. Dissented from.	S.B.	.. .. Special Bench.
Doubt.	.. .. Doubted.		

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DECENNIAL DIGEST

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DACOITY

—*See* PENAL CODE, Ss. 395 & 396.

DAMAGES

—*See also* (1) CONTRACT ACT, S. 73.
(2) TORT.

Breach of Contract
Cause of Action
Conversion
Illegal Attachment
Illegal Seizure
Interest
Liability for
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Measure of
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Special Damage
Tort
Trespass
Miscellaneous

—Breach of Contract.

———*Contract Act, S. 73—Earnest money becomes part of purchase price when contract completed—Vendee's default entails forfeiture—Damages.*

In a contract for sale of immovable property the deposit of earnest money is a guarantee for performance of the contract by the vendee and when the transaction goes forward it becomes part of the purchase price; if by default of the vendee the transaction falls through, the money is forfeited; A. I. R. 1926 P.C. 1, *Foll.* (*Kemp, Ag. C.J. and Murphy, J.*). DINANATH DAMODAR KALE *v.* MALVI MODI RANCHHODDAS & CO.

32 Bom. L.R. 272=A.I.R. 1930 Bom. 213.

———*Measure of, depends on facts of each case.*

The decision of each case of damages for breach of contract depends on its peculiar terms as to the mode, place and time of performance. One case cannot be precedent for other unless terms are similar. (*Tek Chand and Agha Haidar, JJ.*). RATTAN LAL SULTAN SINGH *v.* TEKCHAND CHUNNI LAL.

120 I.C. 785=A.I.R. 1930 Lah. 379.

———*Fixing date of marriage after parties are free to marry implies promise to marry and is not ratification of prior agreement to marry which was void as parties could not contract valid marriage.*

Where a man agreed to marry a woman (plaintiff) during divorce proceedings between her and her husband and after the divorce proceedings had gone through, and consequently the plaintiff became a

free woman, the defendant (man) bought her a ring and actually arranged the date on which they were to be married:

Held: that when persons fix a day for their marriage it may be inferred that there is a promise of marriage. And one is not bound to take it as a ratification of a contract which in itself is void, and which, therefore, in law cannot be ratified by anything that can be subsequently done. (*Viscount Dunedin*). THOMAS CHARLES WILLIAMS SKIPP *v.* LILIAN MILDRED KELLY.

94 I.C. 331=1926 M.W.N. 382=3 O.W.N. 453=28 Bom. L.R. 873=43 C.L.J. 430=24 M.L.W. 18=30 C.W.N. 841=A.I.R. 1926 P.C. 27=50 M.L.J. 498.

———*Right to claim specific performance as well as damages—Omission to claim specific performance is no bar to claim damages.*

Where performance of the contract is refused by defendant plaintiff is entitled to claim back the earnest money and damages, provided they are not penal. His omission to claim specific performance does not bar his right to claim damages. (*B.B. Ghose and Panton, JJ.*). NATHURAM BARMAN *v.* ULLUK CHAND BARMAN. **95 I.C. 700=A.I.R. 1926 Cal. 1041.**

———*Suit for damages—Performance of contract to be simultaneous—Each party must show his readiness and willingness to perform his part of the contract.*

In all these cases where the performance of a contract is to be simultaneous and a suit is brought for damages for breach of contract, each party must show that he was ready to perform his part of the contract. For example, in a suit for damages for breach of a contract to sell and purchase, seller must show that he was able and willing to perform his part of the contract and the buyer must show that he was ready and willing to pay the price. (*Kumaraswami Sastri, O.C.J. and Curgenven, J.*). LAKSHMIKANTHAN *v.* NARAYANASWAMI IYER.

97 I.C. 986=1926 M.W.N. 710=A.I.R. 1926 Mad. 1109.

———*Difference between contract rate and market rate on date of breach is the basis—Plaintiff pleading special measure must prove it.*

When there is an available market for the goods, the difference between the contract price and the market price on the date of the breach is the amount of the damages *prima facie* payable and when the plaintiff claims damages on any other special basis

DAMAGES—Breach of Contract.

he must prove his case. (*Spencer and Venkatasubba Rao, JJ.*). RAMALINGAM CHETTIAR *v.* GOKULDAS MADAVJI & CO. **97 I.C. 871=1926 M.W.N. 691= A.I.R. 1926 Mad. 1021=51 M.L.J. 243.**

———*Cause of action based on breach of contract—Damages based on delay cannot be claimed.*

Where the suit as framed is not one brought in tort for damages due to loss occasioned to the plaintiffs on account of the retardation in delivery but simply for compensation for the loss of the articles which were found missing, the action is founded on breach of contract and in no sense on tort based upon the delay and damages founded on delay cannot be claimed. (*Bucknill, J.*). M. & S. M. RY. CO. *v.* FIRM GOPAL RAI RAM CHUNDER. **94 I.C. 510= 1926 P H.C.C. 123=A.I.R. 1926 Pat. 273.**

———*Contract Act, S. 73—Plaintiff must mitigate loss—Vendor with right to re-sell at any time, on vendee's default to pay by due date need not re-sell immediately but must do so within reasonable time—Otherwise he can get damages only on basis of difference between contract and market rates at date of breach.*

A plaintiff who sues for damages owes the duty of taking all reasonable steps to mitigate the loss consequent upon the breach and cannot claim as damages any sum which is due to his own neglect.

Where the vendor had the right to re-sell the goods at any time if vendees failed to pay and take delivery by certain date and where vendee made default.

Held: that the vendor was not bound to resell the goods immediately after the defaults but could do so within a reasonable time afterwards, but that in view of the persistent refusal of the vendees to take the goods and the falling state of the market, the vendors were bound not to delay in re-selling. Should the vendors make unreasonable delay, they can recover only damages on the ordinary basis of the difference between contract rate and market rate at date of breach. 19 All. 535, *Diss. from.* (*Shah, Ag. C. J. and Fawcett, J.*). HARICHAND AND CO. *v.* GOSHO KABUSHIKI KAISHA, LIMITED. **86 I.C. 521=26 Bom. L.R. 921=49 Bom. 25= A.I.R. 1925 Bom. 28.**

———*Contract Act, S. 73—Reasonable compensation is question of fact—If circumstances require so, no damages need be awarded for breach of contract to sell real property—Case-law discussed.*

No hard and fast rule can be laid down for assessment of damages for breach of contracts to sell. The circumstances of each case have to be considered in deciding what is reasonable and proper compensation for the damage caused by a breach of contract. Under S. 73 the Court is not bound in every case to award damages on the basis of a difference between the price at the date of the contract and the market price at the date of the breach. If circumstances require so no damages need be awarded for breach of contract to sell real property where the vendor is not guilty of fraud. (*Shah, Ag. C.J. and Fawcett, J.*). DHANRAJGIRJI NARSINGGIRJI *v.* TATA SONS, LIMITED. **92 I.C. 225=26 Bom. L.R. 858= 49 Bom. 1=A.I.R. 1924 Bom. 473.**

———*Specific Relief Act, S. 21—Assignee of decree who resiles from contract may be made to pay price instead of damages.*

There is no invariable rule that in cases relating to movable property damages only should be given. In a suit against a person who agreed to take an assignment of a decree the price which he promised to

DAMAGES—Cause of Action.

pay to the assignor may be decreed. (*Krishnan, J.*). K.S. KRISHNA AIYAR *v.* NYNADIKKAN PILLAI. **82 I.C. 78=20 M.L.W. 328= 1924 M.W.N. 693=A.I.R. 1924 Mad. 801.**

—Cause of Action.

———*Contract Act, S. 23—No cause of action arises against person for merely financing appellants in appeal when costs could not be recovered from appellants.*

Even if a person is known to have financed an appellant, it will not give a cause of action to the respondents to recover damages from the financer personally because they have been unable to recover their costs from the appellant. (*Sulaiman and Pullan, JJ.*). MOHAMMAD IBRAHIM QUARESHI *v.* SYED ABDUL HAMID. **119 I.C. 837= A.I.R. 1929 All. 797.**

———*Specific Relief Act, S. 54—Water of certain tank by immemorial custom used by co-sharers for certain land only in proportion of their shares—Ownership of water is not independent of ownership of land—One co-owner using water for other land—Damage caused to other co-owners—They can sue for damages as well as for injunction to restrain unauthorised use.*

Several co-sharers of an agraharam were entitled to the water of a tank in the same proportion which they owned land in the agraharam. It was customary from time immemorial to use the water of the tank for cultivating certain area of land described as "the wet ayacut under the tank." The water of the tank was not even sufficient for the wet ayacut. One of the co-sharers used the water of the tank to convert some of his dry land into wet land and thereby caused damage to the other co-sharers. The other co-sharers sued for injunction as well as damages.

Held: that from immemorial usage must be implied an agreement that the water of the tank was to be used for the wet ayacut only. From the fact that the water was owned proportionately to the land it does not follow that the ownership of water was independent of the ownership of the land. The use of water for other land than the wet ayacut was illegal. Other co-owners can therefore get damages as well as injunction to restrain such use. It would be absurd to say that they should sue for partition of tank water and not for injunction. (*Ramesam and Venkatasubba Rao, JJ.*). VENKATARAMA SASTRI *v.* VENKATANARASAYYA. **113 I.C. 557= 29 M.L.W. 613=A.I.R. 1929 Mad. 25.**

———*Breach of contract to pay money to a third person—No time for payment fixed—Cause of action for damages for breach arises when money is recovered from the party suing.*

For a suit for loss or damage incurred by reason of the failure of a party to the contract to carry out his undertaking to pay money to a third person where no time is mentioned for payment, limitation runs from the time when the money was paid. A.I.R. 1926 *All.* 605, *Rel. on.* (*Walsh and Banerji, JJ.*). RAM RATAN LAL *v.* ABDUL WAHID KHAN. **101 I.C. 691=49 All. 603=25 A.L.J. 411= A.I.R. 1927 All. 435.**

———*Suit for—Temporary injunction wrongfully obtained—Suit is maintainable—Civil P. C., S. 95—Provincial Small Cause Courts Act, Sch. 2, Art. 35 (k).*

Where a temporary injunction is wrongfully obtained on insufficient grounds a suit for damages is maintainable. 9 W.R. 133 and 16 C.W.N. 540, *Rel.*

DAMAGES—Cause of Action.

on. (*B.B. Ghose and Cammiade, JJ.*). HARKUMAR DE v. JOGAT BANDHU. **103 I. C. 318= 53 Cal. 1008=A.I.R. 1927 Cal. 247.**

———*Obstruction from taking water from well is continuing injury—Where damage consequent on an act is actionable rather than the act itself, every damage is actionable.*

A cause of action, in respect of which a plaintiff is entitled to have the prospective damages assessed is distinct from a continuing cause of action, that is to say, a cause of action which arises from the repetition or continuance of acts or omissions of the same kind as that from which the action has been brought. Similarly, where the damage consequent on an act or omission rather than the act or omission itself is actionable, then, as the action is only maintainable in respect of the damage, or is not maintainable until the damage is sustained, an action will lie every time damage accrues from the act. 11 A.C. 127, *Ref.*

The obstruction from taking water from a well is a continuing injury. 6 Mad. 176 and 28 Mad. 72, *Rel. on.* (*Prideaux, A.J.C.*). HARDEO v. RAMCHANDRA. **98 I.C. 679=A.I.R. 1927 Nag. 85.**

———*Collector of Custom made to detain goods by representation made maliciously and without reasonable and probable cause—Damages caused by detention are recoverable.*

When defendants through malice and without reasonable and probable cause make certain representation to the Collector and in consequence plaintiff's goods are detained under S. 19-A of the Sea Customs Act, plaintiff can recover damages caused on account of such detention of his goods. (*Pearson, J.*). ALBERT BONNAN v. IMPERIAL TOBACCO CO., LTD. **94 I.C. 444=30 C.W.N. 465= A.I.R, 1926 Cal. 757.**

———*Where party would have lost a claim apart from conduct of another man the other man is not liable.*

Where a certain pro-note was accepted though it was void as contravening S. 26, Paper Currency Act (2 of 1910), and in discharge of that pronote the agent of the creditor forged another pronote and thus misled his principal into filing a suit on the forged pronote which was dismissed on that ground, and where the creditor did not seek the alternative claim on the consideration of the original pronote.

Held: that the loss of the creditor was not due to the forged pro-note but to his acceptance of his original pro-note and therefore the agent was not liable for the loss of the debt. (*Coutts-Trotter, C. J. and Krishnan, J.*). VEERASAMI PILLAI v. CHIDAMBARAM CHETTIAR. **92 I.C. 819= A.I.R. 1926 Mad. 894.**

———*Breach of Contract—Parties executing lease by unregistered letters—Plaintiff cannot claim damages as he is bound to tender document for defendant's signature nor for non-registration since he could get the letters registered.*

Where plaintiff wrote to defendant terms of the lease which plaintiff accepted and defendant confirmed plaintiff's term by a letter in reply and where the plaintiff claimed damages upon the ground that the defendant had failed to grant him a lease.

Held: that the documents amount to a lease and even if not so, no document being tendered for signature of defendant and defendant not having undertaken to get it registered, defendant was not liable for damages, 9 Bom. 63, *Foll.*

Further inasmuch as the plaintiff himself was entitled and in a position to obtain registration of

DAMAGES—Illegal Attachment

the lease contained in the two documents, any damage which plaintiff suffered by reason of the non-registration of the said documents would appear to be the result of his own negligence. (*Page, J.*). RAMJOO MAHOMED v. HARIDAS MULLICK. **91 I.C. 320=52 Cal. 695=A.I.R. 1925 Cal. 1087.**

—Conversion.

—The principle for the award of damages in cases of conversion of goods is different from the principle applicable to cases of wrong detainer: 5 I.A. 130 (P.C.), *Foll.* (*Wallace and Srinivasa Ayyangar, JJ.*). SAREDDI v. BRAHMAYYA. **115 I.C. 153= 29 M. L. W. 419=A. I. R. 1928 Mad. 1152= 55 M. L. J. 586.**

—Illegal Attachment.

Civil P. C., S. 95—Damages for wrongful attachment, though made in good faith, are recoverable from decree-holder.

The attaching creditor is liable in damages to the person whose property was wrongfully attached even if he has acted honestly. 33 All. 306; A. I. R. 1926 All. 177 and A. I. R. 1925 Nag. 390, *Foll.* (*Johnstone, J.*). MUNSHI RAM v. LACHHI RAM. **112 I. C. 848=A.I.R. 1929 Lah. 200.**

———*Wrongful attachment of stranger's property—Stranger need not prove malice on attaching creditor's part.*

A judgment-creditor is responsible in damages to any person who is not a party to the proceedings and whose property he wrongfully causes to be attached in execution of his decree, without proof of *mala fides*: 17 Cal. 436 (P.C.), *Foll.* (*Sulaiman, J.*). MANGAL CHAND v. MT. ZAINAB BIBI. **90 I.C. 266=6 L. R. A. Civ. 595= A. I. R. 1926 All. 177.**

———*Wrong attachment of property—Decree-holder pointing out wrong property for attachment is liable whether he acts honestly or mistakenly.*

Where a decree-holder points out to the bailiff the goods of a wrong person as the goods of the judgment-debtor and the bailiff seizes the goods, the decree-holder is liable to that person for damages even though he may have acted honestly or mistakenly: 17 Cal. 436 (P.C.), *Rel. on.* (*Raza, J.*). RAMJI LAL v. RAM PRASAD. **95 I. C. 443= A. I. R. 1926 Oudh 483.**

———*Attachment before Judgment—Malicious because no reasonable cause for taking it—Sec. 95, C. P. C.—Termination of suit in plaintiff's favour is essential where such termination is possible—Compensation awarded though attachment not completed.*

The plaintiff may be entitled to compensation, even though the attachment was not completed, if, notwithstanding that, he sustained injury by what was actually done.

The absence of reasonable and probable cause for taking legal action in execution or otherwise is, some evidence, from which malice may be inferred.

The termination of the proceedings in the plaintiff's favour, is essential, but this is applicable only to cases in which a distinct termination in favour of one party or other is possible, and not to a case in which the proceedings cannot end by their nature in any judicial disposal. (*Oldfield and Venkatasubba Rao, JJ.*). JOSEPH NICHOLAS v. M. R. SIVARAMA IYER. **66 I. C. 760= 15 M. L. W. 442=1922 M. W. N. 242= 45 Mad. 527=30 M. L. T. 269= A. I. R. 1922 Mad. 206.**

DAMAGES—Illegal Seizure.

Illegal Seizure.

—A landlord who seizes or detains the goods of his tenant, because some rent is due and unpaid, acts illegally and is liable for the loss he may cause to the tenant by such unlawful seizure or detention. A landlord has no lien for rent on the goods of his tenant. (*Jwala Prasad, A.C.J. and Das, J.*). BANSIDHAR MARWARI *v.* ANAND DAS.
63 I.C. 44 (Pat.).

—Interest.

———*Trusts Act, S. 88—Person entitled to profits—Difficulty in tracing them—Fixed rate of interest should be allowed in Court's discretion—Rate need not be the current rate—Mesne profits.*

Where a person is entitled to profits and a serious difficulty arises in tracing and apportioning the mesne profits, a fixed rate of interest should be awarded in that case on the value of the property: it will be in the option of the Court either to decree the profits or to decree such interest, which it may deem proper in the circumstances. It need not necessarily be the current rate of interest. (*Misra and Srivastava, JJ.*). AMEER HASAN *v.* MUHAMMAD EJAZ HUSAIN. **117 I.C. 456=6 O.W.N. 51= A.I.R. 1929 Oudh 134.**

———*Interest may be allowed by way of damages.*

Interest can be allowed by way of damages on principles of equity: 20 Mad. 481, *Dist.*; 42 Mad. 661; 31 Bom. 354 and 22 C.W.N. 488, *Foll.* (*Raza and Pullan, JJ.*). MD. ALI MD. KHAN *v.* GUR PRASAD. **105 I.C. 836=4 O.W.N. 1061= A. I. R. 1928 Oudh 89.**

—In an action for damages for trespass interest can be allowed as damages. (*Greaves and Mukerji, JJ.*). PANNALAL GHOSE *v.* ADJOI COAL CO. **101 I. C. 62=31 C. W. N. 82= A. I. R. 1927 Cal. 117.**

—Liability for.

———*Joint assault entails joint liability for damages.*

Where all the defendants had a common object and proceeded to assault the plaintiff, all of them are responsible for damages resulting from their joint action, although only three out of them took more prominent part than the others and caused injuries to him. (*Niamatullah, J.*). BANSI *v.* HUKAM SINGH. **A. I. R. 1930 All. 216.**

———*Civil suit brought through malice and without reasonable and probable cause—Suit for damages for loss caused lies.*

A suit lies for damages for wrongful interference with the property rights of another by obtaining an order from a Court maliciously and without reasonable and probable cause. (*Pearson, J.*) ALBERT BONNAN *v.* IMPERIAL TOBACCO CO., LTD. **94 I. C. 444=30 C. W. N. 465= A. I. R. 1926 Cal. 757.**

———*Civil action taken maliciously and without reasonable and probable cause—Injunction issued in consequence—Loss caused by injunction can be recovered, irrespective of injunction giving an independent cause of action or not.*

Where a suit is brought through malice and without probable and reasonable cause and an injunction is issued by Court as a consequence, loss caused by such injunction can be recovered. Whether the injunction gives an independent cause of action or not the plaintiff can obtain his relief in respect of it as a proceeding forming part of the suit which is itself affected by malice in its entirety. (*Pearson, J.*). ALBERT BONNAN *v.* IMPERIAL TOBACCO CO., LTD. **94 I. C. 444=30 C. W. N. 465= A. I. R. 1926 Cal. 757.**

DAMAGES—Measure of.

———*Person in use and occupation is liable for damages.*

A person not entitled to possession who is in possession is liable for damages for use and occupation: 12 O.C. 140, *Rel. on.* (*Ashworth, J.*). NARAIN SINGH *v.* KAIWAN BAHU. **95 I.C. 957=13 O.L.J. 648= 3 O.W.N. 299=A.I.R. 1926 Oudh 304.**

———*Teacher just like parent can inflict corporal punishment—Punishment to be moderate and reasonable and without malice, etc.—No damages could then be awarded.*

The master as the delegate of the parent may for the purpose of correction inflict moderate and reasonable corporal punishment. Care may no doubt be necessary in this application of this general principle in this country in which this delegated authority may be exercised by persons so dissimilar in status as a schoolmaster and the defendant; and Courts will no doubt not fail to insist on a close scrutiny of the severity of the chastisement inflicted and its justification.

Where the punishment, plaintiff complains of, was such as a parent might expect his child to receive, the conclusion must be that defendant was entitled to inflict it and is not liable because he did so.

If it be administered for the gratification of passion or of rage, or if it be immoderate, and excessive in its nature or degree or if it be protracted beyond the child's powers of endurance or with an instrument unfitted for the purpose and calculated to produce danger to life or limb, in all such cases the punishment is excessive and the violence is unlawful.

The schoolmaster cannot escape liability merely on the ground that chastisement administered to the pupil has not left on the pupil's body any marks of violence or injury. Cases are not uncommon in this country of punishments of extremely grotesque character being indicted involving danger to life or limb of the pupil or resulting in a state of prostration on the part of the pupil and Courts will certainly discountenance resort by the schoolmaster to such barbarous and inhuman forms of correction. (*Oldfield and Venkatasubba Rao, JJ.*). P. SANKUNNI *v.* C.S. VENKATRAMANI. **67 I.C. 514= 15 M.L.W. 501= 1922 M.W.N. 246= 45 Mad. 548=31 M.L.T. 26= A.I.R. 1922 Mad. 200= 42 M. L. J. 460.**

—Limitation

———*Limitation Act, Art. 116—Sale—Vendor's title defective—Claim for damages is governed by Art. 116.*

Claim for damages by a vendee on the ground that his vendor's title is defective is governed by Art. 116. The proper measure of damages is the value of the property at the time of the purchase. (*Rupchand, Ag. J.C.*). SORABJI BILLIMORIA *v.* TARACHAND GHANSHAMDAS. **A. I. R. 1930 Sind 66.**

—Measure of.

———*Encroachment by one of two adjacent colliery owners—Damages equal to price of erecting barrier were given: A. I. R. 1927 Cal. 117, Reversed.*

Where in a suit for damages between two adjacent colliery owners the defendants are found to have wrongfully pierced the margin of coal on the plaintiffs' side of the boundary which would in ordinary course have been left as a barrier the plaintiffs are not bound to wait until any risk emerges, when it might well be too late to construct a barrier and the plaintiffs are entitled to price of the erection of

DAMAGES—Measure of.

an artificial barrier as damages: (*Lord Thankerton*). ADJOI COAL CO., LTD., *v.* PANNA LAL GHOSH.
123 I. C. 726=32 Bom. L. R. 654=34 C. W. N. 483=31 M. L. W. 638=51 C. L. J. 407=A. I. R. 1930 P. C. 113=58 M. L. J. 536.

———*Breach of covenant of title—Market value on date of eviction,*

Held that in a suit for damages for breach of covenant of title the measure of damages is the market value of the land on the date when the plaintiff was evicted by the third party. (*Sulaiman, J.*). MAHOMED SIDDIO *v.* MAHOMED NUH.
124 I. C. 185=1930 A. L. J. 653.

———*Measure of damages against vendee failing to pay portion of purchase money to vendor's creditor is amount of debt with interest.*

Where the vendee fails to pay to the vendor's creditor the portion of purchase money left with him for that purpose, there is a breach and the suit against defaulting promisor is not to make him do something in furtherance of the contract for the time of its performance is passed but is in reality one for damages for the breach of it, the measure of which will be the amount of the debt with interest; 36 Mad. 348 and 3 All. 600 (F.B.), *Rel. on.* (*Das and Fazl Ali, JJ.*). RAM RACHHYA SINGH *v.* RAGHUNATH PRASAD MISSER. **122 I. C. 244=8 Pat. 860=A. I. R. 1930 Pat. 46.**

—The rule as regards damages with regard to persons in fiduciary position is not always different from the rule with regard to other persons: 20 Bom. 633, Foll. (*Wallace and Srinivasa Ayyangar, JJ.*). SAREDDI *v.* BRAHMAYYA. **115 I. C. 153=29 M. L. W. 419=A. I. R. 1928 Mad. 1152=55 M. L. J. 586.**

—Suit for damages for trespass and wrongful removal of underground coal—Coal removed negligently—Market value of coal at pit's mouth less cost of carriage to the bank should be allowed—Value on the day when coal was reduced to possession should be considered. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJOI COAL CO.
101 I. C. 62=31 C. W. N. 82=A. I. R. 1927 Cal. 117.

———*Plaintiff taking on lease a shop from defendant for his business as Commission Agent—Defendant refusing to give possession.*

Plaintiff took on lease a shop from defendant at a monthly rental and paid him some advance. Subsequently defendant refused to give him possession. Plaintiff sued defendant for damages on the basis of what his earning as Commission Agent would have been for the period for which possession of the shop was not given to him.

Held: that plaintiff's income would depend on his own ability and business capacity as a Commission Agent. Further, as there were two or three similar shops available in the same mandi, and instead of occupying one of these he apparently chose to do no business, it cannot be said that he suffered a loss because of the failure on the part of his lessors to give him possession of the premises leased to him. Under the circumstances he was entitled only to a refund of advance paid by him. (*Shadi Lal. C. J. and Broadway, J.*), NEKI RAM *v.* PARBHU DOYAL. **100 I. C. 662=28 P. L. R. 101=9 L. L. J. 89=A. I. R. 1927 Lah. 844.**

———*Contract of sale of goods—Breach—Re-sale.*

P contracted to sell to D certain goods which P had agreed to purchase from R. The contract under which P sold to D contained an express

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stipulation that all the terms of the contract between R and P should be embodied as part of the contract, between D and P and he was bound under the contract to pay any loss or damages which P could have sustained by reason of D's breach of the contract so far as R was concerned.

Held: that the damages payable by D were only in law what P would be compelled to pay R. If he chose to pay a claim which R could not enforce he cannot claim as against D. If there was a long delay in the sale by R which delay was at P's instance he could get a right of action against D only if it was shown that D by his conduct or by request wanted the time of the contract to be extended. If without reference to D, P asked R to extend the time for the performance of the contract P and not saddle D with any damages, if there was a finding that the delay was not reasonable. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RAMIER AND BRS. *v.* DURVAS J. SUBBIER. **96. I. C. 42=A.I.R. 1927 Mad. 352=50 M.L.J. 264.**

———*Tort-feasor aware even constructively of damages is liable for it—Existing circumstances at date of tort and not subsequent events determine damage.*

In the case of tort as in contract if at the time when it is committed the tort-feasor knows, or as a reasonable person in the circumstances ought to have known that the commission of the tort may reasonably cause damage which would not usually result from the commission of the wrongful act, these damages become and are deemed to be the reasonable and natural consequences of the tort which has been committed. In cases where the damage is fixed and definite, and due to conditions determined at a particular date, the amount of damages is assessed by reference to the then existing circumstances and subsequent changes would not affect the result. In ordinary circumstances Court is to ascertain the value of the goods at the time of the conversion and in case the plaintiff could by going into the market have purchased other goods of the like quality and description, the price at which that would have been done, would be the particular measure of damages. (*Page, J.*). ROGERS PYATT SHELLAC CO. *v.* JOHN KING AND CO. **95 I. C. 1042=53 Cal. 239=A. I. R. 1926 Cal. 564.**

———*Contract Act, S. 74—Debtor failing to pay at the stipulated time—Mortgagee is entitled to damages, measure would be the rate of interest, but Court can reduce the rate.*

The mortgagee is entitled to damages on account of the failure of the debtor to pay the debt at the stipulated time, and the measure of damages would *prima facie* be the rate of interest agreed upon, although the Court has discretion to reduce that rate if it is found to be unusual; A.I.R. 1922 Lah. 254, *Foll.* (*Findlay, J.C.*). CHINKATIA *v.* VITHOBA.
96 I. C. 491=A. I. R. 1926 Nag. 434.

———*Prospective damages must be granted in case of complete cause of action, but not where the cause of action is not the act but the damage arising therefrom.*

Where plaintiff claimed Rs. 8,000 damages in respect of his having been forcibly dispossessed of certain *sir* fields on the ground that this would have been the net profit he might have obtained from the fields by self-cultivation

DAMAGES—Measure of.

Held: this amounted to a suit for prospective damages and the plaintiff was not entitled to claim in the circumstances of the case, where the cause of action was not over and done with and it was still continuing from day to day even after the suit was filed. When the cause of action is complete it would be most mischievous to say you shall not have all you are entitled to in your first action, but you shall be driven to bring a second, a third or a fourth action for the recovery of your damages. In such a case obviously, prospective damages can be allowed.

A cause of action in respect of which a plaintiff is entitled to have the prospective damages assessed must be distinguished from a continuing cause of action, that is to say, a cause of action which arises from the repetition or continuance of acts or omissions of the same kind as that for which the action has been brought. Similarly, where the damage consequent on an act or omission rather than the act or omission itself is actionable, then, as the action is not maintainable until the damage is sustained, an action will lie every time damage accrues from the act. Prospective damages are not recoverable where the cause of action is not the act, but the damage arising therefrom. (*Findlay, O. J. C.*). YADO *v.* AMBASHANKAR. **92 I.C. 75= A.I.R. 1926 Nag. 260.**

———*Natural causes aiding defendant's acts—Apportionment of damage not possible—Actual damages must be awarded.*

Nominal damages are intended only where the plaintiff has sustained *damnum sine injuria*, that is, where a right of his has been infringed, but not so as to cause any sensible damage. But where the defendants' acts strengthened by other natural causes caused real damage to the plaintiffs, and where no definite portion can be assigned to any of the causes, nominal damages is not the proper relief to be awarded to plaintiff. *Feize* v. *Thompson* (*1* Taunt 121,), *Dist.*; 6 Bom. L. R. 899 and *Fletcher* v. *Smith*, (1876-77) 2 A.C. 781, *Foll.* (*Ramesam, J.*).G. SEETHA RAMA SWAMI *v.* SECY. OF STATE.

91 I.C. 489=21 M.L.W. 449=1925 M.W.N. 352= A. I. R. 1925 Mad. 682.

—Where the period during which the vendors might have delivered the bales of May shipment extended to 31st October ; *Held*, that in assessing damages for non-delivery of bales of May shipment, the market rate of the 1st November might be taken into consideration. (*Sanderson, C.J. and Richardson, J.*). PANNALAL SAGORE MULL *v.* MUKHRAM RADHAKISSEN. **80 I.C. 87=39 C.L.J. 77= A.I.R. 1924 Cal. 637.**

———*Breach of promise of marriage.*

In an action for damages for breach of promise of marriage, plaintiffs are entitled to recover money actually thrown away and also damages to credit and reputation by reason of the refusal. 7 B.H.C. R. 122, *Foll.*; 39 Bom. 682, 714, *Not Foll.* (*Schwobe, C.J.*). KANDASWAMY NAIDU *v.* KANNIAH NAIDU.

78 I.C. 573=1924 M.W.N. 373=20 M.L.W. 60= A.I.R. 1924 Mad. 692 (a)=46 M.L.J. 366.

—Damages for infringement of Copyright is the amount of the proceeds of the sale of the offending work and general damages for infringement. (*Le Rossignol and Campbell, JJ.*), MESSRS. KHOSLA BROS. OF LAHORE *v.* THACKER'S DIRECTORIES, LTD. **67 I. C. 983.**

———*Contract Act, S. 73—Agreement to convey certain number of well sites—Suit for damages for breach of contract for failure to convey—Measure is difference between contract price and market price on day of breach.*

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Where defendant agrees to convey certain well-sites to plaintiff but fails to convey the same a suit for compensation for the breach of contract is governed by S. 73 and the measure of damages will be the difference in the contract price and the market price on the day of the breach. (*McCall, A. J. C.*). MAUNG MO HNAUNG *v.* MA SHWE MYA.

4 U. B. R. 35=4 U. B. R. 38= U. B. R. 41=A. I. R. 1921 U. B. 16.

———*Breach of contract for delivery—Market rate—Rates in other markets are irrelevant*—Bona fide *rate in the same market is a guide.*

Of the market rate in a particular place of any day, actual *bona fide* or ready sales on that day are the best evidence. The rates in a different market which was not accessible in time on the day of delivery are of little use ; still less the costs of production. For trade purposes the rate of another quality of goods which would be a nearest substitute for the quality in question is no basis. (*Madgavkar, A. J. C.*). GOWARDHANDAS *v.* RAWJI HIRJI & CO. **76 I. C. 62=18 S. L. R. 320= A. I. R. 1921 Sind 22 (d).**

—Negligence.

———*Negligence causing injury—Expenses, pain and loss of income are to be considered.*

There are three items to be considered. (1) Expenses (2) Pain and suffering (3) Loss of income where plaintiff has suffered injury owing to negligence of defendant. (*Crump, J.*). VISHNU DIGAMBAR *v.* B. B. & C. I. RY. **85 I. C. 416= 25 Bom. L. R. 881=A. I. R. 1924 Bom. 278.**

—Railway Company.

———*Breach of contract—Railway Company entrusted with goods to be carried—Route not fixed—No delay in delivery—Railway is free to carry goods by any route.*

Where there was no contract on behalf of the Railway Company that they would carry the goods by any particular route and there was nothing except the name of the place of despatch and the name of the place of consignment contained in the contract between the parties concerned.

Held : so long as the goods were delivered at the place of consignment and so long as they were delivered in due course, *i.e.*, within a reasonable time, it mattered not to the plaintiffs or to any one else by what particular route the goods may have been, for the convenience of the Railway Company, despatched by the carriers. (*Bucknill, J.*). M. & S. M. RY. *v.* FIRM GOPAL RAI RAMCHUNDER.

94 I. C. 510= 1926 P.H.C.C. 123= A.I.R. 1926 Pat. 273.

—Special damage.

———*Very great inconvenience constitutes—C.P.C. S.* 91.

Where the plaintiff would, every day and every hour of the day when he desired to leave his house by the entrance on a particular side, be compelled to go the other way and travel at least 3 or 4 times as far and 3 or 4 times as fast if he were pressed for time.

Held : that that would amount to special damage or a more particular form of nuisance suffered by him than by the general public. The Court ought to consider, even although a particular form of nuisance is not capable of being translated into rupees and annas, whether it is a substantial grievance which constitutes a wrong peculiar to the plaintiff which

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in the ordinary way Court of justice would remove by granting an injunction. (*Walsh, Ag. C. J. and Ryves, J.*). MD. RAZAKHAN *v.* MD. ASKAR KHAN. **85 I.C. 304= 46 All. 470=22 A.L. J. 729= 6 L. R. A. Civ. 67=A. I. R. 1924 All. 599.**

—Tort

——Malicious prosecution—Damages can be awarded separately for arrest and prosecution.

In a suit for damages for malicious prosecution it is competent to award damages under two heads, *viz.*, a malicious arrest and malicious prosecution. (*Jai Lal, J.*). NURKHAN *v.* JIWAN DAS. **99 I.C. 638=A.I.R. 1927 Lah. 120.**

—In a libel suit no rule can be laid down for measuring damages. Each case must depend upon its own particular facts. (*Fforde and Campbell, JJ.*). KAIRUDDIN *v.* TARA SINGH. **99 I.C. 300= 7 Lah. 491=27 P.L.R. 812=A.I.R. 1927 Lah. 20.**

——Wrongful arrest—Decree against the estate of the deceased—Wrong order by the Court to arrest the heir in execution—Arrest in execution—Decree-holder is liable.

A money-decree was passed against the estate of a deceased person in hands of his heirs. On an application made to execute the decree the Court directed execution to issue against defendant No. 1 (present plaintiff, one of the heirs). In execution the plaintiff (defendant No. 1) was arrested under order obtained from the Deputy Registrar and brought before the Registrar of the Court who made the following order: 'Decree against the estate of the deceased. No execution by arrest should have been issued against the first defendant's person. Warrant of arrest was bad and illegal and not justified by the tenor of the decree'. Accordingly the defendant was released. In an action for damages for wrongful arrest:

Held: that the plaintiff was entitled to damages for wrongful arrest. The decree entitled the defendants to execute it against the property of the deceased in the hands of defendant No. 1 and they must be taken to have been aware when they applied for the arrest of the plaintiff that such conduct was not justified. (*Macleod, C.J., Kajiji and Kemp, JJ.*). VELJI BHIMSEY AND CO. *v.* BACHOO BHAIDAS. **87 I.C. 199=48 Bom. 691=26 Bom. L.R. 349= A.I.R. 1926 Bom. 118.**

—A person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does so and does not succeed in confining it to his own property, he is answerable for all the damage which is the natural consequence of its escape though the escape may not be due to any fault or negligence on his part. But there is absolutely no logic in making a person liable in damages for causing an alleged injury to a thing which from its nature is incapable of sustaining such injury. (*Kinkhede, A.J.C.*). GOPALA BEGUM *v.* DAMA BABU. **78 I.C. 656= A. I. R. 1924 Nag. 229.**

——Overflow of rain water—Washing away of land on the bank of a water course.

An owner of property as also his neighbours are entitled to protect themselves against water which they have not brought on their lands of their own accord and they can divert that water to protect themselves from damage. The owners on the banks of a *nala* by erecting dams passed the whole water into the *nala* and in consequence of that combined

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water the land of the plaintiff, was damaged. In a suit by plaintiff it was held that he had no cause of action against the defendant who was owner of the lands on the opposite banks of the *nala*. (*Macleod, C.J. and Heaton, J.*). SHIDRAMAPPA *v.* MAHOMED YUSUF. **59 I.C. 391=22 Bom. L.R. 1107.**

—Trespass.

—An act of wrongful possession is an act of trespass which gives rise to a cause of action to a suit for damages in tort. (*Kinkhede, A.J.C.*). NAGO *v.* MULTANMAL. **97 I. C. 1028=A.I.R. 1927 Nag. 9.**

——Minimum damages are amount for which owner would have reasonably let the land to the trespasser—Additional amount may be awarded according to the animus accompanying the wrong.

When a wilful trespasser uses land of another without the permission of the owner, the damages to be awarded to the latter ought in no case to be less than the amount which, taking all circumstances into consideration, a careful and reasonable landlord would have consented to let the land for, or less than the amount which the trespasser would have had to pay as the result of reasonable negotiations for such use or occupation of the land. In addition to this minimum, the owner of the land has a right to an additional amount to be determined by the animus with which the wrong was committed by the trespasser; but the Court in determining this additional amount would consider whether the owner by his conduct did his best to prevent the wrong or he merely looked on and encouraged the wrong hoping to recover damages. *Williams* v. *Corrie* I. C. B. R. 841 and *Jagan* v. *Vivian*, 6 C. App. 742, *Applied*. (*Sreenivasa Aiyangar, J.*). RAMASAMI NAYAKAR *v.* MEENAKSHISUNDARAM CHETTIAR. **85 I.C. 268= 20 M.L.W. 836=A.I.R. 1925 Mad. 222= 47 M.L.J. 922.**

——Items of damages must be proved and not guessed.

In a suit for damages against a trespasser all items of damages should be proved. (*Dalal, J. C.*). SAHDEO *v.* RAGHUBAR. **81 I. C. 573= A. I. R. 1925 Oudh 142.**

——Trespasser bona fide *working mine—He is entitled to his expenses for severing coal and bringing it to bank.*

Obiter: Where a trespasser acts under a *bona fide* belief that he has a title to the coal, all that he is entitled to claim is that, in assessing damages the Court should not act harshly towards him and that he ought to be allowed the expense of severing the coal as well as bringing it to bank. (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA. **83 I.C. 205=3 Pat. 85= A.I.R. 1924 Pat. 02.**

——Plaintiff is at least entitled to nominal damages—Principles of assessing damages are different in Contract and Tort.

Damages for trespass are at large but at least the plaintiff is entitled in every case to nominal damages. If a defendant makes a *bona fide* mistake, a Court ought to be content to award nominal damages but if a defendant takes a risk which he knows to be a risk and persists in fighting when he knows or ought to know that he is wrong, his conduct ought to be measured in some way by the special damages which the Court is entitled to award. The measure of damages in contract is quite different to that in tort. In contract the plaintiff can only recover the actual pecuniary loss. In tort he is entitled to special damages for tres-

DAMAGES—Miscellaneous.

pass to property. (*Walsh and Ryves, JJ.*). SOHA LAL *v.* AMBA PRASAD. **69 I.C. 685= 20 A.L.J. 888=A.I.R. 1922 All. 526.**

—Miscellaneous

———*There is no preliminary decree in suits for damages.*

A preliminary decree which is followed by a final decree is unheard of in suits for breach of contract claiming damages. (*Eforde and Agha Haidar, JJ.*). BEGG SUTHERLAND AND CO. *v.* BAHADUR CHAND. **110 I.C. 177=A.I.R. 1928 Lah. 841.**

———*Measure of damages is not interfered with unless clearly wrong.*

Measure of damages fixed by the lower Court in India will not be interfered with unless the measure is very clearly wrong. (*Viscount Dunedin*). THOMAS CHARLES WILLIAMS SKIPP *v.* LILIAN MILDRED KELLEY. **94 I.C. 331= 1926 M.W.N. 382=3 O.W.N. 453= 28 Bom. L.R. 873=43 C.L.J. 430=24 M.L.W. 18= 30 C.W.N. 841=A.I.R. 1926 P.C. 27= 50 M.L.J. 498.**

———*Cannot be awarded in excess of Court's pecuniary jurisdiction.*

A Court cannot award damages in excess of its pecuniary jurisdiction. (*Newbould and Graham, JJ.*). NABIN CHANDRA *v.* ABDUL GAFUR. **91 I.C. 436= A.I.R. 1926 Cal. 596.**

—Damages which flow directly and naturally, or in the ordinary course of things, from the wrongful act of a wrong-doer cannot be regarded as too remote. As in contracts special damages, which the parties at the time when the contract was first entered into contemplated might result if a breach of the contract was committed, become reasonable and natural in the circumstances relating to that particular contract, so in the case of tort, if, at the time when it is committed the tort-feasor knows, or as a reasonable person in the circumstances ought to have known, that the commission of the tort may reasonably cause damages which would not usually result from the commission of the wrongful act, these damages become, and are deemed to be, the reasonable and natural consequences of the tort which has been committed. (*Page, J.*). SUNDERMULL *v.* LADHURAM KALURAM. **83 I.C. 757=50 Cal. 667= A.I.R. 1924 Cal. 240.**

———*High Court will not interfere with lower Court's decision except on a question of principle.*

On a question of quantum of damages, it is not the practice of the High Court to interfere with the decision of the Court of first instance, except on a question of principle. (*Das and Ross, JJ.*). BISSESWAR LAL HABEBASIA *v.* RUP KISHORE CHOUBEY. **62 I.C. 72=2 P.L.T. 255= A.I.R. 1921 Pat. 341.**

———*Injured party is not bound to spend money for possible advantage to tort-feasor though he must act reasonably.*

Even those who have been wronged must act reasonably however wide the latitude and discretion that is allowed to them within the bounds of reason, but how can a wrong-doer be heard to complain that the person injured has not laid out money for the wrong-doer's benefit, and in order to minimize the damages which he is liable to pay by reason of the tort which he has committed? There is no ground in reason or in equity why the injured party should incur expenditure, or invest money which otherwise he might employ for his own benefit in order that a possible advantage thereby may accrue to the wrong-doer. He is not bound to enter into such a contract which may be either to his advantage or to his detriment according as the market may rise or fall. (*Page, J.*). ROGERS PYATT SHELLAC CO. *v.* JOHN KING & CO. **95 I.C. 1042= 53 Cal. 239=A.I.R. 1926 Cal. 564.**

DEBTOR AND CREDITOR—Combination of Capacities

DAMDUPAT.

See (1) CONTRACT ACT, S. 74.
(2) C. P. CODE, S. 34 AND O. 34, Rr. 2, 4 AND 5.
(3) INTEREST.

DANCING GIRL.

See (1) HINDU LAW.
(2) PENAL CODE, Ss. 372, 373.

DANDIDARI.

See LAND TENURE.

DARPATNI.

See PATNI REGULATION.

DASI.

See HINDU LAW—SUCCESSION.

DASIPUTRA.

See HINDU LAW.

DATTA HOMA.

See HINDU LAW—ADOPTION—CEREMONIES.

DATTAK MIMAMSA.

See HINDU LAW—TEXTS.

DAYABHAG.

See HINDU LAW—TEXTS.

DAYA VIBHAG.

See HINDU LAW—TEXTS.

DEADLY WEAPON.

See PENAL CODE, Ss. 148, 302 & etc.

DEAD PERSON—Decree against.

See CIV. PRO. CODE, O. 22.

DEAF AND DUMB.

See (1) CRIMINAL P. C., S. 341.
(2) EVIDENCE ACT, S. 119.
(3) HINDU LAW.

DEATH-BED GIFT.

See MAHOMEDAN LAW.

DEATH-ILLNESS.

See MAHOMEDAN LAW.

DEATH OF PARTY.

See CIV. PRO. CODE, O. 22, R. 6.

DEATH REGISTER.

See EVIDENCE ACT, S. 74.

DEBT.

See (1) C.P. CODE, O. 21, Rr. 4 & 46.
(2) CONTRACT ACT, Ss. 59 & 60.
(3) DEBTOR AND CREDITOR.
(4) HINDU LAW.
(5) T.P. ACT, S. 58.

DEBTOR AND CREDITOR.

—Charge on Property.

———*Creditor has no charge over property purchased with money advanced—T.P. Act, S. 100.*

There is no law applicable to India by which a creditor, who has advanced money, is entitled to a charge over the property acquired with the money advanced. 16 Bom. L.R. 733, *Dist.* (*Walsh and Mukerji, JJ.*). ANNAPURNA CO., LTD., *In the matter of.* **93 I.C. 93=24 A.L.J. 347= A.I.R. 1926 All. 397.**

—Combination of Capacities.

———*A person advancing money to himself as manager of family—Factum, time and purpose must be strictly proved.*

In a suit for recovery of loans advanced by a person to himself as manager of a family the fact that such loans were advanced, and the time when

DEBTOR AND CREDITOR—Costs of Collection.

and purpose for which they were advanced, must, generally speaking, be proved satisfactorily. (*Srinivasa Aiyangar and Curgenven, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I.C. 210=51 Mad. 549=29 M.L.W. 460=A.I.R. 1928 Mad. 509 (a).**

—Costs of Collection.

———*Creditor sending men to debtor's house to recover debt—Debtor is not liable for the cost of such men.*

If a creditor sends his men to collect the outstanding due to him he is not entitled to charge the debtor with costs of sending men to the debtor's place. (*Devadas, J.*). KRISHNAYYA *v.* NOOKAYYA. **109 I.C. 649=A.I.R. 1928 Mad. 476 (1).**

—Landlord and Tenant.

———*Contract Act, S. 60—Advance amount paid by tenant to landlord—Landlord is entitled to appropriate same towards rent due though suit for rent due is barred by limitation.*

When an advance amount is paid by the tenant to the landlord under a stipulation that the same is to be applied towards the last year's rent due under the tenancy the landlord is entitled to appropriate the same towards the rent due for the instalments due for the final year, though a suit for rent due in respect of such instalments might be barred by limitation. *Waller* v. *Lacy*, 1 Man. & G. 54, *Dist.* (*Anantakrishna Ayyar, J.*). KRISHNASAMI IYER *v.* NATESA IYER. **A.I.R. 1930 Mad. 594 (a).**

—Master and Servant.

———*Workman's Breach of Contract Act* (XIII *of* 1859).

A provision by which the advance to the workman is to be repaid by periodical deductions from the amount of his wages and should in any case be worked out by him does not simply create a relation of debtor and creditor but does create relation of master and servant. 18 Bom. L. R. 548 and 1 Weir 681, *Dist.* (*Oldfield and Hughes, JJ.*). SOMANNA *v.* CHELLAPATHI RAO. **60 I.C. 52=44 Mad. 53=22 Cr.L.J. 196=A.I.R. 1921 Mad. 618 (b).**

—Mortgage.

———*Person authorised to deal with property by Letters of Administration and also by powers-of-attorney from heirs—He mortgaging property—Creditor need not enquire into application of money borrowed.*

A person had authority to deal with certain property by Letters of Administration and powers-of-attorney from the heirs. He mortgaged the property but the creditor did not enquire with regard to the disposal of the money borrowed.

Held: that there was no need for the creditor to make enquiries with regard to the disposal of money. A man with such authority may be dealt with safely, provided he keeps within limits of the authority. If every man who does business with an attorney had to go beyond the four corners of the power-of-attorney and had to enquire into the destination of the money which he lent and so on, ordinary business would be impossible. The special rules applying to the *karta* of a joint Hindu family do not apply to people acting under powers-of-attorney. (*Das and Baguley, JJ.*). N.N. CHETTIAR *v.* TAN MA PU. **112 I.C. 261=6 Rang. 411=A.I.R. 1929 Rang. 5 (c).**

———*Payment of mortgage-money by mortgagee in breach of express conditions in the deed for making such a payment will not be binding on the mortgagor.*

—Where a mortgage bond expressly provided that the mortgagee was not to deposit in Court sum of money raised on the bond in Court until a specified event did not happen and also stated that the mortgagor would not be liable for such amount if the condition was broken, and the mortgagee paid the sum into Court to the credit of the mortgagor in breach of the conditions of the bond, and it was then attached by some creditors of the mortgagor.

Held: that the mortgagor is entitled to hold the mortgagee to the terms of the agreement and so is not liable to make good the amount, so paid into Court contrary to the agreement. (*Das and Allanson, JJ.*). RAMKRIPAL DAS *v.* RAJENDRA SINGH. **103 I.C. 884=A.I.R. 1927 Pat. 388.**

DEBTOR AND CREDITOR—Payment of Debt.

—Payment of Debt.

———*Arbitration—Rights of parties—Award directing payment of money—Party directed to pay is bound to seek other party and offer payment.*

There is no law prohibiting a party from discharging the obligations imposed on him by the award until the passing of the decree in accordance with it. On the other hand, it is settled law that if the award directs payment of money to a particular person, at a particular time, the party, who is to make the payment, is bound to seek out the other party and to offer payment to him at the appointed time, and if he fails in this, he does so at his own risk. (*Tekchand and Dulip Singh, JJ.*). J. KAIKABAD *v.* F. KHAMBATTA. **124 I.C. 339=A.I.R. 1930 Lah. 26 (f).**

———*Contract Act, S. 49—No specific contract—Payment must be made at creditor's place.*

Where no specific contract exists as to the place where the payment of the debt is to be made it is the duty of the debtor to make the payment where the creditor is: A. I. R. 1927 P. C. 156, *Foll.* (*Macnair, A. J. C.*). RAMCHANDBA TEJMAL *v.* MOHANLAL. **121 I.C. 668=13 N.L.J. 4=A.I.R. 1930 Nag. 207 (c).**

———*Civil P. C., S. 20—Price of goods or debt must be paid at seller's or lender's residence.*

Ordinarily, money is borrowed, the repayment of the money must be presumed to have been agreed to be made at the place of residence of the lender: A. I. R. 1926 All. 477 and A. I. R. 1925 Lah. 555, *Rel. on.* (*Addison, J.*). HARDIAL HARGOPAL *v.* BATHAL DAS CHHANGAN LAL. **118 I.C. 898=A.I.R. 1929 Lah. 868 (1).**

———*Debtor paying debt to a person other than creditor—Onus is on debtor to prove that the person was authorised by the creditor to receive payment.*

It is elementary law that when a creditor sues the debtor for the payment of a debt and the defence is that the debtor paid the debt to another person it is for the debtor to prove that the other person had or had been held out to the debtor by the creditor as having had the authority of the creditor to receive payment of the debt on behalf of the creditor. (*Sir John Edge*). MD. KHALEEF SHIRAZI AND SONS *v.* TANNERIES LYONNAISES. **94 I.C. 767=49 Mad. 435=53 I.A. 84=3 O.W.N. 568=1926 M.W.N. 493=24 M.L.W. 115=44 C.L.J. 67=28 Bom. L.R. 1391=31 C.W.N. 1=A.I.R. 1926 P.C. 34=51 M.L.J. 570.**

———*A issuing cheque in favour of B on C—C crediting the amount in B's account and debiting to A's account—A will be deemed to have paid money to B, as soon as entry is made.*

Where A issues in favour of B a negotiable cheque on C, and C credits the amount of the cheque in B's account and debits to A's account, the

DEBTOR AND CREDITOR—Payment of Debt.

moment these adjustments are made in C's account books, A is absolved from his liability to B for the cheque amount. (*Hallifax, A.J. C.*). NARAYANDAS *v.* PANDURANG. **93 I.C. 212=9 N.L.J. 1= A.I.R. 1926 Nag. 359.**

———*Every debt implies a promise to repay.*

Every loan carries with it an implied promise, to repay it, even though no express promise written or verbal, is made to repay it. (*Wadegaonkar, A.J. C.*). TAPIRAM *v.* JUGALKISHORE. **92 I.C. 305= 21 N.L.R. 169= A.I.R. 1926 Nag. 209 (b).**

—Want of consideration.

———*Evidence Act, S.* 102—*Debtors major literate and rich businessmen—Creditor not professional money-lender—Execution admitted—Onus to prove want of consideration lies on debtors.*

Debtors were majors and literate having a fair knowledge of English and claiming to be businessmen possessed of large property. They were neither "expectant heirs" nor had just come of age. The creditor had not been proved to be a professional money-lender and the execution of the pro-notes in question was admitted.

Held: that the onus to prove want of consideration should be placed on them: 25 Bom. 367, *Dist.* (*Tek Chand and Hilton, JJ.*). DIN MOHAMMAD *v.* BADRI NATH. **120 I.C. 417=11 L.L.J.511= A.I.R. 1930 Lah. 65 (a).**

DEBTS AND JOINT FAMILY BUSINESS.

See HINDU LAW.

DEBTS FOR IMMORAL PURPOSES.

See HINDU LAW—ALIENATION.

DEBUTTAR PROPERTY.

See HINDU LAW—RELIGIOUS ENDOWMENT.

DECEASED BROTHER'S WIDOW'S MARRIAGE ACT (1921, 11 & 12 Geo. V., Ch. 24).

—Retrospective Effect.

———*Deceased Wife's Sister's Marriage Act* (1907, 7, *Edw. VII, Ch.* 47)—*Effect in India—Act is retrospective and is to be allowed in Courts in India.*

An intervening marriage could not do away with the cansonical bar of affinity which existed by both the Statute Law of England and that of the English Church in 1920 between a lady and her deceased husband's brother; the Act of 1921 read with the Act of 1907, is retrospective in effect so far as it declares that, in English law, the marriage between a man and his deceased brother's widow, whenever and wherever they took place, should not be regarded as illegal simply on the ground of that peculiar affinity. The true test as to whether a particular marriage ought to be regarded as a valid marriage (where a question of affinity arises) is to apply to the case the personal law of the community (*i.e.*, the religious community) to which the parties concerned belong, after the passage in England of the Act of 1907. (*Bucknill, J.*). ADELAIDE CHRISTIANA LISH *v.* DAVID LISH. **83 I.C. 951= 1924 P.H.C.C. 138=2 Pat. L.R. 125= 6 P.L.T. 303=A.I.R. 1924 Pat. 624 (b).**

DECENNIAL SETTLEMENT REGULATION (Ben. Reg. 8 of 1793).

—Enhancement of Rent.

———*Landlord and Tenant—Rent fixed in perpetuity cannot be enhanced.*

No doubt a suit to enhance rent proceeds on the presumption that a zemindar holding under the Permanent Settlement has the right from time to time to raise the rents of all the rent-paying lands within his zemindari according to the *paraganah* or current rates unless either he is precluded from

DECENNIAL SETTLEMENT REG. (1793).—S. 5 —Enhancement of rent.

the exercise of that right by a contract binding on him or the lands in question can be brought within one of the exemptions recognised by Reg. VIII of 1793. Consequently in each case the nature of the tenure and the conditions under which it is held is the primary question to be determined. Where the grants show that the rate of rent was fixed in perpetuity, it is unnecessary to rely upon the doctrine that fixity of rent may be presumed from uniformity of rent for a long series of years. (*Mookerji and Chotzner, JJ.*) ABINAS CHANDRA DAS *v.* MAJUB ALI CHOWDHURY. **70 I.C. 273= 27 C.W.N. 328=36 C.L.J. 196= A.I.R. 1922 Cal. 461 (2) (a).**

———*Proprietors of land—Settlement does not decide question of title.*

The words "proprietor of land" as used both in the Bengal Code of 1793, and in the Madras Code of 1802, have a technical signification. They refer to zemindars, independent talookdars and others who pay the revenue assessed upon their estates immediately to Government. It would not be correct to say that any question of title was decided as the result of permanent settlement. A settlement with a person under the Bengal system does not establish in the person settled with a right to the land if he did not already possess it; but a settlement is an arrangement made by that person with the Government with respect to the revenue only. Consequently the fact of settlement with a person under the regulations does not conclude the question of proprietorship as between that person and the true proprietor. Thus, both as regards the rights of the ryots, and as regards the claims of other persons to be settled with, the rights of the actual possessor are subject to question, and are not concluded or rendered absolute by the fact of settlement.

The Pitiz Chiefs were held "actual proprietors of the lands" within the meaning of S. 5 of Regn. 8 of 1793 and that although they had lost the right to claim separation from Ramgarh and for that reason must be considered as dependent talukdars, they are still the actual proprietors of the lands and cannot be considered as leaseholders: 21 W. R. 358 (P.C.), *Foll.*; 17 W. R. 41 (P.C.), *Ref.*; *Jugodi's case* (A. I. R. 1926 Pat. 369), *Diss. from.* (*Das and Adami, JJ.*). KAMAKHAYA NARAIN SINGH *v.* BHUVANESHWAR LAL SINGH. **115 I.C. 204= 7 Pat. 594=A.I.R. 1928 Pat. 516 (a).**

—S. 4—Dowls after confiscation.

—The fact that dowls were taken from the holders of the taluks after the confiscation does not make the taluks independent, if in point of fact at the Decennial Settlement or in pursuance of the Regulation relating thereto separate engagements had not been made in respect of them. (*Greaves and Mukerji, JJ.*). BIRINDRA KISHORE *v.* DURGASUNDAR. **98 I.C. 211=A.I.R. 1927 Cal. 136 (b).**

—S. 5—Enhancement of rent.

———*Rent of Taluks held long before Zemindari is not liable to be enhanced.*

The owner of taluks which were formed long before the zemindari, comes within the description of a taluqdar in S. 5 (3) of Regulation VIII of 1793 which was not repealed when the zemindari was created. The rent of such a taluq cannot therefore be enhanced. 22 C. 214 (P.C.), *Foll.* (*Newbould and B.B. Ghose, JJ.*). BIRENDRA KISHORE MANIKYA BAHADUR *v.* ALI AHMAD. **84 I.C. 86= 39 C.L.J. 605=A.I.R. 1924 Cal. 1015 (c).**

DECENNIAL SETTLEMENT REGULATION (1793) —S. 5—Taluqdar.

—S. 5—Taluqdar.

———*Construction—Talukdar may be actual proprietor or merely a lease-holder.*

It appears from Cls. 5 and 7 that a taluqdar may be the actual proprietor of the land, or he may be a lease-holder only, and he is the latter if the taluk is held under a writing in sanad from a zemindar which does not expressly transfer the property in the soil, but only entitles the talukdar to possession so long as he continues to discharge the rent or perform the conditions stipulated therein. (*Sir Lancleot Sanderson*). RAJAH BEJOY SINGH *v.* SURENDRA NARAYAN. **111 I.C. 345=56 Cal. 1=55 I.A. 320=48 C.L.J. 268=26 A.L.J. 1233=33 C.W.N. 7=28 M.L.W. 855=1928 M.W.N. 841=10 P.L.T. 66=A.I.R. 1928 P.C. 234 (b)=55 M.L.J. 456.**

———*No separation of jama—Presumption is against his being an independent talukdar.*

Where a *talukdar* is shown to have taken no steps under the Regulation to obtain separation of his jama, the presumption would be that he was not an independent *talukdar* under S. 5 of the Regulation. (*Mr. Ameer Ali*). SRINATH RAY *v.* P. UDAI NATH. **82 I.C. 879=28 C.W.N. 145=33 M.L.T. 408=1923 M.W.N. 702=A.I.R. 1923 P.C. 217 (b).**

—S. 7—Taluqdars.

———*Taluqdars holding taluqs under writing have no right to subsoil.*

Taluqdars where taluqs are held under writings or sanads are leaseholders only and as such they have no mineral rights in the land. It is the zemindar who has the entire rights to minerals. (*Das and Wort, JJ.*). GOPI RAM *v.* JAGARNATH. **A.I.R. 1929 Pat. 685 (d).**

DECISIONS.

See PRACTICE—PRECEDENTS.

DECLARATION.

See SPECIFIC RELIEF ACT, S. 42.

DECLARATION OF TRUST.

See (1) HINDU LAW—RELIGIOUS ENDOWMENT.
(2) MAHOMEDAN LAW (WAKF).
(3) TRUST.
(4) TRUSTS ACT.

DECLARATORY DECREE.

See (1) EXECUTION.
(2) SPECIFIC RELIEF ACT, S. 42.

DECLARATORY RELIEF.

See SPECIFIC RELIEF ACT, S. 42.

DECLARATORY SUIT.

See SPECIFIC RELIEF ACT, Ss. 4, 42.

DECREE

See also (1) CIVIL P. C., Ss. 2 (2), 47, 96, 152 and O. 9, R. 13.
(2) EXECUTION.
Amendment of—*See* CIVIL P.C., S. 152.
Assignment.
Compromise Decree—*See* Compromise Decree.
Construction.
Date of.
Effect of.
Executability.
Execution.
Ex-parte.
Finality of.
Form of.
Fraud.
Minor.
Setting Aside.
Validity of.

DECREE—Construction—Compromise Decree—Assignment.

———*Contract Act, S. 25—Assignment can be made—Judgment-debtor becoming insolvent.*

Assignment of decree is valid notwithstanding that judgment-debtor has become insolvent. 43 C. 999, *Dist.* (*Krishnan, J.*). K.S. KRISHNA AIYAR *v.* NYNADIKKAM PILLAI. **82 I.C.78=20 M.L.W. 328=1924 M.W.N. 693=A.I.R. 1924 Mad. 801 (b).**

—Construction.

Compromise Decree.
Conditional Decree.
Costs.
Declaratory Decree.
Instalment Decree.
Interest on.
Mesne Profits.
Mortgage Decree.
Partition.
Personal Liability.
Reference to Judgment & Pleadings.
Rules of.
Settlement Court.
Vagueness.
Miscellaneous.

—Construction—Compromise Decree.

———*Consent decree providing each party to bear its costs but not stating that previous interlocutory orders for costs should be superseded—It cannot supersede them.*

A decree by consent, one of the terms of which is that each party should bear its own costs, cannot supersede previous interlocutory orders for costs passed during the course of the suit, if the decree does not specifically state that they should be so superseded: *Beynon & Co.* v. *Godden & Son*, (1878) 4 *Ex. Div.* 246 and *British Natural Premium Provident Association* v. *Bywater*, (1897) 2 Ch. 531, *Relon.* (*Lort Williams, J.*). KEDARNATH BHUTRA *v.* JOHORMULL BHUTRA. **57 Cal. 469=A.I.R. 1930 Cal. 465 (a).**

———*Contract Act, S. 73—Compromise decree providing for injunction preventing sellers-defendants from selling goods to third parties and providing for damages in case of breach—Defendants making breach and paying damages as per compromise— Decree cannot be said as satisfied—Decree—Construction.*

On the 1st March, 1916 the respondents contracted with the appellants for the purchase of 38,000 tons of their manganese ore by instalments over an extended period. The contract contained provisions to secure to the buyers the exclusive supply of the seller's ore till the contract quantity had been worked out. In 1921 the buyers commenced a suit alleging deliveries of ore by the defendants to third parties in breach of the contract. During pendency of the suit the parties arrived at an agreement of compromise, and the terms were embodied in a compromise decree dated 28th February, 1922. Cl. 2 of the decree restrained the defendants from selling the ore from mines mentioned in the agreement of the 1st March, 1916 or alienating the mines themselves till they have delivered the whole remaining balance. Cl. 10 provided "that in the event of the defendants failing to deliver the full quantity of 4,000 tons of ore of the stipulated grade in any particular year or violating any of the conditions of this compromise, the defendants shall pay to plaintiffs damages at the rate of Re. 1 (rupee one) per ton on the whole of the quantity which may then have remained undelivered out of the total quantity of 31,284 tons and the same shall be recovered by execution of this decree." A breach occurred and the

DECREE—Construction—Compromise Decree.

defendants presented an application for leave to deposit Rs. 28,649-2-9 to be paid over to the decree-holders, and for an order declaring the decree to have been thus fully satisfied. The decree-holders applied for execution of their decree by seizure and delivery to them of certain manganese ore, alleged to be lying at several mines and railway sidings, and by the appointment of a receiver and other relief. The trial Court granted application of defendants judgment-debtors and held that the decree-holders were not entitled to the relief prayed but must take in satisfaction the amount deposited by the judgment-debtors. This decision was affirmed in appeal. On appeal to Privy Council,

Held: that Cl. 10 did not enable the judgment-debtors to render nugatory all their obligations under the prior part of the contract, whenever it suited their pockets to do so. It provided that they shall pay at the specified rate, if they fail to perform the contract in any respect, but it did not say that such payment was to be a full and exclusive satisfaction of all obligations under the contract. The payment into Court did not make the decree a satisfied decree. It provided a mode of enforcing such payment but it did not say that the other terms would not be enforced by execution of the decree, namely, by applying to the Court to enforce the injunction. (*Viscount Sumner, Lord Sinha, Sir John Wallis and Sir Lancelot Sanderson*). SIR BISSESSAR DASS DAGA *v.* EMMANUEL VAS. **107 I.C. 25=47 C.L.J. 162=30 Bom.L.R. 243=55 Cal. 238=32 C.W.N. 509=55 I.A. 58=27 M.L.W. 655=26 A.L.J. 667=24 N.L.R. 17=1928 M.W.N. 951=A.I.R. 1928 P.C. 27=54 M. L. J. 122.**

———*Trust created with properties belonging to the persons absolutely—Surviving trustee cannot appoint successor in absence of express power.*

There is no authority for the proposition that in cases where two or more persons create a trust with properties belonging to each absolutely, the surviving trustee has the right to appoint trustee in the absence of any express power conferred on him. The general rule is that the heirs of the founder or founders have such a right.

U and *R* were brothers and succeeded to certain properties as reversioners. *R* filed a suit against *U* for partition and a compromise decree was passed. By the compromise decree certain properties were set apart for the performance of religious trusts. *U* was constituted, by the rajinama decree, the trustee, but as he was old and blind, his son was allowed to be in actual management of the trust properties and to perform the trust. The rajinama decree provided that if there was default in performing the duties, then *R* would have the right to get possession of all the immovable and moveable properties in execution. He was given the right also to collect the produce thereof, pay the tirva of the same and perpetually get performed all the *viniyogas* without obstruction and any omission whatever.

Held: that no power was given under the decree to *R* to appoint a successor: 15 Mad. 199 and 12 Cal. 117 (P. C.), *Foll.* (*Kumaraswami Sastri and Wallace, JJ.*). VENKATARAYA *v.* VASUDEVA. **108 I.C. 294=1928 M.W.N. 127=A.I.R. 1928 Mad. 897 (a).**

—A compromise decree provided: "In case any of the parties does not complete the work of execution of the pottah and *kabuliyat* within the said time, then any of the parties shall be competent to have that executed on taking the protection of a competent Court."

Held: that the words are sufficiently wide and general to cover an application for execution to the competent Court to have the patta and *kabuliyat* executed. (*Cuming and B. B. Ghose, JJ.*). ASHWINI COOMAR *v.* RAMGOPAL. **95 I.C. 179=A.I.R. 1926 Cal. 975 (a).**

———*Consent decree on mortgage silent as to relief under Civ. Pro. Code, O. 34, R. 6—Question not arising in the suit—The decree does not bar subsequent application for the relief—Civ. Pro. Code, O. 34, R. 6.*

Where a suit for sale on the basis of a mortgage is compromised, and a decree is passed on the basis of the compromise, the fact that the compromise does not expressly state the mortgagor's personal liability for the balance does not bar an application under Civ. Pro. Code, O. 34, R. 6 but not for costs which were agreed to be recoverable from the property. (*Daniels, J. C.*). SHRI RAM *v.* SURAJ BALI. **88 I.C. 507=A.I.R. 1926 Oudh 27 (2) (a).**

—A consent decree has no greater sanctity than a contract between the parties. (*Rupchand Bilaram, A. J. C.*). R.E. NARAINDAS SUNDERDAS. **93 I.C. 331=20 S.L.R. 197=A.I.R. 1926 Sind 133 (c).**

———*Direction that rent provided in compromise be entered in revenue papers is not incorporation of compromise into decree.*

The mere fact that the decree directed that entries should be made in the revenue papers of the rent provided in the compromise cannot be regarded as equivalent to the embodiment of the terms of the compromise in the decree. (*Neave, J.*). SANTU *v.* ABHAINANDAN PRASAD. **81 I.C. 297=A.I.R. 1925 All. 32 (h).**

———*Consent decree is but a contract.*

A consent order is a mere creature of the parties and it is not the less a contract and subject to the incidents of a contract, because there is superadded the command of the Judge. (*Mookerjee and Suhrawardy, JJ.*). GANESH CHANDRA PAL *v.* CHANDRA MOHAN DATTA. **84 I.C. 730=28 C.W.N. 984=A. I. R. 1925 Cal. 199 (a).**

———*Defendants to get a certain sum and rest of estate to be divided equally between the parties—No indication that expenses incurred by defendants were included in the sum specially allowed to them—Defendants are entitled to half share of legitimate expenses.*

A person applied for Letters of Administration in virtue of the will left by a Hindu widow. He was opposed by some people but ultimately Probate was granted to him. Then the defeated party filed a suit against him for declaration regarding a portion of the property. This suit was compromised and the compromise decree concluded as follows:—Defendants are entitled to Rs. 500 out of the estate and that the rest of the estate be divided equally (*i. e.*, the plaintiffs get half and the defendants get half). Parties to bear their own costs."

Held: That in spite of this the words of the decree could only be read as meaning the net estate after legitimate deductions had been made. There was nothing in the wording of the compromise to show that any expenses incurred by the defendants were taken into account in calculating the sum of Rs. 500 and in a case of this sort the estate meant the amount which paid estate duty and

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which came into the hands of the administrators or its executors. Hence the defendants were entitled in addition to the sum of Rs. 500 specially allowed to them by the decree, to a half share of the expenses incurred by them in connection with the testatrix's funeral and in connection with obtaining the Probate and realising the assets. (*Harrison, J.*). JAYA LAL *v.* SHUGAN CHAND.

86 I. C. 673=26 P. L. R. 71=
A. I. R. 1925 Lah. 470.

———*Decree on an award by Debt-Conciliation Board is not consent decree.*

A decree passed on an award by the Debt Conciliation Board is not a consent decree, but only a decree based upon an award, and the executing Court cannot go behind it. 15 N. L. R. 39, *Foll.*, 31 Bom. 15 and 35 Bom. 239, *Dist.* (*Baker, J. C.*). GANGARAM *v.* GANPATRAO. **88 I. C. 135=**
A. I. R. 1925 Nag. 361 (a).

———*Compromise decree giving plaintiffs lands by way of maintenance on plaintiffs paying rent for dawam—No under-proprietary title is conferred in the lands—Entries made in Settlement papers on basis of the decree as the tenure being under-proprietary are of no consequence—Record-of-Rights.*

Predecessors-in-title of defendants instituted a suit for the recovery of the land comprising an area of 25 *bighas* 13 *biswas* 13 *biswansis* and asked that certain lands be decreed to them by way of maintenance so that they might cultivate them and that they would pay rent therefor like tenants and would manage to support themselves by those means. The plaintiffs' predecessors-in-interest agreed to this with the result that a decree was passed.

Held: that the decree cannot be construed to have conferred under-proprietary tenure on the defendants' predecessors, and if that was the true interpretation of the decree, the entries made in the papers of the first and the subsequent settlements as regards the nature of the tenure being under-proprietary were of no consequence. (*Wasir Hasan, A. J. C.*). GAYA PRASAD *v.* ALAM SINGH.

88 I. C. 53=A. I. R. 1925 Oudh 751 (b).

———*Amendment of—Grant of stay of execution on parties—Agreement is not amendment of decree.*

Grant by Appellate Court of stay of execution in consequence of agreement between parties does not amount to amendment of decree in terms of the agreement so as to make the agreement enforceable in execution upon the appellate Court affirming the original decree. 5 W. R. Mis. App. 1 ; 7 Mad. 400, *Dist.* (*Mullick and Kulwant Sahay, JJ.*). MANGAL PATHAK *v.* MEHAR SINGH. **85 I. C. 110=**
1924 P. H.C.C. 273=
A. I. R. 1925 Pat. 128.

———*Consent decree in mortgage suit charging amount on mortgaged property and making it payable in instalments—Judgment-debtor relieved from other liability—Decree is final and property can be sold in execution without separate suit.*

The contention in execution proceedings that the decree in question was not a final decree and that it was only a declaratory decree and not capable of execution is not sound when the decree was a consent decree passed in a suit founded on a mortgage bond, against the heirs of the deceased mortgagor, making the decretal amount payable by instalments with a charge on the mortgaged property, the personal liability of the judgment-debtor being excluded and property other than the mortgaged property being exempted from liability. The decree was a final decree; the judgment-creditor had the right to bring the property charged to sale in execution and a separate suit for sale of the property was unnecessary. (*Raymond and Madgavkar, A. J. C.*). MURAD *v.* DAYARAM.

78 I. C. 49=A. I. R. 1925 Sind 156 (c).

———*Consent decree is no more than a contract.*

A consent decree cannot operate to a larger extent than the contract itself. (*Mookerjee and Chotzner, JJ.*). MALCHAND BOID *v.* OSMAN ALI MANDAL. **80 I. C. 307=38 C. L. J. 272=**
A. I. R. 1924 Cal. 159 (b).

———*Consent decree in a mortgage suit fixing time for payment is not a preliminary decree and is excusable.*

Where a compromise decree was passed by which in default of payment by defendants of a certain amount plaintiff was to execute the decree after the fixed date personally against defendant No. 1 and also by sale of the mortgaged property and also out of the other properties of the other defendants.

Held: that the decree was a consent decree and was executable being not a preliminary decree. (*Schwabe, C. J. and Waller, J.*). SUBRAMANIA PILLAI *v.* RAKKUMUTHU MOOPAN. **79 I. C. 418=**
19 M. L. W. 502=1924 M. W. N. 454=
A. I. R. 1924 Mad. 645 (a).

———*Compromise decree is but a contract with superadded command of a Judge.*

It is well settled that a contract of parties is none the less a contract because there is superadded to it the command of the Judge. It is still a contract of the parties, and there is no analogy between a decree giving effect to a compromise agreement between the parties, and a decree obtained upon contest. (19 C. W. N. 1228, *Foll.*). (*Miller, C. J. and Foster, J.*). C. J. SMITH *v.* A. KENNY.

81 I. C. 298=2 Pat. 749=
A. I. R. 1924 Pat. 231.

———*Compromise fixing 2 years for payment and for immediate sale on default—Plaintiff dying before the 2 years—Compromise was held not to be a preliminary decree requiring to be made final and heirs of plaintiff need not be brought on record within 8 months—Civil P. C., O. 22, R. 12, O. 34, R. 4.*

At the hearing of the appeal a petition was put in on behalf of both parties to the effect that it had been agreed between the parties that the plaintiffs would get a decree for Rs. 70,000 inclusive of all costs and interest up to the said date, and that the said amount would be paid by the defendant within two years therefrom with interest at the rate of Rs. 4-8-0 per cent. per annum till realisation, and that in default of payment within the said period of two years, the said amount of Rs. 70,000 with interest at the said rate till realization would be realized by the sale of the properties mentioned in the plaint. Thereupon it was ordered that the said petition should be filed as record and that the defendant and the plaintiffs should give effect to and be bound by the terms thereof.

Held, that the intention of the parties, as far as the same can be gathered from the compromise decree, was that immediately on the expiration of two years from the date of the decree, the plaintiffs would be competent to realise the moneys due to them by the sale of the properties mentioned in the plaint, that under the provisions of O. 22, R. 12, C. P. C., it was not necessary to apply in the suit, which had come to an end, for substitution of the heirs of the plaintiff and of the deceased defendant who had died in the meantime. A. I. R. 1922 P. C. 187, *Dist.* (*C. C. Ghose and Panton, JJ.*).

DECREE—Construction—Compromise decree.

RAJA HEMENDRA LAL SINGH DEO *v.* FAKIR CHAND DATTA. **74 I. C. 929=27 C. W. N. 621=50 Cal. 650=A. I. R. 1923 Cal. 626.**

———*Consent decree—Consent decree is subject to the incidents of an ordinary contract.*

The contract of the parties is not the less a contract, and subject to the incidents of a contract because there is superadded the command of the Judge. (*Mookerjee and Panton, JJ.*). GOPAL KRISHNA *v.* HARINATH. **66 I.C. 766=34 C. L. J. 157= A. I. R. 1921 Cal. 565 (b).**

—Construction—Conditional decree.

———*Money-decree on failure to execute lease in accordance with consent decree—Lease executed accordingly but refused to be accepted by decree-holder—He cannot execute the money-decree.*

In a suit for specific performance of a contract of lease by the lessee it was ordered that if the lessor did not grant a patta according to the terms of the consent decree within a fixed period the lessee would be entitled to a money-decree of a certain amount. The lessor tendered a patta according to the terms of the consent decree. But it was refused by the lessee as not fulfilling the terms of the consent decree.

Held: on construction of the consent decree that the patta was in accordance with it and the lessee was not entitled to a money decree which was passed in the alternative. (*Sir Lancelot Sanderson*). MAYASANKAR BHAGWANJI *v.* SACHINDRA MOHAN GHOSH. **A.I.R. 1930 P.C. 147.**

———*Payment by plaintiff's mortgagee is valid.*

Where in a suit to set aside a sale a conditional decree was passed that plaintiff decree-holder should pay certain sum within a certain time and the payment was made by plaintiff's mortgagee instead of plaintiff by depositing money in Court.

Held: that the condition was satisfied by a payment of the sum into Court, and that the mortgagee though he was not a party had a right to make the deposit. (*Lord Salvesen*). MAHOMED RAHIMTULLA HAJI *v.* ISMAIL ALLARAKHIA. **80 I. C. 411= 5 L.R.P.C. 105=26 Bom. L.R. 549=1924 M.W.N. 422=51 I. A. 236= 48 Bom. 404=34 M.L.T. 99=22 A.L.J. 931=29 C. W.N. 584=A.I.R. 1924 P.C. 133=46 M.L.J. 567.**

———*Limitation Act, Art.* 182—*Non-payment within time being not penalized, ordinary limitation applies.*

A decree was silent as to the effect of non-payment of the decretal amount within the time limited.

Held: the decree-holder is entitled to enforce his decree at any time within the period of limitation prescribed for execution of decree in Art. 182 of Schedule 1 to the Limitation Act notwithstanding the fact that the amount was deposited after the fixed time. 19 I. C. 856; 14 A. 350, *Foll.* (*Moti Sagar, J.*). MAHABIR PERSHAD *v.* KARTAT SINGH. **76 I.C. 144=A.I.R. 1924 Lah. 635 (b).**

———*Payment after date fixed without extension of time disentitles decree-holder to execute decree.*

Where a decree ordered payment by the appellants of a sum of money into Court by a certain date upon which the respondents were directed to re-convey the land to them and where the appellants failed to pay the money within time and did not obtain extension of time.

DECREE—Construction—Declaratory Decree.

Held: that though the appellants subsequently paid the money they were debarred from executing the decree. (*Young and Baguley, JJ.*). MA PU MAI *v.* KO SIT TIN. **85 I. C. 352=3 Bur. L.J. 163=A. I. R. 1924 Rang. 375.**

———*Ordering, deposit of money—Is not a preliminary decree.*

A conditional decree ordering a deposit of money to be made within a certain time is not necessarily to be construed as a preliminary decree and the order restoring possession to J. D. from whom possession had been taken in execution under a mistake, a final decree. (*Daniels, J. C.*). DORILAL *v.* MT. JAMAGA. **72 I.C. 879 = A.I.R. 1923 Oudh 16 (e).**

—Construction—Costs.

Where the Privy Council reversed the decree of the High Court and restored that of the Trial Court, which awarded interest on costs, the proper construction of the P.C. decree is that interest ought to be allowed on the costs of the Trial Court, and in the absence of a specific direction no interest is to be allowed on the costs in the High Court. (*Chatterjea and Pearson, JJ.*). KIRANCHANDRA *v.* SHYAMAPADA. **63 I.C. 709 (c).**

—Construction—Declaratory decree.

———*Mortgage-decree—Payment of principal with interest on instalment ordered—In default of payment plaintiff to be entitled to possession—Decree held to be wrong and merely declaratory and not executable.*

A compromise decree was as follows: "In future defendant I shall be liable to pay interest and principal by instalments. In default of payment of any instalment for two years together the plaintiff will be entitled to take possession of the land." The decree-holder filed an application in execution alleging that there had been default in payment of interest as agreed.

Held: that the last part of the decree was wrong and that the paragraph must be taken to have been merely declaratory and hence decree was not executable: 7 S.L.R. 192, *Rel. on.*; A.I.R. 1928 Mad. 61, *Ref.* (*Dulip Singh, J.*). BANUMAL *v.* PARAS RAM. **120 I.C. 597=30 P.L.R. 701=A.I.R. 1930 Lah 110.**

———*Compromise by way of family arrangement, granting one party allowance, incorporated in decree—Allowance was to be recovered periodically in whatever manner person liked—No mention of execution proceeding—Allowance could be recovered by execution.*

In the course of a partition suit *T* and *J*, father and son, executed a compromise by way of family settlement and a decree was passed in terms of the compromise. In that it was agreed that *J* should pay *T* a sum of Rs. 25 a month by way of maintenance and a provision was included in the compromise which was incorporated in the decree, that in the event of non-payment, *T* should be able to recover the amount from person and property of *J* in whatever manner he liked.

Held: although no execution proceeding was explicitly mentioned in the case, and although such proceedings were mentioned in connexion with an allowance of a third party to the suit, who was also party to the compromise, the decree was not merely declaratory decree and was capable of execution: 15 O. C. 99, *Dist.*; A. I. R. 1922 Oudh 34, *Ref.* (*Pullan, J.*). TIRBENI SAHAI *v.* JAGDAMBA SAHAI. **122 I. C. 623=7 O. W. N. 390=A. I. R. 1930 Oudh 302.**

DECREE—Construction—Declaratory decree.

———Form of—Inference of clear and definite order from language in decree satisfies requirements of executory decree—Use of words "I order" is unnecessary.

If a clear and definite order can be inferred from the language used in a decree, that is sufficient to meet the requirements of an executory decree. It is not necessary that it should contain the words "I order." Where the language used in a decree is imperative "she shall receive from a person Rs. 18-8 p. m. as maintenance allowance" and the decree further provides that the parties are to enforce their claims and rights in execution, the words amount to an order: 9 Bom. 108, *Dist.* 24 I. C. 861 and 1 S. L. R. 184, *Ref.* (*Percival, J. C. and Aston, A. J. C.*). VERHOMAL *v.* MT. RADHANBAI. **A. I. R. 1930 Sind 223 (a).**

———Precedents cannot be applied—Decree, in a suit on mortgage by widow of mortgagor, declaring plaintiff's right to recover possession and further declaring devolution of right on her death—No period for payment of mortgage money fixed—Decree is purely declaratory—Subsequent suit for redemption is not barred either by Civil P. C., S. 11 or S. 47.

On a question of interpretation of a document precedents can hardly arise. Each document must be construed on its own language and in the light of surrounding circumstances if relevant; it is not right for the Court in interpreting a decree to allow to be controlled by decisions in which other documents have been interpreted.

In a suit by widow of the mortgagor in respect of the mortgage, a decree was passed in favour of the plaintiff, declaring the right to redeem and the right to recover possession on payment of a certain amount and further declaring devolution of the right on the death of the plaintiff, but no period for the payment of the mortgage money was fixed.

Held: that the decree was to be interpreted as purely declaratory in the nature of the plaintiff's right to redeem the mortgaged property leaving it open to the plaintiff to claim actual possession whenever she found it convenient to do so on payment of the mortgage money.

Held: further, that a subsequent suit for redemption was neither barred by the rule of *res judicata* nor by the provisions of S. 47, Civil P. C. (*Wasir Hasan and Gokar Nath Misra, JJ.*). SURAJ BAKHSH *v.* GANGA BAKHSH. **105 I. C. 93= A. O. W. N. 382=A. I. R. 1927 Oudh 457 (a).**

———A compromise decree provided that plaintiff would recover a certain sum from defendant and the latter would be entitled to certain cattle, and that if the plaintiff took any of the cattle he would be responsible therefor. On the plaintiff's application for recovery of the money by execution, defendant objected that the plaintiff had taken certain cattle which had been assigned to the defendant and that the value of those cattle should be set off against the amount claimed by the plaintiff.

Held: that inasmuch as the decree had only declared the right of the defendant to the cattle his remedy was to sue the plaintiff for the value of the cattle taken by the latter and that he could not claim a set-off in execution proceeding. (*Broadway and Moti Sagar, JJ.*). JIWAN MAL *v.* NANAK CHAND. **63 I. C. 975 (Lah.).**

———Certain sum directed to be paid—Further proceedings necessary to ascertain what set-off, judgment-debtor is entitled to as adjustment made since decree—Decree is not declaratory and is executable—Execution—Specific Relief Act, S. 42.

Where the decree directs the Principal judgment-debtors to pay a certain sum and this is the decree which the decree-holder wishes to execute, the fact that, in a certain view of the matter, further proceedings might be necessary to ascertain what set-off the judgment-debtor was entitled to against the decree in adjustment that has been made, does not make the decree a declaratory decree. (*Kennedy, J. C. and Madgavkar, A.J.C.*). DONALD GRAHAM & CO. *v.* KEWALRAM. **79 I.C. 477=16 S.L.R. 245= A.I.R. 1921 Sind 132 (e).**

—Construction—Instalment decree.

———Deposit of money—Tender made on specified day but delay in payment—Deposit is not valid.

A judgment-debtor under a decree had to pay certain sum annually to the opposite party on 14th September, and in default he was liable to ejectment from certain property. On 14th September, he brought a tender for the sum to the Court. The Sub-Judge, was on leave but he signed the tender on the following day directing the judgment-debtor to deposit the money. He, however, did not withdraw the tender till 17th September on which date he deposited the money in the Treasury.

Held: that the deposit was made beyond time and though the money was tendered on the 14th the judgment-debtor delayed to take the tender from the Court: A.I.R. 1927 Oudh 263; A.I.R. 1926 All. 602, *Dist.* (*Pullan, J.*). SHEO NATH *v.* MT. GANESHA. **105 I.C. 734= A.I.R.1928 Oudh 209 (1).**

———Failure to pay—Default clause—Court has wide powers to relieve party from consequences of default—Equity.

The amount due under a decree was to be paid in instalments. On failure to pay two instalments, the whole amount then due could be recovered by sale of certain property over which a charge was created. The first instalment was paid when the second became due. The judgment-debtor applied to the Court for extension of time for the payment of second instalment and on the dismissal of the application, the amount of the second instalment was paid into the Court. In the meantime, the third instalment became due. The decree-holder did not accept the payment of the second instalment and applied to the Court to recover the balance due by sale of the property:

Held: As a Court of equity the High Court had wide powers to do what seemed to it just. There is no injustice in putting the decree-holder exactly in the same position as if no default has been committed because the decree-holder has the security of the property for the balance of the decretal amount and interest was running on that amount. (*Macleod, C.J. and Shah, J.*). NARSINHA GOPAL *v.* BALWANT MADHAV VADGAONKAR. **64 I.C. 570= 46 Bom. 463=23 Bom. L.R. 1238= A.I.R. 1922 Bom. 170.**

———Compromise decree—Part-payment accepted by decree-holder—Right to interest is not lost.

In a compromise decree, the decree was to be paid in instalments. On failure to pay within the date fixed, the decree-holder was to get interest @ 12 per cent. per mensem from the date of default and he was at liberty to execute the decree. After the due date the judgment-debtor made payments to the decree-holder who claimed

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appropriation first towards *interest* and then towards the decretal sum.

Held: that the decree-holder was entitled to executing the decree was for the benefit of the interest and the clause as to decree-holder. The acceptance of part-payment did not amount to waiver of the right to interest. (*Jwala Prasad and Ross, JJ.*). T. BARCLAY *v.* MT. DHANDEI.

71 I.C. 937=4 Pat. L.T. 112=1923 P.H.C.C. 194= A.I.R. 1923 Pat. 322 (a).

—Construction—Mesne profits.

———Mesne profits allowed but period not mentioned—Plaint not expressly restricting prayer for profits up-to-date of suit—Profits must be deemed to be allowed up-to-date of delivery of possession. 8 Cal. 178 (P.C.), *Rel. on.* (*Cuming and Page, JJ.*). PROMODE NATH ROY *v.* SECY. OF STATE.

99 I.C. 428=53 Cal. 992=31 C.W.N. 112= A.I.R. 1927 Cal. 182 (b).

—Construction—Mortgage-decree.

—Where mortgagors have a specific and defined share in the mortgaged property and it is clear that they mortgaged no more than their proportionate share in the property, the auction-purchaser at the sale in execution of the mortgage-decree cannot be held to be entitled to retain in possession such shares in the mortgaged property as were clearly exempted from the scope of the suit and consequently from the scope of the decree on which alone their title rests, merely by reason of the fact that decree was ambiguous and the auction-purchaser had entered into possession of the whole property as result of the sale: 16 Cal. 173 (P.C.), *Ref.* (*Wazir Hasan, C.J. and Raza, J.*). SARABJIT SINGH *v.* FARAHATULLAH KHAN. **7 O.W.N. 594= A.I.R. 1930 Oudh 366 (a).**

———*Decree based on award—Amount made a charge on property and made realisable by sale—Necessity for attachment.*

A private award was given by which certain properties were charged with the amount due to one of the parties and it was also provided that the amount might be realised by sale of properties charged and if the amount realised by the sale was not sufficient the balance should be realised from the other properties and the person of the opposite party. A decree was passed in terms of this award.

Held: that this decree should be deemed to be a mortgage-decree and that, even if it were a decree against the property charged, still no attachment was necessary before bringing the properties to sale. (*Addison, J.*). MAHOMED ABDULLA *v.* JAMIAT RAI. **121 I. C. 369.**

———*Plaintiff declared entitled to certain relief in certain contingency—Question of limitation with regard to the relief ordinarily remains open till plaintiff applies for relief.*

Where liberty is given to the plaintiffs in a decree for sale of mortgaged properties to apply for a personal decree for the amount of the balance due to them after sale of the property it does not follow necessarily that the question of limitation in respect of a personal decree has also been considered and decided in plaintiff's favour. The question will ordinarily remain open and will be decided at the proper time, *i.e.*, when the plaintiff applies for a personal decree for the balance due to him after the sale of the mortgaged roperties. (*Dalal, J.C. and Gokaran Nath, A.J.C.*). BIBI BATUL *v.* KEDAR NATH. **88 I.C. 810=12 O.L.J. 372= A.I.R. 1925 Oudh 462 (c).**

DECREE—Construction—Partition.

———*Interest-in-kind is not usually decreed.*

It is unusual in a decree in a mortgage suit to direct that interest should be paid in kind instead of in money.

Where in a mortgage-decree the lower Court in accordance with the terms of the mortgage deeds directed the defendants to give certain amount of rice to the plaintiff.

Held: that defendants should have an opportunity of tendering the market price of the rice. (*Macleod, C.J. and Crump, J.*). SHIVRAO RAMRAO *v.* LAXMIBAI KOM **76 I. C. 638= A.I.R. 1924 Bom. 523 (b).**

———*Allowing redemption does not make a decree a mortgage-decree.*

Where the Court decreed possession to the then plaintiffs with the proviso that the defendant could redeem within four years on payment of Rs. 1,125 and it was nowhere stated in the decree that the decree-holders would enter into possession of the property in the capacity of mortgagees.

Held: the mere fact that it was provided in the decree that the judgment-debtor would be entitled to redeem within four years does not necessarily lead to the inference that the mortgage had not determined and was still subsisting. (*Martineau and Moti Sagar, JJ.*). KOKAN *v.* SOHAN.

76 I. C. 272=A.I.R. 1924 Lah. 696.

———*Possession deliverable on plaintiff depositing Rs. 55 in any Chaitra month—Time does not begin to run until deposit is made—Limitation Act, Art. 181.*

A decree was passed in August 1886 in a suit between the parties in which a consent decree was taken in the following words. 'The plaintiff do pay to the defendants Rs. 55 in respect of the debt on mortgage in Chaitra of any year and the plaintiff do obtain possession of the lands in suit considering the same to have been redeemed. The plaintiff is not entitled to take possession of the lands in dispute in any other month except Chaitra.' The plaintiff was now seeking to execute the decree and was met by contention that execution was barred.

Held: that the relationship of mortgagor and mortgagee still continued to exist between the parties. It was really a preliminary decree. 43 Bom. 334, 477, *Cons*; 23 Bom. 592, *Diss.* Under S. 181 until he paid the money he was not entitled to possession and until possession was asked for and refused he had no right to apply to the Court. (*Macleod, C. J. and Crump, J.*). HANMANT *v.* SHIDU SAMBHU. **72 I. C. 556=25 B. L. R. 358= 47 Bom. 692=A.I.R. 1923 Bom. 300.**

—Construction—Partition.

Suit—Compromise decree defining shares—Fresh suit for partition along with other property is not barred.

In a partition suit a compromise decree was passed defining the shares of the parties in certain properties and the decree reserved liberty to the parties "to apply to the Court as occasions arose". On a fresh suit for partition of the said properties along with some other property;

Held: that the liberty reserved would not enable the plaintiff to apply for partition of the properties when there was no order in the decree itself for such partition. "The liberty to apply" did not empower the Court to deal with matters outside the scope of the order. (*Chatterjea and Pearson, JJ.*). HANSESWAR PAL *v.* BEPIN BEHARY PAL. **A.I.R. 1922 Cal. 197.**

———*Whether rules relating to forms of decree should not be consulted*: (*doubted*).

DECREE—Construction—Personal Liability.

———*Civil P. C., O. 34, R. 5—Question as to personal liability for costs is one of construction of decree.*

The question whether in a mortgage-suit, the costs are to be paid by judgment-debtor personally must always be regarded as one of construction of the decree and of the intention of the Court to be gathered from the terms of the decree. If a decree on a proper construction should be held to have made the costs payable personally by the defendants, apart altogether from the securities or the sale of them, there is not and could not be any rule or principle of law saying that such a decree could not be executed according to its tenor

Where a Court after being informed of satisfaction having been entered up of the original decree, deliberately amended the decree and made an order against a party for the payment of costs without there being any reference whatever to the mortgage securities:

Held: that the obvious intention of the Court was that the amount must be paid personally and a construction which would have the effect of importing into the decree a reference which was not there, to the mortgage security or the sale of it, would be unreasonable. (*Srinivasa Ayyangar, J.*). RAMASWAMI NAICKER *v.* CHINNATHAYAMMAL. **109 I. C. 63=A. I. R. 1928 Mad. 604.**

———*Mother to receive Rs. 500 to be contributed by her two sons—Amount to be realized from certain named properties—Sons are personally liable.*

Where a decree provided that K would be entitled to receive Rs. 250 p.m. from G. (K's son) out of the H estate and Rs. 250 p.m. from R. (K's second son) out of the rent of certain buildings "independent of both the proprietors."

Held: that the two sons were to be personally liable for making the contribution. The words "independent of both the proprietors" did not absolve the sons from their personal liability. (*Coldstream, J.*). RAJ KUMARI *v.* GURBAKSH SINGH.. **99 I. C. 1006=A. I. R. 1927 Lah. 179.**

———*T.P. Act, S.68—Mortgage-decree—Construction.*

One of the reliefs in a mortgage suit was to make the amount under the mortgage bond a charge upon the surplus of the sale proceeds of one of the mortgaged properties sold. At the end of the relief claimed, it was asked that the balance of the decretal amount should be realised from the property and the person of the defendant or defendants. The Court passed a decree under Section 68 as under: "The suit for Rs. 5,877-10-0 with proportionate costs to be decreed in terms of relief five of the claim. He is further declared to have a charge on the surplus sale proceeds which is in deposit in the Collectorate" and refused a mortgage-decree.

Held: that the decree did not include a direction that the balance of the decretal amount could be recovered from the defendants personally and from their personal property by implication, as they were purchasers of the mortgaged property and under the decree were not expressly made liable. The decree granted only that portion of relief No. 5 which related to the creation of the charge on the surplus sale proceeds regarding the amount due under the mortgage-deed. (*Jwala Prasad and Foster, JJ.*). KISHUNDEO SINGH *v.* JAGLAL SAHU. **78 I. C. 774=5 P. L. T. 603=A. I. R. 1925 Pat. 291.**

———Putni Mahal—*Decree for rent—Purchaser of putnidar's right and title after decree, is not personally liable.*

DECREE—Construction—Reference to Judgment and Pleadings.

Where a person purchased the right, title and interest of the *putnidar* of a *putni mahal* after a decree for rent had been passed against the *putnidar*.

Held: the purchaser is not personally liable for the decree if the property passes out of his hands to a third party before the institution of the execution proceedings. For rent accruing due prior to the transfer, a transferee of a tenure is not personally liable. (*Das and Ross, JJ.*). INDER CHAND BETHRA *v.* SURENDRA NARAIN SING. **66 I. C. 711=1922 P.H.C.C. 137=3 Pat. L. T. 318=1 Pat. 449=A. I. R. 1922 Pat. 162.**

—Construction—Reference to Judgment and Pleadings.

———*Executing Court cannot go behind decree and read words though appearing in judgment but not incorporated into it.*

It is not competent to the executing Court to go behind a decree or to read into it certain words which appear in the judgment but which have not been incorporated in it. Where the wording of the decree is clear, it cannot be interpreted in the light of the reasoning of the Judge in the judgment or phraseology used in the judgment. (*Tek Chand, J.*). DEVI DAS *v.* MT. ROPAN BAI. **A.I.R. 1930 Lah. 589.**

———*Two constructions possible—Construction consistent with judgment must be accepted.*

Whenever it is possible to construe a decree in two ways, one way consistent with the judgment and the other inconsistent with it, it is the duty of the Court to construe it in a way consistent with the judgment. (*Ramesam and Cornish, JJ.*). F. H. WILSON *v.* NATH MULL. **31 M.L.W. 339=A.I.R. 1930 Mad: 458.**

—In regard to construction of judgments a good deal depends on the particular circumstances of the case. 13 C.W.N. 1031, *Ref.* (*Fawcett and Mirza, JJ.*). SECY. OF STATE *v.* YELLO RAMACHANDRA. **111 I. C. 268=52 Bom. 369=30 Bom. L.R. 581=A.I.R. 1928 Bom. 215.**

———*Wording not clear—Pleadings may be looked to.*

It is legitimate to refer to the pleadings in a case in order to construe the decree that has been passed in the suit, more especially when the wordings of the decree are not very clear. (*Beasley and Ananthakrishna Aiyar, JJ.*). SANKUNNY *v.* KRISHNA. **107 I.C. 499=51 Mad. 320=27 M.L.W. 93=A.I.R. 1928 Mad. 465=54 M.L.J. 682.**

—A Court construing the decree may look at the term of the plaint itself. (*Cuming and Page, JJ.*). PROMODE NATH ROY *v.* SECY. OF STATE. **99 I.C. 428=53 Cal. 992=31 C.W.N. 112=A.I.R. 1927 Cal. 182.**

———*Decree ambiguous—Court can look to judgment and pleadings to ascertain its meaning.*

Where a decree is in its terms ambiguous, it is competent to the Court executing it to refer to the judgment and the pleadings in the suit in which the decree was passed to ascertain its precise meaning: 18 All. 344, *Foll.* (*Shadi Lal, C.J. and Broadway, J.*). NOOR HUSSAIN SHAH *v.* HUSSAIN BIBI. **102 I.C. 5=8 Lah. 318=28 P.L.R. 439=A.I.R. 1927 Lah. 476.**

———*Clear and unambiguous decree need not be interpreted.*

DECREE—Construction—Rules of.

It is not necessary to interpret a decree in the light of the pleading and the judgment when it is not ambiguous and is clear in its terms. (*Jwala Prasad and Foster, JJ.*). KISHUNDEO SINGH *v.* JAGLAL SAHU. **78 I.C. 774=5 P.L.T. 603=A. I.R. 1925 Pat. 291.**

—Construction—Rules of.

—Applications under clause "liberty to apply" in a decree can only be made for the purpose of carrying out the terms of the decree and the working of it but not to vary the decree. (*Ringnekar, J.*). FATMABAI *v* SHERIFF DEWAJI-CANJEE. **108 I.C. 510=30 Bom. L.R. 137=A.I.R. 1928 Bom. 102.**

———*Whether rules relating to forms of decree should not be consulted: (doubted).*

The process of calling to aid the rules relating to the form of decrees to be passed for the purpose of construing the decree is a process open to question. (*Srinivasa Ayyangar, J.*). RAMASWAMI *v.* CHINNATHAYAMMAL. **109 I. C. 63=A. I. R. 1928 Mad. 604 (b).**

———*Rate of exchange to be calculated as on the date of maturity.*

Where a decree for the value of eight bills of exchange stated in the dollar currency of the United States, and in Sterling, was passed.

Held: that the decretal amount in rupees is to be calculated in accordance with the rate of exchange prevailing on the respective dates when the bills matured for payment, *i. e.*, when the cause of action arose whether the cause of action is for a debt or for damages, and whether it sounds in contract or in tort; and not with the rate of exchange prevailing at the date when the decree was passed. (*Page, J.*). MULLER MACLEAN *v.* S. M. ATAULA AND Co. **81 I. C. 561=51 Cal. 320=A. I. R. 1924 Cal. 778.**

—Where terms of the decree are clear and known wrong interpretation even for a long time will not modify the terms. A.I.R. 1922 P. C. 383, *Dist.* (*Dalal, J.C. and Wazir Hasan, A. J. C.*). BISHUNATH SARAN SINGH *v.* SITLA BAKHSH SINGH. **79 I. C. 784=10 O. L. J. 315=A. I. R. 1924 Oudh 69.**

———*Decree for possession of land includes decree for possession of superstructures also.*

The suit was for ejectment of the defendant from certain land on which there were some huts. The huts were found by the lower Courts to belong to the plaintiff. There was no reference to the huts in the plaint but the decree was as follows. "The suit being decreed with costs and interests, the plaintiff will get *khas* possession of the disputed land on ejecting the defendant therefrom, as prayed. The defendant himself must remove all his personal properties from the disputed land within one month. In default the plaintiff will have to remove the same with the help of the Court and he will get *khas* possession of the said land."

Held: that the decree directing *khas* possession by ejecting the defendant, would necessarily give the plaintiff a right to *khas* possession as against the defendant in respect of the huts also. (*Chatterjee and Cuming, JJ.*). JNANENDRA NATH MOOKERJEE *v.* BRAHMAPADA PRAMANICK. **79 I. C. 191=A. I. R. 1923 Cal. 704.**

—A decree like any other document is open to construction. But the remedy by construction is only appropriate if the language is ambiguous. If the language is plain and clear the proper remedy for a variance between decree and judgment is to apply for amendment. Any construction must be, if possible to make it conform to the judgment. (*N. R. Chatterjea and Richardson, JJ.*). MAHA RAJ KUMAR SHOSHI KANTA ACHARJI CHOWDHURI *v.* RAJA SARAT CHANDRA ROY CHOWDHURI. **77 I. C. 167=35 C. L. J. 339.**

DECREE—Construction—Miscellaneous.

—Construction—Settlement Court.

———*Construction of decree in suit relating to portion of same land should be followed in suit relating to other.*

A's (defendant's) predecessor-in-interest obtained a settlement decree against the predecessors-in-interest of *B* (plaintiff). The lands which were subject-matter of the decree were subsequently divided into two portions in a village partition. In a suit against *A* with regard to one portion of the land which was not in the possession of the plaintiff, the construction of the settlement decree was the matter in dispute and the decree was interpreted in a certain manner.

Held: that in another suit against *A* with regard to the other portion, the settlement decree should be construed in the same way as it was construed in the previous litigation. The fact that the plaintiffs in the latter suit were different from plaintiffs in the previous suit could make no difference when the points in issue are common to both the cases. The judgment deciding that previous suit should be followed where the Court does not think it necessary to reconsider it. (*Raza and Wazir Hassan, JJ.*). SHUJAAT HAIDER *v.* MT. HABIBUNNISSA. **6 O.W.N. 818=10 L.R.A. Rev. 368=A.I.R. 1929 Oudh 528.**

—Construction—Vagueness.

———*Claim decreed against one defendant—Decree containing words "the other defendants should be exempted" amounts to dismissal of suit against them.*

Where the Court decreeing the claim for money against defendant 1 ordered that "the other defendants should be exempted":

Held: that the word 'exempted" used by the Court was an ambiguous word and its use was unfortunate yet the effect of the order was to dismiss the suit as against these defendants: 16 A. L. J. 752, *Foll.*; A.I.R. 1926 All. 475, *Dist.* (*Sulaiman and Kendall, JJ.*). SACHITANAND TEVARI *v.* RADHAPAT PATHAK. **116 I.C. 86=26 A.L.J. 524=A.I.R. 1928 All. 234.**

—If the wording of a decree be ambiguous such construction should be put on the same as would make the decree in accordance with law. (*Beasley and Ananthakrishna Aiyar, JJ.*). SANKUNNY *v.* KRISHNA. **107 I.C. 499=51 Mad. 320=27 M.L.W. 93=A.I.R. 1928 Mad. 465=54 M.L.J. 682.**

—When a decree is silent on a point it could be supplemented by the law applicable to the case. (*Beasley and Ananthakrishna Aiyar, JJ.*). SANKUNNI *v.* KRISHNA. **107 I.C. 499=51 Mad. 320=27 M.L.W. 93=A.I.R. 1928 Mad. 465=54 M.L.J. 682.**

—If a judgment or order is ambiguous it must be so interpreted as to be in conformity with the provisions of law. (*Iqbal Ahmed, J.*). KALLU *v.* LOKMAD DAS. **102 I.C. 273=A.I.R. 1927 All. 507.**

—Where the judgment admits of two meanings, it is wrong to construe it in a way which violates both law and equity. (*Chevis, J.*). UTTAM CHAND *v.* BALLA MAL. **60 I.C. 345 (Lah.).**

—Construction—Miscellaneous.

———*Mahomedan widow suing for dower—A claim for setting aside husband's alienation also included for recovering dower from alienated properties—Decree*

DECREE—Construction—Miscellaneous.

declaring alienated properties to be of the husband and entitling widow to recover decretal money from the properties—Charge was held to be created. 95 I. C. 367; A.I.R. 1926 Pat. 404; 7 P.L.T. 664, *Reversed.*

A Mahomedan widow, after her husband's death, sued to enforce her dower claim. She claimed by her plaint that alienations made by her husband were invalid and that she was entitled to recover her dower debt from the properties so alienated. A decree was passed to the effect that the properties entered in schedule to the plaint be treated to be the properties of the deceased husband from which the widow was entitled to recover the decretal money. In execution of this decree it was contended that no charge was created on the properties of the husband.

Held: that the decree created a charge upon the properties: 95 I. C. 367; A. I. R. 1926 Pat. 404 7 P. L. T. 664, *Reversed.* (*Sir George Lowndes*). SAIYAD QASIM HUSAIN *v.* HABIBUR RAHMAN.

117 I.C. 10=8 Pat. 926=56 I.A. 254=1929 A.L.J. 777=31 Bom. L.R. 879=33 C.W.N. 926=30 M.L.W. 198=6 O.W.N. 613=50 C.L.J. 187=1929 M.W.N. 673=10 P.L.T. 851=A.I.R. 1929 P.C. 174=57 M.L.J. 361.

—Where a decree was obtained to the effect that the defendant should allow the free flow of water over the site in dispute and do no act that would hinder the free flow of water into the tank and abstain from doing any act that would pollute the water that enters the tank:

Held: that the decree was for an injunction. (*Addison, J.*). GULAB SINGH *v.* MAHMUD KHAN.

118 I.C. 399=30 P.L.R. 323=A.I.R. 1929 Lah. 437.

—Where the clauses in a decree gave the plaintiff a right to occupy the flats, until her death, for her residence and provided that in cases where the plaintiff was compelled against her wish to vacate the said flats, the defendants should pay to her Rs. 500 in lieu of her right to reside in the property.

Held: what was contemplated was that in case the plaintiff was compelled to vacate against her wish she should be given Rs. 500 in lieu of maintenance and the defendants could not sell the said property whenever they liked, free of the plaintiff's right to reside therein and ask the plaintiff to go out of the property. (*Rangnekar, J.*). FATMABAI *v.* SHERIFF DEWAJI CANJEE. **108 I.C. 510=30 Bom. L.R. 137=A.I.R. 1928 Bom. 102.**

—Date of.

———*Civ. Pro. Code, O. 21, R. 2 (2)—Date of decree relates back to the date of judgment—Certification of payment can be made before decree is reduced to writing formally.*

Date of the decree is not the date on which the decree is reduced to writing and signed by the Court but the date on which the Court delivers its judgment and expresses what the decree is. In other words, when a person has the judgment of the Court in his favour it may be said that he then obtains his decree, and that the decree, when subsequently drawn up, relates back to that time. Hence an application under the rule is maintainable before the decree is formally drawn up. (*Pearson and Graham, JJ.*). GIRIBALA DASI *v.* BISWAMBHAR HALDAR. **82 I.C. 746=40 C.L.J. 87=A.I.R. 1924 Cal. 1064.**

———*Amended decree starts new limitation only with respect to parties affected by the amendment—Decree—Limitation—Appeal.*

DECREE—Executability.

Where the amendment of the decree or the alteration made in it did not affect the appealing defendant and the defendant was not made a party in the review proceeding.

Held: time began to run against defendant from the date of the original unamended decree.

If a party who is not affected by subsequent proceedings wants to appeal against the decree the period must be computed from the date when the judgment is pronounced or the decree signed. (28 All. 240; 34 All. 282; 44 Cal. 1011, *Dist.*). (*Suhrawardy, J.*). SATYA RANJAN DAS *v.* KSHITISH CHANDRA PAL. **78 I.C. 525=A.I.R. 1924 Cal. 898.**

—Effect of.

———*Decree of appellate Court in one suit does not annul that of another suit.*

The decree of an appellate Court in one suit cannot be held to have the legal effect of annulling or altering *ipso facto* a decree made by a subordinate Court, in another suit: 40 Mad. 299, *Not foll.*; 10 M.I.A. 203, *Expl.*; 3 Cal. 30 (F. B.) and 1 Pat. L. J. 43, *Rel. on.* (*B. B. Ghose and Panton, JJ.*). ASHUTOSH NANDI *v.* KUNDUL KAMINI **33 C. W. N. 908=A.I.R. 1929 Cal. 814.**

———*Setting aside—Decree passed with jurisdiction is not void.*

A decree passed with jurisdiction, however tainted it may be with fraud, is not void; for a plaintiff will not succeed in obtaining any relief before he, if the decree passed against him was by a competent Court, gets it vacated: 13 C.L.J. 404 and 20 C. W. N. 659, *Appl.* (*Suhrawardy and Duval, JJ.*). FAZLU-UDDIN *v.* KHETRA. **90 I. C. 866=30 C.W.N. 59=A.I.R. 1926 Cal. 167.**

———*Decree does not create title except in few cases.*

Per *Devadoss, J.*:—Except in few cases where decrees themselves are a source of title, the decrees of Civil Courts cannot confer a title to immovable property which a person did not possess and therefore when the plaintiff had no title at all to the plaint property, the mere fact that a Civil Court considered or held that he had title would not confer an interest which he did not possess before. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. **74 I. C. 416=17 M.L.W. 254=A.I.R. 1923 Mad. 392.**

———*Injunction against some of several defendants does not affect other defendants.*

Injunction granted only against some of several defendants does not affect the other defendants. (*Martineau, J.*). MALUKA *v.* SUNDER SINGH. **59 I.C. 594=25 P.L.R. 1921=A.I.R. 1921 Lah. 376.**

—Executability.

———*Suit by illegitimate son against widow of zamindar—Decree for half-share in separate estate of zamindar and in outstandings due to zamindar—Decree-holder trying to proceed against the other half-share of zamindar for outstandings—Decree-holder held entitled to proceed against property of zamindar and half-share of zamindar.*

A zamindar died leaving a widow, a daughter, daughter's son, an undivided co-parcener, a concubine and an illegitimate son by her. The widow entered into possession of zamindari. The co-parcener brought a suit to recover the zamindari but under a compromise decree the widow was allowed to enjoy the estate during her lifetime. In 1902 the illegitimate son filed a suit against the widow wherein the Court decreed that he was entitled to half a share in the separate estate and partition of

DECREE—Executability.

the same, and also awarded half the amount of the outstandings due to zamindar. During the pendency of appeal the widow died and the daughter's son was brought on record as the legal representative. In execution proceedings the illegitimate son claimed, as part of separate estate, property consisting of jewels belonging personally to zamindar and to proceed against the other half for the outstandings.

Held: that the final decree of the High Court certainly gave to the illegitimate son a half share of such jewels as formed the separate property of the zamindar.

Held also: that as the decree-holder sought to execute his decree against items of jewels which the widow never asserted to be hers as *streedhanam* but which he claimed to be hers, there was certainly some burden of proof on the decree-holder but at the same time the reversioner also should show that they formed part of the zamindar's estate.

Held further: that the decree-holder was entitled to proceed in execution of his decree against all the items found to belong to zamindar and only a half share in the items belonging to zamindar as separate property but not against the other half which belonged to the reversioner. (*Ramesam and Odgers, JJ.*). NAGAPPA *v.* KARUPPAYYEE AMMAL.

120 I.C. 379=A.I.R. 1930 Mad. 344.

———*Civil P. C., S.* 152—*Suit for partnership accounts compromised deciding S entitled to three annas share, but agreeing to another member to manage business—Decree ordering in terms of compromise, S to be entitled to that share—S not appealing against decree, nor applying for its review—S seeking execution of decree and praying alternately to amend decree if it be not in terms of compromise—Decree was in terms of compromise, merely declaratory and incapable of execution—Even if it were not in terms of compromise, it could not be amended, so as to make it capable of execution, as time for same had passed by.*

Under a compromise terminating a suit for partnership accounts, a person, *S*, was held to be entitled to a three annas share in the partnership and it was further agreed that another sharer should transact all the business of the firm, balance the accounts and render them when asked. In the decree that followed it was ordered and declared in terms of compromise that *S* was entitled to three-annas share in the property belonging to the firm. *S* sought to execute the decree praying that he should be put in joint possession of his share and if the decree were considered as not embodying terms of contract it should be amended under S. 152. No appeal against the decree was filed, nor any application for review made within time:

Held: that the decree was only declaratory and was also in accordance with the terms of the compromise. It could not, therefore, be executed as sought for.

Held further: that even supposing that the decree was faulty as not being according to terms of the compromise, it could not now be amended, as time for such amendment as to make it capable of execution had passed by: 21 C. W. N. 835; A. I. R. 1928 Nag. 173; A. I. R. 1927 P.C. 204 and A.I.R. 1922 Oudh 150, *Dist.* (*Findlay, J. C. and Prideaux, A. J. C.*). MT. DHANNABAI JOHRI *v.* KESHRICHAND JOHRI.

115 I.C. 161= A.I.R. 1929 Nag. 34.

———*Suit on a promissory note by deceased maker—Decree against a legal representative—His liability is limited to assets of deceased—Another heir impleaded but subsequently exonerated—Exonerated person suing for the estate—Decree for delivery in his favour—Execution of decree as against property in his hands is not allowable.*

In a suit on a promissory note a decree was passed that "the first defendant do pay the decree amount from the estate of the deceased." Subsequent to the decree, the defendant 3 thereon originally impleaded as one of the heirs of the legal estate of the deceased but subsequently exonerated from the suit which was dismissed as against him, sued for recovery of possession of the estate of the deceased and on 1st December, 1923, obtained a decree for delivery of the estate. Two days prior to the delivery an assignee of the promissory note decree attached part of the estate in execution and the objection to attachment was overruled by both the Courts below.

Held: that the promissory note decree was not a decree against the estate but against the defendant 1 therein, limited in liability to meet the decree amount out of the estate and not executable against the petitioner who had obtained a decree for its delivery or against the property which was declared not to be the property of defendant 1 but the property of the petitioner: 33 Mad. 75, *Foll.*; 33 Mad. 6; A.I.R. 1926 Mad. 487 and 26 Mad. 230, *Dist.* (*Wallace, J.*). NARASIMAIAH *v.* JAWANTHARAJ SOWCAR. **101 I. C. 110= A. I. R. 1928 Mad. 159=52 M. L. J. 299.**

———*Decree can be partly directory and partly declaratory* (*Cornish, J.*).

The question whether a decree framing a scheme for a charitable trust is executable or not must depend on the language and on the scope of the decree or of that particular part of the decree in respect of which the question arises. From the nature of the case such a decree may in part be declaratory and in part directory. It may provide a specific procedure for carrying out particular provisions of the scheme, and yet leave other provisions of the scheme enforceable by execution. The rule that when once the Court has passed a decree framing a scheme the decree becomes non-executable, cannot be a rule of general application. 24 Bom. 45 and 28 Mad. 319, *Foll.* (*Ramesam and Cornish, JJ.*). THAYARAJASWAMI *v.* BALAYEE AMMAL. **107 I. C. 136=39 M. L. T. 579= 27 M. L. W. 32=A. I. R. 1928 Mad. 61.**

———*Civil P. C., O.* 34, *R.* 5—*Compromise decree—No final decree made—Decree is executable.*

Strictly speaking, O. 34, R. 5 has no application to a compromise decree and, therefore, in the case of a compromise decree where the parties agree that the decretal amount should be realized in a particular way, the Court has full jurisdiction to carry out the intentions of the parties even if there is no final decree: 34 Cal. 886; A.I.R. 1922 All. 383, *Rel. on.* (*Waller and Madhavan Nair, JJ.*). KUNHAMMAD HAJEE *v.* CHATHOTH PARKUM KOZHUVAMMAL. **106 I. C. 395=A. I. R. 1928 Mad. 38.**

———*Decree against assets of deceased person cannot be executed against his legal representatives not joined in suit.*

A decree obtained against the estate of a deceased person by joining some of the legal representatives only cannot be executed against such representatives who were not joined in the suit: 33 Mad. 75 and 32 Cal. 226 (P.C.), *Rel. on*; A. I. R. 1924 Mad. 130, *Dist.* (*Curgenven, J.*). (GURAPATI) GANGARAJU *v.* PENDYALA SOMANNA.

98 I.C. 613=A.I.R. 1927 Mad. 179.

DECREE—Executability.

——*No liability fixed upon any party—No decree can be prepared.*

A decree is prepared only when some liability is fixed upon a party; when no liability is fixed no decree can be prepared and in fact in some cases in the Civil Court no decree is prepared. (*Jwala Prasad and Kulwant Sahay, JJ.*). BHUNESHWARI KUER *v.* SUKHDEO SINGH. **85 I. C. 566= 6 P.L.T. 419=A.I.R. 1925 Pat. 505.**

——*Decree for judicial separation and permanent alimony is rendered void by subsequent co-habitation.*

A decree for judicial separation and for permanent alimony granted to a wife is annulled by subsequent co-habitation of the parties and does not revive on subsequent separation. *Haddon* v. *Haddon*, (1887) 18 Q. B. D. 778, *Foll.* There cannot be any such thing as a conditional resumption of co-habitation. Either the wife accepts her decree for judicial separation and lives apart from her husband under it or she does not accept it. There cannot be any intermediate stage between acceptance of the judicial separation and its non-acceptance. (*Beasley, J.*). ELLEN MA NOO *v.* WILLIAM PO THIT. **83 I.C. 566=2 Rang. 163= A.I.R. 1924 Rang. 314.**

——*Reciprocal reliefs—Decree was held not to be inexecutable.*

A decree provided "that the plaintiff's claim be and is hereby decreed for cancellation of the bond in suit but the defendant shall have the right to recover Rs. 5,000 from the plaintiff's property."

Held: that the latter portion of the decree was not a mere declaratory decree incapable of execution and that the defendant could execute it. (*Kanhaiya Lal, J.C.*). JHANDA SINGH *v.* MD. ANWARKHAN. **77 I.C. 776= A. I. R. 1923 Oudh 160.**

—Execution.

—An attachment is not necessary for bringing the property to sale in the case of a decree which creates a charge on the property. (*Addison, J.*). MAHOMED ABDULLA *v.* JAMIAT RAI. **121 I. C. 369.**

—Decree-holder dying while decree in actual execution—His sons need not freshly apply for execution but can continue after substitution of their names—Civil P. C., S. 47: A. I. R. 1928 All. 299, *Ref.*; A. I. R. 1927 All. 165 (F.B.), *Expl.* (*Mukerji and Bennet, JJ.*). NIADER *v.* KHAZAN. **A.I.R. 1930 All. 604 (1) (a).**

——*Anterior agreement that decree shall not be executed cannot be set up as bar—But suit may be brought to restrain execution contrary to agreement—Civil P. C., O. 21, R. 2.*

An anterior agreement that a decree shall be allowed to be passed but shall not be executed cannot be set up as a bar to execution. But such an agreement is not opposed to public policy and suit can be brought to restrain execution contrary to the agreement. An injunction restraining execution until a breach of obligation under the agreement has occurred is the correct form of relief to ask for and not a declaration that the decree is unenforceable: 29 Cal. 810 and 81 Cal. 179, *Ref.* (*Rankin, C. J. and Mukerji, J.*). PANCHANANDA *v.* BROJENDRA KUMAR. **34 C.W.N. 150= A.I.R. 1930 Cal. 356.**

——*Decree barred by limitation—Subsequent execution proceedings—Judgment-debtor can take objection on ground of limitation if execution proceedings pending and Court is bound to give effect to it only if point not concluded by previous proceedings—Limitation Act, S. 3.*

It is only when the point of limitation is concluded by proceedings in a previous execution that the judgment-debtor is not allowed to take the objection of limitation in a subsequent execution of the decree. But so long as an execution application is pending the judgment-debtor can show at any stage that the application is barred, and the Court will have no option but to dismiss the application under S. 3, Lim. Act. (1920) P.H.C.C. 109, *Foll.*; 8 Cal. 51 (P.C.) and A.I.R 1921 *P.C.* 23, *Ref.* (*Courtney-Terrell, C. J. and James, J.*). ATUL KRISHNA *v.* BRINDABAN. **9 Pat. 306= A.I.R. 1930 Pat. 330.**

——*Executing Court can consider rights of parties under consent decree unless such consideration is tantamount to trying case over again.*

Court executing a consent decree has jurisdiction to consider whether a party to it has by his own action forfeited his rights under it, unless the consideration of the question involves in substance trying the case over again; 26 Bom. 707, *Dist.* (*Wort and Kulwant Sahay, JJ.*). SASADHAR GANGULY *v.* RAGAB SINGH. **A.I.R. 1930 Pat. 234 (b).**

——*Mortgage-decree directing certain items to be sold last—Other items exonerated by decree-holder on accepting payment of a certain sum less than the actual price—Decree cannot be executed as against the items to be sold last.*

In a suit on a mortgage of six items of properties, the decree directed that items 2 and 5 belonging to a puisne mortgagee should be sold last as per agreement come to between the parties. Another puisne mortgagee of items 3 to 6, in execution of a decree on his mortgage, purchased items 3 to 6 and by arrangement with the prior mortgagee-decree-holder deposited into Court a certain sum of money as the rateable amount due from those properties in respect of the prior mortgage. This amount was drawn out by the prior mortgagee-decree-holder and those items were exonerated from the decree. On an application to execute the decree as against item 2:

Held: that the decree-holder having exonerated items 3 to 6 on payment of a sum not representing their full value and the sale price of those items not having been exclusively devoted to the satisfaction of the decrees, the conditions precedent for the sale of item 2 had not been complied with and consequently the said item could not be proceeded against in execution. (*Curgenven, J.*). VAYYA GOUNDAR *v.* CHINNA BOMMA GOUNDAR. **101 I.C. 132=A.I.R. 1927 Mad. 669.**

——*Executing Court cannot question validity of decree—Remedy is by separate suit.*

It is not permissible for an executing Court to go into the question of the validity of the decree, and the only remedy in such a case should be the bringing of a separate suit. (*Ashworth, J.*). SURAJ DIN *v.* KHUSHAL GHOSE. **93 I.C. 32=13 O.L.J. 510.**

——*Decree for dower passed—Executing Court cannot direct in execution payment of decree proportionate to shares of different heirs.*

Although the proposition that the estate of a deceased Muhammadan devolves upon his heir or heirs from the moment of his death and that the proportionate interests of the heirs, if more than one, come into separate existence from that moment is correct, yet when a decree for dower is passed the Court executing the decree is not entitled to go behind the decree and to direct the

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release of a portion of the estate on payment of a proportionate share of the debt : A.I.R. 1924 All. 690, *Dissented from.* (*Mullick and Kulwant Sahay, JJ.*). BIBI HAFSA *v.* KANIZ FATMA. **96 I.C. 3= 7 P.L.T. 798=1926 P.H.C.C. 9= A.I.R. 1926 Pat. 411.**

———*Executing Court cannot go behind decree.*

It is not competent for executing Court to go behind the decree and rely on a collateral judgment against the decree even though the judgment is of a superior Court. (*Jackson, J.*). PARTHASARADHI APPA RAO *v.* MUHAMMAD ABDUL WAHEB. **82 I. C. 434= A. I. R. 1925 Mad. 270.**

———*Starting point is decree of final Court.*

The entire suit which was one for contribution was based upon an *ekrarnama* or certain dealings which the plaintiffs alleged were binding upon three sets of defendants as members of a joint Mitakshara family. The foundation of the liability of the defendants was common, though the extent of their liability might have been different, and in the appeal by one set of defendants from the decree by the trial Court the foundation of the plaintiff's claim was involved. The appellate Court (High Court) dismissed the suit relying upon O. 41, R. 33. The Privy Council restored the decree of the trial Court when it was actually time-barred against the non-appealing two sets of defendants. On application by plaintiff for execution of the Privy Council decree.'

Held: that the order of the Privy Council restoring the decree was final between the parties and the mistake if any in reviving a barred decree could only be rectified by the Privy Council.

Held: further that the decree of the trial Court could not be executed against the non-appealing defendants until the decree became final on appeal to the first appellate Court which however dismissed the suit itself. The starting point for execution therefore began only when the decree was revived by the order in the Privy Council. (*Jwala Prasad and Kulwant Sahay, JJ.*). SOMAR SINGH *v.* MT. PREMDEI KUER. **79 I. C. 794= 3 Pat. 327=5 P. L. T. 21=1924 P. H. C. C. 105= A. I. R. 1925 Pat. 40.**

———*Any party can execute.*

After decree it is open to any party to a suit to whose interest it is that further proceedings be taken, to initiate the supplementary proceedings; but in the ordinary case it is the plaintiff who moves. (*Lord Phillimore*). LACHMI NARAYAN *v.* BALMUKUND MARWARI. **81 I.C. 747=5 P.L.T. 623= 35 M.L.T. 143=5 L R.P.C. 171=20 M.L.W. 491= 4 Pat. 61=51 I.A. 321=22 A.L.J. 990= 26 Bom. L.R. 1129=40 C.L.J. 439= 29 C.W.N. 391=1924 M.W.N. 707= A.I.R. 1924 P.C. 198=47 M.L.J. 441.**

—The Court executing the decree must take the decree as it stands and has no power to go behind it or entertain an objection to the legality of the decree. The terms of S. 74 of the Contract Act are not applicable to a decree. (*Daniels and Dalal, JJ.*). RAGHUNAND PRASAD *v.* GHULAM ALAUDDIN. **79 I.C. 916=46 All. 571=22 A.L.J. 464= 5 L.R.A. Civ. 356=A.I.R. 1924 All. 689.**

———*Any party can apply for execution.*

There is no foundation for the principle that only the successful appellant can execute the order, unless such restrictions can be inferred from the actual language of the decree or order itself. 17 M. 82; 25 M. 426, *Dist.* (*Oldfield and Devadoss, JJ.*). BALUSAMI IYER *v.* VENKATASWAMI NAICKEN. **75 I. C. 219=32 M. L. T. 249= A. I. R. 1924 Mad. 95 (b).**

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———*Parties—Purchasers of mortgaged properties are proper parties.*

Purchasers of one of several mortgaged properties are representatives of judgment-debtor mortgagor and are proper parties in execution of mortgage decree against the particular property though they were not parties to the mortgage suit. (*Das and Adami, JJ.*). DHAROHAR SINGH *v.* RAM PRASAD NARAIN SAHAI. **72 I. C. 862= 1 Pat. L. R. 139=A. I. R. 1924 Pat. 367.**

———*Assets of deceased in the hands of defendants—Inalienable property—Defendants object to execution against such property.*

Where a decree is passed against such assets of the deceased vendor as had come into the hands of his representatives (defendants), if an attempt is made to execute the decree against inalienable property the defendant will be at liberty to object to such execution. (*Stuart, J.*). KALI DIN *v.* MADHO. **77 I. C. 862=A. I. R. 1923 All. 169.**

—In executing a decree the executing Court must be within the four corners of the decree itself. (*N. R. Chatterjea and Richardson, JJ.*). MAHARAJ KUMAR SOSHI KANTA ACHARJI CHOWDHURI *v.* RAJA SARAT CHANDRA ROY CHOWDHURI. **77 I.C. 167=35 C.L.J. 339.**

———*Civil P. C., O. 21, R. 15—Exact contents of decree must be proved before execution can be ordered.*

It is necessary to prove the exact contents of the decree, which is alleged to have been passed, before ordering execution. (*MacColl, A.J.C.*). MAUNG CHIT U *v.* MAUNG THA KU. **77 I.C. 258=4 U.B.R. 135= A.I.R. 1923 Rang. 113.**

———*Transfer of Property Act, S. 70—Accession after mortgage-decree for sale is passed—Accession cannot be sold for the benefit of the mortgagee—Decree—Execution.*

Executing Court has to sell the property specified in the decree to be sold for the satisfaction of the decree obtained by the mortgagee. Therefore where a *mukarraridar* mortgages his *mukarrar*-right and the mortgagee obtains a decree on the mortgage for sale of the mortgaged property, the decree-holder cannot in execution of the decree sell the *brahmottar* right which had been subsequently acquired by the mortgagor in the property. 5 Cal. 198 (P. C.), *Ref.* (*Jwala Prasad and Ross, JJ.*). HARADHAN CHAKERVERTY *v.* HARGOBIND DUTTA. **63 I.C. 552=2 P.L.T. 665=6 P.L.J.347= A.I.R. 1921 Pat. 188.**

———*Civil P. C., S. 37—In general, appellate decree is the one to be executed—Execution—Finality of.*

In general, the rule must be that the Appellate Court's decree, if properly drawn, is the sole decree to be executed in the case but there may be cases in which that general and ordinary rule cannot and should not be invariably enforced, and in particular circumstances it may be incumbent upon to the Courts to permit execution of the decree of the original Court. 14 M.I.A. 465; 6 Beng. L.R. 52; 13 Cal. 13; 11 All. 267 F.B.; 39 Cal. 925; 39 Bom. 175 *Foll.* (*Robinson, C.J. and Duckworth, J.*). S.C. DAS GUPTA *v.* THE BURMA RAILWAYS CO., LTD. **11 L.B.R. 163=A.I.R. 1921 L. B. 37 (d).**

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———*Setting aside—Fraud—Non-service of summons proved—Court can go into merits of original claim.*

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In proceedings to set aside an *ex parte* decree on the ground of fraudulent suppression of summons, if the Court comes to the conclusion that the summons was not in fact served upon the defendant, it is at liberty to examine merits of the claim on which the *ex parte* decree was passed: A.I.R. 1923 Pat. 327, *Rel. on.* (*Ross and Fazl Ali, JJ.*). GOBINDJEE MADHAVJEE *v.* C.J. SMITH.

113 I.C. 698=A.I.R. 1928 Pat. 568.

——Ex parte *decree set aside—Plaintiff in original suit can have his suit re-heard.*

The setting aside of the *ex parte* decree on the ground of fraud entitles the plaintiff in the original suit to have his suit re-heard. It may be that in order to determine the question as to whether fraud had been perpetrated, the Court may go into the question as to whether there was any foundation for the suit; but this question could be gone into only incidentally for the purpose of coming to a finding on the proper issue in the case, namely, that of fraud A.I.R. 1924 Pat. 758; 2 Cal. 184 (P.C.), *Appl.*; A.I.R. 1923 Pat. 327, *Expl.* and *Dist.* (*Kulwant Sahay, J.*). LALJI THATHERA *v.* GANGA THATHERA. **104 I.C. 137=9 P.L.T. 7= A.I.R. 1927 Pat. 396.**

——*Setting aside—Defendant applying for setting aside* ex parte *Small Cause Court decree on the ground of fraud—Application dismissed for failure to comply with conditions imposed by Court—Separate suit for setting aside decree on the same ground is barred—Rangoon Small Cause Courts Act, Sch. I, R.* 78.

Where the defendant against whom an *ex parte* decree is passed has already moved the Small Cause Court for the purpose of setting aside the *ex parte* decree on the ground that summons was not tendered or served on him and has been given an opportunity of establishing his case and he by non-compliance with the condition imposed by the Small Cause Court failed to get an adjudication on that point in that Court it is not open to him to bring a separate suit for setting aside the decree on the same allegations. (*Chari, J.*). M. A. MAISTRY *v.* ABDUL AZIZ RAHAMAN.

101 I.C. 434=5 Rang. 46= A.I.R. 1927 Rang. 130.

——Ex parte *decree based on false claim or perjured evidence cannot be set aside without fraud.*

An *ex parte* decree cannot be re-opened except on the ground of fraud as an extrinsic collateral fact vitiating the proceedings in which the decree was obtained and it is not sufficient to allege that it was obtained on a false claim. Even if an *ex parte* decree is obtained on perjured evidence, it cannot be set aside on that ground. 48 Mad. 381, *Appl.* (*Abdul Raoof and Addison, JJ.*). COMMERCIAL SYNDICATE *v.* CO-OPERATIVE BANK. **92 I. C. 322= 6 Lah. 512=A.I.R. 1926 Lah. 96.**

——*Fraud—Absence of service is not sufficient ground—Suppression of service and false claim to defendant's knowledge must be proved.*

An *ex parte* decree cannot be vacated on the ground of fraud unless it is proved that there was a fraudulent suppression of summons or that the claim of the plaintiff was false to his knowledge. Mere non-service is not a sufficient ground for a suit to set aside a decree. A.I.R. 1922 Patna 291 and 62 I.C. 594, *Rel. on.* (*Moti Sagar, J.*). MD. DIN *v.* BERRY & CO. **89 I.C. 786=A.I.R. 1926 Lah. 86.**

——*Setting aside, suit for—Plea that decree was based on fraudulent claim cannot be raised.*

If the suit has been decreed after contest, or if the suit has been decreed *ex parte* and it is establish-

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ed that summonses were served on the defendants, in a suit to set aside the decree, a plea that the claim on which the decree was based was fraudulent cannot be raised. (*Greaves and Mukerji, JJ.*). NALINI KANTA MUKERJI *v.* HARI NIKARI.

86 I.C.779=29 C.W.N. 325=41 C.L.J. 281= A.I.R. 1925 Cal. 663.

——*Civil P. C., O.* 9, *R.* 13—*Dismissal of application under O.* 9, *R.* 13 *which alleged fraudulent information by applicant's Mukhtar in collusion with plaintiff bars a suit.*

Where an application to set aside *ex parte* decree on the ground of wrong information about the date by the applicant's mukhtar was dismissed.

Held, no suit will lie to set aside the decree on the ground of fraud in that the Mukhtar in collusion with the plaintiff wrongly informed him of the date since that matter was already decided on the application though the information given by the Mukhtar was fraudulent. (*Dawson-Miller, C.J. and Mullick, J.*). MAHABIR PRASAD CHOUDHRY *v.* CHHEDI SINGH. **81 I.C. 1035=1924 P.H.C.C. 155= A.I.R. 1924 Pat. 769.**

——*Fraud—When plaintiff was present in the previous suit he must prove fraud in relation to proceeding in the previous suit but where he was absent and suit had no foundation, suppression of summons may be presumed to be deliberate.*

Where there was appearance by the plaintiff in the former suit, but in which the plaintiff nevertheless contended that the decree in the former suit was obtained by fraud:

Held, that clearly if summons was served on the plaintiff in the former suit it could not be urged by him that there was initially an attempt to prevent him from making his defence. Consequently the endeavour to induce the Court to examine the propriety of the previous judgment must fail unless the Court is satisfied that there was some fraud in relation to the proceedings of the suit. This principle has no bearing on the case in which there was an attempt to prevent the plaintiff from making his defence. The failure to serve summons on a defendant may be accidental or deliberate; and where the Court finds as a fact, that there was no foundation for the suit itself, it is open to the Court to hold that the suppression of summons was deliberate with the object of snatching a decree from the Court in the absence of the defendant. (*Das and Macpherson, JJ.*). JANKI KUER *v.* THAKUR RAI. **75 I.C. 343=1923 P.H.C.C. 336= 5 P.L.T. 37=A.I.R. 1924 Pat. 241.**

——*Civil P. C., S.* 96 *and O.* 9, *R.* 13—*In appeal from* ex parte *decree, question of service of summons cannot be considered which can be considered only under O.* 9.

In an appeal from an *ex parte* decree, the only question with which the appellate Court is ordinarily concerned is whether the evidence on the record is sufficient to support that decree, and that the question of due service of summons is the subject-matter not of an appeal from the decree but of the special proceeding under O. 9. (39 All. 143 and 27 Cal. 738, *Foll.* (*Young, Offg. C. J. and Carr, J.*). RAJ CHANDRA DHAR *v.* MESSRS. K. D. O. C. RAY. **79 I.C. 506=2 Bur. L.J. 282= 2 Rang. 108=A.I.R. 1924 Rang. 137.**

——*Fraud alleged must be extraneous to the points already decided—Non-service of process is not such an extraneous fraud.*

Plaintiff brought a suit to set aside the decree passed against him in Small Cause Court, Rangoon

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on the ground that the decree which was an *ex parte* decree was obtained by means of false evidence and also because the summons in the said suit was never tendered to him and the affidavits of the identifier and that of the process server as to the service of the summons on the plaintiff were false:

Held: that the fraud necessary to set aside a decree upon the ground of fraud must be fraud extraneous to everything adjudicated upon by the Court and not any fraud already dealt with by the Court, that this fraud was not so extraneous and therefore the suit was not maintainable.

It is not open to another Court to entertain a suit to set aside a decree when the sole point is whether the Court was wrong in believing the evidence called before it. This is not a case of fraud extraneous to the trial. (*Beasley, J.*). K. E. MUSTHAN *v.* BABU MOHENDRA NATH SINGH.

76 I.C. 794=1 Rang. 500=A.I.R. 1924 Rang. 119.

———*Setting aside—Fraud—No suppression of summons—Plaint making incomplete statement of law—No fraud is constituted thereby.*

———In a suit to set aside decree *ex parte* on the ground of fraud, when there is no finding that there was fraudulent suppression of the summons at the instance of the defendant (who was a plaintiff in the orginal case) even though the summons was not served on the plaintiffs (defendants in the original case) the decree cannot be set aside. An incomplete statement of a proposition of law in the plaint does not constitute a fraud on the part of the plaintiff. (*C. C. Ghose and Panton, JJ.*). MAHADEB PROSAD KANARIA *v.* MAHABIR PROSAD.

76 I.C. 767=A.I.R. 1923 Cal. 569.

—The present plaintiffs who were defendants in the former suit were prevented by contrivance of the plaintiffs in that suit from placing their case before the Court and the Court was misled into making a decree in favour of the plaintiffs.

Held: that the decree was a fraudulent one and there was no question of obtaining a decree by perjury. (*Chatterjee and Pearson, JJ.*). THE INDIAN PROVIDENT CO., LTD. *v.* GOVINDA CHANDRA DAS. **65 I.C. 318=27 C.W.N. 359=A.I.R. 1923 Cal. 425.**

———*Court finding in later suit that summons was not served on defendant in former suit—No fraud is established thereby—Fraud—Civil P. C., S.* 11.

The main allegation in this suit was that the defendant I did not receive summons in the previous suit and that the *ex parte* decree was got fraudulently behind his back. The evidence discussed by the Judge was only the evidence of the service of summons. The finding was non-service.

Held: that is not evidence of fraud and the dogmatic statement that the previous decree was obtained fraudulently does not amount to a proper finding that the decree has no effect because of fraud. If there is nothing to indicate that the Court which tried the first suit had not satisfied itself of the service of summons it must be presumed that the Court was satisfied before the decree was made. (*Ross, J.*). HARNARAIN PANDEY *v.* NANDA KESHWAR PANDE. **71 I.C.573=1 Pat. L.R. 127=A.I.R. 1923 Pat. 406.**

—A suit to set aside an *ex parte* decree on the ground of fraud cannot succeed unless it is proved that there was fraudulent suppression of summons or that the claim of the defendants was false to their knowledge. (*Teunon and Newbould, JJ.*). PANNALAL KUTHARI *v.* TARA KANTA KARMAKAR. **63 I.C. 778 (Cal.).**

DECREE—Finality of—Consent decree.

—An *ex parte* decree is final till it is set aside by the first Court or the Appellate Court decree. (*Le Rossignol, J.*). ABBAS KHAN *v.* NURKHAN. **60 I.C. 496.**

———*Civil P.C., S.* 11—*Fraud is ground for setting aside decree but question can be* res judicata—*Decree, setting aside.*

Although a decree can be set aside on the ground of fraud, if the question has already been agitated between the same parties and decided by a Court of competent jurisdiction the matter is *res judicata* and cannot again be re-opened between the same parties in a subsequent suit. 29 Cal. 395 (P.C.), *Dist.* (*Dawson Miller, C.J and Ross, J.*). JANGAL CHAUDHRY *v.* LALJIT PASBAN. **60 I.C. 124=6 P.L.J. 1=1921 P.H.C.C. 3=A.I.R. 1921 Pat. 12.**

—Finality of—Amendments.

Amendment by striking off a wrong representative's name in execution proceedings is not amendment of the decree nor does it affect the limitation with respect to other parties. (*Richardson and Page, JJ.*). NARAIN DAS DUTT *v.* BANKU BEHARI CHATTOPADHAYA. **78 I.C. 1001=A.I.R. 1925 Cal. 213 (a).**

—Finality of—Consent decree.

———*Decree is binding until set aside and cannot be ignored like conveyance—Consent decree or decree on award is equally binding.*

In a case of conveyance or an instrument no one is bound to sue to rescind a void conveyance or instrument although he may, if so advised, do so. But where there is a tribunal having jurisdiction and there are parties over whom that jurisdiction is exercised and the Court has issued its decree, it is not open to anybody to treat that decree as a nullity. On the contrary it must be taken, until it is set aside by due course of law, to be valid being in effect the command of the sovereign power which regulates the relation of the parties to the litigation and to the others. This rule applies even to decrees passed with consent or on award. (*Kennedy, J. C. and Raymond, A.J.C.*). PEVANBHAI *v.* THAOOMAL PANJOOMAL. **88 I C. 744=A.I.R. 1926 Sind 15.**

———*Consent decree is not to be varied except by consent.*

A consent decree cannot be varied except by consent. 16 Bom. L. R. 668, *Foll.* (*Baker, J.C.*). GANGARAM *v.* GANPATRAO. **88 I.C. 135=A.I.R. 1925 Nag. 361.**

———*Compromise decree cannot be challenged on the ground of discovery of fresh evidence.*

A compromise once embodied in a decree is merged in the decree and it cannot be challenged in review on the ground that fresh evidence has been discovered, unless such discovery before judgment could not reasonably be expected. (*Le Rossignol, J.*). GHULAM NABI *v.* BASHESHAR MAL. **74 I. C. 603=4 Lah. L. J. 298=A.I. R. 1922 Lah. 407.**

———*If once passed fresh action to set it aside is necessary.*

If a compromise decree has once been passed and entered, a fresh action is usually necessary to have the compromise set aside. Although before that is done, there is power for the Court to refuse to put its seal on what has been done under some misapprehension as to the true state of affairs. (*Heaton, A. C. J. and Marten, J.*). JAMSHEDJI NAOROJI *v.* SORABJI NAOROJI. **85 I. C. 504=25 Bom. L. R. 1137=A. I. R. 1921 Bom. 414.**

DECREE—Finality of—Effect of.

—Finality of—Effect of.

———*Once a decree is passed the suit cannot be dismissed unless the decree is reversed on appeal—Any party can apply to have it enforced.*

After a decree has once been made in a suit, the suit cannot be dismissed unless the decree is reversed on appeal. The parties on the making of the decree, acquire rights or incur liabilities which are fixed, unless or until the decree is varied or set aside. After a decree, any party can apply to have it enforced. A. I. R. 1924 P. C. 198, *Foll.* (*Mukerji, J.*). NILKAMAL *v.* KAMAKSHYA CHARAN.

109 I. C. 67=A. I. R. 1928 Cal. 539.

—Finality of—Ex parte decree.

—An *ex parte* decree is just as binding as any other until it is set aside. (*Wallace, J.*). THIRUVENGADAM MAMMAD *v.* CHATHAMKARA AMMAD.

114 I. C. 230=A. I. R. 1929 Mad. 89.

—Finality of—Fraudulent decree.

———*No re-hearing is allowed at the instance of decree-holder.*

If a decree obtained by decree-holder is a fraudulent decree the decree-holders are not entitled to have the suit re-heard. (*Das and Bucknill, JJ.*). DAMODAR PRASAD *v.* RAM SARUP KUMAR.

71 I. C. 843=4 Pat. L. T. 102=
1923 P. H. C. C. 137=1 P. L. R. 252=
A. I. R. 1923 Pat. 327.

—Finality of—Leave to appeal.

———*Review order challenged and set aside—Original order open to appeal.*

On 3rd November, 1917, an appeal was accepted and the suit as instituted was dismissed by the order of a Division Bench. An application for leave to appeal to the Privy Council was duly presented within time and on the same day an application for review was made. This latter application was accepted and eventually the original order passed on the 3rd November, 1917, was reversed and the suit was decreed in full. From this order passed in review an appeal was presented to the Privy Council, who held that the review was not competent, and that the order of the 3rd November, 1917, be restored.

Held: that the application for leave to appeal to Privy Council by the applicant for review was still alive and had merely been in a state or suspended animation during this long period and therefore leave would be granted to have the case heard on merits by Privy Council. (*Harrison and Zafar Ali, JJ.*). NEKI RAM *v.* CHAJJU RAM.

77 I.C. 869=4 Lah. 445=A.I.R. 1924 Lah. 228.

—Finality of—Period of filing appeal.

———*Decree becomes final after period of appeal.*

Even where there is no appeal, a decree becomes final after the period allowed for appeal: 50 All. 68, *Foll.* (*Dalal, J.*). HEMENDRA NATH *v.* TULSHI SINGH.

A.I.R. 1930 All. 413.

———*Appealable decree becomes final when period of appeal therefrom has expired.*

An appealable decree can only become final when the time allowed for filing an appeal against that decree has expired without an appeal being filed. Till then the decree is capable

DECREE—Finality of—Suit on.

of being challenged by an appeal, and, therefore, during that period it cannot be said that the decree has become final, or, in other words, has become unassailable: 1 All. 293 and 3 All. 134, *Diss. from*: (1881) A.W.N. 165; 1 All. 132; 7 All. 107; 5 A.L.J. 136 and A.I.R. 1925 All. 291, *Foll.* (*Iqbal Ahmad and Kendall, JJ.*). SANOMAN SINGH *v.* RAJA RAM.

103 I.C. 457=25 A.L.J. 809=A.I.R. 1927 All. 848.

—Finality of—Powers of Court.

———*Order without jurisdiction, can't be treated as nullity by the same Court.*

An order without jurisdiction passed in a suit which the Court had jurisdiction to entertain and try, cannot be treated as a nullity by the same Court in subsequent proceedings. (*Kumaraswami Sastri, J.*). ABDUL WAHAB *v.* ROKIA BIBI SAHIBA.

73 I.C. 903=A.I.R. 1924 Mad. 406.

———*Civil Court decree—Criminal Court cannot question.*

Whether a Civil Court decree was properly passed or not is matter with which the Criminal Court is not concerned. The decrees stand and until they are set aside they must be treated as good decrees. (*Ross, J.*). TUFANI LAL *v.* MT. BIBI UMATUL RASSOOL.

5 P. L. T. 535=
1924 P. H. C. C. 244=A. I. R. 1924 Pat. 765.

—Finality of—Presumption of correctness.

A person challenging the correctness of a decree must prove that it was without jurisdiction. (*Ross and Wort, JJ.*). CHOTA NAGPUR BANKING ASSOCIATION *v.* RAMAKHYA NARAIN SINGH.

109 I. C. 306=7 Pat. 341=
A. I. R. 1928 Pat. 431.

—Finality of—Right of suit.

———*Suit to recover money recovered under subsisting decree does not lie.*

It is clear and settled law that money recovered under a decree or judgment cannot be recovered back in a fresh suit or action whilst the decree or action under which it was recovered remains in force, but this rule of law rests upon this ground, that the original decree or judgment must be taken to be subsisting and valid until it has been reversed or superseded by same ulterior proceeding. If it has been reversed or superseded, the money recovered under it ought certainly to be refunded, and is recoverable either by summary process or by a new suit or action. The true question, therefore, in such cases is, whether the decree or judgment under which money was originally recovered has been reversed or superseded. (*Lord Carson*). NAGANNA *v.* VENKATAPAYYA.

76 I. C. 594=21 A. L. J. 726=
1923 M. W. N. 554=46 Mad. 895=
50 I. A. 301=28 C. W. N. 568=
25 Bom. L. R. 1290=18 M. L. W. 913=
33 M. L. T. 262=39 C. L. J. 312=
A. I. R. 1923 P. C. 167=45 M. L. J. 657.

—Finality of—Suit on.

———*Decree not acted upon for long time—Suit based on the decree—Court should grant relief on the basis of decree.*

Plaintiff obtained an *ex parte* decree for confirmation of possession over certain land but did not execute it. After the lapse of some years he brought another suit for confirmation or in the alternative for possession of the same land and relied upon the previous decree. The lower Courts refused to give effect to the decree on the ground that it was not acted upon and that the plaintiff could not rely upon it after such a long time.

DECREE—Finality of—Suit on.

They went into the question of title and dismissed the claim. On second appeal:

Held: that the previous decree could not cease to have effect unless it was set aside, that the lower Courts were in error in going into the question of title again and that the plaintiff's suit should have been decreed on the production of the decree, especially when the defence was found to be baseless. (*Ross, J.*). JHUMAK SINGH *v.* MAHINDRA SINGH. **71 I. C. 560= A. I. R. 1924 Pat. 165.**

———*Civil P. C., S. 47—Execution of decree barred —Suit upon decree cannot be brought.*

Where in a pre-emption suit according to a compromise decree, plaintiff is to obtain possession of property if he pays a certain amount within a particular time but in case of default the suit is to stand dismissed, the plaintiff pays the required amount within the specified time but does not obtain possession either through Court or privately, and after the lapse of the period of limitation for the execution of the decree files a fresh suit for the possession of the property, such suit should be held to be barred under the provisions of Section 47 of the Civil P. C. Case-law discussed. 14 A. L. J. 102, *Diss. from.* (*Sulaiman and Gokul Prasad, JJ.*). RAMANAND *v.* JAI RAM.

59 I. C. 632=43 All. 170=A. I. R. 1921 All. 369.

—Finality of—Unnecessary finding.

———*Issue wrongly framed and decided is binding.*

Where the third mortgagee sued second mortgagee and claimed priority by subrogation due to discharging first mortgage and second mortgagee simply asserted his mortgagee rights and pleaded for discharge but an issue as to second mortgage being genuine was wrongly framed and decided against him while the decree exempted expressly only the rights of other defendants.

Held: the decree destroyed the rights of the second mortgagee though plaintiff failed to prove priority by subrogation and the decree only purported to pass the right of the mortgagor on date of third mortgage but this destruction of rights applied only to property with respect to which second mortgagee specifically asserted his rights and not other property though covered by the same second mortgage. (*Spencer and Venkat Subba Rao, JJ.*). P. SAMI GURUKAL *v.* THIRU PATHIYA PILLAI. **72 I.C. 798= 18 M.L.W. 288=A.I.R. 1924 Mad. 193.**

—Finality of—Wrong decree.

———*Decree wrong but not challenged by the party concerned—Cannot be challenged for him by any one else.*

Nanhe and Teja were brothers who together formed a joint family. They owned an ancestral house. On the 4th February, 1908, Nanhe mortgaged the whole house to Tika Ram. Tika Ram sued on his mortgage and got a preliminary decree for sale in 1912. Before Tika Ram could get an order for sale under O. 34, R. 5, Teja the other brother brought a suit to avoid the mortgage on the ground that Nanhe as a member of an undivided joint Hindu family could not make a valid mortgage of the ancestral house without his consent and in the absence of legal necessity and for a declaration that the house could not be sold under the mortgage decree. The suit was decreed on January 4th, 1913. Thereupon Tika Ram abandoned his rights under the mortgage and asked the Court then seized of the execution proceedings to pass a decree under O. 34, R. 6 and that was done. The effect of that

DECREE—Form of.

was to give Tika Ram a simple money-decree against Nanhe. Nanhe was a party to these proceedings, but he did not contest the application nor did he appeal from the order passed. In execution of that decree the right, title and interest of Nanhe in the house in suit was put up for sale and was purchased by Tika Ram who then brought a suit for partition for half the house on the allegation that Nanhe's right, title and interest in the whole house amounted to half. Teja having failed to set aside the sale in the execution department filed a counter-suit for declaration that the execution sale in favour of Tika was invalid and that he (Tika Ram) was not entitled to partition the house.

Held: that the Court passed an order which it should not have passed having regard to the provisions of the Code. But it was seized of the execution of the case and it did pass that decree. Whether right or wrong that decree not having been challenged by Nanhe, the party concerned and any one who stands in his shoes as Tika Ram does in this case, cannot go behind it. Tika Ram although in the inception his title was impeachable, has now acquired an absolute title which is good against all the world and therefore good against Teja. (25 Bom. 337 (P.C.), *Foll.*; 18 A.L.J. 628, *Dist.*). (*Walsh and Ryves, JJ.*). TEJA *v.* TIKA RAM. **77 I.C. 37=46 All. 32=21 A.L.J. 754= 4 L.R.A. Civ. 522=A.I.R. 1924 All. 225.**

—A wrong suit followed by a wrong decree does not bar a correct suit. (*Ramesam and Jackson, JJ.*). AMMAKANNU AYI *v.* MURUGAYYA ODAYAR.

83 I.C. 324=20 M.L.W 207=1924 M.W.N. 623= 47 Mad. 850=A.I.R. 1924 Mad. 716= 47 M.L.J. 85.

—Form of.

———*Judgment in subsequent suit setting aside decree in previous suit so far as interest of plaintiff in subsequent suit was concerned — Proper form of decree is merely to declare that decree in previous suit is not binding on plaintiff.*

Where in a subsequent suit the judgment purports to set aside the decree in a previous suit so far as the interest of the plaintiff is concerned the proper form of the decree is merely to declare that the decree in the previous suit is set aside as not binding on the plaintiff. It is not further necessary to state that the prior suit would be re-opened and gone into on the merits: 2 Cal. 184 (P.C.); 35 All. 487 (P. C.); 28 All. 585 (P.C.) and 36 Mad. 295 (P.C.), *Rel. on.* (*Anantakrishna Ayyar, J.*). PULLAMMA GARU *v.* SATYANARAYANA.

A.I.R. 1930 Mad. 740.

———*Suit by two sons to recover possession of joint family field sold by father—Finding that part only of consideration for sale binding on sons—Decree should be passed directing delivery of possession of whole field by vendee on payment of 2-3rd consideration found proved for necessity and should contain declaration that vendee has acquired 1-3rd share of father and is entitled to obtain possession thereof in suit for partition.*

If in a suit brought by two sons to recover possession of the ancestral joint family field sold by the father, it is found that a part only of consideration, being an antecedent debt not incurred for any immoral purpose, is for legal necessity and that the other part not being for any legal purpose is not binding on sons, the decree should be passed to the effect that on payment by sons to vendee of a sum representing their 2/3rd share and not the

DECREE—Form of.

entire part of consideration found proved for necessity within a certain time, the vendee shall deliver possession of the entire field and the decree should also contain a declaration that vendee has acquired 1-3rd share and interest of father and is entitled to obtain possession thereof in a suit for partition : A.I.R. 1929 Nag. 60, *Rel. on*; A.I.R. 1924 Nag. 109, *Ref.* (*Subhedar, A. J. C.*). SURAJMAL *v.* BAPURAO. **121 I.C. 43= A.I.R. 1929 Nag. 311.**

———Giving of money-decree for immovable property is wrong. (*Chari, J.*). MAUNG THU *v.* MAUNG SHWE HLA. **A.I.R. 1929 Rang. 272.**

———*Damages—There is no preliminary decree in suits for damages.*

A preliminary decree which is followed by a final decree is unheard of in suits for breach of contract claiming damages. (*Fforde and Agha Haidar, JJ.*). BEGG SUTHERLAND & CO. *v.* BAHADUR CHAND. **110 I.C. 177=A.I.R. 1928 Lah. 841.**

———*Decree should be drafted in elastic form so as to make substantial justice to all parties to the litigation.*

Agha Haidar, J.—Decrees, as a rule, should not be drawn up on the model of a steel-frame and it is always desirable that the Court, under its inherent powers and in order to give full effect to its decision, should frame its decree in such an elastic form as would define the respective rights and liabilities of the several parties to the suit and thus to do substantial justice between all those who are concerned with the result of litigation. (*Shadilal, C. J., Broadway, Tek Chand, Jai Lal and Aga Haidar, JJ.*). SANT SINGH *v.* GULAB SINGH. **114 I.C. 417=10 Lah. 7=11 L.L.J. 317= 30 P.L.R. 453=A.I.R. 1928 Lah. 572 (F.B.).**

———Where the plaintiff paid Rs. 100 to the defendant on a contract to sell him cotton which the defendant was alleged to have broken and thereby caused him a loss of Rs. 100 and it was held that the plaintiff broke the contract, thereby causing the defendant a loss of Rs. 40 and the plaintiff's suit was dismissed but that dismissal gave the defendant not Rs. 40 but Rs. 140 as damages.

Held: that the decree should have been for the payment to the plaintiff of Rs. 60. A. I. R. 1925 Nag. 109, *Foll.* (*Hallifax, A. J. C.*). RAMPRATAP KHANDEWAL *v.* GOVIND BARI. **107 I.C. 524.**

———*Separate cause of action against each defendant —Joint decree cannot be passed.*

Per Page, J.—It is not competent for the Court to pass a joint decree against two defendants with respect to each of whom there is a different cause of action. (*Cuming and Page, JJ.*). PARESH CHANDRA SEN *v.* JOGENDRA NATH ROY. **97 I.C. 955=27 Cr.L.J. 1195=A.I.R. 1927 Cal. 93.**

———*Preliminary decree should not be passed in suit for damages.*

In suits for damages for failure to take delivery of goods ordered, no preliminary decree should be passed. (*Broadway and Fforde, JJ.*). DURGA DATT-JAGAN NATH DELHI *v.* R.J. WOOD AND CO. OF DELHI. **93 I.C. 1012=A. I. R. 1926 Lah. 337.**

—In a suit for accounts a decree can, if necessary, be given in favour of the defendant on payment of the necessary Court-fees. 7 A. L. J. 543, *Foll.* (*Daniels and Neave, JJ.*). RAM CHARAN *v.* BULAQI. **83 I.C. 880=22 A.L.J. 783=5 L.R.A. Civ. 563= 46 All. 858=A.I.R. 1924 All. 854.**

———*Relief by way of possession not claimed—Decree for possession cannot be given—Practice—Appellate Court.*

DECREE—Form of.

In a suit, in which no relief for possession has ever been asked, a formal decree directing the plaintiffs to be restored to possession whether conditional or otherwise, cannot and ought not to be passed.

Per Walsh, J.:—There is no reason when an appellate Court is seized of the whole matter why it should hold itself prevented from making such orders as are necessary to terminate the controversy and to do justice between the parties, and why it is not competent to High Court in appeal to decree that possession to the sons which they have wrongfully been deprived of subject to their doing equity by discharging the antecedent debt which alone could support the transaction. (*Piggott and Walsh, JJ.*). GOVIND DASS *v.* RAM CHARAN LONIA. **68 I. C. 307=A. I. R. 1923 All. 235.**

———*Relief not asked for—C. P. C., O. 7, R. 7— But facts pleaded in plaint which would cover the relief—Court can grant the relief though not prayed for—Practice.*

Where the plaintiff landlord in a suit for royalty and arrears of rent against tenant claimed a decree for ejectment and immediate possession and also for money due and set out in the plaint facts which showed that he was entitled to another relief also, namely, sale of the lease-hold property;

Held: that a decree for sale of the lease-hold property, though not specifically asked for, was within the scope of the suit as framed. The facts which sustain the relief granted are pleaded and not traversed and though there was no prayer for general relief, the Court can always give general or other relief as it may think just. (*Dawson-Miller, C.J. and Foster, J.*). SATYATARAN CHOUDHRY *v.* JYOTI PRASAD SINHA DEO. **76 I. C. 940= 1923 P.H.C.C. 153=5 P.L.T. 330= A.I.R. 1923 Pat. 386.**

———*Relief cannot be given on basis not raised by pleadings or issues.*

Where no question of the losses being calculated at the rate fixed by the *panchayat* arose on the pleadings.

Held: a decree for an amount calculated at the rate is irregular. (*Martineau, J.*). FIRM SHIB LAL *v.* FIRM HARI RAM CHHADAMI. **67 I.C. 959=5 P.W.R. 1923= A.I.R. 1922 Lah. 408.**

———*Suit by minor to cancel bond taken from him —Decree, form of.*

In plaintiff's suit for cancellation of bond on the ground of minority it was decreed.

"That the plaintiff's claim be and is hereby decreed, but the defendant shall have the right to recover Rs. 5,000 from the plaintiff's property".

Held: the decree though unusual could not be changed. If an order was made that the plaintiff must pay to the defendant Rs. 5,000 otherwise the suit will stand dismissed, the result might be that the plaintiff's suit would be dismissed, but if the defendant attempted to recover his money he would be met by a *res judicata* that the plaintiff is a minor and his suit would fail. (*Simpson, A.J.C.*). MUHAMMAD ANWAR KHAN *v.* JHANDA SINGH. **69 I.C. 888=9 O.L.J. 404=25 O. C. 237= A.I.R. 1922 Oudh 271.**

———*Decree must be confined to subject-matter of suit.*

A decree which goes beyond the subject-mattter of the suit is unjustified by law and must be set aside. (*Le Rossignol, J.*). BHOWANI MAL *v.* SARDAR KHAN. **3 L.L.J. 424=A.I.R. 1921 Lah. 159.**

DECREE—Form of.

———*Conditional decree can be passed.*

Courts of Justice are at full liberty to pass conditional decrees to suit the exigencies of each particular case. 8 All. 149, *Ref.* (*Wazir Hasan, A.J.C.*). AMIR ALI *v.* IQBAL ALI.

61 I.C. 312=24 O.C. 22=
8 O.L.J. 287=A.I.R. 1921 Oudh 112.

———*Suit for possession—Mesne profits granted—Decree is not inconsistent with relief asked for.*

Where the decree is perfectly clear and there is no doubt about its meaning, it is unnecessary to look at the pleadings in relation to it. *Robinson* v. *Duleep Singh*, (1879) 11 Ch. D. 798, *Dist.*

Relief of mesne profits is not inconsistent with the prayer for possession in plaint, except so far as there is a statement in the plaint that a separate action would be brought. (*Das and Ross, JJ.*). SURAJ PRASAD PANDE *v.* SOMRA MAHTO.

68 I.C. 903=2 P.L.T. 648=A.I.R. 1921 Pat. 430.

———*Decree of lower Court affirmed.*

An appellate decree should embody so much of the decree of the lower Court as is intended to affirm, and this should avoid the necessity of reference to the decree of the Trial Court. (*Rigg, J.*). LALL DWARKADAS *v.* BURMA RAILWAYS CO. **62 I. C. 299=10 L. B. R. 280=**
13 Bur. L. T. 173.

—Fraud.

———Remedy against fraudulent decree lies by way of injunction to restrain party from executing decree. (*Kinkhede, A. J. C.*). SULTANALI *v.* BALAJI.

80 I.C. 59=A.I.R. 1924 Nag. 413.

—Every Court can treat as nullity a judgment which is or can be shown to be obtained by clear and manifest fraud. (*Twomey, C.J. and Robinson, J.*). MAUNG KYAWKKIN *v.* AMINUL HAQ.

62 I. C. 53=10 L.B.R. 253=13 Bur. L.T. 198.

—Minor.

———*Decree against—Guardian not vigilant of minor's interests—Decree is not binding on the minor.*

Where the guardian *ad litem* of the minor against whom a decree is passed has been guilty of gross negligence and laches in conducting the suit on behalf of the minor the decree so passed can be set aside : 1 Lah. 27 and A. I. R. 1925 Lah. 116, *Ref. to.* (*Zafar Ali, J.*). FAZAL DIN *v.* MUHAMMAD SHAFI. **108 I.C. 63=A.I.R. 1928 Lah. 674.**

—The question of there being no decree against the minors, because of want of their proper representation in suit, can be raised at any time, even in execution. (*Devadoss, J.*). SAMI CHETTIAR *v.* SESHA IYER & CO. **113 I.C. 663=**
A.I.R. 1928 Mad. 1057.

———*Major wrongly treated as minor—No acquiescence—Decree is not binding on him.*

A major against whom a decree has been obtained in a suit wherein he was erroneously described as a minor represented by a guardian where he has not acquiesced in the proceedings, is not bound by the decree. (*Curgenven, J.*). PATI NAGAMMA *v.* PULAPA VEERASAMI. **98 I.C. 869=**
A.I.R. 1927 Mad. 217.

———*Omission to rely on a previous judgment for pleading* res judicata, *is not gross negligence of the guardian vitiating the decree against the minor.*

Where both the lower Courts found negligence merely from the fact that a previous judgment between the parties was not relied upon by the Court of Wards which represented the minor for the purpose of tracing the plea of *res judicata.*

DECREE—Setting aside—Compromise Decree.

Held: that there was no gross negligence such as would be sufficient to vitiate the decision against the minor. (*Devadoss, JJ.*). S. ANANDA RAO *v.* VENKATADRI APPA RAO. **85 I.C. 812=**
1925 M.W.N. 75=A.I.R. 1925 Mad. 258=
47 M.L.J. 700.

———*Civ. Pro. Code, O.* 32, *R.* 3—*Decree against unrepresented minor-defendant, is nullity though prejudice not alleged.*

A minor who was unrepresented in the suit by any guardian cannot be held to be bound by the decree passed againt him although he neither alleges nor proves that the decree passed against him is unjust or to his prejudice and though he regarded himself as major throughout the whole proceeding. 17 C.W.N. 549, *Appr.* Case-law discussed. (*Mukerji and Dalal, JJ.*). MT. CHAMBI *v.* TARA CHAND. **82 I.C. 516=46 All. 744=**
22 A.L.J. 665=5 L.R.A. Civ. 502=
A.I.R. 1924 All. 892.

—Where the guardian of a minor defendant is guilty of negligence, the decree passed against the minor is not, on that account, a nullity. It is only voidable at the instance of the minor, and a sale in execution of such a decree is perfectly valid. (*Martineau, J.*) KIRPA SINGH *v.* MULA SINGH.

63 I.C. 970. (Lah.)

—Setting aside.

Collusive Decree.
Compromise Decree.
Effect of.
Fraud.
Grounds.
Minor.
Mistake.
Procedure.
Right to sue.

—Setting aside—Collusive decree.

———*Collusion outside Court to get decree on false evidence—Doubtful if* 41 M. 743 *applies.*

Quaere.—Whether 41 M. 743 applies to the case, namely, of two defendants in a suit by surety conspiring outside the Court but going into the Court and both giving false evidence there with the intention that the defendant party of those two should have a decree made against him which it was known he could not satisfy, with a view to make the surety pay an amount which was not really due by anybody. (*Schwabe, C.J. and Wallace, J.*). PARAMESWARA *v.* V. MAHEDEVI.

72 I.C. 982=1922 M.W.N. 841=
A.I.R. 1923 Mad. 272.

—Setting aside—Compromise decree.

———*Fraud—One defendant not joining in compromise—Plaintiff not informing the fact to Court—No fraud is committed.*

Omission on the part of the plaintiff to inform the Court that one of the defendants has not joined in the compromise does not constitute fraud so as to justify the setting aside of the decree. (*Scott Smith and Martineau, JJ.*). PANNA LAL *v.* BALWANT. **87 I. C. 250=7 L. L. J. 205=**
26 P. L. R. 196=A. I. R. 1925 Lah. 431.

———*Plaintiff knowing all facts and consenting to decree—No fraud exists.*

If the plaintiff knew all the facts and in spite of that allowed a decree to be passed against him by consent, it cannot be said that he had in any way been defrauded. (*Abdul Raoof, J.*). BHAGAT SINGH *v.* NIKKA. **88 I. C. 572=7 L. L. J. 68=**
26 P. L. R. 445=A. I. R. 1925 Lah. 357.

—Where under a *bona fide* mistake, the counsel in a case entered into a compromise, and before the

DECREE—Setting aside—Compromise decree.

decree was drawn up they wanted to withdraw their consent, the Court will allow it and rehear the matter. If the decree is signed, a fresh action is usually necessary to set it aside. (*Heaton, A. C. J. and Marten, J.*). JAMSHEDJI NAOROJI *v.* SORABJI NAOROJI. **85 I. C. 504= 25 Bom. L.R. 1137=A.I.R. 1921 Bom. 414.**

—There are exceptions to the general rule that a decree by consent can only be varied by consent of parties. (*Madgavkar, A. J. C.*). RAMJI HANSRAJ *v.* H. J. CHINAI. **82 I. C. 73=19 S. L. R. 281= A. I. R. 1925 Sind 40.**

———*Setting aside restores parties to their original rights and Court can proceed with original suit.*

The effect of setting aside the compromise was to remit both parties to their original rights and hence where consent decree is set aside Court can proceed with the original suit. (*Das and Ross, JJ.*). ASHRAFILAL MAHTA *v.* SURAJMAYA MISHRANI. **82 I. C. 181=1924 P. H. C. C. 253=6 P. L. T. 150= A. I. R. 1924 Pat. 758.**

—Setting aside—Effect of.

———*Parties are relegated to position before decree.*

The effect of the cancellation of a decree is that the parties are relegated to the position they occupied before the decree was passed. (*Sen, J.*). RAM SARAP KALWAR *v.* MAHABIR KALWAR. **A.I.R. 1928 All. 685.**

———*On decree being set aside plaintiff in original suit can require that suit to be proceeded with.*

When a decree passed against several defendants some of whom are minors is set aside as against the minors in a separate suit brought by them, the parties are restored to the position which they occupied on the date of the decree and that plaintiff in the original suit can apply to the Court to proceed with that suit. (*Suhrawardy, J.*). ICHHAMOYI PAL *v.* PEARYA MOHAN SHAH. **78 I.C. 427= A.I.R. 1925 Cal. 512.**

—Setting aside—Fraud—Burden of Proof.

———*Onus is on party alleging fraud to show that there was no foundation for the suit.*

The test as to whether a suit lies to set aside a decree is whether there was fraud practised in relation to the proceedings in Court by which the defendant in the original suit was prevented from placing his case before the Court. In order to establish that there was fraud in relation to the proceedings of the suit, judgment-debtor would have to show that there was no foundation for that suit at all. There is no onus upon the decree-holders to establish the validity of the decree obtained by them. (*Das and Bucknill, JJ.*). DAMODAR PRASAD *v.* RAM SARUP KUMAR. **71 I.C. 843= 4 Pat. L.T. 102=1923 P.H.C.C. 137= 1 P.L.R. 252=A.I.R. 1923 Pat. 327.**

—In a suit to set aside a decree on the ground of fraud, the plaintiff must prove that the fraud was extraneous to the decree. (*Jwala Prasad, J.*). JAGARNATH PRASAD *v.* BAHURANI. **62 I.C. 594 (P.)**

———*Court being mistaken in its decision—Whether good ground.*

If the Court is mistaken in its decision and was not misled by the defendant there is no *fraud* practised on the Court so as to enable the plaintiff to have the decree set aside. Rule applied to a case of service of summons. (*Rupchand, A.J.C.*). FIRM OF GHULLAMALLY AND SONS *v.* FIRM OF GAMMETER. **24 S.L.R. 232.**

———*Court misled regarding service of summons—Remedy—Civil P. C., O. 9, R. 13.*

DECREE—Setting aside—Fraud—Nature of Proof.

Any and every act of the defendant which misleads the Court does not afford a cause of action to the plaintiff to found a separate suit for having a decree declared void. Thus if in the previous case the Court was misled into holding that the service of the summons by registered post was good service it would not by itself be sufficient to found a separate action on the ground of fraud. The only remedy given to a party under such circumstances is to apply to the Court which passed the previous decree to set aside the *ex parte* decree under O. 9, R. 13, C.P.C. (*Rupchand, A.J.C.*). FIRM OF M. GHULLAMALLY & SONS *v.* FIRM OF GAMMETER. **24 S.L.R. 232.**

—Setting aside—Fraud—Discretion.

———*Relief as to, is discretionary—Plaintiff must prove himself to be free from fault throughout.*

The power of a Court to set aside a judgment on the ground of fraud is discretionary and the party who wants a judgment to be vacated must show reasons why he did not assert and enforce his rights at the proper time. He must explain the whole course of his conduct throughout the previous litigation and must free himself from all imputation: 38 Mad. 203, *Rel. on.* (*Tekchand and Agha Haidar, JJ.*). DUNICHAND *v.* MOTA SINGH. **103 I.C. 759=A.I.R. 1927 Lah. 602.**

—Setting aside—Fraud—Duty of Court.

———*Court must exercise its jurisdiction with care—Fraud must be such as prevented the plaintiff from placing his case before Court.*

A decree, whether it be a consent decree, or an *ex parte* decree, or a decree passed after contest, is liable to be vacated on account of fraud. But the Court must exercise the jurisdiction to vacate the decree with care and reserve. The fraud entitling a Court to vacate a decree must be such a one that, as a result of the fraud, the defendant in the first suit was prevented from placing his case before the Court. (*Chari, J.*). MAISTRY *v.* ABDUL AZIZ RAHMAN. **101 I.C. 434=5 Rang. 46= A.I.R. 1927 Rang. 130.**

—Setting aside—Fraud—False Evidence.

———*False evidence does not invalidate decree unless other party is prejudiced.*

False evidence in a suit would not amount to fraud vitiating a decree unless the effect of that false evidence was to prevent the other party from putting his case before the Court. 21 C. 612, *Foll.* (*Pratt, J.*). GOKULDAS PITAMBER *v.* ODHAIJI GIGABHAI. **77 I.C. 206=25 Bom. L. R. 893= A.I.R. 1924 Bom. 100.**

—A decree obtained by false evidence cannot be set aside by a suit. (*Dawson Miller, C.J. and Ross, J.*). (RAI) BRIJ RAI KRISHNA *v.* CHATHA SINGH. **76 I.C. 136=4 P.L.T. 35=A.I.R. 1923 Pat. 226.**

———*Suit to set aside, on ground that defendant gave perjured evidence does not lie.*

So far as plaintiff relied on perjured evidence the suit is not maintainable. The alleged fraud having been in effect adjudicated upon, an attempt to re-open the case cannot be allowed. (*Pratt, J.*). ARLANDU *v.* C. T. A. A. L. SITHAMBARAM. **74 I. C. 278=1 Bur. L. J. 129= A. I. R. 1923 Rang. 82.**

—Setting aside—Fraud—Nature of proof.

———*Actual positive fraud must be proved—Constructive fraud is not sufficient.*

In order to obtain a reversal of the judgment given in a former case it is not sufficient for the

DECREE—Setting aside—Fraud—Non-Service.

plaintiffs to prove constructive fraud, but they must prove actual positive fraud, a meditated and intentional contrivance to keep the parties, and the Court in ignorance of the real facts of the case and the obtaining of that decree by that contrivance: 41 Cal. 990 and 4 O. L. J. 520, *Foll.* (*Martineau, J.*). BISHEN SINGH *v.* WASAWA SINGH. **92 I. C. 317= A. I. R. 1926 Lah. 177.**

—Setting aside—Fraud—Non-service.

———*Non-service to be fraudulent must be in pursuance of fraudulent intent—Claim unfounded in law is fraudulent if made for a fraudulent purpose.*

The mere fact that notice was not served is not necessarily a fraud. If, on the other hand, it is shown that there was any deliberate suppression of notice particularly in order to give effect to any fraudulent scheme then such suppression of notice would be clearly fraud. Further it is not necessarily fraud on the part of any person to put forward a claim which is in fact unfounded in law. A person may make a claim to which he is not entitled and his conduct is not fraudulent merely on that ground. It must be found that there were circumstances which establish that the claim if there be one, was made with knowledge and for a fraudulent purpose. (*Woodroffe and Suhrawardy, JJ.*). JOGESH CHANDRA GHOSE *v.* PROSANNA KUMAR TALUKDAR. **71 I. C. 962= A. I. R. 1924 Cal. 395.**

———*Absence of service by itself does not indicate fraud but absence of foundation for suit or presence of fair defence indicate fraud.*

Although the Court will not regard an allegation that there was a failure on the part of the plaintiff to serve processes on the defendant as an allegation of fraud, the case will assume a different aspect if there are allegations in the plaint which suggest that there was no foundation at all for the suit or that there was a fair defence to the suit. Such allegations, if established will instantly raise the presumption that the failure on the part of the plaintiff to serve processes on the defendant or to take steps to have a guardian appointed for the minor, was deliberate and was part of a carefully planned campaign to snatch a decree in the absence of the defendants. 5 A. C. 697; 15 Cal. 533; *Foll.* (*Das and Adami, JJ.*). PANDE SATDEO NARAIN *v.* RAMAYAN TEWARI. **71 I. C. 705=2 Pat. 335= 4 P. L. T. 147=A. I. R. 1923 Pat. 242.**

—Setting aside—Fraud—Plea of.

———*Fraud must be particularised—Civil P. C., O. 6, R. 4.*

Where a suit is instituted to set aside a decree on the ground of fraud, it is obligatory and imperative on the plaintiff to prove that the decree was obtained by fraud practised upon the Court. General allegations of fraud are insufficient and the plaintiff must particularise the facts upon which fraud is founded: 15 Cal. 533 (P. C.), *Rel. on.* (*Sen and Niamatullah, JJ.*). JIWAN SINGH *v.* KUAR REOTI SINGH. **123 I. C. 759=11 L.R.A. Rev. 121= 1930 A.L.J. 469=A. I. R. 1930 All. 427.**

———*It must be definitely alleged.*

By whatever procedure it is sought to overthrow a judgment on the ground of fraud, the fraud must be definitely alleged and its particulars unequivocally stated. (*Lord Buckmaster*). TOM BOEVEY BARRETT *v.* AFRICAN PRODUCTS LTD. **110 I.C. 299=29 M.L.W. 72= A. I.R. 1928 P.C. 261.**

DECREE—Setting aside—Fraud—Probate.

———*Exact fraud must be made out.*

Reilly, J.—It is a very serious thing for a party to a decree to come to Court in a latter suit and try to free himself from the decree on the ground of fraud. If he wishes to do so, he should be required to specify the exact fraud of which he complains and to make out that fraud. (*Kumaraswamy Sastri and Reilly, JJ.*). KRISHNASWAMY *v.* MUTHULAKSHMI. **112 I.C. 762= 1928 M.W.N. 609=A.I.R. 1928 Mad. 1097.**

———*Plea must be specifically raised—Civil P. C., O. 6, R. 4.*

If it is sought to set aside a decree on the ground of fraud the allegation of fraud must be clear, definite and specific. 41 Cal. 990, *Ref.* (*Daniels, J.*). RADHA KRISHUN SHUKUL *v.* NOKH LAL. **74 I.C. 964=21 A.L.J. 488= 4 L.R.A. Civ. 481=A.I.R. 1923 All. 566.**

—Setting aside—Fraud—Powers of Court.

———Ex parte *decree—Suppression of service of summons proved—Court can enquire whether the claim in the original suit was true or false.*

In a suit to set aside an *ex parte* decree on the ground of fraud, it is open to the Court to consider the question as to whether the claim of the plaintiff in the previous suit was a true or a false claim. The plaintiffs in the latter suit have in the first place to show that there was no service of summons, then to show that the non-service of the summons was due to a fraud practised by the plaintiff in the previous suit with the object of keeping the defendant in that suit in ignorance of the suit and of preventing him from placing his case before the Court.

After non-service of the summons is proved it is open to the Court to go into the question as regards the merits of the previous suit with the object of finding as to whether, fraud was actually perpetrated, and as to whether, if opportunity had been given to the defendant he could have produced evidence which might have led the Court to come to a different decision: 18 C.W.N. 447, *Rel. on*; 16 C.W.N. 1002, *Expl.*; A.I.R. 1923 Pat. 327 and A.I.R. 1924 Pat. 241, *Ref.* (*Kulwant Sahay and Allanson JJ.*). RAM CHANDRA PRASAD *v.* FIRM PARBHU LAL RAMARATAN. **101 I.C. 718= 6 Pat. 458=8 P.L.T. 193= A.I.R. 1927 Pat. 183.**

———*Suit to set aside decree on the ground of fraud—In the absence of finding as to fraud the merits of the case cannot be gone into.*

Where the main contention in the suit to set aside a decree was that the decree had been obtained by fraud and fraud had not been established.

Held: that in the absence of any such finding as to fraud the Court cannot go into the merits of the case. (*Pearson and Graham, JJ.*). KAYEM BISWAS *v.* BAHADUR KHAN. **89 I.C. 744=42 C.L.J. 22= 30 C.W.N. 41=A.I.R. 1925 Cal. 1258.**

—Setting aside—Fraud—Probate.

———*Judgment obtained by fraud can be set aside against those who practised fraud except grant of probate as a will must be good or bad against all world.*

A judgment which has been obtained by fraud either in the Court, or of one or more of the parties can be impeached by means of an action, and can be set aside against those who procured it by fraud. There is, however, at least one exception to this rule, for although in most cases a judgment obtained by fraud can be set aside only as against the person who committed or produced or procured

DECREE—Setting aside—Fraud—Separate suit.

the fraud, this limitation does not apply to an action to set aside a judgment granting probate or a will in as much as a will must be either good or bad against all the world. (*Mookerjee and Rankin, JJ.*). BIRESWAR GHOSH *v.* PANCHCOURI GHOSH.
74 I.C. 975=37 C.L.J. 145=27 C.W.N. 587=A.I.R. 1923 Cal. 538.

—Setting aside—Fraud—Separate suit.

———*Decree obtained by practising gross fraud on Court—Suit to set aside such decree is maintainable.*

Where a suit to set aside a former decree is not founded upon a mere allegation that the decree was wrong or incorrect or obtained by perjured evidence but upon allegations which, if true, would amount to a gross fraud practised in relation to the proceedings in Court.

Held: that upon such allegations a decree may always be challenged. (*Mukerji and Graham, JJ.*). ABDUL BARI *v.* AMIRJAN. **100 I.C. 603=A.I.R. 1927 Cal. 940.**

———*Suit to set aside consent decree on the ground of fraud on party is maintainable.*

Although a Court has inherent power to correct its own proceedings when it is satisfied that in passing a particular order it was misled by one of the parties, a suit is the proper remedy where the case is one of fraud on the party: A.I.R. 1926 Pat. 483, *Dist.* (*Das and Adami, JJ.*). GANGANAND SINGH *v.* RAMESHWAR SINGH BAHADUR.
102 I.C. 449=6 Pat. 388=8 P.L.T. 730=A.I.R. 1927 Pat. 271.

———*Decree obtained by fraud can be set aside by separate suit.*

Where a decree has been obtained by a fraud practised on another, by which that other has been prevented from placing his case before the tribunal which was called upon to adjudicate upon it, the decree is not binding on him and may be set aside in a separate suit: 21 Cal. 612, *Foll.*; 16 C. W. N. 1002, *Dist.* (*Findlay, O.J.C.*). KESHO RAO GANPAT RAO *v.* PANDURANG. **95 I.C. 348 (Nag.).**

———*Fraud must be extraneous to matters adjudicated upon.*

A suit will not lie to set aside a decree obtained by fraud unless the fraud is extraneous to the suit and all matters and questions which have already been adjudicated upon at the trial of the suit. (*Godfrey, J.*). SD. ABDULLAH RAHMAN *v.* SYED ALABI. **86 I.C. 537=4 Bur. L.J. 18=3 Rang. 65=A.I.R. 1925 Rang. 200.**

—Setting aside—Fraud—What is.

———*Fraud must be defined on the face of decree—Irregularity or over-statement of claim is not fraud.*

The fraud which should be established, before a decree passed by a Court of competent jurisdiction could be set aside in a separate action, must be fraud which can be explained and defined upon the face of a decree and mere irregularity, or the insisting upon rights which upon a due investigation of those rights, might be found to be over-stated or over-estimated, is not the kind of fraud which will authorize the Court to set aside a solemn decision which has assumed the form of a decree. *Patch* v. *Ward*, (1896) L.R. 3 Ch. 203, *Rel. on.* (*Tekchand and Agha Haidar, JJ.*). DUNICHAND *v.* MOTA SINGH.
103 I.C. 759=A.I.R. 1927 Lah. 602.

———*Deposit after preliminary decree on hypothecation bond—Revised preliminary decree after re-hearing—Sale in execution of final decree on revised decree—Deposit not considered—No fraud is established justifying suit for setting aside decree.*

DECREE—Setting aside—Grounds.

Where in a suit on a hypothecation-bond, a preliminary decree is passed and the judgment-debtor deposited the full decree amount but the suit is reheard and a revised preliminary decree is passed subsequently which is confirmed on appeal and a final decree is obtained in execution of which the mortgaged properties are sold for an amount less than the decretal amount and decree-holder attached the deposited amount for the balance.

Held: that the conduct of the decree-holder in not taking into consideration the deposited amount while executing the decree, does not amount to legal fraud justifying a suit for setting aside the decree. (*Spencer, J.*). RAMA GOUNDAN *v.* VELAPPA GOUNDAN. **97 I.C. 989=24 M.L.W. 520=1926 M.W.N. 662=A.I.R. 1926 Mad. 1069.**

———*Words in printed forms of execution application, used, while applying, in a sense different from usual meaning—No fraud is committed.*

Where in an application for execution, the applicant put the words 'Amount due' under the decree by striking the words 'Amount decreed' in the 7th column and indicated a sum not actually decreed but which was arrived at by calculating according to the manner indicated in the decree for such calculations, and also used in the 5th column the word 'adjustment' not in the strict legal sense but loosely, indicating that the adjustments were merely calculations made by the applicant himself.

Held: that no fraud was practised on the Court and the orders of the Court passed on such application were not liable to be set aside on the ground of fraud. (*Robinson, C.J. Young and Brown, JJ.*). CHOKALINGAM CHETTY *v.* RAMAN CHETTY.
84 I.C. 824=2 Rang. 537=A.I.R. 1925 Rang. 155 (b) F.B.

—Where the pleader allows the essential points in a case to be overlooked the decree cannot be vacated for fraud though the pleader may be liable for misconduct. (*Newbould, J.*). KIRAN CHANDRA *v.* BONO BEHARIDUTTA. **59 I.C. 752 (Cal.).**

—Setting aside—Grounds.

———*Decree though found to be erroneous in view of later decisions cannot be set aside.*

The mere fact that decree was passed in a previous litigation which in view of more recent judicial pronouncement was erroneous is no ground for setting aside that decree. (*Jai Lal and Agha Haidar, JJ.*). UMAR DIN *v.* MIRZAMAN.
31 P. L. R. 123=A. I. R. 1930 Lah. 654.

———*Fraud—Suppression of important evidence or reliance on perjured evidence to obtain a decree cannot be the basis of subsequent suit brought for declaration that previous judgment is null and void.*

The mere fact that a party has suppressed important evidence or has relied upon perjured evidence in the case and has therefore obtained a decree in his favour cannot be the basis of a subsequent suit which can be brought for a declaration that the previous judgment was null and void and of no legal effect: 29 Mad. 179, held overruled by 41 Mad. 743. (*Shadi Lal, C. J. and Agha Haidar, J.*). SHER BAHADUR *v.* MD. AMIN. **116 I. C. 330=11 L. L. J. 207=A. I. R. 1929 Lah. 569.**

———*Suit does not lie to set aside a decree on the ground of its being wrong—Appeal is the remedy.*

A party to a decree is not entitled to maintain a suit to have the decree set aside on the ground that it was wrong. His remedy is to have it set right in appeal: 41 Cal. 990 and 43 Cal. 217, *Rel. on.* (*Tekchand, J.*). AMAR SINGH *v.* CHHAJJU MUL. **108 I. C. 55=A. I. R. 1928 Lah. 766 (b).**

DECREE—Setting aside—Grounds.

—The decree in the Small Cause suit can be set aside only on account of fraud or collusion: 41 Mad. 743, *Rel. on.* (*Ramesam, J.*). RAMAN MENON *v.* MADHAVA MENON. **98 I. C. 176= A. I. R. 1927 Mad. 96.**

———*Perjured evidence given in the case—This alone is not sufficient cause.*

The mere fact that perjured evidence has been given in the case is not sufficient cause for bringing a suit to have the *ex parte* decree in that case set aside. (*Rutledge, C. J. and Brown, J.*). M. A. MAISTRY *v.* ABDUL AZIZ RAHMAN. **104 I. C. 313= 5 Rang. 471=6 Bur. L. J. 148= A. I. R. 1927 Rang. 281.**

———*A decree cannot be set aside merely on the ground that it was obtained by perjured evidence.*

Where a decree has been obtained by means of evidence challenged by the other side and duly weighed by the Court before acceptance the decree cannot be set aside merely on the ground that such evidence can be proved to be false.

The jurisdiction to impugn a previous decree for fraud is to be exercised with care and reserve and the fraud must be established by proof before the propriety of the prior decree can be considered by the Court. There is an important distinction between *ex parte* decrees and contested decrees and a very heavy burden will be upon the party endeavouring to set aside a contested decree of a Court: 41 Cal. 990; 38 Mad. 203; 41 Mad. 743; 8 S. L. R. 81 and 10 Ch. D. 327, *Foll.* (*De Souza, A. J. C.*). MAHOMED YUSIF *v.* NURJAN. **104 I.C. 805= A.I.R. 1927 Sind 257.**

———*Fraud cannot be alleged if suit decreed on contest or if summons was duly served on defendant in the case of* ex parte *decree.*

It is not open to a party to raise pleas of fraud and production of false evidence in a suit to set aside a decree passed in a suit decreed on contest or if the suit had been decreed *ex parte* and it was established that summonses had been served on the defendants: A.I.R. 1925 Cal. 663, *Foll.*; 33 Cal. 936 and 18 C. W. N. 447, *Dist.* (*Greaves and Cuming, JJ.*). BAIKUNTHA CHANDRA *v.* PRAHLAD CHANDRA. **88 I.C. 583=30 C.W.N. 560= A. I. R. 1926 Cal. 426.**

———*Transaction tainted with fraud is voidable and not void—Decree obtained by fraud must be set aside only on the ground of want of jurisdiction.*

A transaction tainted with fraud is voidable and not void. A decree obtained by fraud, collusion or any other unlawful means is a pronouncement in Court of justice, and it cannot be treated as a waste paper. The only objection that can be made to a decree as being void or a nullity must be on ground that it was passed without jurisdiction or that the Court which passed it had no territorial or pecuniary jurisdiction over the subject-matter of the suit. (*Suhrawardy and Duval, JJ.*). FAZLUUDDIN *v.* KHETRA. **90 I.C. 866=30 C. W. N. 59= A.I.R. 1926 Cal. 167.**

———*No absence of jurisdiction and fraud—Decree cannot be set aside by separate suit.*

There is a distinction between a void and a voidable judgment, an irregular judgment being a voidable and not a void judgment. Where the Court has jurisdiction, but in the exercise of the jurisdiction the Court has acted illegally or with material irregularity, but where there has been no fraud, the judgment is voidable and it can be vacated in an appropriate proceeding either by the Court which rendered it or under the Code by the appellate Court either in appeal or revision. But no separate suit can be brought to set aside the decree.

Where a final decree was attacked as having been passed without any application by the plaintiff, but where no fraud existed.

Held: that a separate suit to set aside the decree did not lie: 2 Pat. 335, *Foll.*; 41 Cal. 990, *Ref.* (*Baker, J.C.*). SITARAM *v.* LAXMANRAO. **87 I.C. 820=A.I.R. 1926 Nag. 152.**

———*Suit does not lie to set aside a decree as erroneous.*

A decree cannot be challenged, on the ground of its being erroneous, by a fresh suit. (*Walmsley and B.B. Ghose, JJ.*). JAGANNATH MARWARI *v.* KALACHAND BANERJEE. **86 I.C. 1042=41 C.L.J. 290=29 C.W.N. 771= A.I.R. 1925 Cal. 785.**

———*Suit for—Plaintiff's case being false to his knowledge is no ground.*

To sustain an action to set aside a decree on the ground that it was obtained by fraud, the fraud must be extrinsic to the proceedings before the Judge. It must be in the conduct of the suit, by keeping the plaintiff out of Court, by practising a fraud on him, or by not serving a notice upon him, or by a false declaration, inducing the Court to believe that notice has been served and proceed with the suit *ex parte*, or by some other act by which the defendant is prevented from placing his case before the Court, as fully as he would do, but for the act of the plaintiff. The fact that plaintiff in the previous suit brought a suit false to his knowledge cannot sustain a suit for setting aside the decree obtained by him. (*Devadoss, J.*). SUBBANNA *v.* K. D. BAYAMMA. **86 I.C. 498= 21 M.L.W. 300=A. I.R. 1925 Mad. 640.**

—Judgment based on evidence recorded in another suit at the request of one party but in teeth of the opposition of the other party is liable to be set aside. (*Ramesam and Reilly, JJ.*). PERIGI VENKOBACHARLU *v.* SANJI RADHABAYAMMA. **85 I.C. 912=35 M.L.T. 101= A.I.R. 1925 Mad. 230 (1)=47 M.L.J. 640.**

———*Suit for—On the ground that it was obtained by false evidence does not lie.*

In the absence of evidence in support of collusion and fraud, no suit can be brought for the refund of money by setting aside or ignoring the decree on the ground that the suit in which decree was passed was false and was supported by false evidence. (*Rafique and Lindsay, JJ.*). SHEO PRASAD *v.* SRI PAUL. **66 I. C. 81=20 A. L. J 254= A.I.R. 1922 All. 167.**

———*Perjury and suppression of facts during trial, will not vitiate judgments.*

Perjury in the course of seeking to prove facts and suppression of evidence in a case during its conduct are not fraud of a nature that will vitiate a judgment. (*Coutts Trotter and Ramesam, JJ.*). M. BALAKRISHNA MUDALIAR *v.* A. SWAMINATHA MUDALIAR. **69 I.C. 12=16 M.L.W. 132= 1922 M.W.N. 463=A.I.R. 1922 Mad. 404.**

———*Small Cause decree—False suit—Falsity known to plaintiff—Decree obtained by perjured evidence—Decree should be set aside.*

A Small Cause Court decree is final in the sense that no appeal lies against it; but it cannot on that ground be urged that it may not be set aside by separate suit on the ground of fraud.

Where not only the decree was obtained by perjured evidence but the suit or claim was a false

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suit or claim and the falsity of the claim was known to the party putting forward the claim.

Held: that the decree should be set aside. 24 C.W.N. 133, *Ref.* (*Teunon and Newbould, JJ.*). RAJANI KANTA DAS *v.* PURNA CHANDRA KUNDU.
63 I.C. 712=48 Cal. 298=
A. I. R. 1921 Cal. 298.

——*Suit for decree being obtained by perjured evidence is no ground.*

A suit to set aside an *ex parte* decree, not on the ground that the plaintiff was prevented by any fraud on the part of the defendant from placing his case before the Court, but on the ground that the defendant procured the decree by putting forward perjured evidence in his favour, is not maintainable. 5 P. L. J. 259, *Foll.* (*Dawson Miller, C. J. and Ross, J.*). JANGAL CHOUDHRY *v.* LALJIT PASBAN. **60 I. C. 124=6 P. L. J. 1=**
1921 P. H. C. C. 3=A. I.R. 1921 Pat. 12.

—Setting aside—Minor.

Failure to raise a doubtful plea in the suit by the guardian *ad litem* does not amount to gross negligence on his part and the minor cannot set aside the decree on that ground. (*Srinivasa Ayyangar and Cornish, JJ.*). VENKATARAMANI *v.* SUBRAMANIA. **108 I. C. 639=**
A. I. R. 1928 Mad. 945.

—Where minor is represented by a duly appointed guardian, the decree is not *ab initio* void and Art. 12, Limitation Act, will apply to set it aside. (*Findlay, O. J. C.*). SADASHEO *v.* KARIM.
92 I. C. 241=A. I. R. 1926 Nag. 267.

——*Fraud—Minor is equally bound by a decree as a major—Decree against minor properly represented—Fraud or collusion is the only ground for setting aside.*

An infant is bound by judgment as much as if he was of full age, unless gross laches or fraud and collusion appear in the *prochein ami*. In India the procedure in cases of gross laches is to apply for a review or, if the decree was *ex parte* to get the *ex parte* decree set aside. If it be sought to set aside a decree obtained against an infant, properly made a party and properly represented in the case, and if it be sought to do this by a separate suit, then the plaintiff in such a suit can succeed only upon proof of fraud or collusion. (*Ross and Macpherson, JJ.*). RAJGOPAL ACHARJYA *v.* UPENDRA ACHARJYA. **96 I. C. 437=5 Pat. 768=**
A. I. R. 1926 Pat. 528.

——*Guardian and Ward—Decree passed against minor defendant owing to vakil's inability to explain witnesses's absence and to obtain adjournment, due to guardian's absence, must be set aside.*

The guardian *ad litem* of a minor was absent at the hearing; consequently the vakil for the guardian was unable to explain the circumstances under which the witnesses to whom *subpoenas* were taken out were not present in Court. Consequently the adjournment applied for was refused and a decree was passed by the Court against the minor defendant:

Held: that there was gross negligence on the part of the minor's guardian and that the decree must be annulled. 45 Mad. 425, *Ref. to.* (*Devadoss, J.*). DADA SAHIB *v.* GAJRAJ SINGH. **85 I.C. 258=**
20 M.L.W. 854=A.I.R. 1925 Mad. 204=
47 M.L.J. 928.

——*Decree must be set aside.*

Where the lower Court found as a fact that the plaintiff was a minor at the date of the institution of the previous suit:

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Held: that the High Court had no alternative but to give a declaration to the effect that the decree was a nullity so far as the plaintiff was concerned, whether or not as a fact the plaintiff had any interest in the property. (*Das, J.*). ALI HUSSAIN *v.* FAGUNI RAI. **86 I.C. 856=**
3 Pat. L.R. 16=A.I.R. 1925 Pat. 367.

——*Plaintiff inducing defendant's guardian to suppress evidence and getting a decree—Decree cannot be set aside.*

Where *A* filed a suit against *B* and induced the latter's guardian to suppress material evidence and thus got a decree in his favour.

Held: that this is not such a fraud as would entitle *B* to file a suit to set aside the decree for fraud. (*Macleod, C. J. and Crump, J.*). SHRINIVAS SARJE RAO *v.* NARAYAN RAO NAVLOJI RAO.
76 I.C. 551=A.I.R. 1923 Bom. 379.

——*Civil P. C., O. 32, R. 4 (4)—Court Guardian got appointed on false affidavit—Decree is not binding on minor—Decree—Setting aside—Minor.*

The appointment of the Court guardian on a false affidavit that there was no proper relation of the minor to act as next friend is vitiated by fraud and is of no legal effect. The decree in such a suit and the subsequent sale are therefore not binding on the minor. (*Krishnan and Ramesam, JJ.*). (PUPOOTH) RIRICHAND *alias* RAMANUNNI KURUP *v.* VAYISRAVANTH MANAKKAL RAMAN.
74 I.C. 309=17 M.L.W. 558=32 M.L.T. 107=
1923 M.W.N. 301=A.I.R. 1923 Mad. 553
=44 M.L.J. 515.

—Setting aside—Mistake.

——*Mistake of trying Court—Decree cannot be set aside.*

A decree once obtained can only be set aside on the ground of fraud. It cannot be set aside on the ground of mistake where the mistake was not the mistake of the plaintiff nor of the defendant but the mistake of the Munsif who tried the suit: 43 Cal. 217, *Foll.* (*Harrison and Jai Lal, JJ.*). MUNICIPAL COMMITTEE, AMRITSAR *v.* HARNAM DAS. **110 I.C. 628=9 Lah. 35=29 P.L.R. 316=**
A.I.R. 1928 Lah. 178.

——*Mistake not in the decree, but in a document on which judgment is based—Suit to rectify mistake does not lie.*

Where a decree has been procured by some grave mistake so as to vitiate the whole character of the decree, and to permit its execution would amount to an abuse, the Court has power to rectify the error or mistake upon which the decree is founded in an independent suit; but where a mistake has been made, not in the judgment or decree, but in a document forming part of the evidence on which the judgment is based, a suit to rectify does not lie. (*Martineau, J.*). BISHEN SINGH *v.* WASAVA SINGH. **92 I.C. 317=A.I.R. 1926 Lah. 177.**

——*Judgment of a competent Court cannot subsequently be assailed for mistake.*

A judgment passed by a competent Court having jurisdiction cannot be assailed in a subsequent suit on any ground of mistake. (*Newbould and Ghose, JJ.*). SYED ABU MAHOMED BARAKAT ALI *v.* ABDUL RAHIM. **80 I.C. 44=**
A. I. R. 1925 Cal. 187.

——*Consent decree can be set aside on ground of mutual mistake—Party cannot retain benefit of compromise in part and repudiate the remainder.*

A consent decree cannot have greater validity than the compromise itself and can therefore be set aside on the ground of mistake, fraud, etc. But a mistake on the part of one party only not caused,

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or actively assisted by the other cannot invalidate the decree. A party cannot retain the benefit of a compromise in part and repudiate it as to the remainder. (*Mukherjee and Chotzner, JJ.*). MAJOR A.V. REILY *v.* RAJKUMARI. **74 I.C. 770= 36 C.L.J. 245=A.I.R. 1922 Cal. 493.**

—Setting aside—Procedure.

———*Civil P. C., S.* 11—*Subsisting judgment set up as* res judicata—*It can be impeached on ground of fraud and collusion in the same suit.*

When a subsisting judgment order or decree is set by one party as a bar to the claim of other party, it is not necessary for the other party to bring a separate suit to have the same set aside, but it is open to him in the same suit in which it is sought to be used against him to show that it was obtained by fraud or collusion: A.I.R. 1926 Cal. 167, *Dist.*; 27 Cal. 11; 26 Cal. 591; 21 C.W.N. 594; 24 All. 242; 28 Bom. 639, *Ref.* (*Mukherji, J.*). JAMIR-ADDIN *v* KHADEJANESSA BIBI. **114 I.C. 407= A.I.R. 1929 Cal. 685.**

———*Evidence Act, S.* 44—*Time to set aside a decree expiring—Validity of the decree can be challenged in defence on the ground of fraud.*

Although a defendant cannot bring a suit on the ground of limitation to set aside a decree, he can still in defence contend when the decree has been proved by the plaintiff, that it had been obtained by fraud, and it is not necessary for him to bring a suit to set it aside : A.I.R. 1921 Bom. 257, *Appr.* (*Cuming and Mukherji, JJ.*). BHOLA NATH BOSE *v.* MT. NAGENDRA BALA. **110 I.C. 571= A.I.R. 1928 Cal. 810.**

———*Appellate decree being executed by lower Court —Executing Court from other materials finding that certain matters were not put before the appellate Court and so modifying the decree as the appellate Court would have passed if the matters were put before it—Executing Court's act was without jurisdiction—Proper course was review—Civil P. C., O.* 47, *R.* 1.

The decree of the High Court ran thus : "It is ordered and decreed that the plaintiff do get *khas* possession against the tenant defendants, and it is further ordered and decreed that the plaintiff do realize mesne profits for three years prior to the institution of the suit, the amount to be determined in execution ,proceedings." The Judgeupon other materials placed before him in execution proceedings found that the plaintiff had entered into a compromise with certain persons regarding certain lands and he came to the conclusion that as the compromise was not brought to the notice of the High Court, the High Court had made the decree as stated above.

Held : that no doubt, if the compromise had been brought to the notice of the High Court, the decree might have been made otherwise. But the Subordinate Judge had acted absolutely without jurisdiction in modifying the decree of the High Court in the way he thought that the High Court should have made its decree. If the defendant judgment-debtors had suffered in any way by reason of anything which the plaintiff had done and which was not brought to the notice of the High Court when the case was heard, the proper way was to have the decree amended either by way of review or by some other legal proceeding. The defendants not having done that, could not ask the Subordinate Judge to amend the decree of the High Court in the manner which the Subordinate Judge thought just and to execute the decree in that way. There was not ambiguity in the decree

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and the clear duty of the executing Court was to execute the decree as it stood. (*B.B. Ghose and Bose, JJ.*). KHATEMANNESSA BIBI *v.* UPENDRA CHANDRA. **115 I.C. 591=A.I.R. 1928 Cal. 804:**

———*Civil P. C., O.* 47, *R.* 1—*Decree passed against A in a suit by R on the admission of claim made by A's general agent*—Mukhtyarnama *conferring no such power on agent—Remedy open to A is by separate suit and not review of judgment.*

In a suit by *R* against *A* a decree was passed against *A* on the basis of an admission of the claim made by *A*'s general agent. Thereupon *A* brought a suit to get the decree set aside alleging that *Mukhtyarnama* executed by *A* did not confer any power on his agent to admit any claim or make any compromise.

Held : that *A* could not seek the remedy by way of review of judgment and the proper remedy for him was by instituting a regular suit for the purpose inasmuch as the decree did not contain merely a mistake or an error apparent on the face of the record but one involving a delicate question whether the general agent of *A* had authority under the *mukhtyarnama* executed in his favour to admit the claim : *Huddersfield Banking Co., Ltd.* v. *Henry Lister & Son, Ltd.*, (1895) 2 Ch. 273 ; 10 C.W.N. 529 ; 13 C.W.N. 1197 ; 14 C.W.N. 451 and 34 All. 143, *Discussed* and *Rel. on* ; 38 All. 7 ; 41 Mad. 743 and 23 O.C. 342 ; *Dist.* (*Gokaran Nath Misra and Nanavutty, JJ.*). BHAGWAN DUTT *v.* RAM DUTT. **113 I.C. 483=5 O.W.N. 812= 4 Luck. 76=A.I.R. 1928 Oudh 418.**

———*Fraud—Independent suit is not necessary.*

A party to a suit can show that a decree obtained by the opposite party against him in another suit was obtained by fraud, and it is not necessary for him to bring an independent suit for setting it aside: 27 Cal. 11, *Foll.* (*N. R. Chatterjee and Panton, JJ.*). PRYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.**

———*Remedies to set aside voidable decree are review of suit—Article* 120 *applies—Time runs from decree.*

A decree which is voidable can only be set aside by a regular suit or by bringing an application for review to the Court that passed the decree. The period prescribed is given by Article 120 ; where a decree is voidable it is voidable from the very date on which it is passed and consequently limitation for a suit to set aside such a decree upon the ground that it is voidable begins to run from the date of the decree itself. (*Lindsay and Kanhaiya Lal, JJ.*). MUST. PHULWANTI KUNWAR *v.* INESHAR DAS. **83 I.C. 782=46 All. 575=22 A.L.J. 521= 5 L.R.A. Civ. 785=A.I.R. 1924 All. 625.**

—The proper and convenient course to set aside a decree is to go to the Court that granted the decree and to get it set aside by that Court. (*Das and Macpherson, JJ.*). THE BANARES BANK LIMITED *v.* SURENDRA NARAIN SINGH. **75 I.C. 469= A.I.R. 1924 Pat. 831.**

———*Fictitious decree need not be set aside.*

Execution sale founded on a fiction is really of no value and not binding on any one and does not require to be set aside. (*Greaves and Cuming, JJ.*). SASHI KUMAR SARKHEL *v.* CHANDRA KUMAR SAMADDAL. **68 I.C. 322=35 C.L.J. 348= A.I.R. 1923 Cal. 204.**

—Setting aside—Right to sue.

———*Person not party cannot invite Court to vacate consent decree.*

It is not competent to person to invite a Court to vacate a consent decree to which he is no party ; all that he can do is to get a declaration that this

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decree did not affect his right: 22 C.L.J. 383, *Foll.* (*Cuming and Graham, JJ.*). BISWAMBAR BISWAS v. NILAMBAR MURARI. **33 C.W.N. 997= A.I.R. 1930 Cal. 263.**

——*Declaration that property in possession of party to mortgage suit should be saved from burden of mortgage decree cannot be obtained by the party who remains absent, and decree is not tainted by fraud.*

Where a mortgagee obtains a decree for sale of the property mortgaged and another person who is in possession of the property having purchased it in a money decree is made defendant and chooses to remain absent the latter cannot obtain a declaration that the property in his possession should be saved from the burden of the decree, while it stands and is not tainted by collusion or fraud. (*Dalal, J.*). TERBENI MISSIR *v.* BABU MANGAL CHAND. **A.I.R. 1929 All. 889.**

——Guilty party will not be permitted to defeat a judgment by showing that, in obtaining it he had practised an imposition on the Court. (*Wazir Hasan and Pullan, A. J. Cs.*). BANSI DHAR *v.* AJUDHIA PRASAD. **82 I.C. 333=27 O.C. 175= 11 O.L.J. 619=A.I.R. 1925 Oudh 120.**

——*Decree against firm cannot be set aside on ground of fraud by person, not a member of the firm.*

A person cannot sue to set aside a decree against a firm on the ground that he was not a member of the firm and that the decree was obtained against the firm by fraud and collusion. (*Harrison, J.*). JAWAHAR SINGH *v.* N. D. SASOON & CO. **75 I.C. 165=A.I.R. 1923 Lah. 290.**

—Validity of.

——*Decree against dead person is nullity.*

Decree against a person who is actually dead on the date when the decree was passed is a nullity and void: 13 All. 53 (P. C.) and 40 All. 423, *Foll.* (*Sulaiman and Niamatullah, JJ.*). JADU NANDAN RAM *v.* PARSOTAM GINNING CO., LTD. **1930 A.L.J. 941=A.I.R. 1930 All. 636.**

——*On death of guardian* ad litem *or next friend pending suit or appeal another not substituted and suit decreed—Decree not nullity and executing Court cannot interfere in execution.*

The mere fact that the guardian *ad litem* or next friend of a minor during the proceeding in a suit died and had not been replaced by another till the final decision does not make the decree null and void, the omission is at the most an irregularity which does not form a ground for the executing Court to interfere in execution. (*Case-law discussed*). (*Madgavkar, J.*). SHIDAPPA IRAPPA *v.* BERAPPA SOMAPPA. **31 Bom.L.R. 1254= 54 Bom. 96=A. I. R. 1930 Bom. 141.**

——*Decree based on award invalid against some—Decree also not separable—Award and decree are invalid in entirety.*

Where a decree based on an award cannot be passed against any one of the defendants and it is not possible to separate it, the award and the decree must both be held to be invalid in their entirety. (*Tek Chand, J.*). AHMED *v.* SARDARA. **114 I. C. 712=A. I. R. 1929 Lah. 171.**

——*Mortgagee abandoning his claim against one mortgagor—His name retained on record and decree passed against him also—Decree is not binding on that mortgagor.*

A voluntary and unqualified abandonment by a mortgagee of his claim against one of the mortgagors operates as unqualified dismissal of his suit so far as that mortgagor's interest is concerned although his name is retained on the record and the decree is passed as against him also. The

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mortgage should be deemed to have been wiped out of existence as against that mortgagor's interest. (*Kinkhede, A. J. C.*). UTTAMCHANDA *v.* SHALIGRAM. **117 I. C. 285= A. I. R. 1929 Nag. 79.**

——Filing of an appeal from preliminary decree after the passing of final decree cannot possibly have the effect of nullifying the final decree: A. I. R. 1926 All. 291, *Not foll.* (*Sulaiman and Banerji, JJ.*). CHHANGA *v.* TIRHI. **107 I. C. 581= 26 A. L. J. 87=A. I. R. 1928 All. 192.**

——*Acceptance of resignation of the old trustee by the Devasthan Committee—Decree passed before taking charge by the new trustees—New trustees not brought on record—Decree passed by a competent Court is not rendered a nullity—Civil P. C., O. 22, R. 10.*

The mere fact of the appointment of new trustees by the temple committee even though the new trustees did not take over charge of the office of trusteeship does not render a nullity the decree and judgment passed by the Court of competent jurisdiction against the Devasthan. The mere resignation by a trustee being accepted does not tend the whole proceeding to the same position as in the case of the death of a party: A. I. R. 1921 Cal. 422; 5 Pat. L. J. 314, *Foll.* (*Srinivasa Aiyangar and Reilly, JJ.*). VISWANATHASWAMI DEVASTHANAM *v.* KOODALINGA NADAN. **108 I.C. 401= 1927 M. W. N. 743=A. I. R. 1928 Mad. 246.**

——*Evidence Act, S. 44—Collusive decree binds parties thereto and their representatives—It is not nullity.*

A collusive decree binds the parties thereto and is not a nullity. It is also binding on the representatives of the parties.

No doubt a decree can be avoided on the ground of fraud or collusion under S. 44 of the Evidence Act, but there is a great difference between fraud and collusion. A party who has been made the victim of a fraud can obviously avoid a decree on the ground that he has discovered the fraud subsequent to the decree which could not have been made a point of defence in the former litigation. On the other hand, the fact of collusion is a matter which must have been well-known to both the parties and is a point which could and might have been raised before the decree was passed on the last occasion. A third party can undoubtedly avoid a decree on the ground that it has been obtained collusively, but a party to a collusive decree cannot avoid it on that ground: 11 Bom. 708; 20 Mad. 333; 31 Mad. 485 and 18 Mad. 378, *Rel. on.* (*Sulaiman, J.*). SAHEB RAI *v.* BEHARI RAI. **101 I. C. 765= A. I. R. 1927 All. 494.**

——*Preliminary decree passed* ex parte*—Notice to other party is necessary before it is made final.*

Where a preliminary decree is passed *ex parte*, notice ought to be issued to the other side before the final decree is passed. (*Walsh, A. C. J. and Bannerji, J.*). RAMCHANDRA BANSAL *v.* LACHMAN. **100 I.C. 18= 49 All. 396=25 A.L.J 296= A.I.R. 1927 All. 329.**

—A decree against a dead person is a nullity. (*Dalip Singh, J.*). LACHHAMAN SINGH *v.* MT. CHATTAR KAUR. **103 I.C. 767=A.I.R. 1927 Lah. 663.**

—An error in law does not invalidate the judgment until it is set aside by superior Court. (*Ross and Wort, JJ.*). ACHUDANAND SINGH *v.* GAYANCHAND MAHTON. **102 I.C. 768=8 P.L.T. 673= A.I.R. 1927 Pat. 313.**

——*High Court ordering stay of suit—Stay order not communicated to trial Court—Decree is valid.*

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Where the High Court passed an order staying the suit in the lower Court, but before the order could be communicated to it, it passed a decree in that suit.

Held: that the decree must be treated as validly passed: 41 Mad. 151, *Foll.*; 33 Cal. 927, *Not foll.* (*Kinkhede, A.J.C.*). UDARAM MANGIRAM *v.* LAXMAN MARWARI. **104 I.C. 470= 10 N.L.J. 45=A.I.R. 1927 Nag. 241.**

———*Necessary parties not on record—Decree passed in ignorance of the fact is void against them and wholly void if interests are inseparable*—(*Obiter*).

No decree is binding on a party if he was a necessary party to the suit and he was not on record: and if his interest is inseparable from those of other judgment-debtors under the decree, the decree as a whole would be void: A. I. R. 1925 All. 141; 17 All. 478; 32 All. 301 and 38 Mad. 682, *Rel. on.* (*Wallace, J.*). VESU *v.* T. V. KANNAMMA. **97 I. C. 551=1926 M.W.N. 763= A. I. R. 1926 Mad. 991=51 M.L.J. 282.**

———*Suit on a pro-note by deceased against a wrong person not in possession of deceased's estate—Decree against such person is not binding on real heir.*

Where in a suit on a pro-note by the deceased the decree is against the person in possession of the deceased's estate it is binding on the real heir but where there is no such possession, however *bona fide* the suit, the decree is not binding on the real heir. However honest or *bona fide* a person's belief may be in bringing such a suit, the danger of allowing it to bind the real heir lies in this consideration, namely, that however false or unjust the suit may be, where the defendant is neither in possession nor an heir, there is really nobody interested in defending the suit: 36 M.L.J. 106; 26 Mad. 230 and 11 Mad. 408, *Foll.* (*Case-law considered*). (*Ramesam, J.*). MALAPPA *v.* N. G. KARE GOWD. **93 I.C. 625=1926 M.W.N. 174= A. I. R. 1926 Mad. 487=50 M.L.J. 442.**

———Decree against a dead person is a nullity. 4 P. L. J. 240 (F. B.), *Foll.* (*Das and Adami, JJ.*). KESHO PRASAD SINGH *v.* SHAMNANDUN RAI. **94 I.C. 28=5 Pat. 233=7 P.L.T. 628= 1926 P.H.C.C. 81=A.I.R. 1926 Pat. 504.**

———*Decree is valid until set aside.*

Every order or judgment however erroneous carries with it an initial presumption of validity until and unless it is set aside or declared to be of no effect. (*Pearson and Graham, JJ.*). SHRINATH CHATTERJEE *v.* KEDAR NATH RAI. **82 I.C. 255=A.I.R. 1925 Cal. 276.**

———*Civil P. C., O. 41, R. 1—Decree not prepared by trial Court—Appeal heard and decided—Decision is nullity.*

Plaintiff's suit was dismissed by the trial Court but no decree was prepared. Plaintiff appealed to the District Judge who accepted the appeal and granted the plaintiff a decree.

Held: that the proper course for the District Judge to have adopted was to grant an adjournment to enable the plaintiff to get a decree prepared and therefore the decree granted by him was a nullity. 66 P. R. 1919; 19 P. R. 1919, *Foll.* (*Harrison, J.*). SHER MUHAMMAD *v.* MUHAMMAD KHAN. **69 I.C. 558=A.I.R. 1924 Lah. 362.**

———*Defendants in ejectment suit recorded as occupancy tenant in record-of-rights—Decree is not without jurisdiction.*

The fact that defendants in ejectment suits are entered in the record-of-rights as occupancy tenants is not a sufficient reason for holding that the decrees in these suits were without jurisdiction or were wrong in law. (*Ross, J.*). TUFANI LAL *v.* MT. BIBI UMATUL RASOOL. **5 P.L.T. 535= 1924 P.H.C.C. 244=A.I.R. 1924 Pat.765.**

DEED—Consideration.

———*Instalment decree providing for attachment even without default is* ultra vires.

Where an instalment decree provided that if two instalments were in arrears the decree could be executed for the whole amount and further that "the immovable property of the defendant may be got attached and kept".

Held: that if this means that the defendant's property should be attached before default had been made in the payment of the instalments it is *ultra vires* of the Court, to make such a decree. (*Macleod, C.J. and Coyajee, J.*). GANPATI BHATTA. UMAMAHESHWARBHATTA *v.* DEVAPPA SHANKARA NARAYAN HARIK. **76 I.C. 895=46 Bom. 942= 24 Bom. L.R. 442=A.I.R. 1923 Bom. 30.**

DEDICATION.

See (1) HINDU LAW—RELIGIOUS ENDOWMENT.
(2) MAHOMEDAN LAW—WAQF.

DEED.

Consideration.
Construction.
Execution.
Material Alteration.
Recitals.
Rights of Parties to.
Setting aside—*See* SP. REL. ACT, S. 41.
Validity.

—Consideration.

———*Land let out 60 years before institution of suit and built upon—20 years after terms of tenancy altered—There is no presumption that there was no consideration for altered agreement.*

Where land has been let out about 60 years back and built upon by the tenant, if subsequently new terms were obtained for the tenancy the fact that these terms were obtained about 40 years before institution of the suit does not raise any presumption that there was no consideration for altered agreement. (*Mukherji and Bennet, JJ.*). CHUTTAN TELI *v.* RAZIA KHATUN. **A. I. R. 1930 All. 510.**

———*Price less than 20 times income is inadequate in Bengal.*

In Bengal any price less than 20 times of the income would be inadequate. (*Chakravarthi, J.*) BAIKUNTHA NATH *v.* ADHAR CHANDRA. **92 I.C. 727=A.I.R. 1926 Cal. 653.**

———*Consideration admitted by defendant—Repayments should be proved by defendant.*

The consideration of the bond being admitted and certain repayments alleged, the burden of proof is on the defendant to prove other repayments. (*Baker, J.C.*). MANIK RAO *v.* NURHUSSAN. **88 I.C. 254=A.I.R. 1925 Nag. 376.**

———*Execution admitted by executant—Passing of consideration as against strangers must be proved by executee.*

In an action to enforce a mortgage security where there is no contest by the mortgagor, and execution is admitted by or proved against him, the onus lies upon defendant to prove that the recital as to payment of consideration for the deed which he executed is untrue. Where however a stranger to the transaction is a party and the claim is contested by him and he denies execution and also asserts that there was no consideration for the mortgage the onus is upon the mortgagee

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to prove his case. 17 C.L.J. 173, *Ref.*; 13 C.P.L.R. 1, *Dissented from.* (*Kinkhede, A.J.C.*). BALIRAM *v.* KAMALIA.

78 I.C. 330=A.I.R. 1924 Nag. 367.

———*Sale to discharge previous incumbrance on property sold—Transfer is supported by consideration—T. P. Act, S. 54.*

A sale purported to be for a sum of Rs. 1,200. It was recited in the sale-deed that a sum of Rs. 550 was being left with the purchaser to redeem a prior mortgage and the balance of Rs. 650 was to be paid before the registering officer. It was found that the money was handed over to the vendor before the registering officer but that after it had been so made over it was returned again to the purchaser. It was argued that there was no sale at all inasmuch as the vendor got nothing. It was however found that the market value of the property sold was not more than Rs. 500;

Held: that if by this transfer the vendor was getting rid of the liability to pay a sum of Rs. 550 it cannot be said that there was no consideration for the transfer. (*Lindsay and Sulaiman, JJ.*). ALAMA CHAND *v.* CHHAJJU.

74 I.C. 339=45 All. 559=A.I.R. 1923 All. 530.

———*Partial failure—Deed operates to the extent of sum actually advanced.*

The validity of a bond is not affected by the fact that the consideration recited was not paid in full; the bond is operative to the extent of the sum actually advanced. (*Mookerjee and Buckland, JJ.*). KRISHNA KISOR *v.* NAGENDRABALA.

66 I.C. 694=34 C.L.J. 33=25 C.W.N. 94?=A.I.R. 1921 Cal. 435.

—Construction.

Absolute or Limited Estate.
Absolute or Limited Interest.
Adoption Deed.
Ambiguity.
Ancient Documents.
Bond.
Conflicting Recitals.
Ejusdem Generis.
English Rules.
Evidence of Conduct.
Family Arrangement or Settlement.
Grant.
Hire Purchase.
Instalment Bond.
Intention of Parties.
Law applicable.
Lease or License.
Marriage Settlement.
Mortgage or charge.
Mortgage or Lease.
Mortgage or Simple Bond.
Partition Deed.
Personal Liability.
Powers of Court.
Principles of.
Recitals.
Release.
Religious Endowment.
Sale or Contract of Sale.
Sale or Gift.
Sale or Lease.
Sale or Mortgage.
Surety Bond.
Surrounding circumstances.
Two Documents.
Will and Authority to adopt.

DEED—Construction—Absolute or Limited Interest.

Will or Gift.
Will or Settlement.
Will or Transfer.
Words.
Miscellaneous.

—Construction—Absolute or Limited Estate.

—A Hindu, by a settlement deed, gave his wife a right to enjoy a house along with him during his lifetime and after his death to enjoy the house till the end of her life-time and provided that thereafter the house should be taken by his heirs absolutely.

Held that he intended to confer a life-estate on his wife in his house and that the gift of the remainder in favour of his own heirs was legal and valid. (*Sundaram Chetty, J.*). VARALAKSHMI AMMAL *v.* VENKAMMAL. **122 I.C. 348.**

———*Gift to female—Clear words conferring absolute estate and transferring possession—Provision inserted that the female was to enjoy with her male issues—Gift confers absolute estate.*

Where a deed of gift in favour of a lady begins and ends by saying that it is "executed in favour of M," and there are no words as such limiting her estate, and it contains recitals to the effect that possession had been transferred to her and that she was to pay the *kist*.

Held: that these unmistakably point to the grant of an absolute estate in favour of M.

Held, further, that a provision about enjoyment along with male issue in the deed of gift may be rejected at most as an idle attempt to derogate from the grant and does not affect the absolute estate created by the deed. (*Madhavan Nair, J.*). NAGARAJA AYYAR *v.* NATESA AIYAR.

85 I.C. 993=A.I.R. 1925 Mad. 1013.

—A Muhammadan by a deed of settlement gave certain properties to his sons "to be enjoyed with all rights absolute." Later on the document stated that the sons "shall not subject the properties to mortgages.....or other alienations and that both of them shall live with the income derived from the same every year and thus maintain themselves. After them their descendants shall enjoy the same with the right of alienations as they pleased."

Held: that the sons took an absolute estate and that the direction against alienation was only in the nature of a pious wish that the sons should hand down the properties to their children unimpaired. (*Spencer and Devadoss, JJ.*). ABDUL RAHIMAN *v.* UTHUMANSA ROWTHER. **85 I.C. 945=A.I.R. 1925 Mad. 997.**

———Naslan bad naslan prima facie *import intention to convey an absolute estate.*

The words *naslan bad naslan* have acquired a technical import in legal vocabulary. If there were nothing else to control that import the use of those words would generally be understood to have been made with an intention to convey an absolute estate. 14 Cal. 296 (P. C.), *Ref.* (*Wasir Hasan, A.J.C.*). LACHHMAN DAS *v.* BHAGWANT RAM. **65 I. C. 707=8 O.L.J. 481=A.I.R. 1921 Oudh 240.**

—Construction—Absolute or Limited Interest.

———*Original bequest for life subsequently increased by deed of gift—In absence of evidence proving departure from previous intention and conferring absolute estate, estate does not become heritable.*

Where the original intention of the donor is to bequeath by will a life-estate in certain property and he subsequently increases the grant by means

DEED—Construction—Absolute or Limited Interest.

of a deed of gift, in default of definite evidence to the effect, that at the time of the deed of gift the donor had departed from his previous intention and decided not only to make an immediate gift of property considerably larger than that bequeathed under the will, but at the same time to confer an absolute title in place of a life-interest, grant will not *per se* create heritable estate: 23 All. 194 (P.C.), *Rel. on*; 3 O. L. J. 354 and 11 Cal. 121, *Ref.*; 8 All. 39; A. I. R. 1926 Oudh 561, *Expl.* (*Raza and Pullan, JJ.*). HAFIZ ALI *v.* RANI INDAR KUAR. **7 O.W.N. 511=A.I.R. 1930 Oudh 215.**

———*Person granting patni talukdari patta to his daughter—She, her sons, sons' sons, and her daughters to continue to possess as malik—But her other heirs not to have any right—Absolute estate was granted to daughter—Direction regarding succession was not limited to what happened at her death but was for indefinite period of time, and it being against law of succession was void—Daughter was entitled to deal with it as she liked.*

A person executed a patni talukdari patta of his taluk in favour of his daughter. She and her sons born of her womb and sons born of their loins in succession and the daughters of her womb were to continue to possess the same and were to be *malik* in possession by right of miras talukdari. But except for these her other heirs such as her daughters' descendants or her husband were to have no right to it.

Held: that the donor in this case desired to grant an estate of inheritance but directed that the succession should take place in a specified manner. It was not limited to what should happen at her death but gave directions for an indefinite period of time or, in other words, he intended to alter the rule of succession. The provisions restricting succession, therefore, were void, and the daughter was entitled to deal with the property as she liked. 9 M. I. A. 123, *Not foll.*; I. A. Sup. Vol. 47 at 65; 6 M. I. A. 526 and 38 Cal. 603 (P.C.), *Rel. on.* (*B. B. Ghose and Bose, JJ.*). SARAJUBALA DEBI *v.* JYOTIRMOYEE DEBI. **112 I. C. 113=A. I. R. 1929 Cal. 166.**

———*Words* naslan bad naslan *and* batan bad batan *denote absolute estate in gifted property.*

Where the donor states that the donee is to possess rights in the gifted property *naslan bad naslan* and *batan bad batan* (generation after generation) and that he and his heirs and successors shall have no right left in the gifted property, then or in future, the donee gets an absolute estate. The words *naslan bad naslan* and *batan bad batan* have always been held as words denoting an absolute estate unless the document is full of contradictions which take away the literal meaning of these expressions: 14 Cal. 296 (P.C.); A. I. R. 1922 Oudh 42 and A. I. R. 1926 Oudh 561, *Ref.* (*Wazir Hasan, J.*). BINDHA DIN TEWARI *v.* RAM HARAKH DUBEY. **121 I. C. 95=6 O. W. N. 722=A. I. R. 1929 Oudh 415.**

———*Gift of full proprietary rights by husband to his wife—Wife to hold property generation after generation—No connexion of any one with the property—Deed transfers full proprietary rights.*

When, on a deed of gift, the husband transfers the property to his wife as a special gift describing it as the property in his exclusive proprietary right, and says that he transfers all the rights held by him to her, that she is to hold it generation after generation, that neither himself nor his own heir is ever to make a claim against her, and that no one except her is to have any connexion with the property, the only construction to be placed upon the deed is that it transferred full proprietary rights. (*Stuart, C. J. and Raza, J.*). JAGMOHAN SINGH *v.* SRI NATH. **107 I. C. 866=3 Luck. 302=5 O. W. N. 1=A. I. R. 1928 Oudh 203.**

———*A Hindu's will devising his entire property to his wife with powers of alienation in case of necessity was held not to curtail her powers to legal necessity, the reference to necessity being held as only the ordinary aversion of an owner to alienate save when necessary.*

Where the will devising the whole of the property to the testator's wife stated, "I fully empower B (wife) to deal with my property if it becomes necessary to do so in any manner she may deem proper, by way of effecting a mortgage, sale, charity, etc."

Held: (*Per Fawcett, J.*):—The words "if it becomes necessary to do so" cannot properly be read as restricting the widow's power of alienation to legal necessity under Hindu Law. They are intended to bar alienations for which there are no reasonable grounds and are based on the ordinary aversion of an owner to alienate unless it is necessary to do so. (*Coyajee and Fawcett, JJ.*). BAI SURAJ *v.* JAJIBHAI BHAVSANG. **86 I. C. 196=A. I. R. 1925 Bom. 38 (c).**

———*Gift with conditions takes away the absolute character of the disposition.*

Where in the primary clause of a gift deed the words following the gift were "and all rights appertaining thereto with the following conditions."

Held: that the expression fundamentally affected the construction of the deed as a whole, that the deed did not confer the *maliki* rights without conditions, nor did it confer on the donee those rights of property and alienation which a bare disposition in favour of a person denominated as *malik* would have involved. (*Lord Shaw*). ASHRAFI SINGH *v* BIDYA PRASAD NARAYAN SINGH. **80 I. C. 826=26 Bom. L. R. 776=20 M. L. W. 425=5 L. R. P. C. 136=1924 M. W. N. 819=35 M. L. T. 135=6 P. L. T. 77=A. I. R. 1924 P. C. 191=47 M. L. J. 585 (P.C.).**

———*An estate equivalent to one in fee simple, approaches absolute ownership.*

Strict proof is necessary of any right in derogation of Sovereign's right to assess land at discretion.

An estate equivalent to an estate in fee simple is one approaching as near as possible to an estate of absolute ownership.

To describe an estate as "nearly equal to a freehold" when it is really a leasehold amounts to mere puffing. But one equivalent to that estate is on a different footing. (4 Bom. H.C.R. 1, *Foll.*).

Strict proof must be given of any right set up in derogation of the inherent right of the Sovereign to assess the land at his discretion; and the fact that a very small rent has been paid for many years, does not show that the Government has forfeited its right to enhance the assessment in respect of such land. (*Fawcett, J.*). RAHIMTULLA *v.* HASAN ALI. **85 I. C. 1038=25 Bom. L. R. 1192=A. I. R. 1924 Bom. 212.**

———"*Malik*" *implies absolute estate—Deed in favour of females—No special rule.*

Deeds in favour of females must be interpreted in the same way as any other deed. The words

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"Malik" and "Malkiyat" in a formal document imply an absolute estate unless there is something in the context to qualify it. Where the husband in a deed purporting to be a sale-deed in favour of his wife in consideration of her dower clearly stated that he had given proprietary possession to her and also that she had the full power of a proprietor to alienate the house sold:

Held that the husband's intention was to confer an absolute estate upon the wife. (*Scott-Smith, J.*). MT. MAHOMMADI *v.* KARAM BAKHSH.

72 I.C. 977=A. I. R. 1924 Lah. 347.

———*Maintenance deed—Hindu Law.*

Words "with absolute rights etc" in maintenance deed are not to be construed in a different manner from similar words in other documents. (*Venkatasubba Rao, J.*). NARAYANASWAMY DEVARAYAR *v.* THANGAVELU PADAYACHI. **82 I.C. 67= 1924 M.W.N. 571=A.I.R 1924 Mad. 800.**

———*Deed simply transferring right of management but not in any way transferring ownership does not prevent transfer of ownership.*

Where a deed simply transfers the right of management but does not in any way transfer the ownership of property and other circumstances indicate an intention not to transfer alienation of the property by the executant of the deed subsequent to its execution is valid. (*Kinkhede, A.J.C.*). MOTILAL RAMLAL *v.* RENI.

78 I.C. 711=A.I.R. 1924 Nag. 348.

———*Total relinquishment of rights was inferred from the use of words like 'for ever'—Grant held as heritable though no express words used.*

A service grant to one B, by proprietor of Bettiah Raj contained the following passage:—"Hence because of that good work it is ordered that whatever trees have been planted by his ancestor and also if he plants any; the share of the Raj in them is given up. Hence this *parwana* is written to all forbidding you in any way to interfere with the trees standing on the *nakdi* holdings of the said B for ever."

Held: that, considering the context and the other provisions in the document and the evidence relating to subsequent conduct of the parties, the intention was that the landlord should relinquish his right to the trees both present and future. Even if a document should contain word such as "always," or "for ever" or similar words, if the grant is clearly the grant of a life-interest only the mere use of such words will not have the effect of extending the grant beyond the lifetime of the grantee. But it is equally true if there are no words of limitation in a grant then, even if there are no specific words of inheritance, it may still be a grant in perpetuity. 23 A. 324; (P.C.); 23 C. 838 (P.C.); 14 M.I.A. 247, *Ref.* (*Dawson-Miller C.J. and Mullick, J.*). MAHARAJ RAI *v.* MAHARANI JANKI KUER. **75 I.C. 1031=A.I.R. 1924 Pat. 655.**

———*"To X and his male heirs"—X gets an absolute estate.*

Where a deed of settlement executed by a Parsee Lady gave certain properties to "X and his male heirs absolutely in equal shares."

Held: *Per Shah, Ag. C.J.*—That the use of the words "absolutely in equal shares" negative the idea of any limitation upon the estate given and that the use of the words "male heirs" does not import any limitation either under the English or the Indian law.

Held: *Per Marten, J.*—The words "his heirs" or "his male heirs" are regarded in English law as

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words of limitation and not of purchase. They are not taken as conferring any estate on the heir but simply as showing or marking out the estate the ancestor takes. Further a gift to a man and his male heirs and not to the "male heirs of his body" is an attempt to create an estate unknown to the law and consequently the English law rejects the word 'male' and construes the gift as one to a man and his heirs *simpliciter* (*i.e.*) as a gift in fee simple. Even if the estate created is in tail or in tail male under the English law, such an estate is unknown to the Indian law and cannot be imported into India where the land settled is situate and which must therefore devolve according to the *lex loci*. (*Shah, Ag. C. J. and Marten, J.*). DADABHAI FRAMJI CAMA *v.* COWASJI DORABJI PANDAY. **77 I.C. 83= 24 Bom. L.R. 1111=47 Bom. 349= A.I.R. 1923 Bom. 177.**

———*Words and Phrases—You and your heirs—Absolute estate to grantee—His heirs hold it as ancestral property.*

A Sanad provided "the above estate has been conferred upon you and your heirs for ever."

Held: this does not mean that every subsequent heir of the grantee held the property independently of his personal law with full powers of transfer. You and your heirs is the usual expression for conferring an absolute estate on the grantee. 4 C. 23, P. C.; 24 C. 834, P.C.; 33 C. 947, *Ref.* (*Simpson and Dalal, A.J.Cs.*). RAM RATAN *v.* GANGA BAKSH. **71 I.C. 581=26 O.C. 245= 10 O.L.J. 193=A.I.R. 1923 Oudh 265.**

———*Grant as 'Malik' to wife but saying that she should utilise income and that property is to go to son if born—Grant is only that of life-estate.*

A deed declared that neither the declarant nor his heirs or representatives will have any right or title of claim against the said Musammat or her heirs and legal representatives in respect of the properties. But the succeeding clause made specific reference to the income as that which the lady was to utilize and there was the further clause that if a child should be born the property should belong to that child.

Held: these two clauses seem inconsistent with the construction of the deed as conferring an absolute estate and to indicate what the real intention of the grantor was and construing the deed as a whole it conferred a life-interest only. (*Coutts and Ross, JJ.*). SARABJIT PANDE *v.* RAJ KUMAR PANDE. **69 I.C. 957=1922 P.H.C.C. 74= A.I.R. 1923 Pat. 87.**

—A deed for maintenance presumably creates only life-interest. (*Daniels and Dalal, A.J.Cs.*). HAFIZ-UN-NISA *v.* JAWAHIR SINGH. **66 I.C. 24= 24 O.C. 374=A.I.R. 1921 Oudh 209.**

———*Gift in favour of wife as 'malik' but restrictive clauses used—Gift was held to be only of a Hindu woman's estate.*

In a deed of gift by a husband to his wife, the properties were granted to the wife as 'Malik'. Any alienation made during the lifetime of the donor was to be by his permission. After his death, she could transfer to certain specified persons and to a limited extent. She was also given authority to execute a will in favour of certain specified persons. There was a provision also for the devolution of the properties left undisposed of at the donee's death.

Held: that a Court must look to all the clauses of the deed and give effect to all the clauses ignor-

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ing none as redundant or contradictory and that on a construction of the deed of gift, the intention of the donor was to provide for the donee and also for the ultimate devolution of the property. The grant in effect was grant of an ordinary Hindu woman's estate. The absence of any clause restraining the donee from granting a *mokurari* lease does not lead to the conclusion that she was empowered to grant it. *(Coutts and Ross, JJ.)*. ASHURFI SINGH *v.* BISESWAR PRATAP NARAIN SAHI.

65 I.C. 977=1 Pat. 295=1922 P.H.C.C. 70=3 Pat. L.T. 273=A.I.R. 1922 Pat. 362.

———A deed for maintenance *prima facie* imports only a life-interest. *(Daniels and Dalal, A.J. Cs.)*. MST. HAFIZ-UN-NISA *v.* JAWAHIR SINGH.

24 O.C. 374=A.I.R. 1921 Oudh 209.

———*Will in favour of widow—Full proprietary rights can be conferred by expressions so indicating—Each case will depend on its facts.*

Wherever expressions indicating the creation of a full proprietary right in favour of a widow are to be found in the will she is to be treated as the full owner. Each case has to be decided upon its own particular facts. *(Abdul Raoof, J.)*. MOHAN LAL *v.* MAYA LAL. **59 I.C. 231=3 L.L.J. 132=18 P.L.R. 1921.**

—Construction—Adoption deed.

———"Vyavastha" *does not include power of unrestricted alienation.*

An adoption deed provided "you have acquired whatever rights and authorities a natural son should have acquired had I got any, and you have from to-day become the owner of the property movable and immovable. You should stay with us and take care of us as long as we, that is, I and my wife, live. After our death you are the sole owner and should thereafter make *vahivat* as owner. In whatever manner the estate movable or immovable is managed, as long as I live, it is to be taken that you approve of it. You have no authority to object to it."

The word used for the management reserved, was "*vyavastha*" in the original.

Held: that the deed conferred on the father powers of management free from any interference on the part of the adopted son, but it did not give to the adoptive father an unrestricted power of alienation. *(Macleod, C. J. and Crump, J.)*. BALAPPA GHENAPPA *v.* AKKUBAI RAYAGOUDA. **74 I.C. 220=A.I.R. 1924 Bom. 170.**

———*No words of transfer used—Deed cannot transfer property.*

A document purporting to be an adoption deed contained the following words "you [the adopted son] alone are the full owner of my movable and immovable property".

Held: that it cannot be contended for a moment that the executant in executing the deed which was to evidence the previous adoption intended to transfer thereby all hisimmovable and movable properties unless he used in the document words of conveyance or transfer. *(Macleod, C. J. and Crump, J.)*. SHIDAPPA *v.* SANTAWA. **77 I. C. 477=A.I.R. 1923 Bom. 302.**

—Construction—Ambiguity.

———If the language of the document executed by a Hindu in which there is an express and clear intention of conferring an absolute estate is so clear as to leave no doubt in the mind of the Court, it must take effect according to its tenor. But if, on the other hand, there is an ambiguity in the language which is used, then for purposes

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of construction Courts are entitled to take into consideration the notions and wishes of Hindus with respect to the devolution of their property: 2 I. A. 7 (P.C.), *Foll.* *(Lindsay and Banerji, JJ.)*. RADHA KISHUN *v.* SITA RAM UPADHAYA. **114 I. C. 45=26 A.L.J. 172.**

—The lease deed being ambiguous, the rule, how the parties understood it, applies. A contract in one case should not be interpreted in the view taken with regard to another contract which is differently worded. *(Suhrawardy and Cuming, JJ.)*. HARA MOHAN BANIKYA CHOWDHURY *v.* HEM CHANDRA CHAKRAVARTY. **87 I. C. 758=42 C.L.J. 172=A.I.R. 1925 Cal. 1248.**

———*No ambiguity—Conduct of parties cannot be considered—Evidence Act, S. 92.*

If the meaning of a term in the original agreement is doubtful, assistance might be sought from the conduct of parties. Apart from ambiguity, the mere fact that the parties have acted on an erroneous construction of an instrument furnishes in itself no reason why the Courts should not follow the general rule that an instrument should be construed according to its natural meaning in the light of the circumstances in which it was executed. *(Richardson and Suhrawardy, JJ.)*. BHUPENDRA NARAYAN SINHA *v.* MIDNAPUR ZEMINDARI Co., LTD. **68 I. C. 937=37 C. L. J. 556=A. I. R. 1922 Cal. 300.**

———*Ambiguity in the operative part may be cleared up by reference to recitals.*

Per *Dawson-Miller, C. J.*—Where there is ambiguity in the operative part of the deed, one should look back to the recitals and be guided by what is therein contained in interpreting the ambiguity. This canon of construction, however, cannot apply in all cases where there is a doubt or difficulty in the construction of the document. If one is satisfied upon the natural construction of the operative part of the deed that certain property passes, notwithstanding that the construction may be difficult, the recitals have no binding force.

Per *Das, J.*—The recitals in a conveyance are subordinate to the operative part and that consequently, where the operative part is clear, it is treated as expressing the intention of the parties, and it prevails over any suggestion of a contrary intention afforded by the recitals; but it is well established that where the operative part is doubtful and it is impossible to say, on a mere reading of it, to which properties it refers, then the recitals can and ought to be used to explain its meaning, and that while, for the purpose of construing the operative part the whole of the instrument may be referred to, yet the recitals leading up to it are more likely to furnish the key to its true construction than the subordinate clauses of the deed. For instance, parcels of a deed described with certainty are not cut down by recitals showing that something less was intended to pass; but the recitals assist the construction of the operative part where there is an ambiguity in the operative part as to the property, affected. *(Walsh* v. *Trevanion*, (1850) 15 Q.B. 733, *Foll.)*. *(Dawson-Miller, C. J., Das and Adami, JJ.)*. BHONU LAL CHOWDHURY *v.* W. A. VINCENT. **65 I. C. 882=3 Pat. L. T. 653=A. I. R. 1922 Pat. 619 (F.B.).**

———*Ambiguous deed may be construed in the light of parties' conduct, but unambiguous deed should not be so construed.*

While the true construction of an obscurely framed document may be determined by reference

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to the conduct of parties, no such procedure is admissible when the terms of the instrument are unambiguous. No amount of acting by the parties can alter or qualify words which are plain and unambiguous. (*Mookherjee, A.C.J. and Fletcher, J.*). MIDNAPUR ZEMINDARI CO., LTD. *v.* JOGENDRA KUMAR. **62 I.C. 491=33 C.L.J. 186= A.I.R. 1921 Cal. 750.**

———*Judgment—Language doubtful—Benefit goes to judgment-debtor.*

Where the language of a judgment is doubtful the benefit of the doubt ought to go to the judgment-debtors. (*Kanhaiyalal, J. C.*). GOKARAM SINGH *v.*, MANGLI. **66 I.C. 673=8 O.L.J. 407= A.I.R. 1921 Oudh 138.**

—Construction—Ancient document.

—After lapse of considerable period, cogent evidence is required to hold that an instrument is not what it purports to be. (*Suhrawardy and Garlick, JJ.*). SISIR KUMAR MALLIK *v.* NARAN CHANDRA MALIK. **119 I.C. 803=33 C.W.N. 591= A.I.R. 1929 Cal. 548.**

———*Slip of scribe—Court is not justified in substituting proper word when deed has long remained unchallenged and has been acted upon.*

Where in a document there was a mistake of the scribe and inappropriate word had been inserted and the document remained unchallenged for half a century or so and was acted upon.

Held: that the Court was not justified in substituting the proper word in the context. (*Tek Chand and Agha Haider, JJ.*). MURID HUSSAIN *v.* JOWALA SAHAI. **120 I.C. 14= A.I.R. 1929 Lah. 648.**

———*Ambiguities—Contemporaneous usages may be looked to.*

One of the most settled rules of law for the construction of ambiguities in ancient instruments is that you may resort to contemporaneous usage to ascertain the meaning of the deed: *Attorney-General* v. *Drummond*, (1842) 1 Dr. and Wr. 353, *Rel. on.* (*Misra and Srivastava, JJ.*). MOSHUQ ALI *v.* HURUNISSA. **114 I.C. 113= A.I.R. 1929 Oudh 204.**

———*Resort may be had to contemporaneous usage in interpreting ambiguities in ancient instruments.*

One of the most settled rules of law for the construction of ambiguities in ancient instruments is that you may resort to contemporaneous usage to ascertain the meaning of the deed: *Attorney-General* v. *Drum*, 1 Dr. and War. 353, *Rel. on.* (*Wazir Hasan and Pullan, JJ.*). BENAIK DAT *v.* MOHAMMAD GHAFURKHAN. **105 I.C. 496= 4 O.W.N. 770=A.I.R. 1927 Oudh 442.**

———Should the general words of an ancient grant be uncertain, they may be fairly explained by subsequent usage. (*Lord Phillimore*). SECY. OF STATE *v.* RAJA JYOTIPRASHAD SINGH. **94 I.C. 974= 53 Cal. 533=53 I.A. 100=30 C.W.N. 745= 24 A. L. J. 761=A.I.R. 1926 P.C. 41.**

—Construction—Bond.

———In interpreting the terms of the bond the provisions of law, under which it was executed, must be considered. (*Brown, J.*). MAUNG PO AUNG *v.* MA THET PON. **5 Rang. 494= A.I.R. 1927 Rang. 316.**

———*Bond—Single bond or bond with condition.*

A single bond is a deed wherein a party acknowledges himself to be bound or indebted to another in a certain sum of money which he promises to pay. If there is appended to it a condition that upon the performance of a certain act the bond is to be void, otherwise to remain in force, it is called a bond with a condition. 2 All. 322, *Foll.* (*Mears, C.J., Piggot, Walsh, Ryves and Sulaiman, JJ.*). SHIV DAYAL *v.* MAHERBAN. **69 I.C. 981= 20 A. L.J. 819=45 All. 27=4 L.R.A. Civ. 3= A.I.R. 1923 All. 1 (F.B.).**

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—Construction—Conflicting recitals.

———*Settler's general expression cannot control unambiguous words conveying absolute estate.*

The settler's general expression of intention cannot control or qualify the very unambiguous words in which he conveys an absolute estate, and where the settler uses words which have the legal effect of granting the absolute estate and there are no consistent words of such a nature as to make it clear that the testator did not mean those words to have their ordinary legal meaning, the words used must bear their proper meaning.

Where in a deed it was stated "I hereby make the provisions, so that my properties, etc., may not pass to the control of others after my lifetime and that they may go to my lawful heirs . . . . properties in Sch. 1 hereof are to be enjoyed by myself and my wife during our lifetime; my daughter and her husband are to enjoy the aforesaid properties with absolute rights. The properties mentioned in Sch. 2 hereof are to be enjoyed by my daughter and my son-in-law from this date with absolute rights and with heritable rights in favour of son, grandson, etc."

Held: that the terms conveyed the absolute estate both in Sch. 1 and in Sch. 2 to the daughter and her husband as tenants in common. 24 Cal. 834, *App.*; 22 Mad. 357, *Dist.* (*Phillips and Ramesam, JJ.*). SANKARA NARAYANA REDDI *v.* KOPAYYA REDDI. **91 I.C. 973=23 M.L.W. 81= 1925 M.W.N. 875= A.I.R. 1926 Mad. 236.**

———*Conveyance of land—Difference between boundaries and area given—Land actually comprised within the boundaries should be treated as conveyed.*

Where a land conveyed is described by boundaries as well as by area, if there is a difference between the boundaries and the area, the land actually comprised within the boundaries will be treated to have been conveyed: 18 C.L.J. 541, *Foll.* (*Kulwant Sahay, J.*). RAGHUNANDAN THAKUR *v.* KISHENDEO NARAIN MAHTA. **98 I.C. 351= 7 P.L.T. 134=A.I.R. 1926 Pat. 257.**

———*Recital inconsistent with operative part—Latter is to prevail.*

If both the recitals and the operative part of a deed are clear and unambiguous, but they are inconsistent with each other the operative part is to be preferred. Norton on deeds, p. 181, 5 Russel, 330 and 15 Q.B. 733, *Ref.* (*Young and Brown, JJ.*). T. HUSSAN *v.* CHIN CHONG. **88 I.C. 910= 4 Bur. L.J. 31=3 Rang. 53= A.I.R. 1925 Rang. 209.**

———*Conflict between boundaries and area—Former is to prevail over latter where former is clear.*

Ordinarily when a piece of land is sold with definite boundaries, unless it is very clear from the circumstances surrounding the sale that a smaller extent than what is covered by the boundaries was intended to be sold, the rule of interpretation is that boundaries must prevail as against the measurements. (*Krishnan and Waller, JJ.*). SUBBAYYA CHAKKILIYAN *v.* MANJAM MUTHIA GOUNDAN. **78 I.C. 414=19 M.L.W. 245= 1924 M.W.N. 203=34 M.L.T. 315= A.I.R. 1924 Mad. 493=46 M.L.J. 182.**

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—Where one of the descriptions by boundaries is a false description, the lessee may be entitled to claim that the description by area must prevail over the description by boundaries. But such a claim must be asserted against the lessor and it cannot be tried in an action for ejectment against an alleged trespasser. (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA.
83 I.C. 205=3 Pat. 85=A.I.R. 1924 Pat. 402.

———*Where a deed contains an adequate definition of property demised, erroneous statement as to area will not vitiate description.*

Where the operative part of a lease does not give area of demised land but expressly states that the lease is of entire land known as East Swardih and described in schedule; and where schedule gives area of demised land, yet when read with recital in lease area mentioned in schedule is by guess:

Held: such a description is not actually in conflict with description by boundaries. (*Das and Foster, JJ.*). MESSRS. LINTON MOLESWORTH & CO. *v.* JAGANNATH SUPAKAR. **77 I.C. 403=1 Pat.L.R. 377=5 P.L.T. 437=A. I. R. 1924 Pat. 226.**

———*Conflict between area and boundaries—First description being sufficiently clear second description is to be rejected otherwise second controls first.*

When the premises are sufficiently described, as by giving the particular name of close or otherwise, an erroneous additional description will be rejected as a 'false demonstration,' but if there is not this certainty in the first description as, if it is expressed in general terms and a particular description is added, the latter controls the former and limits the generality of the earlier description. (*Das and Kulwant Sahay, JJ.*). GOPAL MISSER *v.* PARTAP MANDAL. **72 I.C. 643=4 P.L.T. 652=A.I.R. 1924 Pat. 200.**

———*Conflicting recitals as to specification of property—Specification by boundaries should be preferred.*

If there is a conflict of two deeds in respect of the specification of the property, the specification indicated by the boundaries should be preferred and given effect to. (*Wazir Hasan, A.J.C.*). RAGHO PERSHAD *v.* SECRETARY OF STATE. **74 I.C. 369=9 O.L.J. 629=27 O.C. 64=A.I.R. 1923 Oudh 114.**

———*Clauses repugnant to each other—Earlier will override the later clause, but every attempt should be made to reconcile—Effect must be given to part embodying real intention—Document as a whole should be looked at.*

If there are two clauses or parts of a deed repugnant to each other, the first will be received and the latter rejected, unless there is some special reason to the contrary; but this is an expedient to which the Court very reluctantly has recourse, and never until it has exhausted every other means in its power to reconcile apparent inconsistencies, and the rule is subordinate to the general principle that the intention must be ascertained from the entire contents of the deed; for effect ought to be given to that part which is calculated to carry into effect the real intention and that part which would defeat it should be rejected. (*Mookherjee, A.C.J. and Fletcher, J.*). MIDNAPUR ZEMINDARI CO., LTD. *v.* JOGENDRA KUMAR. **62 I.C. 491=33 C.L.J. 186=A.I.R. 1921 Cal. 750.**

———If the boundaries specified in a lease can be identified the ordinary rule is that the statement of area must give away to the description of boundaries. (*Teunon and Newbould, JJ.*). SHEIK BARA KALIM *v.* RAJENDRANATH ROY. **64 I.C. 751 (Cal.).**

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———It is a well-established rule that where the boundaries can be ascertained effect must be given to the description by boundaries irrespective of area. But if the boundaries are uncertain, then area must be considered. 41 C. 49, *Ref. (Newbould and Ghose, JJ.*). HARI MOHAN MODAK *v.* RAMESWAR DAS. **64 I.C. 737 (Cal.).**

—Construction—Ejusdem generis.

———*Deed excluding compensation in case of lands being left fallow, of floods or of drought and excluding right to abatement of rent on whatsoever account-Abatement could be claimed in case of deficiency due to compulsory acquisition.*

Where the terms in a *kabuliyat* ran as follows:—" Any loss arising from leaving the lands fallow or from floods or drought will be mine: you will not have anything to do with it nor shall I be entitled to claim abatement of the stipulated rent on any account whatsoever; any such claim will not be entertained."

Held: that abatement of rent could be claimed in the case of deficiency in area due to compulsory acquisition. The words " on any account whatsoever " must be construed *ejusdem generis* with the preceding provisions and the interpretation in this case would only be that abatement of rent would not be due in the case of losses of the same type as those specified. (*Pearson and Graham, JJ.*). GOSTA BEHARI PRAMANIK *v.* HEM CHANDRA DAS DE.
82 I.C. 315=29 C.W.N. 124=51 Cal. 1022=A.I.R. 1925 Cal. 356.

———*Mercantile documents should not be construed on the lines of wills 'ejusdem generis' applicability of.*

It is not desirable when dealing with the construction of statutes and mercantile documents, to cite authorities on the construction of wills, because a testator is of his own bounty doing what he pleases and there is no presumption that he will not be capricious. In a mercantile document or a statute, there is a presumption that businessmen do not intend to do anything absurd which is some slight guide: but in all cases it is a question of construction.

In a mercantile document in which there was a distinct category dealing with the various types of timber which constituted the stock-in-trade of the mortgagor who was a timber trader and sawmill owner.

Held: that the words " goods, chattels and stock-in-trade " must be read *ejusdem generis* with the preceding words. (*Rutledge, J.*). A. V. JOSEPH, *In re.* **82 I.C. 702=2 Rang. 272=A.I.R. 1924 Rang. 348.**

———*Words and Phrases—" Such other things " must be construed* ejusdem generis *with words which has gone before.*

The terms of the *muchilika* were:—

The immovable and movable properties, silver, and precious stone ornaments which are partly the self-acquisition of the father and which were partly acquired by the plaintiff by having traded for about 18 years along with him and separately and the good debts leaving off the bad debts as per ledger account kept in the business carried on at present only in the name of the plaintiff and the mortgages, simple loans, shares and all such other things, which are in the possession of all the members of our family shall be valued on the whole by you the two arbitrators,

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Held: that "such other things" must be read *ejusdem generis* with the words going before, and they mean assets unconnected with the business and things like mortgages, loans and shares, which might perhaps be compendiously described as choses-in-action.

Held: *further* that the proper interpretation of "good debts.....business" is that if there is a balance of good debts over bad debts, then it is to be divided; if there is no balance, there will be nothing to be divided. That expression does not mean that the whole business was included and that, if that business ultimately turned out as a burden instead of a benefit, the net loss was to be brought in and shared between the brothers. (*Schwabe, C.J. and Ramesam, J.*). M. KUPPUSWAMI CHETTY *v.* M. SINGARAVELU CHETTY.

75 I. C. 848=18 M.L.W. 99=1923 M.W.N. 867= A.I.R. 1923 Mad. 679=45 M.L.J. 233.

———*General words in body of document—Detailed description at the foot of document—One must be read subject to the other—'Etc.' must be read* ejusdem generis *with the words which have gone before—Words and phrases.*

Where the general words, *viz.*, Village of Kovilur in the body of the document were qualified by the description given at the foot of it and there was a clear enumeration of what the village of Kovilur within the four boundaries consisted of,

Held: the words in the body of the document must be read subject to the mere precise description given which must be taken as controlling general words occurring in the earlier portion. The words "the remaining lands" or poramboke and other lands attached thereto (remaining lands) cannot be regarded as including the residential building of the zemindar. Where the words, 'etc.' follow an enumeration of specific things beginning with "all kinds of trees" having some characteristic, the words should be restricted to things of the same nature as those which have been already mentioned. In such a case the rule of *ejusdem generis* will apply and the residential building cannot be said to be *ejusdem generis*, with the things already enumerated. (*Spencer and Venkatasubba Rao, JJ.*). RAJAGOPALA *v.* THIRUPATHI. **72 I. C. 258=1923 M. W. N. 230= A. I. R. 1923 Mad. 511=44 M. L. J. 285.**

———*Landlord and Tenant*—Kabuliat *stating that tenant must not claim abatement for diluvion or any other reason—Ordinarily "any other reason" is a like reason to diluvion—But special circumstances and party's intention must be considered.*

The *kabuliat* stated "You shall never be competent to enhance the said jama on any ground nor shall we get abatement of the jama on the ground of diluvion or on any other ground."

Held: that the words "on any other ground" should be taken as referring to cases of like nature as diluvion. A person who has been deprived of possession of part of the demised premises should not be held liable for the whole rent for ever and this principle applies with greater force where the tenant is deprived of any portion of the leasehold property by any act on the part of the landlord himself. But special circumstances of the case and the intention of the parties must be taken into consideration. (*Chatterjea and Panton, JJ.*). MESBAHUDDIN AHMED CHOWDHURY *v.* ABDUL BORKAT AHAMADULLA, **65 I. C. 839= 34 C. L. J. 119=A. I. R. 1921 Cal. 303.**

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—Construction—English rules.

———*Words—Technical meaning under English law should not be applied.*

In settling the true construction of a deed of settlement in India unless there is a special reason afforded by the deed itself to the contrary, the technical meaning given to words in English law must be disregarded. (*Lord Buckmaster*). GANPATRAO DESAI *v.* BALABHAI RAGHUNATH AGASKAR. **107 I.C. 119=52 Bom. 176=55 I.A. 74= 47 C.L.J. 198=30 Bom. L. R. 282= 27 M.L.W. 400=26 A.L.J. 560= 32 C. W.N. 925=A.I.R. 1928 P.C. 33= 54 M. L. J. 245 (P.C.).**

———*Deeds in India must be liberally construed—English canons of construction are not to be applied.*

Deeds and contracts of the people of India should be liberally construed. The strict canons of construction employed in dealing with deeds in England where conveyancing is a fine art should not be applied: 37 All. 899, *App.* (*Kincaid, J. C. and Lobo, A. J. C.*). MIR ALI NAWAZ *v.* MIR ALI ASGHAR. **97 I. C. 124= A. I. R. 1927 Sind 62.**

—The principles of Common Law with reference to joint contracts should not be applied. (*Kincaid, J.C. and Lobo, A.J.C.*). MIR ALI NAWAZ *v.* MIR ALI ASGHAR. **97 I.C. 124=A.I.R. 1927 Sind 62.**

—Construction—Evidence of conduct.

———*Authorities effecting settlement between various parties likely to cause serious trouble—For determining whether leaders entered that settlement in representative character—Attitude of those whom they were supposed to represent must be considered.*

Where the authorities effect a settlement between the various parties the disputes among which are likely to cause serious trouble, in order to determine the question whether the agreement was entered into by the leaders in a representative character, the attitude of those whom the leaders were supposed to represent must be considered. (*Boys and Bennet, JJ.*). RAM SINGH *v.* SUBHAN MOCHI. **116 I.C. 302=1929 A.L.J. 1083= A.I.R. 1929 All. 519.**

—Where the instrument is plain and unequivocal, evidence of conduct cannot be received for elucidating its terms: 30 Cal. 738 (P.C.), *Foll.* (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOSS. **112 I.C. 184=28 M.L.W. 824= A.I.R. 1928 Mad. 1064=55 M.L.J. 132.**

———*Evidence Act, S. 92—Evidence of conduct can be given only after other means are exhausted.*

The rule, that the conduct of the parties in respect to an instrument may be looked to in construing a document, is subject to this reservation that it can be admitted only after every other means to construe a deed have been exhausted: *Attorney-General* v. *Drummond*, (1842) 1 Dr. & War. 353, *Foll.* (*Ross and Wort, JJ.*). DEVJEE TRIKAMJEE *v.* DAYAMOY MUKHARJI. **108 I.C. 418= A.I.R. 1928 Pat. 225.**

———*Subsequent conduct can serve only as estoppel—It shows the construction put by parties on the deed.*

Though the Court is permitted to look at the surrounding circumstances, that must mean the circumstances surrounding the execution of the document and subsequent conduct can only have effect, if at all, as an estoppel. The subsequent conduct of the parties in reference to the terms of the document can only be evidence of the construc-

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tion they put upon it. (*Macleod, C. J. and Madgavkar, J.*). JAMSHEDJI *v.* SECRETARY OF STATE.
93 I.C. 184=28 Bom. L. R. 25=
A.I.R. 1926 Bom. 209 (c).

———*Subsequent assertions by one party cannot affect meaning.*

Although the circumstances attending the execution of a document may be looked at to construe the contents of the document in order to ascertain the intention of the parties at the time, subsequent assertions by one of the parties with reference to that document cannot affect its meaning. (*Phillips, J.*). KALLIANI AMMAL *v.* COCHIN SIRCAR. **91 I.C. 316=22 M.L.W. 473=**
A.I.R. 1926 Mad. 143.

———*Subsequent conduct of parties not relevant but prior is—One deed not to be construed in the light of another—Stray words should not override main intention.*

In construing a document the conduct of the parties subsequent to the date of the document should not be taken into consideration. Their understanding of the document should not ordinarily influence the Court one way or the other, unless it gives a clue to the meaning of any expression which is not clear. The conduct of the parties prior to the execution of the document, or at the time of the execution of the document, may be of some evidence. It is not proper that the Court should interpret one document, in the light of the recitals of another document. Stray words here and there should not be so construed as to override the main intention of the document. (*Devadoss, J.*). SENGAMALAM *v.* LOGAMBAL.
86 I.C. 8=21 M.L.W. 45=
A.I.R. 1925 Mad. 471.

———*Conduct of parties is relevant to explain a deed capable of several meanings.*

The conduct of the parties to a contract reduced into writing may not vary or alter it, but their conduct may help to explain or elucidate a contract open to different meanings.

N was a trader by profession and carried on in conjunction with his wife, G a profitable business in rice. Some months after G's death, which occurred in December, 1904, N contemplated marrying again. Before the marriage was actually contracted, on the 11th May, 1905, he executed a document apparently a partnership deed which contained among other things :—

(i) All the house sites, buildings, rice, paddy, ponies, gharries, gold and money, which have been in existence up to this date, will belong to the partnership;

(ii) Either partner Ma E Yin or Ma Thaung, the daughters, will take charge of all the private properties belonging to partnership, such as jewellery, etc.

Held that the document was more a record of a division of rights and interest rather than a deed of partnership and therefore the sons and daughters by former marriage had no share in the property acquired by N along with his second wife. (*Mr. Ameer Ali, J.*). MA THAUNG *v.* MA THAN. **80 I.C 1031=51 I.A. 1=19 M.L.W. 477=**
51 Cal. 374=1924 M.W.N. 662=3 Bur. L.J. 333=
29 C.W.N. 559=5 Rang. 175=
A.I.R. 1924 P.C. 88=46 M.L.J. 618 (P.C.).

—A deed of doubtful import is best construed by evidence of the conduct of the parties to it. Where

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an *ikrarnama* between a Hindu widow and her adopted son provided that the former should possess and enjoy certain properties for life, but that she should have no power of alienation and that the latter had the right to enter into possession after the mother's death, *held*, that the deed was merely intended to give the mother the rights of a Hindu widow in the properties, that the estate was not a life-estate and that the adopted son was not a remainder-man. (*Mitra and Casperz, JJ.*). PROMOTHA NATH *v.* DINAMANI. **65 I.C. 826=**
34 C.L.J. 129.

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A suit for partition between two brothers *K* and *T* was compromised under which the share of *K* in all the joint-properties was fixed at 6 annas, and that of his brother *T* at 10 annas, the properties being left joint as before. Later on a further dispute arose between the brothers which was settled by the execution of an annuity bond which proceeded on the narrative that the two brothers were desirous of getting their movable and immovable properties partitioned between them, but that instead of partitioning them out in accordance with the compromise previously effected, *K* gave his whole share to his brother *T* and his heirs on a series of conditions. The leading provision was that a sum of Rs. 40 per month should be paid by *T* to *K* and after his death to his widow, as representing the profits of his share of the movable and immovable properties. There were other conditions namely : "If *T* or after his death his heirs make default in payment of the said monthly sum of Rs. 40, then *K* or his wife would be competent to partition out the immovable properties of his share and to transfer the same by sale, gift, etc., at his or her pleasure. (He) was to receive from *T* or his heirs the sum of Rs. 2,000 (two thousand) on account of the price of the movable properties (and) *T* or his heirs would be bound to pay the same ; if the same be not paid then *K* or his wife would be entitled to realize the same from the movable and immovable properties of *T* or his heirs."

Further so long as *K* or his wife received the said monthly sum of Rs. 40, he or she should not have any power to transfer by sale, gift, &c., or to encumber his share of the properties. As regards *K's* son and daughter the provision was "If a son be born to *K* then that son shall receive the sum of Rs. 2,000, the price of the movable properties and the immovable properties of his share. If no son be born, then after the death of *K* and his wife, his daughter or daughter's son or daughter should get from *T* or his heirs the sum of Rs. 2,000 (two thousand) only, and shall not be competent to claim any other property. If *T* or his heirs fail to pay the said sum of Rs. 2,000 (two thousand), then the aforesaid daughter or daughter's son or daughter shall get the immovable properties of *K's* share and to this neither *T* nor his heirs shall have any objection."

K was predeceased by his wife, and he himself died later on leaving a daughter who was his sole heir and thus entitled to succeed to any property that was vested in him at the date of his death. *T* did not keep up his terms even during *K's* lifetime and therefore *K* demanded partition of the joint properties and payment of the Rs. 2,000 in question. No legal proceedings were taken for the

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partition of the properties but *T* acknowledged the justness of his brother's claim. He, however, being unable to pay, later on sold his share in certain of the joint properties the consideration for which was certain debts due to *K* and the amount of Rs. 2,000. *K* let the properties so acquired from his brother and they passed to his daughter as her heir. A large number, however, of the other properties which belonged jointly to the brothers, had not been partitioned,and accordingly the daughter sued for partition of these properties and for the recovery of specific possession of a 6 annas share thereof.

Held: that her right to obtain partition was not excluded by provisions in the annuity bond. (*Lord Salvesen*). HEMLATA DEBI *v.* SALYA CHARAN BANERJI. **109 I.C. 642=5 O.W.N. 652= A.I.R. 1928 P.C. 248.**

——*Deed must be construed as a whole.*

Deeds of family settlement are of a nature peculiarly their own and the rule of interpretation which would be applicable to pure deeds of transfer cannot be permitted to be applied in the case of such deeds. The deed of family settlement must be read as a whole and the intention of the parties must be gathered from the various provisions contained therein and such intention should be respected. (*Stuart, C. J. and Misra, J.*). AHMAD AZIM *v.* SAFI GAN. **97 I.C. 897=2 Luck 335= 3 O.W.N. Sup. 102=A.I.R. 1926 Oudh 561.**

——*Grant in lieu of maintenance—Whether estate conferred is absolute or limited depends on circumstances of each case—The words "proprietor" or "for ever" do not necessarily confer absolute estate—A claim divesting an absolute estate on happening of certain contingency is not invalid.*

When the purport of the grant is the maintenance of the grantee, there is a *prima facie* indication that the grant was intended only to be for life. But it cannot be said that where the purport of the grant is maintenance, the estate conferred cannot be an absolute estate. This would depend on the construction of the particular deed taken as a whole. If the deed stated clearly that the grantee was to have an absolute interest, such interest cannot be controlled by the mere fact that the motive of the grant was maintenance, but where the terms of the grant are not clear and there are inconsistent conditions in the deed itself pointing to opposite conclusions, the safe rule is to construe the document as a whole and not to hold it to confer absolute title merely on the ground that the words used were "as proprietor" and "for ever" and "in perpetuity."

In the case of family settlements, conditions may be inserted therein which would not be valid in the case of ordinary deeds, under the ordinary law, but such conditions in the deed would be valid and enforceable, when forming a part of such family settlement: (*Case-law cited*).

A clause in a deed laying down that an absolute estate was to be divested on the happening of a particular contingency cannot be treated as invalid. It is neither the law in England nor in India. The correct rule of law appears to be that the first question which has to be decided on the interpretation of the deed is whether under the terms of that deed an absolute estate has been conferred or only a qualified estate. If it is clear that the estate is a qualified estate, no question as to the validity or otherwise of the gift ever can

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arise. It must be held to be good. If, however, the estate is found to be an absolute estate, Courts have to determine whether under the terms of the deed such estate is to be defeated on the happening of a particular contingency: 4 Cal. 23 (P.C.) and 16 Cal. 383 (P. C.), *Rel. on.*

Under a family settlement a talukdar granted some villages to his brothers in lieu of maintenance and in the deed of settlement it was stated that the villages given to each of the brothers were to be given to them in perpetuity for ever, generation after generation with proprietary powers, the words used in the vernacular being "*waste dawam wa hamesha ka naslan bad naslan batanan wa batnan bad batnan ba akhtiar malikana.*" It was further laid down that if no male issue was born to a Guzaradar, then the female issue would be allowed maintenance, and the widow of Guzaradar was to remain in possession of the entire property, without power of alienation during her lifetime, and after her death the property was to be divided among the surviving brothers.

Held: that the words "*naslan bad naslan*" and "*batnan bad batnan*" indicated an idea not to make a guzara resumable after the death of the particular grantee but to make it heritable and heritable only by the lineal male descendants, and such male lineal descendants would be covered by the expressions "*naslan*" (progeny) and "*batnan*" (womb).

The estate conferred upon each of the brothers was an estate in its inception of an absolute character, but heritable only by the male lineal descendants of the grantee and by his widow for her lifetime in case there was no such descendant, and descendible to his surviving brothers after the death of the widow. (*Stuart, C. J. and Misra, J.*). AHMAD AZIM *v.* SAFI JAN. **97 I.C. 897= 2 Luck. 335=3 O.W.N. Sup. 102= A.I.R. 1926 Oudh 561.**

——*Settlement deed by members of family rendering alienation by one member singly invalid—Alienation by one member was held invalid.*

Where A executed a deed purporting to be a settlement deed which provided: "Myself, my mother and wife shall jointly enjoy the undermentioned properties. No alienation by one of us singly shall be valid. If an alienation is to be made, it shall be done by us three together, and if it is made without the consent of all the three, it shall not be valid. My heirs shall enjoy absolutely after our life time."

Held: that there was a remainder given under the instrument to the heirs of *A*.

Held: further, that an alienation by *A* alone of one of the items of properties does not convey that specific item to the purchaser. (*Venkatasubba Rao, J.*). SUBBIAH MOOPANAR *v.* PONNAMMAL. **88 I. C. 393=21 M. L. W. 637= A. I. R. 1926 Mad. 669.**

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—Plaintiff instituted a suit for the purpose of recovering an annuity of three muras of rice on the ground that he was the assignee of such right from one in whose favour such a right was created. The clause relating to it was as follows:

"The three muras of rice which are being given annually to *P*, shall be paid by the three sharers.

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at the rate of one mura of rice each on the responsibility of the share of each."

Held: that the grant in this case is not personal and so not an inalienable one. (*Srinivasa Ayyangar and Jackson, JJ.*). ANANTHA BHATTA *v.* KRISHNAYA SHANABHAGA. **110 I. C. 403 (Mad.).**

———*Inam grant—Confirmation in name of grantee, his representatives and assignees—No estate is conferred on grantee's heirs.*

Where an inam was confirmed by the Inam Commissioner in the name of the grantee, "his representatives and assigns to hold and dispose of the same as he or they think proper."

Held: that the words "representatives and assigns" in the title-deed were merely intended to express the absolute estate proposed to be conferred on the grantee and were not words of purchase granting any estate to the heirs of the grantee: A. I. R. 1923 P. C. 160 and 15 Bom. 222, *Rel. on.* (*Wallace and Madhavan Nair, JJ.*). CHENDRAMMA *v.* NARASIMHAM. **100 I. C. 741= 38 M. L. T. 133=1927 M. W. N. 156= 25 M. L. W. 546=A. I. R. 1927 Mad. 404= 52 M. L. J. 253.**

———*Service grant—Grant of house site, structure and some lands in lieu of service—Default in service—Lands are to be resumed and not the site and structure.*

A service grant set out that, in consideration of melam service, the trustees had granted to the defendant's ancestor some wet and dry lands and a thatched construction and the vacant site and other lands. The aforesaid ancestor was to reside from son to grandson in succession in the house with thatched construction mentioned thereunder. For the wages of service and the prasadams due every year to the defendants' ancestor he, the latter, was to enjoy from son to grandson the income derivable from the land. If the service (to be rendered) as per the above agreement suffered default either by the said grantee or, after him, by his descendants, of the wet and dry lands, etc., and the residential sites, etc., granted, barring the manaikattu and kattukoppu, the said grantee or his descendants would give up the rest of the lands.

Held: that the document meant that if default was made in the service, then the defendants should have no longer any right to the income of the lands, but that they should be allowed to keep the site and superstructure. (*Odgers, J.*). GURUSAMI PILLAI *v.* VEERABHADRA. **95 I. C. 325= 23 M. L. W. 540=A. I. R. 1926 Mad. 695.**

———*Confiscation of Tanjore Raj—Re-grant to widows—After them, daughter, and failing her, next heirs of Raja to inherit—Daughter predeceasing last widow—Widows take life-estate—Raja's next heirs inherit after last widow's death—Rights of illegitimate sons and after adopted son are not excluded.*

On the death of the Last Raja of Tanjore in 1855 leaving a number of widows, a daughter, a number of illegitimate children, a mother, etc., the Government confiscated in 1856 his Raj declaring the same to have lapsed to the British Government on the ground that "the Raja had died without leaving a son by birth or adoption." Subsequently in 1862, the Government decided to relinquish the private estate of the late Raja in favour of his heirs. The terms of the order declaring the manner in which this relinquishment was to be effected, contained the following :—

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"The Estate will therefore be made over to the senior widow who will have the management and control of the property, and it will be her duty to provide a suitable manner for the participative enjoyment of the Estate in question, by the other widows her co-heirs. On the death of the last surviving widow, the daughter of the late Raja, or failing her, the next heirs of the late Raja, if any, will inherit the property."

The senior widow subsequently adopted a son. The daughter predeceased the last surviving widow.

Held: (1) The title which the heirs got must depend entirely on the terms of the re-grant. (2) The grant did not create an ordinary Hindu widow's estate in favour of the widows of the Raja but a life-estate very much resembling the ordinary estate of a Hindu widow and with all the incidents of a widow's estate except the liability to be divested, by a subsequently adopted son rather than an estate of inheritance. (3 The daughter was given what may either be described as a vested interest defeasible in the event of her predeceasing the last widow or a contingent interest on her surviving all the widows. (4) "Failing her" did not mean "failing her and her heirs." (5) The right of the after-adopted son and his descendants to succeed after the death of the widows and daughter was not negatived by the grant. (6) The grant did not negative by its terms, the right of the Raja's illegitimate sons to succeed on the death of the last widow. (7) The heirship on the death of the last of the widows was to be determined according to who was the nearest heir to the Raja on such death and not according to who was the heir next after the daughter in order of succession according to Hindu Law.

Per *Kumaraswamy Sastri, J.*—The grant being a Crown grant, Act XXV of 1895 (Crown Grants Act) which is made retrospective applies and the grant must take effect according to its tenor irrespective of the Hindu Law. (*Spencer, O.C.J. and Kumaraswamy Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AIYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*'Inherit' was held to mean 'to take.'*

While re-granting to the "heirs" of a deceased Raja, his estate which the Government had confiscated on his death, the following order was made :—

"The estate will therefore be made over to the senior widow who will have the management and control of the property, and it will be her duty to provide in a suitable manner for the participative enjoyment of the Estate in question, by the other widows—her co-heirs. On the death of the last surviving widow, the daughter of the late Raja, or failing her, the next heirs of the late Raja, if any will inherit the property."

Held: *Per Kumaraswami Sastri, J.*—"Inherit" can only mean take and that the use of the word "inherit" in the grant did not preclude any idea of a gift in favour of the daughter or next heirs. (*Case-law discussed*). (*Spencer, O.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1= A. I. R. 1925 Mad. 497.**

———*Maintenance grant is resumable on the death of grantee and not on the death of grantor—Such a grant may be heritable if intended.*

A maintenance grant is resumable on the death of the grantee and not on the death of the grantor.

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A maintenance grant is not absolutely inconsistent with a grant to the donee and his heirs. Such a grant is *prima facie* resumable on the death of the grantee, but the context may show that it was intended to make provision not only for the donee but for the heirs of the donee. Where the grant is so expressed, the grantor has the right to resume the grant on the extinction of the line of the grantee. It is all a question of construction. The operative clauses in a maintenance grant were in these terms: "I have made a grant of the milkiat right in the Mouzas named below by way of maintenance with the detail as follows: If any of the said three persons or their heirs put forward hereafter any objection against the rais of the Raj as regards the difference in their maintenance grants which according to the custom obtaining in the family I am competent to assign more to one and less to another, such objection shall not be held legal or tenable in Courts."

Held: that the grantor by providing against the possibility of an objection on the part of the heirs of the grantees had clearly indicated that the grantees took a heritable but not an absolute interest under the grant. 27 Cal. 156; *Foll.* 22 W. R. 225; 23 All. 194, *Ref.* (*Das and Ross, JJ.*). THE HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH.

83 I. C. 812=3 Pat. 880=5 P. L. T. 513= A. I. R. 1924 Pat. 721.

———*Deed carrying out decision of Court—Should be construed* ut res magis valent quam pereat—*Maxim.*

In construing an instrument of settlement carrying out a decision of the Court, Courts ought to take for their guidance the rule that, if possible, such a document should be construed *ut res magis valent quam pereat.*

A deed of settlement provided that on the death of the last three persons, *i. e.*, H. R. and D. the mother of R. L. the second son of H. and his heirs and representatives, shall succeed to the entire Rampur Kaithala estate, as provided by S. 22 of Act I of 1869. But the said L. shall not interfere in any way with the said *ilaqa*, besides the six villages which he has received under S. 8, during the lifetime of R. and his mother, D.

Held: in the first place the words "heirs and representatives" are to be treated as words of limitation and not of purchase, that is, they are merely intended to express the absolute estate which it was proposed to give to Lachman as distinguished from the life estates which had preceded it. This being so, the later words in the sentence may be regarded either as an idle attempt to derogate from the grant previously made and therefore to be rejected, or as words of description only, stating the legal incidents which the grantor conceived to belong to the estate which he had granted. In this case his mistake as to the legal consequence does not affect the grant which he has made and that it was his self-acquired property and therefore received an absolute estate in reversion. *(Lord Phillimore).* LAL RAM *v.* Dy. COMMR., PARTABGAR.

76 I.C. 922=29 C.W.N. 86= 1923 M.W.N. 591=45 All. 596= 50 I.A. 265= 26 O.C. 257=21 A.L.J. 777=33 M.L.T. 355= 10 O.L.J. 513= A.I.R. 1923 P.C. 169=47 M.L.J. 260 (P.C.).

———*Reservation not expressly found in grant cannot be implied or proved.*

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If apt words are not used and if reservations are not made in the grant itself, it does not lie in the mouth of the grantor to contend that the grant is not so extensive as on an ordinary interpretation of the words used in the grant, it would seem to be. *(C.C. Ghose and Panton, JJ.).* HARIPADA BANDOPADYA *v.* EQUITABLE COAL CO., LTD.

76 I.C. 413=A.I.R. 1923 Cal. 335.

———*British North America Act* (1867), *Ss.* 90-*E*, 56 —*Provincial Legislation, disallowance of Private rights completely constituted cannot be affected by disallowance—Crown grant under Vancouver Island Settlers Rights Act* (1904) *read with amending Act of* 1917—*Grant remaining unregistered at date of disallowance but grantee entitled to registration at that date—Disallowance of Amending Act of* 1917 *cannot affect grantee's title—Conflict of laws.*

The language of Sections 56 and 90 of the British North America Act of 1867 itself discloses with sufficient clearness an intention that as to private rights completely constituted and founded upon transactions entirely past and closed, the disallowance of a provincial statute shall be inoperative. It is important in construing such a provision to consider the probable tendency of any proposed construction in relation to its effect upon the working of the constitutional system set up by the British North America Act. If private rights that have been finally constituted under Provincial Legislation are swept away by disallowance which may take place at any time upto the expiration of a year after the enactment of the legislation the Provincial legislation may become the subject of a considerable degree of doubt as to its ultimate operation and effect. This uncertainty would be much limited in its practical incidence by recognized constitutional conventions restricting the classes of cases in which disallowance is permissible; but, in point of law the authority is unrestricted, and under conceivable conditions the uncertainty touching the fate of Provincial enactments might be productive of some degree of general inconvenience. Another objection lies in the probability that the Dominion Government when considering the advisability of disallowing a Provincial enactment in circumstances making the exercise of the power proper and desirable on general grounds would be faced at times with the certainty that in many cases that Government would encounter embarrassments (otherwise not likely to rise) by reason of apprehensions as to the consequences of its action upon the rights and interests of private individuals.

Under the Vancouver Island Settlers Rights Act of 1904 read with the amending Act of 1917, a Crown grant was made in favour of A. The registration of the grant was stayed in consequence of a *lis pendens* having been filed in certain actions which were not well founded. At this stage the amending Act of 1917 was disallowed by the Governor-General in Council.

Held: that the actions in which the *lis pendens* was filed being not well founded, A had when he applied for registration a completely constituted right to register his title and that such a right is one of the class of rights intended to be protected by Section 56 of the British North America Act. Therefore notwithstanding that at the time of the disallowance of the Amending Act of 1917, the grant was not registered. A's right to the land could not be extinguished by the disallowance of the Act of 1917.

DEED—Construction—Hire purchase.

(Viscount Haldane, Viscount Cave, Lord Carson, Mr. Justice Duff and Sir Robert Stout.) WILSON *v.* ESQUIMALT. **A.I.R. 1921 P.C. 234.**

—Construction—Hire purchase.

———*True effect of instrument depends upon intention of parties as gathered from its terms.*

In construing a hire-purchase agreement the substance of the agreement must be considered as a whole, not the substance apart from the language used not the mere words divorced from the substance, but the substance which must be gathered from the true meaning of the language in which it is sought to be expressed. The true effect of an instrument depends upon the intention of the parties as gathered from its terms, and in construing the terms it is the duty of the Court to regard the intention rather than the form and to give effect to the whole instrument. *(Wadia, J.).* BHIMJI N. DALAL *v.* BOMBAY TRUST CORPORATION LTD. **124 I.C. 800=32 Bom. L.R. 64= A.I.R. 1930 Bom. 306.**

———*Agreement imposing obligation upon hirer to buy—Agreement is sale and not hire purchase agreement.*

Where the agreement imposes an obligation upon the "hirer" to buy the chattel mentioned therein from the other party, such obligation attaches on the execution of the agreement and the agreement is really an agreement of sale notwithstanding the use of words, such as hire purchase agreement, lessor and lessee, hiring, rent, tenancy, etc. Such an obligation arises when it is clear from the agreement that the party taking the chattel called the hirer or lessee, has to pay the full amount of the consideration mentioned in the agreement even though the payment is by instalments and that amount is sufficient to cover the purchase price of the chattel; or when it is clear from the agreement that the hirer or lessee cannot at any time during the period mentioned in the agreement return the chattel to the other party called the owner or lessor and absolve himself from the obligation to make further payment. *Lee* v. *Butler*, (1893) 2 Q. B. 318; A.I.R. 1925 Bom. 18, *Rel. on. (Wadia, J.).* BHIMJI N. DALAL *v.* BOMBAY TRUST CORPORATION, LTD. **124 I.C. 800=32 Bom. L.R. 64= A.I.R. 1930 Bom. 306.**

—If the hirer is not bound to pay the full amount of the purchase price or if he can terminate the hiring at any time by delivering the chattel to the other party the agreement is in fact as well as in form a true agreement for hire, and all that the hirer has obtained is an option to purchase. *Helby* v. *Mathews*, (1895) A.C. 471; *Lewis* v. *Thomas*, (1919) 1 K.B. 319 and 6 Bom. L.R. 871, *Rel. on. (Wadia, J.).* BHIMJI N. DALAL *v.* BOMBAY TRUST CORPORATION LTD. **124 I.C. 800= 32 Bom. L.R. 64=A.I.R. 1930 Bom. 306.**

—Construction—Instalment bond.

———*Whole amount becoming due after two defaults —Condition precedent of demand was held not contemplated.*

If on proper construction of the language employed on instalment bond, taking the whole document into consideration the Court should come to the conclusion that a demand was contemplated by the parties to be a condition precedent to the right to sue, then the demand cannot be regarded as merely technical but as being of the substance and no cause of action can be regarded as arising except on the condition being satisfied.

DEED—Construction—Intention of parties.

An hypothecation instalment bond provided for regular payment of instalments and in default of any two instalments it provided: "Whenever you desire you should realise the amount from the properties mentioned hereunder by proceeding against the property specified, by proceeding against our other property and by proceeding against ourselves."

Held: that as soon as the second default was committed, what the parties contemplated as due was the whole of the balance under the bond together with interest thereon without any reference to the provision with respect to instalments. It was impossible to read the document as though it contained a condition precedent, for the whole of the balance becoming due, that a demand should be made by the payees for the whole of the balance. *(Srinivasa Ayyangar and Reilly, JJ.).* SHANMUGA *v.* RAMALINGAM. **108 I.C. 786= A.I.R. 1928 Mad. 952.**

—On 9th July, 1914, one *M* agreed to buy from *J* a four annas share of a village including *sir* and *khudkhast* lands, with cultivating rights in *sir* for Rs. 46,100. *M* paid Rs. 5,000 as earnest money, but being unable to raise the balance of the purchase-money, arranged with *S* that he should have the benefit of the contract with *J*, pay the balance, take the sale-deed in his name and convey to him the said share at any time within ten years on his paying him Rs. 41,000. On 25th August, 1914 *S* accordingly took a sale-deed from *J* and paid him the balance of the purchase-money. On 4th September, 1914, an agreement was executed by *S* in favour of *M* stating the arrangement already mentioned. This document made no specific mention of the cultivating rights in *sir*. In a suit by *S* for specific performance of the agreement,

Held: that the subject-matter of the agreement of 4th September, 1914 between *M* and *S* was the same as the subject-matter of the sale-deed of 25th August, 1914.

Held further: that *S* having agreed to transfer the cultivating rights in *sir* land, there was an implied covenant on his part to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer according to C. P. Tenancy Act, S. 50 (1). *(Sir Lancelot Sanderson).* MOTILAL *v.* NANHELAL. **A.I.R. 1930 P.C. 287.**

—An instalment mortgage-bond contained the clause "in the event of default of payment of one *kist*, all the *kists* being taken as defaulted, mortgagors shall pay interest, etc." *Held* the intention was that in the event of default in payment of one *kist* the whole amount and interest on that was to be paid and that a suit on the basis of the bond brought more than 12 years after the date of the first default would be time-barred. *(Walmsley and Greaves, JJ.).* SAKHWAT ALI KHAN *v.* AMIR PRAMANIK. **61 I.C. 208 (Cal.).**

—Construction—Intention of parties.

———*Intention determines nature of document.*

Intention on the part of parties is the criterion for deciding whether, a document is a petition to the Court or not: 78 P.R. 1917, *Rel. on*; 27 P.R. 1906, *Expl.*; A.I.R. 1926 Lah. 586 and A.I.R. 1923 Lah. 581, *Dist. (Hilton, J.).* SHADI RAM *v.* AMIN CHAND. **A.I.R. 1930 Lah. 937.**

———*Intention is to be gathered from words used and should not be speculated.*

In interpreting a document the Court has not to speculate as the supposed intention of the author

DEED—Construction—Intention of parties.

but has to gather it from the plain words used by the author in the document itself. *(Tek Chand, J.).* GANGA RAM *v.* MT. BIRJI. 111 I.C. 893= A.I.R. 1929 Lah. 143.

———*Intention is to be gathered from document as a whole.*

It is an established canon of interpretation of documents that too much stress should not be laid on a word here or a word there, but the intention of the author is to be gathered from the document as a whole. *(Harrison and Tek Chand, JJ.).* ALLAH RAKHA *v.* ALI MAHOMED. 108 I.C. 741= 9 Lah. 567=30 P. L. R. 107= A.I.R. 1929 Lah. 45.

———*Intention of maker must be found from expressions used—If two constructions possible, one making deed valid should be accepted.*

The true rule of construction of deeds is to find out the intention of the testator or settler from the expressions used in the document itself, and then to apply the law as to whether the intention so expressed is valid or not. If, however, it so happens that it is possible to construe a document in two different ways the Court may accept the construction which would make it valid. *(B. B. Ghose and Roy, JJ.).* RUKEYA BANU *v.* NAZIRA BANU. 105 I.C. 647=55 Cal. 448=32 C.W.N. 248= A.I.R. 1928 Cal. 130.

———*Whether contract is joint or several is a question of construction.*

The question whether a contract is joint or several or joint and several is a question of construction, that is, a question of the intention of the parties to the contract. 12 C.W.N. 34, *Foll. (Kincaid, J. C. and Lobo, A.J.C.).* MIR ALI NAWAZ *v.* MIR ALI ASGHAR. 97 I.C. 124= A.I.R. 1927 Sind 62.

———Intention of parties should be looked to in construing documents containing repugnant words. *(Phillips, J.).* RAMA RAO *v.* CHELLAYYA PILLAI. 97 I.C.580=A.I.R. 1926 Mad. 1208.

———*Intention may be elucidated by conduct.*

The intention of the parties must be collected from the language of the instrument and may be elucidated by the conduct they have pursued. *Chapman* v. *Bluck*, (1838) 4 Bing. N. C. 187, *Foll. (Ross and Kulwant Sahay, JJ.).* MIDNAPORE ZAMINDARI CO., LTD. *v.* MUKTA KESHI PATRANI. 96 I. C. 188= 6 Pat. 51= 1926 P. H. C. C. 199=A. I. R. 1926 Pat. 340.

———*Question is not much of parties' intention as of meaning of words used.*

In construing the terms of a deed the question is not so much what the parties may have intended as what is the meaning of the words which they use, *(Shah, Ag. C. J. and Fawcett, J.).* SECRETARY OF STATE *v.* SHANTARAM NARAYAN DABHOLKAR. 84 I. C. 397=49 Bom. 99=26 Bom. L. R. 847= A. I. R. 1925 Bom. 12.

———*Intention of parties should not be considered when deed is unambiguous.*

Where the document is not itself ambiguous, the intention of the parties should not be taken into consideration. *(Suhrawardy and Graham, JJ.).* KHETTRA MOHAN DAS *v.* BISWANATH BERA. 82 I. C. 411=51 Cal. 972=28 C. W. N. 894= 40 C. L. J. 79=A. I. R. 1924 Cal. 1047.

———*Deed should be construed according to the intention of the parties as evidenced by it and circumstances—Burden of proving the contrary on the party attacking.*

The intention of the parties must be gathered from the terms of the deed itself and the surrounding circumstances. Oral evidence is excluded by S. 92 of the Evidence Act. [22 All. 149, P. C., *Foll.*]. Where a deed is attacked after a long period of years, the burden of proving that it is not what it purports to be lies heavily on the person attacking it. [38 All. 570, P.C., *Ref.*]. The fact that one of the parties to the deed is a Mahomedan may in a doubtful case lend some additional probability in favour of a document being construed as a mortgage, but it does not in any way do away with the rule laid down by the Privy Council that a document is to be construed in accordance with the intention of the parties as evidenced by its terms. *(Ryves and Daniels, JJ.).* BISHAMBER NATH *v.* MUHAMMED UBAID ULLAH KHAN. 77 I. C. 572= 45 All. 581=21 A.L.J. 503=4 L.R.A. Civ. 433= A. I. R. 1923 All. 586.

DEED—Construction—Law applicable.

———*Term will not be implied unless parties must necessarily have intended it.*

A term will not be implied in a grant, unless the Court is driven to the conclusion that the parties must necessarily have intended that stipulation and in that case only to the limited extent absolutely necessary to carry out what is believed to be their intention. *(Schwabe, C.J., Coutts Trotter and Kumaraswami Sastri, JJ.).* TIRUNEELAKANTAM *v.* RAJA RAJESWARA. 70 I.C. 469= 46 Mad. 177=15 M. L. W. 556= 30 M. L. T. 317=A. I. R. 1922 Mad. 263= 43 M. L. J. 158.

—Construction—Law applicable.

———*Contract Act, S. 253—Deed of partnership—Majority authorised to expel partner under certain conditions—Partner proposed to be expelled should have notice of charges against him—He should have reasonable opportunity of defending himself—Charges should be substantiated in a reasonable manner.*

Where under a partnership deed, a majority of the partners are authorized to remove a partner from the firm if certain conditions are fulfilled, and expulsion of a certain member is applied for in a Court, the law applicable in such a case is that the person charged should have reasonable notice of the charges proposed to be brought against him, that he should have a reasonable opportunity of defending himself and that the charges should be substantiated in a reasonable manner. *Labouchere* v. *Earl of Wharncliffe*, (1880) 13 Ch. D. 346; A. I. R. 1914 P. C. 105; and 47 Cal. 623, *Ref.* *(Stuart, C.J. and Nanavutty, J.).* NEM DAS *v.* KUNJ BEHARI LAL. 110 I.C. 500= A.I.R. 1928 Oudh 424.

———*Award—Intention of maker not clear from language used as regards distribution of property to different claimants—Personal law was applied.*

In construing a document the same meaning must be given to the same word throughout the document unless there are very good reasons justifying the attribution of different meanings.

Where, in construing an award, it was not possible to gather the intention of the arbitrator in respect of the division of property dealt with in the award among the different claimants,

Held, that the personal law of the claimants should be applied in determining the shares of each of the claimants. *(Mukherji and Boys, JJ.).* MT. HABIB FATMA *v.* MT. ARJUMAND KHATUN. 95 I.C. 140=A.I.R. 1927 All. 228.

———*Document executed by Mohammedan—Mohammedan Law should be applied.*

DEED—Construction—Law applicable.

Mohammedan Law has to be taken into account in construing documents executed by Muhammadans.

In the case of Muhammadans, unless there is an explicit statement to the contrary, the words "brother" and "sister" would include both half brothers and half sisters. *(Devadoss, J.).* MD. S. CHAMNAD *v.* JAINABI. **96 I.C. 105=23 M.L.W. 740=A.I.R. 1926 Mad. 861.**

———*Impartible estates—Law as understood up to a particular year would govern contracts prior to that year even when they fall to be determined after change in the law.*

It was the settled law in India until the decision of the Judicial Committee in 10 All. 272, that the holder of an impartible estate had only a limited estate and except for special justifiable causes had no power of alienation beyond his life-time. The subsequent holder might indeed confirm the grant and such confirmation operated as confiscation and re-grant and the grantee could not claim to hold under the original grant upon the death of the grantor. The reversal of this accepted interpretation of the law does not displace its application to the contract contained in the transactions of 1794 and 1819 since the parties must be deemed to be bound by the law as then understood. 27 Mad. 141 (P. C.), *Foll.* *(Dass and Ross, JJ.).* DEBI SINGH *v.* F. E. CHRISTIAN. **84 I.C. 429=1924 P.H.C.C. 201=A.I.R. 1924 Pat. 776.**

———*To vary rights defined by General Law the directions must be clear and unambiguous.*

The direction to the trustees in the trust in the settlement was to pay to the widow of the settlor within thirteen months of the settlor's death out of the balance of the "income accruing within the first thirteen months" the Rs. 80,000. The trustees were further directed to divide the remaining balance of the income "arising or accruing" during the first thirteen months after the settlor's death among the four beneficiaries named in equal shares. The direction in the deed operated under the form of a trust for sale. The balance of the proceeds of sale and income to be derived from it were to be held as subsequently directed "except the income arising or accruing due for and within the first thirteen months after the settlor's death," as to which there was reference back to the direction.

Held, the character of payments such as those directed is *prima facie* discontinuous at common law. No doubt, the settlor could have given directions which would have modified this character, or at least, have deprived it of the consequences arising from its discontinuity. But such directions would have had to be clear and unambiguous in order to have the result of varying the rights defined by the general law. There was no such distinctness in direction in the deed as would have been required to have this effect. *(Viscount Haldane).* PHIROZSHAW *v.* BAI GOOLBAI.

76 I.C. 929=28 C.W.N. 882=1923 M.W.N. 616=47 Bom. 790=50 I.A. 276=26 Bom. L.R. 76=33 M.L.T. 372=18 M.L.W. 940=A.I.R. 1923 P.C. 171=47 M.L.J. 79.

—Construction—Lease or License.

———*Agreement for lease held to operate present demise.*

The operative words in the deed of agreement were these: "I therefore considered it proper and suggested to the said Mussammat to take over 16-annas Mauza Makdhumpur. . . . in lieu of Rs. 10,000 of her dower-debt on the condition of paying annually Rs. 500 on account of revenue and cesses and for any personal expenses. Accordingly my second wife, Mt. Bibi Khodaijatul Kubra *alias* Jamil Khatun liked and accepted it. But, it is impossible at this time to execute any necessary deed at this place Islampur Konand . . . . I, therefore, executed this deed of agreement with the same condition. I do declare that on reaching Sahibganj, District Gaya, within three months, I shall execute a necessary deed to the above effect, and shall put (her) in possession and occupation of the said mauza. If, God forbid, a necessary deed to the above effect may not be executed even on the expiry of the aforesaid period of three months or I fail to execute it for any reason, the said Mt. Khodaijatul Kubra *alias* Jamil Khatun has and shall have right and power, according to this deed of agreement, to take possession of the said Makhdumpur in lieu of Rs. 10,000 out of the dower-debt due to her on the condition of paying annually Rs. 500 on account of revenue and road cess and for any personal expenses to me and to my heirs and representatives in respect of Mauza Makhdumpur . . . . and paying *sadr jama* of Rs. 36-9 year after year and to get a necessary deed executed by me and my heirs and representatives through Court or in whatever way she may think possible and proper."

Held, on construction that the instrument was an agreement for a lease operating as a present demise. *(Ross and Wort, JJ.).* KHODAIJATUL KUBRA *v.* KRISHNA PRASAD.

A.I.R. 1930 Pat. 530.

———In a mining lease of a village the property demised was described in the operative part of the document as "the underground coal and stones, etc., of mauza bearing Thak No. 11 specified in the boundaries below" and the area of the mauza was stated to be 121 *bighas* more or less. The schedule of the boundaries given at the end of the document merely contained the words "mauza bearing Thak No. 11-121 *bighas*," it was contended that the lease was made with reference to the thakbast map and not with reference to the revenue survey map.

Held, that on a true interpretation of the document the intention of the parties was that the mauza was demised with reference to the survey map and not with reference to the thak map. The reference to Thak No. 11 was only for the purpose of identification. A.I.R. 1924 Pat. 402 and A.I.R. 1926 Pat. 385, *Rel. on.* *(Ross and Kulwant Sahay, JJ.).* PITCHER & CO. *v.* SATISH CHANDRA. **115 I. C. 217=A. I. R. 1928 Pat. 399.**

———Ijara *lease—No right of transfer given under the lease—Lessee to surrender premises on expiry of lease—Lessee taking* kabuliyat *in respect of some lands and for default in paying rent purchasing himself the lands in execution of decree for rent*—Ijardar *cannot retain suit lands after expiry of lease.*

An *ijara* lease provided: "The lessee will not save and except for the purpose of granting *dur-ijara* settlements to *dur-ijaradars* or other tenants or persons by means of which the rents of the said demised premises or the greater portion thereof may be collected as heretofore, assign, under-let or otherwise part with the possession of the said hereby demised premises or any part thereof and will not enter into any partnership with any other person or persons in respect of the demised premises or any part thereof or charge or assign the lessee's interest under these presents or any part

DEED—Construction—Lease or License.

thereof without the previous written consent of the lessor. At the end (expiration) or other sooner determination of the said term the lessee peaceably and quietly surrender and yield up the said demised premises to the lessor.

Held, that the *ijaradar* could not under the terms of the lease retain possession of a jote purchased by him in decree for arrears of rent for the jote in respect of which he had given a *kabuliyat*. (*Chatterjee and Page, JJ*). K. S. BANNERJEE *v.* DHARENDRA KRISHNA DEB. **96 I.C. 659 (Cal.).**

——Where a document provided "You will have an authority during the term of the contract to pluck or purchase both crops yourself or to give others permission to pluck or purchase them, and if you are unable to purchase their goods yourself then you are to allow the other traders who have purchased goods to take them out after levying the tax according to the assessment rules of the estate."

Held, that the document amounted to a lease of immovable property for a term of years and required registration. The document meant that nobody could gather or purchase any of the produce without the grantee's permission, which would of course be taken for granted in the case of the "forest people" who gathered it, and that "unable to purchase" meant only "do not choose to purchase". 5 N.L.R. 21, *Rel. on.* (*Hallifax and Kotwal, A.J.Cs.*). SETH GOKULDAS NATHANI *v.* LAL ARTATRAM. **95 I.C. 824= A. I. R. 1926 Nag. 466.**

——*Dak fard is not a lease.*

A bid-sheet or dak fard showing the bids made at the auction of land for settlement is a verbal settlement, and the document which did not contain the most important terms and was never intended to be delivered to the lessee as a document of title cannot in such circumstances constitute a lease. (*Dawson Miller, C.J. and Foster, J.*). RAMESHWAR SINGH BAHADUR *v.* KITAB ALI. **98 I.C. 374=1926 P.H.C.C. 261= A.I.R. 1926 Pat. 487.**

——*Tenant permitted to plant grove—Agreement that tenant should become owner of part of the grove subject to restrictions stated in agreement—One restriction being against sale by tenant to outsider—Restriction was held not to prevent mortgage to stranger.*

Under an agreement between a tenant and his landholder as to the terms on which the former would be permitted to plant a grove, the tenant was to become the owner of one-quarter of the grove, subject only to such restrictions as were laid down in the agreement itself. One of these restrictions was that he should not sell this one-quarter share to any stranger, but only to the proprietor by whose permission the grove was to be planted, or to co-sharers of such proprietor.

Held, that there was no covenant against mortgaging. (*Mears, C.J. and Piggott, J.*). HAR PRASAD *v.* GULJARI LAL. **88 I.C. 265=47 All. 604= 6 L.R.A. Civ. 347=A.I.R. 1925 All. 651.**

——*Head lessee not bound to renew head-lease—Covenant to allow renewal to sub-lessee if and when renewal is obtained by head-lessee cannot claim right to renewal in perpetuity.*

Where the head-lessee in head-lease does not bind himself to take out a lease at the end of 99 years' period fixed in the head-lease, but has agreed that if and when the lease is renewed, he and his heirs and assigns would pass on the benefit of that renewal to their lessee, that is not sufficient to give to the sub-lessees the right to the renewal

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of the lease in perpetuity. (*Shah, Ag. C. J. and Kincaid, J.*). MEGHJI MOORJI *v.* TYEBALLI KAMARUDDIN. **90 I.C. 189=26 Bom. L.R. 1019= A.I R. 1926 Bom. 64.**

——*Lease described as permanent, at fixed rent and of hereditary nature indicates permanency—Clause for re-entry will change the nature of lease unless words prohibiting re-entry are clear—Right of entry is not repugnant to the title "kayamgeni chit."*

In determining whether a lessor has a valid right of re-entry under a lease executed by him, the nature of the terms used for the description of the document, the clause with regard to the enjoyment of the property from generation to generation and the rent being a fixed rent would be of great value in the absence of clear words to the contrary. But in a lease of this kind the Court has to see what is the contract entered into by the lessor with the lessee. It is open to the lessee to surrender the land leased to him and it is also open to the lessor to contract with the lessee that the land should be available for him whenever he required it. The mere use of the word "Kayamgeni chit" would not take away the force of the recital in the document that the lessee should surrender the land whenever required by the landlord. In construing a document of this kind the whole of the document should be taken into consideration. Unless there are clear words in the body of the document that the landlord was not to enter upon the land at any time, the clause in question would not be considered repugnant to the general tenor of the document. (*Devadoss, J.*). RAMA RAO *v.* THIMMAPPA. **87 I.C. 433=1925 M.W.N. 157= A.I.R. 1925 Mad. 732=48 M.L.J. 463.**

——*Clause for re-entry—Payment for improvements—Deed fixing proportion of value of trees payable out of the value for improvements—Landlords were held liable for all improvements whatsoever.*

The clause for re-entry in a lease deed ran as follows:—"When we require the property you should take half the value of the improvements for the trees planted by us and full value of the plants planted by you out of the value fixed by wise persons for the improvements and surrender the property to us."

Held: that before re-entry the landlord was to pay for the value of the improvements whatever they may be. (*Devadoss, J.*). RAMA RAO *v.* THIMMAPPA. **87 I.C. 433=1925 M.W.N. 157= A.I.R. 1925 Mad. 732=48 M.L.J. 463.**

——*Lease in terms perpetual, with fixed rent, heritable, and in default of payment of rent of three kists becoming void, was held unresumable.*

The terms of grant of lands to two brothers made the grant a perpetual one. The grantees and their descendants were to pay a fixed rent and enjoy the lands from generation to generation. The grantor's descendants were to collect the fixed rent generation after generation and when there was default in payment of the fixed rent for three kists the fixed lease was to be void.

Held, that the grant was not resumable and that it was permanent in its duration with a fixed rental, capable of descending to heirs in male and female lines and of being held from generation to generation. That is, in short, the grant was an absolute, perpetual, heritable and transferable grant. (*Jwala Prasad and Macpherson, JJ.*). GOPAL OJHA *v.* RAMADHAR SINGH. **82 I.C. 204= A.I.R. 1925 Pat. 228**

DEED—Construction—Lease or License.

———The material clauses of a lease were:—

(1) The purpose of the lease was to enable the lessee to erect Gola house and to purchase and sell all sorts of commodities therein, or in other words to open his business therein;

(2) The lease was not limited for any definite period but that it was a *bemaiyadi* lease or a lease without any term;

(3) That the lessee shall not have the power to construct any pucca building without the express and written permission of the lessor and if that stipulation be violated and pucca building be raised by the lessee without such permission of the lessor, he, the lessee, shall be liable to be evicted; and

(4) In case the lessee went to erect pucca building and to have a pucca well or *Indara* he shall have to do so according to the advice of the lessor.

Held, that the erection of pucca buildings for the business as well as for the purpose of residence was in the contemplation of the parties with the condition that permission for erecting pucca structures will have to be taken from the lessor, and that under these circumstances the inference is not unreasonable, that the lease in question was meant to be of a permanent character and not from year to year.

A *Bemaiyadi* lease or a lease without any term may in the circumstances of a particular case be shown not to confer any permanent grant. (*Jwala Prasad and Adami, JJ.*). A. H. FORBES *v.* HANUMAN BHAGAT.

2 Pat. 452=1 Pat. L.R. 190=77 I.C. 32= A.I.R. 1924 Pat. 88.

———Zurpeshgi *lease by* raiyat—*Transferee to hold directly under landlord—Transferor ceases to be a* raiyat *for the period of the transferee's occupancy.*

In consideration of Rs. 975 the *raiyat* of land put the plaintiff in possession and occupation of the land for a term of nine years. The plaintiff was to appropriate the produce and pay the rent to the landlord, that is to say, the plaintiff was to hold directly under the landlord and not by way of sub-lease under the *raiyat*. The term of the lease was to be extended automatically until the *peshgi* money was paid.

Held, that by this instrument the original *raiyat* transferred his *raiyati* right to the plaintiff who thereby acquired the right to hold the land for the purpose of cultivating it; and the defendant consequently ceased to be *raiyat* as long as the lease was outstanding against him. He had only the reversion of the *raiyati* interest on the expiry of the term of the lease, but during the term of the lease the *raiyati* interest was in the plaintiff. (*Ross, J.*). CHATURGUN BIND *v.* TILAKDHARI SINGH.

71 I.C. 470=A.I.R. 1923 Pat. 402.

———*Bengal Rent Act* (*X of* 1859), *S.* 6—*Tenancy—Construction—Occupancy was held not to be created.*

A suit in 1864 by a *zamindar* against his tenant claiming possession of certain *chur* land, was compromised and fresh *patta* and *kabuliyat* fixing a yearly rent for a term of 8 years, were executed. After the expiry of the term a fresh *patta* and *kabuliyat* were to be given at a fair rate to be then settled. The *kabuliyat* continued "if after the fair rent is settled according to the proper rate prevailing in the villages I refuse to pay that rent, then you will bring the lands under your *khas* possession by evicting me therefrom; and I shall not be able to make any objection to the same." Until a fresh rent was settled the tenancy was to continue at the fixed rate.

DEED—Construction—Marriage Settlement.

Held: upon the construction of the lease, there was no right of occupancy. (*Lord Dunedin.*) MIDNAPUR ZAMINDARI CO., LTD. *v.* NARESH NARAYAN ROY. **64 I.C. 231=30 M.L.T. (P.C.) 279= 48 I.A. 49=48 Cal. 460=14 M.L.W. 265= A.I.R. 1922 P.C. 241.**

———*Landlord and tenant—Lease containing option for renewal—Terms of renewal not stated—Period and terms of new lease will be same as those of original lease, except clause as to renewal.*

Where there is a covenant for renewal, if the option does not state the terms of the renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. (*Mookerjee and Panton, JJ.*). GURU PROSANNA BHATTACHARJEE *v.* MADHUSUDAN CHOWDHURY. **64 I.C. 824= 35 C.L.J. 87=26 C.W.N. 901= A.I.R. 1921 Cal. 574.**

———*Landlord and tenant—Putni lease*—Chaukidari Chakran *lands—Putni lease silent as to rent payable—Zemindar is entitled to rent in addition to amount payable to Chaukidari fund.*

Where the putni lease is silent as to the rent payable for *chaukidari chakran* lands, the zamindar is entitled to some rent in addition to the amount payable to the chaukidari fund. As to the amount of the rent where there are no materials on record the putnidar is entitled to something for collection charges. (*Chatterjea and Newbould, JJ.*). MAHARAJADHIRAJ SIR BEJOY CHAND MOHATAP BAHADUR *v.* KRISHNA CHANDRA MUKHERJEE. **66 I.C. 357=34 C.L.J. 275= A.I.R. 1921 Cal. 466.**

———*Holder to be in exclusive possession—Duration not specified—Provision for month's notice—Agreement is lease not license.*

Where it is clear from the terms of the agreement that the holder is put in exclusive possession of certain premises although the time for which the property was to remain with him is not expressly specified but there is a provision that he need not give vacant possession without one month's notice, this provision implies that the exclusive possession of the holder is to be for one month at least and the effect of the agreement is a lease in favour of the holder. (*Mirza and Broomfield, JJ.*). SHERIF DADUMIYAJI *v.* EMPEROR.

32 Bom. L.R. 332=A.I.R. 1930 Bom. 165.

———*Agreement to pay certain amount of grain every year as damage caused by using the land is lease and not license—T. P. Act, S.* 105.

An agreement by which a certain quantity of grain is agreed to be paid to the owner every year on account of the damage to be sustained by him by his allowing the other persons to take their cattle or carts over a strip of land is lease and not a license nor an easement and the payment claimed is rent. (*Hallifax, A. J. C.*). INDAL *v.* DEBI.

92 I.C. 683=A.I.R. 1926 Nag. 174.

———*Contract to extract lac is a mere license and not a lease.*

A contract for the extraction of lac from trees is of the nature of a license and not a lease. No interest whatever in the trees is given by such contract nor even the right to temporary possession of them. (*Daniels, J. C.*). IDOO *v.* NEHAL KHAN.

88 I.C. 1010=12 O.L.J. 328=2 O.W.N. 312= A.I.R. 1925 Oudh 456.

—Construction—Marriage settlement.

In marriage settlement and Wills of parents there is a presumption that the settler or testator

DEED—Construction—Marriage settlement.

intended the portions should vest in the case of daughters on their attaining majority or marriage and in the case of sons on their attaining majority, whether the children do or do not survive their parents. (*Twomey, C. J. and Young, J.*). ESTHER COHEN *v.* E. I. COHEN. **59 I.C. 806= 13 Bur. L.T. 78=10 L.B.R. 196.**

———*Gift to son's wife—Divorce—Effect.*

On the marriage of his son *A*, one *H* executed a deed of settlement which directed the payment of certain income to "the said *A*, during his life and in trust after the decease of the said *A* to *H*, his wife, during her life." *H* obtained a divorce from *A*; on the death of the settlor the question arose as to whether *H* forfeited the gift of income by reason of the divorce.

Held, that the devolution of marriage made no difference to the settlement and that the wife was entitled to the income. (1875) 1 Ch. D. 563; (1876) 2 Ch. D. 318, *Foll.* (*Baker, J.*). AIMAI HORMUSJI WADIA *v.* JAMSHEDJEE JEEJEEBHOY.

32 Bom. L.R. 1175.

—Construction—Mortgage or Charge.

———*Memorandum recording receipt of money and giving possession to usufructuary mortgagees as also entitling them to registered deed does not require registration and agreement embodied in it can be specifically enforced—Registration Act, S. 17—T. P. Act, S. 59.*

A memorandum recording the fact that money had been borrowed on the terms of a usufructuary mortgage and that the mortgagees had been put in possession and giving the mortgagees the right to obtain a document in a proper registered form does not require registration. It is merely an agreement to execute a usufructuary mortgage bond. This agreement is specifically performable and can be set up as a defence to a suit for redemption. A.I.R. 1929 P. C. 269, *Dist.* (*Ross, J.*). HARNANDAN SINGH *v.* BASUDEO NARAYAN.

A.I.R. 1930 Pat. 479.

———*On partition village X given to one co-sharer A—Agreement that A should pay certain amount from profits annually to other sharers and that the sharers had right to recover same from whoever was in possession (for the time being) of X—Payment regarded as "Malikana"—Agreement created not mere personal liability—It was not only charge but created interest in land.*

At the time of partition, village *X* was given to one co-sharer and in order to equalize the shares it was arranged that this co-sharer should pay a certain sum from its profits annually to the other co-sharers. It was agreed that the sum should be paid by the person in possession (for the time being) of village *X* and that the other co-sharers had a right to recover the sum. This payment was regarded as malikana in this village *X*.

Held, that this agreement did not create merely a personal liability. It was even not only a mere charge on the profits of the village, but it was more than such a charge, *i.e.*, it created an interest in the land itself. 9 All. 591, *Rel. on.* (*Niamatullah, J.*). MT. SAHODRA *v.* BADRI PRASAD.

A.I.R. 1929 All. 737.

———Where a fund is indicated for payment of a certain allowance, the latter must be deemed to be charge on the former. (*Niamatullah, J.*). MT. SAHODRA *v.* BADRI PRASAD, **A.I.R. 1929 All. 737.**

———*Transfer of Property Act, S. 100—Executant of a pro-note stipulating that the amount should come out of timber of certain jungle—Valid charge is created on the timber.*

DEED—Construction—Mortgage or Charge.

M executed a promissory note in favour of *P*. On the same date a *beechak* was sent by *M* to *P*, in which it was stipulated that the amount due under the promissory note should "come out of the *diar* (*deodar*) timber" of the jungle.

Held: that although the fund out of which the debt was to be satisfied had not come into existence, still *P* was entitled to a charge on *M's* timber in the jungle. *Collyer* v. *Issacs*, (1882) 19 Ch. D. 342; *Tailby* v. *Official Receiver*, (1888) 13 A.C. 523; *Tancred* v. *Dalagoa Bay and East Africa Ry. Co.*, 23 Q.B.D. 239; 10 All. 133; 13 Cal. 262; 16 Mad. 429; 38 Mad. 500 and A.I.R. 1924 P.C. 162, *Cons.* and *Appl.* (*Tek Chand and Agha Haidar, JJ.*). MANGAT RAM *v.* PIYARA LAL-SUNDAR LAL.

115 I.C. 762=30 P.L.R. 53= A.I.R. 1929 Lah. 274.

———*Stipulation entitling mortgagee to recover amount and interest as well as compound in case of default—Right to sue for whole mortgage money held accrued even before period fixed for payment of whole sum had expired.*

A sued *B* on a mortgage-deed. The deed contained a clause to the effect that "in case of the breach of contract the above-mentioned mortgagee shall be entitled within the fixed period of 6 years and also after it at any time to recover the entire mortgage money and the interest as well as the compound interest through the Court by attachment and sale of the mortgaged share and my other property." *A* contended that the stipulation contained in the given clause related to the mortgagees (*A's*) right to obtain a simple money-decree in respect of the unpaid interest and did not refer to his right to get a decree for sale for the entire mortgage money.

Held, that the clause did not admit of this interpretation. The clause was intended to give the mortgagee the right to institute a suit for the whole of the mortgage money before the completion of the term of six years in case the mortgagor failed to pay interest regularly at the end of each year. (*Wazir Hasan and Srivastava, JJ.*). LAJADIN *v.* MT. GULAB KUNWAR. **6 O.W.N. 925= A.I.R. 1929 Oudh 536.**

———An agreement for a mortgage was made between the parties, the purpose of which was to arrange the terms upon which the respondent was to grant, for the true amount of the indebtedness, whatever this might be, a mortgage of property, which had formerly been the subject of an agreement for sale and partnership between the parties. Following on the agreement a draft mortgage was in fact prepared purporting to carry out its terms, was approved by solicitors on behalf of the respondent, and the mortgage itself was actually engrossed and the stamp paid for by the respondent.

Held, that the property being identified and the terms of the loan being fixed, the document constituted an agreement which equity would enforce, unless there were circumstances which the Court would consider sufficient to justify the unqualified refusal on the defendant's part to carry out its terms, that there was a valid agreement charging the property with whatever sum was actually due, together with interest, and that a proper mortgage ought to be executed to carry out those terms, for nowhere was the binding effect of the agreement made conditional on fixing the amount of the debt, so that it would be wholly inoperative unless this was first done, and the fact that the action was begun before the account was settled does not

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deprive the plaintiffs of all right to relief. (*Lord Buckmaster*). JEWAN LAL DAGA *v.* NILMANI CHOUDHRI. **107 I.C. 337= 26 A.L.J. 124=30 Bom. L.R. 305=47 C.L.J. 302= 1928 M.W.N. 154=55 I.A. 107= 32 C.W.N. 565=27 M.L.W. 740= 7 Pat. 305=A.I.R. 1928 P.C. 80= 54 M. L. J. 325.**

——*Deed described as mortgage—Transfer of interest not for securing payment of money advanced—Deed was held not to be a mortgage.*

The contents of a deed and the jural relations constituted by it and not the name given to it determine its nature.

Where the transfer of interest was not made for the purpose of securing payment of money advanced or to be advanced for the performance of any engagement,

Held, that though the contract was described as a mortgage, it was not a mortgage. 2 Bom. 113; 11 Bom. 462; 26 Bom. 252; 25 All. 115 (P. C.); S. A. No. 573 of 1911 (Bom.); S. A. No. 574 of 1911 (Bom.); S. A. No. 816 of 1912 (Bom.); Appeal No. 7 of 1912 (Bom.); and 32 Bom. 569, *Foll.* (*Patkar, J.*). GULABBHAI *v.* BHAGVAN. **114 I. C. 266= 30 Bom. L.R. 980=A.I.R. 1928 Bom. 377.**

——*Award partitioning property between J and S —S to pay certain amount to J and not entitled to alienate his share till such amount is paid—No charge is created on S's share for the amount.*

J and *S* had a dispute with each other and finally their property was partitioned by an award given by arbitrators. *S* was to pay Rs. 21,000 with interest at 0-9-6% per mensem in three instalments of Rs. 7,000 to *J* and if he failed to pay any two instalments, *J* was at liberty to realize the whole sum due with interest by suit or otherwise. The award then proceeded to state as follows: "*S* shall not be competent to sell, mortgage, hypothecate or gift or make *waqf* in respect of the immovable property allotted to him till the said amount is not paid off by him to the first party." One instalment of Rs. 7,000 was paid and no further instalments were paid at all. It was contended that by the award a charge or a mortgage was created in favour of *J*.

Held, that the words in the award themselves did not create either a mortgage or a charge. So far as the mortgage is concerned the award not being an act of parties it is difficult to see how any mortgage could be created at all. A mere covenant not to alienate does not by itself create a charge on the property. The mere direction by the arbitrators not to alienate would not by itself be sufficient to create any charge in the property. (*Zafar Ali and Dalip Singh, JJ.*). MANOHAR LAL *v.* RATTAN LAL. **109 I. C. 479=A. I. R. 1928 Lah. 440.**

——*Period fixed in mortgage—It should generally be construed for mortgagor's benefit unless intention is clearly to the contrary.*

Though generally there should be a leaning towards considering the period fixed in an instrument of mortgage as having been fixed for the convenience of debtor, still if the intention should be clear that the mortgagor stipulated for the condition of his being in possession for a specific period the same should be given effect to. The debtor is at liberty to discharge the mortgage debt at any time unless the terms of the document clearly prohibit it and fix a time before which it is not to be paid. 23 Mad. 33 and 17 M.L.J. 83, *Foll.*; 48 I. C. 379; 35 M. L. J. 287, Held Overruled.

DEED—Construction—Mortgage or Charge.

(*Phillips and Srinivasa Ayyangar, JJ.*). VENKATARAMANAMMA *v.* BASANA SIMON. **108 I. C. 277= 1927 M. W. N. 617=A. I. R. 1928 Mad. 234.**

——*Condition in mortgage-deed that if mortgagor wished to sell or mortgage property he should sell to or mortgage it with mortgagee if latter desired to purchase—There is an intention to give mortgagee right of pre-emption—Pre-emption.*

A mortgage-deed contained a condition that if ever the mortgagor wished to sell or mortgage the mortgaged property, he should not be able to sell or mortgage it to any one except the mortgagee and that if the mortgagee was unwilling to purchase it or have it mortgaged in his favour, the mortgagor would be at liberty to transfer it elsewhere.

Held, that there was an intention to confer on the mortgagee a right of pre-emption in respect of the property. (*Adami and Fazl Ali, JJ.*). MATURA SUBBA RAO *v.* SURENDRA NATH. **113 I. C. 106= 9 P. L. T. 747=8 Pat. 243= A. I. R. 1928 Pat. 637.**

——*Want of due formalities of a mortgage would not convert a mortgage into charge—No reference to sale of hypothecated property—Charge is created—Transfer of Property Act, Ss. 100 and 58.*

If an instrument is expressly stated to be a mortgage, and gives the power of realization of the mortgage-money by sale of the mortgaged premises, it should be held to be a mortgage. The fact that the necessary formalities of due execution were wanting would not convert the mortgage into a charge. If, on the other hand, the instrument is not on the face of it a mortgage, but simply creates a lien, or directs the realization of money from a particular property, without reference to sale, it creates a charge, 35 Cal. 837. *Foll.* (*Lobo, A.J.C.*). OFFL. RECEIVER *v.* TIRTHDAS MEWARAM. **97 I.C. 321= A.I.R. 1927 Sind 66.**

——*Unregistered document to pay certain commission in perpetuity to lender—Property of the factory also liable for loan—Transfer of Property Act, S. 100 —Registration Act, S. 17.*

Defendants borrowed a loan from the plaintiff for starting a factory and an unregistered agreement was entered into, which gave the right to the plaintiff to obtain a commission of two and a half per cent. on the gross income of the factory in perpetuity. There were also provisions binding the defendants not to remove the factory, but to get any future partners to enter into a similar agreement and that, in certain events, the properties of the factory would be liable for certain moneys, and that, in certain other contingencies, the lender would be at liberty to recover a certain amount from the machinery of the factory or from the borrowers. A promissory note also was passed in favour of the plaintiff which formed a part of the same transaction.

Held, that the agreement amounted to an equitable charge on the property within the meaning of S. 100 of the Transfer of Property Act. Also it purported to create an interest in land within the meaning of S. 17 of the Indian Registration Act, and as such it would *prima facie* require registration, and as it was never registered, it could not be relied on. The same result follows, if it amounted to an equitable charge within the meaning of S. 100 of the T. P. Act. (*Marten and Madgavkar, JJ.*). AMRATLAL *v.* KESHAVLAL. **98 I.C. 696= 28 Bom.L.R. 939=A.I.R. 1926 Bom. 495.**

——*Mortgage for 5 years—Mortgagee authorised to redeem a prior mortgage within 5 years—*

DEED—Construction—Mortgage or Charge.

Mortgagee can redeem it even after 5 years until his mortgage is redeemed.

Where by a condition in the mortgage which was for a period of five years, the mortgagee was authorised to redeem a prior mortgage any time within the five years,

Held, the mortgagee was entitled to redeem the prior mortgage any time, even after five years, before his mortgage was redeemed. (*Zafar Ali and Addison, JJ.*). GOPAL DAS *v.* MULCHAND.

98 I.C. 960=7 Lah. 399=27 P.L.R. 688=A.I.R. 1926 Lah. 607.

———*Usufructuary mortgage providing that mortgagee should pay certain amount as nankar every year for mortgagor's and his dependant's maintenance—Nankar is a charge on mortgaged properties even after foreclosure.*

When a covenant extends to a thing in esse parcel of the demise, the thing to be done by force of the covenant is cuodammodo annexed and appurtenant to the thing demised, and shall go with the land, and shall bind the assignee.

A usufructuary mortgage of a share in a village provided "the mortgagees shall take possession of the mortgaged property with the exception of the 130 *bighas sir* land and of Rs. 100 cash annually, which amount has been fixed for maintenance of the executants and their dependants and adherents, etc." The mortgage was foreclosed in favour of the mortgagee and he got possession of the share. The annuity was treated as a nankar by the parties for all time, both before and after the foreclosure decree.

Held, the nankar was a charge on the property and the mortgagee was liable to pay it even after the foreclosure decree. (*Wazir Hasan, J.*). BISHWANATH PRASAD *v.* ABDUS SAMAD KHAN.

94 I.C. 788=1 Luck. 176=13 O.L.J. 149=A.I.R. 1926 Oudh 349.

———Usufructuary mortgage deed stating that mortgagor should not be entitled to disturb the mortgagee's possession without payment of the principal amount at 1 per cent. per mensem for the whole term and that mortgagor should not claim the income of the property before disturbance shows that redemption prior to the expiry of the entire term was agreed not to be claimed and not that such redemption was contemplated under the conditions mentioned. (*Kinkhede, A.J.C.*). RANA *v.* WAMAN. **79 I.C. 870=A.I.R. 1925 Nag. 11.**

———*Deed containing promise by vendee of* zamindari *to pay maintenance to vendor—Question whether deed created charge on* zamindari*—Entry in* khewat *prepared shortly after, stating that charge was created—*Khewat *deserves no higher value than as contemporaneous construction.*

A certain person sold his *zamindari* to another. After the sale was completed, the vendee executed a document in favour of the vendor, whereby the vendee, in consideration of the sale of the *zamindari* to him, undertook to pay a certain sum every year to the vendor and his descendants for their maintenance. 3 years after the deed was executed, this allowance was entered in the *khewat* of the village as amounting to a charge on the *zamindari*.

Held, that in construing the document for the purpose of seeing whether it created a charge on the property, the value to be ascribed to the *khewat* was that of *contemporanea ex positio* and nothing more. (*Ashworth, A.J.C.*). CHHOTTY LAL *v.* IQBAL NARAIN. **85 I.C. 331=A.I.R. 1925 Oudh 550.**

DEED—Construction—Mortgage or Lease.

———*General stipulation regarding interest, without limitation as to its currency—Must be treated as applicable to whole period of subsistence of mortgage—Deed—Construction.*

Where a deed of mortgage provided that the mortgagor shall pay the principal money secured by the mortgage with stipulated interest within 7 years, and further that the interest due shall be paid half-yearly and that if the interest for any half-year remained unpaid it shall be added to the principal and shall carry compound interest at the stipulated rate,

Held, a general stipulation in a mortgage deed that the mortgage money shall bear interest at a certain rate without any limitation as to its currency should be treated as applicable to the entire period for which the mortgage money might remain unpaid. (*Kanhaiya Lal, J.C.*). NAJM-UN-NISA *v.* RAGHUNATH. **67 I.C. 963=25 O.C. 36=A.I.R. 1922 Oudh 122.**

———*Right to have property sold for debt given but no express transfer of interest—Deed was held to be a mortgage—T. P. Act, S.* 58.

A document ran as follows:—"This settled coal land, mines, etc., as well as all other movables shall ever be regarded as a security for the payment of the rent and cesses due together with interest thereon due to you. I shall not be competent to transfer the said property by sale, gift, or remove the same, so long as the rent, etc., due to you will remain unpaid."

Held, it created a mortgage and not merely a charge. 34 All. 446, *Foll.* (*Das and Adami, JJ.*). SHIVA PRASAD SINGH *v.* BENI MADHAB CHOWDHURY. **70 I.C. 24=1 Pat. 387=4 P.L.T. 6=A.I.R. 1922 Pat. 529.**

———*Mortgage-deed stating that till certain time the mortgagee should be in possession—There is no covenant to pay—Transfer of Property Act, S.* 68.

A deed of usufructuary mortgage contained the following clause:—"Till the above stated Vaida (time), you shall take possession, make improvements and enjoy and also pay the thirva due, in respect of the property, warg No. 81."

Held, that there was no covenant to pay. 35 M.L.J. 219, *Rel. on.* (*Abdur Rahim and Oldfield, JJ.*). KUNHIMAI KUTTY BEHARI *v.* HALEKOTE AISABI. **62 I.C. 723=13 M.L.W. 434=A.I.R. 1921 Mad. 636.**

———*Security of other lands also offered after discharging pre-existing mortgage thereon—No intention to postpone the arising of the cause of action was held to exist—Limitation Act, Art.* 132.

Where a mortgage in plaintiff's favour provided that the mortgagors would pay off the amount on the security of the lands covered by the deed as well as on the security of certain other lands "after discharging" the mortgage thereon to a third party,

Held, that the words "after discharging," etc., were not intended to postpone the date on which the cause of action for the enforcement of the plaintiff's mortgage was to arise. (*Sadasiva Aiyar and Spencer, JJ.*). SANYASIAH *v.* M. P. ATCHANNA NAIDU. **70 I.C. 759=15 M.L.W. 289=A.I.R. 1921 Mad. 624=42 M.L.J. 339.**

—Construction—Mortgage or Lease.

———*Premium taken—Portion of produce to be given to executants—No amount to be paid as redemption money—No accounts of rents and profits except Government revenue—Deed is lease.*

DEED—Construction—Mortgage or Lease.

It is sometimes difficult to draw the line between a mortgage with possession and a lease where a premium is recovered by the lessor. But where a premium is taken, which premium is to be worked off by the enjoyment of the produce for 30 years and a portion of the produce is to be given to the executants of the document and there is no liability to account for the rents and profits, nor is there any question of redemption on payment of any money and all that the document requires is that an account should be kept as regards the payment of the kist to Government and of the various expenses, the transaction is a lease and not a mortgage. 25 All. 115 (P.C.), *Foll.* (*Kumaraswami Sastri and Devadoss, JJ.*). SUNDARA RAJU *v.* SESHADRI. **106 I.C. 426=26 M.L.W. 739=1927 M.W.N. 556= A.I.R. 1928 Mad. 35=54 M.L.J. 76.**

———*Debt being secured and transferor being entitled to redeem, transfer is mortgage, not lease.*

The only test to find out whether a transfer is a lease or a mortgage is to examine whether the object of the transfer is to secure the re-payment of a debt and secondly whether there is, either expressor by implication, reserved to the transferor a power of redemption of the property. (*Dawson Miller, C.J. and Foster, J.*). MATHURA PANDEY *v.* CHDRIKA RAI. **83 I.C. 192= 3 P.L.R. Civ. 103=A.I.R. 1925 Pat. 319.**

———*Defendant to remain in possession for a number of years and then to surrender possession—Deed is a lease.*

A deed provided that in accordance with a prior agreement, the property, which had been placed in 1st defendant's possession in 1910-11, should remain in it until the end of the year 1917-18 in consideration of a cash payment of Rs. 160 at the date of the prior agreement and other subsequent payments on plaintiff's behalf, in all, Rs. 1,280, that 1st defendant should pay all dues other than extra taxes, which might be levied hereafter, and, should at the end of the term surrender without any separate relinquishment,

Held, the document was a lease. The mortgage character is established only when there is a power of redemption reserved to the lessor either expressly or impliedly, so that it distinctly appears that the parties themselves intended the transaction to be of the nature of a mortgage. 3 All. 1, *Rel. on.* (*Oldfield and Ramesam, JJ.*) NOOKAYYA *v.* BHEEMANNA. **73 I C. 733=17 M.L.W 712= 1923 M.W.N. 176= A.I.R. 1923 Mad. 454=45 M.L.J. 91.**

———*No provision for paying off amount and no accounts to be rendered—Deed is not a mortgage.*

Where there was no provision under which power was given to the executant of the deed to pay off the amount which was the consideration for the deed, and no accounts were to be rendered or required. (*Batten, J.C.*). BIKHA *v.* SHEIKH AMIR. **69 I.C. 511=19 N.L.R. 1= A.I.R. 1923 Nag. 60.**

—Construction—Mortgage or simple bond.

———*Document mentioned as mortgage and description of properties given—Deed is one of mortgage.*

An undertaking by a mortgagor who takes a fresh advance, that he will not redeem the mortgage, until he has repaid the advance is legal and enforceable against himself, but it is not a charge on the land and it is not enforceable against a purchaser of the land. But where a deed is described as a mortgage-deed

DEED—Construction—Personal Liability.

(*rehennama*) and the boundaries of the village already mortgaged are added at the end of the deed, the use of the term "mortgage deed," coupled with some detail of the property mortgaged, is not a mere misnomer applied to the document, and the document constitutes a further charge. (*Simpson, A.J.C.*). GAYA PRASAD *v.* RACHPAL. **70 I.C. 66=9 O.L.J. 484=A.I.R. 1923 Oudh 24.**

—Construction—Partition deed.

———*Hindu Law—Private trust—Partition deed providing for its management interpreted.*

Where as regards the family charity a partition deed provided that the eldest member from among the four branches of the family should exercise supervision and after him those that come next in the order of seniority should take and manage it, and the question was whether on a proper construction of the deed the right to manage the family charity vested in the eldest member of all the four branches of the family or in the eldest member of senior line,

Held, that under the terms of the deed of partition, the management vested in the senior of the four brothers and after them, in the senior member of the four branches and not in the senior member of the first branch alone. 27 Mad. 192, *Foll.* (*Kumaraswami Sastri, J.*). SWAMINATHA AIYAR *v.* RAMASWAMI AIYAR. **99 I.C. 828= 38 M.L.T. 8=A.I.R. 1927 Mad. 1155.**

———*Hindu Law—Partition—Sisters' right to survivorship is lost by relinquishment.*

By a partition deed two step-sisters who inherited their father's properties divided his immovable properties. It closed with the following words:— "Henceforth the only relationship between us will be one of friendship and not of property."

Held, that the parties intended not merely to give their present right to the properties but to exclude the right of succession by survivorship in case one of them predeceased the other. (*Krishnan and Waller, JJ.*). RUKMANI AMMAL *v.* NARASIMHACHARIAR. **78 I.C. 173=19 M.L.W. 465= 34 M.L.T. 29=A.I.R. 1924 Mad. 696= 46 M.L.J. 285.**

—Construction—Personal Liability.

———*Partition deed between father and son providing that if either should fail to pay debts allotted to him under deed and thereby cause loss to other, it should be collected from property allotted in partition —Father paying debts allotted to son can get personal decree against son—Hindu Law—Partition.*

A partition deed between father and son provided "if each fail to discharge the debts allotted to his share and thereby cause loss to the other, it should be collected from the property allotted in partition to the person who had not discharged the debt." With regard to certain debts allotted to the son the creditors pressed the father who first renewed them by keeping them alive and then discharged them. He then brought a suit to recover the money from the son.

Held, that a personal decree could be granted against the son. 33 M.L.J. 58; A.I.R. 1924 All. 105, *Dist.*; 23 Mad. 441; 36 Mad. 348 and 34 Mad. 479, *Rel. on.* (*Odgers, J.*). RAMASAMI AYYAR *v.* DORAISWAMI AYYAR. **114 I.C. 226= A.I.R. 1929 Mad. 137.**

———*Security bond for over-drafts by Company—Tenor of document held to point to a personal liability to pay money.*

DEED—Construction—Personal Liability.

Three of the directors of the Luxmi Company, Ltd. executed a surety-bond which was addressed to the manager of the Marwar Bank, Limited, of Ambala City which was as follows:—"Dear Sir,—In consideration of your allowing the Luxmi Company, Limited, to overdraw sums not exceeding in the aggregate of rupees fifty thousand only (on the security of Luxmi Company, Limited, demand pro-note in your favour of date) we hereby pledge for the re-payment on demand of the said overdraft, together with interest thereon and of any other sums or money which may be or become due to you from the Luxmi Company, Limited, on any account whatsoever, during the continuance of this pro-note. And we hereby declare and agree that the overdraft allowed and intended to be secured by the agreement shall be taken to have been allowed by you entirely upon the faith of and relying upon the declaration signed by us at the foot hereof, which declaration solemnly we declare to be true in every respect. It is hereby further agreed and declared that these presents shall remain and be a continuing security to you for the balance of the said account for the time being to the extent aforesaid, notwithstanding that at any time or times the balance of the said account may be in your favour, it being expressly intended that these presents shall be a security for the balance of the said account due by the Luxmi Company, Limited, to you while the said account shall continue open.

Held, that the natural construction to put upon what is indicated by the use of the imperfect but definite expression "pledge" is that the fresh liability of the three signatories personally was the new security. The whole tenor of the document pointed to an obligation to pay money. (*Viscount Haldane*). PANNALAL *v.* NIHAICHAND.

67 I.C. 423=26 C.W.N. 737=1922 M.W.N. 376=36 C.L.J. 5=16 M.L.W. 80=24 Bom. L.R. 971=31 M.L.T. 129=30 P.W.R. 1922=A.I.R. 1922 P.C. 46=43 M.L.J. 66.

—Construction—Powers of Court.

———*Court is good judge of meaning of words and it is not duty of Court to affirm meaning or definition given in dictionaries.*

When one is enquiring after the ordinary popular meaning of a term, the Court is as good a judge of that meaning as any learned authority. There is no reason to suppose that the Court is not put in better position for judging by consideration of the definitions which are to be got from dictionaries. But it is essential in this case to remember that the duty of the Court is to take a particular case and decide whether or not that case comes within the term that is in question, and it is not any part of the duties of the Court to affirm a definition as one which can safely be relied upon to govern all other cases. (*Rankin, C. J. and Mukherji, J.*). OJAMSHEE PURUSHOTHAM DAS *v.* ABDUL RAHIM OOSMAN.

33 C.W.N. 709=A.I.R. 1929 Cal. 703.

———*Document construed by Privy Council in a certain way—It is not open to further consideration by High Court.*

Where a document was construed by the Privy Council in a certain way in a previous litigation.

Held, that the effect of the document is a matter of construction and is a question of law and that question of law having been decided in a certain way by the highest tribunal is not open to further consideration by the High Court in subsequent litigation. (*B. B. Ghose and Panton, JJ.*). JANAKI NATH ROY *v.* KHAWAJU HABIBULLA SAHEB.

100 I.C. 413=45 C.L.J. 151=A.I.R. 1927 Cal. 359.

DEED—Construction—Powers of Court.

———*Court must see what meaning parties intended to convey where terms of art or terms having well-known meaning are not used.*

In construing documents where terms of art or terms which have got some well-defined meaning are not used the Court should see what meaning the parties intended to convey by what they wrote in the document. However inelegant the language may be the Court should try to see what the parties intended to convey by the terms or by the words used in the document. (*Devadoss, J.*). PODAPATI CHENDRAYYA *v.* MANDUVA HANUMAYYA.

98 I.C. 450=A.I.R. 1927 Mad. 193.

———*Deed called "sale-deed"—Courts are not precluded from ascertaining its true nature.*

The fact that a deed is styled a "sale-deed" and the further fact that the word employed for the purpose of transfer is "sale" cannot preclude Courts from ascertaining the true nature of the transaction and to hold on a proper construction of the deed as a whole that it does not in essence evidence a transaction of sale: A.I.R. 1921 P. C. 89, *Rel. on.* (*Stuart, C.J. and Wazir Hasan, J.*). TALIB ALI *v.* KANIZ FATIMA BEGAM.

102 I.C. 142=2 Luck. 575=4 O.W.N. 400=A.I.R. 1927 Oudh 204.

———*Each document must be interpreted according to its tenor—Lessee or other person undertaking to pay in kind, need not invariably pay in kind—Where option is given to pay in kind or in money Courts should not go behind the document.*

Each document should be interpreted according to its tenor. It is not an invariable rule that where a lessee or other person undertakes to pay rent or maintenance or any such thing in kind he should always pay it in kind. Where an option is given to the promisor to pay in kind or in money, and if the amount payable in money is fixed in the document, Courts should not go behind the document and say that the intention of the parties was to pay in kind. 47 Cal. 133, *Foll.* S. A. No. 460 of 1922, *Dist.* (*Devadoss, J.*). CHENNAMA NAIDU *v.* VENKATAMMAL.

90 I. C. 996=22 M. L. W. 369=1925 M. W. N. 735=A. I. R. 1925 Mad. 1023=49 M. L. J. 186.

———*Clerical error should be corrected.*

In construing a document a Court should treat the document as a whole and if in a particulat context, anything is obviously a clerical error, the Court should correct it. 54 H. C. L. 66, *Ref. to.* (*Wazir Hasan, A. J. C.*). CHAUDHURI ABDUL WAHAB *v.* MT. TAHIRA BANO.

89 I. C. 51=12 O. L. J. 167=2 O. W. N. 357=A. I. R. 1925 Oudh 377.

———*Court may go into surrounding circumstances to find out relative position of parties.*

In all questions of the construction of written documents the Court is at liberty to and must usually go into the surrounding circumstances in order to see what was the relative position of the parties how they came to enter into business together and the particular circumstances of that business at the time may also be a matter for consideration and may be a matter of importance.

DEED—Construction—Powers of Court.

(Mears, C. J. and Knox, J.). RAM KUNWAR RAMESHAR DAS *v.* NARAIN DAS LACHMAN DAS. **A. I. R. 1921 All. 399.**

———*It does not matter whether a litigant calls a document a contract or by other name—Duty is on Court to decide.*

It does not matter what view a plaintiff or a defendant may take of his obligations. In questions of construction of documents it does not matter in the least whether a litigant calls a document "a contract" or by any other name; its true construction is entirely for the Court. Where a manifestly improper construction (to his own prejudice) was originally apparently admitted by a party.

Held: that the Court should apply the right construction only. *(Mears, C. J. and Knox, J.).* RAM KUNWAR RAMESHAR DAS *v.* NARAIN DAS LACHMAN DAS. **A. I. R. 1921 All. 399.**

—Construction—Principles.

Construction as a whole.
Construction giving validity.
Contemporaneous construction.
Conveyance.
Deed by layman.
Deleted words.
Incorporation by referring words.
Interest.
Letters of credit.
Name immaterial.
Natural meaning.
'Next heirs' meaning of.
Object of interpretation.
Plain intention.
Plural includes singular.
Points for consideration.
Precedents.
Presumption.
Previous conduct.
Probability.
Reference to other deeds.
Same meaning.
Strict construction.
Subsequent addition.
Terms of deed.

—Construction—Principles—Construction as a whole.

———Where each point by itself is inconclusive, but the weight which is obtained from the effect of the whole was ignored, the Privy Council adopted the construction as indicated by whole document: A.I.R. 1923 Mad. 1 (F. B.), *Disapproved.* *(Lord Atkin).* V. SEETHAYA *v.* P. SUBRAMANYA.
117 I.C. 507=33 C.W.N. 578=52 Mad. 453=29 M.L.W. 804=31 Bom. L.R. 756=49 C.L.J. 566=56 I.A. 146=1929 M.W.N. 553=A.I.R. 1929 P.C. 115=56 M.L.J. 730.

———*Shia mother inheriting 1/6th as fixed share and 5/96th by return—In the deed of gift of her share only 1/6th mentioned—Donees are still entitled to the whole.*

A deed must be read as a whole in order to ascertain the true meaning of several clauses. The words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible. It is competent to the Court to disregard the literary meaning of the words and give them another meaning, if the words are sufficiently

DEED—Construction—Principles—Construction as a whole.

flexible to bear that interpretation: *N. W. Ry.* v. *Lord Hastings*, (1900) A.C. 260, *Foll.*

A Shia mother executed a deed of gift of her share which she inherited from her deceased son, *viz.*, 1/6th as her fixed share and 5/96ths by return. But the deed mentioned 1/6th share only.

Held: that the donees are entitled to the whole. *(Shadi Lal, C.J. and Aga Haider, J.).* YUSUF ALI MAMUJI *v.* ALIBHOY MAMOONJI. **116 I.C. 177=10 Lah. 671=30 P.L.R. 709=A.I.R. 1929 Lah. 53.**

———Documents ought to be construed with due regard to the intention of the parties as it is to be collected from the whole context of the instrument so as to make one entire and consistent construction of the whole.

A loan of Rs. 10,000 was made for three years with interest at ½ Re. per cent. per mensem. The interest was to be paid before 10th of every month and a receipt obtained, but if default should be made in payment in this manner, or in getting a receipt, the provision was "shall pay interest on interest" at the rate of 1 per cent.

Held: that these words fairly enough refer to interest to be borne by a sum in arrear, if that sum was payable as interest and they did not mean that interest on the composite sum of principal and interest at double the rate reserved upon the principal sum for the whole three years was to be paid: *Barton* v. *Fitzgerald* (15 East, 530); *Sicklemore* v. *Thistleton* (6 M. & S. P. 9) and *Elderslie* v. *Borthwick*, (1905) A.C. 98, *Foll.* *(Lord Atkinson).* P.C. MUTHU CHETTIAR *v.* K.V. MEENAHSHISUNDARAM AYYAR. **107 I.C. 1=47 C.L.J. 183=1928 M.W.N. 91=5 O.W.N. 166=30 Bom. L.R. 261=27 M.L.W. 395=26 A.L.J. 488=32 C.W.N. 569=A.I.R. 1928 P.C. 35=54 M.L.J. 82.**

———*Name given by maker should not be lightly brushed aside but it is not conclusive.*

In construing a deed the entire document should be considered and not merely particular words, terms, or even clauses and this has to be done in the light of the surrounding circumstances. The name by which the instrument is called by the maker must be borne in mind and should not lightly be brushed aside, but it is not conclusive.

Ananthakrishna Aiyar, J.—No doubt when a party uses a particular nomenclature in connexion with a document that he executes, the Courts are bound to start with the presumption that he knows the law as every man is supposed to know the law and starting with the presumption that the executant purports to call the document that he executes by a particular name the Court should examine the principal terms of the document in the same light. *(Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.).* PASUNGILIA PILLAI v. ISAKKIMUTHU PILLAI. **111 I.C. 22=A.I.R. 1928 Mad. 349.**

———In a deed of settlement executed by the father to settle his property upon his male issue and also to provide for the maintenance of himself, his wife, his daughter and his mother, in short to make such arrangements for the members of his family and for those whom he was morally bound to support, as might prevent future disputes, it would be unsafe to interpret its provisions piecemeal and to rely upon them for the purpose of determining the rights conferred on a particular individual mentioned therein. In order to put a correct interpretation

DEED — Construction—Principles—Construction as a whole.

on a deed it must be looked to as a whole. It would be unsafe to ignore certain express provisions in the deed and merely to rely upon the rest: 9 M.I.A. 123 and 9 Cal. 952 (P.C.), *Foll.* (*Stuart, C. J. and Gokaran Nath Misra, J.*). MT. WAHIBUNNISA *v.* MUSHTAF HUSAIN. **95 I.C. 113=13 O.L.J. 278=3 O.W.N. 434=A.I.R. 1927 Oudh 328.**

———The general rule of construction of a written contract is that the language of an instrument is to be understood in its ordinary and natural meaning but at the same time the whole of the contract must be considered in order to ascertain the meaning of any particular part thereof. (*Raymond, A.J.C.*). TYEBALLY ABDUL HUSSAIN *v.* JAMES FINLAY & CO. **80 I.C. 969=17 S.L.R. 15=A.I.R. 1924 Sind 105.**

———*All parts must be construed harmoniously—Erroneous addition to previous correct description will not vitiate latter.*

The best construction of deeds and the one most satisfactory to the Courts is to make each part expound the other, so as to make all parts agree and if a doubt arises as to the construction of a grant and the doubt can be removed by construing the deed adversely to the grantor, this will be done. As soon as there is an adequate and sufficient definition of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it. (*Das and Bucknill, JJ.*). KUMAR KALIKANAND SINGH *v.* SHIVA NANDAN PRASAD SINGH. **63 I.C. 625=3 Pat. L.T. 149=A.I.R. 1922 Pat. 122.**

———Construction harmonising all parts is preferred to one causing repugnancy. (*Daniels and Dalal, A.J.Cs.*). HAFIZ-UN-NISA *v.* JAWAHIR SINGH. **1921 Oudh 209=66 I.C. 24=24 O.C. 374.**

———*Construction harmonising all parts must be preferred to that introducing repugnancy.*

If a document is open to a construction which makes all parts of it harmonise with one another, that construction is always to be preferred over one which introduces a repugnancy between one part of the document and another. (*Daniels and Dalal, A.J.Cs.*). MT. HAFIZ-UN-NISA *v.* JAWAHIR SINGH. **66 I.C. 24=24 O.C. 374=A.I.R. 1921 Oudh 209.**

—Construction—Principles—Construction giving validity.

———When two constructions of an instrument are possible, the law favours the construction which will make it valid. (*Shadi Lal, C.J. and Bhide, J.*). GODHA RAM *v.* SUDH SINGH. **116 I.C. 457=10 L.L.J. 375=10 Lah. 381=30 P.L.R. 546=A. I. R. 1929 Lah. 812.**

———Court should lean towards a construction favouring the validity of the contract rather than its illegality. (*Shah, Ag. C. J. and Fawcett, J.*). BALWANT VISHNU *v.* MISHRILAL SHIVANARAYAN. **85 I.C. 177=26 Bom. L.R. 1194=A. I. R. 1925 Bom. 115.**

—Construction— Principles — Contemporaneous construction.

———*Contemporaneous construction is not binding if manifestly incorrect.*

The Courts cannot be compelled to follow a contemporaneous but incorrect construction of a document. When the construction of the document is doubtful, then a contemporaneous con-

DEED—Construction—Principles—Interest.

struction of it will have great weight in turning the scale. (*Ashworth, A.J.C.*). CHHOTEY LAL *v.* IQBAL NARAIN **85 I.C. 331=A.I.R. 1925 Oudh 550.**

—Construction—Principles—Conveyance.

———*Conveyance to 2 or 3 without specifying shares creates tenancy in common.*

A conveyance to two or more persons without words specifying their shares does not constitute a joint tenancy but constitutes a tenancy in common. (*Walsh and Lindsay, JJ.*). RAM PIARI *v.* KRISHNA PIARI. **63 I.C. 301=43 All. 600=19 A.L.J. 608=A.I.R. 1921 All. 50.**

—Construction—Principles—Deed by layman.

———*Will—Testator a layman—Words must not be strictly construed—Circumstances also should be looked at.*

Where a Will is made by a layman, Court must not construe it with too great nicety, or assign too much weight to the exact words that are used for a transfer of property, as if the testator were accurately weighing the difference between a testamentary instrument and one operating *inter vivos*. In a case like this not only the words actually used in the deed should be considered, but also the circumstances should be taken into consideration and the matter ought to be broadly looked at: 10 Cal. 792 and 32 All. 227, *Foll.* (*Walmsley and Chakravarti, JJ.*). BRAHMOPADA BHATTACHARJEE *v.* RAI MOHAN HALDAR. **94 I.C. 967.**

—Construction—Principles—Deleted words.

———*Printed form with clause deleted—Same effect as if non-existent.*

The effect of deleting words in a printed form of mercantile contract was the same as if the deleted words had never formed part of the print at all. (*Viscount Sumner*). SASOON AND SONS *v.* INTERNATIONAL BANKING CORPORATION. **107 I.C. 225=55 Cal. 1=54 I. A. 317=25 A. L. J. 665=29 Bom. L. R. 1181=46 C. L. J. 61=1 L. C. 241=1927 M. W. N. 648=32 C. W. N. 30=39 M.L.T. 659=A. I. R. 1927 P.C. 195=53 M. L. J. 42.**

—Construction—Principles — Incorporation by roferring words.

———*If term to be incorporated is at variance with the terms in main document, latter will prevail.*

The rule of incorporation by referring words is a rule of construction. But if the term to be incorporated is at clear variance with a term in the main document itself, it is the latter term that must prevail and not the former. The question in each case is one of intention and it cannot reasonably be presumed that, when the parties make a distinct provision in the main document, they intended that that term was to be subject to, and directly contradicted by a term in the subsidiary document, the terms of which have become a part of the bargain only by force of the referring words. (*Venkatasubba Rao, J.*). MYLAPORE H. P. F. LTD. *v.* SABAPATHI. **105 I.C. 796=39 M.L.T. 261=A. I. R. 1927 Mad. 894=53 M.L.J. 272.**

—Construction—Principles—Interest.

———*Interest will run till date of re-payment of principal unless stipulated to the contrary.*

The general principle of construction is that money borrowed on interest will carry interest till the date of repayment of the principal unless the contract makes provision to the contrary: A.I.R. 1922 Oudh 122; A. I. R. 1923 All. 7 and 19

DEED—Construction—Principles—Letters of Credit.

All. 39 (P. C.). *Foll.* (*Stuart, C. J. and Wazir Hasan, J.*).GOKUL PRASAD *v.* GOITRI PRASAD.
100 I. C. 180=4 O. W. N. 147=A. I. R. 1927 Oudh 595.

—Construction—Principles—Letters of Credit.

———*Letters of credit are defined—Liberal construction is permissible only if there is scope for construction.*

While no set form of words may be necessary yet a letter of credit as known to the law must contain a request (general or special) to pay the bearer or person named, money, or sell him some commodity on credit, or give him something of value, and look to the drawer of the letter for recompense, and it partakes of the nature of a negotiable instrument. The rules governing bills of exchange and negotiable promissory notes are always the same, fixed and determinate; while letters of credit are to be construed with reference to particular and often varying terms in which they may be expressed, the circumstances and intentions of the parties to them, and the usages of the particular trade or business contemplated. Letters of credit are accordingly not construed with technical nicety, but are considered as being usually framed with more or less informality and looseness of expression, and hence Courts have sometimes indulged in considerable freedom of interpretation in the effort to arrive at what is designated as the true intention of the parties. Instruments of this sort ought to receive a liberal interpretation. The words should receive a fair and reasonable interpretation, so as to attain the objects for which the instrument is designed and the purposes to which it is applied. There is room for this principle, only when the provisions of the agreement are ambiguous, loose, or susceptible of more than one fair interpretation; if it admits of two fair interpretations and the guarantee has advanced money on the faith of that most favourable to his rights, that interpretation will prevail. The expression "confirmed irrevocable credit" does not amount to a guarantee of the solvency of the person for whom letter of credit is passed. (*Mookerjee and Rankin, JJ.*). CHANDANMULL BENGANEY *v.* NATIONAL BANK OF INDIA LTD. **79 I. C. 757=51 Cal. 43=A. I. R. 1924 Cal. 552.**

—Construction—Principles—Name immaterial.

———*Title of deed is not conclusive of rights of parties.*

The mere fact that the document of title held by the grantees is called a potta, and that they executed a *kabuliyat* in similar terms is not conclusive of the question of whether they were mere leaseholders, *i. e.*, farmers of revenue or were true proprietors paying a *jamabundi* to the overlord. (*Lord Dunedin*). NAYAK VAJESINGJI *v.* SECRETARY OF STATE. **82 I. C. 779=21 M. L. W. 28=1924 M. W. N. 694=48 Bom. 613=51 I. A. 357=22 A.L.J. 951=5 L.R.P.C. 199=26 Bom. L.R. 1143=40 C. L. J. 473=29 C. W. N. 317=A. I. R. 1924 P. C. 216=47 M. L. J. 574.**

———The true construction of a document does not depend upon the name which is given to it, but it must be determined with reference to its terms. (*Dalal and Wazir Hasan, A.J.Cs.*). KARIM DAD KHAN *v.* MT. BIBI GHAFURAN. **66 I.C. 110=9 O.L.J. 104=A.I.R. 1922 Oudh 42.**

———*Document being called* dowl kabuliyat *does not decide its nature—Document as a whole should be considered—*Dowls *expressly excluding transferability*

DEED—Construction—Principles—'Next Heirs' meaning of.

—Custom of transferability cannot be proved—Evidence Act, S. 92 (5).

The mere fact that a document is called a *dowl kabuliyat* does not decide its nature; the document should be looked at as a whole to see what it is.

Any evidence designed to show customary incidents of tenure as attaching to the jotes must be rejected if and so far as it conflicts with what is contained in the *dowls* themselves.

Where the *dowls* contain an express statement that there is no right of sale, gift or transfer without the landlord's consent in face of this, it is impossible to admit evidence of a custom of transferability in the jotes. (*Greaves and Newbould, JJ.*). MD. AYEJUDDIN MEA *v.* PRODYAT KUMAR. **61 I.C. 503=48 Cal. 35?=25 C.W.N. 13=A.I.R. 1921 Cal. 741.**

———*Terms and not name of deed are material.*

Merely calling the document a *patt Istimrari* does not make it so. The Court must ascertain the legal effect of the document with reference to its terms. A.I.R. 1921 P. C. 89, *Ref.* (*Wazir Hasan, A.J.C.*). LIAKAT HUSAIN *v.* NAROTAM DAS. **65 I.C. 780=8 O.L.J. 516=A.I.R. 1921 Oudh 254.**

—Construction—Principles—Natural meaning.

———The natural and obvious meaning of the words in a deed cannot be refused to be given to them, merely because it is suggested that the words have been inserted in the deed for the purpose of ascertaining and specifying the stamp duty which was to be paid. If that were the object of inserting the words in the deed it ought to have been so stated. (*Sanderson, C.J. and Richardson, J.*). FANINDRA NATH ROY *v.* BHOLA DASSI DEBI. **75 I.C. 402=38 C.L.J. 21.**

———*Words must be construed according to natural meaning.*

The words in a written instrument must be constructed according to their natural meaning. (*Jwala Prasad and Adami, JJ.*). RAMLAL KAVERAJ *v.* SATYANIRANJAN CHAKRAVARTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

—Construction—Principles—'Next heirs' meaning of.

——— *Daughter and after her, next heirs' ordinarily means heirs next after the daughter but where daughter dies before succession opens up 'next heirs' mean simply the nearest heirs of the propositus.*

Per *Spencer, Offg. C. J.*—If several objects are placed in a certain order, and mention is made of one and then of the next, the word "Next" ordinarily signifies the next in that order. *Eastwood* v. *Lockwood,* (1868) 8 M. H. C. R. 424, *Ref.*

Where an estate was given to the widows of a certain deceased Raja and it was provided that on the death of the last surviving widow, the daughter of the Raja or failing her the next heirs of the Raja would inherit that property and where the daughter predeceased the last surviving widow.

Held: that ordinarily the words "next heirs" would refer to the heirs next after the daughter but that in this case, owing to the death of the daughter before that of the last surviving widow, the next heirs were the nearest heirs of the Raja and not the heirs next after the daughter.

Per *Kumaraswami Sastri, J.*—Unless the terms of the grant, clearly render it necessaay to do so the nearer heirs of the Raja under the Hindu Law ought not to be exoluded in favour of remoter heirs.

DEED — Construction — Principles — Object of interpretation.

(*Spencer, O. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.
93 I.C. 705=48 Mad. 1=A.I.R.1925 Mad. 497.

—Construction—Principles—Object of interpretation.

———*Intention determines nature of deed and it is to be gathered from the deed.*

The primary object of all interpretation is to determine what intention is conveyed by the deed and the primary source of determining such an intention is the language used in the deed. (*Wazir Hasan and Raza, JJ.*). BASHIR AHMAD *v.* MT. ZUBAIDA KHATUM. **92 I.C. 265=1 Luck. 83=29 O. C. 108=3 O. W. N. 105=A. I. R. 1926 Oudh 186.**

—Construction—Principles—Plain intention.

———*Meaning of clause according to plain intention rendering clause invalid—Still meaning cannot be modified or cut down.*

The meaning of a clause in an agreement according to the plain intention is not to be modified or cut down with reference to the consideration that the construction according to the plain intention may render the clause invalid. (*Ramesam and Reilly, JJ.*). TIRUMALA CHETTY RANGAYYA CHETTY *v.* SRINIVASA RAGHAVACHARLU.
121 I. C. 753=52 Mad. 300=1929 M. W. N. 93=29 M. L. W. 329=A. I. R. 1929 Mad. 243=56 M. L. J. 318.

—Construction — Principles — Plural includes Singular.

Where a *wajib-ul-arz* while recording a custom provided, "or if there be no wife with sons, then the wives of the deceased shall become absolute owners with a right of transfer over the inheritance of the deceased in equal shares."

Held: that the statement meant that where the deceased co-sharer has left only one wife without a son, that wife becomes an absolute owner with a right of transfer over the whole property. The plural includes the singular, and it would be contrary to all right rules of interpretation to hold that the custom did not affect a single wife without a son. (*Stuart and Hasan, JJ.*). SARTAJ KOER *v.* MAHADEO BUX. **92 I. C 657=1 Luck. 120=29 O. C. 153=13 O. L. J. 416=A. I. R. 1926 Oudh 332.**

—Construction—Principles—Points for consideration.

———*Factors for consideration besides wording.*

In construing a document antecedent events, subsequent conduct of the parties to it and the surrounding circumstances are as important as the words employed in disposing of a property. (*Mukerji, Kendall and Niamatullah, JJ.*). FAZUL AHMAD *v.* HAR PRASAD. **116 I. C. 1=1929 A. L. J. 620=A.I.R. 1929 All. 465. (F. B).**

———*Tenor or actual words of the document must be seen.*

The Court is not justified to read into any document an intention which is not expressed in it. It is not proper to interpret the terms of one document in the light of the terms of another document. Each document must be interpreted according to the tenor and actual words used in it. (*Devadoss, J.*). SUBRAYA PAI *v.* SUBRAMANIA PATTAR. **111 I.C. 218=A.I.R. 1928 Mad. 648.**

—In construing a deed the Court should consider all the surrounding circumstances, the position of

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the parties to the agreement, its subject-matter, and th apparent purpose and object thereof, and in particular the provisions to be construed.

At the conclusion of the War the Government of South Australia was faced with the problem of dealing with numbers of discharged soldiers, and determined to make provision for the settlement of such men on unoccupied Crown lands and for advances out of public funds to men so settled.

The respondent, a discharged soldier, who had some training on a Government training farm, by a letter applied for a grant of the lands in question. His application was granted. He later on accepted an agreement over the land which was to be for a term of 65 years, and thereby the vendor agreed to sell and the purchaser to purchase the land as therein described. One of the conditions in the agreement was: "If at any time within the period of ten years from the date of this agreement the vendor is satisfied on such evidence as he deems sufficient that by reason of incompetency or personal disability the purchaser is incapable of managing the said land with advantage to himself or that the purchaser has neglected to work the land satisfactorily or has been guilty of serious misconduct during his occupation thereof, the vendor by notice in writing given to the purchaser may determine this agreement upon and subject to such terms and conditions as the vendor thinks fit (and) upon the expiration of three months from the giving of such notice the agreement and the right of the purchaser to complete the purchase and possession of the said land shall cease and determine and be void, anything in this agreement to the contrary notwithstanding."

It was contended that before deciding to terminate the agreement it was incumbent upon the vendor to institute some judicial or *quasi* judicial enquiry or at the least to communicate to the purchaser the information he had received and his intention to act thereon and give him an opportunity of stating his case in answer thereto.

Held: that no such enquiry was contemplated that the vendor was exercising a merely administrative function and was entitled to form an opinion on such materials as he himself thought sufficient. (*Lord Warrington of Clyffe*). G. R. LAFFER *v.* F. A. GILLEN. **107 I.C. 347=A.I.R. 1927 P.C. 275.**

———*Intention is to be gathered from words, and doctrines are to be given due weight.*

Per *Dawson Miller, C. J.*—The intention of a deed is primarily to be gathered from the words of the instrument itself, and the application of doctrines, although they must be given due weight, must not be allowed to overrule the clear indications of intention to be gathered from the words of the document. But the meaning to be attached to them may be affected by surrounding circumstances, and where this is the case those circumstances no doubt must be regarded. 25 All. 351, *Diss.*; 42 Mad. 288, *Diss.* (*Dawson Miller, C. J. on difference between Das, J. and Foster, J.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **88 I. C. 141=87 I. C. 849=4 Pat. 510=6 P. L. T. 634=A. I. R. 1925 Pat. 625.**

———*Deed of settlement—Object, scope and surrounding circumstances must be considered.*

To determine the true construction of a deed of settlement regard must be had to the object and the whole scope of the instrument, judged, if necessary, by reference to the surrounding

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circumstances. (*Mookerjee and Fletcher, JJ.*). SANTONA ROY *v.* ADVOCATE-GENERAL. BENGAL.
62 I. C. 193=48 Cal. 124=25 C. W. N. 343=A. I. R. 1921 Cal. 389.

——*Court must consider substance of transaction, not mere form.*

It is incumbent upon the Court to look to the substance of the proceedings and not to confine its attention to the mere form, 42 Cal. 56 (P. C.). *Foll.*

This principle is applicable, quite as much to involuntary alienations as to voluntary conveyances. In a sale in execution of a decree against the executor in possession of an estate as such it cannot be contended merely because he is not described as executor that the sales cannot pass any title except that of the executor. (*Mookerjee, A. C. J. and Fletcher, J.*). MAHENDRA NATH *v.* SAMSUDDIN. **62 I. C. 344=25 C. W. N. 279=33 C. L. J. 198=A. I. R. 1921 Cal. 146.**

—Construction—Principles—Precedents.

——*Construction put on similar document is no guide.*

A document is not to be construed with reference to authorities as to how a similar document was construed. *Aspden* v. *Seddon*, (1875) 10 Ch. 394, *Ref.* (*B. B. Ghose and Bose, JJ.*). SARAJUBALA DEBI *v.* JYOTIRMOYEE DEBI. **112 I. C. 113=A. I. R. 1929 Cal. 166.**

——*Every document must be construed by itself.*

Every document has to be interpreted upon its own language and an interpretation put upon one document cannot be a safe guide in interpreting another. (*Gokarnath Misra and Nanavutty, JJ.*). DURGA *v.* LAL BAHADUR. **112 I. C. 387=5 O. W. N. 992=4 Luck. 138=A. I. R. 1928 Oudh 509.**

——*Each document should be construed on its own merits.*

The practice to endeavour to obtain assistance in construing a document from the construction of different documents arrived at by other Courts is unprofitable. (*Stuart, C.J. and Raza, J.*). AJODHYA *v.* SHEO SHANKER. **100 I.C. 193=2 Luck. 416=4 O.W.N. 137=A.I.R. 1928 Oudh 25.**

——*For applying construction of one document to another, the language of both must be identical.*

Unless the language of the documents be identically the same, a decision upon the construction of one document is not of much assistance to the Court in construing another: 31 Cal. 195, *Foll.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). HUKUMAT SING *v.* NENUMAL REJHUMAL. **104 I.C. 572=22 S.L.R. 117=A.I.R. 1928 Sind 45.**

——*Construction of one document is no safe guide or construing another differently worded.*

The construction placed on the terms of one document will not afford a safe guide in constructing a document differently worded. (*Kumaraswami Sastri, J.*). SWAMINATHA AIYAR *v.* RAMASWAMI. **99 I.C. 828=38 M.L.T. 8=A.I.R. 1927 Mad. 1155.**

——Decisions on interpretation of wholly different documents between different parties executed in different circumstances are of little use as a guide in interpreting a document. (*Wazir Hasan, J.*). MAHOMED JABBAR *v.* HARNATH KAUR. **105 I.C. 196=4 O.W.N. 857=A.I.R. 1927 Oudh 436.**

——*Contract—Each contract must be construed with reference to its own terms.*

Each contract must be construed according to its own terms and in the circumstances of that case. Cases may be helpful in so far as they lay down general principles but cannot be direct authority as to the construction to be put upon the deed before the Court in another case: 22 C.W.N. 904, *Dist.* (*Chakravarti, J.*). DHIRENDRA NATH ROY *v.* AHMED MIA. **97 I.C. 279=30 C.W.N. 765.**

DEED—Construction—Principles—Presumption.

——*Precedents are useful only for principles laid down.*

It is not proper that the terms of one document should be interpreted in the light of the words used in another document; but if the principles of construction are enunciated in a case, the Court should consider whether they are applicable to the construction of the document before it. (*Devadoss, J.*). PIRAMU AMMAL *v.* SERUNATHA AMMAL. **86 I.C. 737=A.I.R. 1925 Mad. 1175.**

——*Use of precedents—Case law—Documents should be construed on the basis of their own language and the relevant circumstances in each case and precedents are generally fruitless, save in so far as they lay down any general principles of interpretation.*

It is generally fruitless to refer to precedents on the question of construction of a document. Each document must be construed with the aid of the language used therein and such other surrounding circumstances as may be relevant to the question of construction. They may however be referred to in so far as they lay down any general principles of interpretation. (*Wazir Hasan and Neave, A.J.Cs.*). GULJAR SINGH *v.* MADHO RAM. **78 I.C. 547=11 O.L.J. 275=A.I.R. 1925 Oudh 11.**

——*Construction of identical document under identical circumstances only is useful as guide.*

Any ruling as to the interpretation of a document can only be applied in its entirety to a document absolutely identical in language and in a case the general circumstances of which are substantially the same. Where these conditions are not satisfied a party relying upon previous rulings of the Court and putting them forward as guides to the correct interpretation of the particular document on which the case under appeal actually turns can do nothing more than ask the Court to take into consideration the general principles which have been applied by other Hon'ble Judges in similar cases and to derive from them whatever assistance it can towards arriving at a correct conclusion. (*Piggott, Lindsay and Sulaiman, JJ.*). ALKHU RAI *v.* LACHMAN UPADHIYA. **80 I.C. 550=46 All. 274=22 A.L.J. 137=5 L.R.A. Civ. 145=A.I.R. 1924 All. 324.**

——*One deed cannot be construed with reference to other similar deeds.*

No hard and fast rule can be laid down as to the construction of documents and each case must be decided upon the construction of the particular document and the circumstances connected with it. Upon the question of construction no light can be derived from the construction of similar documents in other cases. (*Banerji, Stuart and Wallace, JJ.*). HARPRASAD *v.* RAM CHANDAR. **63 I.C. 750=44 All. 37=19 A.L.J. 807=A.I.R. 1922 All. 174 (F.B.).**

—Construction—Principles—Presumption.

——*Presumption that price was fixed with reference to quantity may be weakened by special circumstances.*

Though the presumption is that in fixing the price, regard was had on both sides to the quantity which both supposed the estate to consist of, "yet there may be considerations which may rebut or weaken the presumption." *Hill* v. *Buckley*,

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17 Ves. 394, 1811), *Ref.* (*Mr. Ameer Ali*). HUSSONALLY SULLEMANJI *v.* TRIBHOWANDAS MANGALDAS NATHUBHAI. **61 I.C. 361=25 C.W.N. 385=1920 M.W.N. 726=A.I.R. 1921 P.C. 40.**

—Construction—Principles—Previous conduct.

———*Formal contract must be construed according to its terms—Antecedent communings are not to be considered.*

When parties have entered into a formal contract that contract must be construed according to its own terms and not be explained or interpreted by the antecedent communings which led up to it. *Shower* v. *Wilson*, 9 Cl. and F. 515; *Smith* v. *Doed Jersey*, 2 Brod. and Bing. 473; *Prison Commissioners* v. *Clerk of the Peace for Middlesex*, 9 Q.B.D. 506; *Lee* v. *Alexander*, (1883) 8 A. C. 853 *Rel. on.* (*Viscount Dunedin*). BOMANJI ARDESHIR *v.* SECY. OF STATE. **114 I.C. 1=31 Bom. L.R. 256=53 Bom. 230=56 I.A. 51=1929 A.L.J. 47=49 C.L.J. 179=33 C.W.N. 293=A.I.R. 1929 P.C. 34.**

———*Whether previous correspondence is relevant is doubtful.*

It is doubtful whether a Court can refer to the previous correspondence between the parties for the purpose of construing a deed. (*Macleod, C. J. and Madgavkar, J.*). JAMSHEDJI *v.* SECY. OF STATE. **93 I.C. 184=28 Bom.L.R. 25=A.I.R. 1926 Bom. 209.**

—Construction—Principles—Probability.

—Interpretation, which renders the terms of the document probable, is to be preferred to an interpretation which renders the conditions most unlikely. (*Macnair, Offg. J.C. and Staples, A.J.C.*). BHASKAR RAO *v.* BALMUKUND. **A.I.R. 1929 Nag. 162.**

—Construction—Principles—Reference to other deeds.

———*Language similar but not identical—Document should not be interpreted by language of another.*

It is well settled that it is not permissible to interpret one document by the language of another especially when the languages though similar are not identical. (*Bennet and Iqbal Ahmad, JJ.*). RAMADHAR *v.* RAJ NARAIN. **120 I.C. 552=1930 A.L.J. 40=A.I.R. 1929 All. 908.**

———It cannot be laid down that where a borrower has previously borrowed under other instruments, but on similar onerous terms, this cannot be evidence that the borrowing on the occasion in question was a reasonable and proper transaction: A.I.R. 1924 P.C. 184, *Considered.* (*Viscount Sumner*). SUNDER MULL *v.* S. KINKUR SAHANA. **108 I.C. 337=7 Pat. 294=55 I.A. 85=26 A.L.J. 364=9 P.L.T. 203=27 M.L.W. 461=1928 M.W.N. 242=5 O.W.N. 400=47 C.L.J. 403=30 Bom. L.R. 793=32 C.W.N. 657=A.I.R. 1928 P.C. 64=54 M.L.J. 427.**

———Each document has to be construed having regard to the particular terms and language employed and it is a trite saying that no document is exactly like another. (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). PASUNGILIA PILLAI *v.* ISAKKIMUTHU PILLAI. **111 I.C. 22=A.I.R. 1928 Mad. 849.**

———*Two different plots sold by two documents—One cannot be construed in the light of another.*

When two different plots are sold under two different documents, it is not reasonable to ask the Court to read the terms of one document into another. (*Devadoss, J.*). RAMASUBBIER *v.* SHENBAGARATNAM. **99 I.C. 1003=25 M.L.W. 154=A.I.R. 1927 Mad. 357.**

DEED — Construction — Principles—Subsequent additions.

———Each document and the circumstances under which it came into existence must be considered separately, and the construction of one document is not generally of much assistance in constructing another which may differ materially in its terms and in the attendant circumstances. (*Dawson-Miller, C.J. and Foster, J.*). RAMESHWAR SINGH BAHADUR *v.* KITAB ALI. **98 I.C. 374=1926 P.H.C.C. 261=A.I.R. 1926 Pat. 487.**

———*Other deeds cannot be used.*

The language of other documents not in suit cannot be called in aid to construe the words of a particular document which is in suit. (*Greaves and Graham, JJ.*). PRASANNA KUMAR RAY *v.* ARUN CHANDRA SINGHA. **85 I.C. 693=29 C.W.N. 353=A.I.R. 1925 Cal. 656.**

———The language of one instrument does not afford much assistance in the construction of another. 36 Cal. 1003 (P.C.). (*Macleod, C.J. and Shah, J.*). BAI DHONDUBAI *v.* LAXMAN T. JAVADEKAR. **68 I.C. 504=47 Bom. 65=24 Bom. L.R. 794=A.I.R. 1922 Bom. 352.**

———*Each case must be decided on its own merits.*

Cases of construction of leases must be decided on their own facts and the law being well understood the only question in each case is how far the law is to be applied to the particular facts which are put before the Court. (*Wazir Hasan, A.J.C.*). LACHHAMAN DAS *v.* BHAGWANT RAM. **65 I.C. 707=8 O.L.J. 481=A.I.R. 1921 Oudh 240.**

—Construction—Principles—Same meaning.

———*There is no general rule that same meaning must be given to an expression in every part of a document.*

There is no such rule of general application that the same meaning ought to be given to an expression in every part of the document in which it appears. A difficulty or ambiguity may be solved by resorting to such a device, but it is only in such cases that it is necessary or permissible so to do. (*Lord Warrington of Clyffh.*) JOHN LACHLAN MCGILLIVRAY WATSON *v.* B. E. L. HAGGITT. **107 I.C. 459=47 C.L.J. 295=29 M.L.W. 581=A.I.R. 1928 P.C. 115=56 M.L.J. 91.**

—Construction—Principles—Strict construction.

———*Contract—Power reserved to one party to vary terms of contract—Power must be strictly construed against that party.*

Where power is reserved under a contract to one of the contracting parties to vary the terms, the power should be very strictly construed and the indulgent party should not be allowed to travel beyond the plain words of authorisation. (*Seshagiri Aiyar, J.*). A. S. VENUGOPALA AIYANGAR *v.* SOUTH INDIAN RAILWAY COMPANY. **62 I.C. 602=13 M.L.W. 309=A.I.R. 1921 Mad. 621.**

—Construction — Principles — Subsequent additions.

———*Property conveyed clearly defined—Subsequent errors do not affect prior definition.*

As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed any subsequent erroneous addition will not vitiate it. *Llewellyn* v. *Jersey*, 11 M. & W. 183 and *Meller* v. *Wamsley*, 2 Ch. 164, *Foll.* (*Walmsley and B. B. Ghose, JJ.*). DARAPALI SADAGAR *v.* NAJIR AHMED. **77 I.C. 1030=50 Cal. 394=A.I.R. 1923 Cal. 669.**

DEED — Construction — Principles—Subsequent additions.

———*Later clause destroying obligation created by earlier one should be rejected—But if later clause merely qualifies earlier one both should be read together.*

If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause is to be rejected as repugnant and the earlier clause prevails. (1843) 5 Man. & C. 736, *referred.*

But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole. (1877) 6 C. D. 544, *referred.*

In the latter case there could be no question if the later provision of the deed were introduced by the word "but" or the words "provided always nevertheless," or the like. But there is no necessity to find any such words. If a later clause says in so many words or as matter of construction that an earlier clause is to be qualified in a certain way, effect can be given and must be given to both clauses.

Where the first clause provides that in consideration of a certain sum payable in certain instalments the contractor will furnish certain materials and perform certain services and the second clause says that in a certain event that sum is not to be paid, that the agreement is to be at an end and payment is to be made only for labour expended, the operation of the first clause is qualified by the second clause. Where there is a third clause whose effect is to make the certain sum mentioned in the first clause an estimated sum whose accuracy is to be tested and controlled by taking the accounts for which provision is made in the third clause, the first and third clauses can be read together and the intention disclosed by the deed as a whole can be given effect to. (*Lord Wrenbury*). FORBES *v.* GIT.

A.I.R. 1921 P.C. 209.

—Construction—Principles—Terms of deed.

———The intention of a donor is to be ascertained by reading the terms of the deed as a whole, and giving to them the natural meaning of the language used. (*Sir Lancelot Sanderson*). AMJAD KHAN *v.* ASHRAF KHAN. **116 I.C. 405=6 O.W.N. 483=33 C.W.N. 753=1929 A.L.J. 571=31 Bom. L.R. 809=56 I.A. 213=30 M.L.W. 91=4 Luck. 305=A.I.R. 1929 P.C. 149=57 M.L.J. 439.**

———*Ananthakrishna Aiyar, J.*—In construing the terms of deed, the question is not what the parties may have intended but what is the meaning of the words which they used: A.I.R. 1917 P.C. 23, *Foll.* (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). TIRUPATHI NAICKEN *v.* VENKATASUBBA NAICKER. **112 I.C. 243=28 M.L.W. 819.**

———*Common words of style must be given their proper meaning.*

Common words of style used in conveyance of any sort, may be, and often are words of surplusage, but when they are, not words of surplusage, they must be given the proper effect of their own meaning. (*Lord Dunedin*). SATYA NIRANJAN *v.* RAM LAL. **86 I.C. 289=29 C.W.N. 725=27 Bom. L.R. 753=23 A.L.J. 712=6 P.L.T. 42=21 M.L.W. 289=4 Pat. 244=52 I.A. 109=A.I.R. 1925 P.C. 42=48 M.L.J. 328.**

DEED—Construction—Release.

———Courts will look at the substance of the transaction and not merely at the form of the deed for the purpose of determining whether a certain deed is liable to stamp duty as a transfer of mortgage or as a mortgage. (*Mookerjee and Rankin, JJ.*). BANK OF BENGAL *v.* WILLIAM ARRATOON LUCAS. **81 I.C. 471=51 Cal. 185=28 C.W.N. 497=41 C.L.J. 1=A.I.R. 1924 Cal. 578.**

———*Endorsements—Intention of parties must be gathered only from recitals in document—Interpreting one deed by recitals in another is not safe.*

In construing Pharmanas and grants great weight ought to be attached to the actual words used in the grant than to an endorsement which is brief and simple and may not fully express the intention of the grantor. In interpreting deeds and contracts the intention of the parties to the document should be gathered only from the recitals in the document to which they are parties and not from what they said or did before the document was executed.

It is not a safe principle to interpret one document by referring to the recitals in another document. But where the Court has given a definite meaning to certain expressions, that meaning should be applied to such expressions in other cases. (*Phillips and Devadoss, JJ.*). JAGGA ROW *v.* GORI BIBI. **72 I.C. 789=17 M.L.W. 521=1923 M.W.N. 347=A.I.R. 1923 Mad. 545.**

———*Document must be construed on its own terms.*

The meaning and legal effect of a document is to be determined on its own terms alone. (*Schwabe, C.J. and Wallace, J.*). BYSANI MADHAVA *v.* KRISHNASAMI CHETTY. **72 I.C. 987=16 M.L.W. 743=A.I.R. 1923 Mad. 71.**

—Construction—Recitals.

———*Recitals in, are evidence.*

Recitals in a deed are evidence. **44** C. 186 P.C., *Rel. on.* (*Stuart, J.*). SITA RAM *v.* REVA RAM. **71 I.C. 390=A.I.R. 1923 All. 366.**

—Construction—Release.

———*Gaddi Nashin not conversant with customs and intending to prosecute his studies—Deed executed returning powers to his Guru for good management—After acquiring full literary qualifications and qualifications for management intention to come back—Deed was held not to be one relinquishing his rights of the Gadi.*

A Gadi Nashin Mahant executed a document with the intention that there should be no ill-consequence to the mutt as he was not conversant with the custom and had no insight into the management of the properties pertaining to the Gadi. It stated that on account of the affairs of the Gadi he could not prosecute his studies well. It further provided as follows: "It is also my intention that I should sever my connection with it and pass my days for sometime out station and prosecute my studies and acquire the qualification of Gadi Nashin Mahanth. Therefore, I return to my Guru *G.* all the powers which I had acquired for good management of the Gadi and the property appertaining thereto." My Guru shall have the right to exercise at present and also in future all the powers which he used to exercise before as Gaddi Nashin Mahanth. I shall have no objection till I acquire full literary qualifications and the qualifications to make management and those of a Fakir (ascetic) as required for the Gadi."

Held: that the executant had no intention of laying down the office entirely. He was not retiring altogether with the expectation that if he were

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to return he might be fortunate enough to be re-appointed Mahanth. The document indicated that he was absenting himself for a time and that he was for the time appointing a delegate to act for him in his duties during his absence. (*Lord Atkin*). BASDEVA NAND GIR *v.* SHAUTANAND GIR. **120 I.C. 49=50 C.L.J. 513=30 M.L.W. 1032=A.I.R. 1929 P. C. 266=57 M.L.J. 771.**

—Construction—Religious Endowment.

——*Absolute debutter or imperfect debutter—Surplus profits to go to Deity—Absolute debutter is intended.*

Where a deed of endowment provides that the surplus profits after performance of the *sheba*, should be acquired by the "Iswar Jee" and there was a marked dissociation made between this and other secular properties.

Held: that there was an absolute debutter in favour of the Deity named. (*Woodroffe and Suhrawardy, JJ.*). MANMOHAN GHOSE *v.* SIDHESWAR DUBAY. **76 I.C. 213=27 C.W.N. 218=A.I.R. 1923 Cal. 177.**

——Shebait—*Order of succession cannot be altered unless power is reserved.*

Unless the donor makes a reservation to alter the order of the devolution of the office of *shebait* laid down in the deed he has no right to do so. The *shebait* appointed contrary to the order laid down has no right to sue for arrears for rents of the debutter property. (*Woodroffe and Cuming, JJ.*). GOURI KUMARI DASI *v.* RAMANIMOYI DASI. **70 I.C. 175=50 Cal. 197=26 C.W.N. 920=A.I.R. 1923 Cal. 30.**

——*Lands dedicated to deity for conduct of worship by certain Archaka—Deed concluding with words that Archaka and his descendants shall enjoy lands—Gift is to deity and Archaka cannot appropriate surplus income.*

A document was addressed to the god and dedicated land to the god as "maniam for conducting your daily naivadyam and deeparadanai of Sri Swamivaru by Archaka . . ." The concluding words of the grant are "so he shall cultivate the same every year and use the produce thereof; he, his sons and grandsons in succession shall enjoy the same for ever and render the daily naivadyam and deeparadanai of Sri Swamivaru and live happily."

Held: that the archaka is not the donee, but is only to carry out the objects of the gift. The surplus income should revert to the deity and cannot be appropriated by the archaka.

It would be a dangerous proposition to lay down that, if the trustees of religious trusts have for many years been applying the income to their own personal use, the trust-deed must be construed in the light of such conduct. (*Abdur Rahim and Moore, JJ.*). SRINIVASACHARYULU *v.* D. PRATYANGA RAO. **64 I.C. 816=30 M.L.T. 101=A.I.R. 1921 Mad. 467.**

—Construction—Sale or contract of sale.

——*Sale-deed—Test is whether parties intended present conveyance.*

For determining whether a document is a deed of sale or only an agreement to sell, the test is whether, according to the intention of the parties as expressed in the instrument there is a present conveyance of the property or only an agreement to create a further right. This intention has to be gathered from the language of the document as well as from the surrounding circumstances

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37 Mad. 480, *Foll.* (*Krishnan and Venkatasubba Rao, JJ.*). BALLIBOYANA YERRAMMA *v.* JAKANNAGARI RAMAPPA. **98 I. C. 729=24 M. L. W. 697.**

——Where the document was written upon ordinary plain paper bearing only an adhesive stamp of one anna on it, and the document was headed as *Boomi Vikraya Dasthaveju* and contained a statement that the properties are given this day for sale for.....and we have this day taken an earnest of Rs. 200, and it further stated: "We shall take out remaining amount in full and get registered at Kalyandrug."

Held: that the document amounted only to an agreement to sell and was not a sale deed. (*Krishnan and Venkatasubba Rao, JJ.*). BALLIBOYAMA YERRAMMA *v.* JAKHANNAGARI RAMAPPA. **98 I. C. 729=24 M. L. W. 697.**

——*Incorrect phraseology used by scribe should not be much relied upon.*

The fate of a document cannot be determined upon an incorrect phraseology used by the scribe. In order to decide whether the instrument is a mere agreement to sell or a conveyance, all the terms of the document must be looked to. (*Shadi Lal, C. J. and Harrison, J.*). LACHHMAN DAS *v.* BHOJA RAM. **84 I. C. 865=6 L. L. J. 554=A. I. R. 1925 Lah. 284.**

——*Transfer of Property Act, S. 54—Question must be decided from deed as a whole.*

The fact that a deed is described as a sale deed and stamped as such and contains a statement that the executant has made an absolute sale of the property in suit, is a strong point in favour of the view that a sale was made but is not conclusive. The Court should look to all the covenants in the deed and see whether the intention of the parties as expressed in the deed was to effect an immediate transfer of proprietary right in favour of the vendees. (*Daniels and Lyle, A. J. Cs.*). BISHESHAR DAYAL *v.* MST. HAR RAJ KUAR. **66 I. C. 622=8 O. L. J. 346=A. I. R. 1921 Oudh 248.**

—Construction—Sale or Gift.

——"Rajinama" *and* "K buliyat" *whether conclusive evidence of sale depends upon facts of each case.*

The question whether a rajinama and *kabuliyat* are conclusive evidence of sale depends on the facts of each particular case. 22 Bom. L.R. 140 and A.I.R. 1925 Bom. 402, *Ref.* (*Madgavkar, J.*). SHIVAJI SHESHGIR KULKARNI *v.* CHANNAVAKAM BASANGAVDA. **32 Bom. L.R. 687=A.I.R. 1930 Bom. 292.**

——*Mortgagor creating further charges—Mortgagee rights sold—Sale referring to rights sold by terms* "Haq Murtahini"—*Both Mortgage and further charges pass by sale.*

S executed a usufructuary mortgage in favour of Y and subsequently by two other deeds created further charges on the same property in favour of Y. The mortgagee rights of Y were then purchased by another man as "*Haq Murtahini*" and no reference was made at the time of sale to the further charges.

Held: that the rights which were purchased included both the mortgage and the further charges. There was no need that any specific mention should have been made of the existence of the further charges they being already included in the term "*Haq Murtahini*": A.I.R. 1922 All. 174 (F.B.), *Rel. on.* (*Gokaran Nath Misra and Pullan, JJ.*). RAHMAT ALI *v.* LUCHHMAN PRASAD. **117 I. C. 403=5 O. W. N. 1041=A.I.R. 1929 Oudh 40.**

DEED—Construction—Sale or Gift.

———*Contract Act, S.* 35.

Where a deed mentioned the sum and the rate of interest and the period for payment and further recited: "If for any reason we fail to pay the amount during the stipulated time then in lieu of the aforesaid sum the land is sold to you for the aforesaid amount in full satisfaction."

Held: the deed evidences contingent sale of the kind contemplated in Ch. 3 of the Indian Contract Act. It is an actual sale, subject to the condition that it is not enforceable if the executant pays a certain sum within a certain time. If he made that payment, the sale would be void under S. 35 of the Act. If he did not make that payment, the sale was one which became enforceable by law under the same section. (*Fawcett and Madgavkar, JJ.*). ASVATH *v.* CHIMABAI. **91 I.C. 330= 27 Bom. L.R. 1246=A.I.R. 1926 Bom. 107.**

———*Oudh Laws Act* (1876), *S.* 9—Hiba-bil-ewaz *cannot be construed as sale.*

It is not competent for the Courts of law to thwart the express intention of the parties and to convert a transaction of *hiba-bil-ewaz* into one of sale so as to attract to it a claim for pre-emption under the Oudh Laws Act. (*Wazir Hasan and Raza, JJ.*). BASHIR AHMAD *v.* MT. ZUBAIDA KHATUM. **92 I.C. 265=1 Luck 83=29 O.C. 108= 3 O.W.N. 105=A.I.R. 1926 Oudh 186.**

———*Question whether property or right to sue is sold should be decided on the merits of each case.*

The question of whether a transaction which purports to be sale is a genuine sale of immovable property or merely the sale of a right to sue, is frequently a difficult one to decide, and every case must be settled on its own merits. (*Kendall and Pullan, A.J.Cs.*). NAZIR HASAN *v.* MATIN-UZ-ZAMAN. **11 O.L.J. 672=A.I.R. 1925 Oudh 299.**

———*Easement—Right of way—Sale-deed describing southern boundary of the land conveyed as pathway to be reserved—Vendee is entitled to right of way on the land forming southern boundary though no pathway might actually have been set apart by vendor.*

Where in a sale-deed the southern boundary of the site conveyed was described to be "pathway 18 feet in breadth which I am going to set apart".

Held: that the vendee was entitled to an indefeasible right of way on the land which formed the southern boundary, though no pathway might have been actually set apart by the vendor. (*Venkatasubba Rao, J.*). KUPPAKKAL *v.* MATHAN CHETTIAR. **82 I.C. 430=A.I.R. 1924 Mad. 834= 47 M.L.J. 477.**

———*Clause in sale-deed of a portion of village expressly reserving certain* khudkhasht *land rent free to vendor and his successors in perpetuity—No indication of reserving only a life-interest or a tenant's right in the land—Vendor retains his entire interest in the land.*

Where the clause expressly reserved certain *khudkhasht* land, rent or revenue free to the vendor and her successors-in-interest, in perpetuity and did not purport to create or reserve only a limited interest, therein, or otherwise limit the scope thereof by merelyreserving a tenant right in the same and where there were no words in the deed which could be construed as granting only a lease of the land or creating a mere tenant right, and where there was nothing to prevent the parties to the deed from inserting appropriate words to show that the reservation was intended only to carve out the status of a permanent tenant with the incident of heritability attached to it, and not to leave the entire interest of a proprietor intact.

DEED—Construction—Sale or lease.

Held: that the reservation must be taken to be of the entire interest which the transferor could otherwise have passed to the transferee and that the vendor remained the owner of the *khudkhasht* land. (*Kinkhede, A.J.C.*). TULARAM *v.* SUMRATI. **79 I.C. 621=A.I.R. 1924 Nag. 427.**

———Where the boundaries of an estate are not mentioned in a sale-certificate the purchaser takes what was comprised in that estate by its name, at the date of the sale. (*Mookerjee, C.J., Fletcher and Teunon, JJ.*). SECRETARY OF STATE *v.* NARENDRA NATH MITTER. **61 I.C. 91=32 C.L.J. 402.**

———A sold certain *khewat* land to B, there being no reference to the share in *shamilat* land. B sold it to C by a sale-deed which provided: "Whatever rights I had in the *shamilat* in respect of the above mentioned land all those rights now belong to the purchaser." Subsequently A obtained a declaration to the effect that no share in the *shamilat* land passed either to B or to C. C. then brought a suit against B for compensation out of B's *khewat* land.

Held: that B did not purport to sell any *shamilat* to B and therefore he was not liable to compensate C., (*Scott Smith, J*). MALIK KHAN *v.* BHOLA RAM. **60 I.C. 459= 4 L.L.J. 434.**

—Construction—Sale or lease.

———*Document called lease but on proper construction appearing to be sale—Court is not bound to hold it to be lease—Real nature of transaction must be looked into.*

Merely because a document is called lease or a will, although on its proper construction it appears to be something else the Court is not bound to hold it to be that which it calls itself. The Court must look to real nature of the transaction.

H, an occupancy tenant transferred his holding to *D*. On *H*'s deat,h *P* brought a suit for possession against D. *P*, contended that the deed of transfer executed by *H* was sale-deed and as such the sale was void, while *D* said that it was a perpetual lease and also put up plea of adverse possession, namely that *P* had not proved possession within 12 years.

Held: that the document purported to be a perpetual lease of an occupancy holding transferring all the rights of the occupancy tenant without any right of re-entry for ever to the lessee on the payment of a certain sum and an annual sum which was equivalent to land revenue due to Government. Nothing therefore was left to the lessor and the transaction was in fact a sale and not a lease. The transaction being void could not be challenged by *P*. A.I.R. 1928 Oudh 472; A.I.R, 1922 Oudh 81: A,I.R. 1921 Oudh 240; A.I.R. 1922 Oudh 42 *Rel, on.* (*Pullan, J.*). GOPAL SAHU *v.* NAND KUMAR SINGH. **123 I.C. 53=7 O. W.N. 438= A.I.R. 1930 Oudh 300.**

———Where a permanent tenure-holder leased in perpetuity a part of his tenure for a nominal rent and that rent in fact represented a proportionate amount of the rent payable by him in respect of the tenure.

Held: that the transaction was a sale and not a lease. (*Kulwant Sahay and Macpherson, JJ.*). SECRETARY OF STATE *v.* NATABAR MANGRAJ. **103 I.C. 435=6 Pat. 358=A.I.R. 1927 Pat. 254.**

———*Document purporting to be a lease cannot be held to be a sale.*

Where a lease deed conferred on the lessee very extensive rights including the right to sink a well or to construct a house and no right of re-entry was reserved.

DEED—Construction—Sale or Lease.

Held, that these are not sufficient grounds as between parties to the document for holding that the lease is not a lease but a sale. (*Daniels, J.*). INDER DEO RAI *v.* RAM CHARITTAR RAI.
74 I.C. 971=5 L.R.A. Rev. 28= A.I.R. 1923 All. 560.

———*Right to hold land for* 500 *years conveyed—Alienation is one of lease.*

Where a document purported to convey the right to hold a land for a period of 500 years *held* that the transaction is an alienation by way of a lease for a long term and not an out-and-out sale or mortgage. (*Shah, Ag. C. J. and Crump, J.*). CHATURBHAI LALLU BHAI *v.* MOTI BHAI BAPUJI.
77 I.C. 952=24 Bom.L.R. 1315= A.I.R. 1923 Bom. 146.

———*Court will look to terms used by parties—Rent more than Government revenue—Deed is a lease.*

In a transaction, called a *patta istimrari mathati* an annual rent was reserved, out of which the lessee was to pay the Government revenue the remaining portion being payable to the lessor. Except this rent the lessor reserved nothing.

Held: that the transaction must be regarded as a lease not giving rise to a right of pre-emption. The Court will look to the substance of the transaction and will not construe a document which is plainly a sale to be anything else, but it will not overlook the terms which the parties themselves used in describing the deed. (*Simpson, A.J.C.*). SAHEB BAKSH SINGH *v.* THAKUR DIN SINGH.
68 I.C. 966=9 O.L.J. 334=A.I.R. 1922 Oudh 229.

—Construction—Sale or mortgage.

———*Two contemporaneous deeds, one purporting to sell property, other giving right of repurchase to vendor or his lineal descendants—Transaction is not mortgage.*

Unless the property transferred can be considered to be no more than a security and the money advanced as a loan the transaction cannot be characterised as a mortgage. Therefore, if one deed conveys in explicit terms all right, title and interest of the vendor without any reservation of any kind and a second deed merely gives a right of repurchase to specified individual, namely the vendor and his lineal male descendants, the right is not one which can run with the land nor can it enure to the benefit of the legal representative of the vendor. It is no more than a privilege and the property affected by them cannot be considered to be mere security and hence transactions cannot be considered as a mortgage. (*Niamatullah and Bennet, JJ.*). GOBARDHAN *v.* RAGHUBIR SINGH. **1930 A.L.J. 799=A.I.R. 1930 All. 101.**

———*Where there is a conveyance and a promise to re-convey, on receipt of purchase money, the transaction is a sale and not a mortgage.*

Vendor executed a deed of sale of immovable property, simultaneously with an *ekrarnama*, by which the purchaser agreed to take back the agreement and return the deed on payment of purchase money by the vendor at any time. The heirs of the seller, brought a suit to redeem the property, before the expiry of the limitation period of sixty years, on the ground that the transaction was a mortgage.

Held: that the transaction was an absolute sale and not a mortgage: 12 All. 387 (P. C.). *Rel. on.* 22 All. 149 (P. C.), *Dist.*; A.I. R. 1916 P.C. 49, *Ref.* (*Suhrawardy and Garlick, JJ.*). SISIR KUMAR *v.* NARAN CHANDRA. **119 I.C. 803=33 C.W.N. 591= A.I.R. 1929 Cal. 548.**

DEED—Construction—Sale or Mortgage.

———Where a deed purported to have transferred one-third of the holding in question to defendant in lieu of Rs. 500 spent by him on account of plaintiff.

Held: that the transaction was a sale and not a mortgage. (*Shadi Lal, C.J. and Agha Haider, J.*). ALI AHMAD *v.* KHAN MAHOMED. **120 I.C. 420= A.I.R. 1929 Lah. 833.**

———*Sale-deed an outright conveyance—Right of redemption expressly refused—Simultaneous agreement to reconvey if certain amount paid regularly as rent for five years—In default of any payment agreement to be void—The two documents constituted sale with right of re-purchaser and not mortgage.*

A conveyed certain land to *B* by deed of sale which was in its terms an outright conveyance and contained a clause expressly renouncing any right of redemption. At the same time *B* executed an agreement referring to the same land, that if *A* would annually pay to *B* certain sum as rent he may repurchase the land at any time within five years by paying the original price. There was also an express provision that default in payment of the rent would render the agreement of the resale void:

Held: that on the terms of the deeds the relation of debtor and creditor did not exist. *B* could not have sued for the recovery of his money. The two deeds purported to be an outright conveyance with a separate agreement to reconvey on certain conditions, and not to be a mortgage. (*Carr and Mya Bu, JJ.*). U THA MAUNG *v.* U AUNG MYAT GYOW. **117 I.C. 566=A.I.R. 1929 Rang. 39.**

———*Two documents executed almost simultaneously—One a deed of sale and another an agreement to re-sale—Surrounding circumstances and intention must be looked to for deciding whether they constituted a mortgage.*

When the question with reference to two documents, *e.g.*, *A* and *B* executed almost simultaneously, one purporting to be a sale and the other an agreement to re-sell, is, whether the transaction is a mortgage or whether it is merely a sale with an agreement to repurchase, the case has to be decided on the instruments and the language employed in them having regard to the surrounding circumstances. No oral evidence is admissible to prove the real meaning or intention of the parties and not even the subsequent conduct of the parties can be looked at or regarded for the purpose.

Where it was found that at the time of execution of the documents *A* and *B* the property was impending sale, that it was sold under the first document *A* for comparatively low price, that the vendors under *A* were plaintiffs and one *P* a prior mortgagee while the persons who were entitled to the benefit of the contract under *B* were only the plaintiffs, that the actual possession of the property was only with the vendors even before the execution of a muchilika by plaintiff in favour of the defendant the opposite party, that there was no evidence of any bargaining for the price of the property, there was no reliable evidence with regard to the inspection of the property or the examination of the title-deeds before concluding of the transaction, that the creditor while speaking of the amount paid always used the expression "advance the amount" and it was further found that the document *B*, namely the agreement to re-sell, provided after the expiration of the said period you will claim no right or privilege whatever to this agreement or to the properties detailed below and I shall be in undisputed possession of the said properties,

DEED—Construction—Sale or Mortgage.

Held: that the only conclusion that would be in consonance with what may be regarded as the real intention of the parties was that the transaction was only a mortgage and that the sale was merely by way of security for the amount that was advanced. (*Srinivasa Ayyangar and Reilly, JJ.*). SUTHARSANA *v.* SAMARAPURI. **110 I.C. 837= 1928 M.W.N. 634=A.I.R. 1928 Mad. 690.**

———Under a document which purported to be a sale deed the transferee was put in possession by a decree of Court on payment of the amounts mentioned in the document and which the transferee had undertaken to pay. No time for redemption was fixed, nor was any amount fixed as payable on redemption.

Held: that the transaction did not amount to a mortgage. (*Devadoss, J.*). MAHANTHAYA *v.* NANDIAPPA HEDGE. **99 I.C. 685= A.I.R. 1927 Mad. 1081.**

———*Stamp paper used is not sufficient evidence—Relation of real value to the consideration should be considered.*

The fact that the stamp paid on the document is one that was correct for a sale deed under the Indian Stamp Act is not in itself conclusive. The main thing to be considered is the terms of the document itself and the surrounding circumstances so far as they appear in evidence and are relevant in order to determine whether the real intention of the parties in executing a document was to enter into a mortgage transaction or a sale transaction. One of the main tests in construing a deed is the relation of the consideration mentioned in the document to the real value of the property transferred, and if the former sum is grossly inadequate, then it affords an indication that the vendor did not intend to sell the land out and out. (*Fawcett and Madgavkar, JJ.*). ASVATH *v.* CHIMABAI. **91 I.C. 330=27 Bom. L. R. 1246= A.I.R. 1926 Bom. 107.**

———*Agreement by vendee to reconvey the property sold on payment of a fixed sum is not in the nature of a mortgage but a mere agreement to reconvey.*

Where a document executed by the vendee in favour of vendor contained a postcript to the effect: "There is no rent for the house and no interest for the sum. You should not require account of rent and I shall not require interest for money. I shall recover and enjoy rent in lieu of interest. You should pay me Rs. 2,000 as per term as loan without interest."

Held: that the nature of the document was not of mortgage but was merely of an agreement to reconvey. (*Fawcett and Madgavkar, JJ.*). VAMAN *v.* CHANGI. **91 I.C. 360=49 Bom. 862= 27 Bom. L. R. 1261=A.I.R. 1926 Bom. 97.**

———*Sale for a period of fifty years was held to be a mortgage.*

A document purporting to be a sale of land for 50 years on condition of its return after that period was held to be a mortgage. (*Walmsley and B. B. Ghose, JJ.*). DURGA CHARAN MAJI *v.* PORESH BEWA. **76 I.C. 336=A.I.R. 1925 Cal. 105.**

———*Mortgage without possession—Subsequent transfer of possession to mortgagee—Burden of proving that the transaction is an outright sale is on the person alleging it.*

When land is mortgaged without possession and possession subsequently passes to the mortgagee, the burden of proving that the transfer in which possession was given was an outright sale lies on the person alleging it. But in considering whether that burden has been discharged all the

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circumstances of the case must be borne in mind including the conduct of the parties. 5 L.B.R. 40, *Foll.* (*Rutledge and Brown, JJ.*). A. T. A. R. M. M. CHETTY *v.* MD. KASIM. **90 I.C. 1011= 3 Rang. 367=A.I.R. 1925 Rang. 377.**

———One of the two documents purported to be a sale-deed by the plaintiff to the defendants for Rs. 1,200. The other document purported to be an agreement by which the plaintiff was to pay the defendant Rs. 125 per annum for ten years and on such repayment the defendant was to execute a deed of resale, and in default of payment the annual instalments were to carry interest and if the plaintiff failed to pay off the money he should not have any right left in the property.

Held: that these two documents taken together constituted a mortgage and not a sale. (*Marten and Fawcett, JJ.*). SANDU VALJI *v.* BHIKCHAND SURAJMAL. **75 I. C. 118=47 Bom. 621= 25 Bom. L. R. 381=A. I. R. 1923 Bom. 473.**

———The question whether a transaction is a mere mortgage in the form of sale must depend upon the intention of the parties which may be found in the deed itself or gathered from the circumstances attending the transaction in each case. (*Chatterjee and Panton, JJ.*). MADHAB CHARAN DAS *v.* RAJANI MOHAN DAS. **64 I. C. 583. (Cal.).**

—Construction—Surety bond.

———*Entire property made security for periodical payments—Every bit held to be liable for payment of whole.*

Where the entire property is made security for the periodical claims that are to accrue from time to time, the presumption is that from time to time a portion of the security would be sold to enable realization of the periodical claim. Every bit of the secured property becomes liable for payment of the whole, and there is no reason for claim to abate in proportion to the extent of the property previously sold. (*Mukerji and Bennet, JJ.*). AHMAD HUSAIN *v.* TAHIR HUSAIN. **123 I. C. 97= A. I. R. 1930 All. 475.**

———*Liability of surety for money received by* mukhtar *in virtue of his office* "*as* mukhtar"*—Money received by* mukhtar *contrary to directions—Surety was liable—Contract Act, S.* 128.

Money entrusted to the *mukhtar* as *mukhtar* but received contrary to directions in *mukhtarnama* is money received "in virtue of his office" as *mukhtar.*"

A surety for a *mukhtar* appointed by the Court of Wards executed a surety bond, that the *mukhtar* will "account for, render and deliver all moneys, securities for money and property whatsoever which he may receive or be entrusted with by virtue of his office." The *mukhtar* withdrew from the treasury certain money deposited for payment to the Court of Wards contrary to the directions in the *mukhtarnama* not to receive any money payable to the Court of Wards.

Held: that the money was received by the *mukhtar* in virtue of his office as *mukhtar* making surety liable for the amount. (*Bennet, J.*). ZAKI HUSAIN *v.* DEPUTY COMMISSIONER OF GONDA. **115 I. C. 138=A. I. R. 1929 All. 687.**

———A surety bond must be construed strictly. (*Marten, A. C. J. and Crump, J.*). JAYAPPA *v.* SHIVANGOUDA. **107 I.C. 710=52 Bom. 72= 30 Bom. L. R. 19=A. I. R. 1928 Bom. 42.**

———*A surety bond should be interpreted in favour of surety.*

The terms of a surety bond should be interpreted in a manner favourable to the surety or guarantor;

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as the case may be. (*Page and Graham, JJ.*). MUHAMMAD YUSUF *v.* RAM GOVINDA OJHA. **109 I.C. 538=55 Cal. 91=A.I.R. 1928 Cal. 177.**

—Construction—Surrounding circumstances.

———The terms or expressions in a deed or document, used by a layman not acquainted with legal or technical terms must be interpreted with reference to surrounding circumstances.(*Bhide, J.*). ABDUL LATIF *v.* RAHMATULLAH. **123 I.C. 533= A. I. R. 1930 Lah. 139.**

———*Intention must be seen.*

The principles of construction of statutes on which the Courts of Law act in construing instruments in writing—and a statute is an instrument in writing—are that in all cases the object is to see what is the intention expressed by the words used. But where the language is imperfect, and it is impossible to know what the intention is without inquiring further, the circumstances with reference to which the words were used should be looked to. (*Lord Atkinson*). ROYAL BANK OF CANADA *v.* JOSEPH SALVATORI. **107 I. C. 346= 47 C. L. J. 300=A. I. R. 1927 P. C. 272.**

———*Contract—To get away from plain terms of a contract there must be evidence and circumstances showing that parties intended to base their contract on something which was not incorporated in the contract —Evidence Act, S. 92.*

If you are to get away from the plain terms of the contract you have to read into it something which is not there, and in order to entitle you to read into it something, there must be a state of things which appears from the evidence from the circumstances, from the extrinsic surroundings, to have been assumed by the parties to have been the foundation or basis of the contract, so that if that basis fails the contract becomes unenforceable, you have to ascertain from the surrounding circumstances recognised by both the contracting parties what is the substance of the contract and then to ask the question whether the substantial contract needs for its foundation the assumption of the existence of particular state of things. (1863) 3 B. and S. 826, *Rel. on.*

A Muhammadan not being on good terms with his wife, who lived separate claiming maintenance an agreement was entered into between her and her brother-in-law whereby the brother-in-law promised to pay her certain amount per year for maintenance for her lifetime. Shortly after, the husband divorced her. In a suit for maintenance as per the terms of the agreement against the brother-in-law.

Held: that the divorce by husband did not put an end to the agreement and the lady was entitled to the maintenance. (*Odgers, J.*). ABDUL KHADAR *v.* LALU BI. **96 I.C. 900=24 M.L.W. 77= A.I.R. 1926 Mad. 932=51 M.L.J. 215.**

———*Evidence Act, S. 92, proviso 6—Circumstances surrounding a document may be proved only to make its meaning clear and not to prove it to be something else than what it purports to be.*

The language of the proviso is rather vague. It is true that evidence of the circumstances, surrounding a document is admissible; but it is admissible only for the purpose of throwing light on its meaning. It would not be permissible to consider the surrounding circumstances with a view to holding that a document which on the face of it is a sale-deed was intended to operate as a mortgage. There must be some limit to the suggestion that the surrounding circumstances can

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always be scrutinised so as to enable the Court to alter or change the nature of the document to something different from what it appears to be. Otherwise there could be no certainty as to the proper construction to be placed on a document which to all appearance is unambiguous. (*Macleod, C.J. and Coyajee, J.*). MARTAND TRIMBAK GADRE *v.* AMRITRAO RAGHOJIRAO DAMALE. **93 I.C. 924=49 Bom. 662=27 Bom.L.R. 951= A.I.R. 1925 Bom. 501.**

———In considering whether a particular interpretation is beneficial or not to a party, circumstances not appearing on the face of the deed may be taken into account. (*Lord Blanesburgh*). MA SA BON *v.* MA DA TWE. **84 I.C. 561= 20 M.L.W. 884=A.I.R. 1924 P.C. 233.**

———*Subject matter and circumstances attending its creation should be considered.*

In the construction of written or printed documents it is legitimate in order to ascertain their true meaning if that be doubtful, to have regard to the circumstances surrounding their creation and the subject-matter to which it was designed and intended they should apply. (*Lord Atkinson*). VENKATA SUBHADRAYAMMA *v.* VENKATAPATI RAJU GARU. **80 I.C. 807=48 Mad. 230= 5 L.R.P.C. 147=26 Bom.L.R. 786= 20 M.L.W. 298=1924 M.W.N. 607= 29 C.W.N. 57=35 M.L.T. 210= 52 I. A. 1=A. I. R. 1924 P. C. 162= 47 M. L. J. 93.**

—Construction—Two documents.

———*Two intimately connected instruments of conveyance—Evidence of parties to one found false with respect to one—Their evidence with regard to other should be approached with suspicion—Evidence—Document.*

Where two instruments of conveyance between the same parties are very intimately connected with each other, and from the evidence of the parties one of them is found to be false and fraudulent, the evidence of the parties with regard to the other should be approached with great suspicion and subjected to strictest scrutiny. The mere fact that the one was false and fraudulent transaction does not by itself prove that the other deed was also false and fraudulent, but it does throw upon the party a heavy burden to prove that the same was a *bona fide* document and not executed with a view to defeat or delay any claims of the creditor on the executant of the deed. (*Sir Bindo Mitter*). MOHAMMAD ALI MOHAMMAD KHAN *v.* MT. BISMILLAH BEGAM. **A.I.R. 1930 P.C. 255.**

———*Reilly, J.*—An interval of time alone is not sufficient to show that two documents represent separate transactions. (*Ramesam and Reilly, JJ.*). TIRUMALA CHETTY RANGAYYA CHETTY *v.* SRINIVASA RAGHAVACHARLU. **121 I.C. 753= 52 Mad. 300=1929 M.W.N. 93= 29 M.L.W. 329=A.I.R. 1929 Mad. 243= 56 M.L.J. 318.**

———In 1734 a notification was issued by the President and Governor of Fort Saint George for the erection and building of a town in Chintadripet and it contained an invitation to people to come and settle there. Some exemptions were made in the case of persons whose services were required for the temple in Chintadripet. In that *cowle* there were provisions for payment of certain fees to the Palayagars of Triplicane. In 1787 the Government gave a *cowle* under which the *cowledar* was authorised to collect a fee on each house situated in the said pattah of 2 panams per month

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and one panam on every hut as had hitherto been customary, likewise on all shops erected there one panam each per month.

Held: that the latter document cannot be read into the former. (*Devadoss and Jackson, JJ.*). G.R. ADEKESAVALU NAIDU *v.* C. S. B. LAKSHMANA AYYAR. **113 I.C. 36=A.I.R. 1929 Mad. 204.**

———*Mortgage and lease of the same date—Matters to be looked to for determining if they form one transaction explained.*

Matters, to which weight has often been given in determining whether transactions represented by two deeds, *e.g.*, a mortgage and a corresponding lease, were one or separate, are; Whether the documents were executed on the same day or the second very shortly after the first; whether they were registered on the same day, whether they refer *inter se* to each other and, if so, in what terms; whether there is interest named in the mortgage of an amount equivalent to the rent named in the lease; whether period of the two deeds are identical. 19 All. 496, *Foll.*

It may well be that in cases where dates, period, interest and rent are not identical the two deeds may yet be regarded as really one agreement evidenced by the first deed with certain extra condition having effect only for a limited period or in regard to a limited portion of the usufruct, etc., (20 All. 401 and 41 All. 399, *Ref.*). Even if the period covered by the mortgage-deed and the lease are not identical, the mortgage-deed may yet be regarded as the principal agreement the terms of which as to the manner of receipt of a part of the usufruct are valid by a duly registered lease. (*Kanhaiya Lal and Boys, JJ.*). BISHAMBHAR NATH *v.* FIRM BANSAL & CO. **95 I.C. 893=24 A.L.J. 641=A.I.R. 1926 All. 578.**

———*Mortgage by conditional sale referring to earlier one with possession, stipulating that both would be redeemed together—Both should be read together.*

Two mortgages were executed on the same property, the latter provided among other things "That just as the mortgaged property is liable for the money due under the mortgage deed, dated the 15th May, 1869, similarly the same property is and shall be liable for the money due under this deed, that if I, the executant, pay in one lump sum within five years from to-day in a fallow season in the month of *Jeth*, the money due under this deed and the mortgage money of the mortgage-deed as well as other amounts due, the mortgaged property shall be redeemed, otherwise the consideration of this deed and the mortgage money of the deed of mortgage shall be deemed to be the consideration money and this deed shall be deemed to be the sale-deed.

Held: that the mortgage deed of the 15th May, 1869, and later mortgage-deed of the 24th June, 1878 must be read together and that the parties intended that the mortgagee should be treated as having held the mortgaged property from the 15th May, 1869, as a mortgagee in possession under a mortgage in the form of a mortgage by conditional sale. (*Sir John Edge*). MIRZA ABID HUSAIN KHAN *v* MT. KANIZ FATIMA. **80 I.C. 1019=29 C.W.N. 214=22 A.L.J. 284=34 M.L.T. 78=46 All. 269=19 M L.W. 703=51 I.A. 157=11 O.L.J. 427=27 O.C. 72=1924 M.W.N. 657=5 L.R.P.C. 212=A.I.R. 1924 P.C. 102.**

———*One cannot be construed with reference to recitals in the other.*

A document which is executed 1 year and 9 months after an earlier one cannot be treated as part of the same transaction with the earlier one and that the earlier document cannot be construed by a reference to the recitals in the later one. (*Shah, Ag. C.J. and Crump, J.*). NARU HARI GUJAR *v.* JAI DEOJI. **76 I.C. 265=25 Bom. L.R. 68=47 Bom. 431=A.I.R. 1923 Bom. 191.**

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—Construction—Will and authority to adopt.

———*Registration Act (III of 187"), S. 17—Document was construed to be not a will but only an authority to adopt requiring registration.*

A Hindu executed an unregistered document calling it a Will in favour of his wife to the effect:—"I have consented to your adopting a son at your pleasure and conducting the management of the estate in the best manner."

Held: the document is not a Will, but only a power to adopt, and as such ought to have been registered under S. 17 of the Indian Registration Act, 1877. (*Viscount Haldane*). JAGANNATH BHEEMA DEO *v.* KUNJA BEHARI DEO. **64 I.C. 458=26 C.W.N. 374=24 Bom. L.R. 600=30 M.L.T. 124=48 I.A. 482=44 Mad. 733=14 M.L.W. 398=1921 M.W.N. 713=A.I.R. 1922 P.C. 162=41 M.L.J. 648.**

—Construction—Will or Gift.

———*Where deed of gift indicates joint possession, donee is co-sharer and is entitled to resist pre-emption.*

Under a deed of gift a plot was transferred for planting groves but it was recited in the deed by the donor that the plot was a share out of fractional share of the mahal in his hand. The deed did not say that the donee would not be entitled to take part in the administration of the affairs of the mahal. The *khewat* also showed that donee was included among body of co-sharers with joint liability to pay Government revenue, no separate revenue having been assessed on his plot,

Held: that the donee was a co-sharer and entitled to resist suit for pre-emption. (*Sulaiman, Ag. C.J. and Sen, J.*). SHEO BALAK RAM *v.* MATHURA PRASAD. **122 I.C. 178=1930 A.L.J. 343=A.I.R. 1930 All. 117.**

———*Gift evidenced by mutation—Whether was made to donee as adoptive son or whether it was his description should be determined from document and surrounding circumstances.*

In the case of gifts evidenced by mutation Court has to decide after considering the document and surrounding circumstances whether the adoption was the reason or motive for making the gift or bequest or whether the mention of the donee or the legatee as an adopted son was merely descriptive of the person to take under gift or bequest, and he was to take the property even though his adoption may not be valid. Subsequent statements by the donor cannot affect the question: A.I.R. 1924 Lah. 103, *Ref.* (*Shadi Lal, C.J. and Hilton, J.*). DAYA RAM *v.* HANS RAJ. **120 I.C. 793=A.I.R. 1930 Lah. 115.**

———*Document in question was will.*

A and *B* were joint brothers. On the death of *A*, *B* and *A*'s daughter's son *D* applied respectively for mutation of names in their favour. Subsequently an application was presented to the revenue Court in which *B* declared that his name may be entered against the property by right of inheritance during his life-time and after his death half the property may be entered in the name of *D* and the other half in the name of his daughter,

Held: that this application operated as will of *B*. A I.R. 1928 All. 641 (F.B.); 7 All. 163; 36 Cal. 149.

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Rel. on; 10 Cal. 792 (P.C.), *Ref.*; 33 Mad. 304, *Dist.* (*Dalal, J.*). DUDH NATH SINGH *v.* MT. MUNNA KUAR. **118 I.C. 662= A. I. R. 1929 All. 620.**

———*Hindu of Mitakshara School executing tamliknama making his two wives along with himself joint owners of his property—Tamliknama providing that neither he nor his wives could transfer share without consent of all—Shares not specified—Subsequently he executing another document purporting to cancel tamliknama—Tamliknama created tenancy-in-common and each was to get 1/3rd share—It could not be cancelled by subsequent document—Provision prohibiting transfer was absolute restraint on alienation within Transfer of Property Act, S.* 10.

A Hindu governed by the Mitakshara School of Hindu family executed a tamliknama whereby his two wives along with him were to be joint-owners in possession of his property. It was further provided that neither he nor his wives would have the right to transfer the property separately unless all combined to make such transfer. The document did not state specifically as to what share each was to get. Soon afterwards he executed a fresh document purporting to cancel the previous tamliknama.

Held: that the intention in executing the tamliknama was to create a tenancy-in-common with the wives and each of his wives were to get 1/3rd share, and he could not cancel the tamliknama by a subsequent deed.

Held further: that the provision prohibiting transfer was an absolute restraint within the meaning of S. 10 and so void; 23 Cal. 670 (P. C.), *Ref.*; 3 A.L.J. 621, *Rel. on*; 25 Cal. 869, *Dist.* (*Sulaiman and Kendull, JJ.*). GOMTI SINGH *v.* ANARI KUAR. **118 I.C. 152=1929 A.L.J. 880= A.I.R. 1929 All. 492.**

———*Test is whether power to revoke is reserved and time when document is to take effect.*

One of the essential tests for determining whether a document is a gift or a will is when the document is to take effect and whether a power to revoke it has been reserved to the author expressly or by necessary implication: 35 All. 337 (P.C.), *Ref.* (*Tek Chand, J.*). GANGA RAM *v.* MT. BIRJO. **111 I.C. 893=A.I.R. 1929 Lah. 143.**

———*Gift to a person possessing a particular character or relationship—Relationship failing—Onus is on donee to prove that gift is irrespective of relationship.*

Where a gift is made to a person who is described as possessing a particular character or relationship, the gift may be made to him absolutely as an individual, or it may be made to him on account of that relationship so that if the relationship fails, the gift cannot take effect. The onus is upon such a person to prove that the gift was made to him irrespective of the relationship. (*Shadi Lal, C.J. and Aga Haider, J.*). IBRAHIM *v.* MT. SADA-BIBI. **114 I.C. 334=10 Lah. 558= 30 P.L.R. 634=A.I.R. 1929 Lah. 20.**

———*Life-estate with powers of disposition can be created.*

There is ample authority in this country as well as in England for holding that there may be a life-estate with powers of disposition.

Where the adoptive mother entered into an agreement which provided "I have, therefore, henceforward given all the property belonging to my husband as per the schedule below, to my adopted son *S*, the said *S* shall therefore enjoy the said property with all the rights the remaining property shall be enjoyed independently by myself alone and that

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the property which remains after being utilised by me during my life-time shall be enjoyed after my death by the said *S*,"

Held: that the mother intended to reserve to herself a life-estate with full powers over the corpus during her life and as to whatever property was left the adopted son was to succeed. (*English and Indian case-law discussed*). (*Krishnan and Odgers, JJ.*). VENKATA CHANDIKAMBA *v.* VENKATA ROW. **105 I. C. 775=1927 M. W. N. 215= A. I. R. 1928 Mad. 39=53 M. L. J. 557.**

———*Declaration by depositor in Railway Provident Fund appointing a certain person to receive deposit after his death and due attestation as will—Declaration is a Will—Will—Construction.*

A person holding a deposit in the Railway Provident Fund filed a declaration in the following words: "I hereby declare the following to be the name and address of the person who in the event of my death, will be entitled to receive payment of my deposit in the Railway Provident Fund and I make this my Will so far as regards such deposit," and the declaration was duly attested by two witnesses,

Held: the document must be regarded as the Will of the deceased. It is quite true that freedom of the Will and ability to revoke on the part of the testator are two characteristics of a Will, but it cannot be said that the rules of the fund do more than put some limitation on those features and the limitation is not of such a kind as to prevent the declaration from being a Will. (*Walmsley and Chakravarti, JJ.*). KALISADHAN MITRA *v.* PRAFULLA CHANDRA MITRA. **95 I. C. 848= A. I. R. 1926 Cal. 1061.**

———*Gift of income of property is gift of corpus.*

A gift of the income of property without any limitation is a gift of the property itself. *Southmolton* (*Mayor, etc., of*) v. *The Attorney-General* (1854) 5 H. L. C. 1: *Mannox* v. *Greener*, (1873) 14 Eq. 456 and 41 M. L. J. 20, *Foll.* (*Odgers, J.*). VENKATACHARIAR *v.* PACHAYAPPA CHETTY. **92 I. C. 516=22 M. L. W. 698=1926 M. W. N. 106= A. I. R. 1926 Mad. 250.**

———*Revocability is test of a will.*

One of the tests to be applied, for the purpose of seeing whether the document is a will or not, is whether it is revocable. If the document is revocable, it must be construed as a will. (*Devadoss, J.*). SENGAMALAM *v.* LOGAMBAL. **86 I. C. 8=21 M. L. W. 45= A. I. R. 1925 Mad. 471.**

———*'Wasiat', use of—Does not necessarily imply a will.*

In constructing a document no part of it as far as possible should be left out as redundant. The mere use of the word 'Wasiat' cannot make a transaction a will if it was really intended that the property should vest in the donee immediately during the lifetime of the donor. (*Abdul Raoof, J.*). MT. DURGO *v.* PREM SINGH. **74 I C. 653= A. I. R. 1924 Lah. 196.**

———*Deed of gift—Right to recover compensation, whether assigned.*

Defendant sold two shops and in the deed of sale covenanted that in case of eviction by the Municipality the vendee would be entitled to refund of the purchase money. The vendee made a gift of the shops in favour of the plaintiff and the deed of gift contained the following clause: "The donee like the donor will be bound by all the terms and all the rights to realise rents, to do repairs, etc., which I had under this deed vest in the donee."

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Plaintiff was evicted from the shops by the Municipality and brought the present suit to recover the purchase-money from the defendant :

Held, that the right to recover compensation had not been assigned to the plaintiff under the deed of gift and that his suit must, therefore, fail. (*Abdul Raoof, J.*). MUHAMMAD SAID *v.* ABDUL ALI.

66 I. C. 256 (Lah.).

———*Annuity to two persons—On death of one, other gets proportionate amount, in absence of contrary intention of grantor.*

Prima facie an annuity to two persons should be construed to mean that on the death of one of them, the other should get a proportionate amount 23 Cal. 670 P. C., *Ref.*, but where there are indications of a contrary intention, the gift may be taken as a joint gift. 17 C. L. J. 87, *Ref.*

The testator who had been adopted into a wealthy family, was making provision for his natural father's family. He said "I have not been able to confer any special benefit on my natural father's family. Therefore my uterine brother Kunja Lal, if alive at the time of my death, would get from my estate Rs. 25 per month and on his death his sons would get the said amount as monthly maintenance from the estate for life.

Held, that so far as the sons were concerned, the gift was not intended for any particular person but to all the sons of his brother, namely, to a class, and the sons should be considered as a unit for the purpose of the gift. The gift was not to descend to the heirs of the sons but to enure only for their lives, and so no question of the heirs of one of the donees being deprived could arise in this case.

There was no indication that the intention of the grantor was to make a separate grant of a proportional sum in favour of each of the sons; and upon a construction of the whole document it must be considered that the grant was to the sons of Kunja Lal as if they were one grantee with right of survivorship *inter se*. 33 All. 41 and 33 All. 665, *Dist.* (*Chatterjea and Panton, JJ.*). HEMANTA KUMAR *v.* SUDHANSU GOBINDU.

62 I.C. 436=25 C.W.N. 262=A.I.R. 1921 Cal. 175.

———*Imperfect gift cannot be given effect to by being treated as a trust—Trust.*

There is no equity to perfect an imperfect gift, and a gift that has been intended to take effect by way of transfer, the Court will not hold the intended transfer to operate as a declaration of trust. *Milroy* v. *Lord*, (1862) 4 De G. F. & J. 264 and *Richards* v. *Delbridge*, (1874) L. R. 18 Eq. 11, *Foll.* (*Rankin, J.*). AMARENDRA KRISHNA DUTT *v.* MONIMUNJARY DEBI. **66 I. C. 586=48 Cal. 986=A. I. R. 1921 Cal. 148.**

———*Gift of income of property to charity without any limitation is gift of property.*

The gift of the income of a property to charity without any limitation is a gift of the property itself. *South Moulton Corporation* v. *Attorney General*, (10 Eng. Rep. 796) and *Mannox* v. *Greever*, (L.R. 14 Eq. 456), *Ref.* (*Abdur Rahim and Burn, JJ.*). VAITHINATHA AIYAR *v.* THYAGARAJA AIYAR.

68 I. C. 631=A.I.R. 1921 Mad. 563=41 M. L. J. 20.

———*Transfer of Property Act, S. 123—Gift of immovable property and actionable claim failing as regards former does not necessarily fail regarding latter.*

A deed purporting to be a deed of gift of immovable property and actionable claims, but failing as a gift of immovable property for non-compliance with statutory formalities, does not necessarily fail as a gift of the actionable claims also unless the

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gift of the latter can be regarded as conditional on the gift of the former being valid. 30 M.L.J. 62, *Foll.* (*Wallis, C. J. and Hughes, J.*). PERUMAL AMMAL *v.* PERUMAL NAICKER. **61 I.C. 461=44 Mad. 196=13 M. L. W. 69=1921 M. W. N. 5=A. I. R. 1921 Mad. 137=40 M. L. J. 25.**

—Construction—Will or settlement.

———A document was executed by a mother who was a widow, in favour of her son, which dealt with property to an extent of over three velis left to her by her husband under his will absolutely and recited that in respect of that, on account of the request made to her by her son for the benefit of his minor son and out of favour to himself and in consideration of the arrangement that he would not during her lifetime encumber or alienate the rights that would come to him in the property after her death, she on her side undertook to meet all her own expenses till her death out of the income and not to alienate the property. It directed that after the widow's death, the son and his heirs shall enjoy the property with all absolute rights. It further provided that if the widow failed to pay the kist on the property, the plaintiff shall pay and may recover from her out of her income, and that the pattah for the property shall be transferred to the plaintiff. The document was styled a settlement and registered.

Held: that from the tenor of the document it was not a will but a settlement and so subsequent transfer transactions between the parties should be, if possible, interpreted consistently with the document treated as a settlement: 33 Mad. 304; A. I. R. 1927 Mad. 197, *Rel. on*; A. I. R. 1924 Mad. 605; 10 Cal. 792, *Ref.* (*Wallace, J.*). VENKATASUBRAMANIYA IYER *v.* SRINIVASA IYER.

118 I. C. 110=A. I. R. 1929 Mad. 670.

———*Document should if possible be construed in that manner in which effect will be given to all directions.*

It is a well-established principle and rule of construction that a document should be construed if possible only in that manner or as being of that character in which it would be possible to give effect to all the directions contained in the document. If, regarded as a settlement it turns out that any of the directions in the document could not be possible of being given effect to, and if, regarded as a will, effect could be given to all the directions and there would be no difficulty whatever in carrying out the intentions of the maker of the instrument in any manner, then it follows that the construction that it is a will and not a settlement should be the one that is accepted. (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). PASUNGILIA PILLAI *v.* ISAKKIMUTHU PILLAI.

111 I.C. 22=A.I.R. 1928 Mad. 349.

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———*Document purported to be made* inter vivos *is ordinarily to be in favour of a particular defined person—But will comes to be made not in favour of defined person.*

It is common knowledge that nearly all, if not all, documents probably without a single exception, executed by persons with the intention that they should come into operation immediately or documents containing dispositions made or purported to be made *inter vivos* always happen to be in favour of certain particular defined persons. Even a will often comes to be executed probably in accordance with this practice in favour of some particular individual. But generally speaking, it is a testamentary document that

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comes to be made not in favour of particular persons but merely for the purpose of effecting the dispositions therein contained. (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). PASUNGILIA PILLAI *v.* ISAKKIMUTHU PILLAI. **111 I.C. 22= A.I.R. 1928 Mad. 349.**

——One conclusive test as to whether a document was intended to take effect *inter vivos* or not, would be to see whether any irrevocable interest is thereby created immediately in favour of some other person. The question can arise only in respect of documents where the property is directed to go to the donee after the death of the maker of the instrument. In the case of a will, as it speaks only from the death of the testator, the disposition could only begin to take effect from time to time. But a disposition *in presenti* can be made vesting property in a third person on the death of the maker of the instrument, the distinction being that the interest in the latter case, though it comes into possession after the death of the maker, vests immediately. It may also be useful in connexion with such a question to consider whether the interest that the maker of the instrument reserves to himself should be regarded as reserved or retained by virtue of the instrument itself or merely by reason of there not having been any disposition of the property. (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). PASUNGILIA PILLAI *v.* ISAKKIMUTHU PILLAI. **111 I.C. 22=A.I.R. 1928 Mad. 349.**

——*Most important test is to see whether power to revoke the conveyance is reserved.*

Although a document which is not a Will in form may yet be a Will, in substance and effect; but if an instrument is a deed in form, in order to hold that it is testamentary or in the nature of a Will, there must be something very special in the case, and unless there are circumstances which compel the Court to treat an instrument in the form of a deed as a Will, the Court will not do so.

The line between a Will and a conveyance reserving a life-estate is a fine one, and it would be hard to define; the easy and most important test to apply is to see whether the power to revoke is reserved or not. (*Curgenven, J.*). (GARAPATI) GANGARAJU *v.* PENDYALA SOMANNA. **98 I.C. 613=A.I.R. 1927 Mad. 197.**

—Construction—Words.

——Adha *and* urdha.

The words "*adha* and *urdha*" in the document conveyed the underground rights to the lessees including the right to work mines and extract coals. (*Jwala Prasad and Adami, JJ.*). RAMLAL KAVIRAJ *v.* SATYANIRANJAN CHAKRAVARTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

——"*Commercial terms.*"

(*Obiter*). The expression "commercial terms," as used in a deed is relative to the time and the place, the country and part of the country where the money is borrowed, the kind of security that is offered for the loan, the possibilities of realizing the security, the supply of capital and the opportunity of persons willing to lend for possibly a considerable time. It cannot be confined, as in England, to something connected with a publicly announced and official rate of interest for loans generally or to a current rate generally allowed upon the highest security in financial transactions, such as an issue of debentures or something regulated by the day to day supply of money and by facilities for short loans. The word "commercial" must be understood of a community which is not a commercial community and of transactions which no one

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would call mercantile, as a comprehensive but convenient term for such terms as can be arranged freely between borrower and lender under the circumstances of the particular case : A.I.R. 1919 P.C. 12, *Expl.* (*Viscount Sumner*). SUNDER MULL *v.* S. KINKAR SAHANA. **108 I.C. 337= 7 Pat. 234=55 I.A. 85=26 A.L.J. 364= 9 P.L.T. 203=27 M.L.W 461=1928 M.W.N. 242= 5 O.W.N. 430=47 C.L.J. 403=30 Bom. L.R. 793= 32 C.W.N. 657=A.I.R 1928 P.C. 64=54 M.L.J. 427.**

——"*Farokht.*"

"Farokht" cannot be held to mean "transfer" as it is inconsistent with the ordinary meaning of the word. (*Rafique and Piggott, JJ.*). SURAJ NARAYAN PRASAD *v.* RAM GHULAM. **76 I.C. 1050=45 All. 321=A.I.R. 1923 All. 361.**

——"*Fazendari.*"

The word "*Fazendari*" is used with reference to tenants holding under a private landholder to indicate sometimes an indefeasible right to hold in perpetuity on payment of a small quit or ground rent and sometimes any kind of tenure agreed upon between the parties. (39 Bom. 320, *Foll.*).

The term "Fazendar" cannot properly in its strict sense be applied to a lessee from Government.

Liability to disturbance by Government or to pay enhanced assessment makes description as 'perpetual' wrong. (*Fawcett, J.*). RAHIMTULLA *v.* HASAN ALI. **85 I.C. 1038=25 Bom. L.R. 1192= A.I.R. 1924 Bom. 212.**

——"*Hak, Hakuk.*"

The words "hak, hakuk", etc. do not increase the corpus of the grant but only purport to transfer all the rights in the subject-matter of the grant. 44 Cal. 585 (P.C.) and 45 Cal. 87 (P.C.), *Foll.* (*Jwala Prasad and Adami, JJ.*). RAM LAL KAVIRAJ *v.* SATYANIRANJAN CHAKRAVARTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

——"*Heirs*" *means both of male and female line unless otherwise restricted.*

It is plain according to every rule of interpretation that if you wish to limit the word "heirs" either to the male or female line, it is essential that you should do so in direct terms, or by necessary implication ; and in the absence of that limitation there is nothing where female inheritance is possible to prevent the female being an heir equally with the male. (*Lord Buckmaster*). SAFDAR ALI *v.* MIRZA MAKSUDALI BEG. **121 I.C. 229= 1930 A.L.J. 68=34 C.W.N. 208=31 M.L.W. 304= 13 N.L.J. 27=26 N.L.R. 119=32 Bom.L.R. 484= A.I.R. 1930 P.C. 41=58 M.L.J. 125.**

——'*La-aulad*' *means issueless.*

The word '*la-aulad*' in vernacular means issueless or without any sons or daughters. (*Mukerji and Niamatullah, JJ.*). NIRMAN BAHADUR *v.* FATEH BAHADUR SINGH. **1929 A.L.J. 1233= A.I.R. 1929 All. 963.**

——'Kul Rupia' *cannot be taken as referring to interest only.*

A mortgage deed provided among other things *aur jab ada karunga kul rupiya ada kiya karunga.*

Held : that the word '*kiya*' is superfluous, that the words *kul rupiya*, cannot be taken as referring to the interest only ; but that the real meaning of the sentence appears to be that the mortgagor would pay the whole money, that is to say, the mortgage money and interest, at one time. (*Martineau and Zafar Ali, JJ.*). LABHU RAM *v.* ABDULLA. **75 I.C. 183=A.I.R. 1923 Lah. 587.**

——"*Male heirs*" *in a deed do not import limitation—Under Indian Law the expression is ineffective.*

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The use of the words 'male heirs' in a Will do not import any limitation. According to the rule of construction in S. 84 of the Succession Act such an expression would be rejected as having no effect in absence of any indication of contrary intention. There is no reason under the Indian Law why a different effect should be given to that expression in a deed of family settlement. (*Lord Phillimore*). DADABHOY FRAMJI CAMA *v.* COWASJI DORABJI PANDAY.

94 I.C. 535=A.I.R. 1925 P.C. 306.

——"*Merchant*" *held to mean merchant in popularly accepted sense—*"*Assistant*" *held not* "*merchant.*"

A contract of sale provided that any dispute between the buyers and sellers who were commercial people should be referred to the arbitration of a "merchant." There was a dispute and it was referred to a person daily engaged in buying and selling the commodities contracted for as an assistant of a firm. The assistant was an assistant of some seniority with more responsible duties than many other assistants and was head of the department with wide discretionary powers.

Held: that he was not a "merchant" within the terms of the contract: *Hopkins and Co.* v. *Foukelmann*, 2 K.B. 948; *Gill's case*, 28 L. T. 589, *Ref.* (*Rankin, C.J. and Mukerji, J.*). OJAMSHEE PURUSHOTTAMDAS *v.* ABDUL RAHIM.

A.I.R. 1929 Cal. 705.

——"*On demand*"*—The phrase means only* "*immediately*"*—Demand is not necessary to create liability.*

Where it is provided that the mortgagor "will after the compound interest shall be due, upon demand pay to the mortgagee any interest which shall be capitalised hereunder and any interest which shall accrue due thereon."

Held: that this did not necessitate an express demand by the mortgagee for compound interest before any liability to pay it could be said to arise under the mortgage-deed. The words "on demand" do not necessarily mean that there must be an express demand. These words are merely equivalent to "forthwith" or "immediately." (*Fawcett, J.*). NADERSHAW SHERIARJI *v.* SHIRINBAI BAPUJI.

87 I.C. 129=25 Bom. L.R. 839=A.I.R. 1924 Bom. 264.

——"*Subject to.*"

The effect of the words "subject to" in a deed is to introduce condition or proviso. 7 Ch. D. 29; 2 Ch. D. 744 and 87 L.T. 547, *Foll.* (*Macleod, C.J. and Coyajee, J.*). SIMON REUBEN *v.* HAJI SHAIKH MAHOMED SHASTARY. **67 I.C. 433=24 Bom. L.R. 466=A.I.R. 1922 Bom. 404.**

——"*Surface*" *includes all land except mine.*

Surface includes all the land except the mine or the soil overlying the minerals. (*Jwala Prasad and Adami, JJ.*). RAMLAL KAVIRAJ *v.* SATYANIRANJAN CHAKRAVARTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

——Thavanai *in bill of sale was held to mean credit period—Limitation Act, Art.* 53.

The word *thavanai* was held to mean credit period and to place the suit for the price of goods sold and purchased within Art. 53 of the Limitation Act in the following circumstances:—In the bill for piecegoods purchased, sent by the vendor to the vendee, the following words were found at the top "debit interest at ¼ per cent. per mensem after 60 days *thavanai*." The question arose whether it was a credit sale or a cash transaction when the plea of limitation was set up as a defence to the suit for the money due, and it was held to be a credit transaction.

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Per Venkatasubba Rao, J.—The expression "*Thavanai*" has various meanings in various lines of business. Evidence is admissible under S. 98 of the Evidence Act to show the meaning it bears in the particular mercantile transaction in which it was used. When any such case is before the Court, the Court is bound to inform its mind not only by reference to well-known dictionaries but also by evidence of the meaning ordinarily given to it amongst those who use it. Even if the meaning of the word is a fixed period, Proviso 5 to S. 92 of the Evidence Act makes admissible oral evidence for the purpose of showing that by custom of a particular trade an incident not expressly mentioned in a contract is a term of that contract.

Per Jackson, J.—*Thavanai* is a colourless expression meaning only period. Proof *aliunde* is necessary for showing that it was used in a particular sense. (*Venkatasubba Rao and Jackson, JJ.*). K.M.P. R. N. M. FIRM *v.* M. SOMASUNDARAN CHETTY.

85 I.C. 299=48 Mad. 275=20 M.L.W. 981=A.I.R. 1925 Mad. 161=47 M.L.J. 844.

——"*Wilful*" *in* "*wilful acts and defaults*" *is used not as a definition but as description.*

The adjective "wilful" in "wilful acts or defaults" has evidently been used as a description and not as a definition. The idea intended to be conveyed is that the default is occasioned by the exercise of volition or as result of the non-exercise of will due to supine indifference, although the defaulter knew or was in a position to know that loss or harm was likely to result. The word does not necessarily suggest the idea of moral turpitude. The element of accident or inadvertence or honest error or judgment should also be eliminated. The default must be the result of deliberation or intent or be the consequence of a reckless omission. Wilful default therefore is indicative of some misconduct in the transaction of business or in the discharge of duty of omitting to do something either deliberately or by reckless disregard of the fact whether the act or omission was or was not a breach of duty: *Forder* v. *G.W. Ry. Co.*, (1905) 2 K.B. 562; *In Re City Equitable, Fire Insurance Co.*, (1925) 1 Ch. 407. *Ref.* (*Mears, C.J. and Sen, J.*). L. HUDSON *v.* OFFL. LIQUIDATOR, DEHRADEN MOSSOORIE ELECTRIC TRAMWAY CO. **121 I.C. 693=A.I.R. 1929 All. 826.**

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——*Document interpreted by Privy Council in certain way—Parties to document asking other relief in subsequent litigation—Interpretation is still binding on them.*

Where an agreement between the parties has once been interpreted in a certain way by the Privy Council the mere fact that in another litigation some of the parties ask for some other relief does not entitle them to ask the Courts to reconsider the document: A. I. R. 1927 Cal. 359 *Affirmed.* (*Lord Buckmaster*). HABIBULLAH SAHEB *v.* JANKI NATH ROY. **121 I.C. 236=51 C.L.J. 131=31 C.W.N. 313=31 M.L.W. 317=A.I.R. 1930 P.C. 38=58 M.L.J. 252.**

——*Memorandum of company and the powers thereunder to raise money on security of debenture relating to immovable property from Imperial Bank of India examined—Imperial Bank of India Act* (47 *of* 1920), *Sch. I, Part* 1, *sub-Cls.* (5) *and* (6).

Among the objects for which a company was "to raise money by the issue of shares preference, ordinary or deferred, debentures, debenture stock,

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bonds and other securities, and to invest the moneys so raised or any part thereof, upon any of the investments specified in this Memorandum." Upon the securities of the promissory notes executed by the company in favour of its directors who in their turn endorsed them in favour of the Imperial Bank of India, and also upon the securities of debentures issued by it in favour of the Imperial Bank creating charges upon all the company's undertakings, properties and assets including its uncalled capital, the company borrowed money from the Imperial Bank of India. The position as stated in one of the debentures was this: "The company in consideration of . . . now paid on loan to them by the Imperial Bank of India against certain securities authorised by Act 47 of 1920, do hereby as an integral part and collateral security for the said loan undertake to pay . . . "

Held: (1) on construction of the clause in "Memorandum" that the company was empowered to raise money by the issue of debentures and invest the same or any part of it;

(2) that the promissory notes were the original security and the other forms of security were when the loans were given collateral to that security so as to fall within the terms of Sch. 1, part 1, Cls. 5 and 6 of the Imperial Bank of India Act. (*Costello, J.*). IMPERIAL BANK OF INDIA LTD. *v.* BENGAL NATIONAL BANK LTD. **57 Cal. 328= A.I.R. 1930 Cal. 536.**

———*Contract of guarantee—Mortgage by debtor—Creditor incurring loan for advancing it on mortgage by debtor—Loan incurred by creditor on sureties guaranteeing payment by his debtor—Contract of guarantee to certain extent for sum ultimately found due from debtor—Suit against sureties without suit on mortgage held not maintainable till debtor's property sold and found insufficient—Contract Act, S.* 126.

One *G* who was the owner of a house and very considerable landed properties was in financial difficulties and needed a loan of 40 lacs of rupees. *S* borrowed the same from a bank, for the accommodation of said *G* and the latter on receipt of the sum executed a mortgage in favour of *S* for the purpose of securing the loan of 40 lacs, undertaking to pay interest at the rate of six per cent. per annum by equal monthly instalments with quarterly rests until payment. *S* had agreed to obtain the loan amount at the instance of three persons *A*, *P* and *C* who guaranteed to *S* the payment by *G* of the said sum of 40 lacs to the limit of their aggregate liability to the extent of 18 lacs of rupees each being liable for six lacs of rupees. The deed was the deed of continuing guarantee. The deed recited among other things "that within the aforesaid limit of liability this guarantee shall extend to and be applicable to the whole debt that shall ultimately be due to you from the said *G* in respect of such advance as aforesaid "and not merely to so much whereof as shall be co-extensive with our aforesaid maximum liability thereunder." It was also agreed between *S* and the sureties that should the common liability be less than the said maximum aggregate sum of 18 lacs of rupees, the share due from each one of them, in respect thereof should be in strict proportion to the individual liability of each of the appellants as referred to above. Payment was demanded and *G* having failed a notice was served on the sureties of the demand and subsequently a suit was filed.

Held: that construing the terms of the guarantee as a whole to liability under the guarantee did

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not attach until the creditor had pursued their remedies under the mortgage and the proceeds of the sale were proved to be insufficient to satisfy *G's* outstanding indebtedness to *S* in respect of the loan. (*C. C. Ghose and Page, JJ.*). CARRLARASUS PHILLIPS *v.* ALFRED ERNEST MITCHELL.

50 C.L.J. 303=A.I.R. 1930 Cal. 17.

———*Settlement-deed held to have intended to bind parties permanently for future.*

Certain Mahomedans proceeded to take out the "duldul" procession, but as it was likely to result in serious trouble the authorities collected the leaders of the various communities and effected a settlement which provided: "As often Hindus and Mahomedans and Aryasamajists carry out new sorts of processions inside the *qasba* which hurt the feelings of some party, so we agree that we will not carry out any new procession without applying beforehand to the District Magistrate and obtaining his sanction thereto. There is no necessity of taking sanction for ancient processions."

Held: that the agreement was not merely intended to settle the immediate trouble, but was intended to settle permanently the trouble that had been arising. (*Boys and Bennet, JJ.*). BABU RAM SINGH *v.* SUBHAN MOCHI.

116 I.C. 302= 1929 A.L.J. 1083=A.I.R. 1929 All. 519.

———*Property given to A with power of settlement in favour of sister's sons of A to be taken as Abhiman Putra—A executing a deed of settlement in favour of V one of the sister's sons declaring him to be her Abhiman Putra and giving all rights in the property to V—Draft settlement alleged to be prepared in favour of N younger brother of V—V performing funeral obsequies of A according to the settlement—Settlement deed produced by assignee of V—Settlement was in V's favour not as* benamidar *for N.*

The property originally belonged to one *T* who gave it to *A* by will authorising her to execute a settlement deed in favour of such of *A's* younger sister's sons as she might take as Abhiman Putra before her death. *A* in pursuance of the power thus delegated executed a deed of settlement in favour of *V* her sister's son. The deed provided: "that I have taken you as my Abhiman Putra pursuant to the will of *T*. As I have taken you (that is *V*) as Abhiman Putra and as I have affection for you and as you have to protect me and perform my funeral ceremonies when I die I hereby give you the properties mentioned in the schedule. You shall own and enjoy the said property with all rights of deed and gift, etc. I have put you in possession of the said property and you shall pay the Sarkar kist." It was alleged that in the draft settlement instead of *V*, *N's* his brother's name was inserted. *A* a few days before her death went to *V's* house and died there. The settlement deed was produced by the assignee of *V*, the obsequial ceremonies were performed by *V*. A suit was brought by the assignee of *V* for the possession of the property. *N* contended that the settlement deed was *benami* in *V's* name but really for *N*. *N's* plea was not that *V's* name was inserted in settlement deed by any fraud or mistake,

Held, having regard to the terms and provisions of the settlement deed *V* was taken as Abhiman Putra by *A* and he was given the property in suit. The contention that *V's* name was put in *benami* for *N*, could not be sustained. (*Ananthakrishma Ayyar, J.*). BAGIYATHACHI *v.* NARAYANASWAMI CHETTIAR. **A.I.R. 1929 Mad. 741.**

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———A promissory note was executed to "*A*, son of the senior paternal uncle and guardian of minor *B* after deducting a sum in respect of a pro-note executed in favour of guardian of *B*,"

Held, that the real payee was the minor and not the guardian. A.I.R. 1926 Mad. 390, *Dist.* and *Foll.*; Mad. C. R. P. Nos. 222 to 224 of 1927, *Rel. on.* (*Venkatasubba Rao and Walsh, JJ.*). ALAGARSAMI NAIDU *v.* RAMANATHAN CHETTY.

115 I.C. 830=29 M.L.W. 551=
A.I.R. 1929 Mad. 284=56 M.L.J. 399.

———One *K.P.R.*, as the manager of the joint family, executed a power-of-attorney in favour of one *S*. The power-of-attorney authorised *S* to use the name of *K.P.R.*, and, amongst other things, to sell or exchange all or any of the immovable property of or to which *K. P. R.* was or should at any time thereafter become possessed or entitled, for any estate or interest whatsoever or which he then had or at any time thereafter should have power to dispose of.

Afterwards a trust deed was executed between *K.P.R.*, for himself, and as head and manager of the undivided family of the one part, and *V.M.S.* of the other part. By the terms of this deed *V.M.S.* was given "a right over," by way of trust, all the properties, assets and interests mentioned in the schedule attached thereto for the purpose of selling the same. The trust-deed contained other powers, such as management the appointment and removal of agents, including the agents then working. One *M.S.M.* was appointed co-adjutor to counsel and advise the trustee, and it was provided that the trustee should obtain the consent in writing of the co-adjutor before appointing agents, or selling or mortgaging immovable properties in connexion with the trust.

The co-adjutor mentioned in the trust-deed died and no other co-adjutor, was appointed. After this, *V.M.S.* purporting to act as trustee by virtue of the powers conferred upon him by the trust-deed, appointed the said *S* his agent to transact, conduct and manage the affairs.

S, by a registered deed, purported to sell to *E.N.M.K.* the properties in suit.

Held: that the power-of-attorney given by the trustee to *S* was of no effect, as far as the sale of immovable properties was concerned, inasmuch as the trustee had not obtained the consent in writing of a co-adjutor to the sale thereof as provided by the deed the first co-adjutor having died and no successor to him having been appointed.

Held, further on the construction of the trust-deed, that the properties in the suit were not transferred to the trustee and that the authority given to *S* prior to the trust-deed to sell the property was not terminated by reason of that trust-deed.

Held, further, that the question whether the power-of-attorney executed prior to the deed of trust was still effective at the time *S* conveyed the property to the first respondent was a mixed question of law and fact. (*Sir Lancelot Sanderson*). CHOCKALINGAM CHETTIAR *v.* E.N.M.K. CHETTYAR FIRM. **107 I C. 461=6 Rang. 113=47 C.L.J. 429=**
30 Bom.L.R. 788=32 C.W.N. 677=
27 M.L.W. 811=A I.R. 1928 P.C. 44=
54 M. L. J. 517.

———*Meaning of words is question of fact—Their effect is one of law.*

The expression "construction" as applied to a document includes two things: first, the meaning of the words; and secondly, their legal effect. The meaning of the words is a question of fact and the effect of the words is a question of law: *Chatenay* v. *Brazilian Submarine Telegraph Co.*, (1891) 1 Q.B. 79, *Rel. on.* (*Stuart, C.J. and Pullan, J.*). RAM PAL SINGH *v.* JAI RANI SINGH.

107 I.C. 560=4 O.W.N. 1229=
A.I.R. 1928 Oudh 121.

———*Promissory note—Contract for supply of goods—Money advanced on the contract to be deducted from the price of goods supplied—Notes in the form of promissory notes, executed as further security for return of advance—Notes are not negotiable and cancellation of contract will not make them so.*

The plaintiff entered into an agreement with the defendant for the supply of 100,000 tons of rubble coal. The defendant advanced one lakh of rupees against this agreement which was to be repaid by the deduction of one rupee per ton out of the price of the coal supplied. Three notes, appearing on their face to be promissory notes, were executed in further security of the loan. No interest was to be paid on these notes. As the Government took over the control of coal, the plaintiff was unable to supply the coal, according to the contract and the promissory notes were renewed by three fresh promissory notes,

Held: that the notes were not negotiable at the inception and the cancellation of the contract subsequently would not make them negotiable. (*Ross and Fazal Ali, JJ.*). GOBINDJEE MADHAWAJEE & CO., LTD. *v.* C. J. SMITH. **113 I.C. 698=**
A.I.R. 1928 Pat. 568.

———*Construction of document includes two things namely meaning of words and its legal effect—The former is a question of fact and the latter one of law.*

The expression 'construction' as applied to a document includes two things, namely, the meaning of the words and their legal effect. The meaning of the words is in all cases a question of fact and the effect of the words is a question of law. A.I.R. 1923 Lah. 626, *Foll.* (*Addison, J.*). DEVI CHAND *v.* JAI CHAND. **90 I.C. 1047=**
26 P.L.R. 605=A.I.R. 1926 Lah. 21.

———Anubhavam *deed—Definite quantity of grain mentioned—Only that much is of permanent nature.*

Where the remuneration mentioned in the deed is a definite quantity of grain out of the produce of the lands, a strong presumption arises that only a rent charge was granted. Where therefore the *anubhavam* is recited as relating solely to the amount of 60 *paras* of the produce there is a strong presumption that only 60 *paras* is of the permanent nature. 29 Mad. 501; and 30 Mad. 203, *Ref.* (*Phillips, J.*). KALLIANI AMMAL *v.* COCHIN SIRCAR.

91 I.C. 316=22 M.L.W. 473=
A.I.R. 1926 Mad. 143.

———An application for compromise provided that after the applicant died, the respondent was to be her representative and successor and it further provided that so long as the estate in dispute was not transferred to the respondent, a certain annuity would bep ayable from the said estate to the respondent, his heirs and representatives and that the said estate would be liable for payment of the annuity,

Held: that the respondent was meant to succeed the applicant only when a transfer was made by her in favour of the respondent either by way of gift *inter vivos* or by bequest and that so long as the estate did not so vest in the respondent, he was entitled to receive the annuity and if he died before the happening of that contingency his heirs

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and representatives would be entitled to the annuity. (*Stuart, C.J. and Hasan, J.*). MT. SAKINA BEGAM *v.* ALI HAIDER. **94 I.C. 1039= A.I.R. 1926 Oudh 493.**

———*Dissolution of partnership-at-will—First partner appointing agent to settle accounts with second partner—Agent not authorised to refer to arbitration—Document between Agent and second partner ending in finding of balance due from second partner to the first partner and in statement by the Agent that he received the balance in settlement of accounts—Proceeding between agent and second partner was held a settlement of accounts and not arbitration ending in award.*

One of the two partners in a partnership exercised his right under the articles of partnership to determine the partnership at will. He gave a power of attoney to another. This power of attorney did not authorise the man to appoint an arbitrator on behalf of his employer or to submit disputes to arbitration in accordance with a clause in the articles of partnership, but it authorised him, in discussion with the other partner to settle the accounts of the partnership, to collect what money he could, and to sue for any balance which might be found due on the taking of an account. The partnership having been brought to an end, proceedings took place between this man and the other partner. The document that was drawn up in the result ended in a finding of a balance in goods and in cash, due from the other partner to the one who had determined the partnership and in a statement signed by the agent, that he had received the goods and the cash in settlement. This proceeding was repeatedly called an arbitration ending in an award, by the opposite side, in the course of the litigation,

Held: on a construction of the document, and on the ground that the power of attorney authorised the agent to effect a settlement of accounts and to receive goods and cash in discharge but did not authorise him to submit the matter to arbitration, that the proceeding between the agent and the other partner was a direct settlement of accounts of all questions arising between the two partners and not an arbitration of a dispute followed by an award pronounced by the arbitrators. (*Lord Sumner.*). AHMED KHAN *v.* ALI EBRAHIM.

27 Bom.L.R. 746=A.I.R. 1925 P.C. 177.

———*Defendant agreeing to work the plaintiff's railway—Defendant was held only plaintiff's agent.*

Where the defendant-company were, according to the agreement between the parties, to maintain, manage and work the plaintiff's railway system and where for the purpose of the contract the plaintiff was to hand over to the defendant company the railway system together with the rolling stock, plant and machinery belonging thereto, where the capital money required was to be provided by the plaintiff, where all expenses were to be sanctioned by the plaintiff, where at the end of the period of contract, the defendant company was to hand over the possession of the undertaking of the railway to the plaintiff,

Held: that the defendant-company was no more than an agent of the plaintiff and that stores purchased by the defendant-company for the use of the undertaking was the property of the plaintiff,

Held: further, that that the provision in the contract, for the appropriation of one-twentieth of the profits to the defendant company did not make the parties partners, but the appropriation was only a remuneration for services rendered by the defendant company as agent of the plaintiff. (*Sir Lawrence Jenkins*). SECRETARY OF STATE *v.* G. I. P. RAILWAY. **88 I. C. 107=30 C. W. N. 76= 52 I. A. 167=2 O. W. N. 379=1925 M. W. N. 358= 49 Bom. 320=27 Bom.L.R. 810= A.I.R. 1925 P.C. 103=48 M.L.J. 539.**

———*Manager of property to pay annuities to owners—Manager's interest was held more than a right to future maintenance.*

Where under an arbitration award a man's property was to be construed the property of two other persons, but at the same time the owner was allowed to remain in possession of the property and to manage it and collect income and out of the income he was to pay a certain sum yearly to each of the other two persons,

Held: construing the award as a whole, that what was reserved to the owner was something more than a right of future maintenance and that his interest in the property was attachable in execution. (*Ryves and Daniels, JJ.*). MAHFUZ ALI *v.* RADHA KISHEN. **85 I. C. 477=23 A. L. J. 149= 6 L. R. A. Civ. 133=A. I. R. 1925 All. 297.**

———*Deed specially relating to one kind followed by other kinds and then a general clause—General clause refers to kinds immediately before it.*

Where in a deed there is a sum which is specifically dealt with, and afterwards special terms followed by a general clause, the general clause should be taken to be reforable to the subject-matter specifically referred to immediately before it, or, in other words, the rule which is to be applied is the rule *ejusdem generis*. Where a lease provided that the rent to be paid by *darpatnidar* was fixed for ever but there was a further provision that "the road and public works cesses which are now fixed or which may, in future, be fixed and any other new amount or payment that may be fixed, also whatever is payable by the *darpatnidar* according to law, these sums the *darpatnidar* is liable to pay to us over and above the *jama*,"

Held: that the rent, as rent, was fixed for ever; but that the road cess and public works cess or any other rate of assessment of the same kind whether payable now or payable in the future will be paid by the *darpatnidar* to the *patnidar*. But it was not permissible for the landlords to vary the rent which had been fixed under the tenancy by applying to the rent the general words which follow the road cess and public cess, *etc.*, "and any other new amount or payment that may be fixed." (*Suhrawardy and Page, JJ.*). SRISH CHANDRA PAL CHOWDHURY *v.* DEBENDRA NATH SINGH ROY. **79 I. C. 369= A. I R. 1926 Cal. 522.**

———Where among other terms the award of arbitration between D and K declared that K should be in possession of property in dispute but should not alienate it that he should pay maintenance to D and that so long as he did so D could not have the arrangement set aside and where K alienated in spite of the award but continued to pay maintenance,

Held: that D's cause of action arose only after K's death. (*Mukerji, J.*). MT. DURGA KUNWAR *v.* MT. CHINNA KUNWAR. **78 I.C. 633= 5 L.R.A. Civ. 276=A. I. R. 1924 All. 862.**

———*Practice—Fact and Law—Interpretation of document is a question of law.*

Interpretation of the terms of a deed is a question of law. (*Kinkhede, A.J.C.*). TULARAM *v.* MT. SUMRATI. **79 I.C. 621=A.I.R. 1924 Nag. 422.**

———Where a lease passed a certain area of land "as described in the schedule" thereto and in the

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schedule the leased land was described as " bounded on the south by the border of the limit of mouza Fatehpur as per thak,"

Held: that the words "as per thak" meant "as per thak demarcation" and not as per "thak map." (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA. **83 I.C. 205= 3 Pat. 85=A.I.R. 1924 Pat. 402.**

———*Words in deed was construed with reference to the context.*

A deed recited that there was originally one house and it then proceeded that three houses were afterwards built anew and "are hereby sold to you with the right of ingress and egress through the main door and given over to your possession." Then followed the particulars of boundaries. Then came a clause about the Chowk. It ran "there is an open Chowk belonging to those three houses and in front of the door of my other house. All may use the said Chowk according to the limits of their respective houses and inmates of all the four houses have the right of egress and ingress through the main Khadki door,"

Held: that the words 'Open Chowk belonging to these three houses' do not mean, having regard to the context, that the Chowk was to be in the exclusive ownership and possession of the three houses. The words 'all may use the said Chowk' meant all four houses and there they have the same meaning as the inmates of all the four houses referred to in the next sentence. The word according to the limits of their respective houses meant that all might use the Chowk and this means the whole Chowk. (*Marten and Fawcett, JJ.*). SHA BULAKHIDAS *v.* SHA GANPATRAM. **77 I.C. 412= A.I.R. 1923 Bom. 281.**

———The plaintiffs claimed under a policy, the conditions of which provided (1) that if the claim was made and rejected and an action or suit was not commenced within three months after such rejection all benefit under the policy would be forfeited, (2) that if any difference arose as to the amount of any loss or damage such difference should independently of all other questions, be referred to arbitration and that it should be a condition precedent to any right of action or suit upon the policy, that the award of the arbitrator or umpire of the amount of the loss if disputed should be first obtained.

Held: that when the defendants rejected the claim the plaintiffs had a right of action in order that it might be decided by the Court whether such rejection was right or wrong and it was only in the event of that question being decided in favour of the plaintiffs that it would become necessary that the amount of loss or damage should be ascertained. (*Macleod, C.J. and Crump, J.*). E. S. INSURANCE CO. *v.* DINANATH. **72 I.C. 266= 25 Bom. L.R. 164=47 Bom. 509= A.I.R. 1923 Bom. 249.**

———*Date of payment—Rate of exchange is one calculated at due date.*

Where according to the terms of the bills they were to be paid at the current rate for Bank Demand Drafts at date of payment.

Held, the rate of exchange should be calculated at the due date. (*Macleod, C.J. and Crump, J.*). MULLAR MACLEAN & Co. *v.* KADERBHOY M. ESMAILJI. **72 I.C. 246=25 Bom. L.R. 177= 47 Bom. 493=A.I.R. 1923 Bom. 241.**

———The trust deed ran as follows :—

" That the trustees shall be at liberty to apply to the Civil Court having jurisdiction over it for an extinction of trust if they after careful management and strenuous efforts find that they are unable to pay up the debts by resorting to any form of transfer hereinbefore provided in a manner which may be advantageous to the estate of my son the aforesaid *Sharf-uz-zaman*."

Held, the paragraph meant that the trust would end when the trustees became insolvent *qua* trustees, and was not a delegation of power reserved by the donor to put an end to the trust. (*Ashworth and Simpson, A.J.Cs.*). SHARF-UZ-ZAMAN *v.* SIR HENRY STENYON. **70 I.C. 253=23 O.C. 291=. 10 O.L.J. 491=A.I.R. 1923 Oudh 80.**

———*Probate and Administration Act (V of 1881), S. 90—Hindu widow as executrix—Conveyance reciting both capacities, must be taken to be, as an executrix.*

Section 90 of the Probate and Administration Act applies to all Hindu widows, and under that section a Hindu widow who is appointed as an executrix, is entitled to sell as executrix the property left by her husband, if no restriction is imposed on her powers of disposing of the property by the Will which appointed her executrix. A sale by a Hindu widow, who being the executrix of her husband's Will sells a part of her husband's estate and the deed does not expressly say in what particular capacity she sells, but merely recites all her capacities and conveys the whole property and all the title possessed by the widow in the property, must by taken to be effected by the widow in her capacity of executrix of her husband's Will. (*Kanga, J.*). MITHABAI *v.* MEHERBAI. **64 I.C.397= 46 Bom. 162=23 Bom. L.R. 858= A.I.R. 1922 Bom. 179.**

———*Two ladies to hold certain property for life, and the plaintiff to get it after death of both of them—On death of one of the ladies, plaintiff cannot claim half the property.*

Where a compromise provided that two ladies should get and hold certain property for their lives and after the death of both of them the plaintiff should get the same,

Held, that the ladies are joint tenants of the property and the plaintiff is not entitled to recover possession of any portion of the properties until the death of both the ladies. After the death of both of them the plaintiff will take possession of the lands. (*Dawson Miller, C.J. and Coutts, J.*). CHUNDRA MOHAN DATTA *v.* SASIBALA DASSI. **65 I.C. 277=1922 P. H. C. C. 39= 3 Pat. L.T. 623=A.I.R. 1922 Pat. 68.**

———*Arbitration — Submission to arbitration — Agreement between buyer and seller stating that all the terms of contract with importing firm to apply— Arbitration clause in latter contract referring to disputes arising under that agreement alone—Arbitration clause would not apply to agreement between buyer and seller—Deed—Construction.*

The contract between the parties contained a clause "all terms according to the importing firm." The contract with the importing firm contained a clause "Any dispute or claim under this contract is to be settled by . . ."

Held, that the terms of the contract with the importing firm should be read *verbatim* into the contract between the parties and as the arbitration clause referred to disputes arising under the contract with the importing firm and not under the contract between the parties, the arbitration clause was not applicable to disputes under that contract. *Temperley Steamshipping Co.* v. *Smyth & Co.*, (1905) 2 K. B. 791, *Dist.*; *Thomas & Co., Ltd.* v. *Portsea Steamship Co., Ltd.*, (1912) A. C. 1 and

DEED—Construction—Miscellaneous.

Hamilton & Co. v. *Mackie and Sons*, (1889) 5 T.L.R. 677, *Foll.* (*Mookerjee and Fletcher, JJ.*). CHATTURBHUJ CHANDAN MULL *v.* BASDEO DASS DAGA.
60 I.C. 909=33 C.L.J. 145=A.I.R. 1921 Cal. 767.

———The question of proper construction of a document is often a mixed question of law and fact. (*Bucknill, J.*). ABDUL RAHIMAN *v.* WALI MAHAMAD. **65 I.C. 224 (Pat.).**

—Execution.

———All the stamps on which a document is written need not have been signed by the executant. (*Jailal, J.*). MATHRADAS *v.* SHAMBOO NATH,
112 I.C. 843=A.I.R. 1929 Lah. 203.

———Where a deed written in English was signed by a lady who did not know English and the deed deprived her of her legal rights of succession and degraded her status:

Held: that the deed was no bar to her rights under the law. (*Lord Shaw*). A. DINOHAMY *v.* V. L. BALAHAMY. **104 I. C. 327=4 O.W.N. 759=A.I.R. 1927 P.C. 185=54 M.L.J. 388.**

———*Legal Practitioner—Signing a document, fixes signatory with knowledge of contents—A Vakil so signing cannot plead that he did not know the contents.*

A man who signs his name to a document makes himself thereby in every way as responsible for it as if he was the original drafter of it. If it turns out that the document is one which no man acting honestly could in the circumstances have drafted, then he will be bound to answer for every word, line, sentence and paragraph, and it will not be the least defence that some body else wrote it out and he only signed it. Signature implies association and carries responsibility.

If a legal practitioner puts his signature to a document he will be deemed to have read it and to carry it in his recollection to the extent that an ordinarily competent, careful and reasonable man would carry it and he will be bound by all the implications arising from it just as much as if he had written every word of it with his own hand. Practitioners must realize that if they make or associate themselves with statements which they know are dishonest and untruthful for the purpose of misleading the Court they must on proof of misconduct bear personal responsibility and that it will be no defence for them to say that it was done in the interests of the client or at his instigation or at the instigation of a colleague at the bar, or that they were so negligent in the matter that they did not read the document or consider it at all. (*Mears, C. J., Lindsay and Dalal, JJ.*). AHMAD ASHRAB, VAKIL—In the matter of.
98 I.C. 493=48 All. 542=27 Cr.L.J. 1373=A.I.R. 1927 All. 45.

———*Person signing for illiterate executant at his request—Signature is with executant's authority.*

Where a person signs a document for an illiterate executant at his request with a pen touched by the latter, the signature must be held to be made under the authority of the executant. (*Misra, J.*). BHAGWAT PRASAD *v.* SHER KHAN.
94 I. C. 985=A.I.R. 1926 Oudh 489.

———*Different ink used for attestation—Attestor cannot be presumed to be absent.*

The fact that the signatures of the witnesses appear to be written with a different ink and pen from that used to write the body of the document does not necessarily show that the witnesses were not present when the document was executed:

DEED—Material Alteration.

(*Le Rossignol and Fforde, JJ.*). SARDARI MAL *v.* ABDUL SAMAD. **90 I.C. 39=7 L.L.J. 208=26 P.L.R. 506=A.I.R. 1925 Lah. 430.**

———*Execution by weak-minded person—Strict proof of knowledge of contents is necessary.*

In a case where a deed is executed by a weak-minded person, a strong proof is needed to prove that he was explained the contents of the deed and he fully understood them. (*Kinkhede, A.J.C.*). KRISHNABAI *v.* KESHAO RAO. **83 I.C. 253=A.I.R. 1925 Nag. 245.**

Semble. Mere name of firm in the heading of letter is good signature. (1 All. 683; 6 Cal. 340, *Foll.*) (*Daniels and Neave, JJ.*). UMA SHANKAR *v.* GOBIND NARAIN. **80 I.C. 6=5 L.R.A. Civ. 638=22 A.L.J. 807=46 All. 892=A.I.R. 1924 All. 855.**

———"Execution" designates the whole operation including signing by the executant and attestation by the witnesses. (*Kinkhede, A.J.C.*). BALIRAM *v.* KAMALJA. **78 I. C. 330=A.I.R. 1924 Nag. 367.**

———Registration Act, S. 33 (2)—*Pardanashin* Lady—Power-of-Attorney by—Attestation by Sub-Registrar—Presumption of voluntary execution arises—Power to sign bond does not imply power to enter into transaction but power to execute document does. (*Coutts and Das, JJ.*). RAM LAL SINGH v. MT. BIBI SHAHRUNNISSA.
67 I.C. 315=3 Pat. L.T. 442=A.I.R. 1922 Pat. 559.

———Where it has been impossible to decide which of two mortgages bearing the same date was executed first it is not open to either of the mortgagees to claim priority over the other but both must rank *pari passu* as if both of them had been executed at the same time. (*Wallis, C.J. and Oldfield, J.*). KUTTI THEVAN *v.* RAYAPPA GOUNDEN.
65 I.C. 961=14 L.W. 422=1921 M.W.N. 703=A.I.R. 1921 Mad. 693.

———Material Alteration.

———Addition of two attesting witnesses made subsequent to the execution of an improperly stamped promissory note in order to convert it into bond and thereby opening up the possibility of suing upon it on payment of penalty is tantamount to material alteration which invalidates the instrument and destroys the right of action on it: 38 Mad. 746, *Ref.* 43; Mad. 703, *Dist.* (*Hilton, J.*). MANGAL DAS *v.* JASWANT SINGH.
A.I.R. 1930 Lah. 959.

———*Court should consider whether alteration is fraudulent or innocent—Alteration if not fraudulent amendment of plaint may be allowed—Plaintiff may be allowed to fall back on the original cause of action.*

Where there is no cause of action apart from the inadmissible document, the whole claim fails with the inadmissible document. Where there has been a material alteration in the document, the further questions for the consideration of the Court are whether the alteration is fraudulent or innocent and whether the plaint is or can also be based on the original loan itself and evidence exists *aliunde*. Where the alteration is fraudulent, the Courts will not allow the plaint to be amended and the plaintiff to fall back on the original cause of action. But where the alteration, though material, is innocent and the plaint is based on the original cause of action as well as on the document altered, the claim if properly proved, can be allowed on the original cause of action. Or if the original plaint is not on the original cause of action, it is open to the plaintiff to apply and the Court to consider whether the

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plaintiff should be allowed to amend it: (*Case-law discussed.*) (*Madgavkar, J.*). RAVJIBHAI NATHABHAI *v.* RANCHHOD RAGHUNATH.

31 Bom. L.R. 1262=A.I.R. 1930 Bom. 66.

———*Date of document is material part of it and party altering it with fraudulent object cannot rely upon it.*

The date of a document is a material part of it and the party who alters it for a fraudulent object cannot be allowed to avail himself of the document: 91 P.R 1900, *Rel. on.* (*Bhide, J.*). BALMUKUND *v.* PURSOTAM DAS. **121 I.C. 73= 31 P.L.R. 219=A.I.R. 1930 Lah. 548.**

———*Instrument purposely altered by person in lawful possession in material part is void and no suit can be brought on it nor can it be used in defence.*

Wherever any instrument is purposely altered by a person in lawful possession of it in a material part of it the instrument is void for the purpose of enabling any person to sue on it or defend himself by using it as a direct defence depending on its obligatory force as an instrument: *Master* v. *Miller.* 4 T.R. 320, *Foll.* (*Rankin, C.J. and Cammiade, J.*). HAREN CHANDRA *v* KISHORI LAL.

50 C.L.J. 173=A.I.R. 1929 Cal. 789.

———Without fraud or wrong a document cannot be materially altered after its execution: *Doe* v. *Catomore*, 16 Q.B. 745 and A.I.R. 1924 Nag. 250, *Rel. on.* (*Kinkhede, A.J.C.*). SUNDERABAI *v.* BAPUNA. **116 I.C 65=A.I.R. 1929 Nag. 305.**

———When a deed is altered on a material point by the party in whose favour it is executed it thereby becomes void: *Suffel* v. *Bank of England*, (1892) 9 Q.B.D. 555. *Foll.*: A.I.R. 1926 Cal. 831, *Dist.* (*Duval, J.*). DILJAN *v.* MAQBULKHAN.

107 I.C. 475 (Cal.).

———*Negotiable Instruments Act, S. 87—One executant forging signature of the other executant on pronote to creditor's knowledge—Creditor cannot recover.*

Where a pro-note purported to be executed by two persons, but it was found that one of the executants had forged the signature of the other, and the creditor was aware of this fact,

Held, there was material alteration and creditor could not succeed on the note: 26 M.L.J. 257 and C.R.P. 601 of 1912 (Mad.). *Foll.*; A.I.R. 1925 Mad. 929, *Not foll.* (*Wallace, J.*). MOHIDEEN PILLAI *v.* JAMAL MD. JAMALUDDIN. **112 I.C. 404= 1928 M.W.N. 591=A.I.R. 1928 Mad. 1092.**

———*Changing of date of a surety bond is material alteration avoiding the bond.*

Prima facie, the date when a particular document is executed would be clearly material; and the *onus* would be on the person making the alteration to show that so important an alteration, on the particular facts of any case, was not material. It is not merely the actual final effect on a consideration of all the facts and the law in each case, that decides whether the alteration is material. An alteration which may affect the contract which the instrument contains, is also material.

Where a creditor altered the date of the surety bond given on behalf of the debtors being apprehensive of the bar of limitation,

Held, that the alteration was a material one and avoided the document. (*Marten and Madgavkar, JJ.*). NAMDEV JAYRAM *v.* SWADESHI VYAPARI MANDALI LTD. **98 I.C. 721=28 Bom. L.R. 944= A.I.R. 1926 Bom. 491.**

———*Mortgage-deed invalid because of subsequent alteration—Mortgagee can recover upon the original consideration.*

DEED—Material Alteration.

Although a deed of mortgage is invalid by reason of subsequent alterations made in it, the admissions in the deed may be referred to for proving the original debt and the circumstances under which the original debt was contracted, and the plaintiff can recover upon the original consideration: 33 C. 812, *Dist.* (*Case-law discussed*). (*Chatterjea and Page, JJ.*). PARBATI CHARAN *v.* AMARENDRA NATH. **96 I.C. 97=53 Cal. 418= A.I.R. 1926 Cal. 831.**

———*Altered document not forming basis of action —Obligation evidenced by the deed is enforceable.*

The rule that there is no right of action on a document which has been materially altered after execution and without the privity of the party to be affected by it, and that no decree should be passed in a suit brought on such a document despite the fact that consideration for the document has been admitted by the defendant has no application where the obligation to be enforced does not arise under the altered instrument and the instrument is produced merely as a piece of evidence in proof of the obligation. 25 Bom. 616 and 9 C.W.N. 695, *Foll.* A.I.R. 1924 Cal. 452, *Cons.* (*Wadegaonkar, A.J.C.*). TAPIRAM *v.* JUGAL KISHORE.

92 I.C. 305=21 N.L.R. 169=A.I.R. 1926 Nag. 209.

———*Even alteration prejudicial to maker and beneficial to opponent if it affects integrity of deed is material alteration.*

The test of material alteration is not necessarily whether the pecuniary liability of one of the parties have been increased by the change; it is of no consequence, whether the alteration would be beneficial or detrimental to the party sought to be charged on the contract. The important question is whether the integrity and identity of the contract have been changed.

The rate of interest to be charged is one of the most important conditions in any contract of borrowing or lending. So an alteration in the terms of this very important provision must be deemed to be a material alteration. 33 C. 812, *Foll.* (*Rutledge, J.*). GODLA THAMMYA *v.* NARASIMULU.

89 I.C. 657=3 Rang. 227= A.I.R. 1925 Rang. 283.

———*Claim based on a bond materially altered is untenable—But one based on an original contract, not merged in the bond, may be decreed.*

Per *Newbould, J.*:—Where there is a material alteration of the bond the claim based on it should not be decreed. (1 Sm. L. C. 767, *Foll.*). An implied contract to repay money lent arises from the fact that the money is lent even though no express either written or verbal is made to repay it. The material alterations of a written contract destroy the original deed if the debt is merged in the written contract. If the written contract is a negotiable instrument this should usually happen. But in the case of a simple bond the alteration prevents a suit being based on the bond and the question whether a suit would lie on the original debt depends on whether there is a separate contract which can be proved apart from the bond.

Per *Rankin, J.*:—An independent cause of action must be shown if the doctrine 'that no suit can be decreed on the basis of a bond' materially altered is not to take effect. (*Newbould and Rankin, JJ.*). DULA MEAH *v.* MANHAVI ABDUL RAHAMAN.

81 I.C. 641=28 C.W.N. 70=A.I.R. 1924 Cal. 452.

———*Evidence Act, S. 91—Claim based on a bond materially altered is untenable—But one based on an original contract, not merged in the bond, may be decreed.*

DEED—Material Alteration.

Per *Newbould, J.* :—Where there is a material alteration of the bond the claim based on it should not be decreed. (1 Sm. L.C. 767, *Foll.*). An implied contract to repay money lent arises from the fact that the money is lent even though no express promise either written or verbal is made to repay it. The material alterations of a written contract destroy the original debt if the debt is merged in the written contract. If the written contract is a negotiable instrument this would usually happen. But in the case of a simple bond the alteration prevents a suit being based on the bond and the question whether a suit would lie on the original debt depends on whether there is a separate contract which can be proved apart from the bond.

Per *Rankin, J.* :—An independent cause of action must be shown if the doctrine 'that no suit can be decreed on the basis of a bond materially altered' is not to take effect. Verbal negotiations leading up to an express contract in writing cannot be set up as an independent contract and are not even admissible in evidence. Moreover where there is an express promise an implied promise will not be inferred. (*Newbould and Rankin, JJ.*). DULA MEAH *v.* ABDUL RAHAMAN. **81 I.C. 641= 28 C.W.N. 70=A.I.R. 1924 Cal. 452.**

———*Burden as to time of alteration lies on him who puts the same in evidence—Alteration in material particulars avoids the deed—Evidence Act, S.* 101.

A writing which is intended to be under hand only can be altered by erasure or interlineation or otherwise before it is signed but it lies upon the party who puts the instrument in suit to explain the alteration and show *when* it was made. An alteration made while the instrument is in the custody of one party although not made with his knowledge or consent has the same effect in avoiding the instrument as if made by him, on the principle that he who has the custody of an instrument made for his benefit is bound to preserve it in its original state. (*Kinkhede, A.J.C.*). KANNAYALAL TARACHAND *v.* SITARAM TUKARAM. **81 I. C. 847=20 N.L.R. 76= A.I.R. 1924 Nag. 250.**

———*Non-material alteration does not vitiate document.*

Alteration which is not material does not vitiate a document. (*Broadway and Martineau, JJ.*). MADAN LAL *v.* LABHU RAM. **67 I.C. 431= A.I.R. 1922 Lah. 421.**

———*Alteration not material—Validity of deed is not affected.*

A document is not vitiated and deprived of its effect by an alteration which is not material. (*Hallifax, A.J.C.*). GANGA PRASAD *v.* MOTIRAM. **68 I.C. 268=A.I.R. 1922 Nag. 191.**

———*Material alteration must be one which changes legal effect of document.*

A material change or alteration of an instrument is one which causes it to speak a language different in legal effect from what it originally spoke. Accordingly, any act which changes the legal effect of the instrument, that is, which changes the legal identity or character of the instrument, either in its terms or in the relation of the parties to it, is a material change or technically an alteration. It is the effect of the act upon the instrument and not the particular manner in which it is done, that is material, and hence an alteration to be material must be an actual alteration, whether by erasure, interlineation, addition or substitution of material matter affecting the identity of the instrument or contract; it must also be in the material part of the instrument and must affect the rights and obligations of the parties thereto. To constitute an alteration material, it is enough that, if the instrument were genuine, it would operate differently from the original. (*Mookerjee and Buckland, JJ.*). KRISHNA KISOR *v.* NAGENDRABALA. **66 I.C. 694= 34 C.L.J. 33=25 C.W.N. 942=A.I.R. 1921 Cal. 435.**

DEED—Recitals.

—Recitals.

———*Parties to deed not accepting all terms—No claim for rectification by either—Deed must be given effect to as it stands.*

Neither of the parties to a document was content with it: one alleged that it was unauthorized in part and the other alleged that it was agreed upon through mistake, but no claim for rectification was made by either,

Held, that the deed must be construed and given effect to as it stood even if the result be that the document is found to embody a bargain intended by neither of the parties to it: *Stuart* v. *Kennedy* No. 2, 15 App. Cas. 108, *Rel. on.* (*Lord Blanesburgh*). SUNITIBALA *v.* MANINDRA CHANDRA. **A.I.R. 1930 P.C. 217.**

———A recital in a deed of recent date executed by a Hindu widow is no evidence of the fact recited. (*Sen and Niamatullah, JJ.*). GAJE SINGH *v.* MT. UCHHABA. **119 I.C. 514=1929 A.L.J. 309= 10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.**

Kumaraswami Sastri, J.—It is usual, when more than one person execute a document alleging that money was borrowed to pay debts, for the lender to get a general statement that the debts were the debts of the executants and not to give room for future contention by stating what the debts of each of the executants were. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893= 28 M.L.W. 422= A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).**

———*Endorsement of Registering officer and recitals as to receipt of consideration is strong but rebuttable evidence of contents.*

The recital in a sale-deed that the vendor had already received an advance, before executing the sale, of a sum of Rs. 10,000, and a similar admission by him at the registration of the document incorporated in the endorsement made by the registering officer is of great weight and must prevail unless its effect is negatived by other circumstances such as absence of writing evidencing the payment, non-production of account books and the like. 29 All. 184 P.C. *Rel. on.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). SYED HASAN BOGAR *v.* SHEO NARAIN SINGH. **91 I.C. 917= 1 Luck. 7=8 O.W.N. 25=13 O.L.J. 178= A.I.R. 1926 Oudh 81.**

———*Recitals in a deed cannot be relied on except between parties to it for proving assertions containing them.*

Under ordinary circumstances and apart from Statute, recitals in deeds can only be evidence as between the parties to the conveyance and those who claim under them cannot be relied on for the purpose of proving assertions of fact which they contain. 44 Cal. 186 (P. C.), *Foll.* (*Simpson, A. J. C.*). BHAGWATI PRASAD *v.* LALL BAHADUR. **90 I.C. 404=A.I.R. 1926 Oudh 33.**

———*Proof—Deed duly proved by attestors—All conditions therein must be deemed as proved—Party objecting to any condition therein must raise a plea and prove it.*

DEED—Recitals.

Where a mortgage-deed was produced by the mortgagee and duly proved, all the conditions contained in the mortgage-deed must be taken to have been proved. If either party wants to impugn any condition contained in the mortgage-deed it is his duty expressly to raise a plea to that effect and to establish that plea. (*Jai Lal, J.*). RAM CHAND *v.* NANAK CHAND. **91 I. C. 762=7 L.L.J. 417=26 P.L.R. 299=A.I.R. 1925 Lah. 580.**

—The parties to a deed are bound by recitals in the deed. (*Mookerjee and Rankin, JJ.*). BANK OF BENGAL *v.* WILLIAM ARRATOON LUCAS. **81 I.C. 471=51 Cal. 185=28 C.W.N. 497=41 C.L.J. 1=A.I.R. 1924 Cal. 578.**

———*Hindu Law — Alienation—Legal necessity—Recital is evidence of representation—Recital without any other circumstances is not sufficient to support deed.*

In the case of a document of considerable antiquity, a recital in the document is clear evidence of representation to the lender and if the circumstances are such as to justify a reasonable belief that an inquiry would have confirmed the truth of the representation, then, when proof of actual inquiry had become impossible, the recital coupled with the circumstances, would be sufficient evidence to support the deed. But if other circumstances, besides recitals, are wanting, it must be held that the party on whom the burden of proof lay has failed to discharge the burden of proof of the legal necessity. (*Lindsay and Stuart, JJ.*). SURJU PRASAD *v.* MUHAMMAD SHAKUR. **66 I.C. 564=A.I.R. 1922 All. 126.**

—Rights of parties to.

—Whenever one person gives another something instead of what he has got, both parties take the risk of whether the thing that is given will keep, or lose, or enhance it value. (*Viscount Dunedin*). BOMANJI ARDESHIR *v.* SECY. OF STATE. **114 I.C. 1=31 Bom. L.R. 256=53 Bom. 230=56 I.A. 51=1929 A.L.J. 47=49 C.L.J. 179=33 C.W.N. 293=A.I.R. 1929 P.C. 34.**

———*Forfeiture clause in a deed illegal—Executant* pardanashin *lady made to sell her property on the strength of the clause—Clause must be enforced—Evidence Act, S.* 115—Pardanashin *lady.*

Where the executant is a *pardanashin* and uneducated lady and she is made to agree to sell her property on the understanding that a forfeiture clause will be operative in her favour and it is not explained to her that such a forfeiture was illegal and unenforceable, then if the defendant wishes to stick to the transaction he cannot be allowed to repudiate the forfeiture clause on the strength of which the executant's consent had been obtained. (*Sulaiman and Kendall, JJ.*). ALTAF BEGAM *v.* BRIJ NARAIN. **116 I.C. 855=51 All. 612=1929 A.L.J. 367=A.I.R. 1929 All. 281.**

———*Purchaser under sham transaction gets no interest.*

A person who claims under a sham transaction, which is not transaction at all, has no interest in the property conveyed to him. (*Devadoss, J.*). VELAYUDHAN PANDARAM *v.* NALLATHAMBI NADAN. **111 I. C. 690=A.I.R. 1928 Mad. 541.**

———*Transfer as guardian of person who is really major—Major is not bound by it.*

Where it was found that the appellants were majors at the time the deed of gift was executed and that they were wrongly described as minors in the deed of gift in question,

Held, that they never joined in executing the deed of gift and cannot be bound by any alienation

DEED—Rights of parties to.

effected in favour of the plaintiff-respondent's father without their permission and consent. (*Moti Sagar, J.*). CHHITRU *v.* CHHAJJU. **A.I.R. 1923 Lah. 611.**

———*Liability of parties are determined by terms of deed.*

A deed of compromise ran as follows :—

"As to the amount of Income Tax, Excess Profits Tax and Super tax for 1919-20 to be paid by Bakhsh Elahi and Co. and Karam Elahi Muhammad Shafi, after the tax has been deposited in Government Treasury, the liability will be shared by party No. 1 and party No. 2, among themselves in proportion to their shares for ¾th of a year or 9 months." Party No. 1 paid in November, 1920 a sum of Rs 1,22,500 as Excess Profits Tax for the year 1918-19; and they claimed that party No. 2, respondent should pay their share of this amount for 9 months,

Held, the liability of the respondents is circumscribed by the terms of agreement and that, that paragraph as it stands does not make them liable for payment of any portion of the Excess Profits Tax for 1918-19. The onus was on the appellants to prove that respondents were liable (*Shadi Lal, C.J. and Abdul Qadir, J.*). MOHAMAD TAQI *v.* ABDUL RAHIMAN. **79 I.C. 281=A.I.R. 1923 Lah. 151.**

———*Successive mortgages—Right of parties must be governed from covenants as they finally stand—Covenants to pay earlier deed "along with" later deed 'means not before.'*

Where there are successive mortgages the later ones qualifying or restricting the terms and conditions entered into in the preceding one, the rights of the parties must be governed so far as may be by the covenants as they ultimately stand.

A covenant postponing the payment of earlier deeds till the last deed is paid does not prevent the payment of the latter after it falls due, before the earlier ones are paid.

Per *Ashworth, A.J.C.* :—In money deeds where it is provided that a deed of further charge shall be paid up along with an earlier deed the meaning is nothing more than that it shall not be paid up before. (*Kanhaiya Lal, J. C., Daniels and Ashworth, A.J.Cs.*). SARSUTI PRASAD *v.* EHTISHAM ALI. **77 I.C. 310=25 O. C. 349=A.I.R. 1923 Oudh 123 (F.B.).**

———*Stranger to deed cannot plead condition precedent—Evidence Act, S.* 92.

Per *Das, J.* :—A separate oral agreement constituting a condition precedent to the attaching of any obligation under the document could be proved only by the vendor or his representative-in-interest. 27 All. 271, *Foll.* (*Dawson Miller, C J., Das and Adami, JJ.*). BHONU LAL CHOWDHURY *v.* W. A. VINCENT. **65 I.C. 882=3 Pat. L.T. 653=A.I.R. 1922 Pat. 619 (F.B.).**

———*Landlord and Tenant—Tenant encroaching on landlord's adjoining waste—Landlord can either treat him as trespasser, or as tenant of the additional land—Provision in* kabuliyat *for paying additional rent for additional land found in tenant's possession does not disentitle landlord to eject the tenant.*

If a tenant encroaches upon the adjoining waste land of his landlord the landlord is entitled to treat him either as a trespasser or as a tenant. If the landlord treats him as a trespasser, the landlord is entitled to sue him in ejectment within 12 years from the date when he becomes aware of the encroachment. If the landlord treats him as a tenant, then he becomes liable to pay additional rent.

DEED—Rights of parties to.

Where a *kabuliyat* provided: "If the lands in my possession be surveyed at the instance of the landlord I shall abide by the same and I shall take settlement at the rate then prevailing of all excess lands of whatever kind, found to be in my possession as a result of that survey, whether lying inside or outside the boundaries mentioned in the *kabuliyat* and shall also pay the rent at the aforesaid rate for the period during which lands in excess of the lands mentioned in the *kabuliyat* have been enjoyed secretly."

Held, that the clause did not entitle the tenant to annex the adjoining land and retain possession thereof against the wishes of the landlord. (*Mookerjee and Panton, JJ.*). ABDUL HOSSAIN *v.* AFSARUDDIN. **67 I.C. 639=34 C.L.J. 481= A.I.R. 1921 Cal. 83.**

———*Landlord and tenant—Breach of covenant by tenant*—Kabuliyat *providing remedy by ejectment—Landlord is not deprived of right to compensation.*

Where the *kabuliyat* provides a remedy (by ejectment) in case of breach of covenant by tenant, that is not the only remedy and there is no hing to take away the right to compensation on breach of covenant under the general law. (*Chatterjea and Newbould, JJ.*). KRISHNA DAS ROY *v.* MOHENDRA CHANDRA SIL. **62 I.C. 779=25 C.W.N. 930= A. I. R. 1921 Cal. 62.**

—Validity.

———The mere defect in respect of the seal will not make a document for all purposes bad even if it was intended to be under seal. Where an agreement between a company and a banian was reduced to writing and though it was not under seal it was acted upon by the parties as a perfectly valid agreement.

Held: that the agreement was not rendered unenforceable. (*Rankin, C. J. and Buckland, J.*). PROBODH CHANDRA MITRA *v.* ROAD OILS, LTD. **34 C. W. N. 570.**

———Gift—Deed *farzi* and fictitious—No title passes to ostensible transferee—Property continues in donor and is liable to attachment—Transfer by member of joint Hindu family which he is incompetent to make—Transfer is voidable by other members but stands as long as not avoided—Transfer with intent to defeat or delay creditors—Transfer is voidable under T. P. Act, S. 53. (*Sulaiman and Kendall, JJ.*). MT. SARASWATI KUAR *v.* MAHABIR PRASAD. **109 I. C. 272= A. I. R. 1928 All. 476.**

———*Illiterate person making thumb-mark on document—Proof of mark insufficient for validity—Knowledge of contents cannot be inferred from fact of thumb-mark.*

In the case of an illiterate executant something more is required than proof that he made a mark on the document and knowledge of the contents of the document cannot be inferred from the fact that he marked the document: *Foster* v. *Mackinnon*, (1869) 4 C.P. 704, *Foll.* (*Wazir Hasan and Raza, JJ.*). MT. HUBRAJI *v.* CHANDRA BALI. **111 I. C. 829=5 O. W. N. 677= A. I. R. 1928 Oudh 386.**

———*Deed involving extinction of rights and degradation of status of one party—Party not protected by notary—Transaction is bad.*

Where a notary was instructed by one party to a transaction involving not only the extinction and alteration of patrimonial rights, but also a degrading alteration of the status and moral life of others who were to be made parties to the deed, but he never suggested that it was a case for another notary being employed to protect the interest of the other party,

DEFENCE OF INDIA (Criminal Law Amendment) ACT (1915)—Commandeering order.

Held, that the transaction and the evidence by which it was supported are alike discreditable. It would require the very strongest evidence in such circumstances to prevent the respondents from being protected against such a transaction by a Court of law. (*Lord Shaw*). A. DINOHAMY *v.* W. L. BALAHAMY. **104 I.C. 327=4 O W N. 759= A.I.R. 1927 P.C. 185=54 M.L.J. 388.**

———*Setting aside—Transaction, sham from beginning, need not be set aside.*

When a party obtaining an advantage under a document voluntarily chooses to treat it as inoperative and of no effect, it is wholly unnecessary to come to Court seeking an idle relief. Where the transaction is from the very start a sham and a pretence there is no need to get such a transaction formally set aside. (*Venkatasubba Rao, J.*). K. SUBRAYA CHETTI *v.* NAGAPPA CHETTI. **103 I.C. 150=39 M.L.T. 182= A.I.R. 1927 Mad. 805=53 M.L.J. 311.**

———*Gift executed to vendee to make him co-sharer for the purpose of defeating pre-emption—Fictitiousness of gift cannot be presumed in absence of pleading and evidence—Practice—Plea.*

One R, executed a sale deed of his share in favour of S, and the plaintiffs brought the present suit against S, for pre-emption. After the summonses to the defendants had been issued and served, P, a co-sharer in the village executed a deed of gift in favour of S, in respect of a very small amount of the property in the village enabling thereby to resist, the claim of the plaintiffs on the ground that he (S.) was already a co-sharer in the village and therefore no suit for pre-emption was maintainable against him,

Held, that the circumstances that the donor was of a different caste to the donee, that the deed of gift was given after the institution of the suit and the smallness of the property gifted, did not justify the presumption of fictitiousness of the deed of gift. If the *Plaintiffs wished to challenge the deed of gift they should have said so in their pleadings and given evidence in support of their allegations, fictitiousness and fraud.* (*Rafique and Piggott, JJ.*). SHIB LAL *v.* BIDHA SINGH. **72 I.C. 140= 21 A.L.J. 329=4 L R.A. (Civ.) 375= A.I.R. 1923 All. 508.**

———*Inadmissibility does not mean invalidity.*

A document may be inadmissible in evidence but it does not follow that it is invalid. (*Prideaux, A.J.C.*). RAJE UDAJIRAM *v.* RAJESHWAR. **67 I. C. 310=A. I. R. 1923 Nag. 109.**

DEFAMATION.

See (1) PENAL CODE, SS. 499—500.
(2) TORT-DEFAMATION.

DEFAULT.

See C. P. CODE, O. 9.

DEFENCE OF INDIA (Criminal Law Amendment) ACT (4 of 1915).

—Commandeering order.

———*Contract—Commandeering order—Goods ordered by Government under—Contract is not ordinary commercial contract.*

In the case of commandeering order there can be no ordinary commercial contract for sale and purchase, because one of the parties may be unwilling to surrender his goods and yet may be compelled under the commandeering order to do so. He has no option once the order has been made and issued.

DEFENCE OF INDIA (Criminal Law Amendment) ACT (1915)—Rules under.

He is bound to place his goods at the disposal of Government when called upon to do so. The only right he has is that if he does not accept the price offered by Government he can have it settled by arbitration. The arbitrator's order is final. (*Chotzner, J.*). KESSORAM PODDAR AND CO. *v.* SECRETARY OF STATE. **107 I. C. 360=54 Cal. 969=A. I. R. 1928 Cal. 74.**

—Rules under—Chalan by Police.

———*Offence under R.* 25 (1)—*Police making chalan under District Magistrate's order—Chalan may be treated as complaint.*

Chalan by the Police are only possible in cases cognizable by them. But where a District Magistrate directs the Superintendent of Police to make an inquiry, complete the case and send it up for trial and in due course a subordinate Police Officer puts up a chalan, the chalan may be treated as a complaint. 26 Bom. 150 (F. B.), *Foll* 16 P. R. 1890 Cr.; 28 P. R. 1883 Cr.; 2 P. R. 1892 Cr.; 3 P. R. 1892 Cr.; 20 P. R. 1894 Cr. and 37 Cal. 467, *Ref.* (*Broadway, J.*). KHUSHAL SINGH *v.* EMPEROR. **67 I. C. 337=86 P. L. R. 1922=A. I. R. 1921 Lah. 345.**

—S. 5—Procedure.

———Section 360 applies to proceedings before Commissioners under Defence of India Act. (*Shadi Lal, C. J.*). TAJ MOHAMMAD *v.* EMPEROR. **107 I. C. 100=29 P. L. R. 14=29 Cr. L. J. 212=9 A. I. Cr. R. 505=A. I. R. 1928 Lah. 125.**

DEGRADED WOMAN.

See (1) HINDU LAW—MAINTENANCE.
(2) HINDU LAW—STRIDHANAM.
(3) HINDU LAW—SUCCESSION.

DEITY.

See HINDU LAW—RELIGIOUS ENDOWMENTS.

DEKHAN AGRICULTURISTS' RELIEF ACT (17 of 1879).

—S. 2—Agricultural income.

———Income from toddy juice is agricultural income. (*Macleod, C.J.*). KRISHNAJI *v.* GOPAL. **96 I.C. 415=28 Bom. L R. 676=A. I. R. 1926 Bom. 478.**

—S. 2—Agriculturist.

———"Agriculturist" includes agriculturist at any stage of the proceedings. It is not limited to judgment-debtor being an agriculturist at the date of the suit or of the decree. (*Kennedy, J.C., Raymond and Rupchand Bilaram, A.J.Cs.*). HIRIOMAL *v.* HAZARI SING. **78 I.C. 583=18 S.L.R. 19=A.I.R. 1925 Sind 49 (F.B.).**

———Income from lands not in a district, to which the Dekkhan Agriculturists' Relief Act applies, cannot properly be treated as income from agricultural sources, but must be treated as non-agricultural income for to constitute a person as "agriculturist" for the purposes of the Act he must earn his livelihood principally by agriculture carried on within the limits of a district to which the Act applies. (*Fawcett and Pratt, JJ.*). VAMANACHARYA RAMACHARYA *v.* GOVIND MADHAVACHARYA. **76 I.C. 1014=25 Bom. L.R. 826=A.I.R. 1924 Bom. 33.**

———An agriculturist is one who earns his livelihood wholly or principally by agriculture or who ordinarily engages personally in agricultural labour. (*Macleod, C.J. and Coyajee, J.*). D. RUBINE *v.* BALWANTRAI RAMNARAYAN TRIVEDI. **103 I.C. 795=A.I.R. 1923 Bom. 12.**

———The term "Agriculturist," as defined in S. 2 includes a person who derives a greater part of the income from the fruits of the mango trees, even though he bestows no care or attention and labour on them. The test seems to be whether the income is derived from the produce of the land and not what is the actual quantum of labour which has to be bestowed in getting in the crop. (*Macleod, C. J. and Shah, J.*). HIRALAL RAVCHAND SHAH *v.* PARBHULAL SAKHIDAS SHAH. **64 I. C. 117=46 Bom. 48=23 Bom. L.R. 796=A.I.R. 1922 Bom. 146.**

—S. 2—Applicability.

———The Dekkhan Agriculturists' Relief Act (XVII of 1879) is not applicable to an agriculturist who earns his livelihood wholly and principally by agriculture in Punjab. (*Raymond, A. J. C.*). FIRM OF AYARAM TOLARAM *v.* FIRM HITRAM BODRAJ. **66 I. C. 682=16 S.L.R. 76=A. I. R. 1921 Sind 82.**

—S. 2—Assignment and devolution.

———Privileges under the Act are personal—They cannot pass by assignment or devolution. (*Macleod, C. J. and Coyajee, J.*). MARTAND TRIMBAK *v.* AMRITRAO RAGHOJIRAO. **93 I. C. 924=49 Bom. 662=27 Bom. L.R. 951=A. I. R. 1925 Bom. 501.**

—S. 2—Firm.

———Definition of "agriculturist" applies to firm only if firm by itself, tenants or servants earns livelihood wholly or principally by agriculture, and in that case alone it can only be sued at place where firm carries on business—Mere fact that partners are agriculturists does not make the firm an agricultural firm. (*Fawcett, J.*). DHARAMSEY KHETSEY *v.* BALKRISHNA PANDURANG. **120 I.C. 839=53 Bom. 787=31 Bom. L.R. 984=A. I. R. 1929 Bom. 378.**

—S. 2—Interpretation.

———The definition agriculturist is repugnant to the construction of the word 'person' as given in General Clauses Act, S. 3 (39) unless it is taken in a limited sense regarding agricultural firm. (*Fawcett, J.*). DHARAMSEY KHETSEY *v.* BALAKRISHNA PANDURANG. **120 I. C. 839=53 Bom. 787=31 Bom. L. R. 984=A. I. R. 1929 Bom. 378.**

———"*This Act*" *means* "*This Act wholly or in part.*"

The words 'This Act' in S. 2 mean 'This Act wholly or in part' and the definition of an agriculturist refers to a person of the requisite agricultural qualifications within the limits of a district or a part thereof to which the Act "wholly or in part" may, for the time being, extend.

In other words it is sufficient to extend S. 2 of the Act to particular district in order to bring an agriculturist in that district of the qualifications mentioned in the Act within the definition of agriculturists as given in the section. (44 Bom. 217, *Overruled*). (*Marten, Pratt and Coyajee, JJ.*). GANPAT CHANDRABHAN *v.* TULSHI MARD RAMCHANDRA. **81 I.C. 284=48 Bom. 214=26 Bom. L.R. 118=A. I. R. 1924 Bom. 219 (F.B.).**

—S. 2—Joint family.

———Test is to see what is the joint income of the family derived from. Where some of the defendants (members of the joint family) appeared to have been in service, and the joint income from the earnings of the father and his sons was derived from their father's pension, a certain amount of rent from the theatre which had not been very successful and the annual income derived from 14 acres of land assessed at Rs. 29-8 which was found to be about Rs. 200.

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 2—Rights of representatives.

Held, that the defendants were non-agriculturists. (*Macleod, C.J. and Crump, J.*). NARAYAN BAPULAL *v.* SOUNSINGH GHANSHAM SINGH.
76 I.C. 659=A.I.R. 1923 Bom. 383.

—S. 2—Rights of representatives.

———Legal representative of judgment-debtor can plead that he is agriculturist though it is already decided that judgment-debtor is not agriculturist. A.I.R. 1925 Sind 49 and Second Appeal 21 of 1926 (Sind), *Rel. on.* (*Barlee, J.C. and Aston, A.J.C.*). SHOWKOMAL *v.* JAGATMAL THAROOMAL.
118 I.C. 221=A.I.R. 1930 Sind 16.

———Legal representatives of judgment-debtor can prove their status of being agriculturists in execution proceedings. (*Macleod, C.J. and Coyajee, J.*). SHIDRAJ *v.* RENAKI. **92 I.C. 554= 27 Bom. L. R. 1490=A.I.R. 1926 Bom. 140.**

—S. 3—Agriculturist.

———A Jahagirdar relying entirely upon the income derived from the assessment which would be recovered by the village officers from occupants or tenants is for an agriculturist earning his livelihood from agriculture and consequently if a part of his income is derived from assessment that is not agricultural income. (*Macleod, C.J. and Shah, J.*). MUKUND KRISHNA GOVIND KRISHNA *v.* MOHANLAL PARVATHISHANKAR. **83 I.C. 622= 26 Bom. L. R. 620=A.I.R. 1924 Bom. 514.**

—S. 3—Award.

———Application to file award is not a suit within S. 3—Decree is passed on award—Judgment-debtor cannot plead status as agriculturist in execution. (*Fawcett and Madgavkar, JJ.*). LAXMAN *v.* RAMABAI. **95 I.C. 878= 50 Bom. 236=28 Bom. L R. 736= A.I.R. 1926 Bom. 351.**

—S. 3—Ex-parte decree.

—Where owing to absence of pleas on the part of defendant the Court passes an *ex parte* decree without examining him and the plaintiff under Ss. 7 and 12, the Court must be deemed to have decided by necessary implication that the defendant is not an agriculturist and therefore in execution proceedings the defendant cannot plead that he was agriculturist at the time of execution of the decree. (*Rupchand Bilaram, A.J.C.*). LAWRENCE PHILLIPS & Co. *v.* M. R. F. NAZARETH.
78 I.C. 806=19 S.L.R. 247=A.I.R. 1925 Sind 86.

—S. 3—Several defendants.

———Section 11 preserves right of plaintiff to select venue when defendants agriculturists do not reside within jurisdiction of one Court. (*Percival, J. C. and Rupchand, A.J.C.*). TAHILRA *v.* MAGHANMAL.
117 I.C. 150=23 S.L.R. 365=A.I.R. 1929 Sind 170.

—S. 3—Suit, what is.

———An application to file a reference under Cl. 17 of Sch. II, C. P. Code is not a suit and it is doubtful if an application under clause 20 to file an award even when an agriculturist is a party, can be called a suit; but in any case it is not a suit of the description mentioned in S. 3, Cls. (w), (y) or (z) of the Deccan Agriculturists' Relief Act and the Court can file the award to which an agriculturist is a party and on whose property a mortgage is created by the award, without adjusting accounts under Ss. 12 and 13 of the Act. (*Kennedy, J.C. and Madgavkar, A.J.C.*). HOTCHAND BALCHAND *v.* KISHINCHAND.
83 I.C. 548=17 S.L.R. 178= A.I.R. 1924 Sind 23.

—S. 3—Surety.

—The words in Cl. (w), S. 3 "on a written or unwritten engagement for the payment of money not

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 10-A—Object.

herein provided for" are wide enough to cover the case of a surety. Clause (x) does not refer to a contract of suretyship which falls within the purview of Cl. (w), so suit under S. 11 can be instituted in the Court within whose jurisdiction the sureties reside. (*Percival, J. C. and Rupchand, A.J.C.*). TAHILRAM *v.* MAGHANMAL. **117 I.C. 150= 23 S.L.R. 365= A.I.R. 1929 Sind 170.**

S. 10-A—Applicability.

———The mere fact that one or more legal representatives of a deceased defendant has the status of an agriculturist since the death of deceased defendant or acquired that status subsequently will not oust the jurisdiction of the High Court in a suit which is properly instituted. (*Aston, A. J. C.*). GANGARAM SAMANDAS *v.* DEUMAL NIHALCHAND.
116 I.C. 587= A.I.R. 1929 Sind 163.

———Section applies only when an agriculturist is party to suit. (*Macleod, C. J. and Coyajee, J.*). MARTAND TRIMBAK *v,* AMRITRAO RAGHOJIRAO.
93 I.C. 924= 27 Bom. L R. 951= 49 Bom. 662=A.I.R. 1925 Bom. 501.

———To claim the benefit of S. 10-A it is not necessary that a person should be an agriculturist both at the date of the suit and at the date of the transaction. It is enough if he was an agriculturist at the date of the transaction. (*Fawcett and Patkar, JJ.*). SUTAN RAHIM *v.* RANCHHODJI MULJI.
101 I.C. 140=51 Bom. 224= 29 Bom. L. R. 249=A.I.R. 1927 Bom. 149.

———Lease for 500 years—Section does not apply. 38 B. 18, *Foll.* (*Shah, Ag. C. J. and Crump, J.*). CHATURBHAI LALLUBHAI *v.* MOTIBHAI BAPUJI.
77 I.C. 952=24 Bom. L. R. 1315= A.I.R. 1923 Bom. 146.

———Section 10-A of the Act applies to every suit where an agriculturist is a party and where the transaction in issue entered into by such agriculturist is of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part, under Chapter III of the Act. The section is not restricted to suits of the nature mentioned in S. 3, Cls. (*w*), (*y*) or (*z*). (*Macleod, C.J. and Coyajee, J.*). HALLAPPA KALLAPPA *v.* IRARAPA GIRIMALLAPPA. **67 I. C. 844=46 Bom. 843= 24 Bom. L. R. 406=A.I.R. 1922 Bom. 415.**

—S. 10-A—Applicability of Proviso.

———Proviso 2—*Bona fide* transferee for value without notice holding under registered deed executed less than 12 years before suit is not protected.

Per *Macleod, C.J.*:—The object of the Legislature in enacting S. 10-A was to protect the mortgagor and not the transferee, if the mortgagor was sufficiently diligent in seeking to redeem the property.

Per *Heaton, J.*:—Where S. 10-A applies, S. 41 of the Transfer of Property Act ceases to have any application. It is replaced by the 2nd proviso to S. 10-A. If that is not the result, it cannot be conceived why S. 10-A was ever enacted. (*Macleod, C.J. and Heaton, J.*). PRANJIVENDAS NARSIDAS *v.* MIACHAND BAHADUR. **59 I.C. 418= 45 Bom. 87=A.I.R. 1921 Bom. 426.**

—S. 10-A—Object.

The object of S. 10-A of the Dekkhan Agriculturists' Relief Act, namely, the decision as to the real nature of the transaction by admission of the oral evidence which otherwise would be excluded by the ordinary law, whether S. 92 or the like of the Evidence Act, is to override not merely Evidence Act, S. 92, but also where necessary S. 91: A.I.R. 1919 P.C. 44, *Ref.*; 15 Bom. L.R. 555, *Dist.*

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 10-A—Object.

(*Madgavkar, J.*). BASAPPA GURUBASAPPA *v.* TAYAWA VIRUPAXAPPA. **31 Bom.L.R. 1266= 54 Bom. 30=A.I.R. 1930 Bom. 79.**

———Whether S. 10-A which is in the nature of adjective law was intended to override the substantive provisions of the Indian Registration Act and the Transfer of Property Act. (*Marten, C.J. and Crump, J.*). DADA VAKU NIKAM *v.* BAHIRU HINGU. **105 I.C. 754=29 Bom.L.R. 1419= A.I.R. 1927 Bom. 627.**

—S. 10-A—Powers under.

———Court can go behind a document and inquire into real nature of the transaction. (*Marten, C.J. and Crump, J.*). DADA VAKU NIKAM *v.* BAHIRU HINGU. **105 I.C. 754=29 Bom. L.R. 1419= A. I. R. 1927 Bom. 627.**

———Sale or mortgage—Court can determine real nature of transaction in spite of Evidence Act, S. 92. (*Kennedy, J.C. and Raymond, A.J.C.*). HAMBIRKHAN *v.* MURIJMAL. **65 I.C. 356= 15 S.L.R. 160=A.I.R. 1922 Sind 39.**

—S. 10-A—Retrospective effect.

———Section is retrospective in effect. (*Shah and Crump, JJ.*). GANPAT CHANDRABHAN *v.* T. M. RAMACHANDRA. **81 I. C. 284=48 Bom. 214= 26 Bom. L.R. 118=A.I.R. 1925 Bom. 112.**

—S. 10-A—Sale as mortgage.

———Where a transaction is in form a sale between an agriculturist, and a purchaser from him, and he sues to redeem on the footing that it is in fact a mortgage, no setting aside of the sale is necessary. The plaintiff in fact accepts the transaction as a real transaction but says that it is in fact a mortgage and not a sale. (*Shah, Ag. C. J.*). SHIVBASAPPA NINGAPA *v.* BALAPA BASAPA. **81 I.C. 673=25 Bom. L.R. 1209= A.I.R. 1924 Bom. 172.**

—S. 11—Charge on property.

———Suit to enforce charge on property pledged does not fall under Cl. (w), S. 3, but under Cl. (x) and Court has jurisdiction even though defendant is agriculturist not residing in its jurisdiction. (*Rangnekar, J.*). GULAM HUSAIN LALJI SAJAN *v.* CLARA D'SOUZA. **120 I.C. 834=53 Bom. 819= 31 Bom. L.R. 988=A. I. R. 1929 Bom. 471.**

—S. 12—Benamidar mortgagee.

———*Benamidar* can sue on mortgage even in cases governed by the Act—Provisions of Section 12 have to be observed. 46 Cal. 566 (P. C.), *Foll.* (*Fawcett and Madgavkar, JJ.*). NARAYAN KESHAV *v.* KAJI GULAM. **91 I. C. 353=49 Bom. 832=27 Bom. L. R. 1240= A. I. R. 1926 Bom. 115.**

—S. 12—Compromise.

———In a suit falling under S. 12 of the Act, parties are not precluded from entering into a compromise and the Court before it records it under Civil Procedure Code, O. 23, R. 3 can go into the question of suitability or correctness of the compromise: 34 Bom. 502, *Not foll.*; 35 Bom. 190, *Rel. on.* (*Percival, J. C. and Tyabji, A. J. C.*). PESSUMAL *v.* VALOO. **101 I. C. 844=A. I. R. 1927 Sind 197.**

———Where a compromise is entered into and the defendant admits the whole of the plaintiff's claim and asks the Court to pass a decree in accordance with that admission, O. 23, R. 3 does not oust the jurisdiction of the Court. Under S. 12, the Court can go behind the transaction, and is not bound to pass a decree. (*Macleod, C. J. and Shah, J.*). GOTU RAM RADHA KISHAN *v.* BARKU DHODU. **67 I. C. 253=46 Bom. 560=24 Bom. L. R. 88= A. I. R. 1922 Bom. 331.**

DEKHAN AGRICULTURIST'S RELIEF ACT (1879)—S. 13—Suit for past claim.

—S. 12—Taking accounts.

———Mortgagor asking account—Mortgagor is liable to pay sum found due on account though larger than sum due in terms of mortgage: A.I.R. 1922 Bom. 289;46 Bom. 384 and 46 Bom. 764; A. I. R. 1922 Bom. 201; 67 I. C. 151, *Overruled.* (*Madgavkar, Patkav and Wild, JJ.*). GOPALDAS SAMBHUDAS *v.* VITHAL MOHANJI. **118 I.C. 689= 31 Bom. L. R. 915=A.I.R. 1929 Bom. 357 (F.B.).**

———Where in a suit brought for the recovery of the instalments found due under a mortgage instalment bond the account taken by the Commissioner under the Act, showed that the defendant owed a far larger amount than that due under the bond,

Held, that a larger amount than found due under the bond itself cannot be granted as a result of seeking relief under the Act. (*Macleod, C. J. and Shah, J.*). VITHALDAS BHAGWANDAS *v.* MURTAJA HUSEIN. **67 I. C. 151=24 Bom. L. R. 267= 46 Bom. 764=A. I. R. 1922 Bom. 201.**

—S. 13—Absence of data.

———In most cases under the Act some guess-work has to be done in drawing up an account under S. 13 and if, in the absence of data showing exactly how much principal has been received, the Court forms a reasonable estimate from the amount of consideration stated in the bond as to the probable amount of actual principal, there is no legal objection to that estimate being accepted and acted on. (*Macleod, C. J. and Fawcett, J.*). KONDAN *v.* INDARCHAND BACHERAJ. **59 I. C. 576= 45 Bom. 323=A. I. R. 1921 Bom. 393.**

—S. 13—Applicability.

———Fresh advances made and bonds taken while original mortgage not paid off—S. 13 applies and account should be taken as if they all formed one entire transaction. (*Macleod, C. J. and Fawcett, J.*). GURUNATH KESHAV *v.* SADASHIV BALKRISHNA. **59 I. C. 217=45 Bom. 216=A. I. R. 1921 Bom. 251.**

—S. 13—Calculation of accounts.

———Under S. 13 the Court ought to take accounts from the very beginning of the transactions notwithstanding any statement or settlement of account or any contract purporting to close the previous dealings and create a new obligation, and the aggregate of the interest on taking accounts, should not exceed the amount due on the principal account. (*Patkar and Baker, JJ.*). ANNABHAT *v.* SHIVAPPA. **110 I.C. 269=52 Bom. 376= 30 Bom. L.R. 539=A.I.R. 1928 Bom. 232.**

—S. 13—Effect on decree.

———Mortgage—Accounts showing larger amount due than the Bond amount—No decree can be given for more than the bond amount. (*Macleod, C.J. and Shah, J.*). RAGHUNATH SHIVAJI KULKARNI *v.* RAMCHANDRA NARAYAN JOSHI. **64 I.C. 928=46 Bom. 384=23 Bom.L.R. 1098= A.I.R. 1922 Bom. 289.**

—S. 13—Mortgagee in possession.

———Transfer of Property Act, S. 60—Mortgage-money payable after 21 years—If money is not so paid, mortgagee to continue in possession and develop land by crops—There is no clog on redemption—Proper relief is under S. 13. (*Heaton, Ag. C.J. and Crump, J.*). GENU TUKARAM TAPKIR *v.* NARAYAN. **59 I.C. 258=45 Bom. 117= A.I.R. 1921 Bom. 51.**

—S. 13—Suit for past claim.

———Civil P.C., O. 2, R. 2—Three mortgages forming same transaction—Plaintiff suing on one only cannot subsequently sue on the others.

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 13—Trading transactions.

(*Macleod, C.J. and Heaton, J.*). DALUCHAND BALARAM MARWADI *v.* APPI KOM KHEMA SASTE.
59 I.C. 347=45 Bom. 55=A.I.R. 1921 Bom. 282.

—S. 13—Trading transactions.

——It appears inequitable but it is the law, that if the defendants are *agriculturists*, the accounts even though they relate to trading transactions must be taken under the Act. (*Macleod, C.J. and Shah, J.*). NARAYAN LAXMAN AGHARKAR *v.* CHAPSI DOSA. 64 I.C. 1002=46 Bom. 419=23 Bom. L.R. 1186=A.I.R. 1922 Bom. 168.

—S. 15—Applicability.

——Under the provisions of S. 15-B, instalments cannot be granted under a decree to a person who at the time the decree was passed was not but has since become, an agriculturist. (*Macleod, C. J. and Coyajee, J.*). DEVU JETIRAM GUJAR *v.* REVAPPA SATAPPA SHINTRE. 67 I.C. 840=24 Bom. L.R. 370=46 Bom. 964=A.I.R. 1922 Bom. 220.

—S. 15-B—Assertion of right.

——Defendant can prove his status in execution proceedings even though he has not done so in previous executions. A.I.R. 1924 Bom. 305, *Appl.* (*Macleod, C. J. and Coyajee, J.*). NARAYAN *v.* DHANDO. 94 I.C. 76=28 Bom.L.R. 305=A.I.R. 1926 Bom. 246.

—S. 15-B—Consent decree.

——Consent decree ordering payment in one sum cannot be altered making the sum payable by instalments on the application of one of the parties. 44 Bom. 544, *Expl.*; 37 Bom. 614, *Ref.*(*Macleod, C.J. and Shah, J.*). BADHAN BALAKRISHNA *v.* APPAJI VENKATESH. 62 I.C. 634=45 Bom. 1123=23 Bom. L.R. 503=A.I.R. 1921 Bom. 398.

——Section 15-B does not make any exception in case of consent decrees. The fact that the decree is a consent decree should not be held to limit the powers of the Court. It is open to the Court in proper cases even when the decree is a consent decree to substitute system of instalments under S. 15-B to direct sale. (16 Bom. L. R. 668, *Dist. from*). But it is not open to the Executing Court to reduce the actual amount payable under the decree or the rate of interest, if such is awarded in the decree. What is open to it to do is to direct that the decretal amount be paid in instalments instead of being recovered immediately by sale. Those instalments must be calculated at such a rate that they would enable the capital and interest payable under the decree to be paid off in full during the period settled for the payment of instalments. (*Kennedy, J. C. and Madgavkar, A. J. C.*). SANGATMAL LILARAM *v.* JAN MAHOMED GULAM KHAN. 79 I.C. 553= 16 S.L.R. 260=A.I.R. 1921 Sind 102.

—S. 15-B—Ex-parte decree.

——In execution proceedings of an *ex parte* decree defendant can show that he was an agriculturist at the date of the decree and claim instalments under S. 15-B. (*Macleod, C.J. and Crump, J.*). RUDRAPPA SANVIRAPPA *v.* CHANBASAPPA MALLAPPA. 80 I.C. 162=26 Bom. L.R. 153=A.I.R. 1924 Bom. 305.

—S. 15-B—Final decree.

——A decree made under the provisions of S. 15-B of the Deccan Agriculturists' Relief Act, whether for redemption, foreclosure or sale is not a preliminary decree and therefore need not be made final. 46 B. 761; 40 B. 492, *Foll.* (*Shah and Crump, JJ.*). SUKLYA JAIRAM *v.* SUKLAL MOTICHAND. 81 I.C. 684=48 Bom. 172=25 Bom. L. R. 1214=A.I.R. 1924 Bom. 169.

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 21—Raising of Plea.

—S. 15-B—Limitation.

——The time fixed for the payment of the instalments under an instalment decree which is confirmed by the appellate Court should be allowed from the date of the confirmation of the decree. Limitation for an application under S. 15-B of the Act with reference to each instalment should be counted from the date when it is payable under the above calculation. (*Shah, Ag. C. J. and Kincaid, J.*). DARUBHAI MITHABHAI *v.* BECHAR DESAI. 86 I.C. 894=27 Bom. L. R. 196=49 Bom. 305=A.I.R. 1925 Bom. 270.

—S. 15-D—Condition precedent.

——A suit under S. 15-D. will only lie on the presumption that there was a mortgage in existence by an agriculturist and an issue whether or not mortgage was in existence could not be entertained in a suit under the section. (*Macleod, C.J. and Shah, J.*). KRISHNAJI SONAJI *v.* SADANAND MAHADEO. 80 I.C. 763=26 Bom. L. R. 341=A. I. R. 1924 Bom. 417.

—S. 15-D—Effect of sale.

——An agriculturist mortgagor who has sold his equity of redemption is not an "agriculturist whose property is mortgaged" within S. 15-D and therefore his suit for a mortgage account is not maintainable, nor can such a suit be said to be one under S. 16. (*Fawcett, Ag. C.J. and Mirza, J.*). JANKIBAI KESHAV BANDEKAR *v.* RAMCHANDRA JAIRAM BADELE. 113 I.C. 46=30 Bom. L. R. 1148=A. I. R. 1928 Bom. 475.

—S. 15-D—Purchaser from mortgagor.

——In all cases where the mortgage-money is paid off by a person who is interested in the equity of redemption (purchaser from some co-mortgagors), there can be no question of his acquiring the rights of the mortgagee and being liable to be redeemed by the other co-mortgagors. The mortgage can only be redeemed once. A suit for accounts by such co-mortgagors under S. 15-D of the Dekkhan Agriculturists' Relief Act will not lie. Their remedy would be a suit for partition and possession of share on paying their quota of the redemption money. 40 Bom. 646; A.I.R 1926 Bom. 493, *Dist.*; 26 Bom. 500, *Rel. on.* (*Baker, J.*). SHANKAR MAHADEV JADHAV *v.* BHIKAJI RAMCHANDRA GHANEKAR. 116 I.C. 225=31 Bom. L.R. 129=53 Bom. 353=A.I.R. 1929 Bom. 139.

—S. 20—Agriculturist after decree.

——Where the defendant is not an agriculturist at the date of the decree he cannot claim benefit of S. 20 if he becomes an agriculturist subsequently. (*Shah, Ag. C. J. and Crump, J.*). MULJI PURUSHOTTAM THAKKAR *v.* GOVERDHANDAS TRIBHUWANDAS. 76 I. C. 148=24 Bom. L. R. 1291=A. I. R. 1923 Bom. 36.

—S. 21—Plea when available.

——A person is exempt under S. 21 if he is an agriculturist at the time of the arrest. A. I. R. 1923 Bom. 36, *Dist.* (*Macleod. C. J. and Coyajee, J.*). HIRA *v.* DAULA. 95 I. C. 259=28 Bom. L. R. 539=A.I.R. 1926 Bom. 287.

—S. 21—Raising of plea.

——The material date for the determination of the status under S. 21 is the date of the attempted arrest. But by reason of the definition of "agriculturist" in S. 2 (2) that determination may also import the determination of the status at the date when the liability arose. Where no question of jurisdiction is involved the mere failure to appear and urge the status at the hearing of the suit does not preclude the defendant from urging that he is

DEKHAN AGRICULTURISTS' RELIEF ACT (1879)—S. 21—Raising of plea.

an agriculturist at the date of the arrest or imprisonment, and for the purpose of that plea he is not debarred from urging, if necessary, that he was an agriculturist at the date of the decree.

The words "passed, whether before or after the Act comes into force," were added merely to make the Act retrospective, and, thus, to avoid the decision in *Dipchand* v. *Gokaldas*, 4 Bom. 363 (F. B.). (*Case-law discussed*). (*Marten, C. J., Crump and Patkar, JJ.*). MANEKLAL GIRDHARLAL *v.* MAHIPATRAM MANSUKHRAM. **103 I. C. 898= 51 Bom. 454=29 Bom. L. R. 1109= A.I.R. 1927 Bom. 492 (F. B.).**

———The status of an agriculturist can be pleaded in execution proceedings by a judgment-debtor arrested in execution of the decree. A.I.R. 1923 Bom. 36, *Expl.* (*Macleod, C. J. and Coyajee, J.*). AMBANNA *v.* KALLAPPA. **96 I.C. 309=50 Bom. 239= 28 Bom. L. R. 567=A. I. R. 1926 Bom. 327.**

—S. 22—Agriculturist after decree.

———Judgment-debtor not agriculturist at trial of suit—Acquiring that status since passing of decree —He gets benefit of S. 22 at execution proceedings. A. I. R. 1927 Bom. 492 (F. B.), *Rel. on*; A. I. R. 1925 Sind 86, *Expl.* (*Percival, J. C., and Rupchand, A.J.C.*). KODUMAL *v.* BULCHAND. **119 I.C. 543=A. I. R. 1929 Sind 209.**

—S. 22—"Agriculturist" meaning.

———"Agriculturist" means agriculturist at the date of attachment or sale. (*Percival, J.C. and Rupchand, A.J.C.*). KODUMAL *v.* BULCHAND. **119 I.C. 543=A.I.R. 1929 Sind 209.**

—S. 22—Appeal.

———Order under S. 22 falls under S. 47, Civil P. C.—Appeal lies. (*Fawcett, J.C. and Raymond, A.J.C.*). CHOITARAM KALINDAS *v.* LALBUX. **63 I.C. 310=15 S.L.R. 47=A.I.R. 1921 Sind 29.**

—S. 22—Applicability.

———The Court has no jurisdiction to direct the Collector to take possession of the immovable property falling into the hands of the heirs of the judgment-debtor for it would be entirely contrary to all canons of construction to read into the section "or his heirs" after the words "judgment-debtor": A.I.R. 1923 Bom. 190, *Foll.*: 15 S.L.R. 47, *Not foll.*; 24 Bom. L.R. 749 and 53 Bom. 463, *Ref.* (*Patkar and Baker, JJ.*). MATHURADAS TULJARAM *v.* MAHADU MARUTI KAVDE. **32 Bom. L.R. 320= A.I.R. 1930 Bom. 238.**

—A Court is not justified in saying that because a warrant under S. 386, sub-S. (3), Criminal P.C., is to be deemed a decree, therefore the exceptional provisions of S. 22 must be held applicable to such a warrant. 37 Bom. 614; 8 Bom. 20, *Rel. on*; 14 S.L.R. 217, *Appr.* (*Fawcett and Madgavkar, JJ.*). COLLECTOR OF SATARA *v.* MAHADU. **99 I.C. 310= 28 Bom. L.R. 1231=50 Bom. 844= A.I.R. 1926 Bom. 582.**

—In the case of the death of a judgment-debtor who was an agriculturist, his property in the hands of his heirs could not be taken possession of by the Collector under the directions of the Court, as that has not been specifically stated in the second para of S. 22. (*Macleod, C.J. and Crump, J.*). HIRACHAND MOTICHAND *v.* HANSABAI GANPAT RAO. **72 I.C. 62=25 Bom. L.R. 76=47 Bom. 527= A.I.R. 1923 Bom. 190.**

———The immovable property of an agriculturist is under the provisions of S. 22 immune from attachment and sale in execution of a money decree gaainst him. The immunity, however, ceases when the property descends on his death to his legal

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representatives who are not themselves agriculturists. (*Macleod, C. J. and Shah, J.*). MARUTI BABAJI TOTRE *v.* MARTAND NARAYAN KULKARNI. **69 I. C. 175=24 Bom. L. R. 749=47 Bom. 44= A. I. R. 1922 Bom. 213.**

—S. 22—Award.

———Section 15 of the Arbitration Act makes an award directly enforceable as a decree of Court, and therefore an application to execute the award is not an application in execution of an order within S. 22 of the Act. (*Fawcett, J. C. and Kennedy, A.J.C.*). UDHAV DAS *v.* UKAMAL FATAMAL. **60 I. C. 942=14 S.L.R. 217.**

—S. 22—Crops.

———Crops grown on judgment-debtor's lands after his death by his legal representatives cannot be attached. (*Fawcett, J. C. and Raymond, A. J. C.*). CHOITHRAM KALINDAS *v.* LALBUX. **63 I. C. 310=15 S. L. R. 47= A. I. R. 1921 Sind 29.**

—S. 22—Management by Collector.

———Inability to lease by Collector under a previous execution application long time ago is no bar to appoint Collector under another execution application. (*Fawcett, J.C. and Raymond, A.J.C.*). CHOITHRAM KALINDAS *v.* LALBUX. **63 I. C. 310=15 S. L. R. 47= A. I. R. 1921 Sind 29.**

———Civil P.C., S. 50—Collector can be appointed to manage the property of the judgment-debtor in the hands of his legal representatives after his death. (*Fawcett, J. C. and Raymond, A. J. C.*). CHOITHRAM KALINDAS *v.* LALBUX. **63 I. C. 310=15 S. L. R. 47= A. I. R. 1921 Sind 29.**

—S. 22—Mahomedan Agriculturist.

———The immovable property of a Mohamadan agriculturist which is not liable to attachment under S. 22, Dekkan Agriculturists' Relief Act does not become attachable when it comes to the hands of his heirs by devolution and the heirs are themselves agriculturists. (*Fawcett, J.C. and Raymond, A.J.C.*). CHOITHRAM KALINDAS *v.* LALBUX. **63 I.C. 310=15 S. L. R. 47=A.I.R. 1921 Sind 29.**

—S. 22—Raising of plea.

———An agriculturist can plead exemption in execution from attachment although the decree was not passed against him as an agriculturist, and even though it might have been decided in the suit that at the time the decree was passed he was not an agriculturist. A. I. R. 1923 Bom. 36, *Dist.* (*Macleod, C.J. and Coyajee, J.*). BALAKRISHNA *v.* SARUPCHAND. **95 I.C. 1017=28 Bom. L. R. 656= A.I.R. 1926 Bom. 389.**

—S. 22—Rent of land.

———Civil P.C., S. 53—Decree against Hindu father —Although lands inherited by agriculturist son cannot be attached, the rents thereof are liable to attachment for satisfaction of the decree to extent of property inherited. 8 Bom. 220; 9 B.H.C.R. 116 and 2 W.R. 296, *Rel. on.* (*Patkar and Murphy, JJ.*). ANANT GOVIND JOG *v.* TUKARAM KUSHABA SHINDE. **119 I.C. 179=31 Bom. L.R. 442= 53 Bom. 463=A.I.R. 1929 Bom. 233.**

—S. 43—Validity of award.

———Parties orally agreeing to conciliator acting as arbitrator—Award in writing by conciliator— Award is not invalid though the agreement to refer is not in writing. (*Shah, Ag. C. J. and Crump, J.*). SAKHARAM MARUTI *v.* RAJMAL GIRDHARILAL. **79 I.C. 179=25 Bom. L. R. 52= 47 Bom. 298=A.I.R. 1923 Bom. 173.**

DEKHAN AGRICULTURISTS' RELIEF ACT (1879) —S. 44—Want of sanction.

—S. 44—Want of sanction.

——Where an award passed by the conciliator on a reference made to him by the parties, is not sanctioned by the Court under S. 44, the award is invalid and cannot be sued upon. Without the sanction of the Court anything done by the conciliator would have no final effect. Non-compliance with the procedure laid down in S. 44 would be fatal to the suit. (*Shah, Ag. C.J. and Crump, J.*). SAKHARAM MARUTI *v.* RAJMAL GIRDHARILAL. **79 I.C. 179= 25 Bom. L.R. 52=47 Bom. 298= A.I.R. 1923 Bom. 173.**

—S. 53—Additional evidence.

——The mere fact that S. 53 of Act does not give the District Judge express power to call for additional evidence such as an appellate Court has under O. 41, R. 28, Civil P.C., is not a sufficient basis for holding that the District Judge in his revisional jurisdiction has no such power. However, his revisionary powers under S. 53 depend upon satisfying himself that a particular finding of the Subordinate Judge is one wherein there appears to have been a failure of justice. 19 Bom. 116 (F. B.) and 19 Bom. 286, *Rel. on*; 15 Bom. 650, *Dist.* (*Fawcett and Mirza, JJ.*). RAOJI BHOGU *v.* RAGHUNATH. **109 I.C. 711=52 Bom. 349=30 Bom.L.R. 495= A.I.R. 1928 Bom. 187.**

—S. 63-A—Appearance before Sub-Registrar.

——An agriculturist executed and registered a compulsorily registrable document before the Sub-Registrar under S. 63-A. The *vahivatdar* who was the representative of the three executees signed the declaration required under R. 23 under S. 61.

Held, that all the three persons were not bound to appear before the Sub-Registrar and hence the registration was valid. (*Macleod, C.J. and Crump, J.*). SHRIPATI LAXMAN *v.* BALWANTRAO KRISHNA. **80 I.C. 274=26 Bom. L.R. 149= A. I. R. 1924 Bom. 345.**

—S. 63-A—Applicability.

——Section applies also to person holding power of attorney from agriculturist to execute documents. (*Macleod, C.J. and Coyajee, J.*). BHAGU *v.* NARAYAN. **94 I.C. 658=28 Bom.L.R. 428= A.I.R. 1926 Bom. 337.**

—S. 71—Award.

——Section 71 is not concerned with a decree passed on an award. (*Kincaid, J.C. and Kennedy, A.J.C.*). SAJHRO *v.* CHANGOMAL. **63 I.C. 238=15 S.L.R. 77= A.I.R. 1921 Sind 10.**

—S. 71—Uncertified compromise.

——Minor decree-holder—Compromise out of Court can be recognised but may be examined from point of view of minor's benefit—Compromise not sanctioned by the Court will not bind the minor. (*Macleod, C.J. and Shah, J.*). CHHAGUNLAL KALIDAS *v.* PARSEARAM KARNASHANKAR. **62 I.C. 219=45 Bom. 1128=23 Bom.L.R. 473= A.I.R. 1921 Bom. 142.**

DELAY.

See (1) ACQUIESCENCE.
(2) EVIDENCE ACT, S. 115.
(3) LIMITATION ACT, S. 5.
(4) SPECIFIC RELIEF ACT, S. 22.

DELHI LAWS ACT (7 of 1915).

—S. 2—Scope.

——The Transfer of Property Act does not apply to Delhi. It cannot be said to have automatically come into force in Delhi in 1912 (when Delhi was constituted into a separate province) in absence of any notification to that effect. (*Addison and*

DIGWARI

Bhide, JJ.). RALLI BROTHERS OF KARACHI *v.* PUNJAB NATIONAL BANK LTD. **A.I.R. 1930 Lah. 920.**

DELIVERY.

See (1) CONTRACT ACT, S. 108.
(2) MAHOMEDAN LAW—GIFT.
(3) RAILWAYS ACT, S. 72.
(4) T. P. ACT, S. 122.

DEMOLITION OF BUILDING.

See (1) ACQUIESCENCE.
(2) MUNICIPAL ACTS.

DEMONSTRATIVE LEGACY.

See (1) HINDU LAW—WILL.
(2) WILL.

DENIAL OF TITLE.

See T. P. ACT, S. 111.

DEPOSIT.

See (1) C. P. CODE, O. 21, Rr. 84 AND 89.
(2) CONTRACT ACT, S. 73.
(3) T. P. ACT, S. 83.

DEPOSITION.

See EVIDENCE.

DEPOSIT OF TITLE DEEDS.

See T. P. ACT, S. 59.

DEPOSITORY.

See LIMITATION ACT, ART. 145.

DESAI INAM.

See GRANT-INAM.

DESCENDANTS.

See (1) HINDU LAW—SUCCESSION.
(2) MAHOMEDAN LAW—SUCCESSION.

DESCRIPTION OF PARTY TO SUIT.

See C. P. CODE, O. 1, R. 10.

DESCRIPTION OF WITNESS.

See EVIDENCE.

DESHGAT VATAN.

See (1) BOMBAY VATAN ACT.
(2) C. P. CODE, S. 60.
(3) GRANT.

DETENTION IN CUSTODY.

See (1) CR. P. C., S. 344.
(2) CRIMINAL TRIAL.

DETENTION OF ACCUSED BY POLICE.

See (1) CR. P. C., S. 344.
(2) CRIMINAL TRIAL.

DETERMINATION OF TENANCY.

See (1) LANDLORD AND TENANT.
(2) LEASE.
(3) T. P. ACT, Ss. 105, 117.

DEVASTAVIT.

See (1) EXECUTOR.
(2) PROBATE AND ADMINISTRATION ACT, S. 146.

DEVASTHAN.

See HINDU LAW—RELIGIOUS ENDOWMENT.

DHARMA.

See (1) HINDU LAW—RELIGIOUS ENDOWMENT.
(2) MAHOMEDAN LAW—RELIGIOUS ENDOWMENT.
(3) TRUST.
(4) TRUSTS ACT.

DHARMADA.

See HINDU LAW—WILL.

DHARMAKARTA.

See HINDU LAW—RELIGIOUS ENDOWMENT.

DICTA.

See PRACTICE—PRECEDENT.

DIGWARI.

See LAND TENURE.

DILUVION.
See (1) ALLUVION AND DILUVION.
(2) BENGAL ALLUVION AND DILUVION REGULATION (XI OF 1825.)
(3) RIPARIAN RIGHTS.

DIRECTORS.
See (1) COMPANY—DIRECTORS.

DISAFFECTION.
See PENAL CODE, S. 124-A.

DISAPPEARANCE.
See EVIDENCE ACT, SS. 107 AND 108.

DISCHARGE.
See (1) CRIMINAL TRIAL.
(2) CR. P. CODE, SS. 209, 254.
(3) EVIDENCE ACT, SS. 102, 103 AND 114.

DISCHARGE OF ACCUSED.
See CR. P. C., S. 253.

DISCIPLINARY JURISDICTION.
See (1) CONTEMPT.
(2) LEGAL PRACTITIONER.
(3) LEGAL PRACTITIONER'S ACT.
(4) LETTERS PATENT.

DISCONTINUANCE OF POSSESSION.
See (1) ADVERSE POSSESSION.
(2) LIMITATION ACT, ART. 142.

DISCOVERY.
See C. P. CODE, O. 11.

DISCRETION.
See (1) PRACTICE.
(2) SP. REL. ACT, S. 22.

DISCRETIONARY RELIEFS.
See SP. REL. ACT, S. 42.

DISHONEST INTENTION.
See (1) EVIDENCE.
(2) EVIDENCE ACT, SS. 14 AND 15.

DISHONESTY.
See PENAL CODE.

DISHONOUR—HUNDI.
See NEG. INSTR. ACT, SS. 91—98.

DISMISSAL FOR DEFAULT.
See C. P. CODE, O. 9, R. 8.

DISMISSAL FROM SERVICE.
See MASTER AND SERVANT.

DISMISSAL OF COMPLAINT.
See CR. P. C., SS. 203, 247.

DISMISSAL OF SUIT.
See C. P. CODE, O. 9, R. 8.

DISPOSAL.
See PENAL CODE, S. 372.

——Of Dead Body.
See PENAL CODE, S. 318.

——Of Property.
See CR. P. C., S. 517.

DISPOSSESSION.
See (1) ADVERSE POSSESSION.
(2) LIMITATION ACT, ARTS. 142—144.

DISPUTE AS TO POSSESSION OF IMMOVABLE PROPERTY.
See CR. P. C., SS. 144—147.

DISQUALIFICATION.
See HINDU LAW—SUCCESSION.

——To give Evidence.
See EVIDENCE ACT, S. 118.

DISQUALIFICATION OF MAGISTRATE.
See PENAL CODE, SS. 526—528.

DISQUALIFIED HEIR.
See HINDU LAW—SUCCESSION.

DISSOLUTION OF MARRIAGE.
See (1) DIVORCE ACT.
(2) HINDU LAW—MARRIAGE—(*a*) DISSOLUTION. (*b*) DIVORCE.
(3) MAHOMEDAN LAW—DIVORCE.

DIVORCE ACT (1869) (As Amended by Act 25 of 1926)—Foreigner.

DISSOLUTION OF PARTNERSHIP.
See (1) CONTRACT ACT, CH. XI.
(2) PARTNERSHIP.

DISTANT KINDRED.
See MAHOMEDAN LAW, SUCCESSION.

DISTINCT OFFENCES.
See CR. P. C., SS. 35, 233.

——Magistrate—Revision by.
See CR. P. C., S. 438.

DISTINCT SUBJECTS.
See COURT FEES ACT, S. 17.

DISTRAINT.
See (1) B.T. ACT.
(2) DEKKHAN AGRICULTURISTS' REL. ACT.
(3) LANDLORD AND TENANT.
(4) MADRAS ESTATES LAND ACT.

DISTRESS.
See (1) B.T. ACT.
(2) DEKKHAN AGRICULTURISTS' REL. ACT.
(3) LANDLORD AND TENANT.
(4) MADRAS ESTATES LAND ACT.

DISTRICT BOARDS ACTS.
See LOCAL ACTS.

DISTRICT MUNICIPAL ACTS.
See LOCAL ACTS.

DIVERSION.
See (1) EASEMENTS.
(2) EASEMENTS ACT.

DIVESTING OF ESTATE.
See HINDU LAW—ADOPTION—SUCCESSION.

DIVISION.
See HINDU LAW—JOINT FAMILY—PARTITION.

DIVORCE.
See (1) DIVORCE ACT.
(2) HUSBAND AND WIFE.
(3) RESTITUTION OF CONJUGAL RIGHTS.

DIVORCE ACT (4 of 1869)—(As Amended by Act 25 of 1926).

—Burden of Proof.

——The entire burden of proving that the petitioner had changed his domicile lies on him: *Winans* v. *Attorney-General*, (1904) A.C. 287, *Foll.* (*Rankin, C.J. and Page, J.*). LINTON *v.* GUDERJAN.
120 I.C. 801=56 Cal.530=A.I.R. 1929 Cal. 599.

—Foreigner.

——Jurisdiction—Foreigner can be made co-respondent. (*Marten, J.*). MRS. ROSE HILL *v.* MR. LUKE C. HILL. **73 I.C. 304=25 Bom.L.R.289=47 Bom. 657=A.I.R. 1923 Bom. 284.**

——As under the Indian Divorce Act (1869) amended by Act (25 of 1926), the Courts in India cannot pass a decree for divorce in cases of persons resident in India but not domiciled therein, and as the Indian and Colonial Divorce Jurisdiction Act passed by the British Parliament in 1926 validates only decrees passed and confirmed under the Indian Divorce Act prior to 15th December, 1926, the Indian Courts cannot confirm, after the passing of the English statute and the amendment of the Indian Act, where the parties are residents in India but domiciled in England, a decree *nisi* though the decree *nisi* may have been passed prior to the passing of the English statute. A decree of dissolution of marriage confirmed or made absolute after 25th March, 1926, the date when the amendment of the Indian Act came into force, would be a nullity, as the order of confirming or making absolute is itself a decree of dissolution, and the making of it is prohibited by the Indian Act of 1926 in cases where the parties to the marriage are not domiciled in India at the date of presentation of the petition. As such a decree cannot be made

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—Proof of adultery.

under the provisions of the Indian Divorce Act, as amended by Act No. 25 of 1926, it would not be rendered valid by S. 3, Indian and Colonial Divorce Jurisdiction Act. (*Shadi Lal, C.J. and Broadway and Fforde, JJ.*). MRS. LYDIA AGNES WALLER *v.* SAMUEL JAMES WALLER. **110 I.C. 706= 10 Lah. 64=30 P.L.R. 250= A.I.R. 1928 Lah. 557.**

—Proof of adultery.

——Where adultery with a named person is alleged but not proved the divorce petition must be dismissed. Mere submission by the wife that she had become pregnant by some unknown person and had miscarriage would not furnish her ground for divorce. Every petition under the Act must contain an allegation that the parties are domiciled in British India.

Per *Marten, J.*—Spouses can deny sexual intercourse even when living together but such evidence must be scrutinised with great care. Where a petition for divorce alleges adultery with a named person and also with person or persons unknown, leave to dispense with the named co-respondent must first be given by the Court before grant of relief. (*Macleod, C.J., Shah and Marten, JJ.*). W. K. HEWSON *v.* ETHEL M. HEWSON. **85 I.C. 774=26 Bom. L.R. 467= A.I.R. 1924 Bom. 397.**

—Whether ultra vires.

—The Act is not *ultra vires* of the Indian Legislature. *Keyes* v. *Keyes*, 1921 P. D. 204, *dissented from.* The fact that the Parliament decided to legislate and got the Indian Divorces (Validity) Act (11 and 12 Geo. V., c. 18) enacted in order to validate the decrees granted in the past cannot be construed as implying an approval of the dictum in the judgment in *Keyes* v. *Keyes*, 1921 P. D. 204. (*Shadi Lal, C. J. Scott Smith, Le Rossignol, Harrison and Fforde, JJ.*). LEE *v.* LEE. **81 I.C. 686= 5 Lah. 147=A.I.R. 1924 Lah. 513 (F.B.).**

——Act is not *ultra vires* of the Indian Legislature. (*Macleod, C. J., Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I.C. 654=25 Bom. L.R. 945= 47 Bom. 843=A.I.R. 1923 Bom. 321 (F.B.).**

—S. 2—Change of domicile.

——Domicile—Change of domicile means determination to make alleged domicile home, with clear intention of settling there and ending his days there. *Winans* v. *Attorney General*, (1904) A.C. 287, *Foll.* (*Rankin, C. J. and Page, J.*). LINTON *v.* GUDERIAN. **120 I.C. 801=56 Cal. 530=A.I.R. 1929 Cal. 599.**

—S. 2—Christian.

——*Schwabe, C. J.*—Although a person is excommunicated by the sect or the church to which he belongs he does not thereby cease to profess Christianity. The question of profession of Christianity is a question of his own action and not the action of his Church. (*Schwabe, C. J., Oldfield and Ramesam, JJ.*). PAKKIAM SOLOMAN *v.* CHELLIAH PILLAI, **75 I.C. 17=46 Mad. 839= 33 M.L.T. 231=A.I.R. 1924 Mad. 18= 45 M.L.J. 208 (F.B.).**

—S. 2—Different religions.

——Letters Patent (Bombay), Cl. 35 : 38 Bom. 125 ; 20 I.C. 492, *Overruled.*

While enacting the Divorce Act the intention of the legislature was to enact it in such a way as to remove the limitation contained in Cl. 35, Letters Patent. The Divorce Act intended it to be sufficient for one party to profess the Christian religion and did not require that both parties should do so. The Bombay High Court has, therefore, jurisdiction to entertain a suit for restitution of conjugal rights instituted by a lady, who is a Russian and a Christian, against her husband who is a Parsi: 38 Bom. 125; 20 I.C. 492, *Overruled*; 6 M.I.A. 348 (P.C.), *Dist.*; *Chetti* v. *Chetti*, (1909) P. 67, *Rel. on*; *Other cases, Ref.* (*Marten, C.J., Mirza and Broomfield, JJ.*). NINA DALAL *v.* MERWANJI PHEROZSHAW DALAL. **32 Bom. L.R. 1046=A.I.R. 1930 Bom. 385 (F.B.).**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 2—'Or respondent'.

—S. 2—Finding.

——Specific findings of material facts showing case to fall under S. 2 are necessary. (*Sanderson, C.J., Newbould and Rankin, JJ.*). W. H. THOMAS *v.* MRS. THOMAS. **86 I.C. 1018=52 Cal. 379= 29 C.W.N. 350=A.I.R. 1925 Cal. 585 (F.B.).**

—S. 2—Jurisdiction.

——Domicile in India at time of petition is essential for granting jurisdiction. (*Rankin, C. J. and Page, J.*). LINTON *v.* GUDERJAN. **120 I. C. 801=56 Cal. 530= A.I.R. 1929 Cal. 599.**

——The Indian Courts have no power to dissolve marriage of persons who are not domiciled in India and resident in India at the time of bringing the petition. A.I.R, 1929 Lah. 419, *Ref.* (*Shadi Lal, C. J. and Broadway and Fforde, JJ.*). J. W. PYATT SERGEANT *v.* MRS. M. G. PYATT. **115 I.C. 851= 30 P. L. R. 272=A.I.R. 1929 Lah. 555.**

——Residence is enough and domicile is not essential to confer jurisdiction—Jurisdiction is not beyond Indian Councils Act (1861), S. 22.

Keyes v. *Keyes*, (1921) P. 204, *not foll.* The Court is bound to pass a decree in such cases though it may not have any effect beyond British India. *Giordano* v. *Giordano*, 40 Cal. 215, *Foll.* (*Gregory, J.*). ISHARANI NIRUPOM DEVI *v.* VICTOR NITENDRA NARAIN. **53 Cal. 282=A.I.R. 1926 Cal. 871.**

——Mere residence confers jurisdiction on Court, to dissolve marriage.

The residence however as contemplated by the Statute means ordinary residence and not a mere temporary presence in a country such as that of a traveller, and such residence must be *bona fide* residence and not one acquired for a fraudulent or collusive purpose. The word "resides" in S. 2 is used in its ordinary sense and is not intended to mean "is domiciled." (*Shadi Lal, C. J., Scott Smith, Le Rossignol, Harrison and Fforde, JJ.*). LEE *v.* LEE. **81 I. C. 686=5 Lah. 147= A. I. R. 1924 Lah. 513 (F.B.).**

——Courts in India are not empowered to decree dissolution of the marriage between persons not domiciled within their jurisdiction. The provisions of S. 2 as to residence, no doubt apply to cases when the parties are domiciled in India, but where the parties are domiciled in England they cannot override the express provisions in S. 7 of the Act, Courts in India are bound by the provisions of S. 7 of the Act and give relief on the same principles namely, that jurisdiction depends on domicile. *Keys* v. *Keys and Gray*, 1921 P. D. 204, *Foll.* (*Robinson, C. J., May Oung and Beasley, JJ.*). A. H. D. JONES *v.* K. JONES. **76 I.C. 597= 2 Bur. L. J. 106=A.I.R. 1923 Rang. 223.**

—S. 2—' Or respondent.'

——*Effect—One of the parties being Christian and other Parsi—Petition for restitution of conjugal rights—Maintainability.*

In a petition for restitution of conjugal rights it is sufficient if one of the parties professes the

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 2—Procedure.

Christian religion. The Bombay High Court has jurisdiction to entertain a petition instituted by a Russian Lady who is a Russian and a Christian against her husband who is a Parsi, the marriage itself having been celebrated under the French Law. (Effect of word 'or respondent' inserted in S. 2 of the Divoree Act by Act XXX of 1927 considered). (*Marten, C.J., Mirza and Broomfield, JJ.*). DALAL *v.* DALAL. **32 Bom. L.R. 1046= A.I.R. 1930 Bom. 385 (F.B.).**

—S. 2—Procedure.

———It is the duty of the District Courts when a petition for dissolution of marriage comes before them to satisfy themselves that the parties to the marriage are domiciled in India at the time when the petition is presented. The Court should see that the petition itself contains a declaration, to that effect; and, before hearing the suit the Court should first satisfy itself that the parties are in fact domiciled in India. (*Fforde, Addison and Johnstone, JJ., afterwards Shadi Lal, C. J., Broadway and Fforde, JJ.*). MURPHY *v.* MURPHY.

113 I.C. 782=115 I.C. 849=10 Lah. 607= 30 P.L.R 622=A.I.R. 1929 Lah. 419.

—S. 2—Residence and domicile.

———Domicile of the parties to a marriage in practice means the domicile of the husband. *Landerdale Peerage Case*, (1885) 10 A. C. 692; *Udny* v. *Udny*, (1869) 1 H.L. (Sc.) 441; *Bell* v. *Kennedy*, (1868) 1 H. L. (Sc.) 307, *Ref.* (*Rankin, C. J. and Page, J.*). LINTON *v.* GUDERJAN. **120 I.C. 801= 56 Cal. 530=A.I.R. 1929 Cal. 599.**

———The question of domicile is one of intention, to be inferred from all the circumstances of a person's life, conduct, habits and so forth and a man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in His Majesty's civil or military service, or in the exercise of any profession or calling: *In re Macright*, (1886) 30 Ch. D. 165, *Rel. on.*

The mere expression of intention to acquire a new domicile is not enough to prove the change. There must be in addition such conduct on the part of the person claiming to have acquired the new domicile as to leave the Court in no doubt as to the reality and irrevocable character of his expressed intention: *Winans* v. *Attorney-General*, (1904) A.C. 287, *Foll.*

It is not that a person while serving in His Majesty's forces in India can never acquire a new domicile but that he must be deemed to retain his domicile of origin while so serving unless his conduct shows that he has intended to relinquish his original domicile for a new one: *In re Macright*, 30 Ch. D. 165, *Expl.* (*Fforde, Addison and Johnstone, JJ., afterwards Shadi Lal, C. J., Broadway and Fforde, JJ.*). MURPHY *v.* MURPHY.

113 I.C. 782=115 I.C. 849=10 Lah. 607= 30 P.L.R. 622=A.I.R. 1929 Lah. 419.

———Husband and wife were residing in India since their marriage in 1918. Husband said that he was domiciled in India and had no intention of returning to England. Wife also said that she intended settling in India and did not mean to go back to England,

Held, that there was no reason not to acccept their statements that they had made India their domicile. (*Rutledge, C. J., Maung Ba and Brown, JJ.*). E. W. BLACKMORE *v.* BLACKMORE NORA. **119 I.C. 220=7 Rang. 313= A.I.R. 1929 Rang. 216.**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 3—Residence.

———Domicile of choice requires residence and intention of permanent residence. It takes far less to revive a domicile of origin than to acquire a domicile of choice. Where the domicile of petitioner was English.

Held: Rangoon High Court had no jurisdiction to grant divorce. (*Robinson, C. J., May Oung and Beasley, JJ.*). JONES *v.* JONES. **79 I.C. 719=1 Rang. 705= A.I.R. 1924 Rang. 193 (F.B.).**

—S. 3 (1)—Confirmation of decree.

———*By Court* (*Rupchand Bilaram, A.J.C. dissenting*)—The Court of the Judicial Commissioner of Sind can, since the amendment of the Criminal P.C. in 1923, under S. 17 read with S. 3 (1) of the Divorce Act, confirm a decree *nisi* of divorce passed by the Judicial Commissioner of Sind on the Original Side. The High Court of Bombay has no longer jurisdiction to confirm the decrees *nisi* of the Judicial Commissioner. (*Kennedy, J. C. Raymond, Aston, Rupchand Bilaram and Percival, A. J. Cs.*). WALTER JOHN BROOKS *v.* NEE BARWICK. **91 I.C. 99=A.I.R.1926 Sind 58 (F.B.).**

—S. 3 (1)—Interpretation.

———In this section the word "together" governs only the word "last resided" and not the word "reside." The Act therefore gives the petitioning spouse the choice of selecting his forum either as (1) the district where the parties had last resided together or (2) the district within the local limits of which, both the husband and the wife, though living separately "reside" at the date of the presentation of the petition: 47 P.R. 1911 (F.B.); 14 W.R. 416; 44 Bom. 924 and A.I.R. 1926 Oudh. 319, *Foll.* (*Tekchand and Currie, JJ.*). THELMA AGNES *v.* ARCHIBALD CYRIL. **A.I.R. 1930 Lah. 916.**

—S. 3 (1)—'Reside' meaning.

———Person who has an abode elsewhere, but who comes to a place for a short period and with a fixed purpose for being within the jurisdiction of a Court cannot be said to "reside" there; *Coombes* v. *Coombes*, 1 L.B.R. 222; 3 C.W.N. 250; 32 All. 203 and *Manning* v. *Manning*, (1871) 2 P. & D. 223, *Rel. on*; 36 Cal. 964 and A.I.R. 1921 Bom. 211, *Dist.*; 3 Bom. 227, *Ref.* (*Tek Chand and Currie, JJ.*). THELMA AGNES KERSHAW *v.* ARCHIBALD CYRIL KERSHAW. **A.I.R. 1930 Lah. 916.**

—S. 3 (1)—Residence.

———No permanent residence—Residence at a hotel within jurisdiction for nearly a month—Both parties within jurisdiction when respondent was served—There was sufficient residence. (*Marten, J.*). MABEL FLORA MURPHY *v.* J. L. MURPHY. **76 I C. 633=45 Bom. 547=A.I.R. 1921 Bom. 211.**

———Though both parties to a petition for divorce are residing separately from each other, the Court has jurisdiction if they lived within the jurisdiction of the Court at the time of the presentation of the petition. (*Marten, J.*). BORGONHA *v.* BORGONHA. **59 I.C. 931=44 Bom. 924= 22 Bom. L. R. 361.**

—S. 3 (3)—Residence.

———"Reside" does not mean sexual intercourse. (*Marten, C. J. Fawcett and Percival, JJ.*). EDITH WALSH *v.* EDWARD WALSH. **101 I.C. 388= 29 Bom. L.R. 308=A.I.R. 1927 Bom. 230.**

———Parties need not have their own house. (*Marten, C.J., Fawcett and Percival, JJ*). EDITH WALSH *v.* EDWARD WALSH. **101 I.C. 388= 29 Bom. L.R. 308=A.I.R. 1927 Bom. 230.**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 3—"Together."

—S. 3 (3)—"Together."

———The word "together" does not govern the word "reside," but only the word "last resided." (*Marten, C. J., Fawcett and Percival, JJ.*). EDITH WALSH *v.* EDWARD WALSH.
101 I. C. 388=29 Bom. L. R. 308=A. I. R. 1927 Bom. 230.

———The word "together" in the section governs only the word "resided" and not "reside." (*Ashworth, J.*). R. H. LEADON *v.* E. M. LEADON.
94 I. C. 952=13 O. L. J. 236=3 O.W.N. 406=A.I.R. 1926 Oudh 319.

—S. 3—Major children.

———Children not minors cannot be provided. (*Phillips and Reilly, JJ.*). B. ISWARAYYA *v.* (SWARANAM) ISWARAYYA. **1929 M.W.N. 831=31 M.L.W. 97=A.I.R. 1930 Mad. 154=58 M.L.J. 29.**

—S. 4—Declaration of Marriage.

———The jurisdiction of the High Court in matters matrimonial is only such jurisdiction as is comprised within the provisions of the Indian Divorce Act. A suit therefore for a declaration that marriage was a valid and lawful marriage does not lie. (*Bucknill, J.*). ADELAIDE CHRISTIANA LISH *v.* DAVID LISH. **72 I.C. 657=1923 P.H.C.C. 127=1 Pat. L.R. 129=A.I.R. 1923 Pat. 301.**

—S. 4—Jurisdiction.

———Section 4 only continues the jurisdiction already possessed by High Courts at the date when the Act came into force. Section 10 confers jurisdiction on High Courts, and under this section the Oudh Chief Court has original jurisdiction in divorce cases, because where an Act says that a person may present a petition to a particular Court it must be inferred that it means that the Court shall have power to entertain and decide the petition. (*Ashworth, J.*). R.H. LEADON *v.* E.M. LEADON.
94 I.C. 952=13 O.L.J. 236=3 O.W.N. 406=A.I.R. 1926 Oudh 319.

—S. 7—Adultery.

———In Divorce and Matrimonial causes in England there is a definite established practice there that the evidence of the husband or the wife alone is never to be accepted without corroboration either by witnesses or at least by strong surrounding circumstances. Where charges of adultery are made against a known person that man must be made a co-respondent unless the Judge shall otherwise direct. (*Schwabe, C.J., Coutts-Trotter and Kumaraswamy Sastri, JJ.*). P. JOSEPH *v.* P. RAMAMMA.
68 I.C. 931=45 Mad. 982=16 M.L.W. 689=1922 M.W.N. 637=31 M.L.T. 416=A.I.R. 1923 Mad. 9=43 M.L.J. 441 (F.B.).

—S. 7—Appeal.

———Where the points involved were whether the High Court is justified in reading S. 37 as entitling the Court to order enhancement in alimony granted for maintenance to a wife judicially separated, and whether the High Court has power under O. 41, R. 33 of the Civil P.C., to order such enhancement where none was asked the petitioner-husband was granted leave to appeal to the Privy Council but the High Court acting under Divorce Act, S. 7 ordered the petitioner to deposit a sum of Rs. 8,000 for the expenses of wife. (*Jackson and Reilly, JJ.*). B. ISWARAYYA *v.* SWARNAM ISWARAYYA. **123 I.C. 603=31 M.L.W. 150=1929 M.W.N. 651=A.I.R. 1930 Mad. 159=58 M.L.J. 84.**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 7—Intention.

—S. 7—Confirmation of decree.

———Decree *nisi* for dissolution of Marriage—Respondent not served with the petition—Uncorroborated testimony of petitioner in respect of the charges of adultery and cruelty—High Court will not confirm decree.

It is contrary to the principles and rules on which the Court for Divorce and Matrimonial Causes in England acts and gives relief, to act on the uncorroborated testimony of a petitioner either to establish adultery or cruelty. (*Schwabe, C. J., Oldfield and Phillips, JJ.*). K. L. A. PAYNE *v.* A. A. PAYNE. **70 I. C. 43=16 M. L. W. 16=A. I. R. 1922 Mad. 350=42 M. L. J. 562.**

—S. 7—Decree on admission.

———A decree for a dissolution of marriage cannot be made merely on admissions and without recording evidence: 17 Bom. 624, *Ref.* (*Addison, Abdul Qadir and Currie, JJ.*). ALLA RAKHA *v.* MT. BARKAT BIBI. **A.I.R. 1930 Lah. 771 (S.B.).**

—S. 7—Domicile of choice.

———A domicile of choice can only be acquired by residence coupled with an intention of permanent or definite residence. Mere residence by itself will not be sufficient. It takes far less to revive a domicile of origin than to acquire a domicile of choice.

Where the domicile of petitioner was English,

Held: Rangoon High Court had no jurisdiction to grant divorce. (*Robinson, C. J., May Oung and Beasley, JJ.*). JONES *v.* JONES.
79 I.C. 719=1 Rang. 705=A.I.R. 1924 Rang. 193 (F.B.).

—S. 7—Duty.

———In an *exparte* case it is not enough for one of the parties to come forward and say something exactly following the terms of the Act. The proper course, if there is no cross-examining pleader, is for the District Judge to ask sufficient questions to make it reasonably clear what the precise facts are on which the petitioner relies for the relief he claims. (*Marten, C. J., Fawcett and Percival, JJ.*). EDITH WALSH *v.* EDWARD WALSH. **101 I.C. 388=29 Bom. L.R. 308=A.I.R. 1927 Bom. 230.**

—S. 7—Duty of Court.

———The Court, while exercising its discretion in matrimonial cases, must have regard not only to the rights and liabilities of the matrimonial person wronged, and of the wrong-doer respectively *inter se* but also to the interests of society and public morality. The Court should endeavour to promote virtue and morality and to discourage vice and immorality. It ought not to limit or restrict that discretion by laying down rules within which alone the discretion is to be exercised: *English cases considered.* (*Mears, C. J., Walsh and Kendall, JJ.*). JAMES PETER SHERRING *v.* SHAHZADI SHERRING JACKSON. **108 I.C. 117=50 All. 464=26 A.L.J. 153=A.I.R. 1928 All. 338.**

—S. 7—Intention.

———*Crump, J.* (contra *Marten, J.*)—There is the possibility of reading into S. 7 an intention on the part of Legislature to adopt whatever test the Court of Divorce in England might from time to time lay down upon the matter of divorce but that is a forced and unnatural construction. Also it would be necessary to omit the words "Subject to the provisions contained in this Act..." Indeed, had the Legislature intended, any such result, it would have been easy to say in express terms that the provisions of the Act must be read as subject to the rules and principles applied from time to time by

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 7—Principles and Rules.

the Matrimonial Courts in England... They have chosen to say precisely the contrary. Any such construction would introduce an element of uncertainty where certainty is essential. The doctrine of English Courts has varied from time to time upon this point. Since 1895 domicile alone is recognized as conferring jurisdiction.

S. 7 is a residuary section intended to provide for any matters which by inadvertence or otherwise are not expressly dealt with in the Act. It is not unusual in statutory drafting to insert provisions of this nature *ex majore cautela* more especially where an attempt is being made to codify in this country an unfamiliar branch of English Law. The expression 'rules and principles' points rather to the rules and principles on which the Court deals with these matrimonial causes in requiring a certain degree of evidence and other cognate matters. (*Macleod, C. J., Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I.C. 654= 25 Bom. L.R. 945=47 Bom. 843= A.I.R. 1923 Bom. 321.**

—S. 7—Principles and rules.

———The words "principles and rules" in S. 7 means principles and rules of law of evidence, of interpretation, of practice, and of procedure but not statutory provisions nor statutory rules. The principles and rules to be applied are by the words of the section made subject to the provisions of the Act; they can never run counter to the Act. (*Phillips and Reilly, JJ.*). B. ISWARAYYA *v.* SWARNAM ISWARAYYA. **1929 M.W.N. 831=31 M.L.W.97= A.I.R. 1930 Mad. 154=58 M. L. J. 29.**

———It is very doubtful whether the expression "principles and rules" mentioned in S. 7 of the Act is intended to include such an important matter as the rule defining the jurisdiction of the Indian Courts. The section is merely a residuary section and it seems that the Legislature, after making express provisions for various matters relating the matrimonial causes, intended by means of this section to apply the English Law to such matters of miscellaneous character as were not expressly dealt with by the Act. The opening words of S. 7 "subject to the provisions contained in this Act" expressly save the rule relating to jurisdiction contained in S. 2 of the Act. A, I. R. 1923 B. 321, *Ref.* (*Shadi Lal, C. J., Scott Smith, Le Rossignol, Harrison and Fforde, JJ.*). LEE *v.* LEE. **81 I.C. 686=5 Lah. 147= A.I.R. 1924 Lah. 513 (F.B.).**

—S. 7—Scope.

S. 7 deals with procedure and does not extend the grounds of dissolution. (*Costello, J.*). M. BARNARD *v.* G. H. BARNARD. **115 I.C. 572= 56 Cal. 89=32 C.W.N. 742= A.I.R. 1928 Cal. 657.**

—S. 7—Temporary residence.

———High Court can decree dissolution where parties are foreigners but temporarily reside in India—Dissolution is effective in India only. 40 C. 215, *Foll.*; A.I.R. 1923 Bom. 321 and A.I.R. 1924 Lah. 513, *Ref.* (*Pearson, J.*). MILLER *v.* MILLER. **89 I.C. 611=52 Cal. 566=A.I.R. 1925 Cal. 874.**

—S. 10—Admission by wife.

———The Court may act on the admissions of the wife although they are not supported by any other evidence. But to rely entirely upon such admissions is highly dangerous, as collusion between husband and wife is quite possible. In each case the question will be whether all reasonable grounds for suspicion is removed. Generally speaking it is desirable to insist upon evidence corroborative of the admissions. (*Shah, Ag. C. J., Marten and Fawcett, JJ.*). JOHN OVER *v.* MURIEL A. I. OVER. **91 I.C. 20= 49 Bom. 368=27 Bom. L. R. 251= A.I.R. 1925 Bom. 231.**

—S. 10—Adultery.

———If a husband or wife contracts a venereal disease during the marriage but fails to show that the origin of the disease was innocent, adultery is established if it is proved that the wife or husband was free from that disease and could not possibly have communicated the same to him or her. *Gleen* v. *Gleen*, (1900) 7 T. L. R. 62; *Mills* v. *Mills*, (1920) 36 T. L. R. 772 and *Stead* v. *Stead*, (1927) 71 S. J. 391, *Ref.*; *Anthony* v. *Anthony*, (1919) 35 T. L. R. 559 and *Gliksten* v. *Gliksten*, (1917) 33 T. L. R. 203, *Dist.* (*Tek Chand and Agha Haidar, JJ.*). MRS. ADA JOSE *v.* MR. CHARLES LEONARD JOSE. **A. I. R. 1930 Lah. 828.**

———Where it is found that the joint presence of the husband and another woman is not a mere farce staged for the purpose of allowing the wife to constitute divorce proceedings, but is an incident in the course of a liaison, adultery on the part of the husband may be held as proved. *Farnham* v. *Farnham*, 41 T. L. R. 543, *Rel. on.* (*Costello, J.*). M. BARNARD *v.* G. H. BARNARD. **115 I.C. 572= 56 Cal. 89=33 C.W.N. 742= A.I.R. 1928 Cal. 657.**

———Adultery condoned—Offence less than adultery again committed—Previous adultery is not revived.

At least the second offence, if it is not adultery, must be one of which a Court can take cognizance: *Collins* v. *Collins*, (1883) 9 A. C. 205, *Rel. on.* Mere familiarity does not revive adultery. (*Pullan, J.*). G. C. FOSTER *v.* A. B. FOSTER. **107 I.C. 184= 1 L.C. 685=A.I.R. 1928 Oudh 114.**

———In a suit for divorce the correspondence between the respondent and a co-respondent is always a very important piece of evidence. It is a fundamental rule that in a suit for dissolution of marriage it is not necessary to prove the direct fact of adultery. The Court may presume adultery when it is satisfied that a guilty attachment subsisted between the parties, and that opportunities occurred when a guilty intercourse might with ordinary facilities have taken place. (*Broadway and Abdul Raoof, JJ.*). S. I. DAVIDSON *v.* NORTH MACDONALD DAVIDSON. **62 I. C. 782=3 U. P. L. R. (L.) 66.**

—S. 10—Circumstances to be considered.

———All circumstances of married life, and particularly circumstances as to petitioner's adultery, must be considered. (*Mears, C. J., Walsh and Kendall, JJ.*). JAMES PETER SHERRING *v.* SHAHZADI SHERRING JACKSON. **108 I.C. 117= 50 All. 464=26 A.L.J. 153= A.I.R. 1928 All. 338.**

—S. 10—Cruelty.

———Where a husband who has a loathsome disease and knowing that, he compels his wife to sexual intercourse with him against her will, even though the forcible intercourse might not result in communicating the disease, cruelty must be held to be proved, *Foster* v. *Foster*, A.I.R. 1921 P. 438, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). MRS. ADA JOSE *v.* MR. CHARLES LEONARD JOSE. **A.I.R. 1930 Lah. 828.**

———Cruelty may be defined as conduct of such a character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. In order

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 10—Cruelty.

to establish a case of cruelty against her husband a wife must prove more than isolated acts of violence. The degree of violence varies in accordance with the status of the parties but merely proving certain isolated assaults, all of which arose on the spur of the moment and on some real or fancied provocation is not enough. (*Pullan, J.*). G. C. FOSTER v. A. B. FOSTER. **107 I.C. 184=1 L.C. 685=A.I.R. 1928 Oudh 114.**

——Threat of force to pregnant woman is legal cruelty—Adultery condoned by wife can be revived by legal cruelty. (*Walsh, J.*). (MRS. ALICE) KING v. MR. KING. **83 I.C. 167=47 All. 50=6 L.R.A. Civ. 16=A.I.R. 1925 All. 237.**

——The change of religion is no ground for a divorce: nor is mere change of religion coupled with adultery a ground for divorce; there has to be a change of religion coupled with a marriage with some other woman. Where the husband's general conduct towards the wife is of a character tending to degrade her, and subjecting her to a course of annoyance and indignity injurious to her health, the Court should hold the cruelty proved. 164 E.R. 1467, *Ref.* (*Young, Og. C.J., May Oung and Carr, JJ.*). NAUG MUN v. LABYA NAW. **80 I.C. 179=2 Bur. L.J. 9=2 Rang. 199=A.I.R. 1924 Rang. 262.**

—S. 10—Effect of judicial separation.

——Decree for judicial separation—Petition for divorce is not maintainable on the same facts.

Green v. *Green*, (1873) 3 P. & D. 121; *Mason* v. *Mason*, (1883) 8 P. & D. 21; *Fullerton* v. *Fullerton*, (1922) 39 T. L. R. 46; *Hall* v. *Hall*, (1879) 48 L. J. P. 57; and *Bland* v. *Bland*, (1866) P. & D. 237, *Dist.* (*Rankin, C. J. and C. C. Ghose, J.*). ENID IVY COLLINS v. W. G. COLLINS. **115 I.C. 599=56 Cal. 166=32 C.W.N. 932=A. I. R. 1928 Cal. 806.**

—S. 10—Jurisdiction.

——Cases under Divorce Act—Court should inquire into facts giving it jurisdiction to pronounce decree for dissolution of marriage. 14 W.R. 416, *Foll.* (*Tek Chand and Currie, JJ.*). THELMA AGNES KERSHAW v. ARCHIBALD CYRIL KERSHAW. **A. I. R. 1930 Lah. 916.**

——Where neither of the parties are proved to be domiciled in India and therefore for purposes of international law no divorce can be granted to the party but the Indian Courts are authorized under the Indian Divorce Act to grant a petition which will be valid for all purposes throughout British India where the parties are resident within the jurisdiction of the Court and the adultery complained of has been committed in India. (*Pullan, J.*). MRS. NAN GREENWOOD v. L. V. GREENWOOD. **106 I. C. 481=5 O. W. N. 163=A. I. R. 1928 Oudh 218.**

—S. 10—Proof of marriage.

——Divorce case—Marriage should be strictly proved and in general certificate of marriage should be produced. Parties domicile in India and their residence within Court's jurisdiction should also be proved—Adultery independent of wife's admission should be proved. (*Marten, C. J., Blackwell and Baker, JJ.*) *and afterwards remand* (*Marten, C. J., Crump and Blackwell, JJ.*). PREMCHAND HIRA v. BAI GALAL. **105 I. C. 871=51 Bom. 1026=29 Bom. L. R. 1336=A. I. R. 1927 Bom. 594.**

—S. 11—Discretion.

——In the matter of excusing a petitioner from naming an alleged adulterer, a co-respondent in a suit for dissolution of marriage, the Indian Courts have not the same discretion as the English Courts have. *Saunders* v. *Saunders*, (1897) P. 89, *Ref.* (*Findlay, J. C.*). CHARLES HENRY SMALLEY v. MRS. OLIVE MURIEL SMALLEY. **107 I.C. 667=11 N. L. J. 4=A. I. R. 1928 Nag. 117.**

DINORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 13—Collusion.

——Adulterer's name not known. Court should not lightly excuse absence of enquiry. (*Shah, Ag. C. J., Marten and Fawcett, JJ.*). JOHN OVER v. MURIEL A. I. OVER. **91 I.C. 20=49 Bom. 368=27 Bom. L.R. 251=A.I.R. 1925 Bom. 231.**

—S. 11—Necessary parties.

——Adulterer has to be made co-respondent unless omission excused by Court—Wife's parents cannot be made parties. (*Addison, Abdul Qadir and Currie, JJ.*). ALLA RAKHA v. MT. BARKAT BIBI. **A.I.R. 1930 Lah. 771 (S.B.).**

——Adulterer must be made party in an application by the husband for dissolution of marriage. (*Rankin, C.J., C.C. Ghose and Pearson, JJ.*). GARUO SANGMA v. RANGJI MECHIK. **117 I.C. 837=56 Cal. 29=A.I.R. 1929 Cal. 276 (S.B.).**

—S. 11—Revision.

——High Court will not interfere in revision with an order refusing an application for addition of a party as a co-respondent in a suit under the Act. (*B. B. Ghosh and Mallik, JJ.*). MOTI LAL LYALL v. PREMI LYALL. **107 I.C. 475 (1)=54 Cal. 1038=A.I.R. 1928 Cal. 114.**

—S. 12—Duty of Court—Nature of proceedings.

——The proceedings under the Act are not a civil suit which can be compromised and under S. 12 it is for the Court to satisfy itself so far as it reasonably can, not only as to the facts alleged but also whether or not the petitioner has been in any manner accessory to or conniving at the adultery or has condoned the same and the Court has to enquire into any counter-charge which may be made against the petitioner. (*Addison, Abdul Qadir and Currie, JJ.*). ALLA RAKHA v. MT. BARKAT BIBI. **A.I.R. 1930 Lah. 771 (S.B.).**

—S. 13—Admission.

——An admission of adultery unsupported by corroborative proof should no doubt be received with caution, but if the Court, after scrutinizing it carefully believes it to be true it can grant divorce on the strength of that admission alone although there might be a total absence of other evidence to corroborate it: *Robinson* v. *Robinson*, 29 L. J. N. S. 178, *Foll.* (*Shadi Lal, C.J. and Zafar Ali, J.*). MRS. O'DONNELL v. C. E. O'DONNELL. **9 L. L. J. 315==A.I.R. 1927 Lah. 491.**

—S. 13—Collusion.

——Collusion between the parties cannot be inferred from such ordinary acts between them as a solicitor would naturally regard as unoffensive and unobjectionable: *Churchward* v. *Churchward*, (1895) P. 7 and *Harris* v. *Harris*, (1862) 31 L.J. Pr. (N.S.) 160, *Ref.* (*Rankin, C.J. and Page, J.*). LINTON v. GUDERIAN. **120 I. C. 801=56 Cal. 530=A.I.R. 1929 Cal. 599.**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 13—Delay.

—S. 13—Delay.

——It is not open to a party in matrimonial suit to choose his own time for coming to Court and asking for relief. The matrimonial jurisdiction of the Court is intended to afford relief to a husband or to a wife who feels that he or she has been grievously wronged by the other party, and, therefore desires to have the marriage dissolved and possibly to obtain compensation from the person who is responsible for the wrong which has been done. (*Costello, J.*). KING *v.* KING.

57 Cal. 215=A.I.R. 1930 Cal. 418.

——The question of delay in bringing matrimonial suit is always a matter for the discretion of the Court, and the Court ought not to exercise its discretion in favour of the petitioner who has slumbered in sufficient comfort for a space of a year or more, because the inaction, on the part of the petitioner, shows not that he was insincere in his complaint in the sense of not believing that his wife had committed adultery, but because there was an acquiescence by him in the injury which he knew he had suffered. (*Costello, J.*). KING *v.* KING.

57 Cal. 215=A.I.R. 1930 Cal. 418.

——Petition for, divorce five years after knowledge of adultery of wife—Petition should be dismissed even though adultery be established. (*Shadi Lal, C.J. and Bhide, J.*). ALLAN ROBERT SHAW *v.* MRS. EMYLY MAY SHAW. **107 I.C. 273=A.I.R. 1928 Lah. 320.**

—S. 13—Essentials for decree.

——Petition for divorce by wife unopposed—Mere evidence of adultery and cruelty is not enough for decree *nisi*—Want of connivance and explanation of delay in filing petition, is necessary—Necessary facts should be stated with precision. (*Mears, C.J., Boys and King, JJ.*). MRS. M.B. HARTLEY *v.* JACK FLEMING HARTLEY. **124 I.C. 465=A.I.R. 1930 All. 322 (S.B.).**

—S. 13—Object.

——Object of insisting on no collusion is to ensure fair trial. It is to oblige them to bring all material and pertinent facts to the notice of the Court, to prevent their blinding the eyes of the Court in any respect; to oblige them so to act as will enable the Court to be in a position to do justice between the parties. (*Rankin, C.J. and Page, J*). LINTON *v.* GUDERIAN. **120 I.C 801=56 Cal. 530= A.I.R. 1929 Cal. 599.**

—S. 14—Adultery by petitioner.

——Where the husband of the petitioner had deserted her for nearly six years and had not maintained her and her child and he had been guilty of habitual cruelty and adultery.

Held, that a decree for divorce should be passed and the fact that the petitioner had gone unchaste would not deprive her of the decree where the husband was to a great extent responsible for her unchastity. (*Sanderson, C.J., Panton and Graham, JJ.*). MRS. MARY REBERIO *v.* V. S. REBERIO.

98 I.C. 154=54 Cal. 80=44 C.L.J. 25=30 C.W.N. 820=A.I.R. 1926 Cal. 1014.

——In divorce cases, the Court is bound to act on the principles followed by the Divorce Courts in England. Adultery on the part of the petitioner is very rarely condoned by the Court. Where the adultery is committed in ignorance of fact, as where a petitioner whose wife had left him married again in the belief that his wife was dead, the Court may grant relief. Another ground recognised

DIVORCE ACT—(1869)—(As Amended by Act 25 of 1926)—S. 15—Alimony.

is, where a petitioner acts in ignorance of law, as, where a man marries again after decree *nisi* has been passed, but before it was absolute in the *bona fide* belief that his marriage had already been dissolved. Another class of cases in which discretion may be exercised is where the wife commits adultery in consequence of threats and personal violence by which she is coerced into committing a fault. The last case is where the petitioner commits adultery to the knowledge of the respondent but which the respondent long since pardoned and condoned. Cases are not to be decided on grounds of sympathy, but on the judicial exercise of the discretion which the law confides to the Courts. (*Robinson, C.J. and Maung Gyi, J.*). MA OHU MAY *v.* SUTHERLAND. **88 I.C. 1009=4 Bur. L.J.47=A.I.R. 1925 Rang. 257.**

——The Court has a discretion to grant relief to a guilty party. But that discretion has to be exercised with exceptional care, and speaking generally, it is not open to a petitioner to bring a petition and deny that she has committed adultery and then after it is proved that she has committed adultery, to turn round and ask the Court to condone it and grant her a divorce. (*Marten, J.*). WILHELMINA CODD *v.* BERTIE ELIJAH. **84 I.C. 71=47 Bom. 664=25 Bom.L.R. 339=A.I.R. 1924 Bom. 132.**

—S. 14—Condonation.

——Condonation of past matrimonial offences is impliedly conditioned upon future good behaviour of offending spouse and so if after condonation offences are repeated, right to make condoned offence ground for divorce revives—Wife committing adultery—Then husband and wife living together for some months—Wife again deserting husband—Subsequent desertion is sufficient ground for making previous adultery ground for divorce and husband is entitled to decree for divorce. 47 Cal. 1068, *Rel. on.* (*Rutledge, C.J., Maung Ba and Brown, JJ.*). E. W. BLACKMORE *v.* BLACKMORE NOREA. **119 I.C. 220=7 Rang. 313=A.I.R. 1929 Rang. 216 (S.B.).**

——Condonation is not absolute, but is only conditional, and if there is a subsequent matrimonial offence, then the condonation goes, and the original offence is revived. *Palmer* v. *Palmer*, (1860) 2 Sw. & Tr. 61, *Rel. on.* (*Marten, C.J., Blackwell and Baker, JJ.*) *and after remand* (*Marten, C.J., Crump and Blackwell, JJ.*). PREMCHAND HIRA *v.* BAI GALAL. **105 I.C. 871=51 Bom. 1026=29 Bom. L. R. 1336=A. I. R. 1927 Bom. 594.**

——Condoned adultery is revived by the commission of a later matrimonial offence. (*Chatterjea, Ag. C. J., Walmsley and Page, JJ.*). C.E. STUART *v.* D.A.C. STUART. **96 I.C. 932=53 Cal. 436=A.I.R. 1926 Cal. 864.**

—S. 14—Prostitution by Petitioner.

——Where the husband of the petitioner illtreated her and subsequently deserted her without providing for her maintenance and the petitioner lead a life of prostitution out of necessity and later gave it up, the Court ought to exercise the discretion vested under S. 14 in favour of the petitioner and pass a decree *nisi* for dissolution. *Burdon* v. *Burdon*, 1901 P. 52; *Humpson* v. *Humpson*, 1914 P. 104, *referred to.* (*Panckridge, J.*). ROZE *v.* ROZE. **57 Cal. 891.**

—S. 15—Allmony.

——If a husband's suit for dissolution of marriage on the ground of his wife's adultery is dismissed on the ground that the adultery alleged

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 15—Proof of cruelty.

was not proved, the Court cannot as part of the decree in the suit grant permanent alimony to the wife. (*Krishnan and Ramesam, JJ.*). DEVASAHAYAM *v.* DEVAMONY. **69 I.C. 994=17 M.L.W. 90=1923 M.W.N. 184=46 Mad. 133=A.I.R. 1923 Mad. 211=43 M.L.J. 763.**

—S. 15—Proof of cruelty.

——Proof of reasonable apprehension of bodily hurt is sufficient to prove cruelty. The Court is not to wait till the hurt is actually done but the apprehension must be reasonable—It must not be an apprehension arising merely from an exquisite or diseased sensibility of mind. *Evans* v. *Evans*, (1790) 1 Hagg Cons. 35, *Foll.*; *English cases cited.* (*Chatterjea, Ag. C. J., Walmsley and Page, JJ.*). C. E. STUART *v.* D. A. C. STUART. **96 I. C. 932=53 Cal. 436=A. I. R. 1926 Cal. 864.**

—S. 15—Right to relief.

——Speaking generally, a guilty party cannot obtain relief by way of judicial separation any more than he or she can obtain relief by way of a divorce. 13 P. D. 141, *Foll.* Desertion by the husband, in order to be a ground for an order for Judicial separation must be a wilful abstention which is against the wishes of the wife. In a suit by wife it is competent to the husband to bring the cross-petition, not by a separate petition on a separate document, but by a further statement added to the original defence to the wife's petition. (*Marten, J.*). MRS. ROSE HILL *v.* MR. LUKE C. HILL.

73 I.C. 304=25 Bom. L.R. 289=47 Bom. 657=A.I.R. 1923 Bom. 284.

—S. 16—Death of petitioner.

——Where after the passing of the decree *nisi* either the husband or wife dies, the High Court cannot confirm the decree of dissolution. (*Sanderson, C.J., Woodroffe and Richardson, JJ.*). BUTTERFIELD *v.* BUTTERFIELD. **74 I.C. 250=50 Cal. 153=A.I.R. 1923 Cal. 426.**

—S. 16—Interpretation.

——"During that period" means period from the date of decree *nisi* to the date of decree absolute.

It is not the intention of the legislature that no person can be heard to show cause why the decree should not be made absolute if he fails to apply within six months from the date of the decree *nisi*. (*King, J.*). D'CRUZ, F. A. *v.* D'CRUZ, MRS. W.E. **103 I.C. 512=1 L.C. 203=A.I.R. 1927 Oudh 310.**

——The words "not being brought before the Court" in S. 16 mean, "not being brought before the Court at any time up to the date of intervention"; 2 L.R. 357, *Foll.* (*King, J.*). D'CRUZ *v.* D'CRUZ, MRS. W. E. **103 I.C. 512=1 L.C. 203=A. I. R. 1927 Oudh 310.**

—S. 16—Intervention.

——The mere fact that the intervenor happens to be a near relative of the party is not *per se* a ground for refusing to allow him to intervene, where he is not acting at the instance of the party and the simple fact, that the intervenor is a close relation of the party and is living with him is no ground for inferring that the intervenor is acting at the instance of that party. *Howarth v. Howarth*, 9 P.D. 218, *Foll.*; 6 Bom. 416, *Dist.* (*King, J.*). D'CRUZ *v.* D'CRUZ, MRS. W.E. **103 I.C. 512=1 L.C. 203=A.I.R. 1927 Oudh 310.**

—S. 16—Investigation.

——In England there is a King's Proctor whose duty is to investigate any charge of adultery brought against a petitioner and if necessary to move the Court to set aside the decree *nisi*. In India there is no King's Proctor, but the Court should of its own motion investigate into the matter.

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 19—Impotence.

In certain cases the law will not allow evidence to be given by husband or wife as to whether or not they have had sexual intercourse, and to bastardise his or her alleged child by stating, that there was no sexual intercourse between the spouses. But it is open to one of them to say that, by reason of absence abroad or for some other reason, there could have been no access between the parties during particular periods. (*Marten, J.*). WILHELMINA CODD *v.* BERTIE ELIJAH.

84 I.C. 71=47 Bom. 664=25 Bom. L.R. 339=A.I.R. 1924 Bom. 132.

—S. 16—Right to show cause.

——Witness in divorce case is not precluded from showing cause against decree absolute. (*King, J.*). D'CRUZ *v.* D'CRUZ. MRS. W.E. **103 I.C. 512=1 L.C. 203=A.I.R. 1927 Oudh 310.**

—S. 17—Intention.

——Scope—Reference to High Court for confirmation of decree for dissolution—High Court must review entire evidence. (*Mears, C.J., Pigott and Walsh, JJ.*). A.A. GARLINGE *v.* I.R. GARLINGE. **77 I.C. 133=44 All. 745=A.I.R. 1922 All. 504 (F.B.).**

—S. 17—Notice.

——Dissolution of marriage—Proceedings to confirm decree *nisi*—Notice to respondent is not necessary. 8 Cal. 756, *Foll.* (*Scott-Smith, Le Rossignol and Abdul Raooff, JJ.*). HARRIS *v.* CAPT. C. P. HARRIS. **59 I.C. 89=10 P.L.R. 1921=A.I.R. 1921 Lah. 310.**

—S. 17—Want of evidence.

——Dissolution was refused for want of evidence of misconduct. (*Fforde, Addison and Bhide, JJ.*). V. W. A. EMILE *v.* N. G. A. EMILE. **A. I. R. 1930 Lah. 360 (S. B.).**

—S. 18—Procedure.

——Petition under S. 18—Prayer for custody of children inserted—Respondent not prejudiced by hearing the two issues together, nor taking objection—There is no irregularity in disposing of both matters together. *Langworthy* v. *Langworthy*, 11 P. D. 85, *Rel. on*; 19 I. C. 778, *Dist.* (*Kendall, J.*). ESME *v.* EDWARD JOHN ANDERSON. **111 I. C. 627=1929 A.L.J. 65=A. I. R. 1928 All. 677.**

—S. 19—Fraud.

——Fraud apart from fraud in obtaining the consent is not a ground for dissolution of marriage. Non-disclosure of the fact that either party is suffering from incurable disease making co-habitation dangerous to the other is not such fraud. Where due to the wife suffering from syphilis the husband could not consummate the marriage without the very gravest risk to his health and to that of any offspring who might be born of the connection and where this state of things was likely to continue and be permanent,

Held, this amounted to impotency on the part of the wife. (*Greaves, J.*). BIRENDRA KUMAR *v.* HEMALTA BISWAS. **67 I. C. 949=25 C.W.N.706=A. I. R. 1921 Cal. 464.**

—S. 19—Impotence.

——Venereal disease in woman does not constitute impotency—(*Obiter*). A. I. R. 1921 Cal. 459, *Not appr.* (*Stuart, C. J. and Wasir Hasan, J.*). WYLIE *v.* RUTH SHATI WYLIE. **7 O.W.N. 17=A.I.R. 1930 Oudh 83.**

——Incurable syphilis is equivalent to impotence, and that a decree of nullity can be granted

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 19—Impotence.

to a petitioner who proves that the husband or wife, as the case may be, was suffering from such a disease at the time of marriage, even though the disease is not an absolute bar to copulation. Where a woman is discharged from hospital as cured and her blood test was negative it is much more likely that she was suffering from some curable form of venereal disease than that she was suffering from an incurable form. Syphilis in its early stage is not incurable and, therefore, it cannot be said that she is impotent and that her marriage cannot be set aside on that account. 48 Cal. 283, *Rel. on.* (*Pullan, J.*). E. A. WYLIE *v.* R. S. WYLIE. **117 I. C. 450= 6 O. W. N. 244= A.I.R. 1929 Oudh 238.**

———Husband impotent as regards his wife only —Decree of nullity can be pronounced. *C.* (*otherwise H.*) v. *C.*, (1921) P. 399, *Applied.* (*Marten, C.J., Crump and Blackwell, JJ.*). H. *v.* H. **110 I.C. 266= 30 Bom. L.R. 523=A.I.R. 1928 Bom. 279.**

—S. 19—Syphilis.

———*Existence of syphilis in one party to marriage is ground for rescission of marriage contract.*

Where syphilis is contracted, prior to but was not known to exist at the time the contract to marry was entered into, or where such disease was contracted subsequent to the making of the contract to marry, but through no wrongful act of the defendant, its existence furnishes a good defence to an action for breach of promise. The affliction is to be of a serious type, and perhaps, incurable, the rule may well be otherwise where the disease is such as to be easily curable and where the plaintiff assents to a postponement of performance.

The two principal ends of matrimony are, a lawful indulgence of the passions to prevent licentiousness, and the procreation of children, according to the evident design of Divine Providence. Permanent and incurable impotency existing at such time and such nature as to render complete and natural sexual intercourse between the parties practically impossible is recognised as a ground for the annulment of the marriage. Similarly incurable syphilis is a ground for annulling marriage. The existence of such diseases in either party at the time of the marriage renders the marriage voidable.

In such cases a divorce may be decreed on the ground of cruelty. To constitute such a ground of cruelty, it is usually required that the disease should have been actually communicated to the complainant, that the complainant should have been ignorant of the existence or nature of the defendant's disease at the time of its communication, and that the defendant should have infected the petitioner knowingly and wilfully. If all these facts are established no question can obviously arise as to the propriety of granting the divorce, unless there are facts showing a condonation of the offence.

Sound public policy would not permit an extension of the rule to cases where the disease is easily curable. It is the permanent or probably permanent character of the malady, rendering sexual intercourse impracticable throughout the continuance of the marriage, that furnishes the reason for the annulment, and the maxim should apply *cessante rationae cessat lex ipsa.*

The existence of syphilis in one of the parties furnishes a good ground for divorce to the other.

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926))—S. 32—Ordinary suit for.

Concealment of a loathsome and incurable form of syphilis is recognised as a fraud sufficient to warrant divorce or annulment, specially where the existence of the disease is discovered by the other party before the marriage is consummated and the parties immediately separate, that such disease must be actually or probably incurable.

There should be a proper medical examination of the person of the party alleged to be afflicted. Where a party refuses to attend for medical inspection, the Court may properly draw an unfavourable inference. The Courts naturally exercise a wide discretion in ordering physical examination and always do so, subject to such conditions as will afford protection from violence to natural delicacy and sensibility. (*Mookerjee, A.C.J. and Chaudhuri, J.*). BIRENDRA KUMAR *v.* HEMANTA BISWAS. **60 I.C. 362=48 Cal. 283= 33 C.L.J. 97=A.I.R. 1921 Cal. 459.**

—S. 22—Separation when justified.

———It is easy for a wife, who has some grievance against her husband, to say that she would rather take an allowance and live apart from him but it is not the object of the law to make such separations easy. They are merely a short road to prostitution and there are certain things which a wife must put up with. Where the husband has shown himself to be suspicious, jealous and occasionally violent but it is not proved that he is unfaithful or that he has failed to support her or her children in decency or that he is habitually cruel. It is neither for her advantage nor in the interest of justice that she should be given a separation from her husband under such circumstances. (*Pullan, J.*). G. C. FOSTER *v.* A. B. FOSTER.

107 I.C. 184=1 L.C. 685=A. I. R. 1928 Oudh 114.

—S. 22—Subsequent co-habitation.

———*Decree—Execution—Decree for judicial separation and permanent alimany is rendered void by subsequent co-habitation.*

There cannot be any such thing as a conditional resumption of co-habitation. Either the wife accepts her decree for judicial separation and lives apart from her husband under it or she does not accept it. There cannot be any intermediate stage between acceptance of the judicial separation and its non-acceptance. *Haddon* v. *Haddon*, (1887) 18 Q.B.D. 778, *Foll.* (*Beasley, J.*). ELLEN MA NOO *v.* WILLIAM PO THIT. **83 I.C. 566= 2 Rang. 163=A.I.R. 1924 Rang. 314.**

—S. 32—Different religions.

———Bombay High Court has jurisdiction to entertain suit for restitution of conjugal rights instituted by Christian lady against her Parsi husband—Both parties need not be Christian—Divorce Act, Ss. 2 and 4—Letters Patent (Bombay), Cl. 35 : 38 Bom. 125 ; 20 I. C. 492, *Overruled.*

While enacting the Divorce Act the intention of the legislature was to enact it in such a way as to remove the limitation contained in Cl. 35, Letters Patent. 38 Bom. 125 ; 20 I.C. 492, *Overruled* ; 6 M.I.A. 348 P. C., *Dist.* ; *Chetti* v. *Chetti*, (1909) P. 67, *Rel. on*; *Other cases, Ref.* (*Marten, C.J., Mirza and Broomfield, JJ.*). NINA DALAL *v.* MERWANJI PHEROZSHAW DALAL. **32 Bom.L.R. 1046= A.I.R. 1930 Bom. 385.**

—S. 32—Ordinary suit for.

———Suit for restitution of conjugal rights bought by Christian in ordinary way in High Court and not by petition under matrimonial jurisdiction—Judge has jurisdiction to pass decree for

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 34—Considerations in assessing damages.

relief prayed for. (*Blackwell and Kemp, JJ.*). (PETER PHILIP) SALDANHA *v.* (ANNE GRACE) SALDANHA. **32 Bom.L.R. 17=A.I.R. 1930 Bom. 105.**

—S. 34—Considerations in assessing damages.

——In assessing damages on the ground of adultery the Court should consider whether the wife was in the past a good wife and took good care of her husband's house and children, or whether she was a worthless wife, always out of the house and not attending to her duties. In the later case, the petitioner may not be entitled to any damages at all. (*Marten, C.J., Blackwell and Baker, JJ.*) *and after remand* (*Marten, C.J., Crump and Blackwell, JJ.*). PREMCHAND HIRA *v.* BAI GALAL.

105 I.C. 871=51 Bom. 1026=29 Bom. L.R. 1336=A.I.R. 1927 Bom. 534 (F.B.).

——Damages claimed by husband in a divorce petition—Demeanour of husband, happiness in life and position of the wife's partner in adultery are to be considered. *Comyn* v. *Comyn*, 32 L. J. Mat. 210, *Ref.* (*Kendall, J.*). D'CRUZ *v.* MRS. D'CRUZ.

98 I.C. 1019=3 O.W.N. 926=A.I.R. 1927 Oudh 34.

——The object of awarding damages against an adulterer is not to punish at all. All that the law permits to be given is compensation for the loss which the husband has sustained. That is the only guide to the amount of damages to be given. But if it is proved that a man has led a happy life with his wife, that she has taken care of his children, that she has assisted in his business, and then some man appears upon the scene and seduces the wife away from her husband, then those facts will be taken into consideration. If the adulterer did not seduce her away from her husband that makes a very material difference in considering the amount of damages to be given. In considering these questions the conduct of the husband must be looked to.

The means of the adulterer have nothing to do with the question. I.R. 11 P. D. 100, *Appr.* (*Sanderson, C. J., Newbould and Rankin, JJ.*). U. H. THOMAS *v.* MRS. THOMAS. **86 I.C. 1018=52 Cal. 379=29 C.W.N. 350=A. I. R. 1925 Cal. 585 (F.B.).**

—S. 34—Damages—Extent of.

——Where a decree was passed for the dissolution of marriage and though the Court found that a sum of Rs. 1,500 directed to be paid by the co-respondent would be sufficient compensation to the plaintiff it was decreed further that a sum of Rs. 12,000 should be paid into Court in the event of the co-respondent failing to marry the respondent within six months of the confirmation of the decree.

Held: that the further direction regarding Rs. 12,000 was in contravention of S. 34 of the Divorce Act and that the same should be disallowed. (*Broadway, Addison and Dalip Singh, JJ.*). P. *v.* P. **11 Lah. 303=31 Punj. L.R. 590=A.I.R. 1930 Lah. 321 (F.B.).**

—S. 34—Jurisdiction.

——Application for dissolution and damages—Court having no jurisdiction to grant dissolution—Damages alone can be granted—Damages will be different according as he is getting or not a decree for divorce: *Bernstein* v. *Bernstein*, (1893) P. 292, *Dist.*; *Monsell* v. *Monsell*, (1922) P. 34, *Ref.* (*Rankin, C. J. and Page, J.*). LINTON *v.* GUDERIAN. **120 I.C. 801=56 Cal. 580=A.I.R. 1929 Cal. 599.**

—S. 34—Legality of order.

——Damages to petitioner ascertained—Order to pay into Court additional amount if co-respondent does not marry respondent is bad. (*Broadway, Addison and Dalip Singh, JJ.*). PRINGLE *v.* W.L. PRINGLE. **A.I.R. 1930 Lah. 321 (S.B.).**

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 43—Procedure.

—S. 35—Fund for defence.

——Where a petition for the dissolution of marriage on the ground of adultery is filed by the husband and the wife enters an appearance and denies the allegations against her, she has an absolute right to require her husband to furnish her with funds sufficient to enable her to make a full and satisfactory defence and to obtain such assistance from counsel as is reasonable under the circumstances. (*Mears, C.J., Piggott and Walsh, JJ.*). A. A. GARLINGE *v.* I.R. GARLINGE. **77 I. C. 133=44 All. 745=A. I. R. 1922 All. 504 (F.B.).**

—S. 35—Order as to costs.

—The rule that a wife's costs in proceedings *bona fide* instituted against her husband are necessaries for which she can pledge his credit only means that the wife's attorney has a cause of action against her husband for his charges. It does not mean that the Court can in a suit for judicial separation at the instance of the wife under Cl. 12 of the Letters Patent direct the defendant to put the plaintiff in funds. (*Panckridge, J.*). SAMUEL *v.* SAMUEL. **34 C.W.N. 319.**

—S. 37—Enhancement.

——Court has power to enhance alimony ordered to be paid to wife judicially separated. (*Phillips and Reilly, JJ.*). B. ISWARAYYA *v.* (SWARNAM) ISWARAYYA. **1929 M.W.N. 831=31 M. L. W. 97=A.I.R. 1930 Mad. 154=58 M.L.J. 29.**

—S. 37—Marriage declared void.

——Section 37 limits the power of the Court to make an order for permanent alimony to cases in which a decree has been made declaring a marriage to be dissolved or where a decree for judicial separation has been obtained by the wife. The section omits to give such power to the Court where the decree declares the marriage null and void *ab initio* on the grounds mentioned in S. 19 (4). (*Sanderson, C. J., Woodroffe and Richardson, JJ.*). J.J. TURNER *v.* A.E. TURNER. **64 I. C. 924=48 Cal. 636=25 C. W. N. 710=A. I. R. 1921 Cal. 517. (F.B.).**

—S. 37—'On confirmation.'

——"On confirmation" means "at" or "within a reasonable time after." Fifteen years is not a a reasonable time. (*English cases applied*). (*Wallis, C.J. and Krishnan, J.*). ARTHUR MALCOLM LLOYD *v.* KATHLEEN LLOYD. **69 I.C. 746=44 Mad. 989=14 M.L.W. 196=1921 M.W.N.591=A.I.R. 1921 Mad. 230=41 M.L.J. 269.**

—S. 37—Subsequent co-habitation.

——There cannot be any such thing as a conditional resumption of co-habitation. Either the wife accepts her decree for judicial separation and lives apart from her husband under it or she does not accept it. There cannot be any intermediate stage between acceptance of the judicial separation and its non-acceptance. *Haddon* v. *Haddon*, (1887) 18 Q.B.D. 778, *followed*. (*Beaseley, J.*). ELLEN MA NOO *v.* WILLIAM PO THIT. **33 I.C. 566=2 Rang. 163=A.I.R. 1924 Rang. 314.**

—S. 43—Procedure.

——Petition under S. 18—Prayer for custody of children inserted—Respondent not prejudiced by hearing the two issues together, nor taking objection—There is no irregularity in disposing of both

DIVORCE ACT (1869)—(As Amended by Act 25 of 1926)—S. 43—Validity of order.

matters together—Divorce Act, S. 18. (*Kendall, J.*). ESME *v.* EDWARD JOHN. **111 I. C. 627= 1929 A.L.J. 65=A. I. R. 1928 All. 677.**

—S. 43—Validity of order.

———Chief consideration in passing orders must be the welfare of the children—Respondent taking advantage of discovery of illegal marriage to treat wife with less consideration than formerly — Respondent the party at fault as to the illegality of marriage—Respondent's work taking him away from home constantly—Reason not made out why mother be considered unfit for charge—Under the circumstances mother was held to be proper custodian. (*Kendall, J.*). ESME *v.* EDWARD JOHN. **111 I.C. 627=1929 A.L.J. 65= A.I.R. 1928 All. 677.**

—S. 44—Death of petitioner.

———Where the custody of the children was given to the petitioner, the wife, by the decree *nisi* till confirmation and the respondent was directed to pay Rs. 150 for their maintenance.

Held, after the death of the petitioner before confirmation of the decree, the High Court had no jurisdiction in the proceedings. (*Sanderson, C. J., Woodroffe and Richardson, JJ.*). BUTTERFIELD *v.* BUTTERFIELD. **74 I. C. 250=50 Cal. 153= A.I.R. 1923 Cal. 426 (F.B.).**

—S. 45—Security.

———The English authorities do not strike out a husband's petition for divorce or strike out his defence to his wife's petition, merely because he has failed to give security. What they do, is to stay the husband's petition, and as regards the wife's petition to proceed against the husband for contempt, if he is proved to be able to pay but contumaciously refuses to do so. The same procedure should be followed in India. (*Marten, J.*). WILHELMINA CODD *v.* BERTIE ELIJAH. **84 I.C. 71= 47 Bom. 664=25 Bom. L.R. 339= A.I.R. 1924 Bom. 132.**

—S. 45—Service.

———Party should not be lightly excused from effecting personal service of the petition, should circumstances render that course desirable in preference to the practice of service by registered post. (*Shah, Ag. C. J., Marten and Fawcett, JJ.*). JOHN OVER *v.* MURIEL A. I. OVER. **91 I.C. 20=49 Bom. 368=27 Bom. L.R. 251= A. I. R. 1925 Bom. 231. (F.B.).**

—S. 47—Evidence.

———*Viva voce* evidence should be taken although statements in petition may be referred to as evidence. (*Marten, C. J., Blackwell and Baker, JJ.*) *and after remand* (*Marten, C. J., Crump and Blackwell, JJ.*). PREMCHAND HIRA *v.* BAI GALAL. **105 I. C. 871=51 Bom. 1026= 29 Bom. L.R. 1336=A.I.R. 1927 Bom. 594 (F.B.).**

—S. 50—Discretion.

———Although under S. 50 the Commissioner has a discretion to dispense with the service in a proper case he must record proper order in the matter. (*Rankin, C. J., C. C. Ghose and Pearson, JJ.*). GARAO SANGMA *v.* RANGJI MECHIK. **117 I. C. 837=56 Cal. 29= A. I. R. 1929 Cal. 276 (S.B.).**

—S. 50—Mode of service.

———In an application for dissolution of marriage by husband steps should be taken as regards service both upon the wife and the co-respondent and where personal service is not possible it is desirable that an order should be recorded that the matter should be announced in the village by beat of drum and that the proper notice should be put up at the Court house. (*Rankin, C.J., C.C. Ghose and Pearson, JJ.*). GARAO SANGMA *v.* RANGJI MECHIK. **117 I. C. 837= 56 Cal. 29=A.I.R. 1929 Cal. 276 (S.B.).**

DIVORCE JURISDICTION (INDIAN & COLONIAL) ACT—(1926, 16 & 17 Geo. V, Ch. 40)—S. 1—Grounds for decree.

—S. 55—Procedure.

———All decrees and orders made by a Court in any suit or proceedings under the Divorce Act should be enforced and may be appealed from in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction and not by contempt proceedings even though it were the intent of S. 7 to bring into India all the rules of procedure in the Divorce Act in England. (*Costello, J.*). PAULINE WHITE *v.* S. W. WHITE. **107 I. C. 68= 32 C.W.N. 179=A.I.R. 1928 Cal. 513.**

—S. 56—Conditional leave.

———Where the points involved were whether the High Court is justified in reading S. 37 as entitling the Court to order enhancement in alimony granted for maintenance to a wife judicially separated and whether the High Court has power under O. 41, R. 33 of the Civil P.C., to order such enhancement where none was asked the petitioner-husband was granted leave to appeal to the Privy Council but the High Court acting under Divorce Act, S. 7, ordered the petitioner to deposit a sum of Rs. 3,000 for the expenses of wife. (*Jackson and Reilly, JJ.*). ISWARAYYA *v.* SWARNAM ISWARAYYA. **123 I. C. 603=1929 M.W.N. 651= 31 M.L.W. 150=A. I. R. 1930 Mad. 159= 58 M. L. J. 54.**

—S. 57—Validity of new marriage.

———Marriage during former spouse's lifetime and before expiry of the 6 months fixed by S. 57, is void.

Per *Woodroffe, J.*—Where a Minister licensed to solemnise marriage is made aware that there has been a previous marriage which has been dissolved he should require that the decree absolute should be produced before him so that he may see whether the period of six months prescribed by law has elapsed. (*Sanderson, C. J., Woodroffe and Richardson, JJ.*). J. J. TURNER *v.* A. E. TURNER. **64 I. C. 924=48 Cal. 636=25 C. W. N. 710= A. I. R. 1921 Cal. 517 (F.B.).**

—S. 61—Intention.

———Section 61, Divorce Act, is not intended to be anything more and does nothing more than preclude a civil suit for damages of the nature of the English common law action, for criminal conversation which lay at the suit of a husband to recover damages against an adulterer. There is no authority statutory or otherwise, warranting the view that S. 61 forbids the Crown to prosecute and punish an alleged adulterer under S. 497, I. P. C., when moved to do so by an injured husband. (*Coldstream, J.*). F. BWYE OF SIMLA *v.* KIRK. **108 I.C. 381=10 L.L.J. 250=29 Cr. L. J. 382= A.I.R. 1928 Lah. 50.**

DIVORCE JURISDICTION (INDIAN & COLONIAL) ACT (1926, 16 & 17 Geo. V, Ch. 40).

—S. 1—Grounds for decree.

———The words of Prov. (a), S. 1 (1), are intended to mean that the grounds on which a decree for the dissolution of marriage of a British subject domiciled in England may be granted by a High Court in India shall be those on which such a decree might be granted by the Divorce Court in England according to the law for the time being in force in England, *i. e.*, according to the law laid down in

DIVORCE JURISDICTION (INDIAN & COLONIAL) ACT—(1926, 16 and 17 Geo. V, Ch. 40)—S. 3—Validity of decree.

S. 176 of the Supreme Court of Judicature (Consolidation) Act of 1925, and therefore it is sufficient for a wife-petitioner domiciled in England to establish to the satisfaction of the Court in India the adultery of a respondent-husband: A. I. R. 1926 Cal. 871, *Held wrongly decided* and A. I. R. 1925 Cal. 874, *Doubted*. (*Costello, J.*). M. BARNARD *v.* G. H. BARNARD. **115 I. C. 572=56 Cal. 89=32 C.W.N.742=A. I. R. 1928 Cal. 657.**

—S. 3—Validity of decree.

——Parties resident in India but domiciled in England—Decree in Indian Court is valid. (*Costello, J.*). M. BARNARD *v.* G. H. BARNARD. **115 I.C. 572=56 Cal. 89=32 C.W.N. 742=A.I.R. 1928 Cal. 657.**

——As under the Act (1869) amended by Act (25 of 1926), the Courts in India cannot pass a decree for divorce in cases of persons resident in India but not domiciled therein, and as the Indian and Colonial Divorce Jurisdiction Act passed by the British Parliament in 1926 validates only decrees passed and confirmed under the Indian Divorce Act prior to 15th December, 1926, the Indian Courts cannot confirm, after the passing of the English statute and the amendment of the Indian Act, where the parties are residents in India but domiciled in England, a decree *nisi* though the decree *nisi* may have been passed prior to the passing of the English statute. A decree of dissolution of marriage confirmed or made absolute after 25th March, 1926, the date when the amendment of the Indian Act came into force, would be a nullity, as the order of confirming or making absolute is itself a decree of dissolution, and the making of it is prohibited by the Indian Act of 1926 in cases where the parties to the marriage are not domiciled in India at the date of presentation of the petition. As such a decree cannot be made under the provisions of the Indian Divorce Act, as amended by Act No. 25 of 1926, it would not be rendered valid by S. 3, Indian and Colonial Divorce Jurisdiction Act. (*Shadi Lal, C.J., Broadway and Eforde, JJ.*). MRS. LYDIA AGNES WALLER *v.* SAMUEL JAMES WALLER. **110 I.C. 706=10 Lah. 64=30 P.L.R. 250=A.I.R. 1928 Lah. 557 (F.B.).**

DOCTRINE OF FACTUM VALET.

See (1) HINDU LAW—ADOPTION.
(2) HINDU LAW MARRIAGE.

DOCUMENT.

See (1) DEED.
(2) EVIDENCE.
(3) EVIDENCE ACT.

DOCUMENTARY EVIDENCE.

See EVIDENCE ACT.

DOMICILE.

See also SUCCESSION ACT, 1925, PART II.

—Prize of war.

——Where every act of the claimant at the time of the breaking of the war was consistent with the intention to retain his commercial domicile at Constantinople and inconsistent with any intention to divest himself of it and he did his best to continue the voyage of the ship to a Turkish port although he was not able to show that there was any particularly pressing commercial object in sending her to Basra where there was no cargo engaged, or agent appointed, or trade expected,

Held, the claimant had not discharged the onus of showing that he was no longer commercially domiciled in Turkey as he had been before. The condemnation must therefore stand. (*Lord Sumner*). SOCRATUS ATYCHIDES *v.* SECRETARY OF STATE. **70 I.C. 156=46 Bom. 857=25 Bom.L.R. 116=32 M.L.T. 81=27 C.W.N. 557=18 M.L.W. 664=1923 M.W.N. 846=A.I.R. 1922 P.C. 371.**

EASEMEMT—Acquisition and Extinction.

DOMINANT AND SERVIENT OWNER.

See (1) EASEMENT.
(2) EASEMENTS ACT.

DONATIO MORTIS CAUSA.

See (1) HINDU LAW—GIFT.
(2) HINDU LAW—WILL.
(3) MAHOMEDAN LAW—GIFT.
(4) MAHOMEDAN LAW—WILL.
(5) TRANSFER OF PROPERTY ACT, SS. 122—128.
(6) WILL.

DONEE.

See GIFT.

DONOR AND DONEE.

See (1) EVIDENCE ACT, S. 115.
(2) HINDU LAW—GIFT.
(3) MAHOMEDAN LAW—GIFT.

DOWER.

See MAHOMEDAN LAW.

DRAIN.

See (1) EASEMENT.
(2) EASEMENTS ACT.

DRUGS.

See BOMBAY ABKARI ACT.

DUBASH.

See CONTRACT ACT, S. 182.

DUMBNESS.

See HINDU LAW—SUCCESSION.

DURESS.

See (1) CONTRACT.
(2) CONTRACT ACT, S. 16.

DURPATNIDAR.

See BENGAL TENANCY ACT.

DWAYAMUSHYAYANA.

See HINDU LAW—ADOPTION.

DWIRGAMMAN CEREMONY.

See HINDU LAW—WIDOW.

DYING DECLARATION.

See (1) CR. P. CODE, S. 164.
(2) EVIDENCE ACT, SS. 32 AND 33.

EARNEST MONEY.

See (1) CONTRACT ACT, S. 73.
(2) DAMAGES.
(3) T. P. ACT, SS. 54 AND 55.

EASEMENT.

Acquisition and extinction.
Light and air.
Overhanging trees.
Privacy.
Right against Government.
Right concerning water.
Right of way.
Right to bury.
Riparian Rights.
Use of land.
User.
Miscellaneous.

—Acquisition and Extinction.

——Neither registration nor a written instrument is necessary for the creation of an easement. 31 All. 612, *Foll.* (*Daniels, J.*). SURAJ PRASAD *v.* MAHESHWARI PRASAD. **96 I.C. 276 (All.).**

——Easements by prescription are acquired only by sufferance of the dominant owner. (*Greaves and B.B. Ghose, JJ.*). MAMIN KHAN *v.* MOIZUDDIN KHAN. **91 I.C. 348=A.I.R. 1926 Cal. 647.**

EASEMENT—Light and air.

——There must be complete unity of seisin, or the absolute ownership of the dominant and servient tenements must vest in the same person in order that easements may be extinguished. This doctrine has been so strictly construed that it requires the estates in the two tenements to be of an equally high and perdurable character. In other cases of unity the easement is suspended, not extinguished. (*Mukerji, J.*). DURGARAM DAS *v.* BHARAT RAM DAS. **85 I.C. 739=A.I.R. 1926 Cal. 92.**

——Acquisition—Co-owner cannnot acquire easement in joint property. (*Moti Sagar, J.*). HIRA NAND *v.* AHMAD YAR. **A.I.R. 1923 Lah. 608.**

—Light and air.

——Ancient light—Substantial privation rendering occupation discomfortable is necessary to constitute obstruction. 18 Pcm. 474: 23 Pcm. 786; 30 Pcm. 319 and (1904) A.C. 479, *Foll.* (*Patkar and Baker, JJ.*). BHIMAJI VASUDEV *v.* YESWANT CHANGAGOUDA. **120 I.C. 365=31 Bom.L.R. 771= A.I.R. 1929 Bom. 398.**

——Light—Person selling house having windows overlooking his adjoining land—Vendor cannot obstruct light from coming to such windows by building on the adjoining land thus derogating from his own grant—Subsequent vendee of the land is also bound by the obligation.

The true principle underlying cases of this kind is that the vendee is entitled to have the enjoyment of the light and air of the ancient windows in the same manner as it was enjoyed during the unity of possession. (*Mitter, J.*). BRAJESHWARY DASI *v.* NITYANANDA DAS. **110 I.C. 720= 47 C.L.J. 583=32 C.W.N. 996= A.I.R. 1928 Cal. 365.**

——Injunction for the protection of the easement of light and air can only be granted when their closure amounts to an actionable nuisance. It is not enough that the light has been reduced. There must be a substantial privation of light enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind and (in the case of business premises) to prevent the occupier from carrying on business as beneficially as before. *Colls* v. *Home and Colonial Stores*, (1904) A,C. 179; 8 P.R. 1909; 39 Cal. 59 and A.I.R. 1914 P.C. 45, *Ref.*

The existence of other sources of light should be taken into consideration. *Colls* v. *Home & Colonial Stores*, (1904) A.C. 179 and 13 Bom. 252, *Ref.* (*Bhide, J.*). SOHAN SINGH *v.* JAGAT SINGH. **114 I.C. 698=A.I.R. 1928 Lah. 980.**

——*Rankin, C.J.*—Where there has been an interference with ancient lights, the law refuses an action unless there has been a real interference with convenience or comfort of the dominant premises as regards their nature and situation. *Colls* v. *Home and Colonial Stores Ltd.*, (1904) A.C. 179, *Foll.*; *Kine* v. *Jolly*, (1907) 1 Ch. 480, *Expl.* (*Rankin, C.J. and C.C. Ghose, J.*). DEBENDRA NATH *v.* SURENDRA NATH. **102 I.C. 370=31 C.W.N. 419= 45 C.L.J. 474=A.I.R. 1927 Cal. 345.**

——Light, like air, is the common property of all, or, to speak more accurately, it is the common right of all to enjoy it and it is the exclusive property of none, and it is impossible that a person should be allowed to claim the stoppage of all buildings in the neighbourhood for the sake of the extremely small amount of light and air that he must at the best of times, have enjoyed through his windows: *Colls* v. *Home and Colonial Stores*, (1904) A. C. 179, *Rel. on.* (*Kincaid, J. C. and Lobo, A. J. C.*). BULCHAND *v.* ASSUDAMAL. **93 I.C. 444=A.I.R. 1927 Sind 115.**

EASEMENT—Privacy.

——Agreement not to block window—Effect is only to create an ancient light and not to preclude the servient owner from putting up any building which in the slightest degree would diminish the free ingress of light and air. (*Mears, C. J. and Piggott, J.*). GURPRASAD *v.* BISHUNLAL. **79 I. C. 349=5 L.R.A. Civ. 262= A.I.R. 1924 All. 816.**

——Obstruction to light and air—Injunction is proper relief—Compensation in money is not adequate relief. 9 I. C. 417, *Foll.* (*Moti Sagar, J.*). JAWAHAR SINGH *v.* SEWA SINGH. **79 I.C. 572=5 L.L.J. 487=A.I.R. 1924 Lah. 97.**

——Right to light and air—Measure of dominant owner's right—Rule of 45 degrees is not a definite rule recognised by Law.

There must be substantial privation of light enough to render the occupation of the house uncomfortable according to ordinary notions, which must differ considerably, *e.g.*, in the city of London and the country, and obviously differ very considerably in *abadis* or towns. (1904) A. C. 179, *Ref.* (*Walsh, J.*). MT. CHANDAN KUNWAR *v.* NARAIN. **73 I.C. 531= A. I.R. 1923 All. 542.**

—Overhanging trees.

——Trees overhanging for many years—No prescription is acquired. 19 Bom. 420 and 43 Bom. 164, *Foll.*; 44 Bom. 605, *Expl.*; *Lemon* v. *Webb*, (1894) 3 Ch. 1 and (1895) App. Cases 1, *Rel. on.* (*Pandalai, J.*). GURUSAMI RAJA *v.* PERUMAL RAJA. **1929 M.W.N. 726=A.I.R. 1929 Mad. 815.**

——*Right to go on neighbour's land to collect fruits, etc.*

Quaere.—Whether the owner of a Mahwa tree the branches of which overhang the defendant's wall can acquire a right of easement for collecting the fruit on the defendant's land. *Lemon* v. *Webb*, L. R. (1895) H. C. 11, *Ref.* (*Pullan, J.*). ABDUL HAQ *v.* SHAHMAT ALI. **114 I.C. 512.**

——Where there are trees overhanging the plaintiff's land, an injunction only should be granted and no pecuniary compensation: for in such cases the plaintiff's contention is not that his easement has been violated but that his property has been invaded, and will continue to be so invaded unless the invasion is removed. Hence compensation cannot be the proper remedy. 31 Cal. 944 and 43 Bom. 164, *Rel. on.* (*Pandalai, J.*). GURUSAMI RAJA *v.* PERUMAL RAJA. **1929 M.W.N. 726= A.I.R. 1929 Mad. 815.**

——It is impossible to have a custom in case of a thing, so indefinite, so vague and so changeful from day to day, and year to year as the shadow of overhanging trees. It is impossible either in any locality or throughout the country. (*Pandalai, J.*). GURUSWAMI RAJA *v.* PERUMAL RAJA. **1929 M.W.N. 726=A.I.R. 1929 Mad. 815.**

—Privacy.

——Right of privacy in N. W. P.—Custom—Interference is an actionable wrong and affords cause of action to person affected thereby. (*Iqbal Ahmad and Sen, JJ.*). FAZAL HAQ *v.* FAZAL HAQ. **107 I.C. 584=26 A.L.J. 49=A.I.R. 1928 All. 201.**

——Custom—Right of privacy is recognised as a custom of the country.

It does not depend on the caste or creed of the person owning house or on the fact, *viz.*, if it was used by the ladies. 10 All. 858 and 18 A. L. J. 361.

EASEMENT—Right against Government.

Ref. (*Gokul Prasad, J.*). BOHRA TARA CHAND *v.* MT. RAYAZI BEGUM. 73 I.C. 1040= A.I.R. 1923 All. 404.

—Right against Government.

——Government is no doubt bound to supply water to wet fields but the ryots have no vested interest in the maintenance of any particular channels for their supply. The ryots cannot claim as against Government any right to take water to their fields by any particular channel. 32 Mad. 141; 34 M.L.J. 425, *Rel. on.* (*Wallace, J.*). A. VENKATASAMI NAIDU *v.* AGGARAM CHENGA REDDI. A.I.R. 1930 Mad. 621.

——Every ryot can acquire by prescription against Government. (*Devadoss, J.*). SECRETARY OF STATE *v.* K. SUBBA RAO. 99 I.C. 475= 38 M.L.T. 160=1927 M.W.N. 59= 26 M.L.W. 10=A.I.R. 1927 Mad. 382.

——Where a ryot has had the benefit of an extra amount of water for a long time—Something more than he would ordinarily be entitled to as a ryot.

Held, that he is not entitled to insist that that extra supply should be continued. Other considerations would arise if it is proved that his enjoyment of this extra water was as of right. (*Odgers, J.*). MD. USAN ROWTHER *v.* SECRETARY OF STATE. 96 I. C. 317=1926 M.W.N. 404= A. I. R. 1926 Mad. 788.

—Right concerning water.

——Evidence—Sufficiency of—Evidence that person has occupation of lands and that he takes water from tank to irrigate it is good evidence of fact that he has right to do so. (*Rankin, C.J.*). ISMAIL BISWAS *v.* EMPEROR. 124 I.C. 829= A.I.R. 1930 Cal. 289.

——In a suit relating to right of easement claimed by a party in respect of overflow of water from one estate to another, it is absurd to expect proof of exact measurements of diminution at any particular moment of time. 73 P.R. 1905, *Dist.* (*Johnstone, J.*). DHARAM DAS *v.* A.V. VOLKERS. A.I.R. 1930 Lah. 177.

——*Zamindar's tank—Inamdar's user of.*

In a suit by a zamindar against several inamdars to recover compensation for the unauthorised use by the defendant of the water of the plaintiff's tank for the second crop on the defendant's inams the plaintiff admitted the defendant's right to use the water of the tank, for the 1st crop but denied their right for the second.

Held, that the right admitted by the plaintiff and claimed by the defendant was one of easement and that as the evidence established the defendant's user of the water of the suit tank for raising a second crop for twenty years and more the defendants were entitled to an easement by prescriptive right.

Held further, that as the whole decree was questioned in the revision petition and the finding of fact related to all the defendants the whole decree of the Court below against all the defendants, should, under O. 41, R. 4, Civil Procedure Code, be set aside though the revision petition itself had been preferred by only one of them. (*Ramesam, J.*). PITCHIAH *v.* ZAMINDAR OF VENKATAGIRI. 59 M.L.J. 111.

——*Right to drain water.*

Water from the plaintiff's land was for nearly 25 years being discharged on defendant's land but as a Government channel divided the two the water was drained by means of a siphon sluice put up across the Government channel with the permission of the Government. The defendant obstructed the discharge. In a suit by the plaintiff to establish his right to drain off the water the Government was not a party but expressed its willingness to permit the plaintiff to continue to drain the water as before,

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Held, that the plaintiff was not suing as agent of the Government but in his own right. The person to sue would be the owner of the neighbouring servient heritage the Government, as that is the dominant heritage to the defendant's land. (*Jackson, J.*). SRINIVASA CHETTIAR *v.* ARAVAMUTHA IYENGAR. 1930 M.W.N. 611.

——*Right to allow water to flow to lower land.*

Natural right to let rain water on to lower adjacent land—Right whether extends to letting it through particular openings—Proof of prejudice—Onus.

Before the partition two plots of land belonged to a common proprietor; the land on which the plaintiff's house stood was on a higher level than that of the defendant. Subsequent to the partition a wall was built between the houses jointly by the two owners. In that wall an opening was made at the time of the construction.

Held, that the plaintiff had a natural right to allow rain water on his land to flow out to the adjacent tenement, and that he would allow it to flow through the opening in the common wall because the defendant had not shown that such a course involved an additional burden. *Gibbons* v. *Lenfestey*, 1 B. L. T. 55 (P. C.), *applied.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). SINNANA GOUNDAN *v.* VEERAPPA GOUNDAN. 1930 M. W. N. 133=A.I.R. 1930 Mad. 676.

——Even quite apart from the provisions of the Easements Act it is safe to hold as a general principle of law that no claim can be made either as a natural right or as an easement by prescription to water which does not flow in a definite course but which should be regarded as surface water or surface drainage: 37 Mad. 304; *Rawstron* v. *Taylor*, (1855) 11 Ex. 369; A. I. R. 1923 Pat. 65, *Ref.* (*Heald and Myo Bu, JJ.*). MAUNG PWE *v.* MAUNG CHAN NYEIN. 170 I. C. 658=7 Rang. 487= A. I. R. 1929 Rang. 300.

——Right to use water for certain lands—Water used for excess land—Right to water in respect of all the lands is not forfeited. (*Cuming and B. B. Ghose, JJ.*). BHUSAN SHAHANA *v.* UPENDRA NATH GHOSE. 96 I. C. 665= A. I. R. 1926 Cal. 1201.

——Owner of higher land cannot pass to lower land flood water accumulating due to his fault—Adjoining occupier on lower level can raise high bunds to protect his own land.

The owner of the land on the higher level cannot claim an injunction to restrain him from doing so on the ground that his right to evacuate his normal drainage had been invaded where any such invasion was due to his own fault. 25 M.L.J. 276, *Foll.* (*Duckworth, J.*). MOKSODALI *v.* MA HIL. 76 I. C. 729=1 Rang. 427=A.I.R. 1924 Rang. 86.

—Right of way.

——In India just as much as in England there are three distinct rights of way. First, there are private rights in the strict sense of the term vested in particular individuals or the owners of particular tenements and such rights commonly have their origin in grant or prescription. Secondly, there are rights belonging to certain classes of persons, certain portions of the public, such as the freemen of the city, tenants of a manner or the inhabitants of a parish village. Such rights commonly have

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their origin in custom. Thirdly, there are public rights in the full sense of the term which exists for the benefit of all the King's subjects and the sense of these is ordinarily dedication. 15 Cal. 460 (F. B.), *Foll.* (*Mukerji, J.*). PRAN NATH *v.* EMPEROR. **33 C.W.N. 915=A.I.R. 1930 Cal. 286.**

———A public right of way in the full sense of the term and as to all King's subjects is unconnected with dominant tenements. Such right of way may be acquired by user of or dedication to the public in general. In this connection the fact that there were no thoroughfares at the termini is not of much importance on the point of dedication, but the question whether public in general use the way as pathway or only the inhabitants of the village or some other village do, are questions of considerable materiality. For where the privilege to use a road is enjoyed by a particular section of the public community or by inhabitants of two or three villages and not by others the road is not a public road. 25 W. R. 233 and 9 All. 434, *Ref.* (*Mukerji, J.*). PRAN NATH *v.* EMPEROR. **33 C.W.N. 915= A.I.R. 1930 Cal. 286.**

———Ways permitted to be used by a section of the public or ways used by all in particular cases are private ways which have their origin in custom and such customary ways can be converted into an ordinary highway after user by the general public sufficient to raise the presumption of dedication, but the evidence in support of the public claim must be cogent. *Brocklebank* v. *Thompson*, 2 Ch. 344; *Furquhar* v. *Newbury Rural District*, 1 Ch. 12; *Bermondsay* v. *Brown*, L.R. 1 Eq. 204, *Ref.* (*Mukerji, J.*). PRAN NATH *v.* EMPEROR.

33 C.W.N. 915=A.I.R. 1930 Cal. 286.

———Houses on both sides of public road except temple built by plaintiff's ancestor, acquired by defendants—Defendants including road in their mill compound leaving separate passage for plaintiff to reach temple—Plaintiff has no absolute right of passage over road. (*Suhrawardy and Cammiade, JJ.*). MUDDEA MILLS CO., LTD. *v.* SIDHESWAR CHATTERJEE. **115 I.C. 515= 32 C.W.N. 1055= 56 Cal. 280=A.I.R. 1929 Cal. 33.**

———In order to establish a right of way it must be proved that the claimant has enjoyed it for the full period of twenty years and that he has done so as of right: but if it should be the case of the opposite party that the enjoyment was by violence or by stealth or by leave asked from time to time, it is for him to allege and establish that case. But where no such case is made by him the Court ought not to allow him to argue such a case. 8 C. W. N. 359, *Diss. from.* (*Das and Adami, JJ.*). NAZIR HUSSAIN *v.* AULAD HAIDER.

96 I. C. 1010=1926 P.H.C C. 264= A.I.R. 1926 Pat. 460.

———The right of the public to the enjoyment of land set apart from time immemorial for use of the public way stands upon a higher footing than a mere easement over property belonging to another. (*Spencer, Og. C.J. and Srinivasa Aiyangar, J.*). VENKATAKUMAR *v.* SECY. OF STATE.

85 I.C. 345=1925 M.W.N. 271= A.I.R. 1925 Mad. 415=47 M.L.J. 784.

———Easements of way must not be vague or indefinite, that is to say, they must be limited to a particular route over the servient tenement. An easement of way confers no right to wander at pleasure over any part of the servient tenement for whatever purpose.

The servient owner has the right to set out the line of way to be followed by the dominant owner,

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and if he fails to set it out, the dominant owner must take the nearest way he can. In any case, the selection of the road must be such as a person of reasonable and ordinary skill and experience would make, and if the road has to be made it must be made in such a manner as a reasonable and prudent person would adopt if he were making a road over his own land. (*Kinkhede, A. J. C.*). VASUDEO *v.* SHANKER. **85 I.C. 84= 7 N.L.J. 232=A.I.R. 1925 Nag. 168.**

———Pathway not regular and defined—Easement can be acquired. Pathway passing over waste land does not prevent easement if two termini stated. (*B. B. Ghosh, J.*). HARIDAS GHOSE MRIDHA *v.* GOURI CHARAN GHOSE MRIDHA. **71 I.C. 309= A.I.R. 1924 Cal. 359.**

———Sale-deed describing southern boundary of the land conveyed as pathway to be reserved—Vendee is entitled to right of way on the land forming southern boundary though no pathway might actually have been set apart by vendor—Deed—Construction—Easements Act, S. 13. (*Venkatasubba Rao, J.*). KUPPAKKAL, *v.* MATHAN CHETTIAR. **82 I.C. 430=A.I.R. 1924 Mad. 834= 47 M.L.J. 477.**

———Right of way for scavengers through dwelling house—Long User—User as of right and a legal origin may be presumed—Easements Act, S. 15—Other modes of acquisition are not excluded by section.

In the case of long enjoyment a legal origin is presumed in England until the contrary is shown. (1891) App. Cas. 228; (1882) 7 App. Cas. 633; (1904) 2 Ch. 534; 3 East 224; 4 L. W. 128, *referred to.*

In India there are conditions and circumstances such as nature and character of the servient land, the friendship or relationship of parties to be taken note of, before a Court can come to the conclusion that the exercise of a right of way can be held to have been as of right 8 C.W.N. 359; 13 C.L.J. 316; 29 M.L.J. 685, *referred to.* (*Kumaraswami Sastri and Devadoss, JJ.*). KUNJAMMAL *v.* RATHNAM PILLAI. **66 I.C. 11=1922 M.W.N. 143= 15 M.L.W. 266=31 M.L.T. 150= 45 Mad. 633=A. I. R. 1922 Mad. 5= 42 M. L. J. 417.**

———A private right of way, not appurtenant to a dominant tenement like public rights of way, are not easements but rights in gross and can be enforced as such. (*Newbould and Buckland, JJ.*). BALAI CHAND PAL *v.* PANCHU GOPAL SEAL.

59 I.C. 319 (Cal.).

—Right to bury.

———There is no easement known to law by which persons can acquire a title by prescription to bury their dead: A.I.R. 1924 Lah. 492, *Foll.* (*Dalip Singh, J.*). NATHU LAL *v.* NUR MUHAMMAD.

107 I.C. 769 (Lah.).

———Right to bury the dead cannot be acquired by prescription. A.I.R. 1921 Cal. 569; A.I.R. 1924 Lah. 492, *Foll.* (*Zafar Ali, J.*). JIWAN SINGH *v.* KARAM DIN. **103 I. C. 678= A. I. R. 1927 Lah. 664.**

———Exclusive and continuous user by the public of a land as a graveyard with the owner's knowledge and acquiescence for the prescriptive period will raise a presumption of a dedication to the public. By the custom of the country the ground in which human remains are interred is regarded for ever as sacred, and though the ownership of the soil may be vested in others, the permission to bury in the land carries with it the right to per-

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form all customary rites. 78 P.L.R. 1908; 40 Cal. 297 (P.C.) and 26 Bom. 198, *Foll.* (*Campbell, J.*). RAM SINGH *v.* ALI BAKHSH. **95 I.C. 458 (Lah.).**

———An easement by which one person gets a right by prescription to bury the dead in land belonging to another is unknown to law. (*Martineau, J.*). MANGAT RAM *v.* SIRAJ-UL-HASAN.

78 I.C. 152=6 L.L.J. 130=A. I. R. 1924 Lah. 492.

—Riparian Rights.

———Plaintiffs claimed to erect permanent structures across a stream. It was found on evidence that they had no such right but from time to time there was an interruption of the water of the river through the erection of temporary structures. That right had been exercised for 20 years before the beginning of the litigation.

Held, that the right was a right to such interference with the water of the stream as has been effected by the continual use of what are described as temporary structures and plaintiffs should be given a declaration to that effect.

Held further: that it is possible that the use of these temporary structures has given a larger right than the natural right to the plaintiffs. (*Lord Buckmaster*). VIRABHADRAYYA GARU *v.* MAHALAKSHMAMMA GARU. **122 I.C. 305=31 M.L.W. 326=34 C.W.N. 512=32 Bom. L.R. 492=A.I.R. 1930 P.C. 42=58 M.L.J. 285.**

———*Obiter*—Even the rights of the riparian owners may be acquired by easement. (*Shadi Lal, C.J. and Le Rossignol, J.*). BALI RAM *v.* BELA SINGH. **83 I.C. 538=A.I.R. 1923 Lah. 594.**

—Use of land.

———An open space in which the houses of the parties open, it may generally be presumed is meant for the use of the owners and occupants of all the houses abutting on it. (*Zafar Ali, J.*). PRABHU MAL *v.* BANWARI LAL. **102 I.C. 432=9 L.L.J. 195=28 P.L.R. 230=A.I.R 1927 Lah. 351.**

———Constructing cattle troughs on another's land—12 years' user disentitles the owner to have them removed. 16 Bom. 338, *Dist.* (*Kanhaiya Lal, J.*). KAMLAPAT DUBEY *v.* RAM RAJ. **79 I.C. 450=4 L.R.A. Civ. 378=A.I.R. 1924 All. 103.**

—User.

———No minimum limit of time can be laid down which would justify the inference as to immemorial user; it depends on the evidence and the circumstances of each case. A.I.R. 1921 Bom. 430, *Ref.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BENAMALI CHATERJI. **A.I.R. 1930 Pat. 7.**

———The nature and character of the servient land, the friendship or relationship between the servient and dominant owners and the circumstances under which the user had taken place, may induce the Court to hold that the enjoyment was not 'as of right' although there is no direct proof that the enjoyment was had with the permission of the servient owner. The presumption of right from long user is not in India a presumption *de jures et de jure*. It only starts a party with a presumption in his favour which can be rebutted by proof of facts which are inconsistent with or which militate against the inference which, in the absence of evidence by the defendant, would entitle plaintiff to a decree. A. I. R. 1925 Mad. 5, *Foll.* (*Wasir Hasan, J. C.*). MAJID HUSAIN *v.* HUSAIN FAIYAZ. **91 I.C. 987=A.I.R. 1926 Oudh 237.**

———Prescription—Origin of user permissive—No easement is created. (*Banerji and Gokul Prasad, JJ.*). PANNA LAL *v.* BOHRA PANNA. **74 I. C. 481=21 A.L.J. 436=4 L.R.A. Civ. 274=A.I.R. 1924 All. 60.**

EASEMENTS ACT (1882), S. 2—Custom.

———Immemorial user—Grant may be presumed. (*Ghose, J.*). AMRITNATH BISWAS *v.* JOGENDRA CHANDRA BHATTACHARJEE. **69 I.C. 183=A.I.R. 1924 Cal. 369.**

———The incidents of a permanent tenancy in India are different from the incidents of a term or for years as they obtain in England and there is no substantial reason for holding that a tenant with permanent right has no rights of easement against another tenant enjoying the same rights. The user by the plaintiff without interruption peacefully, publicly and as of right for a period of over 30 years ought to be traced to a lost grant. (*C.C. Ghosh and B.B. Ghosh, JJ.*). KALI PADA BOSE *v.* FANI BHUSAN ROY. **70 I.C. 173=A.I.R. 1924 Cal. 363.**

———A mere user which had not ripened by prescription, would not give rise to any right upon which an action could be founded unless some kind of possessory title existed in the plaintiff's favour. (*Spencer and Ramesam, JJ.*). SIVANANJIAH *v.* SITHAY GOUNDER. **70 I.C. 367=14 M.L.W. 449=1921 M.W.N. 510=A.I.R. 1921 Mad. 627=41 M.L.J. 490.**

—Miscellaneous.

———Licensee with interest cannot be evicted unless the interest comes to an end. (*Cuming and Page, JJ.*). ASWINI KUMAR *v.* GOBINDA CHANDRA. **97 I.C. 395=A.I.R. 1927 Cal. 16.**

———Person not in enjoyment of easement cannot prevent by force servient owner from dealing with his land. (*Ashworth, A.J.C.*). LILA *v.* EMPEROR. **77 I.C. 1002=9 O.L.J. 291=25 Cr. L.J. 538=A.I.R. 1922 Oudh 228.**

———A mere finding that a *parnala* is old is no finding in law that an easement has been established with respect thereto. (*Wilberforce, J.*). AHMAD BAKHSH *v.* MT. PALI. **66 I.C. 922=3 L.L.J. 58=A.I.R. 1921 Lah. 171.**

EASEMENTS ACT (V of 1882).

—Applicability.

———Act does not apply to Punjab—Principles of English Law apply as rules of equity and good conscience. (*Addison, J.*). SHIV DAYAL *v.* RAM DAS. **96 I.C. 913=27 P.L.R. 375=A. I. R. 1926 Lah. 473.**

———Principles underlying the Easements Act are applicable to Berar though in Berar that Act is not in force. (*Kinkhede, Offg. A.J.C.*). DAYARAM *v.* DEORAO. **94 I. C. 923=22 N. L. R. 162=A. I. R. 1926 Nag. 376.**

—S. 1—Applicability.

———Act does not apply to Punjab—Principles of English Law apply to cases on easements. (*Zafar Ali, J.*). KARAM ILAHI *v.* GHULAM MUSTAFA. **102 I. C. 447=A. I. R. 1927 Lah. 492.**

—S. 2—Custom.

———A Court should not decide that a local custom exists, unless the Court is satisfied of its reasonableness and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted or by stealth or by force, and that it has been openly enjoyed for such a length of time as suggests that originally, by agreement or otherwise, the usage had become a customary law of the place in respect of the persons and things which it concerned. 17 A. 87, *Foll.*

Per *Kanhaiya Lal, J.*—There is no statutory period of enjoyment provided, during which, in order to establish a local custom, it must be proved that the right, claimed to have been enjoyed by local cus-

EASEMENTS ACT (1882), S. 2—Customary right.

tom, has been so enjoyed. (*Lindsay and Kanhaiya Lal, JJ.*). CHANNU DUTTA VYAS *v.* SWAMI GYANANANDJI. **90 I.C. 976=A.I.R. 1926 All. 130.**

—S. 2—Customary right.

———A customary right is recognized by law and it may arise by agreement or prescription and may be deduced from long and open user. (*Lindsay and Kanhaiya Lal, JJ.*). CHANNU DUTTA *v.* SWAMI GYANANANDJI. **90 I. C. 976= A.I.R. 1926 All. 130.**

——— Those rights which having their origin in custom belong to certain classes of persons on certain portions of the public such as the inhabitants of a village are customary rights. They are not easements in the legal sense of the term. A right based on custom is established by proof of the custom and it is not necessary that there should be evidence from which a lost grant may be presumed. Moreover it is not necessary that a custom should be traced back for the whole time necessary to make it immemorial, whatever that time may be. The evidence must be sufficient to show that the right "has been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become customary law of the locality. The doctrine of the lost grant is applicable to private rights claimed by prescription. It is inapplicable to a right claimed on the basis of immemorial custom. It is inaccurate and slipshod to speak of the local understanding or agreement or practice which comes to be a local law or custom as a grant. The question of legal origin is only of importance where it is suggested that the right claimed might have originated within the time of memory, whatever that time may be. In the case of a custom its legality depends on such considerations as its reasonableness and its certainty. As to the length of user or enjoyment, which must be proved before a local custom may justifiably be inferred, perhaps no definite rule can be laid down. But if the existence of the custom depends on oral evidence, and the user or enjoyment is taken back as far as living memory can be expected to go, then in the absence of rebutting evidence it is not unreasonable to say *Proesumitur retro* or to infer immemorial enjoyment of the right. 17 All. 87; 20 Mad. 389; 23 Bom. 666, *Ref. to.* (*Richardson and Suhrawardy, JJ.*). ALI MOHAMED *v.* SHEIKH KATU.

70 I.C. 263=36 C.L.J. 280=A.I.R. 1923 Cal. 200.

—S. 4—Alternative claim.

———It is not inconsistent for a plaintiff to claim certain property as his own and in the alternative a right of easement over the same. (*Suhrawardy and Cuming, JJ.*). BEHARI LAL MUKERJI *v.* ASUTOSH BANERJEE. **87 I.C. 19=41 C.L.J. 379= A.I.R. 1925 Cal. 788.**

—S. 4—Co-sharers.

———Co-sharer—Easement—Two plots held exclusively by two co-sharers severally—Holder of one plot cannot claim easement over the other plot as such exclusive possession is not ouster of the other co-sharer. (*Ross and Kulwant Sahay, JJ.*). KAMESHWAR NARAIN SINGH *v.* JANARDHAN PRASAD NARAIN SINGH. **87 I.C. 736= 3 Pat. L.R. 81=A.I.R. 1925 Pat. 492.**

—S. 4—Essentials for existence.

———Easement implies tenements belonging to different persons. No different owners, no easement. (*Barlee, J. C. and Kalumal, A. J. C.*). GIRDHARIDAS RADHAKISHEN DAS *v.* TIRATH DAS GOKALDAS. **120 I.C. 497=A.I.R. 1930 Sind 34.**

EASEMENTS ACT (1882), S. 4—Well.

—S. 4—Passage to sweepers.

———Right to allow passage to sweepers may not be an easement. (*Suhrawardy and Garlik, JJ.*). RAMCHANDRA *v.* BHOLA NATH. **33 C.W.N. 189= A.I.R. 1929 Cal. 350.**

—S. 4—Public lane.

———Private persons who merely happen to reside in houses in public lane cannot sue for alleged encroachments in that lane, for no right of easement can be acquired over a public lane. A. I. R. 1924 All. 715, *Dist.* (*Bennet, J.*). BAHAL SINGH *v.* MOHAMMED YUSUF. **118 I.C. 520= A.I.R. 1929 All. 504.**

—S. 4—Public road.

———Right of passage on public road is not easement. (*Walsh and Dalal, JJ.*). MUNICIPAL BOARD, BENARES *v.* BEHARI LAL. **95 I.C. 1030= 48 All. 560=24 A. L. J. 682= A. I. R. 1926 All. 538.**

—S. 4—Question of Fact and Law.

———The question whether a party has an indefeasible right to do something on the land found to belong to another is a mixed question of law and fact. The witnesses are to prove facts or acts done, and it is for the Court to affirm or negative the existence of an alleged right on such facts being considered in relation to the rule of law applicable to the question. (*Niamatullah, J.*). MOHAMMAD YUSUF *v.* SURAJ BALI SINGH. **123 I. C. 377=A. I. R. 1930 All. 338.**

—S. 4—Right of light.

———Suit by occupier of house only, relating to right of light is maintainable. (*Rupchand and Wild, A. J. Cs.*). KHUBCHAND KHUSHALDAS *v.* BULCHAND NARAINDAS. **123 I. C. 230= A.I.R. 1930 Sind 152.**

—S. 4—Right to bury.

———Land for use as a burial ground may be acquired through purchase or dedication. But law does not recognise that an easement by prescription can be created by the mere fact that dead bodies are placed in graves on the land of another and permitted to remain there for the prescriptive term.

The right to bury in a given tract of land cannot be deemed a right imposed for the beneficial enjoyment of land.

The Court will not create a new species of easement specially if the easement claimed constitutes a nuisance. (*Mookerjee and Panton, JJ.*). GOPAL KRISHNA *v.* ABDUL SAMAD. **66 I. C. 640=34 C. L. J. 319= A. I. R. 1921 Cal. 569.**

—S. 4—User and ownership.

———To create an easement there must be a dominant and a servient heritage and the right acquired must be for the beneficial enjoyment of a dominant heritage. User under a claim of ownership of a tank, in and over which such user is had, and which is negatived, cannot operate to found a right of easement over the tank. 16 Bom. 592, *Ref.* (*Phillips and Odgers, JJ.*). PAKKIR MAHAMUD *v.* PICHAI THEVAN. **92 I. C. 465=A. I. R. 1926 Mad. 625.**

—S. 4—Well.

———Suit by *N* to restrain *M* from preventing *N* from using well water—Well situated in ground belonging neither to *M* nor to *N*—*N* proving right of easement to take water from well—*M* interfering with right of *N* by enclosing well with wall and preventing *N* from having access to well—House of *N* formed dominant tenement and ground in which well stood was servient tenement and *N* held entitled to decree ordering demolition of construction made by *M*,

EASEMENTS ACT (1882), S. 4—Well.

Held further, that it was not necessary for *N* to prove that the servient tenement was the tenement of *M* who had interfered with his right but it was sufficient for *N* to show that there was a dominant and a servient tenement and that he had the rights required by S. 4 in order that a right of easement should be established and *N* was entitled to a decree ordering the demolition of the construction made by *M*. (*Mears, C.J. and Bennet, J.*). RAMCHANDER *v.* SHER ALI. **118 I.C. 42=1929 A.L.J. 1120=A.I.R. 1929 All. 779.**

——A person who builds a well can claim from the grantor of the land on which the well is constructed what is necessary for a beneficial enjoyment of a well, but he cannot claim that he has obtained any easement in respect of any particular land in the neighbcurhood except in so far as it is the land of the grantor. Hence where a person builds a well on the municipal land for the use of the public and the neighbour constructs a wall leaving a space of five feet in width surrounding the well, and also a passage leading to the public road, the latter cannot be asked to demolish the wall although it might have prevented the public from seeing the well from a distance. (*Pullan, J.*). MUSTAFA KHAN *v.* DWARKA. **116 I.C. 63=A.I.R. 1929 Oudh 401.**

—S. 5—Artificial water course.

——Artificial water courses or openings for taking water are apparent and continuous. 34 Mad. 487; 2 Mad. 46 and A.I.R. 1924 Mad. 108, *Ref.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. **A. I. R. 1930 Pat. 7.**

—S. 5—Drain.

——Where the drain through which the water flows is a masonry drain it is an apparent easement within the meaning of S. 5 of the Easements Act. The drain is continuous easement in so far as the flow of rain water is concerned. For the flow of rain water no act of man is needed. But the flow of water from the latrine requires the act of man and to that extent the easement to flow such water is not continuous easement. (*Mukerji, J.*). MT. SAJID-UN-NISSA *v.* SAYED HIDAYAT. **80 I. C. 896=22 A. L. J. 425=5 L.R.A. Civ. 291=A.I.R. 1924 All. 748.**

—S. 5—Fruit tree.

——Trees—Fruits falling on neighbour's land—Right to go to gather is not an easement. It is a creation of an express agreement or contract. (*Coutts-Trotter and Ramesam, JJ*). C. D. SARANGAPANI IYENGAR *v.* SADAGOPA NAIDU. **68 I. C. 968=16 M.L.W. 98=1922 M.W.N. 421=31 M.L.T. 78=A.I.R. 1922 Mad. 398=43 M. L. J. 152.**

—S. 5—Staircase.

——Right to use staircase not being continuous does not come within S. 13 (*b*).

In order to bring a case within Cl. (*b*), S. 13, it must be established *inter alia* that the easement claimed is apparent and continuous. A.I.R. 1924 Lah. 488, *Rel. on.* (*Tek Chand, J.*). GHANI MAHOMED *v.* MT. LACHMI. **117 I. C. 381=A.I.R. 1929 Lah. 848.**

—S. 7—Applicability.

——Section 7, Illus. (*c*) applies to cases where the land is in natural condition and does not apply to land burdened with a building and there is artificial pressure by the building itself. In such cases S. 7 does not apply and the question of easement can be decided by applying S. 15. (*Bennet and Iqbal Ahmad, JJ.*). BHAGWAN DAS *v.* BIBI IQBAL SULTAN. **118 I. C. 715=1930 A.L.J. 340=A. I. R. 1929 All. 885.**

EASEMENTS ACT (1882), S. 7—Contiguous fields.

—S. 7—Artificial water course.

——The right to water flowing through artificial water courses is a right of easement, and must rest on some grant or some arrangement, either proved or presumed from, or with the owners of the land from which the water is artificially brought, or on some legal origin. It is quite distinct from the natural right, which, is a natural incident to the ownership of land, and entitles *prima facie* each successive riparian proprietor to the unimpeded flow of water of a natural channel in its natural course, and to its reasonable enjoyment as it passes through his land. In the case of artificial watercourse where no easement or customary right enjoyed by the plaintiff has been proved, but only diminution of supply (and not complete stoppage) the plaintiff is not entitled to an injunction restraining the defendants from interfering with his enjoyment. (*Campbell, J.*). BELA SINGH *v.* BALI RAM. **73 I.C. 489=A.I.R. 1923 Lah. 257.**

—S. 7—Contiguous fields.

——Where two contiguous fields belong to different proprietors, one of which stands upon higher ground than the other, nature itself may be said to constitute a servitude on the inferior tenement, by which it is obliged to receive the water that falls from the superior. If the water which would otherwise fall from the higher ground insensibly without hurting the inferior tenement, should be collected into one body by the owner of the superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any servitude, bound to receive that body of water on his property. A. I. R. 1926 Mad. 449 (F. B.), *Rel. on*; A. I. R. 1929 Mad. 337 and *Gibbons* v. *Lengesty*, (1916) 113 L. T. 55, *Ref.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). SINNANA GOWNDEN *v.* VEERAPPA GOWNDEN. **1930 M. W. N. 133=A.I.R. 1930 Mad. 676.**

——Owner of upper lands can discharge surplus rain-water as also irrigation-water brought on his land for agricultural operations into lower lands by opening vents in his bund provided no damage is caused. *Beard* v. *Moria Colliery Co., Ltd.*, 84 L. J. Ch. 158; *Gibbons* v. *Lengesty*, (1916) 113 L. T. 55; A. I. R. 1926 Mad. 449 (F. B.) and A. I. R. 1928 Mad. 52, *Ref.*; (1918) M. W. N. 167 (*Sadasiva Ayyar, J.*), *Not appr.* (*Waller and Madhavan Nair, JJ.*). KASIA PILLAI *v.* GANESAMUTHUKUMARASAMIA PILLAI. **118 I.C. 287=52 Mad. 426=29 M. L. W. 346=A. I. R. 1929 Mad. 337=56 M.L.J. 311.**

——Owner of land on lower level cannot prevent water flowing over his land in natural course from higher level. A.I.R. 1926 Mad. 449 (F. B.), *Foll.* (*Zafar Ali, J.*). PARTAB SINGH *v.* SURGAN SINGH. **108 I.C. 728=29 P.L.R. 440=A.I.R. 1928 Lah. 717.**

——Where two contiguous fields belong to different proprietors, one of which stands upon higher ground than the other, nature itself may be said to constitute a servitude on the inferior tenement by which it is obliged to receive the water that falls from the superior. If the water which would otherwise fall from the higher ground insensibly without hurting the inferior tenement should be collected into one body by the owner of the superior in the natural use of his property for draining

EASEMENTS ACT (1882) S. 7 — Contiguous fields.

or otherwise improving it, the owner of the inferior is without the positive constitution of any servitude, bound to receive that body of water on his property. The lower heritor cannot object so long as the flow whether above or below ground is due to gravitation unless it has been unduly and unreasonably increased by operations which are in *aemulationem vicini*. But he is under no legal obligation to receive foreign water brought to the surface of his neighbour's property by artificial means; and there is no distinction in principle between water raised from a mine below the level of the surface of either property and water artificially conveyed from a distant stream. One landowner cannot by altering the condition of his land deprive the owner of the adjoining land of the privilege of using his own as he might have done before. The distinction between rural and urban areas drawn in 29 Mad. 539 arises from the accident that illustration (*a*) to S. 7 of the Easements Act instances a case of land in an urban area because it wishes to safeguard the statutory rights of urban authorities to restrict unapproved methods of dealing with land and buildings. Really there is no such distinction. (*Coutts-Trotter, C. J., Krishnan and Beasley, JJ.*). SHEIK HUSSAIN SAHIB *v.* PACHIPULUSU SUBBAYYA.

94 I.C. 677=49 Mad. 441=1926 M.W.N. 370= 24 M.L.W. 641=A.I.R. 1926 Mad. 449= 50 M.L.J. 377 (F.B.).

———Owner of higher land is entitled to let rain water naturally flow into lower land—But the owner of upper land cannot do anything that will throw on lower land any water that would not have naturally gone there—If he does so, the owner of the lower land can protect himself and will not be liable if in so doing he keeps off also water naturally flowing. But where originally the owner of higher land used to maintain a bund to prevent water flowing into his land through a creek in the bund of neighbouring river but by his neglecting to do so the water flowing through that creek, flows down into the lower land from the upper land, and the owner of the former erects a bund to prevent this water, this flow is a natural flow and the lower owner can be prevented by injunction from resisting it unless he has acquired a prescriptive right that the upper owner should maintain his own bund against the creek in proper repair; but it is equitable that the upper owner should be required to give undertaking to keep in proper repair his own bund.

Per *Lentaigne, J.*—The fact that two adjoining owners are found to have a continuous bund erected in such a manner that the bund of each owner is necessary for the protection of the land of the other as well as of his own land raises a strong presumption of a mutual understanding that each owner will repair his portion of the continuous bund necessary for both their lands. (*Lentaigne and Carr, JJ.*). MA HLI *v.* MOKSODALI.

84 I.C. 924=3 Bur. L.J. 217=2 Rang. 450= A.I.R. 1925 Rang. 58.

———Easement—Owner of higher land cannot pass to lower land flood water accumulating due to his fault—Adjoining occupier on lower level can raise high bunds to protect his own land.

The owner of the land on the higher level cannot claim an injunction to restrain him from doing so on the ground that his right to evacuate his normal drainage had been invaded where any such invasion was due to his own fault. 25 M.L.J. 276, *Foll.* (*Duckworth, J.*). MOKSODALI *v.* MA HLI.

EASEMENTS ACT (1882). S. 7 — Spring water.

76 I.C. 729=1 Rang. 427=A.I.R. 1924 Rang. 86.

———Every land-owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such use as he may desire. He may also allow it to flow away in the usual course of nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing. He cannot do this, however, by an artificial discharge upon his neighbour's land unless he has acquired such an easement which his neighbour is bound to submit to. If he should acquire such an easement, the owner of the servient tenement acquires no reciprocal rights as against the owner of the dominant tenement with regard to the flow of surface water, that is, water not passing through a defined channel. (*Dawson Miller, C. J. and Mullick, J.*). MT. SARBAN *v.* PHUDO SAHU. **69 I.C. 947= 4 P.L T 81=1922 P.H.C.C. 305= 2 Pat. 110=A. I. R. 1923 Pat. 65.**

—S. 7—Drainage.

———The natural right of drainage covers only the right to allow rain-water falling on land of a naturally higher level to drain off by surface flow along whatever lines the water may find its way to the neighbouring land; but it does not include a right to pass the water which has come artificially thereon. *Arkwright* v. *Gell*, (1839) 5 M. & W. 203 and *Young* v. *Bankier Distillery Co.*, (1893) A.C. 691, *Foll.* (*Kinkhede, A. J. C.*). RAMCHANDRA NAGOBA *v.* RETIRAM. **107 I. C. 203=24 N. L. R. 122= A. I. R. 1928 Nag. 184.**

—S. 7—Mode of enjoyment.

———Where defendant opened new windows interfering with plaintiff's right to privacy and the plaintiff's right to obstruct the windows by a structure erected on his own ground was declared, but he was directed by the Court to erect a wooden structure,

Held, that the plaintiff cannot be restricted in his choice of the method he might adopt for the obstruction of the windows. (*Mookerjee and Chotzner, JJ.*). SAROJINI DEVI *v.* KRIATA LAL HALDAR. **72 I. C. 576=36 C. L. J. 406= A. I. R. 1923 Cal. 256.**

—S. 7—Right to benefit.

———Easement—Benefit of, only for dominant tenement—No right of servient owner to insist on continuance by dominant owner.

If however water running through an artificial channel on a neighbour's land has all along been flowing to the plaintiff's land it is open to the plaintiff to insist on its continuance on the footing of a lost grant or old arrangement. (*Bucknill, J.*). FUDU SAHU *v.* SARBAN. **65 I.C. 84 (Pat.).**

—S. 7—Right to drain water.

———The right which an upper owner has to allow rain water on his land to flow out to the adjacent tenement is a natural right under the Easements Act. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SINNANA GOUNDAN *v.* VEERAPPA GOUNDAN. **1930 M.W.N. 133=A.I.R. 1930 Mad. 676.**

—S. 7—Spring water.

———Where the obstruction by defendant of water began only fourteen feet from the sources of the springs,

Held, there is clear justification for presuming under S. 114 of the Indian Evidence Act that there is a direct and defined channel known to defendant by which the water sought to be tapped finds

EASEMENTS ACT (1882), S. 8—Permanent tenure.

its way to the adjacent springs, and to such cases. S. 7 does not apply. (*Pratt and Fawcett, JJ.*). BABAJI RAMALING *v.* APPA VITHAVJA.
77 I.C. 131= 25 Bom. L.R. 789= A.I.R. 1924 Bom. 154.

—S. 8—Permanent tenure.

——Holder of permanent tenure can create easements. (*Obiter.*) (*Courtney Terrell, C. J. and Jwala Prasad, J.*). NASIRUDDIN *v.* DEOKALI.
113 I.C. 884=A.I.R. 1929 Pat. 124.

—S. 8—Tenants.

——A tenant can acquire an easement against property held by another tenant. (*Mukerji, J.*). CHOTEY *v.* DAL CHAND. **118 I.C. 225= A.I.R. 1929 All. 862.**

—S. 12—Lambardar.

——*Lambardar* cannot acquire adverse possession nor easement over manure collected by the non-agriculturists—Adverse possession. (*Wazir Hasan and Pullan, JJ.*). GAYA PRASAD *v.* SAHDEO SINGH.
112 I.C. 123=5 O.W.N. 296= A.I.R. 1928 Oudh 257.

—S. 12—Tenant.

——Tenant can claim right of easement based on immemorial user but not on prescription. 6 Cal. 394 (P.C.); 4 Cal. 633 (P.C.) and 30 Cal. 281, *Ref.*; 29 Cal. 363, *Dist.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI.
A.I.R. 1930 Pat. 7.

—S. 13—Condition.

——For claiming easement of necessity it must be shown that the land conveyed is surrounded on all sides by lands belonging to third persons and the only way of access is over the contiguous land of the grantor. (*B. B. Ghose and Panton, JJ.*). HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY *v.* SECRETARY OF STATE. **121 I.C. 737= 56 Cal. 989=A.I.R. 1930 Cal. 230.**

—S. 13—Easement of necessity.

——Where a purchaser could make a passage for himself by piercing a door, it could not be said that he had an easement of necessity of passing over his transferor's property. 33 All. 467, *Foll.* (*Mukerji and Bennet, JJ.*). ATA HUSAIN *v.* QADIR BAKSH. **123 I.C. 762=A. I.R. 1930 All. 560.**

——*Right of way—Dominant owner purchasing property through which he can reach dominant tenement—Effect.*

In considering questions of easement of necessity, convenience is not the best but absolute necessity, and in this matter S. 13 (*e*) is the same as the law in England. A right of way of necessity only arises when there is no other possible legal mode of getting at the land and an easement of necessity which arises by implication of law is a grant of a right of way until such time as the grantee may acquire the power from some other source of reaching the *quasi*-dominant tenement. Where he acquires by purchase the property through which he can reach the several portions of the dominant tenement the old easement ceases to exist. (English, Indian and American law reviewed.) (*Ananthakrishna Aiyar, J.*). VENKATAPATHIRAJU *v.* SUBBARAJU. **1930 M.W.N. 120.**

——An easement of necessity means an easement without which the property retained cannot be used at all and not one merely necessary to the reasonable enjoyment of that property: *Union Lighterage Co.* v. *London Graving Dock Co.*, 2 Ch. 557 and A.I.R. 1924 Mad. 108, *Ref.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. **A.I.R. 1930 Pat. 7.**

EASEMENTS ACT (1882), S. 13—Easement of Necessity.

——There cannot be an easement of necessity for enabling the dominant owner to enjoy another easement. An easement of necessity is not created merely when the easement is necessary, but when it is absolutely necessary for the beneficial enjoyment of the dominant property and the mere fact of the properties having come under a common owner for a period of a year or so does not convert a right, which otherwise could not have been considered absolutely necessary for the enjoyment of the property an easement of necessity.

The right of a person to go upon the land of his neighbour and erect a scaffolding thereon, for the purpose of plastering and white-washing his own wall, is in the nature of an easement, though it is not an easement of necessity. (*Taraporewala, J.*). OFFICIAL TRUSTEE *v.* SALEBHAI. **94 I. C. 673= 28 Bom. L.R. 403=A.I.R. 1926 Bom. 328.**

——An easement of necessity, means an easement without which the property retained cannot be used at all, and not one merely necessary to the reasonable enjoyment of that property, but an easement apparent and continuous and necessary for enjoying the portions severed from the unity of ownership will pass to the transferee unless a contrary intention is expressed or implied in the instruments of transfer. (1902) 2 Ch. 557 at 572 and 3 Bom. L.R. 601, *Foll.*

Where the plaintiffs' plots were all along watered through the openings or vents,

Held, the existence of these vents is sufficient evidence of an apparent, continuous and necessary easement. The vents might be closed for the sake of convenience after irrigating the plaintiffs' fields as a temporary measure, just as a drain may be closed for clearing silt or for repairs, but this act being done for the proper enjoyment of the easement or in the course of enjoyment of an easement which is continuous would not make the easement a non-continuous one. (*Devadoss and Coleridge, JJ.*). M. GANGULU *v.* T. JAGANNATHAM.
76 I. C. 331=A.I.R. 1924 Mad. 108= 45 M.L.J. 724.

——Easement of necessity contemplates absolute necessity and it will not be granted merely for convenience. (*Kanhaiya Lal, J.C.*). KUNJ BEHARI *v.* BHULA. **72 I.C. 199=11 O.L.J. 5= A.I.R. 1923 Oudh 250.**

——Under Cl. (*e*) plaintiff has to prove that the easement claimed was necessary for the enjoyment of the property allotted to him by partition. Under Cl. (*f*) he has to prove that the easement was apparent, continuous and necessary for enjoying his share as it was enjoyed when the partition took effect and that no different intention was expressed or necessarily implied in the partition. There is no right of easement after partition on the mere ground that the easement is necessary for enjoying the share as it was enjoyed. (*Ashworth, A.J.C.*). BRIJ MOHAN LAL *v.* CHANDRIKA SING.
70 I.C. 930=25 O. C. 251=A.I.R. 1923 Oudh 57.

——An easement of necessity is one which the law creates according to the doctrine of implied grant in a particular case. It is one without which the dominant tenement cannot be used at all. A right of way of necessity ceases if the dominant owner can approach the place through his own land. (*Mukerji, A.C.J. and Fletcher, J.*). ABHOYA CHANDRA GHOSH *v.* RAJ KUMAR GHOSH.
60 I.C. 804 (Cal.).

——As a right of easement of necessity arising out of a severance by partition arises from a

EASEMENTS ACT (1882), S 13—Flow of water.

presumed grant, no grant can be presumed where the rights of parties have been definitely settled in a partition suit. (*Newbould, J.*). SIBNATH SAHA *v.* MOHESH CHANDRA SAHA. **59 I.C. 89 (Cal.).**

—S. 13—Flow of water.

———Two adjacent plots one on higher level—Subsequent to partition joint wall with aperture built—Water from well existing before partition and used for washing can be allowed to flow from higher plot to lower through aperture as easement under S. 13 in addition to the natural right to drain off rain water through the said aperture. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SINNANA GOWNDAN *v.* VEERAPPA GOWNDAN.

1930 M.W.N. 133=A.I.R. 1930 Mad. 676.

———*Quasi* easement—Property on slope—Partition—Person holding *quasi*-dominant position possesses easement to drain water through the lower portion as an apparent and continuous easement. (*Shadi Lal, C.J. and Broadway, J.*). CHANDAR *v.* BALA PERSHAD. **115 I.C. 758=A.I.R. 1928 Lah. 497.**

———Partition—No drain existing on either tenement—Level of dominant higher than that of servient—Right to easement arises as regards rain water but not as regards water for daily use as the former is in the nature of an apparent and continuous easement. (*Dalip Singh, J.*). BALA PARSHAD *v.* CHANDAR. **100 I.C. 939=9 L.L.J. 169=28 P.L.R. 334=A.I.R. 1927 Lah. 383.**

—S. 13—Implied grant.

———The doctrine of implied grant does not confer any title to easement which are not non-apparent and non-continuous. (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. **A.I.R. 1930 Pat. 7.**

—S. 13—Nature of easement.

———Question whether an easement is one of necessity is one of fact—C. P. Code, S. 100. (*Odgers, J.*). GOVINDA BHATTA *v.* M. RAMA BHATTA. **103 I.C. 862=A.I.R. 1927 Mad. 963.**

—S. 13—Quasi-easement.

———The term '*quasi*-easements' has been applied to those easements, which, not being easements of absolute necessity, come into existence for the first time by presumed grant or operation of law on a severance of two or more tenements formerly united in the sole or joint possession, or ownership, of one or more persons. The law relating to *quasi*-easements, arising on a division of joint property, is based upon the same principle which governs the conveyance of a part of the tenement held by a single owner or possessor. The principle is that on the grant by the owner of an entire property part of that property as it is then used and enjoyed there will pass to the grantee all those continuous and apparent easements, termed *quasi*-easements, which have been and are at the time of the grant in use for the benefit of the part granted. Such easements arise in favour of the grantee on several principles. As between co-parceners, mutual conveyances of the shares allotted to them respectively upon a partition of joint property, whether under the direction of Court of law or otherwise, will carry with them by presumption of law the right to such continuous easements as are necessary for the reasonable use and enjoyment of the premises respectively allotted. One of such easements is the right of support (including lateral support) which passes by implication of a law to a grantee, it is applicable to the case of a party wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other

EASEMENTS ACT (1882), S. 13—Right of way.

to have it maintained as a dividing wall between the two tenements. The mere fact that the price of the wall was taken into account in adjusting the value of the allotments does not in any way affect the applicability of the law. (*Suhrawardy and Chotzner, JJ.*). BHOLA NATH DUTTA *v.* RADHANATH BISWAS. **78 I.C. 908=51 Cal. 789=A.I.R. 1924 Cal. 844.**

—S. 13—Right of pasture.

———A customary right of pasture on landlord's land can be established by proper evidence if it is made out that from time immemorial the tenants have enjoyed it as of right, and if from the circumstances it could be gathered that the right was enjoyed by them customarily or might be due to a lost grant.

Where the rent was increased within living memory, within a few years and on every occasion on which the landlord granted permission to the tenants to graze the cattle the tenants had to apply for it and obtain such permission,

Held, that customary right cannot be held to exist. (*Coutts-Trotter, C.J. and Srinivasa Ayyangar, J.*). LAKSHMI KUMARA *v.* CHINNA NARAYANAPPA. **106 I. C. 195=A I. R. 1928 Mad. 799.**

—S. 13—Right of way.

———Easement of necessity—Right of way over another property cannot be claimed where other mode of access exists. 28 Mad. 495 and 33 All. 467, *Foll.*; 18 Bom. 616 and 48 I. C. 670, *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*). NARAYANA GAJAPATHIRAJU *v.* JANAKI RATHAYYA MURAJI. **124 I.C. 593=1930 M.W.N. 225=31 M.L.W. 455=A.I.R. 1930 Mad. 609.**

———Continuous and apparent easement—Right of way is apparent but discontinuous easement even where road is formed and metalled—English cases are not applicable in face of the Act. 28 Mad. 495; 33 Mad. 327 and 15 All. 270, *Foll.* (*Case-law discussed.*) (*Kumaraswami Sastri and Walsh, JJ.*). NARAYANA GAJAPATHIRAJU *v.* JANAKI RATHAYYA MURAJI. **124 I.C. 593=1930 M.W.N. 225=31 M.L.W. 455=A.I.R. 1930 Mad. 609.**

———There cannot be an easement of necessity if there is an alternative route or way. But where the alternative route is extremely impassable, it means that the way which is claimed by the plaintiffs and which is claimed by them as a way of necessity is the only way available to them. (*C. C. Ghose and B. B. Ghose, JJ.*). KALI PADA BOSE *v.* FANI BHUSAN ROY. **70 I.C. 173=A.I.R. 1924 Cal. 363.**

———Right of way is not continuous easement. (*Martineau, J.*). GANGA RAM *v.* SITA RAM.

6 L.L.J. 176=A.I.R. 1924 Lah. 488.

———Easement—Right of way—Sale-deed describing southern boundary of the land conveyed as pathway to be reserved—Vendee is entitled to right of way on the land forming southern boundary though no pathway might actually have been set apart by vendor—Deed—Construction. (*Venkatasubba Rao, J.*). KUPPAKKAL *v.* MATHAN CHETTIAR. **82 I.C. 430=A.I.R. 1924 Mad. 834=47 M.L.J. 477.**

———Where the owner of two tenements or of one tenement divided into two parts transfers one part, he puts an end by contract to the relation which he had himself created between the land sold and the land retained. He discharges the land so sold from any burden imposed upon it during his joint occupation: the condition of such

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land is thenceforth determined by the contract of alienation and not by the previous user of the former common owner during his common ownership. But where a man disposes of part of his land and that part affords an accommodation to the part retained, that accommodation will upon severance ripen into an easement, if it be such as to be absolutely necessary for the enjoyment of the part retained and the accommodation be such that it is capable of constituting the subject-matter of an easement. (*English case-law discussed.*) (*Mookerjee and Panton, JJ.*). TRUSTEE MONDUL *v.* KENURAM MONDAL. 65 I.C. 22=34 C.L.J. 518=A.I.R. 1921 Cal. 231.

—S. 13—Right to drainage.

——Partition—Water from plaintiff's site draining off across defendant's land before partition—Plaintiff was held not entitled after partition to drain off his water in a narrow channel across the defendant's land causing greater burden on defendant's land.

Before the partition it was unlikely that water flowed in any channel across the defendant's land and it would be likely to be absorbed as it would be spread over the whole area. Now that the whole amount of the water was concentrated into a narrow channel it imposed a burden upon the defendants of a very different nature to that which was in existence before the partition. It could not therefore be said that it was necessary for enjoying the plaintiff's share as it was enjoyed when the partition took effect. The burden cast upon the defendants was a more onerous burden than it was before, and the plaintiff was not entitled to the easement. (*Phillips, J.*). SINNAN GOUNDAN *v.* VEERAPPA GOUNDAN. 90 I. C. 900=1925 M.W.N. 282=A.I.R. 1925 Mad. 681.

—S. 13—Right to water.

——Suit for injunction restraining owner of intervening fields from interfering with flow of water from well further away—Question having arisen as result of partition of field and well—If flow across intervening field necessary for field in question, and was irrigating it before partition, party has right of easement and could rightly claim injunction. (*Mukerji and Bennet, JJ.*). CHHATARMAL *v.* JUGUL KISHORE. A.I.R. 1930 All. 313.

——Easement to take water for watering a field can be an easement of necessity. (*Odgers, J.*). GOVINDA BHATTA *v.* M. RAMA BHATTA. 103 I.C. 862=A.I.R. 1927 Mad. 963.

—S. 13—Sale.

——Easements and *quasi*-easements pass with sale. 50 P.R. 1888, *Foll.* (*Moti Sagar, J.*). FAIZ MAHOMMAD *v.* LATIF. 78 I.C. 561=A.I.R. 1924 Lah. 724.

—S. 13—Scope.

——The wide language used in the illustration varies the rule of law enacted in the main section itself. But only such easements are allowed under Cl. (*f*) as are continuous. If the easements be not continuous within the meaning of Cl. (*f*), it is difficult to see how the benefit of all the gutters and drains mentioned in Cl. (*h*) of the illustration can be enjoyed in respect of matters which require an act of man for enjoyment. Therefore illustration (*h*) cannot be accepted to modify the law itself. (*Mukerji, J.*). MT. SAJID-UN-NISSA *v.* SAYED HIDAYAT. 80 I.C. 896=22 A.L.J. 425=5 L.R.A. Civ. 291=A.I.R. 1924 All. 748.

EASEMENTS ACT (1882), S. 15—Acquisition by prescription.

—S. 13—Transfer of easement.

——When a *quasi*-servient tenement is conveyed to the grantee, and the *quasi*-dominant tenement is retained by the grantor, *quasi*-easement cannot arise in favour of the grantor unless expressly reserved in his grant, inasmuch as the grantor by a grant for valuable consideration is, in the absence of such express reservation, taken to have relinquished all rights over the tenement granted, and to be thereby afterwards precluded from doing anything which derogates from his grant. *Wheeldon* v. *Burrows*, (1879) 12 Ch. D. 31, *Foll.*; *Pyer* v. *Carter*, (1857) 1 H. and N. 916, *Not foll.* (*Addison, J.*). SHIV DAYAL *v.* RAM DAS. 97 I. C. 913=27 P. L. R. 375=A. I. R. 1926 Lah. 473.

——An apparent, continuous and necessary easement will pass to transferee unless contrary intention is expressed. (*Spencer, Offg. C. J.*). SOURIRAJA NAIDU *v.* RAJAGOPALAN. 81 I.C. 833=20 M.L.W. 245=1924 M.W.N. 678=A.I.R. 1924 Mad. 812=47 M. L. J. 302.

——The provisions of S. 13 and illustrations may be regarded as enunciating the principles of justice, equity and good conscience Where the owner of an entire tract of land, or of two or more adjoining parcels employs a part thereof, so that one derives from the other a benefit or an advantage of a continuous and apparent nature, and sells the one in favour of which such continuous and apparent *quasi*-easement exists, the easement, being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. The principle has been applied to cases of transfer of two tenements, and it has been ruled that if the owner of an estate, part of which is *quasi*-dominant and part *quasi*-servient transfers the two portions to two different persons, the respective transferees will take the portions granted to them, burdened or benefitted, as the case may be, by those rights in the nature of apparent and continuous easements which the previous owner had the right to attach to them. This rule is held applicable where there are several grants not absolutely at the same moment, but so far at the same time that they are considered as one transaction. (*Mookerjee and Chotener, JJ.*). SAROJINI DEVI *v.* KRISTA LAL HALDAR. 72 I.C. 576=36 C.L.J. 406=A.I.R. 1923 Cal. 256.

—S. 15.

Acquisition by prescription.
Customary right.
Interruption.
Light and air.
Right against Government.
Right of Fishery.
Right of way.
Right to support.
Right to water.
User.
Miscellaneous.

—S. 15—Acquisition by prescription.

——Section 15 is of wider application and is not confined to rights of way or of support specially mentioned therein. The expression 'any other easement' includes a variety of rights similar to those illustrated in the section. Pasturage, fishery, ferry and similar rights of easements have been frequently upheld as those acquired by prescription and it is possible to acquire a right of prescriptive easement for storing, for threshing floor and for

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using particular land as courtyard. 14 Bom. 213; 5 Cal. 945, *Ref.* (*Niamatullah, J.*). RAM PHAL SINGH *v.* BACHCHU RAM. **123 I.C. 757= A. I. R. 1930 All. 410.**

———Assertion of right of ownership does not preclude person from claiming right of easement. 16 Bom. 592, *Diss. from*; 62 I. C. 633 and 38 Mad. 1, *Ref.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. **A. I. R. 1930 Pat. 7.**

———*Interruption in enjoyment.*

Where the owner of a mahua tree complained of the construction of a wall by the defendant which prevented him from collecting the fruit of the tree, the branches of which overhang the wall but it was found on the evidence that the wall was constructed three years before the suit was brought,

Held, that assuming that the plaintiff had a right of easement he could not enforce it because of S. 15 of the Easements Act. (*Pullan, J.*). ABDUL HAQ *v.* SHAHAMAT ALI. **114 I. C. 512.**

———A title to easement is not complete merely upon the effluxion of the period mentioned in the statute, *viz.*, 20 years and however long the period of actual enjoyment may be, no absolute or indefeasible right can be acquired until it is so brought in question in some suit, and until it is so brought in question, the right is inchoate only and in order to establish it when brought in question, the enjoyment relied on must be an enjoyment for 20 years up to within two years of the institution of the suit. (*Cuming and Mallik, JJ.*). SITI KANTA PAL *v.* RADHA GOBINDA SEN. **119 I. C. 293= 33 C.W.N. 517=56 Cal. 927=A.I.R. 1929 Cal. 542.**

———Right to stock manure can be acquired by prescription. (*Daniels, J.*). DHANESHWAR TEWARI *v.* ANTU TEWARI. **98 I.C. 460= A.I.R. 1927 All. 115.**

———A riparian right is a natural right and is not acquired by immemorial user. It exists by law; it may be lost by the adverse enjoyment of another; but it has not got to be enjoyed to be kept up. Whatever the enjoyment at the date of the grant may be, the measure of the right that passes is determined only by configuration and the width of the river or stream. (*Kumaraswami Sastri and Ramesam, JJ.*). S. SUBBARAYUDU *v.* SECRETARY OF STATE. **105 I.C. 864=50 Mad. 961= 26 M.L.W. 513=1927 M.W.N. 854= A.I.R. 1927 Mad. 988=53 M.L.J. 868.**

———A prescriptive right to throw back water and keep it standing on the land of another exists only in the case of water flowing in a definite stream and cannot apply to surface-water not flowing in such a stream though it might ultimately, if not arrested, flow in a tank. 7 M.H.C. 37 and 11 Mad. 16, *Rel. on.* (*Odgers, J.*). RAGHAVALU NAYUDU *v.* SECRETARY OF STATE. **97 I.C. 832=1926 M.W.N. 652=25 M.L.W. 359= A.I.R. 1927 Mad. 144.**

———Right in respect of the usufructuary mortgage property can be binding on mortgagee as well as mortgagor, but the act done must not be with mortgagee's express or implied consent. (*Devadoss, J.*). MANNATTIL KRISHNAN NAIR *v.* SIVARAMAKRISHNA PATTAR. **98 I.C. 619=24 M.L.W. 691= A.I.R. 1927 Mad. 73.**

———Acts referable to ownership cannot be basis for claim to easement.

An easement is a restriction in favour of one owner or occupier of immovable property of the

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rights of ownership of the immovable property of another owner. The restriction cannot be built up or asserted without consciousness of the rights which are restricted. If the right that a person is exercising is not with the consciousness that he is restricting another person's rights of ownership, he cannot be enjoying a right of easement. *Lyell* v. *Hothfield*, (1914) 3 K.B. 911, *Foll.* (*Kotwal, A.J.C.*). ABDUL KAYAM *v.* MOJIRAM. **104 I.C. 431= 23 N.L.R. 117=A.I.R. 1927 Nag. 334.**

———Easements by prescription are acquired only by sufferance of the dominant owner. (*Greaves and B.B. Ghose, JJ.*). MAMIN KHAN *v.* MOIZUDDIN KHAN. **91 I.C. 348=A.I.R. 1926 Cal. 647.**

———Mere assertion of ownership in litigation is not bar to acquiring easement; exercising acts of ownership is fatal to claim for easement. 38 Mad. 1, *Overruled*; *Lyell* v. *Hothfield*, (1914) 3 K. B. 911, *Foll.* (*Coutts-Trotter, C. J., Krishnan and Beasley, JJ.*). SUBBA RAO *v.* LAKSHMANA RAO. **96 I.C. 968=49 Mad. 820=23 M.L.W. 609= 1926 M.W.N. 1923=A.I.R. 1926 Mad. 728 (F.B.).**

———Easement can be acquired only by a definite person or persons natural or juristic—A fluctuating and uncertain body of persons cannot acquire one *Lord Rivers* v. *Adams*, (1878) 3 Ex. D. 361, *Foll.* 14 Bom. 213, *Dist.* (*Phillips and Odgers, JJ.*). PAKKIR MAHAMUD *v.* PICHAI THEVAN. **92 I.C. 465=A.I.R. 1926 Mad. 625.**

———In the absence of a finding that the tank is either private property or the property of the Government, a right of easement by prescription cannot be established. (*Phillips and Odgers, JJ.*). PAKKIR MAHAMUD *v.* PICHAI THEVAN. **92 I. C. 465=A. I. R. 1926 Mad. 625.**

———The private nuisance caused by the overhanging boughs belonging to the trees of one neighbour to the owner of the land over which the boughs were overhanging does not create a "right" within the definition of "easement" in the Indian Easements Act, nor does the convenience to the owner of the tree, always changing in extent and position of space, become at any time so determinate that it could by any length of time be held to be enjoyed as "of right". There can be no such easement as can be acquired by prescription. 19 Bom. 420, *Foll.* (*Macleod, C.J. and Coyajee, J.*). KESHAV KRISHNA *v.* SHANKAR MAHADEO. **89 I.C. 191=27 Bom. L.R. 663= A. I. R. 1925 Bom. 446.**

———The enjoyment necessary to qualify for a right of easement is something very different from actual user. In order to establish a right to an easement, the enjoyment of it must continue for twenty years; but in the case of discontinuous easements, this does not mean that the actual user is to continue for the whole period of twenty years. On the contrary, there may be days and weeks and months, during which the right may not be exercised at all, and yet during all those days and weeks and months, the person claiming the right may have been in full enjoyment of it when necessary. 30 Cal. 1077, *Foll.* (*Kanhaiya Lal, J.*). SRI RAM *v.* MANI RAM. **74 I.C. 922= 21 A. L. J. 569=5 L. R. A. Civ. 24= A. I. R. 1924 All. 97.**

———Where the plaintiffs claimed to have acquired an easement by prescription the Court should not convert the claim into one of customary easement. What may suffice to establish a customary easement may be wholly insufficient to establish an easement by prescription and *vice versa*. The

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two rights are different although the result may be the same. (*Broadway and Abdul Qadir, JJ.*). SITA RAM *v.* GHANNO. **69 I. C. 528= A. I. R. 1924 Lah. 275.**

——Under S. 15 (5) plaintiff has to show a period of 20 years continuing up to some point within 2 years before the institution of the suit. The 5th paragraph of S. 15 of the Easements Act seems to render it impossible to acquire statutory prescriptive title to an easement, unless and until the claim thereto has been contested in a suit, 10 A.L.J. 227; *Calls* v. *Home*, (1904) L.R.A. C. 179; *Hyman* v. *Van Don Borgh*, (1908) L. R. 1 Ch. 167, *Foll.* (*Simpson, A. J. C.*). BASDEO SING *v.* BHAGWAT PRASAD. **72 I. C. 909= A. I. R. 1923 Oudh 29.**

——A claim of higher right of ownership does not prevent another person from acquiring a right of easement, if he can show that he converts certain rights of enjoyment over the land in question for the benefit of another land of his own. A right once established by immemorial user, is not extinguished by non-user or interruption for more than two years. (*Mookerjee, A.C.J. and Fletcher, J.*). SURENDRA NATH *v.* GIRDHARI SINGH. **62 I.C. 633.**

—S. 15—Customary right.

——Tank water used by villagers for buildings without objection—Open and free user proved—Legal inference of the right for common benefit not dependent on the permission of the Malguzar arises from the acquiescence. A.I.R. 1928 Nag. 39 and A.I.R. 1928 Nag. 87, *Ref.* (*Kinkhede, A. J.C.*). GOVIND BAPU *v.* WARLU. **110 I. C. 823= A. I. R. 1928 Nag. 329.**

——In order to establish a customary right to do acts such as appropriating earth on another's property, the enjoyment must have been so acquiesced in by the owner as would give rise to the inference that originally by agreement or otherwise the usage (of which the repeated and open enjoyment is only a proof) had become a customary law of the place in respect of the persons and things which it concerned. The period of 20 years is sufficiently long to enable a Court to draw the legal inference that the exercise of the right to appropriate and carry away the earth for making pots must have had a lawful origin in a grant. A.I.R. 1924 Patna 303; 23 Bom. 666, *Foll.* (*Kinkhede, A. J. C.*). RUSHI BHIKU *v.* RUSHI SHEORAM. **107 I.C. 522= 23 N.L.R. 192=A.I.R. 1928 Nag. 87.**

—S. 15—Interruption.

——Where an easement to carry water in a channel across the defendant's land for purposes of irrigation was established, the mere failure to exercise the right for a period of two years prior to suit does not extinguish the right of easement, nor does the mere fact that for one year the plaintiffs irrigated one of their fields from another well affect their right of easement. 26 C. W. N. 121, *Ref.* (*Pullan, J.*). PARTAP SINGH *v.* HEMRAJ. **118 I. C. 521=A. I. R.1929 All. 497.**

——Mere obstruction is not sufficient but further acquiescence for one year must be proved. (*Ashworth, J.*). MUNICIPAL BOARD, PILIBHIT *v.* KHALIL-UL-RAHMAN. **116 I.C. 806= A.I.R. 1929 All. 382.**

——No easement can be claimed under S. 15, where it has been broken for a period of more than two years before the suit is brought. (*Pullan, J.*); ABDUL HAQ *v.* SHAHAMAT ALI. **114 I.C. 512.**

EASEMENTS ACT (1882), S. 15—Light and air.

——Suit by a servient owner before the expiry of twenty years requisite for the exercise of a prescriptive right by the dominant owner prevents the period of 20 years running in favour of the dominant owner. *Flight* v. *Thomas*, (1841) 8 Cl. & F. 231, *Dist.* (*Patkar and Baker, JJ.*). LALLUBHAI *v.* BHIMBHAI. **113 I.C. 525= 30 Bom. L.R. 873= A.I.R. 1928 Bom. 312.**

——Prescriptive right—Non-user for two years before suit by owner or dominant heritage amounts to cessation within two years within S. 15. A. I. R. 1922 Bom. 3; 12 A. L. J. 415; 33 I. C. 503 and 29 M. L. J. 685, *Foll.* (*Curgenven, J.*). RAMAKRISHNAYYA *v.* RATTAYA. **98 I.C. 886= A.I.R. 1927 Mad. 238.**

——Explanation 2 clearly relates not to the period after which the easement has ceased to be enjoyed but to any interval of non-user within the 20 years of enjoyment. (*Curgenven, J.*). RAMAKRISHNAYYA *v.* RATTAYA. **98 I.C. 886= A.I.R. 1927 Mad. 238.**

——Easement acquired before burning of a house —Re-building—Right to the same access of light and air is not lost—House burnt during the process of acquiring easement—Immediate re-building—Enjoyment will not be deemed to be interrupted—Delay in re-building may be evidence against the intention to resume user. (*Macleod, C.J. and Shah, J.*). RATAN LAL BHOLA RAM *v.* GULAM HUSEN ABDUL ALI. **67 I.C. 250= 46 Bom. 448=24 Bom. L.R. 83= A.I.R. 1922 Bom. 3.**

—S. 15—Light and air.

——Injunction for the protection of the easement of light and air can only be granted when their closure amounts to an actionable nuisance. It is not enough that the light has been reduced. There must be a substantial privation of light enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind and (in the case of business premises) to prevent the occupier from carrying on business as beneficially as before. *Colls* v. *Home and Colonial Stores*, (1904) A.C. 179; 8 P.R. 1909; 39 Cal. 59. and A.I.R 1914 P.C. 45, *Ref.*

The existence of other sources of light should be taken into consideration. *Colls* v. *Home and Colonial Stores*, (1904) A.C. 179 and 13 Bom. 252, *Ref.* (*Bhide, J.*). SOHAN SINGH *v.* JAGAT SINGH. **114 I.C. 698=A.I.R. 1928 Lah. 980.**

——The owner of the domiant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or the business of the tenement according to the ordinary notions of mankind. The closing of the only ventilator of a room amounts to a nuisance whether the room is occupied by servants or others. 42 Cal. 46 (P.C.), *Rel. on.* (*Tek Chand, J.*). SHRI DWARKADHISHJI *v.* DEWASINGH. **108 I.C. 53=A.I.R. 1928 Lah. 735.**

——The mere existence of light from other sources to which the person has not acquired any prescriptive right is no answer to a suit for infringement of prescriptive right to light and air: 3 W.R. 29; A.I.R. 1914 P.C. 45; *Jolly* v. *Kine*, (1907) A.C. 1; *Colls* v. *Home and Colonial Stores Ltd.*, (1904) A.C. 179; *Dyres Co.* v. *King*, (1870), 9 E. Q. 438 and *Jolly* v. *Kine*, (1905) 1 Ch. 480, *Dist.* (*Ross, J.*). MT. JADOOIE KAHARIN *v.* MT. KISUN BASI. **105 I.C. 39=A.I.R. 1928 Pat. 106.**

EASEMENTS ACT (1882), S. 15—Light and air.

———The owner of a dominant tenement does not obtain by his easement a right to all the light he has enjoyed during the period of prescription. He obtains a right to so much of it as will suffice for the ordinary purposes of inhabitancy or business according to the ordinary notions of mankind having regard to the locality and surroundings. Further there is no infringement of the easement acquired by ancient lights unless the act which is done amounts to a nuisance.

The mere fact that the making of a room would block the plaintiff's window would not by itself entitle him to obtain a decree for perpetual injunction, in the absence of a definite and clear finding that the constructions contemplated by the defendants would amount to a nuisance. (*Iqbal Ahmed, J.*). DWARKA PRASAD *v.* BISHAMBHAR DAYAL.
99 I. C. 5=A. I. R. 1927 All. 191:

———Joint property—Right does not arise. (*Macleod, C.J. and Coyajee, J.*). RAJUBAI MAHANBHAI *v.* LALBHAI MULCHAND. **97 I.C. 691=28 Bom. L. R. 1000=A.I.R. 1926 Bom. 545.**

———New and bigger windows constructed in place of old ones constitute new easement. 26 Bom. 374, *Foll.* (*Prideaux, A.J.C.*). BADRI *v.* JAFARBHAI. **96 I. C. 546=9 N. L. J. 136=A. I. R. 1926 Nag. 474.**

———No injunction should be granted to prevent obstruction to an easement unless the alleged obstruction causes such a diminution of light as to constitute a nuisance. There must be substantial privation of right enough to render the occupation uncomfortable according to the ordinary notions of mankind. (*Prideaux, A.C.J.*). BADRI *v.* JAFARBHAI. **96 I.C. 546=9 N.L.J. 136=A.I.R. 1926 Nag. 474.**

———There is no easement for the free access of wind. (*Mookerjee and Chotzner, JJ.*). SAROJINI DEVI *v.* KRISTA LAL HALDAR. **72 I. C. 576=36 C. L. J. 406=A. I. R. 1923 Cal. 256.**

———Long user may not always raise a presumption of grant. (*Hallifax, A. J. C.*). SONBA *v.* DATTATRAYA. **71 I.C. 831=6 N.L.J. 59=A.I.R. 1923 Nag. 192.**

———Access and use of light and air through certain opening—Enjoyment need not be as of right to create an easement by prescription. (*Macnair, A. J. C.*). HARI *v.* MAHADEO. **61 I.C. 569=A.I.R. 1921 Nag. 127.**

—S. 15—Right against Government.

———To apply 60 years rule Government ownership must exist on the date when easement is claimed. (*Ashworth, J.*). MUNICIPAL BOARD, PILIBHIT *v.* KHALIL-UL-RAHMAN. **116 I.C. 806=A.I.R. 1929 All. 382.**

———Where a ryotwari holder was found to use water from a Government channel for 50 years but the settlement records showed that his lands were dry lands,

Held, no presumption of an implied grant arise nor could a right by prescription be acquired. (*Ramesam, J.*). LAKSHMI NARAYAN *v.* SECRETARY OF STATE. **105 I.C. 84=39 M. L. T. 112=A.I.R. 1928 Mad. 96.**

———It is against the land, and thereby its owner, that a right of easement can be claimed. Sixty years user must be proved to acquire a right of way against Government whether the Government land is in occupation of Government or their lessee. A. I. R. 1924 All. 724, *Foll.* (*Pullan, J.*). JAGAN *v.* JAGDISH. **106 I.C. 305=4 O.W.N. 1035=A.I.R. 1928 Oudh 17.**

EASEMENTS ACT (1882), S. 15—Right of way.

———The common law of England on the subject of acquisition of preseriptive rights does not apply in India, and, assuming that it does, there would be no prescription against the Crown. 3 B. L. R. 18, *Foll.* (*Kincaid and Raymond, J.Cs.*). GANGARAM *v.* SECRETARY OF STATE. **86 I.C. 757=21 S. L. R. 195=A.I.R. 1927 Sind 270.**

———Sixty years user is necessary in case of Govt. land even where private person is in occupation as easement is a right which attaches to one property over another. (*Ryves, J.*). NARAIN DAS *v.* BEHARI KAHAT. **78 I.C. 844=A.I.R. 1924 All. 724.**

—S. 15—Right of Fishery.

———Limitation Act, Art. 144—Exclusive right of fishery is interest in immovable property and not merely "*profit a prendri*"—Adverse possession for 12 years against lawful owner creates such interest. 1 Pat. 674 and 14 C.L.J. 572, *Foll.* (*Sundaram Chetty, J.*). SECY. OF STATE *v.* DIST. BOARD OF TANJORE. **1930 M.W.N. 328=31 M.L.W. 508=A.I.R. 1930 Mad. 679.**

———Several fishery—No claim to soil itself—Applicability of Easements Act is doubtful. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE. **23 Bom. L.R. 939=A.I.R. 1921 Bom. 93.**

—S. 15—Right of way.

———User to be 'open' must raise presumption of servient owner's knowledge and acquiescence. (*Mirza and Baker, JJ.*). RAMCHANDRA TRIMBAK JOSHI *v.* HARI MARTAND. **116 I.C. 231=31 Bom. L.R. 120=A.I.R. 1929 Bom. 144.**

———In questions regarding a right of way the Court should consider the character of the ground, the space for which the right is claimed, the relations between the parties and the circumstances under which the user took place to decide whether the user was "as of right". A.I.R. 1922 Mad. 5, *Dist.*; 13 C.L.J. 316; 8 C.W.N. 359, *Foll.* (*Mirza and Baker, JJ.*). RAMCHANDRA TRIMBAK *v.* HARI MARTAND. **116 I.C. 231=31 Bom. L.R.120=A.I.R. 1929 Bom. 144.**

———Right of way for limited and special purpose not limited to special track—Change of track is not interruption as it is a discontinuous non-apparent positive easement not limited to a particular path. (*Courtney Terrell, C. J. and Jwala Prasad, J.*). NASIRUDDIN *v.* DEOKALI. **115 I.C. 884=A.I.R. 1929 Pat. 124.**

———Beginning under claim of right cannot be presumed from long user. 8 C.W.N. 359, *Rel. on.* (*Courtney Terrell, C. J. and Jwala Prasad, J.*). NASIRUDDIN *v.* DEOKALI. **115 I.C. 884=A.I. R. 1929 Pat. 124.**

———Passage for sweeper can be acquired, by prescription though sweeper is Municipal servant. (*Macleod, C.J. and Coyajee, J.*). RAMCHANDRA *v.* ANANT LAXMAN. **95 I.C. 170=28 Bom. L.R. 601=A.I.R. 1926 Bom. 282.**

———The right of easement in respect of a sweeper's passage for cleaning a privy through the land of another is acquired if the passage is used for 20 years as of right without interruption. (*Macleod, C.J. and Shah, J.*). YUSEF DAVID VARULKAR *v.* MOSES SOLOMON TALKER. **76 I.C. 754=24 Bom. L.R. 298=A.I.R. 1922 Bom. 79.**

———The mere fact that the land is waste does not necessarily show that no right can be acquired over such land. If that were so, the right of user over almost every pathway in the mofussil would be lost, inasmuch as almost every pathway lies over waste land. 18 C. W. N. 735, *Ref.* In determining the question whether an user of way over waste

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land was as of right or not, the Court would have to consider the character of the land, the relation between the parties and the circumstances under which the user took place. 8 C.W.N. 359, *Ref.* (*Chatterjee and Panton, JJ.*). MAHOMED NURAL HAQ *v.* BAKSU MANDAL. **65 I.C. 509 (Cal.).**

———Easement—Right of way for scavengers through dwelling house—Long user—User as of right and a legal origin may be presumed—Other modes of acquisition are not excluded by section.

In the case of long enjoyment a legal origin is presumed in England until the contrary is shown. (1891) App. Cas. 228; (1882) 7 App. Cas. 633; (1904) 2 Ch. 534; 3 East. 294; 4 L. W. 128, *Ref. to.*

In India there are conditions and circumstances such as nature and character of the servient land, the friendship or relationship of parties to be taken note of, before a Court can come to the conclusion that the exercise of a right of way can be held to have been as of right. 8 C. W. N. 359; 13 C. L. J. 316; 29 M. L. J. 685, *Ref. to.* (*Kumaraswami Sastri and Devadoss, JJ.*). KUNJAMMAL *v.* RATHNAM PILLAI. **66 I.C. 11= 1922 M. W. N. 143=15 M. L. W. 266= 31 M. L. T. 150=45 Mad. 633= A. I. R. 1922 Mad. 5=42 M. L. J. 417.**

———A suit to establish a right of way must be brought within two years of the interruption, otherwise his enjoyment for 20 years will be of no avail. (*Abdur Rahim and Oldfield, JJ.*). NACHIPARAYAN *v.* NARAYANA GOUNDAN. **60 I. C. 171= 12 M. L. W. 713=39 M. L. J. 574.**

———Right of way—Open user continued without interruption for long time and not attributable to permission or sufferance is *prima facie* evidence of enjoyment as of right. 14 W. R. 124, *Foll.* (*Macnair, A.J.C.*). HARI *v.* MAHADEO. **61 I.C. 569=A.I.R. 1921 Nag. 127.**

—S. 15—Right to support.

———*Cutting of drain causing damage to wall—Same which actionable.*

Where it was shown that the plaintiff's wall collapsed as a result of a deep drain cut close to the wall by the defendant but it was not shown that any portion of the soil on the plaintiff's land had fallen into the drain and it was also not proved that the period of 20 years had expired before the alleged encroachment,

Held, that S. 15 and not S. 7 applied to the facts of the case, and that the easement by prescription not having been established the plaintiff was not entitled to recover damages. (*Bennet and Iqbal Ahmad, JJ.*). BHAGWAN DAS *v.* KHURSHED. **1930 A.L.J. 340=A.I.R. 1929 All. 885.**

———Acquisition of easement to rest roof on neighbour's wall—Roof resting on neighbour's wall for more than 20 years—Injunction preventing interference with easement may be granted under Specific Relief Act, S. 54. 29 M.L.J. 685; 6 Cal. 394 (P. C.), *Rel. on*; 39 M.L.J. 574, *Dist.* (*Coutts-Trotter, C.J. and Ananthakrishna Ayyar, J.*). RAMAKRISHNA AYYAR *v.* RAMANATHA PATTAR. **1929 M.W.N. 528=A.I.R. 1929 Mad. 819.**

———Easement—Removal of support of wall before accrual of right of easement by prescription by neighbour is not actionable. *Guteley* v. *Marten*, 1 R. R. 269 and *Dalton* v. *Angus*, 6 App. Cases 740, *Foll.* (*Kinkhede, A. J. C.*). ABDUL RAHEMAN *v.* MULCHAND. **109 I. C. 281=10 N.L.J. 226= A.I.R. 1928 Nag. 91.**

EASEMENTS ACT (1882), S. 15—User.

———Lateral support can be obtained only by prescription. (*Ayling and Coutts-Trotter, JJ.*). ATHI AYYAR, *In re.* **68 I.C. 831= 14 M.L.W.728=A.I.R. 1921 Mad. 322.**

—S. 15—Right to water.

———Where a person is taking water during monsoon through an artificial channel for nearly 32 or 35 years into his own field for irrigation purposes by cutting an *ail* of another's field at a particular place during the monsoon, such user cannot be said to be of a temporary nature and the right to take such water can be acquired by prescription. *Beeston* v. *Weate*, (1856) 5 El. & Bl. 986, *Foll.* (*Rankin, C. J. and C. C. Ghose, J.*). BEPIN BEHARY *v.* RAMNATH GHALAK. **110 I.C. 422=56 Cal. 161= 47 C.L.J. 480=32 C. W. N. 1109= A.I.R. 1929 Cal. 286.**

———There can be no natural right at all with respect to water brought on artificially to the land and irrigation water is water that is brought on land by artificial means, by human effort. There may no doubt be a right to pass on such water also. But such a right can only be the subject of a grant or acquired by prescription. The natural right must be regarded as a right given to the owner of land having regard to the natural configuration and situation of the land. But when the right comes to relate to something that is brought on to the land artificially it will not be correct to describe it as a natural rights. *Sadasiva Iyer, J.*, in (1918) M.W.N. 167, *Diss. from.* (*Srinivasa Aiyangar, J.*). RAMAKRISHNA REDDI *v.* VENKATA REDDI. **108 I.C. 205=39 M. L. T. 373= A.I.R. 1928 Mad. 52.**

———Before the right to the use of water can be the subject of an easement by prescription or grant it must be water flowing through a defined and permanent channel. The essential features from which a grant or arrangement whereby the right claimed may be presumed to rest in some legal origin are that there should be a permanent channel, artificial or otherwise, or indeed a defined channel of any sort conducting the overflow of water and that the overflow should be controlled or directed in any particular course. 6 I.A. 33, *Foll.* (*Dawson Miller, C. J. and Mullick, J.*). MT. SARBAN *v.* PHUDO SAHU. **69 I.C. 947= 4 P.L.T. 81=1922 P.H.C.C. 305=2 Pat. 110= A. I. R. 1923 Pat. 65.**

———Although it is quite possible that the owner of one piece of agricultural land might acquire the right to drain his water on to the land of another, it would be more natural in hilly districts for the owner of the lower land to acquire a right to receive water which either falls on or flows into the higher land. It is only in such a way that cultivation in such districts can proceed; and nothing will prevent the owner of the land on the lower level from acquiring by prescription such a right against the owner of the land on a higher level. (*Macleod, C. J. and Shah, J.*). BASWANTAPPA IRRAPPA DESAI *v.* BHIMAPPA YELLAPPA KOPPAD. **64 I.C. 418=46 Bom. 116= 23 Bom. L.R.1004=A. I. R. 1922 Bom. 378.**

—S. 15—User.

———While the mere putting forward of a wider claim in legal proceeding is not conclusive against a right of easement, yet the question *quo animo egerit*, to what purported character are the acts of user to be described is one which the Court must answer. The question in each case is one of fact as to whether the acts of user are referable to a purported character of owner or to the claim to an

EASEMENTS ACT (1882), S. 15—User.

easement. Even in the case of an enjoyment from time immemorial it would be equally necessary for the plaintiff to prove a user as of right as an easement as distinguishable from a right of ownership. 34 Cal. 51 and A. I. R. 1926 Mad. 728 (F.B.), *Ref.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. **A. I. R. 1930 Pat. 7.**

———Long user does not prove enjoyment as of right. (*Cuming and Mallik, JJ.*). SITI KANTA PAL *v.* RADHA GOBINDA SEN. **119 I. C. 293= 33 C. W. N. 517=56 Cal. 927= A.I.R. 1929 Cal. 542.**

———User as owner cannot be made basis of easement. (*Kotwal, A.J.C.*). TULSIRAM *v.* GANPAT. **104 I.C. 503=A.I.R. 1927 Nag. 386.**

———*Open user for long time is presumed to be as of right.*

An open user continued without interruption for a long time and not shown to be attributable to any permission on the owner's part is *prima facie* evidence of enjoyment as of right. The presumption is that the user is of right. (*Shadi Lal, C.J. and Le Rossignol, J.*). PIARE LAL *v.* ISHQU LAL. **95 I.C. 269=A.I.R. 1926 Lah. 522.**

———Lost grant—Evidence insufficient to prove long enjoyment under the Act cannot be sufficient to raise presumption of lost grant. (*Odgers, J.*). MD. USAN ROWTHER *v.* SECY. OF STATE. **96 I. C. 317=1926 M. W. N. 404= A.I.R. 1926 Mad. 788.**

———User connotes right. (*Martineau, J.*). ISHQ LALL *v.* PIYARI LAL. **86 I.C. 595= 7 L. L. J. 74=26 P.L.R. 110= A. I. R. 1925 Lah. 344.**

———An easement may be enjoyed as an ancient right or by immemorial user apart from S. 15 of the Easements Act, so that such ancient right may be proved, although by the right having been interrupted more than two years before the date of the suit, S. 15 of the Easements Act may not apply.

Per *Shah, J.*:—It would appear from the observations in the case of *Maharani Rajroop Koer* v. *Syed Abul Hossein*, 7 I.A. 240, that their Lordships did not lay any particular emphasis upon the number of years so long as it was in excess of twenty years. It seems that no such limit can be definitely laid down. It must depend upon the circumstances of each case. The question whether immemorial user or ancient right is established in any case must depend upon the evidence and the circumstances of that case. (*Shah and Crump, JJ.*). RAMBHAI DUBHAI *v.* VALLABHAI JAVERBHAI. **62 I. C. 65=45 Bom. 1027= 23 Bom. L.R. 422=A.I.R. 1921 Bom. 430.**

—S. 15—Miscellaneous.

———Section 7, Illus. (*e*) applies to cases where the land is in natural condition and does not apply to land burdened with a building and there is artificial pressure by the building itself. In such cases S. 7 does not apply and the question of easement can be decided by applying S. 15. (*Bennet and Iqbal Ahmad, JJ.*). BHAGWAN DAS *v.* BIBI IQBAL SULTAN BANU SHAHAR KHURSHED BEGAM. **118 I.C. 715=1930 A.L.J. 340= A.I.R 1929 All. 885.**

———A bye-law, passed by the Board and sanctioned by the Government, signifying the intention to let out the spaces at the sides of roads to hawkers, does not create Board's ownership to those sides but merely extends its power of user, the ownership being already created by S. 116, Municipalities Act of 1916, or a similar provision

EASEMENTS ACT (1882), S. 18—Acquisition.

in the previous Act. (*Ashworth, J.*). MUNICIPAL BOARD, PILIBHIT *v.* KHALIL-UL-RAHMAN. **116 I.C. 806=A.I.R. 1929 All. 382.**

———Though Easements Act is not in force in Berar, Limitation Act, S. 26, is. (*Prideaux, A.J.C.*). BADRI *v.* JAFARBHAI. **96 I.C. 546=9 N.L.J. 136= A. I.R. 1926 Nag. 474.**

—S. 17—Applicability.

———S. 17 is intended to apply not to rights of irrigation in natural streams but to rights in the nature of profits *a prendre* which do not include a right to water. (*Mullick and Kulwant Sahay, JJ.*). THAKURJI SRI JUGAL SARKAR *v.* RAJ MANGAL PRASAD. **94 I. C. 929=7 P.L.T. 547= A. I. R. 1926 Pat. 187.**

—S. 17—Surface water.

———Act does not apply to Burma—Right of receiving surface water can be acquired by custom in absence of statutory prohibition. 2 U. B. R. 642 and 24 Cal. 865, *Dist.* (*Baguley, J.*). MAUNG CHAN NYEIN *v.* MAUNG PWE. **114 I. C. 519= 6 Rang. 615=A. I. R. 1929 Rang. 31.**

———Every landowner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and to put it to such use as he may desire. He may also allow it to flow away in the usual course of nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing, and it is for the other party to establish that they have acquired a right to compel the owner not to do so either by contract or by prescription. A.I.R. 1923 Pat. 65, *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). ABDUL BAGI *v.* SHEO PRAKASH SINGH. **107 I.C. 542=A.I.R. 1928 Pat. 279.**

—S. 18—Access to tombs.

———*Conditions—Limits.*

A person can acquire a right of access to a spot in which some persons are buried and to worship the tomb provided he proves that the enjoyment of the right was not by leave granted or by stealth or by force, but that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned. 17 All. 87, *Foll.*

But the right of access to a tomb does not include the right to erect substantial structures over and round the tomb which amounts to an infringement of the owner's rights to the land. (*Rutledge, C.J. and Brown, J.*). L. DAWSON *v.* PRINCESS ROUNEE ZAMANI BEGAM. **112 I.C. 431= 6 Rang. 456=A.I.R. 1928 Rang. 268.**

—S. 18—Acquisition.

———There cannot be a customary easement in favour of an individual and so easement acquired under and by virtue of local customs can only be in favour of class and community. (*Staples, A. J. C.*). RAGHOBA *v.* ANANDA BAI. **119 I.C. 695= A.I.R. 1930 Nag. 40.**

———A village community in India can acquire a customary right. (*Devadoss, J.*). KUMARANDY KUDUMBAN *v.* VENKATASUBRAMANIA AIYAR. **101 I.C. 58=A.I.R. 1927 Mad. 645= 52 M.L.J. 641.**

———In order to find a customary right enjoyment for a period at least as long as would a prescriptive or easementary right require is necessary. (*Odgers, J.*). RAGHAVALU NAYUDU *v.* SECRETARY OF STATE. **97 I.C. 832=1926 M.W.N. 652= 25 M.L.W. 359=A.I.R. 1927 Mad. 144.**

EASEMENTS ACT (1882), S. 18 — Against landlord.

———A custom cannot be established by a practice of less than 20 years. (*Curgenven, J.*). ZAMINDAR OF BODOKIMIDY *v.* BUDANKAYALA BHIMAYYA. 98 I.C. 800=24 M.L.W. 677= A.I.R. 1927 Mad. 76.

—S. 18—Against landlord.

———A tenant may acquire a customary right of using the water of a well against his own zamindar. 12 A.L.J. 963; A.I.R. 1924 All. 159, *Foll.*; 17 A.L.J. 672; 11 A.L.J. 990 and 14 All. 185, *Dist.* (*Dalal, J.*). PARTAP SINGH *v.* NAND KISHORE. 113 I.C. 729=9 L.R.A. Civ. 224= A. I. R. 1928 All. 591.

———The first illustration to S. 18 expressly recognises that a tenant may have a customary right of easement against his landlord. A customary easement is not limited to easements of a kind which could not be recognised at all apart from special customs such as the right of pasturage and the right of privacy referred to in the illustrations. Any kind of easement recognised by custom of the provinces would surely fall within the meaning of the term. (*Daniels, J.*). KARAN SINGH *v.* DALCHAND. 74 I.C. 703= A. I. R. 1924 All. 159.

—S. 18—Burying and cremating.

———In the absence of any evidence that the land was ever dedicated to the community, the mere fact that permission was given for one or two persons to be buried in a particular spot does not *ipso facto* invest the spot with a public character and give outsiders any rights over it. (*Rutledge, C.J. and Brown, J.*). L. DAWSON *v.* PRINCESS ROUNEE ZAMINI BEGUM. 112 I.C. 431=6 Rang. 456= A.I.R. 1928 Rang. 268.

———*Recognition by Courts.*

Right to bury dead in a place privately owned is recognised by Courts and has been regarded by the Courts as a right partaking of the character of an easement and capable of acquisition by virtue of a custom. 23 B. 666, *Ref.* (*Po Han, J.*). MG. SHEW KYE *v.* MG, PO THA. 76 I. C. 588= 2 Bur. L.J. 186=1 Rang. 702= A.I.R. 1924 Rang. 61.

———*Customary right—Form of pleading.*

Customary right of user of land as burial or cremation ground must be specifically pleaded. A plaintiff setting up prescriptive right cannot be allowed to succeed on basis of customary right for the two are fundamentally distinct, for custom differs from prescription in the fact that prescription is the making of a right while custom is the making of a law. (*Mookerjee and Panton, JJ.*). GOPAL KRISHNA *v.* ABDUL SAMAD.
66 I.C. 640=34 C.L.J. 319=A.I.R. 1921 Cal. 569.

—S. 18—Custom and prescription.

———*Distinction.*

Rights which are in the nature of customary rights which exist for the common benefit of certain communities or inhabitants of particular localities, and to establish which the law does not lay down any fixed period must be distinguished from prescriptive easements which can be acquired by 20 years user by specific individuals who alone can exercise them as against servient owners for the beneficial enjoyment of their own dominant heritages. 20 Mad. 389; 17 All. 87 and A. I. R. 1924 Mad. 197, *Foll.* (*Kinkheds, A. J. C.*). SHRIDHAR *v.* RAJABHAN. 108 I.C. 113= A.I.R. 1928 Nag. 89.

EASEMENTS ACT (1882), S. 18—Privacy.

—S. 18—Cutting wood.

———*Nature.*

Villagers taking wood from landlord's jungle without his knowledge cannot acquire right to cut and appropriate wood—If such acts are with permission or acquiescence that amounts to license and cannot likewise confer a right as against him. (*Niamatullah, J.*). MOHAMMAD YUSUF *v.* SURAJ BALI SINGH. 123 I.C. 377=A.I.R. 1930 All. 338.

—S. 18—Custom.

———*Recognition—Conditions.*

A Court should not decide that a local custom, such as cutting wood from a jungle exists, unless the Court is satisfied of its reasonableness and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted or by stealth or by force, and that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned: 17 All. 87, *Rel. on.* (*Niamatullah, J.*). MOHAMMAD YUSUF *v.* SURAJ BALI SINGH. 123 I. C. 377= A. I. R. 1930 All. 338.

—S. 18—Essentials of custom.

———The essential attributes of a custom are, that it must be immemorial, it must be reasonable, it must be continued without interruption since its immemorial origin, and it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the person whom it is alleged to affect. (*Mookerjee and Panton, JJ.*). GOPAL KRISHNA *v.* ABDUL SAMAD. 66 I.C. 640=34 C.L.J. 319= A. I. R. 1921 Cal. 569.

—S. 18—Exercise of right.

———*Mode.*

Customary easement may be exercised intermittently. (*Fawcett, J. C. and Kemp, A. J. C.*). SHAH MAHOMAD *v.* RAMZAN. 66 I. C. 833= 16 S. L. R. 17=A.I.R. 1921 Sind 155.

—S. 18—Overhanging branches of trees.

———*Custom as to—Cannot be recognised.*

A custom in a village not to complain against the overhanging of cocoanut trees over neighbour's lands would not be reasonable and cannot be pleaded. It is indefinite and vague nor can there be customary easement under S. 18 of projecting the branches of trees growing on one's land over the land of another. 43 Bom. 164, *App.* (*Macleod, C. J. and Coyajee, J.*). KESHAV KRISHNA *v.* SHANKAR MAHDEO. 89 I.C. 191=27 Bom. L. R. 663= A.I.R. 1925 Bom. 446.

—S. 18—Prescriptive and customary easement.

———*Distinction.*

Where the plaintiffs claimed to have acquired an easement by prescription the Court should not convert the claim into one of customary easement. What may suffice to establish a customary easement may be wholly insufficient to establish an easement by prescription and *vice versa*. The two rights are different although the result may be the same. (*Broadway and Abdul Qadir, JJ.*). SITA RAM *v.* GHANNO. 69 I. C. 528= A. I. R. 1924 Lah. 275.

—S. 18—Privacy.

———*Right to—Recognition—Conditions.*

Where a custom of privacy existed in the locality in which the plaintiff lived and she sued the defendant that her right of privacy was infringed by certain construction made by defendant and where her house was already overlooked from

EASEMENTS ACT (1882), S. 18—Privacy.

another house and she did not show any reason why she did not object to being overlooked from that particular house and where she endured without protest the invasion of her privacy by the defendant for two years, she is not a person who is entitled to right of privacy although her suit is brought within limitation. 10 All. 358 and A. I. R. 1929 All. 676, *Ref.* (*Boys, J.*). MT. KARIMUNNISSA BIBI *v.* MIRA BAKHSH. **119 I.C. 834= A. I. R. 1929 All. 809.**

———*Enforcement—Facts to be proved.*

Plaintiff alleging infringement of right of privacy must prove customary right of privacy in neighbourhood and that he is individually entitled to take advantage of such custom. 10 All. 358, *Expl.* (*Boys and Young, JJ.*). BHAGWAN DAS *v.* ZAMURRAD HUSAIN. **119 I. C. 833= 1929 A. L. J. 1028=51 All. 986= A. I. R. 1929 All 676.**

———*Infringement.*

Right acknowledged in award cannot be infringed by the opening of a window not used for the legitimate purpose of obtaining light and air. 29 All. 582; A. I. R. 1926 Oudh 541; 5 O. W. N. 538, *Ref.* (*Pullan, J.*). SANGAM MADHO *v.* RAM NARAIN. **6 O. W. N. 854= A. I. R. 1929 Oudh 437.**

———The existence of a public lane in-between would not destroy the right of privacy in case where the right of privacy is proved to have been enjoyed. 6 B. H. C. R. 143; 13 A. L. J. 361 and A.I.R. 1923 All. 201, *Foll.* (*Sulaiman and Kendall, JJ.*). CHHEDI RAM *v.* GOKUL CHAND.

114 I. C. 732=50 All. 706=26 A.L.J. 537= A. I. R. 1928 All. 717.

———*United Provinces—Judicial notice.*

A customary right of privacy exists in the United Provinces and is so well established that the Court is entitled to take judicial notice of the custom. A.I.R. 1926 Oudh 541 and A.I.R. 1926 Oudh 352, *Foll.*; 10 All. 358 and 7 O.C. 126, *Ref.* (*Raza, J.*). SARDAR HUSAIN *v.* AHMAD HUSSAIN. **110 I.C. 693= 5 O.W.N. 538.**

———*Interference—Good cause of action.*

Substantial interference with a right of privacy would afford a person whose right has been invaded a good cause of action. (*Raza, J.*). SARDAR HUSAIN *v.* AHMAD HUSSAIN. **110 I.C. 693= 5 O.W.N. 538.**

———*Nature.*

A customary right of privacy attaches to the property in respect of which it is claimed and is not a personal right. (*Raza, J.*). SARDAR HUSAIN *v.* AHMAD HUSSAIN. **110 I. C. 693=5 O.W.N. 538.**

———The fact that the houses are separated by a public road does not prevent the existence of a custom of privacy. (*Raza, J.*). SARDAR HUSAIN *v.* AHMAD HUSSAIN. **110 I.C. 693=5 O.W.N. 538.**

———*Infringement—Onus.*

Whenever a new wall is built overlooking the courtyard of another person, and such wall contains windows (not in existence in the wall before reconstruction), the initial burden of proof is on the person constructing the wall to show that the windows are not of such a character as to invade the privacy of the person into whose courtyard they look. This presumption that windows must cause an invasion of privacy can be rebutted by showing that no one can look out of the windows. (*Ashworth, J.*). BAQRIDI *v.* RAHIM BUX.

93 I.C. 332=13 O.L.J. 512= A.I.R. 1926 Oudh 352.

EASEMENTS ACT (1882), S. 18—Use of iand.

———*Roof of a house.*

The fact that the local custom mentioned in Illustration (*b*) to S. 18 refers to portions of a house "which are ordinarily excluded from observation," does not preclude a local custom of privacy extending to the roof of the house. (*Fawcett, J.C. and Kemp, A. J. C.*). SHAH MAHOMED *v.* RAMZAN. **66 I.C. 833=16 S.L.R. 17= A.I.R. 1921 Sind 155.**

———Illustration (*b*) to S. 18 affords statutory recognition of the validity of a custom of privacy in India which can be founded on custom and previous enjoyment of privacy in accordance with that custom. (*Fawcett, J.C. and Kemp, A.J.C.*). SHAH MOHAMAD *v.* RAMZAN. **66 I.C. 833= 16 S.L.R. 17=A.I.R. 1921 Sind 155.**

—S. 18—Right to worship.

———*Mode of acquisition.*

The right of going round a tree or worshipping a tree which is supposed to be the abode of a deity cannot be acquired by the inhabitants of a village merely by some people going round the tree or worshipping it. 12 L.W. 193, *Foll.* (*Devadoss, J.*). MANNATTIL KRISHNAN NAIR *v.* SIVARAMAKRISHNA PATTAR. **98 I.C. 619= 24 M.L.W. 691=A.I.R. 1927 Mad. 73.**

———A customary right of going over a particular plot of land belonging to another for the purpose of worshipping a pipal tree and the idol of Sri Ganeshji embedded in the tree, and a tulsi chabutra, all situate on that plot of land is valid. 19 Bom. 420, *Dist.* (*Das and Adami, JJ*). SHEIKH MANGREE MEAN *v.* BEHARI LAL. **61 I.C. 132= 2 P.L.T. 160=6 P. L. J.11= A. I. R. 1921 Pat. 90.**

—S. 18—Tank.

———*Customary right—Essentials.*

A customary right to be established must be reasonable and it must be definite or certain. A customary right to bathe in a tank can be acquired by the residents of a village, but in order to establish such a right the evidence must be clear; the enjoyment must be as of right for a long number of years and in considering the evidence regard must be had to the habits and customs of the people. A.I.R. 1924 Mad. 197, *Ref.* (*Devadoss, J.*). MANNATTIL KRISHNAN NAIR *v.* SIVARAMAKRISHNA PATTAR. **98 I.C. 619=24 M.L.W. 691= A.I.R. 1927 Mad. 73.**

—S. 18—Tarwad—Acquisition against.

———The fact that a junior member of a Malabar tarwad is either a consenting party to or was cognizant of the use of the family property in a particular way by strangers would not necessarily bind the family or the karnavan and strangers cannot acquire customary right of user against the family. (*Devadoss, J.*). MANNATTIL KRISHNAN NAIR *v.* SIVARAMAKRISHNA PATTAR. **98 I.C. 619= 24 M.L.W. 691=A.I.R. 1927 Mad. 73.**

—S. 18—Use of land.

———*Right as to—Essentials.*

Evidence showing that the suit land was used for the village cattle to gather in the early morning for over sixty years and also that people used to assemble on it during festivals in the adjoining temple, is not sufficient to deprive the revenue authorities of their right to deal with property under Dharkast Rules. In order to establish right to the property, there must be, besides such user, evidence that the land in question was dedicated or set apart as a cattle stand or for any purpose connected with the temple. 4 M. L. T. 440 and

EASEMENTS ACT (1882), S. 18—Use of land.

A. I. R. 1924 Mad. 197, *Foll.* (*Madhavan Nair, J.*). K. V. DESIKACHARIAR *v.* SECRETARY OF STATE. 115 I.C. 241=29 M.L.W. 229=56 M.L.J 38.

———*Limits.*

A custom by which the villagers without interruption by the *malik* have been using the land for performing Ram-lilas, for putting up marriage processions, for keeping *Khalihans* and for tying cattle during the rainy season from time immemorial, is not invalid. A declaration of such right can be given. 23 B. 666; 17 All. 87 and 8 C. W. N. 425, *Ref.* (*Ross, J.*). RAM DAS SAH *v.* DAMODAR PRASAD. 72 I.C. 218=4 P.L.T. 223= A.I.R. 1923 Pat. 346.

—S. 19—Applicability.

———S. 19 lays down only that when the dominant heritage is transferred the easement passes to the transferee. But where no easement at all existed while the two tenements belonged to the same person, S. 19 does not apply. (*Martineau, J.*). GANGA RAM *v.* SITA RAM. 6 L.L.J. 176= A.I.R. 1924 Lah. 488.

—S. 19—Severance of tenements.

———*What passes.*

On a severance of tenements easements used as of necessity or in their nature continuous pass by implication but easements used from time to time do not pass unless expressly so stated. *Polden* v. *Bastard*, 1 Q.B. 156, *Rel. on.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. A.I.R. 1930 Pat. 7.

—S. 19—Succession.

———*Effect on the easement.*

A garden, over which an easement to enjoy it as a park, is created in favour of a community but the ownership and management of which is reserved to the owner descends in succession in the ordinary way, subject to the charge upon it. (*Kincaid and Raymond, A.J.Cs.*). LAKHAMBAI *v.* DEVIBAI. 59 I.C. 673=14 S. L. R. 132.

—S. 21—Right of way.

———*Purpose and not person is the test.*

An easement of a right of way for the use of the sweeper can be acquired and the fact that the sweeper is a servant of the Municipality would not prevent the plaintiffs acquiring such a right. (*Macleod, C.J. and Coyajee, J.*). RAMCHANDRA *v.* ANANT LAXMAN. 95 I.C. 170= 28 Bom. L.R. 601=A. I. R. 1926 Bom. 282.

—S. 22—Applicability.

———*Right of way—Alteration.*

When a line of way is once definitely set out, neither the dominant nor the servient owner can compel the other to give or accept a different and substituted way; the provisions of S. 22 of the Easements Act can only apply, when the exact way to be taken over the premises of the servient owner has not been ascertained. 61 L.T. 377, *Foll.* (*Macleod, C.J. and Coyajee, J.*). DHUNDIRAJ BALKRISHNA PHALINKAR *v.* RAMCHANDRA GANGADHAR KALE. 67 I.C. 413=24 Bom.L.R. 437= 46 Bom. 910=A.I.R. 1922 Bom. 407.

—S. 22—Right of way.

———*Essentials.*

A right of way or other easement must be defined and not be so large as to destroy all the ordinary uses of the servient property and make it impossible that it should ever be used for any useful purpose.

A straggling right to the promiscuous use of the whole property for the purpose of driving cattle over it cannot be acquired as an easement. 15 W. R. 295, *Foll.* (*Rafique and Piggott, JJ.*). LAL BAHADUR *v.* RAMESHWAR DAYAL. 60 I.C. 990= 43 All. 345=19 A.L.J. 126= A.I.R. 1921 All. 206.

—S. 22—Right to roof.

———*Limits.*

Where defendants had acquired the right to use the roof A and B as an open space in front of the room C as an easement it cannot justify their building over that portion. (*Abdul Qadir, J.*). HANS RAJ *v.* MALWA MAL. 69 I.C. 406= A.I.R. 1924 Lah. 387.

—S. 22—Right to water.

———*Increase of area—Relief.*

A person entitled to water his lands from another's well does not forfeit his entire right by increasing the area to which the water would flow, and is entitled to a decree declaring his right to water the lands to which the water was already flowing. (*Walmsley, J.*). UPENDRA NATH *v.* BHUSAN SAHANA. 88 I. C. 970=A.I.R. 1926 Cal. 462.

———*Directions of Court.*

An order that plaintiffs can cut opening in tank bund and take necessary water and close bund afterwards is explicit and that the objection that it virtually dispossessed the defendants from the entire tank is not sound. (*Suhrawardy and Cuming, JJ.*). BEHARI LAL MUKERJEE *v.* ASUTOSH BANERJEE. 87 I.C. 19=41 C.L.J. 379= A.I.R. 1925 Cal. 788.

—S. 23—Conditions of enjoyment.

———A dominant owner may from time to time alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage. When a person acquires a right of easement for the outlet of water it may be of a limited kind. He should not be allowed to increase the extent or alter the mode of enjoyment so as to cast an additional burden on the servient heritage. (*Sulaiman and Mukerji, JJ.*). GAJADHAR *v.* KISHORI LAL. 97 I.C. 169=24 A.L.J. 810.

—S. 23—Rain water.

———*Right to regulate—Burden not increased.*

If the owner of the higher tenement has the right to pass on to the lower tenement all the rain-water that falls on his land, the mere fact, that in the course of improving his tenement he carried out works of drainage or other works, the result of which is that instead of the water being allowed to flow imperceptibly to the lower tenement gets collected and is passed by an artificial channel, is the result of a natural user by the owner of the superior tenement of his own land and the works of improving and the draining by him on his land could not be regarded as any acts done on his part which would have the effect of either changing the right or increasing the burden of the obligation corresponding to the right. Conceivably, therefore, if it should be found in any case that by reason of such collecting of the water and passing it on through an artificial cutting in the bund the obligation on the servient tenement is increased in an appreciable degree or if it should be found that the damage done to the servient tenement by such artificial drainage is appreciably in excess of the damage done when the water was passed merely naturally, it would follow that the owner of the lower tenement is entitled to object to the draining of the rain-water in that manner. It is on the assumption that the obligation of the owner of the servient tenement is not changed either in quality

EASEMENTS ACT (1882), S. 23—Right of way.

or increased in degree that any changes by the owner of the higher tenement of his own property are allowed and regarded as not justifying any adjustment on the part of the owner of the servient tenement. A.I.R. 1926 Mad. 449 (F. B.), *Expl.* (*Srinivasa Aiyangar, J.*) RAMAKRISHNA REDDI *v.* VENKATA REDDI. **108 I.C. 205=39 M.L.T. 373= A.I.R. 1928 Mad. 52.**

—S. 23—Right of way.

———*Different purposes.*

Under S. 23 a right of way enjoyed for agricultural purposes may be used for other purposes provided no additional burden is thereby imposed on the servient heritage. 23 Bom. 595, *Foll.* (*Macleod, C.J. and Crump, J.*). MANCHARSHAH *v.* VIRJIVALLABHDAS. **98 I.C. 239=50 Bom. 635= 28 Bom. L.R. 1158=A.I.R. 1926 Bom. 537.**

—S. 27—Right of way.

———*Nature and Limits.*

An easement like a right of way over a tenement is a right running with the land and is not a personal right. Whether it is the owner or a trespasser who is in possession, the person who claims the right of way cannot claim more than that his right of easement should not be curtailed in any way. (*Dalip Singh, J.*). SHIMBU DAYAL *v.* GAJJU MAL. **108 I.C. 610=A. I. R. 1928 Lah. 709.**

—S. 27—Right to drop water.

———*Alteration of course.*

Where a person has acquired by grant from a Municipality a right to drop water on a public road the Municipality will be at liberty to permit another person to build a house, so that the water from plaintiff's house, instead of falling directly on the road will fall on the roof of that house and then fall into the street. (*Mukerji, J.*). RAGHUBIR SARAN DAS *v.* RAM DAS. **85 I. C. 608= 6 L. R.A. Civ. 122=A.I.R. 1925 All. 348.**

—S. 27—Right to water.

———*Servient owner's interference—Limits.*

Plaintiffs had a right to have their land irrigated by the water which passed through their land from the sluices which passed through defendant's land. The flow of the water to their land was obstructed by the channel which the defendant dug at right angles to the existing channel. The defendant was willing to construct a trough or aqueduct, which would carry the water to the plaintiffs' fields over the *nala* in dispute, but it was found that such construction did not give sufficient water to plaintiffs,

Held, that defendants could not be allowed to build.

The owner of the servient tenement must not so deal with the servient tenement as to render the easement incapable, or more difficult, of enjoyment by the owner of the dominant tenement. (*Baker, J. C.*). VENKATRAO *v.* BAPU. **87 I.C. 899= A.I.R. 1925 Nag. 389.**

—S. 28—Heavier burden.

———*What constitutes.*

Where an easement is claimed over another's property the servient tenement should not be saddled with a heavier burden than what the plaintiff has succeeded in proving. But when a particular mode of user is not heavier than the mode of user proved, the plaintiff may be allowed to use it in that particular way, *e.g.*, the user of a way for horses may include the right to lead smaller animals as well but not larger animals or loads. The user of a path for the passage of men, carts and palanquins, may also entitle the dominant owner to take cattle, processions and corpses along the path as the latter user does not add to the burden on the servient tenement. (*Suhrawardy and Cuming, JJ.*). RAM KUMAR MAZUMDAR *v.* MOHIM CHANDRA DUTTA. **65 I.C. 579 (Cal.).**

EASEMENTS ACT (1882), S. 30—Passing of easement.

—S. 28—Injunction as to Light.

———An injunction to restrain the disturbance of an easement of light can only be granted where substantial damage is proved to have been caused. 29 All. 571, *Not foll.*; A.I.R. 1924 All. 394; 33 Mad. 327, *Foll.*; *Colls* v. *Home and Colonial Stores, Ltd.*, (1904) A.C. 179 and *Kine* v. *Jolly*, (1905) 1 Ch. 480, *Ref.* (*Ashworth, J.*). SURAJ NARAIN *v.* KALYAN DAS. **117 I.C. 618=A.I.R. 1929 All. 430.**

—S. 28—Pasture.

———*Extent.*

If the grazing area is larger than that required by the persons, a proprietor may use the excess for his own purposes. The persons having grazing rights cannot prevent him from developing any excess area and using it to its best purposes. 31 C. 503 (P.C.); 86 P.R. 1911, *Ref.* (*Wilberforce, J.*). KARTAR SINGH *v.* RALLA. **67 I.C. 306= 2 L.L.J. 44=77 P.L.R. 1922.**

—S. 28—Right of way.

———*Exercise of—Limits.*

While servient owners are entitled to make any use they choose of the premises provided they do not in any way interfere with the enjoyment by the dominant owner of his right of way within reasonable limits, the dominant owner entitled to the right of way cannot make an excessive user of the right, much less can he act arbitrarily and in a high-handed manner so as to render the beneficial enjoyment by a servient owner of his own premises impossible or fraught with many difficulties. (*Kinkhede, A.J.C.*). DADU *v.* EMPEROR. **90 I.C. 149=26 Cr.L.J. 1493=A.I.R. 1926 Nag. 221.**

———*Different kinds.*

A right of way of one kind, *e.g.*, for persons, cattle and carts, etc., does not include a right of way of another kind, *e.g.*, for sweepers removing night soil in the absence of evidence as to the probable intention of parties, and the purpose for which the right was imposed or acquired. (*Macleod, C. J. and Heaton, J.*). CHINTAMANI HARGOVAN *v.* RATANJI BHIMBHAI. **59 I. C. 426=22 Bom. L. R. 1131.**

—S. 28—Scope.

———Extent of an easement other than an easement of necessity as also the mode of its enjoyment must be fixed with reference to the purpose for which the right was acquired. (*Kanhaiya Lal, J.*). DURGA PRASAD *v.* LACHMI NARAIN. **78 I.C. 563=22 A.L.J. 314= 5 L.R.A. Civ. 221=A.I.R. 1924 All. 394.**

—S. 29—Overburdening.

———*Test.*

The discharge of foul effluent into a drain through which there may be a presumed grant of running water is not permissible in law as it imposes an overburden on the servient tenement. *Philimore* v. *Watford Rural Dist. Council*, (1913) 2 Ch. 434; *Hill* v. *Cook*, 26 L. T. 185; *Cawkwell* v. *Russel*, 26 L. J. Ex. 34, *Foll.*; *Clarke* v. *Somersetshire Drainage Commissioners*, 59 L.T. 670, *Ref.* (*Suhrawardy and Garlick, JJ.*). RAMAN CHANDRA *v.* BHOLA NATH. **33 C.W.N. 189= A. I. R. 1929 Cal. 350.**

—S. 30—Passing of easement.

———*Division—Respective rights.*

When a dominant heritage is divided between two or more persons the easement becomes annex-

EASEMENTS ACT (1882), S. 31—Obstruction.

to each of the shares provided that such annexation is consistent with the terms of the instrument under which the division was made. But there is no presumption that it wholly passed to one of such persons unless there is a specific agreement to that effect. (*Phillips and Devadoss, JJ.*). VEERABHADRAYYA *v.* RAMACHANDRA.
73 I. C. 66=18 M. L. W. 404=
1923 M.W.N. 454=A.I.R. 1923 Mad. 674.

—S. 31—Obstruction.

———*Legality and Limit.*

Excessive user may be rendered impracticable but whole user cannot be obstructed. *Renshaw* v. *Bean*, 18 Q. B. 112, *Held modified*; *Tapling* v. *Jones*, 11 H. L.C. 290 and *Colls* v. *Home and Colonial Stores*, (1904) A.C. 179, *Ref.* (*Suhrawardy and Garlick, JJ.*). RAMAN CHANDRA *v.* BHOLA NATH.
33 C. W.N. 189=A.I.R. 1929 Cal. 350.

—S. 32—Construction of wall.

———*When amounts to an infringement.*

Where an award states that the wall of the servient owner shall not be constructed in such a way as to interfere with the rights of the dominant owner in respect of his existing constructions, the servient owner cannot construct eaves, or use the dominant owner's chabutra or do other acts infringing upon the dominant owner's rights. (*Pullan, J.*). SANGAM MADHO *v.* RAM NARAIN.
6 O.W.N. 854=A.I.R. 1929 Oudh 437.

—S. 33—Injunction.

———*Conditions.*

No injunction should be granted to prevent obstruction to an easement unless the alleged obstruction causes such a diminution of light as to constitute a nuisance. There must be substantial privation of light enough to render the occupation uncomfortable according to the ordinary notions of mankind. (*Prideaux, A. J. C.*). BADRI *v.* JAFARBHAI. 96 I. C. 546=
9 N. L. J. 136=A. I. R. 1926 Nag. 474.

———*Nuisance to be proved.*

The Court ought not to grant an injunction on the ground of nuisance unless the nuisance which is a question of fact is proved. (*Marten and Fawcett, JJ.*). SHA BULAKHIDAS JAMANDAS *v.* SHA GANPATRAM DALSUKRAM. 77 I. C. 412=
A. I. R. 1923 Bom. 281.

—S. 33—Right of suit.

—To give a right of suit there must be substantial infringement. 29 All. 571, *Not foll.* 13 A. L. J. 385, *Foll.* (*Mukerji, J.*). LACHHMI NARAIN *v.* RAM BHOROSEY. 97 I. C. 500=A. I. R. 1926 All. 764.

—S. 33—'Substantial Damage'.

———What would be a substantial "damage" within the meaning of S. 33 in the case of an inhabitant of an open area, need not, necessarily, be a substantial damage to a person accustomed to living in a congested area: A. I. R. 1924 All. 392, *Rel. on.* (*Mukerji, J.*). LACHHMI NARAIN *v.* RAM BHOROSEY. 97 I. C. 500=
A. I. R. 1926 All. 764.

———Each case of disturbance of light and air must be decided on its own facts. Under Ss. 33 and 35 no damage is substantial unless it materially diminishes the value of the dominant heritage and interferes materially with the physical comfort of the plaintiff or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he might have done prior to the disturbance. (*Kanhaiya Lal, J.*). DURGA PRASAD *v.* LACHHMI NARAIN. 78 I.C. 563=
22 A.L.J. 314=5 L.R.A. Civ. 221=
A.I.R. 1924 All. 394.

EASEMENTS ACT (1882), S. 35—Light.

—S. 35—Discretion of Court.

———*Considerations.*

To Courts governed by the Specific Relief Act, the question of injunction or no injunction presents itself in a different light to what it does to the English Courts and that to Courts subject to the Specific Relief Act the English decisions have no application. In India the Court has a discretion, it may—*not shall*—issue an injunction where the injury is such that pecuniary compensation would not afford adequate relief. The good sense of Judges might be relied upon for adequately protecting rights to light on the one hand and freedom from unnecessary burdens on the other. There must be consideration for both sides in all these controversies. (*Young, J.*). MAHOMAD AUZAM ISMAIL *v.* JAGANNAD JAMNADAS. 87 I.C. 800=
3 Rang. 230=A.I.R. 1925 Rang. 327.

—S. 35—Grazing right.

———*Limits and remedy.*

Where grazing rights are enjoyed by the plaintiffs in the *shamilat deh* wherein the defendants have proprietary rights and are entitled to cultivate the lands, the plaintiffs are entitled to have sufficient pasturage left for the use of their cattle and it should be stated in the decree that the defendant's right of cultivation will extend only to so much of the land as will leave plaintiffs a sufficient area for grazing purposes. The plaintiffs are also entitled to injunction restraining defendants from interfering with their rights. (*Moti Sagar and Martineau, JJ.*). KAUSHI RAM *v.* MUHAMMAD ABDUL.
92 I.C. 403=6 L.L.J. 336=A.I.R. 1925 Lah. 216.

—S. 35—Injunction.

———*Nature.*

An injunction is only an alternative within the discretion of the Court and is not an independent form of relief. (*Ashworth, J.*). SURAJ NARAIN *v.* KALYAN DAS. 117 I.C. 618=A.I.R. 1929 All. 430.

———*Conditions.*

When injunction is asked for to restrain the threatened disturbance of an easement, the question for determination is whether the threatened disturbance of the easement would amount to a nuisance. A mere invasion of plaintiff's right of privacy is not sufficient to entitle him to an injunction. 30 Bom. 319, *Foll.*

There must be a threat of disturbance sufficient to cause substantial damage to the plaintiff, or in other words, it must amount to a nuisance, which in law implies substantial damage. The damage must not be merely sentimental or trifling: but in considering whether the property of the plaintiff is in fact injured or his comfort or convenience in fact materially interfered with, by an alleged nuisance, regard must be had to the character of the neighbourhood. (*Fawcett, J. C. and Kemp, A. J. C.*). SHAH MAHOMED *v.* RAMZAN. 66 I.C. 833=16 S.L.R. 17=
A.I.R. 1921 Sind 155.

—S. 35—Interpretation.

———The word "when" in S. 35 (*a*) must be construed to mean "when and where" because it would be useless to prescribe that an injunction could be granted when damages can be claimed under S. 33, if damages under S. 33 could not be claimed. (*Ashworth, J.*). SURAJ NARAIN *v.* KALYAN DAS.
117 I.C. 618=A.I.R. 1929 All. 430.

—S. 35—Light.

———*Relief—Substantial damage necessary.*

An injunction to restrain the disturbance of an easement of light can only be granted where substantial damage is proved to have been caused. 29 All. 571, *Not foll.*; A.I.R. 1924 All. 394;

EASEMENTS ACT (1882), S. 36 — Removal of obstruction.

33 Mad. 327, *Foll*; *Colls* v. *Home and Colonial Stores Ltd.*, (1904) A.C. 179 and *Kine* v. *Jolly*, (1905) 1 Ch. 480, *Ref.* (*Ashworth, J.*). SURAJ NARAIN *v.* KALYAN DAS. **117 I.C. 618=A I.R. 1929 All. 430.**

—S. 36—Removal of obstruction.

——— A person is not justified in taking the law in his own hands and removing the wrongful obstruction of an easement contrary to the provisions of S. 36 of the Easements Act. (*Fawcett and Patkar, JJ.*). ZIPRU TANOJI PATIL *v.* EMPEROR.

101 I.C. 604=29 Bom. L.R. 484=28 Cr.L.J. 476=51 Bom. 487=8 A.I.Cr.R. 72=A.I.R. 1927 Bom. 363.

—S. 38—Release—Construction.

———Where the eastern wall of A's house contained ventilators which A was enjoying for more than 20 years but in 1902 A agreed with B, the adjoining owner, that he would allow the ends of rafters of the next storey which B might build, to be placed on the wall,

Held, that the agreement will not give B the right to so build the next storey as to obstruct the ventilators enjoyed by A. (*Martineau, J.*). NANDU SHAH *v.* SANT RAM. **A.I.R. 1923 Lah. 249.**

—S. 41—Grant—Construction.

———The scope of a grant of easement (right of way) must be determined by the terms of the contract between the parties. Where there is nothing in the terms of the grant that it was to continue only until such time as the necessity was absolute and there was no evidence in support of such agreement it must be held that the grant was not limited till the necessity for it existed. (*Srivatsava, J.*). HIRAJEE *v.* SURAJ BALI.

115 I.C. 303=A.I.R. 1929 Oudh 351.

—S. 41—Termination of necessity.

———In considering the questions of easements of necessity, convenience is not the test, but absolute necessity. They end with the necessity creating them. A way of necessity therefore is extinguished when the necessity terminates by the dominant owner acquiring adjoining property through which he can pass and repass to the old dominant tenement without reference to the servient tenement, and when once extinguished the dominant owner cannot revive it by any acts on his part. 33 All. 467; 19 Bom. 797; 4 C. L. J. 367; *Holmes* v. *Goring*, 2 Bing. 76 and 60 I. C. 504, *Rel on*; 28 Mad. 495, *Not appr.* (*Ananthakrishna Ayyar, J.*). (SARIPELLA) VENKATAPATHIRAJU *v.* (SARIPELLA) SUBBARAJU. **A. I. R. 1930 Mad. 789.**

—S. 43—Increase of burden.

———*Test.*

There was a parnala or a waterspout on the roof of the defendant's house to discharge water on to plaintiff's land. The defendant raised the height of the roof and along with it that of the waterspout by about 2½ or 4 feet,

Held, that no additional burden was thrown on the servient tenement and the easement was not destroyed: *Harvey* v. *Walters*, (1873) 8 C. P. 162, *Appl.* (*Zafar Ali, J.*). KARAM ILAHI *v.* GHULAM MUSTAFA. **102 I. C. 447=A. I. R. 1927 Lah. 492.**

———*Test and remedy.*

If, whatever steps the servient tenement can take, must necessarily interfere with the lawful enjoyment of the original arrangement and the additional burden cannot be reduced, then the easement is extinguished, but where the burden can be reduced without difficulty, to original limits, the easement is not extinguished.

At one time it was thought that the right to ancient light could be lost by pulling down the buildings having the right; that is not the law now. 91 Law Times 816, *Foll.*

The remedy open to the owner of the servient tenement is to proceed against the person who claims the wrongful enlarged user and on his refusal to desist to take the proceedings for an injunction. (*Mears, C. J. and Banerji, J.*). RAMESHWAR DAYAL *v.* B. MAHARAJ CHARAN.

65 I. C. 643=44 All. 343=20 A. L. J. 202=A. I. R. 1922 All. 28.

—S. 46—Extinction—Test—Revival.

———The unity of the dominant and servient estates in the same person extinguishes the easement appurtenant to the dominant estate, for no person can have an easement on land which he himself owns. But unity of title of the two estates will not extinguish an easement, unless the ownership of the two estates be co-extensive, equal in validity, quality and all other circumstances of right. If one estate is held in fee and the other for a term of years, there is no unity of possession that will extinguish an easement of one estate as against the other; but the unity of possession in such cases will only suspend the easement during the time of such unity of possession. Consequently, an easement may be revived, after it has been extinguished by the union of the dominant and servient tenements in one owner by their subsequent severance, provided the easement is apparent, continuous and essential to the enjoyment of the dominant tenement. If there has been unity of possession merely an easement which has been thereby suspended will revive on severance of the union but if there has been unity of seisin for estates in fee simple and not unity of possession merely, all easements are absolutely extinguished and will not revive, unless they are re-created on severance of the former dominant and servient estates. (*Mookerjee and Chotzner, JJ.*). TINKORI PATHAK *v.* RAM GOPAL. **70 I. C. 663=36 C. L.J. 161=50 Cal. 356=A. I. R. 1923 Cal. 8.**

—S. 46—Joint ownership.

———Where the dominant owner had an easement right in respect of ventilators in a wall of his house the fact that the adjoining servient owner acquires by agreement a joint ownership in the wall will not operate to extinguish the easement. It would have been otherwise if he had acquired the joint ownership of the whole house of the dominant owner. (*Martineau, J.*). NANDU SHAH *v.* SANT RAM. **A.I.R. 1923 Lah. 249.**

—S. 47—Non-user.

———When an easement right to the water in a stream is not enjoyed for 20 years continuously, the right is extinguished. (*Phillips and Devadoss, JJ.*). VEERABHADRAYYA *v.* RAMACHANDRA. **73 I.C. 66=18 M.L.W. 404=1923 M.W.N. 454=A.I.R. 1923 Mad. 674.**

—S. 47—Right to water—Non-user—Extinction.

———The right to take a half share of the water from the well on another's land for irrigating one's own land, is an ordinary easement liable to be extinguished under S. 47 if not exercised for more than 20 years and not an easement of necessity. Such right does not of itself import ownership of half the well. (*Shah and Hayward, JJ.*). ANANTA *v.* GANU. **45 Bom. 80=A.I.R. 1921 Bom. 417.**

—S. 50—Exercise of right.

———*No right to compel.*

The owner of the servient tenement cannot compel the owner of the dominant tenement to con-

EASEMENTS ACT (1882), S. 51—Regrant.

tinue the exercise of his right even where that right has been exercised uninterruptedly for over 20 years and even if its exercise should be beneficial to the servient tenement. (*Dawson-Miller, C.J. and Mullick, J.*). MT. SARBAN *v.* PHUDO SAHU.
69 I.C. 947=4 P. L. T. 81=
1922 P. H. C. C. 305=2 Pat. 110=
A. I. R. 1923 Pat. 65.

—S. 51—Regrant.

———*Fresh user—Acquiescence.*

Where defendant had had a right to take water from the well on plaintiff's land for irrigating his (defendant's) land but this right was extinguished on account of non-user for more than 20 years, and plaintiff permitted defendant to repair the well which had fallen into ruin and defendant did accordingly and used the water of the well for the purpose of irrigation,

Held, that the plaintiff must be held to have regranted the easement to defendant and that he was estopped from questioning defendant's right on the ground of want of registered deed to support the grant of the easement. (*Shah and Hayward, JJ.*). ANANTA *v.* GANU. 45 Bom. 80=
A.I.R. 1921 Bom. 417.

—S. 51—Revival.

———*Held*, that an easement which is once extinguished cannot be revived by any act on the part of dominant owner. (*Ananthakrishna Aiyar, J.*). VENKATAPATHI RAJU *v.* SUBBARAJU.
1930 M.W.N. 120.

—S. 52—Common privy.

———Where the landlord provides for the use of his tenants residing in a number of rooms, a privy which however is not expressly included in the lease of the rooms, the tenants are mere licensees in respect of the privy and the privy remains under the control of the landlord, both as regards user and repairs. (*Marten, C.J. and Kemp, J.*). LAKHIMCHAND KHETSEY *v.* RATANBAI.
101 I.C. 210=51 Bom. 274=
29 Bom. L R. 78=A.I.R. 1927 Bom. 115.

—S. 52—Cutting of wood.

———*When a licence.*

One or more inhabitants of a village taking wood from the landlord's jungle without the latter's knowledge cannot by so doing for any length of time acquire a right to cut and appropriate wood contrary to the wishes of the latter. Similar acts done with the permission or acquiescence of the owner being referable to a license express or implied cannot likewise confer a right as against him. (*Niamatullah, J.*). MOHAMMAD YUSUF *v.* SURAJ BALI SING. 123 I. C. 377=
A. I. R. 1930 All. 338.

—S. 52—'Interest in the property.'

———The right to excavate the earth and to carry it away for the purpose of making pots is in the nature of a benefit arising out of land or amounting to an interest in land, and as such it will make the license irrevocable at the option of the owner of the land. (*Kinkhede, A.J.C.*). BUSHI BHIKU *v.* RUSHI SHEORAM. 107 I.C. 522=23 N.L.R. 192=
A. I. R. 1928 Nag. 87.

—S. 52—'Interpretation.'

———*Fawcett, J.*—The words "an interest in the property" in S. 52 are presumably intended to cover cases where there might be a right in the property granted such as a lease, or a right of joint possession. (*Shah and Fawcett, JJ.*). JANARDAN MAHADEO *v.* RAMACHANDRA MAHADEO.
101 I.C. 393=29 Bom. L. R. 312=
A. I. R. 1927 Bom. 240.

EASEMENTS ACT (1882), S. 52—License and lease.

—S. 52—License and Easement.

———Where on a partition between two brothers, a house with a well fell to the share of one of them, while a house without a well to the other's share and in the partition deed, it was stated that the latter should, "out of brotherly affection be allowed to take the water of the well, and that he was asking (it), not as a matter of right but simply out of (brotherly) regard", the first brother put up a wall near the well to prevent water being taken out of it; in a suit the aggrieved brother to establish his right to take water from the well,

Held, that the right acquired by the plaintiff under the deed was not an easement but was a license as defined in S. 52. (*Shah and Fawcett, JJ.*). JANARDAN MAHADEO *v.* RAMCHANDRA MAHADEO.
101 I.C. 393=29 Bom.L.R. 312=
A.I.R. 1927 Bom. 240.

—S. 52—License and lease.

———*Test.*

The main test for deciding whether a person is a licensee of a property or a lessee is that of exclusive possession. If the effect of the agreement is to give exclusive possession to the holder, though subject to certain reservations then it is a lease, if the agreement is merely for the use of the property in a certain way and on certain terms while it remains in the possession and control of the owner it is a license: *Glenwood Lumber Co. v. Phillips*, (1904) A.C. 405; A.I.R. 1923 Bom. 228, *Rel. on.* (*Mirza and Broomfield, JJ.*). SHERIF DADUMIYAJI *v.* EMPEROR. 32 Bom. L.R. 332=
A.I.R. 1930 Bom. 165.

———The distinction between a lease and a license is "not a question of words but of substance. If the effect of the instrument is to give the holder an exclusive right of occupation of the land though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land." *Glenwood, Lumber Co., Ltd. v. Phillips*, (1904) A. C. 405, *Foll.* (*Graham and Mitter, JJ.*). SECRETARY OF STATE *v.* BHUPAL CHANDRA RAY. 57 C. 655.

———*Distinction.*

An agreement by which a certain quantity of grain is agreed to be paid to the owner every year on account of the damage to be sustained by him by his allowing the other persons to take their cattle or carts over a strip of land is lease and not a license nor an easement and the payment claimed is rent. (*Hallifax, A.J.C.*). INDAL *v.* DEBI.
92 I.C. 683=A.I.R. 1926 Nag. 174.

———*Construction.*

Where a plain piece of paper unstamped and unregistered recites that the plaintiff has been given permission to plant trees on a certain plot,

Held, that if the document is to be considered a mere license then, under S. 52 of the Easements Act, it cannot create any interest in the property; and that if it is to be treated as a lease it is invalid under the provisions of S. 107 of the Transfer of Property Act, and that in either case a person in actual occupation of the plot cannot be ejected by means of that document. (*Misra, J.*). GULAB KHAN *v.* LAL MAHOMED KHAN.
96 I.C. 410=A.I.R. 1926 Oudh 609.

———*Distinction.*

The difference between a lease and a license is that, in the case of a license there is no interest in immovable property transferred to the licensee; while in the case of a lease there is a transfer on

EASEMENTS ACT (1882), S. 52—License and lease.

carving out of such interest in favour of the person in whose favour the lease is granted. One chief consideration is whether there is any right of exclusive possession given. If the effect of the document is to give the holder an exclusive right of occupation of the land, it will be a demise of the land but it is not a mere question of words but of substance. The mere calling a document a license would not affect the question but in arriving at a conclusion where the terms are not clear, one has to see what the circumstances are to judge the intention of the parties. It is relevant to consider what the rights of the parties were and what the object of the agreement was. The mere fact that there are restrictive covenants would not by itself make a lease a license if the other terms are clear, but in considering what the intention of the parties was, it is relevant to see what control one party has over the property on which another party is allowed to do certain things.

Provisions that the grantor should have "free access at all times," that the grantee should not sub-let or transfer his rights without the grantor's consent, that upon the determination of the license the grantors might re-enter upon and re-take and absolutely retain possession, etc., do not establish a lease where the other terms and circumstances show that no interest in immovable property was transferred or that exclusive possession of land was not given. Conditions such as the ones referred to above, which restrict the licensee's rights and which, as the licensee cannot claim such rights even in absence of such provisions, are unnecessary in a license and would be natural in a lease, may be due to extra caution on the part of the parties and do not necessarily indicate that a lease was intended.

In this case, certain documents by which leave was given by a Railway company to stack coal on station yards were held to constitute a license and not a lease. (*Spencer, Offg. C. J., Kumaraswami Sastri and Krishnan, JJ.*). ACTING SECRETARY, BOARD OF REVENUE *v.* THE AGENT, SOUTH INDIAN RAILWAY CO. **86 I.C. 688=48 Mad. 368= A.I.R. 1925 Mad. 434=48 M.L.J. 161 (F.B.).**

———*Construction.*

It is essential to the creation of a tenancy of a corporeal hereditament that the tenant should have the right to the exclusive possession of the premises. A grant under which the grantee takes only the right to use the premises without exclusive possession operates as a license, and not as a lease. Having regard to the rights of a lessee, which are specified in S. 108 of the Transfer of Property Act, in particular the rights to growing crops and to put up structures, it seems difficult to say that there could be a valid lease not of a definite area of immovable property but of an area the position of which varies from time to time. On the other hand, it may be said that "immovable property" (as defined in the General Clauses Act) includes not only land but benefits to arise out of the land so that there can be a lease of the benefit of keeping chattels, such as a car and carriage, within certain special limits although the place occupied by the chattels might vary from time to time. Ordinarily the law takes it that a case of that kind is not one of a demise, but that of a license. The mere fact that a person has had the exclusive use of a particular cubicle for two years and that it was the intention of the parties that no one else should use that cubicle so long as the person kept his car on the premises is not in law sufficient to show that the agreement was a demise or a lease and not a license. (*Fawcett, J.*). THE INDIAN HOTELS COMPANY LTD. *v.* PHIROZ SORABJI, CONTRACTOR. **88 I. C. 316= 25 Bom.L.R. 84=A. I. R. 1923 Bom. 228.**

EASEMENTS ACT (1882), S. 56—Interpretation.

—S. 52—Rights of licensee.

———A licensee has no interest in property, and so cannot maintain a suit for possession. *Heap* v. *Hartley*, (1889) 42 Ch. D. 461, *Rel. on.* (*Iqbal Ahmad, J.*). MANHALAL RAI *v.* RAM GULAM. **103 I. C. 43=A.I.R. 1927 All. 633.**

—S. 54—Implied license.

———*Construction.*

A and *B* cotton mill companies owned adjoining lands and had common agents. On the land of *A* company a godown was built and a tank was excavated for the use of the *B* company by the common agents. Later on, the two companies were managed by separate agents. *A* company had never challenged the arrangement. In 1916 disputes arose between the agents and in 1923 A company sued to recover possession of the land,

Held, that under the circumstances there was a grant of a license implied from the conduct of the *A* company acting by its agents and that the *B* company was entitled to rely on the principle of *Ramsden* v. *Dyson*, (1865) 1 H. L. 129 to the effect that it had built upon *A* company's land in the expectation induced by the *A* company that it would be granted a permanent lease of that land. (*Marten, C.J. and Murphy, J.*). GUJERAT GINNING CO. *v.* MOTILAL HIRABHAI SPINNING CO. **123 I C. 481=53 Bom. 792= 31 Bom. L. R.1310=A.I.R. 1930 Bom. 84.**

———*What is.*

N had built a house on another's land with the permission of his predecessor-in-title. After *N*'s death two of his sons executed an agreement to pay ground rent for the land and to vacate in case of default. Afterwards it was found that *N*'s sons including the executants of this agreement and their descendants had abandoned the house, and that the house was in the occupation of *N*'s daughter and her son,

Held, that the agreement to pay ground rent was not binding on the latter and that they were licensees deriving title directly from *N* and not tenants. (*Kanhaiya Lal, J.*). AMJAD KHAN *v.* SHAFIUDDIN KHAN. **78 I.C. 215= A. I. R. 1925 All. 203.**

—S. 55—Rights of Licensee.

———A license to live for generation must be presumed to permit all enjoyments of life by the licensee without restriction. Eating meat or beef is such a reasonable enjoyment of life and it does not *per se* injure the rights of others.

Held, that a licensee has a right to slaughter cows at his residence. (*Sulaiman and Sen, JJ.*). NAUBAHAR SINGH *v.* QADIR BUX. **125 I. C. 14= 1930 A.L.J. 875.**

—S. 56—Interpretation.

———*Fawcett, J.*—The words "save as aforesaid" in the second part of S. 56 bring in the words "unless a different intention is expressed or necessarily implied." (*Shah and Fawcett, JJ.*). JANARDAN MAHADEO *v.* RAMCHANDRA MAHADEO. **101 I. C. 393=29 Bom.L.R. 312= A.I.R. 1927 Bom. 240.**

EASEMENTS ACT (1882), S. 56—Irrevocable license.

—S. 56—Irrevocable license.

——The becoming irrevocable of a license does not make it transferable. (*Walsh, Ag. C. J. and Ryves, J.*). KALLU SHAH *v.* RAHEEM BAKSH.
84 I. C. 284=5 L.R.A. Civ. 532=
A. I. R. 1924 All. 825.

—S. 56—Partnership.

——The mere fact that a licensee enters into a partnership with others or another in respect of profits or losses of the business for the carrying on of which he has obtained a license does not necessarily involve either a sale, transfer or subletting of the license. (*Srinivasa Aiyangar, J.*). GANGADARA SAH *v.* SWAMINADA MUDALI.
92 I. C. 112=22 M. L. W. 679=
A. I. R. 1926 Mad. 218.

—S. 56—Right of residence.

——The site of a hut in a grove in which a licensee is permitted to live belongs to the zamindar and neither the right of occupation of the huts nor the site can be transferred by the licensee. (*Dalal, J.*). BATUK PRASAD *v.* BHAGWAN DAS.
110 I.C. 465=A.I.R. 1928 All. 659.

—S. 56—Right to build.

——When, in a non-agricultural village, the zemindar grants leave to a person to build a kachcha house on parti land, the grantee becomes a mere licensee and a transfer by him or his right to build is not enforceable: A.I.R. 1925 Oudh 262; 29 All. 133 and 33 All. 757, *Dist.* (*Wazir Hasan, J.*). RAM BHAROSAY *v.* ZAMORI BEGAM.
103 I.C. 681=1 L.C. 238=A.I.R. 1927 Oudh 314.

—S. 56—'Riyayas.'

——*Right to transfer—Presumption.*

In case of riyayas occupying houses in cities and towns, it is to be presumed that they have a right of transfer, unlike those who inhabit agricultural areas, and so if a licensor sues to eject the transferee of a riyaya he has to prove not only his ownership but must also prove the existence of custom or terms of the grant under which the house in dispute was built which make the transfer thereof invalid, entitling him to recover possession of the site: 16 I.C. 353 and A.I.R. 1924 All. 112, *Rel. on.* (*Niamatullah, J.*). MOHAMMAD SHER KHAN *v.* AMJAD HUSSAIN. 117 I.C. 365=
A.I.R. 1929 All. 494.

—S. 57—Duty of licensor.

——Under S. 57 the licensor is bound to disclose any defect in the property likely to be dangerous to the licensee of which the licensor was aware but the licensee was not. In other words the licensor is under a duty not to lay a trap either at the beginning of the license or during its continuance and if the licensor does not disclose any hidden risk in the use of the subject of the license to the licensee of which the latter is not aware that amounts to negligence and if any loss is caused due to such negligence, the licensor is liable for damages. *English Case-law referred to.* (*Marten, C.J. and Kemp, J.*). LAKHMICHAND KHETSEY *v.* RATANBAI.
101 I.C. 210=51 Bom. 274=29 Bom.L R. 78=
A.I.R. 1927 Bom. 115.

——It is an elementary rule that the grantor of licence is under an obligation to put the licensee in a position to enjoy the licence. (*Mookerjee and Chotzner, JJ.*). FREDERICK THOMAS KINGSLEY *v.* THE SECRETARY OF STATE.
72 I.C. 270=36 C.L.J. 271=
A.I.R. 1923 Cal. 49.

EASEMENTS ACT (1882), S. 60—Applicability.

—S. 59—Applicability.

——The transferee contemplated by S. 59 must be a person who was not the licensor himself. The section has no application to a case in which one of two joint licensors transfers his interest in the property, with respect to which the license has been granted, in favour of his co-licensor, (*Iqbal Ahmad, J.*). BHUKHAN SING *v.* JUGARDEO KOERI. 98 I. C. 814=A.I.R. 1929 All. 197.

—S. 59—Grant for consideration.

——*Not revoked on transfer.*

A grant for consideration of a right to build a pacca structure on the land of the grantor under the terms of the contract cannot be revoked by the subsequent transfer of the property. (*Wazir Hasan, A.J.C.*). RAGHO PERSHAD *v.* SECRETARY OF STATE. 74 I.C. 369=9 O.L.J. 629=27 O.C. 64=
A.I.R. 1923 Oudh 114.

—S. 59—Permanent structure.

——*Transferee's right.*

Where a structure of a permanent character has been made in pursuance of a license the transferee has no greater right than that possessed by his transferor and is bound by the license: 37 All. 91, *Foll.*; A.I.R. 1929 All. 140, *Dist.* (*Daniels, J.*). FAQIRULLAH *v.* WALIKHAN. 97 I.C. 337=
A.I.R. 1926 All. 714.

—S. 59—Termination of license.

——Where the licensor transfers the property to another, the license ceases to exist by operation of law. (*Mears, C.J. and Gokul Prasad, J.*). BHOJ RAJ *v.* HARDEVA. 77 I.C. 140=44 All. 726=
20 A.L.J. 608=A.I.R. 1923 All. 140.

——*Licensor's death.*

When the grantor of a license dies, his heir can treat the licensee as a trespasser without giving notice of revocation of the license with respect to immovable property. (*Kotwal, A.J.C.*). KARSELAL *v.* BADRI PRASAD.
68 I.C. 107=18 N.L.R. 76=
A. I. R. 1922 Nag. 162.

—S. 59—Transferee, rights of.

——Under S. 59, the transferee is not as such bound by the term of the license granted by the vendor. The wish expressed by the vendor in the deed of sale in favour of the licensee that license be respected by the vendee has no legal effect and in spite of it, according to the terms of S. 59, it is open to the transferee to withdraw the license. (*Wazir Hasan, Ag. C. J. and Raza, J.*). BHAJJA *v.* CHUTTAN. 7 O. W. N. 468=
A. I. R. 1930 Oudh 203.

——S. 59 cannot be interpreted so as to give the transferee a right of revocation of a license which would not be exercisable by the transferor himself: 37 All. 91, *Foll.* (*King, J.*). THAKURPRASAD *v.* J. THOMKINSON. 102 I. C. 26= 1 L. C. 44=
A. I. R. 1927 Oudh 206.

—S. 60—Applicability.

——Section 60 (b) applies equally to permanent works executed on the land of the licensor, or on the land of the licensee, provided the licensee has acted upon the license in executing the work. *Ramsden* v. *Dyson*, (1865) 1 H. L. 129; *Plimmer* v. *Wellington*, (1884) 9 A. C. 699; *Winter* v. *Brockwell*, (1807) 8 East 308; *Liggin* v. *Inge*, (1831) 7 Bing. 682 and 29 Bom. 580, *Ref.* and *Expl.* (*Marten, C.J. and Murphy, J.*). GUJRAT GINNING CO. *v.* MOTILAL SPINNING CO. 31 Bom. L. R. 1331=
A. I. R. 1930 Bom. 70.

EASEMENTS ACT (1882), S. 60—Building license.

—S. 60—Building license.

———Where a license is granted to build houses on the site and the licensees have erected a work of a permanent nature on the site the license cannot in view of the provisions of S. 60 be revoked. (*Iqbal Ahmad, J.*). SHAHJAHAN BEGAM *v.* MUNNA.
100 I. C. 479=A. I. R. 1927 All. 342.

———Where land had been given to a licensee free of rent for building a house thereon and the licensee built a permanent structure the license became irrevocable and the licensor could not afterwards revoke the license, nor could he claim damages for use and occupation. (*Raza, J.*). RAM DAYAL *v.* NISAR HUSAIN KHAN.
91 I. C. 1031=13 O.L.J. 170.

—S. 60—Denial of title.

———The denial of title does not operate to a forfeiture of a license. 39 All. 621, *Foll.* (*Mukerji, J.*). TRIPATHI ANAND NATH TEWARI *v.* JOKHU KURMI. **113 I.C. 757 (All.).**

———A licensee in possession dees not, like the tenant, by denying title of the grantor of the license forfeit the license and become liable to ejectment. (1901) A.W.N. 157 and 39 All. 621, *Foll.* (*Stuart, J.*). MT. DURGA *v.* BABU RAM.
75 I.C. 596=A.I.R. 1923 All. 403.

—S. 60—Interpretation.

———*Fawcett, J.*—Section 60 (a) does not necessarily use the words "transfer of property" in the limited sense of a transfer as defined in the Transfer of Property Act. (*Shah and Fawcett, JJ.*). JANARDAN MAHADEO *v.* RAMACHANDRA MAHADEO. **101 I.C. 393=29 Bom.L.R. 312=A.I.R. 1927 Bom. 240.**

—S. 60—Revocability.

———Two companies owning adjoining lands managed by common agents erection of building and tank on premises of one for use of another—Rule in *Ramsden* v. *Dyson*, (1865) 1 H. L. 129 *held* to be applicable. License presumed to be granted and irrevocable under S. 60 (*b*). (*Case-law referred and discussed*). *Marten, C.J. and Murphy, J.*). GUJERAT GINNING & MANUFACTURING CO. LTD. *v.* MOTILAL HIRABHAI SPINNING & WEAVING CO., LTD. **123 I.C. 481=53 Bom. 792=31 Bom. L.R. 1310=A.I.R. 1930 Bom. 84.**

—S. 60—Revocation on compensation.

———The Indian Easements Act is a complete and self-contained Code, and in view of the provisions of Cl. (*b*) of S. 60, where a license has become irrevocable, the Courts cannot allow a licensor to revoke the license, on condition of his making compensation to the licensee for loss incurred by the revocation of the license. (*Iqbal Ahmad, J.*). BHUKHAN SING *v.* JAGARDEO KOERI.
98 I.C. 814=A.I.R. 1927 All. 197.

—S. 60—Right to revoke.

———*Partial execution.*

A license cannot be revoked even when part only of a work of a permanent character has been executed by the licensee: A. I. R. 1924 Nag. 254, *Rel. on.* (*Macnair, A. J. C.*). GUMAN SINGH *v.* PYARELAL. **117 I.C. 224= A.I.R. 1929 Nag. 141.**

———*Test—Limit.*

Where a licensee constructs permanent building on licensor's site under implied license, the license is irrevocable as to building and licensee cannot be ejected. The irrevocability is restricted to the portion covered by building. 8 All. 69, *Rel. on.* (*Subhedar, A.J.C.*). MT. MANBI *v.* KODU.
118 I.C. 676=A.I.R. 1929 Nag. 269.

EASEMENTS ACT (1882), S. 60—Right to revoke.

———A license to use the land of another unless coupled with a transfer of the property is revocable subject to the right of the licensee for damages if revoked contrary to the terms of any express or implied contract. A mere license is revocable at the will of the licensor unless it is coupled with a grant and in that case it will become a lease and would require compulsory registration. (*Shadi Lal, C. J. and Tapp, J.*), POHU RAM *v.* MT. TABO.
120 I. C. 673=30 P.L.R. 746.

———*Conditions.*

A mere license is revocable at the will of the licensor unless it is coupled with a grant, in which case it becomes a lease and requires compulsory registration. 16 Cal. 640, *Rel. on.* (*Shadi Lal, C. J. and Tapp, J.*). POHU RAM *v.* MT. TABO.
120 I.C. 673=30 P.L.R. 746.

———*Test.*

Where on partition one of the brothers is allowed to take water from the well of the other 'out of brotherly affection' and 'not as a matter of right'—it amounts to a license coupled with a transfer of property and irrevocable under S. 60(*a*) of the Easements Act. (*Shah and Fawcett, JJ.*). JANARDAN MAHADEO *v.* RAMCHANDRA MAHADEO.
101 I.C. 393=29 Bom.L.R. 312=A.I.R. 1927 Bom. 240.

———*Rule as to.*

A mere license is irrevocable when the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in so doing. In cases falling within this rule, if the licensor desires to be able to revoke he must expressly reserve the right when he grants the license, or limit it as to duration. (*Kinkhede, Offg. A. J. C.*). DAYARAM *v.* DEORAO. **94 I. C. 923=22 N. L. R. 162=A.I.R. 1926 Nag. 376.**

———A license cannot be revoked, if the licensee acting upon the license has executed a work of a permanent character unless the license is shown to have been granted under restrictive conditions of the nature set up, no revocation can be allowed to the prejudice of the licensee by whom a permanent structure has been built. (*Kanhaiya Lal, J.*). AMJAD KHAN *v.* SHAFIUDDIN KHAN.
78 I.C. 215=A.I.R. 1925 All. 203.

———Construction of a house by licensee acting on license makes license irrevocable. (*Walsh, Ag. C.J. and Ryves, J.*). KALLU SHAH *v.* RAHEEM BAKSH. **84 I.C. 284=5 L.R.A. Civ. 532=A.I.R. 1924 All. 825.**

———Transferees of one of the zemindars cannot sue occupiers of certain plots as licensees for storing manure, etc., where the occupiers on the strength of the license had been in possession for 12 years and had in pursuance of the licence erected constructions of a permanent character. (*Stuart, J.*). NATHU *v.* TULSI RAM. **78 I.C. 316=5 L.R.A. Rev. 98=A.I.R. 1924 All. 434.**

———Transfer by licensor of ownership does not revoke license. (*Prideaux, A.J.C.*). VITHALDAS MARWARI *v.* GOMA. **79 I.C. 173=20 N.L.R. 60=A.I.R. 1924 Nag. 254.**

———*Implied license to build.*

Acquiescence may be express or implied. In a large town (where ordinarily the *malguzar* permits persons who are not his tenants, to build on his *abadi*) the defendant started building a substantial house on a vacant site in the *abadi*. Soon after he started building, the *malguzar's* agent told the defendant not to build on that site. Defendant replied that he would go and see the malguzar and

EASEMENTS ACT (1882), S. 60—Work of permanent character.

settle the matter with him. The agent reported the matter to the malguzar who took no further action until he filed his suit seven years later for recovery of the land.

Held, that no inference was possible from the facts but that the plaintiff intentionally induced the defendant to believe that he might build on the site without any interference by the plaintiff or any fear of the plaintiff ever attempting to evict him and on the same terms as all the other holders of sites on the *abadi* and that the suit must be dismissed under S. 60 of the Easements Act. (*Hallifax, A.J.C.*). RAMRATAN *v.* SHIODATTARAI. **73 I.C. 137=A.I.R. 1921 Nag. 167.**

—S. 60—Work of permanent character.

———*Test.*

Whether the building is a work of a permanent character depends on the nature of the building and not on the intention of the persons occupying it. At the same time the fact that it has been occupied as a residential house for considerable period is a fact which is to be taken into consideration in deciding whether it is a structure of a permanent character or not. (*Daniels, J.*). FAQIRULLAH *v.* WALIKHAN. **97 I. C. 337= A. I. R. 1926 All. 714.**

———*Kuchcha house.*

A kuchcha thatched house may be a work of a permanent character, where it has been used as a residence for a good many years and there is no evidence to indicate that it is only a temporary structure. (*Neave, J.*). GAURI SHANKAR *v.* MITHAI. **84 I. C. 264=5 L. R. A. Civ. 400= A.I.R. 1924 All. 750.**

———*Mud building.*

A building which is meant for permanent residence, though built with mud and costing only a few rupees, is a building of a permanent character: 28 All. 741, *Foll.* (*Mukerji, J.*). TRIPATHI ANAND NATH TEWARI *v.* JOKHU KURMI. **113 I.C. 757.**

———*Railway sidings.*

A and *B* companies were managed by common agents. The agents acting on behalf of the companies applied to railway company to provide a private railway siding for the use of the companies which the railway company did. The rails leading to the *A* company's land passed through the *B* company's land. The expenses incurred in laying out rails and siding were borne by each company contributing its quota. Later on, the management passed on to separate agents. Disputes having arisen between the two companies, *B* company prevented the other company from using the railway line that passed through its land. *A* company sued to obtain a perpetual injunction restraining *B* company from obstructing the use of the railway line,

Held, that as the *A* company executed work of a permanent character and incurred expenses in the execution, the license could not be revoked under S. 60 (*b*). (*Marten, C. J. and Murphy, J.*). GUJERAT GINNING CO. *v.* MOTILAL SPINNING CO. **31 Bom.L.R. 1331=A.I.R. 1930 Bom. 70.**

———*Kuchcha house.*

A Kuchcha thatched house may be a work of a permanent character and the fact that the thatch is renewed from time to time does not make it a work of a temporary character. (*Kanhaiya Lal, J.*). AMJAD KHAN *v.* SHAFIUDDIN KHAN. **78 I.C. 215=A.I.R. 1925 All. 203.**

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (1907), S. 2—Scope of power.

———*Kuchcha house.*

Even the construction of a kuchcha hut by the licensee may be treated as a work of permanent character: 28 All. 741; 29 All. 133; S.A. No. 500 of 1917; A.I.R. 1924 Nag. 254 and A.I.R. 1925 All. 203, *Ref.* (*Khinkhede, Offg. A. J. C.*). DAYARAM *v.* DEORAO. **94 I. C. 923=22 N.L.R. 162= A. I. R. 1926 Nag. 376.**

———*Kuchcha house.*

Buildings of mud walls and thatched roof built for the purpose of school and which were in existence and kept under regular repair for about 30 years were held to be a work of a permanent character. 28 All. 741, *Foll.* (*King, J.*). THAKUR-PRASAD *v.* J. THOMKINSON. **102 I.C. 26= 1 L.C. 44=A.I.R. 1927 Oudh 206.**

—S. 61—Implied revocation.

———*Remedy.*

An appropriation of the land licensed to any use inconsistent with the enjoyment of the license, works a revocation and the licensee may maintain an action for damages against the licensor for breach of contract in unlawfully revoking it.

Where the license was for valuable consideration, was accompanied by the grant of a profit *a prendre* and was consequently a licence coupled with an interest, and where the grant entitled the licensee to the exclusive right to catch elephants within the defined tracts and for the specified period but owing to accidental and departmental fires of the Forest Department the licensee was hindered in his operation,

Held, it does not follow as a matter of course that the licensee would be entitled to exclusive occupation of the entire territory during such time. It is impossible to award the licensee damages when the licensee fails as well from uncertainty of cause of damages as from uncertainty of extent of damages. (*Mookerjee and Chotzner, JJ.*). FREDERICK THOMAS KINGSLEY *v.* THE SECRETARY OF STATE. **72 I.C. 270=36 C. L.J. 271= A.I.R. 1923 Cal. 49.**

—S. 62—Revocation—License—Consideration—Right to damages.

———Where the licence was for valuable consideration, was accompanied by the grant of a profit *a prendre* and was consequently a licence coupled with an interest and where the grant entitled the licensee to the exclusive right to catch elephants within the defined tracts and for the specified period but owing to accidental and departmental fires of the Forest Department the licensee was hindered in his operation,

Held, it does not follow as a matter of course that the licensee would be entitled to exclusive occupation of the entire territory during such time. It is impossible to award the licensee damages when the licensee fails as well from uncertainty of cause of damages when the licensee damages when the licensee fails as well from uncertainty of damages as from uncertainty of extent of damages. (*Mookerjee and Chotzner, JJ.*). FREDERICK THOMAS KINGSLEY *v.* THE SECRETARY OF STATE. **72 I.C. 270= 36 C.L.J. 271=A.I. R. 1923 Cal. 49.**

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (2 E. B. & A. of 1907).

—S. 2—Scope of power.

———Under the Eastern Bengal and Assam Disorderly Houses Act the owner or occupier of disorderly houses may be ordered to discontinue the use of

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (1907)—S. 3—Procedure.

a house as a disorderly house but not to vacate it. An order imposing daily fine on prostitutes for non-compliance with an order to vacate their houses is therefore not competent under Ss. 2 and 3 and is *ultra vires*. (*Cuming, J.*). KUSAM BAISTAMI *v.* EMPEROR. **A.I.R. 1930 Cal. 638.**

—S. 3—Procedure.

———Proceedings under S. 3 of the Act, (2 E. B. and A. of 1907) are not governed by Cr. P. Code. It is not necessary for the Magistrate to act only on legal evidence and he need not administer oath. But before passing an order he must satisfy himself that the house is used as described in S. 2, Cls. (a), (b) or (c) and he may do this in any way that does not violate the ordinary rules of fairness and propriety, but before he can pass an order under S. 3 he must not only be satisfied that the houses are used as brothels but he must further find an additional fact to bring it within the provisions of Cls.(a), (b) or (c).When the cases of a large number of houses are jointly considered, though it is not necessary to draw up separate proceedings and hold separate enquiries, yet in deciding the question whether annoyance was caused,the Magistrate should apply his mind to the case of each house separately. (*Newbould and B. B. Ghose, JJ.*). RAMA PADA *v.* BASANTA BAISHNABI.

91 I.C. 881=30 C.W.N. 91=27 Cr.. L. J. 145=A.I.R. 1926 Cal. 307.

EAST INDIA COMPANY.

See (1) GOVT. OF INDIA ACT.
(2) SECRETARY OF STATE.
(3) TORT.

EAVES.

See EASEMENT.

ECCLESIASTICAL LAW.

See CLERGY DISCIPLINE ACT.

EDUCATION, EXPENSES OF.

See HINDU LAW—JOINT FAMILY.

EJECTMENT.

See also (1) LANDLORD AND TENANT.
(2) LIM. ACT, ARTS. 142 & 144.

—Burden of proof—(*See also* EVIDENCE ACT SS. 101 AND 103.)

Damages and rent.
Joinder of parties.
Jus tertii.
Right to eject.
Title and possession.
Miscellaneous.

—Burden of proof.

———*Resumption—Unwillingness or inability to serve to be proved.*

In the absence of a notice to quit the land before the suit for ejectment for not rendering service was commenced,

Resumption could not be ordered unless and until it was clearly shown that the defendant was unwilling or incapable of doing the service required. 22 Cal. 938, *Ref.* (*Fazl Ali and Chatterji, JJ.*). NIRMAL KUMAR *v.* SURJAN DUSADH.

A.I.R. 1929 Pat. 433.

———A person suing in ejectment must establish his title. (*Greaves and B.B. Ghose, JJ.*). NEPALDAS *v.* PROBHAS CHANDRA. **90 I. C. 499=42 C. L. J. 221=30 C. W. N. 357=A.I.R. 1926 Cal. 460.**

———*Proof of title—Plea of tenancy—Onus on defendant.*

EJECTMENT—Burden of proof.

In a suit for declaration of title and possession, where plaintiffs establish their title to the land it is the duty of the defendant who sets up tenancy from one of the co-sharers to establish such a tenancy. If one of the plaintiffs is a purchaser from that co-sharer, defendant should show that the nature of the tenancy was such that it was binding upon the purchaser. Again, in order to make that lease binding against all the co-sharers, it is the duty of the defendant to establish satisfactorily that there was a partition between the co-sharers, before the alleged lease to himself under which his lessor obtained a complete title to deal with the land by way of a lease. If the defendant is successful in establishing a tenancy which would be binding against the plaintiff, the plaintiff would still be entitled to a decree declaring his title to the property and the liability of the defendant to pay rent to the plaintiff. (*Greaves and Chakravarty, JJ.*). ANU BISWAS *v.* GOPAL SHEIKH. **87 I.C. 642=A.I.R. 1926 Cal. 442.**

———Plaintiff must prove not only title but also possession within 12 years. (*Dawson-Miller, C. J. and Foster, J.*). KIRAT SINGH *v.* SHEORATAN SINGH. **96 I. C. 551 (Pat.).**

———*Suit for possession—Proof of title.*

Where plaintiff sued to recover immovable property on the ground that it formed part of the inheritance to which she succeeded,

Held, that as the defendants, though without title were in possession, the plaintiff could only recover that possession by establishing her own title as against them. (*Sir Lawrence Jenkins, J.*). HASHMAT ALI *v.* MT. NASIB-UN-NISSA.

88 I.C. 114=30 C. W. N. 196=26 P.L.R. 192=52 I.A. 172=6 Lah. 117=A.I.R. 1925 P.C. 99.

———In a suit framed in ejectment, the plaintiffs must rely upon the strength of their own title and cannot succeed unless they prove that the legal title to the premises is vested in them, and that they have been in possession of the premises and have been ousted therefrom within 12 years before the suit was filed. (*Page, J.*). ADMINISTRATOR-GENERAL OF BENGAL *v.* BAL KISSEN MISSER. **84 I.C. 91=51 Cal. 953=A.I.R 1925 Cal. 140.**

———Where a suit is one substantially in ejectment the plaintiff is bound to establish the title on which he claims properties. (*Spencer, Offg. C. J. and Srinivasa Iyengar, J.*). RANGAPPA NAYAKKAR *v.* RANGASWAMI NAYAKKAR. **88 I.C. 249=1925 M.W.N. 232=A. I. R. 1925 Mad. 1005.**

———*Pattadar—Onus to prove title in grantor.*

Merely because Government have issued a Patta to somebody, there is no presumption that Government are entitled to the land of which they purported to make a grant, and it is always for the grantee to make out that the grantor, Government in this case, has any title. Unless the title of the Government at the time the grant was made is made out, the grantee cannot maintain a suit in ejectment against persons who were in possession at the time of the grant. (*Ramesam, J.*). ADINARAYANA *v.* K. VENKATASUBBAYYA.

87 I. C. 46=A. I. R. 1925 Mad. 752=48 M.L.J. 411.

———*Suit by a co-owner—Onus to show unrestricted authority to eject.*

When a lease is granted by one co-owner the other cannot maintain a suit for the ejectment of the lessee from the whole of the premises. In a suit by one co-owner for ejectment of a trespasser

EJECTMENT—Burden of Proof.

from the whole of the premises the burden of proof lies on him to show that he had unrestricted authority to eject him on the date of the suit. The mere fact that at some point of time in the past he had such authority is not sufficient to show that he continued to be clothed with that authority at the date of the suit so as to be entitled by himself to require the defendant to clear out of the entire premises notwithstanding the fact that the other co-owner has manifested his intention to the contrary by granting him a fresh lease of the entire properties. (*Kinkhede, A. J. C.*). VITHAL *v.* SADASHEO. **82 I.C. 1041=A.I.R. 1925 Nag. 175.**

———*Plea of tenancy—Failure—Onus on defendant.*

Where in an action for ejectment the defendant pleads tenancy by contract but fails to prove the same, the onus is upon the defendants to show some title which will either extinguish or diminish the extent of the plaintiff's title. If the defendants fail, then the plaintiff is entitled to a decree. (*Mullick and Bucknill, JJ.*). SIR RAMESHWAR SINGH *v.* RIT LAL SINGH. **86 I.C. 771= 3 Pat. L. R. 50=6 P.L.T. 514= A. I. R. 1925 Pat. 739.**

———The plaintiff in a suit for ejectment must make out both that he had title to the land in suit and that he was in possession within twelve years of the date when the suit was instituted and if he fails to prove his possession then notwithstanding his title, it being admitted that the defendant is in possession at the date of the suit, his suit must fail. (*Dawson Miller, C. J. and Mullick, J.*). RAMNATH SARANJI *v.* GOBADHAN PANDEY.
81 I.C. 669=3 Pat. 258=6 P.L.T. 185= A. I. R. 1924 Pat. 629.

———*Plea of adverse possession—Onus on defendant.*

In an action for ejectment if the defendants plead adverse possession the onus is upon them and they must show what was the date from which such possession began to run. In such a case the plaintiff's suit cannot be dismissed till the precise title acquired by adverse possession has been determined. (*Mullick and Bucknill, JJ.*). SRI RAMESHWAR SINGH *v.* RIT LAL SINGH. **86 I.C. 771= 3 Pat. L.R. 50=6 P.L.T. 514= A. I. R. 1925 Pat. 739.**

———*Plaintiff's failure in prior proceedings.*

Where plaintiff failed in Criminal Procedure Code, S. 145, proceedings to prove possession and also in survey proceedings the *onus* thus lay heavily on the plaintiffs to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings. (*Mr. Ameer Ali*). INDRAJIT *v.* AMAR SINGH. **74 I.C. 747=21 A. L.J. 554= 4 P. L.T. 447=1 P.L.R. 345=3 P.L.R.1924= 2 Pat. 676=50 I.A. 183=25 Bom. L.R. 1259= 28 C.W.N. 277=33 M.L.T. 233=18 M.L.W. 728= 4 L.R.P.C. 123=5 L.R.P.C. 8=39 C.L.J. 318= A.I.R. 1923 P.C. 128=45 M. L. J. 578.**

———*Suit on title.*

It is for the plaintiff in a suit to establish his title to the land and if he has failed to do so, the failure of defendant to establish his title cannot affect the position. (*Greaves and Panton, JJ.*). M. ABDUL AZIZ *v.* AMIR ALI. **67 I.C. 149= A.I.R. 1923 Cal. 166.**

———In a suit for ejectment it is incumbent upon the plaintiffs not only to prove their title but also that they have been in possession within twelve years of the date of the suit. (*Das and Kulwant*

EJECTMENT—Damages and rent.

Sahay, JJ.) CHATTRAPAT PRATAB BAHADUR SAHAI *v.* C. G. LEES. **72 I.C. 649=1 P.L.R. 322= 4 P.L.T. 487=A.I.R. 1923 Pat. 558.**

———A plaintiff can succeed only on the strength of his own title and not on the weakness of a defendant's title. (*Abdul Raoof and Harrison, JJ.*). DURGA DEVI *v.* SHIB DEVI. **4 L. L.J. 173= A.I.R. 1922 Lah. 83.**

———Plaintiffs in a suit for ejectment are under an obligation to establish their title to the relief which they seek in the suit, *i.e.*, they must establish their right that they are entitled to turn the defendants out of the actual possession of the plots in question. (*Wazir Hasan, A.J.C.*). LIAQAT HUSAIN *v.* NAROTAM DAS. **65 I.C. 780= 8 O.L.J. 516=A.I.R. 1921 Oudh 254.**

Per *Full Bench* (*Jwala Prasad, J., dissenting*).—The plaintiff in a suit for ejectment must prove not only his antecedent title but also his possession within 12 years of the suit. In the absence of any credible evidence on either side as to possession the plaintiff must fall and the presumption arising from title cannot be called in aid to give weight to evidence unworthy of credit any more than if no evidence at all had been given, and the plaintiff cannot succeed merely by proving a title and possession at some antecedent period. S. A. 728 of 1917 and 4 P. L. J. 463, *Overruled.* (*Dawson Miller, C.J., Jwala Prasad, Das, Adami and Bucknill, JJ.*). SHIVA PRASAD SINGH *v.* HIRA SINGH. **62 I.C. 1= 2 P.L.T. 487=1921 P.H.C.C. 305=6 P.L.J. 478= A.I.R. 1921 Pat. 237 (F. B.).**

———*Dispossessor's onus.*

Where a person in possession of a property is dispossessed by another the onus is on the latter to show that he had better title than the former. 2 P.L.J. 61, *Ref.* (*Jwala Prasad, A.C.J. and Das, J.*). AWADH BIHARI DIKSHIT *v.* JITU SAHU. **64 I.C. 243 (Pat.).**

—Damages and rent.

———*Decree for mesne profits—Conditions.*

A decree for mesne profits can only be made against the trespasser in a suit for ejectment if ejectment is decreed. If on an appeal against the decree for ejectment that decree is set aside, there cannot possibly be a decree for mesne profits. If, during the pendency of the appeal against the decree for ejectment, a decree for mesne profits has been made, that decree should be considered as a decree dependent upon the original decree for ejectment, and if that decree is set aside the subsequent decree awarding mesne profits on the basis that the plaintiff has obtained a decree for ejectment must fall; and the same should be the result if the two decrees are passed simultaneously. (*B. B. Ghose and Bose, JJ.*). BHOLA NATH MAJUMDAR *v.* NAYEB KHAN. **114 I.C. 154= 48 C.L.J. 387=A.I.R. 1929 Cal. 91.**

———*Alternative plea for use and occupation.*

In a suit for ejectment where plaintiff fails to prove the contract of tenancy, he is not precluded from urging his alternative claim for damages for use and occupation. (*B.B. Ghose and Graham, JJ.*). SAMIULLA *v.* NIL MAMUD. **97 I. C. 864= A. I. R. 1927 Cal. 13.**

———*Building by trespasser—No damages.*

The principle of English Law *quicquid plantatur solo solo cedit* applies to India, but does not apply either to lessees or to trespassers.

Where therefore a trespasser erects a building on another's land without a *bona fide* belief as to the land belonging to him, the trespasser, on being evicted by the owner, cannot receive compensation

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for the building, but is entitled only to remove it: 2 Pat.L.J. 600; 21 All. 496 and 20 Bom. 298, *Foll.* (*Harrison and Dalip Singh, JJ.*). CHANAN DIN *v.* MT. JABAN. **97 I. C. 394= A. I. R. 1926 Lah. 694.**

———*Pending ejectment suit—Right to rent.*

It is established as a general principle that the right to demand the rent which falls due during the pendency of a suit for ejectment is not in suspense during the pendency of the litigation. The cases in 12 M.I.A. 244 (P.C.) and 30 Cal. 1033 (P.C.) are exceptions to the general rule. (*Newbould and Panton, JJ.*). NAGENDRA NATH *v.* SADHU RAM. **48 Cal. 65=25 C.W.N. 954= A. I. R. 1921 Cal. 525.**

———*Distinction.*

Where the defendant has been in possession of a garden in assertion of a hostile title a suit by the alleged owner of the garden for damages for appropriation of fruits cannot be maintained. But the plaintiff, if he is in time, may bring a suit either for recovery of possession or recovery of rent, as the case may be. (*N.R. Chatterjea and Pearson, JJ.*). HARIHAR DAS *v.* KRISHNADHAN GHOSH. **62 I. C. 635 (Cal.).**

—Joinder of parties.

———*Co-trespassers.*

Co-trespassers are necessary parties. A decree against defendants in the absence of other necessary defendants illegal. A.I.R. 1928 Cal. 138, *Foll.* (*Mukerji and Mullick, JJ.*). MOKSHUD MONDAL *v.* KHEDU MONDAL. **33 C.W.N. 742= A. I. R. 1929 Cal. 669.**

———*Principle regarding.*

The principles governing the rule of joinder of defendants in an action for ejectment are mainly two: first, if any of the persons in possession is left out, he remains in possession as not being affected by the decree, and the decree as one in ejectment and for possession becomes infructuous because the persons ejected as being bound by the decree can always come in under the person who remains in possession; and second, there is a certain amount of risk involved in not making the persons in actual possession defendants, for, in execution of the decree, persons may happen to be turned out who may then bring actions against the plaintiff for wrongful dispossession, not being bound by the decree. *Deo d. Williamson* v. *Roe*, 10 Moore 493; *Deo d. Lord Darlington* v. *Cock*, (1825) 4 B. and C. 259; *Deo d. Turner* v. *Gee*, (1841) 9 Dowl. 612; *Glen* v. *Herring*, (1905) 1 K. B. 152 and *Minet* v. *Johnson*, (1890) 63 L. T. 507, *Expl.* (*Mukerji and Mitter, JJ.*). ARUNADOYA CHAKRABARTY *v.* MAHAMMAD ALI. **106 I.C. 261= 46 C.L.J. 433= A.I.R. 1928 Cal. 138.**

———*Persons in possession.*

The rule that all persons in actual possession should be joined as parties has been firmly established and the principle that a suit will not be entertained where no effective decree can be passed in it is well recognised. 31 Bom. 250; 62 I. C. 714; A.I.R. 1923 Cal. 289; A. I. R. 1927 Cal. 238 and A. I. R. 1921 Cal. 622, *Rel. on.* (*Mukerji and Mitter, JJ.*). ARUNADOYA CHAKRABARTI *v.* MAHAMMAD ALI. **106 I.C. 261=46 C.L.J. 433= A.I.R. 1928 Cal. 138.**

———*Omission not fatal.*

Mere non-joinder of a party in an ejectment suit is not fatal to the trial of the case. (*Cuming and Chakravarti, JJ.*). BAIKUNTHA NATH *v.* SHAIKH HARI. **92 I.C. 899=A.I.R. 1926 Cal. 592.**

EJECTMENT—Right to eject.

——— Person from whom party in actual possession claims to hold is not a necessary party to a suit in ejectment. 21 Bom. 229, *Foll.* (*Das and Adami, JJ.*). BHAGWATI KOER *v.* JAGDOM SAHAY. **62 I.C. 933=2 P.L.T. 471=6 P. L. J. 604= A.I.R. 1921 Pat. 260.**

—Jus tertii.

———*Good plea in defence.*

The defendant is entitled in a suit for ejectment to plead the title of a third party and to show that the plaintiff is not entitled to the interest he claims. (*Greaves and B. B. Ghose, JJ.*). GOUR CHANDRA DAS *v.* SUBASHINI DASI. **90 I. C. 523=42 C.L.J. 200=30 C. W. N. 39= A. I. R. 1926 Cal. 240.**

———*Failure to prove.*

Where the plaintiff in an ejectment suit claims by assignment from a certain person and the defendant pleads that the plaintiff's assignor was not entitled to the property but that a third person was preferentially entitled but the defendant fails to prove his pleading, the plaintiff is entitled to decree. (*Mr. Ameer Ali*). MAHABIR PRASAD *v.* JAMUNA SINGH. **92 I. C. 31= 1925 M.W.N. 738=23 M.L.W. 75= A. I. R. 1925 P. C. 234.**

———*When avails.*

A plea of *jus tertii* is no defence, unless the defendant can show that the act complained of was done by the authority of the owner. The plea of *jus tertii* cannot avail the defendant when the alleged true owner is impleaded as a party and admits the plaintiff's title to it. (*Ramesam, J.*). GANGAYYA *v.* SATYANARAYANA. **91 I. C. 503=22 M. L. W. 120= A. I. R. 1925 Mad. 1021.**

———*Onus on defendant.*

Where a defence of *jus tertii* is set up, it is for the defendants to establish that the persons, in whom they allege the right to the plots to exist, have a title superior to that of the plaintiff. (*Lindsay, J. C. and Wazir Hasan, A.J.C.*). SECY. OF STATE *v.* MD. QASIM. **61 I.C. 871= 24 O.C. 77=8 O.L.J. 160=A.I.R. 1921 Oudh 88.**

—Right to eject.

———*Co-sharer.*

Where a person who is entitled to a lesser share in a land, brings a suit for ejecting a trespasser, he cannot get a decree for possession of the whole of the land, but is entitled to recover possession only to the extent of his share, although he can retain possession of the whole of the joint property as against a trespasser. 12 All. 51 (P. C.), *Dist.* and *Doe Hellyer* v. *King*, 6 Ex. 791, *Foll.* (*Mitter, J.*). NARESHCHANDRA *v.* HAYDER SHEIKH. **115 I.C. 180=49 C.L.J. 83=A.I.R. 1929 Cal. 28.**

———*Different titles.*

Patkar, J.—If a landlord brings a suit for possession on a rent-note and fails to recover possession on the ground that the rent-note is not proved, he is entitled to bring a suit for ejectment on his title as owner and on the allegation of a different legal relation between him and the defendants arising out of holding the lands and paying the rent in respect of them to the plaintiffs. 8 Bom. 174 (F. B.), *Foll.* (*Patkar and Baker, JJ.*). BALRAM GULABCHAND MARVADI *v.* JIGAN JAD PATIL. **114 I. C. 269=30 Bom. L.R. 1583.**

———*One of co-owners.*

One of several co-owners can sue trespasser for ejectment without joining the other co-owners as parties to the action. (*Prideaux, A. J. C.*). ALLI SAHEB *v.* YASIN KHAN. **113 I.C. 886 (Nag.).**

EJECTMENT—Right to eject.

———A Criminal complaint against landlord by tenant does not render him liable to ejectment. (*Gokaran Nath Misra, J.*). MD. AQIL *v.* SHEO BAKSH. **91 I. C. 1055=13 O. L. J. 194= A .I. R. 1926 Oudh 265.**

———*Co-sharer.*

One co-sharer can sue a trespasser in ejectment on behalf of himself and his other co-sharers. (*Dalal, J. C.*). HARI HAR BAKHSH SING *v.* MOHAMMAD USMAN KHAN. **90 I. C. 804= A.I.R. 1926 Oudh 144.**

———*Benamidar.*

Per *Phillips and Venkatasubba Rao, JJ.*—(*In the Order of Reference*). A *benamidar* can bring a suit for ejectment although he is not the real owner. The rule applies whether the transaction is supported by consideration or it is only a transfer by the owner to a *benamidar* which was not really intended to effect a transfer. 46 C. 566 (P.C.), *Foll.* (*Coutts-Trotter, C.J., Ramesam and Wallace, JJ.*). GOVINDA NAIDU *v.* CHENGALROYA MUDALI.

83 I.C. 74=35 M.L.T. 29=1924 M.W.N. 733= 47 Mad. 896=A. I. R. 1925 Mad. 22 = 47 M. L. J. 415 (F.B.).

———*Alteration of premises.*

Where the original possession was permissive subsequent alterations of the premises cannot give rise to cause of action. 18 A.L.J. 781, *Foll.* (*Piggott, J.*). UDAL *v.* CH. GULAB RAI. **75 I.C. 813= A.I.R. 1924 All. 727.**

———A landlord who has a mere right of reversion expectant on the determination of the tenancy and who has not as against his tenant the right to end the tenancy cannot maintain ejectment against a third person merely because that third person has no title in himself. (*Rankin and M. N. Mukherji, JJ.*). ROMESH CHANDRA *v.* DAIBA CHARAN.

78 I.C. 497=28 C.W.N. 602= 39 C.L.J. 356=A.I.R. 1924 Cal. 900.

———*Evidence—Ejectment—Quantum of proof—Gora lands.*

The nature and quality of the proof required to satisfy the burden cast upon a plaintiff may vary in different classes of cases. In the case of *gora* lands, that is to say, lands not brought under regular cultivation but which are from time to time, once in four or five years, subject to cultivation of certain classes of crops the evidence, which might be adduced by either party of acts of user is not such as one might expect would be forthcoming in cases of lands under regular cultivation and should not therefore be rejected on that account. (*Dawson-Miller, C.J. and Mullick, J.*). RAMNATH SARANJI *v.* GOBADHAN PANDEY. **81 I.C. 669= 3 Pat. 268=6 P.L.T. 185=A.I.R. 1924 Pat. 629.**

———When common land was partitioned according to *Thullas*, the land in suit was allotted to *Thulla Surta* and the other plot to *Thulla Kanoa*. The plaintiffs were in possession (cultivating) of the latter plot though they were the proprietors of *Thulla Surta*, and the defendants were similarly in possession of the land in suit, for the sake of convenience of enjoyment,

Held, the arrangement was only for mutual convenience and the plaintiffs will not be barred thereby from getting possession of the land in suit from defendants. (*Broadway, J.*). MUGHALA *v.* ABHE RAM. **79 I. C. 494=4 P.W.R. 1923= A.I.R. 1923 Lah. 172.**

———*Lessor can sue trespasser.*

It is not open to a defendant who is sued as trespasser for ejectment by landlord and who does not hold under the tenant, to plead that the tenant has not abandoned the holding. (*Batten, J. C.*). DEBURAM *v.* PRAHLAD PRASAD. **69 I. C. 559= A.I.R. 1923 Nag. 79.**

EJECTMENT—Title and Possession.

———Where a plaintiff had not abandoned the land and had no intention of abandoning the land, he has a right to sue in ejectment, persons who had entered into unlawful possession. (*Lentaigne, J.*). (MAUNG) PEIN *v.* (MAUNG) PO MAUNG.

79 I. C. 817=2 Bur. L.J. 15=A.I.R. 1923 Rang. 138.

—Title and possession.

———*Tenancy—Title—Relevancy.*

In a suit for ejectment of tenant by a landlord question of title can only be gone into for the purpose of determining the main question in the suit about the relationship between the landlord and the tenant. (*Suhrawardy and Jack, JJ.*). GOVIND KUMAR SEN *v.* MOHINI MOHAN SEN.

33 C.W.N 769=57 Cal. 349=A.I.R. 1930 Cal. 42.

———*Relative value.*

Possession is *prima facie* proof of title; and it is well established that previous possession is a good foundation for a suit in ejectment, although the plaintiff who instituted the suit may not be able to establish any title in himself, provided that the defendant does not establish a better title to the disputed property: 6 Bom. 215, *Foll.*; 25 Bom. 287; 12 W.R. 164; A.I.R. 1927 Pat. 1, *Ref.*; 20 C.W.N. 773, *Not foll.* (*Das and Ross, JJ.*). RANJIT SINGH *v.* JHORI SINGH. **119 I.C. 906= 8 Pat. 351=11 P.L.T. 34=A.I.R. 1929 Pat. 601.**

———*English law applies to India.*

The principle of the English Law to the effect that possession is a good title against all but the true owner and entitles the possessor to maintain an action for ejectment against any other person than such owner who dispossesses him has been adopted in India. (*Shadi Lal, C.J. and Coldstream, J.*). LABH SINGH *v.* AHMAD SHAH. **97 I.C. 369= A.I.R. 1927 Lah. 11.**

———*Tenancy and adverse possession—Both are open.*

In a suit for possession of land a mere assertion of tenancy does not deprive the tenant from pleading limitation. It is open to the tenant in the first place to plead that the lands were comprised in his tenancy and in the second place to assert that if the tenancy was not established as he had held possession for more than 12 years the right of the plaintiffs to recover possession was extinguished by the law of limitation: 8 C.L.J. 557 and 21 W.R. 70, *Rel. on.* (*Suhrawardy and Duval, JJ.*). CHHAIKUDDIN *v.* RAM NARAYAN. **90 I.C. 617=. A.I.R. 1926 Cal. 364.**

———Although the plaintiff in an ejectment suit has failed to establish a case of letting, he is entitled to a decree on the basis of the title unless defendant can show a better title. 25 All. 498 and 25 All. 256, *Ref.* (*Aston, A.J.C.*). MULIBAI *v.* VASSIBAI. **97 I.C. 248=A.I.R. 1926 Sind 98.**

———A person ousted from possession by another having absolutely no title is entitled to eject the latter however defective the plaintiff's title may be. (*Hallifax, A.J.C.*). MAROTI *v.* SITARAM.

78 I. C. 722=A.I.R. 1925 Nag. 32.

———Mere peaceful possession without title is sufficient for ejecting trespasser who dispossessed plaintiff. (*Dawson Miller, C.J. and Mullick, J.*). AKAL AHIR *v.* BAIJNATH DAS. **78 I.C. 228= A.I.R. 1924 Pat. 709.**

———*Suit for.*

A plaintiff in a suit for possession against defendant is bound to succeed if he is able to show a better title in himself than the defendants.

EJECTMENT—Miscellaneous.

(*Dawson Miller, C.J. and Mullick, J.*). (SHEIKH) ABDUR RAHMAN *v.* SHEIKH WALI MOHAMAD.
68 I.C. 601=1922 P. H. C.C. 313=2 Pat. 75=4 P. L. T. 267=A.I.R. 1923 Pat. 72.

—Miscellaneous.

———*Suit for possession—Declaration of title unnecessary.*

The institution of a suit for possession is sufficient to show the plaintiff's election to treat the alienation as a nullity and therefore a separate suit is unnecessary and even a separate suit for a declaration is inoperative; this rule applies even if the ejectment is sought in a revenue Court. (34 Cal. 329; 37 All. 254, *Foll.* (*Walsh, A.C.J. and Sulaiman, J.*). MT. RAJROOP KUAR *v.* KANDHYA.
82 I.C. 238=22 A.L.J. 846=47 All. 2=A. I. R. 1924 All. 785.

———*Right to eject.*

The fact that defendants in ejectment suits are entered in the Record-of-Rights as occupancy tenants is not a sufficient reason for solding that the decrees in these suits were without jurisdiction or were wrong in law. (*Ross, J.*). TUFANI LAL *v.* MT. BIBI UMATUL RASOOL. **5 P.L.T. 535=1924 P. H.C.C. 244=A. I. R. 1924 Pat. 765.**

———*Evidence and probabilities.*

It is only in cases where there is no evidence of the plaintiff as to dispossession, or, where the evidence is valueless, that the plaintiff fails to make out his case by merely proving that he had an antecedent title and possession and it must not be considered that, merely because where evidence was given by both sides and the learned Judge who had to determine the case, had a difficulty upon that evidence or even considered that evidence not altogether satisfactory, he was not entitled to give weight to the probabilities of the case or to any presumptions which might properly arise from the fact that the plaintiff had previously been in possession and had title. Merely because the Judge has some difficulty in arriving at a conclusion upon the evidence or that he does not consider the evidence altogether satisfactory, he is thereby not precluded from looking either at the probabilities of the case as disclosed by other parts of the evidence or from the presumption which might arise from the plaintiff's title. (*Dawson Miller, C. J. and Mullick, J.*). TIAN SAHU *v.* MULCHAND SAHU.
67 I.C. 631=2 Pat. 1=3 Pat. L.T. 460=A.I.R. 1922 Pat. 432.

———*Findings.*

In an ejectment suit, the Court must come to a finding as to the nature of tenancy and also whether the tenancy so found has been put an end to, on the date of suit. (*Sadasiva Aiyar and Napier, JJ.*). ITTINAN *v.* GOVINDAN NAMBUDRI. **62 I.C. 390=13 M. L. W. 397.**

EJUSDEM GENERIS.

See INTERPRETATION OF STATUTES.

ELECTION.

See also (1) SUCCESSION ACT, Ss. 167—177.
(2) T. P. ACT, S. 35.
(3) WILL.

—Breach of rules.

———The mere breach of a rule, however, whether mandatory or directory will not invalidate an election unless the result of the election has been materially affected by such breach. (*Wallace, J.*). AHMAD THAMBI *v.* BASAVA.
72 I. C. 902=16 M. L. W. 898=1922 M. W. N. 813=46 Mad. 123=A.I.R. 1923 Mad. 254=44 M.L.J. 69.

ELECTION—Nomination Papers.

—Canvassing.

———*Is not a right.*

A right to canvass for or against a candidate cannot be regarded as a special right of a voter and much less as part of the franchise of a voter. If indeed it be a right, it is a right which a voter enjoys perhaps with thousands of others who are non-voters and it is impossible to recognize or give effect to any such right in law. (*Srinivasa Iyengar, J.*). EKAMBARA NAICKER *v.* COMMR. OF MADRAS CORPORATION. **99 I. C. 18=1926 M.W.N. 842=A. I.R. 1927 Mad. 22.**

—Change of place and time.

———Mere change of place and time of meeting where an election is to take place does not vitiate the election when no voter is misled or prevented in any way from voting. (*Cuming and Chakravarti, JJ.*). DWARKANATH DUTTA *v.* CHANDRA MOHAN ROY. **91 I.C. 642=A.I. R. 1926 Cal. 665.**

—Duty of Polling officer.

———All that the Polling Officer has to see when the voter presents himself to him is whether the name of the voter is on the roll. He need not wait to the end of the day in respect of every vote in order to see if any one else of the same name appears and claims that he is the voter on the Roll. (*Wallace, J.*). MAMUNDI KONAR *v.* SHAMSHUDDIN SAHIB. **90 I.C. 771=22 M. L. W 507=A.I.R. 1925 Mad. 1207=49 M. L. J. 381.**

—Electoral roll.

———*Old roll continuing till new roll takes effect.*

The effect of S. 51 (4) of the Madras Local Boards Act, 1920, is that an electoral roll once prepared continues in time till a fresh roll comes into effect. Elections held under a six years old roll upheld. (*Ramesam, J.*). VENKATARAMA AYYAR *v.* KUPPUSWAMI AYYANGAR. **1930 M. W. N. 676.**

—Fresh election.

———Where the election to one of the seats in a constituency is set aside, it is desirable that the Court should set aside the election for the whole constituency and order a fresh election. (*Suhrawardy and Costello, JJ.*). RATHIS CHANDRA MUNSHI *v.* AMULYA CHARAN GHATAK. **34 C.W.N. 741.**

—Injunction.

———*When to be granted.*

It is impossible to lay down an exhaustive rule but generally speaking injunctions should be confined to preserving the status *quo ante*, to preventing irremediable damage or loss to the property in the suit, or to averting substantial injury. No such conditions arise where the Court is moved not to re-instate the unseated Councillor, but to unseat the Councillor declared elected in his stead, and thus create a vacancy in the Municipal Council pending a civil litigation in respect of that matter; in such case there is no ground for interference. (*Jackson, J.*). GOPALA KRISHNA KONAR *v.* VILANGA KONAR. **90 I.C. 819=A.I.R. 1926 Mad. 132.**

—Nomination papers.

———*A voter can sign more than one nomination paper in favour of the same candidate.*

In respect of a single vacancy to represent a constitutency on a Taluk Board, there were three candidates for election, the plaintiff and defendant 2 being two of them. After defendant 2's nomination paper was filed, three nomination papers proposing the plaintiff were filed. Out of these one was rejected as the proposer had also subscribed as seconder the earlier nomination paper of defendant 2. The second was rejected because the seconder had as proposer subscribed the earlier nomination

ELECTION—Nomination Papers.

paper of defendant 2. The third was also rejected on the ground that the same voter, who had subscribed as proposer plaintiff's second nomination paper had also subscribed as proposer the third nomination paper, the President, being of opinion that the moment the voter subscribed paper No. 2, his right became completely exhausted and he had no further right to sign his name on any subsequent nomination paper. Plaintiff sued for a declaration that he was validly nominated and for an injunction, restraining the President from holding the election.

Held, that where the rules enact that no voter shall be at liberty to nominate more candidates than there are vacancies, what is sought to be prevented is that no voter shall nominate a larger number of candidates than there are vacancies and not that a voter shall be forbidden from subscribing more than one nomination paper in favour of the same candidate. There was but one vacancy and the voter put forward but one candidate. (*Venkatasubba Rao, J.*). THUBATI KOTAYYA *v.* TALUK BOARD, NARASARAOPET. **118 I.C. 289=30 M.L.W. 345= A.I.R. 1929 Mad. 607=57 M.L.J. 40.**

———*Rejection grounds.*

Where the rejection of the nomination papers was on the ground that it did not give the number of the ward for which the candidates decided to stand; and in the other case on the ground that the thumb mark of the seconder of the candidate had not been attested,

Held, the rejection of the nomination papers was not in law justified. (*Schwabe, C.J. and Wallace, J.*). SARVOTHAMA RAO *v.* CHAIRMAN, M.C., SAIDAPET. **73 I.C. 619=47 Mad. 585=17 M.L.W. 431= 32 M.L.T. 178=1923 M.W.N. 266= A.I.R. 1923 Mad. 475=45 M.L.J. 23.**

—Objection petition.

———*Amendment.*

An application for an amendment of the petition filed after the expiry of the days allowed for an objection petition may, in the discretion of the Judge, be allowed. (*Ramesam, J.*). KANDASAMI CHETTIAR *v.* FOULKES. **92 I.C. 100= 24 M.L.W. 213=A. I. R. 1926 Mad. 396.**

—Powers of Court.

———*Limit.*

It is outside the province of an election Court to allow any candidate to examine the voters to show how the voters voted. The Court is only entitled to consider the correct reception and the correct refusal of the vote. (*Devadoss, J.*). VAIDYANATHA *v.* MURUGIAHAN. **115 I.C. 59= 1928 M.W.N. 549=A. I. R. 1928 Mad. 1077.**

———The Court has jurisdiction to enquire into election matters and if necessary declare the election void as the sanctity of a nomination paper which has been accepted by the Chairman can be questioned after the election. (*Odgers, J.*). DORASWAMI NADAR *v.* JOSEPH L. MOTHER. **92 I. C. 119=1926 M.W.N. 572=24 M.L.W. 208= A.I.R. 1926 Mad. 319.**

—Recount.

———*When to be ordered.*

Where a miscount is alleged by the petitioner and his application is supported by a verified petition, and the Court is satisfied that there is a reasonable ground for the petitioner's belief that there has been a miscount, the Court has jurisdiction to grant a recount. *The Stepney Case*, 4 O'M & H. 34 and (1927) M.W.N. 842 (F. B.), *Ref.* (*Curgenven, J.*). M. LAKSHUMANAYYA *v.* S. RAJAM AYYAR. **30 M.L.W. 949=A.I.R. 1930 Mad. 195= 58 M.L.J. 116.**

ELECTION—Second election.

—Returning officer.

———*Decision is a judicial one.*

The function of the Returning Officer in deciding a question as to the eligibility of a candidate for election is in the nature of judicial function and his decision is in the nature of a judicial decision. (*Sanderson, C. J. and Richardson, J.*). MANINDRA CHANDRA NANDI *v.* PROVAS CHANDRA MITTER. **79 I. C. 1042=51 Cal. 279=39 C.L.J. 58= A.I.R. 1924 Cal. 761.**

—Revision—Disposal.

———If a civil revision petition should be admitted in respect of election petitions, care should be taken for disposing of it as early as possible. (*Srinivasa Aiyangar, J.*). CHELLASWAMI KONAR *v.* K. SANGAMA. **103 I.C. 821=A.I.R. 1927 Mad. 935.**

—Right to nominate.

———*Part of franchise.*

The right to nominate a candidate is undoubtedly part of the franchise and a denial of that right does constitute a denial of the franchise. (*Srinivasa Iyengar, J.*). EKAMBARA NAICKER *v.* COMMR. OF MADRAS CORPORATION. **99 I.C. 18= 1926 M.W.N. 842=A.I.R. 1927 Mad. 22.**

—Right to Vote.

———*Deprivation—Right to damages.*

If a man entitled to vote or to be a candidate at an election is wrongfully deprived of that right, an action for damages lies against the person so depriving him. 1 Smith's Leading Cases 295, *Foll.* But if the act by which the right is interfered with is an act done in a judicial capacity, no action lies unless the act is done maliciously which in this context really means dishonestly. (*Schwabe, C. J. and Wallace, J.*). SARVOTHAMA RAO *v.* CHAIRMAN, M. C., SAIDAPET. **73 I.C. 619=47 Mad. 585= 17 M.L.W. 431=32 M.L.T. 178=1923 M.W.N. 266= A.I.R. 1923 Mad. 475=45 M.L.J. 23.**

———*Deprivation of the right to vote—Good ground for damages.*

Where a duly qualified person entitled to be upon the electoral roll or candidates' list of a Municipality or other constituency, is wrongfully omitted therefrom or misdescribed therein, so as to be deprived of his right to vote or so as to have his nomination rejected though the nomination may have been accepted before the actual election, he is entitled to recover damages which may be made punitive where the omission is the result of malicious omission. The liability of the members including the Executive Officer and the Municipal Board itself must be decided according to the ordinary general principle of the law of principal and agent, so that it may be placed upon the right shoulders. (*Walsh and Stuart, JJ.*). MUNICIPAL BOARD, AGRA *v.* ASHARFI LAL. **65 I.C. 984= 44 All. 202=20 A.L.J. 1=A.I.R. 1922 All. 1.**

—Second election.

———Where a candidate, who stands next in rank and who challenges an election, claims the seat and the disqualification under which the successful candidate is ultimately found to labour was not known to all or any of the voters who cast their votes for him, a second election must be ordered and the candidate who stood next in rank cannot be declared elected. *Hobbs* v. *Morey*, (1904) 1 K. B. 74, *Foll.* (*Coutts-Trotter, C. J., Phillips and Kumaraswami Sastri, JJ.*). S. GOPALA AYYANGAR *v.* M. K. MAHOMED IBRAHIM ROWTHER. **90 I. C. 769=1925 M. W. N. 824=48 Mad. 809= 22 M. L. W. 320=1926 M. W. N. 783= A. I. R. 1925 Mad. 1119=49 M. L. J. 606 (F.B.).**

ELECTION—Secrecy of ballot.

—Secrecy of ballot.

———In an election two members by previous arrangement with a candidate used blue pencils to assure him that they had voted for him and election was sought to be cancelled on the ground that the secrecy of the ballot was violated,

Held: that unless it could be proved that the use of blue pencils indicated the persons who used them, the election would not be rendered invalid: 10 C. P. 733; A. I. R. 1925 Mad. 614 and A. I. R. 1924 Mad. 766, *Foll.* (*Pandalai, J.*). RAJABHADUR MUDALIAR *v.* VISWANATHA REDDIAR.

120 I. C. 851=30 M. L. W. 536=A. I. R. 1930 Mad. 97=57 M. L. J. 481.

—Validity of vote.

———A voter who writes the name of the candidate against the space left for the cross-mark commits a breach of the election rules. (*Devadoss, J.*). VENKATARAMIAH *v.* SUBBU REDDI. **90 I. C. 1055=22 M. L. W. 24=A.I.R. 1925 Mad. 1173.**

———*Rules regarding.*

The name of the candidate for whom the vote was not cast being struck out on the voting papers does not invalidate the vote. The appearance of a tracing of some letters under the cross-mark made on the voting paper against the name of one of the candidates does not invalidate the vote unless the marks are such that the voter may be identified from them. Where the cross-mark is bisected by the line between the names of the candidates no clear intention of the vote having been cast in favour of one candidate or the other can be gathered; and that vote should be excluded from the votes counted. The presence of writing other than the cross-mark would invalidate the vote only if it should be found that the writing is a mark by which the voter may be afterwards identified. [*Woodward* v. *Sarsons*, 10 C. P. 733, *Rel. on.*] It must be either a mark which on the face of it shows or may show the person who has voted or with regard to which there is evidence on the record which shows that the mark was put in there by some prearrangement or conspiracy by reason whereof by looking at the mark one will be in a position to say that it is the vote of such and such a person. In other cases also if the intention that the voter should be identified could be gathered from the mere appearance of the writing the vote will be rejected. (*Srinivasa Ayyangar, J.*). P. C. XAVIER *v.* E. C. JOSEPH. **87 I. C. 216=21 M. L. W. 654=A. I. R. 1925 Mad. 614=48 M. L. J. 268.**

———The rule that when the number of votes recorded exceeds the maximum that can be given at an election must be void, is perfectly sound, especially when there are no rules to meet such a contingency. (*Sanderson, C.J., John Woodroffe and Mukerji, JJ.*). NAGENDRANATH *v.* J. VAS.

60 I.C. 547=32 C.L.J. 124.

———*Fresh evidence inadmissible.*

Where the voting paper is void on the face of it no evidence should be allowed to vary the recorded voting paper. (*Sanderson, C. J., John Woodroffe and Mukerji, JJ.*). NAGENDRANATH *v.* J. VAS.

60 I.C. 547=32 C.L.J. 124.

—Vote.

———*Significance.*

The giving of a vote does not necessarily involve the exercise of judgment at all, it involves merely the expression or intimation of a wish or choice. That wish or choice may indeed be actuated by judgment; but it may also be actuated by mere whim or caprice. The method by which the wish or choice is arrived at is wholly immaterial, so long as the person upon whom the duty of giving the vote is cast expresses or intimates his wish or choice, however arrived at. (*Blackwell, J.*). J. B. PETIT *v.* MUNICIPAL CORPORATION, BOMBAY.

105 I.C. 759=29 Bom L.R. 1430=A.I.R. 1927 Bom. 622.

ELECTRICITY ACT (1910)—S. 12—Right to object.

ELECTIONS OFFENCES AND INQUIRIES ACT (39 of 1920).

—S. 11—Powers of Court.

———*Election set aside—No order as to costs—Court cannot award.*

In an election petition case an application was made before a Small Cause Court to execute the recommendation as to costs awarded by the Commissioners. At the time of the application the Governor had ordered the election to be set aside but had passed no order on the recommendation as to costs, though subsequently costs were ordered.

Held, that the Small Cause Court was bound to confine itself strictly to the order of the Governor as being the only instrument that justified execution being taken out. As the order of the Governor awarding costs did not exist at the time the application was made, the Court had no option but to dismiss the application. (*Das and Doyle, JJ.*). U. MAUNG GYEE *v.* U. BA SIN.

112 I.C. 449=6 Rang. 470=A.I.R 1928 Rang. 245.

ELECTION RULES—R. I.

—Interpretation.

———*Having jurisdiction.*

Certain acts complained of relating to an election, *i.e.*, that votes given for the petitioner at the election were wrongly rejected by the President of Taluk Board as invalid and that the President refused to recount the votes when requested to do so, took place at a place *P*. A petition attacking the validity of the election was presented to the Subordinate Judge at *C*, who had jurisdiction over the place where the candidates were nominated but not over the place where the alleged irregularities happened. According to Rule 1 of the Rules for the Conduct of Inquiries and Decision of Disputes relating to Elections the petition should be presented to the District or Subordinate Judge "having jurisdiction".

Held, that the expression "having jurisdiction" can only mean having jurisdiction over the place of the acts or omissions complained of. (*Reilly, J.*). KUTTY *v.* VYDIARAKATH KUNHALI HAJI.

59 M.L.J. 194.

ELECTRICITY ACT (9 of 1910).

—S. 12—Absence of permission.

———*No interference by High Court.*

A post was erected on the land of a person. Permission from the District Magistrate for erecting it was obtained not before erecting but after institution of suit by the owner of land. Lower Court dismissed the suit.

Held, that High Court would not interfere with the decision. (*Jai Lal, J.*). JIT SINGH *v.* GUJRANWALA ELECTRIC SUPPLY CO., LTD.

114 I. C. 692==A.I.R. 1929 Lah. 226.

—S. 12—Right to object.

———*Principle.*

The ordinary rule of law is that whoever owns the site is the owner of everything upto the sky and down to the centre of the earth, and such owner can, therefore, object to the laying of electric wire on his land although the line may be laid

ELECTRICITY ACT (1910)—S. 12—Powers of District Magistrate.

more than 30 feet above land. (*Jai Lal, J.*). JIT SINGH *v.* GUJRANWALA ELECTRIC SUPPLY CO., LTD. **114 I.C. 692=A.I.R. 1929 Lah. 226.**

—S. 12—Powers of District Magistrate.

——There is no law authorizing the District Magistrate to grant permission to an electric company to lay electric line over the land of a person. (*Jai Lal, J.*). JIT SINGH *v.* GUJRANWALA ELECTRIC SUPPLY CO., LTD. **114 I.C. 692= A.I.R. 1929 Lah. 226.**

—S. 14—Costs of removal.

——The defendants were a corporation who had obtained a license under the Indian Electricity Act, (Act 9 of 1910) and as licensees under the Act had put up an aerial line, etc., on a certain street within the Municipal District of the Municipality of Karachi, the plaintiffs. The Municipality having arranged with the North Western Railway Co., that the latter should effect an overbridge, the aerial line and poles had to be shifted from their position. The plaintiffs' suit was for declaration that the cost of removal should be borne by defendants.

Held: that S. 14 of the Electricity Act applied and not the Bombay District Municipal Act and that plaintiffs must bear the cost of removal. (*Tyabji, A.J.C.*). MUNICIPALITY OF KARACHI *v.* KARACHI ELECTRIC SUPPLY CORPORATION, LTD. **95 I.C. 226=A.I.R. 1926 Sind 115.**

—S. 22—Failure to supply.

——*Good cause for action.*

There is nothing in the Indian Electricity Act which bars, either expressly or impliedly, a suit for damages against licensee for failure to supply energy on proper requisition. (*Campbell, J.*). MUNICIPAL COMMITTEE, AMRITSAR *v.* SHANKAR DAS. **97 I.C. 537=A.I.R. 1926 Lah. 349.**

—S. 22—Substituted connection.

——*Procedure.*

Before a consumer can be supplied electric power from a new connection in substitution of an old one he must put in a fresh requisition in writing under paras. 4 and 5 of Cl. 6 of the Schedule to the Indian Electricity Act. (*Shah, Ag. C. J. and Fawcett, J.*). BHAGAVANJI SONKLESWAR *v.* AHMEDABAD ELECTRICITY CO., LTD. **85 I.C. 186= 49 Bom. 182= 26 Bom. L. R. 1206= A.I.R. 1925 Bom. 120.**

—S. 37—Removal of seals.

——*What amounts to.*

The evidence for the prosecution showed that when the officials of a licensee company visited the premises of the accused the seals which the company had affixed to the meter placed upon the premises of the accused had been removed,

Held, that the accused must be held responsible for removing these seals and that his conviction under R. 106 read with S. 37 (4) was justified. (*Shadi Lal, C.J.*). MAHOMED SADIQ *v.* DELHI ELECTRIC SUPPLY TRACTION CO. **116 I.C. 889= 30 Cr. L.J. 702=13 A.I. Cr. R. 115= 1929 Cr. C. 601=A.I.R. 1929 Lah. 867.**

—S. 50—'Person aggrieved.'

——A licensee-company is a person aggrieved within the meaning of S. 50. (*Shadi Lal, C. J.*). MUHAMMAD SADIQ *v.* DELHI ELECTRIC SUPPLY & TRACTION CO. **116 I.C. 889=30 Cr. L.J. 702= 13 A.I. Cr. R. 115=1929 Cr. C. 601= A.I.R. 1929 Lah. 867.**

—Sch. Cl. 6, prov. (2)—Discontinuance of supply.

——*Conditions.*

A part of the electric apparatus namely the seals of the cut-out were not in good order and condition.

EQUITY—Benefit and repudiation.

As a result of this defect there had been a leakage of energy,

Held, such a state of things must certainly be deemed to be "likely to affect injuriously the use of energy by the licensee or by other persons," and accordingly the electric company were entitled upon discovering this condition of things, to discontinue the electric supply.

Where a main fuse was burnt out, in other words, where the cut-out became defective,

Held, the company was entitled to discontinue the supply of energy to the consumer. (*Scott-Smith and Fforde, JJ.*). KARORI MAL *v.* E. T. LIGHTING CO., LTD. **75 I.C. 456=4 Lah. 182= 6 L.L.J. 86=A.I.R. 1924 Lah. 142.**

EMBEZZLEMENT.

See PENAL CODE, S. 4.

ENCROACHMENT.

See (1) ADVERSE POSSESSION.
(2) ACQUIESCENCE.
(3) LANDLORD AND TENANT.

ENCUMBRANCE.

See (1) BENGAL PATNI REGULATION.
(2) B. T. ACT, S. 159.
(3) MADRAS ESTATES LAND ACT.

——Execution sale, subject to.

See (1) C. P. CODE, O. 21, Rr. 62, 66.
(2) EVIDENCE ACT, S. 115.

ENDORSE.

See NEG. INST. ACT.

ENFRANCHISEMENT.

See GRANT—INAM.

ENGLISH LAW.

See also PRACTICE—PRECEDENTS.

ENGLISH RULES OF CONSTRUCTION.

See DEEDS—CONSTRUCTION.

ENHANCEMENT—Of Rent.

See (1) B. T. ACT, Ss. 50—52.
(2) LANDLORD AND TENANT.
(3) MADRAS ESTATES LAND ACT, S. 26.

——Of Sentence.

See CR. P. CODE, SS. 417, 439.

ENHANCING—Sentence.

See PENAL CODE, S. 75.

ENTICING AWAY MARRIED WOMAN.

See PENAL CODE, Ss. 497—498.

EQUITABLE ASSIGNMENT.

See (1) ASSIGNMENT.
(2) T. P. ACT, Ss. 130—137.

EQUITABLE MORTGAGE.

See TRANSFER OF PROPERTY ACT, S. 59.

EQUITABLE SET-OFF.

See C. P. CODE, O. 8, R. 6.

EQUITY.

—Application of principles.

——A remedy cannot be created in favour of a suitor on the principle of justice, equity and good conscience, when another remedy is already available to him and no case of real hardship is disclosed and when the remedy asked for practically means a declaration that the suitor need not be vigilant but may wait for a period of 12 years, if he chooses to do so, before he avails himself of the remedy. (*Ross and Fazl Ali, JJ.*). BHUVANESHWARI KUER *v.* MANIR KHAN. **111 I.C. 84= 7 Pat. 613=9 P. L. T. 573= A. I. R. 1928 Pat. 641.**

—Benefit and repudiation.

——It is an equitable principle that a man cannot enjoy a substantial benefit under an agreement and then repudiate it. (*Campbell and Zafar Ali, JJ.*). RAMJI DAS *v.* FAZL AZIM. **93 I. C. 959 (Lah.).**

EQUITY—Deliberate wrong.

—Deliberate wrong.

———*Party to—Cannot rely.*

A person who has deliberately brought about a state of affairs, should not be allowed to take exception to that state of affairs and use that changed state for his own advantage.

In the Articles of Association of an Insurance Company, it was provided that the meeting of the policy-holders was to be held in the registered office of the company. The directors of the company refused permission to hold the meeting in company's premises. The meeting was then held at another place,

Held, that the meeting was perfectly regular the change of venue in this case having been caused by the company itself: *New Zealand Shipping Co.* v. *Societe des Ateliers*, (1919) A.C. 1 and *Queshel Forks Gold Mining Co., Ltd.* v. *Ward*, (1920) A.C. 222, *Foll.* (*Beasley, J.*). SUBRAMANIA AIYAR *v.* UNITED INDIA LIFE INS. CO., MADRAS. **114 I.C. 636= A.I.R. 1928 Mad. 1215=55 M.L.J. 385.**

—English law.

———*Applicability.*

The rule of justice, equity and good conscience is in general identical with the rule of English law, but there are exceptions. (*Daniels, J.*). SHEO RATAN *v.* KARAN SINGH. **84 I.C. 269= 22 A.L.J. 788=5 L.R.A. Civ. 571=46 All. 860= A.I.R. 1924 All. 857.**

—Executor and legatee.

———*A* bequeathed certain sum of money by way of a legacy to *M*, who was a minor. *B* was appointed an executor by *A*. Subsequently *B* had also created incomplete gifts in *M's* favour by crediting certain amounts in his accounts in *M's* name. *B* laid out certain sum in buying a house for *M* in which *M* resided till his death. In a suit by heirs of *M* to recover the amount of legacy created in *M's* favour,

Held, that, it should be presumed that *B* paid for the house out of the legacy for which he was liable and not out of inchoate gifts for which he had not yet made himself liable at all. (*Viscount Sumner*). HARIRAM SEROWGEE *v.* MADAN GOPAL BAGLA. **114 I.C. 565=1929 A.L.J. 406=49 C.L.J. 335= 33 C.W.N. 493=31 Bom. L.R. 710= 1929 M.W.N. 422=30 M.L.W. 835= A.I.R. 1929 P.C. 77=57 M.L.J. 581.**

—Hire purchase contract.

———*Primary contract to be carried out.*

In relieving the hirer against forfeiture occasioned by default in the actual payment of instalments as they accrue both under S. 74 and under the general principles of equity the Court has to carry out the primary contract between the parties. Any further contract, express or implied to be binding on the promisor if he breaks the primary contract is secondary or subsidiary, and may be merely intended to secure the fulfilment of the primary contract. The Court may, however, carry out the terms of the secondary contract, if such a contract is just and reasonable but is not bound to: *Kilmer* v. *British Columbia Orchards Lands, Ltd.*, (1913) A.C. 319; *Steedman* v. *Drinkle*, (1916) 1 A.C. 275, *Foll.*; *Cramer* v. *Giles*, (1883) 1 Cab. & El. 151, *Expl.*; *Sterne* v. *Beck*, (1863) 1 De G. & Sm. 595, *Dist.* (*Wadia, J.*). BHIMAJI N. DALAL *v.* BOMBAY TRUST CORPORATION, LTD. **124 I.C. 800= 32 Bom. L.R. 64=A.I.R. 1930 Bom. 306.**

—Liability for loss to others.

———Wherever one of two innocent persons must suffer by the acts of a third person, he who has enabled such third person to occasion the loss must

EQUITY—Right to.

sustain it: *Commonwealth Trust Ltd.* v. *Akotey*, (1925) App. Cas. 72, *Foll.*

To permit goods to go into the possession of another, with all the insignia of possession thereof and of apparent title, and to leave it open to go behind that possession so given and accompanied, and upset a purchase of the goods made for full value and in good faith, would bring confusion into mercantile transactions, and would be inconsistent with law and with the principles so frequently affirmed: *Lickbarrow* v. *Mason*, (1787) 2 Term. Rep. 63, *Foll.* (*Das and Adami, JJ.*). BAIJANATH PRASAD *v.* FIRM NAND RAM DAS. **95 I.C. 867=1926 P.H.C.C. 183=7 P.L.T. 801= A.I.R. 1926 Pat. 353.**

—Mala fide purchaser.

———There can be no equity in favour of a purchaser in fraud of creditors who acts without *bona fides*. The vendee from the purchaser has no right to be paid what his vendor paid under a speculative and fraudulent purchase. (*Spencer, J.*). KASTURI CHETTY *v.* CHINNASAMI PILLAI. **95 I.C. 262= 1926 M.W.N. 293=23 M.L.W. 760= A.I.R. 1926 Mad. 624.**

—Nullifying of decree.

———Where a person is party to a decree and is bound by its terms he cannot be allowed to act in a manner so as to nullify or evade the terms of that decree. (*Gokaran Natk Misra and Nanavutty, JJ.*). ADITYA PRASAD *v.* JAGDISH PRASAD. **115 I.C. 105=5 O.W.N. 873=4 Luck. 93= A.I.R. 1929 Oudh 26.**

—Power of Court.

———*Cannot act against statute.*

It is not within the function of a Court of equity to contravene a direct provision of a Code in order to attain an equitable result, nor can it excuse a breach of a mandatory rule on the ground that it has resulted in justice. (*Ashworth, J.*). RAMDEO RAM *v.* FRANK COMBES. **117 I.C. 614= A.I.R. 1929 All. 437.**

———In the case of an instalment decree with a default clause the High Court as a Court of equity has wide powers to do what seemed to it just. There is no injustice in putting the decree-holder exactly in the same position as if no default has been committed because the decree-holder has the security of the property for the balance of the decretal amount, and interest was running on that amount. (*Macleod, C. J. and Shah, J.*). NARSINHA GOPAL *v.* BALWANT MADHAV WADGAONKAR. **64 I.C. 570=46 Bom. 463= 23 Bom. L. R. 1238=A.I.R. 1922 Bom. 170.**

—Procedure.

———Rules of procedure are not made for the purpose of hindering, but for the purpose of administering justice. (*Suhrawardy and Duval, JJ.*). CHARU CHANDRA GHOSH *v.* RAI BEHARI LAL. **80 I.C. 931=A.I.R. 1925 Cal. 157.**

—Right to.

———Where the sale was a legal and valid sale the fact that by accident or by act of God the property had since, with the exception of the site, been destroyed by fire, is not a sufficient ground for having recourse to the principles of equity, when there is a definite and specific rule of law applicable. (*Findlay, O. J. C.*). NIZAMUDDIN *v.* JUMMA. **88 I.C. 693=A.I.R. 1926 Nag. 17.**

———*Conditions.*

He who seeks equity must do equity. The plaintiff's conduct in equity must have been perfectly proper. His claim to equitable relief will be

EQUITY—Transference with and without value.

negatived by his fraud or misrepresentation or such other considerations. But merely abating a nuisance of which he complains, without the Court's intervention, is not any impropriety on the plaintiff's part, disqualifying him for equitable relief. (*Mukerji, J.*). BANESWAR BANDOPADHYA *v.* AMULYA CHARAN. **82 I.C. 309= A.I.R. 1925 Cal. 288.**

—Transference with and without value.

———There are no equities in favour of an alienee taking under a voluntary settlement as there are in favour of transferees for valuable consideration. The creation of a trust in favour of deity cannot be treated as one on an equal footing with a transfer for valuable consideration as the securing of merit by dedication of property to the service of God cannot be treated as forming good valuable consideration. (*Kinkhede, A. J. C.*). JANARDHAN KASHINATH KASAR *v.* JANARDHAN VISHWANATH SHASTRI. **101 I.C. 839=A.I.R. 1927 Nag. 214.**

—Wrong-doers.

———*No benefit.*

Graham, J.—Equitable considerations ought not to be invoked on behalf of the party who has put himself in the wrong by wilfully disregarding the law. (*Buckland, J., on difference between Suhrawardy and Graham, JJ.*). SHAM LAL KHETRY *v.* CORPORATION OF CALCUTTA. **1929 Cr. C. 525= 33 C.W.N. 777=A.I.R. 1929 Cal. 781.**

EQUITY OF REDEMPTION.

See T.P. ACT, SS. 60 AND 91.

ESCAPE FROM LAWFUL CUSTODY.

See PENAL CODE, SS. 223—226.

ESCHEAT.

See (1) LANDLORD AND TENANT.
(2) CROWN.

ESTATES PARTITION ACT (V (B.C.) of 1897).

See under BENGAL ESTATES PARTITION ACT.

ESTOPPEL.

See (1) EVIDENCE ACT, SS. 115, 116.
(2) T. P. ACT, SS. 43, 54.
(3) PART-PERFORMANCE.

EUROPEAN BRITISH SUBJECT.

See CR. P. CODE, SS. 528-A TO 528-D, 29-A AND 34-A.

EVICTION.

See EJECTMENT.

EVIDENCE.

See also (1) C. P. CODE, O. 18.
(2) EVIDENCE ACT.

Admissibility.
Appreciation of.
Circumstantial Evidence.
Corroboration.
Credibility.
Criminal Trial.
Documents.
Duty of Court.
Exclusion of.
Expert Evidence.
Hearsay.
Identification.
Onus.
Opinions.
Pedigree.
Personal knowledge.
Presumption.
Receipt.
Recitals.
Relevancy.—*See* **EVIDENCE ACT, S. 5.**
Sufficiency.
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EVIDENCE—Admissibility—Documents.

—Admissibility.

Admission.
Documents.
Form of.
Intention.
Irrelevant facts.
Objection to.
Record.
Statements.
Unstamped instrument.
Miscellaneous.

—Admissibility—Admission.

———Before a previous admission can be used against a party it must be put to him and an opportunity afforded to him to explain if it is capable of explanation. (*Tek Chand and Agha Haidar, JJ.*). GHULAM MURTAZA *v.* NAGINA. **31 Punj. L. R. 243.**

—Admissibility—Documents.

———*Unmarked.*

Where a document has been properly proved and discussed in the trial Court, it is admissible in evidence, though not marked as an exhibit. (*Bhide, J.*). MAHESH DAS *v.* NURA. **111 I.C. 381= A.I.R. 1929 Lah. 82.**

———*No date.*

Where a document bears no date and there is nothing to show how and under what circumstances it was prepared it should not be admitted in evidence. (*Greaves and B. B. Ghose, JJ.*). ADAM SARDAR *v.* BISWESWAR DAS. **92 I. C. 601= A. I. R. 1926 Cal. 684.**

———*No objection.*

That no objection was taken in the trial Court as to admissibility is no ground for allowing a document to be proved if the evidence is not admissible. (*Newbould and Graham, JJ.*). DAMODAR PODDAR *v.* JADUNATH DATT. **91 I.C. 449 (Cal.).**

———Where a document is admitted without objection in the trial Court, it cannot be objected to afterwards. (3 P. L. J. 306; 34 Cal. 1059; 11 Bom. 320 and 31 Cal. 155, *Foll.*). (*Daniels, J.*). BEHARI LAL *v.* AMIN CHAND. **79 I. C. 1029= 5 L.R.A. Civ. 398=A. I. R. 1924 All. 918.**

———*Invoice.*

Where the plaintiff sought to prove by producing the invoices sent to him by the consignors showing that the value of the goods amounted to Rs. 204,

Held, it is *prima facie* evidence of what the plaintiff was charged for the goods and what presumably he would have to pay for them and in the absence of cross-examination it is perfectly admissible evidence and it would not be necessary to call consignors and put them into the box to prove what was the actual value of the goods sent. (*Ryves, J.*). DUKHI RAM *v.* B. N. W. RAILWAY. **73 I.C. 440=4 L.R.A. Civ. 48= A.I.R. 1923 All. 145.**

———*Road-cess return.*

Where the Road Cess Return was signed by the landlords it would be admissible as against them. (*Adami, J.*). SADHU SARAN *v.* AMBIKA LAL. **68 I.C. 676=A.I.R. 1923 Pat. 163.**

———*Fresh evidence—Appeal.*

Plaintiff sued for mortgage-debt relying on certified copies on the ground that the mortgage-deeds were lost. The defendant pleaded that the deeds were included in a compromise decree and torn. The trial Court decided in favour of the defendant. The defendant, on appeal by the plaintiff, produced torn pieces of the bonds in the appellate instead of

EVIDENCE—Admissibility—Documents.

in the trial Court. On the plaintiff taking objection to their admissibility,

Held, fresh evidence should not have been admitted in order to enable the Court to decide the case in favour of the defendants, who claimed the benefit of the alleged compromise. (*Batten, J. C.*). THAKUR BHAIRONSINGH *v.* HINDUSINGH.

67 I.C. 237=A.I.R. 1922 Nag. 119.

———*Not acted upon.*

A document is obviously inadmissible, if it is not given effect to and the object for which it was executed, namely, the proposed compromise in a suit, fell through, as then the document has not the force of a decree. (*Jwala Prasad and Adami, JJ.*). SITARAM TEWARI *v.* GYA PRASAD.

A. I. R. 1923 Pat. 37.

———*Pro-note payable to bearer on demand.*

Pro-note payable to bearer on demand is unenforceable but is admissible in evidence to prove acknowledgment of prior debts. (*Spencer and Devadoss, JJ.*). NATARAJULU NAICKER *v.* SUBRAMANIAN CHETTIAR. **69 I.C. 939= 1922 M. W. N. 450=16 M.L.W. 705= 45 Mad. 778=A.I.R. 1922 Mad. 181= 43 M.L.J. 695.**

———*Two railway companies agreeing to work jointly—Suit against one for compensation for death by employee's negligence—Agreement between the companies—Admissibility of.*

Where two railway companies enter into an agreement for the joint working of a certain line, and one of them is sued for compensation for death caused by the negligence of an employee, the agreement between the companies will be *res inter se alios acta* in so far as it covenants as to liability *inter se* but in so far as it determines the position of the servants who perform their functions on the joint line, it is admissible as the best evidence. (*Lord Dunedin.*) BAIN *v.* CENTRAL VERMONT RAILWAY CO. **A.I.R. 1921 P.C. 221.**

—Admissibility—Form of.

———*Order.*

Where the only order passed on an application asking a document to be admitted in evidence was "file with record",

Held, that it is not proper admission of evidence. (*Greaves and B.B. Ghose, JJ.*). ADAM SARDAR *v.* BISWESWAR DAS. **92 I.C. 601= A.I.R. 1926 Cal. 684.**

—Admissibility—Intention.

———Evidence cannot be admitted about intention of parties when that intention is clearly expressed in deed. (*Cammiade and S. K. Ghose, JJ.*). BIMALA CHARAN *v.* ABDUL RAHMAN. **114 I.C. 81= A.I.R. 1928 Cal. 825.**

—Admissibility—Irrelevant facts.

———*No objection.*

An erroneous omission to object to evidence which would in no case be placed on the record cannot prevent the appellate Court from rejecting it. A case where relevant evidence has been brought on record in a wrong manner can be cured and defect removed if objection is taken at the time when evidence is tendered. But the failure to object to the reception of evidence which is irrelevant cannot make it relevant. (*Shadi Lal, C. J. and Agha Haidar, J.*). LACHHU *v.* MELA RAM. **119 I.C. 734=A.I.R. 1929 Lah. 583.**

———*Trial of other persons for same offence.*

Where accused were being tried for having taken part in a certain dacoity; the fact that certain other persons were previously tried for complicity in that dacoity and acquitted is absolutely irrelevant and immaterial. (*Stuart, C. J. and Raza, J.*). RAM PRASAD *v.* EMPEROR. **106 I.C. 721=2 Luck. 631= 1 L.C. 339=8 A.I. Cr. R. 449= A.I.R. 1927 Oudh 369.**

EVIDENCE—Admissibility—Objection to—Appellate Court.

———*Evidence to contradict possible evidence of opponent.*

There is no provision of law which makes evidence, contradicting possible evidence of a possible defence witness, admissible against the accused. (*Suhrawardy and Panton, JJ.*). BHAGIRATHI CHOWDHRY *v.* EMPEROR. **92 I.C. 174= 30 C.W.N. 142=27 Cr. L.J. 222= A.I.R. 1926 Cal. 550.**

—Admissibility—Matter found in illegal search.

———If a search warrant is illegal, then what is found as a result of that search can be put in evidence in a criminal case. 35 All. 358, *Rel. on.* (*Marten and Madgavkar, JJ.*). EMPEROR *v.* ABASBHAI. **93 I.C. 967=50 Bom. 344= 28 Bom.L.R. 272=27 Cr. L.J. 503= A.I.R. 1926 Bom. 195.**

—Admissibility—Objection to—Appellate Court.

———Where certain documents were received by the trial Court without proof and the objection as to their reception was for the first time raised in appeal, *held*, that the objection could not be entertained. (*Dalip Singh, J.*). GORKHA *v.* KAHNUN. **30 P.L.R. 693.**

———*C. P. Code, O.* 26, *R.* 12 (2).

When a party does not raise his objections before the Commissioner appointed for partition, and does not object to the Commissioner's report in the lower Court, he is not entitled to come up to the High Court and object to the recommendations made by the Commissioner, although the High Court is not precluded from considering whether the Commissioner acted within his jurisdiction or not. 6 M. H. C. R. 36 and 6 Bom. H. C. R. 149, *Ref.* (*Devadoss and Walsh, JJ.*). KRISHNA REDDIAR *v.* RAMANUJA REDDIAR. **114 I.C. 232= A.I.R. 1929 Mad. 492.**

———*Second appeal.*

It is unfair to allow a party in second appeal for the first time to object to the reception of evidence with the possible necessity of the case being sent back for rehearing. (*Sanderson, C. J., Panton and Graham, JJ.*). BROJENDA KISHORE *v.* MOHIM CHANDRA. **99 I.C. 189=31 C.W.N. 32= A.I.R. 1927 Cal. 1.**

———*Second appeal—Document exhibited mechanically in Trial Court.*

Where a copy of a registered sale-deed was put in by the defendants in the suit, with a list, and it was never afterwards referred to in the Trial Court which exhibited the document mechanically and without any reason and objection was taken to its admissibility in second appeal,

Held, that the appeal should be accepted and in the interests of justice the whole case sent back for re-trial *de novo* under R. 23. (*Addison, J.*). KISHNA *v.* WARYAMAN.

99 I.C. 920=8 L.L.J. 537= A.I.R. 1927 Lah. 45.

———*No objection in Trial Court.*

Evidence admitted by the Trial Court without any objection at the time when it was offered should not be excluded from consideration by the appellate Court though it may not be legally admissible. 7 M.I.A. 128; 13 M.I.A. 519; 11 B. 320, *Foll.* (*Abdul Raoof and Abdul Qadir, JJ.*) MT. CHANNI BIBI *v.* AHMAD KHAN. **69 I.C. 331= A.I.R. 1924 Lah. 265.**

EVIDENCE — Admissibility — Objection to—Appellate Court.

———*Admission of copy of document.*

A certified copy of a written statement was put in the lower Court in the presence of plaintiff's counsel and without objection by him.

Held, he cannot be permitted in High Court to object that only the original could have been received as proof. (*Martineau and Campbell, JJ.*). DURGA DAL-JAGAN NATH *v.* RAM PARTAB SUKH DAYAL. **79 I.C. 221=A.I.R. 1923 Lah. 138.**

———*No objection in Trial Court.*

Evidence admitted in Trial Court without objection cannot be attacked in appeal. (*Chatterjea and Pearson, JJ.*). RAJESWARI DASI *v.* PULIN BEHARI. **62 I.C. 647=25 C.W.N. 881= A.I.R. 1921 Cal. 71.**

—Admissibility—Objection to—Mode of proof.

———When a fact relevant in itself has been wrongly allowed to be proved in a manner not permitted by law unless the opposite party objects to the evidence at the time when it is offered, he cannot object afterwards. (*Campbell, J.*). JHANDA SINGH *v.* HARNAM SINGH. **94 I.C. 75=27 P.L.R. 260= A.I.R. 1926 Lah. 415.**

———*Appellate Court.*

If no objection be taken in the first Court to the admissibility of evidence on the ground of improper proof, such objection cannot be raised in appeal. 31 Cal. 1059 at p. 1074 (P.C.), *Foll.* (*Baker, J.C.*). R. & K. RY. COMPANY *v.* ZIHURUS SYED ALIVI. **78 I.C. 34=A.I.R. 1924 Nag. 358.**

———*Waiver.*

The question of the mode of proof is a question of procedure and is capable of being waived by a party. Where the question of the admissibility of documents was not raised before the Trial Court, it must be assumed that the party waived his objection to the mode of proof adopted by the opponent. (*Das and Adami. JJ.*). MT. BIBI KANIZ ZAINAB *v.* SYED MOBARAK HOSSAIN. **72 I.C. 748= A.I.R. 1924 Pat. 284.**

—Admissibility—Objection to—Omission to take.

———*Privy Council.*

Where no objection was taken to the admissibility of a document, Privy Council did not think it necessary to consider whether the document was admissible under the Evidence Law of the country. (*Lord Chancellor*). BHAGAT RAM *v.* KHETU RAM. **116 I.C. 394=A.I.R. 1929 P.C. 110.**

———*Hearsay evidence.*

The failure of an advocate to object to the admission of evidence cannot so alter the character of testimony as to convert into corroborative evidence that which the law regards as merely fit for rejection as hearsay. (*Lord Darling*). LIM YAM HONG & CO. *v.* LAM CHOON & CO. **107 I.C. 457= 47 C.L.J. 288=30 Bom. L.R.757 = 29 M.L.W. 520=A.I.R. 1928 P.C. 127= 56 M. L. J. 88.**

———*Effect of.*

Where evidence is admitted in the first Court without any objection being taken to its reception and the evidence is admissible as relevant no party will be allowed to object to the reception of such evidence at any later stage of the litigation. A.I.R. 1925 Cal. 1034 and 19 All. 76 (P.C.), *Foll.* But an omission to take objection to the reception of a document which is irrelevant or inadmissible in evidence in the case does not make it admissible. 19 All. 76 (P.C.), *Foll.* (*Suhrawardy and Mukerji, JJ.*). MANMATHA NATH KAR *v.* PROBODH CHANDRA RATORI. **94 I.C. 279=43 C.L.J. 274.**

EVIDENCE — Admissibility — Objection — When should be taken.

———*Admission by Court—No reasons recorded.*

Where at the time of the admission of the evidence the parties did not take an objection that they had no opportunity to argue on it, the fact that the Judge who admitted the evidence neglected to state his reasons for admitting it, does not render the evidence inadmissible. (*Greaves and Cuming, JJ.*). NABIN CHANDRA *v.* GOUR MOHAN. **90 I.C. 756= A. I. R. 1926 Cal. 369.**

———*Nature of evidence—Mode of proof—Distinction.*

Neither an omission by an advocate to object to the giving of irrelevant and inadmissible evidence, nor the failure of the tribunal to exclude it of its own motion will validate a decree based on material which the Evidence Act declares to be inherently and in substance irrelevant to the issue. But a wholly different question arises where the objection is not as to the nature and quality of the evidence in itself, but merely as to the mode of proof put forward. 43 Mad. 609 (F.B.), *Rel. on.* (*Odgers, J.*). THAMMAYYA *v.* CHINNAYA. **92 I.C. 594= 22 M.L.W. 752=1926 M.W.N. 38= A.I.R. 1926 Mad. 282.**

———*Effect of.*

An erroneous omission to object to evidence which is not admissible under the provisions of the Evidence Act does not make it admissible. (*Mukerjea and Rankin, JJ.*). JAGADISH CHANDRA DE *v.* HARIHAR DE. **78 I.C. 219=40 C.L.J. 39= A.I.R. 1924 Cal. 1042.**

———*Effect of—Duty of Judge.*

The mere omission to object to a document which is not in itself admissible as evidence does not constitute that document evidence so as to be available to either party at the trial. It is clearly the duty of the Judge, apart altogether from any objection by the parties or their pleaders, to exclude irrelevant evidence. (*Dawson Miller, C.J. and Mullick, J.*). MT. SUMITRA KUER *v.* RAM KHAIR CHOWBEY. **1921 P.H.C.C. 17=A.I.R. 1921 Pat. 61.**

—Admissibility—Objection — When should be taken.

———A document can be objected to as irrelevant at any time; a document can be objected to as inadmissible as opposed to irrelevant at the first hearing only. (*Harrison, J.*). GHULAM MUHAMMAD *v.* KALIM ULLAH. **109 I.C. 728=10 L.L.J. 370= A.I.R. 1928 Lah. 428.**

———The proper time for the raising and the determination of all questions as to the admissiblity of documentary evidence is the time when such documents are tendered in evidence. (*Mears, C. J. and Piggott, J.*). MT. MISRI *v.* MT. RAJMATI. **89 I. C. 849=A. I. R. 1926 All. 103.**

———Questions regarding the admissibility of evidence should ordinarily be raised at the time when such evidence is tendered. (*Mears, C.J. and Piggott, J.*). EMPEROR *v.* HAR PRASAD BHARGAVA. **77 I. C. 961=21 A. L. J. 42=45 All. 226= 4 L. R. A. Cr. 19=25 Cr. L. J. 497= A. I.R. 1923 All. 91.**

———*Want of proper proof.*

Where a piece of evidence not proved in the proper manner has been admitted without objection, it is not open to the opposite party to challenge it at a later stage of the litigation. But where evidence has been received without objection in direct contravention of an imperative provision of the law, the principle on which unobjected evidence is admitted, be it acquiescence, waiver or estoppel, does not apply as none of them is available against

EVIDENCE—Admissibility—Record.

a positive legislative enactment. 8 C. W. N. 101, *Foll.* (*Suhrawardy and Cuming, JJ.*). SHIB CHANDRA SINGHA *v.* GOUR CHANDRA PAUL.
68 I. C. 86=27 C. W. N. 134=35 C. L. J. 473=A.I.R. 1922 Cal. 160.

—Admissibility—Record.

———*Department map—Admission in Appellate Court.*

Where the lower Appellate Court asked the Superintendent of Land Records to send a map from his department in the presence of the parties and subsequently the map was inspected by the Court and admitted in evidence,

Held, that the lower Appellate Court was not wrong in admitting the map in question in evidence and basing its decree thereon. (*Das, J.*). MA SIT *v.* L. A. L. A. ANNAMALAI CHETTIAR.
104 I. C. 671=6 Bur. L. J. 112=A. I. R. 1927 Rang. 330.

———*Case.*

Contents of record in a previous case are not admissible unless admitted or proved. (*Campbell, J.*). MUHAMMAD ZAKRIA *v.* GULAM ALI.
95 I.C. 137.

———*Judicial proceeding.*

Evidence recorded in a previous judicial proceeding between the same parties can be made admissible in a subsequent proceeding by the consent of both parties. 43 Mad. 669, *Foll.* (*Odgers, J.*). VARADARAJULU *v.* VELAYUDA. **90 I.C. 743=22 M.L.W. 230=A.I.R. 1925 Mad. 1160.**

———*Report of sale.*

Where the fact of sale was reported to a Revenue Officer but the sale itself was not registered, the report to the Revenue Officer is admissible as evidence as to what was reported, though the report cannot be, or take the place of a sale-deed. (*Pratt, J.*). MG. SHWE H MON *v.* MG. THA BYON.
72 I.C. 6=11 L.B.R. 462=A.I.R. 1923 Rang. 125.

———*Cr. P. Code, S.* 110—*Proceedings.*

In a trial for an offence under S. 396 of the Penal Code, the result of proceedings taken against the accused under S. 110 of the Cr. P. Code is not admissible. (*Walmsley and Huda, JJ.*). ASIMUDDIN *v.* EMPEROR. **59 I.C. 204=22 Cr.L.J. 60=32 C.L.J. 89.**

—Admissibility—Statements.

———*Usual course of business.*

A statement made in the usual course of business by respectable companies concerned with shipping showing the amount of goods omitted to be delivered to various consignees is admissible in a suit by a consignee against shipowner for damages for short delivery. (*Srinivasa Aiyangar, J.*). PONNUSWAMY CHETTIAR *v.* BRITISH INDIA STEAM NAVIGATION. **108 I.C. 196=1927 M.W.N. 728=27 M.L.W. 439=A.I.R. 1928 Mad. 239=54 M.L.J. 636.**

———*Accused in custody.*

In an excise case statements of the accused taken after the accused were taken to the excise barracks and while they were in custody, were held to be not voluntary statements and hence inadmissible. (*C. C. Ghose and Duval, JJ.*). BATASI MONI DASSI *v.* EMPEROR. **98 I.C. 401=53 Cal. 706=30 C.W.N. 854=27 Cr. L.J. 1329=A.I.R. 1926 Cal. 1163.**

———*Persons not examined.*

Statements made by persons, who have not been examined in Court about the absence of the accused, when search was made for accused, are inadmissible. (*Newbould and B.B. Ghose, JJ.*). KERAMAT MONDAL *v.* EMPEROR. **92 I.C. 439=42 C.L.J. 524=27 Cr. L.J. 263=A.I.R. 1926 Cal. 320.**

EVIDENCE—Admissibility—Miscellaneous.

———*Witness in judgment.*

The statement of a witness abstracted in a judgment can be made use of only in one of two ways either under S. 145 of the Evidence Act to contradict the witness or as an admission under S. 21. It cannot be used in lieu of the original statement itself. (*Beasley, C.J. and Curgenven, J.*). SARADAMBA *v.* PATTABHIRAMAYYA. **1930 M.W.N. 601.**

———*Witness before Coroner.*

At the trial of the accused in the Court of Sessions a statement made by a witness in a proceeding before the Coroner is admissible in evidence. (*Madgavkar, J.*). EMPEROR *v.* RAGHOO GANPAT.
97 I.C. 37=28 Bom.L.R. 775=27 Cr. L.J. 1061=A.I.R. 1926 Bom. 404.

———*Conflicting testimony.*

Statement made by a witness at the trial should be altogether rejected when it is in hopeless conflict with his previous statements. (*Martineau and Zafar Ali, JJ.*). RAM KARAN *v.* EMPEROR.
92 I. C. 577=7 L. L. J. 371=26 P.L.R 659=27 Cr. L.J. 289=A.I.R. 1925 Lah. 483.

———*Consent of parties.*

Statements which are not admissible in evidence cannot be rendered admissible by consent of parties. (*Martineau and Zafar Ali, JJ.*). SUNDAR SINGH *v.* SHAM SINGH. **80 I.C. 235=A.I.R.1923 Lah. 630.**

———*Police file—Thanedar's statement in other case.*

In order to prove an alleged theft of an account book in a Civil Court from the plaintiff's house the police file and a copy of the statement made by the Thanedar in other case are inadmissible. (*Wilberforce, J.*). BARU *v.* SUKHA SINGH. **69 I.C. 1008=4 L.L.J. 418=A.I.R. 1921 Lah. 332.**

———*Extracts of Suit Register.*

Where a judgment or decree in a suit cannot be produced as it had been destroyed, the extract from the suit register is admissible. (*Bhide, J.*). MOHAMED BUDHA *v.* GHULAM QADIR.
112 I.C. 651.

—Admissibility—Unstamped instrument.

———*Determination of—Stamp Act, S.* 2 (11).

The Court, in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, will look at the document itself as it stands, and not at any collateral circumstances which may be shown in evidence. 16 Cal. 432 and 6 Bom. L. R. 699, *Foll.* (*Macleod, C.J. and Coyajee, J.*). RAMPRASAD SHIVLAL *v.* SHRINIVAS BALMUKUND.
90 I.C. 685=27 Bom. L.R. 1122=A.I.R. 1925 Bom. 527.

———*Cancellation of stamp—Stamp Act, S. 12.*

Where the stamp upon a hundi is cancelled at a later date and not at the time of executing the hundi the cancellation is not valid and the hundi should be treated as unstamped and so inadmissible in evidence. (*Macleod, C. J. and Coyajee, J.*). DAYARAM SURAJMAL *v.* CHANDULAL DAYABHAI.
90 I.C. 689=27 Bom.L.R. 1118=A. I. R. 1925 Bom. 520.

—Admissibility—Miscellaneous.

———*Admissibility and credibility.*

Admissibility is a question of law and credibility of evidence is one of fact. (*Walsh, A.C.J. and Sulaiman, J.*). MEHI LAL *v.* RAMJI DASS.
80 I.C. 939=22 A.L.J. 864=5 L.R.A. Civ. 720=47 All. 13=A.I.R. 1924 All. 792.

EVIDENCE—Appreciation of—Appellate Court.

—Appreciation of—Appellate Court.

———In every case that comes before an appellate Court the lower Court has the advantage of seeing and hearing the witnesses and the appellate Court has not, but it cannot be said that an appellate Court can never hope to make a diagnosis as to the truth of the case as good as that made by the lower Court. No doubt it is an advantage to see and hear the witnesses, but it is an advantage which may be counter-acted and more than counter-acted by the greater experience and knowledge of the appellate Court. (*Pullan, J.*). GURCHARAN *v.* EMPEROR.

103 I.C. 416=1 L.C. 190= 8 A.I. Cr. R. 379= 28 Cr.L.J. 688=A.I.R. 1927 Oudh 611.

—Appreciation of—Deposition.

———*Stray sentences.*

A few (say two) casual and somewhat ambiguous phrases in a deposition cannot destroy the very clear effect of the whole deposition. (*Batten, J.C. and Hallifax, A.J.C.*). MT. KUSHIBAI *v.* MANRAKHAN. **79 I.C. 422=7 N.L.J. 217= A.I.R. 1923 Nag. 265.**

—Appreciation of—Discrepancies.

———*Date.*

Where the discrepancies between witnesses as to dates is not unnatural, it far from being necessarily a badge of fraud, is an indication of *bona fides.* (*Lord Tomlin.*) MUDANNA VIRAYYA *v.* MUDANNA ADENNA. **121 I.C. 205=51 C.L.J. 136= 1930 M.W.N. 60=32 Bom.L.R. 499= 31 M. L. W. 176=A.I.R. 1930 P.C. 18= 58 M.L.J. 245 (P.C.).**

———A slight change in the statement as to date of birth is not necessarily to be discredited. (*Wazir Hasan, J.C. and Kendall, A.J.C.*). BANS BAHADUR SINGH *v.* SAKAL RAJ KUAR. **81 I.C. 484= 11 O.L.J. 297=A.I.R. 1924 Oudh 385.**

—Appreciation of—Findings.

———*Credibility.*

The lower Court is the proper and, in general, the final Judge of the credibility of evdience. (*Curgenven, J.*). M. KANNIAPPAN *v.* KULLAMMAL. **1930 Cr. C. 88=1929 M.W.N. 696= 2 M.Cr.C. 275=A.I.R. 1930 Mad. 194.**

———*Oral evidence.*

The finding of fact of Trial Court on the oral evidence should not be lightly interfered with as that Court is in a much better position to gauge the truth and value of the oral evidence than the appellate Court. (*Sir Lancelot Sanderson.*) R. ARUNACHALA NAYUDU *v.* S. R. BALAKRISHNA & CO. **107 I.C. 349=A.I.R. 1927 P.C. 266.**

———*Appeal Court—Credibility.*

Where the District Court had not examined the witnesses nor had it had an opportunity of observing those witnesses' demeanour, and in fact it was in no better position than the High Court to judge of the reliability of the witnesses' evidence,

Held, that though as a rule very great value would be attached by the High Court to the finding of the District Court on facts, yet, in this case, its finding could be upset. (*Duckworth and Godfrey, JJ.*). MA E KHIN *v.* MAUNG SEIN. **88 I.C. 167= 2 Rang. 495=A.I.R. 1925 Rang. 71.**

—Appreciation of—Injury.

———*External marks.*

The absence of any external mark of injury is not necessarily destructive of the case that the injury was caused by a brick. It is possible that a blow in the abdomen is less likely to leave a mark than one on a less elastic and resilient part of the anatomy. (*Mullick and Kulwant Sahay, JJ.*). RAMJIT AHIR *v.* EMPEROR. **74 I.C. 705=2 Pat. 309= 1 Pat. L.R. Cr. 236=24 Cr. L.J. 801= A. I. R. 1923 Pat. 413.**

EVIDENCE—Appreciation of—Presumption.

—Appreciation of—Maxim.

———Per *Hallifax, A. J. C.*—The maxim *falsus in uno falsus in omnibus* is entirely false. (*Hallifax, Prideaux and Kotval, A. J. Cs.*). SAKKU *v.* EMPEROR. **65 I. C. 561=23 Cr. L. J. 129= A.I.R. 1922 Nag. 146.**

—Appreciation of—Memory.

———*Imagination or fact.*

"Men without deliberately intending to falsify facts are extremely prone to believe what they wish, to confound what they believe with what they heard and to ascribe to memory what is merely the result of imagination." (*Daniels and Lyle, A.J.Cs.*). MT. ANJUMAN-UN-NISA *v.* SHAIK ASHIG ALI. **66 I.C. 222=8 O.L.J. 439= A.I.R. 1922 Oudh 178.**

—Appreciation of—Oral evidence.

———*Absence of documentary evidence.*

Where the oral evidence produced is itself convincing the absence of documentary evidence in support of it should not be made much of. 3 Lah. 48 (P. C.), *Rel. on.* (*Abdul Raoof and Abdul Qadir, JJ.*). MT. CHANNI BIBI *v.* AHMAD KHAN. **69 I.C. 331=A.I.R. 1924 Lah. 265.**

———Alibi *in criminal case.*

Where witnesses for the accused deposed that they met the accused Ghulam Ali and Fazal Illahi at Sangla about 10 A.M. on the 12th of July and this oral evidence was unsupported by any documentary evidence and the witnesses were not persons who would remember the date precisely,

Held, such evidence as that is easily obtainable in this country. (*Le Rossignol and Zafar Ali, JJ.*). JALAL *v.* KING-EMPEROR. **81 I.C. 347= 25 Cr.L.J. 811=A. I. R. 1923 Lah. 232.**

—Appreciation of—Partition papers.

———*Value on questions of existence of tenancy.*

Partition papers are not of real assistance in the absence of detailed information as to the history of the document mentioned, when it was prepared, by whom, in whose presence, and for what purpose.

The question whether a document is admissible in evidence as a public document is fundamentally distinct from the question whether its contents are binding upon tenants without proof of notice on them or of their consent. Weight will obviously have to be attached to the statutory provisions for the partition of estates in operation at that time; and how far the proceedings did in fact conform to these rules is plainly a relevant matter. (*Mookerjee and Chotzner, JJ.*). TARA KUMAR GHOSE *v.* KUMAR ARUNCHANDRA SINGH. **74 I.C. 383= 36 C.L.J. 389=A.I.R. 1923 Cal. 261.**

—Appreciation of—Presumption.

———*Non-production of accounts.*

Where certain documents produced after the defendant's examination showed that the defendant's story on an important point was false and notwithstanding the fact that opportunity was given to recall him and explain, if possible the contradiction, he was not recalled and where accounts in his possession, though summoned, were not produced,

Held, that the proper presumption from these circumstances was that the defendant's case is untrue. (*Lord Phillimore.*) VENKANNA *v.* AGASTHIAH. **32 M.L.T. 36=27 C. W.N. 725= A.I.R. 1923 P.C. 31.**

EVIDENCE—Appreciation of—Presumption.

———*Possession following title.*

Where there is strong evidence of possession on the part of the respondents, opposed by evidence apparently strong also on the part of the appellants in estimating the weight due to the evidence on both sides, the presumption may well be regarded that possession went with the title. (*Mookerjee and Chotzner, JJ.*). PROMODE KUMAR ROY *v.* MADAN MOHAN SAHA PRAMANIK. **70 I.C. 555= 27 C.W.N. 305=36 C.L.J. 396= A.I.R. 1923 Cal. 228.**

—Appreciation of—Privy Council.

———Where the trial Court, who had seen the witnesses, disbelieved the evidence of the preparation and execution of the will, the Privy Council refused to dissent from him in his estimate of the evidence of the witnesses on those points. (*Sir Binod Mitter.*) VELLASWAMY SERVAI *v.* L. SIVARAMAN SERVAI. **121 I.C. 230= 51 C.L.J. 150=34 C.W.N. 206=31 M.L.W. 185= 1930 M.W.N. 394=32 Bom. L.R. 511= 57 I.A. 96=8 Rang. 179=A.I.R. 1930 P.C. 24= 58 M.L.J. 114 (P.C.).**

—Appreciation of—Probabilities.

———*Based on certain fact not leading to one conclusion—Judge can draw legitimate inferences from facts proved—When particular inference cannot be reasonably drawn from facts partly relying on it for discharging onus of proof fails—Evidence—Burden of proof.*

Where the Court has to depend upon probabilities based on certain facts which do not lead to one conclusion, the Judge is entitled to draw inferences from the facts proved before him, but the inferences must be such as could be legitimately drawn from the facts. If the facts are such that no reasonable man could draw a particular inference is such as to be equally consistent with non-liability and with liability, then the party who relies on the inference to discharge the onus of proof of establishing liability fails. *Smith, Ltd.* v. *G. W. Railway Co.*, (1921) 2 K. B. 237, *Foll.* (*Suhrawardy and Patterson, JJ.*). BENGAL-NAGPUR RAILWAY COMPANY *v.* MOOLJI SICKA & CO. **52 C.L.J. 235.**

—Appreciation of—Proof.

———*Positive and negative.*

An affirmative proposition is not established by showing that the witnesses who depose to a contradictory negative proposition are not roliable. Of course, if there is a conflict of evidence on a point, it would be perfectly legitimate to take into consideration the circumstantial evidence with a view to show that evidence of the first class of witnesses was true and that of the second false. (*Lord Atkinson.*) SARATKUMARI *v.* AMULYADHAN. **71 I.C. 632=17 M.L.W. 481=27 C.W.N. 629= 25 Bom. L.R. 548=37 Cal. L.J. 501= 1923 M.W.N. 392=32 M.L.T. 137= A.I.R. 1923 P.C. 13 (P.C.).**

———*Use of King Edward Stamp in* 1915.

The mere fact that the promissory note is stamped with a King Edward stamp does not prove that the note was executed in 1911 and not in 1915, in the absence of any evidence that there were no King Edward stamps in existence in 1915. (*Moti Sagar, J.*). MT. CHANDO *v.* SIRI RAM. **80 I.C. 177=A.I.R. 1923 Lah. 607.**

—Appreciation of—Relevant evidence.

———*Cumulative effect.*

The proper and satisfactory way of appreciating evidence is to consider, not whether each piece of evidence proves the case by itself, but to consider the cumulative effect of all the relevant items of evidence adduced in the case. 31 All. 412 (P.C.), *Foll.* (*Ananthakrishna Ayyar, J.*). VENKATARAMAYYA *v.* VENKATAPPAYYA. **122 I.C. 663= 1929 M.W.N. 664=A.I.R. 1930 Mad. 337.**

—Appreciation of—Reliability.

———*Signature in different places.*

The fact that in one place of an account book the signature of a party may be forged cannot preclude the Court from holding that his signature in another place is genuine. (*Odgers, J.*). RAMASWAMI *v.* RAJU. **96 I.C. 1051=1926 M.W.N. 635= A.I.R. 1926 Mad. 963=51 M.L.J. 167.**

———*Vernacular record.*

Generally in cases where evidence is given by a witness in his own language, the vernacular record is always treated as more reliable and entitled to greater weight, though this maxim could not always be safely applied in cases where a Magistrate who is taking down the evidence simultaneously in English understands the language as well as his reader. (*Abdul Qadir, J.*). SADHU SINGH *v.* KING-EMPEROR. **73 I.C. 513=24 Cr.L.J. 625= A.I.R. 1923 Lah. 167.**

———*Confession—Delay.*

When the story of confession was not told by the witness until after a fortnight of the occurrence, the evidence is unreliable. (*Coutts and Adami, JJ.*). NIRU BHAGAT *v.* EMPEROR. **71 I.C. 219= 1 Pat. 630=4 P.L.T. 76=24 Cr.L.J. 91= A.I.R. 1922 Pat. 582.**

—Appreciation of—Trial Court's opinion.

———The Court of appeal ought to give sufficient weight to the opinion of the trial Judge on the demeanour, intelligence, position and character of the witnesses who were brought before him before reviewing the findings of the trial Judge, who, upon such matters, is in a position to form a much better judgment than could be formed by Judges who had not had the advantage of seeing the witnesses. A.I.R. 1923 P.C. 62, *Rel. on.* (*Raymond and Madgavkar, A.J.Cs.*). RATANSING GULABSING *v.* NANIK RAM CHATOMAL. **20 S.L.R. 220= A.I.R. 1927 Sind 219.**

—Appreciation of—Will.

———*Circumstantial evidence.*

Where if *B* had been adopted there was no necessity to have a will in his favour and it seemed that the husband of testatrix in his desire to retain the property of his deceased wife in his hands had been resorting to various devices and the idea of getting a will from his wife shortly before her death was one of those devices.

Held, that neither the will nor the adoption was held to be proved. (*Broadway and D. Abdul Qadir, JJ.*). HAR BHAGWAN *v.* HUKAM SINGH. **68 I.C. 769=4 Lah. L.J. 245=3 Lah. 242= A.I.R. 1922 Lah. 243.**

—Appreciation of—Witnesses.

———*Cross-examination—Demeanour.*

Unless the evidence given by witnesses is shaken in cross-examination or their demeanour is such as to lead one to the inevitable conclusion that they have perjured themselves, no Court is entitled to discard evidence on the ground that the witnesses are tenants of a party to the suit. (*Wort, J.*). BEAS SINGH *v.* KHEDU MIAN. **123 I.C. 637= A.I.R. 1930 Pat. 58.**

———*Partisans.*

Where the witnesses are partisans there is always a tendency to strain a point in favour of a friend. It is doubtful if such can conceive that he was thereby doing something improper. The attitude of mind is often a self-deception produced

EVIDENCE—Appreciation of—Witnesses.

sub-consciously by an outside cause. In these circumstances best method to arrive at a correct conclusion is to look at inherent probabilities of the case. (*Stuart, C. J. and Raza, J.*). NISAR ALI KHAN *v.* MUHAMMAD ALI KHAN. **119 I.C. 337=6 O.W.N. 549=A.I.R. 1929 Oudh 494.**

———*Contradictory evidence—Credibility—Finding of trial Court.*

It is doubtless true that on appeal the whole case, including the facts, are within the jurisdiction of the appeal Court. But, genearally speaking it is undesirable to interfere with the findings of fact of the trial Judge who sees and hears the witnesses, and has an opportunity of noting their demeanour, especially in cases where the issue is simple and depends on the credit which attached to one or other of conflicting witnesses.

When the appellate Court finds witnesses for plaintiff deposing to facts absolutely contrary to the facts to which the witnesses for defendant depose; when witnesses on one side are *prima facie* as deserving of credit as the witnesses on the other side, when the witnesses on neither side have been shaken in cross-examination and when trial Court has applied its mind intelligently as to the witnesses whom it should believe and the witnesses whom it should not believe, the finding of the trial Court as to the credibility of the witnesses should be accepted. A. I. R. 1915 P. C. 1, *Foll.* (*Stuart, C. J. and Raza, J.*). RAJ BOCHAN SINGH *v.* SRI THAKORJI MAHARAJ. **4 O.W.N. 1179=A.I.R. 1927 Oudh 618.**

———*Interested.*

Where the brother of the witness in question brought a complaint for causing hurt against the first cousin of the accused a year before,

Held, that this was not a sufficient reason for disbelieving the evidence of the witness. (*Scott-Smith and Martineau, JJ.*). DILIP SINGH *v.* EMPEROR. **86 I.C. 341=7 L.L.J. 44=26 Cr.L.J. 757=A.I.R. 1925 Lah. 318.**

———*Medical opinion—Eye-witness—Value of.*

Where there is the testimony of a considerable body of trustworthy witnesses of good position and undoubted respectability who were able to observe facts and draw inferences therefrom, who acted not in secrecy but with the utmost publicity in the midst of a large assembly and who had no intelligible motive to engage in a conspiracy for setting up a false testamentary instrument, the opinion of medical man as to what should have been the probable state of the testator should not outweigh and prevail over the testimony of such eye-witnesses. (*Mookerjee and Chotzner, JJ.*). SARADINDU NATH RAI CHAUDURI *v.* SUDHIR CHANDRA DAS. **69 I.C. 48=50 Cal. 100=35 C.L.J. 569=A.I.R. 1923 Cal. 116.**

———*Debtor to party.*

To say that, because one in the ordinary course of one's business, owes money to a certain person, one should not be believed when speaking in favour of that person, is too absurd. (*Maung Kin, J.*). MAUNG PO GYON *v.* MAUNG SO. **70 I.C. 902=1 Bur. L.J. 213=A.I.R. 1923 Rang. 30.**

———*Suggestion of doubt—Poor witness—Credibility.*

In order to discredit a witness it is not enough to suggest doubts about his veracity. If the means of contradiction are available to the party who challenges his truthfulness these should be produced before the Court. It cannot be affirmed as a general rule that a person is not trustworthy because he is not wealthy. (*Mookerjee and Buckland,*

EVIDENCE—Circumstantial evidence.

JJ.). PRASANNAMOYI DEBI *v.* BAIKUNTHA NATH CHATTORAJ. **66 I.C. 782=49 Cal. 132=34 C.L.J. 384=25 C.W.N. 779=A.I.R. 1922 Cal. 260.**

——**Appreciation of—Miscellaneous.**

———Per *Hallifax, A.J.C.*—There is no distinction between what a prudent man would believe out of Court and what a Judge may believe. (*Hallifax, Prideaux and Kotval, A.J. Cs.*). SAPKU *v.* EMPEROR. **65 I.C. 561=23 Cr. L.J. 129=A.I.R. 1922 Nag. 146.**

—Circumstantial evidence.

———*Partisan—Direct evidence.*

Where there is very strong feeling between the parties and direct evidence on both sides is of a partisan character, it is safe to decide the case upon the circumstances and probabilities. (*Lindsay and Banerji, JJ.*). SIBT AHMAD *v.* AMINA KHATOON. **113 I.C. 434=26 A.L.J. 705=50 All. 733=A.I.R. 1929 All. 18.**

———*When conclusive.*

Per *Mukerji, J.*—Circumstantial evidence should not merely point to the inference that is to be drawn, but that the evidence must be of such a nature that it can possibly lead to no other inference. (*Rankin, C.J. and Mukerji, J.*). KAMAL KUMAR *v.* NANDULAL DUBAY. **116 I.C. 378=33 C.W.N.211=56 Cal. 738=A.I.R. 1929 Cal. 37.**

———The ordinary rule in a case of circumstantial evidence is that, in order to justify a conviction, it should be incompatible with any reasonable hypothesis than that of the accused's guilt. (*Fawcett and Mirza, JJ.*). EMPEROR *v.* ISMAIL KHADIRSAB. **108 I.C. 501=52 Bom. 385=30 Bom. L.R. 330=10 A.I.Cr.R. 118=29 Cr. L.J. 403=A.I.R. 1928 Bom. 130.**

———*When conclusive—Incompatibility with innocence.*

In order to infer guilt from the circumstantial evidence it must be shown that the inculpatory facts are incompatible, with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (*Tek Chand, J.*). PRITCHARD *v.* EMPEROR. **112 I.C. 850=30 Cr. L.J. 18=11 A.I. Cr. R. 405=A. I. R. 1928 Lah. 382.**

———*When sufficient for conviction.*

Circumstantial evidence to convict a person requires a high degree of probability, that is sufficiently high that a prudent man, considering all the facts and realizing that the life or liberty of the accused person depends upon the decision, feels justified in holding that the accused committed the crime. 32 P.R. 1916 Cr., *Foll.* (*Addison and Coldstream, JJ.*). DINA *v.* EMPEROR. **109 I.C. 912=29 Cr. L.J. 640=10 A.I. Cr. R. 350.**

———*Exhaustiveness—Probability.*

Though circumstantial evidence must be exhaustive, that does not mean that every incident short of the actual commission of the offence must be proved by positive evidence but that what is required is so high a degree of probability that a prudent man would feel justified in holding that the accused committed the crime. 32 P. R. 1916 Cr., *Appl.* (*Campbell and Addison, JJ.*). BUTA SINGH *v.* EMPEROR. **97 I.C. 752=7 Lah. 396=27 Cr. L.J. 1168=27 P.L.R. 447=A.I.R. 1926 Lah. 582.**

———The minutes of a meeting are *prima facie* evidence of what happened at the meeting. (*Shah*)

EVIDENCE—Circumstantial evidence.

Ag. C.J. and Fawcett, J.). PARSHURAM DATTARAM *v.* TATA INDUSTRIAL BANK, LTD.
90 I.C. 580=26 Bom. L.R. 987=A.I.R. 1925 Bom. 49.

———*Redness of eyes—Bhang smoker.*

The redness in the eyes of a person may be due to several causes and in the absence of evidence it cannot be held that the person merely on that account is an habitual smoker of bhang. (*Gokaran Nath, A.J.C.*). BAHADUR DUBE *v.* KING-EMPEROR.
89 I.C. 145=12 O.L.J. 388=26 Cr. L.J. 1281=A.I.R. 1925 Oudh 480.

———*Oral evidence—Equal value.*

Where the question involved is whether the guardian was guilty of gross negligence in the conduct of the case,

Held, that circumstantial evidence is as good as any other kind of evidence in such matters and perhaps better evidence than oral evidence. (*Krishnan and Venkatasubba Rao, JJ.*). VEERAPPAN *v.* MENNAPPAN. **70 I.C. 335= 31 M.L.T. 449=A.I.R. 1923 Mad. 245.**

———*When conclusive.*

If an accused person is to be convicted on circumstantial evidence the circumstances must be such as to exclude all reasonable probability of his innocence. (*Scott-Smith and Abdul Raoof, JJ.*). MD. YAR *v.* EMPEROR. **81 I.C. 555=4 Lah. L.J. 235=25 Cr. L.J. 939=A.I.R. 1922 Lah. 263.**

———The fundamental rule by which circumstantial evidence is estimated is that in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis other than that of his guilt. It is safer to follow the rule that "the fouler the crime the clearer and the plainer the proof ought to be." (*Jwala Prasad and Sultan Ahmed, JJ.*). RAGHUNANDAN KOERI *v.* EMPEROR. **59 I.C. 858=22 Cr.L.J. 154=1 Pat. L.T. 684.**

—Corroboration.

———*Contemporaneous documentary evidence—Oral evidence.*

Where there is a difficult investigation of a fact, the history relating to which is somewhat obscure, contemporaneous documentary evidence, if it is trustworthy, should be preferred to any amount of oral evidence, which does not always create the same amount of confidence. (*Banerji and King, JJ.*). DEBI DAYAL *v.* AMBIKA PRASAD.
119 I.C. 99=A.I.R. 1929 All. 545.

———*Statement of witness.*

It is impossible to treat statements by a witness as corroborating his own evidence, these being merely parts of that very evidence itself. (*Lord Darling.*) LIM YAM HONG & CO. *v.* LAN CHOON & CO. **107 I.C. 457=47 C.L.J. 288=30 Bom. L.R. 757=29 M.L.W. 520=A.I.R. 1928 P.C. 127=56 M.L.J. 88 (P.C.)**

———*Partisan—Oral evidence—Documentary evidence.*

Where there are two factions, each trying to support its own candidate, *i.e.*, either one party or the other the oral evidence given on either side should not be believed and acted upon except where it is borne out and corroborated by the documentary evidence. (*Waller and Madhavan Nair, JJ.*). LAKSHMINARAYAN *v.* K. PUNNAYYA.
103 I.C. 134=A.I.R. 1927 Mad. 820.

EVIDENCE—Credibility.

———*Marriage settlement—Oral evidence—Written evidence.*

It would be unwise of a Judge to act in a disputed Indian case upon oral evidence that there had been an ante-nuptial agreement which would in effect be a marriage settlement unless there was contemporaneous written evidence to corroborate the oral evidence. (*Sir John Edge.*) LAKSHMIAH *v.* KOTHANDARAMA. **88 I.C. 327=27 Bom.L.R. 1076=29 C.W.N. 1013=1925 M.W.N. 717=48 Mad. 605=3 Pat.L.R. 290=23 M.L.W. 138=23 A.L.J. 662=52 I.A. 286=42 C.L.J. 8=A.I.R. 1925 P.C. 181=49 M.L.J. 109 (P. C.).**

———*Police surveillance—Statement under.*

No reliance should ordinarily be placed on the uncorroborated testimony of a criminal who has undergone a sentence of imprisonment and is under police surveillance especially when he is produced by Police under whose supervision he is. (*Shadi Lal, C.J. and Jafar Ali, J.*). NAWAB *v.* THE CROWN. **89 I.C. 311=7 L.L.J. 219=26 P.L.R. 518=26 Cr.L.J. 1335=A.I.R. 1925 Lah. 397.**

—Credibility.

———*Oral evidence—Documentary evidence.*

The trial Judge did not deal with the genuineness of the entries in the books of Pandas upon any reasoned footing. He had no evidence before him directly bearing upon the topic of genuineness, except such as may have been afforded by the comparison of certain signatures. He pronounced the entries forgeries because they were inconsistent with the evidence of one *B*, whom he believed in all. For the same reason he declared that one other document was a forgery, although apparently he had not before him the original or any satisfactory evidence of the circumstances in which it was alleged to have been made. The High Court, however, approached the matter from a different angle. The Judges thought it proper to make a critical examination of the actual books and of the evidence, if any, supporting or impeaching the genuineness of the entries, and after the most rigid scrutiny of these books, came to the conclusion that the entries were undoubtedly genuine. They also weighed the oral evidence directed to the rest of the case, and having seen *M*, the principal witness, rejected the evidence. Upon these findings the ultimate conclusion at which the High Court arrived was inevitable. (*Lord Tomlin.*) MALAYAM SINGH *v.* SHIVRAJ SINGH. **118 I. C. 13=1929 A. L. J. 856=30 M. L. W. 744=A. I. R. 1929 P. C. 217=57 M. L. J. 572 (P. C.).**

———*Finding as to—Legal evidence.*

It is open to the Court to find that the evidence of a person is not worthy of credit; but it cannot arrive at a finding in absence of legal evidence. (*Bennet and Iqbal Ahmad, JJ.*). SHUJAUDDIN KHAN *v.* MEHDI RAZA. **118 I. C. 230=A.I.R. 1929 All. 873.**

———*Competency to decide—Privy Council.*

On a pure question of credibility of witnesses, the Privy Council have no better competence to determine where the truth lay than the lower Appellate Court has. (*Viscount Sumner.*) RAM GOPAL *v.* DHANJI JADHAVJI BHATIA.
111 I.C. 480=55 Cal. 1048=55 I.A. 299=48 C.L.J. 567=1928 M.W.N. 924=24 N.L.R. 154=30 Bom. L.R. 1389=32 C.W.N. 1117=28 M.L.W. 55=11 N.L.J. 229=A.I.R. 1928 P.C. 200=55 M.L.J. 248 (P. C.).

EVIDENCE—Credibility.

———*Trial Judge's opinion.*

At all times considerable weight should be attached to the opinion of the Judge who heard the witnesses as to their relative credibility. When the record does not show that the witnesses on either side have been materially discredited or greatly shaken in cross-examination, it is the duty of the Judge to decide which side is telling the truth. When the Judge has tried the case with marked care and intelligence, his opinion as to credibility of the witnesses should ordinarily be accepted. (*Stuart, C. J. and Gokaran Nath Misra, J.*). MUKTA PRASAD *v.* EMPEROR. **94 I.C. 193= 27 Cr. L.J. 577=13 O.L.J. 69.**

———*Changing sides.*

A witness who has changed sides and has made statements in favour of both the prosecution and the accused is an unreliable witness and neither of his statements can be believed. (*Wazir Hasan, A.J.C.*). SARJU SINGH *v.* EMPEROR. **88 I.C. 852=26 Cr. L. J. 1236= A.I.R. 1925 Oudh 726.**

———*Denomination.*

Credibility of witnesses or jurors must not be judged from their denomination. 11 C.W.N. 1085, *Foll.* (*Mookerjee and Chatterjee, JJ.*). MAMFRU CHOWDHURY *v.* EMPEROR. **81 I.C. 264=51 Cal. 418=38 C.L.J. 397= 25 Cr. L.J. 776=A.I.R. 1924 Cal. 323.**

———*Impracticability.*

Where a witness states that he could see and did see, in apparently very short time, that a certain quantity of land had not been cleared, the statement can be disbelieved as being improbable only if cross-examination is directed to the impracticability of forming a judgment by mere inspection even with the aid of glasses, as to the proportion cleared. (*Viscount Haldane*). NABA KUMAR DAS *v.* RUDRA NARAYAN. **77 I.C. 141= 1923 M.W.N. 622=28 C.W.N. 589=33 M.L.T. 309= 5 L.R. P.C. 25=A.I.R. 1923 P.C. 95= 45 M.L.J. 438.**

———*Delay in disclosure.*

Where a witness keeps quiet for many days after the occurrence and comes forward after the police had made a discovery he is not reliable. (*Shadi Lal, C. J. and Zafar Ali, J.*). RULLIA RAM *v.* THE CROWN. **84 I.C. 321=5 L.L.J. 325= 26 Cr.L.J. 257=A.I.R. 1923 Lah. 438.**

———*Discredited testimony on material facts.*

In dealing with the evidence of witnesses who have been discredited on important and material facts as not speaking the truth it will be well to remember that their evidence on other points must be received with considerable caution. Witnesses who are proved to be not speaking the truth on some important points ought not to be trusted implicitly. 27 C. 637 at p. 646 (P. C.), *referred to.* (*Kumaraswami Sastry and Reilly, JJ.*). RAHIMATULLA SAHIB *v.* KAMARAJA PANDIYA. **1930 M.W.N. 417.**

———*Demeanour—Trial Judge's opinion—Proved facts—Appellate Court's opinion.*

When the question is whether a witness is speaking the truth or not, light is thrown upon it by the demeanour of that witness in the box by the manner in which he answers question, and by how he seems to be affected by the questions that are put to him, and so on. No doubt there the trial Judge has an advantage which cannot possibly be shared by any appellate Court. But when the views upon credibility are founded upon argumentative inferences from facts which are not disputed, then the Court of Appeal is really in just as good a situation as the Judge of first instance. (*Lord Dunedin*). PALCHUR SANKARAREDDI *v.* PALCHUR MAHALAKSHMAMA. **70 I.C. 949= 27 C.W.N. 414=17 M.L.W. 1=31 M.L.T. 307= A.I.R. 1922 P.C. 315.**

EVIDENCE—Criminal Trial.

———*Person acquitted in prior case.*

In estimating the value of the evidence given by a witness, the elementary principle must not be overlooked that where there has been an acquittal, the acquittal is conclusive and it would be a very dangerous principle to adopt to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates. (*Mookerjee and Buckland, JJ.*). SAROJINI DASSI *v.* HARI DAS GHOSE. **66 I.C. 774=49 Cal. 235= 34 C.L.J. 373=26 C.W.N. 113= A.I.R. 1922 Cal. 12.**

—Criminal Trial.

———*Examination of witnesses—Obligation of prosecution—Right of cross-examination by defence.*

The prosecution is under no obligation to examine witnesses who it has reason to believe will not speak the truth. It is usual in such circumstances for the prosecution to tender such witnesses for cross-examination. The defence, however, is certainly entitled to claim that privilege but having omitted to do so they cannot be permitted to make capital of the fact that these witnesses were not cross-examined. 8 Cal. 121, *held too widely stated.* (*Graham and Lort Williams, JJ.*). NAYAN MANDAL *v.* EMPEROR. **34 C.W.N. 170= 1930 Cr. C. 134=A.I.R. 1930 Cal. 134.**

———*Retraction.*

In a case of murder, the evidences of witnesses who have resiled from their previous statements should not be relied upon. (*Devadoss and Wallace, JJ.*). AYYAMPERUMAL PILLAI *v.* EMPEROR. **91 I.C. 50=27 Cr.L.J. 18=1925 M.W.N. 319= 22 M.L.W. 405=A.I.R. 1925 Mad. 879.**

———*Immaterial discrepancies in.*

Where the reason for the acquittal of the accused by the learned Sessions Judge was certain inconsistencies and improbabilities in the evidence of the prosecution story and the difficulty of finding any explanation justifying the rejection of the *alibi.*

It was *held*, that if the prosecution is to be rejected in substance there must be some other explanation of the facts that actually occurred. Failing any such explanation it is not permissible to reject the prosecution evidence owing to immaterial discrepancies or improbabilities. (*Lyle and Ashworth, A. J. Cs.*). EMPEROR *v.* NAROTAM. **74 I.C. 434= 10 O.L.J. 68=24 Cr. L. J. 770= A. I. R. 1923 Oudh 217.**

———*Partial credibility.*

Evidence of a witness, if held to be unreliable in respect of one accused cannot be held to be reliable in respect to other accused. (*Shadi Lal, C. J. and Le Rossignol, J.*). KHERI *v.* THE CROWN. **99 I. C. 857=3 L.L.J. 147=28 Cr. L. J. 185.**

———*Nature of offence—Quantum of evidence.*

The fouler the crime, the clearer and plainer the proof ought to be, though it cannot be laid down as a proposition of law that the quantum or value of evidence must be proportionate to the enormity of the crime or the consequences which may follow from convictions. (*Jwala Prasad and Sultan Ahmad, JJ.*). RAGHUNANDAN KOERI *v.* EMPEROR **59 I.C. 858=22 Cr. L. J. 184=1 P. L. T. 684.**

EVIDENCE—Documents.

—Documents.

———*Account books.*

The noting of the items in the account book kept regularly by munim in whose presence the money was not paid is no evidence. (*Martineau, J.*). FIRM GOKAL MAL. *v.* FIRM NATH MAL.
75 I.C. 812=A.I.R. 1923 Lah. 431.

———*Two conveyances—Same parties—Falsity of one—Truth of other.*

Where two instruments of conveyance between the same parties are very intimately connected with each other, and from the evidence of the parties one of them is found to be false and fraudulent, the evidence of the parties with regard to the other should be approached with great suspicion and subjected to strictest scrutiny. The mere fact that the one was false and fraudulent transaction does not by itself prove that the other deed was also false and fraudulent, but it does throw upon the party a heavy burden to prove that the same was a *bona fide* document and not executed with a view to defeat or delay any claims of the creditor on the executant of the deed. (*Sir Binode Mitter.*) MOHAMMAD ALI MOHAMMAD KHAN *v.* MT. BISMILLAH BEGAM. **A.I.R. 1930 P.C. 255.**

Documents—Award.

———Where exclusive title is set up on the strength of an award, the award must be produced. (*Raza, J.*). NAROTTAN DAS *v.* MAHOMMAD RAZA.
96 I. C. 14=A. I. R. 1926 Oudh 522.

—Documents—Decree.

———Where there was a decree in favour of a co-sharer, against Government followed by a partition in accordance with the decree between that co-sharer, plaintiff and Government,

Held, the decree being followed by partition is elevant and is an important piece of evidence in a suit by the plaintiff against the Government in rerspect of portion of the property covered by the previous suit. (*Lord Phillimore*). NARESH NARAYAN *v.* SECY. OF STATE. **77 I.C. 1048=32 M.L.T. 162=1923 M.W.N. 511=50 Cal. 446=50 I. A. 121=28 C.W.N. 453=4 L.R.P.C. 50=A.I.R. 1923 P.C. 1=45 M.L.J. 444.**

—Documents—Horoscopes.

———Horoscope is not in itself a probative document. The importance of the custody of the documents related to their genuineness and not to relevancy. (*Dalal and Simpson, A. J. Cs.*). AMBIKA PRASAD *v.* LAL BAHADUR. **83 I.C. 840=11 O.L.J. 164=A.I.R. 1924 Oudh 353.**

—Document—Judgment.

—Proof of litigation.

The fact that a judgment is admitted in evidence in order to prove that there was litigation which terminated in a certain way, does not make all the recitals in that judgment part of the evidence in the subsequent action. 20 C.W.N. 643; 23 C.L.J. 583; (1915) and 42 M. L.J. 324 (F.B.) (1922), *Foll.* (*Mookerjee and Rankin, JJ.*). ABDUL LATIF KAZI *v.* ABDUL HUR KAZI. **81 I.C. 667=28 C. W. N. 62=A.I.R. 1924 Cal. 523.**

———*Proof of Custom.*

Where a question of custom is under consideration, a succession of judgments relating thereto is valuable evidence from which the Court can come to a conclusion. (*Ashworth, J .C. and Simpson, A.J.C.*). THAKUR RUDRAPROTAP NARAYAN SING *v.* THAKUR NIRMAN PRASAD SING. **74 I.C. 225=9 O.L.J. 552=A.I.R. 1923 Oudh 61.**

EVIDENCE—Document—Relevancy of.

—Documents—Maps.

———*Entries.*

The entries in *Thakbast* map and *Khasra* made by an Amin before and for the preparation of survey have no evidentiary value. (*Mr. Ameer Ali*). JAGDEO NARAIN SINGH *v.* BALDEO SINGH. **71 I.C. 984=1923 M.W N. 361=27 C.W.N. 925=3 P.L.T. 605=49 I.A. 39)=36 C.L.J. 499=32 M.L.T. 1=2 Pat. 38=A.I.R. 1922 P.C. 272=45 M.L.J. 460.**

—Documents—Probative value.

———The decision of a question of fact must depend on evidence. That evidence may be, and naturally is, documentary, but the documents admitted in evidence upon that question are really historical materials and although they have to be construed, and if possible understood, they are not to be treated as involving issues of law merely because they have to be construed. It is not as though they were being construed as instruments of title, or were contracts or statutes, or otherwise the direct foundation of rights. (*Lord Sumner*). MID. ZAMINDARI CO. *v.* UMA CHARAN. **74 I.C. 482=40 C.L.J. 16=29 C.W.N. 131=21 A.L J. 723=25 Bom. L.R. 1287=4 L.R.P.C. 184=33 M.L.T. 291=1923 M.W.N. 832=4 P.L.T. 627=A.I.R. 1923 P.C. 187=45 M.L.J. 663.**

—Documents—Proof of.

———*Production by accused.*

A document produced by the accused in support of his own defence need not be formally proved by prosecution as against the party producing it. (*Kinkhede, A. J. C.*). MOHAMAD IBRAHIM *v.* EMPEROR. **112 I. C. 902=30 Cr. L.J. 38=11 A.I.Cr.R. 526=A.I.R. 1929 Nag. 43.**

———*Presence of opposite-party—Production and exhibition.*

Formal proof should be presumed to have been waived where a document is produced in the presence of the opposite party and marked as an exhibit. (*Curgenven, J.*). ZAMINDAR OF BODOKIMIDY *v.* BUDANKAYALA BHIMAYYA. **98 I.C. 800=24 M.L.W. 677=A.I.R. 1927 Mad. 76.**

———*Mode—Objection.*

Any objection as to the method of proving a particular document must be taken when it is tendered for admission. (*Mukerji, J.*). ABDUL SAMAD *v.* GUNENDRA KRISHNA ROY. **82 I.C. 974=A.I.R. 1925 Cal. 452.**

———*Waiver.*

The question of relevancy of a document is a question of law and can be raised at any stage but the question of proof is a question of procedure and can be waived by the parties. (*Das and Bucknill, JJ.*). KUMAR KALIKANAND SINGH *v.* SHIVA NANDAN PRASAD SINGH. **63 I.C. 625=3 Pat. L.T. 149=A.I.R. 1922 Pat. 122.**

—Documents—Record.

———*Hakikat Chauhaddi Bundi papers.*

Hakikat Chauhaddi Bundi papers are boundary papers prepared by the owners of the estates and submitted to Government. 26 C.L.J. 500 (P.C.), *Foll.* (*Mookerjee and Buckland, JJ.*). SECY. OF STATE *v.* WAZER ALI. **65 I.C. 866=34 C.L.J. 141=A.I.R. 1921 Cal. 687.**

—Document—Relevancy of.

———*Consideration by appellate—Court. Civil P.C., O. 44 R. 24.*

The first appellate Court which is a Court of fact as well as of law can consider the question of the relevancy of a document which is only a piece of evidence, though this question was not raised in

EVIDENCE—Documents—Relevancy of.

the Trial Court. (*Mallik, J.*). KANTESWAR SARKAR v. INDRAMANI DASHYA. **109 I.C. 25= A.I.R. 1928 Cal. 512.**

———*Against non-party.*

Documents prepared by a surveyor under the authority of the Collector who was then the agent of the Court of Wards in the course of a survey under the Court of Wards Act for the purpose of the Court of Wards are of little or no probative value in a case of a person who was in no way concerned in the proceedings before the surveyor. (*Devadoss, J.*). ARJUNA v. DAYANIDHI. **98 I.C. 301. A.I.R. 1927 Mad. 60=51 M.L.J. 637.**

———*Private document—Government records.*

A mere document between private parties cannot possibly be proof of the correctness of any description of the land contained therein, in the face of entries in Government records. (*Wallace, J.*). RAMASWAMI THEVAN v. ALAGU PILLAI. **79 I. C. 881=A. I. R. 1925 Mad. 143.**

—Documents—Reports.

———*Commissioner.*

A Commissioner's report is evidence in the case, but Courts should take care to see that the report is filed as an exhibit. (*Devadoss, J.*). ARJUNA MAHAPATRO v. DAYANIDHI BOINPALI. **98 I. C. 301=A. I. R. 1927 Mad. 60= 51 M. L. J. 637.**

———*Commissioner.*

Ordinarily in a boundary dispute the Commissioner's report is of great importance but where the finding of the Commissioner are inconclusive his report is not of much help to the Court. (*Chatterjea and Panton, JJ.*). ABDUL HAMID v. BROJENDRA KUMAR. **90 I. C. 643= A. I. R. 1926 Cal. 290.**

———*Inam statement—Inam register.*

An Inam statement is only a statement made by a party at the Inam inquiry and is merely an assertion of his alleged title before a tribunal which has to decide it. The Inam register embodies the result of the finding of the Inam Commissioner, based partly on statements put in by the parties and partly on other evidence and should be looked to see what the facts were. 'Maseethu' is a Telugu form of the Hindustani word "Musjid" which means a Mosque and a 'Panjab' is not called "Maseethu" in Telugu.

The word Devadayam implies a public endowment. 24 Mad. 243, *Foll.* (*Phillips and Venkatasubba Rao, JJ.*). P. PACHA SAHEB v. MOHAMMAD RAHIMUDDIN SAHEB. **77 I. C. 777= 19 M. L. W. 174=1924 M. W. N. 217= 34 M. L. T. 347=A. I. R. 1924 Mad. 491= 46 M. L. J. 245.**

—Duty of Court.

———*Allegation against deceased person.*

Where an allegation is made against a deceased person to the detriment of his estate, Courts of law should scrutinize it carefully before accepting it as correct. (*Mirza, J.*). KRISHNA BAI v. VARJIWANDAS JAGJIWANDAS. **32 Bom. L.R. 201= A.I.R. 1930 Bom. 236.**

———*Written statement manifestly not true.*

A written statement which is manifestly not true cannot be used as substantive evidence of the truth of what is stated in it. To do so is contrary to technical rules of evidence. (*Courtney-Terrell, C.J. and James, J.*). GOBIND GORHI v. BALDEO RAM. **A.I.R. 1930 Pat. 293.**

———*Doubt.*

It is a principle of law that if it is doubtful whether evidence is admissible or inadmissible

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then the benefit must be given in favour of the evidence. (*Dalip Singh, J.*). MOHANLAL v. MT. TULSAN. **109 I.C. 774=A.I.R. 1928 Lah. 824.**

———*Loss of document—Absence of plea—Relevant evidence.*

A document which was relied on was mentioned in the plaint. The document was lost and the fact that it was lost was mentioned in an oral pleading made while evidence was being given and leave was asked to prove it by secondary evidence. This was refused on the ground that no plea of loss of document was raised in the earliest stage. The document was found subsequently and was tendered in the lower Appellate Court, and that Court was of opinion that the refusal to admit secondary evidence was correct because no plea about the loss of the original document was made and he refused to accept the document itself for the same reason,

Held, it is the duty of a Court to get hold of all the relevant evidence there may be and to examine it, giving of course due weight to any circumstances attending its production that might render it less or more credible, and giving the other party a fair opportunity of meeting it, and no Court has the right to reject evidence tendered at any stage of the trial before its close unless it is irrelevant. (*Hallifax, A.J.C.*). KAMOD SINGH v. KHEM KARAN. **103 I.C. 186=10 N.L.J. 129=A.I.R. 1927 Nag. 269.**

———*Relevant evidence.*

It is the duty of the Court to welcome any evidence that may be offered and indeed to search for it, and it is wrong to exclude any evidence that is relevant. If it is tendered late, such suspicion or disbelief of it as may be due to that fact will attach to it automatically, and if the other party has had no opportunity, because of the lateness of production of rebutting evidence he might have had, the disbelief is greatly increased. (*Hallifax, A.J.C.*). KESHEO RAO v. MAROTIRAO. **92 I.C. 102= 8 N.L.J. 227=A.I.R. 1926 Nag. 139.**

———*Admissibility—Summary decision—Doubtful cases—Procedure.*

Matters tendered in evidence by the prosecution affecting case, must be dealt with summarily and instantly by the Judge at the trial when they are tendered. Judges in a Court of appeal, are apt sometimes to attach weight to the opinion of the assessors, and although their opinion does not have any legal effect, the Judge ought to guard very carefully against allowing a discussion in Court, of the reading of a document in Court, in the presence of the assessors injurious to the accused, when it is by law inadmissible. The benefit of a reasonable doubt ought to be given from the Bench, even to the admission of evidence particularly documentary evidence, during the trial, and when the Judge is unable to make up his mind about admissibility, the proper course for him is, either to direct the prosecution to keep back the documets until he has an opportunity of looking into the law, or to reject them altogether. No Judge in a doubtful case of admissibility ought to allow the evidence first to be given, and then in his judgment give a decision about their admissibility. Doubtful or inadmissible documents ought not to be admitted in criminal trials. (*Walsh and Sulaiman, JJ.*). LAIGAM SINGH v. EMPEROR. **86 I.C. 817=26 Cr. L.J. 881=6 L.R.A. Cr. 73= A.I.R. 1925 All. 405.**

———*Guilt or innocence—Decision on—Not soundness of plea.*

Even the entire omission of an available true and complete defence and the substitution for it of

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unsustainable falsehoods are so closely in accordance with the common, indeed almost universal course of human conduct that it cannot be inferred from such a defence that the guilt of the accused is likely. It is the duty of a Magistrate to find out whether an accused person is guilty or innocent, not merely to decide whether the pleas he chooses to put forward are sound or not. (*Hallifax, A.J.C.*). DOMAR SINGH *v.* EMPEROR. **66 I.C. 1001= 23 Cr. L.J. 345=A.I.R. 1922 Nag. 87.**

———*Production of books—Enforcement of order.*

All account books must be produced by the party who has possession of or control over them. If a party disobeys the order made in this behalf, the Court has ample power to enforce its order. (*Mookerjee and Walmsley, JJ.*). HARAMOHAN PODDAR *v.* SUDARSON PODDAR. **66 I.C. 811= 25 C.W.N. 847=A.I.R. 1921 Cal. 538.**

———*Materials placed by consent—Decision on—Practice.*

It is open to parties to agree as to materials to be placed before the Judge for his decision and if the Judge acts on such agreement, he does not thereby delegate his functions as a Judge. So if the parties consent, the Judge can act on the evidence taken by a Commissioner unauthorisedly. (*Richardson and Shamsul Huda, JJ.*). SHAMBHU NATH KHETTRI *v.* SATISH CHANDRA MITRA. **66 I.C. 43= 25 C.W.N. 369=A.I.R. 1921 Cal. 363.**

—Exclusion of.

———*Production at late stage.*

Where an application made for admitting, at an abnormally late stage, evidence which could have been equally well produced at the proper time is vexatious and made with the object of delaying disposal of the suit, such evidence should be excluded: 20 Cal. 740, *Dist.* (*Findlay, J.C. and Prideaux, A.J.C.*). CHOTESHA *v.* MT. MAKTUM BI. **109 I.C. 195=A.I.R. 1928 Nag. 223.**

———*Caste people—Voluntary evidence.*

Defence evidence should not be rejected on the ground that the witnesses were the caste-fellows of the accused or that they had come forward at the trial voluntarily without being summoned. 43 All. 186; A.I.R. 1923 All. 35 and 22 O.C. 375, *Rel. on.* (*Gokaran Nath, A.J.C.*). KEWAL KISHORE *v.* KING EMPEROR. **89 I. C. 147=12 O.L.J. 413= 26 Cr.L.J. 1283=29 O.C. 44= A.I.R. 1925 Oudh 473.**

———*Brahmins accused.*

Where the only ground which the lower Court gave for disbelieving witnesses was that accused were *Brahmins*, that the deceased was a woman and that the witnesses did not consider the death of a mere woman of any importance compared with the lives of *Brahmins* who were accused of her murder,

It was, *held*, the mere facts that the accused are *Brahmins* is not a sufficient reason for rejecting the evidence of witnesses who are *prima facie* reliable. (*Scott-Smith and Moti Sagar, JJ.*). SHEO RAM *v.* THE CROWN. **75 I.C. 733=6 L.L.J. 486= 25 Cr. L.J. 45=A.I.R. 1923 Lah. 436.**

———*Technical grounds.*

The exclusion of evidence of relevant facts on merely technical grounds is always to be deprecated. No legal fiction of presumption can lead to a just decision so surely as an ascertained truth. (*Batten, J. C. and Hallifax, A. J. C.*). BHURI BHAI *v.* ISHAK HUSEN. 69 **I.C. 519=A.I.R. 1923 Nag. 83.**

—Expert Evidence.

———*When admissible.*

The reports of the experts are not legal evidence unless they appear in Court as witnesses and

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are examined by both parties in respect of their opinion. (*Tek Chand, J.*). WADHAWA *v.* JAI KISHAN DAS. **106 I.C. 493=29 P.L.R. 125= A.I.R. 1928 Lah. 427.**

———*Dispute as to age—Limitation—Medical evidence.*

Medical evidence in cases of age of a party to a suit which falls to be decided for purposes of limitation cannot throw much light because from its very nature it is based on conjectures only and it cannot possibly be looked upon for the purposes of determining with precision the exact age of a particular person. In cases when limitation is pleaded in defence, a difference of even a single day settles the fate of the case one way or the other, and no doctor, however conscientious and competent he may be, can give the precise age of a person so as to enable the Court to determine the exact date of that person's birth. (*Tek Chand and Agha Haidar, JJ.*). ZONDA *v.* MT. ROSHNAI. **113 I.C. 53= 10 L.L.J. 183=A.I.R. 1928 Lah. 250.**

———*Statement in different trial—Admissibility of.*

The prosecution is not entitled to put in evidence statements made by a medical expert in some other trial in the absence of the accused. He ought to be examined orally like any other witness before the Magistrate and in the presence of the accused. Such statements if placed on record must be ignored. (*Fforde, J.*). SARDARA *v.* EMPEROR. **94 I.C. 139=26 Punj. L.R. 80= 27 Cr. L.J. 571.**

———*Consent to intercourse.*

The mere presence of semen on the loin cloth of the woman is not sufficient to prove that she was a consenting party, especially in the absence of any spermatozo in the vagina. (*Shadi Lal, C. J. and Lumsden, J.*). GHULAM HUSSAIN *v.* EMPEROR. **6 L.L.J. 474=A.I.R. 1925 Lah. 94.**

———*Dispute as to age.*

Conclusive evidence of age is very rarely obtainable in India. (*Dalal and Simpson, A. J. Cs.*). AMBIKA PRASAD *v.* LAL BAHADUR. **83 I.C. 840= 11 O. L. J. 164=A.I.R. 1924 Oudh 353.**

—Hearsay.

—Where evidence to support immigration of a Hindu family from one province into another is of witnesses who have heard about it from deceased members of the family, it is inadmissible. Cls. (5) and (6) of S. 32, Evidence Act do not apply to it. (*Jackson and Mohiuddin, A. J. Cs.*). RAMCHANDRA *v.* RAMABAI. **123 I.C. 907= A.I.R. 1930 Nag. 267.**

———*Basis of action.*

Under the Evidence Act hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed. (*Phillips and Madhavan Nair, JJ.*). VENKATARAMANUJACHARYULU *v.* APPALACHARYULU. **97 I.C. 785=24 M.L.W. 227= A.I.R. 1926 Mad. 1003.**

—Identification.

———*Identification proceedings.*

There is no section of the Evidence Act, which makes the identification proceedings evidence at all. (*Banerji, J.*) BINDESHRI *v.* EMPEROR. **98 I. C. 478=7 L.R. A. Cr. 170=27 Cr.L.J. 1358= A.I.R. 1927 All. 163.**

———*Indian women.*

Indian women can identify their own articles of jewellery even if they are of a common pattern.

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(*Scott-Smith and Fforde, JJ.*). ACHPAL *v.* EMPEROR. **89 I.C. 449=26 Cr.L.J. 1361= A. I. R. 1926 Lah. 132.**

———*When unreliable.*

An identification made of a man, who is said to have been wearing a beard at the time of offence and whose beard is concealed or absent at the time of identification, is by no means convincing, and when it stands alone, must be regarded as an unstable piece of evidence. (*Walsh and Sulaiman, JJ.*). LAIGAM SINGH *v.* EMPEROR.

86 I.C. 817=26 Cr. L.J. 881= 6 L.R. A. Cr. 73=A. I. R. 1925 All. 405.

———*Outsiders with accused—Legality of Procedure.*

Where owing to the scarcity of other under-trial prisoners in jail outsiders were brought in and placed in the line with the accused.

It was *held*, that the procedure was no doubt unusual, but in the peculiar circumstances of the case it was justified. (*Daniels and Neave, JJ.*). ABDUL WAHAB *v.* EMPEROR. **95 I.C. 756=47 All. 39= 27 Cr. L.J. 836=5 L.R. A. Cr. 193= A. I. R. 1925 All. 223.**

———*After long time—Value of.*

Evidence of identification of persons previously unknown after a number of months that certain persons took part in an attack is unreliable, unless there was a regular identification parade in which the witnesses picked out those persons from among others, especially where it is not stated that such persons bear any distinguishing marks by which they can be recognised. (*Martineau, J.*). MAKHAN SINGH *v.* THE CROWN. **85 I.C. 61= 6 L.L.J. 320=26 Cr.L.J. 445= A. I. R. 1924 Lah. 722.**

———*After questions put by Court—Value of.*

Where it appeared that it was only in answer to questions put by the Court that witness deposed to his being able to identify accused.

It was *held*, the danger of accepting such a testimony is apparent, since witness had ample opportunity to see the accused during the committal proceedings. (*Broadway, J.*). REHMAN *v.* THE CROWN. **83 I. C. 499=26 Cr. L.J. 19=5 L.L.J. 477= A.I.R. 1923 Lah. 662.**

———*Circumstantial evidence.*

Accused robbed three passengers in the female compartment causing them injuries one of whom received a grievous hurt, and then jumped out of the train, and was found lying by the railside as he broke his leg while jumping, having in possession some of the ornaments robbed while more valuable things were taken away by his companion,

Held, the guilt of the accused is perfectly made out. The offence was committed in the morning and the offenders were in the compartment for some time taking off ornaments from the person of the victims and causing them injuries, and there is nothing unlikely in their having been able to identify him. (*Abdul Qadir, J.*). SARIDAGAR *v.* KING EMPEROR. **A.I.R. 1923 Lah. 169.**

—Onus.

———*Admissibility.*

It is for the person tendering documentary evidence to show that it is admissible. (*Carr, J.*). ANWAR ALI *v.* TAFOZAL AHMED. **84 I. C. 487= 3 Bur. L.J. 194=2 Rang. 391= A.I.R. 1925 Rang. 84.**

———*Admission of debt—Plea of limitation.*

Where a defendant admits a debt but pleads that it is barred, he has to prove his plea. Where, however, there is no such admission, the plaintiff has to prove everything required to entitle him to a decree. (*Curgenven, J.*). SUBBARAYULU NAIDU *v.* VENGAMA NAIDU. **123 I.C. 197.**

EVIDENCE—Pedigree.

———*Wrongly laid—When immaterial.*

When evidence has been led on both sides and a finding has been arrived at on a review of the entire evidence, it is immaterial that the *onus* of proof has been wrongly laid on a party. (*Mears, C.J. and Piggott, J.*). IQBAL HAIDER KHAN *v.* MT. WASI FATIMA. **74 I.C. 1004=45 All. 53= A.I.R. 1923 All. 358.**

———*Forgery.*

Where a certain document filed by one party is alleged to be a forgery, the Court is not bound to enquire into the details but the party alleging that it is a forgery must *prima facie* make out a case of forgery before asking the Court to reject the document as a forgery. (*Coutts and Das, JJ.*). LACHMI NARAIN AGARWALA *v.* MUKHRAM MARWARI. **72 I.C. 971=24 Cr. L.J. 507= A. I. R. 1923 Pat. 31.**

—Opinions.

———*Admissibility of.*

Only what the witness actually saw and heard as to what a mob was doing and saying is admissible to prove the nature of the assembly; his opinion and impressions that the assembly appeared to be unlawful are not admissible. (*Jwala Prasad, J.*). JOGI RANT *v.* EMPEROR. **105 I.C. 234=28 Cr.L.J. 906= 9 P.L.T. 260=A.I.R. 1928 Pat. 98.**

———*Eye-witnesses—Conflict.*

Where the opinion of the doctor who visited the patient on one day was that she would not be capable of a particular action the next day after his visit.

It was *held*, the opinion must be hypothetical and cannot be implicitly relied upon or at any rate it must be put into the scale against the evidence of those who actually deposed that the particular act had been done by the patient. (*Macleod, C. J. and Shah, J.*). SHIDDUBAI RUDRAGAUDA DESAI *v.* NILAPPAGAUDA BHARMAGAUDA. **83 I.C. 616= 26 Bom. L.R. 622=A.I.R. 1924 Bom. 457.**

—Pedigree.

———*Unknown common ancestor—Relationship.*

There can be no legal proposition that because the name of the common ancestor is not known, the relationship cannot be held to be proved. 6 Cal. 626, *Expl.*(*Kumaraswami Sastri and Ramesam, JJ.*). JAGANNATHAM *v.* VENKATA SUBBA RAO. **104 I.C. 468=50 Mad. 877=26 M.L.W. 115= A.I.R. 1927 Mad. 344=53 M.L.J. 864.**

———*Common ancestor—Settlement record.*

A certain common ancestor of the parties in the pedigree table recorded at the time of settlement indicates that the land in dispute was occupied by him. This is a piece of evidence to be taken into consideration along with other evidence in determining the issue, but it cannot be alone conclusive proof that the property has descended from that common ancestor. (*Shadi Lal, C.J. and Coldstream, JJ.*). SANDHI *v.* MT. DANI. **96 I.C. 349.**

———*Earlier and later—Conflict.*

Out of the two conflicting pedigrees, the one though brought to light later in point of time, but which was supported by verbal evidence and accepted by competent authorities was accepted in preference to that which was originally produced many years ago and contained the statement that it was all the pedigree that was then known made by the person who was the person most likely to have knowledge. (*Lord Buckmaster*). DODDAWA *v.* BENNEPAGOWDA. **86 I. C. 326=A. I. R. 1925 P.C. 199.**

EVIDENCE—Pedigree.

———*Production—Admission of relationship—Evidence Act, Ss.* 17 and 21.

From the mere fact that a pedigree is filed by a person, it cannot be assumed that he admitted all the relationship stated in it to be correct. (*Lyle, A.J.C.*) BHIMA SINGH *v.* MT. SUNDAR. **69 I. C. 421= 9 O. L. J. 186=26 O. C. 109= A. I. R. 1922 Oudh 218.**

—Personal knowledge.

———*Parties to mutation proceedings.*

It is impossible to fasten the knowledge of mutation proceedings upon persons other than the parties in absence of evidence to show that they had such knowledge (*Wazir Hasan, Ag. C.J., and Pullan, J.*). MT. GUJRATI KUNWAR *v.* BHAGWATIDIN SINGH. **118 I. C. 808=A.I.R. 1930 Oudh 17.**

———*Local inspection—When reliable.*

Where a plaintiff's evidence is not convincing but the defendant has produced practically no evidence, the Court can rely on the local inspection made by itself to determine whether the plaintiff's story is correct. (*Lindsay and Kanhaiya Lal, JJ*). GHASI RAM *v.* BHOLA NATH. **79 I.C. 314=21 A.L.J. 886=5 L.R.A. (Civ.) 1= 46 All. 115=A.I.R. 1924 All. 153.**

———*Dispute as to age—Statement of person concerned.*

A man cannot give direct evidence of his own age, but his statements on the subject are not therefore to be dismissed as of no value. (*Kanhaiya Lal, J.C. and Daniels, A.J.C.*). KANDHAI LAL *v.* MAHOMED ALAM. **63 I.C. 525= 8 O.L.J. 324=A.I.R. 1921 Oudh 160.**

———*Tendering evidence—Duty of party.*

It is the bounden duty of a party personally knowing the facts and circumstances to give evidence on his own behalf and to submit to cross-examination and his non-appearance as a witness would be the strongest possible circumstance which will go to discredit the truth of his case. (*Shingne, J.*). MARTAND *v.* RADHABAI. **32 Bom. L.R. 924.**

—Presumption.

———*Possession—Record-of-rights.*

The presumption of correctness, which attaches to the finally published Record-of- Rights, relates only to possession at the time when the record is prepared: and, even if such presumption can be made in a criminal trial, it is clear that where there has been an interval of 10 or 12 years between the preparation of the record and the occurrence of an offence in respect of dispute arising over possession of land, any presumption arising from the record is obviously of the weakest possible description. Indeed the probative value is practically nil since all sorts of changes may obviously take place in the course of 10 or 12 years. (*Graham and Lort-Williams, JJ.*). NAYAN MANDAL *v.* EMPEROR. **34 C.W.N. 170=1930 Cr. C. 134= A.I.R. 1930 Cal. 134.**

———*Demeanour—Finding of trial Court.*

Trial Court not mentioning that reliance was placed on demeanour of witnesses—Reliance should be presumed.

Even though the trial Court does not mention that reliance was placed on demeanour of witnesses, it must be presumed. (*Lord Carson*). NETHELANDSCHE HANDEL *v.* R. M. P. CHETTIAR FIRM. **118 I.C. 257=7 Rang. 498=30 M.L.W. 569= A. I. R. 1929 P.C. 202.**

———*Non-production of document.*

Non-production of important documents raises adverse presumption against party not producing the documents. (*Phillips and Srinivasa Ayyangar, JJ.*). NATESA PILLAI *v.* MEENAKSHISUNDARA MUDALIAR. **109 I.C. 96.**

EVIDENCE—Recitals.

———*Stolen property.*

The fact that a person is found in possession of stolen property shortly after the theft raises the presumption that he took part in the theft. (*Adami and Scroope, JJ.*). KHATIR JAMA KHAN *v.* EMPEROR. **123 I.C. 393=31 Cr. L.J. 492.**

———*Summon to witness—Failure to examine.*

Where both parties did summon the two attesting witnesses, and as the plaintiff gave them up the defendants did the same, the inference that if they had been examined they would have deposed against the plaintiff, cannot be drawn. (*Hallifax and Kotval, A.J.Cs.*). NILKANTHA RAO *v.* GUNABAI. **96 I.C. 401=A.I.R. 1926 Nag. 482.**

———*Credibility of witness—Relation to party.*

The mere fact that a witness is related to a party is not a true criterion for holding that he has given untrue or perjured evidence. (*Duckworth, J.*). KO MAUNG *v.* MAUNG BA HTWE. **98 I.C. 166= 5 Bur. L.J. 116=A.I.R. 1926 Rang. 204.**

———*Age of witness.*

The statements of ages of witnesses at the head of depositions do not furnish evidence on the subject. 26 All. 108 (P.C.), *Foll.* (*Mukerjee and Suhrawardy, JJ.*). LAKSHAN CHANDRA MANDAL *v.* TAKIM DHALI. **80 I.C. 357=39 C.L.J. 90= 28 C. W. N. 1033=A.I.R. 1924 Cal. 558.**

—Receipt.

———*Value of—Deed.*

The written acknowledgment of receipt is undoubtedly evidence of the fact that the money has been received, but it is not conclusive. (*Dawson-Miller, C.J. and Mullick, J.*). SAIYID ALI IMAM *v.* EMPEROR. **85 I.C. 164=4 Pat. 210= 6 P.L.T. 47=3 Pat. L. R. Cr. 85=1924 P.H.C.C. 349= A.I.R. 1925 Pat. 281.**

—Recitals.

———*Value of.*

Recitals in a deed are evidence. 44 C. 186 (P. C.), *Rel. on.* (*Stuart, J.*). SITA RAM *v.* REWA RAM. **71 I.C 390=A.I.R. 1923 All. 366.**

———*Living person—Admissibility.*

Where a document containing recitals by a person who is alive is admitted in evidence as evidence of a transaction, the recitals in the document do not become part of the evidence unless the person making the assertions is brought before the Court. (*Mukerjee and Chotzner, JJ.*). NIHAR BEWA *v.* KADAR BAKAS MOHAMMED. **68 I. C. 282=A.I.R. 1923 Cal. 290.**

———*Judgment.*

The substance of the pleadings narrated in the judgment furnishes evidence of the allegations made by the parties on that occasion. (*Mookerjee and Cuming, JJ.*). KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **72 I.C. 680= 36 C.L.J. 434=A.I.R. 1923 Cal. 18;**

———*Third parties—Value against.*

Recitals in deeds are only evidence against the parties to the deed and persons claiming through or under them. (*Martineau, J.*). DHARAM SINGH *v.* KIRPAL SINGH. **69 I. C. 409=A.I.R. 1923 Lah. 31.**

———*Deeds of third parties—Admissibility—Evidence Act, Ss.* 11, 13 and 32 (2).

Recitals of boundaries of lands in documents between third parties are not admissible in evidence under S. 11 or S. 13 but are admissible under S. 32 (2) of the Evidence Act. (*Prideaux, A.J.C.*). TRIMBAKH *v.* GANESH. **68 I. C. 314= A. I. R. 1923 Nag. 22.**

EVIDENCE—Recitals.

———*Debts—Necessity—Proof of.*

Mere recitals in bonds are not presumptive proof of the necessity for the debts borrowed thereunder. (*Jwala Prasad and Adami, JJ.*). SHEIK KAROO *v.* RAMESHWAR SAO. **62 I. C. 905=3 P.L.T. 43= 6 P.L.J. 451= A.I.R. 1923 Pat. 143.**

———*Boundaries—Third parties' documents.*

Recitals of boundaries of other lands in documents between third parties, are not admissible in evidence. (*Chatterji and Suhrawardy, JJ.*). S. K. ACHARJI CHOUDHURY *v.* UMED ALI HAWALDAR. **63 I. C. 954=25 C. W. N. 1022= 35 C.L.J. 19=A.I.R. 1922 Cal.251.**

———*Invalid compromise—Admissions—Value of.*

Where the compromise is not binding on the parties any recital in it is not of much value as evidence. Parties are often willing to make admissions for the purpose of effecting a compromise, to which it would be unfair to hold them, if the compromise falls through. (*Daniels and Lyle, A.J.Cs.*). KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. **9 O.L.J. 262=A.I.R. 1922 Oudh 231.**

———*'Mother'—Value of.*

Mother is a term used out of respect and affection among Indians and the mere use of this word in a deed does not denote the actual relation of mother and child between the parties when the whole tenor of the document is against such a conclusion. (*Daniels, J. C. and Dalal, A. J. C.*). MUMTAZ-UN-NISA. *v.* WAZIR ALI. **65 I. C. 308= 8 O. L. J. 569=A.I.R. 1921 Oudh 242.**

—Sufficiency.

———*Occupation of land—Taking water—If proof of right.*

The evidence that a person has the occupation of lands and that he has been taking water to irrigate his lands through a channel from a tank is good evidence that he has some right to do so. This is not one of those things that can be concealed. The fact of enjoyment of such a right is some evidence of the right itself. (*Rankin, C. J.*). ISMAIL BISWAS *v.* EMPEROR. **A. I. R. 1930 Cal. 289.**

———Plaintiff who had a certificate entitling him to collect the debts due to the estate of the deceased aunt claimed from the defendant (another nephew of the aunt) a sum of rupees 10,000, which the defendant deposited under a deposit note with the National Bank of India at Mandalay. The issue in effect was whether the money which the defendant deposited in the Bank was his own money or his aunt's. The plaintiff said and he gave explicit evidence to the effect that, on the instructions of his aunt, shortly before she died he took out the money in his hands which belonged to her, Rs. 10,000, and handed to the defendant, and that is the money which had been deposited in the bank and has not been repaid. The defendant said that he had considerable funds of his own and that Rs. 10,000 was his, which he deposited in the bank of his own account. Evidence produced by both the parties was open to criticism. The trial Judge, who gave careful attention to the evidence, found in favour of the plaintiff's story. The High Court did not believe the story of either side but reversed the decree of the trial Court,

Held, that the trial Judge accepted plaintiff's story, and once plaintiff's story was accepted defendant's evidence was not sufficient answer to plaintiff's case and the original judgment of the trial Court should not be disturbed. (*Viscount Sumner*). SHWE MYO *v.* PO WA. **123 I.C. 174= A. I. R. 1929 P.C. 295.**

EVIDENCE—Suspicion.

———*Admission by vendor—No evidence by vendee—Proof of sale.*

A sued *B* and *C* for possession of land on the ground that the land was sold to him by *B*, but *C* was resisting possession. *B* admitted sale of land to *A* in his written statement and *C* denied *A's* title and joined issue on the point. No evidence was led by *A* to prove the sale,

Held, that *B's* admission was not sufficient proof of the sale and *A* must fail. (*Jai Lal, J.*). SAIDU *v.* MEHR DAD. **101 I. C. 589= A. I. R. 1927 Lah. 356.**

———*Omission to examine—When material.*

Where *A* was a tenant of a house, and *B*, a guest in his house complained to Magistrate of nuisance and *A* was not examined as a witness,

Held, that omission to examine *A* as witness was not material. (*Shah, Ag. C. J. and Crump, J.*). BOMBAY MUNICIPALITY *v.* L. R. MALLANDAINE. **84 I.C. 854=48 Bom. 241= 25 Bom. L.R. 1321=26 Cr. L. J. 374= A.I.R. 1924 Bom. 241.**

———*Revenue records—Proof of mortgage—Evidence Act, S. 35.*

Where in a suit for redemption of a usufructuary mortgage, the mortgagee was found to be in possession for a period over 20 years and the only reliable evidence as to the existence of the mortgage was the extracts from supplementary revenue record register No. 1 and register No. 5,

Held: that in the absence of other reliable evidence supplementary survey records are insufficient to prove mortgage. 2 U. B. R. (1907-1909) Evidence 19, *Foll.* (*May Oung and Duckworth, JJ.*). KO PO MAUNG *v.* MA KEIN GALE. **77 I.C. 380= 1 Rang. 562=A.I.R. 1924 Rang. 135.**

———*Proof of fraud.*

Where a case of fraud is attempted to be made out and the evidence adduced in the case is equally consistent with the allegations of the plaintiff as with the denial of the defendants a case of fraud is not established. (*Das and Bucknill, JJ.*). DAMODAR PRASAD *v.* RAM SARUP KUMAR. **71 I.C. 843=4 Pat. L.T. 102= 1923 P.H.C.C. 137=1 P.L.R. 252= A.I.R. 1923 Pat. 327.**

———*Alteration of trial Court's conclusion—Cogent grounds.*

Cogent grounds would be needed to alter the conclusion drawn by the trial Court from the oral evidence, in spite of the fact that the witness spoke Greek and that it seemed doubtful whether the interpreter thoroughly understood Greek while the Court did not at any rate profess to understand that language. (*Lord Sumner*). SOCRATES ATYCHIDES *v.* SECRETARY OF STATE. **70 I.C. 156=84 I.C. 737= 32 M.L.T. 81= 27 C.W.N. 537=18 M.L.W. 664= 1923 M.W.N. 846=46 Bom. 857= 25 Bom. L.R. 116=A. I. R. 1922 P.C. 371.**

———*Evidence of possession—Proof of lease.*

Where the question is whether certain tenancies are fictitious or real, the crucial test is whether the alleged lessees are in possession. (*Mookerjee and Panton, JJ.*). SARAT CHANDRA *v.* BIBHABATI DEBI. **66 I. C. 433=34 C.L.J. 302= A. I. R. 1921 Cal. 584.**

—Suspicion.

———*Delay in registration.*

Delay in registering a deed is not a sufficient reason for doubting the genuineness of the deed. (*Ross and Wort, JJ.*). MADAN CHOUDHURI *v.* KAMALDHARI THAKUR. **A.I.R. 1930 Pat. 121.**

EVIDENCE—Suspicion.

———*Marksman—Difference in marks.*

It cannot be said that because an illiterate woman put a particular kind of mark in a certain document the mark put by her in another document 23 years afterwards, which differs slightly from the mark in the previous instrument could not be genuine. (*Kumaraswami Sastri, J.*). GANSHAMDOSS NARAYANDOSS *v.* SARASWATHI BAI. **87 I.C. 621=21 M.L.W. 415= 1925 M.W.N. 285=A.I.R. 1925 Mad. 861.**

———*Allegation of—Suppression of document by opponent.*

A claim to recover an agreement which is not produced and is alleged to have been fraudulently detained by an opponent is always one which should be regarded with extreme suspicion and closely examined in every aspect before it is accepted. (*Lentaigne, J.*). MAUNG AUNG GYAW *v.* MUTHIYA. **89 I.C. 361=3 Rang. 177=A.I.R. 1925 Rang. 308.**

———*Positive testimony.*

Positive testimony should not be rejected on mere suspicion. (*Mookerjee and Buckland, JJ.*). BEPIN KRISHNA RAY *v.* JOGESHWAR RAY. **66 I.C. 345=34 Cr.L.J. 256=26 C.W.N. 36= A.I.R. 1921 Cal. 730.**

—Trial.

———*Defence not directed to contradict plaintiff's story—Cross-examination of defence—If necessary.*

Where in a suit by vendors for damages for breach of contract of sale, the plaintiffs' evidence of the purchasers' grounds for requesting delay is corroborated in more than one particular and the writer when called by the purchaser is not asked a single question to contradict the story given by the vendor, it is not correct to say that the vendor ought to have raised the question of the grounds in cross-examination of the witness. Contradiction, if any could be made, ought to have been given by the witness in examination-in-chief. (*Lord Atkin*). BHAI PANNA SINGH *v.* BHI ARJUN SINGH. **117 I.C. 485=1929 A.L.J. 791=31 Bom. L.R. 909= 33 C. W. N. 949= 6 O. W. N. 617= 1929 M.W.N. 558=30 M.L.W. 281=51 C.L J. 105= A.I.R. 1929 P.C. 179=57 M.L.J. 323.**

———*Disbelief of defence.*

Disbelief of a defence does not naturally involve proof of a claim. (*Dalal, J.*). DALLO *v.* JAGAN LAL. **110 I.C. 818=A.I.R. 1928 All. 688.**

———*Charge of fraud—Cross-examination of person charged.*

A person who is charged with fraud should, when he is examined in Court, be cross-examined in regard to it and his explanation taken into consideration. (*Fawcett and Madgavkar, JJ.*). D. DHARMAPPA *v.* P. VENKAPPA. **91 I.C. 426= 27 Bom.L.R. 1318=A. I. R. 1926 Bom. 33.**

———*Attestor—Scribe.*

It cannot be said as a matter of law that a scribe cannot be an attesting witness. It is a question of fact which must be determined by a Court of fact. (*Suhrawardy and Duval, JJ.*). ACHOLA SUNDARI *v.* DOMAN SUNDARI. **90 I.C. 774= A. I. R. 1926 Cal. 150.**

———*Evidence for one accused—Treatment as evidence against the other—Evidence of co-accused.*

The evidence of a defence witness produced by one accused cannot be treated as prosecution evidence against the other. A. I. R. 1925 All. 769, *Foll.* (*Harrison, J.*). SAMMAN *v.* EMPEROR. **96 I. C. 989=27 Cr. L. J. 1037= A.I.R. 1926 Lah. 627.**

EVIDENCE—Value of.

———*Possession—History of title.*

When evidence of possession is scrutinised, the history of title cannot well be ignored. (*Mookerjee and Chotzner, JJ.*). JOBEDA KHATUN *v.* TULSI CHARAN DAS. **77 I. C. 564=36 C. L. J. 472= A. I. R. 1923 Cal. 82.**

———*No opportunity to cross-examine.*

Acting on evidence without giving opportunity to cross-examination is illegal. (*Jwala Prasad and Coutts, JJ.*). MOTI SINGH *v.* DHANUKDHARI SINGH. **73 I. C. 339=24 Cr. L. J. 595= A. I. R. 1923 Pat. 53.**

———*Mode of evidence—Agreement of parties.*

Though the recitals in a judgment cannot be relied upon for the purpose of proving the contents of a document, yet parties, if so minded may ordinarily agree that evidence shall be taken in a particular way. That is not a matter which can be said to affect the jurisdiction of the Court. It is merely that parties allow certain materials to be used as evidence which apart from their consent, cannot be used. Evidence not taken before the Judge actually deciding the case has been made admissible in India by Statute. 43 Mad. 609; 38 Mad. 160; 30 Bom. 109, *Foll.* (*Spencer and Devadass, JJ.*). GOPU NATARAJA CHETTY *v.* RAJAMMAL. **69 I. C. 15=16 M. L. W. 122= 1922 M. W. N. 464=31 M. L. T. 125= A. I. R. 1922 Mad. 394=43 M. L. J. 448.**

—Value of.

———*Rennell's Survey Map.*

Though Rennell's Survey Map made in 1764 before the Permanent Settlement is valuable evidence on the topography, the absence of a certain rivulet in it is not conclusive of its non-existence. (*Suhrawardy and Costello, JJ.*). BENODE LAL CHAKRAVARTY *v.* SECRETARY OF STATE. **34 C. W. N. 1113.**

———*Thak statements.*

Thak statements have evidentiary value and are admissible in evidence unless they deal with matter altogether outside the scope of the survey: 49 I.A. 399, *Expl.* (*Sir John Wallis*). KRISHNA PROMADA DASI *v.* DHIRENDRA NATH GHOSH. **113 I.C. 465=56 Cal. 813=56 I.A. 74= 33 C.W.N. 289=49 C.L.J. 112= A. I. R. 1929 P. C. 50.**

———*Summary proceedings—Question of custom.*

Where the proceedings of a case are necessarily summary as in objection proceedings much reliance cannot be placed upon the decision of the case as an evidence of any custom. (*Jai Lal, J.*). KISHEN SINGH *v.* FAQIR. **112 I.C. 447= A.I.R. 1928 Lah. 966.**

———*Positive and negative evidence.*

It is more important to look to the positive evidence than to the negative. (*Wazir Hasan and Pullan, JJ.*). KHALIL AHMAD KHAN *v.* MD. MUSTOFA KHAN. **112 I.C. 68=5 O.W.N. 275= A.I.R. 1928 Oudh 269.**

———*Conflicting evidence—Duty of Court.*

There is no bettter criterion for the truth, no safer rule for investigating cases of conflicting evidence where perjury and fraud must exist on the one side or the other, than to consider what facts are beyond dispute and to examine which of the two cases best accords with those facts according to the ordinary course of human affairs and the usual habits of life: 5 W. R. P. C. 26, *Appl.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). MT. HAKIMA *v.* JIANDI. **103 I.C. 870= A.I.R. 1927 Sind 209.**

EVIDENCE—Value of.

———*Cumulative effect.*

Though each of the facts inconclusive, their cumulative value may establish the guilt and exclude other possibilities. (*Harrison and Dalip Singh, JJ.*). ABDULLAH *v.* EMPEROR.
95 I.C. 311=27 Cr.L.J. 775.

———*Public document—Discovered not public.*

If a document is once admitted in evidence on the understanding that it is a public document, it loses all evidential value when it is discovered that it is not a public document. (*Zafar Ali, J.*). THAKORSINGH *v.* GHANYA SINGH. **94 I. C. 125= 27 P.L.R. 198=A.I.R. 1926 Lah. 452.**

———*Evidence unreliable in part.*

The ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases however untrustworthy much of the evidence submitted to the Courts may commonly be. (14 M.I.A. 346, *Foll.*). And therefore evidence should not be rejected wholesale simply because some of it is unreliable if the story told by the witnesses is in the main true. (*Kinkhede, A.J.C.*). YESHAWANT *v.* DAULAT. **89 I.C. 663= A.I.R. 1926 Nag. 129.**

———*Printed leases—Expressions in.*

Much reliance cannot be placed upon the words and expressions used in leases executed on printed forms where they are used indiscriminately. (*Mukerji, J.*). MUHAMMAD SULAIMAN *v.* UMA CHARAN SIL. **79 I.C. 648=A.I.R. 1925 Cal. 181.**

———*Retracted statement.*

Evidence of a witness who retracted his statement in the cross-examination cannot be relied upon for convicting an accused person unless there are very strong reasons to suppose that the second statement in the cross-examination is absolutely false. (*Abdul Raoof, J.*). SHAH ALINE *v.* CROWN. **84 I.C. 1052=6 L.L.J. 280= 26 Cr.L.J. 412=A.I.R. 1925 Lah. 44.**

———*Anonymous letter.*

An anonymous letter is no evidence of its contents. (*Devadoss and Wallace, JJ.*). AYYAMPERUMAL PILLAI *v.* EMPEROR. **91 I.C. 50= 27 Cr.L.J. 18=1925 M. W. N. 319= 22 M. L. W. 405=A. I. R. 1925 Mad. 879.**

———*Evidence—No cross-examination.*

In the absence of cross-examination evidence is of little value. 17 C.W.N. 230, *Foll.* (*Wazir Hasan, A.J.C.*). SARJU SINGH *v.* EMPEROR. **88 I.C. 852= 26 Cr. L.J. 1236=A.I.R. 1925 Oudh 726.**

———*Evidence disbelieved in essentials.*

Where the prosecution cannot be believed in its essential details, conviction cannot be based upon a part of the story of the prosecution. Where the greater portion of the prosecution evidence is disbelieved, a Court cannot reconstruct a story and convict the accused on the story wholly inconsistent with that told by witnesses. (*Foster, J.*). JOHARMAL MARWARI *v.* KING-EMPEROR. **81 I.C. 212=5 P.L.T. 635=25 Cr. L.J. 724= A.I.R. 1924 Pat. 813.**

EVIDENCE—Value of.

———*Evidence as to social position and custom—Suit for agreed dower.*

In a suit for dower on the basis of an agreement fixing the amount of the dower, evidence regarding social position of the parties and customary dower is not material except as affording some test of the credibility of the witnesses of the party alleging the agreement. In the case of an agreement entered into 37 years back, the oral evidence of the agreement must be clear and convincing in order to establish a claim against the estate of the man who is said to have been a party to it. (*Lord Salvesen.*) MT. HAFIZAN *v.* MT. SUBA BIBI. **76 I.C. 948= 37 C.L.J. 461=27 C. W.N. 854=18 M.L. W. 670= 4 L.R.P.C. 95=A.I.R. 1923 P.C. 29= 44 M.L.J. 714 (P.C.).**

———*Bearing of* onus.

The weight to be attached to the evidence of a party is not governed by any such external consideration as that of the burden of proof but depends entirely on the intrinsic evidence. (*Kotval, A.J.C.*). GOWARDHAN DAS *v.* R. S. HARLAL RAMSUKH. **69 I.C. 541=A.I.R. 1923 Nag. 62.**

———*Secondary and inferior evidence.*

It is quite unsafe to accept the evidence more or less secondary in its character and certainly of inferior quality to the evidence which would have been produced but has been withheld. Where therefore most of the facts deposed to by the witness of one party are matters of which the opposite party would have in the natural course of circumstances of any particular case, direct knowledge, it is an act of impertinence on the part of the latter party to ask the Court to disbelieve the evidence led by the former party, when he himself is not prepared to take the responsibility of an oath and give to the Court his own version of the facts. (*Dalal and Wazir Hasan, A. J. Cs.*). MT. CHAURAS KUAR *v.* MT. ABHAIRAJ KUAR. **65 I.C. 380= 8 O. L. J. 681=A.I.R. 1922 Oudh 59.**

———*Probability against positive evidence.*

The Court may allow its decision to be affected by considerations of probabilities, even though there may be positive testimony to the contrary effect. (*Mookerjee and Fletcher, JJ.*). SURENDRA KRISHNA *v.* RANEE DASSEE. **59 I. C. 814= 33 C.L.J. 34=A.I.R. 1921 Cal. 677.**

———*Delayed information.*

When a witness admits that he disclosed his knowledge of a crime to the police at a very late date and gives no explanation of this delay, his evidence is of no value. (*Shadi Lal, C. J. and Le Rossignol, J.*). KHERI *v.* THE CROWN. **99 I. C. 857=3 L. L.J. 147=28 Cr. L. J. 185.**

THE INDIAN EVIDENCE ACT

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EVIDENCE ACT (I OF 1872).

—Presumption about death.

———*Religious endowment — Property vested in mahant—Alienation by mahant—Suit by successor against alienee—Limitation.*

Where the property is vested in the juridical person, and the Mahant is only the representative and manager of the idol, the act of alienation is a direct challenge upon the title of the idol, and the idol or the manager of the idol on behalf of the idol must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant or the Shebait the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to the purposes of the endowment; and there is no adverse possession so long as the person making the alienation is alive and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation. Where there can be no doubt whatever that though the property is endowed property in the sense that its income has to be appropriated to the purposes of the endowment, still the title is in the successive Mahants, time is to run from the date of the death of alienor who alienated the properties in dispute. If the alienor has not been heard of for 7 years by those who would naturally have heard of him, if he had been alive, it can be presumed that he is dead. The suits are not barred as the time begins to run from the date of the presumption. *Damodar Das* v. *Lakhan Das*,

EVIDENCE ACT (1872)—Scope.

37 Cal. 885, *Ref.*; *Vidya Varuthi* v. *Balusami*, 44 Mad. 831, *Foll.* (*Das and Bucknill, JJ.*). MAHANTH RAMRUPGIR *v.* LAL CHAND MARWARI.
67 I. C. 401=3 Pat. L.T. 352=1 Pat. 475=A. I. R. 1922 Pat. 243.

—Scope.

———The intention of the Legislature in using the words "in civil proceedings" in S. 196 (7) was to make the statement admissible against the person examined unconditionally so far as civil proceedings are concerned and in criminal proceedings subject to the provisions of S. 132, Evidence Act. S. 196, Companies Act was not intended in any way to override the provisions of the Indian Evidence Act. (*Jai Lal, J.*). RAMCHAND GURWALA *v.* KING-EMPEROR.
98 I.C. 599=27 Cr. L.J. 1383=A.I.R. 1926 Lah. 385.

———*Applicability of Cr. P. Code.*

The Evidence Act is a separate statute dealing with an important branch of law, and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code and must have full scope unless it is clearly proved that they have been repealed or altered by another statute. (*Shadi Lal, C.J. and Addison, J.*). RANNUN *v.* KING-EMPEROR.
94 I.C. 901=7 Lah. 84=27 Cr. L.J. 709=27 P.L.R. 583=A. I. R. 1926 Lah. 88.

———*Applicability of Oaths Act.*

The provisions of the Oaths Act are not intended to be utilized in such a manner as would abrogate the provisions of the Evidence Act. (*Kinkhede, A.J.C.*). SK. JAMU *v.* MAHOMED IBRAHIM.
90 I.C. 378=A.I.R. 1926 Nag. 194.

EVIDENCE ACT (1872), S. 1—Ceylon ordinance.

—S. 1—Ceylon ordinance.

———The Evidence Ordinance of Ceylon is merely the application to Ceylon of the Indian Evidence Act, S. 1. (*Lord Darling.*) DR. VRASAPILLAI GABRIEL *v.* A. S. ELIATAMBY. **52 I.A. 372= A.I.R. 1925 P.C. 229.**

—S. 3—"Evidence."

———*Meaning of*

Per *Macnair, A. J. C.*—The word "evidence" in the Act signifies only the instruments by means of which relevant facts are brought before the Court, *viz.*, witnesses and documents, and by means of which the Court is convinced of these facts. (*Findlay, J. C., Macnair and Subhedar, A. J. Cs.*). GOBARYA *v.* EMPEROR.

A.I.R. 1930 Nag. 242 (F.B.).

———"*Matters before it*"—*Meaning of.*

Every Court is bound to base its decision not merely on "evidence" but on "matters before it." The expression "matters before it" in S. 3 of the Evidence Act includes matters which do not fall within the definition of "evidence" as given in that section. Therefore in determining what is evidence other than "evidence" in the phraseology of the Act, the definition of "evidence" must be read with that of "proved" given in the said section. (*Kinkhede, A.J.C.*). BHAIRONPRASAD *v.* MAHANT LAXMI NARAYANDAS.

79 I.C. 609=A.I.R. 1924 Nag. 385.

—S. 3—"Proved."

———*Degree of proof.*

Where a reversioner is suing persons who are merely trespassers no strong proof is required of the death of a nearer reversioner. A prudent man might within the meaning of the definition of "proved" in S. 3, Evidence Act, consider the death of the nearer reversioner sufficiently probable on very little evidence. (*Ashworth, J.*). BADAL *v.* SARASWATI. **103 I.C. 329=A.I.R. 1927 All. 687.**

———*Meaning of.*

When, after considering all the matters before it, if a Court believes a certain thing exists it cannot say that the thing is not proved. (*Hallifax and Kotval, A.J. Cs.*). MANGAL GAUDA *v.* EMPEROR.

81 I.C. 901=25 Cr. L.J. 1077=A.I.R. 1925 Nag. 37.

———"*Not proved*", "*disproved*" *and* "*reasonable doubt*"—*Meaning of.*

The word "proved" means that it is so probable that a fact is established that a person should as a reasonable man act upon it. The law does not require that facts should be proved with anything like mathematical certainty. The word "disproved" is merely the converse of the previous proposition. The expression "not to be proved" indicates a state of mind between the two states of mind, when it is not possible to say precisely how the matter stands. "Reasonable doubt" is the doubt which reasonable men may reasonably entertain and not the doubt of a weak or vacillating mind. (*Crump, J.*). EMPEROR *v.* SHAFI AHMAD.

31 Bom. L.R. 515.

—S. 4—Presumption—Possession.

Per *Dawson Miller, C. J.*—Possession, however, is not necessarily the same thing as user and if the land is of such a nature as to render it unfit for actual enjoyment in the usual modes it may properly be presumed that the previous possession of the plaintiff continued until the contrary is proved. This presumption is a presumption of fact. It is by no means conclusive and whether it should be applied or not must depend upon the facts of each particular case. 9 Cal. 744 (F. B.), *Rel. on.*

EVIDENCE ACT (1872), S. 5—Depositions.

Per *Mullick, J.*—In every case the Court may draw a presumption as to possession from title. It is a presumption of fact which the Evidence Act expressly warrants by S. 114. Section 4 of that Act enacts that the Court may regard the fact as proved unless and until it is disproved or may call for proof of it. The discretion of the Court is to be exercised with due regard to the nature of the land and the evidence in the case. 1 P. L. J. 146, *Expl.* (*Dawson-Miller, C. J. and Mullick, J.*). INDER LALL *v.* RAM SURAT KUER. **2 P. L. T. 55= 1921 P. H. C. C. 118=A.I.R. 1921 Pat. 158.**

—S. 4—Presumption—Powers of Court.

———*Public purposes—Declaration in acquisition.*

The fact that the declaration may be conclusive as to the land being needed for a public purpose does not in any way debar the Court from enquiring into the validity of the steps which led up to that declaration. (*Greaves, J.*). MANICK CHAND MAHATA *v.* THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST.

48 Cal. 916=A. I. R. 1921 Cal. 159.

—S. 4—"Shall presume."—Meaning of.

———*Agra Tenancy Act* (1901), *S.* 201 (3).

The words "shall presume" in the section mean there is irrebuttable and conclusive presumption even if the parties are members of a joint Hindu family. 33 All. 799 (F. B.), *Foll.* (*Sulaiman and Banerji, JJ.*). GIRDHARI LAL *v.* GOVIND RAI.

103 I.C. 346=25 A. L. J. 706= 8 L. R. A. Rev. 168=A. I. R. 1927 All. 810.

—S. 5—Conduct of a party.

———In a suit against the son of a lambardar for profits, the evidence brought to prove that there was difficulty in the collection of the rent and to prove that on the death of the lambardar no one could be induced to take his place is relevant and admissible. (*Ashworth, J.*). BHAGWATI SARAN *v.* DEO SARAN SINGH. **9 L.R.A. Rev. 23=107 I.C. 702= A.I.R. 1928 All. 166.**

—S. 5—Depositions.

———*Cr. P. Code, S.* 360—*Non-compliance with S.* 360 *does not make record entirely inadmissible in evidence—Evidence Act, Ss.* 5 *and* 80—*Evidence Act, S.* 91.

The provisions of S. 360 are mandatory. But non-compliance does not legally result in the total inadmissibility of the record of evidence and in the absence of any definite provision of law entailing inadmissibility, each case of non-compliance must be considered by the Court on its own merits and the document which purports to be the record can be admitted, but without the presumption laid down in S. 80 of the Evidence Act, and, therefore, open to question by the defence and appraisal by the Court.

The law itself does not expressly lay down that the least failure to comply with the provisions of Section 360 renders the whole document inadmissible. Where therefore there has been an attempt by the presiding officer to comply with its provisions and to secure the accuracy of the record of evidence the provisions of S. 80 do not lead to complete exclusion of the document, and the Court is bound to admit under S. 5 but it is open to each side to adduce evidence as to its faithfulness or otherwise and as to the degree of presumption under S. 80 and the weight to be attached to it. 46 Cal. 895, *Foll.* (*Madgavkar, A.J.C.*). PITOOMAL *v.* EMPEROR. **86 I.C. 33=16 S.L.R. 255= 26 Cr. L.J. 657=A.I.R. 1921 Sind 151.**

EVIDENCE ACT (1872), S. 5—Irrelevant evidence.

—S. 5—Irrelevant evidence.

———*Omission to object—Duty of Court.*

The mere omission to object to a document which is not in itself admissible as evidence does not constitute that document evidence so as to be available to either party at the trial. It is clearly the duty of the Judge, apart altogether from any objection by the parties or their pleaders, to exclude irrelevant evidence. (*Dawson-Miller, C. J. and Mullick, J.*). SUMITRA KUER *v.* RAM KHAIR CHOWBEY. **1921 P. H. C. C. 17= A. I. R. 1921 Pat. 61.**

—S. 5—Objection to—When should be taken.

———A document can be objected to as irrelevant at any time. A document can be objected to as inadmissible as opposed to irrelevant at the first hearing only. (*Harrison, J.*). GHULAM MAHAMMAD *v.* KALIM ULLAH. **109 I.C. 728= 10 L.L.J. 370=A.I.R. 1928 Lah. 428.**

—S. 5—Relevant evidence—Murder trial.

———In the trial for the murder of a particular person the case against the accused under trial, should be determined on evidence which is relevant and admissible under the Act and on the strength of evidence which the Court may consider necessary to record and appreciate with reference to two entirely diff erent murders committed by the accused. (*Shah and Crump, JJ.*). GANGARAM *v.* IMPERATOR. **62 I.C. 545=22 Bom. L.R. 1274= 22 Cr. L.J. 529.**

—S. 5—Third party's documents.

———The recitals of boundaries of other lands in documents between third parties are not admissible in evidence either with regard to a question of boundaries or as to the nature of the land. A. I. R. 1924 Cal. 1067, *Foll.* (*Newbould and Gra-ham, JJ.*). DIMODAR PODDAR *v.* JADUNATH DATT. **91 I. C. 449 (Cal.).**

———Documents relating to land on the boundaries of the land in suit are not admissible for the purpose of showing possession of the disputed land. (*Newbould and Graham, JJ.*). ABDUL KARIM *v.* CHHALE AHMED. **91 I.C. 688= A.I.R. 1926 Cal. 479.**

—S. 6, Ill. (a)—Absence at occurrence.

———Evidence of a witness who was not present at the occurrence but only deposed to circumstances after the occurrence is not admissible to prove facts relating to the occurrence. (*Abdul Raoof and Addison, JJ.*). PAKHAR SINGH *v.* EMPEROR. **91 I.C. 812=7 L.L.J. 436=26 P.L.R. 674= 27 C.L.J. 140=A.I.R. 1925 Lah. 578.**

—S. 6—False complaint.

———Where the offence under trial is filing a false complaint, what happened at the subsequent Police Investigation of the complaint forms no part of the *res gestae.* (*Wallace and Madhavan Nair, JJ.*). VENKATASUBBIAH *v.* EMPEROR. **85 I. C. 209=26 Cr. L.J. 721=48 Mad. 640= 21 M.L.W. 190=1925 M.W.N. 68= A. I. R. 1925 Mad. 579=48 M.L.J. 195.**

—S. 6—Hearsay evidence.

———*Basis of action—Relevancy.*

Under the Evidence Act hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed. (*Phillips and Madhavan Nair, JJ.*). VENKATARAMANUJACHARYULU *v.* APPALACHARYULU. **97 I.C. 785=24 M.L.W. 227= A. I. R. 1926 Mad. 1003.**

EVIDENCE ACT (1872), S. 7—Absence of entry—Relevancy.

—S. 6—Irrelevant evidence.

———*Applicability.*

A certain witness stated that he had seen three women, who were sleeping in the same bari as the complainant and his wife that night, searching something at dusk,

Held, that as the alleged search that evening was not part of the same transaction as the abduction at night, S. 6 could not make it admissible and as the women were neither parties to the case nor agents to any party, S. 8 was inapplicable, S. 9 was also inapplicable. (*Newbould and B. B. Ghose, JJ.*). FAZARUDDIN *v.* EMPEROR. **90 I.C. 433=42 C.L.J. 111=26 Cr. L.J. 1553= A. I. R. 1926 Cal. 105.**

—S. 6—What is Res gestae.

———Where the woman raped made a statement to her relative shortly after and committed suicide about three days after the occurrence.

Held, that the statement was not admissible under S. 6. (*Wallace and Jackson, JJ.*). KAPPINAIAH *v.* EMPEROR. **(1930) M.W.N. 702.**

———*After occurrence.*

What a witness tells at the time of the occurrence in respect of the occurrence itself is *res gestae* under S. 6. But a statement with regard to an event which took place a year ago would not be part of *res gestae.* (*Cuming and Mukerji, JJ.*). KHIJIRUDDIN *v.* EMPEROR. **92 I. C. 442= 53 Cal. 372=42 C.L.J. 504=27 Cr. L. J. 266= A. I. R. 1926 Cal. 139.**

———Whenever recollection comes in, whenever there is opportunity for reflection and explanations, then statements cease to be part of the *res gestae.* (*Martineau, J.*). RAMAN *v.* EMPEROR. **4 L. L. J. 491=A. I. R. 1921 Lah. 258.**

—S. 6—Statements after transaction.

———Where the statement of the girl to her mother does not form part of the transaction, *viz.*, the raping of the girl, or occur during it, but is made after the transaction is over, when the perpetrator had gone away and the girl came away from the scene of occurrence to her mother's house, the statement is not relevant under S. 6. (*Cuming and Lort-Williams, JJ.*). SREEHARI SWARNAKAR *v.* EMPEROR. **50 C. L. J. 524=1930 Cr. C. 132= A. I. R. 1930 Cal. 132.**

———In absence of definite and reliable evidence that the outrage upon a girl in an offence under S. 376, I.P.C. and her statement of the occurrence to her father constitute together *res gestae* much value cannot be attached to the statement even if it is held to be admissible. (*Agha Haidar, J.*). GHULAM HUSSAIN *v.* EMPEROR. **A.I.R. 1930 Lah. 337.**

—S. 6—Statements of members—Unlawful assembly.

———Evidence of statements, made by members of an assembly the promoters of which were charged with offences under S. 325 read with S. 149, I. P. C., of their determination to force their way through the police forms evidence of a part of the *res gestae* and is admissible to indicate that the promoters' intention to ignore the police orders had been communicated to sections of the crowd. (*Rutledge and Maung Gyi, JJ.*). MAUNG TOK *v.* EMPEROR. **90 I. C. 918=3 Rang. 352=26 Cr. L. J. 1622= A. I. R. 1925 Rang. 354.**

—S. 7—Absence of entry—Relevancy.

———The absence of an entry in an account book is a relevant fact, under either S. 7 or S. 8 or S. 11 of

EVIDENCE ACT (1872), S. 8 — Conduct and character.

the Evidence Act. 10 Cal. 1024, *Diss.* 4 C.W.N. 207, *Foll.* (*Hallifax, A.J.C.*). KASAM *v.* FIRM OF HAJI JAMAL. **76 I.C. 327=A.I.R. 1924 Nag. 22.**

—S. 8—Conduct and character.

———*Criminal tendency—Acts which formed basis of prior charge—Relevancy.*

It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue. *Makin* v. *Attorney-General for New South Wales*, (1894) A. C. 57, *Foll.*

Evidence of defalcations both prior or subsequent whether such defalcations formed the basis of another charge on which the accused may have been acquitted or not are admissible in evidence to prove guilty intent as also to anticipate the defence of the non-existence of such intent. (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*). EMPEROR *v.* STEWART. **97 I.C. 1041= 21 S.L.R. 55=27 Cr.L.J. 1217= A.I.R. 1927 Sind 28.**

—S. 8—Corroboration of Evidence.

———Section 8 does not render a statement by a woman raped admissible in evidence when there is nothing to corroborate or confirm the same. (*Wallace and Jackson, JJ.*). KAPPINAIAH *v.* EMPEROR. **(1930) M.W.N. 702.**

—S. 8—Hearsay evidence.

———*Relevancy.*

The answers given by the child in reply to mother's queries could not be admitted in evidence by letting in the mother's statement and that to hold otherwise would be admitting hearsay evidence. (*Shadi Lal, C.J. and Agha Haidar, J.*). EMPEROR *v.* SOOPI. **120 I.C. 539= 1930 Cr. C. 100=31 Cr. L.J. 141=31 P.L.R. 391= A.I.R. 1930 Lah. 84.**

—S. 8—Motive.

———*Value of.*

Motive for a crime, while it is always a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person, can never supply the want of reliable evidence, direct or circumstantial, of the commission of the crime with which he is charged. (*Shadi Lal, C. J. and Addison, J.*). RONNUN *v.* KING-EMPEROR. **94 I. C. 901= 7 Lah. 84=27 Cr. L. J. 709=27 P. L. R. 583= A. I. R. 1926 Lah. 88.**

———*What is.*

In a trial for the murder of a particular person, the prosecution should not show, that on two previous occasions the accused under trial had committed murders but had falsely charged and got convicted some others as murderers. The fact that the previous murders have been committed by the accused does not constitute a motive or preparation under S. 8.

Per *Crump, J.*—A motive is that which moves a man to do a particular act. Whether the belief which produces the state of mind is true or false, the motive remains the same and the truth or falsity, of the belief is not really in question. (*Shah and Crump, JJ.*). GANGARAM *v.* EMPEROR. **62 I.C. 545=22 Cr. L. J. 529=22 Bom. L.R. 1274.**

EVIDENCE ACT (1872), S. 8—Subsequent conduct.

—S. 8—Previous conduct.

———*Principal and agent.*

It is a matter of common knowledge that brokers sometimes for the purposes of gain do resort to the nefarious system of entering into a transaction unauthorisedly in the expectation of its subsequent ratification, but it is a far cry that because an agent had been shown to be guilty of shady practice once his evidence as to the circumstances under which the contract in suit was entered into should be entirely discarded. (*Raymond, A.J.C.*). TYEBALLY ABDUL HUSSAIN *v.* MESSRS. JAMES FINLAY. **80 I.C. 969=17 S L.R. 15= A.I.R. 1924 Sind 105.**

—S. 8—Statement after transaction.

———*Rape.*

Where the statement of the girl to her mother does not form part of the transaction, *viz.*, the raping of the girl, or occur during it, but is made after this transaction is over, when the perpetrator had gone away and the girl came away from the scene of occurrence to her mother's house, the statement is not relevant under S. 6. (*Cuming and Lort-Williams, JJ.*). SREEHARI SWARNAKAR *v.* EMPRROR. **50 C.L.J. 524=1930 Cr.C. 132= A.I.R. 1930 Cal. 132.**

———*Robbery and assault.*

A statement made by the deceased immediately after the robbery regarding the robbery and also regarding the assault committed in the course of the robbery, is admissible showing conduct, though the person who made it cannot be called to depose to it on oath. (*Mullick, Ag.C.J. and Wort, J.*). LALJI DUSADH *v.* EMPEROR. **106 I. C. 698= 6 Pat. 747=9 A.I.Cr.R. 379=29 Cr. L. J. 106= A.I.R. 1928 Pat. 162.**

—S. 8—Statements before Magistrate.

———*Confession proceedings.*

Where an accused person was sent up before a Magistrate under S. 164, Criminal P. C., to have his confession, recorded and he gave the police to understand that he would make a confession, but, instead of making a confession he made a statement, though he was told that it was open to him to say that he would make no statement,

Held, that the statement was admissible as evidence of conduct. (*Mullick, Ag.C.J. and Wort, J.*). LALJI DUSADH *v.* EMPEROR. **106 I.C. 698= 6 Pat. 747=9 A.I.Cr.R. 376=29 Cr.L.J. 106= A. I. R.1928 Pat. 162.**

—S. 8—Statement in answer.

———*Admissibility as complaint.*

The mere fact that the statement is made in answer to a question is not of itself sufficient to make it inadmissible as a complaint. If the question merely anticipates a statement which the complainant is about to make it is not rendered inadmissible by the fact that the questioner happens to speak first. (*Martineau, J.*). RAMAN *v.* EMPEROR. **4 L.L.J. 491=A.I.R. 1921 Lah. 258.**

—S. 8—Subsequent conduct.

———*Value of.*

Different persons are differently constituted and that some accused even though innocent deliberately abscond rather than face the ordeal of a criminal trial and that some other innocent accused do equally foolish things such as make a false admission of guilt or pay off the amount

EVIDENCE ACT (1872), S. 8—Subsequent conduct.

said to have been stolen or embezzled in the vain hope that they may escape a criminal prosecution or get off with a light punishment. Such subsequent conduct cannot dispense with the positive proof of the guilt of the accused, the burden of which lies upon the prosecution. When once the Crown has established the guilt of the accused by the evidence of prosecution witnesses then such subsequent conduct may be utilized as furnishing further proof of the correctness of the conclusion as to the guilt of the accused drawn from the evidence of the prosecution witnesses; by itself, however, it can furnish no legitimate proof of the guilt of the accused. (*Nanavutty, J.*). CHANDRIKA PRASAD *v.* EMPEROR. **7 O.W.N. 564= A.I.R. 1930 Oudh 324.**

———*Approver.*

The mere fact of an accused person having taken the Magistrate to a particular spot and pointed out the several places, where the various incidents narrated by the approver took place, is not admissible as evidence of conduct nor is it of any value in determining his guilt. (*Tek Chand, J.*). BAGEL SINGH *v.* EMPEROR. **121 I. C. 497= 1929 Cr. C. 426=31 Cr. L. J. 269= A.I.R. 1929 Lah. 794.**

———*Construction of deed.*

Per *Mukerji, J.*—Where the meaning of the document regarding certain transactions is not clear, the conduct of the parties is admissible in evidence to show in what light they themselves regarded the transactions. A.I.R 1924 P.C. 88; P. C. A. No. 15 of 1923 and A. I. R. 1926 P. C. 41, *Foll.*

Per *Ashworth, J.*—Subsequent conduct is only admissible for the purpose of construing a deed when it is impossible to arrive at a clear finding as to the meaning of the deed from its own terms and from surrounding circumstances. (*Mukerji and Ashworth, JJ.*). BADRI SINGH *v.* SADAPHAL SINGH. **111 I.C. 701=25 A. L. J. 849= A. I. R. 1928 All. 34.**

———*Raped girl.*

If the raped girl went to her relatives straight after the occurrence and complained on her own initiative about her rape, her conduct would have a direct bearing upon and connection with the occurrence, but if she only answered questions put to her, her statement would be mere hearsay. (*Foster, J.*). EMPEROR *v.* PHAGUNIA BHUIAN. **89 I.C. 1043=26 Cr.L.J. 1475= A. I. R. 1926 Pat. 58.**

———*Murder case.*

The fact that the accused pointed out the place, where the weapon was found as being the place at which it was concealed, and the fact that shortly after the crime he was in a very agitated state and made a statement which led to his being asked to show the spot where the weapon used in the commission of the murder was concealed are evidence of conduct under S. 8 of the Evidence Act, which render highly probable, the oral evidence in the case and indicate that the accused was the murderer. (*Spencer, O.C.J. and Reilly, J.*). SEMALAI GOUNDAN, *In re.* **86 I.C. 664=26 Cr.L.J. 840= 21 M. L. W. 199=A.I.R. 1926 Mad. 574.**

———*Rape case.*

Where a tender girl was alleged to have been raped, a statement made by her stating that she was raped, and uttered immediately after the rape, crying and weeping, is admissible as explaining her act of crying, under S. 8 and by way of corroboration under S. 157. (*Kinkhede, A.J.C.*). SOOSALAL BANIA *v.* EMPEROR. **82 I.C. 142= 25 Cr.L.J. 1214=A.I.R. 1925 Nag. 74.**

EVIDENCE ACT (1872), S. 9—Identification.

—S. 9—Absconding of accused.

———If after the commission of a crime a person whose name is mentioned as a participator in the crime absconds, his conduct implies that he is concerned in the crime. Anything therefore which tends to explain his conduct and furnishes motive other than a guilty conscience is relevant under S. 9. (*Shah and Crump, JJ.*). GANGARAM *v.* EMPEROR. **62 I.C. 545=22 Cr.L.J. 523=22 Bom. L.R. 1274.**

—S. 9—Conspiracy.

———*Evidence of previous association—Several persons charged of conspiracy—Evidence to show previous association for criminal purposes with approver is admissible to corroborate approver under S. 9 and (or) S. 11 as regards his statement regarding conspiracy.*

Where several persons are charged with committing or conspiring to commit a particular dacoity and evidence is tendered to show that prior to the dacoity the accused were closely and intimately associating with the approver and the object of the association was commission of theft and other discreditable acts,

Held, that as far as the evidence of close association with the approver is concerned corroborating the approver's statement that a conspiracy existed, it is admissible under S. 9 and (or) S. 11 of the Act. (*K. Kemp, J.*). EMPEROR *v.* WAHIDUDDIN HAMIDUDDIN (NO. 1). **32 Bom. L.R. 324= A.I.R. 1930 Bom. 157.**

———*Conduct of alleged conspirator.*

Where a person is alleged to be also one of the conspirators but who has not expressly been implicated in the case as a conspirator with the accused, his conduct is evidence only under S. 9 and not under S. 10. (*Fawcett and Madgavkar, JJ.*). EMPEROR *v.* ABDUL. **91 I.C. 690=49 Bom. 878= 27 Bom. L.R. 1373=27 Cr.L.J. 114= A.I.R. 1926 Bom. 71.**

—S. 9—Copy of document.

———*Admissibility of.*

Where the prosecution, when trying a person for sedition, brought a copy of a letter written by him and found in his possession which was alleged to have been sent by him along with the objected writing and it was contended on behalf of the accused that it is necessary for the prosecution to prove that such a letter was sent before this document can be admitted,

Held, that (1) the copy of the letter was relevant to show the accused's intention and could be admitted as evidence; and (2) it is not necessary for the prosecution to prove that such a letter was sent before the copy could be admitted as evidence. (*Fawcett, J.*). EMPEROR *v.* PHILLIP SPRATT (NO. 2). **180 I.C. 32=30 Bom. L.R. 314= 29 Cr.L.J. 322=A.I.R. 1928 Bom. 77.**

—S. 9—Identification.

———*Out of Court—Value of.*

The evidence that a person has identified another person as having taken part in a particular offence either in jail identification proceedings or elsewhere is admissible though the value of such evidence is weakened perceptibly as a general rule by failure to identify subsequently in Court. A.I.R. 1927 Oudh 369, *Foll.*; A.I.R.1921 All. 215 and A.I.R. 1927 All. 163, *Ref.* (*Stuart, C.J.*). PARBHU *v.* EMPEROR. **104 I.C. 626=4 O.W.N. 803= 28 Cr.L.J. 850=A.I.R. 1927 Oudh 598.**

EVIDENCE ACT (1872), S. 9—Identification.

———*Independent evidence.*

In order to rely on the evidence of persons who identified the accused in jail but failed to do so in Court, the fact of the jail identification must be stated in the witness's evidence. An identification in jail is in essence a statement by the witness, "I saw this man who is now before me taking part in the offence". That statement can be used to corroborate his evidence given in Court. If the witness says in his evidence: "A number of persons were shown to me at the jail and from among them I pointed out those persons whom I had seen taking part in the offence", it is permissible under S. 9 to call independent evidence, such as that of the Magistrate who conducted the identification, to prove the identity of the persons whom the witness picked out at the jail, even though the witness himself may not correctly remember who they were. (*Daniels, J.C.*). CHUTKAN *v.* EMPEROR.

90 I.C. 444=26 O.C. 258=
26 Cr.L.J. 1564=A.I.R. 1926 Oudh 36.

———*Magistrate's evidence—Corroborative value.*

For a Magistrate or other officer to come into Court and depose that a particular witness in his presence identified one of the accused as having taken part in the dacoity is nothing more than hearsay evidence but the Magistrate's evidence will be strictly relevant under the provisions of the Evidence Act to corroborate the evidence of a witness saying that he identified certain persons at the jail and that the persons whom he there identified were persons whom he had seen taking part in the dacoity. 19 A. L. J. 947, *Ref.* (*Daniels and Neave, JJ.*). ABDUL WAHAB *v.* EMPEROR.

95 I. C. 756=47 All. 39=27 Cr. L. J. 836=
5 L. R. A. Cr. 193=A.I.R. 1925 All. 223.

—S. 9—Scope.

———Ss. 9 and 11 read along with S. 21 of the Evidence Act amply justify a Court in admitting into evidence all previous statements made by the accused which have a bearing on the question of his guilt and whether the previous statement is made to a police officer or to an officer or to a third party is immaterial if the statement is relevant to the fact in issue. These sections are not controlled by the Cr. P. Code. (*Mullick and Thornhill, JJ.*). MADAN GURU *v.* EMPEROR.

73 I. C. 963=24 Cr. L. J. 723=
4 Pat. L. T. 381.

—S. 10—Confession by approver.

———Admission of an approver that he accepted a sum after the dacoity is not a circumstance incriminating him that he committed the dacoity. (*Newbould and B. B. Ghose, JJ.*). IBRAHIM, *In re.*

88 I.C. 458=42 C. L. J. 496=
26 Cr. L. J. 1146=A.I.R. 1926 Cal. 374.

—S. 10—Confession of co-accused.

———A confession of a co-accused implicating himself and others is admissible in evidence against all the accused under S. 10. It can also be taken into consideration against them under the provisions of S. 30. (*Stuart, C. J. and Raza, JJ.*). RAM PRASAD *v.* EMPEROR.

106 I. C. 721=
2 Luck. 631=1 L. C. 339=8 A. I. Cr. R. 449=
A. I. R. 1927 Oudh 369.

—S. 10—Connection with acts.

———Connexion has to be established with the conspiracy and not with the separate acts of different conspirators which are the overt acts of the different individuals in proof of the conspiracy. (*Dalal, J. C.*). BISHAMBHAR NATH TANDON *v.* EMPEROR.

90 I.C. 706=26 Cr. L. J. 1602=
2 O. W. N. 760=A. I. R. 1926 Oudh 161.

EVIDENCE ACT (1872), S. 10—Scope and effect.

—S. 10—Object and applicability.

———*Cipher Code—Inference.*

The object of S. 10 is merely to ensure that one person shall not be made responsible for the acts or deeds of another until some bond in the nature of agency has been established between them and the acts, words, or writing of another which it is proposed to attribute vicariously to the person charged must be in furtherance of the common design and after such design was entertained.

In a trial of several accused for sedition an exercise book containing a Cipher Code was put in evidence,

Held, that the Cipher Code book was not to be treated as 'the act, word or deed of a particular individual, but the fact that it existed the fact that it set forth the names and addresses of a substantial number of persons charged the fact that it was in a peculiar form such as is not likely to be found in any Code intended to be used for lawful purposes, and many internal indications such as grouping of the names and the use of words and names having a revolutionary significance all gave rise to a probability, amounting almost to certainty that the persons named in the Code were associated for some unlawful purposes whose interests demanded that it should be kept secret and in absence of evidence that the persons named in it were associated for some legitimate purposes to be kept secret for some legitimate reason, the Cipher Code was in itself a good ground for supposing that the persons named had conspired to commit an offence and any other acts or writings of individual conspirators in furtherance of the common design became admissible under S. 10. (*Courtney-Terrell, C.J., Kulwant Sahay and Macpherson, JJ.*). INDRA CHANDRA *v.* EMPEROR.

116 I.C. 756=30 Cr. L.J. 646=11 P.L.T. 45=
13 A.I. Cr. R. 80=A.I.R. 1929 Pat. 145 (F.B).

—S. 10—Previous conduct.

———*Offence under S. 222, Penal Code.*

The accused who was a warder in the jail was being tried under S. 222, Penal Code in respect of intentionally aiding the prisoners under sentence of death in attempting to escape from confinement in jail. He procured saw blades and loosened the rivets of the grates. Previously he was seen by some witness warders conversing and carrying on negotiations with certain fellow-caste-men of the convicts. A constable who was called in as witness and had exhorted the convicts while under trial, deposed that after the death sentence was pronounced and the convicts were brought out one of the convicts called out to his fellowman and told him to give the accused Rs. 100. The request was repeated twice,

Held, that the evidence of the constable was admissible under the circumstances under S. 10. (*Hilton, J.*). MAULA BAKHSH *v.* EMPEROR.

119 I.C. 762=30 Cr.L.J. 1103=1929 Cr. C. 190=
A. I. R. 1929 Lah. 631.

—S. 10—Scope.

———Section 10 renders admissible in cases of conspiracy much evidence which is not otherwise ordinarily admissible under the Indian law. The provisions of the section are wider than those of English law. (*Stuart, C.J. and Raza, J.*). RAM PRASAD *v.* EMPEROR.

106 I.C. 721=
2 Luck. 631=1 L.C. 339=8 A.I. Cr. R. 449=
A.I.R. 1927 Oudh 369.

—S. 10—Scope and effect.

———*Existence of conspiracy and joining therein—Proof of, necessary.*

EVIDENCE ACT (1872), S. 10—Scope and effect.

Section 10 of the Evidence Act means this: if two persons conspire together to commit an offence, each is regarded as being the agent of another and just as the principal is liable for the acts of the agent, so each conspirator is liable for what is done by his fellow conspirator in furtherance of the common intention which they had both entertained. First, you must find, that there was a conspiracy and, secondly, that the person to whom the doctrine is to apply should have joined the conspiracy before they can be made liable for anything said or done by others. (*Crump, J.*). EMPEROR *v.* SHAFI AHMAD. **31 Bom. L.R. 515.**

—S. 10—Statements in furtherance.

———*Conspiracy case.*

If *prima facie* evidence of the existence of a conspiracy is given and accepted the evidence of statements made by any one of the conspirators in furtherance of the common object is admissible against all. (*Coutts-Trotter, C.J.*). LILARAM GANGANMULL, *In re.* **81 I.C. 817=20 M.L.W. 202=25 Cr.L.J. 1041=A.I.R. 1924 Mad. 805.**

—S. 11—Admissibility.

———*Principles—Evidence of previous acts.*

The admissibility of a particular evidence under S. 11 in each case must depend on how near is the connexion of the facts sought to be proved with facts in issue to what degree do they render facts in issue, probable or improbable, when taken with other facts in the case and to what extend would the admission of the evidence be inconsistent with principles enunciated elsewhere in the Act.

Where *A* was charged with entering into a conspiracy to bring false evidence against *B* and *C* and all the previous acts of which evidence was to be given were acts in which he acted against *B* or *C*, or both,

Held, that such evidence was admissible under S. 11 but not under Ss. 10 and 15; *Reg.* v. *Planningan and Higgin*, 15 Cox. C. C. 403 and other cases *Ref.* (*Mya Bu and Brown, JJ.*). HTIN GYAW *v.* EMPEROR. **109 I.C. 491=6 Rang. 6=29 Cr. L.J. 555=10 A.I. Cr. R. 249=A.I.R. 1928 Rang. 118.**

———*Question as to dedication to religious endowment—Circumstances under which gift of one item was made—Same throwing light on question of dedication.*

Where the suit related to rights to properties belonging to a math and the question as to dedication was put in issue and the gift of certain item of property belonging to the institution was sought to be relied on as throwing light on the general question, *held*, that it was admissible under S. 11 (2) of the Evidence Act. (*Mears, C.J. and Dalal, J.*). BHAGWAT PRASAD *v.* BINDESHWARI DAS. **1930 A.L.J. 964.**

—S. 11—Deed between strangers.

———A document between strangers to the suit, in which mention is made of one of the parties to the suit or their predecessors-in-interest as holding the land as belonging to the executants of the document is not admissible in evidence. A.I.R. 1927 Lah. 448, *Foll.* (*Bhide, J.*). ABDUL GHANI *v.* FAKIR MAHOMED. **111 I.C. 361=A.I.R. 1929 Lah. 78.**

———A document between strangers to the suit in which mention is made of one of the parties to the suit or their predecessors as holding the land lying on the boundaries of the lands belonging to the executants of the document is not admissible in evidence. 46 I.C. 719, *Not foll.*; A.I.R. 1925 Cal, 1034 and 224 P. L. R. 1913, *Foll.* (*Shadi Lal, C. J. and Zafar Ali, J.*). LAJPAT RAI *v* FAIZ AHMAD. **103 I. C. 889=8 Lah. 651=29 P.L.R. 74=A.I.R. 1927 Lah. 448.**

EVIDENCE ACT (1872), S. 11—Dispute about land.

———A document between strangers to the suit in which mention is made of one of the parties or their predecessors as holding the land lying on the boundaries of the lands belonging to the executants of the document is not admissible in evidence. (*Suhrawardy and Cuming, JJ.*). CHOONI LAL KHEMANI *v.* NILMADHAB BARIK. **86 I.C. 734=41 C.L.J. 374=A.I.R. 1925 Cal. 1034.**

———A recital in a deed or other instrument is in some cases conclusive, and in all cases evidence as against the parties who make it. But it is no more evidence as against third persons than any other statement would be. (*Greaves and Chakravarti, JJ.*). PRAMATHA NATH CHOUDHURI *v.* KRISHNA CHANDRA BHATTACHARJEE. **84 I. C. 420=28 C.W.N. 1092=A.I.R. 1924 Cal. 1067.**

———*Recitals in—When admissible.*

Recitals in the boundaries of other lands in documents between the third parties, are not admissible in evidence under S. 11 or S. 13. But they might be admissible under Cl. (3) of S. 32 when they are the statements made by persons of the character described in the opening sentence of that section; that is to say, persons who are dead or who cannot be found or for other reasons therein stated cannot be examined as witnesses. (*Newbould, J.*). ABDUL RAHIM KAZI *v.* JONABALI SIKDAR. **68 I.C. 329=A. I. R. 1923 Cal. 299.**

———Recitals of boundaries of lands in documents between third parties are not admissible in evidence under S. 11 or S. 13 but are admissible under S. 32 (2) of the Evidence Act. (*Prideaux, A. J. C.*). TRIMBAK *v.* GANESH. **68 I. C. 314=A.I.R. 1923 Nag. 22.**

—S. 11—Dispute about land.

———*Recitals in certificate or proclamation of sale.*

Recitals in a sale certificate or a sale proclamation are not admissible under Ss. 11, 13 and 32, Cl. 3. A. I. R. 1927 Cal. 230; A. I. R. 1924 Cal. 1067, *Foll.*; 22 W. R. 239 and 23 Bom. 63, *Dist.* (*Cuming and Mukherji, JJ.*). AMBIKA CHARAN *v.* KUMUD MOHUN. **110 I.C. 521=A.I.R. 1928 Cal. 893.**

———*Documents with recitals of boundaries—When admissible.*

Recitals in documents regarding boundaries executed by third parties in favour of the plaintiffs are not admissible in evidence if the executant is not dead and does not come to corroborate them: A.I.R. 1927 Lah. 448, *Foll.*; A.I.R. 1927 Cal. 230; A.I.R. 1916 P.C. 5, *Dist.* (*Harrison, J.*). GHULAM MUHAMMAD *v.* KALIM ULLAH. **109 I.C. 728=10 L.L.J. 370=A.I.R. 1928 Lah. 428.**

———Where the executants of documents containing recitals of boundaries of land in dispute are alive and do not give their evidence, such documents are not admissible either under S. 11 or S. 13. (*B. B. Ghose and Panton, JJ.*). KETABUDDIN *v.* NOFAR CHANDRA. **99 I. C. 907=44 C.L.J. 582=A.I.R. 1927 Cal. 230.**

———*Batwara papers—Entries in.*

The presumption which arises as to the correctness of an entry in the record-of-rights under S. 103-B of the Bengal Tenancy Act would not attach to an entry in the batwara papers, prepared by the Collector under the Bengal Estates Partition Act 5 of 1897. Where certain lands are entered in

EVIDENCE ACT (1872), S. 11—Dispute about land.

those papers as *chowkidari chakran* lands, so far as a stranger is concerned, the only way in which those papers can be treated as evidence would be under S. 11 of the Evidence Act on the ground that in the partition proceedings the lands were claimed as *chowkidari chakran* lands. The entries in those papers could not be in any way binding upon a stranger to those proceedings. 13 C.W.N. 93, *Dist.* (*Chakravarti, J.*). RAHIMUDDIN SARKAR *v.* UMESH CHANDRA. **87 I. C. 694= A. I. R. 1926 Cal. 115.**

———*Description in lease—Value of.*

The right to possession by lessee of a plot of land was in controversy. The right was denied on the ground that the alleged lessor was not entitled to the plot. A pattah executed by the lessor in respect of another plot of land, a year previous to the granting of the lease in question, contained a description of the boundary of the land demised by that pattah. This description clearly evidenced his title to the other plot which formed the subject of the lease in question.

Held, that the lessor's statement in the pattah previously granted could not be said to be a "fact" within the meaning of S. 11 and that that section could not be invoked for admitting the statement. (*Suhrawardy and Cuming, JJ.*). RADHA KRISHNA MARWARI *v.* SARBESWAR NAG. **86 I.C. 674= 29 C.W.N. 469= A.I.R. 1925 Cal. 684.**

———*Document evidencing construction—Value of.*

Old documents mentioning persons who built certain very old houses may be admitted in evidence under S. 11, Cl. 2 and S. 13, Cl. (b) where direct evidence about the construction may not be easily available. (*Kanhaiya Lal, J.*). RAGHUNATH *v.* BINDESHWARI NANDAN. **82 I. C. 582= 5 L.R.A. Civ.231= A.I.R. 1924 All. 526.**

———*Writs of attachment—Non-mention of tenancy*

———*Effect of.*

Where writs of attachment issued in 1792 and 1797 must have been prepared when the Collector took possession of the zemindari upon default in payment of revenue by the proprietor and the documents might be relevant in connection with the history of the estate and might be used to show that the proprietor defaulted and the Collector went into possession, but there was nothing to indicate that the duty was cast upon the Collector to prepare a complete record of all the tenures then in existence,

Held, that in view of the scope of the two attachment writs no inference favourable to the landlord can be drawn therefrom, and they cannot be treated as relevant under S. 11. (*Mookerjee and Chotzner, JJ.*). TARA KUMAR GHOSE *v.* KUMAR ARUNCHANDRA SINGH. **74 I.C. 383=36 C.L.J. 389= A.I.R. 1923 Cal. 261.**

—S. 11—Former judgment.

———*Case under S. 153-A, I. P. C.—Procedure.*

During the prosecution of an author of a book under S. 153-A, I.P.C. the book was proscribed by an order of Government under the Criminal P. C., (amended 1926) S. 99-A on the ground that the book contained matter the publication of which is punishable under S. 153-A, I. P. C. The author applied under S. 99-B and his application was dismissed by a bench of the High Court. Thereupon the trial Magistrate without recording any defence evidence or allowing further cross-examination of prosecution witnesses convicted the accused,

Held, that the conviction was legal and the judgment of the Bench of the High Court was admissible under Ss. 11 and 13, Evidence Act. (*Dalal, J.*). KALI CHARAN SHARMA *v.* EMPEROR. **104 I.C. 225=8 A.I. Cr. R. 204= 8 L. R. A. Cr. 124=25 A.L.J. 846= 28 Cr. L.J. 785= A.I.R. 1927 All. 654.**

EVIDENCE ACT (1872), S. 11—Legitimacy of children.

———*Admissibility—Case under S. 401, I. P. C.*

When offence charged against an accused is that of belonging to a gang of thieves, a former judgment more than 25 years old and convicting him of dacoity is admissible in evidence, though the former judgment is useful only for the purpose of proving that the accused is a person of criminal tendencies to commit theft who may be a member of the alleged gang. The judgment by no means goes to show that he had any habit of committing theft in the period under consideration. 14 Bom. L.R. 373 and 38 Cal. 408, *Foll.* (*Marten and Fawcett, JJ.*). MOTIRAM HARI *v.* EMPEROR. **89 I.C. 527= 26 Bom.L.R. 1223=26 Cr. L.J. 1391= A.I.R. 1925 Bom. 195.**

—S. 11—Hindu Muslim riot.

———*Previous attempt to convert—Admissibility of.*

When the charges against the accused are of dacoity and rioting, evidence that on the day after the occurence, the accused who was a Mussalman wanted another, a Hindu, to embrace Islam and threatened to beat him if he did not, is wholly irrelevant to either of the charges and should not be admitted notwithstanding that the riots in which accused was involved were due to Hindu-Muslim dissensions. (*Newbould and Mukherjee, JJ.*). DARGAHI *v.* EMPEROR. **88 I.C. 733= 52 Cal. 499=26 Cr. L. J. 1213= A.I.R. 1925 Cal. 831.**

—S. 11—Law on migration.

———*Proof of adoption.*

Where the question is whether a migrating family has adopted the law of the new place, the fact that in the allied or connected families, the new law has very widely been adopted and the rites and ceremonies of the new place have been generally recognised, renders it probable within the meaning of S. 11 that the family in question has adopted the new law.

Where the fact in issue is whether the migrating family has adopted the law of the new place a previous judgment, in which the ancestors of the family in question were on one side, is relevant. The observance of rites and ceremonies at marriages, deaths and births are also relevant. (*Mookerjee and Cuming, JJ.*). SARADA PARSANNA ROY *v.* UMA KANTA. **77 I.C. 450=37 C. L. J. 233= 50 Cal. 370= A.I.R. 1923 Cal. 485.**

—S. 11—Legitimacy of children.

———*Previous case—Absence of cross-examination on illegitimacy—Admissibility.*

Where the question is whether a particular person is the illegitimate son of a certain man and a certain woman, the fact on a previous occasion, when giving evidence on behalf of the woman the man was asked questions in cross-examination in order to show his partiality to her, including the question whether she had been his wife before another man took her in marriage, but that no question was asked him as to her bearing him illegitimate children, is admissible in evidence under S. 11 (2) as it makes highly improbable the allegation that the illegitimacy was well-known. (*Daniels, J.C. and Dalal, A.J.C.*). MUMTAZ-UNNISSA *v.* WAZIR ALI. **65 I.C. 308=8 O.L.J. 569= A.I.R. 1921 Oudh 242.**

EVIDENCE ACT (1872), S. 11—No entry in accounts.

—S. 11—No entry in accounts.

———The absence of an entry in an account book is a relevant fact, under either S. 7 or S. 8 or S. 11 of the Evidence Act. 10 Cal. 1024, *Diss.*; 4 C.W.N. 207, *Foll.* (*Hallifax, A.J.C.*). KASAM *v.* FIRM OF HAJI JAMAL. **76 I.C. 327=A.I.R. 1924 Nag. 22.**

———*Admissibility.*

Evidence that there is no entry in the account books, though not admissible under S. 34 may be admissible under Ss. 9 and 11.

The fact of absence of entry is relevant; its effect is to be determined in the light of the general evidence in the case. (*Mookerjee and Chotzner, JJ.*). TARA KUMAR GHOSE *v.* KUMAR ARUNCHANDRA SINGH. **74 I.C. 383=36 C.L.J. 389. A.I.R. 1923 Cal. 261.**

—S. 11—Partnership.

———*Proof of agency.*

Where a plaintiff sues a firm on foot of a transaction made by one member of the firm, it is for the plaintiff to show that either by the course of dealings between him and the defendants or by some overt acts of the defendant firm, that member was acting as their authorized agent in those transactions in such a manner as to bind the firm. (*Fforde and Agha Haidar, JJ.*). FIRM GHAZI RAM RAMPAT *v.* SHIMBU DAYAL. **109 I. C. 327= 9 L. L. J. 518=29 P. L. R. 276= A. I. R. 1928 Lah. 105.**

—S. 11—Religion.

———*Admission in will—Value of.*

Where the religion of a deceased person is a fact in issue, any solemn declaration made by him as to his religion is relevant and if such a declaration is made in a formal document for example in his will, it is relevant as an admission under the provisions of S. 11 (2), 14 and 21 (2) and is entitled to very great weight in deciding the question. 34 All. 341, *Expl.* and *Dist.*; 9 L. B. R. 179, *Ref.* (*Chari and Brown, JJ.*). LEONG HONE WAING *v.* LEAN AH FOON. **121 I. C. 796=7 Rang. 720= A.I.R. 1930 Rang. 42.**

—S. 11—Rent decree.

———*Admissibility—Proof of tenancy.*

When an *exparte* rent decree is satisfied by payment of the decretal amount, it is admissible in evidence to show the relevant fact of the existence of the tenancy till the date of the decree and the landlord's rights as arising from such tenancy. (*Greaves and Panton, JJ.*). ANUKUL CHANDRA DHAR *v* KAMALA KANTA ROY. **67 I. C. 787= A. I. R. 1923 Cal. 270.**

—S. 11—Rent suit.

———*Statement as to rent in order for delivery of possession is inadmissible.*

A statement in an order for delivery of possession as to the rent payable in respect of the land is inadmissible in evidence in a suit between the landlord and the tenant in which the rent payable is in dispute. A.I.R. 1924 Cal. 1067, *Foll.* (*Greaves and Mukerji, JJ.*). CHANDRA MOHAN *v.* SHEIK ELIN. **87 I.C. 512=A.I.R. 1926 Cal. 415.**

—S. 11—Scope.

———*S. 11 is controlled by S. 32.*

As a general rule, S. 11 is controlled by S. 32 when the evidence consists of statements of persons who are dead and the test whether such statement is relevant under S. 11, though not relevant under S. 32, is that it is admissible under S. 11 when it is altogether immaterial whether what was said was true or false but highly material that it was said.

EVIDENCE ACT (1872), S. 13—Decrees.

9 Bom. L.R. 1047, *Ref.* (*Cuming and Mukherji, JJ.*). AMBIKA CHARAN *v.* KUMUD MOHAN. **110 I.C. 521=A. I. R. 1928 Cal. 893.**

—S. 11—Self-serving statement.

———*Admissibility.*

Where the question is whether a person is a *benamidar* or real owner of property.

Per *Dawson Miller, C. J.*—Even self-serving statements made by the person are admissible under S. 11 if they render fact in issue highly probable or highly improbable.

Per *Mullick, J.*—Admissions made by the person in his own favour are not admissible.

Per *Foster, J.*—Where the statements are made by the person in the course of his instructions to his local agent who assists him in acquiring the property they are admissible as *res gestae*. (*Dawson-Miller, C. J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PRASAD. **93 I. C. 454= 5 P. H. C. C. 1=A.I.R. 1925 Pat. 68.**

—S. 11—Statements of living person.

———*Statements of living persons not examined as witnesses being inadmissible under S. 32 cannot be made relevant under S. 11.*

Before a fact can be considered to be relevant under S. 11, it must be shown that it is admissible. It would be absurd to hold that every fact, which even if it be inadmissible and irrelevant, would be admissible under S. 11. If a particular deposition could not be admitted under S. 32, it could not be admissible under S. 11 : 34 All. 341, *Foll.*

Statements of living persons not examined as witnesses are inadmissible in evidence to prove the allegation that the executant was a major at the time when he executed the document. (*Gokaran Nath Misra and Pullan, JJ.*). MUNNA LAL *v.* KAMESHARI DAT. **114 I. C. 801= 5 O. W. N. 1111=A. I. R. 1929 Oudh 113.**

—S. 11—Unregistered deed.

———*Admissibility.*

A deed which is not admissible in evidence on account of its being barred under S. 49, Registration Act, can be admitted in evidence under S. 11 if it is inconsistent with fact in issue. (*Niamatullah and Bennet, JJ.*). SHEO BANDHAN SINGH *v.* SAHDEO PRASAD SINGH. **122 I.C 895= A.I.R. 1930 All. 130.**

—S. 13.

Decrees.
Documents.
Documents between strangers.
Essentials of assertion.
Judgments inter partes.
Judgments not inter partes.
Miscellaneous.

—S. 13—Decrees.

———*Decree not binding on parties as* res judicata *is not conclusive evidence of enforcement of custom.*

Although the most satisfactory evidence of the enforcement of a custom is a decree, still a decree, which does not bind the parties as *res judicata*, is a mere piece of evidence capable of rebuttal. It does not necessarily prove a custom; A.I.R. 1926 Sind 161, *Rel. on.* (*Aston, A.J.C.*). NIAMAT *v.* ABDUL RAHMAN. **A I.R. 1930 Sind 193.**

———Decree in a previous suit to which one party in subsequent suit was not party is admissible in evidence for corroboration of fact asserted by party in oral evidence and question of weight to be attached to it is question of fact—Evidence Act, S. 41. 6 Cal. 171 (F.B.), *Dist.* (*Courtney-Terrell, C.J. and James, J.*). RAM LAKHAN UPADHYA *v.* JAI UPADHYA. **A.I.R. 1929 Pat. 749.**

EVIDENCE ACT (1872), S. 13—Decrees.

———A decree not set aside by a competent Court can be used as evidence with regard to the matters dealt with by it. (*Mukerji, J.*). KIRAN CHANDRA *v.* JAGANNATH BANIK. **114 I. C. 670= A I.R. 1928 Cal. 472.**

———*Suit for rent—Decree by another co-sharer admissibility as to rate of rent.*

A decree obtained by a co-sharer landlord in a previous suit is not admissible in evidence as to rate of rent in a subsequent suit for rent by another co-sharer landlord. It does not follow that because one co-sharer was suing for the particular amount as representing his share of the rent, necessarily other co-sharers would be getting the same amount if the shares were identical or a proportionate amount, unless there was one contract by which the tenancy was created : 22 C. W. N. 304, *Not foll.*; 22 Cal. 533 (P. C.), *Dist.*; 25 Cal. 522 (F. B.) and A. I. R. 1923 P. C. 1, *Foll.*; [cf. A. I. R. 1928 Cal. 355 S. A. No. 2452 of 1925—Ed.] Per *Mitter, J.* A decree obtained by a co-sharer landlord is admissible in evidence as to the rate of rent in a subsequent suit for rent by another co-sharer landlord. —Per *Mullick, J.* 22 C.W.N.304 and 22 C. 533 (P.C.), *Foll.*; 10 C. W. N. 1084, *doubted*. KANTO MOHAN MULLICK *v.* JUDAB CHANDRA. **112 I.C. 787= A.I.R. 1928 Cal. 353.**

———*Criminal P. C., Ss.* 144 *and* 145—*Rent decree —Evidentiary value.*

The rent-decree is to some extent evidence under S. 13 of Evidence Act as to the landlord having recognised the holding as being in possession of tenant sued. It is not conclusive against third parties. (*Jwala Prasad, J.*). NANDKISHORE SAO *v.* BIKAN SINGH. **65 I.C. 856=3 Pat. L.T. 570= 23 Cr L.J. 200=A.I.R. 1922 Pat. 557.**

—S. 13—Documents.

———*Suit to establish rights as mahant—Papers containing recognition of rights by revenue officers and residents of village—Admissibility.*

Where in a suit in which the rights as mahant were asserted a report containing signatures of revenue officers and residents of the village were filed to prove the said rights.

Held, that it was admissible under S. 13 of the Evidence Act. (*Mears, C.J. and Dalal, J.*). BHAGWAT PRASAD *v.* BINDESHWARI DAS. **1930 A.L.J. 964.**

———*Dispute regarding nature af land—Recitals in sale-deeds in favour of one party to suit showing nature of same land are admissible not only under S.* 32 *but also under S.* 13 (*b*).

Where in a suit between two persons the question is whether or not the adjoining piece of land is Nazul land, the recitals made by successive vendors of one of these persons whereby they purported to transfer the house with all the lands, boundaries and rights appertaining thereto but expressly admitted that the land in dispute did not belong to them but was Nazul land are admissible in evidence not only under S. 32 but also under S. 13 (b). 11 A.L.J. 139, *Rel. on* ; 23 Bom. 63; 16 C.W.N. 252; 17 C. W. N. 108; A.I.R. 1924 Cal. 1067; 45 Cal. 159 and A. I. R. 1922 Cal. 251, *Ref.* (*Sulaiman and Kendall, JJ*). TIKA RAM *v.* MOTI LAL. **1930 A.L.J. 564= A.I.R. 1930 All. 299.**

———Settlement deed under which pro-note is transferred, if admissible as secondary evidence, may be employed to prove pro-note under S. 32 (7) read with S. 13 (a)—(*Obiter.*) 26 I. C. 747, *Rel. on.*

EVIDENCE ACT (1872), S. 13—Documents.

(*Curgenven, J.*). SUBBARAYULU NAIDU *v.* VENGAMA NAIDU. **A.I.R. 1930 Mad. 742.**

———*Statement in will regarding nature of tenancy may be taken as evidence.*

A statement in the will made by tenant regarding the permanency of his tenancy may be regarded as one made in course of a transaction by which the property was bequeathed to the legatee under the will and consequently the statement made in the will may be taken as evidence under S. 13. (*Mitter and Mallick, JJ.*). PRAMATHA NATH DAS *v.* CHAMPA DASI. **118 I. C. 353=56 Cal. 275= A. I. R. 1929 Cal. 473.**

———*Bengal Estates Partition Act* (8 *of* 1876), *S.* 77 —Batwara, *prepared under provisions of Ch.* 7 *in presence of proprietor—Admissibility.*

A *Batwara* signed by the partition Deputy Collector and containing entries required by the provisions of Ch. 7 of the Bengal Estates Partition Act would be evidence against the proprietors under S. 13, Evidence Act because they were made in their presence. 38 I.C. 205, *Ref.* (*Mullick, Ag. C.J. and Jwala Prasad, J.*). RAMSARUP RAUT *v.* RAMNARAIN TEWARY. **114 I.C. 479=7 Pat. 85= 10 P.L.T. 399=A I R. 1929 Pat. 32.**

———*Admissibility of* batwara khasra.

The *Batwara Khasra*, prepared by an Amin and not signed by any gazetted officer, cannot be held to be a public document under S. 35, though, on proper proof, it may be evidence either under S. 18 or 13. 17 C.W N. 779, *Expl.* (*Mullick, Ag. C.J. and Jwala Prasad, J.*). RAMSARUP RAUT *v.* RAMNARAIN TEWARY. **114 I.C. 479=7 Pat. 85=10 P.L.T. 399= A.I.R. 1929 Pat. 32.**

———*Mortgage-deed stating rent payable to superior landlord—Mortgage debt paid off—Superior interest purchased by mortgagee—Suit for recovery of rent at an enhanced rate—No proof of enhanced rent—Mortgage bond is admissible to prove the rent.*

Defendant mortgaged the rent land to the plaintiff in 1899. The mortgage-deed stated the rent in respect of that holding payable to the superior landlord as Rs. 18. In 1904 the mortgage debt was paid off, the plaintiff purchased the superior interest and claimed rent at the rate of Rs. 24, although there was no proof of such enhancement,

Held, that the question as to what the amount of rental was, was one of the essential terms of the mortgage bond. That the document was admissible in evidence as it was a transaction by which the right of the defendant to the land was asserted and for the definition of that right, the amount of rent had to be stated. A.I.R. 1927 Cal. 1, *Dist.* (*Mitter, J.*). ABDUL MUNSER *v.* YAKUB TALUKDAR, **117 I.C. 599=A.I.R. 1928 Cal. 703.**

———*Recital of boundaries in—Admissibility.*

A receipt, stating the disputed property as one of the boundaries to an adjacent plot, executed by a deceased person in the ordinary course of business and consisting of an acknowledgment written or signed by him of the receipt of money, is admissible in evidence under S. 32, and not under S. 13. 19 C. W. N. 468 and A. I. R. 1922 Cal. 251, *Dist.* (*Pullan, J.*). AHMAD SHAJI *v.* JAMAL AHMAD. **113 I. C. 414=5 O. W. N. 174= A.I.R. 1928 Oudh 248.**

———*Dispute concerning land—Landlord's papers prepared in course of business concerning lands are admissible.*

Under S. 13 zemindar's papers prepared in the course of business and in due management of the zemindari are admissible in a dispute concerning the land to which such papers pertain : 9 Cal. 741,

EVIDENCE ACT (1872), S. 13—Documents.

Dist.; 16 C. W. N. 116, *Rel. on.* (*Suhrawardy and Cammiade, JJ.*). SUTU HOWLADAR *v.* ALEP.
101 I. C. 792=A. I. R. 1927 Cal. 576.

———*Chittas made by Government for private use in connexion with resumption proceedings are not admissible.*

Chittas made by Government for its own private use in connexion with resumption proceedings are nothing more than documents prepared for the information of the Collector, and are not evidence against private persons for the purpose of proving that the lands described therein are or not of a particular character or tenure. They are admissible neither under S. 83 nor under S. 13 where it is not known whether they were acted on for the purpose of the resumption proceedings or if in fact reliance was placed upon them by Government for the purpose of resumption proceedings: 9 Cal. 741, *Rel. on.* (*Greaves and Mukerji, JJ.*). UPENDRA NATH CHATTOPADHYA *v.* RADHA GOVINDA BANDOPADHYAY. 98 I. C. 85=A.I.R. 1927 Cal. 189.

———*Benami transaction is not admissible.*

Per *Cuming and Mookerjee, JJ.*—A benami transaction is a fictitious transaction and as such cannot be let in evidence under S. 13. (*Sanderson, C.J., Panton and Graham, JJ.*). BROJENDRA KISHORE *v.* MOHIM CHANDRA. 99 I.C. 189=31 C.W.N. 32=A.I.R. 1927 Cal. 1.

———*Rent suit—Chittas are admissible.*

Chittas or the zemindar's private survey papers, though prepared in the absence of the tenants, are not wholly inadmissible in evidence in a rent suit by the zemindar: but there may be a great deal of difference in their probative value, which may range from zero to hundred according to the facts of the particular case. (*Suhrawardy and Cuming, JJ.*). APTABUDDI *v.* SAYED ALLA HAFIJ.
88 I.C. 548=A.I.R. 1925 Cal. 1104.

———*Previous transaction in respect of different property is not "transaction" within the section.*

Where a plot of land was leased and the title of the lessor to the land was disputed, but previous to the lease in question, the lessor had executed a pattah in respect of another plot of land and where his description of the boundary of the land in that pattah showed that he claimed the land in suit as his own,

Held, that the pattah was not a "transaction" as it did not relate to the land in suit. 11 C.W.N. 703, *Foll.* (*Suhrawardy and Cuming, JJ.*). RADHA KRISHNA MARWARI *v.* SARBESWAR NAG.
86 I.C. 674=29 C.W.N. 469=A.I.R. 1925 Cal. 684.

———*Evidence of construction of old houses by old documents.*

Old documents mentioning persons who built certain very old houses may be admitted in evidence under S. 13, Cl. (b) where direct evidence about the construction may not be easily available. (*Kanhaiya Lal, J.*). RAGHUNATH *v.* BINDESHWARI NANDAN. 82 I.C. 582=6 L.R.A. Civ. 231=A.I.R. 1924 All. 526.

———*Lease-deed—Assertions in—Admissibility.*

An assertion in the *kobala* executed by a tenant in favour of his transferee, that his right in it was a permanent one is admissible under S. 13 in evidence in a suit for ejectment of the tenant where permanent tenancy was claimed. (*Rankin, J.*). JNANENDRA NATH DUTT *v.* NASEA DESAI.
83 I.C. 948=39 C.L.J. 526=A.I.R. 1924 Cal. 991.

———*Batwara Khasra.*

Where *Batwara Khasra* was used to show the past history of the plots long before the landlords

EVIDENCE ACT (1872), S. 13—Essentials of assertion.

predecessors-in-interest obtained a settlement and to show that in 1866 the land was raiyati land,

Held, that there is no reason why the document should not be held admissible under S. 13. (*Adami, J.*). SADHU SARAN *v.* AMBIKA LAL.
68 I.C. 676=A.I.R. 1923 Pat. 163.

———*Police orders are admissible.*

Police orders made under various sections of the Criminal Procedure Code, deciding who was in possession of the disputed land are admissible in evidence under S. 13 of the Indian Evidence Act to show the fact that such orders were made. (*Wazir Hasan, A.J.C.*). GHULAM SARWARKHAN *v.* MOHAMMAD ALI KHAN. 65 I.C. 398=8 O.L.J. 609=A.I.R. 1922 Oudh 98.

———*Document by third party recognising plaintiff's right is admissible in evidence.*

The plaintiffs claimed the land in dispute as their *man* land and the defendant claimed it as his *jote*. The plaintiffs produced an *ekrarnama* addressed by a third party to an ancestor of the plaintiffs in which the land in suit was described as *man* land,

Held, the *ekrarnama* was admissible under both clauses (*a*) and (*b*) of S. 13. (*Coutts and Ross, JJ.*). SABRAN SHEIKH *v.* ODOY MAHTO. 70 I.C. 18=1 Pat. 375=3 P.L.T. 792=1923 P.H.C.C. 125=A.I.R. 1922 Pat. 488.

———Assertion of ownership in mortgage-deed is relevant as to ownership under S. 13 and after mortgagor's death under S. 32 (7). (*Sadasiva Iyer and Spencer, JJ.*). NALLASIVA MUDALIAR *v.* RAVAN BIBI. 70 I.C. 389=14 M.L.W. 327=1921 M.W.N. 560=A.I.R. 1921 Mad. 383.

—S. 13—Documents between strangers.

———*Recitals as to Boundaries—Admissibility.*

A document between strangers to the suit in which mention is made of one of the parties or their predecessors as holding the land lying on the boundaries of the lands belonging to the executants of the document is not admissible in evidence. (*Suhrawardy and Cuming, JJ.*). CHOONI LALL KHEMANI *v.* NILMADHAB BARIK. 86 I. C. 734=41 C.L.J. 374=A.I.R. 1925 Cal. 1034.

———*Recitals in—Are inadmissible.*

A recital in a deed or other instrument is in some cases conclusive, and in all cases evidence as against the parties who make it. But it is no more evidence as against third persons than any other statement would be. (*Greaves and Chakravarti, JJ.*). PRAMATHA NATH CHOUDHURI *v.* KRISHNA CHANDRA BHATTACHARJEE. 84 I.C. 420=28 C.W.N. 1092=A.I.R. 1924 Cal. 1067.

—S 13—Essentials of assertion.

———*Mere statement of boundary is not enough.*

A mere statement of boundary cannot be classed with any of the verbs in S. 13 "created, modified, recognised, asserted or denied" and is, therefore, not admissible under S. 13 (a). (*Jackson, J.*). KARUPPANNA KONAR *v.* RANGASWAMI KONAR.
107 I.C. 293=A.I.R. 1928 Mad. 105.

———"*Claim*" *must be asserted in presence of the party to be affected thereby.*

Per *Cuming and Mukerjee, JJ.*—The word "claim" implies that the right is asserted to the knowledge and in the presence of the person whose right will be derogated by the establishment of the claim. The mere assertion of the right in a document, to which the person against whom the right is asserted is not a party and of which he knows nothing is not to claim the right. (*Sanderson, C.J.,*

EVIDENCE ACT (1872), S. 13 — Essentials of assertion.

Panton and Graham, JJ.). BROJENDRA KISHORE *v.* MOHIM CHANDRA. **99 I.C. 189=31 C.W.N. 32= A.I.R. 1927 Cal. 1.**

———*Transaction by which right is asserted is admissible.*

A transaction or instance in which there is a mere assertion of a right or custom does not come within S. 13 but only such a transaction is admissible by which the right or custom is asserted or denied : 11 C.W.N. 703, *Foll.* (*Sanderson, C.J., Panton and Graham, JJ.*). BROJENDRA KISHORE *v.* MOHIM CHANDRA. **99 I.C. 189=31 C.W.N. 32= A.I.R. 1927 Cal. 1.**

——— *Mere assertion of right is sufficient—The right may not have been successfully asserted.*

The words of S. 13 are wide enough to cover the mere assertion of a right in a previous suit where that right was in dispute. There is nothing in that section which requires that the right should be successfully asserted. (*Newbould and Graham, JJ.*). RAMKUMAR DAS *v.* HARNARAIN DAS. **92 I.C. 104=A.I.R. 1926 Cal. 727.**

———*"Claim" and Recital—Distinction.*

The word "claim" denotes a demand or assertion in relation to a thing or attribute as against or from some person or persons, showing the existence of a right to it in the claimant. A bare statement may or may not be a claim according to the attending circumstances in which it is made. It may amount to a claim or be a mere statement of claim, though in some circumstances a statement may amount to a claim.

A statement in a pattah that the land to the west of the land demised under that pattah belongs to the executant of the pattah is not a "claim" but a mere recital. 17 C. W.N. 1016 and 31 Cal. 380, *Foll.* (*Suhrawardy and Cuming, JJ.*). RADHA KRISHNA MARWARI *v.* SARBESWAR NAG. **86 I. C. 674=29 C. W. N. 469= A. I. R. 1925 Cal. 684.**

—S. 13—Judgments inter partes.

———*Judgment in which right under dispute was recognized by Court is admissible as relevant fact.*

Where the mortgagee's right to hold a valid charge on the property comprised in a mortgage is in dispute and it is found that in a previous suit the right was asserted by the representatives of the mortgagee and the right claimed was recognized by the Court, the judgment in that suit being an instance in which the mortgagee's right was recognized against the plaintiffs is a relevant fact and as such is admissible in evidence under S. 13. (*Sulaiman and Sen, JJ.*). MUHAMMAD ABDUL KARIM KHAN *v.* BISHAN SAHAI. **121 I. C. 387=1929 A. L. J. 741= A. I. R. 1930 All. 9.**

———*Observations in—Admissibility.*

Observations in a judgment relating to a different matter though connected cannot bind a third party and the judgment itself cannot be evidence against him. (*Ramesam and Cornish, JJ.*). L. V. NARASIMHA SASTRI *v.* OFFICIAL ASSIGNEE, MADRAS. **1930 M. W. N. 396= A. I. R. 1930 Mad. 751.**

———When a similar question regarding the factum and validity of adoption, was raised in a previous proceeding, the judgments in which that adoption was upheld do constitute relevant pieces of evidence under S. 13 : A.I.R. 1926 Nag. 109 and 24 Bom. 591, *Foll.* (*Kinkhede and Mohiuddin, A.J.Cs.*). YAMUNABAI *v.* DHANNALAL. **114 I. C. 616 (Nag.).**

EVIDENCE ACT (1872), S. 13—Judgments inter partes.

———Judgment in a previous suit is admissible in evidence under S. 13 to establish the illegitimacy of a certain person. 12 All. 1 (F.B.), *Foll.* (*Stuart, C.J. and Raza, J.*). RAJ FATEH SINGH *v.* BALDEO SINGH. **109 I.C. 310=3 Luck. 416= 5 O.W.N. 143=A.I.R. 1928 Oudh 233.**

———*Evidentiary value of.*

Judgments *inter partes* can be admitted in order to prove the conduct of the parties or to show particular instances of the exercise of rights, or admissions made by parties' ancestors or how the property was dealt with previously as relevant evidence under the provisions of S. 11 or S. 13. They cannot be wholly excluded from consideration because in so far as they explain the nature of possession or throw light on the motives or conduct of parties or reproduce the admissions made by the parties or their ancestors and also embody an authoritative statement of the facts which the investigation then held before the Court brought to light, such judgments have very high evidentiary value and may even shift the burden of proof. 22 W.R. 365 ; 24 Bom. 591 and A.I.R. 1926 Nag. 109, *Ref.* (*Kinkhede, A.J.C.*). GOPAL RAO *v.* SITARAM. **97 I.C. 694=9 N.L.J. 215=A.I.R. 1927 Nag. 19.**

———*Suit for possession—Prior decision under S. 145, is a relevant fact.*

In a suit for possession the fact that there was a proceeding under S. 145, Criminal Procedure Code, that there was an inquiry into the matter and that there was a decision adverse to the allegations of the plaintiffs, is a relevant fact under S. 13. 29 Cal. 187, *Foll.* (*Mukerjee and Rankin, JJ.*). HASIM ALI *v.* ABJAL KHAN. **82 I.C. 392= 40 C.L.J. 30=A.I.R. 1924 Cal. 1046.**

———It is not the correctness of the previous decision, but the fact that there has been a decision, that is established by the production of the judgment. (*Mukerjee and Cuming, JJ.*). BAIDYA NATH DUTT *v.* ALEFJAN BIBI. **70 I.C. 194= 36 C.L.J. 9=A.I.R. 1923 Cal. 240.**

———*Judgments not operating as* res judicata—*Admissibility.*

A judgment in a prior suit relating to a different *Jama* but between the same parties is admissible in evidence, whether or not it constitutes *res judicata.* (*Suhrawardy and Cuming, JJ.*). SASIMUKHI CHOWDHURANI *v.* SARASWATY SEN GUPTA. **65 I.C. 522 (Cal.).**

———*Prior judgment questioning a right is admissible.*

A judgment given in a previous suit contesting the right of the then Granthi that the property was *wakf* and was attached to the Gaddi, and, therefore could not be treated by the Granthi as his private property, is admissible for the purpose of showing that at that time also, the right of the Granthi to alienate certain property was called in question. 31 Bom. 143, *Foll. Other cases Ref.* (*Scott-Smith and Abdul Raoof, JJ.*). INDAR SINGH *v.* FATEH SINGH. **59 I.C. 734=49 P.L.R. 1921=A.I.R. 1921 Lah. 337.**

———Judgments which are neither *res judicata* nor judgments *in rem*, are not admissible as showing that a particular right was asserted or denied. (*Stuart and Kanhaiya Lal, A.J. Cs.*). MAHAMMAD ALI KHAN *v.* GHAZANFAR ALI KHAN. **60 I.C. 147=7 O.L.J. 474.**

———Judgments not *inter partes* in previous cases in which the right involved in the present litigation was asserted are admissible. (*Hopkinz, S. M. and Porter, J.M.*) KALLUMISIR *v.* BHAGWATI SINGH. **60 I.C. 142=2 U.P.L.R. (B.R.) 81.**

EVIDENCE ACT (1872), S. 13—Judgments not inter partes.

—S. 13—Judgments not inter partes.

———*Judgment that does not fall under Ss.* 40, 41 *and* 42 *is not relevant under S.* 13 *for decision of same point in subsequent suit.*

Where a judgment is not *in rem* nor relating to matters of public nature, nor between the parties to a subsequent suit, the fact that the Court by that judgment decides a point in a particular way is not relevant for the purpose of the decision of the same point in the subsequent suit. A.I.R. 1929 P.C. 99 and 1 Lah. 540, *Rel. on* ; 19 All. 277 (P.C.), *Expl.* ; 22 Cal. 533 (P C.), *Dist.* ; A. I. R. 1926 Nag. 109, *Overruled* ; 29 Cal. 187 (P.C.) ; 35 Cal. 701 and A.I.R. 1921 Mad. 248, *Ref.* (*Macnair, Offg. J. C. and Jackson and Subhedar, A. J. Cs.*). SHANKAR GANESH *v.* KESHEO **121 I.C. 644=26 N.L.R. 33=12 N.L.J. 164=A.I.R. 1930 Nag. 1 (F.B.).**

———Judgment in a case in which a similar question was decided is admissible though not *inter partes*. The weight to be attached to it is for the trial Court to decide : (See A. I. R. 1930 Nag. 1 (F.B.)—Ed. (*Das and Adami, JJ.*). SHIBO SINGH *v.* JANKI PRASAD. **A.I.R. 1930 Pat. 231.**

———The Evidence Act does not make finding of fact arrived at on the evidence before the Court in one case evidence of that fact in another case where parties are not the same. (*Sir John Wallis*). KUMAR GOPIKA RAM ROY *v.* ATAL SINGH. **114 I.C. 561=1929 A.L.J. 246=49 C.L.J. 327=33 C.W N. 463=29 M.L.W. 674=10 P.L.T. 301=31 Bom. L.R. 734=56 I.A. 119=56 Cal. 1003=A.I.R. 1929 P.C. 99=56 M.L.J. 562 (P.C.).**

———*Customs—Prior decision negativing is admissible.*

Where a custom was sought to be negatived and prior judgments wherein the custom was negatived were produced in evidence,

Held, that the judgments are admissible in evidence only as particular instances wherein the custom was recognized or departed from. (*Mukerji, J.*). HAR PRASAD *v.* HARI LAL. **116 I.C. 799 (All.).**

———*Jains—Decisions recognizing custom in one place is relevant in establishing same custom in another.*

Judicial decisions recognizing the existence of a disputed custom among the Jains of one place are very relevant as evidence of the existence of the same custom among the Jains of another place, but the evidence that the usage has application to the particular case cannot be dispensed with. 27 Cal. 379, *Ref.* (*Kumaraswami Sastri, Offg. C. J. and Curgenven, J.*). GATEAPPA *v.* ERAMMA. **99 I.C. 503=50 Mad. 228=26 M.L.W. 408=A.I.R. 1927 Mad. 228=51 M.L.J. 757.**

———*Throwing light on title of landlord—Admissibility.*

Where in a suit for ejectment by a jaghirdar, the defendants, sought to rely on judgments decided between the landlord and certain other tenants in other villages on the ground that in those cases although not *inter partes* the relation of the jaghirdar to his tenants and the right under which he held was decided.

Held, that the judgments in the other cases were not admissible in evidence. (*Baker, J.*). BANDU MAHAPAT *v.* SHIVASHANKERDAS. **118 I.C. 702=31 Bom. L.R. 335.**

———Judgment not *inter partes* in which an adoption was upheld constitute relevant pieces of evidence under S. 13 of the Evidence Act. (*Kinkhede and Mohiuddin, A. J. Cs.*). YAMUNABAI *v.* DHANNALAL. **114 I.C. 616 (Nag.).**

EVIDENCE ACT (1872), S. 13—Miscellaneous.

———Judgments in the former litigation though not *inter partes* are admissible under S. 13. 44 Mad. 778; 24 Bom. 591; 45 Cal. 138 and 7 N. L. R. 23, *Rel. on.* (*Kinkhede, A. J. C.*). YESHUANT *v.* DAULAT. **89 I. C. 663=A. I. R. 1926 Nag. 129.**

———Judgments not *inter partes* in suits wherein right had been asserted and recognized or denied are admissible under the section. (*Wadegaonkar, A. J. C.*). RAMDHAN *v.* PURUSHOTTAM. **88 I. C. 699=22 N. L. R. 49=A.I.R. 1926 Nag. 109.**

———*Judgments though not* res judicata *are admissible.*

The fact that certain judgments have been held not to operate as *res judicata* does not, however, mean that the judgments are not admissible in evidence. Judgments relating to a particular right, although not *inter partes*, but dealing with the same question; are clearly admissible under S. 13.

Where in the previous suit one of the main points for the consideration of the Courts was whether the property in suit was a private or public property and all the Courts concurred in holding that the property was a public property, it is clearly both a transaction as well as an instance in which the right, that the property was public property, was clearly asserted and recognized by the Court. 12 All. 1 (F. B.); 24 Bom. 591; 12 Mad. 9; 22 Cal. 533 (P. C.) and 29 Cal. 197 (P. C.), *Rel. on.* (*Misra, J.*). HARI KISHEN *v.* RAGHUBAR DAYAL. **97 I.C. 853=1 Luck. 489=3 O. W. N. 645=13 O. L. J. 696=A.I.R. 1926 Oudh 578.**

———Judicial decisions recognising custom among Jains of one place are relevant in respect of Jains of another place. (*Baker, Offg. J. C.*). MT. SANO *v.* PURAN SINGH. **78 I.C. 461=A.I.R. 1925 Nag. 174.**

———*Statements in—Admissibility.*

Statements contained in a judgment relating to a case in which the parties were different are not relevant. (*Lindsay and Kanhaiya Lal, JJ.*). MUST. PHULWANTI KUNWAR *v.* JANESHAR DAS. **83 I.C. 782=46 All. 575=22 A.L.J. 521=5 L.R.A. Civ. 785=A.I.R. 1924 All. 625.**

———*Findings in—Admissibility.*

Findings arrived at in a judgment in a prior suit not *inter partes* should not be used against a person in a subsequent suit. (*Chatterjee and Panton, JJ.*). SATISH CHANDRA MUKERJEE *v.* JOYRAM ROY. **65 I.C. 525 (Cal.).**

———A judgment not *inter partes*, but which relates to the subject-matter of a suit and evidences the assertion of a right in controversy is admissible under S. 13 of the Evidence Act. (*Buckland and Cuming, JJ.*). PARBATI MAJHI *v.* DIGPATI MAJHI. **64 I.C. 465 (Cal.).**

—S. 13—Miscellaneous.

———*X making statement in former suit that he was orphan when adopted—His statement was admissible in subsequent suit to prove instance of orphan's adoption.*

In former suit in which the adoption of *X* was attacked, though not on the ground of his being an orphan at the time of adoption, *X* had made a statement that he was a year old when he was adopted and that his father and mother were then both dead.

Held, that this statement of *X* was admissible if produced in a subsequent suit, in which the question of the validity of an orphan's adoption was in question, to prove an instance of an orphan's adoption. (*Sulaiman and Kendall, JJ.*). BRIJ RAJ SARAN SINGH *v.* BASANT SINGH. **118 I. C. 154=A. I. R. 1929 All. 561.**

EVIDENCE ACT (1872), S. 13—Miscellaneous.

———Custom (Punjab)—Custom previously established—Instances showing continuity occurring after institution of suit relating to custom—Instances are important and should be relied upon—(*Jai Lal, J.*). KISHAN SINGH *v.* FAQIR.

112 I.C. 447= A. I. R. 1928 Lah. 966.

———*Assertion of right—Evidence as to, is relevant.*

Evidence, to prove that a disputed title was asserted and enforced is relevant though the title may be asserted against parties other than those who are disputing. (*Daniels and Lyle, A. J. Cs.*). MT. MANJUMAN UN-NISA *v.* SHAIK ASHIQ ALI.

66 I.C. 222=8 O.L.J. 439=A.I.R. 1922 Oudh 178.

—S. 14—Collateral Offence.

———*Evidence of committing theft—Not relevant to show state of mind in committing dacoity.*

Evidence of commission of other offences such as thefts does not show an intention to commit a different kind of offence, such as dacoity and is therefore not relevant as showing the existence of any relevant state of mind, etc. (*K. Kemp, J.*). EMPEROR *v.* WAHIDUDDIN HAMIDUDDIN (NO. 1).

32 Bom. L.R. 324=A.I.R. 1930 Bom. 157.

———*Evidence of collateral facts—Principles explained.*

It is settled law that under neither of Ss. 14 and 15 can the evidence on facts similar to but not part of the same transaction as the main fact be received for the purpose of proving the occurrence of the main fact, which must be established by evidence directly bearing on it. But when the existence of that fact has been so established and a question arises as to the state of mind of the person who did it, or whether the act in question was done accidentally or with a particular knowledge or intention, evidence of similar acts may, under certain conditions, be admitted. Section 14 is wholly inapplicable to a case where the state of mind or feeling of the accused is not a fact in issue or a relevant fact, and the guilt or innocence depends on proof of actual facts. 6 Cal. 655; 42 Cal. 957; 47 Cal. 671 (F.B.); 12 P.R. 1912 Cr. and *Reg* v. *Richardson*, 8 Cox. 448, *Rel. on.*

Where the accused was charged under S. 409, Penal Code, for embezzling three specific sums.

Held, that evidence of collateral offences in respect of other sums was not admissible. (*Tek Chand, J.*). PRITCHARD *v.* EMPEROR. **112 I.C. 850= 30 Cr. L.J. 18=11 A.I. Cr. R. 405= A.I.R. 1928 Lah. 382.**

—S. 14—Counterfeiting coins.

———Counterfeit coins and instruments found in the house of accused in two districts—Trial in one district—Evidence of such possession in another district admissible. (*Miller, C.J. and Adami, J.*). MISIR GOSAIN *v.* EMPEROR. **61 I.C. 647= 22 Cr. L.J. 407=3 U.P.L.R. (Pat.) 50.**

—S. 14—Former deposition.

———The accused in a case of forgery and conspiracy had previously given evidence in a Civil Court as to the genuineness of the document,

Held, that though the statement could not be admitted as confession, the jury if independently satisfied that the documents are not genuine, the evidence is to be regarded as having high evidentiary value upon the question of intention whether or not they are in conspiracy. (*Rankin, C. J. and Buckland, J.*). AMBER ALI *v.* EMPEROR.

1929 Cr. C. 194=A.I.R. 1929 Cal. 539.

—S. 14—Former judgment.

———*Admissibility for showing criminal tendencies to commit offences.*

EVIDENCE ACT (1872), S. 14—Previous offences.

When offence charged against an accused is that of belonging to a gang of thieves, a former judgment more than 25 years old and convicting him of dacoity is admissible in evidence, though the former judgment is useful only for the purpose of proving that the accused is a person of criminal tendencies to commit theft who may be a member of the alleged gang. The judgment by no means goes to show that he had any habit of committing theft in the period under consideration. 14 Bom. L. R. 373 and 38 Cal. 408. *Foll.* (*Marten and Fawcett, JJ.*). MOTIRAM HARI *v.* EMPEROR.

89 I.C. 527=26 Bom. L.R. 1223=26 Cr. L.J. 1391= A.I.R. 1925 Bom. 195.

—S. 14—Former speech.

———Prosecution based on speech—Previous speech, though made about six months before, is admissible as evidence of intention of speaker if both speeches form part of series of speeches topic on one. (*Tapp, J.*). OM PARKASH *v.* EMPEROR. **A.I.R. 1930 Lah. 867.**

—S. 14—Habitual offender.

———*Trial for being a member of a gang of dacoits—Evidence of thefts—Value.*

In a case where the offence for which the accused are being tried is the particular one of belonging to a gang of dacoits, evidence merely that the accused habitually commits thefts (as opposed to dacoity and possibly robbery) is not evidence indicating an intention to commit the particular crime of which the accused is charged and is therefore inadmissible. But where the accused himself has given evidence that he has a good character such evidence is admissible under S. 54. 32 Mad. 179, *Foll.* (*Fawcett, J.*). EMPEROR *v.* HAJI SHER MAHOMED. **75 I.C. 67= 46 Bom. 958=25 Bom.L.R. 214=24 Cr. L.J. 867= A.I.R. 1923 Bom. 71.**

—S. 14—Intention.

———*Proof of.*

Intention has to be proved like any other fact and may of course be deduced from the conduct of the parties. (*Broadway, J.*). HAZARA SINGH *v.* EMPEROR. **99 I.C. 121=8 L.L.J. 512= 27 P.L.R. 867=28 Cr. L.J. 89.**

—S. 14—Previous conviction.

———Previous conviction—Evidence of, not admissible to show state of mind. But amounts to an evidence of bad character and not admissible under S. 54. 27 Cal. 139; 1 C. W. N. 146, *Foll.* (*Jwala Prasad and Sultan Ahmad, JJ.*). TEKA AHIR *v.* EMPEROR. **60 I. C. 331= 22 Cr. L.J. 219=5 Pat. L.J. 706.**

—S. 14—Previouso ffences.

———Where the evidence of previous conviction or the evidence that a man has been bound over under the preventive sections can be considered only as evidence of character it must be excluded. but where such evidence is admissible *aliunde*. it should not be excluded. Where the accused is charged under S. 400, I.P.C., such evidence is admissible, not as evidence of character but as evidence to prove habit and association. (*Raza and Nanavutty, JJ.*). BACHCHU *v.* EMPEROR.

A.I.R. 1930 Oudh 455.

———*Case of cheating—Previous act of fraud is inadmissible.*

Cheating is a case in which the question of guilt or innocence of the accused depends upon proof of actual facts and not upon the state of the accused's mind. Therefore the evidence as to any previous act of fraud is not admissible under any provision.

EVIDENCE ACT (1872), S. 14—Similar Acts.

of the law. (*Mukerji, J.*). GOKUL KHATIC *v.* EMPEROR. **86 I.C. 970=26 Cr. L.J. 906=29 C.W.N. 483=A.I.R. 1925 Cal. 674.**

—S. 14—Similar Acts.

———*Rash driving of motor car—Evidence regarding similar occurrence previously—Admissibility.*

Where in a prosecution under S. 304-A, I.P.C., it was sought to be proved that the accused had taken part in a similar occurrence just previously by which as a result of the rash driving of his motor car certain persons were injured,

Held, that evidence regarding the previous occurrence was not relevant either under S. 14 or under S. 15 of the Evidence Act.

Per *Waller, J.*—The accused is charged with rashness but the prosecution is not entitled to prove that he was rash generally or in relation to another occurrence. Rashness can be proved with reference to the particular occurrence alone. (*Waller and Ananthakrishna Iyer, JJ.*). COLLETT *v.* EMPEROR. **1929 M.W.N. 395.**

———*Evidence of similar acts of accused in regard to other persons is not admissible.*

Where accused was charged under S. 302, for having administered *Dhatura* to the deceased, the evidence of certain boys that he had previously offered sweets to boys and that one of the boys was afterwards robbed of his jewellery when affected with one of the symptoms of *Dhatura* poisoning, should not be admitted. Section 14 as explained in Illustration (c) shows that the fact that the accused offered sweetmeats to other boys and poisoned one of them with *Dhatura* is not evidence that he administered poisoned sweetmeats to the deceased. (*Batten, J. C. and Hallifax, A.J.C.*). KASHIRAM *v.* EMPEROR. **73 I.C. 262=6 N.L.J. 144=24 Cr. L.J. 566=A.I.R. 1923 Nag. 248.**

—S. 14—Statements after offence.

———A statement by an accused person immediately after the occurrence of an offence is relevant as showing his state of mind but a repetition of what some other persons said to the accused, by the accused, is not relevant and it has to be proved by direct evidence of the person who heard it. (*Broadway and Campbell, JJ.*). KAKAR SINGH *v.* THE CROWN. **81 I. C. 717=25 Cr. L. J. 1005=6 L. L. J. 575=A. I. R. 1924 Lah. 733.**

—S. 14—Statements of co-accused.

———Statements implicating co-accused but not incriminating maker are not admissible in evidence —Parts of such statements are admissible against maker as indicating knowledge on his part. (*Aston, A. J. C.*). WAHID BUX BHUTTO *v.* EMPEROR. **120 I. C. 81=30 Cr. L. J. 1121=1929 Cr. C. 678=A. I. R. 1929 Sind 250.**

—S. 14—Subsequent conduct.

———*Relevancy to show state of mind.*

Evidence of subsequent conduct is admissible to show the state of mind of an accused and therefore to show that the accused knew of and was a party to the cheating. (*Ryves, J.*). BECHAI *v.* EMPEROR. **69 I. C. 159=20 A. L. J. 324=23 Cr. L. J. 671=A. I. R. 1922 All. 244.**

—S. 14—Writings.

———*Seditions trial—Prior writings relevant on the question of intention.*

Primarily, anything that an accused tried under S. 124-A, I. P. C., has written is, if it comes within the general words of S. 14, relevant and admissible. At the same time, of course, the writing should be within a reasonable time of the particular occurrence, *i. e.*, the particular article or

EVIDENCE ACT (1872), S. 17—Admission for specific purpose.

other document, in respect of which he is being charged. (*Fawcett, J.*). EMPEROR *v.* PHILLIP SPRATT (No. 3). **108 I.C. 30=30 Bom. L. R. 315=9 A. I. Cr. R. 429=29 Cr. L. J. 320=A.I.R. 1928 Bom. 78.**

—S. 15—Similar Acts.

———*Criminal misappropriation in 1925—Evidence adduced of similar acts in common link done in 1924—Evidence is admissible.*

Accused were prosecuted for misappropriation by defalcation of accounts made in 1925 and 1926. Evidence was adduced by the prosecution of similar acts done by the accused before 1925.

Held, that the evidence was admissible under S. 15 to rebut the probable plea of mistake or innocent condition of the mind of the accused, the evidence being that of a system in which there was a common link between the acts of 1924 and those of 1925. 6 Cal. 655 and 42 Cal. 957, *Ref.* (*Johnstone, J.*). RAMKRISHAN *v.* EMPEROR. **111 I. C. 387=29 Cr. L. J. 835=11 A. I. Cr. R. 185=A.I.R. 1928 Lah. 880.**

———Evidence of similar acts is admissible to show intention. (*Fawcett and Madgavkar, JJ.*). EMPEROR *v.* HARJIVAN VALJI. **98 I.C. 407=50 Bom. 174=28 Bom.L.R. 115=27 Cr.L.J. 1335=A.I.R. 1926 Bom. 231.**

———*Dacoity—Accused's plea of innocent or accidental presence at the spot—Evidence of previous armed raids admissible.*

Where the accused who were charged under S. 389, I.P.C., plead that their presence in company and armed at a spot was accidental and innocent, it is open to the prosecution to rebut this theory, and to produce evidence that in the same locality raids have taken place in which one of the gang had been concerned. In the case of actual dacoity the prosecution is bound to prove the accused's commission of all the acts which constitute the offence. Section 15 of the Evidence Act admits the production of any evidence which would determine the construction to be placed upon acts which in themselves might or might not be the preparation for dacoity and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible in evidence for the purpose. (*Pipon, J.*). KHAWAJA HASSAN *v.* EMPEROR. **71 I.C. 360=24 Cr.L.J. 136.**

———*Evidence of intention.*

Where the intention of the accused is a relevant fact, evidence of similar transactions both prior and subsequent to the alleged offence is admissible as evidence of intention. But such evidence is only evidence of intention, it is not evidence that accused committed the offence with which he is charged. Rat. Un. Cr. C. 312 and 11 B.H.C.R. 90 *Diss.* from *Reg.* v. *Ollis*, (1900) 2 Q. B. 758; 36 C. 573 : 39 A. 273; *Rex* v. *Fisher*, (1910) 1 K. B. 149, *Foll.* (*Raymond and Aston, A.J.Cs.*). PANE M. VAZ. *v.* EMPEROR. **83 I.C. 889=26 Cr.L.J. 185=16 S.L.R. 197=A.I.R. 1921 Sind 57.**

—S. 16—Execution of injunction.

———Where an injunction was granted and the question was whether it was executed or not,

Held, that it should be presumed as executed. (*Kinkhede, A.J.C.*). BHAIRONPRASAD *v.* MAHANT LAXMI NARAYANDAS. **79 I.C. 609=A.I.R. 1924 Nag. 385.**

—S. 17—Admission for specific purpose.

———*Binding nature of.*

Where an admission was made by defendant-appellant in a compromise filed in the appellate

EVIDENCE ACT (1872), S. 17—Admission of marriage.

Court admitting ownership of plaintiff-respondent over disputed land for a special purpose to shorten proceedings and to avoid further litigation, it cannot be held to be binding in the face of the finding by the High Court in second appeal that the agreement containing the admission was not an agreement within the meaning of O. 23, R. 3 and did not adjust the suit either wholly or in part. The statement was at the most an admission which could constitute a fresh piece of evidence coming up for consideration for the first time in the appellate Court in which case it must be shown that it was formerly produced and admitted under O. 41, R. 27. (*Campbell, J.*). WAHID BAKSH *v.* LALTA PERSHAD. **73 I.C. 387=A.I.R. 1924 Lah. 316.**

—S. 17—Admission of marriage.

———*Mahomedan Law—Probative value.*

The effect of an acknowledgment of paternity validly made as establishing marriage between the parents of the acknowledgee may be a matter of substantive Mahomedan Law; but the effect of an admission of marriage, as proof of such marriage, is a question merely of adjective law governed by the Indian Evidence Act. Its probative value must necessarily depend on the surrounding circumstances. (*Rupchand Bilaram and Lobo, A.J.Cs.*). MT. HAKIMA *v.* MT. JIANDI. **103 I.C. 870=A.I.R. 1927 Sind 209.**

—S. 17—Admissions.

———*Evidential value.*

Ashworth, J.—Admissions are of no evidential value once they are proved untrue. This admission as to receipt, in the deed is proved untrue by the Sub-Registrar's endorsement that a lesser sum was paid at time of Registration. The admission must, therefore, be rejected entirely. (*Mukerji and Ashworth, JJ.*). BAZ BAHADUR SINGH *v.* RAGHUBIR PRASAD. **100 I.C. 1037=49 All. 707=25 A.L.J. 572= A.I.R. 1927 All. 385.**

—S. 17—Admission—What is.

———*Vague admission is no admission.*

In answer to the question put to the accused as to whether three packets of cocaine were recovered from him he replied that three packets were recovered from him, but he went on to say that they were handed to him by a man named Babu and that the accused did not know what these packets actually contained,

Held, that his statement does not amount to an admission that he had cocaine in his possession. (*Sulaiman, J.*). WALI MUHAMMAD *v.* KING EMPEROR. **83 I.C. 904=21 A.L.J. 869=5 L. R. A. Cr. 9=26 Cr. L.J. 200=A I. R. 1924 All. 198.**

———*Casual statements are not.*

Applications for mutation of names by two different agents of the plaintiff, in each of which he is stated to be six years old at the time, cannot be called admissions by persons auhorised to make them as the agents had no authority to make any statement in regard to the plaintiff's age beyond that he was still a minor. Similar is the case of the casual statemants that the plaintiff was then seven years old made in the *Mukhtiarnama* executed on his behalf by plaintiff's guardian. These statements can be proved only to corroborate or contradict depositions given in the suit by the persons who made them. (*Hallifax, A.J.C.*). SHANKARGIR *v.* CHUNNUJI. **71 I.C. 140=5 N.L.J. 1=A.I.R. 1923 Nag. 164.**

EVIDENCE ACT (1872), S. 17—Partition lists.

—S. 17—Erroneous admission.

———*Binding nature of.*

An erroneous admission does not bind the person making such admission. (*Banerji and Gokul Prasad, JJ.*). MANGRU RAI *v.* SHIVANAND LAL. **77 I.C. 875=A.I.R. 1923 All. 575.**

—S. 17—Evidentiary value.

———The effect of an admission is to shift the burden of proof to the party making the admission. What a party himself admits to be true may reasonably be presumed to be so and until the presumption is rebutted the fact admitted must be taken to be established. 29 All. 184 *P.C., Foll.* (*Tek Chand and Bhide, JJ.*). BHAG SINGH *v.* JAI SINGH. **116 I.C. 903=10 Lah. 694=30 P.L.R. 750=A.I.R. 1929 Lah. 318.**

———*Admission of fact shifts burden of proof.*

B sued *W* to recover a sum of money wrongly paid to him. *W's* admission in a previous suit between *B* and a third person that he had received the money from *B* was proved against him. In the present suit *W* pleaded that he had not received the money and that the receipt executed by him in favour of *B* was obtained from him under undue influence,

Held that *W's* admission in the previous suit shifted the burden of proving non-receipt of the money and existence of undue influence on *W*. (*Broadway and Campbell, JJ.*). WASAKHI RAM *v.* HUSSAIN KHAN. **75 I. C. 1027=A.I.R. 1924 Lah. 650.**

———Admissions are always evidence against the party who makes them but they are evidence which varies very much in value according to the circumstances and a Court is quite at liberty to reject them if it is satisfied from other circumstances that they were untrue. (*Daniels, J.C.*). GOKUL PRASAD *v.* KAILAS NATH. **65 I.C. 345=8 O.L.J. 596=A.I.R. 1922 Oudh 55.**

—S. 17—Former deposition.

———Evidence given by an accused on his own behalf in extradition proceedings is an admission by an accused person and is, therefore, *prima facie* admissible in evidence under S. 21; and it is, therefore, for the accused to show why it should not be so admitted. No particular formality is required to enable an admission by an accused person to go in as an admission. (*Percival, A.J.C.*). EMPEROR *v.* E.C.D. WHEELER. **112 I.C. 50=22 S.L.R. 458=29 Cr.L.J. 962=A.I.R. 1929 Sind 15.**

—S. 17—General statement.

———*Particulars of admission not given—Admission is valueless.*

A general statement by a witness that a number of persons admitted having committed a crime, is valueless without some indication as to which of the persons made the admission in question, with some particulars of what was actually said. (*Abdul Raoof and Fforde, JJ.*). SAJJAN SINGH *v.* CROWN. **90 I.C. 145=7 L.L.J. 259=6 Lah. 437=26 P.L.R. 601=26 Cr. L.J. 1489=A. I. R. 1925 Lah. 418.**

—S. 17—Partition lists.

———Partition lists indicating properties which fell to the share of each party though signed by all the co-sharers and attested require no registration provided they do not contain words that can be construed as creating a partition of the status of the parties. A.I.R. 1923 Mad. 160, *Foll.* (*Odgers and Hughes, JJ.*). GNANAMUTHU NADAN *v.* VEILUKANDA NADATHI. **79 I.C. 2=19 M.L.W. 494=1924 M.W.N. 451=A.I.R. 1924 Mad. 542.**

EVIDENCE ACT (1872), S. 17—Proof of admission.

—S. 17—Proof of admission.

———*Admission must be proved by producing statement made.*

Where a previous admission of a party is sought to be used against him, the statement containing the admission must be put in Court's order referring to the admission is not sufficient proof. (*Dalip Singh, J.*). MOLAR *v.* RANPARSHAD.
102 I.C. 198=28 P.L.R. 196=A.I.R. 1927 Lah. 377.

—S. 17—Statement in will.

———A statement in a will suggesting an inference as to a fact in issue, cannot be proved by or on behalf of the person who made it or his representative-in-interest. Even where two executors, who were members of the family, acted upon the will, still the statement cannot be treated as an admission by the members of the family that the statement in the will is true. (*Sir Lawrence Jenkins*). NALAM PATTABHIRAM RAO *v.* MANDAWILLI NARAYAN MOORTI. **100 I.C. 85=26 C. W.N. 273=15 M.L.W. 404=A.I.R. 1922 P.C. 102.**

—S. 18—Batwara papers.

———It would also be evidence against the proprietors under Ss. 18 and 13, Evidence Act because they were made in their presence. 38 I.C. 205, *Ref.* (*Mullick, Ag. C. J. and Jwala Prasad, J.*). RAMSARUP RAUT *v.* RAMNARAIN TEWARY.
114 I.C. 479=7 Pat. 85=10 P.L.T. 399=A.I.R. 1929 Pat. 32.

—S. 18—Burden of proof.

———Recital in mortgage bond as to receipt of consideration being admissible against subsequent purchaser, *onus* of proving want of consideration lies on him. 6 Cal. 268, *Expl.*; A.I.R. 1921 Cal. 435 and 6 C.L.J. 659, *Not appr.* (*Das and Fazl Ali, JJ.*). JAMUNA PRASAD *v.* FAIJDAR. **10 P.L.T. 183=8 Pat. 766=A.I.R. 1929 Pat. 254.**

—S. 18—Business books.

———*Admission that are books of the firm—Effect.*

Where all the parties by their memorandum admit that certain books produced in evidence are books of the firm, that admission must, unless there is anything on the face of them to the contrary, be taken to be an admission that they were books kept in the regular course of business. (*Phillips and Thiruvenkatachariar, JJ.*). VENKATANANDAM *v.* T. DHANARAJU. **117 I.C. 298=A.I.R. 1929 Mad. 689.**

—S. 18—By agent.

———Statements made by an agent to a party to proceedings in circumstances, which show that they are expressly or impliedly authorized to make the admissions are admissible in evidence. (*Stuart, C. J. and Raza, J.*). RAJ FATEH SINGH *v.* BALDEO SINGH. **109 I.C. 310=3 Luck. 416=5 O.W.N. 143=A.I.R. 1928 Oudh 233.**

———*Statement of an attorney.*

A statement in a case drawn up by an attorney for the opinion of a pleader is admissible in evidence as it must be regarded as a statement of the persons on whose behalf he was acting, and what is said or done by him in the course of his business and within the scope of his authority is said or done by the persons on whose behalf he was acting. (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESWAR PRATAB NARAIN SINGH. **101 I.C. 289=6 Pat. 777=8 P. L. T. 510=A.I.R. 1927 Pat. 61.**

———*Admission*—Mukhtear.

A party is not bound by the statement or admission made by his *Muktear Aam*, unless it is shown to have been made within the scope of the authority conferred by the *Mukhtearnamah*. (*Jwala Prasad and Adami, JJ.*). SITARAM TEWARI *v.* GYA PRASAD. **A. I. R. 1923 Pat. 37.**

EVIDENCE ACT (1872), S. 18—By counsel.

—S. 18—By co-heir.

———*Buddhist Law (Burmese)—Admission by one heir.*

Admission by a person that one of the heirs has absolute right to the property to which the person along with others is an heir, cannot affect the other heirs. (*Chari, J.*). MAUNG THU *v.* MAUNG SHWE HLA. **A.I.R. 1929 Rang. 272.**

—S. 18—By co-party.

———An admission or even a confession of judgment by one of the several defendants in a suit is no evidence against the other defendants. 2 I.A. 113 and A.I.R. 1928 Lah. 769, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). DINA NATH *v.* SAYAD HABIB. **117 I.C. 884=10 Lah. 816=A. I. R. 1929 Lah. 129.**

———An admission, or even a confession of judgment, by one of several defendants in a suit is no evidence against the other defendants: 2 I.A. 113, *Foll.* (*Agha Haidar and Broadway, JJ.*). NARENDAR SINGH *v.* C. M. KOUNG. **115 I.C. 425=10 L.L.J. 339=29 P.L.R. 715=A.I.R. 1928 Lah. 129.**

———*Conditions for admissibility.*

To make the admission by one party admissible against his co-party, it is absolutely necessary that the admission should relate to the subject-matter in dispute and that it should be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered and that the requirement of the identity in legal interest between the joint owners is of fundamental importance. (*Suhrawardy and Mukerji, JJ.*). BRAJABALLAV *v.* AKHOY BAGDI. **93 I. C. 115=30 C.W.N. 254=A. I. R. 1926 Cal. 705.**

———*Admission by defendant does not bind others where he does not represent them.*

Admission by one of defendants that the land in suit is ancestral is not binding on the others when they are not represented by him and have independent rights of their own. (*Tek Chand, J.*). KISHAN SINGH *v.* LACHHMAN DAS. **122 I.C. 109=A.I.R. 1930 Lah. 238.**

—S. 18—By counsel.

———Where the pleader of a party makes an admission, whether the admission is of law or an admission of fact, that party is bound thereby and it would be doing great injustice to a Subordinate Court of law to re-open a matter in appeal, which has been decided by that Court on the admission of a pleader of a party. (*Dalal, J.*). NAND KISHORE RAI *v.* B. GANESH PRASAD RAI. **118 I.C. 166=A.I.R. 1929 All. 446.**

———*Admission on question of law is not binding on client.*

Per *Patkar, J.*—The pleader's admission on a pure question of law is not binding on his client and amounts to no more than his view that the question is unarguable: 28 Bom. 408, *Rel. on.* (*Mirza and Patkar, JJ.*). PUNJABAI BHILASA *v.* BHAGWAN DAS KISAN DAS. **117 I.C. 518=53 Bom. 309=31 Bom. L. R. 88=A.I.R. 1929 Bom. 89.**

———*Questions of law and fact.*

Ananthakrishna Ayyar, J.—Though a party might not be bound by admissions made by his counsel on pure questions of law, yet on questions of fact, parties are bound by admissions made by their counsel, whether the admissions be made in the course of the trial in the first Court or in the course of the hearing of the appeal before

EVIDENCE ACT (1872), S. 18—By counsel.

the lower Appellate Court: 25 Mad. 367 (P. C.), *Ref.* (*Beasley and Ananthakrishna Ayyar, JJ.*). ULICHI KOTTAYYA *v.* NALLAMALLI SREERAMULU. **109 I. C. 178=A. I. R. 1928 Mad. 900.**

———*Admission in lower Court cannot be set aside by engaging another pleader in appeal.*

Where in the lower Court the pleader for a party admitted the correctness of the accounts filed by the opposite party:

Held, it is not open to a party in appeal to try to go behind an admission made by his pleader, who represented him in the Trial Court, by engaging a fresh counsel in the appellate Court: 9 W. R. 485; 2 M. I. A. 253; 6 C. W. N. 82; 21 Mad. 274 and 22 Mad. 538, *Foll.* (*Broadway and Agha Haidar, JJ.*). RISAL SINGH *v.* MANOHAR LAL. **102 I. C. 283= A.I.R. 1927 Lah. 748.**

———An admission by counsel on a question of law, *e. g.*, period of limitation cannot bind his clients. (*Addison, J.*). FATEH DIN *v.* AHMAD DIN. **100 I. C. 833=A.I.R. 1927 Lah. 284.**

———*Point of law.*

An admission made by the counsel on a point of law cannot in any way bind client. (*Martineau and Moti Sagar, JJ.*). NANAK CHAND *v.* MIR MUHAMMAD KHAN. **75 I. C. 1048= A. I. R. 1924 Lah. 702.**

———*Power of counsel to make admissions on client's behalf fully explained.*

A counsel has authority to make admissions to Court on behalf of his client on matters of fact relevant to his issues in the case in which he is engaged. Admissions on questions of law would not bind the client.

A counsel has no power to make an admission in or compromise or refer to arbitration a suit if he is instructed not to do so, without express authority from his client. (*Kumaraswami Sastry and Devadoss, JJ.*). MUTHIAH CHETTI *v.* KARUPPAN CHETTIAR. **105 I. C. 5=50 Mad. 786=26 M.L.W 465= 39 M. L. T. =240= A. I. R. 1927 Mad. 852= 53 M.L.J. 606.**

———A party cannot be bound by any wrong admission of his pleader as to law, inasmuch as the parties must be presumed to know what is correct law. (*Ashworth and Gokaran Nath Misra, JJ.*). CHANDOO *v.* MURLIDHAR. **92 I.C. 732=13 O.L.J.138= A.I.R. 1926 Oudh 311.**

—S. 18—By minors.

———*Admission necessary to the case though made by minors is binding.*

Defendants, who were the plaintiffs in previous suits, made a case that the lands were recognised by village custom as *zerait* lands,

Held, in any case the admission made on behalf of the defendants, who were then minors, would bind them in this suit, if the allegation was a necessary allegation and was essential to the case of the defendants. (*Das and Kulwant Sahay, JJ.*). KESHO PRASAD SINGH *v.* PERMESHRI PRASAD SINGH. **71 I.C. 902=4 P. L. T. 135= 1923 P.H.C.C. 65=1 Pat. L. R. 111= 2 Pat. 414= A.I.R. 1923 Pat. 276.**

—S. 18—By party.

———Statement of accused on oath at a Coroner's inquest is admissible at his trial. (*Fawcett, J.*). EMPEROR *v.* RAMNATH MAHABIR. **93 I. C. 690=50 Bom. 111= 28 Bom. L.R. 111=27 Cr. L. J. 466= A.I.R. 1926 Bom. 151.**

———An admission made by some defendants in their character of persons jointly interested with the other defendants in the matter in respect of

EVIDENCE ACT (1872), S. 18—Karnavan and tarwad.

which the admission is made, is binding on the other defendants, 45 Cal. 159, *Foll.* (*Le-Rossignol and Martineau, JJ.*). BHIKA MAL *v.* PURAN MAL. **69 I.C. 35=A. I. R. 1923 Lah. 123.**

—S. 18—By third party.

———Recitals regarding the boundaries in a document not *inter partes* are statements made by third parties and cannot be admitted. A.I.R. 1926 Cal. 948, *Foll.* (*Cuming and Roy, JJ.*). SARAT CHANDRA *v.* SURALA BALA GHOSH. **105 I. C. 61=A.I.R. 1928 Cal. 63.**

—S. 18—By third person.

———*Admissibility of recitals.*

Recitals in a deed regarding the ownership of adjoining land are not admissible against the persons who were no parties to it: A.I.R. 1925 Cal. 1034 and A.I.R. 1927 Lah. 448, *Foll.* (*Tek Chand, J.*). HAKIM ALI *v.* AMRIK SINGH. **108 I.C 264 (Lah.).**

———Admission in a previous suit by a non-party to the subsequent suit is not admissible. (*Campbell, J.*). AHMAD KHAN *v.* JAWAHAR SINGH. **84 I.C. 257=A.I.R. 1923 Lah. 16.**

—S. 18—Debtor and creditor.

———*Creditor's admission of receipt is not of much weight in saving limitation.*

When a creditor comes into Court with a claim which is capable of being regarded as a stale or time-barred claim, it is to his interest to make allegations which would save the claim from the bar of limitation. Having this view, the mere fact that the statement of receipt of interest is against the pecuniary interest of the person making the admission cannot be regarded as of great weight. (*Srinivasa Ayyangar and Curgenven, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I.C. 210= 51 Mad. 549=29 M.L.W. 460= A.I.R. 1928 Mad. 509.**

—S. 18—Divorce proceedings.

———*Admissions of a party must be received with the utmost circumspection and caution.*

The admissions of a party in a divorce proceeding, unsupported by corroborative proof, should be received with the utmost circumspection and caution. Not only is the danger of collusion to be guarded against, but other sinister motives which might lead to the making of such admissions if, though unsupported, they would effect their purpose, are sufficient to render it the duty of the Court to proceed with the utmost caution in giving effect to statements of the kind, *Robinson* v. *Robinson and Lane*, (1859) 29 L. J. P. & M. 178, *Rel. on.* (*Aston, Rupchand Bilaram and DeSouza, A. J. Cs.*). MRS. L. *v.* W.L. **105 I.C. 416= 22 S. L. R. 261=A. I. R. 1928 Sind 55.**

—S. 18—Donor and donee.

———Neither the declaration of a donor nor the declaration of the donee made in their own favour can be admitted in evidence as against the person disputing the gift. A. I. R. 1922 P. C. 56, *Rel. on.* (*Wazir Hasan and Nanavutty, JJ.*). MAHOMED HAIDAR *v.* MOTI LAL. **110 I. C. 26= A.I.R. 1928 Oudh 414.**

—S. 18—Karnavan and tarwad.

———*Admission of an Anandravan.*

A statement made by a person when he was a mere junior *Anandravan* cannot be used as an admission against the *Tarwad* of which he subsequently becomes the *karnavan*. (*Spencer and Devadoss, JJ.*). ABUVAKKAR *v.* KUNHI KUTTIYALI. **74 I. C. 27=16 M. L. W. 768= 31 M. L. T. 389=A.I.R. 1923 Mad. 153.**

EVIDENCE ACT (1872), S. 18—On custom.

—S. 18—On custom.

———*Admission regarding a question of succession, based upon custom is binding on a party.*

An admission on a pure question of law is not binding upon a party, but the question whether a particular custom does or does not prevail in any particular tribe is a matter on which the tribesmen themselves are in the best position to pronounce an opinion and a question of succession based upon custom does not stand on the same footing as the question of law. (*Broadway and Agha Haidar, JJ.*). GHULAM SARVAR KHAN *v.* ABDUL MAIJJID KHAN.
113 I.C. 99=11 L.L.J. 24=30 P.L.R. 178=
A. I. R. 1928 Lah. 779.

—S. 18—On law point.

———*Admission on law point not binding.*

An admission to the effect that an appeal was understamped is not binding being an admission of a point of law. (*Tek Chand and Hellow, JJ.*). SURAIN SINGH *v.* SUNDAR SINGH. **120 I.C. 532=**
A. I. R. 1929 Lah. 879.

———*Admission of points of law cannot bind person.*

Admission by a person that a Brahmin widow was admitted into the caste of Ahirs and that she was Kari wife of an Ahir, includes an admission of a point of law which would not bind him. (*Jackson, A.J.C.*). GULABCHAND *v.* BHAIYALAL.
119 I.C. 698=A.I.R. 1929 Nag. 343.

—S. 18—Predecessor-in-interest.

———*Statements are admissible only during the continuancy of interest.*

Statements made by persons from whom the parties to the suit have derived their interest in the subject-matter of the suit are admissible as admissions, only when the admissions are of a date prior to the date of the transfer. Statements made by persons in possession of property and qualifying or affecting their title thereto are receivable against the persons claiming through them by title subsequent to the admission. (*Jalal and Simpson, A.J. Cs.*). GALSTAUN *v.* MIRZA AHID HUSAIN.
73 I.C. 428=10 O.L.J. 263=A.I.R. 1924 Oudh 19.

—S. 18—Procedure.

———If a statement is to be relied upon as an admission, the whole statement must be taken. (*Sir George Lowndes.*) (BABA) JWALA DAS. *v.* PIR SANT DAS. **A.I.R. 1930 P.C. 245.**

———*Admission must be taken as a whole.*

It is a well established principle of law that if a plaintiff wishes to rest his case solely on the admission of a defendant with regard to a particular transaction, he must accept the admission as to that transaction as a whole. It is not open to him to pick out such part of the admission as may be favourable to himself and to neglect the rest. (*Brown, A.J.C.*). MG SHWE MYIN *v.* MA NAING.
70 I.C. 911=4 U.B.R. 114=1 Bur. L.J. 248=
A.I.R. 1923 Rang. 24.

—S. 18—Scope.

———Section 18 does not by itself make the admission therein mentioned relevant. (*Drake Brockman, C.*). GULAB THAKUR *v.* FADALI. **68 I.C. 566=**
A.I.R. 1921 Nag. 153.

—S. 18—Suggestion.

———*Suggestion is no admission.*

Where the admission is merely a suggestion made in the course of a negotiation and is not even unconditional, it is no admission at all. (*Coutts and Das, JJ.*). RAMPATI RAUT *v.* MAHANTH HANUMAN SARAN. **76 I.C. 1049=1923 P.H.C.C. 142=**
1 Pat. L.R. 235=5 P.L.T. 347=
A.I.R. 1923 Pat. 303.

EVIDENCE ACT (1872), S. 20—Statement agreed to be accepted.

—S. 18—Vendor and vendee.

———An admission by vendor in favour of third party is not binding on the vendee, if made subsequent to the sale. (*Pratt, J.*). MAUNG AUNG *v.* MAUNG SHWE LIN. **73 I. C. 1039=**
1 Bur. L.J. 203=A.I.R. 1923 Rang. 51.

———*Recitals in sale-deed as to source of purchase money.*

Recitals in a sale-deed by the owner of a limited estate that the property was acquired with funds belonging to the estate may be taken to be against the pecuniary interest of vendor. (*Wallis, C.J. and Oldfield, J.*). RAMAYYA *v.* MAHALAKSHMI.
64 I. C. 481=14 M.L.W 33=1921 M.W.N. 434=
A.I.R. 1922 Mad. 357.

—S. 18—Withdrawal of.

———The admission, if gratuitous, can be withdrawn at any time and therefore such a confession, though against the interest of the party making it, is of little value : 78 P. R. 1904, *Rel. on.* (*Tek Chand and Bhide, JJ.*). BUDHU RAM *v.* UTTAM CHAND.
109 I.C. 26=A.I.R. 1928 Lah. 726.

—S. 19—By party.

———Title suit—Proceedings in previous title suit between defendant and third person are relevant and pleadings of defendant admissible as admissions. (*Rowland, J.*). JAIRAM MAHATON *v.* LOKENATH MAHATON. **A.I.R. 1930 Pat. 405.**

—S. 19—By predecessor-in-interest.

———An admission made by a person having a reversionary interest in the property at the time is evidence against another person claiming the reversionary interest under a title derived from the former. (*N. R. Chatterjea and Suhrawardy, JJ.*). SREEMATY TARAMONI CHAUDHURANI *v.* CHARU CHANDRA CHAUDHURI. **64 I.C. 334 (Cal.).**

—S. 19—By trustee.

———Admission and conduct of trustee of public institution cannot be allowed to prejudice institution's case materially. A. I. R. 1927 P. C. 230, *Dist.* (*Addison and Bhide, JJ.*). BALAK RAM HIGH SCHOOL, PANIPAT *v.* NANU MAL.
31 P.L.R. 509=A.I.R. 1930 Lah. 579.

—S. 20—Common representative.

———*Statement by a common representative of both parties is an admission.*

Where both the parties and their legal advisers agreed in writing that a certain Vakil should hear the dispute between them and that they would abide by the statement that he might make before the Court,

Held, that the statement of the Vakil was an admission made in a suit by a nominee of a party and is as effectual as an admission made in pleadings either orally or in writing. (*Sulaiman and Kanhaiya Lal, JJ.*). HIMANCHAL SINGH *v.* JATWAR SINGH.
80 I.C. 16=5 L.R.A. Civ. 439=46 All. 710=
A.I.R. 1924 All. 570.

—S. 20—Statement agreed to be accepted.

———*Agreement to be bound by the statement of a referee—Statement is an admission.*

Where parties to a proceeding agree to abide by the statement of a third person, the statement made by such person is a statement within the meaning of S. 20. It is true that ordinarily, mere admissions are not conclusive, as is provided in S. 31; but admissions of this kind must be taken to be admissions made in a suit by the nominee of a party thereto. Such admissions, therefore, are as conclusive and effectual as admissions made by the parties in their written or oral pleadings. The effect is to prevent each party from resiling from

EVIDENCE ACT (1872), S. 21—Admission and confession.

the statement made by such a nominee. A.I.R. 1924 All. 570, *Foll.* (*Dalal, J.*). GORDHAN DAS *v.* HUSAINA. **103 I.C. 34=A.I.R. 1927 All. 659.**

—S. 21—Admission and confession.

———*Distinction.*

Admission is usually applied to a civil transaction, and to those matters in criminal cases which do not involve a criminal intent. While the term confession is usually used in criminal Court as denoting an acknowledgment of guilt. Admission in a civil suit that a document is genuine cannot in the forgery case be regarded as confession at all. 37 Cal. 467, *Ref.* (*Rankin, C.J. and Buckland, J.*). AMBAR ALI *v.* EMPEROR.

1929 Cr.C. 194=A.I.R. 1929 Cal. 539.

—S. 21—Admission by counsel.

———*Admission on a point of law.*

An admission made by the counsel on a point of law cannot in any way bind client. (*Martineau and Moti Sagar, JJ.*). NANAK CHAND *v.* MIR MUHAMMAD KHAN. **75 I.C. 1048= A.I.R. 1924 Lah. 702.**

—S. 21—Admission by Mukhtear.

———A fact admitted by the defendant's Muktear prior to the framing of the issues is not conclusive, for the Court may require it to be proved otherwise. (*Scott-Smith, A.C.J.*). VIR SINGH *v.* BHOLA SINGH. **82 I.C. 617=6 L.L.J. 358= A I.R. 1924 Lah. 744.**

—S. 21—Admission by pleader.

———*Criminal case—Pleader's admission is binding on the party.*

A pleader has authority to admit certain fact so as to dispense with the necessity of further proof in a criminal case at the appellate stage: 3 Bom. L. R. 467, *Foll.*; 2 Bom. L.R. 751, *Dist.* (*Fawcett and Mirza, JJ.*). BANSILAL GANGARAM VANI *v.* EMPEROR. **112 I.C. 110=11 A.I. Cr. R. 243= 29 Cr. L.J. 990=52 Bom. 686=30 Bom. L.R. 646= A.I.R. 1928 Bom. 241.**

—S. 21—Bond and consideration.

———Executant of a bond or his representative is bound by admission made therein as to the receipt of consideration—Burden of proving want of consideration is on him. A.I.R. 1925 Lah. 471 (F. B.); 35 All. 194 and 35 All. 353, *Rel. on.* (*Jai Lal, J.*). KHETU RAM *v.* HARPOOL. **105 I.C. 847= 29 P.L.R. 110=9 L.L.J. 511= A.I.R. 1927 Lah. 800.**

—S. 21—By insolvent.

———The admissions, of an insolvent, if made after the Act of Insolvency, cannot furnish evidence against another insolvent or as against the Official Assignee. (*Mukerjee and Panton, JJ.*). LUCHIRAM MOTILAL BOID *v.* RADHA CHARAN PODDAR. **66 I.C. 15=49 Cal. 93=34 C.L.J. 107= A.I.R. 1922 Cal. 267.**

—S. 21—Cess return.

———Road cess returns are admissible only against the maker. 39 Cal. 995; 39 Cal. 1005 and 18 C.L.J. 633, *Ref.* (*Ashutosh Mookerji and Rankin, JJ.*). SWARNAMOYI *v.* SOURINDRA NATH MITRA. **89 I. C. 747=42 C. L. J. 14= A. I. R. 1925 Cal. 1189.**

———*Return cannot be used in favour of person making statements therein.*

Section 95 of the Cess Act restricts the provisions of S. 21 of the Evidence Act and makes the exception to that section inapplicable to the case of these returns. A return cannot be used under any circumstances in favour of the person making it but it can be used by others for a purpose not directly connected with the statements made in the return. (*Suhrawardy and Chotzner, JJ.*). CHANDRA MOHAN MAITI *v.* KINARAM MAITI. **79 I.C. 412=A.I.R. 1925 Cal. 408.**

EVIDENCE ACT (1872), S. 21—Creditor and debtor.

———*Admissibility against landlord who signed it.*

Where the Road Cess Return was signed by the landlords, it would be admissible as against them. (*Adami, J.*). SADHU SARAN *v.* AMBIKA LAL. **68 I. C. 676=A.I.R. 1923 Pat. 163.**

—S. 21—Condition for use.

———Admissions cannot be used against a party unless they are put to him and an opportunity is afforded to him to explain them if they are capable of explanation. 123 I. C. 278 and 11 Cal. 580, *Foll.* (*Shadi Lal, C. J. and Abdul Qadir, J.*). SHAFIUDDIN *v.* MUHAMMAD ILAHI. **31 P. L. R. 472= 12 L. L. J. 149=A. I. R. 1930 Lah. 714.**

—S. 21—Construction of document.

———*Party's improper construction—No admission.*

It does not matter what view a plaintiff or a defendant may take of his obligations. In questions of construction of documents it does not matter in the least whether a litigant calls a document "a contract" or by any other name; its true construction is entirely for the Court. Where a manifestly improper construction (to his own prejudice) was originally apparently admitted by a party,

Held, that the Court should apply the right construction only. (*Mears, C.J. and Knox, J.*). FIRM RAM KUNWAR, RAMESHAR DAS *v.* FIRM NARAIN DAS LACHMAN DAS. **A.I.R. 1921 All. 399.**

—S. 21—Co-party.

———An admission of judgment by one of several defendants is no evidence against his co-defendant: 2 I. A. 113; 6 All. 395; 45 Cal. 159, *Ref.*; A. I. R. 1923 Lah. 123 and 44 Cal. 130, *Dist.* (*Tek Chand and Agha Haider, JJ.*). RASHDUDDIN *v.* NAZIRUDDIN. **11 L. L. J. 404=A. I. R. 1929 Lah. 721.**

———The fact, that one of the defendants was present at the time when measurement was made and map prepared and took part in the *batwara* proceedings in which the land in dispute was mentioned as plaintiff's, is certainly evidence though not binding as an admission upon the defendants who claim under an independent title. (*Chatterjea and Panton, JJ.*). ABDUL HAMID *v.* BROJENDRA KUMAR. **90 I. C. 643=A. I. R. 1926 Cal. 290.**

———The admission of one party may be given in evidence against another, when the party against whom the admission is sought to be used has a joint interest with the party making his admission in the subject-matter of the thing to which the admission relates. 45 Cal. 159, *Ref.* (*Newbould and Ghose, JJ.*). NAGENDRANATH *v.* LAWRENCE JUTE CO., LTD. **61 I.C. 544=25 C.W.N. 89= A.I.R. 1921 Cal. 197.**

—S. 21—Co-reversioner.

———*Admission by one does not bind another.*

One reversioner should not be regarded as deriving his interest from another in whom no interest ever vested, even though that other was his own father. So, an admission made by one reversioner does not bind another even though that other is his son. 22 All. 33 and 28 Mad. 57, *Ref.* (*Drake-Brockman, J. C.*). GULAB THAKUR *v.* FADALI. **68 I.C. 566=A.I.R. 1921 Nag. 153.**

—S. 21—Creditor and debtor.

———Entry in a bond that no other sum is due is not binding on creditor but is only an admission in favour of debtor. (*Campbell, J.*). GURDITTA MAL *v.* NABI BAKSH. **93 I.C. 996= A. I. R. 1926 Lah. 381.**

EVIDENCE ACT (1872), S. 21—Evidentiary value.

—S. 21—Evidentiary value.

———*Admission are not conclusive unless amounting to estoppel.*

An admission made in a Court of law no doubt carries with it great weight but it is not conclusive and binding on the party making it, unless it operates as an estoppel. The burden of proof, however, rests heavily upon the party and after him, his heirs, to show that the admissions were untrue. (*Mirza and Baker, JJ.*). BAI DEVMANI *v.* RAVISHANKAR KAR OGHADBHAI. **116 I.C. 236= 53 Bom. 321=31 Bom. L.R. 109= A. I. R. 1929 Bom. 147.**

———*Every admission is evidence against a party making it.*

Every admission which a party makes, is evidence against him, and may properly be acted on without necessarily accepting other admissions on other statements which he may have made. (*Simpson, A. J. C.*) LACHHMAN DAS *v.* BHAGIRATH. **90 I.C. 487=A. I. R. 1926 Oudh 41.**

———*Admission in* 1903 *of existence of door cannot mean that it existed prior thereto.*

In 1903, the plaintiff's predecessors-in-title made an admission in a case brought by them against their step-mother to the effect that a door existed at A in the court-yard now in dispute and that it had been opened by the father of the present defendant.

Held, that this admission alone was not sufficient to prove that the door was opened by defendant's father at any time prior to 1903. (*Moti Sagar, J.*). HIRA NAND *v.* AHMAD YAR. **A.I.R. 1923 Lah. 608.**

—S. 21—Execution purchaser.

———*Bound by admission of judgment-debtor.*

A purchaser at an ordinary execution sale is in privity with and the representative-in-interest of the judgment-debtor within the meaning of section 21 of the Evidence Act, so as to be bound by his admissions. He cannot contend that the terms of the bargain were unconscionable. 18 W.R. 166 : 22 Cal. 909, *Foll.* (*Baker, Offg. J.C.*). HAR BHAGAT *v.* PANDIT NARAYAN RAO. **78 I.C. 338= A.I.R. 1924 Nag. 208.**

—S. 21—Favourable admission.

———*Admission in favour of person making it when admissible.*

The question was when A died. A mortgage-deed executed by A's son in a 1892, in which, A is described as dead is admissible, and will be used in favour of A's son as it is relevant otherwise than as an admission under S. 11 (2). (*Mookerjee, C.J. and Rankin, J.*). SAYERUDDIN AKONDA *v.* SAMERUDDIN AKONDA. **72 I.C. 985=A.I.R. 1923 Cal. 378.**

—S. 21—Joint family.

———*One member stating family is not joint—Statement is not admissible against others who contend otherwise.*

The admission of a member of a Hindu family that the family is not joint and that certain properties belong exclusively to a certain other member thereof is not admissible against other members who contend that the family is joint. (*Newbould and Ghose, JJ.*). NAGENDRA NATH *v.* LAWRENCE JUTE CO., LTD. **61 I.C. 545=25 C.W.N. 89= A.I.R. 1921 Cal. 197.**

—S. 21—Oral confession.

———Oral confession to Magistrate is relevant and may be proved by testimony of the Magistrate. 21 P.R. 1881 (Cr.); 52 P.R. 1887 (Cr.); 11 P.R. 1918 (Cr); A.I.R. 1925 Lah. 557; A.I.R. 1922 Mad. 40, *Foll.*; *Opinion of Shah, J.* in 21 Bom. L.R. 1065 and A.I.R. 1922 Cal. 342, *Diss. from.* (*Tek Chand, J.*). BHAGEL SINGH *v.* EMPEROR. **121 I.C. 497= 1929 Cr. C. 426= 31 Cr.L.J. 269 A.I.R. 1929 Lah. 794.**

EVIDENCE ACT (1872), S. 21—Solicitor's accounts.

—S. 21—Pedigree.

———*Production—Admission of relationship.*

From the mere fact that a pedigree is filed by a person, it cannot be assumed that he admitted all the relationship stated in it to be correct. (*Lyle, A.J.C.*). BHIMA SINGH *v.* MT. SUNDAR. **69 I.C. 421=9 O.L.J. 186= 26 O.C. 109=A.I.R. 1922 Oudh 218.**

—S. 21—Police file.

———Plaintiffs having to prove loss of certain account book in his custody cannot put in police file of alleged theft from his house. (*Wilberforce, J.*). BARU *v.* SUKHA SINGH. **4 L.L.J. 418= A.I.R. 1921 Lah. 332.**

—S. 21—Recitals in deed.

———Recital in deed executed by Hindu widow is admissible as evidence of legal necessity. 44 Cal. 186; 1922 A. 436, *Foll.* (*Mukerji and Dalal, JJ.*). DARBARILAL *v.* GOBIND SARAN. **80 I.C. 31= 46 All. 822=22 A.L.J. 753=5 L.R.A. Civ. 556= A.I.R. 1924 All. 902.**

———An assertion in the *kobala* executed by a tenant in favour of his transferee, that his right in it was a permanent one is admissible under S. 13 in evidence in a suit for ejectment of the tenant where permanent tenancy was claimed. (*Rankin, J.*). JNANENDRA NATH *v.* NASEA DASI. **83 I.C. 948. 39 C.L.J. 526=A.I.R. 1924 Cal. 991.**

—S. 21—Scope and construction.

———*Section should be strictly construed.*

S. 21 (3), which lays down that an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission, is an exception to the general rule and as such should be strictly construed. That clause is intended to apply to cases in which the statement is sought to be used in evidence otherwise than as an admission, for instance as part of the *res gestae*, as a statement accompanying or explaining a particular conduct but it cannot be held that a statement which is inadmissible in evidence under the general rule can be made admissible as such by reference to S. 21 (3). (*Raza and Srivastava, JJ.*). ALICE GEORGINA PASCHAND *v.* EMMA BERTHA PASCHAND NIXON. **A.I.R. 1930 Oudh 441= 7 O.W.N. 683.**

—S. 21—Self-serving statement.

———*Admission in his own favour—Admissibility.*

Where the question is whether a person is a *benamidar* or real owner of property :

Per *Dawson Miller, C. J.*—Even self-serving statements made by the person are admissible under S. 11 if they render fact in issue highly probable or highly improbable.

Per *Mullick, J.*—Admissions made by the person in his own favour are not admissible.

Per *Foster, J.*—Where the statements are made by the person in the course of his instructions to his local agent who assists him in acquiring the property they are admissible as *res gestae*. (*Dawson Miller, C. J., Mullick and Foster, JJ.*). HARIHAR PRASAD SINGH *v.* MAHARAJ KESHO PRASAD SINGH. **93 I. C. 454=5 P. L. T. Sup. 1= A.I.R. 1925 Pat. 68 (F.B.).**

—S. 21—Solicitor's accounts.

———*Entries in—Are admissible.*

Entries in solicitor's books of account regarding object of purchase for client are neither inadmissible

EVIDENCE ACT (1872), S. 21—Statement by deceased person.

nor irrelevant nor hearsay. (*Viscount Sumner*). HARIRAM SEROWGEE *v.* MADAN MOHAN BAGLA.
114 I.C. 565=1929 A.L.J. 406=49 C. L. J. 335=33 C. W. N. 493=31 Bom. L.R. 710=1929 M.W.N. 422=30 M.L.W. 835=A.I.R. 1929 P.C. 77=57 M.L.J. 581 (P.C.).

—S. 21—Statement by deceased person.

———*Statement that a document is a copy of the original is admissible.*

The statement that a document is a copy of the original is admissible where made by a deceased person in a document relating to a relevant fact and also as an admission under S. 21. (*Lord Atkin*). V. SEETHAYA *v.* P. SUBRAMANYA SOMAYAJULU.
117 I. C. 507=52 Mad. 453=56 I. A. 146=33 C. W. N. 578=29 M.L. W. 804=31 Bom. L. R. 756=49 C. L. J. 566=1929 M. W. N. 553=A. I. R. 1929 P. C. 115=56 M. L.J.730 (P.C.).

—S. 21—Unregistered deed.

———*Statement in unregistered compromise is admissible as admission.*

A compromise-agreement operating as a lease requires registration notwithstanding the fact that it has been embodied in a decree, and such an agreement, if unregistered, will not be admissible as a lease, although a statement in it may be admitted as an admission. When such a statement is admitted as an admission it is only a piece of evidence and it is open to the party who has made the admission to show that it was made in circumstances which did not make the admission binding on him or her as the case may be: A.I.R. 1919 P.C. 79, *Rel. on.* (*Mitter, J.*). SAILESH CHANDRA SARKAR *v.* BIRESWAR CHATTERJEE. **A. I. R. 1930 Cal. 559.**

—S. 21—Use in evidence.

———It is unsafe, if not unjust, in a case where an estimate is to be arrived at from the materials at the disposal of the Court to rely upon the admission of the defendant alone. (*Ross and Wort, JJ.*). RAMESHWAR KUER *v.* LACHMAN PRASAD SAHI.
107 I. C. 844.

—S. 21—Will.

———*Statement in a will cannot be proved in maker's favour.*

A statement in a will suggesting an inference as to a fact in issue, cannot be proved by or on behalf of the person who made it or his representative-in-interest. Even where two executors, who were members of the family, acted upon the will, still the statement cannot be treated as an admission by the members of the family that the statement in the will is true. (*Sir Lawrence Jenkins*). NALAM PATTABHIRAM RAO *v.* MANDAVILLI NARAYANAMOORTHY. **100 I.C. 835=26 C.W.N. 273=15 M.L.W. 404=A.I.R. 1922 P. C. 102.**

—S. 23—Admission in compromise.

———*S. 23 is no bar to use of admissions in compromise which is not rejected.*

The parties to a suit agreed to compromise it and executed a statement to that effect. A petition was presented stating that the case had been compromised with a prayer for decree. But it was signed by one defendant only; the other defendants disagreeing with its terms. Thereupon Court framed an issue to ascertain whether the compromise was binding on all the parties. Against the order of the Court framing an issue and directing that enquiry to be made, the plaintiff filed an appeal which was dismissed, the Court holding the inquiry. As a result of the enquiry by Trial Court, it was held that the compromise was not binding on all the defendants and the suit was dismissed. On appeal, the District Judge held that as the compromise had been rejected and held not binding, and the appeal from the order was also dismissed, the admissions in the agreement could not be used as evidence as S. 23 acted as bar.

EVIDENCE ACT (1872)—S. 23—Letters.

Held, that the agreement between the parties to compromise had been reduced to writing and had been filed in Court. It was wrong to say that the compromise was rejected and held not binding and that an appeal from that order was dismissed. The appeal was against the decision of the Trial Court to make an inquiry against the binding nature of the compromise. Therefore, there had been no final adjudication by the District Judge that the compromise was not binding. It was necessary for the District Judge to decide whether the compromise propounded by the plaintiff was binding on the defendants and S. 23 did not present any bar to the proof of the compromise, if it was made as alleged by the plaintiff. (*Jai Lal. J.*). SADHU RAM *v.* BOTHA RAM. **11 L.L.J. 446=A.I.R. 1930 Lah. 293.**

———Admissions to a person to whom the parties went for compromise are not inadmissible in evidence unless there was an express agreement that the evidence of the statements was not to be given. (*Campbell, J.*). FIRM BULAKI RAM *v.* BHAGAT RAM. **95 I. C. 363=A.I.R. 1926 Lah. 548.**

—S. 23—Land Acquisition proceedings.

———*Negotiations—Offer without prejudice—Admissibility.*

Where after a notification for the compulsory acquisition of land, negotiations are started with the owner of the property by the Government regarding price and certain offers are made by the Government expressly "without prejudice" evidence of these offers is not admissible in an appeal by the owner from an award as to the price made by the District Judge. (*Jai Lal and Abdul Raoof, JJ.*). RANZOR SINGH *v* SECRETARY OF STATE.
92 I.C. 319=A.I.R. 1926 Lah. 509.

—S. 23—Letters.

———*S. 23 does not cover case of letters merely because of the inscription "without prejudice."*

Letters having the inscription "without prejudice" were accepted in evidence in lower Court. It was argued that they were inadmissible in evidence.

Held, that the provisions of S. 23 under which the privilege was claimed did not cover the case. The provisions excluded from category of relevant evidence, such admissions as are made, either upon an express condition that evidence of it is not to be given or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given."

Moreover, where the defendant's counsel admits the letters in the Trial Court, the privilege is withdrawn and the letters are free to be used in as evidence in a judicial proceeding. (*Stuart, C. J. and Wazir Hasan, J.*). LUCKNOW IMPROVEMENT TRUST *v.* P. L. JAITBY & CO. **6 O.W.N. 1088=A.I.R. 1930 Oudh 105.**

—S. 24.

Acceptance in part.
Approver.
Confession in custody.
Duty of Court.
Evidentiary value of.
Free confession.
Inducement.
Person in authority.

EVIDENCE ACT (1872), S. 24—Acceptance in part.

Proof of.
Retracted.
Scope.
Value of confession.
What is confession.
Miscellaneous.

—S. 24—Acceptance in part.

———*Confession not full—Court can reject portions that are false and deduce guilt.*

Where the confession is anything but a full confession, the Court is at liberty to use the confession as it stands and derive a deduction of the guilt of the man who made it even while rejecting portions of it which are false. (*Stuart, C.J. and Raza, J.*). MATA DIN *v.* EMPEROR.
123 I. C. 886=31 Cr. L.J. 575=6 O.W.N. 1017=A.I.R. 1930 Oudh 113.

———When a confession is given in evidence, the whole of it must be given. But it cannot be said that if the Courts believe the confession it must also accept the circumstances alleged by the accused in extenuation, however improbable may be the Oourt can believe that part of it which tells against the accused and reject that part which tells in his favour. (*Waller and Reilly, JJ.*). LAKSHMAYYA *v.* EMPEROR. **1930 M.W.N. 785.**

———*Criminal Trial—Confession must be considered as a whole.*

If accused is to be convicted on his confession, it must be taken as a whole and it would be unsafe to use the part against him and discredit the part in his favour. 39 Cal. 855 and 21 Cal. 955, *Foll.* (*Kumaraswami Sastri, J.*). T.R. SRINIVASA ROW *v.* EMPEROR. **109 I.C. 605=27 M.L.W. 318=1928 M.W.N. 161=9 A.I. Cr. R. 493=29 Cr.L.J. 589=1 Mad. Cr. C. 113=A.I.R. 1928 Mad. 493=54 M.L.J. 607.**

———*Confession must be read as a whole—Exception.*

A confession or statement of an accused person must be read and accepted as a whole unless there is evidence to contradict any portion thereof in which case such portion may be rejected. (*Jai Lal and Dalip Singh, JJ.*). WARYAM SINGH *v.* EMPEROR. **99 I.C. 71=28 Cr. L.J. 39=A.I.R. 1926 Lah. 554.**

———*Confession must be accepted as a whole.*

Where the only evidence against the accused is his confessional statement, the Court must accept the whole of the confessional statement. (*Devadoss and Wallace, JJ.*). KATIRI, *In re.* **88 I.C 455=26 Cr. L.J. 1143=A.I.R. 1925 Mad. 1069.**

———*Discovery.*

Though, no doubt, when portions of the statement are admitted, the persons affected thereby may demand that the statement should be admitted and considered in its entirety, yet the principle that portions of a statement or confession may be admitted and others excluded is recognised in the Evidence Act itself. If and when certain facts are deposed to as discovered in consequence of information received from the accused when in custody of the Police, so much of the information as relates distinctly to the fact or facts thereby discovered will become admissible. (*Teunon and Ghose, JJ.*). LEGAL REMEMBRANCER *v.* LATIF MOHAN SINGH ROY. **49 Cal. 167=A.I.R. 1922 Cal. 342.**

—S. 24—Approver.

———*Approver's confessional statement induced as a result of undue pressure—S. 24 does not exclude such statement made under Criminal P. C., S. 339 (2).*

An approver's disclosure is in its very nature always the result of an inducement or promise, namely, the inducement to confess upon a promise of pardon; but should it appear that it was extorted as the result of undue duress, such as threats or violence, to that extent the provisions of S. 24 would be applicable and the confessional statement would have to be ruled out of evidence. Such a statement is not excluded from evidence by S. 24, Evidence Act: 5 A.L.J. 691, *Foll.* (*Fforde and Jai Lal, JJ.*). RAM NATH *v.* EMPEROR.
108 I. C. 514=9 Lah. 608=10 A.I.Cr.R. 76=29 Cr. L. J. 413=29 P. L. R. 165=A.I.R. 1928 Lah. 320.

———Approver tried on the basis of his statement—Statement retracted must be corroborated by other evidence. (*Fforde and Jai Lal, JJ.*). RAM NATH *v.* EMPEROR. **108 I. C. 514=9 Lah. 608=10 A. I. Cr. R. 76=29 Cr. L. J. 413=29 P. L. R.165=A. I. R. 1928 Lah. 320.**

———The hope of being made an approver does not show that the confession is not voluntary. (*Adami and Bucknill, JJ.*). NILMADHAB CHAUDHURY *v.* EMPEROR. **96 I. C. 509=7 A.I.Cr.R. 75=5 Pat. 171=27 Cr. L.J. 957=A.I.R. 1926 Pat. 279.**

———*Inducement by police officer—Tender of pardon—Statement made by approver.*

The accused made a confession in which he implicated three persons in an offence of murder. At the trial of the three persons the accused was granted a conditional pardon and examined as a witness for the prosecution. The three persons were acquitted and the accused was tried for the offence of murder,

Held, the confession made by the accused in the first murder trial was inadmissible in evidence against him under S. 24 of the Evidence Act. The statements made by the accused in the first murder trial as a witness under a tender of pardon are admissible for they were removed from the operation of S. 24 by virtue of S. 339, Cl. (2) of the Cr. P. Code. The statements made by the accused in the trial of the Police officer concerned in the investigation of the case could be admitted in evidence against him on his own trial for murder. (*Heaton, A.C.J., Shah and Hayward, JJ.*). EMPEROR *v.* CUNNA. **59 I. C. 324=22 Cr. L. J. 68=22 Bom. L.R. 1247.**

—S. 24—Confession in custody.

———Statements of accused in Excise case in custody and after their removal to Excise barracks were held inadmissible. (*C. C. Ghose and Duval, JJ.*). BAITASI MONI DASSI *v.* EMPEROR.
98 I.C. 401=53 Cal. 706= 30 C.W.N. 854=27 Cr.L.J. 1329=A.I.R. 1926 Cal. 1163.

———*Accused in police custody—Presumption that his confession is induced is not correct.*

The mere fact of a person being in custody cannot be a good basis for a presumption that any confession he may make is caused by an inducement, threat or promise having reference to the charge against him, proceeding from some police officer and sufficient to make him believe that he would be benefitted in the trial by making it. (*Hallifax and Kinkhede, A.J.Cs.*). DADI LODHI *v.* EMPEROR.
95 I.C. 59=27 Cr.L.J. 731=A.I.R. 1926 Nag. 368.

—S. 24—Duty of Court.

———Case entirely resting on confession—Manner in which confession obtained uncertain—Accused should get benefit of doubt. (*Broadway and Agha Haidar, JJ.*). RAHMAN *v.* EMPEROR.
119 I.C. 420=1930 Cr.C. 104=30 Cr.L.J. 1080=A.I.R. 1930 Lah. 88.

EVIDENCE ACT (1872), S. 24—Duty of Court.

———*Admissibility of confession must be decided before contents of confession are looked at.*

When the admissibility of a confession depends upon a conclusion as to the truth about conflicting evidence antecedent to the making of the confession and tending to show that it is liable to rejection under S. 24, the trial Judge must make up his mind upon this issue, and decide the question of admissibility before relying upon the contents of the confession. (*Walsh and Sulaiman, JJ.*). FATEH CHAND *v.* EMPEROR. **86 I.C. 1001= 26 Cr. L. J. 937=6 L. R. A. Cr. 89= A. I. R. 1925 All. 606.**

———*Doubt as to—Admissibility—Court should lean in favour of accused.*

In a case of doubt on the question of admissibility of evidence when it is of such vital importance to the prisoners as their own confessions one should not hold them as admissible unless one is affirmatively satisfied as to their relevancy. *R. v. Warringham*, 2 Den. C. C. 447-*n*, (1851) *Foll.* (*Mukerji, J.*). EMPEROR *v.* PAUCKKARI DUTT. **86 I. C. 414=52 Cal. 67= 29 C. W. N. 300=26 Cr. L. J. 782= A.I.R. 1925 Cal. 587.**

———*Three-fold function.*

In scrutinising a case from the point of view of S. 24, the Court will have to perform a three-fold function. It will have, as a Court, to determine the sufficiency of the inducement, threat, or promise as affording certain grounds; it will have again to clothe itself with the mentality of the accused to see whether the grounds would appear to the accused reasonable for a supposition that is mentioned in the section; lastly, it will have to judge, as a Court, if the confession appears to have been caused in consequence of the inducement, threat or promise: [52 Cal. 67, *Rel.*]. There is no rule of law which compels a Court to raise an inference of improper inducement from the mere fact that a confession is retracted. (*Broadway and Addison, JJ.*). PARTAB SINGH *v.* EMPEROR. **93 I. C. 978=7 L. L. J. 482=6 Lah. 415= 27 Cr. L. J. 514=A. I. R. 1925 Lah. 605.**

—S. 24—Evidentiary value of.

———Although the evidence of admission of guilt to villagers is sufficient to justify the conviction, still the evidence that such an admission was made must be closely scrutinized like all other evidence which is used to prove a case of murder. A.I.R. 1928 Oudh 393 and A.I.R. 1929 Oudh 167, *Ref.* (*Raza and Pullan, JJ.*). TAULE *v.* EMPEROR. **117 I.C. 737=6 O.W.N. 309=30 Cr. L.J. 829= 1929 C. Cr. 14=A. I. R. 1929 Oudh 272.**

———*Extra-judicial confession is of great importance.*

No doubt the extra-judicial confession is of great importance but it must be a true extra-judicial confession and not one fabricated in order to provide additional evidence for what rightly or wrongly the investigation officer considers to be a weak case. (*Raza and Pullan, JJ.*). TAULE *v.* EMPEROR. **117 I.C. 737=6 O.W.N. 309= 30 Cr. L.J. 829=1929 Cr. C. 14= A. I. R. 1929 Oudh 272.**

———*Extra judicial confessions are not entitled to any weight—To base conviction on such a confession is not safe.*

Apart from the question whether or not extra-judicial confessions are inadmissible in evidence, they are not of such a nature as entitle them to any weight because it is impossible to ascertain the exact words used by the person. To base a conviction on such a confession is not safe: 14 P. R. 1911 (Cr.), *Rel. on.* (*Broadway and Agha Haidar, JJ.*). DEO RAJ *v.* EMPEROR. **111 I.C. 449=29 P.L.R. 486=29 Cr. L.J. 865= A.I.R. 1928 Lah. 858.**

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———Confession before villagers who are trustworthy witnesses may be as strong evidence against accused as confession before Magistrate and requires no corroboration. (*Stuart, C. J. and Raza, J.*). EMPEROR *v.* BADAL. **112 I.C. 897= 5 O.W.N. 698=30 Cr. L.J. 33= 11 A.I.Cr. R. 520=A.I.R. 1928 Oudh 393.**

———*All the parts of a confession are not entitled to equal weight—Some may be believed while others rejected.*

After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction it is not supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist the part that charges the prisoner may be believed, while that which is in his favour may be rejected: 40 Cal. 873, *Foll.* (*Stuart, C. J. and Raza, J.*). NIRBHAY NATH *v.* EMPEROR. **98 I. C. 178=1 Luck. 417=29 O. C. 369= 13 O. L. J. 809=3 O. W. N. 800= 27 Cr. L. J. 1282=A. I. R. 1926 Oudh 618.**

—S. 24—Free confession.

———Confession, when not in police custody, to respectable person and not obtained as a result of duress is admissible and sufficient to convict the confessor. (*Stuart, C. J. and Raza, J.*). SHEO BALAK *v.* EMPEROR. **99 I. C. 232= 3 O. W. N. 301=28 Cr. L. J. 104=7 A. I. Cr. R. 238.**

———*Threats made but not influencing accused—Confession is admissible.*

Where threats are made to the accused but the accused makes the statements deliberately, *i.e.*, uninfluenced by the threats, S. 24 does not apply. 25 Bom. 168, *Foll.* (*Crump, J.*). EMPEROR *v.* ANANDRAO GANGARAM. **89 I. C. 1046= 27 Bom. L. R. 1034=49 Bom. 642= 26 Cr. L. J. 1478=A. I. R. 1925 Bom. 529.**

—S. 24—Inducement.

———Accused making confession to witness—Judge rejecting it thinking that accused made it under belief that it would be to his advantage—Confession is not invalid and should not be rejected. (*Coutts-Trotter, C.J. and Walsh, J.*). PUBLIC PROSECUTOR *v.* CHANDAY A SHETTY. **2 M.Cr. C. 56= A.I.R. 1929 Mad. 92.**

———*Village Panch telling that truth has come out and the accused had better say what he knew—Confession was held inadmissible.*

Whether any threat or inducement was offered or not in a particular case is a question of fact and has to be decided with reference to the circumstances of that case and that it is not safe to make any generalisations merely on the ground that certain set of words used in a particular case or particular cases have been held to be in the nature of an inducement.

Where a village Panch told the accused that the truth had come out, that the villagers were being worried about the affair and he had better say what he knew and the accused thereupon made a confession,

Held, that there was veiled threat as well as inducement and the confession was inadmissible: 9 Bom. H.C. 358; *R.* v. *Thomas*, (1834) 6 C. & P. 335;

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R. v. *Felon*, 7 Q. B. D. 147 and *R.* v. *Thompson*, 2 Q. B. D. 12, *Rel. on*; A. I. R. 1923 C. 458, *Foll.* (*Courtney-Terrell, C. J. and Fazl Ali, J.*). KUNJA SUBUDHI *v.* EMPEROR. **116 I.C. 770=8 Pat. 289=10 P.L.T. 549=30 Cr. L.J. 675=1929 Cr.C. 62=13 A.I. Cr. R. 143=A.I.R. 1929 Pat. 275.**

——*Confession should not be accepted, when evidence does not show that it was not caused by inducement.*

Where the Court is not satisfied on evidence that the confession made by the accused was not caused by any inducement, threat or promise proceeding from any person in authority, the confession should not be accepted. (*Barlee, J.C. and Kalumal, A.J.C.*). EMPEROR *v.* PANJAL. **1929 Cr.C. 539=A.I.R. 1929 Sind 245.**

——*Statement of accused before a Magistrate*: "*I want to make a clean breast of everything for the reason that if I serve the Government in any way, the Government may take pity on me*" *was held not in itself inadmissible.*

In order to make a confession inadmissible there must be something from which it should be inferred that the inducement or promise was given to the accused by some person who had authority to give it. It is not enough for the accused to entertain a hope, which may turn out to be an idle hope, that in consequence of his giving certain information, he would be rewarded by the Government, it must be shown that the hope was directly inspired by some one who had authority to make the promise.

Where an accused in making a confession to a Magistrate said: "I want to make a clean breast of everything for the reason that if I serve the Government in any way, the Government may take pity on me,"

Held, that this was not in itself sufficient to render the confession inadmissible having regard to the provisions of S. 24. (*Chotzner and Gregory, JJ.*). SAMIUDDIN *v.* EMPEROR. **109 I.C. 225=32 C.W.N. 616=10 A. I. R. Cr. 223=29 Cr. L.J. 497=A.I.R. 1928 Cal. 500.**

——*Mukhia of a village, confessed to—Confessor volunteering to make the statement—There is no inducement.*

Where, although the Mukhia, the person confessed to, is undoubted by a man in authority, and would appear to a villager as a person who was able, or likely to be able, to promise a pardon or some other inducement, the confessor volunteered to make the statement if he could get some assurance from the Mukhia that he, the Mukhia, would do his best to help him,

Held, that it is not an inducement proceeding from the person in authority within the meaning of the section so as to make the confession either inadmissible or irrelevant. (*Walsh and Pullan, JJ.*). EMPEROR *v.* MT. HAR PIARI. **97 I.C. 44=49 All. 57=24 A.L.J. 958=27 Cr. L.J. 1068=7 L.R.A. Cr. 156=A I. R. 1926 All. 737.**

——*Pressure by police inducing accused to suppose that he would get a temporal benefit—Confession is irrelevant.*

If the pressure exercised by a police officer in extorting confession from an accused is sufficient to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, the confession would not only be

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weak in value, but wholly irrelevant under S. 24. (*Sulaiman, J.*). DIP SINGH *v.* EMPEROR. **91 I.C. 894=7 L.R.A. Cr. 1=27 Cr. L.J. 158=A.I.R. 1926 All. 246.**

——*Person in authority telling accused that if he gives true account he will be pardoned—Accused's confession is irrelevant, unless the inducement has ceased to operate.*

If a man is told by a person in authority that if he gives a true account of the matter he will be pardoned, that is a continuing offer, the thread of which continues unbroken until it is accepted by the confession which completes the bargain, unless there is some circumstance which breaks it so as to show that the inducement no longer operates, and that the person confessing has no longer any hope of gaining anything from the authorities by making confession. (*Walsh and Sulaiman, JJ.*). FATEH CHAND *v.* EMPEROR. **86 I.C. 1001=26 Cr. L.J. 937=6 L.R.A. Cr. 89=A.I.R. 1925 All. 606.**

——*Moral exhortation by direct superior of accused is not objectionable.*

If a person who is suspected of an offence is examined by a person in direct authority over him and if it is only in consequence of an inducement by way of benefit or a threat that the person under suspicion makes self-incriminating statements such are, broadly speaking, not receivable in evidence because they are not in law regarded as strictly of a voluntary nature but as having been perhaps induced in the one case by a false hope and in the other by fear. On the other hand a merely moral exhortation to tell the truth is in no way objectionable. (*Bucknill and Kulwant Sahay, JJ.*). EMPEROR *v.* AKHILESHWAR PRASAD. **89 I.C. 961=4 Pat. 646=26 Cr. L.J. 1441=A.I.R 1925 Pat. 772.**

——*Promise to consider the prayer for being taken as approver—Confession is inadmissible.*

Where accused is told by a person in authority that if he makes a voluntary confession which is considered to be full and true, his prayer for being made an approver will receive due consideration,

Held, the confession made under such circumstances is inadmissible. (*Walsh and Kanhaiya Lal, JJ.*). TARA *v.* KING-EMPEROR. **74 I.C. 529=45 All. 633=21 A.L.J. 585=24 Cr. L. J. 785=A.I.R 1924 All. 72.**

——*Confession under inducement of being made approver is not admissible.*

At the end of his confession accused said that he had been told by the *darogha* that he would be made an approver. He explained to the Magistrate in the most convincing fashion that he was telling the truth for this reason, and that he knew that what he said might procure his conviction or his release. The Magistrate wrote the usual certificate in an unusual form. He said "I believe the above statement was voluntarily made although it is quite possible that the police officers may have told him that he will be made an approver,"

Held, that this confession should not have been admitted in the face of this. Section 24 of the Evidence Act makes a confession inadmissible, if it appears to have been caused by any inducement or promise. (*Walsh, J.*). KHETAL *v.* EMPEROR. **73 I.C. 62=21 A.L.J. 143=45 All. 300=4 L.R.A.Cr. 13=24 Cr.L.J. 526=A.I.R. 1923 All. 352.**

——*Confession on a promise of release is not admissible.*

Where the accused told the Magistrate that he had been told to tell the truth by a *Saheb* who told him to tell the truth and he would be released,

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Held, that the confession was made under an inducement. (*Macleod, C.J. and Shah, J.*). DINANATH SUNDERJI *v.* EMPEROR. **60 I.C. 1006=45 Bom. 1086=23 Bom. L.R. 338=22 Cr.L.J. 318=A.I.R. 1921 Bom. 70.**

———*Confession—Fear encouraged by Police officer—Offer of pardon—Statements are inadmissible.*

A confession made by an accused person under fear, encouraged by a police officer in a subtle way in the hours that elapsed before the accused reached the Magistrate, is inadmissible in evidence. Accused made an incriminating statement before a Magistrate and was sent to jail. An application for bail was refused at the instance of the Police. The accused was suddenly released on nominal bail and thereafter he made himself useful to the Police by pointing out various places and in other ways. Subsequently he made a second statement before the Magistrate more detailed than the first, much in the fashion of an approver's statement.

Held, that under such circumstances it was difficult to believe that the accused was not given to understand that a pardon was going to be offered to him. The second statement by the accused was inadmissible in evidence. A confession made by an accused person on an inducement by a Police Officer that he would be offered a pardon is admissible in evidence. The evidence of an accomplice, if suspicious, requires corroboration. (*Walmsley and Shamsul Huda, JJ.*). EMPEROR *v.* ANANT KUMAR BANERJEE. **60 I.C. 417=22 Cr.L.J. 225=32 C.L.J. 204.**

—S. 24—Person in authority.

———*Co-villager exercising no influence or authority is not "person in authority."*

It would be doing violence to the terms of S. 24, to hold that a co-villager who does not exercise any influence or authority in the village is a person in authority, although the accused might have thought him to be such a person : A.I.R. 1923 Cal. 458 ; 11 C.W.N. 904 and A.I.R. 1922 Lah. 263, *Rel. on.* (*Rankin, C.J. and C.C. Ghose, J.*). EMPEROR *v.* KUTUB BUX. **57 C. 488=A.I.R. 1930 Cal. 633.**

———*Inamkhor is no person in authority.*

An Inamkhor, who is in a position inferior to that of an ilaqadar cannot be treated as a person in authority. (*Shadi Lal, C. J. and Agha Haidar, J.*). GULAM MD. *v.* EMPEROR. **114 I. C. 719=30 P. L. R. 269=30 Cr. L. J. 375=1929 Cr. C. 102=A.I.R. 1929 Lah. 558.**

———Where the monigar took the accused aside and asked him not to cry but to speak the truth,

Held, that the statement made under those circumstances was not induced by any threat or promise and that it was admissible in evidence.

Quaere whether the monigar was a person in authority within the meaning of S. 24. (*Waller and Cornish, JJ.*). KUTTIAPPA CHETTY *v.* EMPEROR. **1929 M. W. N. 791.**

———*Ziladar serving under a great estate is person in authority.*

A Ziladar serving under a great estate (such as that of Kapurthala) is a person in authority and if such a person holds out inducement to the accused, the admissions made to him would not be admissible: A. I. R. 1926 All. 737, *Rel. on.* (*Raza and Pullan, JJ.*). TAULE *v.* EMPEROR. **117 I. C. 737=6 O. W. N. 309=30 Cr. L. J. 829=1929 Cr. C. 14=A. I. R. 1929 Oudh 272.**

EVIDENCE ACT (1872), S. 24—Person in authority.

———A village Panch is a person in authority, A.I.R. 1923 Cal. 458 and 20 C. W. N. 572 *Rel. on.* (*Courtney Terrell, C. J. and Fazl Ali, J.*). KUNJA SUBUDHI *v.* EMPEROR. **116 I. C. 770=8 Pat. 289=10 P. L. T. 549=30 Cr. L. J. 675=1929 Cr. C. 62=13 A. I. Cr. R. 143=A. I. R. 1929 Pat. 275.**

———*Third party sent by police to induce accused.*

Where a third person was sent by police to make the accused confess by an inducement that he would be dealt with leniently if he confessed,

Held, that the inducement proceeded from a person in authority. (*Addison and Coldstream, JJ.*). BALAGI *v.* EMPEROR. **112 I.C. 347=9 Lah. 671=29 Cr. L.J. 1019=11 A.I. Cr. R. 284=A.I.R 1928 Lah. 476.**

———*Zamindar of the village who was also a Magistrate.*

Where a confession was made to the Zamindar of the village who was also a Magistrate and was regarded as an important person in the village having authority in the matter,

Held, the Zamindar must be regarded as a person in authority within S. 24. (*Das and Scroope, JJ.*). DEVENDRA BHATTACHANDRYA *v.* EMPEROR. **101 I.C. 881=28 Cr. L.J. 497=8 P.L.T. 566=8 A.I Cr. R. 151=A.I.R. 1927 Pat. 257.**

———A Vakil's clerk is not a person in authority within S. 24. (*Daniels, J.C.*). KING EMPEROR *v.* RAM AVADH. **88 I.C. 514=12 O.L.J. 495=2 O.W.N. 398=26 Cr. L.J. 1154=A.I.R. 1925 Oudh 597.**

———*Whether includes village headman—Accused speaking truth of her own accord—No proof of inducement—Admissibility of confession.*

Where the accused made the confession apparently out of remorse and under an overwhelming impulse to speak the truth and it did not appear that the village headman to whom the statement had been made had told her that if she would tell the truth, she would be let off,

Held, that though the headman was a person in authority within the meaning of the section there was no inducement proved which vitiated the confession, and that it was consequently admissible. (*Stuart, C. J. and Raza, J.*). MT. UM RAI *v.* EMPEROR. **6 O.W.N. 947.**

———*Panchayatdars are not persons in authority.*

Panchayatdars are not persons in authority within the meaning of S. 24. Considering the nature of the functions of panchayatdars they are practically private detectives helping the police in finding out the criminals. They cannot be treated as men having any authority over the accused. (*Krishnan and Wallace, JJ.*). MULIMAYANDI THEVAN *v.* EMPEROR. **76 I.C. 829=18 M.L.W. 886=25 Cr. L.J. 269=A.I.R. 1924 Mad. 230=45 M.L.J. 845.**

———*Collecting and Assistant panchayats are persons in authority within the section.*

The collecting panchayat and the assistant panchayat are both persons in authority within the meaning of the section. Consequently the confession which the accused made after he had been assured that he would be saved from the consequences, was not admissible by reason of provisions of S. 24 of the Evidence Act. It is difficult for High Court to come to the conclusion that if the accused was induced by the promise which was

EVIDENCE ACT (1872), S. 24—Person in authority.

made to him by assistant panchayat and others to make the first confession that inducement, was not to some extent the cause of his making the confession before the Magistrate. (*Sanderson, C. J. and Panton, J.*). EMPEROR *v.* GANESH CHANDRA GOLDAR. **74 I.C. 264=50 Cal. 127=24 Cr. L.J. 760= A.I.R. 1923 Cal. 458.**

———*Confession to Lambardar under threats is inadmissible.*

A Lambardar being a person in authority a confession induced by him by the use of threats is inadmissible in evidence under S. 24 of the Evidence Act. (*Scott-Smith and Abdul Raoof, JJ.*). MD. YAR *v.* EMPEROR. **81 I.C. 555=4 Lah. L.J. 235=25 Cr. L. J. 939=A.I.R. 1922 Lah. 263.**

—S. 24—Proof of.

———*Extra-judicial confession.*

The duty of the Court before which an extra-judicial confession, not incorporated in a document, is relied upon is to scrutinise the whole of the material before it, and then to decide whether there is sufficient evidence to prove the confession. A mere general statement to the effect that the prisoner had confessed, is too uncertain a foundation to sustain a finding against him and the Trial Court ought to ascertain as far as possible the very words spoken by an accused who is said to have confessed. There may however be cases in which the evidence gives the substance, though not the actual words of the statement made by the accused and if that evidence is reliable there is no rule of law which precludes the Court from holding, that the confession has been proved: 10 B.L.R. 322, *Ref.* (*Shadi Lal, C. J. and Eforde, J.*). NUR ALI *v.* THE CROWN. **81 I.C. 530=5 Lah. 140=6 L. L. J. 208=25 Cr. L. J. 914= A.I.R. 1924 Lah. 498.**

—S. 24—Retracted confession—Admissibility.

———*Confession duly recorded after taking all precautions—Retraction without sufficient explanation as to how the accused came to make the confession, does not make it inadmissible.*

Where an accused makes a confession after all the precautions necessary have been taken by the Magistrate recording the confession, the mere fact that the confession has been retracted will not make it inadmissible unless the accused gives any sufficient reason as to how he came to make the confession.

A man of sound mind and full age, who makes a statement in ordinary simple language, must be bound by the language of the statement and by its ordinary plain meaning. A. I. R. 1925 All. 627 (F. B.), *Foll.* (*Stuart, C. J. and Raza, J.*). RAJ BAHADUR SINGH *v.* EMPEROR. **98 I.C. 106=3 O.W.N. 818=27 Cr.L.J. 1258= A. I. R. 1927 Oudh 17.**

—S. 24—Retracted confession—Conviction on.

———*Person making confession may be convicted when Court thinks that it is voluntary and true.*

There is nothing in law to prevent a Court from convicting a person upon a confession which has been subsequently retracted, provided that the Court is convinced that the statement is voluntary and true. If there be anything from the barest suspicion to positive evidence that the confession has been obtained by threat, persuasion, etc., such confession has of course to be discarded. But where a confession is made by a person who is *sui juris* before a Magistrate in an atmosphere untainted by the influence of the police or by any other influence and there are no suspicious features about it there is no reason why the statement should not be accepted. (*Young and Sen, JJ.*). MT. KHUBAN *v.* EMPEROR. **120 I.C. 257=31 Cr.L.J. 26= 1930 Cr.C. 45=A.I.R. 1930 All. 29.**

EVIDENCE ACT (1872), S. 24—Retracted confession—Conviction on.

———*Rule of Practice.*

It is a rule of practice not to rely on a retracted confession unless it is corroborated by some evidence to show that the confession is true. As a matter of law it cannot be laid down that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his gullt without independent corroborative evidence, and a prisoner may be convicted on his own confession without any corroborative evidence and even when a confession has been retracted, if the jury believe that the confession contains a true account of the prisoner's connexion with the crime. (*Rankin, C.J. and C. C. Ghose, J.*). EMPEROR *v.* KUTUB BUX. **57 Cal. 488=A.I.R. 1930 Cal. 633.**

———*Retracted confession made voluntarily is sufficient to warrant conviction.*

A confession made voluntarily without any pressure having been brought to bear upon the accused, is sufficient to warrant the conviction of the accused even although such confession may subsequently be retracted. (*Broadway and Agha Haidar, JJ.*). RAHMAN *v.* EMPEROR. **119 I.C. 420= 1930 Cr.C. 104=30 Cr.L.J. 1080= A.I.R. 1930 Lah. 88.**

———Where the confession was retracted but on the evidence there was no possible doubt as to the truth of the confession,

Held, that the confession could be the basis of a conviction. (*Waller and Cornish, JJ.*). KUTTIAPPA CHETTY *v.* EMPEROR. **1929 M.W.N. 791.**

———*Detailed and voluntary confession subsequent retraction—Parts not found to be true—Sufficient for conviction.*

Confession made by an adult man who understood what he was doing, though retracted, is sufficient for the conviction of the person making it, even although certain parts of it are not found to be true, provided that there was a detailed confession and it was made voluntarily and in spite of the fact that he was explained the consequences of making it. (*Stuart, C.J. and Raza, J.*). NAWAB *v.* EMPEROR. **118 I.C. 757=6 O.W.N. 545= 30 Cr. L.J. 967=1929 Cr. C. 220= A.I.R. 1929 Oudh 381.**

———*Conviction may be based on retracted confession though it must be dealt with caution.*

A retracted extra judicial confession can in law be a sufficient basis to support a conviction. Though utmost caution must be used in dealing with retracted confessions, there is no rule that they are not by themselves legal evidence sufficient to justify a conviction : A.I.R. 1921 Sind 129, *Foll.* (*Rupchand and Barley, A.J.Cs.*). SANWALDAS *v.* EMPEROR. **1929 Cr. C. 682=A.I.R. 1929 Sind 253.**

———Accused retracting his confession—Court believing it to be true and voluntarily made—Conviction on such retracted confession although uncorroborated by independent evidence is not illegal. (*Zafar Ali and Coldstream, JJ*). MAJHI *v.* EMPEROR. **104 I.C. 247=28 Cr. L. J. 807= A.I.R. 1927 Lah. 682.**

———*Conviction based on that confession alone is not illegal.*

A conviction based alone on a retracted confession of the accused himself is not bad where the trial

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Court is satisfied that the confession was made voluntarily and that the accused was under no inducement or threat at the time when he made the confession, that he was informed clearly that if he confessed he would not get a pardon and he stated that he quite understood all these circumstances; that he wished to make his statement voluntarily and that he had no idea that he would get a pardon. A. I. R. 1925 All. 627 (F. B.); A.I.R. 1926 Oudh 622 and A.I.R. 1927 Oudh 17, *Foll.* (*Stuart, C.J. and Raza, J.*) MAHIPAT SINGH *v.* EMPEROR. **103 I.C. 800=1 L.C. 223=8 A.I. Cr. R. 416=28 Cr. L.J. 752=A.I.R. 1927 Oudh 597.**

———*Retracted confession may be used against person making it as well as against his co-accused—Retracted confession may form basis of conviction as against person making it, and no corroboration is necessary—Weight to be given to such confession depends upon circumstances.*

A retracted confession may be used as evidence, not only against the person making it, but as against persons tried jointly with the confessing accused for the same offence. As against the person making it, a retracted confession may form the basis of a conviction, even without any corroborative evidence. From the point of view of legality alone the fact that a confession has been retracted is immaterial. The weight to be given to such confessions both as against the person making it and the persons being tried jointly with him is another question and must depend on the circumstances of each case. In deciding whether a retracted confession is to be admitted in evidence, it is doubtless necessary to examine, not only the statement made by the prisoner as to how he came to make the confession, but all the circumstances of the case. (*Broadway and Addison, JJ.*). PARTAP SINGH *v.* EMPEROR. **93 I.C. 978=6 Lah. 415=7 L.L.J. 482=27 Cr.L.J. 514=A.I.R. 1925 Lah. 605.**

———*Legality of.*

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to it must depend on the circumstances under which the confession was given and retracted including the reasons given for retracting. There is no statutory bar to a conviction on such evidence, but a confession must not be regarded in the same light as an admission in a civil Court.

A retracted confession may be impugned on the ground it was not made voluntarily or was not true. (*Pipon, J.C.*). MOTI RAM *v.* EMPEROR. **75 I.C. 152=24 Cr.L.J. 904.**

———*Confession voluntary—Material particulars—Corroboration is not necessary.*

A retracted confession need not be supported in independent and material particulars. The one question which the Judge has to decide is whether the confession tendered in evidence before him has been voluntarily made and a conviction can be based on such confession, 23 Bom. 316; 29 All. 434 and 21 Mad. 83, *Foll.*; 10 Mad. 295 and 12 Mad. 123, *Diss. from.* (*Kincaid, J.C. and Raymond, A.J.C.*). MAHMUD *v.* EMPEROR. **81 I.C. 62=25 Cr. L.J. 574=16 S.L.R. 67=A.I.R. 1921 Sind 129.**

EVIDENCE ACT (1872), S. 24—Retracted confession—Corroboration.

—S. 24—Retracted confession—Corroboration.

———A confession, although retracted at the very first possible moment, is sufficient to warrant conviction if corroborated by the production of articles for which the accused can offer no explanation. (*Broadway and Agha Haidar, JJ.*). ARJAN SINGH *v.* EMPEROR. **119 I.C. 325=30 P.L.R. 646=30 Cr.L.J. 1046=11 Lah. 106=A.I.R. 1930 Lah. 257.**

———*Absence of—Conviction cannot be based on such confession.*

The weight to be given to a retracted confession must depend upon the circumstances under which the confession was originally made and the circumstances under which it was attracted, including the reasons given by the prisoner for its retraction. Unless the confession is corroborated in material particulars by credible independent evidence, or unless the character of the confession and the circumstances under which it was taken indicate its truth it would be unsafe to rely on it.

The accused was appointed approver in a case of murder. He made several confessional statements implicating himself and the other accused in the murder. But at the Sessions trial he unreservedly retracted his previous statements as approver and that he knew nothing of the murder and that he was tutored by the police into making those statements which were false. The conditional pardon granted to him was withdrawn and he was put on his trial on the previous charge of murder. There was no evidence to corroborate his confession and further the various confessional statements made by him were wanting in those natural details which one would ordinarily expect in a free and voluntary confession. The statements also contradicted one another on several important points,

Held, that there was not sufficient evidence to justify his conviction: 31 Mad. 83; 13 C.P.L.R. 107; 20 All. 133; 15 Bom. 452; 22 Cal. 50; A.I.R. 1925 Cal. 587 and 53 I.C. 929, *Rel. on.* (*Findlay, J. C., and Subhedar, A.J.C.*). SHEIKH SHAFI *v.* EMPEROR. **124 I.C. 459=A.I.R. 1930 Nag. 259.**

———There is no absolute rule that a retracted confession requires corroboration. If the Court is satisfied that a confession was, in the first instance, voluntarily made, the fact that it has on second thought, been retracted is of little significance. (*Waller and Reilly, JJ.*). LAKSHMAYYA *v.* EMPEROR. **1930 M. W.N. 785.**

———*Criminal P. C., S. 164—Corroboration is not necessary in every retracted confession.*

That a confession, having been retracted, cannot be acted upon without material corroboration, is not an absolute rule. If the reasons given by an accused person for having made a confession, which he subsequently withdraws, are, on the face of them false, it is not apparent why that confession should not be acted on, as it stands and without any further corroboration. (*Waller and Cornish, JJ.*). KESAVA PILLAI *v.* EMPEROR. **1929 Cr. C. 485=30 M.L.W. 642=2 M. Cr. C. 298=1929 M.W.N. 901=A.I.R. 1929 Mad. 837=57 M.L.J. 681.**

———*In the absence of corroboration in material particulars conviction is not safe.*

It is not illegal to base a conviction even on the retracted confession of an accused person: but in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the peculiar circumstances in which it was

EVIDENCE ACT (1872), S. 24—Retracted confession—Corroboration.

made and judging from the reasons, alleged or apparent, of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine: 30 P. R. 1914 Cr., *Foll.* (*Bhide, J.*). PALA SINGH *v.* EMPEROR. **107 I. C. 614=29 Cr.L.J. 267=9 A.I.Cr.R. 527=A.I.R. 1928 Lah. 329.**

———Where confessions do not stand uncorroborated, and the accused are unable to explain away their confessions though retracted, the confessions alone are sufficient for conviction: A.I.R. 1926 Oudh 622, *Foll.* (*Stuart, C.J. and Raza, J.*). SITAI *v.* EMPEROR. **114 I. C. 123=5 O. W. N. 968=30 Cr. L. J. 228=12 A. I. Cr. R. 229.**

———Conviction based on a retracted confession which was voluntary and was sufficiently corroborated is legal. (*Fforde, J.*). IQBAL KHAN *v.* EMPEROR. **103 I. C. 112=28 Cr. L. J. 656=A. I. R. 1927 Lah. 780.**

———*No proper corroboration—Accused should be acquitted.*

Where the whole case rested on the confession of the accused, which was retracted and there was no corroboration of the confession, but there were many suspicious circumstances about it,

Held, that there was by itself no evidence sufficient to base a conviction. (*Adami and Scroope, JJ.*). KARU *v.* GWALER. **101 I. C. 479=8 P. L. T. 555=8 A. I.Cr. R. 92=28 Cr. L. J. 447= A.I.R. 1927 Pat. 429.**

—S. 24—Retracted confession—Value of.

———Confession of a co-accused, though subsequently retracted is admissible in evidence against his co-accused: A. I. R. 1929 Oudh 167, *Foll.* (*Agha Haidar, J.*). SARDARA *v.* EMPEROR. **A. I. R. 1930 Lah. 667.**

———It is a rule of practice not to rely on a retracted confession unless it is corroborated by some evidence to show that the confession is true. But as a matter of law it cannot be laid down that a confession made and subsequently retracted by a prisoner cannot be accepted without independent corroborative evidence and a prisoner may be convicted on his own confession without any corroborative evidence. (*Rankin, C. J. and C. C. Ghose, J.*). EMPEROR *v.* KUTUB BUX. **57 C. 488.=A.I.R. 1930 Cal. 633.**

———The mere fact of the retraction of a confession is not in itself sufficient to make it appear that it was unlawfully induced but will be a corroboration of the approver's statement. (*Addison and Dalip Singh, JJ.*). RAHMAT *v.* EMPEROR. **113 I. C. 63=11 L. L. J. 5=30 Cr. L. J. 49.**

———Accused's confession retracted on first opportunity—Confession due probably to promise of pardon and not corroborated by independent evidence—No motive for offence committed established by prosecution—Only evidence against accused being he was last seen in company of victim—Confession is inadmissible in evidence and accused cannot be convicted on the remaining evidence. (*Zafar Ali and Coldstream, JJ.*). MAJHI *v.* EMPEROR. **104 I.C. 247=28 Cr. L. J. 807= A.I.R. 1927 Lah. 682.**

———*Retracting confession of will not necessarily indicate invalidity or illegality but probative force depends on circumstances.*

The mere fact that a confession is retracted will not raise an inference that it was obtained by improper inducement, threat or promise. Such a conclusion can only be arrived at from the evidence on the record or from the surrounding circumstances and not upon surmise or conjecture: A. I. R. 1925 Lah. 605, *Foll.*

The fact that a confession has been retracted is immaterial as regards the legality of the admission of the confession as evidence against the person who made it. But the weight to be attached to a retracted confession depends upon the circumstances of each particular case: A. I. R. 1925 Lah. 605, *Foll.*

As regards the person making it a retracted confession may without corroboration form the basis of a conviction and though corroboration may be necessary as regards co-accused, it is not necessary that this corroborative evidence should by itself be sufficient to support a conviction: 30 P. R. Cr. 1914 and 29 All. 434, *Foll.* (*Abdul Raoof and Addison, JJ.*). MOHAR SINGH *v.* EMPEROR. **96 I. C. 647=27 P. L. R. 387=27 Cr. L. J. 983.**

EVIDENCE ACT (1872), S. 24—Scope.

———*Retracted confession is effective against the accused.*

When the accused in full possession of his faculties makes admissions of guilt to various persons, they are not ineffective only because they are subsequently retracted: A. I. R. 1925 All. 627 (F. B.), *Rel. on.* (*Stuart, C.J. and Raza, J.*). EMPEROR *v.* MT. RAJ KATI. **98 I. C. 250=1 Luck. 577=3 O. W. N. 813=27 Cr. L. J. 1306=29 O. C. 396=7 A. I. Cr. R. 283=A.I.R. 1926 Oudh 622.**

———*No inflexible rule that it cannot be acted upon without corroboration though generally it has very little weight.*

It cannot be laid down as an inflexible rule that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a confession which has been retracted unless, after a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. (*Newbould and Pearson, JJ.*). KING-EMPEROR *v.* BISESHWAR DEY. **71 I.C. 497==26 C.W.N. 1010=24 Cr. L.J. 145=A.I.R. 1923 Cal. 217.**

———*Retracted confession carries little weight.*

Per *Shah, J.*—A retracted confession carries much less weight than one which has been adhered to.

Per *Crump, J.*—A confession is after all an evidence in so far as it bears upon the crime into which the Court is at the time enquiring and circumstances corroborating the confession in material points are themselves equally material. (*Shah and Crump, JJ.*). GANGARAM *v.* EMPEROR. **62 I.C. 545=22 Cr.L.J. 629=22 Bom. L.R. 1274.**

—S. 24—Scope.

———*For rejecting confession positive proof of threat etc., is not necessary.*

Per *Mukerji, J.*—The language of S. 24 will show that to reject a confession it is not necessary that there should be positive proof to establish that the confession has been obtained by use of threat, persuations, etc. Anything from a barest suspicion to positive evidence would be enough for a confession

EVIDENCE ACT (1872), S. 24—Scope.

being discarded. The weight, therefore, that has to be attached to a confession, in the view of the legislature, is small. A.I.R. 1925 Cal. 587, *Foll.* (*Mears, C.J., Mukerji and Banerji, JJ.*). RAGHA *v.* EMPEROR. **89 I. C. 903= 23 A.L.J. 821=26 Cr.L.J. 1431= 6 L.R. A Cr. 161=A.I.R. 1925 All. 627 (F.B.).**

———*Voluntary nature is test of admissibility—Factors to determine—Mentality of accused—Sufficiency of inducement and its relation with confession as cause and effect—Proof of inducement is not necessary.*

The test of admissibility of a confession is its voluntary nature and not its falsity or truth. To determine the voluntary nature or otherwise of a confession, the mentality of the accused is to be judged rather than that of the person in authority. Not merely actual words but words accompanied by acts or conduct as well on the part of the person in authority which may beconstrued by the accused person, situated as he then is, as amounting to an inducement, threat or promise, will have to be taken into account. A perfectly innocent expression, coupled with acts or conduct on the part of the person in authority, together with the surrounding circumstances may amount to inducement threat or promise. In scrutinising a case from the point of view of S. 24 of the Evidence Act the Court will have to perform a three-fold function, (1) to determine the sufficiency of the inducement, threat or promise, (2) the mentality of the accused, and (3) whether the confession appears to have been caused in consequence of the inducement, threat or promise. The section does not require positive proof (as defined in S. 3 of the Act) of improper inducement to justify the rejection of the confession, the word "appears" indicating a lesser degree of probability than would be necessary if "proof" had been required. (*Mukerji, J.*). EMPEROR *v.* PANCHKARI DUTT. **86 I. C. 414=52 Cal. 67=29 C.W.N. 300= 26 Cr. L. J. 782=A.I.R. 1925 Cal. 587.**

———*S. 24 will override S. 27 when they conflict.*

A statement though admissible under S. 27 should be excluded if under S. 24 the accused at the time of making the statement was under the influence of the village Magistrate's promise to save him from punishment. (*Spencer, Offg. C. J. and Reilly, J.*). SEMALAI GOUNDAN, *In re.* **86 I.C. 664=26 Cr. L.J. 840=21 M.L.W. 199= A.I.R. 1925 Mad. 574.**

———*Criminal P. C., S. 337—No analogy exists between approver's statement and confession of accused.*

Necessarily in every case where an accused is made an approver it must be ascertained whether he is willing to tell the truth or not. No analogy exists between the case of a confession obtained from an accused person by any inducement and the case of an approver. If it were so, practically all approvers' evidence would be inadmissible. (*Baker, J. C.*). ISMAIL PANJU *v.* KING-EMPEROR. **88 I.C. 283= 26 Cr. L. J. 1115=A. I. R. 1925 Nag. 337.**

———*Conflict between—None exists.*

There is no conflict between S. 24 and S. 80 of the Act. Where the conditions specified in S. 80 are complied with it must be presumed that the document is genuine and the confession duly taken but nevertheless the Court is bound to treat it irrelevant if it should appear to the Court that the confession was procured by inducement, threat or promise. A Court cannot say except on evidence that a confession 'appears' to it to have been caused by inducement, etc. Such a conclusion cannot be reached on surmise or conjecture. (*Das and Adami, JJ.*). EMPEROR *v.* DEWAN KAHAR. **72 I.C. 961= 4 P.L.T 186=24 Cr. L.J. 497= A.I.R. 1923 Pat. 13.**

EVIDENCE ACT (1872), S. 24—What is confession.

—S. 24—Value of confession.

———The mere fact that there was a race for pardon does not detract from the value of the confession, if that race for pardon does not appear to have been caused by an inducement or promise held out by one in authority. (*Addison and Dalip Singh, JJ.*). RAHMAT *v.* EMPEROR. **113 I.C. 65= 11 Lah. L.J. 5=30 Cr. L.J. 49.**

———A man of sound mind and full age, who makes a statement in ordinary simple language, must be bound by the language of the statement and by its ordinary plain meaning. If the statement is believed by the Court to be true, and if the Court is satisfied that there was nothing of the natur- referred to in S. 24 of the Evidence Act, no improper conduct of any body but that the man of his own notion made a confession, and if that confession can legally be receivable in evidence and is corroborated, the plain simple meaning of the words used by him must have their full and proper significance, and the act spoken should be given its legal consequence. (*Mears, C. J., Mukerji and Banerji, JJ.*). RAGHA *v.* EMPEROR. **89 I. C. 903=23 A.L.J. 821= 26 Cr.L.J. 1431=6 L.R.A.Cr. 161= A.I.R. 1925 All. 627 (F.B.).**

———A confession in its normal state, is an entirely suspicious article. A retracted confession is worse. The Court should not lose sight of the fact that assuming that a prisoner had been induced to confess he will not unlikely assure the Magistrate that his confession was volunteer knowing that he will leave the Magistrate's presence in the custody of the police and remain in their custody for many days to come. (8 B.H.C.R. 126, *Ref.*). The use to be made of a confession is really a mattter of prudence rather than law. 19 Bom. 728, *Foll.* (*Mears, C.J., Mukerji and Banerji, JJ.*). RAGHA *v.* EMPEROR. **89 I. C. 903=23 A.L.J. 821= 26 Cr. L.J. 1431=6 L. R. A. Cr. 161= A. I. R. 1925 All. 627 (F.B.).**

———*Stolen articles recovered from accused and other named by him—Confession if rendered untrue because accused minimised his share in offence.*

Where a person confessed he had taken part in a dacoity and named his associates and the Police recovered stolen articles from the house of the person making the confession and from the persons named by him,

Held, that the confession was not rendered untrue merely because the person making the statement minimised his share in the dacoity. (*Raza and Pullan, JJ.*). AUTAR *v.* EMPEROR. **7 O.W. N. 456,**

—S. 24—What is confession.

———*Definition.*

A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. (*Young and Sen, JJ.*). MT. KHUBAN *v.* EMPEROR. **120 I. C. 257=31 Cr. L. J. 26=1930 Cr. C. 45= A.I.R. 1930 All. 29.**

———Admissions by party in case in which charge is baseless and prosecution is carried only to harass party are not voluntary and therefore not binding. (*Tek Chand and Agha Haidar, JJ.*). SECY. OF STATE *v.* G. T. SARIN & CO. **120 I.C. 615= A.I.R. 1930 Lah. 364.**

EVIDENCE ACT (1872), S. 24—What is confession.

———*Oral confession—Accused not shown to know language in which questions put but in answer making signs—Conduct held did not amount to confession.*

Where an accused, not shown to have understood English, is asked in broken English as to whether he was responsible for the act and he nods his head and salams in reply, the conduct does not amount to confession. It is impossible to determine what the accused understood to be the meaning of remarks addressed to him as to his complicity in the crime and without being satisfied that the accused exactly understood the meaning and the import of the question addressed to him, the signs made by him, standing by themselves are meaningless. He might have completely misunderstood what was sought to be conveyed to him and have thus made the signs which were intended to be in answer to something which was entirely different from what his questioners were anxious to put him and therefore confession remains unproved and so is no confession. (*Shadi Lal, C.J. and Agha Haidar, J.*). EMPEROR *v.* SOOPI. **120 I.C. 539= 1930 Cr.C. 100=31 Cr.L.J. 141= 31 P.L.R. 391=A.I.R. 1930 Lah. 84.**

———*Confession after being warned—Accused is bound down by language of confession.*

When a man of sound mind and full age makes a confessional statement in ordinary simple language after he has been warned, he must be bound by the language of the statement and by its ordinary plain meaning: A.I.R. 1927 Oudh 17, *Foll.* (*Raza and Nanavatty, JJ.*). HAZARI *v.* EMPEROR. **7 O.W.N. 527=A.I.R. 1930 Oudh 353.**

———Where an accused charged under S. 380 was asked whether he had stolen the mare and he was arrested while riding it and the accused said "yes": *Held*, that the answer did not amount to a confession. (*Tek Chand, J.*). HASNI *v.* EMPEROR. **103 I.C. 847=28 Cr.L.J. 767= A.I.R. 1927 Lah. 650.**

———*Exculpatory statement made to Magistrate is not confession.*

The statement made by the accused to the Magistrate by way of confession but of self-exculpatory nature is not really a confession. (*Newbould and B. B. Ghose, JJ.*). KERAMAT MONDAL *v.* EMPEROR. **92 I.C. 439= 42 C.L.J. 525=27 Cr.L.J. 263= A.I.R. 1926 Cal. 320.**

———Any statement by a person which would suggest an inference as to his guilt may be a confession within S. 24 of the Act. If it is found that a confession recorded under S. 164 of the Cr. P. C. was procured by a Police Officer by the offer of an inducement, it becomes inadmissible under S. 24 of the Evidence Act.

Per *Shah, J.*—S. 24 will apply even if the person confessing was not a accused person at the time of confession. It is sufficient if he ultimately comes to be the accused person with reference to the charge in respect of which he is said to have confessed. Though a statement of an approver may be given in evidence against him under S. 339 (2) of the Cr. P. C. it cannot be said that the operation of S. 24 is altogether excluded, if it is shown that some influence was proceeding from some authority, simultaneously with the legal tender of pardon, which would invite the application of S. 24 of the Evidence Act, then the confessional part of statement would be inadmissible by virtue of the section. Per *Heaton, A.C.J.*—(*Hayward, J.*) *Semble*:—A statement falling within S. 339 (2) of the Code excludes the operation of S. 24 of the Evidence Act. (*Heaton, A.C.J., Shah and Hayward, JJ.*). EMPEROR *v.* CUNNA. **59 I.C. 324= 22 Bom. L.R. 1247=22 Cr.L.J. 68.**

EVIDENCE ACT (1872), S. 25—Admissibility in evidence.

—S. 24—Miscellaneous.

———*Question of admissibility of confession comes when statement is made to police officer or while in police custody.*

The question whether or not a statement is to be regarded as admissible as being a confession or not usually arises in the case of a statement made to a police officer or in the case of statement made to a man while in custody of the police. (*Rankin, C. J. and Buckland, J.*). AMBAR ALI *v.* EMPEROR. **1929 Cr.C. 194=A.I.R. 1929 Cal. 539.**

———*Admissibility in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case.*

It is not possible for a Court to say that the making of a confession appears to have been caused by any inducement, threat or promise except upon evidence before it. The inference may be suggested by the confession itself or by the evidence of the prosecution or by the evidence adduced by the accused person or by the surrounding circumstances which the Court is always bound to take into consideration, but the conclusion cannot be reached on surmise or conjecture. Whether or not a confession is admissible in evidence is a matter which is to be decided after a full consideration of the evidence and the particular circumstances of each case: A.I.R. 1923 Pat. 13, *Appr.*; A.I.R. 1925 Lah. 605, *Ref.* and A.I.R. 1925 Cal. 587, *Dist.* (*Broadway and Coldstream, JJ.*). BUDHOO *v.* EMPEROR. **108 I C. 387=29 Cr.L.J. 385= A.I.R. 1928 Lah. 676.**

———*Onus of proving absence of inducement, etc., is on prosecution.*

If it appears to the Court that there is reason to suspect that the confession was obtained by inducement so as to bring it under the provisions of Section 24, the prosecution must show that the confession was freely made. (*Newbould and Suhrawardy, JJ.*). ASHUTOSH DUTT *v.* EMPEROR. **68 I.C. 413=26 C.W.N. 54= A.I.R. 1921 Cal. 458.**

—S. 25—Admissibility.

———*Confession to police may be used by the Court to bring on record by evidence any material fact that may come to its knowledge.*

Confession recorded in a police diary cannot be used for anything other than to assist the presiding Judge in the enquiry or the trial or for the purpose of enabling the defence under certain circumstances to contradict the witnesses for the Crown. It is the duty of Judge to bring on record by evidence any material fact that may come to his knowledge and it is for that purpose that he can and should use the confession. (*Boys and Iqbal Ahmad, JJ.*). KARAN SINGH *v.* EMPEROR. **106 I.C. 442=8 A.I. Cr. R. 426= 8 L.R.A. Cr. 153=26 A.L.J. 92= 29 Cr. L. J. 26=A.I.R. 1928 All. 25.**

—S. 25—Admissibility in evidence.

———*Confession to police can be used to contradict judicial confession.*

Section 25 lays down that a confession made to police officer shall not be used as against a person making it. It does not lay down that such a confession shall be inadmissible for all purposes. The confession to the police may be used for the purpose of arriving at a conclusion as to whether

EVIDENCE ACT (1872), S. 25—Confession before witness.

the subsequent judicial confession should be believed or not. But it is unsafe to act upon a retracted confession. (*Scott Smith and Zafar Ali, JJ.*). GULAB *v.* THE CROWN. **75 I.C. 693= 6 L.L.J. 54=25 Cr. L.J. 5=A.I.R. 1923 Lah. 315.**

—S. 25—Confession before witness.

———*Statement made once before a witness and repeated before him and police is admissible.*

The incriminating statement by accused was made to witness in the absence of the police and subsequently repeated before him and the police officer,

Held, the confession is undoubtedly admissible but the weight to be given to it is a matter of consideration. (*Broadway, J.*). WADHAWA SINGH *v.* THE CROWN. **76 I.C. 819=25 Cr. L.J. 259= A.I.R. 1923 Lah. 389.**

—S. 25—First information report.

———A confessional statement made to the Police immediately after a murder and which was recorded in the first information Report is inadmissible in evidence. (*Scott-Smith and Zafar Ali, JJ.*). NUR MAHAMMAD *v.* EMPEROR. **90 I.C. 148=26 Cr. L.J. 1492.**

—S. 25—Incriminating statement.

———*Incriminating statement to police officer, though on face of it, self-exculpatory is inadmissible.*

An incriminating statement made to a police officer cannot be proved against an accused person even where such statement is on the face of it self-exculpatory. 6 Bom. 34, *Foll.* (*Crump, J.*). EMPEROR *v.* ANANDRAO GANGARAM. **89 I.C. 1046=27 Bom. L.R. 1034=49 Bom. 642= 26 Cr. L.J. 1478=A.I.R. 1925 Bom. 529.**

———*Criminal P. C., S.* 161—*Inquiry under S.* 161 *Criminal P. C.—Incriminating statement by accused is inadmissible.*

Any incriminating statement made by an accused person at an inquiry held under S. 161, Cr. P. C., would be excluded at the trial under S. 25 of the Evidence Act, as having been made to a Police Officer, and as such of no material use at the trial. (*Rupchand Bilaram, A. J. C.*). UMER DURAZ MUNSHI *v.* EMPEROR. **86 I. C. 410= 26 Cr. L.J. 778=19 S.L.R. 142= A.I.R. 1925 Sind 237.**

—S. 25—Object of.

———*Object is to prevent the abuse of powers by Police.*

The object of S. 25 is to prevent the abuse of their powers by the police in extorting confessions from persons in their custody Per Marten, C.J. (*Marten, C.J., Shah, Fawcett, Kemp and Mirza, JJ.*). NANOO SHEIKH *v.* EMPEROR. **99 I.C. 330=51 Bom. 78= 28 Bom. L.R. 1196=28 Cr. L.J. 122= 7 A.I. Cr. R. 249=A.I.R. 1927 Bom. 4 (F.B).**

—S. 25—' Police officer.'

———*Officer exercising powers of police is Police officer* (*Per Shah, J., Kemp, J., contra*).

The Police officer within the meaning of S. 25 is an officer who exercises the powers of the police conferred upon him by law, whether he is called a Police officer or he is called by any other name and exercises other functions also under other provisions of law. (*Marten, C. J., Shah, Fawcett, Kemp and Mirza, JJ.*). NANOO SHEIKH *v*, EMPEROR. **99 I.C. 330=51 Bom, 78=28 Bom. L.R. 1196= 28 Cr. L.J. 122=7 A.I. Cr. R. 249= A.I.R. 1927 Bom. 4. (F.B.).**

———"*Police officer*" *in S.* 25 *is wider than in Police Act* (1861), *S.* 1.

Primarily the term "Police Officer" in S. 25 of the Evidence Act means the same as it does in the Police Act but it can be extended beyond the definition in S. 1 of the Police Act to cover only those persons who, like Police Officers, coming within that definition, are so much more interested in obtaining convictions than any member of the community is, that they might possibly resort to improper means for doing so. (*Hallifax and Mitchell, A. J. Cs.*). EMPEROR *v.* AKAIA. **101 I.C. 599=23 N.L.R. 23=28 Cr. L.J. 471= 8 A.I. Cr. R. 66=A.I.R. 1927 Nag. 222.**

EVIDENCE ACT (1872), S. 25—Police officer.

———*Whether includes person invested with police powers—Confession made to such person—Admissibility.*

Where a confession was made to an Assistant Superintendent of the Pokkoku Hill Tracts who exercised the powers of Additional District Magistrate and who was also an Assistant Commandant of Military Police.

Held, that the confession was made to a police officer and was therefore inadmissible in evidence. (*Carr and Brown, JJ.*). JAS BAHADUR THAPA *v.* EMPEROR. **8 R. 52.**

———*Excise Officer is not police officer and admission to him is admissible.—Burma Excise Act* (5 *of* 1917), *Ss.* 53, 54, 55, 56.

Although under Burma Excise Act 5 of 1917 an Excise Officer has power of arrest, search and granting bail he is not a police officer and an admission made to him is admissible in evidence: (1907-9) U.B.R. 1. *Held, no longer good law*, (*Baguley J.*). MAUNGSAN MYIN *v.* EMPEROR. **121 I. C. 715=7 Rang. 771=31 Cr.L.J. 303 A. I. R. 1930 Rang. 49.**

———*Abkari officer exercising powers of Police is a Police officer within S.* 25.

An Abkari officer, who, in the conduct of investigation of an offence punishable under the Bombay Abkari Act, exercises the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of the Police station for the investigation of a cognizable offence, is a Police officer within the meaning of S. 25 and therefore a confession made to him is inadmissible. 28 Bom. L. R. 674, *Overruled*; 46 Cal. 411, *Dist.*; 1 Cal. 207, *Rel. on.* (*Marten, C.J., Shah, Fawcett, Kemp and Mirza. JJ.*). NANOO SHEIKH *v*, EMPEROR. **99 I.C. 330= 51 Bom. 78=28 Bom.L.R. 1196=28 Cr.L.J. 122= 7 A.I.Cr.R. 249=A.I.R. 1927 Bom. 4 (F.B.).**

———An Excise Officer is not a Police Officer within S. 25 of the Evidence Act. 46 Cal. 411, *Foll.* (*Suhrawardy and Mitter, JJ.*). HARBHAJAN SAD *v.* EMPEROR. **102 I.C. 547=54 Cal. 601= 31 C.W.N. 667=28 Cr.L.J. 579=8 A.I.Cr.R. 114= A.I.R. 1927 Cal. 527.**

———*Excise officer is not a police officer—Confession made to him is good evidence.*

An excise officer is not a police officer within the meaning of the Evidence Act and hence a confession of guilt made to him is good evidence against the accused. 46 Cal. 411 and A.I.R. 1925 Sind 70, *Foll.* (*Kincaid, J.C. and Barley, A.J.C.*). EMPEROR *v.* BUDHO. **99 I.C. 594=7 A.I. Cr.R. 290= 28 Cr.L.J. 162=A.I.R. 1927 Sind 112.**

———Statement made to excise officer is admissible as he is not a police officer. 46 Cal. 411, *Foll.* (*Macleod, C.J. and Crump, J.*). RAPHAEL PEREIA *v.* EMPEROR. **97 I.C. 665=28 Bom.L.R. 674= 27 Cr.L.J. 1145=A.I.R. 1926 Bom. 517.**

———Excise officers are not police officers within the section. 46 Cal. 411, *Foll.* (*Kennedy and Rupchand Bilaram, A. J .Cs.*). TILLIBAI *v.* EMPEROR. **82 I. C. 151=18 S. L. R. 75=25 Cr. L.J. 1223= A.I.R. 1925 Sind 70.**

EVIDENCE ACT (1872), S 25—Police officer.

———*Excise Peon is police officer and confession made to him is inadmissible.*

An excise peon having the power to detain, search, seize and arrest any person whom he believes to be guilty of any offence under Opium Act of Bombay Abkari Act has powers which are very similar to those exercised by a police officer. Any confession made to him is therefore inadmissible under the provisions of S. 25. A. I. R. 1927 Bom. 4 (F.B.), *Appl.* (*Mirza and Baker, JJ.*). EMPEROR *v.* DINSHAW KURSHETJI. **117 I. C. 331= 31 Bom. L. R. 49=30 Cr. L. J. 783= A. I. R. 1929 Bom. 70.**

———*Patel in Berar is Police Officer.*

A Patel in Berar is a Police Officer, and the fact that powers are conferred upon him by rules made under the Berar Patels and Patwaris Law, 1900 makes no difference. Consequently the confession made by an accused to a Patel is inadmissible. (*Baker, J. C.*). MT. MECHI *v.* KING EMPEROR. **38 I.C. 32=26 Cr. L.J. 1088=A.I.R. 1925 Nag. 340.**

———*Police Patel in Berar is not Police Officer.*

A Police Patel in Berar cannot be regarded as a Police Officer for the purposes of S. 24 : A. I. R. 1925 Nag. 340, *Diss. from.* (*Hallifax and Mitchel, A. J. Cs.*). EMPEROR *v.* AKAIA. **101 I.C. 599=23 N.L.R. 23=28 Cr.L.J. 471= 8 A. I. Cr. R. 66=A.I.R. 1927 Nag. 222.**

———*Kotwar in C. P. is not a police officer.*

The widest and most comprehensive extension of the term "police officer" cannot make it include a Kotwar in the Central Provinces. He is popularly regarded as a subordinate police officer and even that idea arises mainly from the fact that it is his duty to make, or rather to carry, frequent reports to the police. But the making of reports to a department of the Government does not constitute a person who makes them, a member of that department even in the popular sense and therefore a confession made before him is admissible in evidence. 17 B. 485; 26 Cal. 569 and 1 Cal. 207, *Cons.* (*Baker, J.C. and Hallifax, A.J.C.*). SUKHWARI CHAMARIN *v.* EMPEROR. **76 I.C. 291=25 Cr. L.J. 147=A.I.R. 1924 Nag. 29.**

———*Constabulary—Frontier constabulary is a police officer.*

For the purpose of Ss. 25 and 26 of the Evidence Act a member of the Frontier Constabulary is a police officer and confession made to him while the accused was in his custody and not in the presence of a Magistrate is inadmissible. The term Police officer in this respect must be construed not in any strict technical sense but according to its most comprehensive and popular meaning. The mere fact that the powers of the police officers have not been actually conferred on certain members of the frontier constabulary does not make them any the less police officers. (*Pipon, J.C.*). KHWAJA HASSAN *v.* EMPEROR. **71 I.C. 360=24 Cr. L.J. 136.**

———*Village Headman is not a "Police officer" though invested with power of arrest.*

The mere bestowal on a village Headman of some powers of arrest as are given to a police officer, does not make him a police officer any more than it makes a Magistrate a police officer. A confession, therefore, made to him is not inadmissible in evidence, but the weight to be attached to such confession will depend on the circumstances of the case and the part he has taken in the elucidation of the crime. 1 L.B. R. 65, *Affirmed.* (*Young, Offg. C.J., Heald and May Oung, JJ.*). NGA MYIN *v.* EMPEROR. **81 I.C. 540=2 Rang. 31=3 Bur. L.J. 11= 25 Cr.L.J. 924=A.I.R. 1924 Rang. 245 (F.B.).**

EVIDENCE ACT (1872), S. 25—Statement and confession.

—S. 25—Police officer acting as Magistrate.

———*Police Officer acting also as Magistrate—Confession to him is illegal.*

An Assistant Superintendent having all the powers of a District Superintendent of Police cannot cease to be a police officer simply because he is also a Magistrate and is acting in that capacity and therefore confession made to him is inadmissible in evidence: 7 Bur. L.R. 100 and 1 Cal. 207, *Rel. on.* (*Carr and Brown, JJ.*). JAS BAHADUR THAPA *v.* EMPEROR. **8 Rang. 52=1930 Cr. C. 705= A. I. R. 1930 Rang. 227.**

—S. 25—Presence of police officer.

———*Confession made to person asked by police officer to take confession—Police officer in near proximity—Confession comes under S. 25.*

A confession made to another person in the presence of a police officer, who has asked or instructed that other person to take the confession in such a way as to be his agent where the confession takes place under such circumstances that the police officer is in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession to a police officer. (*Walsh and Pullan, JJ.*). EMPEROR *v.* MT. HAR PIARI. **97 I. C. 44=49 All. 57= 27 Cr. L. J. 1068=24 A.L.J. 958= 7 L.R.A. Cr. 156=A.I.R. 1926 All. 737.**

—S. 25—Repetition to Magistrate.

———Confession made to police officer—Accused merely repeating before Magistrate the fact and contents of the previous confession—Statement to Magistrate is inadmissible in evidence. (*Crump, J.*). EMPEROR *v.* ANANDRAO GANGARAM. **89 I.C. 1046=27 Bom. L.R. 1034=49 Bom. 642= 26 Cr. L.J. 1478=A. I. R. 1925 Bom. 529.**

—S. 25—Statement and confession.

———*Every statement is re-confession.*

Every statement made by any accused person to a Police Officer is not a confession and is not *ipso facto* excluded from being received in evidence. Where the prosecution do not rely upon the statements of the accused either as true or as containing any incriminating circumstances to prove their guilt or for the purpose of avoiding their obligation of proving one of the ingredients of the offence with which the accused are charged but the statements are relied on as false and not as confessions they are admissible. 5 Bom.L.R. 312, *Rel. on.* (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). ADHO *v.* EMPEROR. **86 I.C. 961=19 S.L.R. 6= 26 Cr.L.J. 897=A.I.R. 1926 Sind 257.**

———*Question whether statement is confession should be decided on merits of each case.*

Each case must be decided as it arises with reference to the question whether a particular statement positive or negative, verbal or expressed by conduct, is or is not a confession. (*Rupchand Bilaram, A.J.C.*). UMER DURAZ MUNSHI *v.* EMPEROR. **86 I.C. 410=19 S.L.R. 142= 26 Cr.L.J. 778=A.I.R. 1925 Sind 237.**

———*Statement by accused to Police that co-accused gave him ammunition bundle is inadmissible.*

A distinction must be made between statements which are self-exculpatory, and statements, which, although intended to be made in self-exculpation and not as a confession, nevertheless contain an admission of incriminating circumstances, on which the prosecution relies.

It is for the Court to decide, according to the particular circumstances of each case, whether a statement of an accused amounts to a confession

EVIDENCE ACT (1872), S. 25—Statement and confession.

or not. Where an accused stated to the police that he got the ammunition bundle from the co-accused *held*, that the mere fact that the accused in making this statement may have intended it to be self-exculpatory is insufficient to take it out of the section. The statement in effect amounts to an admission that the accused associated with the other accused and is therefore not admissible. (*Fawcett, J.*). EMPEROR *v.* HAJI SHER MAHOMED.
75 I.C. 70=46 Bom. 961=25 Bom. L.R. 214=24 Cr. L. J. 870=A.I.R. 1923 Bom. 65.

———*Explanatory statement of the circumstances is not a confession.*

Where the Sub-Inspector of Police deposed to the effect that the accused came with cattle and made a statement to him that they were present in the fight.

Held, that the statement of the accused does not amount to a confession in as much as it was only an explanatory statement of the circumstances under which cattle had been seized and was not an admission of guilt but rather in the nature of complaint against the victim of the fight to the effect that he had illegally attempted to interfere with the arrest of the cattle. (*Le Rossignol and Zafar Ali, JJ.*). JALAL *v.* EMPEROR.
81 I.C. 347=25 Cr.L.J. 811=A.I.R. 1923 Lah. 232.

———*Statement not amounting to a confession is admissible against accused.*

A statement made by an accused to a police officer if it does not amount to a confession may nevertheless be used against him and more particularly if the statement made turns out to be false in the light of the other evidence in the case. (*Ryves, J.*). RAMHIT *v.* EMPEROR. **65 I.C. 849=20 A.L.J. 178=23 Cr. L.J. 193=A.I.R. 1922 All. 24.**

———*Statement containing confession—Portions not confession are also admissible.*

Where in a murder case, the first information was lodged by the accused himself, and the accused had stated therein that he had committed the murder,

Held, that the preliminary portions of the first information giving a history or narrative of events preceding the night of occurrence were admissible as statements or admissions not being confessions.

Though when portions of a statement are admitted the persons affected thereby may demand that the statement should be admitted and considered in its entirety, yet the principle that portions of a statement or confession may be admitted and others excluded is recognised in the Evidence Act itself, *e.g.*, S. 27. 10 B. L. R. App. 2; 15 Cal. 589; 41 Cal. 601 and 37 Cal. 467, *Ref.* (*Teunon and Ghose, JJ.*). EMPEROR *v.* LALIT MOHAN.
62 I.C. 578=25 C.W.N. 788=22 Cr. L.J. 562=A.I.R. 1921 Cal. 111.

—S. 25—Village Magistrate.

———*Confession recorded by Village Magistrate even after investigation has begun is admissible.*

Rule 195 is not a rule of law, but merely a rule for the guidance of Village Magistrates and therefore, a confession recorded by a Village Magistrate after the police investigation has begun is admissible apart from the fact whether the Magistrate knew that the investigation had begun. (*Ramesam, and Jackson, JJ.*). KUPPATHAN *v.* KING EMPEROR. **105 I. C. 667=1927 M.W.N. 824=28 Cr. L.J. 955=9 A.I. Cr. R. 148=A.I.R. 1927 Mad. 974=53 M.L.J. 739.**

EVIDENCE ACT (1872), S. 26—Magistrate.

—S. 25—Miscellaneous.

———*House searched—Possession of house being in question—Fact of accused's having put his signature on recovery list is inadmissible.*

Where a house was searched and the accused put his signature on the recovery list,

Held, that the fact of the accused putting his signature on the recovery list is not admissible in evidence against him in a case in which the possession of the house was in question because it would be an incriminating statement of the nature of a confession to a police officer and could not be proved by reason of the prohibition contained in S. 25. (*Campbell, J.*). BEHARI LAL *v.* EMPEROR.
100 I.C. 707=8 Lah. 326=28 P.L.R. 119=28 Cr. L.J. 323=7 A. I. Cr. R.291=A.I.R. 1927 Lah. 343.

—S. 26—'Custody of police.'

———*Actual arrest and detention is not necessary.*

There are found several cases in which police officers have, after detaining a person accused of an offence, put forward the plea that the latter was not in custody, because he had not yet been formally arrested. The object of this seems to be either to avoid the operation of S. 26 or to shorten the period of time between the arrest and the confession subsequently made to a Magistrate or to postpone the necessity for applying for a remand order. The idea of "free detention" is altogether mistaken and sometimes even hypocritical. It is an infringement of the spirit, while appearing to conform to the strict letter of the law. As soon as an accused or suspected person comes into the hands of a police officer he is in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in custody within the meaning of Ss. 26 and 27. (*May Oung, J.*). MAUNG LAY *v.* EMPEROR. **77 I.C. 429=1 Rang. 609=25 Cr. L.J. 381=A.I.R. 1924 Rang. 173.**

———*Person is not in police 'custody' merely because he has been invited to explain certain circumstances, unless he has been arrested or is under police supervision.*

The meaning of words "in custody of the Police" should not be extended by implication to cases beyond what is absolutely necessary, *i.e.*, where the man is really under arrest or in strict supervision and is merely allowed to go out for a few moments. But where the case is not so and the accused is not arrested or under supervision, he merely being invited to explain certain circumstances, he should not be deemed to be in Police custody. It, however, by no means follows, that because the statement is admissible, therefore, it should not be considered with considerable care to see how far reliance should be placed on such extra-judicial confession. The weight to be given to it depends very much on the circumstances of the case, whether suspicion attached to the accused at the time, whether accused was intelligent or ignorant of the possible result of the confession, and the like. (*Kennedy, J. C. and Kemp, A.J.C.*). EMPEROR *v.* MAHOMED BUX. **85 I C. 833=26 Cr. L.J. 609=16 S.L.R. 743=A.I.R. 1921 Sind 145.**

—S. 26—Magistrate.

—'Juge d' instruction' is a Magistrate—General Clauses Act, Cl. 31.

'Juge d' instruction' is a Magistrate and so statements made in his immediate presence are admissible in evidence. The term Magistrate is not restricted to the Magistrates exercising jurisdiction

EVIDENCE ACT (1872), S. 26—Magistrate.

under Cr. P. Code: 22 Bom. 235, *Rel. on.* (*Waller and Pandalai, JJ.*).) PANCHANATHAM PILLAI *v.* EMPEROR. 121 I.C. 157=52 Mad. 529= 29 M. L. W. 645=1929 M.W.N. 383= 2 M.Cr.C. 150=31 Cr. L.J. 223= A.I.R. 1929 Mad. 487=56 M.L.J. 628.

———The word "Magistrate" in S. 26 of the Evidence Act includes Magistrates in Native States. 22 Bom. 235, *Foll.* (*Hallifax and Macnair, A.J.Cs.*). GOVINDA *v.* EMPEROR. 69 I.C. 257= 17 N.L.R. 113=A.I.R. 1921 Nag. 39.

—S. 26—Oral and written confession.

———S. 26 as it stands makes no distinction between an oral and written confession but embodies a substantive rule of law. (*Jai Lal and Currie, JJ.*). JOG RAI *v.* EMPEROR. A.I.R. 1930 Lah. 534.

—S. 26—Oral confession to Magistrate.

———*Admissibility.*

A confession or an incriminating statement made in the presence of a Magistrate by an accused person while in police custody who is not produced before the Magistrate with a view to record his confession can be proved by oral testimony of the Magistrate when it has not been reduced to writing. In absence of any provision of law making it obligatory on the part of a Magistrate to record a confession it is not a matter required by law to be reduced to the form of a document. (*Jai Lal and Currie, JJ.*). JOG RAI *v.* EMPEROR. A. I. R. 1930 Lah. 534.

—S. 26—'Police officer' and 'Magistrate.'

———The words "Police officer" and "Magistrate" in S. 26 of the Evidence Act include the police officers and Magistrates of Native States. 22 Bom. 235, *Foll.* but doubted. (*Crump, J.*). EMPEROR *v.* ANAND RAO GANGARAM. 89 I.C. 1046=27 Bom. L.R. 1034= 49 Bom. 642=26 Cr. L. J. 1478= A. I. R. 1925 Bom. 529.

—S. 26—Presence of police.

———*Statement made in presence of police officer is not admissible.*

A statement made in the presence of a Sub-Inspector and a constable who had the accused under arrest at the time and not recorded by Magistrate under S. 164, Cr. P. Code, is not admissible in evidence. (*Mears, C.J. and Bennet, J.*). NATHU *v.* EMPEROR. 118 I. C. 46=1929 Cr. C. 408= 10 L. R. A. Cr. 141=30 Cr. L. J. 867= 12 A.I.Cr.R. 323=A.I.R. 1929 All. 855.

———*Incriminating admissions of accused before police officers are inadmissible in evidence.*

Incriminating admissions of an accused, under admitted circumstances that he took the whole of the investigating staff of the police officers round the scene of offence and admitted before them his own guilt, are inadmissible in evidence under S. 26. (*Subhedar, A.J.C.*). SHAMLAL *v.* EMPEROR. 120 I.C. 210=31 Cr. L. J. 15= 13 A. I. Cr. R. 157=1929 Cr. C. 673= A.I.R. 1929 Nag. 350.

—S. 26—Scope.

———*S. 26 does not make admission dependent upon knowledge of accused as to identity of Magistrate.*

S. 26 does not make the admissibility of the confession dependent upon the knowledge of the accused as to the identity of the Magistrate, the main consideration being the presence of the Magistrate and the making of the confession in his presence. (*Jai Lal and Currie, JJ.*). JOG RAI *v.* EMPEROR. A.I.R. 1930 Lah. 534.

EVIDENCE ACT (1872), S. 27—Accused.

—S. 26—Statements to police.

———*Statements to police of incriminating nature are inadmissible.*

Statements of accused while in custody of the police officer, and of his having pointed out the places where he committed the offence, are not admissible as being of an incriminating nature, (*Newbould and B. B. Ghose, JJ.*). KERAMAT MONDAL *v.* EMPEROR. 92 I.C. 439=42 C.L.J. 524= 27 Cr. L. J. 263=A.I.R. 1926 Cal. 320.

—S. 26—To foreign administrator.

———*Confession while in police custody made before Portuguese Administrator is inadmissible.*

Administrator in Portuguese territories is not a Magistrate and therefore confession made by an accused before him while in Police custody is not admissible. (*Macleod, C.J. and Fawcett, J.*). EMPEROR *v.* MAHABLI RAMA SAIL. 87 I.C. 520=26 Bom. L.R. 706= 26 Cr. L.J. 984=A.I.R. 1924 Bom. 480.

—S. 26—To Magistrate.

———*Confession to Magistrate while in police custody is not inadmissible.*

If a confession is made to Magistrate, while the accused is in police custody, such confession is not inadmissible, as it is one in the immediate presence of a Magistrate, within S. 26. (*Martineau and Zafar Ali, JJ.*). NAZIR SINGH *v.* EMPEROR. 91 I.C. 806=7 L.L.J. 428=26 P.L.R. 767= 27 Cr. L.J. 134=A.I.R. 1925 Lah. 557.

—S. 26—To Postal officer.

———*Confession made by accused not to Magistrate but Superintendent of Post Offices is not admissible.*

Confession made by an accused not to a Magistrate but to the Superintendent of Post Offices, at his house, where he was taken temporarily by the police and was again removed back to police lock-up, is inadmissible in evidence; 20 Bom. 165, *Foll.* (*Shadi Lal, C.J. and Agha Haider, J.*). EMPEROR *v.* SHEO RAM. 108 I.C. 398=10 L.L.J. 174= 29 Cr. L.J. 386=10 A.I. Cr. R. 115= A.I.R. 1928 Lah. 282.

—S. 26—Voluntary statement.

———*Coroners Act, S. 20—Voluntary statement by accused in inquest proceedings is admissible against the accused on his trial.*

There is no provision of law which renders a statement made voluntarily by an accused, a suspect, in inquest proceedings before a Coroner inadmissible against the accused on his trial for the offence: A.I.R. 1926 Bom. 144, *Dist.*; A.I.R. 1926 Bom. 151, *Ref.* (*Shah, J.*). EMPEROR *v.* AZIMKHAN ZAINKHAN. 110 I.C. 107= 30 Bom. L.R. 84=10 A.I. Cr. R. 419= 29 Cr. L.J. 651=A.I.R. 1928 Bom. 52.

—S. 27.

Accused.
Co-accused.
Conviction on.
Discovery.
Discovery of irrelevant fact.
Duty of Court.
Interpretation.
Presence of police.
Scope.
Several accused.
Statement.
What can be proved.

—S. 27—Accused.

———*Person not accused at the time of making statement—Statement is not admissible.*

EVIDENCE ACT (1872), S. 27—Co-accused.

In order to bring the statement within S. 27 the person making it must not only be in the custody of the police but the statement must be of a person who was then an accused : 6 All. 509 (F.B.), *Rel. on.* (*Adami and Wort, JJ.*). DEONANDAN DUSADH *v.* EMPEROR. **111 I. C. 118= 7 Pat. 411=9 P. L. T. 533= 10 A. I. Cr. R. 466=29 Cr. L. J. 790= A. I. R. 1928 Pat. 491.**

—S. 27—Co-accused.

———*Statement by one accused is not admissible as against co-accused.*

A statement made by an accused to a police officer is inadmissible in evidence against a co-accused. *Emperor* v. *Kangul Mali*, 41 Cal. 601, *Foll.* (*Ryves, J.*). RAMHIT *v.* EMPEROR. **65 I.C. 849= 20 A. L.J. 178=23 Cr. L. J. 193= A.I.R. 1922 All. 24.**

—S. 27—Conviction on.

———*Person convicted on mere evidence that he pointed out places from which portions of stolen property were recovered—Legality.*

The only evidence on which a person's conviction was based was that he pointed out three places from which portions of the stolen property were recovered. Person's father and brother were also suspected and eventually discharged.

Held, that as his relations were also concerned in the crime, it was possible for the person to have knowledge of the places without himself being guilty of any offence and so the recoveries alone were not sufficient to justify the conviction : 18 P. R. 1917, Cr. *Dist.* (*Bhide, J.*). SOHAN SINGH *v.* EMPEROR. **11 L. L. J. 439=1930 Cr. C. 107= A.I.R. 1930 Lah. 91.**

———*Offence under Ss.* 457 *and* 380, *Penal Code—Tank indicated by statement of accused—Vessels recovered from the tank not within sole control of accused—Evidence is insufficient for conviction of accused.*

Where an accused arrested on the charges under Ss. 457 and 380, makes a statement indicating a tank from which vessels, corresponding to the description of articles stolen, are recovered, but where the tank is not the particular property, or within the sole control of the accused, but accessible to the public in general and it is doubtful whether the accused or some other person concealed the stolen articles, such evidence of itself is not sufficient for a conviction : 17 All. 576, *Rel. on*; 16 C. W. N. 238; 1 P. R. 1917 Cr. and A.I.R. 1923 Lah. 335, *Ref.* (*Curgenven, J.*). PUBLIC PROSECUTOR *v.* PAKKIRISWAMI. **30 M. L. W. 791=1929 M.W.N. 785= 2 M. Cr. C. 307=1929 Cr. C. 614= A.I.R. 1929 Mad. 846=57 M. L. J. 548.**

———*Weapon forbidden under Arms Act discovered by reason of information from accused—His conviction is valid.*

Where an article, the possession of which is forbidden by the Indian Arms Act, has been discovered by reason of information given by an accused person his conviction based upon that evidence is valid : 72 P.L.R. 1916, *Foll.* (*Fforde, J.*). NAURANG SINGH *v.* EMPEROR. **100 I.C. 122= 9 L.L.J. 211=28 P.L.R. 626= 28 Cr.L.J. 250=A.I.R. 1927 Lah. 900.**

—S. 27—Discovery.

———*Places already known are not places "discovered" within S.* 27.

Incriminating admissions of an accused before police officers cannot be said to lead to the discovery of several places pointed out by the accused

EVIDENCE ACT (1872), S. 27—Discovery.

where they are already known and cannot be said to have been "discovered" in consequence of the said admissions within the meaning of S. 27. 12 Mad. 153, *Foll.* (*Subhedar, A.J.C.*). SHAMLAL *v.* EMPEROR. **120 I.C. 210=31 Cr. L.J. 15= 13 A. I. Cr. R. 157=1929 Cr.C. 673= A.I.R. 1929 Nag. 350.**

———*Fact known to police cannot be re-discovered on statement of accused.*

A fact known to the police cannot be re-discovered on the statement of an accused person so as to make such statement or such incriminating conduct admissible under S. 27. (*Aston, A. J. C.*). WAHID BUX *v.* EMPEROR. **120 I.C. 81= 1929 Cr. C. 678=30 Cr. L. J. 1121= A. I. R. 1929 Sind 250.**

———*Accused admitting possession of property—Property produced by accused himself—Statement of accused is admissible.*

The statement of an accused that he had in possession certain stolen property is admissible in evidence even though he himself produced the property. (14 M. L. W. 418, *Foll.*). It makes no difference whether the accused himself digs out the property from the place where it is hidden or whether on information given by him some one else digs up the ground and produces the property. 26 M. L. J. 352, *Appr.* (*Spencer, Offg. C. J.*). SOGIAMUTHU PADAYACHI, *In re.* **93 I. C. 42= 50 Mad. 274=27 Cr. L. J. 394= A.I.R. 1926 Mad. 638.**

———*Discovery of articles by accused in his house is a fact discovered within S.* 27.

The discovery of the ornaments at his house by accused is clearly a fact discovered within the meaning of S. 27, and is admissible in evidence. (*Walsh, J.*). KHETAL *v.* EMPEROR. **73 I. C. 62=21 A.L.J. 143=45 All.300= 4 L. R. A. Cr. 13=24 Cr. L. J. 526= A.I.R. 1923 All. 352**

———*Knowledge of facts by persons other than the police is immaterial.*

Though facts are already known to persons other than police officers, such facts cannot be said to be not discovered in consequence of information received within the meaning of S. 27 of the Evidence Act. The language of the section and its place in the Evidence Act make it clear that the discovery therein referred to is discovery to or by police officers. (*Teunon and Ghose, JJ.*). LEGAL REMEMBRANCER *v.* LALIT MOHAN SINGH. **49 Cal. 167=A.I.R. 1922 Cal. 342.**

———*Information leading to discovery of property—Person made to show the places where discovery had already been made—Evidence is not admissible.*

Once property has been discovered in consequence of information received from a suspected person, it cannot be re-discovered in consequence of information received from another suspected person. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of S. 27 of the Evidence Act. (*Scott-Smith, J.*). BUDHA *v.* EMPEROR. **64 I.C. 502=9 P.L.R. 1922= 23 Cr.L.J. 22= A.I.R. 1922 Lah. 315.**

———*"Discovery" means discovery to or by Police.*

If and when certain facts are deposed to as discovered in consequence of information received from the accused when in custody of the police, so much of the information as relates distinctly to the fact or facts thereby discovered will become admissible. The discovery referred to in S. 27 is discovery to or by Police Officers. 11 Cal. 635, *Foll*

EVIDENCE ACT (1872), S. 27—Discovery of Irrelevant fact.

(*Teunon and Ghose, JJ.*). EMPEROR *v.* LALIT MOHAN. 62 I. C. 578=25 C. W. N. 788=22 Cr. L. J. 562=A.I.R. 1921 Cal. 111.

—S. 27—Discovery of irrelevant fact.

——Section 27 has nothing to do with the question whether the fact discovered is or is not relevant. (*Shadi Lal, C. J. Harrison, Fforde, Tek Chand Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAN *v.* EMPEROR. 115 I. C. 6=10 Lah. 283=30 P. L. R. 197=11 L. L. J. 159=30 Cr. L. J. 414=12 A. I. Cr. R. 382=A.I.R. 1929 Lah. 344 (F. B.).

——*Confession to police—Discovery of fact irrelevant to inquiry does not make confession admissible.*

In a case where an accused is charged with murder by poisoning, the fact that at some previous date the accused had treated another person with arsenic for a bad leg is not relevant in any way and the discovery of the fact in consequence of a statement made by the accused to the police cannot make this statement admissible. (*Ross and Wort, JJ.*). GOKUL CHAMUR *v.* EMPEROR. 105 I. C. 683=6 Pat. 611=3 P. L. T. 377=28 Cr. L. J. 971=9 A. I. Cr. R. 118=A. I. R. 1928 Pat. 22.

—S. 27—Duty of Court.

——Per *Broomfield, J.*—In order to apply S. 27 it is necessary to know exactly what the statements relied upon are; because they are admissible only so far as they lead to the discovery of some fact and no further. 11 B.H.C.R. 242, *Rel. on.* (*Mirza and Broomfield, JJ.*). EMPEROR *v.* SHIVPUTRAYA BASLINGAYA. 32 Bom.L.R. 574=A.I.R. 1930 Bom. 244.

——*Court must be very cautious.*

(*Obiter*). Bald evidence introduced through the mouth of a prosecution witness to prove the confessions of an accused under cover of S. 27 ought to receive very little credence by the Court, more especially when the accused stands charged with grave offence as an attempt to murder and particularly, when more direct evidence to prove the same points are available to the prosecution and which they do not take care to produce before the Court. (*Subhedar, A.J.C.*). SHAMLAL *v.* EMPEROR. 120 I.C. 210=13 A.I.Cr.R. 157=31 Cr.L.J. 15=1929 Cr.C. 673=A.I.R. 1929 Nag. 350.

—S. 27—Interpretation.

——'*Fact*'.

The expression "fact" as defined in S. 3 includes not only the physical fact but also the psychological fact or mental condition of which any person is conscious. It is in the former sense that the word is used in S. 27. (*Shadi Lal, C.J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAN *v.* EMPEROR. 115 I.C. 6=10 Lah. 283=30 P.L.R. 197=11 L.L.J. 159=30 Cr.L.J. 414=12 A.I.Cr.R. 382=A.I.R. 1929 Lah. 344 (F. B.).

——'*Information.*'

Fforde, J.—The word 'statement' is used interchangeably with the word 'information'. A.I.R. 1929 Lah. 338, *Diss. from.* (*Shadi Lal, C.J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAN *v.* EMPEROR. 115 I.C. 6=10 Lah. 283=30 P.L.R 197=11 L.L J. 159=30 Cr.L.J. 414=12 A.I. Cr.R. 382=A.I.R. 1929 Lah. 344 (F.B.).

——'*Information.*'

The word "information" cannot be used as synonymous with the word "statement." The word "information" as distinct from the word "statement" connotes two things, namely, a statement or other means employed for imparting knowledge possessed by one person to another, and the knowledge so derived by the other person. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. 115 I.C. 1=30 Cr.L.J. 385=A. I. R. 1929 Lah. 338.

EVIDENCE ACT (1872), S. 27—Scope.

——'*Confession.*'

In construing S. 27 the word "confession" does not necessarily mean a complete confession of guilt but means and includes any incriminating statement. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. 115 I.C. 1=30 Cr.L.J. 385=A. I. R. 1929 Lah. 338.

——'*Discovered.*'

Even more important is the word 'discovered'. It is used in a peculiar sense. The test is that the fact discovered must be discovered in the sense, that the proof of the existence of that fact no longer rests on the credibility of the accused's statement but rests on the credibility of the witnesses who depose to the existence of that fact. The rest of the information is not admissible. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. 115 I.C. 1=30 Cr.L.J. 385=A.I.R. 1929 Lah. 338.

——'*Distinctly.*'

Under S. 27 the information to be proved must relate distinctly to the fact thereby discovered. The word 'distinctly' in S. 27 is used in some sense other than the word 'directly'. It is meant to exclude certain things and to limit and confine the information which may be proved within the definite limits and not necessarily to include everything which may relate to that information. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. 115 I. C. 1=30. Cr.L.J. 385=A.I.R. 1929 Lah. 338.

——*Section must be strictly construed.*

S. 27 must be very strictly construed. Where one accused has agreed to point out a place where a fact would be discovered, in pursuance of his statement to point out that place, the section does not cover similar statements of the other acoused in police custody. (*Prideaux, A.J.C.*). KUDAON *v.* EMPEROR. 91 I.C. 236=21 N.L.R. 86=27 Cr. L.J. 60=A.I.R. 1925 Nag. 407.

——'*Custody.*'

The submission to the custody of a police officer within the meaning of S. 46 is 'custody' within the meaning of S 27, Evidence Act. (*Teunon and Ghose, JJ.*). LEGAL REMEMBRANCER, BENGAL *v.* LALIT MOHAN SINGH ROY. 49 Cal. 167=A.I.R. 1922 Cal. 342.

—S. 27—Presence of police.

——Accused's statement in presence of police is relevant in so far as it relates to material facts discovered in consequence. 26 M. L. J. 352, *Foll.* (*Spencer, J.*). NAINAMALAI KONAN, *In re.* 69 I.C. 377=14 M.L.W. 418=A.I.R. 1921 Mad. 679.

—S. 27—Scope.

——*Out of statement containing confession only such portion as leads to discovery is admissible.*

Per *Graham, J.*—Section 27 being a proviso to the preceding sections must be strictly construed and any relaxation must be sparingly allowed, care being exercised to see that the purpose and object of Ss. 25 and 26 are not rendered nugatory by any lax interpretation.

A statement made by an accused while in police custody which contains a confession of guilt and also supplies information in consequence of which

EVIDENCE ACT (1872), S. 27—Scope.

a discovery is made is not admissible in its entirety under S. 27, but only so much of it is admissible as relates distinctly or immediately to the discovery.

Per *Lort-Williams, J.*—S. 27 is not a proviso to either S. 24 or S. 25. It follows that some restricted or limited meaning narrower than the natural meaning must be attached to the words in S. 27.

The practice in England now is and doubtless was at the time when the Evidence Act was passed to allow to be stated in evidence that in consequence of information received from the prisoner certain facts had been discovered, thus to the extent of fixing the prisoner with knowledge. To this extent evidence under S. 27 may be given. (*Graham and Lort-Williams, JJ.*). SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* BHAJOO MAJHI.

34 C.W.N. 106=A.I.R. 1930 Cal. 291.

———The provisions of S. 27 must be construed as favourably to the accused as possible for it is a section which makes an exception against the accused contrary to the general sections, namely, 25 and 26, which are in his favour.

When the accused stated "I buried the shirt, which was my share of the stolen property, under the beri tree." The shirt was accordingly found under the tree.

Held, that the fact that the accused buried that shirt or the fact that it was his share of the stolen property was not "discovered" within S. 27. Both these statements rested purely on the credibility or otherwise of the accused's statements: the fact that it was his share of the stolen property did not relate distinctly to the fact discovered which was merely that a certain article was buried under a certain tree: these facts could not be proved and would not be admissible or relevant against the accused. What could be rendered admissible under S. 27 would be that which the Court would find necessary in order that the statement may be intelligible and the fact that this was the accused's share of the stolen property or that he buried it, would not necessarily be proved by the admission of the statement. A. I. R. 1928 Lah. 308, *Expl.* and *Diss. from.* (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR.

115 I.C. 1=30 Cr. L.J. 385=A.I.R. 1929 Lah. 338.

———The provisions of S. 27, Evidence Act are quite independent of those of S. 162, Cr. P. Code, and the amended S. 162 does not repeal or in any way affect S. 27. A.I.R. 1926 Rang. 116 (F.B.); A.I.R. 1926 Lah. 88; A.I.R. 1925 Mad. 574 and A. I. R. 1928 Nag. 108, *Appr.*; A. I. R. 1927 Cal. 17; A.I.R. 1926 Pat. 232; A.I.R. 1925 Rang. 101 and A.I.R. 1926 Rang. 116 (F.B.), *Ref.*; A.I.R. 1926 Nag. 368, *Diss. from.* (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*). GOLA *v.* EMPEROR.

114 I.C. 273=24 N. L. R. 158=30 Cr. L.J. 258=12 A. I. Cr. R. 177=A. I. R. 1929 Nag. 17 (F.B.).

———S. 27 relates to statement of accused while in police custody and not prior to his arrest or detention. (*Prideaux, Kinkheade and Kolhatkar, A.J.Cs.*) GOLA *v.* EMPEROR. **114 I. C. 273=24 N. L. R. 158=30 Cr. L. J. 258=12 A I. Cr. R. 177=A I.R. 1929 Nag. 17 (F. B.).**

———S. 27 is confined in its operation to an incriminating statement by an accused person while in police custody. (*Prideaux, Kinkhede and Kolhatkar, A. J. Cs.*). GOLA *v.* EMPEROR.

114 I. C. 273=24 N.L.R. 158=30 Cr. L.J. 258=12 A. I. Cr. R. 177=A.I.R. 1929 Nag. 17 (F. B.).

EVIDENCE ACT (1872), S. 27—Scope.

———*S. 27 qualifies S. 24 as well as Ss. 25 and 26.*

The broad ground for not admitting confessions made under inducement or to a police officer is the danger of admitting false confessions, but the necessity for the exclusion disappears in a case provided by S. 27 when the truth of the confession is guaranteed by the discovery of facts in consequence of the information given. (*Addison and Coldstream, JJ.*). BULAQI *v.* EMPEROR.

112 I.C. 347=9 Lah. 671=11 A. I. Cr. R. 284=29 Cr. L.J. 1019=A.I.R. 1928 Lah. 476.

———*S. 27 is not affected by S. 162, Cr. P. Code.*

S. 27, Evidence Act, is not affected by S. 162, Cr. P. Code, but S. 162 is affected by S. 27, Evidence Act. The result is that a special exception to S. 162, Cr. P. Code, exists in the circumstances mentioned in S. 27, Evidence Act. A.I.R. 1926 Rang. 116 (F.B.), *Rel. on.* (*Ramesam, Waller and Jackson, JJ.*). CHINNA THIMMAPPA *v.* TALUKUNTA THIMMAPPA. **112 I.C. 682=28 M.L.W. 314=1 M. Cr. C. 201=51 Mad. 967=29 Cr. L.J. 1098=A.I.R. 1928 Mad. 1028=55 M.L.J. 351 (F. B.).**

———S. 27 is not repealed by S. 162, Cr. P. Code—Cr. P. Code, S. 162: A.I.R. 1926 Rang. 116 (F. B.), *Foll.* (*Findlay, J. C. and Macnair, A.J.C.*). SHEOBALAK PRASAD *v.* EMPEROR.

108 I.C. 442=11 N.L.J. 7=9 A.I. Cr. R. 408=29 Cr. L.J. 400=A.I.R. 1928 Nag. 108.

———S. 162 of Cr. P. Code, overrides the provisions of S. 27, Evidence Act. (*Kotwal, A.J.C.*). BHOGIA *v.* KING-EMPEROR.

100 I.C. 820=28 Cr. L.J. 340=7 A.I. Cr. R. 575=A.I.R. 1927 Nag. 203.

———*S. 162, Cr. P. Code, does not override S. 27.*

S. 162 applies to the statements of persons examined as witnesses by the police in the course of investigation, and not to the statement of an accused person and it does not override or modify the provisions of S. 27 of the Evidence Act. (*Shadi Lal, C. J. and Addisson, J.*). RANUN *v.* KING EMPEROR. **94 I.C. 901=7 Lah. 84=27 Cr. L.J. 709=27 P.L.R. 583= A.I.R. 1926 Lah. 88.**

———The general provisions of the law with regard to the admissibility of statements made by accused persons like other admissions do not seem to be affected by S. 162, Cr. P. Code. (*Mullick, Ag. C.J. and Jwala Prasad, J.*). JAGWA DHANUK *v.* EMPEROR. **93 I.C. 884=5 Pat. 63=7 P.L.T. 396=27 Cr. L.J. 484=A.I.R. 1926 Pat. 232.**

———*Ss. 160, 161 and 162, Cr. P. Code—If overrides S. 27*—(Per *Curiam, Heald, J., Contra.*)

Ss. 160, 161 and 162 do not apply to an accused person and do not affect or override S. 27 of the Evidence Act, which applies only to information received from a person accused of any offence in the custody of a police officer: A.I.R. 1926 Pat. 232 and A. I. R. 1925 Mad. 574; *Appr.* (*Rutledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR *v.* NGA THA DIN. **96 I.C 145=5 Bur. L.J. 30=4 Rang. 72=27 Cr. L.J. 881=A.I.R. 1926 Rang. 116 (F. B.).**

———*S. 27 is not affected by Cr. P. Code, S. 162 (as amended).*

S. 27 of the Evidence Act, which deals with information received from persons accused of an offence and in police custody is not affected by the aforesaid section of the Cr. P. Code, (*Rutledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR. *v.* NGA THA DIN. **96 I.C. 145=5 Bur. L.J. 30=4 Rang. 72=27 Cr. L.J. 881=A.I.R. 1926 Rang. 116 (F. B.).**

EVIDENCE ACT (1872), S. 27—Scope.

——S. 27, Evidence Act is overridden by S. 162, Cr. P. Code. (*Doyle, J.*). EMPEROR *v.* NGA KYAIN. **94 I.C. 706=27 Cr. L.J. 658=A.I.R. 1926 Rang. 112.**

——*S. 24 will override S. 27 when they conflict.*

A statement though admissible under S. 27 should be excluded if under S. 24 the accused at the time of making the statement was under the influence of the village Magistrate's promise to save him from punishment. (*Spencer, Offg. C. J. and Reilly, J.*). SEMALAI GOUNDAN, *In re.* **86 I.C. 664=26 Cr.L. J. 840=21 M.L.W. 199=A. I. R. 1925 Mad. 574.**

——*Section is not repealed by the amended S. 162, Cr. P. Code.*

The amended S. 162 does not exclude from evidence the fact that the accused made a statement to the police that the weapon with which the crime had been committed was concealed in a prickly pear bush. The section both before and after amendment, is directed against the admission, at the instance of the prosecution of Police diaries and other records prepared or copied from the diaries of investigating officers. The provisions of the Evidence Act are quite independent of the sections in the Criminal Procedure Code and cannot be treated as impliedly repealed in consequence of the amendment of the Code of Criminal Procedure. (*Spencer, Offg. C. J. and Reilly, J.*). SEMALAI GOUNDAN, *In re.* **86 I.C. 664=26 Cr. L. J. 840=21 M. L. W. 199=A.I.R. 1925 Mad. 574.**

——*Cr. P. Code* (1923), *S.* 162—*Overrides S. 27 of the Evidence Act.*

S. 162 of the Cr. P. Code in its present form, overrides, S. 27 of the Evidence Act. (*Baguley, J.*). BAWA ROWTHER *v.* EMPEROR. **84 I. C. 545=3 Bur. L. J. 245=26 Cr. L. J. 321=A.I.R. 1925 Rang. 101.**

—S. 27—Several accused.

——Fact discovered in consequence of information by one accused, other giving same information—Fact cannot be said to be discovered from information given by both. 2 Bom. L. R. 1089; 24 W.R. (Cr.) 36; 11 B. H. C. R. 242, *Ref.* (*Mirza and Broomfield, JJ.*). EMPEROR *v.* SHIVPUTRAYA BASLINGAYA. **32 Bom.L.R.574=A.I.R. 1930 Bom. 244.**

——*Accused jointly pointing to place of dead body—Evidence is not admissible against any of them unless it can be shown who made discovery.*

Where all the accused persons jointly pointed out the place where blood stains were found and subsequently the place where the dead body of a person was discovered buried, such evidence is not admissible at all against any of the accused unless it can be shown who made the discovery first. (*Dalip Singh, J.*). FAQIRA *v.* EMPEROR. **116 I.C. 619=30 P.L.R. 397=30 Cr. L.J. 639=1929 Cr. C. 214=13 A.I. Cr. R. 60=A.I.R. 1929 Lah. 665.**

——*Fact discovered from information of several accused—Fact will be deemed to have been discovered from information of the first.*

Where a fact is discovered in consequence of information received from one of several persons charged with an offence and when others give like information the fact should not be treated as discovered from the information of them all, but from the information of the first: 24 W.R. 36, Cr. and 7 P. R. 1916, *Foll.* (*Shadi Lal, C.J. and Jai Lal, J.*). ADHAM KHAN *v.* EMPEROR. **101 I.C. 488=28 P.L.R. 187=8 A.I. Cr. R. 94=28 Cr.L.J. 456=A.I.R. 1927 Lah. 739.**

EVIDENCE ACT (1872), S. 27—What can be proved.

—S. 27—Statement.

——*Statement by accused that he buried body of person murdered at place pointed out by him is admissible only for S. 201, I. P. C.*

A statement made by the accused to the police that he had buried the body of the murdered person at the place pointed out by him is clearly admissible in evidence under S. 27 only for the purposes of S. 201, I P. C., but not for convicting him of murder. A. I. R. 1929 Lah. 344, *Expl.* (*Tapp, J.*). MAMUN *v.* EMPEROR. **121 I. C. 728=31 Cr. L. J. 293=13 A. I. Cr. R. 382=A.I.R. 1930 Lah. 530.**

——*Statement of accused before police that he buried an article in a place—Police taken to that place and article delivered—Admissibility of statement.*

The accused person stated to the police that he had buried an article at a particular place, took the police to that place and delivered the article to them.

Held, that the statement of the accused to the police was admissible under S. 27 of the Evidence Act. (*Zafar Ali and Jai Lal, JJ.*). EMPEROR *v.* MELA. **112 I. C. 55=10 Lah. L. J. 531=11 A.I.Cr.R. 292=29 Cr. L. J. 967.**

——*Statement by accused.*

A person was charged with an offence of being in possession of illicit liquor. When his house was searched he made a statement that he had buried a mat of lahan at a particular place and as a result of that information the mat containing lahan was discovered at the place by the police.

Held, that the statement was admissible in evidence against the accused to prove his guilt of being in possession of illicit liquor. A. I. R. 1928 Lah. 308 and A. I. R. 1926 Mad. 638 (F.B.), *Foll.* (*Zafar Ali and Jai Lal, JJ.*). EMPEROR *v.* MELA. **112 I. C. 55=10 L. L. J. 531=29 Cr. L. J. 967=11 A. I. Cr. R. 292.**

——*Statements can be made by gesture.*

Statements can be made by other means than by words. They can be made by mere gesture. (*Doyle, J.*). EMPEROR *v.* NGA KYAING. **94 I. C. 706=27 Cr. L. J. 658=A. I. R. 1926 Rang. 112.**

——If the recoveries were made in consequence of the information supplied by the accused, the statements made by them are admissible under S. 27 of the Indian Evidence Act. (*Moti Sagar, J.*). ALI AHMED *v.* THE CROWN. **A. I.R. 1923 Lah. 434.**

—S. 27—What can be proved.

——Only so much of the information given by the accused as relates distinctly to the fact thereby discovered can be proved: A. I. R. 1929 Lah. 344, *Rel. on.* (*Wild, A. J. C. on difference between Percival, J. C. and Rupchand, A. J. C.*). MOHOMUD YUSUF *v.* EMPEROR. **1930 Cr. C. 865=A. I. R. 1930 Sind 225.**

——*Only that portion of information which is immediate and proximate cause of discovery of fact can be proved.*

The legislature has prescribed two limitations in order to define the scope of the information provable against the accused: (1) The information must be such as has caused the discovery of the fact, and (2) the information must "relate distinctly" to the fact discovered. The requirements of both the conditions specified above must be satisfied before an incriminating statement can be received in evidence. Thus, only that portion

EVIDENCE ACT (1872), S. 27—What can be proved.

of the information is provable which was the immediate or proximate cause of the discovery of the fact. Anything, which is not connected with the fact as its cause, or is connected with it, not as its immediate or direct cause, but as its remote cause, does not come within the ambit of the section and should be excluded.

A was being tried under S. 302, I. P. C., for having committed the murder of B who was proved to have suddenly disappeared from his house and whose dead body was recovered from a well two days later. At the time of his disappearance *B* was wearing certain ornaments, but these ornaments were not found on his body at the time of his recovery from the well. During the investigation *A* was alleged to have made a statement to the police in these terms: "I had removed the karas, had pushed the boy into the well, and had pledged the karas with Alla Din" and in consequence of the information so received the karas were recovered from Alla Din, which were identified as those worn by *B* at the time of his disappearance.

Held, (Per *Full Bench*) that the statement that the accused had pledged with Alla Din the karas subsequently recovered from the latter is admissible under S. 27 but that the rest of the incriminating statement cannot be received in evidence. (*Fforde and Jai Lal, JJ. dissenting.*) 9 Lah. 626; A. I. R. 1928 Lah. 308; 111 I. C. 561, *Overruled*; A. I. R. 1926 Mad. 638; A. I. R. 1928 Pat. 162, *Diss. from*; 12 Mad. 153, *Expl.*

(Per *Fforde, J.*)—The information "I had removed the karas and had pledged the karas with Alla Din" may be proved. (*Cases discussed.*)

(Per *Jai Lal, J.*)—The statement "had removed the karas and had pledged the karas with Alla Din" is admissible under S. 27 while the statement "had pushed the boy into the well" is not admissible. (*Cases discussed.*) (*Shadi Lal, C. J., Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAN *v.* EMPEROR. **115 I.C. 6= 10 Lah. 283=30 P. L. R. 197= 11 L. L. J. 159=30 Cr. L. J. 414= 12 A.I.Cr.R. 382=A.I.R. 1929 Lah. 344 (F.B.).**

———The words used by the legislature in S. 27 make it absolutely clear that only so much of such information whether it amounts to a confession or not, as relates distinctly to the fact which is deposed to as discovered in consequence of the information received, may be proved.

An accused gave information to the police in these words: "I shall produce the lathi with which I killed Ismail." It had been admitted as evidence under S. 27: The lathi which the accused handed over had no marks of blood whatsoever,

Held, that if the mere fact of the lathi having been handed to the police, might be relied upon, for the purpose of introducing an alleged confession made by the accused to the police, the provisions of S. 26 would become nugatory. (*Percival, J. C. and Rupchand, A.J.C.*). ILLAHIBUX *v.* EMPEROR. **1929 Cr.C. 453= A.I.R. 1929 Sind 175.**

———As S. 27 is intended to enable the prosecution to prove a confession made under certain circumstances, the whole of the information including the confessional portion thereof, given by the prisoner, which relates to the fact includes not only the concrete thing discovered by the investigating officer, but also its description as given by the accused including its connexion with the crime

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which is under investigation. While only so much of the information can be proved as has led to the discovery of the fact, there is no legal justification for splitting up or cutting down the statement of the prisoner so as to make it a vague and unintelligible statement and thus to defeat the very object with which S. 27 was enacted and, therefore, the information must be proved in the precise terms in which it was given. A. I. R. 1926 Mad. 638 (F.B.), *Rel. on*; 15 P.W.R. 1913 Cr.; 11 P. R. 1915 Cr.; 9 P.W.R. 1918 Cr., *Doubted*; A.I.R. 1926 Lah. 138. *Dist.*; A. I. R. 1926 Bom. 513 and A. I. R. 1928 Pat. 162, *Appr.*

Fforde, J.—The Evidence Act, in express terms, puts the law on the subject on a wider basis than does the common law in England. (*Fforde and Jai Lal, JJ.*). HARNAM SINGH *v.* EMPEROR. **111 I.C. 561=9 Lah 626= 29 P.L.R. 679= 29 Cr.L.J. 881=11 A.I.Cr.R. 106= A.I.R. 1928 Lah. 308.**

———*Confession leading to discovery of anything is admissible.*

The whole confession of a prisoner in police custody cannot be admissible, but where the confession includes a statement that a weapon was used for committing the offence charged, that part of the confession can certainly go in if it leads to the discovery of the weapon: A.I.R. 1926 Mad 638, *Foll.* (*Mullick, A.C.J. and Wort, J.*). LALJI DUSADH *v.* EMPEROR. **106 I.C. 698= 6 Pat. 747=29 Cr.L.J. 106= 9 A.I.Cr.R. 379=A.I.R. 1928 Pat. 162.**

———*Corpse—Discovery on information by accused —Statement of accused to police that he buried body is admissible.*

Where a person was murdered and his body was discovered in consequence of information received from the accused, the statement of accused to the police that he in company with his father and brother buried the body is admissible in evidence: 25 Cal. 413; 98 P.L.R. 1918 and 72 P.L.R. 1916, *Foll.* (*Zafar Ali, J.*). SAIFAL *v.* EMPEROR. **95 I.C. 603=8 L.L.J. 519=27 P.L.R. 580= 27 Cr.L.J. 827.**

———*Information by accused that he buried the dead body is not provable under the section.*

In a case under S. 302, I.P.C., the information given by the accused that he buried the body does not distinctly relate to the discovery of the body and is not provable under S. 27: 125 P.L.R. 1920, *Appl.* (*Scott Smith and Zafar Ali, JJ.*). SULAKDAN SINGH *v.* EMPEROR. **89 I.C. 901=26 Cr.L.J. 1429= A.I.R. 1926 Lah. 138.**

———*Statement leading to discovery of property should be admitted as a whole.*

If an accused makes a statement which is admissible under S. 27, the whole of the statement which leads to the discovery of the stolen property is admissible and sentences should not be cut up so as to reduce the statements only to the actual words which the accused may use to express the fact that he had hidden the properties. (*Spencer, Offg. C.J.*). SOGIAMUTHU PADAYACHI, *In re.* **93 I.C. 42=50 Mad. 274=27 Cr.L.J. 394= A.I.R. 1926 Mad. 638.**

———The information given by the accused which led to the recovery of certain jewels which had been stolen was held to be admissible in evidence under S. 27. (*Scott-Smith and Fforde., JJ.*). MANSHA SINGH *v.* CROWN. **86 I.C. 347=7 L.L.J. 51= 26 Cr.L.J. 763=A.I.R. 1925 Lah. 371.**

EVIDENCE ACT (1872), S. 30—Admissibility of confession.

—S. 30.

Admissibility of confession.
Approver's confession.
Confession, what is.
Corroboration.
Essentials for admissibility.
Evidentiary value.
Retracted confession.
Scope and interpretation.
Self-exculpatory confession.
Miscellaneous.

—S. 30—Admissibility of confession.

——Confession of co-accused during trial implicating the other accused in a warrant case is admissible. (*Johnstone, J.*). RAM KISHAN *v.* EMPEROR. **111 I.C. 387=29 Cr. L. J. 835=11 A. I. Cr. R. 185=A. I. R. 1928 Lah. 880.**

——Cr. P. Code, S. 162—Statement by a person, before he is charged for any offence by police is only an admission and is admissible in evidence against him but not against co-accused: A. I. R. 1927 Cal. 17, *Rel. on.* (*Courtney Terrell, C. J. and Adami, J.*). RAJ KUMAR SINGH *v.* EMPEROR. **111 I. C. 721=9 P. L. T. 449=29 Cr. L. J. 913=11 A. I. Cr. R. 143=A. I. R. 1928 Pat. 473.**

——*Obiter.*—The statement made by an accused in Court implicating himself as well as his co-accused can be taken into account in considering the guilt of the latter. (*Suhrawardy and Panton, JJ.*). NIRMAL CHANDRA *v.* EMPEROR. **100 I. C. 113=31 C. W. N. 239=28 Cr. L. J. 241=A. I. R. 1927 Cal. 265.**

——A confession of a co-accused implicating himself and others is admissiblein evidence against all the accused under S. 10 and can also be taken into consideration against them under the provisions of S. 30. (*Stuart, C. J. and Raza, J.*). RAM PRASAD *v.* EMPEROR. **106 I. C. 721=1 L. C. 339=2 Luck. 631=8 A. I. Cr. R. 449=A.I.R. 1927 Oudh 369.**

——Confession of accused who is convicted on his plea of 'guilty' should not be admitted against others. (*Sulaiman, J.*). SHANKER *v.* EMPEROR. **93 I. C. 241=24 A.L.J. 318=27 Cr. L.J. 449=7 L. R. A. Cr. 56=A.I.R. 1926 All. 318.**

——Co-accused induced to make confession—Confession cannot be relied on. (*Zafar Ali, J.*). TEJU SINGH *v.* EMPEROR. **92 I. C. 461=7 L.L.J. 631=27 Cr. L.J. 285.**

——*Plea of guilty recorded after framing of charge by Magistrate—Confession is admissible against co-accused.*

Three men were sent up for trial before a Magistrate and proceedings taken against them all. When questioned, one of them said that he was guilty and subsequently pleaded guilty after the charge had been framed.

Held: that his confession could be taken into account against the other accused. The trial could not be said to have commenced only after the recording of the plea of guilty. 38 Mad. 302 and 48 Mad. 511 (F. B.), *Foll.* (*Harrison, J.*). FAKHRUDDIN *v.* CROWN. **95 I.C. 63=6 Lah. 176=27 Cr. L.J. 735=A. I. R. 1925 Lah. 435.**

——A statement by one co-accused that another was implicated in the offence is inadmissible in evidence against the other. (*Scott-Smith and Fforde, JJ.*). MAUSHA SINGH *v.* CROWN. **86 I.C. 347=7 L.L.J. 51=26 Cr. L.J. 763=A.I.R. 1925 Lah. 371.**

EVIDENCE ACT (1872), S. 30—Approver's confession.

——Statement of one accused is admissible against co-accused only if section applies. (*Ryves, J.*). RAMHIT *v.* EMPEROR. **65 I.C. 849=20 A.L.J. 178=23 Cr. L.J. 193=A.I.R. 1922 All. 24.**

——Statements of co-accused can be taken into consideration and used as evidence not only against the person making them but also against the person tried jointly with the confessing accused of the same offence. 39 All. 484, *Foll.* (*Prideaux, A.J.C.*). MT. RADHI *v.* EMPEROR. **75 I.C. 701=25 Cr.L.J. 13=A.I.R. 1924 Nag. 27.**

——A confession by each of co-accused implicating self and co-accused as regards robbery but throwing entire burden for murder on the other is admissible as regards former but inadmissible as regards the latter. (*Scott-Smith and Harrison, JJ.*). MIAN KHAN *v.* THE CROWN. **85 I. C. 836=26 Cr. L. J. 612=A. I. R. 1923 Lah. 293.**

——Case under Cr. P. Code, S. 110—Confession made by co-accused when he was co-accused in another case cannot be used. 22 C. W. N. 408, *Foll.* (*Sanderson, C.J. and Mookerjee, J.*). MAFIZUDDI KHAN *v.* EMPEROR. **61 I. C. 793=33 C.L.J. 70=25 C.W.N. 239=22 Cr. L. J. 441=A.I.R. 1921 Cal. 557.**

——*Accused charged with murder—Confession by one implicating him only under Penal Code, S. 328—Confession is admissible against co-accused.*

Where the accused are under trial for murder, a confession by one of them which implicates him only to the extent of an offence under Penal Code, S. 328, is admissible in evidence against the co-accused.

Per *Oldfield and Odgers, JJ.*—*Contra Ramesam, J.*—Persons under trial for a major offence should also be deemed to be charged with and tried for any minor offence or offences, constituted by the particular ingredients of the major offence which may be proved; and it can make no difference that the conviction of one accused of a minor offence takes place only in appeal, when the course of the proceedings has been the same against them both. (*Case-Law discussed.*) (*Oldfield, J.*). MANICKA PADAYACHI, *In re.* **72 I.C. 497=14 M.L.W. 474=A.I.R. 1921 Mad. 490.**

——*Confessions made outside British India.*

If confessions made before Magistrates outside British India are proved against the persons who made them they may be taken into consideration against others who are being tried jointly for the same offence. (*Hallifax and Macnair, A.J.Cs.*). GOVINDA *v.* EMPEROR. **69 I. C. 257=17 N.L.R. 113=A. I. R. 1921 Nag. 39.**

—S. 30—Approver's confession.

——*It is unsafe to base conviction on the uncorroborated statement of approver.*

It is not safe to base a conviction upon the evidence of such an approver who obviously is deeply interested in putting responsibility for the offence upon shoulders other than his own, unless there is some independent evidence to corroborate his story in material particulars. The mere fact that the approver produced a spear and a dang from a field and he stated that the spear was used by the accused is not corroboration of the approver's story; so also the fact that the accused was stained with human blood, does not corroborate the approver's story. (*Fforde, J.*). CHANAN SINGH *v.* KING EMPEROR. **99 I.C. 929=8 L.L.J. 610=28 P.L.R. 39=28 Cr.L.J. 193=7 A. I. Cr. R. 173=A.I.R. 1927 Lah. 78.**

EVIDENCE ACT (1872), S. 30—Approver's confession.

——A statement should not be accepted as that of an approver without any test as to his complicity in the crime. Such a statement does not amount to evidence against the accused. (*Dalal, A. J. C.*). SANT RAM *v.* EMPEROR. **74 I.C. 543= 24 Cr. L.J. 799=A.I.R. 1924 Oudh 188.**

——*It cannot be accepted unless he himself took part in the crime and unless the evidence is corroborated.*

Before the evidence of an accomplice can be accepted, it is necessary to be satisfied that the accomplice himself took part in the crime to the extent that he says and that he is in a position to give true evidence as to what occurred. It is also of course necessary that the accomplice's evidence should be corroborated to prove that it was the accused person and no one else who committed the crime. (*Batten, J. C. and Hallifax, A. J. C.*). KASHIRAM *v.* EMPEROR. **73 I.C. 262= 6 N.L.J. 144=24 Cr. L.J. 566= A.I.R. 1923 Nag. 248.**

——*Approver's confession cannot be used against accused.*

The confession of an approver cannot be used under S. 30 because he is not jointly tried along with the accused in the case. (*Jwala Prasad, J.*). SHIOBHAJAN AHIR *v.* EMPEROR. **2 P.L.T. 125= A. I. R. 1921 Pat. 499.**

—S. 30—Confession—What is.

——Where in a Dhatura poison case one of the co-accused stated that his co-accused brought milk and mixed some powder in it, but he did not know what that powder was and that his co-accused gave the milk to the deceased to drink,

Held, that the statement is not a confession. (*Fforde, J.*). ABDUL AZIZ *v.* EMPEROR. **99 I.C. 1009=27 P.L.R. 441=28 Cr. L.J. 209.**

——A statement by an accused that he and his co-accused struck the deceased in exercise of their right of private defence is in no sense a confession and cannot be taken into consideration against the co-accused. (*Scott-Smith and Zafar Ali, JJ.*). MAULU *v.* EMPEROR. **85 I.C. 371= 6 L.L.J. 434=26 Cr. L.J. 531=A.I.R.1925 Lah. 532.**

——Confession by a person under enquiry under S. 476, Cr. P. Code, is a confession. (*Macleod, C.J. and Fawcett, JJ.*). ANNAJI *v.* VYANKATESH. **87 I.C. 593=26 Bom. L.R. 614= 26 Cr. L. J. 993=A.I.R. 1924 Bom. 445.**

—S. 30—Corroboration.

——(Per *Subhedar, A. J. C.*)—Confession of co-accused cannot be used to corroborate evidence of approver—(*Staples, A. J. C., contra.*) A. I. R. 1921 Nag. 39, *Rel. on*, (*Jackson, A.J.C. on difference between Staples and Subhedar, A.J.Cs.*). DOULAT *v.* EMPEROR. **120 I.C. 721=31 Cr.L.J. 153= A.I.R. 1930 Nag. 97.**

——Confession of one co-accused is to be accepted against another with caution unless corroborated by independent evidence—Confession of one co-accused cannot be said to be corroborated by confession of another co-accused. A.I.R. 1921 Pat. 337; 43 Bom. 739, *Rel. on*. (*Mirza and Patkar, JJ.*). RAMA KARIYAPPA *v.* EMPEROR. **120 I.C. 350= 31 Bom. L.R. 565=A.I.R. 1929 Bom. 327.**

——To say that circumstances corroborative of co-accused's confession should be such as would themselves support conviction is to render S. 30 superfluous—What corroborative evidence is necessary to support conviction must depend on circumstances of each case. 4 Cal. 483; (Per *Jackson, J.*)

EVIDENCE ACT (1872), S. 30—Corroboration.

Not appr. (Per *Garth, C. J.*), *Foll.*; A.I.R. 1924 Mad. 805, *Not appr.* (*Waller and Jackson, JJ.*). UGGAPPA PUJARI *v.* EMPEROR. **119 I.C. 474= 1929 M.W.N. 272=2 M.Cr.C. 96= 30 M.L.W. 403=1929 Cr.C. 9=30 Cr.L.J. 1071= A.I.R. 1929 Mad. 498.**

——The mere fact that the statement of the co-accused was used as corroboration of another part of the finding about guilt is not a ground for setting aside the conviction. (*Wort, J.*). SHEODATT ROY *v.* EMPEROR. **110 I.C. 803=29 Cr. L.J. 771= 11 A. I. Cr. R. 43=10 P.L.T. 429= A.I.R. 1929 Pat. 64.**

——*Existence of a motive for the offence is not sufficient—Person charged must be indubitably identified with the act committed.*

The existence of general hostility, general enmity and a desire, however strong, or a motive, however effective to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. Corroboration must point indubitably to the identification of the person charged with the particular act with which the direct evidence connects him. (*Walsh and Dalal, JJ.*). KALWA *v.* EMPEROR. **95 I.C. 74= 48 All. 409=24 A.L.J. 410=7 L.R. A.Cr. 105= 27 Cr, L.J. 746=A.I.R. 1926 All. 377.**

——*Corroboration should be inconsistent with honest dealings.*

Where there is no evidence at all against the alleged receiver of stolen property a statement made by the thief in his own defence at the close of the case for the prosecution cannot be taken into account against the receiver under S. 30. Judges should use some discrimination when they are dealing with ambiguous evidence which may have an honest or a dishonest interpretation. In such a case there is no corroboration unles the conduct of the accused, or the admission of the accused, goes to the full length of something inconsistent with honest dealing. (*Walsh, J.*). MAHADEO PRASAD *v.* KING EMPEROR. **76 I.C. 1025=25 Cr.L.J. 305= 21 A. L. J. 179=45 All. 323=4 L.R.A.Cr. 57= A.I.R. 1923 All. 322.**

——*Confession of accused can be considered against co-accused but cannot be taken as corroboration of accomplice witnesses.*

The confession made by a person can be taken into consideration as against persons who are being tried along with him, such a statement however is always regarded as tainted and cannot be used to corroborate the testimony of the accomplice witnesses. Where the accused made his statement at the end of the prosecution case when the whole of the evidence had been freshly detailed in his presence, it can be rightly used as evidence against himself.

The evidence of one approver cannot be said to corroborate another except where both have, at the earliest opportunity and before there has been any chance of collaboration, deposed to the same acts as having been committed by particular accused person. As a matter of prudence unanimity as to the incident deposed to or a sufficient number of them by two approvers should have been insisted on before their uncorroborated testimony was deemed sufficient to warrant a conviction thereon. It is doubtful if assessors, even the most intelligent, pay much attention to the aforesaid *maxim* and their opinion cannot be taken as a substitute for untainted evidence where a prudent person would

EVIDENCE ACT (1872), S. 30—Corroboration.

require it. (*Scott-Smith and Broadway, JJ.*). MAHANT NARAIN DAS *v.* EMPEROR.
68 I. C. 113=3 Lah. 144=4 L. L.J. 91=
9 P.W.R. 1922 Cr. =23 Cr. L.J. 513=
A.I.R. 1922 Lah. 1.

———Per *Kanhaiya Lal, J.C. and Lyle, A.J.C.*—Where there is a reasonable doubt whether the accused gave the information which led to a discovery, it would be unsafe to rely on his confession. If the dead body in a murder case was discovered in consequence of the confession, the corroboration would be material but if the evidence produced about the time when the dead body was discovered is discrepant it is difficult to say whether the discovery was made before the confession or afterwards.

Per *Ashworth, A.J.C.*—Where an accused person has pointed out the whereabouts of the body of a man who has undoubtedly been murdered and has made a confession which not only is uncontradicted by any of the facts proved in the case but indeed has received corroboration in respect of many points, then the confession should be held to be true as implicating the person making it unless he can make out a strong case to the contrary. It is not necessary that the confession of an accused should receive direct corroboration as to the fact that the accused was concerned in the offence. It is sufficient that there was such corroboration of the confession as to indicate that the accused had such knowledge of the circumstances of the offence as would suggest his taking part in it. (*Kanhaiya Lal, J.C., Lyle and Ashworth, A.J.Cs.*). HINGA *v.* EMPEROR. 68 I. C. 17=
9 O. L. J. 190=23 Cr.L.J. 481=
A.I.R. 1922 Oudh 202.

———The confession of a co-accused should be corroborated in material particulars. (*Oldfield, J.*). MANICKA PADAYACHI, *In re.* 72 I.C. 497=
14 M.L.W. 474=A. I. R. 1921 Mad. 490.

———The confession of one co-accused cannot be said to be corroborated by the confession of another accused as against an accused person who has not confessed at all; but the confession of one co-accused may furnish the corroboration of the confession of another accused as against the latter and *vice versa*. 38 B. 156. (*Scott-Smith and Leslie Jones, JJ.*). GANGA RAM *v.* CROWN.
60 I. C. 786=22 Cr.L.J. 290.

—S. 30—Essentials for admissibility.

———When the statement is self-incriminatory and also implicates a co-accused, the self-implication is the guarantee for the truth of the accusation against the co-accused and may be taken to be a substitute for the sanction of oath. (*Young and Sen, JJ.*). MT. KHUBAN *v.* EMPEROR.
120 I.C. 257=31 Cr.L.J. 26=1930 Cr.C. 45=
A.I.R. 1930 All. 29.

———Before S. 30 of the Evidence Act can be applied it must be proved that a confession has been made by one of the persons who are being tried jointly for the same offence and that the confession affects the person making it as well as some other persons so jointly being tried. The section is new to the Indian Evidence Act as contrasted with the English Law and must be construed strictly. When once there is no such confession as affects the person making it any statement made by one accused cannot be treated as evidence against the co-accused or be taken as affording corroboration of the evidence of the approver. (*Beasley, C. J. and Ananthakrishna Iyer, J.*). ABBOI NAIDU *v.* EMPEROR. 1929 M.W.N. 698.

EVIDENCE ACT (1872), S. 30—Essentials for admissibility.

———Statement, for using it against the co-accused must be a confession in respect of an offence with which all are charged. 2 All. 444, *Rel. on.* (*Chotzner and Gregory, JJ.*). BHADRESWAR SARDAR *v.* EMPEROR. 109 I.C. 351=29 Cr.L.J. 527=
32 C.W.N. 731=47 C.L.J. 526=
10 A.I.Cr.R. 219=A.I.R. 1928 Cal. 416.

———*Statement must not be self-exculpating.*

Section 30 contemplates a statement, which, taken by itself, is sufficient to justify the conviction of the person making it for the offence for which he is being jointly tried with the other person or persons against whom it is tendered. 2 All. 444, *Foll.* (*Wadegaonkar, A. J. C.*). RAGHUNATH *v.* EMPEROR. 89 I.C. 516=23 N.L.R. 62=
26 Cr.L.J. 1380=A. I. R. 1926 Nag. 119.

———*Statement must inculpate the maker himself more than or at least equally with the co-accused.*

The test to determine whether any statement by a co-accused amounts to a confession under S. 30 is to see whether his statement proposed to be used in evidence against another is sufficient by itself to justify his conviction for the offence for which he is jointly tried with the other person against whom it is tendered. The statement of one prisoner cannot be taken as evidence against another prisoner under S. 30 unless the parties are admittedly in *pari delicto*, that is, unless a confessing prisoner implicates himself to the full as much as his co-prisoner whom he is criminating. The *ratio decidendi* of the cases bearing on this point is that statements which inculpate the maker more than, or equally with, others, alone can afford any satisfactory guarantee of their truth. This necessarily means less weight must be attached to statements which implicate the maker in a lesser degree than others. Where the principal blame is laid on others the statement is self-serving according to the ideas of the person making it and is entirely excluded from consideration. There is absolutely no guarantee whatever as to its truth where the statement entirely exonerates the maker. Such a statement cannot be held admissible as against the co-accused. (*Kinkhede, A.J.C.*). SHEOCHARAN *v.* EMPEROR.
90 I.C. 385=21 N.L.R. 88=26 Cr. L.J. 1537=
A.I.R. 1926 Nag. 117.

———Confession to be used against co-accused must be confession of guilt of maker. (*Ross and Kulwant Sahay, JJ.*). BIGNA KUMHAR *v.* EMPEROR. 94 I.C. 258=1926 P.H.C.C. 167=
27 Cr. L.J. 594=A.I.R. 1926 Pat. 440.

———A confession should justify the conviction of the confessor and only then it is admissible against the confessor's co-accused. 22 Cr. L.J. 260, *Foll.* (*Harrison, J.*). FAKHR-UD-DIN *v.* CROWN.
95 I.C. 63=6 Lah. 176=26 Cr. L.J. 735=
A.I.R. 1925 Lah. 435.

———Confession to be admissible must equally incriminate the maker with the co-accused against whom it is to be used. (*Kotwal and Kinkhede, A.J.Cs.*). SHEROO *v.* EMPEROR. 81 I.C. 891=
25 Cr. L.J. 1067=A.I.R. 1925 Nag. 78.

———*Confession of co-accused must implicate the maker to the same extent as the other accused.*

The statement of an accomplice is taken into consideration when he himself admits his own guilt to the same extent to which he implicates others. His confession may be taken into consideration against such other persons as well as against himself, because the admission of his own guilt operates as a sort of sanction which to some

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extent takes the place of the sanction of an oath and so affords some guarantee that the whole statement is a true one. The word 'confession' in S. 30 cannot be construed as including a mere inculpatory admission of guilt. A confession unsupported by other testimony is evidence of the weakest kind against a co-accused. 7 All. 646, *Foll.* (*Dalal and Cuming, A.J.Cs.*). SHEO AMBAR *v.* EMPEROR. **77 I.C. 439=25 Cr. L.J. 391=A. I.R. 1925 Oudh 295.**

———Only a confession implicating the maker and not exculpating him is admissible as against the other co accused. (*Kennedy, J.C. and Raymond, A.J.C.*). TOPANDAS *v.* EMPEROR. **81 I.C. 249=25 Cr. L.J. 761=A.I.R. 1925 Sind 116.**

———Merely because a confession is not complete and detailed up to the hilt it does not become inadmissible against a co-accused. (*Walsh and Ryves, JJ.*). LAKHAN *v.* EMPEROR. **84 I.C. 548=5 L.R.A. Cr. 101=26 Cr. L.J. 324=A.I.R. 1924 All. 511.**

———*Confession of co-accused need not completely implicate himself—Substantial implication is sufficient.*

No general rule can be laid down as to the admissibility of confession against co-accused and each case must be decided on its own facts. All that is required is that the confession should substantially implicate its maker in regard to the crime with which he and his co-accused are charged. It is not necessary that there should be an admission of actual guilt. It is sufficient if the admission establishes constructive guilt. (*Mullick and Bucknill, JJ.*). SUKA RAUT *v.* EMPEROR. **75 I.C. 705=4 P.L.T. 505=25 Cr. L.J. 17=A. I. R. 1924 Pat. 347.**

—S. 30—Evidentiary value.

———Statement of accused taken after close of prosecution case under S. 342, Criminal P. C., implicating co-accused—It is admissible against co-accused—But no weight can be attached to it if co-accused implicated by it was not given opportunity to cross-examine accused nor was he asked any questions to explain allegations made against him and statement was not made on oath. 4 Cal. 483; A.I.R. 1923 All. 322; 38 Mad. 302; 17 All. 524 and 23 All. 53, *Cons.*, 6 Bom. 124, *Rel. on.* (*Mirza and Broomfield, JJ.*). WILLIAM COOPER *v.* EMPEROR. **32 Bom. L.R. 747=A.I.R. 1930 Bom. 354.**

———In the absence of any corroboration connecting an accused with the commission of offences the confession of a co-accused cannot be taken into consideration against him. (*Broadway and Agha Haidar, JJ.*). ARJAN SINGH *v.* EMPEROR. **119 I.C. 325=30 P.L.R. 646=30 Cr. L.J. 1046=11 Lah. 106=A.I.R. 1930 Lah. 257.**

———The self-inculpatory confession of an accused implicating his co-accused is fact upon which alone the conviction of his co-accused cannot be legally based. Nor can such a confession even if it be corroborated by other evidence which is insufficient by itself to sustain the conviction of the non-confessing co-accused form a legal basis for his conviction.

Per *Full Bench.*—But if there is any other relevant matter implicating the co-accused the Judge is permitted by S. 30 to consider confession along with the said matter and as a result of such consideration to convict the accused. (Per *Sub[illegible], J.C.*). Such confession can be legitimately used to corroborate other evidence and even

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to supplement the same in those exceptional cases in which without such aid the other evidence falls short by very narrow margin of that standard of proof which is requisite for a conviction.

Where the other evidence was to the effect that the accused were seen going on the night of the murder towards the place where the deceased lived and that there was general enmity between the accused and the deceased the evidence is insufficient to justify conviction of the non-confessing co-accused. 24 W.R. 42 Cr. and 9 C. P.L.R. 35 Cr., *Appr.*; A. I. R. 1926 All. 377, *Rel. on*; *other case law discussed.* (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). GOBARYA *v.* EMPEROR. **A.I.R. 1930 Nag. 242 (F.B.).**

———The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars. The difficulty enhances where the said accomplice does not adhere to his statement. (*Sen, J.*). MAN SINGH *v.* EMPEROR. **121 I.C. 103=11 L. R. A. Cr. 1=13 A. I. Cr. R. 52=1929 Cr. C. 656=31 Cr. L.J. 206=A.I.R. 1929 All. 928.**

———Although a confession of one co-accused may be taken into consideration against another under the provisions of S. 30, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. **115 I.C. 1=30 Cr. L.J. 385=A.I.R. 1929 Lah. 338.**

———Where there is nothing against an accused person but a confession made by a co-accused from the dock at the trial, a conviction cannot be supported. (*Waller, J.*). GOVINDA NAIDU *v.* EMPEROR. **118 I. C. 512=1929 M. W. N. 391=2 M. Cr. C. 76=30 Cr. L.J. 932=A. I. R. 1929 Mad. 285.**

———An accused person cannot be convicted solely on such a confession made by a co-accused implicating him. 9 C. P. L. R. 35 Cr. and 37 Cr.; 24 W. R. (Cr.) 42; 38 Cal. 559, *Rel. on.* (*Kinkhede, A. J. C.*). NEEHA *v.* EMPEROR. **109 I.C. 801=11 N.L.J. 104=29 Cr. L. J. 609=10 A. I. Cr. R. 340=A.I.R. 1928 Nag. 213.**

———*Conviction based solely on confession of co-accused is bad.*

Under S. 30 the Court may take into consideration a confession made by an accused person as against the co-accused, but the Court can only treat a confession as lending assurance to other evidence against a co-accused and a conviction based on the confession of a co-accused alone would be bad in law. 38 Cal. 559, *Foll.* (*Das and Scroope, JJ.*). DEVENDRA BHATTACHANDRYA *v.* EMPEROR. **101 I. C. 881=28 Cr.L.J. 497=8 P.L.T. 566=8 A.I.Cr.R. 151=A.I.R. 1927 Pat. 257.**

———Confession by itself cannot be treated as sufficient evidence upon which a conviction can be based of the co-accused. (*Wazir Hasan, A.J.C.*). MANNA LAL *v.* KING EMPEROR. **75 I.C. 753=27 O.C. 40=25 Cr L.J. 49=A.I.R. 1925 Oudh 1.**

———A confession is only evidence against the person who makes it. A conviction of an accused based solely on the confession of another accused cannot stand and there must be independent evidence entirely outside if the confession can be

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used. (*Coutts Trotter, C.J.*). LILARAM GANGANMULL, *In re.* **81 I.C. 817=20 M.L.W. 202=25 Cr. L.J. 1041=A.I.R. 1924 Mad. 805.**

———Confessing co-accused's evidence is practically that of an approver, and must be treated as such especially where the confession was not free from inducement. (*Wazir Hasan and Cuming, A.J.Cs.*). MAHADEO *v.* EMPEROR. **10 O. L. J. 280=A. I. R. 1924 Oudh 65.**

———*Conviction based on it alone, is invalid.*

Prideaux and Kotval, A.J.Cs.—(*Hallifax, A.J.C., Contra*)—A confession of an accused not being declared "relevant" by the Evidence Act as against a co-accused cannot be treated as "substantive" evidence and a judgment cannot be based upon it so far as he is concerned. A Court may under S. 30 of the Evidence Act "take it into consideration" with or supplementarily to relevant facts which may form the basis of a judgment (*case-law discussed*). A confession made by a co-accused must be regarded with suspicion. (*Hallifax, Prideaux and Kotval, A.J.Cs.*). SAPKU *v.* EMPEROR. **66 I. C. 561=23 Cr.L.J. 129=A.I.R. 1922 Nag. 146 (F.B.).**

———Whether the confession of an accused can be used against his co-accused should be determined on seeing whether the accused can be convicted on that confession of the crime with which he and the co-accused were charged. (*Shadi Lal, C.J. and Wilberforce, J.*). CHUNNI LAL *v.* EMPEROR. **60 I.C. 660=22 Cr.L.J. 260 (Lah.).**

———The confession of a co-accused cannot *per se* sustain a conviction and to do so, it must be corroborated *aliunde* by independent evidence in some material circumstance. (*Shadi Lal, C.J. and Leslie Jones, J.*). KEHR SINGH *v.* EMPEROR. **59 I.C. 913=22 Cr.L.J. 161=3 U.P.L.R. (Lah.). 24= 11 P.W.R. 1921 Cr.**

———A confession of an accused is not made on oath and its evidentiary value is very low. The statement of even an accomplice has a higher and more probative value than the confession of a co-accused.

The Court can only treat a confession under S. 30 as lending assurance to the other evidence against the co-accused and a conviction on the confession of a co-accused alone would be bad in law. By S. 30 the Legislature has conferred upon the Court to take into consideration such confession. The corroborative evidence must be cogent and it must be corroborative of the *corpus delicti*. (*Raymond and Aston, A.J.Cs.*). PANI M. VAZ *v.* EMPEROR. **83 I.C. 889=26 Cr.L.J. 185=16 S. L.R. 197=A.I.R. 1921 Sind 57.**

—S. 30—Retracted confessions.

———In cases where the sole evidence against the accused is that of a retracted confession such confession if it is relied on must be relied on as a whole and not only in part. (*Young and Sen, JJ.*). DURJAN *v.* EMPEROR. **121 I.C. 550=1930 Cr. C. 84=31 Cr.L.J, 300=A I.R. 1930 All. 192.**

———*Value of.*

A retracted confession is sufficient evidence for convicting the person who made it if the Court believes it to be true. As regards the person making it such a confession may even without any corroborative evidence form the basis of conviction. As regards his co-accused corroborative evidence is necessary. 20 All. 183; 29 All. 484; A. I. R. 1925 All. 627 and A. I. R. 1927 Oudh 17, *Rel. on.* (*Raza and Nanavutty, JJ.*). WAJID *v.* EMPEROR. **7 O. W. N. 805=1930 Cr. C. 952=A.I.R. 1930 Oudh 412.**

EVIDENCE ACT (1872), S. 30—Retracted confessions.

———Retracted confession of accused standing unrebutted and corroborated sufficiently, by material evidence, is admissible and goes strongly against co-accused. A. I. R. 1929 Oudh 167, *Rel. on.* (*Raza and Nanavutty, JJ.*). WAJID *v.* EMPEROR. **A.I.R. 1930 Oudh 412.**

———*When material for conviction of co-accused*

The retracted confession alone of an accused is not sufficient to justify the conviction of a co-accused, but where such confession stands unrebutted, and there is nothing to show that the accused had any reason for naming other men falsely, and his story fits in exactly with the facts known or proved and is corroborated sufficiently by material evidence against the co-accused, the confession is admissible, and may be a strong piece of evidence against the co-accused. (*Raza and Nanavutty, JJ.*). HAZARI *v.* EMPEROR. **7 O. W. N. 527=A. I. R. 1930 Oudh 353.**

———*There is no distinction between retracted and unretracted confession.*

The Evidence Act makes no distinction whatever between a retracted or unretracted confession. Both are equally admissible and may be taken into consideration against the accused though it may be that less weight would be attached to a retracted confession. (*Cuming and Lort Williams, JJ.*). GOUR CHANDRA DAS *v.* EMPEROR. **115 I. C. 359=32 C. W. N. 1004=30 Cr. L. J. 475=A.I.R. 1929 Cal. 14.**

———Retracted confession must be corroborated by independent evidence in material details. (*Fforde and Jai Lal, JJ.*). MT. MIRAN *v.* EMPEROR. **116 I. C. 621=30 P. L. R. 377=30 Cr. L. J. 640=1929 Cr. C. 167=13 A. I. Cr. R. 49=A.I.R. 1929 Lah. 597.**

———Confession retracted though to be regarded with suspicion is admissible—If corroborated in material particulars or otherwise truthful it can be used even against co-accused. (*Courtney-Terrell, C. J. and Allenson, J.*). SHEONARAIN SINGH *v.* EMPEROR. **117 I. C. 43=8 Pat. 262=10 P. L. T. 228=30 Cr. L. J. 716=A.I.R. 1929 Pat. 212.**

———Retracted confession of co-accused is not sufficient for conviction. 30 P. R. 1914, Cr., *Ref.* (*Bhide, J.*). PALA SINGH *v.* EMPEROR. **107 I.C. 614=29 Cr. L. J. 267=9 A. I. Cr. R. 527=A.I.R. 1928 Lah. 329.**

———The rule is now firmly established that ordinarily, it is improper to use the retracted confession of an accused person against his co-accused, and that, generally speaking it is not safe to convict the maker of such a confession without corroboration in material particulars. (*Tek Chand and Coldstream, JJ.*). SHER MAHOMED *v.* EMPEROR. **104 I. C. 630=28 P.L.R. 583=9 A. I. Cr. R. 56=28 Cr. L. J. 854=A. I. R. 1927 Lah. 765.**

———Retracted confessions although they are nevertheless evidence against the person making them cannot be used as against the co-accused without substantial corroboration. (*Das and Scroope, JJ.*). DEVENDRA BHATTACHANDRYA *v.* EMPEROR. **101 I.C. 881=28 Cr. L.J. 497=8 P.L.T. 566=8 A. I. Cr. R. 151=A.I.R. 1927 Pat. 257.**

EVIDENCE ACT (1872), S. 30—Retracted confessions.

———As a matter of practice the Courts decline to convict accused persons on retracted confessions unless these confessions receive material corroboration, but this is a rule of prudence, not a rule of law. (*Das and Scroope, JJ.*). DENENDRA BHATTACHANDRYA *v.* EMPEROR. **101 I.C. 881=28 Cr. L.J. 497=8 P.L.T. 566=8 A. I. Cr. R. 151=A.I.R. 1927 Pat. 257.**

———It is not safe to base conviction on the retracted uncorroborated confession of a co-accused and mere identification of an accused person by a confessing accused, who admittedly knew him, is absolutely no corroboration of the statement of the confessing accused. Also the mere fact that the accused were not found at their house and that they were absconding is no corroboration of such a confession. (*Banerji, J.*). DUNGAR *v.* EMPEROR. **95 I.C. 938=7 L. R. A. Cr. 143=27 Cr. L.J. 858=A.I.R. 1926 All. 603.**

———The confession of an accused person, whether retracted or not, can be taken into consideration as against his co-accused. But an accused person cannot be convicted solely on the confession or confessions of his co-accused unsupported by other evidence: 3 U. B. R. 3, *Foll.* (*Carr, J.*). NGA PO KANK *v.* EMPEROR. **95 I.C. 71=4 Rang. 45=27 Cr. L.J. 743=A.I.R. 1926 Rang. 127.**

———Accused made a confession which he subsequently retracted. In the confession he carefully avoided saying that he took any actual hand in the murder. He stated however that he was one of the original conspirators and that he was present and saw the murder being committed without attempting to interfere,

Held, this confession cannot be taken into account against the co-accused as the person making confession did not intend to implicate himself though he actually did so. (*Shadi Lal, C. J. and Harrison, J.*). HAYAT *v.* EMPEROR. **68 I.C. 401=4 Lah. L.J. 41=23 Cr. L.J. 561=A.I.R. 1922 Lah. 119.**

———A retracted confession is not inadmissible in evidence and a Judge does right in letting it in and leaving it to the jury to decide the value to be attached to it as against the maker. (*Newbould and Suhrawardy, JJ.*). ABDUL SALIM *v.* EMPEROR. **69 I.C. 145=49 Cal. 573=35 C.L.J. 279=23 Cr.L.J.657=26 C.W.N. 680=A.I.R. 1922 Cal. 107.**

—S. 30—Scope and interpretation.

———Per *Macnair, A.J.C.*—When S. 30 lays down that the Judge may consider a fact in certain circumstances it plainly declares that fact to be relevant in those circumstances. (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). GOBARYA *v.* EMPEROR. **A.I.R. 1930 Nag. 242 (F.B.).**

———Per *Full Bench.*—Court has discretion to exclude a confession by an accused altogether from consideration against the co-accused if it is so disposed, Per *Macnair, A.J.C.*—The use of the word "may" does not show that every confession is of very small-value against a co-accused. It cannot be said that the word "may" gives the Court right to exclude the confession from consideration if it is so disposed. The Judge is given a discretion but the discretion must be exercised in a judicial manner; if the confession would help in arriving at a decision that the accused is guilty he must do so. (*Findlay, J.C., Macnair and Subhedar, A.J.Cs.*). GOBARYA *v.* EMPEROR. **A.I.R. 1930 Nag. 242 (F.B.).**

EVIDENCE ACT (1872), S. 30—Self-exculpatory confessions.

———"*Same offence*"—*Meaning.*

The expression "same offence" in S. 30 means the identical offence and does not mean an offence of the same kind. The legislature did not intend the section to cover different offences in the same transaction by different persons. The illustration to S. 30 makes the meaning of the section quite clear. (*Cuming and Lort-Williams, JJ.*). GOUR CHANDRA DAS *v.* EMPEROR. **115 I.C. 359=32 C.W.N. 1004=30 Cr.L.J. 475=A. I. R. 1929 Cal. 14.**

———Section 30 does not refer to statements made at the trial but the statements made before and proved at the trial: 33 Mad. 302, *Diss. from*; 45 All. 323 and 4 Cal. 483, *Appr.* (*Waller, J.*). GOVINDA NAIDU *v.* EMPEROR. **118 I.C. 512=2 M.Cr.C. 76=30 Cr.L.J. 932=A.I.R. 1929 Mad. 285.**

———"*May take into consideration.*"

The expression 'may take into consideration' points to the necessity of there being other evidence on record to which this statement can lend assurance. (*Kinkhede, A. J. C.*). NEEHA *v.* EMPEROR. **109 I.C. 801=11 N L J. 104=29 Cr.L.J. 609=10 A.I.Cr.R. 340=A. I. R. 1928 Nag. 213.**

———'*Affect*'—*Meaning.*

The word "affect" is a very wide one and S. 30 is not limited to a case where the confessing accused directly implicates another accused as well as himself but also covers a case where the confession indirectly affects a co-accused. (*Fawcett and Madgavkar, JJ.*). EMPEROR *v.* SHIVABHAI BECHARBHAI. **97 I.C. 660=50 Bom. 683=28 Bom.L.R. 1013=27 Cr.L.J. 1140=A.I.R. 1926 Bom. 513.**

———To use therefore a statement made in the dock by one accused against the other in a joint trial, offends against at least two of the fundamental principles of criminal law. What is contemplated by Section 30 is formal proof by the prosecution of a confession previously made. When you prove a confession made by a person, you tender evidence at the trial that on some previous occasion he did in fact make a confession, and that is the only thing which was ever contemplated by the section. (*Walsh, J.*). MAHADEO PRASAD *v.* KING EMPEROR. **76 I.C. 1025=25 Cr.L.J. 305=21 A.L.J. 179=45 All. 323=A.I.R. 1923 All. 322.**

—S. 30—Self-exculpatory confessions.

———The statement of the accused in her confession admitting her guilt on implicating the co-accused is a self-exculpatory statement and is inadmissible in evidence against the co-accused. (*Raza and Pullan, JJ.*). EMPEROR *v.* CHATTAR-PAL SINGH. **7 O.W.N. 980.**

———Confession exculpating author from alleged offence is not confession and should not be relied upon for convicting co-accused. (*Boys and Young, JJ.*). ABDUL JALIL KHAN *v.* EMPEROR. **A.I.R. 1930 All. 746.**

———Self-exculpatory statement of accused should not be taken into consideration against his co-accused. (*Mirza and Murphy, JJ.*). EMPEROR *v.* C. E. RING. **120 I.C. 340=53 Bom. 479=31 Bom. L.R. 545=1929 Cr. C. 114=31 Cr. L. J. 65=A.I.R. 1929 Bom. 296.**

———Where a self-exculpatory statement is volunteered by a co-accused it is inadmissible in evidence. (*Subhedar, A.J.C.*). SHAMLAL *v.* EMPEROR. **120 I.C. 210=31 Cr. L.J. 15=13 A.I. Cr. R. 157=1929 Cr. C. 673=A.I.R. 1929 Nag. 350.**

EVIDENCE ACT (1872), S. 30—Self-exculpatory confessions.

———A confession made by one of the co-accused who does not implicate himself to the same extent as he implicates the other co-accused is of very little value at least as against the other co-accused. (*Courtney-Terrell, C. J. and Fazl Ali, J.*). KUNJA SUBUDHI *v.* EMPEROR. **116 I.C. 770=8 Pat. 289=10 P.L.T. 549=30 Cr. L.J. 675=1929 Cr. C. 62=13 A.I. Cr. R. 143=A.I.R. 1929 Pat. 275.**

———Statements implicating co-accused but not incriminating maker are not admissible in evidence. (*Aston, A.J.C.*). WAHID BUX *v.* EMPEROR. **120 I. C. 81=1929 Cr.C. 678=30 Cr.L.J. 1121. A.I.R. 1929 Sind 250.**

———A confession, intended to be exculpatory as regards the person confessing, is inadmissible against a co-accused though it is admissible against the confessor. *Case-law considered.* (*Findlay, Offg. J. C. and Prideaux, A. J. C.*). DIWAN DHIMAR *v.* EMPEROR. **91 I.C. 1002=9 N.L.J. 80=27 Cr.L.J. 186=A.I.R. 1926 Nag. 229.**

—S. 30—Miscellaneous.

———Identification by co-accused while on trial is not admissible. (*Walsh, J.*). KHETAL *v.* EMPEROR. **73 I.C. 62=45 All. 300=21 A.L.J. 143=4 L.R.A.Cr. 13=24 Cr.L.J. 526=A.I.R. 1923 All. 352.**

—S. 31—Admission by co-defendant.

———Suit for possession—Admission by co-defendant of plaintiff's title—No evidence by plaintiff—Admission is not sufficient proof of plaintiff's title. (*Jai Lal, J.*) SAIDU *v.* MEHR DAD. **101 I.C. 589=A.I.R. 1927 Lah. 356.**

—S. 31—Conclusive admission.

———Admissions under Civil P. C., O. 10, R. 1 are conclusive. (*Sulaiman and Banerji, JJ.*). ABDUL AZIZ *v.* MT. MARIYAM BIBI. **97 I. C. 176=49 All. 219=25 A.L.J. 48=A.I.R. 1926 All. 710.**

—S. 31—Divorce proceedings.

———Divorce Act, S. 13—Husband admitting adultery alleged by wife—Admission is sufficient proof even in absence of other evidence. *Robinson* v. *Robinson*, 29 L. J. N. S. 178, *Foll.* (*Shadi Lal, C. J. and Zafar Ali, J.*). MRS. M. V. O'DONELL *v.* C. E. O'DONELL. **9 L.L.J. 315=A.I.R. 1927 Lah. 491.**

—S. 31—Effect of admission against third person.

———An admission cannot have binding effect on a third person claiming under an independent title. Where a Hindu father made an admission as regards the law applicable.

Held, that it was not binding on the son because he did not claim through the father. (*Graham and Mitter, JJ.*). GOPAL JANA *v.* BROJA MOHAN SWAMI. **34 C.W.N. 944.**

—S. 31—Execution proceedings.

———Admissions made in execution proceedings must be held to be binding when the unsuccessful party proceeds to a suit. (*Dalal, J.*). GORDHAN DAS *v.* HUSAINFA. **103 I.C.34=A.I.R. 1927 All. 659.**

—S. 31—Explained admissions.

———Admissions are on a somewhat similar footing to a retracted confession, and it is difficult to base a conviction on such an admission. (*Addison and Kemp, JJ.*). EMPEROR *v.* BAKHWAR LAL. **102 I.C. 492=8 A.I. Cr. R. 196=28 P.L.R. 313=28 Cr. L.J 556=A.I.R. 1927 Lah. 549.**

—S. 32.

Assertion of right.
Bhat's register.
Boundaries.
Cross-examination.
Date of birth.
Date of death.
Death of executant.
Dying declarations.
Guardianship certificate.
Horoscope.
Interested statement.
Ordinary course of business.
Panda's register.
Pedigree.
Previous statement.
Public interest.
Recitals.
Relationship.
Revenue papers.
Scope.
Special means of knowledge.
Statement after dispute.
Statement against interest.
Unreasonable delay or expense.
Verbal statements.
Miscellaneous.

EVIDENCE ACT (1872), S. 32—Bhat's register.

—S. 32—Assertion of right.

———Settlement deed under which pro-note is transferred, if admissible as secondary evidence, may be employed to prove pro-note under S. 32 (7) read with Evidence Act, S. 13 (*a*). (*Obiter*). 26 I.C. 747, *Rel. on.* (*Curgenven, J.*). SUBBARAYALU NAIDU *v.* VENGAMA NAIDU. **A.I.R. 1930 Mad. 742.**

———S. 32, clause 7 of the Evidence Act, makes the statements made by a deceased person in respect of relevant facts themselves relevant if those statements are contained in a document which relates to any transaction mentioned in S. 13, that is, a transaction in which an assertion is made of a right or title which is relevant question in the suit, those statements being relevant in proof of the facts contained in the statements. So assertion of title as owner in a deed of mortgage is relevant on the question of the mortgagor's ownership under S. 13 and after his death, under S. 32, Cl. 7. (*Sadasiva Iyer and Spencer, JJ.*). NALLASIVA MUDALIAR *v.* RAVAN BIBI. **70 I.C. 389=14 M.L.W. 327=1921 M.W.N. 560=A.I.R. 1921 Mad. 383.**

—S. 32—Bhat's register.

———*Pedigree—Proof of.*

Entries made by successive generations of bards supply a running account of the different branches of the families of their customers and they afford, if otherwise reliable, evidence of as great value as any family pedigree kept by the family members themselves.

A pedigree may be kept by a member of the family or by another person on his behalf and can be admitted in evidence if it is written by a family Bard for the purpose of keeping a record of the family events for his use and for the use of the family. At any rate such a record is a record of the statements as are usually made to and noted by the Bard; it can be admitted in evidence, though the person who made the entries is unknown. The Bahis of Gangabasi priests which contain the relationships of their clients and their ancestors are the records of statements made by persons having special means of knowledge and are admissible in evidence. 46 B. 753; 30 A. 510, *Dist.* (*Kanhaiya Lal and Mukerjee, JJ.*). MT. ANANDI *v.* NAND LAL. **83 I.C. 618=22 A. L. J. 657=5 L.R.A. Civ. 435=46 All. 665=A. I. R. 1924 All. 575.**

EVIDENCE ACT (1872), S. 32—Bhat's register.

———*Family pedigree—Proof by the books kept by the family chronicler.*

If the book by a professional person or a person whose business was to keep a book for the advantage of the family, is shown to have been kept in the ordinary course of business, it should be admitted as evidence under sub-S. 2, S. 32. Even if that were incorrect, still sub-S. 6 of S. 32 enables a family pedigree to be admitted in evidence so long as the members of the family depend upon a particular person to keep a record of the family events. (*Macleod, C.J. and Shah, J.*). MOHAN SINGH UMED RAMOL *v.* DALPAT SINGH HANBAJI.
67 I.C. 235=24 Bom.L.R. 289=46 Bom. 753= A.I.R. 1922 Bom. 51.

———Family records kept by *Bhats* are evidence on question of relationship. (*Richardson and Shamsul Huda, JJ.*). KARTICK CHANDRA *v.* GOSSAIN RUDRANANDA GIR. **66 I. C. 894= 25 C.W.N. 908=A.I.R. 1921 Cal. 482.**

—S. 32—Boundaries.

———The recital in a document between third parties to the effect that the land which formed the boundary of the property dealt with by the document belonged to a particular third person is not admissible against persons not parties to the transaction evidenced by that document to prove the ownership of such neighbouring land. ALAGIRI NAYAKAR *v.* PERUMAL NAYAKAR. **30 L.W. 422.**

———Recitals in documents regarding boundaries executed by third parties in favour of the plaintiffs are not admissible in evidence if the executant is not dead and does not come to corroborate them. A.I.R. 1927 Lah. 448, *Foll.*; A.I.R. 1927 Cal. 230; A.I.R. 1916 P.C. 5, *Dist.* (*Harrison, J.*). GHULAM MUHAMMAD *v.* KALIMULLAH. **109 I. C. 728= 10 L.L.J. 370=A.I.R. 1928 Lah. 428.**

———Documents not *inter partes*—Statements as to boundary description—Executant dead—Documents are admissible: 16 C.W.N. 252; 23 Bom. 63; 11 Bom. L.R. 409; 11 A.L.J. 139; 17 C.W.N. 108; 45 Cal. 159 and 22 W.R. 231, *Foll.*; A.I.R. 1924 Cal. 1067, *Diss. from.* PRAMATHA NATH ROY *v.* BEJOY SINGH. **99 I.C. 910=44 C.L.J. 587= A. I. R. 1927 Cal. 234.**

———Executant of a document containing recital of boundaries of land in dispute dead—Document is admissible. 23 Bom. 63; 16 C.W.N. 252; 11 A.L.J. 139 and 45 Cal. 159, *Foll.* (*B. B. Ghose and Panton, JJ.*). KETABUDDIN *v.* NAFARCHANDA. **99 I. C. 907=44 C. L. J. 582= A. I. R. 1927 Cal. 230.**

———A document between strangers to the suit in which mention is made of one of the parties or their predecessors as holding the land lying on the boundaries of the lands belonging to the executants of the document is not admissible in evidence. CHOONI LAL KHEMANI *v.* NILMADHAB BARIK. **86 I.C. 734=41 C L. J. 374= A.I.R. 1925 Cal. 1034.**

———A mere description of boundaries in a document between third parties cannot be said to be a statement against the proprietary interest of the person making it. PRAMATHA NATH CHOUDHURI *v.* KRISHNA CHANDRA BHATTACHARJEE. **84 I. C. 420=28 C. W. N. 1092= A.I.R. 1924 Cal. 1067.**

—S. 32—Cross-examination.

———The affidavit of a person who is dead and who is not subjected to cross-examination is not evidence admissible either under S. 32 or S. 33,

EVIDENCE ACT (1872), S. 32—Dying declarations—Admissibility.

Evidence Act. (*Wallace, J.*). DORAISWAMI AYYAR *v.* BALASUNDARAM AYYAR. **102 I. C. 243= 38 M. L. T. 275=A.I. R. 1927 Mad. 507. 52 M. L. J. 477.**

—S. 32—Date of birth.

———Entry as to date of birth in a school register based upon statement of deceased father is admissible to prove age. (*Gokaran Nath Misra and Pullan, JJ.*). MUNNA LAL *v.* KAMESHARI DAT. **114 I. C. 801=5 O.W.N. 1111= A.I.R. 1929 Oudh 113.**

—S. 32—Date of death.

———The question was as to the date of *A's* death. A mortgage deed executed by *A's* son soon after *A's* death in which *A* was described as dead is admissible. (*Mookerjee, C.J. and Rankin, J.*). SAYERUDDIN AKONDA *v.* SAMIRUDDIN AKONDA. **72 I. C. 985= A.I.R. 1923 Cal. 378.**

—S. 32—Death of executant.

———Where papers about 45 years old proved to have come into the respondent's hands as purchaser are produced in evidence, and where the papers cannot be shown to be in the hand of any one alive.

A Court of fact may in the circumstances of the case presume that the writer was dead at the time they were produced: 16 C.L.J. 24, *Rel. on.* (*Suhrawardy and Graham, JJ.*). JUBBAR ALI *v.* MONMOHAN PANDEY. **114 I.C. 485=55 Cal. 1216= 49 C.L.J. 70=A. I. R. 1929 Cal. 110.**

—S. 32—Dying declarations—Admissibility.

———The statement of a woman, who was alleged to have been raped and who committed suicide three days later, made immediately, after the incident is inadmissible in evidence as it was not the cause of her death. (*Wallace and Jackson, JJ.*). KAPPINAIAH *v.* EMPEROR. **1930 M.W.N. 702.**

———Statement by deceased before Third Class Magistrate not competent to record statement under Criminal P.C., S. 164—Statement is yet relevant under S. 32 (1). (*Zafar Ali and Addison, JJ.*). CHADJI *v.* EMPEROR. **120 I.C. 274= 1930 Cr. C. 28=31 Cr.L.J. 79= A. I. R. 1930 Lah. 60.**

———Where a person dies in a hospital after being assaulted and hurt, not of the injuries but of a malady independent of such injuries such for example as pneumonia, the dying statement of such person is not admissible in evidence in a trial of his assaulters under S. 324. (*Pullan, J.*). WALI MOHAMMAD *v.* EMPEROR. **7 O.W.N. 466=A.I.R. 1930 Oudh 249.**

———Declaration made by a dying person, though he lingered on for some days, is a dying declaration. (*Fforde and Bhide, JJ.*). THAKUR SINGH *v.* EMPEROR. **113 I.C. 177=10 L.L.J. 463= 30 Cr.L.J. 65=11 A.I.Cr.R. 543= A. I. R. 1929 Lah. 64.**

———A dying declaration which contradicts itself in its various parts is inadmissible in evidence. INAYAT ALI *v.* EMPEROR. **108 I.C. 526= 10 A.I.Cr.R. 68=29 Cr.L.J. 418.**

———A dying declaration as to the cause of death is admissible even when the charge is not one of homicide. 6 W. R. (Cr.) 75, *Foll.* (*Mullick, Ag. C. J. and Wort, J.*). LALJI DUSADH *v.* EMPEROR. **106 I.C. 698=6 Pat. 747=9 A.I. Cr. R. 379= 29 Cr. L.J. 106=A. I. R. 1928 Pat. 162.**

———Dying declaration certified by its recorder in Court to be correct is admissible in proof of its contents. A.I.R. 1922 Cal. 382, *Foll.* (*Harrison and Jai Lal, JJ.*). PARTAB SINGH *v* EMPEROR. **92 I.C. 167= 7 Lah. 91=27 Cr. L.J. 215= 28 P.L.R. 222=A.I.R. 1926 Lah. 310.**

EVIDENCE ACT (1872), S. 32—Dying declarations—Cause of death.

———Dying declaration of one of the dacoits as to the circumstances of dacoity before a Magistrate is admissible against him, so far his implication in the crime is concerned but is not admissible against other dacoits. (*Daniels, J.*). DANNU SINGH *v.* EMPEROR. **85 I.C. 643=26 Cr. L.J. 547= 5 L.R. A. Cr. 201=A.I.R. 1925 All. 227.**

—S. 32—Dying declarations—Cause of death.

———First information Report is admissible under S. 32 (1), Evidence Act, as the statement of a person (since deceased) relating to the circumstances of the transaction which resulted in his death. (*Tek Chand and Johnstone, JJ.*). KAPUR SINGH *v.* EMPEROR. **123 I.C 120=31 P.L. R. 83= 31 Cr. L.J. 475=A.I.R. 1930 Lah. 450.**

———The first information report could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death. (*Rankin and Duval, JJ.*). AZIMADDY *v.* EMPEROR. **99 I.C. 227=44 C.L.J. 253= 28 Cr. L.J. 99=54 Cal. 237= A.I.R. 1927 Cal. 17.**

———Statement by a person as to circumstances of transactions resulting in her death are admissible when cause of her death is in question. (*Aston, A.J.C.*) WAHID BUX *v.* EMPEROR. **120 I.C. 81= 1929 Cr. C. 678=30 Cr. L.J. 1121= A.I.R. 1929 Sind 250.**

———Statement, as to circumstances of transaction resulting in death made before injury was inflicted is admissible. A.I.R. 1924 Lah. 253; 4 Lah. 451, *Diss.*; A.I.R. 1924 Nag. 115 and 20 P.R. 1916 Cr., *Rel. on.* (*Fawcett and Madgavkar, JJ.*). EMPEROR *v.* SHIVABHAI BECHARBHAI. **97 I.C. 660= 50 Bom. 683=28 Bom.L.R. 1013= 27 Cr. L.J. 1140=A.I.R. 1926 Bom. 513.**

———*Report to police showing motive for murder is admissible.*

B made a report to the police that he was slapped by a 'pahelwan' of Nagpur because he had refused to deliver the keys of a house. Next day, *B* was murdered by *C*, who was identified as the assailant of *B* on the previous day,

Held, that the report discloses the motive for the murder and is admissible in evidence. (*Baker, J.C. and Kotwal, A.J.C.*). CHUNNILAL *v.* KING EMPEROR. **88 I.C. 353=7 N.L.J. 144=26 Cr. L.J. 1121= A I.R. 1924 Nag. 115.**

—S. 32—Dying declarations—Evidentiary value.

———It is unsafe to convict a person merely on the dying statement when such statement is not recorded in the deceased's own words and contains a note of the substance of what deceased told the police. (*Boys and Young, JJ.*). EMPEROR *v.* SIKANDAR. **1930 Cr. C. 757=A.I.R. 1930 All. 532.**

———Although a dying declaration, if properly recorded is a valuable piece of evidence, but if while the statement is being recorded a third person is present and prompts the deceased to give out names of certain accused, it would be exceedingly unsafe to attach any weight to such a dying statement. (*Broadway and Zafar Ali, JJ.*). BISHEN SINGH *v.* THE CROWN. **96 I.C. 215= 8 L.L.J. 296=27 P.L.R. 484=27 Cr.L.J. 903= A.I.R 1926 Lah. 496.**

———No reliance would be placed on the dying declaration when it is made at a time when the deceased must have been well aware of the fact that the accused has been named as his assailant. (*Broadway and Zafar Ali, JJ.*). MUZAFFAR *v.* EMPEROR. **99 I.C. 322=8 L.L.J. 410= 27 P.L.R. 632=28 Cr.L.J. 114.**

EVIDENCE ACT (1872), S. 32—Dying declarations—Procedure of taking.

———*Reliability depends upon circumstances in which declaration was made and nature of its record.*

A dying declaration under the Indian Law assumes a character very widely different from what it is under the English Law. A dying declaration is relevant under the Indian Evidence Act, whether the person who made it was or was not at the time when it was made, under expectation of death, and the weight to be attached to it depends not upon the expectation of death which is a guarantee of its truth, but upon the circumstances and surroundings under which it was made and very much also upon the nature of the record that has been made of it. Hence it becomes almost always a question of fact as to whether it should be relied upon or not. (*Greaves and Mukerjee, JJ.*). EMPEROR *v.* PREMANANDA DUTT. **88 I.C. 1000=29 C.W.N. 738=42 C.L.J. 247= 52 Cal. 987=26 Cr.L.J. 1256= A.I.R. 1925 Cal. 876.**

———Dying declaration of inhabitants of a Punjab is unsafe as basis of conviction. (*Scott-Smith and Martineau, JJ.*). BAKHSHISH SINGH *v.* EMPEROR. **86 I.C. 826=26 Cr L.J. 890= A.I.R. 1925 Lah. 549.**

———Dying declaration though conflicting with initial report is not wholly unreliable. (*Broadway, J.*). MULA SINGH *v.* EMPEROR. **71 I.C 593= 24 Cr.L.J. 177=A.I.R. 1924 Lah. 413.**

—S. 32—Dying declarations—Partial acceptance.

———*Acceptance of dying declaration in part and rejection of the rest is not permissible.*

A dying declaration stands upon a widely different footing from the testimony of a witness given in Court. In the case of the latter it is permissible and at times necessary under certain circumstances to accept a part which is unimpeachable and reject that which is obviously untrue, though, to found a criminal conviction on such appraisement of evidence will be very often unsafe. As regards a dying declaration, to accept a portion and reject the rest is entirely out of the question; there must be absolute guarantee of the accuracy of the record and the truth of the entire statement before it can be acted upon. (*Greaves and Mukerji, JJ.*). EMPEROR *v.* PREMANANDA DUTT. **88 I.C. 1000=29 C.W.N. 738= 42 C.L.J. 247=52 Cal. 987=26 Cr. L. J. 1256= A.I.R. 1925 Cal. 876.**

—S. 32—Dying declarations—Procedure of taking.

———*Form of dying declaration should show distinctly the questions put to the declarant and his answers to them.*

Where a statement is not the *ipsissima verba* of the person making it but is composed of a mixture of questions and answers there are several objections open to its reception in evidence, which it is desirable should not be open in cases in which the person has no opportunity of cross-examination. In the first place the questions may be leading questions and in the condition of a person making a dying declaration there is always a very great danger of leading questions being answered without their force and effect being freely comprehended. In such circumstances the form of the declaration should be such that it would be possible to see what was the question and what was the answer, so as to discover how much was suggested by the examining Magistrate, and how much was the production of the person making the state

EVIDENCE ACT (1872), S. 32—Dying declarations—Proof.

ments. *R.* v. *Mitchell*, 17 Cox. C. C. 503 (1892), *Foll.* (*Greaves and Mukerji, JJ.*). EMPEROR *v.* PREMANANDA DUTT. **88 I.C. 1000=29 C.W.N. 738=42 C.L.J. 247=52 Cal. 987=26 Cr.L.J. 1256=A.I.R. 1925 Cal. 876.**

—S. 32—Dying declarations—Proof.

———Dying declaration can be proved by examining person recording it or person who heard its being made—It must be taken as a whole and portion only cannot be allowed. (*Graham and Lort Williams, JJ.*). TAFIZ PRAMANIK *v.* EMPEROR. **50 C. L. J. 584=1930 Cr. C. 196=A. I. R. 1930 Cal. 228.**

———Deceased's statement to doctor made just before death, though admissible, must have independent corroboration to prove murder. (*Jwala Prasad and James, JJ.*). BULLU SINGH *v.* EMPEROR. **120 I.C. 474=A I.R. 1929 Pat. 249.**

———Dying declaration should be proved in manner prescribed by 8 Cal. 211. (*Suhrawardy and Mukerji, JJ.*). SARAT CHANDRA KAR *v.* EMPEROR. **88 I.C. 860=52 Cal. 446=26 Cr. L.J. 1244=A.I.R. 1925 Cal. 821.**

———Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made by a deceased person admissible under S. 32 of the Evidence Act and that statement is not a document made by the Magistrate but the verbal statement made by the deceased person. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over to him at or about the time the statement is made. (*Abdul Qadir, J.*). KUNJ LAL *v.* EMPEROR. **67 I.C. 577=23 Cr. L.J. 417=6 L. L.J. 115=A.I.R. 1924 Lah. 12.**

———*Proof by a witness present is sufficient proof.*

Where the dying declaration was recorded in the presence of a witness, was read over to the deceased in the presence of the witness and was admitted by the deceased to be correct,

Held, if the witness, who heard that statement made, swears that the written statement correctly reproduces the words used by the deceased, this is sufficient to prove that the deceased did use the words contained in that statement. (*Newbould and Suhrawardy, JJ.*). EMPEROR *v.* BALARAM DAS. **71 I.C. 685=49 Cal. 358=24 Cr. L.J. 221=A.I.R. 1922 Cal. 382.**

—S. 32—Guardianship certificate.

———Where the person who had filed the application and affidavit in the Guardianship proceedings was alive during the pendency of the suit in the Trial Court, and might have been called as a witness, but was not called, the defendant-minor was held not be entitled to the benefit of S. 32 (5), Evidence Act. (*Mookerjee and Chotzner, JJ.*). HARA KUMAR DEY *v.* JOGENDRA KRISHNA RAY. **71 I.C. 336=38 C.L.J. 186=A.I.R. 1924 Cal. 526.**

———The recital in a guardianship certificate as to age of a person is admissible under Section 32 (5). (*Mookerjee and Panton, JJ.*). SARUT CHANDRA *v.* BIBHABATI DEBI. **34 C.L.J. 302=36 I. C. 433=A.I.R. 1921 Cal. 584.**

—S. 32—Horoscopes.

———Horoscopes containing date of birth and prepared by a person having special means of knowledge and who is dead, are admissible to prove

EVIDENCE ACT (1872), S. 32—Ordinary course of business.

date of birth. (*Das and Adami, JJ.*). GANGANAND SINGH *v.* RAMESHWAR SINGH BAHADUR. **102 I.C. 449=6 Pat. 388=8 P.L.T. 730=A.I.R. 1927 Pat. 271.**

———Horoscope brought into the Court by the family Pandit was held as evidence of the proof of age. (*Dalal and Simpson, A. J. Cs.*). AMBIKA PRASAD *v.* LAL BAHADUR. **83 I.C. 840=11 O.L.J. 164=A.I.R. 1924 Oudh 353.**

———A horoscope is often accepted as substantive evidence of the date of the birth of the person mentioned in it, perhaps with a vague idea of reference to Section 32. No part of that section can make any statement of a date in such a document a relevant fact. (*Hallifax, A.J.C.*). SHANKARGIR *v* CHINNUJI. **71 I. C. 140=6 N.L.J. 1=A.I.R. 1923 Nag. 164.**

—S. 32—Interested statement.

———*Statements in a will.*

Statements in a will of an interested party in the disputes who was then taking a position adverse to another cannot be regarded as evidence against the other and are inadmissible even though the testator is dead. (*Sir John Edge*). HARI BAKHSH *v.* BABU LAL. **83 I.C. 418=22 A.L.J. 254=34 M.L.T. 70=5 Lah. 92=5 L.R.P.C. 113=51 I. A. 163=28 C.W.N. 953=1924 M.W.N. 650=20 M.L.W. 406=26 Bom. L.R. 1108=A.I.R. 1924 P.C. 126=47 M.L.J. 938 (P.C.).**

—S. 32—Ordinary course of business.

———Rent suit by landlord—Account books from the landlord's *sherista* tendered in evidence and admitted under S. 32 (2)—The fact that they were made in the absence of and without the assent of the tenants and were uncorroborated is not sufficient ground to consider them as of no value. 28 Bom. 294; 16 C. L. J. 24; 16 C. L. J. 328 and 47 Cal. 266, *Ref.* (*Page and Graham, JJ.*). MAN MOHAN PANDEY *v.* HARI NATH. **110 I.C. 338=47 C.L.J. 457=A.I.R. 1928 Cal. 408.**

———A receipt, stating the disputed property as one of the boundaries to an adjacent plot, executed by a deceased person in the ordinary course of business and consisting of an acknowledgment written or signed by him of the receipt of money, is admissible in evidence under S. 32, and not under S. 13: 19 C.W.N. 468 and A.I.R. 1922 Cal. 251, *Dist.* (*Pullan, J.*). AHMAD SHAJI *v.* JAMAL AHMAD. **113 I.C. 414=5 O.W.N. 174=A.I.R. 1928 Oudh 248.**

———Post mortem *report.*

Where the Civil surgeon who conducted the *post mortem* examination had since died.

Held, that the *post mortem* report would be admissible under S. 32 (2) of the Evidence Act as being a statement made by a dead person in the ordinary course of business and in the discharge of his professional duty. (*Sulaiman and Mukerji, JJ.*). MOHAN SINGH *v.* EMPEROR. **85 I.C. 647=26 Cr.L. J. 551=6 L.R.A.Cr. 49=A.I.R. 1925 All. 413.**

———*Account books—Entries in relevancy.*

But where the persons making the entries are dead these entries are relevant under S. 32, sub-Section (2) of the Indian Evidence Act and the entries which are relevant also under S. 32, sub-Section (2) are in law sufficient evidence in themselves, and do not as in the case of entries admissible only under S. 34, require corroboration. (*Shadi Lal, C.J.*). Mt. RANI *v.* FIRM BAHADUR MAL FAKIR CHAND. **63 I .C. 946=4 Lah. L. J. 86=A.I.R.1922 Lah. 119.**

EVIDENCE ACT (1872), S. 32—Ordinary course of business.

———An endorsement of the deceased scribe of a document after the mark of the executant, that it was his mark, is admissible. (*Mitra, Offg. A. J. C.*). MT. LAHANI *v.* BALA. **77 I. C. 798= 18 N. L. R. 85=A. I. R. 1922 Nag. 227.**

———Entries made in the diary of a deceased illiterate *chaukidar* not by the *chaukidar* himself but by other persons at his instance are not admissible under S. 32 (2) of the Evidence Act. 2 P.L.J. 42, *Foll.* (*Das and Adami, JJ.*). CHANCHAMA KUAR *v.* RAM GAYAN. **67 I.C. 57= A. I. R. 1922 Pat. 111.**

—S. 32—Panda's register.

———Entries in the books of priests at places of pilgrimage visited by Hindus are admissible for proving relationship under S. 32. (*Addison and Bhide, JJ.*). BALAK RAM, HIGH SCHOOL, PANIPAT *v.* NANU MAL. **31 P.L.R. 509= A.I.R. 1930 Lah. 579.**

———The statement contained in a deceased priest's bahi regarding the relationship by blood between persons deceased, before the question in dispute arose, is admissible in evidence under Cl. (6). 15 I. C. 625, *Rel. on*; 30 All. 510 (P.C.), *Dist.* (*Campbell, J.*). AMRITSARIA *v.* PRABH DIAL. **89 I. C. 989=A.I.R. 1926 Lah. 157.**

———The papers, books and statement of a *panda* are admissible under S. 32 to prove relationship. (*Harrison and Zafar Ali, JJ.*). BURA *v.* NANAK. **84 I.C. 912=6 L.L.J. 550=A.I.R. 1925 Lah. 281.**

———Entries in the Purohit book are admissible to prove the relationship between parties. (*Broadway and Moti Sagar, JJ.*). KARTAR SINGH *v.* KIRPA SINGH. **30 P. L. R. 1922=3 P.W.R. 1922= A.I.R. 1921 Lah. 380.**

—S. 32—Pedigree.

———*Settlement pedigree.*

A settlement pedigree is admissible in evidence under S. 32, Cl. (5) if it be shown that it amounts to the statements of deceased persons, who were the members of the family and as such had special means of knowledge and further that these statements were made before there was any controversy as to the point, which is sought to be established by the said pedigree. 8 O. L. J. 327; 1 O.L.J. 447; 19 O. C. 321 and A.I.R. 1926 Oudh 101, *Appl.* (*Misra and Nanavutty, JJ.*). SARFARAZ KHAN *v.* MT. RAJANA. **112 I. C. 834= 4 Luck. 39=6 O. W. N. 1285= A.I.R. 1929 Oudh 129.**

———Pedigree satisfying conditions of Ss. 32 (6) and 90—Relationship as given corroborated—Presumption as to its genuineness ought to be made. 37 All. 600; A. I. R. 1921 Nag. 49 and A.I.R. 1925 Nag. 271, *Rel. on.* (*Kinkhede, A.J.C.*). JAGDEO *v.* VITHOBA. **105 I, C. 81= A.I. R. 1928 Nag. 20.**

———*"Family pedigree"—Construction.*

The word "family pedigree" in Cl. 6 should not be construed according to the standard adopted by Courts of England in regard to pedigrees of English families. Peoples of India and peoples of England widely differ in their habits of thought, modes of expression and indeed in their entire system of family life.

Where a pedigree brings one down from the remotest ancestor to the generations living contemporaneously with a person in whose time it is prepared, the document is a record of family traditions as to pedigree and of the existence of persons contemporaneously alive. The authenticity of that part

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of the record which embraces the names of persons who existed before the living memory rests on the absence of anything showing directly or inferentially that the pedigree was prepared with any motive other than the natural motive of preparing and preserving a record of family traditions relating to the family pedigree. Such a pedigree is admissible in evidence. 30 All. 510 (P. C.), *Dist.*; 14 Cal. 296, *Ref.* (*Stuart, C. J. and Wazir Hasan, J.*). JANG BAHADUR *v.* AGAN SINGH. **110 I. C. 466=3 Luck. 256=1 L. C. 700= A.I.R. 1928 Oudh 125.**

———Pedigree Tables are inadmissible unless the persons who made them are proved to be dead or incapable of giving evidence. (*Campbell, J.*). MEHR DAD *v.* MUHAMMAD ALI SHAH. **84 I.C. 927= 6 L.L.J. 299=A.I.R. 1925 Lah. 63.**

———*"Family pedigree" need not necessarily be ancient family record handed down from generation to generation.*

The ruling of the Privy Council in 30 All. 510 does not compel the conclusion that "family pedigree" as used in S. 32 (6) is confined to a document coming strictly within the description contained in that ruling, *viz*,, "an ancient family record handed down from generation to generation and added to as a member of the family dies or is born."

A genealogical tree was received by the witness, a member of the family from his deceased father with whom he had seen it 20 years ago. The witness did not know who wrote it and when.

Held, that the document would be admissible under S. 32 (6) or at least, as the declaration of the witness's deceased father who must be taken to have adopted it. (*Kotval, A.J. C.*). NAMDEO *v.* GANOBA. **86 I. C. 847=8 N.L.J. 29= A.I.R. 1925 Nag. 271.**

———Genealogical tree merely copied by the dead person from an old one is inadmissible. (*Das and Macpherson, JJ.*). JHOBALI RAI *v.* SAKHI RAI. **79 I. C. 335=1923 P.H.C.C. 266= A.I.R. 1923 Pat. 585.**

———Family pedigree writer need not have special means of knowledge. (*Drake-Brockman, A.J.C.*). LAHANU *v.* MOTIRAM. **63 I.C. 968= 4 N.L.J. 33=A.I.R. 1921 Nag. 49.**

———The words "family pedigree" in Cl. (6) do not necessarily include only such a pedigree as is in the possession of a member of the family concerned. (*Drake-Brockman, A.J.C.*). LAHANU *v.* MOTIRAM. **63 I.C. 968=4 N.L.J. 33= A.I.R. 1921 Nag. 49.**

—S. 32—Pedigree table.

———Entries made in the pedigree table prepared at the time of the Settlement under instructions legally issued under the Land Revenue Act giving the history of the Land in respect of which a suit is brought is not inadmissible in evidence. A. I. R. 1928 Lah. 214, *Foll.* (*Jai Lal, J.*). SADAR ALI *v.* ALI MOHAMMAD. **110 I.C. 710= 10 L.L.J. 237=29 P.L.R. 678.**

—S. 32—Previous statement.

———Evidence recorded for the purposes of proceedings under the Fugitive Offenders Act can be admissible under Ss. 32 and 33 of Evidence Act in proceedings under Penal Code against the same accused. (*Wild, J. C. and Aston, A. J. C.*). E. C. D. WHEELER *v.* EMPEROR. **112 I.C. 673= 29 Cr.L.J. 1089=A.I.R. 1928 Sind 161.**

———Statements that the testator had no power to make a will, contained in an objection filed in a

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Probate case are not admissible in another proceeding to show that one of the members of the family had admitted the existence in the family of prohibition on testamentary disposition. (*N. R. Chatterjee and Chotzner, JJ.*). PROTAP CHANDRA DEO DHANBAL DEB *v.* SRI RAJA JAGADISH CHANDRA DEO DHANBAL DEB. **82 I. C. 886=40 C. L. J. 331=A.I.R. 1925 Cal. 116.**

———When the conditions prescribed by S. 32 do not exist, a plaint filed in a rent suit is not admissible to prove a statement made by the superior landlord. (*Mookerjee and Suhrawardy, JJ.*). LAKSHAN CHANDRA MANDAL *v.* TAKIM DHALI. **80 I. C. 357=39 C. L. J. 90=28 C.W.N. 1033=A.I.R. 1924 Cal. 558.**

———Statements made by insolvents under S. 27, sub-S. (1) of the Presidency Towns Insolvency Act cannot be received in evidence in a subsequent suit brought by their creditors against them. Sections 32 and 33 of the Evidence Act are of no avail. The omission to object through mistake to the acceptance of such evidence does not make it legally admissible. *In re Brunner*, (1887) 19 Q. B.D. 572; 19 All. 76; 23 I.A. 106 (P.C.), *Ref. to.* (*Mookerjee and Buckland, JJ.*). LUCHIRAM MOTIRAM BOID *v.* RADHA CHARAN PODDAR. **66 I. C. 15=49 Cal. 93=34 C. L. J. 107=A.I.R. 1922 Cal. 267.**

—S. 32—Public interest.

———Declarations made *ante litem motam* by persons who are now dead in respect of a question relating to a matter of general or public interest, even if they be no more than evidence of reputation or hearsay evidence, are admissible. (*Rankin, C. J. and Mukerji, J.*). BUSOID *v.* NEWAJ AHMED KHAN. **119 I.C. 116=33 C.W.N. 439=A.I.R. 1929 Cal. 533.**

—S. 32—Recitals.

———*Recitals in compromise not stating the previous rights are not admissible.*

Where there were no recitals in the consent decree as to the previous rights of the respective parties in the subject-matter of the litigation but it was stated at the outset that, regardless of the rights of the parties, they had come to an arrangement that in future their rights would be regulated in the manner specified in the decree,

Held, that such recitals in the decree cannot be used as evidence under S. 32. (*Mukerjee and Rankin, JJ.*). JAGADISH CHANDRA DE *v.* HARIHAR DE. **78 I.C. 219=40 C L.J. 39=A. I. R. 1924 Cal. 1042.**

—S. 32—Relationship.

———Statements made by a person who is dead as to the name of her mother and other relations (except her husband) are admissible under S. 32 (5) in a charge under S. 368, I. P. C. (*Aston, A. J. C.*). WAHID BUX *v.* EMPEROR. **120 I C. 81=1929 Cr. C. 678=30 Cr. L. J. 1121=A.I.R. 1929 Sind 250.**

———*Mere hearsay evidence about relationship of parties is not admissible.*

Where the witnesses gave no pedigree table but stated vaguely that they were related to the parties and, therefore, knew that the parties were related in the fifth degree, and as regards their personal knowledge they referred to their previous conduct in attending certain ceremonies described as *oos moos* where the attendance of persons other than relatives is possible, and further stated that they heard there the bhats reciting the pedigree table,

Held, that the statements were not admissible for proving agnate relationship. 32 Cal. 84 (P.C.); A.I.R. 1922 P.C. 139; 39 Cal. 492 (P.C.); 26 I.C. 110 and 26 All. 581, *Ref. to.* (*Dalip Singh, J.*). MOHAN LAL *v.* MT. TULSAN. **109 I.C. 774=A.I.R. 1928 Lah. 824.**

EVIDENCE ACT (1872), S. 32—Revenue papers.

———A statement by a deceased person as to the existence of relationship, the person having special means of knowledge, and the statement being made before the legitimacy of a certain person was called in question, is admissible in evidence. (*Stuart, C.J. and Raza, J.*). RAJ FATEH SINGH *v.* BALDEO SINGH. **109 I. C. 310=3 Luck. 416=5 O.W.N. 143=A. I. R. 1928 Oudh 233.**

———Statement in a previous suit admitting relationship by a person who is dead is admissible in a subsequent suit, not under S. 33 but under S. 32 (5). (*Ross and Wort, JJ.*). GOKHUL PANDE *v.* BALDEO SUKUL. **105 I.C.26=7 Pat. 90=9 P. L. T. 180=A.I.R. 1928 Pat. 113.**

———*Obiter.*—Very liberal interpretation should be given to the words "when the statement relates to the existence of any relationship by blood-relations."

Statements made by deceased members of the family about certain facts of family history and statements regarding the seniority of members of the family are admissible in evidence under S. 32, Cl. (5) of the Evidence Act, (*King, J.*). KRISHNOPAL SINGH *v.* SRI RAJ KAUR. **104 I. C. 299=1 L. C. 97=A.I.R. 1927 Oudh 278.**

———Statement by testator that beneficiary is his adopted son—Suit for declaration of adoption—Statement can be used. A. I. R. 1922 P. C. 102 (P. C.); 26 C. W. N. 772 and 22 Cal. 843 (P. C.), *Dist.*; 40 Cal. 555, *Ref.* (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I. C. 289=5 Pat. 777=8 P. L. T. 510=A.I.R. 1927 Pat. 61.**

———Illustration (*k*) to S. 32 does not indicate that a declaration by a son as to his parentage would not be admissible in evidence. (*Dalal, J. C.*). SANTU *v.* TARA. **85 I.C. 407=A.I.R. 1925 Oudh 537.**

———The dispute between the parties was whether the defendant *S* was or was not the mother of one *K*, deceased. At the trial a document executed by one *M* was put in evidence by the defendant. This document was a deed of gift in which the donor had described *K* as her grandson, and if he were her grandson the presumption was that he was the son of *S* as she was the daughter of *M*.

Held, that the document was not admissible under S. 32 because *M* was still alive and there was no other section of the Evidence Act which would make a statement by a person not a party to the suit admissible in evidence in the circumstances of the case. (*Dawson-Miller, C. J. and Mullick, J.*). SUMITRA KUER *v.* RAM KHAIR CHOWBEY. **1921 P. H. C. C. 17=A. I. R. 1921 Pat. 61.**

—S. 32—Revenue papers.

———The hudabandi papers are admissible under S. 32. 16 C.L.J. 328, *Expl.*; A.I.R. 1927 Cal. 855, *Rel. on.* (*Cuming and Mukerji, JJ.*). GOPESWER SEN *v.* BIJOYCHAND MAHATAB. **108 I.C. 883=55 Cal. 1167=32 C.W.N. 580=A.I.R 1928 Cal. 854.**

———*Jamawasilbaki and jamabandi papers are admissible.*

Jamawasilbaki and jamabandi papers can be admitted in evidence under S. 32 (2), but it must be clear that the persons who made them are dead and that the papers were made in the ordinary

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course of business. The entry as to the rate of rent cannot be distinguished from other entries in the jamawasilbaki papers as being entries not made in the ordinary course of business. 25 C.W.N. 204 and 47 Cal. 266, *Appl.* (*Suhrawardy and Duval, JJ.*). DUKHU MIA *v.* JAGDISH NATH.
90 I.C. 564=A.I.R. 1926 Cal. 359.

———A statement that certain land is in the *khas* possession of the landlord is of doubtful accuracy and ought not to be used in his favour when made in a Return by invoking the aid of S. 32 of the Evidence Act or some other adjective law. (*Suhrawardy and Chotzner, JJ.*). CHANDRA MOHAN MAITI *v.* KINARAM MAITI.
79 I.C. 412=A.I.R. 1925 Cal. 408.

—S. 32—Scope.

———Section 32 of the Indian Evidence Act is much wider than the Common Law-Rule in England. (*Ross and Wort, JJ.*). GOKUL PANDE *v.* BALDEO SUKUL. **105 I.C. 26=7 Pat. 90=9 P.L.T. 180=A.I.R. 1928 Pat. 113.**

———*Statement must relate to the injuries by which death was caused.*

The sub-section applies to the class of statements made by a dying person as to the injuries which have brought him or her to that condition, or her circumstances under which those injuries came to be inflicted. The rule as to the admissibility of evidence under S. 32 (1) has worked ill in India. (*Broadway and Fforde, JJ.*). AUTAR SINGH *v.* THE CROWN. **81 I.C. 964=4 Lah. 451=25 Cr. L.J. 1140=A.I.R. 1924 Lah. 253.**

———Per *Mukerji, J.*—The only material difference as between an entry relevant under S. 34, and one relevant under S. 32, Cl. (2), is that in the former case the person who made the entry may be available as a witness, while in the latter case he is not. Such entries, no matter whether they are relevant under one or the other section are not to be considered as alone sufficient to charge any person with liability. 28 Bom. 294; 10 Bom. L.R. 811; 16 C.L.J. 24 and 16 C.L.J. 328, *Doubted.* (*Cuming and Mukherji, JJ.*). GOPESWAR SEN *v.* BIJOYCHAND. **108 I.C. 883=55 Cal. 1167=32 C. W.N. 580=A.I.R. 1928 Cal. 854.**

———Section 32, Cl. (3) does not make the statement in a document between third parties admissible against a party in suit. 41 Bom. 300 (P.C.), *Rel. on. Case-law discussed.* (*Suhrawardy and Graham, JJ.*). BROJO MOHAN DAS *v.* GAYA PROSAD. **97 I.C. 265=45 C.L.J. 55=30 C.W.N. 761=A.I.R. 1926 Cal. 948.**

—S. 32—Special means of knowledge.

———*Evidence—Admissibility.*

Where evidence to support immigration of a Hindu family from one province into another is of witnesses who have heard about it from deceased members of the family, it is inadmissible. Clauses (5) and (6) of S. 32, Evidence Act, do not apply to it. (*Jackson and Mohiuddin, A.J.Cs.*). RAMCHANDRA *v.* RAMABAI. **123 I.C. 907=A.I.R. 1930 Nag. 267.**

———*Statement of a* qanungo *about relationship between a taluqdar's branch and another taluqdar's branch is admissible.*

A *qanungo* of the taluqdar must be presumed to have special means of knowledge as to the relationship between the different branches of the taluqdar. In the character of a *qanungo*, it is his duty to furnish information to the Settlement Court on questions relating to title and his statement is recorded by the Settlement Officer in the discharge of the official duty. (*Stuart, C.J. and Wasir Hasan, J.*). HARIHAR PRATAB BAKHSH SINGH *v.* BISHESHWAR BAKHSH SINGH. **109 I. C. 422=3 Luck. 326=5 O. W. N. 299=A.I.R. 1928 Oudh 307.**

EVIDENCE ACT (1872), S. 32 — Statements against interest.

———Pedigree—Proof of special means of knowledge necessary before admission of pedigree—Relationship far removed in degree—Presumption of special means of knowledge does not exist. (*Lyle, A.J.C.*). BHIMA SINGH *v.* MT. SUNDAR.
69 I. C. 421=9 O. L. J. 186=26 O.C. 109=A. I. R. 1922 Oudh 218.

———A person's statement about his being the adopted son of a particular person—Adoption taken place when he was very young—He should still be regarded as having "special means of knowledge." 32 Cal. 84 (P.C.), *Rel. on.* (*Drake-Brockman, J.C.*). GULAB THAKUR *v.* FADALI.
68 I.C. 566=A. I. R. 1921 Nag. 153.

—S. 32—Statement after dispute.

———Statement made after a dispute has arisen is not admissible. (*Sulaiman and Banerji, JJ.*). RUP KISHORE *v.* PATRANI. **25 A.L.J. 861=A.I.R. 1927 All. 818.**

—S. 32—Statements against interest.

———*Application of S.* 32 (3) *to detrimental statement of Hindu widow desiring to adopt.*

The principle upon which statements coming under S. 32 (3) are regarded as admissible in evidence is that in the ordinary course of affairs a person is not likely to make a statement to his own detriment unless it is true. But this sanction is of no use in the case of a Hindu widow who, after a lifelong enjoyment of her husband's property, desires at the end to pass it on to her relations, and for this purpose goes through the form of adopting her brother's grandson, to effectuate which she is bound to allege authority from her husband. (*Lord Buckmaster.*) DAL BAHADUR SINGH *v.* BIJAI BAHADUR SINGH. **122 I.C. 8=1930 A. L. J. 122=7 O. W. N. 295=34 C.W.N. 369=32 Bom. L.R. 487=51 C.L.J. 230=57 I.A. 14=52 All. 1=A.I.R. 1930 P.C. 79=58 M.L.J. 446 (P.C.).**

———Dispute regarding nature of land—Recitals in sale-deeds in favour of one party to suit showing nature of same land are admissible under S. 32. 11 A.L.J. 139, *Rel. on*; 23 Bom. 63; 16 C.W.N. 252; 17 C.W.N. 108; A.I.R. 1924 Cal. 1067; 45 Cal. 159 and A.I.R. 1922 Cal. 251, *Ref.* (*Sulaiman and Kendall, JJ.*). TIKA RAM *v.* MOTI LAL.
1930 A.L.J. 564=A.I.R. 1930 All. 299.

———Where a person sentenced to death for murder makes a statement to a Magistrate about the time of his being hanged that the approver appointed to give evidence in the case, who had previously retracted his confessions, was not involved in the crime, the statement may be admissible under S. 32 (3). A. I. R. 1925 P. C. 52, *Rel. on.* (*Findlay, J. C. and Subhedar, A.J.C.*). SHEIKH SHAFI *v.* EMPEROR. **124 I.C. 459=A.I.R. 1930 Nag. 259.**

———(*Obiter.*)—Where the question, whether there was partition between the ancestors of the parties or not, is in issue, the statements made by the deceased ancestors of the parties to the effect that there was partition are admissible in evidence as they are statements against the proprietary interest of the persons making them. (*Mohiuddin and Jackson, A. J. Cs.*). JAITARAM *v.* NAROTTAM.
A.I.R. 1929 Nag. 131.

———Under S. 32 (3) it is the statement and not the document containing the statement which

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must be against the proprietary interest of the person making it. 1910 M. W. N. 668 and 1914 M.W.N. 779, *Foll.*; 22 W. R. 231, *Diss. from.*

Parties making statements which are not material to their interests have no occasion to be accurate. It is for this reason that a statement to be admissible must be against the interest of the person making the same. (*Jackson, J.*). KARUPPANNA KONAR *v.* RANGASWAMI KONAR. **107 I C. 293= A.I.R. 1928 Mad. 105.**

———The statement by a person since dead that certain lands lie on the boundary of the land forming the subject-matter of the document cannot be regarded as having been made against the pecuniary interest of the person making it under S. 32 (3). A.I.R. 1926 Cal. 948, *Foll.* (*Duval and Mitter, JJ.*). KUMUDA KUMARI *v.* DILSOOK ROY. **101 I.C. 542=45 C.L.J. 138= A. I. R. 1927 Cal. 918.**

———*Evidentiary value of.*

So far as a statement against the pecuniary or proprietary or other interest of the person making it is concerned, such statement may be given in evidence against third persons, provided that the reference to such third persons is not foreign to that portion of the statement which is against the interest of the declarant. But although the whole statement of a deceased person is admissible in evidence, the value which the Court will attach to such evidence will depend in each case upon a variety of circumstances. If the statement happens to be recorded in a document it must naturally possess greater value than when it depends upon the evidence of a witness who purports to have heard it. The Court in each case will also have to consider whether or not the statement in question bears on its face the appearances of truth, also the circumstances under which it came to be made, and whether or not the deceased person had a motive in making it or an object in naming the particular person whom he charges with complicity in the crime in question. These are all matters which affect the weight of the evidence and not its admissibility. (*Shadi Lal, C. J. and Fforde, J.*). MOHAMMAD *v.* EMPEROR. **89 I.C. 252=26 Cr. L.J. 1308= A. I. R. 1926 Lah. 54.**

———An admission against interest by a Hindu widow that she borrowed a loan for a particular purpose cannot be split up into two parts making one part admissible and the other inadmissible, but must be admitted as a whole for the purpose of ascertaining the purpose and nature of the loan under S. 32. (*Dawson Miller, C. J. and Macpherson, J.*). SITA RAM SINGH *v.* KHUBLAL SINGH. **94 I. C. 13=5 Pat. 168=7 P. L. T. 573= A.I.R. 1926 Pat. 255.**

———Statement in sale-deed that a certain sum is due from the executant thereof on account of a promissory note executed by him is admissible for controverting the presumption that a promissory note is executed for consideration and showing that only a part of the consideration really passed. (*Stuart and Mukherji, JJ.*). KALYAN RAI *v.* JAGANNATH. **78 I. C. 1033= A. I. R. 1925 All. 130.**

———Attesting with knowledge a document showing that the ancestors have no interest in the land passed by the documents, amounts to a statement against interest and is admissible under S. 32.

EVIDENCE ACT (1872), S. 32—Miscellaneous.

(*Odgers and Hughes, JJ.*). GNANAMUTHU NADAN *v.* VEILUKANDA NADATHI. **79 I. C. 2= 19 M.L.W. 494=1924 M. W. N. 451= A.I.R. 1924 Mad. 542.**

———*Statement by members of a community regarding rule of succession is admissible.*

A statement by some members of the Rajgond community that amongst Rajgonds a son takes interest by birth is a statement against the proprietary interest of the declarant and therefore is clearly admissible in evidence under S. 32 (3). (*Kinkhede, A. J. C.*). RAMNATH *v.* SUKALSI. **78 I. C. 185=A. I. R. 1924 Nag. 330.**

———Declarations made by persons in disparagement of title to land, if made whilst in actual possession, are admissible in evidence under S. 32 (3) of the Evidence Act. (*Fawcett and Raymond, J. Cs.*). RAMDAS *v.* AJUDHIADAS. **63 I. C. 685= 14 S. L. R. 137.**

—S. 32—Unreasonable delay or expense.

———In a case in Madras, the mere fact that a witness happens to live at Rangoon is not a ground for holding that his evidence cannot be procured without unreasonable delay or expense. (*Venkatasubba Rao and Srinivasa Ayyangar, JJ.*). KANDAPPA CHETTI *v.* TIRUPATHI CHETTY. **86 I.C. 576=21 M.L.W. 210=A.I.R. 1925 Mad. 444.**

—S. 32—Verbal statements.

———*Questions with answers by signs owing to throat being cut are admissible under Cl.* (5).

Where the man's throat had been cut and he could not speak but he was said to have replied to the questions put to him by means of signs,

Held, that the questions put to the deceased and the signs made by him taken together might properly be regarded as "verbal statements" made by a person as to the cause of his death within the meaning of S. 32. 7 All. 385 (F.B.); 1922 Cal. 402, *Foll.* (*Scott-Smith and Fforde, JJ.*). RANGA *v.* THE CROWN. **84 I.C. 552=5 Lah. 305= 26 Cr. L. J. 328=A.I.R. 1924 Lah. 581.**

———Signs made by the deceased in answer to questions amount to 'a verbal statement.' (*Newbould and Ghose, JJ.*). EMPEROR *v.* SADHU CHARAN DAS. **77 I.C. 993=49 Cal. 600=26 C.W.N. 414= 25 Cr. L.J. 529=A.I.R. 1922 Cal. 409.**

———Gestures by the person murdered are relevant but not their interpretation by witnesses present. (*Coutts and Ross, JJ.*). CHANDRIKA RAM KAHAR *v.* EMPEROR. **71 I.C. 353=1 Pat. L.R.Cr. 77= 24 Cr.L.J. 129=1 Pat. 401= 3 P.L.T. 779=1923 P.H.C.C. 26= A.I.R. 1922 Pat. 535.**

—S. 32—Miscellaneous.

———The statement that a document is a copy of the original is admissible where made by a deceased person in a document relating to a relevant fact and also as an admission under S. 21. (*Lord Atkin.*) V. SEETHAYYA *v.* P. SUBRAMANYA. **117 I.C. 507=33 C.W.N. 578= 52 Mad. 453=29 M.L.W. 804= 31 Bom. L.R. 756=49 C.L.J. 566= 56 I.A. 146=1929 M.W.N. 553= A.I.R. 1929 P.C. 115=56 M.L.J. 730 (P. C.).**

———Statements of living persons not examined as witnesses are inadmissible in evidence to prove the allegation that the executant was a major at the time when he executed the document. (*Gokaran Nath Misra and Pullan, JJ.*). MUNNALAL *v.* KAMESHARI DAT. **114 I.C. 801= 5 O.W.N. 1111=A.I.R. 1929 Oudh 113.**

———In the absence of proof of some fact within S. 32, what the appellate Court has to do is to find

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whether or not there was any real contention that the writer was still alive and if so grant a remand. (*Rankin, C.J. and Mitter, J.*). JONAB BISWAS *v.* SEVA KUMARI DEBI. **104 I.C. 733= 46 C.L.J. 253=A.I.R. 1927 Cal. 855.**

———A statement made by deceased as to who will be his successor in case of his failure to have a son is inadmissible in evidence under S. 32. (*N.R. Chatterjee and Panton, JJ.*). PRYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I.C. 385= 42 C.L.J. 280=A. I. R. 1926 Cal. 1.**

———Statements of deceased persons are admissible under S. 32 if certain conditions are fulfilled. The statements in a deceased person's will as to the time when a certain member of the family left the house or as to the restriction imposed upon him by a will of a pre-deceased person do not fall within any of the clauses of S. 32. 44 Bom. 192, *Ref.* (*Kincaid, J.C. and Raymond, A.J.C.*). MT. BHAGHARI *v.* MT. KHATUND. **80 I.C. 118= 16 S.L.R. 25=A.I.R. 1921 Sind 177.**

—S. 33—Admissibility of depositions.

———It is necessary that under S. 33 of the Evidence Act the Judge must be satisfied that the evidence is admissible on the materials before him, namely, on the ground that the witness whose deposition is attempted to be put in was not or could not be found or had been won over by the adverse party or otherwise incapable of giving evidence.

A verbal application made by the Public Prosecutor for admission of evidence of a particular witness under S. 33, Evidence Act, is not by itself a sufficient ground for admitting that evidence. 20 W.R. 69 (Cr.) and 41 Cal. 601, *Ref.*

The fact that no objection was taken to the reception of evidence of a particular witness on the mere verbal application by the Public Prosecutor or by the defence, does not dispense with the requirements of S. 33, Evidence Act. 39 Mad. 449 and 10 Lah. 837, *Ref.* (*Suhrawardy and Patterson, JJ.*). MOKSHAD SHEIKH *v.* EMPEROR.

1930 Cr. Cases.

———A previous deposition is admissible against the witness on his subsequent trial, unless he has brought himself within the protection of the proviso to S. 132. 39 Cal. 164 and 45 Cal. 720, *Rel. on.* (*Percival, A.J.C.*). EMPEROR *v.* E.C.D. WHEELER. **112 I.C. 50=22 S.L.R. 458= 29 Cr.L.J. 962=A.I.R. 1929 Sind 15.**

———Ejectment proceedings in revenue Court—Suit or possession in civil Court—Evidence in former is not admissible in latter. (*Tek Chand and Agha Haidar, JJ.*). SARU KHAN *v.* JAN MUHAMMAD. **108 I.C. 313=A.I.R. 1928 Lah. 43.**

———Evidence in previous proceedings admitted with pleader's consent—One accused no party to previous proceedings—Admission of evidence is bad. (*Darwood, J.*). ABDUL GAFFOOR *v.* GOVIND PRASAD. **117 I. C. 241=30 Cr. L. J. 736= A. I. R. 1928 Rang. 284.**

———Evidence under Fugitive Offenders Act may be admissible in proceedings under Penal Code. (*Wild, J. C. and Aston, A. J. C.*). E. C. D. WHEELER *v.* EMPEROR. **112 I. C. 673= 29 Cr. L. J. 1089=A. I. R. 1928 Sind 161.**

———C. P. Code, O. 41, R. 27—Statements of witness in proceedings under Lunacy Act, commenced after dismissal of suit between same parties, were admitted at appellate stage. (*Sir John Wallis.*) MAHANT RAI *v.* MT. LACHMINA KUNWAR. **101 I. C. 363=1927 M. W. N. 456= 26 M. L. W. 94=31 C. W. N. 1087=39 M.L.T. 155= A. I. R. 1927 P. C. 123 (P.C.).**

EVIDENCE ACT (1872), S. 33—Condition precedent.

———Where a witness for the prosecution is examined and cross-examined before charge and leaves for England, and after charge the accused requires him to be cross-examined under S. 257, Cr. P. Code, the Magistrate may act under the provisions of S. 33, Evidence Act. (*Maung Ba, J.*). NGA BA ON *v.* EMPEROR. **104 I. C. 637= 6 Bur. L. J. 114=9 A. I. Cr. R. 33= 28 Cr. L J. 861=A. I. R. 1927 Rang. 248.**

———The fact that a witness did not appear when cited or that he was not examined when present is no ground to make his deposition in previous suit admissible. (*Suhrawardy and Mukherji, JJ.*). BRAJABALLAV *v.* AKHOY BAGDI. **93 I. C. 115= 30 C. W. N. 254=A. I. R. 1926 Cal. 705.**

———Where the formalities prescribed in Ch. 25 of Cr. P. Code are not observed in recording evidence, the accused cannot be said to have had opportunity to cross-examine within S. 33. (*Foster, J.*). EMPEROR *v.* PHAGUNIA BHUIAN. **89 I.C. 1043=26 Cr. L.J. 1475= A. I. R. 1926 Pat. 58.**

———Where evidence was given before a committing Magistrate, but in the Sessions Court the witness proves shy and speechless, S. 33 does not apply to the case and the evidence cannot *ipso facto* be treated as evidence at the Sessions. The proper procedure would be to give the prosecution the right to put leading questions under S. 154 and obtain the admission or denial of the truth of the evidence. (*Pipon, J.C.*). MOTI RAM *v.* EMPEROR. **75 I. C. 152=24 Cr. L. J. 904.**

—S. 33—Compliance with section.

———*Strict proof of compliance with the provision is necessary specially in a murder trial—Reasons should be recorded before admission of evidence.*

Per *May Oung, J.*—The power given by S. 33 requires to be exercised with great caution and the Court must insist on strict proof before holding that the requisite conditions have been satisfied. More especially is this necessary where a man is being tried for his life and the evidence sought to be put in is of signal importance. Moreover, it is essential that a Judge or Magistrate admitting such evidence should either in his judgment or preferably in a separate order record his reasons for doing so.

Per *Lentaigne, J.*—The section pre-supposes a consideration of the grounds for admission of the deposition prior to the admission of the evidence and if the grounds and reasons are recorded prior to the admission of the deposition as evidence, the order constitutes a more convincing proof of the considered adequacy of the grounds than a passage in a judgment subsequently written which in a case near the border line might easily assume the appearance of a subsequent statement of excuses for a previous ill-considered action. (*May Oung and Lentaigne, JJ.*). NGA NYO *v.* EMPEROR. **76 I. C. 817=1 Rang. 512=2 Bur. L.J. 205= 25 Cr. L.J.257=A.I.R. 1924 Rang. 209.**

—S. 33—Condition precedent.

———*Strict compliance with requirements essential.*

A previous deposition can be admitted in evidence only under the provisions of S. 33, Evidence Act, but before it can be placed on the record of a criminal trial the Court must decide judicially that a proper effort had been made on behalf of the prosecution to secure the presence of the witness, that in spite of that effort he had not been traced and could not be found out, or that he was incapable of giving evidence, or was kept out of the way by

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the adverse party, or his presence could not be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. 39 Mad. 449; 41 Cal. 601; A.I.R. 1925 Lah. 418, *Foll.*

The fact that the counsel for the accused gave his consent does not make any difference. A.I.R. 1923 Mad. 32, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). GHULAM HAIDAR *v.* EMPEROR.
116 I.C. 329=10 Lah. 837=30 P.L.R. 192=30 Cr. L. J. 623=1929 Cr. C. 85=13 A.I. Cr. R. 34=A.I.R. 1929 Lah. 542.

——Evidence taken in another case is inadmissible unless requirements of S. 33 are satisfied. (*Kanhaiya Lal, J.C.*). DWARKA SINGH *v.* EMPEROR. **74 I. C. 860=25 O C. 142=24 Cr. L.J. 828=A. I. R. 1922 Oudh 254.**

—S. 33—Consent of parties.

——Evidence in a previous proceeding between the same parties can be made admissible in a subsequent proceeding by consent of parties. A.I.R. 1924 All. 845, *Foll.* (*Madhavan Nair, J.*). LAKSHMIDEVAMMA *v.* P. KRISHTIAH. **104 I.C. 518=39 M.L.T. 198=A.I.R. 1927 Mad. 1107.**

——Evidence recorded in a previous judicial proceeding between the same parties can be made admissible in a subsequent proceeding by the consent of both parties. 43 Mad. 699, *Foll.* (*Odgers, J.*). VARADARAJULU CHETTY *v.* VELAYUDA UDAYAN. **90 I.C. 743=22 M.L.W. 230=A. I. R. 1925 Mad. 1160.**

——Conditions imposed by S. 33 may be dispensed with by consent of parties. 24 Bom. 591 and 43 Mad. 609, *Foll.* (*Neave and Daniels, JJ.*). RADHA KISHAN *v.* KEDAR NATH.
80 I. C. 874=46 All. 815=22 A.L.J. 761=5 L.R.A. Civ. 536=A.I.R. 1924 All. 845.

——Strict requirements can be dispensed with by consent of parties. 43 Mad. 609, *Foll.* (*Phillips and Venkatasubba Rao, JJ.*). B. BHAVAMMA *v.* B. RAMAMMA. **78 I. C. 176=19 M. L. W. 205=1924 M. W. N. 270=34 M.L.T. 355=A.I.R. 1924 Mad. 537.**

—S. 33—Death of witness.

——Evidence of a witness, who dies before his cross-examination, is inadmissible. 5 C.W.N. 230, *Foll.* (*Mears, C. J. and Lindsay, J.*). NARSINGH DAS *v.* GOKUL PRASAD.
107 I. C. 243=50 All. 113=25 A.L.J. 775=A. I. R. 1928 All. 140.

——Witness examined in committal proceedings but not cross-examined immediately—Witness dying before Sessions trial—His deposition in committing Court can be admitted in Sessions trial. (*Rankin, C.J. and C.C. Ghose, J.*). AZIMUDDY *v.* EMPEROR. **101 I.C. 661=31 C.W.N. 410=28 Cr. L.J. 485=8 A. I. Cr. R. 134=A.I.R. 1927 Cal. 398.**

—S. 33—Deposition of party.

——Evidence given by defendant as witness in previous suit is admissible as admission—Section 33 does not apply to such case. 14 B.L.R. (App.) 3, *Foll.* (*Chatterjee and Pearson, JJ.*). ALI MAHOMED *v.* MAHARAJ BEPARI. **64 I.C. 266=36 C.L.J. 186= A.I.R. 1921 Cal. 781.**

—S. 33—Different parties.

——A deposition of a witness made in a previous suit cannot be accepted as evidence in any subsequent suit when the witness is still living and more so when the parties to the previous suit are different from the parties to the subsequent suit.

EVIDENCE ACT (1872), S. 33—Parties.

(*Mears, C.J. and Lindsay, J.*). NARSINGH DAS *v.* GOKUL PRASAD. **107 I.C. 243=50 All. 113=25 A.L.J. 775=A.I.R. 1928 All. 140.**

——Statement in a previous suit cannot be used against person who was not a party to previous suit. (*Sulaiman and Banerji, JJ.*). RUP KISHORE *v.* PATRANI. **25 A. L. J. 861=A.I.R. 1927 All. 818.**

——A statement of a witness examined in a case in which only one of the plaintiffs in the subsequent suit was a party, and in which the other plaintiffs were not parties at all, cannot be admitted in evidence against them all. (*Misra, J.*). HARI KISHEN *v.* RAGHUBAR DAYAL. **97 I.C. 853=1 Luck. 489=3 O.W.N. 645=13 O.L.J. 696=A.I.R. 1926 Oudh 578.**

—S. 33—Discretion of Court.

——Application is essentially matter of discretion of Court. (*Rankin, C.J. and C.C. Ghose, J.*). JATI MALI *v.* EMPEROR. **33 C.W.N. 918=1929 Cr.C. 477=A.I.R. 1929 Cal. 765.**

—S. 33—Dying declaration.

——Dying declaration made to Sub-Inspector—Sub-Inspector examined under S. 208, Cr. P. Code but not cross-examined—Sub-Inspector dying before Sessions Trial—Deposition can be admitted in evidence. (*Graham and Lort-Williams, JJ.*). TAFIR PRAMANIK *v.* EMPEROR. **50 C.L.J. 584=1930 Cr.C. 196=A.I.R. 1930 Cal. 228.**

—S. 33—Evidence before Committing Magistrate.

——Where a witness who gives evidence before the Committing Magistrate, leaves the district, the Sessions Judge cannot, without taking evidence to see whether S. 33 of the Evidence Act has been satisfied, admit the evidence given before the Committing Magistrate. (*Scott-Smith and Fforde, JJ.*). KHEM SINGH *v.* EMPEROR. **88 I.C. 30=7 L.L.J. 105=26 Cr.L.J. 1086=26 P.L.R. 458=A.I.R. 1925 Lah. 319.**

—S. 33—Identity of witness.

——To admit certified copy of the deposition of a witness his identity must be proved. (*Suhrawardy and Mukerjee, JJ.*). BRAJABALLAV *v.* AKHOY BAGDI. **93 I.C. 115=30 C.W.N. 254=A.I.R. 1926 Cal. 705.**

—S. 33—Jurisdiction.

——A proceeding before a Judge or Magistrate who has no jurisdiction is *coram non judice* and the evidence of witnesses given in such a proceeding cannot be used under S. 33 on a retrial before a competent Court. (*Campbell and Addison, JJ.*). BUTA SINGH *v.* EMPEROR. **97 I.C. 752=7 Lah. 396=27 Cr.L.J. 1168=27 P.L.R. 447=A.I.R. 1926 Lah. 582.**

—S. 33—Medical practitioner.

—— *Examining the doctor is not an essential condition when a witness is ill.*

Facilities for obtaining qualified doctors in England are very different from those in India, and thus it cannot be accepted as a proposition of law that it is absolutely necessary to examine a qualified medical practitioner before evidence can be accepted under S. 33 of the Evidence Act when the witness is ill and thus unable to attend. (*Suhrawardy and Duval, JJ.*). SHEIKH ALIJAN *v.* EMPEROR. **103 I.C. 846=31 C.W.N. 908=28 Cr.L.J. 766=A.I.R. 1927 Cal. 679.**

—S. 33—"Parties."

——"Parties" in the proviso include parties wrongly impleaded. (*Kotval and Prideaux, A.J.Cs.*). GANGARAM *v.* EMPEROR. **82 I. C. 715=25 Cr.L.J. 1355=A.I.R. 1925 Nag. 172.**

EVIDENCE ACT (1872), S. 33—Representatives-in-interest.

—S. 33—Representatives-in-interest.

——In seeing whether a person is the legal representative of another or not for the purpose of rendering evidence admissible under S. 33, regard must be had to the state of affairs when the evidence is sought to be admitted.

Where the defendant in a subsequent suit was the natural son of the plaintiff in previous suit and claimed in the subsequent suit not as the natural son of the plaintiff but as adopted son of a third person,

Held, that the depositions in the previous suit were not admissible. A.I.R. 1927 Mad. 733, *Appr.* (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR.

116 I.C. 673=51 Mad. 893=28 M.L.W. 422=
A.I.R.1928 Mad. 994=55 M. L. J. 894 (F.B.).

——*Meaning of.*

The words "representatives-in-interest" mean that the parties in the second proceedings in which evidence is tendered must be the representatives-in-interest of the parties in the first proceeding, or in other words should be persons who derive their title through or claim under them, or, shortly, are their privies.

Section 33 cannot be applied without any reference to the subject-matter of the two suits. The interests involved in each case must be the same, or similar. *English and Indian case-law ref. to.* (*Krishnan and Venkatasubba Rao, JJ.*). KRISHNA RAO *v.* RAJA OF PITTAPUR. **102 I.C. 713=**
A. I. R. 1927 Mad. 733.

——*Partners and joint contractors.*

The expression "representatives-in-interest" in proviso to S. 33 must at least include privies in estate. Partners and joint contractors are each other's agents for the purpose of making admissions against each other in relation to partnership transactions or joint contracts and must be regarded as privies in estate and are included in the expression "representatives-in-interest" in proviso to S. 33. (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAYAN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I. C. 289=**
5 Pat. 777=8 P. L. T. 510=A. I. R. 1927 Pat. 61.

—S. 33—Right and opportunity.

——The true reading of S. 33 is that the party had both the right and the opportunity of cross-examining. Mere opportunity to cross-examine is not sufficient. There must also be the right to do so. (*Lord Buckmaster.*) DAL BAHADUR SINGH *v.* BIJAI BAHADUR SINGH. **122 I. C. 8=**
1930 A. L. J. 122=7 O. W. N. 295=
34 C. W. N. 369=32 Bom. L. R. 487=
51 C. L. J. 230=57 I. A. 14=52 All. 1=
A. I. R. 1930 P. C. 79=58 M. L. J. 446 (P.C.).

—S. 33—Scope.

——The general provisions of S. 33 of the Evidence Act are in no way affected by S. 350 of the Cr. P. Code. (*Eforde and Addison, JJ.*). LEKAL *v.* EMPEROR. **101 I. C. 483=8 Lah. 570=**
28 P. L. R. 199=28 Cr. L. J. 461=
8 A. I. Cr. R. 83=A. I. R. 1927 Lah. 332.

—S. 33—Thanedar's statement.

——Copy of statement of *thanedar* in one case is inadmissible to prove loss of property in another case. (*Martineau, J.*). JIWAN SINGH *v.* EMPEROR.
4 L. L. J. 418=A. I. R. 1921 Lah. 332.

—S. 33—Trial de novo.

——Criminal Trial—Evidence—Trial *de novo*—Witnesses not examined *de novo*—Depositions at the previous trial filed—Procedure is illegal—Consent of accused will not cure irregularity. (*Oldfield and Ramesam, JJ.*). K. K. UMMAR HAJI, *In re.*
69 I.C. 636=16 M.L.W. 697=1922 M.W.N. 644=
23 Cr. L. J. 748=46 Mad. 117=
A. I. R. 1923 Mad. 32=43 M. L. J. 659.

EVIDENCE ACT (1872), S. 34—Accounts.

—S. 33—Witness not cross-examined.

——The true reading of S. 33 is that the adverse party in the first proceeding had both the right and the opportunity of cross-examining and not "the right *or* opportunity to cross-examine." Where a Hindu widow made an adoption about fifty years after the alleged power to adopt was given by the husband and it appeared that in certain prior proceeding regarding mutation of names the widow had referred to the power but there was no issue on the point and the Court had disallowed cross-examination regarding the same,

Held, that the previous statement was not admissible in a later suit in which the validity of the adoption was questioned. (*Lord Buckmaster.*) DAL BAHADUR SINGH *v.* BIJAI BAHADUR SINGH.
122 I.C. 8=1930 A.L.J 122=7 O.W.N. 295=
51 C.L.J. 230=52 All. 1=67 I.A. 14=
32 Bom.L.R. 487=34 C.W.N. 369.=
A.I.R. 1930 P.C. 79=58 M.L.J. 446 (P.C.).

——If the cross-examination of a witness is reserved by a Magistrate during committal proceedings of his own accord, that deposition is not complete and should not be admitted in evidence at the trial in the Court of Session. (*Percival, J. C. and Barley, A. J. C.*). EMPEROR *v.* MAHRAL.
120 I. C. 524=1930 Cr. C. 70=31 Cr.L.J. 121=
A.I.R. 1930 Sind 54.

——In a warrant case until the stage provided for in S. 256 is reached the accused has no right to cross-examine and consequently the evidence of a witness given before framing of the charge is not admissible under S. 33. 8 C. W. N. 388, *Ref.* (*Cuming and Lort-Williams, JJ.*). EMPEROR *v.* C. A. MATHEWS. **1929 Cr.C. 669=**
A. I. R. 1929 Cal. 822.

——A witness was examined by prosecution but no cross-examination was put to him and after the charge it was discovered that he was too ill to attend the Court and was unable to answer the interrogatories. The result was that he was never subjected to cross-examination. It was contended that the statement being incomplete his evidence could not be considered.

Held, that such evidence was admissible but the weight to be attached to it depended upon the circumstances of each case. A.I.R. 1925 Mad. 497, *Rel. on.* (*Johnstone, J.*). MANGAL SEN *v.* EMPEROR.
118 I. C. 647=1929 Cr.C. 568=11 L.L.J. 384=
30 Cr.L.J. 951=A. I. R. 1929 Lah. 840.

—S. 34—Absence of entry.

——Evidence that there is no entry in the account books is not admissible under S. 34. (*Mookerjee and Chotzner, JJ.*). TARA KUMAR GHOSE *v.* KUMAR ARUN CHANDRA SINGH. **74 I.C. 383=**
36 C.L.J. 389=A.I.R. 1923 Cal. 261.

—S. 34— "Account book."

——Where the entries are made from day to day but the totalling does not take place every day, this would not make the book any the less an account-book within the meaning of S. 34. (*Mittra, A.J.C.*). NARAYAN *v.* WAMAN. **59 I.C. 121=**
A.I.R. 1921 Nag. 133.

—S. 34—Accounts.

——*Evidentiary value of.*

Where defendant agreed with plaintiff: "You will receive a sum equivalent to 5 per cent. of the net profits (as shown in the books) of the Bombay

EVIDENCE ACT (1872), S. 34—Accounts.

branch of the Bombay Company Limited as accruing from the sales of all goods for which you were salesman, whether on purchase or joint account,"

Held, a plaintiff, who accepts the defendants' books as deciding his rights to some extent, accepts them to that extent (unless he guards himself by apt words) as statements of the right mode of distributing the results of the recorded transactions, and not as a mere repository of figures like a calendar or price list. On the terms of this agreement the books cannot be divorced from the system of book-keeping of which they are the expression. The thing on which the percentage is to be reckoned is the profit of the branch as shown, and in showing a profit the mode of getting at it is as relevant as the final figure. The profit is the profit of the Bombay branch, not of some selected department of that branch, and it is the company's profit. Profits "shown" can only mean profits, which from time to time are, or in the ordinary course of business will be, shown. (*Viscount Sumner.*) KAIKHUSHROO RUSTOMJI WALLACE *v.* THE BOMBAY CO. LTD. **104 I.C. 139=46 C.L.J. 214=1927 M.W.N. 600=29 Bom. L.R. 1367=32 C.W.N. 145=39 M.L.T. 294=A.I.R. 1927 P.C. 210=53 M.L.J. 278 (P.C.).**

—S. 34—Bogus entries.

———Account books are sufficiently discredited if a certain number of entries therein are proved to be bogus by independent evidence which precludes the possibility of error or accident. (*Lord Sinha.*) SETH MAGANMAL *v.* DARBARILAL CHOWDHURY. **107 I.C. 113=24 N.L.R. 40=30 Bom. L.R. 296=47 C.L.J. 222=5 O.W.N. 226=27 M.L.W. 523=A.I.R. 1928 P.C. 39=54 M.L.J. 208 (P.C.).**

—S. 34—Corroboration.

———Under S. 34 of the Evidence Act, relevant entries in account books unless corroborated are not sufficient to fasten liability on a person. (*Sen and Niamatullah, JJ.*). KHUNNI MAL *v.* DWARAKA DAS. **1930 A.L.J. 987=A.I.R. 1930 All. 710.**

———*Statement in books of account may be corroborated by any evidence.*

Section 34 does not limit in any way at all the nature of the material upon which a Court may rely to support the statements in a book of account. Such material may take the shape of contemporary vouchers, receipts or other documentary evidence or of sworn oral testimony. (*Stuart and Boys, JJ.*). KALLU MAL *v.* BHAWANI DAS. **88 I.C. 383=6 L.R. A. Civ. 375=A.I.R. 1925 All. 742.**

———Plaintiff's own statement on oath in support of entries can be sufficient to support the entries in plaintiff's account books to fix the defendant with liability. (*Abdul Raoof, J.*). FIRM GODHA MAL BUDHU MAL *v.* DITTA. **84 I.C. 909=6 L.L.J. 504=A.I.R. 1925 Lah. 242.**

—S. 33—Essentials.

———It is only the account books that are properly kept that are admissible in evidence as relevant. (*Mears, C.J. and Mukerji, J.*). BANKEY BEHARI LAL *v.* BRIJ BEHARI LAL. **116 I.C. 285=51 All. 519=1929 A.L.J. 115=A.I.R. 1929 All. 170.**

—S. 34—Evidentiary value.

———Relevant entries in account books unless corroborated are not sufficient to fasten liability upon a person. (*Sen and Niamatullah, JJ.*). KHUNNI MAL NARAIN DAS *v.* DWARKA DAS BAJI NATH. **1930 A.L.J. 987=A.I.R. 1930 All. 710.**

———Where the plaintiff's account books are the only evidence of the defendant's liability to pay any of the particular sums entered against them the evidence is not conclusive under S. 34, and

EVIDENCE ACT (1872), S. 34—Proof.

plaintiff's suit must fail. (*Campbell, J.*). GANESHI LAL *v.* FIRM MANGAT RAM ATMA RAM. **76 I.C. 157=A.I.R. 1924 Lah. 540.**

———*Entries—Evidence of past transaction is relevant.*

In a suit for the recovery of Rs. 53-12 on the allegations that the defendants had irrigated their fields from the plaintiffs' well and were liable to pay at the rate of Rs. 4 per *bigha* according to an agreement arrived at between the parties,

Held, that the *bahi* entries in plaintiffs' *bahi* showing that the defendants had been paying the water-rate in previous years at the rate demanded by the plaintiffs taken along with the oral evidence produced sufficiently prove the plaintiffs' claim. (*Moti Sagar, J.*). PRABHU DIYAL *v.* RAM CHANDER. **A.I.R. 1923 Lah. 595.**

—S. 34—Hudabandi papers.

———S. 34 does not apply. 16 C. L. J. 328, *Expl.*; A.I.R. 1927 Cal. 855, *Rel. on.* (*Cuming and Mukerji, JJ.*). GOPESWAR SEN *v.* BIJOY CHAND. **108 I.C. 883=55 Cal. 1167=32 C. W. N. 580=A.I.R. 1928 Cal. 854.**

—S. 34—Irregular accounts.

———Accounts prepared at considerable intervals from memory or possibly inadequate materials cannot be treated as proof of the actual income and expenditure of the estate to which they relate although they may be useful in cases where they corroborate other evidence. (*Phillips, Offg. C. J. and Srinivasa Aiyangar, J.*). RAJAGOPALA NAIDU *v.* SUBBAMMAL. **109 I. C. 153=51 Mad. 291=28 M. L. W. 158=A.I.R. 1928 Mad. 180=54 M.L.J. 703.**

—S. 34—Jama wasil baki papers.

———Jama wasil baki papers, in the absence of proof that the writer or the maker of the entries therein at the date of the trial was dead or could not be procured without unreasonable expense or was otherwise such a person as is contemplated by S. 32, merely amount to evidence under S. 34 which in the presence of other substantive evidence may be used as corroborative but which cannot be regarded as proving any fact by itself. (*Rankin, C.J. and Mitter, J.*). JONAB BISWAS *v.* SIVA KUMARI DEBI. **104 I. C. 733=46 C. L. J. 253=A. I. R. 1927 Cal. 855.**

—S. 34—Proof.

———*Necessity of formal proof that books are kept in course of business has been dispensed with.*

Under the old Evidence Act II of 1855, books to be admissible had to be proved to have been regularly kept in course of business. In the later Act I of 1872 the words "proved to have been" have dropped. This amounts to material alteration in the law. The legislature has dispensed with the necessity of any formal proof that the books were kept up in the regular course of business. It is a matter of intrinsic evidence as to whether the books in question were books of account and regularly kept in the regular course of business. The only limitation imposed by the statute is that the statement contained in the account books "shall not alone be sufficient to charge any one with liability." The value of the entries is corroborative and cannot be used as independent evidence to charge any person with liability. 18 All. 92, *Rel. on*; 27 Cal. 118, *Ref.*; 4 Bom. 576, *Dist.* (*Young and Sen, JJ.*). EMPEROR *v.* NARBADA PRASAD. **121 I. C. 819=1930 Cr. C. 54=51 All. 864=31 Cr.L.J. 356=A.I.R. 1930 All. 38.**

EVIDENCE ACT (1872), S. 34—Proof.

———Where there were only the account books and the general statement of the plaintiff that there were dealings between him and defendant.

Held, that the dealings were not proved under S.34, Evidence Act, in absence of evidence of specific sums having been paid. A. I. R. 1924 Lah. 540; A.I.R. 1922 Lah. 338; A. I. R. 1923 Lah. 431 and 82 P.R. 1914, *Foll.* (*Addison, J.*). BUTA *v.* TIRLOKCHAND. **100 I.C. 862= A.I.R. 1927 Lah. 903.**

———*Party producing accounts should prove reliability of each item.*

It is for the party who puts forward the accounts to explain them and support them in such a way as to convince the Judge there is such a probability of their accuracy as to make it reasonable for a prudent man to accept them. 26 Bom. 363, *Foll.*

A mere account book without more does not prove anything. 52 I.C. 704, *Foll.*

The law requires proof not only of account books generally but of each item, that is, in the interest of the person producing the books but with regard to admissions, *i.e.*, entries against the producer's own pecuniary interest, the law dispenses with all proof save that the book has been kept by or under the authority of the producer. (*Odgers and Madhavan Nair, JJ.*). MATHILDA SICE *v.* FRITZ GAEBELE. **96 I.C. 429=23 M.L.W. 272= A.I.R. 1926 Mad. 953.**

———*Entries in account books must be proved by independent evidence.*

Mere entries in books of account are not by themselves sufficient to charge any person with liability. The reason is that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of third parties. There must be independent evidence of the transaction to which the entries relate. (*Wadegaonkar, A.J.C.*). BENI *v.* BISAN DAYAL. **89 I.C. 371=A.I.R. 1925 Nag. 445.**

———Mere production of books of accounts without proof is not sufficient to charge a defendant with liability although it may have been shown that they had been regularly kept in the course of business. 15 C.L.J. 621 and 47 P.L.R. 1914, *Foll.* (*Abdul Raoof and Harrison, JJ.*). ABDUL HAQ *v.* FIRM SHIVJI RAM. **71 I. C. 259= A. I. R. 1922 Lah. 338.**

—S. 34—'Regularly kept.'

———A book of account may be said to be regularly kept, although the book is not entered up from day to day or from hour to hour as the transactions take place. (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I.C. 289= 5 Pat. 777=8 P.L.T. 510=A.I.R 1927 Pat. 61.**

———*Irregularities in keeping account books affect its weight, but not admissibility—Regularly means according to certain rules or system.*

The fact that the entries in an account book are not in chronological order, and that the roznama was written up once a week from memoranda on loose papers, which were destroyed, and that the khataoni was written up once a month, affect the weight of the evidence but not its admissibility.

According to S. 34, regularly or systematically means that the accounts are kept according to a set of rules or a system, whether the accountant has followed the rules or system closely or not. Nor is there anything in the section that says the system must be an elaborate or reliable one. Both those matters, the degree of excellence of the system, and the closeness with which it has been followed, affect the weight of the evidence of an entry, not its admissibility. The roughest memoranda of accounts kept generally according to the most elementary system, though often departing from it, are admissible in evidence, but would of course have no weight. (*Hallifax, A.J.C.*). KESHORAO *v.* GANESH. **95 I.C. 128= A. I. R. 1926 Nag. 407.**

EVIDENCE ACT (1872), S. 35—Birth and death-registers.

—S. 34—Unstamped receipt.

———Where, in an account book kept in the regular course of business copies of all receipts given by plaintiffs are entered, in the usual course, and one of such entries was that of an unstamped receipt, *held*, that nevertheless the entry was admissible under S. 34 of the Act. (*Hallifax, A.J.C.*). CHOUDHURI RAMPRASAD *v.* NATHU RAM. **68 I.C. 494= A.I.R. 1923 Nag. 32.**

—S. 35.

Basis and scope.
Birth and death registers.
Civil Court records.
Guardianship certificate.
Judgments.
Municipal records.
Police records.
Records of custom.
Reports of officers.
Revenue records.
School certificate and registers.
Miscellaneous.

—S. 35—Basis and scope.

———S. 35 covers public documents of Native States or foreign countries. (*Fawcett and Madgavkar, JJ.*). BHANUDAS NARAYANBOA *v.* KRISHNABAI CHINTAMANI. **99 I.C. 307=50 Bom. 716= 28 Bom.L.R. 1225=A.I.R. 1927 Bom. 11.**

———The section is based upon the circumstance that in the case of official documents entries are made in the discharge of public duty by an officer who is authorised and accredited agent appointed for the purpose. The law reposes such a confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity. (*Walmsley and Mukerjee, JJ.*). TARAK CHANDRA CHUCKERBUTTY *v.* PARASANNA KUMAR SAHA. **78 I. C. 719=39 C.L.J. 389= 28 C.W.N. 679=A.I.R. 1924 Cal. 654.**

—S. 35—Birth and death registers.

———Entry in death register may be rejected when used to prove or disprove death on particular day, if register is prepared in casual way. (*Cuming, J.*). KALIPADA DAS KARMAKAR *v.* SASHI BHUSAN MAJHI. **A.I.R. 1930 Cal. 636.**

———*Date of death—Inference of.*

Where the date of death of a person was in question, and a report of death in the kotwal's diary, dated 6th January, 1913, was produced but it did not mention the date of death but the lower Court inferred that the death was within a week of the date of the report,

Held, that the inference drawn by the lower Court was not altogether erroneous or one which could not have been reasonably drawn from facts proved. (*Kinkhede, A. J. C.*). MT. BANI *v.* GANAJI. **103 I.C. 883=A.I.R. 1927 Nag. 326.**

———*Copy of birth register is admissible to prove age.*

Where the original birth register of a particular year was found to have been lost, but a copy thereof, prepared by the public servant whose duty it was to maintain such a register, was found and it was relied upon to show that certain *A* was born in that year and it was also found that the public

EVIDENCE ACT (1872), S. 35—Birth and death-registers.

servant who prepared that copy had died shortly after,

Held, that the copy was admissible. (*Venkatasubba Rao, J.*). CHAKRAVARTHI *v.* PUSHPAVATHI. **95 I.C. 1005=23 M.L.W. 688= A.I.R. 1926 Mad. 985.**

———*Death Register kept in police station is official book.*

The Death Register kept at the police station is an official book and the entries in it are legally admissible. Such a register is an official book, register or record made by a public servant in the discharge of his official duty within the meaning of S. 35 of the Evidence Act, and an entry made therein would, therefore, be itself a relevant fact. 14 O. C. 68, 15 O. C. 321; 19 O. C. 221; 54 I.C. 166, *Dist.*; 46 Cal. 152 and 22 O.C. 124, *Foll.*; 41 Mad. 26, *Ref. to.* (*Sulaiman and Kanhaiya Lal, JJ.*). SHIB DEO MISRA *v.* RAM PRASAD. **87 I.C. 938= 46 All. 637=22 A.L.J. 690=A.I.R. 1925 All. 79.**

———Death register is public document and is ordinarily conclusive of dates of deaths recorded. (*Spencer, Offg. C. J. and Srinivasa Aiyangar, J.*). RANGAPPA NAYAKAR *v.* RANGASAMI NAYAKAR. **88 I.C. 249=1925 M.W.N. 232= A.I.R. 1925 Mad. 1005.**

———Death Register—Entries during Epidemic Season appearing to have been made at one time and not from day to day—Informant not examined —Register is not of much value. (*Shah, Ag. C. J. and Crump, J.*). SHIVA BASAPPABIN LAGMAPPA MANOLI *v.* NILAWA KOM SATAPA MANOLI. **82 I. C .618=24 Bom. L.R.1162= 47 Bom. 110=A.I.R. 1923 Bom. 17.**

———Register of births and deaths—Entry not proved to be in handwriting of choukidar is inadmissible. (*Lindsay and Gokul Prasad, JJ.*). SHEO BALAK *v.* GAYA PRASAD. **77 I.C. 52= 20 A.L.J. 601=A.I.R. 1922 All. 510.**

———Death Register—Prepared during times of Epidemic—Not of much value to prove order of death. (*Macleod, C. J. and Shah, J.*). Y. N. KULKARNI *v.* LAXMIBAI KESHEO GOPAL. **77 I. C. 117=24 Bom. L.R. 836= 47 Bom. 37=A.I.R. 1922 Bom. 347.**

—S. 35—Civil Court records.

———Where a paper book of Calcutta High Court relating to another case was tried to put in evidence in a case in a Patna Court,

Held, in the absence of proof that the papers printed in that book were the true copies of the original documents it could not be admitted. (*Das and Wort, JJ.*). SANTOKHI MANDAR *v.* RAMESHWAR SINGH. **114 I.C. 469=7 Pat. 187= 11 P.L.T.12=A.I.R. 1929 Pat.41.**

———A sale certificate is not a public or other official book, register or record: A.I.R. 1924 Cal. 526; 17 Cal. 849 and 188 All. 478, *Rel. on.* (*Cuming and Mukherji, JJ.*). AMBICA CHARAN *v.* KUMUD MOHUN. **110 I.C. 521= A. I. R. 1928 Cal. 893.**

———Description of property given in a sale proclamation or a sale-certificate does not amount to a statement within the meaning of Ss. 32 and 35. A.I.R. 1922 Mad. 71 (F. B.), *Foll.* (*Cuming and Mukerji, JJ.*). AMBICA CHARAN *v.* KUMUD MOHUN. **110 I.C. 521=A.I.R. 1928 Cal. 893.**

———Process-server's report is inadmissible if he is not examined. (*Jai Lal, J.*). FATEH MUHAMMAD *v.* HAKIM KHAN. **96 I.C. 825= A.I.R. 1926 Lah. 629.**

EVIDENCE ACT (1872), S. 35—Judgments.

———Register of Civil suits—Entry as to disposal of suit is relevant. (*Richardson and Suhrawardy, JJ.*). SARAT CHANDRA DAS *alias* SACHIDANANDA DAS *v.* SM. SAROJINI RUDRAJA. **79 I.C. 257=27 C.W.N. 897= A.I.R. 1924 Cal. 135.**

———An extract from Register of Applications in respect of Minors and Lunatics is inadmissible in evidence on the question of age. (*Das and Ross, JJ.*). GOKHULA NAND *v.* B. BALDEO NARAYAN SINGH. **86 I.C. 681=5 P.L.T. 403= A.I.R. 1924 Pat. 796.**

—S. 35—Guardianship certificate.

———Entry in guardianship certificate is sufficient to prove age of persons. A.I.R. 1926 Oudh 88 and A.I.R. 1929 Oudh 134, *Foll.* (*Stuart, C.J. and Srivastava, J.*). MEHDI ALI *v.* WALAYAT HUSAIN KHAN. **121 I.C. 277=7 O.W.N. 25= A.I.R. 1930 Oudh 97.**

———In the province of Oudh a certificate of guardianship issued by a District Judge to a guardian appointed by him of a particular minor is a record made by a public servant in the discharge of his official duties and an entry in such record is therefore admissible under S. 35: A.I.R. 1926 Oudh 88, *Foll.*; 17 Cal. 849; 18 All. 478 and 5 P.L.J. 460, *Expl.* and *Not foll.* (*Misra and Srivastava, JJ.*). AMEER HASAN *v.* MD. EJAZ HUSAIN. **117 I.C 456=6 O.W.N. 51= A.I.R. 1929 Oudh 134.**

———In the Province of Oudh a District Judge is bound by law to prepare a certificate of guardianship.

Where the guardianship certificate was prepared in the office of the District Judge and signed by the incumbent of the office as required by the rules framed by the Oudh J. C.'s Court under S. 50 (j) of the Guardians and Wards Act:

Held, that it was a public document made by a public servant in the discharge of his official duty and was therefore a record such as is mentioned under S. 35 of the Evidence Act and an entry therein as to the birth of a minor was relevant fact. 17 Cal. 849, *Diss.* (*Dalal and Wazir Hasan, A.J.Cs.*). MOHAN LAL *v.* MOHAMMAD ADIL. **89 I.C.69= 12 O.L.I. 453=2 O.W.N. 601=A.I.R. 1926 Oudh 88.**

———The certificate of guardianship cannot be regarded as evidence of minority under S. 35. (*Mookerjee and Chotzner, JJ.*). HARA KUMAR DAY *v.* JOGENDRA KRISHNA RAY. **71 I.C. 336= 38 C.L.J. 186=A. I. R. 1924 Cal. 526.**

—S. 35—Judgments.

———Recitals in judgment not *inter partes* of relevant fact are not admissible in evidence. A.I.R. 1929 P.C. 99; 20 C.W.N. 643 and A.I.R. 1922 Mad. 71, *Rel. on.* (*Addison, J.*). ASA SINGH *v.* MANOHA RAM. **121 I.C. 509=11 L.L.J. 526= A.I.R. 1930 Lah. 237.**

———Judgments *inter partes* are admissible under S. 35 inasmuch as they form a record of facts in issue made by public servant in the discharge of his official duty. 18 Mad. 73, *Rel. on.* (*Kinkhede, A.J.C.*). GOPAL RAO *v.* SITARAM. **97 I.C. 694= 9 N.L.J. 215=A.I.R. 1927 Nag. 19.**

———Section 35 has no application to judgments. It would be straining the language of S. 35 to hold that a Judge, when he writes a judgment, is making entries in a public or official book, register or record and that every statement made in a judgment is an entry in such book, register or record. 9 Cal. 586, *Dist.* (*Schwabe, C. J., Coutts Trotter and*

EVIDENCE ACT (1872), S. 35 — Municipal records.

Kumaraswami Sastri, JJ.). TRIPURANA SEETHAPATHI RAO DORA *v.* ROKKAIN VENKANNA DORA.
66 I.C. 280=45 Mad. 332=15 M.L.W. 316=1922 M.W.N. 147=30 M.L.T. 160=A.I.R. 1922 Mad. 71=42 M.L.J. 324 (F.B.).

—S. 35—Municipal records.

———*Assessment list prepared by Municipality.*

Although an assessment list prepared by a Municipality is not the final or sole test of the liability of the assessee to pay the particular taxes, there is a presumption that the assessment list was duly published at the time the assessment was made and that after due publication it became final, and if an assesee alleges in the fact of an entry in such a list that an alleged tax was never paid by him or his predecessor-in-interest but by third persons, the burden is on him to prove that it was so realized. (*Scroope, J.*). BHAGALPUR MUNICIPALITY *v.* MAULAVI FAIK. **A.I.R. 1930 Pat. 370.**

———Entry in Register that a well is public is no evidence against owner when owner had no notice of the entry. (*Abdul Raoof and Lumsden, JJ.*). NUR AHMAD KHAN *v.* THE MUNICIPAL COMMITTEE, AMRITSAR. **75 I.C. 896=A.I.R. 1924 Lah. 511.**

—S. 35—Police records.

———Record of First information report is corroborative and not substantive evidence. (*Sulaiman and Mukerjee, JJ.*). MOHAN SINGH *v.* EMPEROR.
85 I.C. 647=26 Cr. L.J. 551=6 L.R.A. Cr. 49=A.I.R. 1925 All. 413.

———*List of suspects drawn up by Police is not admissible.*

Where the question is whether the accused were present at an unlawful meeting, a list of suspects drawn up by the Police at the time is not admissible in evidence and if admissible it proves nothing beyond the fact that the Police expected to find the accused amongst those present. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH *v.* THE CROWN. **88 I.C. 22=7 L.L.J. 264=26 P.L.R. 566=26 Cr. L.J. 1078=A.I.R. 1925 Lah. 299.**

———Police report is admissible under S. 35. (*Banerji and Kendall, JJ.*). MUHAMMAD SALIUM *v.* RAM KUMAR SINGH. **110 I.C. 667=26 A.L.J. 1001=A.I.R. 1928 All. 710.**

—S. 35—Records of custom.

———Entry in the *wajib-ul-arz* is admissible in proof of the custom under S. 35 and its validity does not depend upon the question whether the *wajib-ul-arz* has been verified by the proprietors of the village or not. (*Wazir Hasan, J.*). MEHDI HASAN *v.* ABDUL WAHID. **101 I. C. 820=1 L.C. 73=A.I.R. 1927 Oudh 608.**

———Officer specially deputed to record customs prevailing in a locality—Record by such officer is evidence and is admissible without further proof. (*Mukerji and Daniels, JJ.*). SHYAM LAL SHAH *In re.* **86 I. C. 729=49 All. 848.**
6 L.R. A. Civ. 186=A.I.R. 1925 All. 648.

—S. 35—Reports of officers.

———Official reports regarding the nature of any estate are valuable and in many cases the best evidence of facts stated therein, but opinions therein expressed should not be treated as conclusive in respect of matters requiring judicial determination, however eminent the authors of such reports may be. (*Lord Sinha*). MARTAND RAO *v.* MALHAR RAO. **107 I.C. 7=55 Cal. 403=24 N.L.R. 25=55 I.A. 45=47 C.L.J. 150=30 Bom. L.R. 251=27 M.L.W. 350=32 C.W.N. 621=11 N.L.J. 26=1928 M.W.N. 942=A.I.R. 1928 P.C. 10=54 M.L.J. 397 (P.C.).**

EVIDENCE ACT (1872), S. 35—Revenue records—Batwara papers.

———Correctness of entry on a copy indicating the date on which it was completely challenged—Report of the copyist in an inquiry about its correctness made departmentally is not relevant without the copyist being cited as a witness. 31 All. 457 (P.C.); 24 Mad. 427 and A.I.R. 1923 Mad. 322, *Dist.* (*Tek Chand, J.*). NIZAM DIN *v.* MOHAMMAD IQBAL.
108 I. C. 619=A.I.R. 1928 Lah. 643.

———The result of an inquiry by a kanungo under S. 202, C. P. Code, embodied in the report, is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duty and the report is, as such, admissible in evidence under S. 35, Evidence Act. (*Wazir Hasan, J.*). JAGDAT *v.* SHEO PAL.
104 I.C. 287=1 L.C. 259=A.I.R. 1927 Oudh 323.

———Mr. Taylor's report about the resumability of mokhasas in the Madras Presidency and the Government order thereon are entitled to great weight. A. I. R. 1924 Mad. 589, *Rel. on.* (*Spencer and Odgers, JJ.*). VEERASWAMI *v.* SERTHARAMA.
98 I.C. 65=A.I.R. 1926 Mad. 1089=51 M.L.J. 394.

———The crop cutting report of the Deputy Collector made under S. 40, Bengal Tenancy Act, should be considered a public document and is evidence of the amount of crops produced by the land. 4 Cal. 79, *Rel. on.* (*Adam, J.*). HARGOBIND SINGH *v.* KISHUNDEYAL GOPE. **95 I. C. 966=7 P.L.T 671=A.I.R. 1926 Pat. 436.**

———Government reports have no judicial authority where they express opinions on private rights of parties but they are entitled to great weight so far as they supply information of official proceedings and historical facts. (*Jwala Prasad and Ross, JJ.*). H. MATHEWSON *v.* SECRETARY OF STATE.
84 I.C. 405=3 Pat. 673=A.I.R. 1924 Pat. 616.

———*Reports made in obedience to order of superior officer come within S.* 35.

The Tahsildar made reports in obedience to an order passed by his superior officer and in discharge of his official duty; whether it is a duty enjoined on him by the law of the country to send up these reports or not, he was bound as an officer subordinate to the Deputy Collector to make the report when he was called upon to do so and the report was made as an official report after such enquiries as the Tahsildar could make, and his report was kept on the record of the land acquisition case in the Collector's office.

Held, it comes expressly within the words of S. 35. (*Krishnan and Ramesam, JJ.*). RATHNAMASARI *v.* SECRETARY OF STATE.
72 I.C. 214=17 M.L.W. 415=32 M.L.T. 279=A.I.R. 1923 Mad. 332=44 M.L.J. 132.

———Though reports and books are not strictly speaking evidence or do not at all come within the scope of S. 35 of the Evidence Act, there may be no objection to their being read for what they may be worth. (*Richardson and Shamsul Huda, JJ.*). JOGESH CHANDRA *v.* MOKBUL ALI.
60 I. C. 984=25 C. W. N. 857=A. I. R. 1921 Cal. 474.

—S. 35—Revenue records—Batwara papers.

———A Batwara signed by the partition Deputy Collector and containing entries required by the provisions of Ch. 7, is a record made in the course of official duty within the purview of S. 35, Evidence Act. 88 I. C. 205, *Ref.* (*Mullick, Ag. C. J. and Jwala Prasad, J.*). RAMSARUP RAUT *v.* RAMNARAIN TEWARY. **114 I. C. 479=7 Pat. 85=10 P. L. T. 399=A. I. R. 1929 Pat. 32.**

EVIDENCE ACT (1872), S. 35—Revenue records —Batwara papers.

———Batwara papers relating to partition proceedings between landlords can be used as evidence to show that certain lands were rent free. (*Suhrawardy and Chotzner, JJ.*). CHATTRA NATH CHOWDHURY *v.* BABAR ALI. **86 I. C. 835= 29 C. W. N. 333=A. I. R. 1925 Cal. 635.**

———A *Batwara Khasra* is not a "record" within the meaning of S. 35 of the Evidence Act, 1872, and an entry made therein of the name of a tenant in possession is not admissible in evidence. 25 C. 90, *Ref.* (*Adami, J.*). SADHU SARAN *v.* H. AMBICA LAL. **68 I. C. 676= A. I. R. 1923 Pat. 163.**

———A *Batwara Khasra* is admissible in evidence. 38 I.C. 491, *Foll.* (*Coutts and Das, JJ.*). TRILOKE PRASAD SINGH *v.* UMANAND LAL. **72 I.C. 634= A.I.R. 1922 Pat. 447.**

—S. 35—Revenue records—Chittas.

———Chittas are admissible in evidence, though what their value should be is a matter to be determined by the Court in the particular circumstances of the case. 9 Cal. 741, *Dist.* (*Cuming and Roy, JJ.*). SARAT CHANDRA *v.* SARALA BALA GHOSH. **105 I.C. 61= A.I. R. 1928 Cal. 63.**

—S. 35—Revenue records—Entries about rent.

———It seems clear from Bengal Regulation (7 of 1822) that the recording of the rate of rent which appear in the *rubkars* of the Collectors is a duty imposed upon them by the regulation itself and the matters so recorded are evidence which the Court is entitled to take into consideration in settling the question of enhancement of rent. (*Dawson Miller, C. J. and Mullick, J.*). DEO NARAYAN SINGH *v.* DWARKA PRASAD SINGH. **109 I.C. 136= P.L.T. 679=A. I. R. 1928 Pat. 429.**

———Certified copy of a paper in Collectorate not strictly fulfilling the test of S. 35, Evidence Act is not sufficient to rebut presumption under S. 50 (2), B. T. Act. (*Walmsley and Mukerji, JJ.*). TARAK CHANDRA CHUKERBUTTY *v.* PRASUNNA KUMAR SAHA. **78 I.C. 719=28 C.W.N. 679= 39 C.L.J. 389=A.I.R. 1924 Cal. 654.**

———The collection papers which have not been proved by persons who make the collections should not be treated as independent evidence of the amount of rent realised. (*Suhrawardy, J.*). FAIJADDIN *v.* AGNI KUMAR SARMA. **71 I.C. 300= A.I.R. 1924 Cal. 370.**

—S. 35—Revenue records—Entries in.

———Bombay Land Revenue (Amendment) Act (1913), S. 7—Entries under are not conclusive but are evidence of fact—Evidence Act, S. 35. A.I.R. 1920 P.C. 46 and 18 All. 176 (P.C.), *Dist.* (*Sir Binod Mitter*). GANGABAI *v.* FAKIRGOWDA SOMAYPAGOWDA DESAI. **123 I.C. 166= 32 Bom. L.R. 368=57 I.A. 61=51 C.L.J. 592= 32 M.L.W. 34=A.I.R. 1930 P.C. 93= 58 M.L.J. 322 (P.C.).**

———Extracts from supplementary revenue records are not sufficient to prove mortgage. (2 U.B.R. (1907-1909) Evidence 19, *Foll.*). (*May Oung and Duckworth, JJ.*). KO PO MAUNG *v.* MA KEIN GALE. **1 Rang. 562=77 I.C. 380= A.I.R. 1924 Rang. 135.**

———Under S. 35 of the Evidence Act, the entry in Revenue Register No. VII is a relevant fact. (*Pratt, J.*). MAUNG HLAING *v.* MAUNG CHIT SU. **76 I.C. 449=1 Rang. 135=A.I.R. 1923 Rang. 196.**

———Revenue records as made in Burma are relevant evidence under S. 35. (*Duckworth and Pratt, JJ.*). MG. PO LUN *v.* MA E MAI. **74 I.C. 47= 1 Bur. L. J. 111=A.I.R. 1923 Rang. 57.**

EVIDENCE ACT (1872), S. 35—Revenue records —Khewat.

———*Entry, in road cess return.*

The fact that certain lands were entered in a road-cess return filed by a person in respect of lands held by him under the zamindar is *prima facie* evidence that they were not held adversely to the zemindar, and the presumption cannot be got over unless it is established that the lands were erroneously included. (*Chatterjea and Greaves, JJ.*). MONMOTHA NATH *v.* ANATH BUNDHU. **61 I.C. 469=25 C.W.N. 106=A.I.R. 1921 Cal. 754.**

———In the absence of any evidence to the contrary entries in the revenue papers must be deemed to be correct. 8 O.C. 145, *Foll.* (*Wazir Hasan, A.J.C.*). DURGA *v.* RAM PADARATH. **65 I.C. 749= 8 O.L.J. 495.**

—S. 35—Revenue records—Hissawari.

———A *hissawari* prepared in consequence of a demand by the Collector under S. 30, Bengal Land Registration Act, is not admissible under S. 35 of the Evidence Act as it is not a public or other official book, register or record. (*Chamier, C.J. and Sharjuddin, J.*). TANHA SINGH *v.* BANDHU SINGH. **59 I.C. 8=1919 P.H.C.C. 323.**

—S. 35—Revenue records—Inam register.

———The inam Register is a great act of state and is entitled to very great weight. In particular cases some reasons may be given why the inam register might be discounted. But the absence of any proof that the inam commissioner made some actual enquiry is no such reason as could depreciate the authenticity of the Inam Register. (*Ramesam, J.*). KRISHNAMACHARLU *v.* S. VIJAYASARTHY. **88 I. C. 646=22 M. L. W. 73= 1925 M. W. N. 117=A.I.R. 1925 Mad. 823= 48 M. L. J. 467.**

—S. 35—Revenue records—Jamabandi papers.

———Where the question is as to whether a certain land is or is not parjaut land, an entry in the jamabandi is admissible and is of great value. (*Sulaiman and Mukerjee, JJ.*). SRILAL GOAIKA *v.* KESHODAS. **87 I.C. 368=A. I. R. 1926 All. 83.**

———Jamabandi prepared by landlord is admissible to show basis of assessment. 25 C.W.N. 204, *Foll.* (*Mullick, A.C.J. and Kulwant Sahay, J.*). SIB SAHAI LAL *v.* BIJAI CHAND. **90 I.C. 862= 5 Pat. 157=7 P.L.T. 375= 1926 P.H.C.C. 19=A I.R. 1926 Pat. 197.**

———Jamabandi is not a record of customary cess. (*Stuart, J.*). (KHAN BAHADUR) MUHAMMAD ASHGHAR ALI KHAN *v.* RAMMON. **71 I. C. 432= A.I.R. 1923 All. 378.**

—S. 35—Revenue records—Katardhar papers.

———The katardhar papers drawn up under the Punjab Land Reservation Act are public documents provable by certified copies thereof: 63 P.R. 1913, *Foll.* (*Dalip Singh, J.*). SHAMAS-UD-DIN *v.* GANESH GIR. **117 I.C. 80=11 L.L.J. 138= A.I.R. 1929 Lah. 328.**

—S. 35—Revenue records—Khewat.

———Khewat entry—Origin of entry known—Entry alone should not be relied upon. 44 Mad. 421 (P.C.), *Rel. on.* (*Stuart, C. J. and Misra, J.*). PIRTHA SINGH *v.* MOHAM-MAD ALI. **94 I.C. 188= 13 O.L.J. 126=A.I.R. 1926 Oudh 427.**

———Even if the entries do not come under the Local Tenancy Act, they are relevant under S. 35 of the Evidence Act, being made by a public officer in the discharge of his duties. 5 Cal. 744, *Foll.* (*N. R. Chatterjee and Chotzner, JJ.*). PROTAP CHANDRA *v.* JAGADISH CHANDRA. **82 I. C. 886=40 C. L. J. 331= A. I. R. 1925 Cal. 116.**

EVIDENCE ACT (1872), S. 35—Revenue records —Maps.

—S. 35—Revenue records—Maps.

——No inference can be drawn from thak map whether a particular river was included in the grant of permanent settlement. Thak authorities having nothing to do with title or possession: 30 Cal. 291 and 22 Cal. 252, *Rel. on.* (*Greaves and Mukerjee, JJ.*). DEBENDRA LAL *v.* SECRETARY OF STATE. **103 I.C. 13=31 C.W.N. 473= 46 C.L.J. 322=A.I.R. 1927 Cal. 403.**

——*Settlement map is more reliable than khasra.*

Inasmuch as the Settlement map forms the original record of area of a field and the entry in the *khasra* is no more than its copy, the former is more reliable in case of conflict between the two in respect of the area. (*Hallifax, A.J.C.*). LAHARAM *v.* GURUMUKHRAO. **99 I. C. 628= A. I. R. 1927 Nag. 204.**

——*Record-of-rights, cadastral map and revenue survey map are* prima facie *correct.*

Revenue Survey map should be properly judicially received in evidence as correct when made. 30 Cal. 291 (P. C.). A Cadastral Survey Map is a map of very great importance. The entry in the Record-of-rights operates in the same way between landlord and tenant, as between landlords of the same or of the neighbouring estates, or between tenant and tenant. The entry must be presumed to be correct until it is shown by evidence to be incorrect. (*Das and Ross, JJ.*). MAZHARUL EKBAL *v.* RAJAGOPAL LAL RAY BAHADUR AND M. MARIAM-UN-NISA. **84 I.C. 488=1924 P.H.C.C. 213= A.I.R. 1924 Pat. 719.**

——*Thak and survey maps are not conclusive proof.*

It cannot be maintained as a matter of law that thak and survey maps constitute sufficient proof that what was part of the bed of the river at that time was included in the Permanent Settlement of 1793; and, no Court can properly act, on the assumption that in 1793 a state of things existed different from what appears from any evidence before the Court. (*Mookerjee and Cuming, JJ.*). SECRETARY OF STATE *v.* UPENDRA NARAIN ROY. **71 I. C. 849=36 C.L.J. 336= A. I. R. 1923 Cal. 247.**

——Agreement to be bound by survey map—Is binding on parties. (*Das and Adami, JJ.*). BABU RAGHUNATH PRASAD SINGH *v.* RAMESHWAR SINGH BAHADUR. **A.I.R. 1922 Pat. 87.**

—S. 35—Revenue records—Pedigree.

——Settlement pedigree amounting to statement of deceased with special knowledge before controversy or prepared in discharge of public duty is admissible under Evidence Act, S. 35. 3 O.L.J. 327; 1 O.L.J. 447; 19 O.C. 321 and A.I.R. 1926 Oudh 101, *Appl.* (*Misra and Nanavutty, JJ.*). SARFARAZ KHAN *v.* MT. RAJANA. **112 I.C. 834= 4 Luck. 39=6 O.W.N. 1285= A. I. R. 1929 Oudh 129.**

——*Old public records—Statements in, should be presumed as true.*

Evidence regarding the tribe of a person taken from public records for a series of years (here since 1852) and recorded in accordance with the requirements of the law, cannot in a pedigree case be disregarded for the reason that a particular link in the chain is not found, especially when there is no suggestion that entries in the records were false or that there was an existing reason why deliberately false entries should have been made. Statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorised agents of the public in the course of official duty and respecting facts which were of public interest or required to be recorded for the benefit of the community. In many cases, indeed, in nearly all cases, after a lapse of years it would be impossible to give evidence that the statements contained in such documents were in fact true, and it is for this reason that such an exception is made to the rule of hearsay evidence. (*Lord Carson*). GHULAM RASUL *v.* SECY. OF STATE. **86 I.C. 654=23 A.L.J. 639=52 I.A. 201= 2 O.W.N. 646=22 M.L.W. 299= 30 C.W.N. 101=26 P.L.R. 390= 6 Lah. 269=A.I.R. 1925 P.C. 170= 50 M.L.J. 120 (P.C.).**

EVIDENCE ACT (1872), S. 35—Revenue records —Record-of-Rights.

—S. 35—Revenue records—Perepatraks.

——*Perepatraks* are admissible in evidence to show actual area under crop. (*Kinkhede, A.J.C.*). SITARAM *v.* HIMATRAO. **90 I.C. 38= A.I.R. 1926 Nag. 161.**

—S. 35—Revenue records—Pyatpaing.

——A *pyatpaing* (foil of Register VII) is admissible in evidence, though it has not been signed by the transferor and transferees, where it was proved by the Surveyor who recorded it. (*Duckworth, J.*). KO MAUNG *v.* MAUNG BA HLAINE **98 I.C. 166= 5 Bur. L.J. 116=A.I.R. 1926 Rang. 204.**

—S. 35—Revenue records—Quinquennial papers.

——The Quinquennial Register of 1795 kept under the Bengal Regulation 48 of 1793 is admissible in evidence to rebut the presumption under the B. T. Act, S. 50 (2). (*Suhrawardy and Duval, JJ.*). HEM CHANDRA ROY CHOUDHURY *v.* BENAYAKDAS ACHARJI CHOUDHURY. **86 I.C. 538= A.I.R. 1925 Cal. 1037.**

——The registers prepared under Regulation 48 of 1793 (Bengal) and now maintained under Act VII of 1876, *e.g.*, Mutation, Quinquennial and Settlement Registers, are public documents.

The entries in these registers are receivable in evidence *quantum valeat* for what they are worth. They are, however, not conclusive and may be shown to be inaccurate. (*Jwala Prasad and Ross, JJ.*) RAMANANDHAN SAHAY *v.* JAIGOVIND PANDEY. **75 I.C. 955=2 Pat. 839= A.I.R. 1924 Pat. 213.**

——Quinquennial papers prepared by the Revenue authorities from 1795 to 1799 under the provisions of Regulation 48 of 1793 containing information as to the lands comprised in revenue-paying estates in the district of Mymensingh are admissible in evidence. 20 Cal. 940, *Foll.* (*Mookerjee and Buckland, JJ.*). SECY. OF STATE *v.* WAZED ALI. **65 I.C. 866=34 C.L.J. 141= A.I.R. 1921 Cal. 687.**

—S. 35—Revenue records—Rasadbandi.

——The rasadbandi or the chowkidara papers are not admissible in evidence as public documents. (*Zafar Ali, J.*). THAKUR SINGH *v.* GHANAYA SINGH. **94 I.C. 125=27 P.L.R. 198= A.I.R. 1926 Lah. 452.**

—S. 35—Revenue records—Record-of Rights.

——Record-of-Rights—The draft record is admissible only for the purpose of showing what was the entry made in the earlier proceedings before the final publication. 1 P. L. T. 224, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). HARDEO NARAYAN SINGH *v.* KAPIL SINGH. **108 I.C. 417= A.I.R. 1928 Pat. 353.**

——The Record-of-Rights is a public record prepared by public officers appointed under the statutory authority of the Local Government and, therefore, is admissible under S. 35. (*B. B. Ghose*

EVIDENCE ACT (1872), S. 35—Revenue records —Settlement register.

and Graham, JJ.). FAZLAR RAHMAN BISWAS *v.* GOLAM KADAR MIA. **96 I.C. 959=30 C.W.N. 689= A.I.R. 1926 Cal. 862.**

—S. 35—Revenue records—Settlement register.

———Where Settlement Register of 1876 was signed by Acting Director of Revenue Settlement and was dated from the Revenue Settlement office,

Held, it cannot be too clearly premised, that any such record would not be held to be conclusive evidence of ownership; but upon the other hand one cannot be blind to the importance ot such a document which appears, *de facto*, to have settled the bounds of the possession of certain plots for a period of thirty-five years (that is to say, from 1876 to 1910). *(Lord Shaw)*. T. P. SRINIVAS CHARIAR *v.* C. N. EVALAPPA MUDALIAR. **68 I.C. 1= 45 Mad. 565=16 M. L.W. 247= 31 M. L.T. 1=49 I.A. 237=24 Bom.L.R. 1214= 21 A.L.J. 250=27 C.W.N. 317=36 C.L.J. 524= A.I.R. 1922 P.C. 325=43 M.L.J. 536 (P.C.).**

—S. 35—Revenue records—Village notes.

———*Stuart, C.J.*—Where a Settlement Officer inspected a village and recorded in respect of it certain remarks, they are admissible in evidence under S. 35, being entries in a public record made by a public servant in discharge of his official duty. *(Stuart, C. J. and Wazir Hasan, J.)*. SHEO BAHADUR SINGH *v.* BISHUNATH. **99 I.C. 876=2 Luck. 4= 4 O.W.N. 15=8 L.R.A. Rev. 48= A. I. R. 1927 Oudh 74.**

———A village note prepared by a Settlement Officer is only a piece of evidence and no presumption of correctness is attached to it. *(Kulwant Sahay, J.)*. BHAGWAN SINGH *v.* LACHUMAN PRASAD. **90 I. C. 579=3 Pat. L. R. 225= A. I. R. 1925 Pat. 754.**

—S. 35—Revenue records—Village papers.

———A definition of "shares," in revenue and village papers affords by itself but a very slight indication of an actual separation. A. I. R. 1920 P. C. 46, *Foll.* *(Addison, J.)*. KARTAR SINGH *v.* LONA. **113 I.C. 773=A.I.R. 1929 Lah. 74.**

—S. 35—Revenue records—Writs of attachment.

———Where writs of attachment issued in 1792 and 1797 must have been prepared when the Collector took possession of the Zemindari upon default in payment of revenue by the proprietor and the documents might be relevant in connection with the history of the estate and might be used to show that the proprietor defaulted and the Collector went into possession, but there was nothing to indicate that the duty was cast upon the Collector to prepare a complete record of all the tenures then in existence.

Held, that in view of the scope of the two attachment writs no inference favourable to the landlord can be drawn therefrom, and they cannot be treated as relevant under S. 11. *(Mookerjee and Chotzner, JJ.)*. TARAKUMAR GHOSE *v.* KUMAR ARUN CHANDRA SINGH. **74 I.C. 383= 36 C. L. J. 389=A.I.R. 1923 Cal. 261.**

—S. 35—School certificate and registers.

———Where the question is as to the age of a person, the entry of his date of birth in the school register based upon the statements of his deceased father is admissible under S. 35, the entry being in a public register stating a fact in issue and made by a public servant in discharge of his official duty. *(Gokaran Nath Misra and Pullan, JJ.)*. MUNNA LAL *v.* KAMESHARI DAT. **114 I.C. 801= 5 O.W.N. 1111=A.I.R. 1929 Oudh 113.**

EVIDENCE ACT (1872), S. 36—Burden of proof.

———Copy of a school leaving certificate given by a school master in a Native State wherein the age of the pupil is recorded and certified, as required by S. 78, Cl. (6), by the Political Agent assigned to that State by the Government of India, is admissible in evidence under S. 35. *(Fawcett and Madgavkar, JJ.)*. BHANUDAS NARAYAN BOA *v.* KRISHNABAI CHINTAMAN. **99 I.C. 307=50 Bom. 716= 28 Bom. L.R. 1225=A.I.R. 1927 Bom. 11.**

———Entries in School Register as to age are relevant. *(Dalal and Simpson, A. J. Cs.)*. AMBIKA PRASAD *v.* LAL BAHADUR. **83 I.C. 840= 11 O.L.J. 164=A.I.R. 1924 Oudh 353.**

———Certain entries from a School Register at Bikaner, which were not proved, are not sufficient to show that the defendant was actually at Bikaner at the time of the entries. *(Moti Sagar J.)*. MT. CHANDO *v.* SIRI RAM. **80 I.C. 177= A.I.R. 1923 Lah. 607.**

—S. 35—Miscellaneous.

———Document neither shown to be prepared by public servant nor shown as forming the act or record of public officer is inadmissible. *(Sen, J.)*. GAURI SHANKAR *v.* EMPEROR. **120 I. C. 547= 1930 A. L. J. 244=1930 Cr. C. 42= 31 Cr. L. J. 133=A.I.R. 1930 All. 26.**

———Entry in vaccination register regarding father's name of illegitimate child made three years after child's birth is inadmissible in evidence. *(Curgenven, J.)*. M. KANNIAPPAN *v.* KULLAMMAL. **1930 Cr. C. 88=1929 M. W. N. 696= 2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.**

———*House registers.*

House registers not prepared by any Government Officer, or by any public servant whose duty it was to prepare them, though kept in the record room of the Deputy Commissioner, are inadmissible in evidence. The mere fact that they are kept in a public office does not lead to the inference that they are public documents: 7 Cal. 76, *Rel. on.* *(Zafar Ali, J.)*. MAHTAB DIN *v.* KASAR SINGH. **107 I. C. 618=A.I.R. 1928 Lah. 640.**

———Prescription register in Government dispensary is admissible though handwriting is not proved. *(King, J.)*. D. CRUZ *v.* D. CRUZ, MRS. W.E. **103 I. C. 512= 1 L. C. 203= A.I.R. 1927 Oudh 310.**

———A certificate of the Manchester Chamber of Commerce stating that there was a national strike in England resulting in the shortage of coal supplies and in difficulty of manufacture by the mills of the contracted goods is not a public record within S. 35. *(Fawcett, J.)*. GIRDHARDAS *v.* KERAWALA & Co. **93 I.C. 622=28 Bom.L.R. 232= A.I.R. 1926 Bom. 253.**

———Attendance register of association—Oral testimony to prove its being such is necessary. *(Fforde and Scott-Smith, JJ.)*. BAWA SARUP SINGH *v.* THE CROWN. **88 I.C. 22= 7 L. L.J. 264=26 Cr. L. J. 1078= 26 P.L.R. 566=A.I.R. 1925 Lah. 299.**

—S. 36—Burden of proof.

———Permanent Settlement—Onus of proving that certain lands were included in the settlement is on party affirming same—Production of thak and survey maps does not necessarily shift onus: 30 C. 291 and 3 C. L. J. 316, *Ref.* *(Mookerjee and Buckland, JJ.)*. SECRETARY OF STATE *v.* WAZED ALI KHAN PANI. **65 I.C. 866=34 C.L.J. 141= A.I.R. 1921 Cal. 687.**

EVIDENCE ACT (1872), S. 36—Maps in criminal cases.

—S. 36—Maps in criminal cases.

———Maps prepared in criminal cases—Statements of witnesses or information received should not be recorded thereon : A.I.R. 1924 Cal. 1029, *Rel. on.* (*Suhrawardy and Panton, JJ.*). BHAGIRATHI CHOWDHURY *v.* EMPEROR. **92 I.C. 174= 30 C. W. N. 142=27 Cr.L.J. 222= A.I.R. 1926 Cal. 550.**

—S. 36—Report referring to map.

———Map referred to in Commissioner's report not produced—Commissioner, neither examined nor cross-examined—Statements were admitted in evidence. (*Lord Phillimore*). NARESH NARAYAN *v.* SECY. OF STATE. **77 I.C. 1048=32 M.L.T. 162= 1923 M.W.N. 511=50 Cal. 446=50 I. A. 121= 28 C.W.N. 453=4 L.R.P.C. 50= A.I.R. 1923 P.C. 1=45 M.L.J. 444 (P. C.).**

—S. 36—Site plan.

———Site plan prepared for a case has very little probative value on question of title. (*Sen, J.*). GAURI SHANKAR *v.* EMPEROR. **120 I. C. 547= 1930 A.L.J. 244=1930 Cr. C. 42= 31 Cr.L.J. 133=A.I.R. 1930 All. 26.**

—S. 36—Survey and Thak maps.

———Although the Thakbast map is a part of the thak survey, it is not meant to be and is not in fact a scientifically prepared plan, but merely a rough sketch, or at most, an unscientifically prepared plan showing the number and approximate position of the thak marks or dhuis for the guidance of the revenue surveyor who followed after, and who, having picked up and verified the thak marks indicated roughly in the Thakbast map prepared the revenue map by accurate observations made by expert surveyors with scientific instruments. Where it appears that he had the Thakbast map before him when he made his survey and prepared the revenue map then the revenue map must be accepted as shewing the result of the thak survey even more accurately than the Thakbast which was not intended to be scientifically accurate.

The signature of the Revenue Surveyor on a thak map means merely that he has satisfied himself that the boundary accepted and intended by the demarcation staff had been correctly picked up on the ground and correctly surveyed on the revenue survey map. (*Dawson-Miller, C.J. and Mullick, J.*). KESHBJI PITAMBAR *v.* SHASHI BHUSAN BANERJI. **96 I. C. 1027=1926 P.H.C.C. 210= A.I.R. 1926 Pat. 385.**

———An entry in a thakbast map is not sufficient to enable a Court of fact to hold that the disputed lands were really included in an estate at the time of the Permanent Settlement. They may be good evidence as to what the boundary of a particular plot was at the time of the Permanent Settlement. The revenue survey maps are not conclusive and may be shown to be wrong, but in the absence of evidence to the contrary they may properly be judicially received as correct when made. It may also be clearly presumed that the boundaries mentioned in the maps were the boundaries which existed at the time of the Permanent Settlement but they do not go further and do not show that the lands measured and included in a particular mauza were settled, at the time of the Permanent Settlement, with a particular man. This has to be proved by evidence *aliunde*. The onus of proving that the lands shown in the survey map as belonging to a particular mauza were included in the Permanent Settlement of 1793, is upon the plaintiffs who affirm that such was the case. 30 Cal. 297; 30 I.A. 44, *Foll.* (*Jwala Prasad and Ross, JJ.*). RAMANANDHAN SAHAY *v.* JAIGOBIND PANDEY. **75 I.C. 955=2 Pat. 839=A.I.R. 1924 Pat. 213.**

EVIDENCE ACT (1872), S. 36—'Thak' meaning.

———*Relative value.*

There is no inflexible rule that a survey map must have preference over a *thak* map. The *thak* and the survey maps should, as a rule agree. 6 C. W. N. 629, *Ref.* Where they differ, the one that more nearly agrees with the local landmarks is the one which should be followed. There is no general or definite rule making it incumbent upon the Court to follow either the one or the other. The Court may, if it considers the *thak* map more reliable, follow that in preference to the survey map. (*Mookerjee and Panton, JJ.*). MAHARAJA OF COOCH BEHAR *v.* MOHENDRA RANJAN RAI. **66 I.C. 923=34 C. L. J. 465=A.I.R. 1921 Cal. 277.**

—S. 36—Survey map.

———Ex parte *statements.*

Ex parte statements in survey maps should be regarded not as primary proof but merely corroborative proof—But if they relate to distant times and no direct evidence is available, their value assumes greater proportion. (*Dawson Miller, C. J. and Mullick, J.*). KAMAKHYA NARAYAN SINGH *v.* SURENDRA KARAN DEO. **113 I.C. 703= A.I.R. 1928 Pat. 284.**

———The revenue survey map is no doubt evidence of title and possession, but where there is no satisfactory direct evidence of acts of possession on the part of either of the parties, the evidence of possession of the cadastral survey entry must prevail until it is rebutted. (*Allanson and Sen, JJ.*). BRINDRABAN PRASAD *v.* GOPAL SARAN. **104 I.C. 514=8 P.L.T. 817=A.I.R. 1928 Pat. 36.**

———Survey maps prepared under Calcutta Survey Act are admissible as evidence of possession. (*C. C. Ghose, J.*)—Survey map is admissible evidence of state of things at the time it was made. (*Rankin, C. J. and C. C. Ghose, J.*). DEBENDRA NATH *v.* SURENDRA NATH. **102 I. C. 370= 31 C. W. N. 419=45 C.L.J. 474= A.I.R. 1927 Cal. 345.**

———Map prepared for partition affecting public revenue is admissible though for limited purpose. (*Chatterjea and Panton, JJ.*). ABDUL HAMID *v.* BROJENDRA KUMAR. **90 I.C. 643= A.I.R. 1926 Cal. 290.**

———A Survey map presumably prepared in the presence and to the knowledge of the parties is evidence between the parties *quantum valeat.* Primarily it is evidence of possession, which is always evidence of title. 10 W. R. 300, *Foll.*; 19 W. R. 202, *Ref. to.* (*Das and Bucknill, JJ.*). NAZIRUL HAQ *v.* ABDUL WAHAB KHAN. **64 I.C. 326=3 Pat. L.T. 140= 1 Pat. 65=A.I.R. 1922 Pat. 58.**

———Maps and Surveys in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible as valuable evidence of the state of things at the time they are made. 30 Cal. 291 (P. C.), *Foll.* (*Das and Adami, JJ.*). BIBI WAKILAN *v.* DEONANDAN PRASAD. **59 I.C. 298=2 P.L.T. 81=A.I.R. 1921 Pat. 268.**

—S. 36—'Thak' meaning.

———Per *Mullick, J.*—The words "as per Thak" mean as per thak pillars. A. I. R. 1924 Pat. 402, *Rel. on.* (*Dawson-Miller, C. J. and Mullick, J.*). KESHBJI PITAMBAR *v.* SHASHI BHUSAN BANERJI. **96 I.C. 1027=1926 P.H.C.C. 210= A.I.R. 1926 Pat. 385.**

EVIDENCE ACT (1872), S. 36—" Thak " map.

—S. 36—" Thak " map.

———In fixing the boundary line between two estates greater weight need not be attached to the *Thak* map than to the Revenue Survey map. (*Suhrawardy and Chotzner, JJ.*). KALI PROSANNA BAHADURI *v.* RANI HEMANTA KUMARI DEBI.
79 I.C. 1038=A.I.R. 1924 Cal. 977.

———*Thak* maps are good evidence of possession at the time they were made, but they are no evidence of title acquired by prescription or adverse possession. (*Das and Kulwant Sahay, JJ.*). CHATTRAPAT PRATAB BAHADUR *v.* G. G. LEES.
72 I.C. 648=1 P.L.R. 322=4 P.L.T. 487=A.I.R. 1923 Pat. 558.

———*Thak* map is valuable evidence in suit between successors of parties to the *thak* proceedings who were present. (*Mookerjee and Panton, JJ.*). MAHARAJA OF COOCH BEHAR *v.* MOHENDRA RANJAN RAI. **66 I.C. 923=34 C.L.J. 465=A.I.R. 1921 Cal. 277.**

—S. 39—Admissibility.

———*Section 27 governs S. 39.*

But if the accused wishes to challenge the veracity of the statement that it was on his information that the thing was discovered he may ask the deponent to depose to the exact words used by him. Then under S. 39 so much of the statement made by him can be given in evidence as the Court considers necessary in that particular case to full understanding of the nature and effect of the statement. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. **115 I. C. 1=30 Cr. L.J. 385=A. I. R. 1929 Lah. 338.**

—S. 39—Admissibility of recitals.

———Because a document is admissible for a certain purpose all recitals, statements and references therein cannot be used as proof of the facts to which they relate. (*Sulaiman and Kendall, JJ.*). TIKA RAM *v.* MOTI LAL. **1930 A.L.J. 564=A.I.R. 1930 All. 299.**

—S. 39—Scope.

———Section 39 cannot be invoked for the purpose of letting in a confession in respect of which the bar created by Ss. 24, 25 and 26, Evidence Act, has not been removed by S. 27. (*Shadi Lal, C. J. and Harrison, Fforde, Tek Chand, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAN *v.* EMPEROR.
115 I.C. 6=10 Lah. 283=30 P.L.R. 197=11 L.L.J. 159=30 Cr. L.J. 414=12 A.I.Cr.R. 382=A. I. R. 1929 Lah. 344 (F.B.).

—S. 40—Applicability.

———Section 40 applies to a case in which the Court has jurisdiction to decide a matter and one party says it should not do so because that matter has been decided before. 6 Cal. 171, *held no good law in view of* 23 Cal. 533 (P.C.) ; 19 All. 277 (P.C.) and 25 Cal. 522, (P.C.). (*Rankin, C.J., C.C. Ghose, B.B. Ghose, Panton and Mukerjee, JJ.*). LAKSHAN CHANDRA *v.* RAMDAS MONDAL. **118 I.C. 857=33 C.W.N. 795=49 C.L.J. 441=A.I.R. 1929 Cal. 374 (F.B.).**

—S. 40—Foreign judgment.

———Where the subject-mater is a *res* so situated as to be within the lawful control of the State under the authority of which a Court sits, and that authority has conferred on the Court jurisdiction to decide as to the disposition of the thing, and the Court has acted within that jurisdiction, that decision is conclusive, whether, according to the law of another country, it might seem right or wrong. *Castrique* v. *Imrie*, L. R. 4 H. L. 414, *Rel. on.* (*Viscount Haldane*). CARL FRANZ ADOLF OTTO INGENOHL *v.* WING ONAND CO.(SHANGHAI), LTD. **107 I. C. 352=47 C.L.J. 263=30 Bom. L.R. 753=A. I. R. 1928 P.C. 33.**

—S. 40—Judgment not inter partes.

———Observations in a judgment relating to a different matter though connected cannot bind a third party and the judgment itself cannot be evidence against him. (*Ramesam and Cornish, JJ.*). NARASIMHA SHASTRI *v.* OFFICIAL ASSIGNEE, MADRAS. **1930 M.W.N. 396=A.I.R. 1930 Mad. 751.**

———A judgment is not evidence against persons not parties to it—It is admissible only in so far as it shows assertion of title made therein. (*Dawson-Miller, C.J. and Foster, J.*). KESHO PRASAD SINGH *v.* KIRTARATH. **97 I.C. 282=A.I.R. 1926 Pat. 577.**

—S. 40—Judgment not res judicata.

———Judgments not operating as *res judicata* may yet be admissible in evidence. (*Kinkhede, A.J.C.*). TULARAM *v.* MT. SUMRATI. **79 I.C. 621=A.I.R. 1924 Nag. 422.**

—S. 41—Binding effect.

———Judgment in probate proceedings operates as judgment *in rem* so far as genuineness or otherwise of will is concerned. 12 C.L.J. 91; 12 C.L.J. 185 and 79 I.C. 44, *Foll.* (*Fazl Ali and Chatterji, JJ.*). MST. PHENKI *v.* MANKI. **9 Pat. 698.**

———The finding as to the execution of the Will of a probate Court binds at any rate the parties and privies to the probate proceedings. (*Das and Foster, JJ.*). CHANDRESHWAR *v.* BISHESHWAR.
101 I.C. 289=5 Pat. 777=8 Pat. L. T. 510=A. I. R. 1927 Pat. 61.

———Decisions referred to in S. 41. are binding on all parties (*obiter*). (*Suhrawardy and Mukerji, JJ.*). GANGA PROSAD CHAUDHURY *v.* KULADANANDA ROY. **94 I.C. 235=44 C.L.J. 399=30 C.W.N. 415=A.I.R. 1926 Cal. 568.**

—S. 41—Grant of letters.

———The grant of letters of administration so long as it subsists is conclusive evidence as regards the proper execution of the will and the legal character conferred on the administrator. 4 Cal. 360, *Foll.*; 13 P. R. 1918; 31 M. L. J. 277; 38 Bom. 427, *Ref.* (*Fforde and Bhide, JJ.*). MT. DAROPTI *v.* MT. SANTI. **116 I. C. 452=A.I.R. 1929 Lah. 483.**

———Grant of Letters is no bar to further proceedings under Penal Code, S. 477. (*Otter, J.*). MALI MUTHU SERVAY *v.* EMPEROR. **97 I.C. 1054=4 Rang. 251=27 Cr. L.J. 1230=A.I.R. 1926 Rang. 202.**

—S. 41—Judgment inadmissible under.

———Judgments not falling under S. 41 can be used only in evidence under S. 42—Legal effect of a judgment *in personam* will depend on facts of each case. (*Wallis, C. J., Spencer and Kumaraswami Sastri, JJ.*). SECY. OF STATE *v.* AHMAD BADSHA. **67 I.C. 971=44 Mad. 778=14 M.L.W. 128=14 M.L.W. 188=1921 M.W.N. 576=A.I.R. 1921 Mad. 248=41 M.L.J. 223=41 M.L.J. 278 (F.B.).**

—S. 41—Judgment in rem.

———Judgment that *A* is not the adopted son of *B* is not one *in rem*. 2 H. M. C. R. 276 and 7 W.R. 338, *Ref.* (*Sen and Niamatullah, JJ.*). URJUN *v.* MATHURA NATH. **116 I.C. 83=26 A.L.J. 797=A.I.R. 1928 All. 395.**

———Finding not essential in probate action is not one *in rem*—Probate is conclusive proof of the due execution of the Will. (*Das and Foster,*

EVIDENCE ACT (1872), S. 41—Judgment in rem and in personam.

JJ.). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH.
101 I. C. 289=5 Pat. 777=8 P. L. T. 510= A.I.R. 1927 Pat. 61.

—S. 41—Judgment in rem and in personam.
———*Judgment in rem is conclusive only as to status and not grounds for deciding the status though adjudicated.*

There is a broad distinction between the effect of a judgment *in rem* and a judgment *in personam*. The point adjudicated upon in a judgment *in rem* is always as to the status of the *res* and is conclusive against the world as to that status, whereas, in a judgment *in personam* the point, whatever it may be, which is adjudicated upon (it being as to the status of the *res*), is conclusive only between parties or privies: *Ballantyne and Co.* v. *Mackinnon*, (1896) L. J. Q. B. 616, *Rel. on.* (*Rupchand Bilaram and Tyabji, A. J. Cs.*). RADHAKISHAN *v.* MT. GANGABAI. **110 I.C.730=22 S.L.R. 105= A. I. R. 1928 Sind 121.**

—S. 41—Judgment not inter partes.
———*Admissibility.*

A decree in a previous suit to which one party in a subsequent suit was not party, is admissible in evidence for corroboration of a fact asserted by the party in oral evidence and the question of weight to be attached to the fact so established is a question of fact. It is not admissible as the proof of the claim. 6 Cal. 171 (F.B.), *Dist.* (*Courtney-Terrell, C. J. and James, J.*). RAM LAKHAN UPADHYA *v.* JAI UPADHYA. **A.I.R. 1929 Pat. 749.**

———C. P. Code, S. 11—Plaintiffs' title negatived in a former suit against a contesting claimant—Plaintiff can re-assert his title in another suit against third party. 33 Mad. 483 and 36 Mad. 141, *Overruled*; 18 C. W. N. 954, *Foll.* (*Wallis, C. J., Spencer and Kumaraswami Sastri, JJ.*). SECRETARY OF STATE *v.* SYED AHMAD BADSHA SAHIB BAHADUR. **67 I.C. 971=44 Mad. 778= 14 M. L. W. 128=14 M.L.W. 188= 1921 M.W.N. 576=A.I.R. 1921 Mad. 248= 41 M.L.J. 223=41 M.L.J. 278 (F.B.).**

—S. 41—'Legal character.'
———The legal characters that can be conferred or taken away in the exercise of the jurisdiction mentioned in S. 41 do not include the state of being a partner. (*Rupchand Bilaram and Tyabji, A.J.Cs.*). RADHAKISHAN *v.* MT. GANGABAI. **110 I.C. 730= 22 S.L.R. 105=A.I.R. 1928 Sind 121.**

—S. 41—Vacating—Adjudication.
———A firm declared insolvent—Order of adjudication against one partner vacated as he was not proved a partner—Judgment vacating the order does not come within S. 41. (*Rupchand Bilaram and Tyabji, A. J. Cs.*). RADHAKISHAN *v.* MT. GANGABAI. **110 I.C. 730=22 S. L. R. 105= A.I.R. 1928 Sind 121.**

—S. 42—Decisions about caste.
———Caste of a particular family—Evidence of members and decisions in previous litigations are relevant. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

—S. 42—Decree inter partes.
———*Obiter*: Decrees *inter partes* that recite the pleadings might be admitted in evidence. 27 Cal. 1004, (P.C.) *Foll.*; A.I.R. 1922 Mad. 71, *Expl.* (*F. B.*). (*Madhavan Nair, J.*). NALUPURATATIL IBRAINE *v.* PARAMESWARA. **85 I.C. 996= 22 M.L.W. 460=A.I.R 1925 Mad. 1019.**

EVIDENCE ACT (1872), S. 43—Essentials for relevancy.

—S. 42—Dispute about tenancy.
———Question as to what villages were included in tenure decided between landlord and tenant—Plaintiff having subordinate interest in tenure suing landlord—Question is not strictly *res judicata* but plaintiff must produce strong evidence in his support. 33 Mad. 459 and 29 Cal. 707, *Ref.* (*Ross and Fazl Ali, JJ.*). BALDEO DAS BIRLA *v.* LAL NILMANI NATH SAHI DEO. **113 I. C. 681= 8 Pat. 122= 9 P.L.T. 627= A. I. R. 1928 Pat. 615.**

—S. 42—Evidentiary value.
———Where a judgment is admissible, it is conclusive evidence for or against all persons whether parties, privies or strangers, or its own existence, date and legal effect as distinguished from the accuracy of the decision rendered. (*Sanderson, C.J. and Richardson, J.*). GOPI SUNDARI DASI *v.* KHEROD GOBINDA CHOWDHURY. **82 I. C. 99= 28 C.W.N. 942= A.I.R. 1925 Cal. 194.**

———Judgment after contest has more probative value than one on compromise. (*Moti Sagar, J.*). LEKH RAJ *v.* INDER MAL. **73 I.C. 658=4 Lah. 176= A.I.R. 1924 Lah. 161.**

—S. 42—Judgment not inter partes.
———Under certain circumstances and in certain cases, the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit. (*Sanderson, C.J. and Richardson, J.*). GOPI SUNDARI DASI *v.* KHEROD GOVINDA CHOWDHURY. **82 I.C. 99=28 C.W.N. 942= A.I.R. 1925 Cal. 194.**

—S. 42—Remarks.
———Remarks about a plot of land not in dispute are not admissible. (*Campbell, J.*). BANWARI LAL *v.* SHEO CHAND. **85 I.C. 795= A.I.R. 1923 Lah. 384.**

—S. 43—Civil judgment.
———A decision of a Civil Court is admissible to disprove an allegation, the truth of which is the basis of conviction of a person in a criminal case. 41 Bom. 1, *Relied on.* (*Krishnan, J.*). VELAYUTHAM CHETTY, *In re.* **72 I.C. 172=24 Cr. L.J. 332= A.I.R. 1924 Mad. 516.**

—S. 43—Conclusiveness.
———The principle of conclusiveness of a decree is much wider than the terms of S. 11: A.I.R. 1921 P. C. 11 and A. I. R. 1922 P. C. 80, *Foll.* (*Wazir Hasan and Raza, JJ.*). DURGA PRASAD *v.* JAGAT JIT SINGH. **112 I.C. 169=5 O.W.N. 266= 3 Luck. 487=A.I.R. 1928 Oudh 359.**

—S. 43—Essentials for relevancy.

Per *Das, J.*—A judgment or decree is not admissible in evidence under S. 43 unless as a fact in issue or as a relevant fact under other sections of the Act. Thus if *A* has obtained a decree for the possession of land against *B*, and *C*, *B*'s son, murders *A* in consequence, the existence of the judgment is relevant as showing motive for the crime. So again, in a suit for malicious prosecution the judgment in the criminal proceeding is evidence to establish the fact of acquittal, the fact, namely, that the criminal proceedings terminated in favour of the plaintiff. A reference to the finding of a judgment may explain the character, of the party's possession and the nature of the enjoyment had in the property in suit and so the finding of a judgment may be referred to in all other cases where the record is matter of inducement or merely in-

EVIDENCE ACT (1872), S. 43—Finding of Criminal Court.

troductory to other evidence. (*Dawson-Miller, C.J. on difference between Das, J. and Foster, J.*). HITENDRA SINGH *v.* RAMESWAR SINGH.
87 I.C. 849=4 Pat. 510=6 P.L.T. 634=A. I. R. 1925 Pat. 625.

—S. 43—Finding of Criminal Court.

———The finding of a Criminal Court cannot be treated as evidence in a Civil action between different parties. (*Lentaigne, J.*). MAUNG PEIN *v.* MA THE NGWE. **84 I. C. 1009=2 Rang. 549=A.I.R. 1925 Rang. 143.**

———Judgment of Criminal Court is relevant to show that certain parties were on bad terms. (*Simpson, A.J.C.*). JANGI SINGH *v.* GANGA SINGH.
77 I. C. 391=10 O. L. J. 393=A .I. R. 1924 Oudh 115.

—S. 43—Judgment inter partes.

———Judgment in former legal proceedings are admissible in evidence to prove plaintiff's former recognition of defendant's status. (*Prideaux and Kinkhede, A.J.Cs.*). JUMILAL *v.* MT. HALKI.
78 I.C. 981=A.I.R. 1924 Nag. 387.

———Judgment in previous suit holding he had no right is admissible for showing that the Granthi's right was questioned then also. 31 Bom. 143, *Foll.* Other cases *Ref.* (*Scott-Smith and Abdul Raoof, JJ.*). INDAR SINGH *v.* FATEH SINGH.
59 I. C. 734=49 P. L. R. 1921=A.I.R. 1921 Lah. 337.

—S. 43—Judgment not inter partes.

———*Recitals in.*

The Evidence Act does not make a finding of fact arrived at on the evidence before the Court in one case, evidence of the fact in another case when the parties are not the same. A recital, therefore, of a judgment not *inter partes* of a relevant fact is not admissible in evidence in another litigation, though the judgment may be used in evidence in certain circumstances as a fact in issue or as relevant fact or possibly as a transaction. A. I. R. 1929 P. C. 99; 20 C. W. N. 643 and A. I. R. 1922 Mad. 71, *Rel. on.* (*Addison, J.*). ASA SINGH *v.* MANSHA RAM. **121 I.C. 509=11 L.L.J. 526=A. I. R. 1930 Lah. 237.**

———*Admissibility—Common defendant.*

Section 43 excludes all judgments in a former suit as irrelevant if they are not *inter partes* unless the existence of such judgment is a fact in issue or is relevant under some other provision of the Act. The existence of the judgment may be relevant but not the decision of the Judge or the opinion expressed by him. It is immaterial if the defendant in both cases is the same and the decision of the Privy Council in 22 C. 533 is no authority for the general proposition that a judgment against a party can always be used against him in a subsequent suit by another person. 56 I.A. 119, *Ref. to.* (*Suhrawardy and Costello, JJ.*). BENODE LAL CHAKRABARTY *v.* SECRETARY OF STATE. **34 C. W. N. 1113.**

———A statement of opinion made by the Judge in a previous judgment not *inter partes* is no evidence in a subsequent case. (*Jai Lal, J.*). HAR NATH *v.* MOHAN DAL. **115 I. C. 422=10 L. L. J. 519=A. I. R. 1929 Lah. 123.**

———Judgment not *inter partes* is admissible if existence of judgment is relevant fact or fact in issue. 6 Cal. 171 (F. B.); 22 Cal. 533 (P. C.) and 25 Cal. 525 (F. B.), *Rel. on*; 19 All. 277 (P. C.); 29 Cal. 137; A. I. R. 1925 Cal. 194 and 40 I.C. 830, *Ref.* (*Adami and Chatterji, JJ.*). SHAMSUNDER KUER *v.* RAMKHELAWAN. **121 I. C. 334=8 Pat. 783=A.I.R. 1929 Pat. 739.**

EVIDENCE ACT (1872), S. 43—Relevancy.

———Previous judgment not *inter partes* is admissible to prove title when such title is in issue. (*Findlay, J. C.*). ABDUL MAJID *v.* TUKARAM.
101 I. C. 774=A. I. R. 1927 Nag. 359.

———In a suit by plaintiffs for a declaration that the sale of suit land is not binding on them, the land being ancestral land, the judgment in a previous suit by the same plaintiffs, but not *inter partes*, for a declaration that alienation of part of the land in suit was not binding on the ground of the land being ancestral can only be treated as admissible for the purpose of showing that on a former occasion the right of the alienee to alienate part of the property in suit was called in question on the ground that the property was ancestral. The finding of the Court in the previous suit that the property was ancestral is not relevant. 1 Lah. 540, *Foll.* (*Fforde and Campbell, JJ.*). PARTAP SINGH *v.* MOTHU. **96 I. C. 998=8 L. L. J. 492=27 P. L. R. 544.**

———A judgment between the plaintiff and third parties is not admissible though the facts found therein may support plaintiff's title disputed in the present suit. (*Dawson-Miller, C. J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PRASAD. **93 I.C. 454=5 P.L.T. Sup. 1=A.I.R. 1925 Pat. 68.**

———A judgment of a Civil Court deciding a question of adoption is not admissible between third parties as evidence of the truth of the matters decided therein. (*Dawson-Miller, C. J. and B. K. Mullick, J.*). MAHADEO ASRAM PRASHAD SAHI *v.* MT. JAGATRAJ KUER. **71 I.C. 929=A.I.R. 1924 Pat. 298.**

———Judgments not *inter partes* are admissible in evidence for the purpose of showing that the title of a defendant was set up by third party and that the suit was decreed. (*Chatterjee and Panton, JJ.*). MOHAR ALI SARKAR *v.* MAFIZUDIN SARKAR.
65 I.C. 699 (Cal.).

———The statements of the plaintiff's age in a decree to which the defendants or their predecessors were no parties, are not conclusive and binding against them. (*Teunon and Newbould, JJ.*). NILARATAN MITRA *v.* ABDUL GAFUR.
59 I.C. 3=32 C. L.J. 75.

—S. 43—Judgment not res judicata.

———*Admissibility.*

Judgments not operating as *res judicata* may yet be admissible in evidence. (*Kinkhede, A. J. C.*). TULARAM *v.* MT. SUMRATI. **79 I.C. 621=A. I. R. 1924 Nag. 422.**

—S. 43—Land acquisition cases.

———Previous decisions in Land Acquisition cases are relevant in a subsequent Land Acquisition case where the market value of lands in the same neighbourhood is in issue. (*Newbould and Ghose, JJ.*). MADAN MOHAN BURMAN *v.* SECRETARY OF STATE. **78 I. C. 557=A. I. R. 1925 Cal. 481.**

—S. 43—Relevancy.

———Judgment that does not fall under Ss. 40, 41 and 42 is not relevant under S. 43 for decision of same point in subsequent suit. A.I.R. 1929 P.C. 99 and 1 Lah. 540, *Rel. on*: 19 All. 277 (P.C.), *Expl.*; 22 Cal. 533 (P. C.), *Dist.*; A. I. R. 1926 Nag. 109, *Overruled*; 29 Cal. 187 (P. C.); 35 Cal. 701 and A.I.R. 1921 Mad. 248, *Ref.* (*Macnair, Offg. J. C.*,

EVIDENCE ACT (1872), S. 44—Collusive decree.

(*Jackson and Subhedar, A. J. Cs.*). SHANKAR GANESH *v.* KESHEO. **121 I.C. 644= 12 N. L. J. 164=26 N. L. R. 33= A. I. R. 1930 Nag. 1 (F.B.).**

—S. 44—Collusive decree.

———*Fraud and collusion—Difference.*

A collusive decree binds the parties thereto and is not a nullity. It is also binding on the representatives of the parties.

No doubt a decree can be avoided on the ground of fraud or collusion under S. 44 of the Evidence Act, but there is a great difference between fraud and collusion. A party who has been made the victim of a fraud can obviously avoid a decree on the ground that he has discovered the fraud subsequent to the decree which could not have been made a point of defence in the former litigation. On the other hand, the fact of collusion is a matter which must have been well known to both the parties and is a point which could and might have been raised before the decree was passed on the last occasion. A third party can undoubtedly avoid a decree on the ground that it has been obtained collusively, but a party to a collusive decree cannot avoid it on that ground : 11 Bom. 708; 20 Mad. 333; 31 Mad. 485 and 18 Mad. 378, *Rel. on.* (*Sulaiman, J.*). SAHIB RAI *v.* BAHARI RAI. **101 I.C. 765=A. I. R. 1927 All. 494.**

—S. 44—Fraud.

———Fraudulent decree—Not got cancelled—Party can show fraudulent nature of, in defence. (*Mookerjee and Chotzner, JJ.*). PULIN BEHARI DEY *v* SATYA CHARAN. **70 I.C. 548= 36 C. L. J. 367=A. I. R. 1923 Cal. 79.**

—S. 44—Gross negligence.

———Although only fraud or collusion and not gross negligence is mentioned in S. 44 the principle involved is applicable to cases of gross negligence also. 27 Cal. 71 and 16 I.C. 543, *Ref.* (*Oldfield and Venkatasubba Rao, JJ.*). BAPANNA *v.* YERRAMMA. **74 I.C. 218=18 M. L. W. 49= 1923 M. W. N. 452=33 M. L. T. 46= A.I.R. 1923 Mad. 718=45 M.L.J. 324.**

—S. 44—Judgment in rem.

———Judgment *in rem* can be contested by person not party to the judgment—Fraud or collusion need not go to the root of the jurisdiction of the Court—English law is different. (*Kulwant Sahay and Macpherson, JJ.*). SITA DEVI *v.* GOPAL SARAN. **111 I.C. 762=9 P.L.T. 397=A.I.R. 1928 Pat. 375.**

—S. 44—Letters of administration.

———Letters of administration—Court other than that issuing the letters can determine if they were obtained by fraud—But better course is to stay suit to enable application to be made to revoke grant. (*Walmsley and Greaves, JJ.*). RAKSHUB MANDAL *v.* FARUNGINI DEVI. **62 I. C. 448= 25 C.W.N. 207=A.I.R. 1921 Cal. 332.**

—S. 44—Setting aside decree.

———Time to set aside a decree expiring—Validity of the decree can be challenged in defence on the ground of fraud. A. I. R. 1921 Bom. 257, *Appr.* (*Cuming and Mukherji, JJ.*). BHOLA NATH *v.* NAGENDRA BALA. **110 I.C. 571= A.I.R. 1928 Cal. 810.**

———*Limitations.*

Some limitation must be put upon S. 44. Where the case merely turns on in effect, a re-heaing of the previous suit on subs tantially the same evidence, then the Court will not hear the second suit. On the other hand, in a proper case the Court has jurisdiction to set aside a decree which has been obtained by fraud practised on the Court.

EVIDENCE ACT (1872), S. 45—Handwriting.

If, for instance, the existence of certain evidence has been stoutly denied by one party, and the Court has been induced to frame its decree on the basis that that evidence did not exist, then, if that evidence is afterwards discovered and it is of such a nature, that, if it had been before the first Court, the probabilities are that the Court would have arrived at a different conclusion, then, it may be, when all the circumstances are looked at, that in that case the Court would set aside the original decree. 41 Mad. 743 (F. B.), *Foll.*; *English case law Ref. to.* (*Marten, C. J. and Baker, J.*). BHIKAJI MAHADEO *v.* BALVANT RAMCHANDRA. **105 I. C. 296=29 Bom. L. R. 1046= A. I. R. 1927 Bom. 510.**

—S. 45—Assistant Mint Master.

———Assistant Mint Master is an expert. (*Daniels, J. C.*). MT. GILLI *v.* EMPEROR. **88 I.C. 848= 12 O. L. J. 497=2 O.W.N. 377=26 Cr.L.J. 1232= A. I. R. 1925 Oudh 616.**

—S. 45—Court as expert.

———Judge should not himself compare signatures without the help of other evidence. (*Newbould and Ghose, JJ.*). J. C. GLASTAUN *v.* SANATAN PAL. **78 I.C. 668=A.I.R. 1925 Cal. 485.**

———A Court's opinion based upon its own knowledge without the help of trained assistant to the effect that a certain amount of arsenic contained in certain prescriptions would produce arsenical poisoning, collapse and unconsciousness, is uusound and valueless especially where it is by itself untrained in medicine. Similarly it cannot say what medicines should be prescribed for billiary colic by reference to medical books. (*Greaves and Panton, JJ.*). SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* PURNA CHANDRA GHOSH. **83 I. C. 631=28 C. W. N. 579= 26 Cr.L.J. 71=A.I.R. 1924 Cal. 611.**

—S. 45—Evidence on commission.

———Expert evidence on commission loses much of its value. (*Broadway, J.*). NUR DIN *v.* EMPEROR. **108 I.C. 369=9 A.I.Cr.R. 561=10 L.L.J. 235= 29 Cr. L.J. 377=A.I.R. 1928 Lah. 533.**

—S. 45—" Expert."

———In law and as applied to a witness, the term "expert" has a special significance and no witness is permitted to express his opinion unless he is an "expert" within the terms of S. 45 or in special cases is permitted to express such opinion by some special law. (*Boys and Young, JJ.*). RAM DAS *v.* SECRETARY OF STATE. **A.I.R. 1930 All. 587.**

—S. 45—Expert opinion.

———An opinion of an expert witness not based on any well defined inexorable laws of nature cannot be taken as decisive especially where there is direct evidence opposed to it: 11 W.R. 25 (Cr.), *Ref.* (*Zafar Ali, J.*). H. MANSEL PLEYDELL *v.* EMPEROR. **96 I. C. 641=27 Cr. L.J. 977= A.I.R. 1926 Lah. 313.**

—S. 45—Handwriting.

———Court convinced against alleged signature—Witnesses deposing in its favour—Court would not declare it to be forgery in absence of other corroborating evidence. (*Page, J.*). LILA SINHA *v.* KUMAR BIJOY PROTAP DEO SINGH. **87 I.C. 534=41 C.L.J. 300=A.I.R. 1925 Cal. 768.**

———*Comparison.*

A comparison of handwriting is at all times, as a mode of proof hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.

EVIDENCE ACT (1872), S. 45—Hand writing—Proof.

Where the lower Appellate Court did not discuss either the oral evidence or the probabilities of the case, but simply relied upon what appeared to it to be a signature on the Will as a mere "tracing forgery" of some other signature of the testator and quashed the probate granted on a consideration of the evidence, by the first Court,

Held, that the lower Appellate Court had erred: 49 Cal. 235; A.I.R. 1922 Cal. 12, *Foll.* (*Sanderson, C.J. and Chakravarty, J.*). AMBIKA CHARAN BARNA *v.* NARESWARI DASI. **85 I. C. 525=29 C.W.N. 75=A.I.R. 1925 Cal. 145.**

—S. 45—Handwriting—Proof.

———*Person proving handwriting must prove his acquaintance with the handwriting to be proved.*

In order to prove the handwriting or signature of another person one must show that he is acquainted with the handwriting or signature of that person. (*Jwala Prasad and Adami, JJ.*). MT. JASODA KUAR *v.* JANAK MISSIR. **92 I.C. 1034=4 Pat. 394=7 P.L.T. 507=A.I.R. 1925 Pat. 787.**

—S. 45—Handwriting—Expert.

———*Inspection by Court.*

It is always unsafe to hold that a document is a forgery on the personal inspection of the document by the Court. (*Das and Adami, JJ.*). MT. BIBI KANIZ ZAINAB *v.* SYED MOBARAK HOSSAIN. **72 I.C. 748=A.I. R. 1924 Pat. 284.**

———Expert evidence as to handwriting—Only similarities must be pointed out to Court—Court has to decide whether particular writing is to be assigned to particular person. (*Lord Birkenhead.*) WAKEFORD *v.* LINCOLN BISHOP. **A.I.R. 1921 P.C. 168 (P.C.).**

—S. 45—Medical witness.

———Experts—Medical witness—Opinion must not depend on which party calls him as witness'. (*Page, J.*). LILA SINHA *v.* KUMAR BIJOY PROTAP DEO SINGH. **87 I.C. 534=41 C.L.J. 300=A.I.R. 1925 Cal. 768.**

—S. 45—Non-expert.

———Evidence of person who is not "expert" in art of handwriting can be ruled out as inadmissible. (*Tek Chand, J.*). CHET RAM *v.* JOGI RAM. **31 P.L.R. 109=A.I.R. 1930 Lah. 336.**

—S. 45—Opinion on foreign law.

———Expert opinion on foreign law, where it is elaborately laid down in a Code, need not be called for—Court should itself interpret such law. (*Odgers and Wallace, JJ.*). PALANIPPA CHETTY *v.* NAGAPPA CHETTIAR. **123 I.C. 600=A.I.R. 1930 Mad. 146.**

—S. 45—Opinions on law.

———It is the duty of Courts themselves to interpret the law of the land and apply it and not to depend on the opinion of witnesses howsoever learned they may be. It would be dangerous to delegate their duty to witnesses produced by either party. Foreign law, on the other hand, is a question of fact with which Courts in British India are not supposed to be conversant. Opinions of experts on foreign law are therefore allowed to be admitted. (*Sulaiman and Mukerji, JJ.*). AZIZ BANU *v.* MAHOMED IBRAHIM. **89 I.C. 690=47 All. 823=23 A.L.J. 768=A.I.R. 1925 All. 720.**

—S. 45—Palm impressions.

———Opinion of expert as to identity of palm impression is admissible. (*Madgavkar, J.*). EMPEROR *v.* BABULAL BEHARI. **108 I.C. 508=52 Bom. 223=30 Bom. L. R. 321=29 Cr. L.J.410=10 A.I. Cr. R. 84=A.I.R. 1928 Bom. 158.**

EVIDENCE ACT (1872), S. 45—Report of expert.

—S. 45—Report of expert.

———The opinion of an expert which is admissible against an accused is the opinion given by him at the trial. Opinion given for the purposes of a previous suit is not substantive evidence and when the accused has not the opportunity to cross-examine the expert regarding that opinion its evidential value is very little.

It is doubtful whether the opinion of an expert recorded for the purposes of a civil suit though proved in a criminal case is admissible at all at the latter trial: A. I. R. 1923 Lah. 622, *Ref.* (*Jai Lal, J.*). GAUDA MAL *v.* EMPEROR. **110 I.C. 810=11 A. I. Cr. R. 5=29 Cr. L. J. 778=A.I.R. 1928 Lah. 921.**

———Reports of experts are not legal evidence unless they appear and are examined in Court—Evidence Expert. (*Tek Chand, J.*). WADHAVA *v.* JAI KISHAN DAS. **106 I.C. 493=29 P. L. R. 125=A.I.R. 1928 Lah. 427.**

———Chemical examiner's negative report regarding absence of trace of blood in the earth, leaves and grass taken from the alleged place of occurrence will not displace strong direct evidence of the place of a certain murder. (*Newbould and C. C. Ghose, JJ.*). HASSENULLA SHEIKH *v.* EMPEROR. **83 I.C. 485=26 Cr. L. J. 5=28 C. W. N. 561=A.I.R. 1924 Cal. 625.**

———Report of finger print bureau is not admissible if not subjected to cross-examination though parties agree to abide by it. (3 N. L. R. 1; 22 C.W.N. 745, 28 I.C. 132. *Ref.*). (*Kinkkede, A.J.C.*). PITAIN *v.* BABOOSINGH. **79 I. C. 641=A. I. R. 1924 Nag. 183.**

———*Penal Code, S.* 193—*Opinion of hand expert not examined on oath—Magistrate's own observation may be used as evidence.*

Where in a trial for perjury in respect of a promissory note which the accused said on oath was in his handwriting, the Magistrate admitted in evidence the opinion of a handwriting expert against the accused without his being examined on oath and also had his own opinion after comparing the handwriting of the promissory note with various other handwritings, that the writing was not of the accused,

Held, that a conviction under S. 193 based on these materials is bad. The proposition that a Judge should not import his personal knowledge into his judgments and that if he wishes to rely on facts within his knowledge, he must go to the witness box and depose to them on oath is no doubt correct in the main, but it does not apply to facts of which a Judge is permitted to take judicial notice and nowhere in the Indian Evidence Act is it laid down that a Judge must not look at exhibits produced in Court or partly base his judgment on them. 11 W.R.Cr. 25, *Foll.* (*MacColl, J.*). S. C. GUPTA *v.* KING EMPEROR. **76 I.C. 425=1 Rang. 290=25 Cr. L.J. 185=A.I.R. 1924 Rang. 17.**

———The Report of the Government Expert, who never came into witness-box and whose report is not supported even by an affidavit is inadmissible in evidence and should not form the basis of the order directing the prosecution on a charge of forgery. A sanction based on a piece of evidence that can in no circumstances be called legal evidence and especially when there is positive legal evidence against it is illegal. The power of sanction should be used with great caution. (*Rafique, J.*). PEARY LAL *v.* KIDAR NATH. **75 I.C. 148=21 A.L.J. 399=4 L.R.A. Cr. 92=24 Cr. L.J. 900=A.I.R. 1923 All. 601.**

EVIDENCE ACT (1872), S. 45—Thumb impression.

—S. 45—Thumb impression.

———Evidence of thumb-impression expert is valuable. (*Addison, J.*). DILEDAD *v.* EMPEROR. **113 I.C. 68=30 Cr. L.J. 52=11 A. I. Cr. R. 428=A.I.R. 1929 Lah. 210.**

———As to the probative value of the opinion of an expert on fingerprints, it must have the same value as the opinion of any other expert, such as a medical officer, etc. In each case the evidence is only a guide to the Court to direct its attention to judge of its value. The Court is at liberty to use its own discretion and to come to conclusion either in affirmance or differing from the view taken by the expert. Though it is not safe to convict an accused upon the sole testimony of an expert, yet the Court cannot refuse to convict a person on the evidence of a fingerprint expert, merely on the ground that it is unsafe to base a conviction upon such evidence: A.I.R. 1926 Cal. 531; A. I. R. 1923 Mad. 178 and 32 Cal. 759, *Foll.* (*Jwala Prasad and Macpherson, JJ.*). BASGIT SINGH *v.* EMPEROR. **104 I.C. 626=6 Pat. 305=28 Cr. L.J. 850=A.I R. 1928 Pat. 129.**

———Evidence of Finger Print Expert as to age of thumb impression opposed to date on the document—Court should be careful to accept expert opinion. (*Bucknill, J.*). RAMLAKHAN PANDE *v.* DHARAMDEO MISIR. **97 I. C. 335=A.I.R. 1926 Pat. 575.**

———Although finger prints sometimes afford valuable evidence of identity, great caution must be exercised in arriving at a conclusion by a comparison of thumb impressions, and the positive evidence of witnesses who were undoubtedly present and were eye-witnesses to the transaction should not be lightly brushed aside. (*Mookerjee and Cuming, JJ.*). BAIDYA NATH DUTT *v.* ALIFJAN BIBI. **70 I. C. 194=36 C. L. J. 9=A. I. R. 1923 Cal. 240.**

———Thumb impression—Conclusions from can be basis of conviction. 32 Cal. 759, *Ref.* (*Oldfield and Ramesam, JJ.*). PUBLIC PROSECUTOR *v.* VIRAMMAL. **69 I.C. 374=16 M. L. W. 663=1922 M. W.N. 642=31 M. L. T.427=23 Cr. L. J.694=46 Mad. 715=A. I. R. 1923 Mad. 178.**

—S. 45—Value of expert evidence.

———Expert evidence by itself is not sufficient to base a conclusion. (*Ross and Fazl Ali, JJ.*). GOBINDJEE MADHWAJEE *v.* C. J. SMITH. **113 I. C. 698=A. I. R. 1928 Pat. 568.**

———Land Acquisition Act, S. 23—Expert's evidence is useless if unsupported by data. 11 C. W.N. 875, 877; 10 Bom. L. R. 907, 913; 33 Bom. 825, *Foll.* (*Broadway and Fforde, JJ.*). SECRETARY OF STATE *v.* (SHRIMATI) SARLA DEVI CHAUDHRANI. **79 I. C. 74=5 Lah. 227=A. I. R. 1924 Lah. 548.**

———Expert evidence—Value—Opinion of an expert is not infallible—He is likely to be partial to the party citing him. 11 W.R. Cr. 25, *Foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). HARI SINGH *v.* LACHMI DEV. **59 I.C. 220=3 L.L.J. 110=12 P.L.R. 1921=A.I.R. 1921 Lah. 126.**

—S. 47—Comparison of handwriting.

———*Handwriting—Comparison of—Weight due to—Resemblance of signature—Denial of signature—Onus.*

Although it is true that under the Evidence Act comparison of handwriting is legitimate enough and the view of persons competent to express opinions may be in many cases of considerable value, the opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. Indeed so uncertain and inexact is the science of the study of caligraphy that it has been for some years past the tendency to regard evidence even of experts as of somewhat inconclusive character. The mere fact that there is a resemblance between the signature alleged to be false and a signature admitted to be genuine does not carry great weight. If a signature is denied, the *onus* of proving it is on the party relying on its genuineness. (*Bucknill, J.*). BATAHU JHA *v.* PARMESHWAR RAI. **64 I.C. 234 (Pat.).**

—S. 47—'Habitually.'

———The term "habitually" in S. 47 means "Usually," "generally," or 'according to custom.' It does not refer to the frequency of the occasions but rather to the invariability of the practice.

The opinion of a record-keeper, who in the course of his official duty has to examine and file papers sent to him, is relevant to prove the hand-writing of a person whose papers are so filed, though the number of such papers may not be great. (*Crump, J.*). P. B. PONDE *v.* EMPEROR. **89 I.C. 1042=27 Bom. L.R. 1031=26 Cr.L.J. 1474=A.I.R. 1925 Bom. 429.**

—S. 47—Proof.

———*Handwriting—Proof of—Comparison is always an unsafe method of proof—Standard writing must be admitted or proved to be writing of person to whom it is attributed and writing compared must purport to be in that person's hand.*

One of the ordinary methods of proving handwriting are (1) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the handwriting by virtue of S. 47 of the Evidence Act. (*Mookerjee and Buckland, JJ.*). SAROJINI DASSI *v.* HARI DAS GHOSE. **66 I.C. 774=26 C. W.N. 113=49 Cal. 235=34 C.L.J. 373=A.I.R. 1922 Cal. 12.**

—S. 48—Inheritance.

———Tribal or family custom as to inheritance—Evidence of members of family or tribe is relevant—Specific instances are unnecessary. (*Mr. Ameer Ali.*) AHMAD KKAN *v.* MT. CHANNI BIBI. **91 I.C. 455=52 I. A. 379=3 O. W. N. 93=6 Lah. 502=30 C. W. N.506=6 L. R. A.P.C. 190=A. I. R. 1925 P. C. 267=50 M. L. J. 637 (P.C.).**

—S. 49—Opinions of dead.

———Opinion of dead person cannot be proved save under S. 32: 23 All. 37, *Foll.*; 11 Cal. 463, *Dist.* (*N. R. Chatterjee and Chotzner, JJ.*). PROTAP CHANDRA DEO DHANBAL DEB *v.* SRI RAJA JAGADISH CHANDRA DEO DHANBAL DEB. **82 I.C. 886=40 C. L. J. 331=A. I. R. 1925 Cal. 116.**

—S. 49—Wajib-ul-arz.

———Interpretation of *wajib-ul-arz* by some members of family is admissible when custom applicable to that family as entered in the *wajib-ul-arz* is in question. (*Dalal, J. C.*). SHARFUDDIN *v.* NIAMAT ALI. **87 I. C. 8=A. I. R. 1925 Oudh 688.**

—S. 50—Dispute about divorce.

———Where the question is whether *A* divorced *B* and *B*'s marriage to *C* was valid, the conduct and opinion expressed by the parties concerned and of all the people of their caste is relevant under S. 50. (*Hallifax and Macnair, A. J. Cs.*). JANGLIA *v.* JHINGRYA. **63 I. C. 595=A. I. R. 1921 Nag. 71.**

—S. 50—English Law and Indian Law.

———*General reputation of marriage relationship.*

S. 50 enacts a rule different from the law in England. According to English Law general

EVIDENCE ACT (1872), S. 50—Family conduct.

reputation is admissible to establish the fact of parties being married but S. 50 is limited to opinion as expressed by conduct. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SESHAMMAL *v.* KUPPANAIYANGAR. **91 I. C. 462=A. I. R. 1926 Mad. 475.**

—S. 50—Family conduct.

———Distribution and devolution of family property is often very valuable evidence of "family conduct" under S. 50. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SESHAMMAL *v.* KUPPANAIYANGAR. **91 I.C. 462= A.I.R. 1926 Mad. 475.**

—S. 50—Hearsay evidence.

———Mere hearsay evidence about relationship of parties is not admissible. 32 Cal. 84 (P.C.); A. I. R. 1922 P.C. 139; 39 Cal. 492 (P. C.); 26 I. C. 110 and 26 All. 581, *Ref. to.* (*Dalip Singh, J.*). MOHAN LAL *v.* MT. TULSAN. **109 I.C. 774= A.I.R. 1928 Lah. 824.**

—S. 50—Long co-habitation.

———*Presumption of marriage.*

Long co-habitation and conduct inconsistent with any other relationship would give rise to a strong presumption of the existence of a valid marriage: 21 Cal. 666 and 8 L.B.R. 222, *Foll.* (*Godfrey and Doyle, JJ.*). KYON HOE TSEE *v.* KYON WONG SI. **96 I.C. 762=5 Bur. L.J. 17= A.I.R. 1926 Rang. 90.**

———*Long co-habitation cannot establish marriage where proof to the contrary exists.*

The so-called sword wives of the Tanjore Raja were held to be mere concubines though permanent concubines and though treated in many respects as legally married wives. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

—S. 50—Marriage—Legality of.

———Where the question is as to the legitimacy of a certain type of marriage contracted by the members of a certain family, much may be gathered from the treatment accorded to the alleged wives and from the way in which they speak of themselves in official documents and petitions and legal proceedings in which they were parties. Evidence of this kind is conduct admissible under S. 50 of the Evidence Act (illustration B), as it shows the repute in which such marriage was held in the family. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

—S. 50—Marriage—Proof of.

———Proof of, by character and conduct of relatives of parties is not correct. (*Lord Shaw*). MOHABBAT ALI KHAN *v.* MD. IBRAHIM KHAN. **117 I.C. 17= 1929 A.L.J. 465=33 C.W.N. 645= 31 Bom. L.R. 846=6 O.W.N. 517=56 I.A. 201= 50 C.L.J. 89=30 M.L.W. 97=1929 M.W.N. 676= 10 Lah. 725=31 P.L.R. 1=A.I.R. 1929 P.C. 135= 57 M.L.J. 366 (P.C.).**

———A Court under the provisions of S. 50 while not directed to exclude evidence of opinion as expressed by conduct to prove such a marriage is directed not to base a finding that such a marriage has taken place upon the evidence of opinion alone. (*Stuart, C. J.*). RAGHUPAT SINGH *v.* KING EMPEROR. **100 I.C 535=4 O.W.N. 172=28 Cr. L. J. 311= 7 A. I. Cr. R. 436=A.I.R. 1927 Oudh 140.**

—S. 50—Reversionership.

———Inam statements purporting to be filed on behalf of a certain Hindu woman but actually signed by her brother's son are inadmissible on a question as to whether certain persons are her reversioners. (*Ramesam, J.*). KRISHNAMACHARLU *v.* S. VIJAYASARATHY. **88 I.C. 646= 22 M. L. W. 73=1925 M. W. N. 117= A.I.R. 1925 Mad. 823=48 M.L.J. 467.**

EVIDENCE ACT (1872), S. 54—Evidence of bad character.

—S. 51—General repute.

———In an action for damages, for libel or slander, evidence may be given in mitigation of damages to show that the plaintiff had general bad character (8 Q. B. D. 491 and Odgers on Libel and Slander, 5th Edition, page 402). Similarly in Criminal prosecution where it is essential, in order to constitute the offence of defamation, that the person who makes or publishes the imputation complained of, should intend to harm, or know or have reason to believe that the imputation will harm the reputation of the person concerning whom it is made or published, the question what reputation the complainant had is relevant. If it is proved that the complainant had a notoriously bad reputation as a bribe-taker, the imputation made as to his having taken a bribe on the particular occasion even if false, could not damage his reputation as he had none to lose. (*Martineau, J.*). DEVI DIAL *v.* KING EMPEROR. **73 I.C. 805=4 Lah. 55= 2 P. W. R. Cr. 1923=24 Cr. L. J. 693= A.I.R. 1923 Lah. 225.**

—S. 54—Evidence of bad character.

———Evidence to show character of persons associating with accused and nature of association is also inadmissible. (*Kemp, J.*). EMPEROR *v.* WAHIDUDDIN HAMIDUDDIN (NO. 1.) **32 Bom. L.R. 324=A.I.R. 1930 Bom. 157.**

———It is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue: *Makin* v. *Attorney-General for New South Wales*, (1894) A. C. 57, *Foll.*

Evidence of defalcations both prior or subsequent whether such defalcations formed the basis of another charge on which the accused may have been acquitted or not are admissible in evidence to prove guilty intent as also to anticipate the defence of the non-existence of such intent. (*Kincaid, J.C. and Rupchand Bilaram, A. J. C.*). EMPEROR *v.* STEWART. **97 I.C. 1041=27 Cr. L. J. 1217= 21 S. L. R. 55=A. I. R. 1927 Sind 28.**

———Evidence of bad character to prove motive for the crime or otherwise relevant is not excluded. 47 Cal. 671 and A. I. R. 1923 Bom. 71, *Dist.* (*Mullick, Ag. C. J. and Jwala Prasad, J.*). JAGWA DHANUK *v.* EMPEROR. **93 I. C. 884= 5 Pat. 63= 7 P. L. T. 396=27 Cr. L. J. 484= A.I.R. 1926 Pat. 232.**

———Evidence of previous bad character is relevant except where it is given for the purpose of showing that the accused was of a bad character and therefore likely to commit offences of the kind in question. Under S. 167, improper admission is no ground for a new trial if there is other evidence sufficient to support the conviction. (*Rattigan, C.J. and Martineau, J.*). DAULAT RAM *v.* EMPEROR. **22 Cr.L.J. 128=59 I.C. 560.**

EVIDENCE ACT (1872), S. 54—Habitual theft.

—S. 54—Habitual theft.

———In a case where the offence for which the accused are being tried is the particular one of belonging to a gang of dacoits, evidence merely that the accused habitually commits thefts (as opposed to dacoity and possibly robbery) is not evidence indicating an intention to commit the particular crime of which the accused is charged and is therefore inadmissible. But where the accused himself has given evidence that he has a good character such evidence is admissible under S. 54: 32 Mad. 179, *Foll.* (*Fawcett, J.*). EMPEROR *v.* HAJI SHER MAHOMED.

75 I.C. 67=46 Bom. 958=25 Bom. L.R. 214=
24 Cr. L.J. 867=A.I.R. 1923 Bom. 71.

—S. 54—Object.

———The object of S. 54 is to lay down that evidence of bad character including a previous conviction is, as a rule, irrelevant "to help to establish an accused person's guilt," but not to lay down that it may not be taken into account in passing sentence: 39 Bom. 326, *Foll.* (*Wallace, J.*). SUBAN SAHIB *v.* EMPEROR. **115 I.C. 483=**
52 Mad. 358=29 M.L.W. 194=2 M.Cr.C. 65=
1929 M.W.N. 393=30 Cr.L.J. 471=
12 A.I. Cr.R. 256=A.I.R. 1929 Mad. 306=
56 M.L.J. 595.

—S. 54—Past good character.

———*Past good character does not lead to presumption of innocence but to prove guilt of such a man; evidence against him must be of an unimpeachable character.*

The mere fact that a person has enjoyed the confidence of his superiors or that he had in fact led a life of honesty during the past, is no reason to suppose that he will not succumb to temptation at the close of his career, but before a man of this type and such antecedents is adjudged guilty, the evidence against him must be of an unimpeachable character. (*Tek Chand, J.*). MANGAL RAI *v.* EMPEROR. **110 I.C. 676=**
10 L.L.J. 262=29 P.L.R. 703=10 A.I.Cr.R. 519=
29 Cr. L.J. 740=A.I.R. 1928 Lah. 647.

—S. 54—Previous conviction.

———Previous convictions and proceedings under S. 110, Cr. P. Code, are admissible in a case under S. 401 for the purpose of proving habit though not of general bad character and are not excluded by S. 54, Evidence Act: 13 Cr.L.J. 539; 38 Cal. 438 and A.I.R. 1925 Bom. 195, *Rel. on*; 32 Mad. 179 and A.I.R. 1923 Bom. 71, *Diss.* and *Dist.* (*Percival, J.C. and Rupchand, A. J. C.*). BAKSHO *v.* EMPEROR. **A.I.R. 1930 Sind 211.**

———Section 54 does not apply to cases in which the bad character of any person is itself a fact in issue. If the evidence of bad character is introduced in order to establish a relevant fact, the evidence of bad character is admissible. Where the evidence of previous conviction or the evidence that a man has been bound over under the preventive sections can be considered only as evidence of character it must be excluded, but where such evidence is admissible *aliunde*, it should not be excluded. Such evidence is admissible under S. 14, not as evidence of character, but as evidence to prove habit and association. 27 Cal. 139; 32 Mad. 179; A.I.R. 1923 Bom. 71; A.I.R. 1925 Cal. 872 and A.I.R. 1925 Oudh 144, *Ref.* (*Stuart, C.J. and Raza, J.*). KHILAWAN *v.* EMPEROR. **112 I.C. 337=**
5 O. W.N. 760=29 Cr. L. J. 1009=
11 A.I. Cr. R.273=A. I. R. 1928 Oudh 480.

EVIDENCE ACT (1872), S. 54—Scope.

———Guilt of joint possession of cocaine—Evidence of previous conviction of trafficking in cocaine and history sheet opened by the police are inadmissible. (*Stuart, C.J.*). RAHIM BAKHSH *v.* EMPEROR.
109 I.C. 349=5 O.W.N. 124=
9 A. I. Cr. R. 416=10 A.I. Cr. R. 169=
29 Cr. L.J. 525=A.I.R. 1928 Oudh 215.

———Former judgment more than 25 years old and convicting accused of dacoity is admissible in a case under S. 401. I.P.C., for showing criminal tendency to commit theft and not habit of committing theft. 14 Bom. L. R. 373 and 38 Cal. 408, *Foll.* (*Marten and Fawcett, JJ.*). MOTIRAM HARI *v.* EMPEROR. **89 I.C. 527=26 Bom. L.R. 1223=**
26 Cr. L.J. 1391=A.I.R. 1925 Bom. 195.

———The principle underlying the legal provision may also be seen in S. 54 of the Indian Evidence Act under which a previous conviction is declared inadmissible against an accused person, except where evidence of bad character is relevant. A.I.R. 1923 Cal. 707, *Dist.* (*May Oung, J.*). MAUNG E. GYI *v.* THE CROWN. **81 I.C. 106=1 Rang. 520=**
A.I.R. 1924 Rang. 91.

———During the trial of the accused for a substantive offence, the evidence about the previous conviction should not be recorded. Such evidence is forbidden by S. 54 unless the accused offers evidence of good character. (*Jwala Prasad and Sultan Ahmed, JJ.*). TEKA AHIR *v.* EMPEROR.
60 I..C 331=22 Cr. L.J. 219=5 Pat. L.J. 706.

—S. 54—Previous dishonesty.

———Evidence of a previous act of dishonesty of the accused can only be allowed to prevent the accused person from pleading that the act under consideration was committed without a dishonest intention. (*Addison and Kemp, JJ.*). EMPEROR *v.* BAKHWOR LAL. **102 I.C. 492=**
8 A.I. Cr. R. 196=28 P.L.R. 313=
28 Cr. L.J. 556= A. I. R. 1927 Lah. 549.

—S. 54—Previous Security proceedings.

———Order under S. 118, Cr. P. Code can be proved against a person proceeded against under S. 110, though the order is not a conviction under Evidence Act, S. 54, Expln. 2. (*Ashworth and King, JJ.*). EMPEROR *v.* KUMERA. **51 All. 275=**
1929 Cr. C. 346=A.I.R. 1929 All. 650.

—S. 54—Previous sedition.

———As a general rule in sedition cases evidence of previous sedition is inadmissible. It is no doubt open to the prosecution, where the accused himself tries to show that he is a well affected man, because he has been particularly making loyal speeches, to prove that he has been in the habit of making seditious speeches. Also the speech, the subject of charge, may be of such a character that its meaning is not patent. It may contain obscure, political, social or historical references, elucidation of which may be sought from previous speeches of the same accused. In such a case previous speeches would be admissible. (*Kennedy, J.C.*). EMPEROR *v.* GOVINDANAND. **84 I.C. 448=26 Cr. L.J. 304=**
A.I.R. 1921 Sind 199.

—S. 54—Scope.

———S. 54 of the Evidence Act does not apply to cases in which the bad character of any person is itself a fact in issue. (*Raza and Nanavutty, JJ.*). BACHCHU *v.* EMPEROR. **7 O.W.N. 862=**
1930 Cr. C. 1079=A.I.R. 1930 Oudh 455.

———Section 54 regulates what is relevant for the purpose of proof at an enquiry or trial, not what is relevant for the purpose of deciding whether a longer or shorter sentence is to be imposed.

EVIDENCE ACT (1872), S. 56—Custom.

(*Rutledge, C. J., Carr, Cunliffe and Das, JJ.*). EMPEROR *v.* NGA BA SHEIN. **111 I.C. 453= 6 Rang. 391=11 A.I.Cr.R. 126= 29 Cr. L.J. 869=A.I.R. 1928 Rang. 200 (F.B.).**

—S. 56—Custom.

———Custom repeatedly brought to the notice of Court may be taken judicial notice of. (*Baker, Offg. J.C.*). MT. SANO *v.* PURAN SINGH. **A.I.R. 1925 Nag. 174.**

—S. 56—Fact transpiring in Court.

———A Court can take judicial notice of facts transpiring in Court. (*Kulwant Sahay and Macpherson, JJ.*). CHATTRA KUMARI DEVI *v.* MOHAN BIKRAM SHAH. **121 I.C. 337.**

—S. 56—Judgments.

———*Court will take judicial notice of judgments but not of statements of facts therein—Custom proved in a previous suit between certain parties will not affect other parties in a subsequent suit.*

When a custom has been repeatedly proved, the Court may take judicial notice of the fact that a certain class of people is governed by the custom. (*Tyabji, A.J.C.*). TULSIDAS KESHOWDAS *v.* FAKIR MAHOMED. **93 I.C. 321=19 S.L.R. 376= A.I.R. 1926 Sind 161.**

—S. 56—Registration endorsement.

———Judicial notice should be taken of the endorsement of the Sub-Registrar and his signature. (*B. B. Ghose and Roy, JJ.*). RADHA MOHUN *v.* NRIPENDRA NATH. **105 I.C. 422= 47 C.L.J. 118=A.I.R. 1928 Cal. 154.**

—S. 57—Custom of privacy.

———There is a customary right of privacy prevailing in Oudh which is so well established and known, as not to require proof, in any case by a party setting it up and the Court itself may take judicial notice of the custom. 10 All. 358, *Rel. on.* (*Ashworth, J.*). BAGRIDI *v.* RAHIM BUX. **93 I.C. 332=13 O. L. J. 512= A. I. R. 1926 Oudh 352.**

—S. 57—Government notification.

———Judicial notice of a Government notification should not be taken by Court. (*Sulaiman and Ashworth, JJ.*). COLLECTOR OF CAWNPORE *v.* JUGAL KISHORE. **107 I.C. 578= A.I.R. 1928 All. 355.**

—S. 57—Matter of public history.

———The questiou of title between trustee of property, alleged to be dedicated to religious user, though an old and historical institution, and a private person cannot be deemed to be a "matter of public history" within the meaning of S. 54 and historical works cannot be used to establish title to such property. Books written as late as when the dispute has already arisen cannot be referred to even if S. 57 is held applicable. 46 I. C. 119, *Foll.* (*Tek Chand and Agha Haidar, JJ.*). SANT SINGH *v.* B. RALLIA RAM. **31 P.L.R. 372= A.I.R. 1930 Lah. 744.**

—S. 57—Municipal rules.

———Rules by the Hyderabad (Sind) Municipality in regard to Water rates and purporting to have the force of law, can be taken judicial notice of by the Court. (*Fawcett, J.C. and Kemp, A.J.C.*). COMMITTEE OF MANAGEMENT OF HYDERABAD *v.* SETH RAMCHAND LOWNKIRAM. **87 I. C. 258= 16 S.L.R. 98=A.I.R. 1923 Sind 1.**

—S. 57—Registered letter.

———Court can take judicial notice that registered letter reaches the destination 24 hours later than an ordinary letter. (*Walsh, Ag. C.J. and Banerji, J.*). CHATURBHUJ RAM LAL *v.* SECRETARY OF STATE. **99 I.C. 622=A.I.R. 1927 All. 215.**

EVIDENCE ACT (1872), S. 56—Applicability.

—S. 57—Signature of officer.

———*Signature of a Gazetted officer—Judicial notice can be taken.*

The applicability of the sub section is not contingent on the exhibition of a copy of the Fort Saint George Gazette containing a notification of his appointment as such officer. (*Ayling and Ramesam, JJ.*). CHOLANCHERI AYAMMA, *In re.* **72 I.C. 515= 24 Cr.L.J. 403=17 M. L. W. 615= 32 M. L. T. 300=1923 M. W. N. 290= A.I.R. 1923 Mad. 600=44 M.L.J. 557.**

—S. 57—Thefts on Railways.

———It is obviously unfair to the railway company to take judicial notice of thefts on the railways. It is for the plaintiff asking for damages to prove "wilful neglect" on the part of the defendant railway. If he wishes to rely on the occurrence of thefts and inadequacy of the method of sealing waggons, it is for him to lead evidence on the point. A.I.R. 1926 All. 641, *Rel. on.* (*Addison, and Bhide, JJ.*). SECRETARY OF STATE *v.* GHANAYA LAL SRIKISHAN OF AMRITSAR. **111 I. C. 523=10 Lah. 329= A. I. R. 1928 Lah. 837.**

—S. 57—Warrant.

———*Warrant issued under S. 46, Calcutta Police Act is not public record—Its contents must be proved in a regular way.*

A warrant issued under the provisions of S. 46 of the Calcutta Police Act is not a public record and there is no presumption of any kind attaching to it; therefore the contents thereof must be proved in the popular way and, therefore, it is incumbent upon the prosecution to prove that a warrant of this description was in strict compliance with the provisions of S. 46 of the Act and that it was issued after information upon oath had been brought before the issuing officer and after such enquiry as he thought it necessary to make had been made. (*C.C. Ghose and Chotzner, JJ.*). B. WALVEKAR *v.* KING EMPEROR. **96 I. C. 264= 53 Cal. 718=30 C. W. N. 713= 27 Cr.L.J. 920=A.I.R. 1926 Cal. 966.**

—S. 58—Admission of execution.

———Admission of execution of a document dispenses with the necessity of proof of proper attestation. 6 Pat. L. J. 465, *Appl.*

Where the defendant mortgagor was an illiterate *pardanashin* lady,

Held, that the mere admission of her execution of the document is not sufficient to dispense with the necessity of proving the passing of consideration. (*Das and Ross, JJ.*). RAM LAL SINGH *v.* MT. SEPTI. **94 I. C. 558= 1926 P.H.C.C. 117=A.I.R. 1926 Pat. 295.**

—S. 58—Admission, what is.

———Mere reference in plaint to suit contract being made on 'office dhara' is no indication to the defendants that plaintiffs rely on one of the terms of the "office dhara" in support of their claim. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). FIRM OF DASSOMAL RAMCHAND *v.* FIRM OF YUSAFALI ADAMI. **86 I. C. 364=18 S.L.R. 265= A. I. R. 1925 Sind 80.**

—S. 58—Applicability.

———Section 58 makes no exception of criminal trials and the Criminal Courts, as a matter of

EVIDENCE ACT (1872), S. 58—Applicability.

practice, do not insist on every fact which is admitted by accused being proved by the prosecution. But, under the proviso, the practice is to insist on proof of all really essential facts. (*Wazir Hasan and Simpson, Ag.J.Cs.*). BHULAN *v.* EMPEROR.
91 I.C. 233=27 Cr.L.J. 57=A.I.R. 1926 Oudh 245.

———Section 58 normally relates to agreed statements of facts made between both parties to save time and expense at a trial. But where there is no agreement to admit facts, and no pleading has been put in by a party it cannot be said any such admission has been made in his pleading. (*Shah, Ag. C. J., Marten and Fawcett, JJ.*). JOHN OVER *v.* MURIEL A. I. OVER.
91 I.C. 20=49 Bom. 368=27 Bom. L.R. 251=A.I.R. 1925 Bom. 231.

———Divorce cases—Section does not apply. (*Shah, Ag. C. J., Marten and Fawcett, JJ.*). JOHN OVER *v.* MURIEL A. I. OVER.
91 I.C. 20=49 Bom. 368=27 Bom. L.R. 251=A.I.R. 1925 Bom. 231.

—S. 58—Document.

———Proof of, may be waived by party affected by it, but validity of document is not affected thereby. 35 Mad. 607; A.I.R. 1918 P. C. 3, *Ref.* (*Dawson-Miller, C.J. and Mullick, J.*). BRIJNATH SINGH *v.* BRIJRAJ KUER.
68 I.C. 383=2 Pat. 52=4 P.L.T 239=A.I.R. 1922 Pat. 514.

—S. 58—Partition.

———Where the defendants alleged that the plaintiff had executed certain unregistered deeds by which the inheritance of a common ancestor was partitioned, and the plaintiff in his pleadings by necessary implication admitted the said allegation.

Held, that oral partition being permissible S. 58 of the Evidence Act made evidence on this point unnecessary and therefore the provisions of Ss. 91 and 92 of the Evidence Act would not prevent defendants from relying on the partition. (*Heald and Lentaigne, JJ.*). MAUNG PO KIN *v.* MAUNG SHWE BYA.
76 I.C. 855=1 Rang. 405=A.I.R. 1924 Rang. 155.

—S. 60—Direct evidence.

———*Under S. 67 direct evidence of handwriting is not always necessary—S. 60 does not exclude circumstantial evidence of a thing which could be seen, heard and felt.*

It was never intended by S. 60 to exclude circumstantial evidence of a thing which could be seen, heard and felt, though at first sight the section might appear to have that meaning. 12 B.L.R. App. 18, *Foll.* (*Cuming and Mukerji, JJ.*). KARALI PROSAD DUTTA *v.* E.I. RY. CO.
111 I.C. 792=48 C.L.J. 32=A.I.R. 1928 Cal. 498.

———Oral evidence must in all cases be direct including the occasion when secondary evidence is being taken under S. 63 (5) of the contents of a document so that the deponent's having read the document becomes necessary. (*Young and Baguley, JJ.*). KALENTHER AMMAL BY HER ATTORNEY MEERA LEBBAI MERICAIR *v.* MA MI.
84 I.C. 175=2 Rang. 400=3 Bur.L.J. 172=A.I.R. 1924 Rang. 363.

—S. 60—Dying declaration.

———*Proof of.*

Witnesses should not be allowed to prove a dying declaration as if it is a substantial piece of evidence in the case. The relevant fact to be proved

EVIDENCE ACT (1872), S. 60—Jail identification.

is the statement made by a deceased person admissible under S. 32 of the Evidence Act, and that statement is not a document made by the Magistrate but the verbal statement made by the deceased person. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him or read over to him at or about the time the statement is made. (*Abdul Qadir, J.*). KUNJ LAL *v.* EMPEROR.
67 I.C. 577=23 Cr.L.J. 417=6 L.L.J. 115=A.I.R. 1924 Lah. 12.

—S. 60—Exparte affidavits.

———Ordinary documents are not proved by mere *exparte* affidavits when the person trying to prove them does not submit himself to cross-examination. Under special circumstances affidavits under Order XIX may be allowed to be read in evidence, but even then if the opposite party *bona fide* desires the attendance of the witness for cross-examination he has to appear. (*Sulaiman, J.*). HABIB BUX *v.* SAMUEL FITZ & CO., LTD.
89 I.C. 22=23 A.L.J. 961=6 L.R.A. Civ. 553=A. I. R. 1926 All. 161.

—S. 60—Fact of deposing.

———Fact of deposing might be proved by any one who has seen and heard witness. 27 Cal. 639. (P. C.) and 34 Mad. 349 (F. B.), *Ref.* (*Ramesam, J.*). K. S. GANAPATHI AIYAR *v.* SAKHARAYAPPA MUDALIAR.
115 I. C. 147=A. I. R. 1929 Mad. 187.

—S. 60—Hearsay evidence.

———Evidence of a witness that he learnt that one of the accused is known by a certain name is hearsay evidence and is therefore inadmissible. (*Boys, J.*). DANNA *v.* KING-EMPEROR.
108 I. C. 689=9 A.I Cr. R. 194=9 L.R.A. Cr. 27=29 Cr. L. J. 449.

———Hearsay evidence is inadmissible. (*Teunon and Ghose, JJ.*). ASHUTOSH DAS *v.* KING EMPEROR.
66 I. C. 513=34 C. L. J. 53.

———The introduction as evidence of a hearsay statement regarding the nature of the occurrence in question and the absence from the Judge's charge to the jury of any caution against the attaching of any value thereto was reprehensible. (*Teunon and Ghose, JJ.*). EMPEROR *v.* LALIT MOHAN SINGH ROY.
62 I. C. 578=25 C. W. N. 788=22 Cr. L. J. 562=A I. R. 1921 Cal. 111.

—S. 60—Jail identification.

———Statements of witnesses at jail identification are not made on oath, and again, they are made in the course of extra-judicial proceedings. The law does not allow statements of this kind to be made available as evidence at the trial unless and until the persons who made those statements are called as witnesses. When these persons are called as witnessess then these previous statements become admissible, not as substantive evidence in the case, but merely as evidence to corroborate or contradict the statements made by these witnesses in Court. If when an identifying witness called in the Sessions Court, states there that he can identify no one, there is obviously nothing to corroborate and so the evidence of the previous statement, express or implied, made in the course of the identification proceedings in the jail is not admissible. (*Lindsay and Sulaiman, JJ.*). NAGINA *v.* EMPEROR.
93 I. C. 477=19 A. L. J. 947=27 Cr. L. J. 813=A. I. R. 1921 All. 215.

EVIDENCE ACT (1872), S. 60—Opinions and impressions.

—S. 60—Opinions and impressions.

———Only what the witness actually saw and heard as to what a mob was doing and saying is admissible to prove the nature of the assembly; his opinion and impressions that the assembly appeared to be unlawful are not admissible. (*Jwala Prasad, J.*). JOGI RAUT *v.* EMPEROR.

105 I. C. 234=9 P.L.T. 260=28 Cr. L. J. 906= A. I. R. 1928 Pat. 98.

—S. 60—Solicitor's books.

———Entries in solicitor's books of account regarding object of purchase for client are neither inadmissible nor irrelevant nor hearsay. (*Viscount Sumner.*) HARIRAM SEROUGEE *v.* MADAN GOPAL BAGLA. **114 I.C. 565=1929 A.L.J. 406= 49 C.L.J. 335=33 C.W.N. 493=31 Bom. L.R. 710= 1929 M. W. N. 422=30 M.L.W. 835= A.I.R. 1929 P.C. 77=57 M. L. J. 581 (P.C.).**

—S. 60—Statement of accused.

———Statement by accused immediately after the offence is relevant but statement by another person to the accused must be proved by the person who heard it. (*Broadway and Campbell, JJ.*). KAKAR SINGH *v.* THE CROWN. **81 I.C. 717= 6 L.L.J. 575=25 Cr. L.J. 1005= A.I.R. 1924 Lah. 733.**

—S. 61—Copy of document.

———That the man producing a document used the same to settle disputes between the villagers, and before him the document was in the possession of his father, does not make the document a true copy of the original (chitta). (*B. B. Ghose and Bose, JJ.*). ABDUL BARI *v.* HRISHIKESH MITTRA. **49 C.L.J. 546=A.I.R. 1929 Cal. 459.**

—S. 62—Newspaper.

———One specimen of a newspaper is not a copy of another specimen of the same newspaper of the same date. There is no relation between them of copy and original. They are all counterpart originals, each being primary evidence of the contents of the rest. (*Hilton, J.*). RAM CHANDRA *v.* EMPEROR. **120 I.C. 798=1930 Cr. C. 331=31 Cr L.J. 168= A.I.R. 1930 Lah. 371.**

—S. 63—Certified copy.

———A certified copy is sufficient secondary evidence under S. 63 of the existence, conditions and contents of the deed but not of its execution, which must be proved as required under S. 68. (*Dalal, J.*). SHEIKH KARIMULLAH *v.* GUDAR KOERI. **82 I. C. 306=5 L. R. A. Civ. 686= A. I. R. 1925 All. 56.**

———The registration copy of a document cannot be admitted in evidence in absence of proof of loss of the original. (*Devadoss, J.*). T. K. APPALACHARYULU *v.* T. K. VENKATA RAMANUJACHARYULU. **85 I.C. 524=21 M. L. W. 67= A. I. R. 1925 Mad. 345=47 M. L. J. 906.**

———Where the Sub-Registrar being doubtful about the execution of a document brought to him for registration, prepared a copy of the same for forwarding it to District Registrar for opinion,

Held, that such a copy was secondary evidence of the document. (*Kinkhede, A. J. C.*). BAYA *v.* BHAURAO. **78 I. C. 865=A.I.R. 1924 Nag. 375.**

—S. 63—Contents of document.

———Secondary evidence of a document is evidence of its contents by person who read the document and oral evidence as to the terms of a mortgage which have not been reduced to writing is not evidence of the contents of the document. U. B. R. (1907-09).

EVIDENCE ACT (1872), S. 63—Oral evidence.

II Evidence P. 13, *Foll.* (*Saunders, J. C.*). MAUNG PO DIN *v.* MAUNG PO NYEIN. **66 I. C. 360=4 U. B. R. 80= A.I.R. 1921 U.B. 3.**

—S. 63—Copy of copy.

———Copy of copy of document produced and admitted to record by consent—Although it cannot prove anything which under Evidence Act cannot be proved, yet it can be admitted to show contents of original. A. I. R. 1925 Mad. 257, *Appr.* (*Reilly, J.*). NARASAYYA *v.* KRISHNAMURTHI. **115 I.C. 509=A.I.R. 1928 Mad. 1255.**

—S. 63—Direct evidence.

———Oral evidence must in all cases be direct including the occasion when secondary evidence is being taken under S. 63 (5) of the contents of a document so that the deponent's having read the document becomes necessary. (*Young and Baguley, JJ.*). KALENTHER AMMAL BY HER ATTORNEY A. S. MEERA LEBBAI MERICAIR *v.* MA MI. **84 I.C. 175=2 Rang. 400= 3 Bur. L. J. 172=A.I.R. 1924 Rang. 363.**

—S. 63—Illiterate witness.

———If a document is read over to a man because he cannot read himself, and he thereupon signs it and as containing what has been read over to him, he may be said within S. 63 to have seen the contents of that document: 12 A.L.J. 239, *Dist.* (*Walsh, J.*). PUDAI SINGH *v.* BRIJ MANGAL. **73 I.C. 654=A.I.R. 1923 All. 612.**

———Witness unable to read the document—His evidence is not secondary evidence of the contents of that document. 12 A. L. J. 239, *Foll.* (*Daniels, J.*) RAMJI DAS *v.* MIHIN LAL. **71 I.C. 654=A.I.R. 1923 All. 441.**

———Where the only witness in support of the mortgage is one Bindeshri, an illiterate person, and no other witnesses have been produced,

Held, that such an illiterate person could not be deemed to be one who has seen the mortgage within Cl. 5 of S. 63, of the Evidence Act. (*Gokul Prasad, J.*). JANKI *v.* RAM KISHORE. **66 I.C. 557=A.I.R. 1922 All. 232.**

—S. 63—Objections.

———Admissibility of a copy of a copy of the original document—Objection regarding admissibility not raised in lower Court—Objection is not open in appeal. (*Devadoss, J.*). K. LATCHAYYA SUBUDHI *v.* V. SEETHARAMAYYA. **84 I.C. 921= 20 M.L.W. 719=35 M.L.T. 129= 1924 M.W.N. 923=A.I.R. 1925 Mad. 257.**

—S. 63—Oral evidence.

———Evidence that the witness saw the document and heard it read out by some one else is only hearsay so far as the contents are concerned, and does not fulfil the requirements of S 60. A. I. R. 1927 P. C. 15, *Foll.*; A. I. R. 1924 All. 792, *Diss. from.* (*Srivastava, J.*). RAM PIARAY *v.* RAM RAGHUBIR LAL. **112 I.C. 310.**

———Oral evidence to be secondary evidence of the contents of a document must be of persons who have read the document. (*Sir John Wallis.*) MA MI *v.* KALLANDER AMMAL. **100 I. C. 1= 45 I.C. 263=5 Rang. 18=54 I.A. 61= 25 A.L.J. 65=38 M.L.T. 41= 1927 M.W.N. 80= 25 M.L.W. 342= 28 P.L.R. 109= 31 C.W.N. 621= 8 P.L.T. 280=6 Bur. L.J. 40= 29 Bom. L.R. 800=A.I.R. 1927 P.C. 15= 52 M.L.J. 376 (P.C.).**

———*"Seen it" meaning of.*

Mere fact of having seen the document is enough the witness need not have read it or have been

EVIDENCE ACT (1872), S. 63—Oral evidence.

able to do so, in order to make his evidence admissible. (*Walsh, A. C. J. and Sulaiman, J.*). MEHI LAL *v.* RAMJI DASS. **80 I.C. 939= 22 A.L.J. 864=5 L.R.A. Civ. 720= 47 All. 13=A.I.R. 1924 All. 792.**

———The argument that if a witness has seen a document without reading it, nevertheless under S. 63 (5) he becomes qualified through knowledge that he has acquired otherwise than by reading it or seeing it in such a way that he became acquainted with its contents by so seeing it, is wrong. (*Young and Baguley, JJ.*). KALENTHER AMMAL BY HER ATTORNEY A. S. MEERA LEBBAI MERICAIR *v.* MA MI. **84 I.C. 175=2 Rang. 400= 3 Bur. L.J. 172=A.I.R. 1924 Rang. 363.**

—S. 63—Paper book.

———Paper-book containing translation of documents is not secondary evidence of the contents of these documents. (*Suhrawardy and Mukerji, JJ.*). RAMANUJ RAI *v.* DAKSHINESHWAR RAO. **93 I.C. 101=43 C.L.J. 237=30 C.W.N. 259= A I.R. 1926 Cal. 752.**

—S. 63—Printed copy of deposition.

———Printed copy of depositions coming up to Madras High Court after Government Press took up printing of High Court papers—Depositions in English—Copy is admissible in evidence as papers are compared with original before giving final order for striking off. A. I. R. 1927 Pat. 61, *Rel. on.* (*Ramesam, J*). GANAPATHI AIYAR *v.* SAKHARAYAPPA MUDALIAR. **115 I.C. 147= A.I.R. 1929 Mad. 187.**

—S. 63—Survey and Settlement Report.

———Survey and Settlement Report which was based on a *jamabandi*, the original of which was not produced and which itself was not exhibited in evidence, cannot be treated as secondary evidence of the contents of the *jamabandi* statement under Cl. (5), S. 63 or under any other section of the Evidence Act. A.I.R. 1928 Pat. 284, *Reversed.* (*Sir John Wallis.*) SURENDRA NATH KARAN DEO *v.* KAMAKHYA NARAIN SINGH. **123 I.C. 145= 31 M.L.W. 352=32 Bom. L.R. 515= 51 C.L.J. 502=A.I.R. 1930 P. C. 45.**

—S. 63—Translation of document.

———*Translation of document in judgment not* inter partes *is inadmissible as secondary evidence.*

Section 63 gives an exhaustive statement of secondary evidence admissible. (*Spencer and Devadoss, JJ.*). JAGANNATHA NAIDU *v.* THE SECY. OF STATE. **70 I.C. 107= 16 M.L.W. 11=1922 M.W.N. 432= 31 M.L.T. 46=A.I.R. 1922 Mad. 334= 43 M.L.J. 37.**

—S. 64—Objections.

———Admission of secondary evidence—Objection as to mode of proof cannot be taken after Court has admitted the document. (*Das and Kulwant Sahay, JJ.*). KESHO PRASAD SINGH *v.* BABU PERMESHRI PRASAD SINGH. **71 I.C. 902=4 P.L.T. 135= 1923 P. H. C. C. 63=1 Pat. L. R. 111= 2 Pat. 414=A.I.R. 1923 Pat. 276.**

—S. 65.

Admissibility of secondary evidence.
Condition precedent.
Discretion of Court.
Objection.
Original instrument invalid.
Miscellaneous.

EVIDENCE ACT (1872), S. 65—Admissibility of secondary evidence—Loss of original.

—S. 65—Admissibility of secondary evidence—Account books.

———In the absence of the original account books, a summary of the result of that examination, as given by a person who had examined them for a pleader is admissible in evidence under S. 65. (*Lindsay and Kanhaiya Lal, JJ.*). MUST. PHULWANT KUNWAR *v.* JANESHAR DAS. **83 I.C. 782= 46 All. 575=22 A. L.J. 521= 5 L.R.A. Civ. 785=A.I.R. 1924 All. 625.**

—S. 65—Admissibility of secondary evidence—Admission of party.

———Where a previous admision of a party is sought to be used against him the statement containing the admission must be put in. Court's order referring to the admission is not sufficient proof. (*Dalip Singh, J.*). MOLAR *v.* RAMPRASAD. **102 I.C. 198=28 P. L. R. 196= A.I.R. 1927 Lah. 377.**

—S. 65—Admissibility of secondary evidence—Income-tax returns.

———Certified copies obtained by private persons of Income-tax Returns are inadmissible as the issue of such copies is unlawful under S. 54 of the Income Tax Act, 1922. (*Carr, J.*). ANWAR ALI *v.* TAFOZAL AHMED. **84 I.C. 487=3 Bur. L.J.194= 2 Rang. 391=A.I.R. 1925 Rang. 84.**

—S. 65—Admissibility of secondary evidence—Loss of original.

———*Proof.*

Whether or not sufficient proof of loss of an original document, to lay a ground for admission of secondary evidence has been given is a point proper to be decided by the Judge of first instance and is treated as depending very much on his discretion. His conclusion should not be overruled, except in a clear case of miscarriage: 19 Cal. 438 (P.C.), *Foll.*; A.I.R. 1922 P.C. 56, *Rel. on.* (*Srivastava, J.*). JAS KARAN SINGH *v.* RAM TAHAL. **114 I.C. 307 (Oudh).**

———S. 57, Registration Act only shows that when secondary evidence has in any way been introduced as by loss of original document copy certified by Registrar is admissible to prove contents of original. (*Mya Bu, J.*). MA YIN *v.* MA BOK. **A.I.R. 1929 Rang. 277.**

———Mortgage deed executed in England—Deed lost before registration in British India—Suit brought for recovery of money—Secondary evidence was held admissible. 23 Mad. 49; 4 M. H. C. R. 312 and 7 Mad. 440, *Dist.* (*Ross and Wort, JJ.*). HERBERT FRANCIS *v.* MAHOMED AKBAR. **105 I.C. 502=7 Pat. 99=9 P.L.T. 221= A.I.R. 1928 Pat. 134.**

———It is well settled that certified copies of registered deeds evidencing private transactions are admissible only when a case for reception of secondary evidence has been made out. Section 57, Registration Act, only shows that when secondary evidence has in any way been introduced, as by proof of the loss of the original document, a copy certified by the Registrar shall be admissible for the purpose of proving the contents of the original. 22 W. R. 303 and 11 I. C. 50, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). BADHAWA RAM *v.* AKBAR ALI. **103 I.C. 752=9 L.L.J. 428=A.I.R. 1927 Lah. 817.**

———Omission to plead loss of a document at the earliest stage of proceedings is not a ground for rejecting its secondary evidence. (*Hallifax, A.J.C.*). KAMOD SINGH *v.* KHEMKARAN. **103 I.C. 186= 10 N.L.J. 129=A.I.R 1927 Nag. 269.**

EVIDENCE ACT (1872), S. 65—Admissibility of secondary evidence—Loss of original.

———The rule laid down in S. 65 that a certified copy is the only secondary evidence admissible when the original is a public document does not apply where the original has been lost or destroyed. 6 Mad. 80, *Foll.*; 27 Cal. 632 (P. C.), *Rel. on.* (*Dus and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESWAR PRATAB NARAIN SINGH. **101 I.C. 289=5 Pat. 777=8 P.L.T. 510= A.I.R. 1927 Pat. 61.**

———Evidence as to a statement made by the executor under the Will as to the same having been burnt is admissible as justifying a party in giving secondary evidence of the Will. *The Queen* v. *Braintree*, 120 E.R. 827 and *The Queen* v. *Kenilworth*, 115 E. R. 631, *Rel. on.* (*Phillips and Madhavan Nair, JJ.*). VENKATARAMANUJACHARYULU *v.* APPALACHARYULU. **97 I. C. 785= 24 M. L. W. 227=A. I. R. 1926 Mad. 1003.**

———Document lost after it was filed in Court—Secondary evidence is allowed (*Lord Sumner.*). TULSI RAM *v.* RAM SARAN. **86 I.C. 552= 27 Bom.L.R 777=29 C.W.N. 965=22 M.L.W. 86= 26 P.L.R. 419=23 A.L.J. 109=2 O.W.N. 256= 6 L.R.P.C. 70=A.I.R. 1925 P.C. 80= 49 M.L.J. 132 (P.C.).**

———Suit on bond—Loss of bond alleged—Defendant denying execution—Plaintiff proving execution—Plaintiff need not prove loss of bond. (*Neave, A.J.C*). BENI MADHO *v.* RAM LAKHAN. **81 I.C. 570=A.I.R. 1925 Oudh 100.**

———Where the loss of the original has not been proved the copy cannot be accepted in evidence. (*Abdul Raoof and Moti Sagar, JJ.*). HUKAM CHAND *v.* SHAHAB DIN. **71 I.C. 495=4 Lah. 90= A.I.R. 1924 Lah. 40.**

———One of the attesting witnesses to a will deposed to its due exccution. He stated that after the death of the testator the original will came into the possession of *D* who was the brother of Mt. R, the legatee and who acted as her Mukhtar. He further deposed that *D* was dead and that no other members of the family either of *R* or of her husband were now in existence.

Held, that a sufficient foundation had been laid for the admission of secondary evidence. (*Lindsay and Sulaiman, JJ.*). RAM CHARAN LAL *v.* RAGHU BIR SINGH. **75 I.C. 387=21 A.L.J. 495= 45 All. 618=4 L.R.A. Civ. 294= A.I.R. 1923 All. 551.**

———The evidence of a witness, who deposes to the loss of a deed which should be in his custody, is sufficient to allow secondary evidence. (*Lord Phillimore*). MT. DHTISHAN ALI *v.* JAMNA PRASAD. **64 I.C. 299=15 M. L.W. 104= 24 Bom. L.R. 675=9 O.L.J. 71= 30 M.L.T. 132=48 I.A. 365= 27 C.W.N. 8=20 A.L.J. 961=24 O.C. 272= A.I.R. 1922 P.C. 56 (P.C.).**

———Certified copy—Original produced in an old suit—Copy can be relied upon by Court. (*Macleod, C.J. and Shah, J.*). CHUDASAMA KHODUBA SARTANSANG *v.* CHUDASAMA TAKHATSANG NARASINGJI. **76 I.C. 155=46 Bom. 32= A.I.R. 1922 Bom. 177.**

—S. 65—Admissibility of secondary evidence—Original in another Court.

———Original filed in another Court and not produceable without delaying suit—Certified copy is admissible. (*Suhrawardy and Costello, JJ.*). JOBEDA KHATUN *v.* SHEIKH MONABALI. **A.I.R. 1930 Cal. 479.**

EVIDENCE ACT (1872), S. 65—Condition precedent.

—S. 65—Admissibility of secondary evidence—Original with hostile person.

———Where original document was with defendant's brother who was on bad terms with defendant, certified copy was held admissible. (*Dalal, J.C.*). BASHIRUDDIN KHAN *v.* MAHADEO SINGH. **79 I.C. 663=27 O.C. 26=11 O.L.J. 565= A. I. R. 1924 Oudh 306.**

—S. 65—Admissibility of secondary evidence—Original with opposite party.

———The production of a certified copy of the registered deed is sufficient proof when the original of that deed is in the possession of the opposite party. (*Mukerji and Bennet, JJ.*). MT. SALIMAN *v.* HAKIM MUKHDUM BUX. **116 I.C. 277= A.I.R. 1928 All. 394.**

———Proof that party against whom deed is sought to be proved appears to be in possession of it is enough. (*Misra, A.J.C.*). MT. ZAIB-UN-NISSA *v.* IRSHAD HUSAIN. **89 I. C. 284=12 O. L.J. 354= 2 O.W.N. 505=A.I.R. 1925 Oudh 504.**

———Where the original receipts are with the defendant and are not produced by him the plaintiff is entitled to produce in evidence copies of the Receipts they being secondary evidence of the Receipts. (*Hallifax, A.J.C.*). CHOUDHRI RAMPRASAD *v.* NATHURAM. **68 I.C. 494= A.I.R. 1923 Nag. 32.**

—S. 65—Admissibility of secondary evidence—Public document.

———*Abstracts.*

An abstract from mutation records showing the number of transfers of land in a particular tribe is admissible in evidence under S. 65 (g) for proving that members of the tribe have unrestricted powers of alienation. (*Abdul Raoof and Moti Sagar, JJ.*). SHER MUHAMMAD KHAN *v.* DOST MUHAMMAD KHAN. **78 I.C. 451= A.I.R. 1925 Lah. 231.**

———An entry in a public document such as a settlement record can be proved only by the original or by a certified copy. (*Martineau, J.*). RAM LAL *v.* GHANASHAM DASS. **71 I.C. 825= A.I.R. 1923 Lah. 150.**

—S. 65—Admissibility of secondary evidence—Telegram.

———Three months after sending a telegram it can be proved by secondary evidence. (*Dalal, J.C.*). BISHAMBHAR NATH TANDON *v.* EMPEROR. **90 I.C. 760=26 Cr. L.J. 1602= 2 O.W.N. 760=A.I.R. 1926 Oudh 161.**

—S. 65—Admissibility of secondary evidence—Will.

———*Bona fide* impossibility of producing original must be proved before secondary evidence as to contents can be adduced. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). RANGAPPA NAYAKER *v.* RANGASAMI NAYAKAR. **88 I.C. 249= 1925 M.W.N. 232= A.I.R. 1925 Mad. 1005.**

—S. 65—Condition precedent.

———Distinction between admissibility and manner of proof—Secondary evidence cannot be admitted when primary evidence is not admissible. A.I.R. 1922 Lah. 401 (2), *Foll.* (*Shadi Lal, C.J. and Le Rossignol, J.*). MUHAMMAD DIN *v.* ALLAH DITTA. **95 I.C. 444=8 L.L.J. 158= 27 P. L. R. 268.**

———Where primary evidence of the contents of a document is inadmissible. secondary evidence of that primary evidence can be in no better position. (*Le Rossignol, J.*). RAHIM BAKSH *v.* MOHAMMAD AYUB. **66 I. C. 153=A.I.R. 1922 Lah. 354.**

EVIDENCE ACT (1872), S. 65—Discretion of Court.

—S. 65—Discretion of Court.

——The question whether the non-production is due to any other sufficient reason not arising from his own default or neglect is one of fact and depends mainly on the discretion of the Court. (*Sulaiman and Kendall, JJ.*). GAYAPRASAD *v.* JASWANT RAI. **A.I.R. 1930 All. 550.**

——Trial Court is to decide whether or not sufficient proof of search for, or loss of, original documents for admission of secondary evidence is given. (*Jackson, A. J. C.*). PANDU *v.* BAPUDAS. **121 I.C. 33=A.I.R. 1929 Nag. 288.**

——What evidence is sufficient to prove loss of document is discretionary with trial Court. Discretion should not be disturbed unless there is miscarriage of justice. 19 Cal. 438 (P. C.), *Foll.* (*Wild, J.C. and Rupchand Bilaram, A. J. C.*). CHOITHRAM *v.* KHUNCHAND. **113 I.C. 370= A.I.R. 1929 Sind 7.**

——The question of the admissibility of secondary evidence is a point properly to be decided by the Judge of first instance and is treated as depending very much on his discretion. His conclusion therefore should not be overruled except in a clear case of miscarriage. 19 Cal. 438 (P. C.), *Foll.* (*Shadi Lal, C. J. and Fforde, J.*). CHUHA MAL *v.* HAJI RAHIM BAKHSH. **71 I. C. 568= 18 P.W.R, 1923=A. I. R. 1924 Lah. 303.**

—S. 65—Objection.

——Copy of document admitted in trial Court without objection—No objection is open in appeal. (*Campbell, J.*). JIWAN MALL *v.* JIWAN. **88 I.C. 541= 7 L. L. J. 79=26 P. L. R. 455= A. I. R. 1925 Lah. 347.**

——Absence of objection in trial Court to secondary evidence on the ground of want of proof of loss of original precludes the objection being raised in appeal. (*Young, J.*). MA THE NU *v.* MG NI TU. **84 I.C. 486=3 Bur. L. J. 193= A.I.R. 1925 Rang. 113.**

——When secondary evidence is produced in the first Court and no objection is taken either by the other side or by the Presiding Officer, it is not open to the Court of Appeal to reject that evidence. 6 Cal. 666; 31 Cal. 155 and 11 Bom. 320, *Foll.* (*Scott-Smith, J. on difference between Martineau and Harrison, JJ.*). JAWALA SINGH *v.* TEJA SINGH. **71 I.C. 801=A.I.R. 1924 Lah. 273.**

——When secondary evidence has once been admitted by the lower Appellate Court, the High Court sitting in second appeal cannot reject it. (*Dalal, J. C.*). BASHIRUDDIN KHAN *v.* MAHADEO SINGH. **79 I. C. 663= 27 O. C. 26=11 O.L.J. 565= A.I.R. 1924 Oudh 306.**

——Original in the possession of one defendant—Co-defendant cannot for the first time in appeal object to plaintiff producing copy. (*Shah and Crump, JJ.*). VINAYAK SHIVRAO ARAS *v.* ATMARAM RAYAJI NETRAMALI. **76 I.C. 152= 24 Bom.L.R. 1308=A.I.R. 1923 Bom. 170.**

——Admission of a copy without objection—Objection cannot be raised in appeal. (*Coutts and Das, JJ.*). RAMLOCHAN MISRA *v.* HARINATH MISRA. **67 I.C. 628= 3 Pat. L. J. 397=1 Pat. 606= A.I.R. 1922 Pat. 565.**

—S. 65—Original instrument invalid.

——Deed of relinquishment requiring registration not registered—Secondary evidence of the

EVIDENCE ACT (1872), S. 65—Miscellaneous.

document is not admissible—Registration Act, S. 49. (*Kinkhede, A.J.C.*). 33 Cal. 613, *Ref. to.* JANARDHAN KASHINATH KASAR *v.* JANARDHAN VISHWANATH SHASTRI. **101 I.C. 839= A.I.R. 1927 Nag. 214.**

——*Unstamped documents.*

Held, production and presentation are not identical with admission and secondary evidence of the contents of an unstamped document, which has been lost or destroyed can, under no circumstances, be allowed. A non-existent document cannot be admitted, though under certain circumstances, of which the most essential is that before its disappearance the original should have borne the necessary stamp, secondary evidence is permitted. (*Shadi Lal, C.J. and Harrison, J.*). MUHAMMAD AYUB *v.* RAHIM BAKHSH. **69 I.C. 723= 5 L.L.J. 172=3 Lah. 282=A.I.R. 1922 Lah. 401.**

——*Specific performance.*

As the written agreement of sale was not on a stamped paper, it was not open to the plaintiff to adduce secondary evidence of it even upon payment of penalty. 23 Mad. 49 (P.C.), *Foll.* (*Macleod, C.J. and Shah, J.*). HIRALAL RAMNARAYAN *v.* SHANKAR HIRACHAND. **62 I.C. 637= 45 Bom. 1170=23 Bom. L.R. 506= A.I.R. 1921 Bom. 401.**

——Absence of original not explained—Secondary evidence of the contents was not admissible. (*Teunon and Newbould, JJ.*). DOMAI BARA *v.* KEREO KOLITA. **62 I.C. 444 (Cal.).**

—S. 65—Miscellaneous.

——*Scope—Documents produced merely as evidence—Applicability.*

According to S. 65 of the Evidence Act the loss of the original must be proved not only in a case where the document is being enforced in a suit but also where it is produced merely as a piece of evidence. (*Sulaiman and Kendall, JJ.*). MAQBUL AHMAD *v.* BRIJDEO TEWARI. **122 I. C. 751.**

——Certified copy of document relied upon—Before any presumption under S. 90 can be made party relying must lay foundation by leading secondary evidence under S. 65: 22 All. 294; 41 All. 592; 6 Cal. 720 and 14 Cal. 486 (P. C.), *Foll.* (*Sulaiman and Kendall, JJ.*). GAYA PRASAD *v.* JASWANT RAI. **A. I. R. 1930 All. 550.**

——*'Produce.'*

The word "produce" only means "procure the production or give it in evidence." (*Sulaiman and Kendall, JJ.*). GAYAPRASAD *v.* JASWANT RAI. **A. I. R. 1930 All. 550.**

——*Loss of document.*

Transaction in nature of relinquishment—Agreement to relinquish unregistered but enforceable under the doctrine of part performance—Secondary evidence of its contents may be given if it is lost. A. I. R. 1924 Rang. 214, *Ref.* (*Chari and Maung Bu, JJ.*). MA NGWE HMON *v.* MAUNG SAN YAUK. **A. I. R. 1929 Rang. 181.**

——*Certified copy.*

It is well settled that certified copies of registered deeds evidencing private transactions are admissible only when a case for reception of secondary evidence has been made out. S. 57, Registration Act, only shows that when secondary evidence has in any way been introduced, as by proof of the loss of the original document, a copy certified by the Registrar shall be admissible for the purpose of proving the contents of the original: 22 W. R. 303 and 11 I. C. 50, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). BADHAWA RAM *v.* AKABAR ALI **103 I.C. 782=9 L.L.J. 428=A.I.R. 1927 Lah. 817.**

EVIDENCE ACT (1872), S. 65—Miscellaneous.

———Registration Act, S. 49—Secondary evidence of partition-deed inadmissible—Oral evidence can be adduced to prove lawful origin of possession. (*Pratt and Mya Bu, JJ.*). MA PWA ZON *v.* MA PAN I. **102 I.C. 696=5 Rang. 154. A. I. R. 1927 Rang. 203.**

———S. 65 does not dispense with production of existing bond. (*Walsh and Pullan, JJ.*). MD. ZAFAR *v.* ZAHUR HUSAIN. **97 I.C. 82= 49 All. 78=24 A. L.J. 964=A.I.R. 1926 All. 741.**

———*Acquiescence to reception of evidence.*

Where the reception of secondary evidence is in direct contravention of an imperative prohibition of law, the fact that there was no objection cannot convert irrelevant evidence into relevant evidence. The principle of acquiescence can only be applied when the secondary evidence has been given of the contents of a document which, if produced, itself could have been admitted under the provisions of the law. (*Campbell, J.*). JHANDA SINGH *v.* HARNAM SINGH. **94 I. C. 75=27 P.L.R. 260= A. I. R. 1926 Lah. 415.**

———*Scope.*

S. 65 has no reference to a case where mere secondary evidence of the documents has not been tendered, but it is the document itself which is put in as secondary evidence of facts which have to be proved *aliunde*. Hence newspapers are not secondary evidence of facts narrated by them. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH *v.* THE CROWN. **88 I. C. 22= 7 L.L.J. 264=26 Cr. L.J. 1078=26 P.L.R. 566= A. I. R. 1925 Lah. 299.**

———A party entitled to produce and producing secondary evidence of a document is not relieved from the duty cast upon him by law namely of proving the execution of the original. (*Shadi Lal, C.J. and Fforde, J.*). CHUHA MAL *v.* HAJI RAHIM BAKSH. **71 I.C. 568=18 P.W.R. 1923= A.I.R. 1924 Lah. 303.**

———Party in possession of document cannot let in secondary evidence. (*Dawson-Miller, C.J. and Mullick, J.*). BUDHAN TELI *v.* MADAN MOHAN LAL. **68 I.C. 653=3 P.L.T 485= A.I.R. 1923 Pat. 111.**

———*Judgment.*

Statements of persons who merely heard judgment pronounced are not admissible in evidence. What is required is an oral account of the contents of the judgment or decree by some one who had read the one or the other. (*MacColl, A.J.C.*). MAUNG CHIT U *v.* MAUNG THA KU. **77 I.C. 258=4 U.B.R. 135=A.I.R. 1923 Rang. 113.**

———*Written statement.*

Where an acknowledgment in the written statement in a previous suit is relied on the statement itself or a certified copy thereof must be proved and neither the plaint nor the decree can be admitted as secondary evidence of the same. (*Piggott and Walsh, JJ.*). HARIMURAT *v.* RAMHIT' **63 I.C. 490=3 U.P.L R. (All.) 179.**

—S. 66—Absence of notice.

———*Effect.*

Under S. 66 of the Evidence Act secondary evidence may not be given unless the party proposing to give it as previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law or as the Court considers reasonable. The omission to give notice to the persons said to possess the original is a fatal objection to the admission of secondary evidence. (*Curgenven, J.*). SUBBARAYALU NAIDU *v.* VENGAMA NAIDU. **123 I.C. 197.**

EVIDENCE ACT (1872), S. 67—Plaint.

———Oral evidence of contents of letter inadmissible under S. 66 cannot become admissible by subsequent dispensing with notice. 20 Cal. 53, *Rel. on.* (*Mukerji and Jack, JJ.*). PROFULLA KUMAR BOSE *v.* EMPEROR. **50 C.L.J. 593= 1930 Cr. C. 209=A.I.R. 1930 Cal. 209.**

—S. 66—Adverse party.

———*Pro forma* defendant is not necessarily "adverse party." (*Banerji and King, JJ.*). MT. DURGANTI KUNWAR *v.* JAGANNATH PRASAD. **118 I. C. 663=1929 A.L.J. 1091= A.I.R. 1929 All. 680.**

—S. 66—Notice when necessary.

———Plaintiff suing on pro-note transferred to him under settlement deed—Note not produced but alleged to be in possession of widow of transferor —Widow on that account joined as defendant but not given notice under S. 66—Settlement deed cannot be admitted as secondary evidence of pro-note. (*Curgenven, J.*). SUBBARAYULU NAIDU *v.* VENGAMA NAIDU. **A.I.R. 1930 Mad. 742.**

———Redemption suit—Mortgagee denying existence of mortgage deed—Notice is not necessary. 6 Cal. 720 (P.C.) and 14 Cal. 486 (P.C.), *Dist.* (*Ross and Macpherson, JJ.*) DINANATH RAI *v.* RAMA RAI. **97 I.C. 348= 6 Pat. 102= 1926 P.H.C.C. 286=A.I.R. 1926 Pat. 512.**

———The second proviso to S. 66 does not apply in a case against a mortgagee and notice to produce must be given before secondary evidence can be given of the mortgage. 2 U. B. R. (1907-08), Evidence, 13, *Foll.* (*Duckworth, J.*). MAUNG PO NI *v.* MA SHWE KYI. **84 I.C. 373= 2 Rang. 397=A.I.R. 1925 Rang. 7.**

—S. 66—Service of notice.

———Pardanashin woman living with her brother—Summons served on brother constitutes notice such as is required by S. 66. (*Banerji and King, JJ.*). MT. DURGAWATI KUNWAR *v.* JAGANNATH PRASAD. **118 I.C. 663=1929 A.L.J. 1091= A.I.R. 1929 All. 680.**

—S. 67—Kind of proof required.

———Section 67 makes proof of execution of a document something more difficult than proof of matter other than the execution of a document. (*Sulaiman and Ashworth, JJ.*). SALAIK CHAND *v.* MT. TANIZ BANO. **107 I.C. 564= A. I. R. 1928 All. 303.**

———Sections 60 and 67 are somewhat ambiguous, but it was never intended by S. 67 that direct evidence of handwriting was always necessary. The section merely stated with reference to deeds what was the universal rule in all cases, that the person who makes an allegation must prove it and lays down no new rule as to the kind of proof to be given. (*Cuming and Mukerji, JJ.*). KARALI PRASAD DUTTA *v.* E. I. RY. CO. **111 I.C. 792= 48 C.L.J. 32=A. I. R. 1928 Cal. 498.**

———Signatures attributed to accused persons—Handwriting must be proved. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH *v.* THE CROWN. **88 I.C. 22=7 L.L.J. 264=26 Cr. L.J. 1078= 26 P.L.R. 566=A. I. R. 1925 Lah. 299.**

———Section does not require any special kind of proof of execution. (*Mittra, Offg. A. J. C.*). MT. LAHANI *v.* BALA. **77 I.C. 798=18 N. L.R. 85= A.I.R. 1922 Nag. 227.**

—S. 67—Plaint.

———A plaint is a private document and must be proved by direct evidence. (*Lindsay, J. C. and Daniels, J.C.*). AHMAD KHAN *v.* HURMUZI KHANAN. **61 I. C. 177=8 O. L. J. 27= A. I. R. 1921 Oudh 81.**

EVIDENCE ACT (1872), S. 68—Account-book.

—S. 68—Account-book.

———Account book is not document required by law to be attested. (*Young and Sen, JJ.*). EMPEROR *v.* NARBADA PRASAD. **121 I.C. 819= 1930 Cr. C. 54=51 All. 864= 31 Cr. L. J. 356=A.I.R. 1930 All. 38.**

—S. 68—Admission of execution.

———Under the law, as it now stands, it is not necessary to call an attesting witness in proof of the execution of any document not being a will which has been registered in accordance with the provisions of the Indian Registration Act unless its execution by the person by whom it purports to have been executed is specifically denied. (*Pullan, J.*). BASDEO UPODHYA *v.* RAJ BEHARI SINGH. **104 I.C. 344=1 L.C. 268= A.I.R. 1927 Oudh 535.**

—S. 68—Applicability.

———There is no law which requires the attestation of a sale-deed so far as Punjab is concerned. Section 68 therefore has no application to sale-deeds in that province. (*Fforde and Jai Lal, JJ.*). MAHARAJA OF FARIDKOT *v.* ANANT RANI. **114 I. C. 62=10 Lah. 447=A.I.R. 1929 Lah. 1.**

———Section 68 applies only to cases where a document is required to be attested. There is no rule of law in force in the Punjab which requires bahi entry to be attested at all. Section 68 has therefore no applicability to such a document. (*Tek Chand, J.*). KANWAR RAM *v.* GHUGI. **108 I.C. 57=A. I R. 1928 Lah. 148.**

———*Dawson-Miller, C. J.*—A document executed in England and requiring to be attested under the English law but not requiring to be attested under Indian Law, relating to property in India may be proved only by proving the signature of the executant. *Adams* v. *Clutterbuck*, 10 Q. B. D. 403, *Ref.* (*Dawson-Miller, C. J. and Mullick, J.*). G. M. TOOMEY *v.* BHUPENDRA NATH. **111 I. C. 57=7 Pat. 320=A. I. R. 1928 Pat. 304.**

—S. 68—Attestation—Proof of.

———The question as to the mode in which a mortgage or a gift can be legally effected ought not to be confounded with the question as to how the mortgage or deed of gift should be legally proved. The absence of attestation invalidates the deed. Where the executant of the document does not admit its execution the document has to be proved in accordance with the provisions of Ss. 68 and 69 of the Evidence Act which relates to the mode of proof. (*Sen and Niamatullah, JJ.*). BALBADAR SINGH *v.* LAKSHMI BAI. **1930 A.L.J. 623.**

———One of three attesting witnesses called but resiling—Document can be proved by other evidence. (*Cuming and Mullick, JJ.*). HASON ALI *v.* GURUDAS KAPALI. **116 I. C. 726= 49 C.L.J. 16=33 C.W.N. 248= A.I.R. 1929 Cal. 188.**

———Attesting witness not remembering at distance of time place of execution or order of attestation is no reason for disbelieving his evidence which is formally sufficient to prove execution and attestation. (*Ross and Chatterji, JJ.*). BISWANATH SINGH *v.* KAYESTHA CORPORATION. **119 I. C. 405=8 Pat. 450= 10 P.L. T. 379=A.I.R. 1929 Pat. 422.**

———Suit on mortgage—Execution of mortgage admitted but attestation denied—Plaintiff not examining any attesting witness (one being dead, the other's whereabouts not known)—Mortgage was held not proved. (*Cf.* Act 30 of 1926). (*Prideaux, A.J.C.*). DEORAO *v.* DHONDIRAO. **109 I.C. 576=A.I.R. 1928 Nag. 244.**

EVIDENCE ACT (1872), S. 68—Certified copy.

———Admission of mortgage bond in evidence without objection is not proof of execution or attestation. (*Das and Ross, JJ.*). BANWARI PRASAD SINGH *v.* MT. BIGNI KUER. **101 I.C. 277= 8 P.L.T. 7=A.I.R. 1927 Pat. 131.**

———The production of one attesting witness satisfies the requirements of S. 68 of the Evidence Act and from a mere failure to do more than is required of the mortgagee and to produce both the witnesses even if he knows where the other is, it cannot be inferred that the mortgagee is intentionally keeping back the other and that therefore his evidence would damage the plaintiff's case. (*Baker, J. C. and Hallifax, A. J. C.*). LACHHMI NARAYAN *v.* ZEHIRUL SAID ALVI. **76 I. C. 772= A. I. R. 1923 Nag. 322.**

———T. P. Act, S. 59—Mortgage—Attestation—Witness denying seeing executant sign—Witness found to be false—Attestation was held proved. (*Robinson, C.J. and May Oung, J.*). DAWSON'S BANK LTD. *v.* CHETTY FIRM. **76 I. C. 522= 1 Rang. 121=A.I.R. 1923 Rang. 254.**

———Section 68 of the Evidence Act does not in any way affect the requirements of S. 59, T. P. Act. 39 All. 109 and 39 All. 241, *Diss.*

There may be cases where all the attesting witnesses are dead, when the requirements of the law would be satisfied by any evidence which would show that the document was executed in the presence of two attesting witnesses. 39 All. 112, *Ref.* (*Wallis, C. J., Seshagiri Aiyar and Abdur Rahim, JJ.*). NAMBERUMAL CHETTIAR *v* RAGHAVA CHARIAR. **71 I. C. 390=14 M.L.W. 563= A. I. R. 1921 Mad. 701.**

———All that Ss. 68 and 69 do is to impose a particular mode of proof and to require that certain documents shall be proved in a particular way and in no other way, that is to say, if one attesting witness is alive execution and attestation cannot be proved by other witnesses without calling the attesting witness, and if no attesting witness is available then similarly S. 69 says that execution and attestation cannot be proved by other evidence unless the handwriting of at least one attesting witness is proved. (*Wallis, C.J. and Krishnan, JJ.*). T. GANGAYYA *v.* B. SUBBAMMA. **69 I.C. 284= 14 M.L.W. 344=1921 M.W.N. 747= A.I.R. 1921 Mad. 472=41 M.L.J. 305.**

———To prove the creation of a valid charge by a mortgage deed the evidence of one of the attesting witnesses, is sufficient to prove the execution of the mortgage; but this proof may be rebutted by the proof on the other side that the other witness or witnesses did not really see its execution. (*Sadasiva Aiyar and Spencer, JJ.*). VENKATA REDDI *v.* MUTHU PAMBULU NAIK. **60 I.C. 554= 29 M.L.J. 463.**

———Execution of—Mortgage-deed must be proved at least by one attesting witness. (*Saunders, J.C.*). MAUNG PO THAUNG *v.* P. L. N. R. M. MUTHIA CHETTY. **65 I.C. 64=4 U. B. R. 78= A. I. R. 1921 U. B. 1.**

—S. 68—Attesting witness.

———*Meaning.*

An "attesting witness" in S. 68 of the Evidence Act, has the same meaning as an "attesting witness" under S. 59 of the Transfer of Property Act. (*Newbould and Panton, JJ.*). JAGANNATH KHAN *v.* BAJRANG DAS. **62 I.C. 97=48 Cal. 61= A.I.R. 1921 Cal. 208.**

—S. 68—Certified copy.

———A certified copy is sufficient secondary evidence under S. 63 of the existence, conditions and

EVIDENCE ACT (1872), S. 68—Death of attesting witness.

contents of the deed but not of its execution, which must be proved as required under S. 68. (*Dalal, J.*). SHEIKH KARIMULLAH *v.* GUDAR KOERI.
82 I. C. 306=5 L. R. A. Civ. 686=A. I. R. 1925 All. 56.

—S. 68—Death of attesting witness.

——Executant of document denying execution —Attesting witnesses either dead, or turned hostile or not available—Signatures of attesting witnesses proved—There is nothing to prevent Court from holding execution proved. 11 Bom. 690; 37 Cal. 467; 12 B.L.R. 18; *Adam* v. *Keer*, 1 Bos. and Pull. 360 and *Joshua Hands* v. *Harbert James*, 2 Comyns. 531, *Rel. on*; *Whitelocke* v. *Musgrove*, 2 Cr. & M. 511, *Dist.*; 35 All. 364, *Not appr.* (*Ananthakrishna Ayyar, J.*). POONUSWAMI GOUNDAN *v.* KALYANASUNDRA AYYAR. **A.I.R. 1930 Mad. 770.**

——Mortgagor, scribe and attesting witnesses dead—In view of amended definition of attestation and varied mode of proving attested document as amended by S. 68 proof of probability of execution is sufficient. (*Barlee, J. C. and Kalumal, A.J.C.*). PARUMAL *v.* ABDUL RAUF. **120 I. C. 91=A.I.R. 1929 Sind 235.**

—S. 68—Denial of execution.

——Mere fact that mortgagor does not admit genuineness of mortgage is not sufficient to put mortgage to proof of attestation. (*Ross and Chatterji, JJ.*). BISWANATH SINGH *v.* KEYESTHA CORPORATION. **119 I.C. 405=8 Pat. 450=10 P.L.T. 379=A.I.R. 1929 Pat. 422.**

——Where the execution of a document is not specifically denied, it is not strictly necessary for the party proving the document to call an attesting witness in proof of the execution of it. (*Madgavkar and Patkar, JJ.*). YAKUBKHAN *v.* GULJARKHAN.
111 I.C. 287=52 Bom. 219=30 Bom.L.R. 565=A.I.R. 1928 Bom. 267.

——Examination of the attesting witness is not necessary when execution is not specifically denied. (*Allanson, J.*). LAKHO TEWARI *v.* LALIT KOERI.
104 I.C. 622=A.I.R. 1927 Pat. 403.

—S. 68—Execution by Pardanashin lady.

——Where the witness did not see the executant a *pardanashin* lady, but saw her signing the deed behind the pardha and where the other witnesses knew her by voice,

Held, the deed is properly attested. (*Das and Adami, JJ.*). RADHA KISHAN *v.* JAG SAHU.
60 I.C. 173=3 U.P.L.R. (Pat.) 14.

—S. 68—Note by attestor.

——An attesting witness noted near his signature that he attested the deed at the request of the executant,

Held, that the ordinary meaning of such a note by an attesting witness would certainly be that he had not seen the executant with his own eyes execute the receipt, but had attested it at his request upon an admission by the latter of the genuineness of his signature. (*Mears, C. J. and Piggott, J.*). SHAMBHU DAYAL *v.* LALLU MAL. **80 I. C. 717=4 L.R.A. Civ. 458=A.I.R. 1924 All. 256.**

—S. 68—Omission of proof.

——Where no attempt is made to prove a mortgage-deed either by calling in an attesting witness or even by putting any question to the scribe of the deed, who was examined as a witness, regarding the attesting witnesses or attestation, the document cannot be used as evidence. (*Banerji and King, JJ.*). JIWAN SINGH *v.* DALIP SINGH.
115 I.C. 450=1929 A. L. J. 588=A. I. R. 1929 All. 389.

EVIDENCE ACT (1872), S. 68—Provisions mandatory.

—S. 68—Oral evidence.

——Where an attestor denies having witnessed the execution of a document, it is open to the parties to let in other oral evidence to show that the attestor did, as a matter of fact, see the execution and was an attesting witness. (*N.R. Chatterjee and Panton, JJ.*). SASHIMUKHI DASI *v.* MON MOHINI DASI. **67 I.C. 87 (Cal.).**

—S. 68—Principal and collateral purposes.

——No distinction should be drawn between documents which are the basis of the suit and those whose production is required for collateral purposes so far as their admissibility in evidence is in question. A. I. R. 1924 Oudh 255, *Foll.* 21 O. C. 312, *Not foll.* (*Ashworth, A. J. C.*). BHARATH SINGH *v.* SHEODAT SHARMA. **91 I.C. 189=A.I.R. 1926 Oudh 266.**

——*No distinction between documents to be used principally and collaterally exists.*

There is no distinction between documents which are the basis of a suit and those whose production is required for a collateral purpose so far as their admissibility in evidence is in question. The direction in S. 68, Evidence Act is mandatory and draws no such distinction. (*Dalal, J. C. and Neave, A. J.C.*). AVADH RAM SINGH *v.* MABHUB KHAN. **79 I.C. 725=10 O.L.J. 525=A.I.R. 1924 Oudh 255.**

——Section 68 of the Evidence Act applies not only to cases where the document is attempted to be enforced to prove the legal right or relation it creates, but in a case where such document is sought to be proved for a collateral purpose.

This view is also supported by the imperative and stringent wording of S. 68 which does not permit the issue of the instrument as evidence for any purpose whatsoever unless and until it is proved in strict accordance with the provisions of the section. The rigour of the English law on which the present section is founded has been to a certain extent lessened by the proviso as contained in S. 70 of the Evidence Act. The enactment of this proviso clearly indicates that the Indian Legislature intended to provide only one exception to this inflexible rule and no other. (*Suhrawardy and Cuming, JJ.*). SHIB CHANDRA SINGHA *v.* GOUR CHANDRA PAUL. **68 I. C. 86=27 C.W.N. 134=35 C.L.J. 473=A.I.R.1922 Cal. 160.**

—S. 68—Proof by scribe.

——Where the only available attesting witness to a mortgage denies his attestation when examined under S. 68, (before it was amended by Act 31 of 1926), the deed may be proved by calling its writer under S. 71 to depose to the execution of the deed by the mortgagor and to its attestation by the two witnesses. (*Marten, C. J. and Crump, J.*). LAKSHMAN PUNJU *v.* KRISHNAJI MAHARU.
105 I.C. 769=29 Bom. L.R. 1425=A.I.R. 1927 Bom. 655.

——Where one of the witnesses to a mortgage deed is dead and the other witness, when the document is read over to him, is unable to say whether that was or was not the document which he attested, it is open to the plaintiff to prove execution of the deed by a person who was present at the time of the execution and for that purpose he can examine the scribe. (*Cuming and Panton, JJ.*). DHIRAJUDDIN *v.* BHARULLA.
90 I.C. 630=A.I.R. 1926 Cal. 318.

—S. 68—Provisions mandatory.

——The provisions of S. 68 are mandatory and they are not controlled by S. 90.

EVIDENCE ACT (1872), S. 68—Provisions mandatory.

The mere fact that the only surviving attesting witness is considered hostile by the party does not relieve him from the duty of examining him as a witness. Nor is it enough that summonses and warrants had been issued upon the witness and the witness had failed to appear, but the processes of the Court such as are mentioned in O. 16, R. 10, C. P. Code, have all got to be exhausted. 1 P. L. J. 369, *Foll.* (*Greaves and Mukerjee. JJ.*). GOBINDA CHANDRA PAL *v.* PULIN BIHARI. **98 I.C. 147= 31 C.W.N. 215= A.I R. 1927 Cal. 102.**

———Failure to call as witnesses, any of the persons who had attested mortgage-deed where it was not shown that they had died or were not subject to the process of the Court or were incapable of giving evidence, was held to be fatal. (*Dalal, J.*). SHEIKH KARIMULLAH *v.* GUDAR KOERI. **82 I.C 306= 5 L.R.A. Civ. 686= A.I.R. 1925 All. 56.**

———Provisions are imperative—Likelihood of witness proving hostile is no ground for not examining him. 1 P.L.J. 369, *Foll.* (*Coutts and Macpherson, JJ.*). DHIRA SINGH *v.* MOTI LAL. **63 I.C. 266=2 P.L.T. 614.**

—S. 68—Retrospective effect.

———Amendment added by Act 31 of 1926 is retrospective. (*Ramesam and Jackson, JJ.*). THAYAMMAL *v.* MUTHUKUMARASWAMI CHETTIAR. **121 I.C. 858=30 M.L.W. 677= A. I. R. 1929 Mad. 881=57 M.L.J. 588.**

—S. 68—Scope.

———Section 68 has nothing to do with the question about the legality or validity of the instrument itself as an effective document of title if there has been no proper attestation as required by law. (*Sen and Niamatullah, JJ.*). BALBHADAR SINGH *v.* LAKSHMI BAI. **A. I. R. 1930 All. 669.**

———The question of the validity of a mortgage bond is distinct from that of the necessity of proving it by an attesting witness. (*Chatterjea and Panton, JJ.*). PAHAN KHAN *v.* BUDAL SARDAR. **66 I.C. 906=34 C.L.J. 498=26 C.W.N. 951= A.I.R. 1921 Cal. 276.**

—S. 68—Search for witness.

———The enquiry for an attesting witness must be strict, diligent, honest and satisfactory. It should be made at the residence of the witness and of the relatives who may have information. Where, an attesting witness is out of the jurisdiction of the Court, however, the document can be proved by other evidence. (*Maung Kin and Rigg, JJ.*). ASOOMEAH *v.* V.S.R.M. CHETTY. **61 I.C. 637=13 Bur.L.T. 114.**

—S. 68—Will.

———Although where an instrument requiring attestation is subscribed by several witnesses, it is in general sufficient to call only one of them (Evidence Act, S. 68) in the case of Wills, it is desirable that all capable of being called should be examined to remove all suspicion of fraud. (*Mookerjee and Fletcher, JJ.*). SURENDRA KRISHNA *v.* RANEE DASSEE. **59 I. C. 814=33 C.L.J. 34= A.I.R. 1921 Cal. 677.**

—S. 69—Attestors dead.

———Transfer of Property Act, S. 59—Attestors dead—Their handwriting proved—Attestor should be presumed to have seen execution. 39 All. 112, *Appl.* (*Waller, J.*). VENKATRAMAYYA *v.* GATTAYA. **101 I. C. 498=A. I. R. 1927 Mad. 662= 53 M. L. J. 216.**

EVIDENCE ACT (1872), S. 70—Effect.

—S. 69—Condition for applicability.

———In order that the case may attract the operation of S. 69, it must be proved that "no such attesting witness can be found." Before a party is entitled to rely upon S. 69, he must ask the Court to exhaust all processes of the Court as laid down in paras. 2 and 3, R. 10, O. 16: 1 P. L. J. 369 and 27 C. W. N. 60 (Notes), *Rel. on.* (*Das and Kulwant Sahay, JJ.*). MT. SHAHZADI BEGAM *v.* MUHUMMAD QASIM. **110 I. C. 756=7 Pat. 312= A.I.R. 1928 Pat. 356.**

—S. 70—Before Sub-Registrar.

———Suit on mortgage bond—Defendant admitting execution before Sub-Registrar but averring that he would not have done so had he known it to be mortgage is no admission of execution under S. 70. (*Mitter, J.* Contra.) 29 Cal. 355, *Ref.* (*Jack and Mitter, JJ.*). AYENALI SHIKDAR *v.* MD. ESMAIL. **49 C. L. J. 347= A. I. R. 1929 Cal. 441.**

———Admission must be in the proceedings—Admission of execution before the registering officer is not sufficient. 13 N. L. R. 197, *Rel. on.* (*Prideaux, A. J. C.*). DEORAO *v.* DHONDIRAO. **109 I. C.576= A. I. R. 1928 Nag. 244.**

———Admission referred to in section must be other than that required by Registrar in registration. (*Kennedy, J. C. and Aston, A. J. C.*). PRIBHDAS *v.* SAHIB KHAN. **93 I. C. 660= 18 S. L. R. 282= A. I. R. 1926 Sind 88.**

—S. 70—By representative.

———An admission by the representative of a party to an attested document of its execution by the party cannot be treated as an admission of the party to an attested document of its execution by himself. (*Mukerjee and Rankin, JJ.*). BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. **74 I.C. 178=38 C.L.J. 114= A.I.R. 1924 Cal. 415.**

—S. 70—Effect.

———*Shah, Ag. C. J.*—(*Crump, J. dissenting*)—Where the defendant admits the execution of the mortgage bond and there is no evidence or plea that the attestations were not proper, the mortgagee need not prove attestation.

Per *Crump, J.*—The word "execution" means that the party affixing his signature has signified his assent to the contents of the document and if a party admits that he has done this then he admits execution. Such admission however will not be taken to mean an admission not only of the signature of assent by him, but also that all the legal formalities, such as due attestation, have been complied with as required by the statute requiring attestation. (*Shah, Ag. C. J. and Crump, J.*). JAGANNATH NARSINDAS *v.* RAOJI TULSIRAM. **76 I. C. 73=47 Bom. 137=24 Bom.L.R. 1296= A. I. R. 1923 Bom. 90.**

———*Admission of executant is not sufficient as against strangers.*

It must be proved according to law as against them unless S. 58, Evidence Act applies to the case and relieves the plaintiffs from the burden of proving attestation. (*Mullick and Ross, JJ.*). ARJUN SAHU *v.* KELAI RATH. **74 I.C. 150= 2 Pat. 317=A.I.R. 1923 Pat. 436.**

———Even in case of a document requiring attestation, where admission by a party to the suit of the execution is on record, the attestation need not be proved. (*Walsh and Wallace, JJ.*). ASHARFI LAL *v.* MT. NANNHI. **64 I.C. 11=44 All. 127= 19 A.L.J. 865=A.I.R. 1922 All. 153.**

EVIDENCE ACT (1872), S. 70—Effect.

———Proof of attestation is not necessary where execution is admitted by defendant. (*Das and Adami, JJ.*) MT. HIRA BIBI *v.* RAMDHAN LAL.
62 I. C. 540=1922 P.H.C.C. 42=6 P.L.J. 465=2 P.L.T. 752=A.I.R. 19 22 Pat. 70.

—S. 70—Invalid document.

———Section 70 cannot and does not affect to render valid, document which, it is apparent from the evidence before the Court, is invalid in law: A.I.R. 1925 P.C. 203 and A.I.R. 1918 P.C. 3, *Rel. on*; 16 C.W.N. 585, *Dist.*

A mortgage was duly executed and attested but the Sub-Registrar finding a technical defect had the document re-executed by the mortgagors in his office. This re-execution was duly registered though not re-attested. In a suit upon the mortgage the mortgagor admitted execution,

Held, that in spite of the admission the document did not amount to a mortgage and, therefore, was not an instrument creating a mortgage upon which the plaintiff could base his claim. (*Cuming and Page, JJ.*). SHEIKH KOCHU *v.* MD. ALI MAHOMUD. **105 I. C. 28=45 C. L. J. 577=A. I. R. 1927 Cal. 926.**

———Admission by the executant of execution is not sufficient to validate a mortgage-deed which has not been duly attested as required. A. I. R. 1924 Rang. 139, *Expl.*; A. I. R. 1925 P. C. 203, *Rel. on.* (*Carr and Mya Bu, JJ.*). MG PO GYI *v.* MG MIN DIN. **104 I.C. 386=5 Rang. 561=6 Bur. L.J. 88=A.I.R. 1927 Rang. 233.**

—S. 70—Pardanashin lady.

———*T. P. Act, S.* 59.

Where the persons who signed a mortgage deed executed by a *pardanashin* lady, as witnesses were not present at the execution of the deed, but the *pardanashin* lady admitted that she had executed the mortgage deed.

Held, that notwithstanding her admission, the mortgage deed was void even as against her. The words of S. 70 of the Evidence Act apply only to a document duly attested. 35 Mad. 607 (P. C.) and 45 Cal. 748 (P. C.), *Foll.*; 37 All. 474 (P. C.). *Dist.* (*Lord Darling.*) MT. HIRA BIBI *v.* RAM HARI LAL.
89 I.C. 659=23 A.L.J. 815=2 O.W.N. 641=6 P. L. T. 575=27 Bom. L. R. 1144=42 C.L.J. 148=22 M.L.W. 373=1925 M. W. N. 728=52 I. A. 362=3 Pat. L.R. 296=5 Pat. 58=30 C.W.N. 365=A.I.R. 1925 P.C. 203=49 M.L.J. 240 (P.C.).

—S. 70—Prior to suit.

———The executant's admission need not have been made during the civil proceedings, but may be an admission made antecedent to the institution of legal proceedings. 4 Pat. L.J. 511, *Foll.* (*Duckworth, J.*). AUNG RHI *v.* MA AUNG KRWA PRU.
77 I.C. 362=1 Rang. 557=A. I. R. 1924 Rang. 139.

—S. 70—Scope.

———Section 70 relates to admission in the course of proceedings in which the document is produced. (*Das and Ross, JJ.*). BANAWARI PRASAD SINGH *v.* MT. BIGNI KUER. **101 I.C. 277=8 P.L.T. 7=A.I.R. 1927 Pat. 131.**

—S. 70—Witnesses not present.

———Where the mortgagor admitting his having signed the mortgage document but denied his having done so in the presence of attestors,

Held, that such admission does not amount to an admission of due execution within the meaning of S. 70.

Per *Richardson, J.*—Where an admission of *execution* is unqualified it may well be equivalent to an admission of due execution or a waiver of proof of due execution, but not where the admission is of the signature, coupled with the denial of his having done so in the presence of attestors.

Per *Suhrawardy, J.*—S. 70 provides an exception to the rule in S. 68, *viz.*, where the executant admits that a document was *executed* by him, *i.e.*, executed according to law, no further proof of execution is necessary. It thus qualifies S. 68 of the Act but does not affect or control S. 59 of the T. P. Act. The word '*execution*' in S. 70 is used in the sense of due execution or execution in a way in which a particular document is required to be executed. (*Richardson and Suhrawardy, JJ.*). ARJUN CHANDRA BHADRA *v.* KAILAS CHANDRA DAS.
70 I.C. 532=36 C.L.J. 373=27 C. W. N. 263=A.I.R. 1923 Cal. 149.

—S. 71—Evidence of scribe.

———Where it was found by the Courts below that the attesting witnesses had been won over and gave evidence hostile to the plaintiff and the plaintiff examined the writer of the deed to prove execution under S. 71 and his evidence was accepted,

Held, that the contention that it is necessary that this witness should have been able to swear that both the attesting witnesses were present when the executant signed the deed and that they witnessed it is untenable: 17 A. L. J. 141 and A.I.R. 1922 Pat. 415, *Foll.*

The law provides that the attesting witnesses, if available, must be called and that in their absence no other evidence to prove execution shall be accepted: If they are dead or have been won over by the other side the person claiming under the document is allowed to prove it as best he can. It is sufficient if he can prove execution by any evidence that may be available. (*Ryves and Daniels, JJ.*). PATESAWARI *v.* SHANKER DAYAL. **74 I.C. 969=A.I.R. 1924 All. 217.**

—S. 71—One witness hostile.

———*Jack, J.*—Where out of two attesting witnesses one is produced but turns hostile, other evidence becomes admissible under S. 71, and the plaintiff is not bound to produce the other, though alive, whom there are grounds for him to believe to be hostile: A.I.R. 1929 Cal. 188, *Rel. on.*

Mitter, J.—(*Obiter*) :—It is not intended by enacting S. 71 to differ from the rule of English Law that the evidence of the other witnesses should not be introduced unless the absence of the other attesting witness is satisfactorily explained in the case where one of the two attesting witnesses had been called and has denied execution: A.I.R. 1929 Cal. 188, *Not appr.*; *Coles* v. *Coles*, (1866) 1 P. 70; *Pilkington* v. *Gray*, (1899) A.C. 401; A.I.R. 1927 Cal. 102, *Ref.* (*Jack and Mitter, JJ.*). AYENALI SHIKDAR *v.* MD. ESMAIL. **49 C.L.J. 347=A.I.R. 1929 Cal. 441.**

—S 71—Proof of execution.

———S. 71 does not require execution in the presence of the attesting witnesses to be proved. 17 All. 141, *Foll.* (*Ryves and Daniels, JJ.*). LALTA PRASAD *v.* DARSHAN SINGH. **74 I.C. 839=A.I.R. 1924 All. 149.**

—S. 71—Witness not recollecting.

———Mortgage—One attesting witness dead—Others having no recollection—Document can be proved by other evidence. (*Das and Adami, JJ.*). LAKSHMAN SAHU *v.* GOKHUL MAHARANA.
70 I.C. 298=1 Pat. 154=A.I.R. 1922 Pat. 415.

—S. 72—Receipt.

———The executant of a receipt need not be examined where the payer has sworn to the payment. (*Mukerji, J.*). ABDUL SAMAD *v.* GUNENDRA KRISHNA ROY. **82 I.C. 974=A.I.R. 1925 Cal. 452.**

EVIDENCE ACT (1872), S. 73—Applicability.

—S. 73—Applicability.

——It is only where other evidence is not available and the handwriting has not been proved by independent evidence to be the handwriting of a particular person, that it is necessary to have recourse to the provisions of S. 73 to see whether by comparison it can be determined whether the document was written by that person or not. (*Cuming and Mukerji, JJ.*). KHIJIRUDDIN *v.* EMPEROR.
92 I.C. 442=53 Cal. 372=42 C.L.J. 504=
27 Cr.L.J. 266=A. I. R. 1926 Cal. 139.

—S. 73—Handwriting.

——It is not fair to compare the free handwriting spread over a folio page of a will with plenty of space, and a post card in which a writer has to condense all he wishes to say in a small space. The writing must necessarily be far more cramped and naturally various letters in the post card writing would differ from the writing which is not cramped. (*Macleod and Coyajee, JJ.*). IRABASAPPA BIN GANGAPPA DALAL *v.* BHADRAWA KOM DOD BASAPPA PRABHU SHETTI. 80 I.C 189=
A.I.R. 1922 Bom. 296.

——*Comparison.*

In applying the provision of S. 73 of the Evidence Act, it is important not to lose sight of its exact terms. It does not sanction the comparison of any two documents but requires that the writing with which the comparison is to be made or the standard writing as it may be called, shall be admitted or proved to have been written by the person to whom it is attributed and next the writing to be compared with the standard or in other words, the disputed writing must purport to have been written by the same person, that is to say, the writing itself must state or indicate that it was written by that person. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts. A comparison of writings has consequently been deemed a mode of ascertaining the truth which ought to be used with very great caution. Although from the dissimilarity of signatures a Court may legitimately draw the inference that a particular signature is not genuine because it varies from an admittedly genuine signature, yet resemblance of two signatures affords no safe foundation that one of them is genuine. (*Mookerjee and Buckland, JJ.*). SAROJINI DASS *v.* HARI DAS GHOSE. 66 I. C 774=
49 Cal. 235=26 C.W.N. 113=
34 C. L. J. 373=A.I.R. 1922 Cal. 12.

—S. 73—Signature.

——The Court has power to compare the alleged genuine signature with admittedly genuine signature to come to a conclusion from it. (*Jackson, A.J.C.*). GONDU *v.* TULSIRAM.
120 I.C.335=A.I.R. 1930 Nag. 27.

——Genuineness of a signature disputed—Mere comparison of admitted signatures without expert advice or microscopic examination is dangerous. (*Lord Atkin*). KERSARBAI *v.* JETHABHAI JIVAN.
111 I.C. 169=28 M. L. W. 737=
A.I.R. 1928 P.C. 277 (P.C.).

—S. 73—Thumb impression.

——A Court can direct an accused person to give his thumb impression in Court. A. I. R. 1924 Rang. 115 (F. B.), *Foll.*; A. I. R. 1922 Pat. 73, *Dist.* (*Mullick and Wort, JJ.*). ZAHURI SAHU *v.* EMPEROR. 106 I. C. 212=6 Pat. 623=
8 P.L.T. 847=28 Cr. L. J. 1028=
9 A. I.Cr. R. 173=A.I.R. 1928 Pat. 103.

EVIDENCE ACT (1872), S. 74—Crop-cutting report.

——Thumb-impressions on a deed compared with others not shown to be of executant—Evidence of expert is of no value. (*Kulwant Sahay and Scroope, JJ.*). GAFFAR BUKSH KHAN *v.* EMPEROR.
101 I.C. 187=8 A. I.Cr. R. 4=8 P. L. T. 393=
28 Cr. L.J. 411=A. I. R. 1927 Pat. 408.

—S. 73—Thumb impression of accused.

——Section 73 specifically directs that any person present in Court may be directed to make a finger impression for the purpose of comparing it with any finger impression alleged to have been his. There is no exception made in favour of an accused person. Section 342, Criminal Procedure Code, does not prohibit the taking of the finger impression from an accused. (10 B. L. T. 32, *Overruled*).

Per *Young, Offg. C. J.*—Such a direction is specifically allowed by the Evidence Act and S. 342, Cr. P. Code, does not operate to prevent it.

Per *Heald, J.*—There is no possible connection between S. 73, Evidence Act and S. 342 of the Cr. P. Code.

Per *May Oung, J.*—There is nothing in common between the power to examine the accused under S. 342, Cr. P. Code, and the power to take his finger impression under S. 73, Evidence Act unless it can be held that by directing the accused to make his finger impression the Court is, in effect, compelling him to provide evidence against himself. (*Young, Offg. C. J., Heald and May Oung, JJ.*). EMPEROR *v.* NGA TUN HLAING.
83 I.C. 668=1 Rang. 759=2 Bur. L.J. 270=
26 Cr. L. J. 108=A.I.R. 1924 Rang. 115 (F. B.).

——*Criminal trial—Thumb impression of accused taken in Court for comparison—Conviction based on such comparison by expert—Is highly irregular.*

There is no law by which an accused person can be, either by words or by gestures or by exposing himself to certain physical treatment, made to implicate himself in the crime with which he is charged. When he is on trial such an idea is highly repugnant to all thoughts of the proper administration of justice in this or in any other British country. (*Das and Bucknill, JJ.*). BAZARI HAJAM *v.* KING EMPEROR. 68 I. C. 958=
1 Pat. 242=3 P.L.T. 526=1922 P.H.C.C. 46=
23 Cr. L.J. 638=A.I.R. 1922 Pat. 73.

—S. 74—'Act' or 'Record of an Act.'

——A circular by which the Director General of Post and Telegraphs notified that stamps of a certain kind would soon be issued to Post Offices for sale to the public was not an 'Act' or 'Record of an act' of a public officer within the meaning of S. 74 of the Evidence Act and the same was inadmissible in evidence. (*Reilly, J.*). VELAYUDHAM PILLAI *v.* EMPEROR. 115 I.C. 509=
1929 M.W.N. 193=30 Cr. L.J. 483.

—S. 74—Admissibility.

——Document neither shown to be prepared by public servant nor shown as forming the act or record of public officer is inadmissible. (*Sen, J.*). GOURI SHANKAR *v.* EMPEROR.
120 I.C. 547=1930 A.L.J. 244=1930 Cr. C. 42=
31 Cr.L.J. 133=A.I.R. 1930 All. 26.

—S. 74—Crop-cutting report.

——Crop-cutting report of Collector prepared under S. 40, Bengal Tenancy Act, falls under S. 74.

EVIDENCE ACT (1872), S. 74—Crop-cutting report.

(*Dawson Miller, C. J. and Foster, J.*). KISHIN DAYAL GOPE *v.* ISHWARNATH SINGH.

102 I.C. 391=8 P.L.T. 74=A.I.R. 1927 Pat. 167.

——Crop-cutting report of Deputy Collector under S. 40, Bengal Tenancy Act, is public document and admissible to prove quantity of crops cut. 4 Cal. 79, *Rel. on.* (*Adami, J.*). HARGOBIND SINGH *v.* KISHUN DAYAL GOPE. **95 I.C. 966=7 P.L.T. 671=A.I.R. 1926 Pat. 436.**

—S. 74—Dakhalnamah.

——A dakhalnamah is a public document and its copy is admissible without proof. 13 A. L. J. 935, *Foll.* (*Banerji, J.*). SILA RAM *v.* EMPEROR.

98 I.C. 471=7 L.R.A. Cr. 173=27 Cr. L.J. 1351=A.I.R. 1927 All. 52.

—S. 74—Departmental enquiry.

——Departmental enquiry by a Magistrate in his executive capacity is not judicial enquiry and statements recorded therein is not evidence taken on oath. Such statements, therefore, are not public documents. (*Pearson and Patterson, JJ.*). GOVERNMENT OF BENGAL *v.* SANTIRAM MONDAL. **A.I.R. 1930 Cal. 370.**

—S. 74—Depositions.

——Depositions of witnesses taken by an officer of the Court are public documents within the meaning of that term as used in S. 74. (*Das and Foster, JJ.*). CHANDRESHEN PRASAD NARAYAN SINGH *v.* BISHESHWAR PRATAP NARAIN SINGH.

101 I. C. 289=5 Pat. 777=8 P. L. T. 510=A. I. R. 1927 Pat. 61.

—S. 74—Letters of officers.

——Letters from the Controller of the Military Accounts acknowledging attachment is a public document. (*Srivastava, J.*). EDU *v.* HIRA LAL.

114 I.C. 502=5 O.W.N. 886=A.I.R. 1928 Oudh 488.

——Magistrate sending an official memo to a Civil Surgeon to examine an accused and report his age—Civil Surgeon's report is not a record of "act" in official capacity—It is not admissible in evidence without formal proof. 20 Mad. 189, *Rel. on.* (*Gokaran Nath Misra, J.*). ABDUL HALIM KHAN *v.* SOADAT ALI KHAN. **108 I. C. 817=1 L. C. 733=A. I. R. 1928 Oudh 155.**

—S. 74—Mutation registers.

——Mutation — Quinquennial and settlement registers prepared under Regulation 48 of 1793, S. 16, are public documents—Entries therein are admissible but not conclusive. (*Jwala Pasad and Ross, JJ.*). RAMANANDHAN SAHAY *v.* JAIGOVIND PANDEY. **75 I. C. 955=2 Pat. 839=A. I. R. 1924 Pat. 213.**

—S. 74—Patwari's abstract.

——Abstract statement prepared by *patwari* even though based on papers in his possession and filed in suit is only private document. (*Sulaiman, J.*). SHEO DAS *v.* SHEO DAYAL SINGH.

A.I.R. 1930 All. 712.

—S. 74—Pedigree.

——If it can be shown that the law requires that entries dealing with ownership of land should be included in pedigree tables then such pedigree tables are properly part of the revenue records and constitute an entry in a public document which is *prima facie* evidence of the truth of its contents. (*Eforde and Jai Lal, JJ.*). GURDIT SINGH *v.* KARTAR SINGH. **103 I.C. 182=23 P.L.R. 675=A.I.R. 1928 Lah. 214.**

—S. 74—Plaint.

——Plaint is not a public document. (*Hallifax, A. J. C.*). MANBODH *v.* HIRASAI. **93 I.C. 650=A.I.R. 1926 Nag. 339.**

EVIDENCE ACT (1872), S. 78—Acts.

—S. 74—Record of acts of officers.

——Under S. 74, Evidence Act, documents forming records of the acts of public officers are public documents, but they do not furnish proof of all facts to which they refer. (*Findlay, J. C. and Macnair, A. J. C.*). MT. RUPA *v.* CHAUDHARI BHAIRAON PRASAD. **105 I.C. 353=A.I.R. 1928 Nag. 93.**

—S. 74—Reports.

——Execution of decree—Report of an officer of the Court, entrusted with the execution, is a public document and can be proved by a certified copy—Evidence Act, S. 77. (*Neave, A. J. C.*). BALKU *v.* EMPEROR. **81 I.C. 533=25 Cr. L. J. 917=A.I.R. 1925 Oudh 183.**

—S. 74 (i) (iii)—Reports to Police.

——(*Obiter*)—The reports made to the police by a woman that she had been married to a certain person are not public documents within the meaning of S. 74 (*i*) (*iii*) of the Evidence Act and secondary evidence of their contents cannot be given under S. 65 (*e*) of the Act. (*Tapp, J.*). MT. NAWAB BIBI *v.* SHER ZAMAN. **123 I.C. 285=31 Punj. L.R. 214.**

—S. 74—Schoolmaster.

——A school-master comes under the words "executive officers." (*Fawcett and Madgavkar, JJ.*). BHANU DAS NARAYANBOA *v.* KRISHNABAI CHINTAMAN. **99 I.C. 307=50 Bom. 716=28 Bom. L.R. 1225=A.I.R. 1927 Bom. 11.**

—S. 74—Settlement record.

——History of Multan District attached to Settlement Record, was held to be a Public document. (*Martineau and Moti Sagar, JJ.*). MUHAMMAD KHAN *v.* SULTAN AZAM. **75 I.C. 1040=A.I.R. 1924 Lah. 639.**

—S. 74—Village papers.

——Village papers are *prima facie* proof of what they record. (*Wazir Hasan, J.*). RAM SABAD *v.* RAM SARUP. **103 I.C. 497=A.I.R. 1927 Oudh 441.**

—S. 76—Foreign copies.

——Copy of evidence given in a Court in Kutch, was not certified by the Political Agent in a manner which fully satisfied the requirements of Ss. 76 (*a*) and 86.

Held, that S. 86 did not exclude other proof. 27 Cal. 639, *Foll.* (*Fawcett, J.*). VALLABH DAS MULJI *v.* PRANSHANKAR NARBHESHANKAR.

113 I.C. 313=30 Bom. L.R. 1519=A.I.R. 1929 Bom. 24.

—S. 76—Plaint.

——Certified copy of a plaint is not admissible in proof of age of the signatory as plaint is not a public document. (*Das and Ross, JJ.*). TARKESHWAR PRASAD TEWARI *v.* DEVENDRA PRASAD TEWARI. **92 I.C. 184=3 Pat. L.R. 270=7 P.L.T. 267=A.I.R. 1926 Pat. 180.**

—S. 77—Reports.

——Execution of decree—Report of an officer of the Court, entrusted with the execution, is a public document and can be proved by a certified copy. (*Neave, A.J.C.*). BALKU *v.* KING EMPEROR. **81 I.C. 533=25 Cr.L.J. 917=A.I.R. 1925 Oudh 183.**

—S. 78—Acts.

——Text of an Act published in Gazette of India is authority and must be followed even though intention of Legislature is not carried out—Interpretation of statutes. (*Adami and Bucknill, JJ.*). RAI BRINANDAN PRASAD *v.* MAHABHIR PRASAD.

97 I.C. 316=A.I.R. 1927 Pat. 142.

——Conflict between version of Act published in Gazette and that published by Superintendent,

EVIDENCE ACT (1872), S. 78—Diplomatic agent.

Govennment Printing—Gazette version must be preferred. (*Phillips, J.*). SUBRAMANIA AIYAR *v.* SHANMUGAM CHETTIAR.
92 I.C. 566=22 M.L.W. 538=
A.I.R. 1926 Mad. 65=49 M.L.J. 363.

—S. 78—'Diplomatic agent.'

———The words "diplomatic agent" are very wide and *prima facie* cover the Resident of Hyderabad, who is the Political Agent of the Government of India. (*Fawcett and Madgavkar, JJ.*). BHANUDAS NARAYANBOA *v.* KRISHNABAI CHINTAMAN.
99 I.C. 307=50 Bom. 716=28 Bom. L.R. 1225=
A.I.R. 1927 Bom. 11.

—S. 78—Foreign copies.

———Copies of entries in registers kept by the officers of a Native State are not admissible in evidence having regard to the provisions of S. 78 (6). (*Kulwant Sahay, J.*). SHAMSHER NARAIN SINGH *v.* MOHAMMAD SALE. 90 I.C. 329=
A.I.R. 1926 Pat. 29.

—S. 78—Municipal proceedings.

———Municipal proceedings may be proved by copy certified by the keeper. (*Mookerjee and Chotzner, JJ.*). AKSHAY KUMAR CHAND *v.* COMMISSIONERS OF BOGRA MUNICIPALITY. 75 I.C. 506=
37 C.L.J. 589=A.I.R. 1923 Cal. 675.

—S. 78—Notifications.

———The production of the Gazette printed under the authority of the Government will be sufficient proof of the notification under S. 78. (*Sulaiman and Ashworth, JJ.*). COLLECTOR, CAWNPORE *v.* JUGAL KISHORE. 107 I.C. 578=
A.I.R. 1928 All. 356.

———Where a notification fixing the election is published in the Gazette, it is proof of the order of Government fixing that election under S. 78. (*Phillips, Ramesam and Wallace, JJ.*). COMMISSIONER, MADRAS CORPORATION *v.* EKAMBARA NAICKER. 106 I.C. 144=39 M.L.T 367=
26 M.L.W. 569=A.I.R. 1927 Mad. 980=
53 M.L.J. 603.

—S. 78—Order of Government.

———Circular issued by the Director-General of Post and Telegraphs notifying that stamps if a certain kind would soon be issued to post offices for sale to the public is not an order of Government within the meaning of S. 78 and the same is inadmissible in evidence. (*Reilly, J.*). VELAYUDHAM PILLAI *v.* EMPEROR. 115 I.C. 509=
1929 M.W.N 193=30 Cr. L.J. 483.

—S. 79—Certificate of registration.

———Registering Officer's evidence is not necessary to prove the certificate of registration, the genuineness of which is to be presumed under S. 79: 38 I.C. 605, *Appr.*; 34 I.C. 281; 38 A. 1 and 17 C. 903, *Diss.* (*Martineau, J.*). MUHAMMAD HASSAN *v.* SOHARA. 71 I.C. 805=A.I.R. 1924 Lah. 389.

—S. 79—Sanction.

———Letter not signed by Chief Secretary but by an officer for him, is not a certified copy and cannot be basis of prosecution. (*Walmsley and Suhrawardy, JJ.*). MD. OZIULLAH *v.* BENI MADHAB CHOWDHARY. 71 I.C. 239=50 Cal. 135=
36 C.L.J. 180=26 C.W.N. 878=
24 Cr. L.J. 111=A.I.R. 1922 Cal. 298.

—S. 80—Confession.

———Confession recorded according to law is presumed to be genuine. (*Harrison and Jai Lal, JJ.*). HARI RAM *v.* EMPEROR. 89 I.C. 897=
26 Cr. L.J. 1425=A.I.R. 1926 Lah. 122.

———Confession containing memorandum under S. 164 (3)—Presumption under S. 80, Evidence Act, arises that all formalities have been performed—Court must be satisfied that confession was voluntarily made. (*Broadway and Addison, JJ.*). PRATAP SINGH *v.* EMPEROR. 93 I.C. 978=
27 Cr. L.J. 514=6 Lah. 415=
7 L.L.J. 482=A.I.R. 1925 Lah. 605.

EVIDENCE ACT (1872), S. 81—Newspaper.

—S. 80—Deposition.

———If the deposition has not been read over to the witness in the presence of the presiding Judge, it does not prove itself under S. 80, but it may be proved in some other way. The Judge who recorded it can prove it or the accused can admit it. (*Prideaux, A.J.C.*). MIRABUX *v.* EMPEROR.
68 I.C.36=18 N.L.R. 192=23 Cr.L.J. 500=
A.I.R. 1923 Nag. 39.

———Though there is no oral evidence to identify the deponent of a deposition made 60 years ago, it is not a sufficient reason to render S. 80 inapplicable and though there is no signature of the presiding officer over it, the presumption that the copy is a true copy may safely be drawn. (*Daniels, A. J.C.*). SARABJIT *v.* MATA DIN. 60 I.C. 431=7 O.L.J. 542.

—S. 80—Scope.

———Section 80 does not deal with admissibility of documents—Only formal proof is dispensed with. (*Rankin, C.J., C. C. Ghose, Suhrawardy, Mukerji and Jack, JJ.*). PADAM PRASHAD *v.* EMPEROR.
119 I. C. 193=30 C.L.J. 106=33 C.W.N. 1121=
30 Cr. L. J. 993=1929 Cr. C. 228=
A.I.R. 1929 Cal. 617 (S.B.).

———Under S. 80 the presumption has to be made as to the genuineness of the statement recorded. No presumption, however, can be made regarding the identity of the deponent: but where the document containing the deposition of a particular person is a very old document, one can turn to the deposition itself to find out whether there is inherent evidence of the identity of the deponent. 7 O. L. J. 542, *Rel. on.* (*Misra, J.*). BHAGWAT PRASAD *v.* SHER KHAN. 94 I.C. 985=
A. I. R. 1926 Oudh 489.

—S. 80—Statements of witnesses.

———Where, therefore there has been an attempt by the presiding officer to comply with provisions of S. 360, Cr. P. Code and to secure the accuracy of the record of evidence, the provisions of S. 80 do not lead to complete exclusion of the document, and the Court is bound to admit under S. 5, but it is open to each side to adduce evidence as to its faithfulness or otherwise and as to the degree of presumption under S. 80 and the weight to be attached to it. 46 Cal. 895, *Foll.* (*Madgavkar, A. J. C.*). PITOOMAL *v.* EMPEROR.
86 I. C. 33=16 S. L. R. 265=26 Cr. L. J. 657=
A.I.R. 1921 Sind 151.

—S. 81—Gazette.

———Under the provisions of S. 81 the genuineness of the Gazette must be presumed, though it is not formally tendered at the trial. It is enough if the Court has the Gazette before it. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH *v.* THE CROWN.
88 I. C. 22=7 L. L. J. 264=26 Cr. L. J. 1078=
26 P. L. R. 566=A. I. R. 1926 Lah. 299.

—S. 81—Newspaper.

———Newspaper actually produced—Presumption of genuineness arises. (*Hilton, J.*). RAM CHANDRA *v.* EMPEROR. 120 I. C. 798=1930 Cr. C. 331=
31 Cr. L. J. 168=A. I. R. 1930 Lah. 371.

———Even if newspapers are admissible in evidence without formal proof, the paper itself is not proof of its contents. It would merely amount to

EVIDENCE ACT (1872), S. 82—Certificate of Chamber of Commerce.

an anonymous statement. (*Fforde and Scott-Smith, JJ.*). BAWA SARUP SINGH *v.* THE CROWN.
88 I. C. 22=7 L. L. J. 264=26 Cr. L. J. 1078=26 P. L. R. 566=A. I. R. 1925 Lah. 299.

—S. 82—Certificate of Chamber of Commerce.

———Certificate of Manchester Chamber of Commerce as to coal strike in England to show consequent shortage of coal is not admissible. (*Fawcett, J.*). GIRDHARDAS *v.* KERWALA AND CO.
93 I. C. 622=28 Bom. L. R. 232=A. I. R. 1926 Bom. 253.

—S. 83—Chittas.

———Chittas made by a Government for private use in connection with resumption proceedings are not admissible either under S. 83 or S. 13. 9 Cal. 741, *Rel. on.* (*Greaves and Mukerji, JJ.*). UPENDRA NATH *v.* RADHA GOVINDA.
98 I.C. 85=A.I.R. 1927 Cal. 189.

—S. 83—Kistwari map.

———Court may not only presume the correctness of the physical features represented in the map but also the correctness of the statements as to the possession. (*Das and Bucknill, JJ.*). NAZIRUL HAQ *v.* ABDUL WAHAB KHAN. **64 I.C. 326=3 Pat. L.T. 140=1 Pat. 65=A.I.R. 1922 Pat. 58.**

—S. 83—Map.

———*Map is admissible without field book.*

A map is admissible in evidence without the field book. The failure to produce the field book affects the weight to be attached to the map and not its admissibility. (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA.
83 I.C. 205=3 Pat. 85=A.I.R. 1924 Pat. 402.

—S. 83—Rennell's map.

———Rennell's map in Bengal can be presumed to be accurate. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I.C. 287=34 C.L.J. 205=A.I.R. 1921 Cal. 661.**

—S. 83—Settlement register.

———Where Settlement Register of 1876 was signed by Acting Director of Revenue Settlement and was dated from the Revenue Settlement Office,

Held, it cannot be too clearly premised, that any such record would not be held to be conclusive evidence of ownership; but upon the other hand one cannot be blind to the importance of such a document which appears *de facto*, to have settled the bounds of the possession of certain plots for a period of thirty-five years (that is to say, from 1876 to 1910). (*Lord Shaw*). SHRINIVASA CHARIAR *v.* EVALAPPA MUDALIAR. **68 I.C. 1=45 Mad. 565=16 M.L.W. 247=31 M.L.T. 1=49 I.A. 237=24 Bom.L.R. 1214=21 A.L.J. 250=27 C.W.N. 317=36 C.L.J. 524=A.I.R. 1922 P.C. 325=43 M.L.J. 536 (P.C.).**

—S. 83—Survey maps.

———Revenue Survey map should be properly judicially received in evidence as correct when made. 30 Cal. 291, P.C. A Cadastral Survey Map is a map of very great importance. The entry in the record of rights operates in the same way between landlord and tenant, as between landlords of the same or of the neighbouring estates, or between tenant and tenant. The entry must be presumed to be correct until it is shown by evidence to be incorrect. (*Das and Ross, JJ.*). MAZHARUL EKBAL *alias* MUNA MIA *v.* RAJA GOPAL LAL RAY BAHADUR.
84 I. C. 488=1924 P.H.C.C. 213=A. I. R. 1924 Pat. 719.

—S. 85—Powers of attorney.

———Statements in powers of attorney are required to be proved like any other statements. (*Kumara*

EVIDENCE ACT (1872), S. 90—Custody.

swami Sastri, J.). PRATAP BHATTADU *v.* COMMISSIONER of INCOME-TAX, MADRAS. **84 I.C. 131=20 M.L.W. 395=1924 M.W.N. 785=A. I. R. 1924 Mad. 880.**

—S. 86—Certifying of document.

———Where copies of the statements of certain witnesses who were examined in a succession certificate case in a Court of a Native State were sought to be put in evidence in a British India Court under S. 33 of the Evidence Act,

Held, that (1) the mere fact that the Resident of the State forwarded the copies in due course is not equivalent to the certificate referred to in S. 86 (2). When a certificate is required by law it cannot be dispensed with merely because it can be obtained at any time. (*Scott-Smith and Fforde, JJ.*). MURLI DAS *v.* ACHUT DAS. **92 I.C. 138=5 Lah. 105=A.I.R 1924 Lah. 493.**

—S. 86—Official translation.

———The Court must accept the official translation as correct. (*Sir John Edge.*) SASIMAN CHOWDHURAIN *v.* SHIB NARAIN CHAUDHURY.
66 I.C. 193=26 C. W. N. 425=3 P. L.T. 133=15 M. L.W. 434=24 Bom. L. R. 576=35 C. L. J. 427=20 A. L.J. 362=1922 M. W.N. 368=30 M. L.T. 242=1 Pat. 305=49 I.A. 25=A.I.R. 1922 P.C. 63=42 M. L.J. 492 (P.C.).

—S. 88—Evidentiary value.

———On the only evidence of telegrams, it cannot be presumed that they are issued from a particular person but they can be considered with the other evidence. (*Fawcett and Madgavkar, JJ.*). EMPEROR *v.* ABDUL. **91 I.C. 690=49 Bom. 878=27 Bom.L.R. 1373=27 Cr.L.J. 114. A.I.R. 1926 Bom. 71.**

—S. 90.

Computation of Period.
Custody.
Discretion of Court.
Evidentiary value.
Extent of presumption.
Interference in appeal.
Presumption when arises.
Secondary evidence.
Unimpeachable document.

—S. 90—Computation of period.

———30 years should be counted from the date of its genuineness being subjected to proof. (*Phillips, J.*). KONDA REDDI *v.* PICHIREDDI.
82 I.C. 487=A.I.R. 1925 Mad. 184.

———Date of production is immaterial—Date of challenging genuineness is to be looked to. (*Martineau and Zafar Ali, JJ.*). LADHA SINGH *v.* MT. HUKAM DEVI. **75 I.C. 57=4 Lah. 233=6 L.L.J. 97=A.I.R. 1924 Lah. 145.**

—S. 90—Custody.

———*Question of fact in each case.*

The question whether the custody is proper or not cannot be determined by any general principles but is one, as the law declares it to be determined on the facts "of the particular case." (*Boys and Sen, JJ.*). BHAGWATI SARAN *v.* RAM SAHAI.
126 I.C. 19.

———Mere production of an ancient document by a party affords no proper custody and it is for the party producing it to explain how the document came to be in his custody. (*Findlay, J. C. and Subhedar, A. J. C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I.C. 609=A.I.R. 1930 Nag. 225.**

EVIDENCE ACT (1872), S. 90—Custody.

———*Partition papers.*

Collectorate is not normally a proper custodian for a chitta relating apparently to a private partition among certain persons of certain property. (*Greaves and Cuming, JJ.*). PURNA CHANDRA SINGH *v.* RADHIKA MOHAN DEB. **90 I.C. 722= A.I.R. 1926 Cal. 370.**

—S. 90—Discretion of Court.

———Documents more than 30 years old—Genuineness disputed—Court should consider external and internal evidence for basing presumption of proper signature and execution. 6 Cal. 209; 29 Cal. 740 and 26 All. 581, *Ref.* (*Madgavkar and Murphy, JJ.*). MANSUKH PANACHAND SHAH *v.* TRIKAMBHAI ICHHABHAI PATEL. **123 I. C. 492= 31 Bom.L.R. 1279=A.I.R. 1930 Bom. 39.**

———Whether genuineness of a document over 30 years old and produced from proper custody should be presumed under S. 90 or not is a matter which is within the discretion of the Court below. (*Srivastava, J.*). JAS KARAN SINGH *v.* RAM TAHAL. **114 I.C. 307 (Oudh).**

———The wording of S. 90 shows that it is not compulsory upon any Court before whom a document purporting or proved to be 30 years old is produced, to presume that the said document is genuine. That section only gives a discretion to the Court that if under the circumstances established in a case, it considers proper to raise such presumption, it can do so. 26 All. 581 (P. C.), *Foll.* (*Misra, J.*). HUSAINI *v.* BASIT ALI. **110 I.C. 415=5 O. W. N. 424.**

———The presumption referred to in S. 90 is one which the Court is not bound to make and notwithstanding that the elements mentioned in that section are satisfied the Court may require the document to be proved in the ordinary manner. 26 All. 581 (P.C.), *Rel. on.*

Where the plaintiff do not rely upon such presumption but adduce evidence in order to prove the genuineness of a document but such evidence is disbelieved by the Court, they cannot complain if such presumption was not made by the Court. (*Mukerji and Mitter, JJ.*). SURENDRA NATH *v.* SAMBHU NATH. **104 I. C. 219= 55 Cal. 210=A.I.R. 1927 Cal. 870.**

———Court is not bound to presume the correctness of every statement in a document thirty years old. (*Cuming and Gregory, JJ.*). KHETRA MOHAN DAS *v.* BHARAT CHANDRA. **98 I.C. 1021=A.I.R. 1927 Cal. 229.**

———Presumption must be cautiously applied—In proper cases presumption may be relied on, whether the document forms foundation of party's title or it is sought to be used as evidence. 11 Cal. 539 and 29 Cal. 740, *Foll.* (*Greaves and Mukerji, JJ.*). GOBINDA CHANDRA *v.* PULLIL BEHAR. **98 I.C. 147=31 C.W.N. 215=A.I.R. 1927 Cal. 102.**

———Direct evidence available—Presumption under S. 90 may be refused to be drawn. (*Wazir Hasan, A. J. C.*). RAGHUBAR SINGH *v.* SANWAL SINGH. **61 I.C. 125=8 O.L.J. 23= A.I.R. 1921 Oudh 55.**

———Any question regarding the presumption to be made in favour of the genuineness of a document under S. 90 is a matter eminently within the discretion of the Trial Court. (*Lindsay, J.C.*). HAR PRASAD UPADHYA *v.* BIKRAMAJIT SINGH. **61 I.C. 959=8 O.L.J. 131=A.I.R. 1921 Oudh 36.**

—S. 90—Evidentiary value.

———Mere production of an ancient document unless supported by some corroborative evidence of acting under it is not entitled to any weight. An ancient deed must be corroborated by evidences of ancient or modern corresponding enjoyment or by other equivalent or explanatory proof; it is then presumed to have constituted part of the actual transfer of property mentioned, because this is the usual course of such transactions, *i.e.*, though absence of proof of possession does not affect its admissibility, it undoubtedly affects the weight to be attached to the document. *Doe on the demise of Earl of Egremont* v. *Pulman*, (1842) 3 Q. B. 622 and 27 Cal. 943, *Ref.*; 20 C.L.J. 407, *Dist.* (*Asutosh Mookerji and Rankin, JJ.*). SWARNAMOYI *v.* SOURINDRA NATH MITRA. **89 I.C. 747=42 C.L.J. 14= A.I.R. 1925 Cal. 1189.**

EVIDENCE ACT (1872), S. 90—Extent of presumption.

———If one is dealing with a document some thirty-five years old the mere fact that the proof of consideration is not at all satisfactory, is by itself a slender ground for holding that the document known to have come into existence was entirely unreal. (*Rankin and B.B. Ghose, JJ.*). SAILAJA NATH RAY CHOUDHURY *v.* RAJA RESHEE CASE LAW. **81 I.C. 493=51 Cal. 135=39 C.L.J. 380= A.I.R. 1924 Cal. 693.**

—S. 90—Extent of presumption.

———The presumption arising under S. 90 applies even to the fact that the testator was in a sound disposing state of mind, for the phrase "duly executed" if effect is to be given to the word "duly" means execution by a person legally competent to execute the document. 3 Cal. 557 and A.I.R. 1924 Cal. 82, *Not appl.*; A.I.R. 1925 All. 1, *Rel. on*; A.S. Nos. 82 and 295 of 1924, *Foll.* (*Curgenven, J.*). KOTAYYA *v.* KARANCHETI VARDHAMMA. **A.I.R. 1930 Mad. 744.**

———There is no presumption under S. 90 with regard to unsigned accounts not purporting to be in the handwriting of any particular person: 33 M.L.J. 84, *Foll.* (*Findlay, J.C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHADAS. **124 I.C. 609= A.I.R. 1930 Nag. 225.**

———If a document purporting to be 30 years old is not duly tendered, proved or exhibited, S. 90 cannot cure the defect. That section only gives discretion to Courts to dispense with proof as to the execution of a document. It raises no presumption whatever as regards the accuracy of the document and cannot be used so as to dispense with formal proof of the contents of the document. (*Bhide, J.*). ABDUL GHANI *v.* FAQIR MOHOMED. **111 I.C. 361=A.I.R. 1929 Lah. 78.**

———Even where an ancient document does not purport to have been signed by the executant, it is open to the Court to presume that the party who signed for the executant signed it with an authority from him. A.I.R. 1925 All. 1 (F. B.), *Foll.* (*Mukerji, J.*). GANGA RAM *v.* CHUNNI LAL. **99 I.C. 759=A.I.R. 1927 All. 765.**

———The presumption of genuineness of a document 30 years old can only dispense with the necessity of its proof, but the question of sufficieny of evidence is not affected thereby. (*Sulaiman, J.*). BALDEOMISIR *v.* BHARAS KUNBI. **95 I.C. 261= A.I.R. 1926 All. 537.**

———Presumption of genuineness includes presumption of executant's authority. A.I.R. 1925 All. 1 (F. B.), *Foll.* (*Mears, C.J. and King, J.*). BALKARAN SINGH *v.* MT. DULARI BAI. **97 I.C. 292=49 All. 55= 25 A.L.J. 920=A.I.R. 1927 All. 231.**

———*Statement—Identity of deponent.*

Under S. 80 the presumption has to be made as to the genuineness of the statement recorded.

EVIDENCE ACT (1872), S. 90—Extent of presumption.

No presumption, however, can be made regarding the identity of the deponent: but where the document containing the deposition of a particular person is a very old document, one can turn to the deposition itself to find out whether there is inherent evidence of the identity of the deponent. 7 O.L.J. 542, *Rel. on.* (*Gokaran Nath Misra, J.*). BHAGWAT PRASAD *v.* SHER KHAN. **94 I.C. 985= A.I.R. 1926 Oudh 489.**

———The presumption permitted by S. 90 in the case of a document purporting to be 30 years old, includes the presumption that when the signature of the executant purports to have been made by the pen of the scribe, the latter was duly authorized to sign for him. 13 A.L.J. 921 and 15 A.L.J. 121, *Overruled.* (*Walsh, Ag. C.J., Sulaiman, Mukerjee, Dalal and Neave, JJ.*). HAJI SHEIKH BODHA *v.* BABU SUKHRAM. **83 I.C. 5=47 All. 31= 22 A.L.J. 857=5 L.R.A. Civ. 775= A.I.R. 1925 All. 1 (F.B.).**

———*Grant—Executant's authority—Surrounding circumstances.*

The application of S. 90 does not justify the inference that the documents, which are established to be genuine, were in fact executed by persons of the requisite authority, but when a grant has been in operation for a long series of years, it may be impossible to adduce direct evidence of authority. In such a contingency the Court may draw an inference from all the surrounding circumstances.

Where the grantee and his successors in interest from generation to generation had been in possession for more than 70 years and the grantor had taken no steps to eject the grantees,

Held, that the burden shifts upon the Zamindar plaintiff to prove how he came to acquiesce in the long possession of the grantee and his successors, and if no evidence, is forthcoming from his side the grants must be presumed to have been made by persons who possessed the requisite authority. (*Mookerjee and Rankin, JJ.*). TARAKESWAR PAL CHAUDHURY *v.* SIRISH CHANDRA GHOSH MANDAL. **80 I.C. 628=27 C.W.N. 964= A.I.R. 1924 Cal. 236.**

———The presumption under S. 90 of the Evidence Act, only exonerates the plaintiff from calling executant for the purpose of proving that he signed the document for the principal. He must prove that executant had authority from the principal to sign his name. (*Walmsley and B.B. Ghosh, JJ.*). RAMANI KANT RAY *v.* BHIMNANDAN SINGH. **85 I.C. 221=50 Cal. 526=A.I.R. 1924 Cal. 82.**

———Although in the case of sale-deeds more than 50 years old, the presumption of law is that they were executed by the persons who purported to execute them, there is no presumption that the scribe who signed these documents for the executants had authority from the executants to do so. 15 A.L.J. 121 and 60 I.C. 96, *Foll.* (*Gokul Prasad, J.*). HAJI SHAIKH BOODHA *v.* SUKHRAM SINGH. **73 I.C. 98[illegible]=A.I.R. 1923 All. 420.**

———If a Court is prepared to presume the genuineness of a document under S. 90 the question whether the endorsement of the stamp-vendor thereon sets out the true facts as to the name of the purchaser of the stamp and the object for which he wanted the stamped *Cadjan* is not so much a question governed by S. 90 as by S. 114 an illustration to which provides that the regularity of official acts might be presumed. The presumption under S. 90 as to documents over thirty years old, has to be made with some care. In the case of

EVIDENCE ACT (1872), S. 90—Presumption—When arises.

registered documents such a presmption is very readily raised; and in the case of other documents unless by reason of their appearance or by reason of internal evidence there are some cogent considerations which recommend them to the favour of the Court, the Court is not bound to raise such a presumption usually. (*Sadasiva Iyer and Spencer, JJ.*). VAIDYANATHA SWAMY IYER *v.* MADAVANARAYUN. **69 I.C. 289=14 M.L.W. 416=1921 M.W.N. 750= A.I.R. 1921 Mad. 452=41 M.L.J. 310.**

———When another person signs for an illiterate executant, there is no necessary presumption in law that the person who signed had an authority to sign. (*Wazir Hasan, A.J.C.*). RAGHUBAR SINGH *v.* SANWAL SINGH. **61 I.C. 125=8 O.L.J. 23= A.I.R. 1921 Oudh 55.**

—S. 90—Interference in appeal.

———It is at the discretion of the trying Judge either to raise or not to raise the presumption arising under S. 90. And the Court of Appeal cannot overrule his exercise of discretion in that matter without sending the case back for retrial. (*Ross and Wort, JJ.*). RAJENDRA PRASAD *v.* GOPAL PRASAD. **108 I.C. 545=7 Pat. 245= 9 P.L.T. 123=A.I.R. 1929 Pat. 51.**

———In a suit for redemption of the Othis the question was whether the documents evidencing them were genuine. The trial Court presumed that they were genuine, but the first appellate Court refused to draw the presumption and considered that the evidence was not sufficient to establish the genuineness of the documents,

Held, that it was open to the lower Appellate Court to refuse to draw the presumption under S. 90 and to form an independent opinion upon the evidence as to the genuineness of the documents, as the trial Court did not record and communicate to the party affected before the opportunity for receiving evidence had passed, that it was prepared to make the presumption under the section and that the party was shut out from adducing further evidence. 37 Mad. 455, *Foll.* (*Curgenven and Ananthakrishna Aiyar, JJ.*). MUTHIYAN CHETTY *v.* VAYYDAYAN. **108 I.C. 412 (Mad.).**

———The exercise of the discretion under S. 90 may be challenged in second appeal where it is shown that the exercise was made arbitrarily and not on judicial grounds. (*Hasan, J.*). MAHADIN SINGH *v.* BIKRAMA SINGH. **93 I.C. 13= 13 O.L.J. 456=A.I.R. 1926 Oudh 362.**

———Where the lower Court for reasons not *prima facie* unsound had refused to raise the presumption of genuineness under S. 90.

Held, that the High Court should not interfere in second appeal. (*Sadasiva Aiyar and Spencer, JJ.*). VAIDYANATHASWAMY IYER *v.* NATESA MALAVARAYAN. **69 I.C. 289=14 M.L.W. 416= 1921 M.W.N. 750=A.I.R. 1921 Mad. 452= 41 M.L.J. 310.**

—S. 90—Presumption—When arises.

———*Pedigree satisfying conditions of Ss.* 32 (6) *and* 90.

Where relationship as described in a genealogical tree is corroborated in material parts by evidence on record and it *prima facie* satisfies all the conditions prescribed by S. 32 (6) and S. 90, presumption ought to be made in favour of its genuineness. 37 All. 600; A.I.R. 1921 Nag. 49 and A.I.R. 1925 Nag. 271, *Rel. on.* (*Kinkhede, A.J.C.*). JAGADEO *v.* VITHOBA. **105 I.C. 81= A.I.R. 1928 Nag. 20.**

EVIDENCE ACT (1872), S. 90—Presumption—When arises.

——Where all the executants are dead, the scribe is dead, the persons who purport to have been the attesting witnesses are dead, the Registrar before whom the deed was registered is also dead, there is a strong case for applying the presumption under S. 90. (*Stuart, C.J. and Raza, J.*). LAL BAHADUR SINGH *v.* RAMESHWAR PRASAD. **105 I.C. 581=4 O.W.N. 965=A.I.R. 1927 Oudh 510.**

——When a document is suspicious, on the face of it, and when the very place of importance has been erased and re-written, presumption under S. 90 does not arise. (*Sulaiman, J.*). BALDEO MISIR *v.* BHAROS KUNBI. **95 I.C. 261=A.I.R. 1926 All. 537.**

——Where a will was more than thirty years old, and all the attesting witnesses except one were dead and the surviving attesting witness spoke against the due attestation of the will.

Held, in the circumstances of the case, that presumption as to its genuineness and proper attestation might be drawn under S. 90. (*Dalal, J. C. and Wazir Hasan, A. J. C.*). THAKUR SHIAM SUNDER SINGH *v.* THAKUR JAGANNATH SINGH.

85 I.C. 558=28 O.C. 91=A.I.R. 1925 Oudh 465.

——The document was more than 30 years old and was produced from proper custody and all the witnesses were dead.

Held, that the presumption must be made under S. 90 of the Evidence Act that the attestation was duly made. (*Dalal, J. C. and Neave, A. J. C.*). MOHAMMAD HASAN *v.* ALI HAIDER.

85 I. C. 509=12 O. L. J. 1=28 O. C. 8=A. I. R. 1925 Oudh 337.

——*Ancient document produced from Collector's custody was held presumably genuine in the circumstances of the case.*

Though the mere fact of a certain document having been produced from a Court where it had been filed does not necessarily bring that document within the requirements of S. 90, yet, the question depends upon the circumstances of each particular case.

The document was 54 years old and was submitted to the Magistrate and Collector with the express purpose that he might take the necessary steps in order to bring the estate under the management of the Court of Wards. The Collector recorded an order which did not throw any doubt upon the genuineness of the document.

Held, that the Court was entitled to accept the document, as presumably genuine under the provisions of S. 90. (*Adami and Sen, JJ.*). RAJENDRA PRASAD *v.* GOPAL PRASAD. **94 I. C. 814=4 Pat. 67=A. I. R. 1925 Pat. 442.**

——*Mortgage-deed more than fifty years old produced from proper custody presumed to be genuine.*

In a redemption suit plaintiff's ancestor was shown to have been in possession in 1840 and the mortgage-deed was executed in 1872 and was registered. It was produced by a person who was admittedly one of the alleged mortgagees. The mark of the executant was made by the village *patwari* who also signed before the Sub-Registrar. An old witness examined to prove the execution of the deed was discredited.

Held, that still the deed should be deemed to be genuine and that the presumption mentioned in S. 90, Evidence Act, should be used in its favour. (*Mukerji, J.*). RAMACHARI *v.* SADHO SARAN.

79 I. C. 403=A. I. R. 1924 All. 869.

——Document duly registered by executants and over thirty years old is admissible where there is

EVIDENCE ACT (1872), S. 90—Secondary evidence.

no reason to doubt its genuineness. 31 All. 482, *Foll.* (*Kanhaiya Lal, J.*). GAYA SINGH *v.* SURAJBALI SINGH. **75 I. C. 931=A. I. R. 1924 All. 832.**

——*Execution of a deed by another for an illiterate person held proved from Registration endorsement.*

One *G*, executed a sale-deed but he being illiterate it was signed by one *D*, for *G*. The deed was registered and its execution was admitted by *G*, before the Registration Officer. It was more than thirty years old and was produced from proper custody,

Held, that the Court was justified in drawing a presumption from the registration endorsement that *G*, had authorised *D* to sign on his behalf. (*Dalal, J. C.*). BHIM SHANKAR DATT *v.* MANI RAM. **80 I. C. 457=10 O. L. J. 643=A. I. R. 1924 Oudh 265.**

——Where a document is undated, no presumption can be drawn under S. 90, as it cannot be said that it is thirty years old. It must then be proved in the ordinary way. (*Phillips and Devadoss, JJ.*). VEERABHADRAYYA *v.* RAMACHANDRA.

73 I.C. 66=18 M.L.W. 404=1923 M.W.N. 454=A.I.R. 1923 Mad. 674.

——*Execution of Will suspicious—Delay in probate—Presumption not made.*

A Will purported to be executed in 1887 was brought to light for the first time in 1907 when it was produced in a Court of Law. In 1910 an application for probate in respect of it was made by a brother of the present applicant but the application was ultimately withdrawn. At that time only one of the attesting witnesses was said to have been alive. Yet no further attempt was made to bring the Will into Court till some ten years later when even that witness was dead. There was no reasonable explanation about the delay after 1910 in making the application for probate. There was no evidence as to the custody of the Will before 1907,

Held, that the applicant cannot get the benefit of S. 90. (*Prideaux and Kotval, A.J.Cs.*). CHAMANLAL *v.* PUNA. **75 I.C. 660=A.I.R. 1923 Nag. 169.**

——*Ancient document never questioned till suit—Consideration may be presumed.*

The passing of consideration for a document which is more than 30 years old and which was never questioned till suit should be taken as proved even if the direct evidence is not as strong as might be naturally expected in respect of recent transactions. (*Sadasiva Aiyar and Spencer, JJ.*). SANYASIAH *v.* M.P. ATCHANNA NAIDU.

70 I.C. 759=15 M.L.W. 289=A.I.R. 1921 Mad. 624=42 M.L.J. 339.

——*Ancient documents—Proper custody—Admission without proof.*

Where the documents are ancient documents, 60 years old, and have been produced from proper custody, that is, from the custody of the lessees who are in possession of the mouza under those documents, the presumption under S. 90 afforded to 30 years old documents will apply to them and they can be admitted without proof. (*Jwala Prasad and Adami, JJ.*). RAMLAL KAVIRAJ *v.* SATYANIRANJAN CHAKRAVARTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

—S. 90—Secondary evidence.

——Where a party relies upon the certified copy of a document, before any presumption as to genuineness of the original can be made under S. 90, it is incumbent on the party to lay the foundation by leading secondary evidence under S. 65·

EVIDENCE ACT (1872), S. 90—Secondary evidence.

22 All. 294; 41 All. 592; 6 Cal. 720 and 14 Cal. 486 (P.C.), *Foll.* (*Sulaiman and Kendall, JJ.*). GAYA-PRASAD *v.* JASWANT RAI. **A.I.R. 1930 All. 550.**

———Court may presume genuineness of signature authenticating a copy. (*Lord Atkin*). V. SEETHAYA *v.* P. SUBRAMANYA. **117 I.C. 507=33 C.W.N. 578=52 Mad. 453=29 M.L.W. 804=31 Bom. L.R.756=49 C.L.J. 566=56 I.A.146=1929 M.W.N. 553=A.I.R. 1929 P.C. 115=56 M.L.J. 730 (P.C.).**

———*Genuineness of even unregistered document can be presumed from its copy after careful consideration of circumstances.*

The Court can presume the genuineness even of an unregistered document thirty years old from a copy of such document, if the original is proved to have been duly executed, and further it is also proved that the original is since lost. But such a presumption can only be made after a careful consideration of all the circumstances of the case.

A document which purported to be the Will was produced in Court in 1897, was referred to in the registered deed of gift in 1902, was made the basis of the public adoption in 1903 and was referred to in the deed of adoption. It was admitted to be genuine in litigation in 1901 and in other litigations from 1903 to 1909, and mutation of names was made in the revenue Court on the basis of the adoption in 1910. Yet since 1879 when testator died until 1923 when this suit was filed, no suggestion was made by any one that a will had been forged or that the will produced in 1897 was a forged document. It was only when 44 speculators combined to take 192 shares of half the estate that the suit was launched,

Held, that after a careful consideration of the whole of the evidence it ought to be accepted as proved that a will was executed and that the genuineness of that will would be presumed from the copy of it: 16 Cal. 753 (P. C.), *Foll.*; 22 All. 294 and 5 Cal. 886, *Ref.* (*Sulaiman and Kendall, JJ.*). BRIJ RAJ SARAN SINGH *v.* BASANT SINGH. **118 I.C. 154=A.I.R. 1929 All. 561.**

———*Section 90 is not confined only to cases where original is produced.*

The words "where any document...is produced," as they stand, do not confine the application of S. 90 to cases in which the original document is actually produced before the Court. There is nothing in S. 90 to prevent the Court making a presumption of the genuineness of the original when a certified copy of a plaint is produced to show acknowledgment for the purposes of limitation: A.I.R. 1923 Mad. 1 (F.B.), *Rel. on.* (*Srivastava, J.*). BRIJ KISHORE *v.* BENI PERSHAD. **121 I.C. 273=6 O.W.N. 880=A.I.R. 1929 Oudh 483.**

———Where documents are filed, as being copies of documents more than thirty years old which came from proper custody, the presumption, arising under S. 90, as to their genuineness might be made by the Court. 2 L. W. 509, *Foll.* (*Spencer and Devadoss, JJ.*). SESHADRI REDDI *v.* SUBRAMANIA AIYAR. **74 I.C. 35=16 M.L.W. 839=32 M.L.T. 89=A.I.R. 1923 Mad. 163.**

———The presumption under S. 90 applies to copies as well as to originals. If the copy is proved to be a true copy a presumption in favour of the genuineness of the original can be made. (*Schwabe, C.J., Oldfield and Coutts Trotter, JJ.*). P. SUBRA[illegible]YA *v.* T. SEETHAYYA. **70 I.C. 729=16 M.L.W. 462=31 M.L.T. 347=1922 M.W.N. 614=46 Mad. 92=A.I.R. 1923 Mad. 1 (F. B.).**

EVIDENCE ACT (1872), S. 91—Admissibility of external evidence.

———Original document could not be produced—Secondary evidence produced — Presumption applies. RAM SUNDER RAI *v.* MT. KALI KUER. **44 All. 683=A.I.R. 1922 All. 321.**

———Section 90 may apply even to a case where the original document is not produced. (*Woodroffe and Walmsley, JJ.*). KHAGESWAR SARMA *v.* SOMESWAR BHATTACHARYA. **63 I.C. 518=33 C.L.J. 382=A.I.R. 1921 Cal. 334.**

—S. 90—Unimpeachable document.

———*Ownership of property in ancient period—Evidence in unimpeachable old documents is conclusive.*

When the question arises as regards the ownership of property in some ancient period the evidence afforded by some unimpeachable ancient documents should be accepted beyond question. (*Venkatasubba Rao and Shrinivas Ayyangar, JJ.*). SECY. OF STATE *v.* RAJA PARTHASARTHY. **96 I.C. 1011=49 Mad. 349=1926 M.W.N. 897=A.I.R. 1926 Mad. 706=50 M.L.J. 699.**

—S. 91.

Admissibility of external evidence.
Applicability.
Exception.
Hundi.
Lease.
Mortgage.
Partition.
Pronote.
Sale.
Statements of witness.
Miscellaneous.

—S. 91—Admissibility of external evidence.

———*Document embodying only some terms—Evidence of other terms admissible.*

Where there is a document which does not contain the entire agreement between the parties but embodies only some of the conditions, oral evidence to prove certain other terms which had been agreed upon and which are not inconsistent with the written instrument is clearly admissible. (*Sen and Niamatullah, JJ.*). CO-OPERATIVE COMPANY, LTD., SAHARANPUR *v.* BHAGWAN DAS AND CO. **A.I.R. 1930 All. 615.**

———*Family settlement—Oral evidence admissible to prove it.*

There is no provision of law requiring that a partition of family settlement must be reduced to writing and the writing registered, though of course, when they are reduced to writing, the point of registration may arise.

Where by family arrangement it was settled that *A*, father of *B*, was to pay the family debts and *B* was to pay nothing, and Rs. 1,000 from the joint property were to be paid to *B* as his share and a house was to fall to the share of *A*,

Held, that the alleged arrangement amounted to family settlement and not to a release of his share by *B*. It was not therefore necessary to get the settlement reduced into writing and get the writing registered. Oral evidence on the point of the alleged settlement was therefore admissible. (*Shingne, J.*). RANGU NYAHALCHAND SHET VANI *v.* LAKSHMAN MARTAND KULKARNI. **A.I.R. 1930 Bom. 438.**

———*Resumption of* saranjam *not required to be reduced to writing.*

There is no law which requires a resumption of *saranjam* to be reduced to writing. The actual order of resumption therefore need not be produced in evidence. Such resumption can be proved under S. 114, Evidence Act, and S. 91 will not govern

EVIDENCE ACT (1872), S. 91—Admissibility of external evidence.

such cases. (*Fawcett, Ag.C.J. and Murphy, J.*). SAYOJI RAO GAIKWAR *v.* MADHO RAO RAGHU. NATH RAO. **115 I.C. 369=53 Bom. 12=30 Bom. L.R. 1463=A.I.R. 1929 Bom. 14.**

———*Agreement to lease—Inadmissibility owing to non-registration—Prior oral agreement—Proof—Permissibility.*

Where the tenant wrote to the landlord to grant a lease in pursuance of an oral conversation and the landlord sent a reply which in law amounted to an agreement to lease but which was rendered inadmissible for want of registration and the tenant thereupon sought to fall back on the prior oral agreement,

Held, that if there was a prior oral agreement, it was either the same as that in the letters or it was modified by the letters and that in neither case did S. 91 of the Evidence Act admit oral evidence of the alleged oral agreement. (*Hilton, J.*). MT. RAJ RANI *v.* HAKAM CHAND JAGDHAR MAL. **31 Punj. L.R. 299=12 L. L. J. 77.**

———*Grant reduced to form of document—Secondary evidence inadmissible where document not shown to have been lost.*

Under S. 91 the only evidence as to a grant when it has been reduced to the form of a document is the document itself unless secondary evidence as to its contents is admissible. Only Cl. (c), S. 65, which makes secondary evidence of lost originals admissible can be applied to such a case; but where there is no evidence on record that the document has been lost Cl. (c) is inapplicable and a finding of Court based on existence of an *ijazatnama* which is said to be lost is erroneous in law. (*Pullan, J.*). MAHOMED KHAN *v.* SHEO BHIKH. **6 O.W.N. 859=10 L.R.A. Rev. 358=A.I.R. 1929 Oudh 447.**

———Where a document, embodying a contract between parties, should have been, but was not registered, the document itself is inadmissible in evidence and further no evidence can be given of its terms under S. 91. (*Pratt, Offg. C.J. and Ormistone, J.*). OFFICIAL ASSIGNEE, RANGOON *v.* L. ROOPJEE. **115 I.C. 903=6 Rang. 676=A.I.R. 1929 Rang. 60.**

———Oral evidence is admissible to prove a condition reduced to writing in a document, where the opposite party is in possession of the document and denies the existence of such a condition. (*Zafar Ali, J.*). INDIAN MERCHANTS, LTD. *v.* ANRUP CHAND. **107 I.C. 492=A.I.R. 1928 Lah. 236.**

———*Terms of contract, originally made by parol, reduced to writing—Oral evidence is not admissible.*

The moment an oral contract is reduced to writing it is not open to any of the parties thereafter to seek to prove the terms of the contract referring to the original oral agreement and S. 91, Evidence Act, applies not only to cases where the contract is brought about or concluded by the writing, but also where the contract having been originally made by parol is subsequently reduced to writing. When the parties reduce the terms of a contract to writing, it clearly indicates the contemplation of the parties that the terms would be reduced to a form where there could be no question at all as to what the terms were and the undoubted policy of the law is that whenever parties have taken such precaution it is the document itself that must be produced and proved as evidence of the contract subject of course to any rules as to secondary evidence. (*Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ.*). KUPPUSWAMI *v.* CHINNASWAMI. **111 I. C. 677=28 M.L.W. 234=A.I.R. 1928 Mad. 546.**

EVIDENCE ACT (1872), S. 91—Admissibility of external evidence.

———Secondary evidence of a mere note that a mortgage had taken place and oral evidence of a transaction of mortgage, which is itself oral, is admissible. (*Pratt, J.*). MA SAW *v.* MAUNG BA. **106 I.C. 476=5 Rang. 650=A.I.R. 1928 Rang. 32.**

———*Contract—Construction—Mercantile contract—Evidence of usage in particular locality is admissible only if necessary to explain ambiguous terms—If such usage is repugnant to the terms of written contract it is inadmissible.*

Where ambiguous terms or phrases are found in a mercantile contract evidence of usage is admissible to explain the meaning of the expressions in the particular trade or locality and where a contract is silent in respect of some incidental term or condition which, according to the course of business established in a particular trade it is customary to find included in such a contract, evidence of the custom is admissible to prove that such term or condition formed part of the contract, unless the incorporation of the term or condition in the contract will have the effect of introducing something repugnant to or inconsistent with the tenor of the written agreement. But where the parties to a contract have expressed the agreement at which they have arrived in a written document the terms of which are capable of a reasonable interpretation, according to the natural meaning of the words that are used, a trade usage which, if it regulated the rights and obligation of the parties, would alter fundamentally the nature and character of the contract as expressed in the written agreement, can neither determine nor affect the rights and obligations of the parties engaged in the transaction; and, as it is inconsistent with the terms of the written agreement evidence of such an usage is inadmissible: *Humprey* v. *Dale*, (1857) 7 E. and B. 266 and *Mollet* v. *Robinson*, L.R. 5 C.P. 646, *Relon.*

Where plaintiff contracted to supply certain goods to the defendants and the indent provided: "I the undersigned, request you to purchase yourselves or through your agent on my account and risk the whole or any part of the undermentioned goods on the terms and conditions stated below",

Held, under the indent the relationship of principal and agent was created between the defendant and the plaintiff; and unless the defendant assented to some other mode of performance, it was the duty of the plaintiff under the indent to create privity of contract between the defendant and the foreign supplier for the purchase of the indent,

Held, further, that the usage that a merchant who under an indent agrees to purchase goods from abroad for and on account of a dealer, "C.I.F. no commission," is entitled to purchase the goods from the supplier as a principal on any terms that he may arrange, and to resell the goods to the dealer upon the terms of the indent, the difference between the price at which the merchant buys from the supplier and the price at which he sells to the dealer being his remuneration for obtaining the goods for the dealer, would be wholly inconsistent with the terms of the indent and would be inadmissible in evidence whether defendant was aware or ignorant of it: *Mollet* v. *Robinson*, (1870) L.R. 5 C.P. 646 and *May & Hart* v. *Angelo*, (1898) 14 T.

EVIDENCE ACT (1872), S. 91—Admissibility of external evidence.

L. R. 551, *Rel. on.* (*Page, J.*). HOLMES WILSON LTD. *v.* S. BATA KRISTO DE. **104 I.C. 268= 54 Cal. 549=A.I.R. 1927 Cal. 668.**

———There is nothing in the Transfer of Property Act to suggest that no transfer of an interest in immovable property can be effected without a writing duly registered or that non-registration of every document which effects a transfer of such interest renders it inadmissible in evidence. *(Rupchand Bilaram and Lobo, A.J.Cs.).* BHAGWATI BAI *v.* BHAGWANDER. **102 I.C. 277= A. I. R. 1927 Sind 206.**

———*Terms of contract reduced into form of an unsigned draft—Document or other evidence is admissible to prove the terms proposed but not entered into.*

When terms of contract in respect of immovable property are reduced into the form of an unsigned draft or memorandum of the terms which the parties had agreed should be embodied in a proper document, there would be nothing in S. 91 of the Evidence Act or S. 49 of the Registration Act to exclude the document or other evidence of the terms of the contract: the parties proposed to make but never did make. (*Hallifax and Kotval, A. J. Cs.*). SETH GOCULDAS NATHANI *v.* LAL ARTATRAM. **95 I.C. 824=A.I.R. 1926 Nag. 466.**

———*Area of demised land—Antecedent documents may be consulted only for identifying land.*

Where the question is as to the extent or area of the Mahal settled with the defendants it is not the duty of the Court and it would be contrary to its duty to admit any antecedent documents for the purpose of contradicting the terms of the settlement made. Any antecedent documents and maps can be used solely for the purpose of identifying the thing demised. (*Lord Shaw*). TILAKDHARI SINGH *v.* KESHEO PRASAD SINGH. **88 I.C. 103= 26 P.L.R. 257=2 O.W.N. 403=41 C.L.J. 386= 3 Pat. L.R. Civ. 114=6 P.L.T. 343= 6 L.R P.C. 109=27 Bom. L.R. 819= 1925 M.W.N. 403=A.I.R. 1925 P.C. 122= 48 M. L. J. 611 (P.C.).**

———Where the plaintiff alleged a mortgage and the defendant alleged a sale but no registered document was produced,

Held, oral evidence was admissible to prove the nature of the transaction. (*Carl, J.*). MAUNG PO TOK *v.* ME LE WAR. **84 I.C. 468= 3 Bur. L. J. 238=A.I.R. 1925 Rang. 102.**

———Agreement not required by law to be in writing or to be registered need not be proved by production of written document but one, the terms of which are reduced into writing should be proved only by the written document and not by oral evidence. (*Mukerjee, J.*). BISHUNATH OJHA *v.* SHEO PRAGASH. **78 I.C. 1043=A.I.R. 1924 All. 842.**

———Verbal negotiations leading up to an express contract in writing cannot be set up as an independent contract and are not even admissible in evidence. (*Newbould and Rankin, JJ.*). DULA MEAH *v.* MOULAVI ABDUL RAHAMAN. **81 I.C. 641= 28 C.W.N. 70=A.I.R. 1924 Cal. 432.**

———*Party in possession of document cannot let in secondary evidence.*

Where documents of title were in existence and defendants, upon whom the *onus* lay had them in their possession and failed to produce them.

Held, that secondary evidence of the terms and contents of the documents cannot be adduced. (*Dawson-Miller, C.J. and Mullick, J.*). BUDHAN TELI *v.* MADAN MOHAN LAL. **68 I.C. 653= 3 P.L.T. 485=A.I.R. 1923 Pat. 111**

EVIDENCE ACT (1872), S. 91—Applicability.

———It is settled law that a relationship such as partnership, landlord and tenant and so forth may be proved apart from the documents which embody the terms of that relationship. (*Duckworth and Pratt, JJ.*). MG PO LUN *v.* MA E. MAE. **74 I.C. 47=1 Bur.L.J. 111= A.I.R. 1923 Rang. 57.**

———External evidence is admissible to show that an unstamped acknowledgment was not signed, to supply evidence of the debt connected with it. 21 Bom. 201 (F.B.) and 30 Cal. 687, *Ref.* (*Oldfield, J.*). VENKATACHALAPATHI CHETTIAR *v.* LAKSHMANAN CHETTIAR. **13 M.L.W. 140= A.I.R. 1921 Mad. 71.**

———*Document containing terms of loan inadmissible—Lender can sue when loan is provable by other evidence.*

The question whether a loan was given and taken, can in certain cases, such as those of collateral security, be distinguished from the question of the terms of the loan and its repayment. Where it can be so distinguished, even if the document embodying the terms is inadmissible, the lender may fall back and sue upon the loan itself and prove it by other evidence. An implied contract to repay money lent always arises from the fact that the money is lent. (*Case-law discussed*). (*Kennedy, J.C. and Madgavkar, A.J.C.*). NARAINDAS *v.* JASSOMAL. **65 I.C. 37=15 S.L.R. 135= A.I.R. 1921 Sind 80.**

—S. 91—Applicability.

———The provisions of S. 91 are not applicable to permission granted by Municipality under S. 114 for connecting the private drain with the Municipal drain. (*Subhedar, A. J. C.*). ABDULLA *v.* AMBADAS. **120 I.C. 221=A.I.R. 1930 Nag. 130.**

———*Arbitration—Agreement.*

The agreement to refer to arbitration is not a contract, grant or other disposition of property and so S. 91 does not apply to it. (*Ashworth, J.*). BABU RAM *v.* LALA RAM. **116 I.C. 853= A.I.R. 1929 All. 415.**

———*Pyatpaing.*

The pyatpaing is signed not for the purpose of recording a contract but for the purpose of reporting to the revenue authorities for revenue purposes what has been done. Such documents are referred to as evidence of what actually has taken place. But they do not purport to record in a formal manner the terms of the contract. It is not, therefore, a document within S. 91. (*Rutledge, C. J. and Brown, J.*). MAUNG KIN LAY *v.* MAUNG TUN THANG. **106 I.C. 503=5 Rang. 679= A.I.R. 1928 Rang. 53.**

———Section does not apply if a party does not attempt to prove the terms of the document (per *Venkatasubba Rao, J.*). (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RAMU CHETTY *v.* PANCHAMMAL. **92 I.C. 1028=1926 M.W.N. 45= A.I.R. 1926 Mad. 402.**

———*A receipt for money.*

A receipt acknowledging payment of money is not a contract or a grant, nor in the ordinary sense of the terms is it a disposition of property within the meaning of S. 91 and so oral evidence is admissible where the receipt is found to be suspicious or is unregistered. 23 Mad. 92, *Foll.* (*Pullan, A. J. C.*). SARDAR SINGH *v.* IQBAL NARAIN. **80 I.C. 57=27 O.C. 380=A.I.R. 1925 Oudh 257.**

———*Deed not produced—Proof of transaction by other evidence is not barred.*

Where it was contended that the plaintiff, not having produced *Bainukasha* deed, was not entitled

EVIDENCE ACT (1872), S. 91—Exception.

to adduce evidence of the transaction and therefore failed to establish his title.

Held, all that S. 91 provides is that when the terms of a contract or of a grant or any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such a contract, grant or disposition of property except the document itself. This, however, refers only to the method of proof of the terms of contract grant or disposition of property: it does not exclude other proof of the transaction itself and this being so the Courts are entitled to consider the other evidence adduced in proof of *Bainukasha* transaction. (*Coutts and Ross, JJ.*). MUSAMMAT MAKHDUMAN *v.* SAIYED ALTAF HUSSAIN. **80 I.C. 187=A.I.R. 1922 Pat. 222.**

—S. 91—Exception.

———*Dekkhan Agriculturists' Relief Act, S. 10-A overrides Ss.* 91, 92, *Evidence Act.*

The object of S. 10-A of the Dekkhan Agriculturists' Relief Act, namely, the decision as to the real nature of the transaction by admission of the oral evidence which otherwise would be excluded by the ordinary law, whether S. 92 or the like of the Evidence Act, is to override not merely Evidence Act, S. 92, but also where necessary S. 91. A.I.R. 1919 P.C. 44, *Ref.*; 15 Bom. L.R. 555, *Dist.* (*Madgavkar, J.*). BASAPPA GURUBASAPPA *v.* TAYAWA VIRUPAXAPPA. **31 Bom. L.R. 1266=54 Bom. 30=A.I.R. 1930 Bom. 79.**

—S. 91—Hundi.

———*Hundi embodying only part of contract inadmissible—Evidence of terms of whole contract not excluded.*

If a hundi is an embodiment of the whole of the contract between the parties and it is not admissible in evidence and cannot be looked at for the purpose of finding out the terms of the contract, other evidence to prove the terms of such contract cannot be allowed. But where the hundi embodies only a part of the contract between the parties, it cannot be said that the whole contract is reduced to the form of a hundi and S. 91 does not exclude evidence showing the terms of the whole contract which cannot be determined from the hundi alone. 7 Cal. 256; 28 All. 298; 34 All. 158; 7 A.L.J. 459; 16 I.C. 33, *Disc.*; 38 Mad. 660; A.I.R. 1921 Lah. 217 and 23 Cal. 851, *Ref.* (*Sulaiman and Kendall, JJ.*). KUNDAN LAL *v.* SAHU BHIKHARI DAS ISHWAR DAS. **116 I.C. 293=51 All. 530=1929 A.L.J. 333=A.I.R. 1929 All. 254.**

———Bill of exchange or hundi does not necessarily embody whole contract between parties. (*Sulaiman and Kendall, JJ.*). KUNDAN LAL *v.* SAHU BHIKHARI DAS ISHAR DAS. **116 I. C. 293=51 All. 530=1929 A. L. J. 333=A. I. R. 1929 All. 254.**

———*Insufficiently stamped Hundi—Secondary evidence of loan.*

Where the money, even though advanced a short time before the actual execution of the hundi which was insufficiently stamped, was advanced on the security of the hundi and the agreement between the parties was that the loan should be made in consideration of the hundi,

Held, the plaintiffs have no cause of action independent of the hundi and as the hundi, insufficiently stamped is inadmissible in evidence and as S. 91 of the Evidence Act forbids secondary evidence, the plaintiffs must fail. (*Chevis and Harrison, JJ.*). CHANDA SINGH *v*, AMRITSAR BANKING COMPANY. **66 I. C 201=2 Lah. 330=A. I. R. 1922 Lah. 307.**

EVIDENCE ACT (1872), S. 91—Mortgage.

———*Hundi inadmissible—Oral contract cannot be proved.*

Where the terms of any contract have been reduced to writing and that writing is, for any reason, inadmissible, the promisee must lose his money. Therefore, where advancing of a loan and the execution of the hundi are simultaneous transactions, and the contract for repayment is embodied in the hundi, but the hundi is inadmissible in evidence due to insufficient stamp, the creditor cannot rely on the original consideration. 16 I.C. 33, *Dissented from. Case-law Ref.* (*Le Rossignol and Wilberforce, JJ.*). GURDAS MAL SINGH *v.* ISHER DAS. **60 I. C. 107=3 L. L. J. 157=A. I. R. 1921 Lah. 217.**

—S. 91—Lease.

———*Deed invalid—Proof* aliunde.

Even if the registration of a lease deed be invalid, the tenancy can be proved otherwise without proving the written lease which may be inadmissible for want of registration. 41 Cal. 347, *Foll.*

The tenancy can also be proved by the doctrine of part performance. (*Das and Kulwant Sahay, JJ.*). DAMODHAR PRASAD *v.* MASOODAN SINGH. **105 I. C. 172=8 P. L. T. 829=A. I. R. 1928 Pat. 89.**

———Where an *amalnamah* evidencing a settlement of land is inadmissible in evidence for want of registration no evidence is admissible on the question as to the persons for whom the settlement was made or as to the extent of their shares settled. (*N. R. Chatterjee and Newbould, JJ*). HEMCHANDRA ROY *v.* SASHI BHUSAN SIL. **63 I.C. 863 (Cal.).**

—S. 91—Mortgage.

———*Interest in a mortgage-deed—Oral evidence.*

Where a mortgage deed contains a stipulation for compound interest, all evidence of an alleged oral agreement to the effect that only simple interest was agreed upon will be wholly inadmissible. Because if the mortgagor alleges that the parties never agreed to compound interest but only to simple interest, all evidence in support of the allegation will be excluded by S. 91, and if his case is that he agreed in writing to pay compound interest, but the parties entered into a simultaneous oral agreement that only simple interest should be paid, then evidence of such oral agreement will be excluded by S. 92. (*Banerji and King, JJ.*). BEHARI LAL *v.* ABDUL AZIZ. **119 I.C. 92=1929 A. L. J. 866.**

———The mortgage sought to be redeemed was passed in 1866. Plaintiff gave sufficient details of the alleged mortgage. It was not proved that there was ever an unregistered instrument of mortgage. The mortgage was proved by circumstantial evidence, *viz.*, recitals in deeds referring to the property as having been so mortgaged and extracts from account books which mentioned the fact of the mortgage, as well as a transaction by which a half-share in the mortgage was transferred to the defendant's father,

Held, that because the terms of the contract had not been reduced to the form of a document and as at the time of the alleged mortgage an oral agreement with transfer of possession sufficed to create a mortgage, S. 91 would not apply,

Held, further, that S. 49, Registration Act, would also not apply, because there was in fact no document tendered in evidence which ought to have been, but was not in fact, registered. (*Fawcett, Ag. C.J. and Murphy, J.*). NARSI *v.* PARSHOTTAM. **115 I.C. 379=52 Bom. 875=30 Bom.L.R. 1277=A.I.R. 1928 Bom. 484.**

EVIDENCE ACT (1872), S. 91—Mortgage.

———*Mortgage requiring registration—Oral evidence inadmissible.*

A mortgage was executed before applicability of Transfer of Property Act for Rs. 80. Further advance of Rs. 80 was taken on the same land after the application of the Act to Burma. The mortgage deed was not registered. The mortgagor brought a suit for redemption on payment of Rs. 160 and tried to prove the mortgage by oral evidence,

Held, that the mortgagor could not get out of the registration by taking money in instalments. Oral evidence was, therefore, inadmissible. (*Das, J.*). MAUNG MIN LWIN *v.* MG. THA BAW.
117 I.C. 59=A.I.R. 1928 Rang. 242.

———Where an earlier mortgage is substituted by a subsequent mortgage but the subsequent mortgage is invalid for want of legal attestation, the mortgagee can fall back on the earlier mortgage as there is no valid substitution of the old security by the new one, provided his rights under the earlier mortgage are not otherwise barred. 6 N.L.R. 164 and 39 All. 178 (P.C.), *Rel. on.* (*Kinkhede, A.J.C.*). VENKATRAO *v.* GANPAT. **98 I.C. 695= A.I.R. 1927 Nag. 83.**

———All the terms of the contract are conveyed by the word "Mortgage", so the fact of mortgage apart from its terms cannot be proved but only the fact of transfer of possession where there is such transfer, can be proved. (*Godfrey, J.*). MAUNG TUN *v.* MAUNG KHAN. **84 I.C. 987=3 Bur.L.J. 231= 2 Rang. 441=A.I.R. 1925 Rang. 61.**

———Authorised maps and entries made in authorised revenue registers corroborative of oral testimony as to documentary transactions can only be admitted where evidence other than the documents themselves is admissible at all. So, a mortgage which ought to have been by registered instrument cannot be proved by authorised maps and entries made in authorised revenue registers : A.I.R. 1923 Rang. 196, *Overruled.* (*Godfrey, J.*). MAUNG TUN *v.* MAUNG KHAN. **84 I.C. 987=3 Bur. L.J. 231= 2 Rang. 441=A.I.R. 1925 Rang. 61.**

———*Suit on mortgage—Original mortgage deed not produced—Defendant pleading payment and discharge—Non-production of mortgage-deed is not fatal—Question of payment must be gone into on merits.*

If the mortgage is totally denied, the plaintiff cannot prove the *factum* of the mortgage without producing the original mortgage deed, but if the defendants do not deny the *factum* of the mortgage but what they allege is that the mortgage has been discharged by payment, it is necessary for the Judge to find whether the mortgage had iu fact been discharged or not. The non-production of the original mortgage might be an important factor in considering whether the mortgage had been discharged or not, but that is no ground in itself for dismissing the suit on the mortgage in such a case. (*Banerji and Gokul Prasad, JJ.*). HIKMATULLAH KHAN *v.* ABDUL AZIM KHAN. **61 I.C. 412= 19 A.L.J. 185=A.I.R. 1921 All. 218.**

—S. 91—Partition.

———Fact of partition may be proved by oral evidence although deed embodying terms of partition cannot be proved for want of registration. 41 Bom. 466 and A.I.R. 1926 Mad. 402, *Foll.* (*Beasley, C. J. and Curgenven, J.*). SUBBARAO *v.* MAHALASHMAMMA. **A.I.R. 1930 Mad. 883.**

———An unregistered partition deed is admissible to prove the factum of partition, but its terms cannot be proved : A.I.R. 1924 Mad. 292; A.I.R. 1924 Pat. 641 ; 43 Mad. 244, *Rel. on.*

EVIDENCE ACT (1872), S. 91—Partition.

Where a deed of partition is unregistered, the combined operation of S. 49, Registration Act, and of S. 91, Evidence Act, would be to shut out all evidence to prove the terms of the deed; still separate status and separate possession are provable by other independent evidence : 41 Bom. 466; 44 Bom. 881, *Rel. on.*

Though a deed of partition is unregistered, the fact of partition and the fact of separate status and separate possession are provable, the reason being that these facts are not part of the "transaction" as contemplated by S. 49 of the Registration Act or of the "disposition" as contemplated in S. 91 of the Evidence Act. (*Hallifax and Mitchell, A.J.Cs.*). JIJI BAI *v.* CHOWDHARY RATAN SINGH.
99 I.C. 448=A.I.R. 1927 Nag. 113.

———*Registration Act. Ss.* 17 *and* 49—*Document evidencing partition—Oral evidence not allowed.*

Where a document is intended to be the evidence of a partition effected between the parties thereto it requires registration under S. 17 and if unregistered is inadmissible in evidence according to the provisions of S. 49. Oral evidence as to the terms of such a document is shut out by S. 91 of the Evidence Act. (*Abdul Raoof, J.*). CHANDU LAL *v.* DAULAT RAM. **69 I.C. 859= A.I.R. 1924 Lah. 286.**

———*Oral evidence should not be given to prove unregistered partition agreement.*

Where a partition is made by an unregistered document, oral evidence is inadmissible to prove it. But if the partition has been acted upon by the parties to the other's knowledge, part performance may be proved. But this is limited to cases in which specific performance can be claimed. As the Court cannot entertain a suit for partial partition specific performance of an agreement to partially partition cannot be claimed. Hence part performance cannot be proved where there has been only an agreement of partial partition, but can be proved where the agreement has been one of entire partition. 12 C.L.J. 25, *partly followed and partly distinguished* ; 21 Ch. D. 9 and 8 A. C. 467, *Foll.* (*Das and Macpherson, JJ.*). NAND LAL MAHTON *v.* DHANUKDHARI MAHTON. **76 I.C. 42= 4 P.L.T. 657=2 Pat. L.R. 37= A.I.R. 1924 Pat. 244.**

———Where the defendants alleged that the plaintiff had executed certain unregistered deeds by which the inheritance of a common ancestor was partitioned, and the plaintiff in his pleadings by necessary implication admitted the said allegation.

Held, that oral partition being permissible S. 58 of the Evidence Act made evidence on this point unnecessary and therefore the provisions of Ss. 91 and 92 of the Evidence Act would not prevent defendants from relying on the partition. (*Heald and Lentaigne, JJ.*). MAUNG PO KIN *v.* MAUNG SHWE BYA. **76 I.C. 855=1 Rang. 405= A.I.R. 1924 Rang. 155.**

———Partition deed inadmissible—Oral evidence is admissible to prove fact of partition but not contents. 41 Bom. 466, *Foll.* (*Campbell, J.*). NARSINGH DAS *v.* UTTAM CHAND. **76 I.C. 852= A.I.R. 1923 Lah. 392.**

———Unregistered partition deed—Evidence as to fact of partition cannot be let in *aliunde.* (*Duckworth and Pratt, JJ.*). MG. PO LUN *v.* MA E. MAE. **74 I.C. 47=1 Bur. L.J. 111= A.I.R. 1923 Rang. 57.**

———Where the deed of partition was unregistered.

Held, it was competent for the plaintiff to say that there was in such and such a year a partition

EVIDENCE ACT (1872), S. 91—Partition.

between himself and his brothers but he could not go further and say what benefit he took under that partition or what share he had in a given property by reason of that partition.

It is of the very highest importance, specially in the interests of a community that is growing commercially, that it should be thoroughly understood that, if parties enter into agreements in writing, they are thereby protected from having their opponents giving evidence of what, they say, were oral arrangements. These rules ought to be rigidly enforced for that very purpose. (S. 91 explained). 41 Bom. 466, *Dist.* (*Mears, C. J. and Piggott, J.*). JAIRAM DAS *v.* RAJ NARAIN. **70 I.C 953= 45 All. 21=20 A.L.J. 777=A.I.R. 1922 All. 493.**

———A partition may be proved by oral evidence though the partition-deed cannot be proved for want of registration. (*Abdul Raoof, J.*). BISHAN DAS *v.* RAM SINGH. **61 I. C. 399= 3 U. P. L. R. (Lah.) 43.**

—S. 91—Pro-note.

———*Debt evidenced by pro-note—Debt proved independently of the pro-note.*

Where a person has contracted a debt and has also executed a pro-note in favour of his creditor, the creditor can bring a suit for the money lent and evidenced by a pro-note and can prove the debt independently of the pro-note, S. 91 does not stand in his way. 6 O. C. 16; A.I.R. 1924 Oudh 249; 34 All. 158; A.I.R. 1928 All. 871 (F.B.), *Rel. on.* (*Raza, J.*). NANKHU SINGH *v.* GIRJA BUX SINGH. **119 I.C. 865=6 O.W.N. 649= A.I.R. 1929 Oudh 399.**

———Even if a chit produced is a promissory note and as such inadmissible is evidence for want of stamp, it is open to a creditor to prove his original debt. *Brown* v. *Watts*, (1808) 1 Taunt 353, *Rel. on.* (*Rupchand, A.J.C.*). ASSARAM MOTIRAM, INSOLVENT, *In re.* **116 I. C. 111= A. I. R. 1929 Sind 164.**

———*Pro-note payable to bearer—Admissibility in suit on original obligation.*

A promissory note made payable to bearer on demand offends against the provisions of S. 25, Paper Currency Act, and is therefore void and cannot be the basis of a claim in any Court of law. But the creditor can sue on the basis of any obligation independently of the execution of the promissory note. (1914) 2 U.B.R. 13; 40 Mad. 727; 40 Mad. 585; 6 M. L. W. 630 and A. I. R. 1922 Mad. 181, *Rel. on* and if there is other evidence outside the promissory note of the obligation sued upon, the promissory note in question is admissible as evidence to be read in conjunction with that other evidence to arrive at a decision as to whether the independent obligation is proved. Where there is no other evidence, while the promissory note is still admissible in evidence, there can be no decree on the basis of it alone. 6 M.L.W. 630 and A.I.R. 1922 Mad. 181, *Rel. on.* (*Boys, Kendall and Sen, JJ.*). *In the matter of* S. 25 PAPER CURRENCY. **115 I.C. 630=50 All. 839=26 A.L.J. 729= A.I.R.1928 All. 371 (S. B.).**

———*Promissory note—Debt provable independently.*

Where a debt may be proved independently of the promissory note, that is, without the assistance of the promissory note in evidence, the plaintiff may be given an opportunity to produce such proof and on his satisfying the Court as to the loan he will be entitled to a decree. 34 All. 158, *Rel. on.* (*Dalal, J.*). CHEDU SINGH *v.* JAGAN NATH PRASAD. **108 I.C. 912=26 A.L.J. 416= A. I. R. 1928 All. 297.**

EVIDENCE ACT (1872), S. 91—Pro-note.

———*Pro-note by several persons jointly—Subsequent oral agreement making the executants severally liable can be proved.*

A subsequent oral agreement, by which the joint and several liability of the executants under the promissory note for the balance due on it is split up with the consent of all parties into a several liability on the part of each of the executants, is not obnoxious to S. 91. (*Thiruvenkatachariar, J.*). RANGASAMI AIYANGAR *v.* SOMASUNDARAM CHETTIAR. **107 I.C. 646=27 M.L.W. 820= A.I.R. 1928 Mad. 173=54 M.L.J. 150.**

———*Pro-note inadmissible—Other evidence of loan is admissible.*

A suit by a creditor for recovery of money paid as a loan on a promissory note does not necessarily fail if the instrument upon which it is based is found to be inadmissible in evidence on account of its being insufficiently stamped or not stamped at all, if he can prove the loan by some other evidence. A.I.R. 1921 Pat. 318; 1 P.L.T. 203; 7 Cal. 256; 3 Cal. 314; 9 All. 351 and A.I.R. 1927 Bom. 437, *Foll.*; A.I.R. 1926 Pat. 432 and 9 M.L.T. 281, *Dist. from.*

Kulwant Sahay, J.—Even in cases where the lending of the money and the execution of the promissory note are contemporaneous, the plaintiff is entitled to maintain a suit for recovery of the money lent and to adduce evidence other than the instrument or the promissory note itself, in order to prove the loan. He cannot, however, give any other evidence as regards, the rate of interest, but he may be entitled to a reasonable amount as compensation by way of interest apart from the contract contained in the hand-note. (*Kulwant Sahay and Macpherson, JJ.*). DHANESHWAR SAHU *v.* RAMRUP GIR. **111 I.C. 482=7 Pat. 845= 9 P.L.T. 471=A.I.R. 1928 Pat. 426.**

———*Pro-note inadmissible—Suit on original loan.*

Where the contract may be considered as contained wholly in the promissory note or bill of exchange as in Ill. (b) to S. 91, if the plaintiff cannot sue on the promissory note he cannot sue at all; but secondly if the promissory note may be regarded as a conditional payment of the amount of the loan in which case if the promissory note is insufficiently stamped, it is only a worthless piece of paper and the plaintiff can sue on the loan and thirdly, the promissory note may be passed as security for the loan in which case there is no necessity for the plaintiff to sue on the promissory note at all and whether it is properly stamped or not he can bring a suit on the loan. (*Kemp, J.*). JACOB AND CO. *v.* A.P. VICUMSEY. **102 I.C. 138= 29 Bom L.R. 432=A.I.R. 1927 Bom. 437.**

———When a loan has been granted on the security of a negotiable instrument, there is no cause of action independent of the negotiable instrument itself, and when that negotiable instrument is inadmissible in evidence the suit must fail: 63 P. R. 1917 and A.I.R. 1922 Lah. 307, *Foll.* (*Broadway and Fforde, JJ.*). RAM JAS *v.* SAHABUDDIN. **95 I.C. 704=A.I.R. 1927 Lah. 89.**

———*Pro-note ineffective—Suit lies on original transaction.*

A creditor can fall back on the original transaction and recover his money on its basis when it is found or conceded that the document or instrument which he had obtained from the debtor was ineffective to establish any contractual relation of debtor and creditor between them so as to serve as a basis for a suit in a Court of law: 6 N.L.R. 125, *Foll.*

EVIDENCE ACT (1872), S. 91—Pro-note.

Although Ss. 91 and 92 prohibit any secondary evidence of the terms of a written contract, they do not exclude proof of a statement of a fact recited therein. Where, therefore, an insufficiently stamped pro-note is not admissible to prove the specific term of the contract embodied therein, namely, the unconditional undertaking or promise to pay the sum with its interest, it could be used as a mere acknowledgment or statement containing defendant's admission of receipt of money and of his own liability therefor to the person from whom he took it. The pronote failing to take effect as such, the creditor could also treat the contract as non-existent and ask for refund of consideration on the ground that it failed. (*Kinhede, A. J. C.*). UDARAM MANGNIRAM *v.* LAXMAN MARWARI.
104 I. C. 470=10 N. L. J. 45=A.I.R. 1927 Nag. 241.

———Where a suit is brought on a promissory note and the plaintiff cannot have recourse to it as a piece of evidence, S. 91 is not a bar to the plaintiff succeeding in his suit if he can prove his claim by other evidence: 24 Bom. 360, *Foll.* (*Macleod, C.J. and Coyajee, J.*). RANCHHOD *v.* RAVJIBHAI.
95 I.C. 847=28 Bom. L.R. 631=A.I.R. 1926 Bom. 357.

———Debt covered by pro-note cannot be proved by independent prior agreement where pro-note is inadmissible for want of stamp: 38 Mad. 660, *Foll.*; 40 Mad. 727, *Cons.*; A.I.R. 1922 Lah. 307, *Ref.* (*Madhavan Nair, J.*). P. SOMARJU *v.* M. SUBBARAYUDU. **85 I.C. 389=20 M.L.W. 943=A.I.R. 1925 Mad. 351.**

———*Pro-note inadmissible—Independent evidence of loan allowed.*

Where a suit was based on the promissory note but it was not stated in the plaint that the promissory note was the only evidence of the loan and the main allegation in the plaint was that the defendant borrowed Rs. 110 in cash from the plaintiff and it was stated that the loan was evidenced by a promissory note,

Held, that there were two distinct actions though contemporaneous, one of the loan and the other of a promissory note and if the promissory note was found to be inadmissible for want of proper stamp the plaintiff should be allowed an opportunity to prove the loan independently of the promissory note: 6 O.C. 16; 34 A. 158, *Foll.* (*Dalal, A.J.C.*). DWARKA *v.* IDU. **74 I.C. 813=26 O.C. 361=A.I.R. 1924 Oudh 249.**

———*Promissory note—Loss not proved—Secondary evidence of note is inadmissible.*

Where a promissory note, upon which a suit is based is lost but the loss is not proved secondary evidence of the note is inadmissible. The language of S. 91 is uncompromising and whenever the terms of a contract are reduced to writing and that writing is, for any reason, inadmissible in evidence, the promisee must lose his remedy. The test is "has the creditor a complete cause of action independently of the document which is inadmissible?" (*Broadway and Campbell, JJ.*). RAM SARAN DAS *v.* TULSI RAM. **67 I.C. 565=A.I.R. 1922 Lah. 417.**

———Where the hand-note was executed and was sought to be used only with a view to bind the defendant in order to afford evidence of the loan having been given, it is open to the plaintiff to prove his case by other evidence if the hand-note be held to be inadmissible in evidence, for want of stamp. (*Jwala Prasad, J.*). BRAHMA DEO RAI *v.* RAM KISHUN MAHTON. **60 I.C. 652=2 P.L.T. 184=A.I.R. 1921 Pat. 318.**

EVIDENCE ACT (1872), S. 91—Sale.

—S. 91—Sale.

———*Unregistered sale-deed—Evidential value.*

Where contract of the sale of the immovable property has been reduced to writing and is followed by delivery of possession, S. 91 does not debar in any way the proof of delivery of possession as the means of conveying the property. The party can use the unregistered document in proof of the terms of the contract or the transaction between himself and the vendor. Only he cannot use the unregistered document to prove that the title passed to him by means of that document. (*Jwala Prasad and James, JJ.*). KISHWAR *v.* SHEONANDAN.
10 P.L.T. 449=A.I.R. 1929 Pat. 620.

———The document that was executed was not a document recording the terms of the contract for sale, but it merely recited that the land had been sold for a certain amount and recorded an agreement as to repurchase by the heirs of the vendor,

Held, that oral evidence as to the contract for sale was not rendered inadmissible by the document. (*Rutledge, C. J. and Brown, J.*). MAUNG TUN PE *v.* MAUNG SEIN MYI. **120 I.C. 232=7 Rang. 414=A.I.R. 1929 Rang. 293.**

———S. 49, Registration Act, must be read together with S. 17 of that Act and S. 91, Evidence Act, and a fair interpretation of S. 49 does not preclude an unregistered document which is required by law to be registered from being given in evidence as to the terms of the contract for sale: A.I.R. 1923 Mad. 297, *Appr.*; A.I.R. 1923 Lah. 495, *Rel. on*; 35 Mad. 63 (F.B.), *Not foll.*; 9 Cal. 520 (F.B.) and A. I. R. 1919 P. C. 44, *Ref.* (*Rutledge, C. J. and Brown, J.*). MAUNG TUN PE *v.* MAUNG SEIN MYI. **120 I.C. 232=7 Rang. 414=A.I.R. 1929 Rang. 293.**

———Registration Act, S. 49—Unregistered sale-deed cannot be admitted in evidence nor can oral evidence be allowed. (*Brown, J.*). MAUNG BA *v.* MAUNG KYWE. **110 I.C. 735=6 Rang. 125=A.I.R. 1928 Rang. 124.**

———A deed of sale conveying immovable property worth less than Rs. 100, although it does not confer any title for want of registration, still having regard to S. 91 of the Evidence Act it may be used as evidence of nature and terms of transaction. (*Suhrawardy and Mukerji, JJ.*). BRAJABALLAV GHOSE *v.* AKHOY BAGDI. **93 I.C. 115=30 C.W.N. 254=A.I.R. 1926 Cal. 705.**

———When the existence of a sale is in question and not its terms, oral evidence is admissible.

The word "terms" in S. 91 is applicable to both classes of documents, *i. e.*, documents which are reduced to writing and which are required by law to be written. (*Phillips, J.*). VIRARAGHAVULU *v.* YELLAMANDA. **95 I.C. 584=1926 M.W.N 384=A.I.R. 1926 Mad. 812.**

———An agreement to sell may be an oral agreement, and such agreements are not required by law to be reduced to the form of a document, within S. 91. By Explanation 3 to the section even if a statement was made in a document of sale, which was not registered, of the prior oral agreement to sell, evidence as to the prior oral agreement is excluded from the provisions of the section.

Per *Carr, J.*—Where the transaction has gone beyond a mere contract for sale and amounts to an abortive sale, S. 91 of the Evidence Act is applicable, and oral evidence to prove the contract is not admissible. 10 L.B.R. 241, *Foll.* (*Robinson, C.J., Heald, May Oung, Lentaigne and Carr, JJ.*). MA MYAT THAZAN *v.* MA DUN. **81 I.C. 857=3 Bur. L.J. 78=2 Rang. 285=A.I.R. 1924 Rang. 214 (F.B.).**

EVIDENCE ACT (1872), S. 91—Sale.

———*Sale-deed to X and 'others'—Evidence to show who the 'others' are is admissible.*

Where a vendor agrees to sell land to several named persons and in drawing up agreement of sale, the name of one person is mentioned and without naming the rest the word "others" is used, the Evidence Act does not prevent evidence from being let in, as to the persons who are meant by the word "others". Provisions of Ss. 91 or 92 are not contravened thereby nor does the case fall within Ss. 93 to 97. (*Kumaraswami Sastri and Devadoss, JJ*). A. VEDA MURTHI MUDALIAR *v.* RAGHAVACHARLU.
65 I.C. 973=15 M.L.W. 371=1922 M. W. N. 185=30 M.L.T. 177=A.I.R. 1922 Mad. 100=42 M.L.J. 475.

———Unregistered sale deed for Rs. 20—Proof of title by delivery is admissible. 8 C. P. L. R. 1, *Foll.* (*Mittra, A. J. C.*). HARLALSA *v.* BAPU.
18 N. L. R. 8=A. I. R. 1922 Nag. 58.

———S. 91 applies to an agreement to sell When such agreement has been reduced to writing and the document is not produced, oral evidence of what took place when the agreement was made, is not admissible to prove the agreement. (*Macnair, A. J. C.*). VYANKATESH *v.* GANESH.
61 I. C. 896=A. I. R. 1921 Nag. 166.

—S. 91—Statements of witnesses.

———*Oral contents of documents only are excluded.*

S. 91, Evidence Act merely excludes the oral contents of a deposition but does not make it inadmissible in evidence. (*Prideaux, A.J.C.*). MIRABUX *v.* EMPEROR. **68 I. C. 36=13 N. L. R. 192=23 Cr. L. J. 500=A. I. R. 1923 Nag. 39.**

———S. 91 even if it covers a deposition, merely excludes oral evidence of its contents but does not make the document itself inadmissible nor prevent its being otherwise proved. (*Daniels, A.J.C.*). MT. FEROZA JAN *v.* MIRZA AMIR ALI.
74 I.C. 445=9 O.L.J. 593=24 Cr. L.J. 781=A.I.R. 1923 Oudh 119.

———*Non-compliance with S. 360, Cr. P. C. does not make record entirely inadmissible in evidence.*

The provisions of S. 360 are mandatory. But non-compliance does not legally result in the total inadmissibility of the record of evidence and in the absence of any definite provision of law entailing inadmissibility, each case of non-compliance must be considered by the Court on its own merits and the document which purports to be the record can be admitted, but without the presumption laid down in S. 80 of the Evidence Act, and, therefore, open to question by the defence and appraisal by the Court.

The law itself does not expressly lay down that the least failure to comply with the provisions of S. 360 renders the whole document inadmissible. Where, therefore, there has been an attempt by the presiding officer to comply with its provisions and to secure the accuracy of the record of evidence, the provisions of S. 80 do not lead to complete exclusion of the document, and the Court is bound to admit under S. 5, but it is open to each side to adduce evidence as to its faithfulness or otherwise and as to the degree of presumption under S. 80 and the weight to be attached to it. 46 Cal. 895, *Foll.* (*Madgavkar, A.J.C.*). PITOOMAL *v.* EMPEROR.
86 I.C. 33=16 S.L.R. 255=26 Cr. L.J. 657=A.I.R. 1921 Sind 151.

———It is not necessary under S. 162 that statements made in the course of the investigation should be reduced to writing. S. 91 of the Evidence Act therefore has no application and it is quite open to the prosecution to prove by the oral statements of the police officer what the contents of the statements made to the police by the witnesses were. (*Kennedy, J.C. and Aston, A.J.C.*). PITUMAL *v.* EMPEROR. **88 I.C. 449=18 S.L.R. 342=A.I.R. 1921 Sind 16.**

EVIDENCE ACT (1872), S. 92—Ambiguity.

—S. 91—Miscellaneous.

———*Even third party can prove a contract reduced to writing only by such writing.*

Whereas in S. 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract, no such limitations are imposed under S. 91. Having regard to the juxtaposition from Ss. 91 and 92 and the deliberate omission from S. 91 of such words of limitation it must be taken that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing. A.I.R. 1917 P.C. 207, *Dist.* (*Srinivasa Aiyangar, J.*). MEENAKSHISUNDARAM PILLAI *v.* CHENCHU MUDALIAR. **109 I.C. 18=A.I.R. 1928 Mad. 459.**

———*Admission of external evidence.*

The rule with regard to writings is that oral proof cannot be substituted for the written evidence of any contract which the parties have put into writing. And the reason is that the writing is tacitly considered by the parties themselves as the only repository and the appropriate evidence of their agreement. (*Lord Carson.*) SUBRAMANIAN *v.* LUTCHMAN. **71 I.C. 650=50 I.A.177=32 M.L.T. 184=2 Bur. L.J. 25=25 Bom. L.R. 582=1 Rang. 16=50 Cal. 338=38 C.L.J. 41=18 M.L.W. 446=28 C.W.N. 1=1923 M W.N. 762=A.I.R. 1923 P.C. 50=44 M.L.J. 602 (P.C.).**

—S. 92.

Ambiguity.
Consideration.
Contract.
Decree of Court.
Discharge.
Document silent as to interest.
Documents requiring registration.
Evidence of conduct.
Fraud.
Gift.
Intention of parties.
Interest.
Interpretation.
Landlord and tenant.
Mistake.
Mortgage.
Negotiations.
Oral agreement.
Parties and representatives.
Partition deed.
Promissory note.
Sale.
Scope and applicability.
Substitution.
Surrounding circumstances.
Terms of the contract.
Third parties.
Usage.
Variation of terms.
Miscellaneous.

—S. 92—Ambiguity.

———*Suhrawardy, J.*—Where the wording of the contract is capable of different interpretations the

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Court is not only justified, but it is its duty, to put a proper construction upon the terms of the contract and is justified in finding with what intention a particular expressi on was used as a matter of pure construction. (*Suhrawardy and Graham, JJ.*). JIVAN MANDUL *v.* RAM MANDUL. **113 I.C. 37=55 Cal. 808=A.I.R. 1928 Cal. 737.**

———Where the document of a grant is produced in evidence and contains no latent ambiguity extrinsic evidence of intention can hardly be admissible. (*Dawson Miller, C. J. and Kulwant Sahay, J.*). UDAI PRATAP *v.* JAGAT MOHAN. **106 I.C. 399=6 Pat. 638=9 P.L.T. 25=A.I.R. 1928 Pat. 66.**

———Where the terms of the deed are ambiguous, the subsequent conduct of the parties is admissible for the purpose of interpretation. (*N. R. Chatterjee and Cholzner, JJ.*). SANKER ROY CHOUDHURY *v.* SECRETARY OF STATE. **84 I.C. 478=40 C.L.J. 322=29 C.W.N. 166=A.I.R. 1925 Cal. 346.**

———Where the words used in an award are perfectly clear, oral evidence as to their meaning is not admissible; it would only be admissible in case those words are ambiguous or are capable of more than one interpretation. (*Harrison, J.*). KESHO RAM *v.* THAKUR DAS. **78 I.C.80=A.I.R. 1925 Lah. 180.**

———*Former transactions admissible only to explain ambiguous terms in a contract.*

Evidence of former transactions between the same parties can be received for the purpose of explaining the meaning of the terms used in their written contract, where such meaning is doubtful, but not where the meaning is plain; nor is it admissible to enlarge or vary the terms of the contract. To admit it in the latter case would be to contravene the provisions of S. 92. Incidents which are impliedly contained in a written oontract, whether by construction of the terms or by implication of law, cannot be varied by extrinsic evidence. (*Mullah, J.*). STEEL BROS. & CO., LTD. *v.* DAYAL KHATAV & CO. **87 I.C. 67=47 Bom. 924=25 Bom. L.R. 1063=A.I.R. 1924 Bom. 247.**

———*Deed silent as to yearly or monthly rate of interest—Evidence cannot be given.*

A document provided "I shall pay the principal with interest at the rate of 1-8-0 per cent." but it was not mentioned whether the rate of interest aforesaid would be per measem or per annum.

Held, that the document is ambiguous and under clause 6 of S. 92 no evidence could be given to clear up that ambiguity. 18 C. W. N. 592, *Foll.* (*Jwala Prasad and Ross, JJ.*). SARJU SAHU *v.* SUKHI LAL. **79 I. C. 420=4 P.L.T. 577=A. I. R. 1924 Pat. 96.**

———Where the contract clearly provides that the goods were to arrive by the steamer *Frauenfels*,

Held, that parties cannot be allowed to adduce parol evidence to contradict the written document which is perfectly plain and explicit. (*Raymond, and Rupchand Bilaram, A.J.Cs.*). FIRM OF JIWANJI *v.* FIRM OF MEHTABRAI CHOOHAMAL. **76 I.C. 286=A.I.R. 1924 Sind 127.**

———A surety bond which was executed on a specific occasion must be taken to have been executed for the purpose of the occasion, and it cannot be assumed that it had reference to any other circumstances of a different date. On the face of it there is no difficulty in giving it an intelligible meaning as constituting a personal pledge. Extrinsic evidence is not admissible in these circumstances to affect

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its meaning. (*Viscount Haldane.*) PANNALAL *v.* NIHAI CHAND. **67 I. C. 423=26 C. W.N. 737=1922 M.W.N. 376=36 C.L.J. 5=16 M.L.W. 80=24 Bom.L.R. 971=31 M.L.T. 129=30 P.W.R. 1922=A.I.R. 1922 P. C. 46=43 M.L.J. 66 (P.C.).**

———The construction of grants must depend upon the interpretation of all the terms of each instrument and except in a case of ambiguity, extrinsic evidence would not be admissible. Each case must be considered on its own facts in order to ascertain the effect of the grant, resort must be had to the terms of the grant itself and to the whole circumstances so far as they can be ascertained. (*Mookerjee and Chotzner, JJ.*). ABINAS CHANDRA DAS *v.* MAJUB ALI CHOWDHURY. **70 I.C. 273=27 C.W.N. 328=36 C.L.J. 196=A.I.R. 1922 Cal. 461.**

———If the meaning of a term in the original agreement is doubtful assistance might be sought from the conduct of parties. Apart from ambiguity, the mere fact that the parties have acted on an erroneous construction of an instrument furnishes in itself no reason why the Courts should not follow the general rule that an instrument should be construed according to its natural meaning in the light of the circumstances in which it was executed. (*Richardson and Suhrawardy, JJ.*). BHUPENDRA NARAYAN SINHA *v.* MIDNAPORE ZEMINDARY CO., LTD. **68 I.C. 937=37 C.L.J. 556=A.I.R. 1922 Cal. 300.**

—S. 92—Consideration.

———*Want of consideration or failure of consideration may be proved—But party cannot prove that amount of consideration agreed upon was more or less than that stated in document.*

It is open to a party to prove want of consideration or failure of consideration or a difference in kind of consideration, but it is not open to him to prove a variation in the amount of consideration. The difference in kind, that is the consideration mentioned, must be wholly absolute; a mere omission to mention some portion of the consideration will not come within the proviso, since such an omission is clearly a variation in the terms of the contract. Recitals then as to the kind of consideration or as to the actual payment of consideration may be shown to be false. Recitals as to the amount of consideration cannot be shown to be false, since the amount of consideration is clearly a term of the contract. It is therefore not open to parties to the documeut to give evidence that the amount of consideration agreed upon was more or less than what is stated in the document. 22 All. 370 (P.C.); 33 All. 340; A. I. R. 1926 Mad. 35 and 10 L.N. 1, *Rel. on*; 38 Mad. 514, *Held, not affected by* 33 All. 340. (*Wallace, J.*). MOTHEY KRISHNAYYA *v.* MOHAMMAD GALEB SAHIB. **124 I.C. 508=1930 M.W.N. 156=31 M.L.W. 446=A.I.R. 1930 Mad. 659=58 M.L.J. 240.**

———In the case of consideration mentioned in a written document, it is open to the party contesting to show that there was no consideration, or that the consideration was different: A.I.R. 1925 P.C. 75, *Appl.* (*Findlay, J. C.*). MUNNASINGA RAJAPUTA *v.* NARAINSINGH. **107 I.C. 658=A.I.R. 1929 Nag. 91.**

———Section 92 does not debar a party from showing by oral evidence the real character of the consideration fixed between the parties. What is not allowed is to contradict the terms of the document: 11 Cal. 519; 5 Mad. 6; 11 Mad. 213; 33

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Mad. 159, *Ref.* (*Otter, J.*). ABDULLAKIN *a.* MAUNG NE DUN. **119 I.C. 738=7 Rang. 292= A.I.R. 1929 Rang. 240.**

——S. 92, Evidence Act, permits a party to a contract reduced into writing to establish, among other matters, want or failure of consideration." A.I.R. 1927 All. 292, *Foll.*; A I.R. 1922 All. 213, *Diss. from.* (*Mukerji, J.*). CHAMAN LAL *v.* HIRALAL. **108 I.C. 158=26 A.L.J. 183.**

——Where the deed in suit recited the debt as a cash loan,

Held, that defendant should be allowed to prove by oral evidence that the document in suit was not for a cash loan, but for the rent partly overdue and partly falling due later, and that the payment of the rent was made: 22 All. 149 (P. C.) and 22 All. 370 (P.C.), *Ref.*: First Appeal No. 71 of 1906, *Dist.* (*Maung Ba, J.*). HAJEE LIN *v.* MAUNG BA. **109 I.C. 189=5 Rang. 822= A.I.R. 1928 Rang. 79.**

——*Oral evidence on a matter on which deed is silent is admissible.*

A purchaser of property at an auction sale agreed to sell back the land to the owner on condition that he paid the interest on purchase money paid by him at the auction for 16 months at 4 per cent. per mensem; the owner paid the sum of interest and the purchaser gave him the conveyance; the purchase money was not paid at the time of registration but the document was registered under S. 75, Registration Act. The document was silent as to any payment as purchase money or otherwise and there was no recital of receipt of consideration,

Held, that oral evidence can be adduced to show that no consideration passed: 17 Mad. 146 and 30 All. 125, *Dist.* (*Pratt and Otter, JJ.*). MAUNG MON *v.* MAKIN OH. **106 I.C. 358=5 Rang. 636= A.I.R. 1928 Rang. 47.**

——*Suit for money—Sarkhat with unobliterated stamp produced—Loan can be proved by other oral evidence.*

Where plaintiff sued defendant for a certain amount for which the defendant had executed a sarkhat bearing an unobliterated one-anna stamp and there was no promise to pay contained in the sarkhat, but there was only an acknowledgment that a certain amount had been borrowed,

Held, that if the plaintiff was able to prove *aliunde* by oral evidence that the defendant had the money, then he was entitled to a decree. (*Lindsay, J.*). LAUNJARI CHANHE *v.* PARSOTAM CHANHE. **103 I.C. 634=25 A.L.J. 567= A.I.R. 1927 All. 503.**

——*Suit on pro-note—Plea of forgery of figures.*

Plaintiff sued defendant for a certain sum due on the promissory note. The defendant denied taking the principal sum mentioned in the promissory note, *viz.*, Rs. 1,300, and denied signing the promissory note in the form it had assumed when the case was brought. He admitted that his signature appeared on the note, but said that when he signed it, the only entries were the figures Rs. 300, at the top of the paper, and signature at the bottom.

The case was decreed in favour of the plaintiff not because the trial Court was satisfied that the loan alleged had been made, but because the defendant had not succeeded in proving affirmatively that the note as produced was a forgery,

Held, that all the defendant admitted was that his signature appeared on the document filed and

EVIDENCE ACT (1872), S. 92—Consideration.

the case to be decided was not whether the plaintiff had been proved to have committed forgery but whether the plaintiff had proved that he lent the Rs. 1,300, to the defendant as he alleged and the burden of proving this loan rested on the plaintiff. (*Rutledge, C.J. and Brown, J.*). HOE MOH *v.* SEEDAT. **105 I.C. 361=5 Rang. 527= A.I.R. 1927 Rang. 319.**

——An unregistered letter is inadmissible in evidence to show that a deed of mortgage and a deed of sale executed previously were not to be acted on and no money was due under the former and no property passed under the latter: 26 M.L.J, 151, *Foll.*; A.I.R. 1926 Mad. 362, *Diss. from.* (*Broadway and Kemp, JJ.*). RATTIRAM *v.* NAND LAL. **103 I.C. 421=A.I.R. 1927 Lah. 626.**

——*Deed—Recital of consideration—Oral evidence to show it incorrect being admissible, opposite party can let in oral evidence to prove the contrary.*

Where there is a recital in a document of the payment of a certain sum of money as consideration, oral evidence is admissible to prove that the recital is incorrect as a matter of fact. Such a recital being only an averment of fact, if one party is allowed to show by oral evidence that a recital in a document is incorrect in fact, the other party must certainly be allowed to show by similar evidence that it is not incorrect and that the recital was deliberately put in, and for the purpose of showing it he must be allowed to prove what the real consideration for the document was. S. 92 does not bar such proof, for such proof is adduced not for the purpose of varying or altering any term of the written contract but only to show that the recital in it is correct. To shut out oral evidence for the purpose will be to allow a gross fraud to be perpetrated: 36 All. 537, *Foll.*; 38 Mad. 514, *Dist.*; 22 All. 370 (P.C.) and 33 All. 340 (P.C.), *Foll.* (*Kumaraswami Sastri and Krishnan, JJ.*). RAMASWAMI CHETTIAR *v.* LODD GOVINDOSS. **91 I. C. 612=22 M.L.W. 848= A.I.R. 1926 Mad. 35=49 M.L.J. 414.**

——*Variation from recited consideration cannot be proved.*

Where the consideration entered in the sale-deed was Rs. 16,000 and the defendant pleaded that the real consideration was Rs. 18,000 and that by an oral agreement between the parties Rs. 2,000 had been left with the plaintiff for payment of his expenses in the event of any litigation arising over the transfer,

Held, that such an oral agreement is inadmissible in evidence under S. 92. (*Ashworth and Neave, A.J.Cs.*). KETTU MAL *v.* PARTAP SINGH. **92 I.C. 787=A.I.R. 1926 Oudh 301.**

——By proviso of S. 92, it is open to a party or his representative to show that there is no consideration for the agreement which may have been reduced into writing and which may have been even registered. 22 All. 370, *Foll.* (*Mukerji and Dalal, JJ.*). BALDEO PRASAD *v.* RAM AUTAR. **82 I.C. 347=22 A.L.J. 850=5 L.R.A. Civ. 731= 47 All. 7=A. I. R. 1924 All. 665.**

——*Want of consideration for pro-note could be proved.*

It is open to defendant who admitted the execution of the promissory note to plead want of consideration. A. I. R. 1922 All. 213, *Dist.* (*Ryves, J.*). LALLUMAL *v.* REOTI RAM. **76 I.C. 353= 45 All. 679=21 A.L.J. 869=4 L.R.A. Civ. 315. A.I.R. 1923 All. 70.**

EVIDENCE ACT (1872), S. 92—Consideration.

———*Pro-note passed to safeguard the plaintiff against a probable claim—Evidence is admissible.*

In a suit on a pronote the defence was that the promissory note in suit was passed to secure plaintiff mortgagee against any claim that might be made by the prior mortgagees, who had been paid off and from whom the defendant had failed to obtain a re-conveyance and that the note was to be returned when the re-conveyance was executed,

Held, that the plea was as to the existence of a condition precedent and the same should be allowed to be proved according to S. 92, Proviso (3). A.I.R. 1921 Bom. 449, *Dist.* (*Shah, Ag. C. J. and Kemp, J.*). AHMAD SAHEB BAPUSAHEB *v.* UBHAIYA HARSI. **87 I.C. 37=25 Bom. L.R. 867= A.I.R. 1924 Bom. 44.**

———*Pro-note proved void—Other consideration may be proved.*

If a pronote is void or is inadmissible, *e.g.*, for want of stamp, plaintiff can fall back on independent consideration if there be any. (*Dalal, J. C.*). BHOLA NATH *v.* RASOOL BAKSH. **77 I. C. 78= 26 O.C. 378=A. I. R. 1924 Oudh 243.**

———*Oral evidence to vary consideration in registered sale-deed is not admissible.*

While want or failure or difference in kind of the consideration may be proved, evidence to vary the amount of consideration in a registered sale-deed is inadmissible, though it is open to the parties to prove by oral evidence that the actual consideration was different from what was mentioned in the deed or that there was no consideration for the deed. If such a course were permissible the protection intended by the legislature to be afforded by the adoption of the rule embodied in S. 92 of the Evidence Act would be completely nullified. 32 I. A. 113; 33 All. 340 (P. C.) *Foll.* (*Mookerjee and Chotzner, JJ.*). ANNALA CHARAN SIL *v.* HARGOBINDA SIL. **75 I. C. 557=27 C.W.N. 496= 37 C.L.J. 552=A.I.R. 1923 Cal. 570.**

———Parol evidence is admissible to prove a debt, acknowledged in writing by the debtor. when such acknowledgment being unstamped is inadmissible in evidence. (*Le Rossignol, J.*). ZIKKAN RAM *v.* LAL. **74 I.C. 939=A.I.R. 1923 Lah. 301.**

———*Registered deed of relinquishment—Contemporaneous oral agreemint for payment of a certain sum—Evidence of such agreement is admissible.*

The plaintiff by registered deed relinquished certain portion of the land leased and agreed to pay a reduced rent for the remaining land. The plaintiff alleged that at that time there was an oral agreement between him and the landlord that the latter would pay Rs. 200 for the recovery of which the suit was brought,

Held, that the question of existence or otherwise of the consideration can always be inquired into irrespective of what is entered in the deed. An agreement to pay as a condition precedent to the enforcement of a deed of relinquishment can also be proved under S. 92, proviso (3) and matters not referred to in the registered document but about which there was contemporaneous oral agreement could be admitted: *Ram Bakhsh* v. *Durjan*, (1887) 9 All. 392 and *Motabhoy Mulla Essabhoy* v. *Mulji Haridas*, (1915) 39 Bom. 399, *Ref. to.* (*Kanhaiya Lal, J.*). BADAL RAM *v.* JHULAI. **63 I. C. 861= 44 All. 53=19 A.L.J.816=A. I. R. 1922 All. 165.**

—S. 92—Contract.

———Where a bond providing for labour by the maker in lieu of interest is silent as to payment of wages and there is no negative covenant precluding the maker from claiming wages for work done S. 92 does not bar evidence as regards wages paid for work done by the executant. (*Devadoss and Sundaram Chetty, JJ.*). KARUPPANNA *v.* PAMBAYAN. **101 I. C. 39=25 M.L.W. 601= A. I. R. 1927 Mad. 531.**

EVIDENCE ACT (1872), S. 92—Decree of Court.

———Oral proof cannot be substituted for the written evidence of any contract which the parties have put into writing: A.I.R. 1923 P.C. 50, *Foll.* (*Newbould and Graham, JJ.*). DHANA MOHAMMED *v.* NASTULLA MOLLA. **92 I. C. 943= A.I.R. 1926 Cal. 637.**

———Where the contract was made in writing and the terms were not varied either by a contract in writing or by oral agreement,

Held, the rights and liabilities of the parties must be determined according to the true construction to be placed on the contract. When a reference to that showed that payment was to be made against the tender of documents and not against delivery of goods, and when none of the relative documents were tendered at the time of demanding payment but only the goods were tendered, the purchasers committed no breach of their contract by not taking up the goods. It was not open to the vendors to show that notwithstanding the form of the contract the parties intended payment to be against delivery of goods and not against tender of documents. (*Broadway and Fforde, JJ.*). HIRA LAL PRABHU DIAL *v.* GOWARDHAN DAS RAM GOPAL. **86 I.C. 399=A.I.R. 1925 Lah. 74.**

———Where all the terms of a contract have not been reduced to writing, the terms so left unwritten can be proved by oral evidence. (*Young and Carr, JJ.*). COALFIELDS OF BURMA, LIMITED *v.* H.H. JOHNSON. **84 I.C. 1021=3 Bur. L. J. 326= 2 Rang. 575=A.I.R. 1925 Rang. 128.**

———A contract of guarantee by a person signing on the back of a negotiable instrument can be established by oral evidence as the whole contract between the parties i not reduced to writing. (*Rupchand Bilaram, A.J.C.*). THAKURSEY HANSRAJ *v.* KISHENDAS REWACHAND. **76 I. C. 282=A.I.R. 1925 Sind 9.**

———Where the documentary evidence showed a contract between plaintiffs and defendants as between principals,

Held, the mere mention of commission in the contract as signed was not in any way inconsistent with the relation being between principal and principal and a mere statement of the defendants contradicted by the plaintiffs, that it was made a condition that there was to be no liability on their part, cannot be allowed to displace the ordinary results which a contract between principals entails. (*Lord Dunedin*). BALTHAZAR AND SON *v.* FIRM E. M. ABOWATH. **63 I. C. 521= 5 Rang. 1=13 M. L. W. 537= A. I. R. 1921 P. C. 129 (P. C.).**

—S. 92—Decree of Court.

———Oral evidence is not admissible to prove an agreement prior or subsequent to a decree contradicting or varying the terms of the decree. A. I. R. 1927 Mad. 911 and 35 All. 48, *Rel on.* (*Jackson, C. J.*). GOPALA KRISHNA IYER *v.* SANKARA IYER. **1930 M.W.N. 240= A.I.R. 1930 Mad. 673.**

———Oral evidence to prove a subsequent adjustment under which part of a decree was paid and the rest agreed not to be executed against the judgment debtors is not inadmissible by reason of S. 92. A. I. R. 1922 All. 18, *Dist.*, *Walsh J.*, in

EVIDENCE ACT (1872), S. 92—Decree of Court.

A. I. R. 1922 All. 13, *Diss from.* (*Sulaiman, Ag. C.J.*.) GANGA DIHAL *v.* RAM OUDH.

113 I.C. 760=A.I.R. 1929 All. 79.

———Where a judgment-debtor sues for damages for the loss of his land owing to the execution of a money-decree being allowed to proceed after a compromise between the decree-holder and himself, the alleged oral adjustment of the decree. though not certified, is not inadmissible under S. 92. There is nothing whatever to prevent the parties from entering into an oral agreement for the settlement of decrees for money. A. I. R. 1922 All. 13, *Diss. from.* (*Carr, J.*). MA SHWE PU. *v.* MAUNG SAN MYO. **114 I.C. 682=6 Rang. 573= A.I.R. 1928 Rang. 316.**

———Oral agreement not to proceed against a certain defendant beyond a certain limit modifies the decree by restricting that defendant's liability in a manner for which the decree does not provide and as an oral agreement it offends against the terms of S. 92, Indian Evidence Act. A. I. R. 1922 All. 7 and S. A. 52 of 1920, *Foll.*; 24 I. C. 391, *Diss from.* (*Odgers and Curgenven, JJ.*). RAJA OF KALAHASTI *v.* VENKATADRI RAO. **105 I.C. 248= 50 Mad. 897=26 M.L.W. 386= 1927 M.W.N. 630=A.I.R. 1927 Mad. 911= 53 M.L.J. 533.**

———*Section 92 does not apply to decrees of Courts.*

Sections 91 and 92 refer only to what are known as "dispositive documents," and the words "or any matter required by law to be reduced to the form of a document" must be read in that sense. A.I.R. 1922 All. 13, *Dissented from.* Hence a decree does not come within the purview of S. 92. (*Newbould and Graham, JJ.*)| ANANDA PRIYA *v.* BIJOY KRISHNA. **91 I. C. 705=A.I.R. 1926 Cal. 643.**

———*Oral contract in substitution of a decree is not admissible.*

Per *Walsh, J.*—Under S. 92 of the Evidence Act evidence of the alleged oral agreement substituting a new executory contract for the original decree is inadmissible. (*Piggott and Walsh, JJ.*). LACHMIN DAS *v.* BABA KALI KAMBIWALA. **64 I.C. 990= 44 All. 258=20 A. L. J. 65= A.I.R. 1922 All. 13.**

———Section 92 of the Evidence Act does not bar the oral evidence to prove an agreement by way of adjustment of a decree as the R. 2 of O. 21, C. P. Code, contemplates the taking of evidence to prove the adjustment. (*Mittra, Offg. J. C. and Hallifax, A. J. C.*). RANGLAL *v.* CHUNILAL.

60 I. C. 316=16 N.L. R. 204.

—S. 92—Discharge.

———Section 92 (4) does not touch any act of a creditor which extinguishes a debt by taking a smaller sum of money. Where the act of the creditor does not extinguish the debt but gives only better terms than before which have yet to be worked out, the principle does not help the debtor and S. 92 (4) prevents the admission of such an agreement. And what S. 63, Contract Act, permits is not an agreement to remit but an actual remission. But where there is no question of any writing being admissible or inadmissible with reference to the provisions of Registration Act, if the writing itself does not purport to extinguish the mortgage bond, it would be admissible in evidence, and a plea of discharge based on the fact that the sum shown in the endorsement was taken in full discharge and the discharge was given to the obligers orally would stand on a different footing from the admission of a writing evidencing the payment. 48 Mad. 803; A.I.R. 1925 Mad. 348, *Rel. on*; 27 I. C. 269; 34 M.L.J. 79, *Expl.*; 44 Bom. 55, *Diss. from*; A.I.R. 1926 Cal. 170 and A.I.R. 1927 Cal. 27, *Appr.* *Case law referred.* (*Rimesam and Jackson, JJ.*). BALASUNDA NAICKER *v.* RANGANATHA AYYAR.

EVIDENCE ACT (1872), S. 92—Discharge.

30 M.L.W. 293= A.I.R. 1929 Mad. 794.

———*Suit on mortgage—Mortgagor alleging compromise and payment in pursuance evidence of discharge inadmissible.*

Plaintiff brought a suit on a registered mortgage passed by defendant. The defendant contended that there was a compromise in the month of January, 1923, between the plaintiff and defendant by which it was agreed that on the defendant paying Rs. 1,500 more to the plaintiff the entire claim for interest due till the end of January, 1923, would be discharged and the balance of interest would be remitted; that accordingly on 1st February, 1923, the defendant paid Rs. 1,500 to the plaintiff in full satisfaction of the claim for interest up to the end of January, 1923.

Held, that the alleged discharge was based entirely upon the alleged oral agreement, and unless the oral agreement is proved the discharge could not be established and the evidence of the oral adjustment being inadmissible under S. 92 (4), the alleged discharge was also inadmissible. A. I. R. 1926 Cal. 170; A.I.R. 1926 Cal. 906; 26 Mad. 195; 37 Mad. 423, *Expl.* and *Dist.*; 44 Bom. 55, *Doubted.* (*Fawcett, Ag. C. J. and Murphy, J.*). SUKHLAL *v.* JETHA. **115 I. C. 382=30 Bom. L.R. 1455= A. I. R. 1928 Bom. 522.**

———*Oral evidence to prove satisfaction of claim is admissible.*

While no oral evidence can be given to contradict or modify the original contract, there is nothing to prevent oral evidence being adduced under prov. 4, S. 92 in order to prove satisfaction of the claim. (*Rutledge, C. J. and Brown, J.*). MAUNG PU *v.* MAUNG PO THANT. **110 I.C. 612= 6 Rang. 191= A.I.R. 1928 Rang. 144.**

———In a mortgage suit it is open to the mortgagor to prove that the mortgage has been satisfied not merely by payment in full of the amount due thereon but by part payment and remission of the balance. 44 Bom. 55, *Diss. from* (*Greaves and Panton, JJ.*). BHABASUNDARI *v.* RAMKAMAL DUTTA. **98 I. C. 860=44 C.L.J. 269= A.I.R. 1927 Cal. 27.**

———Although an endorsement on a mortgage deed in extinguishment of the mortgage, if unregistered, is inadmissible in evidence, other evidence as to the redemption of the mortgaged property or payment of the full amount of the mortgage money can be given. 91 P. L. R. 1904, *Foll.* (*Addison, J.*). LOBHU RAM *v.* SAZAWAR. **100 I.C. 129= A. I. R. 1927 Lah. 237.**

———An oral agreement to receive a lesser amount than is actually due on a mortgage in full discharge of it, as also its actual discharge, cannot be proved under S. 92 (4) of the Evidence Act and S. 17 (b) of the Registration Act. 42 Mad. 41 (F. B.); 27 I. C. 269; 34 M. L. J. 79 and 44 Bom. 55, *Foll.* (*Waller, J.*). MINOR YEGNANARAYANA AYYAR *v.* SUPPAN CHETTY. **100 I.C. 84= A.I.R. 1927 Mad. 1111=52 M.L.J. 224.**

———*Extinguishment of liability created by registered document can be proved.*

It is a well-established rule that a subsequent oral agreement, varying the terms of a registered lease, or suggesting that the rent payable was really less than what was stated in the registered *kabuliyat* or lease, cannot be proved. But a liability created by a registered instrument may be-

EVIDENCE ACT (1872), S. 92—Discharge.

proved to have been extinguished by letting in admissible evidence (including oral evidence) of payment of that liability or by letting in admissible evidence of any other transaction which operates as a mode of payment. 37 Mad 423, *Foll.* (*Kanhaiya Lal and Boys, JJ.*). JHABBA SINGH *v.* CHHAJJU. **94 I. C. 169=24 A. L. J. 548= A.I.R. 1926 All. 445.**

———The evidence to prove a discharge of the debt but not to vary or add to the terms of the bond is not excluded by S. 92. A. I. R. 1926 Cal. 170, *Foll.* (*Walmsley and Chakravarty, JJ.*). RAM RANJAN ROY *v.* JAYANTI LAL. **96 I.C. 11=30 C.W.N.710= 44 C.L. J. 449=A.I.R. 1926 Cal. 906.**

———*Registration Act, S.* 17.

Oral evidence may be admitted to prove that a mortgage bond has been discharged partly by payment and partly by release of the debt and there is nothing in S. 92 of the Evidence Act to prevent such evidence being admitted. 44 Bom. 55, *Diss.* (*Greaves and B. B. Ghose, JJ.*). MAHINCHANDRA *v.* RAM DAYAL. **91 I.C. 757= 42 C. L. J. 582=30 C.W.N. 371= A. I. R. 1926 Cal. 170.**

———Where in a suit on a pro-note in answer to the demand the defendant pleads that he has already discharged the note according to the method agreed upon between the plaintiff and himself, there can be no bar under S. 92 to prevent proof of that agreement as it is a method of payment or discharge. (*Wallace and Madhavan Nair, JJ.*). SATHEPPA CHETTIAR *v.* MUTHUSAMI PILLAI. **92 I.C. 393=A.I.R. 1926 Mad. 537.**

———An oral agreement of satisfaction or discharge of a mortgage debt can be proved by oral evidence. 9 All. 392; 4 C.W.N. 304; 16 C.W.N. 137 and 11 C.L.J. 39, *Foll.* (*Kinkhede, A.J.C.*). KRISNAJI *v.* KASHIRAO. **90 I.C. 450=A.I.R. 1926 Nag. 220.**

———*Discharge of debts can be proved, though it conflicts with statements of fact made in a deed.*

Where the mortgagors are setting up an agreement between them and the mortgagee to the effect that the latter had agreed to allow them credit for certain items, they are not in any way contradicting, varying, adding to, or subtracting from, the terms of the registered deed of mortgage. They are merely showing an agreement relating to the payment and the consequent discharge in part of the mortgage debt. Even a statement of fact made in a written instrument could be contradicted, as the prohibition relates only to the varying, adding to, subtracting from, or contradicting the terms of a contract in writing. 14 C. L. J. 507, *Foll.* (*Stuart, C. J. and Misra, J.*). SUKH LAL *v.* MURARI LAL. **93 I.C. 1019=1 Luck. 160= 13 O.L.J. 95=3 O.W.N. 248= A. I. R. 1926 Oudh 273.**

—S. 92—Document silent as to interest.

———It is open to one of two joint transferees to prove what interest, if any, is taken by the other where the document does not specify the extent of the shares, and evidence of subsequent conduct to prove this is not barred by S. 92 between the transferees *inter se.* 10 All. 421; A. I. R. 1927 Mad. 1102, *Foll.*; *N. E. Ry.* v. *Hastings*, (1900) A. C. 260, *Ref.* (*Curgenven, J.*). RAMAYYA CHETTI *v.* MANNARU CHETTI. **A.I.R. 1930 Mad. 590.**

———*Conveyance creating joint tenancy—Parol evidence to prove severance is admissible—S.* 92 *has no application to such case.*

Where property is purchased in the name of several persons jointly, a joint tenancy is created and parol evidence is admissible to prove that the

EVIDENCE ACT (1872), S. 92—Documents requiring registration.

joint tenants have become tenants-in-common. The evidence is tendered not for the purpose of contradicting or varying the terms of the conveyance but of proving facts from which it may be inferred that, accepting the conveyance as creating a joint tenancy, the purchasers have subsequently so dealt with their respective interests thereunder that the joint tenancy has become a tenancy-in-common. (*Lord Warrington of Clyffe.*) TAN CHEW HOE NEO *v.* CHEE SWEE CHENG. **116 I.C. 385= 29 M.L.W. 44=56 I.A. 112=A.I.R. 1929 P.C. 72= 56 M.L.J. 643 (P. C.).**

———Where a sale-deed is taken jointly in the name of two persons but it is silent as to the respective shares of each, S. 92 is no bar to the proof of facts which would establish their right to separate items of property conveyed to them by the deed. 10 All. 421, *Foll.* (*Devadoss, J.*). MD. SULTAN MOHIDEEN *v.* AMTHUR JALAL. **101 I.C. 653= 38 M.L T. 247=1927 M.W.N. 168= A.I.R. 1927 Mad. 1102=52 M.L.J. 557.**

———*Joint execution of a bill—Oral evidence that one was surety is not excluded if creditor's right to demand immediate payment for either is not affected.*

Where a bill contains a joint promise by the two executants to pay to their creditors the amount of the bill jointly and severally so far as the express promise goes it may not be varied by parol evidence; but where the bill does not declare in express terms the rights of the co-obligors *inter se*, there is nothing in law to prevent one of them from proving such terms by parol evidence, provided that he does not thereby intend to affect the rights of the creditor to demand immediate payment from either or both of the co-obligors or joint promisors; A.I.R. 1924 Sind 13, *Rel. on.* (*Rupchand and Bilaram, A. J. Cs.*). MOOLJI MURARJI SUNDERJI *v.* M.C. PINTO. **92 I. C. 667=20 S. L. R. 106= A.I.R. 1926 Sind 156.**

—S. 92—Documents requiring registration.

———When an "award" is found in reality a partition deed and hence inadmissible in evidence for want of registration, no secondary evidence can be admitted to prove the partition: 10 P.R. 1917, *Foll.* (*Tek Chand and Bhide, JJ.*). KALAYAN DAS *v.* OMA DATT HANS RAJ. **113 I.C. 87=10 L.L.J. 169.**

———So a deed of gift of immovable property cannot be received in evidence if unregistered nor can the terms of the instrument be proved by oral evidence: 59 Pun. R. 1914, *Foll.* (*Shadi Lal, C.J. and Le Rossignol, J.*). MAULA BUKSH *v.* HAFIZUD-DIN. **94 I. C. 7=8 L.L.J. 156= 27 P.L.R. 256=A.I.R. 1926 Lah. 372.**

———Where the rate of interest payable on a mortgage for an amount exceeding Rs. 100 is modified by an agreement, the agreement is compulsorily registrable and oral evidence to prove its terms is not admissible under S. 92, proviso. (4) of the Evidence Act. (*Hallifax and Kotval, A.J.Cs.*). KASTURCHAND *v.* SINGHAI RETANCHAND. **93 I. C. 95=A.I.R. 1926 Nag. 321.**

———*Registered mortgage rescinded only by registered document.*

In the mortgage there was a forfeiture clause to the effect that the mortgagor was to be debarred from redeeming the property after the expiration of two years from the date of the mortgage. A year afterwards the mortgagor said, that he, by a *pyatpaing*, made over the land to the defendants who promised to allow redemption at any time,

EVIDENCE ACT (1872), S. 92—Evidence of conduct.

Held, the subsequent oral agreement could not be proved. It amounts to an agreement to rescind the mortgage and is by law required to be in writing and registered. (*Maung Kin, J.*). UKYO *v.* MG. PAN YO. **74 I.C. 154=1 Bur. L.J. 193= A.I.R. 1923 Rang. 102.**

—S. 92—Evidence of conduct.

———The evidence of the acts and conduct of parties for the purpose of showing that the main or essential terms of a registered instrument have been varied is not admissible, for an agreement is nonetheless oral, although it is to be inferred from the conduct of the parties : 6 C.W.N. 242, *Dist.*; 38 Cal. 892 (P.C.) ; 39 Cal. 284 ; 41 Cal. 493 (P.C.) ; 20 C.W.N. 347 and *other cases discussed* ; 20 C.W.N. 347, *Not appr.* (*Mitter and Mallik, JJ.*). LAKSHMI CHARAN *v.* MAHADEWIP CHANDRA. **116 I.C. 733=56 Cal. 201= A.I.R. 1929 Cal. 437.**

———Evidence of subsequent acts and conduct is admissible to prove the character of a deed : 72 P. R. 1901 ; 28 Cal. 256 and A.I.R. 1925 P.C. 75, *Ref.* (*Bhide, J.*). BELI RAM *v.* DEVI CHAND. **117 I. C. 907=A.I.R. 1929 Lah. 875.**

———The rule, that the conduct of the parties in respect to an instrument may be looked to in construing a document, is subject to this reservation that it can be admitted only after every other means to construe a deed have been exhausted : *Attorney-General* v. *Drummond*, (1842) 1 Dr. & War. 353, *Foll.* (*Ross and Wort, JJ.*). DEVJEE TRIKAMJEE *v.* DAYAMOY MUKHERJI. **108 I. C. 418= A.I.R. 1928 Pat. 225.**

———Where a gift has been effected by an instrument only the conduct of the parties can be considered for the purpose of showing that the transaction is not what it purports to be. (*King, J.*). KRISHNAPAL SINGH *v.* SRI RAJ KAUR. **104 I.C. 299=1 L.C. 97= A.I.R. 1927 Oudh 278.**

———A registered deed has to be cancelled by a registered deed and evidence of an oral agreement to rescind it is shut out by S. 92 (4) of the Evidence Act. So also the conduct showing that the registered transaction is at an end is equally shut out by the said section. 32 Mad. 281, *Foll.* (*Kinkhede, A.J.C.*). NARBADJI *v.* GOPAL. **87 I.C. 29= A.I.R. 1925 Nag. 459.**

———Where the conditions in a grant are clear and unambiguous, evidence of the conduct of the parties leading to a different inference is inadmissible. (*Jwala Prasad and Macpherson, JJ.*). GOPAL OJHA *v.* RAMADHAR SINGH. **82 I. C. 204= A.I.R. 1925 Pat. 228.**

———Evidence of the acts and conduct of parties is not admissible to show that the document was really not what it purported to be, that is, that it was not a mortgage but really a sale. (*Walmsley and B. B. Ghosh, JJ.*). KAMALA KANTA *v.* ANANDA CHANDRA CHAKRABURTY. **71 I.C. 1030= A.I.R. 1924 Cal. 357.**

———Evidence of subsequent acts and conduct is admissible to prove the character of a deed. (*Robinson, C.J. and May Oung, J.*). EUGENE HUGH CONARD LECUN *v.* MAY JULIA LECUN. **82 I.C. 686=2 Rang. 253=3 Bur. L.J. 85= A.I.R. 1924 Rang. 283.**

———The weight of authority so far as the Calcutta High Court is concerned is in favour of the admissibility of evidence of the acts and conduct of parties, and this Court has held upon the subsequent acts and conduct of the parties, that certain terms of a contract were never intended to be acted upon, *i.e.*, from the very beginning. 22 All. 149 (P.C.), *Dist.* (*Chatterjee and Panton, JJ.*). NARENDRA LAL KHAN *v.* BHOLA NATH BHUYA. **77 I. C. 154=27 C. W. N. 336= A. I. R. 1923 Cal. 417.**

EVIDENCE ACT (1872), S. 92—Intention of parties.

———In order to prove evidence of a contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted. 45 Cal. 320 (P.C.), *Foll., Cass-law discussed.* (*Broadway and Harrison, JJ.*). FITZHOLMES *v.* BANK OF UPPER INDIA, LTD. **77 I.C. 523=4 Lah. 258=5 L. L. J. 438= A.I.R. 1923 Lah. 548.**

———Evidence of conduct is admissible if the contract is ambiguous in its terms. But where the terms of the contract are perfectly plain, evidence of conduct is not admissible to vary the terms of the agreement between the parties. (*Mookerjee, A.C.J. and Fletcher, J.*). BHABANI NATH *v.* PURNA CHANDRA. **61 I. C. 818=33 C.L.J. 332= 25 C. W. N. 308=A.I.R. 1921 Cal. 212.**

—S. 92—Fraud.

———*Whether includes fraud on registration law.*

The word 'fraud' used in the proviso is wide enough to include a fraud on the registration law. Thus a party can show that an item was fictitiously put in. Scope of proviso discussed. (*Sulaiman and Kendall, JJ.*). GOPI NATH *v.* RUP RAM. **1930 A.L.J. 926.**

———There is a great difference between a suit to invalidate a document on the grounds of fraud, etc., mentioned in proviso 1 and a suit for a declaration that a document is not what it purports to be according to its plain grammatical meaning. (*Macleod, C.J. and Coyajee, J.*) MARTAND TRIMBAK *v.* AMRITRAO RAGHOJIRAO. **93 I.C. 924= 27 Bom. L. R. 951=49 Bom. 662= A.I.R. 1925 Bom. 501.**

———Where a document is attacked on the ground of fraud, oral evidence for the purpose of superseding the recitals in respect of the terms of the document is admissible under proviso (1) of S. 92. (*Wazir Hasan, A.J.C.*). KUNWAR BEHARI LAL *v.* KALKA. **77 I.C. 695=25 O.C. 282= A.I.R. 1923 Oudh 45.**

———Where appellants knew that the plaintiffs were the true owners it would be a fraud on their part to insist upon their claim to the property under the proviso (1) to S. 92. Even if S. 92 did not apply, the appellants could not maintain their claim in equity. (*Macleod, C. J. and Shah, J.*). MAHADEO KRISHNA PARKER *v.* TUKARAM CHAYA KONDYA. **A.I.R. 1922 Bom. 256.**

—S. 92—Gift.

———Parol evidence is not admissible to show what was transferred under a deed of gift. (*Ashworth, A.J.C.*). MT. MUHESHA *v.* RAMESHAR. **74 I. C. 295=10 O. L. J. 24= 26 O. C. 329=A. I. R. 1923 Oudh 173.**

—S. 92—Intention of parties.

———*Purchase in the name of daughter—Intention, proof of.*

Declarations by the parent if contemporaneous with the purchase are admissible to prove such an intention, but declarations subsequent are to be rejected. A. I. R. 1921 P. C. 56, *Appl.* ; *Grabb* v. *Grabb*, 36 R. R. 362 ; *Sidmouth* v. *Sidmouth*, 50 R. R. 235 and 6 M. I. A. 53 (P. C.), *Rel. on.* (*Rasa and Srivastava, JJ.*). ALICE GEORGINA PASCHAUD *v.* EMMA BERTHA PASCHAUD NIXON. **A.I.R. 1930 Oudh 441.**

EVIDENCE ACT (1872), S. 92—Intention of parties.

———*Transactions evidenced by instrument—Evidence regarding attendant circumstances is admissible under S.* 92.

When considering the nature of evidence that could be kept adduced in cases where a defendant sets up a plea that a certain instrument exhibits only a nominal transaction and at the same time admits that a definite amount was paid in respect of the same transaction evidence by the instrument, the provisions of S. 92, Evidence Act, and S. 81, Trusts Act should be kept in view. Oral evidence of intention of parties is inadmissible. But evidence under S. 92 (b), Evidence Act, regarding the attendant circumstances is admissible: A.I.R.1924 P.C. 226 and A.I.R. 1925 P. C. 75, *Foll.*; 22 All. 149 and A. I. R. 1917 P. C. 207, *Ref.* (*Ananthakrishna Iyer, J.*). VENKATARATNAM *v.* VENKATASWAMI. **A.I.R. 1929 Mad. 807.**

———*Deed—Construction—Sale or mortgage—Two documents executed almost simultaneously—One a deed of sale and another an agreement to re-sale—Surrounding circumstances and intention must be looked to for deciding whether they constituted a mortgage.*

When the question with reference to two documents, *e.g.*, *A* and *B* executed almost simultaneously, one purporting to be a sale and the other an agreement to re-sell, is, whether the transaction is a mortgage or whether it is merely a sale with an agreement to repurchase, the case has to be decided on the instruments and the language employed in them having regard to the surrounding circumstances. No oral evidence is admissible to prove the real meaning or intention of the parties and not even the subsequent conduct of the parties can be looked at or regarded for the purpose.

Where it was found that at the time of execution of the documents *A* and *B* the property was impending sale, that it was sold under the first document *A* for comparatively low price, that the vendors under *A* were plaintiffs and one *P* a prior mortgagee while the persons who were entitled to the benefit of the contract under *B* were only the plaintiffs, that the actual possession of the property was only with the vendors even before the execution of a *muchilika* by plaintiff in favour of the defendant the opposite party, that there was no evidence of any bargaining for the price of the property, there was no reliable evidence with regard to the inspection of the property or the examination of the title deeds before concluding of the transaction, that the creditor while speaking of the amount paid always used the expression "advance the amount" and it was further found that the document *B* namely the agreement to re-sell provided "after the expiration of the said period you will claim no right or privilege whatever to this agreement or to the properties detailed below and I shall be in undisputed possession of the said properties,"

Held, that the only conclusion that would be in consonance with what may be regarded as the real intention of the parties was that the transaction was only a mortgage and that the sale was merely by way of security for the amount that was advanced. (*Srinivasa Ayyangar and Reilly, JJ.*). SUTHARSANA CHARIAR *v.* S. SAMARAPURI CHETTIAR. **110 I.C. 837=1928 M.W.N. 634=A.I.R. 1928 Mad. 690.**

———Oral evidence for the purpose of ascertaining the intention of the parties is not admissible;

EVIDENCE ACT (1872), S. 92—Interest.

22 All. 149 (P. C.), *Foll.* (*Prideaux, Ag. J. C.*). KALURAM *v.* GAJASA. **107 I.C. 201=A.I.R. 1928 Nag. 182.**

———Where a document is not one which embodies the terms of a contract between the parties, but it is merely a written admission of a fact by the plaintiff, evidence of the real meaning of the words used in it is not excluded. (*Hallifax, A. J. C.*). JUMMA *v.* ABU. **93 I.C. 193=A. I. R. 1926 Nag. 301.**

———Though evidence to vary the terms of an agreement in writing is not admissible under S. 92, yet evidence to show that there is not an agreement at all is admissible. Therefore, it is open to the Court to examine the surrounding circumstances with a view to enable it to decide whether the parties intended to arrive at any agreement in regard to the subject-matter of the suit: A. I. R. 1925 P. C. 75, *Foll.* (*Das and Adami, JJ.*). RAMDHANI SINGH *v.* KEWAL MANI BIBI. **90 I.C. 929=7 P.L.T. 145=1926 P.H.C.C. 29=A.I.R. 1926 Pat. 156.**

———Where the promisee knew that one co-executant was a surety for the other co-executant, evidence may be let in to prove that he was a surety. (*Young, J.*). MAUNG SEIN *v.* MA SAW. **82 I.C. 816=3 Bur. L.J. 112=A.I.R. 1924 Rang. 360.**

———That a gift was made subject to a condition can be proved under the provisions of S. 92. (*Robinson, C. J. and Beasley, J.*). MA THIN MAING *v.* MAING GYI. **75 I C. 166=1 Rang. 351—A.I.R. 1924 Rang. 13.**

———The oral admission of the mortgagor cannot be utilised to contradict the terms of the mortgage document. It would be dangerous to allow outside evidence to show the intention of the writer, which is not disclosed by the authorised channel namely, the words which he himself selected. (*Mookerjee and Rankin, JJ.*). MANMATHA NATH KAR *v.* PROBODHCHANDRA PATARHI. **73 I C. 416=37 C.L.J. 52=A.I.R. 1923 Cal. 102.**

———*Language showing intention of document—Different intent cannot be proved.*

Where the language of the document is clear, no evidence is permissible to prove that the intention of the parties was one different from that appearing on the face of the document.

Where a trust deed to discharge debts as well as to benefit the son of the author of the trust, was sought to be proved to be one for the benefit of the creditors alone, under S. 92, proviso (1).

Held, that such proof cannot invalidate the document, and that the proviso does not apply. (*Ashworth and Simpson, A.J.Cs.*). SHARF-UZ-ZAMAN *v.* SIR HENRY SLENYON. **70 I.C 253=25 O.C. 291=10 O.L.J. 491=A.I R. 1923 Oudh 80.**

———Defendants are not precluded by the provisions of S. 92 of the Evidence Act (I of 1872) from giving parol evidence for the purpose of showing that a deed, say, of gift of one kind like *heba-bil-ewaz*, was in reality intended by the executant to be a deed of gift of another kind or ordinary *heba*. (*Chatterjee and Panton, JJ.*). SERAJUDDIN HALDAR *v.* ISAB HALDAR. **70 I.C. 203=49 Cal. 161=25 C.W.N. 833=A.I.R. 1922 Cal. 258.**

—S. 92—Interest.

———A bond declared that money was to be repaid with interest at a certain rate A simultaneous oral contract declared that no interest was to be paid, but the creditor was to be in possession of certain piece of land and was to pay himself the interest out of the usufruct.

EVIDENCE ACT (1872), S. 92—Interest.

Held, that the two contracts were inconsistent with each other and so oral evidence was excluded. (*Mukerjee and Bennet, JJ.*). KALI DEEN SINGH *v.* JAGAT PATHAK. **122 I. C. 894= A. I. R. 1930 All. 440.**

———A mortgage deed was executed on 23rd March, 1920, for a certain sum payable with interest at 1½ per cent. per mensem on 15th April, 1921, and liable in case of default to carry interest at 2 per cent. per mensem. On 24th March, 1923, certain payment was made and it was averred after that date, the mortgagee agreed to accept interest at 1½ per cent. in proof of which the mortgagor pleaded that the mortgagee calculated in his books interest at the rate of 1½ per cent. per mensem.

Held, that such calculation of interest in the mortgagee's book would not bind him to accept more than 1½ per cent. per mensem and such agreement could not be proved under proviso (4) to S. 92. A.I.R. 1914 P.C. 27 and A.I.R. 1929 Nag. 194, *Dist.* (*Jackson, A.J.C.*). NARAYAN SINGH *v.* KESHOSA. **122 I.C. 436= A I R. 1930 Nag. 235.**

———Where it was suggested that the creditor was in the habit of accepting 15 p.c. when a debt was repaid even though the stipulated rate was 24 p.c. and that therefore it should be held that in other cases too the intention was only to collect the lower rate.

Held, that the suggestion is manifestly untenable. The giving up a portion of interest is purely a matter of grace. It cannot be used for construing the suit arrangement as meaning 15 p.c. for that will be against S. 92, Evidence Act. (*Krishnan and Odgers, JJ.*). RAMALINGAM CHETTIAR *v.* SUBRAMANYA CHETTIAR. **103 I.C. 394= 50 Mad. 614=38 M L.T. 323=25 M.L.W 699= A.I.R. 1927 Mad. 620=52 M.L.J. 612.**

———When a bond is silent about interest evidence is permissible to prove a separate agreement to pay interest, but very satisfactory and strong evidence is essential in order to establish any such separate agreement. (*Findlay, J. C.*). RAOZARIO *v.* HARI-BALLABH. **100 I.C. 794=10 N L.J. 43= A.I.R. 1927 Nag. 195.**

———Section 92 prevents proof that though a bond stipulates for compound interest, yet that there was a contemporaneous oral agreement that notwithstanding the bond, compound interest should not be claimed. Nor can the fact that as a matter of fact only simple interest was realised, entitle a party to vary the written contract. (*Newbould and Ghose, JJ.*). ABDUL AZIZ MIA *v.* AMANMAL BATTRA. **78 I. C. 742= A. I.R. 1925 Cal. 276.**

———Evidence of subsequent oral agreement not to charge compound interest is inadmissible to vary the original contract which is a registered one. (*Chatterjea and Cuming, JJ.*). JOGENDRA NATH BANERJEE *v.* KHODA BUKSHA BISWAS. **72 I.C. 554= A.I.R. 1924 Cal. 380.**

———If a document is formally drawn up, it would not be open to the parties to adduce evidence in proof of a contemporaneous oral agreement to pay interest: where the document itself is silent as to interest. 18 C.W.N. 1260 and 9 C.L.R. 301, *Ref.* (*Cuming, J.*). MOTI BISWAS *v.* HARIPADA PAL. **70 I. C. 790= A.I.R. 1923 Cal. 402.**

———A promissory note being a formal document intended to express the whole bargain, an oral agreement for interest made "at the time of the treaty" is not only highly suspicious, but is *prima facie* inadmissible in evidence. (*Rankin, J.*). KADER BAKSH HAZIR BUKSH *v.* SHAIK SERAJUD-DIN. **70 I.C. 130=49 Cal. 716= A. I. R. 1922 Cal. 513.**

EVIDENCE ACT (1872), S. 92—Mistake.

———*Oral agreement for different rate of interest than that in the pro-note is inadmissible—Note by 2 defendants—Liability is joint and several.*

Where the plaintiffs set up an oral agreement according to which the promisor agreed to pay interest at the rate of 1 per cent. while the rate mentioned in the pro-note was 8 annas per cent.

Held, the oral agreement sought to be proved is clearly inconsistent with the terms of the document itself and is inadmissible. (*Lyle, A.J.C.*). HABIB ALI KHAN *v.* LALA RAM NARAYAN. **68 I.C. 520=3 O.L.J. 273= 26 O C. 36=A.I.R. 1922 Oudh 270.**

—S. 92—Interpretation.

———*Word—"Collateral" means not inconsistent.*

"Collateral" means in effect not inconsistent with the terms of the agreement in question. (*Mukerjee and Ashworth, JJ.*). LACHMAN DAS *v.* RAM PRASAD. **100 I.C. 102)=25 A.L.J. 349= 49 All. 680=A.I.R. 1927 All. 422.**

—S. 92—Landlord and tenant.

———Where a tenancy is brought into existence with a view to a particular purpose, subsequently the parties may alter its character and incidents by their conduct. (*Walmsley and Mukerji, JJ.*). LAL GHOSE *v.* NILKANTHA DAS. **80 I.C. 898= A. I. R. 1925 Cal. 340.**

———A tenancy can be proved without proving any written lease that may exist. 1 N. L. R. 147; 41 C. 347, *Ref.* (*Drake Brockman, J. C.*). SURAT SINGH *v.* RANI. **59 I. C 461 (Nag.).**

—S. 92—Mistake.

———In a suit for recovery of possession based on a document which contains a mistake, the property in suit being left out through clerical mistake, although a suit for rectification may be barred by limitation, the plaintiff is entitled to succeed and mistake can be proved under S. 92. A. I. R. 1927 All. 355, *Ref.* (*Dalal, J.*). SUKHDEO RAI *v.* RAM NARAIN RAI. **A.I.R. 1930 All. 387.**

———*In case of mutual mistake either party can prove mistake in written contract.*

Where a mortgage deed stipulates that Re. 1 per month shall be paid interest and the mortgagee contends that the rate of interest agreed upon is Re. 1 per cent. per month, the words "per cent." having been omitted from the mortgage deed, through clerical mistake, it is a case of mutual mistake of the parties and not one of patent ambiguity as contemplated by S. 93. The case is similar to one in which a description of property intended to be conveyed in a particular deed has been wrongly entered. Therefore the combined effect of S. 92 (1), Evidence Act, and S. 31, Specific Relief Act, is to entitle either party to the contract to protect his rights by proving the mistake in the written contract: 39 Mad. 392 and A.I.R. 1922 All. 42, *Rel. on*; 41 Cal. 742, *Dist.* (*Stuart, C. J. and Srivastava, J.*). RAM BHAROSAY LAL *v.* JANKI PRASAD. **7 O.W.N. 14= A.I.R. 1930 Oudh 95.**

———*Surety bond.*

The wording of the surety bond did not support a person's contention that he did not sign a bond for payment of the amount but for appearance and payment of the amount only on failure to produce the person. The evidence showed that though the bond was read out to the person, he was told that he was surety for the appearance. The person had offered himself to be a surety by an application in which he stated that as the judgment-debtor would be produced he placed the properties mentioned therein as security. The order for the release of the judgment-debtor was vague.

EVIDENCE ACT (1872), S. 92—Mistake.

Held, that though ordinarily the wording of the bond could not be allowed to be contradicted there was ample ground for holding that the bond happened to be executed under a mistake as to its real purport. (*Mya Bu, J.*). PO NAW *v.* MAUNG BA CHIT. **A.I.R. 1929 Rang. 262.**

———Where the intention of the parties was to sell survey No. 181 but by mistake survey No. 161 was put in the sale-deed instead of No. 181,

Held, that extrinsic evidence was admissible as to circumstances which would show that survey No. 181 was intended to be sold and not survey No. 161. (*Kinkhede, A.J.C.*). SABHAJI *v.* NAWAL-SINGH. **104 I.C. 736=10 N.L.J. 201= A.I.R. 1928 Nag. 4.**

———*Mistake in written contract can be proved by either party—Suit for rectification of contract is not a necessary preliminary.*

When parties have come to a contract but have failed to express themselves correctly, if a mistake is a real one and mutual, and can be established by satisfactory proofs, a Court of equity will reform written instrument so as to make it conformable to the precise intent of the parties.

The combined effect of S. 92, Cl. (a), Prov. (1) and of S. 31, Specific Relief Act is to entitle either party to a contract, whether plaintiff or defendant, to protect his right by proving a mistake in contract, for example, mistake in the description of the property sold by giving wrong survey number to same : 39 Mad. 792, *Rel. on.*

What in such cases is rectified is not the agreement but the mistaken expression of it : 28 Bom. 420 and A. I. R. 1922 All. 42, *Ref.*

In such a case a party is entitled to succeed upon a construction of a conveyance itself without the necessity of having to take proceedings, by way of a separate suit for rectification of the deed, as a Court is competent to give effect to what was indisputably the real agreement between the parties without driving the plaintiff to a separate suit for rectification : 2 C.W.N. 260 and A.I.R. 1923 Cal. 53, *Foll.* (*Kinkhede, A.J.C.*). SABHAJI *v.* NAWAL-SINGH. **104 I.C. 736=10 N.L.J. 201= A.I.R. 1928 Nag. 4.**

———*Sale-deed—Certain property sold omitted in sale-deed by mutual mistake—Rectification not sought within Limitation—Oral evidence can be admitted to prove sale.*

Though a remedy by way of rectification of an instrument by a suit is open to a party, when through fraud or mutual mistake of the parties an instrument in writing does not truly express their intention ; this does not mean that if, notwithstanding the mutual mistake, the property actually intended to be transferred has passed to the possession of the vendee, the vendee's title to the property can be challenged simply because the instrument has not been rectified within three years from the date of the discovery of the mistake by the vendee. It will always be open to the vendee, if his title is challenged by the vendor, to show that there was a mistake in the instrument and that, as a matter of fact, the property in his possession was intended to be transferred to him. In fact the vendee is entitled to lead oral evidence to show the mistake in the instrument. The mere failure of the vendee, to have the instrument rectified within three years from the date of the discovery of the mistake, cannot have the effect of extinguishing his title to the property intended to be conveyed to him, though not properly described in the sale-deed : 28 C.L.J. 197, *Rel. on.* (*Iqbal Ahmad, J.*). KESHO SINGH *v.* ROOPAN SINGH. **100 I.C. 568 = A.I.R. 1927 All. 355.**

EVIDENCE ACT (1872), S. 92—Mortgage.

———*Specific Relief Act, S. 31—Mis-statement in pro-note as to rate of interest owing to mutual mistake can be rectified.*

The Court can correct the terms of a document if it is proved to the satisfaction of the Court that any of such terms are inaccurate owing to a mutual mistake. It can also correct a mis-statement in a promissory note if in fact a term had been placed in the note without really representing the true bargain between the parties. *Druieff* v. *Lord Parker*, (1868) 5 Eq. 131, *Foll.*; (1885) A. W. N. 42, *Ref.* (*Costello, J.*). LADHA SINGH *v.* MUNSHI RAM AGARWALA. **104 I. C. 559=31 C W.N. 747= A. I. R. 1927 Cal. 605.**

———*Sale-deed with condition of re-purchase executed but consideration of re-purchase not entered—Evidence to prove consideration is allowed.*

A deed of sale duly executed and registered contained an agreement for re-purchase but the space intended to insert the amount of re-purchase money was left blank. The executant brought a suit for specific performance and rectification of the deed, or in the alternative for its cancellation,

Held, that the omission to enter the price was either due to the fraud of the purchaser or to a mutual mistake ; that under S. 92 (1), oral evidence was admissible as to the amount agreed upon on the ground of fraud or mistake and that the document could be rectified by the Courts under S. 31, Specific Relief Act so as to bring it into accord with the real intention of the parties. (*Lentaigne and Carr, JJ.*). MAUNG PE GYI *v.* HAKIM ALLY. **80 I.C. 759= 2 Rang. 113=3 Bur. L.J. 44= A.I.R. 1924 Rang. 235.**

———A mortgage-deed was renewed and in the renewed deed a part of the mortgaged property was mis-described,

Held, that under S. 92, proviso (i) of Evidence Act it was open for the plaintiff to prove this mistake and the evidence which they produce to prove that fact was admissible. (*Lindsay and Gokul Prasad, JJ.*). ABDUL HAKIM *v.* RAM GOPAL. **64 I.C. 961=44 All. 246= 20 A.L.J. 53=A.I.R. 1922 All. 42.**

———Oral evidence of the negotiations antecedent to the execution of the instrument, which shows that what was intended to be offered and accepted was different from what was by mistake actually described in the instrument can be given : 22 All. 149 (P.C.) and 5 Bom. L.R. 853, *Foll.* (*Mookerjee and Buckland, JJ.*). BEPIN KRISHNA RAY *v.* JOGESHWAR RAY. **66 I.C. 345= 34 C.L.J. 256=26 C.W.N. 36=A.I.R. 1921 Cal. 730.**

—S. 92—Mortgage.

———Parties to a registered deed are precluded by the provisions of S. 92 from giving evidence that the property comprised in the deed is different from that which on the face of the deed appears to have been mortgaged. (*Dawson-Miller, C.J. and Macpherson, J.*). MUSI KAZIM *v.* HAJI MUTASADDI. **90 I.C. 841=7 P.L.T. 293.**

———*Scope.*

When there is a subsequent oral agreement between a mortgagor and the mortgagee relating only to the mode of payment of the mortgage money, evidence with respect to such oral agreement is admissible : 9 All. 392 ; 11 C.L.J. 89 ; 25 C.L.J. 560 and A.I.R. 1928 Mad. 283, *Foll.* But where such oral agreement purports to change the

EVIDENCE ACT (1872), S. 92—Mortgage.

character of the mortgage also, the evidence is inadmissible. (*Bhide, J.*). CHANDER HAS *v.* AKBAR. **110 I.C. 261 (Lah.).**

———*Transfer of Property Act, S. 59—Mortgage-deed unregistered—Mortgage is invalid but recitals in the deed are admissible to show nature of mortgagee's possession.*

Even though a mortgage not effected by a registered deed as required by S. 59 is invalid, the recitals in the unregistered mortgage-deed are admissible in evidence for the purpose of explaining the nature and character of the possession of the mortgagees over the mortgaged property: 43 Mad. 244 (P.C.), *Rel. on.* (*Iqbal Ahmad, J.*). MAHA MANGAL RAI *v.* KISHUN KUNDU. **100 I.C. 346= A.I.R. 1927 All. 311.**

———In a mortgage suit for sale the defendant pleaded that plaintiff mortgagee had subsequently orally agreed to accept in full satisfaction of the mortgage debt a conveyance of six shops valued at Rs. 95,000 and Rs. 7,000 in cash. On the date when the oral agreement was made a sum of Rs. 1,12,000 was due on the mortgage,

Held, that the oral agreement amounted to a modification of the original contract and was inadmissible under S. 92 (4): 42 Mad. 41, *Foll.* (*Banerji and King, JJ.*). MD. NIAZ AHMAD *v.* NANHE MAL. **119 I.C. 107=1929 A.L.J. 924= A.I.R. 1929 All. 615.**

———Where the mortgage-deed provided that interest should be paid at one per cent. per mensem compoundable yearly and the defendant alleged in a suit on the mortgage that the contract between the parties was that only simple interest should be paid,

Held, that the evidence in support of the alleged oral agreement was inadmissible under Ss. 91 and 92 of the Evidence Act. (*Banerji and King, JJ.*). BEHARILAL *v.* ABDUL AZIZ. **119 I.C. 92= 27 A.L.J. 866.**

———Evidence of a subsequent oral agreement purporting to vary the original registered mortgage-deed would be inadmissible under proviso 4 to S. 92. (*Lentaigne, J.*). MAUNG MIAT TUNG AUNG *v.* MAUNG PUDU. **89 I.C. 875=3 Rang. 243= A. I. R. 1926 Rang. 322.**

———*Plaintiff mortgaging land with possession but without registered deed—Oral evidence to prove mortgage is not allowed but he may sue on title for possession on condition of returning consideration money.*

Where a plaintiff alleges that possession of immovable property has been given to the defendant as security for a loan of Rs. 100 or upwards, but without any registered instrument, no oral evidence is admissible to prove the transaction. There is a marked distinction in these cases between those relating to an inchoate mortgage and an inchoate sale. In the latter it is open to the party in possession of land who has bought without obtaining a registered deed of conveyance to sue for specific performance of a contract to sell. But there is no right to sue for specific performance possessed by a mortgagor who has given his land in mortgage without securing his right of redemption by a registered deed of mortgage. 8 B.L.R. 334 (F.B.) and 2 R. 285 (F.B.), *Expl.* In such a case it is, however, open to the plaintiffs to bring a suit based solely on their title. If the defendant admits their title and if he fails to prove the contract to sell which he alleges, the plaintiff would be entitled to a decree. That decree must be made conditional on repaying the money advanced not with the intention of granting practically a decree for redemption but by ordering repayment on equitable grounds. The reason why different principles apply to the admissibility of evidence to prove a contract to mortgage and a contract to sell is that in the latter the defendant is entitled to claim specific performance and in the former case he is not. (*Robinson, C. J., Brown and Doyle, JJ.*). MAUNG SAN MIN *v.* MAUNG PO HLAING. **94 I.C. 567=4 Bur. L.J. 118=4 Rang. 1= A.I.R. 1926 Rang. 291 (F.B.).**

EVIDENCE ACT (1872), S. 92—Oral agreement.

———Where a mortgage deed provides for redemption within 2 years of the date of the mortgage, a party to the deed cannot be permitted to prove a verbal promise to allow redemption at any time. (*Lentaigne, J.*). MA HIN THA *v.* MA THET SU. **76 I. C. 624=2 Bur. L.J. 119= A.I.R. 1923 Rang. 232.**

———Mortgage deeds invalid for want of registration or by reason of defective registration are admissible in evidence to prove a personal covenant to pay. (*Robinson, C. J. and Duckworth, J.*). QUAH CHENG GWAN *v.* MAUNG PO MYI. **66 I. C. 589= 11 L.B.R. 148=A. I. R. 1921 L.B. 34.**

—S. 92—Negotiations.

———The true construction of a document cannot be varied by extraneous evidence as to the negotiations which led up to the contract. 41 Cal. 493 (P. C.), *Foll.* (*Prideaux, A. J. C.*). KALURAM *v.* GAJASA. **107 I.C. 201=A.I.R. 1928 Nag. 182.**

———*Oral evidence regarding what took place at the time of the deed is not admissible.*

Where the question was whether two documents constituted a completed contract or not.

Held, oral evidence to show what actually took place on the occasion when the parties entered into the agreement relied upon by the plaintiff is irrelevant and inadmissible. (*Mr. Ameer Ali.*) HARICHAND *v.* GOVIND. **71 I.C. 763= 17 M.L.W. 572=50 I.A. 25=37 C.L.J. 440= 32 M.L.T. 175=25 Bom. L. R. 531= 47 Bom. 335=28 C.W.N. 73=4 L.R.P.C. 84= A.I.R. 1923 P.C. 47=44 M.L.J. 608 (P. C.).**

———*Lease deed defective—Prior correspondence is admissible.*

Where the lease is defective in not giving sufficient description of the property to identify it, the parties have to fall back on extraneous evidence. The Courts can take into consideration correspondence which passed between the parties prior to the lease. (*Rafique and Stuart, JJ.*). SITAL PRASAD *v.* BADRI PRASAD. **69 I.C. 647=20 A. L.J. 907= A.I.R. 1923 All. 53.**

—S. 92—Oral agreement.

———Evidence regarding a subsequent oral agreement is excluded not only in cases in which the original contract is required by law to be in writing but also in cases where the original contract has been registered. (*Bhide, J.*). CHANDAR HAS *v.* AKBAR. **110 I.C. 261 (Lah.).**

———A vendee from the mortgagor of a part of the mortgaged property can enter into an oral agreement with the mortgagee for the redemption of that part only and proof of such an oral agreement by which money is paid, and that part is redeemed is not precluded by S. 92, prov. 4. 27 Mad. 368, *Rel. on.* (*Phillips and Madhavan Nair, JJ.*). KANDASWAMI *v.* PAKKIRISWAMY. **112 I.C. 559=1928 M.W.N. 537= A.I.R. 1928 Mad. 1050.**

———An oral agreement by which a certain sum due under a sale-deed was not to be payable until

EVIDENCE ACT (1872), S. 92—Oral agreement.

the vendee got possession of the whole land cannot be proved under S. 92. (*Phillips, J.*). MUTHUSWAMI AIYER *v.* DHARMA RAJA. **94 I C. 302= 1926 M.W.N. 209=A.I.R. 1926 Mad. 495.**

———*Contemporaneous oral agreement attaching condition precedent—Evidence is admissible.*

The true construction to be placed upon S. 92, proviso (3) is that the provisions thereof are inapplicable in a case in which any obligation under the written contract has attached, and that if the effect of the alleged contemporaneous oral agreement is merely to suspend the performance of the obligations contained in the written contract, evidence of such oral agreement cannot be admitted. On the other hand, it is permissible to adduce evidence of a contemporaneous oral agreement under which the parties to the written contract agree that until the happening of a certain event no obligation whatever under the written agreement should attach, or, in other words, that until the condition precedent has been fulfilled, the written agreement should be and remain inoperative and of no effect. 2 All. 598, *Rel. on.* (*Page, J.*). WALTER MITCHELL *v.* A. K. TENNENT. **90 I.C. 59= 52 Cal. 677=A.I.R. 1925 Cal. 1007.**

———Where the deed between the parties is a informal document, evidence as regards the special agreement alleged by one of the parties is allowable under S. 92, proviso (2). (*Madhvan Nair, J.*). VAIRAVAN CHETTIAR *v.* KANNAPPA MUDALIAR. **86 I.C. 436=A.I.R. 1925 Mad. 1029.**

———Where a deed of lease does not mention the place fixed for payment of rent, it is open to the plaintiff lessee to show that it was subsequently agreed between the parties that rent was to be paid at a particular place. (*Wadegaonkar, A. J. C.*). ONKARPRASAD M. G. NANDLAL *v.* BADRI DAS. **89 I. C. 273=8 N.L J. 81=23 N.L.R. 26= A. I. R. 1925 Nag. 281.**

———Under S. 92, proviso (2) the existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved. This proviso applies where the document is of an informal character. (*Drake Brockman, J. C.*). JODHRAJ *v.* BYRAM. **83 I.C. 309=7 N.L.J. 25.**

———*Pro-note—Oral agreement prior to pro-note but written down subsequently that amount was not payable till a certain event—Evidence of agreement admissible.*

Respondent sued appellants on a promissory note. Appellants admitted execution of the note but pleaded, *inter alia* that under an oral agreement prior to pro-note which was embodied in a written instrument after the pro-note the amount was not payable until the accounts of a certain partnership had been settled.

Held, that the finding that the written instrument was signed some days after the promissory note did not warrant the exclusion of evidence of the oral agreement which was alleged to have been made some time before the written instrument came into existence. (*Heald and Chari, JJ.*). ZALHIA *v.* BHARADWAJA. **88 I.C. 336= 4 Bur. L.J. 38=A. I. R. 1925 Rang. 256.**

———*A* entered into an agreement with *P* for the supply of timber. *A* agreed to advance Rs. 5,000 to *P* "on such securities as thought suitable". *P* offered his brother *H* as surety and he was accepted. Rs. 2,500 was advanced to *P* who signed a promissory-note for the amount, *H* also signed this note. Some ten days later, a further Rs. 2,500 was paid to *H* on behalf of *P* who was away in the jungle. *H* alone signed a promissory-note for this sum. The contract with *P* was in writing but the evidence as to the part of *H* in the transaction was purely oral.

Held, that oral evidence was rightly admitted under proviso 3 to S. 92 of the Evidence Act for the purpose of showing that *H's* liability on the second pro-note which was solely signed by him, arose only on *P's* failure to pay the amount. 10 L.B.R. 366 and 19 Mad. 368, *Foll.* (*Carr, J.*). J. M. MANICKJEE *v.* MAUNG PO HUN. **84 I.C. 1012=2 Rang. 482=A.I.R. 1925 Rang. 83.**

———*Agreement complete in itself—Oral evidence is not allowed to supplement it.*

A contract for sale of land was entered into on 15th January, 1920, by means of a writing appearing in the books of one Chanbasappa. It was signed by both parties and witnessed. The defendant said that the agreement appearing in the book did not contain the whole of the agreement arrived at between the parties but there was an oral agreement that if anybody else per chance offered more than Rs. 500 to the 1st defendant above the agreed amount before the expiry of the period in the agreement the agreement with the plaintiff was to be treated as null and void.

Held, that the evidence about the oral agreement is not admissible.

It may very well be that a writing may be an imperfect agreement of which a Court cannot decree specific performance, but if on the face of it contains all the terms which would entitle it to be considered as a perfect agreement which could be enforced, then undoubtedly no parol evidence could be adduced so as to alter or add to its terms unless they came within one of the provisos of S. 92. (*Macleod, C. J. and Crump, J.*). TUKARAM MAHADAPPA *v.* JAGANNATH SAVLARAM. **76 I. C. 215= A.I.R. 1923 Bom. 236.**

———Oral arrangement providing for repayment of the mortgage debt from the usufruct of the land does not amount to a lease, nor does it constitute a usufructuary mortgage, but only a means of discharging the debt by putting the simple mortgagee in possession of the property and such oral arrangement can be proved. 9 All. 392 and 11 C. L. J. 39, *Foll.* (*Curgenven and Ananthakrishna Iyer, JJ.*). BALAM NOOKAMMA *v.* SADIREDDI DHARMAYYA. **107 I.C. 417=A.I.R. 1928 Mad. 233= 53 M. L.J. 863.**

———Defendant leased his absolute occupancy field to the plaintiff for a term of seven years without landlord's consent: the landlord brought a suit against them to cancel the lease. As the plaintiff and defendant were bound to fail as against the landlord, the lease was given up and in its place the defendant, the tenant, executed in favour of the plaintiff, his sub-tenant, a series of six bonds, undertaking in lieu of the lease to pay off the lease money by giving an instalment of 12 khandis of wheat every year. The defendant pleaded that the real arrangement between the parties was that in order to pay off the lease money the defendant should cultivate his own tenancy land but should give half the produce every year to the plaintiff who had been his sub-tenant, and that the plaintiff should pay him half the rent every year. It was alleged that in order that the landlord should not be aware of this arrangement, the bonds were executed in the form in which they stand. The bonds are described in the defendant's pleadings as "security" for the real oral agreement.

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Held, that the agreement "was not a condition precedent" for the enforcement of the bonds nor can the bonds be regarded as "security" for the carrying out of the oral agreement, and that the attempt to show that the agreement was not what it purported to be but something different is directly against the provisions of S. 92 and is not covered by proviso (3). (*Batten, J.C.*). TATIA *v.* SAWANIA.

71 I.C. 477=6 N.L.J. 21=A.I.R. 1923 Nag. 135.

———*Written agreement incomplete—Supplementary oral agreement can be proved.*

Where the plaintiff's evidence proved that the written agreement about supply of consignments by defendant was incomplete and that there was a supplementary oral agreement.

Held, it would not be inconsistent with the terms of the document that there should have been an agreement that the consignments should be sent when the plaintiff ordered or requested that they should be sent. (*Batten, J.C.*). SETH LAXMICHAND *v.* SHAIKH SHAHABUDDIN.

70 I.C. 844=A.I.R. 1923 Nag. 46.

———It is not to be thought that it is intended by the proviso (3) to permit the terms of a written contract to be varied by a contemporaneous oral agreement. Having regard to the illustrations (*b*) and (*j*) the proper meaning of proviso (3) is that a contemporaneous oral agreement, to the effect that a written contract was to be of no force or effect at all and that it was to impose no obligation at all until the happening of a certain event, may be proved. (*Ryves and Gokul Prasad, JJ.*). S. ALI JAWAD *v.* KULANJAN SINGH. **66 I. C. 131=44 All. 421=20 A. L. J. 247=A. I. R. 1922 All. 262.**

———*Evidence of oral agreement explaining document is admissible.*

The interlineated words and figures in an *ikrarnama* were written after it had been signed by the defendant. The plaintiff's allegation was that there was an agreement made before the execution of the *ikrarnama*, which justified the additions to the document which do not alter it in the least but merely explain it.

Held, that the plaintiff would be entitled to produce oral evidence of the oral agreement.

Sonajee Mali v. *Uttamchand Bania*, 12 C. P. L. R. 33 and *Ganpat* v. *Ramakrishnapuri*, 6 N.L. R. 1, *Foll.*; *Ananda Mohan Shah* v. *Ananda Chandra Naha*, 44 Cal. 154, *Foll.* (*Hallifax, A.J.C.*). GANGA PRASAD *v.* MOTIRAM. **68 I.C. 268=A.I.R. 1922 Nag. 191.**

———Absolute promise to pay on demand—Contemporaneous agreement to excuse promisor from liability if certain event happened—Oral evidence to prove such agreement is not admissible. 39 B. 399 (P.C.), *Dist.* (*Sadasiva Aiyar and Spencer, JJ.*). DOORVAS J. SUBBIAYAR *v.* SUBBARAYULU AIYAR. **68 I.C. 758=1921 M.W.N. 636=A. I. R. 1921 Mad. 474=41 M.L.J. 541.**

—S. 92—Parties and representatives.

———*Persons not claiming through settlor can show that* waqf *was illusory.*

A person who does not claim through the settlor is entitled to challenge the validity of a *waqf* on the ground that it was merely an illusory transaction never intended to be acted upon. 31 M.L.J. 431, *Foll.*; 10 C. W. N. 449, *Dist.* and *Expl.*

Purchasers of some portion of the properties alleged to be *waqf* at a sale for arrears of Government revenue are not persons claiming under the settlor. (*Chatterjee and Panton, JJ.*). MINNAT ALI *v.* NABENDRA KISHORE ROY. **A.I.R. 1928 Cal. 283.**

EVIDENCE ACT (1872), S. 92—Partition-deed.

———*Sale by father as manager—Other members cannot dispute nature of transaction.*

If a father as one of the joint owners sells, as representing all the other members joint with him; those other members must be treated as parties to the document. The other members of the joint family cannot dispute the transaction effected by the manager of the family on the ground that the transaction was really a different one from what it appears to be on the face of the document. (*Macleod, C. J. and Crump, J.*). RAMCHANDRA HANMANT *v.* KASHINATH LAXMAN. **87 I. C. 804=27 Bom L.R. 241=A.I.R. 1925 Bom. 288.**

———Parties cannot be allowed to adduce evidence to prove contrary to the terms of deed of gift that the transaction was in reality a *hiba-bil-iwaz*. (*Scott-Smith and Fforde, JJ.*). HAFIZ FEROZ-UD-DIN AHMAD *v.* SARDAR SHAH. **79 I.C. 81=6 L.L.J. 221= A. I. R. 1924 Lah. 562.**

———Section 92 applies to all parties to a document whether the dispute is between the parties on the one side and the other or between the parties on the same side. Parties on one side to a transaction cannot be allowed to show that the transaction though purporting to be a sale was a mortgage. (*Pratt and Duckworth, JJ.*). MAUNG TUN GYAW *v.* MAUNG PO THWE. **77 I.C. 923=11 L.B.R. 351=1 Bur. L. J. 160=A. I. R. 1922 L.B. 37.**

—S. 92—Partition-deed.

———Division of status can be proved by an unregistered partition deed but status of reunion cannot be proved by unregistered deed of reunion where deed of partition is registered. A.I.R. 1919 P.C. 44, *Dist.*; A.I.R. 1916 P.C. 104 and A.I.R. 1917 P.C. 12, *Rel. on.* (*Kumaraswami Sastri and Reilly, JJ.*). P. MAHALAKSHMAMMA *v.* C. SURYANARAYANA. **117 I.C. 113=51 Mad. 977=28 M. L. W. 919=A.I.R. 1928 Mad. 1113=55 M. L. J. 733.**

———Division of status can be proved even though there is an unregistered partition deed in evidence which may be used to determine the nature of the possession held by a party. A. I. R. 1922 P. C. 266, *Appl.* (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RAMA CHETTY *v.* PANCHAMMAL. **92 I. C. 1028=1926 M. W. N. 45=A. I. R. 1926 Mad. 402.**

———An oral agreement that a partition deed was not to be treated as such, but that a fresh formal deed was to be executed and registered is admissible in evidence. (*Krishnan and Venkatasubba Rao, JJ.*). GOPAYYA *v.* KRISHNAYYA. **69 I. C. 562=16 M. L. W. 784=1922 M. W. N. 833=A. I. R. 1923 Mad. 160.**

———"*Document*" *means valid document—Partition-deed inadmissible for want of registration—Partition can be proved by oral evidence.*

The word "document" in Ss. 91 and 92 means a valid document.

A partition may be proved by oral evidence, although the deed embodying the terms of partition cannot be proved for want of stamp and registration: 41 Bom. 466, *Foll.*

The provisions of Chapter VI, Ss. 91 to 100, do not involve the Courts in the anomalous position of deciding that, because there is a flaw in the deed of disposition which prevents the deed being proved they are at the same time precluded from hearing the oral evidence as to the disposition. If the Courts were placed in this anomalous position the fate of a person who has obtained property under an unregistered deed of partition would be

EVIDENCE ACT (1872), S. 92—Promissory note.

a most unhappy one, for even though the property was his property, he would be unable to prove his title against any dishonest person who chooses to challenge him. (*Stuart, J.*). JAIRAM DAS *v.* RAJ NARAIN. **A.I.R. 1921 All. 405.**

—S. 92—Promissory note.

———In a suit on pro-note alleged to have been executed by two defendants one of them denied the execution and receipt of consideration and averred that he had signed as an attesting witness. Oral evidence to prove that money had been borrowed by both the defendants and that defendant having "witness" before his signature, was one of the executants and not a witness was allowed,

Held, that the evidence adduced is not at variance with the terms of the contract which is not affected by the word "witness" before defendant's signature and is admissible under S. 92. (*Sen, J.*). MUHAMMAD AHMAD KHAN *v.* JAI CHAND LAL. **A.I.R. 1930 All. 709.**

———A claim based on a promissory note payable on demand cannot be resisted on the ground that the amount would be given credit to in the final settlement of accounts between the parties: A. I. R. 1922 All. 213, *Ref.* (*Sulaiman and Kendall, JJ.*). GHANSHIAM *v.* MITHAN LAL. **124 I.C. 763=A. I. R. 1930 All. 529.**

———*Contract with firm—Note by partner in his name—Partnership liable.*

Where there is a contract with the partnership and a promissory note signed by a partner in his own name and not in the name of the partnership, as evidence of such contract, all the partners will be liable. The principle that only the maker of the promissory note can be held liable thereunder is not applicable in a case where an independent contract is alleged and therefore, the promissee can be allowed to adduce evidence as to the independent contract: A.I.R. 1914 P.C. 132 and 40 Mad 727, *Rel. on.*; 7 Cal. 256 and A. I. R. 1918 P.C. 146 *Ref.*; 25 Mad. 580, *Doubted.* (*Phillips and Reilly, JJ.*). PYNDA VENKATACHALAPATI GARU *v.* PYNDA RAMAKRISHNAYYA. **123 I.C. 358= A.I.R. 1930 Mad. 168.**

———*Promissory note can be proved to be conditional.*

In a suit on promissory note, the defendant can prove a separate oral agreement that a condition precedent to the attaching of any obligation to the contract evidenced by the promissory note was that there should not be any obligation attaching under it unless there was a final balance of account on certain transactions against the defendant which he failed to pay: A. I. R. 1927 All. 292, *Foll.* A.I.R. 1922 All. 213, *Diss. from.*

Ashworth, J.—The case is actually no exception to S. 92, Evidence Act. That section refers to documents which operate by reason merely of signature. A promissory note because it is a negosiable instrument and thus partakes of the nature to currency before it can operate must not only be signed but also delivered. (*Boys and Ashworth, JJ.*). BHOGI RAM *v.* KISHORI LAL. **115 I.C. 771= 50 All. 754=26 A.L.J. 696= A.I.R. 1928 All. 289.**

———It is open to the executant under proviso (3) to S. 92, Evidence Act and S. 46, Negotiable Instruments Act to prove that the promissory note is executed and delivered only as security for the payment of future instalments to a chit fund: A. I. R. 1924 Mad. 850, *Foll.* (*Reilly, J.*). PANCHAPAKESA AYYAR *v.* AYYASAWMI AYYAR. **107 I.C. 510 (Mad.).**

EVIDENCE ACT (1872), S. 92—Promissory note.

———In a suit upon a pro-note, a Court should not allow evidence to show that the pro-note was not really executed in the plaintiff's favour or evidence that the note had been discharged by payment to the person really interested: 30 Mad. 88 (F.B.), *Foll.* (*Ashworth, J.*). L. MADAN LAL *v.* LAL CHAND. **100 I.C. 703=25 A.L.J. 402=49 All. 457= A. I. R. 1927 All. 463.**

———*Evidence to vary terms of pro-note is not permissible.*

The execution of a pro-note was admitted, but the defence was that the money was advanced to defendant for the purchase of paddy in pursuance of a partnership agreement and that there was really no loan at all,

Held, that such a defence was not permissible. A.I.R. 1925 Rang. 83, *Dist.*; 31 Mad. 343, *Rel. on.* (*Brown, J.*). (MAUNG) KYAN NAGA *v.* M.A.R.T.A.R. ARUNACHALAM PILLAY. **105 I.C. 476= 5 Rang. 520=A.I.R. 1927 Rang. 327.**

———A subsequent oral agreement varying the terms of a promissory note as regards its exigibility on demand cannot be legally proved. (*Kinkhede, A.J.C.*). SK. JAMU *v.* MOHAMED EBRAHIM. **90 I.C. 378=A.I.R. 1926 Nag. 194.**

———*Suit on promissory note—Defendant cannot prove contemporaneous oral agreement exempting him from liability.*

Where a contract is founded on consideration, and the party who received the consideration wrote down and signed the terms on which he received it, it is not open to him to raise the plea that he did not agree to those terms. Therefore if in a suit on a promissory note to pay on demand, consideration is proved, defendant cannot prove a contemporaneous oral agreement according to which he did not incur any personal liability, and was not bound to pay on demand: A.I.R. 1922 All. 213; 45 Bom. 1155, and 45 Bom. 1242, *Foll.* (*Martineau and Zafar Ali, JJ.*). HIRA LAL *v.* BENARSI DAS. **90 I.C. 982=6 Lah. 411=7 L.L.J. 453= 26 P.L.R. 612=A.I.R. 1925 Lah. 576.**

———*Agreement to postpone the obligation cannot be proved orally.*

An oral agreement purporting to provide that the promise to pay on demand in a promissory note, though absolute in its terms, was not to be enforceable by suit till the happening of a particular event, *i.e.*, that the legal obligation to perform the promise was to be postponed, is not such an agreement as falls within Prov. 3 to S. 92. A. I. R. 1924 Bom. 44, *Dissented.* (*Odgers, J.*). SUBRAMANIA AIYAR *v.* NARAYANASAMI AIYAR. **90 I.C. 1020= 22 M.L.W. 445=1925 M.W.N. 601= A.I.R. 1925 Mad. 1240.**

———*Failure of condition precedent to written agreement as fixed by oral agreement can be proved.*

When it is expressly provided in a promissory note that the amount due thereunder is payable on demand with interest at a partioular rate an oral agreement between the parties that the said amount was to be set off against the amount due to the executant of the promissory note on some other account is not a condition precedent to the enforcement of the liability under the pro-note and such agreement is not admissible in evidence. But an oral agreement between parties to a written contract, to the effect that the latter shall not be of any force until some condition precedent has been performed can be proved by means of oral evidence, and it can be shown that the condition has not been performed and that therefore the written agreement has not acquired any validity or

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force. (*Raymond and Rupchand Bilaram, A. J. Cs.*). RAM SINGH *v.* IBRAHIM. **78 I C. 418= 18 S.L.R. 39=A.I.R. 1923 Sind 136.**

———In a suit on a promissory note, it is open to the defendant to plead that the note was not executed for cash or other consideration but was executed only as a security to cover the advances to be made by the payees and that they (the defendants) are liable only for such sums as may be found due on taking accounts between the parties. (*Ramesam, J.*). SUNDARAM CHETTY *v.* DAMODARAM CHETTY. **84 I. C. 146=1924 M.W.N. 529= A. I. R. 1924 Mad. 850.**

———In a suit on a joint and several promissory note payable on demand executed by *A* and *B*, *A*, can give oral evidence to prove that he joined in the loan only as security for *B*. But he cannot give oral evidence to prove contemporaneous oral agreement with plaintiffs, whereby plaintiffs agreed to recover the amount under the note in the first instance from *B*. (*Rupchand Bilaram, A. J. C.*). THE CENTRAL BANK OF INDIA, LTD. BY ITS ATTORNEY N. C. NAVATY *v.* NADIR SHAH R. MEHTA. **79 I.C. 445=A.I.R. 1924 Sind 13.**

———Unconditional promise to pay—Plea of condition to pay only on settlement of accounts is not allowable. (*Lindsay and Stuart, JJ.*). SRI RAM *v.* FIRM SOBHA RAM GOPAL RAI. **67 I.C. 513= 44 All. 321=20 A. L. J. 315= A.I.R. 1922 All. 213.**

———*Oral evidence is admissible to prove purpose of loan.*

The making of a pro-note by way of security for a sum of money advanced or given to the maker does not shut out oral evidence as to the purpose for which the money is given. Proviso 2 to S. 92 of the Evidence Act allows proof of any separate oral agreement about any matter on which a document is silent and which is not inconsistent with its terms. (*Rigg, J.*). BA. SHEIN *v.* EMPEROR. **64 I.C. 33=A.I.R. 1922 L.B. 10.**

———In a suit on a promissory note payable on demand, it is not open to the defendant to prove a contemporaneous oral agreement by which plaintiff is not to present the promissory note for payment, although payable on demand, until he has discharged certain encumbrances on the property he has sold to a stranger: 25 Cal. 402, *Foll.* (*Macleod, C. J. and Shah, J.*). VISHNU RAMCHANDRA *v.* GANESH KRISHNA. **63 I.C. 673=45 Bom. 1155= 23 Bom. L.R. 488=A. I. R. 1921 Bom. 449.**

———*Suit on—Pro-note given not to plaintiff but to firm having plaintiff's name and belonging to plaintiff's father—Plaintiff cannot succeed.*

If the promissory notes had been executed in favour of the plaintiff, an allegation that he was not the beneficial owner of the money would not afford a defence to the suit. But where the defendants urge that the notes were given, not to the plaintiff but to a firm which happens to possess the same name as the plaintiff and is the property of his father, this raises a question, not of benami, but of identity of the person to whom the note was given, and the plaintiff cannot succeed till the matter has been determined in his favour. (*Mukerjee and Fletcher, JJ.*). ABDUL HAKIM EAR MAMOMED *v.* EBRAHIM SOLAIMAN SALEHJEE & Co. **62 I.C. 210=33 C.L.J. 132= A. I. R. 1921 Cal. 480.**

———An oral agreement providing a different mode of satisfaction of a promissory note payable on demand is inadmissible in evidence. (*Martineau and*

EVIDENCE ACT (1872), S. 92—Sale.

Abdul Qadir, JJ.). BHARAT NATIONAL BANK, DELHI *v.* MOHAN LAL BHAGWAN DOSS. **63 I.C. 748=A.I.R. 1921 Lah. 74.**

—S. 92—Sale.

———It is not open to a party to a registered sale-deed to prove an oral agreement by evidence either oral or documentary contemporaneous with the sale deed, that in spite of a certain property, belonging to the vendor, being entered in the sale-deed, title to it would not pass to the vendee: 43 Mad. 436, *Dist.* (*Mukerjee, J.*). RAM KRISHNA *v.* ANAND KRISHNA. **118 I.C. 589= A.I.R. 1929 All. 578.**

———Where the contemporaneous agreement though in writing is not registered, it is not open to the party to show that what is apparently a sale was really a mortgage: 27 Mad. 348, *Rel. on.* (*Srinivasa Aiyangar, J.*). MEENAKSHISUNDRAM PILLAI *v.* CHENCHU MUDALIAR. **109 I.C. 18= A.I.R. 1928 Mad. 459.**

———*Possession as a mortgagee turned into possession as a vendee without a registered instrument—Oral evidence was admissible to prove facts referable to the contract of sale.*

A brought a suit for a declaration that certain land was liable to be attached in execution of his decree against *P*. At the trial it transpired that *P* had at first mortgaged the land with possession to *N* and her husband, by a registered deed and had later sold it outright to the mortgagees by a *pyatpaing* and without any registered instrument. It was contended on behalf of *A* that no oral evidence was admissible to prove the sale,

Held, that oral evidence could be offered of facts which were referable to the contract of sale and productive of a change in the nature of possession. It is not correct to say that to apply the doctrine of part performance, possession must have been given under the contract of sale and could be referred to no other title. A. I. R. 1924 Rang. 214 (F. B.); A. I. R. 1927 Rang. 33 (F. B.); A. I. R. 1925 Rang. 119; A. I. R. 1923 Rang. 125; A. I. R. 1922 Bom. 9; S. A. No. 89 of 1923; A. I. R. 1914 P. C. 27; A. I. R. 1926 Rang. 182 *Special Second Appeal* No. 104 of 1927 and A. I. R. 1927 Rang. 33 (F. B.) *Discussed* and *Rel. on*, and Rang. S. A. 308 of 1923, *Diss. from.* (*Heald and Maung Ba, JJ.*). C. A. M. K. R. CHETTIAR *v.* MA KYAW. **110 I.C.616=6 Rang. 270= A.I.R. 1928 Rang. 321.**

———Where the terms of a contract are unambiguous, oral evidence of surrounding circumstances and conduct of the parties in contradiction to the terms of a written contract is not admissible.

Where the terms of the deed are clear express an outright sale, the evidence to prove that the transaction is a mortgage or that there is contemporaneous oral agreement to re-sell, is excluded by S. 92: A.I.R. 1924 Rang. 57; 3 L.B.R. 100 (F.B.); 22 All. 149; A.I.R. 1924 P.C 88, *Rel. on*; A.I.R. 1925 P.C. 75, *Dist.* (*Heald and Mya Bu, JJ.*). MAUNG SHIVE PHOO *v.* MAUNG TUN SHIN. **105 I.C. 293=5 Rang. 644=6 Bur. L.J. 195= A.I.R. 1928 Rang. 88.**

———Evidence in any shape cannot on behalf of any party to sale-deed be admitted for showing that there was no agreement at all, or in other words, that a deed was meant to be inoperative; *Harris v. Rickett*, (1859) 118 R.R. 294 and *Pym v. Campbell*, (1856) 119 E. R. 903, *Dist.* (*Mukerji and Ashworth, JJ.*). LACHMAN DAS *v.* RAM PRASAD. **100 I.C. 1029=49 All. 680=25 A.L.J. 349= A.I.R. 1927 All. 422.**

EVIDENCE ACT (1872), S. 92—Sale.

———*Independent subsequent contract to re-purchase can be proved.*

In the case of an outright sale, by registered deed, an independent contract to re-sell, either oral or by unregistered deed can be proved ; but, where the contract is not an independent transaction, but forms part and parcel of the original transaction and together constitutes a mortgage, such contract cannot be proved : A I.R. 1926 Bom. 497, *Rel. on* ; 5 B.L.T. 99 and A. I. R. 1923 Rang. 52, *Expl.* (*Maung Ba, J.*). MA NAN SHEIN *v.* U. YAING.
105 I.C 482=6 Bur L.J. 210=
A.I.R. 1927 Rang. 314.

———*Simple mortgagor subsequently transferring possession to mortgagee—No document—Latter asserting it to be under invalid sale can plead it as bar in redemption.*

Where there is a registered simple mortgage of land a subsequent transfer of possession of the land to the mortgagee without a document by the mortgagors, and the latter assert that this was under the original mortgage, whilst the former plead that it was a fresh transaction amounting to an outright, but invalid, sale to them, the mortgagee can, in a suit by the mortgagors for redemption of the mortgage, plead and prove this invalid sale in equity and as a shield : Civ. App 299 of 1924 and A.I.R. 1924 Rang. 214 (F.B.), *Affirmed* ; A.I.R. 1923 Rang. 125, *Rel. on* ; A.I.R. 1925 Rang. 291 (F.B.), *Foll.* ; A I.R. 1924 Rang. 214 (F.B.), *Appr.* 89 I.C. 875 ; A.I.R. 1925 Rang. 322 ; 3 Rang. 243, *Overruled.* (*Rutledge, C. J., Heald, Carr and Duckworth, JJ.*). MAUNG OK KYI *v.* MA PU. **99 I.C. 519=**
4 Rang. 368=5 Bur. L.J. 145=
A.I.R. 1927 Rang. 33 (F.B.).

———*Government lands, auction of—Claim to accretions.*

Where at the time of the sale by the Government of a certain estate some portions of it were submerged under water and where in the sale notification the area of the estate was specified as certain number of bighas,

Held, that the latter fact did not preclude the purchaser or his successor-in-interest from claiming any accretion to the estate : 2 C. L. R. 39 ; 19 W.R. 89 and 24 W.R. 91, *Dist.* ; 32 C.L.J. 402 ; 21 W.R. 115, *Foll.* (*N.R. Chatterjee and Chotzner, JJ.*). SANKER ROY CHOWDHURY *v.* SECRETARY OF STATE. **84 I.C. 478=29 C.W.N. 166=**
40 C.L.J. 322=A.I.R. 1925 Cal. 346.

———*Encumbrance known to buyer.*

The evidence to prove the knowledge on the part of the buyer of the existence of an encumbrance not disclosed in the sale-deed by the vendor does not offend against S. 92, for such evidence does not contradict, vary, add to or subtract from its terms. (*Devadoss, J.*). RAMASUBBA IYER *v.* MUTHIAH KONE. **85 I.C. 999=A.I.R. 1925 Mad. 968.**

———*Evidence of collateral warranty admissible.*

Where the plaintiff purchaser of a motor car alleged in his plaint that there was an express warranty that the car was a new car and in perfect working order, but there was no such warranty in the written agreement,

Held, that evidence of such an express collateral warranty would be admissible under. S. 92, proviso (2). (*Pratt, J.*). HARBAT JOHN *v.* JAL P. VIRJI. **77 I.C. 150=25 Bom.L.R. 778=**
A. I. R. 1924 Bom. 41.

———An attempt to prove that a sale really took place for Rs. 2,500 when the deed says it took place for Rs. 3,000 is not allowed by S. 92 (2).

EVIDENCE ACT (1872), S. 92—Scope and applicability.

38 Mad. 514, *Foll.*; 36 A. 537, *Dist.* (*Walsh, J.*). LALA SINGH *v.* BASDEO SINGH. **71 I.C. 768=**
A. I. R. 1923 All. 429.

———*Oral evidence to vary terms of the deed is not admissible.*

When the document in question is in terms a sale-deed, no evidence to vary the term of the deed can be admitted unless the case can be brought within any of the provisos to S. 92 of the Indian Evidence Act. (*Macleod, C.J. and Shah, J.*). BAI ADHAR *v.* LALBHAI HIRACHAND. **66 I.C. 865=**
24 Bom.L.R. 239=A.I.R. 1922 Bom. 41.

———*Agreement to sell—Part performance of agreement—Specific performance of the rest was ordered.*

Defendant agreed to sell to the plaintiff two pieces of lands and a house. The agreement was reduced to writing on a plain paper. Plaintiff was put in possession of the lands, the house was conveyed by the defendant's passing a deed of sale on stamped paper but the sale-deed was not registered nor any sale-deed of the lands was ever passed. Agreement to sell also was not brought on record. In a suit by plaintiff for specific performance of the agreement,

Held, that as the agreement had been partly performed by placing the plaintiff in possession of two pieces of lands the plaintiff was entitled to succeed inasmuch as the written agreement of sale was not on a stamped paper it was not open to the plaintiff to adduce secondary evidence of it even upon payment of penalty. 23 Mad. 49 (P.C.), *Foll.* (*Macleod, C.J. and Shah, J.*). HIRALAL RAMNARAYAN *v.* SHANKAR HIRACHAND. **62 I.C. 637=**
45 Bom. 1170=23 Bom.L.R. 506=
A.I.R. 1921 Bom. 401.

—S. 92—Scope and applicability.

———Though S. 92 contemplates that no party to an instrument or his representative should be allowed to uphold the written contract and yet try to establish a contemporaneous oral agreement so as to vary the terms of it, does not prevent even a party to such an instrument from establishing any fact which would make the document itself invalid or establish any fraud or show the transaction to be illegal for the effect of such a plea is not to vary the terms of the document, but to nullify it: (*Case law referred*). (*Sulaiman and Kendall, JJ.*). GOPAL NATH *v.* RUP RAM. **A.I.R. 1930 All. 786.**

———In a suit instituted for recovery of a certain sum due on a hundi, the defendants pleaded that they had compounded with the plaintiffs' creditors by agreeing to pay them 12 annas in the rupee in full settlement of their claims of which they had to pay 4 annas in the rupee in cash and to execute hundis on the balance payable at a future date. The defendants said that the plaintiffs had agreed to the terms and in pursuance thereof received 4 annas in cash but declined to receive the hundis tendered to them,

Held, that the evidence of the defendants could not be excluded and S. 92 did not apply as the defendants did not attempt to contradict, add to or subtract from the terms of the contract as contained in the hundi. (*Wild, J. C. and Rupchand, A.J.C.*). KALUMAL *v.* KESSUMAL. **114 I. C. 97=**
23 S L. R. 294=A.I.R. 1929 Sind 153.

———The provisions are to be read independently of English decisions. (*Mukerji and Ashworth, JJ.*). LACHMAN DAS *v.* RAM PRASAD.
100 I.C. 1029=49 All. 680=25 A.L.J. 349=
A.I.R. 1927 All. 422.

EVIDENCE ACT (1872), S. 92—Scope and applicability.

——The liability in relation to a promissory note or negotiable instrument, attaches by or from delivery, and S. 46 of the Negotiable Instruments Act provides that as between the parties to an instrument (that means to say the immediate parties) it may be shown that the instrument was delivered conditionally or for a sp cial purpose only, and not for the purpose of transferring absolutely the property therein. Similarly it may be shown that the instrument was delivered conditionally, that is to say, as a collateral undertaking, given to the creditor, to be enforced only in the event of the debtor failing to discharge some contemporaneous undertaking. There is no difference in substance but only in illustration and application between the provision in S. 46 of the Negotiable Instruments Act, and proviso 3 to S. 92 of the Evidence Act. (*Walsh, A.C.J. and Banerji, J.*). SHEO PRASAD RAM PRASAD *v.* GOBIND PRASAD. **100 I. C. 332= 49 All. 464=25 A.L.J. 305.= A.I.R. 1927 All. 292.**

——*Companies Act—Company must be deemed a separate entity from share-holders—Though presumption is that all transactions are true, they can be proved to be otherwise.*

Where a company is duly incorporated under the Indian Companies Act, the Court should start with the presumption that it is a separate entity from any individual although that individual may practically hold all the shares, but it would not necessarily follow that every alleged transaction between such individual and the company would be valid or that it would represent a real transaction, and S. 92 of the Evidence Act would not prevent Court from enquiring into the truth of the transactions but the *onus* will be on the Crown. (*Marten, C. J. and Kemp, J.*). SIR DINSHAW MANECKJEE PETIT, BART, *In re.* **102 I.C. 49=29 Bom. L.R. 447= 51 Bom. 372=A.I.R. 1927 Bom. 371.**

——*Contract reduced to writing—Rule excluding any other evidence does not apply when there is complete oral contract before writing.*

The rule of evidence that where the terms of a contract have been reduced to writing, you cannot give any other evidence of the contract than the written document itself, applies only if the document was intended to be the embodiment in writing of the transaction and not if there was a complete oral contract before the writing was given and the document does not express and was never intended to express the whole agreement between the parties. 20 W.R. 150; A.I.R. 1923 P.C. 50 and 43 Cal. 895, *Rel. on.* (*B. B. Ghose and Panton, JJ.*). KHESTRA NATTSIKDAS *v.* HARASUKHDAS BALKISSEN DAS. **102 I. C. 871= 45 C. L. J. 233=31 C. W. N. 703= A. I. R. 1927 Cal. 538.**

——*Sections do not conflict with each other—In S. 92 subsequent representation is relied upon as true; in S. 115 it is relied upon as binding upon the party making it.*

Where a party seeks to give evidence of a subsequent oral agreement modifying the terms of the written grant, he puts forward that agreement as true and relies upon the truth of that agreement. In the case of an estoppel, the party who pleads it does not profess to show that the representation made is true. On the contrary his case very probably is that the representation is false but that the person who made it should not be allowed to show that it is false. Sections 92 and 115 deal with

EVIDENCE ACT (1872), S. 92—Scope and applicability.

two entirely different topics and there is no conflict between the two. (*Venkatasubba Rao, J.*). MD. BATCHA SAHIB *v.* ARUNACHALAM CHETTIAR. **90 I. C. 875=1925 M. W. N. 596= A. I. R. 1926 Mad. 39=49 M.L.J. 396.**

——*Fact of lease-deed in suit being part of* benami *transaction of transfer by sale can be proved.*

Where the defendant denied the alleged agreement to take the land on lease, but admitted the execution of the lease-deed, but alleged that to protect his property from creditors he had transferred his land *benami* to the name of the plaintiff and that the document was made in furtherance of this *benami* transaction.

Held, that in effect his case is that there was no agreement of lease at all and that the deed is merely a fiction. He is therefore not debarred from producing oral evidence of this allegation. Evidence may be given—firstly to show that there was no disposition at all. The rule operates only when there has been in fact a disposition, the whole of which was meant by the intention of parties to be embodied in the form of a document. 7 M. H. C. 189, *Foll.* (*Carr, J.*). ABDUL *v.* ARLIN. **95 I.C. 512=5 Bur. L.J. 2= A. I. R. 1926 Rang. 94.**

——S. 92 merely prescribes a rule of evidence; it does not fetter the Court's power to arrive at the true meaning and effect of a transaction in the light of all the surrounding circumstances. (*Sir Lawrence Jenkins.*) BAIJNATH *v.* VALLY MAHOMED. **86 I. C. 332=27 Bom. L.R. 787= 3 Rang. 106=3 P. L. R. 227=30 C. W. N. 242= 6 L. R. P. C. 57=2 O. W. N. 279= A. I. R. 1925 P.C. 75=48 M. L. J. 339 (P. C.).**

——When the evidence was not of an oral agreement varying the terms of a written contract between the parties to the instrument, but of a different contract:

Held, S. 92 has no application and the evidence is admissible. (*Newbould and B. B. Ghose, JJ.*). SHAILESH CHANDRA GUHA *v.* BECHAI GOPE. **84 I. C. 124= 40 C. L. J. 67= A.I.R. 1925 Cal. 94.**

——*No estoppel against statute.*

Where the transaction is expressly forbidden by statute, the rule that the grantor cannot derogate from his grant does not operate, for on a point of law there can be no estoppel and there is no rule of law standing in the way of a party asking the Court to hold that a particular transaction which as a matter of fact is void should be declared to be of no effect. In such a case the Court is bound as soon as the invalidity of the transaction is pointed out to it, to set aside the transaction provided that the Court holds that the alleged invalidity really exists. 12 N. L. R. 100 and 44 Bom. 488, *Foll.* (*Baker, J. C.*). KESARBAI *v.* JAMADAR. **82 I. C. 126=20 N.L.R. 162= A.I.R. 1925 Nag. 125.**

——The view that there has been introduced into the law of India such a radical change in the laws of evidence as would have the effect of excluding from the class of mortgages many transactions which before the Evidence Act would have been held to be within that clause is not correct. (*Lord Blanesburgh.*) NARSINGERJI GYANAGERJI *v.* PANUGANTI PARTHASARADHI. **82 I.C. 993=47 Mad. 729=51 I.A. 305= 27 Bom. L.R. 4= 40 C.L.J. 481=29 C.W.N. 246= 20 M. L. W. 701=1924 M. W. N. 916= 23 A.L.J. 161=6 L.R.P.C. 41=26 P.L.R. 18= A.I.R. 1924 P.C. 226=47 M.L.J. 809 (P.C.).**

EVIDENCE ACT (1872), S. 92—Scope and applicability.

———*Deccan Agriculturists' Relief Act, S. 10-A—Sale or mortgage—Court can determine real nature of transaction.*

Defendant executed a sale-deed in favour of plaintiff, at the same time there was an oral agreement to re-convey on payment of purchase money, and an unregistered *kabuliyat* was executed subsequently embodying the terms of the agreement. In plaintiff's suit for possession, defendants pleaded that the transaction was only a mortgage,

Held, S. 10-A of the Deccan Agriculturists' Relief Act empowers a Court notwithstanding the provision of S. 92 of the Evidence Act, to inquire into and determine the real nature of such a transaction. The plaintiff whose title is based on the sale-deed, cannot succeed, if defendants prove the transaction to be only a mortgage. (*Kennedy, J.C. and Raymond, A.J.C.*). HAMBIRKHAN *v.* MURIJMAL. **65 I.C. 356=15 S. L. R. 160=A.I.R. 1922 Sind 39.**

———*Oral agreement about payment, modifying written agreement—Payment accordingly—Oral agreement or payment can be proved but not such agreement as to future payments.*

Where an oral agreement is made, which in respect of the manner of payment rescinds or modifies a contract, grant or disposition of property required by law to be in writing or actually written and registered, and any payment is made in accordance with that oral agreement, whether in complete or partial satisfaction of the contract, S. 92 does not exclude evidence of that payment or of the oral agreement that explains it. It does exclude evidence of the agreement in respect of future payments not in accordance with the terms of the instrument. (*Hallifax, A. J. C.*). SAMBHU *v.* TIKARAM. **59 I. C. 240=17 N. L. R. 111=A.I.R. 1921 Nag. 51.**

—S. 92—Substitution.

———Oral evidence is not admissible to show that a person who has signed a contract personally was contracting only as an agent for his principal, for the purpose of exonerating the contracting party from liability for that would be substituting a different agreement from that evidenced by the writing. *Higgins* v. *Senior*, (1841) 58 R. R. 884, *Foll.*; 46 Cal. 663 (P.C.), *Ref.* (*Pratt, J.*). EBRAHIMBHOY PABANEY MILLS CO., LTD. *v.* HASAN MAMOOJI. **63 I.C. 482=45 Bom. 1242=23 Bom. L. R. 767=A.I.R. 1921 Bom. 81.**

———*Substituted oral agreement—Party setting up must prove that the other party had the understanding that both parties were proceeding on a new agreement.*

When parties, who have bound themselves by a written agreement, depart from what has been so agreed on in writing and adopt some other line of conduct, it is incumbent on the party endeavouring to enforce a substituted verbal agreement, to show, not merely what he understood to be the new terms on which the parties were proceeding but also that the other party had the same understanding that both parties were proceeding on a new agreement, the terms of which they both understood. (*Mookerjee and Fletcher, JJ.*). DINA NATH *v.* NETHARAM. **64 I.C. 785=33 C. L.J. 577=A.I.R. 1921 Cal. 852.**

—S. 92—Surrounding circumstances.

———*Oral agreement showing nature of document is not admissible but Court can look into circumstances if document is of doubtful tenor.*

EVIDENCE ACT (1872), S. 92—Surrounding circumstances.

Proof of an oral agreement to show the nature of a document is excluded by S. 92. Such proof cannot be admitted under proviso 6. All that Court has to do is that if the document is of doubtful tenor, it should, in construing it look into surrounding circumstances. A contemporaneous oral agreement contradicting the terms of a document cannot be admitted under the proviso: A. I. R. 1924 P.C. 226; A. I. R. 1924 P.C. 75; A. I. R. 1929 Mad. 807, *Ref.*; 22 All. 149 and 28 Cal. 256, *Dist.*; 25 Mad. 7, *Foll.* (*Curgenven, J.*). LAKSHMIAYYA *v.* MURAHARI. **31 M L.W. 516=1930 M.W.N. 129=A.I.R. 1930 Mad. 547.**

———*Evidence as to circumstances themselves is inadmissible.*

In construing a document evidence so far as it relates to prove how the language of the documen t is related to the existing facts and surrounding circumstances is only admissible and not the circumstances themselves as elucidating the document: 22 All. 149 and A.I.R. 1917 P.C. 207, *Ref.* (*Suhrawardy and Garlick, JJ.*). SISIR KUMAR MALLIK *v.* NARAN CHANDRA MALLIK. **119 I. C. 803=33 C.W.N. 531=A.I.R. 1929 Cal. 548.**

———*Surrounding circumstances can be taken into consideration to find true meaning and effect of the transaction.*

S. 92 merely prescribes rule of evidence; it does not fetter the Court's power to arrive at the true meaning and effect of a transaction in the light of all the surrounding circumstances: A.I.R. 1925 P.C. 75, *Foll.* (*Findlay, J.C.*). MUMMASING RAJAPUTA *v.* NARAINSING. **107 I. C. 658=A. I. R. 1929 Nag. 91.**

———*Evidence of circumstances led only to throw light on the meaning and not to change the nature of the document.*

Under proviso 6 to S. 92, evidence of circumstances surrounding a document is admissible only for the purpose of throwing light on its meaning and it would not be permissible to consider the surrounding circumstances with a view to holding that a document, which on the face of it was a sale-deed, was intended to operate as a mortgage: A.I.R. 1925 Bom. 501, *Foll.* (*Prideaux, A.J.C.*). KALURAM *v.* GAJASA. **107 I. C. 201=A.I.R. 1928 Nag. 182.**

———Oral evidence for the purpose of ascertaining the intention of the parties to the deeds is not admissible, being excluded by the enactment in S. 92, yet it does not enact that no statement of fact written instrument is to be contradicted by oral evidence. Extrinsic evidence of circumstances is admissible to show the relation of the written language to existing facts. (*Maung Ba, J.*). HAJEE LIN *v.* MAUNG BA. **109 I.C. 189=5 Rang. 822=A.I.R. 1928 Rang. 79.**

———*Circumstances surrounding a document may be proved only to make its meaning clear and not to prove it to be something else than what it purports to be.*

The language of the proviso is rather vague. It is true that evidence of the circumstances, surrounding a document is admissible; but it is admissible only for the purpose of throwing light on its meaning It would not be permissible to consider the surrounding circumstances with a view to holding that a document which on the face of it is a sale-deed was intended to operate as a mortgage. There must be some limit to the suggestion that the surrounding circumstances can always be scrutinised so as to enable the Court to alter or change

EVIDENCE ACT (1872), S. 92—Surrounding circumstances.

the nature of the document to something different from what it appears to be. Otherwise there could be no certainty as to the proper construction to be placed on a document which to all appearance is unambiguous. (*Macleod, C.J. and Coyajee, J.*). MARTAND TRIMBAK *v.* AMRITRAO RAGHOJIRAO. **93 I.C. 924=27 Bom. L.R. 951=49 Bom. 662=A.I.R. 1925 Bom. 501.**

———Surrounding circumstances such as are clearly required to show in what manner the language of the documents was related to existing facts are to be taken into consideration. 27 I.A. 58, *Foll.* (*Lord Blanesburgh.*) NARSINGERJI GYANAGIRJI *v.* PANUGANTI PARTHASARADHI. **82 I.C. 993=47 Mad. 729=51 I.A. 305=27 Bom. L.R. 4=49 C.L.J. 481=29 C.W.N. 246=20 M.L.W. 701=1924 M.W.N. 915=23 A.L.J. 161=6 L.R.P.C. 41=26 P.L.R. 18=A.I.R. 1924 P.C. 226=47 M.L.J. 803 (P.C.).**

———*Evidence of surrounding circumstances is not admissible to contradict terms of a document.*

The surrounding circumstances referred to in the proviso are circumstances which enable the Court to ascertain and give effect to the full intention of the parties as expressed in the document itself, and evidence of surrounding circumstances is not admissible under the proviso for the purpose of contradicting the terms of the document. (*Wallis, C. J. and Oldfield, J.*). NARASINGERJI GYANAGIRJI *v.* PARTHASARADHI RAYANIM GARU. **1921 M.W.N. 519=A.I.R. 1921 Mad. 498.**

—S. 92—Terms of the contract.

———*Oral agreement varying terms—Admissibility.*

Where the terms of a contract have been reduced to writing no evidence of any oral agreement or statement is admissible as between the parties to show that the document was not to take effect forthwith as mentioned in the document but after the expiry of a certain period. (*Sen and Niamatullah, JJ.*). PHARMESHWARI DAS *v.* LACHMAN PRASAD. **1930 A.L.J. 1066.**

———*Promissory note—Endorsee can prove his limited liability by oral evidence.*

Lobo, A. J. C.—It is open to the endorser of a negotiable instrument to prove that the endorsee orally agreed to recover the amount of the pro-note from the estate of the drawer only.

Rupchand Bilaram, A. J. C.—A bill or note is required by law to be in writing and so the supervening contracts thereon such as acceptance or endorsement. It, therefore, follows that the contracts of the immediate parties to them are subject to the ordinary rule as to written contracts. The contract, by an endorser of a bill or note, however, stands on a different footing. It is not fully expressed in writing on the document itself, and certain terms are said to be affixed to it either by the Law Merchant or by statute. There is, therefore, more room for admission of parol evidence as to what is the contract represented by the transaction. Where the endorsement is silent, it undoubtedly raises a *prima facie* presumption of law that the liabilities, *inter se*, of successive endorsers are that every prior endorser must indemnify a subsequent one. But this is only a presumption and not an express term of the contract reduced to writing. And, therefore, the rules as to exclusion of parol evidence crystallized in S. 92, Indian Evidence Act, do not apply. As between immediate endorsers such presumption may, in the absence of any other well-recognized rule of law or statutory provision

EVIDENCE ACT (1872), S. 92—Third parties.

in that behalf, be rebutted by parol evidence: *MacDonald* v. *Whitfield*, (1883) 8 A. C. 733, *Rel. on.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). SUNDERJI GOURISHANKER *v.* ABIGAIL. **105 I.C. 747=22 S.L.R. 249=A.I.R. 1928 Sind 50.**

———In the case of an elaborate conveyance prepared after much discussion in the offices of the solicitors for the parties, oral evidence as to the terms of the contract is inadmissible. (*Walmsley and Mukerji, JJ.*). EASTERN MORTGAGE AND AGENCY CO. *v.* MD. FAZUL KARIM. **90 I. C. 851=52 Cal. 914=41 C.L.J. 571=A.I.R. 1926 Cal. 385.**

———*Assignment of decree—Oral evidence is inadmissible to vary term as to consideration payable but is admissible to contradict recital as to amount paid actually.*

The law allows the parties to a deed to show by oral evidence that a recital of fact in a deed is not true. But a recital which is a term of the contract between the parties cannot be contradicted in that manner.

A deed of assignment of a portion of a mortgage decree recited that the consideration for the assignment was a certain amount and that out of that a certain sum was paid in advance on the day of the execution of the deed of assignment,

Held, that evidence was admissible for the purpose of showing that out of the sum stated to have been paid only a portion had been actually paid,

Held, further, that oral evidence to show that the consideration for the assignment was less than that recited in the deed, was not admissible. (*Srinivasa Aiyangar, J.*). LODD GOVINDOSS KRISHNADOSS *v.* MUTHIAH CHETTY. **A.I.R. 1925 Mad. 660=48 M.L.J. 721.**

———*Parties need not appear on face of document—Receipt for rent.*

For the purposes of S. 92 it is immaterial whether the parties to a document appear as executants on the face thereof. Where a landlord gives a receipt for rent received from the tenant, the tenant is a party to the receipt though his name does not appear on the face of the receipt.

Recitals in receipts as to the period for which the payments were made do clearly evidence one of the terms of the contract and cannot be contradicted by oral evidence. (*Wazir Hasan, A.J.C.*). KUNWAR BEHARI LAL *v.* KALKA. **77 I.C. 695=25 O.C. 282=A.I.R. 1923 Oudh 45.**

—S. 92—Third parties.

———S. 92, which excludes evidence of any oral agreement modifying the written contract applies only as between the parties to the instrument and their representatives-in-interest. It does not preclude a person who is not a party to the instrument, from giving evidence, challenging the nature of the transfer: A. I. R. 1929 All. 659 and 43 Mad. 436, *Ref.*; A.I.R. 1925 Bom. 514 and A.I.R. 1926 Pat. 582, *Dist.* (*Sulaiman and Kendall, JJ.*). RAM SUNDAR MAL *v.* COLLECTOR OF GORAKPUR. **A.I.R. 1930 All. 798.**

———*Scope—Objection raised by third party—Court whether go into the same.*

S. 92 of the Evidence Act applies only to transactions *inter partes* and would not bar an enquiry at the instance of a third person whether the parties intended certain item to be transferred by the sale deed. (*Sulaiman and Kendall, JJ.*). GOPI NATH *v.* RUP RAM. **1930 A.L.J. 926.**

———S. 92 does not prevent proof of a fraudulent dealing with a third person's property, or

EVIDENCE ACT (1872), S. 92—Third parties.

proof of notice that the property purporting to be absolutely conveyed belonged to a third person, who was not a party to the conveyance.

Where a person conveys property to another but continues in possession under an oral agreement of repurchase such person can prove against his vendee's purchaser that the sale by the vendee was in fraud of his agreement of repurchase: A.I.R 1917 P. C. 207, *Foll.*; 3 L.B.R. 100 (F.B.), *Not foll.* (*Pratt, Offg. C. J. and Ormistone, J.*). A MALAKYI *v.* KO PO NYEIN. **114 I.C. 676=6 Rang. 741= A.I.R. 1929 Rang 86.**

——What the section says is not between the parties to the contract but between the parties to the instrument, and therefore the section is no bar to the admission of evidence to show what the true nature of the written transaction was, at the instance of a third party, and evidence as to the third party's right cannot only be admissible but is most relevant: 4 N.L.R. 115; 27 Mad. 329; 28 All. 473 and A.I.R. 1917 P.C. 207, *Rel. on.* (*Kinkhede, A.J.C.*). SABHAJI *v.* NAWAL SINGH. **104 I. C. 736=10 N. L. J. 201= A. I. R. 1928 Nag. 4.**

——*Pre-emptor not debarred from showing the intention of the parties or the real nature of the transactions.*

As between the parties to the instrument, oral evidence of intention is not admissible for the purpose of construing the deeds or ascertaining the intention of the parties. But in a suit for pre-emption, a pre-emptor not being a party to the instrument cannot be debarred from adducing evidence to show the intention of the parties or the real nature of the transaction. 22 All. 149 (P.C.), *Rel. on.* (*Stuart, C. J. and Srivastava, J.*). MAHOMED ISHAK *v.* FAHI-UN-NISSA. **113 I C. 263=5 O W.N. 825=4 Luck. 68= A.I.R. 1928 Oudh 472.**

——*Transaction with a third party is not governed by the section.*

Plaintiff sold his land to *A* in satisfaction of a debt of Rs. 450. *A* was alleged to have agreed that he would at any time re-sell the land to the plaintiff at the same price. Later, *A* sold the land to the defendant who agreed with the plaintiff to be bound by the same terms as *A* and to reconvey the land to him at any time for Rs. 450. Plaintiff sued the defendants on the agreement to reconvey the land. The lower Court held that the plaintiff was barred by S. 92 from giving evidence to prove the agreement.

Held, that if the question related to the conveyance to *A*, then evidence was not admissible under S. 92. But as the plaintiff was not a party to the sale-deed executed by *A* in favour of the defendants, S. 92 did not apply and did not debar him from proving the agreement that he set up. A.I.R. 1917 P. C. 207, *Foll.* (*Carr, J.*). MAUNG THAN GYAUNG *v.* MAUNG PYU. **108 I.C. 734= 5 Rang. 836=A.I.R. 1928 Rang. 61.**

——Subsequent oral agreement between *A* and *C* varying terms of deed between *A* and *B* is provable by *C* against *A*. (*Daniels, J.*). SURAJ PRASAD *v.* MAHESHWARI PRASAD. **96 I.C. 276 (All.).**

——*Vendee can give oral evidence in a pre-emption suit to explain the character of the sale-deed.*

In a suit for pre-emption against the vendee, the vendee can adduce evidence showing that a document which on its face purported to be a deed of sale was in reality a deed of relinquishment. Section 92 excludes the admission of any oral agreement or statement as between the parties to an instrument

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or their representatives-in-interest, but the plaintiff in a pre-emption suit is not such a party. (*Lindsay and Sulaiman, JJ.*). BHULLEN SINGH *v.* KUSHI RAM. **79 I.C. 320=21 A L.J. 932= 5 L.R.A. Civ. 41=A.I.R. 1924 All. 229.**

——*Transaction with a third party—Evidence as to, is admissible.*

Whenever evidence is tendered as to a transaction with a third party it is not governed by S. 92 or by the rule of evidence which it contains, and in such a case the ordinary rules of evidence of equity and good conscience come into play unhampered by the statutory restrictions. (*Macleod, C. J. and Crump, J.*). TALAKCHAND BHERAJI *v.* ATMARAM KESHAV. **77 I.C. 342= 25 Bom. L.R. 818=A.I.R. 1924 Bom. 58.**

——Evidence is admissible to show that a sale-deed is not in fact a sale-deed but only a mortgage-deed. Section 92 prohibits only parties. 44 I. A. 236, *Foll.* (*Macleod, C. J. and Crump, J.*). HIRAJI *v.* VISHULL. **79 I.C. 186=A.I.R. 1923 Bom. 429.**

——*Stranger to deed cannot plead condition precedent.*

Per *Das, J.*—A separate oral agreement constituting a condition precedent to the attaching of any obligation under the document could be proved only by the vendor or his representative-in-interest. 27 All. 271, *Foll.* (*Dawson-Miller, C. J., Das and Adami, JJ.*). BHONU LAL CHOUDHURY *v.* W. A. VINCENT. **65 I.C. 882=3 Pat. L.T. 653= A.I.R. 1922 Pat. 619.**

—S. 92—Usage.

——Evidence of an usage inconsistent with the terms of the contract is inadmissible though evidence of an usage increasing liability of a broker is admissible as consistent with the contract. (*Buckland, J.*). NANDA LAL ROY *v.* GURUPADA HALDAR. **81 I.C. 721=51 Cal. 588=A.I.R. 1924 Cal. 733.**

——*Custom that when due date falls on a holiday contract may be performed on the next working day can be proved.*

In the absence of statutory provision or trade custom or usage to that effect, the fact that the performance of a contract falls due on a holiday does not alter the rights of the parties. *Richardson* v. *Godard*, (1859) 23 Howard 28; 15 Bom. 338, *Foll.* Such mercantile usage, though it needs not either the antiquity, the uniformity or the notoriety of custom, must be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. 7 M.I.A. 263 (P.C.) and *Gibson* v. *Small*, (1853) 4 H.L.C. 353, *Foll.* Consequently the usage of which evidence is received must not be repugnant to or inconsistent with the written contract. *Brown* v. *Byrne*, (1854) 3 El. and Bl. 703 and *Ross* v. *Shaw*, (1917) 2 Ir. Rule 367, *Foll.*

But in order that the material incidence which it is sought to annex should fall within the exception of repugnancy, the incident must be such as if expressed in the written contract, would make it insensible or inconsistent or thoroughly unreasonable. (English cases referred).

The mere fact that the usage varies the apparent contract is not of itself sufficient to exclude the evidence, for it is manifestly impossible to add any material incident to the written terms of a contract without altering its effect, more or less. The test is whether the incident, if expressed in the written contract, would make it insensible or inconsistent or unreasonable. (*Mookerjee, A.C.J. and Fletcher, J.*). KASIRAM PANIA *v.* HURNUNDROY FULCHAND. **26 C.W.N. 354=A.I.R. 1921 Cal. 809.**

EVIDENCE ACT (1872), S. 92—Usage.

———*Dowls expressly excluding transferability—Custom of transferability cannot be proved.*

Any evidence designed to show customary incidents of tenure as attaching to the jotes must be rejected if and so far as it conflicts with what is contained in the dowls themselves.

Where the dowls contain an express statement that there is no right of sale, gift or transfer without the landlord's consent in face of this, it is impossible to admit evidence of a custom of transferability in the jotes. (*Greaves and Newbould, JJ.*). MAHOMED AYEJUDDIN MEA *v.* PRODYOT KUMAR TAGORE. **61 I.C. 503=48 Cal. 359=25 C.W.N. 13=A. I. R. 1921 Cal. 741.**

—S. 92—Variation of terms.

———*By proviso 4, oral evidence, varying or modifying terms of a written contract, is entirely inadmissible.*

Under proviso 4, in certain cases, a subsequent oral agreement to modify any previous contract may be proved, but this is not permitted where the law requires that the terms of the contract should be reduced into writing, as in the case of a mortgage or where the terms of the contract have been registered. By proviso 4 oral evidence is entirely inadmissible to vary or modify the terms of such a contract.

Where the defendants pleaded that some time before any payment was made, an oral agreement with the plaintiffs was reached by which they (plaintiffs) were to receive, in full satisfaction of the mortgage deed, less money than was due to them under the mortgage bond.

Held, that the oral agreement set up on behalf of the defendant is calculated te vary the terms of the written instrument by trying to establish that although the plaintiffs were entitled to something under the terms of the mortgage, they were not entitled to it by virtue of a subsequent oral agreement, and that S. 92 was a bar to the plea. 42 Mad. 41 and 119 I.C. 92, *Rel. on.* (*Mukerji, Banerji and Young, JJ.*). COLLECTOR OF ETAH *v.* KISHORI LAL. **A. I. R. 1930 All. 721 (F.B.).**

———*Interpretation—Oral evidence to prove satisfaction of debt by part payment and remission of reminder is admissible.*

Section 63, Contract Act, has nothing to do with the interpretation of S. 92, Evidence Act. In some cases, where the promisee exercises any of his privileges given him under S. 63, Contract Act with the consent of the promisor the act may amount to a variance, etc., of the terms of the original contract and in that case, unless the variance is made by a document in writing, evidence would not be admissible to prove the fact. For example, where the mortgagee agrees to extend the time for payment, if the promise is merely oral and if the mortgage is by a registered document, the promise cannot be proved by oral evidence. But in the case of a satisfaction of the debt or remission of a part of the debt there is no contradicting, or varying, or adding to, or subtracting from the terms of the contract, and oral evidence may be adduced to prove the payment of a part of the debt and remission of the balance. For in that case, it would not be the plea of the mortgagor that the mortgagee is not entitled to the whole of his money. On the other hand his plea would amount to this, that although the mortgagee was entitled to the whole of his money he, in consideration of prompt payment of a certain amount (and for other possible considerations) agreed to accept a part in satisfaction of the full promise. 44 Bom. 55, *Diss. from*; A.I.R. 1926 All. 445, *Expl.*: A.I.R. 1928 Bom. 522; A.I.R. 1928 Mad. 233 and A.I.R. 1926 All. 693, *Discussed.* (*Mukerji, Banerji and Young, JJ.*). COLLECTOR OF ETAH *v.* KISHORI LAL. **A.I.R. 1930 All. 721 (F.B.).**

EVIDENCE ACT (1872), S. 92—Variation of terms.

———*Subsequent oral agreement modifying written contract cannot be proved by oral evidence.*

A subsequent oral agreement to take less than is due under a registered mortgage-bond is an agreement modifying the terms of a written contract, and if it has to be proved, oral evidence is inadmissible under S. 92, prov. 4. 42 Mad. 41 and 44 Bom. 55, *Foll.* (*Zafar Ali and Jai Lal, JJ.*). GHANAYALAL *v.* RALLIA RAM. **110 I.C. 424=9 Lah. 597=30 P.L.R. 46=A.I.R. 1928 Lah. 873.**

———*A document which cannot be said to be a variation of a mortgage bond is admissible.*

A leased certain property to *B* and also executed a mortgage of the same property to him. The mortgage bond contained a covenant that unless credit entry was made therein in respect of payments of amounts which might be made on account of the bond, a statement that they had been made otherwise would not be sustainable. On the same date *B* executed a varthamanam to *A* agreeing to pay a certain sum out of rents for charity, to pay the kist, and to credit the balance of the rents towards the bond. *A* alleged that *B* failed to pay the amount for charity and assessment due in respect of the land and that by crediting the rents as provided for in the varthamanam towards the mortgage-bond, the bond was fully discharged and therefore he instituted the suit for taking accounts in respect of the lease and the mortgage bond, for the recovery of the land and some other reliefs. The Trial Court dismissed the suit, holding that the varthamanam was inadmissible in evidence,

Held, that the varthamanam was admissible in evidence as it cannot be said to be a variation of the mortgage bond.

If the parties had intended actual cash payments to be the only method of discharge, then they would not have with the provision in mind, executed on the same date the varthamanam which provides for a different method of discharge. (*Madhavan Nair and Curgenven, JJ.*). RAMANATHAN CHETTIAR *v.* V. Ry. SETHURAMA MADIGE. **107 I.C. 808=27 M.L.W. 47=A.I.R. 1928 Mad. 382.**

———Evidence of statements made at the time of execution of will cannot be admitted for the purpose of varying the terms of the will. (*Macnair, A.J.C.*). GOVIND *v.* CHINTAMAN. **105 I.C. 840=A.I.R. 1928 Nag. 55.**

———*Two separate sale-deeds by both parties—Evidence to show the transaction to be exchange is admissible.*

Extrinsic evidence is admissible for the purpose of showing that two documents, though purporting to be separate sale-deeds, are in reality part and parcel of the same transaction, which, was one of an exchange. Such evidence which shows that two documents executed and registered on the same date are part and parcel of one transaction and in fact represent only one transaction, does not amount to leading evidence so as to vary the terms of a document. (*Sulaiman and Banerji, JJ.*). KISHEN LAL *v.* RAM LAL. **103 I.C. 399=28 A.L.J. 723=A.I.R. 1927 All. 696.**

———Oral evidence is not admissible to show that one of the executants of a money bond signed only

EVIDENCE ACT (1872), S. 92—Variation of terms.

as surety : 8 C.W.N. 101 and 2 U.B.R. 13, *Foll.* (*Doyle, J.*). MAUNG KO GYI *v.* U. KYAW.
103 I.C. 79=5 Rang. 168=
A.I.R. 1927 Rang. 199.

———Executant cannot plead that a different rate from that contained in the deed was agreed to. (*Stuart, C. J. and Misra, J.*). SUKU LAL *v.* MURARI LAL. **95 I.C. 1019=1 Luck. 160=**
13 O.L.J. 95=3 O.W.N. 248=
A.I.R. 1926 Oudh 273.

———There is no reason in S. 92 of the Act why the fact whether in case of a joint contract both or either of the workmen have actually, or constructively received all or part of the advance should not be proved, since the fact that one of two joint contracting parties actually receives the consideration does not necessarily involve that he does not receive it as regards part or whole as the agent of the other and a finding to that effect will not necessarily involve any variaion of the terms of the contract. (*Oldfield and Devadoss, JJ.*). KANDASWAMI MUDALI *v.* GURUSWAMI PILLAI.
71 I C. 61=16 M.L.W. 883=
31 M.L.T. 475=24 Cr. L.J. 13=
A.I.R. 1923 Mad. 184=44 M. L.J. 53.

———Where a bond is executed by 3 persons, one cannot show by oral evidence that he is only a guarantor for the other debtors. (*Maung Kin, J.*). MAUNG KYA *v.* A. P. R. PERIA KURPON CHETTY.
70 I. C. 872=1 Bur. L.J. 157=
A.I.R. 1923 Rang. 15.

—S. 92—Miscellaneous.

———The question whether a specification of a prior invention describes the invention claimed by the subsequent inventor is a question of construction and parol evidence is only admissible for the purpose of explaining words or symbols of art and other such like technical matters, and of informing the Court of relevant surrounding circumstances. (*Lord Warrington of Clyffe*). CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO. LTD.
124 I.C. 569=31 M.L.W. 126=
A.I.R. 1930 P.C. 1 (P.C.).

———Covenant for title under S. 55 (2), T. P. Act—Contract to the contrary—Whether can take shape of oral agreement. (*Sulaiman, J.*). MAHOMED SIDDIQ *v.* MUHAMMAD NUH. **124 I.C. 185=**
1930 A.L.J. 653.

—S. 93—Conflict.

———*Conflict between recitals and diagram forming part of description of property—Rule that recitals will prevail does not apply.*

Where, in a grant of land there is a repugnancy between the terms of the grant and any plan or diagram, the general rule is that the former will prevail. But where the plan of boundary is a part and parcel of the description itself the general rule ceases to apply.

Where a deed of conveyance contained an ambiguity as to the description of the property conveyed one portion of it referring to the entire house and another portion, only to a portion of the house but both read together did apply correctly either to the whole house or to a portion of it,

Held, the case is within Section 97 of the Act and extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention is to convey the house in its entirety or only a portion of it. The principle that when an instrument contains an ambiguity, evidence of user under it may be given to show the sense in which the parties

EVIDENCE ACT (1872), S. 93—Vakalatnama.

used the language employed, applies to a modern as well as to an ancient instrument, and where the ambiguity is patent as well as where it is latent. (*Wazir Hasan, A.J.C.*). ABDUL GHANI *v.* ASHIQ HUSAIN. **66 I.C. 442=8 O.L.J. 521=**
A.I.R. 1922 Oudh 162

—S. 93—Conflicting statements.

———Extrinsic evidence is admissible for explaining apparently conflicting statements in the body of a document and in the Schedule thereto. (*Mr. Ameer Ali.*) HUSSONALLY SULLEMANJI *v.* TRIBHOWANDAS MONGALDAS NATHUBHAI.
61 I C. 361=25 C W N. 385=
1920 M.W.N. 726= A.I.R. 1921 P.C. 40 (P.C.).

—S. 93—Construction.

———Deed—Construction—Ambiguous deed may be construed in the light of parties' conduct, but unambiguous deed should not be so construed. (*Mookerjee, A. C. J. and Fletcher, J.*). MIDNAPUR ZEMINDARI CO., LTD. *v.* JOGENDRA KUMAR BHAUMIK. **62 I. C. 491=33 C. L. J. 186=**
A. I. R. 1921 Cal. 750.

—S. 93—Defective language.

———Where the language of a document is defective, oral evidence is inadmissible under S. 93 to supply such defects. (*Wallis, C. J. and Oldfield, J.*). NARASINGIRJI GYANAGIRJI *v.* PARTHASARADHI RAYANIM GARU. **1921 M. W. N. 519=**
A.I.R. 1921 Mad. 498.

—S. 93—Elucidation.

———Where the instrument is plain and unequivocal, evidence of conduct cannot be received for elucidating its terms : 30 Cal. 738 (P. C), *Foll.* (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOSS. **112 I. C. 184=**
28 M.L.W. 824=A.I.R. 1928 Mad. 1064=
55 M. L J. 132.

—S. 93—Meaning not clear.

———Contract—Construction—Meaning of words in document not clear—Court may consider prior negotiations for determining meaning : 3 Bom. 186, *Foll.* (*Devadoss and Mackay, JJ.*). SECRETARY OF STATE *v.* ABDUL RAHIM. **114 I. C. 626=**
1928 M. W. N. 763= A. I. R. 1928 Mad. 1246.

—S. 93—Patent ambiguity.

———*When other evidence is not admissible.*

Where a mortgage deed was admittedly ungrammatical and could not be read literally so as to give any clear meaning and in order to arrive at the construction both the parties had to supply or remove some words from the document as it stood,

Held, there was a patent ambiguity in the deed and under S. 93 of the Evidence Act no evidence was admissible to supply the defect. (*Daniels and Neave, JJ.*). RAM GANESH *v.* B. RUP NARAIN RAI. **80 I. C. 944=5 L. R. A. Civ. 542=**
A. I. R. 1925 All. 34.

—S. 93—Sale certificate.

———Where the sale certificate is ambiguous, the Court is entitled to look into the surrounding facts and its conclusion upon those facts would be binding in second appeal. (*Das and Ross, JJ.*). LACHMI PRASAD TEWARI *v.* BALUNANDAN SINGH.
88 I. C. 399=1924 P.H.C.C. 271=
3 Pat.L.R. Civ. 107=A.I.R. 1924 Pat. 805.

—S. 93—Vakalatnama.

———Vakalatnama *without pleader's name but bearing his signature.*

Where a *vakalatnama* did not contain the name of the pleader after the word ' Mr. ' in the printed form but bore the signature of the party as well as that of the pleader,

EVIDENCE ACT (1872), S. 94—Misdescription.

Held, that the ambiguity in the document was not a patent ambiguity such that S. 93 would exclude evidence to explain it, but the ambiguity may be cleared up by extrinsic evidence under S. 96 of the Act. (*Hallifax, A.J.C.*). MAHARASHTRA JNAN KOSH MANDAL LTD. *v.* BIJJULAL.
71 I.C. 436=19 N.L.R. 36=6 N.L.J. 100=A.I.R. 1923 Nag. 182.

—S. 94—Misdescription.

——In cases of misdescription S. 94, Evidence Act, can have no application. (*Kinkhede, A.J.C.*). SABHAJI *v.* NAWALSINGH. **104 I.C. 736=10 N.L.J. 201=A.I.R. 1928 Nag. 4.**

—S. 94—Mutual mistake.

——Where the dispute is not as to existing facts but is as to what is intended by the parties to be done by them in future, S. 94 does not apply and mutual mistake of fact can be proved. (*Jai Lal, J.*). DALIP SINGH *v.* DALIP SINGH. **122 I.C. 493=A.I.R. 1930 Lah. 446.**

—S. 95—Latent ambiguity.

——Where a mortgagee transferred the mortgaged property and there was no mention in the deed that only mortgage rights were intended, to be transferred, the mere fact that it is mentioned in the deed that the property stood in the *khata* of the mortgagor and that there is an indemnity clause cannot justify the contention that only mortgage rights were intended; and if the absence of any assertion in the deed of absolute ownership on the part of the vendor mortgagee makes it possible to hold that mortgagee's rights were sold, there is a latent ambiguity to remove which evidence can be given: 14 M.I.A. 1 (P.C.), *Rel. on.* (*Jackson, A.J.C.*). DAULAT *v.* BALIRAM. **118 I.C. 682=A.I.R. 1929 Nag. 267.**

——*Evidence to clear it admissible.*

When a description is partly correct and partly incorrect and the former part is sufficient to identify the subject-matter intended while the latter does not apply to any subject, the erroneous part will be rejected on the maxim that a false description will not hurt when it can exist with the subject itself. Where the language of a will, though plain in itself, had no meaning with reference to existing facts, evidence can be let in to show how the error arose. (*Raymond and Madgavkar, A.J.Cs.*). NARAINDAS *v.* TEKCHAND. **84 I.C. 137=A.I.R. 1923 Sind 42.**

—S. 95—Misdescription.

——*Evidence is allowed to correct misdescription.*

Where property mortgaged was wrongly written in the bond as Touzi No. 1 in place of Touzi No. Y.

Held, that the plaintiff in a suit to enforce the mortgage can adduce evidence to show that there was a misdescription. (*Jwala Prasad and Ross, JJ.*). MT. WAJIHANNISSA BEGUM *v.* VALMIKI SAHAY. **71 I.C. 589=1 Pat. L.R. 80=A.I.R. 1924 Pat. 359.**

—S. 95—Payment of interest.

——*Evidence can be allowed to show that interest is payable monthly when document is silent.*

Under the provisions of S. 95 or S. 98 evidence can be allowed to show that the rate of interest specified in certain deeds is payable monthly, when the deeds are silent. (*Shadi Lal, C. J. and Tapp, J.*). TEJA SINGH *v.* SANT SINGH. **121 I.C. 75=30 P.L.R. 741=A.I.R. 1930 Lah. 144.**

——Where a compromise decree provides for interest at 2 per cent. but it is ambiguous whether it is monthly or annually, the Court may hear evidence as to the ordinary meaning of those expressions in documents of that nature. (*Walmsley and Greaves, JJ.*). MOHAMED MASER MAHOMED MEA *v.* ZAFUR MAHOMED. **62 I.C. 702 (Cal.).**

EVIDENCE ACT (1872), S. 98—Dispute about meaning.

—S. 96—Latent ambiguity.

——*Extrinsic evidence is admissible.*

When an instrument appears on its face to be free from ambiguity but upon the endeavour being made to apply it to the persons or things indicated, it transpires that the words are equally applicable to two or more persons or to two or more things there is a latent ambiguity. In such a case extrinsic evidence has created the ambiguity and extrinsic evidence is admissible to resolve it and direct evidence of intention may be given for the purpose of ascertaining which of the several persons or things to whom the words are applicable was intended to be connoted. (*Mookerjee and Chotzner, JJ.*). CHAIRMAN SERIAGANJ MUNICIPALITY *v.* CHITTAGONG COMPANY, LTD. **72 I.C. 696=36 C.L.J. 242=A.I.R. 1923 Cal. 32.**

—S. 96—Vakalatnama.

——*Vakalatnama without pleader's name but bearing his signature—Extrinsic evidence admissible.*

Where a vakalatnama did not contain the name of the pleader after the word Mr. in the printed form but bore the signature of the party as well as that of the pleader,

Held, that the ambiguity in the document was not a patent ambiguity such that S. 93 would exclude evidence to explain it, but the ambiguity may be cleared up by extrinsic evidence under S. 96 of the Act. (*Hallifax, A.J.C.*). MAHARASHTRA JNAN KOSH MANDAL LTD. *v.* BIJJULAL. **71 I.C. 436=19 N.L.R. 36=6 N.L.J. 100=A.I.R. 1923 Nag. 182.**

—S. 97—Applicability.

——*Conflict between recitals and diagram forming part of description of property—Rule that recitals will prevail does not apply—Ambiguity—Evidence to solve it is admissible whether it is patent or latent.*

Where, in a grant of land there is a repugnancy between the terms of the grant and any plan or diagram, the general rule is that the former will prevail. But where the plan of boundary is a part and parcel of the description itself, the general rule ceases to apply.

Where a deed of conveyance contained an ambiguity as to the description of the property conveyed one portion of it referring to the entire house and another portion, only to a portion of the house but both read together did apply correctly either to the whole house or to a portion of it,

Held, the case is within S. 97 of the Act and extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention is to convey the house in its entirety or only a portion of it. The principle that when an instrument contains an ambiguity, evidence of user under it may be given to show the sense in which the parties used the language employed, applies to a modern as well as to an ancient instrument, and where the ambiguity is patent as well as where it is latent. (*Wazir Hasan, A.J.C.*). ABDUL GHANI *v.* ASHIQ HUSAIN. **66 I.C. 442=8 O.L.J. 521=A. I. R. 1922 Oudh 162.**

—S. 98—Dispute about meaning.

——Where the point in dispute, is as to the meaning of a particular word in the document oral evidence may be admitted under S. 98. (*Newbould and Cuming, JJ.*). DINANATH DAS *v.* GOPAL CHANDRA DAS. **67 I.C. 90=A.I.R. 1923 Cal. 309.**

EVIDENCE ACT (1872), S. 98—Special usage.

—S. 98—Special usage.

———*Oral evidence—Meaning of words used in a particular locality.*

Where in a deed words in use in particular locality in a peculiar sense are employed, oral evidence is admissible under S. 98 of the Evidence Act to explain the meaning of the words in question. (*Rafique and Stewart, JJ.*). CHIDDU *v.* MESSRS. CAREW & CO., LTD. **63 I.C. 138= 3 U.P.L.R. (All.) 199.**

———*Words not ambiguous—Evidence of special usage giving them a peculiar meaning is admissible.*

Various words in written documents which *prima facie* present no ambiguity may be interpreted by extrinsic evidence of usage; and their peculiar meaning, when found in connection with the subject-matter of the transaction, may be fixed by parol testimony.

Evidence is admissible to show that the term (San) does not signify the Bengali year which commences on the first day of Baisakh and ends on the last day of Chaitra but a different period specially applicable to jalkar tenancies. (*Mookerjee and Panton, JJ.*). JYOT KUMAR *v.* JADU NATH. **64 I.C. 693=34 C.L.J. 160=26 C.W.N. 1022= A. I. R. 1921 Cal. 122.**

—S. 99—Deed of conveyance.

———*Conveyance—Contemporaneous oral agreement proved by person not actual party to the deed.*

As between the actual parties to an outright conveyance a contemporaneous oral agreement to allow re-purchase cannot be proved, but if the party who alleges the contemporaneous oral agreement was not actually a party to the conveyance (although the conveyance was given on his behalf) he can prove that there was such an agreement. A. I. R. 1928 Rang. 58, *Dist.*; A. I. R. 1917 P. C. 207, *Rel. on.* (*Heald and Maung Ba, JJ.*). MA MI *v.* MAUNG AUNG DUN. **111 I.C. 832= 6 Rang. 376=A.I.R. 1928 Rang. 244.**

—S. 99—Mortgage.

———In a suit on a mortgage the mortgagors are estopped from disputing that they have not got the interest which they said they had and which the mortgagees bargained for. But it is open to third parties to state and prove what that interest is and to say that the mortgagors have no interests or have lesser interests than those prescribed for in the mortgage. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RUKMANI AMMAL *v.* ANKAMA NAIDU. **96 I.C. 26=23 M L.W. 664= 1926 M.W N. 938=A.I.R. 1926 Mad. 744.**

———*Mortgage—Stranger can prove subsequent oral agreement between mortgagee and himself.*

Where properties were mortgaged by the defendant to the plaintiff and subsequently certain items of the mortgaged property were bought by another and there was an oral agreement between the purchaser and the plaintiff by which the plaintiff agreed to release the items sold to the purchaser,

Held, that in a suit by the plaintiff on the mortgage the purchaser would not be precluded from proving the oral agreement. 27 Mad. 368, *Ref. to.* (*Venkatasubba Rao, J.*). SRI SAILAM *v.* BHUSHAYYA. **87 I.C. 246=1925 M.W.N. 214= A.I.R. 1925 Mad. 775=48 M.L.J. 280.**

—S. 99—Pre-emption.

———It is open to the plaintiff in a pre-emption suit to show from circumstantial or oral evidence that the real transaction was one of a sale and not a mortgage; S. A. No. 485 of 1925, *Rel. on.* (*Sulaiman and Mukerji, JJ.*). SHEIK USMAN *v.* MOHAMMAD SHAFI KHAN. **98 I. C. 989= A.I.R. 1927 All. 204.**

—S. 99—Waqf.

———*Persons not claiming through settlor can show that waqf was illusory.*

A person who does not claim through the settlor is entitled to challenge the validity of a waqf on the ground that it was merely an illusory transaction never intended to be acted upon. 31 M. L. J. 431, *Foll.*; 10 C W.N. 449, *Dist.* and *Expl.*

Purchasers of some portion of the properties alleged to waqf at a sale for arrears of Government revenue are not persons claiming under the settlor. (*Chatterjee and Panton, JJ.*). HAMMAT ALI *v.* NOBENDRA KISHORE. **A.I.R. 1928 Cal. 233.**

—Ss. 101 to 103.

Admission.
Adoption.
Adverse possession.
Affirmation of fact.
Alluvion and Diluvion.
Ancestral Property.
Appeal.
Assets
Bailment.
Benami.
Carrier.
Compromise.
Condition.
Consideration.
Contract.
Criminal Trial.
Custom.
Declaration.
Duty of Court.
Ejectment.
Execution of decree.
Execution of document.
Exception to rule.
Fraud.
Genuineness.
Grant.
Jurisdiction.
Landlord and tenant.
Legal necessity.
Limitation.
Material alteration.
Minority.
Mortgage.
Negligence.
Negotiable instruments.
Notice.
Objection to onus.
Omission to discharge onus.
Onus immaterial.
Pardanashin Lady — *See* PARDANASHIN LADY.
Partition.
Possession.
Presumption.
Recitals.
Record-of-Rights.
Scope of.
Shifting of onus.
Special agreement.
Special plea.
Suit for profits.
Title.
Under influence.
Vendor and Purchaser.
Will.

EVIDENCE ACT (1872), Ss. 101 to 103—Admission—Execution.

—Ss. 101 to 103—Admission—Execution.

———*Admission by one defendant—Not conclusive against others.*

Where one of the defendants admits the execution of the bond alleged to be executed by all the defendants jointly, in respect of a partnership, such an admission is not conclusive, but it amounts to presumptive proof of the allegation of the plaintiff, and, therefore, the burden should be placed on the defendants to prove the non-existence of a partnership. (*Jai Lal, J.*). GULAB RAM *v.* GANGA SARUP. **93 I. C. 309=27 P. L. R. 160=A. I. R. 1926 Lah. 299.**

———*Execution admitted—Onus of proving it fictitious.*

The execution and registration of the document being admitted if the defendant makes the allegation that the document had been executed merely for show and was purely fictitious the burden of proof rests upon him. (*Lindsay and Kanhaiya Lal, JJ.*). CHAIDDU *v.* DESRAJ. **77 I. C. 753=21 A. L. J. 793=5 L. R. A. Civ. 55=A. I. R. 1924 All. 294.**

———*Thumb impression admitted — Knowledge of contents cannot be presumed.*

When a party admits his subscription or thumb impression borne on any document he ought not to be presumed necessarily to have put it upon that document with full knowledge of its contents and the burden still lies on the party relying on the document to prove the execution and passing of the consideration. 13 N. L. R. 121; A.I.R. 1922 All. 401 (1), *Foll.* (*Kinkhede, A.J.C.*). DEVIDAS *v.* MAMOOJI. **78 I. C. 104=20 N.L.R. 7=A.I.R. 1924 Nag. 103.**

—Ss. 101 to 103—Admission—Gift.

———*Plea of* benami *onus.*

Where a party had admitted the gift by *A* to *B* and the transaction is undisputed for several years even after the death of *A*.

Held, that the burden of proving the transaction was fictitious lies heavily on the party and is not discharged by proving that the donor managed the property especially where the donee was almost illiterate. (*Daniels and Lyle, A. J. Cs.*). MT. ANJUMAN-UN-NISA *v.* SHAIK ASHIG ALI. **66 I. C. 222=8 O. L. J. 439=A.I.R. 1922 Oudh 178.**

—Ss. 101 to 103—Admission—Lost bond.

———*Execution denied—Alternative plea of payment does not amount to admission.*

Where in a suit on a mortgage bond alleged to be lost the defendant denies execution, his alternative plea of payment does not amount to an admission of the mortgage sufficient to relieve the plaintiff from proving the loss of the original deed, and to entitle him to sue upon a copy of it. 11 A.L.J. 255, *Foll.*; 11 A.L.J. 734, *Diss. from.* (*Walsh and Pullan, JJ.*). MD. ZAFAR *v.* ZAHUR HUSAIN. **97 I.C. 82=49 All. 78=24 A.L.J. 964=A.I.R. 1926 All. 741.**

—Ss. 101 to 103—Admission—Partnership.

———*By one partner—Onus of proving it as not binding on others.*

Plaintiff sued defendants for recovery of a sum of money said to be due to him in respect of labour supplied to them. He alleged that accounts of labour supplied were settled and the sum of money was found due to him and produced a document signed by a partner in defendants' business saying the balance claimed in respect of labour was due to plaintiff.

EVIDENCE ACT (1872), Ss. 101 to 103—Adverse possession.

Held that it was an admission and it was for the defendants to prove that such an admission was obtained from them under circumstances which would prevent its being legally binding upon them. A. I. R. 1927 Rang. 318, *Cons.* and *Dist.*; A.I.R. 1925 Lah. 471, *Rel. on.* (*Otter, J.*). FONTYNE & CO. *v.* S. C. APPANNA. **A.I.R. 1929 Rang. 263.**

—Ss. 101 to 103—Admission—Prior suit.

———*Shifts burden of proof.*

B sued *W* to recover a sum of money wrongly paid to him. *W's* admission in a previous suit between *B* and a third person that he had received the money from *B* was proved against him. In the present suit *W* pleaded that he had not received the money and that the receipt executed by him in favour of *B* was obtained from him under undue influence.

Held, that *W's* admission in the previous suit shifted the burden of proving non-receipt of the money and existence of undue influence on *W*. (*Broadway and Campbell, JJ.*). WASAKHI RAM *v.* HUSSAIN KHAN. **75 I.C. 1027=A.I.R. 1924 Lah. 650.**

—Ss. 101 to 103—Adoption.

———*Onus of proving legality.*

It is for the party who alleges adoption to prove an adoption to be legal according to the Hindu Law. (*Chevis, J.*). HIRA *v.* HARDAT SINGH. **68 I.C. 763=47 P.L.R. 1922=A.I.R. 1923 Lah. 26.**

—Ss. 101 to 103—Adverse possession.

———*Title admitted—Proof of possession—Onus on the trespasser.*

Where the plaintiff brings a suit on the basis of his title which is admitted, it is not for him to prove possession on his own part within twelve years, but it is for the trespasser to prove his adverse possession. A. I. R. 1926 Oudh 313; A. I.R. 1916 P.C. 121; A. I. R. 1921 Bom. 368, *Ref.* (*Pullan, J.*). FAKIR BAKHSH SINGH *v.* PRAG SINGH. **108 I.C. 109=6 O.W.N. 121=A.I.R. 1928 Oudh 246.**

———*Suit for redemption—Mortgagee in long possession—Plea of outright sale—Onus to prove how possession passed is on plaintiff*

A person effected a simple mortgage of the land in favour of another person and his deceased wife by a registered deed. About a year later, the mortgagor was unable to pay the interest on the mortgage and possession of the land was given to the mortgagee. Mortgagors' heirs sued for redemption of the mortgage of the land which was in possession of the mortgagee for over 20 years. Mortgagee alleged that the land was made over to him outright by way of sale.

Held, that the burden of proof as to the nature of the original transaction rests on the plaintiff. If they cannot prove how possession passed, no presumption that the possession was not adverse can be drawn. A.I.R. 1925 Rang. 377 and A.I.R. 1927 Rang. 33 (F.B.), *Expl.*; 5 L.B.R. 40, *Doubted.*

Rutledge, C.J.—In cases of long possession the onus should be on the party out of possession. In cases, however, where the possession has been less than 12 years, and where the title of the previous owner is admitted, the onus may properly be put on the person in possession who alleged an outright sale. (*Rutledge, C.J. and Brown, J.*). MAUNG PWA *v.* MAUNG PO SA. **107 I.C. 165=5 Rang. 668=A. I. R. 1928 Rang. 44.**

EVIDENCE ACT (1872), Ss. 101 to 103—Adverse possession.

———*Onus on him who set up.*

In a case where the suit is resisted on the ground of acquisition of title by prescription it is not for the plaintiff to prove his title within 12 years. It is for the defendants to prove his adverse proprietary title. 39 Mad. 670; 17 A.L.J. 84, *Foll.* (*Gokul Prasad, J.*). L. RAGHA MAL *v.* ABDUS SATTER. **74 I.C. 879=A.I.R. 1923 All. 565.**

———*Reversioner of persons previously in possession—Title presumed.*

Where the plaintiff was a reversioner of the persons who were previously in possession of the property.

Held, that title was with them and it is for the defendants who seek to avoid that title on a plea of adverse possession to establish it. (*Daniels, J.*). CHITU *v.* CHARAN SINGH. **77 I.C. 705=A.I.R. 1923 All. 563.**

———*Onus on him who sets up.*

Where plaintiffs are in possession as having some title to the lands, in a suit by them for declaration of ownership and injunction it is for defendants to prove adverse possession for 12 years. (*Macleod, C. J. and Crump, J.*). GAVARAVA GAUDAPPA *v.* MALLANGOWDA CHANAGOWDA PATIL. **76 I.C. 559=A. I. R. 1923 Bom. 382.**

—Ss. 101 to 103—Affirmation of fact—Absence of authority.

———*Onus on principal.*

It was for the landlord to prove that the agent acted outside the powers given to him. (*Teunon and Newbould, JJ.*). AKHOY KUMAR GOSH *v.* ERADATULLA KAZI. **64 I.C. 823 (Cal.).**

—Ss. 101 to 103—Affirmation of fact—Authority to receive.

———*Payment to 3rd party*—Onus *on debtor.*

It is elementary law that when a creditor sues the debtor for the payment of a debt and the defence is that the debtor paid the debt to another person, it is for the debtor to prove that the other person had or had been held out to the debtor by the creditor as having had the authority of the creditor to receive payment of the debt on behalf of the creditor. (*Sir John Edge.*) MUHAMMAD KHALEEF SHIRAZI AND SONS *v.* LES TANNERIES LYONNAISES. **94 I.C. 767=49 Mad. 435=53 I.A. 84=3 O.W.N. 568=1926 M.W.N. 495=24 M.L.W. 115=44 C. L.J. 67=28 Bom. L.R. 1391=31 C W N. 1=A.I.R. 1926 P.C. 34=51 M.L.J. 570 (P.C.).**

—Ss. 101 to 103—Affirmation of fact—Bona fides.

———Where a person sets up the plea that he is a *bona fide* transferee, he is bound to prove it. (*Batton, J.C.*). MT. KASTURI BAI *v.* BALIRAM. **68 I.C. 732=A.I.R. 1923 Nag. 15.**

—Ss. 101 to 103—Affirmation of fact—Circumstances alleged.

——— *Transfers attacked—Onus on plaintiff.*

In a suit attacking transfers of property the burden is on the plaintiff of establishing the attacks. (*Lord Phillimore.*) BAL KISHEN *v.* RAM CHARAN. **113 I.C. 479=29 M.L.W. 579=A.I.R. 1929 P.C. 296=56 M.L.J. 172 (P.C.).**

———*Execution proved—Plea of not binding—Onus.*

When once the execution of a document is proved, if a party alleges circumstances that would make the document not binding on him, it is for him to prove such circumstances. (*Ananthakrishna Iyer, J.*). KRISHNA KURUP *v.* VEERAN KUTTY. **116 I.C. 143 (Mad.).**

EVIDENCE ACT (1872). Ss. 101 to 103—Affirmation of fact—Knowledge.

———*Decree not binding onus to prove.*

Where it was the case of a creditor of the deceased person instituting a suit making as defendant in the action a person who, but for the will would have been the proper legal representative, then it follows that the burden is upon the legal representative to show the circumstances under which or the reasons for which that decree is not binding. (*Srinivasa Aiyangar, J.*). KOLARAMATHU AMMA *v.* MADHAVI AMMA. **108 I.C. 409=1927 M.W.N. 894=A.I.R. 1928 Mad. 243.**

—Ss. 101 to 103—Affirmation of fact—Consent.

———*Consent to a compromise.*

The burden of proving consent to a compromise to set aside which a suit is brought lies on the defendant. (*Lord Atkinson.*) SARATKUMARI *v.* AMULYADHAN. **71 I.C. 632=17 M.L.W. 481=27 C.W.N. 629=25 Bom. L. R. 548=37 C. L. J. 501=1923 M. W. N. 392=32 M. L. T. 137=A.I.R. 1923 P.C. 13 (P.C.).**

—Ss. 101 to 103—Affirmation of fact—Date of document.

———*Plea that a document was ante-dated—Onus.*

The onus of showing that a document duly executed and registered and dated was ante-dated is on the party alleging that it was ante-dated. 44 Cal. 622, *Foll.* (*Spencer, O. C. J. and Kumaraswami Sastri, J.*). KRISHNAMURTHY AIYAR *v.* KRISHNAMUTHY AIYER. **85 I.C. 882=1925 M W.N. 632=A.I.R. 1925 Mad. 932=49 M.L.J. 252.**

—Ss. 101 to 103—Affirmation of fact—Expenditure.

———*Deductions for expenditure claimed—Each item to be proved.*

In a suit for profits when certain deductions are to be made from the gross income for expenditure it is for the defendant to prove each item of expenditure alleged by him and not admitted by the plaintiff, with proper accounts and vouchers. (*Hallifax, A. J. C.*). NARAYANDAS *v.* RADHABAI. **93 I.C. 196=9 N.L.J. 7=A I.R. 1927 Nag. 62.**

—Ss. 101 to 103—Affirmation of fact—Inclusion in holding.

———*Suit for possession—Onus on plaintiff.*

In a suit for possession of land the plaintiff has to prove that the land lay within his holding and not for the defendants to prove that it lay outside: 3 C. W. N. 763, *Ref.* (*Cuming and Mallik, JJ.*). SATI PROSAD GARGA *v.* GOBINDA CHANDRA. **33 C.W.N. 227=56 Cal. 805=A.I.R. 1929 Cal. 325.**

—Ss. 101 to 103—Affirmation of fact—Knowledge.

———*Transfer by grantee—Knowledge of grantor to be proved by transferee.*

Where the question is whether the grantor knew of the transfers made by the grantee tenure holder,

Held, that the onus of proving the negative could not be laid on the grantor as in cases such as these the likelihood is that the grantor would have no such knowledge (*Adami, J.*). MAHARAJA PRATAP *v.* SUNDERBANS KOER. **71 I.C. 999=3 P.L.T. 628=24 Cr.L.J. 279=A.I.R. 1923 Pat. 76.**

———*Defective title of mortgagor—Mortgagee's knowledge of—Onus on mortgagor.*

The burden of proving mortgage's knowledge is upon the mortgagor.

A joint family consisted of the plaintiff, his brother's widow and another brother's daughter-

EVIDENCE ACT (1872), Ss. 101 to 103—Affirmation of fact—Knowledge.

The two former for family necessity mortgaged the whole property suppressing the fact that the third had any interest in the property. On the death of the latter the plaintiff sued for one-third of the property, representing the interest of the daughter of his brother, who did not join in the mortgage, from the assignee of the mortgagee who had brought the property at the mortgage sale in execution of the decree against plaintiff and his brother's wife,

Held, if mortgagee did not know then the mere fact that the assignee who claims through mortgagee may have known the fact as to the existence of interest of plaintiff's brother's daughter, does not prevent his getting a good title to the properties and relying on the estoppel which mortgagee could have set up against any claim by plaintiff in any suit. As soon as the mortgage-deed was produced which contained a representation with regard to a share in the property to which the mortgagor later on obtained title, the burden was no longer on the mortgagee or his assignee to establish that he did not know the true position but the burden of proof shifted on the mortgagors and those claiming under them to show mortgagee's knowledge of the true facts. (*Greaves and Ghose, JJ.*). SARODA PROSAD BANERJEE *v.* GOSTA BEHARI HAZRA.

70 I.C. 385=27 C.W.N. 943=36 C.L.J. 78=A.I R. 1922 Cal. 542.

———*Representation by mortgagor—Auction-purchaser with knowledge of defect—Protected.*

When a person mortgages a property falsely representing it as his own, and after inheriting it subsequently, claims to recover the same, contending that he had no right to mortgage it, the auction-purchaser gets a good title even if he had knowledge of the facts provided the mortgagee was unaware. (*Greaves and Ghose, JJ.*). SARODA PROSAD BANERJEE *v.* GOSTA BEHARI HAZRA.

70 I.C. 385=27 C.W.N. 943=36 C.L.J. 78=A.I.R. 1922 Cal. 542.

—Ss. 101 to 103—Affirmation of fact—Loss.

———*Loss in business surety for managing partner—Onus on the other partners to prove loss.*

Plaintiff stood surety for the managing partner and executed a security bond which provided that if the business suffered any loss and the managing partner refused to pay his share of loss on demand the other partners would be entitled to deduct, from the security money, the share due to them on account of the loss,

Held, the burden of proof to show that the business had suffered a loss and that they had called upon the managing partner to pay his share lay upon the other partners. (*Abdul Raoof and Harrison, JJ.*). KASHI RAM *v.* MT. HARO.

77 I.C. 251=4 L.L.J. 214=A.I.R. 1922 Lah. 236.

—Ss. 101 to 103—Affirmation of fact—Membership of a community.

———*Onus on party alleging.*

If any person asserts in a Court of law that he is a member of a certain section of the community and this fact is denied he must prove the assertion before it can be accepted. (*Hallifax and Kotval, A.J.Cs.*). VITHOBA *v.* LAL SINGH. **76 I.C. 980=19 N.L.R. 104=A.I.R. 1923 Nag. 317.**

—Ss. 101 to 103—Affirmation of fact—Minority of executant.

———*Onus on person alleging.*

The burden of proving that a particular deed is bad on the ground that its executant was a minor at the time of its execution, lies upon the person who makes this allegation. (*Gokaran Nath Misra and Pullan, JJ.*). MUNNA LAL *v.* KAMESHARI DAT. **114 I.C. 801=5 O W.N. 1111=A.I.R. 1929 Oudh 113.**

———*Onus on executant.*

The onus of proving that on the date of executing a deed the executant was a minor is on him. (*Kanhaiya Lal, J. C. and Daniels, A.J.C.*). KANDHAN LAL *v.* MAHOMED ALAM. **63 I.C. 525=8 O.L.J. 324=A.I.R. 1921 Oudh 160.**

—Ss. 101 to 103—Affirmation of fact—Nearest reversioner.

———*Limit of proof.*

It is incumbent on a plaintiff seeking to succeed to property as a reversioner, to establish affirmatively the particular relationship which he puts forward. He is also bound to satisfy the Court that to the best of his knowledge there are no nearer heirs and for this purpose he can rely on the statement of witnesses called for defence. He cannot be expected to do anything more. It is for those, who claim that their kinship is nearer than that of the plaintiff, to prove that relationship. 40 Mad. 654, *Foll.* (*Lindsay and Sulaiman, JJ.*). JAVITRI *v.* GENDAN SINGH. **102 I.C. 167=49 All. 779=25 A. L. J. 500=A.I.R. 1927 All. 767.**

———Prima facie *evidence must be adduced.*

Where plaintiff claims certain relief as the nearest reversioner, it is for him to adduce *prima facie* evidence of his being nearest reversioner. It is not sufficient to rely upon the statements in the plaint or on an unapproved genealogical trees: 23 All. 72 (P.C.) and 40 Mad. 654, *Foll.* (*Curgenven, J.*). T. SESHAMMA *v.* Y. VENKATA REDDI. **100 I. C. 500=38 M L.T. 45=A.I.R. 1927 Mad. 1149=52 M.L.J. 155.**

———*What must be proved.*

In a suit by a reversioner the plaintiff must prove not merely that he is reversioner but that he is the nearest reversioner. (*Lyle, A.J.C.*). BHIMASINGH *v.* MT. SUNDER. **69 I. C. 421=9 O. L. J. 186=26 O. C. 109=A. I. R. 1922 Oudh 218.**

—Ss. 101 to 103—Affirmation of fact—Receipt of money.

———*Wagering contract receipt of money by agent—Onus on principal to prove receipt.*

A suit cannot be brought in which the cause of action is based directly on the wagering contract, but if, as a result of a wagering contract, an agent has received money on his principal's behalf, he is then liable to account to the principal for that money and the onus lies on the principal to prove affirmatively that the agent actually received the money on his behalf. 25 All. 639, *Rel. on.* (*Brown, J.*). MAUNG PO HTAIK *v.* BRAMADIN. **119 I.C. 740=7 Rang. 300=A.I.R. 1929 Rang. 245.**

—Ss. 101 to 103—Affirmation of fact—Relationship.

———*Onus on him setting up.*

Where the plaintiff's right to succeed depends upon his being an agnatic relation of the defendant, the onus is on him to prove that he is so related. (*Das and Bucknill, JJ.*). RAGHUNATH DAS *v.* SHEOKUMAR MISSIR. **67 I.C. 464=A.I.R. 1923 Pat. 309.**

EVIDENCE ACT (1872), Ss. 101 to 103—Affirmation of fact—Separation.

—Ss. 101 to 103—Affirmation of fact—Separation.

———*Onus on him setting up.*

Where jointness up to a certain date is proved, the onus of proving a separation subsequent to that date is on the party alleging such separation. (*Lord Sinha.*) DEO NARAYAN PANDE *v.* AGYAN RAM PANDE. **101 I.C. 249=1927 M.W.N. 96=31 C.W.N. 533=A.I.R. 1927 P.C. 52=53 M.L.J. 658 (P.C.).**

—Ss. 101 to 103—Affirmation of fact—Sequence of events.

———*Must be affirmatively proved.*

The plaintiff who comes into Court alleging that on the happening of certain events in a certain order certain rights to property accrued to him is bound to establish by affirmative and satisfactory evidence the occurrence of such events in such order. Thus a plaintiff alleging that a certain person died before another must prove the fact affirmatively. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). RANGAPPA NAYAKAR *v.* RANGASAMI NAYAKAR. **88 I.C. 249=1925 M. W. N. 232=A. I. R. 1925 Mad. 1005.**

—Ss. 101 to 103—Affirmation of fact—Service of summons.

———*Affidavit of service—Onus to disprove service.*

When there is an affidavit, of the peon serving the notice, of proper service thereof, the party who impugns the fact ought to prove that there was no service. (*B.B. Ghose and Basu, JJ.*). KRISHNA CHANDRA *v.* PABNA DHANA BHANDAR CO., LTD. **117 I. C. 552=A. I. R. 1928 Cal. 722.**

———Person who alleges regular service of summons must prove it. (*Sanderson, C.J. and Rankin, J.*). BENI MADHAB SAPIN *v.* JADU NATH SAPIN. **94 I. C. 907=43 C.L.J. 113=27 Cr. L.J. 715=31 C.W.N. 148=A.I.R. 1926 Cal. 1208.**

—Ss. 101 to 103—Affirmation of fact—Status.

———*Public prostitutes—Onus on them to prove they are not.*

Suit by alleged public prostitutes for grant of a perpetual injunction against the Municipal Committee to the effect that the Committee be restrained from taking any action against the plaintiffs under the notice under S. 152 of the Municipal Act on the ground that they were not public prostitutes the burden is on plaintiffs to show that they were not public prostitutes: A.I.R. 1926 Lah. 461, *Foll.* (*Jai Lal, J.*). MUNICIPAL COMMITTEE, LAHORE *v.* ALLAH RAKHI. **100 I.C. 1010=A.I.R. 1927 Lah. 358.**

—Ss. 101 to 103—Affirmation of fact—Transfer of possession.

———*Surrender by previous tenant—Onus on the subsequent tenant to prove transfer.*

It is for the rival tenant in order to make out a valid surrender to establish that the previous tenant has given over possession at the latest by the commencement of the year, when the patta in his favour took effect (*Srivastava, J.*). MINDAI *v.* SAJID ALI. **6 O.W.N. 1094=11 L.R.A. Rev. 24=A.I.R. 1930 Oudh 69.**

—Ss. 101 to 103—Affirmation of fact—Unchastity.

———*Onus on him who alleges.*

Where the defendant alleges unchastity of the plaintiff the burden of proof is on the defendant to prove it. RAM SUNDER RAI *v.* MT. KALI KUER. **44 All. 683=A.I.R. 1922 All. 321.**

EVIDENCE ACT (1872), Ss. 101 to 103—Appeal.

—Ss. 101 to 103—Affirmation of fact—Wilful disobedience.

———*Of employee—Onus on employee.*

In a case for compensation for the death of a deceased employee, the onus to prove wilful disobedience lies on the employer. (*Kulwant Sahay and Macpherson, JJ.*). URMILA DASI *v.* TATA IRON STEEL CO., LTD. **112 I.C. 328=8 Pat. 24=9 P.L.T. 511=A.I.R. 1928 Pat. 508.**

—Ss. 101 to 103—Alluvion and Diluvion.

———*Assessment—"Added land"—Onus on Government to establish.*

Where Government seek to assess lands under the Bengal Alluvion and Diluvion Act, the burden will lie upon the Government to establish that the lands sought to be assessed are "added lands" within the meaning of S. 6 of that Act. (*Mookerjee and Chotzner, JJ.*). SREE NATH ROY *v.* SECRETARY OF STATE. **70 I.C. 510=50 Cal. 276=36 C.L.J. 345=A.I.R. 1923 Cal. 233.**

———*Possession up to diluvion proved—Continuance of possession during submersion presumed.*

If the plaintiff shows his possession down to the time of the diluvion his possession is presumed to continue as long as the land continued to be submerged.

Further in the case of land covered by water the Court may and generally should, presume, in the absence of evidence to the contrary, that a possession enjoyed by the plaintiff before the twelve years, has continued until within the 12 years. In other words when the plaintiff has shown that he was in possession of the land at the time of diluvion, it must be presumed that he has continued to be in possession within 12 years of the suit. 9 Cal. 744 (F.B.) and 19 Cal. 660 (P.C.), *Foll.* (*Das and Adami, JJ.*). GAJDHAR PRASAD *v.* MST. DULHIN GULAB KUER. **2 P.L.T. 59=A.I.R. 1921 Pat. 234.**

—Ss 101 to 103—Ancestral property.

———*Mere conjectures insufficient.*

The party asserting the land to be ancestral must prove the fact, it not being possible to accept mere conjectures as substitutes for proof. P. R. 42 of 1910, *Foll.* (*Lumsden, J.*). RAM SARAN *v.* HARPHUL. **78 I. C. 913=A. I. R. 1924 Lah. 677.**

———*Assertion of ancestral nature—Proof of—Conjecture insufficient.*

In a case in which the ancestral nature of land is in dispute the party asserting that such land is ancestral is required to prove his assertion and conjectures cannot be accepted as a substitute for proofs. 42 P.R. 1910 (P.C.,) *Rel. on.* (*Broadway and Abdul Qadir, JJ.*). MUNSHA SINGH *v.* UTTAM SINGH. **64 I. C. 428=4 L. L. J. 31=A. I. R. 1922 Lah. 65.**

—Ss. 101 to 103—Appeal.

———*Judgment appealed from—Burden of showing it as wrong.*

In appeals the burden of showing that the judgment appealed from is wrong, lies upon the appellant. If all he can show is nicely balanced calculations, which led to equal possibilities of the judgment on either the one side or the other being right, he has not succeeded. A.I.R. 1922 P. C. 39, *Foll.* (*Raza, J.*). MUSTAFA HUSAIN *v.* MT. SAIDUL NISAN. **99 I.C. 255=3 O.W.N. Sup. 282=A.I.R. 1927 Oudh 66.**

———*Burden of proof—Tenability—Error of principle—Appeal lies.*

EVIDENCE ACT (1872), Ss. 101 to 103—Appeal.

A decision based on an error of the principles governing the question of onus will be set aside. (*Fforde and Campbell, JJ.*). FIRM GANDA SINGH GANGARAM *v.* NUR AHAMAD. **96 I.C. 820= A.I.R. 1926 Lah. 653.**

———*Burden of proof—Appellant must show that judgment appealed from is wrong—Appeal.*

In appeal the burden of showing that the judgment appealed from is wrong lies upon the appellant. If all he can show is nicely balanced calculations which lead to the equal possibility of judgment on either the one side or the other being right, he cannot be said to have succeeded. (*Lord Buckmaster*). NABA KISHORE MANDAL *v.* UPENDRA KISHORE MANDAL. **65 I.C. 305= 20 A.L.J. 22=35 C.L.J. 116= 1922 M.W.N. 95=26 C.W.N. 322= 3 P.L.T. 311=24 Bom. L.R. 346= 15 M.L.W. 417=30 M.L.T. 234= A.I.R. 1922 P.C. 39=42 M. L.J. 253 (P.C.).**

———*Judgment appealed from—Onus of proving it wrong.*

The onus of proving that the judgment and decree appealed against are wrong is on the appellants. (*Woodroffe and Cuming, JJ.*). TARAMONI CHAUDHURANI *v.* GOPAL DAS CHAUDHURY. **65 I.C. 182 (Cal.).**

—Ss. 101 to 103—Assets.

———*Receipt by executor—Proving extent—Onus on executor.*

Where a question is raised as to the extent of assets received by an Executor on the death of the testator, the burden of proof on the point is entirely on the executor. (*Mookerjee and Chotzner, JJ.*). PULIN BEHARI DEY *v.* SATYACHARAN. **70 I.C. 545=36 C.L.J. 367= A.I.R. 1923 Cal. 79.**

—Ss. 101 to 103—Bailment.

———*Proof of care.*

The burden of proof lies on the bailee to show that such care as a man of ordinary prudence would have exercised, was duly exercised by him in respect of goods entrusted to him. 22 Mad. 524, *Foll.* (*Pratt, J.*). MAUNG PO THAIK *v.* MAUNG THA BYAW. **74 I.C. 18=1 Bur. L.J. 132= A.I.R. 1923 Rang. 74.**

—Ss. 101 to 103—Benami.

———*Parties to sale—Near relations—Onus on vendee to prove valid sale.*

Obiter: Where the vendor and vendee are near relation and the sale-deed is in possession of the vendor the burden of proving that the sale is not bogus is on the vendee. (*Macnair, A.J.C.*). MOHANSINGH *v.* PUNJI. **103 I.C. 812= A.I.R. 1927 Nag. 327.**

———The onus of proving that the ostensible owner is not the real owner is on the party so alleging. (*Suhrawardy and Mukerji, JJ.*). RAJANIKANTA *v.* ABANI KANTA. **94 I.C. 33= A.I.R. 1926 Cal. 850.**

———*For plaintiff's benefit—Onus on him.*

The burden of proving that a bond, a suit brought thereon, and an execution sale under the decree obtained in the suit, were all *benami* for the plaintiff lies upon him. (*Woodroffe and Ghose, JJ.*). SHAM LAL RAI CHOWDHURY *v.* RADHA CHARAN RAI. **81 I. C. 774=39 C. L. J. 98.**

———*Shifting of onus.*

There is no doubt that the onus of proving *benami* was upon the defendants who set it up, but after the definite statements made by his witnesses as to the plaintiff's dealings with the property indicating that he was the owner of the property, the plaintiff ought to have examined himself and denied those statements on oath. (*N. R. Chatterjee and Pearson, JJ.*). JAGADISH CHANDRA DEO DHABAL DEB *v.* BHUBANESWAR MITRA. **76 I. C. 241= 27 C. W. N. 38=37 C. L. J. 265= A. I. R. 1923 Cal. 121.**

EVIDENCE ACT (1872), Ss. 101 to 103—Consideration.

—Ss. 101 to 103—Carrier.

———*Railway Company—Necessary pleas.*

It is necessary expressly to plead "loss" and the execution of risk note, if the defendant railway wishes to escape the ordinary liabilities of a bailee. (*Foster, J.*). EAST INDIAN RAILWAY CO. AND G. I. P. RY. CO. *v.* FIRM SUKHDEO DAS. **74 I. C. 431=4 P. L. T. 443= A. I. R. 1924 Pat. 25.**

———*Weight, etc., unknown—Shortage—Onus on him alleging.*

Burden is on the plaintiff to prove shortage where the bill of lading expressly says "weight contents and value when shipped unknown." (1917) 2 K. B. 679, *Ref.* (*Krishnan, J.*). SUBRAMANIA CHETTY *v.* BRITISH INDIAN STEAM NAVIGATION CO., LTD. **72 I. C. 408=17 M.L. W. 363= A. I. R. 1923 Mad. 523.**

—Ss. 101 to 103—Compromise.

———*Compromise of suit—Conclusive on parties and their descendants.*

Where in a partition suit the defendant pleads that plaintiff is not entitled to any share as he is congenitally blind, but the defendant does not proceed with the trial of the issue and enters into an agreement with the plaintiff by which the dispute is settled and one of the conditions of which is the recognition of the plaintiff's title by the defendant, the agreement is binding on the defendant and his descendants and is conclusive of the plaintiff's right to share in the joint property. (*Lindsay and Kanhaiya Lal, JJ.*). BUDH SAGAR *v.* BISHUN SAHAI. **86 I. C. 554= 23 A. L. J. 141=47 All. 327= A.I.R. 1925 All. 366.**

———*Decree against minor—Challenged on attaining age—Proof of invalidity of proceedings—Onus on minor.*

The contention that if a minor on coming of age challenges a decree passed against him on the basis of a compromise even though he does not allege in what manner the compromise is invalid the burden is immediately thrown in the opposite party of establishing that all proceedings in the suit were regular, is a very startling one and not borne out by the authorities. (*Daniels, J.*). RADHA KRISHUN SHUKUL *v.* NOKH LAL. **74 I.C. 964= 21 A. L. J. 488=4 L.R. A. Civ. 481= A.I.R. 1923 All. 566.**

—Ss. 101 to 103—Condition.

———*Contract—Onus of proving it—Conditional.*

The party who alleged that a contract is conditional on the happening of a certain contingency must prove the existence of such a condition by clear and unequivocal evidence. (*Abdul Raoof and Jai Lal, J.*). GANSHI LAL KUNDAN LAL *v.* DEBI SAHIA GULZARI MAL. **105 I.C. 265= A.I.R. 1927 Lah. 481.**

—Ss. 101 to 103—Consideration.

———*Circumstances of parties—Shift burden of proof.*

Debtors were majors and literate having a fair knowledge of English and claiming to be businessmen possessed of large property. They were neither "expectant heirs" nor had just come of age. The creditor had not been proved to be a

EVIDENCE ACT (1872), Ss. 101 to 103—Consideration.

professional money-lender and the execution of the pro-notes in question was admitted.

Held, that the onus to prove want of consideration should be placed on them. 25 Bom. 367, *Dist.* (*Tek Chand and Hilton, JJ.*). DIN MUHAMNAD *v.* BADRI NATH. **120 I. C. 417=11 L.L.J. 511= A.I.R. 1930 Lah. 65.**

——*Admission in a document—Onus on him alleging failure.*

Where it has been admitted or proved that an admission of consideration has been made or executed in a document, the onus of proving want of consideration rests on the person asserting want of consideration : A.I.R. 1925 Lah. 471 (F.B.) and A.I.R. 1927 Lah. 272, *Foll.*; 17 P.R. 1888, *Diss. from.* (*Broadway and Bhide, JJ.*). PARAS DAS *v.* SURAJ BHAN. **104 I.C. 173= A.I.R. 1927 Lah. 823.**

——*Pro-note—Different stories at different stages—Onus on payee.*

Where, in a suit on promissory note, plaintiff set up different stories as to consideration at different stages, the burden of proving consideration shifts on him. 48 P. R. 1915, *Foll.* (*Tek Chand, J.*). SUNDAR SINGH *v.* KHUSH RAM. **102 I.C. 42=28 P.L.R. 295=9 L.L.J. 254= A.I.R. 1927 Lah. 864.**

——*Admission in a document—Onus on executant to prove failure.*

Where an unregistered document, the execution of which is admitted or proved, contains an admission of the payment of the consideration the onus lies on the person executing the document to prove that what he himself admitted to be true, was, as a matter of fact, false and that he did not receive the consideration : A. I. R. 1925 Lah. 471 (F.B.), *Foll.* (*Broadway and Zafar Ali, JJ*). MAHOMAD BAKHSH *v.* SHADI MAHOMED. **100 I. C. 60= 8 Lah. 123=27 P.L.R. 768= A.I.R. 1927 Lah. 272.**

——*Execution of mortgage admitted—Consideration recited but denied onus on mortgagor—Gross inadequacy—Inference.*

Where a mortgagor admits execution of a mortgage-deed, it is for him to prove that he has not received the consideration recited in the deed. The mere fact that he was a reckless borrower does not affect the question of onus. Gross inadequacy of consideration can lead a Court to the conclusion that the party did not understand what he was doing. (*Abdul Raoof and Moti Sagar, JJ.*). JIWA RAM *v.* JHANDA SINGH. **92 I.C. 346 (Lah.).**

——*As against purchaser of equity of redemption, mortgagee has to prove consideration—Onus how discharged.*

A mortgagee as against a purchaser of equity of redemption from the original mortgagor has to prove by affirmative evidence the validity of the consideration and also that it had passed from the creditor to the debtor. The mere admission of the debtor in the mortgage-bond does not shift the onus as it would have been if the suit had been brought against the mortgagor himself alone. He has to give the best evidence possible that the bond was for a really good consideration.

Where the bond debts which formed part of the consideration were debts going back to about forty years from the time when the suit was brought and the plaintiff was able to produce two of the numerous attesting witnesses to the bond, who not only proved the mortgage-bond but also stated that the

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consideration for the bond was admitted by the debtor before them, and there was practically no effective cross-examination of those witnesses on this point,

Held, that it could be safely said that consideration for the bond had been established by the evidence of those witnesses. (*Walmsley and Chakravarty, JJ.*). JAMINI MOHAN *v.* JAGABANDHU SINGH. **89 I.C. 927=A.I.R. 1926 Cal. 295.**

——*Admission in a document—Onus to prove failure on executant.*

Where an unregistered document, the execution of which is admitted or proved, contains an admission of the payment of the consideration the onus lies on the person executing the document to prove that what he himself admitted to be true was, as a matter of fact, false and that he did not receive the consideration. A.I.R. 1925 Lah. 471, *Foll.* (*Fforde and Campbell, JJ.*). THE FIRM GANDA SINGH *v.* NUR AHMAD. **96 I. C. 820= A.I.R. 1926 Lah. 653.**

——*Admission in mortgage-deed—Execution proved—Onus to prove failure on mortgagor.*

The onus of proving consideration in the first instance lies on the mortgagee, but when execution of the document sued upon has been proved or admitted, if the document contains a recital admitting receipt of the consideration, the onus would then lie on the opposite party to show that that admission was false. 6 Lah. 470 ; A.I.R 1925 Lah. 471 (F.B.). *Rel. on.* (*Broadway and Fforde, JJ.*). PUNNU RAM *v.* GHULAM HUSSAIN. **96 I.C. 630=7 Lah. 297=27 P.L.R. 463= A. I. R. 1926 Lah. 494.**

——Execution admitted, consideration denied—Onus is on executant. (*Broadway and Abdul Qadir, JJ.*). MAHOMED HUSSAIN *v.* RAM LAL. **71 I.C. 783=5 L.L.J. 198= A.I.R. 1924 Lah. 39.**

——*Admission in unregistered document—Execution proved—Onus on executant to prove failure no difference in effect between registered and unregistered documents.*

Where an unregistered document, the execution of which is admitted or proved, contains an admission or recital of the payment of the consideration, the onus lies on the person executing the document to prove that he did not receive the consideration. There is no valid reason in principle for drawing a distinction between an admission in a registered deed and that contained in an unregistered document, in so far as the question of *onus probandi* is concerned. (*Shadi Lal I.C.J., Broadway and Abdul Raoof, JJ.*). RAM CHAND *v.* CHHUNAN MAL. **88 I.C. 301=7 L.L.J. 306=6 Lah. 470= 26 P.L.R. 369=A. I. R. 1925 Lah. 471 (F.B.).**

——*Pro-note—Onus on maker to prove failure—But payee's failure to make out can be availed of by maker.*

Though it is undoubted that the onus does lie upon the defendant, to prove that no consideration was given, nevertheless, if a plaintiff, when consideration was denied in the written statement, goes into the witness box, and if the result of his examination is that he fails to establish the point which he set out to make, namely, that he gave the consideration and the Court is thus satisfied that he did not give the consideration which he alleges, the defendant can avail himself of that and has a right to decree. This in no way trenches upon the ordinary rule that the defendant must prove absence of consideration if that is his case. (*Mears,*

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C.J. and Banerjee, J.). MUHAMMAD SHAFI KHAN *v.* MUHAMMAD MOAZZAM ALI KHAN. 79 I.C. 464= 67 I.C. 684=A.I.R. 1923 All. 214.

———*Admission in registered document.*

Where plaintiff recited and admitted the receipt of a sum in the registered document, the burden of proof to show that he did not receive it is on him. (*Le Rossignol and Harrison, JJ.*). MAUGLI *v.* BIDHA LAL. 76 I.C. 916=6 L.L.J. 457= A.I.R. 1923 Lah. 404.

———*Promise to pay—Consideration denied onus on payee.*

Where the document was couched in the following terms :—

"Undersigned promise to pay to Lala Hira Lal and Assa Ram the sum of Rs. 1,000 (rupees one thousand only) payable during the period of one year without interest,"

Held, that the burden of proof was on the executee to prove consideration where the executant admitted only execution while the other members of the family of the executant denied both execution and consideration. 100 P.R. 1915, *Dist.* (*Abdul Raoof and Moti Sagar, JJ.*). RAGHU NANDAN *v.* BUDHU MAL. 86 I.C. 230=A. I. R. 1923 Lah. 346.

———*Admission in sale-deed—Onus on person pleading failure—Purchaser not in possession—Insufficient to discharge.*

Where a vendor admits in his sale-deed the receipt of consideration, the onus of proof that consideration was not paid lies on the person pleading the absence of consideration. The mere fact that the purchaser was not in possession after his sale is insufficient to discharge it. (*Batten, J.C.*). MT. KASTURIBAI *v.* BALIRAM. 68 I.C. 732= A.I.R. 1923 Nag. 15.

———*Admission of execution—Onus of failure on defendant.*

Defendant having admitted the execution of the document it is for him to establish that consideration did not pass. (*Coutts and Das, JJ.*). HARI PRASAD CHOWDHURY *v.* HARIHAR PRASAD CHOWDHURY. 70 I.C. 804=1923 P H.C.C. 20= A. I. R. 1923 Pat. 205.

———*Unstamped entry—Plaintiff's failure to produce account books—Onus of failure not on defendant.*

The plaintiffs claimed certain sum of money, principal and interest included. It was alleged that this transaction had been entered in the plaintiffs' account book, which had been duly signed by the defendant, who had also made an entry in the same account book in his own handwriting. Defendant denied having borrowed any money from the plaintiffs and alleged that there had formerly been a partnership between him and them. He stated that the plaintiffs contemplated carrying on another kiln in partnership with him and that under that impression and thinking that the plaintiffs would contribute a similar sum towards the partnership capital, he had signed and written the memorandum in question, without however having received any sum of money. The entry was not stamped and attested because it was intended to have the whole transaction duly attested and completed when land could be procured,

Held, the burden of proof of the failure of the consideration could not be thrown on the defendant. The failure to produce the Bahikatha of the previous year by the plaintiffs to contradict the defendant, who alleged partnership, strengthened

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defendant's position. (*Broadway and Abdul Raoof, JJ.*). RUBIA SINGH *v.* TOONIA MAL. 60 I.C. 730=4 L. L.J. 73= A.I.R. 1922 Lah. 305.

———*Renewal bond—Consideration yet to be proved by plaintiff.*

In a suit on a bond, the plaintiff is not absolved from proving the consideration merely because the suit bond was executed in consideration of a previous bond. (*Wilberforce, J.*). JETHA MAL *v.* HASAL. 40 P.L.R. 1921=A.I.R. 1921 Lah. 374.

———*Execution admitted partial failure pleaded—Onus on debtor.*

Where the execution of the bond had been admitted and the receipt of consideration was not denied but it was alleged that full consideration could not be admitted, and finally repayment of the debt was definitely alleged.

Held, that the onus was on the debtor to show that the bond was without consideration. (*Broadway and Abdul Qadir, JJ.*). GIRDIT SINGH *v.* KARAM DAD. 77 I.C. 246=4 L.L.J. 199= A.I.R. 1921 Lah. 199.

———*Partial failure—Onus on mortgagor.*

Where in a suit by mortgagee for possession as mortgagee the mortgagor did not deny receipt of whole consideration but pleaded non-receipt of a part:

Held, that the onus to show that consideration had not passed in full is on the mortgagor. 20 P.L. R. 1915. (*Broadway and Wilberforce, JJ.*). GANGA RAM *v.* RULIA. 64 I.C. 901=2 Lah. 249= 106 P.L.R. 1921=A.I.R. 1921 Lah. 128.

—Ss. 101 to 103—Contract.

———*Grounds of invalidity—Onus on him who alleges.*

If a contracting party alleges that an agreement is opposed to public policy, it is for him to set out and prove those special circumstances which will invalidate the contract: 1 C.L.J. 261 and 8 N.L.R. 182, *Foll.* (*Kinkhede, A.J.C.*). GOPAL RAO *v.* BABU. 107 I. C. 903=A.I.R. 1928 Nag. 273.

———*Different intention—Onus on party asserting.*

The ordinary presumption is in favour of the legality of a contract and it is for those, who assert that it was not intended to perform the contract in the manner recited therein, to prove their assertion. (*Harrison and Jai Lal, JJ.*). FIRM KANWAR BHAN *v.* FIRM GANAPAT RAI. 94 I.C. 304= 7 Lah. 442=A.I.R. 1926 Lah. 318.

———*Intention not to enforce—Party alleging must prove.*

The party disputing that he was liable under certain contracts on the ground that they were wagering contracts would have to show that at the time the contracts were entered into, the parties did not intend to carry out the contracts, but agreed to abide by the prices ruling at the due dates, when differences would be paid or received. (*Macleod, C.J. and Crump, J.*). GANGADAS NARAYANDAS *v.* JEKISONDAS MANCHARAM. 73 I.C. 1032=25 Bom.L.R. 520= A.I.R. 1923 Bom. 458.

———*Wagering—Onus on party pleading.*

In contracts, the burden of proof, that they are of wagering nature is on the person who takes that defence. (*Macleod, C.J. and Shah, J.*). RAJMAL RAMNARAYAN *v.* BUDASAHEB ABDUL SAHEB. 66 I. C. 943=24 Bom. L.R. 118= A. I. R. 1922 Bom. 81.

EVIDENCE ACT (1872), Ss. 101 to 103—Criminal Trial.

—Ss. 101 to 103—Criminal Trial.

———*Qualified privilege—Onus of good faith on defamer.*

Qualified privilege, as the term indicates, provides only a qualified protection, and the person charged with the defamation must prove that he used the privilege honestly, and the onus of establishing that lies upon him. (*Walsh, J.*). LALA LACHMAN PRASAD *v.* MAJJU. **77 I.C. 913= A.I.R. 1923 All. 167.**

—Ss. 101 to 103—Custom—Chistis of Ferozepur.

———*Ancestral property—Restricted power of alienation—Onus to prove power on vendor.*

There is therefore the presumption that among these Chistis of Ferozepur District the power of alienation is restricted in respect of ancestral property. The onus of proving that vendor had an unrestricted power of alienation is on the vendee. (*Broadway and Currie, JJ.*). ATA MUHAMMAD *v.* FATEH MUHAMMAD **A.I.R. 1930 Lah. 900.**

—Ss. 101 to 103—Custom—Inheritance.

———*Exclusion of daughters alleged—Onus on party alleging.*

In the case of High Class Hindus, where a custom is alleged to exist whereby daughter is excluded by collaterals from inheriting the property of her father who was separate, the onus of proving such a custom is on the party alleging it. (*Harrison and Dalip Singh, JJ.*). UMRA *v.* MT. DURGA DEVI. **106 I.C. 225=8 Lah. 541= 29 P.L.R. 112= A.I.R. 1927 Lah. 539.**

—Ss. 101 to 103—Custom—"Office dhara" contract.

———*Person relying must produce and prove printed forms.*

Where a contract is alleged to be on "office dhara" and where the "office dhara" refers to the practice of certain firms as seen in printed forms used by them, a plaintiff relying on the term "office dhara," must produce and prove the printed forms above mentioned. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). FIRM OF DASSOMAL RAMCHAND *v.* FIRM OF YUSAFALI ADAMJI. **86 I.C. 364=18 S.L.R. 265= A.I.R 1925 Sind 80.**

—Ss. 101 to 103—Custom—Opposed to statutory right.

———*Onus on party relying on custom.*

Where the widow of a co-sharer has a statutory right to demand partition and another co-sharer denies her right to compel partition by virtue of a custom to the contrary, the onus of proving such custom is on him. (*Martineau and Moti Sagar, JJ.*). SANTA SINGH *v.* BASANT KAUR. **71 I.C. 28= 19 P.W.R. 1923= A.I.R. 1923 Lah. 81.**

—Ss. 101 to 103—Custom—Riwaj-i-am.

———*Daughters excluded—Onus of proving right to succeed is on daughter.*

Where, therefore, there is an entry to the effect that agnates exclude daughters in succession to the property, whether ancestral or self-acquired of their sonless fathers, the onus is on the daughter claiming to succeed to her father's land to show custom entitling her to succeed : A.I.R. 1916 P.C. 129 and A.I.R. 1928 P. C. 294, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). DHARA SINGH *v.* MT. ARURI. **A.I.R. 1930 Lah. 761.**

———*Presumption—Riwaj-i-am—Correctness of the entries.*

The Courts in the Punjab are bound to make an initial presumption in favour of the correctness of the entries in riwaj-i-am. (*Tek Chand and Agha Haidar, JJ.*). DHARA SINGH *v.* MT. ARURI. **A.I.R. 1930 Lah. 761.**

EVIDENCE ACT (1872), Ss. 101 to 103—Duty of Court.

———*Custom—Contrary to—Onus on party relying.*

Where a party wants to rely on a custom opposed to that given in the Riwaj-i-am of a certain district, it is incumbent on him to prove the existence of such a custom. (*Tek Chand and Bhide, JJ.*). GULAM MAHAMMAD *v.* MT. FATIMA. **109 I.C. 326=10 L. L. J. 304.**

———*Onus on person challenging.*

Onus of proving an entry in *Riwaj-i-am* to be wrong lies on the party asserting it to be wrong: 45 P. R. 1917 (P.C.). *Foll.* (*Martineau and Moti Sagar, JJ.*). ALLAH WASAYA *v.* MT. ZOHRAN. **85 I.C. 436=5 Lah. 535= A.I.R. 1925 Lah. 258.**

———*Defendants' plea of special custom supported—Plaintiff to prove general custom applies.*

Where the defendants plea of the applicability of a special custom to the parties, is supported by entries in the *Riwaj-i-am* the onus will be shifted to the plaintiff to make out that only the general custom applies. (*Martineau and Harrison, JJ.*). MST. SARDAR KHANAM *v.* AMIR ZAMAN KHAN. **70 I.C. 227=3 Lah. 392= A.I.R. 1923 Lah. 125.**

———*Initial onus shifted by entry in.*

Though the initial onus is on the collaterals of the 6th degree, to prove their right to succeed in the presence of daughters yet an entry in the *Riwaj-i-am* to that effect is sufficient to shift the onus from the collaterals to the daughters. (*Scott-Smith and Broadway, JJ.*). MST DHAN KAUR *v.* SUNDAR. **67 I.C. 415= 3 Lah. 184= A.I.R. 1922 Lah. 387.**

—Ss. 101 to 103—Declaration.

———*Suit to establish—Sale by judgment-debtor—Consideration, possession and good faith must be proved in serial order by plaintiff.*

In a suit by an objector for establishing sale by judgment-debtor, burden lies on plaintiff of proving consideration, possession and good faith. Questions of consideration, possession and good faith must be decided in serial order.

The burden of establishing the passing of consideration rests on the plaintiff. That is obviously the primary question to determine ; then the question of possession is to be decided. If these points are found in favour of the plaintiff the onus of establishing good faith would still rest upon plaintiff but would be a much lighter one: 15 W.R. 280 ; 23 Cal. 950; 25 Cal. 78, *Dist.*; 2 N.L.R. 87, *Foll.* (*Findlay, O. J. C.*). VINAYAK *v.* KANIRAM. **92 I. C. 810= A. I. R. 1926 Nag. 293.**

—Ss. 101 to 103—Duty of Court.

———Onus probandi *applies in case of doubt—Court cannot be blind to facts established.*

Onus probandi applies to a situation in which the mind of the Judge determining the suit is left in doubt as to the point on which side the balance should fall in forming a conclusion. It does happen that as a case proceeds the onus may shift from time to time. There never is any duty upon the part of the Judge to be blind to facts established before him or to a whole category of facts extending over a long period of time and establishing the possession of property for generations as being in one line and not in two lines. (*Lord Shaw.*) YELLAPPA RAMAPPA *v.* TIPPANNA. **114 I. C. 13=31 Bom. L. R. 249= 53 Bom. 213=56 I. A. 13=1929 A. L. J. 4= 49 C.L.J. 104=29 M.L.W. 231=33 C.W.N. 238= A.I.R. 1929 P. C. 8=56 M. L. J. 287 (P.C.).**

EVIDENCE ACT (1872), Ss. 101 to 103—Duty of Court.

———*Court to fix the burden where it lies in law.*

It would be wholly wrong to allow the burden of proof to be shifted by a redundant averment in the pleading or by an incautious acceptance of an issue framed upon that averment. The Court ought to consider where the burden lies in law. (*Phillips, Offg. C. J., Beasley and Ananthakrishna Ayyar, JJ.*). GUNSHAMDOSS *v.* GULAB BI BAI.

106 I. C. 150=50 Mad. 927=39 M. L. T. 431=26 M. L. W. 697=A I. R. 1927 Mad. 1054=53 M. L. J. 709 (F.B.).

———*Onus on plaintiff—Defendant cannot be called to traverse.*

Where the onus of establishing a positive or negative allegation lies upon the plaintiff, the Court will not order the defendant to give particulars of his traverse of that allegation. (*Madgavkar, A. J. C.*). L. COLLINS *v.* CHARLES BOOTH & CO., LTD.

80 I.C. 958= 17 S.L. R. 9= A.I.R. 1921 Sind 106.

—Ss. 101 to 103—Ejectment.

———*Right to remain—Onus on defendant.*

Where in an ejectment suit the plaintiff's main case was that the defendants were on the land and that they were trespassers with no rights to remain on the land and the defendants admitted the plaintiff's superior title to the land.

Held, that the defendants must show that they had a right to remain. (*Newbould and Panton, JJ.*). PROBODH CHANDRA DAS *v.* BIRSINHA BAGANI.

71 I.C. 319= A.I.R. 1924 Cal. 350.

—Ss. 101 to 103—Execution of decree.

———*Attachment of property—Decree-holder to prove—Judgment debtor's ownership.*

It is for the decree-holder to clearly establish that the property belongs to his judgment debtor only and is liable to be sold in execution of the decree. (*Broadway and Moti Sagar, JJ.*). ISHAR DAS *v.* FAZAL ILAHI.

77 I.C. 516= A.I.R. 1923 Lah. 522.

—Ss. 101 to 103—Execution of document.

———*Proof of date—Onus on plaintiff.*

The plaintiff has to state when his cause of action arose, *e.g.*, the date of the execution of a promissory note on which a suit is based and it lies upon him to substantiate that statement. To cast the burden on the defendants would run counter to the provisions of Ss. 101 and 102, Evidence Act : 5 Cal. 36 ; 9 Cal. 744 and A.I.R. 1926 P.C. 9, *Rel. on*; 7 All. 677, *Dist.* (*Curgenven, J.*). SUBBARAYULU NAIDU *v.* VENGAMA NAIDU. **A.I.R. 1930 Mad. 742.**

———*Execution on blank paper—Onus on plaintiff to prove execution.*

Where the plaintiff sued relying on a document which the defendant affirmed to be only a blank piece of paper to which he was asked to affix his signature and thumb impression,

Held, the burden of proof of its execution lay on the plaintiff. (*Rafique and Lindsay, JJ.*). PIRBHU DAYAL *v.* TULA RAM.

68 I.C. 809= 20 A. L.J. 672=A.I.R. 1922 All. 401.

—Ss. 101 to 103—Exception to rule.

———*General rule*—Prima facie *case being made out, onus is on defendant to disprove—Does not apply where defendant is not claiming under the executant.*

The general rule that where no other suspicious circumstances appear, the plaintiff by merely proving the execution of the document containing recitals must be taken to have made out a *prima facie* case, and it is for the defendant to meet that case by adducing evidence, applies only to the case where the defendant is executant or person claiming under him. It has no application where the executant mortgages joint family property and defendant is not his heir, but one to whom the family properties came by survivorship : A.I.R. 1930 Mad. 251, *Ref.* ; 35 I.C. 455, *Expl.* ; A.I.R. 1922 P. C. 56, *Rel. on.* (*Ananthakrishna Ayyar, J*). MARRIAPPA GOUNDAN *v.* PALANIAPPA GOUNDAN. **A.I.R. 1930 Mad. 796.**

EVIDENCE ACT (1872), Ss. 101 to 103—Fraud.

—Ss. 101 to 103—Fraud.

———*Effects of fraud removed—Onus on party benefitted by the fraud.*

Where fraud has been established in a case against a party who is deriving benefit therefrom it is for him to show that the continuing effects of fraud which was perpetrated have been removed : 17 Bom. 341 (P C.); A.I.R. 1923 Pat. 435 and A.I.R. 1924 Pat. 496, *Foll.* (*Wort, J.*). BEAS SINGH *v.* KHEDU MIAN. **123 I.C. 637=A.I.R. 1930 Pat. 58.**

———*Knowledge of fraud before limitation.*

Fraudulent nature of the sale proceedings and the competency of the applicant in the circumstances to have the sale set aside having been established the onus of proving that the fraud was known long before limitation is upon the decree-holder: 12 P. R. 1898, *Foll.* (*Coldstream, J.*). MT. JAMNAT *v.* ABDUL RAMAN KHAN.

112 I.C. 847 (Lah.).

———*Burden on person alleging.*

The burden of proving the fraudulent nature of a transaction lies ordinarily on the persons who seek to impeach it. (*Raza, J.*). LACHMI NARAIN *v.* MT. NAZEER FATIMA. **94 I.C. 927= A.I.R. 1926 Oudh 501.**

———Where a transaction has remained unchallenged for over 50 years, and where the managing trustees at the date of the transaction are dead, the onus is on the plaintiffs to upset it on the ground of fraud or breach of trust. (*Schwabe, C.J. and Odgers, J.*). C. DORAIVELU MUDALIAR *v.* AUDIKESAVALU NAIDU. **70 I.C. 87= 1922 M.W.N. 620=A.I.R. 1922 Mad. 409.**

———Prima facie *open transaction—Onus on person attacking to prove fraud.*

Where a transaction is carried out openly and publicly and everything is done which ordinarily would be done to give effect to it, it certainly lies on the person challenging the transaction to show that the transaction was other than appeared on the face of it and was really intended to cover a fraudulent motive. (*Daniels and Dalal, A.J.Cs.*). MST. HAFIZ-UN-NISA *v.* JAWAHIR SINGH.

66 I. C. 24=24 O. C. 374= A. I. R. 1921 Oudh 209.

———*Transferee for consideration—Onus of proving fraud is on the other party.*

Where the claim of the transferee has been rejected in execution proceedings and a suit is brought to vindicate that claim, the onus lies in the first instance on the transferee. The onus is discharged as soon as he establishes that the transfer under which he claims is for good consideration and then the onus is on the opposite party to establish a fraudulent intention underlying the transfer. (1919) P.H.C.C. 409, *Ref.* ; 44 Cal. 662 (P. C.), *Rel. on.* (*Coutts and Macpherson, JJ.*). BIBI SAIRA *v.* BIBI SALIMAN.

63 I.C. 111= 2 P.L.T. 577=A.I.R. 1921 Pat. 395.

———*Ostensibily* bona fide *transaction—Party alleging fraud must prove it—When onus shifts.*

Where outwardly a deed of sale which is duly registered purports to create a title in a certain person, it is ordinarily not for him to prove the

EVIDENCE ACT (1872), Ss. 101 to 103—Genuineness.

bona fides of the transaction, or that there was valid consideration. It is for the party who alleges that that was a fraudulent transaction to defeat a creditor, to prove the fraud alleged and the want of consideration. But when he has established circumstances pointing to the truth of the facts he alleges the onus will be shifted and it will be for the other party to prove consideration (*Robinson, C.J. and Duckworth, J.*). MAUNG PO LU *v.* MAUNG PO KWA. **65 I.C. 322=11 L. B. R. 89= A. I. R. 1921 L. B. 58.**

—Ss. 101 to 103—Genuineness.

———*Pro-note alleged as forged—Onus on defendant.*

Plaintiff sued defendant for a certain sum due on the promissory note. The defendant denied taking the principal sum mentioned in the promissory note, *viz.*, Rs. 1,300 and denied signing the promissory note in the form it had assumed when the case was brought. He admitted that his signature appeared on the note, but said that when he signed it, the only entries were the figures Rs. 300 at the top of the paper, and signature at the bottom.

The case was decreed in favour of the plaintiff, not because the trial Court was satisfied that the loan alleged had been made, but because the defendant had not succeeded in proving affirmatively that the note as produced was a forgery. (*Rutledge, C.J. and Brown, J.*). HOE MDH. *v.* I. M. SHEDAT. **105 I.C. 361=5 Rang. 527=A.I.R. 1927 Rang. 319.**

—Ss. 101 to 103—Genuineness—Accounts.

———*Suspicious circumstances—Onus of proving accounts to be fictitious is not on defendant.*

The family firm of which the debtor was once a member was once the richest firm, so much so that the plaintiffs themselves were indebted to it to the extent of over three lakhs of rupees, and all their property was mortgaged in favour of it for that debt. Another suspicious circumstance was that they had this debt set off against their own debts. Secondly, there was the fact that they brought the suit after the debtor's death though he lived for more than five years after the date of the last balance. They kept quiet for all this long period and did not even obtain fresh acknowledgments from the deceased member year by year which money-lenders generally do to charge compound interest and strengthen the evidential value of accounts. If the accounts were wholly or partly fictitious the deceased member alone could prove the same.

Held, the belated suit and non-renewal of acknowledgments strongly point to the conclusion that the plaintiffs could not trust the debtor and did not consider it safe to see him. Under all these circumstances the onus of proving that the account was fictitious did not lie upon the defendants. (*Broadway and Zafar Ali, JJ.*). DHAG MAL DAYA RAM *v.* GARINIJU MAL. **83 I. C. 810= A.I.R. 1923 Lah. 471.**

—Ss. 101 to 103—Grant.

———*Exemption from Revenue—Onus on claimant.*

Title to exemption from revenue must be proved by the preson setting up such title and it must be proved, not by inference but by positive proof by a grant to hold as revenue-fee. At least such evidence should be available as would lead to the necessary inference that there was a grant. 4 M.I.A. 466, *Foll.* (*B. B. Ghose and Roy, JJ.*). RAMNEBASH CHANBOY *v.* JYOTI PROSAD SINGH. **104 I.C. 742=31 C.W.N. 1012= A.I.R. 1927 Cal. 921.**

EVIDENCE ACT (1872), Ss. 101 to 103—Landlord and tenant.

———*Resumability on grantor.*

The burden of founding a resumable grant or tenure is on the grantor. (*Ayling and Ramesam, JJ.*). RAMASAMI *v.* LAKSHMI VARSSIAR. **72 I.C. 627=17 M.L.W. 514=32 M.L.T. 399= 1923 M.W.N. 343=A.I.R. 1923 Mad. 572.**

—Ss. 101 to 103—Jurisdiction.

———*Onus on party seeking.*

The onus of showing that a party is entitled to bring a suit in the special Revenue Court lies undoubtedly on him. (*Wallace, J.*). THIRUMALAYAPPA *v.* KARUPPAYI. **106 I.C. 505= A.I.R. 1928 Mad. 375.**

———Power of Crown to act under a Special Act challenged—Onus is on Crown to show that they come under the statute. (*Mookerjee and Cuming, JJ.*). SECRETARY OF STATE *v.* UPENDRA NARAIN ROY. **71 I.C. 849=36 C.L.J. 336= A I.R. 1923 Cal. 247.**

—Ss. 101 to 103—Landlord and tenant.

———*Permanent tenancy—Right to enhance rent—Onus on landlord.*

In the case of permanent tenancy the onus is on landlord to prove a right to enhance rent by agreement usage or otherwise. A. I. R. 1926 Bom. 52, *Foll.* (*Madgavkar and Murphy, JJ.*). MANSUKH PANCHAND SHAH *v.* TRIKAMBHAI ICHHABHAI PATEL. **123 I.C. 492=31 Bom.L.R. 1279= A.I.R. 1930 Bom. 39.**

———*Suit to recover land as* mal *land—Onus on the zamindar.*

Where a zamindar or a person claiming through the zamindar brings a suit for recovery of certain land as forming part of his *mal* land and the defendant contends the suit on the ground that it was the *lakheraj* property of which they were the *shebaits* or which they held through the *shebait*, it is not enough for the plaintiff to show that it lay within the ambit of the zamindari but they must prove that the land lay within the zamindar's regularly assessed estate or mahal and that it formed part of the *mal* assets at the time of the decennial settlement. The burden then will shift on defendants to prove that it was *lakheraj* property. A.I.R.1922 P.C.272, *Expl.*; A.I.R. 1924 Cal. 328, *Ref.*; 14 M. I. A. 152, *Dist.* (*Cuming and Pearson, JJ.*). MAKHAN LAL PAUL *v.* RUPCHAND MAJI. **51 C.L.J. 41=33 C.W.N. 1168= A.I.R. 1930 Cal. 164.**

———*Ejectment suit—Permanent tenancy set up—Onus on defendant.*

It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant. A. I. R. 1924 P. C. 65 and 16 Cal. 223 (P. C.), *Rel. on*; 32 Cal. 51 (P. C.) and 28 Cal. 738, *Dist.* (*Rankin, C.J. and Mitter, J.*). RAY MONMOTHA NATH MITTER *v.* RAJESWAR RAI CHOUDHURY. **107 I.C. 81=55 Cal. 355= 32 C.W.N. 184=A.I.R. 1928 Cal. 315.**

———*Tenant pleading termination of tenancy—Onus on tenant.*

Where in a suit for recovery of rent by the landlord, a tenant has alleged that the relationship of landlord and tenant that existed between them had terminated resulting in the termination of his liability, the initial as well as the ultimate onus in such a case is on the tenant. (*Cuming and Mukerji, JJ.*). SATU PRAMANIK *v.* MT. JOYNAB BIBI. **110 I.C. 438 (Cal.).**

EVIDENCE ACT (1872), Ss. 101 to 103—Landlord and tenant.

———*Variation in rent—Tenant to prove the reason.*

Where there has been a variation in the amount of rent, the onus is on the tenants to prove why there has been such variation. (*Cuming and Chakravarty, JJ.*). NRISINHA CHANDRA NANDI *v.* BATASI DASHI. **90 I.C. 602= A.I.R. 1926 Cal. 106.**

———*Tenant alleging termination of tenancy—Onus on tenant.*

Where a tenant-at-will alleges that his relationship as a tenant ceased to exist, the onus is on him to prove that the relationship subsequently ceased to exist. (*Rupchand Bilaram, A.J.C.*). MAHOMED FARUK *v.* SIDIK. **79 I.C. 59= A. I. R. 1925 Sind 36.**

———*Ejectment suit—Permanent tenancy—Onus on tenant setting up—Proof of—Long occupation not sufficient.*

When a tenant of lands in India in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such a right is upon the tenant and proof of long occupation at a fixed rent does not satisfy that onus: 16 Cal. 223 P. C. and 43 Mad. 567 P. C., *Ref.* (*Lords Shaw and Carson, Sir John Edge, Mr. Ameer Ali and Sir Lawrence Jenkins*). A. S. N. NAINAPILLAI MARAKKAYAR *v.* T.A.R.A. RM. RAMANATHAN CHETTIAR. **82 I.C. 226=5 L.R.P.C. 33= 19 M.L.W. 259=22 A.L.J. 130=51 I.A. 83= 34 M.L.T. 10=1924 M.W.N. 293= 47 Mad. 337=28 C.W.N. 809= A.I.R. 1924 P.C. 65=46 M.L.J. 546 (P.C.).**

———*Not record as tenant—Onus on tenant.*

Where a person is not recorded as tenant and the landlord does not admit that he was a tenant, the burden is upon him to prove that he was a tenant. (*Batten, J.C.*). ALAM SINGH *v.* SETH GOPALDAS. **68 I.C. 664=A.I.R. 1923 Nag. 7.**

—Ss. 101 to 103—Legal necessity—Alienation.

———*Onus on alienee.*

In cases of alienations where necessity is pleaded it is the duty of the alienee to show the validity of the alienation: 65 P.R. 1900, *Foll.* (*Addison, J.*). MAHAMUD *v.* MT. GHULAM FATIMA. **117 I.C. 905 (Lah.).**

———*By restricted owner—Onus on alienee—How discharged.*

In a suit on a bond made by a person with restricted power of alienation the defendants are not required to plead the absence of legal necessity for the borrowing. It is for the plaintiffs to allege and prove the circumstances which alone will give validity to the mortgage. Even though there may not be legal necessity in fact the alienee would be equally protected if he honestly did all that was reasonable to satisfy himself that the required necessity existed. *Sham Sundar Lal* v. *Achhan Kunwar*, 25 I. A. 183, *Foll.* (*Sir Lawrence Jenkins.*) KONDAMA NAICKER *v.* KANDASAMI GOUNDAR. **79 I.C. 961= 28 C.W.N. 1050=22 A.L.J. 16=1924 M.W.N. 86= 19 M. L. W. 107=5 L. R. P. C. 19= 26 Bom. L.R. 198=51 I.A. 145=34 M.L.T. 20= 47 Mad. 181=39 C.L.J. 194=A.I.R. 1924 P. C. 56= 46 M.L.J. 172 (P.C.).**

———*Suit for declaration as to invalidity—Onus on plaintiff—Not exonerated by defendant's absence.*

Where plaintiff sues for declaration that a sale-deed executed by a member of a Hindu family is fictitious and should be set aside, as being executed without necessity, the burden of proving this allegations is on him, and the absence of defendant from suit, would not relieve him from that burden. The granting of a declaration is a matter of discretion of the Court though such discretion should be exercised only on Judicial Principles. (*Rafique and Piggott, JJ.*). RAM RAGHUBIR LAL *v.* DIP NARAIN SINGH. **71 I.C. 749=21 A.L.J. 168= 45 All. 311=4 L.R.A. Civ. 380= A.I R. 1923 All. 287.**

EVIDENCE ACT (1872), Ss. 101 to 103—Limitation.

———*Pre-emptor supporting alienation—Onus on him as to necessity—Extent of proof required.*

A pre-emptor cannot stand in a better position against the sons than the vendee from father except that, being in a less favourable situation than the vendee to prove proper enquiry as to the existence of necessity or of antecedent debts of the father, less strict proof of enquiry may be required of him. The burden of proving their existence, however, is not shifted by pre-emption from the transferee to the sons, unless the sons were parties to the pre-emption decree. (*Ashworth, J.C.*). JAMNA PRASAD *v.* BALBHADDAR. **74 I.C. 353=25 O.C. 388= 9 O.L.J. 601=A.I.R. 1923 Oudh 147.**

—Ss. 101 to 103—Legal necessity—Borrowing.

———*High rate of interest—Onus on lender.*

Where the rate of interest is unusually high, the burden lies on the mortgagee to prove that there was necessity to borrow at so high a rate. (*Daniels, J. C.*). SAGAR SINGH *v.* MATHURA PRASAD. **87 I.C. 1035=A. I. R. 1925 Oudh 750.**

—Ss. 101 to 103—Legal necessity—Hindu widow.

———*Dealings with a Hindu widow—Onus on person so dealing—Proof of fair rent or price alone not sufficient.*

A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims.

It is sufficient to say that the mere fact that the rent reserved was a fair market rent or the price obtained was a fair market price, cannot alone and in themselves be regarded as sufficient. (*Lord Buckmaster*). NABA KISHORE MANDAL *v.* UPENDRA KISHORE MANDAL. **65 I. C. 305= 20 A. L. J. 22=35 C. L. J. 116= 1922 M. W. N. 95=26 C. W. N. 322= 3 P. L. T. 311=24 Bom. L. R. 346= 15 M. L. W. 417=30 M. L. T. 284= A.I.R. 1922 P.C. 39=42 M.L.J. 253 (P.C.).**

—Ss. 101 to 103—Legal necessity—Mortgage.

———Hindu Law—Alienation—Necessity—Mortgage of joint property by Manager—Party supporting mortgage must prove that conditions imposed were reasonable under the circumstances. (*Syed Wazir Hasan, J. C.*). MANNU LAL *v.* BISHAMBHAR NATH. **79 I. C. 35=11 O. L. J. 415= A. I. R. 1924 Oudh 378.**

—Ss. 101 to 103—Limitation.

———*Suit by a minor on attaining majority—Onus on him to prove—Date of majority.*

It is the duty of the person bringing a suit and claiming exception under Limitation Act, S. 8 to show that he attained majority within three years of the institution of the suit. (*Stuart, C. J. and Srivastava, J.*). MEHDI ALI *v.* WALAYAT HUSAIN KHAN. **121 I. C. 277=7 O. W. N. 25= A. I. R. 1930 Oudh 97.**

———*Pro-note—Two different dates of endorsement for same payment—Onus on plaintiff to prove the date bringing the suit in time.*

Where there are two endorsements on the promissory note as to the same payment of interest

EVIDENCE ACT (1872), Ss. 101 to 103—Limitation.

but the dates of the two differ, and if one is correct, the suit is in time while if the other is correct, the suit is time-barred ; it is the duty of the plaintiff to prove that his suit is within time, and, to do that he must prove that the date bringing the suit in time is correct. (*Carr and Maung Ba, JJ.*). M. K. AHMEDSA ROWTHER *v.* MG. SAN MYEIN.
104 I.C. 368=6 Bur. L.J. 102=A.I.R. 1927 Rang. 255.

———*Onus on plaintiff to prove suit is not barred.*

Where the defendants plead limitation to a suit, it is for the plaintiff to prove facts which would bring the claim within time. (*Macleod, C. J. and Shah, J.*). BANK OF BOMBAY *v.* FAZULBHAY EBRAHIM. **67 I.C. 761=24 Bom.L.R. 513=A.I.R. 1923 Bom. 155.**

———*Suit by minor on attaining majority—Onus on him to prove that suit is in time.*

In a suit by minor on attaining majority to set aside sale by his mother on the ground that she was induced by fraud and misrepresentation the burden lies on plaintiff to prove that his suit is in time. (*Campbell, J.*). JOGAT SINGH *v.* BALAJA SINGH. **70 I.C. 984=A.I.R. 1923 Lah. 254.**

———Prima facie *barred—Onus on plaintiff to disprove bar.*

When a suit or an application is on the face of it barred it is for the plaintiff or the applicant to satisfy the Court of the circumstances which would prevent the statute from having its ordinary effect. 36 Cal. 654, *Foll.* (*Daniels and Dalal, A.J.Cs.*). YAQUB BELG *v.* RASUH BEG. **74 I.C. 517=10 O.L.J. 86=A.I.R. 1923 Oudh 254.**

—Ss. 101 to 103—Material alteration.

———*Pro-note—Alteration in the figure representing consideration—Onus for plaintiff to prove consideration.*

Plaintiff sued defendant for a certain sum due on the promissory note. The defendant denied taking the principal sum mentioned in the promissory note, *viz.*, Rs. 1,300, and denied signing the promissory note in the form it had assumed when the case was brought. He admitted that his signature appeared on the note, but said that when he signed it, the only entries were the figures Rs. 300, at the top of the paper, and signature at the bottom.

Held, that all that the defendant admitted was that his signature appeared on the document filed and the case to be decided was not whether the plaintiff had been proved to have committed forgery but whether the plaintiff had proved that he lent the Rs. 1,300, to the defendant as he alleged and the burden of proving this loan rested on the plaintiff. (*Rutledge, C. J. and Brown, J.*). HOE MOH *v.* I. M SEEDAT. **105 I.C. 361=5 Rang. 527=A.I.R. 1927 Rang. 319.**

———*Erasure or interlineation—Person producing the document must show when it was made.*

A writing which is intended to be under hand only can be altered by erasure or interlineation or otherwise before it is signed but it lies upon the party who puts the instrument in suit to explain the alteration and show *when* it was made. An alteration made while the instrument is in the custody of one party although not made with his knowledge or consent has the same effect in avoiding the instrument as if made by him, on the principle that he who has the custody of an instrument made for his benefit is bound to preserve it

EVIDENCE ACT (1872), Ss. 101 to 103—Mortgage—Redemption.

is its original state. (*Kinkhede, A. J. C.*). KANHAYALAL TARACHAND *v.* SITARAM TUKARAM. **81 I.C. 847=20 N.L.R. 76=A.I.R. 1924 Nag. 250.**

—Ss. 101 to 103—Minority.

———*Representation as major—Onus of proving him a minor heavy on those setting it up.*

Where a deed is executed by a person who alleges himself to be a major at the time of execution, a heavy burden rests upon him or his representatives when they set up the defence of minority. (*Lord Salvesen*). SADIQ ALI KHAN *v.* JAI KISHORI. **109 I.C. 337=26 A.L.J. 685=47 C.L.J. 628=32 C.W.N. 874=5 O.W.N. 547=28 M.L.W. 17=30 Bom. L.R. 1346=A.I.R. 1928 P.C. 152=55 M.L.J. 88 (P.C.).**

———*Defendant pleading minority—Onus on him.*

In a suit to recover money on a bond executed by defendant who pleads minority at the time of execution of the bond, the burden of proving minority is on defendant : A. I. R. 1924 All. 730, *Foll.* (*Ryves and Mukerji, JJ.*). SURJA *v.* JOTI PRASAD. **87 I.C. 445=47 All. 493=6 L.R.A. Civ. 283=A.I.R. 1925 All. 681.**

———*Contract-deed alleged to be executed by minor—Onus on party setting up the deed to prove competence.*

When the validity of a contract is questioned on the ground that the executant is a minor it is for the party setting up the deed to establish by *prima facie* evidence that the contract was valid and entered into by a person who was competent to do so. (*Stuart, J.*). BACHCHA LAL *v.* HASAN KHAN. **66 I.C. 814=A.I.R. 1922 All. 240.**

———*Minor acted and appeared like major—Onus of proving minority on those alleging it.*

It is doubtful whether any heavier burden is laid on the plaintiff than that of establishing that the plaintiff has good reason to believe the alleged minor was of full age. If the minor acted and appeared like a major, the burden of proving minority lies on the party alleging it and presumably basing its allegation on peculiar knowledge. (*Le-Rossignol, J.*). DAHARAN SINGH *v.* HARBANS SINGH. **A.I.R. 1922 Lah. 75.**

———*No clear evidence as to date of birth—Evidence cannot be strained to favour.*

Where the burden of proof of minority is on the plaintiff and his witnesses are not exact as to the date of his birth their evidence cannot be strained in his favour. (*Daniels, J. C.*). MT. MANZURAM BIBI *v.* JANKI PRASAD. **66 I.C. 930=9 O. L. J. 35=A.I.R. 1922 Oudh 50.**

—Ss. 101 to 103—Mortgage.

———*By* Karta—*Onus on mortgagee to prove validity.*

In a suit by the mortgagee on a mortgage executed by the *Karta* of a joint family the onus is on the mortgagee to prove that the mortgage was a valid one. 14 Ben. L.R. 21, *Rel. on.* (*Das and Ross, JJ.*). SADHU SARAN PRASAD SINGH *v.* BRAHMADEO PRASAD SINGH. **61 I. C. 20=2 P. L. T. 318=6 P.L.J. 256=A.I.R. 1921 Pat. 99.**

—Ss. 101 to 103—Mortgage—Redemption.

———*Plea of extinction by sale—Onus on mortgagee.*

Where once a mortgage has been admitted the onus is on the mortgage to show that the mortgage has been extinguished by subsequent sale. (*Sir Benod Mitter*). WALLI MOHAMMAD *v.* MOHAMMED BAKSH. **122 I C. 316=1930 A.L.J. 292=32 Bom.L.R. 380=31 P.L.R. 145=31 M.L.W. 321=11 Lah. 199=57 I.A. 86=A.I.R. 1930 P.C. 91 (P.C.).**

EVIDENCE ACT (1872), Ss. 101 to 103—Mortgage—Redemption.

———*Onus on plaintiff to prove subsistence of mortgage.*

In a suit for redemption, the onus is on the plaintiff to prove mortgage he set up, *i. e.*, that it was still subsisting. (*Kanhaiya Lal, J. C.*). BINDA *v.* SANKATA PRASAD. **95 I. C. 945=8 O. L. J. 401.**

———*Subsistence of mortgage—Initial onus on mortgagor—If mortgage is admitted—Onus shifts mortgagee to prove subsequent sale.*

Plaintiffs alleged that certain trees had been mortgaged by their ancestor to the predecessors-in-title of the defendants,

Held, the onus of proving that the mortgage subsists at the date of suit, lies on plaintiffs in the first instance. If the defendants admit previous mortgage but allege subsequent sale, the onus is shifted on to them to prove ownership by sale when they produce and prove revenue records in their favour, the onus is re-shifted to the plaintiffs, who must prove their case. (*Broadway, J.*). JOTI PRASAD *v.* RAHAMAT ALI. **81 I.C. 336= A.I.R. 1923 Lah. 243.**

———*Larger sum claimed—No burden on plaintiff to prove right to redeem.*

The plaintiffs sued to redeem a mortgage. The defendant admitted the mortgage but pleaded that the mortgage amount was more than that alleged by the plaintiffs,

Held, that no burden lay on the plaintiff to prove his right to redeem on payment of the lesser amount. (*Brown, A.J.C.*). MG. SHWE MYIN *v.* MA NAING. **70 I.C. 911=4 U.B.R. 114= 1 Bur. L.J. 248=A.I.R. 1923 Rang. 24.**

———'Neerozhikka Otti Kanom'—*Onus of proving it is irredeemable is on party alleging it.*

The person setting up the plea that a mortgage is irredeemable must prove that it is so. There is nothing in books on Malabar Law to show that the tenure *Neerozhikka Otti Kanom* is irredeemable. (*Krishnan and Ramesam, JJ.*). KUNNUMMALTHAMMASIKUM NANTHOTH RYRU NAMBIAR *v.* KAPPALLI KANARA KURUP. **70 I.C. 20= 1923 M.W.N. 76=16 M L.W. 930= A.I.R. 1922 Mad. 185=42 M.L.J. 350.**

—Ss. 101 to 103—Negligence.

———*Collections of rents—Negligence alleged—Onus on party alleging.*

In a suit by a *thekadar* against his joint *thekadar* entrusted with collection of rent and keeping accounts, in which the plaintiff seeks to make the defendant liable not only for the profits which the latter has actually collected but for those which through gross negligence or misconduct he has omitted to collect, the burden of proving such negligence or misconduct rests in the first instance on the plaintiff. 12 All. 301 (F.B.), *Rel. on.* (*Wazir Hasan and Raza, JJ.*). RAM PADAR NATH *v.* GANGA PRASAD. **99 I. C. 185= 3 O.W.N. (Sup.) 271=8 L. R. A. Rev. 31= A. I. R. 1927 Oudh 90.**

—Ss. 101 to 103—Negotiable Instruments.

———*Hundi not presented for payment—Loss sustained by drawer—Onus heavy on payee to disprove loss.*

Where a hundi is not presented for payment and the drawer withdraws the money after many days, the burden of proof lies heavily on the payee to prove that the drawer did not suffer any loss, and the circumstances will be very exceptional in which he could prove that the drawer could not possibly have suffered any damage and burden is certainly not discharged by the oral admission of the defendant drawer that some time or other subsequently he got back his money. (*Boys and Ashworth, JJ.*). BHIKKI MAL *v.* RAGHUBIR SINGH. **88 I. C. 916= 6 L. R. A. Civ. 500=23 A. L. J. 861= A. I. R. 1925 All. 811.**

EVIDENCE ACT (1872), Ss. 101 to 103—Omission to discharge onus.

—Ss. 101 to 103—Notice.

———*Absence of notice—Must be alleged and proved.*

The defence of a purchase without notice is one which ought to be specifically alleged as well as proved by one who relies upon it : 42 Cal. 625, *Foll.* (*Dawson Miller, C. J. and Ross, J.*). MURAT SINGH *v.* PHEKER SINGH. **110 I. C. 526= 7 Pat. 584=9 P. L. T. 743=A.I.R. 1928 Pat. 587.**

———*Onus on person setting up notice—Other circumstances than mere registration must be proved.*

Registration by itself is no notice. There must be other circumstances in the case from which the Court could come to the conclusion that the subsequent purchaser had notice of the prior registered agreement and the burden of proof lies on the person setting up notice. 36 B. 446, *Dist.* (*Macleod, C.J. and Crump, J.*). PEERKA LALKA *v.* BAPU KASHIBA MALI. **73 I.C. 231= 25 Bom.L.R. 375=A. I. R. 1923 Bom. 410.**

———*Prior mortgage—Onus on purchaser to prove he had no notice of.*

Where a subsequent purchaser of property pleads that he had no notice, of a prior mortgage thereon,

Held, that the onus is on him to prove it. This rule applies equally in the case of movable property and immovable property. (*Heald and Lentaigne, JJ.*). (MAUNG) CHIT U *v.* BANSI DHAR BAZAZ. **75 I. C. 328=2 Bur. L. J. 63= A. I. R. 1923 Rang. 163.**

—Ss. 101 to 103—Objection to onus.

———*Cannot be made at a late stage.*

A party accepting the onus without demur cannot object at a late stage saying that burden was wrongly put on them. (*Zafar Ali and Bhide, JJ.*). POKHAR DAS *v.* THAKER DAS. **120 I.C. 168=31 P. L. R. 481= A.I.R. 1930 Lah. 218.**

—Ss. 101 to 103—Omission to discharge onus.

———*Inability to prove the basis of claim—No excuse.*

The mere inability to prove a thing, on proof of which alone he can succeed, cannot possibly be regarded as a ground for granting relief to the plaintiff. (*Srinivasa Ayyangar, J.*). K. RAGHAVENDRA RAO *v.* K. S. SHIVAJI & CO. **108 I. C. 758 (Mad.).**

———*Facts proving either way—Onus not discharged.*

The onus of proof is not discharged by producing evidence which is just as consistent with the allegation of the party on whom the onus of proof lies as with the denial of the opponent. (*Das and Foster, JJ.*). GOPINATH SARANJI *v.* AIHARRUL HAQUE. **101 I.C. 119=8 P.L.T. 578= A.I.R. 1927 Pat. 225.**

———*Facts proving either way—Onus not discharged.*

Where the undoubted evidence is consistent both with the allegation of the plaintiff as with the denial of the defendant, the plaintiff must fail. (*Das and Adami, JJ.*). RAMESHWAR NARAIN SINGH *v.* RANI REKNATH KOERI. **67 I. C. 451= A.I.R. 1923 Pat. 165.**

EVIDENCE ACT (1872), Ss. 101 to 103—Onus immaterial.

—Ss. 101 to 103—Onus immaterial.

———*All available evidence led.—Wrong onus.*

The fact that onus is wrongly placed makes no difference when the parties have led all the available evidence. (*Tek Chand, J.*). AMAR DAS *v.* DALI. **121 I.C. 377=A.I.R. 1930 Lah. 677.**

———*Evidence let in on both sides.*

The question of onus does not matter when both parties have let in their evidence in the case. (*Ananthakrishna Ayyar, J.*). MARIAPPA GOUNDAN *v.* PALANIAPPA GOUNDAN. **A.I.R. 1930 Mad. 796.**

———*All material facts before Court.*

Where the relevant facts are before the Court and all that remains for decision is what inference is to be drawn from them, the question of burden of proof is not pertinent and this is more so at the appellate stage. A.I.R. 1920 P.C. 67; A.I.R. 1922 P.C. 292 and A.I.R. 1922 Cal. 160, *Foll.* (*Findlay, J.C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I.C. 609=A.I.R. 1930 Nag. 225.**

———*Plaintiffs' failure to prove—Can yet avail of defendant's pleading.*

A plaintiff, who fails to prove all the facts alleged by him, may yet obtain the whole or any part of the relief claimed by him if the facts pleaded by the defendant and found by the Court, show him to be entitled to it. 4 N.L.R. 86, *Foll.* (*Subhedar, A.J.C.*). GAJADHAR *v.* SETH MEGHRAJ. **121 I.C. 39=26 N. L.R. 130= A.I.R. 1930 Nag. 8.**

———*Appeal—Question of onus hardly arises.*

The question of onus has greater force in original trial and hardly arises in an appeal where the appellate Court has to consider the facts and arrive at a conclusion on the evidence led before Trial Court. (*Patkar and Baker, JJ.*). HIRABHARTHI JAMNABHARTHI *v.* BAIJAVER. **113 I. C. 406= 30 Bom. L.R. 1555=A.I.R. 1929 Bom. 35.**

———*Evidence let in on both sides.*

The question on whom the burden of proof should fall is of very little importance when evidence has been gone into by both sides. (*Cuming and Mallik, JJ.*). SATI PROSAD GARGA *v.* GOBINDA CHANDRA. **33 C.W.N. 227=56 Cal.805= A.I.R. 1929 Cal. 325.**

———*All evidence taken.*

After all the evidence has been taken, no question of burden of proof remains. (*Chari, J.*). MA SAW TINT *v.* ABDUL BARI. **119 I.C. 222= A.I.R. 1929 Rang. 183.**

———*Whole case before Court—Onus material only in ambiguity.*

When all the circumstances have been ascertained so far as the parties have thought fit to ascertain them, discussion on the point of onus of proof becomes immaterial. The question of onus only becomes important if the circumstances are so ambiguous that a satisfactory conclusion is impossible without resort to it: *Robins* v. *National Trust Co.*, (1927) A.C. 515, *Ref.* (*Lord Warrington of Clyffe*). SIME, DARBY AND CO., LTD. *v.* OFFICIAL ASSIGNEE OF LEE SONG PENG. **107 I.C. 233=30 Bom. L.R. 290=47 C.L.J. 339= 27 M.L.W. 744=A.I.R. 1928 P.C. 77= 54 M.L.J. 337 (P. .C).**

———*All evidence led.*

When evidence is led by both sides, question of burden of proof has no importance. (*Sulaiman and Ashworth, JJ.*). KIRTARATH RAI *v.* SRIPAT RAI. **107 I.C. 254=A.I.R. 1928 All. 307.**

EVIDENCE ACT (1872), Ss. 101 to 103—Onus immaterial.

———*Evidence on particular issue—Wrong allocation of burden—Not entitled to claim remand—Rule not inflexible.*

The rule that where parties have led evidence on a particular issue, the wrong allocation of the burden of proof does not entitle the party on whom the burden of proof is subsequently placed to claim a remand, is not inflexible but its applicability must depend upon the facts of the case, the nature of the point involved and the evidence produced by both parties. (*Jai Lal, J.*). JAGADISH RAM *v.* MUKAND LAL. **109 I.C. 331=10 L. L.J. 309= 30 P.L.R. 105=A.I.R. 1928 Lah. 763.**

———*All available evidence let in.*

Where the parties have produced all their available evidence, the dispute on the point of onus is mainly of an academic nature. (*Addison and Johnstone, JJ.*). FEROZE DIN *v.* NAWAB KHAN. **112 I.C. 89=9 Lah. 224=30 P.L.R. 154= A.I.R. 1928 Lah. 432.**

———When the whole evidence is in, the question of onus is merely academical. (*Mullick, Ag. C.J. and Jwala Prasad, J.*). MAHADEO LAL *v.* DULIP NARAYAN SINGH. **106 I.C. 243=9 P. L. T. 393= A. I. R. 1928 Pat. 190.**

———*All evidence let in.*

The question of onus is not very material after the whole of the evidence has been adduced by the parties and gone into in the case. (*Greaves and Mukerji, JJ.*). ISWAR CHANDRA *v.* JOGENDRA LAL. **98 I C. 137=A.I.R. 1927 Cal. 126.**

———*All evidence let in—Appeal stage.*

When all the evidence is in, the question of burden of proof has little or no importance at the stage of appeal. (*Kinkhede, A.J.C.*). MT. MAINEBAI *v.* YADO. **103 I.C. 166=A.I.R. 1927 Nag. 382.**

———*Evidence let in on both sides.*

When evidence has been given on both sides the question of the burden of proof is of academic interest only, and the Court has to decide on the evidence that has been given which version of the transaction is true. (*Ross and Kulwant Sahay, JJ.*). KALI PRASAD CHAUDHARY *v.* NARAYAN PRASAD. **103 I.C. 488=A.I.R. 1927 Pat. 417.**

———*Evidence let in on both sides.*

When both the parties adduced evidence in support of their respective allegations, the question of burden of proof becomes almost immaterial. (*Iqbal Ahmad, J.*). DALLE *v.* AMIR. **98 I.C. 827 (All.).**

———*Evidence let in on both sides.*

When both sides have produced their evidence, the appellate Court should not decide merely on the onus, but should come to its own finding on the evidence recorded. (*Le Rossignol, J.*). TARA CHAND *v.* NASIR-UD-DIN. **96 I.C. 415= 8 L L.J. 238=28 P.L.R. 61= A.I.R. 1926 Lah. 514.**

———*Evidence let in on both sides.*

Where evidence has been produced by both parties on a particular point and the Court has come to a conclusion on consideration of that evidence, the question of burden of proof becomes a matter of pure academic interest. (*Raza, J.*). JEORAKHAN *v.* MT. GOURE. **95 I.C. 826 (Oudh).**

———*Whole evidence considered in appeal.*

The question of onus ordinarily becomes of very little importance when the whole evidence is considered especially by the appellate Court. (*Suhrawardy and Cuming, JJ.*). JNANENDRA NATH ROY *v.* NALINI MOHAN GHOSE. **87 I.C. 565= A.I.R. 1925 Cal. 1262.**

EVIDENCE ACT (1872), Ss. 101 to 103—Onus immaterial.

———*Wrong onus—Merits not affected.*

The question of burden of proof loses its importance when evidence has been adduced on both sides and considered by the Court provided the wrong placing of the onus has not affected the merits of the case. (*Suhrawardy and Duval, JJ.*). HEM CHANDRA DE SARKAR *v.* AMIABALA DE SIRKAR.

84 I.C. 693=52 Cal. 121=40 C. L. J. 184= A.I.R. 1925 Cal. 61.

———*All evidence before appellate Court.*

At the stage of appeal, when all the evidence is before the Court, the question of the burden of proof is not of great importance. (*Kinkhede, A.J.C.*). GOPALRAO *v.* HIRALAL.

83 I.C. 246=A.I.R. 1925 Nag. 225.

———*Evidence let in on both sides.*

Where evidence was given by both parties.

Held, the question of the inital onus loses its importance. (*Neave, J.*). SHIN PRASAD SINGH *v.* MUNESHWAR DUBHE. **5 L. R. A. Civ. 354= A.I.R. 1924 All. 924.**

———*All evidence before trial Court.*

The question of onus ceases to be pertinent after all the evidence is once before the trial Court. (*Kinkhede, A. J. C.*). BALIRAM *v.* KAMALJA.

78 I.C. 330=A.I.R. 1924 Nag. 367.

———*Wrong onus—Parties not misled.*

Where the burden of proof has been wrongly laid, but the parties have led evidence and the Court has on that evidence material to go upon for deciding any disputed point the question of the burden of proof is not very pertinent. 25 C. W. N. 942 and 43 M. 567, *Foll.* (*Prideaux, A. J. C.*). SONAJI *v.* DAULAT. **75 I.C. 782= A.I.R. 1924 Nag. 242.**

———*Material for legitimate conclusion present.*

The question of onus becomes of little materiality when evidence is adduced from which a conclusion of fact may be legitimately drawn. (*Lord Salvesen*). SECY. OF STATE *v.* LAXMI BAI.

72 I.C. 898=47 Bom. 327= 28 C.W.N. 49=17 M.L.W. 405= 32 M.L.T. 111=50 I.A. 49= 25 Bom. L.R. 527=37 C.L.J. 464= A.I.R. 1923 P.C. 6=44 M.L.J. 471 (P.C.).

———*Evidence let in by both parties.*

The question of onus of proof is of no importance when both parties produce evidence. (*Pigott and Walsh, JJ.*). RAMANAND SHUKUL *v.* CHHOTEY LAL. **71 I.C. 417=20 A.L.J. 969= 4 L.R.A. Civ. 31=A.I.R. 1923 All. 124.**

———*Question of onus—When material—Both parties adducing evidence.*

The question of onus of proof only arises where there is a question of fact to be determined and there is no evidence one way or the other which will enable the Court to come to a conclusion. Where evidence is adduced by both parties, then the question of the burden of proof becomes immaterial and the Court has to determine on the evidence before it. (*Campbell and Moti Sagar, JJ.*). NIHAL CHAND *v.* GURDITTA MAL.

80 I. C. 170=5 L.L.J. 451= A.I.R. 1923 Lah. 641.

———*Wrong onus—Evidence nevertheless let in.*

Where the defendants led evidence on the issue as to notice they cannot be said to have held back their evidence because of the imposition of the onus on the other side. 46 I.C. 659; 29 All. 184; 25 I.C. 648, *Foll.* (*Campbell, J.*). LADHA RAM *v.* JINDA RAM. **76 I.C. 891= A. I. R. 1923 Lah. 339.**

EVIDENCE ACT (1872), Ss. 101 to 103—Onus immaterial.

———*All evidence before Court.*

The question of onus is not of much importance when the whole of the evidence is before the Court. (*Spencer and Devadoss, JJ.*). **71 I.C. 130= 16 M.L.W. 936=1923 M.W.N. 57= A. I. R. 1923 Mad. 262.**

———*Evidence let in by both sides considered.*

The question of onus is not of importance when both sides have given evidence and the Court has considered it and preferred the evidence of one side to that of the other. (*Kotval, A.J.C.*). GOWARDHAN DAS *v.* R.S. HARLAL RAMSUTH.

69 I.C. 541=A.I.R. 1923 Nag. 62.

———*All evidence before Court.*

When the entire evidence on both sides is once before the Court the debate as to onus is purely academical. Where the relevant facts are before the Court all that remains for decision is what inference should be drawn from them. (*Mr. Ameer Ali*). CHIDAMBARA SIVAPRAKASA *v.* VEERAMA REDDI. **68 I. C. 538=45 Mad. 586= 16 M.L.W. 102=31 M L.T. 54=49 I.A. 286= 1922 M.W.N. 749=37 C.L.J. 199=27 C.W.N. 245= A.I.R. 1922 P.C. 292=43 M.L.J. 640 (P.C.).**

———*Evidence let in by both sides.*

However important the question of burden of proof may be in the early stages of the case, after all the evidence is out on both sides, it must be looked at as a whole and the truth of the occurrence must be inferred from it. (*Lord Sumner*). THE EAST INDIA RY. CO. *v.* MAJOR ANDREW TORTON KIRKWOOD. **67 I.C. 921=15 M.L.W. 248= 48 Cal. 757=A.I.R. 1922 P.C. 195 (P.C.).**

———*Evidence let in on both sides.*

Where both parties have let in evidence the incidence of onus is an academic question which does not affect the conclusion. (*Pratt and Fawcett, JJ.*). DODDAVA KONU PARAHYA *v.* YELLAWA KONU YELLAPPA NINNI. **70 I.C. 417= A.I.R. 1922 Bom. 233.**

———*All evidence before Court.*

Where the entire evidence on both sides is once before the Court, the debate as to onus is purely academical the controversy then is past the stage at which discussion as to the burden of proof is pertinent; the relevant facts being before the Court all that remains for decision is, what inference should be drawn from them. 47 I.A. 767. (*Mookerjee and Chotzner, JJ.*). ABINAS CHANDRA (DAS *v.* MAJIB ALI CHOWDHURY. **70 I.C. 273= 27 C.W.N. 328=36 C.L.J. 196=A.I.R. 1922 Cal. 461.**

———*Evidence on both sides—All facts before Court.*

Where evidence has been adduced by both contestants in support of their respective cases and the relevant facts are before the Court, the question of burden of proof is immaterial and importance should not be attached to the question on whom the initial onus lay. (*Mookerjee and Buckland, JJ.*). SATIS CHANDRA GHOSE *v.* KALIDASI DASI.

68 I. C. 577=26 C. W. N. 177= 34 C.L.J. 529=A. I. R. 1922 Cal. 203.

———*Evidence on both sides let in—Appellate Court.*

The question of onus loses its importance when both parties have adduced evidence in support of their respective cases and the Court on an examination of such evidence shifts the burden of proof from one party to the other. This must be more so at the appellate stage. 34 C.L.J. 333, *Foll.* (*Suhrawardy and Cuming, JJ.*). SHIB CHANDRA SINGHA *v.* GOUR CHANDRA PAUL. **68 I.C. 86= 35 C. L. J. 473=27 C. W. N. 134= A. I. R. 1922 Cal. 160.**

EVIDENCE ACT (1872), Ss. 101 to 103—Onus, immaterial.

———*Evidence on both sides let in.*

Where both parties have gone into evidence the question of onus disappears. (*Simpson, A. J. C.*). MUHAMMAD ANWAR KHAN *v.* JHANDA SINGH.
69 I. C. 888=9 O.L.J. 404=25 O. C. 237=A. I. R. 1922 Oudh 271.

———*Evidence on both sides—All facts before Court.*

Where evidence has been adduced by each of the contestants in support of their respective cases and the relevant facts are before the Court the question of burden of proof is immaterial, and importance should not be attached to the question on whom the initial onus lay. (*Mukerjee and Buckland, JJ.*). JOGENDRA NATH *v.* JAGADINDRA NATH.
67 I. C. 170=34 C. L. J. 133=A. I. R. 1921 Cal. 577.

———*Question of onus—When material—Evidence let in on both sides.*

The question of onus of proof arises only where there is no evidence one way or the other which will enable the Judge to come to a conclusion upon the question of fact to be determined; but where evidence has been adduced by both the parties and the relevant facts are before the Court the question of burden of proof becomes immaterial, and importance should not be attached to the question on whom the initial onus lay; in such circumstances, the question of the burden of proof is really not pertinent. (*Mookerjee and Buckland, JJ.*). KRISHNA KISOR *v.* NAGENDRABALA.
66 I. C. 694=34 C.L.J. 333=25 C.W.N. 942=A.I.R. 1921 Cal. 435.

———*Evidence let in on both sides.*

The question of burden of proof is not very material where both sides have adduced evidence. (*Krishnan and Odgers, JJ.*). PONNALAGU KONAN *v.* SINNIAH ODAYAN. **70 I.C. 27=1921 M.W.N. 719=A.I.R. 1921 Mad. 462.**

—Ss. 101 to 103—Partition.

———*Survivorship among co-widows—Precluded by—Onus.*

The onus of proving that a partition that was effected by the co-widows precludes the rights of survivorship in each other is on the person who asserts the same. (*Ananthakrishna Ayyar, J.*). MINAKSHI AYI *v.* SUBRAMANIAN CHETTIAR.
123 I. C. 35=1929 M. W. N. 667=A.I.R. 1930 Mad. 175.

———*Custom as to impartibility—Onus.*

Where there is a dispute with respect to an estate being impartible or otherwise, the onus lies on the party who alleges the existence of a custom different from the ordinary law of inheritance according to which custom the estate is to be held by a single member and, as such, not liable to partition. In order to establish that any estate is impartible, it must be proved that it is from its nature impartible and descendible to a single person, or that it is impartible and descendible by virtue of a special custom. A.I.R. 1928 P.C. 10, *Foll.* (*Mohiuddin and Macnair, A. J. Cs.*). MT. SARJABAI *v.* GANGARAM. **118 I.C. 871=A.I. R. 1930 Nag. 35.**

———*Plea of permanent occupancy right—Onus.*

Where in a suit for partition defendants resist by setting up acquiescence in their permanent right of occupancy in a part of the land the burden of proving existence of those rights is on them. A.I.R. 1924 P. C. 65 and A. I. R. 1920 P. C. 67,

EVIDENCE ACT (1872), Ss. 101 to 103—Possession.

Rel. on. (*Lord Salvesen*). SUBRAMANYA CHETTIAR *v.* SUBRAMANYA MUDALIAR. **116 I.C. 601=31 Bom. L.R. 830=33 C.W.N. 734=30 M.L.W. 30=56 I.A. 248=52 Mad. 549=1929 M.W.N. 561=A.I.R. 1929 P. C. 156=57 M.L.J. 1 (P.C.).**

———*Partition list proved—Onus to prove jointness.*

The onus is heavy on the person who desires to show that certain partition lists were not acted upon and the parties continued to be joint in spite of these lists. (*Kumaraswami Sastri and Reilly, JJ.*). VENKATAKRISHNAYYA *v.* RANGAYYA.
117 I.C. 720=A.I.R. 1928 Mad. 865.

———*Temporary nature of—Onus.*

Most partitions that are made are permanent and if any party wishes the Court to believe that a given partition was temporary, he must prove it. (*Hallifax, A.J.C.*). JUMMA *v.* ABU.
93 I. C. 193=A. I. R. 1926 Nag. 301.

———*Time of partition—Proof of subsequent partition—Does not shift burden.*

It is well established law that those who allege that the members of a joint Hindu family had separated must prove, unless it is admitted, that there was a separation at some material time. A separation proved to have taken place at a time subsequent to the material time does not shift the burden of proving separation at the material time, on the opposite party. (*Sir John Edge*). MT. BHAGWANI KUNWAR *v.* MOHAN SINGH. **88 I.C. 385=29 C.W.N. 1037=23 A.L.J. 589=41 C.L.J 591=22 M L.W. 211=1925 M. W. N. 421=A.I.R. 1925 P.C. 132=49 M.L.J. 55 (P.C.).**

———*Muhammadans—Acquisition by one member—Proof that it was from joint fund—Onus.*

In a partition suit among Mohammadans the burden is on the plaintiff to prove that the consideration for the acquisition of property by one member only came from the joint fund. (*Raymond, A.J.C.*). YUSIF MAHOMMED *v.* ABUBACKER IBRAHIM. **78 I.C. 817=A. I. R. 1925 Sind 26.**

—Ss. 101 to 103—Plea under—Shifting of onus.

———*Mixed question of fact and law.*

The question of onus is not a mere question of law. Once the principle of onus has been settled, the question still remains, whether having regard to the transactions proved, the onus still remains where it was or shifts. So that in each particular case, whether the onus has been shifted or not becomes a mixed question of fact and law or rather a question of the due application of a recognised principle to the shifting scenes and circumstances of the countless varieties of human life in business. (*Walsh and Ryves, JJ.*). PEARE LAL *v.* SUNDER SINGH. **68 I.C. 805=44 All. 756=20 A.L.J. 658=A. I. R. 1922 All. 436.**

—Ss. 101 to 103—Possession.

———*Dispossessed party—Proof of possession within 12 years—Onus.*

Where in a case for possession by ejectment of the defendants who, it was alleged, had taken forcible possession of the lands two years before the institution of the suit, it was expressly stated in the plaint that the defendants had no right whatsoever to dispossess the plaintiffs.

Held, that the burden of proving possession by the plaintiffs within 12 years of the institution of the suit was on them. (*Jai Lal, J.*). RAHELLA *v.* WAZIRA. **109 I.C. 320=9 L.L.J. 334=A.I.R. 1928 Lah. 32.**

EVIDENCE ACT (1872), Ss. 101 to 103—Possession.

———*Usufructuary mortgage—Consideration and possession denied by third party—Onus.*

Plaintiff was the purchaser of the interest of a usufructuary mortgagee of certain tenant land. Defendant who was the landlord disputed the validity of the mortgage on the ground that no consideration passed from the mortgagee to the mortgagor, nor did the mortgagee take possession, and that the transaction was therefore *farzi* in character. Documents on which plaintiff relied were found to be executed by the mortgagor who never disputed the passing of consideration. The Record-of-Rights recorded the mortgagee as in possession.

Held, that the onus was not on plaintiff to show that consideration passed but that the onus was on defendant to show that no possession passed to the mortgagee. (*Das and Allanson, JJ.*). HITNARAIN SINGH *v.* RAMBARI RAI. **115 I.C. 196= 7 Pat. 733=9 P. L. T. 484= A.I.R. 1928 Pat. 459.**

———*Suit for—Proof, that defendants were in possession—Onus.*

In a suit for possession in order to be entitled to possession against the defendants, the plaintiffs must satisfactorily prove that at the date when they filed their suit the defendants were in possession of the property.

Per *Cuming, J.*—The plaintiffs must prove possession of defendants within 12 years of the suit. (*Cuming and Page, JJ.*). BIRENDRA NATH RAY *v.* SATIS CHANDRA JOURDAR. **97 I.C. 1003= 44 C.L.J. 121=A.I.R. 1926 Cal. 1166.**

———*Suit by person dispossessed—Proof of possession within 12 years—Land incapable of actual possession—Presumption as to continuance of possession.*

Where the plaintiff sued for possession on the allegation of dispossession,

Held, that he is bound to prove possession within 12 years before suit. In order to prove this, he may rely on the presumption that possession of the lawful owner continues as long as the land is incapable of actual possession. But if he relies on this presumption he must prove that the land was incapable of actual possession within twelve years before suit. (*Newbould, B.B. Ghose and Page, JJ.*). SURESH CHANDRA MUKERJEE *v.* SHITI KANTA BANERJEE. **78 I.C. 679=51 Cal. 669= 28 C.W.N. 637=A.I.R. 1924 Cal. 855.**

—Ss. 101 to 103—Presumption.

———*Suppression of account books.*

Where it appeared that the other legatees had seized large portion of the testator's property and the account books kept by the testator and they were suppressing the same.

Held, the residuary legatee need not prove each item of property beyond the possibility of doubt. On proof of *prima facie* case the other legatees were bound to show that the testator did not own the property or that it was subsequently accounted for. (*Phillips and Venkatasubba Rao, JJ.*). K. VENKATARAMAYYA *v.* K. PITCHAMMA. **78 I.C. 274=A.I.R. 1925 Mad. 164.**

———*Commission agent—No presumption of acting in a particular agency.*

The fact that a party is a commission agent does not raise a presumption that he was acting as an agent in a particular transaction; the onus is on him who alleges agency. (*Martineau, J.*). FIRM SHIB LAL *v.* FIRM HARI RAM. **67 I.C. 959= 5 P.W.R. 1923=A.I.R. 1922 Lah. 408.**

EVIDENCE ACT (1872), Ss. 101 to 103—Presumption—Fraud.

—Ss. 101 to 103—Presumption—Consideration.

———*Recited in mortgage-deed—Presumption may be rebutted by even circumstantial evidence.*

In a mortgage suit for sale, the initial presumption arising under S. 118, Negotiable Instruments Act and from the acknowledgment admitting the receipt of the entire consideration, can be rebutted even by circumstantial evidence. And when it is thus rebutted the burden of evidence shifts on to the mortgagee to show that full consideration did actually pass.

In a mortgage suit for sale the execution of the mortgage document was established and further the mortgagor had made an acknowledgment admitting the receipt of the entire consideration as well as the fact that there were hundis and promissory notes executed by him which had been set off or for the payment of which money had been left in the hands of mortgagee. But the mortgagor was a very young man of profligate habits and the mortgagee was in a position to dominate his will and to exercise undue influence over him. Further the mortgagee was not in a position to lend big sum of money,

Held, that the initial presumption of the passing of full consideration was sufficiently rebutted. 29 M.L.J. 236 and 31 I.C. 739, *Foll.* (*Sulaiman and Kendall, JJ.*). SINGAR KUNWAR *v.* BASDEO. **124 I. C. 717=A.I.R. 1930 All. 568.**

—Ss. 101 to 103—Presumption—Custom.

———*Presumption of caste approval—Proof to the contrary.*

When a particular form of marriage is recognised by custom it is to be presumed that the caste approves of it and no social censure attaches to it, unless the contrary is established. The burden lies on the person who asserts the contrary. (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PALTAN. **90 I. C. 358=48 All. 126= 23 A. L. J. 981=6 L.R.A. Civ. 557= A. I. R. 1926 All. 1.**

—Ss. 101 to 103—Presumption—Cutchi Memons.

———*Custom of governance by Hindu Law—Onus how discharged.*

There is a presumption that Muslims are governed by Muhammadan Law, and if a person alleges that Cutchi Memons are governed by Hindu Law, by custom, the burden of proving the custom lies on him and the onus will be discharged by proof of actual instances in which the alleged custom has been followed. (*Tyabji, A. J. C.*). TULSIDAS KESHOWDAS *v.* FAKIR MAHOMED. **93 I. C. 321= 19 S.L.R. 376=A. I. R. 1926 Sind 161.**

—Ss. 101 to 103—Presumption—Fraud.

———*Conveyance by married woman—Husband not joined—Witnesses, living not called—Writer and attesting witness said to be dead—Presumption of fraud arises.*

Where, in a case of conveyance from one married woman to another, husband is not joined; the persons who were said to be present when the consideration was said to have been paid were not called though they were alive; the attesting witness and the person who drew up the document were said to be dead and were not called,

Held, that a presumption of fraud arose and that consideration must be proved by the plaintiff: A.I.R. 1925 Rang. 227, *Dist.* (*Otter, J.*). MA TIN *v.* P.L.V.R. RAMASWAMY CHETTY. **95 I.C. 384= 5 Bur. L.J. 49=A. I. R. 1926 Rang. 133.**

EVIDENCE ACT (1872), Ss. 101 to 103—Presumption—Joint business.

—Ss. 101 to 103—Presumption—Joint business.

———*Property acquired from profits—Proof that it is joint—Onus.*

Property purchased with the profits derived from a joint business cannot be presumed to be joint and the Hindu Law of joint property is not applicable to such property. Burden of proving that such property is joint is on the party alleging it to be so. (*Suhrawardy and Graham, JJ.*). GHOLAM SIDHIQUE KHAN *v.* JOGENDRA NATH MITRA.

96 I. C. 199=43 C. L. J. 452=31 C.W.N. 205=A.I.R. 1926 Cal. 916.

—Ss. 101 to 103—Presumption—Possession.

———*Kabja receipt—Person named as purchaser—Presumption as to his having got possession.*

From the Kabja receipt, the Court is entitled to presume that the person named therein as purchaser had obtained possession through the Court, and although it is possible that when Kabja receipts are passed, physical possession of the land may not always be given to the purchaser, there is no reason why the Court should presume that no possession was given in a particular case. (*Macleod, C.J. and Crump, J.*). PANDURANG WASUDEO *v.* BASAPPA BIN SHIDDAPPA. **77 I.C. 479=A.I.R. 1923 Bom. 364.**

—Ss. 101 to 103—Presumption—Promissory note.

———*Date and place of execution—Proof to the contrary.*

If pro-note is proved to be genuine and it bears the date and place of execution, the presumption is that it was executed at the place and on the date it shows and the onus lies on the party pleading a different place and date, to show it. (*Ramesam and Reilly, JJ.*). KIRMANY & SONS *v.* AGA ALI AKBAR. **109 I.C. 170=A.I.R 1928 Mad. 919.**

—Ss. 101 to 103—Presumption—Registered document.

———*Bearing date—Presumption as to date of execution—Lapse of time—Effect of.*

In cases where a document has been executed and registered and the question arises as to the date it bears there can be little doubt that the presumption is that the document was executed on the date it bears, and the onus is on the contesting party to show that it was not. In all such cases lapse of time does strengthen the onus cast. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RUKMANI AMMAL *v.* ANKAMA NAIDU.

96 I. C. 26=23 M. L. W. 664=1926 M.W.N. 938=A.I.R. 1926 Mad. 744.

—Ss. 101 to 103—Presumption—Relationship.

———*Presumption as to continuance—Burden of proving the contrary.*

When a particular relationship such as marriage has been shown to exist between two persons, there is a presumption in favour of its continuance, and the burden of proving that they do not stand to each other in that relationship lies on the person who affirms it. (*Shadi Lal, C.J. and Agha Haidar, J.*). GULAM MOHY-UD-DIN KHAN *v.* KHIZAR HUSSAIN. **114 I.C. 74=10 Lah. 470=30 P. L. R. 7=A.I.R. 1929 Lah. 6.**

—Ss. 101 to 103—Recitals.

———*Execution admitted—Lack of understanding pleaded—Onus.*

Where the execution of a document is admitted, the onus is on the executant to prove that he did not understand its terms, even if he is an illiterate person. (*Broadway and Addison, JJ.*). CHANDU MAL *v.* MAHMUD HASAN. **97 I.C. 71=27 P.L.R. 641=A.I.R. 1926 Lah. 692.**

EVIDENCE ACT (1872), Ss. 101 to 103—Record-of-Rights.

———*Covenant to pay interest—Absence of consent—Onus.*

When a stipulation as to interest is found in a bond, the execution of which is either proved or admitted, the onus of proving that a covenant to pay interest has found its way into a bond without the consent of the debtor must ordinarily lie upon the debtor. (*Le Rossignol, J.*). KEWAL RAM *v.* ALLAH DIYA. **79 I.C. 55=A.I.R. 1925 Lah. 64.**

———*Promissory note — Consideration recited — Plaintiff undertaking to prove—Failed in part—Effect.*

In a suit on promissory note, which contained a recital that the consideration was paid in cash, the plaintiff abandoned the recital and undertook to prove that the consideration consisted partly of cash and partly of reduction of defendant's liability to a certain firm which was in turn indebted to the plaintiff. He failed to prove the latter part of the case,

Held, that in respect of the latter part a decree could not be passed in plaintiff's favour merely on the strength of the defendant's signature.

Obiter: He could have got a decree for the whole amount if he had offered no evidence at all but relied on the recital. (*Mears, C. J. and Piggott, J.*). SHAMBHU DAYAL *v.* LALLU MAL. **80 I.C. 717=4 L.R.A. Civ. 458=A.I.R. 1924 All. 256.**

———*Possession stated to have been given—Proof to the contrary.*

Where plaintiff signed a document saying that possession has been delivered under a gift-deed the onus of proof that she did not give possession is on the plaintiff. (*Schwabe, C. J. and Wallace, J.*). FATIMA BIBI *v.* KHAIRUM BIBI. **16 M.L.W. 894=A.I.R. 1923 Mad. 52.**

—Ss. 101 to 103—Record-of-Rights.

———*Lessee's suit for possession—Land entered as defendant's ancestral holding—Onus on defendant to establish.*

Where on the basis of a lease executed by the landlord in favour of the plaintiff, the plaintiff sues defendants for recovery of possession of that land, and that land is recorded in Record-of-Rights as defendants' ancestral holding, having regard for the lease it is for the defendants to establish that the plot was part of their ancestral holding. (*Das, J.*). CHAMAN MAHTO *v.* GANESH MAHTO. **123 I. C. 410=A.I. R. 1930 Pat. 149.**

———*Correctness presumed—Entries presumed to be relevant.*

The ordinary rule with regard to official document like Record-of-Rights is that they must be presumed to be correct until the contrary is shown, that is to say, it must be presumed that the entries made in the Record of Rights were those entries and those entries only which are required to be made in the order passed under S. 80, and if any party wishes to dispute the validity of the entry, then the onus would be on him to produce the order passed under S. 80 to show that these particulars were not in fact required. (*Dawson Miller, C. J. and Jwala Prasad, J.*). KALYANDAS *v.* JYOTI LAL. **99 I. C. 492=1926 P. H. C. C. 338=8 P. L T. 239=A. I. R. 1927 Pat. 97.**

———*Tenure-holders—Recorded as holding within zamindari must prove nature of title—Entered as non-resumable tenure-holders—Burden shifted.*

Where the defendants, the tenure-holders, are recorded in the Record-of Rights as holding land within the ambit of the zamindari of the plaintiff

EVIDENCE ACT (1872), Ss. 101 to 103—Record-of-Rights.

and that he was paying revenue for the same, the onus of showing the nature of their title is upon the tenure-holders and upon a failure to show that they had had a tenancy therein the plaintiff is entitled to resume. But if it is recorded that the defendants were owners of a non-resumable tenure the onus is shifted upon the plaintiff to rebut the presumption created by the Record-of Rights. (*Dawson-Miller, C. J. and Mullick, J.*). KAMAKHYA NARAIN SINGH *v.* JAWAHIR KHAN.

94 I. C. 1007 = A.I.R. 1926 Pat. 369.

———*Entered as tenants—Proof to the contrary—Rent proved not in excess of revenue—Onus not discharged.*

If in the revenue records the defendants were shown as tenants paying rent, the onus is on them to show that they are not tenants, and that onus is not discharged by the fact that the amount of the rent which they paid did not exceed the amount of the revenue and cesses. (*Martineau, J.*). RAM DAS *v.* CHANDI. **69 I.C. 363 = A. I. R. 1923 Lah. 35.**

—Ss. 101 to 103—Scope of.

———*Conflicting evidence does not necessarily fail.*

Where the evidence is conflicting the party on whom onus lies does not necessarily fail as in the case where no evidence is led on either side. (*Wort, J.*). BADRINATH UPADHAY *v.* BAIJNATH MANDAL. **123 I. C. 612 = A.I.R. 1930 Pat. 134.**

———*Onus—Not an invariable obligation—Changes according to pleadings and progress of evidence.*

Question as to the onus depends on the pleadings in a particular case. Onus is not an invariable obligation resting on a party to a suit by fixed and pre-determined rules of evidence. It not only changes according to the nature of the pleadings but it also frequently changes according to progress of evidence. (*Wazir Hasan and Raza, JJ.*). SARJOO PRASHAD *v.* DEO DAT LAL. **103 I. C. 410 = 4 O.W.N. 958 = A.I.R 1927 Oudh 499.**

———*Applicability of general rule—Must also show exceptions do not apply.*

Party on whom onus of showing that a rule applies to him lies, must not only establish that the general rule applies to him, but also establish facts showing that the exception of the general rules does not apply. (*Das and Foster, JJ.*). GOPINATH SARANJI *v.* AJHARRUL HAQUE.

101 I.C. 119 = 8 P.L.T. 578 = A.I.R. 1927 Pat. 225.

———*Burden of proof—Benefit of doubt not given.*

Law does not recognise the principle of giving the benefit of the doubt to a party on whom the burden of proof lies. Burden of proving that a person is of an agriculturist tribe is on him, especially when entries in Settlement record are against him. (*Jai Lal, J.*). THAKAR DAS *v.* GHULAM MD. **94 I.C 158 = A.I.R. 1926 Lah. 484.**

———*Burden of proof—No hard and fast rule—Depends on circumstances of each case.*

As regards the question of burden of proof no hard and fast rule can be laid down in the sense that the rule should apply to all cases. The determination of initial onus of proving a certain fact depends on the particular circumstances of each case, and onus also shifts from time to time during the progress of the trial as the evidence develops and facts are established. (*Wasir Hasan and Neave, A. J. Cs.*). DWARKA PRASAD *v.* NASIR AHMED. **78 I.C. 850 = 11 O.L.J. 219 = A.I.R. 1925 Oudh 16.**

EVIDENCE ACT (1872), Ss. 101 to 103—Special agreement.

———*Weakness of defendant's title will not avail.*

The plaintiff must succeed on the strength of his own title and is not assisted by any weakness, real or apparent in the case for the defendant. (*Mukerjee and Suhrawardy, JJ.*). LAKSHAN CHANDRA MANDAL *v.* TAKIM DHALI.

80 I.C. 357 = 39 C.L.J. 90 = 28 C. W. N. 1033 = A.I.R. 1924 Cal. 558.

———*Onus—A question of law.*

The question upon which party the onus of proving any particular point lies, is undoubtedly a question of law. (*Scott-Smith, J.*). MT. NIAMAT BIBI *v.* MAHOMED FAIZ. **86 I.C. 745 (Lah.).**

—Ss. 101 to 103—Shifting of onus.

———In a mortgage suit for sale, the initial presumption arising, under S. 118, Negotiable Instruments Act and from the acknowledgment admitting the receipt of the entire consideration, can be rebutted even by circumstantial evidence. And when it is thus rebutted the burden of evidence shifts on to the mortgagee to show that full consideration did actually pass.

In a mortgage suit for sale the execution of the mortgage document was established and further the mortgagor had made an acknowledgment admitting the receipt of the entire consideration as well as the fact that there were hundis and promissory notes executed by him which had been set off or for the payment of which money had been left in the hands of mortgagee. But the mortgagor was a very young man of profligate habits and the mortgagee was in a position to dominate his will and to exercise undue influence over him. Further the mortgagee was not in a position to lend big sum of money.

Held, that the initial presumption of the passing of full consideration was sufficiently rebutted. 29 M. L. J. 236 and 31 I. C. 739, *Foll.* (*Sulaiman and Kendall, JJ.*). SINGAR KUNWAR *v.* BASDEO PRASAD. **124 I.C. 717 = A.I.R. 1930 All. 568.**

———Where plaintiff has given *prima facie* evidence of loss of profits caused by defendant, the defendant must prove that the loss was less than that proved by plaintiff. A.I.R. 1924 Nag. 117, *Foll.* (*Hallifax, A.J.C.*). RAMCHARAN *v.* SARWARKHAN.

94 I.C. 999 = A.I.R. 1927 Nag. 75.

———Onus is liable to shift on proof of particular circumstances. (*Daniels, J.*). B. BHAGWAN DAS *v.* ALLAN KHAN. **78 I.C. 649 = A.I.R. 1925 All. 28.**

———*Burden shifts according to facts proved.*

Burden of proof is often of a shifting character and may change from one party to the other as facts are proved which render the case of one party more probable than that of the other. (*Krishnan and Odgers, JJ.*). PONNALAGU KONAN *v.* SINNIAH ODAYAN. **70 I.C. 27 = 1921 M.W.N. 719 = A.I.R. 1921 Mad. 462.**

—Ss. 101 to 103—Special agreement.

———*Redemption suit—Mortgagee setting up special covenant—Onus on him.*

Where in a redemption suit the mortgagees set up an alleged deed of further charge which contained a covenant: "There are two bonds by which the plots are mortgaged. So long as I do not redeem these two bonds then first, I will pay the money due on this bond and then I shall be allowed to redeem the fields," and there was nothing to show what were the mortgage-bonds to which it referred or that it referred to the mortgages in suit.

Held, that the mortgagees were setting up a special covenant entitling them to an additional

EVIDENCE ACT (1872), Ss. 101 to 103—Special plea.

amount and the burden of proof clearly lay on them. (*Daniels, J.C.*). BHUP SINGH *v.* LAZIM SINGH. **65 I.C. 121=24 O.C. 319= A. I. R. 1921 Oudh 257.**

—Ss. 101 to 103—Special plea.

———*Trustees—Misfeasance—Onus.*

It is for those who attack the administration of the trustees to show that there was misfeasance. (*Coutts-Trotter, C. J. and Walsh, J.*). R. RATHNASABAPATHY CHETTIAR *v.* AMMAKANNUMMAL. **123 I. C. 15=30 M.L.W. 914= A.I.R. 1930 Mad. 78=57 M.L.J. 609.**

———*Award attacked—Multifariousness—Applicability to arbitration proceedings—Onus to prove.*

It is incumbent on the person opposing an award to establish first that the provisions of the Civil Procedure Code as to multifariousness apply to proceedings before arbitrators and secondly if they do apply that in view of those provisions the award could not be upheld. (*Rupchand and Barlee, A.J.Cs.*). DATTARAM MUNSHILAL *v.* HARJIMAL & SONS. **121 I.C. 161=24 S.L.R. 145= A.I.R. 1930 Sind 170.**

———*Breach of trust—Action by co-owner—Proof of unlawful advantage taken.*

Where a co-owner of property wants to take action against other co-owner for breach of trust under S. 90, Trusts Act, it is incumbent on him to allege and prove as a fact that the other co-owner by availing himself of the position of a co-owner had gained an advantage in derogation of his rights : A.I.R. 1916 P.C. 227, *Ref.* (*Rupchand and Barlee, A.J.Cs.*). ABDUL RAHMAN *v.* HAJI MD. IDRIS. **118 I. C. 207=23 S. L. R. 461= A.I.R. 1929 Sind 212.**

———*Bar of suit.*

The burden of proving that a suit is barred under O. 2, R. 2, Civil P. C., is upon the defendant : 20 Cal. 716, *Foll.* (*Addison, J.*). ABDUL QADIR *v.* IMAM DIN. **102 I.C. 31=A.I.R. 1927 Lah. 840.**

———*Landlord purchasing tenant's interest—No merger—Proof that the interests continued to be kept apart—Onus.*

When a landlord purchases a tenant's interest but there is no merger of the two interests, the onus of proving that the distinction between the interests continued to be kept alive subsequently also is not on the party alleging that the distinction was so kept alive. (*Dawson-Miller, C. J. and Macpherson, J.*). PARMESHWAR SINGH *v.* MT. SUREBA KUER. **88 I.C. 495=1925 P.H.C.C. 185=6 P.L.T. 805= A.I.R. 1925 Pat. 530.**

———*Objectors to award must prove the grounds of objection.*

Any party wishing to set aside an award on the ground that the arbitrators in arriving at an unfair award either refused to hear somebody or heard the matter without giving notice of the hearing, undertakes the burden of satisfying the Court that this is what really happened. (*Walsh, A.C.J. and Ryves, J.*). GOBIND SINGH *v.* BHIRGUNADH. **82 I.C. 16= 46 All. 686=22 A.L.J. 676=5 L.R.A. Civ. 465= A.I.R. 1924 All. 788.**

———*Proof that the apparent is not the real.*

Burden of proof lies upon the person who asserts that the apparent is not the real state of things. (*Mookerjee and Chotzner, JJ.*). BHUBAN MOHINI DASI *v.* KUMUD BALA DASI. **82 I.C. 934= 28 C.W.N. 131=39 C.L.J. 140= A.I.R. 1924 Cal. 467.**

———Prima facie *case of damage proved—Not bound to prove how damaged.*

EVIDENCE ACT (1872), Ss. 101 to 103—Suit for profits.

Where plaintiff's case was that the article given by him to the defendant for cleaning was damaged by chemicals in the process of cleaning and where he made a *prima facie* case that the article was in good condition at the time it was given to the defendant but was torn at the time it was got back from the defendant,

Held, that he was not bound to prove that the article had been damaged by chemicals in the process of cleaning. (*Lentaigne, J.*). HOLLANDIA PINMEN *v.* HOPPENHEIMER. **84 I. C. 274= 3 Bur. L.J. 203=A.I.R. 1924 Rang. 356.**

———*Mortgage by executor—Onus of proving authority—Not on the mortgagee.*

Where an executor mortgaged the properties of the testator under authority given by the will,

Held, that the onus of proving that the executor was acting within his powers is not on the mortgagee. (*Schwabe, C.J. and Wallace, J.*). PARTHASARATHY NAIDU *v.* MUKUNDAMMAL. **68 I. C. 856=45 Mad. 867=16 M.L.W. 670= 1922 M.W.N. 729=1923 M. W. N. 14= A.I.R. 1923 Mad. 84=43 M.L.J. 551.**

———*Immoral debt by Hindu father—Onus on the sons.*

The onus of proving illegality or immorality as affecting the debt incurred by the father is upon the sons, for after the death of their father their liability to pay the father's debt arises under the express text of the *Mitakshara*. (*Jwala Prasad and Adami, JJ.*). SHEIK KAROO *v.* RAMESWAR SAO. **62 I.C. 905=3 P.L.T 43=6 P.L.J. 451= A.I R. 1923 Pat. 143.**

———*Trustee—Assertion of private ownership—Onus on the trustee.*

The view, that, where the discoverable origins of property show it to be trust property, the onus of establishing that it must have illegitimately come into the trustee's own right rests upon the beneficiaries, must be entirely dissented from. On the contrary the onus is, and is heavily upon the trustee to show by the clearest and most unimpeachable evidence the legitimacy of his personal acquisition. (*Lord Shaw.*) SRINIVAS CHARIAR *v.* EVALLAPPA MUDALIAR. **68 I.C. 1=45 Mad. 565= 16 M.L.W. 247=31 M L. T. 1=49 I. A. 237= 24 Bom. L. R. 1214=21 A. L. J. 250= 27 C. W. N. 317=36 C. L. J. 524= A. I. R. 1922 P. C. 325=43 M. L.J. 536 (P.C.).**

———*Knowledge of transferee—Onus of proving.*

Burden of proving knowledge of the transferee lies on the person who asserts that a transaction was something different from what, on the face of it purports to be. (*Daniels and Lyle, A. J. Cs.*). BIJAI PARTAB SINGH *v.* RAGURAJ SINGH. **67 I.C. 572= 9 O. L.J. 173=25 O. C. 115=A.I.R. 1922 Oudh 7.**

———*Muhammadan Law—Mother's unfitness for custody of son until 7 years—Burden of proof.*

In Mahomedan Law the custody of a boy until, at any rate, the age of seven belongs to the mother. The burden, therefore, of proving that the mother in a particular case is not entitled to be the guardian of her infant son lies heavily on any one who would assert it. (*Kincaid, J.C.*). MST. BIBI FATMA *v.* BAKARSHAH. **66 I.C. 888=15 S.L.R. 175= A.I.R. 1921 Sind 45.**

—Ss. 101 to 103—Suit for profits.

———In a suit by co-sharers against *lambardar* for profits, the burden of proving the amount of arrears lies on the *lambardar*. (*Prideaux, A.J.C.*). SARJE RAO *v.* HARAKCHAND. **6 N.L.J. 234= A.I.R. 1923 Nag. 287.**

EVIDENCE ACT (1872), Ss. 101 to 103—Title.

—Ss. 101 to 103—Title.

———*Negative necessary for proving title—Claimant must prove.*

The general rule of evidence is that if in order to make out a title, it is necessary to prove a negative, the party who avers a title cannot be absolved from proving it : 9 W.R. 190 (F.B.), *Foll.* (*Misra and Srivastava, JJ.*). MOSHUQ ALI *v.* HURUNISSA. **114 I.C. 113= A.I.R. 1929 Oudh 204.**

———*Property of deceased person.*

Where the title of a deceased person to certain properties is disputed and it is shown that those properties belonged to the partnership firm, the onus lies on persons claiming through the deceased person to prove that those properties belonged to him at the time of his death. (*Percival, J.C. and Rupchand, A.J.C.*). ISMAIL *v.* TAYABALLI. **A.I R. 1929 Sind 182.**

———*Ejectment suit — Plaintiff's title must be proved.*

In a suit for ejectment even though the defendant has no title, he can still put the plaintiff to the proof of his title and the plaintiff has still to show that the title-deed on which he relies as having given him a title superior to that of the defendant is a valid one. (*Kumaraswami Sastri and Reilly, JJ.*). VENKATASUBBA *v.* VIGNESWARADU. **110 I.C. 554=1928 M.W.N. 336= 28 M. L. W. 82=A. I. R. 1928 Mad. 840= 56 M L.J. 52.**

———*Suit for declaration—Defendant's want of title —Not sufficient.*

In a suit for a declaration of title and for possession the plaintiff must prove his title. It is not sufficient for him to say that the defendant has no title. (*Cuming, J.*). KARUNA CHARAN *v.* KRISHNA SUNDAR. **90 I. C. 480=A.I.R. 1926 Cal. 179.**

———Shamilat *land—Sale of proprietary land—Onus lies on purchaser to show that* shamilat *was included.*

The rights of proprietors in the *shamilat* of the village are not a mere accessory to the land separately held by them and the onus lies on the purchaser of the proprietary land to show that the sale to him included also a share of the *shamilat.* (*Scott-Smith and Fforde, JJ.*). GOBIND RAM *v.* ALI MUHAMMAD. **79 I. C. 84= A. I. R. 1925 Lah. 99.**

———*Party out of possession—Must prove subsisting title.*

The burden of proving a subsisting title to a land lies on the party out of possession and the fact that the party in possession forced to institute a suit under O. 21, R. 103, C. P. Code does not shift the burden of proof on to him. (*Kincaid, J. C. and Rupchand Bilaram, A. J. C.*). RAMZAN *v.* FAKIR MAHOMED. **82 I. C. 861= A.I.R. 1925 Sind 201.**

—Ss. 101 to 103—Undue influence.

———*Inequality in partition between adult and minor co-owner—Onus is on adult co-owner to show that transaction is not unconscionable.*

Where a partition between a minor and an adult co-owner is attacked by the minor as not binding on him and when it is found that at the time of the partition the minor's mother was a young widow, with no near male relations who could give independent advice to her, and when the defendant knows all about the property from the very beginning and a great disparity in extent of the two lands exists and when there is no ostensible reason for the partition except the wish of the defendant, the onus shifts and it is for the defendant to make out that the transaction was a fair one. (*Spencer and Devadoss, JJ.*). S. PARAMASIVAM *v.* MEENAKSHISUNDARAM. **73 I. C. 863= 1922 M. W. N. 732=16 M. L. W. 721= A.I.R. 1923 Mad. 96.**

EVIDENCE ACT (1872), Ss. 101 to 103—Will.

—Ss. 101 to 103—Vendor and purchaser.

———*Vendor should disprove shortage—Buyer accepting subject to proper quality—Burden as to shortage not on the vendor.*

Where there is no conduct on the part of the buyer amounting to accepting the goods without any question as to the measurement, the burden is on the seller to show that he sent the goods of the proper measurement and there was no shortage.

But where the buyer said "we shall check the invoice and intimate to you; we shall also send money" and never afterwards even suggested that there was shortage in the goods sent and on the other hand accepted the goods subject to the only condition that they should be of the proper quality,

Held, to throw the burden on the seller, of showing that there was not shortage at the time of despatch, would be improper. (*Ramesam, J.*). DORAISWAMI MUDALIAR *v.* SUBBANNA CHETTIAR. **105 I. C. 613=1927 M. W. N. 549= A. I. R. 1927 Mad. 880.**

———The burden lies heavily on the person alleging it to prove that the vendee of immovable property agreed to take the property with a defective title. (*Raymond, A. J. C.*). ABDULALI MOOSABHOY *v.* GOKULDAS LALJI. **97 I.C. 269= 19 S.L.R. 41=A I.R. 1927 Sind 49.**

———Where a person enters into an agreement to sell his property to one person but subsequently sells it to another person, it is for the vendee to prove that he is a transferee in good faith and without notice of the original contract. (*Shadi Lal, C. J. and Coldstream, J.*). JIWAN DASS *v.* LORIND CHAND. **96 I.C. 175= A.I.R. 1926 Lah. 580.**

———*Sale on credit—Plea of purchase for cash—Onus on defendant.*

Plaintiff pleaded that he had sold certain cattle on credit. The defendant replied that he had bought them for cash,

Held, that S. 103 is the more specific section more particularly applicable and that the onus was on defendant to prove payment. (*Young, J.*). RASU *v.* KATTARA. **82 I.C. 658=2 Rang. 202= A.I.R. 1924 Rang. 349.**

—Ss. 101 to 103—Will.

———*Onus on those who attack the will.*

The onus of proving that the will is invalid as the testator was of unsound mind lies upon the persons attacking that document. (*Fforde and Agha Haidar, JJ.*). HIRA *v.* SHAH DIN. **109 I.C. 640=29 P.L.R. 217.**

———*Proof of will—Onus on the propounder how discharged.*

It is not open to doubt that the *onus probandi* lies in every case upon the party propounding the Will : and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. But the onus is in general discharged by the proof of capacity and the fact of execution from which the knowledge of and assent to its contents by the testator will be assumed. (*Das and Foster, JJ.*). MT. RAJ DULARI BIBI *v.* MT. KRISHNA BIBI. **95 I.C. 1036=7 P.L.T. 203= A. I. R. 1926 Pat. 269.**

EVIDENCE ACT (1872), Ss. 101 to 103—Will.

———*Qualified admission as to signature—Burden not shifted.*

The qualified admission of a party regarding the signature of a testator does not shift the burden of proving the non-execution of the will to him: A.I.R. 1924 Nag. 103 and A.I.R. 1922 P. C. 366, *Appl.* (*Findlay, O. J. C.*). KESHEO *v.* VITHAL.

89 I.C.468=8 N.L.J. 123=A.I.R. 1925 Nag 427.

———*Soundness of mind and majority—Propounder to prove.*

The onus of proving not only the soundness of the testator's mind but also the fact that the testator was not a minor at the time of the execution of the will rests upon the person who propounds the will. (*Broadway and Campbell, JJ.*). RAJINDAR SINGH *v.* MT. RAMJOWAI.

83 I.C. 1017=5 Lah. 263=A.I.R. 1924 Lah. 541.

—S. 104—Adoption.

———A very grave and serious onus rests upon any person who seeks to displace the natural succession of property by the act of an adoption. In such case, the proof requires strict and almost severe scrutiny: A. I. R. 1930 P. C. 79, *Rel. on.* (*Addison and Bhide, JJ.*). BALAK RAM HIGH SCHOOL, PANIPAT *v.* NANU MAL. **31 P. L. R. 509=A.I.R. 1930 Lah. 579.**

—S. 104—Dispute about land.

———Suit for establishing title and ejectment—Plaintiff claiming land in dispute under sale-deed—Defendants contesting the claim as holders of *lakheraj* property—Plaintiff has to prove that the land is within the geographical limits of the patni village—Burden of proving that the land is dedicated to a foundation as Niskar Pirattar then shifts on the defendants: A. I. R. 1922 P.C. 272, *Foll.* (*B. B. Ghose and Bose, JJ.*). ABDUL BARI *v.* HRISHIKESH MITTRA. **49 C. L. J. 546=A. I. R. 1929 Cal. 459.**

—S. 104—Receipt of letter.

———The presumption is that if a letter properly directed is proved to have been posted, it reached its destination and was received by the person to whom it was addressed. (*Ross and Kulwant Sahay, JJ.*). KAMAKHAYA NARAIN SINGH *v.* KHALIK AHMAD. **102 I. C. 821=8 P. L. T. 633=A. I. R. 1927 Pat. 305.**

—S. 105—Defamation.

———Where the statements made by the defendants are *per se* defamatory, the burden is on the defendant to prove that the allegations on which his comment was based are substantially true. The plaintiff should not be called upon to prove the quantum of damages: A. I. R. 1929 Sind 90 and *Devis* v. *Shepstone*, (1888) 55 L. J. P. C. 51, *Ref.* (*Rupchand, A. J. C.*). MURLIDHAR *v.* NARAINDAS. **117 I. C. 155=A. I. R. 1929 Sind 172.**

———Prosecution must make out a case for conviction but the accused must prove that his case comes within exceptions: A.I.R. 1924 All. 299, *Dist. from.* (*Kinkhede, A. J. C.*). SURAJMAL *v.* RAMNATH.

105 I. C. 820=28 Cr. L. J. 996=9 A. I. Cr. R. 204=A. I. R. 1928 Nag. 58.

—S. 105—Discharge of burden.

———Where prosecution itself has proved the exception, accused need not prove it. Section 105 says nothing about pleas but merely places burden of proof on the accused. (*Hallifax and Kotval, A.J.Cs.*). MANGAL GAUDA *v.* EMPEROR. **81 I.C. 901=25 Cr. L. J. 1077=A. I. R. 1925 Nag. 37.**

———Although under the Indian Evidence Act the burden of proving an exception under the Penal Code is on the accused person, it does not follow that the circumstances together with the accused person's statement cannot be sufficient evidence to establish the exception in his favour. (*Mukerji and King, JJ.*). MANGALIA *v.* EMPEROR. **98 I.C. 707=7 L.R.A. Cr. 187=27 Cr. L. J. 1395=A.I.R. 1927 All. 119.**

—S. 105—Exceptions.

———In order to bring a case within the exception, strict compliance with its terms is necessary. It is one of the established canons of interpretation that exceptions are to be taken most strongly against the party for whose benefit they are introduced. (*Tek Chand, J.*). E. I. RY., CALCUTTA *v.* GOT RAM CHANDRA BHAN. **108 I.C. 189=10 L. L. J. 202=29 P.L.R. 371=A.I.R. 1928 Lah. 162.**

———*Onus of proving circumstances is on accused unless they are apparent from evidence before the Court.*

The law requires as laid down in S. 105 that the onus of proving circumstances which give the benefit of the general exception to an accused person lies on him, and in the absence of evidence the presumption is against the accused. But this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record, whether produced by the prosecution or by the defence, that the general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the exception. (*Walsh and Ryves, JJ.*). MT. ANANDI *v.* EMPEROR. **71 I.C. 689=24 Cr. L.J. 225=45 All. 329=A.I.R. 1923 All. 327.**

———The burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code rests upon the accused, and S. 105 says the Court shall presume the absence of such circumstances. (*Scott-Smith and Broadway, JJ.*). MAHANT NARAIN DAS *v.* EMPEROR. **68 I.C. 113=3 Lah. 144=4 L. L. J. 91=9 P.W.R. 1922 Cr.=23 Cr. L.J. 513=A.I.R. 1922 Lah. 1.**

—S. 105—Infancy.

———*No proof as to infancy and immaturity of understanding—Defence is not barred.*

There is this difference between a child and a lunatic that the latter is not able to be tried unless he has regained sanity whereas the child may be tried while he is still a child. If a child commits an offence when he is unable to understand the nature of the offence, it can hardly be supposed that he will be able to understand that he must plead his own lack of understanding when placed upon his trial. He cannot be debarred from the defence allowed to him by S. 83 of the I. P. C., merely because of his ignorance of the Court procedure. Therefore, the question cannot be excluded from consideration by the jury notwithstanding that no proof may have been adduced on the point. (*Pullan, A. J. C.*). EMPEROR *v.* ALI RAZA. **84 I.C. 454=26 Cr. L.J. 310=28 O. C. 69=A.I.R. 1925 Oudh 311.**

—S. 105—Insanity.

———*Penal Code, S. 84.*

Where the evidence as to the insanity of accused is conflicting, the accused should be convicted as on him lies the burden of proving insanity which in the case of conflicting evidence cannot be said to

EVIDENCE ACT (1872), S. 105—Plea of justifiable homicide.

be sufficiently discharged. (*Daniels, J.*). CHANDU LAL *v.* THE CROWN. **77 I.C. 236= 21 A.L.J. 776=4 L.R.A. Cr. 234= 25 Cr. L.J. 349=A.I.R. 1924 All. 186.**

—S. 105—Plea of justifiable homicide.

———*Causing death to burglar—Onus.*

Where it appeared that a thief was killed with lathi blows by the inmates of the house when the thief was trying to escape through a hole,

Held, that the burden of proving that the death was justifiable homicide lay upon the persons who were proved to have dealt the blows. (*Raza and Nanavutty, JJ.*). MAHABIR *v.* EMPEROR. **7 O.W.N. 797=1930 Cr. C. 948= A.I.R. 1930 Oudh 408.**

—S. 105—Provocation.

———Accused must prove that his case came within the Exception 1 to S. 300 of the Penal Code and the Court is bound to presume the absence of any such case. (*Broadway and Campbell, JJ.*). KAKAR SINGH *v.* THE CROWN. **81 I.C. 717= 25 Cr. L.J. 1005=6 L.L.J. 575= A.I.R. 1924 Lah. 733.**

—S. 105—Self-defence.

———It lies upon the person bringing the plea of self-defence to establish the circumstances under which each blow that causes an injury to a member of the opposite party is inflicted. (*Tek Chand, J.*). HAZURA SANG *v.* EMPEROR. **104 I.C. 454= 28 Cr. L.J. 838=A.I.R. 1927 Lah. 786.**

—S. 106—Date of transaction.

———The burden of proving the exact date of a mortgage transaction entered into orally being not peculiarly within his knowledge, does not lie on the mortgagee. 17 A.L.J. 330, *Dist.* (*Niamatullah, J.*). MIHI LAL *v.* SONI RAM. **115 I. C. 451= A.I.R. 1929 All. 209.**

—S. 106—Fraud.

———*Question whether or not transfer is fraudulent —Vendee should personally be examined.*

The true object to be achieved by a Court of justice in finding out whether or not a transfer is fraudulent can only be furthered with propriety by the testimony of the vendee who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination. It is an error to rely on the abstract doctrine of burden of proof. A.I.R. 1917 P.C. 6 and A.I.R. 1929 P.C. 95, *Rel. on.* (*Ananthakrishna Ayyar, J.*). MOHIDEEN THARAGAN *v.* MD. MUSTAPPAH ROWTHER. **A.I.R. 1930 Mad. 665.**

—S. 106—Knowledge of facts.

———Assistant Manager of a Press cannot be presumed to have knowledge of every job printing done in the press—Especially where consequences of the knowledge are grave, stricter proof than assumption is necessary. (*Darwood, J.*). CHELLAM PILLAI *v.* EMPEROR. **117 I. C. 49= 30 Cr. L. J. 707=A.I.R. 1928 Rang. 276.**

—S. 106—Misappropriation by servant.

———It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such a servant fails to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his

EVIDENCE ACT (1872), S. 106—Shifting of burden.

own use. (*Lentaigne, J.*). SONA MEAH *v.* EMPEROR. **84 I.C. 331=2 Rang. 476= 26 Cr.L.J. 267=A.I.R. 1925 Rang. 47.**

—S. 106—Pedigree.

———Plaintiff relying on pedigree—Pedigree showing number of persons higher than plaintiff—Plaintiff must prove death of all these persons. (*Wazir Hasan, A.J.C.*). JASODHA *v.* MURLIDHAR. **61 I.C. 144=24 O. C. 1=A.I.R. 1921 Oudh 104.**

—S. 106—Plea of jus tertii.

———Where a defence of *jus tertii* is set up, it is for the defendants to establish that the persons, in whom they allege the right to the plots to exist, have a title superior to that of the plaintiff. (*Lindsay, J.C. and Wazir Hasan, A.J.C.*). SECY. OF STATE *v.* MD. QASIM. **61 I.C. 871=24 O.C. 77= 8 O.L.J. 160=A.I.R. 1921 Oudh 88.**

—S. 106—Presumption.

———*Presumption applies only in absence of clear or sufficient evidence.*

In a case where all the facts are proved by ample evidence and the Court is in a position exactly to say what happened, no importance need be attached to the rule as regards burden of proof. It is only in cases where evidence is meagre and the Court is not in a position definitely to know what happened that the technical rule as to burden of proof is to be observed. (*Ramesam and Jackson, JJ.*). RAGHAVENDRA RAO *v.* VENKATASWAMY. **30 M.L.W 966=1929 M.W.N. 752= A.I.R. 1930 Mad. 251.**

—S. 106—Rent suit.

———Claim for rent based on produce—Tenant preventing landlord from estimating crops—Onus is on tenant to prove actual produce. (*Jwala Prasad and Kulwant Sahay, JJ.*). RANI BHUNESHWARI KUER *v.* SUKHDEO SINGH. **85 I.C. 366= 6 P. L. T. 419=A.I. R. 1925 Pat. 505.**

—S. 106—Scope.

———Representatives of parties to transaction cannot take advantage of the section. 35 I.C. 455, *Diss. from.* (*Ramesam and Jackson, JJ.*). RAGHAVENDRA RAO *v.* VENKATASWAMY. **30 M.L.W. 966= 1929 M.W.N. 752=A.I.R. 1930 Mad. 251.**

—S. 106—Setting aside sale.

———Suit to set aside sale by Collector on the ground of absence of arrears—Plaintiff must prove absence of arrears. (*Walmsley and Suhrawardy, JJ.*). O. S. MEAH *v.* DURGA CHURN DUTTA. **99 I.C. 456=29 C.W.N. 1027= A.I.R. 1926 Cal. 243.**

—S. 106—Shifting of burden.

———Where it is proved that thefts occurred at quite different dates the presumption is that the stolen property passed from the hands of the thief to the receiver at different dates also. The burden is then shifted from the Crown to the accused to prove that that he received it at one time only in a case where the accused is charged separately of offences of receiving stolen property. (*Kincaid, J. C. and Kennedy, Ag. J. C.*). GHULAMO *v.* EMPEROR. **96 I.C. 120=27 Cr. L.J. 872 (Sind).**

———Where in a charge under S. 373, I. P. C. the intention to supply as prostitute a girl when physically ready, is proved, burden lies upon accused to prove intention to wait until age of majority. (*Walmsley and Suhrawardy, JJ.*). KHETRAMANI DASI *v.* EMPEROR. **71 I.C. 232= 35 C.L.J. 451=25 Cr. L.J. 105= A.I.R. 1923 Cal. 539.**

EVIDENCE ACT (1872), S. 106—Suit against Railways.

—S. 106—Suit against Railways.

———*Damages.*

In a suit against railway for damages caused by sparks coming out of engine, the onus is initially on railway to prove that precaution had been taken by them to protect adjoining property from fire. (*Mukerji, J.*). SECY. OF STATE *v.* DWARKA PRASAD. **100 I.C. 640=49 All. 559= 25 A.L.J. 336=A.I.R. 1927 All. 349.**

———*Railways Act, S 75—Articles specified in Sch. 2 included in consignment—Loss—Onus.*

Where articles specified in Sch. 2, Railways Act and requiring a special declaration under S. 75 are included in a consignment, the burden of proof as to what articles are contained in each specific parcel and that the value of such special articles in each package was less than Rs. 100, rests on the consignee as the contents of each parcel is a special matter of knowledge to the consignee. But onus to prove the loss of packages rests on the railway company. (*Findlay, J.C.*). GULAM ABBAS *v.* SECY. OF STATE. **103 I.C. 756= A.I.R. 1927 Nag. 328.**

———*Risk note H—Liability—Onus is on consignor.*

Where goods are consigned under Risk note H, the onus of proving the facts necessary to bring the company within the terms of the contract will be on the consignor. Section 106 of the Evidence Act does not apply and if in all cases of loss, of destruction or deterioration of goods consigned the onus will be on the company to prove how it came about, the special contract will be useless. (*Kumaraswami Sastri, J.*). P. ALBUQUERSQUE AND SONS *v.* THE S. I. RY. COMPANY, LIMITED. **68 I.C. 269= 1922 M.W.N. 328=16 M.L.W. 667= 31 M.L.T. 470=A.I.R. 1922 Mad. 231= 43 M.L.J. 90.**

—S. 106—Suit for mesne profits.

———Although in a suit for mesne profits the person out of possession has to prove what profits the man in possession made out of the property, yet as soon as the plaintiff gives some evidence proving *prima facie* that the profits were somewhere about the sum alleged, the burden of proving that they were less shifts to the shoulders of the defendant. 15 N.L.R. 85, *Foll.* (*Hallifax, A.J.C.*). JAI LAL SAO *v.* LAL FATEH SINGH. **75 I.C. 826= 20 N.L.R. 52=A.I.R. 1924 Nag. 117.**

—S. 106—Tenancy.

———Onus of proving that a certain person is a certain other person's tenant lies on the person setting up the plea. *Black* v. *Christ Church Finance Company, Limited*, (1894) A.C. 48 and *Hughes* v. *Percival*, (1883) 8 A. C. 443, *Foll.* (*Lentaigne, J.*). MAUNG PEIN *v.* MA THE NGIVE, **84 I.C. 1009= 2 Rang. 547=A.I.R. 1925 Rang. 143.**

—S. 106—Validity of decree.

———Decree against executor impeached on the ground that he had ceased to represent estate before suit—Party impeaching decree must prove his allegations. (*Cuming and Chakravarty, JJ.*). BIRENDRA NATH ROY *v.* ANADI PRASANNA DUTTA. **91 I.C. 416 (Cal.).**

—S. 107—Converse of presumption.

———*A person not heard of for seven years—True rule.*

It is constantly assumed that, where the period of disappearance exceeds seven years, death, which may not be presumed at any time during the period of seven years may be presumed to have taken place at its close. This is not correct. The presumption is the same if the period exceeds seven years. The period is one and continuous, though it may be divisible into three or even four periods of seven years. Probably the true rule would be less liable to be missed, and would itself be stated more accurately, if instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one "of not less than seven years." (*Lord Blanbesburgh.*) LALCHAND MARWARI *v.* MAHANT RAMRUPGIR. **93 I.C. 280= 5 Pat. 312=53 I.A. 24=24 A.L.J. 105= 1926 M.W.N. 203=7 P.L.T. 163=3 O.W.N. 335= 43 C.L.J. 24 =28 Bom L.R. 855=30 C.W.N. 721= A.I.R. 1926 P.C. 9=50 M.L.J. 289 (P.C.).**

—S. 107—Muhammadan law.

———The rule of Muhammadan Law about missing persons is purely one of evidentiary presumption and is not applicable in the face of Evidence Act: 7 All. 297 (F.B.), *Foll.* (*Lindsay and Kanhaiya Lal, JJ.*). MAIRAJ FATIMA *v.* ABDUL WAHED. **63 I.C. 286=43 All. 673= 19 A.L.J. 713=A.I.R. 1921 All. 175.**

—S. 107—Scope of presumption.

———Sections 107 and 108 only relate to the date when the suit was brought, that is to say, as to whether a man is alive or dead as the case may be at the date of the suit, and not at some particular period anterior to the suit. The decisions also establish that there is no presumption as to whether a particular person was dead at any time within the period in question. (*Marten and Fawcett, JJ.*). RAMCHANDRA SADASIV OKA *v.* KESHVA DHONDU NARVEKAR. **82 I.C. 27=A.I.R. 1923 Bom. 208.**

—S. 107—Time of death.

———There is no presumption about the time of death—Time must be proved by party concerned. (*Kinkhede, A.J.C.*). MT. DESHRANI *v.* THAKUR KISHORE SINGH. **100 I.C. 446=22 N.L.R. 175= 10 N.L.J. 5=A.I.R. 1927 Nag. 104.**

—S. 108—Hindu law.

———*12 years' rule—Inapplicable.*

The rule of Hindu Law that at least 12 years should elapse before a man unheard of should be treated as dead is only a rule of evidence and is nol applicable after the passing of the Evidence Act: 2 Beng. L. R. 134, *Dist.*; 1 All. 53, *Foll.* (*Krishnan and Venkatasubba Rao, JJ.*). PONDURI ADEYYA *v.* JALADI BURREYA. **71 I.C. 305= 16 M.L.W. 976=1923 M.W.N. 49=32 M.L.T. 6= A.I.R. 1923 Mad. 182=43 M.L.J. 725.**

—S. 108—Presumption—Nature of.

———The presumption is only that the person in question is dead; there is no presumption that he died at any particular time. (*Dalal, J.*). GUDRI SINGH *v.* JANGI SINGH. **124 I.C. 25.**

———Where a person is not heard of for seven years, there is no presumption that he died after the expiry of seven years from the time when he was last heard of. The presumption is only that is dead at the time when the dispute arises. (*Sulaiman and Sen, JJ.*). JAGESHAR SINGH *v.* MAHADEO SINGH. **115 I.C. 626.**

—S. 108—Presumption of death.

———Section 108 of the Evidence Act provides that in certain circumstances a rebuttable presumption of law arises as to death. It does not follow that if those circumstances do not exist there cannot be a presumption or inference of fact, as to death. (*Ashworth, J.*). BADAL *v.* SARASAVATI, **103 I.C. 329= A.I.R. 1927 All. 687.**

———Person not heard of for 7 years by near relatives—Presumption under section must be drawn

EVIDENCE ACT (1872), S. 108—Presumption of death.

(*Broadway and Campbell, JJ.*). KAHAN CHAND *v.* MT. JAWANDI. 79 I.C. 500= A.I.R. 1923 Lah. 174.

———There is a presumption in favour of continuance of life and it is for the person asserting death to prove it. The death of a person cannot be presumed to have taken place more than 7 years before the date of suit calling the question into controversy: 22 Bom. L. R. 771; 1 Lah. 554, *Foll.* (*Wilberforce, J.*). MUHAMMAD CHIRAGH *v.* ABDUL HUQ. 64 I.C. 468 (Lah.).

—S. 108—Proof of death.

———Where a reversioner is suing persons who are merely trespasses no strong proof is required of the death of a nearer reversioner. A prudent man might within the meaning of the definition of "proved" consider the death of the nearer reversioner sufficiently probable on very little evidence. (*Ashworth, J.*). BADAL *v.* SARASWATI. 103 I.C. 329=A I.R. 1927 All. 687.

—S. 108—Time of death.

———*Presumption is as to factum.*

The presumption raised by S. 108 is confined to the factum of death and not the exact time when death may have occurred. Where a party affirms that a certain person died on or before a particular date, that fact has to be established by positive evidence. (*Sen and Niamatullah, JJ.*). JIWAN SINGH *v.* KUAR REOTI SINGH. 123 I.C. 759= 11 L.R.A. Rev. 121=1930 A.L.J. 469= A.I.R. 1930 All. 427.

———While there is a presumption that a person who is proved not to have been heard of for seven years by those who would be likely to hear of him if living, is dead, there is no presumption that he died after the expiry of seven years from the time when he was last heard of. The presumption only is that he is dead at the time when the dispute arises. (*Sulaiman and Sen, JJ.*). JAGESHAR SINGH *v.* MAHADEO SINGH. 115 I.C. 626 (All.).

———When the Court has to determine the point whether a particular person ought to be presumed as dead on the ground that he has not been heard of for more than seven years, there can be no presumption that he was dead at a particular time. The utmost that can be considered is that he was dead at the time when the suit was brought. A.I.R. 1926 P.C. 9, *Foll.* (*Gokaran Nath Misra, J.*). MAHADEO SINGH *v.* HAR BUKHSH DUBE. 106 I.C. 489=4 O. W. N. 1077= A.I.R. 1928 Oudh 13.

———Person not heard of for seven years—That he died on any particular date cannot be presumed. A.I.R. 1926 P.C. 9, *Foll.* (*Addison, J.*). FATEH ALI *v.* AHMAD DIN. 100 I.C. 833= A. I. R. 1927 Lah. 284.

———*No presumption as to time.*

The question for which provision is made in S. 108 is whether a man is alive or dead at the time the question is raised; in other words, the presumption of the continuance of life ceases at the expiration of seven years from the period when the person in question was last heard of. 1 Lah. 554, *Rel. on.*

There is no presumption, however, as to the time of his death, and if any one seeks to establish the precise period at which such person died, he must do so by actual evidence. (*C. C. Ghose, J.*). IN THE GOODS OF GANESH DAS AURORA. 97 I.C. 247=54 Cal. 186=43 C.L.J. 578= A. I. R. 1926 Cal. 1056.

EVIDENCE ACT (1872), S. 108—Nafargats.

———*No presumption as to time.*

What the Court may presume under S. 108 is confined to the *factum* of death; it cannot presume that because the person has not been heard of he died at any particular moment, or in any particular way, or from any particular cause. 34 All. 36 (F. B.), *Foll.*

Ryves, J.—It does not follow that merely because a person has not been heard of for 7 years, where there is no positive or reliable evidence, that he is in fact alive, the Court must find that he was dead at the date of suit, much less that he was dead at any given particular date. (*Walsh and Ryves, JJ.*). REKHAL DAS *v.* MT. SHEOBAI. 74 I.C. 656=21 A.L.J. 393=45 All. 466= 4 L.R.A. Civ. 532=A.I.R. 1923 All. 495.

———*No presumption as to date.*

The presumption under S. 108, relates only to the fact of death, and has no reference whatever to the date of the death.

That fact must be proved like any other fact by the party who is interested in establishing that he died on or before a particular date. 40 B. 239, *Dist.* (*Shah and Crump, JJ.*). GOPAL BHIMAJI AVTE *v.* MANAJI GANUJI PADWAL. 81 I.C. 449= 25 Bom. L. R. 134=47 Bom. 451= A.I.R. 1923 Bom. 163.

———*Presumption of death arises after lapse of seven years.*

In a case where the point of time to which the death has to be referred, may be placed indifferently either during the seven years or after the lapse of the seven years (it not being necessary to show that the person lived during the seven years), there is a presumption after the lapse of the seven years in favour of the death and it is for the other side to displace the presumption and the party relying on the presumption is entitled to succeed if no evidence is offered by the other side. 37 Mad. 440 and Mad. Second Appeal 1911 of 1918 *Rel. on*; 34 All. 36 and 6 L. W. 633, *Rel. on.* (*Oldfield and Ramesam, JJ.*). BAL NAICKER *v.* ACHAMA NAICKER. 69 I. C. 835=14 M. L. W. 315= 1921 M.W.N. 610=A.I.R. 1921 Mad. 985= 41 M. L. J. 295.

—S. 108—Wife.

———Wife leaving her husband and being in another's keeping is not one who would naturally hear from him if he were alive. (*Macnair, A.J.C.*). KAMPTABAI *v.* UMABAI. 117 I.C. 209= 12 N.L.J. 51=A.I.R. 1929 Nag. 127.

—S. 109—Co-judgment-debtors.

———*Suit for contribution—Defendant may plead and he must prove his non-liability to contribute.*

Where on the decree as passed several defendants were made jointly and severally liable, in the subsequent suit for contribution by one of them, it was for any defendant, who contended that he was not liable to pay the full share, to plead and prove it. The mere fact that he was a sleeping partner did not shift the onus from where it primarily lay. (*Harrison, J.*). MAULA BAKSH *v.* KARIM BAKSH 95 I.C. 1007=A. I. R. 1926 Lah. 653.

—S. 109—Nafargats.

———The Nafargats only prove a chain of cultivators in succession, but they do not in themselves prove whether each successor came upon the land under a derivative title or independently of the landlord. So long as each cultivator held the land, there might arise a presumption under S. 109 of the Evidence Act that his tenancy had a continuance, but there is no presumption that his successor is

EVIDENCE ACT (1872), S. 110—Burden of proof.

necessarily a transferee from him. (*Kinkhede, A.J.C.*). RAMCHAND *v.* SHRI RATNANATH SAUNSHAN OF BHAR. **98 I.C. 674=A.I.R. 1927 Nag. 99.**

—S. 110—Burden of proof.

———Where plaintiff is in possession of property of which he says he is the owner the onus of proving that he is not the owner lies on the defendant. (*Zafar Ali, J.*). NYZAM DIN *v.* NARANJAN DAS. **103 I.C. 36=A.I.R 1927 Lah. 841.**

—S. 110—Cattles.

———*Person tethering cattle for four months in year —Presumption of title—Proof.*

Where a person is in possession of property and he uses it for four months of every year for tethering his cattle, such possession is *prima facie* evidence of title, but Court should not say that the person's ownership is established. 13 N. L. R. 25, *Dist.* (*Jackson, A.J.C.*). KASTURCHAND BHICUMCHAND SHOP *v.* ATMARAM. **119 I.C. 701= A.I.R. 1929 Nag. 318.**

—S. 110—Converse of presumption.

———*Person with title is not necessarily presumed to be in possession.*

The presumption, that the plaintiff having the title, also has possession can properly be made in the case of the jungle or waste land, where there is no proof or very little proof of acts of ownership having been exercised on either side, or in cases where the evidence as to such acts of such ownership is very nearly equal. Though the S. 110 recognised a presumption that the person in possession also has a good title there is no corresponding section saying that the person with the title should be presumed to be in possession. This presumption is one that can only come under S. 114 of the Evidence Act which allows the Court to presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, etc. (*Marten and Fawcett, JJ.*). KASHINATH GYANOKA *v.* GANESH SITARAM. **77 I.C. 506=A.I.R. 1923 Bom. 361.**

—S. 110—Dispute with Government.

———Plaintiff in possession of land—Government showing that under general law it is owner—Plaintiff must prove better title or adverse possession for 60 years. (*Macleod, C. J. and Fawcett, J.*). VASTA BALWANT *v.* SECY. OF STATE. **61 I.C. 440=45 Bom. 789= 23 Bom. L.R. 238=A.I.R. 1921 Bom. 177.**

—S. 110—Plea of no possession.

———*Absence of.*

The absence of any plea that the apparent purchaser was out of possession entitles the purchaser to the law's presumption under S. 110, that he was in possession as an owner. (*Kinkhede, A. J. C.*). DAULAT *v.* RAMAPPA. **90 I.C. 196= A.I.R. 1926 Nag. 197.**

—S. 110—Possession as evidence of title.

———Prior pieceful possession is *prima facie* evidence of ownership under S. 110 of the Evidence Act and is a good title against all persons except the true owner and can be relied on in successfully maintaining a suit for ejectment against another who has no title to the land in dispute. (*Subhedar, A. J. C.*). NAGO *v.* RAJESHWAR SANSTHAN AKOLA. **118 I.C. 680.**

—S. 110—Possession of stolen articles.

———Stolen articles found in accused's premises raise a *prima facie* presumption against him—Accused not having control over premises, evidence against him is not conclusive but circumstances of each case should be considered. (*Bucknill, J.*). LACHMI PRASAD *v.* EMPEROR. **A. I. R. 1921 Pat. 480.**

EVIDENCE ACT (1872), S. 111—Fiduciary relation.

—S. 110—Suit for injunction.

———*Prior possession—Value of.*

N brought a suit claiming injunction against *K* restraining him from building a wall on a site of land. Although the site did not belong to *N*, his prior possession was established,

Held, that the suit of *N* could not be dismissed for want of title and that he could be allowed to succeed on the ground of prior possession as such possession is *prima facie* evidence of ownership. 10 N. L. R. 188; 11 N. L. R. 231 and A.I.R. 1917 Rang. 203, *Foll.* (*Subhedar, A. J. C.*). NAGO *v.* RAJESHWAR SANSTHAN AKOLA. **118 I. C. 680 (Nag.).**

—S. 110—Suit for possession.

———Where a person brings a suit for possession and it is proved that possession was with the defendants and title was not clearly established in favour of either party, the plaintiffs' suit must fail. (*Addison, J.*). SULEMAN *v-* GANGA BALLAB. **116 I. C. 546=10 L. L. J. 488.**

———*Dispossession by defendant—What the plaintiff must prove.*

In a suit for possession based upon plaintiff's dispossession by the defendant, the burden of proof is on the plaintiff to prove his possession at some time within 12 years preceding the suit, and it is not enough to show merely an anterior title, without proof of possession within 12 years to shift the burden of proof on to the defendants to show that they were entitled to retain possession. 16 Cal. 473 (P. C.), *Foll.*; 41 All. 669; 39 Mad. 617 and A.I.R. 1922 P. C. 181, *Dist.* (*Campbell, J.*). RAWAL BAKHSH *v.* DOLU MAL. **93 I. C. 1006 (Lah.).**

—S. 110—Vendee and vendor.

———*Plea of bogus transaction—Vendee to prove the sale is real.*

Although under ordinary circumstances the party to a sale-deed duly executed and registered who alleges non-payment of consideration and unreal nature of the transaction is bound to prove his allegation, the fact, that the plaintiff had silently submitted to the withholding of possession for a period of nearly twelve years combined with the continuous possession of the vendor, favoured the allegation of the latter and raised such a counter-presumption as to make it incumbent on the plaintiff to give evidence that the sale was real. 8 All. 641; 33 All. 483, *Ref.* (*Kinkhede, A. J. C.*). RAJA RAM *v.* BAPU. **79 I. C. 596= 20 N.L.R. 154=A.I.R. 1924 Nag. 173.**

—S. 111—Applicability.

———Where the vendor had been living separately and was not under the vendee's influence S. 111 does not apply. (*Abdul Raoof and Moti Sagar, JJ.*). JAI LAL *v.* SHEO CHAND. **85 I. C. 293= 6 L.L.J. 408=A. I. R. 1925 Lah. 123.**

—S. 111—Creditor and debtor.

———Plaintiff, a malguzar money-lender—Suit against tenants—Written statement pleading illiteracy and terrorizing influence of plaintiff amounts to plea of undue influence though not raised in words—Burden of proof is on plaintiff. (*Findlay, J. C.*). VITHOBA *v.* BHANGI. **112 I.C. 893= A.I.R. 1928 Nag. 322.**

—S. 111—Fiduciary relation.

———Whenever a person derives a benefit under a deed, if any confidential or fiduciary relation subsists between the parties, the Courts so far presume

EVIDENCE ACT (1872), S. 111—Necessary elements.

against the validity of the instrument as to require some proof varying in amount according to circumstances, of the absence of anything approaching to imposition, over-reaching, undue influence, or unconscionable advantage. (*Mookerjee and Panton, JJ.*). NIBARAN CHANDRA *v.* NIRUPAMA DEVI. **69 I.C. 476=34 C.L.J. 563=26 C.W.N. 517= A.I.R. 1921 Cal. 131.**

—S. 111—Necessary elements.

———*Position of dominating the will and actual unfair advantage are both necessary.*

To treat undue influence as having been established by proof of the relations of the parties having been such that the one naturally relied upon the other for advice and the other was in a position to dominate the will of the first in giving it, is erroneous. That merely proves influence. It must be further established that a person in a position of domination has used the position to obtain unfair advantage for himself and so as to cause injury to the person relying upon his authority or aid. A.I.R. 1920 P.C. 65, *Foll.* (*Addison and Tek Chand, JJ.*). FAYYAZ-UD-DIN *v.* KUTAB-UD-DIN. **116 I.C. 899=10 Lah. 761=30 P.L.R. 283= A.I.R. 1929 Lah. 309.**

—S. 111—Pardanashin lady.

———Party relying on a deed executed by a pardanashin lady must prove that it was the free and intelligent act of the lady, and that she adopted it with full knowledge and comprehension. A.I.R.1925 P.C. 204, *Foll.* (*Hallifax and Kotval, A.J.Cs.*). MIR DILWAB ALI *v.* RABIA BEGAM. **95 I.C. 506= A.I.R. 1926 Nag. 414.**

———*The burden of proving absence of undue influence is on the party asserting it.*

Where a pardanashin lady was possessed of considerable property which she inherited from her father but which was entirely managed by her husband who used to receive and spend the entire income without reaching the lady's hands and whom she used to obey implicitly.

Held, her husband should be deemed to have stood in a position of active confidence to her. The provisions of S. 111 of the Evidence Act, 1872, applied to the case and the burden of proving good faith lay on the party stating that the transaction into which she had been led by her husband was free from undue influence. The question for determination in the case was not merely that the lady knew what she was doing or had done but a still further vital question to be determined was how her intention to execute the mortgage was produced and whether all that care and prudence was placed around her as against those who advise her which from their situation and relation with respect to her they were bound to exert on her behalf. (*Wazir Hasan and Neave, A.J.Cs.*). DWARKA PRASAD v. NASIR AHMAD. **78 I.C. 850= 11 O.L.J. 219=A.I.R. 1925 Oudh 16.**

———*Transaction with person in active confidence—Latter must prove good faith.*

Where there is a question as to the good faith of a transaction between parties one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence. It is an elementary principle that, whenever any person derives a benefit under a deed, if any confidential or fiduciary relation subsists between the parties, the Courts so far presume against the validity of the instrument as to require some proof, varying in amount according to anything approaching to imposition, over-reaching, undue influence or unconscionable advantage. (*Mookerjee and Buckland, JJ.*). SATISH CHANDRA GHOSE *v.* KALIDASI DASI. **68 I.C. 577=26 C.W.N. 177= 34 C. L. J. 529=A.I.R. 1922 Cal. 203.**

EVIDENCE ACT (1872), S. 112—Applicability.

—S. 111—Pleader and client.

———Pleader appearing in one or two cases of his client—Pleader's father purchasing property from the client—Pleader and father constituting joint Hindu family—Pleader cannot be said to be permanent pleader and does not stand in a position of active confidence so as to justify the throwing on the pleader burden of proving good faith of the transaction—Father is not bound to prove *bona fides* of the transaction. (*Gokaran Nath Misra, J.*). RAM SUMRAN *v.* SARJOO PERSHAD. **114 I.C 806= 4 Luck. 270=5 O.W.N. 1062= 10 L.R.A.Rev. 230=A.I.R. 1929 Oudh 67.**

—S. 111—Subsequent purchaser.

———Where *A* buys property from *B* after *B* has agreed to sell the same to *C*, the onus will be on *A* to show that he bought it in ignorance of the previous contract and in good faith. Where the consideration is paid in full and the vendees are ignorant of the original contract, good faith must be presumed in the absence of evidence to the contrary. (*Abdul Raoof and Harrison, JJ.*). KANSHIRAM *v.* ISHWARDAS. **67 I.C. 888= 5 L.L.J. 150=A. I. R. 1923 Lah. 108.**

—S. 111—Undue influence.

———*Necessary elements.*

For establishing undue influence it must be proved that one person was in a position to dominate the will of and exercise his influence over another and secondly that the former did influence the latter. (*Macleod, C.J. and Shah, J.*). SHIDDUBAI RUDRAGAUDA DESAI *v.* NILAPPAGAUDA BHARMAGAUDA. **83 I.C. 616= 26 Bom. L.R. 622=A.I.R. 1924 Bom. 457.**

—S. 111——Widow and reversioners.

———Hindu widow whose previous mismanagement was proved must show that her subsequent management will be in the interests of the reversioners. (*Findlay, J.C. and Macnair, A.J.C.*). MT. RUPA *v.* CHAUDHARI BHAIRAON PRASAD. **103 I.C. 353=A.I.R. 1928 Nag. 93.**

—S. 112—Acknowledgment by parents.

———*Shifting of burden.*

Where parentage of the plaintiff is challenged, though the burden is initially on him to show that he was the son of his parents, it is shifted on to the defendants as soon as he shows that he has been acknowledged by his parents to be their son and that he has been accepted as such by repute and habit for the last many years, and it would require much clearer and stronger and more reliable evidence on the defendant's part to justify a finding against the plaintiff's paternity. (*Krishnan and Venkatasubba Rao, JJ.*). KRISHNA RAO *v.* RAJA OF PITTAPUR. **102 I.C. 713= A.I.R. 1927 Mad. 733.**

—S. 112—Applicability.

———There is no reason for extending the presumption which exists in favour of a marriage and against concubinage, and in favour of legitimacy and against bastardy, to a case in which the validity of the marriage and the legitimacy of the offspring are admitted and where the only point is as to whether the marriage was conducted in such a way as to confer a particular status and precedence upon the offspring of the union. (*Lord*

EVIDENCE ACT (1872), S 112—Birth after dissolution.

Chancellor.) MOLAPO MOJELU *v.* THABO LEROTHOLI MOJELA. **111 I. C. 193=28 M.L.W. 744=5 O.W.N. 1142=A.I.R. 1928 P.C. 276 (P.C.).**

—S. 112—Birth after dissolution.

———*Child born* 419 *days after.*

A son was born to a Mahomedan wife after 419 days after her husband's death,

Held, that the period of gestation is so extraordinarily unusual as to be suspiciously improbable and rebuts all assertions of mother's chastity: 77 P. R. 1911, *Ref.* (*Johnstone, J.*). MT. RAHIM BIBI *v.* CHIRAGH DIN. **120 I.C. 435=A.I.R. 1930 Lah. 97.**

—S. 112—Birth after father's death.

———*Child born nine months after death of his father—Legitimate.*

The case of the brother of the deceased was that the deceased's widow never had been pregnant at all, and that the story about the birth of a child involved the introduction of a supposititious heir nine months after the death of the husband to a woman who had never been pregnant by her husband or anybody else,

Held, on a consideration of evidence that the child must be taken to be the son of the deceased husband. (*Lord Atkin.*) BHAIRON PRASAD *v* MT. GOPI KUNWAR. **123 I.C. 550=A. I. R. 1930 P. C. 139=58 M. L. J. 708 (P.C.).**

—S. 112—Birth immediately after marriage.

———*Defendant born five and half months after marriage—Legitimate.*

Defendant's father was married to the defendant's mother on 2nd August 1889 and the defendant was born on 23rd January 1890.

Held, that the defendant being born during the continuance of the marriage between his parents is his father's legitimate son unless it is shown that his parents had no access to each other at any time when he could have been begotten. It is immaterial how soon after the marriage the defendant was born: 79 P. R. 1907, *Foll.* (*Martineau, J.*). KAHAN SINGH *v.* NATHA SINGH. **90 I.C. 123=7 L.L.J. 184=26 P.L.R. 509=A.I.R. 1925 Lah. 414.**

—S. 112—Burden of proof.

———It is for the plaintiff to establish all the facts mentioned by S. 112 before he could ask that they should be treated as conclusive proof of his paternity. (*Hallifax, A.J.C.*). MAROTI *v.* BHAGI. **68 I. C. 465=A.I.R. 1923 Nag. 43.**

———The plaintiff set up the case that he was the son of *M* by *I*. The defendants' case was that the union took place after the birth of the plaintiff,

Held, that it was for the plaintiff to prove that *M* was his father and no presumption could be raised in his favour. (*Lindsay, J. C. and Daniels, A.J.C.*). AHMAD KHAN *v.* HURMUJI KHANAM. **61 I.C. 177=8 O.L.J. 27=A.I.R. 1921 Oudh 81.**

—S. 112—Deciding factor.

———Section 112 refers to the point of time of the birth of the child as the deciding factor and not to the time of conception of that child. A. I. R. 1924 Mad. 677, *Foll.* (*Broadway and Fforde, JJ.*). PAL SINGH *v.* JAGIR. **98 I.C. 366=7 Lah. 368=27 P.L.R. 531=3 L.L.J 447=A.I.R. 1926 Lah. 529.**

———*Non-access and second marriage.*

Section 112 refers to the point of time of the birth of the child as the deciding factor and not to the time of the conception of that child. The point of time of the conception of the child has to be considered only to see whether the husband had not access to the mother.

EVIDENCE ACT (1872), S. 112—Muhammadans.

A child born in wedlock should be treated as the child of the father, who was then the husband of the mother, unless it is shown that he had no access to the mother at the time of conception, quite inrespective of the question whether the mother was a married woman or not. Where the mother was married again after dissolution of the first marriage before the child was born, the child is the legitimate son of the second husband. (*Krishnan, J.*). PALANI *v.* SETHU. **81 I.C. 456=20 M.L.W. 69=1924 M.W.N. 502=47 Mad. 706=A.I.R. 1924 Mad. 677=47 M.L.J. 155.**

—S. 112—Divorce.

———Where a woman is divorced by her first husband and she marries a second husband and a child is born during the subsistence of the second marriage, the child is the legitimate son of the second husband, although he might have been conceived during the first marriage, unless it is shown that the second husband had no access to the woman at the time when the child could have been begotten. The English Law and the Hindu Law do not differ in such matters. The date of birth and not that of conception is the test: 24 Cal. 216, *Dist.* (*Devadoss and Waller, JJ.*). SETHU *v.* PALANI. **93 I.C. 317=49 Mad. 553=24 M.L.W. 142=A. I. R. 1926 Mad. 628=50 M. L.J. 453.**

—S. 112—English law.

———*Rule does not apply to India.*

The rule of English Law that the declarations of a father or mother cannot be admitted to bastardise the issue born after the marriage is not applicable in India as it is excluded by the terms of the Act. (*Macleod, C. J. and Coyajee, J.*). BAI KOMALA *v.* BABUBHAI. **95 I. C. 834=28 Bom. L.R. 607=A.I.R. 1926 Bom. 345.**

—S. 112—Foundation of presumption.

———Presumption of legitimacy arises only on proof of marriage which itself can be inferred from living together or recognition as husband and wife. (*Oldfield, J.*). CHOCKALINGAM PILLAI *v.* SANI BATTAR. **79 I.C. 623=A.I.R. 1925 Mad. 426.**

———The presumption arises only after it is proved that a child was born during continuance of a valid marriage. (*Mears, C.J. and Banerjee, J.*). RAO NARASINGH *v.* B. M. LAKSHMI BAI. **66 I C. 902=44 All. 470=20 A.L.J. 274=A.I.R. 1922 All. 214.**

—S. 112—Muhammadans.

———*Rule regarding gestation—Superceded by Evidence Act.*

The rule of Mahomedan Law regarding gestation is a rule of evidence and the Courts are not bound by the rule of Mahomedan Law in this respect. To such case S. 112 applies. 76 P.R. 1891 and A.I.R. 1923 All. 570, *Rel. on.* (*Johnstone, J.*). MT. RAHIM BIBI *v.* CHIRAGH DIN. **120 I. C. 435=A.I.R. 1930 Lah. 97.**

———*Evidence Act applies to determine legitimacy of Muhammadan children.*

Where a Muhammadan child was born during the continuance of a valid marriage between its parents, but its birth was within six months of the date of its parents' marriage.

Held, that S. 112 applied and the child was legitimate. 10 All. 289, *Ref.*; A.I.R. 1923 All. 570, *Appr.* (*Daniels and King, JJ.*). SIBT MUHAMMAD *v.* MD. HAMEED. **96 I. C. 582=43 All. 625=24 A.L.J. 723=A.I..R. 1926 All. 589.**

———*Fasid marriage—Section inapplicable.*

Section 112 cannot be applicable in any way to a marriage which is neither void *ab initio*

EVIDENCE ACT (1872), S. 112—Muhammadans.

(batil), nor absolutely void, but is *fasid, i.e.*, irregular, inasmuch as S. 112 is based on a division of marriages merely into two categories, and cannot be applicable to Muhammadan Law which divides marriages into three categories. If S. 112 can be held applicable the word "valid" in the section must be construed as "flawless" so that the presumption would not apply to *fasid* marriages. (*Ashworth and Raza, JJ.*). MT. KANIZA *v.* HASAN AHMAD KHAN. 92 I.C. 82=1 Luck. 71= 3 O. W. N. 114=A.I.R. 1926 Oudh 231.

——Under the presumption of Mahomedan Law in the case of a *fasid* marriage a child born on the expiry of six months of copula is to be regarded as legitimate. (*Ashworth and Raza, JJ.*). MT. KANIYA *v.* HASAN AHMAD KHAN. 92 I C 82= 1 Luck. 71=3 O. W. N. 114= A. I. R. 1926 Oudh 231.

——Section 112 applies to Mahomedans. (Tyabji's Mahammadan Law, 2nd Ed., p. 267, *Ref.*). (*Daniels, J.*). MT. HAZIRA KHATUN *v.* MT. AMINA KHATUN. 73 I. C. 983=A.I.R. 1923 All. 570.

——*Legitimacy—Rule of Mahomedan Law—Rebuttable presumption arises—Mahomedan Law.*

Where it was found that the plaintiff was born 331 days or eleven full months after his alleged father's death and that his mother had been living for the previous few years in illicit connection with another person.

Held, that the plaintiff-appellant was not the legitimate son of the alleged father. (*Daniels, J.*). FATTEH DIN *v.* UMRAO. 82 I.C. 592= A. I. R. 1923 All. 440.

—S. 112—Non-access and second marriage.

——A child born in wedlock should be treated as the child of the father, who was then the husband of the mother, unless it is shown that he had no access to the mother at the time of conception, quite irrespective of the question whether the mother was a married woman or not. Where the mother was married again after dissolution of the first marriage before the child was born, the child is the legitimate son of the second husband. (*Krishnan, J.*). PALANI *v.* SETHU. 81 I.C. 436= 20 M L.W. 69=1924 M. W. N. 502= 47 Mad. 706=A.I.R. 1924 Mad. 677= 47 M.L.J. 155.

——Claim to succeed to mother's first husband's properties—Plaintiff born after second marriage of mother—Non-access between mother and first husband proved—Presumption under S. 112 is rebutted. (*Hallifax, A.J.C.*). MAROTI *v.* BHAGI. 68 I. C. 465=A.I.R. 1923 Nag. 43.

—S. 112—Personal law.

——Section 112 is not opposed to the personal law of such parties who are allowed to re-marry and divorce according to their personal law. (*Devadoss and Waller, JJ.*). SETHU *v.* PALANI. 93 I.C. 317= 49 Mad. 853=24 M.L.W. 142= A.I.R. 1926 Mad. 628=50 M.L.J. 438.

—S. 112—Rebuttal.

——Very cogent evidence is necessary to rebut the presumption raised by S. 112. (*Hallifax and Macnair, A.J.Cs.*). JANGLIA *v.* JHINGRYA. 63 I.C. 594=A.I.R. 1921 Nag. 71.

—S. 112—Validity of marriage.

——Validity of marriage established—Legitimacy of child is presumed. (*Curgenven, J.*). NARAYAN NAIR *v.* MANIKKATH KULLAPPURA VETTIL BHARGAVI AMMA. 100 I.C. 123=38 M.L.T. 39= 25 M.L.W. 151=28 Cr. L.J. 251= 7 A. I. Cr. R. 351=A.I.R. 1927 Mad. 361= 52 M.L.J. 118.

EVIDENCE ACT (1872), S. 114—Common course of events.

—S. 112—Void divorce.

——Where divorce in the sense of a legal dissolution of the marriage, has not taken place, a child born must be taken to be born during the continuance of a valid marriage between a woman and her husband. (*Curgenven, J.*). M. KANNIAPPAN *v.* KULLAMMAL. 1930 Cr. C. 88=1929 M.W.N. 696= 2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.

—S. 114.

Adoption.
Common course of events.
Criminal Trial.
Custom.
Death.
Documents.
Guiding principles.
Human conduct.
Joint Hindu family.
Marriage.
Murder.
Notice.
Possession and ownership.
Retracted confession.
Scope.
Statements and affidavits.
Miscellaneous.

—S. 114—Adoption.

——Datta homa—*Presumption of performance.*

When an adoption has not been challenged by any member of the family for 48 years though definite evidence is not forthcoming to prove that the *Datta Homa* had been performed at the time adoption took place, it is permissible to presume from the fact, that the adoption had not been challenged for such a long period, that, if the ceremony was necessary, it must have been performed. 29 All. 148 (P.C.), *Ref. to.* (*Kanhaiya Lal and Sulaiman, JJ.*). L. CHHOTEY LAL *v.* CHANDRA BHAN. 80 I.C. 1041=45 All. 50= A.I.R. 1923 All. 176.

——*Authority alleged to be given 100 years before suit—No direct evidence—Presumption from conduct of members.*

In the case of a dispute as to the authorisation of a Hindu widow to adopt a son to her deceased husband, when the authorisation, if ever given, was given almost a hundred years before the date of the suit, the absence of direct evidence on the point is not conclusive. The question in such a case is whether it can be presumed, as a fair matter of inference from established facts that the lady must have had authority to make the adoption, that her authority to do so was known and recognised in the family and that it could safely be inferred from the conduct of the members of the said family. (*Walsh and Piggott, JJ.*). PREMI DEVI *v.* SHAMBHU NATH. 76 I.C. 601=18 A. L. J. 473= 42 All. 382.

—S. 114—Common course of events.

——*Ghee.*

The Court is entitled to take for granted, when it is not denied, that ghee is an article intended for human consumption. It is possible that it can be employed for remote or extraordinary purposes but the ordinary presumption that ghee is intended for human consumption is not a presumption of law but a supposition based on common sense when there is no assertion to the contrary. (*Suhrawardy and Graham, JJ.*). DAULAT RAM *v.* CORPORATION OF CALCUTTA. 49 C. L. J. 502= A. I. R. 1929 Cal. 283.

EVIDENCE ACT (1872), S. 114—Common course of events.

———*'Common' course—Meaning.*

The course of conduct which S. 114, calls "common" can be only that which is most common in the experience of the Judge who has to decide the point. (*Hallifax, A. J. C.*). SECY. OF STATE (G. I. P. RY. CO.) *v.* NANDLAL. **107 I. C. 203= 24 N. L. R. 87= A. I. R. 1928 Nag. 52.**

———Court can take judicial notice that registered letter reaches the destination 24 hours later than an ordinary letter. (*Walsh, Ag. C. J. and Banerje, J.*). CHATUBHUJ RAM LAL *v.* SECY. OF STATE. **99 I. C. 622=A. I. R. 1927 All. 215.**

———*Food partaken at evening meal by husband.*

It is a violent presumption drawn from one's knowledge of human nature and of Indian village life which it is the duty of a tribunal in a case of dhatura poisoning to apply, namely, that the food partaken at the evening meal by a husband in an ordinary constituted house is prepared for him and served to him by his wife. (*Walsh and Pullan, JJ.*). EMPEROR *v.* MT. HAR PIARI. **97 I.C. 44= 49 All. 57=24 A.L.J. 958=27 Cr.L.J. 1068= 7 L.R.A.Cr. 156=A.I.R. 1926 All. 737.**

———*Sending cheques by post.*

From the mere fact that cheques were sent from time to time by post in the ordinary course of business to a certain person it cannot be inferred that there was any implied request from that person to send cheques by post. (*Kajiji, J.*). JAGJIVANDAS *v.* NAGAR CENTRAL BANK. **93 I. C. 619=50 Bom. 118=28 Bom.L.R. 226= A. I. R. 1926 Bom. 262.**

———Posting of letter proved—Letters bearing note by postman that it was refused by addressee—Presumption that it was so refused arises. 15 Cal. 681; 17 C.W.N. 1073 and 23 C.W.N. 319, *Foll.* (*Zafar Ali, J.*). SHER AFZAL *v.* MOHAN LAL. **94 I. C. 103=A.I.R. 1926 Lah. 520.**

———*Hindu Law—Ascetic ceremonies—Presumption.*

Where a ceremony is admittedly performed, the presumption is that it was performed in accordance with the shastras. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RUKMANI AMMAL *v.* ANKAMA NAIDU. **96 I.C. 26= 23 M.L.W. 664=1926 M.W.N. 938= A. I. R. 1926 Mad. 744.**

———The fact that a man is arrested in the district where an offence has been committed many months after its commission does not in any way lead to any inference against him. (*Scott-Smith and Fforde, JJ.*). MANSHA SINGH *v.* CROWN. **86 I.C. 347=7 L. L. J. 51= 26 Cr. L.J. 763=A. I. R. 1925 Lah. 371.**

———The presumption is that a letter which is proved to be posted and posted to the right address is in fact received by the recipient. (*Schawabe, C.J. and Krishnan, J.*). ABURUBAMMAL *v.* OFFICIAL ASSIGNEE OF MADRAS. **79 I.C. 809=47 Mad. 215= 19 M.L.W. 54=33 M.L.T. 217= A.I.R. 1924 Mad. 214=45 M.L.J. 817.**

———A given fact whose existence at a particular time is once established is presumed to continue to exist as long as such fact usually exists. (*Mookerjee and Cuming, JJ.*). SECY. OF STATE *v.* UPENDRA NARAIN ROY. **71 I. C. 849= 36 C.L.J. 336=A.I.R. 1923 Cal. 247.**

———Things continuous in nature may be presumed to have continued until contrary is shown. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I.C. 287=34 C.L.J. 205= A.I.R. 1921 Cal. 661.**

EVIDENCE ACT (1872), S. 114—Criminal trial.

—S. 114—Criminal trial.

———Person carrying in his cart dacoits, one of whom being injured and having blood-stains on clothes soon after dacoity—Unless he explains circumstances presumption is that he knew of part taken by those persons in dacoity and that one injured was injured in dacoity. (*Boys and Young, JJ.*). EMPEROR *v.* KANHAIYA. **124 I.C. 553= A.I.R. 1930 All. 431.**

———Evidence of eye-witnesses not on good terms with accused should not be relied upon unless corroborated. (*Hilton, J.*). BHARTU *v.* EMPEROR. **30 P.L.R. 582=A. I. R. 1930 Lah. 311.**

———Where the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it is dangerous to convict the accused on the residue without corroboration: 42 Cal. 784, *Foll.* (*Nanavutty and Raza, JJ.*). GENDAN LAL *v.* EMPEROR. **A.I.R. 1930 Oudh 480.**

———*Agent Provocateur as witness.*

The evidence of an agent provocateur is looked upon with suspicion and should be seldom relied upon in support of a conviction. (*Agha Haidar, J.*). HAZURA SINGH *v.* EMPEROR. **118 I.C. 544=11 L.L.J. 58= 30 Cr. L. J. 941=30 P.L.R. 603= 1929 Cr. C. 3=A.I.R. 1929 Lah. 436.**

———*Approver's evidence — Corroboration—Nature of—Mere presence of person at the scene—Whether sufficient.*

The corroboration that is required in connection with the approver's testimony is corroboration of the material facts which go to connect the accused with the commission of the offence. The mere presence of a person in the house is not such a corroboration. (*Beasley, C. J. and Ananthakrishna Iyer, J.*). ABBOI NAIDU *v.* EMPEROR. **1929 M.W.N. 698.**

———*Witnesses relations of co-accused.*

Where four men are suspected and relatives of three try to implicate the fourth alone who is a stranger, they are naturally suspected of bias and the principle universally adopted in the case of co-accused comes into play and a Court should require some independent corroboration before accepting the evidence. (*Barlee, J.C. and Kalumal, A.J.C.*). EMPEROR *v.* PANJAL. **1929 Cr. C. 539= A.I.R. 1929 Sind 245.**

———Butcher without license importing meat in quantities more than required for his personal use and distributing it—No proof of receiving money—Presumption that he actually imported meat and sold it is justified. (*Barlee, J. C. and Kalumal Phalumal, A.J.C.*). MAHOMEDDIN *v.* EMPEROR. **118 I.C. 223=1929 Cr. C. 318=30 Cr. L.J. 906= A.I.R. 1929 Sind 150.**

———Conviction should not be based on the evidence of witnesses who are bitter enemies of the accused unless it is supported by the evidence of reliable and disinterested witnesses. (*Shadi Lal, C. J. and Agha Haidar, J.*). DALIP SINGH *v.* EMPEROR. **99 I. C. 75=28 Cr. L.J. 43= A.I.R. 1927 Lah. 874.**

———In a criminal case Courts are not permitted to proceed upon an assumption that accused actually did what they were required by the rules to do. (*Cuming and Mukerji, JJ.*). PRAFULLA KUMAR ROY *v.* EMPEROR. **91 I. C. 883= 30 C.W.N. 94=27 Cr. L.J. 147= A.I.R. 1926 Cal. 345.**

———An attempt to fabricate false evidence of *alibi* would be a very strong piece of evidence against the accused if his connection with such

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attempt had been established. But where the attempt was proved only against his co-accused no such connection should be presumed. (*Shadi Lal, C. J. and Jai Lal, J.*). MAJHI *v.* EMPEROR.
86 I.C. 344=7 L.L.J. 48=26 Cr. L.J. 760=A.I.R. 1925 Lah. 323.

——*Penal Code, S. 408—Servant—Failure to account properly for property entrusted—Presumption of misappropriation.*

It is settled law that where property is entrusted to a servant, it is the duty of the servant to give a true account of what he does with the property so entrusted to him. If such a servant fails to return the property or to account or gives an account which is shown to be false and incredible, it is ordinarily a reasonable inference that he has criminally misappropriated the property so entrusted to him and dishonestly converted it to his own use. In such cases the Courts are entitled to draw hostile inferences and presumptions from the action and statement of the servant. (*Lentaigne, J.*). SONA MEAH *v.* EMPEROR. **84 I.C. 331=2 Rang. 476=26 Cr. L.J. 267=A.I.R. 1925 Rang. 47.**

——*Possession of cocaine.*

Where cocaine was found in certain pots containing grain in a Bania's shop where the accused who were brothers were serving habitually in the shop.

Held, that they must have been daily handling the pots in question and that therefore the finding that both of them must have been aware of the existence of the cocaine in the pot is justifiable. 20 A. L. J. 162; 77 I. C. 447, *Dist.* (*Boys, J.*). GANESH *v.* KING EMPEROR. **83 I.C. 892=5 L.R.A. Cr. 136=26 Cr. L J. 188=A.I.R. 1924 All. 776.**

——When a man points out unknown matters to others, one may presume that he is connected with the crime unless he can give some satisfactory explanation as to how he comes by that knowledge. (*Marten and Crump, JJ.*). AHILA MANAJI *v.* EMPEROR. **24 I.C. 643=24 Bom.L.R. 803=47 Bom. 74=26 Cr. L.J. 339=A.I.R. 1923 Bom. 183.**

——*Presumption as to probability.*

Where the accused gave the deceased a beating the previous day and were seen by various persons on the occasion, it is highly improbable that they would murder the person next day so to invite suspicion. (*Scott-Smith and Moti Sagar, JJ.*). SHEO RAM *v.* THE CROWN. **75 I.C. 733=6 L.L.J. 486=25 Cr. L.J. 45=A.I.R. 1923 Lah. 436.**

——An accused was convicted under S. 412, Penal Code, and the Judge, holding that he must be presumed to have known the nature of the dacoity, sentenced him to the maximum punishment,

Held, that the sentence was excessive as the presumption alone would not justify fixing the accused with more than knowledge that the goods recovered from him had been obtained by dacoity. (*Walmsley and Huda, JJ.*). ASIMUDDIN SARDAH *v.* EMPEROR. **39 I.C. 204=22 Cr. L.J. 60=32 C.L.J. 89.**

—S. 114—Custom.

——*Wajib-ul-arz and Riwaj-i-am—Entries in.*

Entries in wajib-ul-arz and Riwaj-i-am relating to questions of custom are presumptive proof of the custom stated therein. It is therefore for the person rebutting it to prove that the statement of the custom in them is incorrect: 18 P. R. 1914; 98 P.R. 1894 (F.B.); 33 P.R. 1903 and 15 P.R. 1904, *Foll.* (*Addison, J.*). ZAMMA KHAN *v* ABDUL RAHIM. **109 I.C. 59 (Lah.).**

EVIDENCE ACT (1872), S. 114—Documents—Creation of title.

——*Applicability of Hindu Law to Muslims.*

There is a presumption that Muslims are governed by Muhammadan Law, and if a person alleges that Cutchi Memons are governed by Hindu Law by custom, the burden of proving the custom lies on him and the onus will be discharged by proof of actual instances in which the alleged custom has been followed. (*Tyabji, A.J.C.*). TULSIDAS *v.* FAKIR MAHOMED. **93 I.C. 321=19 S.L.R. 376=A.I.R. 1926 Sind 161.**

——Where an agricultural tribe in a village community live by agriculture, a presumption is in favour of custom. (*Martineau, J.*). HIRA NAND *v.* HAYAT MOHAMMAD. **64 I.C. 180=4 U.P.L.R. (Lah.) 6.**

—S. 114—Death.

——*There can be a presumption of death irrespective of S. 108.*

Section 108 provides that in certain circumstances a rebuttable presumption of law arises as to death. It does not follow that if those circumstances do not exist there cannot be a presumption or inference of fact, under S. 114, Evidence Act, as to death. (*Ashworth, J.*). BADAL *v.* SARASWATI. **103 I.C. 329=A. I. R. 1927 All. 687.**

——*Deaths—Order of.*

Where two persons, one aged 18 and the other 60 are found to have died on the same day, but it is not clear as to who died last. A Court is entitled to say that the probabilities are in favour of the younger man surviving the elder. (*Macleod, C. J. and Shah, J.*). Y. N. KULKARNI *v.* LAXMIBAI KESHEO GOPAL. **77 I.C. 117=24 Bom. L.R. 836=47 Bom. 37=A.I.R. 1922 Bom. 347.**

—S. 114—Documents—Consideration.

——When a registered document contains a recital that consideration has passed, it is evidence, against the person executing, of passing of consideration unless rebutted. (*Madhavan Nair, J.*). LAKSHMIDEVAMMA *v.* P. KRISHTIAH. **104 I. C. 518=39 M. L. T. 198=A. I. R. 1927 Mad. 1107.**

—S. 114—Documents—Copy of foreign record.

——True copy of deposition recorded in Court in Cutch Copy certified to be true by a higher officer of the State than the trial Judge, but not by the Political Agent. Presumption arises that the document is true copy.

Held, further, that under S. 114 a presumption would arise that the copy was a correct copy of the record of the deposition as recorded by or under the supervision of the Judge who tried the suit. The fact that the certificate as to its being a true copy is given by a higher officer of the State than the trial Judge would really be an additional reason for accepting its authenticity, and there is no reason to suppose that the mode of certificate, *viz.*, true copy, is not the one ordinarily in use in Cutch just as it is in British India. (*Fawcett, J.*). VALLABHDAS MULJI *v.* PRANSHANKAR NARBHESHANKAR. **113 I. C. 313=30 Bom. L.R. 1519=A.I.R. 1929 Bom. 24.**

—S. 114—Documents—Creation of title.

——*Old document—Conduct of parties may negative creation of title.*

Assuming that a document which is produced apparently from proper custody, was executed, still if, there are circumstances which show that it was

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not acted upon as one would have expected, a document of that nature to be acted upon, the presumption as to the title created by such document falls down. (*Macleod, C.J. and Crump, J.*). (MAHADEO RAMCHANDRA *v.* RAGHOJI JIYAJI RAJE.
77 I. C. 472=A.I.R. 1923 Bom. 233.

—S. 114—Documents—Execution.

———The execution of a pro note by an illiterate woman was held proved, on the evidence of one respectable witness who was opposed by another witness, where the latter was suspected to be false. (*Sir John Edge.*) BHADRAYYA *v.* KANAKAMMA.
22 M.L.W. 8=A. I. R. 1925 P.C. 47 (P.C.).

—S. 114—Documents—Existence of.

———It is a wrong presumption to hold that the mortgagee has only to allege that the original instrument is lost and if the Court comes to the conclusion that there was a mortgage, the mortgagee is relieved from the duty of affirmatively making out the terms of the contract, because the Court may presume that any contract which they set up is true. (*Venkatasubba Rao and Madhavan Nair, JJ.*). C. AHMAD HAJI *v.* MAYAN. **30 M.L.W. 1045=A.I.R. 1930 Mad. 65=57 M.L.J. 789.**

—S. 114—Documents—Foreign school certificate.

———School-leaving certificate in a State and that in British India are similar. (*Fawcett and Madgavkar, JJ.*). BHANUDAS NARAYANKOA *v.* KRISHNABAI CHINTAMAN. **93 I.C. 307=50 Bom. 716=28 Bom. L.R. 1225=A.I.R. 1927 Bom. 11.**

—S. 114—Documents—Genuineness.

———Where a document is on plain paper unstamped and unregistered and such as has never seen the light of the day till it was filed and it has been shown that there were occasions when if genuine it should have been produced but was not produced the presumption is that the document is not genuine but a forged one. (*Das and Adami, JJ.*). DEONATH SINGH *v.* DEBENDRANATH RAI. **123 I.C. 640=A.I.R. 1930 Pat. 78.**

———*Sale—Contract against covenant for title shows document to be genuine.*

Where after the completion of the sale-deed a proviso was added that, if any one claimed the land and the purchaser was deprived of it, he would not be entitled to a refund of the purchase money from the seller, and would have to bear the expenses of any litigation that may take place,

Held, such a stipulation would not have been added if the sale was not a genuine one. (*Martineau, J.*). DHARAM SINGH *v.* KIRPAL SINGH.
69 I C. 409=A.I.R. 1923 Lah. 31.

—S. 114—Documents—Insured cover.

———The mere fact that a cover insured for a certain amount is sent, raises no presumption in law that that cover contains the necessary amount of Government currency notes. (*Sulaiman, J.*). TULA RAM *v.* EMPEROR. **83 I.C. 993=21 A.L.J. 865=5 L.R.A.Cr. 15=26 Cr.L.J. 209=A.I.R. 1924 All. 205.**

—S. 114—Documents—Knowledge of contents.

———Ordinarily the presumption is that if a person signs a document, he must be deemed to have agreed to all that is written thereon. (*Jai Lal, J.*). MATHRA DAS *v.* SHAMBOO NATH. **112 I.C. 843=A.I.R. 1929 Lah. 203.**

———An ordinary sane person would have the final terms of a written document read over before accepting the deed and, therefore, when the executants are men of considerable experience it would require very strong evidence to convince a Court that the deed was signed without being read over. (*Carr and Mya Bu, JJ.*). U THA MAUNG *v.* U. AUNG MYAT GYAW. **117 I.C. 566=A.I.R. 1929 Rang. 39.**

EVIDENCE ACT (1872), S. 114—Documents—Possession of.

—S. 114—Documents—Lease of wakf property.

———Where a lessee of a wakf property *prima facie* proves a heritable right in the tenure at a fixed rate an assumption that the grant was originally lawful can be made. (*Viscount Sumner.*) MUHAMMAD MAZAFFARALMUSAVI *v.* BIBI JABEDA KHATUN. **123 I.C. 722=32 Bom.L.R. 633=34 C. W.N. 462=1930 A.L.J. 377=51 C. L. J. 345=A.I.R. 1930 P.C. 103=58 M.L J. 641 (P.C.).**

—S. 114—Documents—Mortgage.

———When it is proved that the executant put his signature in the presence of the attesting witnesses it was almost certain that the attesting witnesses also put their signatures in the presence of the executant. The circumstances of the case warrant the application of the maxim "*Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*" and the deed must be considered as validly attested : 2 N.L.R. 10, *Rel. on.* (*Macnair and Subhedar, A.J.Cs.*). NARAINRAO *v.* SETH HANUMANTRAM. **A.I.R. 1930 Nag. 273.**

———Mortgagee having option to call in whole amount of principal and interest, in case of default, before due date—Amounts paid towards principal and interest in default, but before due date—Presumption is that mortgagee exercised the option. (*Wallace and Thiruvenkatachariar, JJ.*). RANGASWAMY *v.* KUPPUSWAMY. **107 I.C. 650=A.I.R. 1928 Mad. 637.**

—S. 114—Documents—Order of resumption.

———There is no law which requires a resumption of saranjam to be reduced to writing. The actual order of resumption therefore need not be produced in evidence. Such resumption can be proved under S. 114, Evidence Act and S. 91 will not govern such cases. (*Fawcett, Ag. C. J. and Murphy, J.*). SAYAJI RAO GAIKWARE, BARODA *v.* MADHAV RAO RAGHUNATHA RAO DHAVALE.
115 I. C. 369=30 Bom. L. R. 1463=53 Bom. 12=A.I.R. 1929 Bom. 14.

—S. 114—Documents—Pedigree.

———Where the name of the common ancestor appears in the pedigree-table and where his sons are found to be in joint possession of the property holding equal shares, the presumption is that the common ancestor held the property : 56 P.R. 1906 ; 41 P. R. 1914 and A. I. R. 1927 Lah. 847, *Foll.* ; A. I. R. 1927 Lah. 477, *Ref.* (*Johnstone, J.*). FATEHMA *v.* JIWAN. **116 I.C. 315=A. I. R. 1928 Lah. 964.**

———The mere mention of a common ancestor in a pedigree table is not of itself sufficient to prove that all the land in the possession of his descendants descended from that common ancestor, 41 P.R. 1914 *Diss.* (*Scott-Smith and Moti Sagar, JJ.*). KARTAR SINGH *v.* LABH SINGH.
74 I.C. 685=5 L. L. J. 190=A.I.R. 1923 Lah. 355.

—S. 114—Documents—Possession of.

———*Mortgage deed—Possession of by obligor—Discharge—Presumption.*

In a suit on mortgage, defendants set up a case of discharge, relying on the fact that the mortgage-deed had come into their possession and purported to bear an endorsement of discharge by the plaintiffs' father. Plaintiffs alleged that the document was stolen from them. It was found that the defendants had deposited with the plaintiff's father

EVIDENCE ACT (1872), S. 114—Documents—Priority—When date is same.

the title-deeds of the mortgaged property at the time of the mortgage and they were still in possession of the plaintiffs.

Held, that that fact considerably weakened the presumption in favour of defendants arising from the possession of the mortgage document. (*Sir John Wallis.*) ALWAR NAIDU *v.* KOTHANDAPANI NAIDU.
105 I.C. 263=29 Bom. L.R. 1388=
46 C. L. J. 292=39 M.L.T. 290=
1927 M.W.N. 709 =9 P.L.T. 1=
A.I.R. 1927 P.C. 261=53 M.L.J. 295 (P. C.).

—S. 114—Documents—Priority—When date is same.

———*Two documents executed on same day—Purpose of the documents will determine priority.*

Where more documents than one bear date on the same day they are presumed to have been executed in the order necessary to effect the purpose for which they were executed. That is, it might be presumed that persons who are presumed to know the law observed it and that, when two acts are done on the same day, the one necessary to be done first to give the other validity was, in fact, done first.

But where a sale-deed in respect of property under the management of the Collector in execution of a decree, has been executed and deposit in Collector's Court, sufficient to satisfy the decree is made on the same day, but it is found that the sum out of which the deposit was made was obtained at the time of the registration of the sale-deed, it cannot be presumed, in the absence of any reliable evidence to the contrary, that the deposit was made before the sale. (*Jackson, A. J. C.*). RAJESHWAR *v.* AJABSINGH. 118 I. C. 866=12 N.L.J. 86=
A.I.R. 1929 Nag. 257.

—S. 114—Documents—Validity.

———Where a person executing a deed required by law to be registered is of full age when appearing before the Registrar, and admits the execution of the deed, the presumption is that the transaction to which the deed relates is valid. (*Mukerji and Bennet, JJ.*). MOHAMMAD QADIR ALI KHAN *v.* MOHAMMAD GHULAM IMAM KHAN.
A.I. R. 1930 All. 605.

—S. 114—Documents—Will.

———*Female legatee—Use of word 'malik'—Presumption.*

The ordinary meaning of the word 'Malik' in reference to property is 'absolute owner' and if the testator used the word it is to be presumed that he uses it in its ordinary meaning. The fact that the legatee of a Hindu is a woman points to a probability that the testator intended that after her death his property should return to his heirs-at-law, that is his own family. But it is a very weak indication of that probability, not nearly as strong by itself as the indication of the contrary to be found in the use of the word 'malik.' (*Hallifax, A. J. C.*). SUNDRA BAI *v.* JAGANATH. 69 I.C. 286=
A.I.R. 1923 Nag. 56.

———*Will entirely written by testator*—Prima facie *case of genuineness*—Onus *shifts on defendants to establish forgery.*

There is nothing unnatural in a Hindu sonless and not in a good state of health, writing a document by which directions are given to a widow to adopt the testator's nephew. It is certainly extremely improbable that a person wishing to put forward a forged will would run the risk of imitating the handwriting of the deceased or get it imitated by some one else when it would be so easy to attack a forged document when it runs over a folio page and purports to have been written by the testator. The plaintiff has to prove the document on which he relies but when once he has gone as far as putting before the Court a *prima facie* case which bears the signs of being genuine, then it is for the defendant to produce reliable grounds for upsetting the plaintiff's case and satisfy the Court that it is not only improbable but impossible. (*Macleod and Coyajee, JJ.*). IRABASAPPA BIN GANGAPPA DALAL *v.* BHADRAWA KOM DOD BASAPPA PRABHU SHETTI. 80 I.C. 189=
A.I.R. 1922 Bom. 296.

EVIDENCE ACT (1872), S. 114—Human conduct.

—S. 114—Guiding principles.

———*Presumption of some lawful origin explained.*

The presumption of an origin in some lawful title which the Court has so often readily made in order to support possessory rights, long and quietly enjoyed, where no actual proof of title is forthcoming is one which is not a mere branch of the law of evidence. It is resorted to because of the failure of actual evidence. The matter is one of presumption based upon the policy of law but even considered as an inference from proved facts the grant presumed is the thing which may be regarded as likely to have happened. At the same time it is not a presumption to be capriciously made nor it is one which a certain class of possessor is entitled to, *de jure*. In a case such as this where it is necessary to indicate what particular kind of lawful title is being presumed the Court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed without doing violence to the probabilities of the case. It is the completion of a right to which circumstances clearly point where time has obliterated any record of the original commencement. The longer the period within which and the remoter the time when first a grant might be reasonably supposed to have occurred the less force there is in an objection that the grant could not have been lawful: A.I.R. 1926 Cal. 822, *Affirmed*; A. I. R. 1922 P. C. 163, *Rel. on*; 19 Mad. 485 and A. I. R. 1917 P.C. 6, *Ref.* (*Viscount Sumner.*) MUHAMMAD MAZAFFARALMUSAVI *v.* BIBI JABED KHATUN.
123 I.C. 722=32 Bom, L.R. 633=34 C.W.N. 462=
1930 A. L. J. 377=51 C. L. J. 345=
A.I.R. 1930 P.C. 103=58 M.L.J. 641 (P.C.).

———Presumption should not be made against but in favour of the existing state of things. (*Lord Phillimore.*) SECY. OF STATE *v.* RAJA JYOTI PRASHAD SINGH. 94 I. C. 974=53 Cal. 533=
53 I. A. 100=30 C. W. N. 745=24 A. L. J. 761=
A.I.R. 1926 P. C. 41 (P.C.).

———Presumptions are not made at random. Some connexion must be shown to exist between the fact proving and the fact to be proved, which warrants an inference from the one to the other when the two are brought into proximity. (*Venkatasubba Rao, J.*). THIRUVENKATACHARLU *v.* ALTOO SAHEB. 94 I. C. 458=1926 M. W. N. 344=
A. I. R. 1926 Mad. 511=50 M. L. J. 251.

———Every apparent transaction must be assumed to be real till contrary is proved by party challenging it. (*Das and Ross, JJ.*). ISMAIL ALI KHAN *v.* HAMIDI BEGUM. 62 I. C. 455=2 P. L. T. 658=
6 P. L. J. 218=A. I. R. 1921 Pat. 125.

—S. 114—Human conduct.

———Court would presume a legal origin where there has been a long continued enjoyment of a claim if the claim could have had a legal commencement. (*Ananthakrishna Iyer, J.*). SHIVARAMIYYA *v.* RAJAH OF VENKATAGIRI. 120 I.C. 743=
A.I.R. 1930 Mad. 339.

EVIDENCE ACT (1872), S. 114—Human conduct.

———Court can presume a contract to pay the higher rate and a legal origin and consideration therefor from long continued payment of higher rate : 42 Mad. 475, *Rel.on.* (*Ananthakrishna Iyer, J.*). SHIVARAMAYYA *v.* RAJAH OF VENKATAGIRI. **120 I.C. 743 = A.I.R. 1930 Mad. 339.**

———Concealment of motive gives rise to a presumption under S. 114, that there is one which cannot be avowed. (*Barlee, A.J.C.*). KHETSI PACHAN MINDU *v.* DELA MEGHA MINDU. **121 I.C. 175 = A.I.R. 1930 Sind 135.**

———*Plaintiff's delay in bringing suit—Defendant prejudiced—Presumption.*

Where the long delay of the plaintiffs in bringing the suit has prejudiced the defendants and has prevented them from bringing the best evidence that would otherwise have been available to them, the tendency of the Court must invariably be to make an inference against the plaintiff unless good cause is shown and the Court should attach great importance to such presumption in testing the credibility of the evidence actually given : 14 M.I.A. 67 ; A.I.R. 1924 P. C. 137, *Foll.* (*Sulaiman and Kendall, JJ.*). BRIJ RAJ SARAN SINGH *v.* BASANT SINGH. **118 I.C. 154 = A.I.R. 1929 All. 561.**

———*Deliberate default in payment of revenue.*

Deliberate default in the payment of revenue with the intention that property may be sold free of encumbrances is a common device to defraud mortgagees, and it is obviously essential to the success of that device that the purchaser should be a mere benamidar for the defaulter, since no man is likely to allow his property to be sold for an inadequate price except to himself or to some person representing him. When therefore it is proved that this device has been adopted, there is a fair initial presumption under S. 114 that the purchaser represented the defaulter. (*Heald and Mya Bu, JJ.*). MOHAMAD SALAY *v.* R. M. V. V. M. CHETTIAR. **105 I. C. 258 = 5 Rang. 458 = A. I. R. 1927 Rang. 289.**

———Ordinary care should be deemed to have been taken in every case. Negligence cannot be presumed. (*Kinkhede, A.J.C.*). CHANDRA SHEKHAR *v.* ABIDALLI. **80 I. C. 920 = A.I.R. 1925 Nag. 68.**

———Where a person is at liberty to stop something being done in his house and is proved not to do so the presumption is that he is an accessory to the doing of that thing and he may be held to be in possession of the materials used in the doing of it. (*Ashworth, A. J. C.*). MAI KU *v.* EMPEROR. **86 I. C. 707 = 26 Cr. L.J. 851 = A. I. R. 1925 Oudh 684.**

———*Suit against Railway—Exception not pleaded—Contrary should be presumed.*

Where the plaintiff had expressly described his claim as one of compensation for non-delivery and the defendant had not pleaded that the goods had been lost,

Held, that the plaintiff's case would rest upon the presumption that the goods were still in the possession of the railway company. (*Foster, J.*). EAST INDIAN RAILWAY CO. AND G.I.P. RY. CO. *v.* FIRM SUKHDEO DAS. **74 I. C. 431 = 4 P. L. T. 443 = A.I.R. 1924 Pat. 25.**

———Where the son as reversioner gave consent to a gift by the mother in favour of the grandson after his insolvency the consent was held not to be *bona fide*. (*Piggott and Walsh, JJ.*). HARI HAR PRASAD *v.* UDAY NATH SAH. **74 I. C. 113 = 21 A. L. J. 77 = 45 All. 260 = 4 L.R.A. Civ. 70 = A. I. R. 1923 All. 190.**

EVIDENCE ACT (1872), S. 114—Marriage.

———Where by taking over the sale and paying the full price, a co-owner has waived his own claim to sue such action on the part of the co-owner is presumptive evidence that the sale by another co-owner was not bad for want of necessity. (*Scott-Smith and Fforde. JJ.*). MT. BASANTI *v.* CHANDA SINGH. **77 I.C. 475 = A.I.R. 1923 Lah. 502.**

———Pro-note repudiated by defendant—Suit filed on last day of limitation—Plaintiff alleging to be businessman but not producing account books—Inference must be drawn against plaintiff. (*Sir John Edge*). DATARAM JANI *v.* BASANT MT. KUNWAR. **A.I.R. 1922 P.C. 378 (P. C.).**

———*Laches—Delay in filing suit for dower—Relinquishment cannot be presumed.*

Procrastination is the usual habit of litigants and where the parties are closely related, there must be constant talk and hope of settlement with the interference of relations or neighbours who would like to get credit if not money, by taking sides. These are all circumstances which would lead to delay in filing a suit and it cannot be urged that relinquishment is the only possible inference of delay. (*Daniels, J.C. and Dalal, A.J.C.*). MT. UMMESALMA *v.* SAIYID AMJAD HUSAIN. **66 I.C. 448 = 8 O.L.J. 528 = A.I.R. 1922 Oudh 165.**

———Waiver may be evidenced by conduct inconsistent with the continuance of the rights waived. (*Prideaux, J.*). KAWADJI *v.* GANGARAM. **64 I.C. 461 (Nag.).**

—S. 114—Joint Hindu family.

———*Property standing in wife's name.*

There is no presumption that where a property stands in the name of a Hindu wife, it really belongs to the husband. To uphold such a presumption it is necessary for the person who wants to make out that the property is not the property of the wife in whose name the document stands to establish that the money for purchase came from the husband : 8 Mad. 214, *Rel. on* ; A. I. R. 1925 P. C. 181, *Expl.* (*Krishnan and Venkatasubba Rao, JJ.*). OFFICIAL ASSIGNEE OF MADRAS *v.* NATESA GRAMANI. **98 I.C. 660 = 38 M.L.T. 153 = A.I.R. 1927 Mad. 194.**

———The legal presumption is that a Hindu family is joint and hence it is for the party alleging separation to prove it. (*Gokaran Nath Misra and Raza, JJ.*). MT. JAGWANTI *v.* BICHAND SINGH. **95 I.C. 774 = 13 O.L.J. 744 = A.I.R. 1926 Oudh 511.**

———*Manager.*

The elder of two brothers would as such be presumed to be the head or the manager of the family in the absence of any positive evidence to the contrary. (*Shadi Lal, C. J. and Abdul Qadir, J.*). RAM KISHAN *v.* HIRDE RAM. **71 I.C. 737 = A.I.R. 1923 Lah. 135.**

———Suit to set aside sale by manager of joint family—Nine-tenths of consideration found binding—Court can presume the binding nature of the balance also. (*Schwabe, C.J.*). MEENATCHI AYYAN *v.* RANGACHARLU. **1922 M.W.N. 719 = 16 M.L.W. 595 = A.I.R. 1923 Mad. 120.**

—S. 114—Marriage.

———*Continuous co-habitation.*

The law presumes in favour of marriage and against concubinage when a man and a woman have co-habited continuously for a number of years. (*Lord Shaw.*) MOHABBAT ALI KHAN *v.* MD. IBRAHIM KHAN. **117 I.C.17 = 1929 A.L.J. 465 = 33 C.W.N. 645 = 31 Bom. L.R. 846 = 6 O.W.N. 517 = 56 I.A. 201 = 50 C.L.J. 89 = 30 M.L.W. 97 = 1929 M.W.N. 676 = 10 Lah. 725 = 31 P.L.R. 1 = A.I.R. 1929 P.C. 135 = 57 M.L.J. 366 (P.C.).**

EVIDENCE ACT (1872), S. 114—Marriage.

———*No presumption.*

Where the status of the man is lower than the woman's and the intercourse between them is admittedly illicit for a large number of years no presumption of marriage arises merely because they lived as husband and wife and were regarded by their neighbours as such: 11 M.I.A. 194 (P.C.) and 32 All. 345 (P.C.), *Rel. on*; 34 Mad. 277, *Ref.* (*Marten, C.J. and Murphy, J.*). GANGADHAR TUKARAM *v.* RACHAPPA NAGAPPA. **119 I.C. 182= 31 Bom. L.R. 453=A.I.R. 1929 Bom. 246.**

———*No presumption.*

Presumption of a valid marriage from two persons living together as man and woman cannot be drawn where the union is between a man who is an Ahir and a Brahman widow, who cannot *prima facie* contract a valid marriage. (*Jackson, A.J.C.*). GULABCHAND *v.* BHAIYALAL. **119 I.C. 698= A.I.R. 1929 Nag. 343.**

———*Co-habitation and repute.*

A Mahomedan lady lived continuously with another man and had children who were treated by her, her relatives and friends as issues of that man. The latter had absolute power of disposal over her money. The incomes both of the man and the woman were jointly assessed with taxes by the Municipality.

Held, that the reasonable conclusion was that the woman was married to the man. A. I. R. 1916 P. C. 27, *Rel. on.* (*Stuart, C. J. and Wazir Hasan, J.*). ABDUL HALIM KHAN *v.* SAADAT ALI KHAN. **112 I.C. 596=A.I.R. 1929 Oudh 126.**

———Where a man and woman are living together as husband and wife for a large number of years and have always treated each other as husband and wife, have always been looked on as husband and wife, and there is no obstacle to the marriage, the burden is on the person who denies the marriage to prove that it did not take place. 3 M. I. A. 295 (P. C.); A. I. R. 1922 P. C. 159; A. I. R. 1918 P. C. 11 and 31 Cal. 849, *Rel. on.* (*Brown, J.*). MAUNG KYI *v.* MA SHWE BAW. **121 I.C. 718=7 Rang. 777= A.I.R. 1929 Rang. 341.**

———Presumption of marriage arises from long co-habitation. (*Heald, J.*). MAUNG NGWE SAN *v.* MA GYI. **117 I.C. 64=A.I.R. 1929 Rang. 64.**

———*Unmarried woman—Concubinage—No presumption of marriage from co-habitation.*

A presumption of marriage may arise from long co-habitation, but if it is known that the connexion started in mere concubinage this presumption cannot arise. Relations or conditions of persons or things once shown to exist are presumed to continue until the contrary is proved. If it is proved that a certain woman was unmarried at a certain date the presumption is that she continues so until proved to have married and therefore when there is no proof of any marriage but there is a judicial decision that she was not married but was living as a concubine, there can be no presumption of marriage. (*Addison, J.*). MT. INDI *v.* JAIMAL SINGH. **98 I.C. 887=8 L.L.J. 532= 27 P.L.R. 829=A.I.R. 1927 Lah. 48.**

———*Breach of contract to marry—One party interned during the War and unable to communicate with other—Rescission cannot be presumed.*

In certain circumstances, silence, absence, conduct or expressions in letters may be amply sufficient to lead a Court of Law to conclude that a contract of marriage was dissolved by agreement of both parties.

But where circumstances were altogether extraordinary in that the parties were entangled and embarrassed by difficulties not of their making but by war breaking out and one of the party being interned during the war being suspected as German subject,

Held, that even then to prove that this contract was rescinded by mutual agreement is a burden of which the respondent must discharge himself. If he does not so prove he must make amends to the other party. (*Lord Darling*). LUCIA JACOB *v.* DAVID ALEXANDER WILLS. **89 I.C. 824= 2 O.W.N. 695=22 M.L.W. 726=30 C.W.N. 248= A.I.R. 1925 P.C. 194 (P.C.).**

EVIDENCE ACT (1872), S. 114—Murder.

———*Legitimacy when presumed—Co-habitation and repute.*

The presumption of legitimacy cannot be raised without laying the foundation for it under S. 112. In absence of evidence legitimacy cannot be presumed. Under S. 114 the presumption of marriage arises from joint residence for a length of time or recognition as husband and wife by a certain number of persons. (*Odgers, J.*). CHOCKALINGAM PILLAI *v.* SAMI BATTAR. **79 I.C. 623= A.I.R. 1925 Mad. 426.**

—S. 114—Murder.

———*Murder by some dacoits of person running from scene of dacoity—Murder not in furtherance of common intention.*

It can hardly be natural that the common intention of all the persons who took part in the robbery was to murder not only persons who resisted them in the execution of the robbery but also to murder the persons who ran away from the scene of the robbery and therefore a murder of a person running from the scene of robbery cannot be said to be in furtherance of the common intention of dacoits. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. **115 I.C. 1=30 Cr. L.J. 385= A.I R. 1929 Lah. 338.**

———The trial Judge rejected evidence about three objects, an umbrella, a stick and a bundle said to have been pointed out by the accused, as being in the well where the body of the dead man was found. This was not the exclusive evidence against the accused but there was other considerable evidence also.

Held, that the Judge should not have rejected the evidence. A.I.R. 1926 Mad. 638, *Dist.* (*Coutts-Trotter, C.J. and Walsh, J.*). PUBLIC PROSECUTOR *v.* CHANDAYA SHETTY. **2 M. Cr. C, 86= A.I.R. 1929 Mad. 92.**

———Person knowing of his wife's murder but making no report to police nor trying to find out murderer—His conduct may lead to conclusion that he was murderer. (*Raza and Pullan, JJ.*). BHAGWAN *v.* EMPEROR. **116 I.C. 193= 6 O. W. N. 218=30 Cr. L. J. 567= 12 A.I. Cr. R. 420=4 Luck. 679= A. I. R. 1929 Oudh 190.**

———*Poisoning by members—Presumption when arises.*

A violent presumption that the deceased was poisoned by the members of the family arises, perhaps one of the strongest presumptions known to the law, when a man dies in his own house surrounded by his own family, and poisoned shortly after eating food which must have been prepared for him by his wife, and no explanation is forthcoming from the occupants of the household as to what had happened to him to cause his death, and where, in addition to such violent presumption, the persons accused are proved to have been guilty of persistent lying in an attempt to account for the absence of the deceased, and are

EVIDENCE ACT (1872), S. 114—Murder.

also shown to have hidden the corpse to save themselves, the presumption becomes a certainty. (*Walsh and Pullan, JJ.*). EMPEROR *v.* MT. HAR PIARI. **97 I.C. 44=49 All. 57= 24 A.L.J. 958=27 Cr. L.J. 1068= 7 L.R. A. Cr. 156 = A.I.R. 1926 All. 737.**

———*Charge of murder and theft—Possession of stolen property not explained—Accused cannot be presumed to have committed murder.*

When the charge is that the accused committed murder or theft in a building or both, it is not legitimate to presume that the accused are guilty of the more serious offence of murder because they are unable or unwilling to explain their possession of stolen property, and when the unexplained possession of stolen property is the only circumstance appearing in the evidence against an accused they cannot be convicted of murder unless the Court is satisfied that possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. (*Spencer, J.*). SOGIAMUTHU PADAYACHI, *In re.* **93 I.C. 42=50 Mad. 274= 27 Cr. L. J. 394=A. I. R. 1926 Mad. 638.**

———The possession of the jewels of a murdered woman if unexplained is presumptive evidence that the accused was the murderer as well as that he committed theft. 13 Mad. 426, *Foll.* (*Spencer, J.*). NAINAMALAI KONAN, *In re.* **69 I. C. 377= 14 M.L.W. 418=A.I.R. 1921 Mad. 679.**

—S. 114—Notice.

———*Registered cover—Postman's endorsement of 'refusal' thereon—Effect.*

Where a notice sent by post in a registered cover is returned by the postman with a note that the addressee refused to receive it and the posting of the notice has been proved, there is a presumption under S. 114 that the addressee did refuse to receive it. Where such presumption arises, it is for the party putting forward the plea of want of notice to rebut it. A. I. R. 1926 Lah. 520; 15 Cal. 681; 17 C.W.N. 1073 and 28 C.W.N. 319, *Foll.* (*Addison, J.*). RAUNAQ RAM *v.* PRABH DAYAL.
121 I.C. 382=31 P.L.R. 26=A.I.R. 1930 Lah. 439.

———Suit against Railway. Postal acknowledgment with other evidence may be sufficient proof of notice. (*Ryves, J.*). DUKLIS RAM BARAI *v.* B.N.W. RY. **73 I.C. 440=4 L.R.A.Civ. 48= A. I. R. 1923 All. 145.**

———*Notice under Bengal Cess Act—No presumption as to liability.*

No presumption of S. 114, Cl. (c) of Evidence Act applies with respect to notice provided by S. 52 of Cess Act and the person who claims that a right or an obligation such as the payment of cess by a tenure-holder, has accrued, must prove that the liability had been incurred and the things described in the Act had actually been done. The owner of rent-free lands is not bound to pay road cess before the publication of the valuation rolls under S. 52. (*Jwala Prasad and Ross, JJ.*). PITAMBAR CHOWDHURY *v.* SHAIKH RAHMAT ALI. **65 I.C. 138=3 P. L.T. 282= 1922 P. H. C. C. 167=A.I.R. 1922 Pat. 303.**

—S. 114—Possession and ownership.

———Piece of land adjacent to joint property in name of joint owners is presumed to be joint. (*Mya Bu and Pawley, JJ.*). MA BI *v.* MA KHATTAN. [illegible] 785=7 Rang. 744=A.I.R. 1930 Rang. 72.

——— If possession does not pass under the sale, a presumption is apt to arise straightaway that the sale-deed is a fraudulent one. (*Findlay, J. C.*). BALAJI *v.* PANDURANG. **113 I.C. 884= A.I.R. 1928 Nag. 306.**

EVIDENCE ACT (1872), S. 114—Possession and ownership.

———*Determination of title to waste land—No one proving possession—Court can hold that the land is in possession of rightful owner.*

Under the Record-of-Rights the presumption attaches to the correctness of the entry therein. Under S. 114, in determining a question of fact the Court may presume the existence of certain things. The entry in the Record-of-Rights has only a probative value but the presumption which the Court draws under S. 114 is a presumption of the existence of certain facts, and in determining the title to waste land the Court is entitled to hold that so long as no one else can prove possession and the property is incapable of possession it must be held to be in the possession of the rightful owner. (*Suhrawardy and Graham, JJ.*). NANDA KUMAR *v.* GUNDAD ALI. **98 I.C. 849=44 C.L.J. 265= A.I.R. 1927 Cal. 49.**

———The mere fact that a person chooses to pay somebody else's mortgage debt does not necessarily show that he has some title in the property mortgaged. (*Suhrawardy and Graham, JJ.*). GHULAM SIDHIQUE KHAN *v.* JOGENDRA NATH MITRA. **96 I.C. 199=43 C.L.J. 452=31 C.W.N. 205= A.I.R. 1926 Cal. 916.**

———The mere fact that in the revenue records the sons of a particular person are shown as jointly owning land is not sufficient to raise a certain presumption that that person was the owner of the land. (*Broadway and Coldstream, JJ.*). NATHA SINGH *v.* MOHAN SINGH. **97 I.C. 241= 8 Lah. 30=8 L.L.J. 485=27 P.L.R. 721= A.I.R. 1926 Lah. 659.**

———Where defendants were shown to have been in peaceful possession for more than 60 years,

Held, that it required very strong evidence indeed to prove that the possession was only that of mortgagees. (*Duckworth, J.*). MAUNG PO NI *v.* MA SHWE KYI. **84 I.C. 373=2 Rang. 397= A.I.R. 1925 Rang. 7.**

———Where the vacant plot of land belonged to one party the natural inference would be that it was he who built upon the land at his own expense and *onus* lies heavily on the other party to prove that it was he that did so. (*Raymond and Kennedy, A.J.Cs.*). HARI RAM ISARDAS *v.* MT. HARIDEVIBAI. **A.I.R. 1925 Sind 16.**

———There is no presumption that the gadhi in a village in Berar belongs to the Deshmuk. (*Prideaux, A.J.C.*). ANNAJI *v.* LAXMAN. **76 I.C. 622= A.I.R. 1924 Nag. 199.**

———The mere fact that the deeds are in the possession of the mortgagor does not itself prove that the mortgagee was a mere benamidar for the mortgagor. (*Macleod, C. J. and Crump, J.*). HIRAJI *v.* VISHNU. **79 I.C. 186= A.I.R. 1923 Bom. 429.**

———Where defendant's name was mutated as full owner as per Will and was not challenged for over 12 years,

Held, the presumption was that he was full owner under the Will. (*Le Rossignol and Zafar Ali, JJ.*). LAJJA RAM *v.* SHAMBHU NATH. **79 I.C. 462=5 L.L.J. 14= A.I.R. 1923 Lah. 252.**

———Where possession can be referred to a lawful origin the presumption is that it was acquired lawfully and the burden of proving the contrary is on the party who alleges it, *e.g.*, the burden would

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be on the party who alleges that he held the property as trespasser where he ought to hold as legatee or heir. (*Daniels and Lyle, A. J. Cs.*). KUAR NAGESWAR SAHAI *v.* SHIAM BAHADUR.
9 O.L.J. 262=A.I.R. 1922 Oudh 231.

———*Land submerged under water—Reformation—Party in possession up to the time of diluvion will be presumed to be in possession after reappearance.*

If the plaintiff shows his possession down to the time of the diluvion, his possession is presumed to continue as long as the land continued to be submerged.

Further in the case of land covered by water, the Court may, and generally should, presume, in the absence of evidences to the contrary, that a possession enjoyed by the plaintiff before the twelve years, has continued until within the 12 years. In other words, when the plaintiff has shown that he was in possession of the land at the time of diluvion, it must be presumed that he has continued to be in possession within 12 years of the suit. 9 Cal. 744 (F.B.) and 19 Cal. 660 (P. C.), *Foll.* (*Das and Adami, JJ.*). GAJADHAR PRASAD *v.* DULHIN GULAB KOER. 2 P.L.T. 59=A.I.R. 1921 Pat. 234.

———*When land is not capable of actual enjoyment in the usual modes previous possession of plaintiff will be presumed to continue till contrary is proved.*

Per *Dawson-Miller, C. J.*—Possession, however, is not necessarily the same thing as user and if the land is of such a nature as to render it unfit for actual enjoyment in the usual modes it may properly be presumed that the previous possession of the plaintiff continued until the contrary is proved. This presumption is a presumption of fact. It is by no means conclusive and whether it should be applied or not must depend upon the facts of each particular case. 9 Cal. 744 (F.B.), *Rel. on.*

Per *Mullick, J.*—In every case the Court may draw a presumption as to possession from title. It is a presumption of fact which the Evidence Act expressly warrants by S. 114. S. 4 of that Act enacts that the Court may regard the fact as proved unless and until it is disproved or may call for proof of it. The discretion of the Court is to be exercised with due regard to the nature of the land and the evidence in the case. 1 P. L. J. 146, *Expl.* (*Dawson-Miller, C.J. and Mullick, J.*). INDER LALL *v.* RAM SURAT KUER. 2 P.L.T 55=1921 P. H. C. C. 118=A.I.R. 1921 Pat. 158.

—S. 114—Retracted confession.

———It is not absolute rule of law that retracted confession cannot be accepted without corroborative evidence—But where corroborative evidence does not show beyond reasonable doubt that accused is guilty he should be given benefit of doubt. (*Adami and Scroope, JJ.*). BHAGWAN DAS BHAGAT *v.* EMPEROR. A.I.R. 1930 Pat. 289.

———*Rule as to.*

In a proper case a Court may act upon retracted confession alone, but the rule of prudence and safety is to require generally that such confessions should be corroborated in material particulars by some reliable evidence before an accused person is convicted. (*Courtney-Terrell, C. J. and Fazl Ali, J.*). KUNJA SUBUDHI *v.* EMPEROR.
116 I. C. 770=8 Pat. 289=10 P. L. T. 549=30 Cr. L.J. 675=1929 Cr. C. 62=13 A.I. Cr.R. 143=A.I.R. 1929 Pat. 275.

———It seems quite beyond question that the retracted confessions practically uncorroborated by

EVIDENCE ACT (1872), S. 114—Statements and affidavits.

anything in the prosecution evidence, do not afford anything like a satisfactory basis for the conviction of the accused. (*Piggott and Walsh, JJ.*). MT. SUKHIA *v.* EMPEROR. 73 I.C. 497=24 Cr. L.J. 609=20 A.L.J. 669=A.I.R. 1922 All. 266.

—S. 114—Scope.

———Section 114 does not go so far as to enable the Court to presume that a certain state of things existed in the past without any proof from the party who is required to satisfy the Court on the point. (*Suhrawardy and Patterson, JJ.*). BENGAL-NAGPUR RAILWAY COMPANY *v.* MOOLJI SICKA AND CO. 52 C.L.J. 235.

———The distinction between a mere inference and a presumption of fact is that the latter is an inference under S. 114 and includes a presumption of the nature described in the illustrations. It also includes anything that, in English law, would rank as a presumption of law. (*Ashworth and Kendall, JJ.*). SITA RAM *v.* NANKA.
106 I.C. 250=50 All. 145=25 A.L.J. 833=A.I.R. 1928 All. 16.

———What a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established. (*Wazir Hasan, A. J. C.*). GHULAM SARWAR KHAN *v.* MOHAMMAD ALI KHAN. 65 I.C. 398=8 O.L.J. 609=A.I.R. 1922 Oudh 98.

—S. 114—Statements and affidavits.

———Where a Court has to choose between two conflicting statements of a witness, by one of which he stands to gain a sum, while by the other he stands to lose a bigger sum, the statement against interest should ordinarily be preferred. (*Courtney-Terrell and James, JJ.*). GOBIND GORHI *v.* BALDEO RAM. A.I.R. 1930 Pat. 293.

———When there is a definite allegation in an affidavit which is the only evidence in the case and that allegation is not traversed by the other side, it must be held to be correct. (*Phillips, J.*). C. V. VATHESWARA AYYAR *v.* K.M.R.M.L. KUMARAPPA CHETTIAR.
115 I.C. 247=1929 M.W.N. 139.

———*Contradiction between affidavits on opposite sides—Judge's note about the proceedings is to be accepted.*

Where parties agreed to abide by oath of the plaintiff and the question was what the nature of the agreement was and there was a direct contradiction between affidavits of the two pleaders, which were filed after a long time had elapsed, as to the nature of the agreement,

Held, proper thing to do would be to rely upon the note the Judge made at the time and presume that what took place in the presence of the Judge who must have been aware of the facts and the nature of the agreement was what was agreed to between the parties. The Judge had no interest or motive in supporting the allegations of one side or the other and it must be presumed that he acted properly in administering the oath in accordance with what the parties agreed to. (*Kumaraswami Sastri and Wallace, JJ.*). ARUMUGAM CHETTIAR *v.* DEVARAYA CHETTIAR.
107 I.C. 648=A.I.R. 1928 Mad. 628.

———*Statement after suit is of very little evidentiary value.*

The making of a statement in a document after the suit had been launched and was pending is very different from stating on oath in the witness

EVIDENCE ACT (1872), S. 114—Miscellaneous.

box, and the Court will not attach much weight to the statement even if it is admissible when no question about it has been put to the person making the statement when he was examined as a witness. (*Krishnan and Ramesam, JJ.*). T. LAKSHMI NARASIMHAM *v.* V. RUKMANIAMMA.
A.I.R. 1923 Mad. 225.

—S. 114—Miscellaneous.

———If at the time of booking, the Railway Company is dissatisfied and the person delivering the goods for carriage agrees that the condition of the packages is not satisfactory, it cannot afterwards be made matter of objection in a suit upon the contract that the packages were in good condition. (*Rankin, C. J. and Mitter, J.*). G.I.P. RY. CO. *v.* CHAKRAVERTI, SONS AND CO. 106 I.C. 247=55 Cal. 142=47 C.L.J. 32=32 C.W.N. 53=A.I.R. 1928 Cal. 170.

———*Migration—Personal law—Applicability.*

The ordinary presumption of law is that when a person leaves one district and goes into another where a different custom prevails, he carries his personal law with him and unless there is something to show that he had abandoned his personal law and had adopted the law of his new district, he will continue to be governed by the personal law of his old district. (*Harrison and Dalip Singh, JJ.*). JUGAL DAS *v.* MT. JASODAN BAI.
103 I.C. 170=9 Lah. 110=A.I.R. 1928 Lah. 212.

———*Remittance of money.*

Where money is remitted to a person there is no presumption that the transaction was one of deposit and not of loan: (1916) 1 M.W.N. 206, *Dist.* (*Phillips, J.*). MURUGIAH *v.* PAKKIRIA.
107 I.C. 290=A.I.R. 1928 Mad. 439.

———*Omission to presume is no ground for revision.*

A Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it: but it cannot be taken to be a principle of law that the Court must presume it, and if the Court does not make such a presumption under the circumstances of a case, it is no ground for interfering in revision. (*Pullan, J.*). ADITYA PRASAD SINGH *v.* EMPEROR. 103 I.C. 560=1 L.C. 195=28 Cr.L.J. 704=8 A.I. Cr. R. 414=A.I.R. 1927 Oudh 318.

———*Thing prescribed by statute.*

There is no impropriety in referring a thing as having been done when that thing is required to be done by a section in a statute. (*Walsh, Sulaiman, Mukerjee, Boys and Ashworth, JJ.*). BINDRABAN *v.* G. I. P. RY. CO. 96 I. C. 1039=24 A.L.J. 825=A. I. R. 1926 All. 369 (F.B.).

———*Granting hundi for debt due is presumably only conditional payment and returning of bond for debt due does not rebut presumption.*

It is a question of fact to be decided in each particular case whether the parties intended the subsequent hundi to be an absolute or a conditional payment of the original debt, and the presumption is that the effect of giving or taking of bill or note is that the debt was conditionally paid. This presumption is not rebutted by the fact that previous promissory notes for the original debt were returned: 4 Lah. 151, *Foll.* (*Campbell and Zafar Ali, JJ.*). FIRM BHUDHU MAL *v.* GOKUL CHAND.
92 I.C. 1015=7 Lah. 113=8 L.L.J. 3=27 P.L.R. 75=A.I.R. 1926 Lah. 328.

———*Malicious prosecution — Charge absolutely groundless—Reasonable and probable cause cannot be presumed.*

EVIDENCE ACT (1872), S. 114, Ill. (a)—Grounds for presumption.

In execution of a decree, the officer of the Court went to judgment-debtor's house and attached some articles. The judgment-debtor thereupon filed a complaint of theft against the decree-holder which was found to be groundless. In a suit for malicious prosecution by decree-holder against judgment-debtor,

Held, where on the face of it, the charge brought by defendant against plaintiff is groundless, it can safely be inferred that the defendant had no reasonable and probable cause and the plaintiff cannot be asked to give further evidence directly going to show that there was no reasonable and probable cause. (*Rafique, J.*). BISHUN SARUP *v.* BINDRABAN. 73 I. C. 446=A. I. R. 1923 All. 531.

—S. 114, Ill. (a)—Articles changing hands.

———Where the nature of the articles is such that they may be constantly changing hands, the recovery of such articles more than 5 months after the theft cannot, in law, give rise to a presumption against the possessor, and it is not incumbent upon him to explain how he came by them. (*Abdul Qadir, J.*). HARI RAM *v.* EMPEROR. 62 I. C. 867=22 Cr. L. J. 595=A. I. R. 1921 Lah. 89.

—S. 114, Ill. (a)—Burden of proof.

———*Long lapse of time between theft and discovery of stolen property.*

Where there is long lapse of time between the theft and the discovery of the stolen property (in this case over 15 months), the onus of proving innocent possession should not be cast on the accused. 62 P. L. R. 1916, *Rel. on.* (*Fforde, J.*). NARAIN SINGH *v.* EMPEROR. 108 I. C. 912=29 Cr. L. J. 464=29 P. L. R. 441=A. I. R. 1928 Lah. 687.

———*Criminal case*—Onus *never changes.*

In a criminal case the *onus* is on the prosecution to prove beyond reasonable doubt the guilt of the accused. The *onus* never changes.

Where the Judge stated in his direction to the jury regarding Evidence Act, S. 114, Ill. (a) that if the property was proved or reasonably presumed to be stolen property, the *onus* would shift to the accused to show that he acquired the property in an innocent manner,

Held, that it was a misdirection: 31 C. L. J. 310 and 1914 Cr. App. R. 45, *Foll.* (*Newbould and Mukerji, JJ.*). SATYA CHARAN MANNA *v.* EMPEROR. 88 I. C. 515=52 Cal. 223=26 Cr.L.J. 1155=A. I. R. 1925 Cal. 666.

—S. 114, Ill. (a)—Dacoity.

———*Presumption relates to offence of dacoity also.*

The Presumption not confined to charges of theft but extends to all charges, however penal, not excluding even murder. Consequently where a person charged with dacoity is shown to have been in possession of part of stolen property soon after the dacoity it may be presumed that he was one of the dacoits or he received the property knowing it to have been stolen at the dacoity: 13 Mad. 426, *Ref.* (*Macpherson and Davle, JJ.*). RAMSARUP SINGH *v.* EMPEROR.
A. I. R. 1930 Pat. 513.

—S. 114, Ill. (a)—Grounds for presumption.

———*Accused showing place where stolen property is concealed—When a ground.*

The mere fact that an accused person points out the place in which stolen property is concealed does not give rise to any presumption under S. 114, or justify his conviction of the offence of receiving

EVIDENCE ACT (1872), S. 114, Ill. (a)—Guilty knowledge.

stolen property, still less of the offence of theft or dacoity. But if such property is produced from the house of the accused person a presumption would arise under S. 114, Illus. (a), that the accused was either the thief or had received the goods knowing them to be stolen unless he can account for his possession of the stolen articles; 17 All. 576, *Ref.* (*Mirza and Broomfield, JJ.*). EMPEROR *v.* SHIVPUTRAYA BASLINGAYA. **32 Bom. L. R. 574= A. I. R. 1930 Bom. 244.**

—S. 114, Ill. (a)—Guilty knowledge.

———*Articles of ordinary type found 2½ years after theft—No presumption.*

2½ years before the discovery, at the house of accused, of the articles (four silver ornaments of ordinary type worth Rs. 100) these had been removed from the houses of the two complainants by means of a dacoity. The accused was a goldsmith by caste and profession and when asked, he explained that he himself had made them for his wife. The articles were found, except in one case, on the person of the wife of the accused.

Held, that the accused cannot be presumed to be in possession of the articles with guilty knowledge: 29 All. 138, *Foll.* (*Mukerji, J.*). CHHOTEY LAL *v.* EMPEROR. **85 I. C. 722=26 Cr. L. J. 578= 5 L. R. A. Cr. 199=A.I.R. 1925 All. 220.**

—S. 114, Ill. (a)—Misdirection to jury.

———Before a presumption under S. 114 (*a*) can arise, it must be proved that the goods found in the possession of the accused have been stolen. No such presumption will arise in a case when it may reasonably be presumed that the property in question is stolen property. A direction to the jury that the presence of a reasonable presumption of the property being stolen property is enough to raise the presumption of guilt, is misdirection. (*Newbould and Mukerji, JJ.*). SATYA CHARAN MANNA *v.* EMPEROR. **88 I. C. 515= 26 Cr. L. J. 1155=52 Cal. 223= A.I.R. 1925 Cal. 666.**

—S. 114, Ill. (a)—Nature of possession.

———In order to raise legitimately the presumption of theft, the possession of stolen property should be exclusive as well as recent. (*Rupchand Bilaram and De Souza, A. J. Cs.*). MATARO *v.* EMPEROR. **111 I.C. 732= 29 Cr. L.J. 924=23 S.L.R. 5= A.I.R. 1929 Sind 9.**

—S. 114, Ill. (a)—Possession.

———From the mere fact that the articles were discovered in accused's possession soon after the theft the Judges did not draw the presumption that accused was the thief himself. (*Sulaiman, J.*). YAMINI *v.* EMPEROR. **88 I.C. 705= 5 L. R. A. Cr. 81=26 Cr. L.J. 155= A.I.R. 1925 All. 701.**

—S. 114, Ill. (a)—Possession following theft.

———When a person is found in possession of stolen articles soon after the theft, the law presumes that such person must either be the thief or the receiver of the stolen goods. The identity of the stolen articles being established, the identity of the thief or the receiver of the stolen goods is presumed to be established. (*Rasa and Nanavutty, JJ.*). HAZARI *v.* EMPEROR. **7 O.W.N. 527= A.I.R. 1930 Oudh 353.**

———The fact that a person is found in possession of the stolen property shortly after the theft raises the presumption that he took part in the theft. (*Adami and Scroope, JJ.*). KHALIR JAMA KHAN *v.* EMPEROR. **123 I. C. 393= 31 Cr. L.J. 492=1930 Cr. C. 767= A.I.R. 1930 Pat. 385.**

EVIDENCE ACT (1872), S. 114, Ill. (a)—Time limit.

—S. 114, Ill. (a)—Possession not immediate.

———Possession of stolen property 19 months after theft raises no presumption that the holder thereof was either the thief or received the goods knowing them to be stolen: 22 C.W.N. 597; 11 M.L.W. 43 and 22 Cr. L. J. 595, *Foll.* (*Addison, J.*). NAGLI *v.* EMPEROR. **95 I.C. 471= 27 Cr. L. J. 807=A.I.R. 1926 Lah. 528.**

———Where the accused was found possessed of stolen goods several months after the theft and at a place several miles away from the place of occurrence no presumption that he is either the thief or a receiver of stolen property arises and the *onus* is not on the accused to explain how he got the property and the prosecution cannot succeed by proving the defence to be false. (*Campbell, J.*). ALIA *v.* EMPEROR. **91 I.C. 544= 27 Cr. L.J. 112=A.I.R. 1926 Lah. 272.**

———No presumption arises out of mere possession of stolen articles 12 years after they were stolen: A.I.R. 1926 Lah. 528, *Foll.* (*Coldstream, J.*). MANGAL *v.* EMPEROR. **96 I.C. 650= 27 Cr. L. J. 986 (Lah.).**

———*Possession of property 2 years after loss—Refusal to answer as to source—Adverse inference is justified.*

Though usually a Court is not justified in drawing the presumption of guilty knowledge from possession of property such as jewellery nearly two years after the property had been stolen or otherwise lost to the real owner, the Court is always entitled to request the possessor to disclose the name of the person from whom he had obtained the articles and the particulars as to the origin of the possession and the Court is entitled to draw unfavourable inferences, if the accused refuses to disclose such facts or gives an explanation which can be shown to be false. (*Lentaigne, J.*). RAM PERSHAD *v.* KING EMPEROR. **81 I.C. 443= 2 Rang. 80=25 Cr. L.J. 907=A.I.R. 1924 Rang. 256.**

—S. 114, Ill. (a)—Recent possession.

———*What amounts to recent possession depends on facts of each case.*

The question as to what amounts to recent possession sufficient to justify the presumption of guilt in any particular case, varies according as the stolen article is, or is not, calculated to readily pass from hand to hand: A.I.R. 1926 Lah. 528; 11 M.L.W. 43; A.I.R. 1921 Lah. 89 and 22 C.W.N. 597, *Rel. on.* But the strength and nature of such presumption must vary according to the seriousness of the offence and the nature of the property involved. (*Kinkhede, A.J.C.*). NEGHA *v.* EMPEROR. **109 I.C. 801=11 N.L.J. 104=29 Cr. L.J. 609= 10 A.I. Cr. R. 340=A.I.R. 1928 Nag. 213.**

—S. 114, Ill. (a)—Time limit.

———*No time-limit can be fixed.*

No fixed time-limit can be laid down to determine whether possession of articles is recent or otherwise. But every case must be judged on its own facts. If a few stolen articles were found in possession of a person under circumstances which may give rise to the probability of his coming by them honestly some time after the theft the presumption under the law might not arise against him. (*Suhrawardy and Panton, JJ.*). EMPEROR *v.* EKABBAR. **94 I.C. 361=27 Cr. L.J. 617= A.I.R. 1926 Cal. 925.**

EVIDENCE ACT (1872), S. 114, Ill. (b)—'Accomplice', who is.

—S. 114, Ill. (b).

'Accomplice,' who is.
Corroboration, extent and nature.
'Corroboration,' what is.
Retracted confession.
Value of accomplice's evidence.
Value of approver's evidence.
Miscellaneous.

—S. 114, Ill. (b)—'Accomplice,' who is.

——Witnesses who admittedly had witnessed the crime, who have assisted in concealing the evidence of that crime or at least connived at such being done and who have not attempted to give any information either to the police or to any other person to enable the offender to be brought to justice are in a very little better position than that of accomplices. (*Fforde and Hilton, JJ.*). HAYATU *v.* EMPEROR. **120 I.C. 190=31 Cr. L.J. 50=1929 Cr.C. 87=A. I. R. 1929 Lah. 540.**

——*Witness, accused's paramour and assisting him to put murdered man on bed and covering him with chadar.*

Where the witness was the accused's paramour, and on her own admission accompanied him to the scene of the murder and waited outside the hut while the accused went in and murdered the husband of the witness and then covered him with a chadar and where after that, she returned to the village and shut herself up in her house and gave no information to any one until the next morning when she told one of the P. Ws. privately what had happened,

Held, that in these circumstances she was, to all intents and purposes, an accomplice of the murderer. (*Scott-Smith and Fforde, JJ.*). BAHAWALA *v.* CROWN. **88 I.C. 854=6 Lah. 183=26 P. L. R. 331=26 Cr. L. J. 1238=A.I.R. 1925 Lah. 432.**

—S. 114, Ill. (b)—Corroboration, extent and nature.

——Where the case against accused depends on the view taken as to the corroboration of the approver's story in material particulars, and whether it is such, taken along with the other facts and circumstances, that it can be relied upon as bringing home the guilt for the crime, the corroboration of the approver's story requires most careful investigation upon the question of the identity of the accused persons as participators in the occurrence. (*Pearson and Mullick, JJ.*). MANOHAR MANDAL *v.* EMPEROR. **1930 Cr. C. 657=A. I. R. 1930 Cal. 430.**

——Although it is not illegal to convict on the uncorroborated evidence of an accomplice, a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime, but the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connexion with the crime. (*Raza and Nanavutty, JJ.*). HAZARI *v.* EMPEROR. **7 O. W. N. 527=A.I.R. 1930 Oudh 353.**

——*Several accused—Corroboration as regards each accused—If necessary.*

Per *Staples, A. J. C.*—It is true that an approver's story should be corroborated not only as regards the facts of the case but also as regards the identity of the accused, but where there are several accused and the story of the approver has been confirmed on many points, and as regards the identity of several of the accused, it should not be considered necessary that his story should be corroborated as regards the identity of the remaining accused unless there are reasons for believing that the approver has named those other accused on account of personal spite or for some other reason. The real test of the evidence of the approver is whether it has been believed or not and when it has been corroborated on many points and has not been shown to be false in any particular it should be accepted; and when once it has been accepted as a whole, corroboration as regards the identity of each of several accused should not be demanded. A.I.R. 1921 Nag. 39; 9 All. 528, *Expl.*; *Rex* v. *Baskerville*, (1916) 2 K. B. 658, *Dist.*

(Per *Jackson and Subhedar, A.J.Cs.*).—Even where there are several accused persons, an approver's story to be corroborated as regards a particular accused must be corroborated on some point which implicates that accused. It is not necessary that it should be corroborated on all points relating to him, but there must be some guarantee that his evidence is true as regards that particular accused. A. I. R. 1921 Nag. 39, *Rel. on*; 14 Bom. 331; A.I.R. 1922 Nag. 172; A. I. R. 1925 Nag. 78, *Appl.* (*Jackson, A.J.C. on difference between Staples and Subhedar, A.J.Cs.*). DOULAT *v.* EMPEROR. **120 I.C. 721=31 Cr. L. J. 153=A.I.R. 1930 Nag. 97.**

——It is not all evidence corroborating the accomplice's story, which comes within the rule requiring corroboration. The corroboration indicated in S. 114, Ill. (b), is corroboration in material particulars and these particulars must be such as to connect or identify each of the accused with the offence. [*Rex* v. *Baskerville*, (1916) 2 K. B. 658.] It is not necessary that the accomplice should be corroborated in every material particular. (*Cuming and Lort Williams, JJ'.*). REBATI MOHAN *v.* EMPEROR. **115 I.C. 258=32 C.W.N. 945=56 Cal. 150=30 Cr. L.J. 435=12 A. I. Cr.R. 265=A.I.R. 1929 Cal. 57.**

——The extent of corroboration which a Court demands naturally varies with the circumstances of each case, including the character and antecedents of the approver and the degree of suspicion attached to his evidence. (*Bhide and Johnstone, JJ.*). HAKAM SINGH *v.* EMPEROR. **1929 Cr. C. 626=A.I.R. 1929 Lah. 850.**

——Corroboration need not necessarily consist of direct evidence that the accused committed the crime; it is sufficient even if it consists of circumstantial evidence of his connexion with the crime. *Rex* v. *Baskerville*, (1916) 2 K.B. 658; *Rex* v. *Marks Feigenboum*, (1919) 1 K. B 431, *Rel. on* and *Expl.* (*Bhide and Johnstone, JJ.*). HAKIM SINGH *v.* EMPEROR. **1929 Cr.C. 626=A.I.R. 1929 Lah. 850.**

——*Corroborative evidence itself need not be sufficient to base conviction on—Independent evidence showing in material points that the story of the accomplice is true, is sufficient corroboration.*

The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged and it would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice, that the accused committed the crime, is true not merely that the crime has been committed, but that it was committed by

EVIDENCE ACT (1872), S. 114, Ill. (b)—Corroboration, extent and nature.

the accused. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connexion with the crime.

Corroborative evidence need not be sufficient in itself to base a conviction on. Confirmation of the story of an accomplice does not mean that there should be independent evidence of the accomplice's account of the crime itself. What the law clearly requires is that some relevant and material part of the approver's story incriminating the accused should have support from an independent source. This supplies a test of the truth of the accomplice's narrative as a whole by checking it in some relevant portion. *Rex* v. *Baskerville*, (1916) 2 K. B. 658, *Foll.* (*Fforde, J. on difference between Aga Haidar and Broadway, JJ.*). BARKATI *v.* EMPEROR. **103 I.C. 49=28 Cr.L.J. 625=8 A.I.Cr. R. 273=A.I.R. 1927 Lah. 581.**

———*Corroboration must go to the guilt of each accused separately.*

An accomplice is unworthy of credit, unless he is corroborated in material particulars. The corroboration must go to the guilt of each of the accused separately. 8 All. 306, *Foll.* It must be such as to satisfy the Court that the approver has not substituted the name of one or more of the accused for that of some other person, possibly a particular friend of his own, who actually took part in the offence. The rule is not absolute: 9 All. 528, *Ref.* But it is only in exceptional cases that the corroboration can be dispensed with. (*Simpson and Gokaran Nath Misra, A. J. Cs.*). SHEO NARAIN SINGH *v.* KING EMPEROR.

89 I.C. 261=12 O. L. J. 429=26 Cr. L.J. 1317=A.I.R. 1925 Oudh 715.

———Where there are more than one accused there should be corroboration of approver's story against each. (*Broadway, J.*). SULEMAN *v.* THE CROWN. **76 I.C. 716=25 Cr L J. 252=A. I. R. 1923 Lah. 385.**

———No hard and fast rules can however be laid down to regulate the extent and nature of such corroboration, this being dependant entirely on the circumstances of each case. The fabrication of a false defence cannot be regarded as sufficient to corroborate an approver. (*Scott-Smith and Broadway, JJ.*). MAHANT NARAIN DAS *v.* EMPEROR. **68 I.C. 113=4 L.L.J. 91=3 Lah. 144=9 P.W.R. 1922=23 Cr. L.J. 513=A.I.R. 1922 Lah. 1.**

———*Nature and extent of corroboration required discussed—English and Indian Law on the point do not differ.*

Confirmation (corroboration) does not mean that there should be independent evidence of that which the accomplice relates, otherwise his testimony would be unnecessary. But one accomplice's evidence is not corroboration of the testimony of another accomplice. (1848) 3 Cox C. C. 526 and 531.

Evidence in corroboration must be evidence which implicates the accused, *i.e.*, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it.

The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. Were the law otherwise, many crimes which are usually committed between accomplices in secret, such as incest,

EVIDENCE ACT (1872), S. 114, Ill. (b)—'Corroboration,' what is.

offences with females, etc., could never be brought to justice. *Rex* v. *Baskerville*, (1916) 2 K. B. 658 at P. 667.

The law in this country regarding corroboration of an accomplice's evidence does not differ from English law. (*Kotval, A.J.C.*). KISAN *v.* EMPEROR. **67 I.C. 343=6 N.L.J. 52=23 Cr. L.J. 391=A.I.R. 1922 Nag. 172.**

—S. 114, Ill. (b)—'Corroboration,' what is.

———To use the statement of an approver in such a way as to convict an accused on its strength, care should be taken to see that it is corroborated in material particulars so as to induce one to an inference that the accused were connected with and guilty of the offence. (*Bhide and Fforde, JJ.*). NATHU LABHA *v.* EMPEROR. **114 I.C. 326=30 Cr. L.J. 292=12 A.I. Cr. R. 223=A.I.R. 1929 Lah. 680.**

———An approver's evidence is unworthy of credit unless corroborated in material particulars. And where the only corroborating evidence is that of the approver's son, who repeats parrot-like what he is tutored to say, it is not safe to convict a person. (*Zafar Ali and Bhide, JJ.*). MEHR SINGH *v.* EMPEROR. **122 I.C. 91=11 L.L.J. 223=30 P. L. R. 422=1929 Cr. C. 149=A. I. R. 1929 Lah. 587.**

———Where the evidence of an approver is principally on the question of conspiracy and where that evidence is sought to be corroborated by the evidence of the confessing accused, it amounts to this that one tainted piece of evidence is sought to be corroborated by another tainted piece of evidence and would not justify the conviction of co-accused. (*C. C. Ghose and Jack, JJ.*). LATAFAT HOSSAIN *v.* EMPEROR. **116 I.C. 174=30 Cr. L.J. 586=12 A.I. Cr. R. 460=33 C. W. N. 58=A.I.R. 1928 Cal. 745.**

———The evidence of an accused person's conduct may be used as corroboration of an approver's story: *R.* v. *Feigunbaum*, (1919) 1 K.B. 431, *Rel. on.* (*Addison and Coldstream, JJ.*). CHATRU MALIK *v.* EMPEROR. **111 I.C. 435=29 Cr.L.J. 851=10 Lah. 265=11 A.I. Cr. R. 171=31 P.L.R. 41=A. I. R. 1928 Lah. 681.**

———The production of stolen property by an accused person even from a place which is not in his own possession may be accepted as material corroboration of the evidence of an accomplice who has deposed that the accused joined him in committing the burglary or theft: A.I.R. 1928 Lah. 395, *Foll.* (*Coldstream, J.*). MUHAMMAD *v.* EMPEROR. **111 I. C. 447=29 Cr. L. J. 863=11 A. I. Cr. R. 198.**

———*Approver's story.*

The mere fact that the approver produced a spear and a dang from a field and he stated that the spear was used by the accused is not corroboration of the approver's story: so also the fact that the accused was stained with human blood, does not corroborate the approver's story. (*Fforde, J.*). CHANAN SINGH *v.* KING EMPEROR. **99 I.C. 929=8 L.L.J. 610=28 P.L.R. 39=28 Cr. L. J. 193=7 A. I. Cr. R. 173=A.I.R. 1927 Lah. 78.**

———*Existence of a motive for the offence is not sufficient.*

The existence of general hostility, general enmity and a desire, however strong, or a motive, however effective, to procure the death of another person may be a piece of circumstantial evidence, but is not corroboration of a sworn statement of participation in a particular crime. Corroboration must

EVIDENCE ACT (1872), S. 114, Ill. (b)—Corroboration,' what is.

point indubitably to the identification of the person charged with the particular act with which the direct evidence connects him. (*Walsh and Dalal, JJ.*). KALWA *v.* EMPEROR.
95 I.C. 74=48 All. 409=24 A.L.J. 410=7 L.R.A. Cr. 105=27 Cr. L.J. 746=A. I. R. 1926 All. 377.

———Where an approver gave evidence that the deceased had been put to death by the accused and himself for the sake of his ornaments, and a witness deposed that the accused was seen talking to the deceased on the evening on which he disappeared,

Held, that the deposition of the witness did not amount to a material corroboration of the approver's statement. (*Scott-Smith and Zafar Ali, JJ.*). EMPEROR *v.* RAM KARAN. **88 I. C. 453=7 L.L.J. 528=26 Cr. L.J. 1141=26 P.L.R. 295=A.I.R. 1925 Lah. 600.**

———Stolen property being found in possession of accused is sufficient corroboration. (*Zafar Ali, J.*). MAULA DAD *v.* EMPEROR. **86 I.C. 69=26 Cr. L.J. 693=26 P.L.R. 40=A. I. R. 1925 Lah. 426.**

———*Dacoity.*

In a dacoity case, where an approver gives evidence, the fact that on some day previous to the dacoity, the accused were seen together at a place other than that at which the dacoity took place is not such corroboration of the approver's evidence as to justify the conviction of the accused. (*Zafar Ali, J.*). MAULA DAD *v.* EMPEROR. **86 I.C. 69=26 Cr.L.J. 693=26 P. L. R. 40=A.I.R. 1925 Lah. 426.**

———Evidence of motive is not corroboration of any of the incidents of the crime. 130 C. 247, *Ref.* (*Dalal and Cuming, A.J.Cs.*). SHEO AMBAR *v.* EMPEROR. **77 I.C 439=25 Cr.L.J. 391=A.I.R. 1925 Oudh 295.**

———Discovery of articles is sufficient corroboration of approver's statement. (*Broadway, J.*). WADHAWA SINGH *v.* THE CROWN. **76 I. C. 819=25 Cr. L. J. 259=A.I.R. 1923 Lah. 389.**

———*Penal Code, Ss.* 395 *and* 397.

Where some common things were found in the search and some other things found, claimed by the accused to be their own, were not mentioned in the first report and a gun and a sword were found which were proved to belong to complainant but which were concealed because the complainant did not hold a license,

Held, that there was no sufficient corroboration of approver's story to justify conviction. (*Broadway, J.*). SULEMAN *v.* THE CROWN. **76 I. C. 716=25 Cr. L. J. 252=A. I. R. 1923 Lah. 385.**

———*Corroboration by other accomplices is useless—Corroboration must be of commission of offence.*

Where the evidence of witnesses relied on to corroborate the approver does not go beyond stating that the accused wanted to kill the deceased and with that object got information from them of the deceased's movements on the night in question,

Held, this is not inconsistent with the possibility that they might depute the approver only to do the foul deed. Even if these statements did furnish any kind of corroboration they cannot be used for that purpose, where the witnesses who corroborate are themselves accomplices, according to their own showing and their evidence would require corroboration before it could be relied upon, especially when they have retracted their statements.

EVIDENCE ACT (1872), S. 114, Ill. (b)—Value of accomplice's evidence.

49 I.C. 607; 13 I.C. 998; 14 P.R. 1894, Cr., *Foll.* (*Shadi Lal, C.J. and Abdul Qadir, J.*). AHMAD NUR *v.* EMPEROR. **68 I.C. 821=23 Cr. L.J. 597=A.I.R 1923 Lah. 76.**

———The discovery of blood in the convict's house and on his finger nails, and his suspicious conduct on the day of murder, furnish an adequate corroboration of the approver's testimony. (*Shadi Lal, C.J. and Moti Sagar, J.*). GHULAM HASSAN *v.* EMPEROR. **4 L. L. J. 405=A.I.R. 1921 Lah. 392.**

—S. 114, Ill. (b)—Retracted confession.

———*Conclusive against himself but is only evidence against other co-accused.*

Where a confession does not appear to have been tutored nor made under the influence of drugs or fear but is one which adds to the knowledge which was then available as to the cause of death in many particulars and has not been contradicted by anything and thus appears to be in the evidence a true confession it is sufficient, without any corroborative evidence, for the conviction of the maker though retracted. A.I.R. 1927 Oudh 17, *Foll.*

Such a confession is not alone sufficient evidence to justify a conviction of a co-accused but that confession if unrebutted is admissible in evidence against a co-accused. (*Raza and Pullan, JJ.*). SHEO RATAN *v.* EMPEROR. **114 I. C. 771=6 O.W.N. 159=30 Cr.L.J. 369=A.I.R. 1929 Oudh 167.**

—S. 114, Ill. (b)—Value of accomplice's evidence.

———Evidence of accomplice requires corroboration. (*Boys, J.*). PARAS RAM *v.* EMPEROR. **A.I.R. 1930 All. 740.**

———The statement made by an accomplice should be accepted when it is strongly corroborated in material particulars by clear and cogent evidence for authenticity of which is not open to doubt. (*Young and Sen, JJ.*). MT. KHUBAN *v.* EMPEROR. **120 I.C. 257=31 Cr. L. J. 26=1930 Cr. C. 45=A. I. R. 1930 All. 29.**

———Although it is not illegal to convict on the uncorroborated evidence of an accomplice there is a consensus of opinion that a conviction on the uncorroborated testimony of an accomplice is rarely justified. Nature of corroboration that is required indicated. (*Raza and Nanavutty, JJ.*). BACHCHU *v.* EMPEROR. **7 O.W.N. 862=1930 Cr. C. 1079=A.I.R. 1930 Oudh 455.**

———Confession implicating a co-accused requires corroboration if a co accused is to be convicted on it. 38 Cal. 559; 15 Bom. 66 and 38 Bom. 156, *Ref.* (*Adami and Scroope, JJ.*). KHATIR JAMA KHAN *v.* EMPEROR. **123 I.C. 393=31 Cr. L. J. 492=1930 Cr. C. 767=A.I.R. 1930 Pat. 385.**

———The testimony of a professed accomplice requires to be carefully scrutinized with anxious search for possible corroboration. (*Lord Atkin*). W. C. MACDONALD *v.* FRED LATINER. **112 I. C. 375=29 M.L.W. 155=A. I. R. 1929 P.C. 15 (P.C.).**

———The statement of a co-accused is admissible in evidence but according to the usual practice and as a rule of prudence it is unsafe to accept the tainted testimony of an accomplice so long as it is not corroborated in material particulars. The difficulty enhances where the said accomplice does not adhere to his statement. (*Sen, J.*). MAN SINGH *v.* EMPEROR. **121 I.C. 103=11 L.R.A.Cr. 1=13 A.I.Cr. R. 52=1929 Cr.C. 656=31 Cr.L.J. 206=A.I.R. 1929 All. 928.**

EVIDENCE ACT (1872), S. 114, Ill. (b)—Value of accomplice's evidence.

———*Slighter degree—Of corroboration when sufficient.*

Where police officers act in conspiracy with one another to demand and receive illegal gratification and are ready to make use of their official position to enforce such demand, the testimony of accomplices who are really victimised by them into offering them illegal gratification and have not willingly done so requires a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. 33 Cal. 649, *Ref.* (*Mirza and Murphy, JJ.*). EMPEROR *v.* C.E. RING. **120 I.C. 340=53 Bom. 479=31 Bom. L.R. 545=1929 Cr. C. 114=31 Cr. L.J. 65=A.I.R. 1929 Bom. 296.**

———*"May" is not "must" and evidence of accomplice stands on same footing as other evidence.*

Although S. 114, Illus. (b), provides that a Court may presume that the evidence of an accomplice is unworthy of credit, unless corroborated, "may" is not "must" and no decision of Court can make it "must." Therefore in spite of all that has been said to the contrary in law, the evidence of an accomplice stands on the same footing as any other evidence. The Court is not obliged to hold that he is unworthy of credit and must be corroborated. It is for the Court to consider after taking into consideration all the circumstances one of which being that he is an accomplice whether it does or does not rely on the evidence. To entirely rule out the uncorroborated evidence of an accomplice might in many cases lead to miscarriage of justice. (*Cuming and Lort-Williams, JJ.*). EMPEROR *v.* C.A. MATHEWS. **1929 Cr. C. 669=A.I.R. 1929 Cal. 822.**

———*Rule discussed.*

There is no definite rule of law that a person cannot be convicted upon the uncorroborated evidence of an accomplice. But Ill. (b) to S. 114 of the Evidence Act is the rule in such cases and Courts must act up to it. If the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in material particulars. Rule as to corroboration elaborately discussed. (*Scroope and Chatterji, JJ.*). EMPEROR *v.* KAILASH MISSIR. **11 P.L.T. 545.**

———*Uncorroborated testimony.*

Although a conviction is not "illegal" merely because it proceeds on the uncorroborated testimony of an accomplice, the rule of practice is now firmly established that corroboration of such testimony in material particulars connecting each of the individual accused with the crime is necessary to justify his conviction: A. I. R. 1927 Lah. 581, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH *v.* EMPEROR. **1929 Cr. C. 626=A.I.R. 1929 Lah. 850.**

———The well-known rule of criminal law that an accomplice is unworthy of credit unless he is corroborated in material particulars, which is formulated in S. 114, Ill. (b), is not absolute as will be evident from S. 114 as to Ill. (b) and S. 133, but it is only in exceptional cases that the corroboration can be dispensed with. A. I. R. 1928 Oudh 430, *Cons.* (*Raza, J.*). LALE *v.* EMPEROR. **118 I.C. 423=6 O.W.N. 441=30 Cr. L.J. 922=1929 Cr. C. 143=A.I.R. 1929 Oudh 321.**

———*Credibility of approver.*

The testimony of one accomplice is of little value as a piece of corroborative evidence in support of the testimony of another accomplice. The testimony of an approver can be used for the purpose of corroboration if the taint attached to it is removed. But this "taint" must be removed to such an extent that the Court is prepared to believe the testimony of the approver in the same way and to the same extent as the testimony of an ordinary witness whom it considers to be worthy of credit. A.I.R. 1923 Lah. 76 and 20 P. R. 1919, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH *v.* EMPEROR. **1929 Cr. C. 626=A.I.R. 1929 Lah. 850.**

———*Confession of co-accused.*

Although a confession of one co-accused may be taken into consideration against another under the provisions of S. 30, it would be unsafe, if not illegal, to rely on it without further corroboration in material particulars. (*Harrison and Dalip Singh, JJ.*). KARAM DIN *v.* EMPEROR. **115 I. C. 1=30 Cr. L. J. 385=A. I. R. 1929 Lah. 338.**

———*Confession by co-accused.*

Where there is nothing against an accused person but a confession made by a co-accused from the dock at the trial, a conviction cannot be supported. (*Waller, J.*). GOVINDU NAIDU *v.* EMPEROR. **118 I.C. 512=1929 M. W. N. 391=2 M. Cr. C. 76=30 Cr. L.J. 932=A.I.R. 1929 Mad. 285.**

———Where the accomplice makes his confession and sticks to it, and he actually allows himself to be convicted upon it, no doubt to that extent, there is some sort of guarantee of its truthfulness, but he remains an accomplice with all the suspicion attaching to an accomplice, and his evidence must be viewed with all the suspicion which ordinarily attaches to the evidence of an accomplice. (*Walmsley and Mukerji, JJ.*). EMPEROR *v.* KOMORUDDIN SHEIKH. **A.I.R. 1928 Cal. 233.**

———Although under S. 133, Evidence Act, an accomplice is a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such accomplice, the rule of caution that such testimony should be supported by extrinsic evidence connecting the accused with the crime as now regarded as a rule of law, and although it is not illegal to convict a person on the uncorroborated testimony of an approver, the Courts in points of facts always insist upon the rule being followed. (*Fforde, J. on difference between Aga Haidar and Broadway, JJ.*). BARKATI *v.* EMPEROR. **103 I. C. 49=28 Cr. L. J. 625=8 A.I. Cr. R. 273=A. I. R. 1927 Lah. 581.**

———In dealing with the evidence of an accomplice the Judge is not bound to rely on such statements only as are corroborated by other reliable evidence. Once a foundation is established for a belief that a witness is speaking the truth because he is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsehood of other statements not corroborated. (*Macleod, C. J. and Crump, J.*). BHIMRAO NARASIMHA HUBLIKAR *v.* EMPEROR. **86 I. C. 72=27 Bom. L. R. 120=26 Cr. L. J. 696=A. I. R. 1926 Bom. 261.**

———*Co-accused.*

Confessing co-accused's evidence is practically that of an approver, and must be treated as such especially where the confession was not free from inducement. (*Wazir Hasan and Cuming, A. J. Cs.*). MAHADEO *v.* KING EMPEROR. **10 O. L. J. 280=A. I. R. 1924 Oudh 68.**

———Conviction of accused cannot be based on evidence of accomplices unless such evidence is

EVIDENCE ACT (1872), S. 114, Ill. (b)—Value of approver's evidence.

corroborated in some material and satisfactory manner. (*Das and Bucknill, JJ.*). DHUNNU BELDAR *v.* EMPEROR. **2 P. L. T. 757= A. I. R. 1921 Pat. 406.**

—S. 114, Ill. (b)—Value of approver's evidence.

——Numerous persons from area of 50 miles tried for dacoity—Offences continuing for over four years—Consistently correct identification is difficult—Approver failing to identify particular person on one occasion—His evidence becomes weak regarding that man, but he can be convicted if there is strong evidence besides that of approver. (*Stuart, C. J. and Raza, J.*). KHILAWAN *v.* EMPEROR. **112 I. C. 337=5 O. W. N. 760= 29 Cr. L. J. 1009=11 A. I. Cr. R. 273= A. I. R. 1928 Oudh 430.**

——The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. Accordingly, if the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particular and if the suspicion attaching to the accomplice's evidence is removed then that evidence may be acted upon, even though uncorroborated and the guilt of the accused may be established upon that evidence alone. The law on the point as laid down in Ss. 114, 133 and 134, Evidence Act, gives no countenance to the contention that the uncorroborated testimony of an accomplice is necessarily insufficient to establish a charge against an accused. (*Courtney-Terrell, C. J. and Macpherson, J.*). RATTAN DHANUK *v.* EMPEROR. **113 I.C. 329= 9 P.L.T. 672=8 Pat. 235=30 Cr. L.J. 137= 11 A. I. Cr. R. 41=A.I.R. 1928 Pat. 630.**

——It is not safe to base a conviction upon the evidence of such an approver who obviously is deeply interested in putting responsibility for the offence upon shoulders other than his own, unless there is some independent evidence to corroborate his story in material particulars. (*Fforde, J.*). CHANAN SINGH *v.* KING EMPEROR. **99 I C. 929= 8 L.L.J. 610=28 P.L.R. 39=28 Cr. L.J. 193= 7 A.I. Cr. R. 173=A.I.R. 1927 Lah. 78.**

——The acquittal of any number of persons for want of corroboration cannot weaken the weight of the testimony of an approver. The matter would be different, if it is shown that even one accused person has been acquitted not for want of corroboration but in virtue of a finding that the accused person was innocent of the crime. (*Dalal and Neave, A.J. Cs.*). MURLI BRAHMAN *v.* KING EMPEROR. **89 I. C. 836=27 O. C, 385= 26 Cr. L.J. 1412=A.I.R. 1925 Oudh 374.**

——A person who owns himself to be a scoundrel and in addition to that is also a traitor, is a person whose evidence must be received with caution. Nevertheless the law does not require the total rejection of accomplice's evidence. It is enough if after considering the evidence, the Court is of opinion that the whole body of evidence put together proves the guilt of the accused person. (*Kennedy, J.C. and Aston, A.J.C.*). EMPEROR *v.* SUNDER DAS. **87 I. C. 916=19 S.L.R. 111=26 Cr. L. J. 1028= A.I.R. 1925 Sind 295.**

——When an approver makes the contradictory statements that which seems to be pressed cannot be accepted. (*Fforde, J.*). SAUDAGAR SINGH *v.* EMPEROR. **77 I.C. 895=5 L.L.J. 572= 26 Cr. L.J. 495=A.I.R. 1923 Lah. 683.**

EVIDENCE ACT (1872), S. 114, Ill. (e)—Acts of Courts.

——The facts, that prior to the making of their statements previous concert between approvers was highly improbable, have to be paid regard to, in connection with illus. (b) to S. 114. (*Scott-Smith and Broadway, JJ.*). MAHANT NARAIN DAS *v.* EMPEROR. **68 I.C. 113=3 Lah 144= 4 L. L.J. 91=9 P.W.R. Cr. 1922= 23 Cr. L.J. 513=A.I.R. 1922 Lah. 1.**

——An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons but the uncorroborated statement of an approver taken at the end of the trial is of very little evidentiary value. (*Shadi Lal, C. J. and Wilberforce, J.*). SUNDER SINGH *v.* EMPEROR. **66 I.C. 187=4 Lah. L.J. 284= 23 Cr. L.J. 251.**

——In order to support conviction the statement of an approver, especially of one whose initial statement was very long delayed, requires material corroboration connecting each individual accused with the crime committed. (*Harrison, J.*). SARDARE *v.* EMPEROR. **63 I.C. 612=22 Cr. L.J. 676.**

—S. 114, Ill. (b)—Miscellaneous.

——Court should exercise judicial discretion and have regard to facts of case in considering whether an accomplice is or is not worthy of credit. (*Courtney-Terrell, C. J. and Macpherson, J.*). RATTAN DHANUK *v.* EMPEROR. **113 I.C. 329= 9 P.L.T. 672=8 Pat. 235=30 Cr. L.J. 137= 12 A.I. Cr. R. 41=A.I.R. 1928 Pat. 630.**

——*Accomplice is presumed to be unworthy of credit—Jury must be directed that corroboration is necessary.*

Among the presumptions a Court may make, is the presumption that an accomplice is unworthy of credit, unless he is corroborated in material particulars. That is a direction of law or of practice, which Judges themselves should give to every jury in any case in which they have to direct them upon the law and which in matters of fact they should themselves follow : 29 All. 434, *Dist.*; 4 Cal. 483, *Foll.* (*Walsh and Dalal, JJ.*). KALWA *v.* EMPEROR. **95 I.C. 74=48 All. 409= 24 A.L. J. 410=7 L.R.A. Cr.105= 27 Cr L.J. 746=A.I.R. 1926 All. 377.**

——Though Ill. (*b*) is not imperative, the Courts *ex majore cautela* insist upon the corroboration of an approver's evidence in material particulars. A.I.R. 1924 Lah. 357, *Foll.* (*Kincaid, J.C. and Aston, A.J.C.*). FAIZULLAH *v.* EMPEROR. **81 I.C. 881= 19 S.L.R. 183=25 Cr.L.J. 1057= A.I.R. 1925 Sind 105.**

—S. 114, Ill. (e)—Acquisition of land.

——Failure of a District Board to prove the actual acquisition and possession and the actual delivery of certain land to it by the Government—Intention of the Government to acquire the land and its taking some necessary steps in pursuance thereof proved—It was held to be not wrong to presume that necessary steps for the acquisition of the land and for the transfer of the same to the public body were taken. (*Suhrawardy and Graham, JJ.*). ANUKUL CHANDRA CHAKRAVARTI *v.* CHAIRMAN OF THE DACCA DIST. BOARD. **113 I.C. 24=32 C.W.N. 396= A.I.R. 1928 Cal. 485.**

—S. 114, Ill. (e)—Acts of Courts.

——*Presumption of regularity in official acts—Confession placed on record by Magistrate—Duty of Sessions Judge to presume it was voluntarily made.*

A Court should not disregard S. 114, Illus. (*e*) of the Evidence Act and assume irregularity

EVIDENCE ACT (1872), S. 114, Ill. (e)—Acts of Courts.

in official acts. A Sessions Judge should presume that a confessional statement placed on record by the Magistrate was voluntarily made. (*Jackson, J.*). PUBLIC PROSECUTOR *v.* NAGARAJ.
59 M. L. J. 114.

———There is a presumption that the acts of a Court have been regularly carried out unless the contrary is shown. (*Daniels and King, JJ.*). BAIJNATH *v.* SRI BHAGWAN. **96 I. C. 591= A.I.R. 1926 All. 691.**

—S. 114, Ill. (e)—Batwara proceedings.

———*Presumption of regularity applies only to form and procedure followed and not to representation made to the official concerned.*

Under S. 114 a Court may presume that the official acts have been regularly performed and "Regularly performed" means performed with due regard to the form and procedure.

Where plaintiff produces certain records of *batwara* proceedings and says defendants made certain admissions therein and defendants deny that they made any admissions, the identity of parties who made those admissions must, in the first instance, be established by the plaintiff to the satisfaction of the Court before the plaintiff can rely upon those admissions as against the defendants. The regular performance of official acts does not imply that the representation made to them must be correct, that must be established by the plaintiff. (*Das and Adami, JJ.*). JUGDEO NARAIN SINGH *v.* BULAKI GOPE. **63 I.C. 226= 1921 P.H.C.C. 343=A.I.R. 1921 Pat. 275.**

—S. 114, Ill. (e)—Execution proceedings.

———The presumption is that all proceedings taken by the Court in execution are in proper form and if anybody wants to challenge, he must advance and prove the facts on which he wishes to rely. (*Wallace, J.*). N. M. RAMA RAJA, *In re.*
99 I.C. 33=24 M.L.W. 484= 28 Cr. L.J. 2.

—S. 114, Ill. (e)—Judge.

———If it be the duty of a Court to a particular thing it must be assumed that the Judges of that Court did their duty. (*Abdul Raoof and Harrison, JJ.*). ABDUL KARIM *v.* THE SHOP OF THAKAR RAM. **68 I.C. 740=A.I.R.1923 Lah. 124.**

—S. 114, Ill. (e)—Judgment.

———Where a point is definitely raised in the grounds of appeal and the Court makes no mention thereof in its judgment, it must still be presumed to have performed the judicial act of writing a judgment regularly and properly. (*Harrison and Tek Chand, JJ.*). MT. HARCHARAN KAUR *v.* LACHMAN SINGH. **A.I.R. 1928 Lah. 94.**

—S. 114, Ill. (e)—Judicial proceedings.

———Where a decree was executed as a rent-decree, it must, in the absence of evidence to the contrary, be presumed that the plaint was drawn up in such manner as to warrant a rent-decree and all was properly done. (*Adami, J.*). MOHAMMAD HASIM KHAN *v.* GAYA RAI.
101 I. C. 382=A.I.R. 1927 Pat. 414.

———Where sums are paid before the presiding officer of the Court at the time when a receipt was given for them, the presumption under S. 114 of the Indian Evidence Act is that the ordinary course of business was followed in the case in question. (*Scott-Smith and Fforde, JJ.*). KING EMPEROR *v.* AHMAD SHAH. **A.I.R. 1923 Lah. 566.**

———All judicial proceedings are to be presumed to have been duly performed until the contrary is proved. (*Lyle, A.J.C.*). MUNSHI BABU RAM *v.* BABU RAM. **66 I.C. 620=8 O.L.J. 343= A. I. R. 1921 Oudh 259.**

EVIDENCE ACT (1872), S. 114, Ill. (e)—Orders in Gazette.

———There is a presumption that the proceedings of the Court were regular until the contrary is shown. (*Daniels, J. C. and Dalal, A. J. C.*). MD. MUZAFAR ALI *v.* BHAGWATI PRASAD.
66 I. C. 642=8 O.L.J. 358= A.I.R. 1921 Oudh 176.

—S. 114. Ill. (e)—Non-compoundable case.

———Where there is no evidence that a non-compoundable offence was compounded, it is to be presumed that the criminal Court acted according to law, and the presumption is that the criminal case was withdrawn and not compounded. (*Ashworth, J.*). SUDHO KANDU *v.* MT. JHINKA KUER. **116 I.C. 749= A.I.R. 1929 All. 456.**

—S. 114, Ill. (e)—Official acts.

———Where a Committing Magistrate writes at the foot of the deposition that the cross-examination is being reserved, he does not mean that it is being reserved by him and that the accused has not been given an opportunity for cross-examination. All official acts must be presumed to have been done properly and it is difficult to suppose that Magistrate who must be presumed to have known the law did not give the accused an opportunity of cross-examination to which he was entitled by S. 208, Cr. P. Code. (*Percival, J. C. and Barlee, A.J.C.*). EMPEROR *v.* MAHRAB. **120 I.C. 524= 1930 Cr. C. 70=31 Cr.L.J. 121= A.I.R. 1930 Sind 54.**

———Official acts are to be presumed to be legally performed. Where the jurisdiction of the Assistant Settlement Officer was not questioned in the Trial Court, it was presumed in second appeal, where only the question was raised, that he acted within his jurisdiction in passing the particular order deciding the dispute as to the boundary line. (*Coutts and Ross, JJ.*). BALGOBIND KUMAR *v.* RAI BEHARI LAL MITTER. **66 I.C. 471= 1922 P.H.C.C. 114=3 P.L.T. 617= A. I. R. 1923 Pat. 96.**

—S. 114, Ill. (e)—Official order.

———There is a presumption in favour of any order of an official being legal until the contrary is proved. (*Ashworth, J.*). SHAM SUNDER *v.* EMPEROR.
91 I.C. 56=27 Cr. L.J. 24= A.I.R. 1926 All. 264.

—S. 114, Ill. (e)—Orders.

———*Sheristadar's signing for the Collector with his order is valid.*

The Collector is not bound to sign every order that is issued to third persons and there is nothing wrong in the Collector delegating his power of signing the order to the Sheristadar and such an official act of the Sheristadar is presumed to have been done properly until the contrary is proved: 35 Bom. 243, *Ref.* (*Kumarasawnmi Sastri and Ramesam, JJ.*). SUDARSANA CHARYULU *v.* K. SURYANARAYANA. **107 I.C. 130= 39 M. L.T. 628=27 M. L. W. 42= A. I. R. 1928 Mad. 205.**

—S. 114, Ill. (e)—Orders in Gazette.

———*Date of election.*

Where a notification fixing the election is published in the Gazette, it is proof of the order of Government fixing that election under S. 78 and under S. 114, there is a presumption that this act of publication was done regularly, namely, in accordance with the rules. (*Phillips, Ramesam and*

EVIDENCE ACT (1872), S. 114, Ill. (e)—Precautions.

Wallace, JJ.). COMMISSIONER, CORPORATION, MADRAS *v.* EKAMBARA NAICKER. **106 I.C. 144= 39 M L.T. 367=26 M.L W. 569= A.I.R. 1927 Mad. 980=53 M.L.J. 603.**

—S. 114, Ill. (e)—Precautions.

——It is to be presumed no doubt under S. 114 that every official Act is properly performed but this presumption is hardly sufficient to satisfy a Court that such precaution have been taken as to render an identification truly valuable, *e.g.*, mixing the accused in a large number of men dressed all alike. (*Harrison, J.*). KOLLU *v.* EMPEROR. **67 I.C. 721= 4 L. L. J. 448=23 Cr.L.J. 449= A. I. R. 1922 Lah. 31.**

—S. 114, Ill. (e)—Processual law.

——*Mandatory and enabling provisions.*

In the case of mandatory provisions of the processual law, in the absence of any evidence to the contrary, the Court would presume that all rules and legal forms were complied with as a tribunal is presumed not to deviate from the rules and forms laid down for its guidance. But where the provisions are only enabling and not mandatory, such a presumption does not arise. (*Phillips, O.C.J. and Ramesam and Beasley, JJ.*). SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR.

107 I. C. 625=51 Mad. 128=27 M.L.W. 216= A.I.R. 1928 Mad. 77=54 M.L.J. 8 (F.B).

—S. 114, Ill. (e)—Rules in England.

——Decisions of English Courts as regards the distinction between Courts of Record and other Courts have very little relevancy, in considering the validity of judicial and official acts of Indian Courts and Officers. (*Sadasiva Aiyar and Spencer, JJ.*). NACHIYAPPAN *v.* ALAGAPPA CHETTY.

62 I.C. 87=13 M.L.W. 172= A.I.R. 1921 Mad. 107.

—S. 114, Ill. (e)—Sanction.

——*Name of accused appearing on back of paper.*

While sanctioning the prosecution of accused for an offence under Penal Code, S. 294-A the name of the accused was shown on the back of the paper instead of in the body of the sanction merely because there was not sufficient space left on the front side.

Held: that the initial presumption was that all the official acts were done in a regular manner and hence the sanction was valid. (*Zafar Ali and Bhide, JJ.*). EMPEROR *v.* DIWAN CHAND JOLLY.

124 I.C. 347=1930 Cr. C. 97= A.I. R. 1930 Lah. 81.

—S. 114, Ill. (e)—Scope.

——*Correctness of procedure but not the factum of the act.*

Section 114 authorizes the presumption that a particular judicial or official act which has been performed has been performed regularly, but it does not authorize the presumption without any evidence that the act has been performed. 6 C.W.N. 845 and 32 Cal. 1107, *Foll.* (*Das and Allanson, JJ.*). HIRA LAL *v.* JAGATPATI SAHAI. **111 I.C. 797= 8 Pat. 1=9 P.L.T. 523= A. I. R. 1928 Pat. 600.**

——*Official act—Factum of—Proof necessary.*

The meaning of S. 114 is that if an official act is proved to be done it will be presumed to have been regularly done. It does not raise any presumption that an act was done, of which there is no evidence and the proof of it is essential. 32 Cal. 1107, *Foll.* (*Das and Allanson, JJ.*). HITNARAIN SINGH *v.* RAMBARAI RAI. **115 I.C. 196=7 Pat. 733= 9 P.L.T. 484=A.I.R. 1928 Pat. 459.**

EVIDENCE ACT (1872), S. 114, Ill. (e)—Service of process.

——*Presumption applies to acts of Courts only and not to sufficiency of evidence.*

The presumption that judicial acts have been regularly performed applies to the acts of the Court alone. Where, therefore, a minor defendant was represented by a guardian *ad litem* it might be presumed that the necessary notices were issued and that a formal order appointing the guardian *ad litem* was drawn up, but not that the person who was named as the guardian *ad litem* was a fit person to be appointed guardian. (*Wazir Hasan and Neave, A.J.Cs.*). RAMESHWAR BAKHSH SINGH *v.* MT. RIDH KUER. **87 I. C. 238= A. I. R. 1925 Oudh 633.**

——*Principle does not apply to acts of private persons.*

Per *Ashworth, A.J.C.*—The principle that everything must be held to have been performed duly and in order may apply to the acts of a Court but it will not apply to the acts of private persons. (*Wazir Hasan, Ashworth and Simpson, A.J.Cs.*). RAGHUNATH SINGH *v.* DHONDHE SINGH.

95 I. C. 680=2 O. W. N. 796= A. I. R. 1926 Oudh 169.

—S. 114 Ill. (e)—Service of notice

——When there is nothing to indicate that the Court had not satisfied itself of the service of notice it must be presumed that the Court was so satisfied. A.I.R. 1923 Patna 406, *Rel. on.* (*Tek Chand, J.*). AMAR SINGH *v.* BALA SINGH.

102 I.C. 12=A.I.R. 1927 Lah. 506.

——*Due service of notice under O. 21, R. 54 (2) should be presumed when record of Court on the point is not available.*

Plaintiff purchased property after attachment and after a prohibitory order was served on judgment-debtors not to sell the same. In the Court auction which followed, a part thereof was purchased by defendant. In a suit by plaintiff three years after the attachment, the record of the Court not being available, it was not proved that service of notice was effected in the other modes described in O. 21, R. 54 (2), C. P. Code.

Held, that the Court below should have applied the presumption that official acts were regularly performed and that in view of the fact that a material portion of the record is no longer in existence the Court was wrong in throwing on the defendant the burden of proving by definite evidence the due service of the notice. (*Daniels and Neave, JJ.*). MOHAMMAD ABDUL *v.* SYED AKRAM HASAN.

83 I.C. 878=46 All. 741=22 A.L.J. 703= 5 L. R. A. Civ. 525=A.I.R. 1924 All. 747.

——*Issue of notice proved—Proper service should be presumed.*

When it is found that the Court after ordering issue of notices did bring on the record representatives of the deceased defendant it must be presumed that they had been properly served. The fact that the order sheet does not specifically mention service having been effected does not mean that it was not so effected. Service of summons is merely a ministerial act. The Judicial act of the Court is the step of bringing the legal representatives on the record and it is to this that the presumption of regularity applies. (*Daniels and Dalal, A.J.Cs.*). BHAGIRATHI *v.* PANDIT ONKAR NATH.

72 I. C. 142=10 O. L. J. 185= A. I. R. 1924 Oudh 17.

—S. 114, Ill. (e)—Service of process.

——It must be assumed that a process, issued by the Court and accepted by the Court as having

EVIDENCE ACT (1872), S. 114, Ill. (e)—Signing of order.

been duly served, was served in the manner provided by law and with all the formalities laid down for the service thereof. Therefore, the burden of proving that the formalities required by law were not complied with at the time when formal possession was given to the plaintiff is on the defendant and not on the plaintiff. (*Jai Lal, J.*). PIARA RAM *v.* SOHAWA. **109 I.C. 561= A. I. R. 1928 Lah. 910.**

—S. 114, Ill. (e)—Signing of order.

———*Warrant signed by Sheristadar "by order"—Must be presumed to be legal.*

Where a *Sheristadar* signed the warrant by "order" it was held that the statement that appeared on the face of the warrant that the *Sheristadar* signed "by order" can be presumed to be true and that in the absence of anything to suggest to the contrary it was held that he was actually the officer appointed by the Court to sign processes as required by R. 24 (2) of O. XXI, C.P.C. 6 C.W.N. 845, *Dist.* (*Newbould and Suhrawardy, JJ.*). HARISH CHANDRA CHAUDHURY *v.* GIRIDAR SARKAR.

73 I.C. 328=37 C.L.J. 331=27 C.W.N. 1042= 24 Cr. L.J. 584= A. I. R. 1923 Cal. 584.

—S. 114, Ill. (e)—Wajib-ul-arz.

———In the absence of any reliable evidence it must be held that the public officials engaged in the preparations of a *wajib-ul-arz* did not fail in the discharge of their duty. It must be held that the maxim *omnia presumuntur rite esse acta* applies and the consent of all co-sharers must be presumed to have been obtained in the preparation. (*Wazir Hasan, J. C. and Neave, A. J. C.*). MAQBAL-UN-NISA *v.* BANSIDHAR. **82 I.C 92=11 O L.J. 319= A.I.R. 1924 Oudh 382.**

—S. 114, Ill. (e)—Warrant of attachment.

———It is in the ordinary course of official business in the Courts of the Central Provinces that a copy of every warrant of attachment is issued for posting in the Office of the Collector, and it is fairly safe to assume that this was done in the present case according to the maxim that all official acts are presumed to have been duly and correctly performed. (*Hallifax, A.J.C.*). JODHEN *v.* KAPIL NATH. **69 I. C. 563= A. I. R. 1923 Nag. 78.**

—S. 114, Ill. (e)—Warrants.

———*Calcutta Police Act—No presumption.*

Section 114, Ill. (e) of the Indian Evidence Act cannot be relied upon in order to presume the regularity of warrants under S. 46, Calcutta Police Act, and unless the law expressly says that proof shall be required, evidence ought to be required in every cases of this description that the essential preliminaries precedent to the issue of such a warrant have been complied with. (*C. C. Ghose and Chotzner, JJ.*). B. WALVEKAR *v.* KING EMPEROR. **96 I.C. 264=53 Cal. 718=30 C.W.N. 713= 27 Cr. L.J. 920= A.I.R. 1926 Cal. 966.**

—S. 114, Ill. (f)—Applicability.

———It is for the Court of fact to determine whether the presumptions referred to under S. 114, Ill. (*f*) of the Evidence Act are to be drawn in a particular case or not. (*Mittra, A. J. C.*). RAMCHANDRA *v.* RAGHOJI. **17 N.L.R. 25= A. I. R. 1921 Nag. 116.**

—S. 114, Ill. (f)—Injunction.

———Where an injunction was granted and the question was whether it was executed or not.

Held, that it should be presumed as executed. (*Kinkhede, A.J.C.*). BHIRAN PRASAD *v.* MAHANT LAXMI NARAYAN DAS. **79 I.C. 609= A. I. R. 1924 Nag. 385.**

EVIDENCE ACT (1872), S. 114, Ill. (g)—Account books.

—S. 114, Ill. (f)—Letter.

———*No presumption of its being sent by the person by whom it purports to be written.*

When a letter is duly posted there may be a presumption that it reaches the addressee in the ordinary course of business. But the mere fact that a letter has been received through post raises no presumption that it was despatched by the person on whose behalf it purports to have been written. If however it were proved that a previous letter was sent through post and a reply thereto was duly received by the sender through post purporting to come from the addressee the Court may under certain circumstances presume that it was a reply despatched on behalf of the addressee though not necessarily in his own hand-writing. (*Sulaiman, J.*). HABIB BUX *v.* SAMUEL FITZ AND CO., LTD. **89 I.C. 22=23 A. L. J. 961=6 L R.A. Civ. 553= A. I. R. 1926 All. 161.**

—S. 114, Ill. (f)—Presentation of application.

———Where the facts of a particular case can form a foundation for a fair presumption that an application was made, then the Court would be entitled to presume that it was made: 22 Bom. 722, *Rel. on.* (*Macleod, C. J. and Coyajee, J.*). MULCHAND MANAJI MARWADI *v.* JAMANBHAI ABDUL KABIR SAHEB KAJI. **89 I.C. 228=27 Bom. L.R. 671= A.I.R. 1925 Bom. 443.**

—S. 114, Ill. (f)—Registered letter.

———Registered post-card returned to sender—Presumption is either addressee refused it or was not found: 19 C. W. N. 489, *Dist.* (*Mittra, A.J. C.*). RAMCHANDRA *v.* RAGHOJI. **17 N.L.R. 25= A.I.R. 1921 Nag. 116.**

—S. 114, Ill. (g)—Account books.

———Failure by a party to produce account books raises a strong presumption that their evidence would confirm in a conclusive manner the other documentary evidence against him. (*Harrison and Coldstream, JJ.*). KANSHI RAM *v.* SHANKAR DAS. **111 I.C. 596=10 L. L. J. 93= A.I.R. 1928 Lah. 397.**

———If a partner has books of accounts in his possession and will not produce them, an account may nevertheless be arrived at by presuming everything against him. *Walmsley* v. *Walsmley*, 3 Jo. and Lat. 556 and *Gray* v. *Haig*, 20 Beav. 219, *Foll.* (*Aston, A.J.C.*). DIPCHAND GOLOMAL *v.* KISHNIBAI. **108 I.C. 873=23 S. L. R. 313= A. I. R. 1928 Sind 133.**

———Where the account books have not been produced to prove payments of certain sums, and there is no explanation as to why they have not been produced it is a legitimate inference that had these books been produced they would have gone against the party alleging payments: A.I.R. 1925 P. C. 93, *Foll.* (*Wazir Hasan and Misra, JJ.*). HASAN BAQUR *v.* SHEO NARAIN SINGH. **91 I.C. 917=1 Luck. 7=13 O.L.J. 178= 3 O.W.N. 25= A.I.R. 1926 Oudh 81.**

———The non-production of account books by a party when such account books would throw much light on the case, raises adverse presumption. (*Sir John Edge.*) JAG PRASAD *v.* MT. SINGARI RAI. **86 I.C. 122=6 L.R.P.C. 111= 27 Bom. L.R. 760=29 C.W.N. 941= 23 A.L.J. 97=2 O.W.N. 229= A.I.R. 1928 P.C. 93= 49 M.L.J. 162 (P.C.).**

———Where certain parties who were money-lenders did not produce account books,

Held, that it was unlikely that they did not keep account books as they were money-lenders and that the presumption was that if they produced

EVIDENCE ACT (1872), S.114, Ill. (g)—Account books.

them they would have gone against them. (*Wazir Hasan and Neave, A. J. Cs.*). GULJAR SINGH *v.* MADHO RAM. **78 I.C. 547=11 O.L J. 275= A.I.R. 1925 Oudh 11.**

———Withholding of account books—Presumption is that entries therein are contrary to plea of party withholding. (*Moti Sagar, J.*). THE FIRM JAWALI DAS *v.* UTTAM CHAND. **76 I.C. 553= A.I.R. 1923 Lah. 585.**

———Where account books were in the possession of a party and he did not produce it or explain why they were not produced,

Held, that a presumption should be drawn against him to the effect that, if produced, they will be unfavourable to him. (*Dalal and Simpson, A.J.Cs.*). RUP KISHORE *v.* KANHAIA LAL. **74 I.C. 563= 10 O.L.J. 141=26 O.C. 266= A.I.R. 1923 Oudh 227.**

———*Failure to get third persons to produce—Effect.*

It is often impossible for a creditor to compel third parties to produce their account books, to prove that money is actually due to them and the suit cannot fail because the third parties did not produce the account books. (*Das and Adami, JJ.*). CHINTAMANI MAHAPATRA *v.* SATYAPADI KAR. **70 I.C. 226=1 Pat. 715= A. I. R. 1923 Pat. 71.**

———Per *Das, J.*—The inference drawn from the non production of the books is that, if produced, they would support the other side. (*Dawson-Miller, C.J., Das and Adami, JJ.*). BHONU LAL CHOWDHURY *v.* W.A. VINCENT. **65 I.C. 882= 3 P. L.T. 653= A. I. R. 1922 Pat. 619.**

———Where the creditors of a family *prima facie* established that a purchase by the manager was for the benefit of the family but the defendants asserted that the property was not yielding a proper income and that therefore it was an improvident transaction.

Held, it was for the defendants to establish their case by production of their account books, when they are sought to be suppressed every presumption consistent with facts must be made against the defendants. (*Das and Bucknill, JJ.*). KUMAR KALIKANAND SINGH *v.* SHIVA NANDAN PRASAD SINGH. **63 I.C. 625=3 P. L.T. 149= A.I.R. 1922 Pat. 122.**

—S. 114, Ill. (g)—Accounts.

———*Oudh Rent Act.*

Where in a suit for profits under Oudh Rent Act the *lambardar* failed to file accounts and he was found to be literate, a decree was passed against him on gross rental. (*Simpson, A.J.C.*). MT. JAGRANI *v.* IQBAL NARAIN. **80 I.C. 441= 5 L.R. Oudh 82= A. I R. 1924 Oudh 347.**

—S. 114, Ill. (g)—Criminal Trial.

———*All witnesses not called—Principle explained.*

If the witnesses called by the prosecution are otherwise worthy of credit, the Court is not entitled to disbelieve them simply because some persons, who could have thrown light upon the case, have not been put before the Court by the prosecution. The proposition that it is the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution and who must be able to give important information, and if such witnesses are not called without sufficient reason being shown, the Court may properly drawn an inference adverse to the prosecution, is too wide 16 A. 84. (F.B.) if the police consider a witness to be a false witness or that his evidence is unnecessary, they would be

EVIDENCE ACT (1872), S. 114, Ill. (g)—Examination of party.

justified in not sending up that witness for the prosecution and his absence at the trial ought not to be a reason for disbelieving the prosecution witnesses if they are otherwise worthy of credit. It is of course not for the police or for the Public Prosecutor to champion a particular theory and to suppress the evidence of a reliable witness simply because his testimony is inconsistent with it. (*Mullick and Kulwant Sahay, JJ.*). RANJIT AHIR *v.* EMPEROR. **74 I.C. 705=2 Pat. 309= 1 Pat. L.R.Cr. 236=24 Cr.L.J. 801= A.I.R. 1923 Pat. 413.**

———Non-production of witnesses cited by prosecution when their evidence was unnecessary cannot justify adverse inference when there is nothing else on record to justify it. (*Tapp, J.*). JOWAYA *v.* EMPEROR. **120 I.C. 606=1930 Cr. C. 171= 31 Cr.L.J. 131=A.I.R. 1930 Lah. 163.**

———The non-summoning of a witness alleged to have taken part in the proceedings on which the trial is founded raises adverse presumption. (*Young, J.*). MA HT WAY *v.* EMPEROR. **86 I.C. 475= 4 Bur. L.J. 2=26 Cr. L. J. 827= A. I. R. 1925 Rang. 205.**

———Where two eye-witnesses sent up by the police were not heard by the Court

Held, that there must be some limit to the number of witnesses which a Court is asked to hear and no inference favourable to the accused can be drawn from the fact that these two witnesses had not been called. (*Lyle and Ashworth, A. J. Cs.*). KING EMPEROR v. NAROTAM. **74 I.C. 434= 10 O.L.J. 68=24 Cr. L.J. 770= A.I.R. 1923 Oudh 217.**

—S. 114, Ill. (g)—Examination of party.

———*Party not entering witness-box runs great risk.*

The fact that a party does not appear in the witness-box is a circumstance going very strongly against him. He runs a great risk if he does not enter into the witness box and gives evidence in his case upon facts which are directly within his knowledge and which relates to the matter in controversy. (*Tek Chand and Aga Haidar, JJ.*). ALLAH DITTA *v.* MT. BHAGAN. **116 I.C. 555= A.I.R. 1930 Lah. 401.**

———*Avoidance of the witness-box.*

Where the plaintiffs are the best persons to give evidence as to the 'interest" possessed by them in a religious institution to prove *locus standi* for the purposes of S. 92, Civil P. C., and they merely put the defendants into the witness-box, their failure to go into the witness box goes strongly against them. A.I.R. 1927 P.C. 230, *Rel. on.* (*Zafar Ali and Bhide, JJ.*). KIRPA SINGH *v.* AJAIPAL SINGH. **11 Lah. 142=31 P.L.R. 234= A.I.R. 1930 Lah. 1.**

———Where a party abstains from giving evidence in his own case, the presumption should be that truth lay on the other side. (*Stuart, C.J. and Wazir Hasan, J.*). ABDUL HALIM KHAN *v.* SAADAT ALI KHAN. **112 I.C. 596= A.I.R. 1929 Oudh 126.**

———If the defendant does not choose to go into the witness-box on his own behalf, that is a matter for himself to decide, but in an ordinary case, the Court is entitled to consider that as a point against the defendant. One party is not bound to issue a summons to the other, and unless the latter gives evidence on his own behalf so as to give the former an opportunity of cross-examining him, the Court is entitled to infer everything against him. (*Macleod, C. J. and Shah, J.*). RAJMAL RAMNARAYAN *v.* BUDANSAHEB ABDUL SAHEB. **66 I. C. 943= 24 Bom. L. R. 115=A. I. R. 1922 Bom. 81.**

EVIDENCE ACT (1872), S. 114, Ill. (g)—Income-tax proceedings.

—S. 114, Ill. (g)—Income-tax proceedings.

———*On non-production of accounts, presumption can be drawn.*

Where, during the course of the enquiry the Income-tax Officer is not going to make the assessment to the best of his judgment owing to want of materials but proceeds to make an enquiry as regards the truth or otherwise of the allegations made by the assessee in his return there is nothing to prevent the Income-tax Officer from requiring the assessee to produce any evidence including accounts. And on non-production of the account books the case will be governed by S. 114, Illus. (*g*) and (*h*). (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). SHANKARLINGA NADAR *v.* COMMR. OF INCOME-TAX, MADRAS.

31 M. L. W. 738= A. I. R. 1930 Mad. 209=58 M. L. J. 260 (F.B.).

—S. 114, Ill. (g)—Material witnesses.

———*Non-summoning of.*

Where a witness is not called by the prosecution which it was the duty of the prosecution to call what happens is at the most there arises a presumption that if the witnesses had been called he would not have supported the prosecution case. (*Dhavle and Fazl Ali, JJ.*). KRISHNA MAHARANA *v.* EMPEROR. **1929 Cr. C. 379=A.I.R. 1929 Pat. 651.**

———Failure of prosecution to examine a material witness justifies the inference that the witness, if examined, would have deposed against the prosecution. (*Shadi Lal, C. J.*). TAJ MAHAMMAD *v.* EMPEROR. **107 I. C. 100=29 P. L. R. 14= 29 Cr. L. J. 212=9 A. I. Cr. R. 505= A. I. R. 1928 Lah. 125.**

———*Presumption—Rebuttal of.*

If a party wishes not to have a presumption raised against him by the fact that an important witness has not been called; he should exhaust to the utmost of his power every means to bring that witness before the Court. (*Mookerjee and Buckland, JJ.*). JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI AND CO. **68 I. C. 993=35 C. L. J. 175= 49 Cal. 345=A.I.R. 1923 Cal. 63.**

—S. 114, Ill. (g)—Murder case.

———Where a wife, alleging that her husband is dead, fails to produce such evidence as she ought to know a presumption arises against her. (*Macnair, A.J.C.*). KAMPTABAI *v.* UMABAI. **117 I.C. 209= 12 N.L.J. 51=A. I. R. 1929 Nag. 127.**

—S. 114, Ill. (g)—Non-production of documents.

———*Defeasance in it can be presumed.*

Every deed being the best evidence of its own contents, its non-production raises the presumption that it contains some defeasance; in other words, there is some endorsement on the document which the plaintiff does not like. (*Walsh and Pullan, JJ.*). MD. ZAFR *v.* ZAHUR HUSAIN.

97 I. C. 82=49 All. 78= 24 A.L.J. 964=A.I.R. 1926 All. 741.

———Where one of the parties to a suit refuses to produce the documents in his possession though ordered by the Court to do so, whatever suspicion may be cast upon his conduct by this refusal cannot alter conclusions which really turn upon the construction of documents which are before the Court. (*Lord Sumner.*) AHMED KHAN *v.* ALI EBRAHIM. **27 Bom. L.R. 746= A.I.R. 1925 P. C. 177 (P.C.).**

———*Facts existing once are resumed to continue to exist.*

(1) Where relevant documents in possession of a party is not produced, the Court cannot but draw

EVIDENCE ACT (1872), S. 114, Ill. (g)—Non-production of evidence.

an inference adverse to that party. (*Mookerjee and Cuming, JJ.*). SECY. OF STATE *v.* UPENDRA NARAIN ROY. **71 I.C. 849=36 C.L.J. 336= A.I.R. 1923 Cal. 247.**

———*Maxim explained.*

It is difficult to distinguish between failure to produce evidence and the non-production of it in time, for the purpose of drawing an inference. To hold that no adverse inference could be drawn against a party who had offered to produce evidence at a late stage would often be tantamount to giving him the advantage of having produced it in time. When documents are not produced in time the Court may infer either that they do not exist or would not support the party who should have produced them. *De non apparentibus et non existentibus eadem est ratio.* (*Ashworth, J.C.*). SHANKAR LAL *v.* MAHBUB SHAH. **70 I.C. 278=23 O. C. 286= A.I.R. 1923 Oudh 59.**

———Non-production of documents affords presumption against the defaulting party. (*Dawson-Miller, C.J. and Jwala Prasad, J.*). (MAHANTH) JAGERNATH DASS *v.* JANG BAHADUR RAI. **71 I.C. 887=4 P.L.T. 285=1923 P.H C.C. 33= A.I.R. 1923 Pat. 218.**

———*Lease.*

Where in a case where the question is whether a lease is a permanent or a temporary one, the lessee does not produce the lease deed though it is in his possession, the inference to be drawn is that the lease was only a temporary one. (*Dawson-Miller, C. J. and Mullick, J.*). BUDHAN TELI *v.* MADAN MOHAN LAL. **68 I.C. 653=3 P L.T. 485= A.I.R. 1923 Pat. 111.**

———*Promissory-note—Loss not accounted for—Adverse presumption.*

Where the plaintiff did not account for non-production of the promissory note on which he sued and the defendant contended that nothing was due under the note and that it contained the endorsement 'excused'.

Held, that under those circumstances the Court could presume that the note if produced would be to the detriment of the plaintiff. (*Kumaraswami Sastri and Reilly, JJ.*). RAHIMATULLA SAHIB *v.* KAMARAJA PANDIYA. **1930 M.W.N. 417.**

———*Original title-deed.*

If the original title-deed of the plaintiff is not produced in the first Court in a suit for recovery of possession the appellate Court may draw an inference adverse to the plaintiff. (*N. R. Chatterji and Panton, JJ.*). HARENDER KUMAR ROY CHAUDHURI *v.* DURGACHARAN SAHA.

62 I.C. 697 (Cal.).

—S. 114, Ill. (g)—Non-production of evidence.

———*Books.*

Where a party does not produce certain books saying that they have been destroyed and the matter dealt by the books could be easily proved by secondary evidence which is admittedly in the possession or power of the party and which it does not attempt to place on the record, the opposite party is entitled to the presumption that these books if produced would have gone against the contentions of the party not producing them. (*Tek Chand and Agha Haidar, JJ.*). SECY. OF STATE *v.* G. T. SARIN & Co. **120 I.C. 615= A.I.R. 1930 Lah. 364.**

———Best evidence not produced though available raises adverse presumption. Inconsistent pleas and not proving pleas raised, indicate falsity of defence.

EVIDENCE ACT (1872), S. 114, Ill. (g)—Non-production of evidence.

(*Lord Blanesburgh.*) RAMESHWAR SINGH *v.* BAJIT HAL PATHAK. **114 I C. 592=1929 A.L.J. 261=49 C.L.J. 308=33 C.W.N. 430=29 M.L.W. 501=6 O.W.N. 423=31 Bom. L.R. 721=11 P.L.T. 101=A.I.R. 1929 P.C. 95=57 M.L.J. 565 (P. C.).**

———The non-production by the plaintiffs, of all the books which they could be expected to produce raises adverse presumption against them. (*Marten and Fawcett, JJ.*). AMARSANGJI INDRASANGJI *v.* RANCHHOD JETHABHAI. **91 I. C. 265=27 Bom. L.R. 267=A. I. R. 1925 Bom. 294.**

—S. 114,Ill. (g)—Non-production by Government.

———*No presumption against them.*

Where Government had to prove that certain service inam lands were excluded from the zamindari but failed to produce the record of the original settlement it cannot be suggested that it was withheld because it was against the Government: 38 Mad. 620, *Dist.* (*Jackson and Reilly, JJ.*). LAKSHMI VENKAYAMMA *v.* SECY. OF STATE. **117 I C. 292=A. I. R. 1929 Mad. 399.**

—S. 114, Ill. (g)—Non-production of witness.

———When a fact can be proved by a witness who can be called and is not called, a party is not entitled to rely on an inference which, however plausible and probable, is not the only possible inference. (*Macleod, C. J. and Shah, J.*). BANK OF BOMBAY *v.* FAZLBHAY EBRAHIM. **67 I.C. 761=24 Bom. L.R. 513=A.I.R. 1923 Bom. 155.**

—S. 114, Ill. (g)—Possession of document denied.

———*Old document—No presumption.*

Where the defendants deny that the deed is in their possession and there is nothing to establish that the denial is false:

Held, in the case of a very old mortgage the possibility of its having been lost and being no longer in existence is naturally much greater than in the case of a mortgage of recent date, and under the circumstances it is not safe to draw the inference that the deed is in possession of the defendants and if produced, it would go against them. (*Daniels, J.*). RAMJI DAS *v.* MIHIN LAL. **71 I.C. 654=A.I.R. 1923 All. 441.**

—S. 114, Ill. (g)—Preliminary enquiry.

———*Defence not disclosed in earlier stages—Inference.*

If neither in their examination before the Committing Magistrate, nor in that in the Sessions Court, accused disclose what their exact defence is to be, and they only enter on their defence of alibi, a certain presumption arises against them as to their guilt of offence. (*Findlay, J. C.*). RAMADHIN BRAHAMIN *v.* EMPEROR. **112 I.C. 51=29 Cr. L. J. 963=11 A. I. Cr. R. 302=A.I.R. 1929 Nag. 36.**

———There is no duty cast upon an accused person to disclose his defence in the course of a preliminary enquiry, and no inference can be drawn against the accused for non-disclosure of his defence at that stage. (*Sen, J.*). KUMAR PRASAD *v.* KING EMPEROR. **102 I.C. 899=28 Cr. L.J. 611=8 P.L.T. 656=8 A.I. Cr. R. 297=A. I. R. 1927 Pat. 292.**

—S. 114, Ill. (g)—Scope.

———The presumption indicated in Illus. (*g*) to S. 114 of the Act cannot displace a contrary inference supported by adequate evidence. (*Sir Lawrence Jenkins.*) RAMACHANDRUDU *v.* JANAKIRAMANNA. **63 I.C. 740=13 L.W. 293 (P.C.).**

EVIDENCE ACT (1872), S. 114, Ill. (i)—Theft of document.

—S. 114, Ill. (g)—Thumb impression.

———Where a person was asked in Court whether he was willing to give his thumb impression and he declined,

Held, that the Court was entitled to draw an inference adverse to him upon his denial to do so. (*Mullick and Wort, JJ.*). LAHURI SAHA *v.* EMPEROR. **106 I.C. 212=6 Pat. 623=8 P.L.T. 847=28 Cr. L.J. 1028=9 A.I. Cr. R. 173=A. I. R. 1928 Pat. 103.**

—S. 114, Ill. (g)—Witnesses not examined.

———Failure to examine one's own assistants who might have spoken in one's favour was held to justify the forming of adverse presumptions. (*Lentaigne, J.*). HOLLANDIA PINMEN *v.* HOPPENHEIMER. **84 I.C. 274=3 Bur. L.J. 203=A.I.R. 1924 Rang. 356.**

—S. 114. Ill. (h)—Irrelevant question.

———*No adverse presumption can be drawn from a refusal.*

When the question in issue was whether transfer by one *M* was nominal, he was asked what his income was and how much income-tax he paid. *M* refused to answer.

Held, that the Court need not disbelieve his evidence merely because of those answers; nor need it presume from his refusal to answer the question as to his income, that the answer if given would have been unfavourable to him; it was too much to ask a witness what his income was in a case of this kind. (*Mulla, J.*). K. F. NARIMAN *v.* MUNICIPAL CORPORATION, BOMBAY. **83 I.C. 856=25 Bom. L.R. 689=47 Bom. 809=A .I. R. 1923 Bom.305.**

—S. 114, Ill. (i)—Burden of proof.

———*Loss of hundies—Obligor pleading discharge.*

Where the plaintiff sued for money due upon hundis but alleged their loss, whilst defendant admitted execution but pleaded payment and subsequent destruction of the documents:

Held: that there is no presumption that the hundies have been discharged. (*Scott-Smith and Martineau, JJ.*). DHIAN SINGH *v.* GURDIT SINGH. **89 I. C. 234=6 Lah. 297=26 P. L. R. 481=A.I.R. 1925 Lah. 521.**

———The strength of the presumption, which might be raised when a document, creating the obligation, is produced by the obligor, varies in different circumstances. The burden shifts as the evidence is developed; and when both the parties produce their evidence, the question on whom the initial onus lay, ceases to be of much importance. 34 All. 511 (P. C.); 19 Cal. 438 (P. C.), *Ref. to*; A.I.R. 1918 P. C. 30, *Foll.* (*Kanhaiya Lal, J. C.*). RAM NATH *v.* RAGHA SAH. **68 I.C. 892=25 O.C. 125=10 O. L. J. 159=A.I.R. 1922 Oudh 211.**

—S. 114, Ill. (i)—Presumption.

———The Court may presume when a document creating an obligation is in the hands of the obligor that the obligation has been discharged. A. I. R. 1928 All. 16, *Rel. on.* (*Addison, J.*). UDEY SINGH *v.* HARI RAM. **121 I. C. 730=12 L.L.J. 21=A.I.R. 1930 Lah. 443.**

—S. 114, Ill. (i)—Theft of document.

———*No presumption of discharge arises when circumstances led to inference of theft.*

The presumption under S. 114 that when a document creating an obligation is in the hands of the obligor the obligation has been discharged is subject to the qualification that when the bond is in the possession of the obligor but the circumstances

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of the case are such that he may have stolen it, these circumstances are to be considered by the Court in deciding whether the maxim would apply or not. (*Ross and Kulwant Sahay, JJ.*). KALI PRASAD CHAUDHURY *v.* NARAYAN PRASAD.

103 I.C. 488=A. I. R. 1927 Pat. 417.

—S. 115.

Acquiescence.
Admission.
Alteration of position.
Attestation.
Conduct.
Consent.
Consent decree or order.
Different subject.
Effect of.
Election.
Equitable estoppel.
Execution sale.
Executor.
Fraud.
Ignorance of law.
Inconsistent pleas.
Interpretation.
Judgment.
Laches.
Landlord and tenant.
Minor.
Mistake.
Mortgagor and mortgagee.
None against statute.
None if truth known.
Parties and privies.
Pleadings.
Plea under.
Pre-emption.
Public policy.
Question of law.
Recitals.
Representation.
Scope of.
Silence.
Vendor and purchaser.
Waiver.
Miscellaneous.

—S. 115—Acquiescence—Abandonment.

———*Non-user.*

While mere non-user is not sufficient to amount into to abandonment, it is a fact to be taken consideration with the other facts and circumstances of the case; and it is from all these facts that the Court has to decide, whether or not the clear intention to abandon can be inferred or is indicated. (*Robinson, C.J. and Brown, J*). S. A. CHRISTOPHER *v.* J. A. COHEN. **84 I.C. 1008= 3 Bur. L. J. 297=2 Rang. 534= A.I.R. 1925 Rang. 187.**

—S. 115—Acquiescence—Absence of objection.

———Where a tenant without zamindars' permission makes a grave on the *abadi*, the mere fact that the servants of the zamindar stood by and did not object cannot amount to agent's acquiescence so as to estop zamindar from interfering with the grave. (*Ashworth, J.*). KHUDU BUKSH *v.* JAI SHANKAR. **115 I.C. 628=A.I.R. 1929 All. 386.**

—S. 115—Acquiescence—Absence of party.

———No estoppel arises when a person builds a house on another's land in his absence. (*Raza, J.*). DWARAKA *v.* SANKATHA. **94 I.C. 307 (Oudh).**

—S. 115—Acquiescence—Acceptance of benefit.

———There is a distinction between performing an award and accepting a benefit under an award.

EVIDENCE ACT (1872), S. 115—Acquiescence—Fraud.

When a benefit is accepted by a party he may be precluded. The acceptance of a benefit even under protest might amount to acquiescence. But a party is not precluded by estoppel or acquiescence from challenging the validity of an award merely because certain payments have been made as directed by the award. (*English cases referred*). (*Aston, A. J. C.*). ISRIBAI *v.* PEVIBAI. **121 I.C. 164=A.I.R. 1930 Sind 195.**

—S. 115—Acquiescence—Bona fide belief.

———To determine whether the landlord is estopped by reason of the principle of acquiescence the real issue to be kept in mind is whether the person who acted in contravention of his right had a *bona fide* belief or not that he did possess the right to erect the building.

Where the *wajib-ul-arz* contained the prohibition against building a new building without the permission of the zemindar,

Held, that such a clause may honestly be interpreted not to preclude the alteration of a kachcha mosque into a pakka one. (*Dalal, J.*). MT. BIBI RAMJI *v.* KARIM. **101 I.C. 630= A.I.R. 1927 All. 544.**

—S. 115—Acquiescence—Elements of.

———To constitute acquiescence (1) the tenant must have made a mistake as to his legal rights; (2) he must have expended some money or must have done an act on the faith of such mistaken belief; (3) the landlord, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the tenant; (4) the landlord must know of the tenant's mistaken belief on his rights; and (5) the landlord must have encouraged the tenant in his expenditure of money or in other acts which he has done, either directly or by abstaining from asserting his legal right: *Willmott* v. *Barber*, (1880) 15 Ch. D. 96, *Foll.* (*Tek Chand, J.*). AMRIT SURYA RAM *v.* DIWAN CHAND. **114 I.C. 70=A.I.R. 1929 Lah. 625.**

———If a party having a right, stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain. *Duke of Leeds* v. *Lord Amerst*, 2 P. 124, *Foll.*

But acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* and illegal. Further, estoppel by acquiescence connotes, among other things, that the person estopped in effect has represented to the person who is infringing his right that he is not entitled to complain that his right is being invaded, and that the party relying upon this representation has altered his position to his detriment under a mistaken impression that he was legally justified in acting as he had done. (*Walmsley and Page, JJ.*). GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS. **89 I.C. 804=52 Cal. 748=29 C.W.N. 931= A.I.R. 1925 Cal. 1107.**

—S. 115—Acquiescence—Fraud.

———*Acquiescence which will deprive a man of his legal rights must amount to fraud—Elements necessary to constitute fraud explained.*

Acquiescence which will deprive a man of his legal rights must amount to fraud and the elements necessary to constitute such a fraud are: (1) the party pleading acquiescence must have made a mistake as to his legal rights; (2) he must have expended some money or done some act on the faith of his mistaken belief: (3) the party possessing the legal right must know the existence of his

EVIDENCE ACT (1872), S. 115 — Acquiescence —Fraud.

own right which is inconsistent with the right claimed by the other; and (4) he must know of that other's mistaken belief of his rights and he must have encouraged that other in his expenditure of money or in the other acts done by him. When all these elements exist, there is fraud of such a nature that it will entitle the Court to restrain the possessor of the legal rights from exercising it: A.I.R. 1926 All. 324, *Rel. on.* (*Raza, J.*). MAHOMED HASAN ALI *v.* HARNATH KOER. **110 I.C. 569= A.I.R. 1928 Oudh 470.**

———The acquiescence, which would deprive a man of legal rights, must amount to fraud. (*Raza, J.*). MATA BHIKH *v.* KALADIN. **99 I.C. 894= 8 L.R.A. Rev. 155=A. I. R. 1927 Oudh 135.**

———*Acquiescence to be successfully pleaded, must amount to fraud.*

The acquiescence which will deprive a man of his legal rights must amount to fraud. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights: *Willmott* v. *Barber*, (1880) L.R. 15 Ch. D. 96 and A.I.R. 1926 All. 324, *Foll.*

The mere fact the plaintiff raised no objection when the building was constructed by the defendant and that there was long delay on her part in enforcing her rights, if any, in respect of the land in dispute, is not sufficient to establish acquiescence when the defendant has never alleged that he had acted in the *bona fide* belief that he was acting within his rights: A. I. R. 1925 Oudh 258, *Dist.* (*Raza, J.*). MUSTAFA HUSAIN *v.* MT. SAIDUL MIAN. **99 I.C. 255=3 O.W.N. Sup. 282= A. I. R. 1927 Oudh 66.**

———*Acquiescence to act as estoppel must be fraudulent—Elements rendering an acquiescence fraudulent indicated.*

The acquiescence which will deprive a man of his legal rights must amount to fraud. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. The following are the elements or requisites necessary to constitute fraud of that description. In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, as, the doctrine of acquiescence is founded upon conduct with a knowledge of one's legal rights. Fourthly, the defendant, the possessor of the legal rights, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but nothing short of this will do: (1880) 15 Ch. D. 96, *Foll.* (*Mears, C.J. and Lindsay, J.*). JAI NARAIN *v.* JAFAR BEG. **92 I.C. 1017=48 All. 353= 24 A.L.J. 355=A.I.R. 1926 All. 324.**

EVIDENCE ACT (1872), S. 115—Acquiescence—Proof of.

—S. 115—Acquiescence—Grant.

———Where an heir of the grantee enters into possession of the grant after the death of the grantee and the grantor accepts rent from him, the mere acceptance of rent by the grantor should not constitute the heir anything more than a mere tenant-at-will.

The mere assertion of a jagirdari right acquiesced in by the superior landlord cannot be taken to import a claim or an acknowledgment of a larger interest than that of a life-estate. (*Dawson-Miller, C.J. and Jwala Prasad, J.*). PRATAP UDAINATH SAHI DEO *v.* GANESH NARAIN SAHI. **70 I.C. 232=1921 P.H.C.C. 369= A.I.R. 1921 Pat. 218.**

—S. 115—Acquiescence—Knowledge of owner.

———*Knowledge on the part of the person to be estopped not proved—Doctrine of acquiescence does not apply.*

Where the defendants regarded through mistake certain land to be their own and partitioned it among themselves and there was no evidence to the effect that the plaintiff knew that the defendants were partitioning his land as theirs and the plaintiff kept silent knowing that the defendants were likely to be prejudiced by the partition and by a subsequent claim on the part of the plaintiff, the plaintiff has done nothing and is not estopped from setting up his title and possession to the land by the principle of acquiescence: A.I.R. 1926 All. 324, *Appl.* (*Mukerji, J.*). MUBARK HUSAIN *v.* MD. ISHAQ. **97 I.C. 268=8 L.R.A. Rev. 6= A I.R. 1926 All. 721.**

—S. 115—Acquiescence—Long silence.

———Where a co-parcener has alienated joint property and the alienee improves the same by making heavy expenditure, the other co-parceners cannot impeach the sale if they stand by for a long time and allow without objection the expenditure to be made by the alienee. 177 P. W. R. 1911 and 13 Bom. L.R. 162, *Foll.* (*Broadway and Harrison, JJ.*). DHANPAT RAI *v.* GURANDITTA MUL. **64 I.C. 520=2 Lah. 258=10 P.L.R. 1922= A.I.R. 1921 Lah. 110.**

—S. 115—Acquiescence—Period of.

———Widow making gift of her deceased husband's property to her daughter and daughter's husband jointly—Daughter acquiescing for less than 12 years in the position that her husband was co-owner of that property does not constitute estoppel so as to deprive her reversionary right. 43 Mad. 849, *Appr.* (*Wallace and Madhavan Nair, JJ.*). PAPPAMMAL *v.* ALAMELU AMMAL. **119 I. C. 152= A.I.R. 1929 Mad. 467.**

—S. 115—Acquiescence—Proof of.

———In order to sustain a plea of acquiescence and to raise the bar of an equitable estoppel, it is incumbent upon the party relying on it to show that the conduct of the owner whether consisting in abstinence from interfering or in active intervention was sufficient to justify the legal inference that he had by plain implication, contracted that the right of occupation under which the other party originally obtained possession of the land, should be changed into a perpetual right of occupation. (*Kinkhede, A. J. C.*). BHASIA *v.* THAKUR RAMSINGH. **100 I. C. 855= A. I. R. 1927 Nag. 180.**

———One co-sharer granting lease for planting grove—Tenant planting grove—Other co-sharers suing for injunction and possession—Defence of acquiescence—Defendant should prove his *bona fide*

EVIDENCE ACT (1872), S. 115—Acquiescence—Time of.

belief in his valid right and plaintiff's deliberate abstinence from preventing defendant from spending money. (*Daniels, A. J. C.*). JAGANNATH *v.* DIN MUHAMMAD. **65 I.C. 705=8 O.L.J. 474= A.I.R. 1921 Oudh 231.**

—S. 115—Acquiescence—Time of.

———*Distinction between acquiescence when the act is in progress and acquiescence after the act is done, indicated.*

Acquiescence by the landlord is a question of legal inference drawn from the facts found.

There is a distinction between a case where the acquiescence allowed occurs while the act acquiesced in, is in progress, and another, where the acquiescence takes place after the act has been completed. In the former case, the acquiescence is aquiescence under such circumstances that assent may be reasonably inferred from it. In the latter case, when the act is completed without any knowledge or without any assent on the part of the person whose right is infringed, the matter must be determined on very different legal considerations. A right of action has been vested in him, and mere delay to take legal proceeding to redress the injury cannot, by itself, constitute a bar to such proceedings, unless the delay on his part, after he has acquired full knowledge has affected or altered the position of his opponent. 19 C. W. N. 882, *Ref.* (*Kinkhede, A. J. C.*). GHASIA *v.* THAKUR RAMSINGH. **100 I.C. 855= A.I.R. 1927 Nag. 180.**

—S. 115—Acquiescence—Trespasser.

———Trespasser building on site of another in spite of owner's protesting—Owner suing for possession after two years—He has not acquiesced and is entitled to possession. 3 N. L. R. 114, *Dist.* (*Findlay, J. C.*). MAHDEO PATEL *v.* NARAYAN. **104 I.C. 566=A.I.R. 1927 Nag. 348.**

———*Ryots building on waste land without zamindar's permission cannot resist a suit in ejectment against him by zamindar.*

If a raiyat without the permission of the zamindar begins to build upon waste land over which he has no right to build and completes his construction within a few months, the zamindar is not estopped from recovering possession of the site on the ground that he did not intervene at an earlier stage. Unless it could be established that the defendants were making constructions under some *bona fide* mistake of which the plaintiffs were aware and in spite of their knowledge the plaintiffs deliberately refrained from intervening and thereby led the defendants to believe that they were right in their estimation, there could be no estoppel. No one can by merely trespassing upon the land of another and constructing costly building on it claim a right to retain possession or to compel the owner to receive compensation for the land. 21 All. 496 (P.C.) and 12 A. L. J. 1026, *Rel. on.* (*Sulaiman, J.*). ZAHID ALI *v.* SUKHU LONIA. **89 I.C. 509=A.I.R. 1926 All. 87.**

———*Person doing a thing in spite of objection cannot plead acquiescence by other party.*

Defendant encroached upon the *Chabutara* of the plaintiff, and placed beams on her wall more than 6 years ago. Defendant pleaded ownership and old construction. It was found that he was not owner, and that plaintiff had objected to the Municipal Board sanctioning construction. The Municipal Board refused to decide the question of title and the defendant went on making his construction.

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Held, that there was no acquiescence. (21 All. 496. P.C., *Ref.*) (*Gokul Prasad, J.*). MT. KOKLA KUNAR *v.* KALIAN MAL. **76 I.C. 585= A.I.R. 1923 All. 452.**

———The defendants having been granted a user of certain land for certain purposes, used it for purposes other than the purpose for which it had been granted, by digging a *baoli* which was used by the public.

Held, there was no question of the owner standing by watching the construction of the *baoli* being made by a person who was under a mistaken belief that the land was his own property, in order to gain an advantage. The defendants could not have believed that the land was their own property and there was nothing to show that the plaintiffs had any sinister motive in abstaining at the time from protest. (*Stuart, J.*). MAULVI MAHOMED *v.* MAHABIR DAS. **70 I. C. 836= A. I. R. 1923 All. 11.**

—S. 115 — Acquiescence — Wilful — Non-interference.

———*Landlord and tenant.*

In 1913 the landlord contracted to grant a permanent lease in respect of certain land. No formal lease was executed under the terms of S. 107, T. P. Act. Pursuant to the contract the tenant obtained possession of the land and erected permanent and costly structures thereon. The landlord was aware of the erection of those structures and must have realized that the tenant would not have constructed such a building unless he was assured of the possession of a permanent right in the land. In December, 1918, the landlord gave notice to the tenant of his refusal to specifically perform the contract. The landlord in 1923 brought a suit for ejectment against the defendant.

Held, that the landlord having allowed the tenant to erect structures on his land would not be allowed to eject the tenant as he acquiesced in tenant's conduct. *Ramsden* v. *Dyson*, (1866) 1 H.L. 129 and *Gregory* v. *Mighell*, (1881) 18 Ves. 328, *Foll.*; 21 All. 496 (P.C.), *Dist.*; 28 Cal. 693 (P.C.) and A.I.R. 1925 P. C. 146, *Rel. on.* (*Mukerji and Graham, JJ.*). G. H. C. ARIFF *v.* JADUNATH MAJUMDAR. **112 I. C. 865=55 Cal. 1090= 33 C.W.N. 333=A.I.R. 1929 Cal. 101.**

———Plaintiff's connivance at defendant's building in plaintiff's land—Defendants having *bona fide* belief that they possess good title to the property—Plaintiff's bringing a declaratory suit—Plaintiff's claim cannot be decreed, on ground of acquiescence. *Willmott* v. *Barbar*, (1880) 15 Ch. D. 96 and A.I.R. 1927 Oudh 66, *Rel. on.* (*Srivastava, J.*). IMAMI *v.* IBRAHIM. **A. I. R. 1929 Oudh 292.**

———Owner standing by and allowing improvement on his land is estopped, but where he objects to do so by a notice, he is not. (*Cuming and B. B. Ghose, JJ.*). HARI BHUSHAN *v.* SHEIK ABDUL. **97 I.C. 441=A.I.R. 1927 Cal. 54.**

———*To create estoppel by conduct, other party must have been led away by the conduct.*

If a stranger begins to build on land supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a Court of Equity will not afterwards allow the real owner to assert his title to the land. *Ramsden* v. *Dyson*, 14 W. R. 926, *Foll.*

Per *Venkatasubba Rao, J.*—To create an estoppel the declaration, act or omission must be of an unequivocal and unambiguous character. The essence

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of estoppel is that the conduct of the other party is the cause of the action of the person invoking the estoppel; and if the act is the result of the reliance upon the representation mere forbidding the act will not prevent the estoppel. (*Phillips and Venkatasubba Rao, JJ.*). ASHTAMOORTHI NAMBUDRIPAD *v.* RAMA MUDALI. **96 I.C. 915= A. I. R. 1926 Mad. 1052.**

———*Person interested in preventing act, acquiescing therein will be estopped.*

Generally speaking, if a party having an interest to prevent an act being done has full notice of its having been done and acquiesces in it so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done with his previous license. Though mere acquiescence is not equivalent to consent; yet consent need not be by word and may be by act, and if consent can be intimated by conduct as well as by act it is clear that acquiescence may, under certain circumstances be taken to be consent. (*Mukerji, J.*). UMARAM GOGOI *v.* PURUK CHAND OSWAL. **85 I.C. 540= A.I.R. 1925 Cal. 993.**

———If a stranger builds upon the land of *A*, supposing it to be his own, and *A* remains wilfully passive, equity will not allow him to profit by the mistake. If a person having a right and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person who commits the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. (*Wazir Hasan, A. J. C.*). RAFIQ HUSSAIN *v.* BHAYA BISNATH PRASAD. **84 I.C. 511=11 O.L.J. 677= 28 O.C. 114=A. I. R. 1925 Oudh 258.**

———*Owner of land acquiescing in stranger's building on land cannot subsequently sue for land—Acquiescence may be implied—English and Indian law.*

It is well established law in England that if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India with the exception that the party building on the land of another is allowed to remove the building. *Case-law referred.* (*Hallifax, A. J. C.*). RAMRATAN *v.* SHIODATTARAI. **73 I.C. 187=A. I. R. 1921 Nag. 167.**

—S. 115—Admission.

———An admission in previous suit cannot operate as estoppel in a subsequent suit unless the decision in the previous suit is based upon the admission: 11 M. I. A. 50 (P.C.), *Dist.* (*Mukerji and Mallick, JJ.*). ABDUL GANI *v.* NABENDRA KISHORE ROY. **33 C.W.N. 876=57 Cal. 258= A I.R. 1930 Cal. 47.**

———Where a person admits execution before the Registrar after the document has been explained to him, it cannot subsequently be accepted that he was ignorant of the nature of the transaction. (*Sir John Wallis.*) SENNIMALAI GOUNDAN *v.* SELLAPPA GOUNDAN. **114 I.C. 568= 33 C.W.N. 407=29 M.L.W. 439= A.I.R. 1929 P.C. 81=56 M.L.J. 511 (P.C.).**

EVIDENCE ACT (1872), S. 115—Alteration of position.

———Admissions do not operate as estoppel but they must be explained by persons making them. (*Fforde and Bhide, JJ.*). SECY. OF STATE *v.* MT. VIDYA VOTE. **A.I.R. 1929 Lah. 748.**

———The admission by a mortgagor in a mortgage-deed that the property comprised in the deed belongs to him, in the absence of a strong proof on his side that such property was not really his when he mortgaged it, concludes the matter against him. (*Coldstream, J.*). FAKIR MAHOMED *v.* RAMZAN. **99 I. C. 642=A.I.R. 1927 Lah. 171.**

———Property purchased at execution sale subject to mortgage—Purchaser cannot challenge validity of the mortgage in mortgagee's suit. A.I.R. 1923 Nag. 282 and 47 Cal. 446, *Rel. on.* (*Findlay, O.J.C.*). GOVINDRAO *v.* HIRACHAND. **95 I.C. 563= A. I. R. 1926 Nag. 446.**

———A person is not entitled to give an undertaking to a Criminal Court to abstain from certain action and to go and file a civil suit for declaration that the undertaking given by him was of no effect. (*Neave, J.*). RAM SARAN *v.* THAKUR SEO. **85 I.C. 586=A.I.R. 1925 All. 605.**

———Partition among co-sharer landlords—Admission that certain lands were rent-free precludes contrary contention afterwards. (*Suhrawardy and Chotzner, JJ.*). CHATTRA NATH CHOWDHURY *v.* BABAR ALI. **86 I.C. 825=29 C.W.N. 333= A.I.R. 1925 Cal. 635.**

———Admission in a different proceeding that one had sold the land does not act as estoppel so as to do away with the necessity of registering the document. (*Duckworth, J.*). MAUNG PO YIN *v.* MAUNG TET TU. **86 I. C. 205= 2 Rang. 459= A.I.R. 1925 Rang. 68.**

———Admissions by a Hindu widow that she had acquired the property as heir to her husband does not necessarily involve the legal inference that she was asserting only a limited interest and not her absolute right. 42 All.152, *Foll.*; 14 A.L.J. 913, *Dist.* (*Lindsay and Sulaiman, JJ.*). UMAN SHANKER *v.* MT. AISHA KHATUN. **74 I. C. 869=45 All. 729= A. I. R. 1924 All. 88.**

———Admission in previous compromised suit does not estop party from proving the truth. (*Dhobbey, A.J.C.*). MOHAMAD YUSUF *v.* PIRMOHAMAD. **65 I.C. 368=A.I.R. 1922 Nag. 67.**

—S. 115—Alteration of position.

———Before an estoppel can take place it is necessary for the party to establish that he had been led to do something detrimental to the interest owing to the action of the other party. (*Stuart, C. J. and Raza, J.*). NISAR ALI KHAN *v.* MUHAMMAD ALI KHAN. **119 I.C. 337=6 O.W.N. 549= A.I.R. 1929 Oudh 494.**

———*Change of position on faith of act or omission pleaded is necessary.*

In order that a particular declaration, act or omission of a certain person may constitute estoppel against him, the person pleading estoppel in his favour must show that he, accepting the truth of his declaration and relying upon the truth thereof, has acted upon such belief and changed his position to his detriment: 40 Cal. 378 (P.C.) and A.I.R. 1924 P.C. 213, *Rel. on.* (*Stuart, C. J. and Misra, J.*). AHMAD AZIM *v.* SHAFI JAN. **97 I.C. 897=2 Luck. 335=3 O.W.N. Sup. 102= A.I.R. 1926 Oudh 561.**

———*Inconsistent statements in two suits—Change of position.*

In a previous suit the claim of the plaintiff was based on the ground that certain widows did

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not inherit the properties, but that his grandfather inherited them. In the second the plaintiff claimed the properties as reversioner of the very widows,

Held, that the plaintiff was not estopped by the statement made in the previous suit. So far as the plaintiff himself was concerned, there was no doubt that the statements in the second suit were inconsistent with what was stated in the previous suit but there had been no change of position by reason of the statements made by the plaintiff in the first suit. (*Chatterjea and Cuming, JJ.*). NRIPENDRA NATH BHOWMIK *v.* BASANT KUMAR LAHIRI.
89 I.C. 207=29 C.W.N. 861=A.I.R. 1925 Cal. 1195.

———*Causing another to believe that he is one's adopted son—Change in circumstances—Estoppel is created.*

Where a person is treated by another in such a way as leads him to believe that he is the adopted son of that other and on that footing and on account of such acquiescence and by reason of such encouragement he severs his connection with his natural family or undergoes a change of circumstances in such a way that when restored to his natural family his position would be very different from what it would have been if he had never left it the person treating him as described above and those who claim through him will be estopped from questioning the adoption. 14 M.I.A. 67, *Foll.* (*Mukerji, J.*). UMARAM GOGOI *v.* PURUK CHAND OSWAL. **86 I.C. 540=A.I.R. 1925 Cal. 993.**

———*A mere undertaking may operate as an estoppel, though it may not amount to a contract.*

An undertaking may operate as an estoppel, though in the absence of consideration it cannot amount to a contract. A man may be estopped, not only from giving particular evidence, but from doing acts, or relying upon particular arguments or contentions which the rules of equity and good conscience prevent his using as against his opponent.

Where the question was whether the undertaking of a mortgagee, *viz.*, "I shall accept so much in satisfaction of our debt. I release the balance in your favour. You may purchase the equity of redemption" operated as an estoppel against him.

Held, the mortgagee could not turn round and say that he was entitled to claim the full amount of the bond if the other party relying upon the statement had purchased the property which they otherwise would not have done. (*Newbould and B. B. Ghose, JJ.*). SHAILESH CHANDRA GUHA *v.* BECHAI GOPE. **84 I.C. 124=40 C. L. J. 67=A. I. R. 1925 Cal. 94.**

———*'Act on such belief' meaning.*

Where the facts are within the knowledge of both the parties, there is no scope for the doctrine of estoppel. However the language of S. 115, extends to the encouragement of an erroneous belief. But party must have acted on such belief in consequence of the encouragement. The phrase "act upon such belief" means that the party must have altered its position with reference to the subject-matter of the representation.

Where all that the Judge was able to say was 'it may well be doubted whether the plaintiff would have acted in the way he did but for the way in which the defendants had acted',

Held, that was not sufficient. It must be found as a fact that the plaintiff would not have acted as he did. (*Pratt, J.*). WILLIAM JACKS AND CO. *v.* JOOSAB MAHOMED. **82 I.C. 791=48 Bom. 38=25 Bom. L.R. 1170=A. I. R. 1924 Bom. 115.**

EVIDENCE ACT (1872), S. 115—Attestation.

———Transfer of Reversionary interest—Transferee not acting thereon—No estoppel is created. (*Macleod, C. J. and Coyajee, J.*). DAYARAM PREMJI *v.* BECHANDAS DOONGERSEY. **67 I.C. 963=24 Bom. L. R. 351=A.I.R. 1922 Bom. 437.**

———What the law and the Indian statuate mainly regard is the position of the person who was induced to act and the principle on which the law and the statute rest, is, that it would be most inequitable and unjust to him that if another, by a representation made, or by conduct amounting to a representation, had induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. If the person who made the statement did so without full knowledge of under error, *sibi impulet* it may in the result be unfortunate for him, but it would be unjust, even though he acted under error to throw the consequence on the person who believed his statement and acted on it as it was intended he should do. (*Dawson Miller, C. J. and Miller, J.*) SIR L. E. RALLI *v.* A. H. FORBES.
67 I.C. 744=1 Pat. 717=3 P. L. T. 467=1922 P. H.C.C. 209=A.I.R. 1922 Pat. 258.

———Where a statement is relied upon as constituting an estoppel, it must be proved that the statement caused a change of position of the parties setting up the estoppel. (*Leslie Jones and Moti Sagar, JJ.*). ABDULLA *v.* FATEH MUHAMMAD. **62 I.C. 809=A.I.R. 1921 Lah. 117.**

———The doing of anything will not amount to estoppel when it has not led the other party to change his position. (*Oldfield and Seshagiri Aiyar, JJ.*). VISWANATHA SASTRI *v.* SITALAKSHMI AMMAL. **61 I.C. 979=13 M.L.W. 37=1921 M.W.N. 181=A.I.R. 1921 Mad. 126.**

———The whole principle of estoppel is based on altered circumstances, that is position of the person pleading estoppel must be changed by the alleged representation. (*Das and Ross, JJ.*). SHAIKH ABDUL RAHIM *v.* MT. BAREIBA.
61 I.C. 807=2 P.L.T. 556=6 P.L.J. 273=A.I.R. 1921 Pat. 166.

—S. 115—Attestation.

———Person attesting asserting facts mentioned in document—Attestation is sufficient to prove his knowledge of its contents. (*Jai Lal, J.*). BHAMHA RAM GIRDHARI LAL *v.* RAM PYARA MAL.
116 I. C. 716=A.I.R. 1930 Lah. 217.

———*If creates estoppel.*

Attestation of a deed proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed, nor affect him with notice of its provisions. Mere attestation by itself would neither create an estoppel nor imply consent. A.I.R. 1916 P.C. 110, *Foll.* (*Raza and Pullan, JJ.*). SHEO RATAN LAL *v.* SANT BAKHSH.
118 I. C. 93=6 O.W.N. 369.

———*Attestation by itself does not operate as estoppel but it can so operate when coupled with other circumstances.*

Attestation of a deed by itself estops a man from denying nothing whatever except that he witnessed the execution of the deed, and by itself it does not show that he consented to the transaction which the document effects.

But where in addition to the fact of attestation there was evidence to show that the attestor who was managing member of the family consented to

EVIDENCE ACT (1872), S. 115—Attestation.

and acquiesced in the execution of the mortgage by a widow of the family property which was in her possession, and took an active part in the consultations which resulted in the mortgage and after the mortgage was executed entered into an agreement with mortgagee whereby in effect he obtained an option to have the mortgage transferred to him,

Held, that the attestor not only witnessed the execution of the mortgage but also he, in his capacity of managing member of the joint family, consented to and acquiesced in the mortgage being given and could not, therefore, be allowed to challenge its validity. (*Sir Lancelot Sanderson.*) BHAGWAN SINGH *v.* UJAGAR SINGH.

107 I. C. 20=47 C. L. J. 189=30 Bom. L. R 267= 32 C.W.N. 538=29 P.L.R. 182=27 M. L.W. 672= 26 A.L.J. 553=1928 M. W. N. 933= A.I.R. 1928 P.C. 20=54 M. L. J. 254 (P.C.).

———Mere attestation of deed cannot amount to an estoppel, since attestation does not fix an attesting witness with knowledge of the contents of a document. (*Addison and Johnstone, JJ.*). FEROZE DIN *v.* NAWAB KHAN. **112 I.C. 89=9 Lah. 224= 30 P.L.R. 154= A.I.R. 1928 Lah. 432.**

———A reversioner who brings about a mortgage by limited owner and also attests it cannot be allowed to challenge that the debt secured by the mortgage was not binding on the reversioner. (*Coutts-Trotter, C. J. and Srinivasa Iyengar, J.*). SRINIVASARAGHAVACHARIAR *v.* E. RAJAGOPLACHARIAR. **1927 M W.N. 231= A.I.R. 1927 Mad. 438.**

———Award *ultra vires*—Signature thereon does not estop. (*Pullan, J.*). ASHAF ALI *v.* SAKHAWAT HUSAIN. **104 I.C. 394=1 L.C. 311= A.I.R. 1927 Oudh 448.**

———Where thumb marks of witnesses are impressed on a document in token of consent and as attestation and the document is read and explained to them at the time of registration and again their thumb marks are impressed,

Held, that it is not a mere attestation but is a distinct and clear acquiescence which binds the attestors and estops them from questioning the validity of the document : A. I. R. 1922 P. C. 20; A. I. R. 1923 All. 28, *Dist.* (*Harrison, J.*). SUNDAR SINGH *v.* BHANSINGH. **90 I C. 1032= 26 P.L.R. 756=A.I.R. 1926 Lah. 62.**

———*Real owner attesting a deed of mortgage by ostensible owner in token of his consent is estopped from claiming ownership.*

The fact that a party attested the deed of mortgage does not by itself estop him from denying that he knew of its contents or that he consented to the mortgage, but there might be circumstances which would show that the attestation was intended to convey something more than a mere witnessing of the execution and was meant as involving consent to the transaction.

Where the owner assured the mortgagees that the title to the estate lay with the transferor, that he had no interest in it, and that with a view to signify that assurance he attested the deed of mortgage.

Held, that the assurance given by the owner as to the title of the property under mortgage was enough to create a belief in the mind of the mortgagees and to act upon it, and if they believed and acted upon that belief, the owner cannot turn round and say that the mortgagees should not have believed him but made further enquiries : A.I.R. 1922 P.C. 20 and *Bloominthal* v. *Ford*, (1897)

EVIDENCE ACT (1872), S. 115—Attestation.

A C. 156, *Foll.* (*Wazir Hasan, A. J. C.*). MD. MAZHAR-UD-DIN HASAN *v.* ZAHUR-UD-DIN KHAN. **90 I.C. 547=A.I.R. 1926 Oudh 131.**

———*Attestation coupled with other circumstances can be "consent."*

Though mere attestation is not sufficient to fix a party with knowledge of the deed attested yet attestation combined with other circumstances may amount to evidence of consent. Where not only did the reversioners attend before the Registrar, identify the executant, and attest the deed, but the debt in respect of which the deed was executed was a debt from the reversioners themselves as principal debtors.

Held, that it was impossible to believe under these circumstances that they were not aware of the nature of the transaction or that their attestation was not meant to indicate their assent to it. 42 Cal. 876 ; A.I.R. 1922 P. C. 20, *Ref.* (*Daniels and Neave, JJ.*). RAM ADHAR *v.* BHAGWAN SINGH. **85 I.C. 580=5 L.R.A. Civ. 644= A. I. R. 1925 All. 209.**

———The attestation of a deed does not by itself estop the person attesting from denying that he knew of its contents or that he consented to the transaction which it effects. A.I.R. 1922 P. C. 20, *Foll.* (*Martineau, J.*). ABDUL AZIZ *v.* ABDULLA. **87 I.C. 652=7 L.L.J. 179=26 P.L.R. 215= A.I.R. 1925 Lah. 413.**

———Attestation does not by itself create estoppel. 49 C. 334, *Foll.* (*Kotval, A. J. C.*). ANANDRAO *v.* DADA. **71 I.C. 43=A.I.R. 1924 Nag. 65.**

———The mere attestation of a deed by a relative does not import concurrence nor does it involve any knowledge of the contents of the deed. (*Jwala Prasad and Foster, JJ.*). JAGDAM SAHAY *v.* RUPNARAIN MAHTON. **84 I.C. 208= 5 P.L.T. 375= A.I.R. 1924 Pat. 736.**

———*Gift deed—Application for mutation—Attestor of—If can challenge gift.*

A gift of immovable property was made by a report to the Revenue Surveyor. The heirs of the donor signed the report as witnesses to the transaction and possession was given to the donees.

Held, that the heirs could not after many years dispute the right of the donees to the possession of the land, though the donees did not get a legal title to the lands for want of a registered deed. (*Heald, J.*). MA SHIN *v.* MAUNG HAWN. **79 I.C. 579=1 Rang. 651=A.I.R. 1924 Rang. 102.**

———The mere fact of attestation does not raise any presumption that the attesting witnesses were aware of the contents of the document. A plea of estoppel cannot be founded on that fact alone. (*Stuart and Sulaiman, JJ.*). UDAI BHAN SINGH *v.* GAJENDRA SINGH. **70 I.C. 815= A.I.R. 1923 All. 28.**

———*Attestation does not work estoppel.*

The attestation of a deed by itself estops a man from denying nothing whatsover excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the documents and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. (*Lord Buckmaster.*) PANDURANG KRISHNAJI *v.* M. TUKARAM. **65 I.C. 954=24 Bom. L R. 557= 35 C. L.J. 409=15 M.L.W. 486=20 A.L J. 305= 18 N.L.R. 1=26 C. W.N. 201= 30 M. L.T. 249=49 Cal. 334= 49 I.A. 16=5 N.L.J. 6=A.I.R. 1922 P.C. 20= 42 M.L.J. 436 (P.C.).**

EVIDENCE ACT (1872), S. 115—Attestation.

———Merely because a person signed a mortgage bond as an attesting witness, he cannot be held to be bound by the recitals in it. (*Coutts and Macpherson, JJ.*). DHIRA SINGH *v.* MOTI LAL.

63 I.C. 266=2 P.L.T. 614.

—S. 115—Conduct.

Absence of.
Acceptance of benefit.
Admission.
Adoption.
Advantage not taken.
Arbitration.
Change of plea.
Compliance with order.
Compromise.
Consent.
Construction of document.
Contract.
Execution of decree.
Execution proceedings.
Execution sale.
Jurisdiction.
Land acquisition.
Negligence.
No estoppel.
Notice.
Omission to assets.
Omission to dissociate.
Omission to plead.
Omission to object.
Ordinary course of business.
Promise under inducement.
Recognition of agency.
Representation.
Residing.
Reversioner.
Silence.
Sufficiency of.
Termination of agency.
Miscellaneous.

—S. 115—Conduct—Absence of.

———No litigant has any right to delay or obstruct the proceedings of the Court by absenting himself deliberately and then asking for re-consideration of the matter passed in his absence. (*Shadi Lal, C. J. and Broadway, J.*). GURDITTA SHAH *v.* MUHAMMAD KHAN. **116 I. C. 714 (Lah.).**

—S. 115—Conduct—Acceptance of benefit.

———Where a person obtains a release from a liability upon the understanding of foregoing a definite claim against a third party, that person is estopped from asserting or enforcing the claim to the detriment of the third party. (*Sen and Niamatullah, JJ.*). MT. WAHIDAN *v.* NASIR KHAN.

A.I.R. 1930 All. 434.

———Where during the lifetime of the mother, the daughters who were in possession effected a partition of certain properties and the parties enjoyed the properties in pursuance of that arrangement but its validity was sought to be questioned after the death of the mother by the executants themselves.

Held, that they were estopped from doing so. (*Mukerji and Bennet, JJ.*). POKHAR SINGH *v.* DULARI KUNWAR. **125 I.C. 1=1930 A.L.J. 688= A.I.R. 1930 All. 687.**

———Award—Election by party to award by taking benefits under it—Party cannot turn round and say that award is invalid. A. I. R. 1929 Cal. 796, *Ref.* (*B. B. Ghose and Bose, JJ.*). ANANTA LAL *v.* JNANADA SUNDARI. **50 C.L.J. 323= A.I.R. 1930 Cal. 258.**

———*Order for restoration on payment of costs—Acceptance of costs—Effect.*

EVIDENCE ACT (1872), S. 115—Conduct—Acceptance of benefit.

When an order shows plainly that it is intended to take effect in its entirety and that several parts of it depend upon each other, a person cannot adopt one part and repudiate another. For instance, if the Court directs that the suit shall be restored on the plaintiff paying the costs of the opposing party, there is no intention to benefit the latter, except on the terms mentioned in the order itself. If the party receives the costs, his act is tantamount to adopting the order. But if a party receives the benefit reserving his right to object to the order, he will not in that case be precluded from attacking it. A. I. R. 1927 Mad. 1009, *Not foll.* (*Case-law discussed*). (*Ramesam and Venkatasubba Rao, JJ.*). VENKATARAYUDU *v.* RAMA KRISHNAYYA.

123 I.C. 337=31 M.L.W. 30=1930 M.W.N. 50= A. I. R. 1930 Mad. 268=58 M.L.J. 137.

———Where Court orders restoration of a suit dismissed for default, on condition that plaintiff pays certain amount to defendant and defendant received that amount, having been under no compulsion to do so, no revision against the order lies at the instance of the defendant. *Tinkler* v. *Hilder*, (1849) 4 Ex. 187, *Foll.*; 12 C.L.J. 556, *Dist.* (*Jackson, J.*). NARAYANAMURTHY SOMAYAJULU *v.* MAHAMMAD AZAM SAHIB. **110 I.C. 528 (Mad.).**

———A co-sharer under a partition decree cannot reprobate the decree after having obtained an advantage to the detriment of the other co-sharer. But if the decree was a nullity it cannot be affirmed by anything that a co-sharer does short of obtaining an advantage under it to the detriment of others. (*B. B. Ghose and Panton, JJ.*). JAMILENNESSA KHATUN *v.* IJJATENNESSA KHATUN.

A. I. R. 1929 Cal. 586.

———*Advantage taken under partition—Party estopped from setting impartibility.*

The father of the plaintiff entered into a partition and the deed was acted upon for over 40 years, the plaintiff asserted his claim to entire property as being entitled by law of primogeniture and estate being impartible, but kept quiet for about 12 years and dealt with his share of the property as having been derived under the deed of partition,

Held, that he cannot reasonably be heard to say that he is entitled to succeed by primogeniture which is the subsisting custom of the family. (*B. B. Ghose and Panton, JJ.*). NARENDRA NARAIN *v.* NAGENDRA NARAIN. **118 I.C. 342= 50 C. L. J. 267=A.I.R. 1929 Cal. 577.**

———Persons acting on general award and accepting benefit under it cannot challenge it. (*Percival, C.J. and Aston, A. J. C.*). KHUBCHAND *v.* JETHANAND. **117 I. C. 153= 23 S.L.R. 417= A.I.R. 1929 Sind 168.**

———*Plaintiff allowed to amend plaint on payment of costs—Defendant accepting payment cannot challenge the order in appeal.*

A party who has adopted an order of the Court and acted under it cannot after he has enjoyed a benefit under the order contend that it is valid for one purpose and invalid for another.

Defendants resisted the suit for rendition of accounts filed by the plaintiffs, pleading *inter alia* that no suit for accounts was maintainable on the facts alleged. The Trial Court upheld that plea and dismissed the suit. On appeal the Court agreed with the trial Court that a suit for accounts was not maintainable on the facts alleged, but allowed the plaintiffs to amend the plaint on payment of Rs. 150 as costs to the defendants, and remanded

EVIDENCE ACT (1872), S. 115—Conduct—Acceptance of benefit.

the case for re-trial. The defendants took the costs but filed a second appeal from the order of remand,

Held, that the appeal was not competent as the defendants acquiesced in the order passed by the Trial Court by accepting the costs awarded to them; 12 C. L. J. 556; 21 C. W. N. 232 and A.I.R. 1927 Mad. 1009, *Rel. on*; 31 P.R. 1907 (F.B.) and A.I.R. 1927 Lah. 771, *Dist.* (*Bhide, J.*). SOHAN LAL *v.* DHARIMAL ISHAR DAS **109 I C. 819= 10 L. L. J. 398=A. I. R. 1928 Lah. 813.**

———Person, not included in the cause-title but claiming to be party, and taking steps for securing some relief to himself—He is estopped from contending that he was not made a party. (*Srinivasa Ayyangar and Reilly, JJ.*). SUTHARSANA *v.* SAMARAPURI. **110 I.C. 837=1928 M. W. N. 634= A.I.R. 1928 Mad. 690.**

———Estoppel—Reversioners not succeeding in claiming property on prior occasions, as persons in possession alleged it to be trust property—The latter cannot subsequently deny the character. (*Phillips and Ramesam, JJ.*). PICHAI PILLAI *v.* LINGAM IYER. **108 I.C. 199= A. I. R. 1928 Mad. 268.**

———*Legatee cannot dispute testator's title nor can he set up title different from that contained in the will.*

One who obtains or accepts or retains possession of property under the will and who neither has, nor professes to have, any title thereto except under the will is estopped, as against any remainderman or other person claiming under the same will, from asserting that the testator was not entitled to such an estate in the property as he purported to devise or bequeath and generally from setting up any title to the property in himself which is independent of and adverse to the will, or any interest of a different kind from that which he would have taken if the property had passed by the will as it was impliedly represented by him to have passed. (*Pullan, J.*). MOHAMMAD ALI KHAN *v.* NISAR ALI KHAN. **109 I.C. 835= 1 L.C. 592=A.I.R. 1928 Oudh 67.**

———*Party to decree taking advantage of the decree cannot subsequently go behind it.*

Where a party to a decree passed on award files an execution application to enforce the decree by possession being awarded to him of the lands as provided in the award and obtains possession in execution proceedings of at least a part of that property, the maxim *allegans contrarria non est audiendus* applies and he having taken advantage of the decree by its enforcement cannot be allowed to play fast and loose with justice and go behind the decree: 24 All. 164; 21 C.W.N. 232 and *Tinker* v. *Hilder*, (1849) 18 L. J. Ex. 429, *Rel. on.* (*Wild, J. C. and Rupchand Bilaram, A.J.C.*). GHULLAMALLAH SHAH *v.* PAPURBAI. **112 I.C. 286= 23 S.L.R. 196=A.I.R. 1928 Sind 175.**

———Will—Legatee, having no title to property except under will, accepting the will—He cannot set up that the testator has a defective title nor can he claim title adverse to testator or other legatees. *Board* v. *Board*, L.R. 9 Q.B. 48, *Appl.* (*Mears, C. J. and Lindsay, J.*). GANGA DIN *v.* RAM PRASAD. **106 I.C. 20=26 A.L.J. 62=A.I.R. 1927 All. 642.**

———*Order setting aside* ex parte *decree—Plaintiff accepting costs—Effect.*

Where an order setting aside an *ex parte* decree has been passed and the plaintiff accepts costs and his pleader appears in Courts thereafter the plaintiff should be deemed to have accepted the order setting aside decree and the order will not be interfered with. (*Addison, J.*). S. BURDEN & CO. *v.* ARMY CANTEEN BOARD INDIA, SIMLA. **96 I. C. 782= A.I.R. 1926 Lah. 637.**

EVIDENCE ACT (1872), S. 115—Conduct—Adoption.

———Judgment-debtor requesting decree to be by instalments and acting upon it cannot subsequently object to it: A.I.R. 1923 Lah. 381, *Ref.* (*Jai Lal, J.*). FIELDING *v.* JANKI DAS & SONS. **95 I.C. 243=A.I.R. 1926 Lah. 465.**

———Gift by ostensible owners—Donee cannot afterwards deny right of donors to make gift: 42 Cal. 56, *Dist.* (*Wallace, J.*). K. JANAKI *v.* P. GOVINDAN. **85 I. C. 546=22 M.L.W. 113= A.I.R. 1925 Mad. 990.**

—S. 115—Conduct—Admission.

———Admission of liability under decree does not debar Court of Wards from challenging decree on ground that it was not validly obtained—(*Obiter*). (*Tek Chand and Tapp, JJ.*). PUNJAB COURT OF WARDS *v.* LALA KANWAR BHAN. **A. I. R. 1930 Lah. 798.**

———*Deed of further charge—Recital of earlier mortgages—Effect.*

Where a co-parcener executes a deed of further charge in which he recites earlier mortgage-deeds he should be inferred to have admitted their validity in every respect and he cannot be allowed subsequently to set up that the earlier deeds were for an excessive rate of interest. The rate of interest in any deed cannot be impugned by a co-parcener who was himself a party to that deed or must be deemed by his statements or conduct to have admitted the propriety of the rate. (*Ashworth and Misra, JJ.*). CHANDRIKA PRASAD *v.* NAZIR HUSSAIN. **92 I. C. 681= 13 O.L.J. 396=A.I.R. 1926 Oudh 306.**

—S. 115—Conduct—Adoption.

———Widow adopting with consent of her husband's collaterals—Collaterals not objecting to the adopted son taking his share by partition—Adopted son taking care of the widow till her death and redeeming mortgage by her husband—Collaterals are estopped from challenging adoption. (*Harrison and Dalip Singh, JJ.*). MUHAMMAD YASIN *v.* GHULAM MUHAMMAD. **96 I.C. 777 (Lah.)**

———*Widow recognising adoption by conduct cannot dispute its validity.*

When plaintiff's husband, a boy, was adopted his name and his house name was changed, he took the house name of the first defendant's husband and the name of his adopted father's father, and immediately after the adoption the first defendant performed his Upanayanam ceremony. Some years later the first defendant performed his marriage and also Grahapravesam ceremony and the adopted boy performed the shraddha for the first defendant's husband, and did not receive any of his natural family property, and the first defendant also asserted that she had her husband's authority to adopt at the time of the adoption.

Held, that these circumstances are quite sufficient to constitute an estoppel and therefore first defendant is estopped from denying the adoption. 34 A. 389 (P. C.,) *Foll.* (*Phillips and Venkatasubba Rao, JJ.*). VENKATA SUBBAMMA *v.* VENKAMMA. **77 I.C. 214=19 M.L.W. 83= 33 M.L.T. 191=1924 M.W.N. 1= A.I.R. 1924 Mad. 308=46 M.L.J. 52.**

———*Party can be estopped from denying adoption*

No doubt it is perfectly true that under the Hindu Law an adoption can only be effected by the due performance of certain religious ceremonies;

EVIDENCE ACT (1872), S. 115 — Conduct — Advantage not taken.

but the plaintiff in an action can be estopped by his own previous conduct from asserting that such valid and binding adoption had not in fact taken place. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. **69 I. C. 971= 20 A. L. J. 945=45 All. 169= A. I. R. 1923 All. 58.**

—S. 115—Conduct—Advantage not taken.

——Even if the compromise is beneficial to a party's interest, but he has not taken any benefit out of or under it, that compromise does not constitute an estoppel debarring him from challenging it. (*Mukerji, J.*). HRIDAY NATH *v.* NIRODA SUNDARI. **108 I. C. 44= A.I.R. 1928 Cal. 334.**

—S. 115—Conduct—Arbitration.

——The Court will not permit a party to lie by or act in an indecisive manner so as to obtain the benefit of an award if it is in his favour and endeavour to set it aside if it is not. (*Rupchand, A.J.C.*). C. & I. ENGINEERING CO. *v.* MALIK THAKURDAS MATHURADAS. **123 I.C. 234= A.I.R. 1930 Sind 79.**

——Where the defendant adduces evidence and acts as if the arbitrator is legally appointed and objects to the award only when it has gone against him he is estopped from questioning the validity of the appointment. (*Mukerji and Niamatullah, JJ.*). GAJADHAR *v.* CHUNNI LAL. **117 I.C. 344= 1929 A.L.J. 868=A.I.R. 1929 All. 559.**

——Agreement to refer not signed by a party but arbitrators' authority accepted by him—There is sufficient satisfaction and the party cannot subsequently challenge the validity of the award. A.I.R. 1926 All. 239, *Dist.* (*Zafar Ali and Jai Lal, JJ.*). KANNAYA LAL *v.* DAULAT RAM. **110 I. C. 302=A.I.R. 1929 Lah. 367.**

——Arbitration—Arbitrators having no jurisdiction—Mere appearance of the parties before them under protest and examining witnesses will not amount to waiver of objections as to jurisdiction or estoppel. (*Marten, C.J. and Blackwell, J.*). CHETANDAS *v.* RADHAKISSON. **104 I.C. 174= 29 Bom.L.R. 1087=A.I.R.1927 Bom. 563.**

——Award accepted and acted upon cannot be challenged. 42 Cal. 801 (P.C.), *Foll.* (*Kanhaiya Lal and Ashworth, JJ.*). KANHAIYALAL *v.* JANGI. **96 I. C. 39=24 A.L.J. 649= A. I. R. 1926 All. 527.**

—S. 115—Conduct—Change of plea.

——Where a person advances one plea and afterwards finds it prejudicial to him, he cannot by giving it up avoid its consequences. (*Devadoss, J.*). CHINNAN CHETTY *v.* V. VILATHAN. **106 I.C. 229=39 M.L.T. 415= 27 M.L.W. 30=A.I.R. 1928 Mad. 27.**

—S. 115—Conduct—Compliance with order.

——The fact that the plaintiffs paid without demur the small *ad valorem* Court-fee in pursuance of the order of an earlier date does not debar them from questioning the validity or illegality of the Court demanding *ad valorem* Court-fee when subsequently the Court demanded a much larger fee since a fresh cause of action accrued to the plaintiffs on the latter date when additional Court-fee was demanded. (*Jwala Prasad and Foster, JJ.*). MANI LAL *v.* DURGA PRASAD. **80 I.C. 667= 5 P.L.T. 425=1924 P. H. C. C. 254= 3 Pat. 930=A.I.R. 1924 Pat. 673.**

—S. 115—Conduct—Compromise.

——Plaintiff compromising suit on defendant's allowing property to be sold on certain conditions —Defendant cannot afterwards say that holding is

EVIDENCE ACT (1872), S. 115—Conduct—Execution of decree.

non-transferable. (*Das and Adami, JJ.*). NIDHI PARIDA *v.* KARUNAKAR PADHAN. **87 I.C. 250= 1 Pat. 153=A.I.R. 1922 Pat. 433.**

—S. 115—Conduct—Consent.

——A party cannot approbate and reprobate with knowledge of the facts, and if the husband or the wife once deliberately affirms the marriage, he or she cannot subsequently object to the marriage. Therefore, where a previous petition for declaring the marriage a nullity has been dismissed by consent of parties a second petition is not competent: *Lord Shelborne in G. v. M.*, (1885) A.C. 171 *Rel. on.* (*Marten, C.J., Crump and Blackwell, JJ.*). H. *v.* H. **110 I.C. 266=30 Bom. L R. 523= A.I.R. 1928 Bom. 279.**

—S. 115—Conduct—Construction of document.

——*Document executed with one intention cannot be utilised for another purpose.*

The executant of a document executed with one intention cannot by change of mind utilize that document for a transaction of a wholly different character.

Per *Devadoss, J.*—When a document is executed without the intention of conveying title by one person in favour of another, it cannot afterwards be used for the purpose of conveying the title merely because one of them changes his mind and wants the document to be operative. (*Odgers and Devadoss, JJ.*). KULANDAI VELU PILLAI *v.* VENKATARAYAR. **106 I.C. 652=39 M.L.T. 470= A.I.R. 1928 Mad. 25=53 M.L.J. 808.**

—S. 115—Conduct—Contract.

——After the right to get either rescission or reformation of the contract is barred, it is not competent to a party to a contract enjoying the benefit under it to say that he is not bound by one of its terms. (*Chakravarty, J.*). SASI KANTA ACHARJEE BAHADUR *v.* GENDA SHEIKH. **82 I.C. 970=A.I.R. 1926 Cal. 389.**

—S. 115—Conduct—Execution of decree.

——Decree-holder accepting deposit made in Court under protest—Decree-holder is not estopped from prosecuting appeal: A.I.R. 1923 P.C. 13, *Rel. on.* (*Tek Chand and Dalip Singh, JJ.*). KAIKABAD *v.* KHAMBATTA. **A.I.R. 1930 Lah. 26.**

——*Satisfaction of decree by surrendering a cross-decree—Effect.*

An involuntary act done by a person in pursuance of an order of the Court cannot operate as an estoppel against him and prevent him from enforcing a remedy given to him by law.

Where after filing an appeal the judgment-debtors satisfied the execution of the decree appealed against, partly by payment in cash and partly by surrendering their decree,

Held, that this act of the judgment-debtors does not amount to a recognition of the validity of the decree thus precluding them from impeaching it in appeal: 12 C. L. J. 556; 21 C. W. N. 232 and *Tinkler* v. *Hilder*, 18 L. J. Ex. 429, *Dist.* (*Shadi Lal, C. J. and Agha Haidar, J.*). ISHARDAS DHARAM CHAND *v.* BUTAMAL DURGADAS. **115 I.C. 67= A. I. R. 1929 Lah. 42.**

——Vendee taking out money deposited by pre-emptor does not estop him from challenging pre-emptor's right to pre-empt: 33 P. R. 1912 and 16 P. R. 1907, *Foll.* (*Sulaiman and Banerji, JJ.*). MT. KUDRAT-UN-NISSA BIBI *v.* ABDUL RASHID. **96 I.C. 543=48 All. 616=24 A.L.J. 779= A.I.R. 1926 All. 661.**

EVIDENCE ACT (1872), S. 115—Conduct—Execution of decree.

——*Execution of the claim allowed does not preclude plaintiff from appealing against the claim disallowed.*

When a party has derived any advantage and taken benefit under the order of the Court, he is to be deemed to have acquiesced in it and should not be allowed to challenge it at any subsequent proceeding or by way of appeal: 12 C. L. J. 556 and 21 C. W. N. 232, *Rel. on.* But where plaintiff sues defendant for a certain amount and the defendant admits the liability as regards a part of the amount and denies the rest of the claim and a decree is passed for the amount admitted to be due by the defendant, execution of the decree as regards the amount decreed does not preclude the plaintiff from appealing against the claim dismissed: 12 C.L.J. 556 and 21 C. W. N. 232, *Dist.* (*Suhrawardy and Mukerji, JJ.*). JOGESH CHANDRA *v.* FAZAL ALI. **95 I.C. 10=A.I.R. 1926 Cal. 960.**

——Appellant offering money deposited by respondent in lower Court, as security for costs—No estoppel is created. (*Lord Atkinson*). SARATKUMARI *v.* AMULYADHAN. **71 I.C. 632=17 M.L.W. 481=27 C.W.N. 629=25 Bom. L. R. 548=37 C. L. J. 501=1923 M. W. N. 392=32 M. L. T. 137=A.I.R. 1923 P.C. 13 (P C.).**

——Execution of a decree has never been held to estop the decree holder from appealing from it so far as it is against him. (*Wallis, C. J., Krishnan and Venkatasubba Rao, JJ.*). SUBBA RAO *v.* BALUSU BUCHI. **72 I.C. 292=1923 M.W.N. 533=47 Mad. 7=18 M.L.W. 61=A. I. R. 1923 Mad. 533=44 M.L.J. 534.**

—S. 115—Conduct—Execution proceedings.

——The parties to execution proceedings are governed by general law of estoppel. They cannot continue to raise the same plea over and over again. But if the plea has never been raised before, the principle of constructive estoppel does not apply to execution proceedings. Hence, the fact that without raising a certain plea of objection a party submitted to prior execution proceedings does not debar him from raising that plea as an objection to later execution proceedings. (*Jackson, J.*). N. C. LAKSHMIKUTTI AMMA *v.* MARIUTHUMMA THIHUMA. **82 I.C. 504=20 M. L.W. 649=35 M.L.T. 118=1924 M.W.N. 771=A.I.R. 1925 Mad. 127=47 M.L.J. 798.**

—S. 115—Conduct—Execution sale.

——Execution—Sale in purchase by decree-holders in lieu of decretal amount—One judgment-debtor entitled to interest in decretal amount—Conduct of parties showing purchase was only for benefit of decree-holders—Judgment-debtor is not entitled to any interest in the property. (*Sulaiman and Ryves, JJ.*). MAKHAN LAL *v.* SOHAN LAL. **87 I.C. 665=23 A.L.J. 257=A. I. R. 1925 All. 331.**

—S. 115—Conduct—Jurisdiction.

——Small Cause suit filed on regular side—Appeal—Want of jurisdiction cannot afterwards be pleaded. (*Dalal, J. C.*). MAHARAJ DIN *v.* BALBAHADDAR PRASAD. **85 I. C. 481=12 O.L.J. 265=2 O.W.N. 8=29 O. C. 14=A.I.R. 1925 Oudh 403.**

——Taking part in partition proceedings by Revenue Court—Party can afterwards deny Revenue Court's jurisdiction to proceed with partition. (*Ross and Sen, JJ.*). GURSAHAI MAHTON *v.* MUHAMMAD SAIYAD. **84 I.C. 151=2 Pat. L.R. Civ. 266=A.I.R. 1925 Pat. 137.**

EVIDENCE ACT (1872), S. 115—Conduct—Negligence.

—S. 115—Conduct—Land acquisition.

——*Declaration as to Government right to quarry for certain purposes—Owner receiving compensation on that basis—Purpose exhausted—Subsequent suit—No estoppel.*

Consequent upon a declaration under S. 6, Land Acquisition Act, 1894, that land was needed for a public purpose, *viz.*, quarries in connexion with certain constructions with an insertion in it of statement under S. 3 (i) under Land Acquisition (Mines) Act, 1885 excluding certain mines and making necessary reservation, the owner of the land claimed compensation for minerals or an express order excluding them from acquisition and the Judge to whom reference was made under S. 18 of the Act held that the minerals had not been acquired. The owner also claimed compensation for a special stone which had high commercial value lying under the land, part of which was leased to a stone company and some part was in the occupation of tenants. The Superintending Engineer made a fair estimate of the quantity of stone available which it would have been profitable to remove to the railway siding, which was made the measure of compensation allowed in the award under S. 11 for the total value of the entire quantity of the available stone. The amount awarded was accepted by the owner. On the completion of the proposed construction the owner gave notice to Government under S. 4 of the Act of 1885 of his intention to work the minerls of the land covered by the declaration. The right of the owner was denied and consequently the owner sued for possession of the sub-soil including stones and other minerals lying in, upon or under the land. The defence was that the compensation already granted included all the value of all minerals and stones lying in, upon or under the surface of the land acquired. It was not denied that the stones were minerals,

Held, that on the construction of the declaration and the subsequent conduct of parties the stones other than those required for construction of the proposed work vested in the owner and he was not estopped from claiming to work them by reason of the course adopted in the proceedings under the Land Acquisition Act. (*Ross and Chatterji, JJ.*). SECY. OF STATE *v.* GYANENDRA CHANDRA PANDE. **8 Pat. 742=A.I.R. 1930 Pat. 112.**

——Claimant is not estopped from showing proper value though he had shown less value in former proceedings of other nature. (*De Souza, A.J.C.*). N.H. MIRCHANDANI *v.* SPECIAL LAND ACQUISITION OFFICER, KARACHI. **101 I.C. 269=A.I.R. 1927 Sind 168.**

—S. 115—Conduct—Negligence.

——Where the plaintiff, by signing the transfer forms, and delivering the same and the share certificates to the brokers, who absconded without paying for the shares to plaintiff, placed them in a position to give a title to defendant, who was a *bona fide* purchaser for value without notice,

Held, whatever right he may have against the absconding brokers, plaintiff is estopped by his act from asserting any right to the shares: 15 A.C. 267, *Foll.* (*Kanga, J.*). FAZAL D. ALLANA *v.* MANGALDAS M. PAKVASA. **66 I. C. 726=46 Bom. 489=23 Bom. L.R. 1144=A.I.R. 1922 Bom. 303.**

EVIDENCE ACT (1872), S. 115—Conduct—No estoppel.

—S. 115—Conduct—No estoppel.

——The mere fact that a person attached the surplus sale proceeds of the execution sale under another decree in order to satisfy any decree obtained by him but did not proceed further cannot preclude him from claiming title to the property. (*B.B. Ghose, J.*). SURENDRANATH *v.* JABED ALI. **85 I.C. 747=A. I. R. 1926 Cal. 420.**

——Granting of lease of nazul for building purposes does not estop Municipal Committee from refusing permission to build. (*Findlay, O.J.C.*). MAROTRAO *v.* MUNICIPAL COMMITTEE, NAGPUR. **92 I.C. 796=A.I.R. 1926 Nag. 281.**

——Rent suit—Inclusion of a plot in the suit on objection by defendant—Subsequent suit to eject defendant from the plot—No estoppel is created. (*Das and Adami, JJ.*). RAM PRASAD SINGH *v.* RAMCHANDRA RAI. **81 I.C. 324=4 P.L.T. 730=A.I.R. 1924 Pat. 203.**

—S. 115—Conduct—Notice.

——Where after receiving notice of a previous burden a person takes a mortgage of a property and advances money, he must be considered to have thought the property worth the further advance subject to the previous burden: 28 All. 315, *Ref.* (*Dalal, J.*). BENI MISIR *v.* MAHABIR SUKLA. **A. I. R. 1930 All. 431.**

——Railways Act (9 of 1890), S. 77—Claim for damages for loss of goods—Notice given to one of the two railway companies and forwarded by it to the other—Latter company making enquiries in the matter and repudiating its liability—Absence of notice cannot be pleaded by the latter railway company: A.I.R. 1926 Lah. 253; A. I. R. 1922 Mad. 362 (F. B.) and 26 Bom. 669, *Dist.* (*Bhide, J.*) DHANPATMAL LOBHAMAL *v.* AGENT, B. B. & C. I. RY. CO. **110 I. C. 718=A. I. R. 1928 Lah. 438.**

—S. 115—Conduct—Omission to assent.

——*Landlord and tenant.*

The landlord succeeded in his suit for ejectment in the lower Courts and obtained possession. But the High Court reversed the decision on the technical ground that no proper notice to quit was given by the landlord. The tenants however did not claim restitution,

Held, that by accepting the landlord's possession as good the tenants impliedly surrendered the tenancy and by their failure to claim immediate possession they led the landlord into the belief that no proper notice to quit was necessary. They were therefore estopped from pleading that his possession was not lawful. (*Oldfield and Seshagiri Aiyar, JJ.*). PEDDI KAYILAKATH KUNNI *v.* THAYYIL KUNHAI AMMA. **13 M. L. W. 32= A.I.R. 1921 Mad. 144.**

—S. 115—Conduct—Omission to dissociate.

——Where during the pendency of a suit the minor becomes major, but the guardian continues to represent him and the parties continue the old state of affairs the guardian is liable for costs. (*Ramesam and Jackson, JJ.*). YELLAMA *v.* SURYANARAYANAMURTHY. **1929 M. W. N. 545= A. I. R. 1929 Mad. 782.**

—S. 115—Conduct—Omission to plead.

——Where plaintiffs allowed one *S* to join with them in a suit against another person and to obtain a decree as the son of a particular man without denying that he was the son of the man and had no right to sue, they will be estopped from disputing his paternity in a suit by them for possession of the property decreed. (*Martineau and Zafar Ali, JJ.*). SUNDAR SINGH *v.* SHAN SINGH. **80 I. C. 235= A.I.R. 1923 Lah. 630.**

EVIDENCE ACT (1872), S. 115—Conduct—Omission to object.

—S. 115—Conduct—Omission to object.

——*Attachment of decree—Rightful owner omitting to object—Other parties acting on such conduct—Effect.*

Where a person did by his omission to object to the attachment of the decree lead another party to believe that the decree was still the property of his judgment-debtor at the time of the attachment and to act on that belief in giving credit for the amount recovered by execution of the decree which he attached and in releasing the other debtors who were jointly liable under the decree in his favour from liability under that decree.

Held, that the person who omitted to raise the objection was estopped from denying that the judgment-debtor was still the owner of the decree attached at the time of attachment. (*Heald, O. C. J. and Chari, J.*). CO-OPERATIVE TOWN BANK OF PADIGON *v.* S. V. K. V. SHUNMUGAM PILLAY. **125 I.C. 365=8 Rang. 223=A.I.R. 1930 Rang. 265.**

——*Burden of proof.*

A part accepting the onus without demur cannot object at a late stage saying that burden was wrongly put on them. (*Zafar Ali and Bhide, JJ.*). PAKHAR DAS *v.* THAKUR DAS. **120 I. C. 168=31 P. L. R. 481= A. I. R. 1930 Lah. 213.**

——Person, in whose favour three mortgages on same property were executed, assigning second of them to another—Assignee suing making assignor *pro forma* defendant—Assignor not disclosing third mortgage by written statement—He cannot sue auction-purchaser on his third mortgage. (*Boys and Bennet, JJ.*). PITAMBAR DAS *v.* PUNNA. **115 I.C. 638=A.I.R. 1929 All. 511.**

——*Admission of additional evidence in appeal.*

In appeal, appellants were allowed to adduce further evidence on an issue of fact. The respondents did not take up their stand on the inadmissibility of such evidence but adduced further evidence to rebut the contention of the appellants,

Held: that the respondents could not complain of the allowing of evidence. (*Page and Mallik, JJ.*). FAZUR BANOO *v.* RAHIM BUX. **115 I.C. 184= 32 C.W.N. 1020=A.I.R. 1929 Cal. 26.**

——*Trial of Small Cause suit on original side.*

Where in a suit, instituted in a Small Cause Court, a question of title was raised and the suit was transferred to the original side for trial, and afterwards the issue of title was deleted but the suit was tried on the original side without any objection from the plaintiff, and further the objection was not also raised in the grounds of plaintiff's appeal to the High Court, the plaintiff would not be allowed to raise it at a later stage: A.I.R. 1922 Mad. 352, *Rel. on.* (*Odgers, J.*). RAMANUJA JEER SWAMIGAL *v.* SAMI NADAR. **119 I.C. 386=A.I.R. 1929 Mad. 525.**

——*Suit by minor without next friend—Failure to object after notice—Effect.*

If a defendant in a suit instituted by a minor without a next friend is aware or has received notice of the minority of the plaintiff and yet elects to proceed to trial and take his chance of obtaining a decree in his favour on the merits without raising any objection to, or issue upon, the maintainability of the suit and prefers the objection for the first time on appeal when the trial has gone against him he is estopped. 22 Cal. 270 and 19 Mad. 127, *Rel. on.* (*Page and Graham, JJ.*). MT. FULI BITU *v.* KHOKAI MONDAL. **111 I. C. 349= 55 Cal. 712=A.I.R. 1928 Cal. 537.**

EVIDENCE ACT (1872), S. 115—Conduct—Omission to object.

———Pre-emption—Sale after notice that co-sharers have a right of pre-emption—Before commencement of sale co-sharer claiming his right without protest by purchaser—Purchaser cannot subsequently resist the claim of the co-sharer. (*Page and Graham, JJ.*). MONORANJAN METRI *v.* FAZLAR RAHMAN. **103 .I.C. 823= A. I. R. 1927 Cal. 925.**

———Person entitled to challenge alienation present at mutation but failing to object is estopped. (*Fforde and Campbell, JJ.*). RAM SARUP *v.* RAM SARAN. **96 I.C. 915=A. I. R. 1926 Lah 650.**

———Where *P* allowed *S* to act as lambardar, knowing that he was not one, and that under the law he could not become one,

Held, *P* cannot be allowed to disown *S*'s acts by contending that he was not a lambardar at all. (*Prideaux A.J.C.*). RAMRAO *v.* GHULARAM. **95 I.C. 987=8 N.L.J. 195=A.I.R. 1926 Nag. 188.**

———Where two members of a Hindu joint family mortgaged property and there was a mortgage-decree after which one of the mortgagors died without issue and in the proceeding for final decree one of his brothers not a party to the mortgage had been made a party,

Held, that as it was legally open to him to plead that he claimed under independent title and should not be made a party to the final decree and as he had not done so he was bound by the decree and could not be plaintiff in a subsequent suit to set aside the decree. (*Daniels, J.*). BALAKRAN LAL *v.* MALIK NAMDAR. **78 I.C. 637= 5 L. R. A. Civ. 279=A.I.R. 1924 All. 873.**

———Where a party failed to object to a wrong order of a Court and thus deprived the opponent of certain remedies open to him if the party had objected, he cannot afterwards raise that objection. (*Walmsley and Mookerjee, JJ.*). JOGUNNESSA BIBI *v.* SATISH CHANDRA BHATTACHARYA.

83 I.C. 438=39 C.L.J. 434=28 C.W.N. 559= 51 Cal. 690=A.I.R. 1924 Cal. 633.

———*Agreement—Property divided in pursuance of —Sons of a party to agreement.*

Where the sons of the cousin of *S* contested the validity of an arrangement by which the property of *S* was divided between the cousins and his daughters, and the parties remained in possession for over 14 years under the arrangement,

Held, having been in possession for 14 years after their father's death who was a party to the agreement, the sons were estopped. 40 All. 487, *Foll.* (*Ryves and Gokul Prasad, JJ.*). BAHADUR SINGH *v.* RAM BAHADUR. **71 I.C. 405=21 A.L.J 140= 45 All. 277=4 L.R.A. (Civ.) 105= A.I.R. 1923 All. 204.**

—S. 115—Conduct—Ordinary course of business.

———Estoppel by conduct—Promissory note by Bank not specially providing for compound interest—Bank keeping current accounts at compound interest—Compound interest should be paid by Bank and also by Directors when they guaranteed payment. (*Harrison and Zafar Ali, JJ.*). BHARAT NATIONAL BANK, LTD., DELHI *v.* BANARSI DAS. **83 I.C. 190=5 Lah. 129= A.I R. 1924 Lah. 531.**

—S. 115—Conduct—Promise under inducement.

———Oral promise of gift of land to Municipality after latter had already constructed road on the land—Donor is not estopped from denying gift. (*Shah and Hayward, JJ.*). KUVERJI KAVASJI *v.* MUNICIPALITY OF LONAVULA. **45 Bom. 164= A.I.R. 1921 Bom. 198.**

EVIDENCE ACT (1872), S. 115—Conduct—Reversioner.

—S. 115—Conduct—Recognition of agency.

———Contract by agent—Principal fully recognising his authority cannot subsequently question it. (*Broadway and Abdul Raoof, JJ.*). MOSSAJEE AHMAD & CO. *v.* ADMR. GENL. OF BENGAL. **60 I.C. 739=3 L.L.J. 265= A.I.R. 1921 Lah. 48.**

—S. 115—Conduct—Representation.

———Plaintiff causing defendant to repair a well on the understanding that defendant should be entitled to use the water of the well as easement—No registered deed executed granting easement—Plaintiff is estopped from questioning defendant's right. (*Shah and Hayward, JJ.*). ANANTHA *v.* GANU. **45 Bom. 80=A.I.R. 1921 Bom. 417.**

—S. 115—Conduct—Resiling.

———*Decision invited on an issue—Jurisdiction cannot be questioned later.*

A party who has insisted upon the trial of an unnecessary issue in a case cannot at the stage of appeal be allowed to get rid of the adjudication on that issue by urging that it should not have been investigated. Neither party who has taken the chance of a favourable decision, when defeated, can ask reversal on the ground that the issue was not properly triable in that action. 33 Cal. 425; 9 N.L.R. 38; 9 W. R. 338 and 3 M. I. A. 229 (P.C.) and A.I.R. 1924 P.C. 144, *Foll.* (*Kinkhede, A.J.C.*). RAGHUBARPRASAD *v.* SAHOO. **89 I.C. 1009= A.I. R. 1926 Nag. 164.**

—S. 115—Conduct—Reversioner.

———Though transfer of his interest by a reversioner is void, he may, by becoming a party to a compromise and by taking the benefit of the compromise, be estopped from claiming as a reversioner: 15 Cal. 556, *Foll.*; A. I. R. 1918 P.C. 70; 33 All. 356 and 41 All. 611, *Ref.*; A.I.R. 1917 P. C. 95, *Dist.* (*Dalal, J.*). NAKCHED CHAUDHARI *v.* SUKHDEO CHAUDHARI. **124 I.C. 714= A. I. R. 1930 All. 430.**

———When a next reversioner relinquishes his rights for consideration, he cannot be permitted to go back upon his relinquishment: A.I.R. 1917 P.C. 95, *Dist.* (*Dalal, J.*). BENI MADHO *v.* SHAMBHU NATH. **114 I.C. 908=9 L.R.A. Rev. 180= A.I.R. 1929 All. 196.**

———Reversioners challenging alienation by widow—Widow living—Reversioners cultivating land under alienee and paying rent to him, taking contribution from him for improvements and keeping silent when he paid a mortgagee of last male-holder—Facts do not amount to admission of alienee's title. (*Harrison and Tek Chand, JJ.*). SULTAN BHAN SAHIB *v.* PIRA. **111 I.C. 247= A.I.R. 1928 Lah. 6.**

———A reversioner, who is a party to and is benefitted by a transaction entered into by a Hindu widow, is precluded from questioning any part of it, and his sons cannot set it aside especially when he did not do so in his lifetime: A. I. R. 1923 Bom. 471, *Affirmed.* (*Lord Sinha.*) RAMGOWDA ANNAGOWDA PATIL *v.* BHANSAHEB.

105 I.C. 708=54 I.A. 396=29 Bom. L.R. 1380= 32 C.W.N. 88=27 M.L.W. 140=39 M.L.T. 250= 1927 M.W.N. 736=4 O.W.N. 876=46 C.L.J. 267= 52 Bom. 1=A.I.R. 1927 P.C. 227= 53 M. L. J. 350 (P.C.).

———Reversioner entering into compromise amounting to settlement of doubtful claim of property to which he has a right of succession is estopped from claiming the property in contravention of the terms of the compromise.

EVIDENCE ACT (1872), S. 115—Conduct—Reversioner.

(*Sulaiman and Boys, JJ.*). MOTI SHAH *v.* GHANDHARP SINGH. **96 I.C. 595=48 All. 637=24 A.L.J. 873=A.I.R. 1926 All. 715.**

———Agreement by next reversioner with the remote reversioners during widow's lifetime and with her consent to divide properties—Possession given under the agreement continuing up to the widow's death—Next reversioner cannot challenge the agreement on widow's death. 40 All. 487, *Appl.* (*Phillips, J.*). SAMI NAIDU *v.* SITARAMAYYA. **91 I.C. 359=22 M.L.W. 716=A.I.R. 1926 Mad. 254.**

———Reversioner accepting a mortgage of the expectancy from other reversioners is not estopped from claiming a share in the property mortgaged to him. (*Raza, J.*). DEO KALI *v.* RANCHOOR BUX. **92 I. C. 19=13 O. L. J. 208=A I. R. 1926 Oudh 253.**

———Joint conveyance by widow and next reversioner of their absolute interest—Reversioner is estopped from challenging the transaction. (*Suhrawardy and Cuming, JJ.*). AMAR KRISHNA DE *v.* RAJENDRA KUMAR DE. **87 I.C. 790=A.I.R. 1925 Cal. 1205.**

———Sale by Hindu widow—Reversioner approving—Widow's daughter succeeding—Daughter transferring her rights to Reversioner as such—Reversioner cannot question sale by widow. (*Venkatasubba Rao, J.*). KAMA SASTRI *v.* T. KANNAMMA. **88 I.C. 765=1925 M.W.N. 495=A.I.R. 1925 Mad. 638=48 M.L.J. 284.**

———Reversioner acting as the widow's attorney and attesting deed by her will be estopped from disputing it. (*Le Rossignol and Wilberforce, JJ.*). ARORA *v.* SHIVDEO SINGH. **4 L.L.J. 45=A.I.R. 1922 Lah. 61.**

———Limited owner making family arrangement—Reversioner obtaining possession of portion of estate—Reversioner is estopped from claiming as such afterwards. (*Lindsay, J. C.*). JOGESHAR *v.* BHUSHAN. **24 O. C. 5=A.I.R. 1921 Oudh 134.**

—S. 115—Conduct—Silence.

———Co-sharer standing by and allowing purchaser to think that sale is free from incumbrances—He cannot later on assert that it was not so (*Greaves and Cuming, JJ.*). JABED ALI *v.* SURENDRANATH. **90 I. C. 333=42 C. L. J. 477=A. I. R. 1926 Cal. 351.**

—S. 115—Conduct—Sufficiency of.

———No actual verbal representation is necessary to give rise to estoppel. It is quite enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. 19 I.A. 203, *Foll.* (*Raymond and Madgavkar, A.J.Cs.*). AZIZULLAH KHAN *v.* GHULAM HUSSAIN. **80 I. C. 994=17 S. L. R. 63=A. I. R. 1924 Sind 97.**

———Verbal representation is unnecessary to give rise to estoppel. It is enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. (*Raymond and Madgavkar, A. J. Cs.*). AZIZULLAH KHAN *v.* GHULAM HUSSAIN. **80 I C. 994=17 S.L.R. 63=A.I.R. 1924 Sind 97.**

—S. 115—Conduct—Termination of agency.

———After a principal has refused to indemnify an agent in the future in a speculative business committed to that agent, that principal cannot be heard to say that the agency subsisted. *Keech* v. *Sandford* and Ch. L. C. 635 and 19 Beavon 356; 19 Ves. 144, 18 L. J. Ch. 288; De Gm. and Or. 787, *Dist.*; McNaughten's Select Cases in Ch. 29; 1900 A.C.

EVIDENCE ACT (1872), S. 115—Consent.

293 and 2 H. and T. W. 224, *Foll.* (*Dawson-Miller, C.J., Mullick and Foster, JJ.*). HARIHAR PRASAD SINGH *v.* MAHARAJ KESHO PRASAD SINGH. **93 I. C. 454=5 P. L. T. Sup. 1=A. I. R. 1925 Pat. 68 (F.B.).**

—S. 115—Conduct—Miscellaneous.

———*A party cannot take advantage of an event brought about by his own act or omission.*

A person who has deliberately brought about a state of affairs, should not be allowed to take exception to that state of affairs and use that changed state for his own advantage.

In the Articles of Association of an Insurance Company, it was provided that the meeting of the policy-holders was to be held in the registered office of the company. The directors of the company refused permission to hold the meeting in company's premises. The meeting was then held at another place,

Held, that the meeting was perfectly regular the change of venue in this case having been caused by the company itself: *New Zealand Shipping Co.* v. *Society des Atelliers*, (1919) A. C. 1 and *Queshel Forks Gold Mining Co., Ltd.* v. *Ward*, (1920) A. C. 222, *Foll.* (*Beasley, J.*). SUBRAMANIA IYER *v.* UNITED INDIA LIFE INS. CO. **114 I.C. 636=A.I.R. 1928 Mad. 1215=55 M.L.J. 385.**

———A person who deliberately, by his own act, got the name of another entered as owner of half the property cannot subsequently plead that he was the owner of the whole property. (*Ryves and Daniels, JJ.*). MATHURA PROSAD *v.* MT. ANANDI KUNWAR. **74 I.C. 911=21 A.L.J. 498=4 L.R.A. Civ. 555=A.I.R. 1924 All. 63.**

—S. 115—Consent.

——— *Adoption.*

Where, in a dispute regarding family property, settlement was effected between *B* and *W* (a female member) and property was partitioned between them and *B* agreed that *W* would be at liberty to adopt any person as her son and in pursuance of the compromise between them *W* adopted a son,

Held, that whatever the legal position as regards the validity of the adoption may be, *B* is estopped from questioning the adoption by *W*. 34 All. 398 (P.C.) and 15 Mad. 486, *Rel. on.* (*Bhide, J.*). MT. ICHHNUN *v.* BANWARI LAL. **114 I.C. 711=A.I.R. 1929 Lah. 16.**

———*Civil case.*

Irregular mode of recording evidence can be validated by consent—Party consenting is estopped. (*Dalip Singh, J.*). YUSAF ALI HAKIMJI *v.* MD. DIN & SONS. **99 I. C. 681=A.I.R. 1927 Lah. 132.**

———Contract—One party agreeing to abide by the decision of the other—He must accept the decision unless it is arbitrary or unjust. 5 Mad. 173, *Rel. on*; (*Rupchand Bilaram and Lobo, A.J.Cs.*). BURMA OIL CO. *v.* NARAINDAS DAYALSING. **104 I. C. 185=A. I. R. 1927 Sind 253.**

———When a person appeared at the time of the mutation in respect of the sale in dispute and expressed his consent to it he cannot subsequently come forward and impugn it, (*Shadi Lal and Martineau, JJ.*). MAHOMED UMER *v.* WALI. **99 I.C. 752=2 L. L. J. 306.**

———By consenting to the order of reference to arbitration and extension of time, the party is not estopped from objecting to the continuance of the proceedings *ad infinitum* or after they have proved themselves incorrigible. (*Rankin, J.*). ROBINDRA DEB MANNA *v.* JOGENDBA DEB MANNA. **80 I.C. 459=27 C.W.N. 420=A. I. R. 1923 Cal. 410.**

EVIDENCE ACT (1872), S. 115—Consent.

———Lease—Lessor's consent to allow permanent construction—Will estop him from subsequently disputing the permanent nature of the lease. (*Dawson-Miller, C. J. and Miller, J.*). SIR L. E. RALLI *v.* A. H. FORBES. **67 I. C. 744= 1 Pat. 717= 3 P. L. T. 467= 1922 P.H.C.C. 209=A.I.R. 1922 Pat. 258.**

———The doctrine of estoppel applies to the case of a Ghatwal who has himself granted a permanent lease and he cannot allege that the *ijara* did not create a permanent right. (*Coutts and Macpherson, JJ.*). KANGALI CHARAN MUKERJI *v.* SURJA NARAIN SAH. **65 I. C. 303=1922 P.H.C.C. 90= 6 P. L. J. 687=A. I. R. 1922 Pat. 161.**

—S. 115—Consent decree or order.

———A consent order raises an estoppel as much as a decree passed *in invitum*. 36 Bom. 283, *Foll.* (*Adami and Chatterji, JJ.*). DEO LAL *v.* BINDESHWARI NARAYAN. **120 I. C. 776= 10 P. L. T. 469= A. I. R. 1929 Pat. 440.**

———*Petition of compromise in probate Court—Admissions in—Regular suit for possession—No estoppel.*

Held, that a probate Court has no jurisdiction to deal with title to property covered by a testamentary instrument, that at the worst the plaintiff abandoned her claim to the estate of her husband but that abandonment, whether orally stated or recited in the petition, could not destroy her title, nor can estop her from filing a suit for possession of her husband's share in the joint property. (*Mookerjee and Rankin, JJ.*). SRIMATI HARIDASI DEBI *v.* P. B. MOOKERJEE. **78 I. C. 14= A. I. R. 1924 Cal. 905.**

———A compromise as to possession in proceedings under S. 145, Cr. P. C., could not be deemed to have the effect of estoppel. (*Banerji and Gokul Prasad, JJ.*). GOPI DASS *v.* MADHO LAL. **76 I. C. 527= 20 A. L. J. 932=45 All. 162= A. I. R. 1923 All. 77.**

—S. 115—Different subject.

———*Hindu Law—Adoption—Agarwalla adoption—Brahminical adoption falsely set up—Acts and representations regarding former cannot create estoppel as to latter.*

The parties were Agarwallas and the adoption was made in the manner customary among the Agarwallas. The story of a regular Brahminical adoption of the same boy previous to the Agarwalla adoption was invented with the object of giving to latter adoption the rights of collateral succession. The acts and representations of the plaintiffs which were set up as estopping them from questioning the adoption related to the Agarwalla adoption,

Held, that the plaintiffs were not estopped from questioning the adoption and denying that the adopted son acquired any rights of collateral succession by the adoption. 19 W.R. 12 (P.C.), *Foll.* and 34 All. 398 (P.C.), *Dist.* (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I.C. 357=1925 M.W.N. 692= 30 C.W.N. 601=23 A.L.J. 273=2 O.W.N. 335= 21 N.L.R. 50=52 Cal. 482=6 L.R P.C. 97= 27 Bom. L.R. 837=52 I.A. 231= A.I.R. 1925 P.C. 118=49 M.L.J. 173 (P.C.).**

———Occupancy holding—Portion sold under mortgage decree—Raiyat is not estopped from objecting to sale under money-decree. (*Das and Adami, JJ.*). DEWAN RAM CHOUDHURY *v.* AHIL MUNDER. **62 I.C. 55=2 P.L.T. 341=6 P.L.J. 202= 1921 P.H.C.C. 197=A.I.R. 1921 Pat. 4.**

—S. 115—Effect of.

———*Rule of estoppel is personal—Adopted son does not get a status merely by this doctrine.*

EVIDENCE ACT (1872), S. 115 — Equitable estoppel.

A rule of estoppel is purely personal against the person estopped and cannot create any substantive right *in rem* except against the person estopped or his personal representative. By the operation of this rule, no status arises in favour of the defendant as an adopted son for all purposes under the Hindu law. (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI. **110 I.C. 665=50 All. 885=26 A.L.J. 1106. A.I.R. 1928 All. 459.**

———Estoppel being simply a principle of the law of evidence, it creates no substantive rights of an absolute character, but can only operate to close the mouths of certain people who have acted in a certain way from setting up what may be true facts of the case. (*Coutts-Trotter, C.J.*). J. PARASURAMAYYA *v.* J. VENKATARAMAYYA. **103 I.C. 855= 1927 M.W.N. 311=A.I.R. 1927 Mad. 777.**

—S. 115—Election.

———*Double remedy open to creditor—One chosen—Creditor is not estopped from re-electing his remedy.*

Where the creditors have a double remedy open to them and they intentionally elect their remedy against the joint estate of the firm, there is nothing to estop them from re-electing their remedy against the separate estate of the individual partners. *Ex-parte Adamson, In re. Collie*, (1878) 8 Ch. 807, *Rel. on.* (*Rupchand Bilaram, A.J.C.*). AHMAD HAJI *v.* MACKENZIE STUART & CO. **105 I.C. 366= A.I.R. 1928 Sind 40.**

———*Election—Remedies — After election second remedy is lost.*

When a plaintiff has the choice of suing two persons on the same cause of action it may happen that if he elects to sue one and obtain a decree he is estopped from suing the other but if he obtained a decree on a mortgage under the belief that his mortgagor acted in a personal capacity but afterwards finds he was acting in a fiduciary capacity he is not debarred from suing the right person. (*Ramesam and Jackson, JJ.*). AMMAKANNU AYI *v.* MURUGAYYA ODAYAR. **83 I.C.324= 20 M.L.W. 207=1924 M.W.N. 623= 47 Mad. 850= A.I.R. 1924 Mad. 716= 47 M.L.J. 85.**

———*Election of remedies.*

Person taking recourse to special procedure cannot fall back upon general one but must conform to the special only. (*Kinkhede, A. J. C.*). LABHUA SAO *v.* CHETAN. **79 I.C. 161= 20 N. L. R. 145=A.I.R. 1924 Nag. 275.**

—S. 115—Equitable estoppel.

———Donor's heirs challenging gift on the ground of insanity of donor—Donor and donee both made defendants and they successfully contesting suit—Subsequent suit by donor to cancel gift on the same ground is not barred nor does equitable estoppel arise. Civil P. C., S. 11. (*Iqbal Ahmad, J.*). KAMPTA PRASAD MISIR *v.* BHULAI MISIR. **100 I.C. 527=A.I.R. 1927 All. 365.**

———Person without right building in spite of remonstrance by owner—Equitable Estoppel laid down in 21 A. 490 (P. C.) does not apply. (*Daniels, J.*). MAOLA *v.* BAHORU. **A.I.R. 1923 All. 367.**

———*Essentials.*

It is not enough for the defendants to show that the plaintiff landlord stood aside and allowed the structures to be erected. One of the essential elements of equitable estoppel is that the person who sets up that estoppel must have acted in good faith and must have been under the belief that he

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had a right to put up the buildings. (*Lindsay, J.*). MT. DULARI KOER *v.* SALIG RAM. **66 I.C. 603= A.I.R. 1922 All. 210.**

—**S. 115—Execution sale.**

———In connexion, with the sale of immovable property subject to an incumbrance the auction-purchaser is entitled to contest the factum and the validity of the incumbrance. There is no rule of estoppel which can prevent him from impeaching the charge on the property : 31 All. 583 (P.C.) ; A. I. R. 1921 All. 79 and 33 Bom. 311 and 35 Bom. 275. *Ref.* (*Shadi Lal, C. J. and Hilton, J.*). MT. MANKAUR *v.* ISHARDAS. **120 I.C. 162=11 Lah. 90= 31 P.L.R. 358=A.I.R. 1930 Lah. 40.**

———Landlord and Tenant—Suit for rent by landlord co-sharer against tenant—Money-decree passed—Decree executed as rent decree and holding sold without objection—On partition holding allotted to another co-sharer—Suit by co-sharer for recovery of possession alleging purchaser to be landlord's *benamidar*—Co-sharer judgment-debtor is not estopped from setting up that decree was only money-decree and could not be executed as rent decree. (*Das and Fazl Ali, JJ.*). BHAGWANDUTT SINGH *v.* LACHMI NARAYAN SINGH.

119 I.C. 882=A.I.R. 1930 Pat. 150.

———Judgment-debtor not objecting to low price advertised in proclamation cannot complain of it after sale. (*Wallace and Madhavan Nair, JJ.*). RAMANATHAN CHETTIAR *v.* RAMANATHAN CHETTIAR. **117 I.C. 705= 30 M. L.W. 995=A.I.R. 1929 Mad. 275.**

———*A decree-holder, failing to mention charges in his favour is estopped from setting up such charges.*

Where a decree-holder fails to mention in the sale proclamation, as required by O. 21, R. 66, any encumbrances or charges in his favour, he is estopped from denying that the property was sold free from such charges : 15 Mad. 412, *Foll.* ; see also 47 Cal. 446. (*Curgenven, J.*). GIRIYA SHETTI *v.* ANANTHAMMA. **100 I.C. 493=38 M.L.T. 49= A.I.R. 1927 Mad. 1142=52 M.L.J. 222.**

———Where the owner of a property sold in execution as the property of the judgment-debtor, stands by and allows the purchaser to buy it, he cannot question the sale and claim the property as his own. (*Campbell, J.*). JHANDA SINGH *v.* HARMAN SINGH. **94 I.C. 75=27 P. L.R. 260= A.I.R. 1926 Lah. 415.**

———*Sale proclamation—Omission to mention encumbrance—Knowledge of auction-purchaser — No estoppel.*

Where a property subject to a mortgage is sold in Court auction, and the auction-purchaser has knowledge of the mortgage but through Court's mistake the sale proclamation does not mention that the property is subject to the mortgage, the mortgagee is not estopped from enforcing his mortgage as against the auction-purchaser. Further, where the mortgage is one with possession, possession itself is sufficient notice to everybody concerned of the incumbrance and if the auction-purchaser is to be deemed in law to have had notice of the mortgage, no plea of estoppel can be sustained. It is a settled rule of law that if a person either knows a certain fact, or is presumed in law to know a certain fact, the principle of estoppel cannot apply. 30 Cal. 539, *Ref.*; 22 Bom. 686, *Dist.*; 36 C. 328, *Ref.* (*Misra, J.*). TULLO *v.* INDAR KUNWAR. **93 I.C. 873=13 O.L.J. 154= 3 O.W.N. 346=A.I.R. 1926 Oudh 330.**

———Where a person purchases certain property in execution of a money decree expressly subject to

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a mortgage on it and admits the existence of the mortgage it is not subsequently open to him to challenge the mortgage in a suit, on the mortgage, by the mortgagee. A.I.R. 1923 Nag. 282 and 47 Cal. 446, *Rel. on.* (*Findlay, Offg. J.C.*). GOVINDRAO *v.* HIRCHAND. **95 I.C. 563=A.I.R. 1926 Nag. 446.**

———Execution of decree—Decree-holder's agent endorsing that property, need not be sold—Decree-holder is not estopped from executing, against the property. (*Jackson, J.*). PARTHASARADHI APPA RAO *v.* MD. ABDUL WAHEB SAHEB. **82 I.C. 434= A.I.R. 1925 Mad. 270.**

———*Failure to object.*

A judgment debtor who might have raised objections to a sale in execution of a decree against him but has refrained from doing so or who might have appealed against the order for sale, has no right after the sale has been carried out to prefer an objection that the property sold was not legally saleable. 29 All. 612 and 28 Bom. 125, *Foll.* (*Kanhaiya Lal, J.*). MUKAT SINGH *v.* MISRA PARAS.

79 I.C. 106=A. I. R. 1924 All. 726.

———*Purchaser at execution sale is bound by the estoppel against judgment-debtor.*

Where there was a sale in execution of a mortgage decree in 1907 but there was a clerical error in the description of the properties both in the mortgage as well as in the decree, and there was a sale of the same properties in 1908 in execution of a money decree.

Held, (i) that the mortgagor would be estopped from denying the title of the mortgagee and could not take advantage of the clerical error to nullify the security granted by him (ii) that the purchaser in execution of the money decree purchased only the right, title and interest of the judgment-debtor and is in no better possession than the judgment-debtor, and was bound by the estoppel against him. (*Mookerjee and Cuming, JJ.*). NANDI LAL AGRANI *v.* JOGENDRA CHANDRA DUTTA. **70 I.C. 960= 36 C.L.J. 421=A.I.R. 1923 Cal. 53.**

———Mortgage pending attachment notified in sale proclamation—No notice to decree-holder—Latter is not estopped from contesting validity of mortgage. (*Stuart and Sulaiman, JJ.*). ROSHAN LAL *v.* LALLU. **68 I.C. 790=44 All. 715= 20 A.L.J. 722=A.I.R. 1922 All. 443.**

———Property sold in execution as belonging to one judgment-debtor—Others not objecting, cannot afterwards sue for their share in the same they are estopped. *T. R. Arunachellem Chetti* v. *V. R. R.*, 16 A. P. 171 ; 12 Mad. 19 ; *M. A. R. Arunachellam Chetti and Olpherts* v. *Mahabir Prasad Singh*, L.R. 10 I.A. 25 ; 9 Cal. 656, *Foll.* (*Lyle, A.J.C.*). ABDUL RAZAK *v.* MUHAMMAD HAJJAM. **67 I.C. 797=9 O.L.J. 131=A.I.R. 1922 Oudh 11.**

———Mortgagee bringing property to sale in execution of simple money decree without disclosing mortgage—He is estopped from setting up mortgage against auction-purchaser. (*Brown, A.J.C.*). MAUNG KYIN PEW *v.* MA. PWA ME.

64 I.C. 953=4 U.B.R. 62.=A.I.R. 1922 U.B. 1.

———C. P. Tenancy Act (1883), S. 42, requiring express words for passing *sir* rights—Express words not used, by agreement between the parties who wanted the question to remain open—Vendor cannot plead the statute as objection to vendee's claiming those rights. He is estopped. (*Lord Buckmaster.*) GULAB SINGH *v.* BALLABHDAS.

61 I.C. 769=48 Cal. 591=48 I.A. 220= 19 A.L.J. 361=34 C.L.J. 1=26 C.W.N. 938= 14 M.L.W. 228=1921 M.W.N. 310=17 N.L.R. 88= A.I.R. 1921 P.C. 13=40 M.L.J. 418 (P.C.).

EVIDENCE ACT (1872), S. 115—Executor.

—S. 115—Executor.

———An executor who has entered upon his duties as such is estopped from pleading immunity from his obligation as executor, on the ground that no probate has been taken out by him. 34 M. 211, *Ref. to.* (*Ramesam and Cornish, JJ.*). NAMBERUMAL CHETTI *v.* VEERAPERUMAL PILLAI.
59 M.L.J. 596.

—S. 115—Fraud.

———Fraud committed upon creditors—Judgment-debtor cannot claim ownership of house (subject of fraud) or equitable interest in sums spent for building it. (*Ramesam and Jackson, JJ.*). SUBHA RAO *v.* VEERANJANEYASWAMI.
A.I.R. 1930 Mad. 298.

———*Fraud upon registration land.*

Where the parties intended to hoodwink the Sub-Registrar by entering a piece of property within his jurisdiction in the sale-deed, in order to give that officer jurisdiction, the parties contemplated a fraud on the law of registration and so should not be granted any relief in a Court of justice. (*Mukerji, J.*). RAM KRISHNA *v.* ANAND KRISHNA.
118 I.C. 589=A.I.R. 1929 All. 578.

———It is not open to a party to plead his own fraud against another, not a party to the fraud. (*Sulaiman and Kendall, JJ.*). RAM LAL *v.* HARPAL.
115 I.C. 113=1929 A.L.J. 423=A. I. R. 1929 All. 237.

———A participator in fraud, when the fraud is effected, cannot impeach the transaction on the ground of such fraud. 6 Bom. 703 and 11 Bom. 708, *Ref.* (*Fawcett, Ag. C.J. and Murphy, J.*). KONDI RAVJI *v.* CHUNI LAL RUPCHAND.
113 I.C. 229=53 Bom. 75=30 Bom. L.R. 1539=A. I. R. 1929 Bom. 1.

———Party giving a particular form to a document for avoiding stamp duty cannot take aid of the principle that deeds and contracts of the people of India ought to be liberally construed. 40 P.R. 1913, *Dist.* (*Tek Chand, J.*). MATU MAL *v.* BANARSHI DAS.
108 I.C. 593=A.I.R. 1928 Lah. 678.

———Unless a person is found guilty of either an overt act or of an act of omission which is likely to induce the other side to believe that he is entitled to commit the particular act complained of, there can be no question of estoppel. Plea of estoppel can be maintained only if the conduct of the person against whom estoppel is alleged, is found to be fraudulent. 21 All. 496 (P. C.); 30 Cal. 539 (P.C.), *Foll.*; A.I.R. 1927 Oudh 66, *Rel. on.* (*Gokaran Nath Misra, J.*). RAM DATT *v.* CHHOTAK.
106 I.C. 244=3 Luck. 133=4 O W.N. 1019=9 L.R.A. Rev. 336=A.I.R. 1928 Oudh 23.

———*Collusive decree.*

Where a person permits a collusive decree to be passed against him he and his representatives cannot thereafter be able as against the decree-holder, to assert the invalidity of such decree, although the decree is open to be impeached by a creditor. 11 Bom. 708, *Foll.* (*Mears, C. J. and Dalal, J.*). DARHARI LAL *v.* MAHBUB ALI MIAN.
101 I.C. 513=49 All. 640=25 A.L.J. 497=A. I. R. 1927 All. 538.

———*Fraud of the mortgagor.*

It is no answer to an innocent plaintiff, seeking to recover money which has been paid by him through deceit by which the plaintiff was induced to enter into an invalid transaction, to say that the transaction being invalid, no action lies. Such a suit is not based upon the transaction. It is based upon the fraud of the defendant and is bound to succeed. (*Walsh and Pullan, JJ.*). SHAHZAD SINGH *v.* NARAIN KURMI.
101 I.C. 257=25 A.L.J. 37=A.I.R. 1927 All. 190.

EVIDENCE ACT (1872), S. 115—Inconsistent pleas.

———*Party to fraud.*

Where the plaintiff succeeded in carrying out the fraud by executing a sale-deed of his property he is precluded from putting forward his own title to the property by taking advantage of his own fraud. 36 C. 551 (P.C.), *Foll.* (*Gokul Prasad, J.*). LACHMAN DAS *v.* MULCHAND.
71 I.C. 441=A.I.R. 1923 All. 411.

———*One cannot take advantage of his own wrong or that of his predecessor.*

Where it is necessary for a party who wishes to establish a certain state of things, in order to do so to set up his own wrong doing, he will not be allowed to do so An adopted son who merely takes from the adoptive father can be in no better position than the adoptive father himself and he will not be allowed to set up that his adoptive father's consent was obtained by a promise of corrupt payment. The principle *Nemo allegans tur pitudinem suam est adiendus* is applicable in India. 32 M.L.J. 484 and 31 Bom. 305, *Foll.* (*Schwabe, C. J. and Coutts-Trotter, J.*). PARTHASARATHY REDDI *v.* KANDASAMI REDDI
73 I.C. 954=18 M L.W. 156=32 M L.T. 349=1923 M.W.N. 423=A.I.R. 1923 Mad. 711=45 M.L.J. 161.

———Transfer of Property Act, S. 53—Conspiracy between mortgagor and mortgagee—Object to defraud latter's creditor—Payment of mortgage falsely established—Mortgagee cannot sue for mortgage-money afterwards. (*Ryves and Stuart, JJ.*). MUHAMMAD SHAFI *v.* NANHE.
63 I. C. 921=19 A.L.J. 454=A. I. R. 1921 All. 140.

—S. 115—Ignorance of Law.

———No estoppel can arise from ignorance of the law which both parties are supposed to know. (*Heald and Chari, JJ.*). MA MA GYI *v.* U. CHIT PE.
95 I.C. 879=5 Bur. L.J. 56=A.I.R. 1926 Rang. 131.

———No estoppel can arise in favour of party misled only by his own ignorance of law. (*Wazir Hasan and Ashworth, A. J. Cs.*). AMJAD KHAN *v.* ASHRAF KHAN
87 I.C. 445=2 O.W.N. 83=28 O.C. 265=A. I. R. 1925 Oudh 568.

———Where the defendants, transferees of certain tenures were ignorant of the fact that the tenures were inalienable and liable to forfeiture on alienation but the landlord was in no way responsible for such ignorance.

Held, that this cannot raise any estoppel against him nor can the fact that he did not exercise his right of enforcing forfeiture prior to the suits bar him from doing so now or raise any estoppel against him. If the tenures, the defendants purchased, are forfeitable ones, they must take the consequence and cannot complain even if they paid full value. (*Ayling and Krishnan, JJ.*). ZAMORIN RAJU *v.* SAMU NAIR.
15 M.L.W. 164=A.I.R. 1922 Mad. 290.

—S. 115—Inconsistent pleas.

———*Appeal — Objection to forum — Subsequent change of contention—Estoppel.*

A preferred an appeal to the Commissioner from an order rejecting certain objections to the confirmation of a sale. The appeal was opposed by *B* on the ground that the case was governed by the new Tenancy Act and that the appeal should have been filed in the High Court. The appeal was returned and presented to the High Court. *B* then changed

EVIDENCE ACT (1872), S. 115—Inconsistent pleas.

his position and contended that the case was not governed by new law but by old law and no appeal lay to the High Court.

Held, that *B* wae estopped from raising any question of jurisdiction inasmuch as it was on his own insistence that the appeal was returned by the Commissioner. By his objection he had accepted the jurisdiction of the High Court as the proper forum of appeal. (*Sulaiman and Pullan, JJ.*). RAM KHELAWAN SINGH *v.* MAHARAJAH OF BENARES. **120 I.C. 125=1930 A.L.J. 224= A.I.R. 1930 All. 15.**

———*Scope of.*

Where the tenants of a holding take up a position in proceedings under S. 105, Ben. Ten. Act, that the application does not lie and the application is withdrawn, they will not be allowed to say in subsequent proceedings in suit that the application operated as a bar to it. The principle is that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponents and that this wholesome doctrine applies not only to successive stages of the same suit but also to another suit other than the one in which the position was taken up provided the second suit grows out of the judgment of the first. A.I.R. 1924 Cal. 600, *Foll.* (*Mukerjee and Bose, JJ.*). HEMANTA KUMARI DEVI *v.* PRASANNA KUMAR DATHI. **120 I.C. 243= 56 Cal. 584=A.I.R. 1930 Cal. 32.**

———A party having claimed on basis of investment in commercial speculations cannot claim on another basis when he finds that the first basis is prejudicial to him. (*Viscount Sumner.*) HARIRAM SEROWJEE *v.* MADAN GOPAL BAGLA.

114 I.C. 565=1929 A.L.J. 406=49 C. L.J. 335= 33 C.W.N. 493=31 Bom. L.R. 710= 1929 M.W.N. 422=30 M.L.W. 835= A.I.R. 1929 P.C. 77=57 M.L.J. 581 (P.C.).

———Where plaintiff has obtained a decree on the representation that a Court had jurisdiction, subsequently he cannot go back upon it and urge want of jurisdiction. (*Fawcett, Ag. C. J. and Murphy, J.*). KONDI RAVJI *v.* CHUNI LAL RUPCHAND. **113 I. C. 229=53 Bom. 75= 30 Bom. L. R. 1539=A. I. R. 1929 Bom. 1.**

———Consignor taking delivery of goods on strength of bill-of-lading and basing his suit on it—He cannot say he is not bound by its terms. *Glyn* v. *East and West India Dock Co.*, (1882) 7 A. C. 591, *Rel. on.* (*Mukerji and Bose, JJ.*). EZEKEIL *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD. **117 I. C. 851=33 C. W. N. 169= A.I.R. 1929 Cal. 260.**

———Where a party got a revision dismissed on the ground that an order could be attacked in appeal, he is estopped from raising a plea in appeal that the proper remedy was by way of revision because that order could not be attacked in appeal. (*Dalip Singh, J.*). MATHRA DAS AND SONS *v.* KAUSHI RAM. **120 I. C. 594 (Lah.).**

———Where a person has successfully opposed an application under S. 47, Civil P. C., on the ground that that section did not apply, he cannot subsequently raise a plea in a suit brought by the applicant that the suit was barred by S. 47. (*Kinkhede, A. J. C.*). UTTAMCHAND *v.* SHALIGRAM. **117 I. C. 285=A. I. R. 1929 Nag. 79.**

———A decree-holder filed a suit against a son of his judgment-debtor for ousting him from possession, which he had acquired as a stranger under O. 21, R. 100, in a previous execution proceedings. The decree-holder contended that the son was separate and was not the legal representative of his father and succeeded in getting possession of part of the property. He next started execution proceedings with respect to the rest alleging that the son as a legal representative was bound by the decree.

Held, that the decree-holder cannot be allowed to come forward on his new and entirely inconsistent allegations with his previous one, there being no provision either of law or equity to justify the extraordinary volte face. (*Findlay, J.*). SETH KISANLAL *v.* BAJIA TELI. **113 I. C. 146 (Nag.).**

———Appeal rightly filed in Revenue Court dismissed on respondent's objection to jurisdiction—Appeal subsequently filed in Civil Court—Respondent cannot plead want of jurisdiction of Civil Court. 3 O. C. 32 and 2 O. C. 188, *Foll.* (*Gokaran Nath Misra and Srivastava, JJ.*). SAIRA BIBI *v.* CHANDRA PAL SINGH. **114 I.C. 120= 5 O.W.N. 897=4 Luck. 159= 10 L.R.A. Rev. 211=A.I.R. 1928 Oudh 503.**

———Where a person claims a certain property by challenging a certain trust deed, he cannot, on failure of the claim, claim the property under the trust deed. (*Wallace and Madhavan Nair, JJ.*). SIVARAMA KRISHNAIER *v* SIVAKAMI ACHI. **100 I.C.648=A.I.R. 1927 Mad. 498.**

———*Contrary plea cannot be allowed in appeal so as to place opponent at a disadvantage.*

A litigant who has all along maintained a position in support of one branch of his suit cannot be permitted when he fails upon this branch to withdraw from the position and assert the contrary more especially when he thereby places his opponent at a great disadvantage. (*Lord Salvesen.*) PUSPHAVATI ALAKH NARAYAN GAJPATIRAJ *v.* SECY. OF STATE. **94 I.C. 501=49 Mad. 249= 53 I.A. 64=43 C.L.J. 378=28 Bom. L.R. 865= 24 M L.W. 9=1926 M.W.N. 585= A.I.R. 1926 P.C. 18=50 M.L.J. 391 (P.C.).**

———Suit filed in Small Cause Court—Defendant contending suit is not small cause—Plaint returned and refiled in ordinary Court—Defendant estopped from contending that suit is small cause. 13 A. L. J. 854, *Rel. on.* (*Daniels, J.*). KARTAR SINGH *v.* NANDA. **93 I.C. 846=A.I.R. 1926 All. 664.**

———*Valuation of suit—Acceptance by defendant—Plaintiff cannot re-open the same in P. C. application.*

On an application by the defendant for leave to appeal to the Privy Council against the appellate decree in a suit where the suit was for declaration without consequential relief falling under Sch. II, Cl. 17 of the Court Fees Act, the value given in the plaint for purposes of jurisdiction must be held to be the market value of the subject-matter of the suit, and where it has been stated to be Rs. 10,000 the defendant having accepted the valuation so given, it is not open to the plaintiff to show that the value of the subject-matter is less than Rs. 10,000. (*Ramesam and Venkatasubba Rao, JJ.*). CHELASANI RATTAYYA *v.* ANNE BRAHMAYYA. **91 I.C. 572=A.I.R. 1925 Mad. 1223=49 M.L.J. 309.**

———*Joinder of parties.*

Where defendants in a redemption suit opposed plaintiffs' application for joining other part-proprietors of the land in suit, and the Court therefore rejected plaintiff's application,

EVIDENCE ACT (1872), S. 115—Inconsistent pleas.

Held, defendants afterwards cannot attack the decree on the ground of non-joinder of parties. (*Dawson-Miller, C.J. and Mullick, J.*). SRI KANTA PRASAD *v.* JAG SAH. **84 I. C. 293= 3 Pat. 818=6 P.L.T. 237=A.I.R. 1925 Pat. 57.**

———Statement in the pleading would be a bar to a different averment in the course of the proceeding. (*Sanderson, C.J. and Richardson, J.*). BURN AND CO., LTD. *v.* H. H. THAKUR SAHIB SHREE LAKHDIRJEE. **83 I. C. 260=28 C.W.N. 104= A. I. R. 1924 Cal. 427.**

———*Admission as to valuation by a party will bind him.*

Defendants who accept the value of property for purposes of jurisdiction cannot be heard to question that value subsequently. The value of the property is a question of fact. It is not proper for a party by an admission as to a lower valuation to suffer an appeal to be heard by a single Judge and then to claim a higher valuation for the purpose of obtaining an appeal to the Privy Council. (*Ashworth and Simpson, A.J.Cs.*). BHAGWATI PRASAD *v.* ACHHAIBAR SINGH. **74 I.C. 214=9 O.L.J. 531= 26 O.C. 24=A.I.R. 1923 Oudh 93.**

—S. 115—Interpretation.

———"*Permitted another person to believe a thing*" —*Meaning.*

By the words "permitted another person to believe a thing", etc., the section contemplates that not merely may there be active inducement on the part of the declarant for a belief in the mind of another person but it is enough if the declaration is such by which the declarant in the ordinary course permits somebody else to believe in the truth of the declaration and to act on that belief. (*Mukerji and Mullick, JJ.*). BARKAT ALI *v.* PRASANNA KUMAR. **33 C. W. N. 873= A. I. R. 1929 Cal. 819.**

—S. 115—Judgment.

———*Recitals in—If operates as estoppel.*

Where a dispute between parties in a suit is referred to arbitration and one of the parties alleges partition, which is subsequently mentioned in the award, the other party is not estopped from denying the partition in a subsequent suit. (*Rupchand and Wild, A. J. Cs.*). UTAMCHAND *v.* SAJANDAS. **123 I.C. 698=A.I.R. 1930 Sind 182.**

———A party to a decree creating a charge on his property is estopped from saying that he is not entitled to create the charge or mortgage on the property. 10 Bom. 342 and A. I. R. 1923 Bom. 276, *Dist.* (*Patkar and Murphy, JJ.*). SHANKAR KONDAPPA *v.* GANPAT SHANKARSHET. **119 I.C. 186=31 Bom. L.R. 439= A.I.R. 1929 Bom. 227.**

———It is a well-known rule of law that where a party has asserted a certain position in a previous litigation he cannot re-agitate the matter on the assumption of fresh facts against persons who were parties whether as plaintiffs or defendants in the previous suit. (*Dalip Singh, J.*). BHOLA *v.* SHEOCHAND. **106 I.C. 484 (Lah.).**

———*Estoppel by record.*

Estoppel by record operates as an estoppel to the whole right and not to a fragment of it which might be given effect to or repealed by the decree of Court. *Badar Bee* v. *Habib Merican Noordin*, (1909) A.C. 615 and *Jones Brothers, Ltd.* v. *Woodhouse*, (1923) Ch. D. 117, *Foll.* (*Wazir Hasan and Raza, JJ.*). DURGA PRASAD *v.* JAGAT GIT SINGH. **112 I.C. 169=3 Luck. 487= 5 O.W.N. 265=A.I.R. 1928 Oudh 359.**

EVIDENCE ACT (1872), S. 115—Laches.

———Symbolical possession given by Court though actual possession should have been given—Judgment-debtor is bound by the order — Principle of estoppel applies. (*Jai Lal, J.*). HARBHAGWAN *v.* TAZA. **89 I. C. 596=26 P.L.R. 546= A. I. R. 1926 Lah. 35.**

———Case decided by appellate Court on one ground—Other grounds though relied on by lower Court are not estoppel by record. (*Rankin and Mukerji, JJ.*). CHITPORE GOLABARI CO., LTD. *v.* GIRIDHARI LAL SEROGI. **78 I. C. 353= A.I.R. 1925 Cal. 530.**

———Civil P.C., Sch. 2, Para 14—Parties representing whole property to be theirs—Third persons interested in the property but arbitrator unaware of the fact and deciding the dispute—Party to reference are estopped from challenging award. (*Mullick and Kulwant Sahay, JJ.*). SHAIKH MUHAMMAD KHALIL *v.* SHAIKH ABDUL RAHIM. **93 I.C. 261=4 Pat. 670=7 P.L.T. 644= A.I.R. 1925 Pat. 810.**

———A plea unnecessarily raised by a party and decided by the Court also equally unnecessarily does not estop the party from putting the same in a later suit. (*Campbell, J.*). SOHAN SINGH *v.* JAWAL SINGH. **73 I. C. 854= A. I. R. 1923 Lah. 248.**

———Estoppel can be proved by a judgment given by consent as by a judgment given after opposition. In either csse the estoppel consists of the establishment of facts by order of the Court either by an agreed statement by the parties, or by the adjudication of the Court upon the controversy being fully heard. (*Lord Buckmaster.*) STEPHENS & CO. *v.* ALLEN. **A.I.R. 1921 P.C. 231 (P.C.).**

———*Party not bound by the judgment cannot plead.*

Per *Kumaraswamy, J.* —Estoppel must be mutual and it is difficult to see how a party not bound by a judgment can set it up in bar against a party to it.

Whatever would estop or bar persons whose title is set up must also bar the person pleading *jus tertii* whether the estoppel is by record, deed or *in pais.* (*Wallis, C.J., Spencer and Kumaraswami Sastri, JJ.*). SECY. OF STATE *v.* AHMAD BADSHA. **67 I.C. 971=44 Mad. 778=14 M.L.W. 128= 14 M. L. W. 188=1921 M. W. N. 576= A. I. R. 1921 Mad. 248= 41 M.L.J. 223=41 M.L.J. 278 (F.B.).**

—S. 115—Laches.

———The delay of nearly five years prior to the suit for rescission of contract on the grounds of defect in title of plaintiff's vendors and onerous covenants is highly prejudicial to the defendants-vendors, especially when the plaintiff was previously seeking to enforce the contract against his vendees notwithstanding the defects. Plaintiff's conduct in enforcing the contract against his vendee and laches of five years work out an estoppel against him and equally debar him from enforcing his claim. (*Rupchand, Ag. C. J.*). SORABJI MUNCHERJI BILLIMORIA *v.* TARACHAND GHANSHAMDAS. **A I. R. 1930 Sind 66.**

———Length of delay and nature of acts done during the interval are material for estoppel. (*Baguley, J.*). MAUNG KAJAING *v.* P. L. T. A. R. CHETTIAR FIRM. **116 I. C. 470=6 Rang. 643= A. I. R. 1929 Rang. 17.**

———A mere delay in filing a suit does not *per se* constitute acquiescence. 1 All. 82, *Foll.* (*Findlay, J.C.*). NARAYAN *v.* RAJA LAXAMAN RAO. **105 I.C. 286=A. I. R. 1927 Nag. 400.**

EVIDENCE ACT (1872), S. 115—Laches.

———*Length of delay and nature of acts done during interval are material.*

Thus the doctrine of laches in Courts of equity is not an arbitrary or technical doctrine. In a case in which it would be practically unjust to grant a remedy either because the party has by his conduct done that which might fairly be regarded as tantamount to a waiver of the remedy or where, he has by his conduct and neglect, though perhaps not waived the remedy yet has rendered the situation of the other party such as it would not be reasonable to render it, in both these cases, lapse of time and delay are most material if afterwards the remedy is asserted by the party making delay. (*Schwabe, C. J. and Coutts-Trotter, J.*). W. BRUNTON *v.* JOHN E. C. BRUNTON. **78 I C. 299= A.I.R. 1925 Mad. 360.**

———*Proof of.*

The plea of laches on the part of the plaintiff as barring his right to enforce some remedy must be established by evidence of facts amounting to waiver, abandonment or acquiescence on the part of the plaintiff and such evidence must be plain and unambiguous. (*Kinkhede, A.J.C.*). NARAYAN *v.* MT. TULSHI. **80 I.C. 607= A.I.R. 1925 Nag. 104.**

———Lessee entitled to renewal not asking for same but continuing in possession and willing to do his part of agreement is not guilty of laches. (*Abdur Rahim and Oldfield, JJ.*). T. PICHI NAIDU *v.* C. JEFFERSON. **60 I.C. 591=44 Mad. 230= 1921 M.W.N. 31= A.I.R. 1921 Mad. 541= 41 M.L.J. 94.**

—S. 115—Landlord and tenant.

———A *purchasing non-transferable occupancy holding in execution of mortgage-decree against tenant—On landlord proceeding to execute rent-decree by sale of holding* A *depositing decretal amount —Withdrawal of deposit by landlord—Acceptance of deposit even under protest held to amount to recognition of* A's *tenancy.*

A purchased a non-transferable occupancy holding in execution of a mortgage decree against the original tenants. The landlord of the holding obtained a rent decree against the original tenants and proceeded to sell the holding in execution of the decree. *A* put in an application praying to deposit the decree-holder's dues under S. 170. The Court after making a remark, " Heard pleaders on both sides " permitted the deposit. The landlord withdrew the deposit, but after *A* instituted a suit for declaration of his title contended that the withdrawal was made under protest and did not amount to recognition by him of *A*'s tenancy.

Held, that the fact of the withdrawal of the deposit by the landlord amounted to a recognition by him of the tenancy of *A*.

Held also : that from the remark of the Court, " Heard pleaders on both sides ", it could not be assumed that the withdrawal had been made on protest.

Held further that assuming there was a protest by the landlord the acceptance of the deposit by him amounted to recognition of tenancy on the principles of estoppel. 6 C. L. J, 601 ; 7 I. C. 477 ; 28 I. C. 343, *Rel. on* ; 30 I. C. 83 and A. I. R. 1926 Cal. 1215, *Dist.* (*Mitter and Patterson, JJ.*). CHHOTA MURARI MOHAN PANDA *v.* PROTAP NARAIN PANDA. **A. I. R. 1930 Cal. 745.**

———A tenant cannot refuse to pay the rent, because the landlord for a number of years made no claim for rent for the land occupied by the tenant. (*Mohiuddin, A. J. C.*). KAMPTA PRASAD *v.* RAM SARAN SINGH. **117 I.C. 287= A.I.R. 1929 Nag. 123.**

EVIDENCE ACT (1872), S. 115—Landlord and tenant.

———Where the tenancy under the plaintiff is once denied, the tenants would not be entitled to claim on a future occasion that the tenancy under the plaintiff was subsisting. (*Suhrawardy and Mullick, JJ.*). HATIMULLAH *v.* MAHOMED ABJU. **113 I.C. 13=32 C.W.N. 391= A.I.R. 1928 Cal. 312.**

———Tenant is not estopped from disputing landlord's title if he executed the *kabuliyat* through fraud or mistake. (*Cuming and Chakravarti, JJ.*). CHENGTU SARKAR *v.* JAHERUDDIN MONDAL. **91 I.C. 669= A.I.R. 1926 Cal. 720.**

———Acceptance of rent by landlord from mortgagee of tenancy—Landlord is not estopped from contending that mortgage was invalid. (*Dalal, J.C.*). HARI KISHEN DAS *v.* MAIKU LAL. **87 I.C. 959= A.I.R. 1926 Oudh 37.**

———A claim for rent is a recurring claim and it is open to the tenant at any time to take an objection on the ground that the claim contravenes the provisions of the law. (*Dawson-Miller, C. J. and Mullick, J.*). W. H. MEYRICK *v.* DIPA PANDEY. **84 I.C. 361=3 Pat. 825=6 P.L.T. 537= A.I.R. 1925 Pat. 185.**

———*Acceptance of rent.*

There is no peculiarity in the law of estoppel in India as distinguished from that of England. The law of India is compendiously set forth in S. 115 of the Indian Evidence Act, Act 1 of 1872. Taking of a rent each year under a mistaken belief may bar by estoppel the owner from any claim for mesne profits during the particular year or years for which such rent was received. It would estop the owner from maintaining that the person who paid the rent possessed the property with a liability to account or possessed on any other or further terms than on payment of the rent made and taken. In cases of estoppel the onus of establishing the facts and circumstances from which estoppel arises rests upon the person pleading it. (*Lord Shaw.*). MITRA SEN SINGH *v.* MT. JANKI KUAR. **82 I. C. 946=46 All. 728=51 I. A. 326= 23 A.L.J. 172=6 L.R. P.C. 12= 26 Bom. L.R. 1134=40 C.L.J. 468= 20 M.L.W. 566=1924 M.W.N. 703= 35 M.L.T. 247=27 O. C. 208=29 C.W.N. 533= 3 P.L.R. Civ. 169= A.I.R. 1924 P.C. 213= 47 M.L.J. 591 (P.C.).**

———Where in a lease, lessor stated that description of land by acreage was conjectural and subsequently in the transaction with a third party the acreage was determined, lessor is not estopped as against lessee from adhering to his statement in the original lease. (*Das and Foster, JJ.*). MESSRS. LINTON MOLESWORTH AND CO. *v.* JAGANNATH SUPAKAR. **77 I.C. 403=1 P. L. R. 377= 5 P.L. T. 437= A.I.R. 1924 Pat. 226.**

———Where the lessees had a right to build on the land, but they did not produce the lease deed in their possession which will show under what terms they had such a right, the mere fact that the landlord stood by while the tenants built on the land will not estop the landlord from pleading that the lease was only a temporary one. (*Dawson-Miller, C. J. and Mullick, J.*) BUDHAN TELI *v.* MADANMOHAN LAL. **68 I.C. 653=3 P.L.T. 485= A.I.R. 1923 Pat. 111.**

———Where the entry in the *Thakbust khasra* has been made in fraud of the owner, the withholding of the rent collected by the *thikadar* of the proprietor does not create an estoppel or destroy the

EVIDENCE ACT (1872), S. 115—Landlord and tenant.

relationship of landlord and tenant. (*Mr. Ameer Ali.*) JAGDEO NARAIN SINGH *v.* BALDEO SINGH.
71 I.C. 984=1923 M.W.N. 361=27 C.W.N. 925=3 P.L.T. 605=49 I. A. 399=36 C.L.J 499=32 M. L. T. 1=2 Pat. 33=A.I.R. 1922 P. C. 272=45 M.L.J. 460 (P.C.).

——Person suing another for rent is estopped from questioning tenancy afterwards. (*Das and Bucknill, JJ.*). JITAN MAHTON *v.* BHAGWAN SAHAI. **64 I.C. 262=2 P.L.T. 780=A.I.R. 1921 Pat. 470.**

—S. 115—Minor—Applicability.

——The rule of estoppel is a rule of evidence and it must be taken subject to the Contract Act, and it is doubtful whether S. 115 of the Evidence Act applies to infants.

In order to support the plea of estoppel in the case of infants, fraud operating to deceive must be found as a fact. 25 Cal. 616, *Foll.* (*Das and Adami, JJ.*). GANGANAND SINGH *v.* RAMESHWAR SINGH BAHADUR. **102 I.C. 449=6 Pat. 388=8 P.L.T. 730=A I.R. 1927 Pat. 271.**

—S. 115—Minor—Attestation by.

——The law relating to estoppel must be read together with, and subject to other laws in force, such as those relating to contract and transfer of property, and that where such laws declare an infant to be free of liability in respect of a particular transaction, he cannot be made liable by virtue of an estoppel, for an estoppel cannot alter the law.

Attestation of a sale-deed by minor does not estop him from subsequently claiming the property sold. 26 Cal. 381, *Rel. on.* (*Duckworth, J.*). MAUNG TIN *v.* MA LUM. **99 I.C. 148=5 Bur. L.J. 141=A.I.R. 1927 Rang. 108.**

—S. 115—Minor—Description as.

——Minor becoming major one month before suit and having common interest with the other plaintiff, his brother, and taking active part in prosecuting the case, is estopped from challenging the validity of the decree passed in such suit. 20 All. 90 and A.I.R. 1924 All. 54, *Dist.* (*Daniels and King, JJ.*). BINDA *v.* MANGALA. **96 I.C. 606=48 All. 661=24 A.L.J. 847=A.I.R. 1926 All. 673.**

—S. 115—Minor—False representation.

——When a contract has been entered into by a minor, representing himself to be a major the contract is void as against him and he is not estopped from pleading minority: A. I. R. 1928 P. C. 152, *Foll.*; 21 Bom. 198; 41 Bom. 480; 46 Bom. 137; A.I.R. 1923 Bom. 169: 64 I. C. 457, *deemed overruled.* (*Madgavkar, J.*). BALANGOWDA BHIMANGOWDA *v.* GADIGEPPA BHIMAPPA.
118 I.C. 698=31 Bom. L.R. 340=A.I.R. 1929 Bom. 201.

——A contract entered into by a minor is void and the minor is not estopped from pleading his minority as a bar to a contract entered into by him even though he had falsely represented himself to be of age and thereby induced the other party to enter into the contract: 15 N. L. R. 149, *Foll.*; *Levene* v. *Brougham*, (1909) 25 T. L. R. 265; *R. Leslie Ltd.* v. *Shiell*, 3 K. B. 607, 26 Cal. 381; 30 Cal. 539;. 38 Mad. 1071; 37 Mad. 38; A.I.R. 1927 Rang. 108; A. I. R. 1927 Pat. 271, *Ref.*; 21 Bom. 198; 41 Bom. 480; A. I. R. 1923 Bom. 169, *Not foll.*; A. I. R. 1928 Lah. 609 (F. B.), *Appr.*; 1 Lah. 389; 59 I. C. 393, *Overruled* by A. I. R. 1928 Lah. 609 and 15 C. W. N. 239, *Diss. from in* 20 C. W. N. 418. (*Staples, A. J. C.*). GULABCHAND *v.* SETH CHUNNILAL. **25 N.L.R. 85=A.I.R. 1929 Nag. 156.**

EVIDENCE ACT (1872), S. 115—Minor—Returned of benefit.

——Where an infant has induced a person to contract with him by means of a false representation that he was of full age, he is not estopped from pleading his infancy in avoidance of the contract. Though S. 115, Evidence Act, is general in its terms, it must be read subject to the provisions of the Contract Act declaring a transaction entered into by a minor to be void: 59 I. C. 393; 1 Lah. 389 and 60 I. C. 267, *Overruled.* (*Shadi Lal, C. J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH.
111 I.C. 175=9 Lah. 701=10 L.L.J. 413=30 P.L.R. 60=A.I.R. 1928 Lah. 609 (F.B.).

——Section 115 of the Evidence Act is no more than a rule of evidence and a rule of evidence cannot be so construed as to nullify the express provisions of S. 11 of the Contract Act.

In a suit upon a promissory note executed by the defendant while he was a minor, although he misrepresented his age to the plaintiff, the defendant is not estopped from pleading his minority in defence to the suit: 8 A.L.J. 1058, *Foll.* (*Prideaux, A. J. C.*). PUNDLIK *v.* BHAGWANTRAO.
96 I.C. 893=A.I.R. 1926 Nag. 491.

—S. 115—Minor—No estoppel.

——*Sale by guardian—Minor's letter stating necessity—If operates as estoppel.*

Where at the time of sale of property by a guardian of a minor, the latter signed a letter which stated in detail that necessity for sale existed and where the object of taking the letter from the minor was not to assure the vendee that necessity existed but was to prevent the minor from bringing a suit to set aside the sale, the minor in a suit for possession of property is not estopped from denying the existence of legal necessity as he is not shown to have caused or permitted the vendee to believe that necessity existed. (*Macnair, A. J. C.*). SITARAM *v.* MULCHAND. **115 I.C. 175=A.I.R. 1929 Nag. 221.**

——*Contract Act S. 11.*

A deed executed by minors is a nullity and incapable of founding a plea of estoppel. (*Lord Salvesen.*) NAWAB SADIQ ALI KHAN *v.* JAI KISHORI. **109 I.C. 387=26 A.L.J. 685=47 C.L.J. 628=32 C.W.N. 874=5 O.W.N. 547=28 M.L.W. 17=30 Bom. L.R. 1346=A.I.R. 1928 P.C. 152=55 M.L.J. 88 (P.C).**

——Principle of estoppel cannot be applied to an infant who is incompetent to contract under S. 11 of the Contract Act. 43 I.A. 256 (P.C.); 15 A. L. R. 149, *Foll.* (*Hallifax, A. J. C.*). GOKULDAS *v.* GULAB RAO. **89 I.C. 143=A.I.R. 1926 Nag. 108.**

——No estoppel against statute—Minor is not estopped from pleading minority. (*Kennedy, J.C., Raymond and Kemp, A. J. Cs.*). MT. HURI *v.* ROSHAN KHUDABUX. **71 I.C. 161=16 S.L.R. 112=A.I.R. 1923 Sind 5 (F.B.).**

—S. 115—Minor—Representative of.

——Guardian and Wards Act, S. 30—Mortgage without permission—Later sale with permission—Vendee undertaking to pay mortgage is not estopped from contesting validity of mortgage: 8 A. L. J. 754, *Rel. on.* (*Ashworth and Iqbal Ahmad, JJ.*). MAKSUD ALI *v.* SHEIKH ABDULLA.
108 I.C. 728=50 All. 218=25 A.L J. 1017=A.I.R. 1928 All. 77.

—S. 115—Minor—Returned of benefit.

——Where a minor representing himself as of age executes a mortgage-deed, the mortgage is void and he is not estopped from pleading minority but the Court can on equitable grounds order restitution

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of benefit received by himself if the circumstances of the case so require : A. I. R. 1928 Lah. 609, *Foll.* (*Tek Chand and Hilton, JJ.*). BUDHA SINGH *v.* LAKHMI CHAND. **30 P.L.R. 584= A.I.R. 1929 Lah. 880.**

——Minor between 18 and 21 is not estopped from pleading his minority—Court may relieve the other party on general principles of equity. (*Dalal, J.*). RADHA KISHAN *v.* BHUREY LAL. **110 I. C. 373=50 All. 862=26 A.L.J. 837= A. I. R. 1928 All. 626.**

——But the minor, in equity is required to return the benefit he has received by making a false representation as to his age, if he wants to challenge his own act : A. I. R. 1928 Lah. 609 (F.B.), *Foll.* (*Shadi Lal, C.J. and Johnstone, J.*). NAGASH MUHAMMAD *v.* FATEH MUHAMMAD. **111 I. C. 344=29 P.L.R. 608.**

——Where a minor selling his property dishonestly represents to the vendee that he is a major and that vendee believes that representation and acts on it in taking the sole-deed from the minor as a major, the minor is not estopped under S. 115 from denying that he was a major at that date. [*Leslie* v. *Shiell*, (1914) 3 K. B. 607 *Dist.*; A.S. No. 89 of 1920 *Foll.*] But if he claims a declaration that the sale is void under S. 41 of the Specific Relief Act that relief may be granted to him on the condition that he makes such compensation to defendant as justice may require : 7 L. W. 124, *Ref.* (*Reilly, J.*). VENKATARAMAYYA *v.* PUNNAYYA. **94 I. C. 853=23 M.L.W. 521= A.I.R. 1926 Mad. 607.**

—S. 115—Minor—Rule applies.

——The language of S. 115 is comprehensive enough to include a minor : 26 Cal. 381, *Diss. from.* (*Shadi Lal, C.J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH. **111 I.C. 175=9 Lah. 701= 10 L.L.J. 413=30 P.L.R. 60= A.I.R. 1928 Lah. 609 (F.B.).**

——Pro-note by—Mis-representation as to age—Minor may be estopped from pleading minority. (*Macleod, C.J. and Shah, J.*). JASRAJ BASTIMAL *v.* SADASHIV MAHADEO WALEKAR. **64 I.C. 457=46 Bom. 137= 23 Bom. L.R. 975=A.I.R. 1923 Bom. 169.**

——The word "person" as used in S. 115 should not be narrowed down to exclude an infant. *Nelson v. Stocker*, (1859) 4 De G. & J. 458 and 25 Cal. 371, *Foll.* Other cases discussed. (*Chevis, A.C.J. and Le Rossignol, J.*). WASINDA RAM *v.* SITA RAM. **59 I.C. 393=1 Lah. 389=51 P.W.R. 1920= 50 P.L.R. 1921=A.I.R. 1921 Lah. 312.**

——If a minor obtains a loan on the representation that he is of age, he cannot plead his infancy as defence to a suit on the loan. (*Le Rossignol, J.*). HARJI MAL *v.* ABDUL HALIM. **60 I.C. 267 (Lah.).**

—S. 115—Mistake.

——Vendor and vendee both advised by same solicitors—Both sharing same mistake as to vendor's title due to solicitor's advice—Vendee paying purchase money and vendor utilising it to obtain transfer—Defect in title of vendor discovered—Vendee is not estopped from claiming back purchase money as vendor did not act on faith of vendee's representation. (*Shah, Ag. C.J. and Kincaid, J.*). MEGHJI MOORJI *v.* TYEBALLI KAMRUDDIN. **90 I.C. 189=26 Bom. L.R. 1019= A.I.R. 1925 Bom. 65.**

——*Wrong statement as to one's rights—No estoppel is created.*

EVIDENCE ACT (1872), S. 115—Mortgagor and mortgagee.

Plaintiff made a statement in mutation proceedings in the Court of Assistant Collector that he and his nephews were heirs of one *Mt. R* and that mutation of one-sixth of the property may be made in his favour and of the rest in the names of the defendants.

Held, the statement did not prevent the plaintiff from asserting his right to the entire property in a Civil Court subsequently. (*Dalal, A.J.C.*). RAM RATAN *v.* BINDU. **72 I C. 832= A.I.R. 1924 Oudh 168.**

——*Execution sale.*

A decree-holder brought up his own properties for sale as belonging to appellant,

Held, the fact that respondent was himself under a mistake when he filed his sale application will not prevent an estoppel. Unless it is found that appellant was not in fact misled, respondent must be held to be estopped. (*Ayling, Offg. C. J. and Odgers, J.*). RAMASAMI KONAN *v.* KULANDAIVELU PILLAI. **70 I.C. 569=1922 M.W.N. 121= 15 M.L.W. 272=A.I.R. 1922 Mad. 63.**

——A person is always entitled to prove if he can, that there was a mistake in the accounts and that he signed them as correct by mistake. (*Batten, J.C.*). SETH BHOJRAJ *v.* PANDA SHANKARNATH. **71 I. C. 45=A.I.R. 1922 Nag. 265.**

——The intention mentioned in S. 115 of the Evidence Act does not exclude an intention which is based on a mistake. 20 Cal. 296, *Foll.* (*Hallifax, A.J.C.*). RAMPRASAD *v.* MT. IMRAT BAI. **65 I.C. 477=18 N.L.R. 27=A.I.R. 1922 Nag. 79.**

—S. 115—Mortgagor and mortgagee.

——An usufructuary mortgagee cannot deny the title of the mortgagor and set up adverse possession unless he actually leaves the holding and enters under a different status. (*Ashworth, J.*). JAI NANDAN TEWARI *v.* UMRAY KOERI. **119 I.C. 568= 10 L.R.A. Rev. 289=A.I.R. 1929 All. 305.**

——The mere fact that the mortgagee brought a suit against purchaser of mortgaged property to have the sale set aside does not estop mortgagee from instituting a suit to enforce his mortgage claim against the mortgage property. (*Mullik and Garlick, JJ.*). RASIK CHANDRA *v.* JAGABANDHU. **113 I. C. 904=A. I. R. 1929 Cal. 392.**

——Where a mortgagor refused possession when according to the terms of the contract he was bound to give possession, the mortgagor is precluded from asserting that the property is not liable to sale in satisfaction of the mortgage debt. 41 Mad. 259 (F.B.), *Rel. on.* (*Dalip Singh, J.*). GHULAM MAHOMMED *v.* MD. HUSAIN. **116 I.C. 214= A.I.R. 1929 Lah. 289.**

——Mortgagor and mortgagee—*A* suing on his mortgagee joining his co-mortgagee *B* as defendant —*B* not appearing in Court and decree passed exclusively in favour of *A*—*A* executing decree receiving money and giving discharge—*B* cannot urge that this position was not legally available to *A*. (*Misra and Pullan, JJ.*). JAGMOHAN DAS *v.* INDAR PRASAD. **115 I. C. 97=6 O.W.N. 133= 4 Luck. 597=A.I.R. 1929 Oudh 160.**

——Equitable mortgagee entering into possession with consent of mortgagor—The former leasing the property to a third person—Auction-purchaser of the equity of redemption is bound by the mortgagor's consent and his suit for rent and damages against the third person is not maintainable. (*B.B. Ghose and Page, JJ.*). H. R. CHAMARIA & CO. *v.* SONATAN PAL. **107 I.C. 72=46 C.L.J. 515= A. I. R. 1928 Cal. 188.**

EVIDENCE ACT (1872), S. 115—Mortgagor and mortgagee.

———Mortgagor not raising issue of limitation as to personal remedy at the hearing cannot raise it after sale when the proceeds are found insufficient and mortgagee applies under Civil P.C., O. 34, R. 6. (*Shadi Lal, C.J. and Broadway, J.*). RALIA RAM *v.* HIRALAL. **111 I.C. 808= A.I.R. 1928 Lah. 653.**

———Where the mortgagee is let into possession by the mortgagor, the former is estopped from denying the title of the latter at the commencement of his possession, though he is not debarred from showing that the title has since determined. 18 All. 329, *Rel. on.* (*Iqbal Ahmad, J.*). DALIP SINGH *v.* TILAK SINGH. **99 I.C. 561=A.I.R. 1927 All. 270.**

———If after a preliminary decree for foreclosure has been passed the mortgagee enters into possession before the day appointed for payment has arrived, the mortgagor would certainly have a right to demand a fresh account and the appointment of a further day for payment: but if he allows many years to pass before making his application, it must be considered that he acquiesced in the mortgagee holding the property as his own and induced him to believe that it was no longer necessary either to execute the decree he had obtained or to obtain an order absolute for foreclosure. (*Macleod, C.J. and Coyajee, J.*). VASANT RAO *v.* MANA BHAI. **94 I.C. 96=28 Bom.L.R. 347= A.I.R. 1926 Bom. 273.**

———Mortgagor estopped from denying consideration of the mortgage—Transferee from mortgagor is also estopped. (*Wallace and Madhavan Nair, JJ.*). NARAYANASWAMI *v.* VENKATARAMA. **95 I.C. 264=23 M.L.W. 749=1926 M.W.N. 315= A.I.R. 1926 Mad. 808=50 M.L.J. 511.**

———*Mortgage suit—Agreement entered into by mortgagor before final decree to pay higher interest to get extension of time.*

Held, the mortgagor was estopped, in an application by the mortgagee for execution of the agreement, from contending that the agreement could not be enforced in execution. 2 I. A. 219 and 5 C. 27, *Rel. on.*

The question whether such an agreement does or does not violate the rule, that a Court cannot add to its decree, becomes under the circumstances one which the Court will not enter into, the party who seeks to raise such question being estopped by his own conduct and the action of the Court taken thereunder. (*Ramesam and Jackson, JJ.*). SUBRAMANIA PILLAI *v.* CORERA. **86 I.C. 723= 1925 M.W.N. 86=A.I.R. 1925 Mad. 457= 48 M.L.J. 121.**

———Assignee of mortgagee not giving notice of assignment to mortgagor—mortgagor continning to pay the old mortgagee—Assignee cannott refuse to give credit for such payments. (*Kinkhede, A.J.C.*). BASANTRAO *v.* NARAYAN. **78 I.C. 127= A.I.R. 1924 Nag. 401.**

———*Mortgagor though trustee is estopped from setting up trust.*

Even where the mortgagors are trustees acting in a public capacity and not for their own benefit, they are estopped from denying their title and cannot set up as a defence against the mortgagee that the property so mortgaged is trust property which the mortgagors had no right to mortgage. Where the mortgage deed clearly and unmistakeably purports to be executed by the mortgagor as the proprietor of the property in his own interest, he is estopped from denying the interest which he represented as his own proprietary right in the deed. (*Dawson Miller, C.J. and Foster, J.*). BRIJL RATAN DAS *v.* RAGHUNANDAN GIR. **71 I.C. 944= 1923 P.H.C.C. 49=1 P.L.R. 225= 4 P.L.T. 457=A.I.R. 1923 Pat. 203.**

EVIDENCE ACT (1872), S. 115—None against statute—Duty of Court.

———If a person professes to have an interest in a property whatever interest he may have is bound by the mortgage and must be enforced against him and he cannot claim that a personal decree should have been passed. (*Lord Phillimore.*) BHOLANATH SEN *v.* BALRAM DAS. **70 I.C. 932= 27 C.W.N. 607=18 M.L.W. 48= 1923 M.W.N. 525=31 M.L.T. 306= A.I.R. 1922 P.C. 382=47 M.L.J. 258 (P.C.).**

———Even though a mortgage by a tenant-at-will is not binding on the landlord, it is open to him to recognise it as valid. Such a mortgage is not *ab initio* void. A mortgagee cannot go behind his mortgage and dispute the mortgagor's right to enforce redemption. (*Kanhaiya Lal, J.C.*). BHAIRON *v.* BALAK. **68 I.C. 558=9 O.L.J. 331= A.I.R. 1922 Oudh 287.**

—S. 115—None against statute—Acquiescence.

———The doctrine of acquiescence cannot be invoked to defeat a clear statutory provision. (*Ashworth and Misra, JJ.*). MUNICIPAL BOARD, LUCKNOW *v.* DEBI DAS. **99 I.C. 643=1 Luck. 444= 13 O.L.J. 553=3 O.W.N. 514= A.I.R. 1926 Oudh 388.**

—S. 115—None against statute—Assessment.

———Section 31, Act 31, 1858 empowers the Government either to add the revenue assessed upon the alluvial increment to the jumma of the parent estate and enter into a new engagement with the proprietor for the payment by the latter of the aggregate amount, or to make a separate settlement for the alluvial increment and to make this increment as a separate estate accordingly. Although on previous occasions the Government chose to exercise their right in the manner first described, they are not under any obligation to exercise their discretion in the same way on a subsequent occasion when a fresh survey is made of all the accretions. (*Sir John Wallis.*) SECY. OF STATE *v.* PARVATI CHARAN SHAHA. **110 I.C. 8= 32 O.W.N. 906=48 C.L.J. 163=55 I.A. 289= 55 Cal. 1037=A.I.R. 1928 P.C. 193 (P.C.).**

—S. 115—None against statute—Contract.

———An estoppel cannot operate to override an express provision of law. Where under the Agra Tenancy Act an agreement to pay enhanced rates had to be by registered instruments but the tenant paid the enhanced rent in the absence of such an agreement,

Held, that he was not estopped in a subsequent proceeding for rent from asserting that rent was payable only on the old scale. (*Oakden, S. M. and Smith, J. M.*). BADAM *v.* ABDUL HAMID KHAN. **13 R.D. 859.**

——There cannot be any estoppel against a statute, nor can the parties contract themselves out of any statute. (*Suhrawardy and Cuming, JJ.*). JNANENDRA NATH ROY *v.* NALINI MOHAN GHOSE. **87 I.C. 565=A.I.R. 1925 Cal. 1262.**

—S. 115—None against statute—Duty of Court.

——No Court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties, or by a failure to plead or to argue the

EVIDENCE ACT (1872), S. 115—None against statute—Jurisdiction.

point at the outset. (*Lord Sumner.*) SURAJMULL *v.* TRITON INSURANCE CO. 86 I.C. 545= 27 Bom. L.R. 770=29 C.W.N. 893= 23 A.L.J. 105=52 I.A 126=1925 M.W.N. 257= 6 L.R.P.C. 66=A. I. R. 1925 P.C. 83= 49 M. L. J. 136 (P.C.).

—S. 115—None against statute—Jurisdiction.

———A party to a submission to arbitration through Court can question the validity of the arbitration proceedings on the ground that the Court had no jurisdiction to refer to arbitration. (*Suhrawardy and Cuming, JJ.*). T. WANG *v.* SONA WANGDI. 87 I.C. 633=29 C. W. N. 886=52 Cal. 559= 42 C. L. J. 23=A.I.R. 1925 Cal. 812.

—S. 115—None against statute—Stamp Act.

———It being the duty of a Court to give effect to a statute in spite of the conduct of the parties, there can be no estoppel against a statute (*e.g.*, the mandatory provisions of S. 36, Stamp Act). 38 Mad. 519; 38 Mad. 374 and 37 M. L. J. 65, *Rel. on.* (*Madhavan Nair, J.*). VENKATESWARA IYER *v.* RAMANATHA. 119 I. C. 472= A. I. R. 1929 Mad. 622.

—S. 115—None against statute—Succession.

———Buddhist Law (Burmese) — Succession—Agreement by father and son to enjoy property equally—Survivor to succeed excluding heirs—Agreement is invalid as defeating the law, and son's widow is not estopped from questioning the agreement. (*Heald and Chari, JJ.*). MA MA GYI *v.* U. CHIT PI. 95 I. C. 879=5 Bur. L. J. 56= A. I. R. 1926 Rang. 131.

—S. 115—None against statute—Transfer of property.

———The sale of an occupancy holding is contrary to law and absolutely void and no estoppel arises against a statute. A person resisting suit for possion of an occupancy on the ground that it has been sold to him cannot raise the plea of estoppel. (*Pullan, J.*). GOPAL SAHU *v.* NAND KUMAR SINGH. 123 I.C. 53=7 O.W.N. 438= A. I. R. 1930 Oudh 300.

———The Nawab of Murshidabad executed a lease to the defendants of certain lands and premises to which the Murshidabad Act 15 applied for a term of 21 years in consideration of the sum of rupees five lacs as advance of the total rent payable for during the said term of 21 years. The Nawab then sued to recover possession of the demised property and mesne profits, upon the ground that the lease was null and void by reason of the provisions of condition (1) of the Murshidabad Act, 15 of 1891.

Held, that the lease contravened condition (1) of the Act and was therefore null and void,

Held, further that as the Nawab was a person under disability, he was not estopped from denying the validity of the lease. *Jeffries* v. *Alexander*, 8 H.L.C. 594; *Batiman* (*Lady*) v. *Faber*, (1898) 1 Ch. 144; *Leslie* v. *Sheill*, (1914) 3 K. B. 607; 36 Cal. 920; A.I.R. 1928 Cal. 537 *and other cases discussed.* (*Page, J.*). NAWAB OF MURSHIDABAD *v.* BILAS ROY CHOUDHURI. 118 I.C. 561=56 Cal. 252= A.I.R. 1929 Cal. 433.

——— An estoppel cannot have the effect ofmaking a void transfer valid. (*Wazir Hasan, Ag. C. J. and Misra, J.*). BINDESWARI SINGH *v.* HAR NARAIN SINGH. 6 O. W. N. 233=4 Luck. 622= A.I.R. 1929 Oudh 185.

———*Estoppel.*

Transfer which is void cannot be validated by recourse to ordinary doctrine of estoppel. (*Kin-*

EVIDENCE ACT (1872), S. 115—None against statute—Miscellaneous.

khede, A.J.C.). MAROTI SURYABHAN *v.* RAIWANT RAO. 107 I.C. 897=A.I.R. 1928 Nag. 262.

———Where sanction of the Court was obtained to sell the properties for a certain amount to pay off the debts due from the estate but the administratrix mortgaged the properties for the amount as fixed for sale at a high rate of interest, *viz.*, 15 p.c., while properties were really worth less than the mortgage amount,

Held, that permission of sale could not be utilized for mortgaging the properties and the administratrix could successfully plead want of sanction, in a suit by the mortgagee to enforce the mortgagee. (*Marten, C. J. and Percival, J.*). CHANDRI AYAL *v.* ABDUL KARIM. 98 I. C. 915=51 Bom. 16= 28 Bom. L.R. 1360=A. I. R. 1927 Bom. 49.

———No estoppel exists on a point of law—Grantor can derogate from grant if transaction is expressly forbidden by statute: 12 N. L.R. 100 and 44 Bom. 488, *Foll.* (*Baker, J. C.*). KESAR BAI *v.* JAMADAR. 82 I.C. 126=20 N.L R. 162= A. I. R. 1925 Nag. 125.

———Representation by disqualified proprietor of his competency to transfer cannot create an estoppel against him. (*Neave and Kendall, A.J.Cs.*). LALA HARI KISHUN DAS *v.* CHAUDHRI MOHAMMAD SAFI. 80 I.C. 800=11 O.L.J. 502=, 28 O.C. 34=A. I. R.1924 Oudh 438.

—S. 115—None against statute—Void contract.

———Where a particular act is declared to be void and unlawful by statute a party cannot by representation, any more than by other means, raise against him an estoppel so as to create a state of things, which he is under a legal disability from creating. (*Shadi Lal, C.J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH. 111 I.C. 175= 9 Lah. 701=10 L.L.J. 413=30 P.L.R.160= A.I.R. 1928 Lah. 609 (F.B.).

———A contract which is void cannot create estoppel: 31 Bom. 165, *Foll.* (*Wazir Hasan and Neave, A. J. Cs.*). DWARKA PRASAD *v.* NASIR AHMAD. 78 I.C. 850= 11 O.L.J. 219= A. I. R. 1925 Oudh 16.

———*Hundi invalid under S. 26, Paper Currency Act.*

There can be no estoppel against a clear injunction of a statute and therefore the endorser of a hundi drawn on him which is invalid under S. 26 of the Paper Currency Act is not estopped from denying the validity of the instrument. *Seshagiri Aiyar, J.*, in 42 Mad. 470, *Not foll.*; 40 Mad. 585, *Foll.* (*Abdur Rahim and Oldfield, JJ.*). ALAGAPPA CHETTY *v.* ALAGAPPA CHETTY. 60 I. C. 130= 44 Mad. 187=A.I.R. 1921 Mad. 382.

—S. 115—None against statute—Miscellaneous.

———There can be no estoppel against an Act of Parliament or against an Act of legislature and the principle of estoppel cannot be invoked to defeat the plain provisions of the statute: 38 Bom. 709; 36 Cal. 920; 38 Cal. 512 and 42 Cal. 455, *Ref.* (*Patkar and Baker, JJ.*). AHMED BHOUDDIN *v.* BABU DEVJI ZUJANI. 122 I. C. 113=53 Bom. 676= 31 Bom. L.R. 778=A.I.R. 1930 Bom. 135.

———There is no estoppel against a statute. (*Subhedar, A. J. C.*). MADANLAL *v.* RIPUSUDANPRASAD. A.I.R. 1930 Nag. 191.

———There can be no estoppel contrary to a statutory enactment. (*Sulaiman and Banerji, JJ.*). BHAGWAN SINGH *v.* TASADDUQ HUSSAIN. 115 I.C. 642=1929 A.L.J. 889= A.I.R. 1929 All. 849.

EVIDENCE ACT (1872), S. 115—None against statute—Miscellaneous.

———An estoppel cannot be invoked to defeat an express provision of law. (*Ashworth and Misra, JJ.*). CHANDU *v.* MURLIDHAR. **92 I.C. 732= 13 O.L.J. 138=A.I.R. 1926 Oudh 311.**

———There cannot be any estoppel against a statute and a statutory defence not set up in a prior suit can be set up in a subsequent suit. (*Suhrawardy and Cuming, JJ.*). NAFAR CHANDRA PAL CHOWDHURY *v.* BHUSI MOLLA. **65 I.C. 581 (Cal.).**

—S. 115—None if truth known.

———Where the statement relied on is made to a party who knows the real facts and is not misled, there can be no estoppel: 30 Cal. 539, *Foll.* (*Fawcett, J.*). VALLAB DAS MULJI *v.* PRANSHANKAR NARBHESHANKAR. **113 I.C. 313= 30 Bom. L.R. 1519=A.I.R. 1929 Bom. 24.**

———When both parties are equally conversant with the true state of the facts it is absurd to refer to the doctrine of estoppel. (*Devadoss, J.*). SWAMINADHA AIYAR *v.* SWAMINADHA AIYAR. **99 I.C. 772=38 M.L.T. 32= A.I.R. 1927 Mad. 458.**

———The mere fact that the reversioners stood by and asked another person to purchase the property from the female holder, would not in any way estop them from setting up a claim to the property where the purchaser knew that the holder had only a life-interest in it. (*Devadoss, J.*). S. R. SWAMINATHA AIYAR *v.* SWAMINATHA AIYAR. **99 I.C. 772=38 M.L.T. 32= A.I.R. 1927 Mad. 458.**

———There can be no estoppel where parties are aware of the facts. 6 O. C. 331, *Foll.* (*Raza, J.*). DEBI PRASAD SHUKLA *v.* BAJI NATH. **95 I. C. 585=A.I.R. 1926 Oudh 506.**

———Both parties knowing true state of facts—No estoppel arises. (*Raza, J.*). NANHEN KHAN *v.* FIDA HUSAIN. **93 I.C. 279=13 O.L.J. 463= A. I. R. 1926 Oudh 361.**

———No estoppel exists where the other party knows the truth. (*Spencer and Kumaraswami Sastri, JJ.*). MOLLAYYA PADAYACHI *v.* KRISHANASWAMI IYER. **85 I.C. 855=21 M.L.W. 336= A.I.R. 1925 Mad. 95=47 M.L.J. 622.**

———But where the truth of the matter is known to both parties there can be no estoppel. 30 Cal. 539 (P. C.), *Foll.* (*Wazir Hasan and Neave, A. J. Cs.*). DWARKA PRASAD *v.* NASIR AHMAD. **78 I. C. 850=11 O. L. J. 219= A. I. R. 1925 Oudh 16.**

———There is no estoppel in favour of a man who knew all the facts of the case, so a co-signatory to a mortgage-deed is not estopped in a suit for contribution by the other executant to deny that the latter alone mortgaged his property and that he (the defendant) mortgaged none. (*Walsh, A. C. J. and Sulaiman, J.*). GAYA PANDI *v.* AMAR DEO. **85 I.C. 498=22 A. L. J. 855= 5 L. R. A. Civ. 673=A.I.R. 1924 All. 787.**

———A false representation made to a person who knows it to be false is not such a fraud as to take away the privilege of infancy. 162 P. R. 1919, *Foll.* (*Broadway, J.*). BISHAN SINGH *v.* BISHNA. **69 I. C. 543=A.I.R. 1924 Lah. 294.**

———Registration Act, S. 28—Mortgagor is estopped from pleading want of title unless mortgagee knew real facts—Non-existence of property indicates fraud of both parties. (*Kinkhede, A. J. C.*). TULSIRAM *v.* TUKARAM. **78 I. C. 398= A.I.R. 1924 Nag. 363.**

———A person who knows the truth can hardly be allowed to rely upon an estoppel arising from a

EVIDENCE ACT (1872), S. 115—Parties and Privies—Party bound.

false representation. No estoppel can arise where the truth is known to the party who claims the estoppel, (30 I. A. 114, *Ref.*) nor unless it is shown that the party claiming estoppel ever intended to do a thing and was prevented from doing so by the act or assertion of the other person. (*Krishnan and Ramesam, JJ.*). VENKATACHALA *v.* ARUNTHAVATHACHI. **72 I. C. 548=17 M. L. W. 755= 1923 M. W. N. 225=A.I.R. 1923 Mad. 568.**

———There can be no estoppel where the other side knows the full facts and even a representation on a matter of law, *i.e.*, as to the validity of an adoption creates no estoppel. (*Ayling and Odgers, JJ.*). RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. **70 I. C. 653=1922 M. W. N. 481= A.I.R. 1923 Mad. 11.**

———There is no estoppel where both parties knew the actual facts but chose to act on the supposition that the facts were otherwise. (*Ashworth, A.J.C.*). MT. MAHESHA *v.* RAMESHAR. **74 I.C 295= 10 O.L.J. 24=26 O.C. 329= A.I.R. 1923 Oudh 173.**

———Where the truth is known to both the parties there is no case of estoppel. (*Das and Kulwant Sahay, JJ.*). JAGDIP PRASAD *v.* MT. RAJO KUER. **75 I.C. 1022=4 P.L.T. 531= 1923 P.H.C.C. 177=2 Pat. 585= A.I.R. 1923 Pat. 464.**

———Where a party has not been misled by the representation made by another, that other is not estopped. (*Chatterjee and Pearson, JJ.*). JYOTI PRASAD *v.* DASARATH GHOSH. **63 I.C. 109= 36 C.L.J. 73=A.I.R. 1921 Cal. 453.**

—S. 115—Parties and Privies — Auction-purchaser.

———Although a person holding a ganti interest in the land and granting a permanent lease of the same land will be estopped from asserting his right as a ryot, the purchaser of that interest at an auction sale, who obtains a new title from the landlord at an increased rent, will not be so estopped. (*B. B. Ghose and Roy, JJ.*). JALADHAR MONDAL v. AMRITA LAL. **105 I.C. 641= A.I.R. 1928 Cal. 87.**

———An execution purchaser is the representative of the judgment-debtor so as to bring him within the rule of estoppel and the principle of *res judicata*: A. I. R. 1922 Pat. 63, *Foll.* (*Das and Foster, JJ.*). MAHARAJA BAHADUR SINGH *v.* A. H. FORBES. **97 I. C. 205=1926 P. H. C. C. 249= A. I. R. 1926 Pat. 478.**

—S. 115—Parties and Privies—Father and son.

———Consent of father and grandfather to an adoption does not bind the son or grandson. (*Harrison and Dalip Singh, JJ.*). ZOLI *v.* KHAJANA. **96 I. C. 749=8 Lah. 48=A. I. R. 1926 Lah. 654.**

—S. 115—Parties and Privies — Husband and wife.

———A widow claiming through her husband cannot impeach a settlement come to by her husband with other members of the family whereby he released by necessary implication the interest which he had in the property. (*Lord Phillimore.*) DADABHOY *v.* COWASJI DORABJI. **94 I. C. 535= A.I.R. 1925 P. C. 306 (P.C.).**

—S. 115—Parties and Privies—Party bound.

———When a lease, purporting to be of a permanent character, is granted by a person who, on the face of the document, confesses to have a higher status than that of a raiyat, the grantee may invoke the doctrine of estoppel against the grantor and the persons claiming through him.

EVIDENCE ACT (1872), S. 115—Parties and Privies—Party bound.

The question of invalidity of the lease may be raised by the landlord or a person claiming through him or by some one who has a permanent title, but notby the grantor or any one claiming through him. A. I. R. 1921 Cal. 451 (F.B.), *Foll.*; 13 C.L.J. 649 and 17 C.W.N. 59, *Ref.* (*Cuming and Roy, JJ.*). JOGENDRA CHANDRA *v.* MONMOHINI DEBI.

103 I. C.230=A.I.R. 1928 Cal. 156.

——A person represented that a lady was full owner of a certain property, and accepted a transfer of a portion of it from her.

Held; that he could not be allowed to deny the truth of the representation in a suit between himself and the representatives of the lady. This is exactly the kind of estoppel defined in S. 115, Evidence Act. (*Dalal, J. C. and Neave, A. J. C.*). MOHAMMAD HASAN *v.* ALI HAIDER. **85 I. C. 509= 12 O.L.J. 1=28 O. C. 8=A.I.R. 1925 Oudh 337.**

—S. 115—Parties and Privies—Representative.

——Estoppel is purely personal and will not affect others in so far as they claim a title otherwise than through the person estopped primarily. 14 Cal. 401, *Foll.* (*Mukerji, J.*). UMARAM GOGOI *v.* FURUK CHAND OSWAL. **85 I.C. 540= A.I.R. 1925 Cal. 993.**

——An estoppel available to a certain person will be available to his transferees in respect of the interest transferred. (*Dalal, J.C. and Neave, A.J.C.*). MOHAMMAD HASAN *v* ALI HAIDAR.

85 I. C. 509=12 O. L. J. 1=28 O.C 8= A. I. R. 1925 Oudh 337.

—S. 115—Parties and Privies—Reversioners.

——No act or omission by presumptive reversioners can amount to estoppel against actual reversioners. (*Sulaiman and Sen, JJ.*). MUHAMMAD ABDUL KARIM KHAN *v.* BISHAN SAHAI.

121 I. C. 387=1929 A. L. J. 741= A. I. R. 1930 All. 9.

——Probate obtained by widow on the nearest reversioner's withdrawing objections—A remote reversioner can contest proceedings and he is not estopped. 27 C. L. J. 320, *Appl.* (*Greaves and Mukerji, JJ.*). SHAMA CHARAN DE *v.* REEBALA DASSI. **96 I.C. 682=30 C.W.N. 567= A.I.R. 1926 Cal. 792.**

—S. 115—Parties and Privies—Third parties.

——Mere fact that son's widows of original mortgagees lived in ancestral house and meddled with outstanding debts does not estop heirs from suing for possession of mortgaged land of which the widows give discharge. (*Johnstone, J.*). SARUPA *v.* MT. DHUNDAN. **122 I.C. 89=11 L.L.J. 219= A.I.R. 1930 Lah. 286.**

——*Co-sharers—Recognition of tenancy by one co-sharer landlord—Effect.*

In order that a recognition of tenancy by a co-sharer landlord may be effective against a third party such an admission must have been, at the time when it was made, against the interest or capable of affecting the interest of the person making it, and so recognition of a tenancy by a co-sharer landlord after the property has been allotted to another co-sharer in the collectorate partition is not binding upon the latter co-sharer. (*Das and Rowland, JJ.*). PARMESHARI PRASAD SINGH *v.* RAMGATIA.

120 I.C. 44=11 P.L.T. 99=A.I.R. 1930 Pat. 149.

—S. 115—Parties and Privies —Transferee.

——Mahomedan lady executing mortgage attested by her brother to raise money to meet his debts—Mortgagee bringing suit on mortgaged property—Property purchased pending suit—Purchaser suing for cancellation of delivery order—Purchaser held not estopped from setting brother's rights in mortgage property. (*Ananthakrishna Ayyar, J.*). MD. ISMAIL SAHEB *v.* RASOOL BI. **123 I.C. 42= A.I.R. 1930 Mad. 567.**

EVIDENCE ACT (1872), S. 115—Plea under.

——Gift by a widow—Next reversioner's assent—A transferee from such reversioner is not estopped from challenging the gift. (*Gokul Prasad, J.*). RAM DAYAL *v.* MITHOO LAL. **71 I. C. 287= A.I.R. 1923 All. 410.**

—S. 115—Parties and Privies—Two capacities.

——Anything done by a person in his representative character cannot create an estoppel on what is a personal claim by himself by a perfectly different arrangement: A.I.R. 1927 Oudh 341, *Affirmed.* (*Viscount Dunedin*). RAM HARAKH *v.* HANWANT RAM. **A.I.R. 1930 P. C. 249 (P. C.).**

——Partition decree—Some lands, liable to be sold for revenue due on another estate, allotted to one party—Land sold in revenue sale and purchased by other party—Such party is not estopped from enforcing his rights. (*Sir John Wallis*). KRISHNA PROMADA DASI *v.* DHIRENDRA NATH GHOSH.

113 I. C. 465=56 Cal. 813= 56 I. A. 74=33 C. W. N. 289= 49 C. L. J. 112=A. I. R. 1929 P. C. 50 (P. C.).

——Admission of *wakf* by *mutwalli* does not estop him from claiming a share in it as heir, if *wakf* is void. (*B.B. Ghose and Roy, JJ.*). RUKAYA BANU *v.* NAZIRA BANU. **105 I.C. 647= 55 Cal. 448=32 C.W.N. 248=A.I.R. 1928 Cal. 130.**

——*Under-proprietorship by estoppel.*

Act of the Deputy Commissioner, holding a person's estate as manager on behalf of the Court of Wards, in describing persons in possession as under-proprietors or in accepting rents from their mortgagees cannot create a title as under-proprietor by estoppel in favour of them: A.I.R. 1924 P.C. 213, *Foll.* (*Stuart, C.J. and Wazir Hasan, J.*). JHAGOO SINGH *v.* DEPUTY COMMR. PRATABGAR.

101 I.C. 803=A.I.R. 1927 Oudh 538.

——Release of interest as the heir of father is not bar to a claim to inherit a share after the brother's death. *Halsbury's Laws of England*, Vol. X, page 461, *Foll.*; 20 Cal. 373, *Dist.* (*Martineau and Campbell, JJ.*). YUSAF ALI *v.* ALI BHOY.

83 I. C. 776=A. I. R. 1923 Lah. 8.

—S. 115—Pleadings.

——*Change of.*

Where the plaint allegation was that the position of *K* under a certain award was that of a trustee for the plaintiff but in appeal the plaintiff's counsel urged that *K* had only a life-interest in the property but the other allegations were stuck to,

Held, that the plaintiff did not change her case so completely as to be estopped from urging what were the positions of the respective parties under the award. (*Mukerji, J.*). MT. DURGA KUNWAR *v.* MT. CHUNNA KUNWAR. **78 I.C. 633= 5 L.R.A. Civ. 276=A. I. R. 1924 All. 862.**

—S. 115—Plea under.

——Defence of estoppel can always be taken if it is warranted by the facts proved or admitted even if those facts have not been specifically pleaded. (*Heald, Offg. C.J. and Chari, J.*). CO-OPERATIVE TOWN BANK OF PADIGON *v.* SHANMUGAM PILLAY. **125 I.C. 365=8 Rang. 223= A.I.R. 1930 Rang. 265.**

——Where plea of estoppel is not set up in the pleadings or issues it cannot be availed of later, because estoppel is eminently a matter of pleadings. (*Wallace and Madhavan Nair, JJ.*). PAPAMMAL *v.* ALAMELU AMMAL.. **119 I.C. 182= A.I.R. 1929 Mad. 467.**

EVIDENCE ACT (1872), S. 115—Plea under.

———*To whom available.*

Only the person to whom the representation was made or for whom it was designed can avail himself of it. If however, the declaration was intended to be general, then, it seems that one who did not hear it, but to whom it was made known directly afterwards or within the time to be allowed for acting upon it, may act upon it.

A declaration in the sale proclamation by the decree-holder that the property advertised for sale is not subject to any encumbrance does not act as estoppel as against him in favour of a purchaser of the property privately from the judgment-debtor and not in auction sale to which the proclamation related : *Case law discussed.* (*Greaves and Mukerji, JJ.*). JOGESHCHANDRA *v.* ENTAZ ALI.

97 I.C. 625=A.I.R. 1927 Cal. 34.

———The rule of estoppel is a rule of evidence and ought to be pleaded with sufficient clearness. (*Das and Ross, JJ.*). SHAIKH ABDUL RAHIM *v.* MT. BARIRA. **61 I.C. 807=2 P.L.T. 556=6 P.L.J. 273=A.I.R. 1921 Pat. 166.**

———*Nature of.*

Per *Kemp, A.J.C.*—Estoppel being a rule of evidence is not proper to be set out in a plaint which should confine itself to facts. It is a rule of evidence and not a cause of action. (*Fawcett, J. C., Crump and Kemp, A. J. Cs.*). BANUMAL *v.* NEWANDMAL. **83 I.C. 360=16 S.L.R. 207=A.I.R. 1921 Sind 159 (F.B.).**

—S. 115—Pre-emption.

———Successful pre-emptor dying—Vendor succeeding as legal representative of pre-emptor—Vendor is not estopped from taking benefit of decree. (*Sulaiman and Kendall, JJ.*). BINDRABAN *v.* DURAG SINGH. **1930 A.L.J. 369=A.I.R. 1930 All. 220.**

———*Consent to a transfer—Effect.*

By consenting to a transfer a person disqualifies himself from pre-empting and loses his right of pre-emption altogether. He is then estopped not only as against the vendor and the vendee but also against a rival pre-emptor. (*Sulaiman and Pullan, JJ.*). RAM DAWAN SHUKAL *v.* RAM SURAT. **117 I.C. 345=1929 A.L.J. 935=A.I.R. 1929 All. 589.**

———*Co-sharer—Refusal to purchase—Effect.*

A co-sharer intended to sell his share. Other co-sharer refused to purchase the share, on the ground that he had no money to make the purchase, but without showing his intention to reserve his right to pre-empt subsequently, and thereby induced the vendee to purchase the share on the belief that this other co-sharer had waived his right to pre-empt. In a suit for pre-emption by the other co-sharer,

Held, that there was absolute refusal to purchase the share and he would now be estopped from going behind his refusal and claiming a right to pre-empt although no notice was given under S. 14, Agra Pre-emption Act: 6 All. 463; 27 All. 670 and 5 A.L.J. 331, *Not appr.*; 39 All. 127; 15 A.L.J. 315; 40 All. 690, *Dist.*; A.I.R. 1926 All. 467, *Rel. on.* (*Sulaiman and Kennedy, JJ.*). RAMESHAR PRASAD *v.* GHISIAWAN PRASAD. **121 I.C. 241=1929 A.L.J. 665=51 All. 820=A.I.R. 1929 All. 531.**

———*Appeal.*

Withdrawal by the vendee of the money paid in the lower Court under its decree by the pre-emptor does not debar the vendee from appealing against that decree: 16 P.R. 1907; 83 P.R. 1912 and A.I.R. 1926 All. 661, *Foll.*; 82 P.R. 1868, *Over-*

EVIDENCE ACT (1872), S. 115—Question of law.

ruled by 31 P.R. 1907 and 76 P.L.R. 1906, *Dist.* and *Dist. from.* (*Tek Chand, J.*). MEHDI *v.* MT. NADRAN. **111 I.C. 814=A.I.R. 1929 Lah. 137.**

———Pre-emptor party to suit by village landlords challenging sale to be pre-empted—Sale confirmed by compromise decree—Right of pre-emption cannot be exercised. (*Lord Shaw.*) RIKHI RAM *v.* DHANPAT RAI. **110 I.C. 1=10 Lah. 75=55 I.A. 266=48 C.L.J. 158=33 C.W.N. 90=30 P.L.R. 1=A.I.R. 1928 P.C. 190 (P. C.).**

———The Mukhtar-am of the vendor, who took part in the proceedings relating to the sale and subsequently purchased part of the property sold to the vendee, on account of his having taken part in the negotiation relating to the sale is not estopped from resisting the plaintiffs' claim, of whom he is co-sharer and with whom he is on equal footing and who as such have no preferential right as against him, and so he is entitled to say that as the property has now come into his hands, he being a co-sharer of the plaintiffs, they have no preference over him. 29 All. 125, *Foll.* (*Sulaiman and Banerji, JJ.*). BOHRA GANGA PRASAD *v.* POORAN. **108 I.C. 157=26 A.L.J. 89.**

———The applicability of the rule of estoppel by acquiescence in cases of pre-emption in the Province of Oudh cannot be questioned. 22 O.C. 323; 10 O.C. 257; 5 O.C. 395 and 1 O.C. 254, *Foll.* (*Ashworth and Gokaran Nath Misra, JJ.*). JAGANNATH PERSHAD *v.* CHANDI PERSHAD. **93 I.C. 640=29 O.C. 327=13 O.L.J. 212=3 O.W.N. 356=1 Lnck. 68=A. I. R. 1927 Oudh 86.**

———Where the vendor has offered property to the pre-emptor at a price higher than that ultimately accepted by him from vendee the pre emptor is not estopped from asserting his right by reason of his refusal to buy the property. (*Martineau and Zafar Ali, JJ.*). NATHA SINGH *v.* SUNDAR SINGH. **92 I.C. 258=7 L.L.J. 559=26 P. L. R. 835=A.I.R. 1926 Lah. 10.**

———The person to whom a notice has been given to the effect that a property is going to be sold and who intimates his refusal to purchase cannot be allowed, after the sale has been made after his refusal, to turn round and seek to enforce his right of pre-emption through the Court. The doctrine of estoppel applies to all sorts of cases including pre-emption cases. (*Lindsay and Kanhaiya Lal, JJ.*). OON MAHOMED *v.* BINT ZOHRA. **87 I.C. 414=6 L.R.A. Civ. 300=A.I.R.1925 All. 645.**

———Party consenting to sale to vendee cannot pre-empt—Taking active part in collecting money and in effecting registration amounts to acquiescence. 7 P.R. 1912, *Dist.* (*Harrison and Zafar Ali, JJ.*). BHAGAT RAM *v.* RAGHBAR DIAL. **79 I.C. 132=A.I.R. 1925 Lah. 57.**

———Accepting money from the vendee in satisfaction of mortgage does not estop mortgagee from pre-empting. (*Broadway and Brasher, JJ.*). KAUSHI RAM *v.* BHOJARAM. **69 I. C. 648=A. I. R. 1924 Lah. 159.**

—S. 115—Public policy.

———*Adoption by a dancing girl.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition based on the ground of public policy. (*Ayling and Coutts-Trotter, JJ.*). KANDAIYA PILLAI *v.* CHOKKAMMAL. **59 I. C. 214=28 M. L. T. 106=12 L. W. 7.**

—S. 115—Question of law.

———Applicability of a case cited is a pure question of law and no question of estoppel arises.

EVIDENCE ACT (1872), S. 115—Question of law.

(*Mullick. Ag. C.J. and Jwala Prasad, J.*). RAMSARUP RAUT *v.* RAM NARAIN TEWARY.

114 I. C. 479=7 Pat. 85=10 P. L. T. 399=A. I. R. 1929 Pat. 32.

——There cannot be any estoppel on a point of law going to the jurisdiction of the Court. (*Dalip Singh, J.*). RAM SINGH *v.* IMPERIAL BANK OF INDIA, LTD., RAWALPINDI.

A. I. R. 1928 Lah. 802.

——*Construction of document.*

Per *Ashworth, A.J.C.*—The question of the proper construction to be placed on a deed is a question of law and there can be no estoppel by a pleading of law inasmuch as the other side must be presumed to know what the law is. (*Kanhaiya Lal, J.C. Daniels and Ashworth, A.J.C.*). SARSUTI PRASAD *v.* EHTISHAM ALI. **77 I. C. 310=25 O.C. 349=A.I.R. 1923 Oudh 123.**

—S. 115—Recitals.

——Recitals in deed—Executant is not necessarily estopped from denying. 1 Lah. 137, *Expl.*; 40 All. 593 (P.C.), *Dist.* (*Jai Lal, J.*). SHIWALA MAHADEO *v.* LACHHMAN. **96 I.C 440=8 L. L. J. 291=27 P. L. R. 581=A.I.R. 1926 Lah. 471.**

—S. 115—Representation—Absence of.

——Person misled by mistaken legal advice and not by representations by another—The other is not estopped. (*Lord Phillimore.*) VERTANNES *v.* ROBINSON. **102 I.C. 639=5 Rang. 427=54 I.A. 276=29 Bom. L.R. 1017=1927 M.W.N. 492=39 M.L.T. 134=25 A.L.J. 713=46 C.L.J. 126=31 C.W.N. 1078=26 M.L.W. 417=A.I.R. 1927 P.C. 151=53 M.L.J. 71 (P. C.).**

——Where a Mahomedan widow who had one-eighth share, alienated property on behalf of her minor children but it did not appear either from the recitals or from evidence on record that she intended or contracted to transfer property, or any portion thereof in her own individual right,

Held, the alienation was not valid to the extent of her share. (*Kinkhede, A. J. C.*). GULAM JAFAR *v.* RAMDHAN. **103 I.C. 209=A I.R. 1927 Nag. 290.**

——*No question of estoppel arises.*

P sued *D* for possession on the basis of the expiry of a lease. *D* claimed to be an occupancy tenant and the matter went up to the Privy Council. While the appeal was pending *D* transferred his right to *R*. *P* therefore impleaded *R* as party in the appeal. *D* was ultimately declared as the occupancy tenant. *P* then instituted this suit to eject *R* as a mere trespasser.

Held, there is nothing even remotely of the nature of an estoppel in this case. The plaintiffs neither in the petition nor in the presenting of it made any representation that transferees had acquired any title to the lands in question or were tenants of those lands either with or without a right of occupancy. The position of the plaintiffs then was and still is that transferees were trespassers without any title to the possession of or interest in the lands in question. (*Sir John Edge.*) DAMODAR NARAIN *v.* S. A. MILLER. **69 I.C. 134=16 M. L.W. 692=31 M. L.T. 205=4 P.L.T. 199=27 C.W.N. 461=21 A.L.J. 365=A.I.R. 1922 P.C. 349=44 M.L.J. 723 (P. C.).**

—S. 115—Representation—Action on.

——In the absence of any evidence to prove that the plaintiff acted on the faith of any representation made by the defendant, the question of estoppel does not arise. (*Kumaraswami Sastri, J.*). SHYAMA BHAI *v.* PURUSHOTHAMADOS. **90 I.C. 124=21 M.L.W. 551=A.I.R. 1925 Mad. 645.**

EVIDENCE ACT (1872), S. 115—Representation—Lease.

—S. 115—Representation—Adoption.

——Where, in a dispute regarding family property, settlement was effected between *B* and *W* (a female member) and property was partitioned between them and *B* agreed that *W* would be at liberty to adopt any person as her son and in pursuance of the compromise between them *W* adopted a son.

Held, that whatever the legal position as regards the validity of the adoption may be, *B* is estopped from questioning the adoption by *W*: 34 All. 398 (P.C.) and 15 Mad. 486, *Rel. on.* (*Bhide, J.*). MT. ICHHNUN *v.* BANWARI LAL. **114 I.C. 711=A.I.R. 1929 Lah. 16.**

—S. 115—Representation—Application for sanction.

——Where a party led another to apply for sanction to validate a sale he cannot plead that that sanction will not validate the sale. (*Fawcett and Coyajee, JJ.*). KARSANDAS KALIDAS *v.* CHHOTALAL MOTICHAND. **77 I. C. 275=48 Bom. 259=25 Bom. L.R. 1037=A.I.R. 1924 Bom. 119.**

—S. 115—Representation—Award.

——Where one party to the award led another to believe to his prejudice that he is going to abide by the award he is estopped from contesting it. The fact that he signed the award does not however by itself render it more binding on him. 6 C.P.L. R. 95, *Foll.* (*Baker, Offg. J. C.*). CHOWDHARI MANOHAR LAL *v.* MT. AMANO. **77 I.C. 41=A.I.R. 1924 Nag. 14.**

—S. 115—Representation—By mortgagor.

——*Auction-purchaser with knowledge of defect—Protected.*

When a person mortgages a property falsely representing it as his own, and after inheriting it subsequently, claims to recover the same, contending that he had no right to mortgage it, the auction-purchaser gets a good title even if he had knowledge of the facts provided the mortgage was unaware. (*Greaves and Ghose, JJ.*). SARODA PRASAD BANERJEE *v.* GOSTA BEHARI HAZRA. **70 I.C. 385=27 C.W.N. 943=36 C. L.J. 78=A.I.R. 1922 Cal. 542.**

—S. 115—Representation—Carrier.

——Consignor's agent—Representation to Railway and getting reduced rate thereby creates estoppel. (*Daniels and Neave, JJ.*). RAGHUNANDAN RAM *v.* G. I. P. RY. **81 I.C. 1=46 All. 649=22 A.L.J. 645=5 L.R.A. Civ. 396=A.I.R. 1924 All. 692.**

—S. 115—Representation—Finding of.

——Finding as to representation by one inducing another to do an act is one of fact. (*Venkatasubba Rao, J.*). MD. BATCHA SAHIB *v.* ARUNACHALAM CHETTIAR. **90 I.C. 875=1925 M.W.N. 596=A.I.R. 1926 Mad. 39=49 M.L.J. 326.**

—S. 115—Representation—Knowledge unnecessary.

——Section 115 does not require that a person, who by his declarations or conduct induces a belief in the mind of the other, must of a necessity have been aware of his rights: 20 Cal. 296 (P.C.) and A.I.R. 1925 P.C. 146, *Foll.* (*Sulaiman and Iqbal Ahmad, JJ.*). MATA DAYAL LAL *v.* LALJI SAHAI. **106 I.C. 524=25 A. L. J. 878=A.I.R. 1927 All. 838.**

—S. 115—Representation—Lease.

——Lessee requesting permission of lessor to build leasehold—Lessor informing that lease was permanent and that lessee had a right to build—Lessee building accordingly—Lessor cannot evict lessee

EVIDENCE ACT (1872), S. 115—Representation —Lease.

on the ground that lease was not permanent: 1 H.L. 129; 28 Cal. 693 (P.C.); 20 Cal. 296 (P.C.), *Rel. on.* (*Mr. Ameer Ali.*) FORBES *v.* RALLI.

87 I. C. 318=52 I.A. 178=6 L.R.P.C. 119= 1925 M.W.N. 453=23 A.L.J. 548= 27 Bom.L.R. 860=41 C.L.J. 543=2 O.W.N. 514= 6 P.L.T. 404=4 Pat. 707=30 C.W.N 49= A.I.R. 1925 P.C. 146=49 M.L.J. 48 (P. C.).

———Property taken on lease for public purposes—Public purposes forming part of consideration for lease—Lessee or his successors cannot be allowed to claim absolute interest. (*Suhrawardy and Duval, JJ.*). PEARY LAL MULLIK *v.* SURENDRA NATH. **88 I. C. 505=A.I.R. 1925 Cal. 1233.**

—S. 115—Representation—Nature of.

———In order that representation may operate as an estoppel, it must be representation of an existing fact and not of a mere intention or of future promises. Estoppel does not confer any title but is merely a rule of evidence which prevents one party from denying the existence of a fact which he represented as existing and upon which representation another person has been induced to act to his detriment. (*B.B. Ghose and Panton, JJ.*). HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY *v.* SECRETARY OF STATE. **121 I. C. 737= 56 Cal. 989=A. I. R. 1930 Cal. 230.**

———A representation that the interests of a deceased had devolved upon the persons making the representation is a "thing" within the meaning of S. 115 as it is not a question of law but is mixed question of law and fact. (*Mukerji and Mallick, JJ.*). BARKAT ALI *v.* TRASANNA KUMAR. **33 C. W. N. 873=A.I.R. 1929 Cal. 819.**

———*Representation, of a mere opinion or of a point of law.*

No estoppel can ensue upon a representation, not of a fact, but of a mere opinion or of a point of law. If, therefore, a person alters his position, to his detriment, by acting on the representation of a mere question of opinion or a matter of law which would be equally accessible to both the parties, no estoppel could arise. But where there has been a representation as to the existence of a fact to a certain person and the latter believes it and acts upon it and his position is altered, so that he cannot be put back to his original position at all, at any rate, without great loss and inconvenience, estoppel will undoubtedly ensue. 30 All. 549; 34 All. 398 (P. C.); *Frederick Bloomenthal* v. *James Ford*, (1897) A. C. 156, *Rel. on*; A. I. R. 1925 P. C. 118 (P. C.) and 19 W. R. 12 (P. C.), *Dist.* (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI. **110 I.C. 665= 50 All. 885=26 A.L.J. 1106= A.I.R. 1928 All. 459.**

———*Promises* de futuro.

The doctrine of estoppel by representation is applicable to some state of facts alleged at the time to be in existence and not to promises *de futuro* which if binding at all, must be binding as a contract. *Maddison* v. *Alderson*, (1883) 8 A. C. 473, *Foll.* (*Rupchand Bilaram, A.J.C.*). DEVIBAI *v.* DAYABHOY MOTILAL. **89 I.C. 164= A. I. R. 1926 Sind 42.**

———*Inducing belief in validity of custom.*

The fact that defendant induced the belief that a custom was valid is not such a belief as is referred to in S. 115 of the Act, that is to say, a belief in the truth of a "thing" which means a belief in a fact. Where the act complained of was not done with the intention of inducing the result and where the act complained of was not the case of the belief in ,the truth of a thing, which means a belief in a fact, *held*, estoppel was not created. (*Martineau, J.*). RAMJI DAS *v.* JAI GOPAL. **69 I.C. 431=A.I.R. 1923 Lah. 244.**

EVIDENCE ACT (1872), S. 115—Representation —Payment under.

—S. 115—Representation—Omission to object.

———*Attachment of decree—Omission to object—Effect.*

Where the Chairman and the Manager of a bank have arranged, between themselves without actual knowledge on the part of other officers of the bank, the assignment of a decree by the Chairman to the Bank, the Bank cannot claim the benefit of that assignment without the accepting liability for knowledge on the part of the Chairman and Manager of a subsequent attachment of the decree which had been assigned. If in such a case the bank by its omission to object to that attachment of the decree leads the attaching decree-holder of the assignor Chairman to believe that the decree was still the property of his judgment-debtor at the time of the attachment, and to act on that belief in giving credit for the amount recovered by execution of the decree which he attached, the bank is estopped from denying that the Chairman was still owner of the decree attached at the time of attachment. (*Heald, Offg. C.J. and Chari, J.*). CO-OPERATIVE TOWN BANK OF PADIGON *v.* SHANMUGAM PILLAY. **125 I. C. 365=8 Rang. 223= A. I. R. 1930 Rang. 265.**

—S. 115—Representation—Pardanashin Lady.

———Where the executant is a *pardanashin* and uneducated lady and she is made to agree to sell her property on the understanding that a forfeiture clause will be operative in her favour and it is not explained to her that such a forfeiture was illegal and unenforceable, then if the defendant wishes to stick to the transaction he cannot be allowed to repudiate the forfeiture clause on the strength of which the executant's consent had been obtained. (*Sulaiman and Kendall, JJ.*). ALTAF BEGAM *v.* BRIJ NARAIN. **116 I.C. 855=51 All. 612= 1929 A.L.J. 367=A.I.R. 1929 All. 281.**

—S. 115—Representation—Partners.

———Where one person bids at an auction sale and after acceptance of his bid another person representing himself to be a partner with the first joins him in making initial deposit, the second person becomes a co-contractor or co-lessee and not a sub-lessee or transferee and is estopped from denying his liability thereunder. (*Kumaraswami Sastri and Walsh, JJ.*). MUNICIPAL COUNCIL, TIRUVARUR *v.* P. R. KANNUSWAMI PILLAI. **1930 M.W.N. 140=53 Mad. 352= 31 M. L. W. 271=A.I.R. 1930 Mad. 600= 58 M.L.J. 377.**

—S. 115—Representation—Patta.

———Per *Ramesam, J.*—A person having induced the Revenue Authorities to issue a patta in the name of another and himself is estopped from contending that the other has no title. (*Spencer and Odgers, JJ.*). LAKSHMINARASIMHAM *v.* VENKATARUTNAYAMMA. **70 I. C. 642= 30 M.L.T. 334=A.I.R. 1921 Mad. 645.**

—S. 115—Representation—Payment under.

———*A* made advances to *B* on the assurance given by *C*, who also was requested by *A* that money due to *B* by *C* should be paid to *A* direct. After a cheque drawn in favour of *A* by *C* was presented for payment, it was dishonoured, *C* having stopped payment to *B* in the meanwhile having discovered misconduct on *B*'s part.

EVIDENCE ACT (1872), S. 115—Representation —Pre-emption.

Held, that *A* was entitled to recover and C was estopped from denying that bills due to *B* were in order. (*Sanderson, C. J. and Buckland, J.*). B. N. RY. CO. LTD. *v.* CO-OPERATIVE HINDUSTHAN BANK LTD. **97 I.C. 606=53 Cal. 622= A.I.R. 1926 Cal. 1089.**

—S. 115—Representation—Pre-emption.

———Where, however, a pre emptor has previously expressed his clear intention not to pre-empt the property on any account and has waived his objection in unequivocal language to the property being sold to the vendee, he is estopped personally from pre-empting afterwards, even though the exact share or price at which it was going to be sold was not mentioned to him. 6 All. 463 ; 27 All. 670 ; 5 A.L.J. 331 ; A.I.R. 1926 All. 467, *Ref.* (*Sulaiman and Sen, JJ.*). BASIRA BIBI *v.* SHEIKH ATA ULLAH. **118 I.C. 170=1929 A. L.J. 528= A.I.R. 1929 All. 453.**

—S. 115—Representation—Reversioner.

———*Consent to a family arrangement—Effect.*

Next presumptive reversioners consenting to and joining in a family arrangement thereby agreeing to an acceleration of part or whole of the estate by limited owner are estopped from challenging the same if it has been acted upon provided the agreement is not opposed to the nature of estate vesting in the reversioners. A.I.R. 1922 All. 297 ; A.I.R.1923 All. 387 (F. B.) and A.I.R. 1918 P. C. 70, *Rel. on* ; *Cases discussed.* (*Mukerji and Bennet, JJ.*). POKHAR SINGH *v.* MT. DULARI KUNWAR. **A.I.R. 1930 All. 687**

———Where a reversioner for good consideration agrees not to lay claim to a property when the succession opens out, he must in equity be held bound by that agreement : A.I.R. 1918 P. C. 70; A.I.R. 1926 All. 715, *Rel on* and A.I.R. 1923 All. 387 (F. B.), *Dist.* (*Sen and Niamatullah, JJ.*). RAGHUBIR *v.* NARAIN. **A.I.R. 1930 All. 498.**

———*Relinquishment by—Effect.*

Where a widow transfers by gift a portion of her husband's property and the reversioners execute a deed of relinquishment whereby they purport to renounce and relinquish whatever rights and whatever interest they might conceivably possess under the Hindu Law in respect of the property covered by the deed of gift and expressly covenant that at no time hereafter will either of them or their heirs successors or representatives, set up any right or claim or whatsoever to the property.

Held, that they cannot sue to have the gift deed set aside even when the succession opens in their favour. 45 C. 590, (P. C.), *Cons.* ; 44 Bom. 488, *Dist.* ; A.I.R. 1922 All. 297, *Affirmed.* (*Mears, C.J. Banerjee, Piggott, Walsh and Ryves, JJ.*). FATEH SINGH *v.* THAKUR RUKMINI RAWANJI MAHARAJ. **72 I.C. 8=45 All. 339=21 A.L.J. 235= 4 L.R.A. Civ. 392=A.I.R. 1923 All. 387.**

———Hindu Law—Alienation—Hindu widow—Gift—Reversioner joining in the alienation and consenting to alienation is estopped from disputing it later A.I.R. 1917 P.C. 95 ; A.I.R. 1918 P. C. 140, *Ref. to* ; 3 All. 362, *Ref. to.* (*Tudball and Sulaiman, JJ.*). MAHADEO PRASAD SINGH *v.* MATA PRASAD. **63 I. C. 721=44 All. 44= 19 A. L. J. 799=A.I.R. 1922 All. 297.**

—S. 115—Representation—Status.

———Plaintiff describing defendant's status as that of *raiyat* in lease—Defendant acting upon it—Plaintiff is estopped from saying to the contrary

EVIDENCE ACT (1872), S. 115—Scope of.

later on. (*Mookerjee and Rankin, JJ.*). ISWAR CHANDRA NATH *v.* GOUR SUNDAR NATH. **82 I.C. 90=39 C.L.J. 337=A.I.R. 1923 Cal. 608.**

—S. 115—Representation—Validity of document.

———Person taking under a will which could be repudiated, and paying maintenance to testator's widow as provided in the will—He cannot subsequently repudiate the will so as to defeat widow's right. (*Kumaraswami Sastri and Ramesam, JJ.*). LAKSHMAMMA *v.* SREERAMULU. **104 I. C. 650= A.I.R. 1927 Mad. 1066.**

—S. 115—Representation—Validity of transaction.

———A party to a contract for a sale inducing a belief in a subsequent purchaser of a property that he has no right over the property—The right under the contract cannot subsequently be enforced. (*Wazir Hasan, J.*) JIA LAL *v.* MT. SAERA BIBI. **99 I. C. 2=3 O. W. N. (Sup.). 273= A.I.R. 1927 Oudh 104.**

———When a person mortgages a property falsely representing it as his own, and after inheriting it subsequently, claims to recover the same, contending that he had no right to mortgage it, the auction-purchaser gets a good title even if he had knowledge of the facts provided the mortgagee was unaware. The burden of proving mortgagee's knowledge is upon the mortgagor. (*Greaves and Ghose, JJ.*). SARODA PROSAD BANERJEE *v.* GOSTA BEHARI HAZRA. **70 I.C. 385=27 C. W. N. 943= 36 C. L. J. 78=A. I. R. 1922 Cal. 542.**

———Sikh, desiring son marrying Arain woman with relatives' consent—Son born—Relatives are estopped from questioning legitimacy. (*Leslie Jones and Broadway, JJ.*). LACHMAN SINGH *v.* PARTAP SINGH. **67 I. C. 937=3 L.L.J. 366= A.I.R. 1921 Lah. 251.**

—S. 115—Scope of.

———Rule of estoppel although primarily rule of evidence affects substantive rights. (*Sen and Niamatullah, JJ.*) MT. WAHIDAN *v.* NAZIR KHAN. **A. I. R. 1930 All. 434.**

———A party relying upon S. 115 of the Evidence Act has to establish not only that the opposite party had made a certain declaration but that the said declaration had been believed and had been acted upon and that it was not reasonably possible for the said party to know the true state of affairs by pursuing enquiries reasonably and with diligence. Where truth is accessible to party the plea of estoppel upon representation fails. (*Sen and Niamatullah, JJ.*). MAHOMED SHAFI *v.* MAHOMED SAID. **122 I. C. 871.**

———*Acts or declarations need not be intentional.*

The law of this country gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself or must have acted with an intention to mislead or deceive. What the law and Indian Statute mainly regard is the position of the person who was induced to act and the principle on which the law and the statute rest is that it would be most inequitable and unjust to him that if another, by a representation made, or by conduct amounting to a representation has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it. So long as there is no duty cast upon the person induced not to rely upon the inducer's statement but to make further inquiries the

EVIDENCE ACT (1872), S. 115—Scope of.

word "intentionally" is satisfied. 20 Cal. 296 (P. C.), *Foll.* (*Mukerji and Mullick, JJ.*). BARKAT ALI *v.* PRASANNA KUMAR. **33 C.W.N. 873= A. I. R. 1929 Cal. 819.**

———The existence of estoppel does not depend on the motive, or on the knowledge of the person making the representation and it is not essential that the intention of the parties whose declaration act or omission had induced another to act, or to abstain from acting should have been fraudulent or he should not have been under a mistake or misapprehension: 20 cal. 296 (P. C.), *Foll.* (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI. **110 I.C. 665=50 All. 885= 26 A.L.J. 1106=A.I.R. 1928 All 459.**

———The law enacted in S. 115 relating to estoppel does not differ from the English law on the subject. (*Shadi Lal, C.J. Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH. **111 I.C. 175= 9 Lah. 701=10 L.L.J. 413=30 P.L.R. 60= A.I.R. 1928 Lah. 609 (F.B.)**

———Questions of acquiescence and estoppel require very careful treatment. (*Walsh and Pullan, JJ.*). RAFI-ULLAH KHAN *v.* MT. MUMTAZ BEGAM. **102 I.C. 586=A.I.R. 1927 All. 609.**

———*Ashworth, J.*—In English law the general rule appears to be that a person who is a party to a deed is estopped from denying its contents, but to this general rule there is the exception that a receipt in a deed does not amount to an estoppel generally, either at law or in equity.

Section 115 is not exhaustive of the law of estoppel applicable to India.

A recital of a receipt in a deed will not operate as an estoppel, under any application of the principle embodied in S. 115 (as opposed to the terms of that section) because such recitals do not operate by way of estoppel in English law. (*Mukerji and Ashworth, JJ.*). BAZ BAHADUR SINGH *v.* RAGHUBIR PRASAD. **100 I.C. 1037=25 A.L.J. 572= 49 All. 707=A.I.R. 1927 All. 385.**

———*Parties to whom it is available.*

It makes no difference whether the persons against whom the estoppel is urged happen to be the defendants or the plaintiffs.

If the title of a plaintiff in a case in respect of a certain property has been admitted by the defendant or if the defendant's title has been admitted by the plaintiff and either of the parties to the case is estopped from denying the title of the other, it is difficult to perceive any distinction in the two cases.

If a plaintiff can assert his claim to a particular property, there being no estoppel in his way, and if he is entitled to a decree in respect of the property to which he is legally entitled, there is no reason why the plaintiff, whose title has been admitted by the defendant and which title the latter is estopped from denying, should not be given a decree in his favour. (*Gokaran Nath Misra, J.*). TEJ BAHADUR KHAN *v.* NAKKO KHAN. **99 I.C. 472= 3 O.W.N. 993=A.I.R. 1927 Oudh 97.**

———Where a party seeks to give evidence of a subsequent oral agreement modifying the terms of the written grant, he puts forward that agreement as true and relies upon the truth of that agreement. In the case of an estoppel, the party who pleads it does not profess to show that the representation made is true. On the contrary his case very probably is that the representation is false but that the person who made it should not be allowed to show that it is false. Sections 92 and 115 deal

EVIDENCE ACT (1872), S. 115—Silence.

with two entirely different topics and there is no conflict between the two. (*Venkatasubba Rao, J.*). MAHOMED BATCHA SAHEB *v.* ARUNACHELAM CHETTIAR. **90 I.C. 875=1925 M.W.N. 596= A.I.R. 1926 Mad. 39=49 M.L.J. 396.**

———No such principle can be laid down as that a person who states that any portion of a document is true and binding between the parties should not be allowed to state that any other recital in the document is false. (*Srinivasa Aiyangar, J.*) LODD GOVINDOSS KRISHNADASS *v.* MUTHIAH CHETTY. **A. I. R. 1925 Mad. 660=48 M.L.J. 721.**

———Does not override Civil P.C., O. XXI, R. 2. (*Kennedy, J. C. and Raymond, A.J.C.*). MOTOOMAL *v.* TEOOMAL. **79 I.C. 89=18 S.L.R. 51= A.I.R. 1925 Sind 140.**

———Estoppel must be very strictly interpreted and any point in doubt must be decided against the estoppel. (*Shadi Lal, C.J. and Le Rossignol, J.*). NIHAL SINGH *v.* NARAIN SINGH. **80 I.C. 525= 6 L.L.J. 45=A.I.R. 1924 Lah. 469.**

———*Estoppel and* res judicata—*Difference.*

Estoppel is a rule of evidence precluding a person from denying the truth of that thing which he has induced another person to believe to be true whereas *res judicata* is founded on the principle that there should be an end to litigation when once it has been decided between the parties. (*Dawson-Miller, C.J. and Coutts, J.*) KALI DAYAL *v.* UMESH PRASAD. **65 I.C. 266=1922 P.H.C.C. 33= 1 Pat. 174=3 P.L.T. 506=A.I.R. 1922 Pat. 63.**

—S. 115—Silence.

———Silence cannot operate as an estoppel unless it is established that there was duty to speak. (*Das and Fazl Ali, JJ.*). BHAGWANDUTT SINGH *v.* LACHMI NARAYAN SINGH. **119 I. C. 882= A.I.R. 1930 Pat. 150.**

———*Person being party to sale as* pro forma *defendant is not estopped from asserting title subsequently.*

There is no duty cast upon a person who is made *pro forma* defendant in the suit under B. T. Act, S. 148-A, to give notice to intending purchasers that the rent-suit or the execution sale or the proceedings in execution are not such as to confer title on the purchaser as contemplated under the special provision of S. 158-B, of the Bengal Tenancy Act. His silence cannot influence the conduct of the auction-purchaser, in any way and it cannot be said that the person keeping silent will be estopped from asserting his title. (*B. B. Ghose, J.*). SURENDRA NATH BANDOPADHYA *v.* JABED ALI TALUKADAR. **85 I.C. 747=A.I.R. 1926 Cal. 420.**

———Mere silence or omission to act does not create estoppel unless there is a duty to speak. (*Mukerji, J.*). UMARAM GOGOI *v.* PURUK CHAND OSWAL. **85 I.C. 540=A.I.R. 1925 Cal. 993.**

———Non-intervention in mortgage suit by *A* against *B* regarding property which, subsequent to the mortgage, was allotted in partition to *C* does not estop *C* from recovering the property when it has been sold in execution of mortgage decree. (*Daniels and Neave, JJ.*). NARAIN *v.* RAM SARAN. **85 I.C. 490=22 A.L.J. 853=5 L.R.A. Civ. 751= A.I.R. 1924 All. 871.**

———The failure to object to the admissibility of evidence in time so as to enable the opposite party to amend his pleading estops one from raising the plea of inadmissibility subsequently. (*Das and Ross, JJ.*). CHHATERDHARI MAHTO *v.* NASIB SINGH. **78 I.C. 919=5 P.L.T. 551= A.I.R. 1924 Pat. 806.**

EVIDENCE ACT (1872), S. 115—Vendor and Purchaser.

—S. 115—Vendor and Purchaser.

———*Vendee's incapacity to contract—Vendor not estopped.*

(Per *Rutledge, C.J.* and *Maung Ba, J.*).—Where the buyer of immovable property, is under disability to buy there can hardly be any question of his being induced to buy by misrepresentation that he was under no such disability. The vendor, therefore, is not estopped from suing to recover possession of the property on the ground of vendee's incapacity to contract. (*Heald, O. C. J., Chari, Mya Bu, Ormistone and Dass, JJ. on equal divisian between Rutledge, C.J., Maung Ba, Brown, and Carr, JJ.*). U. PYINNA *v.* MAUNG LAW. **121 I. C. 705= 7 Rang. 677=A.I.R. 1929 Rang. 354 (F.B.).**

———*Vendee assuring his readiness to complete sale —Vendor demanding immediate completion—Vendee cannot resile.*

Where the vendee under a contract for the sale of immovable property stated to the vendor that his (the vendee's) money was ready and that the title was being engrossed and where those two matters alone were wanting to complete the sale, and where the vendor gave five days' notice to the vendee to complete the sale,

Held, that the vendee was estopped from denying the truth of his statements. (*Lord Shaw.*) MOTI LAL *v.* HAJI MOOSA. **88 I.C. 440= 27 Bom. L.R. 814=23 M.L.W. 51=41 C.L.J. 334= 1925 M.W.N. 314=6 L.R.P.C. 106= 3 Pat. L.R. 152=26 P.L.R. 209=30 C.W.N. 410= A.I.R. 1925 P. C. 124=48 M.L.J. 484 (P.C.).**

———*Vendor representing whole property to be his own and agreeing to sell the whole cannot resile from the contract.*

If a man, having partial interest in an estate, chooses to enter into a contract, representing it and agreeing to sell it as his own, it is not competent to him afterwards to say, though he has valuable interests, he has not the entirety and therefore the purchaser shall not have the benefit of his contract. The person contracting under these circumstances is bound by the assertions in the contract; and if the vendee chooses to take as much as he can have, he has a right to that, and to an abatement; and the Court will not hear an objection by the vendor that the purchaser cannot have the whole. (*C. C. Ghose and Panton, JJ.*). KRISHNA CHANDRA DEY *v.* W. GRAHAM. **75 I.C. 421=50 Cal. 700= 27 C.W.N. 693=A. I. R. 1923 Cal. 694.**

———*Conveyance by estoppel—English and Ceylon Laws.*

Though there is a considerable analogy between the doctrine of English Law as to the conveyance by estoppel, and the doctrine of the Roman Dutch Law which prevails in Ceylon that doctrine is not identical with that of the English Law. The mode by reasoning by which it is reached is different, and the conclusions are not necessarily the same. This law admitted what was called the *exceptio rei venditate et traditoe*. Under this exception the purchaser who had got possession from a vendor who at the time had no title could rely upon a title subsequently acquired by the vendor not only against the vendor but against any one claiming under the vendor; and though delivery (traditio) was a part of the defence, if the purchaser had acquired possession without force or fraud he could use the exception though he had never received actual delivery from the vendor. Also if he had once been in possession without force or fraud, and had since lost possession he could

EVIDENCE ACT (1872), S. 115—Waiver.

recover it by the publician action, using the exception as a replication to any defence set up by the vendor or those claiming title under him. The principle does not rest upon estoppel by recital and is broader in its effect than the English rule.

Under the Roman-Dutch Law, the question is what was the property purported to be conveyed; and on all principles of construction the recitals can only be looked at for the purpose of assisting the Courts to arrive at the determination of the actual effect of the conveyance. The recitals as to how the transferor got the title to the property are not material; if the transferor had no title at the time, under the Roman-Dutch Law, his subsequent acquisition would make the transfer effective, howsoever the title is subsequently got. (*Lord Phillimore.*) FERNANDO *v.* GUNATILLAKA. **A.I.R. 1921 P.C. 138 (P.C.).**

—S. 115—Waiver.

———*Sale proclamation—Waiver of by judgment-debtor.*

Where a judgment-debtor with full knowledge of his rights to insist upon the decree-holders to attach his property again, secures a postponement of the sale for a month, with a promise to pay the debt in that time, and agrees to decree-holder's holding the sale on that adjourned date without a fresh proclamation, in case he does not pay, and consents not to raise the question of want of fresh attachment, he cannot afterwards be permitted to resile from his position having secured an advantage to the prejudice of the decree-holder: 13 C. L. J. 243, *Dist.*; A.I.R. 1922 Mad. 447; (1917) M.W.N. 89; 24 M.L.J. 70; A.I.R. 1926 Mad. 211; 13 C. L. J. 243 and A. I. R. 1925 Mad. 1113, *Ref.* (*Pandalai, J.*). (BADAM) SESHAYYA *v.* (GRANDHI) SATTIRAJU. **120 I.C 863=A.I.R. 1930 Mad. 414.**

———*Arbitration—Objections as to misjoinder of causes of action.*

By agreeing to refer different causes of action against different parties on one and the same reference the parties to it do not only waive objections as to misjoinder of causes of action but agree to a joint trial and cannot afterwards be permitted to challenge the award. (*Rupchand and Barlee, A. J. Cs.*). DATTARAM MUNSHILAL *v.* HARJIMAL & SONS. **121 I.C. 161=24 S.L.R. 145= A.I.R. 1930 Sind 170.**

———*Lessee continuing after breach by lessor waives right (if any) to terminate lease.*

It is not open to a lessee to continue to occupy the house after the breach of a covenant by the lessor without giving notice that he was willing to extend the time for performance up to a specified date and then throw up the lease on a date arbitrarily chosen by him. If he did not put an end to the lease on the date of the breach by the lessor it must be taken that he has waived the benefit of the condition (assuming there was one). (*Ramesam, J.*). GOVINDASWAMI CHETTIAR *v.* PALANIAPPA CHETTIAR. **87 I.C. 10= 21 M.L.W. 271=A.I.R. 1925 Mad. 833= 48 M.L.J. 397.**

———*Lessor and lessee.*

Where the lessor did not exercise his right to forfeit the tenancy for two years after his title was repudiated by the tenant and allowed a third party to purchase the leased property at a Court auction he was held as estopped as against the third party from setting up the forfeiture which was considered as waived. (*Broadway, J.*). CHIRAGH DIN *v.* MUHAMMAD USMAN KHAN. **70 I.C. 359= A.I.R. 1924 Lah. 281.**

EVIDENCE ACT (1872), S. 115—Waiver.

———Where in compromising a suit, certain rights are given up, the parties are estopped from claiming those rights afterwards. (*Mears, C.J. and Banerji, J.*). MAHAMMAD IBRAHIM *v.* CHANDAN SINGH. **63 I.C. 727=3 U.P.L.R. All. 187.**

—S. 115—Miscellaneous.

———*Certified copies only of former applications filed—Evidence of identity available but not given—No estoppel created.*

Where certain facts have been admitted by certain persons in certain applications the mere production of their certified copies without evidence of identity, when such evidence is available, only shows that persons purporting to be the persons sought to be estopped by the applications, made the applications and that the officer before whom they were made was satisfied as to their identity. This is not sufficient for creating an estoppel against these persons so as to preclude them from denying the contents of the applications. (*Aston, A.J.C.*). SUFAN *v.* KHEMCHAND.

A.I.R. 1930 Sind 150.

———Property of husband and wife-mortgage by wife during absence of husband in jail—Husband recovering possession—There was no estoppel against husband. (*Maung Ba, J.*). MAUNG SHWE HTA *v.* MAUNG AN. **118 I.C. 127= A.I.R. 1929 Rang. 112.**

———A land was added to a village by the river changing its course. Some of the zamindars claimed ownership to it on the basis of a previous suit many years ago in which they had asserted their rights to land which had subsequently ceased to exist and had gone back into the river.

Held, that there can be no question of *res judicata* or estoppel. (*Stuart, C.J. and Raza, J.*). SHIV RAM LAL *v.* GANGA SHANKAR. **111 I.C. 370= A.I.R. 1929 Oudh 15.**

———Railway receipt—Delivery of, to another without endorsement—Printed rule on the Railway receipt that unendorsed person not to be recognised as agent—Railway Company may still plead that the person is agent unless it operates as estoppel. (*Ashworth and Iqbal Ahmad, JJ.*). SECRETARY OF STATE *v.* RISHI RAM JAGDISH PRASAD. **108 I.C. 457=50 All. 227= 25 A.L.J. 1029=A.I.R. 1928 All. 145.**

———Civil P.C., S. 2—Suit against *A* as legal representative of deceased debtor—*C*, alleged real representative, joined as party but his name struck off on his application that he was unnecessarily joined—So far as *C* and persons claiming under him are concerned decree against *A* is valid. (*Shah and Fawcett, JJ.*). CHHAGANLAL *v.* JAYARAM. **100 I.C. 956=51 Bom. 125= 29 Bom. L.R. 107=A.I.R. 1927 Bom. 131.**

———Civil P.C., S. 11—Suit for mortgage debt against father and sons—Mortgagee's pleader-making statement that sons should be discharged—Simple money-decree passed—Statement neither operates as *res judicata* nor as estoppel in subsequent declaratory suit by sons that the property is not liable to execution and sale in the decree against father. (*Raza, J.*). MANOHAR LAL. *v.* IMDAD ALI. **98 I.C. 300=3 O.W.N. 862= A.I.R. 1927 Oudh 15.**

———Where plaintiff failed in prior suit on certain facts alleged by defendant and denied by him, defendant is not estopped in later suit from taking advantage of plaintiff's evidence about the facts in the later suit though it conflicts with defendant's allegation in the prior suit. (*Lord Blanesburgh.*) LALCHAND MARWARI *v.* MAHANT RAMRUPGIR. **93 I C. 280=5 Pat. 312=53 I.A. 24=24 A.L.J. 105= 1926 M W N. 203=7 P.L.T. 163=3 O.W.N. 335= 43 C.L.J. 249=28 Bom. L.R. 855=30 C.W.N. 721= A.I.R. 1926 P.C. 9=50 M.L J. 289 (P.C.).**

EVIDENCE ACT (1872), S. 116—Adverse possession.

———Talukdari watan lands liable to payment of *jama* recorded as rent-free lands by mistake—No estoppel arises against Government. (*Fawcett and Madgavkar, JJ.*). SURSINGJI DAJIRAJ *v.* SECY. OF STATE. **99 I.C. 293=28 Bom. L. R. 1213= A.I.R. 1926 Bom. 590.**

———Mortgage by Hindu widow as guardian of her adopted son—Subsequent sale of the equity of redemption by her as owner—Purchaser is not estopped from redeeming. (*Spencer, J.*). RANGAYYA NAIDU *v.* BASANA SIMON. **94 I.C. 639= 23 M. L. W. 367=A.I.R. 1926 Mad. 594.**

———There can be no estoppel against a litigant arising out of the wrongful act of the Court permitted or performed by its own officials. (*Walsh, A. C. J. and Ryves, J.*). PANDIT BALGOBIND *v.* SHEO KUMAR. **82 I. C. 184=22 A. L. J. 791= 5 L. R. A. Civ. 545=46 All. 864= A.I.R. 1924 All. 818.**

———*Point of law—Conduct of party affects.*

Where the plaintiffs had put in a petition to add the other co-sharers landlords as parties to the suit but the defendants objected to this addition and the Munsif refused to allow it,

Held, that the respondents were not entitled to raise this point in appeal. (*Ross, J.*). JAGSAH *v.* SRI KANTA PRASAD. **72 I.C. 401=A.I.R. 1924 Pat. 168.**

—S. 116.

Acquiescence.
Adverse possession.
Cessor of title
Dispute with third person.
Effect of attornment.
Ejectment by another.
Interpretation and scope.
Mortgagor and mortgagee.
Tenant already in possession.
Termination of tenancy.
When tenant can deny.
Miscellaneous.

—S. 116—Acquiescence.

———Acquiescence is an instance of estoppel—Mere non interference is not enough—Acquiescoing with full notice in act prejudicial to oneself so as to induce reasonable belief of his consent, followed by consequent alteration of others position is necessary. 7 Jur. (N.S.) 149 and 8 Ch. D. 286, *Foll.* (*Mukerji, J.*). BANESHAR BANDOPADHYA *v.* AMULYA CHARAN. **82 I. C. 309= A.I.R. 1925 Cal. 288.**

—S. 116—Adverse possession.

———Where land is in the possession of a tenant not only is the possession consistent with the title of the landlord, but the tenant cannot by himself alter its character. The duty which he owes to the landlord of preserving his title prevents any acts of his from having the effect of acts of adverse possession. By disclaiming the landlord's title he forfeits the term but the landlord is not bound to take advantage of the forfeiture, and might enter upon the natural expiration of the term. When the tenant for years becomes a tenant at sufferance by holding over he is still unable to disseise his landlord and gain an adverse possession, or at any rate such disseisin would not be presumed from mere length of possession. A.I.R. 1929 P.C. 272; A.I.R. 1923 P.C. 118;

EVIDENCE ACT (1872), S. 116—Adverse possession.

A.I.R. 1923 P.C. 205; A.I.R. 1924 P.C. 65, *Foll.*; 19 W.R. 252 (P.C.), *Dist.*; A.I.R. 1924 Cal. 168, *Expl.* (*B. B. Ghose and Cammiade, JJ.*). BEJOYCHAND MAHTAB *v.* SUKUMARI DEVI. **117 I.C. 842=32 C. W. N. 720.**

———*Party acquiring by adverse possession—Permissive possession after if estopped.*

Where the rights of the vendors of the plaintiff had become extinguished by adverse possession of plot of land by defendant for more than 12 years, the defendant will not be estopped from pleading acquisition of title by adverse possession and denying plaintiff's title to plot even though the defendant, after purchase of the plot by the plaintiff had obtained his permission to occupy the plot. (*Chari, J.*). (MAUNG) BA THAN *v.* (MAUNG) SEIN WIN. **120 I. C. 662=A. I. R. 1929 Rang. 170.**

———An adverse possession by the tenant cannot be predicated from the mere fact of non-payment of rent or discontinuance of payment of rent unless in connection therewith the landlord has been apprised that the tenant claims title in himself. When the tenant thus disclaims the title of the landlord, claims title in himself, and the landlord has notice of that fact it has the effect of an ouster and disseisin, even though this has happened during the continuance of the term. The theory on which adverse possession becomes a perfect title is that the true owner has, by his own fault, failed to assert his right against the hostile holder. Consequently, where possession is originally, taken and held under the true owner, a clear positive, and continued disclaimer and disavowal of title, and an assertion of an adverse right brought home to the true owner are indispensable before any foundation can be laid for the operation of the statute of limitation. Without this, the length of the occupation is immaterial and does not affect the title; possession for the full period of limitation must have elapsed after repudiation before title based thereon can be acquired. If the rule were otherwise, the greatest injustice might be done; without such knowledge of the repudiation, the landlord has the right to rely upon the fiduciary relation under which the possession was originally taken. As has been well said, a possession commencing under the authority of or in subordination to the true title, does not become transformed into a hostile one, by a mere change in mental attitude. It must be shown that the true owner had knowledge of the adverse holding, or it must be so open and notorious as to raise a presumption of notice to him. (*Mookerjee and Walmsley, JJ.*). GIRISH CHANDRA *v.* SRI KRISHNA. **75 I.C. 325=38 C.L.J. 266=A.I.R. 1924 Cal. 168.**

—S. 116—Cessor of title.

———Where a person holding a paramount title steps in and the title of the landlord is put an end to, a tenant who has attorned to the former is not estopped from denying his landlord's title. A.I.R. 1925 Mad. 143, *Ref.* (*Wallace, J.*). LINGAYYA AYYAVARU *v.* KANDULA GANGIAH. **105 I.C. 892=A.I.R. 1928 Mad. 58.**

———*Landlord and tenant.*

Tenant can prove cessor of landlord's title by ouster by paramount title holder and can attorn to the latter on such ouster. 2 M. 226, *Ref.*; A.I.R. 1922 Cal. 237, *Ref.* (*Wallace, J.*). RAMASWAMI THEVAN *v.* ALAGA PILLAI. **79 I. C. 881=A. I. R. 1925 Mad. 143.**

———It is open to the tenant to prove a subsequent cessor of the landlord's title. The estoppel mentioned in S. 116 of the Evidence Act refers to the title at the beginning of the tenancy. One way in which the tenant can show that the title has determined is by proving an eviction by title paramount or the equivalent of such an eviction. (*Sanderson, C.J and Richardsan, J.*). RAM CHANDRA CHATTERJI *v.* PRAMATHA NATH CHATTERJI. **63 I.C. 754=35 C.L.J. 146=A.I.R. 1922 Cal. 237.**

EVIDENCE ACT (1872), S. 116—Effect of attornment.

—S. 116—Dispute with third persons.

———Tenant can set up his own title against third person though not against landlord. (*Sulaiman and Kendall, JJ.*). TIKA RAM *v.* MOTI LAL. **1930 A.L.J. 564=A.I.R. 1930 All. 299.**

———A subsequent licensee can sue a prior licensee who had abandoned his rights in the land of which the licensor had then granted a subsequent license to the plaintiff. 38 A. 178, *Dist.* (*Kanhaiya Lal, J.*). SYED ZAHUR HASAN *v.* MT. SHAKER BANOO. **78 I.C. 189=A.I.R. 1925 All. 29.**

———Donee is not estopped from pleading against stranger want of title in the donor nor against mortgagee by redeeming mortgage executed by donor. 61 P.R. 185, *Foll.* (*Martineau, J.*). RADHA KISHAN *v.* MOOL CHAND. **76 I.C. 128=A.I.R. 1925 Lah. 27.**

———Person not claiming through tenant is not estopped from claiming plaintiff's title. (*Stuart and Kanhaiya Lal, JJ.*). MAHARAJA OF JAIPUR *v.* SURJAN SINGH. **75 I. C. 495=44 All. 671=20 A.L.J. 615=A.I.R. 1922 All. 333.**

—S. 116—Effect of attornment.

———After one of the three brothers who were landlords became insolvent they jointly mortgaged their property. A tenant was let into possession by them prior to the insolvency and mortgage, who after the mortgage was executed attorned to the mortgagee and paid him rent. In a suit for ejectment by the mortgagee, the tenant claimed that he was not estopped from denying the title of the mortgagee.

Held, that the rent note was separated from and independent of the mortgage, and so the taint of illegality of the mortgage, if any, as one of the executants was an insolvent, does not extend to the rent note. Hence the tenant would be estopped from denying mortgagee's title. 32 Bom. 449 and A. I. R. 1927 Bom. 129, *Dist.*

Held further: that even though the tenant was originally let into possession by the mortgagors from the time when he passed a fresh rent note in favour of the mortgagee a new tenancy arose and he remained in possession under the mortgagee, and so his former possession did not prevent estoppel from arising. A. I. R. 1928 Bom. 265, *Foll.*; 11 Cal. 519, *Not foll.* (*Madgavkar, J.*). NAGINDAS SANKALCHAND *v.* BAPALAL PURSHOTTAM. **32 Bom. L.R. 692=A.I.R. 1930 Bom. 395.**

———Tenant cannot challenge title of his landlord. 42 I. A. 202, *Foll.* (*Lord Phillimore.*) VERTANNES *v.* ROBINSON. **102 I.C. 639=5 Rang. 427=54 I.A. 276=29 Bom. L.R. 1017=1927 M.W.N. 492=39 M.L.T. 134=25 A.L.J. 713=46 C.L.J. 126=31 C.W.N. 1078=26 M.L.W. 417=A.I.R. 1927 P.C. 151=53 M.L.J. 71 (P.C.).**

———Landlord and tenant—Person attorning to lessors as tenant cannot question title of lessors. (*Rankin, C. J. and C. C. Ghose, J.*). KESORAM PODDAR *v.* BANAMALI DE. **103 I.C. 93=45 C.L.J. 249=A.I.R. 1927 Cal. 941.**

———Where the lessors accepted and acted upon the *kabuliyat*, the lessors as well as the persons claiming under them, are equally estopped from

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denying the validity of the lease. (*Cuming and B. B. Ghose, JJ.*). HARI MONDAL *v.* DURJODHAN MONDAL. **94 I.C. 661=A.I.R. 1926 Cal. 882.**

———*Tenant cannot set up title inconsistent with that under which he was let into possession.*

A person who has lawfully come into possession of land as tenant from year to year or for a term of years cannot set up during the continuance of such relation any title adverse to the landlord inconsistent with the legal relation between them and however notoriously and to the knowledge of the other party, acquire by the operation of the law of limitation, title as owner or any other title inconsistent with that under which he was let into possession: 24 Mad. 246; 37 Mad. 1; 21 Mad. 153, *Foll.*; 7 Bom. 96; 27 Bom. 515, *Dist.* (*Kennedy, J.C. and Aston, A.J.C.*). SIDIK HAJI YACUB *v.* MAHOMED FARUQ. **90 I.C. 1007=21 S.L.R. 185=A.I.R. 1926 Sind 71.**

———*Tenant can't plead he is benamidar.*

By accepting a deed of conveyance in fee and going into possession, a grantee is estopped to deny the title or seisin of his grantor by alleging that he is merely benamidar for another person. (*C. C. Ghosh and Panton, JJ.*). PRABHAT CHANDRA CHATTERJI *v.* BIJOY CHAND MAHATAP.
75 I.C. 89=50 Cal. 572=A. I. R. 1924 Cal. 84.

———Lessee cannot deny title of lessor. (*Abdul Raoof, J.*). MELA RAM *v.* RIKHI KESH.
69 I.C. 111=33 P.W.R. 1922=A. I. R. 1923 Lah. 69.

———A tenant cannot set up an adverse title to the landlord. (*Ryves and Stuart, JJ.*). DEBI PROSAD *v.* MT. GUJAR. **68 I.C. 750=20 A. L. J. 696=A.I.R. 1922 All. 423.**

———Covenant in *kabuliyat*—Rights incorrectly recorded in covenant—Person entering into covenant must recognise rights. (*Woodroffe and Walmsley, JJ.*). MIDNAPORE ZEMINDARI CO., LTD. *v.* NARES NARAIN ROY. **63 I. C. 161=33 C. L. J. 317=A. I. R. 1921 Cal. 368.**

———A lessee from a mortgagor cannot question the validity of the mortgage in a suit for ejectment of the lessee. (*Newbould and Abdul Majid, JJ.*). SHASHI BHUSHAN *v.* DEB NATH. **60 I.C. 705 (Cal.).**

———Tenant executing lease cannot deny lessor's title—It is immaterial from whom he held before. (*Macnair, A. J. C.*). CHANDOO *v.* PARBHOO.
59 I.C. 707=A. I. R. 1921 Nag. 118.

—S. 116—Ejectment by another.

———Lessee ejected by true owner—Rent suit by lessor—Plaintiff's title cannot be denied. (*Daniels, J.*). MOTI LAL *v.* YAR MUHAMMAD.
85 I.C. 756=47 All. 63=6 L.R.A. Civ. 108=A.I.R. 1925 All. 275.

———Tenant let in possession by *A* but evicted by true owner—Tenant attorning to true owner can then challenge title of *A.* (*Devadoss and Waller, JJ.*). ALAGA PILLAI *v.* RAMASWAMI THEVAN.
91 I. C. 1074=1925 M.W.N. 878=23 M.L.W. 296=A.I.R. 1926 Mad. 187=49 M.L.J. 742.

—S. 116—Interpretation and scope.

———"*Continuance of tenancy.*"

The words "continuance of tenancy" in S. 116 applies to the tenancy in question in the same suit in which the estoppel arises, and not to any previous tenancy. (*Madgavkar, J.*). NAGINDAS SANKALCHAND *v.* BAPALAL PURSHOTTAM.
32 Bom.L.R. 692=A.I.R. 1930 Bom. 395.

———Section 116 does not state that every license is revokable at the whim of the licensor. (*Baguley, J.*). V. AHDEIKSA *v.* MA SAN ME. **121 I.C. 787=7 Rang. 617=A.I.R. 1930 Rang. 29.**

EVIDENCE ACT (1872), S. 116—Mortgagor and mortgagee.

———Estoppel would operate only as regards the denial in so far as it relates to the beginning of the tenancy and not to any other point of time. Though the tenancy may be continuing, it is quite open to the tenant to plead and show that his liability to pay the rent has wholly or partially or for a time ceased. Such a plea does not amount to disputing the landlord's title but is really one of confession and avoidance, and is available to the tenant: 2 Mad. 226; 12 W.R. 109; 14 W.R. 85 and 21 W.R. 5, *Foll.* (*Cuming and Mukerji, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA.
112 I.C. 172=55 Cal. 1013=47 C.L.J. 387=32 C.W.N. 559=A.I.R. 1929 Cal. 22.

———*Tenant is not prevented from showing subsequent devolution of title.*

Section 116 only provides that the tenant cannot deny that the landlord at the beginning of the tenancy, had a title to the property or that he had a right to let the property. He cannot, however, be prevented from showing that the landlord had only a life-interest and that on his death the property devolved on some one else. (*Sulaiman, Ag. C.J. and Weir, J.*). MADAN LAL *v.* MT. GUR DASSI.
110 I. C. 376=26 A. L. J. 1255=A. I. R. 1928 All. 650.

———'*At the beginning of tenancy.*'

If once the relation of landlord and tenant is established between the parties, the tenant would be estopped from disputing the landlord's title. The words "at the beginning of the tenancy" cannot be construed to mean the time when the tenant was first let into possession. It may be that in some cases the tenant may be in possession before the new tenancy begins and he may attorn to another landlord by executing a lease which constitutes a new tenancy. The question, therefore, to be decided in each case under S. 116 would be whether a new tenancy had arisen and not whether the tenant had been let into possession by the landlord. In support of the contention that there is no relation of landlord and tenant between the parties the tenant may assert that the contract of tenancy is void or voidable on account of misrepresentation or fraud: 40 Mad. 561 (F.B.); 8 B.H.C (A.C.J.) 175 and 34 Bom. 329, *Rel. on*; 37 All. 557 (P.C.), *Ref.* (*Patkar and Baker, JJ.*). SHANKAR RANA *v.* JAGANNATH. **111 I.C. 911=30 Bom. L.R. 741=A.I.R. 1928 Bom. 265.**

———*Words "at the beginning" do not apply where tenant is already in possession.*

The words in S. 116 "At the beginning of the tenancy" only apply to cases in which tenants are put into possession of tenancy by the person to whom they have attorned and not to cases in which the tenants have previously been in possession. Where there was no proof of any rent ever having been paid or that the defendant was inducted as a tenant by the plaintiff and the parties were brothers and admittedly the house was once joint property,

Held, in these circumstances the defendant was not estopped from denying that he was the plaintiff's tenant. (*Campbell, J.*). RIKHI KESH *v.* MELA RAM. **73 I. C. 450=A. I. R. 1923 Lah. 483.**

—S. 116—Mortgagor and mortgagee.

———A mortgagee cannot deny the title of his mortgagor on the date of the mortgage. It is however, open to him to assert that on the death of the mortgagor persons who are his heirs under the

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Hindu Law did not succeed to his occupancy rights in accordance with the special rules laid down in Act 12 of 1881. (*Niamatullah, J.*). MAHADEO CHAUBE *v.* RAM RAJ CHAUBE.
122 I. C. 414= A.I.R. 1930 All. 108.

———Mortgage with possession—Mortgagors to remain in occupation as tenants in pursuance of lease executed by them—Mortgagors are precluded from challenging otherwise. (*Zafar Ali and Bhide, JJ.*). ASA RAM *v.* KISHANCHAND. **120 I. C. 166= A.I.R. 1930 Lah. 386.**

———A mortgagee cannot deny the title of the mortgagor, for the purposes of the mortgage nor can the mortgagor derogate from his grant so as to defeat his mortgagee's title : 36 Bom. 185 ; 42 Cal. 455 and *Tasker* v. *Small*, (1837) 3 My. and Cr. 63, *Foll.* (*Patkar, J.*). SOMBHAI *v.* JAGAJIVAN.
114 I. C. 377=30 Bom. L. R. 987= A. I. R. 1928 Bom. 380.

———Landlord and Tenant—Mortgagor of *muafi* land cannot assert against the mortgagee whom he has ejected his own want of title. (*Stuart, C.J. and Raza, J.*). SHYAM MANOHAR *v.* BENI MADHO.
110 I. C. 320=5 O.W.N. 545= 10 L.R.A. Rev. 29=A. I. R. 1928 Oudh 336.

———Mortgagee is estopped in a redemption suit from setting up an interest of a third party, at the time the mortgage was entered into. (*Sulaiman, J.*). RAJARAM DHAR *v.* JADUNANDAN. **88 I. C. 539= A. I. R. 1926 All. 758.**

———Mortgagee can't dispute mortgagor's title to property. (*Shah, Ag. C. J. and Fawcett, J.*). MADHAVRAO HARBAJI THAKUR *v.* AMABABAI LAXMAN JADHAV. **85 I.C. 193=26 Bom.L.R. 1210= A. I. R. 1925 Bom. 125.**

———Mortgagee is estopped from denying the title of mortgagor in a redemption suit where he had obtained possession from the mortgagor. (*Raymond and Madgavkar, A.J. Cs.*). MAHOMED MOOSA *v.* KAZI FATEHULLAH. **79 I.C. 466= 19 S.L.R. 268= A.I.R. 1925 Sind 167.**

———Defendants in a redemption suit disputing the title of plaintiffs who were not the original mortgagors, is a different matter from a mortgagee setting up a paramount title as against his admitted mortgagor. In the former case the defendants would be quite within their rights.

Quaere :—Is the mortgagor's title itself open to attack in a redemption suit by him ? (*Miller, C.J. and Kulwant Sahay, J.*). BASDEO PRASAD *v.* DWARIKA PANDEY. **83 I.C. 478=2 Pat. 805= A.I.R. 1924 Pat. 234.**

———*Mortgagor though trustee is estopped from setting up trust.*

Even where the mortgagors are trustees acting in a public capacity and not for their own benefit, they are estopped from denying their title and cannnot set up as a defence against the mortgagee that the property so mortgaged is trust property which the mortgagors had no right to mortgage. Where the mortgage-deed clearly and unmistakeably purports to be executed by the mortgagor as the proprietor of the property in his own interest, he is estopped from denying the interest which he represented as his own proprietary right in the deed. (*Dawson Miller, C.J. and Foster, J.*). BRIJ RATAN DAS *v.* RAGHUNANDAN GIR.
71 I.C. 954=1923 P.H.C.C. 49=1 P. L.R. 225= 4 P.L.T. 437=A.I.R. 1923 Pat. 203.

—S. 116—Tenant already in possession.

———Where a tenant being already in possession has made an attornment or acknowledgment of the tenancy, he may show that he did so through ignorance, mistake or the like. (*Raza, J.*). BISHAN NARAIN BARGARA *v.* FIDA HUSAIN.
112 I.C. 382.

———Section 116 applies to cases where a tenant is let into possession by a landlord, and so a person who was in possession before the landlord had purchased the property is not estopped from pleading that he is not a tenant. 11 Cal. 519 and 25 I.C. 721, *Foll.* (*Zafar Ali, J.*). RAMZAN SHEIK *v.* ARUNA MAL. **108 I.C. 182 (Lah.).**

———Where some of the members of the tenant's family under misapprehension of their title excuted *kabuliyat* but the tenant was not put into possession by such *kabuliyat* or by any lease executed by the landlord and remained in possession of his own *sir* plots, the execution of the *kabuliyat* having no effect upon his possession or title.

Held, no question of estoppel would arise under S. 116. A.I.R. 1915 P.C. 96, *Foll.* (*Raza and Pullan, JJ.*). BISHONNATTI *v.* SURAJPAL. **106 I.C. 8= 4 O.W.N. 1037=9 L.R.A. Rev. 342= A.I.R. 1928 Oudh 33.**

———Where a tenant is not let into possession by the landlord, but was already in possession at the time of the *kirayanama* he is not estopped from proving that he made acknowledgment of the tenancy by executing the *kirayanama* through ignorance, mistake or the like. A.I.R. 1915 P.C. 96, *Rel. on* and A.I.R. 1928 Oudh 33, *Foll.* (*Raza, J.*). BISHEN NARAIN BHARGAVA *v.* FIDA HUSAIN.
112 I.C. 382 (Oudh).

———Mere attornment after previous possession as proprietor would not raise estoppel. (*Dawson-Miller, C.J. and Mullick, J.*). KAMAKHYA NARAYAN v. SURENDRA KARAN DEO.
113 I.C. 703=A.I.R. 1928 Pat. 284.

———*Kabuliyat* executed by person already in possession as tenant of third party does not create estoppel. (*Daniels, J.*). FAQIR MOHAMMAD *v.* BHAGGU KHAN. **79 I.C. 371=5 L.R.A.Rev. 111= A.I.R. 1925 All. 244.**

———*Tenant in possession prior to lease also is estopped.*

A tenant who has executed a lease but has not been let into possession by the lessor is estopped from denying his lessor's title in the absence of proof that he executed the lease in ignorance of the defect in the lessor's title, or that the execution of the lease was procured by fraud, misrepresentation or coercion. The mere fact that the tenant was in possession prior to the execution of the lease does not prevent the doctrine of estoppel from applying. 40 M. 561; 123 P. R. 1919 (F.B.), *Foll.* (*Broadway, J.*). MELA RAM *v.* MT. BHOLI. **76 I.C. 47= A.I.R. 1925 Lah. 60.**

———*Tenant can deny landlord's title if tenant is in possession already.*

Though under S. 116 no tenant can deny his landlord's title existing at the commencement of the lease, the rule only applies where the tenant has been let into possession by such landlord and not to cases where he has been in possession previously. 25 I. C. 721, *Foll.* Also if through ignorance or mistake a tenant has executed a rent note and has not been put in possession by the lessor he can dispute the lessor's title. 18 B. 328, *Ref.* (*Prideaux, A.J.C.*). MT. LAXMIBAI *v.* DEVI. **72 I.C. 855= A. I. R. 1924 Nag. 62.**

———Whatever might be the nature of user of the land by lessee before the lease is executed if he

EVIDENCE ACT (1872), S. 116—Tenant already in possession.

clearly attorns to the lessor when he executes the lease the lessee is estopped. (*Rafique and Stuart, JJ.*). SITAL PRASAD *v.* BADRI PRASAD
69 I.C. 647=20 A.L.J. 907= A.I.R. 1923 All. 53.

———Estoppel—Payment of rent by tenant—Tenant is not estopped from denying landlord's title if he was not let into possession by him. 11 Cal. 519, *Ref. to.* (*Mittra, A. J. C.*). SETH SAGUNCHAND *v.* LALA CHHABILERAM. **76 I.C. 884= 18 N.L.R. 11=A.I.R. 1922 Nag. 60.**

—S. 116—Termination of tenancy.

———Section 116 does not contain the whole law of estoppel and the tenant's estoppel operates even after the termination of the tenancy. (*B. B. Ghose and Cammiade, JJ.*). M. MUJIBAR RAHAMAN *v.* ISUB SURATI. **32 C.W.N. 867=49 C.L.J. 1= A.I.R. 1928 Cal. 546.**

———*Lessee on expiry of lease can question title of lessor.*

A lease was granted after a mortgage. The lessee purchased rights under the foreclosure decree which was obtained on the mortgage. The lessor then instituted the present suit after the expiry of the lease for possession of the land leased.

Held, when the lease has terminated it is open to the man in possession to dispute the lessor's title to the land on the ground that ownership of it had passed of either by a transfer or operation of law, to another. (*Prideaux, A.J.C.*). DAULAT *v.* SARDAR SINGH. **82 I. C. 616= A. I. R. 1923 Nag. 91.**

———A tenant in possession cannot, even after the expiration of his lease, deny his landlord's title without actually and openly surrendering possession to him. 123 P.R. 1919, *Foll.*

Once the relationship of landlord and tenant has been established, the tenant must surrender possession before he can set up a claim to be the real owner. (*Broadway, J.*). ALLAH BAKHSH *v.* LAL KHAN. **67 I.C. 269=79 P.L.R. 1922= A.I.R. 1921 Lah. 370.**

—S. 116—When tenant can deny.

———Per *Ramesam, J.*—Although where the lands are lands in an estate, a tenant cannot contract out of his occupancy rights, *i.e.*, however, much he may, contract to surrender the land at the end of the period of a *muchilika*, such a clause would be void and in spite of the clause he may continue in possession; still where the question whether the land is in an estate or not is itself in dispute and the dispute has been settled by a Court of law against the contention of the tenant that the land is in an estate, and therefore, *prima facie* the Estates Land Act does not apply, if the tenant submits to the decision and obtains a *muchilika* he will be estopped from raising the question that the lands are in an estate so long as he keeps possession under the *muchilika* and has not surrendered vacant possession: A.I.R. 1922 P.C. 241; A.I.R. 1925 Mad. 1043; 29 Cal. 518; 34 Mad. 211, *Rel. on*; (1895) 2 Ch. 273 and (1899) A.C. 144; *Re: Anderson Peqler* v. *Gillatt*, (1905) 2 Ch. 70. *Re. Coole Coole* v. *Flight*, (1922) 2 Ch. 536, *Dist.*; 22 Bom. 348, *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). RAMALINGA MUDALI *v.* RAMASAMI AYYAR. **119 I.C. 577=29 M.L.W. 760= 1929 M.W.N. 239=A.I.R. 1929 Mad. 529.**

———A tenant is estopped from denying his landlord's title till he surrenders possession. A.I.R. 1915 P.C. 96, *Expl.* and *Foll.* (*Carr, J.*). DAYALAL & SONS *v.* KO LON. **117 I.C. 60= 6 Rang. 657=A.I.R. 1929 Rang. 15.**

EVIDENCE ACT (1872), S. 116—Miscellaneous.

———Tenant must quit possession before challenging landlord's title. (*Das and Doyle, JJ.*). J. A. VERTANNES *v.* J.G. ROBINSON. **120 I.C. 657= A.I.R. 1928 Rang. 162.**

———*Illegality of transaction.*

If in a suit for ejectment on a rent note it is found that the alleged tenant is in possession under the rent note but the rent note forms only a part of other documents forming one transaction and such trasaction is illegal, it is open to the tenant to plead that the transaction is illegal: 32 Bom. 449; 38 Bom. 709 and 39 Bom. 358, *Rel. on*; 22 Bom.L.R. 149, *Dist.* (*Marten, C.J. and Patkar, J.*). BHAVAN LALU *v.* UMAR MAHOMED.
100 I. C. 1004=51 Bom. 43=29 Bom.L.R. 97= A. I. R. 1927 Bom. 129.

———Tenant cannot deny landlord's title until he surrenders possession: A.I.R. 1915 P.C. 96, *Foll.* (*Wazir Hasan, J.*). MAHOMED SAYED *v.* ZAHIRUDIN. **101 I.C. 771= A.I.R. 1927 Oudh 544.**

———Unless the lessee surrenders possession to the lessor he is bound by estoppel under S. 116 and cannot repudiate his landlord's title and set up title in another person: 37 All. 557 (P.C.); 38 All. 226 and 41 All.654, *Foll.* (*Kinkhede, A.J.C.*). PUNDIT DIWAKAR *v.* URKUNDA.
97 I.C. 992 (Nag.).

———Title of landlord cannot be denied until surrender by tenant is proved—This principle applies between lessee and sub-lessee: 37 All. 557 (P.C.) and A.I.R. 1924 Oudh 309; 1 O. W. N. 957, *Foll.* (*Gokaran Nath Misra, A. J. C.*). MOHAMMAD HUSAIN & SONS *v.* UBEROI & CO., LTD.
89 I. C. 590=12 O. L. J. 501=2 O. W. N. 576= A.I.R. 1925 Oudh 694.

———Defendant let in by plaintiff — Defendant cannot deny plaintiff's title unless he has openly surrendered possession. (*Dalal, J. C.*). DHANI RAM *v.* MAIKOO LAL. **87 I.C. 286= A.I.R. 1925 Oudh 687.**

———A tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord: 37 A. 557 (P. C.), *Foll.* (*Wazir Hasan, A. J. C.*). SHAMSUDDIN KHAN *v.* AGHA SAYID FATEH SHAH.
75 I.C. 936=84 I. C. 532=A.I.R. 1924 Oudh 309.

———A tenant cannot dispute his landlord's title unless he first gives up possession of the property to the landlord and it makes no difference in this respect whether the lease is determined by the expiration of the specific term fixed in the lease, or by a notice given in pursuance of a power in the lease to determine it. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE. **23 Bom. L. R. 939= A.I.R. 1921 Bom. 93.**

—S. 116—Miscellaneous.

———Suit for ejectment by transferee of land conveyed by widow (as executrix) against widow's son to whom land was leased and widow and other three children residing with him—Suit decreed as against widow's and son's share and three children declared entitled to partition of their share—Son held estopped under S. 116, Evidence Act, but his liability under S. 115 left open and application to make it clear dismissed—On vacating land son claimed title to his share as one of next-of-kin of his father—Suit held to be barred under S. 11. (*Lord Russell of Killowen.*) JOHN AGABEG VERTANNES *v.* JAMES GOLDEN ROBINSON.
34 C. W. N. 720=A.I.R. 1930 P. C. 224 (P.C.).

EVIDENCE ACT (1872), S. 116—Miscellaneous.

——A sub-lessee cannot deny the title of his lessor, *i.e.*, the main lessee. (*Das and Kulwant Sahay, JJ.*). DAMODAR PRASAD *v.* MASOODAN SINGH. **105 I.C. 172=8 P.L.T. 829= A.I.R. 1928 Pat. 89.**

——Tenant ejected by landlord's decree—He cannot subsequently sue for declaration of his title. (*Das and Doyle, JJ.*). J. A. VERTANNES *v.* J. G. ROBINSON. **120 I.C. 657= A.I.R. 1928 Rang. 162.**

——No customary right to use land for a certain purpose can be claimed by a tenant against his landlord. (*Ashworth, J.*). MT. BILASI *v.* BIJAJ NARAIN. **102 I.C. 186=A.I.R. 1927 All. 566.**

——Tenant taking land from one person but paying rent to another—Tenant is not estopped from disputing title of that other—English and Indian Law. (*Mukerji, J.*). ABDUL RAJJAK SIKDUR *v.* PROMADA SUNDARI DEVI. **80 I.C. 22= A.I.R. 1925 Cal. 482.**

——Where a document does not create a tenancy at a fixed rent, an expression in the *kabuliyat* that it did create, does not estop the landlord from proving that tenancy at fixed rent was not created. (*Suhrawardy and Duval, JJ.*). ESHAQUE SHEIKH *v.* MOTILAL MALO. **81 I.C.1043= A.I.R. 1925 Cal. 294.**

—S. 117—Dishonoured bill.

——In a suit on a dishonoured bill of exchange after the defendant has accepted the Bill and by so doing has got possession of the goods he cannot be allowed to plead that he was merely an agent acting for the drawer. He cannot be allowed to defend himself on the lines: A.I.R. 1918 P.C. 146, *Ref.* (*Barlee, A.J.C.*). PHOENIX TRADING CO., LTD. *v.* F. R. B. DIWANCHAND SIBAL. **117 I.C. 160= 23 S.L.R. 479=A.I.R. 1929 Sind 172.**

—S. 118—Child.

——*Criminal trial.*

Where the Court is of opinion that the child upon whom an offence under S. 376, I.P.C., is committed is unable to give relevant information in the matter by reason of tender years and consequent immaturity of judgment, it should not examine the child at all: 38 All. 49, *Foll.*; 41 Cal. 406, *Not foll.* (*Agha Haidar, J.*). GHULAM HUSSAIN *v.* EMPEROR. **A.I.R. 1930 Lah. 337.**

——*Evidence by child should be accepted with caution.*

There is no more dangerous witness than young children. Any mistakes or discrepancies in their statements are ascribed to innocence of failure to understand, and undue weight is often given to what is merely a well taught lesson. Children have good memories and no conscience. They are easily taught stories and live in a world of make-believe so that they often become convinced that they have really seen the imaginary incident which they have been taught to relate. The evidence of a child should therefore be accepted with great caution. (*Raza and Pullan, JJ.*). MANNI *v.* EMPEROR, **A.I.R. 1930 Oudh 406.**

——*Sufficient understanding.*

A child of tender years is a competent witness when such child is intellectually sufficiently developed to understand what it has seen and afterwards to inform the Court about it; this sufficiency may be tested even in examination-in-chief: understanding is thus the sole test of competency under S. 118: 38 All. 49, *Foll.*; 41 Cal. 406, *Rel. on*, 10 All. 207, *Expl.* (*Kalumal, A.J.C.*). S. RASUL *v.* EMPEROR. **120 I. C. 515=31 Cr.L.J. 114= A. I. R. 1930 Sind 129.**

EVIDENCE ACT (1872), S. 118—Rejection of evidence.

——*Procedure before admitting child as a witness.*

Before examining a child of tender years as a witness, a Court should satisfy itself that the child is sufficiently intellectually developed to comprehend what he has seen and to give an intelligent account of it to the Court, by testing his intellectual capacity, by putting a few and simple and ordinary questions to him and the Court should record a brief proceeding so that the appellate Court may feel satisfied as to the capacity of the child to give evidence. If the Court is of opinion that by reason of tender years and defective or immature understanding the child could not have perceived the particular incident to prove which he is produced as a witness, the Court should not only refrain from administering the oath to him but should also decline to examine him as a witness: 38 All. 49 and 11 C.W.N. 51, *Ref.* (*Agha Haidar, J.*). TULSI *v.* EMPEROR. **110 I.C. 799= 10 A. I. Cr. R. 527=29 Cr.L.J. 767= A.I.R. 1928 Lah. 903.**

——*Capacity—Record of opinion as to, is not obligatory.*

When the evidence of a child of tender years is adduced the Judicial Officer should for the sake of precaution ascertain as a preliminary measure by means of a few simple questions whether the intelligence of the child is such that (whether sworn or not) it is capable of giving testimony and it is certainly desirable that something should at the commencement of the record of the evidence of a witness of this character be entered to show that such a test has been in fact made. But the mere fact that the Judge omits to make the record will not render the evidence inadmissible, if the Judge is, as a matter of fact satisfied about the capacity to give the evidence. (*Bucknill, J.*). PANCHU CHAUDHURY *v.* EMPEROR. **66 I.C. 73=3 P.L.T. 649= 23 Cr. L.J. 233=A.I.R. 1923 Pat. 91.**

—S. 118—Competency.

——*Test.*

The only test of competency is that the witness should not be prevented from understanding the questions put to him or from giving rational answers to those questions by tender years or other cause. (*Ross and Wort, JJ.*). RAM JOLAHA *v.* EMPEROR. **102 I. C. 349=8 A. I. Cr. R. 189= 8 P.L.T. 594=28 Cr.L.J. 541= A. I. R. 1927 Pat. 406.**

—S. 118—Counsel.

——*Rule as to exclusion from Court—Inapplicable.*

The rule as to the exclusion of the witnesses from Court until they have been examined is not without exceptions. It does not extend to the parties themselves in civil cases so long as they conduct themselves properly, or to their solicitors whose assistance is necessary for the proper conduct of the case. The same rule applies in Criminal Cases. There are even stronger reasons for not applying the rule to the Counsel for the parties who have to conduct the case. (*Wallis, C. J. and Krishnan, J.*). VEMUREDDI BABUREDDI, *In re.* **62 I. C. 828=44 Mad. 916=13 M.L.W. 702= 1921 M.W.N. 440=22 Cr. L.J. 588= A. I. R. 1921 Mad. 425=41 M.L.J. 158.**

—S. 118—Rejection of evidence.

——Rejection of evidence on the ground of a relation of the witness belonging to the same village as the wife of a near relation of the accused was held to be bad. (*Scott-Smith and Fforde, JJ.*). BAGH SINGH *v.* EMPEROR. **81 I. C. 113= 25 Cr. L. J. 625=A.I.R. 1925 Lah. 49.**

EVIDENCE ACT (1872), S. 118—Scope.

—S. 118—Scope.

——Section 118 makes no distinction between prosecution and defence witnesses. (*Baguley, J.*). A. V. JOSEPH *v.* EMPEROR. **85 I. C. 236= 26 Cr. L. J. 492=3 Bur. L. J. 265=3 Rang. 11= A. I. R. 1925 Rang. 122.**

—S. 120—Party to suit.

——*Evidence of a plaintiff or defendant is not to be disbelieved on the ground that he is a party.*

There is no inflexible rule that if a party, plaintiff or defendant, gives his testimony, he must be disbelieved, because he is a party to the suit. Such a rule, if adopted, would nullify the provisions of S. 120 which provides that in all civil proceedings, the parties to the suit shall be competent witnesses. When a plaintiff has deposed in support of his case, his testimony must be scrutinised in the same manner as that of any other witness; and the Court is free to attach to the evidence that amount of credence which it appears to deserve, from his demeanour, deportment under cross-examination, motives to speak or hide the truth, means of knowledge, powers of memory, and other tests, by which the value of a statement of a witness can be ascertained, though not with absolute certainty, yet with such a reasonable amount of conviction as ought to justify a man of ordinary prudence in acting upon those statements. (*Mookerjee and Buckland, JJ.*). JOGENDRA-KRISHNA ROY *v.* KURPAL HARSHI & CO. **68 I.C. 993=35 C.L.J. 175=49 Cal. 345= A.I.R. 1923 Cal. 63.**

—S. 122—Admissibility.

——*Receipt of bribe.*

The communication made by an arbitrator to his wife shortly before his death admitting that he had accepted bribe from a party can be permitted to be disclosed in evidence only if the requirements of S. 122, have been fulfilled. (*Tek Chand and Dalip Singh, JJ.*). KAIKOCAD *v.* KHAMHATTA. **120 I.C. 494=A.I.R. 1930 Lah. 280.**

—S. 122—Confession to husband.

——No statement of an incriminating nature made by the appellant as to her guilt under S. 302 to her husband could be received in evidence. 10 P. R. 1914, *Foll.* (*Broadway and Martineau, JJ.*). MT. IHSANAN *v.* THE CROWN. **81 I.C. 271=25 Cr. L.J. 783= A. I. R. 1923 Lah. 40.**

—S. 123—Jail report.

——*Privileged document.*

A report submitted to the Inspector-General of Prisons under S. 900 of the Jail Manual is clearly an unpublished official record relating to affairs of State within the meaning of S. 123, and there is no distinction between the actual text of the report and the statements which it incorporates: 48 C.304 *Foll.* (*Daniels, J. C.*). KING EMPEROR *v.* NANDA SINGH. **89 I.C 387=12 O.L.J. 450= 2 O.W.N. 422=26 Cr. L.J. 1347= A.I.R. 1925 Oudh 540.**

—S. 123—Power to decide.

——The public officer concerned and not the Judge is to decide whether the evidence referred to shall be given or withheld. If the objection is taken by the proper person the Court will not go behind it. A.I.R. 1921 Cal. 282, *Rel. on.* (*Jackson, J.*). SECY. OF STATE *v.* SAMINATHA NADAR. **119 I.C. 718=A.I.R. 1930 Mad. 342.**

——Moreover it is the public officer concerned, and not Judge, who is to decide whether the evidence referred to shall be given or withheld. In such cases the head of the department has absolute discretion to give or withhold permission and the Court is not entitled to question the claim of privilege raised by him. 5 O. L. J. 294, *Foll.* (*Daniels, J.C.*.) KING EMPEROR *v.* NANDA SINGH. **89 I.C. 387=12 O.L.J. 450=2 O.W.N. 422= 26 Cr. L.J. 1347=A.I.R. 1925 Oudh 540.**

EVIDENCE ACT (1872), S. 124—Power to decide.

——The public officer concerned, and not the Judge, is to decide whether the evidence referred to shall be given or withheld. This holds good even when there is reason to suspect that the witness concerned may have had access to the official records withheld and may have refreshed his memory therefrom before he came to give evidence. (*Mookerjee, A J.C. and Chaudhuri, J.*). W. S. IRVIN *v.* D. J. REID. **63 I.C. 467=48 Cal. 304= 25 C.W.N. 150=A.I.R. 1921 Cal. 282.**

—S. 124—Document of state.

——*Court can on its own motion disallow a document of state if public policy so requires.*

No sound distinction can be drawn between the duty of the Judge when objection is taken by the responsible officer of the Crown, or by the party, or when no objection being taken by anyone, it becomes apparent to him that a rule of public policy prevents the disclosure of the documents or information sought and therefore a Court is justified in declining to allow a document of State to be produced on its own motion. *Hennessy* v. *Wright*, 21 Q.B.D. 509, *Foll.* (*Findlay, O.J.C.*). WAMAN-RAO *v.* EMPEROR. **94 I.C. 899=22 N.L.R. 34= 27 Cr. L.J. 707=A.I.R. 1926 Nag. 304.**

—S. 124—Government resolutions

——A Government Resolution reciting various opinions of Government officers, including their legal adviser, is a privileged document under S. 124. (*Fawcett and Madgavkar, JJ.*). SURSENJI DAJIRAJ *v.* SECY. OF STATE. **99 I.C. 293= 28 Bom. L.R. 1213=A.I.R. 1926 Bom. 590.**

—S. 124—Official confidence.

——*Statement of person desiring Court of Wards to take charge of his properties made to Collector, is privileged.*

In a suit, the Collector, as Manager Court of Wards was ordered to produce certain documents relating to a certain estate under his control. He claimed privilege under S. 124 on the ground that the document contained statements that were made to him in his official capacity and that their disclosure would be prejudicial to the public interest. The Lower Court held that statements made under process of Law cannot be said to be made in "Official Confidence,"

Held, that under the Court of Wards Manual (3 of 1899) there is no question of process of law in this case and therefore the particular document was a communication made to the Collector in his "Official Confidence" and he could not be compelled to disclose it. (*Rafique and Lindsay, JJ.*). COLLECTOR OF JAUNPUR *v.* JAMNA PRASAD. **66 I.C. 171=44 All. 360=20 A.L.J. 140= A.I.R. 1922 All. 37.**

—S. 124—Power to decide.

——The Trial Court has jurisdiction to decide whether an official communication is confidential. (*Devadoss, J.*). SECY. OF STATE *v.* MUTHU ALAGAPPA. **113 I.C. 872=A.I.R. 1928 Mad. 1093.**

——Under S. 124, it is for the Court to decide whether a document is a communication made to a public officer in official confidence. If the Court decides that it was so made then it is solely for the officer to say if its disclosure would or would

EVIDENCE ACT (1872), S. 124—Railway communications.

not be in the public interests. (*Rafique and Lindsay, JJ.*). COLLECTOR OF JAUNPUR *v.* JAMNA PRASAD. **66 I.C. 171=44 All. 360=20 A. L. J. 140=A.I.R. 1922 All. 37.**

—S. 124—Railway communications.

———*Communications by railway employees to Station Master as regards theft are not protected.*

B was charged of having committed theft of certain pieces of cloth in charge of the railway company from a goods truck at a railway station. The Station Master started an enquiry and recorded statements of four persons all of whom were railway employees; these statements were forwarded to the Divisional Superintendent who objected under S. 124 to their production before the trying Magistrate when the accused called for them in order that he might cross-examine the witnesses,

Held, that these communications were not protected. (*Stuart, C. J.*). EMPEROR *v.* BHAGWATI PRASAD. **6 O.W.N. 937=1929 Cr. C. 677=A.I.R. 1929 Oudh 543.**

—S. 124—Waiver.

———*Waiver at one stage—Privilege cannot be claimed subsequently.*

Where copies of documents had been filed in the lower Court apparently without any objection that they were privileged documents which should not be admitted in evidence, it cannot be claimed any more that they are communications made in official confidence. 32 M. 62; 39 M. 304, *Dist.* (*Krishnan and Ramesam, JJ.*). RATHNAMASARI *v.* SECY. OF STATE. **72 I.C. 214=17 M.L.W. 415=32 M.L.T. 279=A. I. R. 1923 Mad. 332=44 M.L.J. 132.**

—S. 126—Absence of litigation.

———*No excuse for disclosure.*

The obligation to keep undisclosed matters which ought not to be disclosed has nothing to do with the question whether at the time when the communications were made there was pending litigation or any prospect of it. L. R. 8 Ch. 361, *Foll.* (*Shah, Ag. C.J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom. L.R. 887=A. I. R. 1925 Bom. 1 (F. B.).**

—S. 126—Advice by third party.

———Section 126 prohibits disclosure not only of any advise given by the professional adviser in the course and for the purpose of his employment but also the disclosure by an attorney of advice given by another person such as a barrister, attorney, etc. (*Shah, Ag. C. J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom. L.R. 887=A.I.R. 1925 Bom. 1 (F.B.).**

—S. 126—Counsel for two parties.

———Where legal practitioner is engaged by two parties he cannot make any disclosures in proceedings between a third party and one of his clients without consent of both of his clients though as between them there can be no secrecy. 3 Bom. 91; 2 A. and E. 171, *Foll.* (*Shah, Ag. C. J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom.L.R. 887=A.I.R. 1925 Bom. 1 (F.B.).**

—S. 126—Friend of party.

———Presence of the client's friend when professional communications are made to an attorney does not affect attorney's obligation to keep the communications secret. (*Shah, Ag. C. J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom. L.R. 887=A.I.R. 1925 Bom. 1 (F.B.).**

EVIDENCE ACT (1872), S. 132—Compulsion.

—S. 126—Period.

———The obligation continues after the employment has ceased. (*Shah, Ag. C. J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom. L.R. 887=A.I.R. 1925 Bom. 1 (F.B).**

—S. 126—Privileged communication.

———Pleaders engaged for obtaining succession certificate examined as to contents of testator's will—He was privileged from disclosing its terms. 5 Bom. L. R. 122, *Dist.*; A.I.R. 1925 Bom. 1 (F.B.), *Ref.* (*Marten, C. J. and Murphy, J.*). BAIKANTA *v.* BHAILAL GHELABHAI AMIN. **31 Bom. L.R. 1046=A.I.R. 1929 Bom. 414.**

—S. 126—Scope.

———Giving out matter which is already a disclosed fact is not forbidden. (*Shah, Ag.C.J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom.L.R. 887=A.I.R. 1925 Bom. 1 (F.B.).**

—S. 129—Applicability.

———*Statements made by servants of a party are not privileged.*

The documents for which privilege can be claimed would be those only which are in the nature of communications between the lay clients and their professional legal advisers. No privilege can attach in law to the statement, made by a party's servants with reference to the subject-matter of the suit to the master. 2 Bom. 455; 15 Bom. 7 and 11 Cal. 655, *Rel. on.* (*Mirza, J.*). CENTRAL INDIA SPINNING WEAVING AND MANUFACTURING CO. *v.* G.I.P. RY. CO. **102 I C. 425=29 Bom.L.R. 414=A.I.R. 1927 Bom. 367.**

—S. 132—Co-accused.

———The section affords sufficient protection to a co-accused to give evidence against his co-accused if compelled to do so and there is no ground why his evidence should be refused. (*Zafar Ali, J.*). RAJA RAM *v.* EMPEROR. **73 I. C. 521=5 L. L. J. 429=24 Cr. L. J. 633=A.I.R. 1924 Lah. 247.**

—S. 132—Compulsion.

———*What is.*

The protection offered by S. 132, Proviso, does not cover any and every answer given by a witness during the course of his trial. The compulsion contemplated in that section is something more than being put into the witness-box and being sworn to give evidence. The compulsion in the proviso refers to compulsion by Court and not compulsion under law. The witness, of course, need not ask in so many words the protection of the Court. The compulsion may be implied or explicit, and in every case it is a question of fact whether there was or was not compulsion. But a witness who answers a question or questions put to him without seeking the protection of S. 132 by objecting to the question put, and requesting to be excused, is not entitled to that protection. 3 Mad. 271 (F.B.); A.I.R. 1926 Bom. 141 (F.B.); A.I.R. 1926 Mad. 906, (F.B.); A.I.R. 1924 All. 381; 16 All.88; 40 All. 271, *Foll.*; 42 All. 257 and A.I R. 1921 All. 362, *Not foll.*; A.I.R. 1927 Mad. 379; A.I.R. 1925 Rang. 345, *Dist.* (*Devadoss and Waller, JJ.*). PEDDABHA REDDI *v.* VARADA REDDI. **116 I.C. 337=52 Mad. 432=29 M.L.W. 210=2 M.Cr.C. 8=1929 M W.N. 84=30 Cr. L.J. 613=13 A.I. Cr. R. 21=A.I.R. 1929 Mad. 236=56 M.L.J. 570.**

———Compulsion under that section is a question of fact. It by no means follows that the witness is

EVIDENCE ACT (1872), S. 132—Compulsion.

compelled to answer every question put by Counsel. (*Watts and Ryves, JJ.*). EMPEROR *v.* BANARSE.
77 I.C. 829=46 All. 254=22 A.L.J. 144=5 L.R.A. Cr. 73=25 Cr.L.J. 477=A. I. R. 1924 All. 381.

———Unless a person objects to any question the answer, to which is likly to criminate him, he cannot be said to have been compelled to give such answer. (*Heaton, A.C.J., Shah and Hayward, JJ.*). EMPEROR *v.* CUNNA. **59 I.C. 324=22 Cr.L.J. 68=22 Bom. L.R. 1247.**

—S. 132—Compulsory and voluntary.

———*Test—Mere record of deposition is not by itself sufficient.*

Where the Judges are permitted to simply make notes of the deposition of a witness it is difficult to know whether a witness voluntarily made a statement or was "compelled" to make it in answer to a relevant question. So the mere record of a deposition is not by itself sufficient evidence of compulsory or voluntary nature of the statement of a witness. (*Kinkhede, A.J.C.*). SURAJMAL *v.* RAMNATH. **105 I. C. 820=28 Cr.L.J. 996=9 A.I. Cr.R. 204=A.I.R. 1928 Nag. 58.**

—S. 132—Defamation, what is.

———To give out that a woman had miscarriage without any knowledge whether she was married or not would amount to defamation because the person who makes the statement would have reasonable belief that such imputation would harm the reputation of the woman in case she was not married and if such statement is made in a witness-box and epecially so in examination-in-chief when the character of the woman is not a fact in issue, the witness is not protected by S. 132, unless the Judge himself asked the question. 32 Cal. 756; 18 A.L.J. and 112, *Ref.* (*Dalal, J.*). KASHI RAM *v.* EMPEROR. **A.I.R. 1930 All. 493.**

—S. 132—Liquidation proceedings.

———In proceedings under S. 196 (5), Companies Act there is no contest between two parties and therefore the proviso to S. 132 does not confer any special privilege on the person so examined. (*Jai Lal, J.*). RAMCHAND GURWALA *v.* KING EMPEROR. **98 I.C. 599=27 Cr. L.J. 1383=A.I.R. 1926 Lah. 385.**

—S. 132—Omission to protest.

———Relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not protected in cases where the witness has not objected to answering the question put to him. (*Macleod, C. J., Crump and Coyajee, JJ.*). BAI SHANTA *v.* UMROO AMIR. **93 I.C. 151=50 Bom. 162=28 Bom. L.R. 1=27 Cr. L.J. 423=A.I.R. 1926 Bom. 141(F.B.).**

———*Answer to question on a relevant point—Protected.*

A voluntary statement by a witness may stand on a totally different footing to an answer given by him as a witness on oath to a question put to him either by the Court or Counsel on either side, especially when the question is on a point which is relevant to the case. In the latter case the witness is within the protection afforded by S. 132 although he may not have objected to the question being put to him. 3 Mad. 271; 16 All. 88; 40 All. 271 and 42 All. 257, *Diss. from.* (*Tudball, J.*). CHATUR SINGH *v.* EMPEROR. **43 All. 92=A. I. R. 1921 All. 362.**

—S. 132—Privilege.

———*Motive—Important elements.*

Not only the status of the witness claiming privilege and his capacity to realize the risk and take

EVIDENCE ACT (1872), S. 133—Accomplice, who is.

objection to the question at the time of giving the answers but also the motive with which he gives his evidence, go a great way to determine his criminal responsibility or otherwise for the statement. (*Kinkhede. A.J.C.*). SURAJMAL *v.* RAMNATH. **105 I.C. 820=28 Cr.L.J. 996=9 A.I.Cr.R. 204=A.I.R. 1928 Nag. 58.**

———Ordinarily, it is for the witness to claim protection at the time of giving his self-criminating answer, and to prove it as a defence to a prosecution for defamation. (*Kinkhede, A J.C.*). SURAJMAL *v.* RAMNATH. **105 I.C. 820=28 Cr.L.J. 996=9 A.I.Cr. R.204=A.I.R. 1928 Nag. 58.**

—S. 132—Scope of protection.

———*Privilege applies only to particular questions objected to—Objection to answer is necessary.*

The proviso applies only to answers given to particular questions. It does not confer a general immunity on a person who is examined even after his protest. In order to substantiate the privilege he must object to the particular questions which are put to him if he desires that answers to those questions be not used against him in any subsequent criminal proceedings. A general objection is not sufficient. (*Jai Lal, J.*). RAMCHAND GURVALA *v.* KING EMPEROR. **98 I.C. 599=27 Cr.L.J. 1383=A.I.R. 1926 Lah. 385.**

—S. 132—Voluntary statement.

———Witness actuated by malicious motives making voluntary and irrelevant statement not elicited by questions put to him, is guilty under S. 500. He cannot claim privilege under I.P.C. 21 Cal. 392; 32 Cal. 756; 40 Cal. 433, *Rel. on.* (*Kinkhede, A.J.C.*). SURAJMAL *v.* RAMNATH. **105 I.C. 820=28 Cr.L.J. 996=9 A.I.Cr.R. 204=A.I.R. 1928 Nag. 58.**

—S. 133—*See also* EVIDENCE ACT, S. 114, ILL. (*b*).

Accomplice, who is.
Conviction on uncorroborated testimony.
Corroboration, extent and nature.
Corroboration, what is.
Retracted confession.
Value of accomplice's evidence.
Value of approver's evidence.
Miscellaneous.

—S. 133—Accomplice, who is.

———*Persons assisting concealment of evidence of crime are "accomplices."*

Witnesses who admittedly had witnessed the crime, who have assisted in concealing the evidence of that crime or at least connived at such being done and who have not attempted to give any information either to the police or to any other person to enable the offender to be brought to justice are in a very little better position than that of accomplices. (*Fforde and Hilton, JJ.*). MAYATU *v.* EMPEROR. **120 I.C. 190=31 Cr. L. J. 50=1929 Cr.C. 87=A.I.R. 1929 Lah. 540.**

———*Penal Code, S.* 161.

A person who offers a bribe to a public officer is an accomplice. Persons who actually pay the bribes or co-operate in such payments or are instrumental in the negotiations for the purpose are also accomplices of the person bribed, and a person who with knowledge that the bribe has to be paid advances money is clearly an abettor and as such an accomplice. 14 Bom. 331; 26 Bom. 193 and 27 Cal. 144, *Rel. on.* (*Kinkhede, A. J. C.*). MUHAMMAD USAF KHAIN *v.* EMPEROR. **114 I.C. 457=30 Cr. L.J. 311=1929 Cr.C. 110=A.I.R. 1929 Nag. 215.**

EVIDENCE ACT (1872), S. 133—Accomplice, who is.

———*Accomplice and informer—Distinction.*

In criminal cases the distinction between an informer and an accomplice assumes at times considerable importance, and in order to determine whether a witness who first associated with wrongdoers and subsequently gave information to the police belongs to the first category or is an accomplice whose evidence cannot be accepted without corroboration, it has to be seen whether the witness had entered into the conspiracy for the sole purpose of detecting and betraying it or whether he is a person who concurred fully in the criminal designs of his co-conspirators for a time and joined in the execution of those till either out of fear or for some other reasons he turned on his former associates and gave information to the police. If at the time when he joined the conspiracy he had no intention of bringing his associates to book, but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice; and his position is not modified simply because later on he turns round and carries information to the police: A. I. R. 1928 Lah. 193, *Rel. on.* (*Tek Chand, J.*). MANGAT RAI *v.* EMPEROR.

110 I.C. 676=10 L.L.J. 262=
29 P.L.R. 703=10 A.I. Cr. R. 519=
29 Cr. L. J. 740=A.I.R. 1928 Lah. 647.

———*Distinction between accomplice and informer explained.*

If at the time when a person joined the conspiracy he had no intention of bringing his associates to book but his sole object was to partake in the commission of the crime, he cannot be called an informer but is an accomplice and his position is not modified simply because later on he turns round and carries information to the police.

A person was present when the plans for committing a dacoity were hatched and had agreed to go to the meeting place in the evening armed with a revolver. He returned soon after and remained there for more than six hours but during this period he took no steps whatever either to inform the police or his master that a dacoity was contemplated. He then actually proceeded to a spot near the house where the dacoity was to be committed and took part in the preparations for committing the offence. It was only after it had been decided to postpone the dacoity till the moon had gone down and he had been sent to the town to bring food for two of the offenders that he for the first time disclosed the whole affair.

Held, that in view of these facts the person cannot but be regarded as an accomplice and his evidence needs corroboration in material particulars against each convict. (*Tek Chand, J.*). KARIM BAKHSH *v.* EMPEROR. **109 I.C. 593=9 Lah. 550=**
29 Cr. L.J. 577=10 A.I.Cr.R. 293=
A.I.R. 1928 Lah. 193.

———A person who has knowledge of the commission of an offence but keeps quiet for some days is no better than an accomplice. 21 Cal. 328 and 24 W.R. 55 (Cr.). *Foll.* (*Suhrawardy and Duval, JJ.*). UMED SHEIKH *v.* EMPEROR. **96 I.C. 867=**
30 C. W. N. 816=27 Cr. L. J. 1011=
45 C. L. J. 581.

———*Person privy to crime.*

Where a witness is found, from his own testimony, to be privy to the crime alleged to be committed by accused, his evidence is no better than that of an accomplice. (*Martineau and Campbell, JJ.*). NUR MUHAMMAD *v.* EMPEROR,
6 L.L.J. 529=A.I.R. 1925 Lah. 253.

EVIDENCE ACT (1872), S. 133—Conviction on uncorroborated testimony.

———Murder—One who helps accused to dispose of body is not an accomplice. (*Le Rossignol and Zafar Ali, JJ.*). JEHANA *v.* THE CROWN.

73 I. C. 506=24 Cr. L. J. 618=
A.I.R. 1923 Lah. 345

—S. 133—Conviction on uncorroborated testimony.

———In law the uncorroborated testimony of an accomplice is sufficient to uphold a conviction provided there is any reason to suppose that it is true. Thus if an accomplice makes a clean breast of the crime and convinces the Court that he is speaking the truth the Court can accept his evidence against his fellow offender. But if so far from making a clean breast of it, he consorts a story of his perfect innocence saying that the fellow offender committed the crime the Court cannot in the same breath refuse to accept the story and convict the fellow offender. (*Jackson, J.*). KUPPUSWAMY IYER, *In re.* **1930 M.W.N. 169.**

———*It is not safe to convict on the sole testimony of accomplice unless corroborated in material particulars by direct or circumstantial evidence.*

The evidence of accomplices is always admissible and is always relevant, but under a very old practice of the Courts in England some evidence is accepted only with great caution and after the closest scrutiny and is not usually accepted against any individual person unless it is corroborated. Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justified. The practice in India is the same as the practice in England. The evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the prisoner committed it. The corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connexion with the crime: A. I. R. 1927 Oudh 369, *Ref.* (*Raza and Nanavutty, JJ.*). BACHCHU *v.* EMPEROR.

A.I.R. 1930 Oudh 455.

———It is nowhere laid down as an inflexible proposition of law that a conviction cannot be based upon the uncorroborated testimony of an accomplice; but it is the usual practice of the Courts to require corroboration of the story of the approver before declaring an accused person to be guilty of a crime. The amount or kind of corroboration required in a particular case must, however, depend upon the peculiar circumstances of that case. (*Shadi Lal, C. J. and Bhide, J.*). NARAIN *v.* EMPEROR. **107 I.C. 97=9 A.I. Cr. R. 497=**
29 Cr. L.J. 209.

———*Co-accused and accomplice—Difference explained.*

A confession of an accused person implicating a co-accused under S. 30 cannot be considered as the same thing as 'the testimony of an accomplice, which is referred to in S. 133. Section 133 contemplates that the accomplice shall be examined as a witness. This being so, the provision that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, has no application to the case of an uncorroborated confession taken into consideration as against a

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co-accused jointly tried with the confessing accused under S. 30. Therefore an accused person cannot be convicted solely on such a confession made by a co-accused: 9 C. P. L. R. 35 Cr. and 37 Cr.; 24 W. R. (Cr.) 42; 38 Cal. 559, *Rel. on.* (*Kinkhede, A. J. C.*). NECHA *v.* EMPEROR.
109 I.C. 801=11 N.L.J. 104=29 Cr. L. J. 609=10 A.I. Cr. R. 340=A.I.R.1928 Nag. 213.

———*If jury be not warned of danger in accepting uncorroborated evidence, conviction based upon it must be set aside.*

A jury must be warned expressly of the danger in accepting the uncorroborated evidence of an accomplice and if the warning is omitted a conviction based upon such uncorroborated evidence must be set aside. (*Courtney Terrell, C. J. and Macpherson, JJ.*). RATTAN DHANULL *v.* EMPEROR.
113 I.C. 329=9 P.L.T. 672=8 Pat. 235=30 Cr. L. J. 137=12 A. I. Cr. R. 41=A.I.R. 1928 Pat. 630.

———*Conviction is rarely justifiable though not illegal—English Law.*

The evidence of accomplices is always admissible and is always relevant but under a very old practice of the Courts in England such evidence is accepted only with great caution and after the closest scrutiny, and is not usually accepted against any individual person unless it is corroborated. Although it is not illegal to convict on the uncorroborated evidence of an accomplice, there is a consensus of opinion that a conviction on the uncorroborated evidence of an accomplice is rarely justifiable. The practice in India is the same as the practice in England. *Rex* v. *Baskerville*, (1916) 2 K. B. 658, *Cons.* and *Rel. on.* (*Stuart, C. J. and Raza, J. C.*). RAM PRASAD *v.* EMPEROR.
106 I. C. 721=2 Luck. 631=1 L. C. 339=8 A. I. Cr. R. 449=A.I.R. 1927 Oudh 369.

———When there is no corroborative evidence of the approver's testimony, it is unsafe to base a conviction on that evidence. (*Broadway and Zafar Ali, JJ.*). JANG SINGH *v.* EMPEROR.
96 I. C. 262=27 Cr. L. J. 918 (Lah.)

———A conviction can be based on the uncorroborated testimony of an accomplice: A.I.R. 1922 Lah. 1, *Ref.* (*Daniels and Neave, JJ.*). ABDUL WAHAB *v.* EMPEROR.
95 I. C. 756=47 All. 39=27 Cr. L. J. 836=5 L.R.A. Cr. 193=A.I.R. 1925 All. 223.

———Conviction entirely based on the evidence of an approver with no corroboration in material particulars is bad. (*Scott-Smith and Campbell, JJ.*). FEROZ KHAN *v.* EMPEROR.
86 I. C. 401=6 L. L. J. 608=26 Cr. L. J. 769=A.I.R. 1925 Lah. 268.

———If the Court is satisfied as to the veracity of the testimony of an accomplice, conviction may be based on the uncorroborated evidence of the accomplice. (*Baguley, J.*). A. V. JOSEPH *v.* EMPEROR.
85 I.C. 236=26 Cr.L.J. 492=3 Bur. L.J. 265=3 Rang. 11=A.I.R. 1925 Rang. 122.

———*Judge should direct the jury that they can legally convict.*

There is no doubt that the uncorroborated evidence of an accomplice is admissible in law. But it has long been a rule of practice for the Judge to warn the Jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice or accomplices and in the discretion of the Judge to advise them not to convict upon such evidence but the Judge should point out to the Jury

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that it is within their legal province to convict upon such unconfirmed evidence. (*Richardson and Suhrawardy, JJ.*). EMPEROR *v.* JAMALDI FAKIR.
81 I.C. 712=51 Cal. 160=28 C.W.N. 536=25 Cr.L.J. 1000=A.I.R. 1924 Cal. 701.

———*Conviction on uncorroborated evidence, when approver is a scoundrel is not warranted.*

The decision in each case must depend on its own particular circumstances and no general rule can be laid down as to when an accomplice's uncorroborated evidence alone should be accepted and acted on against an accused. A conviction on the uncorroborated evidence of an accomplice is to be regarded as exceptional. The two illustrations given under S. 114 of the Act clearly indicate that the application of S. 133 must be exceedingly rare. There is no positive legal bar to taking an approver's evidence as a basis for a conviction but unless some reliable corroboration on a material point were superadded to it, it would, in almost all cases, be unsafe to accept it as conclusive. Where in several respects the approver's evidence did not appear to the Trial Court to be quite satisfactory and the likelihood of his "playing a double game" strongly suggested itself at one time, and the approver was a thorough paced scoundrel.

Held, that the uncorroborated testimony of the approver did not afford a sufficient foundation for conviction. (*May Oung, J.*). MAUNG LAY *v.* EMPEROR.
77 I.C. 429=25 Cr. L.J. 381=A.I.R. 1924 Rang 173.

———The evidence of an accomplice by itself is enough for a conviction, but it is a rule of practice founded on experience that in every case where an accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise this presumption is an error of law, but in each case the weight to be attached must depend on the particular circumstances. (*Mullick and Thornhill, JJ.*). MADAN GURU *v.* EMPEROR.
73 I. C. 963=4 P.L.T. 381.

———Conviction on the uncorroborated evidence of an accomplice is not illegal. Such evidence must be treated with great suspicion and caution bu, must be acted upon if believed in: 8 All. 306t *Diss. from.* (*Hallifax and Macnair, A. J. Cs.*). GOVINDA *v.* EMPEROR.
69 I.C. 257=17 N.L.R. 113=A.I.R. 1921 Nag. 39.

—S. 133—Corroboration, extent and nature.

———*Several accused—Corroboration as regards particular accused—Necessity of.*

Per *Staples, A. J. C.* (*Contra*)—It is true that an appro ver's story shouldbe corroborated not only as regards the facts of the case but also as regards the identity of the accused, but where there are several accused and the story of the approver has been confirmed on many points, and as regards the identity of several of the accused, it should not be considered necessary that his story should be corroborated as regards the identity of the remaining accused unless there are reasons for believing that the approver has named those other accused on account of personal spite or for some other reason. The real test of the evidence of the approver is whether it has been believed or not and when it has been corroborated on many points and has not been shown to be false in any particular it should be accepted; and when once it has been accepted as a whole corroboration as regards the identity of each of several accused

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should not be demanded : A. I. R. 1921 Nag. 89 ; 9 All. 528, *Expl.* ; *Rex* v. *Baskerville*, (1916) 2 K. B. 658, *Dist.*

(Per *Jackson* and *Subhedar*, *A. J. Cs.*)—Even where there are several accused persons, an approver's story to be corroborated as regards a particular accused must be corroborated on some points which implicates that accused. It is not necessary that it should be corroborated on all points relating to him, but there must be some guarantee that his evidence is true as regards that particular accused: A.I.R. 1921 Nag. 39, *Rel. on* ; 14 Bom. 331; A.I.R. 1922 Nag. 172 ; A.I.R. 1925. Nag. 78, *Appl.* (*Jackson*, *A. J. C. on difference between Staples and Subhedar*, *A. J. Cs.*). DOULAT *v.* EMPEROR.

120 I. C. 721= 31 Cr. L.J. 153= A.I.R. 1930 Nag. 97.

———Corroboration may be circumstantial.

(Per *Staples*, *A. J. C.*)—A.I.R. 1922 Nag. 172, *Rel. on.* (*Jackson*, *A. J. C. on difference between Staples and Subhedar*, *A. J. Cs.*). DOULAT *v.* EMPEROR. **120 I.C. 721=31 Cr. L.J. 153= A.I.R. 1930 Nag. 97.**

———*Need not be direct.*

The evidence in corroboration of the approver's evidence need not be direct evidence showing that the accused have committed the crime. It is sufficient if it is merely circumstantial evidence of their connexion with the crime : 1 L. C. 339, *Cons.* (*Raza*, *J.*). LALE *v.* EMPEROR. **118 I.C. 423= 6 O.W.N. 441=30 Cr.L.J. 922= 1929 Cr. C. 143=A.I.R. 1929 Oudh 321.**

———*Approver's evidence must be corroborated also as to the identity of accused.*

The evidence of an approver must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner : A.I.R 1922 Lah. 1 ; *Rex.* v. *Baskerville*, (1916) 2 K. B. 658 and *R.* v. *Francis Stubbs*, (1855) 25 L. J. M. C. 16, *Foll.* (*Addison and Skemp*, *JJ.*). WAZIR CHAND *v.* EMPEROR. **102 I.C. 500=8 A.I.Cr. R.230= 28 Cr.L.J. 564=A.I.R. 1928 Lah. 30.**

———It is very difficult to vary the standard of corroborative proof required in the case of various approvers. Tender age is no ground for applying lenient standard. (*Addison and Skemp*, *JJ.*). WAZIR CHAND *v.* EMPEROR. **102 I. C. 500= 8 A.I. Cr. R. 230=28 Cr. L.J. 564= A.I.R. 1928 Lah. 30.**

———*Corroboration is required with respect to each individual accused.*

Where there are several accused, corroboration is required with respect to the guilt of each individual accused, that is to say, the fact that the evidence of the accomplice is corroborated as to certain of the accused does not amount to corroboration of the evidence as regards the guilt of the other accused. (*Courtney-Terrell*, *C. J. and Macpherson*, *J.*). RATTAN DHAMUK *v.* EMPEROR. **113 I.C. 329= 9 P. L. T. 672=8 P. L. T. 235=30 Cr. L. J. 137= 12 A. I. Cr. R. 41=A.I.R. 1928 Pat. 630.**

———There is no definite rule of law that a person cannot be convicted upon the uncorroborated evidence of an accomplice. But Ill. (*b*) to S. 114 of the Evidence Act is the rule such cases and Courts must act up to it. If the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in material particulars. Rule as to corroboration elaborately discussed. (*Scoone and Chatterji*, *JJ.*). EMPEROR *v.* KAILASH MISSIR. **11 P. L. T. 845.**

EVIDENCE ACT (1872), S. 133—Corroboration, extent and nature.

———*Principles explained.*

Although under S. 133, Evidence Act, an accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of such accomplice, the rule of caution that such testimony should be supported by extrinsic evidence connecting the accused with the crime is now regarded as a rule of law, and although it is not illegal to convict a person on the uncorroborated testimony of an approver, the Courts in points of facts always insist upon the rule being followed.

What is required is some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged and it would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice, that the accused committed the crime, is true not merely that the crime has been committed, but that it was committed by the accused. The corroboration need not be direct evidence that the acoused committed the crime ; it is sufficient if it is merely circumstantial evidence of his connexion with the crime.

Corroborative evidence need not be sufficient in itself to base a conviction on. Confirmation of the story of an accomplice does not mean that there should be independent evidence of the accomplice's account of the crime itself. What the law clearly requires is that some relevant and material part of the approver's story incriminating the acoused should have support from an independent source. This supplies a test of the truth of the accomplice's narrative as a whole by checking it in some relevant portion: *Rex.* v. *Baskerville*, (1916) 2 K. B. 658, *Foll.* (*Fforde*, *J. on difference between Agha Haidar and Broadway*, *JJ.*). BARKALI *v.* EMPEROR. **103 I. C. 49=28 Cr. L. J. 625=8 A. I. Cr. R. 273= A.I.R. 1927 Lah. 581.**

———*Must connect the prisoner with the offence.*

It is not sufficient that the approver's testimony is confirmed as to the circumstances of the felony but it must be proved that the testimony is corroborated in some material circumstances, such circumstance connecting and identifying the prisoner with the offence. (*Shadi Lal*, *C.J. and Jai Lal*, *J.*). KATTU *v.* EMPEROR. **98 I. C. 190= 27 P. L. R. 615=8 L. L. J. 616= 27 Cr. L. J. 1294=A.I.R. 1927 Lah. 10.**

———*Corroboration as to the part played by the accomplice.*

It is not sufficient that the approver should be corroborated with regard to the actual commission of the crime itself; for such corroboration merely shows that he himself took part in the offence. Experience requires that the approver should also be corroborated in material points as to the part played by his accomplices. The amount of corroboration in this respect as indeed in respect of all corroboration of an approver's evidence, must depend upon the view which the Court takes of the approver's character and of his general demeanour in the witness-box. (*Mullick*, *Ag.C.J. and Jwala Prasad*, *J.*). JAGWA DHANUK *v.* EMPEROR. **93 I.C. 884=5 Pat. 68=7 P.L.T. 396= 27 Cr.L.J. 484=A.I.R. 1926 Pat. 232.**

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——A statement of an approver in order to be a basis for conviction must be a trustworthy statement and must be amply corroborated in material particulars which must be Independent of the accomplice or of the co-confessing accused. (*Kotval and Kinkhede, A.J. Cs.*). SHEROO *v.* EMPEROR.
81 I.C. 891=25 Cr. L. J. 1067=A. I. R. 1925 Nag. 78.

——It is not necessary that the approver should be corroborated as regards every single statement that he makes and therefore a direction to jury that if the approver was corroborated on some points, they might believe him on other points in respect of which he was not corroborated, is not misdirection. (*Newbould and B.B. Ghose, JJ.*). LEDU MOLLA *v.* EMPEROR. **87 I. C. 925=52 Cal. 595=26 Cr.L.J. 1037=42 C.L.J. 501=A.I.R. 1925 Cal. 872.**

——*Defence being false is not corroboration of approver.*

Section 133 contains the rule of law regarding the testimony of accomplices and S. 114, Ill. (b) is merely a guide to assist the Courts, though, as stated by *Johnstone, C.J.* in 17 P.R. 1915, in a vast majority of cases prudence requires that there shall be corroboration. No hard and fast rules can however, be laid down to regulate the extent and nature of such corroboration, this being dependant entirely on the cirmstances of each case. The fabrication of a false defence cannot be regarded as sufficient to corroborate an approver. (*Scott-Smith and Broadway, JJ.*). MAHANT NARAIN DAS *v.* EMPEROR. **68 I. C. 113= 3 Lah. 144=4 L. L. J. 91=9 P. W. R. 1922 (Cr.)=23 Cr.L.J. 513=A.I.R. 1922 Lah. 1.**

——*Nature and extent of corroboration required discussed—English and Indian Law on the point do not differ.*

Confirmation (corroboration) does not mean that there should be independent evidence of that which the accomplice relates, otherwise his testimony would be unnecessary. But one accomplice's evidence is not corroboration of the testimony of another accomplice. (1848) 3 Cox C. C. 526 and 531.

Evidence in corroboration must be evidence which implicates the accused, *i.e.*, whieh confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it.

The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. Where the law otherwise, many crimes which are usually committed between accomplices in secret, such as incest, offences with females, etc., could never be brought to justice. *Rex* v. *Baskerville*, (1916) 2 K. B. 658.

The law in this country regarding corroboration of an accomplice's evidence does not differ from English law. (*Kotval, A.J.C.*). KISAN *v.* EMPEROR. **67 I.C. 343=6 N.L.J. 52=23 Cr. L.J. 391=A.I.R. 1922 Nag. 172.**

——*Several accused.*

When there are several accused, each person accused is entitled to claim that as against him the statement of the approver shall be corroborated by some reliable evidence. (*Chevis, J.*). LALA *v.* EMPEROR. **65 I.C. 622=34 P.L.R. 1922=3 P.W.R. 1922 (Cr.)=23 Cr. L.J. 158=A.I.R. 1921 Lah. 215,**

EVIDENCE ACT (1872), S. 133—Corroboration, what is.

—S. 133—Corroboration, what is.

——*Theft and murder—Corroboration of theft—If connects accused with murder.*

The evidence of an approver must be corroborated in material particulars, and those material particulars should connect the accused persons with the crime.

In a charge for theft and murder the approver in no way sought to exculpate himself so far as the conspiracy to commit theft and the theft itself was concerned, nor so far as regards conspiring to commit murder, though he exculpated himself so far as the actual murder was concerned. The story of the approver so far as a conspiracy to commit theft and the actual theft was corroborated, and the circumstances showed that the persons who committed theft were the same who committed the murder,

Held, that the corroboration connected the accused with the crime of murder. (*Adami, J.*). SHEO BARHI *v.* EMPEROR. **A.I.R. 1930 Pat. 164.**

——*Involuntary accomplices—Slighter degree of corroboration enough.*

Where police officers act in conspiracy with one another to demand and receive illegal gratification and are ready to make use of their official position to enforce such demand, the testimony of accomplices who are really victimised by them into offering them illegal gratification and have not willingly done so requires a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. 33 Cal. 649, *Ref.* (*Mirza and Murphy, JJ.*). EMPEROR *v.* C. E. RING. **120 I.C. 340=31 Bom. L. R. 545=53 Bom. 479=31 Cr. L. J. 65=1929 Cr. C. 114=A.I.R. 1929 Bom. 296.**

——A man who has been guilty of a crime himself will always be able to relate the facts of the case and if the confirmation be only on the truth of that history, without identifying the persons, that is no corroboration at all : *R.* v. *Farler*, 8 C. and P. 106 and *R.* v. *Ealhai Bux*, B.L.R. Sup. Vol. 459 (F.B.), *Foll.* (*Cuming and Lort Williams, JJ.*). REHATI MOHAN *v.* EMPEROR. **115 I. C. 258=32 C.W.N. 945=56 Cal. 150=30 Cr.L.J. 435=12 A.I. Cr. R. 265=A. I. R. 1929 Cal. 57.**

——*Dacoity— Approver — Corroborating witness omitting to mention dacoits in F. I. R.—No corroboration.*

Where a dacoity was committed and the evidence against the accused persons was that of an approver and the corroborative evidence consisted of a witness who said he identified certain accused persons when they committed the dacoity but omitted to mention the dacoits by their names in the first information report, such omission is a disqualifying circumstance for accepting his evidence on the point of identification and there is absolutely no corroborative evidence which connects or tends to connect the accused persons with the crime : 6 Bom. L.R. 443 ; 8 All. 306 ; A.I.R. 1921 Nag. 39 ; A.I.R. 1922 Nag. 172 ; A.I.R. 1925 Nag. 78, *Rel. on* ; *Rex.* v. *Baskerville*, (1916) 2 K. B. 658, *Ref.* (*Kinkhede, A.J.C.*). LODYA MAHAR *v.* EMPEROR. **114 I.C. 623=30 Cr. L. J. 331=1929 Cr. C. 108=A. I. R. 1929 Nag. 222.**

——Confirmation does not mean that there should be independent evidence of that which the accomplice relates, otherwise his testimony would be unnecessary. The evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the

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prisoner. The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime. (*Stuart, C.J. and Raza, J.*). RAM PRASAD *v.* EMPEROR.

106 I.C. 721=2 Luck. 631=1 L.C. 339=
8 A.I. Cr. R. 449=A.I.R. 1927 Oudh 369.

———*Co-accused and approver.*

There is no statutory prohibition against accepting the evidence of an approver who is thoroughly unreliable and base a conviction upon his uncorroborated testimony, but to do so is extremely dangerous especially where such evidence when examined is obviously open to criticism from the point of view of possible mistake, or intentional concealment or misrepresentation. The confession of a criminal who has confessed his guilt, in so far as it implicates other persons besides himself, must be treated as very little if at all superior in value to that of an accomplice who has received a pardon and therefore where the Court has a witness belonging to each of these classes the question necessarily arises as a matter of logic whether unless both these witnesses survive every test which can reasonably and ought properly to be applied to witnesses so that in the result one can say with confidence that neither of them has swerved in substance from the truth the problem remains the same or whether tainted evidence is made better in quality by being doubled in quantity. (*Walsh and Pullan, JJ.*). PARTAB SINGH *v.* EMPEROR. 96 I.C. 127=
27 Cr. L.J. 879=A.I.R. 1926 All. 705.

———It cannot be said that as a point of law the evidence of the witnesses who support the statement of the approver is not corroborative evidence because such evidence was known to the police before the approver was examined by them. (*Newbould and B. B. Ghose, JJ.*). IBRAHIM, *In re.*

88 I.C. 458=42 C.L.J. 496=26 Cr. L. J. 1146=
A. I. R. 1926 Cal. 374.

———Verification of the approver's confession may be of value as corroboration of his evidence in Court. (*Newbould and B.B. Ghose, JJ.*). LEDU MOLLA *v.* EMPEROR. 87 I.C. 925=
26 Cr.L.J. 1037=52 Cal. 595=42 C.L J. 501=
A.I.R. 1925 Cal. 872.

———Murder—Blood stains on accused's shirt is not sufficient corroboration—Evidence as to motive does not dispense with need for corroborative evidence. (*Le Rossignol and Fforde, JJ.*). JIT SINGH *v.* EMPEROR. 86 I.C. 811=26 Cr.L.J. 875=
26 P.L.R. 124=A. I. R. 1925 Lah. 526.

———Mere fact that the accused were seen with the approver a few days before the dacoity is not a material corroboration of the evidence of the approver to the effect that they joined him in the dacoity. If the accused person produces certain property which is identified at the trial as having been stolen in the course of the dacoity, it is sufficient corroboration. (*Scott-Smith, A.C.J.*). HAZARA SINGH *v.* THE CROWN. 82 I.C. 707=6 L.L.J. 370=
25 Cr.L.J. 1347=A.I.R. 1924 Lah. 727.

———*Approver's detention in Police lock-up is immaterial.*

That the evidence of an approver, if believed is sufficient foundation whereon to repose a conviction is quite clear, but in practice the Courts *ex majori cautela* insist upon corroboration of the approver's statement in material particulars. Where the statement of the approvers that there was a murderous conspiracy to which the accused was a party was supported by the evidence proving that he did aid the parties to that conspiracy to obtain murderous weapons.

Held, that there was sufficient corroboration. The facts that the approvers did not make statements as soon as they were arrested and that they were kept in the Police look-up during the enquiry were immaterial. (*Le Rossignol, J.*). TOTA SINGH *v.* EMPEROR. 69 I.C. 462=A.I.R. 1924 Lah. 357.

———Identification by three persons and the recovery of stolen property with the accused constitute a very satisfactory corroboration. (*Dalal, J.C.*). EMPEROR *v.* RAM CHARAN. 27 O.C. 29=
11 O.L.J. 210=25 Cr.L.J. 785=
A.I.R. 1924 Oudh 314.

———*Production of stolen property by accused is a corroboration.*

Where the only evidence against an accused person is that he has produced stolen property out of a place which is not in his own possession, that evidence is not sufficient to support a conviction for theft or for receiving stolen property. But the production of the property is clear evidence against the person producing it and is material corroboration of the evidence of an accomplice who has deposed that that person joined him in committing a dacoity or a burglary or a theft. The discovery of stolen property out of a house jointly occupied by himself and his uncle, is corroboration of the approver's story against the accused. Such production might not be sufficient evidence of itself to support a conviction for being dishonestly in possession of a stolen property, but it certainly is evidence against the persons producing it. The value of the evidence is another matter. (*Scott-Smith, J.*). KHUSHAL SINGH *v.* THE CROWN. 76 I.C. 698=25 Cr. L.J. 234=
A.I.R. 1923 Lah. 335.

———An approver may be telling the truth and it is quite probable that he himself was concerned in the murder but his statement as to who his accomplices were, must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered by the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation, must be regarded with doubt and these witnesses may possibly be hiding themselves at the cost of innocent men. (*Chevis, C. J. and Le Rossignol, J.*). FATTA *v.* EMPEROR.

67 I.C. 828=2 L.L.J. 296=23 Cr.L.J. 476=
18 P.W.R. (Cr). 1922.

———Several persons making confessions—That particular person is named by more than one, is not sufficient corroboration. (*Chevis, J.*). LALA *v.* EMPEROR. 65 I.C. 622=34 P.L.R. 1922=
23 Cr.L.J. 158=3 P.W.R. 1922 (Cr.)=
A.I.R. 1921 Lah. 215.

———*Motive not sufficient corroboration.*

The mere fact of there having existed an animosity in the mind of a person accused of murder against the deceased which might have provided some motive for a crime of this nature is not in itself a corroborative factor of the evidence of accomplices or to put it in other words, if there had merely been this evidence of motive, such in itself would of course not have been sufficient to justify even a thought of conviction. (*Das and Buckmill, JJ.*). DHANNU BELDAR *v.* EMPEROR.

2 P.L. T. 757=A.I.R. 1921 Pat. 406.

EVIDENCE ACT (1872), S. 133—Retracted confession.

—S. 133—Retracted confession.

———*Must be much more corroborated than evidence of accomplice taken on oath.*

A retracted confession is not the testimony of an accomplice within the meaning of S. 133. A retracted confession should carry practically no weight as against the person other than the maker, because it is not made on oath, it is not tested by cross-examination and its truth is denied by the maker himself who has lied on one or other of the occasions and the very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath: 28 Cal. 689; 38 Cal. 559, *Ref.* (*Newbould and Mookerjee, JJ.*). MOYEZ SARDAR *v.* EMPEROR.

84 I. C. 712=40 C.L.J. 551=26 Cr. L.J. 360= A.I.R. 1925 Cal. 406.

———A retracted statement of an approver, is admissible as evidence against an accused person. (*Odgers, J.*). VEERABHADRA *v.* EMPEROR.

61 I.C. 528=22 Cr.L.J. 400=12 M. L.W. 385

———*Rule as to.*

Though, as a matter of law, a conviction may be based upon a retracted confession if the Court can come to the unhesitating conclusion that the confession is voluntary, yet as a matter of prudence no conviction should be based upon such a retracted confession: 2 C.L.R. 132; 21 W.R. Cr. 49; 27 C. 295; 18 A. 78, *Ref.* (*Jwala Prasad and Sultan Ahmed, JJ.*). MAKSUD ALI *v.* EMPEROR.

60 I. C. 56=2 P.L.T. 773=22 Cr. L.J. 200= A.I.R. 1921 Pat. 337.

—S. 133—Value of accomplice's evidence.

———Although it is not illegal to convict on the uncorroborated evidence of an accomplice there is consensus of opinion that a conviction on the uncorroborated testimony of an accomplice is rarely justified. Nature of corroboration that is required indicated. (*Raza and Nanavutty, JJ.*). BACHCHU *v.* EMPEROR. **7 O.W.N. 862=1930 Cr.C. 1079= A.I.R. 1930 Oudh 455.**

———*Rule of practice.*

Although a conviction is not "illegal" merely because it proceeds on the uncorroborated testimony of an accomplice, the rule of practice is now firmly established that corroboration of such testimony in material particulars connecting each of the individual accused with the crime is necessary to justify his conviction. A.I.R. 1927 Lah. 581, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH *v.* EMPEROR. **1929 Cr. C. 626= A.I.R. 1929 Lah. 850.**

———*One accomplice cannot corroborate another accomplice—'Taint' must be removed.*

The testimony of one accomplice is of little value as a piece of corroborative evidence in support of the testimony of another accomplice. The testimony of an approver can be used for the purpose of corroboration if the taint attached to it is removed. But this "taint" must be removed to such an extent that the Court is prepared to believe the testimony of the approver in the same way and to the same extent as the testimony of an ordinary witness whom it considers to be worthy of credit. A.I R. 1923 Lah. 76 and 20 P.R. 1919, *Ref.* (*Bhide and Johnstone, JJ.*). HAKAM SINGH *v.* EMPEROR. **1929 Cr. C. 626=A.I.R. 1929 Lah. 850.**

———*Controlled by S.* 114, *Illus.* (*b*).

Absolute rule of law regarding the evidence of accomplices that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds

EVIDENCE ACT (1872), S. 133—Value of accomplice's evidence.

upon the uncorroborated testimony of an accomplice is subject to a rule of guidance in illustration (b) to S. 114 and which says that an accomplice is unworthy of credit, unless he is corroborated in material particulars. (*Kinkhede and Mohiuddin, A.J.Cs.*). MUSA *v.* EMPEROR.

114 I.C. 609=30 Cr.L.J. 333= 1929 Cr. C. 257=A.I.R. 1929 Nag. 233.

———*Principles explained.*

It is generally unsafe to convict a person on the evidence of accomplices unless corroborated in material particulars. In considering whether this maxim applies to a particular case it must be remembered that all persons coming technically within the category of accomplices cannot be treated on precisely the same footing.

Accomplice evidence is untrustworthy for three reasons :—(i) He is likely to swear falsely to shift the guilt from him ; (ii) He being a participator in crime is likely to disregard the sanction of an oath ; and (iii) He gives evidence under promise of or in expectation of a pardon. Therefore if the principal evidence is of accomplices, it is tainted evidence and hence there is need for corroboration. 26 Bom. 193; 14 Bom. 115, *Foll.* (*Kinkhede, A.J.C.*). MUHAMMAD USUF KHAN *v.* EMPEROR.

114 I. C. 457=30 Cr.L.J. 311= 1929 Cr. C. 110=A.I.R. 1929 Nag. 215.

———*Withdrawal of prosecution does not make him independent witness—Corroboration of one accomplice by another is not independent.*

The withdrawal of prosecution against an accomplice relegates him from the position of a co-accused to his original position of an accomplice who had for all practical purposes earned complete immunity for his participation in the crime. His evidence under such circumstances could not be a piece of independent evidence. To regard the testimony of one accomplice as corroborated by the testimony of another accomplice is to hold that there is corroboration where under law or fact there is none at all. (*Kinkhede, A.J.C.*). MAHOMED YUSAF KHAN *v.* EMPEROR. **114 I.C. 457= 30 Cr.L.J. 311=1929 Cr. C. 110= A. I. R. 1929 Nag. 215.**

———If evidence of accomplice is truthful demand of corroboration is not obligatory on tribunal—It should apply intrinsic and extrinsic tests to ascertain truthfulness. (*Courtney-Terrell, C.J. and Macpherson, J.*). RATTAN DHANUK *v.* EMPEROR.

113 I.C. 329=9 P.L.T. 672=8 Pat 235= 30 Cr.L.J. 137=12 A.I. Cr. R. 41= A.I.R. 1928 Pat. 630.

———It is impossible to hold that the evidence of an accomplice uncorroborated cannot be said to be evidence against an accused : A.L.J.R. 110, *Ref.* (*Banerji, J.*). BULCHAND *v.* EMPEROR.

97 I.C. 489=49 All. 181=24 A.L.J. 1050= 7 L.R.A.Cr. 197=27 Cr.L.J. 1369= A.I.R. 1927 All. 90.

———*Co-accused—Discharged instead of being tendered a pardon—Competent witness.*

Where in a trial for offence under S. 401 the case against an accomplice had been withdrawn on the ground that he had aided materially in bringing to light the operations of the gang and he was discharged under S. 494 (1) instead of tendering a pardon under S. 337 and then he was examined as a witness against his co-accused,

Held, that there was nothing illegal in the procedure adopted and that the accomplice was a competent witness in the case : Cr. App. No. 22 of 1918

EVIDENCE ACT (1872), S. 133—Value of accomplice's evidence.

(Nagpur J.C.'s Court) and 25 Bom. 422, *Rel. on.* (*Findlay, Offg.J.C.*). MAHADEO *v.* EMPEROR.
95 I. C. 471=27 Cr. L. J. 807=
A.I.R. 1926 Nag. 426.

———*Corroboration in all material particulars is not necessary.*

In dealing with the evidence of an accomplice the Judge is not bound to rely on such statements only as are corroborated by other reliable evidence. Once a foundation is established for a belief that a witness is speaking the truth because he is corroborated by true evidence on material points, the Judge is at liberty to come to a conclusion as to the truth or falsehood of other statements not corroborated. (*Macleod, C.J. and Crump, J.*). BHIMRAO NARASIMHA HUBLIKAR *v.* EMPEROR.
86 I.C. 72=27 Bom. L.R. 120=26 Cr. L.J. 696=
A.I.R. 1925 Bom. 261.

———Provided that an accomplice is not a co-accused under trial in the same case, in a trial before a Magistrate an accomplice is a competent witness and may be examined on oath. (*Baguley, J.*). A. V. JOSEPH *v.* EMPEROR. 85 I.C. 236=
26 Cr. L.J. 492=3 Bur. L.J. 265=
3 Rang. 11=A.I.R. 1925 Rang. 122.

———*Accomplice against whom case is withdrawn—One to whom pardon is tendered—Position of.*

An accomplice witness against whom the case has been withdrawn under S. 494 is less reliable than one to whom a pardon has been tendered under S. 337. The latter is pardoned conditionally and has before him, as an inducement to stick to the truth, the constant apprehension that his statement may be used against him in a trial hereafter if he is proved to have given false evidence on any point. On the other hand the accomplice witness who has not received a conditional pardon is a freer man in the witness-box since he is not pinned down to a previous statement which may be based on tutored material by the fear of prosecution for perjury if his deposition in Court does not correspond exactly with that previous statement. (*Campbell, J.*). CHHAPROLIA *v.* EMPEROR.
73 I. C. 808=24 Cr.L.J. 696=
A.I.R. 1924 Lah. 235.

———*Accomplice is competent witness.*

There is no provision of Indian Statute Law, nor is there any principle of natural justice, which makes an accomplice as such an incompetent witness at the trial of another person in respect of the offence in the commission of which he was an accomplice. The fact that the Local Government issued a Notification that persons though accomplices will not be prosecuted by the Government if they gave evidence in the case, will not make them incompetent witnesses.(*Mears,C.J. and Piggott, J.*). EMPEROR *v.* HAR PRASAD BHARGAVA.
77 I.C. 961=
21 A.L.J. 42=45 All. 226=4 L.R. A. Cr. 19=
26 Cr. L. J. 497=A. I. R. 1923 All. 91.

———The evidence of an accomplice by itself is enough for a conviction, but it is a rule of practice founded on experience that in every case where an accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise this presumption is an error of law, but in each case the weight to be attached must depend on the particular circumstances. (*Mullick and Thornhill, JJ.*). MADAN GURU *v.* EMPEROR.
73 I.C. 963=24 Cr. L.J. 723=
4 P. L. T. 331.

EVIDENCE ACT (1872), S. 133—Value of approver's evidence.

———*Long delay in giving statements—Taint of suspicion.*

An approver may be telling the truth and it is quite probable that he himself had a hand in the murder but his statements as to who his accomplices were must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered in this case was the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation. The delay may be due to their reluctance to implicate the accused after they had promised not to give information but it was obvious that statements obtained after such a long delay must be regarded with suspicion: and these witnesses may possibly be scheming themselves at the expense of innocent men. Even if these witnesses bear no enmity to the appellants and are related to them, the long delay in making their statements makes their evidence liable to grave suspicion. (*Chevis, C. J. and Le Rossignol, J.*). FATTA *v.* EMPEROR. 67 I. C. 828 =
23 Cr. L. J. 476=2 L. L. J. 296
=18 P.W.R. 1922 (Cr.).

———Conviction of accused cannot be based on the evidence of accomplices unless such evidence is corroborated in some material and satisfactory manner. (*Das and Bucknill, JJ.*). DHANNU BELDAR *v.* EMPEROR. 2 P.L.T. 757=
A.I.R. 1921 Pat. 406.

—S. 133—Value of approver's evidence.

———*Dacoits, drawn from different places and committing offence for over a long period—Consistent correct identification of every accused not necessary.*

In the case of a gang the members of which had been collected from an area with a diameter of over fifty miles, and had been concerned in dacoities in the course of which more than a hundred different individuals had taken part in the offences and where the offences had continued over a period of four years, it would almost be a miracle if any man had been able consistently to identify correctly every man who had taken part in these offences, or who had belonged to the gang. No doubt, in such a case the failure of an approver to identify a particular man on one occasion, although he identified him on others, weakens his evidence considerably in respect to that particular man. But this circumstance does not show such a man to be innocent and cannot outweigh other evidence which establishes his guilt. Even where the approver's evidence is weak against a particular individual, that particular individual should be convicted when there is strong evidence apart from the evidence of the approver to establish that he was a member of the gang. (*Stuart, C. J. and Rasa, J.*). KHILAWAN *v.* EMPEROR. 112 I. C. 337=
8 O. W. N. 760=29 Cr. L. J. 1009=
11 A. I. Cr. R. 273=A.I.R. 1928 Oudh 430.

———*Principle explained.*

The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. Accordingly, if the suspicion which attaches to the evidence of an accomplice be not removed, that evidence should not be acted upon unless corroborated in some material particular, and if the suspicion attaching to the accomplice's evidence is removed then that evidence may be acted upon, even though uncorroborated and the guilt

EVIDENCE ACT (1872), S. 133—Value of approver's evidence.

of the accused may be established upon that evidence alone. The law on the point, as laid down in Ss. 114, 133 and 134, Evidence Act, gives no countenance to the contention that the uncorroborated testimony of an accomplice is necessarily insufficient to establish a charge against an accused. (*Courtney-Terrell, C. J. and Macpherson, J.*). RATTAN DHANUK *v.* EMPEROR. **113 I. C. 329= 9 P. L. T. 672=8 Pat. 235=30 Cr. L. J. 137= 12 A. I. Cr. R. 41= A.I.R. 1928 Pat. 630.**

———Where the approver's testimony was not sufficiently corroborated by the evidence as to the recovery of articles which were incapable of identification,

Held, the accused should not be convicted. (*Abdul Raoof, J.*). SHAH ALAM *v.* CROWN. **84 I.C. 1052=6 L.L.J. 280=26 Cr. L.J. 412= A.I.R. 1925 Lah. 44.**

———*Charge of murder.*

It is not safe to convict the accused for murder on the strength of an approver's statement and the retracted confession of one of the accused, especially when there is a conflict between the two statements and there is very little independent corroboration. (*Neave and Kendal, A. J. Cs.*). PARMESHWAR *v.* EMPEROR. **82 I.C. 135= 11 O.L.J. 325=25 Cr.L J. 1207= A.I.R. 1924 Oudh 369.**

———*Approver's complicity in the crime must be proved.*

A statement should not be accepted as that of an approver without any test as to his complicity in the crime. Such a statement does not amount to evidence against the accused. (*Dalal, A. J. C.*). SANT RAM *v.* EMPEROR **74 I.C. 543= 24 Cr. L.J. 799=A.I.R. 1924 Oudh 188.**

———*Statement by one as corroborating that of another.*

There is nothing in S. 133 to suggest that the statement of one approver cannot be regarded as corroborating that made by another approver. No doubt if it could be shown that the approvers had ample opportunity of consultation, this corroborative value would be greatly diminished. (*Lumsden, J.*). EMPEROR *v.* DARYA SINGH. **77 I.C. 984=25 Cr. L.J. 520= A.I.R. 1923 Lah. 666.**

———*Approver's evidence corroborated by circumstances may establish guilt.*

The approver referred to a story by one *A* who invited him along with appellants to join in the dacoity; the incident of the story told by the approver turned out to be true on police inquiry. Appellants were seen with the approver at Sukho and arrested in his company at Mandra. The possession of the three tickets all from Chakala to Mandra and bearing consecutive numbers was strong corroboration of the approver's story as to the appellants having accompanied him to the scene of the occurrence,

Held, the guilt of the appellants has been established beyond reasonable doubt by the evidence of the approver which had been amply corroborated as against them. (*Broadway and Martineau, JJ.*). HAKIM *v.* KING EMPEROR. **84 I.C. 647= 26 Cr. L.J. 343=A.I.R. 1923 Lah. 153.**

———An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons, but the uncorroborated statement of an approver taken at the end of the trial is and must be of no value whatever.

EVIDENCE ACT (1872), S. 134—Criminal trial.

(*Shadi Lal, C.J. and Wilberforce, J.*). SUNDERLAL SINGH *v.* EMPEROR. **4 L.L.J. 284= A.I.R. 1921 Lah. 267.**

—S. 133—Miscellaneous.

———*If one section is controlled by the other.*

Per *Subhedar, A. J. C.*—The rule in S. 114, Illus. (b), that an accomplice is unworthy of credit unless he is corroborated in material particulars has become a rule of practice of so universal application that it has now almost acquired the force of law.

Per *Jackson, A. J. C.*—S. 133 cannot be entirely nullified by judicial decisions and there may be cases in which the rule in S. 114, Illus. (b), should not be applied. The question arising in every case where the uncorroborated evidence of the accomplice has to be considered is whether it can be believed or not. Further when the evidence is strengthened by corroboration of other facts of the story by evidence of several accomplices or by confessions of co-accused, the question whether the maxim should still apply must receive careful consideration: A.I.R. 1921 Nag. 39, *Rel. on.* (*Jackson, A.J.C. on difference between Staples and Subhedar, A.J.Cs.*). DOULAT *v.* EMPEROR. **120 I. C. 721= 31 Cr. L. J. 153=A. I. R. 1930 Nag. 97.**

———If the evidence of an approver is discarded, it must be discarded as a whole and the defence cannot base arguments on it any more than the prosecution. (*Adami, J.*). SHEO BARHI *v.* EMPEROR. **A.I.R. 1930 Pat. 164.**

———*Duty of prosecution to show that evidence is of accomplices and is corroborated.*

It is mainly the duty of the prosecution to bring the accomplice character of the evidence to the notice of the Court and then invite it to believe it by reference to the corroborative evidence on record. An accused is under no legal obligation to do so. He can keep quiet and take advantage of the flaw in the evidence brought by the prosecution against him, or in short, of the weakness of the prosecution case. (*Kinkhede, A.J.C.*). MUHAMMAD USAF KHAN *v.* EMPEROR. **114 I. C. 457=30 Cr. L. J. 311= 1929 Cr. C. 110=A.I.R. 1929 Nag. 215.**

———The evidence of a spy requires corroboration to practically the same extent as that of an accomplice. (*Wazir Hasan and Pullan, A.J.Cs.*). SURAT BAHADUR *v.* KING EMPEROR. **81 I.C. 986= 25 Cr. L. J. 1162=11 O. L. J. 640= A.I.R. 1925 Oudh 158.**

———*Impossibility of corroborative evidence does not dispense with necessity thereof.*

It would be a perversion of the lesson gained by accumulated experience of the conduct of an accomplice to adopt any such rule of practice as that where corroboration is not possible his testimony may be accepted as true without corroboration. An accomplice is too immoral a person to be worthy of credit without corroboration in material particulars and if corroboration is not forthcoming because it is not possible in the nature of things that it should be forthcoming it does not make the accomplice less immoral. The guiding rule in this behalf is furnished by Illus. (b) cf S. 114. (*Wazir Hasan, A.J.C.*). MANNA LAL *v.* KING EMPEROR. **75 I.C. 753=27 O.C. 40= 25 Cr.L.J. 49=A.I.R. 1925 Oudh 1.**

—S. 134—Criminal trial.

———In a criminal trial it is not incumbent upon the prosecution to produce all the persons who happened to have gathered at the spot where the offence occurred and that the production of two or

EVIDENCE ACT (1872), S. 134—Criminal trial.

three of the respectable and leading members of the village would suffice. (*Broadway and Jai Lal, JJ.*). BAHADUR *v.* EMPEROR. 112 I.C. 215= 10 L.L.J. 229=29 Cr. L.J. 999.

———*One witness.*

It is not illegal to convict a man on the evidence of only one witness. It must entirely depend on the circumstances of each case. (*Coutts Trotter, C.J. and Devadoss and Beasley, JJ.*). VEERAPPA GOUNDAN *v.* EMPEROR. 114 I.C. 353=51 Mad. 956= 1 M. Cr. C. 56=28 M.L.W. 575= 1929 M.W.N. 185=30 Cr. L. J. 317= A.I.R. 1928 Mad. 1186=55 M.L.J. 591 (F.B.).

—S. 134—Will.

———It is not necessary though it may be desirable to produce all the witnesses to a will, especially where its genuineness is challenged. (*Kendal and Pullan, A.J.Cs.*). KALKA SINGH *v.* JAGWANT KUNWAR. 89 I.C. 722=A.I.R. 1926 Oudh 69.

—S. 136—Onus in appeal.

———*Witness disbelieved on inadmissible evidence—Effect.*

In ordinary cases the question of the *onus* is not of great importance in appeal where both parties have produced the whole of their evidence upon an issue. But where the witnesses have been disbelieved by admission and perusal of inadmissible evidence, *e.g.*, where certified copies of judgments in previous cases wherein the evidence of these witnesses was disbelieved, were put in without examining the witness under S. 136, the decision is vitiated. (*Campbell, J.*). SOHAN SINGH *v.* SANTA SINGH. 83 I.C. 768=A.I.R. 1923 Lah. 491.

—S. 138—Criminal trial.

———*Prosecution is not entitled to examine-in-chief on the substantive case after cross-examination by accused.*

After the cross-examination of the witness on behalf of the accused the re-examination would ordinarily be directed to the explanation of the matter referred to in the cross-examination. No doubt, a new matter may, by the permission of the Court, be introduced with leave to the other side to cross-examine the witness upon that matter. But this cannot possibly entitle the prosecution to examine-in chief on the substantive case of the prosecution after the defence has disclosed its case in the cross-examination of the witness. (*Jwala Prasad, J.*). SHIVADHIN SINGH *v.* KING EMPEROR. 60 I.C. 662=3 P. L.T. 32. A.I.R. 1923 Pat. 116.

—S. 138—Documents filed after examination.

———When a document is produced by opponent after his witness's cross-examination is over the witness can be recalled for further cross-examination on the document. (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA. 83 I.C. 206=3 Pat. 85=A.I.R. 1924 Pat. 402.

———*Documents tendered after evidence.*

A witness cannot be disbelieved without his attention being drawn to the documents inconsistent with his deposition even though the documents were produced after his examination. In such a case he should be recalled for further cross-examination. (*Viscount Haldane.*) NABA KUMAR DAS *v.* RUDRA NARAYAN JANA. 77 I.C. 141= 1923 M.W.N. 622=28 C.W.N. 589= 33 M.L.T. 309=5 L.R.P.C. 25= A.I.R. 1923 P.C. 95=45 M.L.J. 433 (P.C.).

—S. 138—Mode of examination.

———*Court itself examining witnesses—Impropriety of.*

EVIDENCE ACT (1872), S. 145—Admission.

Generally it is not the province of the Court to examine witnesses and as a rule of the Court the Court should leave the witnesses to the pleaders to be dealt with as is provided for in S. 138 of the Indian Evidence Act; where therefore the Court took the witnesses into its own hands and proceeded with their examination and they were not permitted to be examined by the complainant or his pleader,

Held, that a ground for transfer of the case was made out. (*Wazir Hasan, J.C.*). JANKI *v.* SHEO NARAIN SINGH. 82 I.C. 154=11 O.L.J. 333= 25 Cr.L.J. 1226=27 O.C. 246= A.I.R. 1924 Oudh 371.

—S. 138—Omission of cross-examination.

———*Probative value of evidence will deteriorate.*

Where a witness dies after examination-in-chief and before cross-examination, the evidence is admissible but the weight to be attached to such evidence should depend upon the circumstances of each case and though in some cases the Court may act upon it if there is other evidence on record, its probative value may be very small and may even be disregarded. (*Spencer, Ag.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. 93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.

———*Evidence is not admissible.*

Section 138 implies that the party had an opportunity to cross examine and does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross-examination is sufficient compliance with the requirements of the law. (*Jwala Prasad and Coutts, JJ.*). MOTI SINGH *v.* DHANUKDHARI SINGH. 73 I. C. 339= 24 Cr. L.J. 595=A.I.R. 1923 Pat. 53.

—S. 138—Scope.

———Section 138 deals not with the rights of the party but only provides the order in which the proceedings are to be conducted. (*Cuming and Lort-Williams, JJ.*). EMPEROR *v.* C.A. MATHEWS. 1929 Cr. C. 669=A. I. R. 1929 Cal. 822.

—S. 141—Prosecution witness.

———*Leading question without declaring witness hostile.*

It is not open to the prosecution to put a question of the nature of cross-examination to their own witness without declaring him hostile and then cross-examining him. It is improper for the Court to allow the question; the question and the answer are both inadmissible and cannot be taken into consideration. (*Coutts and Das, JJ.*). JAGDEO SINGH *v.* EMPEROR. 71 I. C. 117= 1 Pat. 758=4 P.L.T. 232=24 Cr. L.J. 69= A.I.R. 1923 Pat. 62.

—S. 145—Admissibility.

———Before a previous admission can be used against a party it must be put to him and an opportunity afforded to him to explain it if it is capable of explanation. (*Tek Chand and Agha Haidar, JJ.*). MARYAM *v.* NAGINA. 12 L. L.J. 161.

———It is not necessary, in order to make the previous statements admissible for the purpose of impugning the credit of a witness, that the accused should have had an opportunity to cross-examine. (*Madgavkar, J.*) EMPEROR *v.* RAGHOO GANPAT. 97 I.C. 37=28 Bom.L.R. 775= 27 Cr. L.J. 1061=A.I.R. 1926 Bom. 404.

—S. 145—Admission.

———Where an admission is not put to the party making it and the party making it is not examined on it under S. 145, the admission is not legal evidence and cannot be used against the party making it: A. I. R. 1915 P. C. 7; 21 C. W. N. 280.

EVIDENCE ACT (1872), S. 145—Depositions in commitment proceedings.

Ref.; 31 P. R. 1903, *Diss. from.* (*Tek Chand and Agha Haidar, JJ.*). MUHARRAM ALI *v.* BARKAT ALI. **A.I.R. 1930 Lah. 695.**

—S. 145—Depositions in commitment proceedings.

———*Former statement cannot be put in under S.* 288, *Cr P. Code without putting to witness.*

No doubt when depositions before the committing Magistrate are admitted in the Sessions Court under S. 288 they are on the same footing with any other evidence in the case. But S. 145, Evidence Act: governs the position in so far as these statements are used for contradicting the witness either mainly or incidentally. Depositions, therefore, taken in the Committing Magistrate's Court which contradict the evidence given in the Sessions Court cannot, however, be put in without putting them to the witness: A. I. R. 1922 Pat. 40; 7 All. 862. *Appr.*; 28 All. 683, *Expl.* and *Not appl*; 4 C.W.N. 49, *Diss. from. Other case-law referred.* (*Scroope and Dhavle, JJ.*). NANHU MAHTON *v.* EMPEROR. **A.I.R. 1930 Pat. 338.**

—S. 145—Document tendered after examination.

———*Documents tendered after evidence.*

A witness cannot be disbelieved without his attention being drawn to the documents inconsistent with his deposition even though the documents were produced after his examination. In such a case he should be recalled for further cross-examination. (*Viscount Haldane*). NABA KUMAR *v.* RUDRA NARAYAN. **77 I.C. 141= 1923 M.W.N. 622=28 C.W N. 589= 33 M.L.T. 309=5 L.R.P.C. 25= A.I.R. 1923 P.C. 95=45 M.L.J. 438 (P.C.).**

—S. 145—Evidentiary value.

———*Cr. P. Code, S.* 164.

Previous statements used for discrediting the evidence of a witness cannot be used as substantive evidence: 34 Cal. 129 (P.C.), *Ref.*; 26 Mad. 191 and 17 O. C. 363, *Foll.* (*Walsh and Kendall, JJ.*). BISHEN DATT *v.* EMPEROR. **105 I.C. 677= 8 L.R.A. Cr. 130=8 A.I. Cr. R. 287= 25 A.L.J. 994=28 Cr. L.J. 965= A.I.R. 1927 All. 705.**

—S. 145—First information.

———A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and 145, the person who makes it. It cannot be used as substantive evidence to contradict other persons : A.I. R. 1928 Lah. 17, *Foll.* (*Addison and Dalip Singh, JJ.*). GAMAN *v.* EMPEROR. **116 I.C. 187=11 L.L.J. 1= 12 A. I. Cr. R. 453=30 Cr. L.J. 571= A.I.R. 1928 Lah. 913.**

———The statement of a person recorded by the police as a first information report can be proved to corroborate that person's evidence in Court under the provisions of S. 157, to impeach his credit by cross-examination under S. 145 of the Act provided that the procedure there prescribed is observed, but it cannot be used as substantive evidence against him : 4 P.R. 1918 Cr., *Foll.* (*Tek Chand and Coldstream, JJ.*). THAKAR SINGH *v.* EMPEROR. **107 I.C. 761=29 Cr. L.J. 277=9 A. I. Cr. R. 516.**

—S. 145—Mode of contradicting.

———*Procedure.*

If the defendant wishes to cross-examine a witness on a previous deposition with a view to discrediting him the attention of the witness must be drawn to those discrepancies so that he may have the chance of explaining them. In such a case it is not proper for a judge to stop the examination and have the whole deposition filed with a view to discrepancies being pointed out at the time of argument. (*Waller and Cornish, JJ.*). SUBBIAH THEVAN *v.* EMPEROR. **1929 M. W. N. 789.**

EVIDENCE ACT (1872), S. 145—Police diary.

———In order to contradict a witness by a writing or a former statement made by him, it is essential that writing or statement should be put to him. (*Broadway and Agha Haidar, JJ.*). MAKHAN SINGH *v.* EMPEROR. **119 I. C. 333= 30 Cr. L. J. 1052.**

—S. 145—Mode of proof.

———*S.* 145 *controls S.* 155.

Section 155 only lays down that the credit of a witness may be impeached *inter alia* by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ; but it does not lay down the manner in which the former statement is to be proved. The mode of proof of such a statement in writing when it is sought to be tendered in evidence for contradicting a witness is provided in S. 145. In other words S. 155 is controlled by S. 145 and is not independent of it. (*Jai Lal and Bhide, JJ.*). GOPI CHAND *v.* EMPEROR. **A. I. R. 1930 Lah. 491.**

—S. 145—Newspaper.

———Extract from newspaper by itself is not admissible though can be used to contradict or corroborate writer. (*Stuart, C. J. and Raza, J.*). NISAR ALI KHAN *v.* MUHAMMAD ALI KHAN. **119 I. C. 337=6 O. W. N. 549= A. I. R. 1929 Oudh 494.**

—S. 145—Object.

———The object of the provision in S. 145 is to give the witness the chance of explaining or reconciling his statements before the contradiction can be used as evidence. (*Chotzner and Duval, JJ.*). MADARI SIKDAR *v.* EMPEROR. **102 I.C. 550= 54 Cal. 307=28 Cr. L J. 582= 8 A.I. Cr. R. 112=A.I.R. 1927 Cal. 514.**

—S. 145—Omission to draw attention.

———*Previous statement cannot be used to contradict him.*

Where the witness seemed to have improved in his evidence in the Court, upon the statement made by him in the first information report,

Held, that inasmuch as his attention was not directed to the statement made by him in the first information report in accordance with the procedure laid down in S. 145 that statement cannot be used for the purpose of contradicting the evidence given by him in Court. (*Scott-Smith and Martineau, JJ.*). MOHNA *v.* THE CROWN. **86 I.C. 406= 7 L.L.J. 59=26 Cr. L.J 774= A.I.R. 1925 Lah. 328.**

—S. 145—Police diary.

———*Principle explained.*

It is only what is written in the police diaries that can be used under S. 145, to contradict the witness, and what the Police officer stated that a witness said or did not say, is inadmissible. The way to prove those portions of the written statement of a witness which have been specifically put to him in order to contradict him is for the accused to mark the passage or passages in the copy from the police diaries given to him and then to ask the writer of the statement to say that it is a true copy : (A. I. R. 1926 Lah. 347 and A. I. R. 1925 Lah. 337, *Ref. to.* (*Addison and Coldstream, JJ.*). DHARAM SINGH *v.* EMPEROR. **108 I.C. 162= 9 A.I. Cr. R. 567=29 Cr. L.J. 343= A.I.R. 1928 Lah. 507.**

EVIDENCE ACT (1872), S. 145—Previous deposition.

—S. 145—Previous deposition.

——Before a previous admission can be used against a party, it must be put to him and an opportunity afforded to him to explain it if it is capable of explanation. *(Tek Chand and Agha Haidar, JJ.)*. GHULAM MURTAZA *v.* NAGINA.
A. I. R. 1930 Lah. 991.

——Deposition before Magistrate who first started to try the case cannot be used for the purpose of discrediting the evidence given before another Magistrate unless it is produced in evidence. *(Fforde, J.)*. SAWAN SINGH *v.* CROWN.
90 I.C. 657=7 L.L.J. 339=26 P.L.R. 811=26 Cr. L.J. 1585=A. I. R. 1925 Lah. 499.

—S. 145—Proof of statement.

——The statement by which it is sought to contradict the prosecution witness under S. 162, Cr. P. C. must be either proved by the investigating officer, or must be admitted by the witness in his cross-examination, or must be proved in some other way before it is put to the witness under S. 145. *(Patkar and Baker, JJ.)*. SHAIKH USMAN *v.* EMPEROR. **107 I.C. 57=52 Bom. 195=9 A.I. Cr. R. 476=29 Cr. L.J. 221=29 Bom. L.R. 1581=A.I.R. 1928 Bom. 23.**

—S. 145—Proper contradiction.

Where the purpose of the production of the document at the time of cross-examination of a witness seemed to have been well understood by him and from the record of his deposition it was manifest that after being shown the document, he was directly asked whether it was not a fact that he was not at a particular place on the alleged date as was clear from the document and where on re-examination no attempt was made to elicit any explanation,

Held, the witness was properly contradicted. *(Sir Lawrence Jenkins.)* BAIKUNTHA NATH CHATTERJI *v.* PRASANNAMOYI DEBYA.
72 I.C. 286=27 C.W.N. 797=A.I.R. 1922 P.C. 403=34 M.L.J. 699. (P. C.).

—S. 145—Report of police.

——A report made by a police officer in connexion with an enquiry made by him in the exercise of his lawful jurisdiction is admissible in evidence in a judicial proceeding only for the purpose of refreshing his memory in case the police officer is examined as a witness. *(Piggott, J.)*. BALDEO RAM *v.* KUNKUN RAM. **88 I.C. 586=6 L.R.A. Civ. 393=A.I.R. 1925 All. 808.**

—S. 145—Scope.

——Under S. 145 a witness may be cross-examined as to previous statement made by him in writing without such writing being shown to him or being proved. Only if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. *(Spencer and Venkatasubba Rao, JJ.)*. RAMAKKA *v.* V. NAGESAM.
92 I.C. 792=47 Mad. 800=A. I. R. 1925 Mad. 145=48 M.L.J. 89.

—S. 145—Statements to police.

——*Compliance with section necessary.*

Under S. 162, Cr.P.Code., a statement made before the investigating officer can be used for the purpose of contradicting such witness when produced at the trial but after strict compliance with the provisions of S. 145, Evidence Act.

If the witness admits to have made the statement the previous statement in writing need not be proved. If he denies to have made any such statement and it is intended to contradict him the relevant portions of the record contrary to his statement in Court must be read to him and the witness should be given the opportunity to reconcile the same. It is only after this is done that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner provided by law. *(Jai Lal and Bhide, JJ.)*. GOPI CHAND *v.* EMPEROR. **A.I.R. 1930 Lah. 491.**

EVIDENCE ACT (1872), S. 145—Statements to police.

——*If the entire statement is no part of the judicial record.*

Only those portions of statements made by witnesses before the police as have been actually used under S. 162, Cr. P.Code, to contradict the witnesses in the manner provided in S. 145, in the course of their cross-examination or re-examination are parts of the judicial record and can be treated as evidence in a case. The other parts of the statements cannot be relied upon by the prosecution or the defence in determining the guilt or innocence of the accused and should not be referred to by the Judge. *(Tek Chand and Agha Haidar, JJ.)*. MT. SABHAI *v.* EMPEROR. **121 I.C. 66=31 Cr.L.J. 199=A.I.R. 1930 Lah. 449.**

——*Cr. P. Code, S. 162—Stage when it can be used.*

So far as proceedings before charge are concerned, copies of witnesses, statements made to the police should not be granted until the stage of cross-examination is reached. If that stage is allowed to go by without application being made, an accused must wait until the witness is again about to be subjected to cross-examination before he can claim grant of a copy. Under S. 145, until the occasion arises for putting the statement to the witness it cannot legally be used for any purpose whatsoever. It should not therefore be placed in the accused's hands until that stage in the trial has been reached when he may so use it. *(Curgenven, J.)*. PUBLIC PROSECUTOR, MADRAS *v.* VEDI. **122 I.C. 463=2 M. Cr. C. 243=1929 M.W.N. 885=31 M.L.W. 241=1930 Cr.C. 185=31 Cr.L.J. 414=A.I.R. 1930 Mad. 185.**

——*Procedure indicated.*

A copy of the statement made before the police cannot be used against the witness till he has been confronted with it. The right procedure, when a prosecution witness is contradicting himself, is to ask the Judge to look into the diary and decide whether the accused person should not have a copy of the statement. If such copy be granted, the witness's attention must be called to the same: A.I.R. 1915 P.C. 7, *Ref.* *(Mears, C.J. and Mukerjee, J.)*. KASHI RAM *v.* EMPEROR. **109 I.C. 120=26 A.L.J. 139=9 A.I. Cr. R. 249=9 L.R.A. Cr. 30=29 Cr.L.J. 472=A.I.R. 1928 All. 280.**

——*How they can be used.*

The only way a witness can be contradicted by statements made to the police under the provisions of S. 162, Cr. P. Code, is to prove his written statement and put it to the witness under S. 145, Indian Evidence Act, to permit him to explain the contradictions, if any. Statements made to the police cannot be used at a trial in any other way. *(Addison and Kemp, JJ.)*. EMPEROR *v.* IBRAHIM.
105 I.C. 807=8 Lah. 605=28 P.L.R. 649=28 Cr.L.J. 983=9 A.I. Cr. R. 132=A.I.R. 1928 Lah. 17.

EVIDENCE ACT (1872), S. 145—Statements to police.

———*First information report—Statement by third parties to police during investigation and counter-information against complainant or his party—Principles explained.*

The first information report against the accused is clearly not a statement within the contemplation of S. 162 because it is not made in the course of an investigation. Such report has to be tended under one or other of the provisions of the Evidence Act. The usual course is for the prosecution to call the informant and for the first information to be tendered as corroboration under S. 157; but it could also be tendered in a proper case under S. 32 (1) as a declaration as to the cause of the informant's death, or as part of the informant's conduct (of the *res gestae*) under S. 8. Theoretically, the defence could prove the information to impeach the informant's credit under S. 155 or to contradict him under S. 145.

Statements made by third parties to the police in the course of their investigation can be used as corroboration under S. 157, or in contradiction under S. 145 or to impeach credit under S. 155 provided the person who made the statement is called as a witness. This would apply to the prosecution and to the defence indifferently under the Evidence Act. But S. 162 of the Cr. P. Code enacts first that if such a statement is not recorded in writing it cannot be used in evidence in any circumstance or for either side or for any purpose: A.I.R. 1920 Rang. 116 (F.B.): A.I.R. 1925 Lah. 399 and A.I.R. 1924 Bom. 510, *Foll.*

If such a statement has been recorded in writing then it cannot be used for any purpose but one and that by the defence. Provided that the person who made it is called as a witness for the prosecution the defence may apply for a copy of the statement and if it be proved may use it under S. 145 of the Evidence Act to contradict that witness.

It sometimes happens that after the first information has been laid against the accused, a counter-information is laid against the complainant or his party by a member of the accused's party who is not himself an accused. As this comes under S. 154 and must be reduced to writing and signed, it cannot come within S. 162. Whether it is admissible at the trial of the accused will depend upon the circumstances and must be decided under Evidence Act. The police cannot of course treat statements as informations unless they are really received as such and come truly and properly within S. 154. (*Rankin and Duval, JJ.*). AZIMADDY *v.* EMPEROR. **99 I.C. 227=44 C.L.J. 253=28 Cr. L.J. 99=54 Cal. 237=A.I.R. 1927 Cal. 17.**

———*Compliance with section necessary.*

The provisions of S. 162 as amended absolutely bar the use of statements, both oral and written, and make those statements inadmissible for any purpose under the Evidence Act in any enquiry or trial except for one purpose, and that is by the accused to contradict a prosecution witness in the manner provided by S. 145: A.I.R. 1925 Mad. 579, *Diss. from.* (*Rutledge, C.J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR *v.* NGA THA DIN. **96 I.C. 145=5 Bur.L. J. 30=4 Rang. 72=27 Cr. L.J. 881=A.I.R. 1926 Rang. 116. (F. B.).**

—S. 145—Third party's statement.

———To hold that a witness may be contradicted by previous inconsistent statements, not of himself but of a third party, would be against principle and opposed to this section. (*Phillips and Venkatasubba Rao, JJ.*). B. BHAVAMMA *v.* B. RAMAMMA. **78 I.C. 176=19 M.L.W. 203=1924 M. W.N. 270=34 M. L T. 355=A.I.R. 1924 Mad. 537.**

—S. 145—Uninterpreted depositions.

———Depositions of the witnesses in a previous case in which there has been no compliance with the provisions of S. 360 may not possibly be used as evidence in the case in which they were made, but nevertheless they can be used on a subsequent occasion to contradict the witnesses under S. 145. (*Adami and Scroope, JJ.*). FAZLUR RAHMAN *v.* KING EMPEROR. **104 I.C. 100=6 Pat. 478=8 P. L. T. 773=8 A.I. Cr. R. 555=28 Cr. L.J. 772=A. I. R. 1927 Pat. 315.**

—S. 149—Leading questions.

———*If may be asked without declaring witness hostile.*

Section 154 read with S. 143 provides that the Court may allow the party to put leading questions to his own witnesses. This does not necessarily mean that he must declare the witness hostile and cross-examine him. It is only when he declares the witness hostile and cross-examines him that he cannot rely upon his evidence. Where the Public Prosecutor asks a witness some questions with the permission of the Court desiring to get from him not a contradiction of what he said but something in addition, he cannot be said to have cross-examined the witness. The questions are merely leading questions.

Per *Lort-Williams, J.*, contra —Sections 143 and 154 read together do not give power to prosecution to put leading questions to their own witnesses even with the assent of the Judge. The meaning of S. 154 is that with permission of the Court they may treat a witness hostile and cross-examine him. (*Cuming and Lort-Williams, JJ.*). BIKRAM ALI PRAMANIK *v.* EMPEROR. **50 C.L.J. 467=1930 Cr. C. 139=31 Cr. L.J. 610=A.I.R. 1930 Cal. 139.**

—S. 150—Criminal prosecution.

———There is no absolute privilege in the case of an advocate but a question asked in cross-examination making an imputation as regards a witness affords no ground ordinarily for a criminal prosecution: A. I. R. 1927 Cal. 823, *Foll.* (*C. C. Ghosh and Gregory, JJ.*). NAZIR AHMAD *v.* JOGESH CHANDRA BANERJI. **111 I.C. 569=29 Cr. L. J. 889=11 A.I. Cr. R. 156.**

—S. 151—When allowed.

———*Inheritance—Questions as to unchastity.*

During the examination of one of the defendant by plaintiff a question was put whether she was made pregnant by a certain person. The question was objected to but the plaintiff contended that it was relevant, his case being that the witness did not inherit the property by reason of her unchastity during the life-time of her husband. If the plaintiff's case was that she did not inherit the property of her husband by reason of her unchastity during his life-time, then the question would be relevant. If, however, it was asked for impeaching her credit as a witness, the Court will have to consider the provisions of Ss. 146 and 148 to 152 of the Evidence Act. (*Chatterjee and Pearson, JJ.*). SUBALA DASI *v.* INDRA KUMAR HAZZRA. **65 I. C. 692=A. I. R. 1923 Cal. 315.**

—S. 153—Scope.

———Sections 153 and 155, Evidence Act, must be strictly construed and narrowly interpreted if the Courts governed by the Act are to be spared the task in many suits of prosecuting on most perfect

EVIDENCE ACT (1872). S. 154—Cross-examination without examination-in-chief.

material issues, which have no bearing upon that really in contest between the parties: *A. G.* v. *Hitchcock*, 1 Ex. 91, *Ref.* (*Lord Blanesburgh.*) BHOGILAL BHIKACHAND *v.* ROYAL INSURANCE CO., LTD. 108 I.C. 1=6 Rang. 142= 26 A. L. J. 377=32 C.W.N. 593= 47 C.L.J. 550=30 Bom. L.R. 818=28 M.L.W. 276= A. I. R. 1928 P.C. 54=54 M. L. J. 545 (P.C.)

—S. 154—Cross-examination without examination-in-chief.

———A prosecution witness not called by the prosecution but "tendered as gained over" cannot be cross-examined by the prosecution. (*Ross and Wort, JJ.*). RAMJAG AHIR *v.* EMPEROR. 109 I. C. 114=7 Pat. 55=9 P. L. T. 567= 29 Cr. L.J. 466=A.I.R. 1928 Pat. 203.

—S. 154—Cross-examination without permission.

———*Procedure explained.*

The party desiring to cross-examine its own witness has to take the permission of the Court, implying thereby that there is a discretion in the Court whether it would permit the witness to be cross-examined or not. That discretion has always to be exercised with caution by the Court before which the matter comes up for consideration. Putting questions by way of cross-examination to one's own witness without the permission of the Court is a procedure not to be allowed. (*Cuming and Mukerji, JJ.*). KHIJIRUDDIN *v.* EMPEROR. 92 I. C. 442=53 Cal. 372=42 C.L.J. 504= 27 Cr. L.J. 266=A.I.R. 1926 Cal. 139.

—S. 154—Difference in statements.

———*Cross-examination must be directed for discrediting altogether.*

The fact that the statement of the witness differed from the statement recorded by the Sub-Inspector shortly after the occurrence, is not a sufficient reason, to cross-examine him as a hostile witness and it must be understood that he should be cross-examined to be discredited altogether, and not merely to get rid of part of his testimony. (*Walmsley and Pearson, JJ.*). EMPEROR *v.* SATYENDRA KUMAR DUTT. 71 I.C. 657=37 C. L. J. 173=24 Cr. L. J. 193= A. I. R. 1923 Cal. 463.

—S. 154—Hostile witness.

———*Definition.*

A hostile witness may be defined as one who from the manner in which he gives his evidence (within which is included the fact that he is willing to go back upon previous statements made by him) shows that he is not desirous of telling the truth to the Court. (*C. C. Ghose and Pearson, JJ.*). PANCHANAN GOGAI *v.* EMPEROR. 51 C.L.J. 203=34 C.W.N. 526= A.I.R. 1930 Cal. 276.

———*Ground for discrediting a witness as hostile.*

The grounds that witnesses do not support the prosecution story, but they are neighbours of the accused and they have been won over by them, that one of them is a tout and the other is a man of straw and quite unreliable, are no reasons for declaring the witnesses hostile; and unless there is something in their depositions which is conflicting with earlier statements made by them, which would afford ground for thinking that they have been gained ever by the defence, the prosecution is not entitled to declare them hostile. The fact that the witnesses are neighbours of the accused is not sufficient ground for treating them as hostile in order to discredit the statements that they made favourable to the defence. (*Ross and Kulwant*

EVIDENCE ACT (1872), S. 154—Purpose of cross-examination.

Sahay, JJ.). PARMESHWAR DAYAL *v.* EMPEROR. 94 I.C. 705=7 P.L.T. 567=1926 P H.C.C. 139= 27 Cr. L.J. 657=A.I.R. 1926 Pat. 316.

———*Definition of—Treating witness as hostile is matter for Court's discretion.*

A witness who is unfavourable is not necessarily hostile; a hostile witness is one who from the manner in which he gives his evidence shows that he is not desirous of telling the truth. Where a witness stands in the situation which naturally makes him adverse to a party desiring his testimony, the party calling the witness is not entitled as of right to cross-examine him. The matter is entirely in the discretion of the Court whether to permit the person calling the witness to put any questions to him which might be put in cross-examination by the adverse party. 12 M. I. A. 380 (P. C.), *Dist.* and 42 Ch. D. 373, *Ref. to.* (*Mookerjee and Buckland, JJ.*). LACHIRAM MOTIRAM BOID *v.* RADHA CHARAN PADDAR. 66 I.C. 15=49 Cal. 93=34 C.L.J. 107= A.I.R. 1922 Cal. 267.

———*Necessary—Witness cannot be treated as hostile witness as of right—Principles to determine who is a hostile witness discussed.*

There is with regard to S. 154 no distinction on principle between an attesting witness whom a party is obliged to call and any other witness whom he may cite of his own choice; but the Court may, in the exercise of its discretion, be more easily persuaded in the former case than in the latter. In view of the provision of the Indian Evidence Act, there is no room for application, in this country, of the view taken in some English cases, that a necessary witness, that is, one whom a party is compelled to call and who may therefore be considered rather the witness of the Court than of the party, as an attesting witness to a Will, can be discredited as of right by his own side.

Two important points must be borne in mind; first that a witness is considered adverse when, in the opinion of the Judge, he bears a hostile *animus* to the party calling him and not merely when his testimony contradicts his proof; in other words, a hostile witness is one who from the manner in which he gives his evidence shows that he is not desirous of telling the truth; and, secondly, when a witness is treated as hostile and cross-examined by the party calling him, this must be done to discredit the witness altogether and not merely to get rid of part of his testimony. *Case-law referred.* (*Mookerjee and Fletcher, JJ.*). SARENDRA KRISHNA *v.* RANEE DASSEE. 59 I.C. 814=33 C.L.J. 34= A.I.R. 1921 Cal. 677.

—S. 154—Power under.

———*Commissioner.*

A Commissioner for taking evidence cannot exercise the discretion vested in the Court under S. 154. (*Mookerjee and Fletcher, JJ.*). SURENDRA KRISHNA *v.* RANEE DASSEE. 59 I.C. 814= 33 C.L.J. 34=A.I.R. 1921 Cal. 677.

—S. 154—Purpose of cross-examination.

———*To obtain admission on which party cross-examining may rely.*

A party is allowed to cross-examine its own witness because that witness displays hostility and not necessarily because he displays untruthfulness. The main purpose of such cross-examination is to obtain admissions and it would be ridiculous to assert that a party cross-examining a witness is thereby prevented from relying on admissions and to hold that the fact that the witness

EVIDENCE ACT (1872), S. 154—Result of cross-examination.

is being cross-examined implies an admission by the cross examiner that all the witnesses' statements are falsehoods : A.I.R. 1927 Bom. 501, *Rel. on* ; *Bradley* v. *Ricardo*, (1831) 8 Bing. 57, *Ref. Faulkner* v. *Brines*, (1858) 1 F. & F. 254; A.I.R. 1926 Cal. 139; A.I.R. 1928 Cal. 690, *Diss. from.* (*Courtney Terrell, C. J. and Dhavle, J.*). SOHRAI SAO *v.* EMPEROR. **124 I.C. 836=11 P.L.T. 148=9 Pat. 474=A.I.R. 1930 Pat. 247.**

—S. 154—Result of cross-examination.

———*Position of hostile witness—Rule as to.*

The evidence of a hostile witness cannot in part be relied upon and the rest of it discarded or rejected. When a witness is declared hostile so that leave to cross-examine is granted to the party calling him, it is necessary that the Judge should explain what the position is that then arises, namely that by asking for leave to cross-examine the witness, the party calling him admits that he is not a witness of truth and one whose evidence is not entitled to credit, who is prepared to make one statement on oath at one time and another at another time and that the evidence of such witness should be rejected and left out of account in the minds of the jury. It is a rule which leans in favour of the accused and as such ought not to be departed from lightly. The Judge should tell the jury to reject the evidence of such witness altogether and his omission to do so amounts to misdirection : A.I.R. 1923 Cal. 463 ; *Alexander* v. *Gibson*, 2 Camp. 556, *Ref.* (*C. C. Ghose and Pearson, JJ.*). PANCHANAN GOGAI *v.* EMPEROR. **51 C.L.J. 203=34 C.W.N. 526=A.I.R. 1930 Cal. 276.**

———*No reliance in part.*

A party cannot be allowed to say that his witness is a truthful witness so far as a part of his evidence is concerned but an untruthful witness so far as some other portion is concerned. Once a party cross-examines his own witness he must be held to no longer rely on him : A.I.R. 1926 Cal. 139 and A.I.R. 1923 Cal. 463, *Rel. on.* (*Cuming and Lort-Williams, JJ.*). MOKBUL KHAN *v.* EMPEROR. **114 I.C. 793=56 Cal. 145=30 Cr. L.J. 350=32 C.W.N. 872=A.I.R. 1928 Cal. 690.**

———*Discrediting certain statements does not amount to discrediting whole of the evidence.*

Seeking to discredit the statements of witnesses considered hostile only on certain points does not amount to discrediting the evidence *in toto*, of these witnesses, and it must be a matter for the Court, on the particular facts in each case to credit or to discredit the different portions of the evidence of each witness as in other cases : A.I.R. 1926 Cal. 139, *Diss.* (*Crump and Madgavkar, JJ.*). EMPEROR *v.* JEHANGIR ARDESHIR. **106 I.C. 100=8 A. I. Cr. R. 324=29 Bom.L.R. 996=28 Cr.L.J. 1012=A.I.R. 1927 Bom. 501.**

———When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of S. 154, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony. (*Cuming and Mukerji, JJ.*). KHIJIRUDDIN *v.* EMPEROR. **92 I.C. 442=53 Cal. 372=42 C.L.J. 504=27 Cr. L.J. 266=A.I.R. 1926 Cal. 139.**

—S. 155—Depositions in commitment proceedings.

———Where in the Sessions Court witnesses retracted the statements made before the committing Magistrate,

EVIDENCE ACT (1872), S. 155—Rape case.

Held, the statements made to the police and to the committing Magistrate are relevant to contradict their evidence before the Sessions Court given in place of their retracted statements. (*Pratt and Fawcett, JJ.*). MARUTI JYOTI SHINDE *v.* EMPEROR. **63 I.C. 332=46 Bom. 97=23 Bom. L.R. 820=22 Cr L.J. 636=A. I. R. 1922 Bom. 108.**

—S. 155—First information report.

———*Conviction based on first information report alone, illegal.*

First information report is not substantive evidence of the facts recorded in them and a conviction cannot be based on such reports. They can be used to corroborate the witnesses who made them and are of value showing that they told the same story at the first possible occasion. If they tell a different story in Court, the report can be used to contradict them or discredit their testimony. But it is not legitimate for a Court, when witnesses tell a different story in the witness box and contradict the report made by them, to discard the evidence given on oath and to rely on the report. (*Ryves, J.*). JAMALUDDIN *v.* KING EMPEROR. **74 I.C. 716=24 Cr. L.J. 812=A.I.R. 1924 All. 164.**

—S. 155—'Former statement.'

———A statement in a criminal case, made after the hearing of a civil suit in trial Court but its hearing in appeal is not a " former statement". Such a statement may possibly be used by re-examining the witness in the appellate stage. (*Rutledge, C. J. and Brown, J.*). U. PO SAING *v.* G. KYI MAUNG. **104 I.C. 377=6 Bur. L.J. 86=A I.R. 1927 Rang. 247.**

—S. 155—Investigating officer.

———*Should not be asked what a witness told him when the evidence is taken down in writing.*

Where the counsel for accused asked in the course of cross-examination the investigating officers if a certain witness made or not a particular statement to them,

Held, that though the language of S. 153 (3) is *prima facie* wide enough to permit of such questions, yet where the evidence has been reduced to writing, it is undesirable to permit the putting of such questions as, if the witness is replying from his memory alone, there is little value in what he may say. If he is refreshing his memory by looking at the diary, the procedure is outside the scope and intent of S. 159, Evidence Act. (*Mears, C. J. and Mukerjee, J.*). KASHI RAM *v.* EMPEROR. **109 I. C. 120=26 A.L.J. 139=9 A.I. Cr. R. 249=9 L.R. A Cr. 30=29 Cr. L. J. 472=A.I.R. 1928 All. 280.**

—S. 155—Prior deposition.

———*Rule explained.*

Where an attesting witness is dead his depositions in a prior judicial proceeding would be relevant and admissible, if the prior judicial proceeding was between the same parties and the adverse party in that proceeding had the right and opportunity to cross-examine him and the question in issue is substantially the same. But if the witness being alive is examined in the present proceeding, his prior depositions are not available as substantive evidence but can only be used to contradict or corroborate his present statements.(*Ananthakrishma Ayyar, J.*). PONNUSWAMI GOUNDAN *v.* KALYANASUNDARA AYYAR. **A.I.R. 1930 Mad. 770.**

—S. 155—Rape case.

———In rape cases the general immoral character of the woman is relevant evidence. (*Newbould and*

EVIDENCE ACT (1872), S. 155—Report of offence.

B. B. Ghose, JJ.). KERAMAT MONDAL *v.* EMPEROR. 92 I. C. 439=42 C. L. J. 524= 27 Cr. L. J. 263=A.I.R. 1926 Cal. 320.

—S. 155—Report of offence.

———*Report after 24 hours.*

A report of an offence, not made at or about the time of the occurrence, to an officer, who has no powers to investigate the matter, though it can be used under S. 155 to impeach the credit of the person making the same, cannot be used to corroborate the witness under S. 157. (*Cuming and Gregory, JJ.*). EMPEROR *v.* RAM CHANDRA. 111 I. C. 327=55 Cal. 879=10 A. I. Cr. R. 456= 29 Cr. L. J. 823=A.I.R. 1928 Cal. 732.

—S. 155—Scope.

———*Sections must be strictly construed.*

Sections 153 and 155, Evidence Act, must be strictly construed and narrowly interpreted if the Courts governed by the Act are to be spared the task in many suits of prosecuting on most perfect material issues, which have no bearing upon that really in contest between the parties: *A. G.* v. *Hitchcock*, 1 Ex. 91, *Ref.* (*Lord Blanesburgh.*) BHOGI LAL BHIKACHAND *v.* ROYAL INSURANCE CO., LTD. 108 I. C. 1=6 Rang. 142= 26 A. L. J. 377=32 C. W. N. 593= 47 C. L. J. 550=30 Bom. L. R. 818= 28 M. L. W. 276=A.I.R. 1928 P. C. 54= 54 M. L. J. 545 (P.C.).

———Section 27 of the Evidence Act remains unaffected by the latest amendment of S. 162 of the Cr. P. C., but Ss. 155 and 157 are affected except in the only instance mentioned in the proviso to S. 162, Cr. P. C. (*Rutledge, C. J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR *v.* NGA THA DIN. 93 I. C. 145=4 Rang. 72= 5 Bur. L. J. 30=27 Cr. L. J. 881= A.I.R. 1926 Rang. 116 (F.B.).

—S. 155—Statement before Monegar.

———*Use of.*

A statement by witness signed before the Monegar cannot be used as substantive evidence of the witness against the accused as it is not a statement recorded on oath in the presence of the accused by a Magistrate empowered to take down evidence. The only use of such a statement would be to corroborate or contradict statements made on oath at the trial. (*Spencer and Kumaraswami Sastri, JJ.*). MALAYA GOUNDAN *v.* THE CROWN. 66 I.C. 326=23 Cr. L. J. 262=14 M. L. W. 612= 1921 M. W. N. 872=A.I.R. 1922 Mad. 303= 42 M. L J. 278.

—S. 155—Statement to police.

———Statements made by witnessesto the police officer during the course of investigation under Chapter 14 cannot be used by the Court for contradicting those witnesses. (*N. R. Chatterjee and B.B. Ghose, JJ.*). KERAMAT MANDAL *v.* EMPEROR. 92 I. C. 453=42 C. L. J. 528= 27 Cr. L. J. 277=A.I.R. 1926 Cal. 147.

———*Admissible if S. 145 is complied with.*

Statements made before a police officer and taken down by him in writing are admissible under S. 155 (3) provided only that the provisions of S. 145 had been complied with, in the matter of putting the specific parts of it, which were to be relied upon, to the witnesses in their cross-examination. (*Sanderson, C.J. and Pearson, J.*). THOMAS JAMES HENRY ARNUP *v.* KEDAR NATH GHOSH. 91 I. C. 801=27 Cr.L. J. 129= 30 C.W.N. 835=A.I.R. 1925 Cal. 1017.

EVIDENCE ACT (1872), S. 157—Prior deposition.

—S. 157—First information report.

———Statements in first information report can be used for the purpose of corroborating or contradicting a witness but are inadmissible for the purpose of proving that the facts alleged therein are correct: 17 C.W.N. 1213; A.I.R. 1925 All. 303 and A.I.R. 1927 Cal. 17, *Foll.* (*Beasley, C. J. and Pandalai, J.*). SANKARALINGA TEVAN *v.* EMPEROR. 124 I. C. 506=1930 M.W.N. 496= 3 M. Cr. C. 100=1930 Cr.C. 632= 31 M.L.W. 451=A.I.R. 1930 Mad. 632= 53 M.L.J. 397.

———*Cannot be used to contradict other persons.*

A first information report can only be used to corroborate or contradict under the provisions of Ss. 157 and 145, the person who makes it. It cannot be used as substantive evidence to contradict other persons: A.I.R 1928 Lah. 17, *Foll.* (*Addison and Dalip Singh, JJ.*). GAMAN *v.* EMPEROR. 116 I.C. 187=11 L. L. J. 1=12 A.I.Cr. R. 453= 30 Cr.L J.-571=A.I.R. 1928 Lah. 913.

———First information report is not substantive evidence by itself, but it can only be used under S. 157 as a previous statement to corroborate or contradict a statement made subsequently in Court. (*Shadi Lal, C. J. and Zafar Ali, J.*). CHOGHATTA *v.* EMPEROR. 91 I.C. 697=27 Cr.L.J. 121= A.I.R. 1926 Lah. 179.

—S. 157—Hearsay evidence.

———*Duty of prosecution.*

Section 157 provides an exception to the general rule excluding hearsay evidence and in order to bring a statement within the exception the duty is cast on the prosecution to establish by clear and unequivocal evidence the proximity of time between the taking place of the fact and the making of the statement. (*Tek Chand, J.*). MANGAL RAI *v.* EMPEROR. 110 I. C. 676=10 L.L.J. 262= 29 P.L.R. 703=10 A.I. Cr. R. 519= 29 Cr. L.J. 740=A.I.R. 1928 Lah. 647.

—S. 157—Letters of police.

———A letter written by a police officer to his superior expressing that a certain person would make a certain statement for a certain sum of money is not under S. 157 properly receivable in evidence for any purpose. (*Lord Blanesburgh.*) BHOGILAL BHIKACHAND *v.* ROYAL INSURANCE CO., LTD. 108 I.C. 1=6 Rang. 142= 26 A.L.J. 377=32 C.W.N. 593= 47 C.L.J. 550=30 Bom. L.R. 818= 28 M.L.W. 276=A. I. R. 1928 P.C. 54= 54 M.L.J. 545 (P.C).

—S. 157—Prior deposition.

———*Prior whole statement cannot be admitted—Even admissible parts cannot be admitted before witness is examined.*

The trial Judge in a civil suit permitted an officer in charge of the Record-of-Right proceedings to be called as the very first witness and to produce the statements of witnesses recorded in those proceedings, which were exhibited notwithstanding the objection raised on that behalf.

Held, that only parts of such statements, as were necessary to corroborate or contradict the witnesses when they were examined in the case, could be put in through them under the provisions of S. 157. (*Rupchand Bilaram and Lobo, A. J. Cs.*). MT. HAKIMA *v.* MT. JIANDI. 103 I. C. 870= A.I.R. 1927 Sind 209.

———Where there is nothing in the deposition of a witness in the trial which may be corroborated by his earlier statements, there is no justification for the whole of the depositions being brought as

EVIDENCE ACT (1872), S. 157—Prior deposition.

evidence in the record, but only particular passages which are relevant may be used. (*Cuming and Mukerji, JJ.*). KHIJIRUDDIN *v.* EMPEROR.

92 I.C. 442= 53 Cal. 372=42 C.L.J. 504= 27 Cr L.J. 266=A.I.R. 1926 Cal. 139.

——Where the deposition of a witness before the Committing Magistrate is treated as evidence in the Sessions Courts, a previous statement by the witness under S. 164, can be used to corroborate such deposition in the Sessions Court. 34 B. 599, *Diss. from* ; 2 Weir 821, *Foll.* (*Ayling and Odgers, JJ.*). VERLAIAH KONE *v.* KING EMPEROR.

72 I.C. 529=16 M.L.W. 239= 1922 M.W.N. 506=31 M.L.T. 175= 45 Mad. 766=24 Cr. L.J. 417= A.I.R. 1923 Mad. 20=43 M.L.J. 222.

—S. 157—Proceedings against pleader.

——*The petition of party and the contents thereof—Admissible.*

Sanderson, C.J. —Where a party files a petition on the date of hearing asking for adjournment on the ground that his pleader cannot attend Court that day on account of *Hartal*, the fact of filing the petition as well as its contents can be proved and are admissible, though not perhaps sufficient, to charge the pleader with professional misconduct.

Woodroffe, J. —The petition is admissible and corroborative to the evidence. (*Sanderson, C.J. Woodroffe and Mookerjee, JJ*). EMPEROR *v.* RAJANI KANTA BOSE. **71 I.C. 81= 49 Cal. 782=26 C.W.N. 589=35 C.L.J. 356= 24 Cr. L.J. 33=A.I.R. 1922 Cal. 515 (S.B.)**

—S. 157—Rape case.

——If the evidence of raped girl is excluded from the case, the evidence of her relatives to the effect that she accused a certain person of having raped her cannot be used as corroborative evidence under S. 157. (*Foster, J.*). EMPEROR *v.* PHAGUNIA BHUIAN. **89 I. C. 1043=26 Cr.L.J. 1475= A.I.R. 1926 Pat. 58.**

——Where a tender girl was alleged to have been raped, a statement made by her stating that she was raped, and uttered immediately after the rape, crying and weeping, is admissible as explaining her act of crying, under S. 8 and by way of corroboration under S. 157. (*Kinkhede, A.J.C.*). SOOSALAL, BANIA *v.* EMPEROR. **82 I.C. 142= 25 Cr.L.J. 1214=A.I.R. 1925 Nag. 74.**

—S. 157—Records and documents.

——*Dispute regarding boundaries—Documents relating to neighbouring lands are admissible.*

In a suit for possession of land if the opposite party disputes the boundaries of the land in suit, it is open to the plaintiff to produce documents relating to neighbouring lands in which there is recital as to particular boundaries of the land in suit, and such documents will be admissible to prove the plaintiffs' title if the persons in whose favour the documents are executed are examined and admit the correctness of the boundaries : A.I.R. 1927 Cal. 230, *Ref.* (*Suhrawardy and Garlick, JJ.*). MOHIM CHANDRA *v.* KANAILAL SAHA. **33 C.W.N. 1085= A.I.R. 1930 Cal. 311.**

——*Entry in vaccination register.*

Where an entry in the vaccination register, which includes a statement by a woman that a person, bearing the name of the alleged father of her illegitimate child, was the father of the illegitimate child, is made three years after its birth, the entry does not satisfy the terms of S. 157, and is not admissible in evidence.

EVIDENCE ACT (1872), S. 157—Scope.

Quaere.—It is doubtful whether such a statement is rendered admissible by S. 35. (*Curgenven, J.*). M. KANNIAPPAN *v.* KULLAMMAL. **1930 Cr.C. 88=1929 M. W. N. 696= 2 M. Cr. C. 275=A.I.R. 1930 Mad. 194.**

——*Sale-deed—Recital therein as to refusal of partition—Admissibility.*

A sale deed dated 1910 by one *N* in favour of *B* recited all the circumstances leading to the sale. It also contained a recital as follows : "About a year ago I came to Poona and asked my uncles and my step-brothers to effect a partition and to allot to me my one-ninth share of our ancestral property, but they refused to give my share." It was contended that the recitals in the deed were not admissible as evidence against the uncles or cousins of *N* on the issue whether *N* demanded a share of the property in 1909 as it did not come within S. 157.

Held, that though the particular statement did not come within S. 157 on the ground that it was not made at or about the time of the *N's* alleged interview with his uncle in 1909 but the deed was admissible in evidence as corroboration of the evidence given by *N* and his witnesses upon other material matters. (*Sir Lancelot Sanderson.*) RADHOBA BALOBA VAGH *v.* ABURAO BHAGWANTRAO. **118 I. C. 1=33 C. W. N. 1006= 31 Bom. L. R. 1030=50 C.L.J. 135= 1929 A.L.J. 1031=30 M.L.W. 514=6 O.W.N. 786= 56 I.A. 316=53 Bom. 699=1929 M.W.N. 852= A.I.R. 1929 P.C. 231=57 M.L.J. 287 (P.C.).**

——*Age—Guardian's former application.*

The verified application formerly made by a guardian, containing his ward's date of birth, is admissible under S. 157 and the guardian is entitled to refresh his memory from that document : 18 All. 478, *Ref.* (*Banerji and King, JJ.*). HURCHAND *v.* DEWAN SINGH. **117 I. C. 832= 1929 A.L.J. 615=A. I. R. 1929 All. 550.**

——*Executant of document producing it in support of his evidence.*

Where the executant of a document containing recitals of boundaries of land in dispute is called as a witness and he gives his evidence and in support of that he produces a document executed by him. The document would be admissible under S. 157 as corroborative of the evidence given by the witness in the witness-box. (*B. B. Ghose and Panton, JJ.*). KETABUDIN *v.* NOFORCHANDRA. **99 I.C. 907=44 C.L.J. 582=A.I.R. 1927 Cal. 230.**

—S. 157—Report of offence.

——A report of an offence, not made at or about the time of the occurrence, to an officer, who has no powers to investigate the matter, though it can be used under S. 155 to impeach the credit of the person making the same, cannot be used to corroborate the witness under S. 157. (*Cuming and Gregory, JJ.*). EMPEROR *v.* RAM CHANDRA ROY. **111 I. C. 327=55 Cal. 879=10 A. I. Cr. R. 456= 29 Cr.L.J. 823=A.I.R. 1928 Cal. 732.**

—S. 157—Scpe.

——Section 157 affected by S. 162 of the Cr. P. C., so far as statements to the police, taken under S. 161, whether oral or recorded are concerned, but S. 27 which deals with information received from persons accused of an offence and in police custody is not affected by the aforesaid section of the Cr. P. C. (*Rutledge, C. J., Heald, Duckworth, Chari and Maung Ba, JJ.*). EMPEROR *v.* NGA THA DIN. **96 I.C. 145=4 Rang. 72= 5 Bur. L. J. 30=27 Cr. L. J. 881= A.I.R. 1926 Rang. 116 (F. B.).**

EVIDENCE ACT (1872), S. 157 — Statements before Magistrate.

—S. 157—Statements before Magistrate.

——Any Magistrate is competent to hold a test identification and if he is not empowered to deal with the matter under enquiry he can prove the statement made before him under the provisions of S. 157. (*Chotzner and Gregory, JJ.*). SAMI-UD-DIN *v.* EMPEROR. **109 I C. 225=32 C W.N. 616=10 A.I. Cr. R. 223=29 Cr. L J. 497=A.I.R. 1928 Cal. 500.**

—S. 157—Statements by third person.

——Section 157 cannot be invoked to let in statements made by third persons as evidence for the purpose of corroboration of witness examined in a case. (*Cuming and Mukerji, JJ.*). AMBICACHARAN *v.* KUMUD MOHUN. **110 I.C. 521=A.I.R. 1928 Cal. 893.**

—S. 157—Statements in commitment proceedings.

——Statements made before a Committing Magistrate, when admissible under the Evidence Act, can be admitted for all purposes and not only for the purpose of corroboration or contradiction: A. I. R. 1925 Pat. 51, *Appr.* (*Sulaiman and Banerji, JJ.*). BEHARI *v.* EMPEROR. **98 I.C. 485=49 All. 251=25 A.L J. 126=7 L.R.A. Cr. 205=27 Cr. L.J. 1365=7 A.I. Cr. R. 10=A.I.R. 1927 All. 479.**

——The object and effect of S. 288 of the Criminal Procedure Code is to place the deposition in the committal enquiry on exactly the same footing as the deposition in the Sessions Court. Such a deposition is "testimony" within the meaning of S. 157 of the Evidence Act, which, a prior statement by the witness during the police investigation is admissible in evidence to corroborate. A.I.R. 1923 Mad. 20 and 27 Cal. 295, *Foll.* (*Scott-Smith and Fforde, JJ.*). MAM CHAND *v.* THE CROWN. **82 I.C. 129=5 Lah. 324=25 Cr.L.J. 1201=A.I.R. 1924 Lah. 609.**

—S. 157—Statement to police.

——For corroborating a witness, his statement before competent police officer at the identification parade held by the police in the course of the investigation may be proved by oral evidence though the written record of the statement is not admissible. (*K. Kemp, J.*). EMPEROR *v.* WAHIDUDDIN HAMIDUDDIN. **32 Bom.L.R. 327=A.I.R. 1930 Bom. 158.**

——*Statements to police and Committing Magistrate —Not substantive evidence.*

The statements made by a witness to the Police are relevant only for the purpose of contradicting his testimony at the trial, and in the absence of any order under Cr. P.C., S. 288, the statements made to the Committing Magistrate can be used only for the purpose of contradicting or corroborating that testimony. These statements cannot be treated as though they were substantive evidence like the statement made by the witness at the trial. (*Martineau and Zafar Ali, JJ.*). RAM KARAN *v.* EMPEROR. **92 I.C. 577=7 L.L.J. 371=26 P.L.R. 659=27 Cr.L.J. 289=A.I.R. 1925 Lah. 483.**

——Statements made by the witnesses to the police during the investigation are not admissible for purpose of corroborating their depositions before the Committing Magistrate. (*Shadi Lal, C.J. and Zafar Ali, J.*). RAKHA *v.* CROWN. **93 I.C. 230=27 Cr.L.J. 438=26 P.L.R. 304=6 Lah. 171=A.I.R. 1925 Lah. 399.**

——Oral statements by witnesses in Police investigation which do not corroborate their evidence at the trial are inadmissible. (*Wallace and Madhavan Nair, JJ.*). VENKATASUBBIAH *v.* EMPEROR. **85 I.C. 209=26 Cr.L.J. 721=48 Mad. 640=21 M.L.W. 190=1925 M.W.N. 68=A.I.R. 1925 Mad. 579=48 M.L.J. 195.**

EVIDENCE ACT (1872), S. 159—Account-books.

——*Deputy Superintendent of Police.*

A statement, made to the Deputy Superintendent of Police, in which the informant gave an account of what occurred is admissible in evidence as the Deputy Superintendent of Police is an officer legally competent to investigate the facts of a murder and dacoity, within the meaning of S. 157. (*Ayling and Odgers, JJ.*). THACHROTH HYDROSS, *In re.* **76 I.C. 695=18 M.L.W. 113=1923 M.W.N. 860=25 Cr.L.J. 7=A.I.R. 1923 Mad. 694=45 M.L.J. 279.**

——Where a statement made to a police officer is not the first information under S. 154 of Cr. P. C. the Magistrate must take from the police officer, a statement, that the particular statement was made to him. (*Beachcroft and Ghose, JJ.*). SABIN SARDAR *v.* EMPEROR. **61 I.C. 650=22 Cr.L.J. 410 (Cal.).**

——*If the section is overridden by S. 162, Cr.P.C.*

Although the written record of statements made to the police in the course of an investigation could not be used as evidence, S. 162 does not exclude oral evidence of the statements, whether they had been taken down in writing or not: 35 Mad. 247 and 35 Mad. 397, *Rel. on.*

Section 162 does not override the general provisions of the Evidence Act as to oral evidence of such statements to corroborate the evidence of a witness: 39 Bom. 58 and 36 Cal. 281, *Rel. on.* (*Miller, C.J. and Adami, J.*). BALDEO KOERI *v.* KING EMPEROR. **61 I.C. 785=2 P.L.T. 565=6 P.L.J. 241=22 Cr.L.J. 433=A.I.R. 1921 Pat. 122.**

—S. 158—Opinion of Court.

——The question whether a witness is entitled to credit or not must be decided by a Court on the evidence before it, and not on what another Court thought of the witness in another case, and therefore opinion of Court in another case as to the witness cannot be put in to impeach his credit. (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I.C. 289=5 Pat. 777=8 P.L.T. 510=A.I.R. 1927 Pat. 61.**

—S. 158—Previous statements.

——Previous statement not made in Court can be used for limited purpose of corroborating or contradicting witness only and not as substantive evidence: 26 Mad. 191 and 25 A.L.J. 994, *Foll.* (*Jai Lal and Abdul Qadir, JJ.*). NIAMAT KHAN *v.* EMPEROR. **31 P.L.R. 411=A.I.R. 1930 Lah. 409.**

—S. 158—Statement to police.

——Section 158 places a person whose statement has been used as evidence under S. 32 in the same category as a witness actually produced in Court for the purpose of contradicting his statement by a previous statement made by him. Therefore a statement which has been admitted in evidence under S. 32 may be contradicted by another statement of the same person made to police during investigation. (*Harrison and Jai Lal, JJ.*). HARI RAM *v.* EMPEROR. **89 I.C. 897=26 Cr.L.J. 1425=A.I.R. 1926 Lah. 122.**

—S. 159—Account-books.

——*Produced at late stage not admitted in evidence but party allowed to refresh his memory by reference to them—Procedure is proper.*

EVIDENCE ACT (1872), S. 159—Convincing document.

Where in a suit in which the amount payable by one party to the other was in dispute and there was omission on the part of both parties to produce their account books within the proper time, and in consequence the Subordinate Judge regarded with great suspicion the books the defendant produced, and he refused to allow the plaintiff's books to be put into evidence though he permitted him to refresh his memory by reference to their entries.

Held, that the Subordinate Judge was right in the view he took and that the procedure was justified by S. 159. The weight of the evidence, the objection to the document upon the ground that its not having been produced at the proper time renders its authenticity the subject of suspicion, and all other grounds upon which a document can be successfully impeached still remain open, but refusal to permit a man to refresh his memory by proper relevant contemporaneous documents might lead to a grave injustice. (*Lord Buckmaster.*) JEWAN LAL DAGA *v.* NILMANI CHAUDHURI.

107 I.C. 337=7 Pat. 305=55 I.A. 107=26 A.L.J. 124=30 Bom.L R. 305=47 C.L.J. 302=28 M.W.N. 154=32 C.W.N. 565=27 M.L.W. 740=A. I. R. 1928 P.C. 80=54 M. L.J. 325 (P.C.).

—S. 159—Convincing document.

———When the writing brings to the mind of the witness neither any recollection of the facts mentioned in it, nor any recollection of the writing itself, but which nevertheless enables him to swear to a particular fact from the conviction of his mind on seeing a writing, which he knows to be genuine, the witness may refresh his memory by referring to the writing. (*Newbould and Suhrawardy, JJ.*). ABDUL SALIM *v.* EMPEROR. **69 I.C. 145=43 Cal. 573=35 C.L.J. 279=26 C.W.N. 680=23 Cr. L.J. 657=A.I.R. 1922 Cal. 107.**

—S. 159—Document by others.

———*Document read at or near the transaction.*

When a witness wants to refresh his memory under S. 159, he is to do so by referring in Court to the document which he had read at or near the time of the transaction, and it is the fact that he had known it to be correct when he read it that is the justification for his doing so. It is quite immaterial that a document to which the witness refers in Court was not printed by the witness himself or in his presence. It is essential only that he should have read it at or soon after the transaction to which it relates. (*Hilton, J.*). RAMCHANDRA *v.* EMPEROR. **120 I.C. 798=1930 Cr. C. 331=31 Cr. L.J. 168=A.I.R. 1930 Lah. 371.**

—S. 159—Documents giving dates.

———*Recitals in old document are admissible to refresh memory.*

The plaintiff in order to show that his father died before the property had been acquired, produced a mortgage bond which had been executed by him on the 28th October, 1892, in which he was described as the son of Khan Mahomed Akonda deceased,

Held, the deed is admissible to refresh memory as to when the father died. (*Mookerjee, C. J. and Rankin, J.*). SAYERUDDIN AKONDA *v.* SAMESUDIN AKONDA. **72 I.C. 985=A. I. R. 1923 Cal. 378.**

—S. 159—Duty of witness.

———If upon any question a witness suffers from a *bona fide* lapse of memory, and that failure of memory can be remedied by reference to any memorandum or other writing prepared by the

EVIDENCE ACT (1872), S. 159—Notes of speech.

witness at the time, and the Court invites the witness to refresh his memory with reference to the writing, the witness is, under an obvious obligation to do so. (*Piggott and Walsh, JJ.*). HARKHU *v.* EMPEROR. **65 I.C. 575=19 A.L.J. 76=23 Cr. L.J. 143=A.I.R. 1921 All. 86.**

—S. 159—Horoscopes.

———*Rule explained.*

Very great confusion of thought or rather lack of thought is frequently shown in Civil Courts in regard to the admission in evidence of horoscopes and similar documents. A horoscope is often accepted as substantive evidence of the date of the birth of the person mentioned in it, perhaps with a vague idea of reference to S. 32. No part of that section can make any statement of a date in such a document a relevant fact. A horoscope can be used to help in proving the date of birth stated in it only under S. 159 or S. 160 and then of course only if the person who wrote it or a person who read it soon after it was written is examined as a witness. Very nearly the same remarks will apply to other documents in which the age of a person is stated, such as the deed of adoption or rather of initiation as a "chela." (*Hallifax, A. J. C.*). SHANKERGIR GURU MOTIGIR *v.* CHINNUJI.

71 I.C. 140=6 N.L.J. 1=A.I.R. 1923 Nag. 164.

—S. 159—Investigating officer.

———*Practice explained.*

Where the counsel for accused asked in the course of cross-examination the investigating officers if a certain witness made or not a particular statement to them,

Held, that though the language of S. 155 (3) is *prima facie* wide enough to permit of such questions, yet where the evidence has been reduced to writing, it is undesirable to permit the putting of such questions as, if the witness in replying from his memory alone, there is little value in what he may say. If he is refreshing his memory by looking at the diary, the procedure is outside the scope and intent of S. 159, Evidence Act. (*Mears, C.J. and Mukerji, J.*). KASHIRAM *v.* EMPEROR.

103 I. C. 120=29 Cr. L.J. 472=9 L.R.A. Cr. 30=9 A. I. Cr. R. 249=26 A.L.J 139=A.I.R. 1928 All. 280.

—S. 159—List of articles.

———Lists of discovery of stolen articles can be used by the persons in order to refresh their memory at the time of giving evidence, but the lists are not themselves evidence. (*Scott Smith, A.C.J.*). HAZARA SINGH *v.* THE CROWN. **82 I. C. 707=25 Cr. L.J. 1347=6 L.L.J. 370=A.I.R. 1924 Lah. 727.**

—S. 159—Memorandum.

———Memoranda kept by a witness can be used in evidence not by itself but as corroborating a witness or refreshing his memory: 10 N.L.R. 44 at p. 47, *Rel. on.* (*Subhedar, A. J. C.*). KEYARSOSP *v.* GARBAD. **120 I.C. 224=A.I.R. 1930 Nag. 24.**

—S. 159—Mode of proof.

———Statement of the person injured by the accused, made before certain villagers and recorded in full by the Patwari, is not to be proved by producing the witten record of it. The proper method is that given in S. 159. (*Hallifax and Mitchell, A.J.Cs.*). EMPEROR *v.* AKAIA. **101 I. C. 599=23 N.L.R. 23=28 Cr. L.J. 471=8 A I. Cr. R. 66=A.I.R. 1927 Nag. 222.**

—S. 159—Notes of speech.

———Section 159 does not render the notes of a speech inadmissible in evidence. (*Tapp, J.*). OM PARKASH *v.* EMPEROR. **A.I.R. 1930 Lah. 867.**

EVIDENCE ACT (1872), S. 159—Police diary.

—S. 159—Police diary.

———*Defence entitled to inspect only portion refreshed and not whole diary.*

There is nothing in the law which entitles the defence to an inspection of anything more than that portion of the police diary from which the witness refreshed his memory and there is no illegality or irregularity in the procedure of the Magistrate who disallows the application for the inspection of the whole diary. (*Coutts and Das, JJ.*). LACHMI SINGH *v.* EMPEROR.

68 I.C. 623=2 Pat. 74=23 Cr.L.J. 591=3 P. L.T. 562=A.I.R. 1922 Pat. 562.

—S. 159—Post-mortem notes.

———*If can go on the record* en bloc.

Per *Rupchand, A.J.C.*—Sections 159 to 161 permit limited use being made of post-mortem notes of Medical Officer, namely that they be used by the witness who made them for refreshing his memory or by a party for the purpose of contradicting the witness. It is extremely undesirable that such notes of post-mortem examination be put in evidence through the Medical Officer *en bloc* as it is prejudicial to both parties.

Per *Percival, J. C.*—When pleader for accused takes no objection to the post-mortem notes going on the record and when there is no discrepancy between the post-mortem notes and the evidence of the Medical Officer, the placing of the post-mortem notes does not do the accused any harm: 9 Cal. 455 and 27 Cal. 295, *Ref.* (*Wild, A. J. C.*) *on difference between Percival, J.C. and Rupchand, A.J.C.*). MOHAMMAD YUSIF *v.* EMPEROR.

1930 Cr. C. 865=A.I.R. 1930 Sind 225.

—S. 159—Prior deposition.

———*Evidence recorded during absence of accused can't be used—Where witness is unable to remember details of occurrence but his memory can be refreshed under.*

Where the deposition recorded under S. 512, Cr. P. C., of a witness who is unable to remember the details of the occurrence is sought to be given in evidence. The proper procedure in such a case is to read out his previous deposition to the witness under the provisions of S. 159 to refresh his memory and then to ask him whether he remembers the details of the occurrence. (*Scott-Smith, J.*). BHIKA *v.* KING EMPEROR.

76 I.C. 31=25 Cr.L.J. 95=A.I.R. 1924 Lah. 605.

—S. 159—Statement of injuries.

———A copy of the statement of injuries recorded in the register of medico-legal cases may be used by the medical witness for the purpose of refreshing his memory but it cannot be treated as evidence: 9 Cal. 455, *Ref.* (*Zafar Ali, J.*). MAHOMED SADIQ *v.* EMPEROR. **89 I.C. 458=26 P.L.R. 533=26 Cr.L.J. 1370=A.I.R. 1926 Lah. 51.**

—S. 159—Unstamped receipt.

———A copy of an unstamped Receipt, though inadmissible in evidence, can be used by a witness to refresh his memory by referring to it. (*Hallifax, A.J.C.*). CHOUDHURI RAMPRASAD *v.* NATHURAM. **68 I.C. 494=A.I.R. 1923 Nag. 32.**

—S. 159—' Writing.'

———The word "writing" used in S. 159 includes also printed matter. (*Hilton, J.*). RAMCHANDRA *v.* EMPEROR. **120 I.C. 798=1930 Cr. C. 331=31 Cr.L.J. 168=A.I.R. 1930 Lah. 371.**

—S. 160—Engineer's report.

———In a suit for damages for negligence in supervising a building, an engineer's report is admissible to prove quantity of damages, provided the Engineer makes the contents of the report a part of his deposition by using it to refresh his memory. (*Walmsley and Chakravarti, JJ.*). NAGENDRA NATH SINGH *v.* SRIMATI NAGENDRA BALA. **97 I. C. 200=43 C.L.J. 479=A.I.R. 1926 Cal. 988.**

EVIDENCE ACT (1872), S. 163—Non-production.

—S. 162—Procedure.

———In order to ascertain whether certain public documents are privileged or not, the proper procedure to follow is as follows: The Court should issue summonses to the Record Keeper and the person who is in possession of such documents to produce them and on receipt of the summons it is the duty of those persons to appear in Court with those documents and there raise such objections as they might have had to their production or admissibility, and the Magistrate should then decide whether the objections were valid under Ss. 123 and 124, Evidence Act. They can then plead privilege under S. 123 or produce a proper privilege certificate from the head of their department that all or any of the documents summoned related to "affairs of State" and were privileged. (*Tek Chand and Agha Haidar, JJ.*). EMPEROR *v.* KARTAR SINGH. **110 I.C. 785=10 A I. Cr.R. 557=29 Cr.L.J. 753.**

—S. 163—Account-books.

———When a party to a suit calls the opposite party to produce the account-books as evidence and on their being produced inspects them, the account-books should be taken as evidence of both the parties without any further proof and should be admitted *in toto*. 5 Bom. L.R. 380 and 9 All. 713 (P.C.), *Rel. on.* (*Kinkhede, A.J.C.*). KISAN GHULE *v.* PURANSA. **106 I.C. 305=A.I.R. 1928 Nag. 119.**

—S. 163—Appeal.

———A party producing documents at the appellate stage in Court under O. XIV, R. 4, C.P.C., at the instance of his adversary cannot insist on their being used in evidence under S. 163 all at once. (*Kinkhede, A.J.C.*). TRIMBAK *v.* SITARAM MAHARAJ SANSTHAN. **89 I.C. 1016=A.I.R. 1926 Nag. 60.**

—S. 163—Departmental enquiry.

———*Crown—Can also claim benefit of section.*

Application of S. 163 is not restricted to civil proceedings only. It is applicable also to criminal trials and even though the Crown is the prosecutor.

Where, therefore, notice to produce statements made to a Magistrate during departmental enquiries is given to the Crown by the defence and such statements are produced, inspected and used for cross-examination of several witnesses, the Crown is entitled to have the whole of the statements as evidence. The Crown as prosecutor is not a different person from the Crown that recorded the statement and the statements cannot be said to be not in exclusive possession of the Crown. (*Pearson and Patterson, JJ.*). GOVERNMENT OF BENGAL *v.* SANTIRAM MONDAL. **A.I.R. 1930 Cal. 370.**

———Departmental enquiry by a Magistrate in his executive capacity is not judicial enquiry and statements recorded therein is not evidence taken on oath. Such statements, therefore, are not public documents, and S. 163 can be applied to such statements. (*Pearson and Patterson, JJ.*). GOVT. OF BENGAL *v.* SANTIRAM MONDAL.

A.I.R. 1930 Cal. 370.

—S. 163—Non-production.

———*Adverse inference—When permissible.*

Where a suit is brought on a bond or mortgage no adverse inference is permissible against the

EVIDENCE ACT (1872), S. 163—Proof of documents.

plaintiff for non-production of his account-books unless the other party has called upon him to produce such account-books and he has failed to comply with a demand. (*Kinkhede, A.J.C.*). KISAN GHULE *v.* PURANSA. **106 I.C. 305= A.I.R. 1928 Nag. 119.**

—S. 163—Proof of documents.

———Section 163 does not render proof of the document to be exhibited unnecessary or alter the normal incidence of that burden. (*Oldfield and Venkatasubba Rao, JJ.*). RAJAGOPALA *v.* RAMANUJA. **72 I.C. 459=1923 M.W.N. 292= 18 M.L.W. 165=A.I.R. 1923 Mad. 607.**

—S. 165—Court witnesses.

———*Applicability of section.*

The section applies to Court witnesses. The expression "any witness" includes a Court witness also. If the Judge were examining a Court witness and Counsel on either side were to object to the putting of a particular question, the Judge would rely upon S. 165 of the Evidence Act.

Where a Court witness made an important statement which was against the case of the appellants,

Held, that the appellants should have been given opportunity to cross-examine that witness. Parties have no absolute right without the permission of the Court to cross-examine a Court witness: 24 C. 288; 29 C. 387; 35 C. 243; 3 Bom. L.R. 145 at p. 158, *Diss.* (*Simpson, A.J.C.*). MAKUND SINGH *v.* MT. GHAFOOR-UN-NISSA. **74 I.C. 108= A.I.R. 1924 Oudh 182.**

—S. 165—Inadmissible evidence.

———The power conferred on the Judge under S. 165 cannot be exercised for the purpose of introducing evidence in contravention of the law.(*N. R. Chatterjea and B. B. Ghose, JJ.*). KERAMAT MANDAL *v.* EMPEROR. **92 I.C.453=42 C.L.J. 528= 27 Cr. L. J. 277= A.I.R 1926 Cal. 147.**

—S. 165—Intervention with questions.

———*Court intervening with questions to witnesses—Unless counsel's legitimate work was so impeded as to amount to mis-trial, no grievance can be made out of this.*

The fact that the Trial Judge intervened with questions during the examination and cross-examination of witnesses, misled Counsel and left him under the impression that the Court was not prepared to accept the statements made by the witnesses concerned, is obviously not a matter which can be set right on appeal, unless it is established that the intervention of the Judge with questions, with a view to clear up obscurities, to fill up lacunae, to supplement deficiencies, and generally to elicit the truth, exceeded the bounds of even the comprehensive provisions of S. 165 of the Evidence Act, and so impeded the legitimate work of Counsel engaged in the cause as to amount to a mis-trial, leading to failure of justice.

During the progress of the trial, it is not wise for Counsel to anticipate the final opinion of the Judge even as to the veracity of a witness, which may have to be judged, not solely from his individual statements, but from the testimony taken in conjunction with all the other facts brought out in the course of the litigation. (*Mookerjee and Fletcher, JJ.*). SURENDRA KRISHNA *v.* RANEE DASSEE. **59 I. C. 814=33 C. L. J. 34= A.I.R. 1921 Cal. 677.**

—S. 165—Production of documents.

———Under S. 165 of the Evidence Act, the Judge may himself, in order to discover or obtain proof of relevant facts, order the production of any document, where O. 13, Rr. 1 and 2, or S. 151, C. P. C., do not serve his purpose. (*Ashworth, J. C.*). SHANKAR LAL *v.* MAHBUB SHAH. **70 I. C. 278= 25 O. C. 286= A.I.R. 1923 Oudh 59.**

—S. 165—Scope.

———The provisions of S. 165 cannot be used in contravention of S. 162 of the Criminal Procedure Code. (*Otter, J.*). MAUNG HTIN GYAW *v.* MAUNG PO SEIN. **99 I. C. 1019=4 Rang. 471= 28 Cr. L. J. 219=7 A. I. Cr. R. 373= A. I. R. 1927 Rang. 74.**

EVIDENCE ACT (1872), S. 167—Revision.

—S. 167—Allocation of onus.

———Wrong allocation of *onus* of proof is not material when the decision has not been affected on the merits. (*Martineau, J.*). AHMADYAR *v.* MUHAMMAD ALI. **3 L. L. J. 445= A.I.R. 1921 Lah. 162.**

—S. 167—Duty of appellate Court.

———*Reception of inadmissible evidence.*

What a Court of appeal, has to consider is whether the reception of inadmissible evidence influenced the minds of the jury so seriously as to lead them to a conclusion which might have been different but for its reception. Hence where inadmissible evidence has been admitted, there are two points for consideration firstly whether the reception of the inadmissible evidence has in fact occasioned a failure of justice, and secondly whether if it is excluded, there was sufficient evidence to justify the verdict of the jury. (*Sanderson and Cholzner, JJ.*). HARENDRA NATH *v.* EMPEROR. **84 I.C. 451=40 C.L.J. 313=26 Cr.L.J. 307= A.I.R. 1925 Cal. 161.**

—S. 167—Objection about admissibility.

———*C. P. C., S.* 100—*Objection can be taken for first time in second appeal.*

An erroneous omission to object to inadmissible evidence does not make it admissible. The omission to take objection to the admissibility of a document becomes fatal only in cases where if the objection is taken in time, any defect in its admissibility can be cured and the document made admissible. In other cases objection as to inadmissibility can be raised even in second appeal though it was not raised in the lower Courts : 19 All. 76 (P. C.), *Foll.* (*Suhrawardy and Cuming, JJ.*). CHOONI LAL KHEMANI *v.* NILMADHAB BARIK. **86 I.C. 734=41 C.L.J. 374=A.I.R. 1925 Cal. 1034.**

—S. 167—Omission to object.

———Evidence admitted in Trial Court without objection cannot be attacked in appeal. (*Chatterjea and Pearson, JJ.*). RAJESWARI DASI *v.* PULIN BEHARI MITTER. **62 I.C. 647=25 C.W.N. 881= A.I.R. 1921 Cal. 71.**

—S. 167—Other evidence sufficient.

———Under S. 167 it is permissible for High Court in spite of the improper admission of a confession in evidence to uphold the conviction if independently of the evidence objected to there is sufficient evidence to justify the decision of the Sessions Judge. (*Macleod, C. J. and Fawcett, J.*). KING EMPEROR *v.* MAHABLI RAMA SAI. **87 I. C. 520= 26 Bom. L.R. 706=26 Cr L.J. 984= A.I.R. 1924 Bom. 480.**

—S. 167—Revision.

———*Practice explained.*

The High Court in revision, ordinarily speaking will remand a case for a finding with reference to admissible evidence only, where the lower Court being competent to deal with facts has not adopted the course of ignoring the evidence wrongly admitted and considering whether there still remains enough evidence to support the judgment.

EVIDENCE ACT (1872), S. 167—Second appeal.

If the Court takes the view that irrespective of the improperly admitted evidence the decision is sustained by sufficient evidence, the decision cannot be reversed merely on the ground of the improper admission of evidence. (*Venkatasubba Rao, J.*). SANKAR CHENNA BASAPPA *v.* K. MANAPPA.
82 I.C. 283=21 M.L.W. 87=25 Cr. L.J. 1275=A.I.R. 1925 Mad. 243.

—S. 167—Second appeal.

——There is great difficulty in applying the provisions of S. 167 to the generality of cases which come before the High Court on second appeal. When evidence has been improperly admitted, the High Court, not being a Court of fact, cannot decide whether the remaining evidence in the case is sufficient to warrant the finding, but should remand the case to the lower Court for re-hearing. (*Sanderson, C. J., Panton and Graham, JJ.*). BROJENDRA KISHORE *v.* MOHIM CHANDRA.
99 I. C. 189=31 C. W. N. 32=A. I. R. 1927 Cal. 1.

——Where an Appellate Court has relied for its decision upon a document which is inadmissible in evidence, a Court of second appeal would be justified in remanding the case for decision to the first Appellate Court with a direction to exclude that document from its consideration. (*Zafar Ali, J.*). HEM RAJ *v.* NIHAL SINGH.
90 I. C. 678=7 L. L. J. 352=26 P.L.R. 632= A. I. R. 1925 Lah. 506.

——In second appeal the Court is not in possession of all the evidence or in a position to be able to weigh it and see whether in fact apart from the objectionable evidence there was sufficient evidence to entitle the lower Court to come to the decision which it did, so as to enable the High Court to affirm that decision under S. 167. (*Dawson-Miller, C.J. and Mullick, J.*). SUMITRA KUER *v.* RAM KHAIR CHOUBEY.
1921 P.H.C. C. 17=A. I. R. 1921 Pat. 61.

EXAMINATION.

See EVIDENCE ACT, Ss. 132-153.

EXAMINATION OF ACCUSED.

See (1) CR. P. CODE, SS. 164, 256, 342, 364 AND 365.
(2) CRIMINAL TRIAL.

EXAMINATION OF WITNESSES.

See (1) C. P. CODE, O. 16 AND O. 26.
(2) EVIDENCE.
(3) EVIDENCE ACT, SS. 118-134.

EXCESS PROFITS DUTY ACT (10 of 1919).

—S. 2—Business.

——*Royal Calcutta Turf Club carries on business and is liable to excess profits duty on collections from non-members—Test explained.*

The Royal Calcutta Turf Club is carrying on an "adventure or concern in the nature of trade" and consequently is carrying on a "business" within the meaning of S. 3 of the Act, in respect of sums received from persons other than members of the Club, under the following heads:—(1) Entrance fees to the stand paddocks and enclosures or gate-money; (2) Entrance fees paid by owners of horses; (3) Book-makers license fees; and (4) Percentage on the totalisators. *Carlisle and Silloth Golf Club* v. *Smith*, 2 K. B. 177, *Foll.*

The fact that the members of the Club do not receive any profit out of the transactions which are carried on by the Club, and that the admitted surplus is used for the purpose of subscribing to charities, is not material.

The test is whether the moneys are received by the Club and in exchange for something which is given by the Club and in respect of which profit is made. (*Sanderson, C. J., Teunon and Richardson, JJ.*). THE ROYAL CALCUTTA-TURF CLUB *v.* SECY. OF STATE.
66 I. C. 473=25 C. W. N. 734=A. I. R. 1921 Cal. 633.

EXCESS PROFITS DUTY ACT (1919), S. 18—Rules under R. 24 (3).

——*Turf club—Carries on 'business' and liable to excess profits duty on collections from non-members—Test pointed out.*

A turf club is liable to excess profits duty in respect of the following sources of income in so far as the sums received under these heads are not paid by the members of the club;

(1) Entrance fees to the stand, paddocks, and enclosures, or gate money,
(2) Entrance fees paid by owners of horses,
(3) Book-makers' license fees,
(4) Percentages on the totalisators.

It must be held that the Turf Club is carrying on an "adventure or concern in the nature of trade" and is consequently carrying on a "business" within the meaning of S. 3 of the Act, in respect of sums received under the four heads mentioned from persons other than members. It is not material what is the ultimate destination of the surplus, if any, which the Turf Club receives in respect of these matters. The test is whether moneys are received by the club from non-members of the club and in exchange for something which is given by the club and in respect of which profit is made. *Carlisle and Selloth Golf Club* v. *Smith*, (1912) 2 K.B. 177, *Affirmed on appeal*; (1913) 3 K.B. 74, *Foll.* (*Sanderson, C.J., Teunon and Richardson, JJ.*). CALCUTTA TURF CLUB *v.* SECY. OF STATE.
43 Cal. 844=A. I. R. 1921 Cal. 44.

—S. 4—Assessment.

——The Excess Profits Duty Act, 1919, does not require the duty to be assessed within the year for which the duty is imposed. (*Wallis, C.J., Ayling and Krishnan, JJ.*). DEPUTY COMMISSIONER, INCOME-TAX *v.* LAKSHMIDAS PURUSHOTHAM AND CO.
63 I.C. 420=1921 M.W.N. 513=14 M.L.W. 57=44 Mad. 768=A.I.R. 1921 Mad. 228=41 M.L.J. 189 (S.B.).

—S. 5—Capital.

——Moneys invested in shares in public companies and Government securities which have been treated as part of the capital of the firm, are "capital employed in the business of the firm" and consequently, as such must be included in the capital computation both for the accounting period and "the standard years". Similarly loans to individuals and business concerns must be treated as capital. (*Sanderson, C.J., Woodroffe and Richardson, JJ.*). MARTIN AND CO. *v.* SECY. OF STATE.
67 I.C. 909=25 C.W.N. 875=A.I.R. 1921 Cal. 639.

—S. 6—Capital.

——An Income-Tax Assessee who wishes to avail himself of the exemption on the ground of an increase in the average capital, must put before the Collector and the Board of Revenue satisfactory evidence that his capital had been increased as alleged by him. (*Wallis, C. J., Ayling and Krishnan, JJ.*). DEPUTY COMMR. AND SECY. TO THE CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* ABDULLA SAHIB AND CO.
70 I.C. 30=14 M.L.W. 413=A.I.R. 1921 Mad. 717 (F.B.).

—S. 18—Rules under R. 24 (3).

——*Interpretation.*

The words "proceedings for the recovery of any sum "in sub-rule (3) of R. 24 mean the proceedings taken under sub-rule (1) of that rule after de-

EXCESS PROFITS DUTY ACT (1919), S. 19—Application of.

fault has been made in payment. (*Martineau, J.*). GIAN SINGH BAHADUR SINGH *v.* THE CROWN.
73 I.C. 106=4 Lah. 165=
A.I.R. 1924 Lah. 54.

—S. 19—Application of.

———*S. 19 does not apply to cases chargeable under this Act only.*

Section 19 merely provides for the protection of the tax-payer, that the profits of any business shall not be chargeable both with super-tax and excess profits duty, but with whichever is the higher, and has no application to a case in which profits are chargeable only with excess profits duty and not with super-tax. It does not relieve profits from the liability to Excess Profits Duty by S. 4 unless such profits are chargeable with super-tax and the super-tax exceeds the Excess Profits Duty. (*Wallis, C.J., Ayling and Krishnan, JJ.*). DEPUTY COMMISSIONER, INCOME-TAX *v.* LAKSHMIDAS PURUSHOTTAM AND CO. **63 I.C. 420=1921 M.W.N. 513=**
14 M.L.W. 57=44 Mad. 768=
A.I.R. 1921 Mad. 228=41 M.L.J. 189 (S.B.).

—S. 20—Deductions.

———*Costs to find out duty cannot be deducted.*

Though the amount of the Excess Profits Duty is to be allowed as a deduction in respect of profits of a business for the purpose of income-tax, the costs of arriving at the Excess Profits Duty can not be so allowed. Further this has got to be for a specified year and does not apply to any later year. (*Schwabe, C. J., and Coutts Trotter, J.*). SECRETARY, BOARD OF REVENUE *v.* B. MUNISWAMI CHETTY. **77 I.C. 39=18 M. L. W. 792=**
33 M. L. T. 122=47 Mad. 653=
A.I.R. 1924 Mad. 205=45 M. L. J. 711 (S.B.).

—Sch. 1—Employed in business.

———*Firm carrying business as managing agents on another Company for Commission varying on the profits—Exception does not apply.*

The proviso in Sch. I should be read as governing generally the three kinds of businesses which are enumerated under headings 1, 2 and 3 or, put in another way, as including the businesses mentioned therein as within the terms of S. 3 of the Act. Agents, secretaries and treasurers, or agent of a mill company under the usual form of agreement and remunerated by a commission which would depend either on the out-turn or on the amount of profits are not to be considered as carrying on a business excepted under Sch. I.

Where all that the agreement provides for is that subject to the control of the Directors of a certain Company a certain firm shall have the general conduct and management of the business and affairs of the company the firm are not officers of the company, in the strict sense of the word, nor are they servants. They are a firm which for a certain agreed remuneration has consented to do the work which is detailed in the agreement. There is nothing whatever in the agreement which would prevent the firm from carrying on any other business so long as they carried on the work under the agreement in the proper manner. (*Macleod, C. J. and Fawcett, J.*). *In the matter of* THE SPECIFIC RELIEF ACT.
63 I.C. 775=45 Bom. 1064=23 Bom. L. R. 609=
A.I.R. 1921 Bom. 452.

—Sch. 2, R. 1—'Employed in' business.

———*Meaning of.*

The words "employed in the business" in the proviso to R. 1 of Sch. 2 *prima facie* bear their natural meaning of "actually employed in the business," and cannot properly be construed as if

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the words were "employed or intended to be employed in the business." (*Macleod, C. J. and Fawcett, J.*). *In the matter of* THE EXCESS PROFITS DUTY ACT, 1919. **60 I.C. 964=**
45 Bom. 881=23 Bom. L. R. 139=
A.I.R. 1921 Bom. 119.

EXCHANGE.

See also T. P. ACT, S. 118.

—Rate of.

———*Suit for recovery of sterling in Indian Currency—Rate of exchange is that prevailing on date of the foreign judgment.*

The plaintiffs obtained a judgment against the defendants for a certain amount in sterling in the King's Bench Division of the High Court of Justice in England for costs. The defendants having failed to pay the amounts, the plaintiffs filed a suit in Bombay to recover the equivalent in rupees of the amount as converted at the rate of exchange ruling on 23rd February, 1921. The defendants contended that the rate of exchange should be held to be that prevailing on the day of the judgment against them in the suit filed in Bombay.

Held, the rate of exchange prevailing at the date of the foreign judgment sued on is the one to be taken. (*Fawcett, J.*). MADHAVJI VISHRAM *v.* RAMNIKLAL VADILAL. **70 I. C. 474=**
47 Bom. 487=25 Bom. L.R. 173=
A.I.R. 1923 Bom. 437.

EXCISE ACT.

See (1) BENGAL EXCISE ACT, VII OF 1878.
,, ,, V OF 1909.
(2) EASTERN BENGAL AND ASSAM EXCISE ACT, I OF 1910.
(3) BIHAR AND ORISSA EXCISE ACT, II OF 1915.
(4) BURMA EXCISE ACT, V OF 1917.
(5) PUNJAB EXCISE ACT, I OF 1914.
(6) U. P. EXCISE ACT, IV OF 1910.

EXCLUSIVE POSSESSION.

See (1) ADVERSE POSSESSION.
(2) CO-SHARER.
(3) HINDU LAW—JOINT-FAMILY.

EX-COMMUNICATIONS.

See (1) C. P. C., S. 9.
(2) CASTE DISABILITIES REMOVAL ACT.
(3) HINDU LAW.
(4) TORT.

EXECUTING COURT.

See C. P. C., S. 21.

EXECUTION.

See also (1) CIVIL P. C., S. 47 AND O. 21.
(2) DECREE.

Application.
Attachment.
Bar to.
Completion of.
Compromise decree.
Construction of decree.
Decree binding.
Decree not to be varied.
Decree null and void.
Duty of Court.
Executability of decree.
Execution by Collector.
Jurisdiction.
Legal representatives.
Limitation.
Mesne profits.
Mode of.
Restitution.
Restoration—*See* CIVIL P. C., S. 151.

EXECUTION—Application.

Right to.
Satisfaction.
Scope of.
Setting aside.
Stay of—*See also* O. 41, R. 5.
Step-in-aid of—*See* LIM. ACT, ART. 185 (5).
Miscellaneous.

—Application.

——*Application for execution of decree.*

When certain decrees were sought to be executed the judgment-debtor objected that he was not liable. The objection having been substantially upheld the execution was permitted only in respect of certain small items. Thereupon the judgment-debtor preferred appeals to the High Court. Subsequently the execution proceedings, were dismissed for default. The appeals having later on ended in favour of the decree-holder the decree-holder again applied for execution this time varying the list of properties against which the decrees were to be attached,

Held, that the original execution applications were revived and that what happened after the Court upheld the objection was immaterial and that the decree-holder could consequently execute the decrees, *in toto*. (*Mukerji and Guha, JJ.*). KUMAR SARAT KUMAR ROY *v.* HARIPADO CHATTERJEE. **34 C.W.N. 897.**

——An application for amendment of a pending application for execution made after the decree sought to be executed had become barred by limitation cannot be entertained. 17 Cal. 631 (F. B.); A. I. R. 1924 Cal. 131, *Rel. on*; 27 C. L. J. 398, *Not foll.*; A. I. R. 1927 Pat. 223; A. I. R. 1923 Pat. 224, *Cons.* and *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). JAGANNATH DAS *v.* CHAMU RAGHUNATH. **119 I.C. 411=8 Pat. 462= A.I.R. 1929 Pat. 407.**

——*Concurrent applications for execution of a decree against different properties may be made.*

While one application for execution of a decree is pending, other independent applications for execution against other properties of the judgment-debtor may be filed. Concurrent applications for execution of a decree against different properties may be made: 37 Mad. 231; A. I. R. 1916 P. C. 16 and A. I. R. 1923 Pat. 224, *Ref.* (*Wallace and Thiruvenkatachariar, JJ.*). TANDAVAMURTI *v.* DURGAMBA. **113 I.C. 260=A.I.R. 1928 Mad. 1154.**

——*Application not fully disposed of by Court—Next application for same relief should be deemed as continuation of the prior one.*

An assignee of a preliminary decree applied for recognizing his transfer and also for making the decree final and the Court finally made the order thereon: "Transfer proved already accepted." There was no order refusing or rejecting his application in respect of the passing of the final decree,

Held, that later execution application in respect of the same relief should be properly treated as a mere continuation of the previous proceedings: A.I.R. 1922 Mad. 65, *Dist.* (*Srinivasa Ayyangar, J.*). MALLIKARAJA PUDU *v.* NALLA VENKAYA. **109 I.C. 376=A.I.R. 1928 Mad. 971.**

——No special application is necessary to revive the first application which is pending before the Court and where there has been no dismissal of the original application for execution: 22 C. W. N. 766, *Dist.* (*Greaves and Panton, JJ.*). AKSHOY KUMAR DE PATWARI *v.* NALINI KUMAR MAJUMDAR. **94 I.C. 80 (Cal.).**

EXECUTION—Application.

——*Proclamation for sale.*

Any application by a decree-holder in respect of the property which shall be proclaimed for sale is one to be decided by the Execution Court. It may decide it rightly or wrongly; its order on such application is final if not appealed against. (*Ashworth and Neave, A. J. Cs.*). SITAPAT RAM *v.* MOHAMMAD ASGHAR. **92 I.C. 29= A.I.R. 1926 Oudh 193.**

——*No amendment after registration—What amounts to amendment.*

No amendment of an execution petition should be allowed after it has been registered. 17 Cal. 631 (F. B.), *Foll.*

However, where a mortgagee decree-holder simply notifies to the Court that the sale of the mortgaged properties should not affect the *merasi* rights or interests of certain defendants and makes no further prayer with respect to them in the execution application, his action does not amount to an amendment of the petition. (*Suhrawardy and Duval, JJ.*). ABDUL HASMAT AHAMAD *v.* HRISHIKESH DAS. **85 I.C. 742= A.I.R. 1925 Cal. 1048.**

——Where the properties sought to be attached in two applications are different, the latter is not the continuation of the former, nor where the former application has been dismissed for default of the decree-holder. (*Das and Ross, JJ.*). MT. RESHMA KUMARI *v.* RAMESHWAR OJHA. **79 I. C. 897=A.I.R. 1925 Pat. 197.**

——*Successive applications for execution when and to what extent barred.*

There is nothing to prevent several applications being made, directed against and linked into partnership of private property. There is nothing to prevent a succession of applications directed against persons who are ascertained to be, or believed to be partners in the particular venture out of which the decree has arisen. The limitation however that is imposed on all these applications is that, if there has been a previous application, in which there has been a definite decision affecting a particular piece of property, or a particular person, and from that decision nothing has been done by way of appeal or institution of suit if either of these methods were available, that decision is a final decision between the parties, and if in any subsequent proceedings, the point again becomes material the parties are bound by that previous decision, and the matter cannot be reopened. To that extent, and that extent only, is there limitation on the successive applications in execution. (*Mears, C.J. and Piggott, J.*). KAPUR CHAND *v.* LALA KANAHAIYA. **74 I.C. 513= 21 A.L.J. 641=4 L.R.A. Civ. 441= 45 All. 735=A.I.R. 1924 All. 34.**

——*No revival occurs where decree-holder himself is at fault but it occurs where progress is arrested in spite of decree-holder.*

An application for execution may in certain contingencies be treated as one to revive and carry through a pending execution; thus the second application might be treated as one not to initiate a new proceeding, but to revive the previous proceeding when the latter was arrested by reason of circumstances over which the decree-holder had no control. Where the difficulty has been created entirely by the decree-holder himself as he ignored the order made by the Executing Court in the first proceeding, the principle has clearly no application. 5 Cal. 595; 29 Cal. 662, *Foll.*; 5 All. 236,

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Dist. (*Mookerjee and Panton, JJ.*). RAJINI BANDHU CHATTERJEE *v.* KALEE PRASANNA CHATTERJEE. **74 I. C. 279=A.I.R. 1924 Cal. 419.**

———*Dismissal for want of Court-fees on decree—Order wrong.*

Where a proper complete decree had been drawn up and the execution Court dismissed the application for execution on the ground that there was no decree as no necessary Court-fees had been paid and it did not appear how any Court-fees were necessary, *held*, the order dismissing the application for execution was wrong. (*Shah and Crump, JJ.*). GANDHI VADILAL CHHAGANLAL *v.* GANDHI MANAK LAL CHHAGANLAL. **79 I.C. 489= A.I.R. 1923 Bom. 41.**

———*Award—Instalments conditional on security—Default—Application proper.*

By an award the judgment-debtor was allowed to pay up the amount by instalments on giving security and if he failed to give the first instalment in time it was to be paid along with the second. The judgment-debtor failed to give security and on his failure to pay the first instalment, but before the time of the second instalment, the decree-holder filed an application for execution for the recovery of the first instalment,

Held, the payment by instalments was conditional on the execution of security and the application was proper. (*Martineau, J.*). BHAGWAN DAS *v.* MUTSADDI LAL. **A.I.R. 1923 Lah. 445.**

—Attachment.

———The Collector has no jurisdiction to withdraw the attachment effected by the order of the Civil Court. (*Mukerji and Bennet, JJ.*). JAGANNATH PRASAD *v.* SHEO NARAIN. **123 I.C. 105= A.I.R. 1930 All. 281.**

———*Objection to attachment.*

Where an objection to an attachment of property during execution proceedings is dismissed and during the pendency of appeal preferred against the dismissal of order, property is already sold, appeal is infructuous as the decision would not be binding on the purchaser: 15 I. C. 529, *Foll.* (*Bhide, J.*). KHAN JAHAN *v.* DAS MAL. **110 I.C. 246=10 L.L.J. 328.**

———*Money paid in satisfaction of a particular decree.*

Where the judgment-debtor pays in the money in satisfaction of the decree, it is a final discharge of his obligation, and no money can be said to be lying to his credit so as to be liable to the attachment by other creditors, and it is not a fraud on other creditors even though nothing is left to them for proceeding against: (1916) 1 M.W.N. 195, *Foll.* (*Jackson, J.*). V. CHINNAMALU *v.* C. KUNHI KANNA MENON. **100 I. C. 24= A. I. R. 1927 Mad. 625.**

———*Property under attachment, disposed of by officer appoinetd* pendente lite—*Officer should refund.*

Where during the continuance of an attachment in execution, a person disposes of the property under the orders of a Court and the Court's orders are set aside in appeal, the proper person to make a refund is the person who has disposed of the property and not the party at whose instance that person was appointed by the Court to act as he did. (*Sulaiman and Mukerji, JJ.*). JWALA PRASAD *v.* SHEIKH CHUTTAN. **85 I.C. 161= 6 L.R.A. Civ. 36=A.I.R. 1925 All. 328.**

———*Rents—No one can collect rents except receiver.*

Court has no authority to empower any one to collect the rents except by duly appointing him as a receiver. It has no power to order the tenants to pay their rent to the decree-holder and if they refuse to pay it they cannot be prosecuted, and the Court has no power to authorise any one but a receiver to file suits for the recovery of rents. (*Carr and Brown, JJ.*). MAUNG THEIN *v.* S. A. S. FIRM. **89 I.C. 794=3 Rang. 235= A.I.R. 1925 Rang. 318.**

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———*Future rents.*

Where in execution proceedings the Court attached future rents and authorised the decree-holder to collect them after directing him to give security for the re-payment of the rents with 6 per cent. interest if the attachment should be removed,

Held, the Court had taken upon itself to lend the decree-holder this money at that rate of interest. It had no power to do this. (*Carr and Brown, JJ.*). MAUNG THEIN *v.* S. A. S. FIRM. **89 I.C. 794=3 Rang. 235= A.I.R. 1925 Rang. 318.**

———*Dismissal and restoration of execution case—Effect.*

Where an attachment is already in force when the execution case is dismissed for default and is restored the same day, and where the dismissal for default is known to nobody except decree-holder's pleader, a sale held subsequently is not vitiated. (*Hallifax, A.J.C.*). SHANKAR RAO *v.* MANICK RAO. **68 I.C. 643= A.I.R. 1923 Nag. 18.**

———*Land.*

Where the land was formerly in the name of previous *Gaddi Nashin*, and after his death it was mutated, not in the name of the new *Gaddi Nashin*, but in the name of the shrine in order to protect it from attachment in execution, it should be attached as requested by the decree-holder leaving the shrine or persons interested to prefer objections if any in the usual course. (*Chevis, J.*). FIRM OF GANDA MAL CO. *v.* GANGA NATH. **4 L. L. J. 49=A.I.R. 1922 Lah. 147.**

———A suit by the rightful owner for wrongful attachment of property, which is attached in execution as being the property of the judgment-debtor is maintainable against the decree-holder, in spite of a subsequent order that the property should not be released and returned to the true owner, pending the decision of the suit by decree-holder that the property is liable to attachment. (*Mookerjee, A.C.J. and Fletcher, J.*). BHUSHAN CHANDRA PAL *v.* NARENDRANATH KOOR. **60 I.C. 280= 32 C.L.J. 236.**

—Bar to.

———*Interest.*

Where a decree-holder has failed to claim for a portion of interest accrued due in a previous application for execution, he cannot be allowed to claim that portion in a subsequent application on the principle that a portion of an entire decree for which execution is not claimed cannot form part of a subsequent claim in execution. (*Mukerjee and Guha, JJ.*). SHYAMA CHARAN *v.* PROTAP CHANDRA DAS. **51 C.L.J. 280=A.I.R. 1930 Cal. 349.**

———*Constructive* res judicata—*Notice of execution served on judgment-debtor—Judgment-debtor failing to appear—Question of executability of decree is* res judicata.

When an application is made for execution of a decree and notice of the application is served on the judgment-debtors, they are bound to appear and show cause why the decree should not be executed. If they fail to appear and show cause, and

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if on such failure an order *ex parte* should be made by the Court directing execution, then the question of the executability of the decree should, according to the law of constructive *res judicata*, be regarded as having been decided by the Court in favour of the decree-holder and the rule of constructive *res judicata* will be available even if the parties are not personally served.

All that is necessary under the law is that they should be properly served, served according to the rules relating to service. (*Srinivasa Ayyangar, J.*). SUNDARARAJULU NAIDU *v.* NARAYANASWAMI NAIDU. **103 I.C. 825=39 M.L.T. 34= 26 M.L.W. 481=A. I. R. 1927 Mad. 813.**

———*Decree for rent—Sale in execution of, subject to liabilities under another decree—Decree-holder himself purchasing properties—Execution against other properties of debtor in respect of the other decree is not barred.*

After a holding has been once sold in execution of a rent decree and has passed out of the possession of the tenant it cannot ordinarily be again sold in execution of any other decree for rent due by the same tenant. An exception however has been made in cases where the executing Court, although ir regularly, allows the holding to be sold subject to a liability to satisfy another outstanding decree; in such cases the auction-purchaser is concluded by *res judicata* and the landlord is competent to proceed in the first instance against the holding and to call upon the auction-purchaser to discharge the liability which he has undertaken. But the principle has no application at all where the decree-holder is himself the purchaser. 6 C.W.N. 877, *Dist.* Even in a case where the landlord decree-holder purchased subject to liability to satisfy his other decree for arrears of rent, he may bring to sale the other property of the tenant in execution of his unsatisfied decree. (*Mullick and Macpherson, JJ.*). JUGAL KISHORE NARAYAN SINGH *v.* BHATU MODI. **80 I.C. 377=1923 P.H.C.C. 205= 1 P. L.R. 811=2 Pat. 720=4 P.L.T. 640= A.I.R. 1923 Pat. 517.**

———Res judicata—*Principle of.*

Where the Court, decided after due notice upon the judgment-debtors that the execution was in order and that it should proceed,

Held, that the order is binding upon the judgment-debtors. It is an order deciding as between the parties that the execution was not barred by limitation. Such an order operates as *res judicata* and whether right or wrong, the order cannot be challenged in subsequent execution proceedings. (*Jwala Prasad and Bucknill, JJ.*). GOUR CHANDRA ROY *v.* JONADAN PRASAD THAKUR. **68 I.C. 337= 4 P.L.T. 204=A.I.R. 1923 Pat. 180.**

———*Pre-decree agreement cannot be pleaded as a bar in execution proceedings.*

An agreement made before the passing of a decree, which, if raised in the suit, would negative wholly or partially a defendant's liability to meet the plaintiff's claim, is one which would constitute a valid defence to the suit; but such an agreement cannot be pleaded as a defence to an execution application: 40 M. 233; 43 M. 725; 8 L.W. 205, *Rel. on.* (*Spencer and Ramesam, JJ.*). (KOONAMNENI) MALLAYYA *v.* (KANNEGATI) CHINA KOTAYYA. **64 I.C. 148=14 M.L.W. 317=1921 M.W.N. 382= A.I.R. 1921 Mad. 616.**

—Completion of.

———No one can execute a satisfied decree. A puisne mortgagee who was subrogated to the decree charge obtained by the prior mortgagee on the property by

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paying the amount of the execution sale before confirmation cannot execute the decree because it had been satisfied on account of that sale. (*Wallace, J.*). PARVATI AMMAL *v.* VENKATARAM IYER. **81 I.C. 771=20 M.L.W. 278= 1924 M.W.N. 510=A.I.R. 1925 Mad. 80= 47 M.L.J. 316.**

———*Statement on the return.*

Where the statement on the return was that delivery was complete, the decree-holders, acceptance of it as such must be taken in its natural meaning, the only meaning which is recognized in the Code, that the delivery was complete absolutely and against the world. It is quite clear that delivery of possession to the decree-holder involves that no person other than the decree-holder remains in possession. That will not be less so, if delivery is symbolical, since the physical possession of the tenants in such cases is of course not in question. (*Oldfield and Venkatasubba Rao, JJ.*). IBRAMIM SAHIB *v.* KONAMMAL. **70 I.C. 755= 31 M.L.T. 356=A.I.R. 1923 Mad. 25= 43 M.L.J. 179.**

—Compromise decree.

———It is open to the executing Court to examine the terms of a compromise decree before enforcing it and to see whether the penal clause, if there is any, is to be enforced *in toto* or not. *Case-law referred.* (*Sulaiman and Mukerji, JJ.*). B. KISHEN PRASAD *v.* KUNJ BEHARI LAL. **91 I. C. 790=24 A.L.J. 210= A. I. R. 1926 All. 278.**

———*Power to modify terms.*

An executing Court can modify a penalty which has been fixed in a compromise or contract, even if that compromise or contract is subsequently embodied in a decree. But while dealing with an award which is in no sense of the word a compromise or a contract, the executing Court has no power to modify the terms of such award. 35 Bom. 239: 24 C.W.N. 545, *Dist.* (*Harrison, J.*). KESHO RAM *v.* THAKUR DAS. **78 I. C. 80= A.I.R. 1925 Lah. 180.**

———A compromise decree cannot be challenged in execution proceedings exactly as if it had been a decree passed after contest. (*Phillips and Odgers, JJ.*). KOTHANDARAMASWAMI NAIDU *v.* PAPAMMAL. **79 I.C. 891=A. I. R. 1925 Mad. 218.**

———*Illegal condition in a compromise decree cannot be enforced.*

Where a decree based on a compromise contained a condition that trees on *sir* land which were not transferable apart from the land were to pass,

Held, that the condition was inoperative and the decree could not be executed with respect to the trees. (*Prideaux, A.J.C.*). PARASHRAM *v.* SITARAM. **78 I.C. 357=20 N.L.R. 1= A. I. R. 1924 Nag. 84.**

———*Execution in the nature of specific performance will not be allowed long after the time fixed by decree has passed.*

A compromise decree provided for the pulling down of the plaintiff's wall and for the payment by the defendant of a certain sum of money and the building of a new wall within two months from the date of that compromise. Admittedly the money was not paid nor the wall built within the two months. Nothing was done by either party until the defendant took out the execution against plaintiff for pulling down the wall as per terms of the decree. There was no evidence at all of any intervening acts of the parties after the date of the decree. There was therefore, a lapse of time of just

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over one year from the date fixed by the compromise for the performance of the acts,

Held, that time was the essence of the contract; the defendant was out of Court because he was a year out of time and no waiver or a new agreement had been shown to have taken place. But supposing time was not of essence of the contract the defendant could not even then, after an unexplained delay of one year obtain specific performance of this agreement. (*Marten and Fawcett, JJ.*). SHANKAR SAKHARAM JAGDALE *v.* RATANJI PREMJI SHET. **79 I. C. 226=47 Bom. 607=25 Bom.L.R. 328=A.I.R. 1923 Bom. 441.**

———Partition suit—Order for sale made with the consent of parties that it should be with certain guarantee—Consent as to guarantee cannot be withdrawn after order for sale is made.(*Wallis, C.J. and Ramesam, J.*). O. M. AKILANDAMMAL *v.* V. RANGANATHAM CHETTY. **62 I.C. 730=13 M. L.W. 429.**

—Construction of decree.

———*Interest allowed in judgment but omitted in decree.*

Where interest has been omitted in the decree though allowed in the judgment, it is a case of pure omission and not one of any ambiguity. Hence the rule that, where a decree is ambiguous, the Court should put such construction upon it as would make it in accordance with law, has no application to such a case and the decree should be amended to bring it on line of judgment. 21 All.361, *Dist.* (*Mukerji and Guha, JJ.*). SHYAMA CHARAN *v.* PROTAP CHANDRA DAS. **51 C.L.J. 280=A.I.R. 1930 Cal. 343.**

———Executing Court can interpret a decree by referring to judgments as well as pleadings in the case. 1 Pat. L. T. 471, *Foll.* (*Jwala Prasad, J.*). BHADO MANDER *v.* KHODABUX. **A.I.R. 1929 Pat. 746.**

———*Mortgage suit—Compromise decree.*

A prior mortgagee brought suit on his mortgage. He impleaded, besides the mortgagors, the puisne mortgagees. By means of a compromise, certain property belonging to the mortgagors was to be considered as sold to the plaintiff for a certain sum. Out of this sum, plaintiff was to pay the amount due to puisne mortgagees. It was stipulated that the puisne mortgagees were to recover the same from the plaintiff by execution or by a fresh suit. Until payment, the property of the plaintiff was to remain charged with the sum fixed for payment to him. A decree was accordingly passed in terms of the compromise. Plaintiff did not pay. Thereupon the puisne mortgagees put in an application for a final decree. It was contended that the Court had no jurisdiction to pass the final decree in their favour because it had passed a decree originally embodying the terms of the compromise against them,

Held, that it would be placing altogether too narrow a construction on the decree to hold that it was only passed against the mortgagors and the fact that it was stipulated that the puisne mortgagees could take out execution of this decree or bring a new suit tended to support the view that the decree was meant to be in their favour against the plaintiff. (*Dalip Singh, J.*). ROOP NARAIN *v.* HUKAM CHAND *v.* JAGADHAR MUL. **10 L.L.J. 319=A. I. R. 1928 Lah. 829.**

———If the decree is ambiguous, the judgment may be consulted and the decree construed in the light of the plaint and judgment. (1915) M. W. N. 914 and 33 I. C. 561, *Rel. on.* (*Odgers and Curgenven, JJ.*). THUSHTU BALAKRISHNA CHETTIAR *v.* V. KRISHNAMURTHI AIYAR. **100 I.C. 841=38 M.L.T. 143=1927 M.W.N. 202=A.I.R. 1927 Mad. 416=52 M.L.J. 182.**

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———Although an Executing Court cannot go behind the decree yet that Court ought to interpret the decree when an application for execution is placed before it, and for that purpose it ought to refer to the pleadings in the case and to the judgment passed by the Court. (*Das and Ross, JJ.*). SAHAI MISTRI *v.* SATULI DARJI. **92 I.C. 133=A.I.R. 1927 Pat. 141.**

———Although an executing Court cannot go behind a decree it is permissible to it to interpret it with reference to the proceedings anterior to the decree in order to find out its true meaning. (*Kinkhede, A. J. C.*). DHANNU *v.* HARBHAJAN. **97 I.C. 584=9 N.L.J. 140=A.I.R. 1926 Nag. 480.**

———*Interest—Method of calculation.*

Where the executing Court continues to apply the same method of calculation in the matter of accumulating interest from the date of final decree onwards as had been applied in drawing up the final decree for sale, the judgment-debtors cannot take objection to it in the execution proceedings. (*Piggott and Walsh, JJ.*). DUTT PRASAD SINGH *v.* SRI NARAIN. **74 I.C. 557=21 A.L.J. 340=4 L.R.A. Civ. 195=A.I.R. 1923 All. 503.**

———*Reciprocal reliefs—Decree held executable.*

A decree provided "that the plaintiff's claim be and is hereby decreed for cancellation of the bond in suit but the defendant shall have the right to recover Rs. 5,000 from the plaintiff's property,"

Held, that the latter portion of the decree was not a mere declaratory decree incapable of execution and that the defendant could execute it. (*Kanhaiya Lal, J. C.*). JHANDA SINGH *v.* MD. ANWAR KHAN. **77 I. C. 776=A. I. R. 1923 Oudh 160.**

———Where the decree was against the joint family property including the separate property of a certain member of a joint family and the member quitted the family,

Held, all of his property that remains liable for the satisfaction of the decree is (1) his share in the joint-family property (2) his separate property such as it was up to the date on which he quitted the family. His separate property acquired after he quitted the family is not and never was joint family property. (*Le Rossignol and Campbell, JJ.*). GOKUL CHAND *v.* HUKAM CHAND. **65 I.C. 731=3 Lah. 14=A.I.R. 1922 Lah. 84.**

———*Execution Court cannot deal with matter not dealt with by Trial Court.*

The mere fact that the plaintiff prayed that the shares with all subsequent issues should be transferred to him on payment of mortgage money of the shares mortgaged does not give the execution Court power to deal with subsequent issues, if there was no evidence before the Trial Court of subsequent issues and if it could not be said that they were mentioned in the suit. (*Macleod, C. J. and Shah, J.*). MOTILAL HIRABHAI *v.* BAI MANI. **87 I.C. 269=46 Bom. 529=23 Bom. L.R. 1279=A.I.R. 1922 Bom. 370.**

———*Mistake in recitals.*

Where in the recital part of a decree, the nature of the claim as set forth in the plaint is inadequately recited, the executing Court is not in any way bound by it and it is within the competence of such Court to examine the record and to ascertain for itself what the actual facts are. (*Dawson-*

EXECUTION—Construction of decree.

Miller, C. J. and Mullick, J.). RAMESHWAR SINGH *v.* SAHU LAL JHA. **59 I.C. 25=2 P.L.T. 7=A.I.R. 1921 Pat. 360.**

———*In general, appellate decree is the one to be executed.*

In general, the rule must be that the appellate Court's decree, if properly drawn, is the sole decree to be executed in the case but there may be cases in which that general and ordinary rule cannot and should not be invariably enforced, and in particular circumstances it may be incumbent upon to the Courts to permit execution of the decree of the original Court. 14 M.I.A. 465 ; 6 Ben. L. R. 52; 13 Cal. 13 ; 11 All. 267; (F. B.); 39 Cal. 925; 39 Bom. 175, *Foll.* (*Robinson, C.J. and Duckworth, J.*). S. C. DAS GUPTA *v.* THE BURMA RAILWAYS CO., LTD. **11 L.B.R. 163=A.I.R. 1921 L.B. 37.**

———*If declaratory.*

Where the decree directs the principal judgment-debtors to pay a certain sum and this is the decree which the decree-holder wishes to execute, the fact that, in a certain view of the matter, further proceedings might be necessary to ascertain what set off the judgment-debtor was entitled to against the decree in adjustment that has been made, does not make the decree a declaratory decree. (*Kennedy, J.C. and Madgavkar, A.J.C.*). DONALD GRAHAM AND CO. *v.* KEWALRAM. **79 I.C. 477=16 S.L.R. 245=A.I.R. 1921 Sind 132.**

—Decree binding.
Going behind the decree.
Items.
New plea.
Objections.
Power of executing Court.
Representatives.

—Decree binding—Going behind the decree.

———*Order for mesne profits—Wrong procedure.*

If the Court passes an order in contravention of O. 20, R. 12, it is not a nullity owing to total want of jurisdiction. It is a case of mere irregular exercise of jurisdiction and from this it follows that the executing Court cannot go behind the decree to which it is bound to give effect in execution : A.I.R. 1929 Bom. 217, *Rel. on* ; 37 I.C. 997, *Doubted.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). KEMGAMSWAMY *v.* VADDADI SUBBAMMA. **30 M.L.W. 810=A.I.R. 1930 Mad. 30=57 M. L. J. 728.**

———The Court executing the decree has no power to go behind it. It cannot annul the decree or enter into any questions which are beyond the scope of the decree. (*Raza, J.*). NAGESHWAR *v.* TALUK SINGH. **114 I. C. 809=6 O.W.N. 49=A.I.R. 1930 Oudh 195.**

———*Civil P. C., S. 47—Lunatic properly described in plaint and guardian nominated for him—Lack of formal order—Decree not a nullity.*

Per *Kulwant Sahay, J.*—It is open to the Court executing the decree to refuse to execute it, if it finds that the decree was a nullity.

If a minor or a lunatic is properly described in the plaint and if a guardian is nominated for him, the Court has jurisdiction to entertain the suit. If the minor or lunatic was effectively represented in the suit, the lack of a formal order appointing a guardian would only amount to an irregularity of procedure which would not be fatal to the suit. The decree rendered in such suit is not a nullity. Hence the Court executing the decree could not go behind the decree and examine the validity thereof. 50 I. C. 529 (F.B.) and A.I.R. 1925 Cal. 907 (F.B.), *Rel. on*; 30 Cal. 1021 (P.C.), *Expl.* and *Rel. on*; A. I. R. 1923 Pat. 242, *Appr.* and 32 Cal. 296, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). TIKA RAM *v.* TULA RAM. **11 P.L.T. 185=A. I. R. 1930 Pat. 480.**

EXECUTION—Decree binding—Going behind the decree.

———*Court ordering profits to be ascertained in execution—Order irregular—Executing Court — Must ascertain the mesne profits.*

No doubt under O. 20, R. 12, the amount of the mesne profits must be determined during the course of the suit and an enquiry as to mesne profits under this rule is not a proceeding in execution, but a proceeding in continuation of the original suit. But if the Court instead of passing an order under O. 20, R. 12, orders the mesne profits to be recovered in execution then the decree though irregular is binding between the parties. In such a case there is not any want of jurisdiction in the Court passing an order in contravention of O. 20, R. 12, but it is merely an erroneous or irregular exercise of jurisdiction. Executing Court has no jurisdiction to go into the question whether the Court passing the decree committed any error in the exercise of its jurisdiction. It is incumbent on the executing Court to ascertain the mesne profits: 33 Bom. 194; 43 Mad. 675 (F.B.), *Foll.*; A.I.R. 1925 Cal. 907 (F.B.), *Dist.* and *Not foll.* (*Patkar and Murphy, JJ.*). LAKSHMIBAI ANANT *v.* RAVJI BHIKAJI. **118 I.C. 700=31 Bom. L.R. 400=A. I. R. 1929 Bom. 217.**

———The Court executing the decree cannot go behind the decree and find for itself whether the decree is correct and if it ought to have been passed in the form in which it stands. It has to take the decree as it is. If any party is aggrieved his remedy is not to object in execution proceedings but to seek such other means as may be open to him in law. (*Kulwant Sahay and Macpherson, JJ.*). RAJNANDAN SINGH *v.* SANT PRASAD SINGH. **118 I.C. 143 (Pat.).**

———It is impossible, to contend that for the purpose of execution one is entitled to go behind the decree and show that it is not only a decree personally against the judgment-debtor, but binding on other persons or on the properties of others. (*Srinivasa Iyengar, J.*). SUBRAMANIAN *v.* SIVASWAMI CHETTY. **109 I.C. 557=27 M.L.W. 804=A.I.R. 1928 Mad. 362=54 M.L.J. 278.**

———A Court executing a decree cannot go behind the terms of the decree and must execute the decree as it stands: 40 Mad. 233 (F.B.), *Dist.* (*Shadi Lal, C.J. and Broadway, J.*). DILSUKH RAI *v.* LACHMAN DAS. **100 I.C. 156=9 L.L.J. 7=28 P.L.R. 71=A.I.R. 1927 Lah. 894.**

———It is not open to the executing Court to go behind the decree itself and to find that there was a contemporaneous arrangement that the decree should not be executed. (*Cuming and B. B. Ghose, JJ.*). DWARKA NATH KARMAKAR *v.* LALIT MOHAN KARMAKAR. **97 I. C. 576 (Cal.).**

———The executing Court cannot go behind the decree. (*Addison, J.*). DUVAN CHAND *v.* ANJUMAN INDADI KARYA. **99 I. C. 535=27 P.L.R. 750.**

———*Executing Court cannot go behind the decree and cannot refuse to execute it until it is set aside.*

A Court executing a decree must take the decree as it stands and has no power to go behind the decree. Until that decree is satisfied according to law or is set aside, it stands and the executing Court cannot refuse to execute it. (*Addison, J.*). MT. FATIMA BIBI *v.* ABDUL RAOOF KHAN. **99 I.C. 999=27 P.L.R. 232.**

EXECUTION—Decree binding—Going behind the decree.

———A decree was passed in terms of an award. There was a clear mistake in the map filed with the award. The executing Court examined the head arbitrator who deposed that the map was incorrect,

Held, that the procedure adopted by the executing Court was wrong and his order passed thereon must be set aside. (*Walsh and Kanhaiya Lal, JJ.*). HAR PRASAD *v.* RAGHUBAR DAYAL.

74 I.C. 817=45 All. 628=21 A.L.J. 541= 4 L.R.A. (Civ.) 553=A.I.R. 1924 All. 62.

———The Court to which application for execution of a decree is made is bound by its terms as are the parties to it and has no power to go behind it or to enter into questions beyond its scope. 7 A. 107, *Foll.* (*Campbell, J.*). FAQIR MUHAMMAD KHAN *v.* PIRDAD KHAN. **75 I. C. 844= A.I.R. 1924 Lah. 615.**

———An executing Court has only to interpret the decree under execution. It cannot go behind it or interpret it in a manner wholly repugnant to the tenor of the judgment on which it is based. (*Kinkhede, A.J.C.*). MT. BANI *v.* NARSOO.

78 I.C. 639=A.I.R. 1924 Nag. 378.

———An executing Court cannot go beyond the decree for enquiring whether the Court that passed the decree was entitled to do so in view of what was actually alleged by the plaintiff. It can interpret a decree but cannot say that it should not have been passed by the Court. (*Das and Ross, JJ.*). HAKIM MOHAMMAD IDRIS *v.* LACHMAN DAS.

78 I.C. 303=5 P.L.T. 368=1924 P.H.C.C. 25= A.I.R. 1924 Pat. 504.

———The Executing Court cannot go behind the decree and discuss its validity. (*Ayling and Odgers, JJ.*). SAMI MUDALIAR *v.* MUTHIAH CHETTY.

69 I.C. 465=16 M.L.W. 314= 1922 M.W.N. 597=A.I.R. 1923 Mad. 212= 43 M.L.J. 293.

———*Decree varied in appeal—Defendant not party to appeal affected—Executing Court cannot go behind the decree.*

A mortgage-decree was passed against *A* and *B* making the property of *B* primarily liable for the decree amount. *B* appealed against the decree without making *A* party thereto and the decree was varied by releasing the liability of *B*'s property when the decree-holder thereupon began to execute the decree against *A*'s property. *A* objected saying that he was not bound by the appellate decree and that *B*'s property must be sold first,

Held, as *A* took no steps to get the order of the appellate Court set aside the only decree that could be executed was the decree which directed that properties other than property of *B* should be sold in default of payment of decretal amount. It is not for the executing Court to enter into the merits or demerits of a decree. Its only functions are to carry out the directions of the Court. (*Macleod, C.J. and Shah, J.*). GUMANJI DHIRAJI MARWADI *v.* VISHVANATH PARBHU HINGMIRE.

69 I.C. 55=46 Bom. 243= 23 Bom. L.R. 1072=A.I.R. 1922 Bom. 195.

———The Court executing a decree must take it as it stands. It has no power to go behind the decree, in other words, it cannot entertain any objection as to the legality or correctness of the decree, the reason being that a decree, though it may not be according to law, is binding and conclusive between the parties if not appealed from. (*Broadway, J.*). RAM DAS *v.* S. P. NITTO. **67 I.C. 753= 64 P.L.R. 1922=4 U.P.L.R. Lah. 93.**

EXECUTION—Decree binding—Objections.

———The Court executing the decree cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside on A. I. R. 1921 Bom. 228, *Foll.* (*Macleod, C. J. and Fawcett, J.*). RAMNATH MULCHAND *v.* GAJANAN PANDURANG. **45 Bom. 946= A.I.R. 1921 Bom. 229.**

———It is the duty of an executing Court to look in the first instance at the decree and if the terms of the decree are clear and unambiguous, an executing Court is bound to give effect to it, even though it may regard it as erroneous. (*Leslie Jones and Broadway, JJ.*). KAKA SINGH *v.* LACHMAN DAS. **67 I.C. 740=3 L.L.J. 263.**

———A Court executing a decree must take it as it stands and has no power to go behind it. It cannot entertain any objection as to the legality or correctnesss of it.

The mere fact that a decree is in some respects difficult to execute does not render it incapable of execution. (*Broadway and Moti Sagar, JJ.*). JIWAN MAL *v.* NANAKCHAND. **63 I. C. 975 (Lah.).**

—Decree binding—Items.

———*Judgment-debtor cannot insist on exclusion of particular item of assets.*

Where the decree contained clear words that the plaintiff was to recover the amount from the income and assets of the *Ulturai Kattlai*,

Held, that the defendant cannot urge in the executing Court that a particular item of income, or assets should be excluded. 43 Mad. 675 (F. B.), *Ref.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). VAITHILINGA MUDALIAR *v.* CHIDAMBARAM PILLAI. **91 I.C. 720=1925 M.W.N. 774= A.I.R. 1926 Mad. 113=49 M.L.J. 520.**

—Decree binding—New plea.

———*Executing Court can't allow plea of bar of limitation where the decree directs execution to proceed.*

Where the decree of the Privy Council in an execution matter directed execution to proceed no objection can be entertained by the executing Court, to the execution of the decree of the Privy Council on the ground that the Privy Council failed to consider an objection to execution on the ground of limitation. (*Phillips and Odgers, JJ.*). KALAYANI PILLAI *v.* THIRUVENKATASWAMY AIYENGAR. **80 I.C. 85=20 M.L.W. 99= 1924 M.W.N. 439=47 Mad. 618= 35 M.L.T. 50=A.I.R. 1924 Mad. 695= 47 M.L.J. 154.**

—Decree binding—Objections.

———*Decree against father cannot be challenged merely on ground of unconscionable rate of interest.*

As a Hindu son cannot challenge his father's transaction merely on the ground that it was not for legal necessity, and since the question as to rate of interest falls under the head of legal necessity, once a decree has been passed against a Hindu father, his son cannot challenge it on the ground of its being unconscionable to save the family property from sale. A.I.R. 1924 P.C. 50; A.I.R. 1926 Oudh 321; 17 O.C. 318, *Rel. on*; 4 O.L.J. 157, *Diss. from.* (*Pullan, J.*). SOBHA SINGH *v.* KESHO SINGH. **A.I.R. 1930 Oudh 234.**

———*Decree void—Objection can be taken in execution.*

Per *Kumaraswamy Sastri, J.* (*In Order of Reference*).—"A distinction must be drawn in cases where the decree is void against the minor or is only voidable and if the decree is void, it is difficult to see why the matter should not be raised in

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execution." (*Coutts Trotter, C.J., Madhavan Nair and Jackson, JJ.*). VENKATA SOMESWARA RAO *v.* LAKSHMANASWAMI. **115 I.C. 801= 52 Mad. 275=29 M.L.W. 125= A.I.R. 1929 Mad. 213=56 M.L.J. 175 (F.B.).**

——Per *Devadoss, J.* (*In Order of Reference*).—Where there is a guardian appointed under the Guardians and Wards Act and another person is appointed as guardian *ad litem* and a decree is obtained against the minor, in such cases there should be no decree against the minor as he was not properly represented in the suit, and an objection may be taken to execution on the ground that there is no decree against the minor. (*Coutts-Trotter, C. J., Madhavan Nair and Jackson, JJ.*). MADDURI VENKATA SOMESHWARA RAO *v.* PULAVARTY LAKSHMANASWAMI. **115 I. C. 801= 29 M. L. W. 125=52 Mad. 275= A.I.R. 1929 Mad. 213=56 M.L.J. 175 (F.B.).**

——*Objection by judgment-debtor—Decree-holder absent—No adjudication on merits—Order allowing objection is set aside.*

In objection by the judgment-debtor to the execution of a decree the decree-holder was absent; the judgment-debtor was present by his pleader and the Judge passed the following order: "The petitioner's pleader is present. The execution case is hereby dismissed for default and petitioner's objection is allowed". The merits of the application of objection were not argued before the Judge *ex parte* nor did the Judge really come to any adjudication on the merits of that application,

Held, that the further order "petitioners' objection is allowed," must be set aside. (*Duval and Mitter, JJ.*). MATANJINI DEVI *v.* BEHARI LAL BANERJI. **104 I.C. 571=46 C.L.J. 116= A.I.R. 1927 Cal. 925.**

——*That decree is preliminary and not final is not open.*

A judgment-debtor cannot object to the execution of a decree on the ground that it is preliminary and not final when he has not raised that objection in previous execution proceedings: A.I.R. 1925 Lah. 640, *Foll.*; 1919 P. H. C. C. 105 (F. B.), *Dist.* (*Coldstream, J.*). JAGIRI MAL *v.* RAMCHAND. **99 I.C. 870=A.I.R. 1927 Lah. 780.**

——*Mortgage-decree directing sale of certain property—Objection as to its saleability cannot be taken in execution.*

It is, no doubt, true that a judgment-debtor may, in certain cases, offer objection to the effect that certain property of his is not saleable in the case of a money decree, and such objection may, in certain circumstances, be urged even after the confirmation of the sale. The case of a mortgage decree is, however, different. An attack on such a mortgage decree to the effect that property ordered to be sold by it is not legally saleable, is, in reality, an attack upon the validity of the decree. The executing Court is bound to assume in this connexion that the decree has been made with jurisdiction and to allow an executing Court to hold that property specifically ordered to be sold by it was, in reality, not saleable, would amount to rendering the said decree so far a nullity. (*Findlay, J.C.*). BABHUTMAL *v.* MADHOJI. **102 I.C. 121=10 N.L.J. 87=A.I.R. 1927 Nag. 216.**

——Objections should be taken in the Court passing the decree and not in transferee Court for execution. (*Prideaux, A.J.C.*). RAMPRASAD *v.* HARIDAS. **97 I.C. 768=A.I.R 1927 Nag. 31.**

——Parties in an execution case cannot call in question the validity of a decree as actually framed

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or impugn the jurisdiction of the Court that framed it, nor is it open to a party to an execution case to go behind the plain and obvious meaning of a decree: 47 Cal. 485 (P.C.), *Rel. on.* (*Ashworth and Gokaran Nath Misra, JJ.*). SHANKER BAKHSH *v.* MT. TALUQDEI. **92 I.C. 722=2 Luck. 169= 29 O.C. 276=13 O.L.J. 320=3 O.W.N. 375= A.I.R. 1927 Oudh 33.**

——*Prior decree agreement.*

An objection based on an agreement prior to the passing of the decree is not maintainable in the Court executing the decree. If parties wish to enter into such arrangements, the only proper course is to have the terms embodied in a decree passed by consent: A.I.R. 1926 Rang. 140, *Rel. on.* (*Carr, J.*). MAUNG BA *v.* DOW THIT. **98 I.C. 1056= 5 Bur. L.J. 142=A. I. R. 1927 Rang. 48.**

——An objection that a decree was wrongly passed against the heirs of a deceased defendant after abatement of suit cannot be taken in execution proceedings. (*Greaves and Mukerjee, JJ.*). MATIUR RASUL *v.* ABDUL SAID. **89 I.C. 765= 30 C.W.N. 86=A.I.R. 1926 Cal. 109.**

——*Mortgage decree—Objection that property ordered to be sold is not saleable—Cannot be entertained.*

Where the jurisdiction of the executing Court is based on a decree for sale it is not open to the executing Court to refuse to carry out the sale so long as the decree exists in full force and effect. An objection that the property is not saleable can be made by the judgment-debtor in the case of a money decree either before, and under certain circumstances even after, confirmation, but in the case of a mortgage decree the objection cannot be taken in an execution proceedings because it is an attack upon the validity of the decree: 28 Mad. 84, *Diss.* (*Mullick and Ross, JJ.*). AMRIT LAL SEAL *v.* JAGAT CHANDRA. **93 I.C. 935=4 Pat. 696=7 P.L.T. 468= A. I. R. 1926 Pat. 202.**

——An objection to the validity of a decree cannot be entertained by an executing Court. (*Kinkhede, A.J.C.*). DURGAPRASAD *v.* THAKURPRASAD. **87 I.C. 72=A.I.R. 1925 Nag. 377.**

——The validity of a decree cannot be objected to in execution proceedings following such decree though the Court in passing has contravened some provision of law. (*N. R. Chatterji and Newbould, JJ.*). HEMCHENDRA CHOUDHURY *v.* CHANDRA MOHAN NAMODAS. **60 I.C. 204=24 C.W.N. 1070.**

—Decree binding—Powers of executing Court.

——*Civil P. C., S. 42—Transfer decree.*

A Court executing a transfer decree cannot entertain any objection regarding the legality or propriety of the order directing execution: 7 All. 330; 21 Bom. 456; 5 Cal. 736 and 156 P.L.R. 1905, *Rel. on*; A.I.R. 1925 Pat. 807 and 1 Pat. L. W. 582; *Dist.* (*Johnstone, J.*). PAIRA MAL *v.* MEHR CHAND. **123 I.C. 531=A.I.R. 1930 Lah. 143.**

——Executing Court can only refuse to execute a decree which was a nullity as passed without jurisdiction either territorial or pecuniary or with reference to the persons before it. Otherwise it is quite clear that an executing Court cannot refuse to execute any decree. It has no jurisdiction to question the legality or correctness of the decree which is sought to be executed: A.I.R. 1925 Cal. 907 (F.B.), *Foll.* (*Ghose and Cammiade, JJ.*). DWIJENDRA MOHAN SHAHA *v.* LALIT MOHAN SHAHA. **110 I.C. 510 (Cal.).**

——When a decree is not passed without jurisdiction, an Executing Court cannot consider whether,

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the decree is nvalid or not. A.I.R. 1925 Cal. 907 (F.B.), *Dist.* (*Dalip Singh, J.*). MIR MAHOMED *v.* SURJAN MAL & CO. **103 I.C. 673= A.I.R. 1927 Lah. 651.**

———*Compromise decree—Executability—Principles governing.*

When a decree is based on a compromise and when it contains a condition which cannot be legally enforced, the decree, so far as that condition is concerned, is inoperative and, so to speak, the illegal part of it cannot be executed. A.I.R. 1924 Nag. 84, *Foll.*

But there is no good ground for extending this principle to all other decrees passed by a Court and therefore when a decree is not a compromise decree the executing Court cannot go into the question of saleability of the land ordered under the decree to be sold. 22 W. R. 460; 9 C. P. L. R. 136 and 15 C. P. L. R. 134, *Ref.* (*Findlay, J. C.*) SHEOKISAN *v.* HARAYAN WASUDEO. **101 I.C. 756= A.I.R. 1927 Nag. 242.**

———It is not open to the Executing Court to go behind the decree and decide any question of minority of the judgment-debtor. The proper Court to deal with any question of this kind is the Court who passed the decree: 44 Cal. 627, *Foll.* (*Greaves and Panton, JJ.*). ABDUL RAHMAN HAJEE HOSSEIN *v.* GOURHARI GHOSE. **95 I.C. 629 (Cal.).**

———*Maintenance decree — Interest — Executing Court cannot grant, but separate suit lies.*

In a suit for maintenance a decree was passed for a certain sum but there was no mention in it that the plaintiff was entitled to interest on the sum decreed. The executing Court on the application of the decree-holder allowed interest at the rate of 6 per cent. per annum on the arrears from the time they fell due,

Held, that the executing Court had no such power but the decree-holder may bring a suit for damages for detention of the decretal amount: 3 Cal. 602 and 15 C.L.J. 684, *Ref.* (*Suhrawardy and Duval, JJ.*). NARESH CHANDRA BOSE *v.* KRISHNA BHABINI DASI. **94 I. C. 997=53 Cal. 42= A.I.R. 1926 Cal. 505.**

———A Court executing an award under the Co-operative Societies Act has no power to do anything except to execute the award as if it were a decree of the executing Court: S. A. No. 695 of 1923, *Foll.* (*Addison, J.*). AHMAD YAR *v.* CO-OPERATIVE CREDIT SOCIETY. **97 I.C. 288=8 L. L. J. 310= 27 P.L.R 706=A.I.R. 1926 Lah. 547.**

———*Marshalling.*

When the right of marshalling has been decided in the judgment it cannot be re-opened again in execution proceedings: 24 L. W. 257, *Ref. to.* (*Wallace, J.*). SUBBA AIYAR *v.* PICHUMANI AIYAR. **97 I. C. 601=24 M. L. W. 260= A. I. R. 1926 Mad. 1144.**

———*Court cannot question its own decree for jurisdiction of Court passing a decree.*

It is well-established law that the executing Court has no power to question the jurisdiction of the Court that lawfully sends to it a decree for execution. Nor can a Court when executing its own decree question, *qua* execution Court, its own power to have framed that decree. *A fortiori* it cannot question a decree framed by its own appellate Court. (*Ashworth and Neave, JJ.*). AHMAD MIRZA BEG *v.* ALLHABAD BANK LTD., LUCKNOW. **94 I.C. 317=29 O. C. 26=A.I.R. 1926 Oudh 385.**

———Once a decree is passed, the judgment-debtor cannot, in execution, contend that the suit was

EXECUTION—Decree binding—Representatives, not maintainable. (*Ross and Sen, JJ.*). THE OFFICIAL ASSIGNEE OF THE H. C. OF JUDICATURE, BENGAL *v.* MT. JAGA BIBI. **85 I.C. 488= A.I.R. 1925 Pat. 516.**

———An executing Court has no jurisdiction to criticise or go behind the decree; all that concerns it is the execution of it. If the decree should be annulled that is not the function of an executing Court: 44 C. 627, *Foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). THE LAHORE BANK LTD. IN LIQUIDATION *v.* GHULAM JILANI MINOR THROUGH MT. ZAIWAR NISHAN. **78 I.C. 460= 5 Lah. 54=A.I.R. 1924 Lah. 448.**

———The executing Court can only add execution costs to a decree in the course of execution proceedings; it cannot add to or amend the decree under execution. (*Ryves and Gokul Prasad, JJ.*). DAMBAR SINGH *v.* B. KALLYAN SINGH. **65 I.C. 799=44 All. 350=20 A.L.J. 170= A.I.R. 1922 All. 27.**

———*Amendment.*

An executing Court cannot decide whether particular amendment of a decree is *ultra vires* of otherwise. (*Greaves and B. B. Ghose, JJ.*). RAJAKOTI KUMAR MUKERJI *v.* TINCOWRI CHAKRABARTI. **70 I. C. 293= A.I.R. 1922 Cal. 136.**

———*Direction to build a bund.*

It is the duty of the executing Court to execute the decree as it stands and it is open to the Court to direct something to be done not directed by the decree on the ground that literal compliance with the decree was impossible. An executing Court has no right to direct a decree holder build a bund at any point other than that provided by the decree. (*Scott-Smith, J.*). ALI MAHOMED *v.* JAHAN KHAN. **65 I.C. 126=15 P.W.R. 1922.**

———It is not open to the executing order to reduce the actual amount payable under the decree or the rate of interest if such is awarded in the decree. What is open to him to do is to direct that the decretal amount to be paid by instalments instead of being recorded immediately by sales. (*Kennedy, J. C. and Madgaonkar, A. J. C.*). SANGATMAL LILARAM *v.* JAN MAHOMED GULAM KHAN. **79 I.C. 553=16 S.L.R. 260= A. I. R. 1921 Sind 102.**

—Decree binding—Representatives.

———*Heirs—Service of notice in final decree application—Non-appearance—Objection in execution that the decree is not valid as the abatement was not properly set aside not maintainable.*

Where the heirs of a deceased defendant in a mortgage suit, questioned the validity of the final decree, which was under execution on the ground that the abatement of the suit, resulting from the death of the defendant, was not properly set aside at the time the final decree was made and that the heirs were not properly brought on the record,

Held, that it was not open to the heirs to raise the objection in execution proceedings since when the final decree was passed, they were served with notices and as they did not appear, the decree was made final against them. The result of the order of the Court in making the decree final was in substance and in fact to pass the final decree against such heirs. The mere omission to mention them formally in the decree, when their names were already mentioned in the application for the final decree did not render the decree invalid. (*Shah and Percival, JJ.*). SITHARAM DATTAJI *v.* ANANT HARI KAMAT. **101 I.C. 129=29 Bom. L.R. 244= A.I.R. 1927 Bom. 156.**

EXECUTION—Decree binding—Representatives

———*Buddhist husband and wife—Joint business—Mortgage-decree against husband alone—Wife also bound.*

Where a Buddhist husband and wife carried on a ginning business and part of the joint property was in the name of the husband only and he mortgaged it and the mortgagee brought a suit in which the property was brought to sale without impleading the wife,

Held, that the husband was not only the managing partner, but also the benamidar of the wife in respect of any interest she may have had in the mortgaged property, and that she was bound by the decree passed against the husband : 10 L. B. R. 36 (F. B.). *Dist. (Heald and Chari, JJ.).* M. E. MYA *v.* JAPAN COTTON COMPANY.

101 I. C. 354=5 Bur. L. J. 218=A.I.R. 1927 Rang. 119.

—Decree not to be varied.

———*Rate of interest.*

That as a Court of equity the Court has wide powers to do what is just, does not mean that it has power to alter the terms of the decree either with regard to the decretal amount or the rate of interest which was to be paid thereon. So an executing Court has no power to make an order enhancing the rate of interest fixed by the decree : A. I. R. 1922 Bom. 170, *Expl.* (*Macleod, C. J. and Coyaji, J.*). RAGHUNATH *v.* NARAYAN. **95 I.C. 267=28 Bom. L. R. 543=A.I. R. 1926 Bom. 368.**

———An executing Court cannot give a relief which is not given by the decree itself. (*Martineau, J.*). MT. HUSSAIN BIBI *v.* NUR HUSSAIN SHAH.

94 I.C. 212 (Lah.).

———*Decree awarding mesne profits but silent as to interest thereon—Executing Court cannot award that interest.*

Where a decree declares that the plaintiff is entitled to mesne profits and says nothing about interest, if the amount of mesne profits is left for determination by the Court of execution, the decree-holder is entitled to interest upon the mesne profits and to have such interest added to the mesne profits when they are ascertained. But if the Court which ascertains the mesne profits has omitted to allow interest, it is not open to the Court which executes the decree for mesne profits to allow interest in execution proceedings: 6 C. L. J. 462 and *Wallace, J.*, in No. 74 of 1924, *Foll.*; A. I. R. 1922 All. 117, *Not foll.*(*Madhavan Nair, J.*). RAMAN MENON *v.* PANGUNNI MENON. **96 I.C. 697=A.I.R. 1926 Mad. 952=50 M.L.J. 563.**

———In execution, the Court may modify the decree by directing payments by instalments: 8 B. 808, *Ref.* (*Macleod, C. J. and Crump, J.*).SIDAGAVADA KANAGAVADA *v.* RAMACHANDRA BABAJI.

A.I.R. 1924 Bom. 118.

—Decree null and void.

———Where a person, carrying on business in firm's-name, dies during the pendency of a suit framed against the firm's name, and a decree is passed, the executing Court has jurisdiction to enquire into the question whether the decree is a nullity or not. (*B. B. Ghose and S. K. Ghose, JJ.*), HARI BANDHU *v.* HARI MOHAN.

51 C.L.J. 30=34 C.W.N. 36=A.I.R. 1930 Cal. 327.

———Where the lunatic was effectively represented in a suit though the next friend was not appointed,

Held, that the validity of the decree could not be impugned before the executing Court. Difference between invalid and void decree pointed out.

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(*Kulwant Sahay and Macpherson, JJ.*). TIKA RAM *v.* TULA RAM. **11 P.L.T. 185=A.I.R. 1930 Pat. 480.**

———*Distinction between a void and voidable decree pointed out.*

But it is important to bear in mind the distinction between a decree which is void or is a nullity and a decree which is merely voidable. A decree can be said to be void where there is a total want of jurisdiction in the Court to pass it. If the Court had no jurisdiction to entertain the suit, it cannot possibly have jurisdiction to pass a decree in the suit. If however, the Court had jurisdiction to entertain the suit but acted irregularly or illegally in the exercise of its jurisdiction, the decree passed by it may be erroneous or illegal but cannot be said to be without jurisdiction. (*Kulwant Sahay and Macpherson, JJ.*). TIKA RAM *v.* TULA RAM. **11 P.L.T. 185=A.I.R. 1930 Pat. 480.**

———*Suit for declaring execution proceedings null and void.*

No Court has jurisdiction to entertain a suit to declare proceedings in execution of a decree passed by a competent Court null and void so long as the decree itself is not set aside either on appeal or in a regular suit on the ground of fraud under conditions under which the law allows such a decree to be so challenged. (*Tek Chand, J.*). AMAR SINGH *v.* CHAJJUMAL. **108 I.C. 55=A.I.R. 1928 Lah. 766.**

———In execution proceedings the objection can be put forward that the decree was a nullity on the ground that one of the judgment-debtors had died before the decree was passed. (*Adami and Macpherson, JJ.*). JAMILA KHATOON *v.* DAYANAND THAKUR. **107 I. C. 843=7 Pat. 331=A.I.R. 1928 Pat. 272.**

———*Amount exceeding pecuniary jurisdiction—Decree is not a nullity.*

The mere fact that a decree is for an amount exceeding the pecuniary jurisdiction of the Court which passed the decree, is not *ipso facto* proof that it was beyond jurisdiction and a nullity, and the Court is wrong in questioning in execution the validity of such a decree: 8 Bom. 31; and 10 Bom. 200, *Foll.* (*Fawcett and Madgavkar, JJ.*). AMBADAS HARIRAO *v.* VISHNU GOVIND.

100 I. C. 109=50 Bom. 839=28 Bom. L.R. 1461=A.I.R. 1927 Bom. 83.

———*Objection that decree against dead person is a nullity.*

A decree passed against a dead man is a nullity and it is not essential for a separate suit to be brought to challenge the fact: 26 Bom. 317; 40 All. 423 and A.I.R. 1925 Bom. 290, *Considered.* (*Marten, C.J. and Percival, J.*). SHIVAJI SAYAJI GAOKAR *v.* VITHAL NARAYAN MIRASHI.

98 I.C. 927=28 Bom. L.R. 1367=A.I.R. 1927 Bom. 53.

—Duty of Court.

———*Equitable execution should not ordinarily be allowed.*

Although it is not always necessary that legal execution should be exhausted before the appointment of a Receiver by way of equitable execution can be obtained, "equitable execution" should not under ordinary circumstances be allowed when there is no impediment to execution being levied in the ordinary way. (*Rankin, C.J. and C. C. Ghose, J.*). (RAJA) PROMOTHANATH MALIA *v.* H.V. LOW AND CO. **34 C.W.N. 238=51 C.L.J. 209=A.I.R. 1930 Cal. 502.**

———It is the duty of an executing Court to consider not only the decree but also the judgment

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and the pleadings in the suit. (*Beasley, C.J., Sundaram Chetty and Walsh, JJ.*). ABDUL SAC *v.* SUNDARA MUDALIAR. **1930 M.W.N. 779 (F.B.).**

———*Meaning of decree clear—Executing Court cannot attribute some other meaning to it.*

A Court which executes a decree has to execute it according to its terms, and if for that purpose it is called upon to construe the decree, it has to do so according to the plain meaning of the words of the decree. When the words to be construed are clear enough, the executing Court cannot attribute some other meaning to it unless it has to do so in virtue of any enactment or rule having the force of law applicable to the particular case before it. (*Wallace and Thiruvenkatachariar, JJ.*). BALAKRISHNA MENON *v.* MANAKKAL UMA.

114 I.C. 825=52 Mad. 263=28 M.L.W 719= A. I. R. 1929 Mad. 105=55 M.L.J. 873.

———Fresh application likely to be barred under C.P. Code, S. 48—Court should allow decree-holder to exhaust all lawful means for realizing his decree before dismissing pending application. (*Jai Lal, J.*). JAICHAND *v.* CHIRAGH DIN.

95 I.C. 956=A. I. R. 1926 Lah. 544.

———No Court which executes a decree can pass such an order "Proceedings closed" or "Petition lodged' or "The matter is held over" for statistical purposes. It is the duty of the executing Court to execute a decree and it can dismiss the application, only if the creditor does not take proper steps and does not help the Court in executing the decree. (*Devadoss and Waller, JJ.*). RAMNATHAN CHETTY *v.* NALLA VEERAPPA. **91 I.C. 880= 22 M.L W. 815= A.I.R. 1926 Mad. 272.**

———When the question arises as to what is included in a decree in execution proceedings the execution Court has got to go into the question as to what was decreed. (*B. B. Ghose, J.*). GOLAM NABI CHAPAWALA *v.* F. W. NEEDHAM.

85 I. C. 1004=A.I.R. 1925 Cal. 1243.

———An executing Court has no power to set aside the decree though passed against the wrong party and in a suit wrongly framed. (*Greaves and Graham, JJ.*). KUDRATULLA SARKAR *v.* UPENDRA KUMAR CHOWDHARY. **84 I.C. 999=40 C.L.J. 254= A.I.R. 1925 Cal. 203.**

———*Should guard against playing into the hands of scheming judgment-debtors.*

Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights. (*Dalal, J.C. and Wazir Hasan, A.J.C.*). KUER JANG BAHADUR *v,* BANK OF UPPER INDIA, LUCKNOW. **87 I.C. 21= 12 O.L.J. 146=2 O.W.N. 73=28 O.C. 330= A.I.R. 1925 Oudh 448.**

———It is the duty of the Court executing a decree to see that parties to the proceedings are properly before it. (*Das and Ross, JJ.*). SIDHESWARI PRASAD NARAYAN SINHA *v.* MT. DULHIN RADHA DULARI KUAR. **80 I.C. 716=6 P. L. T. 164= 3 P.L.R. 242=A. I. R. 1925 Pat. 160.**

———*Terms if can be ordered.*

It is for the judgment-creditor to elect his remedies in execution, subject to such rules as governed the case and the Court cannot stay execution of money decree against the person of the judgment debtor on condition of the latter paying some amount and the judgment-creditor proceeding against the judgment debtor's immovable property. (*Schwabe, C. J. and Waller, J.*). AGAJAN SAHEB *v.* ABDUL MAJID KHAN. **77 I.C. 764= 19 M.L.W. 164=1924 M.W.N. 265= A.I.R. 1924 Mad. 512.**

EXECUTION—Executability of decree.

———*Declaratory decree by appellate Court.*

It is the duty of an appellate Court frequently, and all that it can do, to make a declaration and then the form in which that declaration is conceived and the words in which the order is framed, amount to a direction to the Court below to clothe that declaration in the proper form of a mandatory order, and to give effect to the mandatory order so expressed : 18 W. R. 175, *Foll.*; 19 Cal. 139, *Ref. to.* (*Daniels and Wazir Hasan, A. J. Cs*). RANI BEJAI RAJ KOER *v.* JAI INDRA BAHADUR SINGH. **66 I. C. 982=9 O.L.J. 5= A.I.R. 1922 Oudh 34.**

———*Money paid into Court in pursuance of an order—Source is not to be considered by Court.*

The Courts are not concerned with the source from which money comes which is paid into Court under any order. Whether it comes from the pocket of a party or an outsider, it is money paid into credit of the proceedings, and can be dealt with only on an application made in the regular course by one of the parties. If there are any persons in whose favour any interest in the money so lying in Court has been created by any of the parties, they can then be heard. (*Macleod, C. J. and Fawcett, J.*). ISMAIL ALLARAKHIRA *v.* DUTTATRAYA RAMCHANDRA. **61 I.C. 403= 45 Bom. 967=23 Bom. L.R. 291= A. I. R. 1921 Bom. 30.**

—Executability of decree.

———*Injunction granted preventing withdrawal of principal—Suit dismissed—Injunction ordered by High Court conditionally on paying interest from dismissal of suit—Order is executable.*

The respondents filed a suit calling in question the validity of petitioner's decree against a common debtor *N* and for an injunction to prevent petitioner from drawing an amount deposited by *N*. The respondent's suit was dismissed by the Subordinate Judge on 22nd December, 1915, and the High Court ordered a new trial on 19th October, 1916. Previously on 28th January, 1916, the High Court granted an injunction on condition that the respondents paid 9 per cent. interest to the petitioner from 22nd December, 1915, the date of the dismissal of their suit by the Subordinate Judge. On 28th October, 1919, the High Court finally dismissed the respondents' suit. On 1st October, 1920, the injunction was dissolved on an appeal to the Privy Council being abandoned. The petitioner applied for execution together with 9 per cent. interest on 23rd February, 1922.

Held, that the order was an executable order and the interest could be recovered in execution : 2 I.A. 219 (P.C.) and A I.R. 1927 Mad. 416, *Rel. on.* (*Odgers and Curgenven, JJ.*). VENKATARAMA *v.* S.I. BANK, TINNEVELLY.

104 I.C. 750=1927 M.W.N. 529= 39 M.L.T. 394=A.I.R. 1927 Mad. 927.

———*Decree declaring a charge on certain property of defendant—Charge can be enforced in execution.*

It is not necessary that in every case where it is sought to enforce a charge created by a declaratory decree the person for whose benefit the charge is created must resort to the procedure for enforcement of claims under a mortgage : 2 P. L. J. 55, *Foll.*; 1 P.L.W. 69, *Dist.* and 22 Cal. 859, *Not foll.*

Plaintiff obtained a decree declaring that she was entitled to a certain maintenance allowance from

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the defendant to be recovered from certain properties belonging to the defendant. In execution of this decree the plaintiff made an application for the recovery of a certain sum on account of arrears of maintenance by sale of the properties charged.

Held, that although the decree obtained by the plaintiff was declaratory in form it was capable of execution and the decree obtained by the plaintiff being a money decree the interest of the judgment-debtor in the properties charged with the payment of maintenance allowance could be sold in execution of the decree. The provision of R. 14 of O. 34 of the C. P. Code did not apply to such a case. (*Mullick and Ross, JJ.*). HARI SHANKAR RAI *v.* TAPAI KUER. **88 I. C. 923=4 Pat. 693=6 P. L. T. 802=A.I.R. 1926 Pat. 31.**

———*Objection to—Transferee Court.*

The omission to take objection to assignment of the decree and to its transmission to another Court for execution does not preclude the judgment-debtor from raising the question in the executing Court that the decree was not then executable in the manner proposed by the decree holder. (*Spencer and Venkatasubba Rao, JJ.*). NATESA *v.* ANNAMALAI. **73 I. C. 213=17 M.L.W. 319=32 M.L.T. 157=A. I. R. 1923 Mad. 487.**

—Execution by Collector.

———*Once the Collector executes a partition decree, the Court cannot re-send the case to him for re-partition—Collector must follow the terms of the decree.*

Where once the Collector effects a partition the Court cannot send the case back to him for re-partition. But if the Collector disregards the terms of the decree and divides the property in contravention of its terms, clearly the Court is entitled to interfere. 42 Bom. 689, *Expl.* The Collector, when asked to partition lands in accordance with a decree, must follow the terms of the decree, and he is not at liberty to read the decree together with the judgment so that he partitions the lands in a manner which is not contemplated by the decree. (*Macleod, C.J. and Coyajee, J.*). TIMMANNA *v.* GOVIND. **94 I.C. 656=28 Bom.L.R. 523=A. I. R. 1926 Bom. 258.**

—Jurisdiction.

———*Executing Court can decide whether Court passing decree had jurisdiction.*

No doubt executing Court cannot question the validity or legality of a decree if there is a decree in existence. But it must be able to decide whether a decree exists at all and therefore where the Court has no inherent jurisdiction to pass the so-called decree, the decree has no real existence in law and the executing Court within those narrow limits can decide whether the decree was passed by a Court which, for lack of inherent jurisdiction, could not pass such a decree; for that point settles the question as to whether there is an existing decree upon which the executing Court can take action, A. I. R. 1925 Cal. 907 (F.B.), *Rel. on.* (*Dalip Singh, J.*). ROOP NARAIN *v.* HUKAM CHAND JAGADHAR MUL. **10 L.L.J. 319=A.I.R. 1928 Lah. 829.**

———*Final decree in mortgage suit without a preliminary decree.*

Merely because the Court in a mortgage suit, passes a final decree without passing a preliminary decree, its decree does not become one without jurisdiction if otherwise it has jurisdiction. At the most it commits an irregularity or illegality in passing such a decree and the decree cannot be challenged in execution proceedings. (*Cuming and B. B. Ghose, JJ.*). ABDUL HALIM ABDUL HOSSAIN *v.* HEMENDRA KUMAR RAY. **96 I.C. 686=A.I.R. 1926 Cal. 1179.**

EXECUTION—Jurisdiction.

———*Applicability of S. 24, C. P. Code to execution proceedings.*

In regard to suits competency is not referred to in the section in the sense of territorial or local or pecuniary competency. There may be other kinds of incompetency so far as an executing Court is concerned. S. 24 applies to execution proceedings: 39 Mad. 485; 22 Bom. 778 and A.I.R. 1925 All.276 (2), *Foll.* Contention that S. 39 gives to the Court that passed the decree a power to transfer, whereas S. 24 gives a similar power, and no higher power to a superior Court is wrong. This construction is far-fetched and if adopted will render S. 24, so far as execution proceedings are concerned almost useless. (*Venkatasubba Rao and Madhavan Nair, JJ.*). RAJAGOPALA PANDARATHAR *v.* TIRUPATHIA PILLAI. **95 I.C. 12=49 Mad. 746=A.I.R. 1926 Mad. 421=50 M.L.J. 161.**

———*Consequences of default—Relief against.*

Although an executing Court cannot modify or vary the terms of a decree, it has power to relieve a party to a decree against the consequences of his default in not observing the obligations imposed upon him by a decree. (*Macleod, C. J. and Coyajee, J.*). KRISHNARAO PANDURANG BARVE *v.* BALWANT KESHAV PATIL. **89 I.C. 217=27 Bom. L.R. 678=A.I.R. 1925 Bom. 404.**

———*Court trying suit without jurisdiction—Executing Court can refuse to execute decree.*

Where the decree presented for execution was made by a Court which apparently had not jurisdiction, whether pecuniary or territorial or in respect of the judgment-debtor's person to make the decree, the executing Court is entitled to refuse to execute it on the ground that it was made without jurisdiction, *i. e.*, within these narrow limits the executing Court is authorised to question the validity of a decree. (*Walmsley, C. C. Ghose, Suhrawardy, B. B. Ghose and Duval, JJ.*). GORA CHAND *v.* PROFULLA KUMAR. **89 I. C. 685=29 C.W.N. 948=42 C.L.J. 1=53 Cal. 166=A.I.R. 1925 Cal. 907 (F.B.).**

———*Second application for delivery of possession.*

Even where a decree-holder has got possession in execution of the original decree if subsequently he was wrongly dispossessed before the final decree of the appellate Court restored the original decree of the Dt. Munsif he would be entitled to apply for delivery of possession a second time. 7 M.L.T. 107, *Foll.* (*Spencer and Venkatasubba Rao, JJ.*). VENKAT LAKSHMI AMMAL *v.* SADASIVA AIYAR. **76 I. C. 861=18 M. L. W. 883=A.I.R. 1924 Mad. 200.**

———A Court which sells immovable property must have territorial jurisdiction over such property. 17 Cal. 699; 42 Mad. 813; 42 Mad. 821; 11 M.L.W. 63 (F.B.), *Foll.* (*Spencer and Devadoss, JJ.*). VIKRAM DEV. *v.* LAKSHMI NARASIMHA. **76 I.C. 269=18 M.L.W. 747=A.I.R. 1924 Mad. 144.**

———The objection that the executing Court has no jurisdiction to order sale of the property should be raised before the Court proceeds to sell the property. (*Das and Kulwant Sahai, JJ.*). HIRJI JIVRAJ BALDEO *v.* RAMJAS AGARWALA. **72 I.C. 670=A.I.R. 1924 Pat. 182.**

———When the money was received by the Lahore Branch of the Bank from the Kasauli Branch where it was attached by order of execution Court of Lahore as the agent of the decree-holder,

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Held, the money when received by the Bank in Lahore, belonged to the decree-holder and it was no longer within the jurisdiction of the execution Court in Lahore to deal with it in any way, *e.g.*, issuing prohibitory order for not paying to decree-holder. (*Scott-Smith, J.*). P.W. FITZHOLMES *v.* WARYAN SINGH. **75 I C. 419= A.I.R. 1923 Lah. 514.**

———*Declaratory decree in terms of compromise.*

Where the claim sprang from the compromise entered into between the parties, the object of which was to put an end to all disputes between them; and it was never contemplated that another action should be brought in respect of any of the matters which formed the subject-matter of the settlement,

Held, the execution Court has jurisdiction, though decree merely declares the rights of the parties *inter se* and does not direct any act to be done. (*Shadi Lal, C. J. and Abdul Qadir, J.*). MOHAMMUD ZAQI *v.* ABDUL RAHIMAN. **79 I.C. 281= A.I.R. 1923 Lah. 151.**

———*Award of damages for a future uncertain event is illegal and cannot be executed—Even if executable, subsequent orders of Court without application by decree-holder cannot save limitation.*

In execution proceedings the Court, while allowing postponement of sale on the application of judgment debtor, ordered for payment of damages in the event of a fresh application for postponement being made at some future date. Later on after the judgment-debtor applied for postponement again, the Court directed the damages to be incorporated in the main decree, and in the objection of the judgment-debtor the Court excluded it from the general account and directed that the damages may be recovered by separate execution,

Held, the Court had no jurisdiction to make an order awarding damages for an event which might or might not occur at some future time.

Neither the order of the executing Court directing a certain sum as damages to be incorporated in the general account of the main decree, nor the further order that the damages should be excluded from the general account, is an order awarding damages and capable of execution, nor could these orders save limitation for the purpose of executing the order awarding damages assuming that the order could be executed. (*Das and Kulwant Sahay, JJ.*). JAIMAL AHMAD *v.* KESHO DAS. **72 I.C. 1035=1923 P.H.C.C. 202= A.I.R. 1923 Pat. 407.**

———*Dismissal of execution application.*

An order dismissing an execution application without notice to decree-holder is without jurisdiction. No order can be passed to the prejudice of a party without having given him an opportunity to be heard. (*Jwala Prasad and Bucknill, JJ.*). GOUR CHANDRA ROY *v.* JANARDAN PRASAD THAKUR. **68 I.C. 337=4 P.L.T. 204= A.I.R. 1923 Pat. 180.**

———*Power to refund money paid under mistake after a decree was satisfied.*

Where after the satisfaction of the decree by one judgment-debtor by deposit of money and taking certificate, another judgment-debtor unknowingly deposited the decretal amount and after the discovery of the satisfaction of the decree applied for refund of the money,

Held, notwithstanding the fact that the decree had already been executed, the execution Court has jurisdiction to entertain the application. (*Dawson Miller, C. J. and Jwala Prasad, J.*). GOPAL RAI *v.* RAMBHANJAN RAI. **65 I.C. 307=1 Pat. 336= 1922 P.H.C.C. 53=3 P.L.T. 754= A.I.R. 1922 Pat. 166.**

—Legal representatives.

———*Application for substitution in transferee Court—Acquiescence by L. Rs.'—Legality of proceedings cannot be impugned.*

If the judgment-debtor dies, before a certificate, as is required by S. 41 is issued, the Court of transfer does not lose its jurisdiction over the execution proceeding, which does not abate by reason of the death. But before execution can proceed against the legal representative of the deceased judgment-debtor, the decree-holder must get an order for substitution from the Court which passed the decree. This is a matter of procedure and not of jurisdiction. The jurisdiction over the subject-matter continues as before, but a certain procedure is prescribed for the exercise of such jurisdiction. If there is non-compliance with such procedure, *e.g.*, if the application for substitution is made to the Court to whom decree is transferred instead of to the Court passing the decree, the defect might be waived; and the party who has acquiesced in the Court exercising it in a wrong way cannot afterwards turn round and challenge the legality of the proceedings: 22 Cal. 558; 27 Cal. 488 and 28 Mad. 466, *Expl.*; A.I.R. 1925 Oudh 448, *Affirmed*. (*Sir Lancelot Sanderson.*) (KUNWAR) JANG BAHADUR *v.* BANK OF UPPER INDIA LTD., LUCKNOW, IN LIQUIDATION. **109 I.C. 417=5 O.W.N. 502= 26 A.L.J. 681=48 C.L.J. 23=32 C.W.N. 790= 55 I.A. 227=28 M.L.W. 25=3 Luck. 314= 30 Bom. L.R. 1373=1928 M.W.N. 863= A.I.R. 1928 P.C. 162=55 M.L.J. 545 (P.C.).**

———*Executing Court must decide question of legal representative and cannot refer party to separate proceedings—C. P. Code, S. 47.*

When a decree-holder has died and some persons appear asking to be allowed to execute that decree as representing the decree-holder, then it is under S. 47, C.P. Code necessary that the Court itself should decide who the legal representative of the deceased person is. If the claimant who claims to be the legal representative produces a probate or a letter of administration or any such general conclusive proof of his status, then the Court certainly need not go further and should accept that as conclusive. But if there is no such evidence then it is not for the Court to refer the applicant to separate proceedings but it must itself make up its mind after such inquiry as may be possible. (*Kennedy, J. C. and Tyabji, A. J. C.*). PARUMAL THAWERDAS *v.* MT. MHAKAN. **92 I.C. 575=21 S.L.R. 20= A.I.R. 1926 Sind 113.**

———*Mortgagee dying after redemption decree under the T. P. Act.*

Proceedings after a redemption decree obtained under the T. P. Act, Ss. 92, 93 are proceedings in execution and where the mortgagee dies after a redemption decree, the rights of the mortgagor are not barred by his not bringing the legal representatives of the mortgagee on record within time. (*Daniels, A.J.C.*). RAM RUP *v.* GHANI AHMAD. **74 I.C. 162=9 O.L.J. 624= A. I. R. 1923 Oudh 156.**

———*When to be impleaded.*

The decree-holder entitled to apply for the execution of his decree is bound to implead a representative of a deceased judgment-debtor, for the purpose of such application, only when a default under the

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decree occurs and execution becomes necessary. Merely because execution has been unnecessary for 20 years, decree-holder cannot be held to be debarred from it. (*Oldfield and Ramesam, JJ.*). ANDAL AMMAL *v.* VIJIA NAIDU. **14 M.L.W. 632= A.I.R. 1921 Mad. 693.**

—Limitation.

———*Construction of robkar sanctioning transfer application.*

In a suit decree was given on 13th June, 1913. The execution proceedings began on 13th January, 1925, *i.e.*, within 12 years under S 48, C. P. Code During these proceedings the decree-holder applied for the transfer of the execution under S. 39. The robkar in sanctioning the transfer application ran : "In my opinion the issue regarding the limitation period does not arise in such a transfer and the proceedings will be the same. The fact that this decree will have to be transmitted to the other Court is an intermediate proceeding since the property is situate outside the jurisdiction of the Court,"

Held, that the transmitting Court did intend to decide that no objection as to limitation could possibly arise by reason of the transfer and by holding that the proceedings before the transferee Court were only intermediate proceedings, it practically did intend to order execution as distinct from mere transfer. (*Dalip Singh, J.*). DEVI DAS *v.* MD. AKBAR KHAN. **11 L.L.J. 501= A.I.R. 1930 Lah. 118.**

———Where a party is directed by a judgment to pay additional Court fee before execution is taken out for the purposes of limitation, the period runs from the date of the judgment and not from the date on which the Court-fee is paid ; A. I. R. 1924 Cal. 351, *Foll.* (*Dalal, J.*). BUDDHU KHAN *v.* A. BARNER. **100 I.C. 476=A.I.R. 1927 All. 335.**

———The filing of the appeal by objector against the order dismissing his objection against the execution of the decree does not operate as a bar to the decree-holder taking out fresh execution and, therefore, limitation for fresh application begins from the date of dismissal of the objection. (*Adami and Kulwant Sahay, JJ.*). IBRAHIM HUSSAIN KHAN *v.* SHEOPRATAP NARAIN. **89 I. C. 886= A.I.R. 1926 Pat. 129.**

———*Legislature's policy.*

It is the policy of the legislature that questions arising in execution should be investigated and decided by the Courts without the least possible delay. (*Pearson and Graham, JJ.*). HARIPADA HALDAR *v.* BARADAPROSAD ROY CHOWDHURY. **82 I. C. 322=51 Cal. 1014= A.I.R. 1925 Cal. 351.**

———*Limitation is not revived by transfer of decree to another Court even with consent of judgment-debtor.*

Transfer of a decree for execution to another Court does not constitute a revivor even though the transfer is with consent of the judgment-debtor since the Court transmitting the decree is not the Court to decide objections on the part of the judgment-debtor such that the decree is incapable of execution or that execution is barred by limitation. The Court of execution must determine such objection : 48 Cal. 903, *Foll.* (*Richardson and Page, JJ.*). NARAIN DAS DUTT *v.* BANKU BEHARI CHATTOPADHYA.

78 I.C. 1001= A.I.R. 1926 Cal. 213.

———*Continuing absence from jurisdiction.*

A new starting point is created at any stage of the execution owing to a fraud on the part of the judgment-debtor. This continued absence of the judgment-debtor from the jurisdiction of the executing Court is a continuing fraud and a new starting point is created from the last day when the judgment-debtor entered the jurisdiction of the Court. (*Kinkhede, A.J.C.*). KHAIRULLA *v.* SETH DHANRUPMAL. **80 I. C. 903=22 N L.R. 67= A. I. R. 1925 Nag. 82.**

EXECUTION—Mesne profits.

———The period during which the execution proceedings are stayed (an injunction having been obtained by the judgment-debtor) should be deducted. (*Chatterje , and Panton, JJ.*). JYOTI PRAKASH NANDI *v.* MUKTI PRAKASH NANDI. **81 I.C. 734=51 Cal. 150= A.I.R. 1924 Cal. 485.**

———*Payment after date fixed without extension of time disentitles decree-holder to execute decree.*

Where a decree ordered payment by the appellants of a sum of money into Court by a certain date upon which the respondents were directed to reconvey the land to them and where the appellants failed to pay the money within time and did not obtain extension of time,

Held, that though the appellants subsequently paid the money they were debarred from executing the decree. (*Young and Baguley, JJ.*). MA PU MAI *v.* KO-SIT TIN. **85 I.C. 352=3 Bur. L.J. 163= A.I.R. 1924 Rang. 375.**

———It has never been held necessary that an execution application in order to save limitation should be directed to the same property or even indeed the same person. (*Daniels, J.*). GOPI NATH SHUKUL *v.* SAT NARAIN SHUKUL. **74 I.C. 1014=A.I.R. 1923 All. 384.**

———*Decree incapable of execution.*

Until a decree is capable of execution, limitation does not begin. Where the costs though taxed were not entered in the decree, an application praying that they be included is not one for amendment of decree but for supplying the defect, and in any case limitation begins only from the date the costs are included. (*Greaves and B. B. Ghose, JJ.*). RAJAKOTI KUMAR MUKERJI *v.* TINCOWRI CHAKRABARTI. **70 I.C. 293=A.I.R. 1922 Cal. 136.**

———*Sale set aside—A second application.*

A second application for execution made after the sale held on the basis of the first application has been set aside at the instance of the judgment-debtor, is in essence an application to revive and continue the earlier application, and from this point of view no question of limitation really arises. (*Mookerjee and Panton, JJ.*). JIRA BIBI *v.* MAJIRUDDIN CHOWDHURY. **64 I.C. 849= 35 C. L. J. 135=A.I.R. 1921 Cal. 594.**

———Application to attach immovable property refused—Second application to appoint Collector under S. 22, Dekkan Agriculturists' Relief Act, made while first application pending—Second application also disallowed—Limitation for appeal runs from dismissal of second application. (*Fawcett, J.C. and Raymond, A.J.C.*). CHOITHRAM KALINDAS *v.* LALBUX. **63 I. C. 310= 16 S.L.R. 47=A.I.R. 1921 Sind 29.**

—Mesne profits.

———*Awarded in kind—Executing Court can convert at market rate and can award interest.*

Where in a suit for recovery of a certain land the decree awarded possession with mesne profits at the rate of 6 garces 27 putties per annum but did not fix the rate at which the grain was to be converted into money and there was also no order as to interest on the profits,

EXECUTION—Mode of.

Held. (1) that the execution Court rightly adopted the average market rate to get the correct money equivalent in spite of the fact that the decree-holder had given a certain rate; and (2) that the executing Court was competent to grant interest, although no express provision for interest, was made in the decree. (*Odgers and Curgenven, JJ.*). RAJA OF BOBBILI *v.* AYYAGARI SODEMMA. **105 I.C. 34= 26 M.L.W. 367=1927 M.W. N. 661= 39 M.L.T. 499= A I. R. 1927 Mad. 954= 53 M. L. J. 619.**

—Mode of.

———*Court when can mortgage judgment-debtor's land.*

The Court has jurisdiction to mortgage land but ordinarily such a course should not be adopted. Where judgment-debtor is in possession of movable property sufficient to satisfy a decree but has successfully resisted the execution for about 10 years, and where the executing Court mortgages the land of the judgment-debtor for the decretal amount, the case is an exceptional one and the Court exercises its discretion properly: 1 Lah. 192; A.I.R. 1929 Lah. 660 and 92 I. C. 949, *Rel. on*; 2 Lah. 78, *Ref.*(*Addison, J.*). NASAR DIN *v.* BUTAMAL. **119 I.C. 231=A.I.R. 1930 Lah. 77.**

———The High Court has the power in appropriate cases to appoint a receiver and to direct him to sell the property in the mofussil. (*Rankin, C. J. and Buckland, J.*). RAJA PRAMATHA NATH MALIA *v.* H. V. LOW & CO. **51 C. L. J. 270.**

———*Property charged for decretal amount.*

Immovable property charged with the payment of the amount of a decree need not be attached by the decree-holder. The proper mode of enforcing the charge would be to treat the decree as if it were a preliminary decree for sale and afterwards, on default being committed and an application being made for the sale of the property to pass an order in the nature of a decree absolute for sale: 41 Mad. 327, *Rel. on*; 6 L. W. 701, *Expl.* (*Shrinivasa Aiyangar, J.*). M. A. ANATHALWAR *v.* NARAYAN PRASAD. **99 I.C. 656=24 M. L. W. 836= A.I.R. 1927 Mad. 190.**

———*Decree for possession of land.*

It is not within the province of the executing Court to order the debtor to dismantle buildings on the land as to which the decree was silent, even when ordering the debtor to give up possession of the said land in terms of the decree: (1873) 18 W. R. 527, *Foll.* (*Duckworth, J.*). KAUK SIKE *v.* ONG HOCK SEIN. **100 I. C. 301= 5 Bur. L. J. 201=A.I.R. 1927 Rang. 82.**

———*Instalment decree.*

Where an instalment decree is passed and there is a condition in the decree that on default of payment of any instalment the whole balance would become due, then if the decree-holder waives a default by the judgment-debtor and accepts the instalment in respect of which a default has been made, he is not competent afterwards to turn round and take advantage of the default clause and execute the decree for the whole amount. (*Jai Lal, J.*). GOPAL MAL *v.* FIRM GOPAL. **96 I.C. 784=A. I. R. 1926 Lah. 632.**

———*Transfer of Property Act, S.* 81.

Executing Court can determine the order in which property would be sold in execution of a mortgage-decree when the question has not been decided during trial. (*Phillips and Madhavan Nair, JJ.*). CHOKKALINGA TAMBIRAN *v.* RAMANADAN. **97 I. C. 586=1927 M. W. N. 254= 24 M.L.W. 257=A.I.R. 1926 Mad. 1031.**

EXECUTION—Mode of.

———*Part of a decree can be executed if that part is independent of the other parts.*

Though a plaintiff cannot voluntarily split up his decree and take out execution of only a portion thereof while deliberately refraining from executing the other portion in which the benefit was subject to an onerous condition, still where part of the decree has by efflux of time, for which the decree-holders are in no way responsible, becomes impossible of execution the plaintiff is in no way debarred from executing the other portions of the decree, which are entirely independent of such part: 10 C.P.L.R. 83, *Disc.* (*Findlay, Offg. J. C.*). JAIRAM *v.* ADKU. **89 I.C. 135=21 N.L.R. 148= A.I.R. 1926 Nag. 138.**

———Court cannct arrest though it can serve notice on the defendant unless he is within the jurisdiction of the Court. (*Rupchand Bilaram, A.J.C.*). FATEH CHAND MADAN GOPAL *v.* UTANMAL JHAMANDAS. **89 I. C. 401= A. I. R. 1926 Sind 51.**

———*Mortgage-decree — Execution Court cannot order properties to be sold in particular order.*

The execution Court ought not ordinarily to fetter the discretion of the decree-holder to put to sale whatever property he wished first to sell.

Where subsequent to the execution of a mortgage, a certain portion of the property was purchased by another and where there was a suit on the mortgage and the suit was decreed and in the executing Court the subsequent purchaser applied that the items purchased by him should be sold only if the other items were insufficient,

Held, that the question turned on the form of the contract between the vendor and the purchaser, namely whether the property was sold subject to the encumbrance or not and as in the present case it appeared that the sale was subject to the mortgage, there was no ground for interfering with the rights of the mortgagee to sell the property in any order he pleased. (*Case-law discussed.*) (*Mullick and Ross, JJ.*). KHIRODHAR SINGH *v.* GAJADHAR LAL MAHTO. **91 I.C. 221=6 P.L.T. 393= 1925 P H.C.C. 164=A.I.R. 1925 Pat. 484.**

———*Collector.*

Where a decree is transferred for execution to the Collector he has absolute jurisdiction to choose the best method allowed to him by law for raising money to satisfy the decree but beyond that it is not within his province to decide how much money is due to the decree-holder and how much of the decree has been satisfied. (*Stuart and Mukerji, JJ.*). ABDUL SHAKUR *v.* SYED MUHAMMAD. **78 I.C. 429=22 A.L.J. 202=5 L.R.A. Civ. 93= 46 All. 414=A. I. R. 1924 All, 307.**

———*Mortgage-decree—All the property covered by the mortgage should be put up for sale.*

The decree-holder is entitled to have all the properties mortgaged to him put up for sale but it is entirely in the discretion of the Court to direct in which order the properties should be sold; otherwise costs may be thrown away. All the properties must be advertised for sale and when they are actually brought into execution and become subject to sale it would be then for the Court to decide on just and equitable principles which property ought to be first sold. 15 C.W.N. 80, *Ref.* (*Das and Ross, JJ.*). BHAGWAN CHANDRA DAS. *v.* RAI SAHIB DHARAM NARAIN DAS. **84 I. C. 203=3 Pat. 962=2 P. L.R. Civ. 242= 1925 P. H. C. C. 62=6 P. L. T. 392= A.I.R. 1924 Pat. 802.**

EXECUTION—Mode of.

———*Surety.*

The surety is bound so long as the judgment-debtor is bound. The judgment-debtor is bound so long as any payments which he may have made are not certified. Execution therefore can be taken against the surety till the payments are certified. (*Woodroffe and Ghose, JJ.*). ONKARMAL AGARWALA *v.* NRITYA GOPAL CHAKI.

67 I.C. 885=A.I.R. 1923 Cal. 313.

———A Civil Court can order the temporary alienation of the land of a member of an agricultural tribe in satisfaction of a money decree. 1 Lah. 292 (F. B.) and 1 P. R. 1919 (Rev.), *Foll.* (*Scott-Smith and Dundas, JJ.*). SAIN DITTA *v.* NUR AHMAD.

74 I.C. 194=4 L.L.J. 476.

—Restitution.

———*Additional Court-fee.*

A decree-holder, applying for execution of a decree within 3 years but paying additional Court-fee which he is directed to pay, after 3 years, cannot recover the amount of Court-fee in execution. (*Dalal, J.*). BUDDHU KHAN *v.* A. BONER.

100 I.C. 476= A.I.R.1927 All. 335.

———Where the suit was brought against two sets of defendants, one deriving title from the other, if the plaintiff was wrongly given possession contrary to the decree, it was open to either of them to apply for restitution. (*Daniels, J.C.*). DORILAL *v.* MT. JAMAGA. **72 I.C. 879= A.I.R 1923 Oudh 16.**

—Right to.

———A mortgagee cannot, at his own option, abandon his right of selling some of the properties mentioned in the decree before proceeding against other properties of the judgment-debtor. But, if it appears that judgment-debtor has no saleable interest in the properties directed to be sold, the decree-holder need not go through the farce of putting them up for sale. (*Ramesam and Jackson, JJ.*). SRINIVASA AYYANGAR *v.* BAPPU IYER.

121 I. C. 844 (Mad.).

———*Mere small inadvertance.*

The result of holding, that even though an execution application for a large amount might come to be dismissed by the first Court for non-appearance or for failure to put in some paper or some such formal defect the Court has absolutely no power at all to set aside the order of dismissal under any provisions of law, would be virtually to hold that a person by some such small inadvertance would be entirely losing the benefit of a decree passed in his favour by a Court of law : A.I.R. 1926 Mad. 980, *Doubted.* (*Wallace and Srinivasa Aiyangar, JJ.*). MUHTHU CHETTIAR *v.* NARAYANAN.

110 I.C. 63=51 Mad. 672=28 M.L.W. 297= A.I.R. 1928 Mad. 528=55 M.L.J. 274.

———A darkhastdar, who has no title whatever to execute the decree at the time of the darkhast, cannot remedy the defect by completing the title after the date of darkhast, and then try to execute the decree by virtue of that title. (*Macleod, C. J. and Coyajee, J.*). PANDUJOTI KADAM *v.* SAVLA PIRAJI KATE. **90 I.C. 561=27 Bom. L.R. 1109= A. I. R. 1925 Bom. 472.**

———*Instalment decree.*

Where a decree payable by instalments provided for full payment on default,

Held, that such decree ceased to be instalment decree on a default taking place. (*Macleod, C. J. and Crump, J.*). GULABRAO YESWANT HARPHALE *v.* MAGAN GHELABHAI GUJARATHI. **87 I.C. 769= 27 Bom. L.R. 461=A.I.R. 1925 Bom. 326.**

EXECUTION—Right to.

———The fact that on some previous occasion the decree-holder's agent had endorsed on a notice of sale that property need not be sold does not estop the decree-holder from executing the decree against such property. (*Jackson, J.*). RAJAH PARTHASARADHI APPA RAO *v.* MUHAMMAD ABDUL WAHAB SAHEB. **82 I. C. 434= A. I. R. 1925 Mad. 270.**

———*Decree for specific performance of contract to sell.*

Where the plaintiff got a decree for specific performance of an agreement to sell immovable property against defendant but did not want to execute the decree,

Held, that the defendents were also 'decree-holders' within S. 2 (3) of the C. P. Code and as such could take out execution of the plaintiff. (*Macleod, C.J. and Coyajee, J.*). BAI KARIMABIBI *v.* ABDUREHMAN SAYAD BANU. **67 I.C. 667= 46 Bom. 990=24 Bom. L. R. 496= A. I. R. 1923 Bom. 26.**

———*Partition decree.*

In execution of a decree for partition of house and lands, at the instance of the plaintiff a Commissioner was appointed to effect a division of a house first. The Commissioner made a report, but before the report could be given effect to, the house was burnt down. The plaintiff thereupon applied to drop the execution proceedings, but the defendant insisted to carry on the same execution proceedings.

Held, that the defendant should be allowed to continue the application for execution and need not issue a fresh darkhast. (*Macleod, C. J. and Coyajee, J.*). CHUNILAL JAMNADAS *v.* MULCHAND HARJIVANDAS. **67 I.C. 417=46 Bom. 937= 24 Bom. L. R. 440=A.I.R. 1923 Bom. 23.**

———*Beneficial owner can be added as a party.*

A beneficial owner can ask to be added as a party to a pending execution application. A part transferee of a decree can apply to execute it even though there was an agreement to the contrary. The principle is clear that parties should be allowed to join the record when their rights are in danger. (*Krishnan, J.*). RUKMANI AMMAL *v.* RAMACHANDRA.

72 I.C. 874=17 M. L. W.67= A. I. R. 1923 Mad. 317=44 M. L. J. 122.

———The second mortgagee who discharges the prior mortgage and the decree obtained on that mortgage is not an assignee of the decree and he is not entitled to execute the decree. (*Banerji and Gokul Prasad, JJ.*). BORA SHIB LAL *v.* MUNNI LAL. **63 I. C. 604=44 All. 67=19 A.L.J.840= A.I.R. 1922 All. 153.**

———*Maintenance decree creating charge.*

The language of R. 14, O. 34, C. P. Code makes it clear that the rule does not apply unless the decree, falls within the description of a decree for payment of money in satisfaction of a claim arising under the mortgage or charge. The mortgage or charge mentioned in this rule must obviously be a mortgage or charge existing prior to the date of the decree and not one created by the decree.

It is not obligatory upon a person to take recourse to a suit to enforce a charge on immovable property created by a consent decree. (1919) 43 Bom. 631, *Distinguished.* A decree for maintenance may be made in such a form as to entitle the plaintiff to realise in execution not only the arrears, which had accrued due at the date of the institution of the suit but also future maintenance

EXECUTION—Satisfaction.

as it accrues due from time to time. (*Mukerjee and Panton, JJ.*) INDRAMANI DASI *v.* SURENDRA NATH MANDAL. **64 I.C. 852=35 C. L. J. 61= A. I. R. 1922 Cal. 35.**

—Satisfaction.

———Every payment on account of a debt is perfectly lawful payment irrespective of its effect upon the other creditors: 26 Mad. 792, *Foll.* (*Jackson, J.*). V. CHINNAMALU *v.* KUNHIKANNA MENON. **100 I.C. 24=A.I.R. 1927 Mad. 625.**

———*Proof of full satisfaction necessary.*

Where the decree-holder repeatedly makes default in executing the decree and in appearing before the Court though ordered by the Court to do so and warned that the execution case would be filed as fully satisfied if the decree-holder makes default, and where there is no proof that the decree has, as a matter of fact, been fully satisfied, the Court cannot file the execution case as fully satisfied though the decree-holder can be penalised in other ways for his default. (*Jai Lal, J.*) BHAGWAN DAS *v.* RAHIM DAD KHAN. **89 I.C. 979= 7 L.L.J. 226=26 P. L R. 515= A.I.R. 1925 Lah. 453.**

———*Judgment-debtor granting lease of his land to decree-holder for 20 years in satisfaction of decree—Executing Court cannot afterwards curtail the period.*

A money-decree was fully satisfied in 1912 by the grant of a lease for 20 years to the decree holder of some land belonging to the judgment-debtor. Some years later the executing Court on the application of the judgment-debtor, cancelled the remaining period of the lease and directed that possession of the land be restored to the judgment-debtor on payment to the decree-holder a certain sum found on calculation to be due to the decree-holder.

Held, that the executing Court had become *functus officio* as soon as the lease was executed and the decree was fully satisfied and was not therefore, competent subsequently to reduce the term of the lease which had been given in full satisfaction of the decree in 1912. (*Martineau, J.*). HIRA SINGH *v.* MADHAO. **75 I.C. 870= A.I.R. 1924 Lah. 634.**

—Scope of.

———*Compromise in execution proceedings—Limitation.*

A compromise can be entered into much in the same manner as in a regular suit in execution proceedings, which does not extinguish the decree; and the Court executing the decree is bound, subject to the conditions indicated by O. 23, R. 3, C.P. Code to give effect to the compromise; and after recording such a compromise the decree is adjusted and the decree to be executed is the adjusted decree. The limitation applicable in such a case is that contained under Art. 182, Cl. (4), and under Cl. (6) of the same article there would be a period of three years allowed for the issue of the notice to the judgment-debtor to pay under the decree. (*Prideaux, A.J.C.*). RAMPRASAD *v.* HARIDAS. **97 I.C. 768=A.I.R. 1927 Nag. 31.**

———*Plea of non-transferability.*

If the mortgagors fail to raise the plea of non-transferability before the decree is passed, their failure to raise it does not prevent them from raising this point in the execution department: A.I R. 1924 All. 328 (F.B.), *Foll.* (*Sulaiman and Mukerji, JJ.*). BALLABHA DAS *v.* MURAT NARAIN SINGH. **95 I.C. 1048=48 All. 385= 24 A.L.J. 489=A.I.R. 1926 All. 432.**

———Execution of a rent-decree against some of the tenants is limited to their right, title and interest and does not affect the holding: 42 C.L.J. 232, *Rel. on.* (*Suhrawardy and Page, JJ.*). RAMPADA NAG MADAK *v.* KANAI RAI. **98 I.C 206=44 C.L.J. 167= A I.R. 1926 Cal. 1219.**

EXECUTION—Miscellaneous.

———A declaratory decree is not capable of being executed. (*Martineau, J.*). MALUKE *v.* SUNDER SINGH. **59 I.C. 594=25 P.L.R. 1921= A.I.R. 1921 Lah. 376.**

—Setting aside.

———A judgment-debtor who once acquiesces in the execution of a decree, cannot subsequently object to its execution. (*Riggs, J.*). LALL DWARKADAS *v.* BURMA RAILWAYS CO. **62 I.C. 299=10 L.B.R. 280=13 Bur. L. T. 173.**

—Stay of.

———An order purporting to shelve papers does not amount to dismissal of an application for execution but only to staying the proceedings for the time being (*Mukerji and Bennett, JJ.*). JAGANNATH PRASAD *v.* SHEO NARAIN. **123 I.C. 105=A.I.R. 1930 All. 281.**

———Execution of decree as to costs awarded in preliminary decree in partition suit need not be stayed till the passing of final decree. (*Jai Lal, J.*). RIKHI KESH *v.* MELA RAM. **96 I.C. 416= A.I.R. 1926 Lah. 605.**

———*Practice pointed out.*

It is not right for a Judge, upon the making of a decree to stay the execution of it unconditionally without very much better cause being shown by the defendant than that his property is tied up and that he cannot lay his hands upon it for the moment. That may be a ground for staying execution conditionally on the judgment-creditor being in some way secured. It is not correct, under these circumstances, to stay execution unconditionally, or by imposing a simple condition as to giving security for a small amount for defendant's appearance in six months' time. (*Schwabe, C. J. and Ramesam, J.*). SUNDARAM MUDALIAR *v.* MUTHUSWAMI PILLAI. **88 I.C. 439=21 M.L.W. 635= A.I.R. 1925 Mad. 908.**

———No application for execution need be pending to enable a Court to suspend execution of a decree for it can do so in anticipation of an application for execution. Hence the period when execution was set aside, although no application for execution was pending, must be excluded. (*Abdur Rahim and Odgers, JJ.*). GOVINDARAJULU NAIDU *v.* RANGA RAO. **62 I.C. 235=13 M.L.W. 97= 1921 M.W.N. 98=A.I.R. 1921 Mad. 113= 40 M.L.J. 124.**

—Miscellaneous.

———*Agency Court—Validity of decree can be questioned.*

Civil Procedure Code not being applicable to Agency Courts the ordinary rule that an executing Court will not canvass the legality of the decree is not applicable. An Agency Court may refuse to sell property within its jurisdiction under a decree not passed by an Agency Court and therefore not by a Court having jurisdiction. (*Krishnan and Venkatasubba Rao, JJ.*). K. PERRAZU *v.* N. M. CHANDRA RAZU. **69 I. C. 559=16 M.L.W. 669= 1922 M.W.N. 728=A.I.R. 1923 Mad. 114.**

———*Simultaneous execution under all the Codes including that of* 1882 *was recognised.*

Under the Civil Procedure Codes of 1859, 1877 and 1882, the legality of concurrent execution has always been recognised though in practice it was

not generally carried out. (*Case-law discussed*). (*Mullick and Kulwant Sahay, JJ.*). RAM SUMRAN PRASAD *v.* RAM BAHADUR. **71 I.C. 741= 2 Pat. 328=4 P.L.T. 99= 1923 P.H.C.C. 61=A.I.R. 1923 Pat. 224.**

———*Practice—Duty of Court—Complaints should be considered only when made to Court directly in open Court and not through a subordinate officer.*

Complaints such as those by a judgment-debtor that bidders had not come or that the process-server had wrongly proclaimed that the sale would be held at some place other than the place at which it was to be held in fact, should be considered by the Court only when they are made to it in open Court in the usual way and not through a subordinate officer. (*Oldfield and Seshagiri Aiyar, JJ.*). JAYARAMA AIYAR *v.* VRIDHAGIRI AIYAR. **59 I.C. 167=44 Mad. 33=A.I.R. 1921 Mad. 583.**

EXECUTION APPLICATION.

See (1) C. P. CODE, S. 47 AND O. 21, R. 11.
(2) LIMITATION ACT, ART. 181.

EXECUTION OF DECREE.

See (1) CIVIL P. C., S. 47.
(2) DECREE-EXECUTION.

—Certification.

See CIVIL P. C., S. 41.

EXECUTION OF DOCUMENT.

See (1) DEED, EXECUTION.
(2) WILL, EXECUTION.

EXECUTION PROCEEDINGS.

See (1) C. P. CODE., O. 21.
(2) EXECUTION.

EXECUTION SALE.

Accounts.
Bids.
Binding nature of.
Certificate.
Confirmation of.
Duty of Court.
Legal representatives.
Rights of purchaser.
Sale subject to incumbrance.
Setting aside.
Stranger purchaser.
Validity of.
What passes under.
Miscellaneous.

—Accounts.

———*Appointment for definite poriod—Management continuing after expiry of period—Suit for account—Liability to account for entire period.*

Where executors were appointed for a certain period but they continued to manage the estate even after the expiry of that period.

Held, that they were liable to account for the entire period of their management. (*Rankin, C. J. and B. B. Ghose, J.*). KANTI CHANDRA TARAFDAR *v.* RADHA RAMAN SARKAR. **34 C.W.N. 275.**

—Bids.

———It is no part of the duty of a bidder to inform the Court of the existence of the amount of incumbrance. (*Fawcett and Madgavkar, JJ.*). D. DHARMAPPA *v.* P. VENKAPPA. **91 I. C. 426= 27 Bom. L. R. 1318=A.I.R. 1926 Bom. 33.**

———*Highest bid—Discretion of Court to accept or reject.*

By reason of the third condition on the back of the sale proclamation a discretion is reserved to the Court to accept or not to accept a bid in view of the particular circumstances disclosed in the case, and it shall be in the discretion of the Court or the officer holding the sale to decline acceptance

of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so, but while not accepting a sale or ordering a re-sale the Court should state some reasons for its so doing: 21 C. L. J. 174 and A.I.R. 1928 Cal. 316, *Appl.* (*Mukerji, J.*). RAMSAKHI *v.* RADHANATH. **94 I. C. 46=A.I. R. 1926 Cal. 827.**

———*Bidders are presumed to bid on the understanding that the sale would be concluded soon.*

Bidders in auction-sale should be presumed to make an offer on the condition that it would be accepted or rejected within the period during which such sales ordinarily last and in the absence of anything to show that they consented to the period being protracted to any length of time it must be held that the offer was not intended to be open, for a number of days (in this case 6 weeks.) (*Walmsley and Mukerji, JJ.*). TULARAM BHUTANIAR *v.* PURNENDRA NARAIN RAI. **78 I.C. 710= A. I. R. 1925 Cal. 557.**

———*Property knocked down—Court can order a re sale notwithstanding.*

Sale is not concluded when a property is knocked down and the deposit made. Having regard to the provisions of the third condition of sale set out in Form No. 29, Appendix E of the First Schedule of the Civil Procedure Code, the Court has discretion in the matter and the order directing a re-sale of the property is within the Court's jurisdiction. (*Newbould, J.*). FAZIL MEAH *v.* PROSANNA KUMAR ROY. **68 I.C. 305=A.I.R. 1923 Cal. 316.**

—Binding nature of.

———*Wrong property sold—Procedure.*

Where plaintiff allows by mistake one of his properties to be sold at a Court-auction along with other properties of his,

Held, (1) that the Court sale was not a nullity, (2) that without setting aside the sale a mere suit to recover the property from the purchaser does not lie. (*Macleod, C. J. and Coyajee, J.*). NAGA BHATTA *v.* NAGAPPA. **67 I. C. 857= 24 Bom. L.R. 423=46 Bom. 914= A.I.R. 1923 Bom. 62.**

———*Sale in execution is not binding on persons not parties.*

Persons who are not parties to a decree are not bound by it, and ordinarily therefore a sale in execution of a decree does not operate to pass the property of any person who is not bound by the decree. A Court has no jurisdiction to sell the property of persons who are not parties to the proceedings or properly represented on the record. As against such persons decree and sales would be a nullity and might be disregarded without any proceedings being taken to set them aside. (*Lindsay, J.C.*). JADUNATH SINGH *v.* MST. AFZAL KHANAM. **8 O.L.J. 191=A.I.R. 1921 Oudh 150.**

—Certificate.

———*Rights of parties to sale are determined by certificate of sale.*

The rights of the parties to the sale proceedings are determined by the certificate of sale, which finally vests the property in the auction-purchaser, and subject to any mistakes in the certificate of sale, which it is always open to the Court or officer granting the certificate of sale to correct, the title so acquired cannot be afterwards disturbed in any subsequent proceeding at the instance of any person who was a party to the confirmation of the sale. (*Kanhaiya Lal and Ashworth, JJ.*). NANDKISHORE *v.* BADANSINGH. **95 I.C. 578= 48 All. 568=24 A.L.J. 687= A.I.R. 1926 All. 575.**

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———The sale certificate is not essential for the reaction of the title in the auction-purchaser. It is merely a piece of evidence. So, adverse possession against an auction purchaser begins at least from confirmation of sale. (*Wazir Hasan, J.C. and Neave, A. J. C.*). MT. MAHMUD-UN-NISSA *v.* SYED LAHID RAZA. **84 I.C. 98=11 O L.J. 466= A.I.R. 1925 Oudh 20.**

———*Ambiguity.*

Where there are in the sale certificate two descriptions of the property which cannot be reconciled it is open to the Court to look at the decree in the suit and to determine which of these descriptions really governs the sale. 19 C.L.J. 182, *Foll.* (*Daniels, J.*). MUKHBAR AHMAD *v.* KABI AHMAD. **78 I.C. 666=A.I.R. 1924 All. 856.**

—Confirmation of.

———*Private satisfaction of decree after sale but before confirmation—Practice explained.*

A private satisfaction of a decree certified in Court after the sale of immovable property has been held and before the confirmation of the sale is ordered, does extinguish the decree and prevent the Court from confirming the sale in favour of the auction-purchaser, if he be the decree-holder himself; but it does not extinguish the decree and prevent the Court from confirming the sale, where a third person has purchased the property *bona fide* at the auction-sale: 10 All. 166 (P.C.,) *Appl.*; A.I R. 1928 Nag. 43, *Not appr.*; 10 All. 83; 35 Bom. 516, *Dist.*; A. I. R. 1926 Nag. 298; Nag. C. R. 201 of 1925 and A. I. R. 1928 Nag. 136 (2), *Appr.*; Nag. S. A. 405 and 406 of 1923 *Diss. from*; A. I. R. 1922 Nag. 248, *held too widely enunciated.* (*Findlay, J. C. and Kinkhede and Prideaux, A. J. Cs.*). SHANKAR *v.* JAWAHARLAL. **111 I. C. 895= 24 N.L R. 127=11 N.L.J. 142= A. I. R. 1928 Nag. 265 (F.B.).**

———*Parties to decree settling their claim before confirmation.*

Where the judgment-debtor and the decree-holder come to a settlement before the sale has been confirmed, there is no decree left capable of execution and executing Court is *functus officio* and cannot thereafter confirm the sale. The position would be very different if the sale has been confirmed and the parties to the decree come to a settlement while legal proceedings for the reversal of the order of confirmation are in progress; S. A. No. 405 of 1923, *Foll.* (*Findlay, J. C. and Prideaux, A. J. C.*). MAROTI *v.* VITHOBA.

100 I. C. 565=A.I.R. 1928 Nag. 43.

———*Gurudwaras Act—Order is not appealable.*

The executing Court can pass an order in spite of the fact that the sale had been confirmed, setting aside the confirmation of the sale on the ground that the balance of the auction-money had not been paid. (*Addison, J.*). RADHA KISHAN *v.* HARI SINGH. **100 I.C. 800= A.I.R. 1927 Lah. 337.**

———The executing Court has no jurisdiction to set aside a sale which has once been confirmed. (*Addison, J.*). RADHA KISHAN *v.* HARI SINGH.

100 I.C. 800=A. I. R. 1927 Lah. 337.

———*Court sale is not complete until confirmation.*

When a Court sale takes place, the sale in favour of a particular individual is not complete unless and until it receives the confirmation of the Courts. It is the acceptance of the Court that constitutes the contract. When the person asserts that the Court-officer had power to bind the Court by his acceptance of a bid, he must prove his contention. The mere fact that in the published conditions of

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sale there is no statement to the effect that it is subject to the confirmation of the Court cannot be treated as implying that the Court had renounced its power of confirming the sale before it could take effect. (*Krishnan and Odgers, JJ.*). RATNASAMI PILLAI *v.* SABAPATHY PILLAI. **82 I.C. 793= A.I.R. 1925 Mad. 318.**

———Execution sale takes effect from moment of sale and no confirmation is necessary. (*Spencer and Kumaraswami Sastri, JJ.*). MOLLAYYA PADAYACHI *v.* KRISHNASWAMI IYER. **85 I.C. 855= 21 M.L.W. 336=A.I.R. 1925 Mad. 95= 47 M.L.J. 622.**

———*Effect.*

Though the decree-holder purchaser is unable to obtain possession that would not entitle him to take out further execution for that portion of his purchase-money which is represented by the property puchased by him. Execution comes to an end with the sale of the property and whether or not the auction purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and it does not in any way affect it. (*Das and Adami, JJ.*). TRILOKENATH JHA *v.* BAUSMAN JHA. **72 I.C. 938=1 P. L.R. 6= 2 Pat. 249=1923 P.H.C.C. 300=5 P.L.T. 30= A.I.R. 1923 Pat. 22.**

—Duty of Court.

———Executing Court has no jurisdiction to set aside a sale which has once been confirmed: A.I.R. 1927 Lah. 337, *Foll.* (*Addison, J.*). BIHARILAL *v.* RAMCHAND. **110 I.C. 773.**

—Legal representatives.

———*L. R's of decree-holder—Right to proceed with pending execution application.*

Where the legal representatives of the deceased decree-holder and judgment-debtor have been brought on record in execution proceedings, the old application made by the deceased decree-holder for execution remains pending and his representatives can proceed with it. They need not make fresh application under R. 16, O. 21: A.I.R. 1927 All. 165 (F. B.), *Cons.*; A I. R. 1927 Mad. 184, *Ref.*; A. I. R. 1928 P. C. 162 and A. I. R. 1926 Mad. 573, *Foll.* (*Percival, J.C. and Barlee A.J.C*). SHOUKOMAL *v.* NICHUMAL. **A.I R. 1930 Sind 283.**

———The representatives of a judgment-debtor are bound by attachment and sale held in execution of a decree, although they may not have been formerly made as parties or that wrong persons may have been parties to the decree. 25 Bom. 337 (P.C.), *Foll.* (*Misra, J.*). BABU LAL *v.* MT. SUHKRANI. **99 I.C. 211=13 O.L.J. 813= 3 O.W.N. 771=A. I. R. 1926 Oudh 613.**

—Rights of purchaser.

———*The description given in sale proclamation is not binding.*

In an execution sale the decree-holder may be bound by the description given by him in the sale proclamation, but the purchaser who has purchased the property described in a particular way in the sale proclamation can claim a higher or different right which the judgment-debtor actually had and which the purchaser has really purchased. (*Suhrawardy and Graham, JJ.*). TARINI CHARAN *v.* GRISH CHANDRA. **115 I.C. 81= 56 Cal. 173= 48 C.L.J. 97=32 C.W.N. 587= A.I.R. 1928 Cal. 880.**

———Where after an execution sale it turns out that the judgment-debtor had no interest in the property sold, the auction-purchaser is not entitled to the refund of the purchase money: 10 L.B.R. 76;

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Rel. on; A.I.R. 1926 Cal. 971, *Expl.* (*Brown, J.*). MAUNG NAUNG *v.* MAUNG BA GYI. **112 I.C. 436= 6 Rang. 468=A.I.R. 1928 Rang. 272.**

——*Sale.*

An auction-purchaser, who is a stranger to the suit, is not bound to look behind the decree of the Court and he acquires an indefeasible right to the property purchased by him in such sale. (*Johnstone, J.*). MT. GURDEVI *v.* KHARAITI MAL. **104 I.C. 222=10 L.L.J. 23= A.I.R. 1927 Lah. 685.**

——A transferee of whole interest in joint family property even in an execution sale under money decree is entitled to contest the validity of a transfer made by one of the members of the family on the ground of want of legal necessity : 33 All. 783 (F.B.), *Appl.* (*Mears, C.J. and King, J.*). RAJ BALLAW PRASAD *v.* DALIP NARAIN SINGH. **97 I.C. 344= A.I.R. 1926 All. 718.**

——Where an auction-sale takes place in the exercise of a jurisdiction vested in a Court, a third party purchaser cannot be bound by the result of any further litigation relating to the decree. (*Mukerji, J.*). ATMA RAM *v.* NANAK CHAND. **92 I.C. 571=A. I. R. 1926 All. 274.**

——*Wrong form of proclamation.*

Where by carelessness or oversight a wrong form is used for the proclamation of sale, in order to find what rights the auction-purchaser obtained under the sale the true meaning of the decree under which the sale took place as well as the proceedings leading up to the sale should be looked into. (*B.B. Ghose and Panton, JJ.*). KALI PROSANNA RAY *v.* PREM CHAND MAHAPATRA. **95 I.C. 853=A. I. R. 1926 Cal. 1062.**

——*Sale in purchase by decree-holders in lieu of decretal amount—One judgment-debtor entitled to interest in decretal amount—Conduct of parties showing purchase was only for benefit of decree-holders—Judgment-debtor is not entitled to any interest in the property.*

It cannot be disputed that as a general proposition of law if only one of several decree-holders purchases the property at auction in lieu of the decretal amount, the purchase, in the absence of anything positive to the contrary, must be deemed to have been made on behalf of all the interested decree-holders : 37 All. 545, *Foll.*

But where a judgment-debtor is interested in the decretal amount he need not necessarily be entitled to any interest in the property purchased by the decree-holders. Even if it be conceded that ordinarily if the purchase is made by the decree-holder in lieu of the decretal amount and the payment is merely set off against the decree, then it may be deemed that the purchase is made on behalf of all the persons interested in the decretal amount whether plaintiffs or defendants, the Court has to see whether that inference can be properly drawn in view of the conduct of both the parties throughout the proceedings in the particular case.

A co-mortgagee had refused to join in the mortgage suit brought by the other mortgagees and had not himself brought any suit within limitation on the basis of the original document which he retained in his possession and the suit had to be brought on the basis of a certified copy. Then he was made a defendant and was not allowed to be transposed as a plaintiff because he had some subsequent mortgages on the property and thus occupied a double capacity, namely of co-mortgagee as well as of subsequent mortgagee. When the decree was passed, permission was granted to the decree-

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holders to bid. The mortgagee in question made no attempt to bid himself. After the sale had taken place he applied to have the sale set aside. In his application he clearly stated that the property had been purchased for decree-holders. He never suggested that the purchase had also been made in his interest.

Held, that having regard to the attitude of both the parties it cannot be held that when the purchase was made it was made on behalf of Mokhan Lal also : 37 All. 545, *Dist.* (*Sulaiman and Ryves, JJ.*). MAKHAN LAL *v.* SOHAN LAL. **87 I.C. 665= 23 A. L. J. 257=A.I.R. 1925 All. 331.**

——*Purchaser need not enquire if decree and sale are valid.*

Where a person purchases the property of a minor at an auction-sale in execution of a decree against a minor,

Held, it was not necessary for the purchaser to enquire whether the decree and the sale thereunder were for valid reasons. (*Walmsley and M.N. Mukerji, JJ.*). UMA CHARAN CHKRAVARTI *v.* GUIRAM BAG. **83 I. C. 1040=39 C.L.J. 394= A.I.R. 1924 Cal. 1008.**

——*Refund of purchase money.*

A suit by auction-purchaser at a sale in execution of a decree for rent, against both the decree-holder and the judgment-debtor for refund of the purchase-money and also for compensation is not maintainable on the ground that the judgment-debtor had no saleable interest in the land. 22 C.W.N. 760, *Foll.* There is no warranty of title in the case of a sale under a rent decree. 17 C.L.J. 652, *Expl.* (*Rankin and B. B. Ghose, JJ.*). BANKA BEHARY DAS *v.* GURDAS DHAR. **80 I.C. 257= 40 C.L.J. 157=28 C.W.N. 20= A.I.R. 1924 Cal. 172.**

——Bona fide *purchasers are not protected where Court has no initial jurisdiction.*

Courts will, as far as possible, protect innocent purchasers from the consequences of irregularities and defects of procedure at Court sales for the reason that strangers are entitled to presume that the proceedings of Courts are regular, but such help cannot be extended to the overlooking of patent want of inherent jurisdiction on the part of the executing Court. (*Spencer and Devadoss, JJ.*). VIKRAM DEY *v.* LAKSHMI NARASIMHA. **76 I.C. 269=18 M.L.W. 747= A.I.R. 1924 Mad. 144.**

——*Properties sold in one lot before decision of High Court that they should be sold in separate lots.*

In the execution of a decree on three mortgage-bonds a sale of all the properties in one lot took place. The High Court, on an objection by one of the transferees of the judgment-debtor,

Held that each property separately mortgaged ought to have been separately sold. The sale having been held before the High Court's decision the decree-holder, auction-purchaser applied for possession in spite of the judgment of the High Court.

Held that he was not entitled to possession. He can, however, apply alternatively by way of amendment of his application for an order or resale of the properties separately in accordance with the High Court's direction. (*Walsh and Ryves, JJ.*). HARBANS NATH *v.* ACHRAJ NATH. **65 I.C. 16= A.I.R. 1922 All. 375.**

——Where a mortgagee of a *raiyati* holding with fixed rates purchases it in execution of his decree on the mortgage, where the original lease subsists and the mortgagee has notice of it, he is bound by the terms of the original *kabuliyat* and must pay-

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rent and interest in accordance therewith. 24 Cal. 37, *Dist.*; 32 Cal. 258 (F.B.), *Foll.* (*Teunon and Chaudhuri, JJ.*). BHUT NATH *v.* RAMA NATH.
48 Cal. 93=A.I.R. 1921 Cal. 199.

———*Collusive agreement by mortgagor—Not binding on mortgagee—Auction-purchaser.*

Where the mortgagor in possession entered into an agreement with his tenants after the date of mortgage that they should thenceforward pay him *nagdi* rents and up till the time of the agreement they paid produce rents and the rate settled on compromise was considerably lower than the fair rent, and this low rate was entered into in collusion with tenants after taking heavy *nazarana* because the mortgagor saw no means of saving his property.

Held, that the mortgagee would not be bound by the agreement. 1 P.L.J. 563, *Rel. on.* (*Coutts and Sultan Ahmed, JJ.*). MATHURA RAI *v.* MANDIL DAS. **1921 P.H.C.C. 165=A.I.R. 1921 Pat. 183.**

—Sale subject to incumbrance.

———*Purchaser cannot challenge validity of the mortgage in mortgagee's suit.*

Where a person purchases certain property in execution of a money decree expressly subject to a mortgage on it and admits the existence of the mortgage it is not subsequently open to him to challenge the mortgage in a suit on the mortgage by the mortgage : A.I.R. 1923 Nag. 282 and 47 Cal. 446, *Rel. on.* (*Findlay, O. J. C.*). GOVINDRAO *v.* HIRCHAND. **96 I.C. 563=A.I.R. 1926 Nag. 446.**

—Setting aside—Ancestral property.

———A sale of ancestral property by a Civil Court is not void in law. (*Stuart and Ryves, JJ.*). DILIP-NARAIN SINGH *v.* PARMAOTI BIBI. **67 I. C. 931= 17 A.L.J. 982=42 All. 58.**

—Setting aside—Application.

———*An application to set aside sale is not one in execution.*

An application for setting aside a sale cannot be regarded as an application in a proceeding in execution of a decree or order because when the sale of the property attached in execution has been completed, and the purchase money has been paid into Court, nothing more remains to be done in respect of the execution of the decree as against that property. (*Das and Adami, JJ.*). L. N. NATHSAHI DEO *v.* M. P. U. NATHSAHI DEO. **69 I.C. 613= 1922 P.H.C.C. 363=1 P. L.R. 55= 2 Pat. 243=4 P.L.T. 367=A.I.R. 1923 Pat. 29.**

———The judgment-debtor is entitled to apply to have the execution sale set aside on the ground of fraud even after the confirmation of the sale. (*Coldstream, J.*). MT. JANNAT *v.* ABDUL RAHMAN KHAN. **112 I.C. 847.**

———*Proof of fraud.*

Where in an application to have an execution sale set aside for fraud, fraud has been established, the onus is on the person who alleges that the application is barred to prove it. (*Coldstream, J.*). MT. JANNAT *v.* ABDUL RAHMAN KHAN. **112 I. C. 847.**

—Setting aside—Fraud.

———No presumption of fraud against the guardian *ad litem* of a minor in a suit can be drawn from the mere fact that he did not defend the suit, especially when the parties mainly concerned in the suit did not choose to defend it. (*Phillips and Madhavan Nair, JJ.*). K. ANANTHACHARIAR *v.* RANGACHARIAR. **98 I.C. 463= A. I. R. 1927 Mad. 209.**

———*Decree obtained by fraud*—Bona fide *purchaser in execution—Rights discussed.*

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In cases of sale in execution of a decree obtained by fraud, where a stranger has purchased, the Court should determine, whether it will be in accordance with the principles of justice, equity and good conscience to set aside the sale. The Court has, in fact, to reconcile two conflicting principles. On the one hand, fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of Courts of justice, and avoids all judicial acts, ecclesiastical and temporal. A Court of Equity will wrest property, fraudulently acquired, not only from the perpetrator of the fraud, but from his children and his children's children or, from any persons amongst whom he may have parcelled out the fruits of his fraud, and will restore it to those from whom it has been fraudulently abstracted. On the other hand, against a purchaser for valuable consideration without notice, the Court will not take the least step imaginable ; a purchase without notice for a valuable consideration is a bar to the jurisdiction of the Court. On the facts of each case, the Court has to determine which of these doctrines prevails. In the solution of the problem, we have to bear in mind that the protection given to the *bona fide* purchaser had its origin exclusively in equity and is based entirely upon the conception that a Court of Equity acts solely upon the conscience of litigant parties, by compelling the defendant to do what and only what in *pro consientiae* he is bound to do. If the relations between the two contestants standing before the Court are such that, in equity and good conscience, the plaintiff ought to obtain the aid which he asks, and the defendant ought to do or suffer what is demanded of him, then the Court will interfere and grant the relief ; if the relations are not of this character, then the Court will withhold its hand and will leave the parties where they stand. The protection given to the *bona fide* purchaser, therefore simply means that from the relations subsisting between the two parties, specially that which is involved in the innocent position of the purchaser, equity refuses to interfere and to aid the plaintiff in what he is seeking to obtain, because it would be unconscientious and inequitable to do so ; the Court will not, in such an event, aid either party agrinst the other. It does not determine the question of title between parties. It is in most cases available only by way of defence. It is a shield in the hands of a defendant, to protect him against the claim of his adversary. It means that equity will refuse to interfere to aid the plaintiff in his suit, because, under the circumstances of the case it would be unconscionable that the plaintiff should have what he seeks to obtain. It enforces no right, but simply refuses to interfere in the plaintiff's behalf. (*Mookerjee and Rankin, JJ.*). BIRESWAR GHOSH *v.* PANCHCOURI GHOSH. **74 I.C. 975= 37 C.L.J. 145=27 C.W.N. 587= A. I. R. 1923 Cal. 538.**

———*Material facts suppressed—Court has inherent power to refuse to confirm the sale.*

The Court has an inherent power to refuse to allow the sale to be carried out if it is satisfied that the Court has been misled either in giving leave to bid or in fixing the reserve price. In order to show that the Court has been misled it is necessary to show either actual mis-statements to the Court or non-disclosure to the Court of relevant facts unknown to the Court and which there was a duty to bring before the Court. Where the decree-holder put in an affidavit of which the tenor was that it was very doubtful whether the judgment-

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debtor had any interest in the property at all which was proposed to be sold, that they had claims to it which were subject to litigation and the outcome of the litigation, like most litigation, was uncertain, and that it was impossible, therefore to give any idea of the market value, and further added that the market value of the lot in question might be fixed at Rs. 3,000, but suppressed a fact well known to him, namely, that the property, in respect of which the judgment-debtors claimed and had since been heid by the Court to have, a two thirds interest, had been put up for sale, by the Court before and that the Court had fixed Rs. 45,000 as the reserve price and a bid of Rs. 36,000 had been refused on the ground that it was not great enough.

Held, that there were all the elements necessary for the Court to act on its inherent powers and that the confirmation of sale was rightly refused. O. 21, R. 92, C.P.C., is no bar to the Court interfering to cancel the sale even though no party has applied therefor. (*Schwabe, C. J. and Wallace, J.*). RAGHAVACHARIAR *v.* MURUGESA MUDALI.

72 I.C. 545=46 Mad. 583=17 M.L.W. 750=32 M L.T. 285=1923 M.W N. 323=A.I.R. 1923 Mad. 635=44 M.L.J. 680.

———Where at auction sale certain property was sold as non-ancestral, though it was really ancestral; and it was clear that the plaintiff-judgment-debtor had knowledge of the execution and had an opportunity of being heard in the execution Court and afterwards he sought to set aside the auction sale on the ground of fraud.

Held, that this was no evidence of any fraud on the part of the defendants.

Held, further that even if the property was really ancestral, as plaintiff suffered no damage, the sale cannot be set aside. 28 All. 273; 42 All. 68, *Foll.* (*Piggott and Walsh, JJ.*). BHATELAY CHUNNI LAL *v.* CHAKKERPAN. **67 I.C. 934=44 All. 390=20 A.L.J. 281=A I R. 1922 All. 56.**

———An execution sale ought not to be set aside merely because the sale was held in execution of an *ex parte* decree obtained by fraud where the purchaser is a stranger who was no party to the fraud and was not aware of it at the time of paying the purchase-money. (*Teunon and Buckland, JJ.*). GOPAL PORAI *v.* SWARNA BEWA. **64 I.C. 611 (Cal.).**

———Though a decree is fraudulently obtained, the execution sale under it is not rendered void, unless the auction-purchaser was a party to the fraud in the execution proceedings which vitiated the sale. (*Jwala Prasad, J.*). JAGARNATH PRASAD *v.* BAHURANI. **62 I.C 594 (Pat.).**

—Setting aside—Grounds for.

———*It is not wise and desirable to interfere on slender grounds.*

It is not wise and desirable to interfere with Court sales on grounds not strong enough. As a matter of ordinary experience, Court sales are not popular and if the impression is created in the minds of the public that such sales can be set aside on slight grounds it will take away a great deal from the security which an act of the Court ought to give to its proceedings, much to the prejudice of the judgment-debtors. (*Suhrawardy and Graham, JJ.*). MAHARAJ BAHADUR SINGH BALUCHAR *v.* SUCHINDRA NATH ROY. **113 I.C. 562=32 C.W.N. 309=A.I.R. 1928 Cal. 328.**

———*Prideaux, A.J.C.*—The fact that one sale took place in execution of two decrees against the same person, is obviously no good reason for

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setting aside the sale. (*Macnair, A.J.C.*). SHANKAR RAO *v.* GANPAT RAO. **105 I. C. 123=A.I.R. 1928 Nag. 34.**

———*Minor properly represented till passing of decree but not so represented in execution proceedings—O. 32 is not strictly applied to the stage of execution.*

Even if there was no due representation of the minor in the execution proceedings had in furtherance of a decree in a suit in which the minor was properly represented that fact is not a ground upon which the sale can be set aside.

The provisions of O. 32, relating to suits by or against minors have no direct application in proceedings in execution after the rights of the parties have merged in a good and valid decree. At any rate the rules in O. 32 are not so strictly applied at that stage: A. I. R. 1921 Cal. 476 and A.I.R. 1924 Cal. 847, *Foll.* (*Page and Graham, JJ.*). RAKHAL CHANDRA *v.* KUMADINI DEBYA.

104 I.C. 357=A.I.R. 1927 Cal. 930.

———Non-representation of an infant by a guardian in execution proceedings is not in itself sufficient ground for avoiding an execution sale: A. I. R. 1926 Cal. 109 and A. I. R. 1921 Cal. 476, *Foll.* (*Graham, J.*). NAKULCHANDRADAS *v.* RAJENDRA CHANDRA. **104 I.C 196=A.I.R. 1927 Cal. 873.**

———*Sale.*

When a sale takes place in execution of a decree in force at the time, it cannot be set aside against a *bona fide* purchaser on the ground that that decree was afterwards amended: 10 All. 166 (P.C.) and 38 All. 240, *Foll.* (*Sulaiman and Daniels, JJ.*). PIRTHI NATH *v.* MT. KUNJI KOER.

89 I.C. 369=24 A.L.J. 65=6 L R.A. Civ. 420=A.I.R. 1926 All. 41.

———*Acquiescence—Plaintiff cannot resile.*

A party, who has submitted to decree (in this case passed by a Foreign Court) and has allowed his property to be sold in execution cannot be allowed to file a suit in order to set aside the sale to the prejudice of the rights of the auction-purchaser on the ground that the whole proceeding with regard to him was null and void (*e.g.*, that he was not served with a summons of the foreign Court. (*Macleod, C. J. and Shah, J.*). MALHAR NARAYAN PRABHU *v.* VISHNU SONU GOVADA. **80 I.C. 754=26 Bom. L.R. 392=A.I.R. 1924 Bom. 351.**

———*Flaw in attachment is no ground.*

When a sale has been duly held, without material irregularity or fraud in publishing or conducting it, it cannot be considered a nullity merely by reason of a flaw in the attachment or the absence of an attachment. 11 Mad. 437, *Foll.* (*Hallifax, A.J.C.*). SHANKAR RAO *v.* MANIK RAO.

68 I.C. 643=A.I.R. 1923 Nag. 18.

—Setting aside—Irregularity.

———*Consolidated decrees.*

Where two decrees against a judgment-debtor have been consolidated and sale takes place in execution of both the decrees and property is sold by one bid, in order to challenge the sale on the ground of irregularity sales in execution of both the decrees must be challenged. (*Sulaiman and Kendall, JJ.*). INDAR KOER *v.* DHARAM NARAIN.

A.I.R. 1930 All. 556.

—Setting aside—Misrepresentation.

———Where a suit was brought, to set aside an execution sale on the ground that the sale proclamation contained a misrepresentation but the

EXECUTION SALE—Setting aside—Misrepresentation.

plaint did not make any imputation of fraud against any of the defendant.

Held, Per *Walsh, J.*—(*Lindsay, J., dissenting*) that the suit was maintainable on the ground of equity, justice and good conscience. (*Walsh and Lindsay, JJ.*). GAJADHAR PRASAD *v.* MUHAMMAD ABDUL MAJID. **63 I. C. 425= 19 A. L.J. 530=A.I.R. 1921 All. 327.**

——*Mistake in sale proclamation.*

A sale in execution cannot be set aside in a suit by the auction-purchaser on the ground of a mistake in the sale proclamation as to the extent of the judgment debtor's share in the property, where it is not proved that any misrepresentation was intentionally made by or on behalf of the decree holders. (*Rafique and Ryves, JJ.*). BAIJNATH PRASAD *v.* NARENDRA BAHADUR. **61 I. C. 74=19 A. L. J 147= A. I. R. 1921 All. 223.**

—Setting aside—Partial.

——A sale in execution can be partially set aside. (*Suhrawardy and Page, JJ.*). RAMPADA NAG *v.* KANAI RAI. **98 I.C. 206=44 C.L.J. 167= A. I. R. 1926 Cal. 1219.**

—Setting aside—Stranger.

——*Decree amended after sale—Sale cannot be set aside if in favour of stranger.*

If a wrong decree is passed by the Court and the sale takes place in execution of it and a third party purchases the property that sale cannot be set aside merely on the ground that that decree is subsequently amended. A stranger having purchased the property, it is no longer a matter relating to execution of a decree exclusively between the original parties to the suit: 10 All. 166 (P.C), *Rel. on.* (*Lindsay and Sulaiman, JJ.*). AGHA HUSAIN *v.* QASIM ALI. **89 I.C. 1018=48 All. 94= 23 A.L.J. 946=6 L.R.A. Civ 580= A. I. R. 1926 All. 35**

——*Sale to stranger under decree set aside in appeal or satisfied subsequently by judgment-debtor, cannot be set aside.*

A decree is certainly dead as soon as it is satisfied as between the parties to it, but that cannot be allowed to affect the vested rights of others. If the death of a decree by its being set aside in appeal cannot be allowed to interfere with a sale under it to a purchaser who was no party to it, still less can it do so when its death is due only to its satisfaction. 10 All. 166 (P.C.), *Foll.*; A.I.R. 1922 Nag. 248, *Diss. from*; 10 All. 83 and 35 Bom. 516, *Dist.* (*Hallifax, A. J. C.*). RAMCHANDRA *v.* LAKSHMAN. **92 I.C. 803= 9 N. L.J. 3=A.I.R. 1926 Nag. 298.**

——A person who is a stranger to the suit is justified in believing that the Court had authority to attach and sell the property sold by it in execution: 25 Bom. 337, *Foll.* (*Kanhaiya Lal, J.*). MUKAT SINGH *v.* MISRA PARAS RAM. **79 I.C. 106=A.I.R. 1924 All. 726.**

—Stranger purchaser.

——*Auction-sales.*

Auction-sales specially when the purchasers at such sales are strangers and particularly rent sales, which are of constant occurrence, should not be lightly held inoperative, inasmuch as anything which impairs the security of purchasers at such sales tends to lower the prices of properties set up for sale. (*Ross and Fazl Ali, JJ.*). BALDEO DAS *v.* NILMANI NATH. **113 I.C. 681=8 Pat. 122= 9 P.L.T. 627=A.I.R. 1928 Pat. 615.**

EXECUTION SALE—Validity of.

——*Reversioners of judgment-debtor cannot get the sale declared invalid for want of necessity.*

Where an alienee, who is an outsider, finds that the alienor's debt is a decretal debt, he need not make any further inquiry and the reversioners will not be allowed to go behind the decree. The rule is however, not applicable where it is clear that the alienee's suspicions should have been aroused by the surrounding circumstances or where it is proved that he actually had knowledge of the bad faith of the decretal transaction: 21 P.L.R. 1912, *Foll.* (*Chevis and Campbell, JJ.*). RANA SINGH *v.* RULLIA. **63 I.C. 99=3 Lah. 139= 92 P.L.R. 1922=A.I.R. 1922 Lah. 299.**

——*Sale cannot be impugned so long as decree remains valid.*

A *bona fide* auction-purchaser need look only to the decree and order of sale of the executing Court and is not bound to enquire further into the title and, so long as the decree remains valid, the proceedings taken under that decree, so far as they affect third parties in the same position as *bona fide* auction-purchasers, cannot be impugned: 29 Bom. 435 (F.B.) and 10 All. 166; 15 I.A. 12 (P.C), *Foll.* (*Le Rossignol and Campbell, JJ.*). INDAR SINGH *v.* PRABHU LAL. **66 I. C. 4= 3 Lah. 88=A.I.R. 1922 Lah. 277.**

——A *bona fide* purchaser who is not the decree-holder, or any person claiming through him, at an auction-sale in execution of a valid decree acquires a valid title to the property purchased by him and is not affected by the subsequent reversal or modification of the decree: 14 C. 18; 10 A. 166; 26 C. 734; 87 C. 107. *Foll.* (*Broadway and Martineau, JJ.*). TARA CHAND *v.* ABDUL AHAD. **67 I.C. 894 (Lah.).**

—Validity of.

——Want of attachment is a mere irregularity and does not, by itself, vitiate the execution sale. Consequently an execution sale held without attachment is not *per se* void but only can be set aside on proof of injury. (*Bhide, J.*). MAHOMED AKBAR KHAN *v.* AMAR NATH. **122 I.C. 102=12 L. L.J. 71.**

——The fact that the property was not attached before the execution sale would amount merely to an irregularity and would not make the sale void. (*Addison, J.*). MAHOMED ABDULLA *v.* JAMIAT RAI. **121 I.C. 369.**

——Relief on the ground of mistake can be given in the case of sales held through the intervention of Court. (*B B Ghose and N.K. Bose, JJ.*). WAZIR ALI *v.* NASIMANNESSA BIBI. **116 I.C. 634= A.I.R. 1928 Cal. 865.**

——The death of a judgment-debtor after attachment of the property and before sale does not necessarily invalidate the sale. Such a sale is good unless appropriate steps are taken to have it set aside. (*Suhrawardy and Graham, JJ.*). HARA PRASAD *v.* GOPALCHANDRA. **100 I.C. 997= 45 C.L.J. 73=31 C.W.N. 299= A.I.R 1927 Cal. 315.**

——*Sale after death of guardian* ad litem *is not a nullity.*

A sale held in execution of a decree after the death of the guardian *ad litem* of a minor judgment-debtor without appointing a fresh guardian is not a nullity: A.I.R. 1924 Mad. 130, *Rel. on*; 23 Cal. 686, *Foll.* (*Macnair, A.J.C.*). BALDEO PRASAD *v.* KUSAM SINGH. **101 I. C. 238=23 N.L.R 146= 10 N.L.J. 27=A. I. R. 1927 Nag. 198.**

——A sale in execution is good even though at the time the sale was held the application for exe-

EXECUTION SALE—Validity of.

ecution was barred. (*Mullick and Scroop, JJ.*). LACHUMAN PANDEY *v.* DWAHI SAHU.

101 I.C. 694=8 P.L.T. 494=A.I.R. 1927 Pat. 261.

———*Stay ordered—Sale held in ignorance of the order is without jurisdiction.*

A sale held in ignorance of the order for stay passed by an appellate Court is without jurisdiction and must be set aside. An order to stay passed by an appellate Court is an order to a Subordinate Court to stay its hand and in that sense it bears no analogy to an injunction which is an order to a party to refrain from doing a certain act. The former takes effect from the time of its pronouncement and its communication is only needed to make it known to the Court which is directed to carry it out. Its force is not suspended till it is formally communicated to the Court concerned. An injunction is however binding on the party to whom it is issued from the time it is communicated for there can be no attempt unless the party concerned knows what he is required to do or to abstain from doing and a Court cannot punish a man for doing what he did not know he was forbidden to do. (*Kanhaiya Lal and Boys, JJ.*). SAHU NAND KISHORE *v.* SHADI RAM. **96 I C. 137=A I.R. 1926 All. 457.**

———*Mere mis-description.*

A mere mis-desoription would not necessarily invalidate the sale but would amount to a mere irregularity if the parties concerned knew what had been attached and had been actually sold. (*Findlay, Offg.J.C.*). TIKARAM *v.* NARAYAN.

92 I.C. 44=A.I.R. 1926 Nag. 246.

———*Persons not parties to a decree—Court having no jurisdiction to sell property—Sale is void* ab initio.

Though mere irregularities of procedure in obtaining the decree or in execution thereof do not afford a sufficient ground for setting aside sales in execution, yet where the Court has no jurisdiction to sell the property in suit the sale is void *ab initio*. Persons who are not parties to a decree are not bound by it and ordinarily, therefore, a sale in execution of a decree does not operate to pass the property against any person who is not bound by the decree. (8 O.L J. 191, *Foll.*). A Court has no jurisdiction to sell the property of persons who are not parties to the proceedings or properly represented on the record. As against such persons the decrees or sales would be a nullity and might be disregarded without any proceedings being taken to set them aside : 32 Cal. 396, *Ref. to.* (*Raza, J.*). NAROTAM DAS *v.* MAHOMMAD RAZA.

96 I.C. 14=A.I.R. 1926 Oudh 522.

———*Sale beyond decree.*

Where property in excess of that ordered to be sold by a decree was auctioned.

Held, that the sale of the excess portion was absolutely illegal. (*Sulaiman and Daniels, JJ.*). GANGA DEVI *v.* RAM PRASAD. **88 I.C. 393=23 A.L.J. 558=6 L.R. A. Civ. 464=A.I.R. 1925 All. 551.**

———*Execution-sale is unauthorised if prior to it, the Court has ordered the property to be released, though the sale may be held before the Court's order is known to the Sale Amin.*

The sale of property in execution depends on the existence of the order of the Court directing it to be attached and sold. As soon as this order ceases to exist, no sale can take place and if any is held it is unauthorized and of no effect. 12 All. 96, *Fell.* (*Kotval, A.J.C.*). JITMAL *v.* ZUMBARLAL.

84 I.C. 471=20 N.L.R. 168=A.I.R. 1925 Nag. 60.

EXECUTION SALE—Validity of.

———*Decree against Hindu widow.*

When the question is as to the binding character of a sale in execution of a decree against a Hindu widow, it is the duty of the Court to go behind the decree and examine the form of the suit or possibly even the terms of the document on which the claim for the decree was based. (*Kendall and Pullan, A.J.Cs.*). MT. RAJ KUNWARI *v.* MT. RANI MAHARAJ KUNWARI.

82 I.C. 832=A.I.R. 1925 Oudh 243.

———*Sale of property not saleable under special law, is void.*

It is the duty of the execution Court to see whether it has jurisdiction to sell a certain property and therefore where a sale is prohibited by law, *e.g.*, in this case by the Bundlekhand Land Alienation Act (II of 1903), the execution Court cannot proceed with the sale even though there is a decree for its sale. In such a case no question of estoppel against the defendant really arises. If, therefore, a sale did take place under such a decree it was a mere nullity and could in no sense pass title to the purchasers. 18 A.L.J. 59, *Foll.* (*Sulaiman, J.*). SATDHAR *v.* RAM CHANDRA. **79 I.C. 532=46 All. 153=21 A.L.J. 917=4 L.R.A. Civ. 607=A.I.R. 1924 All. 261.**

———*Sale of site in a village.*

The site under the house of a non-proprietor in a village ordinarily belongs to the proprietors and its sale without the consent of the proprietary body is void and not voidable. (*Scott-Smith, J.*). AZIM KHAN *v.* KARIM. **71 I.C. 822=A.I.R. 1924 Lah. 396.**

———*Representative not on record.*

A sale does not necessarily become a nullity, in consequence of a judgment-debtor being dead and his legal representatives not being on record, when it takes place: 26 M.L.J. 267, *Diss.*; 18 L.W. 577; 43 M. 313 ; 1 L.W. 969; 11 L.W. 59; 16 L.W. 934; 16 L.W. 178 ; 46 Cal. 971 and 61 I.C. 823, *Foll.*; 43 Bom. 235 and 27 Cal. 528, *Diss.*; 42 M. 732 and 10 L.W. 410, *Dist.* (*Spencer and Devadoss, JJ.*). PARAMSIVA THEVAR *v.* PULUK RUPPA THEVAR.

77 I.C. 631=18 M.L.W. 780=1924 M.W.N. 27=33 M L.T. 137=47 Mad. 525=A.I.R. 1924 Mad. 137=45 M.L.J. 829.

———*Sale without notice under O. 21, R. 22 may be nullity but without notice to legal representative of J—D dying just before actual sale is not a nullity—(Case-law discussed.)*

If any order is passed by an executing Court against a party without notice being given to him of the application which gave rise to the proceedings the party behind whose back such proceedings are taken, will not be bound by the order. Further, if process is issued without the notice, which O. 21, R. 22 prescribes in cases where the judgment-debtor is dead or the decree is more than one year old, the want of notice might constitute a material irregularity entitling a person whose interests have been affected to apply either under O. 21, R. 90 or by suit to have any sale of property that has been held upon the decree-holder's application set aside. But if the decree-holder has done all that the law requires him to do and if the judgment-debtor or one of the several judgment-debtors, where there are more than one, happens to die during the course of the execution of the sale warrants or it may be while the auctioneer is actually holding the auction, the sale is not invalidated by the accident of the owner's death before the sale is completed: 22 M. 119 ; 26 M. L. J. 267 and 41 M.L.J. 547; 6 Mad. 180 ; 15 M. 399, *Dist.*

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A decree once passed does not become barred or incapable of being executed by reason of the death of a judgment-debtor, nor do execution proceedings abate owing to the failure of the decree-holder to bring the legal representatives of a judgment-debtor on the record. O. 21. R. 22 is the only provision which deals with legal representatives of parties to decrees and that only applies to the commencement of execution proceedings. The legal representatives of judgment-debtors who die during the course of processes of Court being executed are able to watch public sales without being personally served with notice. When the law only prescribes the issue of notice to them at the commencement of execution proceedings, they cannot claim as a matter of right to have fresh notice, if their representation of the deceased's estate commences during the progress of the carrying out of the processes of the Court, nor are they justified in treating such processes as invalid for want of jurisdiction on the part of the Court and its officers. A.I.R. 1922 Mad. 307, *Diss.* and 25 Bom. 337 (P.C.), *Foll.* (*Spencer and Krishnan, JJ.*). DORAISWAMI *v.* CHIDAMBARAM PILLAI. **75 I.C 46=47 Mad. 63=18 M.L.W. 577=1923 M.W N. 817=33 M.L.T. 25=A.I.R. 1924 Mad. 130=45 M.L.J. 413.**

———*Irregularity in attachment does not nullify sale.*

When sale has been duly held, without material irregularity or fraud, it cannot be considered a nullity merely by reason of flaw in the attachment or even the entire absence of an attachment. Similarly an attachment which was duly made in all except some minor detail of which the judgment-debtor had no knowledge at all, must be considered a valid attachment for all purposes. Even if the order of attachment was not subsequently posted in the Collector's office, that will not in any way invalidate or affect the attachment. (*Hallifax, A.J.C.*). JODHAN *v.* KAPIL NATH.
69 I.C. 563=A.I.R. 1923 Nag. 78.

———*Failure to attach.*

The failure to attach the property before sale does not render the sale null and void. It may amount to material irregularity but is not sufficient unless substantial injury is caused thereby, to vitiate the sale. A Court has jurisdiction to sell without attachment under S. 51 of the Civil Procedure Code. (*Dawson-Miller, C.J. and Mullick, J.*). WAZIR NARAIN SINGH *v.* BHIKARI RAM.
68 I. C. 363=3 P L.T. 765=1922 P.H.C.C. 321=2 Pat. 207=A.I.R. 1923 Pat. 45

———*Sale day fixed by District Judge—Temporary injunction by Subordinate Judge—Refusal by District Judge to stay sale—Sale is invalid and High Court will restore* status quo ante.

Where the District Judge fixed a certain date for the sale of the property alleged to belong to the judgment-debtor, and the claimant of the property instituted in the Court of the Subordinate Judge a suit for declaring the property to be his own in which he obtained an *ad interim* injunction restraining the decree-holder from selling the property but the District Judge refused to stay the sale,

Held, although the District Judge was not personally bound by the order of injunction, yet in the exercise of his inherent powers he should have directed that the sale should not take place, the decree-holder having been restrained by injunction from proceeding with the sale. The District Judge should not have assisted a party to commit a contempt of the Court once the injunction is granted

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the High Court is bound to see that the order of the Court is carried out (*Dawson-Miller, C. J. and Mullick, J.*). MAHARAJ BAHADUR SINGH *v.* A. H. FORBES. **70 I.C. 394=1922 P.H C.C. 225=3 P. L. T. 645=1 Pat. 662=A.I.R. 1922 Pat. 382.**

———*Final decree in the absence of deceased mortgagor—Jurisdiction of person to sell property of person not on record—Sale is a nullity.*

In a mortgage suit against a major defendant and a minor defendant represented by the major defendant, the major defendant died before the final decree and his legal representatives were not brought on the record nor a fresh guardian appointed to represent the minor. The plaintiff applied for and obtained a decree absolute and brought the property to sale. The minor, on attaining majority, brought the present suit for a declaration that the decree absolute and the proceedings were void,

Held, that as the defendant was not properly represented on the record, the present plaintiff was entitled to the declaration he sought.

A Court has no jurisdiction to sell the property of persons who are not parties to proceedings before it, or properly represented on the record. As to such persons a decree or sale purporting to be made under it would be a nullity and might be disregarded without any proceedings to set it aside. (*N. R. Chatterjee and Panton, JJ.*). RUHINI NANDAN GHOSE *v.* RAJENDRA NATH GHOSE.
61 I.C. 291 (Cal.).

—What passes under.

———*Moveable property wrongly sold—True owner can recover from purchaser.*

In a sale of moveable property under a decree of Court all that is sold is the right, title and interest of the judgment-debtor; and the real owner, if not the judgment-debtor can bring a suit to recover the moveable property or its value from the auction-purchaser in the same manner as he would be entitled to recover from the judgment-debtor: 9 W. R. 118, *Foll.* (*Brown, J.*). MAUNG PA *v.* ABDUL GANI. **97 I.C. 1029=4 Rang. 202=A.I.R. 1926 Rang. 214.**

———*Mortgage-decree—Sale-purchaser acquires interests of both mortgagor and mortgagee—Alienee of property, subsequent to mortgage sued on not made a party to suit—Decree does not bind him—Purchaser cannot get* khas *possession as against such alienee but he can sue for sale of the property.*

At a sale in execution of a mortgage-decree, the interests of both the mortgagor and the mortgagee pass to purchasers: 22 Bom. 945, *Rel. on.*

Persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor to which they have not been made parties: 18 Cal. 164 (P.C.), *Rel. on.* The subsequent transferee has to be afforded an opportunity to redeem. He is not, however, entitled to anything more by reason of the fact that he had not been impleaded. This omission can neither improve his possession nor the reverse: 26 All. 464, *Rel. on.*

The purchaser at a mortgage sale has no right to sue for *khas* possession of the property as against a transferee of the equity of redemption who was not a party to the suit on the mortgage but his only remedy is to bring a suit against such transferee for sale: 6 Cal. 317, *Foll.* (*Rutledge, C.J. and Maung Ba, J.*). MA KIN KYAW *v.* R. C. DAY.
97 I. C. 243=4 Rang. 96=A.I.R. 1926 Rang. 183.

EXECUTION SALE—What passes under.

———*Sale.*

The expression "all moneys due from tenants in respect of arrears of rent" where proprietary rights are purchased in execution includes also any rent decree obtained against the tenants prior to the sale. 25 C.W.N. 863, *Foll. (Suhrawardy and Cuming, JJ.).* JATINDRA NARAIN BHADURI *v.* CHANDRA NATH PRAMANIK.

87 I.C. 742=A.I.R. 1925 Cal. 1247.

———*Subject to equities.*

A purchaser at a sale in execution of a decree purchases the property subject to all the equities of the judgment-debtor and he cannot take up the position of a *bona fide* purchaser for value without notice. (*Newbould and Ghose, JJ.*). J. C. GALSTAUN *v.* SONATAN PAL. **78 I.C. 668= A.I.R. 1925 Cal. 485.**

———*Subject to all equities.*

The purchaser at an auction sale in execution of a decree of a Civil Court purchases the property subject to all the equities affecting the judgment-debtor. (*Jwala Prasad and Kulwant Sahay, JJ.*). NAGENDRA NATH *v.* SAMBHU NATH.

88 I.C. 219=3 Pat. 947=6 P.L.T. 769= A. I. R. 1925 Pat. 106.

———*Mortgage-decree.*

The interest of a purchaser at a sale held in execution of a mortgage decree is certainly more than merely the interest of the judgment-debtor. (*Ayling and Venkatasubba Rao, JJ.*). SUNDARAM IYAR *v.* THIYAGARAJA PILLAI. **99 I. C. 831= A. I. R. 1923 Mad. 160=50 M. L. J. 183.**

———For determining what passes to a purchaser in an execution sale the test is what the Court intends to sell and what the purchaser understands that he bought. The question of what the Court could, or should, have sold does not arise : 10 Mad. 241 (P. C.); 27 Mad. 131, *Foll.* (*Baker, Offg. J. C.*). SAKHARAM *v.* GITABAI.

75 I. C. 823=A. I. R. 1923 Nag. 333.

———*Mortgage-decree—Lease by mortgagor not binding.*

Where a lease is granted by the mortgagor after the date of the mortgage, it is not binding on any person who may acquire any rights in the properties in enforcement of the mortgage. An auction-purchaser in execution of a mortgage decree gets the right, title and interest of the mortgagor as on the date of the mortgage and any lease subsequent to the date of mortgage is not binding on him. (*Kanhaiya Lal, J. C.*). MT. BIBI SAIDUNNESSA *v.* FAIYAZ HASAN. **69 I. C. 97=9 O. L. J. 31= A. I. R. 1923 Oudh 1.**

———*Mortgagee—Auction-purchaser.*

There is no difference between a person who purchases, by private treaty and a person who acquires by a sale under a mortgage decree property from the mortgagor. The mortgagee, auction-purchaser stands in no better position against a stranger than the mortgagor himself. (*Dawson Miller, C. J. and Jwala Prasad, J.*). BASANTA KUMARI DASI *v.* BALMAKUND MARWARI. **72 I.C. 912= 1923 P. H. C. C. 1=2 Pat. 277=1 P. L. R. 338= A.I.R. 1923 Pat. 371.**

———*D. Register and* Khatian *not reconcilable—Sale certificate should be looked into.*

Where the D. Register could not be reconciled with the *Khatian* and *Khewat* and where the words "Pach Gunda Minjumle das gunda Pokhta" were used in execution proceedings.

Held, that the only guide to the solution of the doubt as to what actually passed under the sale, is to look into the inventory of the properties attached to the application for execution, the sale certificate and the writ for delivery of possession. (*Coutts and Adami, JJ.*). RASIK BEHARI PRASAD CHAUDHARI *v.* HIRDENARAIN CHOUDHURI.

A.I.R. 1923 Pat. 30.

EXECUTOR —Accounts.

———The general rule applicable to sales in execution of decrees is that no man can transfer to another a better title than he himself possesses. (*Dawson-Miller, C.J. and Coutts, J.*). KALI DAYAL *v.* UMESH PRASAD. **65 I.C. 266= 1922 P. H. C. C. 33=1 Pat. 174= 3 P.L.T. 506=A. I. R. 1922 Pat. 63.**

——— Where a *waqf* is created of the value of certain immovable property but before anything is done, the property is sold in execution of a decree against the trustee, the purchaser gets a good title to the property. (*Mears, C.J. and Banerji, JJ.*). MUHAMMAD ISMAIL *v.* MUHAMMAD ISHAQ.

62 I.C. 904=43 All. 508=19 A.L.J. 452= A.I.R. 1921 All. 224.

———*Decree for rent by Revenue Court—Sale in execution—Defendant subsequently held in another proceeding entitled to hold rent-free—Sale passes no title.*

There is a very great distinction between sales in execution of Civil Court decrees and sales by the revenue Courts for arrears of assessment. If it were found that as a matter of fact the defendant in the revenue proceedings was entitled to hold his lands free of assessment, any sale which took place on the footing that he was bound to pay assessment would be invalid and that the purchaser in such a sale would not acquire a good title even against the judgment-debtor except by adverse possession : 25 Cal 833, *Foll.*; 29 Bom. 435, *Dist.* (*Macleod, C.J. and Heaton, J.*). MAHADAN NARAYAN *v.* SADASHIV KESHAV. **59 I.C.118= 45 Bom. 45=A.I.R. 1921 Bom. 257.**

—Miscellaneous.

———*Successive purchasers—Priority.*

An auction-purchaser who during the pendency of a maintenance suit by a Hindu widow of an item of property over which a charge was claimed in the plaint and was granted by the decree purchased in execution of a simple money decree binding on the joint family is not entitled to priority over another auction-purchaser of such property in proceedings taken to execute the maintenance decree. (*Wallace and Ananthakrishna Ayyar, JJ.*). SEETHARAMANUJA CHARYULU *v.* VENKATASUBBAMMA. **1930 M.W.N. 625=32 L.W. 416= A.I.R. 1930 Mad. 824=59 M.L.J. 485.**

———*Stranger—Property of, sold in execution and put in the possession of decree-holder.*

Where in execution of a decree the property of a person unconnected with the suit is brought to sale and he is ousted and possession given to the auction-purchaser such person is entitled to be replaced in the position in which he was when ousted. The mere fact that the auction-purchaser's remedy has, in the meantime, become barred by time makes no difference. (*Tudball and Sulaiman, JJ.*). RAM CHARAN SAHU *v.* GOGA.

60 I.C. 120 (All.).

EXECUTOR.

See also (1) ADMINISTRATOR.
(2) PROB. & ADMN. ACT.

—Accounts.

———*Suit for—No relief sought against one executor—Other executors not taking objection cannot raise objection at later stage.*

In a suit for accounts against executors the plaintiff did not seek any relief against one of them

EXECUTOR—Accounts.

on the ground that the executor had taken no part in the management, though he made him a party. The other executors too did not raise the objection in the written statement or at the time of the framing of the issues or during argument that he was a necessary party to any order to account that might be passed. An order for rendering accounts was made against the others.

Held, that although *prima facie* all the surviving executors should be made parties to a suit for accounts and the order for accounts ought *prima facie* to be made against them all yet in the circumstance of the case the other executor could not be allowed at a late stage to insist on the executor omitted being joined in the order. (*Rankin, C. J. and B. B. Ghose, J.*). KANTI CHANDRA TARAFDAR *v.* RADHA RAMAN SARKAR.

34 C.W.N. 275=A.I.R. 1930 Cal. 461.

———*Option to implead representatives of executors who have died.*

In a suit for accounts against executors of a will it is optional on the part of the plaintiff to implead the representatives of the executors who have died. (*Rankin, C.J. and B. B. Ghose, J.*). KANTI CHANDRA TARAFDAR *v.* RADHA RAMAN SARKAR.

34 C.W.N. 275=A.I.R. 1930 Cal. 461.

—Assets.

———*What is.*

Property acquired with assets, that come into the hands of the executor at the time of the death of the testator, is as much assets of the testator as that which was in his possession at the time of his death. *Abbott* v. *Parfitt*, 6 Q. B. 346, *Ref.* (*Jack and Mitter, JJ.*). RAJENDRA NARAYAN BASU *v.* DEBENDRA NATH MUKHOPADHYA.

123 I.C. 241=50 C.L.J. 70=A.I.R. 1930 Cal. 55.

—De son tort.

———The mere taking away of a portion of the property of a deceased man does not make the person who takes away a portion of the property while there is a legal representative present, an executor *de son tort*. (*Sanderson, C. J. and Chakravarti, J.*). SATYA RANJAN *v.* SARAT CHANDRA.

96 I.C. 695=30 C.W.N. 565=A.I.R. 1926 Cal. 825.

———Where a person has been permitted by the executor to obtain possession of part of the assets of the testator he will not be executor *de son tort* to the original testator or of the executor, even if he retained those assets after the executor's death when there is no personal representative of either. (*Odgers, J.*). GOPALA CHETTY *v.* NARAYANASWAMI CHETTY. **95 I.C. 33=23 M.L.W 528=A.I.R. 1926 Mad. 681.**

———*Necessary party.*

An executor by implication having taken upon himself the duties of an executor in connection with the estate of the deceased continues liable to be sued in the character of executor, and is a proper and necessary party to any proceedings in which the estate of the deceased is sought to be affected. If he is not made a party, the estate is not bound by any decree passed in that suit (*Scott-Smith and Fforde, JJ.*). KESAR SINGH *v.* INDER SINGH.

76 I.C. 172=6 L.L.J. 454=A.I.R. 1924 Lah. 543.

—Discharge.

———*Becomes* functus officio *on complete administration.*

Quaere—When an express power of sale is given to an executor to be exercised by him when he thought it necessary, does it cease to operate when the executor on a complete administration of the

EXECUTOR—Powers.

estate ceased to be an executor. (*Mulla, J.*). DE SOUZA *v.* K. R. DAPHTARY. **87 I.C. 230=26 Bom. L.R. 610=A.I.R. 1924 Bom. 252.**

—Exhibition of bad temper—No disqualification.

———A mere exhibition of bad temper and levelling foolish charges against the man whom the testator had appointed ought not to be allowed to prevent the nominee from becoming the executor in the ordinary way. (*Rankin, C. J. and C. C. Ghose, J.*). BAIDYANATH SEIN *v.* RAJENDRANATH SEIN.

52 C.L.J. 66.

—Powers.

———When an executor deals with a property of the estate, it must be presumed that he was acting in that capacity, notwithstanding that this fact does not appear on the face of the document. The person advancing money under the document need not enquire as to its application. *In re Ven & Furze's Contract*, (1894) 2 Ch. 101 and *Colyor* v. *Finch*, (1854) 5 H.L.C. 905, *Appl.* (*Venkatasubba Rao, J.*). NARAYANASWAMI *v.* RAMASWAMI.

109 I. C. 47=28 M. L W. 372=A. I. R. 1928 Mad. 817=54 M L J. 677.

———*Will giving power to borrow—They can hypothecate if necessary.*

Where by the will the executors were given powers to borrow for the purpose of management and cultivation of the property,

Held, that it was the testator's intention that they should, if they found it necessary or expedient, be entitled to hypothecate the property in order to raise money for those purposes as if they were absolute owners. (*Dawson Miller, C.J. and Mallick, J.*). E. M. TOOMEY *v.* BHUPENDRA NATH. **111 I. C. 57=7 Pat. 520=A.I.R. 1928 Pat. 304.**

———*Executor holds property with right of testator—Property vests in residuary legatee only after administration is complete.*

An executor as such is the owner of the properties of the testator and holds these properties in the right of the testator and not in the right of the beneficiaries. The result is that in all the cases coming within the Hindu Wills Act or the Probate Act the executor or the administrator as such is the legal representative of the deceased and statutory owner of property except such as would otherwise have passed by survivorship to some other person. The residuary legatee does not become proprietor until after the administration has been completed and his interest thus ascertained. This interest is subject to the payment of debts and legacies and the discharge of other trusts contained in the will. No doubt he is beneficially interested in the estate subject to these payments and the discharge of these trusts; but he is not proprietor except when a residue has been ascertained, which on completion of administration is made over to him by the executor. Halsbury's "Laws of England", Vol. 14, p. 217, *Ref.* (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH.

83 I.C. 812=3 Pat. 880=5 P.L.T. 513=A.I.R. 1924 Pat. 721.

———*Promissory note—Note does not bind estate except in case of necessity.*

It appears to be settled law that, upon a contract of borrowing made by an executor after the death of the testator, the executor is only liable personally, and cannot be sued as an executor so as to get execution against the assets of the testator. 7 Ch. 128, *Foll.*; 24 Cal. 77, *Dist.*

EXECUTOR — Renunciation whether can be retracted.

An exception to the above rule is recognised in case there is a necessity to borrow money for the purpose of the estate. (*Daniels, A.J.C.*). B. ANANT RAM *v.* NATIONAL BANK OF UPPER INDIA, LTD.
66 I. C. 116=9 O. L.J. 94= A.I.R. 1922 Oudh 20.

—Renunciation whether can be retracted.

——An executor is not necessarily concluded by a renunciation once declared and he can retract his renunciation at any time before a grant of administration has passed the seal. (*Mukerji and Guha, JJ.*). NIGENDRA CHANDRA SEN *v.* MOHENDRA-HARI NAG. **34 C.W.N. 939.**

—Right to be indemnified.

——*Executor purchasing testator's putni with testator's assets in execution of money decree—Rent falling in arrears—Zamindar bringing suit for rent—Zamindar is entitled to rent and if executor is discharged, testator's property is liable for it.*

A putni was sold in execution of money decree against a putnidar testator. The executor appointed by the testator putnidar under the will, purchased it with assets that came into his hands on the death of the testator. The proprietor of the zamindari under which the putni in question was held brought a suit for recovery of arrears of rent due to default in payment of the same for years 1328 and 1329 B.S. The proprietors had already purchased the putni at a sale held under Regn. 8 of 1819, for arrears of rent for 1330 B.S. So he could not execute the rent decree by sale of putni and was therefore compelled to execute it against the assets. During the period for which the rent was claimed the estate was under the management of executorship but the executor was discharged before the institution of the suit. It was contended that the heirs of the testator were not liable for rent as the rent for which the suit was instituted accrued due during the period when the estate was under the management of the executor and as the putni was already sold the executor was personally liable. It was not shown that the putni did not bring any income during the period when it was in possession of executor,

Held, (i) that the executor was entitled to be indemnified out of the testator's estate against the liabilities which he had properly incurred and (ii) that the proprietor with whom the executor had contracted to pay rent stood in the shoe of executor and would have the same indemnity as the executor had against the testator's estate and could realise his dues out of the assets of the testator. *Raybold* v. *Turner*, 1 Ch. 199 and *Dowse* v. *Gorton*, (1891) A.C. 190, *Ref.* (*Jack and Mitter, JJ.*). RAJENDRA NARAYAN BASU *v.* DEBENDRA NATH MUKHOPADHYA. **123 I.C. 241=60 C.L.J. 70= A. I. R. 1930 Cal. 56.**

—Title.

——*Probate does not create title but from death title vests in executor.*

Every executor derives his title from the will and not from the probate. The probate is indeed the only proper evidence of the executor's appointment but notwithstanding this it is clear that the executor represents the estate of the testator from the time of his death. 14 C.W.N. 256, *Diss.* (*Lindsay and Sulaiman, JJ.*). MEGHRAJ *v.* KRISHNA CHANDRA BHATTACHARJI. **78 I.C. 243= 46 All. 286=22 A.L.J. 193= 5 L.R.A. Civ. 193=A.I.R. 1924 All 365.**

EXECUTRIX.

See **EXECUTOR.**

EXPLOSIVES ACT (1884), S. 7—Rules under—R. 35 (1914)—Onus.

EX PARTE.

See (1) CIV. PRO. CODE, S. 9, R. 13.
(2) JUDICIAL PROCEEDINGS.

EX PARTE CASES.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE DECREE.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE JUDGMENT.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE ORDER ABSOLUTE.

See CIV. PRO. CODE, O. 34.

EX PARTE PROCEEDINGS.

See CIV. PRO. CODE, O. 9.

EXPECTANCY.

See T. P. ACT, S. 6.

EXPENSES OF WITNESSES.

See CIV. PRO. CODE.

EXPERT.

See EVIDENCE ACT, SS. 45, 50.

EXPERT EVIDENCE.

See EVIDENCE ACT, S. 45.

EXPERT OPINION.

See EVIDENCE ACT, S. 45.

EXPLOSIVES ACT (4 of 1884).

—S. 5—Rules under—R. 138—Liability.

——*Servant of licensed master manufacturing gunpowder in master's house without latter's knowledge or consent—Master is liable for servant's act.*

The accused held a license under the Indian Explosives Act to manufacture gunpowder. One of the conditions of the license was that the explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose and separated from any dwelling house. The accused constructed a building outside the village, which complied with this condition, and employed a woman who used to work exclusively in this building. One day the woman with her assistant went with ingredients for manufacturing gunpowder to the house of the accused in the village, and performed part of the process of manufacture there with pestles having iron rings without the knowledge of their master and while he was engaged elsewhere. During the process of manufacture there was explosion and the woman was killed and her assistant was injured,

Held, (Per *Fawcett and Crump, JJ.* contra *Shah, J.*)—that the act of the woman, though unauthorized, was one within the scope of her employment and the accused, her master, would be liable for her wrongful act. (*Case law Discussed.*) (*Crump, J. On difference between Shah, and Fawcett, JJ.*). EMPEROR *v.* MAHADEVAPPA HANMANTAPPA.
100 I. C. 972=51 Bom. 352=29 Bom. L.R. 163= 28 Cr. L. J. 364=7 A.I. Cr. R. 489= A. I. R. 1927 Bom. 209.

—S. 7—Rules under—R. 35 (1914)—Onus.

——Where a person is accused of having taken delivery of consignments described as "fire works" in contravention of R. 35, the burden of proving that these were explosives such as are covered by the Explosives Rules is upon the prosecution and the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that these were explosives such as are within

EXPLOSIVES ACT (1884), S. 7—Rules under—Rr. 35 and 47.

the purview of these rules. (*Beasley, C. J. and Pandalai, J.*). POLAKI CHIDAMBARAM *v.* EMPEROR. **1930 Cr. C. 762=3 M. Cr. C. 59=1930 M.W.N. 73=A.I.R. 1930 Mad. 678.**

—Rules under—Rr. 35 and 47.

———*Toy fireworks—Onus.*

Held that the Rules under the Explosives Act do not apply to the manufacture, possession, etc., toy fireworks, and that no offence was committed by reason of such acts.

Held also that the burden of proving that certain articles were explosives is clearly on the prosecution and that the mere fact that the accused took possession of and signed for a consignment which was described as fireworks does not amount to an admission by him that they were explosives such as are within the purview of the rules. (*Beasley, C. J. and Krishna Pandalai, J.*). CHIDAMBARAM *v.* EMPEROR.

1930 M. W. N. 73.

EXPLOSIVE SUBSTANCES ACT (6 of 1908).

—S. 3—"Maliciously."

———*Word used in legal sense.*

"Malice" in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense it means a wrongful act done intentionally without just cause or excuse. It is in the legal sense that the word "maliciously" is used in S. 3. *Bromage* v. *Prosser*, 4 B. and C. 247, *Rel. on.* (*Fforde and Addison, JJ.*). BHAGAT SINGH *v.* EMPEROR.

121 I. C. 726=31 P.L.R. 73=31 Cr. L. J. 290=A. I. R. 1930 Lah. 266.

—Ss. 4 and 7—Consent.

———*Committal consent not obtained—Proceedings not void.*

The failure to obtain necessary consent of Government as required by S. 7 does not invalidate the commitment proceedings conducted by a Magistrate for an offence under S. 4 and exclusively triable by the Sessions Court as the committal proceedings are only an "inquiry" as defined in Cl. (*k*) of S. 4 of the Criminal P. C. (*Fawcett and Madgavkar, JJ.*) EMPEROR *v.* KALLAPPA DUNDAPPA.

99 I. C. 37=50 Bom. 695=28 Bom. L.R. 1290=28 Cr. L. J. 5=7 A. I. Cr. R. 161=A. I. R. 1927 Bom. 21.

—S. 4—Maliciously.

———*A person not knowing existence of explosives cannot be said to possess it maliciously.*

Not only does the term "possession" imply knowledge, but the expression "maliciously" as used in S. 4, connotes intention. But neither knowledge, nor intention as to the use to be made of an object, can be imputed to a person who is not conscious of its existence. (*Shadi Lal, C.J. and Agha Haidar J.*). DULA SINGH *v.* EMPEROR.

109 I.C. 209=9 Lah. 531=10 A.I. Cr. R. 235=29 Cr. L.J. 481=10 L.L J. 408=29 P.L.R. 629=A.I.R. 1928 Lah. 272.

—S. 4—Possession.

———*Presumption of, with head of the family—When arises.*

Where the portion of a house in which an article is found is not in the exclusive possession of any one member of the joint family, but is used by, or accessible to, all the members of the family there is no presumption that the article is in the possession or control of any person other than the housemaster or the head of the family. But it is open to the prosecution to prove that the possession was with some other member of the family, and that member would then be liable to account for it: 15 All. 129, *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). DULA SINGH *v.* EMPEROR. **109 I.C. 209=10 A.I. Cr. R. 235=29 Cr. L J. 481=9 Lah. 531=10 L L J. 408=29 P.L.R. 629=A.I.R. 1928 Lah. 272.**

EXTRADITION ACT (1903)—Foreign state.

—S. 5—Offence under.

———*Temporarily residing in the house is no offence.*

Per *Suhrawardy, J.*—Temporary residence in a house containing explosive articles, even with the knowledge of their existence there, is not possession within the meaning of S. 5, Explosives Act. Conspiracy to possess connotes some act of possession or attempted possession. (*Buckland, Suhrawardy and Cammiade, JJ.*). HARI NARAYAN CHANDRA *v.* EMPEROR. **106 I.C. 545=46 C.L.J. 368= 29 Cr. L.J. 49=9 A I. Cr. R. 228=A. I. R. 1928 Cal. 27.**

EXPRESS MALICE.

See (1) MALICIOUS PROSECUTION.
(2) TORT.

EXPRESS TRUST.

See (1) TRUST.
(2) TRUSTS ACT.

EX-PROPRIETARY HOLDING.

See (1) LANDLORD AND TENANT.
(2) OCCUPANCY HOLDING.

EX-PROPRIETARY TENANCY.

See AGRA TENANCY ACT.

EX-PROPRIETOR.

See AGRA TENANCY ACT.

EXPUNGING FROM RECORD.

See (1) CIV. PRO. CODE, S. 151.
(2) PRACTICE.

EXTENSION OF TIME.

See CIV. PRO CODE, Ss. 148, 151 AND O. 34.

EXTINGUISHMENT OF CHARGES.

See (1) B. T. ACT, Ss. 159-163.
(2) T. P. ACT, S. 101.

EXTINGUISHMENT OF RIGHT.

See (1) LIMITATION ACT, S. 28.
(2) MERGER.
(3) T. P. ACT, S. 101.

EXTORTION.

See PENAL CODE, Ss. 383-389.

EXTRADITION ACT (15 of 1903).

—Construction.

———Extradition Act and Criminal Procedure Code both being penal enactments their terms must be strictly construed in favour of accused persons wherever such construction can be reasonably justified. (*Mirza and Baker, JJ.*). BAI AISHA, *In re.*

117 I.C. 321=53 Bom. 149=31 Bom. L.R. 62=30 Cr. L.J. 772=A.I.R. 1929 Bom. 81.

—Foreign state.

———*Pondicherry—Treaties between Great Britain and France,* 1815 *and* 1876—*Surrender of British Indian subject for theft committed in Pondicherry—Summary order for surrender—Validity—Indian Extradition Act, Chap. II—Applicability.*

The East Indian possessions of France are not a "Foreign State" and Chap. II of the Indian Extradition Act of 1903 do not apply to those possessions. Extradition in such cases is governed by the treaty of 1815 between Great Britain and France. Article (ix) of the treaty of 1815 remains unaffected by Art. (xvi) of the treaty of 1876 and a British Indian subject may on requisition by the Governor of Pondicherry for instance be surrendered for the offence of theft committed therein without any preliminary procedure being adopted. The treaty of 1815 having provided that the surrender

EXTRADITION ACT (1903)—Foreign state.

should be on demand, a more elaborate procedure cannot be superimposed by the unilateral act of one of the high contracting parties. Nor is it open to a Municipal Court to say that the accused should be surrendered with a certain amount of procedure: 47 C. 37, *Foll.*; 48 C. 328, *Expl.* (*Wallace and Jackson, JJ.*). MUTHU REDDI *v.* EMPEROR.
1930 M.W.N. 381.

———*Chandernagore is a Foreign State.*

Chandernagore is a Foreign State as defined by the Extradition Act, 1903. (*Buckland, J.*). CELESTE COULLINGTON, *In re.* **63 I C. 819=48 Cal 328=22 Cr. L. J. 691=A.I.R. 1921 Cal. 273.**

—S. 7—Revision.

———*Order of District or Chief Presidency Magistrate executing warrant under S. 7 can be revised.*

Execution by the District Magistrate (or the Chief Presidency Magistrate) in British India of a warrant under S. 7 of Extradition Act is not an executive act. The Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and the order of the Magistrate is subject to the revisional powers of the High Court. The order can also be interfered with under S. 561-A. On proper proceedings being taken High Court can also interfere under S. 491: 42 Cal. 793, *held too widely stated*; 7 Bom. L.R. 463; 41 Cal. 400 and A.I.R. 1922 Pat. 442, *Rel. on.* (*Mirza and Baker, JJ.*). BAI AISHA, *In re.*
117 I.C. 321=53 Bom. 149=31 Bom. L.R. 62=30 Cr. L.J. 772= A.I.R. 1929 Bom. 81.

—S. 7—Warrant.

———*Magistrate need not enquire as to its legality.*

Section 7 lays down that the Magistrate to whom the warrant is addressed shall act in pursuance thereof and does not require him to take evidence; hence it is no part of his duty to ascertain whether the warrant issued under S. 7 was a legal warrant; 3 P. R. (Cr.) 1909, *Rel. on.* (*Martineau, J.*). HANS RAJ *v.* CROWN. **93 I C. 275=7 Lah. 159=27 P.L.R. 319=27 Cr.L.J. 755=A.I.R. 1926 Lah. 411.**

———A warrant of extradition signed by the Assistant British Envoy of Nepal Court is not valid where the officer is not empowered as a Political Agent within S. 7. (*Adami and Bucknill, JJ.*). SADHAK GIR *v.* EMPEROR. **81 I. C. 175=23 Cr.L. J. 687=A. I. R. 1926 Pat. 112.**

———*Absconding from jail in Nepal State—Extradition warrant sent by British Envoy at Nepal to District Magistrate in British India is without jurisdiction and cannot be acted upon by Magistrate—High Court can interfere with order of Magistrate.*

Absconding from jail is not one of the offences mentioned in first Schedule. Therefore S. 7 has no application at all to a warrant issued by the British Envoy at the Court of Nepal for the arrest of a person who has absconded from a jail in Nepal and has come into Br. India. Such a warrant is without jurisdiction. Section 10 of the Act could only apply, if the warrant is wholly illegal and without jurisdiction. Therefore the arrest is without any authority.

Section 15 of the Act empowers the Government of India and the Local Government to stay any proceedings taken under Chapter III of the Act and to direct any warrant to be cancelled and the person arrested to be discharged. But that does not necessarily oust the jurisdiction of High Court to interfere in a case where the action under the Act has not been taken under a valid warrant. This section ousts the jurisdiction of High Court to inquire into the propriety of the warrant but leaves

EXTRADITION ACT (1903), S. 18—Extradition.

open the question of High Court's power to interfere with a Magistrate's action, if it was proved that such action was consequent upon a warrant issued by a Political Agent which was plainly illegal. The procedure for requisitioning the surrender of any person accused of having committed any offence not necessarily an extradition crime is laid down in S. 9 of the Act but the requisition of such a case has to be made "to the Government of India or to any Local Government". Where no such requisition is made the warrant addressed to the Dt. Magistrate cannot possibly be supported under S. 9. (41 C. 400; 18 C. W. N. 869; 14 Cr. L. J. 673). If the treaty between British and Nepal Governments prohibits extradition for offences not specified therein, such prohibition overrides the provisions of the schedule by virtue of S. 18, but there is no such prohibition in the Treaty and therefore S. 9 does not in any way derogate from the provision of the Treaty. The Act practically enhances the power of the Nepal Government to requisition the authorities in the British territories to arrest and deliver fugitive offenders of their territory: 39 C. 164; 7 Bom. L. R. 463, *Foll.* (*Jwala Prasad and Ross, JJ.*). JAIPAL BHAGAT *v.* EMPEROR. **66 I.C.517=1 Pat. 57=3 P.L.T. 786=23 Cr. L.J. 293=A.I.R. 1922 Pat. 442.**

—S. 8—Bail.

———On an arrest of a person in Berar by or at the instance of Nizam's police once the warrant from the Nizam's state authority has been received the Magistrate has no power to admit to bail even under the Extradition Act except under Ss. 8 and 8 (*a*) and therefore unless the Nizam's authority directs bail to be taken, the Magistrate can only do so if he reports the case to the Local Government: 43 Bom. 310 at 320, *Ref.* (*Baker, Offg. J. C.*). DADDIPRASAD *v.* DISTRICT MAGISTRATE, YEOTMAL. **77 I.C. 234=25 Cr. L. J. 346=A.I.R. 1924 Nag. 313.**

—S. 10—Bail.

———Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Criminal P. C. whom he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 57 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (g). But even in such a case under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, JJ.*). SHRIRAM SHAMBHUDAYAL, *In re.*
87 I.C. 100=26 Cr. L J. 948=26 Bom. L.R. 984=A.I.R. 1925 Bom. 104.

—S. 18—Extradition.

———*Scope of.*

There is no derogation of the rights of the parties to the treaty by allowing one Government with the consent of the other to obtain extradition of a criminal who has committed an offence not mentioned in the treaty. A Government or a State is entitled if it so wishes, to hand over persons subject to the law of another State at the request of that State. In such a case there is no derogation to the Sovereign rights of either power. All that S. 18 provides is that the Act shall not work against the will of either party so as unduly to impose any liability on such party. It does not prevent their co-operation in a friendly action according to the comity of nations. (*Kennedy, J. C. and Raymond, A.J.C.*). JAMNA *v.* EMPEROR. **91 I.C. 69=20 S.L.R. 126=27 Cr.L.J. 37=A.I.R. 1926 Sind 126.**

EXTRADITION ACT (1903), S. 23—Bail.

—S. 23—Bail.

———*Power to grant.*

Magistrate has power to grant bail to an accused who has been arrested in pursuance of S. 54 (7) of the Cr. P.C., whom he has been asked to retain in custody, by the Dt. Magistrate of a Native State.

Per *Fawcett, J.*—As S. 54 (7) does not apply to arrests in Bombay, when the accused is arrested without warrant in Bombay, he must be deemed to have been arrested under S. 33 (*g*). But even in such a case, under S. 23 of the Extradition Act, the Magistrate has power to grant bail. (*Marten and Fawcett, JJ.*). SHRIRAM SHAMBHUDAYAL, *In re*, **87 I.C. 100=26 Bom. L R. 984=26 Cr. L.J. 948=A.I.R. 1925 Bom. 104.**

EXTRADITION TREATY (1867).

—Surrender of accused.

———*Surrender of accused is to be made on requisition being sent through Commissioner of Berar.*

When an accused person is arrested in Berar by or at the instance of Nizam's Police he is kept by the Berar Police till a requisition is received by the District Magistrate for his surrender. This requisition is sent by the Nizam's authority the Talukdar to the District Magistrate through the Commissioner of Berar, together with the evidence of criminality. The District Magistrate on receiving the requisition from the Commissioner surrenders the accused person. On no account may he comply with a requisition made direct to him by the Nizam's authorities. No time limit is laid down and there is no necessity of a warrant from the Political Agent. (*Baker, Offg. J.C.*). DADDI PRASAD *v.* DISTRICT MAGISTRATE, YEOTMAL.
77 I.C. 234=25 Cr.L.J. 346=A.I.R. 1924 Nag. 313.

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURT.

See RESPECTIVE HIGH COURT RULES.

EXTRA TERRITORIALITY.

See JURISDICTION.

EXTRA TERRITORIAL JURISDICTION.

See (1) CR. P. CODE, S. 188.
(2) PENAL CODE, SS. 2, 3 AND 4.

EXTRINSIC EVIDENCE.

See EVIDENCE ACT, S. 92, ETC.

FABRICATED DOCUMENT.

See PENAL CODE.

FABRICATING FALSE EVIDENCE.

See PENAL CODE, SS. 193 AND 114.

FACT, FINDING OF.

See CIV. PRO. CODE, S. 100.

FACTOR.

See CONTRACT ACT, SS. 171 AND 182.

FACTORIES ACT (12 of 1911).

—Construction.

———*Position both of employee and employers should be looked to.*

Factory Acts should be properly enforced for the protection of workmen but on the other hand one must also bear in mind that the employer's position has to be considered too. It may be that without any negligence on their part defects will exist in their factories but if they are to be proceeded against in a Criminal Court for alleged negligence, then it would seem only fair that the matter should be clearly brought home to them. (*Marten and Fawcett, JJ.*). NARAYAN ANANT *v.* EMPEROR. **85 I.C. 226=26 Bom.L.R. 1245=26 Cr.L.J. 482=A.I.R. 1925 Bom. 143.**

FACTORIES ACT (1911), S. 2—Occupier.

—S. 2—"Employed."

———Persons employed merely for selling the manufactured articles do not come within the definition of "employed," even though they happen to occupy a room at the factory for the sake of convenience. (*Addison and Skemp, JJ.*). PRAG NARAIN *v.* CROWN. **109 I.C. 599=8 Lah. 666=29 P.L.R. 234=29 Cr. L.J 583=A.I.R. 1928 Lah. 78.**

—S. 2—Interruption.

———Interruption must be taken in connexion with each individual employed and not confined to the general cessation of work and it is more reasonable to interpret the section as meaning actual work and not merely residence in the factory for a certain number of hours. (*Dalal, J.*). KAMLAPAT *v.* EMPEROR. **11 L.R.A. Cr. 42=1930 A.L.J. 459=A. I. R. 1930 All. 214.**

—S. 2—Factory.

———*Gurhal Ghar is a factory.*

A Gurhal Ghar is a factory within the meaning of S. 2 (3) (*a*), Factories Act, even though the engine shed is a separate building and less than twenty persons are employed therein but over twenty persons are employed in the Gurhal Ghar inclusive of those employed on the crushers and those employed in the boiling shed, and these latter must be said to be employed both "on the premises and within the precincts of the Gurhal Ghar." A.I.R. 1927 Mad. 345, *Rel. on.* (*Mirza and Broomfield, JJ.*). GANPAT DATTU *v.* EMPEROR. **32 Bom. L.R. 329=A. I. R. 1930 Bom. 162.**

———Mechanical power used only in aid of manufacturing process—Persons simultaneously employed in premises exceeding twenty—It is a factory. (*Mirza and Broomfield, JJ.*). GANPAT DATTU *v.* EMPEROR. **32 Bom. L. R. 329=A.I.R. 1930 Bom. 162.**

———Railway workshops are factories within the meaning of the Act. (*Johnstone, J.*). INDAR SINGH *v.* SECY. OF STATE. **119 I. C. 722=A.I.R. 1929 Lah. 573.**

———*Meaning of.*

By a factory is meant premises where anything is done towards the making or finishing of an article up to the stage when it is ready to be sold or is in a suitable condition to be put on the market. (*Addison and Skemp, JJ.*). PRAG NARAIN *v.* CROWN. **109 I.C. 599=8 Lah. 666=29 P.L.R. 234=29 Cr. L.J. 583=A. I. R. 1928 Lah. 78.**

———*Premises or precincts within which mechanical power is used for manufacture are factory.*

A factory includes everything, mechine rooms, sheds, godowns, yards. If within these premises or precincts mechanical power is used in aid of any process for altering for transport or sale of any article, than these premises or precincts are a factory.

The drying yard used for drying ground-nuts, where machinery for decorticating the ground-nuts was working was held to be a part of factory although there was no connexion with machinery or any work incidental to the manufacturing process: 101 L. T. 571, *Dist.* (*Jackson, J.*). V. RAMANATHAM *v.* KING EMPEROR. **100 I.C. 235=50 Mad. 834=25 M.L.W. 176=38 M.L.T. 78=28 Cr. L. J. 267=7 A. I. Cr. R. 448=A.I.R. 1927 Mad. 345=52 M. L.J. 207.**

—S. 2—Occupier.

———The definition of 'occupier' in the Factories Act is not an exhaustive definition and there is

FACTORIES ACT (1911), S. 18—Procedure.

nothing in it which in any way limits the normal meaning of the word 'occupier' as indicating a person who is in actual possession and control of a factory. (*Fawcett and Madgavkar, JJ.*). GAMADIA *v.* EMPEROR. **91 I.C. 949=50 Bom. 34=27 Bom. L. R. 1405=27 Cr. L. J. 165=A.I.R. 1926 Bom. 57.**

—S. 18—Procedure.

——*' Service of notice.'*

The numerous provisions in the Procedure Code for service of notices or orders are intended to make it certain that a particular process or an order of the Court is brought to the specific notice of the individual affected A mere knowledge that proceedings may be instituted or something of that sort is not sufficient to take the place of the imperative directions in the Code as to service on the actual individual. The words in S. 18 (2) "serve on the manager an order in writing" mean that such an order as is referred to in Form O should be served definitely on the manager of the factory: and that it should specify exactly what measures the manager is to take in order to remove the danger. But a mere note of a visit is not such an order as is contemplated therein. (*Marten and Fawcett, JJ.*). NARAYAN ANANT *v.* EMPEROR. **85 I.C. 226=26 Bom. L. R. 1245=26 Cr. L. J. 482=A. I. R. 1925 Bom. 143.**

—S. 20—Partition.

——The provisions of S. 20 are not fulfilled if there is a door made in a partition between the two portions of the room and that door is shown to be open at a particular time, or even although it is shut, yet it is not locked or other effective means taken to prevent its being opened by a woman or child wishing to get into the press room. (*Fawcett and Madgavkar, JJ.*). GAMADIA *v.* EMPEROR. **91 I. C. 949=50 Bom. 34=27 Bom. L. R. 1405=27 Cr. L. J. 166=A. I. R. 1926 Bom. 57.**

—S. 23—Children.

——Even in the case of a child of fourteen there is need for a certificate under S. 23, Cl. (a). (*Mirza and Patkar, JJ.*). EMPEROR *v.* GOKULDAS HARIDAS. **117 I.C. 447=31 Bom. L. R. 544=30 Cr. L. J. 793=A.I.R. 1929 Bom. 272.**

——Where children were employed for purposes of sorting ground-nuts in a yard close to a room where machinery for decortication of ground-nuts was used,

Held, that the children were employed in a factory. (*Jackson, J.*). V. RAMANATHAM *v.* KING EMPEROR. **100 I. C. 235=50 Mad. 834=25 M.L.W. 176=38 M.L.T. 78=28 Cr. L.J. 267=7 A.I. Cr. R. 448=A.I.R. 1927 Mad. 345=52 M.L.J. 207.**

—S. 24—Employment of women.

——*General prohibition—Legality.*

All that the law authorises the Inspector to do in the case of a ginning factory is to express his opinion and not to issue orders. The Inspector has no right to issue a general prohibition against the employment of women at night without going into the question whether the staff is sufficient. (*Rafique and Stuart, JJ.*). COCALAS *v.* EMPEROR. **61 I.C. 225=19 A.L.J. 503=22 Cr.L.J. 369=A. I. R. 1921 All. 229.**

—S. 26—Offence under.

——Where men work during a time which is admittedly outside the time fixed for employment of each person employed in the factory, the owner of the factory is guilty under S. 26. (*Dalal, J.*). KAMLAPAT *v.* EMPEROR. **11 L.R.A.Cr. 42=1930 A.L.J. 459=A.I.R. 1930 All. 214.**

FACTORIES ACT (1911), S. 42—Scope.

—S. 27—Employment of women.

——Ginning factory—Employment of women at night—Inspector's opinion not obtained—Employment is technically an offence—Smallest fine should be imposed. (*Rafique and Stuart, JJ.*). COCALAS *v.* EMPEROR. **61 I.C. 225=19 A. L. J. 503=22 Cr.L.J. 369=A.I.R. 1921 All. 229.**

—S. 28—Working system.

——*Cancellation of approval—Appeal—Prosecution pending appeal—Desirability of.*

Where an Inspector of Factories approves a system of working a particular factory, he has power under S. 21 of General Clauses Act to cancel the approval. If an appeal is pending from the order of cancellation it is not desirable to institute a criminal prosecution in respect of the factory having been worked in contravention during the pendency of the appeal. (*Abdul Raoof, J.*). MADAN MOHAN LAL *v.* EMPEROR. **59 I.C. 857=22 Cr. L. J. 153 (Lah.).**

—S. 34—Liability.

——*Liability of manager and occupier.*

The duty to inform the authority under the Factories Act under S. 34 is laid on the manager. It is therefore primarily the manager who is to be supposed to have contravened this provision of the Act, but both the occupier and manager are made responsible jointly and severally for this contravention under S. 41-J. (*Tek Chand, J.*). WAZIR CHAND *v.* EMPEROR. **A.I.R. 1930 Lah. 658.**

—S. 34—' Person.'

——The word " person " includes the plural and consequently where as a result of a single accident more persons than one are injured the accident cannot be split up into as many persons injured and notice contemplated is single notice of the accident which the manager is required to submit to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of casualties. (*Tek Chand, J.*). WAZIR CHAND *v.* EMPEROR. **A. I. R. 1930 Lah. 668.**

—S. 41—Fine.

——*Amount.*

As S. 41 is a penal section, it ought to be construed strictly. The occupier and manager both or either of them can be required to pay a fine which may extend to Rs. 200, but between the two they cannot be required to pay any sum exceeding Rs. 200 for each offence. (*Shah and Crump, JJ.*). VRIJBALLUBDAS JEKISONDAS *v.* EMPEROR. **45 Bom. 220=A.I.R. 1921 Bom. 322.**

—S. 41—Liability.

——If more than one person is unlawfully employed the manager and agent are liable for as many offences as there are persons so employed. (*Shah and Crump, JJ.*). VRIJBALLUBDAS JEKISONDAS *v.* EMPEROR. **45 Bom. 220=A.I.R. 1921 Bom. 322.**

—S. 42—Scope.

——The structure of S. 42, Factories Act, indicates that one proceeding is split up into two proceedings and while the manager or occupier is accused of having committed an offence under the Act, he is also a complainant on his complaint against the other person or persons he has brought in. In the proceeding in which the manager or the occupier is the complainant he is liable to be cross-examined by the other person or persons who has or have been brought before the Court on his complaint. This must mean that the manager or occupier *qua* complainant must give evidence

FACTORIES ACT (1911)—S. 42—Scope.

himself. There is no substance in the objection that the manager or occupier who initially is charged with an offence against the Act cannot go into the witness-box and give evidence himself, because he goes into the witness-box not as an accused in the case originally started against him, but in his own right as a complainant on his complaint against the other person or persons whom he has brought in. It is not a material irregularity to dispose of the two matters by one judgment or to record the evidence in the two matters together. (*C. C. Ghose and Gregory, JJ.*). SUPT. & REMEMBRANCER OF LEGAL AFFAIRS *v.* MURRAY. **117 I.C. 673= 30 Cr. L.J. 818=56 Cal. 400= 32 C. W. N. 922= A.I.R. 1928 Cal. 537.**

FACTUM VALET.

See HINDU LAW—(1) ADOPTION.
(2) MARRIAGE.

FAIR COMMENT.

See PENAL CODE, Ss. 499 AND 500.
TORT—DEFAMATION.

FAKIR.

See MAHOMEDAN LAW.

FALSE ALLEGATION.

See PENAL CODE, S. 193.

——Charge.

See PENAL CODE, Ss. 182, 211.

——Complaint.

See (1) CRIM. PRO. CODE,
(2) CRIMINAL TRIAL.
(3) PENAL CODE.

——Document.

See PENAL CODE, Ss. 464, 467.

——Entry.

See PENAL CODE, S. 477.

——Evidence.

See PENAL CODE, Ss. 191—200.

——Information.

See PENAL CODE, Ss. 182—211.

——Measure.

See PENAL CODE, S. 267.

——Personation.

See PENAL CODE, Ss. 205, 416, 419.

——Receipt.

See PENAL CODE, Ss. 463 AND 471.

——Statement.

See PENAL CODE, Ss. 191—200.

——Weight.

See PENAL CODE, S. 267.

FALSE IMPRISONMENT.

See TORT.

FAMILY ARRANGEMENT.

Arbitration.
By Limited owner.
Consideration.
Construction of.
Effect.
Essentials and Test.
Marriage Settlements.
Parties.
Setting aside.
What are family arrangements.
Writing stamp and registration.
Miscellaneous.

—Arbitration.

——*Award in favour of person not party to reference—Binding nature of.*

The co-heirs of a Mahomedan referred the division of the properties to arbitration. One of the co-heirs requested that some of the properties falling to his share must be awarded to his minor son who was not a party to the submission and the properties were likewise awarded to him:

FAMILY ARRANGEMENT—Consideration.

Held, that a family arrangement was the result and that the benefit of the award could be claimed by the minor though he himself was no party to the submission to the arbitration, and that the minor acquired title to the properties. (*Devadoss, J.*). DADA SAHIB *v.* GAJRAJ SINGH.

85 I.C. 258=20 M.L.W. 854= A.I.R. 1925 Mad. 204=47 M.L.J. 928.

——*Award—Enforceability as family arrangement.*

Where one party to the award led another to believe to his prejudice that he is going to abide by the award he is estopped from contesting it. The fact that he signed the award does not however by itself render it more binding on him: 6 C. P. L. R. 95, *Foll.* It has always been the policy of Courts of equity to uphold family settlements, even when they are not in legal form: 43 All. 1 and 42 Cal. 801. *Foll.* (*Baker, Offg. J. C.*). CHOWDHURI MANOHARLAL *v.* MT. AMANO.

77 I.C. 41=A.I.R. 1924 Nag. 14.

——*Award and family arrangement—Validity—Principles underlying.*

The principles under which the validity of an arbitration should be judged are more rigid than those which apply when a family agreement is under consideration. There is ample authority indicating that in some instances in which, although as an arbitration proceeding the result of an award cannot be supported, it is still capable of support on the ground, that the award represented what is in effect the outcome of a family compromise. Even assuming that much greater latitude may be extended to the support of a family arrangement than is the case in maintaining an award under an arbitration, nevertheless, where a reversionary interest is in fact affected by a family arrangement, such a compromise cannot be supported. Much more so when the reversionary interest is that of a minor. *Case-law discussed.* (*Bucknill and Ross, JJ.*). RAM BAHADUR SEN v. MAHANTH GANESH BHAGAT. **73 I.C. 542=2 Pat. 554= 5 P.L.T. 255= A. I. R. 1924 Pat. 49.**

—By limited owner.

——The circumstance that a party to a settlement was a limited owner at the time would not make it any the less binding if the other requisites of validity of the settlement are present. (*Mukerji and Bose, JJ.*). KHANTA MOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE.

118 I.C. 566=48 C.L.J. 489= A.I.R. 1929 Cal. 149.

——Hindu Law—Limited owner making family arrangement—Reversioner obtaining possession of portion of estate—Reversioner is estopped from claiming as such afterwards. (*Lindsay, J. C.*). JAGESHAR *v.* BHUSHAN. **24 O. C. 5= A.I.R. 1921 Oudh 134.**

—Consideration.

——Converting an expectancy into certainty and avoiding chance of litigation in future is good consideration for family arrangement. (*Mukerji and Bennet, JJ.*). POKHAR SINGH *v.* MT. DULARI KUNWAR. **A. I. R. 1930 All. 687.**

——A family arrangement may be executed to avoid future disputes even if they have not already arisen. (*Ashworth, J.*). RAMESHWAR RAI *v.* SHEOPAL RAI. **117 I.C. 822 (All.)**

——*Claims adjudged and disputes settled is sufficient consideration for upholding the family settlement.*

FAMILY ARRANGEMENT—Consideration.

——It is a wrong principle of law to test the validity of the agreement by having recourse to the expedient of finding out whether the claims of the parties to the agreement were good. The true test is whether the parties had laid any claim against each other and whether those claims had been settled by virtue of the agreement termed the "family settlement." If a settlement was arrived at, the strength or validity of the claims of the parties has nothing to do with the validity of the family settlement. The fact that the claims of the parties had been adjudged and that the disputes between them had been settled would amount to a sufficient consideration for the upholding of the family settlement: A. I. R. 1927 Oudh 572, *Appr.* and *Foll.* (*Misra and Nanavutty, JJ.*). SITAL SINGH *v.* GAJINDRA BAHADUR SINGH.
116 I.C. 59=4 Luck. 57=5 O.W.N. 1022=
A. I. R. 1929 Oudh 373.

——*Active contest is not necessary.*

Although at the time when a family settlement is made there was no active contest, still the mere fact that at that time the parties agreed among themselves that they would not dispute each other's claims in respect of certain property is sufficient to establish the fact that a valid and binding family settlement took place between them: A.I.R. 1927 Oudh 572, *Expl.* (*Wazir Hasan, Ag. C.J. and Pullan, J.*). BALBHADDAR SINGH *v.* SHAMSHER SINGH.
115 I.C. 197=6 O.W.N. 109=
A. I. R. 1929 Oudh 305.

——*Avoiding possible or anticipated dispute is sufficient consideration.*

In order to have a valid family settlement it is not necessary that there must be a dispute in existence at the time when such settlement is arrived at. It may be that the members of the family may anticipate disputes likely to arise thereafter and if in order to prevent the arising of such disputes and to secure peace and happiness in the family they arrive at a settlement among themselves, the settlement arrived at must be deemed to be valid: 22 O.C. 300, *Foll.* (*Misra and Srivastava, JJ.*). AMEER HASAN *v.* MD. EJAZ HUSAIN.
117 I.C. 456=6 O.W.N. 51=
A. I. R. 1929 Oudh 134.

——The family arrangement or settlement is ordinarily resorted to in the interests of the whole family when recourse to it is essential to protect the family property from the extravagance of a particular member of the family, or to make a suitable provision for a female member of the family: 6 All. 560 (P.C.), *Ref.* (*Kolhatkar, A.J.C.*). MAHADEO *v.* GANESHRAM.
113 I.C. 373=
A. I. R. 1928 Nag. 308.

——*Pending litigation or prospects thereof are not necessary.*

It is not necessary that there should be a pending litigation or a prospective litigation in order that an arrangement may be considered a good family arrangement. The principle underlying the family arrangement extends not merely to cases in which arrangements are made between members of a family for the preservation of its peace, but to cases in which arrangements are made between them for the preservation of its property: *Williams* v. *Williams*, (1867) 2 Ch. A. 294, *Foll.* (*Devadoss, J.*). SADASIVAM PILLAI *v.* SHANMUGAM PILLAI.
98 I.C. 268=25 M.L.W. 119=
A.I.R. 1927 Mad. 126.

——Bona fide *claim.*

If there is a *bona fide* claim by a member of the family to the property in dispute, although it might turn out in the end that there was no substance in it, an arrangement come to by all the members of the family to settle that claim is a valid arrangement and will be binding upon all the parties concerned: A.I.R. 1921 Pat. 260; A.I.R. 1924 Pat. 736 and 33 All. 356 (P. C.), *Foll.* (*Ross and Kulwant Sahay, JJ*). GAJADHAR PRASAD *v.* LACHUMAN LAL SAHU.
103 I.C. 354=
8 P.L.T. 759=A.I.R. 1927 Pat. 339.

FAMILY ARRANGEMENT—Construction of.

——A family arrangement requires some consideration and under the guise of a family arrangement a party cannot enter into a transaction which he is not under the law competent to do and which may be beyond his disposing power.

Where a Hindu widow gave away part of her husband's estate to the presumptive reversioner,

Held, that in the circumstances the gift could not be supported as a family arrangement. (*Suhrawardy and Cuming, JJ.*). INDRA NARAIN MANNA *v.* SARBASOVA DASI.
87 I.C. 930=41 C.L.J. 341=
A.I.R. 1925 Cal. 743.

——*Compromise of disputed claims.*

Wherever doubts and disputes have arisen with regard to the rights of the different members of the same family, and fair compromises have been entered into to preserve the harmony and affection, or to save the honour of the family, those compromises will be sustained by the Court, although, perhaps, resting upon grounds which would not have been considered satisfactory if the transaction had occurred between strangers. But it must be established that the right compromised could at least have formed the subject-matter of a claim though a doubtful claim. (*Das and Adami, JJ.*). BHAGWATI KOER *v* JAGDAM SAHAY.
62 I.C. 933=2 P.L.T. 471=6 P.L.J. 604=
A.I.R. 1921 Pat. 260.

—Construction of.

——*Deed must be construed as a whole.*

Deeds of family settlement are of a nature peculiarly their own and the rule of interpretation which would be applicable to pure deeds of transfer cannot be permitted to be applied in the case of such deeds. The deed of family settlement must be read as a whole and the intention of the parties must be gathered from the various provisions contained therein and such intention should be respected. (*Stuart, C.J. and Gokaran Nath Misra, J.*). AHMAD AZIM *v.* SHAFI JAN.
97 I.C. 897=
2 Luck. 335=3 O.W.N. Sup. 102=
A.I.R. 1926 Oudh 561.

——In the case of family settlements, conditions may be inserted therein, which would not be valid in the case of ordinary deeds, under the ordinary law, but such conditions in the deed would be valid and enforceable, when forming a part of such family settlement: (*Case law cited.*)

Under a family settlement a talukdar granted some villages to his brothers in lieu of maintenance and in the deed of settlement it was stated that the villages given to each of the brothers were to be given to them in perpetuity for ever, generation after generation with proprietary powers. The words used in the vernacular being "*waste dawam wa hamesha ka naslan bad naslan batnan wa batnan bad batnan ba akhtilar malikana*". It was further laid down that if no male issue was born to a Guzaradar then the female issue would be allowed maintenance, and the widow of Guzaradar was to remain in possession of the entire property, without power of alienation during her lifetime, and after her death the property was to be divided among the surviving brothers.

FAMILY ARRANGEMENT—Effect.

Held, that the words "*naslan bad naslan*" and "*batnan bad batnan*" indicated an idea not to make a guzara resumable after the death of the particular grantee but to make it heritable and heritable only by the lineal male descendants, and such male lineal descendants would be covered by the expressions "*naslan*" (progeny) and "*batnan*" (womb).

The estate conferred upon each of the brothers was an estate in its inception of an absolute character, but heritable only by the male lineal descendants of the grantee and by his widow for her lifetime in case there was no such descendant, and descendible to his surviving brothers after the death of the widow. (*Stuart, C.J. and Gokaran Nath Misra, J.*). AHMAD AZIM *v.* SHAFI JAN.

97 I.C. 897=2 Luck. 335=3 O.W.N. Sup. 102= A.I.R. 1926 Oudh 561.

—Effect.

———Malabar Law—Karar by the manager assented to by other members—Karar is binding on the manager and comes to end on his death: 5 L. W. 511 and 32 M. L. J. 323, *Foll.* (*Wallace, J.*). ACHIPRE *v.* ACHIPRE. **105 I.C. 101= 1927 M.W.N. 553=A.I.R. 1927 Mad. 887.**

———The essence of a family arrangement lies in an adjustment of conflicting claim *bona fide* made and recognized on both sides with the laudable object of putting an end to a controversy. If it were permissible to raise and to obtain a trial of the issue as to title in a subsequent litigation and obtain a finding thereon and then to determine in favour of the validity of the arrangement if it falls in line with the finding no compromises will hold good in the end: A.I.R. 1927 Oudh 97, *Foll.* (*Stuart, C.J. and Wazir Hasan, J.*). MAHABIR *v.* DWARIKA. **103 I. C. 757=4 O W. N. 663= A.I.R. 1927 Oudh 572.**

———Compromise in settlement of claim of doubtful nature is binding on parties. (*Sulaiman and Boys, JJ.*). MOTI SHAH *v.* GHANDHARP SINGH. **96 I. C. 595=48 All. 637=24 A.L.J. 873= A. I. R. 1926 All. 715.**

———Settlement of doubtful rights is binding on all parties—*Spes successionis* cannot be dealt with—Contingent right may be dealt with by turning it into vested right by means of surrender: 42 Mad. 523, *Foll.* (*Stapleton* v. *Stapleton*, 21 L. J. Ch. 434). (*Phillips and Ramesam, JJ.*). RAMA AIYAR *v.* NARAYANASAMI AIYAR. **96 I.C. 483=23 M.L.W. 496=1926 M.W.N. 958= A.I.R 1926 Mad. 609=51 M.L.J. 313.**

———A family arrangement is binding as much on the parties thereto as on their sons and descendants. (*Lindsay and Kanhaiya Lal, JJ.*). BUDH SAGAR *v.* BISHUN SAHAI. **86 I.C. 554= 47 All. 327=23 A.L.J 141= A.I R. 1925 All. 366.**

———A settlement of controversy between two persons may amount to a transfer from one to the other. But where the compromise is based on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is, there is no such transfer: 3 Agra H.C. Rep. 82; L.R.I.A. 157 (P.C.) and 33 All. 356 (P.C.), *Foll.*

Where settlement creates no title by transfer in favour of any one of the parties to it, but the interest which the persons obtain under the terms of the settlement is in virtue of the recognition of the antecedent claim of each by the other or others, and where one of the parties has founded his claim on his right to succeed by inheritance under an alleged rule of custom, his land is "inherited" within the meaning of Oudh Civil Digest, para. 179 (a). (*Wazir Hasan and Simpson, A.J.Cs.*). AMEER MIRZA BEG *v.* UDIT PERSHAD. **90 I.C. 779=2 O.W.N. 816= A I.R. 1925 Oudh 709.**

FAMILY ARRANGEMENT—Essentials and test.

———Where the several conditions of the deed of settlement constitute elements of consideration moving from one party towards another and thereby resulting in the entire settlement, and where the compromise intends to, and does as a matter of fact, settle the disputes amongst the several members of the family, it must be held that every one of the parties to the compromise is bound to fulfil the obligations which he undertakes to do in regard to any other party to the same settlement. They are not only bound to do so, but that they cannot be permitted to do otherwise: 40 All. 487 (P.C.), *Ref.* (*Wazir Hasan, A.J.C.*). AMIR ALI *v.* IQBAL ALI. **61 I.C. 312=24 O.C. 22= 8 O.L.J. 287=A.I.R. 1921 Oudh 112.**

—Essentials and test.

———For a family arrangement to be good it is not necessary that there should be a family dispute which has to be settled or composed. A family arrangement to be good need not necessarily be a "Compromise of doubtful rights." *Williams* v. *Williams*, (1867) 2 Ch. 294, *Foll.* (*Mukerji and Bennet, JJ.*). POKHAR SINGH *v.* MT. DULARI KUNWAR. **125 I.C. 1=1930 A.L.J. 688= A.I.R. 1930 All. 687.**

———*Existence of dispute* in praesenti *is not necessary but doubtful claim is essential.*

The existence of a doubtful claim is essential for a family settlement but the existence of a dispute or controversy *in praesenti* is not, and a family settlement may be supported on the ground of maintaining peace and goodwill amongst the members or the family, for the preservation of the family honour or of the family property and for the avoidance of disputes and litigation in future. (*Sen and Niamatullah, JJ.*). RAGHUBIR *v.* NARAIN. **A.I.R. 1930 All 498.**

———A family arrangement entered into to avoid the occurrence of disputes in future and not of actually existing disputes is valid. (*Ashworth, J.*). RAMESHWAR RAI *v.* SHEOPAL RAI. **117 I.C. 822 All.**

———For a compromise to be binding it is necessary that the parties should have been parties to the compromise or should claim under or through such parties or should have acted on it or derived some benefit under it. Further the parties to the compromise should *bona fide* consider that there is a question to be decided between them for no compromise would be good if it ultimately turned out that there was no doubt upon the point which was made the subject of the compromise, and again it must be an honest settlement of an existing dispute which must not be manifestly *ultra vires* of the parties to settle: 2 M.I.A. 181 (P.C.); 13 M.I.A. 497 (P.C.); 7 M.I.A. 311 (P.C.); 14 M.I.A. 24 (P.C.); 20 Cal. 373 (P.C.); 26 Cal. 81 (P.C.) and 33 All. 356 (P.C.), *Ref.* (*Mukerji and Bose, J.*). KHANTAMOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE. **118 I.C. 566=48 C.L.J. 489= A.I.R. 1929 Cal. 149.**

———It is the object and purpose of a transaction which determines whether it has the character of a family arrangement or settlement. That character is not determined by the mere fact of its being consented to by the other members of the family. (*Kolhatkar, A.J.C.*). MAHADEO *v.* GANESHRAM. **113 I.C. 373=A. I. R. 1928 Nag. 308.**

FAMILY ARRANGEMENT—Essentials and test.

——Where a family arrangement had been fairly entered into without concealment or imposition on either side, with no suppression of what is true or suggestion of what is false, although the parties might have greatly misunderstood the situation and mistaken their rights, it will be upheld: 10 C.L.J. 503, *Foll.* (*Devadoss, J.*). SADASIVAM PILLAI *v.* SHANMUGAM PILLAI. **98 I.C. 268= 25 M.L.W. 119=A. I. R. 1927 Mad. 126.**

——In considering the question as to whether a deed of family arrangement is a valid deed, one has to consider the benefit to the family as a whole and not to the individual members thereof. (*Ross and Kulwant Sahay, JJ.*). GAJADHAR PRASAD *v.* LACHHUMAN LAL SAHU. **103 I C. 354= 8 P. L. T. 759=A.I.R. 1927 Pat 339.**

——The test of a family arrangement is that it constitutes the recognition of a pre-existing title and not that the parties derive any title from each other. There might be a withdrawal of any gratuitous admission, unless there is some obligation not to withdraw it and a mere consent to the entry of the name of another in the revenue papers does not create any such obligation; 1 O.L.J. 81, *Ref.* (*Raza, J.*). MT. PHULJHARI *v.* HAR PRASAD. **93 I. C. 378=1 Luck. 318=3 O. W. N. 181= 13 O.L.J. 548=A.I.R. 1926 Oudh 338.**

——A family arrangement cannot be effected by mere conduct, apart from any explicit agreement. A *bona fide* dispute is also essential. (*Wazir Hasan and Ashworth, A.J.Cs*). AMJAD KHAN *v.* ASHRAF KHAN. **87 I. C. 445=2 O.W.N. 83= 28 O.C. 265=A.I.R. 1925 Oudh 568.**

——A family arrangement to be operative, must be without fraud. It would not be supported if founded in mistake of either party to which the opposite party was accessory or if either party has been misled by the concealment of material things; for the essence of the matter is mutual communication of all relevant circumstances. (*Mookerjee and Buckland, JJ.*). SATISH CHANDRA GHOSE *v.* KALIDASI DASI. **68 I.C. 577=26 C.W.N. 177= 34 C.L.J. 529=A.I.R. 1922 Cal. 203.**

—Marriage settlement.

——*A* executed a marriage settlement in view of the marriage of his son *B* under which *B*'s wife *C* took a life-interest after *B*'s death. Subsequently *C* obtained a divorce from *B*. After *B*'s death the question arose whether *C* still took life-interest under the settlement.

Held, that *C*'s rights under the settlement were not forfeited by the dissolution of the marriage: *Flitzgerald* v. *Chapman*, (1875) 1 Ch. D. 563, *Rel. on*; 20 Bom. 718, *Dist.* (*Baker, J.*). AIMAI HORMUSJI WADIA *v.* JAMSHEDJEE JEEJEEBHOY, BART. **A.I.R. 1930 Bom. 481.**

——*Child's portion—Vesting of—Presumption.*

Unless there is anything to the contrary, the presumption in marriage settlements is that a child's portion vests at marriage in the case of a daughter and at majority in the case of a son unless there is anything to the contrary. (*Twomey, C.J. and Young, J.*). COHEN ESTHER *v.* E. I. COHEN. **49 I. C. 806=10 L.B.R. 196=13 Bur. L.T. 78.**

—Parties.

——*Minors—Binding nature of.*

Even in the case of a Mahomedan family if the family arrangement is a fair and equitable one it should not be rejected simply on the ground that the minors were not represented by a properly constituted guardian of theirs at the time when the arrangement was arrived at. If the interests of the minor children are fully safeguarded and if all the adult members of the family accept the arrangement it should be held binding on the minors: 33 All. 256 (P.C.); 3 Agra H.C.R. 82 and A.I.R. 1922 P.C. 356, *Appl.* (*Misra and Srivastava, JJ.*). AMEER HASAN *v.* MD. EJAZ HUSAIN. **117 I.C. 456= 6 O.W.N. 51=A.I.R. 1929 Oudh 134.**

FAMILY ARRANGEMENT—Setting aside.

——*All members need not join for arrangement to be valid.*

It is not necessary that in order to make a valid and binding family arrangement all the members of the family must be parties to it. If some members of the family settle their disputes by arriving at a settlement among themselves there is no reason why that settlement should not be considered to partake of the nature of family arrangement. (*Gokaran Nath Misra, J.*). TEJ BAHADUR KHAN *v.* NAKKOKHAN. **99 I. C. 472= 3 O.W.N 993=A.I.R. 1927 Oudh 97.**

——*Father can enter on behalf of minor sons.*

The father, as the natural guardian of his minor sons, is fully competent to enter into a family arrangement on their behalf and in considering whether there was sufficient consideration for the agreement the Court will not be disposed to scan with much nicety the amonnt of the consideration. *William* v. *Williams*, (1867) 2 Ch. 294, *Rel. on.* (*Ross and Kulwant Sahay, JJ.*). GAJADHAR PRASAD *v.* LACHHUMAN LAL SAHU. **103 I C. 354= 8 P.L.T. 759=A.I.R. 1927 Pat. 339.**

——A family arrangement is one arrived at by members of the same family. The mere fact that an agreement is entered into by persons who are relations of each other does not make such an agreement a family settlement so as to be binding on persons who are not even parties thereto. (*Mears, C.J. and Sulaiman, J.*). MITTER SAIN *v.* DATA RAM. **90 I.C. 1000=24 A.L.J. 185= A.I.R. 1926 All. 194.**

——*Parties must belong to same family.*

Per *Lindsay, J.*—Family arrangements are arrangements arrived at by members of the same family in settlement of doubtful claims, cases in which, there being uncertainty as to the rights of the various claimants, the dispute is composed by a settlement based upon the acknowledgment of pre-existing title in the parties concerned. There must be a dispute, the parties must belong to the same family, and the property which constitutes the subject-matter of the dispute must be the property of the family to which the parties belong. An arrangement made by a Hindu widow with the person whom she is going to adopt, before the adoption, is not a family arrangement. (*Lindsay and Mukerjee, JJ.*). MITAR SAIN *v.* DATA RAM. **87 I.C. 724=A. I. R. 1926 All. 7.**

—Setting aside.

——A family arrangement stands on a different footing from an ordinary contract. A settlement of doubtful claims or rather what the parties believed to be doubtful claims, without the worry and expense of litigation might itself be sufficient consideration for such an arrangement. The fact that there is no other consideration to support the arrangement or that it transfers the property to a person without any right, is not a sufficient ground for setting it aside: 8 Cal. 188, *Rel. on.* (*Bhide, J.*). MT. ICHHNUN *v.* BANWARI LAL. **114 I.C. 711= A.I.R. 1929 Lah. 16.**

——Where agreement of family arrangement was recorded in the *wajib-ul-arz* prepared at the time of the settlement and its terms were acted upon since then, it is not open to the parties to raise any question regarding the validity of the agreement.

FAMILY ARRANGEMENT—Setting aside.

A.I.R. 1924 P.C. 27 ; A.I.R. 1916 P. C. 9 ; A.I.R. 1927 Oudh 162 and A.I.R. 1927 Oudh 570, *Foll.* (*Misra and Nanavutty, JJ.*). SITAL SINGH *v.* GIJINDRA BAHADUR.
116 I. C. 59=4 Luck. 57=5 O.W.N. 1022=A.I.R. 1929 Oudh 373.

———*Grounds for.*

An agreement as to division of the family property can be set aside where the heir gives up property to which he had undoubted rights without consideration or where he was ignorant or without professional assistance, even though there was no evidence of fraud or undue influence : A.I.R. 1924 Pat. 49, *Foll.* (*Brown and Chari, JJ.*). TAFUZZAL AHMAD *v.* MAUNG SHWE KYI.
A. I. R. 1929 Rang. 335.

———Where a compromise is no longer to be regarded as a merely executory agreement, but is accepted and worked on by parties, such a family compromise should not on grounds of equity and good conscience be disturbed unless there are strong and valid reasons for doing so. (*Findlay, J.C.*). MT. ANJIRA BAI *v.* ANNAPURNA BAI.
109 I. C. 624=11 N. L. J. 133=A. I. R. 1928 Nag. 254.

———*Strong evidence is necessary to set it aside.*

When a family arrangement is brought about in the interests of the members of a family, it would require very strong grounds to set it aside at the instance of any one of the parties to the arrangement. (*Devadoss and Waller, JJ.*). SUBBARAJU *v.* NARAYANARAJU. **97 I. C. 232=24 M. L. W. 716=A. I. R. 1926 Mad. 1093=51 M.L.J. 366.**

—What are family arrangements.

———Where several members of a family arrive at a settlement each one relinquishing his claim in respect of the property not falling to his share and recognizing the rights of the others as they had previously asserted it to the portions allotted to them respectively, the transaction should be looked upon as a family arrangement and not as a transfer from one member to the other member : 33 All. 356 (P.C.) ; A.I.R. 1922 P. C. 356 ; 17 O. C. 108 and A. I. R. 1923 Oudh 307, *Foll.* (*Misra and Srivastava, JJ.*). AMEER HASAN *v.* MD. EJAZ HUSAIN.
117 I.C. 456=6 O. W. N. 51=A. I. R. 1929 Oudh 134.

———*Declaration of family arrangement of disrupted family.*

A declaration of family arrangement purporting to give shares in the plaintiff's ancestral property to the members of the different branches of the disrupted joint family was executed by the father of the plaintiff. Under law there could not be any re-union and the act was done not to settle any dispute but simply out of charity and compassion. The plaintiffs were not the parties to the declaration nor was it to their advantage. The declaration was never intended to be enforced, was not acted upon and the plaintiffs were all along in possession of the property,

Held, that the declaration could not affect the plaintiffs. (*Adami and Fazl Ali, JJ.*). LAKSHMIDHAR JAGATI *v.* KRISHNA CHANDRA JAGATI.
A.I.R. 1929 Pat. 548.

———Where disputes arose on the death of a Hindu and his widow and daughter on one side and his nephew on the other side settled the disputes by an agreement according to the terms of an oral will left by the deceased, taking for themselves particular shares of his estate,

Held, that the agreement is a *bona fide* family arrangement and is binding on the parties. (*Coutts*

FAMILY ARRANGEMENT — What are family arrangements.

Trotter, C. J. and Ramesam, J.). A. P. R. K. R. V. VELLAM CHETTI *v.* VENUGOPAL CHETTI.
97 I.C. 570=24 M.L.W. 842=A.I.R. 1927 Mad. 185.

———On death of widow all members of last male holder's family agreeing to their names being recorded in revenue records irrespective of different degrees of relationship—Family arrangement is complete. 35 All. 502 ; 37 All. 105 ; 17 O.C. 108 ; 19 O. C. 75 and 22 O. C. 300, *Foll.* (*Gokaran Nath Misra, J.*). TEJ BAHADUR KHAN *v.* NAKKO KHAN.
99 I.C. 472=3 O.W.N. 993=A I. R. 1927 Oudh 97.

———According to the terms of a compromise in a suit effected between the parties plaintiff was to adopt the son of one of the defendants within two months from the date of compromise and if he did so he was to enjoy the entire property which fell to his father's share but on failure to take the boy in adoption he was to retain only one half of the property. The plaintiff failed to take the boy in adoption and consequently was dispossessed of half the properties in execution of the compromise decree. In a suit for the recovery of those properties on the ground that the compromise is not binding on him,

Held, that the compromise was a *bona fide* family settlement and not opposed to public policy and that the clause in the compromise that the plaintiff should retain one-half of the properties and give back the other half on failure to adopt the boy was not a penal clause. (*Devadoss and Waller, JJ.*). SUBBARAJU *v.* INDUKURI NARAYANARAJU.
97 I.C. 232=24 M.L.W. 716=A.I.R. 1926 Mad. 1093=51 M.L.J. 366.

———*Bona fide* settlement of dispute—Holder of an estate dying leaving two widows and a son, bequeathing whole estate to the son—One widow challenging the validity of the marriage of the other widow and the legitimacy of the son—Agreement allowing increased maintenance to contesting widow for her withdrawing the allegation is a *bona fide* settlement. 33 All. 356 (P.C.), *Foll.* (*Stuart, C. J. and Raza, J.*). SHYAMA KUMAR SINGH *v.* THAKURAIN DULAR KUNWAR.
98 I.C. 81=3 O.W.N. 805.

———If there is a dispute and if all the members of the family come to an arrangement it will not be open to any of the parties to go behind such an arrangement, but where a father and sons amicably arranged that the father should settle all the properties upon the sons reserving to himself little or nothing, it cannot be said that the essentials of a family arrangement are present which would preclude any of the parties from claiming by inheritance to any other of the parties to such an arrangement. In order to make out a valid family settlement by which a person could relinquish his right to property not only *in praesenti* but also *in futuro*, there must be in the first place consideration for such relinquishment : in the second place there must be words which would convey such an expression of intention on the part of any of the parties to the document. So long as the arrangement is merely a one sided arrangement or where there is no dispute to be settled, a mere settlement of property by one upon another cannot be considered to be a family arrangement under which it can be said that certain rights which would accrue in future have been given up. (*Spencer and Devadoss, JJ.*). ABDUL RAHIMAN *v.* UTHUMANSA ROWTHER.
85 I. C. 945=A. I. R. 1925 Mad. 997.

FAMILY ARRANGEMENT—What are family arrangements.

———Where by the agreement one brother agrees to forego his right under S. 22 as the brother to succeed to his brother's share, if he left a widow, it is subsequently not open to him, or to any one claiming through him to go behind that agreement in order to claim a right which has been surrendered. A family settlement is binding on the parties thereto because the objection of settlement is the reconciliation of existing differences and the avoidance of future dispute. (*Kanhaiya Lal, J. C. and Lyle, Offg. A.J.C.*). MUHAMMAD YAQUB KHAN *v.* MUHAMMAD SAHIB ALI KHAN. **67 I.C. 556= 9 O.L.J. 160=25 O.C. 21=A.I.R. 1922 Oudh 87.**

—Writing, stamp and registration.

———Where the transaction is intended to operate as a transfer, the formalities enjoined by the Stamp, Registration and Transfer of Property Acts have to be complied with. The imperative requirements of these statutes cannot be evaded or displaced by the parties choosing to describe the document embodying the transaction as a family settlement when, in truth and substance, it is either a transfer of property or a deed of partition. (*Sen and Niamatullah, JJ.*). RAGHUBIR *v.* NARAIN **A. I. R. 1930 All. 498.**

———There is no provision of law requiring that a partition of family settlement must be reduced to writing and the writing registered, though of course, when they are reduced to writing, the point of registration may arise.

Where by family arrangement it was settled that *A*, father of *B*, was to pay the family debts and *B* was to pay nothing, and Rs. 1,000 from the joint property were to be paid to *B* as his share and a house was to fall to the share of *A*:

Held, that the alleged arrangement amounted to family settlement and not to a release of his share by *B*. It was not therefore necessary to get the settlement reduced into writing and get the writing registered. Oral evidence on the point of the alleged settlement was therefore admissible. (*Shingne, J.*). RANGU NYAHALCHAND SHET VANI *v.* LAKSHMAN MARTAND KULKARNI. **A.I.R. 1930 Bom. 438.**

———Family settlement need not be embodied in formal registered document: A. I. R. 1927 Oudh 97, *Rel on*; 35 All. 502 and 22 O. C. 300, *Ref.* (*Wazir Hasan, Ag. C.J. and Pullan, J.*). BALBHADDAR SINGH *v.* SHAMSHER SINGH. **115 I.C. 197= 6 O.W.N. 109=A.I R. 1929 Oudh 305.**

———A family settlement is based on the assumption that there is an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is. So a deed of family settlement is not a transfer within the meaning of S. 10, T. P. Act but is a recognition of conflicting claims. (*Raza and Pullan, JJ.*). HANUMAN SAHU *v.* ABBAS BANDI BIBI. **120 I. C. 387= 6 O.W.N. 169=4 Luck. 452= A.I.R. 1929 Oudh 193.**

———A family arrangement dealing with immovable property of the value of Rs. 100 and *upwards*, can be effected by an oral contract: 1 I. A. 157 (P. C.): 33 All. 356 (P. C.); and A. I. R. 1914 P. C. 44, *Rel. on.* (*Sulaiman, Ag. C.J. and Mukerji and Boys, JJ.*). RAMGOPAL *v.* TULSHI RAM. **116 I.C. 861=51 All. 79=26 A.L.J. 952= A.I.R. 1928 All. 641.**

———*Oral arrangement followed by a petition in Court.*

If an oral family arrangement is followed immediately or after an interval (shorter or longer) by a petition in Court containing a reference to the arrangement (either a mere reference to the fact of their having been an arrangement, or a partial or complete setting out of the terms, with or without a declaration of an acceptance of and intention to be bound by those terms), the question whether the reference was merely for the purpose of informing the Court or was dictated by a desire to make formal record of the arrangement to be evidence by the document, will have to be determined on the facts of each case. In the former case registration is unnecessary. But in the latter case, if the value of the property involved is Rs. 100 or upwards absence of registration makes the document inadmissible in evidence and is fatal to proof of the arrangement indicated in the document. (*Sulaiman, Ag. C. J. Mukerji and Boys, JJ.*). RAMGOPAL *v.* TULSHI RAM. **116 I.C. 861=51 All. 79= 26 A.L.J. 952=A.I.R. 1928 All. 641 (F. B.).**

———*Arrangement reduced to writing with intention to form document of title but not registered—Doctrine of part performance will not cure absence of registration.*

Where there is no legally binding oral family arrangement, or the arrangement though reduced to writing with the intention that the document should be the document of title, cannot be proved for want of registration, and where no question of estoppel arises, the mere facts that mutation has taken place and that possession has been taken cannot, by virtue of what is known as the doctrine of part performance, remedy the absence of registration: 31 All. 73 (P.C.), *Rel. on.* (*Sulaiman, Ag C.J. Mukerji and Boys, JJ.*) RAMGOPAL *v.* TULSHI RAM., **116 I.C. 861=51 All. 79= 26 A.L.J. 952=A.I.R. 1928 All. 641 (F.B.).**

———Court of equity will uphold a family arrangement provided that it has been acted upon, even where legal forms such as registration have not been strictly complied with: 43 All. 1; 42 Cal. 801 (P C.), *Ref.* (*Baker, Offg. J. C.*). BAKARAM *v.* NARAYAN. **78 I. C. 58=A. I. R. 1924 Nag. 373.**

———An arrangement amounting to a mutual relinquishment and admission of claim by all the parties cannot come within any of the classes of transfer with which the Transfer of Property Act deals for purposes of registration. (*Hallifax, A.J.C.*). JAINAKSI *v.* GULAM MOHIUDDIN. **69 I. C. 545=A.I.R. 1923 Nag. 55.**

—Miscellaneous.

———A family arrangement must be proved as well as pleaded, and it cannot be presumed in the absence of any evidence: A. I. R. 1928 All. 65, *Ref.* (*Staples, A. J. C.*). MAHASINGA *v.* MANSINGA. **118 I. C. 55= A.I.R. 1929 Nag. 83.**

———*Condition not valid in ordinary deeds may be inserted.*

A family settlement cannot create an estate which is contrary to law but in the case of family settlements conditions may be inserted therein which would not be valid in the case of ordinary deeds under the ordinary law, but such conditions in the deed would be valid and enforceable when forming a part of such family settlements: A. I. R. 1926 Oudh 561, *Foll.* (*Raza and Pullan, JJ.*). HANUMAN SAHU *v.* ABBAS BANDI BIBI. **120 I.C. 387= 6 O.W.N. 169=4 Luck. 452=A.I.R. 1929 Oudh 193.**

FAMILY SETTLEMENT.

See FAMILY ARRANGEMENT.

FATAL ACCIDENTS ACT (13 of 1855).

—Applicability.

———The principle embodied in the Indian Fatal Accidents Act may be applied to cases arising in

FATAL ACCIDENTS ACT (1855)—Basis of compensation.

Berar, though the Act has not been applied. (*Kotwal and Macnair, A.J.Cs.*) RAKMABAI *v.* DHANRAJ. **64 I.C. 311= A.I.R. 1921 Nag. 102.**

—Basis of compensation.

———Compensation awarded under the Act is compensation for the loss of the actual pecuniary benefit which the beneficiaries might reasonably have expected to enjoy, had the man not been killed. (*Kemp, J.*). CAITANO DE MELLO *v.* MERIDIAN ELECTRICAL ENGINEERING CO. **102 I.C. 400=29 Bom.L.R. 402= A. I. R. 1927 Bom. 357.**

—Costs.

———In a case under the Fatal Accidents Act, costs as between attorney and client would be allowed. (*Page, J.*). NAIN BALA SEN *v.* AUCKLAND JUTE CO., LTD. **89 I.C. 679= 52 Cal. 602= A.I.R. 1925 Cal. 893.**

—Licensee and licensor.

———Licensor not disclosing to licensee hidden risk in the use of subject of license—Loss caused to licensee—Licensor is liable for damages under the Indian Fatal Accidents Act. (*Marten, C.J. and Kemp, J.*). LAKHMICHAND *v.* RATANBAI. **101 I.C. 210=51 Bom. 274=29 Bom.L.R. 78= A.I.R. 1927 Bom. 115.**

—Measure of damages.

———Measure of damages is the financial loss sustained by the death—One year's wages is not a proper measure. (*Schwabe, C.J. and Wallace, J.*). S. I. INDUSTRIALS, LTD. *v.* ALAMELU. **72 I.C. 632=1923 M.W.N. 344=17 M.L.W. 495= A.I.R. 1923 Mad. 565=45 M.L.J. 53.**

—S. 1—Amount.

———*Length of life and value to plaintiffs determine the estimate.*

The amount awarded must not be equivalent for the loss but some reasonable sum. In awarding damages for prospective loss of income or other earnings, the Courts ought not to give the plaintiff such a sum as, if invested, would produce the full amount of income which he would probably have earned but ought to take into account the accidents of life and other matters and to give the plaintiff what they consider under all the circumstances a fair compensation for his loss. The proper way of finding out the financial loss to the plaintiff is to form some estimate of what the value of the continued life of the deceased would have been to the plaintiff and how long it was probable that it would continue: A. I. R. 1923 Mad. 565, *Appr.* (*Prideaux, A.J.C.*). SECY. OF STATE *v.* BHARIBAHU. **96 I.C. 403=9 N.L.J. 76= A. I. R. 1926 Nag. 271.**

—S. 1—Appeal.

———Appellate Court should not set aside award of lower Court unless it is capricious or unreasonable—Awarding amount is difficult and judicial officers may differ widely regarding the appropriate amounts but they should exercise proper discretion. (*Kanhaiya Lal and Ashworth, JJ.*). G.I.P. RY. CO. *v.* MT. NANNHI BAI. **96 I.C. 278= A.I.R. 1926 All. 702.**

—S. 1—Distribution.

———Damages awarded can be distributed between some of the parties. (*Richardson and Suhrawardy. JJ.*). SYED SADAQ REZA *v.* KHOSHMOHINI DASI. **71 I.C. 346=A.I.R. 1922 Cal. 317.**

—S. 1—Facts to be considered.

———In a suit for damages any fine realised from the defendant and paid to the plaintiff in the criminal case against the defendant, should be taken into consideration. (*Mukerji and Ashworth, JJ.*). NATHU RAM *v.* MT. CHAND KUAR. **106 I.C. 165=A.I.R. 1927 All. 684.**

FATAL ACCIDENTS ACT (1855), S. 2—Remote loss.

———Suit for damages—Deceased a cultivator only—Probable duration of the capacity of deceased to supply labour must be considered. *Rowley* v. *L. and N. W. Railway*, 42 L.J. Ex. 153, *Foll.* (*Mukerji and Ashworth, JJ.*). NATHU RAM *v.* MT. CHAND KUAR. **106 I. C. 165= A.I.R. 1927 All. 684.**

———No rule exists as to how many years' income is to be allowed as compensation—Possibility of earner's death, his age and earning capacity are to be considered. (*Harrison and Dalip Singh, JJ.*). DHAN SINGH *v.* MT. GANESH BAI. **101 I.C. 642=A.I.R. 1927 Lah. 417.**

———*Value of life depends on the earning capacity of the deceased—High Court need not interfere if the amount awarded is sufficient protection.*

It is difficult to lay down any general rule regulating the award of damages in cases under the Act. In each case the circumstances may differ, and these circumstances must necessarily regulate the amount to which a party might be entitled, or measure the loss which that party has suffered by the death of the person concerned.

Where a person loses his life as a result of an accident, the value of his life does not depend on the number of his dependants but on his earning capacity. The larger the number of dependants in a family, the greater is the value of the life of the person supporting them; but the loss which they suffer by his death can be measured by his earning capacity, of which the family was enjoying the benefit, and the care, attention and support which were to be reasonably expected from him had he been alive: A.I.R. 1922 Cal. 317, *Foll.*

When the dependants are sufficiently protected by the amount awarded to them, High Court need not interfere. (*Kanhaiya Lal and Ashworth, JJ.*). G. I. P. RY. Co. *v.* MT. JANKI BAI. **96 I.C. 681=A.I.R. 1926 All. 703.**

———The widow and son of the deceased can recover damages for the loss of the contribution made by the deceased towards the joint income of the family. Legal liability alone is not the test of injury in respect of which damages may be recovered under the Act, but the reasonable expectation of pecuniary advantage by the relatives remaining alive may be taken into account and damages given in respect of that expectation, if it be disappointed. and the probable pecuniary loss thereby occasioned (112 P.R. 1913, *Ref.*) and the fact that the deceased provoked the quarrel in the course of which he was killed does not disentitle his relatives from recovering damages. (*Abdul Rzoof and Abdul Qadir, JJ.*). PIARA RAM *v.* BEHARI RAM. **69 I.C. 354=A.I.R. 1924 Lah. 269.**

—S. 1—Sentimental considerations.

———*Relevancy of.*

In a suit for damages under the Act no sentimental considerations are relevant. The plaintiff cannot get higher damages because the deceased was brutally murdered by the defendant than if the death had been due merely to an error of judgment. (*Mukerji and Ashworth, JJ.*). NATHU RAM *v.* MT CHAND KUAR. **106 I.C. 165= A. I. R. 1927 All. 684.**

—S. 2—Remote loss.

———Where a passenger had some currency notes about him at the time of the accident,

FATAL ACCIDENTS ACT (1855), S. 2—Scope.

Held, that the loss of such notes cannot be the cause of action against the railway as the loss of the notes was only a remote and not an immediate result of the accident.

Every cause leads to an infinite sequence of effects, but the author of the initial cause cannot be made responsible for all the effects in the series. He is liable only for those which immediately flow out of his wrongful act. *Sharp* v. *Powell*, (1872) 7 C.P. 253, *Expl.* (*Shadi Lal, C.J. and Le Rossignol, J.*). SECRETARY OF STATE *v.* GOKAL CHAND.

96 I.C. 1026=6 Lah. 451=26 P.L.R. 623=A.I.R. 1925 Lah. 636.

—S. 2—Scope.

———The statute by enacting the rule allowing the legal representatives to include in their suit a claim for the loss to the estate does not create any fresh liability but merely recognizes what already existed under the common law and prescribes only the procedure for enforcing it. (*Shadi Lal, C.J. and Le Rossignol, J.*). SECRETARY OF STATE *v.* GOKAL CHAND.

90 I.C. 1026=6 Lah. 451=26 P.L.R. 623=A.I.R. 1925 Lah. 636.

FAZENDARI.

See LAND TENURE FAZENDARI.

FEEDING THE GRANT BY ESTOPPEL.

See T. P. ACT, S. 43.

FERRY.

—Acquisition of right.

———The right to a ferry franchise between two villages cannot be acquired by mere prescription but there must be facts proved from which, if there is no direct grant from the Government, it can be implied that such grant was actually made. (*Macleod, C. J. and Coyajee, J.*). SHAMA DURGAJI BHOI *v.* GANGADHAR NARAYAN MUZUMDAR.

67 I. C. 419=24 Bom. L.R. 445=46 Bom. 952=A.I.R. 1922 Bom. 243.

FICTITIOUS TITLE.

See T. P. ACT, S. 53.

FIDUCIARY RELATIONSHIP.

See (1) EVIDENCE ACT, S. 111.
(2) TRUSTS ACT, SS. 88, 94.
(3) CONTRACT ACT, S. 16.

FINAL ORDER.

See C. P. CODE, SS. 2 (2), 11, 104, 109.

FINANCE ACT (13 of 1925).

—S. 7—Calculation of super-tax.

———*Unregistered firm converted into a limited company on 1st April*, 1925—*Rate of super-tax.*

The Western India Turf Club was converted into a Limited Company by being registered under Companies Act as a Company limited by guarantee. For the financial year 1925-26 it was called upon to put in a return of income for the previous year, namely, 1924-25. It accordingly put in its return of income showing the income earned by the Club as an unregistered firm during the previous year 1924-1925, when the Company was not in existence. For the purposes of assessment, the Income-tax Officer determined the total income to be Rs. 15,03,522 under S. 23 (1) of the Act, and calculated super-tax thereon at Rs. 4,59,153 by applying to it the scale rates applicable to an unregistered firm,

Held, that the Company is liable to be assessed at the rate of one anna in the rupee for super-tax in respect of the excess over Rs. 50,000 of total income of the Turf Club for the previous year: A.I.R. 1925 All. 535, *Expl.* and *Dist.* (*Macleod, C. J. and Coyajee, J.*). THE WESTERN INDIA TURF CLUB, *In re*.

98 I.C. 226=50 Bom. 648=28 Bom. L. R. 1236=A.I.R. 1926 Bom. 539.

———(5 of 1927).

—S. 5—Demand drafts.

———Demand drafts are bills of exchange and are exempt from stamp duty, *English and Indian Case-law discussed.* (*Rankin, C. J., Suhrawardy, B. B. Ghose, Mukerji and Cammiade, JJ.*). *In the matter of* STAMP ACT.

115 I.C. 177=56 Cal. 233=32 C.W.N. 1015=A.I.R.1928 Cal. 566 (S.B.).

FINDING OF FACT.

See C. P. CODE, S. 100.

FINE.

See PENAL CODE, SS. 63—70.

FINGER IMPRESSION.

See (1) CRIMINAL TRIAL.
(2) EVIDENCE ACT, S. 45.

FIRE INSURANCE.

See INSURANCE.

FIRM.

See (1) C. P. CODE, O. 21, Rr. 49, 50 & O. 30.
(2) CONTRACT ACT, SS. 239—266.
(3) CORPORATION.
(4) COMPANY.

FIRST INFORMATION.

See CR. P. CODE, SS. 154—160.

FISHERY.

—Adverse possession.

———An exclusive right of fishery is not a mere profit *a prendre* but is an interest in immovable property which can be acquired by twelve years' adverse possession as against the lawful owner. Such an interest is transferable and heritable. (*Sundaram Chetty, J.*). SECRETARY OF STATE *v.* THE DISTRICT BOARD OF TANJORE.

31 L.W. 503=1930 M.W.N. 328=A.I.R. 1930 Mad. 679.

———The right of the public to fish in the sea is common and is not the subject of property and members of the public exercising the common right to fish in the sea are bound to exercise that right in a fair and reasonable manner and not so as to impede others from doing the same: 2 Bom. 19, *Foll.*

A person, therefore, although exclusively and continually using a portion of the sea over 28 years cannot claim it as the basis of the legal right to exclude any others and to confine the use of that portion of the sea for fishing for himself: 2 Bom. 19 and 39 Cal. 53, *Rel. on.* (*Madgavkar, J.*). RAOJI VASUDEO GIRAP *v.* TUKARAM VISHNU KURLA.

117 I.C. 335=31 Bom. L.R. 329=A.I.R. 1929 Bom. 226.

———If the right claimed is a mere right to fish not excluding the lawful owner, it would appear to be an easement within the description of the word in the Limitation Act and can be acquired by 20 years' uninterrupted enjoyment. If it is an exclusive right of fishery it is an interest in immovable property and can be acquired by 12 years' adverse possession involving an ouster of the rightful owner. Such a right contains all the essential elements of property and even if it may properly be described as a profit *a prendre*, it has also the distinctive features of an interest in immovable property. Even if S. 26 of the Act should be applicable, this would not bar the operation of Art. 144 and S. 28 if the right came under both descriptions: 2 P. L. J. 283, *Foll.*; 5 Cal. 945; 12 Bom. 221; 18 Cal. 80, *Ref.* (*Dawson-Miller, C. J. and Mullick, J.*). HENRY HILL AND CO. *v.* SHEO RAJ BAI.

67 I.C. 954=1 Pat. 674=3 P.L.T. 477=1 Pat. L. R. 34=A. I. R. 1923 Pat. 58.

FISHERY—Essentials for establishing right.

—Essentials for establishing right.

———It is not absolutely essential to prove an express grant after a considerable lapse of time and the plaintiffs can establish their right by proof of an uninterrupted user of fishery prior to their dispossession. The evidence, however, must be clear and unambiguous showing the plaintiff's exercise of the right of fishery over the particular spot in river particularly when the bed of the part of the river in question belonged to the owner of the adjoining village: 42 Cal. 489 (P.C.), *Foll.* (*Dawson-Miller, C. J. and Jwala Prasad, J.*). KEDAR NATH GOENKA *v.* AMRIT MANDAL.

88 I.C. 676=1925 P.H.C.C. 170=A. I. R. 1925 Pat. 568.

—Extent of right.

———*Jalkar—Part of river bed free from water during part of the year—Right to fishery over that part is not lost.*

The grantee of a fishery right in a river is entitled to fish in all waters comprised within the bank of the river and the circumstances that a particular sheet of water may during part of the year be disconnected from the flowing stream or permanent current, does not affect the rights of the grantee: a jalkar so situated in the river-bed is essentially part of the river and the fish contained therein may properly be deemed fish of the river: 18 C.L.J. 399 and 42 Cal. 489 (P. C.), *Foll.* (*Newbould and Graham, JJ.*). SECRETARY OF STATE *v.* NEMAI CHAND MUKHERJEE. **91 I.C. 752 (Cal.).**

—Jalkar.

———*Meaning of.*

The term Jalkar is ambiguous. It may mean a grant of a right of fishery or it may mean the grant of a sheet of water together with the sub-soil. The question whether what was intended to be granted in a particular case was restricted to a right of fishery or included a grant of sheet of water together with the sub-soil must depend upon the construction of the original grant if available or must be determined with regard to the subsequent history of the property. (*Mookerjee and Chotzner, JJ.*). PRANKISHORE TARAFDAR *v.* SURODA PROSAD PAKRASHI. **72 I.C 55=37 C. L.J. 580=A.I.R. 1923 Cal. 358.**

—Lease of.

———Grant of lease for fishing creates an interest in immovable property: 14 N. L. R. 35, *Ref.* (*Findlay, J. C.*). MANYA *v.* SITARAM.

100 I.C. 438=23 N.L.R. 16=A.I.R. 1927 Nag. 147.

—Navigable rivers.

———*Right of fishing in—Extent of.*

It was in the power of the Government in right of the Crown as successor to the East India Company to grant such exclusive right of fishing in a navigable water. Since about 1860 the policy of making such grants has been greatly doubted. But such grants were not uncommon in Bengal in earlier times and if proved, they are perfectly legal. Mere grants of rights to tolls are not rights of exclusive fishery. A mere mention in the Revenue documents, that certain classes of revenue are not being interfered with, is not to be construed as granting exclusive right in navigable waters if other adequate and sufficient meaning can be found for them. *Prima facie* public navigable rivers are *publici juris* and everybody has a right in India to fish in any navigable water—whether tidal or not. Per *Ghosh, J.*—"I entertain considerable doubt whether after the abolition of Sayer any Zemindar has got any right to levy tolls or taxes with regard to the right of fishing by fishermen in a public navigable river". (*Rankin and B. B. Ghose, JJ.*). MIDNAPORE ZAMINDARY CO., LTD. *v.* TRAILOKYA NATH HALDAR. **81 I.C. 501=51 Cal. 110=40 C. L. J. 238=A.I.R. 1924 Cal. 562.**

FISHERY—Right to soil.

—Occupancy right.

———No right of occupancy can be acquired in respect of a right called jalkar or fishery: 23 W.R. 432; 4 Cal. 767; 4 Cal. 961, *Ref.* (*Fazl Ali and Chatterji, JJ.*). JAIGOBIND SINGH *v.* BHAWANI SINGH. **9 Pat. 401=A. I. R. 1930 Pat. 382.**

—Passing of rights.

———The settlement of land carries with it the right to fish when there is water upon it unless and until the landlord shows that the fishing right was reserved to him. *Jones* v. *Davies*, (1902) 86 L. T. 477, *Rel. on.* (*Fazl Ali and Chatterji, JJ.*). JAIGOBIND SINGH *v.* BHAWANI SINGH. **9 Pat. 401=A.I.R. 1930 Pat. 382.**

—Permanent right.

———In order that there should be a permanent right of fishing it is necessary that there should be a grant or that it should be possible to hold that a grant was implied. Mere recording in the Government chitta that certain persons have been given settlement of fishing rights does not prove that there was a permanent grant, nor does it lead to the presumption of a lost grant. It should be shown that it was at least the practice of Government to give permanent leases of fishing rights. (*Cammiade and S. K. Ghose, JJ.*). JADABENDRA NANDAN DAS *v.* BEHARI MULA. **118 I.C. 888=56 Cal. 444=A.I.R. 1929 Cal. 464.**

—Transfer of right.

———*Quebec Law—Right of fishing can be separately transferred.*

The right to fishing accompanied with a right of way for the enjoyment of the former right is more than usufructuary in the older and stricter meaning. It is right to a separate subject or incident of property. There is no inherent reason for refusing to treat a fishing right as a self-contained and separable subject. In the seigniorial cases they were treated as self-contained and separable. In the law of Scotland, where the fee cannot be split up they are regarded as proper subjects for a separable title to property in fee. The definition of Art. 405 of the Quebec Code presents this analogy that it places no difficulty in the way of regarding the right of fishing as an item among others comprised in the subject-matter. There is no reason why, consistently with the language of Arts. 405, 406 and 408 of the Quebec Code there should not be ownership of a fishing right as a mode of enjoying and disposing of separable and physical subject for possession. The title to take the fish is a title to take a product of the river and Art. 408 recognizes as possible in law the union with it as an accessory of the right to use bed of the river or the banks when naturally or artificially stipulated for as part of that which is joined to the fishing right. (*Viscount Haldane.*) MATAMAJAW SALMON CLUB *v.* DUCHAINE (SINCE DECEASED.) **A.I.R. 1921 P. C. 200 (P.C.).**

—Right to soil.

———*Right to soil* prima facie *is in Government.*

Prima facie the soil in the bed or the sea in a port would be vested in the Government in right of the Crown. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE. **23 Bom. L.R. 939=A.I.R. 1921 Bom. 93.**

FISHERY—Several Fishery.

—Several Fishery.

———*Lost grant.*

There are serious legal difficulties in accepting a contention that a right of several fishery had its origin in a lost grant by the Government to a certain unincorporated community who granted it to the men of certain localities, who lastly granted it to the parties in question. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE.

23 Bom. 939 = A.I.R. 1921 Bom. 93.

—Shifting river.

———*Rights in.*

In Bengal it is settled that the Government's grantee can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and the downstream limits of his grant, whether the Government own the soil subjacent to such waters as being the long established bed, or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment: A. I. R. 1914 P. C. 48, *Appl.*

But there is no authority for the proposition that the grantee would not only enjoy the right of fishery in the bed of the tidal navigable river as granted, but would also retain the right of fishery on the land of another over which the river flowed for a short interval but ceased to do so, if there is a sheet of water on defendants' land which is connected with the river. (*B. B. Ghose and G. N. Roy, JJ.*). INDU BHUSHAN BOSE *v.* SARAJULALA DEBI.

104 I.C. 494 = 46 C.L.J. 93 = A.I.R. 1927 Cal. 741.

—Stake fishing.

———*Rights of the public.*

Where stake fishing is an ordinary method of public fishing, acts which could be relied under English law to establish a several fishery may be attributed to the person's exercise of a public right. There would seem no reason why a man who has once planted his stakes and kept them in repair should ever be turned out during his life, nor why if, from illness or old age, he wanted to retire, he should not be able to substitute a relative or a friend in his place with or without payment before any other member of the public could intervene. Once it is granted that the public right of fishing in navigable waters on any coast may be exercised by stake fishing, it almost follows that *quasi* permanent rights may be obtained in particular spots. For there is no one entitled to eject the stakeholder, and in practice it would be difficult, if not impossible, to prevent him from transferring his rights to his relatives or friends. So where stake fishing is general, caution is necessary before one accepts the view that each Dar owner has a prescriptive right to a sheet of water and to affix his stakes in the sub-soil although he has no claim to the soil itself. Where it is not established that the acts in question are necessarily inconsistent with a public right of stake fishing, no prescriptive right to an exclusive right or several fishery can be held to be made out.

The stake fisherman may fix his stake as the sailor does his anchor or mooring buoy. Neither claims the soil for each is exercising a public right. The stake like the mooring buoy may belong to and be used by a particular man or a shipping Company. But all this does not involve an exclusive right to any particular waters. It is only because all persons having the like right, namely, the general public cannot all fish or anchor in the same spot that by a natural process different persons go to different spots and that in course of time a particular spot may be identified with a particular person.

FOREIGNERS ACT (1864), S. 2—Effect of transfer of territory.

The right of a member of the public who is entitled to fish in the sea by means of stakes would not pass by grant or descent. The right of the public to fish in the sea does not come within the description of property of any kind. On the other hand, the stake fisherman will be entitled to be protected from improper interference with his public right of fishing. The law is capable of compelling parties to exercise their common rights fairly towards each other, and not in a spirit of malice or rapacity. But though the right to fish may be public, the right to the stake is private and is a subject of property. If, therefore, the stakes were let out with covenants for repair, surrender and non-removal and possibly also with a covenant for compensation if by negligence the existing right to fish therefrom was lost, it would be questionable whether such an agreement could be successully attacked. (*Case-law fully discussed*). (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE.

23 Bom. L.R. 939 = A.I.R. 1921 Bom. 93.

———The tenant of a several fishery must give up the fishing stakes on the termination of the tenancy, and he cannot claim to retain them on the ground that he has repaired them from time to time or even renewed them. *Prima facie* the boundaries mentioned would include every fixture within their limits at the creation of the tenancy. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE.

23 Bom. L.R. 939 = A.I.R. 1921 Bom. 93.

FIXTURES.

See T. P. ACT, Ss. 3 AND 108.

FLOATING CHARGE.

See COMPANIES ACT, S. 109.

FOOD, ADULTERATION OF.

See MUNICIPAL ACTS.

FORBEARANCE TO SUE.

See CONTRACT ACT, Ss. 2 AND 28.

FORECLOSURE.

See C. P. CODE, O. 34, Rr. 2 AND 3.

FOREIGN COURT.

See (1) C. P. CODE, S. 13.
(2) EVIDENCE ACT, Ss. 40 AND 43.

FOREIGNERS ACT (3 of 1864).

—S. 2—Effect of transfer of territory.

———*Cession of territory by Britain to another state —British subject ceases to be such on cession.*

A relinquishment of the Government of a territory is not only a relinquishment of the right to soil or territory, but also of the rights over the inhabitants of the country. The distinction between a right of election of which sovereign he will become the subject and the method by which a man can leave a newly ceded territory and remain within the allegiance of his former sovereign, seems somewhat fine: but the distinction is one between a mere assertion of elected allegiance and actual conduct clearly showing such an election. It is not enough for an inhabitant to assert, when the question arises, that he has elected to remain within the allegiance of his former sovereign; there must be conduct on his part, such as leaving the ceded territory and going to reside permanently in his former sovereign's dominions to indicate his previous election. Any inhabitant of the ceded or separated territory has not the right to remain an inhabitant of it, and at the same

FOREIGNERS ACT (1864), Ss. 3 & 3 (a)—Procedure.

time to retain the allegiance and nationality of the State which ceded or permitted the separation. The common law of England embodying the above rules is the law for the time being in force in British India within the meaning of the proviso to S. 1: 18 Cal. 620 (P. C.) and 42 Mad. 589 (P.C.), *Foll.*

The applicant was born in Ramdupati which was in British territory. In that village he had some lands and owned a house in which his family resided permanently. He, however, came to Bombay for purposes of trade. Ramdupati was subsequently ceded to the Maharaja of Benares by the British Government. The applicant continued to live in Bombay for trade before as well as after the cession,

Held, that the applicant was a "foreigner" by virtue of the proviso to S. 2 of Act III of 1915, amending the Foreigners Act, 1864. (*Fawcett and Madgaonkar, JJ.*). EMPEROR *v.* JAGARDEO RAMSUMER TIWARI. **90 I.C. 310=49 Bom. 804=87 Bom. L.R. 1043=26 Cr. L.J. 1526=A.I.R. 1925 Bom. 489.**

—Ss. 3 & 3 (a)—Procedure.

———Government must issue orders about detention or release or removal without delay—Commissioner of Police cannot do any such thing without such orders. (*Marten and Fawcett, JJ.*). JAGERDEO RAMSUMER TEWARE, *In re.* **85 I. C. 138=49 Bom. 222=26 Bom. L.R. 1252=26 Cr. L.J. 458. A.I.R. 1925 Bom. 139.**

FOREIGN JUDGMENT.

See CIVIL P. C., S. 13.

FOREIGN JURISDICTION ACT (1890, 53 & 54 Vict., Ch. 37).

—Protected state.

———*Jurisdiction of Crown in.*

The Foreign Jurisdiction Act appears to make the jurisdiction, acquired by the Crown in a protected country, indistinguishable in legal effect from what might be acquired by conquest. It is a statute that appears to be concerned with definition and secondary consequences rather than with new principles. *Rex* v. *Earl of Crowe*, (1910) 2 K. B. 576, *Rel. on.* SABHUZA II *v.* MILLER. **99 I.C. 265=30 C. W. N. 961=A.I.R. 1926 P. C. 131 (P. C.).**

—S. 1—Interpretation.

———"Foreign country" means any country or place outside of Her Majesty's dominions, and the expression "jurisdiction" includes power. Consequently there can be no doubt at all that the King-in-Council has power in respect of foreign territory within the definition of that clause, either to legislate himself by Order in Council or to make provision for legislation by delegating that legislative authority to such a person or body as he may denote in the Order in-Council. (*Lord Atkin.*) DATTATRAYA KRISHNA RAO KANE *v.* SECY. OF STATE. **A. I. R. 1930 P. C. 267 (P.C.).**

—S. 12—Interpretation.

———"*Act of Parliament*" *and* "*orders and regulations.*"

The Act of Parliament and the orders and regulations referred to thereunder are Acts, orders and regulations so far only as they apply to His Majesty's subjects in the territory in question and have no relation to a case where the legislation does not purport to affect His Majesty's subjects at all but has relation to persons who are not subjects of His Majesty, but subjects of His Highness the Nizam of Hyderabad. (*Lord Atkin*). DATTATRAYA KRISHNA RAO KANE *v.* SECY. OF STATE. **A.I.R. 1930 P.C. 267 (P. C.).**

FOREST ACT (1878), Ss. 29 and 32 (c)—Clearing.

FOREST ACT (7 of 1878).

—Berar grazing rules.

———There is nothing in the grazing rules for Berar given in appendix 15 of the C.P. Forest Manual, which imposes any criminal liability on a licensee for grazing, for the acts of his servant. (*Baker, J.C.*). FAKIRA SAMBHAJEE KUNTU *v.* EMPEROR. **87 I.C. 918=26 Cr.L.J. 1030=A.I.R. 1926 Nag. 73.**

—Presumption.

———If a person is found with a gun and ammunition in a Reserved Forest it may be presumed until the contrary is shown that hunting was being engaged in. (*Curgenven, J.*). SAMUEL *v.* EMPEROR. **1929 M.W.N. 808.**

—S. 3—Permanently settled estate.

———Where the land is part of a permanently-settled estate, it is private property and not Government property within the meaning of the Forest Act and therefore cannot legally be subject of reservation under Chapter II of that Act. (*Woodroffe and Suhrawardy, JJ.*). SECRETARY OF STATE *v.* ABDUL RAHAMAN. **76 I.C. 494=A. I. R. 1923 Cal. 377.**

—Ss. 6, 7 and 9—Interpretation.

———Sections 6, 7 and 9 equally refer to land which is of the description mentioned in S. 3, that is, proceedings taken in respect of such land. (*Woodroffe and Suhrawardy, JJ.*). SECRETARY OF STATE *v.* ABDUL RAHAMAN. **76 I.C. 494=A.I.R. 1923 Cal. 377.**

—S. 25 (d)—Essentials for conviction.

———The owner of cattle found grazing in a Government Forest Reserve cannot be convicted under S. 25 (*d*). Forest Act (7 of 1878) in the absence of evidence that he pastured the cattle or permitted them by some overt act or negligent omission to trespass in the reserve. (*Baker, J.C.*). FAKIRA SAMBHAJI KUNBI *v.* EMPEROR. **87 I.C. 918=26 Cr. L. J. 1030=A.I.R. 1926 Nag. 73.**

—S. 29—Breaking and clearing.

———Where "breaking" only is forbidden by the notification an offence is not committed where there has been only "clearing." (*Boys and Kendall, JJ.*). UMMED SINGH *v.* EMPEROR. **99 I.C. 407=49 All. 291=8 L. R. A. Cr. 27=25 A. L. J. 148=28 Cr. L. J. 151=7 A.I.Cr.R. 200= A. I. R. 1927 All. 121.**

—S. 29—Fixing of date.

———Notification under S. 29 (*a*) fixing no date is bad—Conviction for cutting trees reserved by such notification is illegal under S. 32. (*Rankin and Duval, JJ.*). MOSLEM SIKDAR *v.* EMPEROR. **102 I. C. 498=54 Cal. 296=28 Cr.L.J. 562=A. I. R. 1927 Cal. 516.**

—S. 29—Reversion.

———"Protected forests" were declared to be reserve forests and then they were declared to have ceased to be reserve forests,

Held, the later notification did not turn the forests into village forests or into land to which the Forest Act did not apply at all; but the effect of it was to revert them to their former position of protected forests. (*Stuart, J.*). KAMLA PATI *v.* EMPEROR. **81 I.C. 711=46 All. 128=25 Cr.L.J. 999=A.I.R. 1924 All. 539.**

—Ss. 29 and 32 (c)—Clearing.

———Where 'breaking' of ground only is forbidden by a notification issued under the Forest Act, no

FOREST ACT (1878), S. 39 (b)—Liability to duty.

offence is committed when there has been only 'clearing'. A. I. R. 1927 All 121, *Foll.* (*Iqbal Ahmad, J.*). THEP SINGH *v.* EMPEROR.
102 I. C. 559=8 A. I. Cr. R. 111=8 L. R. A. Cr. 112=28 Cr. L. J. 591=A.I.R. 1927 All. 767.

—S. 39 (b)—Liability to duty.

——The ordinary interpretation of Cl. (b) would be that the duty is to be levied from the person who actually brought the timber from some place outside British India to the place, whereon its importation the duty becomes leviable, and thus it would be straining Cl. (b) to hold that timber, of which a person obtains possession and which has been originally brought from a place beyond the frontier of British India, is liable in the hands of that person to duty, though he has taken no part in the bringing of that timber from the place beyond the frontier. What the clause only contemplates is the levy of duty from a person, who has actually brought timber from a foreign place to the place where the duty is leviable; and if in fact, a person has not brought it from such foreign place and has not participated in a conspiracy to so bring it, the timber is not liable in his hands to a levy of duty: 17 Bom. L. R. 72, *Foll.* (*Fawcett and Patkar, JJ.*). EMPEROR *v.* KADARBHAI USUFALLI.
103 I. C. 593=51 Bom. 896=28 Cr. L. J. 705=8 A. I. Cr. R. 346=29 Bom. L. R. 987=A.I.R. 1927 Bom. 483.

—S. 41—Confiscation.

——Confiscation made in order to test the wrong interpretation of the words "timber" and "forest produce" in S. 41 put by the High Court though vexatious was held necessary. (*Harrison, J.*). LAL BADSHAH *v.* EMPEROR. **106 I.C. 790=29 Cr. L. J. 198= A.I.R. 1928 Lah. 80.**

—S. 41—Interpretation.

——"*Timber*" *and* "*forest produce.*"

The words "timber" and "forest produce" in S. 41 are used in the widest sense as given in the definitions to be found in S. 2 and not in the narrow and restricted sense especially introduced to define and limit the powers described in Ch. 7. (*Harrison, J.*). LAL BADSHAH *v.* EMPEROR. **106 I. C. 790=29 Cr. L. J. 198=A.I.R. 1928 Lah. 80.**

——"*Timber and other forest produce.*"

The phrase "timber and other forest produce" in S. 41 refers to timber and other forest produce as defined in S. 39, *viz.*, timber or other forest produce which is produced in British India and in respect of which the Government has any right or which is brought from any place beyond the frontier of British India. (*Harrison, J.*). LAL BADSHAH *v.* KING EMPEROR. **76 I. C. 101=25 Cr. L. J. 104=A. I. R. 1925 Lah. 225.**

—S. 41—(Bom. Rules) 3 and 4—Liability of forester.

——Forester is not liable for consenting to removal of produce to a place other than the one to which pass relates so long as the quantity and description of the produce are not exceeded. (*Shah, Ag. C. J. and Kincaid, J.*). KING EMPEROR *v.* PANDU VITHU. **84 I.C. 250=26 Bom. L. R. 971=26 Cr. L. J. 250=A.I.R. 1924 Bom. 439.**

—S. 41 (Bom. Govt.), Rr. 3 and 4—Removal of wood.

——Removal of wood to place other than that to which passes related is an offence. (*Shah, Ag. C. J. and Kincaid, J.*). KING EMPEROR *v.* PANDU VITHU. **84 I.C. 250=26 Bom. L. R. 971=26 Cr.L.J. 250=A.I.R. 1924 Bom. 489.**

FOREST ACT (1927), S. 59—Interpretation.

—S. 59—Appeal.

——Under S. 59 even a third person who was not a party to the proceedings in the Original Court and whose claim for relief from confiscation was not adjudicated upon is entitled to prefer an appeal. The phrase, "any person claiming to be interested in the property so seized" in S. 59 cannot be construed as limited to the case contemplated by S. 57. And, the words 'so seized' refer to the seizure under S. 52. (*Pearson and Jack, JJ.*). MEHAR SARDAR *v.* EMPEROR. **34 C.W.N. 956=52 C. L. J. 171=1930 Cr. C. 908=A.I.R. 1930 Cal. 577.**

—Ss. 63 and 29—Scope.

——Under S. 63 a Forest Officer cannot arrest, without warrant, persons committing an offence under S. 29 and his custody is not a lawful custody under S. 63 within the meaning of S. 225, Penal Code. (*Rankin and Duval, JJ.*). MOSLEM SEKDAR *v.* EMPEROR. **102 I. C. 498=54 Cal. 296=28 Cr. L. J. 562=A.I.R. 1927 Cal. 516.**

—S. 75 (d)—Withdrawal of tender.

——Rule under S. 75 (d) prohibiting withdrawal of tenders before acceptance is not *ultra vires*. (*Macleod. C. J., Crump and Coyajee, JJ.*). SECRETARY OF STATE *v.* BHASKAR KRISHNAJI.
89 I.C. 498=49 Bom. 759=27 Bom. L.R. 973=A.I.R. 1925 Bom. 485 (F.B.).

—S. 84—Applicability.

——Section 84 does not apply generally to the consequences of a breach on the part of the contractor but only to a particular penalty provided for a breach of the condition as to the contractor performing any duty or act or abstaining from a particular act. (*Shah, Ag. C. J. and Kincaid, J.*). BHAGWANDAS RANGILDAS *v.* SECRETARY OF STATE. **86 I.C. 87=27 Bom. L.R. 66=49 Bom. 194=A.I.R. 1925 Bom. 227.**

——(16 of 1927).

—S. 26—Burden of proof.

——Where the charge against the accused is that he has made an encroachment on Government forest land, the *onus* is on the prosecution to establish that the land forms part of the Government forest: 19 Mad. 165, *Ref.* (*Findlay, J. C.*). NAGO WAIN *v.* EMPEROR. **124 I. C. 622=1929 Cr. C. 53=A.I.R. 1929 Nag. 190.**

—S. 26 (d)—Conviction under.

——Cattle grazing in the Government forest—Owner not authorizing directly nor indirectly such grazing—He cannot be convicted: 11 N. L. R. 76, *Ref.* (*Subhedar, A. J. C.*). EMPEROR *v.* SARTOKI. **120 I.C. 414=1930 Cr. C. 152=31 Cr. L.J. 109=A. I. R. 1930 Nag. 64.**

——Where it is clear from evidence that the accused has been cultivating land alleged to be part of a Government forest for at least seven years and the probabilities are that his father had done the same before him he cannot be held to have cleared or broken up the land for cultivation or any other purpose and his conviction under S. 26 (h) cannot be sustained. (*Findlay, J. C.*). NAGO WANI *v.* EMPEROR. **124 I.C. 622=1929 Cr. C. 53=A.I.R. 1929 Nag. 190.**

—S. 59—Interpretation.

——*Words "any person claiming to be interested in the property" in S. 59—"So seized".*

The first canon of construction of a statute is that you must take the language as it stands and if it is clear, give effect to it. There is no possible ground for saying that the phrase "any person claiming to be interested in the property so seized" occurring in S, 59 could be construed as limited to

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the case contemplated by S. 57 when no mention is made of any such limitation, the language of the section is perfectly clear and unrestricted in its terms and must be given effect to accordingly. Apart from that, the words "so seized" logically and grammatically refer to the seizure under S. 52, which includes seizure of tools, boats, etc. (*Pearson and Jack, JJ.*). MEHER SARDAR *v.* EMPEROR.
A.I.R. 1930 Cal. 577.

FORFEITURE.

See (1) ACT OF STATE.
(2) CONTRACT ACT, S. 74.
(3) CROWN.
(4) LANDLORD AND TENANT.
(5) PENAL CODE.
(6) T. P. ACT, S. 111.

—Of Property—*See* PENAL CODE, S. 62.

FORCED ENDORSEMENT.

See PENAL CODE, S. 465, ETC.

FORGED NOTES.

See PENAL CODE, S. 489-B.

FORGERY.

See (1) CR. P. CODE, SS. 195 and 476.
(2) PENAL CODE, SS. 463 and 471.

FOREST OFFICER.

See FOREST ACT.

FORMA PAUPERIS.

See CIV. PRO. CODE, O. 33.

FORM AND CONTENTS OF JUDGMENT.

See CR. P. CODE, S. 367.

FORWARD CONTRACTS.

See CONTRACT ACT, SS. 73, 83—92, ETC.

FOSTERAGE.

See MAHOMEDAN LAW.

FRAME OF SUIT.

See CIV. PRO. CODE.

FRAMING AND SETTING ISSUES.

See CIV. PRO. CODE.

FRANCHISE.

See MUNICIPAL ACTS.

FRAUD.

See also (1) C. P. CODE, SS. 11, 13 AND 47 AND O. 6, R. 4; O. 21, R. 90, ETC.
(2) CONTRACT ACT, SS. 17, 19, ETC.
(3) DECREE, SETTING ASIDE.
(4) PRACTICE—FRAUD.

——Party to Fraud—Relief.

See T. P. ACT, S. 53.

——Who may plead.

See (1) CONTRACT ACT, SS. 19, 23.
(2) EVIDENCE ACT, S. 115.
(3) T. P. ACT, S. 53.

—Benami transaction.

——Where in a suit for declaration that a certain alienation is invalid the plaintiff is merely a figure head and the real plaintiff is the alienor himself who has caused the suit to be instituted for undoing his own act, no declaratory decree should be passed: A.I.R. 1925 Lah. 24, *Foll.* (*Findlay, J.C.*). GANGABAI *v.* HANSDAS. **103 I.C. 905=10 N.L.J. 64=A.I.R. 1927 Nag. 213.**

—By minor.

——In equity, if an infant be old enough to commit a fraud by inducing others to think that he is of age, he cannot take advantage of it, and, if the Court cannot restore the parties to their original footing, the infant will be bound as if he were an adult. But where the minor has not obtained any property by fraudulent misrepresentation and is merely asking to be put in the position which he occupied before the transaction, this rule will not apply.

FRAUD—Fraudulent decree.

It is a question of some difficulty to determine what constitutes a fraudulent misrepresentation by an infant; but it is well established that, allowing another person to deal with him as if he was an adult or doing acts which only an adult can properly do is not sufficient: *Ex-parte Jones*, (1881) L. R. 18 Ch. D. 109, *Ref.*

The representation must, in order to create the liability, be an express representation.

Where, therefore, a minor simply executes a vakalatnama and files a written statement without making any express representation that he is of age, that of itself does not amount to a fraudulent representation that he is of age.

Again, there may be a false representation which is not fraudulent; for untruth does not of itself import a dishonest mind. Proof of absence of the actual and honest belief is necessary; *Derry* v. *Peck*, 14 A. C. 337, *Ref.* (*Das and Adami, JJ.*). GANGANAND SINGH *v.* RAMESHWAR SINGH.
102 I.C. 449=6 Pat. 388=8 P.L. T. 730=A.I.R. 1927 Pat. 271.

—Effect.

——If fraud has been effectuated, estate should be allowed to remain where it is—Otherwise Court will interfere. (*Robinson, C. J. and Duckworth, J.*). MAUNG PO ZU *v.* MAUNG P. KWA.
65 I. C. 322=11 L. B. R. 89=A.I.R. 1921 L.B. 58.

—Execution sale.

——Civil P. C., S. 47—Old and new Code—No application under S. 47 is maintainable, for recovering land obtained by fraud not concerned with publishing or conducting the sale—A separate suit will lie. 19 Cal. 683 (P.C.), *Diss.* (*Gokul Prasad, J.*). NARAIN SINGH *v.* ZALIM SINGH. **74 I.C. 351=A. I. R. 1923 All. 573.**

—Ex parte decree.

——Court finding in later suit that summons was not served on defendant in former suit—No fraud is established thereby—Civil P. C., S. 11. (*Ross, J.*). HARNARAIAN PANDEY *v.* NAND KESHWAR PANDEY. **71 I. C. 573=1 P.L.R. 127=A.I.R. 1923 Pat. 406.**

—Failure of fraud.

——Where fraud has wholly failed, parties can be remitted to original position. (*Hallifax, A.J.C.*). RAMPRASAD *v.* SETH JASKARAN. **82 I. C. 489=21 N.L.R. 21=A. I. R. 1925 Nag. 73.**

—Fraudulent decree.

——A fraudulent decree pre-supposes that fraud has been practised on the Court or on one of the parties to the suit. (*Cuming and Graham, JJ.*). BISWAMBAR BISWAS *v.* NILAMBAR MURARI.
33 C.W.N. 997=A.I.R. 1930 Cal. 263.

——*Every fraud can't sustain suit to set aside decree got by fraud.*

Many decrees are obtained by the fraud of the successful party which cannot be set aside by filing another suit and when the authorities are examined the difficulty, in laying down any principle to establish a distinction between frauds which if proved will enable the successful party to set aside a decree and those which will not support such a suit, is apparent.

Whenever a plaintiff or defendant obtains a decree by perjury the Court has been misled and not mistaken and the judgment so obtained can be impeached on the ground of fraud.

Where the Court was misled by the insolvent plaintiff who concealed his insolvency, in the suit for debt due prior to insolvency and where it was still open to the Official Assignee to sue him for the debt.

FRAUD—Fraudulent registration.

Held: the decree could be set aside by the debtor. (*Macleod, C.J.*). ANDREW ROZARIO *v.* MAHOMED IBRAHIM SARANG. **83 I.C. 34= 48 Bom. 583=26 Bom. L.R. 695= A.I.R. 1924 Bom. 460.**

—Fraudulent registration.

——Any fraud or misrepresentation by one party alone is ample to render the registration a nullity. (*Findlay, O.J.C.*). MT. SARJA *v.* MT. TULSI. **91 I. C. 1018=A.I.R. 1926 Nag. 93.**

—Omission to raise issue.

——Court cannot go into tho question of fraud when no issue has been raised regarding fraud and the defendants were not asked to meet any such case. (*Krishnan and Venkatasubba Rao, JJ.*). KUPPUSWAMI AIYANGAR *v.* BAVASWAMI RAO. **101 I. C. 399=50 Mad. 337= A.I.R. 1927 Mad. 538=38 M.L.T. 197.**

—Partnership.

——*Fraud vitiates any agreement entered into on dissolution of partnership.*

An agreement entered into on a dissolution will be set aside if it can be shown to have been based upon error or to have been tainted by fraud, whether in the shape of positive misrepresentation or of concealment of the truth.

In a suit upon a promissory note it was found that the working partners of a firm prepared and produced accounts before the sleeping partners on the faith of which the latter took upon themselves the partnership business and sent off the working partners promising to pay them under promissory note a sum of money after giving the former some cash and some logs of timber.

Held: that having regard to the fraud practised upon the sleeping partners as shown by the numerous instances of falsification of accounts by the working partners, the settlement was not binding upon the managing partners and that the promissory note was accordingly vitiated: 5 M.I.A. 872 (P.C.) and *Law* v. *Law*, (1905) 1 Ch. 140, *Ref.* (*Ananthakrishna Ayyar, J.*). (VATAKKAM CHIRAYIL PARKUM) KURUNDALIAMMAL *v.* T. P. E. N. KUNHI KANNAN. **123 I. C. 596= A. I. R. 1930 Mad. 141.**

—Party to fraud.

——*Defence of* pari delicto.

Two points have to be proved before a person can successfully plead the defence of *pari delicto*. It must be proved that the transaction was intended to defraud a third person and that the third person was, as a matter of fact, defrauded. The mere admission on the part of the plaintiff that the transaction was intended to defraud was not sufficient for the Court to take judicial notice of the fraud although it is not raised by the pleadings. The defence must be raised at the proper time and where the plaintiffs have no opportunity of leading evidence to meet the second point, *viz.*, that the third person was as a matter of fact defrauded, the defence cannot be allowed: 27 All. 266, *Expl.* and *Dist.* (*Rupchand and Barlee, A.J.Cs.*). MULCHAND HEMRAJ *v.* KHEMCHAND THANMAL. **118 I.C. 202= A. I. R. 1930 Sind 9.**

——Where each party is equally in fault, the law favours him who is actually in possession: A.I.R. 1923 Cal. 90; A.I.R. 1923 All. 504; 25 P.R. 1905; and 21 P.R. 1916, *Foll.*; A.I.R. 1925 Mad. 1016; 18 O. C. 131; 31 Bom. 405; 37 Bom. 217; 82 M.L.J. 484 and A.I.R. 1923 Mad. 711, *Not foll.* (*Addison, J.*). WAZIR CHAND *v.* KARANCHAND. **107 I. C. 110 (Lah.).**

FRAUD—Party to fraud.

——Parties to fraud cannot seek assistance from Court. (*Findlay, Offg. J. C.*). C. P. AUTOMOBILE, LTD. *v.* RAMCHANDRA VISHWANATH. **91 I.C. 1029=A.I.R. 1926 Nag. 259.**

——A plaintiff is precluded from setting up his own fraud in order to support his claim. The case of defendant who is only resisting a claim stands on a different footing: 38 P.R. 1892; 31 B. 405; 18 O.C. 131, *Dist.*; 25 P. R. 1905: 18 B. 372, *Foll.* (*Martineau, J.*). RADHA KISHAN *v.* MOOLCHAND. **76 I.C. 128=A.I.R. 1925 Lah. 27.**

——Benami—Defendant purchasing benami in plaintiff's name and remaining in possession and defrauding a stranger in collusion with plaintiff—Plaintiff suing for possession—Defendant cannot successfully plead benami and fraud: 32 M.L.J. 484 and 31 Bom. 405, *Foll.*; A.I.R. 1923 Cal. 90, *Not foll.* (*Waller, J.*). PACHYAMMAL *v.* DEVANAIAMMAL. **91 I.C. 776=22 M.L.W. 313=A.I.R. 1925 Mad. 1016.**

——Where the fraudulent purpose has been effected the maxim *in pari delicto potior est conditio possidentis* will apply and the Court will help neither party. On the other hand where the purpose of fraud is not carried in execution the mere intention to defraud will not deprive the true owner of the property. 33 Cal. 967, *Foll.* (*Wazir Hasan and Pullan, A.J.Cs.*). BANSI DHAR *v.* AJUDHIA PRASAD. **82 I.C. 333=27 O.C. 175=11 O.L.J. 619= A.I.R. 1925 Oudh 120.**

——Once it is established that the parties are *pari delicto* the Courts will not assist an illegal transaction in any respect, that is, the person who asks the Court to do something will fail. A.I.R. 1923 All. 504, *Foll.*; A.I.R. 1924 All. 80, *Dist.* (*Daniels, J.*). DAYA RAM *v.* THAKURI. **83 I. C. 21= 46 All. 622=22 A.L.J. 506= 5 L.R.A. Cr. 170=A.I.R. 1924 All. 668.**

——*Stifling non-compoundable prosecution—Parties not* in pari delicto.

Money paid on illegal contract cannot be recovered in the absence of fraud, duress or undue influence or oppression, where the payment was obtained by the innocent misrepresentation of the other party. The generality of the rule is, however, subject to some qualification, *e. g.*, where contracts or transactions are prohibited by law for the sake of protecting one set of men from another set of men, the one from their situation and condition being liable to be oppressed or imposed upon by the other, there the parties are not *in pari delicto*; and it has therefore been held that the person injured after the transaction is finished and completed, may bring his action and defeat the contract. If one person has paid money to another or has executed deeds in favour of another in pursuance of an illegal agreement, *e. g.*, to stifle a non-compoundable criminal prosecution though both parties are *in delicto*, yet they are not *in pari delicto*, and the person who has paid the money or has executed the deeds may recover it back in an action for money paid and received or may apply for the setting aside of the deeds respectively. (*Case-law discussed.*) (*C. C. Ghosh and Panton, JJ.*). RAM KUMAR DAS *v.* NANDA KUMAR SHAHA. **75 I. C. 27= 50 Cal. 639= A. I. R. 1924 Cal. 248.**

——Vendor cannot plead that the transfer in favour of vendee was a benami transaction intended to cheat the creditors or his own vendor by putting his name as benamidar for his own vendor. (*Coutts-Trotter and Ramesam, JJ.*). K. RAMASWAMY NAICKER *v.* ALAMELU AMMAL. **78 I.C. 921=34 M.L.T. 301=1924 M.W.N. 203= A.I.R. 1924 Mad. 604=46 M.L.J. 298.**

FRAUD—Party to fraud.

———*Carried out—Court will refuse relief to applicant.*

Where it was a part of the agreement that the parties should procure an order recognising the transfer, withholding from the Court the fact that it was not intended by them to be operative but real intention was merely to mislead third parties.

Held, it is a discreditable conspiracy to cheat the creditors. In such a case, when the facts come to the notice of the Court, the doctrine of *pari delicto* will be given effect to; and the Court will refuse aid to the party who has participated in the fraud and who asks for relief. 2 Q. B. D. 724 C. A., *Foll.* (*Spencer and Venkatasubba Rao, JJ.*). SHRIRAMA ROW *v.* BAPAYYA.

76 I.C. 845=18 M L.W. 453=
A.I.R. 1924 Mad. 189.

———*He can succeed only if purpose did not get beyond intention.*

Where the owner of property transfers it to another for an illegal purpose and such purpose is carried into execution neither the vendor nor his heirs can succeed in a suit to eject the vendee in possession without proving that the purpose never got beyond the stage of intention. In general where parties are concerned in illegal agreements or other transactions whether they are *mala prohibita* or *mala in se* Courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief. (*Baker, Offg. J. C.*). MAN SINGH *v.* KARAN SINGH. **78 I. C. 260=**
A. I. R. 1924 Nag. 200.

———*Transferee can retain property only if fraud is carried out.*

To enable a fraudulent confederate to retain property transferred to him in order to effect a fraud the contemplated fraud must be actually carried into effect. Then and then alone does the fraudulent grantor or giver loose the right to claim the aid of the law to recover the property he has parted with: 35 I.C. 28, *Foll.* (*Wazir Hasan and Cuming, A. J. Cs.*). RANNAQ ALI *v.* SYED NAZIR HUSSAIN. **78 I. C. 359=11 O.L.J. 92=**
A. I. R. 1924 Oudh 321.

———*Parties* in pari delicto—*Fraud carried out—Court would dismiss claim.*

A defendant can properly plead and rely on facts showing that he and the plaintiff were *in pari delicto* (4 Q.B. 312, 1869, *Ref.*). If the Court finds that parties were acting together with a view to perpetrate fraud and did in fact perpetrate that fraud, and that there is no difference in the decree of the plaintiff and defendant's guilt the duty of the Court is to dismiss the claim. A.I.R. 1923 Cal. 90. (*Mears, C.J. and Banerji, J.*). VILAYAT HUSAIN *v.* MT. MISRAN. **72 I.C. 92=**
45 All. 336=21 A.L.J. 303=4 L.R.A. Civ. 418=
A.I.R. 1923 All. 504.

———Suit for possession—Plaintiff, a party to the fraud, cannot allege fraud but defendant can show transaction to be fraudulent. (*Robinson, C. J. and Heald, J.*). MAUNG TIN *v.* MA MYA MJIUT.

65 I.C. 459=11 L.B.R. 83=A.I.R. 1921 L.B. 63.

—Proof of.

———When a plaintiff impeaches a transaction on the ground of fraud, the facts which constitute the alleged fraud must be distinctly, specifically and accurately stated. A charge of fraud must be substantially proved as laid, and when one kind of fraud is charged, another kind of fraud cannot, upon failure of proof, be substituted for it. 11 B. 620; 20 C. W. N. 638, *Foll.* (*Percival, J. C. and Rupchand Bilaram, A.J.C.*). ABDUL NABI KARIMDINO *v.* MAZHARALI NUR MAHOMED. **125 I.C. 33.**

———*Fraud—Collusion.*

Where the Court had no jurisdiction to pass a decree in terms of a compromise for payment of the amount agreed, where, to avoid possible complication and difficulties arising out of recording a simple compromise in that Court, a form of having a reference to arbitration and award was gone through and where application to a competent Court was made to file the award and have a decree passed in its terms, without letting the Court know of the proceedings in the other Court,

Held, that this conspiracy of silence cannot be described as "collusion" in the sense in which the word is used in connexion with judicial proceedings, *viz.*, a secret agreement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose, or even in the wider sense of a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person or for some improper purpose. (*Fawcett, Ag. C. J. and Murphy, J.*). KONDI RAVJI *v.* CHUNI LAL RUPCHAND. **113 I.C. 229=**
53 Bom. 75=30 Bom. L.R. 1539=
A.I.R. 1929 Bom. 1.

———Fraud is difficult to prove by means of direct evidence. It can usually only be established by the circumstances surrounding the case. (*Findlay, J.C. and Macnair, A.J.C. afterwards Prideaux, A.J.C.*). VYANKATESH *v* ANNASA LAL.

107 I.C. 517=23 N.L.R. 143=11 N.L.J. 49=
A.I.R. 1928 Nag. 1.

———It is not ordinarily possible to prove fraud by direct evidence. So if it is inferred from the conduct of the parties the finding as to fraud is not illegal. (*Baker, J. C.*). SHEORAM *v.* DOMA.

89 I.C. 367=A I. R. 1925 Nag. 460.

———*Evidence of, can be gathered from circumstances only.*

In a case where a forgery or fraud is alleged, it is almost impossible to prove the same by actual direct evidence, and all that the person alleging it can do is to give evidence of the circumstances, from which a reasonable presumption arises that something of the sort has occurred. (*Findlay, O. J. C.*). KESHEO *v.* VITHAL. **89 I. C. 468=**
8 N. L. J. 123=A. I. R. 1925 Nag. 427.

———Fraud and collusion must be proved by facts or inferences from facts as a whole—Suspicions or surmises or conjecture are no substitute but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape. (*Lord Atkinson.*) SATISH CHANDRA *v.* SATISH KANTHA. **73 I.C. 391=28 C.W.N. 327=**
39 C.L.J. 165=33 M.L.T. 325=
A. I. R. 1923 P.C. 73=45 M.L.J. 363 (P.C.).

———One *R* executed a sale deed of his share in favour of *S* and the plaintiffs brought the present suit against *S* for pre-emption. After the summonses to the defendants had been issued and served, *P*, a co-sharer in the village executed a deed of gift in favour of *S* in respect of a very small amount of the property in the village enabling thereby to resist, the claim of the plaintiffs on the ground that he (*S*), was already a co-sharer in the village and therefore no suit for pre-emption was maintainable against him.

FRAUD—Revenue sale.

Held that the circumstances that the donor was of a different caste to the donee, that the deed of gift was given after the institution of the suit and the smallness of the property gifted did not justify the presumption of fictitiousness of the deed of gift. If the *plaintiffs wished to challenge the deed of gift they should have said so in their pleadings and given evidence in support of their allegations, fictitiousness and fraud. (Rafique and Piggott, JJ.).* SHIB LAL *v.* BIDHA SINGH.

72 I.C. 140=21 A.L.J. 329=4 L.R.A. Civ. 375=A.I.R. 1923 All. 508.

—Revenue sale.

——If a suit for annulment of a revenue sale is based on a definite allegation of fraud, that of itself is sufficient to entitle the plaintiffs to the relief provided that the plaintiffs prove that fraud has been committed and that the plaintiffs' right of residing in the lands has been adversely affected. (*Suhrawardy and Costello, JJ.*). ANANTA LAL SARKHAL *v.* SOUDAMINI GUHA.

A. I. R. 1930 Cal. 621.

——*Civil Court has jurisdiction to declare sale fraudulent and not binding on plaintiff.*

A Civil Court has jurisdiction to make a declaration that a revenue sale is fraudulent and did not convey plaintiff a interest in the property. The sale has the appearance of a sale for arrears of revenue but is in its essence, a private alienation. A co-owner of land cannot be allowed to use the machinery of the Revenue Sale Law to defraud other co-owner, and if he does so the Civil Courts are competent to declare that the result of his conduct is not to place a fraudulent purchaser in a better position than a buyer at a private sale. (*Pratt, J.*). MA ZA *v.* MA MI. **67 I.C. 636=11 L.B.R. 313=A.I.R. 1923 Rang. 17.**

—Taking advantage of.

——Where the plaintiff succeeded in carrying out the fraud by executing a sale-deed of his property he is precluded from putting forward his own title to the property by taking advantage of his own fraud. 36 C. 551 (P.C.), *Foll.* (*Gokul Prasad, J.*). LACHMAN DEO *v.* MULCHAND. **71 I.C. 441=A.I.R. 1923 All. 411.**

——A person who procured a legal flaw cannot take advantage of it. (*Walsh and Stuart, JJ.*). RAM SUNDAR *v.* MT. KULWANTHI KUNWAR.

66 I.C. 499=44 All. 642= 20 A.L.J. 392=A.I.R. 1922 All. 233.

—What is.

——Any and every act of the defendant which misleads the Court does not afford a cause of action to the plaintiff to found a separate suit for having a decree declared void. Thus if in the previous case the Court was misled into holding that the service of the summons by registered post was good service it would not by itself be sufficient to found a separate action on the ground of the fraud. The only remedy open to a party under such circumstances is to apply to the Court which passed the previous decree to set aside the *ex parte* decree under O. 9, R. 13, C. P. C. (*Rupchand, A. J. C.*). FIRM OF M. GHULLAMALLY & SONS *v.* FIRM OF GAMMETER. **24 S.L.R. 232=A.I.R. 1930 Sind 298.**

——A defendant relying on a rule of evidence which prevents a Court from taking certain evidence can hardly be said to be guilty of a fraud. (*Macleod, C. J. and Crump, J.*). TALAKCHAND BHERAJI *v.* ATMARAM KESHAV. **77 I. C. 342=25 Bom.L.R. 818=A. I. R. 1924 Bom. 58.**

——The mere execution of a deed of relinquishment by an ex-proprietary tenant cannot amount to constructive fraud on behalf of the landlord. (*Gokul Prasad, J.*). BHAGWANT *v.* MARE.

72 I.C. 1024=A.I.R. 1923 All. 113.

FRAUD IN COURT.

See C. P. CODE, S. 73, O. 21, R. 52.

FRAUD ON CREDITORS.

See (1) FRAUDULENT TRANSFERS.
(2) T. P. ACT, S. 53.

FRAUDULENTLY, DEFINITION OF.

See PENAL CODE, S. 25.

FRAUDULENT PREFERENCE.

See (1) PROV. INS. ACT, Ss. 37 AND 54.
(2) PRES. TOWNS INSOLVENCY ACT, S. 56.
(3) T. P. ACT, S. 53.

FRAUDULENT TRANSFER.

See T. P. ACT, S. 53.

FREE CONSENT.

See CONTRACT ACT, S. 16.

FREEDOM OF RELIGION ACT.

See CASTE DISABILITIES REMOVAL ACT.

FREIGHT.

See RAILWAYS ACT.

FRESH EVIDENCE.

See C. P. C., O. 41, R. 27.

FRESH SUIT.

See C. P. C., O. 23, R. 1.

FRUSTRATION.

See CONTRACT ACT, S. 56.

FUGITIVE OFFENDERS ACT (1881, 44 & 45 Vict., Ch. 69).

—S. 33—Interpretation.

——The word "return" in S. 33 is not to be read as implying that the offender is a fugitive from the country to which he is being sent for trial: 103 Law Times 473, *Rel. on.* (*Wild, J. C. and Aston, A.J.C.*). E. C. D. WHEELER *v.* EMPEROR.

112 I.C. 673=29 Cr. L. J. 1089=A.I.R. 1928 Sind 161.

FULL BENCH.

See PRACTICE—HIGH COURT.

FUNERAL EXPENSES.

See (1) HINDU LAW.
(2) MAHOMEDAN LAW.

FURTHER ENQUIRY.

See (1) C. P. C., O. 41, Rr. 23 AND 25.
(2) CR. P. C., Ss. 203 AND 437.

FUTURE INTEREST.

See T. P. ACT, O. 34.

GADABA OR GUDABA.

See GRANT—INAM.

GAMBLING.

See (1) CONTRACT ACT, Ss. 23, 30 AND 65.
(2) GAMBLING ACTS, IMPERIAL (PUBLIC GAMBLING ACT 3 OF 1867) AND PROVINCIAL.

GAMBLING ACT (III of 1867).

—S. 3—Gambling in Dewali.

——Gambling in Dewali should not be considered to be an offence; but the law will not countenance gambling even at Dewali if it is in contravention of the Gambling Act. Where the only evidence that anything was done in contravention of the Act was that the owner of the house had in front of him a small pot containing a few annas and there was no reason to suppose that the sum represented his profits or that it was what is known as 'nal' and the sums staked were quite trifling,

Held, that it was only a case of Dewali Gambling in a private house and no offence was committed. (*Pullan, J.*). LACHHMAN *v.* EMPEROR.

7 O. W. N. 757=1930 Cr. C. 943=A.I.R. 1930 Oudh 403.

GAMBLING ACT (1867), S. 5—General warrant—Legality.

—S. 5—General warrant—Legality.
———To issue a warrant to raid houses where gambling goes on at the time of Dewali is highly undesirable as the police are merely encouraged to run in numbers of perfectly innocent persons in order to get a reward. (*Pullan, J.*). LACHHMAN *v.* EMPEROR. **7 O.W.N. 757=1930 Cr. C. 943=A.I.R. 1930 Oudh 403.**

GAMBLING CONTRACT.
See CONTRACT ACT, S. 23.

GAMBLING IN LITIGATION.
See CONTRACT ACT, S. 23.

GAMING.
See (1) CONTRACT ACT, Ss. 30 AND 65.
(2) GAMBLING ACTS, IMPERIAL AND PROVINCIAL.

GANJAM AND VIZAGAPATAM AGENCY RULES.
See AGENCY RULES.

GARNISHEE.
See (1) C. P. CODE, O. 21, Rr. 46, 53, ETC.
(2) HIGH COURT RULES.

GAYAWAL.
See (1) HINDU LAW—RELIGIOUS OFFICE.
(2) T. P. ACT, S. 6.

GAZETTE.
See EVIDENCE ACT, S. 81.

GENERAL CLAUSES ACT (10 of 1897).

—S. 3 (15)—High Court.
———For the purpose of determining the meaning the words "ordinary or extraordinary original civil jurisdiction" in S. 3, Cl. 15, General Clauses Act, all that is excluded is the High Court, acting under Cls. 11 to 18, Letters Patent, and that the High Court exercising any other original jurisdiction would fall within the definition of District Judge.
Hence the High Court is a "District Court" when it does not exercise its ordinary or extraordinary civil jurisdiction conferred by Cls. 11 to 18, Letters Patent: 13 Bom. 520 (P. C.), *Foll.* (*Wallace and Ananthakrishna Ayyar, JJ.*). *In the matter of* G. A. KUPPUSWAMI NAYAGAR.
A. I. R. 1930 Mad. 779.

—S. 3 (20)—Applicability.
———The definition of the words "in good faith" given in the General Clauses Act of 1897 does not apply to the Transfer of Property Act. (*Mukerji and Ashworth, JJ.*). LACHMI PRASAD *v.* LACHMI NARAIN. **107 I.C. 36=25 A. L. J. 926=A.I.R. 1928 All. 41.**

—S. 3, Cl. 25—Benefit to arise out of land.
———*Whether includes mortgage.*
Held, that a mortgage is not "a benefit to arise out of land" within the meaning of S. 3, Cl. 25 of the General Clauses Act. (*Rankin, C. J. and C. C. Ghose, J.*). IMPERIAL BANK OF INDIA *v.* BENGAL NATIONAL BANK, LTD.
57 Cal. 328=34 C. W. N. 605.

—S. 3 (25)—Building.
———Building is immovable property. (*Harrison and Dalip Singh, JJ.*). MUNI LAL *v.* KISHORE CHAND. **103 I. C. 742=9 L. L. J. 157=28 P. L. R. 325=A.I.R. 1927 Lah. 373.**

—Ss. 3 (25) and 34—Mortgage bond.
———Simple mortgage bond is moveable property for the purpose of procedure for attachment. (*Case-law discussed*). 15 All. 134; 26 Bom. 305; 18 P. R. 1909; 37 Mad. 51; 50 I.C. 157, *Foll.* (*Walsh, A.C.J. and Boys, J.*). LAL UMRAO SINGH *v.* LAL SINGH. **80 I.C. 890=5 L.R.A. Civ. 674=22 A.L.J. 840=46 All. 917=A. I. R. 1924 All. 796.**

GENERAL CLAUSES ACT (1897), S. 3 (39)—Corporation.

—S. 3 (25)—Mortgagee's interest.
———A sale of a mortgagee's interest can only be effected by means of a registered deed of transfer: 10 A.L.J. 167; 29 Cal. 1; 37 Mad. 51, *Foll.*; 13. All. 89; 15 All. 134 and A.I.R. 1924 All. 796, *Expl.* and *Not foll.* (*Sulaiman and Kendall, JJ.*). BANK OF UPPER INDIA, LTD. *v.* FANNY SKINNER. **119 I.C. 241=1929 A.L.J. 279=51 All. 494=A. I. R. 1929 All. 161.**

—S. 3 (25)—Mortgage with possession.
———A mortgage with possession is an interest in land because the mortgagee has a right to possession and enjoy the benefits arising out of the land until he is redeemed. In such a case, the mortgagee rights therein are immovable property. (*Harrison and Dalip Singh, JJ.*). MUNI LAL *v.* KISHORE CHAND. **103 I.C. 742=9 L. L. J. 157=28 P. L. R. 325=A. I. R. 1927 Lah. 373.**

—S. 3 (25)—Several fishery.
———A several fishery is an incorporal hereditament and would normally be considered real or immovable property. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE. **23 Bom. L.R. 939=A.I.R. 1921 Bom. 93.**

—S. 3 (31)—Juge d' instruction.
———'Juge d' instruction' is a Magistrate and so statements made in his immediate presence are admissible in evidence. The term 'Magistrate' is not restricted to the Magistrates exercising jurisdiction under Cr. P. C.: 22 Bom. 235, *Rel. on.* (*Waller and Pandalai, JJ.*). PANCHANATHAM PILLAY *v.* EMPEROR. **121 I. C. 157=29 M.L.W. 645=1929 M.W.N. 383=52 Mad. 529=2 M. Cr. C. 150=31 Cr.L.J. 223=A.I.R. 1929 Mad. 487=56 M.L.J. 628.**

—S. 3 (34)—Shares in company.
———Shares in a company are goods. But they are peculiar kinds of moveable property, which cannot pass freely from hand to hand. (*Macleod, C.J. and Crump, J.*). VADILAL SARABHAI *v.* MANEKJI PESTONJI BHARUCHA. **82 I.C. 977=25 Bom. L.R. 414=A.I.R. 1923 Bom. 372.**

—S. 3 (37)—Under Wakf Act.
———There does not appear to be anything in the Mussalman Wakf Act which is repugnant to the definition of an offence contained in the General Clauses Act and in the Criminal Procedure Code and as the Act contains no provision regarding the Court by which offences under S. 10 of the Act should be tried, they can be tried by any Magistrate. (*Percival, J.C. and Aston, A.J.C.*). ALI MAHOMED *v.* EMPEROR. **105 I.C. 666=22 S.L.R. 141=28 Cr. L.J. 954=9 A.I. Cr. R. 142=A.I.R. 1928 Sind 43.**

—S. 3 (39)—Applicability.
———*Guardians and Wards Act, S. 4 (2)—Person.*
Per *Mukerji, J.*—The word 'person' as used in the definition of 'Guardian' in S. 4, Cl. (2), Guardians and Wards Act, is not to be read in the light of the meaning given to it by S. 3, Cl. (39), General Clauses Act. (*Mukerji and Guha, JJ.*). SM. ASALATA ROY *v.* SOCIETY FOR THE PROTECTION OF CHILDREN OF INDIA. **51 C.L.J. 272=A.I.R. 1930 Cal. 397.**

—S. 3 (39)—Corporation.
———*Cr. P. C., S. 250—"Person" includes a corporation.*
The expression "person" includes not only a natural person but also a juristic person. Section 3 (39) of the General Clauses Act makes it perfectly clear that the word "person" includes "any company or

GENERAL CLAUSES ACT (1897), S. 3. (39)—Firm.

association or body of individuals whether incorporated or not". (*Shadi Lal, C.J.*). THE MUNICIPAL COMMITTEE OF LAHORE *v.* RATTAN CHAND. **72 I.C. 623=24 Cr. L.J. 463=A.I.R. 1923 Lah. 31.**

—S. 3 (39)—Firm.

———The word 'person' clearly includes a firm as provided by the General Clauses Act, 1897; and when the return is made on behalf of the firm by a partner, it is the firm that is the person who makes the return. (*Coutts-Trotter, C.J. and Krishnan, J.*). COMMR. OF INCOME-TAX, MADRAS *v.* THILAI CHIDAMBARAM NADAN. **90 I.C. 549=48 Mad. 602=22 M.L.W. 206=A.I.R. 1925 Mad. 1048=49 M.L.J. 124.**

—S. 3 (52)—Mark.

———Mark by a person able to write but who belonged to illiterate caste was held to be a valid signature. A.I.R. 1923 Nag. 182, *Ref.* (*Baker, Offg. J. C.*). GULAM MOHIUDDIN *v.* SHANKER. **78 I.C. 79=A.I.R. 1924 Nag. 159.**

—S. 3 (52)—Signature.

———*Bengal General Clauses Act, S.* 3 (41)—"*Signature*"—*Means writing name with the intention to authenticate the document.*

Speaking generally a signature is the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed. The insertion of the name, in any part of the writing, in a manner to authenticate the instrument is sufficient. Although the signature be in the beginning or middle of the instrument, it is binding as if at the foot of it. The question always is, whether the party, not having signed it regularly at the foot, yet meant to be bound by it as it stood, or whether it was left, so unsigned because he refused to complete it; but when it is ascertained that he meant to be bound by it as a complete contract, the signature is, for purposes of execution, effective. The Courts have gone so far as to hold that the name at the head of a telegram was sufficient. Some of the cases even hold that it matters not for what purpose the signature was put, if in fact it authenticates the document. But the primary rule is what where the name occurs in the document, not as authenticating the whole, but only for a particular purpose or only with reference to a part, it is not an effective signature. *Johnson* v. *Dodgson*, 2 M. & W. 653; 46 R. R. 733; *Tourret* v. *Cripts*, 48 L. J. Ch. 567, *Ref. to.* (*Mookerjee and Chotzner, JJ.*). J. & D. EZIEKEIL CO., *In re.* **70 I.C. 794=36 C.L.J. 109=50 Cal. 180=A.I.R. 1923 Cal. 35.**

—S. 3 (59)—Applicability.

———Where the probabilities are not, and the evidence does not show, that the parties usually went by the Gregorian Calendar, provisions of General Clauses Act, S. 3 (59) do not apply. (*Batten, J.C.*). SETH BHOJRAJ *v.* PANDA SHANKERNATH. **71 I.C. 45=A.I.R. 1922 Nag. 265.**

—S. 3 (59)—'Sambat' calendar.

———A year calculated according to the *Sambat* calendar amongst Hindi speaking parties should not be considered to mean a year according to the British calendar. (*Baker, J.C.*). MOTIRAM *v.* SETH LAKHMICHAND. **76 I. C. 44=A.I.R, 1924 Nag. 216.**

—S. 6—Contingent rights.

———*Repeal of statute does not affect even contingent rights.*

GENERAL CLAUSES ACT (1897), S. 6—Sanction for prosecution.

If an auction-purchaser of properties has, under law a right to re-payment of his purchase-money should he discover that the judgment-debtor had no saleable interest in the property,

Held, that such an alternative contingent right is presumed by S. 6 (*c*) of the Act and is not to be deemed to be taken away by the repeal of the enactment giving such a right. (*Mookerjee and Chotzner, JJ.*). MAKAR ALI *v.* SURFADDIN. **70 I.C. 606=36 C.L.J. 132=27 C.W.N. 183=50 Cal. 115=A.I.R. 1923 Cal. 85.**

—S. 6—Interpretation.

———The repeal or amendment of an Act does not affect a right already in existence unless a contrary intention is made out expressly or by implication. (*Dawson-Miller, C.J. and Jwala Prasad, J.*). CHAUDHURI GURSARAN DAS *v.* AKHOURI PUMESHWAR CHARAN. **104 I.C. 580=6 Pat. 296=8 P.L.T. 841=A.I.R. 1927 Pat. 203.**

—S. 6—Interpretation.

———The word enactment in S. 6 (e) include not only an entire law but any section or provision of a law. (*Daniels, J.*). KASHMIRI LAL *v.* MT. KISHEN DEN. **83 I.C. 650=5 L.R.A. Cr. 99=26 Cr. L.J. 90=A. I. R. 1924 All. 563.**

—S. 6—Letters Patent.

———*Amendment of applicability.*

In the case of a repeal by an enactment there are clear statutory authorities against retrospectivity of legislation for instance, S. 38, Interpretation Act, 1889, (52 and 53 Vic., c. 63), and S. 6, General Clauses Act, 1897. But these provisions do not cover an amendment to the Bombay High Court's Letters Patent, which is made by His Majesty under the powers conferred by sub-S. (1-A), S. 106, Government of India Act: 3 B.H.C.R. (O.C.J.) 49 and *The Colonial Sugar Refining Company Ltd.* v. *Irving*, (1905) A.C. 369, *Dist.* (*Fawcett and Mirza, JJ.*). BADRUDDIN *v.* SITARAM. **114 I.C. 241=52 Bom. 753=30 Bom. L.R. 942=A.I.R. 1928 Bom. 371.**

—S. 6—Provincial Acts.

———*Mallik, J.*—When an Act of the Governor-General-in-Council repeals any enactment, then, unless a different intention appears, the repeal shall not affect any rights acquired under the enactment so repealed. This rule also applies to an Act of the Bengal Council. (*Cuming and Mallick, JJ.*). SHIBA KALI KUMAR *v.* CHUNI LAL. **103 I.C. 674=31 C.W.N. 1007=A.I.R. 1927 Cal. 748.**

—S. 6—Repeal of Ss. 92 and 93, T. P. Act.

———*Effect.*

A judicially declared right of redemption is a valuable right. The rights of a mortgagor who has obtained a redemption decree under the T. P. Act, Ss. 92, 93 are not mere matters of procedure and are not taken away by the repeal of those sections by the C. P. Code, 1908. (*Daniels, A. J. C.*). RAM BUP *v.* GHANI AHMAD. **74 I.C. 162=9 O.L.J. 625=A.I.R. 1923 Oudh 156.**

—S. 6—Sanction for prosecution.

———*Amended Code—Effect of.*

Sanction for prosecution granted before the coming into force of the new Code under which the provision as to the grant and revocation of sanction is abolished, can be revoked even after the coming into force of the new Code, the right to apply for revocation of sanction not being a mere matter of procedure but of substantive right. *Gardner* v. *Lucas*, (1878) 3 A.C. 582; *Attorney-General* v. *Sillem*, 10 H.L. C. 704 and *Colonial Sugar Refining Co.* v. *Irving*, (1905) A.C. 369, *Foll.* (*Coutts-Trotter,*

GENERAL CLAUSES ACT (1897), S. 8 (1)—Succession Act.

C. J., Spencer, Kumaraswami Sastry, Beasley and Srinivasa Aiyangar, JJ.). RAMAKRISHNA AIYAR *v.* SITHAI AMMAL. **91 I.C. 395=27 Cr.L.J. 91=1925 M.W.N. 684=48 Mad. 620=22 M.L.W. 879=A.I.R. 1925 Mad. 911=49 M.L.J. 223 (F.B.).**

—S. 8 (1)—Succession Act.

———Proceedings under the repealed and re-enacted Succession Certificate Act must be taxed in exactly the same way after as before the Act of 1925 for there is no substantial difference involved in the principle of the provisions. (*Marten, C. J. and Baker, J.*). RAJARAJESWARASHRAM *v.* SVARUPANANDTIRTH. **103 I.C. 637=29 Bom. L.R. 1031=A.I.R. 1927 Bom. 499.**

—S. 10—Applicability to decrees.

———Section 10 is based upon the principle that parties who are prevented from doing a thing not by any default of their own but by the Court itself are entitled to do it at the first subsequent opportunity and this principle is a general one and applies to the interpretation of decrees of Court. (*Krishnan, J.*). SANKARAN *v.* RAMAN. **87 I.C. 560=1925 M.W.N. 566=21 M.L.W. 469=A.I.R. 1925 Mad. 743=48 M.L.J. 596.**

—S. 10—Cattle Trespass Act.

———*Principle of S. 10 may be applied to Cattle Trespass Act, S. 20.*

Although S. 10, General Clauses Act, only applies to Acts made on or after 14th January, 1897, and does not cover in terms, an Act like Cattle Trespass Act passed in 1871, the principle underlying S. 10, General Clauses Act, should be applied to complaints under Cattle Trespass Act, S. 20. (*Findlay, J. C.*). MAHADEO GANPATI PATIL *v.* NABHA VISWANATH. **113 I.C. 285=30 Cr. L.J. 125=12 A.I. Cr. R. 69=A.I.R. 1929 Nag. 96.**

—S. 10—Closing of Court.

———*Court open during vacation for receiving plaints, etc., is deemed to be open.*

When a Court is adjourned for the vacation but the notification states that the Court will be open on certain days for the reception of plaints, petitions and other papers, the Court cannot be treated as closed on those days when it was open for the above purpose: 5 M. 189 (F.B.), *Foll.*

As a matter of practice, it is well understood that plaints, which are not presented in the Presidency Small Cause Court on the days when the office is open for receiving them during the vacation, become time-barred after the expiration of the period of limitation appropriate to such suits and plaintiffs cannot claim to exclude the whole of the Small Cause Court's vacation. The words "other papers" are very wide and must include applications for re-trial of the suit. (*Spencer and Venkatasubba Rao, JJ.*). THE BRITISH INDIA STEAM NAVIGATION CO. *v.* H. M. SHARAFALLY. **70 I.C. 888=17 M.L.W. 705=46 Mad. 938=A. I. R. 1923 Mad. 435=44 M.L.J. 100.**

—S. 10—Compromise decree.

———As neither S. 5 of the Limitation Act nor S. 10 of the General Clauses Act applies to a compromise decree, a party who was bound to do a particular thing under such decree is not entitled to any extension of time on account of the Courts being closed on that day. On the question of the date, from which the time should be counted,

Held, that it should be counted from the date of decree. (*Daniels, J.C.*). ILAHI RAZA KHAN *v.* MT. TAIBA BEGAM. **66 I.C. 273=9 O.L.J. 53=A.I.R. 1922 Oudh 145.**

GIFT—Conditional gift.

—S. 10—Expiry of time on holiday.

———Limitation Act, S. 4—Time fixed by decree expiring in Holidays—Payment on re-opening day is within time. 7 N.L.R. 176, *Foll.*; 35 B. 75, *Ref*; 36 B. 268, *Not foll.*; 41 All. 47, *Ref.* (*Batten, J.C.*). DHANU SINGH *v.* KESHAOPRASAD. **72 I.C. 388=19 N.L.R. 116=A.I.R. 1923 Nag. 246.**

—S. 26—General and special laws.

———Where the insolvent was entrusted with furniture by the Official Assignee for the purpose of continuing his business and, in breach of the trust, he disposed of it to various persons,

Held, that his conviction under general law was proper, even assuming that the facts proved do amount to an offence under S. 103 (b) (2), Presidency Towns Insolvency Act: 6 M.L.W. 283, *Foll.* (*Waller and Madhavan Nair, JJ.*). WILLIAM PLYTHE PETRETT *v.* EMPEROR. **105 I.C. 448=39 M.L.T. 268=28 Cr.L.J. 928=A.I.R. 1927 Mad. 1018.**

—S. 26—No two punishments.

———Where either of the two offences under two different Acts was constituted by the same acts the offender could not be punished for both. (*Zafar Ali, J.*). (HAKIM) BAHADUR SINGH *v.* THE CROWN. **76 I.C. 689=25 Cr. L.J. 225=A. I. R. 1923 Lah. 342.**

GESTATION.

See (1) T.P. ACT, S. 14.
(2) EVIDENCE ACT, S. 112.

GHATTI TOMULU.

See MAD. EST. LAND ACT, SS. 3 (11), 143, 145.

GHATWALI.

See LAND TENURE—GHATWALI.

GHATWALI LAND REGULATION (BENGAL—29 of 1814).

—Ghatwal can be a mourashi mokararidar.

———A person may be a *mourashi mokararidar* and also a ghatwal. (1918 P.H.C.C. 305 and A.I.R. 1924 P.C. 5, *Ref.*). The distinction between a ghatwali within the regulation and ghatwali which is outside the regulation is that in the former case there is no tenure between the zamindar and the ghatwali who holds direct from the Government while in the latter the tenure exists. In the former case while the lands of the ghatwali are still deemed to be within the zamindari, the zamindar no longer pays the Government revenue for them and has therefore, no claim to the underground rights; his only right connected with these lands is to receive the difference between the rent paid by the ghatwal and the amount of the Government revenue which was assessed on this part of the zamindari; if the Government does not claim the mineral rights there is no one to whom they can belong but the ghatwal. But in the latter case the zamindar still pays the Government revenue on these lands and if the ghatwal claims the minerals he must show some transaction which grants him the minerals either expressly or by necessary implication. (*Das and Ross, JJ.*). SATYA NIRANJAN CHAKRAVARTY *v.* SUSHILA BALA DASI. **90 I.C. 513=4 Pat. 799=A.I.R. 1926 Pat. 103.**

GIFT.

See also (1) DEED—CONSTRUCTION.
(2) HINDU LAW—GIFT.
(3) MAHOMEDAN LAW—GIFT.
(4) T. P. ACT, Ss. 122—128.
(5) TRUSTS ACT, S. 3.

—Conditional gift.

———Condition to pay maintenance allowance to donor by donee not observed by donee—Property

GIFT—Imperfect gift.

gifted can be recovered by donor. (*Sir John Wallis.*) MOHANT RAI *v.* MT. LACHHMINA KUNWAR.

101 I.C. 363=1927 M.W.N. 456=26 M.L.W. 94=31 C.W.N. 1087=39 M.L.T. 155=A.I.R. 1927 P.C. 123. (P.C.).

—Imperfect gift.

———Imperfect gift cannot be given effect to by being treated as a trust. *Milroy* v. *Lord*, (1862) 4 Deg. F.& J. 264 and *Richards* v. *Delbridge*, (1874) L. R. 18 Eq. 11, *Foll*. (*Rankin, J.*). AMARENDRA KRISHNA *v.* MONIMUNJARI DEBI.

66 I.C. 586=48 Cal. 986=A.I.R. 1921 Cal. 148.

—Life-estate.

———It is possible in this country for a person, possessed of estate appertaining solely to himself to grant by deed or will an estate to some other person which will amount substantially to an estate which corresponds in extent to that which is known in English Law as a "Life-estate." I. A. Supp. Vol. 47 (P.C.), *Foll.* (*Das and Bucknill, JJ.*). BRIJ-KISHORE NARAIN SINGH *v.* HARBANS NARAIN SINGH. **62 I.C. 611=2 P.L.T. 728=A.I.R. 1921 Pat. 397.**

—Subsequent condition.

———Condition subsequent in a gift which is void does not affect validity of gift. (*Page, J.*). LALIT MOHAN SEAL *v.* BROJENDRA NATH SEAL.

96 I.C. 45=53 Cal. 251=A.I.R. 1926 Cal. 561.

—Trust and gift.

———Every step taken towards proof of a gift is in itself *protanto* a negation of a trust, for a trust retains the actual ownership in the trustee, while an endeavour to make a gift is an endeavour to divest the property and pass it away to the donee. (*Viscount Sumner.*) HARIRAM SEROWGEE *v.* MADAN GOPAL BAGLA. **114 I. C. 565=1929 A.L J. 406=49 C.L.J. 335=33 C.W.N. 493=31 Bom. L.R. 710=1929 M.W.N. 422=30 M.L.W. 835=A.I.R. 1929 P.C. 77=57 M.L.J. 581 (P.C.).**

GODAVARI AGENCY RULES.

See AGENCY RULES—GODAVARI.

GOLD COAST COLONY NATIVE ORDINANCE.

—S. 28—Complaint under.

———*Remedies open.*

Where a complaint as to violation of S. 28 is brought against a person in a Native Court, all that he can do is either to put in defence and if judgment is against him appeal against it or apply for transfer. He cannot stop the case by raising a case in another Court and craving by means of declaration to make good what is really the defence in the original action simply by saying that bringing of the case is malicious. (*Viscount Dunedin.*) OSU-MANYAWA YAW EWUA *v.* NANA SIR OFORI ATTA. **A. I. R. 1930 P. C. 260 (P.C.).**

GOOD FAITH.

See (1) PENAL CODE, S. 52.
(2) SP. REL. ACT, S. 27.
(3) T. P. ACT, SS. 41, 43, 53.
(4) TRUSTS ACT, S. 96.

GOODS.

See CONTRACT ACT (1872), SS. 76—123.

GOOD WILL.

See (1) CONTRACT ACT, SS. 253—266.
(2) PARTNERSHIP.
(3) TRADE MARK.
(4) TRADE NAME.

GOONDAS ACT.

See BENGAL GOONDAS ACT (1 B. C. OF 1923).

GOVERNMENT OF INDIA ACT (1915), S. 30—Acquisitions.

GOVERNMENT.

See (1) ACT OF STATE.
(2) CROWN.
(3) GOVERNMENT OF INDIA ACT.
(4) GRANT.
(5) SECRETARY OF STATE.

GOVERNMENT OF INDIA ACT (1833, 3 & 4 WILL IV, Ch. 85).

—S. 86—Applicability.

———It may be that for political, economic or other reasons the Government desire to restrict the purchase of immovable property in British India by the Ruling Chiefs but before such a desire can be enforced through the law Courts of this country it must be shown that the circular issued by the Government is one that has the sanction of some law binding on the Courts. Section 86 of an enactment of 1833, 3 and 4 Williams 4, C. 85 and S. 1, Act 4, 1837 passed by the Right Hon'ble the Governor-General-of-India-in-Council on 17th April, 1837 have no application to such cases. (*Fforde and Jai Lal, JJ.*). MAHARAJA OF FARED KOTE *v.* ANANTH RAM. **114 I. C. 62=10 Lah. 447=A.I.R. 1929 Lah. 1.**

GOVERNMENT OF INDIA ACT (1858, 21 & 22 Vict., Ch. 106).

—S. 65—Applicability.

———*Regulation of Civil Procedure is not subject to S.* 65.

The Regulation of Civil Procedure has nothing to do with the obligations formerly vesting in the East India Company as a trading corporation, for it is incidental to the duties of the ruling power, and cannot be said to be subject to the Government of India Act, 1858, S. 65. (*Viscount Sumner.*) BHAG CHAND *v.* SECY. OF STATE. **104 I.C 257=51 Bom. 725=54 I. A. 338=25 A.L.J. 641=29 Bom.L.R. 1227=46 C.L.J.76=1927 M.W.N.561=1 L.C 291=32 C.W.N. 61=26 M.L.W. 809=A.I.R. 1927 P.C. 176=53 M.L.J. 81 (P.C).**

GOVERNMENT OF INDIA ACT (1915, 5 and 6 Geo. V, Ch. 61 as amended by 1916, 6 and 7 Geo. V, Ch. 37, 1919, 9 and 10 Geo. V, Ch. 101, 1924, 14 and 15 Geo. V, Ch. 23 and 1925, 15 and 16 Geo. V, Ch. 83).

—Ss. 29 (5) and 32—Commandeering order.

———A commandeering order is one which no one but Government can make, and being an act of the Sovereign, the Secretary of State evidently cannot be sued in respect of it. (*Chotzner, J.*). KESSORAM PODDAR & CO. *v.* SECY. OF STATE.

107 I.C. 360=54 Cal. 969=A.I.R. 1928 Cal. 74.

—S. 29—Ultra vires contracts.

———When a statute lays down certain mandatory provisions in regard to the framing of contracts between the Secretary of State and a private individual, it is no answer to say that because the provisions were ignored on particular occasions and payments were made on contracts which were not in conformity with the statute that that should be taken as a precedent which will be binding upon the Secretary of State in every case. Contracts to be binding upon the Secretary of State must be made in strict conformity with the provisions laid down in the statute. If they are not so made, they are not valid as against him. (*Cholzner, J.*). KESSORAM PODDAR & CO. *v.* SECY. OF STATE. **107 I. C. 360=54 Cal. 969=A.I.R. 1928 Cal. 74.**

—S. 30—Acquisitions.

———After Collector had taken possession of land acquired under Land Acquisition Act, the owner

GOVERNMENT OF INDIA ACT (1915), S. 30—Scope and nature of.

expressed a desire to gift away the land to Government. The Government thereupon withdrew the further proceedings relating to the compensation and called upon the owner to effect a registered gift deed.

Held, that there can be no withdrawal after possession is taken under an award. To vest the property in the owner, Government must execute a written deed according to Government of India Act, S. 30, and therefore any incumbrance created on the property by the owner after the withdrawal is ineffective against the Government, where no written re-conveyance by Government to the owner has been effected : 17 M.L.J. 557, *Diss. from.*

The owner at the most can acquire the interest of a trustee for the purpose of re-conveying the property to Government and this interest cannot become subject to any mortgage. (*Rutledge, C. J. and Carr, J.*). SECY. OF STATE *v.* CHETTIAR FIRM OF S. R. M. M. R. M. **98 I. C. 323= 4 Rang. 291=A.I.R. 1927 Rang. 14.**

—S. 30—Scope and nature of.

———The provision of law laid down in S. 30 (2) is mandatory and not merely directory and must be strictly complied with in order to constitute a valid contract with the Secretary of State for India. The act of a person who is not authorized by the Governor-General-in-Council, in entering into a contract on behalf of the Secretary of State for India is *ultra vires* and there is no valid contract with the Secretary of State. (*Tek Chand and Agha Haidar, JJ.*). SECY. OF STATE *v.* G. T. SARIN & CO. **120 I.C. 615=A. I. R. 1930 Lah. 364.**

—S. 32—Income-tax.

———Section 67 is not *ultra vires*, as a suit for recovery of income-tax wrongly assessed would have not lain against the East India Company : 40 Cal. 391 (P. C.) and 4 M. I. A. 353, *Ref.* (*Baguley, J.*). R. N. SINGHA *v.* SECY. OF STATE. **109 I.C. 180=5 Rang. 825= A. I. R. 1928 Rang. 70.**

—S. 46—Interpretation.

———*Madras City Municipal Act—Expression—Governor-in-Council—Meaning of.*

The reference to the Governor-in-Council in the Act could not, in consonance with the general intent, be regarded as anything other than a reference to the executive Government. Therefore, the expression Governor-in-Council in the Act should since Government of India Act, 1919, be read as the Governor acting with Ministers as provided in S. 46. (*Srinivasa Iyengar, J.*). T. EKAMBARA NAICKER *v.* MADRAS CORPORATION. **99 I. C. 18=1926 M.W.N. 842= A.I.R. 1927 Mad. 22.**

—S. 46—Order relating to transferred subjects.

———*Nature of*—Certiorari.

The Madras Presidency is governed in relation to transferred subject by the Governor acting with Ministers. Whether their advice is followed or not, the orders passed in relation to transferred subjects are orders of the Governor acting with Ministers and when such orders are sought to be challenged by writs of *certiorari*, the application should be directed against that body and against none else. (*Venkatasubba Rao and Madhavan Nair, JJ.*). VENKATARATNAM *v.* SECY. OF STATE. **32 M.L.W. 475=A.I.R. 1930 Mad. 896.**

—S. 46—Writs of certiorari.

———When orders passed by the Governor acting with Ministers are sought to be challenged by writs of *certiorari*, the writ should be directed against that body and against none else. (*Venkatasubba Rao and Madhavan Nair, JJ.*). VENKATARATNAM *v.* SECY. OF STATE. **32 M.L.W. 475=A.I.R. 1930 Mad. 896.**

GOVERNMENT OF INDIA ACT (1915), S. 65—Scope.

—S. 49—Delegation of powers.

———When certain powers are given by statute to the Governor acting with the Ministers one of two things, must be clearly established, either that the power was, as a matter of fact, exercised only by the Governor with the Ministers or else that the power is notified as having been so exercised as to make it incapable of being called into question. The Government may, in the course of its administration of executive functions, delegate many things to subordinate officers. But no such delegation is proper or possible when the right, more especially in the nature of a discretion, is created and given by statute in a particular manner.

The requirement of R. 5 under the Madras City Municipal Act that the dispensing with shall be by the special order of the Governor with the Ministers must be strictly carried out. It is not power that can be delegated or that can be exercised under any departmental rules by any persons other than the persons constituted as the proper authority : 42 Mad. 885, *Rel. on.* (*Srinivasa Iyengar, J.*). EKAMBARA NAICKER *v.* COMMR. OF MADRAS CORPORATION. **99 I.C. 18=1926 M.W.N. 842= A.I.R. 1927 Mad. 22.**

—S. 43—Orders issued by Secretary.

———The Government orders issued "by order of the Government, Ministery of Local Self-Government" and signed by the "Secretary to Government," though required by R. 37 to be issued by the Governor-in-Council are valid in view of S. 49 (1), Government of India Act. (*Odgers and Madhavan Nair, JJ.*). MD. RAZA SAHEB *v.* SADASIVA RAO. **92 I. C. 918=49 Mad. 49= 1926 M.W.N. 467=A.I.R. 1926 Mad. 297.**

—S. 61—Re-distribution of territories.

———Re-distribution of territories does not by itself make an Act inapplicable in a place in which it was already in force. (*Mukerji and Bose, JJ.*). SATYA RANJAN ROY *v.* ANNAPURNA DASI. **114 I.C. 666=48 C. L. J. 523= A. I. R. 1929 Cal. 145.**

—S. 65—High Court.

———*Aston, A. J.C.*—Even the exercise of jurisdiction of a High Court under the Charter Act in British India is subject to the general legislative power of the Governor-General-in-Council : 4 Cal. 172, *Ref.* (*Percival, J.C., Aston, Rupchand Bilaram and DeSouza, A.J.Cs.*). EMPEROR *v.* JIAND. **111 I. C. 865=22 S.L.R. 349=29 Cr. L.J. 945= A.I.R. 1928 Sind 149 (F.B.).**

—S. 65—' Person.'

———The expression "person" as used in S. 65, includes any body of persons, corporate or incorporate. (*Mukerji and Niamatullah, JJ.*). RAMPRASAD, *In the matter of.* **1930 A.L.J. 579= A. I. R. 1930 All. 389.**

—S. 65—Scope.

———If a party has a right of action against the East India Company, that right cannot be taken away by any Act of the Indian Legislature after the possessions of the company are vested in the Crown: 40 Cal. 39, *Expl.* (*Macleod, C.J. and Shah, J.*). DAMODUR TUKARAM *v.* SECY. OF STATE. **62 I. C. 673=45 Bom. 1161= 23 Bom. L. R. 492=A. I. R. 1921 Bom. 367.**

GOVERNMENT OF INDIA ACT (1915), S. 72—Emergency.

—S. 72—Emergency.

———*Authority of the Governor-General—Finality of.*

Per *Broadway, J.*—According to S. 72 of the Act it is the Governor-General, and Governor-General alone, who is concerned and the intention of the framers of the Act is to leave it to the Governor-General to decide, as a pure act of administration whether a state of emergency exists which calls for an Ordinance and that his decision on that point is final and not liable to consideration by the Courts although it is open to the Courts to decide whether, in making the Ordinance he has kept his terms within the provisions of the Act: *De Verteuil* v. *Knaggs*, (1918) A.C. 557, *Rel. on.*

Per *Bhide, J.*—The existence of an emergency and the purpose of an Ordinance can be looked into by a Court of law. If, however, there are circumstances which are reasonably capable of being looked upon as giving rise to an "emergency" the Court will not be justified in interfering even if it is inclined to take a different view on the facts, because legislature has invested the Governor-General with a discretion in very wide terms to exercise his powers under S. 72 and hence his decision is entitled to great weight. (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR.

A.I.R. 1930 Lah. 781.

—S. 72—Overriding existing law.

———*Ordinance 3 of 1930—Validity.*

Although the provisions of the Ordinance have the effect of depriving the accused person of a right to be tried by a Sessions Judge aided by assessors and a right of appeal to the High Court, still as these rights are given by the Criminal Procedure Code which is only an Act of the Indian legislature it can be overridden by the Indian legislature the Governor-General-in-Council and the Governor-General acting by himself. The terms of the Ordinance, therefore, do not vitiate the provisions of the Government of India Act and hence the Ordinance is not *ultra vires.* (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR.

A.I.R. 1930 Lah. 781

—S. 72—Power of High Court.

———*Ordinance, whether* intra vires *or* ultra vires. —*Decision of.*

High Court can examine an Act of the legislature whether enacted by the legislature itself or by the Governor-General-in-Council or by the Governor-General, in order to see whether the said Act or Ordinance has been made and promulgated within the scope of the powers conferred on the legislature, the Governor-General-in-Council and the Governor-General respectively, by the Government of India Act, 1919: A.I.R. 1920 P.C. 23 and 4 Cal. 172 (P.C.), *Rel. on.* (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR. **A.I.R. 1930 Lah. 781.**

—S. 72-D—Rules under—Rule 94—Demand for grant.

———Save and except what is provided for in S. 72-D of the Government of India Act and R. 94 of the Rules and Standing Orders, there cannot be made any demand for grant even if His Excellency the Governor makes a recommendation for appropriation of provincial revenues on occasions not provided for in the said section and the said rule. (*C. C. Ghose, J.*). SHANKER ROY CHOWDHURY *v.* H.E.A. COTTON. **35 I. C. 14=40 C.L.J. 515= A.I.R. 1925 Cal. 373.**

GOVERNMENT OF INDIA ACT (1915), S. 80-A, Cl. (1)—Interpretation.

—S. 72-D, Rules under—R. 15—Finality of President's decision.

———Rule 15 does not exclude the jurisdiction of the High Court. It is a Rule by which the members of the Bengal Legislative Council are bound, and it means nothing more or less than this that when the President has given his decision on a point of his order, his decision is final, so far as the members of the Council are concerned, and that it cannot be questioned by anybody within the Council. The presence of the word "final" in R. 15 does not exclude jurisdiction of the High Court, nor does it conclude the matter. It is a word which is to be found in numerous statutes sometimes it has been held with reference to the context in which it appears that the word 'final' means final for all purposes, and excludes jurisdiction of the Courts; sometimes it has been held notwithstanding the existence of the word 'final' the jurisdiction of the Courts is not excluded. (*C.C. Ghose, J.*). SHANKER ROY CHOWDHURY *v.* H.E.A. COTTON.

35 I.C. 14=40 C.L.J. 515= A.I.R. 1925 Cal. 373.

—S. 72-D (3) (4)—Interpretation.

———In Cl. (3) to S. 72-D, as amended in 1925, the words "payments or emoluments payable to or on account of a person in respect of his office" include the tour expenses and the travelling allowances of the Governor and the Members of his Council and the Inspector-General of Police and therefore these expenses are non-votable items.

Even assuming for the sake of argument that the "tour expenses" and the "travelling allowances" were not exempted from being submitted to the vote of the Council, the question cannot be raised before the High Court by reason of Cl. (4). (*Dawson-Miller, C.J., Jwala Prasad and Bucknill, JJ.*). KRISHNA BULLABH SAHAY *v.* GOVERNOR OF BIHAR & ORISSA. **96 I.C. 791=5 Pat. 595= 7 P.L.T. 695=A.I.R. 1926 Pat. 305 (F.B.).**

—S. 79—Special tribunal.

———*Creation of—Powers of the Local legislature.*

The words "to make laws for the peace and good Government of the territories for the time being constituting that Province" in S. 79 are very wide and include a power to direct that disputes of a particular kind shall be decided in a particular way and before a tribunal specially created for the purpose. (*Lindsay, Kanhaiya Lal and Daniels, JJ.*). ABDUL RAHMAN *v.* ABDUL RAHMAN.

87 I.C. 51=47 All. 513=23 A.L.J. 385= 6 L.R.A. Civ. 191=A.I.R. 1925 All. 380 (F.B.).

—S. 80-A, Cl. (1)—Interpretation.

———*Court of law is not competent to consider the merits of a particular enactment.*

The words "for the peace and good Government" are used because they are words of the widest significance and it is not open to a Court of law to consider with regard to any particular piece of legislation whether in fact it is meritorious in the sense that it will conduce to peace or to good Government. They are words which are intended to give subject to the restrictions of the Act, a legislating power to the body which it invests with that authority. There is nothing in that expression which can be the foundation of any reasonable argument to the effect that the Criminal Law Amendment Act of 1925 was outside the jurisdiction of the local legislature. (*Rankin, C.J. and Masumdar, J.*). GIRENDRA NATH *v.* BIRENDRA NATH.

102 I.C. 647=54 Cal. 727=31 C.W.N. 593= 8 A. I. Cr. R. 121=A. I. R. 1927 Cal. 496

GOVERNMENT OF INDIA ACT (1915), S. 80-A, Cl. (4)—Interpretation.

—S. 80-A, Cl. (4)—Interpretation.

——"*Affect*"—*Meaning of.*

Clause 4 is doubtless wider than the mere provision that the local legislature shall not have power to repeal an Act of Parliament and the word "affect" may cover any interference with the will of Parliament as expressed in a statute. But what Cl. 4 of S. 80-A refers to and preserves from interference is the effect of an Act of Parliament by its own force as a determination of the will of Parliament with reference to a particular subject-matter. It may well be that it guards against any possibility that a local legislature might attempt to interfere with the operation of Acts of Parliament that do not technically extend to India. But it cannot be construed as meaning that because in 1726 when there was no other law, the Courts in Calcutta adopted the law that prevailed at home subject to many modifications, therefore any part of that law so introduced which originated in statute as distinct from common law cannot be interfered with by the local legislature. (*Rankin, C. J. and Mazumdar, J.*). GIRENDRA NATH *v.* BIRENDRA NATH.
102 I.C. 647=54 Cal. 727=31 C.W.N. 593=8 A.I. Cr. R. 121=A.I.R. 1927 Cal. 496.

—S. 80 (A)—Scope and interpretation of.

——Section 80 (a) cannot be interpreted to mean that no local legislature can, by reason of those words, repeal or alter any enactment of its own. (*Kanhaiya Lal and Lindsay, JJ.*). SARJU PRASAD *v.* BHAGWATI PRASAD.
88 I.C 297=23 A.L.J. 373=6 L. R. A. Civ. 337=A.I.R. 1925 All. 542

—S. 80-A, Cl. (4)—Validity of acts.

——The Bengal Criminal Law Amendment Act of 1925 does not affect Acts of Parliament and is not *ultra vires* of the local Government that passed it. (*Rankin, C. J. and Mazumdar, J.*). GIRENDRA NATH *v.* BIRENDRA NATH.
102 I.C. 647=54 Cal. 727=31 C.W.N. 593=8 A.I. Cr. R. 121=A.I.R. 1927 Cal. 496.

—S. 96-B—Dismissal of officers.

——*Prerogative of the Crown.*

Section 96-B, so far from abrogating the prerogative of the Crown with regard to the dismissal of persons in the Civil Service, reiterates and emphasises the fact that the right of dismissal at pleasure still exists and enacts that that right is only limited in so far as there are definite and special or particular rules or regulations laying down the method by which or the circumstances in which the right is to be exercised: *Denning* v. *Secy. of State*, 37 T. L. R. 138, *Ref.*; A. I. R. 1927 Cal. 311, *Dist.* (*Costello, J.*). BIMALCHARAN *v.* TRUSTEES, INDIAN MUSEUM.
57 Cal. 231=A.I.R. 1930 Cal. 404.

——*Wrongful dismissal—Breach of formalities under R.* 14—*Suit—Maintainability.*

Where a person, who occupied the position of E. A. C. was dismissed from his appointment and he brought a suit against the Secretary of State for India in Council for damages for wrongful dismissal on the ground that the provisions of R. 14 and the Circular G. No. 18 of 28th April, 1926, issued by the Government of Burma, Central Department were not followed, though he cannot rely on the alleged breach of the procedure laid down in Circular G. No. 18; as such order is purely an executive one, he is not precluded from bringing his action and decision of the case will depend on the consideration of the alleged breach of the formalities laid down in R. 14. *Gould* v. *Stewart*, (1896) A. C. 575, *Appl.*; A. I. R. 1927 Cal. 311, *Rel. on.* (*Cunliffe, J.*). J. R. BARONI *v.* SECY. OF STATE.
120 I.C. 695=A.I.R. 1929 Rang. 207.

GOVERNMENT OF INDIA ACT (1915), S. 106 (2)—Revenue.

——*Rules regarding Civil Service, R.* 14—*Strict observance.*

The provisions of R. 14 of the rules regarding Civil Services in India which are manifestly intended for the protection and benefit of the officer, are inconsistent with importing into the contract of service the term that the Crown may put an end to it at pleasure and therefore, before a police officer may be dismissed, the procedure laid down by R. 14 must be followed. *Gould* v. *Stuart*, 1896 A.C. 575, *Foll.* (*Buckland, J.*). SATISCHANDRA DAS *v.* SECY. OF STATE.
101 I.C. 581=54 Cal. 44=A.I. R. 1927 Cal. 311.

—S. 96-B, sub-S. 4—Scope.

——Sub-S. (4) is not sufficiently wide to cover rules regulating General Provident Fund (*Obiter*). (*Kendall, J.*). SECY. OF STATE *v.* HURCHARAN.
117 I.C. 622=1929 A.L.J. 670=51 All. 845=A. I. R.1929 All. 417.

—S. 106 (1-A)—Letters Patent.

——General Clauses Act (1897), S. 6—Section 6 does not apply to an amendment to Bombay High Court's Letters Patent as it is made not by an enactment but under sub-S. (1-a). S. 106: 3 B.H.C.R. (O.C.J.) 49 and *The Colonial Sugar Refining Company, Ltd.* v. *Irving*, (1905) A. C. 369, *Dist.* (*Fawcett and Mirza, JJ.*). BADRUDDIN ABDUL RAHIM *v.* SITARAM VINAYAK APTEE.
114 I.C. 241=52 Bom. 753=30 Bom. L.R. 942=A.I.R. 1928 Bom. 371.

—Ss. 106 and 107—Making of rules.

——*Sanction of Local Government—Necessity for.*

There is nothing in the Government of India Act or in the Civil Procedure Code, which requires that the rules which the High Court may make for the conduct of its own business or for the regulation of the pleaders appearing before it should have the sanction of the Local Government. (*Devadoss, J.*). *In the matter of* A VAKALATH.
109 I. C. 206=A.I.R. 1928 Mad. 472.

—S. 106 (2)—Revenue.

——*Jurisdiction of High Court.*

In matters affecting the revenue, the original side of the High Court, and that side alone, is debarred from interfering in revenue matters: (35 M. L. J. 33, *Ref.*). Collection of money by sale of smuggled goods is a matter affecting the collection of revenue though it be in the nature of a penalty. (*Coutts-Trotter, C. J. and Beasley, J.*). GOVINDARAJULU NAIDU *v.* SECY. OF STATE.
105 I.C. 576=50 Mad. 449=39 M.L.T. 304=26 M.L.W. 558=A. I. R. 1927 Mad. 689=53 M.L.J. 355.

——High Court can compel Revenue Authority to do its statutory duty. (*Lord Phillimore.*) ALCOCK & CO. *v.* REV. AUTH.
78 I.C. 392=25 Bom. L. R. 920=21 A L.J. 689=50 I.A. 227=1923 M.W.N. 557=47 Bom. 742=33 M.L.T. 267=18 M.L.W. 918=4 L.R P.C. 188=39 C. L. J. 302=28 C.W.N. 762=A.I.R. 1923 P.C. 138=45 M.L.J. 592 (P.C.).

——*Order against Revenue authority under Specific Relief Act, S.* 45, *to make reference to High Court cannot be passed.*

The Government of India Act, S. 106, prohibits an order to be passed against the Chief Revenue Authority under S. 45 of the Specific Relief

GOVERNMENT OF INDIA ACT (1915), Ss. 106 & 107—Validity of rules.

Act requiring the latter to make a reference to the High Court under S. 51 of the Income Tax Act, 1918.

The effect of S. 51 is not to partially repeal S. 106 even to the limited extent of allowing the High Court to exercise Original jurisdiction when there are allegations of bad faith. (*Wallis, C. J. and Oldfield, J.*). CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* ANANTAPUR GOLD MINES, LTD.

64 I. C. 682=44 Mad. 718=14 M.L.W. 108= 1921 M.W.N. 502=A.I.R. 1921 Mad 524= 41 M.L.J. 177.

—Ss. 106 and 107—Validity of rules.

——Section 106 is the general section that deals with the jurisdiction of the High Court and the terms of that section are wide enough to include the special powers mentioned in S. 107. It does not therefore signify whether the power to settle Court-fees is derived from S. 106 or from S. 107: for, in either case the power is ultimately to be traced to S. 106 itself and S. 106 is one of the provisions of the Government of India Act, which the Governor-General-in-Council may repeal or alter. There is nothing to prevent the Indian Legislature from making rules pertaining to Court-fees applicable to the original side and therefore Rr. 10 and 11, O. 33, are not *ultra vires* of the Indian Legislature. (*Venkatasubba Rao, J.*). YELUMALAI *v.* KUPPAMMAL. **109 I.C. 173=27 M.L.W. 760= A. I. R. 1928 Mad. 385=54 M.L.J. 263.**

—S. 106—Writ of certiorari.

——Power to issue writ of *certiorari* falls within original jurisdiction as distinguished from appellate or other jurisdiction—High Courth as no jurisdiction to issue writ of *certiorari* against Governor acting with Minister for Public Health Jurisdiction. (*Venkatasubba Rao and Madhavan Nair, JJ.*). PENUGONDA VENKATARATNAM *v.* SECY. OF STATE. **32 M.L.W. 475= A.I.R. 1930 Mad. 896.**

—S. 107—Abuse of powers.

——If a Magistrate abuses his power under S. 144 the remedy is probably to invoke the power of S. 107, Government of India Act. (*Ramesam, J.*). VEDAPPAN SERVAI *v.* PERIANNAN SERVAI.

113 I.C. 279=28 M.L.W. 506= 1928 M.W.N. 779=52 Mad. 69=1 M.Cr.C. 304= 30 Cr. L. J. 119=12 A.I.Cr.R. 17= A.I.R. 1928 Mad. 1108=55 M.L.J. 621.

—S. 107—Board of Revenue.

——*If Subordinate to the High Court.*

Section 15, Charter Act Replace by S. 107, Government of India Act provides that every Court subject to the appellate jurisdiction of the High Court is subject to its power of superintendence. Reading these two provisions together every Civil Court of the Presidency is subject to the High Court's power of superintendence, in other words, is subordinate to that Court: 9 Cal. 295 (P.C.), *Foll.*

Revenue Courts, although so designated, on account of their more limited jurisdiction, are nevertheless, properly understood, Civil Courts.

The revenue officers having been by the very terms of the Act, constituted Courts, when hearing certain suits or applications, it is a necessary corollary, that the Board, governed as it is by the same rules of procedure, should also be deemed a Court when dealing with the same matters at a later stage.

It is wrong to assume that the Courts mentioned in S. 107 of the Government of India Act (S. 15 Charter Act) as being subject to the High Court's

GOVERNMENT OF INDIA ACT (1915), S. 107—Inherent power.

appellate jurisdiction, are restricted to such Courts as were in existence, at the time of the passing of the Charter Act or the issue of the Letters Patent. (*Phillips, Odgers and Venkatasubba Rao, JJ.*). RAGHUNADHA PATRO *v.* GOVINDA PATRO.

114 I.C. 161=A.I.R. 1928 Mad. 1032= 55 M.L.J. 798 (F.B.).

—S. 107—Election petitions.

——The High Court has no jurisdiction to interfere with orders passed by Sub Judge or District Judge on petitions presented under the rules for the decision of disputes as to the validity of an election held under Madras District Municipalities' Act, as they are not Courts as defined by C.P.C.: 21 Bom. 279, *Foll.* (*Devadoss. J.*). M. DEIVANAYAGAM PILLAI *v.* P. T. S. DIWAN MOHIDEEN ROWTHER. **70 I.C. 780= 16 M. L. W. 827= 1922 M.W.N. 818= A.I.R. 1923 Mad. 169= 44 M.L.J. 39.**

—S. 107—Errors of law or fact.

——The power of superintendence vested in High Court and embodied in S. 107 of the Government of India Act, was not intended to authorise the Court, in the exercise of the authority so given, to interfere with and set right the orders of a subordinate Court on the ground that such order proceeded on an error of law or an error of fact: 9 All. 104, *Foll.* (*Mears, C.J. and Piggott, J.*). ADYA SARAN *v.* JAGANNATH. **78 I. C. 391=46 All. 323= 22 A.L.J. 235=6 L.R.A. Rev. 49= A.I.R. 1924 All. 561.**

—S. 107—Ex-parte decree.

——Unless a case of denial of the right of fair trial can be made out High Court will not interfere under S. 107 of the Government of India Act. Where the Court determines according to law the question of fact whether sufficient cause has been made out there can be no denial of the right of fair trial. (*Mullick and Ross, JJ.*). JAGDIP SINGH *v.* HARKU SINGH. **89 I.C. 863=A.I.R. 1926 Pat. 37.**

—S. 107—Inadequate decision.

——Decision under S. 73, Village Courts Act, is revisable when it is hopelessly inadequate. (*Mullick and Bucknill, JJ.*). BISHUN MOHAN SAHAY *v.* NARAYAN PRASAD ASTHANA.

74 I.C. 140=A. I. R. 1924 Pat. 434.

—S. 107—Indefinite postponement.

——If the effect of an order of the Trial Court indefinitely postponing the trial of an issue of fact is an almost certain loss of material testimony to plaintiff as well as defendant the High Court will interfere in the exercise of its powers of superintendence though S. 115 of the Code may not apply. (*Mullick and Ross, JJ.*). BHIMNATH *v.* JAGARNATH.

89 I. C. 814=1926 P. H. C. C. 294= 7 P.L.T. 82= A. I. R. 1925 Pat. 674.

—S. 107—Inherent power.

——*Criminal cases.*

It is now well settled that a High Court is competent, in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915 (which replaced S. 15 of the Indian High Courts Act, 1861) to set aside proceedings instituted without jurisdiction by a Subordinate Court under S. 145 of the Cr. P. Code; such power of superintendence can be exercised notwithstanding S. 435 (3), Cr. P. Code, which lays down that proceedings under Chapter XII (which comprises Ss. 145-148) are not proceedings within the meaning of that section. The High Court can, when it sets aside the proceedings, proceed to give such consequential directions as

GOVERNMENT OF INDIA ACT (1915), S. 107—Insolvency Judge.

may be found necessary in the interests of justice in the circumstances of the particular case. Although the Criminal Procedure Code does not contain a provision corresponding to S. 151 of the C. P. Code, yet the inherent power of Courts is in no sense restricted in application to civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone Courts exist; but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. Where in a dispute as to lac between tenants and zamindars it was manifestly impossible to restore the physical condition of things as they existed when the proceedings under S. 145 were instituted and where the title was in dispute and the Court was not in a position to make an assumption as to possession in favour of either party,

Held, that in such circumstances, the best course to adopt was to keep the property in the custody of the Court pending decision by a Civil Court on the question of title: 1 M.L.W. 1032; *Hood Barrs* v. *Heriot*, (1896) A.C. 174 and *Peruvian Guano Co.* v. *Dreyfus Bros.*, (1892) A. C. 166, *Ref.* (*Mookerjee, Ag.C.J., Fletcher, Chatterjee, Richardson and Ghose, JJ.*). PIGOT *v.* ALI MAHOMAD MANDAL.

60 I.C. 325=48 Cal. 522=22 Cr.L.J. 213=A.I.R. 1921 Cal. 30 (S.B.).

—S. 107—Insolvency Judge.

———*If can exercise powers under S.* 107.

The power of superintendence as contemplated by S. 107 is exercised by the High Court as a whole in what is the execution capacity and not by a single Judge exercising insolvency jurisdiction.

Therefore, where the Insolvency Judge of the High Court made the order staying insolvency proceedings in the Court of the District Judge at Hooghly,

Held, that the District Court at Hooghly which is a Court of concurrent jurisdiction with the Insolvency Court of the High Court was not bound by the order of stay. (*Cuming and Mallick, JJ.*). SASOON AND SONS LTD. *v.* GASTO BEHARI DE.

103 I.C. 754=31 C.W.N. 847=A.I.R. 1927 Cal. 629.

—S. 107—Interpretation.

———"*Appellate Jurisdiction.*"

(Per *Robinson, C. J.*)—The expression "Appellate Jurisdiction" in S. 107 does not necessarily imply that there must be some right of appeal. The expression is used merely to indicate the limits of the jurisdiction of the Court so as to cover the largest area over which its jurisdiction extends. (*Robinson, C. J., Heald and Rutledge, JJ.*). K.A.M. MOHIDEEN *v.* BUKSHI RAM. **91 I.C. 627=3 Rang. 410=A.I.R. 1926 Rang. 33 (F.B.).**

—S. 107—Mis-use of powers.

———Mis-use of powers under S. 145, Cr.P. Code—Judicial discretion not exercised—High Court can interfere. (*B. B. Ghose and Chotzner, JJ.*). ARAN SARDAR *v.* HARA SUNDER MAZUMDAR.

71 I.C. 225=27 C.W.N. 171=37 C.L.J. 39=24 Cr. L.J. 97=A.I.R. 1923 Cal. 95.

—S. 107—Nature of powers.

———The powers of a High Court under S. 107 are not merely administrative but judicial also, and they may be called in aid when an order is so bad on the face of it as to be in a sense a denial of justice: 1 P.L.T. 467, *Foll.* (*Wort, J.*). MT. MAHARUP KUER *v.* MAHABIR SINGH.

105 I.C. 131=9 P.L.T. 325=A.I.R. 1928 Pat. 111.

—S. 107—Negligence of petitioners.

———The powers of superintendence under Government of India Act, S. 107 are not to be lightly exercised especially where the petitioners were guilty of negligence. (*Mullick and Bucknill, JJ.*). (MT. BIBI) ZAINAB *v.* PARAS NATH. **75 I. C. 430=2 Pat. 800=4 P.L.T. 491=1 P. L.R. 361=A.I.R. 1924 Pat. 37.**

—S. 107—Order for taking accounts.

———Suit for accounts of income of property—Interlocutory order—Ultimate decision appealable—Order not to be revised unless directions given for taking accounts are improper. (*Dawson-Miller, C.J. and Mullick, J.*). HARIHAR PRASAD SINGH *v.* KESHO PRASAD SINGH.

3 P. L.T. 638=A.I.R. 1922 Pat. 598.

—S. 107—Orders in executive capacity.

———Suit for possession of house dismissed—Plaintiff subsequently presenting application that defendant having disappeared his movables should be taken into possession by police—Order by Magistrate accordingly—Subsequent application by defendant to set aside previous order dismissed—Both orders held to be passed in executive capacity under Police Act and High Court held to have no jurisdiction to reverse them—Government of India Act, S. 107 held to have no application: 4 P. R. 1908 Cr.; A.I.R. 1927 All. 193; A.I.R. 1926 Bom. 551; 24 Mad. 121; 36 Mad. 72; *Ex parte Bradlaugh*, 3 Q. B. D. 549, *Dist.* (*Jai Lal and Currie, JJ.*). ABDUL SHAKUR *v.* MAHADEV PARSHAD.

A.I.R. 1930 Lah. 539.

—S. 107—Panchayat Court.

———The High Court cannot interfere with the order of a Panchayat Court under Ss.435 and 439 of the Criminal P. C. But under S. 107 of the Government of India Act the High Court has powers of supervision over all the criminal and Civil Courts in the Presidency, and when a grave error of a Panchaat Court which is not governed by the provisions of the Cr. P. Code appears on the face of the record the powers given by S. 107 of the Government of India Act could be invoked to correct such error.

Where the judgment of a Panchayat Court convicting a person under S. 426 of the Penal Code, does not mention the value of the amount of loss or damage alleged to have been caused, the High Court will set aside the judgment in the exercise of its powers of superintendence under S. 107 of the Government of India Act. (*Devadoss, J.*). MUNIGADU *v.* EMPEROR.

88 I.C. 521=1925 M.W.N. 600=26 Cr.L.J. 1161=A.I.R. 1925 Mad. 1144.

—S. 107—Persona designata.

———The first (now Chief) Judge of the Rangoon Small Causes Court, when exercising the powers vested in him by S.18 of the Rangoon Rent Act, 1920 (S. 20 of Act 9 of 1925) exercises those powers not as a Court but as a *persona designata* and therefore his decision thereunder is not subject to the revisional jurisdiction of the High Court. A.I.R. 1926 Rang.25, *Foll.*; A.I.R. 1923 Rang. 94 (F.B.), *Overruled.* (*Rutledge, C.J. Heald, Chari and Maung Ba, JJ.*). H.A. AZIZ *v.* KILYOBOY.

98 I.C. 902=4 Rang. 304=5 Bur. L.J. 117=A.I.R. 1927 Rang. 1 (F.B.).

—S. 107—Powers of High Court.

———The High Courts have under S. 107 of the Government of India Act not only administrative

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but judicial powers. In the exercise of its power of superintendence it can direct a subordinate Court to do its duty. It cannot however set it aside on the ground of error of law or of fact. In the exercise of its superintending power, it will not ordinarily interfere except in cases of grave and irreparable injustice. Thus it can interfere with orders under S. 36 of the Legal Practitioners' Act if the section has not been complied with or if the person proceeded against was not given a reasonable opportunity of defending himself. (*Addison and Hilton, JJ.*). CHATAR BHUJ *v.* EMPEROR.

31 P.L.R. 542=A.I.R. 1930 Lah. 839.

—S. 107—Powers of Vacation Judge.

———There is no provision of law by which the High Court can in the first instance receive a plaint which ought to be filed in some inferior Court within the Presidency and pass orders pending the disposal of the suit and although the Court in which it was to be filed was closed owing to vacation, the Vacation Judge of the High Court cannot entertain such a suit except perhaps where the claim has arisen within the limits of the ordinary original civil jurisdiction of the High Court and where the High Court has concurrent jurisdiction along with other Courts of the Presidency town: C. M. P. 1498 of 1919, *Foll.* (*Ramesam, J.*). JUMNA BAI *v.* RAMANATHAN CHETTIAR. 113 I.C. 412=28 M.L.W. 684=52 Mad. 52=A.I.R. 1929 Mad 29=55 M. L. J. 690.

—S. 107—Powers when exercised.

———Although an order may be wrong and may involve hardship to one or other party, S. 107 cannot be invoked to revise such orders when the resulting hardship is not unusually grave or irreparable. (*Bhide, J.*). TOMLINSON *v.* WILLIAMS.

A.I.R. 1930 Lah. 448.

———The powers vested in High Court under S. 107 should be exercised very rarely and in exceptional circumstances to prevent real hardships or injustice. (*Jai Lal, J.*). BURMA OIL CO. *v.* ADAMJI MAMOONJI. 97 I. C. 390=27 P.L.R. 831=8 L.L.J. 578=A.I.R. 1927 Lah. 14.

———*Order for local investigation.*

The High Court should not interfere in revision or under powers of superintendence to prevent what would be a calamitous waste of time and money if local investigation were to take place. If it would be not only fruitless but would be determining the rights of the parties upon an improper basis and would inevitably and unnecessarily prolong a litigation, High Court ought to interfere to prevent such a calamity. (*Dawson-Miller, C.J. and Foster, J.*). RAMJI RAM *v.* RAMASRE RAUT.

83 I.C. 124=1924 P.H.C.C. 217=A.I.R. 1924 Pat. 761.

———Where the record of a case before the Court is so erroneous as to manifestly amount to an injustice, the High Court would exercise the powers of superintendence vested in them under S. 107. 56 I.C. 155 (Pat.), *Ref.* (*Spencer and Venkatasubba Rao, JJ.*). VENKATA RANGABHUSANAM *v.* KARELLA RAMASWAMI. 73 I. C. 131=17 M. L. W. 375=1923 M W.N. 244=A. I. R. 1923 Mad. 500=45 M.L.J. 78.

———*Powers should be exercised when other remedies are exhausted.*

———Ordinarily, a party should exhaust all remedies in the Courts below before he comes to the High Court. This is a very desirable practice, but

GOVERNMENT OF INDIA ACT (1915), S. 107—Refusal to issue injunction.

there is, however, no absolute bar in law to the party coming direct to the High Court under S. 107 of the Government of India Act. (*Dawson-Miller, C. J., Mullick and Jwala Prasad, JJ.*). SHEBALAK SINGH *v.* KAMRUDDIN MANDAL.

68 I.C. 149=2 Pat. 94=1 Pat. L.R Cr. 2=1922 P. H. C. C. 241=3 P. L. T. 573=23 Cr. L.J. 549=A.I.R. 1922 Pat. 435 (F.B.).

—S. 107—Practice and procedure.

———On a difference of opinion in matters under S. 145, Cr.P.C., the Senior Judges' opinion prevails as the jurisdiction exercised by the High Court is under S. 107 of the Government of India Act and not under Ss. 435 and 439, Cr. P. Code. (*Choudhuri and Newbould, JJ.*). THE INDIAN IRON AND STEEL COMPANY *v.* BANSO GOPAL TEWARI.

59 I. C. 403=22 Cr. L. J. 99=32 C.L.J. 54.

—S. 107—Refusal of sanction.

———Where the lower Courts refused to give sanction for prosecution under S. 195, Cr.P.C.,

Held, that S. 107 of the Government of India Act could not be invoked in support of the application for sanction to prosecute.

Per *Ghose, J.*—Although the High Court is vested with very wide powers of superintendence over the proceedings of subordinate Courts, these powers are not to be exercised for the purpose of interfering with the order of a subordinate Court, merely on the ground of error in law or error in fact. In other words, the powers of superintendence are not applicable where the only question is whether the decision of the lower Court is against the weight of the evidence.

Per *Cuming, J.* —The power under S. 107 of the Act is exercised only in exceptional cases and this is not an exceptional case. (*Ghose and Cuming, JJ.*). SARAT CHANDRA MANDAL *v.* RAM SASTRI ROY. 69 I. C. 153=36 C.L J. 265=26 C. W. N. 1016=23 Cr. L. J. 665=A. I. R. 1923 Cal. 45.

—S. 107—Refusal to add party.

———Section 115 is clearly not applicable where the lower Court has refused in the exercise of its jurisdiction to add a party as plaintiff. Possibly S. 107 of the Government of India Act might apply to cases where the result is denial of the right of fair trial. (*Mullick and Ross, JJ.*). KALI RAI *v.* TULSI RAI. 93 I.C. 932=4 Pat. 723=7 P.L.T. 499=A.I.R. 1926 Pat. 207.

—S. 107—Refusal to frame issue.

———Where upon the pleadings clearly an issue arises whether the rent payable by the defendant is below the prevailing rate and the Trial Court on being so requested refuses to frame the same,

Held, that the case is perhaps near the border line so far as S. 115 of the Civil Procedure Code is concerned, but it is clear that under S. 107 of the Government of India Act it is a fit case for interference in revision: 15 C.W.N. 682, *Dist.* (*Mullick and Ross, JJ.*). SHEO PRASAD SINGH *v.* SUKHU MAHTO. 72 I.C. 148=1 P L.R. 89=4 P.L.T. 401=A.I.R. 1923 Pat. 518.

—S. 107—Refusal to issue injunction.

———*Obiter*—A petition under S. 107, Government of India Act, lies for revision of the order of a Magistrate rejecting an application to issue a clear temporary injunction restraining the Government from rejecting the nomination paper of the petitioner who has been removed from the Town Committee by a Government notification. (*Tapp, J.*). JIWAN SINGH *v.* SECY. OF STATE.

A.I.R. 1930 Lah. 899.

GOVERNMENT OF INDIA ACT (1915), S. 107—Rent Controller's orders.

—S. 107—Rent Controller's orders.

———The jurisdiction of the High Court in revision is not conferred by the Rent Act. The High Court exercises its jurisdiction under S. 115 of Civil P. C. and S. 107 of the Government of India Act and there cannot be any doubt that it has the power to revise an order passed by the Rent Controller without jurisdiction, although the order did not admit of revision by the President of the Tribunal. (*Greaves and B. B. Ghose, JJ.*). SATYA NERANJUN SHAW *v.* THE CARNANI INDUSTRIAL BANK, LTD. **93 I. C. 56=30 C. W. N. 236= A.I.R. 1926 Cal. 708.**

———(Per *Heald and Rutledge, JJ., Robinson, C.J dissenting*)—The Controller of Rents is not a Court nor a Civil Court. The High Court is not a Court of appeal from him as a Court nor has appellate jurisdiction over him nor is he a Court subject to the appellate jurisdiction of the High Court within the meaning of S. 107 of the Government of India Act nor subordinate to the High Court within the meaning of S. 115 of the Civil P. C. so as to make his decisions subject to revision by the High Court: A.I.R. 1923 Cal. 169; 26 C.W.N. 30; A.I.R. 1922 Cal. 427; 26 C.W.N. 102; 26 C.W.N. 53 and 9 Cal. 295 (P.C.), *Dist.*; A.I.R. 1923 Rang. 94 (F.B.), *Expl.* (*Robinson, C. J., Heald and Rutledge, JJ.*). K. A. M. MOHIDEEN *v.* BUKSHI RAM. **91 I.C. 627=3 Rang. 410= A.I.R. 1926 Rang. 33 (F.B.).**

———The Rent Controller's Court is a Court of civil jurisdiction and the High Court has power to revise the Controller's orders under its general power of superintendence under S. 107 of Government of India Act. (*Woodroffe and Ghose, JJ.*). ABDUL HUQ. *v.* MOHAMADDIN. **67 I C. 302= A.I.R. 1923 Cal. 311.**

———High Court has the power of revision under its general powers of superintendence over the Rent Controller's Court under S. 107 of the Government of India Act. (*Chatterjee and Cuming, JJ.*). H. D. CHATTERJEE *v.* L. B. TRIBEDI. **68 I.C. 274= 49 Cal. 528= 26 C.W.N. 78= A.I.R. 1922 Cal. 427.**

—S. 107—Revenue cases.

———No revision lies under S. 115, C.P.C. or S. 107 of the Government of India Act or Cl. 16 of the Madras Letters Patent against an order of the Revenue Divisional Officer acting under Act III of 1895 as such officer is not a Court subject to the superintendence of the High Court. Meaning of 'appellate jurisdiction' discussed—*Case-law discussed.* (*Ayling, Offg. C.J. and Odgers, J.*). PALANIKUMARA CHINNAYYA GOUNDEN. *In re.* **66 I.C. 566=14 M.L.W. 548= 1921 M. W. N. 757= A.I.R. 1922 Mad. 337= 41 M.L.J. 577.**

—S. 107—Revenue Court exercising judicial powers.

———Where the Sub-Deputy Collector after inquiry refused the application of the opposite party for prosecution of petitioner under Penal Code, S. 471 but on appeal the Collector set aside the order of the Sub-Deputy Collector and made a formal complaint under S. 200, Criminal Procedure Code, for the prosecution of the petitioner.

Held, that the Collector was clearly acting as a Revenue Court and he was exercising judicial powers in setting aside the order of the Sub-Deputy Collector and in making a complaint under S. 200 and was therefore subject to the superintendence of the High Court and his order is revisable under

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S. 115, Civ. Pro. Code, as also under S. 107 of the Government of India Act: 6 Pat. L. J. 178, *Ref.* (*Mullick, J.*). FAUJDAR RAI *v.* EMPEROR. **90 I.C. 445=26 Cr.L.J. 1565=7 P.L.T. 199= A.I.R. 1926 Pat. 25.**

—S. 107—Revision.

———Revision application against order passed under Ss. 476, 476-A and 476-B, Cr. P. C. by Civil Court does not lie under S. 439 of the Code as it is not a matter connected with any proceedings before any inferior criminal Court within the meaning of S. 435 of the same Code. In such matters, the High Court can only interfere under S. 115, Civil Procedure Code, or S. 107, Government of India Act, and the order can therefore only be challenged for wrong, illegal or irregular exercise of jurisdiction: 40 Cal. 477, *Rel. on.* (*Suhrawardy and Costello, JJ.*). PURNA CHANDRA DUTTA *v.* SHEIKH DHALU. **A.I.R. 1930 Cal. 721.**

—S. 107—Revocation of sanction.

———The High Court can only interfere with the order of District Judge revoking the order of the Munsif granting sanction for the prosecution of a party for perjury either under S. 115, Civil Procedure Code, or under S. 107 of the Government of India Act, and the ground that the learned Judge should have considered not whether the prosecution was likely to succeed put whether a *prima facie* case has been made out which was a sufficient justification of removing the bar imposed by the Legislature to a prosecution for perjury, is not one which would justify interference under either of these sections. (*Newbould and Suhrawardy, JJ.*). JAINUDDIN *v.* KERAMATULLA. **71 I. C. 595= 24 Cr.L.J. 179=A.I.R. 1924 Cal. 641.**

—S. 107—Scope.

———Section 107 of the Act does not give wider powers to High Court than S. 115, Civil P.C. (*Wort and Kulwant Sahay, JJ.*). SHAM NARAIN SINGH *v.* BASUDEO PRASAD SINGH. **122 I.C. 152=11 P.L.T. 172= A.I.R. 1930 Pat. 277.**

———The powers of superintendence conferred on High Courts under the Government of India Acts are not merely administrative but judicial and are very wide: 9 All. 104 (F.B.) and 7 Bom. 341 (F.B.), *Ref.* (*Percival, J.C. and Rupchand and Wild, A.J.Cs.*). KHUDABUX *v.* PANJO. **A.I.R. 1930 Sind 265 (F.B.).**

———Per *Heald, J.*—Where the jurisdiction of the High Court has been questioned as to the High Court's revisional powers reference must be made to the provisions of S. 107 of the Government of India Act rather than to S. 115 of the Civil P.C. (*Robinson, C.J. Heald and Rutledge, JJ.*). K.A.M. MOHIDEEN *v.* BUKSHI RAM. **91 I.C. 627=3 Rang. 410= A.I.R. 1926 Rang. 33.**

———Per *Heald* and *Rutledge, JJ., Robinson, C.J. dissenting*—Section 107 does not confer on the High Court any powers of revision in respect of any Courts for which the High Court is not a Court of appeal or over which it does not exercise appellate jurisdiction. (*Robinson, C.J., Heald and Rutledge, JJ.*). K. A. M. MOHIDEEN *v.* BUKSHI RAM. **91 I.C. 627=3 Rang. 410= A.I.R. 1926 Rang. 33 (F.B.).**

———The High Court has no power under S. 107 to order the expungement of certain paragraphs in the judgment of a Subordinate Court on the ground of their containing language misrepresenting the conduct of a vakil and damaging to him at

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the instance of a third party. (*Oldfield and Devadoss, JJ.*). DANDAYUDAPANI IYER *v.* DISTRICT MUNSIF, KALLAKURCHI. **78 I.C. 6= A.I.R. 1925 Mad. 402.**

———*Proceedings instituted without jurisdiction under Criminal P. C., S. 145—High Court has inherent power to set aside proceedings and pass consequential orders.*

It is now well settled that a High Court is competent in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915 (which replaced S. 15 of the Indian High Courts Act, 1861) to set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145 of the Cr. P. C. such power of superintendence can be exercised notwithstanding S. 435 (3), Cr. P. C., which lays down that proceedings under Chapter XII (which comprises Ss. 145-148) are not proceedings within the meaning of that section. The High Court can, when it sets aside the proceedings, proceed to give such consequential directions as may be found necessary in the interests of justice in the circumstances of the particular case. Although the Criminal Procedure Code does not contain a provision corresponding to S. 151 of the Civil P. C. yet the inherent power of Courts is in no sense restricted in application to civil cases: it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone Courts exist: but the Court, in the exercise of such inherent power must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. Where in a dispute as to lac between tenants and zamindars it was manifestly impossible to restore the physical conditions of things as they existed when the proceedings under S. 145 were instituted and where the title was in dispute and the Court was not in a position to make an assumption as to possession in favour of either party.

Held, that in such circumstances the best course to adopt was to keep the property in the custody of the Court pending decision by a Civil Court on the question of title: 1 L. W. 1032; *Hood Barrs* v. *Heriot*, (1896) A. C. 174 and *Peruvian Guno Co.* v. *Dreyfus Bros.*, (1892) A. C. 166, *Ref.* (*Mookerjee, A.C.J., Fletcher, Chatterjea, Richardson and Ghose, JJ.*). **60 I.C. 325=48 Cal. 822=22 Cr. L.J. 218= A.I.R. 1921 Cal. 30 (S.B.).**

—S. 107—Stay of criminal proceedings.

———It would be within the jurisdiction of the High Court under its general powers of superintendence to direct a presiding officer of any Civil Court subordinate to it to adjourn for a time any proceeding, of whatsoever nature, which he might have initiated by virtue of any powers exercisable by him as the presiding officer of such Court, including proceedings under S. 476 of the Cr. P.C.

On the general question of the stay of criminal proceedings when these, on the face of them, raise a question of fact which is still under adjudication by a Civil Court of competent jurisdiction, as for instance by the High Court as a Court of first appeal, the High Court need not stay the proceedings under S. 476, Criminal Procedure Code. When those proceedings are terminated and the prosecution is actually instituted, it will be open to the

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accused to move the High Court, which has, under the Criminal Procedure Code itself, very large powers over Criminal Courts of subordinate jurisdiction, to direct a temporary postponement of the prosecution pending further action in the High Court. The further action should take the form of moving the High Court to expedite the hearing of the First Civil Appeal in connection with which applications were originally made to stay proceedings under Criminal Procedure Code, S. 476: 1905 A.W.N. 254, *Ref.* (*Piggott, J.*). RAJ KUNWAR SINGH *v.* EMPEROR. **60 I.C. 428=22 Cr. L.J. 236= 43 All. 180=A.I.R. 1921 All. 365.**

—S. 107—Transfer of cases.

———Under S. 107 the Bombay High Court has power of superintendence over the Mewas Agent (West Khandesh) and has a right to direct a transfer of any suit from the Court of the Mewas Agent to any other Court of equal or superior jurisdiction. The District Court is a Court of equal jurisdiction to that of the Mewas Agent. (*Patkar and Baker, JJ.*). PESTANGI RATANGI DABU & CO. *v.* COLLECTOR OF WEST KHANDESH.

101 I. C. 582=51 Bom. 416=29 Bom. L. R. 361= A.I.R. 1927 Bom. 272.

———The High Court in its general powers of superintendence over all inferior Courts can direct the transfer of a case where a District Judge has refused to exercise that power of transfer under S. 24. (*Suhrawardy and Cuming, JJ.*). SAROJ BASHINI *v.* GIRIJA PROSHAD. **87 I. C. 170= A.I.R. 1926 Cal. 326.**

———The High Court can, in the exercise of its powers of general superintendence under S. 107, direct a transfer of proceeding under the Legal Practitioners' Act. (*Shadi Lal, C. J.*). LAKSHMI NARAIN *v.* MT. RATNI. **93 I.C. 700= 27 P.L.R. 225=27 Cr.L.J. 476= A. I. R. 1926 Lah. 199.**

—S. 107—Want of jurisdiction.

———When there is initial want of jurisdiction it is clear that the proceedings though they may purport to be under S. 145 are not really proceedings under it and the High Court can interfere under S. 459, Cr.P.C. but if the proceedings were properly started, all interference on the ground of serious irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it can be only under S. 107 of the Charter Act, 31 Mad. 318, *Foll.*; 26 M. L. J. 280, *Ref.* (*Ramesam, J.*). THYALYEE AMMAL *v.* SRIRANGAROYA GOUNDAN. **71 I. C. 228=1922 M.W.N. 629= 16 M. L. W. 497=31 M.L T. 202= 24 Cr. L.J. 100=A.I.R. 1923 Mad. 60= 43 M L.J. 624.**

———If an order is challenged to be without jurisdiction, that is to say, if it be outside the section the mere fact of the order purporting to be so passed will not bring it within the section so as to debar the exercise of the powers of revision by the High Court to set it aside as null and void and without jurisdiction. (*Venkatasubba Rao, J.*). SHUKULATHI *v.* GULAM MOIDEEN.

71 I.C. 503=16 M.L.W. 338=1922 M W.N. 689= 24 Cr. L.J. 156=A.I.R. 1923 Mad. 24.

———It is now well settled that a High Court is competent, in the exercise of the power of superintendence vested in it under S. 107 of the Government of India Act, 1915 (which replaced S. 15 of the Indian High Courts Act, 1861), to set aside proceedings instituted without jurisdiction by a subordinate Court under S. 145 of the Cr.P.C.;

GOVERNMENT OF INDIA ACT (1915), S. 107—Withdrawal of suit.

such power of superintendence can be exercised notwithstanding S. 435 (3), Cr. P. C., which lays down that proceedings under Chapter XII (which comprises Ss. 145-148) are not proceedings within the meaning of that section. The High Court can, when it sets aside the proceedings, proceed to give such consequential directions as may be found necessary in the interests of justice in the circumstances of the particular case. Although the Criminal Procedure Code does not contain a provision corresponding to S. 151 of the C. P. C., yet the inherent power of Courts is in no sense restricted in application to civil cases; it is equally applicable to criminal matters. The power is not capriciously or arbitrarily exercised; it is exercised *ex debito justitiae* to do that real and substantial justice for the administration of which alone Courts exist: but the Court, in the exercise of such inherent power, must be careful to see that its decision is based on sound general principles and is not in conflict with them or with the intentions of the Legislature as indicated in statutory provisions. (*Mookerjee, A.C.J., Fletcher, Chatterjea, Richardson and Ghose, JJ.*). PIGGOT *v.* ALL MUHAMMAD MANDAL.

60 I.C. 325=48 Cal. 522=22 Cr. L.J. 213=A. I. R. 1921 Cal. 30 (S B.).

—S. 107—Withdrawal of suit.

——Per *Mullick, J.*—Whether the order of a Court which has given leave to withdraw with permission to bring a fresh suit in contravention of the terms of O. XXIII, R. 1 can be revised under S. 115, C.P.C., if the section is strictly construed, is a matter of some doubt. But the practice of the Court has been to interfere either under the powers conferred, by S. 115, C. P. C. or by the Government of India Act. (*Dawson-Miller, C. J., Mullick and Jwala Prasad, JJ.*) RAJ KUMAR MAHTON *v.* RAM KHELAWAN SINGH.

64 I.C. 337=1922 P.H.C.C. 17=3 P.L.T. 80=1 Pat. 90=A.I.R. 1922 Pat. 44.

—S. 108—Power to make rules.

——Section 35 of the Letters Patent as well as S. 122 of the C. P. Code, and S. 108 of the Government of India Act (1915) merely give the High Court power to make rules and orders for the purpose of regulating proceedings in civil cases. (*Rutledge, C. J., Brown and Maung Ba, JJ.*). MA THAN *v.* MG. BA GYAW. **93 I.C. 124=3 Rang. 546=4 Bur. L. J. 185=A. I. R. 1926 Rang. 1 (F.B.).**

—S. 110—Issue of mandamus.

——Although the High Court cannot issue an order in the nature of a mandamus to the Governor, there is nothing to prevent it issuing such an order to persons, though eminent, holding a public office. A. I. R. 1923 P. C. 138, *Ref.* (*Rutledge, C. J. and Brown, J.*). U PO THIN *v* N. N. BURJORJEE.

105 I. C. 428=5 Rang. 504=6 Bur. L. J. 240=A.I.R. 1927 Rang. 324.

—S. 110—Writ of Certiorari.

——The power to issue writs of *certiorari* falls within the "original jurisdiction" of the High Court from which the Government is exempted by the terms of S. 110 of the Government of India Act. (*Venkatasubba Rao and Madhavan Nair, JJ.*). VENKATARATNAM *v.* SECY. OF STATE.

32 L. W. 475=A. I. R. 1930 Mad. 896.

—S. 112—Custom.

——Evidence must be adduced when a custom is set up in derogation of the personal law applicable to the parties. (*Baker, J. C.*). MT. BASHIRBI *v.* ABDUL SATTAR. **82 I. C. 815=A. I. R. 1925 Nag. 179.**

GOVERNMENT TRADING TAXATION ACT (3 of 1926), S. 2 (3)—Applicability.

—S. 124—Misdemeanour.

——*Procedure.*

The rules of procedure laid down in England for setting into motion the machinery of the law or for instituting prosecutions do not apply to India in the absence of express statutory provision to the contrary. Therefore, the Lahore High Court is competent to take cognizance of an offence of misdemeanour under S. 124, Government of India Act, on being moved by the person aggrieved if otherwise it has jurisdiction to entertain the complaint. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MAHOMED.

115 I. C. 428=30 Cr. L. J. 460=12 A. I. Cr. R. 413=A.I.R. 1929 Lah. 217.

—S. 124—History.

——History of legislation with respect to trial of the offences of misdemeanours traced. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MAHOMED. **115 I.C. 428=30 Cr.L.J. 460=12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.**

—S. 124—Issuing of notice.

——Issuing of a notice to the respondent in criminal case instituted on a petition by way of complaint under S. 124 (1) to show cause why process should not issue against him, is permissible in certain exceptional cases. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MAHOMED. **115 I. C. 428=30 Cr. L.J. 460=12 A.I.Cr.R. 413=A.I R. 1929 Lah. 217.**

—S. 127—Scope.

——Section 127 does not confer exclusive jurisdiction on His Majesty's High Court of Justice in England, on the other hand it expressly saves the jurisdiction of the other Courts. It is an enabling provision of law and, therefore, it cannot be read to exclude the jurisdiction of other Courts who might otherwise have been competent to take cognizance of the offences. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MAHOMED. **115 I.C. 428=30 Cr. L.J. 460=12 A.I.Cr.R. 413=A.I.R. 1929 Lah. 217.**

—Ss. 128 and 129—Scope.

——Sections 128 and 129 cannot be read as conferring jurisdiction on the High Courts in India to try the offences under S. 127. They merely provide for the manner in which the jurisdiction of such Courts, if it otherwise exists, is to be exercised, (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MAHOMAD. **115 I.C. 428=30 Cr.L.J. 460=12 A.I. Cr.R. 413=A.I.R. 1929 Lah. 217.**

GOVERNMENT SERVICE—FUNDAMENTAL RULES.

—R. 52—Leave allowance.

——Master and servant—Government servant entering private employment without permission—Dismissal for misconduct—Government has no right to a refund of leave allowance paid before dismissal. (*Waller, J.*). RAM NARAYANA SARMA *v.* SECY. OF STATE. **101 I C. 23=25 M.L.W. 394=A.I.R. 1927 Mad. 460=52 M.L.J. 285.**

GOVERNMENT TRADING TAXATION ACT (3 of 1926).

—S. 2 (3)—Applicability.

——Tehri State is included in the territory which is under "His Majesty's protection" and

GOVERNMENT TRADING TAXATION ACT (1926), S. 2 (3)—Trading, what is.

so the Government Trading Taxation Act is applicable to it. (*Mukerji and Niamatullah, JJ.*). RAM PRASAD, *In the matter of.* **1930 A.L.J. 579= A.I.R. 1930 All. 389.**

—S. 2 (3)—Trading, what is.

——Act of a State in arranging for the sale of a commodity and in receiving proceeds of the contract in British India, constitutes trading in British India. (*Mukerji and Niamatullah, JJ.*). RAM PRASAD, *In the matter of.* **1930 A.L.J. 579= A.I.R. 1930 All. 389.**

—S. 3—Liability under.

——Although Government Trading Taxation Act only came into force on 1st April, 1926, a State or Government liable to income-tax under the provisions of the Act is liable to assessment with reference to transactions which took place during the year 1925-1926 by virtue of Income Tax Act, S. 3. (*Mukerji and Niamatullah, JJ.*). RAM PRASAD, *In the matter of.* **1930 A.L.J. 579= A. I. R. 1930 All. 389.**

GRAMANATHTHAM.

See (1) GRANT INAM.
(2) LAND TENURE.

GRANT.

See also CROWN GRANTS ACT, 1885.

Brahmottar.
Construction.
Darkhast.
Fishery.
Inam.
Jagir.
Khorposh.
Law applicable.
Life-estate.
Maintenance grant.
Marwat.
Pension.
Presumption.
Relinquishment.
Resumption.
Rights of alienee.
Rights of grantee.
Rights of grantor.
Rights of holder.
Sankalp.
Saranjam.
Service grant.
Shrotriem grant.
Succession to.
Vatan.

—Brahmottar.

——*Brahmottar interest created by Ghatwal is not burdened with service—It is liable to be sold in execution of a decree.*

A Brahmottar interest created by a Ghatwal is not burdened with any services as a Ghatwali estate is, and although the interest created by the Brahmottar grant is liable to resumption under certain circumstances, such interest can be sold in execution of a decree. The Brahmottar interest cannot be held to be inalienable because the Ghatwal who created the Brahmottar right had no power to alienate his own estate. So long as the interest created under the Brahmottar grant is in existence such interest is liable to be attached and sold in execution of a decree against the Brahmottadar. (*Adami and Kulwant Sahay, JJ.*). SARDA DEVI *v.* RAM LONEHAN BHAGAT. **97 I.C. 210= 7 P.L.T. 570=1926 P.H.C.C. 254= A. I. R. 1926 Pat. 444.**

GRANT—Construction—Ambiguity.

—Construction—Absolute ownership.

——*Karnam inam held by husband granted to his widow and daughter by Government after his death on condition of paying certain quit rent—Grant confers absolute estate.*

Where a grant is an absolute grant, it cannot be cut down by any considerations as to the status of the family and the position of the members (grantees) at the date of the grant. The fact that other donees are mentioned does not make any difference as regards the construction of the grant: A. I. R. 1926 Mad. 227, *Appl.*

Where Karnam Inam lands held by the husband were enfranchised by the Government in favour of the widow and daughter under the terms: "This inam being held for karnam service now otherwise provided for, will be subject to the payment of an annual quit rent of Rs. 11 which is hereby imposed upon it in commutation both of the service and the reversionary interest possessed by the Government in the inam. The inam is now confirmed to you in freehold, in other words, the inam will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the above mentioned quit rent."

Held, that the widow and daughter obtained an absolute right to the property and their interests were not merely that of a Hindu widow or daughter succeeding to the property of her husband or father having only a limited right therein: A. I. R. 1922 P. C. 96, *Appl.* (*Kumaraswami Sastri and Reilly, JJ.*). PALANIYANDI *v.* VEYILAMUTHU PILLAI. **112 I C. 320=52 Mad. 6= 28 M.L.W. 530=1928 M.W.N. 723= A.I.R. 1929 Mad. 93=56 M.L.J. 579.**

——*Grant proved to be for generation after generation——Nothing contrary—Grant confers absolute estate.*

Wazir Hasan, J.—Ordinarily a transfer of land without restrictions carries with it every incident of ownership and passes to the transferee all interests which the transferor is then able to pass in the property and in the legal incidents thereof. Therefore, where a grant is proved to be for "generation after generation" it must be construed, in the absence of anything to the contrary to be a grant of an absolute estate: 14 I. A. 7, *Ref. to.*

Stuart, C. J.—Where a man is proved to have hereditary rights, and there is nothing to show that they are non transferable, they must be presumed to be transferable. (*Stuart, C.J. and Wazir Hasan, J.*). SHEO BAHADUR SINGH *v.* BISHUNATH. **99 I.C. 876=2 Luck. 4=4 O W.N. 15= 8 L.R.A. Rev. 48=A.I.R. 1927 Oudh 74.**

——Grantee to collect revenue and to take a fixed sum out of it—Grantee is not absolute owner. The Government had the right to levy non-agricultural assessment on warkas land that had passed out of the possession and enjoyment of the grantee but not on land in the actual occupation and enjoyment of the grantee. (*Macleod, C.J. and Madgavkar, J.*). JAMSHEDJI *v.* SECY. OF STATE. **93 I.C. 184=28 Bom. L.R. 25= A.I.R. 1926 Bom. 209.**

—Construction—Ambiguity.

——Where, the document of a grant is produced in evidence and contains no latent ambiguity extrinsic evidence of intention can hardly be admissible. (*Dawson-Miller, C.J. and Kulwant Sahay, J.*). UDAI PRATAP NATH *v.* JAGAT MOHAN. **106 I. C. 399=6 Pat. 638=9 P.L.T. 25= A.I.R. 1928 Pat. 66.**

GRANT—Construction—Annuity.

—Construction—Annuity.

——Inam—Grant of cash allowance changed to grant of village—After calculating revenue, surplus over the allowance to be paid by grantee to the Government—Grant is not of an annuity but of the village. (*Viscount Dunedin.*) BOWANJI ARDESHIR *v.* SECY. OF STATE. **114 I.C. 1= 31 Bom. L. R. 256=53 Bom. 230=56 I.A. 51= 1929 A.L.J. 47=49 C.L.J. 179=33 C.W.N. 293= A.I.R. 1929 P. C. 34 (P.C.).**

—Construction—Cypres.

——Where a charitable gift is made upon a condition precedent the gift fails if the condition is not satisfied. To attract the application of the cypres doctrine an absolute declaration of intention to give to charity must be established. (*Mookerjee and Fletcher, JJ.*). SANTONA ROY *v.* ADVOCATE GENERAL, BENGAL. **62 I. C. 193=48 Cal. 124= 25 C.W.N. 343=A.I.R. 1921 Cal. 389.**

—Construction—Duty of Court.

——Decision of Inam Commissioner, as to nature of grant is not conclusive—It is for the Court to see what it is. (*Phillips and Devadoss, JJ.*). JAGGA ROW *v.* GORI BIBI. **72 I.C. 789=17 M.L.W. 521= 1923 M.W.N. 347=A.I.R. 1923 Mad. 545.**

—Construction—English law.

——Principles of common law of England should not be applied. (*Dawson-Miller, C.J. and Kulwant Sahay, J.*). UDAI PRATAP NATH *v.* JAGAT MOHAN. **106 I.C. 399=6 Pat. 638= 9 P.L.T. 25=A.I.R. 1928 Pat. 66.**

—Construction—Extrinsic evidence.

——Construction must depend upon the terms of the instrument—Extrinsic evidence is inadmissible.

Except in a case of ambiguity, extrinsic evidence would not be admissible. (*Mookerjee and Chotzner, JJ.*). ABINAS CHANDRA DAS *v.* MAJUB ALI CHOUDHURY. **70 I.C. 273=27 C.W.N. 328= 36 C. L. J. 196=A.I.R. 1922 Cal. 461.**

—Construction—Grant of mouje.

——*Words and phrases "Mouje."*

Grant of a mouje indicates 'a village in which there were peasant proprietors owning cultivable lands even then.' The view that the word in the particular context merely means a defined place cannot be accepted: 38 Mad. 891 (892) *view of Sadasiva Aiyar, J. Appr.*; 43 Mad. 92; A.I.R. 1923 Mad. 1; 70 I.C. 729 (F.B.), *Reversed.* (*Lord Atkin.*) V. SEETHAYA *v.* P. SUBRAMANYA. **117 I.C. 507= 33 C. W.N. 578=52 Mad. 453=29 M.L.W. 804= 31 Bom. L.R. 756=49 C.L.J. 566= 56 I.A. 146=1929 M.W.N. 553= A. I. R. 1929 P.C. 115=56 M.L.J. 730 (P.C.).**

—Construction—Inheritance.

——From the year 1799 until 1865 the Barwe estate was a putra putradik jagir resumable by the Maharaja on failure of male heirs of the original grantee of Chota Nagpur and it was not an absolute estate of inheritance. (*Dawson-Miller, C.J. and Jwala Prasad, J.*). UDAINATH SAHI DEO *v.* GANESH NARAIN SAHI. **70 I.C. 232= 1921 P.H.C.C. 369=A.I.R. 1921 Pat. 218.**

—Construction—Minerals.

——*Grant of all zamindari rights.*

A grant of patni taluk provided: "You shall be in possession of all the zamindari rights and interests as prevailing from before in the lands included in the said mauza from before". There was nothing to show that sub-soil rights were included in the grant,

Held, that the zamindari rights were conferred in the subject-matter of the grant and the grant of

GRANT—Construction—Patta.

zamindari rights on what was expressly conveyed did not increase the actual corpus of the subject affected by the patta. They only gave expressly what might otherwise quite well be implied, namely, that that corpus being ascertained there will be carried with it all rights appurtenant thereto, including not only possession of the subject itself, but it may be of rights of passage, water, or the like, which enure to the subject of the patta and may even be derivable from outside properties. A.I.R. 1917 P.C. 163, *Ref.* (*Das and Allanson, JJ.*). IRANGOBINDA SAHU *v.* SATYA NIRANJAN. **112 I.C. 659= 8 Pat. 190=9 P.L.T. 593=A. I. R. 1928 Pat. 482.**

——*"Oil" does not include "gas"—Words—Upper Burma Oil fields Regulation* (4 *of* 1910), *S.* 2—*Petroleum Act* (1899)—*Burma Oil-fields Act* (1918), *S.* 2.

Where by a grant by Government, dated 25th April, 1912, the Secretary of State for India in Council granted to the respondents the right to win and get earth-oil from a certain well site and to dispose of all earth-oil to be gotten therefrom on certain conditions.

Held, that the grantee did not by his grant obtain any right to win, get or dispose of gas.

Held further, that the ownership of natural gases, so far as they are capable of ownership, remained with Government and did not pass either in 1912 or in 1919 by the rules under Burma Oil-fields Act (1918) to the grantee. (*Rutledge, C.J. and Brown, J.*). BURMA OIL CO., LTD. *v.* U. PO NAING. **102 I. C. 830=5 Rang. 133= A. I. R. 1927 Rang. 201.**

—Construction—Mining lease.

——*Right of using surface—Limits.*

It is settled law that a right of using the surface to which the mine owner may be entitled by implication is confined to such things as are reasonably and strictly necessary for the convenient working of the mines. The mine owners have no other rights of any description whatsoever unless these rights are to be found within the four corners of the grant in their favour. (*C. C. Ghose and Panton, JJ.*). HARIPARDE PANDOPADYA *v.* EQUITABLE COAL CO., LTD. **76 I. C. 413= A.I.R. 1923 Cal. 335.**

—Construction—Patta.

——*Whether confers title—Distinction between cases where the Government is owner and cases where it is not owner.*

In cases where Government is not the owner of the land, the mere issue of a patta in favour of a person does not operate in law to convey a title to the land in the pattadar to the prejudice of the real owner. The patta in such cases is only a memorandum of one extent of land and the Government assessment due thereon. It may be entitled to such weight as the Court thinks fit in the circumstances in considering whether the person in whose name the patta stood and who paid the Government revenue was in possession of the land; but as evidence of ownership of land a patta by the Government is *per se* of no real use. But as regards lands of which Government is the owner and which is at their absolute disposal either because it is assessed waste land, an escheated land or land resumed it is open to the Government to make a grant of such land to any person it thinks fit. In such cases, the order granting such land to such person has the effect of conveying to such person the title to the land subject to the payment of revenue. The grant itself may take the form of a patta.

GRANT—Construction—Permanency.

Held, on the facts, that the patta in question belonged to the latter category. (*Ananthakrishna Aiyar, J.*). SAMPATHU RAO *v.* APPASAMY NAINAR. 1930 M.W.N. 385.

—Construction—Permanency.

———*Grant of tank for public purpose—Presumption is in favour of permanency.*

Where in the case of a grant of land made for the excavation of a tank the evidence showed that there was scarcity of water in the village, and the original grantee undertook to remove the difficulty felt by the villagers, if land were granted to him in perpetuity, so that he might excavate a tank at considerable expense of money and the grant was made accordingly and the tank was excavated for public benefit.

Held, that according to Hindu religious notions, such grant of land for digging tank was supremely meritorious and in these circumstances, it is inconceivable that the grant could have been of a temporary character or that the landlord could ever have intended to resume the grant: 39 C. 439, *Foll.*; 46 C. 683 (P. C.), *Dist.* (*Mookerji and Rankin, JJ.*). TARAKESWAR PAL CHOWDHURY *v.* SIRISH CHANDRA GHOSH MANDAL.

80 I. C. 628=27 C.W.N. 964=
A.I.R. 1924 Cal. 236.

—Construction—Personal grant.

———*Head of religious institution—Grant to, in personal capacity.*

Where the proprietary rights in certain lands are granted to a person by way of reward in recognition of his energy and zeal in looking after a sacred house and bringing the surrounding waste land into cultivation and not as the head or member of a religious institution, the grant is a personal one and the mere use of the word 'dharmarth' by the grantee's son with reference to the land, does not create any presumption that the land had been for any charitable or religious purpose. Even the head of a religious institution may hold and acquire property in his own right. (*Broadway and Johnstone, JJ.*). GURDWARA PRABANDHAK COMMITTEE *v.* SOHAN SINGH. A.I.R. 1930 Lah. 609.

———*Grant to mahant in personal capacity.*

The Settlement Officer, gave a Mahant and his heirs rights as occupancy tenants without a right of transfer, without any condition as to the purposes to which the income of the land was to be devoted, without any reference to their being Mahants of a particular temple and without suggesting that the temple was to benefit from their possession. There were no conditions requiring the Mahant and his successors to devote any portion of the income towards the expenses of the temple. They were granted the property subject only to the condition that they might retain it so long as the temple was in existence.

Held, that the grant was not a grant to the temple, but a grant to an individual on the condition that he satisfied certain expenses of the temple from the income of the property granted, and the land given by the settlement decree was not *wakf* property given for religious or charitable purpose and Act 14 of 1920 was not applicable.

Wasir Hasan, J.—The essence of a trust for a public or religious purpose lies in its characteristic of permanency. The possibility of such a trust cannot be conceived in a tenure where the tenure can come to an end on default or even on the exercise of a volition on the part of the trustee. Where the right of occupancy which the plaintiff's predecessor had obtained in the lands in suit from the settlement Court is liable to be extinguished altogether in the event of non-payment or refusing to pay rent to the superior proprietor, the case is not one of trust falling within the purview of Act 14 of 1920: A.I.R. 1924 P.C. 109 and 5 Cal. 438 (P. C.), *Foll.* (*Stuart, C. J. and Wazir Hasan, J.*). JAGATJIT SINGH *v.* BRIJ MOHAN DAS. 108 I. C. 98=
3 Luck. 392=5 O. W. N. 50=
A.I.R. 1928 Oudh 241.

GRANT—Construction—Words.

—Construction—Principles.

———A grant in respect of its amplitude is always construed (unless it be a Crown grant) against the grantor. (*Lord Phillimore.*) BASIRAM SAHU ROY *v.* RAM RATAN ROY. 101 I.C. 359=54 Cal. 586=
54 I.A. 196=8 P.L.T 255=1927 M.W.N. 437=
31 C.W.N. 885=39 M.L.T. 170=
26 M.L.W. 642=A.I.R. 1927 P.C. 117=
53 M.L.J. 117 (P.C.).

———Inam grant should be construed strictly in favour of the Crown though in ordinary cases the construction should be in favour of grantee. (*Shah, Ag. C. J. and Fawcett, J.*). SECY. OF STATE *v.* SHANTARAM NARAYAN DABHOLKER.

84 I.C. 397=49 Bom. 99=26 Bom. L.R. 847=
A.I.R. 1925 Bom. 12.

—Construction—Recitals.

———The entries in the settlement statement or in the Alienation Register do not in any way outweigh the express statements in sanads on the subject. (*Fawcett and Madgaokar, JJ.*). SECY. OF STATE *v.* INDOORAI BHAKRAI. 98 I.C. 933=
50 Bom. 698=28 Bom. L.R. 1308=
A.I.R. 1927 Bom. 40.

———*Recitals alone not sufficient proof.*

Ordinarily, the recitals in a document upon which the grant depends would not be sufficient evidence that the grant was made for the purposes mentioned therein, but they are required to be supported by proof *aliunde* that they were made for those purposes. No presumption as to the correctness of the recitals arises from the mere fact that a document is more than 70 years old, without considering other circumstances. 42 C. 876 (P.C.), *Ref.* (*Ayling and Odgers, JJ. afterwards Spencer and Venkatasubba Rao, JJ.*). KELU KARUP *v.* RAMAN NAIR. 73 I.C. 275=
A.I.R. 1924 Mad. 247.

—Construction—Service grant.

———*Kazhagam service—Grant was held not to be one of service.*

Having regard to the terms in a deed:—"You are to enjoy the same conducting Vazhipadu to the deity," and to the meaning of the terms Vazhipadu in Gundart's Dictionary:—"offering of rice of which the greater part returns to the donor,"

Held, that the grant was not at all a service grant. The obligation to make the show of an offering being a nominal obligation was merely a moral one. (*Ayling and Ramesam, JJ.*). RAMASWAMI *v.* LAKSHMI VARESSIAR. 72 I.C. 627=
17 M L.W. 514=32 M.L.T. 399=
1923 M.W.N. 843=A.I.R. 1923 Mad. 572.

—Construction—Words.

———*Words and phrases—Muafi.*

For some peculiar reasons where small amounts are granted, more specially to a religious institution, the word muafi is wrongly used to cover not only the cases where the institution owns the property but also where it does not and merely enjoys the property assigned. (*Broadway and Harrison, JJ.*). SHIROMANI GURDWARA PRABHANDHAK COMMITTEE *v.* KARAM SINGH.
128 I.C. 835=A.I.R. 1930 Lah. 46.

GRANT—Construction—Words.

———The use of the words *sab sudha* in a grant does not cause mineral rights to be included within it: A.I.R. 1917 P.C. 163, *Rel. on.* (*Dawson Miller, C.J. and Kulwant Sahay, J.*). UDAI PRATAP SINGH *v.* JAGAT MOHAN.

106 I.C. 399=6 Pat. 638=9 P.L.T. 25= A.I.R. 1928 Pat. 66.

———*Total relinquishment of rights was inferred from the use of words like 'for ever'—Grant held as heritable though no express words used.*

A service grant to one *B* by proprietor of Bettiah Raj contained the following passage :—'Hence because of that good work it is ordered that whatever trees have been planted by his ancestor and also if he plants any, the share of the Raj in them is given up. Hence this *parwana* is written to all forbidding you in any way to interfere with the trees standing on the *nakdi* holdings of the said *B* for ever.

Held: that, considering the context and the other provisions in the document and the evidence relating to subsequent conduct of the parties, the intention was the landlord should relinquish his right to the trees both present and future. Even if a document should contain word such as "always" or "for ever" or similar words, if the grant is clearly the grant of a life-interest only the mere use of such words will not have the effect of extending the grant beyond the life-time of the grantee. But it is equally true if there are no words of limitation in a grant then, even if there are no specific words of inheritance, it may still be a grant in perpetuity. 23 A. 324 (P. C.); 23 C. 838 (P. C.); 14 M. I. A. 247, *Ref.* (*Dawson-Miller, C.J. and Mullick, J.*). MAHARAJ RAI *v.* MAHARANI JANKI KUER. **75 I.C. 103=A.I.R. 1924 Pat. 655.**

———*Madras Estates Land Act* (1908), *S.* 189—*Grant of whole village—No presumption as to grant of* melvaram *only exists*—"Mousa," *use of, does not show existence of occupancy rights.*

The grant of a whole village will not be presumed to be the grant only of *melvaram* interest unless it is shown that the *kudivaram* interest was already in the hands of some one else than the donee. The division of produce between the Agraharamdars and the cultivators, throws light on the system then prevalent of paying *kist* to the land-owner, but it is no indication whether the tenant had or had not occupancy rights. The word '*mouza*' does not necessarily import the meaning that there were occupancy ryots on the land. The word "*Kadim*" does not convey anything as to the existence of occupancy rights. (*Spencer and Venkatasubba Rao, JJ.*). JAVVADI SOORAYYA *v.* TAVVALA SURYARAO NAIDU. **72 I.C. 795=17 M.L.W 555= A.I.R. 1923 Mad. 623=45 M.L.J. 41.**

—Darkhast.

———*Benami.*

When a land is granted on *darkhast* it cannot be said that it is given to a man *benami* for some other individual. The onus would be heavily on the party setting up such a case to make out his case. (*Devadoss, J.*). DHANAMATHI AMMAL *v.* JAYAKEERTHI NARAIN. **85 I.C. 958= 22 M.L.W. 352=A.I.R. 1925 Mad. 973.**

—Fishery.

———Jalkar—Meaning of rights—Whether grant was of right of fishing or sub-soil must depend upon terms of grant or subsequent history of property. (*Mookerjee and Chotzner, JJ.*). PRAN KISHORE TARAFDAR *v.* SARODA PRASAD PAKRASI. **72 I. C. 55=37 C.L.J. 580= A.I.R. 1923 Cal. 358.**

GRANT—Inam—Charity.

———*Lost grant.*

There are serious legal difficulties in accepting a contention that a right of several fishery had its origin in a lost grant by the Government to a certain unincorporated community who granted it to the men of certain localities, who lastly granted it to the parties in question. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE.

23 Bom L.R. 939=A.I.R. 1921 Bom. 93.

—Inam—Alienation.

———*Unenfranchised inam lands granted purely as a favour for maintenance of donee and his heirs are not incapable of alienation—Madras Board of Revenue Standing Orders* 52.

Unenfranchised inam lands granted not for the performance of future services either public or private, but as a pure matter of favour for the maintenance of the donee and his heirs are not incapable of alienation. It is very doubtful whether the Board's Standing Order 52, paragraph 1, Cl. (5), sub. Cl. (3) has the force of law.

The prohibition of alienation mentioned in the standing order was merely intended to indicate that the Government had the right of resumption in consequence of the prohibited alienation though it would not exercise that right if the alienees agreed to enfranchisement and to pay the ordinary rent or to pay a quit-rent without the option of refusal. (*Sadasiva Aiyar and Coutts-Trotter, JJ.*). VENKATARAMA AIYAR *v.* CHANDRASEKHARA AIYAR. **62 I.C. 625=44 Mad. 632= 13 M.L.W. 383=1921 M.W.N. 204= A.I.R. 1921 Mad. 292=40 M.L.J. 344.**

—Inam—Assignee's liability.

———If the assignee of a share from the original inamdar holds his share in physical severalty he is separately liable for his share and if they are jointly in possession as tenants-in-common of the whole (even if such possession is through subtenants) they will be jointly liable though it will be open to them to cut down their liability by division : *United Diaries* v. *Public Trustee*, (1923) 1 K.B. 469; *Dooner* v. *Odlum*, (1914) 2 I.R. 441, *Foll.*; 11 L.W. 523, *Dist.* (*Ramesam and Reilly, JJ.*). MUSAFKANNI RAVUTHAR *v.* DORIASINGAM.

105 I.C. 179=26 M.L.W. 288= A.I.R. 1927 Mad. 931=54 M.L.J. 30.

—Inam—Charity.

———*Inam Dharmadaya — Determination of the nature of tenure is one for Government—Summary Settlement Act* (*II of* 1863), *S.* 16.

Where the grant made was *Inam Dharmadaya* and was to be hereditary,

Held, the signification of such a grant is that it was made on grounds of religion and not on political grounds. The mere fact that in occasional correspondence the grant is referred to as "*jagir*" or "*saranjam*," *i.e.*, political, cannot derogate from the effect of the language of the grant itself. The question whether the tenure was political was one which was for determination by the Government under the provisions of the Interpretation S. 16 of the Summary Settlement Act (II of 1863) and that, by treating the title as one to which the Act applied, the Government must determine that the tenure was not political. (*Viscount Haldane.*) MAHARAJA, KOLHAPUR *v.* BALAMAHARAJ.

77 I.C. 100=28 C.W N. 906=1923 M.W.N. 638= 48 Bom. 1=50 I.A. 308=26 Bom.L.R. 252= 33 M.L.T. 378=A.I.R. 1923 P.C. 194 (P.C.).

———*Construction—Deed effected by trustee prejudicial to the trust does not bind the Trust—Trust.*

GRANT—Inam—Charity.

In a suit for an injunction restraining the defendants from interfering with the plaintiff's possession of the suit lands, the plaintiff alleged that he had been the *kudiwaramdar* of the suit lands prior to 1882 on condition of delivering *waram* to the landlord and that in 1882 the predecessor-in-title of the defendants executed a deed under which the *waram* was commuted into a fixed money rent and that the defendant claiming to revert to the *waram* rate, were interfering with the plaintiff harvesting his crops. The defendants contended that as the *inam* was a charity *Inam*, the deed of 1882 was not binding on them.

Held, that the suit lands were *inam* lands and the deed of 1882 was not binding on the charity nor the defendants who were trustees of the charity. The fact that a third share of the proceeds is being appropriated by the *inamdars* for their private uses does not make it the less a charity *inam* as the grant was only one and cannot be split up into two parts—a personal grant of one third and a charity grant of two-thirds of the *inam*: 40 M. 116, *Ref.* (*Ayling and Ramesam, JJ.*). SUNDARARAJACHARIAR *v.* ALI MUHAMMAD. **72 I.C. 690. A.I.R. 1923 Mad. 661=44 M.L.J. 649.**

———The *Inam proceedings* did not create any dedication. They were instituted only with the object of investigating titles to hold lands revenue-free as belonging to valid endowments. (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA SWAMIGAL *v.* BALUSWAWI AYYAR. **65 I.C. 161= 15 M.L.W. 78=3 P.L.T. 245= 26 C.W.N. 537=20 A.L.J. 497= 24 Bom. L.R. 629=30 M.L.T. 66= 48 I.A. 302=44 Mad. 831=1921 M.W.N. 449= A.I.R. 1922 P.C. 123=41 M.L.J. 346 (P.C.).**

—Inam—Construction.

———The words in an Inam title-deed, "The Inam is now confirmed to your representatives and assigns, to hold or dispose of, as you or they think proper", are not mere words of limitation but are effective to secure the grant to the heirs of the deceased grantee. (*Phillips, J.*). NARASIMHAM *v.* CHANDRAMMA. **92 I.C. 321=22 M.L.W. 669= A.I.R. 1926 Mad. 154= 49 M.L.J. 547.**

—Inam—Devadayam.

———Devadayam inam lands are inallenable. 45 Mad. 620, *Foll.* (*Odgers, J.*). SUBBAYYA *v.* SETTIPILLI RAMAYYA. **91 I.C. 666= 22 M.L.W. 225=A.I.R. 1925 Mad. 1046= 51 M.L.J. 131.**

—Inam—Dharmila.

———"*Dharmila*" *means* "*granted subsequent to permanent settlement*"

An inam granted subsequent to the settlement is a dharmila inam as opposed to inams granted prior to the settlement and excluded from the assets of a permanently settled estate and afterwards enfranchised by the inam rules in 1861 to 1864. (*Kumaraswami Sastri and Ramesam, JJ.*). S. SUBBARAYULU *v.* SECY. OF STATE. **105 I.C. 864=50 Mad. 961=26 M.L.W. 513= 1927 M.W.N. 854=A.I.R. 1927 Mad. 988= 53 M.L.J. 868.**

—Inam—Enfranchisement.

———Enfranchisement confers title: A.I.R. 1925 Mad. 726, *Foll.* (*Phillips and Madhavan Nair, JJ.*). ANANTHALAKSHMI *v.* NARASIMHACHARLU. **97 I.C. 687=A.I.R. 1926 Mad. 1210.**

———Service grant—Subsequent possession cannot divest previous title created by inam patta in favour of persons in possession: 20 Mad. 454, *Rel. on.* (*Deavdoss, J.*). VENKATA RAO *v.* MANGA RAO. **87 I.C. 376=1925 M.W.N. 808= A.I.R. 1925 Mad. 1184=49 M.L.J. 71.**

GRANT—Inam—Nature of.

—Inam—Forfeiture.

———*Disloyalty to Government.*

Where an inam was granted with a condition that the grantee thereof should remain a faithful subject of the British Government, grantee presiding over a meeting convened to boycott the visit of H. R. H. the Prince of Wales was held to be sufficient ground for forfeiture of the grant. (*Macleod, C. J. and Crump, J.*). SHRIPAD VISHNU *v.* SECY. OF STATE. **93 I.C. 448= 28 Bom. L.R. 1175=A.I.R. 1926 Bom. 581.**

—Inam—Register.

———Object was to record terms of inam—Reference to rent payable by ryots is made only to exhibit material for assessing quit-rent—Rate therein is average rate. (*Curgenven, J.*). ANDI MOOPAN *v.* MOHIDEEN MEERAL BIVI. **98 I.C. 882=A.I.R. 1927 Mad. 226.**

—Inam—Kadim Haks.

———Kadim Haks are grants made prior to the grant of the village in favour of the inamdars and independently of them. (*Fawcett and Madgavkar, JJ.*). SECY. OF STATE *v.* INDURAI BHAURAI DESAI. **98 I.C. 933=50 Bom. 698= 28 Bom. L.R. 1308=A.I.R. 1927 Bom. 40.**

—Inam—Nature of.

———*Property allowed to remain in possession of the eldest member of the eldest branch—Inference is that it is vadiliki inam.*

If successive generations have treated a certain property as an acquisition to the inam to which the rule of primogeniture and impartibility applied then it requires strong evidence to treat it as subject to partition. The intention is the test by which the Courts should be guided in cases of this nature. When for a hundred years the property has been allowed to remain in the possession of the eldest member of the eldest branch, it is a justifiable inference that the family have for generations agreed that it would be treated as appertaining to vadilki inam: 29 Cal. 433 (P.C.); 35 All. 391 (P.C.) and A.I.R. 1923 P.C. 59, *Ref.* (*Madgavkar and Patkar, JJ.*). GANESH *v.* SHRINIWAS. **113 I.C. 620=30 Bom.L.R. 457= A.I.R. 1928 Bom. 211.**

———There is no presumption that an Inam grant is a grant of both the varams; each case has to be decided on its facts and the merits: A.I.R. 1922 P.C. 292, *Ref.* (*Waller and Madhavan Nair, JJ.*). T. VENKATA SUBBA RAO *v.* B. SIVAJI. **106 I.C. 30=39 M.L.T. 208=1927 M.W.N. 609= A.I.R. 1927 Mad. 946.**

———There is no presumption that grant was of both varams—Each case will depend on its own facts—Where inam grant is proved to be of both varams, onus is on tenants to prove their occupancy rights: A.I.R. 1924 P.C. 65 and A.I.R. 1922 P.C. 292, *Expl.*; A.I.R. 1924 P.C.65, *held not to overrule*; A.I.R. 1922 P.C. 292; A.I.R. 1926 Mad. 136, *Foll.* (*Phillips and Madhavan Nair, JJ.*). ZAMINDAR OF PARLAKIMIDI *v.* RAMAYYA. **98 I.C. 813= A.I.R. 1927 Mad. 10=51 M.L.J. 510.**

———*No presumption can be raised in favour of either party—Tenants holding as occupancy tenants since* 1843—*Grant of* melvaram *only in favour of grantee can be presumed.*

In considering the nature of an inam grant, namely, whether it was a grant of *melvaram* only or a grant of both *melvaram* and *kudivaram*, no

GRANT—Inam—Nature of.

presumption can be made in favour either of the grantee or of the cultivator, and therefore where an *inamdar* sues to evict the tenants, the ordinary principle that a person suing in ejectment must prove his right to eject will apply : A. I. R. 1922 P.C. 292, *Foll.*; A.I.R. 1924 P.C. 65, *Expl.* and *Dist.*

Where it was found that the defendants-tenants and their predecessors in-interest had been in possession of the suit lands from 1843 onwards and that they had been disposing of their rights in those lands and dealing with them as if they had this right of occupancy and there was no evidence to show that the original grantee was himself in occupation of the suit lands before the grant and the only available evidence as to the tenants in possession showed that so far back as there was any record, the defendants and their predecessors had been cultivating the lands and dealing with them as if they had this right of occupancy.

Held, that the evidence does not support a grant to any greater extent than a grant of *melvaram* only. (*Phillips, J.*). PERIA KARUPPA THEVAN *v.* A. KANIYALASWAMIGAL KOVIL. **91 I.C. 1027= 22 M.L W. 625=1925 M. W. N. 821= A.I.R. 1926 Mad. 136=49 M.L.J. 602.**

———Question as to grant being of soil or of share of revenue is one of fact in each case—Presumption that grant passes only share in revenue does not exist. (*Shah, Ag. C. J. and Fawcett, J.*). SECY. OF STATE *v.* SHANTARAM NARAYAN DABHOLKER. **84 I.C. 397=49 Bom. 99= 26 Bom.L R. 847= A.I.R. 1925 Bom. 12.**

———*Grant of whole inam village is subject to the rights of community—Where the rights are easements enjoyed by the public the soil belongs to inamdar and he can eject trespasser.*

In the case of inam villages the grant of a whole inam village must be taken subject to the rights of the community. In the case of burial grounds, threshing floors, etc., such rights (so long as the character of the site does not charge) may be regard ed as vested in the Government. (36 M.L.J. 203, *Ref.*). But where the rights of the public amount to a bare easement, the *inamdar* has title to the soil. In the case of an irrigation tank, irrigating certain lands, it is doubtful if there are any rights belonging to the community, as the rights of irrigation appertain to the lands irrigated. as easements and the grant must be taken to be subject to the easements. If the tank is one for public drinking and bathing, the grant may be subject to the rights of the public for these purposes ; but there is no reason to hold that the bed does not belong to the *inamdar*. On the other hand, it is proper to say that it belongs to him. So that, if the tank ceases to be a tank, all rights vest in him and if it continues to be a tank, in the interests of the public, the proper person to take action against a trespasser is the *inamdar* who is still the owner of the bed and can take action to remove the trespass. (*Ramesam and Jackson, JJ.*) KANNAYIRAM PILLAI *v.* VIRUDUPATI GINS LTD. **81 I. C. 1021= 20 M. L. W. 185= A.I.R. 1925 Mad. 139.**

———There is no presumption that an Inam grant is grant of the land revenue only and each case must be decided with reference to the circumstances connected with it. (*Venkatasubba Rao, J.*). CHIDAMBARA GURUKKAL *v.* SIVAJNANASUNDARAM PILLAI. **79 I.C. 619=1924 M. W. N. 487= A. I. R. 1924 Mad. 833=47 M.L.J. 598.**

———There is no presumption that an inam grant by a zamindar is a grant of the *melvaram* only or of both varams: 41 M. 1132 and 48 M.166 ; A.I.R. 1922 P. C. 292, *Ref.* (*Phillips and Devadoss, JJ.*). VENKATARANGAYYA APPARAO BAHADUR *v.* MORAMPUDI BAJIRAJU. **76 I. C. 61=1923 M.W.N. 755= 19 M. L. W. 619= A. I. R. 1924 Mad. 93= 45 M.L.J. 238.**

GRANT—Inam—Origin of.

———*Right to minerals—Language of grant is essential.*

A grant of a village in inam may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. The title deed of the Inam Commissioners confers no higher title than was originally granted. The fact that Government at one time disclaimed its right to minerals does not deprive them of their title conclusively. (*Sir Lawrence Jenkins.*) SECY. OF STATE *v.* SRINIVASA CHARIAR. **60 I. C. 230= 44 Mad. 421=48 I.A. 56= 19 A.L.J. 201=33 C L.J. 280=25 C.W.N. 818= 13 M.L.W. 592=1921 M.W.N. 111= 29 M.L.T. 181=A.I.R. 1921 P. C. 1= 40 M.L.J. 262 (P.C.).**

———*Presumption is that grant is of both warams.*

There is a presumption in the case of grants of even inam lands (whether granted by the former ruling power or by a Zamindar) that the grant was of both warams. (*Sadasiva Aiyar and Spencer, JJ.*). SUBRAMANIA GURUKKAL *v.* AMMAKANNU AMMAL. **70 I.C. 477=14 M. L. W. 376=1921 M.W.N. 696= A.I.R. 1921 Mad. 595=41 M.L.J. 450.**

———The decision of the Judicial Committee in 41 Mad. 1012 that there was no presumption in favour of the restriction of the grant to the *melwaram*, applies to grant by Government as well as by private individuals and to British as well as pre-British grants. (*Oldfield, J.*). PERAYYA LINGAM *v.* VENKATAPATHIRAJU. **63 I.C. 804= 13 M L.W. 601= A.I.R. 1921 Mad. 302.**

———There is no presumption in inam grants that it is the *melwaram* alone that is granted: 41 Mad. 1012 and 37 M.L.J 42, *Foll.* (*Ayling and Seshagiri Aiyar, JJ.*). VENKATAPPA CHARYULU *v.* TIRUMALAREDDI PAPIREDDI. **62 I.C. 309= 13 M.L.W. 203=44 Mad. 550= A.I.R. 1921 Mad. 40.**

———*Third party, right of, to eject grantee.*

Where, the Government makes a grant of land at its absolute disposal, a third person cannot deprive the grantee's title on the ground that he was a landlord of the grantee and such third person's prior right as landlord is destroyed by the act of grant of the Government. There is no presumption of law that an inam grant of a village is *prima facie* a grant of the land revenue only. The terms of the grant, and whole circumstances connected therewith have to be looked into. In a suit for ejectment, the burden of proving that the tenancy is terminated and there is a ground for eviction lies on the plaintiff. (*Sadasiva Aiyar and Spencer, JJ.*). SUBRAMANIA AIYAR *v.* ONNAPPA GOUNDAN. **61 I.C. 597=12 M.L.W. 576=28 M.L.T. 389= 39 M L.J. 629.**

—Inam—Origin of.

———Suit for declaration that suit land was Government grant—Mittadar pleading that it was ryoti land—Real question to be decided is whether the inam was or was not granted or continued by Government—So, before deciding this question it is not proper to raise the question of Limitation under Lim. Act, Art. 14. (*Anantkakrishna Ayyar, J.*). CHIDAMBARA *v.* NAGAMMAL. **123 I.C. 341= A.I.R. 1930 Mad. 710.**

GRANT—Inam—Partibility.

—Inam—Partibility.

———*Berar Inam Rules, R.* 59—Jagir—*Land is liable to partition.*

Property consisting of an ordinary *Inam* village is liable to partition at the suit of a co-sharer except when it is held on *Saranjam* or other impartible tenure or where the terms of the original grant impose a condition upon its enjoyment that the management should rest with a particular branch of the family of the grantees. Under R. 9 of the Berar Inam Rules "Land" which term includes a village acquired by Pargana servants as Government officials, admits of division through Civil Courts. (*Dhobby, A.J.C.*). KRISHNA RAO *v.* NILKANTHA. **69 I.C. 800=18 N.L.R. 163=5 N.L.J. 25=A.I.R. 1922 Nag. 52.**

—Inam—Perpetual lease.

———The distinction between a grant in inam and a perpetual lease on a favourable rent is indeed very fine although in law it is quite sound. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SEETAYYA GARU *v.* APPADU. **92 I. C. 814=A.I.R. 1926 Mad. 526.**

—Inam—Proof.

———*Reference to Inam Registers when permissible.*

In determining the nature of property granted in inam, in the absence of the original grant, the entry in the Inam Registers may be referred to as evidencing the history of the property in question and the terms upon which it is held ; but where the original grant is available, the Court must be guided by its terms alone : 43 Mad. 253 (P.C.) and A.I.R. 1921 P. C. 1, *Appl.* (*Odgers and Jackson, JJ.*). DOST MD. KHAN *v.* HASSARATH KIBULUE SAYYAD. **102 I.C. 473=38 M.L.T. 248=A.I.R. 1927 Mad. 599.**

—Inam—Resumption.

———Right of Government to resume unenfranchised personal inams is not absolute and unqualified—Pensions Act, S. 7 (1): 12 Mad. 98; 26 Mad. 389; 26 All. 617 and 32 All. 148, *Dist.*; 1 M. H. C. 465, *Not cons.* (*Devadoss and Mackay, JJ.*). SECY. OF STATE *v.* ABDUL RAHIM. **114 I.C. 626=1928 M.W.N. 763=A. I. R. 1928 Mad. 1246.**

———Persons having no claim to hold the office for which the inam is granted by hereditary right, cannot maintain a suit to recover inam land when it is resumed by Government. (*Reilly, J.*). VELU PILLAI *v.* SECY. OF STATE. **107 I.C. 785=A.I.R. 1928 Mad. 852.**

———When the right of Government to resume an inam is questioned the Government or its assignees will have to substantiate the same. (*Waller and Madhavan Nair, JJ.*). VENKATASUBBA RAO *v.* B. SIVAJI. **106 I.C. 30=39 M.L.T. 208=1927 M.W.N. 609=A.I.R. 1927 Mad. 946.**

———Dharmilla Inam—If services to be rendered are public, inam is not resumable—If services are private presumption is of resumability. (1911) 2 M.W.N. 406, *Ref.*; 30 M. L. J. 132 (F.B.), *Rel. on.*

Even where the lands are Dharmilla inam lands and services are private and personal, if the terms of the grant show that they were given partly for past services and partly for future services, then it would be more a grant burdened with service, rather than a grant as remuneration for future service and thus not resumable. (*Ramesam, J.*). RAJAH OF VIZIANAGRAM *v.* RAMASWAMI. **101 I.C. 49=A.I.R. 1927 Mad. 448=52 M.L.J. 283.**

———*Court cannot order resumption.*

The discretion of exercising its power to resume the grant lies with the Government and a Court

GRANT—Inam—Service inam.

cannot, on the assumption that the object of the grant has failed, make any direction, that the inam should revert to the temple and that the trustee should manage it and treat it as property belonging to the temple. (*Spencer and Devadoss, JJ.*). SESHADU REDDI *v.* SUBRAMANIA AIYAR. **74 I.C. 35=16 M.L.W. 839=32 M.L.T. 89=A.I.R. 1923 Mad. 163.**

———Ferpetual inam—Resumption by Government—Ryotwari patta granted to Inamdar—Occupancy rights of tenants are not defeated : 12 L. W. 576, *Diss. from*; 33 M. L. J. 370; 28 M. L. J. 44; 2 Mad. 226 and 12 Mad. 422, *Ref.* (*Ayling and Seshagiri Aiyar, JJ.*). VENKATAPPACHARYULU *v.* TIRUMALAREDDI. **62 I.C. 309=44 Mad. 550=13 M.L.W. 203=A. I. R. 1921 Mad. 40.**

—Inam—Saranjam.

———*Construction of grant.*

The mere use of wide expressions such as the grant of land "for ever" or "from generation to generation" does not prevent the grant being one of saranjam. Nor again is the use of the word "inam" instead of "saranjam" conclusive. It is for Government to determine in a particular case whether a grant is one of saranjam only. (*Fawcett, Ag. C.J. and Murphy, J.*). SAYAJI RAO, GAIKWAR OF BARODA *v.* MADHAVRAO RAGHUNATHRAO DHAVADE. **115 I. C. 369=30 Bom. L.R. 1463=53 Bom. 12=A.I.R. 1929 Bom. 14.**

—Inam—Service inam.

———*Resumption.*

Where a village carpenter committed default in the discharge of his duties and the Collector passed orders resuming the carpenter's inam and directed that ayan patta should be issued to the purchaser who was in possession of the lands.

Held, that the inam being of both warams the Government could resume the same and grant it to another, and that the purchaser was entitled to a declaration of his title and for possession on the basis of the patta issued by Government. Incidents of patta discussed. (*Ananthakrishna Aiyar, J.*). SAMPATHU RAO NAINAR *v.* APPASAMI NAINAR. **1930 M.W.N. 385.**

———*Resumption.*

A grant of lands burdened with *vinayaka* services to be rendered in connection with a temple is one for public service rendered to the whole Hindu community and so long as the service to the deity is being regularly rendered, it is not liable to be resumed. Similarly an inam relating to a *valluva* or astrologer inam cannot be resumed so long as the service is being performed. (*Ananthakrishna Ayyar, J.*). PRAYAG DOSS JEEWARU *v.* ABBU PILLAI. **123 I.C. 28.**

———*Sagubadi inam incidents—Resumption.*

A *sagubadi* inam is an inam granted to head ryots with a view to their encouraging the cultivating of Government's lands. Lands thus granted are burdened with the *sagubadi* service. If the inamdar to whom such a grant hasbeen made should fail to perform that service when the service was performable, it would be open to the zamindar to resume the inam but if the services have long ceased to be performed for the simple reason that there is little or no cultivable land yet remaining to be cultivated and the terms of the grant have not been violated, the zamindar is not entitled to resume the inam. (*Ananthakrishna Ayyar, J.*). PRAYAG DOSS JEEVARU *v.* ABBU PILLAI. **123 I.C. 28.**

———Inam for private service to the zamindar is not the same as an inam for public service.

GRANT—Inam—Service inam.

(*Jackson and Reilly, JJ.*). LAKSHMI VENKAYAMMA *v.* SECY. OF STATE. **117 I.C. 292= A.I.R. 1929 Mad. 399.**

———*Construction of grant.*

Inam granted in favour of some persons so long as service therein is rendered—Every person is entitled to share although he does not personally render the service. (*Kumaraswami Sastri and Reilly, JJ.*). MIR MAHABOOB *v* MIR SURAJUDDIN. **115 I.C. 150= A.I.R. 1928 Mad. 1148.**

———*Resumption.*

The Government have no right to resume service Inam lands forming part of the property of zamindar or to make a fresh grant of them to any other person. (*Devadoss, J.*). ANKAMA NAIDU *v.* BEEKI NAIDU. **99 I.C. 699= 38 M.L.T. 9= A. I. R. 1927 Mad. 449.**

———The phrase "sarva dambala inam" shows only that no money payment is insisted on the holding of the inam, but it does not necessarily show that it was not a service inam. (*Ramesam, J.*). BRAHMAYYA *v.* MADHURAM. **94 I.C. 489= A.I.R. 1926 Mad. 496= 50 M.L.J. 282.**

———Karnam—Inam Commissioner refusing to grant patta in the name of karnam but giving pattas to other persons in the family who were in possession—Such pattas give them good title—Such enfranchisement enures for their benefit and not for that of karnam: A.I.R. 1925 Mad. 780, *Foll*; A.I.R. 1922 P.C. 96, *Dist.* (*Devadoss, J.*). VENKATA RAO *v.* MANGA RAO. **87 I.C. 376= 1925 M.W.N. 808= A.I.R. 1925 Mad. 1184= 49 M.L.J. 71.**

———Inams for public service—Leases for a period are valid—Sale is invalid even during alienor's lifetime: A.I.R. 1922 Mad. 197 (F.B.), *Appr.* (*Case-law referred to.*) (*Devadoss and Madhavan Nair, JJ.*). KADIYALA BASWAYYA NAIDU *v.* MUNISAMI REDDI. **86 I.C. 1041= A.I.R. 1925 Mad. 1155.**

———Karnam service inam—Enfranchisement in favour of stranger to office—Holder of office at the time cannot claim benefit of enfranchisement: A.I.R. 1922 P.C. 96 and S.A. Nos. 287 and 288 of 1921, *Foll.*; 30 M.L.T. 334, *Dissented from.* (*Phillips and Odgers, JJ.*). G. RAMAKRISHNAYYA *v.* G. PITCHAYYA. **91 I.C. 165= 1925 M.W.N. 480= 21 M.L.W. 474= A.I.R. 1925 Mad. 726= 48 M L.J. 500.**

———*Service inam and personal inam distinction —Exclusive prior possession against grantee of a title-deed after enfranchisement is of no avail against the grantee.*

The lands comprising the emoluments of the karnam office are attached to the office as such, so that even if a stranger to the family is appointed the land goes with the appointment, eligibility to the office is a personal matter; the land goes with the office and is impartible and Government, in the act of enfranchisement, severs the land from the office and allows the office-holder for the time being to enfranchise it. The distinction between the enfranchisement of a service inam and that of a personal inam is that the latter is a mere release of the service obligation, release by the Crown of its reversionary interests, while the former is a resumption of the land by Government and a re-grant of it to whomsoever Government pleases, although no doubt ordinarily the re-grant would be to the holder of the office at the time of the enfranchisement. The enfranchisement of a service inam and the issue of a title-deed thereupon create a new title in the grantee, unless Government had at the time of the resumption no right to resume.

GRANT—Inam—Trustees.

Adverse possession prior to resumption does not count against the new grantee. (*Wallace, J.*). GOWRIKANTAM *v.* RAMAMURTHY. **80 I.C. 557= 19 M.L.W. 663= 34 M L.T. 234= 1924 M.W.N. 566= A.I.R. 1924 Mad. 783= 46 M.L.J. 482.**

———Inam burdened with trust of doing certain services—Surplus after services belongs to grantee. (*Spencer and Devadoss, JJ.*). SESHADU REDDI *v.* SUBRAMANIA AIYAR. **74 I.C. 35= 16 M.L.W. 839= 32 M L T. 89= A.I.R. 1923 Mad. 163.**

———Karnam service woman being karnam at time of enfranchisement—Grant of title-deed to her conveys absolute estate descendible to her own heirs—Madras Hereditary Village Officers Act, III of 1895. (*Spencer and Devadoss, JJ.*). ANDUKURI VENKATARAMADAS *v.* PACHIGOLLA GAVARRAJU. **70 I.C. 677= 16 M.L.W. 228= 1922 M.W.N. 305= 31 M.L.T. 154= A.I.R. 1922 Mad. 173= 43 M.L.J. 153.**

———Blacksmith's Inam—Inamdars who were owners of Kudivaram removed from service—Mirasdars and Pattidars not thereby entitled to possession. 26 M.L.J. 169, *Dist.* (*Oldfield and Odgers, JJ.*). P. ELLAPPA NAIDU *v.* BOOLOGACHARY. **1922 M.W.N. 180= 16 M.L.W. 531= A.I.R. 1922 Mad. 97= 42 M L.J. 359.**

———*Hindu joint family—Partition—Subsequent enfranchisement—Divided member should prove that the inam was kept undivided at partition.*

The fact of partition from the person in whose name the service inam is enfranchised is not conclusive against a claim to co-parcenary rights in the enfranchised inam lands. Whether the co-parcenary right survives, will have to be determined as a fact in each case. It may be that the office with the inam attached to it was allotted at partition to the co-parcener then holding office as a part of his share. In such a case, persons divided from him would obviously have no rights after enfranchisement. It may be that in view of the peculiar nature of the tenure and the legal impossibility of severing the lands or any portion of them from the office, the inam was kept undivided on the understanding that although till enfranchisement only the office-holder could enjoy it, yet in the event of enfranchisement, all members would be entitled to share. It may be that the other co-parceners were actually allowed by the office-holder to enjoy some portion of the inam land or its profits. If a divided member claims to share in an enfranchised service land the onus lies on him of proving, not only that he is a member of the original service family, but that at any partition which has taken place the inam was kept out of partition as undivided property in which all the sharers retained joint rights.

View of Spencer, J., in (1918) M.W.N. 849, *Dissented from*; 26 Mad. 339 and 30 Mad. 434 (F.B.), *Ref. to.* (*Ayling and Odgers, JJ.*). VENKATA SUBBA RAO *v.* SATYANARAYANAMURTI. **60 I.C. 27= 44 Mad. 179= A.I.R. 1921 Mad. 86= 40 M.L.J. 31.**

—Inam—Trustees.

———Certain persons managing temple property as *de facto* trustees considering themselves to be Archakas—Surplus income appropriated to their use—Inam Register showing that property wholly belonged to temple—Their appropriation is not *bona fide* and they are liable to account for moneys received by them: 21 Bom. 556 and 24 Mad. 243,

GRANT—Inam—Waste land.

Dist. (*Phillips and Odgers, JJ.*). GOPALACHARYULU *v.* LAKSHIMINARAYANA. **114 I.C. 650= A. I. R. 1929 Mad. 87.**

—Inam—Waste land.

——Per *Venkatasubba Rao, J.*—It cannot be said that an inam grant of waste land is in law impossible. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SEETAYYA GARU *v.* APPADU. **92 I.C. 814= A.I.R. 1926 Mad. 526.**

—Jagir.

——*Attachment—Exemption from.*

There is no initial presumption that a jagir is a political pension and the burden of proving that it is a political pension and as such exempt from attachment is on the person who alleges it: 111 I.C. 838, *Foll.*; 61 I.C. 895 and 95 P.R. 1906, *Doubted.* (*Shadi Lal, C. J. and Abdul Qadir, J.*). DUNI CHAND-TELO MAL *v.* GURMUKH SINGH. **31 P.L.R. 538= A.I.R. 1930 Lah. 816.**

——*'Jagir' and 'muafi' distinguished.*

The difference between muafi and jagir is that the former is remission of land revenue to the owner whereas the latter is an assignment of land revenue which is collected and paid to the jagirdar. The jagirdar may subsequently acquire the property and if he does, the grant technically becomes 'muafi' though it always continues to be shown as a jagir. (*Broadway and Harrison, JJ.*). SHIROMANI GURDWARA PRABHANDHAK COMMITTEE *v.* KARAM SINGH. **123 I.C. 836= A.I.R. 1930 Lah. 46.**

——*Alienation—Right of.*

The Government in granting jagirs of the first class did not intend to put them on a par with grants of Cl. 3 which are governed by R. 5 of the Inam Rules subject to the four kinds of restrictions enumerated in sub-R. 2 of the said rule. Hence in the case of a jagir of the first class, as the jagir of Mahan in Akola District is future alienation of it is not prohibited. (*Subhedar, A.J.C.*). (KHWAJA) JALALUDDIN *v.* MOHAMAD AMIR. **A.I.R. 1930 Nag. 279.**

——*Co-jagirdars—Profits, suit for.*

A managing jagirdar has a right to collect the available profits and to make them available for distribution among the co-jagirdars and consequently, a suit for the assessed rental of a home farm due from co-jagirdar is maintainable: 13 C.P. L.R. 48, *Ref.* (*Subhedar, A.J.C.*). VITHAL *v.* LAXMAN. **119 I.C. 678= A.I.R. 1930 Nag. 132.**

——*Right of the head of family.*

Where a jagir belongs to the head of the family (jagirdar) by virtue of right under the rule of primogeniture in matters of descent and junior members of the family are entitled only to such parts thereof as are actually allotted to them for purposes of residence or maintenance, it must be presumed that the head of the family is in possession of the unallotted portion thereof and it is for those who claim any title either by grant or by adverse possession to any portions of the estate to establish their claim by affirmative evidence. (*Jai Lal, J.*). UPENDAR CHAND *v.* HARNAM SINGH. **110 I.C. 436 (Lah.).**

——A jagir includes a khorposh tenure. (*Mullick and Kulwant Sahay, JJ.*). KAMAKSHYA NARAYAN SINGH *v.* JADO CHARAN. **114 I.C. 194= A.I.R. 1928 Pat. 294.**

——A jagir granted to a *kasi* for services which were for the convenience of the tenants of the zamindar is a private, and not of a public nature.

GRANT—Jagir.

(*Ross and Kulwant Sahay, JJ.*). BIBI UMATUL-RASUL *v.* NAGESHWAR BUSE RAI. **103 I.C. 679=7 Pat. 36= A.I.R. 1927 Pat. 386.**

——*Proof—A village cannot become a jagir only because it is so called.*

To call a village a jagir is not sufficient to constitute a jagir.

Where the granting authority was the Government who presumably at the time of the grant were perfectly aware of the nature and constituent elements of a jagir and the Government styled the villages in the grant deed as a jagir, and its own officers consistently adopted that nomenclature:

Held, there were strong grounds for holding that the grant was the grant of a jagir. (*Wallace and Madhavan Nair, JJ.*). RAMASAMI *v.* TIRUPATHI. **98 I.C. 291=50 Mad. 10=24 M.L.W 460= A.I.R. 1926 Mad. 1167=52 M.L.J. 269.**

——*Jagir and inam—Distinction.*

That distinguishing feature of a jagir in olden days was that it was a grant of landed property for life or for a definite number of lives in lieu of pension for services, usually military, rendered to Government in order that the grantee may maintain a certain dignity and state: 40 Mad. 664, *Rel. on.*

The word "jagir" primarily points to occupancy: (1918) M.W.N. 384 (P. C.), *Foll.* (*Wallace and Madhavan Nair, JJ.*). RAMASAMI *v.* THIRUPATHI. **98 I.C. 291=50 Mad. 10=24 M.L.W. 460= A.I.R. 1926 Mad. 1167=52 M.L.J. 259.**

——*Jagir is presumably for life.*

Jagir grant conveys only an estate for life unless clear words indicating a different intention appear in the instrument. (*Dawson-Miller, C.J. and B.K. Mullick, J.*). MAHADEO ASRAM PRASAD SAHI *v.* MT. JAGATRAJ KUER. **71 I.C. 929= A.I.R. 1924 Pat. 298.**

——*Resumable grants—Circumstances leading to the inference that grant is resumable—Service tenures—'Resumption' does not mean that on failure of heirs it 'escheats' to zemindar but only that latter can make a new settlement.*

Where the *jagir* was specifically mentioned as a service tenure involving the performance of police and other duties and a new settlement with the *Taluqdar* showed that the rent was increased from Rs. 735 to Rs. 1,000, four villages were taken out of the Pargana and set apart for the maintenance of the widows of the previous holder, and a new patta was granted to him by the Maharajah and a new *Parvana* was issued to him at the zemindar's instance for possession of the *jagir*.

Held, in face of these facts it is idle to contend that the settlement with the *talukdar* was a continuance of the old tenure. Had the *talukdar* succeeded to the *jagir* by right of inheritance the maintenance of the Ranis, the widows would have exclusively devolved on him and the superior landlord would have had no concern with it or the right to take away any part of the property to provide for their maintenance. The Maharajah's interference on behalf of the widows is explainable only on one hypothesis, *viz.*, that he was making a new arrangement by virtue of a right recognized by the authorities.

"Resumption" in connection with these service tenures does not mean that on failure of the direct male line it "escheats" to the zemindar and becomes what is called his *sir* or *khas* property; the *jagir* retains its character, but the zemindar becomes entitled to make a new settlement with the

GRANT—Jagir.

knowledge and sanction of the authorities. (*Mr. Ameer Ali.*) SRINATH RAY *v.* P. UDAI NATH.
82 I. C. 879=28 C.W.N. 145=33 M.L.T. 408=1923 M.W.N. 702=A.I.R. 1923 P.C. 217 (P.C.).

———Tenant of jagir in Berar—Mortgage of tenancy is not invalid. (*Mittra, A.J.C.*). MT. SONI *v.* MEGHASHYAN. **18 N.L.R. 195=A.I.R. 1923 Nag. 103.**

———*Previous jagirdar claims in connection with.*

Each new jagirdar gets his jagir free of claims in connection with his predecessor, and it is doubtful whether funeral expenses of the previous holder are a legal charge on the jagir income. Declaratory decree in favour of a jagirdar who refused to pay funeral expenses, was refused especially because he did not claim refund of expenses paid under order of Collector. (*Chevis, J.*). ASAD ALI KHAN *v.* MT. SHARIF-UN-NISSA BEGAM.
A.I.R. 1922 Lah. 365.

———The interest of a jagirdar is ordinarily that of a life-tenant. 46 Cal. 683 and 3 Bom. 186 (P.C.), *Foll.* (*Dawson-Miller, C.J. and Jwala Prasad, J.*). (MAHARAJA PRATAB) UDAI NATH SAHI DEO *v.* GANESH NARAIN SAHI. **70 I.C. 232=1921 P.H.C.C. 369=A.I.R. 1921 Pat. 218.**

———*Trees—Right to cut.*

Though the zemindar is proprietor of the soil, yet by custom he might not have the right to cut trees without the jagirdar's permission.

The right to cut and sell timber in the jagir of Unerpur, in Sind, is (at any rate as between the jagirdar and the zamindar) vested in the zamindar who has more proprietary interest in the soil than the jagirdar. (*Fawcett. A.J.C.*). PIR MAKHDUM *v.* MALIK BOOLA KHAN. **79 I.C. 819=16 S.L.R. 87=A.I. R. 1921 Sind 109.**

—Khorposh.

———In a common parlance, a grant to any member of the family would be a khorposh grant. It need not necessarily be limited to grants by a senior member of the family to a junior member. (*Mullick and Kulwant Sahay, JJ.*). NARAYAN SINGH *v.* JADUCHARAN SINGH. **114 I.C. 194=A.I.R. 1928 Pat. 294.**

———*Intention to separate.*

Asserting in excess of what a person has in khorposh mouzahs does not by itself show any intention to separate. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMAR DEBI *v.* SIVA PROSAD SINGH. **93 I. C. 385=42 C.L.J. 280=A. I. R. 1926 Cal. 1.**

———*Reversion.*

In all cases of *korposh* grants, there is always the possibility of a reversion to the parent estate, on the extinction of heirs of the grantee. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.**

—Law applicable.

———Village service tenure—Two Kotwars—In the settlement one was selected for service by lot and the other was recorded in the *wazib-ul-arz* as sub-tenant of the first—In the next settlement this arrangement was not recorded and the sub-tenant was dispossessed—He was held entitled to possession and a proper record of his life tenancy—This case not governed by the Tenancy Act of 1883, S. 50-B (2). (*Drake-Brockman, J. C.*). GHIBLIA *v.* DAWLATIA. **18 N.L.R. 34=A.I.R. 1922 Nag. 158.**

—Life estate.

———*Acceptance of rent from life-tenant's heir—Effect.*

GRANT—Marwat.

Where an heir of the grantee enters into possession of the grant after the death of the grantee and the grantor accepts rent from him, the mere acceptance of rent by the grantor should not constitute the heir anything more than a mere tenant-at-will.

The mere assertion of a jagirdari right acquiesced in by the superior landlord cannot be taken to import a claim or an acknowledgment of a larger interest than that of a life-estate. (*Dawson-Miller, C. J. and Jwala Prasad, J.*). MAHARAJA PRATAP UDAINATH *v.* G. N. SAHI. **70 I. C. 232=1921 P. H. C. C. 369=A.I.R. 1921 Pat. 218.**

—Maintenance grant.

———Annuity in the nature of maintenance is not heritable. 23 All. 194 (P. C.), *Foll.* (*Stuart, C. J. and Wazir Hasan, J.*). DEPUTY COMMR., HARDAI *v.* SYED MIRAJ RASUL.
98 I. C. 298=2 Luck. 398=13 O.L.J. 821=3 O.W.N. 866=A.I.R. 1928 Oudh 42.

———Impartible estate—Grants for maintenance to junior members are for life. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 385=42 C. L. J. 280=A.I.R. 1926 Cal. 1.**

———*Duration of estate.*

Where the object of a grant is maintenance it is *prima facie* for the life of the grantee in spite of the words 'for ever' or 'in perpetuity' but if the right of alienation has been also granted the intention is to confer an absolute estate. (*Wazir Hasan, J. C.*). TEJA SINGH *v.* MOTI SINGH. **80 I. C 918=27 O.C. 330=A.I.R. 1925 Oudh 125.**

———*Duration of estate—Construction.*

A maintenance grant is resumable on the death of the grantee and not on the death of the grantor. A maintenance grant is not absolutely inconsistent with a grant to the donee and his heirs. Such a grant is *prima facie* resumable on the death of the grantee, but the context may show that it was intended to make provision not only for the donee but for the heirs of the donee. Where the grant is so expressed, the grantor has the right to resume the grant on the extinction of the line of the grantee. It is all a question of construction. The operative clauses in a maintenance grant were in these terms: "I have made a grant of the *milkiat* right in the Mouzas named below by way of maintenance with the detail as follows. If any of the said three persons or their heirs put forward hereafter any objection against the *rais* of the Raj, as regards the difference in their maintenance grants which according to the custom obtaining in the family I am competent to assign more to one and less to another, such objection shall not be held legal or tenable in Courts".

Held, that the grantor by providing against the possibility of an objection on the part of the heirs of the grantee had clearly indicated that the grantees took a heritable but not an absolute interest under the grant. 27 Cal. 156, *Foll.*; 22 W. R. 225; 23 All. 194, *Ref.* (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I.C. 812=3 Pat. 880=5 P.L.T. 513=A.I.R. 1924 Pat. 721.**

—Marwat.

———In Oudh, a marwat grant is hereditary but non-transferable: A. I. R. 1924 Oudh 124, *Foll.* (*Ashworth and Misra, JJ.*). RAM SHANKAR SINGH *v.* LAL BAHADUR SINGH. **92 I.C. 637=1 Luck. 98=13 O.L.J. 216=3 O.W.N. 267=A. I. R. 1926 Oudh 277.**

GRANT—Marwat.

———*Marwat Definition.*

A grant made to grantee who was killed fighting for the Taluqdar, is called *marwat* and is not transferable nor resumable. (*Simpson, A. J. C.*). SIYA RAM *v.* SALIK. **77 I. C. 352= 10 O.L.J. 335=5 L. R. Oudh 13= A.I.R. 1924 Oudh 124.**

—Pension.

———*Pension from generation to generation—Predecessor of each generation is Government.*

Where a pension is granted from generation to generation, one generation cannot be said to be the successor-in-interest of the last. At the very moment when the grant was made by Government a right arose in favour of each successive generation and the predecessor-in-interest of each successive generation is the Government and not the father. (*Ashworth and Sen, JJ.*). BHOOPAL RAI *v.* SHIAM SUNDER. **1929 A. L. J. 724= 11 L.R.A. Rev. 65=A.I.R. 1929 All. 781.**

—Presumption.

———*Extent of grant.*

Absence of evidence of terms—Presumption of grantor passing all that he had not admissible—Rules of English law not applicable. (*Lord Tomlin.*) MAHIPATI SURYARAO *v.* SECY. OF STATE. **117 I.C. 481=1929 A.L.J. 702= 33 C.W.N. 725=31 Bom. L. R. 866= 30 M.L.W. 9=1929 M.W.N. 442=6 O.W.N. 503= 56 I. A. 223=52 Mad. 538=50 C.L.J. 30= A.I.R. 1929 P. C. 152= 57 M.L.J. 64 (P. C.).**

———It is reasonable to presume that where land is given for a cemetery there would be no reservation by the grantor. (*Lindsay, J.*). KHUDA BAX *v.* RAGHUNANDAN LAL. **100 I.C. 623= A.I.R. 1927 All. 381.**

———*Lost grant—Long possession without paying rent—Lost rent-free grant will be presumed—But possession must be as of right with notice to persons likely to be adversely affected.*

A person who claims to hold as a tenant land within the ambit of a zemindary must prove his right to hold it without payment of rent by a grant from the zemindar, but production of the grant itself is not the only way to prove such a grant.

When long possession (here for 62 years) without paying rent has been proved by direct evidence, the Court not only might, but ought to presume that the claim was based upon a grant which is lost. Care must, however, always be taken to see in these cases that long possession is clearly established to have been enjoyed under a definite claim of right in such a manner that in the circumstances it was likely to have attracted the notice of the person or persons whose rights are adversely affected by such a claim.

Whether a presumption of a lost grant should arise or not must depend upon the circumstances of each case: 42 Cal. 489 (P. C.); 6 Cal. 394 (P. C.); A. I. R. 1925 Cal. 309, *Rel. on.* (*Panton and Chakravarty, JJ.*). KIRAN CHANDRA *v.* SRINATH CHAKRAVARTY. **100 I.C. 453=31 C.W.N. 135= A.I.R. 1927 Cal. 210.**

———*Occupancy right.*

Where it is not in evidence whether the grant was of the whole land or only of the *melwaram* the usual presumption of occupancy right must be raised in favour of grantee and on resumption of grant he must pay rent as occupancy ryot. (*Phillips,*

GRANT—Resumption.

J.). CHOWDANNA *v.* VENKATAPATHINAYANI VARU. **93 I. C. 141=1926 M.W.N. 458= 24 M.L.W. 249=A.I.R. 1926 Mad.621= 50 M.L.J. 429.**

———Lost Grant—Immemorial user by public of a ghat—Title by lost grant is presumed. (*Suhrawardy and Duval, JJ.*). PEARY LAL MULLICK *v.* SURENDRA NATH. **88 I. C. 505= A.I.R. 1925 Cal. 1233.**

———Where the enjoyment may be explained as a mere user of a public right, a presumption of a lost grant need not be made. (*Marten, J.*). LAKSHMAN GOWROJI *v.* RAMJI ANTONE. **23 Bom. L.R. 939=A.I.R. 1921 Bom. 93.**

—Relinquishment.

———Government seizing village in which owner had right to both *varams*—Afterwards Government relinquishing same—Both *varams* deemed relinquished. (*Waller and Madhavan Nair, JJ.*). SRINIVASA AYYAR *v.* NALLAMUTHU PADAYACHI. **111 I.C. 204=A.I.R. 1928 Mad. 1245.**

—Resumption.

———*Grant in lieu of wages and grant burdened with services—Distinction—Presumption.*

Where a zamindar wants to resume lands granted before the permanent settlement and held by the grantees from father to son, the onus is always on the plaintiff to prove that grant was one in lieu of wages resumable at will.

A village in the Vizianagaram zamindari was granted as early as 1752. The grantees were hillmen. They and their predecessors were in possession for more than 250 years and had brought the land under cultivation. The lands had been descending from father to son and had been alienated without question.

Held: that on the facts, the onus was very heavy on the zamindar seeking to resume the lands to show that the grant was merely a grant in lieu of wages resumable at will and not a grant burdened with service in which case it could not be resumed without at least showing that the services were required to be done and were refused: 13 M.I.A. 438 (P.C.); 28 Bom. 305 and A.I.R. 1926 Mad. 511, *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). PUSHAVATI ALAKH NARAYANA *v.* VUGGINA APPALASWAMI. **A.I.R. 1930 Mad. 755=59 M.L.J. 183 (F.B.).**

———*Kadim grants.*

If grants were kadim or in existence at the date when the village itself was granted in inam, the right of resumption would be vested in the Government and not in the inamdar: A. I. R. 1927 P. C. 217, *Foll.* (*Sir John Wallis.*) LAKHAMGOWDA BASVAPRABHU *v.* APPANNA. **113 I. C. 467= 29 M.L.W. 617=53 Bom. 222=56 I. A. 44= 31 Bom. L.R. 235=A. I. R. 1929 P. C. 30= 56 M.L.J. 429 (P.C.).**

———*Effect.*

Inam—Resumption by Government extinguishes all interests acquired before enfranchisement—Subsequent grantee gets free of all such interest. (*Devadoss, J.*). RAMANNA *v.* VENKATNARAYAN. **99 I.C. 468=25 M.L.W. 238=38 M.L.T. (H C.) 20= A. I. R. 1927 Mad. 301=52 M.L.J. 52.**

———*Status of holder.*

As to whether in a particular case, the status of the holder of the resumed grant is that of a tenure-holder or that of a raiyat must be determined by reference to the entry in the record of rights. (*Das and Foster, JJ.*). GOBINATH SARANJI *v.* AJHARRUL HAQUE. **101 I.C. 119=8 P.L.T. 578= A.I.R. 1927 Pat. 225.**

GRANT—Resumption.

———*Zamindar can resume grant only if land is in his zamindari and is assessed to revenue—Inclusion of revenue is presumed if services for the grant were personal.*

Whether a zamindar can resume a grant, will depend upon whether the revenue from the land was or was not included in the assets of the zamindari at the time of the settlement. If it was included, the right of resumption would be with the zamindar, if not, he would not have that right. If there is no direct evidence to show whether the revenue was or was not included, one may turn to the nature of the services as they may furnish a clue. If the services were personal to the zamindar, it may reasonably be assumed that the Government would not have exempted the land from the revenue, but would have treated it, for the purpose of the settlement, as revenue-paying land. (*Venkatasubba Rao, J.*). THIRUVENKATACHARLU *v.* ALTOO SAHEB. **94 I. C. 458= 1926 M.W.N. 344=A.I.R. 1926 Mad. 511= 50 M.L.J. 251.**

———*Right of.*

In case of grants there is no presumption that it was made in lieu of wages for service, or when the grantor proves that the services were personal, that the grant was made in lieu of wages. The person claiming resumption must make out his title to resume : *Case-law reviewed.* (1911) 2 M.W.N. 406, *Dist.* (*Venkatasubba Rao, J.*). THIRUVENKATACHARLU *v.* ALTOO SAHEB. **94 I.C. 458= 1926 M W.N. 344=A.I.R. 1926 Mad. 511= 50 M L.J. 251.**

———*Land not burdened with service—Liability to resumption.*

Where a menial servant of a temple holds no office a hereditary character and is remunerated for the performance of his duties by the use of certain lands on payment of annual cess the lands are not burdened with any service in connection with the temple nor is the holder a trustee. Upon cessation of his service the land is liable to immediate resumption. (*Chaudhuri and Cuming, JJ.*). JOYNATH SARKAR *v.* HARI MOHAN DAS. **59 I.C. 469 (Cal.).**

———*Effect.*

The fact that the grant is resumable cannot affect the character of the tenures created by the grantor or raise any presumption as to the existence of persons having an interest in the property prior to the grant. (*Oldfield, J.*). PERAYYA LINGAM *v.* VENKATAPATHI RAJU. **63 I.C. 804= 13 M.L.W. 601=A.I.R. 1921 Mad. 302.**

—Rights of alienee.

———A purchaser of a definite extent from one of the agraharamdars is not liable jointly and severally with the other agraharamdars to pay *kattubadi* and his liability rests only on the privity of estate and must be limited to the proportionate share due on the portion he purchased. A.I.R. 1927 Mad. 931, *Foll.* and 11 L. W. 523, *Rel. on.* (*Ramesam. J.*). SURYANARAYANA *v.* VENKATA RAMAYYA APPA. **115 I.C. 351=29 M.L.W. 600=56 M.L.J. 273.**

———*Crown grant—Transferee obtaining renewal.*

Where a Crown grant under which the grantee's interest was as for thirty years, was transferred by him during period of thirty years and the transferee after expiration of thirty years got it renewed in his name.

Held, that the transferor can no longer claim ownership in the subject of the grant. (*Lord Shaw.*) MI ASHA *v.* JOGENDRA LAL CHOWDHURY. **A.I.R. 1921 P. C. 135 (P. C.).**

GRANT—Rights of grantee.

—Rights of grantee.

———*Minerals—Right to.*

When a grant is made by a zemindar of a tenure at a fixed rent although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect : A.I.R. 1916 P.C. 191, *Appl.* (*Lord Tomlin.*) MAHIPATI SURYA RAO *v.* SECY. OF STATE. **117 I.C. 481= 1929 A L.J. 702=33 C.W.N. 725= 31 Bom.L.R. 866=30 M.L.W. 9=1929 M.W.N. 442= 6 O.W.N. 503=56 I A. 223=52 Mad. 538= 50 C.L.J. 30=A.I.R. 1929 P.C. 152= 57 M.L.J. 64 (P.C.).**

———*Mirasi rights.*

Where there is grant of the soil, the mirasi rights in the land would be covered by the grant. (*Fawcett, Ag. C.J. and Murphy, J.*). SAYOJI RAO GAIKWAR *v.* MADHAVA RAO RAGHUNATH RAO. **115 I.C. 369=53 Bom. 12=30 Bom. L.R. 1463= A.I.R. 1929 Bom. 14.**

———*Prescription.*

Where a person was granted a *cowle* under which the grantee was authorised to collect certain fees from each house, the mere fact that quit rent was not collected for over a century would not exempt the house-owners from the payment of quit rent. (*Devadoss and Jackson, JJ.*). G. R. ADIKESAVALU NAIDU *v.* C. S. B. LAKSHMANA AYYAR. **113 I.C. 36=A.I.R. 1929 Mad. 204.**

———*In Oudh, Shankalap and Marwat grants are ordinary grants—Grantor restricting the right of the grantee—Grantee can make a valid transfer of the subject-matter of the grant—Such transfer can be valid only between the transferor and transferee—Prohibitions against transfer founded upon public interest are absolute.*

Shankalap and marwat grants in Oudh are ordinary grants which connote under proprietary tenure. Where, however, the grantor adds that the grantee will not have transferable right, the grantee and his successors will hold lands with heritable but non-transferable rights under a grant. The grantee or his successor can make a valid transfer of the subject-matter of the grant in spite of the restraint on the power of alienation imposed originally by one of the terms of the grant; but having regard to that term such a transfer can only be valid as between the transferor and the transferee. The restraint against alienation being for the benefit of the grantor will be given effect to in his favour only. There is an essential difference between restrictions on transfers imposed by the Legislature and those imposed by a Court or decree by grant and there are cases in which for the protection of particular interest it is deemed expedient to depart from the general principle and to fetter the privilege of free alienation. In such cases, the prohibition against transfer being founded upon consideration of public interest must be treated as absolute : 15 O. C 67, *Appr.* (*Stuart, C. J. and Wazir Hasan, J.*). BALBHADDAR SINGH v. KUSHAR DAS. **110 I.C. 357= 3 Luck. 636=5 O.W.N. 487=10 L.R.A. Rev. 38= A. I. R. 1928 Oudh 344.**

———*Inamdar accepting settlement is bound and can upset it only on the basis of contract.*

Inamdar accepting the settlement, as evidenced by the sanad, is *prima facie* bound by the terms therein contained, and he can only upset that settlement on some basis recognized by contract law such as mistake, fraud or misrepresentation.

GRANT—Rights of grantee.

(*Fawcett and Madgavkar, JJ.*). SECY. OF STATE *v.* INDURAI BHAURAI DESAI. **98 I.C. 933=50 Bom. 698=28 Bom.L.R. 1308=A.I.R. 1927 Bom. 40.**

———*Riparian rights.*

When a water-course not merely bounds but flows through the land of the grantee, the presumption that the bed is included in the grant must necessarily be stronger, and where no express reservation exists, it lies on the grantor to show that presumption should not prevail: 41 Mad. 840 (F.B.) and 12 L.W. 371, *Ref.* (*Curgenven, J.*). VENKAYYA *v.* SECY. OF STATE. **99 I.C. 446=24 M.L.W. 833=1926 M.W.N. 969=A. I. R. 1927 Mad. 207.**

———*Permanent and inalienable lease—Lessor acquiescing in transfers—Lease becomes alienable.*

Where a perpetual lease without power of alienation granted to a certain person was subsequently sold in auction and was again conveyed for consideration by the purchaser to the original grantee and where the lessor was unsuccessful in his attack on the auction-sale and did not object at all to the re-transfer subsequently made by the auction-purchaser.

Held, that the original condition against alienation was no longer operative and that the interest in the hands of the lessee was transferable and liable to attachment. (*Dalal, A.J.C.*). AMBIKA PRASAD *v.* ATTAR ALI. **89 I.C. 182=A.I.R. 1926 Oudh 15.**

———*Minerals—Rights to.*

Express words in the grant are not necessary for the transfer of the right to mines and minerals in the lands granted. (*Shah, Ag. C. J. and Fawcett, J.*). SECY. OF STATE *v.* SHANTARAM NARAYAN DABAOLKER. **84 I.C. 397=49 Bom. 99=26 Bom. L.R. 841=A.I.R. 1925 Bom. 12.**

———Ejectment—Suit for—Patta granted to plaintiff by Government—Plaintiff must prove Government had title at the time.

Otherwise, the grantee cannot maintain a suit in ejectment against persons who were in possession at the time of the grant. (*Ramesam, J.*). ADINARAYANA *v.* KALAMALLA VENKATASUBBAYYA. **87 I.C. 46=A.I.R. 1925 Mad. 752=48 M.L.J. 411.**

—Rights of grantor.

———*Dedication for public use.*

The fact that the plaintiff dedicated his Ghat for public use for the purposes of bathing does not destroy the plaintiff's right as proprietor. (*Tudball and Rafique, JJ.*). RAMU GHATIA *v.* HEMANTA KUMARI. **63 I.C. 498=19 A.L.J. 483=A.I.R. 1921 All. 294.**

—Rights of holder.

———*Mortgagee of unenfranchised land—Possession of.*

Where unenfranchised land is mortgaged and the mortgagee remains in possession for over 12 years, he acquires by prescription the right of a usufructuary mortgagee and is liable to be redeemed as such; and the taking of a sale in discharge of the mortgage does not alter the nature of the possession of the mortgagee when the alleged purchase is not valid: 44 Mad. 946; 14 Bom. 279 and 14 Mad. 38, *Rel. on.* (*Viswanatha Sastri, J.*). BUTCHI RAJU *v.* SEETHARAMAYYA. **93 I. C. 955=1926 M.W.N. 9=23 M. L. W. 707=A.I.R. 1926 Mad. 377.**

———Lands constituting emoluments of office, held as owner by person not entitled to office, for more than 12 years—The holder gets absolute title even as against succeeding office-holders: 38 M. L. J. 320, *Foll.* (*Sadasiva Aiyar and Spencer, JJ.*). SUBRAMANIA GURUKKAL *v.* AMMAKANNU AMMAL. **70 I.C. 477=14 M. L.W. 376=1921 M.W.N. 696=A.I.R. 1921 Mad. 595=41 M.L.J. 450.**

GRANT—Saranjam.

—Sankalap.

———A *Sankalap* grant is resumable but not transferable. (*Simpson, A.J.C.*). SIVA RAM *v.* SALIK. **77 I. C. 352=10 O.L.J. 335=5 L.R. Oudh 13=A. I. R. 1924 Oudh 124.**

———*Presumption.*

The Courts should be very careful about raising any presumption in favour of deeds of *shankalap* which are produced practically for the first time during the trial of cases in which under proprietary rights are claimed on the basis of those deeds. (*Lindsay, J.C.*). HAR PRASAD *v.* BIKRAMAJIT SINGH. **61 I.C. 959=8 O. L. J. 131=A.I.R. 1921 Oudh 36.**

—Saranjam.

———*Alienation of.*

Where a saranjamdar who has occupancy rights in the lands included in the saranjam, grants the saranjam to a third party, together with the occupancy rights in the lands, and the alienation is absolutely rent-free and no benefit is reserved to the saranjam estate in the way of rent or in any other manner, and where there was no acquiescence in the continuance of the saranjam grant after the life-time of the original grantee, such mirasi or occupancy rights are resumable when the grant of the saranjam is resumed, and an alienation is not binding on the saranjamdar's successors: A.I.R 1927 P. C. 238; 40 Bom. 606; A.I.R. 1921 Bom. 303; A.I.R. 1926 Bom. 316, *Dist.*; A.I.R. 1925 Bom. 177, *Foll.* (*Fawcett, Ag. C. J. and Murphy, J.*). SAYOGI RAO GAEKWAR *v.* MADHO RAO RAGHUNATH RAO. **115 I.C. 369=53 Bom. 12=30 Bom. L.R. 1463=A. I. R. 1929 Bom. 14.**

———*Effect.*

The grantee of saranjam grant is not entitled to create in his own favour occupancy rights in lands unoccupied at the time the grant was made or held by others then but forfeited on one ground or another during the subsistence of the grant. When the saranjam is resumed, the Government becomes entitled to resume not only the land revenue, but also all the rights and benefits that the grantee had secured by virtue of his grant: A.I.R. 1925 Bom. 197, *Reversed*; 10 Bom. 112, *Diss. from*; 6 Bom. 598, *Dist.* (*Lord Sinha.*) SECY. OF STATE *v.* MT. GIRJABAI. **106 I. C. 1=51 Bom. 957=54 I.A. 359=26 A.L.J. 32=29 Bom. L.R. 1503=46 C.L.J. 420=39 M L.T. 463=27 M.L.W. 124=32 C.W.N. 329=A.I.R. 1927 P. C. 238=53 M.L.J. 431 (P.C.).**

———*Alienation.*

A grant of mirasi rights is not necessarily an alienation which will not be binding beyond the life-time of the saranjamdar making the grant. (*Fawcett and Madgavkar, JJ.*). MADHAVRAO *v.* IMAM BABU. **94 I.C. 737=50 Bom. 195=28 Bom. L.R. 433=A.I.R. 1926 Bom. 316.**

———*What it includes—Presumption.*

A grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the Royal share of the revenue only. There is no presumption that a grant of Saranjam is a grant of Royal revenue only. It must be determined in each case upon the facts what was the quality of the original grant although it may be

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that it is ordinarily a grant of the Royal revenue only. (*Lord Salvesen.*) SECY. OF STATE *v.* LAXMI BAI.
72 I .C. 898=47 Bom. 327=28 C.W.N. 49=17 M L.W. 405=32 M.L.T. 111=50 I.A. 49=25 Bom. L.R. 527=37 C.L J 464=A.I.R. 1923 P.C. 6=44 M L.J. 471 (P C.).

———The grant of Inam and Mirasi rights by a Saranjamdar whose estate descends by inheritance to the eldest member of the family is binding on his successor. (*Shah and Crump, JJ.*). SAKHARAM GOVIND *v.* TRIMBUKRAO RAMACHANDRA.
61 I.C. 40=45 Bom. 694=23 Bom. L.R. 314=A.I.R. 1921 Bom. 393.

—Service Grant.

———*Commutation—Effect.*

Where the land, which was service land and therefore originally inalienable, is subsequently commuted for a quit rent and treated as "kaush baus," the tenure of that land is altered from service to rent, as long as the donee's descendants continue to pay rent, and such land becomes alienable: 19 W.R. 211 (P.C.) and A.I.R. 1918 P.C. 135, *Foll.* (*Fawcett and Mirza, JJ.*). BABA SAHEB BAIROGIRAO *v.* GOPAL HANMANT.
113 I.C. 254=30 Bom. L.R. 917.

———*Resumption.*

As long as the holders of the grant are able and willing to perform the service, the landlord has no right to put an end to the tenure, whether the services are required or not. 29 Mad. 52 (P.C.), *Foll.* (*B. B. Ghose and Cammiade, JJ.*). K. S. BANNERJI *v.* KAMDAR ALI.
117 I.C. 848=32 C.W.N. 727.

———*Lease for long term—Validity—Test.*

In dealing with the question whether a lease for a long term of inalienable property like service inam is void. the Court has to see the nature of the transaction rather than the form. The real question is whether the transaction in effect places the income from the lands beyond the disposal of the holder of the office and prevents him from enjoying the emoluments which were intended to go to the holder of the office in order to enable him to discharge his duties properly.

Permanent leases or leases for so long a period as would practically amount to an alienation will be invalid as against the successor-in-office who will be entitled to the rents and other emoluments, arising out of the land which goes with the office, but if the lease is not of this character, it is not absolutely void but only voidable at the instance of the successor-in office. Where a premium is taken, one test will be whether the rent paid is sufficient to maintain the holder of that office in such a way as not to interfere with the due performance of the duties attached to the office. (*Case-law discussed.*) (*Kumaraswami Sastri and Devadoss, JJ.*). SUNDARA RAJU *v.* SESHADRI.
106 I. C. 426=26 M. L. W. 739=1927 M.W.N. 556=A.I.R. 1928 Mad. 35=54 M. L. J. 76.

———*Resumption—Right of.*

A grant for Kattu Kaluva service was originally made for service to the villagers and not for private service to the Zamindar himself, and, therefore, it is not resumable by the landlord at his pleasure and without concurrence on the part of the villagers. (*Srinivasa Aiyangar, J.*). THE RAJAH OF VIZIANAGARAM *v.* J. GANGADU. **106 I.C. 671=39 M.L.T. 338=A.I.R. 1927 Mad. 1001.**

———*Resumption.*

In the case of a grant, burdened with service the grant is not resumable merely because the necessity for service has ceased, though it will be liable to forfeiture in case of wilful failure in the performance of service. (*Odgers, J.*). GURUSWAMI PILLAI *v.* VEERABHADRA.
95 I.C. 325=23 M.L.W. 540=A.I.R. 1926 Mad. 605.

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———*Grant* in lieu *of wages—Resumption.*

A post-settlement grant for a service to attend daily on the zemindar as he performs devotions, etc. is a grant *in lieu* of wages, and the zemindar is entitled to put an end to such service at his pleasure and resume the grant. (1911) 2 M.W.N. 406 and (1914) M.W.N. 179, *Foll.* (*Phillips, J.*). CHOWDANA *v.* VENKATAPATHINAYAM VARU.
93 I.C 141=1926 M.W N. 458=24 M.L.W. 249=A.I.R. 1926 Mad. 621=50 M.L.J. 429.

———*Resumption—Right of—Grant* in lieu *of wages and Grant burdened with service—Distinction.*

To determine whether a certain grant is resumable or not, regard must be had to the nature of the tenure and to the fact whether the grant was made *in lieu* of wages for service or it was an absolute grant subject to the condition of the performance of the service. The relation between the grantor and the grantee is that of master and servant in the first case. In the second case, in absence of contract to the contrary, whether grantor requires the service or not is immaterial, the only question being whether there has been default on the part of the grantee. (*Venkatasubba Rao, J.*). TIRUVENKATACHARLU *v.* ALLOO SAHEB. **94 I.C. 458=1926 M.W.N. 344=A.I.R. 1926 Mad. 511=50 M. L. J. 251.**

———*Enfranchisement—Hindu widow in favour of—Effect.*

A service inam enfranchised in the name of a Hindu widow and confirmed to her in freehold confers absolute property and not merely a widow's estate although some other persons are joined with her as grantees. (*Jackson, J.*). VENKATASUBBA RAO *v.* ADINARAYANA RAO. **92 I.C. 472=22 M.L.W. 631=A. I. R. 1926 Mad. 227=50 M. L.J. 46.**

———*Resumption—Grant* in lieu *of wages.*

If a mere servant is allowed to cultivate land instead of being paid in money for his services, it is open to the grantor to dismiss him at any time, with of course, such notice or compensation as might be equitable, just as he can, any other servant paid in money, if he is dissatisfied with him and wishes to get rid of him. (*Hallifax, A.J.C.*). MANBODH *v.* HIRASAI. **93 I.C. 650=A.I.R. 1926 Nag. 339.**

———*Karnam, Land attached to office of, goes with office and is impartible—Enfranchisement gives the then owner full rights—Other members of family cannot claim partition thereof—Law governing palayam tenures are not applicable to this case.*

In Madras the Karnam of the village occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family. Therefore it followed that lands held as appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible. *Venkata* v. *Rama*, (1884) 8 Mad. 249 (F. B.); *Venkatarayudu* v. *Venkataramayya*, (1891) 15 Mad. 284. *Appr.*

A case of a Palayam tenure and that of Karnam are quite separate and cannot be treated as being governed by analogical principle.

When a Palayam was abolished in so far as the duty of rendering military service was concerned,

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the estate was continued with all its hereditary incidents to the Palayaghar in the same manner as is possessed by a zamindar. It is different with regard to a case of a Karnam. A hereditary right in a Karnam or his family can only, at the utmost be said to constitute a certain *spes* among persons within the area of selection of those eligible for the office. But it is not even so limited. The power of selection rests with the administrative officials, who alone are Judges of the eligibility of the Karnam for the time being, and it is the settled law of Madras that the emoluments in the shape of lands follow the office, *ex-necessitate*. Otherwise the holder of the lands might be some person other than the holder of the office. *Pingala Lakshimi* v. *Bommireddipalli Chalamayya*, (1907) 30 Mad. 434, *Overruled*.

Therefore the title deed, granted to the appellant's father at the time of enfranchisement of the Karnam by way of an Inam, which was in express words confirmed to him, and was, "now confirmed to you, your representatives and assigns to hold or dispose of as you or they think proper," must be given full effect to and hence it is not subject to be eviscerated or altered by any claim for partition or division put forward by way of defence to such a suit. (*Lord Shaw.*) MUSTI VENKATA JAGANNADA SARMA *v.* MUSTI VEERABHADRAYYA.

61 I. C. 667=30 M. L. T. 14=
26 C. W. N. 302=48 I. A. 244=
44 Mad 643=1921 M. W. N. 401=
34 C L. J. 16=14 M. L. W. 59=
A.I.R. 1922 P. C. 96=41 M.L.J. 1 (P. C.).

———*Adverse possession—Against grantor.*

A person who gets possession of land as emoluments for a service to be performed by him cannot be allowed to treat the lands as his own by merely denying his liability to do service or by neglecting to do that service. He should first surrender the land to his master and again take possession thereof adversely to his master and enjoy them for 12 years after so re-taking possession before he could set up title by adverse possession: 12 Bom. 322, *Foll.* (*Sadasiva Iyer and Napier, JJ.*). (TAMIRISI) VENKATASAMI *v.* VIVVALA AMANNA.

62 I.C. 771=1921 M.W.N. 378=
A.I.R. 1921 Mad. 640.

———*Alienation.*

Lands attached as emoluments to a religious office are inalienable in the same manner as the office itself and the sale of such lands is a void transaction. (*Sadasiva Iyer and Spencer, JJ.*). SUBRAMANIA GURUKKAL *v.* AMMAKANNU AMMAL.

70 I.C. 477=14 M.L.W. 376=
1921 M.W.N. 696=A. I. R. 1921 Mad. 595=
41 M.L.J. 480.

—Shrotriem grant.

———*No presumption of inclusion of kudivaram and melvaram or of exclusion of kudivaram.*

There is no presumption that a shrotriem grant includes both melvaram and kudivaram or that it does not include kudivaram. Each case must be decided on its own circumstances: A.I.R. 1922 P.C. 292, *Foll.*; 43 Mad 92; A.I.R. 1923 Mad. 1; 70 I.C. 729 (F.B.), *Reversed*.

"Shrotriem" according to Wilson's Glossary means "a grant of lands or a village held at favourable rates, properly an assignment of lands or revenue to a Brahmin learned in the Vedas but latterly applied to similar assignments to native servants of Governments, Civil or Military, and both Hindus and Mahomedans as a reward for past services. A shrotriem grant gives no right over the lands and the grantees cannot interfere with the occupants as long as they pay the established rents." But the effect of latter legal decisions is that a shrotriem grant may in fact grant the kudivaram as well as melvaram. Where the document itself in the final recital uses the term again "as we have granted to you the said agraharam you should enjoy the same from son to grandson, paying the shrotriem thereon and be happy." The term can only mean revenue though this consideration in itself is not conclusive. Where the grantors were Deshpandyas who were revenue officials of farmers of revenue under the paramount authority, the strong probability is that they granted that which in their position as Deshpandyas they would possess, *viz.*, the rights over the revenue. (*Lord Atkin.*) V. SEETHAYA *v.* P. SUBRAMANYA.

117 I. C. 507=33 C. W. N. 578=
52 Mad. 433=29 M.L.W. 804=
31 Bom. L.R. 756=49 C.L.J..566=
56 I.A. 146=1929 M. W. N. 553=
A.I.R. 1929 P.C. 115=56 M.L.J. 730 (P.C.).

—Succession to.

———In the case of property attached to a maniem office the devolution very frequently does not follow the rules laid down by the Hindu Law. The appointment rests with the Government and very frequently the appointment is made on other grounds than direct heirship alone. (*Phillips and Madhavan Nair, JJ.*). ANANTHALAKSHMI AMMAL *v.* K. NARASIMHACHARLU.

97 I.C. 687=A.I.R. 1926 Mad. 1210.

—Vatan.

———An endorsement appended to the Register of *Sanads* will not be a sufficient proof that the *Vatan* property became ordinary property: 25 B. 470, *Foll.*; F. A. 177 of 1920, *Ref.* (*Macleod, C.J. and Crump, J.*). DULANBI *v.* MUHAMMAD HANIF.

A.I.R. 1923 Bom. 296.

———Vatan *lands—Bombay Hereditary Offices Act, S. 5 — Auction sale against widow—Reversioners bound by sale if purchaser is also a* vatandar.

The sale of the *vatan* lands in execution against the widow of a *vatandar* in respect of a decree that had been passed against him is valid and binding upon reversioner provided the auction-purchaser is a *vatandar* of the same *vatan* since the widow would be able to alienate her husband's immovable property for legal necessity under S. 5 of the Bombay Hereditary Offices Act. (*Macleod, C. J. and Shah, J.*). GANESH RAMCHANDRA KULKARNI *v.* LAXMIBAI VENKATESH NARAYAN.

67 I.C. 209=46 Bom. 726=24 Bom. L.R. 249=
A.I.R. 1922 Bom. 96.

———*Adverse possession.*

Assuming that the Nadgirs were entitled either by agreement or by custom to get back their *Vatan* lands on payment of *Judi*, time would not begin to run against them until they were made aware that the *Jahagirdars* were setting up a title to hold the *Vatan* lands in their own right. Nor is it easy to see how the *Jahagirdars* could acquire the offices of Patil and Kulkarni by adverse possession.

The *Vatan* lands had not become the absolute property of the *Jahagirdars* considering the way of, in which they were treated both by Government and its assignees the *Jahagirdars*. (*Macleod, C.J. and Shah, J.*). SHRINIVAS LINGO NADGIR *v.* SECY. OF STATE.

24 Bom.L.R. 214=A.I.R. 1922 Bom. 18.

———*Palkhi Inam to Vatandars.*

The village granted to the Deshpande *Vatandars* as *Palkhi Inam* by the Mahomedan King was to

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pay their *Palkhi* expenses and therefore it was an appanage of the vatan. It was not merely a grant of the Royal share of Revenue.

In the Bombay Presidency, Inams and other similar grants are being treated as implying a grant of the royal share of the revenue and not necessarily of the soil unless words suitable to indicate grant of the soil are used in the document evidencing the grant.(*Macleod, C.J. and Shah, J.*). TUNGABAI GOPAL DESAI *v.* KRISHNAJI RAMCHANDRA DESHPANDE. **67 I.C. 215=24 Bom. L.R. 252=46 Bom. 741=A.I.R. 1922 Bom. 5.**

——*Alienation.*

Vatans like Desaigiri Hak under the service commutation settlement effected in Gujarat in or about 1873 are alienable : 25 Bom. 470, *Foll.* (*Macleod, C. J. and Fawcett, J.*). KHUSHAL BAI PARAGJI *v.* DULABHBHAI PARAGJI. **61 I. C. 411=45 Bom. 948=23 Bom. L. R. 304=A. I. R. 1921 Bom. 281.**

GRANT OF LEASES REGULATION (Ben. Reg. 44 of 1793).

—S. 5—Enhancement of rent.

——*Talukdar made to pay enhanced rent under S. 5—Original term as to fixity of rent is not affected.*

Section 5 deals with an exception to the provisions of S. 4. The mere fact that the talukdar had to pay enhanced rent by reason of the provisions of S. 5 does not show conclusively that the rent was not fixed. The revenue sale would not affect the terms of the contract which there might have been between the parties at the time of the creation of the tenure. (*Sanderson, C.J. and B.B. Ghose, J.*). SARODA PROSAD PAKRASI *v.* UMASHANKAR SANYAL. **99 I.C. 258=44 C. L.J. 385=A.I.R. 1927 Cal. 168.**

GRATUITOUS ACT.

See CONTRACT ACT, SS. 69, 70.

GRATUITY.

See C. P. C., S. 60.

GRAVE AND SUDDEN PROVOCATION.

See PENAL CODE.

GRAZING RIGHTS.

See (1) ADVERSE POSSESSION.
(2) EASEMENT.
(3) EASEMENTS ACT.

GRIEVOUS HURT.

See PENAL CODE, SS. 320, 326.

GROSS NEGLIGENCE.

See TORT—NEGLIGENCE.

GROUNDS FOR REMAND.

See C. P. C., O. 41, Rr. 23, 25.

GROUNDS FOR REVIEW.

See C. P. C., O. 47.

GROUNDS FOR TRANSFER.

See C. P. C., S. 24.

GROUNDS OF APPEAL.

See (1) APPEAL.
(2) C. P. C., O. 41.
(3) PRACTICE.

GROUNDS OF TRANSFER.

See CR. P. CODE, SS. 426-428.

GROVE.

See (1) LANDLORD AND TENANT.
(2) OUDH RENT ACT.

GROVE HOLDER.

See AGRA TENANCY ACT.

GROWING CROPS.

See (1) GENERAL CLAUSES ACT, S. 3 (25).
(2) IMMOVABLE PROPERTY.
(3) T. P. ACT, S. 3.

GUARANTEE.

See CONTRACT ACT, Ss. 124-147.

GUARDIAN AND WARD—Alienation by guardian.

GUARDIAN.

See (1) C. P. C., O. 32.
(2) GUARDIANS AND WARDS ACT.
(3) HINDU LAW—GUARDIANSHIP.
(4) MAHOMEDAN LAW—GUARDIANSHIP.
(5) MINOR.

GUARDIAN AND WARD.

Alienation by guardian.
Arbitration.
Debts contracted by guardian.
Eligibility for guardianship.
Gross negligence.
Guardian's rights and liabilities.
Minor's liability for guardian's acts.
Rights and liabilities.
Transactions between.
Miscellaneous.

—Alienation by guardian.

——Where the mother and guardian of a minor alienated certain property but the deed did not describe her character as such,

Held, that in the absence of a recital that she was conveying it as owner it could be inferred from other circumstances that she was acting as guardian. (*Mukerji and Bennet, JJ.*). SHEONANDAN PRASAD *v.* TAHIRAN BIBI. **1930 A.L.J. 852.**

——*Gifts—Customary gifts of moderate value.*

Where a guardian purported to release a debtor of the estate from his indebtedness by giving him a receipt, the effect of which was to wipe out his indebtedness under the bond for Rs. 800 executed by him in favour of the minor and the consideration was expressed to be a gift at the time of the marriage of the minor and also as recognition of his services as a mukaddam,

Held, that though the guardian had authority to make such gifts as would be customary on the occasion of his ward's marriage, he had certainly no authority to make a gift of this extent as the effect of that gift was to reduce the value of the minor's estate by that amount. The authority of the guardian extended only to making disbursements which were legally compellable on behalf of the minor and customary gifts of a moderate value and that there was no legal compulsion to make this unusual gift and that the generosity could be challenged. (*Mears, C. J.*). COLLECTOR OF MEERUT *v.* SAGAR MAL. **117 I. C. 99=1929 A.L.J. 605=A. I. R. 1929 All. 454.**

——*Substantial portion of consideration applied for necessary purposes.*

Suit by minor for setting aside sale—Major portion of consideration found for legal purposes—Sale should be upheld.

To disturb a *bona fide* purchaser who has reason to believe after a lapse of considerabe time that his title is secure is serious thing to do and is really a serious menace to the peace of people's minds. (1914) 1 L. W. 877; (1915) M. W. N. 8; (1916) 1 M.W.N. 163 and (1921) M.W.N. 715, *Foll.*; (1919) 41 All. 63; (1922) 44 All. 683; (1923) 45 All. 429 and (1924) 46 All. 531, *Not foll.* (*Odgers, J.*). PHAKIRU PANIGRAHI *v.* KOTHAPALLI CHENDRASEKARAM. **99 I.C. 681=1926 M.W.N. 956=A.I.R. 1927 Mad. 215.**

——Where a Mahomedan widow who had one-eighth share, alienated property on behalf of her minor children but it did not appear either from the recitals or from evidence on record that she intended or contracted to transfer property, or any portion thereof in her own individual right,

GUARDIAN AND WARD — Alienation by guardian.

Held, the alienation was not valid the extent of her share. (*Kinkhede, A.J.C*). GULAM JAFFAR v. RAMDHAN. **103 I.C. 209=A.I.R. 1927 Nag. 290.**

———*Transfer in lieu of maintenance.*

Guardian should not permanently alienate immovable property to provide maintenance for person entitled to be maintained only for life—But such alienation is voidable only and not void. 39 All. 61 and A.I.R. 1922 Mad. 112, *Foll.* (*Spencer and Odgers, JJ.*). DEVIACHILA AIYANGAR v. VENKATACHARIAR. **88 I.C. 967= 22 M.L.W. 188=1925 M.W.N. 556= A. I. R. 1926 Mad. 46=49 M.L.J. 317.**

———*Sale by step-mother—Setting aside of—Refund of consideration.*

Where the step-mother of a minor sold property belonging to the minor in order to pay off a mortgage executed by his father and to meet the marriage expenses of the minor,

Held, that the sale could be set aside at the instance of the minor, but the minor was bound to refund the consideration money. (*Macleod, C.J. and Crump, J.*). LIMBAJI RAVJI HAJARE v. RAHI RAVJI HAJARE. **88 I.C. 643=49 Bom. 576= 27 Bom. L. R. 621=A.I.R. 1925 Bom. 499.**

———*Legal necessity for half the consideration—Rest retained with vendee to be paid to minor on attaining majority—Sale valid.*

A minor's guardian sold minor's property for a reasonable price. There was legal necessity for half the purchase money, in the shape of the necessity to discharge loan borrowed by the minor's father. The remaining half of the price was allowed to remain with the vendee subject to the condition that on the minor attaining majority, it should be paid to the minor with interest at 6 per cent. per annum. A promissory note was taken for the sum and the vendee acted in good faith,

Held, that the sale was valid and that the execution of the promissory note for the unpaid half of the purchase money did not put an end to the vendor's lien for the unpaid purchase money and was not imprudent. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). K. MUNAYYA v. M. KRISHNAYYA. **84 I.C. 949=20 M.L.W. 693= A.I.R. 1925 Mad. 215=47 M.L.J. 737.**

———*Specific performance of contract by minor's guardian.*

Specific performance of a contract by minor's guardian for the sale of immovable property which at the time was for the benefit of the estate, can be decreed notwithstanding there is an offer of better price subsequent to the contract: 42 Mad. 183, *Foll.* (*Devadoss, J.*). KASIVASI CHIDAMBARA SWAMIGAL v. RAMAKRISHNA REDDIAR.

82 I.C. 926=20 M.L.W. 659=35 M.L.T. 110= 1924 M.W.N. 878=A.I.R. 1924 Mad. 863= 47 M.L.J. 683.

———*Specific performance—Grant of, against minors.*

Specific performance will not be granted where *de facto* guardian has entered into a contract with a third party for the sale of the minor's property. To direct the contract to be carried into effect as against the minors is to sanction a plain breach of trust on the part of *de facto* guardian: 45 C. 878, *Foll.* (*Das and Foster, JJ.*). ABDUL HAQ v. MOHAMMAD YEHIA KHAN. **78 I.C. 483= 4 P.L.T. 353=2 P.L.R. Civ. 181= A.I.R. 1924 Pat. 81.**

GUARDIAN AND WARD—Arbitration.

———*De facto guardian—Step-mother—Alienation for benefit of minor is valid—Delegation of authority by guardian is not invalid.*

Where there is ample proof that the step-mother the *de facto* guardian of the minor managed the estate of the minor that she increased the value of that estate very much, that from the time of plaintiff's grandfather it was usual as it is in the case of ground landlords of a rising town to grant licenses and leases for building purposes, and that the mother continued what family had been doing,

Held, that step-mother as the *de facto* guardian had power to make or to extend the licenses covering the sites in suit, and that the granting of the licenses was beneficial to the minor's estate: 10 N. L. R. 133, *Disapp.*

Held, further that if the *de facto* guardian could herself grant these licenses she can delegate her power to another person. (*Prideaux, A. J. C.*). GANPAT v. FIRM OF BISSESARLAL GOVINDRAM. **71 I.C. 491=8 N.L. J. 110=A. I. R. 1921 Lah. 365.**

———*Unauthorised person—Alienation by.*

Sale of minor's property by unauthorised person purporting to act as guardian—Sale is void—Minor is entitled to recover possession free from all payments but having regard to the provisions of Ss. 38 and 41 of the Specific Relief Act, the vendees are entitled to claim that the parties should be relegated to the position they were in before the deed of sale was executed. (*Broadway and Beewan Petman, JJ.*). FATEH KHAN v. LANGRA. **68 I. C. 15=94 P.L.R. 1922= A.I.R. 1923 Nag. 230.**

—Arbitration.

———*Reference to, by guardian on competent legal advice.*

In a suit by a minor to set aside a decree on the ground of the guardian's negligence, it is necessary to show that firstly, the guardian was guilty of negligence, that is to say, of such want of care as was required of him under the circumstances and secondly that such negligence resulted in a decision being given against him.

Thus, where the guardian acting under competent legal advice and with the Court's sanction on behalf of the minors referred the dispute to the arbitration of a sole arbitrator, empowering him to decide the dispute *uko bil mukto*, within or beyond the issue as he likes," such expression being commonly used in references filed in Court in these parts, and the arbitrator after arriving at his decision on merits has used *uko bil mukto* powers (power of awarding lump sum) for the benefit of the minors and the decision with regard to the outstandings is also in favour of the minors,

Held, (*a*) that the reference to arbitration did not amount to negligence : (*b*) that the reference is not rendered *ipso facto* invalid by use of the expression *uko bil mukto* within or beyond the issues, (*c*) that the minors actually benefitted by the act of the guardian and cannot succeed. (*Percival, J.C. and Rupchand, A.J.C.*). PHAGUNMAL v. TAEJMAL. **123 I.C. 301=A.I.R. 1930 Sind 186.**

———*Reference to by guardian—Validity.*

All acts of the guardian which were such as an infant might, if of age, reasonably and prudently do for himself, must be upheld when done for him by his guardian.

When the reference to arbitration by guardian is for the benefit of the minor and is not an act which the minor, if of age, would not have done reasonably and prudently for himself, it is binding on the minor: 2 M. H. C. R. 47; 19 Cal. 334;

GUARDIAN AND WARD—Debts contracted by guardian.

35 Bom. 153, *Foll.* (*Heald and Rutledge, JJ.*). PUNUSHWAMI *v.* VEERAMUTHU. **91 I.C. 676= 3 Rang. 452=A.I.R. 1926 Rang. 31.**

—Debts contracted by guardian.

———*Test of validity.*

Where a guardian borrows money on behalf of a minor, the proper test in a suit by the lender is whether the minor could reasonably and prudently have incurred the debt himself. It is not sufficient for the lender to show only that the loan was for necessary purpose: A.I.R. 1926 Nag. 75, *Foll.* (*Dalip Singh, J.*). MANOHAR LAL SIS RAM *v.* RATAN SINGH. **A. I. R. 1930 Lah. 588.**

——— De facto *guardian has power to bind ward's estate for his necessities.*

Where minors or incapacitated persons who are unable to take care of themselves are left adrift, a person who takes pity on them and looks after them and raises money for their maintenance out of the family property does what is expected of an ordinary human being and any debt incurred for the maintenance of such incapacitated persons or minors must be discharged out of the estate of such persons or minors: A.I.R. 1926 Mad. 457, *Rel. on.* (*Devadoss and Madhavan Nair, JJ.*). RAVUNNI NAIR *v.* NALANAD. **116 I.C. 127. A. I. R. 1928 Mad. 1131.**

———Bona fide *act in course of management.*

A minor is bound by the act of his guardian done *bona fide* for his benefit in the management of the estate, even though his name does not appear in the connected transaction: 35 Cal. 320, *Dist.*; 1 N.L.R. 66; A.I.R. 1922 Nag. 104; and 20 Bom. 286, *Rel. on.* (*Findlay, J.C.*). BAJIRAO MAHAR *v.* RAMRAO. **110 I.C. 48=A.I.R. 1928 Nag. 292.**

———*Necessity or benefit.*

When a loan is taken by a guardian on behalf of a minor for the purpose of some necessity or for the benefit of the minor's estate then the minor's estate can be held liable: 39 Mad. 915 and 26 Mad. 330, *Foll.* (*Mears, C.J. and King, J.*). PHALRAM *v.* AIYUB KHAN. **98 I.C. 657=49 All. 52= 24 A.L.J. 895=A.I.R. 1927 All. 55.**

———*Personal liability of guardian.*

A guardian executed a hypothecation bond as guardian containing a stipulation "I have agreed to pay,"

Held: that the expression did not amount to a personal covenant to re-pay, by the executant but was only a covenant in his capacity as guardian. No difference in the legal position will take place and a personal liability will not be imposed upon the guardian simply because it was represented by the guardian that the money would be utilised for the benefit of the minor's estate and despite such application, the minor's business suffered loss: 24 Bom. 166 and *Beattie* v. *Ebury*, 7 Ch. A. 777, *Foll.*; 46 I.C. 665, *Not foll.* (*Odgers, J.*). NAGALINGAPPA *v.* VENGANNA. **83 I.C. 139= 20 M.L.W. 746=A.I.R. 1925 Mad. 425.**

———*Debts incurred for purchase of lands.*

The guardian has no right whatever to involve the ward's estate in debt, for the purpose of purchasing land to be added to his estate. Where a guardian incurs debt for purchasing lands, the creditor will not be entitled to proceed against the minor's estate but can have a decree, only against the lands actually purchased with the money borrowed by him. (*Krishnan and Odgers, JJ.*). J. BURRAYYA *v.* RAMAYYA. **78 I.C. 90=47 Mad. 449= 19 M.L.W. 67=33 M.L.T. 254=1924 M.W.N. 42= A.I.R. 1924 Mad. 472=46 M.L.J. 49.**

GUARDIAN AND WARD—Eligibility for guardainship.

———*Land revenue—Debt incurred for paying.*

A debt contracted by guardian to pay land revenue due from the minor's estate is binding on the minor's estate. (*Baker, J. C.*). JAGESHWAR RAO *v.* GAJAL RAO. **79 I.C. 22=A.I.R. 1924 Nag. 168.**

———*Money borrowed for litigation—Promissory note by guardian—Construction—Liability of minor.*

The promissory note sued upon contained the words "I (the Sister) had taken these rupees because I conduct a suit in the Court as the guardian of minors named Thakordas and Shankerlal (brothers) and I shall pay you the rupees of the promissory note with interest at one per cent. per mensem whenever you will demand the same,

Held, that assuming that she the executant (sister of minors) was a *de facto* guardian she does not purport in the document to bind the minors. They cannot therefore be personally responsible on the note, nor could the sister, as the next friend or as sister of the minors, make a contract with the plaintiff which would bind the estate of the minors. The plaintiff may proceed against the minors to recover moneys which they might be liable to pay as a debt incurred by their father or by their mother or sister for necessary purposes in another suit properly framed. (*Macleod, C. J. and Crump, J.*). PARBHUBHAI *v.* BAI LALITA. **76 I. C. 555= A.I.R. 1923 Bom. 304.**

—Eligibility for guardianship.

———*Mother.*

In absence of any evidence as regards the law which the Gonds follow a mother of a minor is a preferential guardian to a grandmother. (*Macnair, Offg. J.C.*). NARBADI *v.* CHOOTI. **117 I.C. 281= A. I. R. 1929 Nag. 129.**

———*Guardian* de facto *and guardian* ad hoc*—Distinction.*

There must be some course of conduct in that capacity before a person can be described as a guardian *de facto.*

A person who over many years has never intermeddled or acted as a guardian cannot come forward and claim to be a guardian *de facto* and authorized to sell on behalf of a minor. Such a person would be a guardian *ad hoc* and not a guardian *de facto.* (*Marten, C.J. and Crump, J.*). HARILAL RANCHOD *v.* GORDHAN KESHARE. **105 I. C. 722= 51 Bom. 1040=29 Bom. L. R. 1414= A.I.R. 1927 Bom. 611.**

———*Immorality of minor's mother.*

The mere fact that the minor's mother gave birth to an illegitimate child is not sufficient reason for not appointing her as a guardian of her son's person and property, where it is neither alleged nor proved that she was improperly dealing with the property while she was in possession of it. (*Kotval, A.J.C.*). MT. GANGU *v.* MT. KONGSHI. **74 I.C. 53=A.I. R. 1923 Nag. 305.**

———*Father—Suit between and minor son—Effect.*

Where a minor files a suit for partition against his father, the latter's interest is, from that date, adverse to the interest of the minor and he cannot therefore as the natural guardian of the minor seek to bind the minor's property by any alienation. (*Jwala Prasad and Adami, JJ.*). RAMJATAN RAI *v.* BALIRAM PRASAD. **70 I.C. 846= A.I.R. 1923 Pat. 25.**

———*Minor.*

A minor cannot be the guardian of his sister. So he cannot institute a complaint of kidnapping of his sister. (*Martineau, J.*). KARURA *v.* MAN RAJ. **67 I.C. 831=3 L.L.J. 588=A.I.R. 1921 Lah. 316.**

GUARDIAN AND WARD—Gross negligence.

—Gross negligence.

———*Failure to set up proper defence to suit.*

Failure to set up proper defences by the guardian to a suit against the minor is gross negligence and on that ground the minor can get the decree set aside. The fact that such defences might have been very successfully met by the plaintiff in that suit does not make the guardian not negligent. (*Devadoss, J.*). VADAPILLI JOGARAO *v.* VENKAMMA. **101 I.C. 143=25 M.L.W. 523= A. I. R. 1927 Mad. 497.**

———*Failure to defend suit.*

Mere failure on the part of the Guardian *ad litem* to defend a suit or to appeal from a decree is of itself not gross negligence, since it is possible, that there may be a good case against the minor and the guardian *ad litem* might have thought fit not to incur additional expense in defending the suit. (*Scott-Smith, A.C.J.*). NAWAB SINGH *v.* GURBAKSH SINGH. **82 I. C. 598=6 L.L.J. 346= A.I.R. 1925 Lah. 116.**

———*Filing suit without taking legal advice.*

If the guardian of a minor acting perfectly in good faith but without taking into consideration the legal aspects of a case files a suit on the minor's behalf, although it might be that it would have been to the minor's advantage if the guardian had not instituted the suit, the guardian is not guilty of gross negligence. (*Phillips and Venkatasubba Rao, JJ.*). SUBBIAH PANDARAM *v.* ARUNACHALAM PANDARAM. **80 I. C. 992= A. I. R. 1925 Mad. 379.**

———*Failure to be present at hearing of suit against minor.*

The guardian *ad litem* of a minor was absent at the hearing; consequently the vakil for the guardian was unable to explain the circumstances under which the witnesses to whom *subpoenas* were taken out were not present in Court. Consequently the adjournment applied for was refused and a decree was passed by the Court against the minor defendant.

Held, that there was gross negligence on the part of the minor's guardian and that the decree must be annulled: 45 Mad. 425, *Ref. to.* (*Devadoss, J.*). DADA SAHIB *v.* K. GAJRAJ SINGH. **85 I.C. 258=20 M. L. W. 854= A.I.R. 1925 Mad. 204=47 M.L.J. 928.**

———*Failure to produce relevant document in litigation.*

Where in a suit by a guardian on behalf of a minor against a Hindu father and his four sons for the recovery of a debt, the guardian based the claim on the Hindu law liability under which father and sons are liable for debt borrowed for a purpose such as the marriage of one of the sons: and where the suit was decreed only against the father but was dismissed against the sons.

Held, that the non-production by the guardian of a document executed by two of the sons who thereby undertook to share the liability with their father, did not under the circumstances amount to gross negligence by the guardian so as to entitle the minor to re-open the decree on his attaining majority. (*Devadoss, J.*). ANJANEYULU *v.* CHINNA SUBBIAH. **82 I. C. 952=20 M. L. W. 529= 1924 M. W. N. 758=A.I.R. 1924 Mad. 860.**

—Guardian's rights and liabilities.

———*Father—Ceremonies.*

Where a minor's interests are in no way affected, the father, who is a natural guardian of the minor, until his guardianship is set aside by a competent Court has the first right to perform ceremonies

GUARDIAN AND WARD—Guardian's rights and liabilities.

regarding the minor, in preference to another person (maternal grandmother) acting as a *de facto* guardian of the minor for many years. (*Beaumont, C. J. and Madgavkar, J.*). JALBHAI CURSETJI DRIVER *v.* JERBAI HORMASJI PALKHIVALA. **32 Bom. L.R. 1301.**

———*Adverse possession.*

The possession of a *de facto* guardian or of his mortgagee as a derivative owner cannot be legally deemed to be adverse to the minor, but when the *de facto* guardian effects a sale of the minor's property, the possession of purchasers would become adverse since the date they got into possession: 35 Bom. 79 and 30 Mad. 145, *Rel. on.* (*Sundaram Chetty, J.*). SORIMUTHU THONDAMAN *v.* PERUMAL AMMAL. **A. I. R. 1930 Mad. 703.**

———*Accounts, liability for.*

Where it has not been proved that there has been a regular rendering of accounts by a guardian a suit by the ward for accounts lies and an order requiring the guardian to render the accounts can be passed. Where the evidence indicates that the guardian of property acted as guardian of the minor before his formal appointment he is liable for accounts during the earlier period also: A.I.R. 1925 Cal. 1069, *Ref.* (*Das and James, JJ.*). GAURI LAL *v.* RAJA BABU. **A.I.R. 1929 Pat. 626.**

———*Court of Wards—Ward's right to sue for damages.*

There is no privity of contract between the ward and the employee of the Court of Wards for the management of the ward's estate and so the ward cannot sue him for any damage caused during the period when the Court of Wards was managing his estate through the negligence of the employee and for which period the ward has granted the Court of Wards a release of all his claims after the estate is handed over to him. (*Sulaiman and Mukerji, JJ.*). MD. AYUB *v.* SURAJPAL SINGH. **91 I.C. 783= 24 A. L. J. 225= A. I. R. 1926 All. 254.**

———*Claim against guardian personally—Liability of minor's estate.*

A claim for damages against the guardian cannot be litigated in any dispute between the minor and the assignee. A claim against a trustee or a guardian cannot be set off in a suit brought by a minor on attaining majority; but a separate suit must be brought against the guardian or trustee. (*Baker, J. C.*). RAJARAM *v.* RAMCHANDRA. **89 I.C. 944=A.I.R. 1926 Nag. 33.**

———*Muhammadan Law*—De facto *guardian.*

A *de facto* guardian can only deal with the minor's property at his own risk and his acts are like those of any other person who arrogates to himself the power of transferring another's property. He can incur liability but can impose no obligation on the infant. This general rule is subject to certain well-defined restrictions such as acts arising out of the wants of an infant but even in such a case it appears that the guardian is only entitled to deal with the movable property of the infant and cannot pledge or sell the infant's immovable property: 45 Cal. 878 (P. C.), *Foll.* (*Ryves, J.*). ABDULLA KHAN *v.* MAHBUB ULLAH KHAN. **76 I. C. 556=A.I.R. 1923 All. 485.**

———*Reimbursement for expenses incurred as guardian.*

If at the time when the guardian accepted office some properties of the minor were in the possession of a third party and if the guardian then by his industry and by the expenditure of his own money brought the properties into his possession

GUARDIAN AND WARD—Minor's liability for guardian's acts.

he would undoubtedly be entitled to recover as against the minor the money spent by him in so recovering the property, but he is not entitled to recover the money spent by him in recovering the minor's properties lost through his own neglience during his office. (*Das and Ross, JJ.*). SHAIKH ABDUL RAHIM *v.* MT. BARIRA. **61 I.C. 807= 2 P.L.T. 556=6 P.L.J. 273= A.I.R 1921 Pat. 166.**

—Minor's liability for guardian's acts.

——*Unauthorised persons—Joining in transaction entered into by guardian.*

If a mother acted *bona fide*, in the capacity of the natural guardian of her son any disposition made by her is not invalid, for the mere reason that other persons who were not authorised to deal with the property, joined in the transaction. (*Spencer and Odgers, JJ.*). DEIVACHILA AIYANGAR *v.* VENKATACHARIAR. **88 I.C. 967=22 M.L.W. 188= 1925 M. W. N. 556=A.I.R. 1926 Mad. 46= 49 M.L.J. 317.**

——A guardian cannot bind a minor by a personal covenant. (*Baker, J.C.*). RAJARAM *v.* RAMCHANDRA. **89 I.C. 944=A.I.R. 1926 Nag. 33.**

——*Contract by guardian—Minor is bound if under his personal law he is bound to discharge that obligation.*

No decree can be passed against a minor or his estate on a contract entered into on his behalf by his guardian, under which covenant no charge is created on the estate except in such cases where the minor's estate would be liable to the obligation incurred by the guardian under the personal law to which he is subject. As a minor is bound to pay father's debt, his estate is also liable to pay such debts : 42 Mad. 185, *Appr.* (*Prideaux, A.J.C.*). LALCHAND *v.* NARHAR. **89 I.C. 896= A.I.R. 1926 Nag. 31.**

——*Tests.*

Per *Srinivasa Iyengar, J.*—When the question is whether a transaction by a guardian on behalf of a minor should be set aside the usual test namely whether a man of ordinary prudence would have entered into such a transaction in respect of his own property is too broad. However, it indicates one limit, namely, that no Court will uphold a transaction which it considers that a man of ordinary prudence would not have had in respect of his own property. The other limit is that, supposing that at the time of the transaction the guardians who acted actually were guardians appointed by the Court and they made an application to the Court for sanctioning a particular transaction, the circumstances must be such as the Court would consider justifiable for the purpose of sanctioning the transaction. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). K. MUNAYYA *v.* M. KRISHNAYYA. **84 I.C. 949=20 M.L.W 693= A.I.R. 1925 Mad. 215=47 M.L.J. 737.**

——*Decree against.*

A minor is as much bound by a judgment in his own action as if of full age, unless gross laches or fraud and collusion are established on the part of guardian. (*Wazir Hasan and Neave, A. J. Cs.*). RAMESHWAR BAKSH SINGH *v.* MT. RIDH KUER. **87 I. C. 238=A. I. R. 1925 Oudh 633.**

——*Sale in favour of minor.*

A sale in favour of a minor can be enforced, especially when the consideration for the sale had been paid in full to the vendor, as, after that the minor is under no further obligation to any one:

GUARDIAN AND WARD—Transactions between.

30 C. 539 (P.C.), *Dist.*; 40 M. 308 (F.B.), *Foll.* (*Broadway and Campbell, JJ.*). THOKAR DAS *v.* MT. PUTLI. **82 I. C. 96= 5 Lah. 317=A.I.R. 1924 Lah. 611.**

——*Contracts by Guardian.*

A contract which imposes an onerous obligation on a minor to pay a heavy sum as rent is not binding. A guardian has no power to enter into engagements on behalf of his minor ward making him liable under onerous covenants : 39 C. 232 (P.C.), *Ref.* The action of a *de facto* guardian will be binding on the minor's property only if it is for the minor's benefit or necessity. (*Krishnan and Ramesam, JJ.*). RARICHAN v. MANAKKEL RAMAN. **74 I.C. 309=17 M.L.W. 558= 32 M. L.T 107=1923 M.W.N. 301= A.I.R. 1923 Mad. 553=44 M. L.J. 515.**

——*Ordinary course of business—Transactions.*

In the case of a business undertaking where transactions are carried out in the ordinary course of business, it is not necesssary for the creditor to give specific evidence of benefit in each individual transaction. The fact that the transactions were carried out in the ordinary course of business is sufficient to raise a presumption that they were for the benefit of the business, and if the transaction is by the guardian of the minor the minor is bound by the transaction. 18 O. C. 84, *Foll.* (*Daniels, A.J.C.*). WILAYAT HUSAIN *v.* PUTTU LAL. **67 I.C. 982=25 O.C. 6= A.I.R. 1923 Oudh 35.**

——Bona fide *acts of Management.*

A minor is bound by the act of his guardian done *bona fide* and for his benefit in the management of his estate. (*Drake-Brockman, J. C.*). MANGULAL *v.* NANHI. **67 I. C. 806=5 N. L.J. 1= 19 N.L.R. 131=A.I.R. 1922 Nag. 104.**

——*Wrongful acts of guardian.*

If a guardian acted in the interests of the minor's estate and took over certain crops belonging to a third person, for the benefit of the estates the estate would be liable for the value of the crop, so taken. 28 Bom. 230 and 40 Mad. 632, *Foll.* (*Kotval, A.J.C.*). CHATARIA *v.* DAWLAT. **66 I.C. 468=5 N.L.J. 206= A.I R. 1922 Nag. 48.**

—Rights and liabilities.

——*Position of guardian.*

A guardian of a minor may be a *quasi* trustee for certain purposes, *e. g.*, for money received by him on behalf of his ward, but it is not clear that he can incur expenses to any extent he likes without seeking the intervention of any Court in the hope that he would be allowed to create a charge on the property of the minor to that extent. (*Broadway and Abdul Qadir, JJ.*). GOPI MAL *v.* PANNALAL. **72 I.C. 424=A.I.R. 1924 Lah. 339.**

—Transactions between.

——A transaction between a guardian and ward must be scrutinized with a great care and if the ward is not represented by independent persons the transaction must be regarded with suspicion. (*Spencer and Ramesam, JJ.*). NIMMAGADDA SESHAYYA *v.* CHERUKURY MEENAKSHAMMA. **98 I.C 691 (Mad.).**

——*Per* Wazir Hasan, A. J. C.—*Fiduciary relation—Person in such position cannot take advantage of his position as such.*

A person in a fiduciary position shall not be allowed to take any advantage of his position and the Court will not allow a person to be placed in a position in which his interest shall pull him one way and his duty the other. Whenever two persons stand in such a relation that, while it continues,

GUARDIAN AND WARD—Miscellaneous.

confidence is necessarily reposed by one, and the influence which naturally grows out of that confidence is possessed by the other, and this confidence abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, although the transaction could not have been impeached if no such confidential relation had existed: 2 *White and Tudor's Leading Cases*, 722; 7 Rev. Rep. 56; L.R. 2 Ch. 55; L. R. 3 A.C. 254. *Appl.* (*Dalal and Wazir Hasan, A.J.Cs.*). MOHAN LAL *v.* MAHAMMAD ADIL. **89 I. C. 69=12 O. L. J. 453=2 O.W.N. 601=A.I.R. 1926 Oudh 88.**

—Miscellaneous.

———*Religion of Ward—Court's interference.*

A Hindu died leaving behind a widow and minor children. The widow embraced Mahomedanism and took her children to live with her and they lived with her for a period of nearly four years. Subsequently a Hindu on behalf of the Hindu Mahasabha demanded them to be brought up as Hindus,

Held, that it was the duty of people interested to intervene at once and to go to the Court and to ask that the Court should protect the minor children from being converted to Mahomedanism. But as nearly four years had been allowed to pass without any application, the application on behalf of the Mahasabha could not be granted. The right view in such a case must be what was best in the interests of the children. Where the children had for a long time remained as Mahomedans and were happy and well-looked after, no order changing their mode of life could be made. (*Mears, C. J. and Sen, J.*). ABDUL RAHMAN *v.* JAGANNATH PANDEY. **118 I. C. 707=A. I. R. 1930 All. 86.**

GUARDIANS AND WARDS ACT (8 of 1890).

—Applicability.

———A suit by minor with next friend for possession of property against a person who admits the minor's title but claims to be in possession as minor's guardian is not maintainable, the proper procedure being under the Guardians and Wards Act for the appointment of a guardian: 26 All. 594, *Appr.* (*Prideaux, A.J.C.*). MT. BHAGI *v* KASHRAM. **89 I.C. 55=21 N.L.R. 75=A.I.R. 1925 Nag. 328.**

—Construction.

———*Disciplinary powers—Minor's benefit.*

The provisions conferring special disciplinary powers on the Court for the benefit of minors must not be interpreted narrowly so as to leave no remedy against misbehaving guardians save by suit unless there are plain indications in the act prohibiting such a course. (*Walsh, Ag. C. J. and Neave, J.*). SITARAM *v.* MT. GOVINDI. **80 I.C. 592=46 All. 458=22 A.L.J. 585=A.I.R. 1924 All. 593.**

—Dispossession of third person.

———Where the District Judge appoints certain persons as guardians of minors, he has no jurisdiction to pass any order against the person who was in possession of the minor's properties as trespasser prior to such appointment. What he can do is only to direct the guardian now appointed to bring a suit against that person. (*Mukerji and Niamatullah, JJ.*). CHANDRIKA RAI *v.* SRIKANT RAI. **117 I.C. 98=1929 A.L.J. 798=51 All. 899=A.I.R. 1929 All. 697.**

———An order purporting to be passed under the Guardians and Wards Act cannot bind third parties who are in possession of the estate. Under the Guardians and Wards Act a District Judge has no jurisdiction to dispossess third persons from the property of which they may, be rightly or wrongly, in possession, but can at best give directions to the guardian to take necessary steps to recover the property. (*Walsh and Sulaiman, JJ.*). HARBANS SINGH *v.* RAJINDER KUAR. **85 I.C. 1047=47 All. 313=23 A.L.J. 28=6 L.R.A. Civ. 162=A.I.R. 1925 All. 277.**

GUARDIANS AND WARDS ACT (1890)—Nature of proceedings.

—Duty of Court.

———*State as guardian—Policy of law.*

The state from the earliest times is supposed to be the guardians of the infants and the earliest regulations gave effect to this principle and made provisions for the custody of the minors and when the state assumes direct custody of the infant it undertakes to bring up the boy as his natural father or guardian would have done, that is, in the traditions of the family to which after becoming major he has to revert. The state has made provisions for the care of infants by statutory provisions such as Court of Wards Act and the Guardians and Wards Act. The District Judge under the latter Act exercises the functions and becomes the protector and the guardians of infants by exercising the power to appoint guardians of the persons and properties of the infants. Therefore no Court should grudge the trouble and worry on assuming charge of the estate of the minor, that would necessarily occur so long as an infant has not attained majority. (*Jwala Prasad and Kulwant Sahay, JJ.*). MANMOHINI DASI *v.* HARI PRASAD BOSE. **81 I.C. 1045=5 P.L.T. 415=2 P.L.R. 200=A.I.R. 1924 Pat. 755.**

—Eligibility for guardianship.

———*Person having interest in estate after minor's death is not disqualified to be appointed guardian.*

Where *A* was appointed guardian of the person and *B*, her husband, as guardian of the property of a minor, and it appeared that *B* himself was entitled to succeed to the property in a fractional share on the death of the minor,

Held, that this did not make the appointment of the guardians invalid. (*Scott-Smith, J.*). MT. SHARFAN *v.* BHOLI. **4 L. L. J. 275=A.I.R. 1922 Lah. 395.**

—Guardian ad litem.

———Per *Devadoss, J.*—(In order of Reference)—Where there is a guardian appointed under the Guardians and Wards Act and another person is appointed as guardian *ad litem* and a decree is obtained against the minor, in such cases there should be no decree against the minor as he was not properly represented in the suit and an objection may be taken to execution on the ground that there is no decree against the minor. (*Coutts-Trotter, C.J., Madhavan Nair and Jackson, JJ.*). VENKATA SOMESHWAR RAO *v.* LAKSHMANASWAMI. **115 I. C. 801=52 Mad. 275=29 M.L.W. 125=A.I.R. 1929 Mad. 213=56 M.L.J. 175. (F. B.).**

—Guardian, appointment on affidavits.

———In uncontested proceedings an order appointing a guardian under the Guardians and Wards Act on the affidavits of the parties is not *ultra vires*. (*Suhrawardy and Graham, JJ.*). KAMINI MAYI DEBI *v.* BHUSAN CHANDRA GHOSE. **97 I. C. 692=44 C.L.J. 40=A.I.R. 1926 Cal. 1193.**

—Nature of proceedings.

———*Judicial or administrative.*

The proceedings under the Guardians and Wards Act, once initiated by an application either for

GUARDIANS AND WARDS ACT (1890) — Nature of proceedings.

appointment or for declaration of a guardian last or continue throughout the minority of the minor concerned and the filing of the papers do not put an end to the proceedings. The Court appointing the guardian, when it receives the report of the guardian, does not act in an administrative or executive capacity, but as a "Court" within the meaning of S. 195 (c), Criminal Procedure Code. (*Kinkhede, A. J. C.*). TULARAM MARWADI *v.* EMPEROR. **100 I.C. 1044=28 Cr. L. J. 388=7 A. I. Cr. R. 521=A.I.R. 1927 Nag. 184.**

——Proceedings under the Act are not intended to be summary. (*Kotval, A.J.C.*). GOPAL RAO *v.* SHRAWAN. **68 I.C. 291=A.I.R. 1923 Nag. 36.**

——*Non-appearance of parties—Procedure.*

It is a mis-conception of the Court's duty under the Act to treat an appplication for guardianship or proposed guardian as though the applicant was a party in a suit and to dispose of the matter in his absence merely by making an order in favour of his opponent as though the absent person was a defaulter in a civil suit. (*Walsh and Ryves, JJ.*). RAM SAHAI *v.* CHOTEY LAL. **63 I. C. 567=19 A.L.J. 489=A.I.R. 1921 All. 256.**

—Order against third party.

——There is nothing in the Guardians and Wards Act which entitles a Court, while appointing a person guardian of a minor, to order a third party to pay anything towards the minor's support or maintenance. (*Campbell, J.*). MANSA RAM *v.* MT. NAURATI. **87 I.C. 650=7 L.L.J. 193=26 P.L.R. 213=A.I.R. 1926 Lah. 427.**

—Procedure.

——*Proceeding under—Court refusing leave to adduce evidence—Interference in revision.*

When a matter of guardianship is before the Court under Act VIII of 1890 it is incumbent on the Court to hear such evidence as the parties desire to put before it. Where it does not do so the High Court can interfere in revision. (*Suhrawardy and Costello, JJ.*). ROSULAN BIBI *v.* RAHAMATULLA KHAN. **34 C. W. N. 763.**

——*Interference by High Court.*

The District Judge who exercises a parental jurisdiction in proceedings under the Guardians and Wards Act, cannot be expected to observe the formality and precision of procedure laid down by the Civil Procedure Code to be followed by Court in the trial of ordinary suits. If the order passed by the District Judge is on the whole reasonable, the High Court will refrain from interfering because he has not acted with proper regard to any statute or loss of evidence or the procedure under Civil P. C. (*Walsh and Ryves, JJ.*). MT. KHUNDI DEVI *v.* CHOTEY LAL. **83 I.C. 288=44 All. 587=20 A.L.J. 468=A.I.R. 1922 All. 338.**

—Stay of proceedings.

——High Court has inherent power to pass an order, to stay proceedings under the Guardians and Wards Act, and can disallow the transfer of the custody of the minor to the guardian appointed by the lower Court pending the decision or the appeal to the High Court: 3 C. L. J. 29, *Rel. on.* (*Bhide, J.*). SHAM SINGH *v.* MT. THAVI. **110 I.C. 912=A.I.R. 1928 Lah. 912.**

—Visiting minors.

——There is no machinery under the Guardians and Wards Act to work out the right of the mother under Muhammadan Law, to visit her child in the custody of the father as guardian. (*Rigg, J.*). HAZARA BIBI *v.* SULAIMAN HAJI MOHAMAD. **59 I.C. 562=13 Bur. L.T. 86.**

GUARDIANS AND WARDS ACT (1890), S. 7—Applicability.

—S. 3—Joint Hindu family.

——*Jurisdiction of High Court to appoint guardian of member.*

Section 3 of the Act provides that nothing in that Act shall derogate in any way from the jurisdiction of the High Court. The High Court therefore has the inherent jurisdiction in a proper case to appoint guardian of person and property of the member of a joint Hindu family so as to prolong his period of minority notwithstanding the provision in the Guardians and Wards Act forbidding appointment of guardian of a minor in a joint family where there is any adult co-parcener alive: 32 Mad. 139; 30 Bom. 152; 25 All. 407 (P. C.); 19 Bom. 96 and 25 Bom. 353, *Ref.* (*Kemp, J.*). NARSI TOKERSEY & CO. *v.* SACHINDRANATH GAJANAM.

31 Bom. L.R. 1009=A.I.R. 1929 Bom. 475.

—S. 3—Jurisdiction of High Court.

——*Non-residents.*

There is no restriction in the powers granted to either the Supreme Court or the High Court which limits the exercise of guardianship jurisdiction to the town or to European British subjects, and even if any such limitation exists, it does not apply where person who is outside the limits of ordinary original jurisdiction or who is not a European British subject desires to avail himself of the jurisdiction of the Court and there is no opposition thereto: 2 Cal. 357; 21 Bom. 137 and 2 N.W.P.H.C. R. 79, *Ref.* and 21 Cal. 206, *Dist.* (*Lort-Williams, J.*). TARUNCHANDRA GHOSH, *In re.*

A. I. R. 1930 Cal. 598.

—S. 4—Hindu husband.

——Where a Hindu husband admittedly had the custody of his minor wife and the wife leaves him, the husband is by Hindu Law the natural guardian and entitled to custody and comes within the definition in S. 4 as being "a person having the care of the person of a minor." (*Barlee, A.J.C.*). KHETSI PACHAN MINDU *v.* DELA MEGHA MINDU. **121 I.C. 175=A.I.R. 1930 Sind 135.**

—S. 4—Interpretation.

——From the definitions of "guardian" and "ward" as given in S. 4 it appears that the word guardian is of general import and includes natural and testamentary guardians and guardians appointed by Court. (*Bennet and Iqbal Ahmad, JJ.*). DIPCHAND *v.* MUNNI LAL. **1929 A.L.J. 1248=A. I. R. 1929 All. 879.**

—S. 4—Jurisdiction

——An application under S. 25 must be made to the Court where the minor ordinarily resides. (*Rutledge, C.J.*). MAUNG BA THEIN *v.* MA THAN KIN. **118 I.C. 415=A.I.R. 1929 Rang. 129.**

—S. 4—"Person."

——*Meaning of.*

Per *Mukerji, J.*—The word 'person' as used in the definition of 'Guardian' in S. 4, Cl. (2), Guardians and Wards Act, is not to be read in the light of the meaning given to it by S. 3, Cl. (39), General Clauses Act. (*Mukerji and Guha, JJ.*). SM. ASALATA ROY *v.* SOCIETY FOR P.C. I.

51 C. L. J. 272=A. I. R. 1930 Cal. 397.

—S. 7—Applicability.

——Habeas corpus—*Proceedings.*

Where Hindu minors were with the mother and the mother was inclined towards a belief in the Christian religion and it was likely she might be ultimately converted to that religion, and she was likely to bring them up in such a way that they would ultimately express a desire to be converted to Christianity.

GUARDIANS AND WARDS ACT (1890), S. 7—Costs—Unsuccessful application.

Held, the proper course for removal of the mother from guardianship and have another guardian appointed was under the Guardians and Wards Act.

The High Court refused to exercise any powers under Cr. P.C., S. 491 (a): 14 M.I.A. 309 (P.C.); 46 P.W.R. 1916; 20 C.W.N. 608 and 57 I. C. 651, *Ref.* (*Ramesam, J.*). VEERASAMI *v.* GUTTIKONDA RATNAMMA. **112 I. C. 472=1 M. Cr. C. 307=29 Cr. L.J. 1048=11 A. I. Cr. R. 323=A.I.R. 1928 Mad. 1087.**

—S. 7—Costs—Unsuccessful application.

———Where a philanthropic Society unsuccessfully sought to be made a guardian of a minor's property and claims costs which cannot be regarded as expenses either as on account of necessaries or as having been incurred for the welfare of the minor or for protection of his estate the society is not entitled to the costs. (*Mukerji and Guha, JJ.*). SM. ASALATA ROY *v.* SOCIETY FOR P.C.I. **51 C.L.J. 272= A.I.R. 1930 Cal. 397.**

—S. 7—Debuttar property.

———No guardian under S. 7 can be appointed for the management of *Debuttar* property on behalf of minor *shebait* who cannot possibly have proprietary interest in it: 39 All. 196, *Diss.*; 33 M.L.J. 297, *Foll.* (*Coutts and Das, JJ.*). KIBBY *v.* MT. BAHURIA SHURATAN KUAR. **70 I.C. 872=1 Pat. 432=3 P.L.T. 805= A.I.R. 1922 Pat. 527.**

—S. 7—Essentials for appointment.

———*Application.*

It is not open to the Court acting *proprio motu* to appoint as guardian of the property of the minor a person who had not applied to be so appointed: 135 P.R. 1893; 38 Cal. 783, *Foll.*; A.I.R. 1924 Oudh 126, *Dist.* (*Tek Chand, J.*). MT. SAKINA BEGAM *v.* WALIULLAH KHAN. **107 I.C. 397= A.I.R. 1928 Lah. 456.**

———*Existence of property.*

It is not an essential preliminary to taking any proceedings under the Act for the appointment of a guardian that the minor should be shown to be possesssed of property and it is not necessary that the applicant should at first, as next friend of the minor, establish the right of the minor to the property in dispute: 3 All. 403, *Dist.* (*Gokaran Nath Misra and Raza, JJ.*). RAM NARAIN *v.* MT. GOURA. **99 I.C. 222=3 O.W.N. 985= A.I.R. 1927 Oudh 68.**

—S. 7—Executor under will.

———It is permissible to appoint a guardian of a minor's estate although that estate is not in possession of the minor but in that of the executor under a will. But the executor's possession cannot be disturbed by such appointment. (*Oldfield and Ramesam, JJ.*). ALWAR AMMAL *v.* NARAYANA NAICK. **70 I.C. 360=14 M.L.W. 706= A.I.R. 1921 Mad. 328.**

—S. 7—Family arrangement.

———An appointment of a guardian for the minor's property is not necessary where the previous family arrangements are quite satisfactory for the protection of the minors' interests: 93 P.R. 1914, *Foll.* (*Addison, J.*). USAF ALI *v.* ALIBHOY MAMOONJI. **101 I.C. 259=A.I.R. 1927 Lah. 789.**

—S. 7—Husband as guardian.

———Although a husband is the legal guardian of the person of his wife where there is no necessity for appointing a guardian, the husband should not be appointed a guardian. The provisions of the Guardians and Wards Act should not be put in force in order to enable a husband to get possession of the person of his wife. (*Scott-Smith, J.*). ASIR BAI *v.* GIRDHARI RAM. **67 I.C. 882= 3 L.L.J. 293=A.I.R. 1921 Lah. 68.**

GUARDIANS AND WARDS ACT (1890), S. 7—Removal of testamentary guardian.

—S. 7—Joint Hindu family.

———A member of a joint family cannot be appointed by a Court guardian of another member of the family in respect of joint family property. Under the Hindu Law itself the active eldest member is manager of joint family property without any order of Court. (*Dalal, J.C.*). BALBIR *v.* CHEDDI LAL. **85 I.C. 276=A.I.R. 1925 Oudh 642.**

—S. 7—No property.

———Court can exercise its jurisdiction to appoint a guardian of the person of the minor even if he is possessed of no property. It is the duty of the father to maintain and educate his children who are incapable of supporting themselves and although the law has always recognized this duty, the Civil Courts have no direct means of enforcing this obligation, so as to compel him to maintain them out of property in which they have no interest: 9 Bom. 96, *Rel. on.* (*Mukerji and Graham, JJ.*). V. J. WALTER *v.* M. J. WALTER. **111 I. C. 543= 55 Cal. 730=A.I.R. 1928 Cal. 600.**

—S. 7—Power of Court.

———Once the power of the Court is properly invoked, it is competent to and advisable for the Court to go into the question of appointing a person itself under its statutory power. It is the duty of the Court, as soon as any dispute about the guardianship of the minor's property or any allegation of detriment to the minor's interests resulting from such dispute is properly brought to its notice, to sift the matter in the interest of the minor. It can appoint the applicant or any other person guardian. (*Kotval, A.J.C.*). JIWANDAS *v.* RAJRANI. **64 I.C. 433=A.I.R. 1921 Nag. 97.**

—S. 7—Procedure.

———Proceedings under the Guardians and Wards Act should not be summary, but a proper enquiry should be made and the Court should give an opportunity to the parties to produce evidence and show which of them is better entitled and qualified to act as guardian of the minors. Further it should be determined which of them is better entitled under the personal law of the parties: A. I. R. 1925 Lah. 567 and A.I.R. 1925 Nag. 233, *Foll.* (*Zafar Ali, J.*). MT. LACHHMI *v.* NANAKCHAND. **107 I.C. 606= A.I.R. 1928 Lah. 716.**

———*Fresh application from person finally appointed.*

Sections 7 and 8 do not necessarily require that when once proceedings have been instituted on a proper application, a separate application should be taken from the person whom the Court appoints though in practice it is more usual to take one. (*Daniels, A.J.C.*). MT. ISLAMAN *v.* MT. MAQBHULAN. **73 I. C. 255= A. I. R. 1924 Oudh 126.**

—S. 7—Property in hands of administrator.

——A guardian can be validly appointed of the property of a minor although an administratrix may have been appointed in respect of that property: 8 Ben. L.R. 208, *Foll.* (*Sanderson, C.J. and Mookerjee, J.*). LALIT KUMAR *v.* DASARATHI SINGHA. **66 I.C. 261=48 Cal. 802=A.I.R. 1921 Cal. 139.**

—S. 7—Removal of testamentary guardian.

———Where a guardian has been appointed under the Will of the minor's father, it is impossible for Court to ignore or disregard the provisions of the Will unless it is satisfied that the person appointed as guardian under the Will is not a fit and

GUARDIANS AND WARDS ACT (1890), S. 7—Removal of testamentary guardian.

proper person to have their custody. In such a case the Court must consider the welfare of the minors and also that any order that might be made will not infringe sub-S. (3) of S. 7 of the Act. (*Greaves, J.*). LIONEL ASHBY DURKLEY, *In re.* **101 I.C. 609=31 C.W.N. 394=A.I.R. 1927 Cal. 389.**

———*Neglect by such guardian.*

Where a testamentary guardian has taken no interest in the minor and has neglected the performance of his duties as such and has allowed the estate to deteriorate, it would be the duty of the Court to remove him under S. 39 and to appoint a new guardian instead. The paramount consideration for the decision of the Court in such cases is the welfare of the minor. (*Tek Chand, J.*). MT. KISHNO *v.* MT. PARTABO. **100 I.C. 738=28 P.L.R. 127=A.I.R. 1927 Lah. 876.**

—S. 7—Removal order.

———A person can apply for the appointment of another guadrian under S. 7, though an order of removal under S. 39 is not obtained. (*Stuart, C.J. and Raza, J.*). MAHOMEDI BEGAM *v.* MEHDI ALI KHAN. **104 I.C. 562=A.I.R. 1927 Oudh 516.**

—S. 7—Rival claimants.

———Where there was a dispute among the rival claimants for the appointment of guardian endangering the property of the minor and the Court accepted arrangement by which the contestants took each half of the property, but later on ordered delivery of whole property to one of them,

Held, that it was desirable that guardian should be immediately appointed for the property of the minor and proper steps taken for the safeguard of the property. (*Broadway, J.*). MT. MAHANDAN *v.* MT. AISHAN BIBI. **96 I.C. 283.**

—S. 7—Security.

———Order appointing guardian conditional on furnishing security is valid—Section 7 is not controlled by Guardians and Wards Act, S. 34 (a): 30 M.L.J. 508, *Disc.*; 40 Mad. 775, *Foll.*; A.I.R. 1927 Mad. 36 (F.B.), *Diss. from*; 24 I.C. 202, *Ref.* (*Shadi Lal, C.J. Broadway and Tek Chand, JJ.*). SHAMDAS *v.* UMER DIN. **A.I.R. 1930 Lah. 497 (F.B.).**

———A guardian to the property of a minor was appointed on condition of furnishing security in 1902. The guardian furnished security in 1909,

Held, that the appointment of the guardian took effect from 1909. (*Shadi Lal, C. J., Broadway and Tek Chand, JJ.*). SHAMDAS *v.* UMER DIN. **A.I.R. 1930 Lah. 497 (F.B.).**

———*Majority Act, S. 3.*

Where a person is appointed as guardian of the person or property of a minor under the Guardians and Wards Act on condition of his furnishing security, and fails to furnish the security, there is no appointment of a guardian within the meaning of S. 3 of the Majority Act such minor becomes major when he completes his 18th year. Such a conditional order is invalid under the Act.

Per *Sadasiva Ayyar, J.*—30 M. L. J. 508, *Foll.*; 40 Mad. 775, *Overruled.* (*Coutts-Trotter, C. J., Krishnan and Beasley, JJ.*). *In the matter of* NATHA VENKATESA PERUMAL. **99 I.C. 213=49 Mad. 809=24 M.L.W. 707=A.I.R. 1927 Mad. 36=51 M.L.J. 726 (F.B.).**

—S. 7—Suit.

———The question of the appointment of a guardian for a minor's person and property is a matter specially within the provisions of the Guardians and Wards Act, and no suit can be brought for that purpose. (*Ghulam Mohiuddin, A.J.C.*). MT. ANJANI *v.* VITHU. **110 I.C. 46=A.I.R. 1928 Nag. 297.**

GUARDIANS AND WARDS ACT (1890), S. 11—Grounds for appointment.

—S. 8—Eligibility for appointment.

———*Litigious person.*

Where there was nothing on the file to show that the applicant was not extremely fond of the minors, or that he was not actuated by what he believed to be his concern for their interest,

Held, that the fact that he was of a litigious disposition was not a sufficient cause for throwing out his application to be appointed guardian. (*Dalal and Wazir Hasan, A.J.Cs.*). NAWAB SARWAR-UL-MULK SARWARJUNG BAHADUR *v.* MIRZA WAKER ALI BEG. **87 I.C. 902=12 O L J. 281=2 O.W.N. 246=A. I. R. 1925 Oudh 398.**

—S. 8—Official Receiver.

———The appointment of an Official Receiver, as a guardian to the estate of a minor, without any application from him is contrary to the provisions of S. 8: 135 P.R. 1893; A.I.R. 1928 Lah. 456 and 38 Cal. 783, *Foll.* (*Tek Chand, J.*). MT. RALOO *v.* Y. LAL. **117 I. C. 901 (Lah.).**

—S. 8—Official trustee.

———Under the Official Trustees' Act, the Official Trustee is a Government officer appointed by Government and liable, under the provisions of S. 16 of the General Clauses Act, to be removed by Government. The Official Trustee as such should not be appointed the guardian of the property of a minor. (*Rangnekar, J.*). OMAR TYAB ABA SHARIF *v.* ISMAIL TYAB ABA SHARIF. **108 I.C. 495=30 Bom. L.R. 177=A.I.R. 1928 Bom. 69.**

—S. 9—Essentials for appointment.

———An applicant for guardianship should reside within the jurisdiction of the Court of which he makes the application: 36 All. 280, *Foll.* (*Zafar Ali, J.*). MT. LACHHMI *v.* NANAK CHAND. **107 I.C. 606=A.I.R. 1928 Lah. 716.**

—S. 9—Inherent powers.

———A District Court the jurisdiction of which is, as defined under Guardians and Wards' Act, has no inherent powers as are not expressly conferred upon it by the Act; A. I. R. 1914 P.C. 41, *Rel. on.* (*Rupchand, A.J.C. and Barlee, Ag. J.C.*). MOONDOMAL CHHADALDAS CHUGH *v.* NAZIR, J. C.'S COURT, SIND. **121 I.C. 168=A.I.R. 1930 Sind 43.**

—S. 10—Conditional appointment.

———*Conditional order of appointment as guardian of property is of no effect.*

Where a District Judge appointed the father guardian of the property of a ward and directed the respondent to restore the child to her father, remarking that no order as regards the guardianship of her person was necessary,

Held, that the conditional order of appointment as guardian of the property is of no effect. The District Judge was not correct in saying that no order as regards the guardianship of the person was "necessary": A.I.R. 1927 Mad. 36 and A.I R. 1925 Mad. 1085, *Rel. on*; A.I.R. 1925 Mad. 398, *Not foll.* (*Waller and Cornish, JJ.*). TOTAMMA *v.* MARINA VEERRAJU. **A.I.R. 1930 Mad. 19.**

—S. 10—Natural guardian.

———An order appointing a person who is already by law a guardian, is an order without jurisdiction.

Where a person is entitled to the custody of the minor, being a natural guardian, the proper method is to pass an order under S. 12. (*Walsh and Banerji, JJ.*). MT. ULFAT BIBI *v.* BAFUTI. **102 I.C. 103=49 All. 773=25 A L.J. 585=A.I.R. 1927 All. 581.**

—S. 11—Grounds for appointment.

———Where it was alleged that an alienation of a part of the property of the minors was necessary to

GUARDIANS AND WARDS ACT (1890), S. 11—Notice.

pay off certain debts on which interest was accumulating and that it would be impossible to alienate so long as the applicant did not get a certificate of appointment from the Court,

Held, that this was a fit case in which the application for the appointment of a guardian ought to have been accepted. (*Moti Sagar, J.*). MT. SAHAN *v.* SHADI. **79 I. C. 579= A.I.R. 1923 Lah. 601.**

—S. 11—Notice.

———*Failure to issue—Effect.*

A person who is not made party to the proceedings in a guardianship case but on whom a notice should have been issued under S. 11 of the Guardians and Wards Act as a person interested in the matter of the appointment of a guardian is entitled to move the High Court to interfere in revision. (*Martineau, J.*). BALLU MAL *v.* HARDAWARI MAL. **79 I.C. 451=6 L.L.J. 219= A. I. R. 1924 Lah. 570.**

———*Failure to give—Revision.*

It is open to a person, on whom notice should have been served to come forward and object in revision to the order passed : (18 O.C. 66, *Ref.*). (*Daniels, A. J. C.*). MT. ISLAMAN *v.* MT. MAQBHULAN. **73 I.C. 255=A.I.R. 1924 Oudh 126.**

—S. 12—Applicability.

———*Pendency of guardianship proceedings.*

Section 12 by reason of the wording used as well as by reason of its location in the Statute only applies during the pendency of guardianship proceedings. After guardian is appointed Ss. 24 and 25 do apply ; 40 Bom. 600, *Expl.*; 39 Mad. 608 and 37 All. 515, *Rel. on.* (*Dalip Singh, J.*). INDER SINGH *v.* KARVAR KAUR. **119 I.C. 423= A.I.R. 1929 Lah. 487.**

—S. 12—Guardian, custody of—Removal from.

———Illness of a child in the custody of the adoptive father is no reason to make over the child to the natural father. (*Campbell, J.*). PIARE LAL *v.* UDAI RAM. **A.I.R. 1923 Lah. 376.**

—S. 12—Injunction.

———*Marriage—Restraint of.*

In proceedings under the Guardians and Wards Act the Court has jurisdiction to issue an injunction restraining the marriage of a ward. The powers of the Court in the matter of protection of the person and property of the minors embrace a wide field and the Court has jurisdiction to pass all such orders as it considers necessary and proper in the interests of the minors. (*Jai Lal, J.*). MURARI LAL *v.* MT. SARASWATI. **86 I.C. 226= 88 I.C. 576=7 L.L.J. 30= A.I.R. 1925 Lah. 358.**

—S. 12—Receiver.

———*Minor's property—Sale of, for discharge of debts.*

Section 12 empowers the Court to make such order for the protection of the properties of the minor as it thinks fit. The discretion which is conferred upon the Court by this section is a wide one, and there can be no doubt that it has the power to appoint a receiver, and the Receiver when appointed must, having regard to the provisions of S. 141, Civil P. C. be deemed to have all powers of a Receiver under the Code. Those powers would include the power to sell where the adoption of such a course is deemed to be necessary for the protection of the interests of the minor. An order, therefore, directing the Receiver to sell certain property of the minor in order to pay off the debts due from the minor's estate, is not *ultra vires* of S. 12 as it is a

GUARDIANS AND WARDS ACT (1890), S. 13—Procedure.

matter of the discretion of the Court. (*Graham and Mitter, JJ.*). JYOTI PRASAD LALA *v.* PEARILAL LALA. **51 C.L.J. 38=34 C.W N. 192= A.I.R. 1930 Cal. 384.**

———*Power to appoint—Appeal.*

As an application under S. 12, Guardians and Wards Act, is a proceeding in Court of civil jurisdiction, it is competent to the District Judge to appoint a receiver in such a proceeding under Civil P. C., O. 40, R. 1, and an order passed thereunder is appealable as provided under O. 43, R. 1, Cl. (s) : 36 Bom. 20 and A. I. R. 1925 Lah 489, *Foll.*; A.I R. 1924 All. 682, *Expl.* (*Kinkhede, A. J. C.*). GODULEBAI *v.* JANABAI. **116 I.C. 642= A.I.R. 1929 Nag. 119.**

———*Order appointing—Appeal.*

A Judge before whom an application for the appointment of a guardian is pending has power to appoint a Receiver but that order is to be under the Code of Civil Procedure, and not the Guardians and Wards Act.

Such an order, therefore, does not come under S. 12 of the Guardians and Wards Act but under O. 40, R. 1 of the Code and is therefore appealable under Cl. (s) of R. 1 of O. 43. (*Abdul Raoof J.*). MT. CHANDRA WATI *v.* JAGAN NATH SINGH RAM LAL. **90 I.C. 611=7 L.L.J. 281= 26 P.L.R. 576=A.I.R. 1925 Lah. 489.**

—S. 13—Procedure.

———*Not summary.*

The procedure under S. 13, Guardians and Wards Act, is not intended to be summary, and a Court should not reject an application for the appointment of a guardian of a minor without any enquiry at all: 63 P.L.R. 1917. *Foll.* (*Abdul Raoof, J.*). SAJJAM SINGH *v.* MT. GUJRI. **105 I.C. 616= 26 P.L.R. 164=A.I.R. 1928 Lah. 108.**

———The procedure under S. 13 is not intended to be summary : 17 Bom. 560, *Ref.* (*Scott-Smith, J.*). MT. ZAINAB BIBI *v.* ABDUL KARIM. **89 I.C. 865=A.I.R. 1926 Lah. 117.**

———*Opportunity to produce evidence.*

Where there was nothing on the record to show either that the applicant was given a full hearing or that he was given any opportunity of producing evidence to show that the alleged will was not genuine, and where there was nothing on record to support the statement in the written pleas of the relatives that the applicant was at the time litigating against minor,

Held, that the case must be sent back to the lower Court for further enquiry, and that the applicant must be given an opportunity of giving evidence in support of his application. (*Campbell, J.*). YUSUF ALI MAMOOMJI *v.* ALLIBHOY. **87 I. C. 646=26 P. L. R. 255= A. I. R. 1925 Lah. 567.**

———*Not summary.*

The proceedings under the Act are not summary and an order of appointment if passed without holding any enquiry and hearing any evidence as required, by S. 13 of the Act, or calling upon the parties to say whether they had any evidence to give or not, is not a reasonable one and is liable to be set aside: 17 Bom. 560, *Foll.*; A.I.R. 1922 All. 338, *Dist.* (*Kinkhede, A.J.C.*). SHEOSHANKAR *v.* KHUPCHAND **83 I. C. 320=A.I.R. 1926 Nag. 233.**

———*Failure to consider whether appointment was for minor's welfare.*

Where the order, appointing minor's father, as guardian was passed without any inquiry at all into the allegations made against him in her

GUARDIANS AND WARDS ACT (1890), S. 15—Several minors.

minor's mother in-law's petition and in the application for appointment as guardian by a cousin of minor's husband, who charged him with mis-appropriation,

Held, in appointing father as the guardian the Court ignored the procedure laid down by the Guardians and Wards Act in Ss. 11 and 13 and failed to consider whether the guardian was by character and capacity a fit person and whether his appointment was for the welfare of the minor. His procedure was thus materially irregular. (*Kotval, A. J. C.*). GOPAL RAO *v.* SHRAVAN.

68 I. C. 291=A. I. R. 1923 Nag. 36.

—S. 15—Several minors.

———*Several minors—Separate guardians for persons—Single common guardian for property.*

Where property is not large and the Court has appointed separate guardians of persons of the minors, and the appointment of as many guardians of property as that of persons would lead to waste, property may be left in the hands of one of such guardians. (*Mukerji and Bennet, JJ.*). MUNAWWAR KHAN *v.* TASALLI KHAN.

A.I.R. 1930 All. 255.

—S. 15—Supporting minor.

———The Court, when it appoints a person as the guardian of a minor's person should put the person appointed as guardian in a position to support the minor. (*Mukerji and Bennet, JJ.*). MUNAWWAR KHAN *v.* TASALLI KHAN. **A.I.R. 1930 All. 255.**

—S. 17—Adopted minor.

———*Adoptive relations to be preferred.*

In considering the guardianship of a minor who is an adopted son, the first consideration must be with regard to the interest and the welfare of the minor, and, after that the Court has to see how far the intentions of the adoptive father can be best carried out. Nothing should be done the effect of which will be to frustrate the wishes of the adoptive parents, by eventually leading the boy to disregard the traditions of the family of his adoption. So long as any member of the adoptive family fit to be appointed guardian is forthcoming, the Court should not appoint the natural father of the minor as his guardian. So in a competition between the adoptive paternal grandmother and the natural father of the adopted boy the paternal grandmother should be preferred: 15 C.W.N. 558, *Dist.* (*Adami and Sen, JJ.*). MONOMOHINI DASI *v.* HARI PRASAD.

94 I.C. 808=4 Pat. 109=A. I. R. 1925 Pat. 444.

—S. 17—Arbitration.

———*Reference to—Competency of.*

The intention of the legislature is that the question as to who is the most suitable person for the appointment is to be decided by the Court and for these reasons a District Court cannot in law refer the selection of a guardian to arbitration. Besides the law allows a reference to arbitration only where all the parties interested agree, while in a guardianship application the party most interested is the minor and he cannot agree to a reference: A.I.R. 1924 Mad. 484, *Rel. on.* (1892-96) 2 U.B.R. 407, *Held not good law.* (*Darwood and Mya Bu, JJ.*). MA NGWE NYUN *v.* MA THYWE.

112 I.C 451=6 Rang. 563=A.I.R. 1928 Rang. 137.

—S. 17—Directions of law.

———Where the law definitely lays down that an appointment of a certain guardian cannot be made, it is not proper for the Court to disregard the law even in the interests of the minor. (*Pullan, J.*). ANSAR AHMAD *v.* SAMIDAN.

106 I.C. 822=5 O.W.N. 87=A.I.R. 1928 Oudh 220.

—S. 17—Eligibility for appointment.

———*Charitable society.*

In considering the appointment of guardian of the minor's property any one having an interest adverse to that of the minor cannot be appointed such guardian, and for the proper management of the property the character, the capacity and the fitness of the individual to be appointed has to be taken into consideration. It is for this reason that an individual only is to be appointed by the Court as guardian and not a charitable Society whose office-bearers are liable to change. (*Mukerji and Guha, JJ.*). SM. ASALATA ROY *v.* SOCIETY FOR P. C. I.

51 C. L. J. 272=A. I. R. 1930 Cal. 397.

———*Married sister.*

A married sister of a minor applied for being appointed as a guardian. The application was opposed by "the Society for the Protection of Children in India." The sister was the only person who could be entrusted with the care of the boy and there was no definite evidence of ill-treatment of the minor against her. The minor was above 14 years of age and showed a decided preference for his sister. The other relations of the minor did not come forward to act as the guardian of the minor either in respect of his person or of his property, and there was no opposition offered by any of these relations to the appointment of sister as guardian of the minor,

Held, that in the interests of the minor the sister should be appointed as the guardian of the person of the minor; the Society as a philanthrophic and charitable institution, willing to do good to unprotected children may be allowed to visit the minor, at his house, and take all measures necessary or expedient to protect the minor from harm, whether moral or physical, in co-operation with the guardian: 2 C. L. R. 583, *Dist.* (*Mukerji and Guha, JJ.*). SM. ASALAT ROY *v.* SOCIETY FOR P. C. I.

51 C.L.J. 272=A.I.R. 1930 Cal. 397.

———*Appointment of guardian by Court—Principles applicable.*

Under the Guardians and Wards Act a Court in appointing a guardian or declaring a guardian of the minor is guided first by the provisions of S. 17 of the Act and secondly by what appears to be the welfare of the minor consistently with the law to which the minor is subject. By placing the provisions of the section above the law to which the minor is subject the Act makes it open to the Court to consider other matters as well as the personal law even if they are opposed to that law. Thus the Court may consider the opinion of the minor, whatever it may be if he is old enough to form an intelligent preference and in considering what is for the welfare of the minor the Court must have regard to his age, sex and religion and any existing or previous relations of the proposed guardian with the minor or his property. (*Pullan, J.*). NADIR MIRZA *v.* MUNNI BEGAM. **7 O. W. N. 950=A.I.R. 1930 Oudh 471.**

———Generally speaking a Court of justice is loath to take sides in a case between rival religions, and where a male child has been born and brought up in the faith of his father, he should not be handed over to his mother who has left that faith, and has thereby stepped outside the family in which

GUARDIANS AND WARDS ACT (1890), S. 17—Eligibility for appointment.

she was married, with certainty that the boy will be induced to leave the religion of his father for the new religion of the mother.

Where a child is born to a Shia Mahomedan and has been brought up in that faith by the father till his death, and has not lived for two years with his mother, she should not be allowed to come forward on the father's death and take away from the custody of his paternal grandfather the son, whom she had herself left with his father from the religion and surroundings in which he has so far been brought up. (*Pullan, J.*). NADIR MIRZA *v.* MUNNI BEGAM. **7 O.W.N. 950=A.I.R. 1930 Oudh 471.**

———*Adverse interests.*

The uncle of the minor applied for being appointed the guardian of his minor nephew in place of his mother and grandmother acting jointly. His application was granted by the District Judge in spite of the decision of his predecessor that the interests of the uncle were adverse to those of the minor. The reasons why the uncle's petition was granted were that after the appointment of the mother and the grandmother serious disputes arose between them, and the uncle.

Held, in appeal that the uncle could not be appointed guardian in view of the decision that his interests were adverse to those of the minor and his subsequent conduct. (*Jai Lal, J.*). ATAR KAUR *v.* SODHI SINGH. **98 I.C. 809=8 L.L.J. 201.**

———*Father as guardian.*

Where there was a maintenance order against the father, amount under which was long delayed and partly not paid and where the ward, a boy of 14, wanted to learn tailoring while the father wanted to put him to school.

Held, the father should not be appointed a guardian especially when he had re-married and divorced the ward's mother. (*Campbell, J.*). MT. MUKABAR *v.* KARIM BAKHSH. **75 I.C. 496=A.I.R. 1923 Lah. 283.**

———Where specific charges are made against a person which may make it necessary to call upon him to account to the estate of a minor, it is advisable not to appoint as guardian, any person on terms of friendship with such person. Nor is it advisable to appoint a person who does not understand the business of the estate. (*Kotval, A.J.C.*). MT. RAJRANI *v.* BHAGWANDAS. **69 I.C. 596=A.I.R. 1922 Nag. 232.**

—S. 17—Husband.

———*Minor wife repudiating marriage—Shia Law.*

The fact that the Court could not set aside an effective marriage would not debar the Court from deciding that no effective marriage had taken place.

Where the minor is a Shia girl who has been married to a Sunni, and who, on attaining the age of majority, has repudiated the marriage and served her husband with a notice of repudiation, it is not in the interest of the girl that she should be required to live with her husband until the matter is decided by a competent Court. (*Ashworth, J.*). MT. UMMATUL FATIMA *v.* ALI AKBAR. **93 I.C. 271=13 O.L.J. 735=3 O.W.N. 195=A.I.R. 1926 Oudh 521.**

—S. 17—Joint Hindu family.

———*Jurisdiction of Court with regard to.*

The jurisdiction of the Court of Chancery with regard to the persons and estates of infants, which descended to the Supreme Court of Calcutta and so to the High Court at Calcutta and so to the Allahabad High Court by virtue of Cl. (12), Letters Patent exists. But the High Court is reluctant to exercise the same in the case of a joint Hindu family as it is sanctioning a wholly new practice: 17 All. 529 and 2 A.L.J. 81, *Foll.*; 16 Bom. 631; 19 Bom. 96 and 25 Bom. 353. *Ref.* (*Boys and Iqbal Ahmed, JJ.*). *In the matter of* GOVIND PRASAD. **112 I.C. 873=30 All 709=26 A.L.J. 595=A.I.R. 1928 All. 709.**

GUARDIANS AND WARDS ACT (1890), S. 17—Personal law.

—S. 17—Minor's wish.

———*Inquiry from minor personally.*

Court is not bound to ascertain from the minor in person her wishes as to her guardianship and the proposal for her marriage, and therefore omission to do so is not a failure to exercise jurisdiction, under S. 115, C.P.C. (*Oldfield and Devadoss, JJ.*). KONTHALATHAMMAL *v.* THANGASWAMI PILLAI. **74 I.C. 896=46 Mad. 873=18 M.L.W. 256=33 M.L.T. 80=1923 M.W.N. 902=A.I.R. 1924 Mad. 327=45 M.L.J. 431.**

—S. 17—Mother.

———*Immorality—Wasting minor's property.*

Where the minor's mother had in the past been immoral and had spent the minor's money in wandering about the country to get away from her village for her delivery of an illegitimate child, and it was found that she had been mismanaging and wasting, the minor's estate,

Held, the Court was clearly right in not entrusting the further custody of her minor son's property to her. (*Prideaux, A. J. C.*). MT. TULSAI *v.* MT. TULSAI. **75 I.C. 592=A.I.R. 1924 Nag. 141.**

———*Preferential claim.*

Where the mother is herself willing to be appointed guardian and it is not found that she has unfitted herself by her character and capacity or by her previous relations with the minor's property, to be the guardian of that property, or that her appointment will not be justified in the interest of the minor, she should be appointed guardian of the property of the minors. (*Kotval, A.J.C.*). MT. LAXMIBAI *v.* ABDUL QADIR. **68 I.C. 474=A.I.R. 1923 Nag. 129.**

—S. 17—Near relation.

———*Minor's welfare—Sole consideration.*

In appointing a guardian for the property of a minor, the Court has to decide first whether the appointment of a guardian is necessary and, having decided that it is, it has to select from among those who are willing to act, the person who is most likely to manage the property best, and the decision of both points depends solely, as is laid down in Ss. 7 and 17, on what is for the minor's welfare. Nearness of kin comes into consideration only because a person nearly related to the minor is likely to look after his interests better and more keenly than a more distant relative. The wishes of the persons connected most nearly with the minor that a certain person should be appointed to look after his property can only be taken into consideration as evidence that that person will probably be the best manager of it. (*Hallifax and Kinkhede, A. J. Cs.*). MT. SHANTABAI *v.* GUNWANT RAO. **109 I.C. 393=A.I.R. 1928 Nag. 209.**

—S. 17—Personal law.

———*Whether can be disregarded.*

The major married sister of a minor Muhammadan girl and the sister's husband applied for the removal of the guardian of the minor and for the appointment of either or both of them as the guardian. The lower Court, holding that the sister

GUARDIANS AND WARDS ACT (1890), S. 17—'Relation.'

could not be guardian according to Muhammadan Law as, her husband was not related to the minor within the prohibited degrees, did not consider at all the fitness or otherwise of the guardian sought to be removed.

Held, that though the Court should act consistently with the personal law of the minors, yet in the present case, if it were impossible to discover any suitable guardian in case of the present guardian being unfit, the powers of the Court would not be circumscribed by the tenets of the Muhammadan Law. (*Dalal, J. C.*). GUNNA *v.* DARGAHI. **85 I.C. 624=28 O.C. 172= A.I.R. 1925 Oudh 623**

—S. 17—'Relation.'

——In S. 17 (2) 'relation' does not mean relationship. (*Adami and Sen, JJ.*). MONOMOHINI DASI *v.* HARI PRASAD. **94 I.C. 808=4 Pat. 109= A.I.R. 1925 Pat. 444.**

—S. 17—Welfare of minor.

——*Considerations of.*

The circumstances that the mother of the minor girl has been forced to leave the house of the person claiming guardianship, that there has been litigation between them, that the person claiming guardianship is the legal heir of the minor girl and that the minor girl wishes to remain with the person who helped her mother and for whom she has life-long affection, make it desirable that girl should remain in the custody of the person with whom she has so long stayed. (*Mears, C.J. and Bennet, J.*). SAYIDUDDIN *v.* ABDUL BARI. **A.I.R. 1929 All. 857.**

——*Ties of affection—Religion.*

In considering the matter from the point of view of the welfare of the minor the Court should with advantage look to the circumstances which may possibly stand in the way of the child being properly looked after. The first and paramount consideration of the Court is the welfare of the child which is not to be measured by money only or by physical comfort only but is to be taken in its widest sense. The moral and religious welfare of the child must be considered, as well as its physical well being, nor are the ties of affection to be dis regarded though they are not conclusive. (*Mukerji and Graham, JJ.*). V. J. WALTER *v.* M. J. WALTER. **111 I. C. 543=55 Cal. 730= A.I.R. 1928 Cal. 600.**

——Court passing an order appointing a guardian of a minor should not solely base his order upon who is entitled to be guardian under personal law of the minor, but the Court has also to consider the welfare of the minor. (*Scott-Smith, J.*). MT. ZAINAB BIBI *v.* ABDUL KARIM. **89 I. C. 865= A.I.R. 1926 Lah. 117.**

——*Ties of affection—Religion.*

The word welfare must be taken in its widest sense. The moral and the religious welfare must be considered as well as the child's physical well-being and due regard must be had to the ties of affection. (*Venkatasubba Rao, J.*). SARASWATHI AMMAL *v.* DANAKOTI AMMAL. **85 I.C. 840= 1924 M.W.N. 870=20 M.L.W. 902= 48 Mad 299=26 Cr. L. J. 616= A.I.R. 1924 Mad. 873= 47 M.L.J. 614.**

——*Presumptive heir of minor not suitable.*

In case of claims of distant relations there is no question of preference other than what arises from a consideration of the minor's welfare which is made the paramount consideration under S. 17 (1) and (2). The presumptive heir to the property of a minor is not a suitable person to be appointed guardian of his person, as such a person stands to gain by the minor's death. (*Spencer and Venkatasubba Rao, JJ.*). NARASAYYA *v.* VENKATAPPA. **71 I.C. 298=17 M.L.W. 92=1923 M.W.N. 12= A.I.R. 1923 Mad. 359=44 M.L.J. 62.**

GUARDIANS AND WARDS ACT (1890), S. 19—Appointment of father.

——*Adoptive parents.*

The main question for the Court in matters of guardianship is the welfare of the child and the Court need not assign the personal guardianship of the child to the person, who in other respects has the best title to be the guardian.

If the residence of a minor with the adoptive parents was a part of the consideration for their adoption of a son, they are the proper guardians unless serious ill-treatment or incompetency on their part is proved (*Ashworth, J.C.*). MT. GANGA JOTI *v.* DIP NARAIN. **68 I.C. 553= 9 O.L.J. 325=A.I.R. 1922 Oudh 129.**

—S. 17—Young step-mother.

——It is not an inflexible rule of law that a pardanashin lady should not be appointed guardian of the property and person of a minor. But each case must obviously depend upon its circumstances.

A died leaving behind him considerable property, his minor children, his widow and a cousin brother. The widow was young and inexperienced and ill-treated her step-children, the minors. She could not manage the property satisfactorily. On the other hand, the cousin of the deceased was on good terms with the deceased, who in his last days had entrusted the management of his property to him.

Held, that there was necessity for the appointment of a guardian and that the cousin of the deceased is a suitable person to be so appointed in preference to the step-mother: 42 Cal. 953; 62 P.L.R. 1913; 60 P.W.R. 1913 and 17 C. L. J. 405, *Dist.* (*Bhide, J.*). CHANDRAWATI *v.* JAGAN NATH SINGH. **111 I.C. 208=A.I.R. 1928 Lah. 941.**

—S. 19—Appointment of father.

——What is meant by S. 19 is that where the father of the minor is living and is not incompetent to be the guardian of the person of the minor, no other person shall be appointed as guardian of the person of such minor. It does not restrict the right of the father though he is the natural guardian under the personal law of the minor, to apply to be appointed guardian under the Act. Such appointment may confer on him higher rights than what he possesses as the natural guardian and in dealing with the outer world the certificate granted by the Judge confers a greater importance on his powers than what he possesses as the natural guardian: A.I.R. 1922 Bom. 405, *Diss. from.* (*Suhrawardy and Graham, JJ.*). KAMINI MAYI DEBI *v.* BHUSAN CHANDRA GHOSE. **97 I.C. 692= 44 C.L.J. 40=A.I.R. 1926 Cal. 1193.**

——*Order directing child to be returned to father.*

The prohibition in S. 19 cannot be held to apply only to persons other than the husband in Cl. (*a*) and father in Cl. (*b*). So a father cannot apply to be appointed guardian of his minor child. But there is no objection to an order directing the return of the child to the father if the case is otherwise a fit one for such order. (*Ramesam and Jackson, JJ.*). LAKSHAMA REDDI *v.* ALLAVIRA REDDI. **86 I. C. 957=23 M.L.W. 213= A.I.R. 1926 Mad. 1085.**

——*Father can be declared guardian.*

Section 19 means that if a third party applies he shall not be appointed or declared a guardian of the

GUARDIANS AND WARDS ACT (1890), S. 19—Appointment of father.

person of a minor whose father is living and is not unfit. If the father is the applicant, the section has no application.

Per *Jackson, J.*—Under S. 19, the minor's father cannot be declared guardian. (*Venkatasubba Rao and Jackson, JJ.*). RAGHVAIYA *v.* M. LAKSHMIAH.

86 I.C. 640=21 M.L.W. 244=A.I.R. 1925 Mad. 398=48 M.L.J. 179.

———*Proceedings under S.* 25.

The father cannot be appointed guardian by proceedings under the Guardians and Wards Act, but as a nturalguardian he can take proceedings under S. 25 of the Act: A.I.R. 1925 Oudh 282; 40 Bom. 600; A.I.R. 1925 Oudh 257, *Ref.* (*Wazir Hasan, A.J.C.*). S. AHMAD AGHA *v.* ZOHRA BEGAM. **87 I.C. 1024=12 O.L.J. 441=2 O. W. N. 242=A. I. R. 1925 Oudh 421.**

———*Obiter*—A father cannot be appointed guardian of the person of a minor under the Act. He is the natural guardian of the son. (*Dalal, J. C.*). MT. CHANDRA KUAR *v.* CHOTEY LAL.

80 I. C. 330= A. I.R. 1925 Oudh 282.

———A father cannot be appointed a guardian because he is the natural lawful guardian and nothing can take that from him. (*Walsh, Ag. C.J. and Neave, J.*). SUKHDEO RAI *v.* RAM CHANDER.

83 I.C. 24=5 L.R.A. Civ. 417=22 A. L. J. 680=46 All. 706=A.I.R. 1924 All. 622.

———A father cannot be appointed guardian under the Guardians and WardsAct. The Court is not authorized to appoint or declare a guardian of the person of a minor whose father is living, unless that father is unfit to be guardian. An application by the father himself is not intended to be excepted from the provisions of this section. (*Brown, A.J. C.*). RAMJAN KHAN *v.* MARIAN BIBI.

72 I.C. 200=4 U.B.R. 146=A.I.R. 1923 Rang. 120.

———*Custody of minor son — Application under S.* 25.

An application under the Guardians and Wards Act made by the father to be appointed guardian of the person of his minor son living with his mother and to have his custody, presumably, under S. 19, is not competent; he, being the natural guardian, can apply under S. 25 for the minor's return to his custody. (*Macleod, C. J. and Shah, J.*). BAI TARA *v.* MOHANLAL LALLUBHAI. **68 I. C. 518=24 Bom.L.R. 779=A. I. R. 1922 Bom. 405.**

—S. 19—Appointment of Husband.

———*Application under S.* 25.

Where a husband applies to be declared as the guardian of person of his wife for custody of her person, no declaration of guardianship can be made under S. 19, even though the Court holds that the husband is not unfit to be the guardian of his wife. The proper course for the applicant, in such case, is to make an application under S. 25, A.I.R. 1922 Bom. 405; A.I.R. 1926 Bom. 228; A.I.R. 1914 P. C. 41, *Ref.* (*Kemp, Ag. C. J. and Murphy, J.*). MANIBAI HEMRAJ *v.* MAGANLAL VITHALDAS. **32 Bom. L. R. 386=A.I.R. 1930 Bom. 239.**

———Section 19 (a) prohibits the Court from appointing a guardian of the person of a minor girl who is married and whose husband is not, in the opinion of the Court, unfit to be the guardian of her person. (*Martineau, J.*). BALLU MAL *v.* HARDAWARI MAL. **79 I.C. 451=6 L. L.J. 219=A.I.R. 1924 Lah. 570.**

GUARDIANS AND WARDS ACT (1890), S. 19—Father as guardian.

—S. 19—Delegation of power by father.

———*Father entrusting the custody of his minor son to a friend by agreement—Such arrangement does not amount to adoption among Muhammadans—Father can revoke the agreement and apply for guardianship.*

Father is the natural guardian; he cannot divest himself of that duty, or substitute another in his place. His duty is in the nature of a sacred trust. He may in the exercise of his discretion delegate his authority to another, such as a tutor or a schoolmaster or a friend and entrust the education and custody of his children to that other on such terms as he seems fit, but such delegation is revocable.

There is no such thing as adoption among Muhammadans and an arrangement of this kind is clearly revocable. (*Walsh and Pullan, JJ.*). NAZIR KHAN *v.* GANESH. **96 I.C. 617=A.I.R. 1926 All. 687.**

—S. 19—Father as guardian.

———*Father has inalienable right to the custody of his child.*

A father is not only the natural guardian but has an inalienable right over his child unless there are overwhelming circumstances to the contrary: *Re Thain, Thain* v. *Taylor*, (1926) Ch. 676, *Foll.* (*Walsh, Ag. C. J. and Banerji, J.*). ABDUL AZIZ KHAN *v.* NANHE KHAN. **101 I.C. 529=49 All. 332=25 A.L.J. 248=A.I.R. 1927 All. 458.**

———Father applied to be appointed guardian of his minor son for the purpose of withdrawing certain deposit from a bank in the name of the minor. The money was deposited in the name of grandfather of the minor and the minor and was payable to either or survivor. Maternal uncle of the minor contested the application on the ground thatth deposit receipt was entered in his name,

Held, that *prima facie* as the receipt was payable to either or survivor on the death of the grandfather, the legal interest would pass to the minor, but at any rate it was obviously for the welfare of the minor that he should not be compelled to bring a suit as regards this deposit receipt and it should be left to the parties to establish their title to this receipt in a civil suit. It is not necessary to decide to whom this deposit receipt really belonged.

Held, further that the father should be appointed guardian after furnishing necessary security. (*Dalip Singh, J.*). MIRI MAL *v.* KANSHI PRASAD. **93 I.C. 328=27 P.L.R. 158.**

———*Father can't be appointed guardian of minor's person.*

The first right to the guardianship and the custody of a minor boy is in the father, he being his natural guardian.

The S. 19 (b) of the Guardians and Wards Act deprives a Court of jurisdiction under the Act to appoint or declare a father of minor to be the guardian of his person. (*Shadi Lal, C.J. and Le Rossignol, JJ.*). MT. TAJ BEGUM *v.* GULAM RASUL. **83 I.C 308=6 L.L.J. 597=26 P.L.R. 12=A.I.R. 1925 Lah. 250.**

———Where there was a maintenance order against the father, amount under which was long delayed and partly not paid and where the ward, a boy of 14 wanted to learn tailoring while the father wanted to put him to school.

Held, the father should not be appointed a guardian especially when he had re-married and divorced the ward's mother. (*Campbell, J.*). MT. MUKABAR *v.* KARIM BAKSH. **75 I. C.496=A. I. R. 1923 Lah. 283.**

GUARDIANS AND WARDS ACT (1890), S. 19—Joint Hindu family.

———The father is exclusively entitled to be the guardian. The words of S. 19 so far from being subject to the provisions of S. 17 expressly override them. No other view of the meaning of S. 19 is possible: 38 M. 807 (P.C.), *Ref.* (*Batten, J.C. and Hallifax, A.J.C.*). DHAN KUMARI DEBI *v.* THAKUR MAHENDRA SINGH. **71 I.C. 443= 19 N.L.R. 45=6 N.L.J. 111=A.I.R. 1923 Nag. 199.**

—S. 19—Joint Hindu family.

———No guardian in respect of the minor's interest in the property of an undivided Hindu *Mitakshara* family should be appointed: 25 All. 407, *Rel. on.* (*Lindsay and Sulaiman, JJ.*). RATTAN CHAND *v.* RAMKISHAN MURARJI.

114 I.C 743=26 A.L.J. 777= A. I. R. 1928 All. 447.

———*High Court—General jurisdiction of.*

Where the father applied to be appointed a guardian of a minor member of a joint *Mitakshara* family.

Held, under its general jurisdiction and apart from the Guardians and Wards Act, the High Court had power to appoint a guardian of the property of a minor who was a member of a joint Hindu family and where the minor's property was an undivided share in the family property. (*Greaves, J.*). HARI NARAIN DAS (AN INFANT), *In re.* **74 I.C. 244=50 Cal. 141= A.I.R. 1923 Cal. 409.**

—S. 19—Mother and father.

———The principle underlying Cl. (*b*) of S. 19, applies to a mother as well as to a father, though with less force. (*Baker and Hallifax, A.J.Cs.*). MT. SUMITRI BAI *v.* MT. SUBHADRA BAI.

75 I.C. 564=A.I.R. 1924 Nag. 178.

—S. 19—Removal of father.

———Although in general, parents are entrusted with the custody and education of their children, yet this is done upon the natural presumption that the children will be properly taken care of, and will be brought up with a due education in literature and morals and religion and they will be treated with kindness and affection. But whenever the presumption is removed, whenever (for example) it is found that a father is guilty of gross ill-treatment or cruelty towards his infant children; or he is in constant habit of drunkenness and blasphemy or low and gross debauchery; or he professes atheistical or irreligious principles; or that his domestic associations are such as tend to the corruption and contamination of his children; or that he otherwise acts in a manner injurious to the morals or interests of his children; in every such case the Court will interfere and deprive him of the custody of his children, and appoint a suitable person to act as guardian and take care of them and to superintend their education. (*Mukerji and Graham, JJ.*). V. J. WALTER *v.* M. J. WALTER.

111 I.C. 543=55 Cal. 730=A I.R. 1928 Cal. 600.

———Without a finding that the father is unfit, the law forbids the appointment or declaration of any other person to be guardian. In such cases the welfare of the minors is the main consideration. (*Coldstream, J.*). FAKHRUDDIN *v.* MT. BIRO.

95 I.C. 558=27 P.L.R. 330=A.I R. 1926 Lah. 393.

———When the child is in the actual custody of the father, the custody cannot be disturbed in appeal from an illegal order, under S. 25 granting custody of the child to the father. (*Dalal, J.C.*). MT. CHANDRA KWAR *v.* CHOTEY LAL. **80 I.C. 330= A.I.R. 1925 Oudh 282.**

GUARDIANS AND WARDS ACT (1890), S. 24—Conditions in certificate.

———Any friend of a minor may approach the Court in the case of the minor being ill-treated and invoke the protection of the Court on behalf of the minor. But it is another question altogether if an outsider invokes the protection of the Court for a minor who is in the lawful custody of her father, unless the applicant can satisfy the Court that it is for the welfare of the minor that an order should be made against the father. Where a stranger, the spiritual head of the community made an application to deprive the father of the custody and the natural guardianship of the minor girl, on the ground that she was about to be married at the early age of four which would expose her to the risk of premature widowhood, and that the father was about to sacrifice his daughter's interests by resorting to the practice of *Sata* marriages with a view to secure a bride for himself,

Held, general considerations of that character, which are not opposed to the practice of the community to which the parties belong, cannot be ordinarily accepted as a sufficient ground for depriving the father of such rights as he has to look after the welfare of his minor children. (*Macleod, C. J. and Shah, J.*). KESHAV LAL MAGANLAL TRIVEDI *v.* AMBALAL VENIRAM. **64 I.C. 576= 46 Bom. 415=23 Bom. L.R. 1225= A.I.R. 1922 Bom. 278.**

—S. 20—Setting up adverse title.

———A person in a fiduciary position cannot, without taking his discharge and giving up possession, set up as against the *cestui que* trust his paramount title or the paramount title of a third person. This rule is of universal application and is without any exception whatever. *Attorney-General* v. *Munro*, 64 E. R. 73, *Ref.* (*Das and Ross, JJ*). SHAIKH ABDUL RAHIM *v.* MT. BARIRA. **61 I.C. 807= 2 Pat. L.T. 556=6 P.L.J. 273= A.I.R. 1921 Pat. 166.**

—S. 22—Allowance after removal.

———The District Judge's order granting special allowance to a guardian on his removal, for services rendered to the estate, is not appealable nor open to revision. Section 22 of the Guardians and Wards Act empowers a District Judge to grant a special allowance to the guardian. (*Wazir Hasan, A. J. C.*). SURAJ NARAYAN SINGH *v.* BISHAMBHAR NATH BHAN. **78 I.C. 138=A.I.R. 1925 Oudh 260.**

—S. 23—Sale of property.

———*Setting aside.*

Where the Collector as guardian obtained the sanction of the Commissioner, his superior officer, to the sale of his ward's property and when his action was challenged in the High Court, an application to remove him was dismissed and the sale was confirmed by the Court, it is quite impossible for the minor after attaining majority to attempt to set aside the transaction. (*Macleod, C. J. and Coyajee, J.*). ABHERAJ UMARKHAN MALEK *v.* DOLATSINGJI DESAI. **96 I.C. 17= 28 Bom. L.R. 628.**

—S. 24—Conditions in certificate.

———*Ward, marriage of—Leave of Court, condition as to.*

A person who accepts to act as a certificated guardian impliedly undertakes to have custody of an infant entrusted on terms imposed on him by the Court. So long as he retains such custody and has not restored the custody of the infant, he cannot assert any rights which he may have unde the ordinary law and is bound to carry out th orders of the Court. If one of the condition

GUARDIANS AND WARDS ACT (1890), S. 24—Marriage of minor.

mentioned in the certificate issued to guardian is that he shall not marry the infant without the leave of the Court, he is bound by that condition. (*Rupchand Bilaram and DeSouza, A.J.Cs.*) PREMJI KANJI *v.* MT. JEEVIBAI. **108 I C. 668= 23 S.L.R. 75= A.I.R. 1928 Sind 129.**

—S. 24—Marriage of minor.

——Where the Court sanctioned the marriage of a minor boy aged 12 to a girl aged 10 and the grounds alleged were that the boy who was himself very rich was likely to get a very rich father-in-law, that the boy was grown up and desired his marriage and it was also said that because the Sarda Act which would take effect soon was likely to postpone the marriage for a long time it was better to have the marriage celebrated, so that the boy might avoid the temptations of a dissolute life.

Held, that the welfare of the minor was the only test in such a case and that the grounds set out would not be a justification for sanctioning the marriage of such a young boy.

Held, also that it was not in the province of the Judge to set at naught the principle underlying the Sarda Act or to teach others to flout it. (*Venkatasubba Rao and Madhavan Nair, JJ.*). VENKATARAJU *v.* SUBBARAO. **1930 M.W.N. 57.**

——*Sanction of Court.*

The guardian for marriage of the infant, who may have negotiated for the marriage, must apply to the District Judge for his sanction. Notice of the application should be given to the infant, to the guardian of person if he happens to be different from the guardian for marriage, and also to such relations of the minor as the Judge may deem necessary. He will then consider the objections and suggestions, if any and then determine whether the proposal of the guardian for marriage is for the true welfare of the minor or whether the marriage is unsuitable by reason of incongruity of age, inequality of rank and fortune or any like reason. If, on the materials before the District Judge, he is satisfied that the marriage is not unsuitable, he will sanction it : 42 Cal. 351, *Rel. on.* (*Rupchand Bilaram and DeSouza, A. J. Cs.*). PREMJI KANJI *v.* MT. JEEWIBAI. **108 I.C. 668=23 S.L.R. 75= A.I.R. 1928 Sind 129.**

——*Injunction.*

Where on the day on which an application for the removal of a guardian was dismissed, the Court on an oral application, made an order granting a permanent injunction restraining certain four persons, without notice to the persons concerned, from taking steps towards the minor's marriage against the wishes of the guardian sought to be removed.

Held, that the order was without jurisdiction and must be set aside in revision. (*Oldfield and Devadoss, JJ.*). KONTHALATHAMMAL *v.* THANGASWAMI PILLAI. **74 I.C. 896=46 Mad. 873= 18 M.L.W. 256=33 M. L. T. 80= 1923 M.W.N. 902=A.I.R. 1924 Mad. 327= 45 M.L.J. 431.**

——Sanction by the Court to the marriage of the minor on the application of the certificated guardian of the minor should not be refused simply on the opposition of a relative without dealing with the guardian's proposal on the merits. (*Macleod, C. J. and Shah, J.*). GANU GOPAL SONAR *v.* DATTATRAYA LAXMAN POTDAR. **75 I.C. 128= 24 Bom. L.R. 845=A. I. R. 1922 Bom. 335.**

GUARDIANS AND WARDS ACT (1890), S. 25—Father's application for custody.

—S. 25—Certificate of guardianship.

——*Obiter*—A certificate of guardianship is a preliminary necessity for obtaining custody of an infant. (*Dalal, J.C.*). MT. CHANDRA KUAR *v.* CHOTEY LAL. **80 I.C. 330= A. I. R. 1925 Oudh 282.**

—S. 25—Constructive custody of guardian.

——Even where the minor has never been in the custody of the guardian, in order to make the Act workable, a fiction must be imported into S. 25, whereby it is deemed that the child has been constructively in the guardian's custody and has left it. (*Waller and Cornish, JJ.*). TOTAMMA *v.* MARINA VEERAJU. **A.I.R. 1930 Mad. 19.**

——Where the child was in the custody of the applicant's (father) father-in-law, and the applicant sought to obtain custody of the child,

Held, that the section applies on the footing that although the lawful guardian did not have previously actual physical custody it should be deemed that the minor at the time of leaving or removal was constructively in that guardian's custody and therefore he could enforce his rights under the section. (*Venkatasubba Rao and Jackson, JJ.*). RAGHAVAYYA *v.* LAKSHMIAH. **86 I. C. 640= 21 M.L.W. 244=A.I.R. 1925 Mad. 398= 48 M L.J. 179.**

—S. 25—Divorced mother.

——A woman who has been divorced and has married a second husband, is not a person better suited to have the custody of the minor child than the father, however unsuitable the father may be, and is not a person who ought to be heard to say that the father is unsuitable. She loses the right to assert a claim against the father for the child. (*Walsh and Banerji, JJ.*). MT. ULFAT BIBI *v.* BAFATI. **102 I.C. 103=49 All. 773= 25 A.L.J. 585=A.I.R. 1927 All. 581.**

—S. 25—Exercise of powers.

——In order to take action under S. 25 it is immaterial whether the minors are removed forcibly or whether they left the guardian's custody of their own accord. (*Tek Chand, J.*). AMIR KHAN *v.* TALEB MAHOMED. **100 I. C. 807= A. I. R. 1927 Lah. 266.**

—S. 25—Father.

——When the child is in the actual custody of the father, the custody cannot be disturbed in appeal from an illegal order under S. 25 granting custody of the child to the father. (*Dalal, J. C.*). MT. CHANDRA KUAR *v.* CHOTEY LAL. **80 I. C. 330=A.I.R. 1925 Oudh 282.**

—S. 25—Father, right of, to proceed under section.

——The father cannot be appointed guardian by proceedings under the Guardians and Wards Act, but as a natural guardian he can take proceedings under S. 25 of the Act: A.I.R. 1925 Oudh 282, 40 Bom. 630; A.I.R. 1925 Oudh 257, *Ref.* (*Wasir Hasan, A.J.C.*). S. AHMED AGHA *v.* ZOPRA BEGAM. **87 I. C. 1024=12 O.L.J. 448=2 O.W.N. 242= A.I.R. 1925 Oudh 421.**

—S. 25—Father's application for custody.

——*Muhammadan law.*

Though, according to the Muhammadan Law, the mother is the guardian of her minor son below 7 years of age, and so an application by the father for the custody of a child aged less than 7 at the time of the application would be incompetent, nevertheless, if during the course of the proceedings, the infant has attained 7 years of age, it is open to the father to continue the application.

GUARDIANS AND WARDS ACT (1890), S. 25—Father's application for custody.

The only remedy of a father for the custody of his minor son is by an application under S. 25: 42 M. 647; 38 M. 807 (P. C.), *Rel. on.* The words "removed from his custody" should receive a liberal construction as including removal from constructive custody. A refusal to deliver a minor to his natural guardian when asked to do so by the latter amounts in effect to removal from his custody. (*Rupchand Bilaram and Wild, A. J. Cs.*). ALUM KHATOON *v.* ABDULLA GUL MAHOMED.
124 I.C. 381 (Sind).

——*Immoral father.*

An immoral father has not the same right to the custody of his children as a moral man: A. I. R. 1924 All. 622, *Not appr.* (*Madhavan Nair and Thiruvenkatachariar, JJ.*). ATCHAYYA *v.* KOSARAJU NARAHARI. **120 I. C. 747= A. I. R. 1929 Mad. 81.**

——Where the father is content to allow another relation to take over and bear the burden of the maintenance and the education of his children for many years, and where during this period he is leading an immoral life, to take these children from the environment in which they were living and place them in their father's house would amount to little more than an act of gross cruelty, and the father should not be allowed to revoke the authority which was given to the relation to have the custody of his children: A.I.R. 1914 P.C. 41, *Rel. on*; A.I.R. 1924 All. 622, *Diss. from.* (*Findlay, J.C.*). BALDEO PRASAD *v.* DHAMARAM.
103 I.C. 361=A.I.R. 1927 Nag. 314.

——*Obiter.*—A father cannot apply under the provisions of S. 25 of the Act for the custody of his infant son. His remedy is by way of suit. (*Dalal, J.C.*). MT. CHANDRA KUAR *v.* CHOTEY LAL.
80 I.C. 330=A.I.R. 1925 Oudh 282.

——Neither the fact that the child has never been actually in the custody of the father nor the fact that the father has never been appointed guardian of the child by an order of the Court prevents the application of S. 25. An order appointing a father guardian of his child under the Guardians and Wards Act would be wholly *ultra vires.* (*Wazir Hasan, A.J.C.*). CHHOTE LAL *v.* CHANDRA KUNWAR. **80 I.C. 71=11 O.L.J. 537= A.I.R. 1925 Oudh 257.**

——The decision of the question whether it would be for thewelfare of the child to return to the custody of its guardian depends entirely on the circumstances of each case. When the guardian of the person of a ward applies for the custody of the ward, he is only asking the Court to help him to discharge the duty cast on him by law with reference to his ward and it is for those who oppose such an application to make out that the welfare of the ward will be better served by its being kept out of the custody of its guardian and retained in the custody of the person against whom the application is made. This onus is especially heavy when the guardian is the father of the child.

A child of four years was brought up from its birth by its maternal grand-parents. The father applied to recover custody of the child's person. The maternal grandfather opposed the application on the grounds that (1) the application was made through spite and was not *bona fide*, inasmuch as the father was led to make it because of the grandfather's threatening to sue him for partition of the child's property which the father was wasting; (2) that the father had ill-treated the child's mother

GUARDIANS AND WARDS ACT (1890), S. 25—Father's application for custody.

before her death and had married a second wife; and (3) that as the child was brought up from its birth by its maternal grandmother, it would be cruel to remove him from her,

Held, that none of these grounds, even if true, would be sufficient to deprive the father of the custody of his child. Even considering the matter entirely from the point of view of the welfare of the minor, it could not be to the minor's welfare to estrange him from his father at this tender age: A. I. R. 1914 P. C. 41; 28 M. L. J. 442; A. I. R. 1924 Mad. 45; A. I. R. 1924 All. 622; 29 M. L. J. 442 and 29 All. 210, *Rel. on*; 22 M. L. J. 247, *Dist.* (*Madhavan Nair and Thiruvenkatachariar, JJ.*). ATCHAYYA *v.* KASARAJU NARAHARI.
120 I.C. 747=A.I.R. 1929 Mad. 81.

——What a Court has to look to on applications under Habeas Corpus is the interest of the child as being paramount.

A father made an application for a writ of Habeas Corpus directing that the custody of his son aged about 7 or 8 should be delivered to him. There was nobody in his house to look after the child of such tender age, he himself being a driver of motor car,

Held, that the High Court should not interfere and the proper course for the father would be to set the Court in motion locally under S. 25, Guardians and Wards Act. (*Coutts-Trotter, C.J., Madhavan Nair and Jackson, JJ.*). SHAIK MOIDIN *v.* KUNHADEVI. **2 M. Cr. C. 58= A.I.R. 1929 Mad. 33 (F.B.).**

——A natural and a legal guardian is not ordinarily entitled to divest himself of the responsibility imposed upon him by law and to transfer it to another person, and if he has transferred such liability to another person, there is nothing to debar him to revoke such transfer unless the Court is satisfied that by his conduct he has debarred himself from revoking such authority and such conduct must have a direct effect for the welfare of the minor: A.I.R. 1926 All. 687, *Appl.* (*Jai Lal, J.*). WAZIRKHAN *v.* ABDUL HAMID KHAN.
112 I.C. 693=A.I.R. 1928 Lah. 806.

——The prohibition in S. 19 cannot be held to apply only to persons other than the husband in Cl. (*a*) and father in Cl. (*b*). So a father cannot apply to be appointed guardian of his minor child. But there is no objection to an order directing the return of the child to the father if the case is otherwise a fit one for such order. (*Ramesam and Jackson, JJ.*). (VIYYURU) LAKSHAMA REDDY *v.* ALLA VIRA REDDI. **86 I.C. 957=23 M L.W. 213= A.I.R. 1925 Mad. 1085.**

——The father cannot be appointed guardian by proceedings under the Guardians and Wards Act, but as a natural guardian he can take proceedings under S. 25 of the Act: A.I.R. 1925 Oudh 282; 40 Bom. 600; A.I.R. 1925 Oudh 257, *Ref.* (*Wazir Hassan, A.J.C.*). S. AHMAD AGHA *alias* CHHOTEY SAHEB *v.* THE PERSON OF MT. ZOHRA BEGAM.
87 I.C. 1024=12 O.L.J. 441= 2 O.W.N. 242=A.I.R. 1925 Oudh 421.

——*Considerations to weigh with the Court.*

A father cannot be appointed guardian under the Guardians and Wards Act He can delegate the performance of the daily duties of looking after the child and for that purpose place the child under the custody of some one else. If he does so, it then becomes the question under S. 25 for the Court to decide when he applies for the restoration of the custody, whether it is for the welfare of the minor,

GUARDIANS AND WARDS ACT (1890), S. 25—Father's application for custody.

Where an application is made for the restoration of the custody of the child by the father the Court should see what is right over the child, rather than try to see what the character of the father is. Thus a quarrel with the mother of the boy or distrusting the mother's moral character are not sufficient to deprive him of the custody of the child. Nor the fact that he left the infant child (girl) of his in the charge of his wife's family relatives. (*Walsh, Aq. C.J. and Neave, J.*). SUKHDEO RAI *v.* RAM CHANDER. **83 I. C. 24=5 L.R.A. Civ. 417= 22 A.L.J. 680=46 All. 706=A. I. R. 1924 All. 622.**

———Where the minor aged 4 years was in the custody of the mother, and the father and the mother were on bad terms and the father applied for removal of the minor from mother's custody and for appointment of himself or some other fit person as guardian,

Held, the petition should be treated as one under S. 25 and there was no reason why the petition should not be granted. (*Oldfield and Venkatasubba Rao, JJ.*). SATYANARAYANA VARAPRASADA RAO *v.* VENKATA LAKSHMI NARASAYAMMA. **73 I.C. 948=18 M.L.W. 173=1923 M.W.N. 668= A. I. R. 1924 Mad. 45.**

———In an application by a father to obtain custody of his minor son, the only question to be considered is whether it will be in the interests and welfare of the minor to return to the custody of the father : 38 Mad. 807, *Rel. on.* (*Macleod, C.J. and Shah, J.*). BAI TARA *v.* MOHANLAL LALLUBHAI. **68 I. C. 518=24 Bom. L.R. 779= A. I. R. 1922 Bom. 405.**

—S. 25—Guiding principles.

———An order under Cl. (1) of S. 25 cannot be made but "for the welfare of the minor" and in considering "what will be for the welfare of the minor" regard must be had to the age, sex and religion of the minor as laid down in Cl. (2), S. 17 of the Act : 12 All. 213, *Foll.* (*Zafar Ali, J.*). MT. LACHMI BAI *v.* DIWANCHAND. **107 I. C. 759 (Lah.).**

———Where a person has been duly appointed guardian of the person and property of a minor and no valid reason has been shown to change the guardianship of the minor, the order for minor's return should not be disturbed. (*Tek Chand, J.*). SANT SINGH *v.* LALCHAND. **106 I.C. 834 (Lah.).**

—S. 25—Habeas corpus.

———On an application by the *de jure* guardian for *habeas corpus* in respect of a child detained against its will the dominant question is what conduces to the interests and welfare of the infant and the Court must dispose of the application with reference to it. The moral, the religious and the physical welfare and the ties of affection as also the opinion of the child if it is capable of forming an intelligent opinion are to be taken into consideration. The opinion of the child is an important element and the degree of the child's mental development must to a certain extent weigh with the Court. The age of the infant is also an important factor. There is no inflexible rule in England that a boy over 14 and a girl over 16 will have the final voice and that the wishes of the infant have to be given effect to. Even if such a rule exists it is too artificial to be applicable in India. (*Venkatasubba Rao, J.*). SARASWATHI AMMAL *v.* DHANAKOTI AMMAL. **85 I.C. 840= 1924 M.W.N. 870=20 M.L.W. 902= 48 Mad. 299=26 Cr. L.J. 616= A.I.R. 1924 Mad. 873=47 M. L. J. 614.**

GUARDIANS AND WARDS ACT (1890), S. 27—Appointment of guardian as guardian ad litem. —S. 25—Husband and wife.

———Where all the requirements of S. 25 are satisfied, the Court has jurisdiction to make an order; the Court cannot refuse to exercise jurisdiction because the husband, who has applied under S. 25 for the custody of his minor wife, has an alternative remedy, in that he can bring a regular suit : A. I. R. 1925 Oudh 282 and 40 Bom. 600, *Dist.* (*Barlee, A.J.C.*). KHETSI PACHAN MINDU *v.* DELA MEGHA MINDU. **121 I. C. 175= A.I.R. 1930 Sind 135.**

—S. 25—Interpretation.

———The expression "guardian" used in S. 25 was not confined to statutory guardians but includes the lawful guardian, such as the father, and the "custody" referred to in S. 25 includes both constructive as well as actual custody : 21 O. C. 194, *Foll.* (*Walsh and Banerji, JJ.*). MT. ULFAT BIBI *v.* BAFATI. **102 I. C. 103= 49 All. 773=25 A.L.J. 583=A. I. R. 1927 All. 531.**

—S. 25—Jurisdiction.

———An application under S. 25 must be made to the Court where the minor ordinarily resides. (*Rutledge, C. J.*). MAUNG BA LHEN *v.* MA THAN KIN. **118 I.C. 415=A.I.R. 1929 Rang. 129.**

—S. 25—Prejudice to ward.

———Whether or not the ward has been prejudiced by the guardian's choice in applying for her custody under S. 25 is an irrelevant consideration where the Court has jurisdiction to make an order under S. 25 if it thinks it will be for the welfare of the ward to return to the custody of her guardian. (*Barlee, A.J.C.*). KHETSI PACHAN MINDU *v.* DELA MEGHA MINDU. **121 I.C. 175=A.I.R. 1930 Sind 135.**

—S. 25—Refusal of relief under section.

———The reason that the guardian is too weak to keep the minors is wholly insufficient to refuse relief under S. 25. It is the duty of the Courts to protect the weak against the high-handed acts of the strong and this duty has to be performed with greater vigilance when the aggrieved party is a duly constituted guardian appointed by the Court itself, and the victims are minors under its charge. (*Tek Chand, J.*). AMIR KHAN *v.* SALEH MAHOMED. **100 I. C. 807=A.I.R. 1927 Lah. 266.**

—S 25—Removal from custody.

———*Meaning.*

The refusal by a person to deliver back the child to its natural guardian when asked to do so by the latter, amounts in effect to a removal from his custody and he can, therefore, apply under S. 25 of the Act. (*Madhavan Nair and Thiruvenkatachariar, JJ.*). ATCHAYYA *v.* KOSARAJU NARAHARI. **120 I.C. 747=A.I.R. 1929 Mad. 81.**

—S. 26—Residence abroad.

———While, leave for permanent residence outside the jurisdiction of the Court may be granted for good and sufficient grounds and under sufficient safeguards, leave for the permanent residence of the child abroad and out of the Court's jurisdiction is not permitted except where it is manifestly advantageous to the child as regards health and the like. (*Mukerji and Graham, JJ.*). V. J. WALTER *v.* M. J. WALTER. **111 I. C. 543=55 Cal. 730= A. I. R. 1928 Cal. 600.**

—S. 27—Appointment of guardian as guardian ad litem.

———*Duty of guardian.*

Where the proposed guardian has been served with notice and objects to appear as such on behalf of the ward, the Court ought to appoint some other proper person to act as guardian.

GUARDIANS AND WARDS ACT (1890), S. 27—Appointment of guardian as guardian ad litem.

The Code of 1882 contains no provision similar to that found in O. 32, R. 4 (3) of the Code of 1908. In the absence of any such provision, where a person has voluntarily applied to be appointed guardian of the person and property of a minor under the provisions of the Guardians and Wards Act, he is bound to deal with the ward's property as if it were his own and to do everything which is reasonable and proper for the protection and benefit of the property entrusted to him. This obligation in fact arises under S. 27 of the Guardians and Wards Act. If therefore the Guardian has been served with notice of his appointment as guardian *ad litem* in a suit against his ward and chooses to take no steps to object to his appointment, the Court may well presume that he consents thereto, and the mere fact that he does not enter appearance or defend the action can afford no presumption that he repudiates liability. 30 I.A. 182; 30 Cal. 1021, *Foll.* The Court after satisfying itself of the fact of minority is bound to appoint a proper person to act on behalf of the minor in the conduct of the case, but, a defect in following the rules referred to in S. 443 is not necessarily fatal to the proceedings: 34 C.L.J. 302; 30 I.A. 182. (F.B.) 18 C. L. J. 18; 20 C.L.J. 469, *Dist.* (*Dawson Miller, C.J. and Foster, J.*). THAKUR TAJESHWAR DUTT *v.* LAKHAN PRASAD SINGH. **83 I.C. 290=2 Pat. 296=4 P.L.T. 127=1 Pat. L.R. 59=1923 P.H.C.C. 88=A.I. R. 1923 Pat. 231.**

—S. 28—Powers and duties.

———Once a person, natural guardian or a stranger is appointed guardian of a minor by order of the Court passed in accordance with the provisions of the Act as contained in Ss. 28 to 31, he is clothed with all the obligations imposed by that Act in dealing with the ward's property. It is not in his power to throw off those obligations by the exercise of his own volition and pose as a natural guardian and act in that status : 36 Mad. 295 (P.C.), *Rel. on.* Nor can an alienation by him be upheld, if it is made without the sanction of Court, on the ground that it was entered into as natural guardian and was for the benefit of the minor. (*Wazir Hasan and Neave, A.J.Cs.*). RAMESHWAR BAKSH SINGH *v.* MT. RIDH KUER. **87 I. C. 238=A.I.R. 1925 Oudh 633.**

—S. 28—Sale.

———A sale by a certificated guardian in contravention of Ss. 28 and 29 is voidable and not void. (*Das and Fazl Ali, JJ.*). GOBARDHAN LAL *v.* SHEO NARAYAN. **117 I.C. 161=8 Pat. 226=A.I.R. 1929 Pat. 202.**

—S. 29—Compliance.

———Civil P. C., O. 21, R. 83—Case coming under both provisions—Compliance under S. 29 is not rendered unnecessary : 23 Bom. 287 ; 31 All. 378, *Foll.* (*Mukerji and Cuming, JJ.*). VIJENDRA MOHAN SARMA *v.* MANORAMA DASI. **70 I.C. 990=49 Cal. 911=36 C.L.J. 326=28 C.W.N. 57=A.I.R. 1922 Cal. 150.**

—S. 29—Compromise.

———*Civil P. C., O. 32, R. 7—Guardian* ad litem.

The provisions of S. 29 of the Guardians and Wards Act and O. 32, R. 7, C. P. C. are two distinct provisions for the purpose of safeguarding a minor's interests under different contingencies. It is erroneous to set aside under S. 29, Guardians and Wards Act a compromise entered into by a guardian of minor appointed for the purposes of litigation, on the ground that no permission of the District Judge for the compromise had been obtained : 8 C. L. J. 266 and 35 C. L. J. 203, *Rel. on.* (*Fforde and Johnstone, JJ.*) CHET RAM *v.* BHIM SAIN. **122 I.C. 103=31 P.L.R. 131=A.I.R. 1930 Lah. 250.**

———*Court guardian.*

A Court guardian granted a lease of the minor's properties for a term of 7 years without obtaining the sanction of the Judge under S. 29 of the Act; but the lease was in accordance with a compromise entered into with the sanction of the Court,

Held, as the sanction of the compromise by the Court under O. 32, R. 7, C.P. Code, signified that the compromise was for the benefit of the minor, which is also what S. 29 of the Guardians and Wards Act signifies, the lease was valid. (*Stephen and Mullick, JJ.*). ABDUR RASHID *v.* SHEIKH KHANDKAR. **68 I.C. 997=35 C.L.J. 206.**

—S. 29—Conditions regarding alienation.

———*Conditions precedent and conditions subsequent.*

A distinction must be drawn between a condition precedent and a condition subsequent imposed on the guardian of a minor to transfer the minor's property. Non-compliance with a condition precedent will vitiate a transfer made by the guardian. But the same cannot be the effect of non-compliance with a condition subsequent unless there is something in the order granting permission to transfer the minor's property casting an obligation on the transferee of that property to do some act subsequent to the execution of the deed of transfer in his favour. The only duty cast upon the transferee by law is that he must satisfy himself that the order sanctioning the transfer has been strictly complied with by the guardian up to the time of the execution of the deed of transfer, and that no conditions precedent imposed by the order have been violated. If the conditions precedent have been complied with by the transferee in conformity with the permission granted by the District Judge, a good title will pass to the transferee, and the failure of the guardian to comply with the subsequent conditions cannot divest the title already vested in the transferee by the transfer: 26 C.W.N. 218; 3 A.L.J. 30, *Rel. on*; A.I.R. 1924 All. 474, *Dist.* (*Iqbal Ahmed and Kendall, JJ.*). SUBHAN ALI *v.* CHITTO. **102 I.C. 804=25 A.L.J. 725=A. I. R. 1927 All. 631.**

———*Non compliance.*

Where the District Judge acting under the Guardian and Wards Act empowers the guardian to sell a property of the minors for an alleged debt of theirs and further directs him to put in the bonds after these have been satisfied and so endorsed by the creditor it does not follow that non-compliance with the latter direction vitiates the sale if actually carried out and the vendee has all along been in possession of the purchased property. Where the same property is held partly by adult co-sharers and partly by minors the very fact that the minor's share was sold for a price a little over that for which the shares of adult co-owners was sold goes to indicate the *bona fides* of the sales of the shares of the minors. (*Chitty and Richardson, JJ.*). DYAM KHAN *v.* SARAT CHANDRA DE. **95 I.C. 421=26 C. W. N. 218.**

—S. 29—Contract to sell.

———*Specific performance.*

Specific performance will not be granted where *de facto* guardian has entered into a contract with a third party for the sale of the minor's property. To direct the contract to be carried into effect

GUARDIANS AND WARDS ACT (1890), S. 29— Duty of Court.

against the minors is to sanction a plain breach of trust on the part of *de facto* guardian: 45 C. 878, *Foll.* (*Das and Foster, JJ.*). ABDUL HAQ v. MOHAMMAD YEHIA KHAN. **78 I.C. 483= 4 P.L.T. 553= 2 Pat. L.R. Civ. 181=A.I.R. 1924 Pat. 81.**

—S. 29—Duty of Court.

———*Sanction of Court—Effect.*

It is the duty of the Court to which an application is made under S. 29 of the Act for sanction of the sale of a minor's property, to satisfy itself by enquiry that the transaction is necessary and is for the minor's benefit and a creditor is entitled to rely on an order of sanction as evidence that the Court has satisfied itself on this point and that the transaction is a proper one: A.I.R. 1922 Mad. 135, *Rel. on*; 11 Cal. 379 at 383, *Foll.* (*Daniels and Neave, JJ.*). BUDDHOO (ALIAS) GULAB DAS v. SHEO CHARAN, BHAGWAN DAS. **82 I.C. 328=22 A.L J. 851= 5 L. R. A. Civ. 726=47 All. 8= A.I.R. 1924 All. 875.**

———*Sanction of Court—Effect.*

The Guardians and Wards Act throws the entire responsibility for granting permission to the guardian to do any of the acts mentioned in S 29 upon the Civil Court and therefore a due enquiry by the Civil Court must take place before the permission can be granted by it to the guardian to do any of these acts. Where therefore an order has been made authorising the guardian to raise a loan on the security of the infant's estate the lender of the money is entitled to trust that order, and he is not bound to inquire as to the expediency or necessity of the loan for the benefit of the infant's estate. If any fraud or underhand dealing is brought home to him that would be a different matter; but, apart from any charge of that kind, he is entitled to rest upon the order: 5 Cal. 363 and 11 Cal. 379 (P.C.), *Foll.*; A.I.R. 1922 Mad. 135, *Expl.*; 6 M.I.A. 393 (P.C.), *Ref.*

The view that the order of the District Judge affects no more than the question of *onus* of proof is not acceptable. (*Das and Allanson, JJ.*). MAHABIR DAS v. JAMUNA PRASAD. **112 I.C. 438=8 Pat. 48=9 P.L.T. 553= A. I. R. 1928 Pat. 543.**

—S. 29—Loans.

———*Minor's marriage.*

Where guardian is not required by the conditions of her appointment to take the leave of the Court for arranging a marriage of her ward and she celebrates the marriage and incurs a loan by charging the minor's property, she is entitled to have permission of the Court for arranging to re-pay the loan. (*Campbell, J.*). MT. NIHALI BAI v. THE CROWN. **97 I.C. 823=27 P.L.R. 292=A.I.R. 1926 Lah. 438.**

—S. 29—Loans in personal capacity.

———When certain items of consideration for a mortgage by the guardian of a minor with sanction of the Court under S. 29 represented loans previously advanced to the guardian on his own responsibility, but the Court sanctioned the mortgage with full knowledge of that fact, the mortgage is valid even as regards those items (*Venkatasubba Rao and Reilly, JJ.*). RAMAN v. TIRUGNANASAMBANDAM PILLAI. **99 I.C. 660=50 Mad. 217= 25 M.L.W. 25=A.I.R. 1927 Mad. 233= 51 M.L.J. 869.**

—S. 29—Mortgage and sale.

———*Power of private sale given to mortgagee—Validity.*

The permission to mortgage will not imply a permission to sell unless it is expressly conferred,

GUARDIANS AND WARDS ACT (1890), S. 29— Powers and duties of certificated guardian.

And even when permission to sell is expressly conferred it is enacted by S. 31 of the Act that the Court may in its discretion attach to the permission any reasonable condition such as that the sale shall not be complete without the sanction of the Court or such other conditions as are enumerated in Cl. (3) of that section. Absolute power of sale without the intervention of the Court conferred on the mortgagee is invalid and of no effect so far as it affects the shares of the minors whose guardian has been appointed under S. 29: 11 Cal. 379, *Foll.* (*DeSouza, A.J.C.*). ABDUL RAHIM v. ABDUL HUSSEIN. **106 I.C. 872= 22 S.L.R. 243=A.I.R. 1928 Sind 101.**

———There is no distinction of principle between a sale and a mortgage as to the granting of sanction. (*Venkatasubba Rao and Reilly, JJ.*). RAMAN v. TIRUGNANASAMBANDAM. **99 I.C. 660= 50 Mad. 217=25 M.L.W. 25= A.I.R. 1927 Mad. 233=51 M.L J. 869.**

—S. 29—Order of sanction.

———*Validity.*

Even where the Judge sanctioning an alienation does not recite the necessity specifically in his order of sanction, if the record shows that the affidavits or the petitions before him set out the necessity clearly and the says "sanction granted" or words to this effect, it can be presumed that he adopted the necessities and reasons and the sanction is valid. (*Venkatasubba Rao and Reilly, JJ.*). RAMAN v. TIRUGNANASAMBANDAM. **99 I.C. 660=50 Mad. 217=25 M.L.W. 25= A.I.R. 1927 Mad. 233=51 M.L.J. 869.**

—S. 29—Powers and duties of certificated guardian.

———*Speculative business—Starting of.*

The position of a certificated guardian is analogous to that of a trustee. The powers of a certificated guardian in respect of starting new and speculative business are not wider than those of a karta. He has no power to start an entirely new business of a risky character unless compelled by necessity and for protection and benefit of the family: A.I.R. 1922 P.C. 287 and 20 C.W.N. 500, *Rel. on.* (*Sulaiman and Boys, JJ.*). RAM DIN v. MANSA RAM. **1929 A. L. J. 1140=51 All. 1027= A.I.R. 1929 All. 890.**

———*Building houses.*

The defendant who held the appointment of a guardian during the minority of the plaintiff by the will of the latter's adopted mother built two houses on the plaintiff's land with money taken out of the minor's funds and the rest was borrowed on the security of this very property. The plaintiff on attaining majority brought the suit against the defendant praying for a decree for settlement of accounts and possession of the land after demolition of the house. The trial Court while partly decreeing the plaintiff's suit ordered that the defendant should remain in possession of the houses and the site on which they stand for a period of 45 years and that he should pay a certain ground rent to the plaintiff,

Held, that the order of the trial Court which practically amounts to an enforced sale of the plaintiff's land to the defendant on the latter's paying to the former a small premium, is not equitable and therefore cannot stand. (*Broadway and Agha Haidar, JJ.*). THAKAR DAS v. NARAIN. **109 I.C. 165=9 L. L. J. 488= 29 P. L. R. 46=A.I.R. 1928 Lah. 90.**

GUARDIANS AND WARDS ACT (1890), S. 29—Rights of alienee.

—S. 29—Rights of alienee.

———When an order of the Court has been made authorizing the guardian of an infant to raise a loan on the security of the infant's estate, the lender of the money is entitled to trust to that order, and he is not bound to enquire as to the expediency or necessity of the loan for the benefit of the infant's estate, and where an alienation has been made with the sanction of the Court, the alienee can rely upon it and the alienation must be upheld unless the alienee has been a party to a fraud or collusion or has been guilty of any underhand dealing: 11 Cal. 379 (P.C.), *Foll.*; 5 Cal. 363, *Expl.*; A.I.R. 1922 Mad. 135, *Diss. from.* (*Venkatasubba Rao and Reilly, JJ.*). RAMAN *v.* TIRUGNANASAMBANDAM. **99 I.C. 660=50 Mad. 217=25 M.L.W. 25=A.I.R. 1927 Mad. 233=51 M. L. J. 869.**

—S. 29—Transfer, what is.

———*Surrender of ex-proprietary holding—Sanction of Court.*

As an ex-proprietary tenant cannot transfer his ex-proprietary holding, the surrender by him of such holding is not a transfer within the meaning of S. 29 of the Guardians and Wards Act, so as to require the previous permission of the District Judge by a guardian to surrender such a holding of his ward. (*Iqbal Ahmad, J.*). BALWANT SINGH *v.* HARDEEN. **101 I. C. 804=8 L.R.A. Rev. 158=A.I.R. 1927 All. 546.**

—S. 30—Alienation in contravention.

———Alienation of the property of a minor by his guardian in contravention of the directions contained in the order of the Court sanctioning the alienation is not protected by the sanction. (*Mukerjee, J.*). MANGAL KURMI *v.* SHEO SARAN. **98 I.C. 500 (All.).**

———Mortgage in contravention of order of district Judge is voidable by minor. Minor is not also affected by a decree on the mortgage against him with a guardian whose interest is adverse. Sanction for usufructuary mortgage does not include one for simple mortgage. (*Daniels and Dalal, JJ.*). CHIRANJI LAL *v.* SAYED ILIAS ALI. **79 I.C. 556=46 All. 620=22 A.L.J. 493=5 L.R.A. Civ. 360=A.I.R. 1924 All. 751.**

—S. 30—Alienation without sanction.

———Where a person purchased property from a guardian but it appeared that the sanction of the Court had not been obtained and the guardian effected a second sale in favour of another person who sued to recover possession,

Held, that the Court could grant a decree conditional on the purchaser reimbursing the prior purchase as regards the monies he had paid under the sale for the minor's benefit. (*S. K. Ghose, J.*). NAGENDRANATH GHOSE *v.* MOHINI MOHAN BOSE. **34 C.W.N. 948.**

———Minor's property was mortgaged by certificated guardian but without permission from District Judge and was subsequently sold with such permission. The vendees undertook to pay the mortgage but did not pay it. In a suit by mortgagee,

Held, that the vendees were not estopped from challenging validity of the mortgage but as representatives-in-interest of the minor, could only be permitted to get rid of the liability created by the mortgage on condition of making restitution to the extent to which the minor was benefitted by the mortgage money: 8 A. L. J. 754, *Rel. on.* (*Ashworth and Iqbal Ahmad, JJ.*). MAKSUD ALI KHAN *v.* SHEIKH ABDULLAH KHAN. **108 I.C. 728=50 All. 218=25 A.L.J. 1017=A.I.R. 1928 All. 77.**

GUARDIANS AND WARDS ACT (1890), S. 30—Contract without authority.

———A sale without the sanction of the Court by the certificated guardian is not void *in toto* but is only voidable, and if the minor has been benefitted, he cannot avoid the sale without restoring the benefit to the purchasers. (*Mukerjee, J.*). MANGAL KURMI *v.* SHEO SARAN. **98 I C. 500 (All.),**

———Vendee from guardian of a minor, under a sale for which the guardian had not obtained Court's permission obtains a good title to the property till the sale is set aside at the instance of the minor. (*Macleod, C. J. and Coyajee, J.*). NARASINGACHARYA GOPALACHARYA SHURPATI *v.* TULSABAI RAMBHAT DANDAVATI. **87 I.C. 712=27 Bom. L.R. 433=A.I.R. 1925 Bom. 320.**

———It is not open to any person dealing with a certificated guardian to support an unauthorized sale of a minor's property by calling in aid the personal law of the minor. An unauthorised sale by guardian appointed under Act XL of 1858, would be voidable and not void if made after the repeal of that Act. (*Rankin and B.B. Ghose, JJ.*). DAS RAM CHOWDHURY *v.* TIRTHA NATH DAS. **81 I.C. 522=51 Cal. 101=A.I.R. 1924 Cal. 481.**

———A disposal of immovable property by a guardian in contravention of Ss. 28, 29 is voidable at the instance of a tenant also who holds it from guardian. (*Mears, C.J., Walsh and Banerji, JJ.*). JITAN TAMBOLI v. NAMCO. **A.I.R. 1922 All. 45 (F.B.).**

—S. 30—Appeal.

———An appeal does not lie from an order passed under S. 30 of the Act. (*Piggott and Walsh, JJ.*). LACHMI PRASAD v. BALDEO DUBE. **87 I.C. 251=44 All. 458=20 A.L.J. 390=A.I.R. 1923 All. 14.**

—S. 30—Contents of sanction order.

———The object of the legislature was to guarantee an enquiry by the Judge and a determination by him to his own satisfaction that the alienation sanctioned was necessary or advantageous. But where there was no enquiry the order was not a nullity. The legislature contemplated an enquiry by the District Judge into the nature of the proposed transaction before he sanctioned an alienation by a guardian of the estate of his ward. But it does not follow that if sanction has been granted by the District Judge without enquiry, his act is without jurisdiction and that the transaction is invalid. The effect of such omission cannot be more far-reaching in its destructive operation than an alienation by the guardian without the requisite sanction. In that event, S. 30 provides that the alienation is not void but voidable, and in order to avoid it, the plaintiff must face the fundamental question whether the transaction was for his benefit. (*Mookerjee and Rankin, JJ.*). PRAHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDHURY. **81 I.C. 630=38 C.L J. 213=A.I.R. 1924 Cal. 420.**

—S. 30—Contract without authority.

———*Voidable and not void—Refund of benefit.*

A contract entered into by a certificated guardian without authority is not void but only voidable and the party rescinding the contract must, if he has received any benefit thereunder from the other party to the contract restore such benefits so far as may be : 42 Mad. 96 and A. I. R. 1928 Lah. 250, *Ref.* (*Sulaiman and Boys, JJ.*). RAM DIN *v.* MANSA RAM. **1929 A.L.J. 1140=51 All. 1027=A.I.R. 1929 All. 890.**

GUARDIANS AND WARDS ACT (1890), S. 30—Contravention, what is.

—S. 30—Contravention, what is.

——If the guardian of the minor sold less than what he was authorized to sell that cannot be held to constitute contravention of the permission in any sense of the word. The further fact that the sale deed represents the share transferred thereby as constituted of the plots of land mentioned at the foot of the sale-deed is equally not a contravention of the permission, though the permission may not refer specifically to those plots, provided the plots specifically mentioned in the sale-deed exactly represent, both in quality and quantity, the fractional share purported to be sold. (*Wazir Hasan, Ashworth and Simpson, A.J.Cs.*). RAGHUNATH SINGH *v.* DHONDHI SINGH.

95 I.C. 680=2 O.W.N. 796=A. I. R. 1926 Oudh 169 (F.B.).

—S. 30—Duties of transferee.

——*Compliance with terms of sanction.*

When a minor's certificated guardian transfers the minor's property with the sanction of the District Judge the person intending to take the property must see that the terms imposed upon the transfer by the District Judge are complied with. It is not open to him to say that the conditions were impossible of compliance and therefore he took the minor's property without complying with them. (*Kanhaiya Lal and Mukherji, JJ.*). KISHORI RAMANJI *v.* DULEY RAM. **78 I.C. 226=22 A.L.J. 155=5 L.R.A. Civ. 77=A.I.R. 1924 All. 474.**

—S. 30—Pardanashin lady guardian.

——Once a sale is proved to have been effected by a certificated guardian without the permission of the District Judge it becomes voidable without any enquiry as to whether the terms of the transfer were favourable to the minors or not. Where the sale by itself was in favour of the manager of the property of minors, whose guardian was a pardanashin woman and where there was no permission for sale of the property in favour of the manager,

Held, that the sale in his favour was voidable: 1 O. W. N. 775, *Foll.* (*Dalal and Wazir Hasan, A. J. Cs.*). MOHAN LAL *v.* MOHAMMAD ADIT. **89 I. C. 69=12 O.L.J. 453=2 O.W.N. 601=A.I.R. 1926 Oudh 88.**

—S. 30—Partner of firm as guardian.

——Where a managing partner of a firm is also appointed guardian of minor partners under the Act, his powers must be exercised in accordance with the provisions of the Act and therefore a mortgage of the minor's properties effected without the sanction of the District Judge can be invalidated at the instance of the minors or the person interested under S. 30. (*B. B. Ghose and Roy, JJ.*). SOLEMA BIBI *v.* HAFEZ MAHOMED. **104 I.C. 833=54 Cal. 687=A.I.R. 1927 Cal. 836.**

—S. 31—Alienation without sanction.

——Specific Relief Act, S. 27—Minor's property sold with Court's sanction—Guardian contracting to sell to third person before Court's sanction—Specific performance cannot be granted as against purchaser with Court's sanction. (*Newbould and B. B. Ghose, JJ.*). TARINI KUMAR DUTTA *v.* SIRISH CHANDRA DAS. **85 I.C. 667=A.I.R. 1925 Cal. 1160.**

——Once a sale is proved to have been effected by a certificated guardian without the permission of the District Judge it becomes voidable without any enquiry as to whether the terms of the transfer were favourable to the minors or not. Where the sale by itself was in favour of the manager of the property of minors, whose guardian was a pardanashin woman and where there was no permission for sale of the property in favour of the manager,

Held, that the sale in his favour was voidable: 1 O. W. N. 775, *Foll.* (*Dalal and Wazir Hasan, A. J. Cs.*). MOHAN LAL *v.* MOHAMED ADIT. **89 I.C. 69=12 O.L.J. 453=2 O.W.N 601=A.I.R. 1926 Oudh 88.**

GUARDIANS AND WARDS ACT (1890), S. 31—Draft of sale-deed.

—S. 31—Attacking sanction.

——On an application by a guardian to the District Judge for permission to sell the minor's property to pay off certain debt, the Judge passed an order simply granting permission to sell a portion of a property to detray a debt of Rs. 6,700. The guardian however effected a sale for Rs. 1,800 and the sale included some debts that were not binding on the minor,

Held, that the order did not conform to the mandatory provisions of S. 31 (2) of the Guardians and Wards Act and that the sale was not binding on the minor.

The sanction granted by a District Judge for the sale of a minor's property has no special sanctity in itself but can be attacked on the ground not only that it was given as a result of fraud but also that it was otherwise improper, and did not satisfy every requirement of S. 31, sub-S. (2) of the Guardians and Wards Act. (*Pullan, A.J.C.*). RAMADHIN SINGH *v.* RAM SUMER SINGH. **80 I. C. 679=27 O. C. 284=A. I. R. 1925 Oudh 237.**

—S. 31—Contents of order.

——*Substantial compliance.*

Section 31 (2) is not mandatory in the sense that there must be strict compliance with its terms.

Where an application under S. 31 by the guardian of a minor for sanction, stated why it was for the benefit of the minor, and the Court after inquiry granted the sanction without reciting the necessity or advantage,

Held, that there was substantial compliance with the requirements of the section: 11 C.L.J. 197, *Foll.* (*Dalip Singh, J.*). INDAR SINGH *v.* PEARA SINGH. **103 I. C. 698=A. I. R. 1927 Lah. 666.**

——Under S. 31 of the Guardians and Wards Act the order granting permission to sell shall recite the necessity and describe the property with respect to which the act permitted is to be done, and this order shall be recorded, dated and signed by the Judge of the Court with his own hand. "Approved" with the initials of the District Judge on a draft of a sale-deed does not amount to a permission for sale of ward's property by the guardian. (*Dalal and Wazir Hasan, A.J.Cs.*). MOHAN LAL *v.* MOHAMMAD ADIL. **89 I. C. 69=12 O. L. J. 453=2 O. W. N. 601=A. I. R. 1926 Oudh 88.**

——The mere omission to recite the necessity in the order is no more than an irregularity and it does not render the sanction altogether illegal: 11 C. L. J. 197, *Foll.* (*Daniels and Neave, JJ.*). BUDDHOO ALIAS GULAB DAS *v.* SHEO CHARAN. **82 I.C. 328=22 A.L.J. 851=5 L.R.A. Civ. 726=47 All. 8=A.I.R. 1924 All. 875.**

—S. 31—Draft of sale-deed.

——*Submission to Court for approval.*

The order of permission to sell was as follows:

"Permission to sell is granted. Draft of sale-deed will be filed for approval of the Court."

GUARDIANS AND WARDS ACT (1890), S. 31—Duty of Court.

Held. (Per *Ashworth* and *Simpson*, *A. J. Cs.*, *Wazir Hasan*, *A. J. C.*, *dissenting*.) The condition was a condition precedent. The failure to submit the draft to the Judge renders the sale invalid.

Per *Wazir Hasan*, *A. J. C.*—The further act contemplated by the Court to be done was not the granting of a second sanction after the approval of the draft but was merely to see and be satisfied that the draft did not contravene any of the two conditions stated in the permission. If the sale fully complied with the terms of the permission the fact that no draft was produced before the Judge for approval is wholly immaterial. (*Wazir Hasan*, *Ashworth and Simpson*, *A. J. Cs.*). RAGHUNATH SINGH *v.* DHONDHE SINGH. **95 I.C. 680= 2 O.W.N. 796=A.I.R. 1926 Oudh 169 (F.B.).**

—S. 31—Duty of Court.

———It is the duty of the Court to which an application is made under S. 29 of the Act for sanction of the sale of a minor's property, to satisfy itself by enquiry that the transaction is necessary and is for the minor's benefit and a creditor is entitled to rely on an order of sanction as evidence that the Court has satisfied itself on this point and that the transaction is a proper one: A.I.R. 1922 Mad. 135, *Rel. on*; 11 Cal. 379, *Foll.* (*Daniels and Neave*, *JJ.*), BUDDHOO (ALIAS) GULAB DAS *v.* SHEO CHARAN. **82 I.C. 328=22 A.L.J. 851=5 L.R.A. Civ. 726= 47 All. 8=A.I.R. 1924 All. 875.**

—S. 31—Effect of sanction.

———A vendee from the guardian of a minor is entitled to rely on the Court's sanction absolutely and is not bound to inquire into the benefit or necessity of the transaction: 11 Cal. 379, *Foll.* (*Dalip Singh*, *J.*). INDAR SINGH *v.* PEARA SINGH. **103 I.C. 698=A.I.R. 1927 Lah. 665.**

—S. 31—Facts to be considered.

———All that the District Judge has to consider in an application by the certificated guardian for sale of the minor's property is, whether such a sale is necessary or is for the evident advantage of the ward. While granting permission the District Judge should mention that the transaction may take place at a certain figure, the certificated guardian, however, should not be directed to sell to a certain party; the sanction under S. 31 is therefore complete authority to the certificated guardian to sell to any person he likes who is willing to comply with the terms upon which permission to sell is accorded by the District Judge. (*Das and Fazl Ali*, *JJ.*). GOBARDHAN LAL *v.* SHEO NARAYAN. **117 I.C. 161=8 Pat. 226= A.I.R. 1929 Pat. 202.**

———*Grant.*

In granting permission to the guardian to transfer any property of the minor, it is the duty of the Court to see that the transaction confers the highest benefit to the minor. If on account of the competition between the purchasers, the minor gets a higher value for the property which was intended to be sold it is not the business of the Judge to enquire into the motive which led the rival purchasers to offer higher bids. It is to the advantage of the minor that there should be competition. For the sake of convenience and for the purpose of finding a purchaser who would offer the highest value for the property, Court may direct issue of proclamation of sale and direct the Nazir to sell the property. If the Judge makes an order on the representation of a statutory guardian for sale of the property of his ward for the value suggested by the guardian, he may withdraw that order if it is brought to his notice that a higher value can be obtained for the minor's property than the value for which the guardian was going to sell it. It may not be due to the guardian's improvidence; it may be due to his inability to find proper purchasers with his best endeavours to do so, that he may suggest a lower value. (*Newbould and B.B. Ghose*, *JJ.*). TARINI KUMAR DUTTA *v.* SIRISH CHANDRA DAS. **85 I.C. 667=A.I.R. 1925 Cal. 1160.**

—S. 31—Fraud.

———The sanction of the District Court to an alienation by the guardian of a minor must recite the necessity for the alienation in compliance with S. 31 (2). The sanction given by Courts is only *prima facie* evidence that the sanction is a good one and it is open to the minor to show at any future time that the alienation was fraudulent and invalid and is not binding on him. The sanction of the Court merely shifts the burden on to the plaintiff to show that the alienation was not for necessity and does not bind him. (*Spencer and Ramesam*, *JJ.*). NALLAKA VENKATASWAMI *v.* RUGAM VIRANNA. **65 I.C. 964=45 Mad. 429= 15 M.L.W. 373=1922 M.W.N. 357=31 M.L.T. 484= A.I.R. 1922 Mad. 135=42 M.L.J. 333.**

—S. 31—Fraudulent Act.

———*Leaving no margin of time for the Judge to enquire.*

Fraud is infinite in variety: sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring: it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court. Fraud is an extrinsic collateral act, which vitiates the most solemn proceedings of Courts of justice. Where no margin of time was left for the Judge under S. 31 (2) of the Guardians and Wards Act which might be utilized in making any inquiry into the nature of the proposed sale and its effect on the interests of the minors:

Held, that such deliberate inaction on the part of manager of minor's property with the object of gaining an unfair advantage was an act calculated to deceive and therefore fraudulent: *Reddaway* v. *Banham*, (1896) A. C. 199, *Foll.* (*Dalal and Wazir Hasan*, *A.J.Cs.*). MOHAN LAL *v.* MOHAMMAD ADIL. **89 I.C. 69=12 O.L.J. 463= 2 O.W.N. 601=A. I. R. 1926 Oudh 88.**

—S. 31—Marriage expenses.

———An order fixing the amount of marriage expenses of a ward is apparently under S. 31 (3) (*d*) and so not appealable. (*Walsh and Kanhaiya Lal*, *JJ.*). MT. DURGABAI, *In the matter of*. **92 I.C. 482=48 All. 300=24 A.L.J. 310= A.I.R. 1926 All. 301.**

—S. 31—Non-compliance.

———Non-compliance with the provisions of para. 2 to S. 31 has not the effect of rendering the order of the District Judge null and void; but it is only an irregularity: 11 C.L.J. 197, *Rel. on.* (*Das and Allanson*, *JJ.*). MAHABIR DAS *v.* JAMUNA PRASAD. **112 I. C. 438=8 Pat. 43=9 P.L.T. 553= A.I.R. 1928 Pat. 543.**

—S. 31—Order without enquiry.

———Where a Judge in a case in which an enquiry is necessary allows through his remissness a transaction to take place to the detriment of the minor the sanction which he has given is not a bar to a re-opening of the transaction. But apart from the

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fact that the law itself does not order an inquiry, absence of inquiry would not vitiate the transaction if the Judge has been able to conclude a good bargain. (*Stuart, C. J. and Raza, J.*). SAJID HUSSAIN *v.* ABDUL RAHIM. 115 I. C. 273= A.I.R. 1929 Oudh 354.

——Under S. 31 permission to the guardian to sell property shall not be granted by Court except in case of necessity, or for an evident advantage to the ward. This provision of law indicates that the Judge obtains jurisdiction to sanction the sale only when he makes a proper inquiry as to the necessity and advantage of the sale. The want of such an inquiry without which the Judge is prohibited from granting permission to sell property, amounts to a want of jurisdiction in the Judge to proceed with the matter and his order is in consequence a nullity. (*Dalal and Wazir Hasan, A. J. Cs.*). MOHAN LAL *v.* MAHAMMAD ADIT. 89 I. C. 69= 12 O. L. J. 453=2 O. W. N. 601= A. I. R. 1926 Oudh 88.

—S. 31—Procedure.

——The violation of the procedure prescribed by S. 31 (2) for recording the order granting the permission cannot be made the ground of brushing aside the finality of the order as enacted by S. 48. The only condition in which the finality prescribed by S. 48 can be avoided is to establish that the order granting the permission was a nullity.

An order passed by a Court in violation of such rules of procedure, however mandatory, as relate merely to the form of the order cannot be treated as a nullity. The omission to follow such rules of procedure can amount to no more than a mere irregularity or a material irregularity in the circumstances of a particular case. On the other hand, an order passed by a Court in violation of such rules of procedure, the observance of which only invests the Court with jurisdiction to pass the order, is a nullity : 25 Bom. 337 (P.C.) and 42 Cal. 72 (P.C.), *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). RAMESHWAR BAKSH SINGH *v.* MT. RIDH KUER. 87 I.C. 238= A.I.R. 1925 Oudh 633.

—S. 31—Subsequent sanction.

——*Effect.*

A certificated guardian can enter into a contract with an intending purchaser, but such a contract is subject to sanction being accorded to the proposed transaction and that, when the sanction has been accorded, the contract becomes a completed contract by virtue of that sanction. After the sanction is actually accorded, it is not necessary for the certificated guardian to solemnly enter upon another contract with the proposed purchaser: A.I.R. 1924 Pat. 81 and 29 All. 213, *Expl.* and *Dist.* (*Das and Fazl Ali, JJ.*). GOBARDHAN LAL *v.* SHEO NARAYAN SAHU. 117 I.C. 161=8 Pat. 226= A.I.R. 1929 Pat. 202.

—S. 33—Applicability.

——*Institution of suit on minor's behalf.*

Where there was a dispute between the sons and a minor daughter of a deceased Mahomedan regarding the division of property and where the minor daughter's guardian in the Court of the District Judge, with the consent of the District Judge, entered into certain arbitration proceedings in order to settle the disputes, and where an award was passed, but in the meantime the girl was married and the husband who was appointed guardian of his wife presented a petition to the District Judge asking for the Court's permission to institute a suit on behalf of his wife for the purpose of having the award and the decree which had been passed, set aside on the ground of fraud and collusion but it was dismissed ;

Held, that the order dismissing the application was not one under S. 43, and was not appealable, but was one apparently in proceeding taken under S. 33, and that it must be taken that the Court was of opinion that the suit which the guardian proposed to file was a suit which should not be brought and so the order would not prevent the guardian from bringing the suit, if he was so advised but in bringing the suit he would act at his own risk and would not be entitled to the indemnity which was conferred upon guardians acting with advice of the Court under sub-S. 3. S. 33. (*Lindsay and Ashworth, JJ.*). MT. TASKIN FATMA *v.* MD. MUNIM BAKSH. 109 I.C. 56=50 All. 535=26 A.L.J. 290= A.I.R. 1928 All. 259.

—S. 34—Accounts.

——The whole tenor of the Guardian and Wards Act shows that the District Judge has jurisdiction to examine the accounts ; and, if that is so, it is clearly within the jurisdiction of the District Judge to call upon the guardian to pay into Court any sum that he may find due upon a true account of the affairs of the minor : A. I. R. 1924 All. 593 and A. I. R. 1925 Pat. 477, *Foll.*; 25 C. L. J. 149 and A. I. R. 1926 Mad. 478, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). MD. FARID-UDDIN AHMAD *v.* AHMAD ABDUL WAHAB. 107 I.C. 152= 7 Pat. 144=9 P.L.T. 383=A. I. R. 1928 Pat. 255.

—S. 34—Appeal and revision.

——An order under S. 34 (*d*) which is final under S. 48 directing the guardian of a ward to pay a certain sum of money as balance due from him is not appealable, but it would be open to examination by the High Court on the revision side. (*Broadway, J.*). RAM JAS *v.* CHANI. 79 I.C. 178= 4 L. L. J. 272=A. I. R. 1923 Lah. 89.

—S. 34—Attachment of guardian's property.

——The Court has no power to attach the property of the guardian or his surety for the purpose of realising the balance. Section 35 of the Act provides the remedy for the realisation of the amount due from the guardian. Ample powers are also given under S. 45 of the Act to the District Judge. (*Abdul Raoof, J.*). RADHAKISHAN *v.* KHUSI RAM. 77 I.C. 478=A.I.R. 1923 Lah. 506.

—S. 34—Auditing of accounts.

——Section 43 read with S. 34 of the Act impliedly provides for expenditure over getting the accounts audited by the Examiner of Local Accounts and the new enactment S. 34-A added by Act 17 of 1929 has been made, with the object of making express provision in that regard. (*Macpherson and Fazl Ali, JJ.*). MT. LAKHANDEI KUER, *In re.* 11 P.L.T. 349= A. I. R. 1930 Pat. 384.

—S. 34—Balance due.

——*H* was appointed the guardian of property of certain minors in an appeal and was ordered to put in accounts, *M* being appointed commissioner to check them. Later on *K*, guardian of person of minor applied for removal of *H*. After the report was put in by *M* the Court passed an order removing *H*, holding that he was liable to pay a certain sum to the minors and directing *H* to deposit the amount in the Court,

Held, that the order directing *H* to pay the balance due could not be held as part of the order removing *H* from guardianship. The words "balance due" in S. 34 (d) meant the balance

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shown by the guardian to be due from him in the accounts and the Courts had no jurisdiction to pass an order directing payment: 21 C. W. N. 688, *Foll.*; A.I.R. 1924 All. 593 and A.I.R. 1926 Mad. 478, *Disc.* (*Dalip Singh, J.*). HUKIM RAY *v* MT. KHANDI BAI. **122 I.C. 107=31 P.L.R. 453= A. I. R. 1930 Lah. 420.**

———There is nothing in S. 34 to warrant the suggestion that the expression "balance due from him on those accounts" is necessarily intended to empower the Court to compel the guardian to pay into the Court, not the sum which he admits to be due at the foot of the account exhibited by him, but the sum which the Court finds on an enquiry held by it to be due. (*Rupchand and Barlee, A.J.Cs.*). HOONDOMAL CHHADALDAS CHUGH *v.* NAZIR, J.C.'S COURT, SIND. **121 I.C. 168= A.I.R. 1930 Sind 43.**

—S. 34—Death of ward.

———The words "any cause" in S. 41 (3), Guardians and Wards Act are not restricted to the causes mentioned in sub-Ss. (1) and (2) of S. 41.

Just as the death of the guardian puts an end to his guardianship, so does the death of the ward himself. The death of the ward does not put an end to the jurisdiction of the Court over the guardian, and the property can be recovered from the latter without having recourse to a regular suit: (1918) M.W.N. 440; A.I.R. 1925 Sind 269 and 33 Bom. 419, *Foll.*; 42 All. 1, *Not foll.* (*Shadi Lal, C.J. and Broadway, J.*). SHIV CHARAN LAL *v.* BHAWANI SHANKER. **110 I.C. 776= 10 Lah. 127=30 P. L. R. 680= A.I.R. 1928 Lah. 495.**

—S. 34—Failure to furnish security.

———Where a person is appointed as guardian of the person or property of a minor under the Guardians and Wards Act on condition of his furnishing security, and fails to furnish the security, there is no appointment of a guardian within the meaning of S. 3 of the Majority Act and such minor becomes major when he completes his 18th year. Such a conditional order is invalid under the Act.

Per *Sadasiva Ayyar, J.*—30 M. L. J. 508, *Foll.*; 40 Mad. 775, *Overruled.* (*Coutts-Trotter, C. J., Krishnan and Beasley, JJ.*). NATHA VENKATESA PERUMAL, *In re.* **99 I.C. 213= 49 Mad. 809=24 M.L.W. 707= A.I.R. 1927 Mad. 36=51 M.L.J. 726 (F.B.).**

—S. 34—Interpretation.

———"Account" used in connection with S. 34 (*c*) and (*d*) must mean a just and true account. Where the amount is a liquidated sum and clearly earmarked for a purpose the Court can amend the accounts by striking out the objectionable amount or it may reject the account on the ground that it is an untrue account of the guardian's liability and direct the guardian to submit a fresh account within limited time. But it is the duty of the Court to decide what is the balance due and the guardian's version is not final: 21 C.W.N. 688, *Dist.* (*Walsh, Ag. C.J. and Neave, J.*). SITA RAM *v.* MT. GOVINDI. **80 I.C. 592=46 All. 458= 22 A.L.J. 585=A.I.R. 1924 All. 593.**

—S. 34—Procedure.

———The procedure laid down in S. 145, C.P. Code is not applicable to the case of a surety under the Guardians and Wards Act. Section 145 deals with something more than a mere mode of trial in a pending proceeding, and confers a substantive right of making a person, who is not a party to a pending suit to be made party to it and to be

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amenable to the jurisdiction of the Court in execution proceedings. It cannot be therefore extended to apply to enforcement of surety bonds given in favour of the Court in proceedings other than suits. (*Kennedy, J C. and Rupchand Bilaram, A.J.C.*). KHUSHIRAM TEJBHANDAS *v.* JHALIBAI. **89 I.C. 342=19 S.L.R. 390=A.I.R. 1926 Sind 35.**

—S. 34—Re-payment.

———Clause (*d*) does not empower the Court to direct the guardian to pay into Court more than the amount shown to be due in the accounts exhibited by him. What is contemplated is not a decision of substantive rights of the parties. The words "on those accounts" point to the same conclusion. 67 I C. 309, *Dis.* 25 C L.J. 149, *Foll.* The juxtaposition of three Ss. 34, 35 and 36 seems to indicate that when the measure of the guardian's liability is put in issue, the proper course seems to apply to the Court under S. 35 or S. 36 and then file a regular suit against the guardian: A.I.R. 1924 All. 593, *Diss.* An order against a guardian regarding liability not admitted by him may be treated as one under S. 43 and treated as appealable.

Where the guardian mixed his ward's moneys with his own but the moneys had throughout not been lent out on interest,

Held, direction to pay 12 per cent. simple and not compound interest will meet the ends of justice. (*Venkatasubba Rao and Madhavan Nair, JJ.*). HARI KRISHNA CHETTIAR *v.* GOVINDARAJULU NAICKER. **98 I.C. 332=23 M.L.W. 420= 1926 M.W.N. 359=A.I.R. 1926 Mad. 478= 50 M.L.J. 273.**

—S. 34—Scope.

———An order appointing a person guardian of the property of a minor, conditional on his furnishing security, is not void *ab initio*. Section 7 of the Act, which empowers the Court to make an order appointing a guardian of the person or property of the minor is comprehensive in its terms and does not lay down, expressly or by necessary implication, that the Court cannot impose a condition of this kind, in cases where it thinks fit to do so.

Section 34 (a) is not exhaustive as to the powers of the Court to demand security. It obviously confers on the Court powers which are additional and not exclusive. It deals with the obligations of a guardian of property, who has already been appointed as such, and empowers the Court to require him to furnish security if and when, subsequent to his appointment, it becomes necessary to do so. It does not in any manner control or qualify S. 7 under which the Court has full power to make the appointment on such terms and subject to such conditions as it, in its discretion, considers conducive to the welfare of the minor: 30 M.L.J. 508, *Disc.*; 40 Mad. 775, *Foll.*: A.I.R. 1927 Mad. 36 (F.B.), *Diss. from*; 24 I.C. 202, *Ref.* (*Shadi Lal, C.J., Broadway and Tek Chand, JJ.*). SHAM DAS *v.* UMER DIN. **A.I.R. 1930 Lah. 497 (F.B.).**

———*Orders under, should relate to cash in hand only.*

It is only that cash which the guardian would have had, if he had followed the Court's directions as regards investment, that the Court can under S. 34 compel him to produce. It is immaterial whether the guardian invests in approved securities as per Court's order or in unapproved securities in contravention of Court's order. (*Wallace and Madhavan Nair, JJ.*). RAMANJULU REDDY *v.* RANGIAH REDDIAR. **94 I. C. 79= A.I.R. 1926 Mad. 825.**

GUARDIANS AND WARDS ACT (1890), S. 34—Scrutiny of guradian's account.

—S. 34—Scrutiny of guardian's acount.

——An application by a minor after attaining majority for scrutiny of the accounts submitted by the discharged guardian does not lie under S. 34, Guardians and Wards Act: A.I.R. 1926 Mad. 977, *Foll.*; 5 C.W.N. 207 and A.I.R. 1924 All. 593, *Not foll.*; 16 M.L.J. 285 and A.I.R. 1926 Mad. 478, *Ref.* (*Odgers, J.*). TIRUVENGADDATHA AIYANGAR *v.* TIRUVENGADATHAR AIYANGAR. **100 I.C. 600=38 M. L. T. 115=26 M. L. W. 44=A.I.R. 1927 Mad. 1136.**

—S. 35—Applicability.

——Section 35 is perfectly general and can apply to a case where the ward was a minor or to a case where the ward has ceased to be a minor. The section is intended to cover both the cases. There is nothing in S. 35 making it inapplicable to the case of a ward attaining majority and applying for an assigument of the bond: 42 Mad. 302 and A.I.R. 1926 Mad. 977, *Diss. from.* (*Ramesam and Jackson, JJ.*). GOPALAKRISHNASWAMI *v.* SRINIVASA. **109 I. C. 894=51 Mad. 683=28 M.L.W. 71=1928 M.W.N. 423=A.I.R. 1928 Mad. 545=54 M.L.J. 671.**

—S. 35—Discretion of Court.

——The words "as trustee for the ward" in S. 35 do not prevent the Court's ordering an assignment in favour of the transferee of a ward who has attained majority. The exercise of the jurisdiction to assign is undoubtedly discretionary: 30 Bom. 164, *Ref.* (*Panckridge, J.*). PREOTAMA DEVI *v.* CHANDRA KUMAR GHOSH.

A. I. R. 1930 Cal. 594.

—S. 35—Duty of Court.

——*Separate suit, directing ward to institute.*

If, on a perusal of the accounts, a Court has reason to think that at least in respect of some moneys received in respect of the property of the ward they have not been duly accounted for; it is reasonable to hold that there is ground for being satisfied that the engagement has not been kept up, and though, to be satisfied that the engagement of the bond has not been kept up, the Court has to make some kind of *prima facie* enquiry, the ward should not be referred to a regular suit for the purpose of satisfying the Court that the engagement has not been kept up. (*Ramesam and Jackson, JJ.*). GOPAL KRISHNASWAMI *v.* SRINIVAS AYYANGAR. **109 I.C. 894=1928 M.W.N. 423=28 M.L.W. 71=51 Mad. 683=A. I. R. 1928 Mad. 545=54 M.L.J. 671.**

—S. 35—Suit.

——The remedies by suit contemplated by Ss. 35 and 36 are not inconsistent with the remedies provided for by S. 45. (*Walsh, Ag. C. J. and Neaves, J.*). SITARAM *v.* MT. GOVINDI. **80 I.C. 592=46 All. 458=22 A.L.J. 585=A.I.R. 1924 All. 593.**

—S. 37—Neglect.

——*Not taking steps to obtain possession of minor's property.*

A certificated guardian who has accepted the position of a trustee by virtue of an order passed by a Court of law will not be heard to say that he did not do his duty but let the properties remain under the management of somebody else. If he does not take any steps to reduce into possession the properties of the minor, then there is undoubtedly wilful default and neglect on his part and the Court will be entitled to pass a decree for account on the footing of wilful default and neglect, although such a case is not made out in the plaint. (*Das and Ross, JJ.*). SHAIKH ABDUR RAHIM *v.* MT. BARIRA. **61 I.C. 807=2 P.L.T. 556=6 P.L.J. 273=A.I.R. 1921 Pat. 166.**

GUARDIANS AND WARDS ACT (1890), S. 39—Grounds.

—S. 39—Appeal.

——*Order under S. 39—Order removing guardian under the section is alone appealable.*

With reference to an order under S. 39 of the Guardians and Wards Act, the only appeal permissible is one against an order removing a guardian under that section. (*Wazir Hasan, A. J. C.*). SURAJ NARAYAN SINGH *v.* BISHAMBHARNATH BHAN. **78 I.C. 138=A.I.R. 1925 Oudh 260.**

—S. 39—Applicability.

——*Testamentary guardian.*

The provisions of the Act apply to guardians appointed by Will and action can be taken in regard to them under Ss. 39, 41 (3) and 45, but before taking action under S. 45 the Court should make an enquiry in order to ascertain whether such guardians had any property of the minors in their possession and control which they were withholding and for which they were accountable. (*Shadi Lal, C. J. and Broadway, J.*). DAMODAR DAS *v.* MT. JATTI. **103 I.C. 470=8 Lah. 306=9 L. L. J. 231=28 P.L.R. 367=A.I.R. 1927 Lah. 344.**

—S. 39—Ex parte appointment.

——The proper remedy, in a case where the objector applies to revise a previous *ex parte* order appointing one guardian and makes certain allegations against the latter, is under S. 39: 20 C.L.J. 213, *Dist.* (*Suhrawardy and Graham, JJ.*). KAMINI MAYI DEBI *v.* BHUSAN CHANDRA GHOSE. **97 I.C. 692=44 C.L.J. 40=A.I.R. 1926 Cal. 1193.**

—S. 39—Failure to give security.

——One *S* was appointed guardian of the person and property of the three minors and in the same order he was directed to give ten thousand rupees security. This he never did and he intimated definitely that he could not do so. The District Judge thereupon passed an order, recited the fact that no security had been given and said that anybody who wished to be appointed guardian could now apply,

Held, that the order of District Judge is tantamount to an order of removal under S. 39, on the ground that the guardian had continuously failed to perform the duties of his trust and had contumaciously disregarded the order of the Court. (*Harrison, J.*). MT. KHUSAL DEVI *v.* SUKH DIAL. **71 I.C. 572=21 P. W.R. 1923=A.I.R. 1924 Lah. 313.**

—S. 39—Failure to keep accounts.

——It cannot be said that a failure to keep accounts of trust property is not a failure to perform a very important duty of the trust and the illiteracy which is a bar to the performance of such duty can be looked upon as an incapacity under S. 39. Though it may be usual for guardians to fail to keep account and a District Judge acting in the exercise of his discretion may pardon the fault, still he has discretion in the matter and he will only exercise it when there has been no breach of trust or no serious misconduct. (*Rupchand and Barlee, A.J.Cs.*). FAIAZ MAHOMED *v.* MAHOMED BACHAL. **117 I. C. 782=A.I.R. 1930 Sind 14.**

—S. 39—Grounds.

——*Successive applications on same grounds—Maintainability — Second marriage of guardian mother.*

The duly appointed guardian of the person of a minor is not to be called upon to resist successive

GUARDIANS AND WARDS ACT (1890), S. 39—Guardian outside jurisdiction.

applications for his or her removal based upon the same set of facts each time. There is however no question of *res judicata*. The fact that the second husband of the guardian mother comes to reside in the house where the minor and the guardian live is no ground for removal of the guardian. (*Piggott and Walsh, JJ.*). BHAGWAN DAS *v.* MANGALIA.
71 I.C. 416=45 All. 196=20 A.L.J. 959=A.I.R. 1922 All. 540.

—S. 39—Guardian outside jurisdiction.

——In view of S. 39 it is perhaps intended by the legislature that a Court will not appoint as guardian any one who resides outside its jurisdiction. (*Mukerji and Guha, JJ.*). SM. ASALATA ROY *v.* SOCIETY FOR P. C. I.
51 C.L.J. 272=A.I.R. 1930 Cal. 397.

——The Act does not say that the Court must remove a guardian who ceases to reside within the local limits of the jurisdiction of the Court and there is nothing in the act preventing the appointment of a person ordinarily residing outside the limits of the Court's jurisdiction as guardian: 36 All. 280, *Doubted*. (*Prideaux, A. J. C.*). MT. AHILYABAI *v.* MT. VITHABAI. **75 I.C. 595=A.I.R. 1925 Nag. 224.**

—S. 39—Incompetent guardian.

——*Custody of minors.*

If the guardian is incompetent or is otherwise an improper person to be allowed to continue as such, proper proceedings must be taken under S. 39 for his removal and the appointment of another guardian. But until this is done, it is the duty of the Court to render all assistance to the guardian in the discharge of his duties and to see that the minors remain in his custody. (*Tek Chand, J.*). AMIR KHAN *v.* TALEB MAHOMED. **100 I.C. 807=A.I.R. 1927 Lah. 266.**

—S. 39—Notice.

——Before removing a guardian, he should be given notice setting out for which of the causes mentioned in S. 39, it is proposed to remove him: 20 C. L. J. 291, *Rel. on.* (*Macnair, Offg. J. C.*). MT. YAMUNABAI *v.* DIST. JUDGE, CHHINDWARA. **116 I.C. 669=A.I.R. 1929 Nag. 176.**

—S. 39—Removal of guardian.

——*Duty of Court to provide for management of minor's estate.*

When the Court removes a person from guardianship it is its duty to pass the necessary orders for the adequate protection of the minor's estate, especially when it is in a bad state of management. (*Mukerji and Guha, JJ.*). KIRANSASI GHOSE *v.* PANCHANAN GHOSE. **34 C.W.N. 986.**

—S. 41—Appeal.

——No appeal lies from an order under S. 41 (3). (*Addison, J.*). MUHAMMAD AKBAR *v.* MT. HUSSEIN BIBI. **96 I. C. 173 (Lah.).**

—S. 41—Death of minor.

——*Disputed succession—Court* functus officio.

Though S. 41 might apply to cases of the death of a minor, still it is applicable only to simple cases where there can be no doubt whatever about the succession to the minor and about the items of property which belong to the minor or the accounts relating to the management of the estate. When, however, there is a dispute relating to succession, or the likelihood even of a dispute as to succession, the Court has no powers under the Guardians and Wards Act to seek to determine the succession to a deceased minor and thereupon make any orders for granting delivery of possession of property.

GUARDIANS AND WARDS ACT (1890), S. 41—Legal representative of guardian.

A Court acting under the Guardians and Wards Act is really *functus officio*, when the minor dies. Any disputes or rights with regard to the property of the minor should be litigated in the ordinary tribunals of the country: 1918 M. W. N. 440, *Doubted*. (*Srinivasa Ayyangar, J.*). TULASIDAS GOVINDJEE *v.* MADHAVADASS LALJI.
92 I. C. 570=22 M.L.W. 642=1926 M.W.N. 68=A. I. R. 1926 Mad. 148.

——After the death of a ward the person who had been a guardian does not continue to be guardian. Section 41 must be read so far as possible to give effect to what may be supposed to be the reasonable intentions of the Legislature. When a ward dies the Court should generally direct the guardian to deliver the property into Court or to deliver the property to some person producing an heirship certificate. In very rare cases the latter precaution might be dispensed with but in that case the Court should otherwise guarantee the interests of possible claimants. A list of contingencies on the happening of which the powers of the guardian cease is not necessarily exhaustive and even if it is exhaustive it is arguable that Cl. (c) applies. Order for accumulative and progressive fine is, if not without jurisdiction, yet, is inappropriate. The fine is not to be levied except in the case of recusancy which is something more than disobedience and if it is intended to use those powers, as a general rule, it is better to fix some date on which the guardian is to comply with the orders of the Court or demonstrate why he is unable to do so. (*Kennedy, J.C. and Percival, A.J.C.*). FATEHCHAND *v.* PARBATIBAI. **92 I. C. 196=18 S.L.R. 85=A.I.R. 1925 Sind 269.**

—S. 41—Delivery of possession.

——Until Court has passed an order for the removal of the guardian it has no power to call upon him to deliver the property in his possession.

The power of compelling the guardian to deliver possession of the property can only be exercised in the interest of the minor. These summary powers are meant for his protection. They cannot be invoked by a person claiming adversely to the minor. The remedy for such adverse claimants lies in a regular suit. (*Mittra, A.J.C.*). MT. SITABAI *v.* SHANKAR. **18 N.L.R. 184=A.I.R. 1922 Nag. 266.**

—S. 41—Investigation into accounts.

——When the Court orders a guardian under S. 41 (3) to deliver accounts and property in his possession, it can also direct an investigation into the acconnts: 5 C.W.N. 207, *Dist.* (*Waller, J.*). RAMA RAO *v.* RANGASWAMI RAO. **92 I.C. 98=A.I.R. 1926 Mad. 419.**

—S. 41—Legal representative of guardian.

——The very fact that this provision applies not only to the ex-guardian but to the legal representative of a deceased guardian makes it clear that the only obligation imposed on a guardian or the legal representative of a deceased guardian, as the case may be, is to hand over any such property as is in his possession or control and not such property as has disappeared or has passed out of his possession or control and likewise to hand over such accounts as are in his possession irrespective of such accounts being correct or not: A.I.R. 1924 All. 563, *Not appr.* (*Rupchand, A.J.C. and Barlee, Ag. A.J.C.*). HOONDAMAL CHHADALDAS CHUGH *v.* NAZIR, J. C.'S COURT, SIND. **121 I.C. 168=A.I.R. 1930 Sind 43.**

——A suit will lie against the guardian's son and a surety, to render account in the absence of an

GUARDIANS AND WARDS ACT (1890), S. 41—Liabilities on discharge.

order of discharge of the guardian. (*Martineau, J.*). JAGAT SINGH *v.* SUNDAR SINGH. **67 I.C. 935= 3 L. L.J. 364.**

—S. 41—Liabilities on discharge.

———Liabilities of even a discharged guardian do continue after his discharge as regards any fraud which may subsequently be discovered and an order for restoration of any property of the ward that remains in his possession can be executed in proceedings under the Guardians and Wards Act. (*Sulaiman and Daniels, JJ.*). MUHAMMAD ABDUL RALI *v.* KHODAIJA BIBI. **88 I.C. 165= 6 L.R.A. Civ. 455=23 A.L.J. 428= A. I. R. 1925 All. 457.**

—S. 41—Powers of Court.

———*Accounts.*

If the Court is satisfied on a perusal of the accounts submitted by the guardian at the time of his discharge and on hearing the parties, that the accounts are correct, it may make a declaration of his discharge, but it is not bound to do so, nor is it bound to certify that the accounts are correct. The minor may bring a separate suit for the purpose: 5 C.W.N. 207; 21 C.W.N. 688 and 29 C.L.J. 44, *Foll.*; A.I.R. 1924 All. 593, *Dissented from* and A. I. R. 1926 Mad. 419, *Not foll.* (*Phillips and Madhavan Nair, JJ.*). SUBBARAMI *v.* PATTABHIRAM. **97 I. C. 578=50 Mad. 80= 1926 M.W.N. 695=24 M. L. W. 523= A.I.R. 1926 Mad. 977=51 M.L.J. 249.**

—S. 43—Amount due by guardian.

———Legislature has neither expressly, nor impliedly given power to the Court to record a definite finding as to the exact amount due by the guardian as a result of an enquiry binding upon the guardian and to compel its payment; and if there is a definite finding by a Court as to the amount which the ex-guardian had to pay as the result of the enquiry, to that extent the finding is not warranted by the provisions of the Act and is without jurisdiction: 21 C.W.N. 688; A.I.R. 1926 Mad. 825 and A.I.R. 1926 Mad. 977, *Appr.*; A.I.R. 1925 Sind 269, *Ref.* (*Rupchand, A.J.C. and Barlee, Ag. J. C.*). HOONDOMAL CHHADALDAS CHUGH *v.* NAZIR, J. C.'S COURT, SIND. **121 I. C. 168=A.I.R. 1930 Sind 43.**

—S. 43—Contempt of Court.

———In the case of a minor, for whom a personal guardian has been appointed and who undertook not to marry the minor without the Court's permission, the marriage or connivance at marriage with the ward of the Court without the consent of the Court is contempt of the Court liable to be severely punished. These powers of the District Judge are, however, limited to the actual guardian in respect of whom the order is made and cannot be exercised against those indirectly committing the breach: 42 Cal. 351, *Rel. on*; 22 Bom. 509 and 22 Bom. L.R. 899, *Ref.* (*Madgavkar, J.*). BAI MANI *v.* BHAILAL CHUNILAL. **31 Bom. L. R. 1120= A. I. R. 1929 Bom. 417.**

—S. 43—Disobedience of orders.

———Clause 4 limits the exercise of powers mentioned therein to a disobedience of orders passed under Cls. 1 and 2. (*Rupchand Bilaram and Lobo, A.J.Cs.*). NARAINDAS AILDAS *v.* MT. JHALIBAI. **103 I.C. 493=A.I.R. 1927 Sind 262.**

—S. 43—Duty of Court.

———*State being guardian of minors the District Court must see that the minor is trained in the same manner as if he had been under his natural father or guardian.*

GUARDIANS AND WARDS ACT (1890), S. 43—Marriage of minor.

The state from the earliest times is supposed to be the guardian of the infants and the earliest regulations gave effect to this principle and made provisions for the custody of the minors and when the state assumes direct custody of the infant it undertakes to bring up the boy as his natural father or guardian would have done, that is in the traditions of the family to which after becoming major he has to revert. The state has made provisions for the care of infants by statutory provisions such as Court of Wards Act and the Guardians and Wards Act. The District Judge under the latter Act exercises the functions and becomes the protector and guardian of the infants by exercising the power to appoint guardians of the persons and properties of the infants. Therefore no Court should grudge the trouble and worry on assuming charge of the estate of the minor, that would necessarily occur so long as an infant has not attained majority. (*Jwala Prasad and Kulwant Sahay, JJ.*). MANMOHINI DASI *v.* HARI PRASAD BOSE. **81 I.C. 1045= 5 P.L.T. 415=2 P. L. R. 200= A.I.R. 1924 Pat. 755.**

—S. 43—Interpretation.

———" Regulating the conduct or proceedings of a guardian " cannot be interpreted as an order holding that prior to the date of such order guardian had caused loss to the estate which he should make good. A.I.R. 1926 Mad. 478, *Not Appr.* (*Rupchand, A. J. C. and Barlee, Ag. J. C.*). HOONDOMAL CHHADALDAS CHUGH *v.* NAZIR, J. C.'S COURT, SIND. **121 I.C. 168=A.I.R. 1930 Sind 43.**

—S. 43—Marriage of minor.

———*Appellate Court, powers of.*

One of the duties of a guardian of a minor girl is to provide a suitable bridegroom. Whatever he does in relation to that is either conduct or proceedings within the meaning of S. 43. Where a Court authorises the guardian to celebrate the marriage of the girl, his act is a regulation of conduct or proceeding on the part of the guardian. The appellate Court has therefore the right to hear appeal from such an order under the provisions of S. 47 (1) read with S. 43. (*Mears, C. J. and Sen, J.*). REOTI LAL *v.* SHIAM LAL. **121 I.C. 690= 1930 A.L.J. 152=52 All. 74= A.I.R. 1930 All. 66.**

———It is well settled that under its delegated powers from the Sovereign as *parens patriae* of infants it is competent for the Court to restrain by an injunction an unsuitable marriage of an infant whether he or she be a ward of Court or not and that this rule equally applies to Hindus and Mahomedans. Where the Court has not assumed superintendence of the person of an infant it is *prima facie* necessary that the Court should be moved to prevent such an unsuitable marriage. But different considerations apply where the Court has, as a matter of fact, assumed superintendence of the infant and in pursuance thereof has transferred its duties to a person of its own choice called the certificated guardian and has charged him with the custody of the infant on behalf of the Court. In that case it is incumbent upon the Court to take all necessary precautions to prevent the person so entrusted from doing any act which is likely to result in irremediable injury to the ward. And there can be no greater injury to an infant than that he or she should be tied down to an unsuitable partner in life. This is the more so in the

GUARDIANS AND WARDS ACT (1890), S. 43— Scope of power.

case of an infant whose law declares his marriage as indissoluble except by death. In England it is the uniform practice to require a guardian appointed by the Court to give a recognizance that the infant shall not marry without the leave of the Court. And in any case where there is the least suspicion that a marriage is likely to take place without the Court's sanction it issues an injunction not only to prevent such marriage but to prevent communication between the ward and the admirer and removes the infant from the custody of the guardian if he is suspected of connivance. There is no reason why the same rule should not prevail here. (*Rupchand Bilaram and De Souza, A. J. Cs.*). PREMJI KANJI *v.* JEEWIBAI. **108 I.C. 668=23 S.L.R. 75= A.I.R. 1928 Sind 129.**

—S. 43—Scope of power.

———*Guardian appointed or declared by Court.*

Under S. 43 (1) it is only the conduct or proceedings of a guardian *appointed or declared by Court* which can be called in question. When the minor was in the custody of a person who was not a guardian appointed by the Court, and thereafter a guardian was appointed the former cannot be called upon to deliver jewels on the person of the minor during the custody of the former person: 36 M.L.J. 189, *Dist.* (*Odgers, J.*). KUPPAMMAL *v.* MUNIAPPA CHETTI. **82 I.C.488=1924 M.W.N. 892= A. I. R. 1924 Mad. 902=47 M.L.J. 655**

—S. 45—Accounts.

———The Court has no authority under S. 45 to demand payment from the guardian of any more than the balance shown due by the guardian's accounts as put in.

Such order cannot also be made when no enquiry, is made, even assuming that the guardian's accounts are false, as to what the income and the expenditure for each year actually is. (*Dalip Singh, J.*). HARNAM SINGH *v.* GURDIAL SINGH. **A.I.R. 1920 Lah. 558.**

—S. 45—Applicability.

———*Contumacious disobedience of Court's orders—Legal representative of guardian.*

Section 45 is intended to punish wilful disobedience by the guardian of an order issued to him by the Court which it is within his power to comply with if he is so minded. Clause (*c*) places failure by the legal representative of a deceased guardian to deliver any property or account in his possession on the same footing as failure by the guardian himself to do the same. This clause therefore refers only to wilful non-compliance with what is within the competence of the person ordered to do which he has contumaciously declined to do and nothing more. (*Rupchand, A. J. C. and Barlee, Ag J. C.*). MOONDOMAL CHHADALDAS CHUGH *v.* NAZIR, J. C.'S COURT, SIND. **121 I. C. 168=A.I.R. 1930 Sind 43.**

—S. 45—Ex parte order.

———Where the Court purporting to act under S. 45 imposed a fine upon a person for having failed to comply with its previous order to produce a minor girl in his custody and the order imposing the fine was made *ex parte* without giving him an opportunity to show cause against it, the order imposing the fine is not tenable. (*Bhide, J.*). SANT SINGH *v.* LALCHAND. **114 I.C. 333= A.I.R. 1929 Lah. 630.**

—S. 45—Failure to pay balance.

———Failure of a guardian to exhibit true accounts or to pay the balance found due on such accounts would make him liable to the penalties

GUARDIANS AND WARDS ACT (1890), S. 45— Order without enquiry.

mentioned in S. 45. (*Walsh, Ag. C. J. and Neave, J.*). SITA RAM *v.* MT. GOVINDI. **80 I.C. 592= 46 All. 458=22 A.L.J. 585= A.I.R. 1924 All. 593.**

—S. 45—Fine, imposition of.

———*Legality.*

A guardian put in a petition to the Court to the effect that he had collected some money belonging to the minor, which should be deposited at a proper rate of interest and that he would be responsible for it. The Court ordered that he should put the money in fixed deposit in a bank on a certain date on which the guardian appeared and stated that he had not brought the money as the mother of the minor did not wish it to be deposited in a bank but wished that it should be lent out at a higher rate of interest with the help of the minor who had reached the age of 18 years. Thereupon the Court at once fined the guardian Rs. 50 for not having carried out its orders and it further directed that he would be fined Rs. 10 a day until he deposited the money,

Held, that the Court had no power under S. 45 (1) (b), Guardians and Wards Act, to impose the fine in question. That section only authorizes a Court to impose a fine on a guardian if the guardian fails to pay into Court on a requisition under S. 34 (d) of the Act, the balance due on the account exhibited by him in compliance with a requisition under S.34 (c) and not for failure to deposit other moneys: 25 C. L. J. 149, *Foll.* (*Addison, J.*). GARIB CHAND *v.* EMPEROR. **108 I.C. 739= A.I.R. 1928 Lah. 538.**

—S. 45—Liability of surety.

———*Procedure for enforcing.*

The proper remedy for the Court to proceed against the sureties on the surety bond executed by the guardian and the sureties is to assign the bond to enable the assignee to sue on the bond and not by issuing execution, on the strength of S. 141, C. P. Code: A.I.R. 1926 Sind 35, *Foll.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). NARAINDAS AILDAS *v.* MT. JHALIBAI. **103 I.C. 493= A. I. R. 1927 Sind 262.**

—S. 45—Minor not in custody of guardian.

———Where a guardian of a minor is appointed but the minor is in custody of a third person, no direction can be made under S. 12 (1) of the Act. The proper course is to direct the third person to compel the minor to return to the custody of her guardian in obedience to an order under S. 25 (1). In the absence of such an order an order imposing a fine on the third person is not correct. (*B.B. Ghose and Bose, JJ.*). KINU SUNDARI DEVI *v.* NARENDRA NATH. **111 I.C. 134=A.I.R. 1929 Cal. 27.**

—S. 45—Order without enquiry.

———In order to enable the Court to impose the fine it must be shown that the sum for the non-payment of which the fine has been imposed was actually due from the guardian, and if the guardian represents that the sum is not due, no fine can be imposed unless it is ascertained as to whether the sum which he has been ordered to pay is really due from him.

On a previous occasion accounts were examined and certain amount was stated in the Dt. Judge's order to be due from the guardian, to the minor. The guardian continued as such for some time after. Then she was succeeded by another who in turn was succeeded by a third. To the intermediate guardian, the original guardian had paid a portion of the amount stated to be due from her.

GUARDIANS AND WARDS ACT (1890), S. 45—Powers of High Court.

When the guardian for the time being applied to realise the balance, the original guardian wanted to examine witnesses to show that the amount stated to be due from her included certain items which were actually realised not by her but by her successor in the office of guardianship. Her objection was overruled and eventually on her non-payment, she was fined,

Held, that the order, being one without any enquiry as regards the amount actually payable by the guardian, was improper. (*Mullick and Kulwant Sahay, JJ.*). MT. ABBASI BEGUM *v.* MT. YAQUTI BEGUM. **93 I. C. 628=4 Pat. 264=7 P.L.T. 473=A.I.R. 1925 Pat. 477.**

—S. 45—Powers of High Court.

———*Order passed without enquiry.*

Where the guardian of a minor was removed from the guardianship and was ordered by the Court to deliver possession to the new guardian of a certain house which was not included in the list of the minor's properties filed by him (the old guardian), and to which a third person laid claim and where he (the old guardian) was fined for disobedience of the order,

Held, Per *Sulaiman, J.*—In appeal against the order of fine it was open to the High Court to revise the previous order for delivery of possession if it found that it had been passed without any enquiry as to the title to the house,

Held, further that the District Judge could not in the proceedings under the Guardians and Wards Act compel the former guardian to hand over to the new guardian the house over which he never obtained possession as guardian of the minor and which he never admitted to belong to the minor.

Per *Daniels, J.*—Though the order for delivery of possession was not directly before the High Court and could not therefore be revised, the High Court was not precluded from taking notice of the fact that the order had been passed without any evidence on the record to show that the appellant was in possession on behalf of the minor. (*Sulaiman and Daniels, JJ.*). FAKIR MUHAMMAD *v.* BRIJ NARAIN. **88 I.C. 444=23 A.L.J. 736=6 L.R. A. Civ. 377=A.I.R. 1925 All. 785.**

—S. 45—Suit.

———The remedies by suit contemplated by Ss. 35 and 36 are not inconsistent with the remedies provided for by S. 45. (*Walsh, Ag. C. J. and Neave, J.*). SITA RAM *v.* MT. GOVINDI. **80 I.C. 592=46 All. 458=22 A.L.J. 585=A.I.R 1924 All. 593.**

—S. 46—Letter by Collector.

———*Whether evidence.*

It is only when the Court calls upon the Collector for a report under S. 46 of the Act, that it is open to the Court to treat the report as evidence. A letter by Collector to Dt. Judge asking for cancellation of an order of appointment of guardian by latter, is not to be treated as evidence. (*Shah, Ag. C. J. and Crump, J.*). NAGAWA GURLINGAYA *v.* COLLECTOR OF BELGAUM. **77 I.C. 702=25 Bom. L. R. 1232=A.I.R. 1924 Bom. 157.**

—S. 47—Appeal.

———*High Court—Inherent power.*

The High Court, apart from Clause 15 of the Letters Patent, has inherent jurisdiction to hear an appeal in a matter affecting a ward of Court. (*Beamont, C. J. and Madgavkar, J.*). JLABHAI *v.* JERBHAI. **32 Bom. L.R. 1301.**

GUARDIANS AND WARDS ACT (1890), S. 47—Refusal to remove guardian.

———The words 'removing a guardian' in S. 47 Cl. (g) are not descriptive of the section but of the order against which the appeal is provided for. (*Wazir Hasan, A. J. C.*). SURAJ NARAYAN SINGH *v.* BISHAN BHARNATH BHAN. **78 I.C. 138=A.I.R. 1925 Oudh 260.**

—S. 47—Consequential order.

———Where the District Judge passed an *ex parte* order for production of the minor, and the person ordered, instead of producing the minor, applied for cancellation of the *ex parte* order, and the District Judge refused to cancel the order on the ground of disobedience of the *ex parte* order,

Held, that no appeal lay against the latter order as it was a consequential order. (*Findlay, O. J. C.*). MT. AKABAI *v.* NARAYAN. **92 I.C. 36=A.I.R. 1926 Nag. 251.**

—S. 47—Limitation and procedure.

———Though it is true that in an appeal filed under S. 47, Guardians and Wards Act, the Act appears to be silent both as regards the procedure to be followed in respect of appeals and the period of limitation for the same, still as the general provisions of the Civil Procedure Code as regards procedure are applicable to cases under the Guardians and Wards Act, the procedure in respect of appeals under S. 47, Guardians and Wards Act must be taken to be governed by the provisions of the Civil Procedure Code, and the period of limitation in respect of the appeal under S. 47, Guardians and Wards Act, would therefore seem to be 90 days from the date of the order under appeal: 7 P. R. 1898 and 43 Mad. 51, *Foll.* (*Bhide, J.*). MT. PANA BIBI *v.* MAHLA. **110 I.C. 374=A.I.R. 1928 Lah. 488.**

—S. 47—Order fixing maintenance.

———No appeal lies from an order on a guardianship application fixing the amount to be paid by the guardian of the property for the maintenance and education of the ward: 28 M. L. J. 96, *Ref.* (*Prideaux, A.J.C.*). MT. TULSAI *v.* MT. TULSAI. **76 I.C. 592=A.I.R. 1924 Nag. 141.**

—S. 47—Order to deposit money—Appeal—Revision.

———An order under S. 34 (d) directing a guardian to deposit into Court the money due to the minor is not appealable, but where there is a mistake apparent on the face of the record, the High Court may interfere in revision and correct it. (*Abdul Raoof, J.*). RADHA KISHEN *v.* KHUSHI RAM. **67 I.C. 309=83 P. L. R. 1922=A. I. R. 1921 Lah. 377.**

—S. 47—Refusal to act under S. 45.

———No appeal lies against an order refusing to take action under S. 45. (*Walsh, Ag. C. J. and Neave, J.*). SITA RAM *v.* MT. GOVINDI. **80 I.C. 592=46 All. 458=22 A. L. J. 585=A.I.R. 1924 All. 593.**

—S. 47—Refusal to remove guardian.

———A refusal to remove a guardian is not appealable under S. 47: 19 Cal. 487; 23 Cal. 201; 30 Bom. 667; 20 All. 433, *Foll.* (*Oldfield and Devadoss, JJ.*). KONTHALATHAMMAL *v.* THANGASWAMI PILLAI. **74 I.C. 896=46 Mad. 873=18 M.L.W. 256=33 M.L.T. 80=1923 M.W.N. 902=A.I.R. 1924 Mad. 327=45 M.L.J. 481.**

GUARDIANS AND WARDS ACT (1890), S. 47—Refusal to remove guardian.

———*Testamentary guardian.*

Where on an application to remove a testamentary guardian the order referred to non-applicant as the testamentary guardian, affirmed her fitness for the appointment and found against the conduct alleged, as disqualifying her for it,

Held, that all that was relevant to the prayer for her removal and did not amount to the making of a declaration, which was not made in terms, which neither party had asked for and which the lower Court was not conscious that it was considering.

The power to appoint a testamentary guardian and to make a will, were as regards any demonstrable or legitimate origin and until the Hindu Wills Act in 1870, on the same footing.

A Hindu can appoint a guardian of the person and property of his child by will when the property willed is his separate property.

There is nothing in law or reason or equity to prevent there being two guardians, one for person and another for the property. The Guardians and Wards Act expressly permits the appointment of more guardians than one—*vide* S. 15, Cls. (4) and (5). Where it is not permissible to appoint a guardian for the property of a minor, a guardian for the person alone can be appointed by testament: 19 Bom. 309, *Foll.*

Case-law reviewed and texts and history traced.

Per *Devadoss, J.*—It is the inherent right of a father to have the custody of his minor children and that right is transmissible by will or testament and there is nothing in the Hindu Law to prevent such transmission.

A father has power to appoint by will a guardian or the person of his minor children whether there be joint family property or not; and that right does not depend upon the father being able to devise by will any property to his children for whom he appoints a guardian. (*Oldfield and Devadoss, JJ.*). KONTHALATHAMMAL *v.* THANGASWAMI PILLAI.

74 I.C. 896=46 Mad. 873=18 M.L.W. 256=33 M.L.T. 80=1923 M.W.N. 902=A.I.R. 1924 Mad. 327=45 M.L.J. 481.

—S. 48—Declaration of majority.

———After a minor was declared to have attained majority by Court, the Court again entertained an application for correcting the age.

Held, that the Court had no right to interfere in the matter as it was *functus officio*. (*Stuart, C.J. and Raza, J.*). SAJID HUSAIN *v.* ABDUL RAHIM.

115 I.C. 273=A.I.R. 1929 Oudh 354.

—S. 48—Discharge.

———*Accounts—Liability for.*

An order under S. 48 discharging the guardian from further acting as the guardian to the person and properties of the minor does not imply a discharge from liability for accounting to the minor. Such a discharge must expressly be ordered under S. 41 (4): 15 C.L.J. 57, *Rel. on.* (*Das and Ross, JJ.*). SHAIK ABDUL RAHIM *v.* MT. BARIDRA.

61 I.C. 807=2 P.L.T. 556=6 P.L.J. 273=A. I. R. 1921 Pat. 166.

—S. 48—Finality of orders.

———Save, in cases where orders under the Guardians and Wards Act can be assailed either by way of an appeal under S. 47 of the Act or by way of an application for revision under S. 115 of the C.P. Code, under S. 48 of the Guardians and Wards Act, they are final. (*Wazir Hasan, A.J.C.*). SURAJ NARAYAN SINGH *v.* BISHAMBHAR NATH BHAN.

78 I.C. 138=A.I.R. 1925 Oudh 260.

—S. 48—Manner of sale.

———*Jurisdiction, want of.*

When the Court orders particular procedure to be followed to effect the sale of a minor's property that order is final although made without jurisdiction. (*Newbould and B.B. Ghose, JJ.*). TARINI KUMAR DUTTA *v.* SRISH CHANDRA DAS.

85 I.C. 667=A.I.R. 1925 Cal. 1160.

—S. 48—Procedure.

———*Rules relating to form and those creating jurisdiction—Distinction.*

The violation of the procedure prescribed by S.31 (2) for recording the order granting the permission cannot be made the ground of brushing aside the finality of the order as enacted by S. 48. The only condition in which the finality prescribed by S. 48 can be avoided is to establish that the order granting the permission was a nullity.

An order passed by a Court in violation of such rules of procedure, however mandatory, as relate merely to the form of the order cannot be treated as a nullity. The omission to follow such rules of procedure can amount to no more than a mere irregularity or a material irregularity in the circumstances of a particular case. On the other hand, an order passed by a Court in violation of such rules of procedure the observance of which only invests the Court with jurisdiction to pass the order, is a nullity: 25 Bom. 337 (P.C.) and 42 Cal. 72 (P.C.), *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). RAMESHWAR BAKHSH SINGH *v.* MT. RIDH KUER.

87 I.C. 238=A.I.R. 1925 Oudh 633.

—S. 48—Review.

———Where the District Judge granted permission to guardian of a minor to sell the minor's property for Rs. 37,500, but before the sale-deed was drawn up offers by other intending purchasers were made to the extent of Rs 46,000,

Held, the District Judge could review his own order and cancel his previous permission: 29 All. 213; 31 Bom. 590; (1915) P.R. 424, *Foll.* (*Baker, J.C. and Prideaux, A.J.C.*). SONBA *v.* NARAYAN.

79 I.C. 471=A. I. R. 1924 Nag. 269.

———An order made by a Court appointing guardian of a minor under the Guardians and Wards Act is not open to review. (*Scott-Smith, J.*). MT. SHARFAN *v.* MT. BHOLI. **4 L. L.J. 274=A. I. R. 1922 Lah. 395.**

—S. 48—Revision.

———*Order fixing expenses of ward's marriage.*

A Court has jurisdiction to fix the amount of marriage expenses of a ward, and since the question is one of fact being purely a question of amount, no revision lies under S. 48: A.I.R. 1926 All. 301, *Foll.* (*Ghulam Mohiuddin, A. J. C.*). MT. JAMNABAI *v.* GOPAL DAS. **109 I.C. 671=A.I.R. 1928 Nag. 291.**

———*Expenses of ward's marriage.*

Revision does not lie in a matter which is purely a question of discretion in the lower Court, *e. g.*, a question of amount to be sanctioned for the marriage of the ward. (*Walsh and Kanhaiya Lal, JJ.*). MT. DURGABAI, *In the matter of.*

92 I.C. 482=48 All. 300=24 A.L.J. 310=A.I.R. 1926 All. 301.

GUDABA OR GADABA.

See GRANT INAM.

GUILTY, Plea of—*See* CR. P. CODE, S. 271.

GUMASTHA.

See (1) CONTRACT ACT.
(2) PRINCIPAL AND AGENT.

GUZARAT TALUKDARS' ACT (Bom. 6 of 1888).

—S. 2 (1) (a)—Mulgameti.

———*Amendment Act (II of* 1905), *S.* 2 (1)—*'Mulgameti' meaning of—Kathis of Salangpur—Bombay R. Code—Law how far affected.*

Per *Marten, J.*—A Mulgameti is one who is, or is descended from, a former ruler and owner of the village and still retains by re-grant or otherwise some part of the lands or interest therein of such former ruler and owner, but not necessarily any of his governing rights. A Gameti would have sovereign or quasi-sovereign rights, but to constitute a Mulgameti some retention of such sovereign or quasi-sovereign rights is not essential. If the Gameti retains or is re-granted some of his former lands or interest therein although all his former governing rights pass to others, he is still a Mulgameti. The Kathis though they are Mulgametis, do not hold land directly from Government, and consequently are Talukdars within the meaning of the 1888 Act as amended by the 1905 Act.

Per *Pratt, J.*—A Talukdari estate is an estate which connoted rulership in pre-British times but which is now a landlord estate to which some seignorial or subordinate rights may or may not be still attested. (*Marten and Pratt, JJ.*). DOLATSINGJI JASWANTSINGJI *v.* OGHAD VIRA.
**82 I.C. 867=25 Bom. L.R. 726=
A.I.R. 1924 Bom. 72.**

—S. 16—Finality of decision.

———The decision of the District Court under S. 16 of the Act does not bar a regular suit on the principle of *res judicata*: 30 Bom. 220, *Appr.* (*Macleod, C. J., Pratt and Crump, JJ.*). AMARSANGJI DUNGARJI JHAL *v.* DEEPSANGJI RAVABHAI JHALA. **87 I.C. 588=49 Bom. 442=
27 Bom. L.R. 345=
A.I.R. 1925 Bom. 241 (F.B.).**

—S. 16—Second appeal.

———*Scope.*

No second appeal lies to the High Court from a decision of the District Judge under S. 16 of the Act: 16 Bom. 408, *Overruled.* (*Macleod, C.J., Pratt and Crump, JJ.*). AMARSANGJI DUNGARJI JHALA *v.* DEEPSANJI RAVABHAI JHALA.
**87 I.C. 588=49 Bom. 442=27 Bom. L.R. 345=
A.I.R. 1925 Bom. 241 (F.B.).**

—S. 29-B—Notice.

———*Mortgagor having knowledge.*

Although the plaintiff mortgagor who is desirous to redeem, has knowledge of the original mortgage-deed, those who are desirous of claiming under that deed are bound to give notice in writing of their claim after the notification under S. 29-B was issued. Otherwise their claims could not be considered: 19 Bom. L. R. 855; 94 Bom. 142, *Foll.* (*Macleod, C.J. and Coyajee, J.*). TALUKDHARI SETTLEMENT OFFICER *v.* AKUJI ABHRAM.
**68 I.C. 487=24 Bom. L. R. 762=46 Bom. 993=
A.I.R. 1922 Bom. 350**

HABITUAL OFFENDER.

———*Sub-mortgagee—Rights of.*

Where the mortgagee of talukdari rights and the sub-mortgagees to whom the mortgagee's rights were mortgaged by the mortgagee's heirs failed to notify their claim when the talukdari settlement officer called upon creditors to notify their claims and where therefore the sub-mortgagees, the plaintiffs, who were ejected, sued to recover possession on the ground that it was not their duty to notify their claim,

Held, In spite of the provisions of S. 29-B one of the representatives of the original mortgagee who was a minor was entitled to claim against the talukdar and therefore plaintiffs were entitled to sue in spite of their failure to notify their claim. As long as the mortgagee's rights were in existence the plaintiffs could sue the mortgagee for all those rights which the mortgagee would be entitled to claim against the mortgagor and they were entitled to remain in possession as long as the mortgagee who was their mortgagor could claim his mortgage rights against the Talukdar. (*Macleod, C.J. and Shah, J.*). HARANBHAI JIVABHAI *v.* COLLECTOR OF KAIRA. **64 I.C. 225=46 Bom. 239=
23 Bom. L.R. 1046=A.I.R. 1922 Bom. 200.**

—S. 31—Mortgage.

———*Talukdari land—Mortgage of, is void.*

Where mortgaged land was entered by the Talati in Register of Inam Vanta lands a few months before the suit as vanta land but no village account of long standing was forthcoming to prove that it was vanta land and not Talukdari and the mortgagor was a Talukdar, and his estate was taken over for management by Talukdari Settlement Officer under that Act:

Held, the mortgaged land was Talukdari land and the mortgage on the death of the Talukdar was void. (*Macleod, C.J. and Coyajee, J.*). SHANKAR LAL TAPIDAS v. BAJIKHAN AKTYARKHAN.
**69 I.C. 102=24 Bom. L.R. 709=
A.I.R. 1922 Bom. 342.**

—S. 33—Powers of Talukdari officer.

———The powers under S. 33 of a Government officer in the temporary management of a taluqdar's estate to manage the revenue for recovery of arrears of revenue are the same as the Collector has as regards an unalienated village: 18 Bom. L.R. 323, *Appl.* (*Macleod, C. J. and Coyajee, J.*). JINABHAI *v.* COLLECTOR. **24 I.C. 752=
28 Bom. L.R. 416=A.I.R. 1926 Bom. 325.**

HABEAS CORPUS.

See CRIMINAL P. C., S. 491.

HABEAS CORPUS ACT (1862, 25 & 26 Vict., Ch. 20).

—Scope.

———By the Habeas Corpus Act, the powers of the King's Bench are limited to England and such places outside England which have no local Court competent to exercise the power. (*Schwabe, C. J., Oldfield and Coutts-Trotter, JJ.*) GOVINDAN NAIR *v.* EMPEROR. **68 I.C. 838=45 Mad. 922=
16 M.L.W. 349=31 M.L.T. 304=
23 Cr. L.J. 614=A.I.R. 1922 Mad. 499=
43 M.L.J. 396 (F.B.).**

HABITUAL OFFENDER.

See (1) CRIMINAL P. C., SS. 106 to 112,
(2) CRIMINAL TRIAL,
(3) PENAL CODE,

HACKNEY CARRIAGE ACT (1879), S. 6—Absence of number.

HACKNEY CARRIAGE ACT (14 of 1879).

—S. 6—Absence of number.

———*Carriage being re-painted.*

Where in answer to the charge that the number had not been painted in a prominent place on the carriage, the proprietor of a hackney carriage explained that the carriage had been re-painted and was awaiting for the number and where as a matter of a fact five days after the challan the carriage was actually re-inspected and passed correct and where the lamps of the carriage bore the number,

Held, that the owner's explanation was correct and that no offence was committed. (*Wazir Hasan, A.J.C.*). KING EMPEROR *v.* JOHN CASSEL.
88 I.C. 594=2 O.W.N. 443=26 Cr.L.J. 1170=A.I.R. 1925 Oudh 447.

HANDWRITING.

See (1) EVIDENCE.
(2) EVIDENCE ACT, SS. 47, 67, 68 & 73.

HEARSAY EVIDENCE.

See (1) EVIDENCE.
(2) EVIDENCE ACT.

HEIR, BEQUEST TO.

See WILL.

HEIRS.

See HINDU LAW—SUCCESSION.

HEREDITARY ALLOWANCE.

See HEREDITARY OFFICE.

HEREDITARY OFFICE.

See (1) BOMBAY HEREDITARY OFFICES ACT.
(2) HINDU LAW, RELIGIOUS OFFICE.
(3) MAHOMEDAN LAW, RELIGIOUS OFFICE.
(4) MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).
(5) T. P. ACT, S. 6.

HERMIT.

See HINDU LAW—SUCCESSION.

HIBA-BIL-EWAZ.

See MAHOMEDAN LAW—GIFT.

HIDDEN TREASURE.

See TREASURE TROVE ACT.

HIGH COURT.

See also (1) CR. P. CODE, SS. 4, 266, 554, ETC.
(2) GOVERNMENT OF INDIA ACT.
(3) JURISDICTION.
(4) PRIVY COUNCIL.

—Equity.

———It is part of the function of the High Court in dealing with cases to look below the surface and make deductions from the probabilities. (*Duckworth and Pratt, JJ.*). MG. PO LUN *v.* MA E MAI.
74 I. C. 47=1 Bur. L. J. 111=A. I. R. 1923 Rang. 57.

HIGHWAY—Closing of thoroughfare.

—Judge on other service.

———A Judge who does not resign his appointment does not cease to be Judge of the High Court during his temporary absence on other service. (*Spencer and Devadoss, JJ.*). MEYAPPA CHETTIAR *v.* CHIDAMBARAM CHETTIAR. **83 I. C. 91=1924 M.W.N. 692=21 M.L.W. 12=A. I. R. 1925 Mad. 58=47 M.L.J. 397.**

—Rent Controller.

———*High Court has powers of superintendence.*

High Court has power of superintendence and revisional jurisdiction as regards the Controller. The Controller, in discharging his duty under S. 15 and the President of the Tribunal in discharging his duties under S. 18 act as Courts of Justice. Whether they are Civil Courts within the meaning of any particular enactment is another question, but they are both Civil Courts in the general sense; they are authorized to decide judicially, and by judicial methods only, between persons seeking their civil rights. Such functions as they perform under Ss. 15 and 18 are neither administrative nor ministerial. (*Rankin, J.*). ALLEN BROS. & CO. *v.* BANDO & CO. **70 I. C. 371=49 Cal. 931=26 C. W. N. 845=A.I.R. 1923 Cal. 169.**

—Rules framed by Government.

———The High Court will not interfere with rules and conditions framed by Government under express provisions of law unless they are in conflict with some legal principles. (*Chaudhuri and Cuming, JJ.*). NAGENDRALAL DAS *v.* MUNICIPAL COMMISSIONER OF CHITTAGONG. **59 I. C. 340=47 Cal. 426=27 C.W.N. 240.**

HIGH COURT RULES.

See UNDER VARIOUS HIGH COURTS.
(1) ALLAHABAD, (2) BOMBAY, (3) CALCUTTA, (4) LAHORE, (5) MADRAS, (6) PATNA AND (7) RANGOON.

HIGH COURTS (INDIAN) ACT (1861, 4 & 25 Vict., Ch. 104).

—S. 15—List of touts.

———*Order of District Magistrate including name in.*

High Court can entertain in exercise of general powers of superintendence an application in revision from an order of District Magistrate including the name of a person in a list of touts under S. 36, Legal Practitioners Act: 21 All. 181 and A.I.R. 1928 All. 334, *Rel. on.* (*Sulaiman and Niamatullah, JJ.*). KAPOOR CHAND JAIN *v.* EMPEROR. **1930 A.L.J. 961=A.I.R. 1930 All. 641.**

HIGHWAY.

—Blind alley.

———*Ownership—Adjacent houses.*

In the case of a blind alley the Court may presume that the ownership vests in the owners of the adjacent houses, but that presumption is not a presumption of law but an inference of fact: A.I.R. 1925 Bom. 27, *Cons.* (*Dalip Singh, J.*). SHIMBU DAYAL *v.* GAJJU MUL. **108 I.C. 610=A.I.R. 1928 Lah. 709.**

—Closing of thoroughfare.

———*Special damage.*

The presumption that when a public thoroughfare is closed, the members of the public in

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general suffer an equal inconvenience is rebuttable and can be rebutted by evidence that plaintiff has suffered special inconvenience so as to entitle him to sue for removal of the obstruction. (*Ashworth, J.*). BHEWANI GHULAM *v.* SITLA-PRASAD. **93 I.C. 453=A.I.R. 1926 Oudh 343.**

—Dedication.

———*Presumption from long user.*

Where so far as living memory goes, a passage has been proved to have been used as a public cart road, the correct inference to be drawn is that it has been so used from time immemorial as a public highway, and dedication should be presumed from long user: A.I.R. 1920 P. C. 43, *Rel. on.* (*Marten, C.J. and Murphy, J.*). ARDESHIR JIVANJI *v.* AIMAI KUVARJI. **117 I.C. 513=53 Bom. 187=31 Bom. L.R. 97=A.I.R. 1929 Bom. 94.**

———*Lost grant, presumption of.*

The existence of a prior dedication with regard to an ancient public way takes very much the nature of what is called a lost grant. It is entirely different in its legal attributes and in its origin from a private way or easement which may be acquired by prescription following upon continuous user. The public cannot acquire a public way by prescription, and where a public way is found and no traces are forthcoming of its origin the law presumes a dedication or a lost grant by the owner to whom the land belonged and who alone could dedicate it. (*Wats, Ag.C.J. and Ryves, J.*). MD. RAZA KHAN *v.* MD. ASKARI KHAN. **85 I.C. 304=48 All. 470=22 A.L.J. 729=6 L.R.A. Civ. 67=A.I.R. 1924 All. 599.**

———*Origin of roads.*

From a long continued user of way by the public, an inference of dedication to the public can be drawn. In villages as well as in small towns in Oudh there is no doubt that the origin of highways may be traced to the fact that land used as highway was either nobody's or everybody's land. (*Wazir Hasan, A.J.C.*). RAI BAJRANG BAHADUR *v.* BABU BADRI NATH. **70 I.C. 74=9 O. L. J. 497=A.I.R. 1923 Oudh 26.**

—English law of.

———*Applicability.*

It is very doubtful whether it would be right to bodily import the whole of the English law as to highways into cases relating to highways in India. (*Wazir Hasan, A.J.C.*). BAJRANG BAHADUR SINGH *v.* BADRI NATH BHARGAWA. **70 I.C. 74=9 O.L.J. 497=A.I.R. 1923 Oudh 26.**

———*Applicability.*

It is sometimes dangerous to attempt to ascertain the law in India by the discussion of English cases. But in a matter where, legislation like the Municipalities Act, following closely upon English Local Government legislation, has left the matter at large, without following it up by modifying the general law on a topic such as public ways and highways the Courts in India are really enjoined to apply the English principles. (*Walsh, Ag. C.J. and Ryves, J.*). MD. RAZA KHAN *v.* MD. ASKARI KHAN. **85 I.C. 304=48 All. 470=22 A.L.J. 729=6 L.R.A. Civ. 67=A.I.R. 1924 All. 599.**

—Interdiction.

———*Equal right of all sections of the public.*

When the streets are public streets vested in a Municipality all members of the public have equal

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rights and one section of the community has no right to interdict another section of the community from the lawful use of the public streets: 30 Mad. 185 (P.C.); A.I.R. 1925 P.C. 36 and A.I.R. 1926 Mad. 830, *Foll.* (*Waller and Madhavan Nair, JJ.*). SUNDARESWARA SROUTHIGAL *v.* EMPEROR. **102 I.C. 481=50 Mad. 673=8 A.I. Cr. R. 194=25 M.L.W. 667=38 M.L.T. 307=1927 M.W.N. 279=28 Cr. L.J. 545=A.I.R. 1927 Mad. 938=52 M.L.J. 602.**

—Music.

———Where a Hindu temple existed in a locality for a long time and the community had exercised the right to play music in it and also on the adjacent public street for a considerable length of time and subsequently the Mahomedans deliberately built their mosque cheek by jowl with the Hindu temple and sued the Hindus for a declaration restraining them from disturbing their worship.

Held, that the Hindus had the right to conduct processions with music so long as they did not interfere with the ordinary use of the street by the public and subject to the lawful directions by the Magistrates. That the right of the Mahomedans to stop the playing of music depends on the circumstances of each case and that they cannot claim to curtail the Hindus' right of service and music which has been customary long before the mosque was built: A.I.R. 1925 P.C. 36, *Foll.*; 2 Mad. 140, *Expl.* and 6 Mad. 203 (F.B.), *Ref.* (*Wallace and Ananthakrishna Ayyar, JJ.*). JAFFAR HUSAIN KHAN *v.* KRISHNAN SERVAI. **1930 M.W.N. 520=31 M.L.W. 845=A. I. R. 1930 Mad. 701=58 M.L.J. 703.**

———Public have right to conduct religious processions with music through a public street: A.I.R. 1925 P.C. 36, *Rel. on*; 42 Bom. 438, *held no longer good law.* (*Kotval, A.J.C.*). ABDUL AZIZ *v.* DEO RAO. **104 I.C. 213=A.I.R. 1927 Nag. 339.**

—Nuisance.

———*Encroachment*—Bona fide *claim—Duty of Magistrate.*

Encroachment upon a public road is an obstruction to the public path, and it is a nuisance in itself under S. 268 of the Penal Code. No length of user can justify an encroachment upon a public way. The question of a sufficient width of the road being left in support of the encroachment, for public use is no ground for allowing the encroachment or obstruction to continue. It is the duty of the Magistrate to come to a finding, whether the claim of the person complained of, to such encroachment, is *bona fide* or not, and question of possession is relevant for this purpose. (*Jwala Prasad, J.*). JAGROSHAN BHARTHI *v.* MADAN PANDE. **105 I.C. 233=6 Pat. 428=8 P.L.T. 452=8 A.I. Cr. R. 306=28 Cr. L. J. 910=A. I. R. 1927 Pat. 265.**

—Private right.

———*Access to public road from private property.*

A right of immediate access from private property to public highway is recognised in law as a private right distinct from the rights of the owner of that property to use the highway itself as one of the public. Although the plaintiffs must show

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particular damage it is clear that a private right of this kind has been recognised as being particular damage in the case of individual members who had enjoyed access to the highway from adjoining property. (*Mears, C. J. and Piggott, J.*). HANUMAN PRASAD *v.* RAGHUNATH PRASAD. **82 I. C. 659=46 All. 573=22 A.L.J. 568=5 L.R. A. Civ. 393=A.I.R. 1924 All. 715.**

—Religious procession.

——*Suit for declaration of right.*

There is a right to conduct a religious procession with its appropriate observances along a highway. Persons of whatever sect are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace; and a suit lies for the declaration of such right. But claim by one sect, for the exclusive use of the highway for their worship is untenable: 2 Bom. 457, *overruled.*

The distinction between indictment and action in regard to what is done on a highway is a distinction peculiar to English Law and ought not to applied in India. (*Lord Dunedin.*) MANZUR HASSAN *v.* MUHAMMAD ZAMAN. **86 I.C. 236=3 Pat. L.R. 300=23 A.L.J. 179=6 L.R.P.C. 34=27 Bom. L.R. 170=21 M.L.W. 239=6 P.L.T. 115=52 I.A. 61=29 C.W.N. 486=2 O.W.N. 53=47 All. 151=A.I.R. 1925 P.C. 36=48 M.L.J. 23 (P.C.).**

——Persons of whatever sect, are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets, by the public and subject to such direction as the Magistrates may lawfully give to prevent obstructions of the thoroughfare or breaches of public peace: A.I.R. 1925 P.C. 36 and 5 Mad. 309, *Foll.* (*Simpson, A.J.C.*). DILLI *v.* KING EMPEROR. **89 I. C. 269=2 O. W. N. 589=26 Cr. L. J. 1325=A.I.R. 1925 Oudh 656.**

——*Blocking passage.*

Religious processions are lawful and legal and come within a proper user of the public highway and are always subject to the control of the District Magistrate and Police Officers. But primarily the purpose for which a highway is dedicated is that of passage. Any extensions thereof must be such as are not inconsistent with the maintenance of the paramount idea that the right of the public is that of passage. Hence a religious procession is not entitled, by frequent stops in a public street for the purpose of performing some religious rites, to block the passage in an unreasonable manner. (*Tudball and Sulaiman, JJ.*). MUHAMMAD ZAMAN *v.* MANZUR HASAN. **63 I. C. 984=43 All. 692=19 A.L.J. 740=A. I. R. 1921 All. 146.**

—Right of public.

——Any member of the public has got the right to use a public street in any lawful manner and a declaration can be granted if he is prevented from so doing without proof of any special damage: A.I.R. 1925 P.C. 36, *Foll.* (*Krishnan and Odgers, JJ.*). MALLIAH *v.* GANGANNA. **94 I.C. 226=A. I. R. 1926 Mad. 880.**

HINDU DISPOSITION OF PROPERTY ACT (1916), S. 2—Retrospective effect.

—Special damage.

——*Village pathway.*

Infringement of a village pathway which is not a public pathway, in which the plaintiffs have a right along with the villagers, does not require proof of special damage to give rise to a cause of action: 23 C. W. N. 91 and 26 C. W. N. 587, *Foll.*; 25 C.W.N. 95, *Dist.* (*Chakravarti, J.*). SURESHCHANDRA DUTTA *v.* JAMINI KANHATA. **96 I. C. 711=A. I. R. 1926 Cal. 1159.**

——*Village pathway.*

The plaintiffs asked for declaration of a village pathway used by all the people of the village for certain specified purposes. The defendants contended that the alleged pathway was not a public highway but was a permissive foot track,

Held, that the suit was for the enforcement of a village pathway and no question of special damage arose in the case: 15 Cal. 460, *Foll.*

It is only in the case of a public highway that the question of special damage arises; where the case is one of a village pathway, there is no question of special damage: 23 C.W. N. 91, *Ref.* (*Mookerjee and Rankin, JJ.*). HARISH CHANDRA SAHA *v.* HARISH CHANDRA CHUCKERBUTTY. **80 I. C. 195=39 C. L. J. 347=A.I.R. 1923 Cal. 622.**

——In an action for the removal of an obstruction of a public road, the mere fact that the plaintiffs would have to go a longer way round or that the road would be impassable for carts is not a finding that the plaintiff would suffer injury or damage peculiar to himself in any way different from the damage that would be suffered by other people who had hitherto used this road. The object of the rule requiring proof of special damage is that but for such a rule the defendants might be harassed by separate suits from every individual member of the public whose right of way has been obstructed. Special damage does not mean serious damage but means damage of a special nature, that is, damage affecting the plaintiff individually or damage peculiar to himself, his trade or calling. (*Newbould and Panton, JJ.*). BATIRAM KOLITA *v.* SIBRAM DAS. **61 I.C. 405=25 C.W.N. 95=A.I.R. 1921 Cal. 271.**

——*Village pathway.*

A suit for a declaration that a pathway is a village pathway and for an injunction on the defendant to remove certain obstruction can proceed without proof of special damage: 23 C. W. N. 91. *Foll.* (*Panton, J.*). HARISH CHANDRA *v.* PRAN NATH. **69 I.C. 910=26 C.W.N. 587=A.I.R. 1921 Cal. 405.**

HINDU DISPOSITION OF PROPERTY ACT (15 of 1916).

—S. 2—Retrospective effect.

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HINDU LAW—Adoption—Affiliation.

HINDU LAW—
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—Adoption—Affiliation.

———*Affiliation deed declaring a boy as a son—Deed making no reference to executant's death—Document not styled as will—It does not make the son an adopted son.*

An affiliation deed executed by the last male holder and which was relied upon to validate the adoption contained : "Further you, becoming a son to me, will be such an owner of all my properties as a son is." There was no reference to executant's death and the document was not styled as a will.

Held, that the clause cannot amount to a gift or transfer of all deceased's properties. At best, it contemplates that the alleged adopted son should be associated with him as a joint owner on the footing that both are members of a joint family. In the absence of an adoption, they cannot be members of a joint family, but may become tenants-in-common, *i.e.*, the document might be a gift of an undivided half of the properties if there are appropriate words indicating gift : 12 L. W. 660, *Dist.* (*Coutts-Trotter, C. J. and Ramesam, J.*). SURAPPA *v.* SUNDARAMMA. **107 I. C. 141= A.I.R. 1928 Mad. 176.**

—Adoption—Agreement.

———*Kumaraswamy Sastri, J.—Adoptee a major—Agreement to pay widow's debts is legal—Agreement to give a share of property instead of paying debts—Legality of—(Odgers, J).—Adoption made with the sole desire of dividing the inheritance with the adopted son is invalid—(Odgers and Jackson, JJ.). Settlement with adopted son preserving half estate to widow is against Hindu Law. A. I. R. 1927 P. C. 139, Foll.*

Kumaraswami Sastri, J.—If the adopted son is at the time of adoption a major capable of contracting, there is nothing illegal in the widow requiring the adopted son to pay her debts. If the adopted son, instead of undertaking the burden, thinks that it is in his interests to get an unburdened share of the estate and makes the widow to pay her debts out of any share allotted to her, the adoption would not be invalid as being made from a corrupt motive. The case may be different if the widow had not debts to pay or if the proportion of the estate granted to her was so disproportionate to the debts that the Court can on the evidence treat it as a device pure and simple by the widow under the guise of an adoption to get a large share of her husband's estate to herself: A.I.R. 1927 P. C. 139, *Rel. on.*

Odgers, J.—As in the case of a surrender by a widow to a reversioner, so in an adoption, the operation must not be a mere device to divide the estate with the reversioner. An adoption is invalid if it is made with a corrupt motive namely, the sole desire of dividing the inheritance with the adopted son. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893= 28 M.L.W. 422= A.I.R. 1928 Mad. 994= 55 M.L. J. 894 (F.B.).**

HINDU LAW—Adoption—Agreement.

———*Agreement to secure benefit to widow's friends or relatives is not legal.* (*Mears, C. J.*)—*If adoptee is major, such agreement is binding* (*Sulaiman, J.*).

Mears, C.J.—A Hindu widow when making an adoption can impose stipulations which are reasonable and proper for her own protection; agreements for maintenance, and at times management of the property are deemed as valid. But a widow cannot be permitted to benefit her own relatives and friends and bargain for money or property to be made over to them as a condition of the adoption. She is not entitled in law to propose any arrangement in favour of her relatives which could diminish the value of the ancestral estate.

Per *Sulaiman, J.*—Even if the adopting widow has no power to impose conditions on her would-be adopted son, the adopted son, if of age is not prevented from undertaking a liability on himself for consideration of being adopted. The adopted son would be bound by his agreement not because the widow had power to impose such condition on him before adopting him but because he himself entered into an agreement in lieu of consideration. The defendant is bound not by the authority of the widow but by his own agreement. (*Mears, C.J. and Sulaiman, J.*). MITTAR SAIN *v.* DATA RAM. **90 I.C. 1000= 24 A.L.J. 185= A.I.R. 1926 All. 194.**

———*Agreement to adopt is a good consideration* (*Sulaiman, J.*).

An agreement to adopt a particular man is a good consideration for the adoptee's entering into an agreement in widow's favour or according to her wishes. (*Mears, C.J. and Sulaiman, J.*). MITTAR SAIN *v.* DATA RAM. **90 I.C. 1000= 24 A.L.J. 185= A.I.R. 1926 All. 194.**

———*Stipulations by widow with the adoptee—Validity of.*

Adoption of an adult by a Jain widow—Adopted son, a poor man, getting large property on account of adoption—Agreement by the adoptee as condition precedent to adoption, to give some property to widow's brothers is binding as being supported by good consideration. (*Lindsay, J., dissenting*).

Per *Lindsay, J.*—A Hindu widow, about to make an adoption to her husband cannot stipulate for gifts of her husband's estate to be made to her relations and to strangers by the adopted son after he is taken in adoption. She cannot make the adoption upon the adopted son's agreeing to carry out her directions to make such gifts. To allow an arrangement of this nature to be carried out would be to allow the Hindu widow to do indirectly what the Hindu Law forbids her to do directly ; and no such arrangement can be enforced. Any attempt to bind the adopted son by such conditions must fail; the conditions are void and the son takes the estate free from them. An adoptive father can at the time of adopting a son impose such conditions as he thinks

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fit upon the enjoyment of his property by the adopted son. A widow, however, stands in a very different position. It is legitimate for a widow on such occasions to impose conditions for her own benefit provided they are reasonably designed for her own protection. The widow, although the estate is divested from her by the act of adoption, is nevertheless entitled to maintenance and may for that purpose make provision for the protection of the estate in her own interest. The question in all cases is whether the stipulations are reasonable. If they are unreasonable, such as giving the widow absolute powers of disposition over the property, they should be rejected. In the United Provinces the consent of the husband is essential for an adoption by a widow, and while consent so given would justify the widow in imposing reasonable conditions for the protection of herself and the estate from which she is entitled to draw maintenance, it would not be readily assumed that the husband consented to arrangements made by the widow at the time of adoption whereby extensive portions of his estate could be transferred by way of gift to the members of his wife's family. The invalidity of such conditions cannot be cured by showing that the adopted son, a person of full age, assented to them. The invalidity arises out of the inherent disability of the widow under the Hindu Law to give away portions of her husband's estate and an attempt to impose conditions which would lead indirectly to such alienations being made is absolutely void as being *ultra vires*. Even if it can be deduced from the language of the deeds in the case that all the formalities necessary to the execution of a deed of trust had been carried out, the purpose of the trust being unlawful the trust could not be enforced. (*Lindsay and Mukerji, JJ.*). MITTAR SAIN *v.* DATA RAM. **87 I.C. 724= A.I.R. 1926 All. 7.**

——Agreement between adoptive and natural father whereby adoptive father reserves full powers of disposal over his property is not binding on the adoptee as being opposed to the principles of the Hindu Law of adoption. (*Macleod, C.J. and Coyajee, J.*). PARVATIBAI *v.* VISHVANATH. **92 I.C. 4= 27 Bom. L.R. 1509=A.I.R. 1926 Bom. 90.**

——*Adoption induced by promise of maintenance is valid.*

The adoption of a boy is a religious act and is one which is necessary for the salvation of the soul. If a person is asked to adopt a boy by the promise of sufficient means to maintain himself and the boy, the adoption induced by such promise will not militate against the rules of Hindu Law governing adoptions. (*Devadoss and Waller, JJ.*). SUBBARAJU *v.* NARAYANARAJU. **97 I.C. 232= 24 M.L.W. 716=A.I.R. 1926 Mad. 1093= 51 M.L.J. 366.**

——*Collateral arrangement between adoptor and adoptee's natural father does not make the adoption invalid.*

An adoption cannot be declared invalid by reason of any collateral arrangement of contract entered into between the adopter and the adoptee's natural father, for it would do incalculable harm to the adopted boy if the adoption is to be declared invalid by reason of any arrangement, between persons over whom he had no control. (*Case-law referred to.*) (*Devadoss and Waller, JJ.*). SUBBARAJU *v.* NARAYANARAJU. **97 I.C. 232=24 M.L.W. 716= A.I.R. 1926 Mad. 1093=51 M.L.J. 366.**

——*Agreement by natural father with adoptive father entitling latter to dispose of ancestral property*

HINDU LAW—Adoption — Agreement — Ante-adoption.

by deed inter vivos *or will—Agreement made at time of adoption—Adopted son benefitted—Latter is bound by agreement.*

Per *Spencer, Offg. C.J.*—If an adoption and a disposition of his property by the adoptive father form part of one transaction, the adopted son never acquires any interest in the property disposed of and no question can arise as to his guardian's competency to deal with it.

Per *Kumaraswamy Sastri, J.*—Where an adoption is made by a Hindu who at the time of adoption had absolute power of disposal over the property, an agreement between the natural father and the adoptive father as regards alienations which the adoptive father wants to make either by a document *inter vivos* or by will binds the adopted son in all cases where such an agreement would be for his benefit. There is no reason why the rights of the boy to be adopted should be tested with reference to what his position in the family would be after the adoption and to see whether the adoptive father could, after the adoption, have made the alienations which are disputed. The right of a Hindu father to give his son in adoption is not governed by any questions of benfit to the adopted boy. For it is perfectly competent to the natural father to give his boy in adoption to a pauper and thus deprive his son of any interest in the natural father's property. If the adopting father would not make the adoption but for the conditions agreed to by the natural father and if in spite of those conditions the adopted son would be benefitted, there is no reason why the transaction should not be tested like any other agreement entered into by the natural father as guardian of his own son. (*Case-law discussed.*) (*Spencer, Offg. C. J. and Kumaraswami Sastry, J.*). KRISHNAMURTHY AIYAR *v.* KRISHNAMURTHY AIYAR. **85 I.C. 882=1925 M.W.N. 632= A.I.R. 1925 Mad. 932=49 M.L.J. 252.**

—Adoption—Agreement—Ante-adoption.

——*Ante-adoption arrangement giving portion of property absolutely to adoptive mother—Such arrangement is binding on adopted son.*

Where in an ante-adoption agreement made with the consent of the natural father of the minor adopted son, it was arranged that a portion of the adoptive father's property would be given absolutely to the adoptive mother, and the arrangement is fair and reasonable and beneficial to the adopted son, the agreement is binding on the adopted son although it purports to give absolute property to the adoptive mother: A.I.R. 1927 P. C. 139, *Disc.* and *Expl.* (*Ramesam and Venkatasubba Rao, JJ.*). T. RAJU *v.* NAGAMMAL. **113 I.C. 449= 52 Mad. 128=29 M.L.W. 77=1928 M.W.N. 732= A.I.R. 1928 Mad. 1289=56 M.L.J. 41.**

——*Natural father consenting—Validity of—Agreements are valid by custom to the extent of creating life-interest in adopting widow even in whole property.*

But it is quite different when the adoption is antecedent to the date at which the disposition is meant to take effect. The rights which flow from adoption are immediate, and the disposition, if given effect to, is inconsistent with these rights and cannot of itself *vi propria* affect them. In such cases, it is impossible to ascribe any value to the guardianship power of the natural father to bind the son as to property, in which he cannot have an interest until the time when the guardianship has ceased, nor can the case be solved by the doctrine

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of approbate and reprobate, for the doctrine of approbate and reprobate assumes election and the adopted son has no election. He cannot undo the adoption and be as he was. The same fact destroys the idea of conditional adoption. The adoption cannot be undone : it cannot, therefore, be conditional.

The only ground on which such arrangement can be sanctioned is custom and it seems that custom has sanctioned such arrangements in so far as they regulate the right of the widow as against the adopted son. It seems part of the custom that one *sine qua non* of such arrangement should be the consent of the natural father as showing that the arrangement is for the advantage of the boy, and that the mere postponement of his interest to the widow's interest, even though it should be one extending to a life-interest in the whole property, is not incompatible with his position as son.

As soon however, as the arrangements go beyond that, *i.e.*, either give the widow property absolutely or give the property to strangers, it seems that no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu Law. It cannot be laid down as a general proposition that all arrangements, consented to by a natural father, and of benefit to the boy, in the sense that half a loaf being better than no bread, he is better with an adoption with truncated rights than with no adoption at all, are valid: *Opinion* of *Farran, J.*, in 11 Bom. 381, *Not appr.* ; 2 Mad. 91 (P.C.) and 16 Cal. 556 (P.C.), *Expl.* and *Dist.* (*Bombay and Madras cases discussed.*) (*Viscount Dunedin.*) KRISHNAMURTY *v.* KRISHNAMURTY. **101 I.C. 779=50 Mad. 508=29 Bom. L.R. 969=1927 M.W.N. 467=54 I.A. 248=43 C.L.J. 620=31 C.W.N. 910=4 O.W.N. 621=39 M.L.T. 52=26 M.L.W. 186=25 A.L.J. 945=8 P.L.T. 719=A.I.R. 1927 P.C. 139=53 M.L.J. 57 (P.C.).**

—Adoption—Authority.
Conditional.
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Necessity of.
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—Adoption—Authority—Conditional.

———Hindu authorizing wife to adopt by his will—Will directing that boy in particular family should be adopted in first place—Daughter's son from that family adopted—Adoption is valid under will. (*Sulaiman and Kendall, JJ.*). BRIJ RAJ SARAN SINGH *v.* BASANT SINGH. **118 I.C. 154=A.I.R. 1929 All. 561.**

———The authority given by husband by his will to his widows to adopt was as follows: "If my younger brother should beget sons you should take in adoption any of these children or the children of any other persons if you are desirous of doing so and at a time when you wish to do it." The adoption made by the widows was not of a son of the younger brother.

Held, that it was only in the event of the younger brother having more than one son that the testator intended that his widows may, if they should have no objection, adopt one of his sons. Further, it is only if the widows should be desirous of doing so, it is stated that they should take in adoption one of the sons of the brother. The adoption therefore was valid. (*Srinivasa Aiyangar and Reilly, JJ.*). TIRUVENGATARATNAM *v.* BUTCHAYYA. **113 I.C. 347=52 Mad. 373=28 M.L.W. 727=1928 M.W.N. 53=A.I.R. 1929 Mad. 11=55 M.L.J. 757.**

HINDU LAW—Adoption—Authority—Consent.

———*Particular person named—If there was any obstacle, another was to be adopted—Existence of obstacle or* bona fide *doubt that it existed—Adoption of another is valid.*

Written permission to adopt stated that a step-brother was to be adopted but any other person may be adopted "if there be any obstacle to take him" (the step-brother), "in adoption according to the Shastras". In Dataka Mimansa there is a prohibition against the adoption of a step-brother and certain lawyers who were consulted gave their opinion against the adoption of a step-brother. So another person was adopted,

Held, that it was a valid adoption as there was either a prohibition against the adoption of a step-brother or at least a *bona fide* doubt as to its validity: 21 All. 412 (P.C.); (1863) W. R. Spc. No. 121; (1868) 12 M.I.A. 397 (P.C.) and 3 Mad. 15, *Ref.* (*Ross and Wort, JJ.*). RAJENDRA PRASAD *v.* GOPAL PRASAD. **108 I.C. 545=7 Pat. 245=9 P.L.T. 123=A.I.R. 1929 Pat. 51.**

—Adoption—Authority—Consent.

———*Mere presence of reversioner is not consent.*

Per *Kumaraswami Sastri* and *Reilly, JJ.*—If the adoption was made on the footing of the consent by the son, the mere presence of the next presumptive reversioner when the authority was given would not make the adoption valid if the consent of the son on the basis of which the adoption was made is not proved or is invalid. (*Coutts Trotter, C.J., Madhavan Nair and Jackson, JJ.*). ANNAPURNAMMA *v.* APPAYYA SASTRY. **119 I.C. 389=52 Mad. 620=29 M.L.W. 858=A.I.R. 1929 Mad. 577=56 M.L.J. 760 (F.B.).**

———*Son's consent is sufficient.*

Per *Full Bench.*—The assent of a son to an adoption by his mother is sufficient assent under Hindu Law to validate the adoption where there is no change in the circumstances and there are no other grounds for the next presumptive reversioner to object to the adoption when actually made. The fact that the son is not alive when the adoption is actually made does not render his consent ineffectual nor can the adoption be vitiated merely because the son has no proprietary interest to lose by the adoption when actually made or because it tends to defeat the reversionary right of other sapindas: 12 M.I.A. 397 (P.C.); 26 Mad. 627: A.I.R. 1918 P.C. 97; 1 Mad. 69 (P.C.); 1 Mad. 174 (P.C.); 41 Mad. 604; A.I.R. 1925 Mad. 67; A.I.R. 1926 Mad. 916, *Rel. on*; A.I.R. 1920 P.C. 4, *Ref.*; 36 Mad. 145, *Expl.* (*Coutts Trotter, C.J., Madhavan Nair, and Jackson, JJ.*). ANNAPURNAMMA *v.* APPAYYA. **119 I.C. 389=52 Mad. 620=29 M.L.W. 858=A.I.R 1929 Mad. 577=56 M.L.J. 760 (F.B.).**

———*Sapinda—Withholding of consent — Improper motives—What are—When Court can question withholding of consent.*

Kumaraswami Sastri, J.—The Sapinda is not entitled to withhold his consent from corrupt or improper motives. What he has to see is the interest of the family to which adoption is made, and the sapinda whose refusal is not proper can be ignored; 23 Mad. 486, *Rel. on.*

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The position of the next sapindas whose consent is necessary is that they are, by virtue of the relationship, competent advisers of the widow and proper Judges of the propriety of the act of the widow in making the adoption. Where a sapinda sets up an agreement between his father and the widow's husband which according to him prohibits an adoption even when such a contention has been set up by his father in a previous litigation and negatived and persists in this objection and where he says he is not going to give up his reversionary right to succeed by consenting to the adoption the sapinda cannot be a competent Judge of the propriety of the widow's act or a competent adviser. If the position of the sapindas is that of a domestic forum then the moment one of the Judges takes up the grounds above mentioned as reason for the dissent he ceases to be one who could be a member of the forum and the widow is entitled to look to the consent of other sapindas. The fact that he would lose the estate if an adoption was made and the fact that the boy chosen is a son of his enemy would not render his grounds of objection to give consent proper.

Odgers, J.—The law has set up what may be called a domestic tribunal, namely the sapindas, who are to judge as to the contemplated action of the widow in making the adoption. Their decision or at least their refusal is only to be canvassed if the refusal is obviously improper. A sapinda is entitled to show that if the adoption is not undertaken with any honest or spiritual purpose, it is undertaken out of spite with a view to put him to loss and make a gain for the adopter since he is thereby merely amplifying or explaining his grounds for asserting that there is no honest purpose in the adoption.

Jackson, J.—If a sapinda has for good reason refused his consent, it is not for the Courts to go behind his action, by introducing principles of equity which in other circumstances may prevail in England.

It cannot be said that a sapinda's judgment is vitiated from the outset on account of his personal interest. So long as he has exercised a reasonable judgment, and is not actuated by motives of fraud or corruption, his decision must be respected. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR.
116 I.C. 673=51 Mad. 893=28 M. L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 824 (F.B.).

———Sapindas of equal degree—No difference exists as regards their capacity to consent to adoption—Adopted son and subsequent natural born son stand on equal footing. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B).**

———The fact that the son of a reversioner is to be given in adoption for which the reversioner's consent is necessary would not make him incapable of giving consent. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F B).**

———*Odgers, J.*—Where there are two sapindas, of whom one consents and the other refuses, you cannot merely disregard the latter and say that as you have one consent that is enough to validate the adoption. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).**

———*Jackson, J.*—If the consent of a substantial majority of the agnates nearest in relationship has been obtained, the Court need not trouble about the motives underlying the adoption. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).**

———A daughter-in-law can only adopt with the consent of her father-in law and such consent is operative only during his life-time, as such the consent contained in his will is of no avail : 29 Bom. 410 and A.I.R. 1922 Bom. 321, *Foll.* (*Patkar and Baker, JJ.*). YESHWADABAI VAMAN *v.* RAMCHANDRA SHANKAR. **105 I.C. 351=29 Bom. L. R. 1320=A.I.R. 1927 Bom. 652.**

———Where a widow adopts without express authority from her husband or without consent of the remaining co-parceners the adoption is invalid and gives no rights to the adoptee in the joint family property. (*Fawcett and Madgavkar, JJ.*). BABANNA SANGAPPA *v.* PARAVA NINGHBASAPPA. **100 I.C. 147=50 Bom. 815=28 Bom.L.R. 1446=A.I.R. 1927 Bom. 68.**

———*Sapindas—Refusal of consent—Corrupt motives, what are—Motive of widow—Nearest Sapindas even in number—Court to decide the propriety of refusal of consent.*

In the Dravida country a Hindu widow not having her husband's authority may nevertheless, if authorized by the consent of his kinsmen, validly adopt a son to him.

So far as sapindas are concerned, all the nearest ones must be consulted, but if any one of them gives or refuses his consent from corrupt or malicious motives his action may be ignored.

Whatever weight might be attached to the religious benefits flowing from an adoption, the secular rights flowing from it cannot be ignored : A.I.R. 1918 P.C. 97, *Rel. on.*

No doubt, the question is to be decided by the opinion of the majority of the sapindas, but it must be by a majority of the nearest sapindas and there must be such a substantial majority as to justify the conclusion that the adoption is proper and is made in the *bona fide* performance of a religious duty. If the refusal to consent of the dissenting minority is shown to be based upon proper and valid grounds, the mere fact of a majority being in favour of the adoption should not prevail.

In a case where there are only two nearest sapindas, one assenting and one dissenting, no question of majority comes in. If the dissent of the dissenting sapinda is shown to be unreasonable, it may be ignored, and the assent of one alone would be sufficient to validate the adoption. But if, on the other hand, the objection is well-founded, the adoption cannot be supported.

The objection that the adoption would deprive the kinsman of his inheritance is a personal one and such an objection is not a valid one : 39 Mad. 77 and 2 L.W. 284, *Rel. on.*

Per *Venkatasubba Rao, J.*—The very essence of the rule of consent is that the sapindas are presumed to be capable of forming an honest judgment, although in the very nature of things they are interested parties. Therefore the consent of a

sapinda cannot be discounted on the ground that he is the natural father of the boy.

The reason for requiring the consent of the nearest among the sapindas is that it is their reversionary interest that is affected by the adoption (A I.R. 1926 Mad. 881, *Foll*), and as the sapindas' right to be consulted depends upon the measure of their proprietary (or quasi-proprietary) right, it stands to reason that in regard to consenting to an adoption, the position of the *aurasa* son and the adopted son must be alike, their rights to property being equal.

When a man has sons, the latter do not equally with their father fall in the group of the nearest sapindas: A.I.R. 1918 P.C. 97 and A.I R. 1920 P.C. 4, *Expl.*

The refusal to consent, because the reversionary interest of the sapinda will be prejudiced can in no circumstances be justified, nor can the fact that the boy is the son of his longstanding enemy.

If the number of the nearest sapindas is even, the Court will in such cases be called on to decide the propriety or the *bona fides* of the dissent. The assenting kinsmen are not required to justify their assent: for the adoption is a meritorious act and it is presumed that the assent was properly given, but if it is proved in such cases that the dissenting kinsmen were actuated by corrupt or malicious motives their dissent must be disregarded: 2 Mad. 202; 30 Mad. 50 (P.C.) and 26 Mad. 627, *Rel. on.* (*Case-law fully discussed.*) (*Krishnan and Venkatasubba Rao, JJ.*). KRISHNA RAO *v.* RAJA OF PITTAPUR. **102 I.C. 713=A.I.R. 1927 Mad. 733.**

———*Sapinda's consent must be independent of representation that husband had given authority.*

The assent of the sapindas to be a foundation of the adoption must be obtained uninfluenced by any statement of the widow that there was also the husband's authority, if the evidence shows that the widow made such a statement: 2 Mad. 270 and 26 Mad. 627, *Dist.* (*Ramesam and Madhavan Nair, JJ.*). P. VENKANNA *v.* Y. VENKANNA.

102 I.C. 154=A.I.R. 1927 Mad. 706.

———Adoption without consent of deceased husband or co-parcener is invalid: A.I.R. 1926 Bom. 435 (F.B.), *Foll.* (*Fawcett and Madgavkar, JJ.*). GANESH *v.* GURNATH. **98 I.C. 457=28 Bom.L.R. 1188=A.I.R. 1926 Bom. 575.**

———*Consent by father-in-law to widowed daughter-in-law—Death of father-in-law before adoption—Sapindas in existence at the time of adoption not objecting—Adoption is valid.*

Where the consent is given to the widowed daughter-in-law by her father-in-law who happens to be the nearest sapinda then living, his death, before the adoption is made, would not *ipso facto* revoke the consent. Such a consent will come to an end only if circumstances had materially changed after his death.

Where in such a case there had been no change in the circumstances on the date the adoption was made, either by the coming into existence of other nearer sapindas, or by the death of sapindas then alive, or by reason of the estate having vested in third persons; and five sapindas were alive on the date of the adoption and the boy adopted was the son of one of them and his natural father was present at the adoption; another sapinda assisted the widow during the ceremony and a third was present; but the 4th and 5th sapindas were on that date in their houses in the village and did not in any way indicate to the widow that they objected to the adoption,

Held, that the adoption by the daughter-in-law was valid. In the circumstances of the case the authority of the father-in-law was not at an end on the date of the adoption: 41 Mad. 604, *Foll.*; 36 Mad. 145, *Dist.* (*Odgers and Viswanath Sastri, JJ.*). AMMAMMA *v.* SATYANARAYANA.

96 I.C. 950=49 Mad. 636=24 M.L.W. 150=A.I.R. 1926 Mad. 916=51 M.L.J. 426.

———*In absence of agnates consent of nearest cognates, will suffice.*

There being no agnate relation the consent of the nearest cognate relation who under the law would be the presumptive reversioner is sufficient. When it is said that assent of sapindas is necessary, sapindas include *bhinnagotra* sapindas as well as *sagotra* sapindas. The test of propinquity from the point of view of property is an unfailing test and a sure guide in this matter: A.I.R. 1925 Mad. 67, *Diss.*; 12 M.I.A. 397 (P.C.); 3 I.A. 154; 1 Mad. 69 (P.C.); 1 Mad. 174 (P.C.); 30 Mad. 50 (P.C.), *Ref.*; 41 Mad. 958 (P.C.), *Expl.* (*Spencer and Venkatasubba Rao, JJ.*). KESAR SINGH *v.* SECY. OF STATE.

93 I.C. 651=49 Mad. 652=1926 M.W.N. 540=24 M.L.W. 878=A. I. R. 1926 Mad. 881=51 M. L.J. 16.

———According to the Bombay School, the consent of the husband's kinsmen is not necessary for the adoption by a Hindu widow who has not been authorised by her husband to adopt to him: A. I. R. 1922 P.C. 216, *Foll.* (*Lord Phillimore.*) HARIGIR *v.* BHARATHI. **88 I.C. 343=21 N.L.R. 127=22 M.L.W. 355=1925 M.W.N. 414=A.I.R. 1925 P.C. 127 (P.C.).**

———The consent of the husband's mother would validate an adoption by a widow, in the absence of any other sapindas. (*Spencer, Offg. C. J, and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*Consent of one only of two kinsmen.*

Consent of one only of two kinsmen is not that of majority even where the other was asked; and the consent of a remote kinsman cannot cure the defect. (*Ramesam and Jackson, JJ.*). A. BRAHMAYYA *v.* C. RATTAYA. **83 I.C. 59=20 M.L.W. 503=1924 M W.N. 844=A.I.R. 1925 Mad. 67.**

———Adoption by widow—Courts should examine the motives of the sapindas in giving consent—Object of helping widow to screen alienation by widow, from the attacks of nearer reversioners makes consent invalid—Consent obtained by promise of payment of some money is corrupt. (*Ramesam and Jackson, JJ.*). A. BRAHMAYYA *v.* C. RATTAYYA. **83 I.C. 59=20 M.L.W. 503=1924 M.W.N. 844=A.I.R. 1925 Mad. 67.**

———*Husband's authority — Sapinda's consent—Difference between.*

There is an essential difference between the authority of the husband and the assent of a sapinda. The former is intended to be exercised only after the death of the husband. The latter is intended to be used at a reasonable time, after the consent is given. When the interval is short, the death of the sapinda may not matter; but a sapinda's assent is not to be pocketted by the widow and used long after it was given, when entirely different considerations as to the expediency of the adoption may apply. Again, the boy to be adopted ought also to be referred to the consideration of the sapinda whose consent to the adoption of "any

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boy at any time" is invalid. *(Ramesam and Jackson, JJ.)*. A. BRAHMAYYA *v.* C. RATTAYYA.
83 I.C. 59=20 M. L. W. 503=1924 M. W. N. 844=A.I.R. 1925 Mad. 67.

———*Refusal of consent by Sapinda—Failure to give reasons for refusal.*

Any refusal unaccompanied by reasons is not necessarily an improper refusal. It is, of course, improper if the sapinda were asked to state his reasons and 'declines' to state, them, either at the time or later on, in the course of the judicial proceedings. *(Ramesam and Jackson, JJ.)*. A. BRAHMAYYA *v.* C. RATTAYYA. **83 I. C. 59=20 M L. W. 503=1924 M.W.N. 844=A.I.R. 1925 Mad. 67.**

———Madras Law—Adoption of daughter's son with consent of deceased husband or sapindas is legal: A.I.R. 1923 Mad. 517, *Foll.* *(Schwabe, C.J. and Coutts-Trotter, J.)*. PARTHASARATHY REDDI *v.* KANDASWAMI REDDI. **73 I.C. 954=18 M.L.W. 156=32 M. L. T. 349=1923 M.W.N. 423=A. I. R. 1923 Mad. 711=45 M. L. J. 161.**

———*Sapinda's refusal—Court can scrutinise reasons*—Bhinnagotra *sapindas need not consent.*

The right of the Court to scrutinise the kinsmen's reasons extends only where consent is refused and not where consent is given inasmuch as the law imposes a responsibility upon kinsmen in granting their consent to an adoption. A daughter's son is not entitled to be consulted regarding an adoption by a widow who has obtained the consent of the nearest sapindas, as he is not a *gnati*, and *Bhinnagotra* sapindas are not included under the terms sapindas in the texts which require their consent to an adoption. Consent of the sapindas to an adoption by the widow is material as guaranteeing the propriety of the widow's action in making the adoption. Where such consent has not been shown to have been obtained by fraud, coercion or corruption, it is sufficient authority for the adoption. *(Oldfield and Phillips, JJ.)*. VADREU RANGANAYAKAMMAGARU *v.* RYALI SOMASUNDRA RAO.
59 I.C. 609=43 Mad. 876.

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———Authority given to a wife to adopt has to be strictly pursued: 12 M.I.A. 350 (P.C.), *Ref.* *(Sir Binod Mitter.)* RAJENDRA PRASAD BOSE *v.* GOPAL PRASAD SEN. **11 P. L.T. 587=1930 A.L.J. 1184=32 L.W. 324=34 C.W.N. 1161=52 C.L.J. 287=A.I.R. 1930 P.C. 242 (P.C.).**

———*Will directing mother to adopt would amount to nearest sapinda's consent and not to authority.*

Per *Kumaraswami Sastri* and *Reilly, JJ.*—So far as the authority to adopt is concerned, it can only be given by the husband and so son's will directing mother to adopt, can in law only amount to a consent by the son who under the Hindu Law would be the nearest sapinda of his mother. *(Coutts-Trotter, C.J., Madhavan Nair and Jackson, JJ.)*. ANNAPURNAMMA v. APPAYYA SASTRI.
119 I.C. 389=52 Mad. 620=29 M.L.W. 858=A.I.R. 1929 Mad. 577=56 M.L.J. 760 (F.B.).

———It must be assumed that a Hindu husband who for the purpose of continuing his line and providing for the purpose of performance of religious ceremonies for the salvation of his soul and authorizing an adoption to be made, does not authorize an invalid adoption. *(Srinivasa Aiyangar and Reilly, JJ.)*. TIRUVENGADARATNAM *v.* BUTCHAYYA. **113 I.C. 347=52 Mad. 373=28 M.L.W. 727=1928 M.W.N. 53=A. I. R. 1929 Mad. 11=55 M.L.J. 757,**

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———*A special power to adopt has to be strictly construed.*

A power to adopt, where it happens to be a special as distinguished from a general power, has to be strictly construed and no limitation should be imported into the document, independently of what would flow from the plain etymological meaning of the document itself; where the words are clear and unambiguous, full effect has to be given to those words, without any regard to extraneous circumstances such as the conduct of the parties or the particular surroundings, which might have influenced the intention of the testator. *(Sen and Niamatullah, JJ.)*. DHARAM PRAKASH *v.* MT. KALAWATI DEVI. **110 I. C. 665=50 All. 885=26 A. L. J. 1106=A.I.R. 1928 All. 459.**

———*Adoption to be made with consent of father-in-law—Adoption after father-in-law's death—If valid—Authority to be liberally construed.*

The Courts should not be astute to defeat an adoption but should rather do their utmost to support it unless it is clearly in excess or in breach of the power.

In a written permission to adopt there was a clear intention that an adoption was necessary. If a specified person was not adopted, another was to be adopted with the consent of the father-in-law. But there was no penalty attaching to the failure to take the consent. The father-in-law died and afterwards an adoption was made.

Held, that the primary intention was to adopt and the consent was a secondary consideration, failure to obtain which, through a cause beyond the control of person acting upon the deed, does not invalidate the adoption. The deed should be construed liberally: 16 C.L.J. 304; 18 Cal. 385; 29 Mad. 382 (P.C.), *Foll.*; 32 M.L.J. 47; A.I.R. 1921 P.C. 88 and (1869) 12 M.I.A. 350 (P.C.), *Dist.* *(Ross and Wort, JJ.)*. RAJENDRA PRASAD *v.* GOPAL PRASAD. **108 I.C. 545=7 Pat. 245=9 P.L.T. 123=A.I.R. 1929 Pat. 51.**

———*Will giving absolute power over estate to widow and a power to adopt if she wished—Adoption by widow—Estate vests in the adopted son.*

Where by a will the widow is given absolute power over the property and a power to adopt if she wished, the bequest of the estate to the widow with absolute powers should be regarded only as a provisional bequest subject to the exercise of the power to adopt given by the will. On the election by the widow to exercise the power and make an adoption the provisional bequest ceases and the implied intention of the testator that from the date of the adoption the adopted son should represent him and his estate should take effect: A.I.R. 1925 Mad. 932, *Rel. on*; 10 M.I.A. 279 and 26 Bom. 526, *Ref. to.* *(Phillips and Srinivasa Aiyangar, JJ.)*. KRISHNAMMA *v.* LAKSHMINARAYANA. **108 I.C. 202=1927 M.W.N. 625=A.I.R. 1928 Mad. 271.**

———Where a Hindu testator directed in his will that the executors should cause a certain boy to be adopted to him,

Held, that the clause did not mean that the power to adopt was given by the testator to the executors and that it must be held that the power was given to the widow. *(Srinivasa Ayyangar and Curgenven, JJ.)* SRIRANGAM AYYANGAR *v.* VENGU AMMAL. **108 I. C. 654 (Mad.).**

———*Power to adopt need not be exercised at once.*

Under the Hindu Law, when power is given to the widow to adopt, there is no obligation on her

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part to make the adoption at once. It is well known that it takes time and trouble to select a suitable boy. Horoscopes have to be consulted and the opinions of Laudets taken. (*Mr. Ameer Ali.*) RAWAT SHEO BAHADUR SINGH *v.* BENI BAHADUR SINGH. **98 I. C. 567=1 Luck. 403=3 O. W. N. 761=29 O. C. 305=31 C.W.N. 438=A.I R. 1926 P.C. 97 (P.C.).**

———A Hindu widow though directed by her husband to adopt cannot be legally compelled to adopt a boy. The adoption to some extent is a matter of her a discretion and this is specially so when the boy to be adopted has not been named. (*Mears, C. J. and Sulaiman, J.*). MITTAR SAIN *v.* DATA RAM. **90 I.C. 1000=24 A.L.J. 185=A.I.R. 1926 All. 194.**

———*Widow forbidden to adopt without consent of persons named—Absence of consent vitiates adoption.*

When the general intention of a Hindu to be represented by an adopted son is clear, there is no reason why effect should not be given to such intention, if it is possible to do so without contravening the law. At any rate, the Court will not be astute to defeat the intention of the testator, and all powers are to be liberally construed in furtherance of the purpose for which they were created. But, where special reasons exist for placing restrictions on the authority, and special instructions are given for the guidance of the wife and restriction is placed on the authority, they are to be strictly followed.

Where not only was the wife to adopt according to the selection, and with the consent of two persons named in the deed, but it was expressly provided that she shall not have the power (according to her choice) to adopt without their consent,

Held, that an adoption without the consent of the two persons was invalid. (*Chatterjea and Pearson, JJ.*). PRAN GOPAL GOSWAMI *v.* CHANDRA MOHAN CHAKRABARTY. **95 I.C. 777=41 C.L.J. 55=A.I.R. 1925 Cal. 619.**

———*Existence or non-existence of authority inferred from circumstances.*

Where it was alleged that a young man of about 30 years who had only been married for about 3 years had authorized 3 days prior to his death his second wife to adopt a son to him,

Held, that as unless the man had been stricken with some serious illness it was not likely he would think of there being a necessity for a son being adopted to him, the question as to how long he had been ailing prior to his death was a vital question in determining whether he had or had not authorised the adoption.

Held, further, that inasmuch as the contestants of the adoption had failed to prove that the man had been seen attending to his ordinary avocations during the period when the opposite party asserted he had been suffering and as other circumstances left the matter entirely in doubt, there was not evidence of sufficient cogency to interfere with the judgment of the High Court which was to the effect that the adoption had been authorized. (*Lord Dunedin.*) RAMADHIN SINGH *v.* MT. CHANDRAMA. **89 I.C 865=22 M.L.W. 91=A.I.R. 1925 P.C. 54 (P.C.).**

———Where the will recited "I have no male issue, etc., but have two married wives only." They two should adopt a boy for the perpetuity of my name after me. And at present there is one of my kinsman, Totelal Kenhaylal Agarwal, resident of Burhampur. My wives should adopt him as son

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after me. If he is not available, my two wives should with the consultation of each other, adopt any other boy of my own family. If no boy in the family is available my wives should adopt none. If there is a difference of opinion between the two wives as to the boy to be adopted that boy should be adopted whom my younger wife Sonu will choose and "perpetuate my name and manage the property."

Held, looking to the intention of the testator, which was that a certain boy was to be adopted, though both widows are mentioned, the will does not restrain the authority of either. The main object was that a particular boy was to be adopted; the mention of both widows was subservient to the adoption itself. The document gave the widows as far as this boy is concerned no option, it did not allow them any power of selection. Therefore the fulfilment of the wish of the testator by the remaining widow who was the only person who could fulfil it was not against, but in accordance with what the testator contemplated. (*Kotval and Prideaux, A. J. Cs.*). AMBADAS *v.* KASHIBAI. **71 I.C. 979=A.I.R. 1923 Nag. 27.**

———Mahratta School—Authority by husband—Particular boy named but no prohibition to adopt other boys—Boy named not available—Adoption of other boy is valid. (*Sir John Edge.*) YADO *v.* NAMDEO. **64 I.C. 536=20 A. L.J. 481=16 M. L.W. 565=26 C.W.N. 393=24 Bom. L.R. 609=49 Cal. 1=30 M.L.T. 53=48 I.A. 513=17 N.L. R. 146=A.I.R. 1922 P.C. 216=42 M.L.J. 219 (P.C.).**

———*Bombay School—Widow—Must obey husband's mandatory directions.*

According to the Bombay School of Law the duty of a Hindu widow to obey her husband's command compels her to act upon any mandatory direction that he may give by Will as to the way in which her power of adoption should be exercised.

A Hindu governed by the Bombay School directed by his Will as follows: "If I did not adopt a son during my life-time my wife should, as far as possible, adopt *S.* the second son of my elder brother *J.* If the boy cannot be obtained, any other boy should be adopted, with the advice of the trustees."

Held, that "Should as far as possible" means that unless there are conditions outside the Will preventing the possibility of the adoption, the widow, when she does adopt is to exercise her power in favour of *S.* (*Lord Buckmaster.*) SITABAI *v.* BAPU ANNA PATEL. **57 I.C. 1=47 Cal. 1012=47 I.A. 202=16 N.L. R. 162=22 Bom. L.R. 1359=28 M.L.T. 408=12 M.L.W. 386=1920 M.W.N. 556=25 C.W.N. 97=A.I.R. 1921 P.C. 88=39 M.L.J. 106 (P.C.).**

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———*Husband authorising adoption and selecting boy—One co-widow dying before actual adoption—Adoption is valid.*

Where a man has died leaving a number of widows with authority to adopt a son to him and he has selected the boy and where before the actual adoption one of the widows dies but she consents to the boy being adopted and desires him to perform her funeral ceremonies, the adoption is not rendered invalid by her death before the actual taking place of adoption. (*Spencer, Offg. C.J. and Kumara-*

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swami Sastri, J.). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A. I. R. 1925 Mad. 497.**

———*Power given to two widows together—Adoption by one after death of the other was held valid.*

Where the Will recited, "I have no male issue, etc., but have two married wives only. They two should adopt a boy for the perpetuity of my name after me. And at present there is one of my kinsmen, Totelal Kanhaylal Agarwal, resident of Burhanpur. My wives should adopt him as son after me. If he is not available, my two wives should, with the consultation of each other, adopt any other boy of my own family: If no boy in the family is available my wives should adopt none. If there is a difference of opinion between the two wives as to the boy to be adopted that boy should be adopted whom my younger wife Sonu will choose and perpetuate my name and manage the property,"

Held, looking to the intention of the testator which was that a certain boy was to be adopted, though both widows are mentioned, the will does not restrain the authority of either. The main object was that a particular boy was to be adopted; the mention of both widows was subservient to the adoption itself. The document gave the widows as far as this boy is concerned no option. It did not allow them any power of selection. Therefore the fulfilment of the wish of the testator by the remaining widow who was the only person who could fulfil it was not against but in accordance with what the testator contemplated. (*Kotval and Prideaux, A. J. Cs.*). AMBADAS *v.* KASHIBAI. **71 I.C. 979= A.I.R. 1923 Nag. 27.**

—Adoption—Authority—Determination of.

———Authority to adopt to be exercised with *A's* consent ends with *A's* death if not exercised earlier: 27 Cal. 996 (P.C.), *Ref.*

Deceased authorised his wife to adopt a particular boy and the authority provided that in case the particular boy could not be adopted, she should adopt another with the permission of deceased's father. The particular boy could not be adopted and before adopting another the father died,

Held, that the words "with the permission of my father" created a condition precedent to the exercise of the power of adoption certainly during the lifetime of the father, and there was no reason for holding that the words were to have a different effect after the death of the father and therefore the wife's power came to an end on the father's death: 7 Pat. 245; 108 I.C. 545; A.I.R. 1929 Pat. 51, *Overruled.* (*Sir Binod Mitter.*) RAJENDRA PRASAD BOSE *v.* GOPAL PRASAD SEN. **A.I.R. 1930 P.C. 242 (P.C.).**

———*Estate vesting in senior widow — Junior widow's authority comes to an end.*

The right of the widow to make an adoption is not dependent on her inheriting as a Hindu female owner her husband's estate. She can exercise the power, so long as it is not exhausted or extinguished. The authority to adopt cannot, however, be exercised when the power of adoption itself has come to an end. The vesting of the estate in the senior widow is the proper limit to the exercise of the junior widow's power and the moment that limit is reached, the power of adoption of the junior widow is at an end: 1 Mad. 69 (P.C.); 31 Bom. 373 (P.C.) and A. I. R. 1918 P. C. 192, *Dist.*; 26 Bom. 526; A.I.R. 1918 P.C. 74; 28 Bom. 461 and

HINDU LAW — Adoption — Authority—Prohibition.

A.I.R. 1928 Bom. 291, *Foll.* (*Patkar and Baker, JJ.*). HIRABHARTHI JAMNEBHARTHI *v.* BAI JAVER. **113 I.C. 406=30 Bom. L.R. 1555= A. I. R. 1929 Bom. 35.**

———*Power given to widow in a joint family is not extinguished by death of her husband.*

Where a member of a joint Hindu family has given his widow power to adopt, that authority is not automatically exhausted by his death, because his property vests in the other members by survivorship: A.I.R. 1918 P.C. 192, *Rel. on*; (*Case-law discussed.*) (*Kendall and Niamatullah, JJ.*). HIRA LAL *v.* PIAREY LAL. **111 I.C. 622= 51 All. 54= 26 A.L.J. 849=A.I.R. 1928 All. 505.**

—Adoption—Authority—Necessity of.

———Sitambari Jains—*Widow may adopt without husbands' authority.*

Among *Sitambari Jains* the widow of a sonless Jain can legally adopt to him a son without any express or implied authority from her deceased husband, and the adopted son may, at the time of adoption, be a grown up and married man. The only essential ceremony necessary is the giving and taking of the adopted son. (*Sir John Edge.*) SHEOKUERBAI *v.* JEORAJ. **61 I. C. 481= 1920 M.W.N. 627=16 N.L R. 170= 2 U.P.L R. 161=25 C.W.N. 273 (P.C.).**

—Adoption—Authority—Presumptions about.

———"*Express authority*" *meaning of—Process of adoption by giving and taking begun in lifetime of adopting father—Authority to widow can be implied.*

The phrase "express authority of the husband" so often used in decisions means nothing more than an affirmative indication enabling the widow to adopt, which can be traced to the mind of the husband.

The word "express" is not used in opposition to the word "implied" and an authority can be implied from the facts of a particular case.

In all cases where the process of adoption has begun by a giving and taking in the life-time of the adopting father, there is a clear indication of his desire and no further authority is needed to enable the widow to adopt. It should be necessarily implied in such taking by the adoptive father. (*Ramesam and Venkatasubba Rao, JJ.*). SEETHARAMAMMA *v.* SURYANARAYANA. **97 I.C. 615= 49 Mad. 969=25 M.L.W. 183= A. I. R. 1926 Mad. 1184=51 M.L.J. 466.**

———Widow—Adoption in 1867 not questioned till adoptee's death—Authority can be presumed. (*Ramesam, J.*). SAMBASIVA SASTRIAL *v.* RAMASWAMY SASTRIAL. **86 I. C. 772= A.I.R. 1925 Mad. 803=48 M.L.J. 353.**

———Per *Kumaraswamy Sastry, J.*—Husband's authority—Boy taken by husband with a view to adoption and brought up—Actual ceremony by widow—Authority may be presumed. (*Spencer, Offg.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

—Adoption—Authority—Prohibition.

———"*Khanden*" *includes ascendants, descendants and collaterals in the male line—Wife prohibited from adopting a son of the relations of her family—Adoption of her brother's daughter's son is not prohibited.*

In the case of a Hindu, his *khandan* consists of his lineal ascendants and descendants and his collaterals in the male line,

There was a direction in the will to the following effect: If *K* (testator's junior wife) should like to adopt a son, she shall not adopt any son of

HINDU LAW — Adoption — Authority—Prohibition.

the relations of her family or that of *B* (the senior wife), or the mother. If my brother *J* should give his son into adoption, she should adopt him; otherwise she should adopt some other boy, and she shall not have power to make a gift. In case of necessity *K* shall have power to sell or mortgage a portion of the property." *K* adopted *D*, the son of the daughter of her brother, but later she filed a suit for declaration that the son was not adopted son and his adoption was invalid. She impugned the deed of adoption on the ground that the adopted son belonged to a class or category of persons adoption from whom was expressly prohibited by the testator,

Held, that the adoption of *D* was outside the prohibition imposed by the testator and was, therefore, valid in law. (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI.

110 I.C. 665=50 All. 885=26 A.L.J. 1106=A. I. R. 1928 All. 459.

——*Prohibition may be inferred from circumstances.*

A prohibition of adoption according to the Bombay Law need not be express: A.I.R. 1922 P.C. 216, *Expl.*; 23 Bom. 250; 23 Bom. 789 and 37 Bom. 107, *Rel. on.*

But if an implied prohibition is to be established, it must be gathered from the whole of what the husband said and did on the occasion or occasions in question, of which the disposition of his property in his will may be an important part to be taken into consideration; and no doubt the disposition of his whole property in favour of persons other than his widow would be strong evidence that he did not intend an adoption to be made, and little additional evidence might be needed to make out a prohibition. (*Phillips, O. C. J. and Reilly, J.*). SUKHEVDOSS RAMPRASAD *v.* MT. CHOTI BAI.

109 I.C. 5=1928 M.W.N. 32=27 M.L.W. 145=A.I.R. 1928 Mad. 118.

——Refusal by husband to adopt is not tantamount to prohibition to the widow to adopt: 7 B.H.C. (App.) 1, *Expl.* (*Case-law considered.*) (*Fawcett and Patkar, JJ.*). SITABAI RAM RAO *v.* GOVIND RAO RAM RAO. **101 I.C. 46=51 Bom. 217=29 Bom. L.R. 236=A.I.R. 1927 Bom. 151.**

——An implied prohibition is sufficient to prevent a widow adopting; it is not necessary to prove an express prohibition. 12 M.I.A. 397 (P.C.); 22 Mad. 398 (P.C.), *Rel. on.* (*Krishnan and Venkatasubba Rao, JJ.*). KRISHNA RAO *v.* RAJA OF PITTAPUR. **102 I.C. 713=A.I.R. 1927 Mad. 733.**

—Adoption—Authority—Proof of.

——*Adoption recognised as valid for more than 40 years by all parties concerned including plaintiff—No element of usurpation in widow's conduct—Adoptee living in adopted home as member of that household—Authority to adopt was held to be proved.*

The burden, resting, altogether apart from the law of limitation upon any litigant who challenges the authority of an adoption that has been recognised as valid during a long course of years is of the heaviest order.

The same witnesses who proved the adoption also proved the authority to adopt; the adoption was challenged as having been made without the husband's authority, about 42 years after it had taken place; the conduct of the adopting widow had no element of usurpation in it but simply the element of carrying out her husband's dying wish. Adopted son was transferred from his natural home to his adopted home and he had lived there all his life as a member of that household. The plaintiff did not question the authority to adopt during the adopting widow's life which extended for 30 years beyond that of her husband. The local authorities had recognised the adoption as valid and treated the adopted son as such. In various litigations, the plaintiff had acted along with the adopted son acknowledging in the course of the proceedings his right, and all other parties concerned had all along recognised the validity of the adoption,

Held, that the authority to adopt was proved. (*Lord Shaw.*) SEETHARAMACHANDRA *v.* KRISHNA ROW. **89 I.C. 817=A.I.R. 1925 P.C. 201=53 M.L.J. 858 (P.C.).**

HINDU LAW — Adoption — Authority—Who can give.

——*Authority by husband aged 15 years—Improbable circumstances—Adoption cannot be held to be proved.*

A Hindu died leaving his wife and widows of two predeceased sons. The younger son's widow adopted plaintiff. It was alleged that her husband, who was only 15, had given her authority to adopt and according to the wishes of his younger son the father had instructed his wife to get the widow of the younger son to adopt. A Kaifiyat, expressing consent to the adoption, alleged to have been executed by the mother-in-law of the adoptive mother was produced to serve as proof of the instructions of her husband, but its execution by her was not proved. The ceremony of adoption was performed under suspicious circumstances and the mother-in-law, who had nothing to do with it and had applied for mutation in her name, was absent,

Held, that on the facts the adoption was invalid. It is improbable that a boy of fifteen would think of adoption or his father would agree to his wishes leaving aside his own wife or widow of his elder son. (*Kotval and Prideaux, A.J.Cs.*). GOVIND *v.* RADHABAI. **68 I.C. 325=A.I.R. 1923 Nag. 7.**

—Adoption—Authority—Setting aside.

——*Suit to declare authority to be invalid before adoption—If lies.*

Where a suit for declaration that the authority to adopt was invalid had been tried and decided in the lower Court, High Court in second appeal applied its mind only to the question whether the case was a fit one in which a Court with a due exercise of discretion should grant a declaration before any adoption has been made.

Quaere: Whether a suit for declaration that an authority to adopt is invalid lies where no adoption has actually been made. (*Spencer and Ramesam, JJ.*). YELUKUR SUBHADRAMMA *v.* YELKUR VENKATA SESHIAH. **98 I.C. 681 (Mad.).**

—Adoption—Authority—Who can give.

——*Father-in-law cannot authorise daughter-in-law to adopt—Consent by sapinda cannot be given by way of will.*

There is no authority for holding that a father-in-law can authorise his daughter-in-law to adopt under the Hindu Law; the only way in which a widow can adopt is either by the authority of her husband or by the consent of her nearest sapindas given *bona fide* and honestly. No sapinda is entitled to give by way of a Will to take effect after his death, a consent to an adoption by a widow: The consent has to be given with reference to the circumstances attendant upon the proposed adoption and usually at the request of the widow: 36 Mad. 145, *Ref.* (*Krishnan and Ramesam, JJ.*). T. LAKSHMI NARASIMHAM *v.* V. RUKMANIAMMA.

A.I.R. 1923 Mad. 225.

HINDU LAW——Adoption—Burden of proof.

—Adoption—Burden of proof.

——*Onus rests heavily on person setting up adoption.*

Very grave and serious onus rests upon a person who seeks to displace the natural succession of property by the act of an adoption. In such a case the proof requires strict and almost severe scrutiny and the longer the time goes back from the date when the power was given to the time when it comes to be examined, the more necessary it is having regard to the fallibility of human memory and the uncertainty of evidence given after the lapse of such time, to see that the evidence is sufficient and strong. (*Lord Buckmaster.*) DAL BAHADUR SINGH *v.* BIJAI BAHADUR SINGH.

122 I.C. 8=1930 A.L.J. 122=7 O.W.N. 295=34 C. W. N. 369=32 Bom. L. R. 487=51 C.L.J. 230=57 I.A. 14=52 All. 1=A.I.R. 1930 P.C. 79=58 M.L J. 446 (P.C.).

——Grave and serious onus rests on person seeking to displace natural succession by act of adoption. In such case, the proof requires strict and almost severe scrutiny: A.I.R. 1930 P. C. 79, *Rel. on.* (*Addison and Bhide, JJ.*). BALAK RAM HIGH SCHOOL, PANIPAT *v.* NANU MAL. **31 P.L.R. 509=A.I.R. 1930 Lah. 579.**

——The onus of proving whether there has been a valid adoption is on the person who asserts it. The assertions and admissions made by his natural father and uncles on former occasions as to the validity of the adoption would tend to shift the burden of proof. (*Kinkhede and Mohiuddin, A.J.Cs.*). YAMUNABAI *v.* DHANNALAL.

114 I.C. 616 (Nag.).

——Per *Spencer, Offg. C. J.*—Where an adoption is alleged to have been made by a man who was *in extremis* and who was delirious and not in full possession of his faculties, the onus lies on those who profound the adoption, of proving that he was in a fit state of mind to perform the act of taking the child in adoption with a proper consciousness of the nature of the act that he was performing. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.

93 I. C. 705=43 Mad. 1=A. I. R. 1925 Mad. 497.

——*Apparently valid adoption proved—Opposite party should prove failure in ceremonial.*

It is the duty of the person who asserts that an adoption had been performed, to prove it. But if it is proved that an adoption is apparently valid as performed then in as much as there is presumption that things are done as they should be done, it is necessary for the person attacking the adoption to demonstrate in what particular respects there has been a failure of ceremonial or ritual. (*Kennedy and Percival, A.J.Cs.*). MT. CHATIBAI *v.* SHRIMATI KUNDIBAI.

88 I.C. 573=A. I. R. 1925 Sind 223.

——*Onus is on party setting up adoption—Shifting of onus.*

The onus of proving an adoption is on the party setting it up. But very slight evidence may be sufficient for this purpose, where the alleged adopted son has been treated as such for a long series of years. (*Mookerjee and Cuming, JJ.*). KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG.

72 I.C. 680=36 C.L.J. 434=A. I. R. 1923 Cal. 18.

——Adoption by minor widow of her guardian's son—Onus of proving validity is on adoptee who sets it up.

HINDU LAW—Adoption—Capacity to take.

In the case of a Hindu widow of immature age the Court is bound to consider all the circumstances surrounding the adoption set up which she disputes as not having been made by her of her own free will. (*Macleod, C.J. and Coyajee, J.*). GHANASHYAM DAS VISHNUDAS GANDHI *v.* LAXMIBAI.

70 I.C. 955=24 Bom.L.R. 726=A.I.R. 1922 Bom. 218.

——The admission of an adoption in a deed amounts to an admission both of the fact and the validity of the adoption and the burden of proving the contrary lies upon the person making the admission. (*Sadasiva Iyer and Spencer, JJ.*). SOORLA SINGH *v.* KANAKA SINGA. **59 I.C. 585=43 Mad. 867=12 L.W. 245=1920 M.W.N. 528.**

—Adoption—Capacity to take.

——Whether the adoption is made during the lifetime of the husband or after the death, only one wife can receive a child in adoption so as to step into the position of being its adoptive mother: 37 Mad. 199 (P.C.), *Rel. on.* (*Macnair, Offg. J. C. and Staples, A.J.C.*). YAMUNA BAI *v.* JAMUNA BAI.

12 N.L.J. 75=26 N.L.R. 39=A. I. R. 1929 Nag. 211.

——*Hindu governed by Bombay School dying leaving a widow and widow of predeceased son—The latter cannot adopt after the widow's death although the estate may vest in her.*

Where the last male holder dies leaving a nearer heir other than the adopting widow, the latter's power of adoption comes to an end, as soon as his estate is vested in the nearer heir, and is incapable of being revived at any future date.

Where a Hindu governed by the Bombay School dies leaving behind him his widow and a widowed daughter-in-law, the power of the daughter-in-law to adopt to her husband comes to an end by the vesting of the estate in the widow and does not revive again by the death of the widow. An adoption of the son by a daughter-in-law, therefore, although the estate has vested in her, after the widow's death is invalid. (*Case-law discussed.*) (*Findlay, J.C., Kinkhede and Mohiuddin, A.J.Cs.*). UTTAM RAO *v.* DAULAT. **116 I.C. 499=25 N.L.R. 144=A.I.R. 1929 Nag. 98 (F.B.).**

——Step-mother succeeding as *gotraja* sapinda is incapable of adopting. 32 Bom. 499, *Foll.* (*Patkar and Baker, JJ.*). BASANGOWDA *v.* RUDRAPPA.

110 I.C. 633=52 Bom. 393=30 Bom.L.R. 591=A.I.R. 1928 Bom. 291.

——The widow of a predeceased son can make a valid adoption with the contemporaneous consent of the mother-in-law in whom the estate of the last full owner has vested as an heir: 23 Bom. 327 and 38 Bom. 724, *Foll.*; A.I.R. 1921 Bom. 55 and A.I.R. 1918 P. C. 192, *Ref.* (*Patkar and Baker, JJ.*). YESHVADHAI WAMAN *v.* RAMCHANDRA SHANKAR.

105 I.C. 351=29 Bom. L. R. 1320=A.I.R. 1927 Bom. 652.

——*Adoption by girl of twelve years—Girl capable of judging for herself, the effect of adoption—Acquiescence and treatment as valid by near relations.*

Held, that especially, having regard to the circumstances that the adoption was questioned after so many years, it was impossible to say that it had not been satisfactorily established that the girl was capable of taking the boy in adoption. (*Coutts-Trotter, C.J. and Srinivasa Aiyangar, J.*). ABAYAMBAL *v.* RAJARATHNA AYYAR. **104 I.C. 396=1927 M.W.N. 298=A. I. R. 1927 Mad. 1095.**

HINDU LAW—Adoption—Capacity to take.

——Husband can validly adopt without or against wife's consent. (*Phillips and Madhavan Nair, JJ.*). SUNDARAMMA *v.* VENKATASUBBIER. **97 I.C. 145=49 Mad. 241==1926 M. W. N. 778=A. I. R 1926 Mad. 1203=51 M.L.J. 545.**

——*Mother, succeeding to her son's estate on the re-marriage of his widow cannot adopt.*

Where a Hindu dies, leaving a widow and son and that son himself dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of adoption by the former widow is extinguished and can never afterwards be revived. It is clear therefore that where the son has left a widow who could have adopted, his mother has no power to do so on her succession to the estate on the re-marriage of her son's widow: 32 Bom. 499; 41 Mad. 855 (P.C.), *Foll*; 19 Bom. 331; 25 Bom. 306; A.I.R. 1924 Bom. 441, *Dist.* (*Baker, J.C. and Prideaux, A. J. C.*). GANAPATI *v.* SALU.

89 I. C. 345=A.I.R. 1926 Nag. 15.

——A widow succeeding to the estate of her son who dies issueless and a widower after having attained ceremonial competence can make a valid adoption: 45 I. A. 156, *Expl.* and *Dist.*; 25 Bom. 306, *Foll*; (1903) 27 Bom. 492 (P. C.), *Dist.* (*Macleod, C. J. and Shah, J.*). ANJIRABAI GULABRAO POWAR *v.* PANDURANG BALKRISHNA POWAR.

80 I.C. 185=43 Bom. 492=26 Bom. L. R. 326=A.I.R. 1924 Bom. 441.

——*Grandmother—Adoption by.*

Under Hindu Law a grandmother can validly adopt even when the estate has passed directly from her husband to her grandson and come back to her directly from her grandson without the intervention of any other heir: 26 Bom. 526, *Dist.* (*Macleod, C. J. and Shah, J.*). NARHAR GOVIND *v.* BALWANT HARI. **80 I.C. 435=26 Bom. L.R. 528=48 Bom. 559=A.I.R. 1924 Bom. 437.**

——*Son dying after attaining majority—Mother can adopt another son.*

Where a son dies after attaining majority but without leaving a son or a widow, the mother can adopt another son with the consent of the sapindas. There is nothing in 41 M. 855 (P.C.) on which to find on principle that the mere attainment of majority by the son or the adopted son divests his mother of the power to adopt to her husband in the event of that son's death without heir. Under the Hindu Law a minor can marry to get legitimate sons and his widow can adopt to him, so that, even a minor may fulfil the tests laid down in that case though he has not yet come into full disposing possession of his estate. (*Case-law discussed*): 35 M.L.J. 798 and 25 M.L.T. 204, *Diss.* (*Schwabe, C.J. and Wallace, J.*). TRIPURAMBA *v.* VENKATARAMAN. **72 I.C. 278=46 Mad. 423=A.I.R. 1923 Mad. 517=44 M.L.J. 349.**

——*Widow succeeding as* gotraja sapinda *cannot make a valid adoption so as to affect the reversioner's rights.*

A Hindu widow who succeeds to an estate, not her husband's, but as a *gotraja sapinda* of the last male holder in consequence of the absence of nearer heirs, cannot make a valid adoption. It cannot be said therefore that the decision of High Court, that a widow of a *gotraja sapinda* cannot adopt so as to defeat the rights of the reversioners has in any way been shaken by the decision in *Yadho* v. *Namdeo*, A.I.R. 1922 P.C. 216.

If the widow of a predeceased son of plaintiff's paternal uncle from whom he was separate though she took a life-estate as a widow of a *gotraja sapinda*, had no power to adopt so as to defeat the rights of the plaintiff as the reversioner then the widow of a grandson of plaintiff's uncle (who was not the last male holder) who in the lifetime of her husband's uncle's widow had only a right of maintenance, had no power to adopt so as to exclude the reversioners. (*Macleod, C.J. and Shah, J.*). Y. N. KULKARNI *v.* LAXMIBAI KESHEO GOPAL.

77 I.C. 117=24 Bom. L.R. 836=47 Bom. 37=A.I.R. 1922 Bom. 347.

——*Daughter-in-law succeeding as* gotraja sapinda *cannot adopt.*

Where a daughter-in-law succeeds as a *gotraja sapinda* of the last male owner in the absence of any nearer heir she cannot adopt to her husband so as to affect the devolution of the estate inherited by her as a *gotraja sapinda*. It may be that, where the adoption has the effect of divesting any estate vested in a third person, it might not be valid, but it does not follow that where it has no such effect the adoption is necessarily valid: 29 Bom. 410; 26 Bom. 526 (F.B.) and 4 Bom. 219, *Foll.* (*Macleod, C.J. and Shah, J.*). DATTATRAYA BHIMRAO SABNIS *v.* GANGABHAI GANESHBAI NAVER. **77 I.C. 17=46 Bom. 541=24 Bom. L.R. 69=A.I.R. 1922 Bom. 321.**

——A person having a grandson subject to the defect of such dumbness cannot correctly be described as sonless. Adoption by him during the lifetime of the grandson is not valid: (1867) 4 Bom. H. C. (A.J.C.) 135, *Foll.*, (*Macleod, C.J. and Shah, J.*). BHARMAPPA, ADOPTIVE FATHER, BHARAMAGAUDA MUDIGAUDAR *v.* UJJANGAUDA, ADOPTIVE FATHER, BHARAMA.

65 I.C. 216=46 Bom. 455=23 Bom. L.R. 1320=A.I.R. 1922 Bom. 173.

——*Minor widow aged 12½ cannot make valid adoption.*

Adoption by minor Hindu widow aged 12½ is invalid. Without attempting to lay down any general rules as to whether at the age of 12½ years a girl could ever make a valid adoption in the absence of any clear evidence as to the special capacity of any particular girl to exercise an independent judgment at that age, it cannot be held that she can exercise such judgment as is required in the case of adoption. (*Macleod, C.J. and Shah, J.*). PARVATAVA *v.* FAKIRNAIK. **64 I. C. 899=46 Bom. 307=23 Bom. L.R. 1075=A.I.R. 1922 Bom. 105.**

——*Senior widow alive—Adoption by junior widow is invalid.*

Where a Hindu died leaving two widows the senior one having lived apart from him for 25 years, and the junior widow after asking for the consent of the senior widow adopted a boy to her husband,

Held, that the adoption was not valid, as the adoptive mother, the second widow had no authority from her husband; and the absence of any relinquishment by the senior wife of her prior right to adopt invalidates the adoption by the junior wife,

Held, further the verses in the Mitakshara clearly prove the superior position of the senior widow and her right to adopt follows as an inference in the absence of prohibition, which leaves the senior widow free to exercise the right which she has according to the Sastras.

The fact therefore that she was living, apart from her husband for no fault of hers does not take away her prior right to adopt nor does it imply a prohibition by the husband to adopt. Verses in the

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Mitakshara explained. (*Spencer and Ramesam, JJ.*). MUTHUSWAMI NAICKEN *v.* PULAVARATAL.
66 I. C. 504=45 Mad. 266=15 M L.W. 40=1922 M.W.N. 53=30 M.L.T. 60=A.I.R. 1922 Mad. 106=42 M.L.J. 101.

———Bombay Presidency—Unchaste Sudra widow can adopt: (1894) P.J. 22, *Dist.* (*Macleod, C. J. and Fawcett, J.*): BASWANT MUSHAPPA *v.* MALLAPPA KALLAPYYA.
59 I.C. 800=43 Bom. 459=A.I.R. 1921 Bom. 301.

———The wife of a lunatic cannot validly adopt under the Hindu Law. (*Macleod, C.J. and Fawcett, J.*) RAMAKRISHNA *v.* LAXMINARAYAN.
59 I.C. 458=22 Bom. L.R. 1181.

———Adoption by a minor widow, who has not attained sufficient maturity of understanding the nature of the act, is invalid and she can recover her husband's property from the adoptee unless his position has been prejudiced. In such case there is no estoppel against her : 34 All. 398 (P.C.), *Dist.* (*Sadasiva Aiyar and Spencer, JJ.*). RAMACHARI *v.* SARASWATI AMMAL. **60 I.C. 246=12 M. L. W. 544=1920 M.W.N. 721.**

—Adoption—Ceremonies.

———*Giving and taking essential.*

It is well settled that the physical act of giving and receiving is absolutely necessary in order to constitute a valid adoption. It is of the essence of adoption and the law does not accept any substitute for it : 6 Cal. 381 (P. C.), *Rel. on.* (*Addison and Bhide, JJ.*). BALAK RAM, HIGH SCHOOL, PANIPAT *v.* NANU MAL. **31 P. L. R. 509=A. I. R. 1930 Lah. 579.**

———In Punjab datta homa is not necessary—Gift and acceptance must take place. (*Shadi Lal, C. J. and Hilton, J.*). DAYA RAM *v.* HANS RAJ.
120 I. C. 793=A.I.R. 1930 Lah. 115.

———*Sudras—Giving and taking essential.*

Though in the case of Sudras no ceremonies are required for a valid adoption, still the giving and taking of a child in adoption should be established in proof of validity of an adoption: 5 Cal. 770 (P.C.), *Foll.* (*Fforde and Agha Haidar, JJ.*). KISHORELAL *v.* MT. JOWOLI. **108 I. C. 62 (Lah.).**

———*Giving and taking is necessary.*

A mere declaration by the adoptive father is not sufficient to create valid adoption and the actual giving and taking is essential for a valid adoption, whether the parties belong to the three regenerate classes or are Sudra: .6 Cal. 381 (P. C.) and 25 C.W.N. 403, *Rel. on.* (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASAD LAL. **106 I.C. 620=6 Pat. 506=8 P.L.T. 34=A.I.R. 1927 Pat. 145.**

———*Registered-deed is not essential.*

Per *Mukerji, J.*—A deed of adoption is more often than not, executed after the ceremony of adoption has taken place. The law does not require that an adoption should be evidenced by a registered deed. But as a precautionary measure people do execute such deeds. Any agreement that may have taken place before, and as a consideration of the adoption, may find place in the deed of adoption and in any deed that the adopted son may himself execute subsequent to the adoption. (*Lindsay and Mukerji, JJ.*). MITAR SAIN *v.* DATA RAM. **87 I.C. 724=A.I.R. 1926 All. 7.**

———*Giving and taking completed in adoptive father's life-time—Datta homam may be performed after his death.*

The adoptee living with his natural father was taken to the adopting father with a view to his being adopted. Letters passed between adopting father and the natural father of the boy in respect of the contemplated adoption and all the terms were settled. An auspicious day was chosen and the adoption was fixed for a particular day. In the meantime the adoptive father died. The ceremony of adoption was performed subsequently,

Held, that the only reasonable inference is that the husband gave his consent to his widow making the adoption and that the secular act of giving and taking the boy having been completed in the life-time of the husband, the religious act of datta homam essential to complete the adoption may be performed subsequent to his death. (*Ramesam and Venkatasubba Rao, JJ.*). SEETHARAMAMMA *v.* SURYANARAYANA. **97 I.C. 615=49 Mad. 969=25 M.L.W. 183=A. I. R. 1926 Mad. 1184=51 M.L.J. 466.**

HINDU LAW—Adoption—Ceremonies.

———Only ceremony among Agarwallas is tying turban round the adoptee's head and feasting the caste panchas. (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I.C. 357=1925 M.W.N. 692=30 C.W.N. 601=23 A.L.J. 273=2 O.W.N. 335=21 N.L.R. 50=52 Cal. 482=6 L.R.P.C. 97=27 Bom. L.R. 837=52 I.A. 231=A.I.R. 1925 P.C. 118=49 M.L.J. 173 (P.C.).**

———Brahmins—Non-sagotra boy—Datta homa is essential. (*Macleod, C.J. and Crump, J.*). GOVINDA PRASAD LALITA PRASAD *v.* RINDABAI LALITA PRASAD. **87 I.C. 472=27 Bom. L.R. 365=49 Bom. 515=A.I.R. 1925 Bom. 289.**

———*Physical handing over of boy by father is unnecessary—Presence and direction to hand over is enough but essential.*

It is not anywhere laid down that it is necessary that the actual physical handing over should be done, by the natural father. The natural father must be present at the time and he must direct that the handing over be done, because there must be an intention in the mind of the father at the moment of the adoption to give up his natural rights, but if that requirement is complied with it is not necessary that the actual, physical handing over should be done by the hands of the natural father. (*Kennedy, J.C. and Percival, A.J.C.*). MT. CHATI BAI *v.* SHRIMATI KUNDIBAI. **88 I.C. 573=A.I.R. 1925 Sind 223.**

———*Datta homam—Presumption of having been performed.*

When an adoption has not been challenged by any member of the family for 48 years though definite evidence is not forthcoming to prove that the *Datta Homa* had been performed at the time adoption took place, it is permissible to presume from the fact, that the adoption had not been challenged for such a long period, that, if the ceremony was necessary, it must have been performed: 29 All. 148 (P.C.), *Ref. to.* (*Kanhaiya Lal and Sulaiman, JJ.*). L. CHHOTEY LAL *v.* CHANDRA BHAN.
80 I.C. 1041=45 All. 59=A.I.R. 1923 All. 176.

———*Mere execution of deed cannot effect—Adoption.*

Mere execution of a deed does not effect an adoption, and it has yet to be found in a Court of law that in a community where an orphan adoption is recognised as valid such an adoption could be made up by a deed alone. (*Macleod, C.J. and Crump, J.*). SHIDAPPA *v.* SANTAWA. **77 I.C. 477=A.I.R. 1923 Bom. 302.**

———Putreshti Jag *or sitting upon the* bedi *is not absolutely necessary for validity of adoption.*

The ceremony of *Putreshti Jag* is not essential to the validity of an adoption even amongst the regenerate classes. (Sir Thomas Strange's Hindu Law, Vol. 1, P. 95, *Ref.*). There must be gift and

HINDU LAW—Adoption—Ceremonies.

acceptance manifested by some overt act. Beyond this, legally speaking, it does not appear that anything is absolutely necessary. There is no authority to support the view that the giver should actually sit upon the *bedi* during the datta homa ceremony. (*Dawson-Miller, C. J. and Foster, J.*). MAKUND DEB *v.* SHRI JAGANNATH. **72 I.C. 230= 2 Pat. 469=4 P.L.T. 427=1 P.L.R. 201= 1923 P.H.C.C. 97=A.I.R. 1923 Pat. 423.**

———There is no provision for the person giving in adoption and the person taking being the same individual. Such a position is opposed to Hindu Law. (*Macleod, C. J., Shah and Hayward, JJ.*). FAKIRAPPA VEERBHADRAPPA *v.* SAVITRIWA SANGAPPA. **62 I.C. 318=23 Bom. L.R. 482= A.I.R. 1921 Bom. 1 (F.B.).**

—Adoption—Custom.

———*Entry in* wajib-ul-arz *cannot supersede general law as to necessity of husband's authority.*

If an entry in *wajib-ul-arz* with regard to custom of adoption by Hindu widow is silent on the question of husband's permission which is the *sine qua non* of the validity of adoption by a Hindu widow, the entry cannot supersede the general law that a Hindu widow can make an adoption only with permission of her husband : 12 M.I.A. 523 ; 29 Cal. 828 (P. C.); A.I.R. 1921 P.C. 62 ; 14 M.I.A. 570 and 3 I.A. 259, *Ref.*; A.I.R. 1923 P. C. 90, *Dist.* (*Wazir Hasan, Ag. C. J. and Pullan, J.*). CHANDI SINGH *v.* GUR PRASAD SINGH. **A.I.R. 1930 Oudh 339.**

———Among Bunjahi Brahmins in the Punjab custom allows a daughter's son to be taken in adoption by his maternal grandfather. (*Bhide, J.*). TANSUKH RAI *v.* SOM DATT. **31 P.L.R. 176= A.I.R. 1930 Lah. 391.**

———*Lingayats — Adoption can be made before Deeksha.*

Vethulagama, one of the Agamas which are of primary authority among Lingayats, deals with adoption and fixes the fifth year as the proper age for adoption. This has been relaxed by custom and adoption can be made before Deeksha ceremony which takes place before marriage : 8 Mad. 440, *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*) SOMASEKHARA *v.* MAHADEV. **53 Mad. 297= A.I.R. 1930 Mad. 496.**

———Lingayats—Custom allowing adoption of married man has not obtained judicial recognition.

Such adoption is invalid even if law governing Sudras be applied to them : 16 Mad. 384, *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*). SOMASEKHARA *v.* MAHADEVA. **53 Mad. 297= A.I.R. 1930 Mad. 496.**

———*Married Marwari Brahmin—Adoption of—If allowed.*

A married Marwari Brahmin cannot be validly adopted in the absence of proof of custom allowing such adoption and mere lapse of time of 30 years cannot cure illegality of such adoption of married person. (*Sulaiman and Pullan, JJ.*). PHULCHAND *v.* GOBARDHAN DAS. **119 I.C. 855= 1929 A.L.J. 970=A.I.R. 1929 All. 739.**

———*Person of Bhinnagotra—Custom against adoption of.*

If an adoption is attacked on the ground that the adoptee was of a different gotra, a special custom that such adoption is invalid in a particular locality, must be proved, because under the Hindu Law there is no restriction in regard to gotra. (*Sulaiman and Kendall, JJ.*). BRIJ RAJ SARAN SINGH *v.* BASANT SINGH. **118 I.C. 154= A.I.R. 1929 All. 561.**

HINDU LAW—Adoption—Custom.

———The practice of adopting chelas by widows is not proved amongst the Gharbhari Gosais : 5 Bom. 682 ; 5 Bom. L.R. 114 and 5 Bom. L.R. 318 ; *Dist.* (*Patkar and Baker, JJ.*). HIRABHARTHI JAMNABHARTHI *v.* BAI JAVA. **113 I. C. 406= 30 Bom. L.R. 1555=A.I.R. 1929 Bom. 35.**

———*Adoption is only a temporal act among the Agarwallas.*

The Agarwallas differ partieularly from the Brahminical Hindoos in their conduct towards the dead, omitting all obsequies after the corpse is burnt or buried. They also regard the birth of a son as having no effect on the future state of the progenitor and consequently adoption is a mere temporal arrangement and has no particular object. (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I.C. 357=1925 M.W.N. 692= 30 C.W.N. 601=23 A.L.J. 273=2 O.W.N. 335= 21 N.L.R. 50=52 Cal. 482=6 L.R. P.C. 97= 27 Bom. L. R. 837=52 I. A. 231= A.I.R. 1925 P. C. 118=49 M.L.J. 173 (P.C.).**

———Sarin Khatris *settled in United Provinces—Adoption of sister's son is valid.*

The *Sarin Khatris*, settled in the United Provinces came originally from the Punjab. In the Punjab among *Khatris* of all sub-divisions the rules of the Hindu Law relating to adoption are not strictly observed and a custom exists among them by which the adoption of a daughter's son or sister's son is recognized. The adoption of a sister's son is also recognized among the *Sarin Khatris* settled in the United Provinces. (*Lindsay and Kanhaiya Lal, JJ.*). MAKKHAN LAL *v.* KANHAIYA LAL. **86 I.C. 305= A.I.R. 1925 All. 688.**

———Adoption of Daughter's son is allowed among Agharvala Vaishyas by custom. (*Lindsay and Sulaiman, JJ.*). MT. BALLO *v.* RAM KISHAN. **81 I.C. 490=21 A.L.J. 478= A.I.R. 1924 All. 49.**

———Among the Mahrashtra Brahman community of Nagpur the prohibition of the Hindu Law of the adoption of a daughter's son or of a sister's son has been abolished by custom. (*Baker, J. C. and Hallifax, A. J. C.*). JAGESHWAR *v.* PANDURANG. **78 I.C. 840=7 N.L.J. 82= A.I.R. 1924 Nag. 73.**

———*Adoption of orphan—May be valid under a custom.*

The adoption of an orphan is invalid according to orthodox Hindu Law. But the Dhusars of the Gurgaon District Punjab to which the parties belong are governed by customary law according to which the adoption of an orphan by Dhusars is valid. (*Sir John Edge.*) RAMKISHORE *v.* JAINARAYAN. **64 I.C. 782=15 M.L.W. 144= 49 Cal. 120=30 M.L.T. 144=26 C. W.N. 881= 48 I.A. 405=20 A.L.J. 857= 1922 M.W.N. 125=17 N.L.R. 169= A.I.R. 1922 P.C. 2=42 M. L. J. 80 (P.C.).**

———Among Jains residing in the Idar State in the Mahikanta Agency in the Bombay Presidency, it is customary to adopt an orphan. (*Macleod, C. J. and Fawcett, J.*). PARSHOTAM GANPAT *v.* VENICHAND GANPAT. **61 I.C. 492=45 Bom. 754= 23 Bom. L.R. 227=A.I.R. 1921 Bom. 147.**

———Adoption of daughter's son among Khatris of Amritsar is valid according to custom. (*Shadi Lal, C. J. and Le Rossignol, J.*). PARMA NAND *v.* SHIV CHARAN DAS. **59 I.C. 256= 2 Lah. 69=3 L.L.J. 82=21 P.L.R. 1921= A.I.R. 1921 Lah. 147.**

———Adoption of a daughter's son or a sister's son is valid by custom among the Brahmins of the

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Andhra portion of the Madras Presidency as it is in the southern districts. (*Oldfield and Phillips, JJ.*). VADREN RANGANAYAKAMMAGARU *v.* SOMASUNDARA RAO. **59 I.C. 609=43 Mad. 876.**

——According to the custom prevailing among *Kshatriyas* in South Kanara, in the Madras Presidency, the adoption of a brother's daughter's son is valid. (*Sadasiva Aiyar and Spencer, JJ.*). SOORALA SINGA *v.* KANAKA SINGA. **59 I.C. 585=43 Mad. 867=12 M.L W. 245= 1920 M.W.N. 528.**

—Adoption—Dancing girls.

——*Adoption for prostitution is invalid.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition case on ground of public policy. (*Ayling and Coutts-Trotter, JJ.*). KANDAIYA PILLAI *v.* CHOKKAMMAL. **59 I.C. 214=28 M.L.T. 106=12 M.L.W. 7.**

—Adoption—Divesting of estate.

——*Widow adopting to divest property vested in collateral is not allowed.*

A widow with no right of succession of her own cannot adopt so as to divest the estate vesting in the collateral to her deceased husband, so as to keep the succession in the family when his natural born son, though competent to do so, has failed to do so, though having no son of his own, either natural born or adopted, and the mere fact of the attestation of the deed of adoption if such adoption takes place, would not estop the collateral from getting up his title to the estate. (*Jwala Prasad and Scroope, JJ.*). AMARCHANDRA MANSINGH *v.* BANAMALI SINGH. **123 I.C. 770=11 P.L.T. 268= A.I.R. 1930 Pat. 417.**

——After the separation of two brothers, if one of them is adopted, the adoptee takes his separate property to the new family: A.I.R. 1923 Bom. 297, *Foll.* (*Zafar Ali and Dalip Singh, JJ.*). RALIA RAM *v.* MT. SODHAN. **123 I.C. 81= A.I.R. 1930 Lah. 470.**

——Bengal School—According to Bengal School an estate once vested in the son cannot be divested by his subsequent adoption except in case of extreme degradation: 29 Mad. 437; 5 Cal. 776 (P.C.), *Foll.*; A.I.R. 1928 P.C. 87; 40 Bom. 429, *Dist.* (*Jack and Mitter, JJ.*). SHYAMA CHARAN *v.* SRICHARAN. **120 I.C. 157=49 C.L.J. 298= 33 C.W.N. 553=56 Cal. 1135= A.I.R. 1929 Cal. 337.**

——Office of trusteeship vested in widow—She then adopting son—Office of trusteeship like all other private property will vest in adopted son and widow will be divested of same: 20 Mad. 162 and 19 All. 428, *Dist.*; 32 Mad. 167 and 22 C.L.J. 404, *Rel. on.* (*Srinivasa Aiyangar and Reilly, JJ.*). TIRUVENGATARATNAM *v.* BUTCHAYYA. **113 I.C. 347=52 Mad 373=28 M.L.W. 727= 1928 M.W.N. 53=A.I.R. 1929 Mad. 11= 55 M.L.J. 757.**

——Full owner of property by will bequeathing it to his wife *N* for life and after her, to his widowed daughter-in-law *K* absolutely—Will giving permission to either widow to adopt—Widow *N* entering into contract relating to property and *K* bringing suit for its specific performance—Adoption made after estate had become vested in two widows:

Held, that the adoption could not oust *N* of her life interest nor could it after the death of *N* prevent the vesting of an absolute estate under the terms of the Will for the simple reason that the bequests had taken effect already long before the adoption, that *K* could enter into the contract and that *N* could maintain the suit for specific performance: A.I.R. 1927 P. C. 139, *Rel. on.* (*Jackson and Subhedar, A. J. Cs.*). PARASHRAM *v.* SHRIRAM. **118 I.C. 477=26 N.L.R. 88= A.I.R. 1929 Nag. 321.**

HINDU LAW—Adoption—Divesting of estate.

——Property acquired at partition in the natural family is not divested by a person's subsequent adoption in another family: 29 Mad. 437; 1 C.W.N. 121; A.I.R. 1923 Bom. 297; A.I.R. 1922 Nag. 16; 40 Bom 429; 43 Bom. 774, *Disc.*; 5 Cal. 777 (P.C.), *Appl.* (*Jackson, A.J.C.*). RAMACHANDRA *v.* HARISCHANDRA. **117 I.C. 268= 25 N.L.R. 139=A.I.R. 1929 Nag. 177.**

——Widow holding absolute estate under her husband's will—Adoption of a son divests her of the estate—A.I. R. 1927 P C. 139, *Cons.*; 10 M I.A. 279 and 5 C.W.N. 20, *Rel on.* (*Phillips, Offg.C.J. and Reilly, J.*). SUKHDEVDOSS RAMPRASAD *v.* MT. CHOTI BAI. **109 I.C. 5=1928 M.W N. 32= 27 M.L.W. 145=A.I.R. 1928 Mad. 118.**

——*Law of divestment does not apply to property given to widow by Government grant for management as the head of a family.*

The Hindu Law of divestment of a widow's estate by an adopted son applies to the property that she inherits from her husband. The trust property given by Government to her by a grant in order that she should manage it as head of the family for the time being, creates a right which is different from the right of a widow who enjoys a property for her lifetime after the death of her husband and acquires no prescriptive right by managing the property. (*Spencer and Ramesam, JJ.*). PRATAP SINHA *v.* SIMJI RAJU. **98 I.C. 442=1926 M.W.N. 793= A. I. R. 1927 Mad. 50=51 M.L.J. 652.**

——The rule that an estate once vested cannot be divested does not apply where the adopted son succeeds not by inheritance but under settlement.

The whole principle underlying the rule as to divesting estates is that a superior title as heir cannot be created by a widow, where the property has already vested in a person who in law has taken the estate from the deceased heir of the last male holder. (*Odgers and Vishwanath Sastri, JJ.*). AMMAMMA *v.* SATYANARAYANA. **96 I C. 950= 49 Mad. 636=24 M L.W. 150= A.I.R. 1926 Mad. 916=51 M L.J. 426.**

——Where a sole surviving co-parcener of a Hindu family is adopted into another family and has a daughter then living, his estate in his natural family vests in his daughter, on his adoption. (*Macleod, C.J. and Crump, J.*). MANIKBAI VISHNUDAS GUJJAR *v.* GOKUI DAS RAMDAS KARADGI. **87 I.C. 816=49 Bom. 520= 27 Bom. L.R. 414=A.I.R. 1925 Bom. 363.**

——*Vatan property once vested in a collateral can't be divested.*

In the case of Vatan property a widow cannot adopt a son so as to vest the Vatan property in him if on the death of her natural son it was vested in a male member of the family in the absence of any heirs of the son. It is the right to possession and not the possession that is to be vested. (1913) 37 Bom. 598, 602, S.C. 15 Bom. L.R. 783, 788, *Foll.* (*Macleod, C.J. and Shah, J.*). ADIVEVA FAKIRGOWDA *v.* CHANMALLGOWDA RAMANGOWDA. **81 I. C. 1018=26 Bom L. R. 360= A.I. R. 1924 Bom. 393.**

HINDU LAW—Adoption—Divesting of estate.

———*Adoption does not divest estate already vested in the adopted son.*

The rule of Hindu Law or custom according to which an adopted son is deprived of right of inheritance in his natural family cannot apply where succession to the natural father's estate precedes the adoption, unless a contrary custom is proved. (*Zafar Ali, J.*). CHHANGA *v.* JAI LAL.
78 I. C. 161=6 L. L. J. 174=
A. I. R. 1924 Lah. 480.

———*Adoption does not divest estate absolutely vested in adopted son.*

The adopted person is not divested by virtue of his adoption, of any property which is absolutely vested in him before adoption. If a son is given in adoption after partition between father and sons the property already vested in the adoptee will not devolve on his natural father. (*Macleod, C.J. and Crump, J.*). MAHABALESHWAR NARAYAN *v.* SUBRAMANYA SHIVRAM. 72 I. C. 309=
25 Bom. L. R. 274=47 Bom. 542=
A.I.R. 1923 Bom 297.

———*Property vested in last surviving co-parcener's widow—Adoption by widow of predeceased co-parcener cannot divest.*

After the death of the last surviving co-parcener when the estate has vested in the widows of that co-parcener the adoption effected by a widow of a predeceased co-parcener cannot have the effect of divesting that estate. On that point the decision in *Yadao* v. *Namdeo*, is silent. It is difficult to accept that the effect of that decision is to overrule by implication the current of decisions on that point : 44 B. 483, *Foll.*; 48 I.A. 513, *Dist.* (*Shah, Ag. C. J. and Crump, J.*). SHIVABASAPPA BIN LOGNAPPA MANOLI *v.* NILAWA KAM SATAPA MANOLI. 82 I.C. 618=24 Bom. L.R. 1162=
47 Bom. 110=A. I. R. 1923 Bom. 17.

———Property absolutely vested in the adoptee before adoption is not divested: 29 Mad. 437, *Differed from.* (*Dhobley, A. J. C.*). MAROTI *v.* LAXMAN. 65 I. C. 362=5 N. L. J. 58=
A.I.R. 1922 Nag. 16.

—Adoption—Dwyamushyayana.

———*Dwyamushyayana form is unknown in Punjab—No express agreement—Presumption is of dattaka adoption.*

The dwyamushyayana form of adoption under which the boy adopted, while acquiring the relationship of a son to his adoptive father, retains also his relationship to his natural father, is entirely unknown to the Punjab, and in the absence of a specific plea to this effect, it cannot be held that when the defendant pleaded that he had been adopted, he had meant that he had been adopted in any form other than the ordinary dattaka form which is generally prevalent among the Punjab Hindus in this province.

Under the Hindu Law, in the absence of any express agreement to the effect that the adoption was to be in the dwyamushyayana form, it must be presumed to be an ordinary adoption: 41 Bom. 315 and 42 Bom. 277, *Foll.*

There is no presumption that where an only son has been adopted by a united brother of his father it must be presumed that there was an arrangement that he was to be dwyamushyayana and that the burden of proving that this was not so is on the party who disputes it. (*Martineau and Moti Sagar, JJ.*). MOHUA MAL *v.* MULA MAL. 89 I.C. 688=
A.I.R. 1926 Lah. 623.

HINDU LAW—Adoption—Eligibility.

—Adoption—Eligibility.

———Among twice-born Hindus governed by the Mitakshara law an adoption can only be made of a boy whose natural mother could before her marriage have been legally married by the adopter: 21 All. 412 (P. C.) and A. I. R. 1915 P.C. 15 *Rel. on.* (*Stuart, C. J. and Raza, J.*). UDAIRAJ SINGH *v.* MT. RAJ KUNWAR. 121 I.C. 91=6 O.W.N. 725=
A.I.R. 1929 Oudh 469.

———*An only son may be adopted.*

The injunction of the Shastras against the adoption of an only son is only commendatory and not mandatory. (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI. 110 I.C. 665=
50 All. 885=26 A.L.J. 1106=A.I.R. 1928 All. 459.

———*Janeo ceremony is absolute bar.*

The performance of the upanayana (the janeo ceremony) is an absolute bar to the adoption: 9 All. 253, *Foll.* (*Sulaiman and Iqbal Ahmad, JJ.*). GOPI NATH *v.* MT. KISHNI. 105 I.C. 831=
25 A.L.J. 1009=A.I.R. 1927 All. 634.

———*Married boy cannot be adopted.*

Among twice-born classes of Hindus a boy cannot be adopted after he is married, in the absence of a custom varying Hindu Law. (*Stuart, C.J. and Wazir Hasan, J.*). BISHUNATH KAUR *v.* SHEO BAHADUR SINGH. 104 I C 581=
4 O.W.N 550=A. I. R. 1927 Oudh 265.

———Regenerate classes—Adoption of daughter's son, sister's son and mother's sister's son is prohibited—*Factum valet* will not validate such adoption: 21 All. 412 (P.C.), *Foll.* (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASAD LAL. 106 I C 620=6 Pat. 506=
8 P.L.T. 34= A.I.R. 1927 Pat. 145.

———*No restrictions are imposed as to age of boy—Adoption will not be set aside on the ground that the boy was older than 5 years.*

The Hindu Law imposes no restrictions as to age of an adopted boy and whatever be the age of the adopted son, his adoption is valid if made before upanayana, if he belongs to any of the regenerate classes, and, before marriage, if he belongs to the Sudra caste and therefore an adoption will not be set aside on the ground that the boy adopted was older than five years at the date of the adoption : A.I.R. 1923 Patna 423 and *Mamood, J.*, in 9 All. 253, *Foll.* (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESWAR PRATAB NARAIN SINGH. 101 I.C. 289=
3 Pat. 777=3 P.L.T. 510=A.I.R. 1927 Pat. 61.

———Among the Agarwallas the qualifying age for adoption extends to 32 years. (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. 87 I.C. 357=
1925 M.W.N. 692=30 C.W.N. 604=
23 A.L.J. 273=2 O.W.N. 338=
21 N.L.R. 50=52 Cal. 482=6 L.R.P.C. 97=
27 Bom.L.R. 837=52 I.A. 231=
A.I.R. 1925 P.C. 118=49 M.L.J. 173 (P.C.).

———Husband's brother can be validly adopted. (*Macleod, C.J. and Coyajee, J.*). SHRIPAD DATTATRAYA KAMAT *v.* VITHAL VASUDEVSHET PARKAR. 89 I.C. 197=49 Bom. 615=
27 Bom. L.R. 674=A.I.R. 1925 Bom. 399.

———Giving of an only son in adoption by widow is valid: 25 Bom. 537, *Foll.* (*Macleod, C.J. and Crump, J.*). GANPATI SHANKARAPPA *v.* KRISHNAPPA SHIVARAM. 73 I.C. 205=A.I.R. 1924 Bom. 159.

———*Person previously adopted under an invalid adoption, is eligible.*

The defendant claimed to be the adopted son of Krishnaji ; his claim was disputed on the ground that he had been previously adopted by one

HINDU LAW—Adoption—Eligibility.

Ramchandra. The factum of that adoption was proved. It was also proved, however, that the first defendant was the sister's son of Ramchandra,

Held, the parties being Deshastha Brahmins, *prima facie* the adoption of a sister's son would be invalid. No attempt was made to show that in the community to which the parties belonged a custom has been established to permit the adoption of the sister's son therefore the fact that the defendant had gone through the ceremony of adoption purporting to result in his passing into the family of Ramchandra, must be considered as a nullity and would not operate as a defect against his being validly adopted by Radhabai into the family of Krishnaji. An adoption must either be effectual for all purposes, or a nullity. (*Macleod, C.J. and Crump, J.*). BHAN ABAJI DESHPANDE *v.* HARI RAMCHANDRA PATKI. **72 I.C. 631= 25 Bom.L.R. 411=A.I.R. 1923 Bom. 301.**

———Under Hindu Law, the adoption of daughter's husband is valid. (*Macleod, C.J. and Shah, J.*). SITABAI NAGES DESAI *v.* PARVATIBAI NAGES DESAI. **69 I.C. 172=24 Bom. L.R. 748= 47 Bom. 35=A.I.R. 1922 Bom. 239.**

———*Upanayanam in the family of invalid adoption—No bar to subsequent adoption.*

An *Upanayanam* is not valid unless performed by the father or in his absence, by another kinsman in the family to which the boy concerned actually belongs. The performance of the *Upanayanam* in a family into which the boy is wrongly believed to have entered by an invalid adoption, is a nullity and is no bar to his subsequent adoption. (*Oldfield and Phillips, JJ.*). VADREU RANGANAYAKAMMA *v.* SOMASUNDARA RAO. **59 I.C. 609=43 Mad. 876.**

———*It is desirable that adoption is made at a tender age.*

It is desirable that a boy should be adopted at a tender age so that he may be thoroughly assimilated to the family into which he is adopted and being bred up from his infancy amidst its members may be looked upon as a natural relation. (*Drake-Brockman, J.C.*). GULAB THAKUR *v.* FADALI. **68 I.C. 566=A.I.R. 1921 Nag. 153.**

———Person standing in same degree from common ancestor as adopter himself, can be adopted. (*Drake-Brockman, J.C.*). GULAB THAKUR *v.* FADALI. **68 I.C. 566=A.I.R. 1921 Nag. 153.**

—Adoption—Estoppel.

———*Likelihood of damage by change of position is enough to be proved.*

It is not cast upon the adopted son who sets up the estoppel against the adoptive father to prove conclusively that he was in fact damnified by the father resiling from the story of the adoption, but it is enough if he proves to the satisfaction of the Court that the likelihood of his being prejudiced by the alteration of position was so great that the Court will presume that the plaintiff must have been damnified: 34 All. 398 (P.C.), *Foll.*

The estoppel will only operate against the adoptive father and in no way against the *aurasa* son of the adoptive father. (*Coutts Trotter, C.J.*). J. PARASURAMAYYA *v.* J. VENKATARAMAYYA. **103 I.C. 855=1927 M.W.N. 311= A.I.R. 1927 Mad. 777.**

———*Agarwalla adoption — Brahminical adoption falsely set up—Acts and representations regarding former cannot create estoppel as to latter.*

The parties were Agarwallas and the adoption was made in the manner customary among the Agarwallas. The story of a regular Brahminical adoption of the same boy previous to the Agarwalla adoption was invented with the object of giving to latter adoption, the rights of collateral succession. The acts and representations of the plaintiffs which were set up as estopping them from questioning the adoption related to the Agarwalla adoption.

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Held, that the plaintiffs were not estopped from questioning the adoption and denying that the adopted son acquired any rights of collateral succession by the adoption: 19 W.R. 12 (P.C.), *Foll.* and 34 All. 398 (P.C.), *Distinguished.* (*Mr. Ameer Ali.*) DHANRAJ JOHARMUL *v.* SONI BAI. **87 I.C. 357=23 A.L.J. 273=2 O.W.N. 335= 21 N.L.R. 50=52 Cal. 482=6 L.R.P.C. 97= 27 Bom.L.R. 837=52 I.A. 231=1925 M.W.N. 692= 30 C.W.N. 601=A.I.R. 1925 P.C. 118= 49 M.L.J. 173 (P.C.).**

———*Party can be estopped by, from denying adoption.*

No doubt it is perfectly true that under the Hindu Law an adoption can only be effected by the due performance of certain religious ceremonies; but the plaintiff in an action can be estopped by his own previous conduct from asserting that such valid and binding adoption had not in fact taken place. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. **69 I.C. 971= 54 All. 169=20 A.L.J. 945=A.I.R. 1923 All. 58.**

—Adoption—Evidence.

———*Lapse of time—Adopted son treated as such by members of the family and the public—Presumption in favour of valid adoption.*

In all cases it is not necessary to produce direct evidence of the fact of adoption and where it appears that the adoption had taken place long since and the adopted son has been treated as such by the members of the family and in public transactions, every presumption will be made that every circumstance has taken place which is necessary to account for such a state of things as is proved or admitted to exist: 24 Bom. 473 and 27 All. 271 (P.C.), *Foll.*; 29 All. 519 (P.C.), *Rel. on.* (*Kinkhede and Mohiuddin, A.J.Cs.*). YAMUNABAI *v.* DHANNA LAL. **114 I.C. 616 (Nag.).**

———*Estoppel against father—Real prejudice need not be proved—Likelihood of prejudice enough.*

It is not cast upon the invalidly adopted son who sets up the estoppel against the adoptive father to prove conclusively that he was in fact damnified by the father resiling from the story of the adoption, but it is enough if he proves to the satisfaction of the Court that the likelihood of his being prejudiced by the alteration of position was so great that the Court will presume that the plaintiff must have been damnified: 34 All. 398 (P.C.), *Foll.*

The estoppel will only operate against the adoptive father and in no way against the *aurasa* son of the adoptive father. (*Coutts-Trotter, C.J.*). J. PARASURAMAYYA *v.* J. VENKATARAMAYYA. **103 I.C. 855=1927 M.W.N. 311= A.I.R. 1927 Mad. 777.**

———Reiterated declarations by the adopted son himself, extending over a number of years, that he was adopted son is sufficient proof of adoption against him when he is denying the adoption. (*Lord Blanesburgh.*) CHANDRA SHEKHAR BAKSH SINGH *v.* MT. RAJ KUNWAR. **96 I.C. 836= 24 M.L.W. 320=1926 M.W.N. 596= 31 C.W.N. 417=A.I.R. 1926 P.C. 91 (P.C.).**

———Where the adoption was never challenged for many years,

Held, that the factum of adoption must be taken as proved and that it is a fair presumption to

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make that such adoption was made with the necessary assent of the collaterals. (*Broadway, J.*). KANHAYA *v.* NAURANG. 76 I.C. 754= A.I.R. 1923 Lah. 374.

———In none of the correspondence which passed between the uncle and the nephew, did uncle refer to nephew as his son: nor did he refer to his wife as the mother of the boy; on the contrary he referred to her as his aunt. Moreover the nephew was the only other member of the family and therefore uncle's only heir and thus there was no necessity to adopt him.

Held, the alleged adoption is not proved. (*Scott-Smith and Moti Sagar, JJ.*). MT. UTTAM DEVI *v.* DINA NATH. 75 I.C. 774=A. I. R. 1923 Lah. 359.

———Name not changed—No proof of expenditure on ceremony—No reference to adoption at mutation—Adoption is not proved. (*Kotval and Prideaux, A.J.Cs.*). DEORAO *v.* MT. ANNAPURNABAI. A.I.R. 1922 Nag. 185.

———Where the plaintiffs sued for a declaration that a widow had no authority to adopt and that she did not adopt and the evidence in the defendant's side which was more valuable and weighty than that of the plaintiffs showed that the widow had asked for Police help at the time of adoption,

Held, that the adoption must be held to be established. (*Das and Adami, JJ.*). CHANDRAMA KUER *v.* RAM GAYAN. 67 I.C. 57=A.I.R. 1922 Pat. 111.

———*Direct proof is not necessary—Conduct of members of family, etc., is enough.*

It is not necessary to produce direct evidence of the fact of adoption; where it has taken place long since and where the adopted son has been treated as such by the members of the family and in public transactions, every presumption will be made that every circumstance has taken place which is necessary to account for such a state of things as is proved or admitted to exist. (*Mookerjee and Buckland, JJ.*). JAGANNATH MARWARI *v.* MT. CHANDNI BIBI. 67 I. C. 31=34 C.L.J. 432= 26 C.W.N. 65=A.I.R. 1921 Cal. 647.

———If giving and taking is not established as a fact no amount of acknowledgment would make a person an adopted son. (*Woodroffe and Walmsley, JJ.*). KRISHNA BHAMINI DASI *v.* BROJA MOHINI DASI. 66 I.C. 38=25 C.W.N. 403= A.I.R. 1921 Cal. 617.

—Adoption—Factum valet.

———An adoption of a daughter's son, sister's son, and mother's sister's son being expressly forbidden by the texts on Hindu Law is contrary to law and void in the three regenerate classes, Brahmin, Kshatriya and Vaisya, and the principle of *factum valet* will not validate such an adoption. (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASADHAH. 106 I.C. 20= 6 Pat. 506=8 P.L.J. 34=A.I.R. 1927 Pat. 145.

———Adoption of Orphan, is invalid—*Factum valet*, doctrine of, does not apply. (*Ayling and Odgers, JJ.*). MAREYYA *v.* RAMALAKSHMI. 60 I.C. 141=44 Mad. 260=A.I.R. 1921 Mad. 331.

—Adoption—Relationship.

———Adoption of the daughter's son cannot be in the dattaka form and consequently there is no transplantation of the adoptee into the adopter's family and so as no relationship is created by the adoption beyond the personal relationship of the parties, the adopter's daughters cannot be held to become the sisters of the adoptee: 113 P.L.R. 1908; A.I.R. 1922 Lah. 433, *Rel. on.* (*Shadi Lal, C.J. and Hilton, J.*). UGGAR SEN *v.* KHUSHI RAM. 120 I.C. 5=A.I.R. 1929 Lah. 653.

HINDU LAW—Adoption—Relationship.

———*Question of adoption is one of status—Law of domicile governs.*

Per *Phillips, J.*—Adoption creates definite relationship between the person adopted and the person adopting and a question relating to its validity is akin to a case of legitimacy. In both the right of a person to be declared as the legal son of a father is involved. Adoption naturally carries with it rights to property but the main element in adoption is a religious element; for, the status conferred by adoption involves religious obligations and it is usually for the performance of such religious obligations that the adoption is effected. The question of adoption is consequently a question relating to the status of the parties and is governed by the law of domicile. (*Phillips and Reilly, JJ.*). RAMAKRISHNAYYA *v.* MAHALAKSHMAMMA GARU. 30 M.L.W. 691.

———*Natural brother cannot succeed to adopted son's estate in the adoptive family.*

It is not true to say that by Hindu law an adoptee only loses his consanguinity for purposes of succession. Adoption has been spoken of as "new birth" in many cases, a term sanctioned by the theory of Hindu law. The theory itself involves the principle "of a complete severance of the child adopted from the family in which he is born. . . and complete substitution into the adoptive family, as if he were born in it: A.I.R. 1915 P.C. 41, *Ref.*

Consideration of the intimate connexion, which primitive Hindu Laws established between the funeral offerings and ceremonies on behalf of the dead and the right of succession to his property will show that ceremonially the adopted son only becomes new born in the family of his adoptive father, so as to be qualified to provide efficaciously the offerings of which the dead have need, by first dying in the family of his birth, out of which he is given by his natural to his adoptive parent, and in which his offering will be no longer efficacious or desired. Therefore, when such an adopted son dies, his natural brother cannot succeed to him to his estate in the adoptive family being still a member of the family of his birth and bound to make the necessary offerings for his own ancestors and thus not qualified to do the same thing for his brother and his adoptive father and that father's immediate predecessors. (*Viscount Sumner.*) RAGHURAJ CHANDRA *v.* RANI SUBHADRA KUNWAR. 108 I.C. 673=3 Luck. 76=55 I.A. 139= 26 A.L.J. 609=30 Bom.L.R. 829=32 C.W.N. 1009= 5 O.W.N. 443=A.I.R. 1928 P.C. 87. 55 M.L.J. 778.

———*Adopted son loses all rights in natural family including right to inherit to natural relations.*

It is a well established principle of the Mitakshara law that an adoption in the dattaka form has the effect of transferring the adopted boy from his natural into the adoptive family and consequently of losing all his rights of a son in his natural family including the right of claiming any share in the estate of his natural relations. The only tie or affinity that such a boy retains with his natural family is that he cannot marry in it within the prohibited degree nor can he adopt from that family a boy whom he could not have adopted if he had remained in that family. (*Fforde and Jai Lal, JJ.*). DHANNA MAL *v.* PARMESHARI DAS. 111 I. C. 251=A.I.R. 1928 Lah. 9.

———It makes no difference as to extinction of a person's rights in his natural family whether he be adopted during the lifetime of his natural father or

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after the death of his natural father. (*Dalal, J.*). DHARAM SINGH *v.* BAKSHI. **94 I C. 315= A.I.R. 1926 All. 425.**

———*Adoptee's son, in existence at father's adoption retains his right to adoptee's natural family (Obiter).*

If any sons of the adoptee are in existence on the date of adoption they will be vested with interest in the property of the natural family and the father's adoption though it involves his civil death as regards the property does not have the same effect on the rights of his son or sons. (*Dalal, J.*). DHARAM SINGH *v.* BAKSHI. **94 I.C. 315= A.I.R. 1926 All 425.**

———*Wife not actually receiving can be adoptive mother.*

There appears to be no authority for the proposition that the wife does not become the adoptive mother unless she actually receives the boy.

Per *Madhavan Nair, J.*—The wife becomes the adoptive mother, not because she receives the boy in adoption, but because she is the wife of the adopter, her husband, who takes the boy in adoption.

Per *Phillips, J.*—A Hindu son has to offer oblations not only to his father's ancestors, but also to his mother's ancestors. When therefore, he is adopted into a new family, he becomes the son of that family and presumably he would offer oblations not only to his adoptive father's ancestors but to his father's wife's ancestors as well. It would be straining the legal fiction of adoption too far to hold that the boy need have no mother at all, although this may possibly be necessary in the case of an adoption by a bachelor. Wherever possible, therefore, a mother should be found for the boy, and the fact that such a mother died before the adoption can be no obstacle in view of the fictitious character of the whole principle of adoption : *Case-law considered.* (*Phillips and Madhavan Nair, JJ.*). SUNDARAMMA *v.* VENKATASUBBIER.

97 I. C 145=49 Mad. 941=1926 M.W.N. 778= A.I.R. 1926 Mad. 1203=51 M.L.J. 545.

———*Adopted son ceases to be a member of his natural family.*

After adoption in the dattaka form the adopted son ceases in all real sense of the word to be a member of the family of his natural father, and all ties of relationship between him and the family of his natural father come to end. The separation is absolute. The separation is rendered no less absolute because owing to the blood tie, which he cannot escape, he is prohibited from marrying within the prohibited degrees in the family of his natural father. (*Stuart, C. J. and Hasan, J.*). BRIJ INDRA TEWARI *v.* SUBHADRA KUNWAR. **95 I. C. 798= 1 Luck. 233=29 O.C. 218=3 O.W. N. Sup. 34= A.I.R. 1926 Oudh 449.**

———The continuation of sapinda relationship between the adopted person and his natural family does not establish the proposition that the relationship of a brother between the adopted person and his natural brother subsists even after the adoption. *Case-law referred to.* (*Stuart, C. J. and Hasan, J.*). BRIJ CHANDRA TEWARI *v.* SUBHADRA KUNWAR. **95 I. C. 798=1 Luck. 233= 29 O. C. 218=3 O.W.N. Sup. 34= A.I.R. 1926 Oudh 449.**

———Wife of adoptee passes into adoptive family. (*Dhobley, A.J.C.*). MAROTI *v.* LAXMAN. **65 I.C. 362=5 N.L.J. 58= A. I. R. 1922 Nag. 16.**

HINDU LAW—Adoption—Rights of adopted son —Disposition of property.

—Adoption—Rights of adopted son—Adverse possession.

———Time does not run against the adopted son prior to the date of his adoption and adverse possession against the adoptive mother does not affect the rights of the adopted son: 13 Bom. 160, *Dist.* (*Mittra and Prideaux, A.J.Cs.*). SITARAM *v.* RAJARAM. **17 N. L.R. 18= A.I.R. 1921 Nag. 111.**

—Adoption—Rights of adopted son—Co-parcenary.

———Property got by the adoptive father from maternal grandfather—Adopted son is co-parcener in it: 27 Mad. 382; 39 Mad 930, *Ref.* and 35 Cal.1039 *Foll.* (*Ramesam and Jackson, JJ.*). A. VENKATA SESHAMMA *v.* A. APPA RAO. **30 I.C. 79= 20 M. L. W. 181=A.I.R. 1925 Mad. 125.**

—Adoption—Rights of adopted son—Disposition of property.

———*Illatom adoption—Subsequent alienation by father-in-law—Rights of illatom son-in-law.*

The practice of illatom is a departure from ordinary Hindu Law, and accordingly it lies upon the party claiming by virtue of the statute to override the provisions of that law to substantiate his claim. This cannot in general be done, as, for instance, can be done in a case of adoption, by appeal to settled rules of law because the practice of illatom being of late occurrence and confined to certain castes, has never become crystallized into fixed rules of law by a long course of judicial decisions. Where therefore, a father-in-law takes a son-in-law in illatom, and subsequently alienates some of his property, it lies heavily upon the illatom son-in-law to show that by specific customary law overriding the general Hindu law, he has a preferential right to the rights of father in-law's alienees: 4 Mad. 272; 21 Mad. 266; 9 Mad. 114; A I.R. 1927 Mad. 708; 7 M. H. C. R. 25 and A. S. No. 206 of 1912, *Rel. on.* (*Beasley, C. J. and Curgenven, J.*). (VATRAPU) SUBBARAO *v.* (PAMIREDDI) MAHALAKSHMAMMA. **A.I.R. 1930 Mad. 883.**

———Son dying after authorising his wife to adopt—Father settling property on daughters after son's death—Plaintiff was adopted later and suing for partition—Father dying during suit and plaintiff then claiming whole property—Doctrine of relation back does not apply and plaintiff takes subject to settlement in favour of daughters.

In the case of adoption by widow the doctrine of relation back has nothing to do with a last male holder. A sole surviving co-parcener in possession of property has always been regarded as the owner of the co-parcenary property, the theory of relation back has only to do with establishing a line of succession to the adoptive father and in order to establish that line, it is necessary that certain intermediate holders should give way to the adopted son's superior claims as that of a natural born son of his adoptive father. He can so to speak insist on the property devolving in a direct line as far as possible from father to son or from grand-father to grand-son and it is in this connexion and this alone that the doctrine of relation back is to be regarded. (*Case-law fully discussed*). (*Odgers and Venkatasubba Rao, JJ.*). VEERANNA *v.* SAYAMMA. **118 I.C. 821=52 Mad. 398= 29 M. L. W. 309=A.I.R. 1929 Mad. 296= 56 M. L. J. 401.**

———After the separation of two brothers, if one of them is adopted, the adoptee takes his separate property to the new family: **A.I.R. 1923 Bom. 297,**

HINDU LAW—Adoption—Rights of adopted son—Disposition of property.

Foll. (*Zafar Ali and Dalip Singh, JJ.*). RULIA RAM *v.* MT. SODHAN. 123 I. C. 81= A.I R. 1930 Lah. 470.

———*Disposition before adoption by adoptive father*—Inter vivos *or by will is binding on adopted son.*

When a disposition is made *inter vivos* by one who has full power over property under which a portion of that property is carried away, no rights of a son who is subsequently adopted can affect that portion which is disposed of The same is true when the disposition is by will and the adoption is subsequently made by a widow who has been given power to adopt. For the Will will speak as to the death of the testator and the property is carried away before the adoption takes place. (*Viscount Dunedin.*) KRISHNAMURTHY *v.* KRISHNAMURTHY. 101 I.C. 779=50 Mad. 508= 29 Bom.L.R. 969=1927 M W.N. 467= 54 I.A. 248=45 C.L.J. 620=31 C.W.N. 910= 4 O.W.N. 621=39 M.L J. 52=26 M L W. 186= 25 A.L.J. 945=8 P.L.T. 719= A.I.R. 1927 P.C. 139=53 M L.J. 57 (P.C.).

———*Disposition of property made before adoption by the father is binding on the adopted son.*

In cases of adoption after the death of the adoptive father by his widow under his authority, every lawful disposition of the property made by him, even by a will, would be binding on the adopted son, and the rights accruing by virtue of such adoption are only in that part of the estate which remains undisputed at the moment of the adoption: 12 Mad. 490; *Subramania Ayyar, J., in Reference to* 27 Mad. 577; A.I.R. 1923 Mad. 376 and 3 I.C. 378, *Foll.*; 43 Bom. 778; 40 Bom. 270; 27 Mad. 577 and 16 Cal. 556, *Dist.* (*Lindsay and Sulaiman, JJ.*). DURGI *v.* KANHAIYA LAL. 101 I. C. 678= 49 All. 579=25 A.L.J. 338= A.I.R. 1927 All. 387.

———Plaintiff adopted by his uncle—Father and uncle lived jointly—Ancestral land alienated by father and uncle during plaintiff's minority but before his adoption—Plaintiff cannot challenge after adoption as he is dead with respect to his real father and his rights begin from the date of adoption with respect to his adopted father: 26 Mad. 143 and 5 Bom. 630, *Foll.* (*Baker, J.C. and Prideaux, A.J.C.*). NAGARMAL *v* ABDUL RAHMAN. 89 I.C. 941=A.I.R. 1926 Nag. 5.

———*Alienation by widow prior to adoption.*

Adopted son may enforce his right to property alienated by widow (adoptive mother) prior to adoption, without setting aside the transfer. (*Shah, Ag. C.J. and Fawcett, J.*). HANAMGOWDA SHIDGOWDA PATIL *v.* IVGOWDA SHIWGOWDA PATIL. 84 I.C. 374=48 Bom. 634= 26 Bom. L.R. 829=A.I.R. 1925 Bom. 9.

—Adoption—Rights of adopted son—Liability.

———*Property in the hands of adoptive mother changed with maintenance—Adopted son is bound.*

Where a consent decree was passed between two widows by which each was allotted a half share in certain properties but one of them was further directed to pay out of the property a sum of money to the other for her maintenance and the person who undertook the liability subsequently adopted a son,

Held, that the maintenance holder or her executor could sue to recover the arrears of maintenance which was charged on the estate and that the adopted son was bound by the obligations of the widow entered into prior to adoption. (*Graham and Mitter, JJ.*). RAJ NARAIN HAZARI *v.* BEJOY SINGH 34 C.W.N. 754.

HINDU LAW—Adoption—Rights of adopted son—Status.

———*Decree against adoptive mother—Adoptee's liability is not limited to assets taken from her.*

The adopted son is the owner of the estate and represents the estate in its entirety. In this view he should also be made liable for the sum decreed against adoptive mother without the limitation of his liability. In other words plaintiff's liability to pay this sum is not dependent upon any assets which he has taken from adoptive mother if, indeed, he has taken any assets from her at all. (*Rafique and Lindsay, JJ.*). JIWA RAM *v.* NAND RAM. 66 I.C 144=44 All. 407= 20 A.L.J. 226=A. I. R. 1922 All. 223.

———*Contracts by adoptive father before adoption are binding.*

Where a person entered into a contract to sell immovable property and died before completing the sale, but his minor widow delivered possession and received the purchase money and subsequently adopted the plaintiff; in a suit by plaintiff to recover possession,

Held, that suit is not maintainable: 41 Bom. 438 (F.B.), *Appl.* (*Macleod, C.J. and Fawcett, J.*). LAXMAN MADHORAO *v.* BHAGWAN SINGH. 59 I.C. 581=43 Bom. 434= 23 Bom. L.R. 55=A.I.R. 1921 Bom. 409.

—Adoption—Rights of adopted son—Partition.

———*Partition between co-widows is ineffective as against adopted son.*

Partition between co-widows is a mode of separate enjoyment binding on themselves and cannot enlarge their legal rights so as to affect the adopted son. (*Kotval and Prideaux, A.J.Cs.*). MT. ANNAPURNABAI *v.* RUPRAO. 78 I.C. 284= A.I.R. 1924 Nag. 319.

—Adoption—Rights of adopted son—Share.

———*Sudras in Southern India—Adopted son and after-born son share equally.*

The rule of the Dattaka Chandrika, that on a partition of the joint family property of a Sudra family, an adopted son is entitled to share equally with the legitimate son born to adoptive father subsequently to the adoption, has been accepted and acted upon for at least more than a century in Madras as the law applicable in such cases to Sudras. In Bengal, the same rule applies.

Gopalah v. *K. Venkataraghavulu*, (I.L.R. 40 Mad. 632; 29 M.L.J. 710), *Overruled*; *Raja* v. *Subbaraya*, (I.L.R. 7 Mad. 253), *Approved*. (*Sir John Edge.*) A PERRARU *v.* A. SUBBARAYADU. 61 I.C. 690= 3 P. L.T. 1=26 C. W.N. 1= 30 M.L.T. 1=48 I.A. 290=44 Mad. 656= 19 A.L.J. 621=23 Bom.L.R. 920=34 C.L.J. 56= 14 M.L.W. 270=1921 M.W.N. 540= A.I.R. 1922 P.C. 71=41 M.L.J. 33 (P. C.).

———The adopted son takes one-fourth of the entire estate when there is a real son, in provinces governed by the Mitakshara school. (*Shadi Lal, C.J. and Le Rossignol, J.*). PARMA NAND *v.* SHIV CHARANDAS. 59 I.C. 256=2 Lah. 69= 3 L. L. J. 82=21 P. L. R. 1921= A. I. R. 1921 Lah. 147.

—Adoption—Rights of adopted son—Status.

———*Dattaka putra and karta putra—Difference between.*

It is a very strong thing to say that a karta putra who retains his status in his natural family and loses no right in that family is in a better position than a datta putra who undoubtedly loses his

HINDU LAW—Adoption—Rights of adopted son—Status.

status in his natural family and who is liable to be defeated in his adoptive family by the birth of a natural born son. The modern text books refer to the adoption of a karta putra as an adoption in the kritrima form ; but this is not quite correct. All that is necessary is the consent of the adoptee, which involves the adoptee being an adult. He does not lose the rights of inheritance in his natural family, and takes the inheritance of his adoptive father, but not of his father's father or other collateral relations nor of the wife of his adoptive father or her relations. It is no part of the contract that the adoptee should succeed to the estate left by his adoptive father. A dattak son who loses his status in his natural family has no absolute right to the estate of his adoptive father. He is liable to be defeated by a gift *inter vivos* or by a devise made by his father in favour of another person. He is also liable to be defeated, if not absolutely, certainly to the extent of important shares in the estate by the birth of a natural born son subsequent to the adoption. Succession to the estate of the adoptive father is not inherent in the status of a karta putra. When a natural born son is in existence he is entitled to exclude every other kind of son from sharing with him in the estate of his father : 1 Sel. Rep. 11 ; 6 I.D., Old series, page 8, *Expl. and doubted.* (*Das and Adami, JJ.*). KANHAIYA LAL SAHU *v.* MT. SUGAKUAR.

90 I.C. 65=4 Pat. 824=6 P.L.T. 593=A. I. R. 1926 Pat. 90.

——*Adopted son is similar in all respects to natural born son.*

The rights of the adopted son, unless curtailed by express texts, are in every respect the same as those of a natural-born son and an adoption, so far as the continuity of the line of inheritance is concerned, has a retrospective effect.

In cases of competition between an adopted son and an illegitimate son of a Sudra, it would be unreasonable and against all precedents, in computing the shares, to treat the illegitimate sons as legitimate, presume that the adoption was after the birth of the illegitimate son, add to it the consequence that the adoption is invalid and hold that the illegitimate son could therefore get the whole property and then it should be divided by halves so as to give the illegitimate son and the adopted son equal shares. The proper course is to assume the adopted son to be in the same position as a natural-born son, imagine the illegitimate sons to be legitimate, assume that they can coexist with the legitimate sons, see what shares they would get on that footing, and give the illegitimate sons one-half of it. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

——An adopted son takes the place of natural son and has the right to inherit the property of his adoptive mother's ancestors. (*Macleod, C. J. and Shah, J.*). DATTATRAYA BHIMRAO SABNIS *v.* GANGABHAI GANESHBAI NAVAR. **77 I.C. 17=46 Bom. 541=24 Bom. L.R. 69=A.I.R. 1922 Bom. 321.**

—Adoption—Rights of adopted son—Succession.

——*Adopted and aurasa sons share equally in collateral succession.*

Kumaraswami Sastri, J.—Although under Hindu Law an adopted son might have a lesser share in his adoptive father's estate because of the birth of a natural son, so far as succession to collaterals is concerned, the adopted son and the natural born son stand on equal footing and they get equal shares. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITHAPUR.

116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).

——*Adoption by daughter-in-law to her husband—Adopted son succeeds to the estate of his adoptive grand-father.*

When a Hindu offers the sacrificial cake or pinda, he secures the advancement of the spirit of the father grand-father and great-grand-father, each to an equal degree; and no offerings by any other descendant or by any collateral are of the same order of efficacy. When a son is adopted his offering of the pinda to his adoptive father, and to his adoptive grand-father and great-grand-father, are as efficacious as the offerings of a natural son; and for this reason he is entitled to succeed to share in the family property, as if he were a begotten son. Where, therefore, an adoption secures to the spirit of the last male holder of an estate, that advancement, otherwise lacking, which is given by the offering of the pinda, then the imposition of pious duties on the adopted person should carry with it the legal rights to succeed to the estate of the last male-holder. But this broad principle is subject to the following equitable restrictions :

(1) That the estate is not already vested by inheritance in a person other than the adopting widow, or her co-widows.

(2) That if the estate is a share in an estate held by co-parceners the consent of the co-parceners is necessary.

Where the last male holder dies in exclusive possession of his estate, and his estate vests directly in his daughter-in-law, her husband, (*i. e.*, the son of the last holder) having pre-deceased the last holder, her adopting a son to her husband makes the adopted son, an heir to the last holder : 14 Bom. 463 ; 20 Bom. 250 ; 21 Bom. 319 ; 26 Bom. 526, *Ref.*; A. I. R. 1922 Bom. 321 ; 29 Bom. 410 ; 31 Bom. 373 and 32 Bom. 499, *Dist.* (*Hallifax and Mitchell, A. J. Cs.*). BASWANTRAO *v.* DEORAO.

99 I.C. 369=A.I.R. 1927 Nag. 2.

——Adopted son can inherit to the relations of his adoptive father's wife, deceased before adoption. (*Phillips and Madhavan Nair, JJ.*). SUNDARAMMA *v.* VENKATASUBBIER. **97 I. C. 145=49 Mad. 941=1926 M.W.N. 778=A. I. R. 1926 Mad. 1203=51 M.L.J. 545.**

——Son adopted by widow succeeding as *gotraja sapinda* and taking life-interest cannot succeed to her interest but can inherit adoptive father's property. (*Macleod, C. J. and Coyajee, J.*). HAMNAVA *v.* VENKAPPA. **91 I. C. 305=27 Bom. L.R. 1331=A.I.R. 1926 Bom. 26.**

——Adopted son in Bombay takes one-fourth of the share of a subsequently born natural son, even among Sudras: 17 Bom. 100, *Foll.* and 44 Mad. 656 (P.C.), *Expl.* (*Crump and Coyajee JJ.*). TUKARAM MAHADU *v.* RAMCHANDRA MAHADU.

89 I.C. 984=49 Bom. 672=27 Bom. L.R. 921=A.I.R. 1925 Bom. 425.

——An adopted boy cannot inherit to the relations of the wife of the adoptive father if the wife does not or cannot take part in adopting him, as for instance, where the adoption takes place after her death. (*Devadoss, J.*). VENKATASUBBIER *v.* SUNDARAMMA. **85 I.C. 318=20 M.L.W. 925=A.I.R. 1925 Mad. 340=48 M. L. J. 126.**

HINDU LAW—Adoption—Rights of adopted son —Succession.

———*Adopted son cannot succeed to his natural maternal grand-fathers' property.*

The theory of adoption involves the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and the maternal line and therefore, the adopted son cannot succeed to the property of his maternal grandfather in his natural family: 10 I.A. 138, *Ref.* (*Macleod, C. J. and Crump, J.*). BHANSAHEB *v.* RAMGAUDA. **76 I.C. 937= 25 Bom.L.R. 813=A.I.R. 1923 Bom. 471.**

———Adoption not in Dattaka form—Adopted son does not succeed collaterally: 67 P.L.R. 1911, *Foll.* (*Broadway and Abdul Raoof, JJ.*). THIRTHA RAM *v.* MT. KHAN DEVI. **60 I.C. 101= 3 L.L.J. 35=A. I. R. 1921 Lah. 149.**

—Adoption—Setting aside.

———*Widowed daughter adopting—Next reversioner can sue to set aside the adoption.*

If the widowed daughter of the propositus professes to adopt a son, the nearest reversioner in the family of the propositus has a right of suit within the terms of S. 42, Act I of 1877, to set aside such adoption: A.I.R. 1916 P.C. 117, *Dist.*; A.I.R. 1917 P. C. 196, *Appl.*; 42 Mad. 699; A.I.R. 1921 Mad. 710 and 35 M.L.J. 144, *Ref.* (*Jackson, J.*). MUTHUKRISHNA MUDALIAR *v.* HARI NARAYANA MUDALIAR. **105 I. C. 154= 26 M.L.W. 282=A.I.R. 1927 Mad. 785= 53 M.L.J. 601.**

———*Aura son's right to challenge adoption—Nature of.*

The case of the *aurasa* son of an adoptive father stands on a different footing, from that of a reversioner. The cause of action is one and the same whatever may be the number of the reversioners. But the case of an *aurasa* son is altogether different, for the adoption affects him as it affects no one else: for if the adoption is held valid his right to the family property would be cut down under the Hindu Law. But if the adoption is held to be not valid then he would succeed to the whole of the family property. Therefore decisions which relate to suits by reversioners would not apply.

The mere fact that the father who made the illegal adoption was alive for more than six years after the adoption would not bar the right of a son born a year or two after the adoption to question it.

Son's right to challenge the adoption is quite independent of that of the father. (*Devadoss, J.*). SIDDA REDDI *v.* DEVA JAYARAMI REDDI.

98 I. C. 435=24 M.L.W. 601=1926 M.W.N. 736= A.I.R. 1926 Mad. 1123=51 M.L.J. 757.

—Adoption—Texts.

———*Vyavahara Mayukha—Right of widow in Bombay to adopt without husband's authority.*

Per *Spencer, Offg. C.J.*—About 1674 the present law that a widow can adopt without the authority of her husband was also the law as expounded in Bombay. Though Vyavahara Mayukha came into use only by about 1700 it did not introduce a new Law of its own but only declared the law prevailing even before it was written. (*Spencer, O.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*Kalikapurana—Age of adoptee.*

The passage attributed to the *Kalika Purana* which restricts the age of the adoptee cannot be relied upon as authentic and the adoption of a child over five years of age is therefore permissible: 9 A. 253, *App.* (*Dawson-Miller, C.J. and Foster, J.*). MAKUND DEV *v.* SHRI JAGANATH. **72 I.C. 230=2 Pat. 469=4 P.L.T. 427= 1 Pat. L. R. 201=1923 P.H.C.C. 97= A.I.R. 1923 Pat. 423.**

—Adoption—Validity—Bar to adoption.

———Per *Kumaraswami Sastry, J.*—Sword wives' sons though legitimate, still if incompetent to perform ceremonies, do not invalidate adoption. (*Spencer, O.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

—Adoption—Validity—Bombay school.

———Adoption of a boy older than adoptive father is valid in Bombay Presidency. (*Macleod, C.J. and Shah, J.*). BALABAI TUKARAM *v.* MAHADU KRISHNA. **80 I.C. 529=48 Bom. 387= 26 Bom. L.R. 222=A.I.R. 1924 Bom. 349.**

—Adoption—Validity—Caste.

———*Adoption in a different sub-caste of the same caste valid.*

Adoption would not be invalid so long as the adoptive father and the adopted son belonged to a sub-caste of the same primary caste especially when inter-marriage between the two sub-castes is permissible: 17 O.C. 186, *Ref. to.* (*Sulaiman and Kanhaiya Lal, JJ.*). SHIB DEO MISRA *v.* RAM PRASAD. **87 I.C. 938=46 All. 637=22 A.L.J. 690= A.I.R. 1925 All. 79.**

—Adoption—Validity—Form.

———*Mithila School—Adoption in dattaka form is valid—Adoptee can inherit to collaterals.*

Adoption made in the dattaka form by a person of Mithila would not be illegal and the adopted son is capable of inheriting to collaterals. (*Das and Foster, JJ.*). CHANDRAHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I.C. 289=5 Pat. 777=8 P.L.T. 510= A.I.R. 1927 Pat. 61.**

—Adoption—Validity—Illegal adoption.

———Adoption of same boy by two brothers is illegal. (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I. C. 357=1925 M.W.N. 692=30 C.W.N. 601= 23 A.L.J. 273=2 O.W.N. 335=21 N.L.R. 50= 52 Cal. 482=6 L.R. P.C. 97=27 Bom.L.R. 837= 52 I.A. 231=A.I.R. 1925 P.C. 118= 49 M.L.J. 173 (P.C.).**

—Adoption—Validity—Invalid.

———*Mere lapse of time does not validate invalid adoption.*

Patkar, J.—Mere lapse of time would not validate an invalid adoption. A long course of recognition and acquiescence on the part of the members of the family and persons acquainted with the facts may give rise to an inference that conditions relating to the adoption were duly fulfilled.

Baker, J.—The fact that the adoption was recognized and acted upon cannot make that, which was invalid under the Hindu Law, valid. (*Patkar and Baker, JJ.*). BASANGOWDA *v.* RUDRAPPA. **110 I.C. 633=52 Bom. 393=30 Bom.L.R. 591= A.I.R. 1928 Bom. 291.**

———Where there are two brothers in a joint family and one of them (*B*) dies leaving his wife pregnant and the other *A* dies subsequently leaving his wife, who adopts *P*, and then *K* is born to *B*'s wife, in a suit against *K* for recovering half share of the property,

Held, that *K* is in law a co-parcener from the date of his conception and that the adoption by *A*'s wife of *P*, while *K* was in the womb, without the authority of husband, is not valid and gives *P*, no

HINDU LAW—Adoption—Validity—Invalid.

interest in the joint family property. (*Fawcett and Madgavkar, JJ.*). BALA *v.* AKUBAI. **99 I.C. 417= 28 Bom. L.R. 1254=50 Bom. 722= A.I.R 1926 Bom. 584.**

———Two of five relatives not consulted—Adoption is invalid: 30 M. 50 (P.C.), *Rel. on.* (*Venkatasubba Rao, J.*). SUBBAMMA *v.* ADIMOORTHAPPA. **86 I.C. 269=21 M.L.W. 85= 1925 M.W.N. 107=A.I.R. 1925 Mad. 635.**

—Adoption—Validity—Kashmir Brahmins.

———*Adoption after thread ceremony is valid.*

Among Kashmir Brahmins of Amritsar where adoption of a boy after thread ceremony was recognised as valid by the Biradri and by the friends of the family, and its validity was not questioned by any one from 1896 until the dispute arose in 1913,

Held, that the adoption was valid. (*Sir John Edge.*) DURGA DEVI *v.* SHAMBU NATH. **80 I.C. 965=29 C.W.N. 106=22 A.L.J. 394= 5 L.R.P.C. 83=5 Lah. 200=26 Bom. L.R. 551= 34 M.L.T. 93=1924 M.W.N. 434=51 I.A. 182= 20 M.L.W. 216=A.I.R. 1924 P.C. 113= 46 M.L.J. 661 (P.C.).**

—Adoption—Validity—Motive.

———*Bad motive of adoptive father cannot invalidate an adoption otherwise valid.*

Where it was alleged that the adoption by appellant was induced by a bribe,

Held, that the mere fact that the adopter has mixed motives for the adoption would not be sufficient in law to render it invalid. Where the adopter has a right to adopt a son no question of fraud or coercion arises. If the adopter's own object in making the adoption is the perpetuation of his family and other sufficient reasons, and if in addition there are other motives of a worldly nature which also induced him to do that which he has an absolute right to do, there is no reason why, where the rights of no other person are infringed, this should in any way affect the validity of his act: 35 B. 169 ; 22 B. 199; 22 B. 558 (F. B.) and 1 M. 174 (P. C.), *Ref.* Public Policy does not concern itself with the motives which induce a person to exercise his lawful rights without risk of injury to Society. (*Dawson-Miller, C.J. and Foster, J.*). MAKUND DEB *v.* SHRI JAGANATH. **72 I.C. 230=2 Pat. 469=4 P.L.T. 427= 1 Pat.L.R. 201=1923 P.H.C.C. 97= A.I.R. 1923 Pat. 423.**

—Adoption—Validity—Nature of.

———*Adoption held valid is valid for spiritual as well as temporal purposes.*

There is no possible distinction between the validity of an adoption for spiritual purposes and its validity for temporal purposes, or between its validity for any one purpose and its validity for any other. Under the Hindu Law if an adoption is valid at all, it is valid entirely, and a person validly adopted becomes for all purposes, spiritual or temporal, the natural son of the person by or to whom he is adopted. (*Hallifax and Mitchell, A. J. Cs.*). BASWANT RAO *v.* DEORAO. **99 I.C. 369=A.I.R. 1927 Nag. 2.**

—Adoption—Validity—Objections to.

———Plaintiff relying on the rule of prohibition of adoption of daughter's son among regenerate classes should raise the point in his plaint allowing defendant to plead family custom to the contrary. (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASAD LAL. **106 I.C. 620= 8 P.L.T. 34=6 Pat. 506=A.I.R. 1927 Pat. 145.**

HINDU LAW—Adoption—Validity—Sudras.

—Adoption—Validity—Orphan.

———*Orphan cannot be validly adopted in absence of a custom.*

Under Mitakshara law an orphan cannot be validly adopted. However, if a custom is proved under which such adoptions do take place, they would have to be held to be valid. But the burden lies heavily to prove a special and unusual custom on the person setting it up. (*Lindsay and Sulaiman, JJ.*). SUKHBIR SINGH *v.* MANGEISAR RAO. **100 I.C. 778=49 All. 302=25 A L. J. 185= A I.R. 1927 All. 252.**

———*Orphan cannot be adopted.*

It is essential to the validity of an adoption that the child should be 'given' to the adopter by the father or, if he be dead, by the mother. No other person has the right, nor can such right be delegated to anybody else. Consequently a boy who has lost both his parents cannot be adopted. (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI **87 I.C. 357=1925 M W N. 692=30 C.W.N. 601= 23 A.L.J. 273=2 O W.N. 335=21 N.L.R. 50= 52 Cal. 432=6 L R.P.C. 37=27 Bom. L.R. 837= 52 I.A. 231=A I R. 1925 P.C. 118= 49 M.L.J. 173 (P.C.).**

———Adoption of married orphan and only son is invalid. (*Zafar Ali, J.*). CHHANGA *v.* JAI LAL. **78 I.C. 161=6 L.L.J. 174= A. I. R. 1924 Lah. 480.**

—Adoption—Validity—Sudras.

———*Adoption of married man, even though Sudra, is invalid except in Bombay.*

Except in the Bombay Presidency where Mayukha prevails, in all the other provinces in India, the adoption of a married man, even though he happens to be a Sudra, is invalid. In the portion of Bombay Presidency where the Mayukha is followed, such adoption is held valid : A.I.R. 1925 Mad. 272; 33 Bom. 669; A.I.R. 1925 Bom. 363. *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*). SOMASEKHARAH *v.* MAHADEVA. **53 Mad. 297= A I.R. 1930 Mad. 496.**

———The adoption of a sister's son amongst the three twice-born castes is prohibited and invalid, whilst amongst Shudras it is valid : 22 Bom. 973 and 21 All. 412 (P.C.), *Foll.* (*Madgavkar and Patkar, JJ.*). SUBRAO *v.* RADHA. **113 I.C. 497= 52 Bom. 497=30 Bom. L.R. 692= A I.R. 1928 Bom. 295.**

———As Jats are Sudras, a sister's son can be adopted among them. (*Harrison and Campbell, JJ.*). HIRA *v.* SHIBBU. **84 I.C. 1=6 Lah. 52= 6 L.L.J. 442=26 P. L. R. 225= A. I. R. 1925 Lah. 163.**

———The existence of illegitimate children was held to be no bar to adoption among Sudras. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

———In Madras Presidency adoption of a married person amongst Sudras is invalid. (*Case-law reviewed*). (*Ramesam and Reilly, JJ.*). V. LINGAYYA CHETTY *v.* CHENGALAMMAL. **89 I.C. 923=20 M.L.W. 959=1925 M W.N. 268= 48 Mad. 407=A.I.R. 1925 Mad. 272= 47 M.L.J. 776.**

———Lewa Patidars in Gujarat are Sudras and adoption of sister's son is valid, amongst them: 44 Bom. 166, *Ref.* (*Macleod, C. J. and Crump, J.*). KAHANDAS NARAN *v.* JIWAN PARAG. **73 I. C. 1023=25 Bom.L.R. 510= A.I.R. 1923 Bom. 427.**

HINDU LAW—Adoption—Validity—Sudras.

——The adoption of a married man even among Sudras is invalid. (*Chevis, J.*). HIRA *v.* HARDAT SINGH. 68 I.C. 763=47 P.L.R. 1922= A.I.R. 1926 Lah. 26.

—Adoption—Widow—Bombay School.

——Adoption made by a widow of a co-parcener without having authority from her husband and without obtaining the consent of the co-parceners is invalid: A.I R. 1926 Bom. 435 (F.B) and 6 Bom. 498 (F.B.), *Foll.* and A.I.R. 1922 P. C. 216, *Ref.* (*Subhedar, A.J.C.*). YASHODI *v.* CHANDRABHAN. 121 I.C. 50=A.I. R. 1929 Nag. 367.

——Widow of a co-parcener in Bombay cannot adopt without husband's authority or consent of co-parceners: A.I.R. 1926 Bom. 435 (F. B.) and 6 Bom. 498 (F.B), *Foll.*; A.I.R 1922 P.C. 216 and A.I.R. 1925 P.C. 127, *Dist.* (*Patkar and Baker, JJ.*). BHIMABAI *v.* GURUNATH GOUDA. 114 I.C. 392= 30 Bom. L.R. 859=A.I.R. 1928 Bom. 367.

——*Widow has independent authority to adopt in Bombay.*

In the Mahratta country of the Bombay Presidency a Hindu widow whose husband does not expressly forbid her to adopt a son to him, has power to do so without the authority of her husband or the consent of her husband's kinsmen, whether or not her husband's estate is vested in her and whether or not he dies separated. (*Spencer, Offg. C. J. and Kumaraswamy Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. 93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

——*Widow can adopt whether the husband was joint or separate at the time of his death.*

The rule that in the Mahratta country, a Hindu widow may, without the permission of her husband and without the consent of her kindred, adopt a son to him if the act is done by her in the proper and *bona fide* performance of a religious duty and neither capriciously nor from a corrupt motive, is equally applicable whether her husband at the time of his death was joint or separated and whether his property was or was not vested in her as his heir at the time when she made the adoption. *Rakhmabai* v. *Radhabai*, 5 Bom. H.C.R.A.C. 4 (181) 1868, *Foll.* (*Sir John Edge.*) YADEO *v.* NAMDEO. 64 I.C. 536=20 A. L.J. 481= 15 M.L.W. 565=26 C W.N. 393=24 Bom. L.R. 609= 49 Cal. 1=30 M.L T. 53=48 I.A. 513= 17 N.L.R. 145=A.I.R. 1922 P.C. 216= 42 M.L.J. 219 (P.C.).

—Adoption—Widow—Co-widows.

——*Concurrent adoption by two widows is valid.*

Where the widows concurrently adopt a son, the adoption need not be held invalid although it be supposed that the adoptee thereby stands in the relationship of a son to two mothers, for adoption in Hindu Law is based on what is essentially a fiction and there must be obvious limits to the extension of such fiction: 37 Mad. 199 (P. C.), *Not Appl.* (*Srinivasa Ayyangar and Reilly, JJ.*). TIRUVENGADARATNAM *v.* BUTCHAYYA. 113 I.C. 347=28 M.L.W. 727=1928 M.W.N. 53= 52 Mad. 373=A.I.R. 1929 Mad. 11= 55 M.L.J. 757.

——*Two widows jointly authorised to make adoption—Adoption should be deemed to be made by and to senior widow and is therefore valid.*

Where an authority to adopt is given to both the widows jointly and they both concurrently make the adoption, the act of adoption should be deemed to have been made by the senior widow only and to herself as mother, even though both the widows might have concurred in making the adoption. Considering the genius of Hindu Law and what may be considered as the custom and consciousness of the community at large, at any rate in South India, it will be more in accordance with the reason of the thing to regard the adoption in such a case as having been made by and to the senior widow or the dharmapatni The junior widow becomes only the step-mother of the adoptee. The adoption therefore is valid: 37 Mad. 199 (P.C.), *Not appl.*; 39 Mad. 772, *Rel. on.* (*Srinivasa Aiyangar and Reilly, JJ.*). TIRUVENGATARATNAM v. BUTCHAYYA. 113 I.C. 347=52 Mad. 373= 28 M.L W. 727=1928 M W.N. 53= A.I R. 1929 Mad. 11=55 M.L.J. 757.

HINDU LAW—Adoption—Widow—Motive.

—Adoption—Widow—Madras School.

——In the Madras School, the cousultation with daughter's son who is a major, next heir and otherwise competent to advise is necessary—Per *Jackson, J.*:—It is not necessary. (*Ramesam and Jackson, JJ.*). BRAHMAYYA *v.* RATTAYYA. 83 I. C. 59= 20 M.L.W. 503=1924 M.W.N. 844= A.I.R. 1925 Mad. 67.

——*Consultation with reversioners—What is.*

A registered letter to a person, containing a request to assent to an adoption, the letter being never opened by him and returned, is not a valid consultation. (*Ramesam and Jackson, JJ.*). A. BRAHMAYYA *v.* RATTAYYA. 83 I.C. 59= 20 M.L.W. 503=1924 M.W.N. 844= A.I.R. 1925 Mad. 67.

—Adoption—Widow—Motive.

——*Adoption out of religious motives and for personal gain—Adoption valid—Arrangement for personal gain void.*

Kumaraswami Sastri, J.—The adoption is a religious sacrament, according to Hindu law-givers, as a marriage. The necessity for the adoption of a son in the case of childless Hindus is insisted upon as an act necessary for their salvation and is looked upon as very meritorious. Secular motives do come into play and influence persons in making adoption. Where an adoption is made by a widow both in fulfilment of her religious duties and also for the purpose of getting a gain for herself, the proper thing is to hold that the adoption would be valid while any arrangement for her personal benefit if not within the limits actually allowed by law, would be void. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. 116 I.C. 673=51 Mad. 893= 28 M.L.W. 422= A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).

——*Widow's motive is not irrelevant in Madras.*

Jackson, J.—Considering that adoption is only a method by which a married couple can have a child it may seem incongruous that a Court of law should concern itself with the underlying motive, and question whether it was caprice or corruption. That incongruity however disappears when the other aspect of adoption is considered, namely, a method by which the holder of a life-interest can interrupt the normal succession, and confer an absolute estate. Sapindas do not merely affirm the conduct of the widow; they pronounce a decision in their own right as persons having an interest in the protection of the inheritance; and in this view if no such decision has been pronounced, owing to an equal division between the sapindas, there can be no adoption and there is no need for the Court to go further and inquire itself into the widow's motive. But in Madras, it cannot be said that the widow's motive is entirely irrelevant, either as

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guiding the sapindas or in their absence, as guiding the Court. (*Kumaraswami Sastri, Odgers and Jackson, JJ.*). KRISHNAYYA RAO *v.* RAJAH OF PITTAPUR. **116 I.C. 673=51 Mad. 893=28 M.L.W. 422=A.I.R. 1928 Mad. 994=55 M.L.J. 894 (F.B.).**

———*Motive of widow in making adoption—If material.*

The corrupt motive of the widow in making the adoption cannot be relied on by the Court to declare the adoption invalid, although it would certainly be a very proper ground for a kinsman to consider when he is called upon by the widow for his consent, he would be justified in refusing his assent if he finds that the widow's motive in proposing the adoption is in part at least corrupt or improper: 22 Bom. 558, *Foll.*

When it is shown that the widow has sought the advice of her kinsman, the Court must not embark upon an enquiry as to what the motives of the widow are in seeking consent. A duty is cast upon the widow to apply for consent and, when she performs that duty, her act cannot be questioned on the ground that her motives were bad. It is for the kinsmen who are called on to grant consent to examine the motives and where it is found that effective consent has been granted, the Court will treat that as the decision of a domestic tribunal and will not trouble to canvass the propriety of the consent. (*Krishnan and Venkatasubba Rao, JJ.*). KRISHNA RAO *v.* RAJAH OF PITTAPUR.

102 I.C. 713=A.I.R. 1927 Mad. 733.

———*Religious motive to be presumed.*

Per *Spencer, Offg. C. J.*—If the act of adoption can be referred to proper religious motive, the Court ought to presume that the adopting widow was influenced by religious motives and not by mere caprice. Acting in opposition to co-widows or other relations is immaterial. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.

93 I. C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

———Courts have no jurisdiction to question the motives of a widow who adopts a son to her husband. (*Kennedy, J.C. and Percival, A.J.C.*). MT. CHATIBAI *v.* SHRIMATI KUNDIBAI.

88 I. C. 573=A.I.R. 1925 Sind 223.

—Adoption—Widow—Power to give.

———Widow after re-marriage can't give her son by first husband. (*Baker, J. C., Kotval and Prideaux, A. J. Cs.*). MT. SHEOKABAI *v.* GANPATH.

79 I. C. 142=20 N. L. R. 57=A. I. R. 1925 Nag. 1 (F.B.).

———*Mother can give in adoption.*

It appears to be well settled that a mother may give her son in adoption even without her husband's express consent in cases where such consent cannot be obtained, as where he is dead or has joined a religious order. (*Dawson-Miller, C. J. and Foster, J.*). MAKUND DEB *v.* SHRI JAGANNATH. **72 I. C. 230=2 Pat. 469=4 P. L. T. 427=1 Pat. L. R. 201=1923 P. H. C. C. 97=A.I.R. 1923 Pat. 423.**

———Widow cannot give in adoption her son by first husband after re-marriage: 33 Bom. 107, *Overruled*: 24 Bom. 89, *Foll.* (*Macleod, C. J., Shah and Hayward, JJ.*). FAKIRAPPA VEERBHADRAPPA *v.* SAVITREWA SANGAPPA. **62 I.C. 318=23 Bom. L. R. 482=A.I.R. 1921 Bom. 1 (F.B.).**

—Adoption—Widow—Right to adopt.

———Adoption by widow with no right of succession to her husband on death of natural born son without son natural or adopted, and when capable

HINDU LAW — Adoption — Widow — Right to adopt.

of adopting, cannot divest estate vesting in collateral nor can attestation of deed of adoption by such collateral estop him from setting up his title to estate. (*Cases discussed.*) (*Jwala Prasad and Scroope, JJ.*). AMARENDRA MANSINGH *v.* BANAMALI SINGH. **123 I.C. 770=11 P. L. T. 268=A. I. R. 1930 Pat. 417.**

———*Bombay School—Husband dying—Joint property not vested in widow—Widow cannot adopt.*

A Hindu widow in the Maratha country of the Presidency of Bombay, who has not her husband's estate vested in her and whose husband was not separate at the time of his death, is not competent to adopt a son to her husband without his authority or the consent of her father-in-law of her husband's undivided co-parceners: 6 Bom. 498 (F.B.), *held not overruled by*, A.I.R. 1922 P.C. 216; A.I.R. 1926 Bom. 435(F.B.), *Appr.* (*Jackson, A.J.C.*). JAIN *v.* KRISHNAPPA. **118 I.C. 685=25 N.L.R. 208=A.I.R. 1929 Nag. 289.**

———*Widow inheriting as mother can adopt without consent of other collaterals.*

In order that the widow may have a right to adopt, the husband need not be a separate member at the time of his death.

Even if the husband dies while he was united and as a member of the joint family, the right may be exercised by the widow, when she inherits as the mother of her son who, in the meantime has separated from the other co-parceners: 44 Bom. 297, *Foll.* (*Patkar and Baker, JJ.*). BHIMABAI *v.* GURUNATH GOUDA. **114 I.C. 392=30 Bom.L.R. 859=A.I.R. 1928 Bom. 367.**

———*Joint family—Widow of a co-parcener has no inherent power to adopt without authority of her husband or consent of surviving co-parceners—Widow succeeding as mother can adopt.*

Per *Macleod, C.J.*—Privy Council have not decided by their judgment in *Yadao* v. *Namdeo*, A.I.R. 1922 P.C. 216, that a widow in a Hindu joint family can, in the absence of any directions by her husband, adopt without the consent of her husband's co-parceners, and the decision of the Full Bench of this Court in *Ramji* v. *Ghamau*, 6 Bom. 498 (F.B.), has not been overruled.

Per *Shah, J.*—Though *Ramji* v. *Ghamau*, 6 Bom. 498 (F.B.), is overruled, so far as it can be held to conflict with the decision in *Yadao* v. *Namdeo*, A.I.R. 1922 P.C. 216, *i.e.*, where the husband died in union, leaving an express authority to the widow to adopt, and where subsequently the estate came to be vested in the widow as the heir of her son, adopted in pursuance of the said authority, on account of a subsequent partition between the son and other co-parcener, and where the estate was so vested in her at the time of the adoption, it is not overruled so far as the main point involved in *Ramji* v. *Ghamau*, 6 Bom. 498 (F.B.), is concerned, *viz.*, that where the husband died in union leaving no express authority to the widow to adopt, the widow cannot adopt without the consent of the surviving co-parceners in whom the estate is vested by survivorship at the time of the adoption. In the absence of the express authority of her husband, the widow of a Hindu co-parcener in an undivided family cannot adopt without the consent of the surviving co-parceners, in whom the property is vested by survivorship at the time of the adoption: 12 M.I.A. 397; 1 Mad. 69 (P.C.), *Foll.*; A.I.R. 1922 P.C. 216, *Expl.*

Per *Crump, J.*—Their Lordships of the Privy Council have laid it down as a correct rule of law

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that the widow of a Hindu in the Maratha country of the Presidency of Bombay has, where there is no prohibition by the deceased husband, an inherent right to adopt which is not subject to any of those limitations which have hitherto been placed upon it.

Per *Madgavkar, J.*—In so far as the observations of Westropp, J. on a review of Hindu authorities in (1866) 7 B.H.C.R. App. laid down that the husband's refusal in his lifetime, and even on the day preceding his death, to adopt a son was tantamount to a positive prohibition to the widow to adopt after his death, their Lordships of the Privy Council in *Yadao* v. *Namdeo*, A.I.R. 1922 P.C., 216, held that whatever the case in other parts of India, in the Maratha country these observations of Westropp, J., have no application; and they prefer the decision and the principles in (1868) 5 B.H.C.R. (A.C.J.) 181 as applicable to the fact in *Yadao* v. *Namdeo*, A.I.R. 1922 P. C. 216. The decision in *Yadao* v. *Namdeo*, A.I.R. 1922 P.C. 216, has not in any way affected the main point of the principle in *Ramji* v. *Ghamau*, 6 Bom. 498 (F.B.), *viz.*, the necessity of the consent of the undivided co-parceners for a valid adoption by a widow in a joint family made without the authority of her husband.

In a family which is undivided at the time of her husband's death but which is subsequently separated in status, even though the property is not actually partitioned, a Hindu widow in the Maratha country can, after the separation in status, and when the property vests in her and her co-widow, adopt without the consent of the collaterals, so long as there is no prohibition, express or implied, by the deceased husband to that particular adoption. Absence of express authority, or refusal to adopt in his lifetime, is not of itself a prohibition in the Maratha country. (*Macleod, C.J., Shah, Crump, Madgavkar and Coyajee, JJ.*). ISHVAR DADU *v.* GAJABAI. **96 I.C. 712= 50 Bom. 468=28 Bom.L.R. 782= A. I. R. 1926 Bom. 435 (F.B.).**

———*Property escheated to Government—Widow can adopt.*

Even where the property of the last owner has been escheated to the Government, there is no bar to the adoption of a son by the widow of the owner. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYER. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*Re-grant of confiscated property to the heirs of the owner—Widow can adopt but the terms of the grant cannot be disturbed.*

The property of a certain Raja was confiscated by the Government on his death. Subsequently, the Government relinquished the estate to the heirs of the Raja and conveyed the same to the Raja's senior widow. She was to manage the property and to provide for the participative enjoyment of the other widows, described by the grant as "co-heirs." Upon the death of the last surviving widow the Raja's daughter and failing her, the next heirs of the Raja were to inherit the property. After the grant had taken place, the senior widow adopted a son to her husband,

Held, that under the circumstances of the case there had been no escheat to the Government: but if there had been such escheat, the widow's right of adoption of a son for spiritual purposes was unfettered,

Held, further that the grant did not prohibit the adoption or show any intention to exclude the adoptee from inheriting the property, though the adoption could not disturb the arrangements taking place under the terms of the grant. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

HINDU LAW—Adoption—Widow—Validity.

———Where a man dies leaving a son and a widow and that son marries and begets a daughter and his wife and daughter die and after them he also dies, the widow of his father can adopt a son to him (the father) : 46 Mad. 423, *Foll.* (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*Husband dying after making invalid adoption—Widow cannot make a second adoption during lifetime of adoptee.*

The widow is bound by the act of her husband and to accept all the implications of an adoption by him, valid or invalid. In spite of the liberal interpretation of her powers to adopt, in the Bombay Presidency, the Hindu Law cannot have contemplated, and certainly it has not provided, that the widow could practically ignore and supersede her husband's act of adoption. A widow can adopt only in the absence of a prohibition by her husband. That prohibition may be express or implied by the husband's act of adoption. It is implied that his widow shall not adopt any other boy to him during the life-time of the adopted boy or until the adoption is declared invalid by a competent Court at the instance of somebody other than the widow interested in the estate. (*Shah and Fawcett, JJ.*). BHAN ADGAUDA PATIL *v.* NARASAGAUDA TATYA PATIL. **65 I.C. 614= 46 Bom. 400=23 Bom. L.R. 1272= A.I.R. 1922 Bom. 300.**

———Under the Hindu Law the widow of deceased co-parcener cannot adopt unless she has either the express authority of her husband or the consent of her husband's co-parceners. If she otherwise adopts such adopted son cannot claim to be entitled to the self-acquired property of his adoptive father. (*Macleod, C.J. and Fawcett, J.*). PANDU KRISHNA JADHAV *v.* DHONDI KRISHNA PATIL. **59 I. C. 783=22 Bom. L. R. 1403.**

—Adoption—Widow—Successive adoptions.

———A Hindu widow can adopt a second son, if the first adopted son dies without leaving behind him an issue or a widow: 29 Mad. 382 (P.C.); 25 Bom. 306, *Foll.* (*Kotval, A.J.C.*). SHEIKH DALLU *v.* PUNJAB. **78 I.C. 95=A.I.R. 1924 Nag. 344.**

—Adoption—Widow—Validity.

———If it is established that events had occurred which could constitute an adoption, apart from any question of the competency of the person alleged to be adopted, the widow cannot dispute such an adoption made by her husband : A.I.R. 1922 Bom. 397, *Foll.* (*Macleod, C.J. and Crump, J.*). SHIDAPPA *v.* SANTAWA. **77 I. C. 477=A.I.R. 1923 Bom. 302.**

———Adoption by husband—Wife is bound by the adoption. Whether valid or not: 23 Bom.L.R. 1272, *Foll.* (*Macleod, C. J. and Coyajee, J.*). CHIMABAI MALGAUDA PATIL *v.* MALLAPPA PAYAPPA. **67 I. C. 654=24 Bom. L. R 489= 46 Bom. 946=A.I.R. 1922 Bom. 397.**

———Where a Hindu died leaving two widows *K* and *G* and one *A* the widow of a pre-deceased nephew ; *A* adopted a son with *G's* consent and *G* subsequently adopted a son *R* to her husband,

Held, that as soon as *A* adopted a son to her husband, *G's* power to adopt came to an end and so

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the adoption of *R* is invalid. (*Macleod, C.J. and Shah, J.*). VAMAN VITHAL *v.* VENKAJI KHANDO.
61 I.C. 460=45 Bom. 829=
23 Bom. L.R. 269=A. I. R. 1921 Bom. 55.

—Adoption—Miscellaneous.

———Power to adopt is in some ways analogous to a power of appointment and must be distinguished from trust. Powers are never imperative; they leave the act to be done at the will of the party to whom they are given and are not obligatory upon the conscience of the party interested. (*Sen and Niamatullah, JJ.*). DHARAM PRAKASH *v.* MT. KALAWATI DEVI.
110 I.C. 665=
50 All. 883=26 A.L.J. 1106=
A. I. R. 1928 All. 459.

———*Court-fee.*

According to the Madras High Court a relief with regard to the validity or otherwise of an adoption is capable of valuation: 6 Mad. 192, *Foll*; 15 All. 378 and 35 Bom. 264, *Dist.*; 37 Cal. 860, *Not Appr.* The valuation of such relief should be calculated according to the market value of the property likely to be affected by the adoption being held as invalid or as not having taken place at all: A. I. R. 1927 Mad. 563, *Ref., but not Cons.*; 12 Mad. 223 and 5 P. L. J. 397, *Dist.* (*Devadoss, J.*) *In the matter of* RAMASWAMI ASARI.
113 I.C. 363=
23 M.L.W. 660=1928 M.W.N. 729=
52 Mad. 340=A.I.R. 1928 Mad. 1294=
56 M.L.J. 107.

———*Father leaving no estate—Adoption is still valid.*

A valid adoption to a deceased father is not impossible even when the father has left no property to which the adopted son can succeed by inheritance or survivorship: 1 Mad. 69 (P. C.), *Rel. on*; 10 M. I. A. 279; 8 Cal 302 (P. C.); 10 Mad. 205 (P. C.); 26 Bom. 526 (F. B.) and A. I. R. 1918 P.C. 74, *Cons* (*Phillips, Offg. C. J. and Reilly, J.*). SUKHDEVDOSS RAMPRASAD *v.* MT. CHOTI BAI.
109 I.C. 5=1928 M.W.N. 32=27 M.L.W. 145=
A.I.R. 1928 Mad. 118.

———*Condition of postponement attached to adoption is valid.*

A condition of postponement attached to an adoption is valid, although the full operation of the adoption is postponed for two lives both already in existence. (*Hallifax, A. J. C.*). KOLHI *v.* CHHOTIBAI.
68 I. C. 294=
A.I.R. 1923 Nag. 121.

—Alienation.

Applicability.
Co parcener.
Father.
Guardian.
Lender's (alienee's) duty.
Manager.
Manager of endowment.
Necessity.
Partial enforcement.
Recitals.
Refund.
Setting aside.
Widow.
Miscellaneous.

—Alienation—Applicability.

———*Mitakshara law of alienation is not applicable to impartible estate with rule of primogeniture.*

Mitakshara law of alienation is inconsistent with and inapplicable to an impartible estate in which the succession is according to primogeniture. The person disputing alienation has to prove custom according to which the estate is inalienable, the

HINDU LAW — Alienation — Co-parcener — Consent.

question of legal necessity for debt being irrelevant: 10 All. 272 (P.C.), *Rel. on*; A.I.R 1921 P. C. 62; A.I.R. 1927 P.C. 159 and 31 All. 224, *Ref.* (*Courtney-Terrell, C.J. and James, J.*). MADHUSUDAN DEB *v.* KHESTABASI SAHU.
121 I. C. 462=8 Pat. 932=
A I R. 1930 Pat. 137.

—Alienation—Co-parcener—After born co-parcener.

———*After-born co-parcener when can challenge alienation.*

Where a co-parcener who could challenge a deed was alive at the execution of the deed, and the plaintiffs were born during his lifetime and within twelve years of the alienation.

Held, they undoubtedly obtained a right to challenge it. A right to sue is not however co-parcenary property in which a son acquires interest by birth. Section 6 of the Limitation Act cannot be pleaded by a plaintiff who was not in existence when the alienee took possession. He is entitled to take advantage of the existing cause of action so long as it subsists; but he does not obtain a fresh period of 21 years from the date of his birth. Even a co-parcener who challenges an alienation does so in virtue of his own independent right as a person who has acquired interest in the family estate by birth. Plaintiffs cannot rely on S. 7 where there was no joint right when the period of limitation commenced; plaintiffs can bring their suit within three years of the date when the co parcener could have attained majority: 33 All. 654; 9 Lah. 558; 24 O.C. 330; 4 All. 235; 27 All. 704, *Foll.* (*Daniels, J.*). DHANRAJ RAI *v.* RAM NARESH RAI.
79 I.C. 1019=5 L.R.A. Civ. 325=
A. I. R. 1924 All. 912.

—Alienation—Co-parcener—Burden of proof.

———*Co-parcener challenging alienation must prima facie prove want of necessity.*

When a creditor wants to enforce a charge on the joint family property created upon it by one member of the joint family, it is for the creditor to make out a *prima facie* case of legal necessity if the charge is challenged by the other members. But where one of the members of the joint family seeks for a declaration that the charge created upon the family property should be declared null and void on the ground that it was created without legal necessity, there should be some *prima facie* evidence given by the plaintiff before the creditor is called upon to give evidence with regard to the validity of his document. (*Rafique and Piggott, JJ.*). RAM RAGHUBIR LAL *v.* DIP NARAIN SINGH.
71 I.C. 749=21 A.L.J. 168=45 All. 311=
4 L.R.A. Civ. 380=A.I.R. 1923 All. 287.

—Alienation—Co-parcener—Consent.

———A minor co-parcener cannot assent to an invalid transaction affecting his interest until he attains his age. (*Ramesam and Thiruvenkatachariar, JJ.*). *In the matter of* AMIRTHALINGA THEVAN.
112 I. C. 553=1928 M.W.N. 602=
28 M.L.W. 634=A.I.R. 1928 Mad. 986.

———*Consent may be implied from circumstances.*

The joint family property can be made the subject of a gift by one co-parcener with the consent express or implied of the other co-parceners: 39 All. 437 (P.C.). *Foll.* Where a gift was made by one member without express consent of other members but a subsequent sale of another portion of joint property was effected by all members and both deeds were registered on the same day and in the same place.

HINDU LAW—Alienation—Co-parcener—Powers of co-parceners.

Held, that consent of the other members may be implied from their conduct: 19 Cal. 123, *Foll.* (*Kanhaiya Lal, J. C.*). MAHABIR PANDE *v.* MATHURA PRASAD. **72 I.C 410=11 O.L.J. 343= A.I.R. 1924 Oudh 138.**

—Alienation—Co-parcener—Powers of co-parceners.

——Under Hindu Law each individual member of a divided family is the exclusive owner of the property that falls to his share on partition and is competent to alienate it. (*Zafar Ali and Bhide, JJ.*). PAKHAR DAS *v.* THAKAR DAS. **120 I.C. 168= 31 P. L. R. 431=A. I. R. 1930 Lah. 213.**

—Alienation—Co parcener—Refund.

——If a sale by a co parcener is, in a suit to set aside the sale, found not binding on the joint family the purchaser is entitled to a refund of the purchase money paid by him. (*Kulwant Sahay and Macpherson, JJ.*). RAM DAS SINGH *v.* TANAK SINGH. **111 I. C. 51=9 P. L. T. 758= A. I. R. 1928 Pat. 557.**

—Alienation—Co-parcener—Rights of co-parceners

——*Mortgage by a co-parcener, of family property, is binding only to the extent of his share—Other co-parceners are not entitled to redeem.*

If one of the co-parceners who is not a manager mortgages property held in co-parcenary by himself and others, the mortgage is binding so far as the mortgagor's joint share in the property is concerned but it does not bind the other co-parceners and their interest in the mortgaged property remains unaffected. The other co-parceners are not, therefore, necessary parties to a suit instituted by the mortgagee to enforce the mortgage for the reason that whatever interest they possessed in the mortgaged property is not in law affected by the foreclosure decree and they are not entitled to redeem the mortgage: 14 N.L.R. 117 and 4 N.L.R. 9, *Rel. on.* (*Subhedar, A. J. C.*). DINKARRAO *v.* SHAMRAO. **122 I.C. 699=26 N.L R. 208= A.I.R. 1930 Nag. 173.**

——*Obiter*—Though an alienation without necessity is void at the outset it is still open to the other co-parceners to validate it by their ratification if they are competent to do so: 35 Mad. 177, *Diss from*; A. I. R. 1922 Mad. 112, *Expl.* (*Ramesam and Thiruvenkatchariar, JJ.*). *In the matter of* AMIRTHALINGA THEVAN.

112 I.C. 553=1928 M.W.N 602=28 M.L.W. 634= A.I.R. 1928 Mad. 986.

——Where both the brothers in a joint Hindu family alienated by way of mortgage specific items of joint property and later on one of the mortgagors sold his share in those items to the mortgagee and the other co-parcener, being aware of such alienation, alienated his share in favour of the plaintiff:

Held, that plaintiff cannot insist, in a redemption suit, that he should have been allowed to redeem the whole of the property and thus compel the mortgagee to sue for partition, that the law applicable to mortgages should be applied in cases of this kind and not the strict rule of Hindu Law which is against the alienee of specific item of property from one co-sharer, claiming to be in possession of that property and that partial redemption is the proper relief in such a case: A.I.R. 1923 Mad. 533, *Appl.*; A.I.R. 1921 P.C. 125 and 31 M.L.J. 275, *Dist.* (*Devadoss and Jackson, JJ.*). GANAPATHI BHATTA *v.* BEERU BHANDARY. **106 I.C.196=27 M.L.W. 206=A.I.R. 1927 Mad. 1039.**

HINDU LAW—Alienation—Co-parcener—Rights of co-parceners.

——*Other co-parceners can prove that sale was nominal.*

When a member of a joint family has purported to sell his share to a stranger and does not himself plead that the transfer was not a sale or that it was for no consideration, it is open to the other members of the family to put forward such pleas and prove that there was no sale or no consideration for the sale and thus retain that property for the members of the joint family including the member who professed to sell it: 5 Cal. 148 and 25Mad. 690, *Ref.*; 27 Mad. 162, *Rel. on.*; 27 All. 271, *Dist.*; 37 Mad. 435, *Expl.* (*Wallace, J.*). MUTHUSAMY GOUNDAN *v.* PALANI GOUNDAN. **105 I.C. 845=A.I.R. 1927 Mad. 950= 53 M.L.J. 763.**

——*Co parceners retaining benefit of the alienation cannot challenge it.*

A co-parcener purchased certain property, paid a portion of consideration from joint family funds and for the rest executed a mortgage of the same property in favour of the vendor. In a suit by other co-parceners to set aside the mortgage,

Held, that the co parceners are not entitled to have the mortgage set aside while retaining the benefit of the consideration money. (*Hasan and Misra, JJ.*). ABHAIDAT SINGH *v.* RAGHO INDAR PARTAB SAHAI. **91 I C. 976=1 Luck. 1= 3 O.W.N. 40=13 O L.J. 37= A. I. R. 1926 Oudh 77.**

——There is no justification in reason or authority for the proposition that the liability of a Hindu co-parcener as regards executory contracts (*e.g.*, to sell land) is different from his liability as to executed contract. A minor co-parcener can enforce specific performance of the contract which is highly beneficial to the family and not entered into by the deceased manager to discharge any debt: 26 Mad. 74; 32 Mad. 320; 2 P.L.J. 513 and 3 L. W. 435, *Foll.* (*Rupchand Bilaram, A. J. C.*). LAKSHMICHAND ISARDAS *v.* FIRM OF KHUSHALDAS MANGATRAM. **88 I.C. 116=18 S.L.R 230= A.I.R. 1926 Sind 330.**

——*Any co-parcener can challenge an alienation made without necessity.*

A single member of a joint Hindu family, whose rights have been infringed by a sale of joint family property, can have the entire sale set aside, because if the vendors were entitled to deal with the joint family property, the alienation is wholly valid but as they were not entitled to do so, a single co-parcener cannot alienate even his own share: 39 All. 437 (P. C.), *Foll.* (*Dalal and Simpson, A. J. Cs.*). DWARKA PRASAD *v.* RAM DEBI. **77 I.C. 329=10 O. L. J. 360= 27 O. C. 140=A. I. R. 1924 Oudh 120.**

——*Suit by another co-parcener for his share only on ground of no necessity does not lie.*

A co-parcener in a joint family property who establishes that a member of the family has alienated that property without legal necessity, can sue to recover the whole property. He cannot be allowed to sue for his own share or any specific portion thereof for in a Mitakshara joint family no particular share can be predicated as belonging to any individual member. (*Mullick and Bucknill, JJ.*). SHYAM SUNDER RAI *v.* JAGARNATH MISRA. **74 I.C. 758=2 Pat. 925=1923 P.H.C C. 263= 1 Pat. L.R. 373=5 P.L.T. 193= A.I.R. 1923 Pat. 590.**

HINDU LAW—Alienation—Co-parcener—Rights of purchaser.

—Alienation — Co-parcener — Rights of purchaser.

———*Transferee has no right for separate possession —Suit for general partition must be filed—When prayer for separate possession can be granted.*

A transferee of an undivided interest of a member of a co-parcenary has no right to separate possession of his purchase except by a partition of the whole estate belonging to the family claimed in a properly constituted suit for partition to which all proper persons are impleaded as parties.

In the absence of anything on record to show that the array of parties is complete in the sense that there are no other members in the family for whom any provision either by way of maintenance or marriage portions has not to be made in the event of partition, and in the absence of any material to show that all the equities and right of all persons interested can be settled, the request for a grant of a decree for separate possession after the partition of the entire estate cannot be granted in a suit for possession by the purchaser: 9 N.L.R. 18, *Foll.* (*Kinkhede, A.J.C.*). MAMUJI *v.* DALPAT.

104 I.C. 569=A.I.R. 1928 Nag. 37.

———*Property alienated worth more than alienor's share—Whole property should be allotted to alienee.*

Where in execution of a decree against a co-parcener, a specific joint family property was sold and the other co-parcener instituted a suit later on against the vendee for recovery of the property sold, and it was found that on the date of the sale, the value of the alienor's share in the joint family property was considerably more than the value of the specific item of property sold.

Held, that the vendee was entitled to ask the Court in the co-parcener's suit itself to allot the alienated property to his vendor's share and thereby allow him to retain the property. (*Devadoss, J.*). SIVANARAYANA *v.* MUTHUKUMARA. **100 I.C. 747= 38 M.L.T. 122=A.I.R. 1927 Mad. 1084.**

———*Auction-purchaser of whole estate may challenge alienations.*

A transferee of whole interest in joint family property even in an execution sale under money decree is entitled to contest the validity of a transfer made by one of the members of the family on the ground of want of legal necessity: 33 All. 783 (F.B.), *Appl.* (*Mears, C. J. and King, J.*). RAJ BALLAW PRASAD *v.* DALIP NARAIN SINGH. **97 I.C. 344=A.I.R. 1926 All. 718.**

———*Stranger purchaser if in possession may hold as tenant-in-common as also a person in possession under adverse possession.*

A stranger purchaser of the undivided share of a co-parcener in a joint Hindu family, if in possession, need not be ejected in a suit for recovery of possession brought by an excluded co-parcener, but can be declared to be entitled to hold (pending a partition) as a tenant-in-common with the other co-parceners: 3 Cal. 198 (P.C.), *Expl.*

Each case (as to the propriety or otherwise of allowing the purchaser to retain possession) should be decided on its own facts: 26 Bom. 141, *Ref.*

Held: (Per *Fawcett, J.*, in application for review). The same principles apply to a person who is not a "purchaser" in possession of a joint family property, but is merely a person who had successfully remained in possession by virtue of his adverse possession. (*Fawcett and Coyajee, JJ.*). BHAN LAXMAN *v.* BUDHA. **96 I.C. 166= 50 Bom. 204=28 Bom. L.R. 765= A.I.R. 1926 Bom. 399.**

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———*Suit to set aside alienation should not be converted into one for general partition—Alienee must file separate partition suit and both may be tried together to obviate possible plea of* res judicata.

It is not competent for the Court in a suit by a co-parcener for setting aside an alienation of a certain item of family property to grant relief which it would grant on a general partition. The proper course for the alienee would be to sue for partition and ask the Court to allot to his alienor the specific property conveyed to him and if the Court finds that the interests of the other co-parceners would not be prejudiced by allotting to the alienating co-parcener the specific property alienated by him the Court may allow the alienee to retain the property. His suit for partition is not barred by *res judicata* by reason of a previous suit for setting aside the alienation. If both the suits are tried together there would not be any difficulty at all, as the possible plea of *res judicata* can then be obviated: A.I.R. 1922 Mad. 112, *Affirmed*; 43 Bom. 17, *Rel. on*; A.I.R. 1926 Mad. 241, *Diss. from.* (*Devadoss and Waller, JJ.*). KANDASWAMI *v.* VELAYUTHA.

96 I.C. 993=50 Mad. 320= 1926 M.W.N. 399=24 M.L.W. 367= A.I.R. 1926 Mad. 774=51 M.L.J. 99.

———Purchaser from co-parcener of his undivided interest is not a tenant-in-common as in Bombay but only a holder of equity to get partition: 38 Mad. 684 and 39 Mad. 265, *Rel. on.* (*Spencer and Odgers, JJ.*). SHANMUGAM PILLAI *v.* PANCHALI AMMAL. **95 I.C. 209=49 Mad. 896= 23 M.L.W. 551=A.I.R. 1926 Mad. 683= 50 M.L.J. 681.**

———In a suit by a co-parcener for recovery of the property or for partition, the alienee is entitled to claim partition, if it can conveniently be done: 40 Cal. 906, *Foll.* (*Phillips and Venkatasubba Rao, JJ.*). RAMASWAMI AYYAR *v.* VENKATARAMA AIYAR. **75 I.C. 406=46 Mad. 815= 18 M.L.W. 183=1923 M.W.N. 786= A.I.R. 1924 Mad. 81=45 M.L.J. 203.**

———*Purchaser's right is to compel a partition—He cannot take possession.*

A member of a Mitakshara Hindu family has an interest which is capable of being attached in execution of a decree as against him. But though a creditor can attach and purchase the interest of such a member it is not open to him to take possession of that interest. He only acquires a right to compel a partition. (*Das and Kulwant Sahay, JJ.*). MADRI PRASAD *v.* NAND KESHWAR. **85 I.C. 1014=2 Pat. 386=6 P.L.T. 742= A.I.R. 1923 Pat. 451.**

—Alienation—Co-parcener—Setting aside.

———*Reversioners can challenge alienation.*

If an alienation is made by one member of a joint Hindu family, which is really not binding on the estate and afterwards that member dies and also the surviving members die, the reversioners would have the right to challenge the alienation: 8 A.L.J. R. 901, *Ref.* (*Walsh and Sulaiman, JJ.*). SARJU PRASAD *v.* MANGAL SINGH. **87 I.C. 294=47 All. 490=23 A.L.J. 254= 6 L.R.A. Civ. 201=A. I. R. 1925 All. 339.**

———*Co-parcener seeking to set aside alienation must pay his share of amount supported by necessity.*

A sale-deed alienating the family property was executed by the major of three brothers constituting a Hindu joint family on his own behalf and not as manager of the family and by his mother

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acting as the guardian of his minor brothers. One of the minor brothers, on attaining majority brought a suit to recover the property on the ground that the sale was invalid being without legal necessity and his mother not being entitled to execute the sale-deed on his behalf.

Held, that the suit could only be decreed for recovery of the plaintiff's one-third share in the property subject to the payment of one-third of the amount found to be for legal necessity. (*Daniels, A.J.C.*). MAHESH DAT *v.* RAM ASRE.

67 I.C. 814=9 O.L.J. 138= A.I.R. 1922 Oudh 114.

—Alienation—Co-parcener—Validity.

———*Alienation by a member of joint family—Principles as to, considered.*

In the case of an alienation by a member of a joint Hindu family, three possible cases arise (1) where the whole of the consideration, even after being allotted to the alienor's shares only, is grossly inadequate, the whole transaction may have to be set aside, making the consideration proved a charge on the family property, (2) where the whole consideration is not grossly inadequate and can be regarded as the price of the alienor's share, but is less than the value of such share, the transaction may be upheld as the sale of the alienor's share only and the other members who question the transaction are entitled to recover their share of the property without being subjected to any other equity. In such a case, if the members are divided and the alienor leaves other heirs than the members who question the transaction, he or his heirs may have a right to contribution, and (3) where the consideration proved exceeds the value of the alienor's share, the transaction may be upheld as sale of the alienor's share only and for the excess a charge may be given over the shares of the other members: 26 M.L.J. 604 and A.I.R. 1927 Mad. 1116, *Not foll.*; 37 Mad. 435, *Diss. from*; (1917) M.W.N. 273, *Dist*; 27 Mad. 162, *Rel. on.* (*Kumaraswamy Sastry and Ramesam, JJ.*). VENKATAPATHI *v.* PAPPIA. **113 I.C. 158= 51 Mad. 824=28 M.L.W. 228= 1928 M.W.N. 410=A. I. R. 1928 Mad. 788= 55 M.L.J. 489.**

———*Minors—Alienation by manager or father, and that by guardian distinguished.*

Ananthakrishna Ayyar, J.—Sales conducted by co-parceners among whom is the father or the manager of the family conveying out not only their individual shares, but also the shares of the minors of the family, stand on a different footing from sales effected by guardians of property of minors in which the guardians have no personal interest, for this reason that the co-parceners who join in such sales have themselves got an interest in the property they purport to sell. (*Srinivasa Aiyengar and Ananthakrishna Aiyer, JJ.*). SATHAPPAN AMBALAM *v.* VADIVELU.

109 I.C. 106=A.I.R. 1928 Mad. 450.

———*Power by two brothers to third to mortgage family property—Mortgage by the third to pay debts binding on family is valid.*

A power of attorney executed by two brothers in favour of the third provided among other things "in respect of any mauza or share of land owned and possessed by us, the executants, the said Mokhtar-Am shall grant simple or Zarpeshgi-Thika or make mortgage with possession,"

Held, that these words were quite sufficient to confer the power to execute mortgage for debts for

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which the joint family, consisting of the three brothers, was liable. (*Lord Carson,*) DWARKA NATH SINGH *v.* KESHRI MALL. **101 I.C. 377= 1927 M.W.N. 433=31 C.W.N. 890= 39 M.L.T. 270=A.I.R. 1927 P.C. 111= 53 M.L.J. 592 (P.C.).**

———*A mortgage of an undivided share is void but a share separated can be available as security for mortgage-debt.*

A mortgage of the whole or a share of the joint family property of a Mitakshara family is void and inoperative as against the property hypothecated and gives the mortgagee no rights even against the mortgagor's undivided share but where the mortgagor's interest has been separated from that of the other members of the family it may become available as security for the mortgage debt: 5 P.L.J. 605, *Ref.* (*Simpson and Dalal, A. J. Cs.*). RAM RATAN *v.* GANGA BAKHSH. **71 I.C. 581= 26 O.C. 245=10 O.L.J. 193= A.I.R. 1923 Oudh 265.**

———*Validating circumstances, what are—Interpretation of Mitakshara, Ch. 1, Paras 27 to 29.*

The three circumstances which are mentioned in paragraph 28, Ch. 1 of the Mitakshara are exceptions to the general rule laid down in paragraph 27 and must be deemed to be disjunctive clauses. The circumstances which would justify transfers of joint ancestral property by one of the members of the family are, as stated in that paragraph (1) a season of distress, (2) for the sake of the family and (3) specially for pious purposes. The last portion of paragraph 29 is not intended to be a limitation of pious purposes as mentioned in paragraph 28. (*Mears, C.J. and Banerji, JJ.*). SRI THAKURJI *v.* NANDA AHIR. **63 I.C. 546=19 A.L.J. 380= 43 All. 560=A.I.R. 1921 All. 333.**

———Mortgage by some co-parceners not for necessity and not by father for antecedent debt, does not bind even mortgagor's undivided share. (*Dawson-Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*). MATHURA PRASAD *v.* RAJKUMAR MISRA. **62 I.C. 132=2 P.L.T. 407= 6 P.L.J. 526=1921 P.H.C.C. 245= A.I.R. 1921 Pat. 447 (F.B.).**

—Alienation—Father.
Admissions by.
After-born son.
Antecedent debt.
Benefit to estate.
Burden of proof.
Consent of co-parceners.
Court's duty.
Decree against..
Extent of validity.
Justifications for.
Limitation.
Powers of.
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Refund.
Rights of alienee.
Setting aside.
Son's liability.
Subsequent partition.
Surety.
Miscellaneous.

—Alienation—Father—Admissions by.

———*Admissions by father cannot be used against sons.*

No admission by a father can be used against the sons in a case where they are impugning the authority of the father to make them liable for the

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father's alienation of their property, alienated by him otherwise than as manager. (*Ashworth, A.J.C.*). BHARATH SINGH *v.* SHEODAT SHARMA.
91 I.C. 189=A.I R. 1926 Oudh 266.

—Alienation—Father—After born son.

———*After-born son cannot challenge.*

A son cannot object to alienations validly made by his father before he was born or begotten, because he could only by birth obtain an interest in property which was then existing in his ancestor: 34 Cal. 372, *Rel. on.* (*Das and Adami, JJ.*). HITENDRA *v.* SUKHDEB. 115 I.C. 886=
8 Pat. 558=10 P.L.T. 79=A.I.R. 1929 Pat. 360.

———*Right of a son born after alienation explained.*

A son cannot object to alienations validly made by his father before he was born or begotten because he can only by birth obtain an interest in property which was then existing in his ancestor. Hence if at the time of the alienation there has been no one in existence whose assent was necessary or if those who were then in existence have consented, he cannot afterwards object on the ground that there was no necessity for the transaction. On the other hand, if the alienation was made by a father without necessity and without the consent of the sons then living it would not only be invalid against them but also against any son born before they had ratified the transaction and no consent given by them after his birth would render it binding upon him. The reason of the thing is not of course that the unborn son has any right in the family property at the time of the alienation but that on his birth he acquires a share in the family properties as it then stands. If a previous alienation of any portion of the family properties was validated by consent or failure to set it aside in time on the part of the other members of the family then in existence, the property in which he acquires a share at birth is diminished to the extent of the portion thus alienated. If the alienation was invalid he acquires a share in the whole property including the portion purported to be alienated, not because the alienation was an invasion of his rights, for he had none, but because it was bad in itself and did not diminish the corpus of the joint family property: A. I. R. 1925 P. C. 33, *Expl.* (*Ramesam and Thiruvenkatachariar, JJ.*). *In the matter of* AMIRTHALINGA THEVAN. 112 I. C. 553=
1928 M.W N. 602=28 M L W. 634=
A.I.R. 1928 Mad. 986.

———A grandson, who was not born at the time when ancestral property was disposed of by the grandfather, cannot question the validity of the disposition, the property having been parted with at a time he had not come into existence. (*Srinivasa Ayyangar and Cornish, JJ.*). VENKATARAMANI *v.* SUBRAMANIA. 108 I.C. 639=
A.I.R. 1928 Mad 945.

——— *Grandson not born at the time can challenge.*

A grandson is entitled to challenge an alienation made by his grandfather on the ground of want of legal necessity even though he was not born on the date of the alienation. (*Walsh and Pullan, JJ.*). BABU RAM *v.* MAHADEO RAM. 98 I.C. 1012=
A.I.R. 1927 All. 127.

———*Alienation without necessity and without consent of living son can be attacked by subsequently born son.*

A son cannot object to alienations validly made by his father before he was born or begotten; but if the alienation was made by a father without necessity and without the consent of a son then living, it would be invalid not only against him but also against any son born before he had ratified the transaction: 11 W.R. 480; 12 C. P. L. R. 63; 16 Mad. 76 and A.I.R. 1924 Nag. 200, *Appl.* (*Findlay, O.J.C.*). GUNAJI *v.* RAMCHANDRA.
94 I.C. 948=A I.R. 1926 Nag. 360.

———*No fresh cause of action for after-born son.*

An after-born son does not get a fresh cause of action by his birth after the alienation but he can take advantage of the existing cause of action provided the title has not completely vested in the transferee. (*Daniels, A.J.C.*). OUDH BEHARI LAL *v.* DAL SINGH. 79 I.C. 666=10 O L.J. 404=
A.I.R. 1924 Oudh 205.

———*Sons born after alienation take subject to it.*

Sons and grandsons not born at the date of the mortgage take by their birth an interest in the family property subject to the mortgagee's rights in respect of the father's shares as they existed at the date of the mortgage and they are not entitled to object to the alienation of such shares. (*Kotval and Prideaux, A.J Cs.*). RUKHMABAI *v.* VITHUSA.
78 I.C. 384=A. I. R. 1924 Nag. 398.

———*Can challenge only if it is invalid against sons holding at the date of the alienation.*

A son cannot object to alienations validly made by his father before he was born or begotten but if the alienation was made by a father without necessity and without the consent of sons then living, it would not only be invalid against them, but also against any son born before they had ratified the transaction; and no consent given by them after his birth would render it binding upon him: 33 All. 654; 11 W.R. 480, *Foll.*

If a previous alienation of any portion of the family property was validated by consent or failure to set it aside in time the property in which he acquires a share at birth is diminished to the extent of the portion thus alienated. 12 C.P.L.R. 63, *Foll.*

Any one son whose claim is not barred by time, could recover the whole of the property to be held for the benefit of the joint family: 35 All. 571, *Dist.*

If the alienation is valid, the subsequently born son cannot sue to set it aside, but if the alienation is invalid the subsequently born son can sue not because the alienation was an invasion of his rights for he had none, but because it was bad by itself and did not diminish the corpus of the joint family property. (*Baker, Offg. J.C.*). MANSINGH *v.* KARAN SINGH. 78 I.C. 260=A.I.R. 1924 Nag. 200.

———*Suit by one son does not bar a similar suit by an after-born son.*

A Hindu son, who was in existence at the time his father sold certain ancestral property, brought a suit for recovery of the property sold but before the suit was decided another son was born,

Held, that such son also acquired a cause of action as regards the same and the first suit not being in a representative character, the second suit by the second son is not affected by the result in the first suit: 19 A.L.J. 978, *Ref.* (*Dalal, J.C.*). JANG BAHADUR SINGH *v.* RANI SINGH.
77 I.C. 353=10 O.L.J. 353=27 O.C. 107=
A.I.R. 1924 Oudh 141.

———*Alienation by father—Son born after, sets no new cause of action.*

A son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation when the purchaser takes possession and a new cause of action

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does not accrue upon the subsequent birth of a son in the family. In the case of an after-born son the time from which the period of limitation is to be reckoned is the date of the transfer and as he was not born on that date and was under no disability on that date he cannot obtain the benefits of the provisions of S. 6 of the Limitation Act. When he cannot save limitation for himself he can give no benefit under S. 7 to his elder brothers: 40 Cal. 966, *Dist.*; 8 W. R. 15; 23 W. R. 285; 4 All. 120, *Ref.* (*Dalal and Wazir Hasan, A. J. Cs.*). RANODIP SINGH *v.* RAMESHAR PRASAD. **66 I.C. 938= 9 O.L.J. 45=A.I.R. 1923 Oudh 52.**

———*After-born son cannot challenge.*

A son born after execution of a mortgage by the father could acquire no rights in the co-parcenary property as it stood before his birth but could only obtain rights on his birth in the co-parcenary property as it then stood, *i. e.*, although no doubt on his birth he would obtain a share in the equity of redemption of the property, he would have no *locus standi* to challenge the mortgage or set aside on any ground whatsoever. (*Schwabe, C.J., Oldfield and Coutts-Trotter, JJ.*). KONGA RAMASWAMI IYER *v.* THUMBAYASAMI. **70 I.C. 769=1922 M.W.N. 526= 31 M.L.T. 370=16 M.L.W. 981= A.I.R. 1922 Mad. 452.**

———*Mortgage by father—After-born sons cannot challenge.*

The right of challenging an alienation made by the family manager is personal and is not inherited by the surviving members. Sons of the mortgagor born after the mortgage take the family property as it existed at their birth and cannot impeach any previous alienation. *Moti* v. *Kanya*, 5 N. L. J. 181 at 188, *Foll.* (*Dhobley, A. J. C.*). JAIRAM *v.* VENKATRAO. **65 I.C. 658=5 N. L.J. 66= A. I. R. 1922 Nag. 101.**

———Son conceived at time of alienation has same rights as son in existence—Subsequently born son can also challenge alienation: 16 Mad. 76 and 33 All. 654, *Ref.* (*Chevis and Scott-Smith, JJ.*). DWARKA DAS *v.* KRISHANKISHORE. **61 I.C. 628=2 Lah. 114=3 L.L.J. 349= 73 P.L.R. 1921=A.I.R. 1921 Lah. 34.**

———*Subsequently born persons get no fresh right to attack.*

The right to challenge an alienation by an ancestor of family property on the ground that it was not made for legal necessity is a right which comes into existence as soon as the alienation is made and is available at once to any member of the joint family, who being in existence at that time, has not consented to the alienation, but every person who is born into the family afterwards does not acquire a fresh right to attack such an alienation: 4 All. 120 (P.C.), *Rel. on.* (*Lindsay, J. C.*). OUDH BEHARI SINGH *v.* SURAJ BALI. **61 I.C. 801=8 O.L.J. 205= A.I.R. 1921 Oudh 127.**

—Alienation—Father—Antecedent debt.

———*Sale for antecedent debt—A fourth of debt not for legal necessity—Sale cannot be impeached.*

Where the purchaser acts in good faith after due enquiry and is able to show that the sale was justified by legal necessity the mere fact of that part of the price is not proved to have been applied to a necessary purpose does not invalidate the sale,

Held, that the sale which the vendor had to make in order to pay off his antecedent debts cannot be impeached simply because the vendee has not

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established necessity for a portion of the price which is more than one-fourth and less than one-third of the total consideration. (*Shadi Lal, C. J. and Agha Haidar, J.*). BUTA MAL *v.* GOPAL SINGH. **30 Punj. L.R. 532 (Lah.).**

———*Antecedent debt—Meaning of.*

An antecedent debt means a debt antecedent in fact as well as in time that is to say, that the debt was truly independent and not part of the transaction impeached: 46 A. 95 (P. C.), *Rel. on.* (*Shadi Lal, C. J. and Agha Haidar, J.*). BUTA MAL *v.* GOPAL SINGH. **30 Punj. L.R. 532 (Lah.).**

———*Grand-father—Debt of—Grandson's share if liable.*

A Hindu father or grandfather has special powers of alienating co-parcenary property for the payment of an antecedent debt which is not incurred for immoral or illegal purposes. In such a case the whole of the co-parcenary property is liable for the payment of the debts contracted by the paternal grandfather and the grandson is in the same position as the son. (*Shadi Lal, C.J. and Bride, J.*). GANPAT RAM *v.* SAGAR MAL. **114 I C. 703= 30 Punj L.R. 99.**

———*Alienation to discharge antecedent debt is binding.*

The managing co-parcener of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity: if he is the father and the reversionaries are the sons he may, by incurring debt so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceedings upon a decree for payment of the debt. If he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate. (*Broadway and Jai Lal, JJ.*). ABDUL GHANI *v.* SAMSAR CHAND. **107 I.C. 385= A.I.R. 1928 Lah. 101.**

———The fact that a previous debt in favour of the same mortgagee is set off and forms the consideration for the second mortgage deed does not prevent the former debt from being an antecedent debt: A.I.R. 1927 All. 150, *Foll.* (*Sulaiman and Boys, JJ.*). BABU LAL *v.* MT. KASHMIRO. **98 I.C. 1037 (All.).**

———*Bulk of consideration for antecedent debt—Alienation as a whole should be considered to determine whether it should be upheld and to what extent in each case.*

The propriety of the alienation as a whole has to be considered. It may be that in certain cases where the bulk of the consideration for an alienation made by a father in respect of joint family property consists of antecedent debt or is justified by a legal necessity, the alienation may be held binding upon the sons; where there is much more in an alienation than the simple question as to the amount of the consideration that might be of a valid character the Court must consider it in its entirety and come to the conclusion in the particular circumstance of each case as to whether it should be upheld or set aside. (*Wazir Hasan, A. J. C.*). GAURI SHANKAR *v.* BADRI NATH. **88 I. C. 474= A. I. R. 1925 Oudh 685.**

———*Antecedent debt includes debt under usufructuary mortgage.*

The language of proposition 3 in the case of *Brij Narain* v. *Mangla Prasad*, A.I.R. 1924 P.C. 50 is broad enough to include debt incurred under usufructuary mortgage within the term 'antecedent debt'. That language is not susceptible of any

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limitation restricting the term to such mortgage debts only as are incurred under a simple mortgage alone. (*Wazir Hasan and Kendall, A. J. Cs.*). MADHO PRASAD *v.* NIAMAT. **84 I.C. 501= 11 O. L. J. 579=27 O. C. 366= A. I. R. 1925 Oudh 185.**

———*Court cannot enquire into prior history of the debt.*

Where a father sold a piece of land for paying off certain money due on a prior mortgage this must be regarded as an antecedent debt and the Court cannot go backwards and find that only sum due as an antecedent debt was the orignal sum due on a promissory note prior to the execution of mortgage. (*Sen and Pullan, JJ.*). SHYAM LAL *v.* BADRI PRASAD. **1929 A.L.J. 1149=51 All. 1039= A.I.R. 1929 All. 789.**

———Mortgages of joint family property executed for legal necessity are antecedent debts, and a sale executed in consideration of those antecedent debts is a good transfer, and is binding on the sons and grandsons : A.I.R. 1925 P. C. 264, *Foll.* (*Stuart, C. J. and Nanavutty, J.*). KAILASH SINGH *v.* BALBHADDAR SINGH. **112 I. C. 151 (Oudh).**

———*Debts mentioned in the deed fictitious—But vendee paying off real antecedent debts—Sale is valid.*

Per *Sulaiman, J.*—Antecedent debts of the father unless tainted with immorality or illegality are binding on the sons, and a transfer in lieu of them is perfectly valid. It does not make any difference in principle if a portion of the sale consideration though originally intended to pay off one antecedent debt, is as a matter of fact, when it is discovered that that debt does not exist, honestly utilized to pay off another antecedent debt. When both the debts are binding on the sons they cannot complain if one is paid off rather than the other. The payment of debts due from the father is considered to be one of the recognized legal necessities. When therefore, an antecedent debt has in fact been discharged, though not the one actually mentioned in the deed, the transfer should not be vitiated unless there be circumstances showing an attempted fraud. In cases where false recitals are dishonestly and fraudulently entered in deeds of transfer in order to deceive persons entitled to challenge the alienation, a Court may prevent the transferee from shifting his ground and setting up his own fraud: 1 U.P.L.R (A.) 119, *Foll.*

Per *Boys, J.*—Alteration of the destination of the consideration is not itself sufficient to invalidate the transaction where the actual disbursement would support an allegation of legal necessity. But where the mis-description of the reason for the transaction is coupled with the further element that the reason had little or no existence in fact it cannot be accepted as a broad proposition of general application that it is quite immaterial what purpose is set out in the deed if only the vendee or mortgagee can subsequently show that the money was in fact disbursed for a proper purpose. But he who seeks equity must do equity, and if in the peculiar circumstances of a case equity is wholly on the side of the vendee, he ought to be protected.

Where the vendee was clearly very careless in not making proper enquiry at the outset, but on discovery of his mistake he exercised proper caution in securing that the money which he was to advance and which he still hold was only devoted to objects which could have supported his sale-deed if they had the original objects set out in the deed and where the father was himself behind the suit

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for challenging the sale and therefore, the plaintiff could not really have suffered any surprise by the defendant vendee setting up a good antecedent debt as having been actually discharged out of the sale consideration instead of the hollow one mentioned in the sale-deed,

Held, that the equities were all on the side of the vendee and the sale to him should not be disturbed. (*Sulaiman and Boys, JJ*). PIARE LAL *v.* SRI THAKURJI. **88 I.C. 964=23 A.L.J. 909= 6 L.R.Civ. 537=A.I.R. 1926 All. 79.**

———Father as a manager executing a mortgage to discharge antecedent debt—Mortgage is binding on entire family estate : A. I. R. 1924 P. C. 50, *Foll.* (*Hasan and Misra, JJ.*). JAI NARAIN *v.* MAHABIR PRASAD. **95 I. C. 857=2 Luck. 226= 13 O. L. J. 574=3 O.W.N. Sup. 23= A.I.R. 1926 Oudh 470.**

———Mortgages can be antecedent debts which would justify for their liquidation a sale of family property : A.I.R. 1924 P.C. 50, *Foll.* (*Lord Blanesburgh.*) LAL BAHADUR *v.* AMBIKA. **91 I.C. 471= 28 O.C. 371=47 All. 795=52 I.A. 443= 23 M. L. W. 220=12 O. L. J. 649= 30 C. W. N. 701=1925 M.W.N. 852= 2 O.W.N. 913=A. I. R. 1925 P. C. 264 (P.C.).**

———Mortgage effected to discharge antecedent debt—Sons are liable unless antecedent debt is immoral or illegal : 39 A. 437 (P.C.) and A. I. R. 1924 P.C. 50, *Ref.* (*Lindsay and Kanhaiya Lal, JJ.*). KANHAIYA LAL *v.* NIRANJAN LAL. **86 I.C. 98= 47 All. 351=23 A.L J. 52=6 L.R.A. Civ. 247= A. I. R. 1925 All. 367.**

———Alienation by father, in satisfaction of earlier mortgage and mortgage decree is for antecedent debt and if the debts are not tainted with immorality the sons are bound by the alienation : 44 I. A. 197 ; A.I.R 1924 P.C. 50, *Foll.* (*Mears, C. J. and Piggott, J.*). BHIMSINGH *v.* RAM SINGH. **84 I.C. 13=46 All. 301=22 A.L.J. 180= 5 L.R.A. Civ. 75=A.I.R. 1924 All. 309.**

———*Father can alienate joint property for antecedent debt contracted on the security of family property.*

A Hindu father has power to alienate the joint family property for an antecedent debt where such antecedent debt has been contracted on the security of the family property. This rule is not affected in any way whatever by the observation of the Privy Council in 39 All. 437 : 42 Mad. 711, (F. B.). *Foll.* (*Moti Sagar, J.*). DALJIT SINGH *v.* HARI CHAND. **78 I C. 11=A I.R. 1923 Lah. 669.**

———*Personal covenant in an earlier mortgage deed—If an antecedent debt.*

A personal covenant given by a father at the time of entering into a mortgage could not be described as "disconnected in fact as well as in time." Even if the personal covenant be contained in an earlier mortgage, as that earlier mortgage is an alienation and not a debt, there is no antecedency on the principle of *Chet Ram* v. *Ram Singh*, A.I.R. 1922 P. C. 247. Thus whether the personal covenant be contemporaneous or previous, if it is part of a mortgage, it is not antecedent in the legal sense.

Whether there is an antecedent obligation dissociated in time and in fact from the sale or mortgage in any particular case is a question of fact.

Per *Devadoss, J.*—Where a personal covenant to pay is outstanding in a mortgage document I cannot see why the covenant cannot sustain a sub-

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sequent alienation as an antecedent debt. (*Spencer and Devadoss, JJ.*). VADAMALAI *v.* SUBRAMANIA.
71 I. C. 130=16 M.L.W. 936=
1923 M.W.N. 57=A. I. R. 1923 Mad. 262.

———*Mortgage in lieu of promissory-notes—Mortgage binding on sons.*

Where a mortgage was taken by the creditor in lieu of pro-notes executed by the father and the father died in the course of the suit on the mortgage,

Held, the effect of the novation of the contract was practically to render the earlier bonds unenforceable. The consideration of the mortgage is therefore a good consideration binding on the sons who were charged under the Hindu Law with the responsibility of paying the debts due by their father. (*Kanhaiya Lal, J C.*). RAMSING *v.* MT. RAGHUBANSA. **72 I.C. 877=26 O.C. 201=**
A. I. R. 1923 Oudh 3.

———*Debt not immoral to purchaser's knowledge—Sale is valid.*

Where joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons by reason of their duty to pay their father's debts, cannot recover that property unless they can show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted: 39 All. 437 (P.C.), *Ref.*

The principle holds good even where the father, whose debt was so paid, is alive : 23 O C. 244, *Ref.* (*Kanhiaya Lal, A.J.C.*).RAM NIDH *v.* ISHURDIN.
63 I.C. 288=24 O.C. 161=
A.I.R. 1921 Oudh 117.

———*Sale not for antecedent debt, is not binding on sons.*

The principle that when once ancestral property has passed out of a family under a sale-deed executed by the father the sons cannot recover the property merely by proving absence of legal necessity, only applies where the sale under which the property had passed away from the family is executed in lieu of antecedent debt or in execution of a decree for debt, but it does not apply to a sale for cash down: 39 All. 437 (P.C.), *Expl.* and *Foll.* (*Daniels, J.C.*). LACHHMAN SHUKUL *v.* RAMKISHORE. **64 I. C. 220=24 O.C. 218=**
A.I.R. 1921 Oudh 102.

———*Sons cannot question alienation save by showing that the debts were illegal or immoral to the knowledge of the alienee.*

Where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debts, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted: 5 Cal. 148 (P.C.), *Foll.* (*Wazir Hasan, A.J.C*). BASDEO LAL *v.* MAHABIR. **69 I.C. 570=8 O.L.J. 18=**
A. I. R. 1921 Oudh 63.

———*Antecedent debts need not be unsecured debts.*

Per *Full Bench* (*Dawson Miller, C. J., Dissenting*) :—A mortgagee is entitled to enforce a mortgage, executed by the father of a joint Mitakshara Hindu family, against the father and sons, even in absence of legal necessity provided the loan was not raised for an illegal or an immoral pur-

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pose where the consideration for the mortgage is a debt which though in substance and in reality incurred antecedently to the mortgage, is incurred on the security of joint family property or the object of the mortgage is to raise a loan to pay such a debt: 5 P.L.J. 120 and 61 I. C. 102 ; 6 P.L.J. 72 ; A.I.R. 1921 Patna 18, *Overruled*; 41 All. 235 (F.B.), *Diss. from* ; 42 Mad. 711 (F.B.), *Foll.* ; 39 All. 437 (P.C.), *Discussed*; *Other cases referred.* (*Dawson Miller, C.J., Jwala Prasad, Das, Adami and Bucknill, JJ.*). MATHURA MISRA *v.* RAJAKUMAR MISRA.
62 I.C. 132=2 P.L.T. 407=6 P.L.J. 526=
1921 P.H.C.C. 245= A.I.R. 1921 Pat. 447 (F.B.).

—**Alienation—Father—Benefit to estate.**

———Where the father manager mortgaged the family property—a share in a village—in order to purchase another share in the village over which he had a usufructuary mortgage and which was for sale,

Held, the mortgage was binding on the family : 1 P.L.T. 136 and 24 C.W.N. 938, *Rel. on.* (*Ross and Fazl Ali, JJ.*). JAN MOHAMMAD *v.* BIKOO MAHTO.
116 I.C. 33=7 Pat. 798=10 P.L.T. 811=
A. I. R. 1929 Pat. 130.

———*Sale resulting in benefit to family should be upheld.*

Where the father was neither a spendthrift nor a profligate but a well-behaved person possessing considerable experience of the world, and he was in his youth a patwari, was next employed as manager of the estate of his brother-in-law and then a pleader's Munshi, and where it was found that the land sold was quite unproductive yielding no income but the vendees paid a large amount for it because it adjoined their house which they wanted to extend.

Held, that the sale was for benefit of the family and was not assailable by his sons. (*Zafar Ali and Addison, JJ.*). KAREMCHAND *v.* RAM LABHAYA MAL. **96 I.C. 443=7 Lah. 476=8 L.L.J. 283=**
27 P.L.R. 444=A.I.R. 1926 Lah. 468.

———Mortgage by, to clear encumbrance on pre-empted property—No benefit to family proved—Sons are not bound : 33 All. 242 and A.I.R. 1923 All. 218, *Dist.* (*Daniels and Neave, JJ.*). BHAGWATI SINGH *v.* GURCHARAN DUBE. **92 I.C. 332=**
5 L.R. A. Civ. 647=A.I.R. 1925 All. 96.

———*Alienation actually resulting in benefit to the estate should be upheld.*

Where the father was under no necessity to sell the estate but for various reasons he wanted to get rid of it ; no enquiry was made by the purchaser ; the bulk of the consideration was employed in a loan and on apparently good security, and the net result of the transaction was an increase of about Rs. 750 per annum in the income of the family.

Held, that the sale resulted in an actual benefit to the family and should therefore be upheld: 1 Pat. L. T. 535, *Ref.* (*Baker, J.C. and Prideaux, A. J.C.*). BHAGWAT *v.* ANANDRAO. **86 I.C. 515=**
22 N.L.R. 136=A.I.R. 1925 Nag. 302.

———*Benefit apart from necessity cannot support alienation.*

The sale by the father of undivided ancestral family lands is not binding on the sons where there is no necessity for the sale, no present pressure on the estate, no reasonable marriage expenses of any female members of the family to be met, no Government or other revenue to be paid or any of the rest of the usual matters considered to be necessary purposes. The fact that the father acted *bona fide* and thought that what he did would be for the

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benefit of himself and his sons is not enough to support the sale. (*Sadasiva Ayyar and Coutts Trotter, J.*). DORASAMI AYYAR *v.* S. VENKATARAMA AIYAR. **63 I.C. 228=13 M.L.W. 618= A.I.R. 1921 Mad. 610.**

———A reversioner inheriting property from a collateral gets absolute estate and his sons and grandsons cannot impeach alienations of the property made by him. A mortgage by father binds the family property if made for family benefit or necessity or to pay an antecedent debt. (*Stuart and Kanhaiya Lal, A.J.Cs.*). BHARAT SINGH *v.* SARSRUTI SINGH. **60 I.C. 137=7 O.L.J. 45 = 23 O.C. 244.**

—Alienation—Father—Burden of proof.

———*Sons disputing consideration ought to prove that property is ancestral.*

Sons and grandson disputing the consideration of mortgage-deeds executed by the father have to prove that the property is ancestral in order to entitle them to question the consideration. They cannot question alienation when the property is proved to be self-acquired property of the mortgagor. (*Stuart, C. J. and Srivastava, J.*). MT BRIJ KUNWAR *v.* SANKATA PRASAD. **123 I. C. 84)= 6 O.W.N. 933=A.I.R. 1930 Oudh 39.**

———Manager executing mortgage to secure future advances of money and obtaining such advances—Onus lies on alienee to show, contracting of debt was act of prudent manager. (*Ross and Chatterji, JJ.*). BISWANATH SINGH *v.* KAYESTHA CORPORATION. **119 I.C. 405=8 Pat. 451= 10 P.L.T. 379=A.I.R. 1929 Pat. 422.**

———*Alienee to prove that alienation was to discharge antecedent debt—Then onus is shifted to sons, to prove debts were immoral or illegal.*

Those who deal with a person who has only a limited interest in property and who professes to dispose of a larger interest are *prima facie* bound to make out the facts which authorize such a disposition. The only difference between the powers of a Hindu father as manager of the family, and that of other manager, is that the father can sell the property also for an antecedent debt of his which is neither illegal nor immoral. The sale will be valid if it was made to discharge an antecedent debt contracted by the father and to the extent necessary to discharge that debt. The onus lies on the purchaser to prove that it was to discharge an antecedent debt of the father that the sale to him was made or that he, after using reasonable care to ascertain the existence of such circumstances that would justify the sale, has acted in good faith. If the sale is proved to have been made for discharging the father's antecedent debts, then only the onus is shifted to the sons to establish affirmatively that the said debts were illegal or immoral and that the purchaser had also notice that they were of such a character: A.I.R. 1922 Mad. 112, *Expl.*; A.I.R. 1925 Mad. 1248, *Diss. from.* (*Ramesam and Thiruvenkatachariar, JJ.*). *In the matter of* AMIRTHALINGA THEVAN. **112 I.C 553= 1928 M.W.N. 602=28 M.L.W. 634= A.I.R. 1928 Mad. 986.**

———Purchaser of land belonging to the joint family from a father has to prove the legal necessity or antecedent debt. It is only when the burden has been shifted by some *prima facie* evidence, that the sons can be called upon to show that the transaction was illegal or immoral or otherwise not

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binding upon them. (*Mullick Ag.C.J. and Wort, J.*). JOKHER GOSAIN *v.* GANESH SINGH. **106 I. C. 18)=8 P. L. T. 704= A. I. R. 1928 Pat. 54.**

———Private alienation—No onus of proof lies on the son challenging alienation —Alienee must prove legal necessity or antecedent debt. (*Dalal, A.J.C.*). JAGAT SINGH *v.* BIKRAM SINGH. **88 I.C. 900=A.I.R. 1925 Oudh 675.**

———Sons must prove illegality or immorality only in case of antecedent debt or execution sale. In other cases, for example, of alienation for cash alienee must prove legal necessity. (*Daniels, J.*). MUNESHWAR LAL *v.* AMAR NATH. **78 I.C. 626= 5 L.R.A. Civ. 286=A.I.R. 1924 All. 493.**

———*Transferee to prove legal necessity or antecedent debt.*

It is only when the property has passed out of the family on account of an antecedent debt or where it has been sold by public auction, that the sons cannot challenge the alienation unless they show that the debt was tainted with immorality. It is not correct to say that in every case where the property has passed out of the family (though under a private sale not in lieu of any antecedent debt and even when the legal necessity has not been established) the sons cannot challenge it unless they show that the debts were contracted for immoral purposes. Where a property has been sold by the father and the sons bring a suit to recover it, and apparently the property has not been sold away at public auction, then it lies upon the transferee to justify the alienation of the estate by showing that the debt was in lieu of some antecedent debt or that the alienation was for some legal necessity: A.I.R. 1917 P. C. 61, *Ref.* (*Lindsay and Sulaiman, JJ.*). SAHEB SINGH *v.* GIRDHARI LAL. **73 I.C. 1024=45 All. 576=4 L.R.A. (Civ.) 284= A.I.R. 1924 All. 24.**

———*Necessity for sale proved—Sons to prove that necessity could have been otherwise met.*

When the purchaser has proved that the sale was effected for a purpose which would constitute valid necessity for the transfer, the burden is shifted on those who repudiate the transaction to prove that such necessity could have been satisfied by ways other than the sale of joint family property. Where no evidence has been produced by them for this purpose, the presumption is that no such evidence existed. (*Dalal, J. C.*). BASHIRUDDIN KHAN *v.* MAHADEO SINGH. **79 I.C. 663=27 O C. 26= 11 O.L.J. 565=A.I.R. 1924 Oudh 306.**

———*Burden on transferee to show validity of consideration.*

Where the property has passed out of the family by foreclosure or sale in execution of a decree or where such a decree has been passed and new rights have come into existence, the burden lies on the sons to prove that the transfer was made for an immoral purpose but where there has been a transfer for cash down and the son contests the legality of the sale the burden lies on the vendee to prove the valid nature of the consideration. (*Dalal, J.C.*). JANG BAHADUR SINGH *v.* RANI SINGH. **77 I.C. 353=10 O.L.J. 353=27 O.C. 107= A.I.R. 1924 Oudh 141.**

———Alienee must show connection between the debts of the father and the consideration paid by him. (*Martineau and Harrison, JJ.*). AMIR *v.* MALIK KHAN CHAND. **73 I.C. 818=6 L.L.J. 431= A.I.R. 1923 Lah. 255.**

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———*Vendee need not prove necessity.*

In the absence of a finding that a father has been recklessly extravagant or wantonly wasting his property, the vendee of the property from the father is not required to prove that the previous debts were contracted for necessary purposes; he has only to prove their existence. The son cannot impeach such a sale. (*Martineau, J.*). JAGAT SINGH *v.* GANDA SINGH. **69 I.C. 47= A.I.R. 1922 Lah. 301.**

———Consideration made up partly of amount of previous mortgage and partly of cash paid at the time—Son challenging sale—Regarding antecedent debt, son cannot succeed except by proving debt to be immoral—Regarding other items, vendee should prove legal necessity. (*Case-law discussed*). (*Abdul Raoof and Harrison, JJ.*). LAIQ SHAH *v.* DINA NATH. **63 I.C. 515= 3 L. L. J. 491= A.I.R. 1921 Lah. 304.**

—Alienation—Father—Consent of co-parceners.

———*Consent of co parceners is not necessary.*

The consent of the other co-parceners is not essential where the managing co-parcener makes an alienation either for a valid necessity or for the benefit of the family: A.I.R. 1925 All. 618, *Foll.* (*Zafar Ali and Addison, JJ.*). KARAMCHAND *v.* RAM LABHAYA MAL. **96 I.C. 443=7 Lah. 476= 8 L.L.J. 283=27 P.L.R. 444=A.I.R. 1926 Lah. 468.**

———A transaction by the Manager can be ratified by the son so as to estop the latter from afterwards disputing it: 38 Mad. 396, *Foll.* (*Daniels, J.*). SHEO DEV *v.* HABHI ULLAH KHAN. **75 I.C. 872=A.I.R. 1924 All. 721.**

—Alienation—Father—Court's duty.

———*Details need not be scrutinised if sale is for necessity.*

In a case of alienation by a father if the transaction itself is good, *i.e*, there is legal necessity and is such as would be authorised and would be binding on the joint family, the mere fact that the father does not describe himself as manager of the joint Hindu family would not make it unauthorised. It is not necessary to scrutinise all the details of sale consideration if the Court is satisfied that the transaction itself is for legal necessity: A.I.R 1916 P.C. 220; A.I.R. 1924 P.C. 50 and 34 All. 296, *Ref.* (*Sulaiman and Pullan, JJ.*). RAM PRASAD *v.* KANHAIYA LAL. **120 I.C. 549= 1929 A.L.J. 1223=A.I.R. 1930 All. 73.**

———*Suit by mortgagee for possession, on mortgage executed by father—Sons questioning mortgage on ground of legal necessity—Question can be agitated in that suit.*

Where on a mortgage executed by a Hindu father, the mortgagee brings a suit for possession of the mortgaged property, impleading the sons of the mortgagor as defendants, if sons question the mortgage on the ground that it was neither justified by legal necessity nor supported by any antecedent debts it is necessary to determine in such suit whether or not the mortgage is binding upon the sons: A.I.R. 1917 P.C. 41, *Rel. on*; A.I.R. 1926 Oudh 357, *Expl.* (*Wazir Hasan, C.J., Raza and Srivastava, JJ.*). ANGRAJ BAHADUR SINGH *v.* RAMRUP. **A.I.R. 1930 Oudh 284 (F.B.).**

———*Whether the sale as a whole was justified should be found.*

Where a sale by a father is impeached on the ground of want of legal necessity by a son, the question to be decided is not whether his share of the property sold might have been justified by legal necessity but whether the sale of the whole property actually effected was so justified: A.I.R 1927 P.C. 37, *Foll.* (*Macnair, A.J.C.*). KAMTA PRASAD *v.* MADHAVRAO. **116 I.C. 648= 12 N.L.J. 1=25 N. L. R 28= A.I.R. 1929 Nag. 60.**

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———Mortgagor, a debauchee—Part of the consideration applied to a prior debt—Court should enquire whether the mortgagee had reason to suppose that prior debt was incurred without legal necessity. (*Le Rossignol, J.*). JAGIR SINGH *v.* PAHARA SINGH. **42 P.L.R. 1921= A.I.R. 1921 Lah. 366.**

—Alienation—Father—Decree against.

———Where in a suit upon a mortgage executed by a Hindu father four of his minor sons were impleaded with the mother as guardian *ad litem* but the plaintiff failed to implead one other minor son and the latter subsequently sued to assert his rights though in the prior suit the suit was contested on behalf of the minors on all possible grounds,

Held, that the later suit was not sustainable. (*Adami and Wort, JJ.*). RAGHUNANDAN PRASAD *v.* GHANANDAN. **11 P.L.T. 483= A.I.R. 1930 Pat. 521.**

———Mortgage executed by father for antecedent debt neither immoral nor illegal, being binding on son, decree passed against father in suit for sale of mortgaged property binds son though he is not party to it: 17 All. 537, *Not foll.*; A.I.R. 1924 P.C.50, *Rel. on.* (*Banerji and King, JJ.*). JWALA NATH *v.* CHHANGAMAL. **118 I.C. 383= 1929 A. L. J. 612= A.I.R. 1929 All. 553.**

———*Mortgage decree is binding on sons even though they were not parties to the suit.*

A Hindu father fully represents his minor sons in a mortgage suit brought against him and the decree obtained in such suit against the father is binding on the sons, though not made parties to the suit, and acts as *res judicata*: A.I.R. 1914 P.C. 136; 34 Bom 354, *Rel on*; 40 Bom. 248 and 41 Cal. 727, *Dist.* (*Baker, J.*). MADHUSUDAN PANDURANG *v.* BHAGWAN ATMARAM. **118 I C. 788=31 Bom. L. R. 395= 53 Bom. 444=A. I. R. 1929 Bom. 213.**

———*Mortgage decree is binding on sons though they were not parties to the suit—Pious duty of the sons.*

Though a son is entitled to a declaration that a mortgage effected by his father of the joint family property is not binding on him as a mortgage unless the consideration of the mortgage is an antecedent debt of the father not being illegal or immoral or the money is borrowed for family necessity, but if a decree has been obtained by the mortgagee against the father even if the son has not been impleaded as a defendant, then the family property is available for sale in execution of such a decree on the ground of the pious duty of the son to pay the debts of his father: 53 P.R. 1901 and A.I.R. 1924 P.C. 50, *Foll.* (*Zafar Ali and Jai Lal, JJ.*). UJAGAR MAL *v.* RAMDITTA MAL. **111 I.C. 787 (Lah.).**

———Mortgage by father—Decree against father and minor sons cannot be set aside on the ground that the minors were not properly represented in the suit, by proper guardians: 34 All. 549, *Foll.* (*Mukerji and Ashworth, JJ.*). BHAIRON SHANKAR SINGH *v.* SHIAM SINGH. **102 I.C. 5= A.I.R. 1927 All. 746.**

HINDU LAW — Alienation — Father — Decree against.

——*Compromise decree in mortgage suit, providing for sons' shares to be sold is binding on sons.*

A compromise decree in a mortgage suit provided that if the decree was not fully satisfied out of the sale proceeds the balance of the decretal amount may be recovered from the mortgagor personally or from the assets of the mortgagor in the hands of his sons. The sale proceeds proving insufficient the decree-holder sought to execute the decree by sale of other property belonging to the mortgagorand the sale of the interest of his sons in such property,

Held, that the interest of the mortgagor in joint family property as well as the interest of the sons of the mortgagor could be sold in execution as the debt incurred was their father's and was not shown to be either immoral or illegal. (*Wazir Hasan, A.J.C.*). MT. MAHARAJI *v.* RAGHMAN.

89 I.C. 476=A.I.R. 1926 Oudh 61.

——Where a mortgage by father has merged into a decree, it is not sufficient for sons to prove that it was without necessity, but they must prove that it was for illegal or immoral purposes: A.I.R. 1926 Oudh 321, *Foll.* (*Stuart, C.J. and Raza, J.*). KEDAR NATH *v.* SHANKAR DAYAL.

94 I.C. 250 (Oudh).

——*Sale in execution of money decree against father—Son must prove immorality to avoid sale.*

Where joint family property is sold in execution of a money decree obtained against the father alone, the son cannot get rid of the sale without proving that the debt in respect of which the decree was obtained had been incurred by his father for what the Hindu Law would call an immoral purpose: 13 Cal. 21 and A. I. R. 1924 P. C. 50, *Foll.*; A.I.R. 1924 All. 11 and A.I.R. 1924 All. 169, *Ref.* (*Mears, C. J. and Piggott, J.*). RANJIT SINGH *v.* RAMAN SINGH. **87 I.C. 654=A. I. R. 1925 All. 781.**

——*Minor son of mortgagor not made party—Suit not bad for non-joinder—But decree does not bind minor.*

Where a mortgage is executed by two Hindu coparceners and the mortgagee sued them without impleading the minor son of one of the executants, the suit is not bad for non-joinder of parties but may be decreed as against the actual mortgagors. But the suit is not good on the ground that the major defendants represent the minor who has not been impleaded. The minor co-parcener can afterwards set aside the alienation on any legitimate grounds: 34 All. 549 and A.I.R. 1924 All. 9:8, *Dist.* (*Sulaiman and Ryves, JJ.*). NATHU *v.* RAM SARUP.

87 I.C. 700=47 All. 427=23 A.L.J. 246=A. I. R. 1925 All. 335.

——*Attachment in execution of decree against Father—Sons' shares are liable unless debts are illegal or immoral.*

If the joint ancestral property of a Hindu family governed by the Mitakshara law is attached in execution of a personal decree obtained against the father of the family, his sons can only secure the exemption of their interest in the said property from attachment or sale by satisfying the Court that the debt in respect of which the decree was obtained was tainted with immorality, or was otherwise such a debt as it could not be the pious duty of the sons to satisfy. The sons' liability is not postponed till after the father's death. (*Mears, C.J. and Piggott, J.*). ABDUL KARIM *v.* RAM KISHORE. **86 I.C. 837=47 All. 421=23 A.L.J. 196=A.I.R. 1925 All. 327.**

——*Mortgage-decree against father—Son's shares liable.*

HINDU LAW — Alienation — Father — Decree against.

A mortgage decree can be enforced against the ancestral property in the hands of the sons and grandsons of the mortgagor unless they can show that the mortgage debt was illegal or immoral. It is not sufficient to show that the transaction was extravagant or reckless or that the money might have been got at a cheaper rate of interest. The sons are liable not only for the original mortgage amount but also for the interest.

Semble: The son might perhaps take an objection that the stipulation for interest was in the nature of a penalty. (*Mullick and Ross, JJ.*). TIKAIT GAYANNATH *v.* PANDIT MALHJYI VAIDIJA.

90 I. C. 276=6 P.L.T. 507=1925 P.H.C.C. 160=A. I. R. 1925 Pat 588.

——When a decree is passed against the father who is the manager of an undivided Hindu family, before it can be executed against the joint family property, all that is necessary is that it should appear that such a decree was as a matter of fact passed against the father in his capacity as representative and manager, and it is not necessary that the decree should be so drawn in express terms. (*Kennedy, J.C. and Raymond, A.J.C.*). NARUMAL MULCHAND *v.* JAGATMAL THARUMAL.

91 I C. 740=A.I.R. 1925 Sind 288.

——Where joint ancestral property has passed out of a joint family under a sale in execution of a decree for the father's debt, the sons cannot recover that property unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted: 1 I.A. 321 and 39 A. 437 (P.C.), *Foll.* (*Kanhaiya Lal, J.*). JADUBIR *v.* GAJADHAR. **75 I.C. 785=21 A.L.J. 809=5 L.R.A. Civ. 53=A.I.R. 1924 All. 169.**

——Hindu sons cannot recover joint family property which has been sold in execution of a mortgage decree against their father without showing that the mortgage debt was for illegal or immoral purposes: 44 Cal. 524 and 42 All. 58; A.I.R. 1922 All. 310; 48 Cal. 41, *Foll.* (*Ryves and Daniels, JJ.*). SITLA PRASAD *v.* MT. CHAMELI BAHU. **75 I.C. 316=21 A.L.J. 683=4 L.R.A. Civ. 326=A.I.R. 1924 All. 111.**

——*Foreclosure decree against father—Sons not parties—Decree is binding on sons.*

A son or grandson cannot escape the effect of a foreclosure decree passed against his father or grandfather on a mortgage executed for purposes binding on the family estate merely because he was not impleaded by name in the suit. It is open to such a son who is not made a party to a suit to show that a debt in respect of which the mortgage was executed was not really antecedent in the sense accepted by the Privy Council or that if antecedent it was for a purpose either illegal or immoral, but where the mortgage was within the scope of the father's authority the sons are bound by the decree and they may not be impleaded by name: 34 A. 549 (F.B.); 39 A. 437 (P.C.), *Foll.* (*Daniels and Dalal, A.J. Cs.*). BHAGIRATHI *v.* PANDIT ONKAR NATH. **72 I.C. 142=10 O.L.J. 185=A.I.R. 1924 Oudh 17.**

——*Foreclosure decree against father binds sons though not made parties.*

Where the father mortgaged certain properties to the mortgagee and the latter brought a suit thereon against the father alone and got a decree and in execution thereof the property was sold,

Held, that in the absence of anything to show that the debt due by father was a personal debt

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and the suit was brought against him in his personal capacity or that the mortgagee had a notice of the existence of the sons, it is not open to the sons, after the property has passed out of the family to set up their right against the remedy obtained by the creditor in enforcement of his debt: 6 O.C. 101, *Foll.* (*Kanhaiya Lal, J.C.*). BHAGWATI PRASAD *v.* KOLLU RAM. **70 I.C. 941= 25 O.C. 256=A.I.R. 1923 Oudh 54.**

—Alienation—Father—Extent of validity

———*Sale not binding on son's share—Possession to be given of the whole—But purchaser's right to father's share to be declared.*

A purchaser of an estate from a Hindu father, when the sale was not binding on the share of the son, was liable to be dispossessed by the son of the whole and every part of the undivided estate while the family remained undivided, though the purchaser may have remained in possession for many years: 9 N. L. R. 18, *Foll.*; 39 Mad. 265, *Rel. on*; A.I.R. 1926 Bom. 399, *Ref.* But a declaration in favour of the purchaser about his right to the father's share should form part of the decree: 3 Cal. 198 (P.C.), *Foll.* (*Macnair. A.J.C.*). KAMTA PRASAD *v.* MADHAV RAO. **116 I.C. 648= 12 N.L.J. 1=25 N.L.R. 28=A.I.R. 1929 Nag. 60.**

———A Hindu father's alienation of certain property was held to be not binding on his son's shares. One of his two sons had died:

Held: that the other son is entitled to a half share of the property sold, that being his share of the property when he impeached the sale: 2 C.P.L.R. 141. *Dist.* (*Macnair, A.J.C.*). KAMTA PRASAD *v.* MADHAV RAO. **116 I.C. 648= 12 N L J. 1=25 N L.R. 28=A.I.R. 1929 Nag. 60.**

———Mortgage for cash and to pay previous mortgage—Sons can sue to set aside, pleading want of necessity for both mortgages—Previous mortgage itself for cash, is not an antecedent debt to support subsequent mortgage, but if creditor had paid it after *bona fide* enquiry as to necessity, it will be binding on the sons: 16 N.L.R. 64, *Approved.* (*Hallifax, Kotval and Dhobley, A.J.Cs.*). DHUDA BAI *v.* NARAIN. **66 I.C. 239=5 N.L.J. 73= A.I.R. 1922 Nag. 28 (F.B.).**

—Alienation—Father—Justifications for.

———*Immorality or illegality of debt—When sons are bound to prove.*

The circumstances in which it is necessary for the sons to show that the debt was illegal or immoral in order to recover the property are two only. The first is, where property has passed out of the family under a conveyance executed by a father in consideration of an antecedent debt in order to raise money to pay off such debt. The second is, where property has been sold in execution of a decree for the father's debt.

In the case of a private sale executed for an amount paid in cash, there is no necessity to show that the debt supporting the alienation was illegal or immoral. (*Daniels, J.*). BALDEO *v.* BHAGWAN MISRI. **78 I.C. 595=A.I.R 1925 All. 241.**

———*Pious obligation — Liability for antecedent debts—Distinction between.*

A pious obligation which arises only on the death of the ancestor on the one hand and antecedent debts which may support an alienation while the ancestor is alive on the other, are distinct grounds on which justification for an alienation may be pleaded. (*Daniels and Wazir Hasan, A.J.Cs.*). RAM SURAN *v.* MANGAL SINGH. **60 I. C. 219= 8 O. L. J. 87=A. I. R. 1921 Oudh 38.**

HINDU LAW—Alienation—Father—Powers of —Alienation—Father—Limitation.

———*Suit to set aside sale—Vendee not in possession—Relief is merely declaratory—Art. 120 applies.*

Where a suit was brought by certain Hindus for setting aside a sale-deed executed by their father and where the property was in the possession of the mortgagee even at the time of the institution of the suit and the vendee had never obtained possession, the suit is to be regarded as merely a declaratory suit and Art. 120 and not 126 applies for alienee did not get possession: A.I.R. 1927 All. 702; 41 Mad. 650; 70 P. R. 1914, *Ref.* (*Sulaiman and Pullan, JJ.*). ANGAD SINGH *v.* BAHADUR SINGH. **119 I C. 90= 1929 A. L. J. 1131=A. I. R. 1929 All. 750.**

———Elder brother not suing to set aside within three years of his majority—Younger son's suit within three years of his majority is not barred: A.I.R. 1926 P.C. 16, *Foll.*; 16 Mad. 436 and 38 Mad. 18, *Not foll*; A.I.R. 1926 Mad. 1190, *Ref.* (*Kumaraswamy Sastri and Reilly, JJ.*). RAJAGOPALA AYYANGAR *v.* SRINIVASA RAGHAVA AYYANGAR. **109 I.C. 572=51 Mad. 627=28 M.L.W 311= 1928 M.W.N. 708=A.I.R. 1928 Mad. 1055= 55 M.L.J. 30.**

———Suit to set aside by younger son within 3 years of attaining majority. Elder son attaining majority more than 3 years before—Younger's son's suit is not barred. (*Daniels, J.*). LACHHMAN PRASAD *v.* SALU SALIK CHAND. **98 I.C. 508=A.I.R. 1927 All. 188.**

———*Bar of limitation against one major son does not affect other sons.*

A suit brought by some sons within three years of their majority to set aside alienation by father is not barred though one of the sons had long before three years reached majority: 16 Mad. 436 and 33 Mad. 118, *impliedly overruled.* (*Mr. Ameer Ali.*) JAWAHIRSINGH *v.* UDAIPARKASH. **93 I.C. 216=48 All. 152=53 I.A. 36= 24 A.L.J. 97=1926 M.W.N. 197= 3 O.W.N. 365=43 C L.J. 374= 28 Bom. L.R. 851=30 C.W.N. 698= A.I.R. 1926 P.C. 16=50 M.L.J. 344 (P C.).**

———Elder son attaining majority but not questioning, the alienation. Suit by younger son within three years of his attaining majority is not barred: A.I.R. 1926 P.C. 16, *Foll.* (*Devadoss and Wallace, JJ.*). NARAYANA *v.* VENKATASWAMI. **98 I.C. 31=24 M.L.W. 475=1926 M.W.N. 767= A.I.R. 1926 Mad. 1190=51 M.L.J. 845.**

—Alienation—Father—Powers of.

———A father can certainly sell joint property for discharging antecedent debts even in absence of pressure: A.I.R. 1923 All. 535, *Diss. from.* (*Ramesam and Jackson, JJ.*). PURUSHOTTAM RAO *v.* RAM RAO. **121 I.C. 837=52 Mad. 856= 30 M.L.W. 251=A. I. R. 1930 Mad. 326= 57 M.L J. 720.**

———*Perpetual lease is not in ordinary course of management.*

Lease is in ordinary course of management where land cannot be cultivated more profitably by manager himself or through hired servants. But perpetual lease is not in ordinary course of management. (*Ashworth, J.*). BANWARI BARHI *v.* RAM RATAN. **119 I.C. 436=10 L.R.A. Rev. 293= A.I.R. 1929 All. 387.**

———Per *Sulaiman, J.*—The restrictions on the power of a Hindu father to alienate immovable property are equally applicable to transfers of moveables: 31 All. 359, *Foll.* (*Sulaiman and Ashworth, JJ.*). BANKEY LAL *v.* NATHA RAM. **107 I.C. 576=A.I.R. 1929 All. 199.**

HINDU LAW—Alienation—Father—Powers of.

———*Father cannot alienate for general benefit without necessity.*

There is no general power in a Hindu father to alienate lands in any way he likes for anything that may be of general benefit to the family, whether or no there is any necessity: 6 M.I.A. 393; A.I.R. 1917 P C. 33; A.I.R. 1923 Bom. 453 and 36 Cal. 1003 (P.C.), *Foll* (*Marten, C.J. and Crump, J.*). VENKATARAMAN *v.* JANARDHAN. **106 I.C. 79= 52 Bom. 16=29 Bom. L.R. 1522= A.I.R. 1928 Bom. 8**

———*Father's powers of disposition and management are wider than manager's.*

The powers of a Mitakshara father as karta of the family to bind his infant sons with regard to disposal or management of joint family properties are wider than those of other kartas of such families and rest upon an implied consent on the part of all the members and a presumption that what is done is for the benefit of the family: A.I.R. 1917 P.C. 61, *Foll.* (*Mukerji and Mitter, JJ.*). SURENDRA NATH *v.* SAMBHU NATH. **104 I.C. 219= 55 Cal. 210=A.I R. 1927 Cal. 870.**

———*Contract to sell—Purchaser privileged to indefinitely postpone completion of sale or repudiate the contract—Contract not binding on sons.*

The father and manager of a joint Hindu family contracted to sell the family property to *A* for payment of a prior mortgage on the property but before the contract was completed into sale, he contracted to sell it to *B*. The contract with *A* remained in force for about three years and it subsequently fell through and the deposit received thereunder was returned to *A*. Immediately afterwards *B* sued for specific performance against manager alone and got a decree. Thereafter the sons, some of whom were adult at the date of the contract, sued to set aside the sale,

Held, that so long as earlier contract with *A* was in existence *B* was under no enforceable obligation to perform his own; and immediate payment of the purchase price being the prime necessity in view of the earlier mortgage to be paid off, the contract bound the vendor to sell, at a fixed price, property of apparently increasing value in circumstances which gave the purchasers the privilege of indefinitely postponing completion of the purchase and payment of the price, with the further privilege, if it so suited them, of repudiating the bargain altogether on the ground that so long as the earlier contract was insisted upon by its purchaser the vendor could make no title. Such a transaction was entirely beyond the power of the father as karta of the joint family, and was not binding on the plaintiffs. (*Lord Blanesburgh.*) RAMCHARAN LONIA *v.* BHAGWANDAS MAHESHARI. **95 I.C. 898= 48 All. 443=53 I.A. 142=24 A.L.J. 622= 3 O.W.N. 783=31 C.W.N. 193=1926 M.W.N. 503= 38 M.L.T. 18=A.I.R. 1926 P.C. 68 (P.C.).**

———*Alienation is binding unless for illegal purposes.*

Alienations made by the father of Hindu minors not only as the manager of a joint Hindu family, but also as their guardian are *prima facie* binding on them. The power of a Hindu father may be more or may be less than the power of a guardian to bind his minor sons, but unless it can be established that the alienations were for unnecessary or illegal purposes the alienations are *prima facie* good: A.I.R. 1922 Mad. 112, *Foll.* (*Odgers, J.*). ALAGAR AIYANGAR *v.* SRINIVASA AIYANGAR. **91 I.C. 709=22 M.L.W. 515=1925 M.W.N. 777= A.I.R. 1925 Mad. 1248=50 M.L.J. 406.**

HINDU LAW—Alienation—Father—Refund.

———If a father transfers property and it is clear that he intends to part with all the interest he possesses in any capacity in the property, a recital in the deed as to its being his self acquired property is not sufficient to invalidate an otherwise proper transaction. (*Spencer and Devadoss, JJ.*). VADAMALAI *v.* SUBRAMANIA. **71 I C. 130= 16 M.L W. 936=1923 M.W.N. 57= A.I R. 1923 Mad. 262.**

———Where the father in a Hindu family consisting of a father and his infant son, alienates family property, he cannot be said to have consented to the alienation in his capacity of guardian to his minor son. (*Wallis, C.J. and Krishnan, J.*). SUBBARAMA REDDI *v.* RAMAMMA. **59 I C. 681= 43 Mad. 824=12 M.L W 249= 1920 M W.N. 529.**

———The father is authorised not only to sell the joint family property for the satisfaction of his antecedent debts, but also to mortgage it: 15 N.L.R. 85, *Foll.* (*Kotval and Prideaux, A.J.Cs.*). PANDURANG *v.* KESHORAO. **64 I C 718= A.I R 1921 Nag. 173.**

—Alienation—Father—Presumption.

———*Discretion exercised by father must be presumed to be proper.*

In the case of an alienation by father or manager when there are no circumstances of prejudice or other questionable motive, the discretion of the father or the manager must be taken to be proper until and unless the contrary is established in the evidence or there are circumstances to show the contrary, it must be held that it has not been shown that the discretion exercised by the adult members of the family in effecting a sale was beyond their legitimate powers. (*Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ.*). SATHAPPAN AMBALAM *v.* VADIVELU. **109 I. C. 106=A. I. R. 1928 Mad. 450.**

———Where a major brother and his minor brothers under the guardianship of their mother had executed a transfer, a presumption may arise that the major brother was not acting as *karta* of the family. But, where a father makes a transfer along with his minor sons, under guardianship of their mother, the presumption is that the transfer has been made by the father in his capacity as manager: 9 O. L. J. 138, *Dist.* (*Dalal, J. C.*). JANG BAHADUR SINGH *v.* RANI SINGH. **77 I. C. 353=10 O.L J. 353=27 O. C. 107= A.I.R. 1924 Oudh 141.**

—Alienation—Father—Refund.

———Mortgage by Hindu father for paying pre-emption money, set aside at son's instance—Money can be charged on pre-empted property. (*Mears, C. J. and Mukerji, J.*). KISHEN SAHAI *v.* RAGHUNATH SINGH. **116 I. C. 433=51 All. 473= 1929 A.L.J 110=A.I.R. 1929 All. 139.**

———Alienation by father of joint ancestral property not for necessity or payment of antecedent debts—Decree setting aside alienation should not be subject to condition that the consideration money paid by the vendee should be refunded to him: A.I.R. 1922 Lah. 241; 67 I.C. 89 and A.I.R. 1921 Mad. 447, *Foll.*; 11 Cal. 396; A.I.R 1923 Lah. 255, *Diss.* (*Shadi Lal, C.J. and Jai Lal, J.*). DAYA RAM *v.* HARCHARAN DAS. **107 I.C. 781= 8 Lah. 678=29 P. L. R. 72= A. I. R. 1928 Lah. 111.**

———*Son getting benefit of purchase money—Purchaser entitled for refund.*

Where joint property is sold by father and it is proved that the purchase money was carried to

HINDU LAW — Alienation—Father—Rights of alienee.

assets of the joint estate and the son had had the benefit of his share of it, the son cannot recover his share of the estate without refunding the share of his purchase money but any laches on the part of the purchaser will debar him from such equitable relief: 9 W.R 511 Cr. (F.B.), *Foll.*; 29 Cal. 473, *Dist.*; 15 W.R. 6 (F.B.); 11 Cal. 396 and A.I.R. 1921 Mad 447. *Ref.* (*Mullick, Ag. C.J. and Wort, J.*). JOKHU GOSAIN *v.* GANESH SINGH.
106 I.C. 189=8 P.L.T. 704=A.I.R. 1928 Pat. 54.

—Alienation—Father—Rights of alienee.

——Father making gift of joint family property to his wife without consent of sons—Gift is voidable at the instance of the members of the joint family—Attaching creditor of father cannot have that option: 33 All. 783 and A.I.R. 1924 All. 29, *Dist.* (*Sulaiman and Kendall, JJ.*). MT. SARASWATI KUAR *v.* MAHABIR PRASAD. **109 I.C. 272=A.I.R. 1928 All. 476.**

——*Son setling aside sale and recovering his share—Subsequent suit by alience for general partition—Alienee praying that alienated property be allotted to him and in the alternative for other property.*

Held: that the matter is *res judicata* so far as the property sold is concerned and so the first part of the prayer must be disallowed, and further that as it was not in the plaintiff's power to ask for a general partition in the former suit, the suit is competent for allotment to the plaintiffs of other properties as substitute. (*Case-law considered.*) (*Phillips and Ramesam, JJ.*). SOWRIMUTHU *v.* PACHIA PILLAI. **91 I.C. 868=49 Mad. 483=1925 M.W.N. 844=A.I.R. 1926 Mad. 241=49 M.L J. 679.**

——*Possession under contract for sale by father and right to specific performance is good defence in ejectment suit by sons.*

The defendant who is in possession of the property and has paid the price can successfully plead his possession and the contract for sale as a defence to a suit for possession by sons of the person agreeing to sell who claim under their father and who are born after the date of the contract to sell by their father, as they could not acquire at birth any interest in the property to which their father had already parted with his title: A I.R. 1924 Mad. 271 (F. B.), *Foll.* (*Spencer, J.*). VENKIAH *v.* MADLEN GURAVIAH. **96 I.C. 290=23 M. L. W. 604=A.I.R. 1926 Mad. 757=50 M. L. J. 669.**

—Alienation—Father—Setting aside.

See also HINDU LAW—ALIENATION—SETTING ASIDE.

——The reservation of a small portion of the property for the maintenance of the widow does not affect the validity of the surrender: 46 I.A. 259; 47 C. 466; 37 M.L.J. 513 (P.C.), *Rel.* A gift for the daughter's life with reverter to the widow is possible; but it would have to be clearly so expressed. But the operation of a surrender is to effect the widow completely so far as the estate is concerned, so that her right is not revived by the death, during her lifetime, of her daughter to whom she had surrendered her estate but the estate devolves in favour of the next reversioner and the succession cannot be interrupted by the mere fact that the widow is still alive: 46 A. 59, *Ref. to.* (*Phillips and Reilly, JJ.*). VEERANNA *v.* SEETANNA. **50 M. L. J. 139.**

—Alienation—Father—Son's liability.

——*Son bound to pay debts not illegal or immoral.*

If the debt be one which the son is under a pious obligation to pay and since the son is under a pious obligation to discharge every debt contracted by the father unless it is an immoral debt or an illegal debt, the son cannot set up his rights against the alienation made by the father to pay off those debts: 5 Cal. 148 (P.C); 13 Cal. 21, *Rel. on.* (*Das and Wort, JJ.*). RAMTAHAL THAKUR *v.* JAGATNAND JHA. **124 I.C. 844=11 P. L. T. 234=A. I. R. 1930 Pat. 327.**

HINDU LAW — Alienation — Father — Son's liability.

——An alienation by a Hindu grandfather for the payment of antecedent debts not tainted with illegality or immorality is binding on the grand-son being co-extensive with that of the son for paying debts. (*Shadi Lal, C. J. and Bhide, J.*). GANPAT RAM *v.* SAGAR MAL. **114 I.C. 703=30 P.L.R. 99.**

——Mortgage by father—Son, minor at the date of mortgage—He is not personally liable under the mortgage, nor is his self-acquisition. (*Lord Phillimore.*) RAMKISSEN SINGH *v.* MAHOMED ABDUL SATTAR. **109 I.C. 574=30 Bom. L.R. 852=24 N.L.R. 186=28 M L.W. 248=32 C.W.N 1149=48 C.L.J. 570=A.I.R. 1928 P.C. 165=55 M L.J. 292 (P.C.).**

——*Son suing for partition cannot avoid the liability on his share unless he proves illegal or immoral purpose.*

Where in a suit for partition the son asks for a declaration that certain debts incurred by the father by mortgage are not binding upon him, it is for him to show that those debts were incurred for illegal or immoral purposes and if he is able to show that, then he could get relief. Otherwise the debts would be binding upon him. If the mortgagee is able to obtain a personal decree against the father exhausting his remedy against the father's share, then he would be entitled to go against the son's share of the family property to the extent of the balance remaining due after executing the decree against the father's share: 22 Mad. 519 and 38 Mad. 1120, *Dist.* (*Devadoss and Jackson, JJ.*). KANDASAMI GOUNDAN *v.* MARUDACHALA GOUNDAN. **107 I.C. 129=39 M.L.T. 562=A.I.R. 1928 Mad. 105.**

——Alienation by father to pay off prior mortgage—Sons are not bound merely by force of pious obligation: A.I.R. 1925 Oudh 9, *Foll.* (*Stuart, C. J. and Wazir Hasan, J.*). JANG BAHADUR LAL *v.* BHAYA RAGHUNATH SINGH. **98 I. C. 1053=2 Luck. 401=13 O. L. J. 833=3 O. W. N. 930=A. I. R. 1928 Oudh 43.**

——Contract to sell by karta—Suit for specific performance with alternative claim for damages for breach of contract—Sons and nephews of karta made defendants— Pending appeal, karta died—Cause title amended to make other defendants heirs of karta—In appeal claim for specific performance given up.

Held: the amendment of the cause title in the appeal before the High Court on the death of defendant 1 did not alter the nature of the suit. Nor did the abandonment of the claim for specific performance at the hearing of that appeal alter the suit as framed into an action for money had and received, or for the recovery of a debt, and no decree could be passed against the surviving defendants. (*Lord Sinha.*) RAM SARAN MANDAR *v.* MAHABIR SAHU. **100 I C. 56=6 Pat. 323=54 I.A 55=25 A.L.J. 74=1927 M.W.N. 69=8 P.L.T. 98=38 M.L.T. 74=31 C.W.N. 469=45 C L. J. 313=25 M. L. W. 635=29 Bom. L. R. 796=A. I. R. 1927 P. C. 18=52 M. L. J. 402 (P.C.).**

HINDU LAW — Alienation — Father — Son's liability.

———*Mere renewal of previous mortgage—No pious obligation.*

Where the alienation in suit is wholly a renewal of the previous mortgage made by the father, sons cannot be bound by the alienation made by the father on the sole ground of pious obligation: A.I.R. 1925 Oudh 9, *Foll.* (*Stuart, C.J. and Hasan, J.*). JANG BAHADUR LAL *v.* BHAYA RAGHUNATH SINGH. **98 I.C. 1053=3 O.W.N. 930= 13 O.L.J. 833=A.I.R. 1928 Oudh 43.**

———Doctrine of pious obligation cannot validate an alienation, if it is otherwise invalid. (*Kanhaiya Lal, J. C.*). RAM AUTAR *v.* BENI SINGH. **68 I.C. 196=25 O.C. 89=10 O.L.J. 7= A. I. R. 1922 Oudh 135.**

———*Mortgage without legal necessity is invalid—But a money-decree can be passed against the sons.*

A mortgage of joint family property by a Hindu father, without legal necessity but not for unlawful or immoral purposes, is invalid from its inception.

A transfer by a father cannot become a valid transfer merely by the accident of the father's death. (*Obiter dictum*): 6 O. L. J. 297, *Diss. from*; 31 All. 176 and 39 All. 437 (P. C.), *Foll.*

Hence the mortgage cannot be enforced against the sons after the father's death. But the sons being under a pious obligation to discharge the debts of their father are liable to have a simple money-decree passed against them. The pious obligation resting upon the sons does not extend to the payment of time-barred debts. (*Lindsay, J.C.*). RAM CHHATAR *v.* RAM LAL. **65 I.C. 950= 24 O.C. 395=A.I.R. 1921 Oudh 230.**

———Mortgage, invalid for want of legal necessity, or antecedent debt is not validated by mere pious obligation to pay: S. A. 134 of 1920, *Rel. on*; 6 O. L. J. 297, *Diss. from.* (*Dalal, A. J. C.*). GAJADHAR BAKHSH SINGH *v.* BAIJNATH. **65 I.C. 967=8 O.L.J. 605= A.I.R. 1921 Oudh 220.**

—Alienation—Father—Subsequent partition.

———*Mortgage without necessity or antecedent debt —Share allotted to wife on partition is not liable.*

Where a father who is the manager of a joint family mortgages, without legal necessity and for paying no antecedent debt, the joint family property and afterwards a partition is made in which a share is allotted to the mortgagor's wife, that share is not liable to the mortgagee. Only the share of the actual mortgagor will be liable. (*Dalal, J. C. and Wazir Hasan, A.J.C.*). MT. KALKA DEVI *v.* CHAUDHURY GANGA BAKSH SINGH. **88 I. C. 127=12 O.L.J. 306= A.I.R. 1925 Oudh 435.**

—Alienation—Father—Surety.

———*Mortgage for suretyship is binding on sons.*

Sons in a joint Hindu family are liable for the due fulfilment of hypothecation bond entered into by their father as surety.

Where a Hindu father, having two sons, entered into a hypothecation bond as surety in respect of joint and ancestral property in the Court of Small Causes and where objection was taken that the bond was worth nothing,

Held: that the bond tendered was a valid hypothecation bond and the mere fact that the executant had sons did not make it invalid: 26 All. 611, *Foll.*; A.I.R. 1924 P.C. 50, *Expl.* and *Dist.* (*Young and Bennet, JJ.*). MATA DIN KANDU *v.* RAM LAKHAN AHIR. **120 I.C. 555=1929 A.L.J. 1283= 52 All. 153=A.I.R. 1930 All. 87.**

HINDU LAW—Alienation—Guardian—Brother's marriage.

———*Father cannot charge joint property as surety.*

No father of a Hindu family can, as a surety charge the family property so as to effect a valid alienation as he can only do so for purposes of necessity or for an antecedent debt: A.I.R. 1924 P.C. 50, *Rel. on.* (*Sulaiman and Kendall, JJ.*). CHAKKAN LAL *v.* KANHAIYA LAL. **119 I.C. 86= 1929 A.L.J. 199=A.I.R. 1929 All. 72.**

—Alienation—Father—Miscellaneous.

———The alienation of a widow stands on a different footing from the sale by a Hindu father. (*Devadoss and Wallace, JJ.*). NARAYANA *v.* VENKATASWAMI. **98 I. C. 31=24 M.L.W. 475= 1926 M.W.N. 767=A.I.R. 1926 Mad. 1190= 51 M.L.J. 845.**

———*Account stated may support alienation.*

An account stated between the father and the alienee may be a good support for the alienation. But if the defendants rely upon other documents they may be entered into, and the alienation disapproved if the debt stated in the account is found to be suspicious in the light of the documents. (*Mears, C.J. and Piggott, J.*). RAM REHKA *v.* RAM SUNDER. **86 I.C. 834=6 L.R.A. Civ. 128= A.I.R. 1925 All. 295.**

———Bona fide *purchaser—Rights of.*

A certain property which was subject to a mortgage was gifted to certain minors by their grandfather. According to a prior family arrangement, the mortgage was to be discharged by the minors' father. The minor's father sold the property. Part of the consideration went to discharge the mortgage. The purchaser acted *bona fide* and had no notice of the family arrangement as to the discharge of the mortgage.

Held: that the sale was valid to the extent of the mortgage. (*Wallace, J.*). NILKANTA SARMA *v.* GANESA IYER. **91 I.C. 310=1925 M.W.N. 43= 21 M.L.W. 685=A.I.R. 1925 Mad. 469.**

———*Consideration for mortgage—Proof of antecedent debt or legal necessity.*

The question of the consideration for a mortgage debt having been required to pay off antecedent debts, or for other legal purposes binding on minor sons depends upon proof of the existence of debts and of the fact of their satisfaction out of the consideration as also upon the existence or otherwise of circumstances amounting to legal necessity for the borrowing of cash. (*Kinkhede, A. J. C.*). MOTILAL RAMLAL *v.* RENI. **78 I.C. 711= A.I.R. 1924 Nag. 348.**

—Alienation—Guardian—Adverse possession.

———Possession given before alienation becomes adverse to minor only from date of alienation. (*Case-law considered*). (*Odgers and Viswanatha Sastri, JJ.*). SEETHARAMAMMA *v.* APPIAH. **92 I.C. 827=49 Mad. 768= 23 M.L.W. 285=1926 M.W.N. 238= A.I.R. 1926 Mad. 457=50 M.L.J. 689.**

—Alienation—Guardian—Brother's marriage.

———Alienation by guardian of a dancing-girl for her brother's marriage is not binding on the girl as she is not bound to perform her brother's marriage. (*Krishnan and Venkatasubba Rao, JJ.*). KANNAMMAL *v.* RAMATHILAKAMMAL. **97 I.C. 632= A. I. R. 1927 Mad. 38.**

HINDU LAW — Alienation—Guardian—Burden of proof.

—Alienation—Guardian—Burden of proof.

———*Alienee must prove necessity or reasonable enquiry on his part as to necessity—He need not see to its application—Application of the money is relevant in considering the existence of necessity.*

In order to justify the alienation by a guardian of the minor's property there must be either "necessity" for the loan, or the creditor before lending money should have made reasonable enquiries to satisfy himself as to the existence of such necessity. Whether there was necessity or not for a loan or sale would depend upon the circumstances of the case : 6 M.I.A. 393 (P.C.), *Foll.* When a creditor seeks to justify alienation on the ground that he made enquiries and was reasonably satisfied that there was necessity, he is not bound further to prove that the money borrowed was actually utilized for the purposes for which it was borrowed; but, in discussing such a question it would be relevant to consider, with reference to the evidence, whether the money was utilized for the purposes for which it was raised. If it was not, then at the time it was raised there could obviously have been no necessity for it. If the evidence shows that the debt for which the money was raised was paid by other means and some time after, then the Court is justified in relying upon it for drawing the inference that there was no necessity justifying the transaction. (*Madhavan Nair, J.*). VEGE RAMAYYA *v.* SURYANARAYANA MURTHI. **105 I.C. 150= A.I.R. 1927 Mad. 890=53 M.L.J. 464.**

———Inadequacy of consideration—*Onus* of proving is not on person challenging sale, but guardian must prove that he tried his utmost to fetch higher procurable price. (*Chakravarti, J.*). BAIKUNTHA NATH *v.* ADHAR CHANDRA. **92 I C. 727= A.I.R. 1926 Cal. 653.**

———*Settlement by widow—Person taking settlement must prove justification for it.*

The adult sons of a Hindu widow are not bound by a settlement made by her of their property, where there is nothing to show that they received any benefit from the settlement, but the minor sons can be bound by it, if it can be justified on the ground of legal necessity or benefit to the minors, the burden to prove which is on the person taking the settlement. (*Chatterjee and Newbould, JJ.*). HEM CHANDRA ROY *v.* SASHI BHUSAN SIL. **63 I.C. 863 (Cal.).**

—Alienation—Guardian—Court's duty.

———*Court must satisfy itself as to the propriety of sale.*

In a case where the interest of the minor is concerned, the case ought not to be decided simply on the questions raised by the parties, but the Court has to satisfy itself, in the interest of the minor, that the sale was a proper sale and the Court must insist upon the purchaser to satisfy it that circumstances justifying a sale of the minor's property did really exist. The mere fact that there was a debt to be paid does not justify the guardian straight off to sell the immovable property of the minor : 12 C. L. J. 586, *Dist.* (*Chakravarti, J.*). BAIKUNTHA NATH *v.* ADHAR CHANDRA. **92 I. C. 727=A.I.R. 1926 Cal. 653.**

—Alienation—Guardian—Debts repayment.

———A minor's guardian sold minor's property for a reasonable price. There was legal necessity for half the purchase money, in the shape of the necessity to discharge loan borrowed by the minor's father. The remaining half of the price

HINDU LAW—Alienation—Guardian—De facto.

was allowed to remain with the vendee subject to the condition that on the minor attaining majority, it should be paid to the minor with interest at 6 per cent. per annum. A promissory note was taken for the sum and the vendee acted in good faith.

Held: that the sale was valid and that the execution of the promissory note for the unpaid half of the purchase money did not put an end to the vendor's lien for the unpaid purchase money and was not imprudent. (*Spencer, Offg. C. J. and Srinivasa Aiyangar, J.*). K. MUNAYYA *v.* M. KRISHNAYYA. **84 I.C. 949=20 M.L.W. 693= A.I.R. 1925 Mad. 215=47 M.L.J. 737.**

———Alienation by the guardian of a minor for the re-payment of the debts of the minor's paternal uncle is invalid. (*Baker, J.C. and Hallifax, A.J.C.*). CHITNAVIS *v.* NATHU SAO. **79 I.C. 1002= 20 N.L.R. 106=7 N.L.J. 170=A.I.R. 1925 Nag. 2.**

———Alienation by the guardian of a minor for re-paying the time-barred debts of his father is invalid. (*Baker, J.C. and Hallifax, A.J.C.*). CHITNAVIS *v.* NATHU SAO. **79 I.C. 1002= 20 N.L.R. 106=7 N.L.J. 170=A.I.R. 1925 Nag. 2.**

—Alienation—Guardian—Decree, setting aside.

———Money borrowed by guardian for trade of the maternal uncle of the minor is not a necessary purpose and a mortgage by the guardian for it does not bind the minor's estate. Decree can be set aside without proof of fraud or collusion. (*Spencer and Ramesam, JJ.*). CHUNDURU PUNNAYYAH *v.* RAJAM VIRAMMA. **70 I.C. 668=43 Mad. 425= 15 M.L.W. 427=1922 M.W.N. 213= A.I.R. 1922 Mad. 273=42 M.L.J. 429.**

—Alienation—Guardian—De facto.

———De facto *and* De jure *guardians—Alienations by—Same tests apply.*

A *de facto* guardian is under Hindu Law in the same position as a *de jure* guardian so far at least as acts done by him for the benefit of the minors are concerned and as regards such acts the same test is to be applied as would be applied in case of alienation by a legal guardian : 6 M. I. A. 393, *Foll.*; A. I. R. 1918 P.C. 11, *Dist.*; 37 Mad. 514; 13 M.L.J. 223 and A.I.R. 1926 Mad. 457, *Ref.*

But in the case of *de facto* guardians, alienations by them, would require strict proof not only of necessity but of adequacy of consideration, and it would be dangerous to hold that because there were debts due by the father it is open to anybody who chooses to take upon himself the management of the estate to sell the property of the minors for a price far below the market value of the land. (*Kumaraswami Sastri and Curgenven, JJ.*). RAMASWAMY PILLAI *v.* KASINATHA IYER. **108 I.C. 529=1927 M.W.N. 356= A.I.R. 1928 Mad. 226.**

———*Alienation by* de facto *guardian found partly binding—Course to be followed indicated.*

Where a Court finds that an alienation by *de facto* guardian is not wholly binding on minor plaintiffs, there are three courses open as regards granting relief. The first course is to set aside the sale altogether and direct the plaintiffs to pay the vendee the consideration which is binding on them (plaintiffs) with interest. The second course is to direct the purchasers to pay the plaintiffs the difference between the actual value of the land and the consideration which is binding on them with interest. The third course is to divide the lands in proportion to the value of the lands and the actual consideration found payable :

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A.I.R. 1923 Mad. 120, *Ref.* (*Kumaraswamy Sastri and Curgenven, JJ.*). RAMASWAMY PILLAI *v.* KASINATHA IYER. **108 I. C. 529= 1927 M W.N. 356=A.I.R.1928 Mad. 226.**

——*Quaere*: Whether a *de facto* guardian is entitled in Hindu Law to sell a minor's property. (*Marten, C. J. and Crump, J.*). HARILAL RANCHOD *v.* GORDHAN KESHAV. **105 I.C. 722= 51 Bom. 1040=29 Bom L.R. 1414= A.I.R. 1927 Bom. 611.**

——*Alienation is valid only when* de jure *guardian failed to act, much to the detriment of the minor.*

An alienation by a *de facto* guardian may be valid if such an alienation is otherwise justified. But where there is a legal guardian and the alienation is made by a *de facto* guardian, it is the duty of the *de facto* guardian to satisfy the Court that the legal guardian refused to act for the minor and to protect her interest and that unless the *de facto* guardian acted for her, irreparable loss to the minor would have been the result of the inaction of the legal guardian. (*Chakravarti, J.*). BAIKUNTHA NATH *v.* ADHAR CHANDRA. **92 I. C 727= A.I.R. 1926 Cal. 653.**

——*Alienation not for necessity is only voidable—One for necessity is binding.*

An alienation by a *de jure* guardian or a natural guardian is voidable and as the powers of natural and *de facto* guardians are similar, a transaction entered into by a *de facto* guardian not for necessity is only voidable at the option of the minor on attaining his age. But an alienation for necessity is binding (*Odgers and Viswanatha Sastri, JJ.*). SEETHARAMMAMMA *v.* APPIAH. **92 I.C 827=49 Mad. 768=23 M.L.W. 285= 1926 M.W.N. 238=A.I.R. 1926 Mad 457= 50 M.L.J. 689.**

——*Natural brother of adopted minor can act as* de facto *guardian.*

A natural brother as *de facto* guardian of an adopted minor can act as such and hence a mortgage effected by him and on attaining majority approved and discharged by the minor cannot be questioned by a complete stranger, and the question cannot be agitated for the first time in second appeal: A. I. R. 1926 Mad. 457, *Foll.* (*Odgers, J.*). ERULANDI THEVAN *v.* S. SUBRAMANIA IYER. **97 I.C. 611=1926 M.W.N. 559.**

——The right of a *bona fide* incumbrancer who had taken from a *de facto* manager a charge on lands created honestly for the purpose of saving the estate or for the benefit of the estate, is not affected by the want of union of the *de facto* with the *de jure* title. (*Campbell, J.*). CHANDULAL *v.* MUKANDI. **87 I.C. 40=26 P.L.R. 120= A.I R. 1925 Lah. 503.**

——A Hindu minor is not entitled to impeach an alienation made during his minority for the benefit of the estate and with due regard to his interests by his *de facto* guardian. (*Martineau, J.*). DADAR SINGH *v.* BANSI. **85 I.C. 741= A.I.R. 1925 Lah. 520.**

——*De facto* guardian can create charge on property *bona fide* for the benefit of the estate in same circumstances as *de facto* and *de jure* manager. (*Kinkhede, A.J.C.*). NARAYAN *v.* DHARMA. **81 I.C. 273=A.I.R. 1925 Nag. 134.**

——Alienation by *de facto* guardian for legal necessity need not be ratified by minor after majority. (*Kinkhede, A.J.C.*). GANPAT SAMBAJI *v.* MAHADEO. **78 I.C. 946=24 N.L.R. 8= A.I.R. 1924 Nag. 364.**

HINDU LAW—Alienation—Guardian—Mother.

—Alienation—Guardian—Mother.

——*Previous mortgage by mother of minor cannot be relied upon as supporting subsequent sale by her.*

Where a sale by the mother of a Hindu minor is alleged to have been effected to pay off a prior mortgage, the previous mortgage, when it is itself effected by the mother, cannot be relied upon as supporting a subsequent sale by her unless the mortgage was for necessity. (*Tek Chand and Agha Haidar, JJ.*). PRABHUDAYAL *v.* RALLA RAM. **31 P.L.R. 198=A.I.R. 1930 Lah. 672.**

——*Mother executing mortgage in satisfaction of debt due by minor's father.*

If a mother, who is a guardian of her minor, executes a mortgage in consideration of money paid by the mortgagee in satisfaction of the debts due by the minor's father on a promissory note, such action of the mother binds the son whether the mother purported to act as guardian or not: 1 N.L.R. 66, *Appl.*; 27 Bom. 390, *Dist.* (*Jackson, A.J.C.*). DAYARAM KUNBI *v.* MOTIRAM. **120 I.C. 415= A.I.R. 1930 Nag. 21.**

——*Mother can bind neither subsisting interest nor the interest to be acquired.*

A Hindu mother acting as guardian for her infant son, cannot possibly bind any interest which the son might acquire in certain property. Even if the infant has any subsisting interest in the property, the mother as guardian cannot enter into any contract on behalf of the infant which would be binding on him: 39 Cal. 1232 (P.C.), *Rel. on.* (*B.B. Ghose and Cammiade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I C 298=55 Cal. 841= 47 C.L.J. 376= 32 C. W. N. 439= A.I.R. 1929 Cal. 50.**

——*Sale without necessity is not binding on the son.*

While *P*, a Hindu inamdar owning large properties, was a minor, the land belonging to him was sold for Rs 300 to *K* by the mother as his guardian. In the sale deed the only recital was that the property was sold for "our expenses," *i.e.*, maintenance expense of *P* and his mother. But the evidence showed that *P's* estate was possessed of vast extent of lands worth about seventy to eighty thousand rupees.

Held: that the sale was invalid as there were no legal grounds for upholding it: 6 M I.A. 393 (P. C.) and A. I. R. 1917 P. C. 33, *Rel. on*; A. I. R. 1922 Bom. 122, *Expl.* and *Dist.*; A.I.R. 1929 Bom. 251 and A.I.R. 1922 Bom. 122, *Ref.* (*Ananthakrishna Ayyar, J.*). SREENIVASA RAO *v.* K. EARAPPA. **122 I.C. 43= A.I.R. 1929 Mad. 856.**

——*Portion of consideration not for legal necessity.—Sale to be set aside on payment of binding portion.*

Where the mother as guardian alienated certain property but only a portion of the consideration for the alienation of the property was for legal necessity

Held, on the paying back to the vendee that part of consideration which was for legal necessity the plaintiffs would be entitled to get back their share in the property alienated. (*Gokul Prasad, J.*). LAKHRAM SINGH *v.* SHEO PRASAD. **82 I.C. 68= A.I.R. 1922 All. 316.**

——Mitakshara joint family—Mother of minor member though guardian of his person, cannot alienate minor's share in joint family property: 25 All 407, *Foll.* (*Dawson Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*). MATHRA PRASAD *v.* RAJKUMAR MISRA. **62 I.C. 132= 2 P.L.T. 407=6 P.L.J. 526= 1921 P.H.C.C. 245=A.I.R. 1921 Pat. 447.**

HINDU LAW—Alienation — Guardian—Paternal uncle.

—Alienation—Guardian—Paternal uncle.

——*Alienation by paternal uncle in presence of minor's mother does not bind minor's estate.*

Paternal uncles are not natural guardians in the presence of the minor's mother and therefore have no power to mortgage minor's share in joint property and therefore a mortgage by paternal uncle is not binding on minor, though he may have derived benefit under the mortgage. (*Le Rossignol, J.*). HARDWARI *v.* CHUNI LAL.

80 I.C. 735=6 L.L.J. 182=
A. I. R. 1924 Lah. 533.

—Alienation—Guardian—Powers of.

——Alienation can be made for necessity or for benefit of estate. (*Shadi Lal, C. J., Broadway and Tek Chand, JJ.*). SHAM DAS *v.* UMER DIN.

A.I.R. 1930 Lah. 497 (F.B.).

——*Gift in excess of guardian's authority binds ward on ratification, after attaining majority.*

The Hindu Law does allow a gift even of immovable property by a guardian, just as much as by a *karta*, for the benefit of the estate or for necessity and that however much a guardian may have exceeded his powers, or otherwise acted improperly in his trusts, his acts will be rendered binding on the ward by being ratified or acquiesced in, by him, after he had attained majority: 8 M.I.A. 319 and 2 Mad. 91 (P.C.), *Ref.* (*Mukerji and Mullick, JJ.*). AMAR CHANDRA *v.* SARODAMOYEE DEBI.

33 C.W.N. 690=57 Cal. 39=
A. I. R. 1929 Cal. 787.

——Alienation by natural managing guardian for necessity or benefit of estate is valid: 45 Cal. 878, *Dist.* (*Campbell, J.*). SURAIN SINGH *v.* BABU.

91 I.C. 1054=26 P.L.R. 781=
A. I. R. 1926 Lah. 197.

——*Alienation by guardian is binding on minor, if it is for necessity or for his benefit.*

The test with regard to the binding nature of alienation by natural guardian upon the minor as laid down in *Hunooman Persad* v. *Mt. Babooee*, 6 M.I.A. 393 at pages 423 and 424, is that the power must be exercised by the guardian rightly for necessity or for the benefit of the infant. It would be open to the alienee to establish that he had made all proper and necessary inquiries and that he had acted in good faith in advancing the moneys to the natural guardian of the minor. (*Shah and Crump, JJ.*). RAOJI THAKARAM PATIL *v.* HEMRAJ SADARAM. **75 I. C. 561=A.I.R. 1923 Bom. 213.**

—Alienation—Guardian—Sister.

——*Married sister managing minor sister's property—Alienation by her is not binding unless it be for necessity.*

If the person acting on behalf of the minor is the manager of the estate, the alienation is valid and binding as against the minor if it is supported by legal necessity or otherwise beneficial to the minor: A.I.R. 1926 Nag. 81, *Foll.*

Where the minor sister is living with her married sister and the latter is in fact looking after her property as well as her person, it is competent to the latter to alienate a portion of her sister's property as manager and her act will bind the minor or her representatives-in-interest if it is proved to be for legal necessity. (*Kinkhede, Offg. A.J.C.*). PUNJABRAO *v.* RAMKRISHNA. **95 I.C. 553=9 N.L.J. 70=**
A.I.R. 1926 Nag. 332.

——*Manager.*

A sister as a manager of her minor sister must be allowed a reasonable latitude in the exercise of her power to alienate, provided she, as the manager of the minor's estate acts prudently and fairly towards the minor's interest. (*Kinkhede, Offg. A. J. C.*). PUNJABRAO *v.* RAMKRISHNA.

95 I.C. 553=9 N.L.J. 70=
A. I. R. 1926 Nag. 332.

HINDU LAW—Alienation—Guardian—Validity.

——*Married sister is not guardian—She cannot legally sell minor's property.*

Under Hindu Law married sister is not a guardian, and any sale by her of her minor sister's property is absolutely void and can be set aside by the alienee of the minor's heir. The situation of an unauthorized guardian is not bettered by describing him as a *de facto* guardian. He may, by his *de facto* guardianship assume important responsibilities in relation to the minor's property, but he cannot thereby clothe himself with legal power to sell it: 34 All. 213, *Foll.* (*Baker, J.C.*). PUNJABRAO *v.* ATAMARAM.

87 I.C. 1018=A.I.R. 1926 Nag. 124.

—Alienation—Guardian—Specific performance.

——It is not within the competence of a guardian of a minor to bind him with a contract to alienate property and such contract if entered into cannot be enforced against the minor: 39 Cal. 232 (P.C.), *Foll.* (*Graham and Mitter, JJ.*). MONOHAR DAS *v.* TARIM CHARAN.

34 C.W.N. 135=A.I.R. 1929 Cal. 612.

——*Contract of sale by guardian cannot be specifically enforced against the minor even when guardian has placed the other party in actual possession—Doctrine of part performance cannot be invoked.*

The guardian of a Hindu minor cannot enter into a contract on his behalf so as to bind the minor in such a manner as to be capable of being specifically enforced against the minor: 11 Bom. 551 (P.C.) and 39 Cal. 232 (P.C.), *Rel. on.*

The matter cannot be regarded as different even if there was not only a contract by the guardian to convey the property, but, pursuant, to the contract the guardian, by way of partly performing the contract, has placed the other party in actual possession, for the doctrine of part-performance, being an equitable doctrine, can be held to apply to the person concerned, and if the contract is not a contract of the plaintiff who is suing, the equitable principle cannot be invoked against him: A. I. R. 1928 Mad. 407, *Rel. on.* (*Wallace and Srinivasa Ayyangar, JJ.*). NAGESWARA RAO *v.* MANDAVA. **110 I.C. 492=1928 M.W.N. 214=**
A.I.R. 1928 Mad. 830.

—Alienation—Guardian—Step-mother.

——Alienation by widow managing the estate of her son and step-son is binding on step-son, if for necessary purposes: 10 N.L.R. 133; 15 N.L.R. 55; A.I.R. 1923 Nag. 230 and A.I.R. 1925 Nag. 134, *Explained.* (*Findlay, J.C., Hallifax and Kotval, A.J.Cs.*). KESHAO *v.* JAGANATH.

92 I.C. 121=22 N.L.R. 5=
A.I.R. 1926 Nag. 81 (F.B.).

—Alienation—Guardian—Validity.

——A Hindu minor widow's mother who was staying with her effected the sale of her minor daughter's property to pay off the debts of the minor's husband; and the husband's separated step-brother was the purchaser of the property. The property of the minor was being managed by the step-brother of the minor's husband and not by her mother,

Held, that the mother was not the *de facto* guardian of the minor daughter. The husband's step-brother not only had the right under the Hindu Law to be the plaintiff's guardian but by his acts had actually assumed the role

HINDU LAW—Alienation—Lender's (alienee's) duty.

of her guardian. He should not therefore be allowed to deprive the minor of her property by getting a conveyance in his favour from the minor's mother who was not allowed to have anything to do with the minor's estate. The sale therefore was void and not binding on the minor. And the sale being void the husband's step-brother was not entitled to be paid the amount that he spent to relieve the burden on the estate as he was only a volunteer inasmuch as he had no title to the property: 38 Mad. 1125; 17 Bom. L. R. 1134; 17 M.L.T. 138; 2 I. A. 131 (P. C.) and 27 Bom. 390, *Rel. on.* (*Devadoss and Mackay, JJ.*). ALAGUMPERUMAL KARAYALAR *v.* VINAYAGATHAMMAL.

117 I. C. 731=29 M. L. W. 6=A.I.R. 1929 Mad. 110=55 M.L.J. 861.

—Alienation—Lender's (alienee's) duty.

———*Need not look to application of the surplus.*

Where a purchaser acting in good faith upon due inquiry, is able to show that the sale itself was justified by legal necessity, he is under no obligation to inquire into the application of any surplus and is not bound to make re-payment of such surplus to the members of the family challenging the sale. (*Mirza and Baker, JJ.*). GAJONAN SITARAM *v.* SITARAM LOGHUNATH. **114 I.C. 245=30 Bom. L.R. 1629=A.I.R. 1929 Bom. 55.**

———*Sale by father—Vendee to prove good faith and consideration—He need not enquire how the sale price was utilised.*

Where it has been established that the alienation by father was made for a necessary purpose, *e.g.*, in order to pay off an antecedent debt which was binding upon the sons and recoverable from the joint family property and it is not shown that the vendees knew the father to be an immoral man or that his immorality was so gross and so notorious that they must be presumed to have known of it, the vendees are only bound to show that they acted in good faith and that the sales were made for a necessary purpose and for a fair price. Having done this, they are under no obligation to enquire into the application of any surplus over the sum required to carry out the necessary purpose: A.I.R. 1927 P.C. 37, *Foll.* (*Fforde and Campbell, JJ.*). ULFAT RAI *v.* TEJ NARAIN.

106 I.C. 176=8 Lah. 632=29 P. L. R. 132=A. I. R. 1928 Lah. 83.

———*Purchaser need not enquire about application of surplus if the sale is for necessity.*

Where a certain amount is taken in cash by the vendor without specification of the nature of the necessity and the remaining consideration was legitimately taken in satisfaction of antecedent debts and the purchaser acted in good faith and, after due enquiry, and the sale itself was justified by legal necessity,

Held, that the purchaser was under no obligation to inquire into the application of the surplus and is not bound to make re-payment of such surplus to the members of the family challenging the sale: A.I.R. 1927 P.C. 37, *Foll.* (*Stuart, C. J. and Raza, J.*). NAGESH NATH *v.* RAM JANKI TEMPLE. **4 O.W.N. 1112=A. I. R. 1927 Oudh 590.**

———If it is once conceded that the sale by father was for legal necessity it is not for the vendee to pursue each and every item of the consideration and ascertain how it was applied: A.I.R. 1927 P.C. 37; A.I.R. 1927 P.C. 246; 6 M.I.A. 393 (P.C.), *Rel. on.* (*Sen and Pullan, JJ.*). SHYAM LAL *v.* L. BADRI PRASAD. **1929 A. L. J. 1149=51 All. 1039=A.I.R. 1929 All. 789.**

HINDU LAW—Alienation—Lender's (alienee's) duty.

———*Alienee antecedent creditor—Previous debts must be proved to be just.*

No doubt it is not sufficient for an alienee who is himself an antecedent creditor to prove merely the existence of his debts still it is not necessary for such an alienee to prove "necessity" for the antecedent debts. All that he need prove is that the antecedent debts were "just": 65 P.R. 1900 (F.B.), *Expl.* and *Appl.*; 1 Lah. 472, *Dist.*; 60 I.C. 714 and A.I.R. 1922 Lah. 301, *Cons.* (*Bhide, J.*). WARYAM SINGH *v.* INDAR SINGH. **116 I.C. 306=A.I.R. 1929 Lah. 242.**

———Consideration of mortgage being antecedent debts—Mortgagee need not make further enquiry as to existence of legal necessity. (*Findlay, J. C.*). RAM GOPAL *v.* AMBA PRASAD. **113 I.C. 891=A.I.R. 1929 Nag. 6.**

———*Alienee knowing alienor to be spendthrift—Alienee is bound to see that the money is utilized for the purpose for which it is borrowed.*

It is not generally the alienee's duty to see that the money advanced by him was properly expended for the purpose for which it was advanced. But where the alienee knows the spendthrift character of the vendor and knows that money which he might advance will not be spent for the purpose for which it is meant, and he still advances money, without seeing that it is applied for the purposes for which it is borrowed, the sale is apt to be set aside. (*Zafar Ali and Dalip Singh, JJ.*). NEKI RAM *v.* KURE. **112 I.C. 558=A.I.R. 1928 Lah. 526.**

———Where the borrower is a notorious spendthrift a creditor would not be protected merely by the fact that the money advanced by him was said to be required to pay off antecedent debts, especially when the vendee must have known the character of the vendor: 76 P. R. 1917, *Foll.* (*Addison, J.*). HARNAM SINGH *v.* JAGIR SINGH.

98 I.C. 865=A.I.R. 1927 Lah. 46.

———*Creditor need only make reasonable enquiry as to legal necessity.*

If a creditor, before embarking on transactions has made reasonable and *bona fide* inquiry and has satisfied himself to the best of his knowledge and belief that legal necessity exists, the real existence of such legal necessity in point of fact is not a condition precedent to his success: 6 M. I. A. 393, *Hanuman Prasad's case, Foll.* (*Findlay, Offg.J. C. and Prideaux, A. J. C.*). SHANKAR RAO *v.* PANDURANG. **92 I.C. 646=9 N.L.J. 22=A.I.R. 1927 Nag. 65.**

———*Creditor need not see to the application of the money.*

The creditor has only to enquire into the necessity for the advance, and if he acts honestly he is not bound to see to the application of the money: 6 M. I. A. 393 (P. C.). *Foll.* (*Campbell and Dalip Singh, JJ.*). ICHHAR SINGH *v.* NATHA.

98 I.C. 514=8 L.L.J. 479=27 P.L.R. 623=A.I.R. 1926 Lah. 693.

———Alienation by father for necessity—It is sufficient for vendee to satisfy himself as to the existence of necessity and he need not enquire as to actual application of the money: 65 P.R. 1900, *Foll.* (*Harrison, J.*). IBRAHIM *v.* SHAH MAHOMED. **92 I.C. 263 (Lah.).**

———*Alienation by mother of a minor, to pay prior mortgage—Purchaser is not bound to see that money was properly disposed of.*

Where it was found that the mother of a minor sold minor's property in order to pay off a mortgage,

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and it was desirable in the interests of the minor that the mortgage should be paid off, as the profits of the land mortgaged were more than the interest on the mortgage, but it was contended that the payment made by mother to the mortgagee was excessive.

Held, even though the mortgagee was paid in excess, that would not affect the position of a *bona fide* purchaser for value. It would be sufficient for him to enquire whether there was as a matter of fact a mortgage to be paid off. He would not be bound to follow the purchase money, and ascertain that is was properly disposed of by the plaintiff's guardian. (*Macleod, C. J. and Coyajee, J.*). VISHVANATHBHAT ANNABHAT *v.* MALLAPPA NINGAPPA. **92 I.C. 628=49 Bom. 821=27 Bom. L. R. 1103=A.I.R. 1925 Bom. 514.**

——No enquiry would sustain an alienation of the co-parcenary property unless the facts represented to the alienee were such as if true, would have justified the loan. (*Shadi Lal, C. J. and Malan, J.*). GIRDHARI LAL *v.* KISHEN CHAND. **85 I.C 463=5 Lah. 511= A.I.R. 1925 Lah. 240.**

——*Existence of necessity is immaterial if lender has made enquiries and acts honestly—Amount of debt need not be equal to amount required for necessity—Rate of interest higher than Court rate does not vitiate alienation.*

The lender who advances money to a manager on mortgage of family property is bound to inquire into the necessities for the loan and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and under such circumstances he is neither bound to see to the application of the money nor need he ascertain that the amount of the money, which he advances, is equal in amount to the entire debt which constitutes the family necessity. The fact that the interest on the mortgage was higher than the Court interest on the decree, does not vitiate the mortgage, nor does the fact that the amount of property mortgaged was larger than the amount which was about to be sold under the decree. (*Simpson, A. J. C.*). SHEO BEHARI *v.* SHEO RATAN SINGH. **90 I. C. 345=A.I.R. 1925 Oudh 740.**

——Alienee from widow, should assure himself not only that necessity exists but that it cannot be satisfied without borrowing. (*Dalal, J. C.*). RAMAN *v.* BARATI. **85 I.C. 489=27 O.C. 329=A.I.R. 1923 Oudh 587.**

——Where a person purchases the property of a minor at an auction-sale in execution of a decree against a minor,

Held, it was not necessary for the purchaser to enquire whether the decree and the sale thereunder were for valid reasons. (*Walmsley and M. N. Mukerji, JJ.*). UMA CHARAN CHAKRAVARTI *v.* GUIRAM BAG. **83 I.C. 1050=39 C.L.J. 394=A.I.R. 1925 Cal. 1008.**

——*Honest enquiry as to existence of necessity is enough.*

An alienee who pays antecedent debts if he acts honestly and makes proper enquiry whether the debts are actually due is not responsible if he had been deceived. A just debt, incurred for a necessary purpose is always binding irrespective of the income and means of the alienor and just debts are

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debts which are actually due and are not immoral or illegal or opposed to public policy and not contracted as an act of reckless extravagance of wanton waste or with the intention of destroying interests of the reversioners. An alienee discharging an antecedent debt is not required to make an inquiry into the nature thereof. (*Broadway, J.*). ANOKH SINGH *v.* SAPURAN SINGH. **79 I.C. 980=A.I.R. 1923 Lah. 660.**

——Where a mortgagee wishes to enforce a charge against the family property the burden lies on him to satisfy the Court that the mortgage transaction had been entered into for family necessity or in lieu of antecedent debt of the father or with the consent, express or implied of all the members of the family. (*Lindsay and Sulaiman, JJ.*). INAYAT ELAHI *v.* HARDEO SAHAI. **74 I.C. 326=45 All. 692=21 A.L.J. 610=5 L.R.A. Civ. 61=A.I.R. 1924 All. 29.**

——*Purchaser must prove that on a* bona fide *enquiry he satisfied himself as to existence of legal necessity.*

A representation by itself raises no equity in favour of the purchaser or the mortgagee, for the law does not permit him to act upon that representation unless he satisfies himself by an honest and *bona fide* enquiry that the representation is true. Where he so enquires into the necessity for the loan or the sale and satisfies himself by an honest and *bona fide* enquiry that the necessity exists, the law completely protects him; for it is not a condition for his success in any litigation which may arise out of the transaction that he should prove the existence of the necessity. It is sufficient if he proves that he made an honest enquiry and was satisfied that the necessity existed. The case would stand on a different footing if, in addition to the representation that he had power to charge the joint family property there is a further undertaking that he would make good the representation by partition or otherwise. Where it is proved to the satisfaction of the Court that there was such an undertaking on the part of the Karta of the joint family, the Court has ample power to compel him to do that which he undertook to do, but where there is no such undertaking, it is impossible for the Court to direct that the members of a joint family should hold their properties in definite shares and that the share of one or some of the members should remain charged for the payment of any money to the mortgagee or the purchaser: 20 W.R. 192; 13 C.W.N. 815; 14 C.W.N. 552, *Diss.*; 39 All. 500, *Foll.* (*Das and Bucknill, JJ.*). JATA DHARI SINGH *v.* DUKHI SINGH. **72 I. C. 1053=4 P.L.T. 64=A.I.R. 1923 Pat. 197.**

——Bona fide *enquiry made—Creditor is not bound to see to application of money.*

A creditor is not bound to see to the application of money. If a person dealing with the manager of a family or for the matter of that, with the guardian of a minor, does make enquiries and acts honestly, the real existence of an alleged and reasonable necessity is sufficient to validate the debt and he is not bound to see to the application of the money. (*Kanhaiya Lal and Sulaiman, JJ.*). RAGUBANS UPADHYA *v.* INDARJIT SINGH. **69 I.C. 683=46 All. 77=20 A.L.J. 886=A.I.R. 1922 All. 526.**

——*Alienee made aware of maintenance claim and not acting* bona fide*—Sale could not defeat claim for maintenance.*

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A Hindu died leaving the plaintiff, his widow, and a son. The latter alienated almost all his father's properties to the defendants. The plaintiff then sued the defendants for recovery of maintenance and declaration of a charge on the said properties. The lower Courts found that the property left by the deceased was only limited ; that the son incurred debts for immoral purposes ; that at the time of purchasing the shops the vendees were warned that the widow had set up a claim for maintenance ; and that therefore they are not *bona fide* purchasers,

Held, the sale was not justifiable and could not defeat the plaintiff's right of maintenance : 2 Bom. 494, *Foll.*; 22 All. 326, *Ref.* (*Abdul Raoof and Martineau, JJ.*). BHAGAT RAM *v.* MT. SAHIB DEVI. **67 I.C. 848=3 Lah. 55=21 P.W.R. 1922= A.I.R. 1922 Lah. 273.**

———*Reason given by alienor found to be proper by creditor—No enquiry into all circumstances is necessary.*

Bucknill, J.—When a lender contemplates lending money to a *karta* of a joint family, it is probable that according to the present law, he should make some clear enquiry as to the reason for which the loan is being arranged but provided that he is told that reason and that reason seems to him a proper one, it is not necessary for him to make any further enquiry. A lender need not examine entirely the circumstances of the borrowers or to do more than be assured by him that the money is required for the legal necessity or the family benefit of the family which the borrower represents. (*Dawson Miller, C. J and Bucknill, J.*). HARI PRASAD SINGHA *v.* SOWRENDRA MOHEN SINHA. **66 I.C. 945=1 Pat. 506= 3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

———*Scope of enquiry by alienee.*

An honest enquiry by the alienee of a joint family property from the Karta, for borrowing money for a lease, does not mean enquiry into the terms of the lease itself which would satisfy the lender that the lease would be beneficial to the family. Honest enquiry as to the purpose for which the money was required is sufficient. (*Das and Ross, JJ.*). SADHU SARAN PRASAD SINGH *v.* BRAHMDEO PRASAD SINGH. **61 I.C. 20= 6 P. L. J. 256=2 P. L.T. 318=A.I.R. 1921 Pat. 99.**

———In order that an alienation should be binding on the family, it must be proved that it was for family benefit and it is immaterial whether the alienation was by *karta* or not. Whether the transaction is a loan for purchase of goods, the creditor must show that he made enquiries and was satisfied that it was for family benefit. (*Jwala Prasad and Das, JJ.*). DEBI SARAN SAHAI *v.* BANKEY BEHARI LAL. **63 I.C. 223 (Pat.).**

—Alienation—Manager—Business.

———*Manager has no authority to bind any portion of family property to enable him to embark on speculative venture.*

The manager of a joint Mitakshara family cannot impose on the minor co-parceners the risk and liability of a new business started by himself and other adult members and has no authority to bind any portion of the joint family property in order to enable him to embark on a speculative venture. The contract for a cattle market and the opening of an Arhat for flour and ghee is business of a speculative character : 8 Bom. 602; 1 P.L.T. 136; 98 I.C. 651; *Ref.*; A.I.R. 1924 All. 379, *Cons.* and *Doubted* ; A.I.R. 1928 All. 403; A.I.R. 1926 Pat. 17,

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Cons. and *Appr.* (*Ross and Chatterji, JJ.*). BISWANATH SINGH *v.* KAYESTHA CORPORATION. **119 I.C. 405=8 Pat. 450=10 P.L.T. 379= A.I.R. 1929 Pat. 422.**

———*Alienation for discharging old debts of family business and to carry it on is justified.*

Where a business is carried on with joint family funds for the benefit of the joint family, the properties of the joint family, both movable and immovable, including the shares of minor members of the family, are liable for debts incurred in carrying on the business, and it is within the powers of the managing member in a proper case to sell immovable as well as the movable property for the purpose of discharging such debts or enabling the business to be carried on.

Where the manager sold family property for Rs. 43,500 to satisfy pre-existing debts to the amount of Rs. 38,000.

Held, that it was enough to support the sale without showing how the balance had been applied: A.I.R. 1927 P.C. 37, *Ref.* (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **101 I.C. 373= 8 Lah. 597=54 I.A. 211=29 Bom. L.R. 886= 25 A.L.J. 599=45 C.L.J. 548=1927 M.W.N. 453= 4 O.W.N. 537=28 P.L.R. 463=8 P.L.T. 647= 26 M.L.W. 442=32 C.W.N. 233=9 L.L.J. 496= 39 M.L.T. 345=A.I.R. 1927 P.C. 121= 52 M.L.J. 729 (P.C.).**

———*Civil P. C., O. 40, R. 1—Mortgage by karta of Hindu joint family—Money used for family business—Receiver can be appointed in mortgage suit.*

Where a mortgage was created by the *karta* of a joint family, on the family properties for securing overdrafts on the banking account of limited company of which the *karta* was a member, and where the adult members of the family were aware of the mortgage and the money advanced was used for the family business.

Held, that in a suit on the mortgage, a receiver could be appointed. (*Sanderson, C. J. and Walmsley, J.*). RAM KUMAR LAL *v.* CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA. **87 I.C. 375=41 C.L.J. 203= A.I.R. 1925 Cal. 664.**

—Alienation—Manager—Consent of co-parceners.

———*Failure to challenge alienation by show or by overt act—Is not binding on co-parcener and is not consent.*

Even if the other co-parcener be a major at the date of the alienation, it cannot be said that he assented to or acquiesced in the alienation merely by his not bringing any action against the purchaser for establishing that the alienation cannot affect his rights in the property, or by his not manifesting by any other overt act that he did not acquiesce in the alienation so far as his interests in the property are concerned, much less such assent or acquiescence can be imputed to him while he is a minor. The maxim *actio personalis moritur cum persona* does not apply to an action by the co-parcener to challenge the alienation. (*Ramesam and Thiruvenkatachariar, JJ.*). *In the matter of* AMIRTHALINGA THEVAN. **112 I.C. 553=1928 M.W.N. 602= 28 M.L.W. 634=A.I.R. 1928 Mad. 986.**

———*Manager can alienate without express consent of other adult co-parceners.*

Ordinarily the *karta* or the recognized head of the family, be he the father or the eldest co-parcener, manages the family affairs. But circum-

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stances do often exist when on account of his incapacity, or temporary or permanent absence, or as in the case of a trading concern on account of a junior member being more competent to look after such affairs, a junior member is required to act as the *de facto* manager, and to deal with the family property. He then acts as the accredited agent of the family property in the same way and subject to the same limitations as the "*karta.*" He has the power as managing co-parcener to alienate family property for legal necessity so as to bind the interests not only of the minors, but of adult co-parceners without the express consent of such adult co-parceners. A general consent of this nature may be deducible in case of urgent necessity, from the very fact of the manager being entrusted with the management of the family. (*Kennedy, J.C. and Rupchand Bilaram, A. J. C.*). NARAINDAS *v.* KHATANMAL. **88 I.C. 916=19 S.L.R. 402= A.I.R. 1926 Sind 22.**

———*General consent by other members, does not authorise alienation beyond his powers.*

General consent given to a manager of joint Hindu family would not include a consent to alienations for value which are not within his province as manager, so that, for other alienations express consent would be necessary. Therefore the consent given to a manager by other members of the family does not necessarily include consent to future alienations. (*Macleod, C. J. and Crump, J.*). BALAPPA GHENAPPA *v.* AKKUBAI RAYAGOUDA. **74 I.C. 220=A.I.R. 1924 Bom. 170.**

———*Mortgage without legal necessity can be only with the consent of co-parceners.*

The head of a joint family cannot mortgage the joint family property without consultation with, and consent of, the other members, but where legal necessity is proved it is unnecessary to prove consent because it will be implied. But where the executor of the mortgage bond executes it as certificated guardian of a person who is really of age the recital in the bond to that effect negatives all idea of consent of such person. (*Coutts and Ross, JJ.*). KAMLA PRASAD *v.* NATHUNI NARAYAN SINGH. **66 I. C. 149=3 P. L.T. 401= 1922 P.H.C.C. 136=A.I.R. 1922 Pat. 347.**

—Alienation—Manager—Debts.

———*Paternal uncle as manager—Sale of nephew's share.*

An uncle acting as Manager of a joint family is not entitled to sell the share of his nephew in the joint family property in order to discharge a debt incurred by his own father even though the father be also the grandfather of the nephew whose property is alienated. (*Mears, C.J. and Piggott, J.*). MT. RAMESHA *v.* KALPOO RAI. **85 I. C. 84= 46 All. 264=22 A.L.J. 159=5 L.R.A. Civ. 112= A.I.R. 1924 All. 538.**

—Alienation—Manager—Extent of validity.

———*Contracts by manager for sale of immovable property, or for family necessity—Not enforceable against minor.*

A contract entered into by the manager on behalf of the joint family at a time when one of the members is a minor cannot be enforced as against the minor. The rule is not limited to contract on behalf of the minor for the purchase of immovable property but also applies to contracts made by managing members of a joint Hindu family for necessities or for the benefit of the family.

Such a contract, if it is not indivisible can, however, be enforced with variation except, with reference to the share of the minor : 39 Cal. 232 (P.C.), *Rel. on* ; A.I.R. 1926 Cal. 445, *Ref.*; 2 P.L.J. 518, *Diss. from.* (*Jack and Mitter, JJ.*). NRIPENDRA CHANDRA SHARKAR *v.* EKHERALI JOARDAR. **34 C. W. N. 272=57 Cal. 268= A. I. R. 1930 Cal. 457.**

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—Alienation—Manager—Gift.

———*Gift to stranger can be only for spiritual benefit.*

A head of a joint Hindu family has no authority to transfer a part of family immovable property by way of gift to a person who is not a near relation of his, the transaction not being for any pious purpose or for spiritual benefit even though he is under obligation to the donee (the donee having educated and helped donor's sons in difficulties.) (*Sulaiman and Pullan, JJ.*). UMA SHANKAR LAL *v.* MAHABIR PRASAD. **118 I.C. 235= A.I.R. 1929 All. 854.**

———*Gift to daughter's son is invalid.*

A gift by a manager of a joint Hindu family in favour of his daughter's son even of a small portion of the ancestral property is invalid : 31 Bom. 373 (P.C.), *Expl.* and *Dist.* (*Gokaran Nath Misra and Raza, JJ.*). BADLOO *v.* MT. BACHCHI. **98 I. C. 1047=3 O.W.N. 916= A. I. R. 1927 Oudh 23.**

—Alienation—Manager—Liability.

———Agra Tenancy Act (1926), S. 45—Grant of permanent lease of agricultural land by manager in excess of his powers—Tenants in possession and paying rent regularly—The tenant cannot be regarded as trespasser and cannot be ousted by a minor member of the family : 28 All. 30 and 3 A.L.J. 517, *Dist.* (*Kendall and Niamatullah, JJ.*). BASDEO *v.* MUHAMMAD YUSUF. **116 I.C. 491= 26 A.L.J. 1313=9 L.R.A. Rev. 321= 51 All. 285=A. I. R. 1928 All. 617.**

———*Benefit resulting from alienation, must be distributed over all the shares.*

If a manager of a Hindu family sells half the family estate for justifiable necessity, the benefit must be distributed over the shares of the various members. At the same time a manager can sell his own share for what he likes. The proper course is to divide the property by metes and bounds and to allot to the other members of the family their shares charged with the amount by which they have benefitted by the liquidation of debts : 37 Mad. 435, *Foll.* (*Jackson, J.*). ADINARAYANA REDDI *v.* SUBBARAYAL REDDI. **104 I.C. 621=A.I.R. 1927 Mad. 1116.**

———*Alienation resulting in benefit is binding.*

A transfer of joint property by the manager can be justified if it is not a mere speculation but results in actual benefit to the estate. The other members of the family cannot retain the benefit and at the same time repudiate the transaction by means of which the benefit has been acquired: 6 M.I.A. 393 (P.C.) and 4 All. 532, *Rel.*; 40 Mad. 709, *Expl.* (*Sulaiman and Banerji, JJ.*). JADO SINGH *v.* NATHU SINGH. **98 I. C. 773=48 All. 592= 24 A.L.J. 633=A.I.R. 1926 All. 511.**

———Manager alienating for legal necessity, as manager—Minor member joining in execution—Minor is bound by the alienation, as much, as he would be, if he had not joined in execution : 34 All. 296 (P.C.), *Dist.* (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). NARAIN DAS *v.* KHATAMMAL. **88 I. C. 916=19 S.L.R. 402= A. I. R. 1926 Sind 22.**

———An unauthorised alienation for value by manager of property, effecting the whole interest

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of family property is good only against his share: 49 I.A. 358, *Ref.* (*Macleod, C.J. and Crump, J.*). BALAPPA GHENAPPA *v.* AKKUBAI RAYAGOWDA. **74 I. C. 220=A.I.R. 1924 Bom. 170.**

—Alienation—Manager—Limitation.

———*Unauthorised alienation by manager is void* ab initio *and* in toto.

Where the manager of a Hindu joint family mortgages the family property for purposes not recognised by the law, the mortgage is void *in toto* and *ab initio*. There is no question of the security failing at a subsequent date. Therefore where in a suit on such mortgage the plaintiff prays for an alternative relief that if the property is not liable, he must be given a personal decree against the assets of the mortgagor, Art. 116 and not Art. 97 applies: 27 Cal. 762, *Foll.*; 19 Cal. 123 (P.C.), *Dist.* (*Daniels and Wazir Hasan, A.J.Cs.*). GAJODHAR BAKHSH *v.* GAURI SHANKAR. **61 I.C. 205=8 O.L.J. 81=A. I. R. 1921 Oudh 47.**

—Alienation—Manager—Powers of.

———*Appropriation, for religious charity—If small, can be made without consent of co-parceners, but only by act* inter vivos.

A dedication of a portion of the family property for the purpose of a religious charity may, according to Hindu Law, be validly made without any instrument in writing, even if it be an appropriation of some landed property, and the act of the *karta* of the family would be validly assented to in any way, however informally, by the other members of the family. Such an appropriation may even (if the property allotted be small as compared with the total means of the family) be made by the *karta* without consent. But the appropriation or alienation must be made by the manager by an act *inter vivos* and must not be an alienation *de futuro* by will: 45 Mad. 281, *Reversed.* (*Lord Phillimore.*) GANGI REDDI *v.* TAMMI REDDI. **101 I.C. 79=50 Mad. 421=54 I.A. 136=4 O.W.N. 482=29 Bom. L. R. 856=25 A.L.J. 593=45 C.L.J. 512=31 C.W.N. 799=1927 M.W.N. 502=26 M.L.W. 139=8 P.L.T. 681=A.I.R. 1927 P.C. 80=52 M.L.J. 524 (P.C.).**

———On separation between three brothers the sons of two brothers with the son of the third have no authority to alienate the ancestral property of the joint Hindu families, to which they belong, in absence of necessity or in absence of antecedent debt. (*Stuart, C. J. and Raza, J.*). DY. COMMR., PARTABGARH *v.* SHEONATH. **100 I.C. 689=2 Luck. 459=4 O.W.N. 215=A.I.R. 1927 Oudh 149.**

———Alienation by manager other than father or grandfather cannot be supported unless legal necessity is established—No question of debts being immoral arises in such cases: A.I.R. 1923 All. 591; A.I.R. 1925 All. 169 and A.I.R. 1925 All. 180, *Dist.* (*Sulaiman, J.*). NANAKCHAND *v.* RAM PRASAD. **92 I.C. 316=A.I.R. 1926 All. 250.**

———*Power to mortgage extends only to the extent of legal necessity.*

A manager of a joint Hindu family cannot mortgage his own share in the family property for his own personal debts. His authority to mortgage the family property exists where a debt borrowed by him is justified by legal necessity or, if he happens to be the father of the sons who are also members of the joint family with him, is required for the payment of antecedent debts. Until partition no member of a family governed by the Mitakshara, whether manager or otherwise, can say that a particular

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share in the property belongs to him. The property has to be treated as a whole and undivided. If therefore, a manager executes a mortgage of a family property which is not justified either on the ground of legal necessity or of antecedent debt the transaction cannot affect any portion of the property alleged to have been so transferred. (*Case-law cited*). (*Hasan and Misra, JJ.*). JAI NARAIN *v.* MAHABIR. **95 I. C. 857=2 Luck. 226=13 O.L.J. 574=3 O.W.N. (Sup.) 23=A.I.R. 1926 Oudh 470.**

———*Benefit to estate does not justify manager's alienation.*

It is going too far to say that a manager of a Hindu joint family can justify a sale of joint family property merely on the ground that the sale at the time appeared to be advantageous. It would be going much further than any principle of Hindu Law warrants to hold, that because a manager of joint family considers it advantageous at the time to exchange joint family land for money, such an alienation can be treated as justified and therefore binding on the minor members of the family. (*Macleod, C. J. and Crump, J.*). VISHNU VISHWANATH *v.* RAMACHANDRA SADASHIV. **73 I.C. 1017=25 Bom. L.R. 508=A.I.R. 1923 Bom. 453.**

—Alienation—Manager—Presumption.

———Property mortgaged as self-acquired found to be ancestral.

Held, applying the principle that the Court should incline to the view that a transferor alienated the property in the capacity most favourable to a *bona fide* purchaser, that the defendant must be deemed to have mortgaged the property not only as his self-acquired property, but also as manager of a joint Hindu family to which the property really belonged: (1916) 2 M.W.N. 115, *Rel. on.* (*Phillips and Srinivasa Ayyangar, JJ.*). SEETHARAMAMURTHI *v.* RANGAYYA. **108 I.C. 278=1927 M.W.N. 769=A.I.R. 1928 Mad. 293.**

———Covenant by manager to indemnify vendee against loss if minor members challenged alienation,

Held, that insertion of such a clause is no more than a reasonable precaution against the undoubted risk that the vendors who were majors might afterwards make common cause with the vendors who were minors and endeavour by *suppressio veri* and *suggestio falsi* to get the sale set aside. (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **101 I.C. 373=8 Lah. 597=54 I.A. 211=29 Bom. L.R. 886=25 A.L.J. 599=45 C.L.J. 548=1927 M.W.N. 453=4 O.W.N. 537=28 P.L.R. 463=8 P.L.T. 647=26 M.L.W. 442=32 C.W.N. 233=9 L.L.J. 496=39 M.L.T. 345=A.I.R. 1927 P.C. 121=52 M.L.J. 729 (P.C.).**

———*Manager purporting to mortgage whole property—Presumption as whole was mortgaged.*

Where the manager purported to mortgage the whole property and he was legally competent to do so, there is nothing in the document to repel the natural inference that what was intended to be conveyed was the whole property. It must be held that the mortgage was as to the whole, and the recital that the executant was the owner of only a half of it, may be treated as surplusage: A.I.R. 1924 Mad. 550; 28 I.C. 365, *Foll.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). UNNAMALAI *v.* ABBOY CHETTY. **92 I.C. 524=28 M.L.W. 168=50 M.L.J. 172.**

HINDU LAW — Alienation — Manager — Presumption.

———*Document silent as to quantum of interest—Presumption is of entire family interest.*

Where a vendee purchases property from a *de facto* manager of the joint Hindu family and there is nothing in the document to show that the manager conveys only his share or that he reserves the shares of anybody from being conveyed, both the parties to the conveyance should be presumed to have intended that the whole interest of the family should be conveyed by it, although the vendor does not describe himself as the managing member of the family: 34 All. 296 (P. C.), *Dist.* (*Devadoss and Waller, JJ.*). CHENGAYYA *v.* DEVA SAMBANDHA. **92 I.C. 720=23 M.L.W. 390=1926 M.W.N. 289=A.I.R. 1926 Mad. 406=50 M.L.J. 145.**

—Alienation—Manager—Representation.

———*Family is sufficiently represented when manager is impleaded in mortgage suit.*

Where all the adult members of a family senior to the member not impleaded in the mortgage suit, execute the mortgage deed and are actually impleaded in the mortgage suit, the manager must be one of the senior members and the junior member therefore must be taken to be fully represented. The mere omission of his name from the array of defendants would not make the decree null and void: 34 All. 549, *Ref.* (*Sulaiman, Ag. C. J. and Kendall, J.*). DEO NARAIN *v.* DALIP. **121 I. C. 817=A.I.R. 1930 All. 541.**

—Alienation—Manager—Rights of alienee.

———*Alienee from the co-parcenary body—Can challenge alienations by manager only to the extent of protecting or defining his rights.*

A transferee of any property or interest in property from a co parcenary body acquires along with that property or interest, the right of the co-parcenary body to call in question a previous alienation made by the manager of the family, otherwise than for legal necessity, for the purpose of protecting or defining the property or interest acquired. The power of avoidance in the hands of the transferee cannot be greater than that which would have been exercised by the co-parcenary body at the moment immediately preceding the transfer. The power cannot be used by a mortgagee to resist a suit for redemption by a subsequent alienee of the equity of redemption, since this would be using it for a purpose beyond protection of the mortgagee's interest. Nor can it be used by the transferee of a mere equity of redemption under a voluntary deed of transfer: for in this case the deed would have sufficiently defined the interest acquired. A purchaser, however, at a Court sale in execution of a decree for sale of property subject to a mortgage can use the power to impugn the mortgage unless the validity of the mortgage has been decided by the Court as against the mortgagor, *i.e.*, the co-parcenary body: 33 All. 783 (F.B.), *Cons.* and *Rel. on*; A.I.R. 1924 All. 51, *Expl.* and *Dist.*; A.I.R. 1925 All. 339; A.I.R. 1926 All. 718, *Rel. on*; A.I.R. 1926 P.C. 109, *Cons.*; 42 All. 50, *Dist.* (*Ashworth and King, JJ.*). MADAN LAL *v.* GAJENDRAPAL SINGH. **116 I.C. 436=51 All. 575=1929 A.L.J. 344=A. I. R. 1929 All. 243.**

—Alienation—Manager—Suit against.

———Property proved to be family property—Mortgage by manager—Description in mortgage deed that manager executed the deed as owner does not affect actual character of the deed. The natural and legitimate inference to be drawn should be

HINDU LAW—Alienation—Manager—Validity.

that the defendant has been sued in the capacity of the manager. It is not necessary that the plaintiff should state in distinct terms that he is suing the manager: or that the defendant is being sued as manager: 22 M.L.J. 45 and 1 O. L. J. 456, *Rel. on.* (*Gokaran Nath Misra and Raza, JJ.*). PIRTHIPAL SINGH *v.* RAMESHWAR. **99 I.C. 154=2 Luck. 288=3 O.W.N. 954=A.I.R. 1927 Oudh 27.**

—Alienation—Manager—Validity.

———An exchange of property cannot be inoperative only because of a defect in the title of a party to it.

A manager of joint Hindu family exchanged family property, and the transaction was not challenged by other members,

Held, that the exchange was valid. (*Niamatullah, J.*). GOPI RAM *v.* DURJAN. **113 I. C. 753=A.I.R. 1929 All. 63.**

———*Alienation held binding—Purchaser cannot be required to pay over again the whole or any portion of the purchase money.*

Ananthakrishna Iyer, J.—A sale impugned must either be upheld or held to be not binding. If a sale is held not binding, then questions of equity would crop up. But in cases where the sale is held to be binding, in ordinary cases any question of equity would not arise at all. The finding that a sale is binding implies that either the persons who effected the sale had authority or that having regard to the particular circumstances in which the sale was held authority to sell must be implied in law. Whatever might be the exact ground on which a sale is upheld if a sale is really upheld, the Court is not justified in asking the purchaser to pay again the whole or any portion of the purchase money: A.I.R. 1927 P.C. 37 and A.I.R. 1927 P.C. 121, *Rel. on.* (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). SATHYAPPAN AMBALAM *v.* VEDIVELU. **109 I. C. 106=A.I.R. 1928 Mad. 450.**

———*Lease to mortgagee—Interest on mortgage to be deducted out of rent—Rent consequently reduced very much—Lease not binding.*

Where a mortgage and a lease were both contemporaneously executed and the lease provided, that out of the rent payable by the lessee under its terms, the interest that was due to him upon his mortgage-debt should be deducted, the result being that after all the different payments had been made as the lease provided, the gross amount of Rs. 16,775 rent was reduced to Rs. 3,804 per annum,

Held, it must be regarded as it was drawn and so regarding it it is impossible successfully to contend that the lease is of such a character that it would justify the manager of a joint family estate binding the joint family property by means of its terms. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDAR. **69 I.C. 273=31 M. L.T. 217=16 M.L.W. 780=1922 M.W.N. 791=27 C.W.N. 299=21 A.L.J. 301=37 C.L.J. 457=A.I.R. 1922 P.C. 347=44 M.L.J. 728 (P.C.).**

—Alienation—Manager of endowment.

See HINDU LAW—RELIGIOUS ENDOWMENT—ALIENATION.

—Alienation—Necessity.

Benefit to estate.
Burden of proof.
Business.
Consent of co-parceners.
Debts.
Father.

HINDU LAW—Alienation—Necessity—Benefit to estate.

House repairs.
Interest.
Litigation.
Maintenance.
Marriage.
Partial necessity.
Pressure.
Presumption.
Proof of.
Purchase of property.
Purchaser's rights.
Recitals.
Religious ceremony.
Re-purchase of property.
Sale to mortgage.
Test of.
Widow.
Miscellaneous.

—Alienation—Necessity—Benefit to estate.

———Where the adult members of a family purchased their residential house which was also used for carrying on business and it appeared that the purchase was beneficial to their interests,

Held, that a mortgage of the purchased property to raise money towards a portion of the purchase money was binding on the minor members of the family. (*Mukerji and Bennet, JJ.*). GOVINDJI *v.* FIRM LALLAMUL HARDEO DAS.
1930 A.L.J. 1170=A.I.R. 1930 All. 767.

———*Alienation by prudent manager—Justification on the principle of benefit to estate—Degree of prudence.*

In order to sustain an alienation of joint Hindu family property by the managing member of the family (and the same principle would admittedly apply in the case of a guardian of a Hindu minor) the transaction must be one which is for the benefit of the estate and such as a prudent owner would have carried out with the knowledge available to him at the time, and such transactions are justifiable on the principle of benefit to the estate and are not limited to transactions which are of a defensive nature. The degree of prudence, which might fairly be required from a man who was not the sole owner of the property, would naturally be somewhat greater than that which might be expected in the case of a sole owner and might be that demanded in ordinary case from a trustee: A.I.R. 1928 All. 454 (F.B.); A.I.R. 1928 All. 403 and A.I.R. 1925 All. 333, *Rel on*; A.I.R. 1929 Bom. 251, *Diss. from* and A.I.R. 1916 P.C. 110, *Dist.* (*Tek Chand and Agha Haidar, JJ.*). RALLARAM *v.* GOVARDHAN DAS. **A.I.R. 1930 Lah. 679.**

———Any act for which the character of "legal necessity" or of "benefit to the estate" can be claimed must be an act of a defensive character: A.I R. 1925 All. 333; A.I.R. 1928 All. 403; A.I.R. 1929 All. 139 and A.I.R. 1929 Bom. 251, *Rel. on*; A.I.R. 1928 All. 454 and A.I.R. 1922 Bom. 122, *Expl.* (*Jackson, A.J.C.*). NAGRAJ *v.* GANPAT.
121 I.C. 669=26 N.L.R. 56=A.I.R. 1930 Nag. 86.

———*"Necessity" and "Benefit"—Difference between.*

The benefit to the estate for supporting an alienation must be of a protective character. The necessity involves some notion of pressure from without. The benefit to the estate would not include an alienation of the property for the purpose of investing the proceeds so as to yield a better return, and would not imply vast powers of management

HINDU LAW—Alienation—Necessity—Benefit to estate.

which might amount to an authorization to embark on speculative ventures. (*Case-law discussed.*)

Son's properties inherited from his maternal grandfather sold by father. Father purchased other properties and paid the sale proceeds towards their price. No sale-deed was executed of the properties purchased by father but he got possession of them, and realised far more income than the original properties of the son yielded.

Held, that the minor lost his absolute property immune from any liability to pay his father's debts and instead, did not even get any sale-deed in his name, but a contract of sale passed in the name of the father. The transaction effected by the father was not for the benefit of the minor, nor was it brought about by any necessity or any pressure on the estate. The alienation was detrimental to the real interest of the minor and was not binding on him. (*Patkar and Murphy, JJ.*). RAGHO TOTARAM *v.* ZAGA EKOBA. **118 I.C. 555=53 Bom. 419=31 Bom.L.R. 364=A.I.R. 1929 Bom. 251.**

———Anything which is for the benefit of a reversionary heir may properly be regarded as necessity. (*Shadi Lal, C.J. and Skemp, J.*). SADHU SINGH *v.* CHIMNA RAM. **116 I.C. 898=30 P.L.R. 267=A. I. R. 1929 Lah. 397.**

———Pre-emption necessary for safeguarding family interests—Money raised for satisfying pre-emption decree is for legal necessity: A.I.R. 1925 All. 333, *Considered.* (*Dalal and Pullan, JJ.*). CHOTKHAN LAL *v.* GANGA SINGH. **99 I.C. 382=A.I R. 1927 All. 219.**

———*Necessity includes benefit of estate.*

The manager of a joint family has an implied authority to do whatever is best for all concerned, the test being whether the transaction was one into which a prudent owner would enter in order to benefit the estate. The word "necessity" includes not only a case of actual pressure on an estate or a danger to be avoided by prompt discharge of liabilities but also an act benefitting the estate. (*Case-law considered*). (*Campbell, J.*). ROSHAN LAL *v.* RUSTOMJI. **92 I. C. 669=A. I. R. 1926 Lah. 249.**

———*Manager purchasing house for benefit of the family—Minors are bound.*

Where the manager of a joint Hindu family mortgages family property in order to raise money for purchasing immovable property for the benefit of the family, for example, to pay off the family debt by the sale of the property so purchased at a higher price, the mortgage is binding on the minor members of the family, being entered into for family necessity: A.I.R. 1923 Bom. 453 and A.I.R. 1925 All. 333, *Dist.*; 6 M.I.A. 393; A.I.R. 1922 Bom. 122 and 42 All. 559, *Rel. on*. (*Raymond, A. J. C.*). RATILAL SON OF MOOLJI *v.* RAGHUNATH MULJI. **92 I.C. 378=A.I.R. 1926 Sind 184.**

———*Benefit and necessity are not convertible terms—Sale to prevent continuous loss is for necessity.*

A sale by the manager of joint Hindu family property will be upheld not only in cases in which the object of the sale is to relieve the estate of any actual pressure or to avert a danger, but also in cases where a benefit is to be conferred upon the estate. The answer to the question what constitutes "benefit to the estate" must vary according to the circumstances of each case: 40 Mad. 709 and 6 M.I.A. 393 (P.C.), *Rel. on.*

Sale intended to avert future and continuous loss to the family is for necessity: 23 C.W.N. 858, *Ref.*

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(*Wazir Hasan, A. J. C.*). SURAJ NARAIN *v.* GURCHARAN PRASAD. 91 I.C. 495=2 O.W.N. 904= A. I. R. 1925 Oudh 743.

——*Question of benefit to be decided on the circumstances of each case.*

There is no hard and fast rule for determining the question as to what constitutes and what does not constitute "benefit to the estate". What may be regarded such a benefit in one case may not be so regarded in another. The answer to a question as to whether a certain loan falls within the description "benefit to the estate" or it does not fall within that description must depend on a consideration of the entire circumstances of every particular case: 40 Mad. 709, *Foll.*

Where the mother acting as the guardian of her minor son mortgaged the family lands for obtaining a loan for the purpose of re-starting the cultivation of *sir* lands of the family which (cultivation) had been suspended for some time,

Held, that in the circumstances of the case the loan was justifiable and binding. (*Wazir Hasan, A.J.C.*). CHANDRIKA PRASAD *v.* RAMSAGAR.

89 I.C. 567=2 O.W.N. 425=12 O.L.J. 565= A.I.R. 1925 Oudh 459.

——*Benefit to be determined as at the date of transfer.*

The right way of judging ordinary cases whether a loan on a mortgage of family property for purchasing an estate constitutes a benefit to the family is not by looking at the ultimate result of the purchase many years after. The question of benefit must be determined with reference to the time of the purchase. (*Kotval and Prideaux, A.J.Cs.*). RUKHMABAI *v.* VITHUSA. 78 I.C. 384= A.I.R. 1924 Nag. 398.

——A mortgage of family property executed for payment of a pre-emption decree is binding on the family. The doctrine of the benefit of the family has been introduced in the Hindu Law: 33 All. 242, *Foll.* (*Gokul Prasad, J.*). SHANKAR SAHI *v.* BAICHU RAM. 74 I.C. 18=A.I.R. 1923 All. 569.

——Mortgage by manager for paying portion of purchase money for buying lands for family on the mortgage—Purchase not beneficial, not yielding even the interest on the mortgage—Mortgage is not binding on minor's share. (*Sadasiva Iyer and Spencer, JJ.*). SUBRAMANIA CHETTY *v.* CHIDAMBARA MUDALI. 69 I.C. 756= 1921 M.W.N. 740=14 M.L.W. 495=41 M.L.J. 459.

——*Contract by adult members to dispose of dilapidated house—Minors are bound—'Benefit' may sometimes mean 'necessity.'*

The adult co-parceners of a joint Hindu family contracted to sell to the plaintiff a house belonging to the family which was not in good condition and which did not fetch any rent. It was not necessary to sell the house as the family was in good circumstances. When the plaintiff sued for specific performance of the contract to sell, the minor co-parceners objected on the ground that there was no necessity for sale and that therefore the contract could not affect their interest,

Held, as the adult co-parceners very properly decided to dispose of the house which was in dilapidated condition and which the Municipal Committee wanted to pull down the minor co-parceners were bound by the agreement. The term 'necessity' must not be strictly construed. The benefit of the family may under certain circumstances mean a necessity for the transaction.

HINDU LAW—Alienation—Necessity—Burden of proof.

(*Shah and Fawcett, JJ.*). NAGINDAS MANEKLAL *v.* MAHOMED YUSUF MITCHELLA. 64 I.C. 923= 46 Bom. 312=23 Bom. L.R. 1094= A.I.R. 1922 Bom. 122.

——*Starting of new business may justify alienation in proper circumstances.*

A benefit to the family is sufficient ground for upholding an alienation: 42 All. 559 and 5 P.L.J. 622, *Foll.* It is undoubtedly good law that a manager of a joint family property is not justified in alienating or pledging that property for purposes of speculative nature, but it cannot be laid down as an invariable rule that in no case can the starting of a new business justify an alienation of joint family property. Here the circumstances of the family have to be taken into account. (*Daniels, A.J.C.*). SHEO RATAN SINGH *v.* DRIGPAL SINGH. 63 I.C. 554=8 O.L.J. 314=A.I.R. 1921 Oudh 163.

—Alienation—Necessity—Burden of proof.

——When alienees give evidence showing *prima facie* the existence of "just antecedent debts" the onus is on the plaintiff's who challenge the alienation to rebut that evidence: 1 Lah. 472, *Rel. on.* (*Bhide, J.*). KEHR SINGH *v.* GANGA SINGH. A.I.R. 1930 Lah. 130.

——*All members joining in the sale is not enough proof of necessity.*

A vendee may be excused from making further detailed enquiries, but to start with there must be certain circumstances in front of him to give him the impression of the probability of the existence of a valid necessity. But where there are no such circumstances, the mere fact that all the major members of the joint family joined in the sale, would not entitle a Court to hold that a valid necessity existed. Nor would it throw the burden of proving want of legal necessity on the minor members challenging the sale: 8 Bom. 602; A.I.R. 1924 Oudh 300; A.I.R. 1925 All. 28 and A.I.R. 1924 All. 912, *Dist.* (*Dalal, J.*). BHAGWAT *v.* SALAMAT KHAN. 114 I.C. 185= A.I.R. 1929 All. 205.

——*Mortgagee must prove that manager was pressed by legal necessity to borrow money on hard and unconscionable terms.* (*Cf.* A.I.R. 1928 P.C. 64—*Ed.*).

The covenants in a mortgage postponing redemption for a period of 30 years certain and authorizing the mortgagee to spend as much money as he chose over new constructions of the mortgaged premises, which money may far exceed the value of the mortgaged property and entitling the mortgagee to claim interest on the money so spent at the rate of 24 per cent. per annum with the compelling obligation on the mortgagor to keep the interest running for a period of 30 years are on the face of them hard and unconscionable. In such a case it is the obvious duty of the mortgagee to satisfy the Court by the proof of the fact that the mortgagors were pressed by some necessity justifiable in the eyes of the Hindu Law to borrow money on such terms: A. I. R. 1919 P. C. 12 and A. I. R. 1923 P. C. 37, *Ref.* (*Wazir Hasan and Nanavutty, JJ.*). RAM KISHORE *v.* BAIJ NATH. 113 I.C. 410=3 Luck. 598=5 O.W.N. 395= A.I.R. 1928 Oudh 287.

——Alienee must prove necessity or his belief as to there being necessity—Due enquiry and his *bona fides* are necessary requisites. (*Greaves and Mukerji, JJ.*). SANTOSH KUMAR *v.* GANESH CHANDRA. 98 I.C. 919=31 C.W.N. 65= A.I.R. 1927 Cal. 160.

HINDU LAW — Alienation—Necessity—Burden of proof.

———*Mortgage by Karta without necessity—Voidability is presumed to be known to the parties—Mortgagee alleging that he discovered it to be void later on must rebut the presumption.*

If the Karta of a joint Hindu family mortgages the joint family property without legal necessity, and not for the purpose of discharging an antecedent debt, the parties to the mortgage must be presumed to know that the mortgage is unenforceable and void. It is necessary for the plaintiff alleging that he discovered it to be void at a later date within S. 65 of the Contract Act to rebut the presumption by proving that in fact he discovered at a later date that the mortgage was void: A.I.R. 1923 P. C. 189, *Foll.*; A.I.R. 1922 P. C. 403; 20 O. C. 306 and A.I.R. 1925 Oudh 212, *Dist.* (*Raza and King, JJ.*). SHAMBHOO SHUKUL *v.* DHANESHAR SINGH. **101 I.C. 265=4 O.W.N. 256= A.I.R. 1927 Oudh 177.**

———*Alienee has to prove necessity.*

The alienee has to prove the existence of necessity in the case of alienation by limited owner. The reversioner is not to prove its absence in the first instance: A. I. R. 1924 P. C. 56 (P. C.); 21 All. 71 (P.C.) 34 Cal. 329 (P.C.), *Foll.* (*Cuming and B. B. Ghose, JJ.*). UPENDRANATH *v.* KIRAN CHANDRA. **97 I.C. 149=43 C.L.J. 562= A. I. R. 1926 Cal. 1046.**

———*Burden is on transferee to prove legal necessity—Long lapse of time will lessen the burden.*

The onus of proving legal necessity lies upon the transferee, but if long time has lapsed since the transaction it will not be reasonable to expect such full and detailed evidence as to the state of things which gave rise to the sale as in the case of alienations made at more or less recent dates, and in such circumstances presumptions are permissible to fill in the details which have been obliterated by time. (*Kinkhede, Offg. A. J. C.*). KALOOSINGH *v.* MT. SUNDARABAI. **95 I.C. 707= A.I.R. 1926 Nag. 449.**

———*Burden of proof is on alienee—Quantum of proof depends on circumstances of each case.*

It is well settled that it is for the mortgagee of a joint family property to prove legal necessity. He may either prove as a fact that there was such necessity or prove that he honestly did all that was reasonable to satisfy himself that the required necessity existed. The quantum of proof which is required in any particular case is not capable of a general and inflexible answer and depends on the circumstances of that particular case. (*Kennedy, J. C. and Rupchand Bilaram, A. J. C.*). NARAINDAS *v.* KHATANMAL. **88 I.C. 916= 19 S.L.R. 402= A.I. R. 1926 Sind 22.**

———*Sale in execution of decree against grandfather—Contesting grandson must prove immoral purpose.*

Though primarily the burden of proving that the sale of property belonging to a joint family being valid is on the purchaser, yet in the case of an auction sale the burden is shifted to the contestor. Therefore where in execution of a decree against the grandfather, ancestral property is sold the onus is on the grandson to prove that the transfer was for an immoral purpose. (*Pullan, A.J.C.*). BADRI NATH *v.* RADHABALLABHRAJJI. **80 I.C. 622= A.I.R. 1925 Oudh 199.**

———*Son suing to set aside alienation by father—Necessity to be proved by transferee.*

In every case the burden *prima facie* lies on the plaintiff to establish his case; but where it is either admitted or proved that the plaintiff was a member of a joint Hindu family that the property transferred was an ancestral property, and that it had been transferred without the plaintiff's consent and not apparently in lieu of antecedent debt or at an auction-sale, the burden would lie on the defendant transferee to justify the alienation. (*Lindsay and Sulaiman, JJ.*). BAIJNATH RAI *v.* GOKUL RAI AND AFTER HIS DEATH BRIJ BEHARI RAI AND AVADH BEHARI RAI. **74 I.C. 498=45 All. 718= 4 L.R.A. (Civ.). 598=21 A.L.J. 659= A. I. R. 1924 All. 37.**

———*Burden of proving necessity lies on vendee's pre-emptor and not on sons.*

A pre-emptor cannot stand in a better position against the sons than the vendee from the father, except that, being in a less favourable situation than the vendee to prove proper inquiry as to the existence of necessity or of antecedent debts of the father, less strict proof of inquiry may be required of him. The burden of proving their existence however is not shifted by pre-emption from the transferee to the sons, unless the sons were parties to the pre-emption decree: 9 O.L.J. 601, *Rel. on.* (*Dalal, J.C. and Neave, A. J. C.*). AVADH RAM SINGH *v.* MABHUB KHAN. **79 I.C. 725= 10 O.L J. 525=A.I.R. 1924 Oudh 255.**

———*Debts not validly contracted by father cannot be treated as valid after father's death.*

To validate an alienation by father, existence of legal necessity must be proved, even though the father is dead at the date of suit. A transaction otherwise invalid cannot be treated as valid by reason of the father having died prior to the suit: A.I.R. 1922 P. C. 247, *Ref.* (*Daniels, J.*). RAJA SINGH *v.* DURGA SINGH. **73 I. C. 607= A. I. R. 1923 All. 529.**

———*Evidence Act, Ss.* 101, 102, 103—*Alienee preempted by another—Onus of proving necessity is not shifted to sons.*

A pre-emptor cannot stand in a better position against the sons than the vendee from father except that, being in a less favourable situation than the vendee to prove proper enquiry as to the existence of necessity or of antecedent debts of the father, less strict proof of enquiry may be required of him. The burden of proving their existence, however, is not shifted by pre-emption from the transferee to the sons, unless the sons were parties to the pre-emption decree. (*Ashworth, J.C.*). JAMNA PRASAD *v.* BALBHADDAR. **74 I.C. 353= 25 O.C. 388=9 O. L. J. 601=A.I.R. 1923 Oudh 147.**

———*Burden of proof of legal necessity on the pre-emptor of the vendee.*

In a suit by the son to set aside a sale by the father and uncle of joint ancestral property, against the pre-emptor of the vendee the burden of proving legal necessity is on the pre-emptor: 8 A.L.J. 1022, *Foll.* (*Rafique and Stuart, JJ.*). RAM SARUP SINGH *v.* RAM SARAN SINGH. **69 I.C. 845= 20 A.L.J. 935=A. I. R. 1922 All. 539.**

———*Mortgage by Manager—No suspicious circumstances—Onus is on those who repudiate the transaction.*

Where the father or manager of a joint Hindu family alienates family property, in the absence of evidence tending to shake confidence in the transactions themselves, or in the conduct and care of the manager or of the creditor, the onus is shifted back on to the sons or members of the family who desire to repudiate the transactions, to hold otherwise is to hold out to litigants the deliberate invi-

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tation, one might use the word temptation, to attempt to conform to an impossible standard of evidence by calling direct testimony which must of necessity be valueless and frequently deliberately perjured. Where a mortgage of a joint Hindu property is made and there is nothing to show that the manager went out of his way to borrow money for purposes which he knew to be unlawful or those which could confer no benefit on the family and there are no circumstances raising suspicion the presumption must be in favour of legality of those documents and the burden of proof is shifted to the shoulders of the defendants who desire to repudiate the transaction: A.I.R. 1916 P. C. 110, *Foll.* (*Walsh and Ryves, JJ.*). PEARE LAL *v.* SUNDER SINGH. **68 I. C. 805= 44 All. 756=20 A. L. J. 658= A. I. R. 1922 All. 436.**

———*Mortgage—Plea of absence of necessity for high rate of interest not raised in written statement—Alienee need only prove necessity for loan.*

The facts necessary to prove legal necessity for the execution of the bond may be entirely different from those which are necessary to prove that there was necessity for borrowing money at a particular rate of interest or compound interest, and unless the plea of absence of legal necessity for interest, is specifically taken in the written statement, the only onus which remains upon the plaintiff is that of proving that the bond itself *i.e.*, the borrowing of the money, was justified by legal necessity and not of proving necessity for the rate of interest also. (*Dawson-Miller, C.J. and Adami, J.*). AINTHAN GOPE *v.* KHAKHAR SAHU. **67 I.C. 790=1 Pat. 612=3 P.L.T. 367= A.I.R. 1922 Pat. 356.**

—Alienation—Necessity—Business.

———Father mortgaging ancestral property and spending money borrowed for business which is for benefit of family—Such alienation is for family necessity though business is not ancestral: A.I.R. 1924 All. 879 and A.I.R. 1929 Mad. 153, *Rel. on.* (*Zafar Ali and Jai Lal, JJ.*). MOHAN LAL *v.* DIWAN CHAND. **A.I.R. 1929 Lah. 687.**

———*Money borrowed for speculative purchase, is not for necessity.*

Where money is borrowed merely for a speculative purchase in the commodity market by a person whose occupation was not, and never had been, trading, the debt is not for carrying on a family business or to start any family business. A mere random act of speculation cannot be treated as a legitimate act of borrowing for business purposes: A.I.R. 1928 Lah. 111, *Ref.* (*Broadway and Harrison, JJ.*). THANESHER *v.* RAM CHAND. **119 I.C. 239=11 L.L.J. 86= A. I. R. 1929 Lah. 468.**

———*Mortgage for family trade is binding.*

Where a family shop is being carried on for the benefit of a joint family, the powers of the adult members in charge of such shop to borrow money for purposes of the business and mortgage family properties to secure re-payment of such money are wide, and the minor co-parceners are liable to the extent of their interest in the joint family property for a mortgage executed by the adult members: 34 Bom. 72, *Foll.* (*Fawcett, Ag. C. J. and Mirza, J.*). SHIVLAL *v.* TANNIRAM. **113 I. C. 353= 30 Bom.L.R. 1136=A.I.R. 1928 Bom. 444.**

———Alienation by *de facto* guardian—Investment of proceeds in trading business—Stringent necessity of money for business must be proved. (*Findlay, J. C.*). MAHADEO *v.* SOMAJI. **99 I.C. 1050= A. I. R. 1927 Nag. 145.**

HINDU LAW — Alienation—Necessity—Consent of co-parceners.

———कुटुंबार्थे—*Meaning of—Extension of money-lending business is not necessity.*

The original word in the Mitakshara कुटुंबर्थे is not easy to render into English, and there may be cases where the benefit approximates so closely to necessity that the transaction may be upheld and even specific performance ordered. Alienation of ancestral property by father to extend his money-lending business cannot be said to be one for necessity. (*Raymond and Madgavker, A.J.Cs.*). RATANSING SULABSING *v.* HANIKRAM CHATOMAL. **20 S.L.R. 220=A.I.R. 1927 Sind 219.**

———*Father—Unyielding property — Difficult to manage—Proceeds applied to extension of existing family business—Sale is binding on sons.*

Under the Hindu Law a transfer can be made by the manager of a family either for legal necessity or for the family benefit. A transaction which is entered into by the father manager of a joint family for the purpose of disposing of property, which yielded a small profit and was difficult to manage, and to apply the sale consideration to the extension of the existing family business, cannot be questioned by the sons. Whether the business was not of a speculative nature, the subsequent failure of that business affords no criterion for determining whether the transaction was originally a prudent transaction which the manager of a Hindu family, and especially a father was entitled to make for the family benefit. (*Lindsay and Kanhaiya Lal, JJ.*). JAGMOHAN *v.* PRAG AHIR. **87 I.C. 27=47 All. 452=23 A.L.J. 209= A.I.R. 1925 All. 618.**

———*Widow can alienate if prudent conduct of business requires it.*

It is a general rule of Hindu Law that a widow in possession of her husband's estate, cannot alienate movable or immovable property inherited from him except for legal necessity. But in the course of management of her husband's business, she can transfer only if the prudent conduct of business requires it, the prudent conduct of business amounting to necessity. The profit or loss on a transfer made by a widow is not a test of necessity. (*Stuart and Ryves, JJ.*). PAHALWAN SINGH *v.* JIWAN DAS. **59 I.C. 162=42 All. 109=18 A.L.J. 41.**

—Alienation—Necessity—Consent of co-parceners.

———*Adult member joining in execution does not supply evidence of necessity.*

Although the fact that all the adult members of a family joined in the execution of a deed of transfer is sufficient to supply any lacuna that may exist in the evidence of legal necessity, that fact alone cannot supply the evidence of legal necessity when there is no evidence of legal necessity on the record: 8 Bom. 602 and A.I.R. 1924 All. 912, *Ref.* (*Mukerji and Bennet, JJ.*). SALAMATKHAN *v.* BHAGWAT. **1930 A.L.J. 634= A.I.R. 1930 All. 379.**

———Legal necessity is not conclusively established by attestation of other members. (*Sulaiman and Kendall, JJ.*). SRI NATH. *v.* JAGANNATH. **A.I.R. 1930 All. 292.**

———One member consenting to sale of family property by another does not make former vendor:

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42 All. 264, *Not appr.*; 21 Cal. 496 (P.C.), *Ref.* (*Wazir Hasan, Ag. C.J., Misra and Pullan, JJ.*). HIWANCHAL SINGH *v* AJODHYA SINGH.
115 I.C. 433=6 O.W.N. 374=4 Luck. 370= A.I.R. 1929 Oudh 265 (F.B.).

———Where joint family property is alienated assent by other co-parceners is only evidence of justifiable family necessity and is of no avail except by way of estoppel when admittedly there was no family necessity. (*Dalal, J.C. and Wazir Hasan, A.J.C.*). MT. KALKA DEVI *v.* GANGA BAKSH SINGH. **88 I.C. 127=12 O.L.J. 306= A.I.R. 1925 Oudh 435.**

———Where the transaction is entered into by all the adult members of the family it is sufficient to raise a presumption of necessity. An amount payable under a pre-emption decree is a debt for which the manager is justified in borrowing money on the security of the family property: 8 B. 602; 33 A. 242: 12 A.L.J. 641, *Foll.* (*Daniels, A.J.C.*). SHAMSHER DATT SINGH *v.* LALTA SINGH. **72 I.C. 1000=A.I.R. 1924 Oudh 300.**

———It is doubtful whether manager cannot alienate without express or implied consent of adult members: 25 All. 407 (P. C.), *Dist.* (*Macnair, A.J.C.*). GOPAL RAO *v.* NEMICHAND.
61 I.C. 575=A.I.R. 1921 Nag. 129.

—Alienation—Necessity—Debts.

———Grandson and great-grandson are bound by alienation made to pay grandfather's and great-grandfather's debts which are neither illegal nor immoral: 7 A.I.R. 1926 P.C. 105, *Foll.*(*Stuart, C. J. and Wazir Hasan, J.*). JANG BAHADUR LAL *v.* BHAJA RAGHUNAH SINGH. **98 I.C. 1053= 2 Luck. 401=13 O.L.J. 833=3 O.W.N. 930= A.I.R. 1928 Oudh 43.**

———*Alienation by manager other than father for payment of a time-barred debt, is not for legal necessity and hence is not valid.*

A mere manager of a joint Hindu family not the father, has no power to alienate the property in lieu of any antecedent debt of his own. An alienation by a managing member can only be upheld if the transfer is for legal necessity or for the benefit of the family. An alienation by the managing member of the family cannot be said to have been for legal necessity, if the legal remedy to recover the debt has become time-barred: A.I.R. 1924 All 551 (F.B.), *Dist.*(*Sulaiman and Mukerji, JJ.*). JHABBU RAM *v.* BAHORAN SINGH. **91 I.C. 1023= A.I.R. 1926 All. 243.**

—Alienation—Necessity—Father.

———Where father relinquishes the equity of redemption to the mortgagee in possession and the relinquishment is not for necessity or for the benefit of the family, sons are not bound by it. (*Banerji and King, JJ.*). MANGALI PERSHAD *v.* BABU RAM.
116 I. C. 875=51 All. 659=1929 A.L.J. 393= A. I. R. 1929 All. 365.

———Alienation by father—A very small portion of the consideration not for necessity—Alienation should be upheld. A money-decree should be given to the plaintiff for the amount not covered by necessity: A.I.R. 1925 All. 624 (F.B.); A.I.R. 1925 All. 324 and A.I.R. 1922 P.C. 307, *Foll.* (*Dalal and Pullan, JJ.*). BISHAMBHAR NATH *v.* MADHURI SARAN. **98 I.C. 824 (All.).**

———Minor—Mortgage by father as manager without legal necessity—Subsequent mortgage—Subsequent mortgagee redeeming prior mortgage is not entitled to claim money paid for redeeming prior mortgage, in suit by son to set aside subsequent

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mortgage. (*Wazir Hasan and Neave, A.J.Cs.*). PARTAB SINGH *v.* SHAMSHER BAHADUR SINGH. **87 I.C. 66=A.I.R. 1925 Oudh 708.**

———Mortgage executed by father for legal necessity would be binding on the joint family property in spite of the fact that the son was not properly represented in suit on the mortgage: 37 A. 179, *Foll.*; A.I.R. 1923 Patna 242, *Not foll.* (*Daniels and Dalal, JJ.*). CHANDRADIP ZAVARI *v.* BABU JADUNANDAN. **79 I.C. 1041=5 L.R.A. Civ. 366= A.I.R. 1924 All. 573.**

———Where a Hindu father sells ancestral property for the discharge of his debts, if the application of the proceeds is satisfactorily accounted for, the fact that a small portion is not accounted for will not invalidate the sale. As to what would be a bulk depends on the facts of each case. A sum of Rs. 3,000 out of a total of Rs. 3,500 is a bulk of the consideration. Having regard to decisions it will be difficult to hold that Rs. 500 is a trifling amount. (*Lindsay and Kanhaiya Lal, JJ.*). NATHU RAM *v.* KANHAIYA LAL. **80 I.C. 226 (All.).**

———*Compromise decree is no better than a transfer.*

A compromise decree obtained against the father in a suit on mortgage by father is in reality no better than the transfer itself, and the mere existence of the decree cannot deprive the sons of their rights in the joint family property and therefore the mortgagee-decree-holder must prove that the debt was contracted for valid necessity or for payment of an antecedent debt. (*Dalal, A.J.C.*). RAM DAYAL *v.* NIMAR SINGH. **80 I.C. 492= 26 O.C. 355=11 O.L.J. 360= A.I.R. 1924 Oudh 133.**

———A father, as manager of a joint Hindu family has not a general right to deal with joint family property by way of sale or mortgage, even though the money raised is used by him in some business by which he expects to make more money. Where a mortgage of family property by a father is sought to be enforced the burden lies heavily on the person seeking to enforce it of proving the existence of legal necessity for the transaction. (*Piggott and Gokul Prasad, JJ.*). GANGA PRASAD *v.* RAM SARUP. **60 I.C. 68 (All.).**

———*Money borrowed for paying purchase money under pre-emption decree is not for paying antecedent debt or for legal necessity.*

To find whether a certain transaction is binding on the family or not, its nature must be examined at the date of the transaction and it should not be judged by what happened later. (A.I.R. 1928 All. 403, *Foll.*). A mortgage of ancestral property by a father to pay the purchase money under a pre-emption decree is not for paying an antecedent debt or for legal necessity and is not justified : A.I.R. 1928 All. 454 (F.B.), *Expl.* ; A.I.R. 1925 All. 333, *Appl.* ; A.I.R. 1923 All. 298, *Rel. on* ; 33 All. 242 and 36 All. 17, *Not foll.* (*Mears, C. J. and Mukerji, J.*). KISHEN SAHAI *v.* RAGHUNATH SINGH.
116 I.C. 488=51 All. 473= 1929 A.L.J. 110=A.I.R. 1929 All. 139.

———*Legal necessity does not mean actual compelling necessity.*

Fazl Ali, J.—The term 'necessity' is not to be understood in the sense of what is absolutely indispensable, nor actual compelling necessity is to be the sole test of the validity of an alienation by the manager of a Hindu family. If it can be shown that the transaction as a whole was beneficial to the interests of the family, the transaction will be held to be valid and binding on the other

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members : 5 P.L.J. 622, *Rel. on.* (*Ross and Fazl Ali, JJ.*). JAN MOHAMMED *v.* BIKOO MAHTO.
116 I.C. 33=7 Pat. 798=10 P.L.T. 811=
A.I.R. 1929 Pat. 130.

———*Mortgage for entering into a chit fund transaction is not justified.*

The father may mortgage his son's share for necessity or for a benefit to be conferred on the joint family, but a chit fund is not like the ordinary transactions of a Hindu family. It bears no resemblance to money borrowed for maintaining the family, for performing the marriages or upanayanam, or paying the Government revenue, or educating boys in the family, or paying of antecedent debts. There is the possibility that chit fund transaction may end in profit, but it is not a transaction for which the father can mortgage his son's share. (*Ramesam, J.*). NATESA AIYAR *v.* SAHASRANAMA IYER. 103 I.C. 814=
A.I.R. 1927 Mad. 773=53 M.L.J. 550.

———*Alienee to prove legal necessity or reasonable enquiry on his part.*

Where property has passed out of the hands of the family either in lieu of an antecedent debt or under an execution sale in respect of a debt of the father the sons can only recover the property by showing that the debt was either illegal or immoral, but this rule does not apply to a sale for cash. When a transaction such as this is impeached by the son it is for the creditor or transferee in the first instance to prove either legal necessity or at least such inquiry as would have satisfied a prudent man that the necessity existed, and the same rule applies where the defendant is not the original transferee but a pre-emptor. (*Daniels, J.*). CHANDRIKA SINGH *v.* BHAGVAT SINGH.
83 I.C. 54=4 L.R.A. Civ. 545=
A.I.R. 1924 All. 170.

———*Improvident agreement by father—Sons are not bound by—Existence of antecedent debt does not of itself justify alienation of whole property—All adult members executing mortgage—There is a presumption of necessity.*

Where the father as manager entered into an agreement to sell immovable properties the facts that he himself repented of it, and that his sons begged to be allowed to contest the suit brought with the object of enforcing it, serve to raise a considerable presumption that the agreement was an improvident one. The existence of the antecedent debt cannot of itself be regarded as justifying the father and manager of joint undivided Hindu family, in parting with practically the whole of the immovable property belonging to himself and his sons for inadequate price. In the case of an alienation of joint family property effected by the concerted action of all those members of the joint family who had attained majority at the time, there is a very considerable presumption in favour of such alienation having been made for real family necessity. If the father did what many men in difficulties do, namely, entered into an improvident transaction to rid himself of his immediate embarrassment, without due regard to the necessities of the case and the interests of the minor members of the family, the purchaser must be held, on principle to have taken such risk as was involved in the transaction into which he entered. (*Piggott and Walsh, JJ.*). GOVIND DASS *v.* RAM CHARAN LONIA. 68 I. C. 307=
A.I.R. 1923 All. 235.

———The existence of antecedent debts due to third parties constitutes valid necessity. (*Scott-Smith and Fforde, JJ.*). MT. BASANTI *v.* CHANDA SINGH. 77 I.C. 475=A.I.R. 1923 Lah. 502.

—Alienation—Necessity—House repairs.

———*House repair is necessity—Creditor not bound to estimate the sum required.*

Expenses incurred for the repairs to a house would be regarded as "necessity." But in such cases it would be exceedingly difficult for any person advancing money for repairs to a building to be called upon to have an estimate prepared of the sum required for the proposed repairs. It would be sufficient if it is proved that enquiries were made and that it had been discovered that repairs were actually going to be made and that steps were being taken to have the repairs made: A.I.R. 1925 Lah. 240, *Foll.* (*Broadway and Jai Lal, JJ.*). SALIGRAM *v.* MOHAN LAL. 90 I.C. 143=7 L.L.J. 470=
26 P.L.R. 708=A.I.R. 1925 Lah. 407.

—Alienation—Necessity—Interest.

———*Interest at one per cent.—Failure to pay at the end of the year—Interest to be added to the principal—Stipulation not unreasonable.*

If manager mortgagor agrees to pay an abnormally high rate of interest, it is the duty of the mortgagee to satisfy the Court that the mortgagor could not have raised money at a lesser rate of interest or that the rate agreed on was otherwise justified. But if the rate of interest is *prima facie* reasonable it may be considered to be justified.

Where two brothers, who are members of a joint Hindu family between themselves and their sons, mortgage property agreeing to pay interest at 1 per cent. per mensem and further stipulate that if interest is not paid at the end of a year it shall be added to principal, and interest at the contractual rate is to run on the aggregate amount of principal and interest, such stipulation is not unreasonable: A. I. R. 1919 P. C. 12, *Expl.* (*Sen and Nizamatullah, JJ.*). BAJRANGI MISIR *v.* PADARATH SINGH.
124 I.C. 759=A.I.R. 1930 All. 504.

———*Necessity for high rate of interest must be proved.*

Fazl Ali, J.—In the case of a mortgage executed by the manager, the mortgagee must prove necessity for borrowing at a high rate failing which the Court has power to award a reasonable rate of interest: A. I. R. 1919 P. C. 12, *Rel. on.* (*Ross and Fazl, JJ.*). JAN MOHAMMAD *v.* BIKOO MAHTO.
116 I.C. 33=7 Pat. 798=10 P.L.T. 811=
A.I.R. 1929 Pat. 130.

———Rate of interest for mortgage exorbitant—Mortgagee must prove necessity for loan and also for the rate of interest and terms: A.I.R. 1919 P.C. 12, *Foll.* (*Stuart, C. J. and Raza, J.*). JOTAN SINGH *v.* MAHADEV PRASAD.
100 I.C. 686=A.I.R. 1927 Oudh 574.

———Mortgage of joint property by Manager—Party supporting mortgage must prove that conditions imposed were reasonable under the circumstances in addition to showing necessity for the loan: 41 All. 571, *Foll.*; A.I.R. 1923 P. C. 37, *Ref.* (*Wazir Hasan, J.C.*). MANNU LAL *v.* BISHAMBAR NATH. 79 I.C. 35=11 O.L.J. 415=
A.I.R. 1924 Oudh 378.

———*Antecedent debts do not bind sons and grandsons only if they are illegal or immoral—Exorbitant ruinous rate of interest is not illegal or immoral.*

It is only in cases where elements of justifying necessity or benefit are lacking that the doctrine of antecedent debt becomes important and the only exceptions relieving the sons and grandsons from the pious obligation are where illegality or immorality is proved. It is now established that the

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exception only exists in cases where the debt was contracted for an illegal or immoral purpose or where the obligation arises from some illegal or immoral transaction. An exorbitant rate of interest ruinous to the joint family should not be regarded as an immoral transaction. (*Dawson-Miller, C.J. and Foster, J.*). KULDIP SAHAY *v.* RAM BUJHAWAN MAHTO. **83 I.C. 385= 3 Pat. 425=5 P.L.T. 115= A.I.R. 1924 Pat. 454.**

——*Manager—Legal necessity for rate of interest must also be proved by creditor.*

It is incumbent on those who support a mortgage made by the manager of a joint family to show, not only that there was necessity to borrow, but that it was not unreasonable to borrow at some high rate and upon hard terms and if it is not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage, that rate and those terms cannot stand. But the Court should reduce the interest only by the extent to which the authority is exceeded. (*Simpson and Wazir Hasan, A.J.Cs.*). BASANT RAI *v.* KESHO RAM. **74 I.C. 346=9 O.L.J. 612= A.I.R. 1923 Oudh 139.**

——*Necessity both for loan and the rate of interest must be proved.*

It is incumbent on those who support mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow, but that there was necessity to borrow at a rate of interest in excess of the ordinary commercial rate and upon hard terms, and if it is not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage, that rate and those terms cannot stand.

Simple interest at the rate of 1 per cent. per annum is a fair commercial rate in absence of special circumstances justifying a higher rate where the security is ample. (*Lord Parmoor.*) RAM BHUJAWAN *v.* V. NATHU RAM. **71 I.C. 933= 2 Pat. 285=25 Bom.L. R. 568= 1923 M.W.N. 382=38 C.L.J. 25= 4 P.L.T. 29=32 M.L.T. 129=50 I.A. 14= 28 C.W.N. 446=18 M.L.W. 767= 1 Pat.L. R. 445=4 L.R.P.C. 75= A.I.R. 1923 P. C. 37=44 M.L.J. 615 (P.C.).**

——*Alienation by manager—High rate of interest—Creditor must prove necessity for the loan as well as for the high rate of interest.*

But when a contract entered into by a head member or a Karta of a joint Hindu family is sought to be enforced against the other members on the ground of necessity, it must be shown not only that there was the necessity, to borrow the principal sum but that the rate of interest agreed upon was also a necessity ; in other words, that it was impossible for the *Karta* or the head member to obtain the loan for family necessity except at the rate of interest agreed upon. The creditor in such a case has not only to show that there was a family necessity so as to bind the members of the family on behalf of the parties to the contract with respect to the loan advanced but that the rate of interest was the market or commercial rate. He will not be entitled to enforce a higher rate of interest against the other members and to make the joint family properties liable for interest higher than the current market rate of interest: A.I.R. 1923 P. C. 37 *Foll.* (*Jwala Prasad and Ross, JJ.*). MAHADEO PRASHAD *v.* BISSESSAR PRASHAD. **74 I.C. 695= 2 Pat. 488=4 P.L.T. 707=A.I.R. 1924 Pat. 71.**

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——The interest on a debt is nothing but a portion of the debt itself. (*Hallifax, A.J.C.*). ANAND RAO *v.* SARASWATIBAI. **71 I.C. 532= 6 N. L. J. 115=A.I.R. 1923 Nag. 125.**

——In the case of a mortgage, interest at 9 per cent. compound interest is excessive and would not, in any event be enforced by Court. (*Piggott and Walsh, JJ.*). GOVIND DASS *v.* RAM CHARAN LONIA. **68 I.C. 307=A.I.R. 1923 All. 235.**

—Alienation—Necessity—Litigation.

——*Debts incurred by a female heir for frivolous litigation are not for legal necessity.*

A female heir is not justified in jeopardizing the reversion by incurring debts for the prosecution of a frivolous litigation affecting the estate and cannot be allowed to saddle the reversion with the risks of a speculative venture. Debts incurred for the purpose of prosecuting such litigation will bind only her life-interest and will not affect the interest of the reversioners. (*Sen and Niamatullah, JJ.*). RAGHUBIR SARAN *v.* RAM SARAN. **114 I.C. 33=26 A.L.J. 825=A.I.R. 1928 All. 651.**

——*Alienation by widow—Costs of litigation—When "necessity."*

Costs of litigation are not always legal necessity. If the costs had been incurred for the purpose of protection of the estate and the limited owner had incurred debts for the purpose of meeting these costs then only the costs of the litigation could be considered as legal necessity. (*Cuming and B. B. Ghose, JJ.*). UPENDRA NATH *v.* KIRAN CHANDRA. **97 I.C. 149=48 C.L.J. 562=A. I. R. 1926 Cal. 1046.**

——*Widow—Alienation for expenses of litigation—Must not be a decree to raise more money than necessary—Reversioner's act necessitating loan—Reversioner should not complain of rate of interest.*

Where money is borrowed for meeting expenses of litigation it is impossible for a widow to satisfy the creditor as to the actual amount she must borrow for meeting the future expenses of litigations. In a case like this the Court should be satisfied that legal necessity existed and that the sum lent was not unreasonably large. The transaction should be shown to be genuine and free from doubts of collusion between the creditor and the widow for raising a larger sum than was really needed. The interest of the reversioner should no doubt be protected but at the same time the widow should not be hampered by unreasonable restrictions in raising money when legal necessity exists. When the main necessity for the loan is brought about by the wrongful act of the reversioner himself he should not be heard to complain of the high rate of interest more especially when he made no attempt to show that money was available to the widow at a lower rate of interest than was charged in the bond. In such cases the amount of costs actually awarded to the widow should not be taken as basis because every one acquainted with the costs of litigation in this country knows that the actual amount which a successful litigant gets as costs allowed by the Courts is much less than the actual amount spent by him. (*Cuming and Chakravarti, JJ.*). TARAPRASAD SAW *v.* MADHUSUDAN GIRI. **91 I.C. 12=42 C.L.J. 269=30 C.W.N. 204= A.I.R. 1926 Cal. 283.**

——*Alienation by manager—Cost of necessary litigation is legal necessity.*

A manager can alienate joint family property by way of sale or mortgage in order to meet the costs of litigation which became imminent and absolutely necessary in the circumstances then existing:

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44 Cal. 186 (P.C.); 40 All. 171 (P.C.) and 43 Mad. 541 (P.C.), *Rel. on.* (*Kinkhede, Offg. A.J.C.*). KALOOSINGH *v.* MT. SUNDERABAI. **95 I.C. 707= A.I.R. 1926 Nag. 449.**

———*Alienation by widow—Defending title to property no longer hers is no legal necessity.*

Where the widow was uncertain as to what property was in her possession but filed a suit for certain property as being in her possession.

Held, that in the circumstances of the case it was impossible to say that she had legal justification for spending money in defence of property which at the time of the expenditure had ceased to be hers. (*Dawson-Miller, C. J. and Foster, J.*). RAM KARAN MAHTO *v.* DAHUR MAHTON.

96 I.C. 231 = A.I.R. 1926 Pat. 490.

———*Pre-emption is not legal necessity.*

Any act for which the character of 'legal necessity' or 'benefit to the estate' can be claimed must necessarily be a defensive act, something undertaken for the protection of the estate already in possession, not an act done with the purpose of bringing fresh property in possession and which may or may not be successful under the chances attending upon litigation. So, a Hindu father cannot encumber joint ancestral property to acquire the necessary funds to pre-empt other property. (*Mears, C.J. and Piggott, J.*). SHANKAR SAHI *v.* BAICHU RAM. **86 I.C. 769=47 All. 381= 23 A.L.J. 204=6 L.R.A. Civ. 214= A.I.R. 1925 All. 333.**

———*Money borrowed by member to defend himself from criminal charge, is necessity.*

If a member of a joint undivided Hindu family is standing his trial on a serious charge of murder and wants funds to defend himself and raises funds by creating a charge on the family property, he does so under necessity which may be called legal necessity under the Hindu Law. There is no difference in principle whether a *karta* of the family or a younger member of the family borrows money by hypothecating the family property in case he is in trouble in order to defend himself. (*Rafique and Piggott, JJ.*). RAM RAGHUBIR LAL *v.* DIP NARAIN SINGH. **71 I.C. 749= 21 A.L.J. 168=45 All. 311=4 L.R.A. Civ. 380= A.I.R. 1923 All. 287.**

———Expenses of litigation in respect of abduction of alienor's wife is a necessity—An alienee who pays antecedent debts, if he acts honestly and makes proper enquiry whether the debts are actually due is not responsible if he has been deceived. A just debt incurred for a necessary purpose is always binding irrespective of the income and means of the alienor and just debts are debts which are actually due and are not immoral or illegal or opposed to public policy and not contracted as an act of reckless extravagance or wanton waste or with the intention of destroying interests of the reversioners. An alienee discharging an antecedent debt is not required to make an inquiry into the nature thereof. (*Broadway, J.*). ANOKH SINGH *v.* SAPURAN SINGH. **79 I.C. 980= A.I.R. 1923 Lah. 660.**

———Money borrowed by a sonless proprietor on the security of ancestral land to enable him to reap the benefit of a decree for pre-emption is an act of good management and the loan must be held to have been raised for valid necessity: 17 I.C. 285; 165 P.W.R. 1912; 192 P.L.R. 1912, *Foll.*; 65 P.R. 1907; 208 P.L.R. 1908; 146 P.W.R. 1907, *Distinguished.* (*Scott-Smith and Fforde, JJ.*). PRATAB SINGH *v.* HAKIM SINGH. **75 I.C. 87=4 Lah. 171=6 L.L.J. 99= A.I.R. 1923 Lah. 480.**

—Alienation—Necessity—Maintenance.

———The rule that alienation for future maintenance is not allowed by Hindu Law is not an inflexible rule: 9 S.L.R. 69 and A. I. R. 1929 Lah. 317, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). RALLA RAM *v.* GOVARDHAN DAS. **A. I. R. 1930 Lah. 679.**

———*Alienation for future maintenance.*

An alienation by widow for her own maintenance is justified but she cannot anticipate wants by raising money in order to meet the expenses of her future maintenance. (*Shadi Lal, C. J. and Broadway, J.*). BALI RAM *v.* DAYA RAM. **119 I.C. 417= A.I.R. 1929 Lah. 678.**

———Alienation by father to provide funds for maintenance of family—Son's share can be sold. (*Devadoss, J.*). SRINIVASA AIYANGAR *v.* ALAMELU AMMAL. **101 I.C. 571 = A.I.R. 1927 Mad. 715.**

———*Maintenance of widowed sisters of husband is legal necessity.*

Debts contracted to maintain widowed sisters of husband who was maintaining them in his lifetime are for legal necessity justifying alienation by widow. (*Greaves and B.B. Ghose, JJ.*). SAILABALA DEBI *v.* BAIKUNTHA NATH. **91 I.C. 186= A.I.R. 1926 Cal. 486.**

———*Sale by widow for future maintenance—When valid.*

There is no hard and fast rule that a widow cannot alienate property for future maintenance. Each case would depend upon its circumstances. If there is no other property and the only property is not capable of yielding any appreciable income she is entitled to sell it for maintaining herself: 9 M. L. T. 307, *Dist.* (*Devadoss, J.*). KUTHALINGA MUDALIAR *v.* SHANMUGA MUDALIAR. **92 I. C. 989=23 M.L.W. 373= 1926 M.W.N. 274=A.I.R. 1926 Mad. 464= 50 M.L.J. 234.**

———The support of dependent relations in the family would be a part of the family necessity. (*Mukerji and Dalal, JJ.*). DARBARI LAL *v.* GOBIND SARAN. **80 I.C. 31=46 All. 822=22 A.L.J. 753= 5 L.R.A. Civ. 556=A.I.R. 1924 All. 902.**

———*Widows—Sale for maintenance.*

Where the husband left a large area of land which was not very productive and the widows did not appear to have been able to live on it without becoming involved in debt, the charge created by the mortgages cannot be regarded as being without necessity. (*Le Rossignol and Wilberforce, JJ.*). ARURA *v.* SHIVDEO SINGH. **4 L. L. J. 45= A.I.R. 1922 Lah. 61.**

—Alienation—Necessity—Marriage.

———Expenses for sister's marriage of minor are a valid necessity. (*Tek Chand and Agha Haidar, JJ.*). PRABHU DAYAL *v.* RALLA RANI. **31 P.L.R. 198= A.I.R. 1930 Lah. 672.**

———*Mortgage-debt incurred by father for his fourth marriage is not for family necessity—Debt is not binding on son.*

In order that any purpose should be regarded as a legitimate family purpose it must be felt as such by every member of the family.

The fourth marriage of a father cannot be a legitimate family purpose.

Where a Hindu father, who was between 40 and 45 years of age, and had a minor son nine years old, mortgaged the entire family property for a con-

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sideration of Rs. 4,000, borrowed in connexion with his fourth marriage for payment to the bride's mother as bride's price,

Held, that the mortgage debt was not incurred for a legitimate family purpose and that the minor's share of the mortgaged property was not liable for the debt: 32 All. 575, *Diss. from*; 32 Bom. 81 and 34 Mad. 422, *Dist*; 22 Bom. 658; 23 All. 495 and 32 Mad. 185, *Ref.* (*Niyogi, A. J. C.*). ONKAR *v.* KISANSINGH. **A.I.R. 1930 Nag. 282.**

———*Widow—Divorce by daughter is not legal necessity.*

Under the Hindu Law, no doubt, the marriage of a daughter would be a legal necessity justifying the alienation of property by a widow. A divorce, however, is against the policy of Hindu law, and there is no precedent which would justify the Court in holding that a divorce may be regarded as a legal necessity. (*Fawcett, Ag. C. J. and Mirza, J.*). TANGEVA *v.* GOVINDAPPA.

113 I.C. 42=30 Bom.L.R. 1145=
A.I.R. 1928 Bom. 495.

———A son who succeeds his father must maintain his unmarried sister and marry her. A sale of ancestral property by a son on his father's death to marry his sister is for legal necessity. (*Addison, J.*). MOKHA *v.* ALFA. **110 I.C. 432 (Lah.).**

———Widow—Alienation to meet marriage expenses of the nearest reversioner— Alienation is justified unless contrary is proved : 20 C.W.N. 734, *Dist.* (*Devadoss, J.*). SEVU VANDAYAN *v.* NARAYANASWAMI IYER.

97 I.C. 774=1926 M.W.N. 706=
A.I.R. 1926 Mad. 1078.

———*Alienation by widow to provide for dowry of daughter is for necessity—Reasonableness of dowry amount.*

A widow is not only entitled, but is bound to arrange for the marriage of a daughter who was unmarried at the time of the husband's death, to arrange as good a marriage as the father would have wished to arrange had he been alive, and that she is justified in making substantial alienations of the family property for the benefit of the daughter, as, according to the Hindu Law the arranging of a suitable marriage for a daughter would confer religious benefit upon the deceased husband.

In a case in which there are no sons, there cannot be any hard and fast rule as to the proportion of the estate which may fairly be alienated to provide a dowry for such a daughter, and the reasonableness of the dowry can only be decided on the circumstances of each particular case: A. I. R. 1924 All. 23, *Appr.* (*Stuart, C. J. and Hasan, J.*). MADHO PRASAD *v.* MT. DHEMRAJ KUAR.

95 I C. 574=1 Luck. 477=
13 O.L. J. 627=3 O.W.N. 529=
A.I.R. 1926 Oudh 425.

———Widow—Daughter's marriage—Widow is not bound to spend her private funds—She may alienate her husband's property. (*Suhrawardy and Cuming, JJ.*). SATISH CHANDRA NAG *v.* HARIPADA DE. **87 I.C. 43=41 C.L.J. 209=**
A.I.R. 1925 Cal. 689.

———Expenses for marriage of daughter of a separate co-parcener are not "necessity." (*Lindsay and Sulaiman, JJ.*). BENAIK RAO *v.* PULAIN SINGH.

79 I.C. 69=5 L.R.A. Civ. 335=
A.I.R. 1924 All. 929.

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—Alienation—Necessity—Partial necessity.

———*Substantial portion for necessity—Due enquiries made—Consideration adequate—Sale should be upheld.*

The mere fact that a part of the consideration, however small, is not substantiated by legal necessity would not necessarily nullify a deed or show that there was no justification for its execution. The material question that has to be considered is whether the sale itself was for the legal necessity. And if on such consideration it is found that the substantial portion of the consideration was for legal necessity, that due enquiries as to legal necessity were made by the purchaser, and that the consideration was adequate, even though the purchaser may not be in a position to prove how the surplus was applied, the sale-deed can be upheld: A. I. R. 1927 P.C. 37, *Foll.*; 1 I.A. 321 (P.C.) and A.I.R. 1927 P.C. 246; A.I.R. 1929 P.C. 143, *Ref.* (*Sulaiman and Kendall, JJ.*). SRI NATH *v.* JAGANNATH.

A.I.R. 1930 All. 292.

———*Alienation of several plots of land—Only some plots covering amount of legal necessity—Court can release rest of property.*

Where legal necessity has not been shown for the entire sum borrowed in consideration of transfer but for the part only and the property is composed of several separate plots of land out of which some one or more can be sold for the amount of legal necessity the Court can while maintaining the alienation of such plots return the others to the sons. (*Dalal, J.*). RAM KARAN SINGH *v.* SHIV HARAKH SINGH. **A.I.R. 1930 All. 95.**

———Mother sold son's property for purchase of some other property, marriage of her daughter and for maintenance. A person was added as surety to the sale-deed. Necessity was proved only for a portion of the consideration (for Rs. 1,600 out of Rs. 2,500).

Held, that the insertion of the surety's name was by no means a suspicious circumstance. It might have been no more than a reasonable precaution against the undoubted risk that the minor might later on repudiate the sale as being for want of necessity.

Held, further that the proper course under the circumstances was to allow the vendees to retain the property on condition of paying back the sum for which necessity had not been proved with interest from the date of the sale up to hearing of the appeal : A. I. R. 1927 P. C. 121 and A. I. R. 1928 Mad. 226, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). RALLARAM *v.* GOVARDHAN DAS.

A.I.R. 1930 Lah. 679.

———Father—Due enquiry by vendee as to necessity—Sale for adequate consideration—Legal necessity proved as to three-fourths of consideration—Mere fact that vendee could not prove after 14 years the manner of application of one-fourth consideration by vendor, was held not sufficient to set aside sale : 6 M.I.A. 393 ; A.I.R. 1926 P.C. 105; A.I.R. 1927 P.C. 37, *Rel. on*; 25 All. 330; 27 All. 494 ; A.I.R. 1923 All. 248 and A.I.R. 1925 All. 324, *held disapproved by* A.I.R. 1927 P.C. 37. (*Sir Lancelot Sanderson.*) RAM SUNDAR LAL *v.* LACHHMI NARAIN. **116 I.C. 605=1929 A.L.J. 561=**
33 C.W.N. 699=31 Bom.L.R. 803=
30 M.L.W. 24=6 O.W.N. 510=
1929 M. W. N. 463=51 All. 430=
A.I.R. 1929 P.C. 143=57 M.L.J. 7 (P.C.).

———Manager—Sum not proved for legal necessity not exceeding one-third—Sale is valid, A.I.R. 1927

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P.C. 37; A.I.R. 1927 P.C. 121 and A.I.R. 1927 P.C. 246, *Foll.* (*Mirza and Baker, JJ.*). GAJANAN SITARAM *v.* SITARAM RAGHUNATH. **114 I.C. 245= 30 Bom. L.R. 1629=A.I.R. 1929 Bom. 55.**

———When the sum for which no valid necessity is proved is only a small portion out of the consideration, the criterion for determining whether the sale should be set aside and decree for possession should be granted conditionally on payment of sum constituting valid charge is whether the sale transaction was necessary. (*Bhide, J.*). WARYAM SINGH *v.* INDAR SINGH. **116 I.C. 306= A.I.R. 1929 Lah. 242.**

———Widow selling husband's property—Part of consideration only for legal necessity—Real question on which validity of sale will depend is whether it was for a necessary purpose—Proportion between the two parts of consideration will only be one of the items to be considered, in determining the validity: A.I.R. 1927 P.C. 37, *Ref.* (*Phillips J.*). KRISHNAYYA *v.* KOTTAYYA. **119 I.C. 717= A.I.R. 1929 Mad. 449.**

———Decree—Form of—Suit by two sons to recover possession of joint family field, sold by father—Finding that part only of consideration for sale binding on sons—Decree should be passed directing delivery of possession of whole field by vendee on payment of 2/3rd consideration found proved for necessity, and should contain declaration that vendee has acquired 1/3rd share of father and is entitled to obtain possession thereof in suit for partition: A.I.R. 1929 Nag. 60, *Rel. on*; A.I.R. 1924 Nag. 109, *Ref.* (*Subhedar, A.J.C.*). SURAJ MAL *v.* BAPURAO. **121 I.C. 43=A.I.R. 1929 Nag. 311.**

———*Necessity found as to 9/10 of the value of property sold—Widow acting fairly and purchaser acting honestly—Sale is binding on reversioner.*

In such a case the question to be considered is whether the widow has acted fairly towards the expectant heirs and whether the person who dealt with her, also acted honestly and in good faith, when he entered into the transaction in question after making due enquiry, or under the *bona fide* belief that an accredited necessity did exist, and whether the price offered by him was "adequate and not unreasonably low." If the answer to this question is in the affirmative, the transaction has to be upheld as binding as against the persons at whose option it is liable to be affirmed or disaffirmed after the death of the widow: A.I.R. 1927 P.C. 37; A.I.R. 1927 P.C. 121; A.I.R. 1927 P.C. 246, *Foll.*; 18 Bom. 534; 11 Bom. 320: A. I. R. 1918 P. C. 118, *Ref.* (*Kinkhede, A.J.C.*). KISAN *v.* TUKARAM TIDEN. **A. I. R. 1929 Nag. 180.**

———Where the bulk of the money is undoubtedly raised for justifiable necessities the whole transaction should be affirmed. (*Das and Ross, JJ.*). AMBICA PRASAD *v.* CHANDRAMANI KUER. **117 I.C. 867=8 Pat. 396=10 P.L.T. 607= A.I.R. 1929 Pat. 289.**

———*Necessity proved for a large portion—Whole transaction should be upheld.*

Where inquiry is made and it is established that there is a valid necessity in respect of a very large portion of the money raised, there is a presumption that the portion not accounted for has been spent for proper purposes and for the benefit of the family. The principle applies to mortgage as well as to a sale: A.I.R. 1927 P. C. 37 and 6 M.I.A. 393 (P.C.), *Foll.* (*Das and Adami, JJ.*). HITENDRA *v.* SUKHDEB. **115 I.C. 886=8 Pat. 558= 10 P.L.T. 79=A. I. R. 1929 Pat. 360.**

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———Widow selling husband's property—Part of sale-proceeds found for legal necessity but not rest—Court cannot set aside sale on condition that the amount for legal necessity should be paid to purchaser for real question to be decided is whether the sale was justified by legal necessity: A. I. R. 1927 P. C. 37, *Foll.* (*Das and Fazl Ali, JJ.*). RAM ASRE *v.* AMBICA LAL. **119 I.C. 547=11 P.L.T. 6=A.I.R. 1929 Pat. 216.**

———"*Voidable*", *meaning of—Alienation supported by necessity is valid in its entirety—If no necessity it is totally void.*

The term "voidable" as used with reference to alienations of property by the manager of Hindu joint family or by female owners possessing only a limited interest therein, is not used in the sense in which it is used in the Contract Act, as meaning that the transaction is binding on the co-parceners or on the reversioners until it is set aside by them and that the person who seeks to set it aside has to establish that the transaction was vitiated, by fraud, undue influence, misrepresentation or any other circumstances which would entitle a party to a contract to avoid it. It has invariably been accepted as a sound canon of the Hindu Law that where the alienation is not for justifiable necessity it is void and not only voidable as regards the shares of the other members of the family and, where such necessity exists, it is valid in its entirety: 35 Mad. 177, *Foll.* (*Ramesam and Thiruvenkatachariar, JJ.*). *In the matter of* AMIRTHALINGA. **112 I.C. 553= 28 M.L.W. 634=1928 M.W.N. 602= A.I.R. 1928 Mad. 986.**

———*Sale substantially for necessity—No necessity for small portion—Sale is not affected—Test for upholding such alienation laid down.*

If a sale is found to be substantially for purposes binding on the family, the mere fact that in respect of a small portion of the consideration no necessity has been proved or shown cannot affect the sale or the exercise of the power of sale in such a case. Each case has got to be determined on its own facts. The principle on which Courts of law can hold whether or not in particular cases alienations were substantially for necessity is, that if a man of ordinary prudence, who is the ideal of the law in respect of his own property, or in respect of property which he is in charge of as manager of the family, would in those circumstances have alienated the 'property for the purpose of raising the amount required for the interest of the family, then it follows that it must be considered as a case where the sale was substantially for necessity. If the facts, however, should turn out to be that the sale or transaction was obviously so imprudent that no man of ordinary prudence would have entered into such a transaction in respect of any such property, then it follows that it was a case in which the power was wrongly exercised or purported to be. (*Srinivasa Aiyangar and Anantha-krishna Ayyar, JJ.*). SATHAPPAN AMBALAM *v.* VADIVELU. **109 I.C. 106=A.I.R. 1928 Mad. 460**

———Where the proportion of the consideration not required for necessity was about one-fifth, sale by father was not upheld: A.I.R. 1924 Nag. 109, *Dist.* (*Kinkhede, A.J.C.*). MAMUJI *v.* DALPAT. **104 I.C. 569=A. I. R. 1928 Nag. 37.**

———*The principle of upholding sale if bulk of consideration is for necessity—When not applicable.*

The principle that if a sale-deed is found to have been executed for necessity and the bulk of its

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consideration consists of antecedent debt or was justified by family necessity, it should not be set aside because no legal necessity in respect of a minor portion of the sale price has been proved is not applicable in the case of a mortgage where the father can borrow the precise amount required to meet the family necessity. If he borrows more money than is required, the sons cannot be made liable for the sum in excess of the family necessity: 19 O.C. 122; 22 O.C. 84; 23 O.C. 204 and A.I.R. 1927 P. C. 37, *Ref.*; 15 All. 75 and A. I. R. 1926 Cal. 283, *Dist.* (*Gokaran Nath Misra and Srivastava, JJ.*). JAI INDRA *v.* KHAIRATILAL.
113 I.C. 489=4 Luck. 107=5 O.W.N. 836=A.I. R. 1928 Oudh 465.

———*Small part of consideration not proved for necessity—Sale should be upheld.*

A sale of joint property will not be set aside merely because a part of the proceeds is not proved to have been applied to purposes of necessity. The real question that has to be considered is this: Whether the sale itself was justified by necessity. If the purchaser has acted honestly, if the existence of a family necessity for sale is made out, and the price is not unreasonably low, he (the purchaser) is not bound to account for the application of the price: A. I. R. 1927 P. C. 37, *Ref.* (*Lord Shaw.*) GAURI SHANKER *v.* JIWAN SINGH. **107 I.C. 4=25 A.L.J. 967=47 C.L.J. 7=1928 M.W.N. 1=4 O.W.N. 1192=32 C.W.N. 257=30 Bom. L.R. 64=27 M.L.W. 203=A.I.R. 1927 P.C. 246=53 M.L.J. 786 (P.C.).**

———Alienation by widow—Very small portion of consideration found not for necessity—Sale was upheld: A. I. R. 1927 P. C. 37 and 121, *Appl.* (*Lord Blanesburgh.*) SURAJ BHAM SINGH *v.* SAH CHAIN SUKH. **105 I.C. 257=29 Bom. L.R. 1385=32 C.W.N. 117=46 C.L.J. 291=A.I.R. 1927 P.C. 244=53 M.L.J. 300 (P.C.).**

———Where the manager effected an alienation of the joint family properties and his self-acquired property, and the proportionate amount found to be for legal necessity is in excess of the proportion that the joint family property bears to the self-acquired property, the other members who challenge the alienation cannot recover any portion from the alienee. (*Iqbal Ahmad, J.*). LACHMAN DUBE *v.* AMBIKA DUBE. **100 I. C. 444=A.I.R. 1927 All. 366.**

———Alienation by widow—Greater portion of consideration for necessity—Alienation cannot be challenged: A.I.R. 1924 Nag. 109, *Foll.* (*Findlay, J. C.*). MT. JANI *v.* BAHU. **102 I.C. 888=A.I.R. 1927 Nag. 362.**

———*Small portion not for necessity—Sale when avoided.*

Even if any small sum of money out of the large sale consideration has not been required for any legal necessity, the sale cannot be avoided unless it were shown that the money was not at all paid, and that the consideration which was actually paid was not equal to the real value of the property: A.I.R. 1925 All. 624 (F.B.), *Ref.* (*Sulaiman and Banerji, JJ.*). JADO SINGH *v.* NATHU SINGH. **98 I.C. 773=48 All. 592=24 A.L.J. 633=A.I.R. 1926 All. 511.**

———Alienation by a widow—Sum not required for legal necessity being comparatively small—Sale should be upheld—No rule exists that a particular arithmetical proportion of consideration should be found to be for necessity, to uphold sale: A.I.R. 1925 All. 624 (F.B.), *Rel. on*; A.I.R. 1925 All. 324, *Ref.* (*Dalal and Pullan, JJ.*). BHAGWANT BHARTI *v.* RAJPAT KURMI. **98 I.C. 809=25 A.L.J. 104.**

———*The question is if the part unsupported by necessity is insignificant.*

When the sale is only in part supported by legal necessity, the proper principle to be applied is not whether the bulk of the sale consideration was taken for legal necessity, but whether the portion which was not taken for the said purpose was such a small fraction of the total consideration that it might reasonably be left out of account: A.I.R. 1922 All. 321; A.I.R. 1924 All. 708 and A.I.R. 1924 Nag. 109, *Ref.* (*Findlay, Offg. J.C.*). GOVINDA *v.* KRISHNAJI. **94 I.C. 1002=A.I.R. 1926 Nag. 341.**

———*Alienation by father—One-sixteenth of the total consideration found to be not for legal necessity—Sale was upheld.*

It is not correct to say that if any part of the consideration, however insignificant, was invalid and not binding on the plaintiff, as not being incurred for legal necessity, the plaintiff is entitled to have the sale set aside. On the contrary there is plenty of authority for the proposition that where the portion of the consideration for which no legal necessity can be proved is insignificant the sale will stand.

Where, out of the total consideration, about Rs. 6,000 was found to be for legal necessity and about Rs. 250 was not, but it was found that these Rs. 250 were actually paid to plaintiff's father.

Held: that the sale should be upheld and the defendant should not be made to refund the sum of Rs. 250 and odd: A.I.R. 1922 All. 321, *Appr.* (*Lindsay, Kanhaiya Lal and Daniels, JJ.*). BAHADUR LAL *v.* KAMLESHAR NATH.
90 I.C. 988=48 All. 183=24 A.L.J. 52=6 L.R.A. Civ. 591=A.I.R. 1925 All. 624 (F.B.).

———Necessity proved for a very large part of sale consideration—Sale was upheld. (*Ryves and Daniels JJ.*). DAULAT *v.* SANKATHA PRASAD.
86 I. C. 91=47 All. 355=23 A.L J. 55=6 L.R.A.Civ. 167=A.I.R. 1925 All. 324.

———Co-parcener—Sale of ancestral property—Three-fourths of the consideration found to be for necessity—Sale impugned after 20 years—Sale should be upheld. (*Shadi Lal, C.J. and Le Rossignol, J.*). JAI SINGH *v.* DARBARE SINGH.
89 I.C. 302=6 Lah. 137=7 L.L.J. 354=26 P.L.R. 329=A.I.R. 1925 Lah. 396.

———*Sale is set aside where no legal necessity is proved for considerable portion.*

Where the defendants have succeeded in establishing necessity or antecedent debt with respect to a part of the consideration the difficulty often arises whether the sale-deed should or should not be upheld. It is impossible to lay down any hard and fast rule which could apply equally to every case: for every transaction has to be considered on its own merits and the Court has to come to a finding on the merits of every case. Where the balance which is not proved to have been for valid necessity or antecedent debt is not so insignificant as to be ignored.

Held: the sale-deed should be set aside on payment by the plaintiffs of the sum which has been found to be a good consideration: 25 All. 330; 27 All. 494; 32 All. 392; A.I.R. 1922 All. 321, *Foll.* (*Sulaiman and Mukerji, JJ.*). SANMUKH PANDE *v.* JAGANATH PANDE AND RAMSARAN PANDE.
83 I. C. 838=46 All. 531=22 A.L.J. 417=5 L. R. A. Civ. 289=A.I.R. 1924 All. 708.

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———*If the part of consideration not supported by necessity is not trifling will be set aside.*

Where necessity for a portion is proved, the Court should look to the amount of the consideration to which no legal necessity has been established. If this amount was so trifling that it could be left out of account the sale should be upheld, otherwise it should be set aside. In this case legal necessity was proved for Rs. 1,780 out of Rs. 2,500 but the sale was set aside: 41 All.3 38, *Dist.*; A.I.R. 1922 All. 321, *Foll.* (*Daniels, J.*). CHANDRIKA SINGH *v.* BHAGWAT SINGH. **83 I.C. 54= 4 L.R.A. Civ.545=A.I.R. 1924 All. 170.**

———*Alienation by widow—Necessity for major portion proved—Sale should be upheld.*

Two properties were mortgaged with onerous conditions as to interest. After the death of the mortgagor, his widow sold one of the properties for the amount of the mortgage amount to the mortgagee. The sale was impeached as being for 2/3 of the real price.

Held: that the sale was for necessity. Where there is necessity for the sale, unless the difference between the true price and the actual price paid is particularly inadequate, the sale ought not to be set aside. Reasonable allowance ought to be made for the difference in price in favour of the alienation. (*Shah and Coyajee, JJ.*). CHANBASAPPA PUTTAPPA *v.* CHANBASAWA MALLAPPA.

77 I.C. 336=25 Bom. L.R. 1078= A.I.R. 1924 Bom. 176.

———*Small portion not covered by legal necessity—Sale is not invalidated.*

Unless the portion not covered by legal necessity is really large the fact that small portion (in this case 1/8th) of the consideration was not for legal necessity cannot affect the validity of the sale itself. (*Case-law referred to.*) (*Prideaux, A.J.C.*). BHADAJI *v.* GANESHRAO. **83 I.C. 70= 20 N.L R. 4=A.I.R, 1924 Nag. 109.**

———*Alienation by manager—Rs. 80 out of Rs. 400 found not to be for necessity—Deed was set aside.*

It is not always possible for a manager to sell or mortgage a property for the exact amount required for family necessity but that would not justify him to mortgage or sell property for a larger amount than is absolutely necessary. Rs. 80 out of the total consideration of Rs. 400 was held not to be such a small amount as might be neglected in considering the question of the valid necessity for the alienation. The deed was set aside and plaintiff was made to pay Rs. 320 to the purchaser: A.I.R. 1922 All. 321; 27 All. 494 and 25 All. 330, *Foll.* (*Gokul Prasad, J.*). MATADIN TEWARI *v.* SURAJBALI SINGH. **83 I. C. 32= A.I.R. 1923 All. 522.**

———*Small portion of consideration not for necessity—Sale will not be set aside—Sale to discharge an usufructuary mortgage over the property sold, cannot be a necessity.*

If in the case of a sale by a widow a small portion of the purchase money was not required for urgent necessity, it does not follow that the sale itself was not due to necessity, unless it could be reasonably presumed or unless it is proved that the sale of a lesser area for the exact amount required for necessity was feasible. (*Case-law discussed*). The principle is applicable with all the more force to the case of an alienation by a male proprietor. A sale of properties to discharge an usufructuary mortgage over the very property sold cannot be held to be for necessity and must be set aside.

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(*Martineau and Brasher, JJ.*). GOKHA RAM *v.* SHAM LAL. **77 I.C. 174=3 Lah. 426= A.I.R. 1923 Lah. 268.**

———The sale of immovable property by a limited owner ought not to be converted into a mortgage merely because a trifling portion of the consideration was paid in cash for current expenses and was not proved to have been for necessity. (*Scott-Smith and Brasher, JJ.*). HASSAN MUHAMMAD *v.* MAHANDA. **81 I.C. 331=5 L.L.J. 292= A.I.R. 1923 Lah. 245.**

———*Widow—Payment of husband's debts is legal necessity—A small portion of consideration for alienation not supported by necessity—Sale is valid—Delay on reversioner's part not excusable.*

Defendant (1) a widow sold her share for Rs. 5,300 to satisfy a decree on a mortgage executed by her husband, for Rs. 4,588-2-2 and the balance Rs. 711-13-10 was appropriated to reimburse herself for expenses of her husband's brother's daughter's marriage. The plaintiff, the nearest surviving agnate, brought a suit after a long delay for a declaration that the sale was void against him as a reversioner.

Held: the husband of defendant (1) died leaving his debts unpaid and it was to satisfy the debts secured by mortgages that the defendant 1 sold her moiety of the property; there was therefore necessity in law and in fact for the sale of the moiety of property. The sale would not be invalid no matter what may have been the purpose to which the defendant 1 applied the balance of Rs. 711-13-10. The purchasers were not bound to see that the defendant 1 applied it to any particular purpose. Further,

Held, that the delay, on the flimsy ground that the plaintiff was not aware of the sale, was inexcusable. (*Sir John Edge.*) MEDAI DALEVOI *v.* NAINAR TEVAN. **74 I.C. 604=16 M. L.W. 478= 31 M.L.T. 149=1922 M.W.N. 804=27 C.W.N. 365= 21 A.L.J. 282=A.I.R. 1922 P.C. 307 (P.C.).**

———Sale by manager—Legal necessity in part—Questions for determination is whether non-binding portion is so small as not to entail the setting aside of the sale and not if the binding portion formed the bulk of the consideration. (*Lindsay and Kanhaiya Lal, JJ.*). JAI NARAYAN *v.* BHAGAWAN PANDE. **80 I.C. 1006=20 A.L.J. 621= A.I.R. 1922 All. 321.**

———Where in particular the vendees take advantage of the youth and inexperience of the vendor and all the transactions are suspicious, the Court would not uphold the sale merely because it is held to be good in respect of a major portion of the consideration. There is however no hard and fast rule: 33 P.R. 1911 (F.B.) and 6 I.C. 984, *Ref. to.* (*Wilberforce and Abdul Qadir, JJ.*). BEN SINGH *v.* HAZARA SINGH. **63 I.C. 760=3 Lah. 99= A.I.R. 1922 Lah. 275.**

———Where it is found that a portion of the sale consideration was taken by a father for legal necessity and that the family benefitted by the transaction to that extent, the sons can recover the property sold only by re-paying the said portion of the sale consideration. (*Daniels, J.C.*). MT. MANZURAN BIBI *v.* JANKI PRASAD.

66 I.C 930=9 O.L.J. 35=A.I.R. 1922 Oudh 80.

———No legal necessity for portion of consideration—Sale must be set aside on payment of binding portion. (*Dawson-Miller, C. J. and Mullick, J.*). BISHUN PRASAD SINGH *v.* NARSINGH DAS.

68 I.C. 663=3 P. L.T. 330=A.I.R. 1922 Pat. 355.

HINDU LAW—Alienation—Necessity — Partial necessity.

———*Sale upheld if invalid—Part of consideration is small—Sale avoided if valid part is small.*

If only a very small part of the consideration found invalid, the sale will be upheld if the purchaser pays to the plaintiff, the part of the consideration which is not binding on him. In raising equity in favour of the purchaser adequacy of the price paid, and necessity for sale are relevant considerations: 46 Cal. 566 (P. C.), *Foll.* But when the consideration found to be valid is only a small portion of the whole, there is no equity in favour of the purchaser. (*Spencer and Krishnan, JJ.*). VISVANATHA SASTRIGAL *v.* VALAM BAL AMMAL.

62 I.C. 701=30 M.L.T. 14 (Mad.).

———Alienation by manager—Large portion of consideration for legal necessity—Transfer is not void: A. I. R. 1921 Oudh 47, *Dist.* (*Dalal, A. J. C.*). GAJADHAR BAKHSH SINGH *v.* BAIJNATH.

65 I.C. 967=8 O.L.J. 605= A.I.R. 1921 Oudh 220.

———Alienation by father—Legal necessity for 9/10ths is found—Transaction is justified. (*Daniels, and Lyle, A J. Cs.*). CHOKHEY SINGH *v.* HARDEO SINGH. **64 I.C. 757=24 O.C. 330=8 O L.J. 667= A.I.R. 1921 Oudh 196.**

—Alienation—Necessity—Pressure.

———Property had been mortgaged by the father. After his death, one of his sons, who had attained majority, sold the property with the consent of his mother because the amount payable to the mortgagee was to become payable five days after the date of the sale,

Held, that there was a legal necessity to sell the property in order to pay off the mortgagee. (*Mirza and Baker, JJ.*). GAJANAN SITARAM *v.* SITARAM RAGHUNATH. **114 I.C. 245=30 Bom. L.R. 1629. A.I.R. 1929 Bom. 55.**

———Where a Hindu widow fails to pay her share of the Government revenue and her co sharer brings a suit for contribution and attaches her dwelling house in execution of the decree, any alienation made by the widow for satisfying the decree is binding on the reversioners: 25 Cal. 565, *Dist.* (*Mr. Ameer Ali.*) GANESH LAL PANDIT *v.* KHETRAMOHAN MAHAPATRA.

95 I.C. 839=5 Pat. 585=53 I.A. 134= 24 A.L.J. 615=28 Bom. L.R. 931= 43 C.L.J. 545=24 M L.W. 50= 1926 M.W N. 535=3 0.W.N. 591= 7 P.L.T. 501=31 C.W.N 25= A.I R. 1926 P.C. 56=51 M.L J. 82 (P.C.).

———Where the demand for land revenue was so pressing that the moveable property was actually under attachment on the date when the mortgage was executed,

Held: that the mortgage was for legal necessity. (*Daniels, J.C.*). SAGAR SINGH *v.* MATHURA PRASAD. **87 I.C 1035= A.I.R. 1925 Oudh 760.**

———*Alienation by father—Mere existence of debts is not sufficient—Proof of pressure is necessary.*

In order to justify an alienation made by the father it is not sufficient in law to show that at the time of the alienation debts binding upon the family were outstanding. It must further be shown that the alienation had to be undertaken under the pressure of a present necessity for the discharge of the debts, *i.e.*, that there was any immediate pressure upon the alienor at the time he executed the sale-deeds. In the absence of proof of any compelling necessity for these transfers by sale it must be held that they were not alienations which could be justified under the Hindu Law. *Hanuman Prasad Pande's case Foll.* (*Rafique and Lindsay, JJ.*). BANDHU RAM *v.* RAM KISHUN SONAR.

73 I.C.1010=21 A.L.J. 354= 4 L.R.A. (Civ.) 406= A. I. R. 1923 All. 535.

———If the transaction was in the main for legal necessity it would not be impeachable on the ground that a smaller sum might have been sufficient to remove the pressure at the time. (*Mookerjee and Rankin, JJ.*). CHANDRA KISOR DATTA MAJUMDAR *v.* KUMAR UPENDRA CHANDRA CHAUDHRI. **74 I C. 612=37 C.L.J. 319= A. I. R. 1923 Cal. 563.**

—Alienation—Necessity—Presumption.

———Widow—Negotiations for mortgage opened, by possible reversioner—Immediate reversioner assenting—Mortgagee's pleader advising that legal necessity existed—Mortgagee can assume legal necessity. (*Jackson and Mohiuddin, A.J.Cs.*). MT. MANKARNIKABAI *v* NANDLAL ACHALDAS.

122 I.C. 371=A. I. R. 1930 Nag. 220.

———Necessity for Rs. 9 800 proved—Necessity for balance of Rs. 200 should be assumed: 40 Cal. 342, *Rel. on.* (*Mukerji and Niamatullah, JJ.*). ANGAN LAL *v.* SURAN BEHARI.

123 I.C. 221=1929 A.L.J. 526=51 All. 799= A.I.R. 1929 All. 503.

———The concurrence of all the adult members of family in a transaction is sufficient to raise a presumption of legal necessity where the other members are living away and the property is managed by such adult members: 8 Bom. 602, *Foll.* (*Daniels, J.*). B. BHAGWAN DAS *v.* ALLAN KHAN.

78 I. C. 649=A.I.R. 1925 All. 28.

———Where the deed was executed by the representatives of all branches of the family and by all the adult male members of the family living at the time,

Held: each of these circumstances separately is sufficient to raise a presumption of legal necessity: A.I.R. 1922 Pat. 450; 22 A.L.J. 182; 8 Bom. 602; 8 A.L.J. 15, *Foll.* (*Daniels, J.*). DHANRAJ RAI *v.* RAM NARESH RAI. **79 I C. 1019= 5 L.R.A. Civ. 325=A.I.R. 1924 All. 912.**

———Suit to set aside sale by manager of joint family—Nine tenth of consideration found binding—Court can presume the binding nature of the balance also. (*Schwabe, C. J.*). KUTTUVA MEENATCHI AYYAN *v.* DARMIAH RANGA CHARULU.

1922 M.W.N. 719=A.I.R. 1923 Mad. 120= 16 M. L. J. 595.

———An alienation 13 years old major portion of the consideration for which has been allowed by the Court, must be held to be made for legal necessity where the remaining portion of the consideration was taken an account of famine. (*Harrison, J.*). RAMJI LAL *v.* RAM GARUP. **72 I.C. 448= 48 P L.R. 1922=A.I.R. 1922 Lah. 368.**

—Alienation—Necessity—Proof of.

———The recitals in an instrument of sale to which the reversioner is not a party should not ordinarily be admitted as evidence. Where evidence has not been given by people who might have deposed with regard to legal necessity and it is not shown that they had passsd away or that their evidence was not available, the presumption as to ancient alienations is inapplicable. (*Graham and Mitter, JJ.*). GOPAL JANA *v.* BROKA MOHAN SWAMI. **34 C W.N. 944.**

———*Expenses alleged to justify sale not contemplated at the date of sale—Widow possessing other funds as well—Necessity not proved.*

At the date when the sale-deed was executed by the widow she had admittedly in her possession

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Rs. 1,600, and the expenses, which it was alleged justified the sale on the ground that there was necessity, might not even then have been in contemplation, and certainly so far as the evidence went had not been incurred,

Held, that the necessity had not been established upon the facts as shown by the purchaser upon whom the burden lay. (*Lord Buckmaster.*) BALKISAN DEVCHAND *v.* KUNJALAL HIRALAL AGARWALA. **122 I.C. 1=32 Bom.L.R. 365=51 C.L.J. 237=31 M. L. W. 625=A.I.R. 1930 P.C. 133=58 M.L.J. 358 (P.C.).**

———*Transaction old—Presumptions are permissible to fill in obliterated details.*

Where a sale-deed is of a very old date, it is not reasonable to expect that full and detailed evidence would be forthcoming as to the state of things which gave rise to the sale deed. In such circumstances presumptions are permissible to fill in the details which have been obliterated by time: A.I.R. 1916 P.C. 110; A.I.R. 1914 P. C. 38 and A.I.R. 1920 P.C. 64, *Foll.* (*Sulaiman, Ag. C.J. and Kendall, J.*). RAM NARAIN *v.* MT. NANDRANI KUNWAR. **114 I.C. 868=50 All. 823=A.I.R. 1929 All. 128.**

———*Legal necessity has to be proved for the transfer as a whole.*

Legal necessity has to be proved for the transfer and not for each rupee of the consideration. The necessity for the transfer can in most cases be established only by proving necessity in respect of the consideration, but ordinarily proof in respect of the greater part of the consideration is quite sufficient: A.I.R. 1925 Nag. 302; A.I.R. 1927 P.C. 37 and A.I.R. 1927 P.C. 246, *Ref.* (*Hallifax and Mohiuddin, A.J.Cs.*). KHUSHAL *v.* LABHAN RAO. **110 I.C. 351=A.I.R. 1928 Nag. 232.**

———Where a substantial portion of the consideration for sale of joint family property was proved to be for legal necessity, while it was not established that the remaining small portion was not for legal necessity, and the transaction took place 55 years ago, the sale was a good transfer: A. I. R. 1927 P.C. 37, *Foll.* (*Stuart, C. J. and Nanavutty, J.*). KAILASH SINGH *v.* BALBHADDAR SINGH. **112 I.C. 151 (Oudh).**

———Alienation by father—Mere existence of family business is not sufficient to show necessity. The lender must also show that the money was required for the family business. (*Shadi Lal, C. J. and Malan, J.*). GIRAHARI LAL *v.* KISHEN CHAND. **85 I.C. 463=5 Lah. 511=A.I.R. 1925 Lah. 240.**

———*Old transactions—Presumptions as to details.*

In the case of old transactions full and detailed evidence is not to be expected and it is permissible to fill in the details by reasonable presumptions: 47 I. A. 6; 20 A. L. J. 658; 44 All. 756, *Foll.* (*Daniels, J.*). ISH DAT TEWARI *v.* TAMESHAR, **79 I.C. 296=5 L.R.A. Civ. 357=A.I.R. 1924 All. 916.**

———*Alienee need only prove that substantial part of the consideration was for necessity—Maxim*—De minimis non curat lex *applies.*

Where the creditor proved that almost the whole amount was expended for necessity,

Held: where nothing is shown adverse to the character or mode of livelihood of a Hindu father Courts ought not to be astute to find objections or highly artificial conclusions as to the absence of legal necessity in transactions which took place long ago and which are necessarily difficult to

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establish in all their details by clear verbal proof in a Court of law.

The transaction cannot be interfered with even *pro tanto.*

Some margin must be allowed for incidental expenses and the task imposed on the creditor of proving the intended and actual destination of each Rupee is, humanly speaking, an impossible one and for Courts of Justice to impose that duty on a creditor as a matter of principle is to invite him to commit and suborn perjury in the Trial Courts. The failure to prove a small margin in a large sum is covered by the maxim *de minimis non curat lex.* (*Walsh and Piggott, JJ.*). SURAJ PRASAD *v.* MUKHANLAL. **66 I.C. 134=44 All. 382=20 A.L.J. 236=A.I.R. 1922 All. 51.**

———*Old transaction—Proof of inquiry, by creditor and of necessity for major portion of debt, let in—Court may presume necessity for the balance also.*

Whilst it is true that the onus of proving necessity rests upon the mortgagees, if they have the assurance of the borrowers that the debts incurred were for family necessity and they made exhaustive enquiries as to the existence of debts which amounted to a very large sum and even if a few small items out of the total might appear to be doubtful, the Court should not scrutinize with meticulous care after a lapse of twenty years each small item about which the existence of family necessity is doubtful so as to give to the mortgagors the benefit of the doubt when the enquiries made by the mortgagees showed that the vast bulk of the debt appeared to have been incurred for family necessity and was subsequently acknowledged as a joint debt by the responsible heads of the different branches of the family. (*Dawson-Miller, C. J. and Bucknill, J.*). HARI PRASAD SINGH *v.* SURENDRA MOHAN SINGH. **66 I.C. 945=1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

———*Probability of family necessity—Absolute proof is not required but should be presumed after 20 years.*

If 20 years later it should appear that in a few instances there is no conclusive proof that the debts were actually incurred for family necessity or with the active participation of all the adult members of the family still if the circumstances show that the needs of the family were such that it is probable that the money even in those cases were required for family necessities, a Court should not require absolute proof in every case but may presume that the lender satisfied himself at the time that the debts were of such a nature as had been represented to him and as appear from the recitals in the bond. (*Dawson-Miller, C. J. and Bucknill, J.*). HARI PRASAD SINGHA *v.* SOURENDRA MOHAN SINGHA. **66 I.C. 945=1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

———*Representations by transferees is not enough enquiry by the alienee.*

In a case of transfer by the father of a joint Hindu family the transferee may prove the existence of an antecedent debt of the father or of some other form of legal necessity, or he may prove that he was reasonably satisfied of that existence after sufficient enquiry. The proof of enquiry may be a part of that of the existence of the legal necessity or may stand by itself, and the sufficient enquiry can be established at least in part by proof of representations made by transferors. But ordinarily something more than the mere representation of the borrower is necessary to constitute reasonable enquiry on the part of the lender. *Case-law*

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discussed. (*Hallifax, A. J. C.*). GANBA *v.* SHRI VISHVESHWAR DEOSTHAN. **64 I.C. 268= 17 N.L.R. 194=4 N.L.J. 26=A.I.R. 1921 Nag. 14.**

—Alienation—Necessity—Purchase of property.

———A Hindu father is not entitled to sell joint ancestral property in order to get a better for himself in addition to one already possessed unless necessity for getting a new house is established. (*Dalip Singh, J.*). LAJJA RAM *v.* ABDUL RAHIM KHAN. **109 I.C. 448=29 P.L.R. 222= A.I.R. 1928 Lah. 437.**

———Alienation to purchase new property is not necessarily unjustified. (*Sulaiman and Banerji, JJ.*). JADO SINGH *v.* NATHU SINGH. **98 I.C. 773= 48 All. 592=24 A.L.J. 633=A.I.R. 1926 All. 511.**

—Alienation—Necessity—Purchaser's duty.

———If the lender is shown to have acted *mala fide*, he cannot ask the Court to uphold the charge in his favour against the heir, grounded on a necessity which his wrong has helped to cause. The lender cannot act merely upon the representation made to him by the manager but he is bound to make an honest enquiry into the necessity of the loan with reference to the parties with whom he is dealing, that is to say, with reference to the representation made to him by the parties with whom he is dealing. The necessity for the enquiry, is an equitable rule framed for the protection of the lender, does so enquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of the charge and the lender is not bound to see to the application of the money. A complete codification of the evidence that would, in all cases, establish a case of *mala fides* against the lender is impossible. (*Das and Bucknill, JJ.*). KUMAR KALIKNAND SINGH *v.* SHIVA NANDAN PRASAD SINGH.

63 I. C. 625=3 P.L. T. 149=A.I.R. 1922 Pat. 122.

—Alienation—Necessity—Purchaser's right.

———Mortgage of joint family property—Purchaser of equity of redemption can raise pleas of want of legal necessity and unconscionable nature of terms in his redemption suit. (*Wazir Hasan and Nanavutty, JJ.*). RAM KISHORE *v.* BAIJNATH.

113 I.C. 410=3 Luck. 598=5 O.W.N. 395= A.I.R. 1928 Oudh 287.

———Alienation by widow—Transferee from reversioner can raise the plea as to legal necessity: A.I.R. 1923 Pat. 122, *Expl.* (*Kotval, A.J.C.*). (HAJI) SHEIKH MOHAMED *v.* RAMCHANDRA. **90 I.C. 74=A.I.R. 1926 Nag. 179.**

—Alienation—Necessity—Recitals.

———*Recital in deed may form evidence after long interval.*

Recitals in documents executed by Hindu ladies are by themselves no proof of the existence of legal necessity. But in cases where there has been a long interval of time and the surrounding circumstances support the inference, the recitals in such deeds would be evidence of representation having been made to the transferees to that effect: A.I.R. 1916 P.C. 110, *Foll.* (*Sulaiman and Sen, JJ.*). MUHAMMAD ABDUL KARIM KHAN *v.* BISHAN SAHAI.

121 I.C. 387=1929 A.L.J. 741=A.I.R. 1930 All. 9.

———Legal necessity recited in document and both parties dead—Presumption is that there was legal necessity, unless rebutted. (*B. B. Ghose and S.K. Ghose, JJ.*). UPENDRA NATH MUKHERJEE *v.* GURUPADA HALDER. **34 C.W.N. 404= A.I.R. 1930 Cal. 508.**

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———*Deed—Recital.*

A recital in a deed of recent date executed by a Hindu widow is no evidence of the fact recited. (*Sen and Niamatullah, JJ.*). GAJE SINGH *v.* MT. UCHHABA. **119 I.C. 514=1929 A.L.J. 309= 10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.**

———*Proof of enquiry not possible—Proof of* bona fide *belief in alienor's representations and recitals in the deed are enough evidence.*

It is not absolutely necessary for a transferee to establish the actual existence of family necessities, or to show that the money advanced by him was utilized for such purposes. It is only necessary that a representation should have been made to the purchaser that such necessity existed and that he should have acted honestly and made proper enquiry to satisfy himself or its existence. The recital in the document is clear evidence of a representation, and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recital coupled with such circumstances would be sufficient evidence to support the deed. (*Sulaiman, Ag. C.J. and Kendall, J.*). RAM NARAIN *v.* MT. NANDRANI KUNWAR. **114 I.C. 868=50 All. 823= A.I.R. 1929 All. 128.**

———Recitals in a deed of sale with regard to the existence of legal necessity for an alienation by a Hindu widow are not in themselves evidence of such necessity without substantiation by evidence *aliunde*. (*Sulaiman, Ag. C. J. and Kendall, J.*). RAM NARAIN *v.* MT. NANDRANI KUNWAR.

114 I.C. 868=50 All. 823=A.I.R. 1929 All. 128.

———Recitals in a sale-deed are ordinarily insufficient in the absence of other independent evidence to establish that the vendee made sufficient enquiries into the existence of legal necessity: A.I.R. 1921 Nag. 14, *Rel. on.* (*Macnair, A.J.C.*). KANTAPRASAD *v.* MADHAORAO.

116 I.C. 648=12 N.L.J. 1=25 N.L.R. 28= A. I. R. 1929 Nag. 60.

———Recitals in mortgage bond with regard to the existence of legal necessity for an alienation are not of themselves evidence of such necessity without substantiation by evidence *aliunde*: A.I.R. 1914 P.C. 38, *Rel on.* (*Ross and Chatterji, JJ.*). BISWANATH SINGH v. KAYESTHA CORPORATION.

119 I.C. 405=8 Pat. 450=10 P.L.T. 379= A.I.R. 1929 Pat. 422.

———The principle that when a sale by a Hindu widow is old enough, a presumption ought to be made in favour of the transaction being supported by legal necessity, does not apply where the sale-deed contains no recital as regards the existence of any legal necessity for the transaction: A.I.R. 1916 P.C. 110, *Appl.* (*Kinkhede, A.J.C.*). ATMA RAM *v.* UMED SINGH. **102 I. C. 32= A.I.R. 1927 Nag. 383.**

———*Widow—Mortgage by widow and sale under it —Suit by reversioner challenging necessity for mortgage after a long-time—Recitals in mortgage-deed about necessity ought not to be disregarded.*

In cases where sales by widows have been questioned after long lapse of time the recitals in the document as regards necessity ought not to be disregarded even though they are not strictly evidence; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that a representation should have

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been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper enquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible, the recital, coupled with circumstances, would be sufficient evidence to support the deed. But it does not follow from the above principles that all ancient transactions ought to be upheld; where the circumstances tend the other way it will be reasonable not to apply these principles: 44 Cal. 186 (P.C.); 43 Mad. 541 (P.C.) and A. I. R. 1925 Mad. 673, *Foll.* (*Ramesam and Venkatasubba Rao, JJ.*). SANYASI *v.* RAMCHANDRA RAO.

95 I.C. 691=1926 M.W.N. 319=A.I.R. 1926 Mad. 692=51 M.L.J 73.

———*Widow—Recital in ancient deed—Probability—Recital may be acted on.*

In respect of ancient alienations the amount of evidence that should reasonably be demanded is not the same as in the case of recent transactions. Full and detailed evidence which may otherwise be forthcoming will not, owing to lapse of time be available and, in such circumstances, presumptions are permissible to fill in the details which have become obliterated by time. (*Venkatasubba Rao, J.*). A. SOMAYYA *v.* A. VENKAYYA.

86 I.C. 483=22 M.L.W. 81=A.I.R. 1925 Mad. 673=48 M.L.J. 224.

———In the case of a mortgage of joint family property executed by the father a mere recital in the mortgage bond may be evidence but not sufficient proof of legal necessity. (*Dalal, A.J.C.*). MT. RAJAVANTA *v.* RAMESHAR. **87 I.C. 180=12 O.L.J. 235=2 O.W.N. 225=28 O.C. 393=A.I.R. 1925 Oudh 440.**

———*Alienation by widow—Recitals do not prove necessity but recitals in old deed cannot be lightly set aside.*

Recitals cannot by themselves be relied upon for the purpose of proving the assertion of fact which they contain for if such proof were permitted the rights of reversioners could always be defeated by the insertion of carefully prepared recitals. But where all the original parties to the transaction are dead, and all those, who could have given evidence on the relevant points have grown old, or passed away, a recital consistent with the probability and circumstances of the case has greater importance and cannot be lightly set aside. (*Kanhaiya Lal, J. C.*). QUAMAR JEHAN BEGAM *v.* BANSIDHAR. **72 I.C. 1046=A.I.R. 1924 Oudh 162.**

———*Alienation by widow—Legal necessity, inquiry as to, coupled with recitals in a deed are sufficient to support the deed.*

A recital in a deed is clear evidence of the representation, (that legal necessity existed on the part of the alienor) and where it is found that the alienee acted honestly and made all proper inquiries and satisfied himself of the truth of such representation, the recital coupled with the representation and the inquiry is sufficient evidence to support the deed: 43 I.A. 249 (252), *Ref.* (*C. C. Ghose and Panton, JJ.*). BANKU BEHARI DE *v.* BISSEHWAR LAL MARWARI.

76 I.C. 598=A.I.R. 1923 Cal. 575.

———*They are not by themselves evidence—Lapse of time raises presumption and saves alienee from adverse inference.*

HINDU LAW—Alienation—Necessity—Religious ceremony.

In the application of this rule, it is to be borne in mind that recitals in conveyance or mortgages of the existence of legal necessity are not by themselves evidence of the fact, and there must ordinarily be some evidence *aliunde* to substantiate the allegations: 19 C.L.J. 469 P.C., *Foll.*

Though lapse of time does not affect the question of onus of proof regarding legal necessity, it may give rise to a presumption of acquiescence or save the alienee from adverse inference arising from the scantiness of the evidence offered on his behalf. In other words when by efflux of time direct evidence independent of the recital becomes unavailable, a recital of necessity, consistent with probability and the circumstances, assumes greater importance: it is clear evidence of a representation to the purchaser, and when evidence of actual enquiry by him has become impossible, the recital coupled with circumstances which justify a reasonable belief that an enquiry would have confirmed its truth is sufficient evidence to support the transaction: 22 C.L.J. 180, *Foll.* (*Mookerjee and Rankin, JJ.*). CHANDRA KISOR DATTA *v.* UPENDRA CHANDRA.

74 I.C. 612=37 C.L.J. 319=A.I.R. 1923 Cal. 563.

———Mere recitals in bonds are not presumptive proof of the necessity for the debts borrowed thereunder. (*Jwala Prasad and Adami, JJ.*). KAROO *v.* RAMESHWAR SAO. **62 I.C. 905=3 P.L.T. 43=6 P.L.J. 451=A.I.R. 1923 Pat. 143.**

———*Recital is evidence of representation—Recital without any other circumstances is not sufficient to support deed.*

In the case of a document of considerable antiquity, a recital in the document is clear evidence of representation to the lender and if the circumstances are such as to justify a reasonable belief that an inquiry would have confirmed the truth of the representation, then, when proof of actual inquiry had become impossible, the recital coupled with the circumstances, would be sufficient evidence to support the deed. But if other circumstances, besides recitals, are wanting, it must be held that the party on whom the burden of proof lay has failed to discharge the burden of proof of the legal necessity. (*Lindsay and Stuart, JJ.*). SURJU PRASAD *v.* MD. SHAKUR.

66 I.C. 564=A.I.R. 1922 All. 126.

———*Purpose of mortgage recited in the deed coupled with circumstances is sufficient evidence to support the deed.*

The recital in a deed of mortgage may not by itself be sufficient to prove the purpose for which the money was borrowed against third parties, but it is clear evidence of the representation made to the creditor, and if the circumstances are such as to justify a responsible belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recital coupled with the circumstances will be sufficient evidence to support the deed: 44 Cal. 186 (P.C.), *Foll.* (*Daniels, A.J.C.*). RAM SARAN *v.* DAWAN SINGH. **66 I.C. 36=24 O.C. 386=A.I.R. 1921 Oudh 214.**

—Alienation—Necessity—Religious ceremony.

———Daughter inheriting estate of her mother—Expenses for barkhi ceremony of mother can be met by her out of mortgage of such property. (*Sulaiman and Kendall, JJ.*). MAQBUL AHMAD *v.* BRIJDEO TEWARI. **122 I.C. 751=1930 A.L.J. 765=A.I.R. 1930 All. 529**

HINDU LAW—Alienation—Necessity—Religious ceremony.

———Two members of joint Hindu family between themselves and their sons occupying respectable positions in their society and village, borrowed Rs. 70 on mortgage of joint family property and spent the same on Gauna ceremony of daughter of their family—Money spent is warranted by legal necessity : 37 Cal. 1, *Rel. on.*

While considering legal necessity for a mortgage social considerations cannot be ignored. If, having regard to what is customary in the society to which the family belongs, a certain expenditure is reasonable such that a prudent man similarly situated would incur or such that other members, if adult, are likely to sanction, it may well be regarded as money spent on legal necessity. The circumstances of the particular family, such as its means, social customs and sentiments, the purpose on which the sum in question is to be spent, its adequacy or otherwise are some of the considerations which will determine the propriety of the expenditure in a given case. (*Sen and Niamatullah, JJ.*). BAJRANGI MISIR *v.* PADARATH SINGH.
124 I.C. 759=A.I.R. 1930 All. 504.

—Alienation—Necessity—Re-purchase of property.

———The re purchase of property sold by a separated brother is not however the purpose which constitutes legal necessity under Hindu Law. (*Daniels, J.*). SHEO DEN *v.* HABHI ULLAH KHAN.
75 I.C. 872=A.I.R. 1924 All. 721.

———Father as manager of the joint family property is not entitled to encumber it for the purpose of acquiring ancestral estate belonging to a near relative. The duty of the father or other manager is to manage the property of the joint family to which he himself belongs for the benefit of that family. (*Batten, J.C. on difference between Drake-Brockman, J.C. and Hallifax, A. J. C.*). GANPAT RAO *v.* LAXMI CHAND. **77 I. C. 640= 6 N. L.J. 239=A. I. R. 1924 Nag. 1.**

—Alienation—Necessity—Sale to mortgage.

———Sum for necessity forming substantial portion of whole consideration—Land value not much in excess of amount for necessity—Sale should not be changed into mortgage. (*Tek Chand and Hilton, JJ.*). LAHNU *v.* BAKHSHI.
A.I.R. 1929 Lah. 875.

———Necessity proved—Sale not below market value—Vendor could not raise sum by mortgage—Sale cannot be converted into mortgage: A.I.R. 1919 P.C. 12 ; A.I.R. 1923 P.C. 37 and 20 P.W.R. 1911, *Dist.* (*Tek Chand and Hilton, JJ.*). ISHAR DAS *v.* BHIKU. **120 I. C. 541= A. I. R. 1929 Lah. 809.**

—Alienation—Necessity—Test of.

———*Sale—Setting aside—Tests—If necessity could be met from other parties or otherwise met.*

Where in a suit by members of joint Hindu family for setting aside the sale of a house the Court finds the legal necessity to be proved only in respect of a certain sum and decrees the plaintiff's claim on condition that they re-pay the sum, the finding is not in accordance with law. The sale is either wholly valid or invalid according as it is found to have been made for necessity or the reverse. Considerations that would be of importance in order to decide whether it was necessary to sell the house in suit to raise the particular sum would be whether the parties concerned had any other property out of which they could meet the necessary expenditure, whether it would not have been possible to raise the sum by mortgage and matters of a like nature: A. I. R. 1927 P. C. 37 and 246, *Ref.* (*Kendall and Niamatullah, JJ.*). MURLI *v.* GHAMAR. **121 I.C 385=51 All. 61= A.I.R. 1930 All. 22.**

HINDU LAW—Alienation—Necessity—Widow—Burden of proof.

———*Proportion of price to the amount of actual necessity is an important factor but not the sole test.*

Ananthakrishna Iyer, J.—In deciding whether a particular sale should be ultimately held to be binding or not the proportion of the price to the amount of actual necessity is no doubt a factor ordinarily an important factor, but that is not the sole test to be taken into account in adjudicating on such matters. (*Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ.*). SATHAPPAN AMBALAM *v.* VADIVELU. **109 I.C. 106= A.I.R. 1928 Mad. 450.**

—Alienation — Necessity — Widow — Benefit to estate.

———*Acts in ordinary course of management are binding—Alienation without necessity—Validity of.*

A Hindu widow in possession is undoubtedly entitled to do ordinary acts of management, but whether in a particular case, a particular action of the widow was in the ordinary course of management or not must be decided with reference to the circumstances of that case: 33 Cal. 842 and 25 I. C. 280, *Rel. on.*

Where a transaction though not in the form of a sale, was in reality a permanent alienation by a limited owner without any legal necessity for doing so, it could only hold good for her life time. (*Iqbal Ahmad, J.*). RAM SINGH *v.* BRIJ RAJ SARAN SINGH. **99 I.C. 548= A.I.R. 1927 All. 283.**

—Alienation — Necessity — Widow — Benefit to reversioners.

———*Alienation by limited owner is justified if made for maintenance but not if made for comforts or to purchase another better property.*

A daughter is not bound to sell her father's property to the prejudice of her son's interest for the purpose of putting the family in comfortable circumstances. If she has no other income and if the family was really starving and without selling the property she would starve she would be justified in selling the property inherited from her father to the prejudice of the reversioners, but it is not open to a widow or a limited owner, such as daughter, to sell the property in her possession because she could not manage the property or that it is beneficial to her as well as to the reversioners to sell it and buy some other property. (*Devadoss, J.*). SRINIVASA AIYANGAR *v.* ALAMELU AMMAL.
101 I.C. 571=A.I.R. 1927 Mad. 715.

—Alienation — Necessity — Widow—Burden of proof.

———*Burden of proof lies on alience to prove that alienation was made for necessity.*

The burden of proof lies on the decree-holder as alienee from a widow, who had only a widow's interest in the property to prove that the alienation, *viz.*, the charge made in the decree, was made for any necessity which could legally extend its validity beyond the widow's life or that the decree-holder took this alienation in good faith after making the necessary inquiries. (*Reilly and Cornish, JJ.*). C. MEENAMBAL AMMAL *v.* ABURHUBAMMAL. **1930 M.W.N. 337= A.I.R. 1930 Mad. 688.**

———Widow mortgaging property—Mortgagee suing to enforce mortgage against reversioner—

HINDU LAW—Alienation—Necessity—Widow—Burden of proof.

Mortgagee must prove that mortgage was of nature binding on reversioner (*Jackson and Mohiuddin, A. J. Cs.*). MT. MANKARNIKABAI *v.* NANDLAL ACHALDAS. **124 I.C. 371=A.I.R. 1930 Nag. 220.**

——Land mortgaged by widow for debts due by husband to third parties—If it is shown that debts were actually paid by mortgagee, *onus* is on reversioner suing for declaration to prove that debts were tainted with immorality: 65 P. R. 1900 and 1 Lah. 472, *Rel. on.* (*Shadi Lal, C.J. and Skemp, J.*). MANGAL SINGH *v.* DEVA SINGH.

116 I.C. 891=A.I.R. 1929 Lah. 846.

——*Mortgage by widow—Mortgagee must prove consideration independently of recitals.*

Recitals in a deed, though binding on the parties to that deed, cannot be considered to be binding upon third parties, who are not in any way connected with the deed.

Where creditor seeks, under a mortgage executed by a widow, to recover money from the reversioners, it is necessary for him to establish the passing of consideration independently of the recitals contained in the deed itself. (*Misra, J.*). JAGANNATH SINGH *v.* GURCHARAN SINGH. **114 I.C. 783=4 Luck. 279=5 O.W.N. 1097=A.I.R. 1929 Oudh 422.**

——*Sale by widow to discharge a mortgage—Vendee to prove that sale is justified—Failure to make enquiries—Absence of good faith.*

In the case of alienation by a widow the *onus* lies heavily on a vendee to prove that a certain mortgage transaction for discharge of which the sale is effected, is a genuine and *bona fide* one and the discharge of this debt constitutes legal necessity.

Where a vendee fails to prove what inquiry was made and how he was satisfied as to the genuineness or good faith of that transaction, though the fact was peculiarly within his knowledge, this omission must be taken as the strongest indication of the absence of good faith on his part: A.I.R. 1927 P.C. 230, *Foll.* (*Shadi Lal, C. J. and Bhide, J.*). AHMAD DIN *v.* TULSA SINGH.

113 I.C. 292=A.I.R. 1928 Lah. 875.

——*Alienation by widow to satisfy a decree against her for husband's debt—When valid.*

A mortgage of ancestral land by a widow to satisfy a decree for a debt contracted by her deceased husband is not binding on the reversioners unless it is shown that she had no other means to satisfy the decree. The burden of proving the necessity lies heavily on the mortgagee: 39 P. R. 1915, *Dist.* (*Harrison, J.*). PUR SINGH *v.* NAZAR SINGH.

91 I. C. 479=26 P.L R. 15=A.I.R. 1926 Lah. 208.

——*Alienee must prove necessity—Burden is not shifted though sale effected with minor reversioners' consent.*

The principle of law is that in the case of purchase from a limited owner, it is for the alienee to make out that the sale is good or to show the circumstances which would give the limited owner right to convey full title to the properties sold and the mere fact that the minor reversioner as represented by his father joined in the sale-deed along with his grandmother would not shift the burden of proof from the shoulders of the alienee to those of the minor reversioner. (*Devadoss, J.*). SULEMAN SAHEB *v.* P. VENKATRAJU. **86 I.C. 195=21 M.L.W. 115=A.I.R. 1925 Mad. 670.**

——*Alienee to prove necessity or* bona fide *enquiry.*

When a person claims title under an alienation effected by a Hindu widow in respect of the estate

HINDU LAW—Alienation—Necessity—Widow—Daughter's marriage.

of her husband, the burden lies upon him to establish either that there was a legal necessity in fact which justified the alienation or that he made proper and *bona fide* enquiries and did all that was reasonable to satisfy himself as to the existence of such necessity: 35 Cal. 420, *Foll.* (*Mookerjee and Rankin, JJ.*). CHANDRA KISOR DATTA *v.* UPENDRA CHANDRA. **74 I. C. 612=37 C. L. J. 319=A.I.R. 1923 Cal. 563.**

——*Widow—Mortgage—Necessity for borrowing, and on the particular terms*—Onus *is on alienee to make out both.*

A person who deals with a Hindu widow having a limited estate is bound to establish the facts, which justified the transaction under which he claims.

In the case of a mortgage, made by a widow, it is incumbent on the mortgagee to show not only that there was a necessity to borrow, but also that it was not unreasonable to borrow at a high rate and upon the particular terms, and, if this is not shown the rate and terms would not stand even though the charge may be upheld. (*Kanhaiya Lal, J. C.*). DARYAO SINGH *v.* KALI SINGH. **68 I.C. 164=9 O.L.J. 213=A.I.R. 1922 Oudh 175.**

——A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims.

It is sufficient to say that the mere fact that the rent reserved was a fair market rent or the price, obtained was a fair market price, cannot alone and in themselves be regarded as sufficient. (*Lord Buckmaster.*) NABA KISHORE MANDAL *v.* UPENDRA KISHORE MANDAL. **65 I.C. 305=20 A.L.J. 22=35 C.L.J. 116=1922 M.W.N. 95=26 C.W.N. 322=3 P.L.T. 311=24 Bom. L.R. 346=15 M. L. W. 417=30 M. L.T. 234=A.I.R. 1922 P.C. 39=42 M. L. J. 253 (P.C.).**

——In an action against the widow on a contract made by the widow, a compromise, by which she makes over the estate stands on no different footing from a conveyance by her of the property and the alienee must prove legal necessity. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). NALLA TIRUPATIRAJU *v.* NANDIKOLLA VENKAYYA. **67 I.C. 479=45 Mad. 504=1922 M. W. N. 207=15 M. L. W. 395=30 M.L.T. 181=A.I.R. 1922 Mad. 131=42 M.L.J. 392 (F.B.).**

——*Loan for litigation expenses—Creditor to prove absence of funds.*

Where a widow purports to alienate a portion of her husband's property in order to meet expenses of litigation incurred for the protection of the estate against a hostile attack, necessity is not established unless it is proved that at the time the money was actually advanced there was no money in the offer sufficient for the protection of the estate and it is for the creditor to establish that there were no funds in the hands of the widow sufficient for the protection of the estate against the hostile attack. (*Das and Ross, JJ.*). BALU SUDARSHAN PRASHAD NARAIN SINGH *v.* SARJUG SINGH. **60 I.C. 486 (Pat.).**

—Alienation—Necessity — Widow — Daughter's marriage.

——A married woman who had inherited her father's property, alienated a portion of it to pay off a prior debt incurred for the marriage expenses of her daughter. Her husband being poor could not afford to have his daughter married,

HINDU LAW—Alienation—Necessity—Widow—Daughter's marriage.

Held, that the transaction was for legal necessity: 18 All. 474 and 50 M. L. J. 221, *Foll.*; 1 Pat. L.J. 81, *Dist.* (*Ross and Wort, JJ.*). KAMLA PRASAD SINGH *v.* LALJI PRASAD. **9 Pat. 721.**

———The widow can make a gift of landed property to her daughter or son-in-law on the occasion of her marriage or any ceremonies connected with the marriage and that the promise made may be fulfilled afterwards; and it is not essential to make a gift at the time of the marriage but that it may be made afterwards, upon the ground that the gifts when made fulfil the moral and religious obligation of giving a portion of the property for the benefit of the daughter and the son-in-law. The only limitation placed upon this power of making a gift is that it should bear a reasonable proportion to the entire property of the deceased father and that it should be justifiable in the circumstances of the case. (*Case-law fully discussed.*) (*Jwala Prasad and Bucknill, JJ.*). RAM SUMRAN PRASAD *v.* GOVIND DAS. **99 I.C. 782=5 Pat. 646=7 P.L.T. 821=A.I.R. 1926 Pat. 582.**

———Where the marriages of the other daughters of the widow's husband which took place before the Great War cost Rs. 800,

Held, that the widow was justified in spending out of her husband's estate Rs 1,400 for her daughter's marriage which was celebrated after the war. (*Suhrawardy and Cuming, JJ.*). SATISH CHANDRA NAG *v.* HARIPADA DE. **87 I.C. 43=41 C.L.J. 209=A.I.R. 1925 Cal. 689.**

—Alienation — Necessity—Widow — Dowry for daughter.

———*Alienation by widow for providing reasonable dowry for her daughter is valid.*

There can be no question as to the right of a Hindu widow of a separated Hindu governed by the Mitakshara Law to make an alienation to provide a dowry for her daughter provided it is a reasonable alienation in the circumstances of the case and it is immaterial whether the deed was executed before or after the marriage ceremony: A.I.R. 1926 Oudh 425, *Rel. on.* (*Stuart, C.J. and Rasa, J.*). UDAI DAT *v.* AMBIKA PRASAD. **100 I.C. 503=2 Luck. 412=4 O. W.N. 133=A.I.R. 1927 Oudh 110.**

—Alienation — Necessity — Widow—Husband's debts.

———*Payment of barred debts of husband is legal necessity—Widow can alienate whole property for that purpose.*

Payment of barred debt left by her husband is a pious duty on the part of the widow and amounts to legal necessity. It is not necessary that there should be any danger to the estate in order to entitle the widow to incur debt or alienate the property of her husband in order to pay off barred debts. She may alienate the whole of the estate inherited if she cannot raise sufficient money for the purpose by alienating a part: 21 Cal. 190; 21 Cal. 190-*n* and 6 M. I.A. 393 (P. C.), *Ref.* (*B. B. Ghose and S. K. Ghose, JJ.*). ASHUTOSH SIKDAR *v.* CHIDAM MONDAL. **34 C. W. N. 153=A. I. R. 1930 Cal. 351.**

———*Widow can alienate property to save her life-estate being sold for debts legally due from her husband.*

It is legal necessity for the widow to discharge her husband's just debts, *i.e.*, debts legally due not necessarily for legal necessity by alienation of the ancestral property. Where the widow finds herself

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in the position of having the whole estate attached and sold to the detriment of her life-interest, for the debts incurred by the husband, she is justified in alienating the property in order to save her life-estate which is given to her really for the purposes of maintenance. The case of a widow is distinguishable from the case of person who himself incurred the debt: A.I.R. 1923 Lah. 245, *Rel. on.* (*Dalip Singh, J.*). SUNDAR SINGH *v.* JIVAN SINGH. **118 I. C. 899= A.I.R. 1930 Lah. 249.**

———*Widow is justified in selling property for payment of mortgage debts incurred by her husband and shortly to become due.*

A widow must be allowed some latitude in the exercise of her powers of alienation and she is right in providing beforehand for payment of the mortgage debt incurred by her husband shortly to become due and she cannot be blamed for making at the same time a comprehensive arrangement for the settlement of all the mortgage debts on the property of her husband in her hands, even though some of them did not require to be paid for a year or so: 20 C.W.N. 210; A.I.R. 1922 P. C. 356 and 18 Bom. 534, *Rel. on*; A. I. R. 1925 Bom. 91 and A.I.R. 1928 Oudh 287, *Dist.* (*Jackson, A.J.C.*). YASODA *v.* SHAMJI. **123 I. C. 899=A.I.R. 1930 Nag. 218.**

———A widow is entitled to sell a portion of her husband's property to discharge a debt created by the husband in the security of a *zarpeshgi* mortgage, although the mortgagee is in possession and under the terms of the contract precluded from bringing a suit to recover his debt: 18 Bom. 534, *Rel. on.* (*Das and Fazl Ali, JJ.*). RAM ASRE *v.* AMBICA LAL. **119 I.C. 547=11 P.L.T. 6=A.I.R. 1929 Pat. 216.**

———Where the husband has left debts his widow is perfectly entitled to acknowledge them and charge her husband's land with those debts: 17 P. R. 1919 (F.B.), *Foll.* (*Addison, J.*). ABDUR RAHMAN *v.* RURA. **114 I.C. 52=A.I.R. 1928 Lah. 962.**

———*Widow can alienate to pay debts of the last male holder or interest thereon—Enquiry by transferee about the pressure on the estate is sufficient—Interest on debts has prior claim to maintenance—Transferee has to see that alienation is not unfair to reversioners.*

Per *Kanhaiya Lal, J.*—Under the Hindu Law a widow is entitled to the beneficial enjoyment of the entire estate for her life; but if there are debts due by the estate, it is to her interest to pay the debts or the interest accruing due, lest she may lose the corpus or a portion of the estate by an enforced sale in satisfaction of those debts and her means of maintenance may thereby be affected. A widow is under a pious obligation to pay the debts of the last male-holder even though they may be barred by time.

A creditor is not affected by any precedent or subsequent mis-management of the estate, unless he has been a party to it. The immediate pressure on the estate and the danger to be averted are the principal matters about which he is bound to enquire, and if he acts in good faith, he is protected and can enforce the transaction as much against the widow as against her reversionary heirs.

Per *Ashworth, J.*—A widow is only entitled to the usufruct of the property less reasonable interest on debts against the property which it is not possible or convenient for her to discharge. The widow is bound to keep down interest on her husband's

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debts and is only entitled to enjoy the real net income of her husband's properties: 1913 M.W.N. 275, *Ref.* The interest on a debt on the estate in possession of a widow is a prior claim on the income of the estate. An alienee from the widow has to see that the alienation does not operate unfairly against the reversioners. (*Kanhaiya Lal and Ashworth, JJ.*). GAURI SHANKER *v.* KAMALA PRASAD. **95 I.C. 869=A.I.R. 1926 All. 645.**

——Where a widow mortgaged property to pay off an earlier mortgage by her husband and she covenanted in the deed to pay enhanced revenue as was covenanted in the deed by her husband.

Held, that there was no reason to hold that the widow was not justified in making that covenant. (*Simpson and Gokaran Nath Misra, A.J.Cs.*). THAKUR BISHU NATH *v.* RAM RATAN.
89 I.C. 581=12 O.L.J. 406=2 O W.N. 522=A.I.R. 1925 Oudh 529.

——Under the Hindu Law a widow is bound to pay the debts due by her husband, such payment being conducive to the spiritual benefit of the deceased and therefore if she alienates the property inherited by her from her husband in order to pay off the debts due by him, no question of any pressure or necessity arises : 51 I.A. 145, *Expl.* (*Simpson and Gokaran Nath Misra, A.J.Cs.*). THAKUR BISHU NATH *v.* RAM RATAN. **89 I. C. 581=12 O. L. J. 406=2 O. W. N. 522=A. I. R. 1925 Oudh 529.**

——*Sale for amount not exactly covering the debt cannot be set aside.*

A sale by a Hindu widow cannot be set aside upon payment of the amount which it was necessary for the widow to raise to pay off a legal debt, simply because the property sold was not sold for a sum which *exactly* covered that debt. It would manifestly be impossible, and possibly prejudicial to the interest of the estate, if the widow were to be bound in every instance to sell property for payment of a debt due from her husband for exactly the sum due to the creditor : 14 C.W.N. 895, *Foll.* ; 29 All. 331 (P.C.), *Expl.* (*Hallifax, A.J.C.*). ANAND RAO *v.* SARASWATIBAI. **71 I. C. 532=6 N. L. J. 115=A. I. R. 1923 Nag. 125.**

——Mother succeeding to son's estate cannot alienate for debts of her husband unless charged on the estate, though son was under pious obligation to pay. (*Gokul Prasad and Stuart, JJ.*). SHEO RAM PANDE *v.* SHEO RATAN PANDE.
63 I. C. 279=43 All. 604=19 A. L. J. 613=A.I.R. 1921 All. 163.

—Alienation—Necessity—Widow—Interest.

——Alienation by widow for interest in excess of what is allowable under the rule of *Damdupat*, is not justified in Berar : 10 N.L.R. 91, *Foll.* (*Baker, J.C.*). RAJRAM *v.* RAMCHANDRA. **89 I. C. 944=A. I. R. 1926 Nag. 33.**

——*Sale to discharge mortgage and interest thereon —When not valid.*

J originally mortgaged the land for Rs. 1,500 on the 20th of November, 1903. The mortgage was converted into a sale by the widow in 1910, the consideration being Rs. 1,500 due on the mortgage, Rs. 1,221-13 due as interest and Rs. 24 spent on repairing a well and due from the mortgagor under the terms of the deed of mortgage.

Held, that the widow had no necessity to sell the equity of redemption, the debt being a charge only on the mortgaged land and not being recoverable from the person or other property of the mortgagor, and that the interest due under the mortgage was not a just debt : 65 P. R. 1900 (F.B.), *Ref.* (*Scott-Smith. J.*). BODH RAJ *v.* RAJA SINGH. **77 I.C. 906=A.I.R. 1923 Lah. 668.**

HINDU LAW—Alienation—Necessity—Widow—Maintenance.

—Alienation—Necessity—Widow — Land Revenue.

——*Arrears of land revenue is not legal necessity if occasioned by imprudence.*

It is not open to the life-tenant to imperil the reversion by extravagance, imprudence and wanton neglect to pay the Government revenue where funds were available to her. In the absence of evidence to prove that the usufruct of the property was not sufficient to meet the Government revenue, the mere fact of allowing the revenue to fall into arrears will not put upon herself created liability, the impress of necessity, as would legalise the conveyance of the absolute title to the property in execution of the decree against her : 5 Pat. 585, *Dist.* (*Sen and Niamatullah JJ.*). RAGHUBIR SARAN *v.* RAM SARAN. **114 I.C. 33=26 A.L.J. 825=A.I.R. 1928 All. 651.**

——*Arrears of revenue is necessity.*

The existence of arrears of revenue for which the estate is liable to be sold up is at least presumptive evidence of necessity, even though when the loan is incurred, the Government may not have taken measures to enforce the liability. This presumed necessity may no doubt be repudiated by showing that the widow had sufficient income to enable her to pay the revenue without the necessity of borrowing. (*Ryves and Daniels, JJ.*). LALTA PRASAD *v.* DARSHAN SINGH.
74 I.C. 839=A.I.R. 1924 All. 149.

—Alienation—Necessity—Widow—Maintenance.

——*Alienation by widow for the maintenance of daughter's son, is not justifiable.*

Under Mitakshara, the daughter's son is not a member of the last male holder's family, he belongs to the family of the daughter's husband. Nor could the daughter's son, be a dependent member of the last male holder's family when his father is living and able to maintain him. Therefore the last male holder is not bound to maintain the daughter's son, and on his death his estate in the hands of his widow is not liable for the maintenance, education, upanayanam and marriage. Any alienation by the widow for such purposes is not justifiable. (*Case-law discussed.*) (*Ananthakrishna Iyer, J.*). ANANDARAO *v.* VENKATASUBBA RAO.
123 I. C. 812=1930 M.W N. 40=31 M.L.W. 692=A.I.R. 1930 Mad. 287=58 M.L.J. 127.

——Balance from income after paying interest payable on previous mortgage of property sufficient for her maintenance—Sale of property is not for necessity: A.I.R. 1927 P.C. 37, *Expl.* and *Dist.* (*Shadi Lal, C.J.* and *Bhide, J.*). AHMAD DIN *v.* TULSA SINGH. **113 I. C. 292=A.I.R. 1928 Lah. 875.**

——Where a woman inherits considerable property as a limited owner she is not entitled to charge the reversion with debts contracted by her when she could have met those debts from the income of the property. But where the income is not sufficient for her own maintenance, or for other purposes, such as pilgrimage to holy places, etc., a limited owner can alienate the property to the prejudice of the reversion. (*Devadoss, J.*). RAJAGOPALACHARIAR *v.* SAMI REDDI.
93 I.C. 49=1926 M.W.N. 266=A.I.R. 1926 Mad. 517=50 M.L.J. 221.

HINDU LAW—Alienation—Necessity—Widow—Maintenance.

———Where the estate does not yield sufficient income for the widow's maintenance and she therefore sells it in order to invest it in purchasing a house which fetches more rent,

Held, that if by first selling the land, a widow can so improve the estate as to provide sufficient for her own maintenance this must be regarded not merely as a prudent arrangement but also as a necessary arrangement, and it is therefore binding on the reversioners. (*Chevis and Campbell, JJ.*). RADHA RAM *v.* KHUSHI RAM. 66 I.C. 343= A.I.R. 1922 Lah. 204.

—Alienation—Necessity—Widow—Management.

——— *If a prudent act of management, sale is upheld.*

A Hindu widow enjoys the same latitude in the exercise of her powers as the manager, of a joint family, or of an infant's estate, possesses, provided "she acts fairly to her expectant heirs." In such a case all that one has therefore to see is whether the widow acted fairly towards her expectant heirs or prejudicially to their interest: 11 Bom. 320 and 18 Bom. 534, *Appl.*

Even though there is no absolute legal necessity, a sale by widow can be upheld, on the ground of its being a prudent and beneficial act of management: A. I. R. 1925 Nag. 302, *Foll.* (*Kinkhede, A.J.C.*). SUMITRABAI *v.* HIRBAJI. 97 I.C. 983= A.I.R. 1927 Nag. 25.

———*Private sale to avoid Court-sale as an act of good management—Sale need not be exactly for amount of legal necessity.*

Where a widow sold property by a private sale to save it from being sold at a much less price at an auction sale,

Held, it was an act of good management and prudence on her part that she executed the sale-deed to save the property from being sold for an inadequate price. A widow is not always bound to sell exactly for the amount for which there is legal necessity. It is to be seen in each case whether having regard to the circumstances the alienation was a proper one, and the widow has dealt fairly towards the expectant heir. (*Abdul Raoof and Martineau, JJ.*). NAMAN MAL *v.* HAR BHAGWAN. 66 I. C. 362=2 Lah. 357= A. I. R. 1922 Lah. 317.

—Alienation—Necessity—Widow—Meaning of.

———The power of the widow in respect of alienation for legal necessity is the same as that of the manager of the family property; and it can only be exercised in the case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be avert d or the benefit to be conferred on it, in the particular instance, is the thing to be regarded: 6 M.I.A. 393 (P.C.), *Appl.*

There can be no question that she may make alienations to procure maintenance for herself or to defray the expenses of her own religious ceremonies, such as may be necessary, for the salvation of her husband's soul; but she is not at liberty to anticipate her wants.

The word "necessity" has a somewhat special, almost a technical meaning. Necessity, does not mean compulsion, but the kind of pressure which the law recognizes as serious and sufficient. (*Greaves and Mukerji, JJ.*). SANTOSH KUMAR *v.* GANESH CHANDRA. 98 I.C. 919=31 C.W.N. 65= A.I.R. 1927 Cal. 160.

———*Necessity does not mean actual compulsion, but pressure which the law deems sufficient.*

A widow can alienate, if there are no other means available, for the obligatory ceremonies to secure the repose of the soul of her husband. She can, in some circumstances, alienate immoveable property to pay the last owner's debts or (if there is no other available source of supply) for her own or infant children's maintenance. Necessity does not mean actual compulsion, but the kind of pressure which the law recognises as serious and sufficient. (*Lord Phillimore.*) RAMSUMRAN *v.* MT. SHYAMKUMARI. 69 I. C. 71=4 I A. 342= 31 M. L. T. 200=1 Pat. 741=27 C.W.N. 269= 3 P.L.T. 749=21 A.L.J. 18=16 M.L.W. 956= 37 C.L.J. 356=25 Bom. L.R. 634= 4 L.R.P.C. 17=A.I R. 1922 P.C. 356= 44 M L.J. 751 (P. C.).

—Alienation — Necessity — Widow — Mother's debts.

———Alienation by daughter to pay off mother's debts is not binding on reversioners. (*Stuart, J.*). SITA RAM *v.* REWA RAM. 71 I.C. 390= A.I. R. 1923 All. 366.

—Alienation — Necessity — Widow — Obsequial ceremonies.

———Payment of husband's debt and performance of his obsequial ceremonies are a legal necessity. (*Coyajee and Fawcett, JJ.*). BAI SURAJ *v.* JIJIBHAY BHAVSANG. 86 I.C. 196= A.I.R. 1925 Bom. 38.

—Alienation—Necessity—Widow—Pilgrimage.

———*Pilgrimage not conducive to husband's spiritual welfare is not necessity.*

According to Hindu Law only those pilgrimages which conduce to spiritual welfare of the husband constitute a valid necessity for an alienation by a widow. A pilgrimage to Gaya for performance of the husband's Shradha has been held to constitute such necessity but not pilgrimages to places like Benares, Muttra, Brindaban, etc.: A.I.R. 1924 All. 902 and 3 C. W. N. 544, *Ref.* (*Shadi Lal, C. J. and Bhide, J.*). AHMAD DIN *v.* TULSA SINGH. 113 I.C. 292=A.I.R. 1928 Lah. 875.

———Widow is competent to alienate her husband's estate for expenses in connexion with a feast given to Brahmins after return from pilgrimage to Gaya. The feast to Brahmans, after performance of the sradh ceremony at Gaya, is an essential incident which justifies reasonable expenditure: 18 C.W.N. 1303, *Foll.*; A. I. R. 1921 All. 109 and 43 Cal. 574, *Ref.*; 33 All. 255, *Not foll.* (*Raza and Nanavutty, JJ.*). SAMRATH SINGH *v.* RAM MIT. SINGH. 110 I.C. 531=5 O.W.N. 510= A.I.R. 1928 Oudh 353.

———There is no authority for the view that a Hindu widow's pilgrimage to Dwarkaji or Jagannathji is necessarily conducive to her husband's spiritual benefit: A.I.R. 1922 P.C. 261 and 43 Cal. 574, *Dist.* (*King, J.*). RAMLAL *v.* KUNWAR RACHPAL. 102 I. C. 275=4 O. W. N. 498= A.I.R. 1927 Oudh 231.

—Alienation—Necessity—Widow—Powers of.

———Widow has no power to alienate husband's property even in absence of blood relation except for necessary purposes unless such authority is conferred by husband by will. (*Addison and Bhide, JJ.*). BALAK RAM, HIGH SCHOOL, PANIPAT *v.* NANU MAL. 31 P.L.R. 509=A.I.R. 1930 Lah. 579.

—Alienation—Necessity—Widow—Presumption.

———*Alienation challenged 49 years afterwards—Conduct of the parties who could have objected should be looked to.*

In a suit to challenge alienation by a Hindu widow 49 years after its date, it was found that the

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sister of the last male owner had attested the deed, that two reversioners had attested a sale-deed by the alienee, and in a partition among the reversioners they had agreed not to challenge the alienation and during the widow's lifetime the alienation was not challenged by the reversioners,

Held, that these circumstances lead to the inference that the alienation was for necessity: A.I.R. 1922 P.C. 163 and 43 Mad. 541, *Ref.* (*Spencer, J.*). NATESA AIYAR *v.* PANCHAPAGESA AIYAR.

93 I.C. 684=22 M.L.W. 874=
A.I.R. 1926 Mad. 247.

——Where a famine year is followed by several years of scarcity and the widow makes the alienations soon after that period, alienation can be said to have been made for necessity: A.I.R. 1917 P.C. 6, *Ref.* (*Phillips and Srinivasa Ayyangar, JJ.*). NATESA PILLAI *v.* MEENAKSHISUNDARA MUDALIAR. 109 I.C. 96 (Mad.).

—Alienation—Necessity—Widow—Purchaser's rights.

——The purchaser from widow is not bound by any previous act of mis-management by the widow so long as he is satisfied that there was a pressing necessity for the sale. (*Greaves and B. B. Ghose, JJ.*). SAILABALA DEBI *v.* BAIKUNTHA NATH.

91 I.C. 186=A.I.R. 1926 Cal. 486.

——A transferee from a Hindu widow cannot be permitted to plead against the reversioner the bar of S. 41, Transfer of Property Act: A.I.R. 1925 All. 79, *Rel. on.* (*Misra and Raza, JJ.*). KHUSHWAQT RAI *v.* JAGANNATH PRASAD TANDAN.

119 I.C. 872=A.I.R. 1930 Oudh 184.

——*Sale by widow of her absolute estate—Recital of necessity in the deed does not make it a limited estate.*

In cases where a widow or daughter has an absolute estate and where she purports to sell the property absolutely, the purchaser is entitled to rely upon the title she had and there is no reason to cut down the estate intended to be sold by presuming that the parties intended only to have a widow's estate in spite of the fact that the sale-deed purports to be an absolute sale-deed conferring full title, necessity being set out only as enabling the widow to confer such title. (*Kumaraswami Sastri and Reilly, JJ.*). PALANIYANDI *v.* VEYILAMUTHU PILLAI. 112 I.C. 320= 52 Mad. 6=
28 M.L.W. 530=1928 M.W.N. 723=
A.I.R. 1929 Mad. 93=55 M.L.J. 579.

——*Daughter can alienate only for necessity—But alienation of her life-interest can be given effect to by partition at the instance of the alienee.*

A daughter is a limited owner and therefore not entitled to alienate the property inherited from her father absolutely without there being legal necessity therefor. She cannot bind the inheritance for her own personal debts or private purposes as against reversioners, but she can do so only for her own life. She can alienate her own life-interest and effect can be given to such alienation by partition sought at the instance of the alienee. (*Adami and Sen, JJ.*). SAHDEO SINGH *v.* KISHUN BEHARI.

90 I.C. 559=7 P.L.T. 47=1925 P.H.C.C. 292=
A.I.R. 1925 Pat. 820.

——*Consideration applied to pay debt—Limited or absolute interest passes as the debt is the widow's or her husband's.*

In the case of voluntary as well as involuntary alienations of the estate of a Hindu widow, where the consideration has been applied to pay off a prior debt the same principles will apply. If the prior debt was in the nature of a personal claim

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against the widow, only her interest will pass to the alienee. But if the debt was binding on the husband's estate as well then the alienee will get an absolute estate in the property: 10 Cal. 985 (P. C.), *Foll.* (*Mears, C. J. and Piggott, J.*). B. ISHWARI PRASAD *v.* BABUNANDAN.

38 I.C. 193=47 All. 563=6 L.R.A. Civ. 291=
A.I.R. 1925 All. 495.

——*Alienee* benamidar *can't sue for declaration of title on widow's death.*

An alienation by a Hindu widow is not void but merely voidable. Transferees of widow who are *benamidars* for her, have no title whatever after the death of the widow whom alone they represented, to sue for declaration of title. (*Dawson Miller, C. J. and Mullick, J.*). BHIKARI BEHARA *v.* SRIMATI SITAMONI DEVI. 78 I.C. 467=
A.I.R. 1924 Pat. 706.

——*Improvement by alienee—Reversioner is bound to pay value of improvements.*

In a suit by reversioner, after widow's death to recover property mortgaged by the widow without necessity, the reversioner ought, on principles of equity, to compensate the mortgagee for what he has spent on the property. But if the successful reversioner is not prepared to compensate either wholly or in part, the mortgagee for what he has spent on the property, then the mortgagee is entitled to remove what he has placed on the property at his own expense: 40 C. 555 (P. C.), *Foll.*; 32 B. 32, *Dist.* (*Macleod, C. J. and Crump, J.*). SIDDAPPA BIN MAHALINGAPPA *v.* PANDURANG WASUDEO. 72 I.C. 626=25 Bom. L.R. 395=
47 Bom. 696=A.I.R. 1923 Bom. 385.

——*Purchaser is entitled to interest on consideration found binding—Increased rent from improvements must be set off against mesne profits.*

Where an alienation by a Hindu widow is set aside, the person dispossessed is entitled to the sum paid out of the purchase money towards the incumbrances binding on the estate with interest that would run concurrently with mesne profits.

Where the purchaser from a Hindu widow causes permanent improvements to be made whereby the Jama of the property is increased, the increased rent that is properly attributable to the improvements can be set off against the mesne profits, even although it was not actually executed by the person in possession at the moment when the decree for possession was made. (*Lord Buckmaster.*) RAJA RAI BHAGWAT DAYAL SINGH *v.* RAM RATAN SAHU. 65 I.C. 69=
26 C.W.N. 257=35 C.L.J. 121=
15 M.L.W. 481=24 Bom. L.R. 336=
1922 M.W.N. 102=20 A.L.J. 26=
3 P.L.T. 229=A.I.R. 1922 P.C. 91=
42 M.L.J. 243 (P.C.).

——Life-estate—Alienation by life-tenant of property acquired with estate money—Property in alienee's hands is not subject to any charge. (*Wallis, C. J. and Oldfield, J.*). RAMAYYA *v.* MAHALAKSHMI. 64 I.C. 481=
14 M.L.W. 33=1921 M.W.N. 434=
A.I.R. 1922 Mad. 357.

——*Transferee not liable for mesne profits till transfer is repudiated.*

A transfer by a Hindu widow is only voidable and until the reversioner signifies his intention to avoid it, the transferee cannot be deemed to be in wrongful possession. So, the transferee is not liable for any mesne profits or to pay any compensation for the use of the land until the transfer is

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repudiated: 34 Cal. 329 (P.C.), *Foll.*; 14 C.P.L.R. 129, *Dist.* (*Kotval, A. J. C.*). MT. RAIJI *v.* SHRIRAM. **59 I.C. 368=A.I.R. 1921 Nag. 133.**

—Alienation—Necessity—Widow—Refund.

———*Amount borrowed disproportionate to necessity —No collusion proved—Reversioner should be made to pay the amount found to be for necessity.*

Where it is shown that the money borrowed was more than the necessity justified, then the Court should find whether the creditor knew or could have known by means of enquiries then available that the money was in excess of the necessity; and if the finding is in the affirmative then the Court should allow the reversioner to recover the property on payment of the sum really justified by the necessity. If on the other hand the finding of the Court is in the negative, the transaction should be upheld in its entirety: 29 All. 331; 31 Mad. 153 and 27 All. 494, *Ref.* The mere fact that the amount borrowed is to some extent larger than the sum actually needed ought not to vitiate the mortgage. It is impossible to draw a line as to what extent an excess should be held not to vitiate the transaction. When the excess is disproportionately large, that itself is evidence of collusion and then the Court should not uphold the transaction. In cases where the Court finds that the necessity was inadequate for a part of the entire loan, the reversioner should be put to terms. The decree for possession should be subject to payment of the sum paid to the widow without interest, the usufruct of the property being set off against the interest. (*Cuming and Chakravarti, JJ.*). TARAPRASAD SAW *v.* MADHUSUDAN GIRI. **91 I.C. 12=42 C.L.J. 269=30 C.W.N. 204=A.I.R. 1926 Cal. 283.**

—Alienation — Necessity — Widow — Religious ceremony.

———Construction of a ghat on a river is a charitable and religious act justifying debt or alienation by widow. (*Baker, J.C.*). THAKUR KALLU SINGH *v.* BHURAJI. **79 I.C. 633=A.I.R. 1924 Nag. 384.**

———A contribution by a Hindu widow to the expenses of the Sradh of a near relation of her husband, half of whose property was in her possession is a valid legal necessity especially when her obligation to contribute half the expenses was admitted by one of the next reversioners. (*Dawson-Miller, C.J. and Mullick, J.*). RAMSUNDER KUER *v.* SATRUHAN PRASAD CHAUDHRI. **75 I.C. 846=A.I.R. 1924 Pat. 591.**

—Alienation—Necessity—Widow—Rent.

———A widow is entitled to sell her husband's estate to satisfy a rent decree for, although a liability to pay rent is a personal liability, still the necessity to pay off decrees for rent constitutes a legal necessity within the meaning of that term in Hindu Law: 19 C.W.N. 313, *Foll.* (*Das and Fazl Ali, JJ.*). RAM ASRE SINGH *v.* AMBICA LAL. **119 I. C. 547=11 P. L. T. 6=A. I. R. 1929 Pat. 216.**

———The payment of a decree for arrears of rent cannot by itself be considered to be legal necessity, unless there is evidence to show that the widow had no means to pay that decree: 19 C.W.N. 313; 11 M. I. A. 241 (P.C.); 30 Cal. 550 (P. C.); 16 C.W.N. 1070 and 17 C.W.N. 337, *Foll.* (*Misra, J.*). JAGANNATH SINGH *v.* GURCHARAN SINGH. **114 I. C. 783=4 Luck. 279=5 O.W.N. 1097=A.I.R. 1929 Oudh 422.**

———Payment of arrears of rent, for lease taken by widow for her own benefit is not legal necessity.

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(*Mears, C.J. and Piggott, J.*). B. ISHWARI PRASAD *v.* BABUNANDAN. **88 I.C. 193=47 All. 563=6 L.R.A. Civ. 291=A.I.R. 1925 All. 495.**

———*Payment of arrears of rent for ex-proprietary tenancy is not legal necessity.*

Where the holder of a widow's estate sells zamindary property, the ex-proprietary tenancy which comes into existence cannot be said to constitute a portion of the estate as it devolved upon her. Hence it cannot be said that in paying off a decree for arrears of rent in respect of such ex-proprietary tenancy, the limited owner is saving a portion of the family estate in her hands. Therefore the payment of such arrears of rent is not legal necessity capable of supporting an alienation of the family estate. (*Mears, C.J. and Piggott, J.*). B. ISHWARI PRASAD *v.* BABUNANDAN. **88 I. C. 193=6 L. R. A. Civ. 291=47 All. 563=A.I.R. 1925 All. 495.**

—Alienation — Necessity — Widow — Spiritual benefit.

———Alienation by widow of small portion for spiritual benefit of husband is valid—Excavation and consecration of tank are acts of high spiritual benefit—What constitutes reasonable portion depends on facts: A.I.R. 1922 P.C. 261; 43 Cal. 574 and 37 Cal. 1, *Rel. on.* (*Mohiuddin, A.J.C.*). FATTESINGH CHATRI *v.* SARHA. **122 I. C. 437=13 N.L.J. 41=A.I.R. 1930 Nag. 198.**

———*Construction of temple and ghats is conducive to spiritual benefit of husband.*

The construction of a temple and ghats is regarded by Hindus as an act of high religious merit and that the constructions if made by a Hindu widow with that object, would be conducive to the spiritual benefit of her deceased husband's soul: 2 Luck. 713, *Ref.* (*Pullan and Srivastava, JJ.*). BISHESHWAR BUKSH SINGH *v.* JANG BAHADUR SINGH. **122 I. C. 614=7 O. W. N. 173=A. I. R. 1930 Oudh 225.**

———Transfer made for the spiritual benefit of the widow and not for the benefit of the husband, does not bind the husband's estate after the death of the widow.

An act done by a widow supposed to conduce to the spiritual benefit of her husband would confer spiritual benefit on herself, but an act done by the widow supposed to conduce to the spiritual benefit of herself would not confer spiritual benefit on her husband: A. I. R. 1921 All. 178 and A. I. R. 1927 Oudh 450, *Appl.* (*Stuart, C.J. and Nanavutty, J.*). HAR MITRA *v.* RAGHUBAR PRASAD. **110 I.C. 618=3 Luck. 645=5 O.W.N. 533=A.I.R. 1928 Oudh 342.**

———Widow has power to alienate husband's estate for conducing benefit on her husband's soul, but it must be within proper and reasonable limits: 8 M.I.A. 508 (P.C.); 42 Bom. 136; (1908) A.W.N. 202; 8 Mad. 552 and 22 Cal. 506, *Rel. on.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). INDAR BUX SINGH *v.* SHEO NARESH SINGH. **104 I. C. 676=4 O.W.N. 820=A.I.R. 1927 Oudh 450.**

———A Hindu widow is not competent to alienate her inherited property for her own spiritual benefit as the acts conducive to her own spiritual benefit are not necessarily conducive to her husband's spiritual benefit: 4 All. 482; 22 Cal. 506 and 33 All. 255, *Ref.* (*King, J.*). RAMLAL *v.* KUNWAR RACHPAL. **102 I. C. 275=4 O.W.N. 498=A.I.R. 1927 Oudh 231.**

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———The money advanced for building a house necessary for the purposes of education of children does not fall within the doctrine of legal necessity. (*Greaves and Cuming, JJ.*). JOGESH CHANDRA GHOSE *v.* CHAPALA SUNDARI BASU.
90 I.C. 594=A.I.R. 1926 Cal. 383.

———Within a proper limit a widow can alienate her husband's property for the performance of religious acts which are supposed to conduce to his spiritual benefit: 43 Cal. 574 and 11 Ben. L.R. 418, *Rel. on.*

If the property sold or gifted by the widow bears a small proportion to the estate inherited and the occasion of the disposition or expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioners: 34 Mad. 288, *Rel. on.* (*Jwala Prasad and Bucknill, JJ.*). RAM SUMRAN PRASAD *v.* GOVIND DAS. **99 I.C. 782=5 Pat. 646=7 P.L.T. 821=A.I.R. 1926 Pat. 582.**

———Alienation of small portion of husband's estate for act, conducing to benefit of his soul is allowed—Alienation of whole estate where income is not sufficient may be allowed for an object regarded as essential for salvation of the husband's soul. (*Martineau and Campbell, JJ.*). MT. TEHL KUAR *v.* AMTAR NATH. **79 I.C. 670=17 P.W.R. 1923=A. I. R. 1925 Lah. 2.**

———Caste feasts are not "charitable or religious purposes" within the meaning of Hindu Law. (*Madgavkar, A.J.C.*). THAOOMAL PANJOOMAL *v.* SOMIMAL CHELLA RAM. **84 I.C. 685=A.I.R. 1924 Sind 140.**

———*Alienation for performing optional ceremonies is allowed if it is of a small portion.*

The Hindu system recognizes two sets of religious acts, one is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed in the Hindu Religious law, which are considered as essential for the salvation of the soul of the deceased; the other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. With reference to the first class of acts, the powers of the Hindu female, who holds the property, are wider than in respect of the acts which are simply pious and if performed are meritorious, so far as they conduce to the spiritual benefit of the deceased. In one case, if the income of the property, or the property itself, is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view. If the property sold or gifted bears a small proportion (which it is impossible to define more exactly) to the estate inherited and the occasion of the disposition or expenditure is reasonable and proper according to the common notions of the Hindus, it is justifiable and cannot be impeached by the reversioner. (*Mr. Ameer Ali.*) SARDAR SINGH *v.* KUNJ BIHARI LAL.
69 I. C. 36=37 C. L. J. 383=27 C. W. N. 653=25 Bom. L. R. 648=2 P.W.R. 1923=44 All. 503=16 M. L. W. 871=49 I.A. 383=31 M. L. T. 253=A.I.R. 1922 P.C. 261=44 M.L.J. 766 (P.C.).

———*Widow's spiritual benefit is no necessity.*

Under the Mitakshara Law in order to justify an alienation by a widow of a portion of her husband's property for religious or charitable purposes, it must be established that the alienation is supposed to conduce to the spiritual welfare of her husband, even if the portion of the property alienated be not excessive. An act done by the widow supposed to conduce to the spiritual benefit of herself would not confer benefit on her husband: 4 All. 482, *Foll.*; 8 M.I.A. 529 (P.C.) and 43 Cal. 574, *Ref.* (*Rafique and Stuart, JJ.*). SHAM DEVI *v.* BIRBHADRA PRASAD. **62 I. C. 432=43 All. 463=19 A.L.J. 312=A.I.R. 1921 All. 178.**

—Alienation—Necessity—Widow—Test applicable.

———*When all facts are not within lender's knowledge, test to be applied must be less strict.*

It is difficult for a lender to know the exact extent of the legal necessity in respect of which he advances the money on the security of the family property, and different test would be applied in a case when all the facts are not within the lender's knowledge than the strict test that would be applied if all the facts are necessarily within the lender's knowledge. (*Greaves and Cuming, JJ.*). JOGESH CHANDRA GHOSE *v.* CHAPALA SUNDARI BASU. **90 I.C. 594=A.I.R. 1926 Cal. 383.**

—Alienation — Necessity—Widow — Miscellaneous.

———A permanent lease by widow in consideration of the lessee looking after her in her old age is for legal necessity. (*Cuming and B.B. Ghose, JJ.*). RAJENDRA NATH *v.* PEYARI MOHAN.
94 I. C. 321=A.I.R. 1926 Cal. 854.

———*Alienation by limited owner for clearing debts binding on estate—Transferee—Burden of proof.*

A sale by a female owner to pay outstanding debts which are a charge on the estate and which bind the estate and which could not be got rid of by the reversioners without payment is one for necessity and it is not incumbent on the transferee to establish that some dire consequences would have ensued if those debts had not been discharged: A. I. R. 1923 All. 535, *Dist.* (*Sulaiman, J.*). AMBIKA PRASAD *v.* MADHO PRASAD. **85 I.C. 868=A.I.R. 1925 All. 621.**

———*Adequacy of consideration is immaterial unless fraud or collusion is proved.*

Per *Ashworth, J.*—When once it is shown that a sale by a Hindu father and manager is necessary, no suit will lie against the vendee in the absence of fraud or collusion being proved against him, on the ground of insufficiency of price inasmuch as the father is empowered to make arrangements for the sale and the vendee can scarcely be expected to see that the price is inadequate. (*Sulaiman, J., contra.*) (*Sulaiman and Ashworth, JJ.*). BANKEE LAL *v.* NATHA RAM. **107 I.C. 576=A.I.R. 1929 All. 199.**

———*Alienation by manager—"Excess of necessity" explained* (obiter).

"Excess of necessity" relates to terms that are available because, if you must borrow and therefore must pay interest, it cannot be in excess of the authority on that occasion to pay the terms that are necessary, when more moderate terms are not available: A. I. R. 1919 P. C. 12, *Expl.* (*Viscount Sumner.*) SUNDER MULL *v.* SATYAKENKAR SAHANA. **108 I.C. 337=7 Pat. 294=55 I.A. 85=26 A.L.J. 364=9 P.L.T. 203=27 M.L.W. 461=1928 M.W.N. 242=5 O.W.N. 400=47 C.L.J. 403=30 Bom. L. R. 793=32 C.W.N. 657=A.I.R. 1928 P.C. 64=54 M.L.J 427 (P.C.).**

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———*Deed — Construction "Commercial terms," meaning explained.*

The expression "commercial terms," as used in a deed is relative to the time and the place, the country and part of the country where the money is borrowed, the kind of security that is offered for the loan, the possibilities of realising the security, the supply of capital and the opportunity of persons willing to lend for possibly a considerable time, it cannot be confined, as in England, to something connected with a publicly announced and official rate of interest for loan generally or to a current rate generally allowed upon the highest security in financial transactions, such as an issue of debentures or something regulated by the day to day supply of money and by facilities for short loans. The word "commercial" must be understood of a community which is not a commercial community and of transactions which no one would call mercantile, as a comprehensive but convenient term for such terms as can be arranged freely between borrower and lender under the circumstances of the particular case: A.I.R. 1919 P.C. 12, *Expl.* (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA.
108 I C. 337=26 A.L J. 364=9 P.L.T. 203=55 I.A. 85=27 M L W. 461=1928 M.W.N. 242=5 O.W.N. 400=47 C.L J. 403=30 Bom. L.R. 793=32 C.W.N. 657=7 Pat. 294=A.I.R.1928 P.C. 64=54 M L J 427 (P.C.).

———Discharge of debt by father or manager not made a ground for sale—Mere subsequent discharge cannot support the sale.

In all the cases, in order to determine whether an alienation is for necessity or not, what the Court has to see is the state of things when the alienation was made and the purpose for which the alienation was made or stated to be made. (*Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ.*). SATHAPPAN AMBALAM *v.* VADIVELU.
109 I C. 106=A.I.R. 1928 Mad. 450.

———Where the property mortgaged forms the separate or self-acquisition of the mortgagor no question of benefit or legal necessity strictly arises. (*Kinkhede, A.J.C.*). GOPAL RAO *v.* BABU.
107 I.C. 903=A.I.R. 1928 Nag. 273.

———*Practice of settling cases by accounting not approved.*

The practice of the Allahabad High Court of investigating and settling the cases of alienation of family property upon the principles of accounting, imperils transactions of sale, which, in their real essence and substance, are sales made for family necessity. (*Lord Shaw.*) GAURI SHANKAR *v.* JIWAN SINGH. **107 I.C. 4=25 A.L.J. 967=47 C.L.J. 7=1928 M.W N. 1=4 O W.N. 1192=32 C W.N. 257=30 Bom. L.R. 64=27 M.L.W. 203=A I.R. 1927 P C. 246=53 M.L.J. 786 (P.C.).**

———Finding as to existence of legal necessity can be examined in second appeal: 9 A.L.J. 63, *Foll.* (*Kinkhede, A.J.C.*). MOTIRAM *v.* TUKARAM.
96 I.C. 1006=A.I.R. 1926 Nag. 486.

———*Plea.*

It is open to a subsequent transferee to take the plea that the prior mortgage was without legal necessity: 33 All. 783 (F. B.), *Foll.* (*Lindsay and Sulaiman, JJ.*). INAYAT ELAHI *v.* HARDEO SAHAI. **74 I C. 325=45 All. 692=21 A.L.J. 610=5 L.R.A. Civ. 61=A.I.R. 1924 All. 29.**

HINDU LAW—Alienation—Recitals.

———*Purpose mentioned in the deed must be examined.*

Where a sale-deed, jointly executed by the heads of all the branches of a family, mentions the purpose for which the sale was made, the Court has merely to examine whether that purpose is one which Hindu Law recognizes as valid. There is no room for raising any presumption with regard to legal necessity for the transaction. *Balvant Santaram* v. *Babaji bin Sambhapa*: referred to. (*Daniels, J.C.*). MT. MANZUREN BIBI *v.* JANKI PRASAD. **66 I.C. 930=9 O.L.J. 35=A.I.R. 1922 Oudh 50.**

—Alienation—Partial enforcement.

———*Transfer not justified—Cannot be partially enforced.*

An alienation or transfer of the joint family property by a manager (otherwise than for legal necessity and otherwise than for an antecedent debt) if avoided by other co-parceners, is entirely ineffectual and will not operate to transfer his own share: A.I.R. 1917 P.C. 41; A.I.R 1917 P.C. 61, *Rel. on.* (*Ashworth, J.*). MT. ASHRAFUNNISSA BEGAM *v.* SAHDEO PANDE. **117 I C. 609=A I.R. 1929 All. 479.**

———Alienation otherwise invalid cannot be enforced even against the father's own share in the joint family property in U.P: 6 I A. 88; 39 A. 437, *Foll.*; A.I.R. 1924 P. C. 50, *Expl.*; A.I.R. 1924 All. 24, *Foll.* (*Daniels, J.*). MANESHER LAL *v.* AMAR NATH. **78 I.C. 626=5 L.R.A. Civ. 286=A.I.R. 1924 All. 493.**

———*Sale by father set aside—Vendee not entitled to charge even on father's share.*

Where in a suit by a son, an alienation by an undivided Hindu father was set aside on the ground that no legal necessity was proved and it was found that the vendor had not misled the vendee that he (the vendor) was the sole owner,

Held, that the vendee was not entitled to any charge for the purchase money even on the vendor's share. (*Lindsay and Kanhaiya Lal, JJ.*). RAM SAHAI *v.* PRABU DAYAL. **63 I.C. 358=43 All. 655=19 A.L.J. 687=A. I. R 1921 All. 137.**

———*Unauthorised alienation by Karta does not bind even his share.*

A mortgage executed by the Karta of the family without the consent of the other members and executed without family necessity or in payment of an antecedent debt, is invalid and gives the mortgagee no charge upon the family property or even upon the undivided share of the mortgagors themselves: 39 All. 500 (P.C.), *Foll.* (*Dawson-Miller, C. J. and Mullick, J.*). BANKHUNDI RAI *v.* KESHORI MANDAL. **61 I.C 102=6 P.L.J. 72=2 P.L.T. 17=1921 P.H.C C. 113=A.I.R. 1921 Pat. 18.**

—Alienation—Recitals.

———*Not of much evidentiary value—Effect of.*

The recital by a father in a mortgage deed to the effect that the deed is executed for family necessity is an admission by him as a manager of the Hindu family, but is of little evidential value as it may have been a false recital made by him for his own purposes, except when under circumstances they amount to a representation of the need of the family or owing to length of time it is impossible to produce other evidence: A.I.R. 1914 P.C. 38 and A.I.R. 1916 P.C. 110, *Expl.* and *Foll.* (*Ashworth and Sen, JJ.*). PADAM SINGH *v.* REOTI SARAN. **118 I.C. 372=1929 A.L.J. 873=A.I.R. 1929 All. 481.**

HINDU LAW—Alienation—Recitals.

———*Recitals are no evidence—In old deeds they are presumptive evidence.*

Recitals in deeds cannot by themselves be relied upon for the purpose of proving assertion of facts that they contain. They are certainly some kind of evidence and if the recitals happen to be in a document sufficiently old they become more and more weighty as time goes on. But such recitals can never be conclusive evidence. In the case of recitals found in old documents they can be used as presumptive evidence but the presumption that can arise from them cannot be said to be one which is unrebuttable: A.I R. 1916 P.C. 110, *Foll.* (*Mullick, J.*). ADHAR CHANDRA BHATTACHARYA *v.* SUSHILA SUNDARI PAL. **109 I. C. 35 (Cal.).**

———*Lapse of time—Value of recitals.*

When proof of actual enquiry has become impossible by lapse of time, the recital of necessity and its representation to the purchaser would be sufficient evidence to support an alienation of joint family property by the manager, but this rule would not apply where there is no lapse of time: A.I.R. 1916 P C. 110 (P. C.), *Ref.* (*Jai Lal and Fforde, JJ.*). AMAR NATH *v.* KISHEN CHAND.
103 I.C. 224=A.I.R. 1927 Lah. 629.

———*Recital as to necessity is not by itself evidence.*

The mere recital in the deed as to necessity is no evidence of such necessity so as to bind minor members, where it is not shown that any enquiry was made at all, nor is it shown that proof of that enquiry was not forthcoming owing to lapse of time: 36 All. 187 (P.C), *Foll.*; 44 Cal. 186 (P. C.), *Dist.* (*Harrison and Dalip Singh, JJ.*). MUNI LAL *v.* KISHORE CHAND. **103 I.C. 742=9 L.L.J. 157=28 P L R. 325=A.I.R. 1927 Lah. 373.**

———Recitals in deeds as to existence of necessity are not evidence without substantiation, by evidence, *aliunde*: A. I. R. 1914 P.C. 38, *Foll.* (*Madhavan Nair, J.*). VEGE RAMAYYA *v.* SURYANARAYANAMURTHI. **105 I. C. 150=A.I.R. 1927 Mad. 890=53 M.L.J. 464.**

———*Recitals as to necessity—Lapse of time—Value of.*

Recitals in deeds cannot by themselves be relied upon for the purpose of proving the assertions of fact which they contain. They can only be evidence as between the parties to the conveyances and those who claim under them, yet after a long period has elapsed, between the alienation and the suit to set it aside, when all those who could have given evidence on the relevant points have grown old or have passed away, a recital consistent with the possibilities and circumstances of the case assumes greater importance and cannot lightly be set aside. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth then, when proof of actual enquiry has become impossible the recital coupled with such circumstances would be sufficient to support the deed: A.I.R. 1916 P. C. 110, *Foll.* (*Raza, J.*). MT. MENDA *v.* LACHMAN PARSHAD.
101 I.C. 769=A.I.R. 1927 Oudh 566.

———*Lapse of time—Value of recitals.*

After lapse of many years' recital, coupled with circumstances, may be sufficient evidence to support the deed of alienation; therefore inquiry should be made by Court as to the nature of the recitals and the circumstances existing at the time those recitals were made: 44 Cal. 186, *Expl.* and

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Appl. (*Mukerji and Dalal, JJ.*). MAHOMED NUH *v.* BRIJ BEHARI LAL. **82 I.C. 5=46 All. 656=22 A.L.J. 650=5 L.R.A. Civ 424=A I.R. 1924 All. 939.**

———*Father—Recitals as to necessity in, do not bind sons, though they may be evidence of representation.*

A recital in a deed by a manager will not bind other members of the family in respect of an alienation by him which they are impugning; but it may be evidence of a representation made as to necessity which coupled with proof showing that actual enquiry has become impossible, and coupled with circumstances justifying reasonable belief that an enquiry would have confirmed the truth of the recital, would be sufficient evidence to support the necessity stated. (*Ashworth, J.C.*). JAMNA PRASAD *v.* BALBHADDAR. **74 I.C. 353=25 O C. 388=9 O.L.J. 601=A.I.R. 1923 Oudh 147.**

—Alienation—Refund.

——— *Necessity not proved as to small portion—Order for re-payment by purchaser to reversioner of amount not for necessity cannot be sustained (obiter).*

Where the major portion of the consideration of the sale effected by a Hindu widow of her husband's estate is found to be supported by legal necessity and the sale is on that ground sustained, an order for re-payment by the purchaser to the reversioners who had sued to set aside the sale, of the small and insignificant portion of the consideration not proved to have been supported by legal necessity is opposed to the whole current of authority and cannot be sustained: A.I.R. 1927 P.C. 37, *Ref.* (*Kinkhede, A.J.C.*). KISAN *v.* TUKARAM SIDKE.
A.I.R. 1929 Nag. 180.

———*Alienee—Suit for refund—Cause of action—Limitation.*

Plaintiffs purchased a certain property from a Hindu father and the sale was subsequently cancelled in a suit by the sons to set it aside on their depositing a certain sum in Court. Plaintiffs sued the sons of vendor, for the balance of the purchase money,

Held, that the suit is not barred by the principles of *res judicata* as money paid to the father as consideration for the sale at the time of the sale cannot be regarded as a debt of the father until the sale had been set aside and the right of the vendee to get back the sale consideration from the father has accrued. And that the decree in the son's suit became operative only at the date of deposit and the period of limitation under Art. 97 would run from that date and not from the date of the passing of the decree: 39 All. 485, *Foll.* (*Dalal and Pullan, JJ.*). RAGHUNATH PRASAD *v.* RAM BHAROSE.
100 I.C. 745=A.I.R. 1927 All. 421.

———Mortgage of joint family without necessity is void from its inception—Mortgagor is bound to re-pay loan under S. 65 of the Contract Act, as soon as it is discovered to be void: 39 All. 500 and A.I.R. 1922 P.C. 403, *Foll.* (*Raza and King, JJ.*). SHAMBOO SUKUL *v.* DHANESHAR SINGH.
101 I.C. 265=4 O.W.N. 256=A.I.R. 1927 Oudh 177.

———*Reversioner setting aside must refund benefit.*

Where a sale by a Hindu widow having a limited interest has benefitted the estate by the payment of debts which are binding on it, although the amount paid may not amount to the whole of the consideration money received for the property sold, the Court will when it sets aside the sale, direct payment to the alienee to the extent of the benefit received by the estate. It follows, therefore, that if the consideration-money for the sale is found

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intact at the death of the widow, the estate has benefitted to that extent; hence if the reversioner after the widow's death wishes to have the sale by her set aside, he can only succeed if he restores the money. It will be different if it cannot be proved that the purchase money is still intact in the estate. (*Macleod, C.J. and Coyajee, J.*). SOMESHWAR JETHABAI DAVE *v.* SOMESHWAR GOVINDRAM JOSHI. **67 I.C. 658=47 Bom. 1=24 Bom. L.R. 493=A. I. R. 1923 Bom. 16.**

———Alienation by father set aside in favour of son—Vendee is not entitled to a condition in the decree for return of the consideration, affected by the sale being set aside. For the consideration which has failed, the appellants may either secure payment from the vendor or sue him and execute their decrees against the whole family property. (*Le Rossignol and Campbell, JJ.*). BADAM *v.* MADHO RAM. **66 I.C. 19=2 Lah. 333=A.I.R. 1922 Lah. 241.**

———An alienation could be upheld where if only that amount had been borrowed, which the Court finds for legal necessity, a mortgage would still have been necessary; if not the alienation should be set aside on condition that the creditor be repaid the money advanced with interest. (*Daniels, A.J.C.*). UMRAO SINGH *v.* GAYA PRASAD. **60 I.C. 647=23 O.C. 374.**

—Alienation—Setting aside.

———*A son in embryo can impugn.*

For certain purposes a child *en ventre sa mere* is to be considered as born, and the right of a son to take objection to the alienation made by his father dates not from the hour of his birth, but from that of his conception. (*Shadi Lal, C.J. and Bhide, J.*). MAHOMED KHAN *v.* AHMAD KHAN. **116 I.C. 545=10 Lah. 713=30 P.L.R. 737=A.I.R. 1929 Lah. 254.**

———De facto *guardian—Mortgage by—Validity of—Who can challenge.*

Under Hindu Law a mortgage effected by a *de facto* guardian is not void but only a voidable transaction: and though mortgage can be challenged by the minor as not being for his benefit, third persons have no *locus standi* to challenge it on that ground: 73 P.R. 1890, *Foll.* (*Bhide, J.*). TAPASSI RAM *v.* RAJA RAM. **115 I. C. 417=A.I.R. 1930 Lah. 136.**

———*Alienations by guardian are only voidable—Minor on coming of age may impugn any sale that is not binding on him.*

Alienations made by a guardian, if not legally justified, are only voidable and not void. The minor on coming of age may elect to stand by the same or may elect to avoid the same. The circumstance that the minor has elected not to impugn some sales by guardian is no ground by itself to debar him from impugning the same to an alienee, if on the facts proved a particular sale by the guardian is not binding on the minor. The motive of the minor in bringing the suit is irrelevant, if his legal right to the property is proved, though in appreciating the evidence, the motive may throw some light in particular cases. (*Ananthakrishna Ayyar, J.*). SREENIVASA RAO *v.* ERAPPA. **122 I. C. 43=A.I.R. 1929 Mad. 856.**

———*Transfer not for necessity—No presumption of benefit.*

In absence of evidence to show as to how the consideration-money was disposed of, a transfer of minor's property by his guardian which is proved not to be for necessity, cannot be upheld as benefitting the minor's estate, because there is no presumption that a debt contracted by a manager of a Hindu family is for the benefit of the family: A.I.R. 1924 Lah. 44 and A.I.R. 1925 All. 618, *Applied*, (*Subhedar, A.J.C.*). HARI *v.* JHIM. **117 I. C. 223=A.I.R. 1929 Nag. 117.**

HINDU LAW—Alienation—Setting aside.

———*Suit by minor—Declaration against can be given, when he is not a figure head for alienor.*

A declaratory decree may be given in a suit to contest an unnecessary alienation if the suit is brought honestly on behalf of a minor reversioner to protect his interests, but it would not be proper to pass such a decree in a case in which the minor is merely a figure head and the real plaintiff is the alienor himself, who has caused the suit to be instituted for the purpose of undoing his own act: A.I.R. 1925 Lah. 24, *Foll.* (*Tek Chand and Bhide, JJ.*). MAQBUL HUSAIN *v.* DIL MOHAMMOD. **109 I.C. 585 (Lah.).**

———*Elder brother not challenging in time—Suit by younger brother is barred.*

If the eldest brother, who is naturally the managing member of the family, does not bring a suit within time to set aside an alienation, any suit by a younger brother would be barred inasmuch as the suit is barred against the elder brother: 38 Mad. 118, *Foll.*; A.I.R. 1926 P.C. 16, *Cons.* (*Devadoss and Jackson, JJ.*). SURRAYYAH *v.* SUBAMMA. **106 I.C. 863=1927 M.W.N. 911=A.I.R. 1928 Mad. 42=53 M.L.J. 677.**

———*Portion of consideration not for necessity—If alienation will be set aside—Real question is if alienation was justified—If justified alienee need not see to the application of surplus.*

The statement that, "where a father has sold ancestral property for the discharge of his debts, if the application of the bulk of the proceeds is accounted for the fact that a small part is not accounted for will not invalidate the sale," although in itself a correct statement of the law, is not a complete statement of the law; a sale will not necessarily be invalidated wherever the part of the consideration not accounted for cannot be described as small.

The true question which falls to be answered in such cases is whether the sale itself was one which was justified by legal necessity. This is the point of view from which the matter should be approached.

Where the sale has been held to be justified, but there is no evidence as to the application of a portion of the consideration, a presumption arises that it has been expended for proper purposes, and for the benefit of the family.

Where the purchaser acts in good faith and after due enquiry, and is able to show that the sale itself was justified by legal necessity; he is under no obligation to enquire into the application of any surplus and is, therefore, not bound to make re-payment of such surplus to the members of the family challenging the sale: 6 M.I.A. 393 (P.C.); (1864) W.R. 385; (1867) 8 W.R. 75, *Rel. on*; 25 All. 330 and 27 All. 494, *Disapproved*; 86 I. C. 91; A.I.R. 1925 All. 324; 47 All. 355, *Overruled*.

Where the sale challenged was made after due enquiry as to the legal necessity by the vendee, such necessity had been proved by him to the extent of Rs. 3,000 out of a total price of the Rs. 3,500 and sale was for an adequate consideration,

Held, that the mere fact that after a long interval of time the purchaser had not been able to establish how the surplus of Rs. 500 was applied is not a sufficient ground in law for setting aside the

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sale. (*Lord Salvesen.*) SRI KRISHNA DAS *v.* NATHU RAM. **100 I.C. 130=49 All.149=54 I.A. 79=25 A.L.J. 80=1927 M.W N. 89=38 M.L.T. 48=4 O.W.N. 184=31 C.W.N. 462=8 P.L.T. 210=45 C.L.J. 386=29 Bom. L.R. 825=26 M.L.W. 856=A.I.R. 1927 P.C. 37=52 M.L.J. 720 (P.C.).**

———Property of deceased held by widow for herself and her minor children—Alienation by widow, not for legal necessity—Setting aside—Cause of action arises not on the date of death of the widow, but on date of deed. (*Carr, J.*). M. V. MUDALIAR *v* V. S. M. PILLAY. **99 I.C. 753=5 Bur. L J. 173=A.I.R. 1927 Rang. 85.**

———Alienation by father—Son's suit challenging alienation is not collusive unless father is the real financier for suit: A.I.R. 1925 Lah. 24, *Foll.* (*Addison, J.*). HARNAM SINGH *v.* JAGER SINGH. **98 I. C. 865=A.I.R. 1927 Lah. 46.**

———*Consideration partly binding — Order to be passed must depend upon equitable considerations.*

A minor through his mother as next friend sued his father for partition of the joint family property. The father had sold certain family property. The sale consideration was Rs. 500 but only Rs. 320 was actually paid. The minor sought to set aside the sale and the question was to what relief the minor was entitled. The two Judges disagreeing, the matter was referred to the Chief Justice.

Held, that there is no uniformity of practice in such matters and in such matters the Court acts on equitable principles. In the present case the fair thing to do was to sell the property and divide the proceeds in proper shares to which the parties were entitled. (*Schwabe, C.J.*). MEENATCHI AYYAN *v.* RANGACHARLU. **1922 M. W.N. 719=A.I.R. 1923 Mad. 120=16 M.L.W. 595.**

———*Necessity or benefit not proved—Reversioner seeking to recover need not pay compensation to alienee.*

Where the mother and guardian of a minor proprietor alienates property of the minor for purposes neither necessary nor beneficial, and the reversioner to the estate of the minor sues to recover the property he is entitled to recover without paying any compensation as no equities arise between the reversioner and the alienee: 9 W.R. 511; 42 Mad. 36 and 32 All. 392, *Dist.* (*Odgers, J.*). B. SITAYYA *v.* P. RA MASWAMI. **91 I. C. 758=22 M.L.W. 476=1925 M. W. N. 587=A. I. R. 1925 Mad. 1288.**

———Sale of joint property for discharging valid mortgages of joint property is binding on coparceners. (*Lord Blanesburgh.*) LAL BAHADUR *v.* AMBIKA. **91 I.C. 471=28 O.C. 371=47 All. 795=52 I.A. 443=23 M.L.W. 220=12 O.L.J. 643=30 C.W.N. 701=1925 M. W. N. 852=2 O.W.N. 913=A.I.R. 1925 P.C. 264 (P.C.).**

———*Validity of alienation—Tests of.*

Per *Srinivasa Iyengar, J.*—When the question is whether a transaction by a guardian on behalf of a minor should be set aside the usual test namely whether a man of ordinary prudence would have entered into such a transaction in respect of his own property is too broad. However, it indicates one limit, namely, that no Court will uphold a transaction which it considers that a man of ordinary prudence would not have had in respect of his own property. The other limit is that, supposing that at the time of the transaction the guardians who acted actually were guardians appointed by the Court and they made an application to the

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Court for sanctioning a particular transaction, the circumstances must be such as the Court would consider justifiable for the purpose of sanctioning the transaction. (*Spencer, Offg.C.J. and Srinivasa Aiyangar, J.*). MUNAYYA *v.* KRISHNAYYA. **84 I.C. 949=20 M.L.W. 693=A.I.R. 1925 Mad. 215=47 M. L.J. 737.**

———Alienation by manager of his share and that of minor brother,

Held, that the minor cannot ignore the sale but must first sue for declaration, that the sale does not bind his share, within 12 years of his becoming aware of the sale. (*Macleod, C.J. and Shah, J.*). KRISHNAJI SONAJI *v.* SADANAND MAHADEO. **80 I.C. 763=26 Bom. L.R. 341=A.I.R. 1924 Bom. 417.**

———Sale proceeds invested in money lending—Money-lending business brought into account in partition but not property sold—Sale cannot be set aside. (*Schwabe, C.J. and Wallace, J.*). DURAISAMI *v.* SUBBARAYA. **72 I.C. 322=17 M.L.W. 348=32 M.L.T. 277=1923 M.W.N. 242=A. I. R. 1923 Mad. 442.**

———*Son's suit to set aside—Form of relief.*

A Hindu son is entitled to set aside an alienation by his father of ancestral property which has not been effected for the payment of an antecedent debt or for any family necessity: 53 P.R. 1901; 28 A. 328; 39 A. 485, *Rel.* In a suit for possession of the properties so alienated the son is not bound to refund the purchase money but can claim possession of the property. 11 C. 396; 32 I.C. 891, *Ref.* (*Broadway and Martineau, JJ.*). KALI CHARAN *v.* JAGGU. **67 I.C. 89 (Lah.).**

———*Suit to challenge alienation—Subsequently born members have no fresh cause of action.*

Once a cause of action to bring a suit to challenge the alienation of a joint Hindu family property comes into existence, no fresh cause of action accrues to members who are subsequently born in the family after the execution of the sale-deed: A.I.R. 1921 Oudh 196, *Foll.* (*Dalal, A.J.C.*). SHEO AMBUR KHAN *v.* RATIPAL SINGH. **65 I. C. 404=8 O. L. J. 679=A.I.R. 1921 Oudh 229.**

———*Alienation not binding on sons then living, not binding on sons born subsequently also.*

A son cannot object to alienations validly made by his father before he was born or begotten, because he could only by birth obtain an interest in property which was then existing in his ancestor. Hence if at the time of the alienation there had been no one in existence whose assent was necessary or if those who were then in existence had consented, he could not afterwards object on the ground, that there was no necessity for the transaction. If, however, an alienation was made by a father without necessity and without the consent of sons then living, it would not only be invalid against them but also against any son born before they had ratified the transaction, and no consent given by them after his birth would be binding upon him. Where a promissory note executed a few days before the mortgage in favour of the mortgagee himself constitutes part of the consideration of the mortgage it is upon the mortgagee to show that this debt, although it may be called an antecedent debt was borrowed for purposes which would make it binding on the joint family. (*Rafique and Lindsay, JJ.*). BHUP KUAR *v.* BALBIR SAHAI. **64 I.C. 885=44 All. 190=19 A.L.J. 978=A.I.R. 1922 All. 382.**

HINDU LAW—Alienation—Widow—Compromise.

—Alienation—Widow.
Compromise.
Consent of reevrsioner.
Gift.
Powers of.
Setting aside.
Miscellaneous.

—Alienation—Widow—Compromise.

——Alienation by widow within her competence, as reasonable and prudent compromise of existing claim against her husband's estate, is binding on reversioners : A. I. R. 1922 P. C. 356, *Ref.* (*Sir George Lowndes.*) RAOJI *v.* KUNJALAL HIRALAL AGARWALA. **123 I.C. 709=34 C.W.N. 627=51 C L.J. 434=A.I.R. 1930 P. C. 163 (P.C.).**

——A compromise made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest : 33 All. 356 (P.C.); A. I. R. 1922 P. C. 356 and A. I. R. 1925 P. C. 272; *Ref.* (*Stuart, C. J. and Wazir Hasan, J.*). HARIHAR PROTAB BAKHSH SINGH *v.* BISHESWAR BAKSH SINGH. **109 I C. 422=3 Luck. 326=5 O.W.N. 299=A I.R. 1928 Oudh 307.**

——*Compromise not* bona fide *and collusive—If amounts to alienation—Tests.*

A Hindu widow sued for recovery of her husband's share of the family properties alleging that her husband and the defendant were divided. The suit was compromised by which she admitted there was no division, accepted certain lands absolutely for herself, and gave up the rest of property movable and immovable. In a suit by the reversioner challenging the transaction it was proved that the compromise was not a *bona fide* one but was the result of collusion and that the husband had been divided.

Held, that the compromise amounted to an alienation and was not binding on the reversioners.

In all such cases the questions (1) whether the compromise of the widow is *bona fide*, and (2) whether the compromise amounts to an alienation depend on the true facts as found in the later suit, on the terms obtained by the widow in the compromise, *i.e.*, whether she was surrendering any portion of her rights as then ascertained with reference to the facts and how much, whether she was reserving any benefit for herself personally as opposed to the estate, and lastly, whether the real facts were known to her. That she obtained a benefit peculiar to herself should be a good proof of want of *bona fides*. Whenever a compromise, by which the widow surrenders property to which she is entitled on the true facts, has been found to be not *bona fide*, it amounts to an alienation. (*Ramesam, J.*). BACHU CHINNA *v.* BACHU NARANAPPA. **87 I.C. 667=1925 M.W.N. 311=A.I.R. 1925 Mad. 731=48 M.L.J. 461.**

——*Reversioner only can set aside deed of settlement.*

A deed of settlement cannot be set aside by a person who has a limited interest. It could be done at the instance of even a remote reversioner. Where plaintiff is only entitled to a right of maintenance he should advertise for the next reversioner and then file a suit for setting it aside. (*Kajiji, J.*). BAI PRATAPGAVARI *v.* MULSHANKAR PREMCHAND. **80 I.C. 173=26 Bom. L.R. 269=A.I.R. 1924 Bom. 353.**

——*Compromise by alienee—Person deriving interest from alience cannot question it.*

A person entitled to object to an alienation made by a widow in favour of her son-in-law brought a suit to have such alienation declared null and void. The representatives in-interest of the alienee realising that the position of their predecessor-in-title was untenable entered into a compromise with such person.

Held, that such compromise cannot be questioned by one who derives his title from the representatives-in-interest of the alienee. (*Broadway and Abdul Qadir, JJ.*). MT. MALTO *v.* FAKIRA. **4 L.L.J. 27=A. I. R. 1922 Lah. 115.**

HINDU LAW—Alienation—Widow—Consent of reversioner—Accepting benefit.

—Alienation—Widow—Consent of reversioner—Accepting benefit.

——*Reversioner consenting to gift by widow to next reversioner is precluded on ground of election to challenge it.*

A Hindu widow who succeeded to the estate of her sons gifted a portion of it to her daughter with the consent of her daughter-in-law who was also a widow on condition that the donee was to maintain the widows during their lifetime. On the death of the daughter and the widow the daughter-in-law claimed possession on the ground that she was the heir.

Held, that the daughter-in-law having received maintenance from the daughter was precluded on the ground of election from maintaining the suit : A.I.R. 1927 Bom. 260 (F B.), *Rel. on*; A.I R. 1922 Bom. 102 ; A.I.R. 1918 P.C. 196 and A.I R. 1927 P.C. 227, *Ref* ; 44 Bom. 488, *Dist.* (*Madgavkar, J.*). ANNU MUKUNDA KAKADE *v.* SHRIPATI TUKARAM SHINDE. **32 Bom. L.R. 705=A.I.R. 1930 Bom. 373.**

——Next reversioner consenting to alienation—Alienation is presumed to be for necessity although reversioner takes substantial benefit: 30 All. 1 (P.C.), *Foll.*; A.I.R. 1918 P.C. 196, *Expl.* (*Das and Ross, JJ.*). AMBICA PRASAD *v.* CHANDRAMANI. **117 I.C. 867=8 Pat. 396=10 P L.T. 607=A.I.R. 1929 Pat. 289.**

——In the case of an alienation by widow, the reversioner's act in accepting a substantial benefit from the alienation amounts to an act showing his consent to the alienation and his election to treat it as valid and binding, so far as he is concerned. (*Fawcett, Ag.C.J. and Mirza, J.*). JARGEVA *v.* GOVINDAPPA. **113 I.C. 42=30 Bom. L. R. 1145=A. I. R. 1928 Bom. 495.**

——Reversioner consenting and receiving benefit under, cannot challenge validity of the transaction: A.I.R. 1927 P.C. 227, *Foll.* (*Kumaraswamy Sastri and Reilly, JJ.*). KRISHNASWAMY *v.* MUTHULAKSHMI. **112 I.C. 762=1928 M.W.N. 609=A.I.R. 1928 Mad. 1097.**

——*Descendants of the reversioner cannot challenge alienation.*

A Hindu widow alienated most of her husband's property by virtue of three deeds:—By one she gifted certain property to her brother; by the second she sold half of five Survey numbers to a Bhauband of her husband and by the third she sold the other half of these properties to her son-in-law. After her death the descendants of the Bhaubands desired to set aside the alienations in favour of her brother and son-in law,

Held, that the transactions which were effected by the widow with the consent of the Bhauband were evidently pre-arranged as a proper disposition of her husband's property between these parties, and these transactions must be considered as a whole and since the Bhauband received considerable advantage from giving his consent to the alienations, it would be most inequitable if his

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descendants, while retaining that advantage, should be allowed to set aside the other alienations. (*Macleod, C.J. and Crump, J.*). BHANSAHEB v. RAMGAUDA. **76 I.C. 937=25 Bom. L. R. 813= A.I.R. 1923 Bom. 471.**

—Alienation—Widow—Consent of reversioner—Accepting benefit (Estoppel).

———*Reversioner becoming party to compromise and taking benefit under it is estopped from claiming as reversioner.*

The interest of a Hindu reversioner is an interest expectant on the death of a qualified owner; it is not a vested interest, it is a *spes successionis* or a mere chance of succession, it cannot be sold, mortgaged, assigned or relinquished, for a transfer of a *spes successionis* is a nullity and has no effect in law. But though transfer of his interest by a reversioner is void, he may, by becoming a party to a compromise and by taking the benefit of the compromise, be estopped from claiming as a reversioner: 15 Cal. 556, *Foll.*; A. I. R. 1918 P. C. 70; 33 All. 356 and 41 All. 611, *Ref.*; A.I.R. 1917 P.C. 95. *Dist.* (*Dalal, J.*). NAKCHED CHAUDHARI v. SUKHDEO CHAUDHARI. **124 I.C. 714= A.I.R. 1930 All. 430.**

———An agreement by a reversioner with the widow during her lifetime though not operative as a family arrangement may operate as a personal agreement estopping him from making any contrary claim especially when he has enjoyed benefit under it: A.I.R. 1926 All. 715, *Foll.* (*Ashworth, J.*). RAMESHWAR RAI v. SHEOPAL RAI. **117 I.C. 822 (All.)**

———Reversioner relinquishing his rights for consideration cannot resile: A. I. R. 1917 P. C. 95. *Dist.* (*Dalal, J.*). BENI MADHO v. SHAMBHU NATH. **114 I.C. 908=9 L R.A. Rev. 180= A.I.R. 1929 All. 196.**

———Reversioner releasing his rights for consideration cannot challenge widow's alienation—Nor can his son do so if the reversioner survived the widow and did not challenge during his lifetime: 23 M.L.J. 363 and A. I. R. 1927 P. C. 227, *Rel. on.* (*Kumaraswami Sastri and Reilly, JJ.*). RENGAN v. PALANIYANDI. **112 I.C. 251=28 M.L.W. 413= 1928 M.W.N. 742=A.I.R. 1928 Mad. 1101= 56 M.L.J. 66.**

———A reversioner, who is a party to and is benefitted by a transaction entered into by a Hindu widow, is precluded from questioning any part of it, and his sons cannot set it aside especially when he did not do so in his lifetime: A. I. R. 1923 Bom. 471, *Affirmed.* (*Lord Sinha.*) RAMGOWDA v. BHANSAHEB. **105 I.C. 708=52 Bom. 1= 54 I.A. 396=29 Bom. L.R. 1380= 32 C.W.N. 88=27 M.L.W. 140= 39 M.L T. 250=1927 M.W.N. 736= 4 O.W.N. 876=46 C.L.J. 267= A.I.R. 1927 P.C. 227=53 M.L.J. 350 (P.C.).**

———A deed of gift of a portion of the property in favour of reversioners and a Will of another portion in favour of a third person were executed on the same day by a limited owner. The deed of gift was signed by the third person and the Will by the donees-reversioners,

Held, though the mere signature by the reversioners of the Will does not amount to proof that they agreed to the contents, yet when the two documents are taken together, the conclusion is irresistible that the reversioners not only recognized the right of the donor to make a gift in their own favour, but also to make a Will in

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favour of another, and this action of the reversioners amounts to a clear estoppel, precluding them from challenging the validity of the Will.

The reversioners can be estopped from a claim to to the property by their own relinquishment of what was at that time *spes successionis*: A.I.R. 1923 All 389, *Foll.* (*Daniels, J.*). PURAN DASS v. DULI CHAND. **96 I.C. 668=A. I. R. 1926 All. 684.**

———Where the reversionary heir to a Hindu's estate caused the purchasers of the estate to believe that he approved of the sale by the widow and that such rights, as he had, he was willing to give up and after the widow's death obtained a conveyance of the rights of the widow's daughter who succeeded, in the properties, which conveyance was executed on account of the fact that he happened to be the reversionary heir of the estate.

Held, that he was estopped from questioning the transaction of purchase by the strangers. (*Venkatasubba Rao, J.*). BHALLAMUDI KAMA SASTRI v. THIRUMAMIDI KANNAMMA. **88 I.C. 765= 1925 M.W.N. 495=A.I.R. 1925 Mad. 638= 48 M.L.J. 284.**

———Where a man, who becomes ultimately a reversioner, has entered into a compromise with the limited owner in the life-time of a holder of life-interest, he is precluded from disputing the validity of the compromise: 40 A. 487 (P.C.), *Foll.* (*Mukerji, J.*). SAT NARAIN SAHU v. BINDESRI PRASAD. **87 I.C. 787=6 L.R.A. Civ. 210= A.I.R. 1925 All. 453.**

———Reversioner who has elected to hold transfer by a widow good during the lifetime of the widow cannot be allowed to challenge the validity of the transfer after succession has opened in his favour.

Where a widow executed a deed by which her husband's property was gifted in equal shares to her two daughters and their names were accordingly entered in the revenue papers.

Held, that the conduct of each daughter in taking the gift and obtaining mutation indicated approval of the entire deed of gift and neither could be allowed to treat it as nullity and sue for recovery from the heirs of the other. (*Neave, J.*). MT. BATKA v. MT. SITMAN. **82 I.C. 372= 5 L.R.A. Civ. 401=A.I.R. 1924 All. 527.**

———*Reversioner accepting benefit under a family arrangement cannot question it.*

Where the result of the family settlement was that the two daughters who were entitled to joint possession of the entire estate for the whole of their life-time surrendered a portion of their interest and allowed a reversioner who had no immediate right of any kind, to obtain possession of a portion of the property.

Held, that he cannot be allowed to turn round and repudiate this arrangement by setting up the case that he was now claiming as a reversioner to the last male owner. (*Lindsay, J.C.*). JAGESHAR v. BHUSHAN. **24 O.C. 5= A.I.R. 1921 Oudh 134.**

———Where a presumptive reversioner joins in an alienation by the female and gets full benefit of the transaction, he cannot, when the property falls to him, claim the property on the plea that he could not on the date of alienation, deal with the property himself. (*Abdur Rahim and Moore, JJ.*). SHANMUGA VELAYUDAM CHETTY v. KOYAPPA CHETTIAR. **60 I.C. 635=1920 M.W.N. 679.**

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—Alienation—Widow—Consent of reversioner—After-born son.

——*Managing member consenting—Son born subsequently to him is bound.*

Where a widow of deceased co-parcener is in possession of part of family property and a co-parcener as managing member consents to a mortgage by the widow on behalf of the family a son born to him subsequent to such consent cannot impugn the validity of the mortgage, the consent being binding on him: 6 Bom. L.R. 925; 9 Bom. L. R. 595 and 7 W. R. 502, *Dist.* (*Sir Lancelot Sanderson.*) BHAGWAN SINGH *v.* UJAGAR SINGH.

107 I.C. 20=47 C.L.J. 189=30 Bom. L.R. 267=32 C.W.N. 538=29 P.L.R. 182=27 M.L.W. 672=26 A.L.J. 553=1928 M.W.N. 933=A.I.R. 1928 P.C. 20=54 M.L.J. 254 (P.C.).

—Alienation—Widow—Consent of reversioner—Attestation.

——*Consent by attestation can be given only by presumptive reversioner.*

It is only if the presumptive heirs, who alone are expected to take exception to an alienation, consent by attesting the deed, inference of legal necessity is justified. A remoter reversioner cannot by his action bind the presumptive heirs: A.I.R. 1918 P.C. 196, *Ref.* (*Sen and Niamatullah, JJ.*). GAJI SINGH *v.* MT. NEBHABHA. **119 I.C. 514=1929 A.L.J. 309=10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.**

——*Mere attestation is neither consent nor does it create estoppel.*

Attestation of a deed proves no more than that the signature of the executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed nor affect him with notice of its provisions. Mere attestation by itself would neither create an estoppel nor imply consent. Where the reversioner attested a sale-deed executed by a Hindu widow and there was nothing to show that he was aware of the contents,

Held, that the attestation was not presumptive proof of necessity. (*Raza and Pullan, JJ.*). SHEO RATTAN LAL *v.* SANT BAKHSH. **118 I.C. 93=6 O.W.N. 369.**

——*Reversioner attesting maintenance deed—No estoppel.*

Where a person before he had any idea of becoming entitled as reversioner to another man's property, witnesses the mark of his daughter on a maintenance deed in her favour executed by the limited owner of the property, does not thereby admit the title of the limited owner's alienee, and the fact does not estop or militate against his present position as reversioner: 42 Mad. 529, *Foll.* (*Odgers, J.*). CHALLA ELLAMANDE *v.* CHALLAPEDA ELLAMANDA. **114 I.C. 229 (Mad.).**

——Reversioner arranging for a debt for limited owner and for alienation of property cannot challenge that alienation. (*Coutts Trotter, C. J. and Srinivasa Iyengar, J.*). SHRINIVASA RAGAVACHARIAR *v.* E. RAJAGOPAL CHARIAR.

1927 M.W.N. 231=A.I R. 1927 Mad. 438.

——*Attestation if consent—Inference from surrounding circumstances.*

Although mere attestation of a sale-deed by a reversioner is not by itself conclusive of the fact that he was aware of the nature of the transaction or that he was a consenting party to an alienation by a Hindu widow, the Court can draw proper inference from this as well as other circumstance attending the transaction. (*Ryves and Mukerji, JJ.*). ANANTOO *v.* RAMRUP TIWARI.

87 I.C. 315=6 L.R.A. Civ. 284=A.I.R. 1925 All. 692.

HINDU LAW—Alienation—Widow—Consent of reversioner—Effect of.

——*Evidence Act, S. 115—Attestation coupled with other circumstances can be "consent."*

Though mere attestation is not sufficient to fix a party with knowledge of the deed attested yet attestation combined with other circumstances may amount to evidence of consent. Where not only did the reversioners attend before the Registrar, identify the executant and attest the deed, but the debt in respect of which the deed was executed was a debt from the reversioners themselves as principal debtors,

Held, that it was impossible to believe under these circumstances that they were not aware of the nature of the transaction or that their attestation was not meant to indicate their assent to it: 42 Cal. 876; A.I.R. 1922 P.C. 20, *Ref.* (*Daniels and Neave, JJ.*). RAM ADHAR *v.* BHAGWAN SINGH.

85 I.C. 580=5 L.R.A. Civ. 644=A.I.R. 1925 All. 209.

—Alienation—Widow—Consent of reversioner—Burden of proof.

——*Reversioners consenting—Purposes of alienation not mentioned in deed but decided by alienees in their written statement—Onus lies on reversioners to disprove.*

Where reversioners consent to a transaction by a limited owner, in the absence of any evidence to the contrary, their consent is *prima facie* evidence or presumptive evidence of the existence of circumstances which would be sufficient to constitute necessity under the Hindu Law and which would be sufficient to bind the reversion. It is not necessary that the purpose itself should be mentioned in the document. All that the law requires is that the alienee should prove the existence of circumstances at the time the transaction was entered into which would justify a limited owner to pass full interest in favour of the alienee in other words which would entitle a limited owner to bind the reversion by the alienation.

Where the alienees did allege the circumstances which would amount to necessity in their written statement:

Held, that it was not necessary that such circumstances should have been mentioned in the documents by which the alienations were effected and that the onus lay on plaintiffs to disprove the allegations: 42 Mad. 523 (P.C.), *Foll.* (*Devadoss, J.*). RAMASWAMI REDDI *v.* RAJAGOPALA CHARIAR.

91 I.C. 270=22 M.L.W. 518=1925 M. W. N. 789=A. I. R. 1926 Mad. 29.

—Alienation—Widow—Consent of reversioner—Effect of.

——*Consent binds reversioner, though given subsequent to transfer.*

An alienation by a widow is not void but voidable, the reversioner may accept it as valid and if he does so, his acceptance will bind him. In such a case there is no election within the strict meaning of the term. Even given subsequently such assent has the effect of satisfaction of the transfer: 30 All. 1 (P.C.) and A.I.R. 1918 P.C. 196, *Foll.*; A.I.R. 1923 All. 387 (F.B.) and A.I.R. 1929 Mad. 502 (F.B.), *Ref.* (*Jackson, A.J.C.*). MAROTI *v.* MAROTI.

A.I.R. 1930 Nag. 287.

——*Evidence Act, S. 115—No act or omission by presumptive reversioners can amount to estoppel against actual reversioners.*

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No act or omission committed by the presumptive reversioners can amount to an estoppel as against the reversioners who actually succeeded to the estate. Their conduct may under certain circumstances raise a presumption in favour of legal necessity but can never debar the actual reversioners from claiming the estate in assertion of their own rights which they do not claim through the former reversioners. Therefore the result of a previous litigation by the presumptive reversioners does not amount to an estoppel. (*Sulaiman and Sen, JJ.*). MUHAMMAD ABDUL KARIM KHAN *v.* BISHAN SAHAI. **121 I.C. 387=1929 A.L.J. 741=A. I. R. 1930 All. 9.**

———*Invalid gift—Consent thereto, does not vest property in the donee.*

J claimed that the widow had made an oral gift of the property in his favour and he was in possession as a donee. The collaterals admitted the gift and agreed to the mutation of names in favour of *J*. The Court accordingly ordered that the name of *J* should be entered in place of the deceased widow,

Held, that as no interest in immovable property can validly pass from one person to another in the eye of the law without there being a registered document of transfer, in the absence of such document, the proprietary interest in the property could not have passed from the widow to *J* or from the collateral to *J* and even if the collaterals be estopped from claiming the possession of the property it is impossible to hold that proprietary title has actually become vested in *J* or his transferee by virtue of the oral gift : A.I R. 1923 All. 387 (F.B.), *Dist.* (*Sulaiman and Kendall, JJ.*). BACHCHI LAL *v* DEBI DIN. **119 I.C. 503=51 All. 629=1929 A.L.J. 430=A.I.R. 1929 All. 300.**

———*Consent given on representation that gift was completed by the husband is no consent to a limited owner's alienation.*

A consent to gift by widow, by a reversioner given under assumptions of facts which never existed, *e.g.*, that the alleged donee was nephew of her husband and that the estate had already been gifted by the husband to the donee but as the donee had allowed the widow to remain in possession she executed a gift deed in his favour, is a consent to an act which the widow did not do in her right of a female heiress but by virtue of her bare possession which she held under the good will of the donee of the estate and thus is not a consent by a reversioner to an act of transfer of the estate by the female heir at all: A.I.R. 1923 All. 387 (F.B.), *Dist.* (*Wazir Hasan, Ag.C.J. and Misra, J.*). BINDESHWARI SINGH *v.* HAR NARAIN SINGH. **6 O.W.N. 233=4 Luck. 622=A.I.R. 1929 Oudh 185.**

———*Alienation is binding on the reversioner when he succeeds to the estate after widow's death.*

Where an alienation without any necessity by Hindu widow of property forming part of her deceased husband's estate is consented to by the next presumptive male reversioner without receiving any consideration for giving such consent, the transaction is binding on the consenting reversioner, if he succeeds to the estate after the death of the widow and of the female reversioner succeeding her: A.I.R. 1923 All. 387 (F.B.) and A.I.R. 1927 Bom. 260 (F.B.), *Appr. and held not inconsistent with* A.I.R. 1918 P.C. 196. (*Coutts-Trotter, C.J.,*

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Madhavan Nair and Jackson, JJ.). RAMAKATAYYA *v.* VIRARAGHAVAYYA. **119 I.C. 156=52 Mad. 556=1929 M.W.N. 323=29 M.L.W. 818=A. I. R. 1929 Mad. 502=56 M.L.J. 755 (F.B.).**

———Under the Bombay school of Hindu Law, no question of legal necessity, as such, arises, when the next reversionary heirs have consented to the alienation. (*Findlay, J.C.*). VINAYAK *v.* SITABAI. **103 I.C. 373=A.I.R. 1927 Nag. 312.**

———*Next reversioner, whether male or female, joining in the deed cannot challenge alienation on the widow's death.*

Where a Hindu widow sells a part of her husband's property without legal necessity but with the consent of the next presumptive reversioner, and the reversioner joins in the deed by which the property is alienated, the same reversioner cannot challenge the validity of the transaction after the widow's death, having regard to his election testified by his being a party to the deed, and whether such reversioner is a male or a female makes no difference: 21 Bom L.R. 640 (P.C.) and A.I.R. 1923 All. 387 (F.B.), *Foll.*; A.I.R. 1922 Bom. 102, *Appr.* (*Marten, C.J., Crump and Patkar, JJ.*). RAMCHANDRAPPA YADEO *v.* SAYAD KHAN MUTHEKAN. **102 I. C. 232=51 Bom. 475=29 Bom.L.R. 386=A. I. R. 1927 Bom. 260 (F.B.).**

———*Consent does not bind his son.*

One reversioner does not claim through another, and the estoppel by consent raises only a personal bar against the consenting party. Therefore consent by a reversioner does not bind his son who gets the estate in his own right. (*Kinkhede, A.J.C.*). JESHWANT RAO *v.* MT. TULSABAI. **99 I.C 835=A. I. R. 1927 Nag. 134.**

——— *Reversioner standing by and asking vendee to purchase property—No estoppel.*

The mere fact that reversioner stood by and asked another person to purchase the property from the female holder, would not in any way estop them from setting up a claim to the property where the purchaser knew that the holder had only a life interest in it. (*Devadoss, J.*). S. S. SWAMINADHA AIYAR *v.* SWAMINATH AIYAR. **99 I.C. 772=38 M.L.T. 32=A. I. R. 1927 Mad. 458.**

———A reversioner who consents to an alienation by a widow is himself estopped from questioning it: A. I. R. 1923 All. 387 (F. B.) and A. I. R. 1922 Bom. 102, *Foll.* (*Ramesam, J.*). VIRARAGHAVAYYA *v.* RAMAKOTAYYA. **96 I C. 132=23 M.L.W. 305=A.I.R. 1926 Mad. 508.**

——— *Non-consenting reversioner can recover only his share on widow's death.*

Every reversioner succeeds to property on the death of a widow in his own right and the property becomes his self-acquired property and not joint family property, and therefore where one of the two reversioners consents to an alienation by widow the non-consenting reversioner cannot sue the vendee for possession of whole property. Sale as regards consenting reversioner's share is valid and the other reversioner can recover only his share : A.I.R. 1923 All. 387 ; 45 All. 339 (F.B.), *Appl.* (*Dalal, J.*). AJUDHIA PRASAD *v.* MATHURA PRASAD. **95 I. C. 698=A.I.R. 1926 All. 609.**

——— *Mere consent by a reversioner to a transaction by widow is not estoppel in every case.*

If a reversioner by his act which amounts either to ratification or election, or some other act which he has done after the reversion opened, in order to make the alienee believe that he was standing by

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the transaction and that he was prepared to allow it to be good, he cannot afterwards resile from that position; but by the mere consent to the transaction at the time when it takes place, it cannot be said that in all cases a reversioner is estopped from contesting the validity of the transaction after the death of the limited owner: A.I.R. 1922 All. 297; 46 Cal. 566 (P.C.) and A.I.R. 1922 Bom. 102, *Not foll.* (*Devadoss, J.*). RAJAGOPALA CHARIAR *v.* SAMI REDDI. **93 I.C. 49=1926 M.W.N. 256=A.I.R. 1926 Mad 517=50 M.L.J. 221.**

———*Consent of presumptive reversioners at the date of alienation does not estop actual reversioners—Surrender in favour of one is not equal to surrender to all.*

The consent of the whole body of reversioners at the date of the alienation would afford presumptive evidence of necessity but would not estop the actual reversioners from disputing the alienation unless the consenting reversioners themselves were the actual reversioners at the date when the reversion fell due. A Hindu widow can renounce in favour of the nearest reversioner, if there be only one, or of all the reversioners nearest in degree, if more than one, at the moment but a surrender to one of the reversioners is not equivalent to a surrender to all the reversioners, even if it is for the benefit of all the reversioners. (*Shah, Ag. C.J. and Kincaid, J.*). MANJAYA SANNAYA SHANBHOG *v.* SESHAGIRI SHAMBHULING UPADHYA.

85 I.C. 207=49 Bom. 187=73 Bom. L.R. 1267=A.I.R. 1925 Bom. 129.

———Standing aloof of limited owner is not relinquishment nor is disclaimer, at appellate stage. (*Dawson-Miller, C. J. and Mullick, J.*). LALLOO PRASAD SINGH *v.* LACHMAN SINGH. **82 I.C. 510=3 Pat. 224=A.I.R. 1924 Pat. 438.**

———Where the whole body of reversioners joined in the execution of the mortgage by the widow and thus gave consent to it.

Held, they having joined in the deed cannot attack its validity. Where there was any other reversioner in existence who was not a party to the deed it would be open to him successfully to attack it. (*Dawson-Miller, C. J. and Adami, J.*). RAGHUNATH PRASAD *v.* BANK OF BENGAL.

69 I.C. 212=A.I.R. 1924 Pat. 295.

———*Relinquishment by reversioners of their rights and interest in the property—They cannot challenge the alienation even when succession opens in their favour.*

Where a widow transfers by gift a portion of her husband's property and the reversioners execute a deed of relinquishment whereby they purport to renounce and relinquish whatever rights and whatever interest they might conceivably possess under the Hindu Law in respect of the property covered by the deed of gift and expressly covenant that at no time hereafter will either of them or their heirs, successors or representatives, set up any right or claim or whatsoever to the property,

Held, that they cannot sue to have the gift deed set aside even when the succession opens in their favour: 45 C. 590 (P.C.), *Cons.*; 44 Bom. 488, *Dist.*; A. I. R. 1922 All. 297, *Affirmed.* (*Mears, C. J., Banerjee, Piggott, Walsh and Ryves, JJ.*). FATEH SINGH *v.* THAKUR RUKMINI RAMANJI.

72 I.C. 8=21 A.L.J. 235=45 All. 339=4 L.R.A. Civ. 392=A.I.R. 1923 All. 387 (F.B.).

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———*Next reversioner's assent—A transferee from consenting reversioner is not estopped from challenging the gift.*

Consent of the reversioner would not validate a gift it being a transfer without consideration, nor could the assent of the next reversioner amount to a relinquishment he having no vested interest which could be relinquished. A transferee from such a reversioner is not therefore estopped from challenging validity of such gift. (*Gokul Prasad, J.*). RAM DAYAL *v.* MITHOO LAL. **71 I.C. 287=A. I. R. 1923 All. 410.**

———*Consent to one sale cannot validate another sale.*

The consent of presumptive reversioners to one sale of property by the widow does not preclude the reversioners who are alive when the reversion falls in though they may be the sons of the reversioners, from disputing the want of legal necessity for another sale of the property by the widow. (*Macleod, C.J. and Shah, J.*). TUKARAM BHAU DHAS *v.* GANPAT ANANDRAO DHAS. **70 I.C. 767=A.I.R. 1922 Bom. 346.**

———*Consenting reversioner is estopped from challenging gift.*

Where a Hindu widow made a gift of a portion of her husband's property in favour of her husband's brother's grandson with the consent of her husband's brother, the next reversioner.

Held, her husband's brother was estopped from questioning the gift and it was valid as against him. (*Macleod, C.J. and Shah, J.*). BASAPPA *v.* FAKIRAPPA. **64 I. C. 214=46 Bom. 292=23 Bom. L.R. 1040=A.I.R. 1922 Bom. 102.**

———*Reversioner joining in the alienation and consenting to alienation is estopped from disputing it later.*

Where the next immediate reversioner jointly with the widow executed a deed of gift and at the time of mutation stated that he consented to the gift and his successor on being entitled to the estate did not repudiate it at the time of mutation,

Held, the reversioner and his successor-in-title are estopped from disputing the validity of the transfer. A.I.R. 1917 P.C. 95; A.I.R. 1918 P.C. 140, *Ref. to.*; 3 All. 362. *Ref. to.* (*Tudball and Sulaiman, JJ.*). MAHADEO PRASAD *v.* MATA PRASAD. **63 I.C. 721=44 All. 44=19 A.L.J. 799=A I.R. 1922 All. 297.**

———A transfer for no legal necessity but made by the widow and next reversioner is not binding on the remoter reversioners. (*Mears, C.J, and Banerji, J.*). GHISIAWAN PANDE *v.* MT. RAJ KUMARI. **63 I. C. 556=43 All. 534=19 A L.J. 476=A.I.R. 1921 All. 33.**

———A reversioner's right to sue for possession accrues on the death of the Hindu female. Absence of vested interest which cannot be effectively dealt with, does not prevent the application of the rule of estoppel so as to prevent the reversioner from challenging his own representations. (*Abdur Rahim and Moore, JJ.*). SHANMUGA VELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. **60 I.C. 635=1920 M.W.N. 679.**

—Alienation—Widow—Consent of reversioners—Execution by.

———*Joining in execution is unequivocal form of consent.*

Where entire body of reversioners is a party to an alienation made by a widow, the act of joining in execution of deeds of transfer is the highest and the most unequivocal form of consent which they

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can give to the alienation and they are estopped from impugning it: A.I.R. 1918 P.C. 196; A.I.R. 1923 P.C. 189, *Rel. on.* (*Wazir Hasan, Ag. C.J. and Pullan, J.*). CHANDI SINGH *v.* GUR PRASAD SINGH.
A. I. R. 1930 Oudh 339.

———Where not only did the nearest reversioner consent to the alienation by a Hindu widow, but he actually joined in the execution of the deed of gift,

Held: that the deed of gift cannot be set aside by the consenting reversioner: A.I.R. 1927 Oudh 469 and A.I.R. 1927 P.C 227, *Foll.* (*Stuart, C.J. and Raza, J.*). GAYA DIN SINGH *v.* MADHO SINGH.
107 I.C. 180=4 O.W.N. 1101=
A.I.R. 1927 Oudh 558.

—Alienation—Widow—Consent of reversioners—Extent of.

———Consent of only one of the reversioners—No presumption that transaction is right and proper—Assent binds reversioner personally: A.I.R. 1927 P.C. 227, *Foll.* (*Jackson, A.J.C.*). MAROTI *v.* MAROTI. **26 N.L.R. 265=A.I.R. 1930 Nag. 287.**

———*Next reversioner female entitled to absolute estate—Consent of immediate male reversioner is necessary.*

Even under the Bombay School where the next reversioner is a female entitled to an absolute estate upon succession the consent of the immediate male reversioner is necessary in order to estop him from challenging the alienation. Mere consent of female reversioner is not sufficient: 5 Bom. 563; 25 Bom. 129; 34 Bom. 165, *Rel. on*; 38 Bom. 224, *Dist.* (*Subhedar, A. J. C.*). KISHAN *v.* NAMDEO.
119 I.C. 676=A. I. R. 1929 Nag. 277.

———To dispense with proof of legal necessity consent of all existing reversioners must be shown: 42 Mad. 523 (P.C.), *Foll.* (*Kinkhede, A.J.C.*). YESHWANT RAO *v.* MT. TULSABAI.
99 I.C. 885=A.I.R. 1927 Nag. 134.

———Legal necessity—Consent of the body of the next reversioners is best evidence of the *bona fide* nature of the transaction. (*Kinkhede, A.J.C.*). SUMITRA BAI *v.* HIRBAJI. **97 I. C. 983=**
A.I.R. 1927 Nag. 25.

———*Consent must ordinarily be of all reversioners.*

An alienation by a Hindu widow which, if challenged, would be set aside, is a good alienation if the whole body of persons constituting the next reversioner assent to it and their consent will be presumed from their failure to contest it: 30 All. 1 (P.C.), *Foll.* (*Stuart, C.J. and Raza, J.*). MT. JAMNA KAUR *v.* MADARI SINGH.
106 I.C. 328=4 O.W.N. 903=A.I.R. 1927 Oudh 469.

———*Whole body of reversioners must consent.*

Alienation by a Hindu widow or a Hindu mother without proof, either of legal necessity or of reasonable inquiry and honest belief as to its existence but with the consent of the next reversioner or reversioners for the time being, may be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable inquiry and honest belief raised by such consent is not rebutted by more cogent proof.

Ordinarily the consent of the whole body of persons constituting the next reversion should be obtained, though there may be cases in which special circumstances may render the strict enforcement of this rule impossible: 30 All. 1 (P.C.), *Foll.* (*Gokaran Nath Misra and Raza, JJ.*). GAJADHAR LAL *v.* MAKHAN LAL. **99 I.C. 17=**
3 O.W.N. (Sup.) 262.

HINDU LAW—Alienation—Widow—Consent of reversioners—Non-objection.

———*Gift by widow with consent of next reversioners being themselves life-tenants and as per wishes of last owner is valid.*

The consent of the whole body of next reversioners to a gift by a Hindu female owner for life is as presumptive evidence of that gift having been made for purposes or in circumstances which would validate it after the donor's death, in the way in which such consent was held in 42 Mad. 523 (P.C.) to be presumptive evidence of the legal necessity for an alienation for consideration. The consent of the people interested in quarrelling with an alienation would be equally strong proof of its being justifiable whether it was a gift or a sale or a mortgage.

Where with the consent of the next reversioners who are themselves life-tenants the widow made a gift of the property as per the expressed wishes of the husband,

Held, the donee, in any case, would take an estate valid during the life of the next reversioners but that the expressed wishes of the last owner would be sufficient justifying cause for the alienation of the absolute estate to the donee. (*Batten, J. C. and Hallifax, A. J. C.*). MT. KUSHIBAI *v.* MAURA KHAN. **79 I.C.422=7 N.L.J. 217=**
A.I.R. 1923 Nag. 265.

—Alienation—Widow—Consent of reversioners—Female reversioner.

———*Fawcett, Ag. C. J.*—Even the consent of a female reversioner is sufficient to estop her from challenging an alienation by widow: *Previous Authorities to the contrary deemed overruled by* A.I.R. 1927 Bom. 260 (F.B.). (*Fawcett, Ag. C. J. and Mirza, J.*). TARGEVA *v.* GOVINDAPPA.
113 I.C. 42=30 Bom. L R. 1143=
A.I.R. 1928 Bom. 495.

———*Consent of only male reversioners raises presumption of legal necessity.*

The consent of such reversioners as might fairly be expected to be interested to quarrel with the transaction affords a presumptive proof which: if not rebutted by contrary proof, will validate the transaction as a right and proper one. Such a presumption does not however arise when the reversioners who joined in the transfer were ladies or life holders: 14 M. I. A. 176; 5 Bom. 563; 25 Bom. 129; 35 Cal. 1036, *Foll.* (*Mukerji and Dalal, JJ.*). MAHOMED NUH *v.* BRIJ BEHARI LAL. **82 I.C. 5=46 All. 656=22 A.L.J. 650=**
5 L.R.A. Civ. 424=A.I.R. 1924 All. 939.

—Alienation—Widow—Consent of reversioners—Non-objection.

———*Absence of objection owing to failure of reversioners, cannot be construed as consent.*

A gift made by a Hindu widow, which is a form of alienation which she is not ordinarily competent to make, can become a valid alienation if made with the consent of her husband's kindred. But if her husband has no kindred or the kindred have failed before they have had an effective opportunity of objecting, the abstention to object cannot be regarded as a consent: 8 M.I.A. 529, *Appl.* (*Stuart, C.J. and Raza, J.*). MT. JUMNA KAUR *v.* MADARI SINGH. **106 I.C. 328=4 O.W.N. 903=**
A.I.R. 1927 Oudh 469.

———*Consent may be implied if reversioners being competent abstain from objecting.*

An alienation by a Hindu widow is a good alienation unless and until the alienation is challenged by the reversioner. Consent may be

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implied from abstention to challenge when there are in existence persons who have a right to challenge : 34 Cal. 329 (P.C.), *Appl.*

In a case in which the reversioner has not challenged the alienation, a Court of law will not permit a third party to challenge it : A.I R. 1923 Pat. 122, *Foll.* (*Stuart, C. J. and Raza, J.*). MT. JAMNA KAUR *v.* MADARI SINGH.

106 I.C. 328=4 O.W.N. 903= A.I.R. 1927 Oudh 469.

—Alienation—Widow—Consent of reversioners—Presumption.

——Consent of female reversioner to alienation does not raise presumption of legal necessity against parties other than consenting reversioner : 5 Bom. 662 ; 25 Bom. 129 ; 35 Cal. 1086, *Foll.* ; A.I.R. 1918 P.C. 196, *Dist.* ; A.I.R. 1927 Bom. 260 (F.B.) ; A. I. R. 1922 Bom. 102 and A. I. R. 1925 Bom. 129, *Ref.* (*Mirza and Broomfield, JJ.*). KURVATEPPA MAHALINGAPPA KURVATTI *v.* NIGAYYA CHANBASAYA PATRIMATH. **32 Bom. L.R. 626= A. I. R. 1930 Bom. 299.**

——Alienation by minor widow of adoptive son with consent of natural parents of deceased husband—Re-sale by purchaser to consenting guardian for nominal consideration.

Held, that the property was re-sold to consenting guardian for nominal consideration was a valid ground for holding that the prior alienation must have been collusive and whatever presumption of law there might have been as regards legal necessity that was rebutted by collusion. (*Mirza and Broomfield, JJ.*). KURVATEPPA MAHALINGAPPA KURVATTI *v.* NIGAYYA CHANBASAYA PATRIMATH. **32 Bom L. R. 626= A. I. R. 1930 Bom. 299.**

——A Hindu widow mortgaged a house and the next reversioner stood surety for the due performance of clauses and conditions in the mortgage deed and for any loss accruing from defect of title or for falling short of the mortgage amount realized by sale of the property. Sons of the reversioner sued for possession after widow's death on the ground that the alienation was without legal necessity:

Held, that the consent of the father raised the presumption that the alienation was for legal necessity. (*Dalip Singh and Agha Haidar, JJ.*). SUNDAR *v.* KAMUN. **117 I.C. 84=A.I.R. 1929 Lah. 516.**

——Assent by presumptive reversioner to alienation by widow is cogent evidence of necessity. (*Phillips and Srinivasa Ayyangar, JJ.*). NATESA PILLAI *v.* MEENAKSHISUNDARA MUDALIAR. **109 I. C. 96 (Mad.).**

——The consent of next reversioner, though not conclusive proof of the existence of legal necessity, raises a presumption of the existence of such necessity : A.I.R. 1918 P.C. 196 and 40 Cal. 721 (F.B.), *Foll.* (*Sulaiman and Banerji, JJ.*). HAJI MAHOMED SAID KHAN *v.* KUNWAR DARSHAN SINGH. **103 I. C. 116=25 A. L. J. 744= A.I.R. 1927 All. 835.**

——*Reversioner consenting to alienations made by limited heir—Transaction should be presumed to be proper.*

The consent of such reversioners, as might fairly be expected to be interested to dispute the alienations made by a limited owner, will be held to afford presumptive proof, which if not rebutted by contrary proof, will validate the transaction as a right and proper one : A.I.R. 1918 P. C. 196, *Foll.*

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(*Wazir Hasan and Pullan, JJ.*). BINAIK DAT *v.* MOHAMMAD GAFUR KHAN. **105 I.C. 436= 4 O. W. N. 770=A. I. R. 1927 Oudh 442.**

——Consent of next reversioner raises presumption of legal necessity but it is rebuttable. (*Daniels and King, JJ.*). MAHADEO PRASAD *v.* SHYAM SUNDER. **97 I.C. 342=A.I.R. 1926 All. 707.**

——Where a mortgage deed executed by a Hindu widow who was illiterate was signed by the next reversioner (who was her daughter's son) on her behalf,)

Held, that on this ground alone the consent of the daughter's son should not be considered as proved. (*Dawson Miller, C. J. and Jwala Prasad, J.*). RAMBUJHAWAN SINGH *v.* SUBAJ PRASAD. **88 I.C. 502=6 P.L.T. 826=1925 P.H.C.C. 137= A.I.R 1925 Pat. 467.**

——Where the widow transfers the property in which she has a life estate ostensibly for legal necessity, and the reversioner assents to the transfer, his conduct presumes that there was legal necessity : 42 Mad. 523 and 40 Cal. 721, *Foll.* (*Suhrawardy and Cuming, JJ.*). AMAR KRISHNA DE *v.* RAJENDRA KUMAR DE. **87 I.C. 790= A. I. R. 1925 Cal. 1205.**

——Where the transaction is in favour of a person having a direct interest in obtaining it, *i.e.*, of the presumptive reversioner himself the presumption of the transaction being a proper one disappears ; 34 All. 129, *Appr.* ; 9 O.C. 104, *Foll.* ; (*Daniels, J.*). TODAR MAL *v.* KISHAN LAL. **79 I.C. 1007= 5 L.R.A. Civ. 395=A. I. R. 1924 All. 919.**

——The circumstances that the only reversioners at the time gave their unqualified consent to the mortgage raised a very strong presumption that the mortgage was supported by legal necessity though the presumption is rebuttable. (*Mukerji and Dalal, JJ.*). DARBARI LAL *v.* GOBIND SARAN. **80 I.C. 31=46 All. 822=22 A.L.J. 753= 5 L.R.A. Civ. 556=A.I.R. 1924 All. 902.**

——*Consent by reversioners is evidence of legal necessity.*

The consent of reversioners to an alienation merely affords evidence that the alienation was under circumstances which render it lawful and valid. In other words the consent of the reversioners is evidence of legal necessity. It will depend upon the circumstances of the case whether it is sufficient evidence or insufficient evidence. (*Stuart and Sulaiman, JJ.*). UDAI BHAN SINGH *v.* GAJENDRA SINGH. **70 I.C. 815= A.I.R. 1923 All. 28.**

——*Consent of reversioners is presumptive proof of necessity.*

When the alienation of the whole or part of the estate by a Hindu widow or other female owner has to be supported on the ground of necessity, then if such necessity is not proved *aliunde* and the alienee does not prove inquiry on his part and honest belief in the necessity, the consent of such reversioners, as might fairly be expected to be interested to quarrel with the transaction, will be held to afford a presumptive proof, which if not rebutted by contrary proof will validate the transaction as a right and proper one. (*Tudball and Sulaiman, JJ.*). BHUP SINGH *v.* JHAMMAN SINGH. **64 I.C. 630=44 All. 95= 19 A.L.J. 881=A. I. R. 1922 All. 169.**

——*Reversioner present at the time of payment—No presumption of legal necessity arises.*

The vendee must prove that the presence of the reversioner at the time of the payment induced him

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to believe that this money was required by the widow for legal necessity and that for this reason he did not trouble to make any further enquiry. The fact that a reversioner is one of the parties to a sale transaction effected by a Hindu widow and was present at the time, the consideration-money was paid to her does not give rise to a presumption that the payment is made for legal necessity. (*Dalal, A.J.C.*). SHEOAMBAR KHAN *v.* BALKARAN SINGH. **65 I.C. 360=8 O.L.J. 619=A.I.R. 1922 Oudh 112.**

———In the case of an alienation by a Hindu widow, if it is proved that the consent of the immediate reversioners had been obtained, it raises a strong presumption of the existence of legal necessity for the transfer, which if not rebutted by contrary proof, will validate the transaction as a right and proper one: 30 All. 1; 36 M. L. J. 493, *Foll.* (*Tudball and Sulaiman, JJ.*). HARJAN RAI *v.* MAHABIR TEWARI. **64 I.C. 474 (All.).**

———*Consent of reversioner is presumptive evidence of necessity.*

The consent of the reversioner is always presumptive evidence of the legal necessity which justifies an alienation on the part of the Hindu female. The question whether the evidence adduced in any particular case amounts to "a presumptive proof" or not must necessarily be a question of the sufficiency or insufficiency of evidence and as such a pure question of fact. (*Wazir Hasan, A J. C.*). RAM BODH SINGH *v.* RAM NARAYAN SINGH. **65 I.C. 776=8 O L J. 512=A. I. R. 1921 Oudh 238.**

—Alienation—Widow—Consent of reversioners—Ratification.

———Where a reversioner for whom the succession has not yet opened ratifies an alienation by a widow, such ratification is good: A.I.R. 1929 Mad. 502 (F.B.) and 30 All. 1 (P. C.), *Foll.*; A.I.R. 1923 All. 387, *Ref. Foll.* (*Jackson, A.J.C.*). MAROTI *v.* MAROTI. **26 N.L.R. 265=A.I.R. 1930 Nag. 287.**

—Alienation—Widow—Consent of reversioners—Reversioner purchaser.

———The presumption of legal necessity which arises when a transfer is made with the consent of the next presumptive reversioner does not arise when the transfer is to such reversioner himself. (*B. B. Ghose and S. K. Ghose, JJ.*). UPENDRA NATH MUKHERJEE *v.* GURUPADA HALDER. **34 C W.N. 404=A. I. R. 1930 Cal. 508.**

———The principle that where the next reversioner consents to an alienation by a widow, the alienation operates independently of the question of legal necessity is limited to an alienation by the widow of her whole interest in favour of the next reversioner or reversioners at the time of the alienation: 42 Mad. 523 (P.C.), *Expl.* (*Daniels and King, JJ.*). MAHADEO PRASAD *v.* SHYAM SUNDER. **97 I. C. 342=A.I.R. 1926 All. 707.**

———Where the vendees are some of the reversioners, it cannot be said that they gave their consent to the sale by taking a sale-deed from the widow. (*Devadoss, J.*). K. SEETHARAMAYYA *v.* R. SAMUDRUDU. **86 I.C. 4=21 M.L.W 69=A.I.R. 1925 Mad. 384.**

—Alienation—Widow—Consent of reversioners—Validity.

———Reversioner transferee of whole share—Such alienation is on same footing as surrender—When however reversioner is transferee of part of estate alienation is not validated by his consent:

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40 Cal. 721 (F.B.) and A.I.R. 1918 P.C. 196, *Ref.* (*Jackson, A.J.C.*). MAROTI *v.* MAROTI. **26 N.L.R. 265=A.I.R. 1930 Nag. 287.**

———Reversioner transferee of part of estate—His consent though not validating transaction estops him, though not his son, from questioning alienation: A.I.R. 1927 P. C. 227 *Dist.*; A.I.R. 1926 All. 715 and A.I.R. 1927 Bom. 260 (F.B.), *Foll.* (*Jackson, A.J.C.*). MAROTI *v.* MAROTI. **26 N.L.R. 265=A.I.R. 1930 Nag. 287.**

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———*Declaration is useful where proof of necessity is required—Gift—No question of necessity.*

In cases of transfers for consideration in which questions of legal necessity may arise, the grant of a declaratory relief ordinarily serves the useful purpose of declaring rights which depend upon proof of circumstances as to which evidence may disappear by the time succession to the estate opens. But in a case where the transfer is a gift pure and simple made by Hindu widow no question of legal necessity or its validity as such can arise. (*Sen and Niamatullah, JJ.*). BECHU AHIR *v.* HANSRAJ AHIR. **A.I.R. 1930 All. 734.**

———*Gift to idol must be of a small fraction.*

Dedication of property by widow to the ancestral deity of the family for the due performance of the Sheba and puja of the family deity is a meritorious act conducive to the benefit of the soul of the deceased owner and although it is for ancestral deity of the family it is on no different footing than the other gifts. To support such a gift according to law it must be of a fraction of the property, and the rule cannot be extended so as to take into consideration the necessity of the idol: A.I.R. 1922 P.C. 261, *Rel. on.* (*Rankin, C.J. and B.B. Ghose, J.*). MADAN MOHAN SAHA BANIK *v.* RAKHAL CHANDRA SAHA BANIK. **33 C.W.N. 1042=A.I.R. 1930 Cal. 173.**

———A Hindu widow has no right to make a gift of whole of the property left to her even for the spiritual benefit of her husband and as such it is invalid, not being of the moderate share thereof: A.I.R. 1922 P.C. 261 and 42 Bom. 136, *Foll.* (*Bhide, J.*). SUNDER SINGH *v.* GURDWARA CHOHA SAHIB. **120 I. C. 189=30 P.L.R. 281=11 L.L.J. 78=A. I. R. 1929 Lah. 450.**

———*Consent of reversioners does not validate a gift.*

There can be no case of an alienation by a Hindu widow unless the alienation is made for legitimate purposes which may be proved either *aliunde* or by raising a presumption in favour of it, which presumption may, if not rebutted by contrary proof, be passed on the consent of reversioners. A transfer by way of gift in favour of a stranger is not an alienation to which the presumption of its being legitimate founded on the consent of the reversioners can be applicable: A. I. R. 1918 P.C. 196, *Rel on*; A. I. R. 1927 P.C. 227, *Dist.* (*Wazir Hasan, Ag. C.J. and Misra, J.*). BINDESHWARI SINGH *v.* HAR NARAIN SINGH. **6 O. W. N. 233=4 Luck. 622=A.I.R. 1929 Oudh 185.**

———Widow having only one daughter, inheriting property worth Rs. 8,000—Gift of property worth Rs. 2,000 to son-in-law at the time of marriage is valid.

It is established beyond any doubt whatever that a Hindu widow may make a gift of a reasonable portion of her deceased husband's estate to her son-in-law on the occasion of her daughter's marriage. The amount of land which may be alienated for this purpose depends in each case upon the whole of the circumstances, upon the position of the family, the number of children to be provided

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for, the nature of the land alienated, and any other circumstances which may arise in a particular case.

Held, that the gift was valid. (*Fforde and Tek Chand, JJ.*). WAZIR CHAND *v.* MT. JIWAN DEVI.
103 I.C. 353=A.I.R. 1928 Lah. 58.

———*Gift valid only if for spiritual benefit or for some indispensable religious duty.*

A donee from a widow acquires no title under it, unless the gift is one occasioned by spiritual necessity or made in the performance of indispensable acts of duty or religious necessity and relates to property which forms only a small portion of the entire estate. In absence of any such purpose, the gift is void and cannot be validated by subsequent acts of ratification: 8 M.I.A. 529, *Foll.* (*Kinkhede, A.J.C.*). DASHRATH *v.* TARACHAND.
105 I.C. 379=10 N.L.J. 216=A.I.R. 1927 Nag. 354

———*Gift for religious purposes—Proportion of gift to estate in widow's hands at the time should be considered.*

In every case in which an alienation by way of gift for religious or charitable purposes is made by a Hindu widow, holding an estate with the limited interest of such widow, the Court is bound to take into consideration the proportion borne by the property gifted away to the total estate in the hands of such widow.

Where the estate that originally came into the hands of a holder of a widow's estate consisted of a 8 annas share of zamindary property but by various transfers, the estate had dwindled to a 2 annas share only, and where, out of this, the limited owner gifted a six pies share to the family priest,

Held, that the gift could not be supported. (*Mears, C.J. and Piggott, J.*). B. ISHWARI PRASAD *v.* BABUNANDAN. **88 I.C. 193=47 All. 563=6 L.R. A.Civ. 231=A.I.R. 1925 All. 495.**

———*Gift by widow is void after her lifetime.*

A gift made by a Hindu widow even in favour of the next reversioner, if it does not amount to a complete surrender of the widow's estate, is not valid according to Hindu Law. It might be operative during the life-time of the widow but after her death it ceases to have any legal effect. (*Suhrawardy and Cuming, JJ.*). INDRA NARAIN MANNA *v.* SARBASOVA DASI. **87 I.C. 930=41 C.L.J. 341=A.I.R. 1925 Cal. 743.**

———*Gift does not end at donee's death though it ends at donor's death.*

The interest which the donee of property from a Hindu widow who gave the same, having inherited it from her husband does not terminate with the death of the donee and if the gift be in favour of a daughter the property will be *stridhan* in her hands and after her death it will pass to her personal heirs. This is subject, of course, to the condition that the gift must cease to be effective at the widow-donor's death. (*Kinkhede, A.J.C.*). NARAYAN *v.* MT. TULSHI. **80 I. C. 607=A.I.R. 1925 Nag. 104.**

———*Widow has greater powers of disposal for religious purposes and small portion can be gifted for such purposes.*

A Hindu widow has a larger power of disposition for religious or charitable purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. Where the value of the property gifted to a priest at Gaya by *suphal sankalp* bears a very small proportion to the total value of the property which the widow had inherited from her husband,

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Held, the gift is valid and binding on the reversioners. (*Lindsay and Kanhaiya Lal, JJ.*). BALDEO PRASAD *v.* FATEH SINGH. **78 I.C 654=46 All. 533=22 A.L.J. 490=5 L.R.A Civ. 270=A.I.R. 1924 All 933.**

———Gift by widow in favour of a presumptive reversioner—Property subject to usufructuary mortgage in favour of other reversioners—Other reversioners suing for declaration,

Held, that plaintiffs should be granted the declaration but that in the event of the present plaintiffs surviving the widow, they will only be entitled to actual possession of their share of the property which was mortgaged, on payment to *J*, or his legal representatives, their quota of the mortgage debt. 22 W. R. 409 (P. C.), *Foll.* (*Lindsay and Sulaiman, JJ.*). RAGHU NANDAN SINGH *v* TULSHI SINGH. **75 I.C. 244=46 All. 33=A.I.R. 1924 All. 315.**

———Gift to son-in-law of entire property to induce him to marry her blind and crippled daughter—Gift whether invalid after her lifetime.

A Hindu widow has for certain purposes a clear authority to dispose of her husband's property and she might do it for religious purposes which include dowry to a daughter. Although as a general rule such dowry shall not exceed a quarter, the word "quarter" as used here, simply enjoins the allowance of as much as will suffice for the marriage. A gift of the whole property of small value will be held valid after her life time: 37 Cal. 1 and 22 Mad. 113, *Ref.* (*Mears, C.J. and Stuart, J.*). BHAGWATI SHUKUL *v.* RAM JATAN TEWARI.
73 I.C 648=45 All. 297=21 A.L.J. 232=4 L.R.A. Civ. 386=A.I.R. 1924 All. 28.

———Gift by a widow with the consent of the next reversioners is valid only for her lifetime. (*Newbould and Ghose, JJ.*). JNANENDRA NATH ROY CHOWDHURY *v.* RAM RANJAN BANERJEE.
73 I.C. 588=A.I R. 1924 Cal. 988.

———*Gift of less than ¼ as dowry in daughter's marriage is valid.*

A Hindu widow can make an absolute gift of a reasonable portion of her deceased husband's estate upon the occasion of the marriage of her daughter as dowry. There is no distinction between a gift made upon the occasion of a daughter's *gowna* ceremony and a gift made as dowry upon the occasion of a daughter's marriage: 37 Cal. 1, *Foll.* Where the total value of gifted portion amounted to something less than 1/4th of the whole estate, the gift was held both proper and reasonable. (*Scott-Smith and Fforde, JJ.*) JAWALA RAM *v.* HARI KISHEN SINGH. **80 I.C 690=5 Lah. 70=A.I.R. 1924 Lah. 429.**

———*Gift to charity of more than one-fourth is not valid.*

A gift made by a Hindu widow to a charitable institution of a portion more than one fourth of her deceased husband's estate is not valid against the reversioners. A gift by a Hindu widow of a moderate portion of her deceased husband's estate can only be valid if it is expressly made for the spiritual welfare of the deceased. A gift, however pious or meritorious cannot be enforced against the reversioners unless it is proved to be made with that object and unless that purpose is deemed by the Hindu religion to be fulfilled by the character of the gift in the question. (*Abdul Raoof and Fforde, JJ.*). MUNSHI LAL *v.* MT. SHIV DEVI.
78 I. C. 266=4 Lah. 336=5 L. L. J. 496=A.I.R. 1924 Lah. 137.

HINDU LAW—Alienation—Widow—Gift.

———*Consent of reversioner who is insolvent does not pass property to donee.*

Where a Hindu lady purports to alienate property to a third party with the consent of the reversioner the transaction operates as a surrender into the hands of the reversioner followed by a conveyance to a third party and if the reversioner is an insolvent the moment the surrender is made the property passes to the receiver in insolvency. (*Piggott and Walsh, JJ.*). HARI HAR PRASAD (MINOR) *v.* UDAY NATH SAH. **74 I.C. 113= 45 All. 260=21 A.L.J. 77=4 L.R.A. Civ. 70= A.I.R. 1923 All. 190.**

———A gift made by a widow in accordance with the expressed dying wishes of her husband, especially one entailing the many spiritually beneficial acts, would be binding on the reversioners. (*Hallifax, A.J.C.*). RAMCHANDRA BALKRISHNA *v.* RAMCHANDRA JAIRAM. **65 I.C. 952= A.I.R. 1922 Nag. 222.**

———It is not the function of the Court in considering whether a gift by a Hindu widow out of her husband's estate is a valid trust, but the question what were the real purposes for which she made the gift, is of fact only. If the gift was made by the widow for the benefit of the soul of her deceased husband, it should be upheld.

It is unnecessary that there should be any proof that the donee is expected to confer benefit upon the deceased's soul. (*Mears, C.J. and Walsh, J.*). GOBIND UPADYA *v.* LAKHRAM. **63 I.C. 221= 43 All. 515=19 A.L.J. 499= A.I.R. 1921 All. 109.**

———Consent operates to raise a presumption that the transaction was a proper one and for valid necessity. This presumption has no application to the case of a gift. Where the donee is not the nearest reversioner, there is no question of surrender by the widow: 42 Mad. 523 (P.C.), *Foll.* (*Daniels, J. C. and Dalal, A.J.C.*). DRIGHPAL SINGH *v.* HARHAR BAKHSH SINGH. **64 I.C. 80= 24 O.C. 245= A.I.R. 1921 Oudh 169.**

—Alienation—Widow—Powers of.

———According to the Hindu Law, a widow in Gujarat governed by the Mayukha can dispose of movable property inherited from her husband by act *inter vivos*, *i.e.*, by sale, gift or otherwise, but cannot will it away: 28 Bom. 453; 17 Bom. 690, *Ref. to.* (*Marten, C. J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL.

32 Bom. L. R. 1217= A.I.R. 1930 Bom. 517.

———*Alienation such as a prudent owner would make in order to benefit the estate*—Bona fide *lender is not affected by the precedent mis-management of the estate when he is not a party to it.*

The power of a widow to charge an estate not her own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in case of need or for the benefit of the estate. But where in a particular instance the charge is one which a prudent owner would make in order to benefit the estate, the *bona fide* lender is not affected by the precedent mis-management of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it, in the particular instance is the thing to be regarded. But it must be remembered that according to this principle it is only the *bona fide* lender who is protected. But, if that danger arises from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the widow grounded on a necessity which his own wrong has helped to cause: 6 M.I.A. 393 (P.C.),

HINDU LAW — Alienation — Widow — Setting aside.

Foll. (*Shadi Lal, C.J. and Bhide, J.*). AHMAD DIN *v.* TULSA SINGH. **113 I. C. 292= A. I. R. 1928 Lah. 875.**

———*Power and extent of disposal depends on the circumstances.*

It is impossible to define the extent and limit of a widow's power of disposing her husband's estate; it must depend upon the circumstances of the disposition whenever such disposition shall be made and must be consistent with the law regulating such disposition: 37 Cal. 1 and 22 Mad. 113, *Ref.* (*Greaves and B. B. Ghose, JJ.*). SAILABALA DEBI *v.* BAIKUNTHA NATH. **91 I. C. 186= A.I.R. 1926 Cal. 486.**

—Alienation—Widow—Setting aside.

———*Mortgage for cost of repairs to house—Necessity for repairs not proved—Mortgage not valid.*

According to the condition of a previous mortgage deed, a widow executed another mortgage for sums expended by the mortgagee to effect repairs of the mortgaged property the widow receiving nothing under the second mortgage. The property was afterwards sold and a suit for possession was brought by the reversioners,

Held: that as it had not been proved that the property required any repairs, the second mortgage was not binding on the reversioners. It was an alienation and the plea that because certain terms of a prior mortgage had not been complied with, therefore, the second mortgage was not to be regarded as an alienation at all, but was merely a transaction following on the first mortgage, could not be sustained. (*Dalip Singh and Agha Haidar, JJ.*). SUNDAR *v.* KAMUN. **117 I.C. 84= A.I.R. 1929 Lah. 516.**

———*Small portion of consideration not for necessity—Decree conditional on payment of consideration proved for necessity is justified* (obiter).

Where in a suit by a reversioner to set aside a sale by a widow of her husband's property, it was found by the lower Court that a small portion of the consideration was not proved to have been supported by legal necessity, and on that ground, the sale was set aside, inserting in the decree, a condition that on failure of the reversioners within a certain time to pay to the purchaser the amount of the consideration which was proved to have been supported by legal necessity, the suit of the reversioners should stand dismissed with costs,

Held, that the imposition of such a condition was fully justified: A.I.R. 1927 P.C. 244; A.I.R. 1925 Nag. 325, *Ref.* (*Kinkhede, A.J.C.*). KISAN *v.* LIKARAM LIDKE. **A.I.R. 1929 Nag. 180.**

———*Alienation by limited owner is only voidable.*

A sale by a limited owner is not *ab initio* void or invalid. It is perfectly valid and binding until it is set aside at the instance of the next reversioner. Such a transaction is like a voidable contract which is valid and enforceable unless it is repudiated by the person at whose option it is voidable. Therefore, if a person who has no right to challenge such an alienation be in possession of the alienated property, he cannot defend his possession against the alienee: A.I.R. 1922 Lah. 217, *Expl.* and *Dist.*; A.I.R. 1924 All. 109, *Appr.* (*Fforde and Jai Lal, JJ.*). DHANNA MAL *v.* PARMESHARI DAS.

111 I. C. 251= A.I.R. 1928 Lah. 9.

———Daughter can maintain a declaratory suit regarding an alienation effected by her step-mother.

On the death of the step-mother the property will descend to the heirs of her husband and his daugh-

HINDU LAW — Alienation — Widow — Setting aside.

ter is under Hindu Law entitled to succeed to it. She is therefore, his reversioner and has got a *locus standi* to contest the alienation made by her step-mother. (*Tek Chand, J.*). MT. BAL KAUR *v.* MT. HAR KAUR. **108 I.C. 184=A.I.R. 1928 Lah. 242.**

———*Reversioner—Election to set aside—Can be by demand or taking possession.*

The election of a reversioner to treat the alienation by a Hindu widow as a nullity, so as to make the possession of the alienee wrongful, can be expressed not only by the filing of a suit, but by a simple demand.

The intention of a reversioner to avoid an alienation by a Hindu widow can also be communicated to the alienee by an attempt to take possession forcibly: 34 Cal. 329 (P.C.), *Expl.* (*Hallifax, A.J.C.*). SITARAM MADHOJI *v.* MAROTI.

103 I.C. 259=10 N L.J. 137= A. I. R. 1927 Nag 305.

———A sale of joint family property should not be set aside merely because a part of the proceeds is not proved to have been applied to purposes of necessity. The principle applies equally to a sale by a widow. Where therefore the sale itself is for necessity a Court should not call upon the transferees to account for every item which goes to make up the sale consideration: A.I.R. 1927 P. C. 37, *Foll.* (*Wazir Hasan and Pullan, JJ.*). BENAIK DAT *v.* MOHAMMAD GHAFUR KHAN.

105 I.C. 496=4 O.W.N. 770=A.I.R. 1927 Oudh 442.

———A suit by reversioner for declaration that a mortgage by vendee from Hindu widow does not affect his rights, is not maintainable. He must attack the sale by widow and if that remedy is time-barred, he cannot get over the difficulty by attacking the mortgage by vendee. (*Stuart, C. J. and Wazir Hasan, J.*). BADRIPRASAD *v.* BACHCHA. **101 I.C. 52=A.I.R. 1927 Oudh 217.**

———Land mortgaged by last male holder—Property sold by widow to discharge the mortgage debts—No proof that there were no other properties available on which to raise the necessary money—Sale set aside. (*Das and Adami, JJ.*). DASARATH SINGH *v.* DAMIN SINGH. **103 I.C. 495= 8 P.L.T. 314=A.I.R. 1927 Pat. 219.**

———*Gift of whole interest of the widow is good until questioned after reversion falls in.*

The gift by widow of the whole interest in the property is good against all the world until the reversion falls in, and even then it is liable to be questioned by the actual reversioners. Only when so questioned, if the attack is successful, the interest terminates. (*Phillips and Ramesam, JJ.*) RAMA AIYAR *v.* NARAYANASAMI AIYAR. **96 I. C. 483= 23 M. L. W. 496=1926 M. W. N. 958= A.I.R. 1926 Mad. 609=51 M L.J. 313.**

———*Gift by widow—Widow subsequently surrendering her life-estate to next reversioner — Reversioner cannot challenge gift during her lifetime* (Walmsley, J. contra, Page, J.).

Per *Walmsley, J.*—A reversioner on the strength of the deed of relinquishment, cannot obtain possession of the property gifted away by the widow immediately, but he can do so after her death. (*Walmsley and Page, JJ.*). PRAFULLA KAMINI ROY *v.* BHABANI NATH ROY. **91 I. C. 897= 52 Cal. 1018=A.I.R. 1926 Cal. 121.**

———*Widow alienating property to purchase new property—Estate improved—Reversioner cannot set aside sale.*

If the parties who have to support an alienation made by a widow can show that the estate has been improved by selling immovable property and buying other lands of equal or greater value and more convenient for cultivation and management, Courts will not set aside such transaction: (1912) M.W.N. 167 and 41 M.L.J. 459, *Appr.*; 32 Bom. 577, *Dist.* (*Spencer, J.*). MAHALAKSHMAMMA *v.* RAMASAMY. **94 I.C. 950=23 M.L.W. 596=1926 M.W.N. 253= A. I. R. 1926 Mad. 641=50 M.L.J. 651.**

———*Sale of absolute occupancy holding without necessity is invalid.*

A sale by a widow in possession of her husband's absolute occupancy fields without legal necessity is liable to be set aside by the reversioners and the landlord's consent to the transfer cannot validate the transfer so as to amount to a surrender plus a subsequent grant of tenancy: 8 N.L.R. 154, *Foll.* (*Findlay, Offg. J. C.*). MAROTI *v.* CHIN SOO. **95 I.C. 626=A.I.R. 1926 Nag. 367.**

———*Alienation by widow without legal necessity is not void, but only voidable by reversioner.*

An alienation by a widow without legal necessity is voidable and not void and until the reversioner (including in that term 'Crown' if there is no reversioner) decides to avoid it or to treat it as a nullity, it stands good: 8 M. I. A. 529, *Dist.*; 18 C.W.N. 940 and 34 Cal. 329, *Foll.* (*Greaves and Cuming, JJ.*). UPENDRA NATH JANA *v.* S. M. SHIBADASI DEBI. **88 I.C. 898= A.I.R. 1925 Cal. 1053.**

———*First adopted son dying, second son adopted—Second son can challenge independently.*

An adopted son has, by virtue of his adoption, an inherent right to question any alienation by his adoptive mother before his adoption and the fact that there had been a previously adopted son could in no way affect that right. The second adopted son does not succeed to the first adopted son nor is he the representative of his, and therefore whether the mother as widow of the original holder made the alienation before the first adoption while she held a widow's estate, or after the death of the first adopted son, when she would be holding as his heir, would make no difference to the rights of the second adopted son to question her alienation. (*Macleod, C.J. and Coyajee, J.*). HANMANT SUBBAYA NAIK *v* KRISHNA MANJUNATH YAJI. **89 I.C. 62=49 Bom. 604=27 Bom. L.R. 642= A.I.R. 1925 Bom. 402.**

———The position of adopted son and that of reversioner in regard to alienation by widow are the same but for the fact that the former's rights commence on adoption, and the latter's after widow's death. (*Shah, Ag. C.J. and Fawcett, J.*). HANAMGOWDA SHIVGOWDA PATIL *v.* IRGOWDA SHIVGOWDA PATIL. **84 I.C. 374=48 Bom. 654= 26 Bom. L.R. 829=A.I.R. 1925 Bom. 9.**

———*Alienation by widow can be challenged by after-born reversioner.*

The limitations imposed upon the estate of a widow or daughter under Hindu Law are not imposed upon her for the benefit of reversioners. They are inseparable from her estate, so that even if there are no reversioners, she cannot alienate the corpus of the property except for a legal necessity. If she does alienate without legal necessity, then, if there be no reversioners, the alienation may be set aside by the Crown taking the property by escheat. So after-born reversioners can set aside alienations by the holders of such estates: 8 M.I.A. 500, *Foll.* (*Harrison and Zafar Ali, JJ.*). LALCHAND *v.* MANOHRI. **78 I.C. 717= A.I.R. 1925 Lah. 108.**

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———*All alienations by widow need not be challenged in one and the same suit.*

There is no law which compels a reversioner to bring one common suit to challenge all alienations made by a Hindu widow even though such alienations are in respect of different rights and in favour of different parties. (*Sulaiman, J.*). BANSOLOCHAN RAI *v.* JAGARNATH LAL. **78 I.C. 873= A.I.R. 1924 All. 838.**

———It is open to the reversioners to get only one of several transfers made by a Hindu widow set aside leaving aside the several transfers if they so choose to act. (*Sulaiman, J.*). BANSOLOCHAN RAI *v.* JAGARNATH LAL. **78 I C. 873= A.I.R. 1924 All. 838.**

———*It is voidable only at the option of next reversioner.*

An alienation by a Hindu female although made without necessity is not absolutely void but is only voidable. The option of avoiding such an alienation rests with the next heir and nobody else has the right to challenge it. (*Chevis and Harrison, JJ.*). WAZIRI MAL *v.* GANGA RAM. **69 I.C. 573= A.I.R. 1924 Lah. 370.**

———*Alienations by widows are only voidable and only reversioners can avoid them.*

It is the reversioners and the reversioners alone that can dispute a gift or other alienation by a Hindu widow. If they choose to allow the property to which they are entitled to remain with the donee or alienee, that is their affair and no one else can object.

It is not a correct view that a gift is void beyond the life-time of the widow even if it remains unchallenged by the reversioners during her lifetime or after her death.

A Hindu widow is not a tenant for life but is owner of her husband's property subject to certain restrictions on alienation. Her alienation is not therefore absolutely void but is voidable at the election of the reversionary heir. (*Dawson-Miller, C. J. and Mullick, J.*). MAHARAJA KESHEO PRASAD SINGH BAHADUR *v.* CHANDRIKA PRASAD SINGH. **68 I.C. 394=3 P.L.T. 797=2 Pat. 217= A.I.R. 1923 Pat. 122.**

———If the documents purport to have been executed by widow for legal necessity or at any rate for good cause, they are not void but voidable. The persons who are entitled to seek to avoid them are the reversioners, and it is not open to the strangers who do not claim as the reversioners to raise the question. (*Walmsley and B. B. Ghose, JJ.*). JABEDALI SHEIKH *v.* PRASANNA KUMAR NAG. **75 I.C. 281=27 C.W.N. 433= A. I. R. 1923 Cal. 423.**

———*Widow's alienations are only voidable.*

A Hindu widow's estate is not a life-estate and it is not an estate held in trust for reversioners. She represents the estate and has power to make alienations subject to the right of reversioners to have those alienations set aside if they are found to be either not for legal necessity or not for the benefit of the estate. They do not cease to be operative until they are set aside. A reversioner therefore cannot institute a suit for ejectment of the alienees in the Revenue Court without setting aside the alienation. (*Stuart, J.*). KANDHYA *v.* MT. RAJ KUNWAR. **75 I.C. 681= A.I.R. 1923 All. 367.**

———*Widow's alienation is not void but voidable.*

The estate of a Hindu widow is not a life-estate. She is a proprietor of the estate with a right of

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alienation subject to certain qualifications. Each alienation by the widow in the exercise of that right must be judged by the circumstances in which it is made. Her alienation is not therefore, absolutely void, but it is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court and he shows his election to do the latter by commencing an action to recover possession of the property. (*Wazir Hasan, A. J. C.*). BAHADUR SINGH *v.* N. S. SULTAN HUSAIN KHAN. **66 I.C. 455= 8 O.L.J. 535= A. I. R. 1922 Oudh 171.**

———Reversioner—Each alienation gives a fresh cause of action. (*Wazir Hasan, A. J. C.*). BAHADUR SINGH *v.* N. S. SULTAN HUSAIN KHAN. **66 I. C. 455=8 O.L.J. 535= A.I.R. 1922 Oudh 171.**

———Alienation—Widow transferring equity of redemption—Suit for redemption by donee—Mortgagee cannot resist donee's claim—Only reversioner can dispute his title. (*Macleod, C. J. and Heaton, J.*). SITARAM RAVAJI *v.* KHANDU MAIRALA. **59 I.C. 480=45 Bom. 105= A. I. R. 1921 Bom. 413.**

———*Alienation is not void but voidable—Reversioner suing for possession need not ask for declaration that alienation is inoperative.*

A Hindu widow is not a tenant for life, but is owner of her husband's property, subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it, subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. The institution of a suit for possession shows his election to treat the alienation as a nullity, and in such a suit, it is not necessary for him to ask for a declaration that it is inoperative. (*Mookerjee, Ag. C. J. and Fletcher, J.*). SULIN MOHAN *v.* RAJ KRISHNA GHOSE. **60 I.C. 826=33 C.L.J. 193= 25 C.W.N. 420= A. I. R. 1921 Cal. 582.**

—Alienation—Widow—Miscellaneous.

———A confirmation by a widow of a past alienation by her husband is not a new alienation by her. (*Madhavan Nair, J.*). ELAGAN *v.* NANJAPPAN. **85 I. C. 964=A.I.R. 1925 Mad. 919.**

———Mortgage by widow—Suit by reversioner to declare mortgage void against himself—Necessity for loan proved but no necessity proved for onerousness of terms of loan—Decree to be given that the onerous terms are not binding: A.I.R.1924 P.C. 184, *Foll.* (*Wazir Hasan, A. J. C.*). MOHAN LAL *v.* MT. DHAN KUAR. **85 I.C. 426=27 O.C. 362= A.I.R. 1925 Oudh 309.**

———*Fixing rent in perpetuity where variable rent was agreed to, is not valid against reversioners.*

Where a Hindu widow grants a permanent lease of a plot of land at a fixed rent to a person who is already in possession under a prior lease, at a variable rent granted by the full owner and the grant is not intended to operate as a new lease, the object of the parties being merely to alter one of

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the most important incidents of the tenancy that is to fix the rent in perpetuity,

Held, that the new lease is not operative against the reversioners. (*Mukerjee and Cholzner, JJ.*). JAMINI MOHAN SARKAR *v.* DEBENDRA NARAIN SINGH. **71 I.C. 976=A.I.R. 1924 Cal. 355.**

———*Reversioner treating the alienations as good cannot complain.*

An alienation by a widow beyond her powers is voidable and not void. If, therefore, a reversioner after he became *intituto* to reduce the estate to possession and knew of the alienation, did something which showed that he treated the alienation as good he would lose his right of complaint. (*Kumaraswami Sastri, J.*). NAYAKAMMAL *v.* MUNUSWAMI MUDALIAR. **84 I.C. 231= 20 M.L.W 222=A.I.R. 1924 Mad. 819.**

———Where there is no will, oral or written, the Hindu Law does not recognise any expression of the husband's wish during life as validating an alienation made by her after his death. (*Daniels, J.C. and Dalal A.J.C.*). DRIGPAL SINGH *v.* HARHAR BAKHSH SINGH. **64 I. C. 80= 24 O.C. 245=A.I.R. 1921 Oudh 169.**

—Alienation—Miscellaneous.

———Either a gift is good and binding upon the family or it is not. But where once the gift has been declared to be void the donor's heirs, cannot be deprived of their property and compelled to take compensation for it. (*Sulaiman and Pullan, JJ.*). UMA SHANKAR *v* MAHABIR PRASAD. **118 I.C. 235=A.I.R. 1929 All. 854.**

—Applicability—Aborigines of Assam.

———*Bengal School of Hindu Law applies.*

The Hindu Law should be applied to the aborigines of Assam. The Bengal School of Hindu Law applies to them. So, a sister's son is an heir unless there is a custom to the contrary. (*Chatterjee and Pearson, JJ.*). NEARAM KACHARI *v.* ARDARAM KACHARI. **64 I.C. 145= 35 C.L J. 34=A.I.R. 1921 Cal. 558.**

—Applicability—Berar.

———Berar is *prima facie* governed by the Bombay School of Law: and, though the Mayukha has not the same authority there as in Gujarath it supplements the Mitakshara and where the text of the Mitakshara is ambiguous, considerable weight must be given to the Mayukha. (*Jackson and Mohiuddin, A.J.Cs.*). BAJIRAO *v.* ATMARAM. **A.I.R. 1930 Nag. 265.**

———The Mitakshara Law is paramount and the Mayukha is of secondary consideration in Berar. (*Macnair, A.J.C.*). GOVIND *v.* CHINLAMAN. **105 I.C. 840=A.I.R. 1928 Nag. 55.**

———In Berar, following the Bombay Deccan, the Mitakshara is paramount and the Mayukha is of secondary consideration, being only relied upon when the Mitakshara is silent or doubtful. (*Baker, J.C. and Kotval and Prideaux, A.J.Cs.*). NARAYAN *v.* TULSIRAM. **87 I. C. 979=22 N.L.R. 183= A.I.R. 1925 Nag. 329 (F.B.).**

———In Berar Mayukha predominates over Mitakshara wherever they differ. (*Kotval, A.J.C.*). SHRIRAM *v.* RAJARAM. **78 I. C. 367=19 N.L.R. 193= A.I.R. 1924 Nag. 83.**

———*Lex loci* is Mitakshara as interpreted by Mayukha: 9 N.L.R. 102, *Foll.* (*Prideaux, A.J.C.*). GOVINDA *v.* MT. DOOMI. **65 I. C. 671= 5 N.L.J. 187=A.I.R. 1921 Nag. 142.**

—Applicability—Bhale Sultans.

———*Bhale Sultans are governed by Hindu Law in matter of succession.*

HINDU LAW—Applicability—Converts.

The Mahomedan Bhale Sultans have as a whole retained customs of inheritance which are generally in accordance with Hindu Law, and they have not adopted the Mahomedan Law of succession, and, therefore, the father has no share in the property left by his son: 9 M. I. A. 195 (P. C.), *Foll.*; A.I.R. 1922 P.C. 59, *Dist.* (*Wazir Hasan and Pullan, JJ.*). KHALIL AHMAD KHAN *v.* MOHAMMAD MUSTAFI KHAN. **112 I. C. 68=5 O.W.N. 275= A.I.R. 1928 Oudh 269.**

—Applicability—Converts.

———*Non-Hindu—When becomes a Hindu.*

Merely professing a theoretical allegiance to the Hindu faith does not make a person Hindu—Nor an ardent admirer and advocate of Hinduism and its practices is a Hindu—Long residence in India, abdication of one's own religion by a clear act of renunciation, adopting Hinduism by undergoing formal conversion to Hinduism, assuming a Hindu name, marrying in accordance with Hindu religious rites and taking to the Hindu mode of life, are proofs that a non-Hindu has become a Hindu. (*Venkatasubba Rao, J.*). RATANSI D. MORARJI *v.* ADMINISTRATOR GENENRAL OF MADRAS. **111 I C. 364=52 Mad. 160=28 M L.W. 674= 1928 M.W.N. 848=A.I.R. 1928 Mad. 1279= 55 M.L.J. 478.**

———European convert to Hinduism is subject to Hindu Law—Test of conversion is not of domicile but of religion. (*Venkatasubba Rao, J.*). RATANSI *v.* ADMINISTRATOR-GENERAL OF MADRAS. **111 I.C. 364=52 Mad. 160= 28 M.L.W. 674=1928 M.W.N. 843= A. I. R. 1928 Mad. 1279=55 M. L. J. 478.**

———*When Hindu Law is applicable.*

A mere conversion to a religion would not necessarily involve the adoption of the laws as to inheritance and succession obtaining among the adherents of that religion. But when the converts aim at identifying themselves with the rest strong evidence would be needed to show that they kept their own laws relating to social relations, marriage, inheritance and succession uninfluenced by the rules of law obtaining among the adherents of of the religion to which they became converts. (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MOOKKA KONE *v.* AMMAKUTTI AMMAL. **108 I. C. 760=51 Mad. 1=27 M. L. W. 611= A.I.R. 1928 Mad. 299=54 M. L. J. 174 (F.B.).**

———*When the law of survivorship applies.*

Conversion creates partition by operation of Hindu Law itself and therefore the right of survivorship does not survive, unless the convert has shown as a matter of fact that he renounced the partition which his conversion *ipso facto* effected: A.I.R. 1921 Mad. 224, *Expl.*; 1912 M.W.N. 386, *Foll.*; 31 Bom. 26, *Not foll*; 9 M.I.A. 195 (P.C.), *Rel. on.* (*Wallace, J.*). SUBBAYYA *v.* RANGAYYA **105 I.C. 206=26 M.L.W. 361= A.I.R. 1927 Mad. 883.**

———Hindus who have been converted to Islam frequently retain some of their Hindu customs and in particular those relating to marriage and inheritance. (*Wazir Hasan and Pullan, JJ.*). BINAIK DAT *v.* MOHAMMAD GHAFUR KHAN. **105 I.C. 496=4 O.W.N. 770=A.I.R.1927 Oudh 442.**

———A co-parcener by conversion to an alien faith such as Mahomadanism ceases to be a co parcener and separation is caused immediately on conversion: 9 M. I.A. 199 and 57 P.R 1916, *Foll.* (*Martineau, J.*). MT. JAMNA BAI *v.* GOUDA RAM. **80 I.C. 519=6 L.L.J. 84= A. I. R. 1924 Lah. 479.**

HINDU LAW—Applicability—Converts.

———*Conversion to Muhammadanism—Presumption is that Muhammadan Law applies, but may be rebutted.*

Where the family is descended from converts to Muhammadanism from Hinduism the presumption is that they follow Muhammadan Law. The presumption is a rebuttable one.

Instances showing that converts to Muhammadanism had departed from strict Mahomedan Law in other matters could not be regarded as raising any presumption that Mahomedan Law, had been abrogated by custom in matters of succession. But instances are relevant and of importance, *not to prove the special custom set up* but to show that in spite of the fact that the parties are converts to Islam strict Mahomedan Law has not been invariably followed and thus weaken the presumption referred to in 20 Bom. 53 and 45 Mad. 308. (*Broadway and Campbell, JJ.*). NAJIM-UDDIN *v.* ABDUL HAMID. **72 I. C. 845=A.I.R. 1923 Lah. 175.**

———There are among the Mahomedans certain groups whose ancestors were Hindus and professed the Hindu religion, and were then converted to Islam. Among these groups may be reckoned, as is shown by decided cases, Khojas, Suni Borahs, Molesalam Girasias, Cutch Memons, Nassapooria Memons; and, lastly, Halai Memons. Halai Memons domiciled in Porebunder follow the Hindu Law of Succession. (*Lord Dunedin.*) KHATUBAI *v.* MAHOMED HAJI ABU. **72 I.C. 202=47 Bom. 146=50 I.A. 108=27 C. W. N. 774=4 L.R.P.C. 42=37 C.L.J. 131=25 Bom.L R. 127=17 M. L. W. 208=32 M. L. T. 45=A.I.R. 1922 P.C. 414=44 M.L.J. 35 (P.C.).**

—Applicability—Cutchi Memons.

———*Succession—Hindu Law applies.*

The fact that a Cutchi Memon had signed a declaration under the Cutchi Memon Act that he was to be governed in all matters of succession by Mahomedan Law is immaterial in a case of his succession to a person who has not signed such a declaration, as his succession would be determined according to the law applicable to that person. (*Mirza, J.*). ABDUL SAKUR *v.* ABUBAKKAR. **32 Bom.L.R. 215=A.I.R. 1930 Bom. 191.**

———*Ex-communication—Decision of "Jamait" not arrived at in consonance with principles of justice—Court has jurisdiction to interfere.*

The decision of the "Jamait" or Council of the Khoja community ex-communicating a person is within the scope of its authority if arrived at in a manner consonant with the ordinary principles of justice, but if it is not so arrived at the Court would have jurisdiction to interfere: 26 Bom. 174, *Foll.* (*Wild, A.J.C.*). FAKIR MAHOMED NANJI *v.* AGHA KHAN. **A.I.R. 1930 Sind 204.**

———*Hindu joint family system does not apply.*

The Hindu joint family system is not known to the law governing Cutchi Memons; and they cannot live jointly in the sense that the word is understood in Hindu Law. The fact that two people live in a house does not make them members of a joint family governed by Hindu Law. The mere fact that younger members of a Cutchi Memon family join in the business started by their head would not make them partners, nor the firm a business governed by the Hindu Law of family firm. (*Tyabji, A.J.C.*). TULSIDAS KESHOWDAS *v.* FAKIR MAHOMED. **93 I. C. 321=19 S.L.R. 376=A.I.R. 1926 Sind 161.**

———*Hindu Law of joint family does not apply.*

Cutchi Memons have never adopted as part of their customary law the Hindu Law of joint family or the distinction existing in that law between ancestral family, joint family and ancestral property they are subject by custom to the Hindu Law of succession and inheritance only.

The presumption of Hindu Law that the money came from joint funds is not applicable to Muhammadans. There is no such thing as joint family property under the Muhammadan Law. (*Raymond, A.J.C.*). YUSIF MOHAMED *v.* ABUBACKER IBRAHIM. **78 I. C. 817=A.I.R. 1925 Sind 26.**

HINDU LAW—Applicability—Dancing girls.

———*Ancestral property—Son has no vested interest.*

The application of the rules of Hindu Law of custom to the Cutchi Memons is limited to rules of inheritance and succession and does not extend to the rules relating to the joint family property as applicable to Hindus. A son of a Cutchi Memon has no vested interest by birth in the ancestral property of his father: (1914) 10 Bom. L.R. 224 and (1915) 41 Bom. 181, *Rel. on.* (*Shah, Ag. C. J. and Pratt, J.*). HAJI OOSMAN *v.* HARROON SALEH MAHOMED. **68 I.C. 862=24 Bom. L.R. 978=47 Bom. 369=A.I.R. 1923 Bom. 148.**

———*Hindu Law of joint family applies.*

The Hindu Law as to joint family and coparcenary is applicable to Cutchi Memons. It is however open to the parties to prove any special custom varying any particular incidence of the joint family law. (*Case-law fully discussed.*)

The question is not whether after conversion a custom sprang up among the Cutchi Memons at variance with the Hindu Law, but whether they retained their old law to any, and if so, to what extent.

At the time of their conversion the Cutchi Memons were Hindus governed by the Mitakshara and the normal state of their families was a system of a joint and undivided family, with a law of survivorship as elaborated in the Mitakshara, whereby females were excluded in favour of male co-parceners, and were only entitled to residence and maintenance. (*Kumaraswami Sastri, J.*). HAJEE ABOO BUCKER *v.* EBRAHIM HAJEE. **70 I.C. 715=31 M.L.T. 183=A.I.R. 1921 Mad. 571.**

—Applicability—Dancing girls.

———*Collateral succession obtains amongst sons of dancing girls.*

The rule of collateral succession obtains among the legitimate descendants of the two sons of a dancing woman whose paternity is unknown, *i. e.*, each branch can inherit to the other.

It is a misnomer to call the son of a dancing woman whose paternity is unknown an illegitimate son. The illegitimate son is one born out of wedlock, *i e.*, no marriage was solemnized between the father and the mother. In the case of sons of prostitutes or dancing women the paternity is unknown and it is only an euphemism to call them illegitimate sons.

People who have been born in India and who are of the Hindu faith, and whose customs and manners are those of Hindus, are governed by the Hindu Law. In the case of a dancing woman or a Hindu prostitute her religion is Hindu and her customs, manners and observances are Hindu, and her sons are Hindus, and the Hindu Law therefore is applicable to them. It is consonant with reason and principle that when a particular system of law is made applicable to a set of persons, the whole of that system should be applied and not portions of it, unless any custom, valid and binding, is proved to the contrary, or else the application of that

HINDU LAW—Applicability—Dancing girls.

system is modified either by statute or by anything contained in the rules of that system. It is not necessary that in order to have heritable blood inheritance should be traced through the father. It logically follows that the sons of a dancing woman or a prostitute have heritable blood between them. Hence there is heritable blood between the lines of their legitimate descendants. (*Case-law discussed.*) (*Davadoss and Wallace, JJ.*). VISHWANATH MUDALI *v.* DORAISWAMI MUDALI.

1925 M.W.N. 613=A.I.R. 1926 Mad. 1.

———*Joint family with rights of survivorship is possible—Right by birth is doubtful.*

There can be a co-parcenary of dancing girls, with rights of survivorship. But there is no case which goes to the length of saying that daughters of dancing girls acquire by birth an interest in the ancestral property.

The parties were dancing girls. The mother, daughter and grand-daughter all lived together, put their earnings together and behaved in all respects as members of a joint family.

Held, that they constituted a joint family with rights of survivorship.

Held, also that a mortgage of the joint property was binding on the other members of the family in so far as the amount borrowed had been spent on purposes binding on a joint Hindu family. (*Kumaraswami Sastry, J.*). P. KOKILAMBAL *v.* P. SUNDARAMMAL. **86 I.C. 632=21 M.L.W. 259=A.I.R. 1925 Mad. 902.**

—Applicability—Dat Brahmans.

———Dat Brahmans of the village Damun Chak tahsil Kharian, district Gujrat, are governed in matters of succession by their personal law namely, Hindu Law, and not by custom prevailing among their agriculturist neighbours. (*Abdul Raoof and Addison, JJ.*). KHAZAN CHAND *v.* PARS RAM.

90 I.C. 1045=6 Lah. 524=26 P.L.R. 627=7 L.L.J. 459=A.I.R. 1925 Lah. 646.

—Applicability—Dayanandis.

———*Dayanandis are Hindus.*

Dayanandis are Hindus. If the Brahmos are Hindus, the Arya Samjists are more so because though professing to be monotheistic they believe in the supremacy of the Vedas. (*Coutts and Adami, JJ.*). SURAJ JOTE KUMAR *v.* ATTAR KUMARI.

67 I.C. 550=1922 P.H.C.C. 235=3 P.L.T. 551=1 Pat. 706=A.I.R. 1922 Pat. 378.

—Applicability—Gharbari Gosavis.

———Except so far as their particular customs apply, the Gharbari Gosavis are governed by the usual law as to Hindus. (*Lord Phillimore.*) HARIGIR *v.* BHARATHI. **88 I.C. 343=21 N.L.R. 127=22 M.L.W. 355=1925 M.W.N. 414=A.I.R. 1925 P.C. 127 (P.C.).**

—Applicability—Gond.

———*Gond is not a Hindu—Hindu Law applies to the extent it has been adopted.*

A Gond is not a Hindu and is not governed by the Hindu Law. In the case of any particular Gond it can of course be proved that this family or any large body of Gonds in which he is included has adopted any particular custom or all the principles of Hindu Law, by becoming converts to the Hindu religion or otherwise, so that they are now bound by that custom or those principles, but it is for the party who alleges this to prove it. Credible evidence that on the points, which most frequently arise, involving personal law, custom of the family or body differs in no respect from that of Hindu families in the locality, would suffice for

HINDU LAW—Applicability—Jains.

an inference that all the principles of Hindu Law might have been adopted. It would then be for the opposite party to show that although part of the Hindu Law might have been adopted, the particular custom which governed the disposal of the suit had not been adopted: A.I.R. 1923 Nag. 317, *Rel. on.* (*Macnair, Offg. J.C.*). MIRARI *v.* HANSLAL. **121 I.C. 650=26 N.L.R. 111=A.I.R. 1930 Nag. 57.**

———Per *Hallifax, A.J.C.*—Hindu Law cannot be applied to Gond family unless it is shown that it has adopted rules of Hindu Law: A.I.R. 1923 Nag. 317, *Foll.* (*Mohiuddin and Macnair, A.J.Cs.*). MT. SARJABAI *v.* GANGARAM. **118 I.C. 871=A. I. R. 1930 Nag. 35.**

———In the absence of any evidence as regards the law which the Gonds follow a mother of a minor is a preferential guardian to a grand-mother. (*Macnair, Offg. J.C.*). NARBADI *v.* CHOTTI. **117 I. C. 281=A. I. R. 1929 Nag. 129.**

———Gonds are not Hindus: A.I.R. 1923 Nag. 317 and 2 N.L.J. 129, *Foll.* The Raj Gonds are no exception to this rule and they also are not governed by the Hindu Law. (*Baker, J.C.*). JANKUBAI *v.* PARVATI. **87 I. C. 1036=A.I.R. 1925 Nag. 333.**

———*Gond is not a Hindu—Family custom—Custom adopting Hindu Law could be proved.*

A Gond is not a Hindu and is not governed by the Hindu Law. In the case of any particular Gond it can of course be proved that his family or any large body of Gonds in which he is included has adopted any particular custom or all the principles of Hindu Law, by becoming converts to the Hindu religion or otherwise but it is for the party who alleges this to prove it. (*Hallifax and Kotval, A.J.Cs.*). VITHOBA *v.* LAL SINGH. **76 I.C. 980=19 N.L.R. 104=A.I.R. 1923 Nag. 317.**

—Applicability—Grahast Gosains.

———A Grahast Gosain or Bairagi is governed by the ordinary rules of Hindu Law unless it is proved that any special custom applies: *Sheoshankar Gir* v. *Rama Krishna Puri*, S. A. No. 619 of 1909, *Diss. from.* (*Hallifax and Macnair, A.J.Cs.*). ITWARIDAS *v.* BODHAN. **17 N. L.R. 29=A.I.R. 1921 Nag. 54.**

—Applicability—High caste Hindus in Punjab.

———*High caste Hindus in Punjab—Hindu Law applies.*

Even in the Punjab, the high caste Hindus living in towns and working as traders are presumably governed by Hindu Law and in the absence of sufficient evidence it cannot be said that that law is superseded on any particluar point by custom. (*Martineau and Zafar Ali, JJ.*). MT. BAL KAUR *v.* DEOKI. **75 I.C. 109=4 Lah. 236=6 L.L.J. 69=A.I.R. 1923 Lah. 579.**

—Applicability—Illegitimate sons.

———Hindu Law does not apply to illegitimate sons of a Hindu by a Mahomedan concubine and they are not even entitled to maintenance on general principles of equity. (*Chevis and Le Rossignol, JJ.*). CHARANJIT SINGH *v.* AMIR ALI. **64 I.C. 892=2 Lah. 243=A.I.R. 1921 Lah. 121.**

—Applicability—Jains.

———The Hindu Law applies to the Jains in the absence of custom varying the law: 31 C. 11 (P.C.) 1 A. 688 (P.C.); 4 C. 744 (P.C.); 23 Bom. 257, *Ref. to.* (*Marten, C. J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL. **32 Bom. L.R. 1217=A.I.R. 1930 Bom. 517.**

———*Widow and mother take limited interest as under Hindu Law.*

A widow belonging to the community of Dasha Shrimali Shwetambar Jains in Bombay has no

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larger powers over the immovable property inherited from her husband than an ordinary Hindu law. And the mother inheriting as an heir after the widow is not competent to deal with the property inherited from her son. She gets only a limited interest. (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL. **32 Bom. L.R. 1217= A.I.R. 1930 Bom. 517.**

——A Jain mother is not competent to make a gift of a large portion of the properties in favour of charities. (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL. **32 Bom. L.R. 1217= A.I.R. 1930 Bom. 517.**

——Jains are primarily governed by Hindu Law subject to the proof of any custom that might be set up: 74 P.R. 1916; A. I. R. 1927 Mad. 228, *Foll.* (*Broadway and Hilton, JJ.*). PREM SAGAR *v.* RAM GOPAL. **A.I.R. 1929 Lah. 814.**

——*Succession is governed by Hindu Law unless special custom is pleaded and proved.*

Unless a special custom is pleaded and proved, the ordinary Hindu Law governs succession amongst the Jains. It cannot be assumed that they do possess a peculiar custom of inheritance with reference to the property which devolves upon a Jain widow from her husband and reported decisions cannot supply the place of evidence and any fact relating to custom has got to be proved by the production of evidence bearing upon the question sought to be proved: 16 Bom. 347; 4 Cal. 744 (P.C.); 32 All. 247 (P. C.) and 2 C. W. N. 154, *Foll.*; 1 All. 688 (P. C.), *Dist.* (*Sen and Niamatullah, JJ.*). MT. BULAGAN *v.* RATAN LAL. **110 I.C. 546=26 A.L.J. 1196= A.I.R. 1928 All. 636.**

——*Widow cannot adopt without consent of husband or his sapindas.*

Adoption amongst Jains is regulated by the ordinary Hindu Law, and it is for the Jains to allege and prove any custom different from the normal Hindu Law and usage in the country in which the property is located and the parties reside. Therefore, the consent of the husband or his sapindas is necessary to validate an adoption made by a Jain widow: 4 Cal. 744 (P.C.); 2 C.W.N. 154; 8 W.R. 116; 30 All. 197; 10 Bom. H. C. R. 241; and 16 Mad. 182, *Foll.* (*Kumaraswami Sastri, Offg. C.J. and Curgenven, J.*). GATEPPA *v.* ERAMMA. **99 I.C. 503=50 Mad. 228= 26 M.L.W. 408=A.I.R. 1927 Mad. 228= 51 M.L.J. 757.**

——*Jains are governed by Hindu Law in absence of special custom.*

The ordinary Hindu Law applies to Jains in the absence of proof of special custom varying it, and a widow among Jains holds a limited interest in the joint family property of her husband and his brother in the absence of any special custom: 4 Cal. 744, *Foll.*; 1 All. 688 (P. C.) and 27 Cal. 379, *Dist.* (*Daniels and King, JJ.*). NEKRAM SINGH *v.* SHRINIWAS. **96 I.C. 639=24 A.L.J. 751= A.I.R. 1926 All. 586.**

Per *Mukerji, J.*—Adoption among Jains is more a matter of custom than of spiritual necessity. Even a married man may be adopted among them. (*Lindsay and Mukerji, JJ.*). MITAR SAIN *v.* DATA RAM. **87 I.C. 724=A.I.R. 1926 All. 7.**

——Agarwallas generally adhere to Jainism and repudiate the Brahminical doctrines relating to obsequial ceremonies, the performance of Sraddh, the offering of oblations for the salvation of the soul of the deceased. They do not believe that a son, either by birth or by adoption, confers spiri-

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tual benefit on the father: 10 B.H.C.C. 241, *Ref.* (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I.C. 357=1925 M.W.N. 692= 30 C.W.N. 601=23 A. L. J. 273= 2 O.W.N. 335=21 N.L.R. 50=52 Cal. 482= 6 L.R.P.C. 97=27 Bom. L.R. 837=52 I.A. 231= A.I.R. 1925 P.C. 118=49 M.L.J. 173 (P.C.).**

——Among the Jains a widow enjoys absolute power of disposal over property inherited by her from her husband which was not his ancestral property. (*Baker, Offg. J.C.*). MT. SANO *v.* PURAN SINGH. **78 I.C. 461=A.I.R. 1925 Nag. 174.**

——*Jains are Hindu Dissenters—Custom must be proved if exemption from Hindu Law is claimed.*

Jains are Hindu Dissenters and when a custom is set up by them in contravention of the ordinary Hindu Law, the custom must be proved subject to the requirements as to the proof of any other custom varying the ordinary Law. But when so proved, effect must be given to the custom. (*Baker, Offg. J.C.*). MT. SANO *v.* PURAN SINGH. **78 I.C. 461=A.I.R. 1925 Nag. 174.**

——*Jains may adopt in dattaka form.*

There is no authority to show that Jains cannot adopt in the Dattaka form or that an adopted son among Jains can, in no case, become a member of the family of his adoption. (*Broadway and Abdul Qadir, JJ.*). GOPI MAL *v.* PANNALAL. **72 I.C. 424=A.I.R. 1924 Lah. 339.**

——Jains are subject to Hindu Law in matters of alienation except where a special custom is proved. (*Broadway and Brasher, JJ.*). CHHAJJHU MAL *v.* KUNDAL MAL. **70 I.C. 838= A.I.R. 1923 Lah. 53.**

——*Jains generally adhere to Hindu Law—Hindu Law of adoption applies in absence of contrary usage—Sitambari Jain widow can adopt a boy, even married, to her husband without husband's authority.*

The Jains are of Hindu origin; they are Hindu dissenters. Although generally adhering to the ordinary Hindu Law, that is, the law of the three superior castes, they recognise no divine authority in the Vedas and do not practise the Shradhs, or ceremony for the dead. The due performance of the Shradhs, or religious ceremonies for the dead, is at the base of the religious theory of adoption, but the Jains have so generally adopted the Hindu Law that the Hindu rules of adoption are applied to them in the absence of some contrary usage. The only ceremony necessary to the validity of an adoption among the Jains is the giving and taking of the adopted son, actually putting of the boy in the lap of the adoptive father or mother is not necessary.

Among the Sitambari sect of Jains the widow of a sonless Jain can legally adopt to him a son without any express or implied authority from her deceased husband to make an adoption and the adopted son may be at the time of his adoption a grown-up and married man. (*Sir John Edge.*) SHEOKUARBAI *v.* JEORAJ. **61 I.C. 481= 16 N.L.R. 170=1920 M.W.N. 627= 25 C.W.N. 273=A.I.R 1921 P.C. 77 (P.C.).**

——*Jains—Adoption being merely temporal, variations from general law have been recognized.*

Among the Jains adoption is a mere temporal or secular arrangement and has no spiritual or religious object or significance; and consequently several variations from the ordinary Hindu Law have been judicially upheld as valid among them. (*Macleod, C.J. and Fawcett, J.*). PARSHOTAM GANPAT *v.* VENICHAND GANPAT. **61 I.C. 492=45 Bom. 784= 23 Bom. L.R. 227=A.I.R. 1921 Bom. 147.**

HINDU LAW—Applicability—Jains.

———Jains have so generally adopted the Hindu Law that the Hindu rules of adoption are applied to them in the absence of some contrary usage: 25 C.W.N. 273 (P.C.), *Foll*; 14 M.I.A. 570 (P.C.), *Ref.* (*Macleod, C.J. and Fawcett, J.*). PARSHOTAM GANPAT *v.* VENICHAND GANPAT. **61 I.C. 492= 45 Bom. 754=23 Bom. L.R. 227= A.I.R. 1921 Bom. 147.**

—Applicability—Kayasthas.

———*Lapses from orthodox practices do not entail degradation—Kayasthas—Bihari Kayasthas are not sudras—Adoption—Rules of dwijas apply.*

A Hindu does not cease to be so merely by occasional lapses in matters of diet and ceremonial observances from orthodox Hindu practice. The principle will equally apply where the question is whether the members of a regenerate class have ceased to belong to it by reason of such lapses. The Kayasthas are not Sudras, but belong to the three regenerate classes and their abandoning the performance of Upanayanam ceremony will not degrade them to Sudradom. In any case the Behari Kayasthas are not Sudras. All of them came down from Upper India and are governed by the laws and customs which prevail there: 10 Cal. 688, *Diss. from.* Therefore, the rule prohibiting an adoption of a daughter's son, mother's sister's son and sister's son among the three regenerate classes does apply to them unless varied by family custom. (*Hindu Law texts and case-law fully reviewed.*) (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASAD LAL. **106 I.C. 620= 8 P.L.T. 34=6 Pat. 506=A.I.R. 1927 Pat. 145.**

—Applicability—Khoja Muhammadans.

———Hindu Law applies to Khoja Muhammadans with regard to the question of succession and inheritance only. But principles relating to joint family are not applicable to Khojas. (*Percival, J.C. and Aston, A.J.C.*). MAHOMED KASSIM *v.* NATHO BHANO. **107 I.C. 211 (Sind).**

—Applicability—Kurmi Mahtos.

———*Manbhum district — No* lex loci *— Kurmi Mahtos—It is a question of proof if Dayabhaga or Mitakshara applies to them.*

Per *Macpherson, J.*—The term "aboriginal," at least in Chota Nagpur, denotes race only. It implies nothing as to religion which may be even within the same tribe Animism, a slight veneer of Hinduism, various intermediate stages of Hinduism, or Christianity. On the other hand, the term "Hindu" has in Chota Nagpur reference only to religion. The Kurmi-Mahtos of the Manbhum district are racially an aboriginal tribe.

It is far from settled law that the Dayabhaga system is the *lex loci* in the district of Manbhum, particularly the north and the western half, or indeed in any part of the district. Like the rest of Chota Nagpur and the Jungle Mahals the district of Manbhum was until comparatively recent times outside the Hindu pale.

There is no *lex loci* as to the system of Hindu Law which prevails in Manbhum or in any area of it. It cannot be predicated of a Hindu of that district and particularly of a convert to Hinduism from the local tribes that he belongs by operation of law to any particular school of Hindu Law, whether Mitakshara, Dayabhaga or another. It is a matter of proof in each case whether they are governed by a particular school. The onus is upon the person who alleges that customary laws have been discarded and that the aboriginal convert adheres to a particular school of Hindu Law in the matter of inheritance. (*Dawson-Miller, C.J. and Macpherson, J.*). KRITTIBASH MAHTON *v.* BUDHAN MAHTANI. **89 I.C. 796=6 P.L.T. 604= 1926 P.H.C.C. 129=A.I.R. 1925 Pat. 733.**

HINDU LAW—Applicability—Migration.

—Applicability—Lingayats.

———Lingayats whose only God is Shiva and who acknowledge the authority of the Vedas are bound by Hindu Law except in so far as it is modified by custom: A.I.R. 1927 Mad. 228, *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*). SOMASEKHARA *v.* MAHADEVA. **53 Mad. 297=A.I.R. 1930 Mad. 496.**

—Applicability—Mahomedans.

———There is a presumption that Muslims are governed by Muhammadan Law, and if a person alleges that Cutchi Memons are governed by Hindu Law by custom, the burden of proving the custom lies on him and the onus will be discharged by proof of actual instances in which the alleged custom has been followed. (*Tyabji, A. J. C.*). THULSIDAS KESHAVDAS *v.* FAKIR MAHOMED. **93 I.C. 321=19 S.L.R. 376= A.I.R. 1926 Sind 161.**

—Applicability—Makkathayam Thiyyas.

———*Makkathayam Thiyyas are governed by custom—Hindu Law is to be adopted in cases where custom is not proved on any particular matter.*

The Makkathayam Thiyyas are governed by the customary law and when a question arises as to what is the rule of law governing them on any particular matter, the Court has to see what is the rule of customary law obtaining amongst them in that matter and in cases which are not sufficiently covered by prior decisions, the question will have to be determined with reference to the evidence in the case: 17 Mad. 184, *Expl.*; 19 Mad. 440 and 19 Mad. 1, *Ref.*

In the absence of any satisfactory evidence to show what exactly is the rule of the customary law in any particular point, the rule of Hindu Law on that point must be presumed and adopted to be the rule of the customary law obtaining amongst the community on that point. The presumption therefore will be useful and will hold good only if satisfactory evidence is not forthcoming as to what is the rule of the customary law: 39 M.L.J. 427 and S.A. 2092 of 1920, *Diss. from*; 15 Mad. 281, *Expl.* and *Foll.*; A. I. R. 1921 Mad. 661, *Ref.* (*Waller and Madhavan Nair, JJ.*). PATTUKKAYAL CHAKUTTI *v.* KOTHEMBRA CHANDUKUTTI. **105 I.C. 55=39 M.L.T. 314= A.I.R. 1927 Mad. 877=53 M.L.J. 368.**

—Applicability—Marathas.

———*Marathas of the five families and* 96 *families are Kshatriyas.*

The popular view lays down three tests for determining the class to which a Hindu belongs: (1) the consciousness of the caste; (2) its customs; and (3) the acceptance of that consciousness by the other castes. Dividing the Marathas, therefore, into the three sub-divisions well recognized among themselves, *viz.*, the five families, the 96 families and the rest, the first two classes are proved to be legally Kshatriyas, judged by the three tests: *Case-law discussed.* (*Madgavkar and Patkar, JJ.*). SUBRAO *v.* RADHA. **113 I.C. 497= 52 Bom. 497=30 Bom.L.R. 692= A.I.R. 1928 Bom. 295.**

—Applicability—Migration.

———A dispute was as to property situated in the Bombay Presidency. The family, to which the property belonged, observed old customs prevailing on the Delhi side.

HINDU LAW—Applicability—Migration.

Held, that the family must have sprung from Delhi, from where the customs had been introduced in their present place. The family was, therefore, governed by Benares and not Bombay School. (*Lord Buckmaster.*) BALKISAN DEVCHAND *v.* KUNJALAL HIRALAL AGARWALA. **122 I.C. 1= 32 Bom.L.R. 385=31 C L.J. 237= 31 M.L.W. 625=A.I.R. 1930 P.C. 133= 58 M.L.J. 338 (P.C.).**

——*Person migrating, or territory transferred to another province—He is presumed to have carried his personal law with him.*

Whether it is case of an individual migrating from one province to another, or a case of territory where he resides being transferred from one province to another, the presumption until contrary is shewn is that he carries his personal law with him. Where, therefore, North Kanara District of Madras is transferred to Bombay Presidency, Mayukha cannot be said to apply to it simply because of such transfer: 13 W. R. 47 and A. I. R. 1921 P. C. 59, *Rel. on.* (*Kumaraswami Sastri and Walsh, JJ.*). SOMASEKHARA *v.* MAHADEVA. **53 Mad. 297= A.I.R. 1930 Mad. 496.**

——*Law.*

The law existing at the time of migration continues to govern the migrated members until it is renounced. (*Findlay, J. C. and Subhedar, A. J. C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I.C. 609=A.I.R. 1930 Nag. 223.**

——*Person migrating carries his personal law.*

When a person migrates from one country to another, there is a presumption that he carries with him his personal law and unless there is something to show that he has adopted the law of his new domicile, he must be deemed to be still governed by the old law. (*Lindsay and Sulaiman, JJ.*). SUKHBIR SINGH *v.* MANGEISAR RAO. **100 I.C. 778=43 All. 302=25 A. L. J. 185= A. I. R. 1927 All. 252.**

——*Family resident in Bengal claiming to be governed by Mitakshara—Proof of migration.*

Where the parties who were residents of Bengal claimed to be governed by the Mitakshara and the evidence only proved that at sometime or other they must have migrated from outside Bengal but where it could not be ascertained as to when this migration took place or from where the parties' ancestors had come and the parties availed of only the services of Bengali priests on ordinary occasions and only on important occasions procured the services of an up-country Misra Brahmin,

Held: that the evidence was not sufficient to prove that the parties were governed by Mitakshara as alleged. (*Greaves and Mukerji, JJ.*). NAGENDRA NATH ROY *v.* JUGAL KISHORE ROY. **90 I.C. 281=29 C.W.N. 1032=43 C.L J. 83= A.I.R. 1925 Cal. 1097.**

——*Migrating family—Personal law continues to apply unless renounced.*

The personal law of a migrating family will govern them in their new domicile if it was the personal law at the time of migration and provided that they have not renounced the law of the province from which they have migrated. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

——*Migrating family.*

Employment of local priests under supervision of family priests does not prove adoption of local law. Per *Spencer, Offg. C.J.* (*Spencer, Offg. C.J. and Kumaraswami Sastri, J*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

——*Migrating family—Party pleading the original law as different from local law must prove.*

When a Hindu migrates, he is entitled to carry his own law, that is to say, the personal law from his home of origin, to the new place. He may continue to observe these rules or laws or may abandon them: but where the law to be pleaded is different from the law prevailing in the locality, it must be on the party who pleads that law, to say so. (*Mukerji and Daniels, JJ.*). SHYAM LAL SHAH, *In re.* **86 I.C. 729=6 L.R A. Civ. 186= 49 All. 848=A.I.R. 1925 All. 648.**

——Where a family migrated from one territory to another and preserved its ancient ceremonies and practices the presumption is that it also preserved its personal law of succession unless there is proof of the renunciation of the original law for that of the place migrated to. (*Lindsay and Kanhaiya Lal, JJ.*) JAWAHIR LAL *v.* JEVAN LAL. **79 I.C. 861=45 All. 192=22 A.L.J. 49= 5 L.R.A. Civ. 130=A I.R. 1924 All. 350.**

——*Migrating family going to Bengal need not show immigration before Dayabhaga.*

For a family originally, coming from north west of India and residing in Bengal, it is not absolutely necessary to prove immigration since the establishment of the Dayabhaga system and the continued practice of Mitakshara customs in order to show that the family is governed by Mitakshara. The necessary proof of origin and practice is enough: 31 C.L.J. 52, *Expl.* (*Walmsley and Suhrawardy, JJ.*). RAMESH CHANDRA SINHA *v.* MD. ELAHI BUKSH **79 I. C. 309=50 Cal. 898= A.I.R. 1924 Cal. 383.**

——*Migrating family—New school adopted—Revival by one member not permissible.*

Where a Hindu family migrates from one province to another, the presumption is that it carries with it old laws and customs as to succession and family relations but this presumption may be rebutted by proof that the family has adopted the law and usages of the place to which it has migrated, and once it is proved that a new family usage has grown up in the course of generations, possibly with the concurrence or acquiescence of families of the same group, it furnishes the governing law of the family. It would obviously lead to much confusion and abundant litigation, if the law permitted arbitrary attempts to revive and give effect to the original usages, after they had been clearly abandoned, and the abandonment had been acted upon so long as to result in the adoption of new usages. It is then not open to a member at any time to disclaim his personal law and adopt another at his choice; if this were permissible chaos could be the only result. (*Mookerjee and Cuming, JJ.*). SARADA PRASANNA ROY *v.* UMA KANTA. **77 I. C. 450=37 C. L.J. 233=50 Cal. 370= A.I.R. 1923 Cal. 433.**

——*Migrating family—Law of original country applies*, prima facie.

The law of succession is in any given case to be determined according to the personal law of the individual whose succession is in question. If nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place. In that sense only is domicile of importance. But if more is known, then in accordance

HINDU LAW—Applicability—Migration.

with that knowledge his personal law must be determined unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated. Original law is law which prevailed at the time of migration. The law governing succession to Maharashtra Brahmin whose ancestors had at one time lived in the Bombay Presidency is the law applicable there and his daughter takes an absolute estate in his property after his death. (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO. **57 I.C. 543=48 Cal. 30=47 I.A. 213=16 N.L.R. 187=18 A.L.J. 1049=22 Bom. L.R. 1070=28 M.L.T. 157=12 M.L.W. 679=1920 M.W.N. 483=3 N.L.J. 251=25 C.W.N. 243=A.I.R. 1921 P.C. 59=39 M.L.J. 166 (P.C.).**

———New domicile — Connection with original home maintained—Presumption is that the law applicable originally continues to apply, in matters of succession. (*Broadway and Campbell, JJ.*). NAZM-UD-DIN *v.* ABDUL HAMID. **72 I. C. 845=A.I.R. 1923 Lah. 175.**

———If nothing is known about a man except that he lived in a certain place, it will be assumed that his personal law is the law which prevails in that place : 16 N. L. R. 187 (P.C.), *Foll.* (Origin of Gujars of Nimar District traced.) (*Batten, J. C.*). RAMPHABAI *v.* TOTARAM. **71 I. C. 727=6 N.L.J. 33=A.I.R. 1923 Nag. 188.**

—Applicability—Mithila.

———Per *Das, J.*—The Mitakshara is of authority in Mithila except in regard to those matters where there is a difference ofo pinion between Vijnaneswara and the Mithila commentators. (*Dawson-Miller, C. J. on difference between Das, J. and Foster, J.*). AITENDRA SINGH *v.* RAMESWAR SINGH. **88 I.C. 141=87 I.C. 849=4 Pat. 510=6 P.L.T. 624=A.I.R. 1925 Pat. 625.**

—Applicability—Naiks.

———*Hindu Law applies to Naiks—Even prostates are governed by Hindu Law if they have not adopted any other religion with a personal law—It will apply to aboriginal tribes though complete conversion to Brahmanical religion is not proved.*

Hindu Law should be applied to the Naiks. Even those who abandon the religion of the Srutis and Smritis and do not adopt another religion signifying thereby their intention to adopt the laws of succession of the community following the religion newly adopted, will be governed by the Hindu Law. The Hindu Law as now understood is the law of the Srutis and Smritis including the recognized customs as administered and interpreted in the light of the judicial decision and the said law is applicable to all who have not adopted some other personal laws of their own. The Hindu Law will apply not only to the Aryan settlers and such aboriginal races as have been completely absorbed in the Aryan community but also to the descendants of the original tribes who more or less avoided the complete conversion to the Brahmanical religion. (*Jwala Prasad and Ross, JJ.*). RAM PERGASH SINGH *v.* MT. DAHAN BIBI. **78 I.C. 749=3 Pat. 152=5 P.L.T. 203=1924 P.H.C.C. 85=A.I.R. 1924 Pat. 420.**

HINDU LAW—Applicability—Raj-Chaurasi.

—Applicability—Namboodris.

———*Namboodris are governed by Hindu Law in absence of proof of special usage or custom to the contrary.*

Where the *illom* of a Namboodri consisted of a father who was an idiot, his two sons who were minors and their step-mother who was managing the household and looking after the minors and where the step-mother borrowed money on mortgage of family properties for family necessity and a suit was brought to enforce the mortgage,

Held, that there was no authority of the mortgagor either as guardian of the members of the family or its surviving efficient member to mortgage the family estate and that the mortgage was not enforceable against the family properties since a mere *de facto* guardian has no such power.

The Hindu Law as contained in the Mitakshara is the law that governs the Namboodris at Malabar save in so far as it is proved to have been modified by usage or custom having the force of law. Therefore in the absence of either party proving that a special usage or custom not known to the ordinary Hindu Law has been established by precedents or otherwise, Courts will ordinarily apply only the Hindu Law to Namboodris. (*Jackson, J.*). T. M. NARAYANAN NAMBUDIRI *v.* K. RAVUNNI NAIR. **84 I.C. 973=20 M.L.W. 876=35 M. L. T. 127=1924 M.W.N. 792=A. I. R. 1925 Mad. 260=47 M. L. J. 686.**

—Applicability—Outcaste.

———Person belonging to a regenerate class though degraded is governed by rules governing that class. (*Jwala Prasad and Bucknill, JJ.*). ISHWARI PRASAD *v.* RAI HARI PRASAD LAL. **106 I.C. 620=6 Pat. 506=8 P.L.T. 34=A.I.R. 1927 Pat. 145.**

—Applicability—Powars.

———*Powars of C. P. are not governed by Bombay School.*

The Powars of C.P. are not governed by Bombay School of law and though after their migration to the Central Provinces they came into close contact with the Mahrattas and have inevitably been tinged thereby in matters of language, dress, marriage ceremonies and the like, they did not come from the Bombay Presidency, bringing with them Bombay customs. (*Findlay, J.C.*). MT. RUKHMABAI *v.* JAIPAL. **100 I.C. 457=23 N.L.R. 108=A.I.R. 1927 Nag. 122.**

—Applicability—Rajbansis.

———Family of Rajbansis of Bengal of non-Hindu origin alleging to be governed by Hindu Law—Hindu names—Hindu priests—Hindu castes and gotras—Observed Hindu ceremonies and Hindu secular and ritual observances—Hindu Law (Dayabhaga) held applicable. (*B. B. Ghose and Panton, JJ.*). NARENDRA NARAIN *v.* NAGENDRA NARAIN. **118 I.C. 342=50 C.L.J. 267=A. I. R. 1929 Cal. 577.**

———Rajbansis of Bengal are governed by ordinary Hindu Law. (*C. C. Ghosh and Panton, JJ.*). SANTALA BEWA *v.* BADASWARI DASI. **75 I.C. 11=27 C.W.N. 669=50 Cal. 727=A.I.R. 1924 Cal. 98.**

—Applicability—Raj-Chaurasi.

———*Lachmipur Raj-Chaurasi is governed by Hindu Law.*

HINDU LAW—Applicability—Rajgonds.

The Lachmipur Raj-Chaurasi even supposing its origin to be not Hindu had adopted in general not only Hindu religion and Hindu social usages, but also the Hindu Law regulating the succession of landed property, and this though, there were still some relics of non-Hinduism. (*Lord Phillimore.*) SAHDEO NARAIN *v.* KUSUM KUMARI.
71 I.C. 769=2 Pat. 230=4 P.L.T. 217=
50 I.A. 58=37 C.L.J. 360=25 Bom. L.R. 560=
1923 M.W.N. 377=32 M.L.T. 121=
27 C.W.N. 901=18 M.L.W. 597=
A.I.R. 1923 P.C. 21=44 M.L.J. 476 (P.C.).

—Applicability—Rajgonds.

——Rajgonds are governed by Hindu Law. (*Kinkhede, A.J.C.*). RAMNATH *v.* SAKALSI.
78 I.C. 185=A.I.R. 1924 Nag. 330.

——Raj Gonds of Bhagi in Bhandara District are not governed by Hindu Law and, in absence of custom, a question of guardianship must be decided as per justice, equity and good conscience.

Certain minors of a *Gond* family with their mother lived jointly with their step-brother who managed the whole estate and was regarded by the family and all the world as the natural and rightful guardian of the minor's property,

Held, he must according to equity and justice be treated as against the mother both *de facto* and *de jure* guardian since he was the actual guardian of the property of his brothers and was regarded by the whole of his family and all the world as the natural and rightful guardian and since he would be the natural and rightful guardian under the system of personal law, governing practically the whole of the population in the midst of which the family lives. (*Hallifax, A. J. C.*). KOLHU *v.* BELSINGH. 66 I.C. 303=17 N.L.R. 183=
A.I.R. 1922 Nag. 201.

—Applicability—Rajputs.

——Persons who are agricultural Rajputs for many generations past are ordinarily governed by custom and not by Hindu Law. (*Campbell and Zafar Ali, JJ.*). SITAB SINGH *v.* HAZARI SINGH.
93 I.C. 993=7 Lah. 117=27 P.L.R. 200=
A.I.R. 1926 Lah. 207.

—Applicability—Rao Rathor Telis.

——*Descendants of Rao Rathor now settled in C. P.—Benares School applies.*

Descendants of Rao Rathor Telis who left their original home in Ajmer about 1500 A. D., and settled in Central Provinces but who still observe the personal law which governed them in Ajmer, are governed by the prevalent School in Ajmer, namely the Benares School, in respect of the estate inherited by a woman from her father. (*Hallifax, A.J.C.*). NARAIN *v.* MOTISA. 99 I.C. 461=
A.I.R. 1927 Nag. 121.

—Applicability—Sikhs.

——Nirmalas in Punjab are distinct from other Sikhs and have merged among Hindus. (*Zafar Ali and Bhide, JJ.*). KIRPA SINGH *v.* AJAIPAL SINGH.
11 Lah. 152=31 P.L.R. 425=
A.I.R. 1930 Lah. 1.

——History of Sikh sects, Udasi and Akali, traced. (*Stuart, C. J. and Wazir Hasan, J.*). SATGUR PRASAD *v.* HAR NARAIN DAS. 111 I.C. 817=
A. I. R. 1929 Oudh 44.

—Applicability—Sodhis.

——Sodhis of Anandpore, Dist. Hoshiarpore, are not governed by Hindu Law in matters of inheritance. That being so, there can be no presumption that an Anandapore Sodhi family constituted a coparcenary body in accordance with the Hindu Law of Mitakshara. (*Zafar Ali and Campbell, JJ.*). WAZIR SINGH *v.* MOTI SINGH. 94 I. C. 492=
7 Lah. 522=27 P.L.R. 846=
A.I.R. 1926 Lah. 395.

HINDU LAW—Ascetic—Bairagi.

—Applicability—Thattans.

——*Follow Makkattayam—Property is* prima facie *partible.*

The Thattans are Hindus, and, therefore, the Courts have to apply to them the principles of Hindu Law, unless and until it is proved that they follow any other customary law. The rule of Hindu Law is in favour of partibility and impartibility is the exception. Makkattayam Law, which the Thattan caste admittedly follows, corresponds in the main to the ordinary Hindu Law. Marumakkattayam, in which partibility is unknown, is an exception to the general rule. Hence *prima facie* Makkattayam involves partibility: 40 M.L.J. 301, *Foll.* (*Schwabe, C.J. and Wallace, J.*). KUNHI KUTTY *v.* RAMAN. 72 I.C. 145=
46 Mad. 597=18 M. L. W. 525=
1923 M.W.N. 173=A.I.R. 1923 Mad. 432=
44 M.L.J. 274.

—Applicability—Thiyyas.

——*Hindu Law applies unless special custom is proved.*

Prima facie the ordinary Mitakshara system of Hindu Law applies to the Thiyyas of South Malabar, and the burden of proving a custom opposed to Hindu Law is on the party alleging such custom. Thus a daughter with her husband alive, claiming a right of residence in her father's house, must prove the custom. (*Sidasiva Aiyar and Spencer, JJ.*). KUTTAYATHA KUTTI *v.* ATCHUTAN.
60 I. C. 209=13 M.L.W. 101=
A. I. R. 1921 Mad. 74.

—Applicability—United Provinces.

——*The Mitakshara is of paramount authority, though where it is silent other books of authority can be referred to.*

In the United Provinces, the Mitakshara by Vijnaneswara is of paramount authority. But where the Mitakshara is silent or is doubtful, other books of authority can legitimately be referred to. But where the Mitakshara lays down a rule clearly, then, even though it contradicts other books of authority, it has to be followed in the United Provinces. (*Walsh, Ag. C.J. and Sulaiman, J.*). KANHAIYA LAL *v.* MT. GAURA. 83 I.C. 147=
47 All. 127=22 A.L.J. 890=6 L.R.A. Civ. 1=
A.I.R. 1925 All. 19.

—Applicability—Yadavas.

——The Madura Ramnyana Chavadi 1000 Yadhavas who reside chiefly in the town of Madura and about 56 adjoining villages are Hindus belonging to the Sudra caste. (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MOOKKA KONE *v.* AMMAKUTTI AMMAL. 108 I.C. 760=51 Mad. 1=
27 M.L.W. 611=A.I.R. 1928 Mad. 299=
54 M.L.J. 174 (F.B.).

—Ascetic—Arya Samajist.

——The performance of the Prajapathiyesthi homam is essential and is the final ceremony to be performed even by the Arya Samajist who becomes a Sanyasi: 33 M. L. J. 63 and 14 C. W. N. 191, *Ref.* (*Sulaiman and Kendall, JJ.*). BALDEO PRASAD *v.* ARYA PRITI NIDHI SABHA. 124 I.C. 761=
A.I.R. 1930 All. 643.

—Ascetic—Bairagi.

——Brahman becoming Bairagi does not necessarily lose caste. (*Mukerji and Dalal, JJ.*). JASWANT RAO *v.* KASHINATH RAO. 86 I.C. 208=
6 L.R.A. Civ. 14=A.I.R. 1925 All. 253.

HINDU LAW—Ascetic—Renunciation.

—Ascetic—Renunciation.

———*Necessary ceremonies must be gone through, to become a Sanyasi.*

The mere fact that a person declares that he has become a Sanyasi or that he is described as such or wears clothes ordinarily worn by the Sanyasis would not be sufficient to make him a perfect Sanyasi. It is essential that he must enter into the fourth stage of his life in accordance with the necessary requirements. He must not only retire from all worldly interests and become dead to the world, but to attain this he must perform the necessary ceremonies without which the renunciation will not be complete. (*Sulaiman and Kendall, JJ.*). BALDEO PRASAD *v.* ARYA PRITI NIDHI SABHA. **124 I.C. 761= A.I.R. 1930 All. 643.**

—Ascetic—Sanyasi.

———*Rituals necessary for becoming—Arya Samajist—Rituals are same as in Sanatana Dharma.*

An elaborate procedure including *Viraja homam* and other pur ficatory ceremonies is prescribed for becoming a Sanyasi of the Sanatana Dharma religion; the proced ure is the same in the case of an Arya Samajist. Merely calling oneself a Sanyasi does not confer that status. (*Sulaiman and Kendall, JJ.*). BALDEO PRASAD *v.* ARYA PRITI NIDHI SABHA. **124 I. C.761 (All.)= A.I.R. 1930 All. 643.**

———"*Apath Sanyasi*" *described.*

Renunciation is considered meritorious, but a man renounces only what he may keep and gives up what he may retain. In the case of an Apath Sanyasi, the man is face to face with death and he makes a virtue of necessity and gives up earthly things when he cannot help doing so. He expects that he is dying and goes through the form of renouncing the world. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RUKMANI AMMAL *v.* ANKAMA NAIDU. **96 I. C. 26=23 M. L. W. 664= 1926 M W.N. 938=A.I.R. 1926 Mad. 744.**

—Caste—Agarwallas.

———The Agarwallas are divided into a number of sub-castes or sects: 6 N.W.P. 383, *Ref.* (*Mr. Ameer Ali.*) DHANRAJ *v.* SONI BAI. **87 I.C. 357= 1925 M.W.N. 692=30 C. W. N. 601= 23 A. L. J. 273=2 O. W. N. 335= 21 N. L. R. 50=52 Cal. 482=6 L.R.P.C. 97= 27 Bom. L.R. 837=52 I.A. 231= A. I. R. 1925 P.C. 118=49 M.L.J. 173 (P.C.).**

—Caste—Bhumihar Brahmans.

———The Bhumihar Brahmins are unquestionably *dwij* and a very important community in Bihar, but it would be incorrect in all respects to class them as Brahmans. (*Kulwant Sahay and Macpherson, JJ.*). SITA DEVI *v.* GOPAL SARAN NARAYAN SINGH. **111 I.C. 762=9 P.L.T. 397= A.I.R. 1928 Pat. 375.**

—Caste—Ghrabari Gosavis.

———*Gharbari Gosavis—Their status.*

Gharbari Gosavis are a fraternity within the Sudra caste. Gharbari means householder, and the literal translation of the two words, is "householder ascetics"—that is, they are married ascetics having certain of the customs and practices of ascetics, necessarily modified by the fact of marriage and its consequences. (*Lord Phillimore.*) HARIGIR *v.* BHARATHI. **88 I.C. 343= 21 N.L.R. 127=22 M.L.W. 355= 1925 M. W. N. 414=A.I.R. 1925 P.C. 127 (P.C.).**

—Caste—Hindu.

———It is not necessary that a person who is a Hindu must be a member of some caste. (*Venkatasubba Rao, J.*). RATANSI *v.* ADMINISTRATOR GENERAL OF MADRAS. **111 I.C. 364=52 Mad. 160= 28 M.L.W 674=1928 M.W.N. 848= A.I.R. 1928 Mad. 1279=55 M.L.J. 478.**

HINDU LAW—Caste—Tests.

—Caste—Jats.

———The Jats are Sudras: 24 I.C. 982, *Foll.* (*Iqbal Ahmad, J.*). MEWA RAM *v.* LAL SAHAI. **100 I.C. 650=A.I.R. 1927 All. 410.**

—Caste—Kayasthas.

———*Kayasthas are not Sudras.*

The law that the Kayasthas are not Sudras is perfectly well settled and finally laid down though it dissents from the view held in the Calcutta High Court; A.I.R. 1927 Pat. 145, *Foll.*; 10 Cal. 688, *Diss. from*; 20 C.W.N. 901; A.I.R. 1921 Cal. 48 and A.I.R. 1920 P.C. 129, *Ref.* (*Ross and Wort, JJ.*). RAJENDRA PRASAD *v.* GOPAL PRASAD. **108 I.C. 545=7 Pat. 243=9 P.L.T. 123= A.I.R. 1929 Pat. 51.**

———Bengali Kayasthas are Sudras by caste. (*Sanderson, C.J. and Richardson, J.*). BISHWANATH DAS *v.* SARASIBALA DASI. **66 I.C. 590= 48 Cal. 926=25 C.W.N. 639=A.I.R. 1921 Cal. 48.**

—Caste—Mohals.

———*Mohals are Rajputs.*

Mohal is the name of a sub-division of the tribe of Rajputs and in the Punjab there is no other tribe which has a *got* of the name of *Mohal*. There are no persons in the Punjab who have any real right to be described as *Mohals* except *Rajputs* and some *jats* who, rightly or wrongly, claim that they are really of *Rajput* origin. (*Lord Carson.*) GHULAM RASUL *v.* SECY. OF STATE. **85 I.C. 654=23 A.L.J. 639=52 I.A. 201= 2 O.W.N. 646=22 M.L.W. 299=30 C.W.N. 101= 26 P.L.R. 390=6 Lah. 269= A.I.R. 1925 P.C. 170=50 M.L.J. 120 (P.C.).**

—Caste—Nattukottai Chettis.

———Nattukottai Chettis are Sudras. (*Krishnan and Odgers, JJ.*). VELLIYAPPA CHETTY *v.* NATARAJAN. **100 I.C. 655=50 Mad. 340= 25 M.L.W. 493=A.I.R. 1927 Mad. 386= 52 M.L.J. 229.**

—Caste—Presumption.

———There is a presumption that all castes who are not proved to be twice-born and who are not admitted to be untouchables were Sudras. (*Spencer, Offg.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.**

—Caste—Tanjore Royal family.

———The late Raja Sivaji of Tanjore was a Sudra. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1= A. I. R. 1925 Mad. 497.**

—Caste—Tests.

———*Caste is the result of birth alone.*

Caste is the result of birth and not of choice or volition; though a person may lose caste he cannot by any act of his, rise to a higher caste. The mere performance of ceremonies which are performed by the twice-born classes would not elevate the Sudras or the fourth class to the status of the twice-born class, though where the caste of a family is doubtful and its origin cannot be traced, the performance of Vedic or Puranic rituals without any objection for a long series of years will be important evidence as to the caste. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

HINDU LAW—Caste—Tests.

——Per *Spencer*, *Offg. C.J.*—The consciousness of a community is a good test of *Varna*. (*Spencer*, *Offg.C.J. and Kumaraswami Sastri*, *J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.
93 I. C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

——*Upanayanam is a test.*

Upanayanam is the ceremony which differentiates the three higher classes, namely the Brahman, the Kshatriya and Vaisya, from the Sudra. Where in cases of controversy as to whether a person belongs to the twice-born class or to the Sudra class, it is shown that Upanayanam ceremony was not performed, it is a very important piece of evidence to show that the person belongs to the Sudra caste and not to the higher caste, though the converse case of the non-performance of Upanayanam by the twice-born would not necessarily show that the person not performing it belongs to the lower class. In cases of Sudras for whom Upanayanam ceremony is not prescribed there is the practice of putting on the sacred thread at the time of the marriage or funeral ceremonies. This is called the *Alankara Poonool or Loukika Poonool* [or the ornamental sacred thread] and is merely an imitation of the higher classes involving no religious consequences not being prescribed by any of the Smrithis. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.
93 I. C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

——Wearing the sacred thread, though worthy of notice, is by no means conclusive on the question of caste. (*Spencer*, *Offg.C.J. and Kumaraswami Sastri*, *J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1= A. I. R. 1925 Mad. 497.**

——Gayatri Upadesam *is essential for the twice-born.*

Per *Kumaraswami Sastri*, *J.*—Closely connected with Upanayanam ceremony is the *Gayatri Upadesa* or the teaching of the sacred verse in the *Gayatri mantra* at the Upanayanam that really confers on the Brahmin, the Kshatriya or the Vaisaya the status of a twice-born. The mantra which the Sudras are authorised to use is the first verse in Devi Bhagavatam, and not the *Gayatri*. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.
93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

——Vedic mantras are prescribed only for the three higher or twice-born classes and prohibited for the Sudras. In the case of Sudras, rituals have to be performed with mantras taken from the Puranas. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR..
93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

——*Many Sudras have gotra but no pravara.*

Per *Kumaraswami Sastri*, *J.*—The mere fact of having a gotra would not settle the question as to whether a person is a Sudra or a twice-born, as many Sudra families have gotras—some Rishi gotras and some non-Rishi gotras. One important thing connected with gotra is pravara; and gotra and pravaras go together. So far as the Sudras are concerned, though they have gotras, they have no pravaras. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A. I. R. 1925 Mad. 497.**

——*Marriage between sagotras is allowed only among Sudras.*

So far as twice-born classes are concerned, marriages between members of the same gotra and Pravara are absolutely forbidden, and, if performed, would be invalid; among Sudras this rule does not apply. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

HINDU LAW—Custom—Evidence of.

——In regard to sradha, the offerings to the ancestors called pinda consist in the case of Kshatriyas of cooked rice balls or pindas, while in the case of Sudras cooked rice is not used but only flour. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

——Employment of Sudra cooks evidences sudrahood. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

——*Kunbis and Mahrattas in Berar are Sudras.*

Kunbis and Mahrattas in Berar are Sudras. One of the tests by which a Sudra is known is that they do not don the sacred thread, intercaste eat forbidamongst them are customary and they marriages den flesh, such as the flesh of fowls. (*Prideaux, A.J.C.*). GOPAL RAO *v.* SITARAM RAM RAO.
64 I.C. 863=A.I.R. 1921 Nag. 150.

—Custom—Alienation.

——Killajat Mahal of Orissa is alienable in the absence of custom to the contrary: 31 Cal. 224 and 32 Cal. 158, *Ref.* (*Courtney-Terrell, C. J. and James, J.*). MADHUSUDAN DEB *v.* KHESTABASI SAHU. **121 I.C. 462=8 Pat. 932= A. I. R. 1930 Pat. 137.**

——The village Vellikurichi granted to the Naick family was held to be not inalienable: (1851) Mad. Sadr. Ad. Dec. 87 and 21 Mad. 310, *Cons.* (*Madhavan Nair and Thiruvenkatachariar, JJ.*). THIRUMALAI SOURI NAICKER *v.* VENKATACHALAM CHETTY. **116 I.C. 571= A.I.R. 1929 Mad. 234.**

——In Rohtak Tahsil the *riwaj-i-am* places upon the plaintiff, the person seeking to challenge an alienation, the burden of proving that he possesses such a right. A very large part of the customary law regarding restrictions on alienation is purely case made law and the law primarily applicable to Hindus is Hindu Law modified by custom: 147 P.W. R. 1918, *Foll.* (*Le Rossignol, J.*). GIANI *v.* TEK CHAND. **64 I.C. 549= 11 P.L.R. 1922=4 Lah. 111=A.I.R. 1922 Lah. 69.**

—Custom—Evidence of.

——A custom at variance with the ordinary Hindu Law should be ancient and invariable. It should be established by clear and unambiguous evidence: 14 M.I.A. 570, *Ref. to.* (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL.
32 Bom. L.R. 1217=A.I.R. 1930 Bom. 517.

——*Custom is not founded on reason—One custom is no evidence of existence of another.*

Custom cannot be said to be founded on reason, for no reason, even the highest whatsoever, would make a custom or law. Custom cannot therefore be enlarged by any parity of reasoning. Customs may be similar or contradictory, probable or improbable, and the existence of one custom is no evidence for the existence of another. The only proof of custom is the evidence of that custom and not other evidence that given certain data certain results follow with the force of law; 37 Cal. 322,

HINDU LAW—Custom—Evidence of.

Rel. on. (*Wallace and Jackson, JJ.*). PALANIAPPA CHETTIAR *v.* V.N.S. CHOCKALINGAM CHETTI.
30 M.L.W. 1040=A.I.R. 1930 Mad. 109=57 M.L.J. 817.

——Special custom must be ancient, invariable and established by clear and unambiguous evidence. 14 M.I.A. 570 (P.C.) and 29 All. 109, *Foll.*; A.I.R. 1917 P.C. 181; A.I.R. 1922 P.C. 59 and A.I.R. 1928 P.C. 10, *Ref.* (*Patkar and Baker, JJ.*). HIRABHARTHI JAMANA BHARATHI *v.* BAI JAVER.
113 I. C. 406=30 Bom. L. R. 1555=A. I. R. 1929 Bom. 35.

——*Custom modifying ordinary law of succession must be ancient and invariable.*

It is of the essence of special usages, modifying the ordinary law of succession that they should be ancient and invariable: and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends: 14 M.I.A. 570 (P. C.), *Foll.* (*Madgavkar and Patkar, JJ.*). SUBRAO *v.* RADHA. **113 I. C. 497=52 Bom. 497=30 Bom. L. R. 692=A.I.R. 1928 Bom. 295.**

——*Custom at variance with Hindu Law—Clear instances must be given.*

In order to give effect to a custom which is set up and which is at variance with the ordinary Hindu Law it should be ancient invariable, continuous, notorious not expressly forbidden by the legislature and not opposed to morality or public policy, and as regards instances in support of the custom they should be established by clear and unambiguous evidence and must be conclusive. (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MOOKKA KONE *v.* AMMAKUTTI AMMAL.
108 I.C. 760=51 Mad. 1=27 M.L.W. 611=A.I.R. 1928 Mad. 299=54 M.L.J. 174 (F.B.).

——*Custom at variance is not necessarily a departure from or exception to Hindu Law principles.*

It is now settled by a long course of decisions that the Hindu Law, as understood by the Judges and the legal profession is applicable to all Hindus and a custom not in accordance with the general Hindu Law has to be proved by the party setting it up. But, in considering the proof of such a custom, the Court should not labour under the impression that the custom pleaded is a conscious departure or from variation of the Hindu Law applicable to the parties. The custom is not an exception to the general Hindu Law as if that a set of persons who were governed by the Hindu Law agreed to adopt a course of conduct in variance with the law which governs them. In weighing the evidence as regards any custom which is set up the Court should consider whether the caste or sect or clan among whom it is said to prevail ever adopted wholly or only with some reservations the general body of Hindu Law and whether they ever intended to alter their customs and customary laws completely. (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MOOKA KONE *v.* AMMAKUTTI AMMAL. **108 I.C. 760=51 Mad.1=27 M.L.W. 611=A.I.R. 1928 Mad. 299=54 M.L.J. 174 (F.B.).**

——*Proof of custom by evidence of instances.*

In support of the alleged custom the defendant examined some 33 witnesses. Thirty of these spoke of the general custom permitting the adoption of a daughter's son prevailing among the Agarwala Vaishas and they were able to cite at least 34 witnesses out of which 20 instances were accepted as being instances where adoption either of a daughter's son or a sister's son had taken place. Out of these 20 instances, 11 were instances of the adoption of a daughter's son,

Held, the customs set up by the defendant was satisfactorily established. (*Lindsay and Sulaiman, JJ.*). MT. BALLO *v.* RAMKRISHNA. **81 I.C. 490=21 A. L. J. 478=A.I.R. 1924 All. 49.**

HINDU LAW—Custom—Jains.

——*Custom in contravention of general Hindu Law must be strictly proved.*

A custom is a matter which has to be proved with more thoroughness and with greater precision than a case which merely affects the parties on record and does not adversely affect parties who themselves are not present in Court, but are nevertheless interested by virtue of belonging to the same community. (*Mears, C.J. and Piggott, J.*). MT. DHOLA KAUR *v.* MATHURA SINGH. **75 I.C. 657=A.I.R. 1923 All. 341.**

——*Evidence of modern instances may be enough.*

Evidence of modern instances, which alone can be proved by oral evidence, may establish the custom, though the Court is not satisfied by the evidence of texts or experts that those instances have occurred in pursuance of a recognised custom, in order to link the present with the past. (*Case-law discussed.*) 32 All. 247, *Ref.* (*Macleod, C.J. and Fawcett, J.*). PARSHOTAM GANPAT *v.* VENICHAND GANPAT. **61 I. C. 492=45 Bom. 754=23 Bom. L.R. 227=A.I.R. 1921 Bom. 147.**

—Custom—Hereditary office.

——*Birt jajmani to sweep—In the absence of irrevocable grant or usage binding on owner of the house it cannot prevail against his wishes.*

Except possibly in cases where the right can be traced to a grant of an irrevocable character by the owner of a house, or to usage and prescription proved by evidence to be binding on the owner of the house, the right of birt jajmani to sweep, though enforceable between the rival claimants cannot prevail against the wishes of the owner, and the relief of injunction can be granted to one claimant against another only where it is a matter of indifference to the owner as to who renders services to him on payment of remuneration which he is willing to offer: 9 M.I.A. 344; 2 M.H.C.R. 330; 20 All. 234; and 12 A. L. J. 267, *Considered.* (*Sen and Niamatullah, JJ.*). LACHMAN *v.* BHAJAN. **114 I.C. 874=26 A.L.J. 815=A.I.R. 1928 All. 389.**

—Custom—Hindu temple.

——Brahmins employed to recite mantras during worship—Custom under which recitation by less than the fixed number of Brahmins is alleged to be quite valid is opposed to public policy. (*Sadasiva Aiyar and Spencer, JJ.*). KRISHNA AIYANGAR *v.* RAMAN CHETTIAR. **69 I.C. 469=14 M.L.W. 329=A.I.R. 1921 Mad. 670.**

—Custom—Jains.

——*No custom giving absolute power to widow over immovables.*

No custom has been established in Bombay to show that a Jain widow is the absolute owner of the immovable properties inherited from the husband (Cases bearing on Jain customs reviewed). Her powers are no larger than those of an ordinary Hindu widow: 27 C. 379, *Dist.* (*Marten, C. J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL. **32 Bom. L.R. 1217=A.I.R. 1930 Bom. 517**

HINDU LAW—Custom—Jains.

———Kinds of proof to establish custom—In support of custom that among Swetambari Dasashrimali Jains of Balapur in Akola District, widow takes absolute interest in husband's self-acquired property, 15 instances of alienations by widows unchallenged by reversioners adduced—One of those alienations upheld by Bombay High Court—Many of those instances being of same locality and same sect of Jains—Custom held to be established.

Evidence in support of a custom should be such as to prove the uniformity and the continuity of the usage and the conviction of those following it that they were acting in accordance with law; and (2) evidence of acts of the kind, acquiescence in those acts, their publicity, decisions of Courts, or even of panchayats upholding such acts, the statements of experienced and competent persons of their belief that such acts were legal and valid will all be admissible, but although admissible, evidence of this latter kind will be of little weight if unsupported by actual examples of the usage asserted: 7 M. H. C. R. 250, *Foll. Case-law discussed.* (*Findlay, J. C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I. C. 609= A.I.R. 1930 Nag. 225.**

———If the custom that a widow takes an absolute interest in the self-acquired property of her husband is found to obtain in other sects of the Jains it will also bind the Swetambari Desashrimali sect: 27 Cal. 379 and A.I.R. 1923 All. 656, *Rel. on.* (*Findlay, J.C. and Subhedar, A. J. C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I.C. 609= A.I.R. 1930 Nag. 225.**

———An Oswal Jain father in the joint family has a right to alienate the ancestral property as he wishes, under a custom: 29 All. 495, *Ref.* (*Stuart, C.J. and Raza, J.*). MILAP CHAND *v.* MT. MOHINI BIBI. **110 I.C. 180=3 O.W.N. 515= A. I. R. 1928 Oudh 348.**

———Decisions recognizing custom in one place is relevant in establishing same custom in another. But the evidence that the usage has application to the particular case cannot be dispensed with: 27 Cal. 879, *Ref.* (*Kumaraswami Sastri, Offg. C.J. and Curgenven, J.*). GATEPPA *v.* ERAMMA. **99 I.C. 503=50 Mad. 228=26 M.L.W. 408= A.I.R. 1927 Mad. 228=51 M.L.J. 757.**

———Evidence Act, S. 13—Judicial decisions recognising custom among Jains of one place are relevant in respect of Jains of another place. (*Baker, Offg. J.C.*). MT. SANO *v.* PURAN SINGH. **78 I.C. 461=A.I.R. 1925 Nag. 174.**

—Custom—Migrating family.

———*Family custom—Primogeniture — Migration of family.*

The family to which the parties belonged were Chohan Rajputs who migrated into the Nima district of the Central Provinces from their homes. It was claimed by the principal defendant, in a suit for partition that the succession in the family was governed by the rule of primogeniture and the properties belonged exclusively to him as the holder of the title of Rana and the *gadi*, as they were impartible,

Held, it could be presumed that the family carried with it to its new home the custom and institutions to which it was subject in its original home. (*Mr. Ameer Ali.*). RANA SHEONATH SINGH *v.* BADAN SINGH. **64 I.C. 194=20 A. L. J. 443= 26 C.W.N.226=48 Cal. 997= 48 I.A. 446=17 N. L. R. 128= 4 N.L.J. 89=A.I.R. 1922 P.C. 146 (P.C.).**

HINDU LAW — Debt—Antecedent debt—Applicability.

—Debt.

Antecedent debt.
Co-parcener.
Father.
Immoral or illegal.
Liability.
Manager.
Necessity.
Son's liability.
Trade.

—Debt—Antecedent debt.

Applicability.
Burden of proof.
Liability.
Meaning.
What is.
What is not.

Debt—Antecedent debt—Applicability.

———*Pressure is not pre-requisite of "antecedence."*

If the debt was "antecedent" it is immaterial that it was neither pressing nor even due, since pressure is not a pre-requisite of "antecedence," though it is proof of necessity; nor is the fact that the debt might have been otherwise paid even relevant to the question of antecedence: A.I.R. 1924 P.C. 50, *Ref.* (*Macnair and Subhedar, A. J. Cs.*). NARAINRAO *v.* SETH MANUMANTRAM. **A.I.R. 1930 Nag. 273.**

———*Legal necessity need not be proved for father's antecedent debt.*

The proof of antecedent debts which dispenses with the necessity of proving legal necessity for a sale must be father's antecedent debts and not those incurred by a managing member other than the father: A.I.R. 1924 P.C. 50; A.I.R. 1924 All.465; A.I.R. 1924 All. 309 and A.I.R. 1924 All. 551 (F.B.), *Foll.* (*Kinkhede, A.J.C.*). WAMAN *v.* VISHNU. **107 I.C. 516=A.I.R. 1928 Nag. 151.**

———*Alienation for antecedent debts may be for those of grand-father and great-grand-father as well.*

To satisfy the validity of an alienation of the undivided estate on the basis of an "antecedent debt". It is not necessary that the alienation must be by the father for his own debts but may be for the debts of the grandfather or the great-grandfather: A.I.R. 1926 P.C. 105, *Expl.* (*Stuart, C.J., Raza and Srivastava, JJ.*). SHEO RAM *v.* DURGA BAKHSH. **112 I.C. 288=5 O.W.N. 735= 3 Luck. 700=A.I.R. 1928 Oudh 378 (F.B.).**

———Where the debts arose out of extravagance and carelessness of the father but there was no suggestion that they were incurred for immoral or illegal purposes.

Held, that the sons were bound by such debts. (*Baker, J.C.*). BANSIDHAR *v.* PANDURANG. **78 I. C. 431=A.I.R. 1925 Nag. 196.**

———*Alienation by father as manager for antecedent debt binds sons but not other co-parceners.*

There is a very clear distinction between cases in which an alienation for an antecedent debt is made by a Hindu father and is being contested by the sons, and cases in which an alienation for an antecedent debt, is made by the managing co-parcener of a joint undivided estate, and is being contested by other co-parceners, not the sons of the person making the alienation. In the former case the sons are bound by the father's alienation to the extent of their interest in the joint family property; in the latter case the co-parceners are not bound by the manager's alienation and their interest in the joint family property is unaffected by it: 21 A.L.J.,

HINDU LAW — Debt—Antecedent debt—Applicability.

943. *Foll.* (*Mears, C. J. and Piggott, J.*). ANANTOO KALWAR *v.* RANI PRASAD. **78 I.C. 619= 46 All. 295=22 A.L.J. 182= 5 L.R.A. Civ. 86=A.I.R. 1924 All. 465.**

———*Mortgage for legal necessity—Second mortgage to secure prior mortgage is valid.*

The principle that a prior mortgage does not constitute an antecedent debt enunciated in the case of Ram Chandra, does not apply if it is shown by evidence on the record that the previous mortgages had been given for loans that were themselves taken for legal necessity and were binding on the family. (*Rafique and Piggott, JJ.*). RANJIT SINGH *v.* GANGA SAHAI. **69 I.C. 765= A. I. R. 1922 All. 291.**

———Antecedent debt, doctrine of, is applicable only when relationship of father and son exists. (*Das and Bucknill, JJ.*). KUMAR KALIKANAND SINGH *v.* SHIVA NANDAN PRASAD SINGH. **63 I. C. 625=3 P.L.T. 149= A. I. R. 1922 Pat. 122.**

———*Legal necessity need not be proved.*

It is only when legal necessity cannot be established that the question of antecedent debt becomes material, and in the case of antecedent debts legal necessity need not be proved. (*Daniels and Wazir Hasan, A. J. Cs.*). RAM SURAN *v.* MANGAL SINGH. **60 I.C. 219=8 O. L. J. 87= A.I.R. 1921 Oudh 38.**

—Debt—Antecedent debt—Burden of proof.

———*Debt not illegal or immoral—Mortgagee need not prove necessity.*

Where joint family property was mortgaged by the father to his antecedent creditor in consideration for his antecedent debt, and the debt was a just debt, *i.e.*, not tainted with fraud or an act of extravagance, the mortgagee need not prove that such antecedent debt was for a necessary purpose: 81 P.L.R. 1912; A.I.R. 1926 Lah. 569; 65 P.R. 1900 (F.B.); 60 I.C. 714 and A.I.R. 1921 Lah. 112, *Ref.* (*Shadi Lal, C.J. and Skemp, J.*). SADHU LAL *v.* CHIMNA RAM. **116 I.C. 898=30 P.L.R. 267= A.I.R. 1929 Lah. 397.**

———*Mortgagee proving antecedency of debts—Sons must prove that they were for immoral or illegal purposes.*

In all cases the mortgagee must, in the first instance, establish that his debt was either for legal necessity or for payment of antecedent debts or for the benefit of the family. Once the mortgagee has established that the loan was for payment of antecedent debts it is no longer incumbent upon him to prove that these antecedent debts in themselves were for necessity. In order to get rid of his liability the burden then lies on the son to establish that those antecedent debts were tainted with immorality or illegality: 13 Cal. 21 (P.C.) and A.I.R. 1924 P.C. 50, *Foll.* (*Lindsay and Sulaiman, JJ.*). TULSI RAM *v.* BISHNATH PRASAD. **105 I. C. 885=25 A.L.J. 753= A.I.R. 1927 All. 735.**

———*Prior loan to be proved to have been for necessity.*

In order to establish necessity for alienation it is not enough to prove that a debt raised by a father by mortgaging family property was used in discharging a prior mortgage on it. It must also be proved that the prior mortgage was for necessity also. [But see *Brij Narayan* v. *Mangla*, A.I.R. 1924 P. C. 50.] (*Walmsley and Suhrawardy, JJ.*). SURENDRA NATH PANDEY *v.* BRINDAVAN CHANDRA GHOSE. **78 I. C. 45=A.I.R. 1925 Cal. 545.**

HINDU LAW—Debt—Antecedent debt—Meaning.

———Antecedent debt as consideration for mortgage bond proved—Proof of family necessity or benefit to minor son is not necessary. (*Jwala Prasad, Ag.C. J. and Das, J.*). SHEIKH ABDUL RAHAMAN *v.* SHIB LAL SAHA. **63 I.C. 570= 1922 P.H.C.C. 81=6 P.L J. 650= 2 P.L.T. 572=A.I.R. 1922 Pat. 252.**

—Debt—Antecedent debt—Liability.

———Antecedent but not immoral debts are binding on the sons irrespective of whether income from ancestral property was or was not sufficient for the needs of the family and there was no necessity for incurring them: 15 N.L.R. 88 and A.I.R. 1924 P.C. 50, *Rel. on.* (*Staples and Subhedar, A. J. Cs.*). BABURAO *v.* PANDHARINATH. **120 I.C. 326= A.I.R. 1930 Nag. 43.**

———The family property is liable when the father has contracted debt for the satisfaction of an antecedent debt: 46 All. 95 (P. C.), *Foll.* (*Tek Chand and Agha Haidar, JJ.*). RAM SINGH *v.* GANGA RAM. **103 I.C. 496=A.I.R 1927 Lah. 755.**

———Any prior mortgage debt due by the father is valid as an antecedent debt and it is not necessary that the mortgage debt must also be enforceable as a personal liability: 42 Mad. 711 and A.I.R. 1924 All. 543, *Foll.* (*Phillips and Ramesam, JJ.*). SATYANARAYANA *v.* SATYANARAYANA MURTHI. **92 I. C. 85=1926 M.W.N. 7= A.I.R. 1926 Mad. 428=50 M.L.J. 144.**

———*Antecedent debts of father borrowed for imprudent and unreasonable purpose—Still sons' pious duty attaches.*

In determining the liability of sons to pay the antecedent debts of father the test is whether the transaction for which money constituting the antecedent debt was borrowed was one which a prudent man would enter into and the question of benefit must be determined by the nature of the transaction and not by reference to the result thereof, although such result may properly be taken into consideration in determining whether the transaction was one into which a prudent owner would enter: A.I R. 1926 Patna 17, *Rel. on.*

Even where the antecedent debt is incurred for a purpose which is imprudent and unreasonable, it is one to which the pious duty of the son will attach: 14 C.W.N. 659, *Appr.* (*Findlay, J.C.*). LAXMAN *v.* WASUDEORAO. **95 I.C. 730= A.I.R. 1926 Nag. 457.**

———Payment made in satisfaction of antecedent debts of the father independent of the transaction of the mortgage is recoverable from the family property if the suit for recovery of money is within time. (*Dalal, J. C.*). SITLA BAKHSH SHUKLA *v.* JAGATPAL SINGH. **86 I.C. 693=12 O.L.J. 114= A.I.R. 1926 Oudh 394.**

———*Sons liable for antecedent debts, unless they be illegal or immoral.*

The son cannot recover the property lost by his father either by voluntary or involuntary sale for antecedent debts unless he shows that the debt was taken for immoral purposes or was of such character that he was not in any contingency bound to discharge. (*Stuart and Kanhaiya Lal, A.J.Cs.*). BHARATH SINGH *v.* SARSRUTI SINGH. **60 I.C. 137=23 O.C. 244=7 O.L.J. 459.**

—Debt—Antecedent debt—Meaning.

———An independent debt, neither illegal nor immoral, contracted by a Hindu father on the security of the joint family estate, antecedent to the transaction impeached, is an antecedent debt.

HINDU LAW—Debt—Antecedent debt—Meaning.

(*Fforde and Campbell, JJ.*). ULFAT RAI *v.* TEJ NARAIN. **106 I.C. 176=8 Lah. 682=29 P.L.R. 132=A.I.R. 1928 Lah. 83.**

——*'Antecedent' debt can be in favour of the alienee—Dissociation in fact and time explained.*

Where a previous mortgage deed is renewed in favour of the same mortgagee and the consideration for the subsequent deed is the amount due on the earlier one the alienation can be deemed to be in lieu of an 'antecedent debt' so as to be binding on the sons, unless they can establish immorality or illegality: A.I.R. 1924 P.C. 50; 46 All. 95, *Expl.* In *Brij Narain*'s case, A.I.R. 1924 P.C. 50, their Lordships do not say that the two debts must be absolutely independent of each other, or wholly unconnected with each other. All that is said is that the previous debt, in order to be antecedent debt, should be truly independent and not part of the subsequent transaction. Whenever a previous debt is set off in a subsequent mortgage deed, the second deed is in one way connected with the first, and one might in one sense say that the second is not independent of the first. But the true test to apply is whether the first one was independent of the second. The two deeds must not be part and parcel of the same transaction, but they must be distinct and separate not only in point of time but in reality. There must be dissociation in time as well as in fact. If at the time when the earlier mortgage transaction was entered into the later one was not even in contemplation, the first will be independent and will remain an antecedent debt, even though it be set off in the second document and even though both be in favour of the same mortgagee. (*Walsh, A.C.J., Sulaiman, Daniels, Mukerji and King, JJ.*). RAM REKHA *v.* GANGA PRASAD. **97 I. C. 514=49 All. 123=24 A.L.J. 970=A. I. R. 1926 All. 545 (F.B.).**

——Under the Hindu Law, in order to constitute an antecedent debt binding on the sons, it is not necessary that the prior and subsequent creditors should be different persons: A.I.R. 1922 All. 312, *Dist.*; 6 O.L.J. 297, *Foll.* (*Hasan and Misra, JJ.*). JAI NARAIN *v.* MAHABIR PRASAD. **95 I.C. 857=2 Luck. 226=13 O.L.J. 574=3 O.W.N. Sup. 23=A. I. R. 1926 Oudh 470.**

——*Antecedent debt must have been incurred independently of the estate.*

The obligation incurred by a father in order to be binding upon his sons must have two attributes, namely, first, that it must have been incurred antecedently to the transaction in suit and, secondly, it must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such a joint estate: A.I.R. 1922 P. C. 247, *Foll.* (But see *Brij Narayan* v. *Mangal*, A.I.R. 1924 P.C. 50). (*Walmsley and Suhrawardy, JJ.*). SURENDRA NATH PANDEY *v.* BRINDAVAN CHANDRA GHOSE. **78 I. C. 45=A. I. R. 1925 Cal. 545.**

——It seems plain from the recent decision of their Lordships of the Privy Council in *Brij Narain* v. *Mangal Prasad*, A I.R. 1924 P. C. 50 that the definition of "antecedent debt" which was given in *Sahu Ram Chandra's* case has been materially altered.

——Antecedent debt now means merely a debt, which is antecedent in fact as well as in time, that is to say, a debt truly independent of and not part of the transaction impeached. (*Lindsay and Sulaiman, JJ.*). B. GAURI SHANKAR *v.* PDT. SHEO NANDAN. **78 I.C. 911=46 All. 384=22 A.L.J. 369=5 L.R.A. Civ. 306=A.I.R. 1924 All. 543.**

HINDU LAW—Debt—Antecedent debt—Meaning.

——*Antecedent debt must be antecedent in time and independent from ownership of joint estate.*

The obligation incurred by a father which would be binding upon his sons must have been incurred antecedently to the transaction in suit and must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by such joint estate. [This view is no longer tenable see *Brij Narain* v. *Mangal Prasad*, A.I.R. 1924 P.C. 50.] (*Dalal and Simpson, A.J.Cs.*). AMBIKA PRASAD *v.* LAL BAHADUR. **83 I. C. 840=11 O.L.J. 164=A.I.R. 1924 Oudh 353.**

——An antecedent debt to be binding on Hindu sons must not only be antecedent in time to the transfer questioned by the sons but also dissociated in fact therefrom: 39 All. 437, *Ref.* (*Dalal, J. C. and Neave, A. J. C.*). AVADH RAM SINGH *v.* MAHBUB KHAN. **79 I.C 725=10 O.L.J. 525=A. I. R. 1924 Oudh 255.**

——An antecedent debt means an obligation not only antecedently incurred but incurred wholly apart from the ownership of the joint estate or security afforded or supposed to be available by the joint estate. (*Cf.* A.I.R. 1924 P.C. 50). [Note:—This is not tenable after *Brij Narain* v. *Mangal Prasad*, A.I.R. 1924 P. C. 50.] (*Kennedy, J. C. and Raymond, A. J. C.*). NARUMAL MULCHAND *v.* NICHUMAL. **76 I.C. 778=18 S.L.R. 1=A.I.R. 1924 Sind 124.**

——*Must be incurred apart from ownership of joint estate.*

Under Hindu Law family property in the hands of the sons is bound by a mortgage executed by their father, during his lifetime, to pay off antecedent debts, if two conditions have been fulfilled, firstly, the mortgage must have been to discharge an obligation antecedently incurred and secondly, the obligation antecedently incurred must have been incurred wholly apart from the ownership of the joint estate: 39 All. 437 (P.C.), *Foll.* [Note:—Compare *Brij Narain* v. *Mangal Prasad*, A.I.R. 1924 P. C. 50]. (*Scott-Smith and Abdul Qadir, JJ.*). LAKHU MAL *v.* BISHEN DAS. **66 I.C. 403=3 Lah. 74=A. I. R. 1922 Lah. 291.**

——*Debt must be one incurred antecedent to transaction.*

The doctrine of antecedency applies where the debt is one incurred in substance and reality antecedently to the mortgage whether or not the debt so incurred was secured by a charge on the family property. (*Dawson Miller, C. J. and Bucknill, J.*). HARI PRASAD SINGA *v.* SOURENDRA MOHAN SINGH. **66 I.C. 945=1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

——*Test is, if loan and mortgage to secure it, are one transaction.*

The true test of antecedency is whether the payment of the advance and the transfer securing its payment are in reality a single transaction or not. The mere hope by the creditor that the debts will be binding on the estate of the joint family and his expectation of recovering them from the joint estate do not make the payment and the transfer a single transaction. What makes the subsequent transfer a part of the prior transaction of the advance is the original understanding or agreement at the time of the advance. If there is such an understanding, both the payment and the transfer flowing from it are really one transaction, though the transfer is put off to a later date;

HINDU LAW—Debt—Antecedent debt—Meaning.

39 All. 437 (P.C.), *Expl.* (*Kotwal and Prideaux, A.J.Cs.*). PANDURANG *v.* KESHORAO.

64 I.C. 718=A.I.R. 1921 Nag. 173.

——An antecedent debt must not only be prior in time but must be quite separate from the mortgage in question. If a person borrows money on a mortgage, a little more than a fortnight after a prior mortgage there is no separation so as to render the latter an antecedent debt. (*Daniels, A.J.C.*). UMRAO SINGH *v.* GAYA PRASAD.

60 I.C. 647=23 O.C. 374.

——*Secured and unsecured debts can both be "antecedent debts."*

The liability of a father under a personal covenant to repay in a mortgage bond can be antecedent debt.

Per *Jwala Prasad, J.*—It is impossible to make a real distinction between a secured and unsecured debt for the purpose of its being an antecedent debt.

The principle is that in order to be antecedent debts, for which the father can validly mortgage the family property, both the secured and the unsecured debts must have been incurred not only antecedently to the mortgage sought to be enforced, but also independently of it. (*Jwala Prasad and Ross, JJ.*). MICHU MISSIR *v.* BALBHADRA PRASTI.

62 I.C. 116=2 P.L.T. 147=A.I.R. 1921 Pat. 367.

——*Debts laid down in Sahu Ram's case—What are.*

In Sahu Ram's case, 39 All. 437 the Privy Council intended to lay down a general principle regulating not merely the particular facts of the case before them, but all cases of a similar nature where the question might arise in future, in order to bring the case within the exception that the family property in the hands of the sons is bound by a mortgage executed by the father during his lifetime to pay off an antecedent bebt two conditions must be fulfilled, first, that the mortgage must have been to discharge an obligation antecedently incurred, and secondly, that the obligation antecedently incurred must have been incurred wholly apart from the ownership of the joint estate: 5 P.L.J. 120 and 41 All. 235, *Foll.*; 42 Mad. 711, *Dissented from.* (Note—Compare A.I.R.1924 P.C. 50) (*Dawson-Miller, C.J. and Mullick, J.*). BANKHANDI RAI *v.* KISHORI MANDAL. **61 I.C. 102=6 P.L.J. 72=2 P.L.T. 17=1921 P.H.C.C. 113=A.I.R. 1921 Pat. 18.**

—Debt—Antecedent debt—What is.

——Mere recital of debts in the sale-deed amounting to an acknowledgment by the manager of the joint family executing the sale-deed does not make those debts antecedent debts. (*Sulaiman and Kendall, JJ.*). SRI NATH *v.* JAGANNATH.

A.I.R. 1930 All. 292.

——*Debt payable to third person is antecedent debt.*

A debt payable to a third person is deemed to be a just antecedent debt unless it is tainted with immorality. Payments of just antecedent debt amounts to a legal necessity. Where therefore no allegation of immorality is made, no question of extravagance or character arises and the alienation by the father for paying off the debt binds the son. (*Jai Lal and Tapp, JJ.*). MADHO RAM *v.* DHARAM SINGH.

A.I.R. 1930 Lah. 394.

——The debt does not cease to be antecedent merely because it is not ripe for payment when it is sought to be charged upon ancestral property by the father; A.I.R. 1923 All. 535, *Not foll.*; A.I.R. 1924 P.C. 50, *Rel. on*; A.I.R. 1925 Nag. 2 and A.I.R. 1926 P.C. 16, *Dist.* (*Staples and Subhedar, A.J.Cs.*). BABURAO *v.* PANDHARINATH.

120 I.C. 326=A.I.R. 1930 Nag. 43.

HINDU LAW—Debt—Antecedent debt—What is.

——Debts due on a previous mortgage and incorporated in the consideration of the mortgage sued are antecedent debts: A.I.R. 1926 Oudh 470 and 42 Mad. 711 (F.B.), *Rel. on.* (*Staples and Subhedhar, A.J.Cs.*). BABURAO *v.* PANDHARINATH.

120 I.C. 326=A.I.R. 1930 Nag. 43.

——*Purchase on credit—Credit period not expired—Liability to pay purchase money is antecedent debt.*

A debt may conceivably be both due and payable even though not demandable or enforceable at law and thus the payment of a debt which is really payable, even though not demandable, cannot be said to be premature especially when on such payment being made, proportionate discount can also be obtained. Therefore, an alienation by father to pay off such debt is binding on son as one for paying an antecedent debt, especially when it is a trade debt: A.I.R. 1923 All. 535, *Dist.* (*Coutts-Trotter, C.J. and Srinivasa Aiyangar, J.*). DAMODARAM CHETTY *v.* BANSILAL ABURCHAHD.

111 I.C. 297=51 Mad. 711=28 M.L.W. 521=A.I.R. 1928 Mad. 566=55 M.L.J. 471.

——Mortgage by father—Renewal by son, consideration being amount due on earlier mortgage, in favour of same mortgagee—The alienation is one in lieu of antecedent debt and binds the son's sons: A.I.R. 1926 P.C. 105, *Expl.* (*Stuart, C.J., Raza and Srivastava, JJ.*). SHEO RAM *v.* DURGA BAKSH. **112 I.C. 288=5 O.W.N. 735=3 Luck. 700=A.I.R. 1928 Oudh 378 (F.B.).**

——An antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached: A.I.R. 1924 P.C. 50, *Foll.* (*Broadway and Jai Lal, JJ.*) ABDUL GHANI *v.* SAMSAR CHAND. **107 I.C. 385=A.I.R. 1928 Lah. 101.**

——*Separate and independent previous mortgages are antecedent debt—Mortgagee taking fresh mortgage in lieu of them does not destroy their antecedency.*

The mere fact that instead of bringing a suit to enforce his claim on the previous documents, when time was about to expire, which are absolutely separate, distinct and independent transactions, the mortgagee thought fit to take a fresh mortgage in lieu of the amounts due on the previous deeds as well as some further consideration and also agreed to reduce the rate of interest, cannot destroy the character of the previous mortgages as antecedent debts, the inclusion of the previous amounts notwithstanding, and there was no necessity to prove legal necessity for them: A.I.R. 1924 P. C. 50 (P.C.), *Expl.*; A.I.R. 1927 All. 127 and A.I.R. 1926 All. 690, *Dist. from. Case-Law considered.* (*Sulaiman and Boys, JJ.*). SHEO PRASAD *v.* BALWANT SINGH. **98 I.C. 1023=24 A. L. J. 1041=A.I.R. 1927 All. 150.**

——Debt owed to pre-emptor by vendor (Hindu father) prior to the 'pre-emption sale' is antecedent debt for which sons are liable. A contract for a loan which never was completed, to pay off a previous debt, otherwise discharged, is not an antecedent debt. (*Mr. Ameer Ali.*) JAWAHIR SINGH *v.* UDAIPRAKASH. **93 I.C. 216=48 All. 152=53 I.A. 36=24 A.L.J. 97=1926 M.W.N. 197=3 O.W.N. 365=43 C.L.J. 374=28 Bom. L.R. 851=30 C.W.N. 698=A.I.R. 1926 P.C. 16=50 M.L.J. 344 (P.C.).**

HINDU LAW—Debt—Antecedent debt—What is.

——An independent debt neither illegal nor immoral contracted by a Hindu father on the security of the joint family estate, antecedent to mortgage sued on is an "antecedent" debt and it does not cease to be so simply because the prior mortgagee and the subsequent mortgagee are the same: A.I.R. 1924 P.C. 50 and 42 Mad. 711 (F.B.), *Foll.* (*Zafar Ali, J.*). MT. THAKARAI BAI *v.* JASPAT RAI. **93 I.C. 911= A. I. R. 1926 Lah. 436.**

——The debt previously borrowed on the security of the joint family property is an antecedent debt for which the joint family property is liable: A.I.R. 1924 P.C. 50 (P.C.), *Foll.*; 39 All. 439 (P.C.), *Not foll.* (*Kotval, A.J.C.*). CHOTTURAM BHIKRAJ *v.* NARAYAN. **90 I.C. 210=A.I.R. 1926 Nag. 49.**

——Mortgage by father—Though personal remedy is barred, the debt can be as an antecedent debt: A.I.R. 1924 P.C. 50 and 42 Mad. 711 (F.B.), *Foll.* (*Ashworth, A.J.C.*). BHARATH SINGH *v.* SHEODUT SHARMA. **91 I.C. 189=A. I. R. 1926 Oudh 266.**

——Where a mortgage is executed by a father to pay off certain previous mortgages of joint family property, is a mortgage to pay off antecedent debts and as such is binding on the sons: A.I.R. 1924 P.C. 50, *Foll.* (*Stuart, C.J. and Hasan, J.*). RAM NARAIN *v.* KUNWAR BAHADUR. **93 I.C. 4 (Oudh.)**

——Antecedent debt means antecedent in fact as well as in time; that is to say, that the debt must be truly independent and not part of the transaction impeached.

There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead. (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MAGLA PRASAD RAO. **77 I.C. 689=21 A.L.J. 934= 5 L.R.P.C. 1=28 C.W.N 253=5 P.L.T. 1= 2 Pat. L.R. (Civ.) 41=1924 M.W.N. 68= 19 M.L.W. 72=33 M.L.T. 457=51 I.A. 129= 46 All. 95=26 Bom. L.R. 500=11 O.L.J. 107= 1 P.L.R. 1924=41 C.L.J. 232= A.I.R. 1924 P.C. 50=46 M.L.J. 23 (P.C.).**

——In order to be an antecedent debt the previous debt need not necessarily be a simple debt but may also be a mortgage debt. (*Sulaiman and Mukerji, JJ.*). SANMUKH PANDE *v.* JAGANATH PANDE AND RAMSARAN PANDE. **83 I.C 838= 46 All. 531= 22 A.L.J. 417= 5 L.R.A. Civ. 289=A.I.R. 1924 All. 708.**

——A debt secured by a mortgage containing a personal covenant may constitute antecedent debt equally with a debt secured only by a personal bond: 42 Mad. 711, *Foll.* (*Daniels, J.C.*). GAURI SHANKAR *v.* JANG BAHADUR. **79 I.C. 1008= 27 O. C. 124=11 O. L. J. 248= A.I.R. 1924 Oudh 394.**

——Consideration for a purely usufructuary mortgage may constitute antecedent debt which could support a subsequent alienation. (*Wazir Hasan, J.C.*). MANNU LAL *v.* BISHAMBUR NATH. **79 I. C. 35=11 O. L. J. 415= A. I. R. 1924 Oudh 378.**

——A debt secured by a mortgage of joint family property but not yet time-barred as a simple money debt, is an antecedent debt such as would support an alienation of joint family property. (*Dalal and Simpson, A.J.Cs.*). DWARKA PRASAD *v.* MT. RAM DEBI. **77 I. C. 329=10 O. L. J. 360= 27 O. C. 140=A.I.R. 1924 Oudh 120.**

——*Debt incurred before plaintiff was born is a valid antecedent debt.*

The mortgage in suit was executed by the father of the plaintiff as head of the joint family. Part

HINDU LAW—Debt—Antecedent debt—What is.

of the consideration was applied to pay off a mortgage executed by the father at a time when the plaintiff was not born and no joint family was in existence,

Held, that this constituted a valid antecedent debt and that the plaintiff was not entitled to challenge it: A.I.R. 1922 All. 51, *Ref.* (*Daniels, J.*). TRILOCK SAITHWAR *v.* LALSA SAITHWAR. **71 I. C. 465=A. I. R. 1923 All. 488.**

——*Secured debt is not antecedent debt.*

Prior mortgage debts forming consideration of subsequent mortgage are not antecedent debts so as to bind the sons, but the oral debt incurred by a co-parcener of the grandfather which was binding on the grandfather binds the grandson as an antecedent debt. (*Piggott and Sulaiman, JJ.*). RAM RATAN MISIR *v.* KAPIL DEO SINGH. **83 I.C. 417= A.I.R. 1923 All. 20.**

——But though a debt, which has become absolutely barred by time and the liability to pay which has not been undertaken in a previous writing, cannot be deemed to be a good antecedent debt so as to validate a conveyance by the father in lieu of it, yet when the mortgage-debt as such has not become time-barred, but only the personal remedy against the father is barred, it can still be a good antecedent debt so as to justify an alienation in lieu of it. (*Lindsay and Sulaiman, JJ.*). B. GOURI SHANKER *v.* P.H. SHEO NANDAN. **78 I. C. 911= 46 All. 384=22 A.L.J. 369=5 L.R.A. Civ. 306= A. I. R. 1924 All. 543.**

——*Loan on void mortgage is antecedent debt.*

What is in fact an antecedent or pre-existing debt due by a Hindu, for the satisfaction of which he would be entitled to alienate his son's shares in the joint family property as security along with his own if he had not mortgaged that property as security for the debt at the time he incurred it, does not change its character as an antecedent debt due by the father for which he is entitled to alienate his son's shares merely by reason of his having executed a void mortgage of those shares along with the valid mortgage of his own when he first incurred the debt. (*Batten, J.C.*). GANPAT RAO *v.* LAXMI CHAND. **77 I.C. 640=6 N. L. J. 239= A. I. R. 1924 Nag. 1.**

——*Money borrowed on hypothecation bond is antecedent debt.*

It is settled law of the Court of the Judicial Commissioner, Lucknow, to regard the definition of their Lordships, in Sahu Ram's case (in 39 All. 437) as one to be construed in the light of the particular facts before it, and as not exoluding from the category of antecedent debts money borrowed on a hypothecation-bond, since the personal liability for debts as secured continues to exist independently of the hypothecation: 23 O. C. 211 *Foll.*

The antecedency of a debt incurred by a father may be invoked to uphold a transfer by him as against the sons even during the father's lifetime. (*Ashworth, J.C.*). JAMNA PRASAD *v.* BALBHADDAR. **74 I.C. 353=25 O.C. 383= 9 O.L.J. 601=A.I.R. 1923 Oudh 147.**

——Where in a previous mortgage there was no personal covenant to pay and no provision permitting the mortgagee to sell the mortgaged property in case of non-payment, held, that this cannot constitute an antecedent debt. (*Dalal and Daniels, A. J. Cs.*). RAM SARUP SINGH *v.* P. JAGESHUR SINGH. **73 I.C. 466=26 O.C. 351= A.I.R. 1923 Oudh 150.**

HINDU LAW—Debt—Antecedent debt—What is.

———Mortgage prior to birth of son—Sale after birth of son to discharge mortgage—mortgage debt must be deemed to be antecedent debt.

Per *Walsh, J.*—Mere antecedency, however is not sufficient to support a charge made by a father upon family property for a debt. (*Walsh and Piggott, JJ.*). SURAJ PRASAD *v.* MUKHANDAL.
66 I.C. 134=44 All. 382=20 A.L.J. 236= A.I.R. 1922 All. 51.

———*Loan on mortgage—Second mortgage to discharge original mortgage—If original mortgage is antecedent debt.*

Per *Kotval, A. J. C.*—Where a creditor has lent money to the father originally on the security of the joint family estate and later on a fresh mortgage is granted for the same money it may well be taken that the security afforded by the second mortgage is in pursuance of the original intention to make the estate security for the debts and that the debt is therefore not dissociated in fact from the alienation.

If a debt secured by a mortgage of the joint family property is to be treated as an antecedent debt when a second mortgage is executed in respect of it, the result would be that a transaction, which was originally of no force as constituting according to their Lordships of the Privy Council a breach of trust, would be legalised by what really is a repetition of that breach.

Per *Macnair, A. J. C.*—Their Lordships of the Privy Council did not intend to lay down in 39 All. 437 the rule that the antecedent debt must be one which was not incurred on the security of the joint family property: F. A. 70 of 1917 and S.A. 291 of 1918. 41 All. 235, *followed*; 42 Mad. 711, *dissented from.*

A Hindu father may incur a debt at one time and subsequently execute a mortgage so as to bind the son's interest in order to pay off the previous debt and such a mortgage is an antecedent-debt binding on the share of the son even though the mortgage forms the consideration for a later mortgage the binding nature of which is challenged by the son. (*Hallifax, Kotval, Macnair and Batten, A. J. Cs.*). SHEONARAIN *v.* NATHU.
65 I.C. 786=5 N.L.J. 114=19 N.L.R. 81= A.I.R. 1922 Nag. 1.

———Mortgage debt—Personal liability to re-pay may be antecedent debt.

A personal liability to re-pay a mortgage debt may be an antecedent debt: 21 O. C. 200; 39 All. 437 (P. C.) and 23 O. C. 204, *Ref.* (*Daniels and Wazir Hasan, A. J. Cs.*). RAM SURAN *v.* MANGAL SINGH.
60 I.C. 219=8 O.L.J. 87= A.I.R. 1921 Oudh 38.

—Debt—Antecedent debt—What is not.

———Sums admitted to be paid in part consideration of the deed attacked, do not constitute antecedent debt. (*Wazir Hasan and Srivastava, JJ.*). LACHMI NARAIN *v.* MANGAL PRASAD.
6 O.W.N. 801=A.I.R. 1929 Oudh 453.

———Where a mortgage of family property was executed to pay off the sale price of land purchased three days earlier,

Held, that there was no room for the theory of antecedent debt in the case: A. I. R. 1928 Pat. 83, *Foll.* (*Ross and Fazl Ali, JJ.*). JAN MOHAMMAD *v.* BIKOO MAHTO. **116 I.C. 33=7 Pat. 798= 10 P.L.T. 811=A.I.R. 1929 Pat. 130.**

———*Loan that cannot be re-paid except by borrowing on the security of family property is no antecedent debt.*

HINDU LAW—Debt—Antecedent debt—What is not.

In order to validate a transaction on the doctrine of antecedent debt, there must, to give true effect to the doctrine of antecedency in time, be also real dissociation in fact. When, therefore, an obligation is created at a time when the father had no money and with the knowledge that the debt can be re-paid only by borrowing on the security afforded by the estate, a mortgage executed to pay such a debt cannot be supported: A. I. R. 1917 P. C. 61, *Foll.* (*Das and James, JJ.*). RAGHUNATH SINGH *v.* MODNARAYAN SINGH. **105 I.C. 1= 9 P.L.T. 142=A.I.R. 1928 Pat. 83.**

———A renewal of the original transaction cannot be an alienation for antecedent debt as defined by the Privy Council: A.I.R. 1924 P. C. 50, *Not appl.* (*Walsh and Pullan, JJ.*). BABU RAM *v.* MAHADEO RAM. **98 I.C. 1012=A.I.R. 1927 All. 127.**

———*Mortgage renewed by a second mortgage is not an antecedent debt.*

Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached: A.I.R. 1924 P. C. 50, *Foll.* If a mortgage includes in its consideration the whole of the sum advanced previously on the same security by the same mortgagee, the first mortgage is antecedent in time but not in fact, and not being truly independent of the second mortgage is not an antecedent debt. (*Walsh and Pullan, JJ.*). GUNDI LAL *v.* BASDEO. **96 I.C. 671= A.I.R. 1926 All. 690.**

———A mortgage by step-mother of a Hindu minor though ratified by the minor subsequently does not constitute an antecedent debt with respect to a subsequent mortgage by the minor, executed after attaining majority. (*Campbell, J.*). CHANDA LAL *v.* MUKANDI. **87 I.C. 40=26 P.L.R. 120= A.I.R. 1925 Lah. 503.**

———Previous mortgage executed by defendant's father—Subsequent mortgage executed by defendant's uncle to discharge first—Previous mortgage debt is not antecedent debt: A.I.R. 1923 Oudh 150, *Ref.* (*Dalal and Wazir Hasan, A.J.Cs.*). BANSIDHAR *v.* BEHARI LAL. **89 I. C. 67=12 O.L.J. 359= 2 O.W.N. 369=A.I.R. 1925 Oudh 626.**

———*Antecedent debt must be prior in time and in fact to the alienation by the father.*

To satisfy the validity of an alienation of the undivided estate on the basis of an antecedent debt the alienation must be by the father for his debts antecedent in time and in fact to the alienation supporting it. A mortgage by sons to re-pay the mortgage debt incurred by their father is not valid on the ground of its having been made for the purpose of paying off an antecedent debt. So also the mortgage debt incurred by the father is not antecedent if the alienation by him is not made for the payment of a debt prior or in time and in fact to the security supporting it. (*Wazir Hasan and Neave, A.J.Cs.*). GAJADHAR BAKSH SINGH *v.* BAIG NATH. **79 I.C. 104=27 O.C. 133=11 O.L.J. 264= A.I.R. 1925 Oudh 9.**

———Money payable by the successful plaintiff in a pre-emption suit is not antecedent debt for the purpose of supporting an alienation of the family property. It does not follow from this that the payment of a pre-emption decree might not be binding on the family on the ground of legal necessity or benefit to the estate: A.I.R. 1923 All. 218, *Foll.* (*Daniels, J.*). SHEODEN *v.* HABHI ULLAH KHAN. **75 I.C. 872=A.I.R. 1924 All. 721.**

HINDU LAW—Debts—Antecedent debt—What is not.

——*Father's debt on security of property is not antecedent.*

Per *Drake-Brockman and Batten, J. Cs.*—A debt borrowed by a Hindu father on the security of the joint family property does not constitute an antecedent debt so as to bind his sons by a subsequent mortgage effected for the discharge of that debt and it is open to the sons when a suit is brought to enforce the later mortgage to plead that earlier one was not justified by legal necessity. The fact that the father is dead at the time of suit makes no difference : A.I.R. 1922 P.C. 247; 6 P.L.J. 526, *Foll.* (*Batten, J.C. on difference between Drake-Brockman, J.C. and Hallifax, A.J.C.*). GANPAT RAO *v* LAXMI CHAND. **77 I.C. 640=6 N.L.J. 239= A.I.R. 1924 Nag. 1.**

——It would be very dangerous to hold that the money required to satisfy the pre-emption decree is an antecedent debt due from pre-emptor: 33 All 242, *Foll.*(*Piggott and Walsh, JJ.*). CHATUR BHUJ *v.* GOBIND RAM. **67 I.C. 668= 21 A.L.J. 348=45 All. 407=4 L.R.A. (Civ.). 409= 74 I.C. 571= A.I.R. 1923 All. 218.**

——A previous mortgage cannot be considered as an antecedent debt if it was in favour of the same mortgagee and was effected only a few days before the mortgage in dispute and the two mortgages formed practically one transaction. (*Broadway and Brasher, JJ.*). MD. USMAN KHAN *v.* ATA MOHYUDDIN. **73 I.C. 871=5 L.L.J. 304= A. I. R. 1923 Lah. 142.**

——*Mortgage debt is not an antecedent debt.*

A mortgage executed by a father is not an antecedent debt since it is not incurred by the father independently of the security of the joint family property. The sons are therefore entitled to advance the plea that there was no legal necessity for the second mortgage by the other sons (their brothers) to pay off the mortgage by their father so as to bind their shares : 39 All. 437, *Foll.* [Note *Brij Narain* v. *Mangal Prasad*, A.I.R.1924 P.C. 50]. (*Prideaux, A.J.C.*). PURNIA *v.* SONIA. **69 I.C. 569= A.I.R. 1923 Nag. 23.**

——*Invalid mortgage is not an antecedent debt for subsequent sale.*

A mortgage, invalid at its date in so far as purporting to encumber the joint family property, cannot become a just and legal consideration on the principle of "antecedent debt" for a sale at a later date. The antecedency should not only be an antecedency to the mortgage itself but there must be disconnection with the mortgage in fact as well as in time. The doctrine of "pious obligation" cannot be invoked against grandsons while the sons of the mortgagor are living. (*Lord Shaw.*) CAET RAM *v.* RAM SINGH. **67 I. C. 569= 44 All. 368=16 M.L.W. 89=3 P L.T. 363= 31 M.L.T. 50=1922 M.W.N. 455= 49 I.A. 228=24 Bom.L.R. 1231=27 C.W.N. 150= 21 A.L.J. 114=37 C.L.J. 79= A.I.R. 1922 P.C. 247=43 M.L.J. 98 (P.C.)**

——A loan made to the father on the occasion of a grant by him of mortgage on the family estate is not an antecedent debt, so as to be binding on the sons. (*Prideaux, A.J.C.*). BALOO *v.* GODAWARIBAI. **66 I.C. 287=5 N.L.J. 238= A.I.R. 1922 Nag. 136.**

——*Usufructuary mortgage—Mortgagor personally liable, if mortgagor is dispossessed—No personal liability—No antecedent debt.*

If once it is proved that a sale has taken place in consideration of antecedent debt the sons are precluded from attacking it, but they are not precluded from raising the prior question whether the sale really was in consideration of such a debt. In order to validate a transaction entered into by a father in consideration of antecedent debt there must be not only antecedency in time but also true dissociation in fact. A clause in a deed of usufructuary mortgage executed by a father, making the mortgagor personally liable for the mortgage money in case the mortgagee be dispossessed from the mortgaged property, does not constitute a personal liability so as to treat it as antecedent debt : *Sahu Ram Chandra* v. *Bhup Singh* referred to. (*Daniels, J.C.*). MT. MANGURAN BIBI *v.* JANKI PRASAD. **66 I.C. 930=9 O.L.J. 35=A.I.R. 1922 Oudh 50.**

HINDU LAW—Debts—Father—Burden of proof.

——*Loan on the security of joint family property is not antecedent debt.*

Where a father borrows money by mortgaging joint family property and the mortgage contains a covenant for personal liability the debt is not an "antecedent" debt because of the personal covenant, because the debt is not borrowed wholly apart from the security afforded or supposed to be available by the joint estate. For a similar reason, where money is borrowed by executing a promissory note and the promissory note itself recites that the money was taken in order that it might form part of the mortgage which was to be subsequently executed the debt cannot be said to be antecedent: 39 All. 437 (P.C.). *Foll.* [*Note.*—Compare *Brij Narain* v. *Mangal Prasad*, A.I.R 1924 P.C. 50.] (*Mears, C.J. and Banerji, J.*). RAM SARUP *v.* BHARAT SINGH. **64 I.C. 763=43 All. 703= 19 A. L. J. 744=A.I.R. 1921 All. 113.**

——A mortgage debt is not as such an antecedent debt unless coupled with a personal obligation to pay the debt. (*Daniels and Wazir Hasan, A.J.Cs.*). RAM DEI *v.* SURAJ BAKHSH. **60 I.C. 177= 23 O.C. 204=7 O.L.J. 509=2 U.P.L.R. (J.C.) 156.**

—Debts—Co-parcener.

——Where a promissory note is executed subsequent to partition of the joint family by one alleging himself to be the managing member of the family, it is the duty of the person who deals with such member of the family to satisfy himself that he had subsisting authority. (*Kumaraswami Sastri and Reilly, JJ.*). VENKATAKRISHNAYYA *v.* RANGAYYA. **117 I.C. 720=A.I.R. 1928 Mad. 865.**

——*Loan by son—No reference to joint family—Alienee to prove that loan was for family benefit*

The onus of proving that a debt incurred by a member of a joint Hindu family was for the benefit of the family must be placed on the creditor, more especially when he is dealing, not with the natural head of the family, namely, the father, but with the son who is living in another village and when he contracts the debt, signs his name only and makes no reference whatever to any business or joint family business for which the loan is being taken. (*Broadway, J.*). NARAIN SINGH *v.* MOHAN SINGH. **93 I.C. 340=8 L.L.J. 10= 27 P.L.R. 95=A.I.R. 1926 Lah. 214.**

——A man is not bound to repay the debts of his paternal uncle. (*Baker, J. C. and Hallifax, A. J. C.*). CHITNAVIS *v.* NATHU SAO. **79 I.C. 1002= 20 N.L.R. 106=7 N.L.J. 170=A.I.R. 1925 Nag. 2.**

—Debts—Father—Burden of proof.

——*Mortgage by father for no antecedent debt—Decree on mortgage against father—Before execution, sons suing challenging mortgage—Mortgagee to prove necessity.*

HINDU LAW—Debts—Father—Burden of proof.

Per *Full Bench.*—Where the father mortgages the joint ancestral property not for paying any antecedent debt and the mortgagee obtains a decree on the mortgage against the father without impleading the sons,and before the property is sold in execution of the decree the sons sue for a declaration that the property is not liable to be sold, the sons are bound to succeed if the mortgagee fails to prove legal necessity for the loan, and the sons are not required to prove immoral character ofthe debt: *Walsh, J.*, in A.I.R. 1928 All. 86 and A.I.R. 1926 Oudh 321, *Diss. from.* (*Sulaiman, Ag. C. J., Mukerji and Boys, JJ*). JAGDISH PRASAD *v.* HOSHYAR SINGH. **115 I.C. 775=51 All. 136= 26 A.L.J. 1289=A I.R. 1928 All. 596. (F. B.).**

———Debts contracted by father for legal necessity —No partition—No proof as to the debt beiug immoral or illegal—Whole joint family property can be sold in execution of a decree for that debt : A.I.R. 1926 Oudh 321 ; 44 Cal. 524 and A.I.R. 1924 P. C. 50, *Ref.* (*Raza, J.*). MANOHAR LAL *v.* IMDADALI. **98 I.C. 300=3 O.W.N. 862= A.I.R. 1927 Oudh 15.**

———*Debt on pro-note—Onus is on sons to prove immorality or illegality.*

Where the father of a joint Hindu family borrows money on the security of a promissory note, in a suit on the promissory note, it is for the sons of the executant of the note to prove that the debt was tainted with illegality or immorality : otherwise they will be bound by the debt: A.I.R. 1924 P.C. 50, *Foll.*; 39 All. 437, *Dist.* (*Dalal, A.J.C.*). SRI KISHEN DAS *v.* KANHAYA LAL. **86 I. C. 877= 12 O.L.J. 232=2 O.W.N. 206= A.I.R. 1925 Oudh 559.**

———*Mortgage merged in a decree—Alienee need not prove necessity.*

So long as the creditor is seeking to enforce a mortgage executed by the father he is bound to prove as against the sons that it was executed for valid necessity. But when once the mortgage has merged in a decree it no longer subsists and the judgment debt which the creditor is seeking to enforce is on the same footing as any other debt incurred by the father. Sons cannot set up their rights against the remedies of their father's creditors for their debts if not tainted with immorality: 17 O.C. 318; A.I.R. 1923 Oudh 227, *Foll.*; A.I.R. 1923 Oudh 182, *Dissented from.* (*Daniels, J.C.*). GAURI SHANKAR *v.* JANG BAHADUR. **79 I.C. 1008= 27 O.C. 124=11 O.L.J. 246= A.I.R. 1924 Oudh 394.**

—Debts—Father—Debt.

———*Debt for which son's share can be sold in execution excludes a mortgage.*

Per *Full Bench.*—In proposition No. 2 as laid down in A.I.R. 1924 P.C. 50, "if he (the manager) is the father and the reversioners are the sons, he may by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt," the word *debt* does not include mortgage debt. (*Sulaiman, Ag. C.J., contra.*) (*Sulaiman, Ag.C.J. and Mukerji and Boys, JJ.*). JAGDISH PRASAD *v.* HOSHYAR SINGH. **115 I.C. 775= 51 All. 136=26 A.L.J. 1289= A.I.R. 1928 All. 596 (F.B.).**

———*New partnership—Debt for—Sons not liable unless they derived benefit.*

Where sons are sought to be made liable for the debt of their father in respect of a partnership which is not ancestral it must be shown that the business resulted in some benefit to the family and that the other members participated in such benefit: A.I.R. 1922 P.C 237 (P.C.), *Rel. on.*

Unless it is shown that other members were admitted to the benefits of the partnership they are not liable for the debts of the firm. (*Coutts-Trotter, C.J. and Ramesam, J.*). MAYA NADAN & BROS. *v.* ARUNACHALAM. **97 I.C. 981= 1926 M.W.N. 671=A.I.R. 1926 Mad. 1106.**

HINDU LAW—Debts—Father—Debt.

———*Son's share can be sold in execution of decree against father.*

A money-decree passed against a Hindu father can be executed against ancestral property in his hands inclusive of his son's interest and the fact that the sons were brought on record as heirs of the father on his death pending appeal in the original proceedings does not make any difference. (*Shah, Ag.C.J. and Fawcett, J.*). NARAYAN GANESH *v.* SAGUNABAI GANGADHAR. **85 I. C. 181= 49 Bom. 113=26 Bom. L. R. 1200= A. I. R. 1925 Bom. 193.**

———*Debt by father for pre-emption money—Sons bound.*

A debt contracted by the father to pay pre-emption money is for a legal necessity for which the father, the managing member of the family, may borrow money. Apart from that it will be the pious duty of the son to pay a simple money debt due from his father even during the life-time of his father. (*Dalal, J.*). BISHUNATH RAI *v.* JODHI RAI. **82 I.C. 180=5 L.R. A. Civ. 690= A.I.R. 1925 All. 120.**

———*Money advanced to father after division of status, but before actual partition—Onus on sons.*

Although at the time of the advance of money to the father, the family had expressed the intention to separate, and in the eye of the law, they were no longer members of a joint Hindu family, yet if there had been no partition of the joint property the onus, would be upon the sons to show that the advance made to their father, was made after the actual division of that property so that they would no longer be liable for such advance. (*Macleod, C.J. and Kanga, J.*). MOTI CHAND RAOJI *v.* MANEKCHAND RAMCHAND GOJAR. **77 I.C. 515=A.I.R. 1922 Bom. 147.**

———*Debts incurred by father—Creditor can proceed against son's shares also.*

Per *Spencer, J.*—It has always been held in this Presidency since the Full Bench decision of *Ponnappa Pillai* v. *Pappuvayyangar*, 4 Mad. 1, that so long as a Hindu family remains undivided, a creditor can proceed against the interest of the sons of the ancestral property for the debts of their father which have not been contracted for illegal or immoral purposes.

Per *Devadoss, J.*—As the law stands at present a creditor can proceed against the shares of the sons in the family property in execution of a decree obtained against the father without proving either family necessity or that the debt was incurred to discharge an antecedent debt. Their Lordships in *Sahu Ramchandra* v. *Bhoop Singh* did not intend to alter the law as it stood as regards the right of an execution creditor to proceed against the son's share in execution of a money-decree obtained against the father. The law has been settled for over a generation as regards this point : 39 All. 437, *Dist.*; 12 Mad. 142; 20 Cal. 328 at 337, *Foll.* (*Spencer and Devadoss, JJ.*). K. SAMA RAO *v.* LAL CHAND. **71 I. C. 153=1922 M. W. N. 708= 32 M.L.T. 9=17 M.L.W. 661=46 Mad. 64= A.I.R. 1923 Mad. 36=43 M.L.J. 745.**

HINDU LAW—Debts—Father—Decree.

—Debts—Father—Decree.

——*Decree against father cannot be challenged merely on ground of unconscionable rate of interest.*

As a Hindu son cannot challenge his father's transaction merely on the ground that it was not for legal necessity, and since the question as to rate of interest falls under the head of legal necessity, once a decree has been passed against a Hindu father, his son cannot challenge it on the ground of its being unconscionable to save the family property from sale: A.I.R. 1924 P.C. 50; A.I.R. 1926 Oudh 321; 17 O.C. 318, *Rel. on*; 4 O. L.J. 157, *Diss. from.* (*Pullan, J.*). SOBHA SINGH *v.* KESHO SINGH. **A.I.R. 1930 Oudh 234.**

——*Decree against father is binding on the sons.*

The reason why the interest of a son in the joint family property can be sold in execution of decree obtained against the father alone is that the decree is binding on the sons as they are deemed to be represented by the father and therefore themselves parties to the suit: A.I.R. 1914 P.C. 136, *Ref.* (*Mukerji and Niamatullah, JJ.*). KISHAN SARUT *v.* BRIJ RAJ SINGH. **121 I. C. 257= 1929 A.L.J. 941=51 All. 932= A.I.R. 1929 All. 726.**

——Where the father of a joint Hindu family incurred a debt for a shop and not separately for himself, and the sons failed to prove immorality regarding this debt,

Held, that joint family property including the share of the sons may be proceeded against, on a decree on the debt: 15 Cal. 717 (P.C.); A.I.R. 1924 P.C. 50, *Foll.* (*Madgavkar, J.*). RAMCHANDRA ANANT DESAI *v.* BHAGWANT GOPAUL THAKUR. **121 I.C. 435=53 Bom. 777=31 Bom. L.R. 1115= A.I.R. 1929 Bom. 465.**

——*Decree against father personally—Sons can be exonerated only on the ground of debt being illegal or immoral.*

A decree although passed against the father personally and after his sons are exonerated, can be executed against the shares of his sons in the family property and such property is liable for the father's debt. The sons can claim exoneration from the liability only on the ground that the debt is immoral or illegal: 13 Cal. 21, *Rel. on*; 31 M.L.J. 502; 27 M.L.J. 276; 28 All. 288 and 37 All. 214, *Ref.*; A.I.R. 1928 Mad. 657 (F.B.) and A.I.R. 1927 Mad. 471 (F. B.), *Expl.* (*Coutts-Trotter, C. J. and Walsh, J.*). DORAISWAMI NADAN *v.* NAGASAMI NAICKEN. **121 I.C. 868=A.I.R. 1929 Mad. 898.**

——*Decree against father on mortgage—Sons not impleaded—Personal remedy against father time-barred—Mortgagee must prove necessity and no question of pious obligation arises* (*Iqbal Ahmad, J.*, differing *Walsh, J.*).

The pious obligation of a Hindu son has reference only to simple money debts which the father is under a personal obligation to pay and to simple money decrees obtained against the father for recovery of such debts, and a distinction must be drawn between a simple money debt and a decree for such debt on the one hand and a debt secured by a mortgage of the family property and a decree for sale of such property on the other. So far as simple money debt or a decree for such debt against the father is concerned, the father is under a personal obligation to discharge that debt or that decree, and the sons labour under a pious obligation to discharge the liability of their father. But in the case of a debt incurred on the security of the family property by the father, when the mortgagee has not sued for recovery of the debt within six years of

HINDU LAW—Debts—Father—Decree.

the date of accrual, of the cause of action and has thus allowed his right to a simple money-decree against the father to become time-barred, the personal obligation of the father disappears, and the mortgagee is then only entitled to recover the debt by sale of the mortgaged property, and in such a case the sons labour under no pious obligation to discharge that debt for the simple reason that the debt is not due from their father.

The principle of pious obligation cannot be applied to the case of a decree for sale on the basis of a mortgage of the family property. In the cass of a suit brought by a creditor against the father for recovery of a simple money debt all that he has to prove, in order to entitle him to a decree, is that he advanced the debt, and it is not necessary for him to prove the purpose for which the debt was incurred. On the other hand, in a suit for sale of the family property, the mere fact that the mortgagee advanced the debt does not entitle him to a decree, unless and until he succeeds in further proving that the debt was advanced for family necessity. Because of their pious obligation to discharge their father's debts the sons cannot impugn the validity of a simple money decree to which they were no party, on the ground of the absence of legal necessity for incurring the debt. But in the case of a decree for sale, when the personal remedy against the father has become time-barred, the sons are under no such obligation and, therefore, if the mortgagee has obtained a decree for sale of the joint family property without impleading the sons or without suing the father in his representative capacity, the sons are entitled to challenge the validity of that decree on the ground that they being no parties to that decree are not bound by the same and in such a suit, unless the mortgagee succeeds in proving that the debt secured by the mortgage was for legal necessity, the sons will be entitled to avoid the decree: 12 A.L.J. 613, *Foll.*; A.I.R. 1924 Oudh 394, *Diss. from.*

Walsh, J.—There is no real distinction between the two cases of a simple money-decree and a decree for debt secured by a mortgage: A.I.R. 1924 Oudh 394, *Appr.*: A. I. R. 1917 P. C. 61 and A.I.R. 1924 P.C. 50, *Expl.* (*Walsh and Iqbal Ahmad, JJ.*). THAKUR LAL *v.* JAGRAJ SINGH. **107 I.C. 693=50 All. 546=26 A.L.J. 229= A.I.R. 1928 All. 86.**

——*Obligation incurred before adoption is binding on the adopted son.*

Where, before adopting a son, a Hindu father enters into a contract to sell his property and receives a sum of money as advance, the obligation to perform the contract or to pay back the amount arises before the date of adoption, and if a son who is born after an obligation has been incurred which obligation by reason of non-performance results in a debt, it cannot be said to be a debt incurred after the birth of the son. Though in certain circumstances it might not result in a debt, yet if the obligation was incurred before the birth of a son, or as in this case, before the adoption, it is not open to the son to dispute the liability of the whole family property for the debt which resulted from obligation incurred by the father before the date of adoption, and the son's share is liable to be proceeded against in execution of a decree obtained against the father for the recovery of advance and for damages for breach of contract: A.I.R. 1921 Mad. 447, *Dist.* (*Devadoss and Madhavan Nair, JJ.*). SWAMINATHAN *v.* SUBRAMANIA AYYAR. **116 I.C. 360=A.I.R. 1928 Mad. 1082.**

HINDU LAW—Debts—Father—Decree.

——*Decree against son as the legal representative of his father—Execution.*

Where sale by a Hindu was set aside as being without family necessity and the vendee being deprived of possession sued to recover the purchase money from the vendor and where his son had been brought on the record as the legal representative of his father who died during the pendency of the suit,

Held, that the proper decree to pass would be a decree against the son as the legal representative of his father and capable of execution against him so far as he held property which was liable to attachment under the Hindu Law for his father's debts. (*Ashworth and Neave, A. J. Cs*). KALLU MAL *v.* PARTAB SINGH. **92 I.C. 787= A.I.R. 1926 Oudh 301.**

——*Entire family property can be sold for debts of deceased father or grand-father.*

There is no authority for holding that the pious obligation of sons does not arise until after the death of the father. Therefore the whole of the joint family property in the possession of the sons and grandsons of the deceased judgment-debtor can be attached and sold in execution of a personal decree passed against the father or the grand-father: 1 O.W.N. 13, *Ref to.* (*Kendall, A.J.C.*). HARIHAR PRASAD *v.* MAHABIR PANDEY. **79 I.C. 1055= 11 O.L.J. 689=27 O.C. 306= A. I. R. 1925 Oudh 91.**

——A decree for mesne profits can be executed against ancestral property in the hands of the son after the death of the father. (*Wazir Hasan, J. C. and Kendall, A.J.C.*). SHAMBU BHAN SINGH *v.* CHANDRA SHEKHAR BAKSH SINGH. **80 I.C. 17= A.I.R. 1925 Oudh 230.**

——The passing of a personal decree in a partition suit against father who was the manager is not alone sufficient to prove immorality of the debts for which decree is passed. (*Mullick and Ross, JJ.*). RAGHUNATH PRASAD *v.* BASDEO PRASAD. **88 I.C. 1012=3 P.L. R. 328= 6 P.L.T. 764= A.I.R. 1925 Pat. 822.**

——Sons can question validity of a decree to which they were not parties provided they claim by independent title. (*Daniels, A.J.C.*). MT. SURJA *v.* BIJAI BAHADUR SINGH. **73 I.C. 13= 26 O.C. 336= A.I.R. 1924 Oudh 136.**

——Shares of the sons in the joint family estate can be proceeded against in execution of a decree even in the lifetime of the father where the decree obtained against the father though personal is in respect of a debt which was for the benefit of the family estate and was neither illegal nor immoral. (*Kennedy, J.C. and Raymond, A.J.C.*). NARUMAL MULCHAND *v.* NICHUMAL. **76 I.C. 778= 18 S.L.R. 1= A.I.R. 1924 Sind 124.**

——Sons cannot recover share of joint property sold under a decree against father unless debt is shown to be immoral: (1874) 1 I.A. 321; 43 Bom. 612 and 60 I.C. 137, *Ref.* (*Lindsay and Sulaiman, JJ.*). RAM CHANDER *v.* HAJI MOHAMMAD NUR. **73 I.C. 656=45 All. 545=4 L.R.A. Civ. 237= 21 A.L.J. 485= A I.R. 1923 All. 591.**

——*Judgment against father alone operates against sons' interests unless the debt is illegal or immoral.*

By the Mitakshara Law according to 44 Cal. 524 (P.C.), a judgment against the father of the family, cannot be executed against the whole of the Mitakshara property, if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. *In every other event* it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against "*the father alone.*" These words could not be clearer and they are absolutely comprehensive. There are no limitations, qualifications or reservations to the effect that the debt must be incurred by the father as representing the estate or purporting to be for the benefit of the estate or in some capacity other than his personal capacity. The words in 44 Cal. 524 are: "*In every other event* it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against *the father alone*"—and there is nothing to qualify the words, "the father alone." The decision in 44 Cal. 524 is to the effect that, once a simple money decree is passed against the father, and manager of a joint Hindu family, that simple money decree can be executed by the execution creditor against the whole of the estate, and will operate against the interests of the sons, unless the debt has been incurred for illegal or immoral purposes. The decision in 15 A.L.J. 437 lays down an absolutely different proposition that joint family property cannot be transferred by an act of volition on the part of the manager, except with the consent of other co-parceners or for legal necessity or in payment of antecedent debts, and that the doctrine of the pious duty of a Hindu son to satisfy his father's debts can have no operation to validate such a transfer, so long at any rate as the father is alive. But in order to apply the principle of the second decision, there must be a transfer by the volition of the manager. (*Stuart, J.*). SHAMBHU DAYAL SINGH *v.* ISWAR SARAN. **75 I.C. 597= A.I.R. 1923 All. 306.**

——*Mortgage-decree—When binds sons.*

A decree against the father on the mortgage by the father has no more force than the mortgage itself, which must be proved, in order to bind the son, to be for an antecedent debt or for legal necessity. (*Scott-Smith and Zafar Ali, JJ.*). HANS RAJ *v.* BALAJI MAL. **76 I.C. 582= A.I.R. 1923 Lah. 356.**

——*Decrees on debts incurred neither for necessity nor for paying antecedent debt—Not binding on sons—Mortgage not binding—Decree thereon is not also binding.*

It cannot be laid down that apart from the question of family necessity or antecedent debt there is a pious obligation on the sons to pay the debts due by their father, which had matured into a decree and that the entire interest of the family could be sold in satisfaction of the decree obtained for the payment of that debt.

A decree unless it is binding on sons does not improve the position of the creditor any more than a sale which a father effects in order to pay a debt incurred by himself on the security of the mortgaged property. The exception to the general rule, that no manager, guardian or trustee can be entitled for his own purpose to dispose of the estate which is under his charge, cannot be extended where a liability under a mortgage merges into a decree unless that decree can by any rule of law be held to be binding on the other members of the family. If a mortgage is not valid in so far as it purports to encumber the joint family property, it cannot become a just and legal consideration if in the absence of the sons of the mortgagor, a decree had been obtained on foot thereof against the mortgagor; otherwise the protection intended for the junior members of the family can in that way be easily circumvented and becomes illusory. (*Kanhaiya*

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Lal, J.C.). GANGA BAKSH SINGH *v.* RAGHUBAR SINGH. **73 I.C. 27=10 O.L.J. 61=26 O.C. 299= A. I. R. 1923 Oudh 182.**

——*Simple money-decree against father—Family property is liable, if debt is not illegal or immoral.*

Where there is a simple money-decree against the father which is not shown to have been based on a debt which was tainted with immorality, the decree can clearly be executed against the father and the father's interests in the family property can be attached and sold: A.I.R. 1917 P.C. 61, *Dist.* and A.I.R. 1916 P.C. 220, *Foll.* (*Stuart and Sulaiman, JJ.*). KALYAN SINGH *v.* DHARAM SINGH. **68 I.C. 794=20 A.L.J. 721=A.I.R. 1922 All. 489.**

—Debts—Father—Representation.

——*Father represents son in execution.*

Execution against father is effective enough to bind the son also, and if any matter in execution is *res judicata* against the father, the plea of *res judicata* is operative against the son too, for practically the father represents the son in execution proceedings even where the suit was not framed against him as manager of the family. (*Ramesam and Jackson, JJ.*). SUBRAMANIA PILLAY *v.* VENKATARAMA REDDI. **120 I.C. 375= 1929 M.W.N. 776=A.I.R. 1930 Mad. 257.**

——Civil P.C., S. 11—Suit for mortgage debt against father and sons—Mortgagee's pleader making statement that sons should be discharged—Simple money-decree passed—Statement neither operates as *res judicata* nor as estoppel in subsequent declaratory suit by sons that the property is not liable to execution and sale in the decree against father. (*Raza, J.*). MANOHAR LAL *v.* IMDAD ALI. **98 I.C. 300=3 O.W.N. 862= A.I.R. 1927 Oudh 15.**

——*Father represents son in litigation.*

Where a joint family property has been sold out and out or where a decree in execution of the mortgage has been obtained against the property, and the rights have thus sprung up with regard to the joint family estate these rights are not to be defeated by the son simply questioning the transaction entered into by its head. He must prove that the debt was contracted for immoral or illegal purposes: 17 O.C. 318, *Foll.*; 2 A.L.J. 613, *Dist.* The father in a suit against him represents the son also. The law is based on the presumption that the managing member represents the other member and not on the actual facts of every case. (*Dalal and Simpson, A.J.Cs.*). RUP KISHORE *v.* KANHAIYA LAL. **74 I.C. 563=10 O.L.J. 141=26 O.C. 266= A.I.R. 1923 Oudh 227.**

——*Mortgage by father—Suit on—Father cannot represent minor son as his guardian* ad litem.

Bucknill, J.—The interest of son in a suit on a mortgage by the father is against that of the father and therefore the father cannot represent son but persons who could plead illegality or immorality of the debt can represent the son: 9 C.L.J. 485; 15 C.L.J. 446; 34 A. 549; 16 C.L.J. 264; A.I.R. 1914 P.C. 136, *Foll.* (*Dawson-Miller, C. J. and Bucknill, J.*). HARIPRASAD SINGHA *v.* SOURENDRA MOHAN SINGHA. **66 I.C. 945=1 Pat. 606= 3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

—Debts—Immoral or illegal—Breach of duty.

——*Damages for breach of civil duty are not illegal or immoral debt.*

Where the father had cut certain trees which did not belong to him and the rest of the damages he had to pay for breach of a civil duty in demolishing a house and the family had benefitted to a large extent by the action of the father.

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Held, there is distinction between a debt which follows as the result of an offence under the original law and a debt for which one is made liable on the ground of a breach of civil duty. In the former case the debt incurred by the father would be immoral and illegal but not in the latter case.

Held, further the damages were due in consequence of a breach of civil duty by the father: 32 Bom. 348, *Dist.*; 39 Cal. 862; 5 C.L.J, 80; 11 C.W.N. 163; A.I.R. 1923 Lah. 399, *Foll.* (*Daniels and Dalal, JJ.*). CHANDRIKA RAM *v.* NARAIN PRASAD. **79 I.C. 1036=46 All. 617=22 A.L.J. 468= 5 L R. A. Civ. 378=A.I.R. 1924 All. 745.**

——*Breach of civil duty by father involving tort or crime—Sons are liable.*

There is no authority for the theory that the sons are not liable upon contracts and quasi-contracts entered into by their father or upon other similar obligations legally incurred. Where there is a breach of civil duty, even though it may involve some tort or crime, the sons are liable to make it good out of the family property: 27 Mad. 71 and 24 Cal. 672, *Dist.* (*Spencer and Odgers, JJ.*). VENKATACHARYULU *v.* MOHANA PANDA. **61 I.C. 530=44 Mad. 214= A.I.R. 1921 Mad. 407.**

—Debts—Immoral or illegal—Burden of proof.

——*Onus of proving immoral nature of debt lies upon son.*

It is not sufficient for a son in Mitakshara joint family to prove that the father was a man of immoral habits: but he must also prove that the particular debt was incurred for an immoral purpose.

Where a father contracted a debt and subsequently executed a mortgage for the debt and the son contested the transaction on the ground that the debt was contracted for an immoral purpose, the onus of proving the immoral nature of the debt lies upon the son who contested the transaction and not upon the alienee: 17 C. W. N. 124 (P.C.), *Rel. on.* (*Ross and Chatterji, JJ.*). BISWANATH SINGH *v.* KAYESTHA CORPORATION. **119 I.C. 405= 8 Pat. 450=10 P.L.T. 379=A.I.R. 1929 Pat. 422.**

——The proposition of Hindu Law is well-established that the burden of proof lies, in cases where the son challenges the debts incurred by the father on the ground of immorality, on the son to establish that the particular debt which he wishes to challenge was incurred for immoral or illegal purposes and this burden is not discharged merely by showing that the father was leading an extravagant or immoral life: 10 P. R. 1918; 58 P. R. 1917 and A.I.R. 1928 Lah. 83, *Foll.* (*Tek Chand and Bhide, JJ.*). SHANTI SARUP *v.* JAGIRI MAL BANSIMAL. **110 I.C. 273 (Lah.).**

——*Young man just attained majority and in affluent circumstances and leading reckless life—Loan by—Lender to prove necessity.*

In the case of a joint family the sons are liable for their father's debts even if the debts are contracted by the father for his own benefit without any legal necessity so long as the debts are not incurred for an unlawful or immoral purpose. Where, however, a young man who has just attained majority and who has inherited valuable property which would yield an income more than sufficient to keep him in comfort having regard to the position of the family and its requirements, leads on openly reckless and immoral life and borrows large sums of money which will not in the ordinary circumstances be necessary for any lawful

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purpose, Courts have thrown the burden of proving the *factum* of the loan upon money-lenders. In such a case the lender cannot get the protection which is usually given to *bona fide* lenders unless he proves that he made reasonable enquiries. It is not necessary in such a case that direct connection should be established between the debt and the necessary purpose for which it was borrowed. (*Kumaraswami Sastri, J.*). GURUMOORTHI IYER *v.* P. S. SUBRAMANIAM. **107 I.C. 401 (Mad.).**

———*Evidence Act, Ss.* 101, 102, 103—*Onus of proof is on son.*

The onus of proving illegality or immorality as affecting the debt incurred by the father is upon the sons, for after the death of their father their liability to pay the father's debt arises under the express text of the Mitakshara. (*Jwala Prasad and Adami, JJ.*). (SHEIK) KAROO *v.* RAMESHWAR SAO. **62 I.C. 905=3 P.L.T. 43=6 P.L J. 451= A.I.R. 1923 Pat. 143.**

—Debts—Immoral or illegal—Direct connection.

———*Direct connexion with money raised and immorality must be established.*

Where an alienation is sought to be impugned on the ground that it was made for immoral purposes it is incumbent on the party impeaching the alienation to prove that there was a direct connexion between the money raised and the immorality: A.I.R. 1928 Lah. 83, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). BELI RAM *v.* SARDARI LAL. **A.I.R. 1930 Lah. 613.**

———*Connexion between transaction and immoral life must be proved.*

In cases to set aside alienations on the ground that the father led an immoral life prior to the transaction, the mere allegation that the father led an extravagant, immoral and licentious life would, even proved, not be sufficient to relieve the son but the connexion between the transaction and alleged immoral life must be proved: 21 All. 238 and 17 C.W.N. 124, *Ref.* (*Gokaran Nath Misra and Srivastava, JJ.*). INDRA BAHADUR SINGH *v.* KHAIRATI LAL. **113 I.C. 489=4 Luck. 107= 5 O.W.N. 836=A.I.R. 1928 Oudh 465.**

———*Proof of general immorality is not enough.*

Proof of general immorality and waste of money is not sufficient to invalidate an alienation by a Hindu father: 6 M.I.A. 393, *Foll.* (*Kumaraswami Sastri and Curgenven, JJ.*). RAMASWAMI PILLAI *v.* KASINATHA IYER. **108 I.C. 529= 1927 M.W.N. 356= A.I.R. 1928 Mad. 226.**

———To prove the immorality of the debt direct connexion between the debt and immorality must be shown: A.I.R. 1924 P.C. 50, *Foll.* (*Fforde and Campbell, JJ.*). ULFAT RAI *v.* TEJ NARAIN. **106 I.C. 176=8 Lah. 632=29 P.L.R. 132= A.I.R. 1928 Lah. 83.**

———*Son must connect immorality with debt.*

It is necessary for a Hindu son to connect the immorality with the debt and proof of the general immoral habits of the father mortgagor, at the time the debts are advanced, is not sufficient to justify the Court in presuming that the debt is so tainted: 30 All. 156; 2 O.L.J. 241 and 36 M L.J. 296, *Foll.* (*Lindsay and Sulaiman, JJ.*). TULSHI RAM *v.* BISHNATH PRASAD. **105 I.C. 885= 25 A.L.J. 753=A.I.R. 1927 All. 735.**

———*Application of debt to immoral purposes need not be proved.*

Per *Kotval, A.J.C.*—It is not necessary to prove that the debts were applied to immoral purposes in

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order oat the son may succeed as against the mortg gee or vendee of joint ancestral property.

The connection between the debts and the immorality can be proved by inference from evidence showing that the debts were contracted during the period of extravagant and immoral habits, but in such a case there must be definite and convincing proof that the immoral practices were contemporary with the loans and that the mortgagor could not indulge in them without the use of the borrowed amount. (*Hallifax, Kotval, Macnair and Batten, A.J.Cs.*). SHEONARAIN *v.* NATHU. **65 I.C. 786= 5 N.L.J 114=19 N.L.R. 81= A.I.R. 1922 Nag. 1 (F.B.).**

———*Debt and the immoral purpose must be connected.*

A Hindu son must establish connexion between a particular loan and expenditure in order to exonerate himself from liability to pay his deceased father's debt: 30 All. 156 and 1 Pat. L. J. 86, *Foll.* (*Batten, J. C. on difference between Drake-Brockman, J. C. and Hallifax, A. J. C.*). GANPAT RAO *v.* LAXMI CHAND. **77 I.C. 640=6 N.L.J. 239= A. I. R. 1924 Nag. 1.**

———*Son to prove direct connection between the debt and immorality.*

To avoid liability for a debt of his father the son has to establish a direct connection between the debt and the alleged illegal or immoral purpose. The onus cast by law on the son is not discharged by evidence showing that the father was keeping a concubine and to that extent must have incurred additional expense. Direct evidence of the application ot a debt for a specific immoral purpose is not always possible to obtain and it will be sufficient if the evidence is such that the Court could infer that the debt must have been incurred for immoral purpose: 15 Cal. 717; 14 Bom. 320; 36 Bom. 68, *Foll.* (*Abdur Rahim and Moore, JJ.*). SUNDARA GOUNDAN *v.* ARUMUGA GOUNDAN. **59 I.C 390= 12 L.W. 159.**

—Debts—Immoral or illegal—Litigation.

———*Costs of false and dishonest litigation—Sons not bound.*

Where the grounds on which the father bases his claim against other persons and also the grounds on which he resists the suit brought against him by others are false and dishonest, the sons are not liable to pay costs for which decrees are passed against the father: 20 M. L. J. 89, *Foll.*; A. I. R. 1925 Oudh 230; A. I. R. 1925 Oudh 325; 40 Bom. 126; 33 All. 472; 39 Cal. 862; 40 Cal. 288; 37 Mad. 458 and 65 P. R. 1900, *Ref.* (*Wazir Hasan and Raza, JJ.*). MAHOMED ALI *v.* JHAO LAL. **106 I.C. 392=4 O.W.N. 1069= A.I.R. 1928 Oudh 10.**

———A Hindu widow surrendered her estate in favour of a certain person. After her death, another person instituted a suit for the recovery of possession of the property. The person in whose favour the surrender had been made defended the suit but he ultimately failed,

Held, that the judgment debt was not tainted with illegality or immorality and it was open to the decree-holder to proceed in execution for costs against the ancestral property in the hands of the son of the judgment-debtor. (*Sulaiman and Boys, JJ.*). RUDRA PRATAP *v.* SHARDA MAHESH. **88 I.C. 200=23 A.L.J. 467=6 L.R.A. Civ. 321= A.I.R. 1925 All. 471.**

———A decree for mesne profits against a father under Hindu Law stands on the same footing as

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any other debt created by him and his conduct in defending a suit unsuccessfully for *mesne* profits cannot be characterised as illegal or immoral. (*Wazir Hasan, J. C. and Kendall, A.J.C.*). SHAMBU BHAN SINGH *v.* CHANDRA SHEKHAR BAKSH SINGH.
80 I.C. 17=A.I.R. 1925 Oudh 230.

———Debts on decree passed in respect of damages for malicious prosecution is an illegal and immoral debt. A debt incurred by a father to defend himself in a criminal case may in certain circumstances be for the benefit of the family in order to save the father and consequently the family from the degradation in the eyes of thepublic : 33 All 472 34 All. 4 ; 1 P.L.T. 34 ; 1 P.L.T. 133, *Foll.* (*Jwala Prasad and Foster, JJ.*). SUNDER LAL *v.* RAGHUNANDAN PRASAD. **83 I.C. 413=3 Pat. 250=5 P.L.T. 135=A. I. R. 1924 Pat. 465.**

—Debts—Immoral or illegal—Meaning.

———*Antecedent debt is just debt when not contracted as act of reckless extravagance or wanton waste or with intention of injuring interests of reversioners.*

It is settled law that payment of an "antecedent debt" is "necessity" provided the antecedent debt is a "just one." A "just debt" has been defined as one which is actually due and which is not immoral, illegal or opposed to public policy. It means a debt not contracted as an act of reckless extravagance or of wanton waste or with the intention of injuring interests of reversioners. An alienee claiming "necessity" in respect of payment has therefore to prove that the debts were "just" in the above sense and it makes no difference whether the antecedent debts are due to himself or other parties: 65 P. R. 1 900 ; 40 Cal. 288 (P.C.) and 60 I. C. 714, *Foll.* (*Bhide, J.*). KEHR SINGH *v.* GANGA SINGH. **A.I.R. 1930 Lah. 130.**

———*Avyavaharika debt—Meaning of.*

The expression "avyavaharika" debt means a debt which is not supportable as valid by legal arguments, and on which no right could be established by the creditor in a Court of Justice : 37 Mad. 458, *Foll.* (*Wazir Hasan and Raza, JJ.*). MAHOMED ALI *v.* JHAO LAL. **4 O.W.N. 1069=106 I.C. 392=A. I. R. 1928 Oudh 10.**

———*Decree for mesne profit against father—Sons' share in joint family property can be attached in execution.*

In execution of a decree for mesne profits, the shares of the sons of the judgment-debtor, in the joint family property, are liable to be attached and sold.

A debt, which is not immoral, at its inception is binding on the son, though subsequently it may be tainted by dishonesty and immorality. Improper, imprudent, unreasonable, or dishonest debts are not necessarily immoral. But liability arising by the commission of offences by the father has been always held to be immoral. The test of benefit to the estate is not a material question for consideration as the liability of the son depends upon the nature of the act.

The liability for mesne profits is not in the nature of 'danda' or fine. The obligation is *rina* or in the nature of a debt.

(Case-law fully reviewed. Texts on the point discussed.) (*Venkatasubba Rao and Madhavan Nair, JJ.*). RAMASUBRAMANIA PILLAI *v.* SIVAKAMI AMMAL. **90 I.C. 165=21 M.L.W. 606=1925 M. W.N. 371=A.I.R. 1925 Mad. 841.**

———*Decree against father in representative capacity—Sons can plead immorality or illegality.*

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In a suit on a mortgage brought against the father in his representative capacity, father represents the entire joint family and the sons cannot re-open a decree against him except on grounds personal to themselves, *e. g.*, that the debt for which the mortgage was given was not binding on them under the Hindu Law. The sons are entitled to plead that it was illegal or immoral. They are also entitled to plead that there was no debt of their father's existing at the time at all, which was of such a nature as to justify an alienation of their shares for its satisfaction.

The term "illegal or immoral" is used as a translation of the word "avyavaharika" which includes "(promises without consideration." 39 Cal. 862, *Foll.* (*Hallifax, A.J.C.*). ARJUN *v.* CHAGGAN LAL. **72 I.C. 1044=6 N.L.J. 185=A.I.R. 1923 Nag. 300.**

—Debts—Immoral or illegal—Penalty.

———*Penalty against father—Son not bound to pay.*

The father of a Hindu family, bid a sum of money for property at an execution sale and deposited one-fourth of the sum bid but did not make good the balance. The property was resold and it fetched a very small price, whereupon the judgment-debtor applied to recover the deficiency. The father died and his son was impleaded a party in his place, and an order, was made to recover the deficiency by sale of the family property. In a suit by the son to set aside the order,

Held, that the suit must succeed. As the father and son were members of a Hindu joint family, as it was the joint family property which it was sought to make liable and as what was due from the father was in the nature of a penalty, neither the father nor the family property was liable. (*Tudball and Rafique, JJ.*). RATAN LAL *v.* BIRJBHUKHAN SARAN. **61 I.C. 774 (All.).**

—Debts—Immoral or illegal—Presumption.

———*Loan contracted while leading immoral life—Presumption is it was for immoral purpose.*

It is not necessary for a Hindu son, in order to absolve himself from liability, to prove not merely the purpose for which the loan by the father was contracted but also that the lender knew the immoral purpose of the loan. It will be sufficient to prove that the borrower was at the time leading a licentious life beyond his means indulging in drink, riot, prostitution and debauchery and that at the same time he was without any business or occupation upon which the money have been legitimately spent without showing on which particular act of immorality the money was spent. If it is proved clearly that at the time the borrower was notoriously wasting his substance in riotous living and spending large sums beyond his means and above his station in life in this wayonly, a loan contracted in the midst of such living, and spent upon it, would be a loan contracted for immoral purposes. (*Kumaraswami Sastri, J.*). GURUMOORTHY IYER *v.* P. S. SUBRAMANIAM.
107 I.C. 401 (Mad.).

—Debts—Immoral or illegal—Prohibited by law.

———Debt by father when under Court of Wards and incompetent to contract debts—Son is not under pious obligation to pay it. (*Rafique and Lindsay, JJ.*). BALDEO PRASAD *v.* BINDESHRI PRASAD. **66 I. C. 128=44 All. 388=20 A.L.J. 251=A.I.R. 1922 All. 215.**

HINDU LAW—Debts—Immoral or illegal—Speculation.

—Debts—Immoral or illegal—Speculation.

———*Speculation by itself does not make the debt immoral.*

Speculation is not usually repugnant to good morals and if the transaction in question is speculative the debt cannot be considered to be tainted with immorality unless is tainted with fraud: A. I R. 1928 Oudh 10, *Rel. on.* (*Stuart, C. J. and Raza, J.*). CHOLKAO SINGH *v.* HASAN BAQAR. **119 I.C. 458=6 O.W.N. 622= A.I.R. 1929 Oudh 458.**

———Debts incurred in speculative transactions cannot be said to be immoral debts. (*Martineau and Zafar Ali, JJ.*). KHEM CHAND *v.* NARAIN DAS SETHI. **89 I.C. 1022=6 Lah. 493= 26 P.L.R. 848=A. I. R. 1926 Lah. 41.**

—Debts—Immoral or illegal—Subsequent immorality.

———The fact that managing co-parcener or father was found extravagant, vicious and generally of an immoral character after the date of borrowing money for paying antecedent debt does not affect the validity of debt contracted by him: 10 P. R. 1918; A.I.R. 1921 Lah. 205, *Ref.* (*Broadway and Jai-Lal, JJ.*). ABDUL GHANI *v.* SANSAR CHAND. **107 I.C. 385=A. I. R. 1928 Lah. 101.**

—Debts—Immoral or illegal—Surety.

———*Liability of indemnity not immoral or illegal.*

One of three Hindu brothers who formed a co-parcenary obtained certain property in settlement of a claim which the co-parcenary as a whole had as against a stranger. In so obtaining the property the co-parcener who made the settlement undertook to indemnify the common debtor in the event of any claim being made by the other brothers,

Held, that the debts arising out of the liabieity to indemnify were neither illegal nor immoral. (*Wazir Hasan, A.J.C.*). MATA DIN *v.* MAHARAJ DIN. **85 I.C. 959=12 O.L.J. 33= A.I.R. 1925 Oudh 325.**

—Debts—Immoral or illegal—Trade.

———*Antecedent debt borrowed for trade purposes is not avyavaharika.*

It is not every impropriety or every lapse from right conduct that stamps the debt as immoral. The son can claim immunity only when the father's conduct is utterly repugnant to good morals or is grossly unjust or flagrantly dishonest.

An antecedent debt borrowed for trade purposes is not an avyavaharika debt: A.I.R. 1926 Mad. 323 and A.I.R. 1925 Mad. 841, *Rel. on.* (*Venkatasubba Rao, J.*). RAJAGOPALA PILLAI *v.* P VEERAPERUMAL. **102 I.C. 680=39 M.L.T. 76= A.I.R. 1927 Mad. 792=53 M.L.J. 232.**

—Debts—Liability.

———*Maintenance of Hindu widow charged on specific property takes precedence over unsecured debts binding on family.*

A simple money creditor of a joint Hindu family has no priority over a charge for maintenance over specific items of property granted to a widow by decree in the absence of fraud or collusion. An auction-purchaser, during the pendency of such maintenance suit of an item of property over which a charge was claimed in the plaint and was granted by the decree, who purchases in the execution of a simple money-decree binding on the family is not entitled to priority over another auction-purchaser of such property in the proceedings taken to execute the maintenance decree: 43 Mad. 800; 2 Bom. 494; 27 Cal. 194; 10 Mad. 283; A.I.R. 1928

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Mad. 713; A.I.R. 1927 Mad. 502; A.I.R. 1927 Mad. 1092, *Rel. on*; 4 All. 296 and 5 All. 367, *Dist.* (*Wallace and Ananthakrishna Iyer, JJ.*). SEETHARAMANUJACHARYULA *v.* VENKATASUBBAMMA. **A.I.R. 1930 Mad. 824.**

———Neither the minors nor their estate is liable for the debts by a guardian which do not purport to bind their estate: 2 N.L.R 25, *Foll.* (*Subhedar, A.J.C.*). HAZARIMAL *v.* GOVINDA. **119 I. C. 683 (Nag.).**

———Whole joint family property in the hands of the sons, is liable under decree unless debt by father is tainted with immorality: A.I.R. 1924 P. C. 50, *Foll.* (*Stuart, C.J. and Raza, J.*). CHOTKAO SINGH *v.* HASAN BAQAR. **119 I.C. 458= 6 O.W.N. 622=A.I.R. 1929 Oudh 458.**

———The interest of the minor grandson is conveyed by a sale in execution of the decree on the mortgage of the joint property obtained against the grandfather where the mortgage is executed by the grandfather for a business carried on jointly with his son. (*Madgavkar, J.*). VADILAL PURSHOTTAM *v.* KANAILAL INDERLAL. **106 I. C. 46= 29 Bom. L.R 1441=A.I.R. 1927 Bom. 620.**

———Ancestral property is liable for the debts of a father, unless it can be shown that they were contracted for immoral purposes. (*Shadi Lal, C.J. and Broadway, J.*). MADAN MOHAN *v.* DAULAT RAM. **100 I.C. 17= A.I.R. 1927 Lah. 772.**

———*Debt contracted by father jointly with another member—Son is bound to pay.*

It is difficult to understand on what principle of the law of the Mithila School it is not the pious duty of the son or grandson to pay a debt contracted by the father or grand-father jointly with another who was a member of the joint family.

Where a debt which was charged by the mortgage bond on the joint property of the family was incurred by each of the heads of the then four branches of the joint family, and all the defendants, who were members of the joint family where their sons or grandsons,

Held, that there was no reason why the charges should not be held as binding upon the family property. (*Sir John Edge.*) SOURENDRA MOHAN *v.* HARI PRASAD. **91 I.C. 1033=24 A.L.J. 33= 1926 M.W.N. 49=5 Pat. 135=7 P.L.T. 97= 28 Bom. L.R. 1126=30 C. W. N. 482= 52 I. A. 418=42 C. L. J. 592= A. I. R. 1925 P.C, 280=50 M.L.J. 1 (P.C.).**

———Debt by co parceners—Family property sold to satisfy debt—Wife of co-parcener cannot enforce right of residence unless the debt is proved to be immoral: 190 P. R. 1889; 39 P.R 1896 and 36 P.R. 1907, *Rel. on.* (*Campbell, J.*). NANKI *v.* FIRM SHAM DASS SALIGRAM. **89 I.C. 874= A.I.R. 1925 Lah. 638.**

———A man must satisfy out of the family properties in his hands, the debts contracted for legal necessity by his paternal grand-father. (*Das and Adami, JJ.*). LADU NARAIN *v.* GOBERDHAN DAS. **86 I. C. 721=4 Pat. 478=6 P.L.T. 497= 1925 P H.C. C. 104=A.I.R 1925 Pat. 470.**

———No mortgage can be enforced against property belonging to a joint family, unless it is established that its consideration was taken for the payment of an antecedent debt independent of the mortgage or for legal necessity. (*Kanhaiya Lal, J.C.*). PRAN *v.* SHEO LAL. **26 O. C. 321= A. I..R. 1924. Oudh 135.**

HINDU LAW—Debts—Liability.

———*Father's liability for debts contracted by son.*

Where father borrowed first and then son took upon himself liability and borrowed further,

Held, the father could be made liable for debts contracted by him only if they were not time-barred as against them and for the debts contracted by the son, the father could not be made liable unless these debts were shown to be for necessary joint family purposes. (*Campbell, J.*). BALLA *v.* BARU MAL. **77 I.C. 926=A.I.R. 1923 Lah. 685.**

———*Antecedent debts and debts contracted for necessity are binding on the family.*

Where five mortgage bonds were executed by the *Karta* of a joint Hindu family and by two of his sons, of these bonds four being for antecedent debts of the *Karta* of the family reasonably binding on the family, and one bond being for family necessity, *viz.*, the marriage expenses of the son and daughter of the *Karta* of the family,

Held: that all the five mortgage debts were binding on the joint family property. (*Das and Adami, JJ.*). DEBI LAL SAH *v.* NAND KISHORE GIR.

65 I. C. 315=1 Pat. 266=3 P. L. T. 759=A. I. R. 1922 Pat. 22.

———*Mortgage by father—Transferee from mortgagor if can question validity of debt—Sons necessary parties.*

A Hindu father mortgaged the family property to *N* and subsequently sold it to *T*. *N* brought a suit on his mortgage for sale of the property against *T* without impleading the sons of the mortgagor. *T* resisted the suit on the ground that the mortgage was not valid as the sum borrowed were not debts binding on the family property,

Held, that no proper decision regarding the validity of the transfer could be reached unless and until the sons of the mortgagor were made parties to the proceedings. (*Gokul Prasad and Lindsay, JJ.*). TIKAM SINGH *v.* NATHU. **36 I. C. 40 (All.).**

———Where a debt was incurred on behalf of the family, though only a single member, not being a manager, deals with the creditor, the creditor being ignorant of the fact that the single member was acting on behalf of the family a suit is maintainable against all the members, though the latter are liable only to the extent of their shares in the family property. (*Oldfield and Ramesam, JJ.*). VENKATA KRISHNIA *v.* A. SUBBIAH.

68 I.C. 462=14 M.L.W. 520=1921 M.W.N. 830=A.I.R. 1921 Mad. 304=41 M.L.J. 554.

———A partition of a joint family, after a debt is incurred for the benefit of the family, does not relieve the co-parceners from liability for the debt to the extent of the family property in their hands. (*Sadasiva Iyer and Napier, JJ.*). MUTHU REDDY *v.* CHINNASAMI REDDI. **69 I.C. 685=12 L.W. 403=1920 M.W.N. 613=28 M.L.T. 308=39 M.L.J. 486.**

———Where the ancestor is dead, the pious obligation to pay his debts is not concerned with the question whether those debts are secured or unsecured, but only with the question whether they are lawful debts not incurred for an illegal or immoral purpose. (*Daniels and Wazir Hasan, A.J.Cs.*). RAM SURAN *v.* MANGHAL SINGH.

60 I.C. 219=8 O.L.J. 87=A.I.R. 1921 Oudh 38.

———Where two families taken together constitute a joint family, every one of them is liable for a debt binding on the joint family, although the two branches may have transactions of their own separately. (*Das and Adami, JJ.*). INDERCHAND *v.* BIDHYADHAR PANDAY. **60 I.C. 282=2 P.L.T. 111=1921 P.H.C.C. 107=A.I.R. 1921 Pat. 48.**

HINDU LAW—Debts—Manager.

—Debts—Manager.

———*Manager signing promissory note in individual capacity—Family not liable.*

When a person executes a promissory note in his own name and not as agent acting in the name of another, the maker whose name appears in the promissory note can alone be made liable thereunder. Hence members of a joint Hindu family cannot be held liable in a suit filed on a promissory note signed by one of its members in his individual capacity even though the maker of the promissory note may be proved to be the manager of the family. (*Shingne, J.*). MANCHERSHA ARDESAR *v.* GOVIND GANESH JOSHI.

A.I.R. 1930 Bom. 424.

———*Debts for benefit of joint family bind co-parceners.*

Where it is found that a debt was incurred by the manager of the joint family for the benefit of the joint family, namely, for the discharge of a decree which was binding against all the co-parceners, such debt is binding on the share of all co parceners. (*Case-law discussed.*) A. I. R. 1922 Lah. 277, *Expl* (*Dalip Singh, J.*). JAI KISHAN *v.* RAM CHAND. **114 I.C. 689=A.I.R. 1929 Lah. 270.**

———Bonds executed by adult members—Subsequent borrowing on bond executed by only one such member and executant not described as manager—Creditor must prove that money was borrowed on subsequent bond by him in capacity of manager and that there was necessity, or he made enquiries as to necessity. (*Macnair, Offg. J. C.*). SITARAM *v.* DOMA. **119 I.C. 674=A.I.R. 1929 Nag. 270.**

———*Lender—When to prove necessity for the loan.*

Where money is lent to the manager of joint family the question of enquiry into the necessity or of reason to believe in its existence can only arise when there is no proof of its existence or proof that it did not exist; then the lender is covered by proof that he believed it to exist, even if it did not. When the lender is familiar with all the circumstances of the family to which the money is lent and he knows whether the necessity for borrowing arose or not, the only way in which the family could be made liable in such a case would be by proof that the necessity did exist. (*Hallifax, A.J.C.*). RAMBHAN *v.* WAMAN RAO.

107 I.C. 657=A.I.R. 1928 Nag. 251.

———*Decree against manager—Manager not described as such in suit—No bar to executing decree against family property.*

Where a decree is passed against a manager of a joint family in respect of a debt contracted for family necessity and family purposes, the decree-holder is entitled to realise the debt from the joint property, no matter if the debtor is not described in the plaint as a manager: A.I.R. 1927 Oudh 27; 1 O.L.J. 456 and A.I.R. 1928 Oudh 227, *Foll.* (*Raza and Nanavutty, JJ.*). RAMESHWAR *v.* BHIHAMBARNATH SHEOKUMAR. **111 I.C. 174 (Oudh).**

———*Debt for manager's personal benefit—Other members given benefit by agreement or voluntarily—Debt not binding on family.*

It is not in the power of the *karta* of a joint family to bind the joint family by entering into speculative transactions. The question of benefit to the family must be determined by reference to the nature of the transaction and not by reference to the result thereof, although the result may properly be taken into consideration in determining whether the transaction was one into which a prudent owner would enter. Where a transaction would result in benefit to the manager personally

HINDU LAW—Debts—Manager.

and not to the family, debt incurred for the transaction is not binding. The fact that the manager, either by agreement with the family or voluntarily shares the benefit with the family makes no difference. (*Das and Adami, JJ.*). RAMCHANDRA SINGH *v.* JANG BAHADUR SINGH. **90 I.C. 553= 5 Pat. 198=7 P.L.T. 52=1926 P.H.C C. 70= A.I.R. 1926 Pat. 17.**

———Civil P. C., O. 1, R. 1—Creditor of manager of joint Hindu family suing after manager's death—All members must be impleaded in the suit if family property is to be bound by the decree. If he impleads some members only in the suit, it is not open to him to have the other members joined in execution proceedings. (*Baker, J. C.*). PESTONJI *v.* GANPAT. **89 I.C. 883=8 N.L.J. 73= A.I.R. 1925 Nag. 288.**

———A Hundi executed by manager for family purposes, *e. g.*, marriage expenses of a co-parcener is binding on all members: A. I. R. 1922 All. 116, *Cons.* (*Ryves and Daniels, JJ.*). SAHU RAGHUNATH SINGH *v.* SRINARAIN. **73 I.C. 1018= 45 All. 434=4 L.R.A. Civ. 211=21 A.L.J. 323= A.I.R. 1923 All. 424.**

———*Pro-note by manager of joint Hindu family is binding on all the members.*

The position of the head of the joint Hindu family is not the same as that of an ordinary business agent, and according to the true view, a joint Hindu family being a legal person according to Hindu Law, lawfully represented by and acting through the managing member or head thereof, is included ordinarily in the term "a person." In other words where a manager of a Hindu family executes a promissory note, such joint Hindu family is in fact the maker, and not only a member thereof who happens to have signed the document. (*Piggott and Walsh, JJ.*). KRISHNANAND NATH *v.* RAJA RAM SINGH. **66 I.C. 150=44 All. 393= 20 A.L.J. 233=A.I.R. 1922 All. 116.**

———*Karta cannot agree to pay time-barred debt.*

Karta of a joint family has no power whatever to enter into any agreement to pay a statute-barred debt. (*Das and Ross, JJ.*). SADHU SARAN PRASAD SINGH *v.* BRAHMDEO PRASAD SINGH. **61 I.C. 20= 2 P.L.T. 318=6 P.L.J. 256= A.I.R. 1921 Pat. 99.**

———Manager is one who manages the family and he can incur debts for necessity. (*Jwala Prasad and Ross, JJ.*). DHANUKDHARI SINGH *v.* RAMBIRICH SINGH. **70 I.C. 391=1 Pat. 171= A.I.R. 1922 Pat. 553.**

—Debts—Necessity—Benefit to estate.

———*Beneficial transactions prudently entered into, are binding.*

There is no justification whatever for the suggestion that the transaction entered into by the manager must necessarily be of a "defensive nature" in order to be binding on the estate. If the transaction was to the benefit of the estate and was such as a prudent owner would have carried out with the knowledge that was available to him at the time, it cannot be set aside. The degree of prudence would be the prudence which an ordinary man would excercise with the knowledge available to him; and the transaction would have to be judged not by its results but by what might have been expected to be its results at the time it was entered into. The decree of prudence to be demanded might well be held to be that which would be demanded in ordinary cases from a trustee: A.I.R. 1917 P.C. 33, *Expl.*; 6 M.I.A. 393 (P.C.). *Appl.*; 20 C.W.N. 645 and 19 O.C. 100, *Appr.*; A.I.R. 1925 All. 333; A.I.R. 1923 All. 298; A.I.R. 1928 All. 403 and A.I.R. 1928 All. 447: *held to be not good law.* (*Boys, Kendall and King, JJ.*). JAGAT NARAIN *v.* MATHURA DAS. **116 I.C. 484=50 All. 969= 26 A. L.J. 841=A.I.R. 1928 All. 454 (F.B.).**

HINDU LAW — Debts— Necessity — Benefit to family.

—Debts—Necessity—Benefit to family.

———*Suit to challenge widow's alienation—Expenses therefor are not for family benefit.*

A suit instituted by certain members of a joint family for a declaration that a transfer by a Hindu widow was not binding on them is really one to enforce a personal right of the individual members and so a loan for the purpose of vindicating such a right cannot bind joint family property as it cannot be said that the family was being benefitted by the loan. (*Banerji and King, JJ.*). SUNDAR KUNWAR *v.* BALDEO PRASAD. **117 I.C. 103= 1929 A.L.J. 960=A. I. R. 1929 All. 623.**

———There is no presumption that a debt when contracted by manager is contracted for the benefit of the family. The creditor must prove that it was incurred for the benefit of the whole family: A.I.R. 1922 Lah. 200; A.I.R. 1924 Lah. 44 and A.I.R. 1925 Lah. 141, *Foll.* (*Addison and Agha Haidar, JJ.*). SOTAM RAM *v.* PARDHUMAN RAM. **105 I.C. 785= 8 Lah. 673=9 L.L.J. 362= 28 P.L.R. 561=A I.R. 1928 Lah. 103.**

———An instalment bond by which payment by easy instalments was spread over 12 years was executed in order to secure the payment to plaintiff of a large sum of rent that had already accrued due to the plaintiff,

Held, the benefit of the family was apparent on the face of the transaction. (*Das and Macpherson, JJ.*). MUNDO SINGH *v.* MAHANTH KRISHA DAYAL GIR. **75 I. C. 98=1924 P.H.C.C. 67= A.I.R. 1924 Pat. 439.**

———Mortgage of family property to obtain money to purchase zemindari shares, the purchase being for the benefit of the family binds all the members. The mortgagee need only prove that he was told that zemindari shares were to be purchased and that he believed it to be true. Mortgage of property to pay off a prior mortgage, the validity of which is admitted, and the prior mortgage, both are binding on the family. (*Banerjee and Sulaiman, JJ.*). TULARAM *v.* TULSI RAM. **60 I.C. 3= 42 All. 559=18 A.L.J. 699.**

———*Father's debt for family benefit—Pious obligation.*

Where a Hindu father incurs debts for the benefit of the family; and the debts are not tainted with immorality, such debts are binding on his son by reason of the pious obligation attaching to him to pay the debts of his father.

A mortgage of family property for the payment of a previous mortgage debt, which saves the family property from sale is binding on the family. (*Piggott and Kanhaiya Lal, JJ.*). LACHMI NARAYAN *v.* DEOKI. **59 I.C. 797 (All.).**

———Debts incurred by rich family for purchasing war bonds in order to be assured of fixed income are binding on family. (*Kotval and Prideaux, A.J.Cs.*). NIMBAJI *v.* KISANLAL. **65 I.C. 668=A.I.R. 1921 Nag. 172.**

———*Loan to save family business—Necessity presumed.*

Where the manager borrows money to save the family property and to remove the fear of disturbance likely to be caused in the family business, the existence of necessity may be presumed, where there is nothing to show that the lender acted

HINDU LAW — Debts— Necessity — Burden of Proof.

otherwise than in good faith. If a previous loan on a pro-note by manager binds the family, a subsequent mortgage in lieu of it cannot be impeached. (*Stuart and Kanhaiya Lal, A.J.Cs.*). BALAK RAM *v.* RAM SUNDAR. **60 I.C. 410=7 O.L.J. 530= 2 U.P.L.R. (J.C.) 168.**

—Debts—Necessity—Burden of Proof.

———Manager has limited authority for borrowing on family property—Burden of proof is on lender to prove that the borrowing and the terms were within the authority. (*Viscount Sumner.*) SUNDER MULL *v.* SATYA KINKAR SAHANA. **108 I.C. 337=7 Pat. 294=55 I.A. 85= 26 A.L.J. 364=9 P.L.T. 203= 27 M.L.W. 461=1928 M.W.N. 242= 5 O W.N. 400=47 C.L.J. 403= 30 Bom. L.R. 793=32 C.W.N. 657= A.I.R. 1928 P.C. 64=54 M L.J. 427 (P.C.).**

———Where it is sought to bind the joint family property by debts incurred by the manager, the burden of proving necessity for the loan is on the creditor : 6 M. I. A. 393, *Ref.* (*Mr. Ameer Ali.*) GAJADHAR *v.* AMBIKA PRASAD. **87 I.C. 292=6 L.R.P.C. 126=1925 M.W.N. 532= 22 M.L.W. 306=47 All. 459=41 C.L.J. 450= 27 Bom.L.R. 853= A.I.R. 1925 P.C. 169= 49 M.L.J. 238 (P.C.).**

———In suits by creditors for money due from joint family no general and inflexible rule can be laid down; the presumption proper to be made will vary with circumstances and must be regulated by and dependent on them: 23 Cal. 766 (P.C), *Foll.* (*Broadway and Zafar Ali, JJ.*). CHALA RAM *v.* KISHEN CHAND. **88 I.C. 762= A.I.R. 1923 Lah. 462.**

—Debts—Necessity—Interest.

———Rate of interest 2 per cent. per month on an unsecured debt though heavy, is not unconscionable or unenforceable in law : A.I.R. 1918 P. C. 249 *Rel. on.* (*Bhide, J.*). MARYAM SINGH *v.* INDAR SINGH. **116 I.C. 306=A.I.R. 1929 Lah. 242.**

———*Rate of interest higher than ordinary rate—Lender must prove necessity for such rate.*

The necessity for a manager to borrow money confers upon him authority to borrow upon reasonable commercial terms and no further. If the rate does appear to be high, that is in excess of ordinary commercial rates, the lender will have to prove the necessity for such a rate. If the rate does not appear to be high and no evidence has been led on behalf of the borrower to show that it was not justified by legal necessity, according to the circumstances that prevailed at the time when the money was borrowed, there would be no occasion for interference by the Court: 41 All. 571; A. I. R. 1923 P. C. 37 and A. I. R. 1924 P. C. 184, *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). GAJRAJ SINGH *v.* MT. MULANKUAR. **103 I.C. 593=4 O.W.N. 981= A.I.R. 1927 Oudh 521.**

———*Debts by manager—Necessity for loan and also for high rate must be established.*

It is incumbent on those who support the mortgage made by the manager of a joint Hindu family to show not only that there was necessity to borrow but it was not unreasonable to borrow at a high rate and upon particular terms and if it was not shown that there was any necessity to borrow at the rate and upon the particular terms as were contained in the mortgage-deed that rate and those terms cannot stand: 41 All. 571 (P. C.), *Rel. on.* (*Stuart, C. J. and Misra, J.*). KIDAR NATH *v.* BHIKHAM SINGH. **92 I.C. 679=18 O.L.J. 338.**

HINDU LAW—Debts—Necessity—Interest.

———*When lender should justify high rate of interest.*

The manager of a joint family, whether the father or not, is not entitled in law to borrow money at an exhorbitant rate of interest unless there is necessity for such a rate, and if the rate of interest is excessive, the onus will be on the lender to show that there was necessity for such an onerous rate. If the manager, *bona fide* is in urgent necessity for money and cannot get it at a lower figure, then he is in law justified in borrowing at that figure, and the aftermath of that transaction due to the accumulation of the interest to a huge amount on account of the non-payment of interest by the manager is irrelevant to the consideration of whether he was justified or not in borrowing at the rate of interest at which he borrowed. The onerous nature of the interest would only be justified reasonably if the necessity for the money at the time of the loan was really urgent. The more urgent the need the less unjustifiable a high rate of interest will be. Both questions are, questions of fact to be decided by the circumstances of the case. Those attacking the transactions must first show *prima facie* that the rate of interest is unnecessarily high for the circumstances of the case. It may be that in certain cases the original rate of interest is *prima facie* so excessive that proof is practically unnecessary and that the plaintiff must know that it is his duty to show necessity for it. But in other cases it may be that the rate, although high, is not so high that the plaintiff should reasonably take it for granted that he has to explain it, even though the Court does not call upon him to do so. In such a case he cannot reasonably be mulcted if he does not explain it: 35 M.L.J. 614, *Foll. Case-law discussed.* (*Odgers and Wallace, JJ.*). PERRAJU GARU *v.* SITARAMACHANDRARAJU GARU. **90 I. C. 458=22 M.L.W. 568= A.I.R. 1925 Mad. 897=48 M.L.J. 584.**

———Where a Hindu mother acting as the guardian of her minor son borrowed a small sum of Rs. 90 for family necess ity by mortgaging a substantial security and agreed to pay interest at 12 per cent. per annum compoundable every six months,

Held : in the circumstances of the case that there was no justification for the rate of interest undertaken to be paid and that a decree for simple interest at 6 per cent. per annum would serve the ends of justice. (*Wazir Hasan, A.J.C.*). CHANDRIKA PRASAD *v.* RAM SAGAR. **89 I.C. 567= 2 O.W.N. 425=12 O.L.J. 565= A.I.R. 1925 Oudh 459.**

———*Manager, debts by—Creditor should prove necessity for rate of interest as well as for principal sum, as against other co-parceners.*

When a contract entered into by a head member is sought to be enforced against the other members on the ground of necessity, it must be shown not only that there was necessity to borrow the principal sum, but also for the rate of interest agreed upon ; in other words, that it was impossible for the *karta* or head member to obtain loan for family necessity at a rate of interest lower than that agreed upon. The question of necessity is one of fact, and as in the case of principal debt so in the case of interest necessity has to be proved by evidence. (*Jwala Prasad and Kulwant Sahay, JJ.*). PARMESHWAR PANDEY *v.* RAJ KISHORE PRASAD. **80 I. C. 34=3 Pat. 829= 5 P.L.T. 646=A.I.R. 1925 Pat. 59.**

———Where the rate of interest is unduly high, a creditor in order to bind the estate must prove not

HINDU LAW—Debts—Necessity—Litigation.

only the necessity for the loan but the necessity to borrow it at an extravagant rate: 41 All. 571 (P.C.). *Foll.* (*Ryves and Daniels, JJ.*). SAHU RAGHUNATH SINGH *v.* SRINARAIN.
73 I.C. 1018=45 All. 434=21 A.L.J. 323=4 L.R.A. Civ. 211=A.I.R. 1923 All. 424.

—Debts—Necessity—Litigation.

———There is no rule of Hindu Law which recognises that the borrowing of money for the purpose of maintaining a suit to recover an estate which has never belonged to the joint family is a legal necessity. Where the benefit of the compromise of the suit went only to one member, the debt incurred to maintain the suit is not binding on the family. (*Rafique and Lindsay, JJ.*). BHAGWAN DAS *v.* MAHADEO PRASAD. **71 I.C. 959=21 A. L. J. 271=45 All. 390=4 L.R.A. Civ. 156=A.I.R. 1923 All. 298.**

———*Defence of manager in a criminal charge against him is legal necessity.*

Debts incurred by the manager in defending himself against a criminal charge are payable by the family: 34 A. 4 and 4 P.L.J. 653, *Foll.* In such case, it is not the creditor's business to determine the amount the manager chooses to expend in his defence. (*Kotval and Prideaux, A.J.Cs.*). NIMBAJI *v.* KISANLAL. **65 I.C. 668=A.I.R. 1921 Nag. 172.**

—Debts—Necessity—Marriage.

———*Debt for marriage of co-parcener or sister is for legal necessity.*

A debt contracted for the marriage of a co-parcener in a joint Hindu family is binding on other co parceners. By the general principles of Hindu Law a minor is under an obligation to provide out of the family property the funds necessary for performing the marriage of his sister. (*Martineau, J.*). DADAR SINGH *v.* BANSI. **85 I.C. 741=A.I.R. 1925 Lah. 520.**

———Marriage expenses though lavish and improvident from a European's point of view are justified if they are in consonance with the position and prestige of the family. (*Dawson-Miller, C.J. and Bucknill, J.*). HARI PRASAD SINGH *v.* SURENDRA MOHAN SINGH. **66 I.C. 945=1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

———Marriage is obligatory on Hindus and the debts reasonably incurred for the marriages of a twice-born Hindu male are binding on the joint family properties: 37 Mad. 273 (F.B.); 32 All. 575; 32 Bom. 81, *Foll.* (*Das and Adami, JJ.*). DEBI LAL SAH *v.* NAND KISORE GIR. **65 I. C. 315=1 Pat. 266=3 P. L. T. 759=A. I. R. 1922 Pat. 22.**

—Debts—Necessity—Proof of.

———Mortgage suit—Mortgagor pleading want of legal necessity — Mortgage containing no recital showing purpose of debt—Mortgagee's evidence that it was for family expenses believed by trial Court—All adult members were executants—Mortgage being old document and mortgagee being dead—Mortgagors not entering witness box—Trial Court's view that it was for legal necessity was not interfered with. (*Sulaiman and Kendall, JJ.*). HARI RAM *v.* GOKUL PRASAD. **A.I.R. 1930 All. 624.**

———In a case where transaction is very old the evidence required to prove the necessity of the transaction need not be so complete as in the case of a more recent transaction: A.I.R. 1916 P.C. 110, *Foll.* (*Phillipps and Srinivasa Ayyangar, JJ.*). NATESA PILLAI *v.* MEENAKSHISUNDARA MUDALIAR. **109 I. C. 96 (Mad.).**

HINDU LAW—Debts—Necessity—Proof of.

———Where money was first borrowed as early as 1873 and evidence as to the actual necessity had disappeared, subsequent admission of its validity would be a very strong piece of evidence as to necessity. (*Lindsay and Sulaiman, JJ.*). INAYAT ELAHI *v.* HARDEO SAHAI. **74 I. C. 325=45 All. 692=21 A.L.J. 610=5 L.R.A. Civ. 61=A.I.R. 1924 All. 29**

———*Filing suit to set aside alienation at the close of the period of limitation.*

Where a suit to set aside alienation by father on the ground among others, of want of necessity is filed at the close of the period of limitation although it is within limitation, yet the conduct of the plaintiff in instituting the suit after such a long time, that is, just at the close of the period prescribed, is an important factor in determining the nature of the transaction and in finding out whether the alienation was or was not for necessity. The mere fact that the area of the property comprised in the mortgage forming the antecedent debt is not known does not justify an inference of want of necessity. (*Moti Sagar, J.*). DALGIT SINGH *v.* HARI CHAND. **78 I.C. 11=A.I.R. 1923 Lah. 669.**

———Necessity proved—Absence of enquiry is immaterial. (*Broadway and Zafar Ali, JJ.*). CHALA RAM *v.* KISHEN CHAND. **88 I.C. 762=A.I.R. 1923 Lah. 462.**

———*Long series of transactions—Chronic need of money is enough proof—Payment of decree is necessity.*

Where there has been a long series of transactions it is not always possible to prove exactly the purposes for which any particular item was borrowed, and, in such a case, it is sufficient for the creditor to show that the family was in chronic need of money and that the moneys were advanced on the representation of the manager that they were needed for such objects. Moreover, where the necessity arises from the pressure of a judgment-debt, the person dealing with the manager of a joint family is entitled to treat the judgment as *prima facie* proof of necessity and he is under no obligation to go behind the judgment in order to enquire whether the debt covered by the decree was for legal and binding necessity of the family. (*Das and Kulwant Sahay, JJ.*). DUKHIT OJHA *v.* JANKI SINGH. **71 I.C. 489=4 P.L.T. 377=A.I.R. 1923 Pat. 443.**

———*Long undisturbed possession by mortgagee is enough proof.*

Where in a suit on a mortgage it was proved that the mortgage had been executed to pay off a previous debt of the joint family and that the mortgagee had been in possession of the mortgage land for twenty-five years without objection by the defendants who were adult members of the joint family,

Held, that the conduct of the defendants amounted to acquiescence and no further proof of necessity, was under the circumstances required. (*Adami and Bucknill, JJ.*). RAM CHOWDHRY *v.* TILAK CHOWHDRY. **60 I.C. 387 (Pat.).**

—Debts—Son's liability.
Barred debts.
Commercial debt.
Devolves on successor.
Extent of.
Father's insolvency.
Interest.
Misappropriation.
Mother's debts.
Partition.
Pious duty.

HINDU LAW — Debts — Son's liability—Barred debts.

Pre-birth.
Surety.
When enforceable.
Miscellaneous.

—Debts—Son's liability—Barred debts.

———*Agreement to pay barred debt is legal.*

Son's agreement to pay time-barred debt of his father is not illegal, for the whole estate in the hands of the son would be liable for the father's debts. There was, therefore, a moral obligation to pay the amount, and even if there was no fresh consideration at the time of acknowledgment, the debt would not be illegal. (*Phillips and Odgers, JJ.*). RAJAMIER *v.* SUBRAMANIAM CHETTIAR.

116 I.C. 827=52 Mad. 465=30 M.L.W. 36= A.I.R. 1928 Mad. 1201.

———Pious obligation of sons does not extend to paying time barred debts. (*Stuart, C.J. and Wazir Hasan, J.*). BRAMHADIN *v.* RAM LAKHAN.

99 I.C. 215=3 O.W.N. 980= A.I.R. 1927 Oudh 32.

———Pious obligation of son does not extend to time-barred debts of father. (*Dawson-Miller, C. J. and Foster, J.*). ACHUTAN AND JHA *v.* SURJA-NARAIN JHA. **95 I.C. 991=5 Pat. 746= 7 P.L.T. 719=1926 P.H.C.C. 274= A.I.R. 1926 Pat. 427.**

———A son is not bound to repay the time barred debts of his father. (*Baker, J.C. and Hallifax, A.J.C.*). CHITNAVIS *v.* NATHU SAO. **79 I.C. 1002= 20 N.L.R. 106= 7 N.L.J. 170=A.I.R. 1925 Nag. 2.**

———*Payment of time-barred debt by father is not immoral.*

The payment of a time barred debt by a Hindu father could not in any sense be treated as an improper act or, to use the stock phrase, a transaction tainted with immorality. Alienation of joint property made for such payment is binding on the sons and grandsons: 13 Mad. 189; 11 Bom. 320; 21 Cal. 190, *Ref.*

Per *Sulaiman, J.*—A mortgage-deed executed by a father of a joint Hindu family in consideration of an antecedent debt which had become time-barred is not binding upon the sons. When a debt has become time barred it has ceased to be a legal debt and, even though the Hindu Law does not recognise the principle of limitation the sons can take advantage of the statute of limitation which makes such debt unenforceable. To hold otherwise would be to extend to an unprecedented extent the exception laid down by Sahu Ram's case to the general rule that if the debt is not for the benefit of the estate, and alienation of the estate for the payment of the debt is bad: 8 A. L. J. 1099, *Foll.* The cases where an alienation by a Hindu widow in lieu of time-barred debts of her husband was supported, may be distinguished on the ground that thereby she had conferred a spiritual benefit on her deceased husband. (*Lindsay and Sulaiman, JJ.*). B. GAURI SHANKER *v.* PDT. SHEO NANDAN. **78 I.C. 911= 46 All. 384=22 A.L.J. 369=5 L.R.A. Civ. 306= A.I.R. 1924 All. 543.**

———*Contract Act, S. 25 (3).*

According to the Hindu Law as well as under S. 25 (3), Contract Act, the execution of bonds by the father in exchange of time-barred debts is binding on the son. (*Gokul Prasad and Stuart, JJ.*). RAM KISHEN RAI *v.* CHHEDI RAI.

68 I.C. 235=20 A. L. J. 577=44 All. 628= A.I.R. 1922 All. 402.

HINDU LAW—Debts—Son's liability—Commercial debt.

—Debts—Son's liability—Commercial debt.

———*Father carrying on new business—Liability of sons for business debts—Pious obligations.*

Where the father carries on a non-ancestral business and it appears that the business is not for the benefit of the family and that the members of the family did not take the benefit thereof, the debts contracted by the father in connection with the business can be enforced against the sons only on the footing of the son's pious duty to discharge the father's obligations. (*Kumaraswami Sastri and Reilly, JJ.*). SUBRAMANIA MOOPANAR *v.* SUBBIAH AIYAR. **1930 M.W.N. 658.**

———Where a Hindu father was conducting an ancestral trading business and the sons were sought to be made personally liable in respect of a trade debt,

Held, that the sons could be made personally liable only if it was established that they were partners in the trade for which the suit debt was contracted. (*Coutts-Trotter, C. J. and Viswanatha Sastri, J.*). BALA VENKATA SITARAMA CHETTIAR *v.* SIVAGURUNATHA CHETTY. **1930 M.W. N. 371.**

———*Father—Debt incurred on personal concern—Debt not binding on sons.*

The mortgage created on joint property to meet the debt incurred by the father of a joint Hindu family, not for the purposes of the "joint family business," but for a business started and continued as his own and personal concern, does not bind his minor sons: A.I.R. 1922 P. C. 237, 6 M.I.A 393 and A.I.R. 1917 P.C. 33, *Rel. on*; A.I.R. 1927 P.C. 121; A. I. R. 1928 All. 403; A.I.R. 1929 Bom. 251; A.I.R. 1922 Mad. 286 and A.I.R. 1929 Pat. 423, *Ref.* (*Wazir Hasan and Srivastava, JJ.*). MUNESHWARENDRA NATH *v.* RAM DIN.

7 O.W.N. 112=A.I.R. 1930 Oudh 85.

———*Pious obligation applies even to speculative transactions.*

The father who is also manager of the joint family business can incur debts for the business in speculative transactions as they cannot be said to be immoral, and thus the pious obligation of sons to pay their father's debts extends to commercial debts also: A.I.R. 1926 Lah. 41 and A.I.R. 1926 Mad. 323, *Foll.* (*Addison, J.*). MAULUK CHAND KISHANJI *v.* DAYA KISHAN.

106 I. C. 183 (Lah.).

———Debt for money due for goods supplied for family business binds co-parceners: A.I.R. 1921 Lah. 61, *Foll.* (*Martineau, J.*). RAM GOPAL *v.* BHAN RAM MANGAL CHAND. **94 I.C. 163. (Lah.).**

———*Sons are liable for commercial debts of father.*

The pious obligation of sons to pay father's debts extends to commercial debts.

Per *Coutts-Trotter, C.J.*—The whole doctrine of the pious obligation is itself a relic of antiquity based originally on a religious and not a legal conception but it has been controlled and moulded into shape by a series of decisions which make it a working rule which in its actual application is neither inconvenient nor unjust. (*Coutts Trotter, C.J. and Viswanatha Sastri, J.*). ATCHUTAN *v.* RATNAJI. **92 I.C. 977=49 Mad. 211= 23 M.L.W. 193=1926 M.W.N. 288= A.I.R. 1926 Mad. 323=50 M.L.J. 203.**

———Trade debts incurred by the father are just claims on son's shares. (*Venkatasubba Rao, J.*). ACHYUTAN *v.* SURAYYA. **79 I.C. 902= 1924 M.W.N. 485=A.I.R. 1924 Mad. 845.**

HINDU LAW—Debts—Son's liability—Commercial debt.

———*Ancestral business—Even minor members are liable.*

Obiter.—It is settled law that in the case of an ancestral business all members of a Hindu joint family including minors are liable for debts incurred in the course of business to the extent of their shares in the family property: 34 B. 72, *relied upon.* (*Prideaux, A.J.C.*). RATANLAL *v.* JAIDEO.

75 I.C. 820=A.I.R. 1924 Nag. 123.

———Trading family—Debts for business purposes are binding. (*Kotval and Prideaux, A. J. Cs.*). NIMBOJI *v.* KISANLAL. **65 I C. 668= A.I.R. 1921 Nag. 172.**

—Debts—Son's liability—Devolves on successor.

———*Widow succeeding to her son is bound to pay her husband's debts.*

There may be no pious obligation on a mother, succeeding to the estate of her son, for the payment of the debts due by her husband but if the son has succeeded to the estate of his father, the person (in this case, the mother) who succeeds such son is as much liable for the payment of the debt due by his father, to the extent of the family property, unless it is tainted with immorality, as a person who would directly succeed to the property on his death. If a son is under a pious obligation to pay the debts of his father; it does not appear how the liability dies on the death of the son, if he leaves property, which had devolved on him on the death of his father, in the hands of those who succeed to his estate. even though it may not have amounted to a charge: A.I.R. 1921 All. 163. *Ref.* (*Kanhaiya Lal, J.C.*). SHEO NANDAN *v.* SHEO BALAK.

71 I.C. 974=10 O.L.J. 303=A.I.R. 1923 Oudh 251.

—Debts—Son's liability—Extent of.

———*Money-decree against father—Properties ambiguously described in execution—Son's share also liable.*

Where money-decrees are obtained against a father and the properties attached, even when there is ambiguity in the description of the properties such as by the use of the words right, title and interest of the judgment-debtor, still it must be taken *prima facie* that the intention in the execution proceedings is to proceed against the whole of the interest that may be proceeded against on account of the Hindu Law rule that a father's debts may be executed against the son. There may be some special circumstances in some cases to show that the execution proceedings were limited to a particular share of interest. Where no such limitation expressly appears, all that the sons can claim is to show that the debt was illegal or immoral or that the debt never existed, and the moment they fail to prove any of the specific circumstances, their claim must fail: 13 Cal. 21 (P.C.); 12 Mad. 142 (P.C.); 17 Cal. 284 (P.C.); 14 Cal. 572 (P.C.) and A.I.R. 1927 Mad. 311, *Foll.* (*Ramesam and Jackson, JJ.*). SUBRAMANIA PILLAI *v.* VENKATARAMA REDDI. **120 I.C. 375= 1929 M.W.N. 776=A.I.R. 1930 Mad. 257.**

———Mortgage by father—More than one-fifth consideration found not binding—Mortgage is binding at least to the extent of consideration found binding. (*Staples and Subhedar, A.J.Cs.*). BABURAO *v.* PANDHARINATH. **120 I. C. 326= A.I.R. 1930 Nag. 43.**

———Debts by father—Bombay School—Secured creditor can limit security to father's interests and claim money-decree for balance enforceable against son's share. (*Rupchand and Wild, A.J.Cs.*). GANGARAM RAMDAS *v.* LALUMAL CHANDUMAL. **A.I.R. 1930 Sind 138.**

HINDU LAW—Debts—Son's liability—Extent of.

———*Debts, by father are binding on sons unless they are immoral or illegal*

In a suit brought by a minor son and a wife of a person against him and his creditors for a partition and declaration that certain decrees, attachments and mortgages were not binding on them on the ground that the debts were incurred by the person for immoral and illegal purposes, the whole estate is *prima facie* liable for the debts unless it is proved that the debts were so incurred. (*Jackson, A.J.C.*). BABURAO *v.* NARAYANRAO.

119 I.C. 687=A.I R. 1929 Nag. 283.

———A son cannot be made liable for debts incurred by his father in a personal capacity such as a lambardar, nor can he be made liable for negligence shown by the father in that personal capacity, unless he has personal assets of the father in his hands: 40 All. 246, *Ref. to.* (*Ashworth, J.*). BHAGWATI SARAN *v.* DEOSARAN SINGH. **107 I.C. 702= 9 L.R.A. Rev. 23=A.I.R. 1928 All. 166.**

———*Father's tort—Sons liability.*

A Hindu son can be held liable for torts committed by his father during the latter's life-time only to the extent to which the family estate has been benefited: *Phillips* v. *Homfrey*, (1883) 24 Ch. D. 439. *Foll.* (*Case-law considered.*)

Such liability does not amount to a debt which he is bound to discharge, and is distinct from obligations legally incurred in consequence of a contract or quasi-contract. (*Findlay, J.C. and Macnair, A.J.C.*). DEOBA *v.* BABAIA. **103 I.C. 809= 23 N.L.R. 134=10 N.L.J. 251=A.I.R.1927 Nag. 337.**

———*Liability extends to grandsons and great-grandsons.*

It is beyond question that under the law of the Mitakshara the great-grandson is as much a member of the joint family as a son or grand son. It is also clear that the right in ancestral property extends to four generations beginning with the father, and that this right springs from "birth."

Under the law of the Mitakshara the rights of descendants are co-extensive with their obligations. Sons and grandsons are expressly declared to have controlling rights in respect of ancestral estate.

The Hindu lawyers appear to have made a difference in the obligations resting upon sons, grandsons and great-grandsons. The son was bound to discharge the ancestral debt as his own, principal and interest, whether he received any assets or not from the ancestor. The grandsons had to discharge the debt without interest and the great-grandson's liability arose only if he received any assets from the ancestor.

The British Indian Courts have held that the son and grandson are not liable for any debt unless they receive assets and that the obligations of each of them, sons and grandsons, are co-extensive. In the case of *Brij Narain* v. *Mangala Prasad*, A.I.R. 1924 P.C. 50; 46 All. 95, the son's liability is expressly laid down, and that rule extends equally to grandsons and great-grandsons: 19 All. 26 (F.B.), *Expl.* (*Mr. Ameer Ali.*) MAIST ULLAH *v.* DAMODAR PRASAD. **98 I.C. 1031=48 All. 518= 53 I.A. 204=25 A.L.J. 1=28 Bom. L.R. 1402= 44 C.L.J. 321=24 M.L.W. 551= 7 P.L.T. 815= 31 C.W.N. 293=1926 M.W.N. 816= 3 O.W.N. 721=38 M.L.T. 77= A.I.R. 1926 P.C. 105=51 M.L.J. 792 (P.C.).**

HINDU LAW—Debts—Son's liability—Extent of.

———*Sons are bound to pay father's debt if not illegal or immoral.*

If the managing member of a joint undivided estate inours debt, his sons are liable for the payment of the debt to the extent of the estate of the joint family, provided that the debt is not tainted with immorality or illegality: A.I.R. 1924 P. C. 50, *Foll.* (*Shadi Lal, C.J. and Malan, J.*). GIRDHARI LAL *v.* KISHE CHAND. **85 I. C. 463=5 Lah. 511= A.I.R. 1925 Lah. 240.**

———Both son and grandson are equally liable to pay the antecedent debt. (*Wazir Hasan and Kendall, A.J.Cs.*). MADHO PRASAD *v.* NIAMAT. **84 I.C. 501=11 O.L.J. 579=27 O.C. 366= A.I.R. 1925 Oudh 185.**

———*In execution of a mortgage-decree, son's share can be sold.*

It is only when a son seeks to avoid liability, that he has to prove that the debt incurred by his father was an immoral one. A money-decree against a Hindu father when the debt was neither illegal nor immoral, whether it was incurred for family purposes or not, could be enforced in the lifetime of the father by sale in execution of the entire co-parcenary estate and is binding on the sons. Although the share of the minors in the mortgaged property cannot be considered as charged with the debt *qua* mortgage, nevertheless the entire co-parcenary estate can be brought to sale in execution of the money-decree against the father whose share in the mortgaged property would remain charged in any event. However, although the shares of the sons in the mortgaged property are not liable to be proceeded against *qua* mortgage, nevertheless in execution of the decree the entire co-parcenary estate including the property mortgaged can be brought to sale. (*Broadway and Campbell, JJ.*). HARKISHEN SINGH *v.* THE LAHORE BANK, LTD. OF AMRITSAR IN LIQUIDATION. **69 I.C. 552= A.I.R. 1924 Lah. 263.**

———The whole of the ancestral property and not merely father's share can be sold under a decree passed in terms of S. 53 of the Code of Civil Procedure: 43 Bom. 612; 3 P.L.J. 533; 48 Cal. 341; 46 Mad. 64; 44 All. 649, *Ref.*; 16 C.L.J. 85, *Foll.* (*Daniels, J.C. and Wasir Hasan, A.J.C.*). BHAGWATI SAHAI *v.* MAHARAJ PRAGDIN. **81 I.C. 15=27 O.C. 111=11 O.L.J. 202= A.I.R. 1924 Oudh 393.**

———*Pious obligation—Sons to pay all debts of father unless they are immoral or illegal.*

Where the debts contracted by father were not incurred for legal and justifying necessities of the joint family or for the benefit of the sons and it was also not found that the debts were incurred for immoral purposes,

Held: that the minor sons were bound to satisfy their father's debt on the theory of the pious obligation of the sons to pay their father's debt even in the father's lifetime. Their liability is however limited to the extent of the co-parcenary property of the joint family: 41 Mad. 136 and 43 Bom. 612, *Ref*; 39 All. 437 (P.C.), *Disc.* (*Kulwant Sahay and Foster, JJ.*). DEBENDRA CUMAR *v.* FYZABAD BANK LTD. **75 I.C. 53=3 Pat. 63= 4 P.L.T. 516=A.I.R. 1924 Pat. 94.**

———Hindu father dying after decree against him—Decree can be executed against ancestral property in hands of son.

The existence of unsatisfied decree on the date of the (judgment-debtor) father's death is evidence of the existence of a debt which it is the pious duty of the son to satisfy. The ancestral property

HINDU LAW—Debts—Son's liability—Father's insolvency.

in the hands of the son is liable under Hindu Law for the payment of this debt unless and until the son could prove that there was in fact no debt at all or that the debt was tainted with immorality. (*Piggott and Walsh, JJ.*). RAMANAND SHUKUL *v.* CHHOTEY LAL. **71 I.C. 417= 20 A.L J. 969=4 L.R.A. Civ. 31= A.I.R. 1923 All. 124.**

———*Son to pay debts not illegal or immoral.*

The sons are bound to pay the decreed debt of their father under the Hindu Law. The liability of theirs is a personal one, and it is not barred up to six years from the date of the decree. The rule of Hindu Law is that where a son or a grandson takes ancestral property by survivorship, he is bound to pay out of such property all debts of his ancestor not incurred for immoral or illegal purposes including the judgment-debts. (*Jwala Prasad and Adami, JJ.*). SHEIK KAROO *v.* RAMESHWAR SAS. **62 I.C. 905=3 P.L.T. 43= 6 P.L.J. 451=A. I. R. 1923 Pat. 143.**

———A mortgage by Hindu father to discharge debts contracted for immoral purposes does not bind the son's interest in the family. (*Walsh and Ryves, JJ.*). GOKUL SINGH *v.* GOKUL SINGH. **62 I.C. 111=3 U.P.L.R. (A.) 14.**

———*Personal decree against father—Debt not immoral or illegal—Execution can be levied against the entire property.*

The decision of the Privy Council in *Sahu Ram Chandra's case*, 39 All. 437 (P.C.) has not overruled the long line of cases according to which a creditor who has obtained a personal decree for money against a Mitakshara father, the debt not being tainted with immorality, is entitled to levy execution against the entirety of the joint family property. Hence a decree passed personally against a Mitakshara father for a debt not justified by legal necessity and not immoral or illegal can be executed against the entire joint family property. (*Case-law reviewed*). (*Richardson and Shamsul Huda, JJ.*). MADHUSUDAN DAS *v.* ISWARI DAYI. **61 I. C. 25=48 Cal. 341=A.I.R. 1921 Cal. 152.**

—Debts—Son's liability—Father's insolvency.

———*Property re-acquired by sons after adjudication of father—Only father's share vests in the Receiver.*

Where joint family property passes out of the family, under a genuine transfer, before an application to adjudge the father of the joint family, an insolvent, is made, but after the father is adjudged insolvent the property is re-acquired by the sons from their own exertions and is held by them as co-owners with their father, only the father's share vests in the receiver. A.I.R. 1925 P.C. 18, *Expl.* (*Percival and Patkar, JJ.*). PARBHULAL DULLABHRAM *v.* BHAGNAN PARBHU. **102 I.C. 464=29 Bom. L.R. 473= A.I.R. 1927 Bom. 412.**

———Mortgage by father for paying debts in ordinary course of business—Subsequent adjudication of his being insolvent—Co-parcenary property including minor's share is liable. (*Martineau and Zafar Ali, JJ.*). KHEM CHAND *v.* NARAIN DAS SETHI. **89 I.C. 1022=6 Lah. 493= 26 P. L. R. 858=A. I. R. 1926 Lah. 41.**

———The Official Receiver can exercise the right of the insolvent father to sell his son's shares in immovable property to pay antecedent debts. (*Spencer and Madhavan Nair, JJ.*). SUBRAMANIA AIYAR *v.* OFFICIAL RECEIVER, TANJORE. **93 I.C. 877=23 M.L.W. 390= A.I.R. 1926 Mad. 432=50 M.L.J. 663.**

HINDU LAW—Debts—Son's liability—Father's insolvency.

——— Father's insolvency—Sons' shares vest in Receiver though on proof of immorality or illegality of any debts, the shares will not be liable for such debts: 7 Bom. 438 ; 19 Mad. 74 ; A.I.R. 1922 All. 79 ; A.I.R. 1925 All. 221, *Foll.* (*Hallifax, A.J.C.*). SHIOGOPAL *v.* SUKHRU. **87 I.C. 957= A.I R. 1925 Nag. 418.**

———*Son's property also vests in the Official Receiver*

By the insolvency of a Hindu father governed by the Mitakshara Law his son's interest as well as his own interest in the joint family estate vest in the Official Assignee and the son's property is to be treated as that of his father so far as the Official Assignee in concerned. The son, no doubt, has his remedy but he has to establish circumstances which would show that his share is not liable for the debts of his father; 3 Lah. 329, *Foll.* (*Scott-Smith, J.*). THE FIRM RALIA RAM GOWANDA MAL *v.* THE OFFICIAL RECEIVER OF THE INSOLVENT'S ESTATE AT GUJRANWALA.

69 I. C. 729= A.I.R. 1924 Lah. 297.

———*Official Assignee can exercise the father's power of sale of son's share for debts not illegal or immoral.*

The Official Assignee, though it cannot be said that the shares of the minors actually vest in him has nevertheless the same rights of disposition of the family property in satisfaction of the debts of the manager as the manager would himself have been entitled to exercise, if he had not been adjudicated an insolvent Thus the Official Assignee can sell the joint ancestral estate of the insolvent and his sons to pay such of the debts of the insolvent as are not shown by the sons to be illegal or immoral debts even during the lifetime of the (father) insolvent: 39 All. 437 (P.C.) ; 44 All. 308 (P.C.), *Expl.* ; 46 Mad. 54; 43 Bom. 612; 13 Cal. 21 (P.C.) ; 44 Cal. 524 (P.C.), *Foll* ; 42 Mad. 711 (F.B.), *Disappr*; 45 All. 90, *Dist.* (*Schwabe, C.J., CouttsT-rotter and Krishnan, JJ.*). BALUSWAMY IYER, *In the matter of.* **80 I C. 108=47 Mad. 87= 19 M.L.W. 86=1924 M.W.N. 94=34 M.L.T. 317= A. I. R. 1924 Mad. 411=46 M.L.J. 86 (F.B.).**

—Debts—Son's liability—Interest.

———*Interest is payable by grandson.*

The tests of Vishnu and Yajnavalkya do not place any limit on the extent of a grandson's liability for the debts of the grandfather but treat the liability of the son and grandson to discharge the debt of their ancestor as co-extensive. The text of Brihaspati which states that interest need not be paid on debts of the grandfather has not been adopted in the decisions of the Courts and interest must be held to be payable on the debts of the grandfather. (*Das and Adami, JJ.*). LADU NARAIN SINGH *v.* GOBERDHAN DAS. **86 I.C. 721= 4 Pat. 478=6 P. L. T. 497= 1925 P. H. C. C. 104=A.I.R. 1925 Pat. 470.**

—Debts—Son's liability—Misappropriation.

———*Money mis-used by father—Sons are bound.*

Where the father, who was the moniagar of a certain mahant collected a certain sum from the ryots and had to remit it to the mahant, but having mis-used it was compelled to borrow the necessary amount by mortgage in order to remit the sum within time,

Held: that the mortgage was binding on the sons : 37 Mad. 458, *Foll.* (*Ramesam and Jackson, JJ.*). RATNA MUDALIAR *v* ELLAMMAL.

118 I.C. 69= A. I. R. 1929 Mad. 792.

———*When sons are not liable.*

Where a Hindu father becomes liable for money taken by him and misappropriated under circumstances which constitute the taking itself a criminal offence his sons cannot be held, under the rule of Hindu Law as to the pious duty of a son, liable to pay his father's debt, but it must be shown that the debts were incurred as a result of the criminal activities of the father or grandfather : 24 Cal. 672 and 27 Mad. 71, *Rel. on.* (*Broadway and Zafar Ali, JJ.*). RALLIA RAM *v.* BALMOKUND **101 I.C. 830= 8 Lah. 117=8 L. L. J. 589=28 P.L.R. 45= A. I. R. 1927 Lah. 60.**

HINDU LAW—Debts—Son's liability—Misappropriation.

———*Misappropriation in the capacity of trustee—Sons are bound.*

Where certain sums of money for which a Hindu father, in the capacity of a trustee, was accountable, were not accounted for by him, and in a scheme suit he was ordered to pay the amount which came into his hands,

Held: that that will not amount to misappropriation or breach of trust and the sons' liability to pay father's debts is not discharged, and that even if it is found that he misappropriated the amount which came into his hands, the sons cannot escape the liability to pay their father's debt: 32 Bom. 348 and 35 M. L. J. 661, *Appl.* (*Devadoss and Wallace, JJ.*). VENKATAKRISHNAYYA *v.* BYRAGI. **94 I.C. 634=1926 M.W.N. 194= 23 M.L.W. 714=A.I.R. 1926 Mad. 535= 50 M L.J. 353.**

———*Unlawful retention of money—Sons are bound.*

The test of liability of son would seem rather to be the purpose for which the father's act was committed than the legality of the act itself. The son is not bound to do anything to relieve his father from the consequence of his own vicious indulgences, but he is surely bound to do that which his father himself would do were it possible, *viz.*, to restore to those, lawfully entitled, money he has unlawfully retained : 16 Mad. 99, *Foll.* (*Ashworth and Neave, A. J. Cs.*). KALLU MAL *v.* PARTAB SINGH. **92 I.C. 787= A.I.R. 1926 Oudh 301.**

———*Debt contracted by criminal misappropriation is immoral.*

Where the debt of father is alleged to be constituted of the money misappropriated by him and it is contended that the debt was tainted with immorality, to determine what constitutes "immorality" of a debt contracted by a Hindu father the test to be applied is whether or not the action of the father which resulted in the debt was infected with an element of criminality. Whether such an element is established or not and the degree of infection which will support a plea of "immorality" must be question for determination on the facts of each case ; and though a conviction for misappropriation or other cognate offence may be good proof of such element, proof of a previous conviction is certainly not essential. The criminality and its degree may be inferred from a consideration of the whole facts. If there was such an element it may be regarded as an immoral debt ; it is otherwise, if there was no such criminal element : 6 All. 234 ; 14 A.L.J. 610 and A I.R. 1924 All. 742, *Ref.* (*Boys and Banerji, JJ.*). JAGANNATH PRASAD *v.* JUGUL KISHORE. **89 I.C. 492=48 All. 9= 23 A.L.J. 882=6 L.R.A. Civ. 518= A.I.R. 1926 All. 89.**

———*Father undertaking to pay money misappropriated by another—Son is liable.*

Where the taking of the money itself is not a criminal offence, a subsequent misappropriation by the father cannot discharge the son from his liability to satisfy the debt. The same principle

HINDU LAW—Debts—Son's liability—Misappropriation.

applies where the misappropriation was not made by the father but by a third person and the father undertook to pay the money for such third person. In such case also the son is liable to discharge the obligation: 39 Cal. 862, *Appl* (*Das and Ross, JJ.*). RAMESHWAR SINGH *v.* DURGA MANDUR.

90 I.C. 454=7 P.L.T. 42=A.I.R. 1926 Pat. 14.

———Misappropriation is a question of intention and the mere keeping back of the money sent to a person for distribution to others or delay in distributing it would not amount to misappropriation. In a suit by the person who sent the money, the sons of the man to whom it was sent cannot plead that the debt was immoral or illegal on the ground of its being misappropriated money. (*Dalal, J.C.*). GANESH PRASAD *v.* JOT SINGH. **87 I.C. 1017=A.I.R. 1925 Oudh 719.**

———*Failure to render accounts as manager—Sons are liable.*

Defendants' father was manager of plaintiff's estates during his minority and while it was under Court of Wards. On attaining majority plaintiff sued for accounts alleging dishonesty and misappropriation and got a decree,

Held, that the decree debt was binding on defendant. Every breach of civil liability does not necessarily involve a moral turpitude and therefore the defendant cannot plead that the debt was contracted for immoral purposes: 39 C. 862, *Appr.* (*Abdul Raoof and Moti Sagar, JJ.*). GURSARAN DAS *v.* MOHAN LAL. **76 I.C. 907=4 Lah. 93=A. I. R. 1923 Lah. 399.**

———Father—Money borrowed to help relation to re-place trust money—No criminal misappropriation—Sons are bound. (*Das and Ross, JJ.*). BENARES BANK LIMITED *v.* JAGDIP NARAYAN PANDE. **62 I.C. 465=6 P.L.J. 198=2 P.L.T. 468=A.I.R. 1921 Pat. 9.**

—Debts—Son's liability—Mother's debts.

———Under Mitakshara sons must pay mother's debts though daughter inherits the balance after paying debts. (*Shah, Ag. C.J. and Fawcett, J.*). MADHAVRAO HARBAJI THAKUR *v.* AMABABAI LAXMAN JADHAV. **85 I.C. 193=26 Bom. L.R. 1210=A.I.R. 1925 Bom. 125.**

———A Hindu father executed a bond in settlement of earlier bonds executed by his mother for him when he was a minor,

Held, the debts were justly due by the father and when no such illegality has been shown in the nature of these debts as would absolve the son from his obligation to pay them out of the joint family property, the son is bound to pay his father's debts: 16 Mad. 99, *Foll.* (*Abdul Raoof and Moti Sagar, JJ.*). RAM RATTAN *v.* BASANT RAI.

64 I.C. 121=2 Lah. 263=3 L.L.J. 863=A.I.R. 1921 Lah. 205.

—Debts—Son's liability—Partition.

———Bona fide *partition—Subsequent liability of sons.*

Per *Kumaraswami Sastri, J.*—So long as a partition is *bona fide* and so long as provision is made for the payment of the debts and the sharer who agrees to discharge the debt, gets property sufficient to pay off the debts, it is difficult to see why a partition so made should still be subject to any pious obligation of the sons: 51 M. 861; 1928 M. W. N. 346 (F. B.), *commented on.* (*Kumaraswami Sastri and Reilly, JJ.*). SUBRAMANIA MOOPANAR *v.* SUBBIAH ANJAR. **1930 M.W.N. 688.**

HINDU LAW—Debts—Son's liability—Partition.

———*Ordinarily subsequent partition is immaterial.*

Where the debts of the father are held to be neither illegal nor immoral, whether there is a subsequent partition between the father and the son or not, it is open to the creditors to enforce payment of their debts out of the whole family property even during the life-time of their father although their right to enforce it as a mortgage claim is limited to the interest of the father in the family property and nothing more: A I.R. 1924 P.C. 50, *Rel. on*; A. I. R. 1928 All. 596 (F.B.), *Dist.* (*Rupchand and Wild, A. J. Cs.*). GANGARAM RAMDAS *v.* LALUMAL CHANDUMAL.

A.I.R. 1930 Sind 138.

———*Partition does not affect pre-partition liability of sons.*

The liability of the sons which arises before a partition between them and their father and the corresponding right of the creditor to recover his money from them cannot be affected by a partition which the father and sons may choose to make and to which the creditor is not a party: A.I.R. 1928 Mad. 657; A.I.R. 1928 Bom. 232; A.I.R. 1924 P. C. 50 and 40 Cal. 407; A.I.R. 1925 All. 221; A.I.R. 1927 Oudh 180, *Ref.*; A.I.R. 1925 Pat. 688; A.I.R. 1927 All. 714, *Not foll.* (*Mukerji and Niamatullah, JJ.*). KISHAN SARUP *v.* BRIJ RAJ SINGH.

121 I.C. 257=1929 A.L.J. 941=51 All. 932=A.I.R. 1929 All. 726.

———*Father adjudged insolvent—Suit for partition by sons—Sale by Official Receiver—When alienee can retain the property.*

In a sale by the Official Receiver of an insolvent father's property his son's interest would not vest in the purchaser in sale by Official Receiver where a suit for partition had been filed by the sons against their father after his insolvency: A.I.R. 1928 Mad. 735 (F.B.); A.I.R. 1926 Mad. 994 (F.B.) and A.I.R. 1925 P.C. 18, *Foll.*

In such a case the plaintiffs (sons) are *prima facie* entitled to a decree for partition though in effecting it regard will be had to the debts which are payable by the father and which are binding on the sons. Where the debts for which the Official Receiver has sold the property are neither illegal nor immoral regard will be had to the equities of the purchaser from the receiver, to whom they will be allotted on partition, if there are no other intervening superior equities. (*Kumaraswami Sastri and Reilly, JJ.*). VENKATARAMAN *v.* KESAVAN PATTAR. **114 I.C. 225=A.I.R. 1929 Mad. 778.**

———Pious obligation of son is independent of question of jointness of estate. The doctrine is founded on religious considerations to which the question of jointness or separation is entirely irrelevant. (*Daniels and Wazir Hasan, A. J. Cs.*). RAM SURAN *v.* MANGAL SINGH. **60 I.C. 219=8 O.L.J. 87=A.I.R. 1921 Oudh 38.**

———*Son is liable to extent of family property in his hands on partition.*

Son is liable to pay the personal debts of his father out of the joint family property that has come into his hands on partition before the decree for such debts is passed in favour of the creditors against father alone, provided the debts are incurred by father when father and son constituted a joint Hindu family and were neither illegal nor immoral. The liability is with the property and the acts of the members of the family cannot divest the property of that liability: A.I.R. 1928 Mad. 657 (F.B.); A.I.R. 1928 Bom. 232, *Foll.*; A. I. R. 1927 All. 714, *Diss. from*; A.I.R. 1927 Oudh 180; A.I.R. 1926 Oudh 470; A.I.R. 1926 P.C. 105; A.I.R.

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1924 P.C. 50; 12 Mad. 142 (P.C.); 15 Cal. 717 (P.C.) and 5 Cal. 148 (P.C.), *Ref.* (*Stuart, C. J., Wazir Hasan and Pullan, JJ.*). RAGHUNANDAN *v.* MOTI RAM. **119 I.C. 449=6 O.W.N. 689= A.I.R. 1929 Oudh 406 (F.B.).**

———*Son liable even after partition.*

Even after a *bona fide* partition, the son is liable for the debts of the father, other than those contracted for an illegal or immoral purpose, and whether the father is alive or dead, and the fact that the debts were incurred in trade started by the father does not affect this liability: A.I.R. 1924 P. C. 50; 24 Bom. 555; 38 Mad. 1120 and A.I.R. 1924 Mad. 682, *Rel. on. Case-law discussed.* [Compare A.I.R. 1928 Mad. 657 (F.B.)] (*Patkar and Baker, JJ.*). ANNABHAT *v.* SHIVAPPA. **110 I.C. 269=52 Bom. 376= 30 Bom. L. R. 539=A. I. R. 1928 Bom. 232.**

———*Father adjudged insolvent—Sons suing for partition—Official Assignee's power of sale of son's share extinguished.*

(Per *Ramesam and Madhavan Nair, JJ.*, contra, *Phillips, Offg. C.J.*).—After the adjudication of the father as an insolvent and the vesting of his rights in the Official Assignee, the institution of a partition suit by the sons of the insolvent effects a severance of the joint family status and therefore, the power to sell their shares by private sale. of the Official Assignee, who steps into the shoes of the father, is extinguished, although the Official Assignee by proper proceedings in the insolvency Court may proceed against their shares. (*Phillips, Offg. C. J., Ramesam and Madhavan Nair, JJ.*). OFFICIAL ASSIGNEE, MADRAS *v.* RAMACHANDRA. **112 I.C. 541=51 Mad. 417=1928 M.W.N. 294= 28 M. L. W. 109=A.I.R. 1928 Mad. 735= 55 M.L.J. 175 (F.B.).**

———*Son's liability continues even after* bona fide *partition.*

Per *Full Bench.*—A simple creditor of a father in a joint Hindu family is entitled to recover the debt from the shares of the sons even after a *bona fide* partition has taken place between the father and the sons: A.I.R. 1924 Mad. 682, *Appr.*; 41 Mad. 136, *Dist.* (*Coutts-Trotter, C.J. and Srinivasa Ayyangar, J.* Contra.). (*Coutts-Trotter, C.J., Waller, Jackson, Srinivasa Ayyangar and Ananthakrishna Ayyar, JJ.*). SUBRAMANI *v.* SABAPATHI. **110 I. C. 141=51 Mad. 361= 27 M.L.W. 688= 1928 M.W.N. 346=A.I.R. 1928 Mad. 657= 54 M.L.J. 726 (F.B.).**

———A Hindu son cannot be compelled to pay his father's debt out of his separated property either in his father's life-time or after his father's death: A.I.R. 1924 P.C. 50; 28 Bom. 383, *Dist.* (*Pullan, J.*). MATHURA *v.* SHAMBOO DAYAL. **107 I. C. 884= 5 O.W.N. 80=A.I.R. 1928 Oudh 225.**

———*Son's liability does not follow him after separation from father* (Kendall, J.).

The dictum in Mulla's Hindu Law that a son's pious obligation to pay his father's personal debt is not a personal liability, must be interpreted to mean that it will not follow the son after he has been separated from his father by a partition. It is clearly wrong to argue that it is a liability that is attached to his property: 22 Mad. 519 and 41 Mad. 136, *Ref.* (*Ashworth and Kendall, JJ.*). GAYA PRASAD *v.* MURLIDHAR. **104 I.C. 406= 25 A.L.J. 829=A.I.R. 1927 All. 714.**

———Debts by father incurred prior to suit for partition by sons—Debts not incurred for immoral purposes—Sons' shares are also liable.

HINDU LAW—Debts—Son's liability—Partition.

(*Coutts-Trotter, C.J., Krishnan and Curgenven, JJ.*). K. VENKU REDDI *v.* M. VENKU REDDI. **100 I.C. 1018=50 Mad. 535= 1927 M.W.N 237=25 M.L.W. 784= 38 M.L.T. 342=A.I.R 1927 Mad. 471= 52 M L.J. 387 (F.B.).**

———*Sons are liable for pre-partition debt.*

Where a debt is contracted by Hindu father before partition and it is not shown to be illegal or immoral, the shares of sons after partition can be proceeded against to satisfy the debt: A.I.R. 1924 P.C. 50, *Foll*; A.I.R. 1926 P.C. 105; A.I.R. 1924 Mad. 682 and A.I.R. 1927 Oudh 180, *Rel. on.* (*Wazir Hasan, J.*). JAI NARAIN *v.* MAHABIR PRASAD. **102 I.C. 231=4 O.W.N. 494= A.I.R. 1927 Oudh 568.**

———*Decree against father—Partition after decree—Decree cannot be executed against son's share.*

The property which is given to the son on partition may be liable in proper proceedings for the debt incurred by the father, but it does not necessarily follow that the decree against the father can be executed against the son: 47 Mad. 621, *Ref.* A decree must be executed against the judgment-debtor or his legal representative and after partition between father and son, the son cannot be said to be the legal representative of his father as regards his separate property. (*Phillips and Madhavan Nair, JJ.*). SRINIVASA AIYANGAR *v.* ARAVAMUDU IYENGAR. **95 I. C. 304= 23 M.L.W. 693=1926 M.W.N. 331= A.I.R. 1926 Mad. 690.**

———Sons being liable to pay father's debts, property acquired by them at partition of ancestral property can be taken possession of by receiver of their father's estate to satisfy the father's debts unless the sons can show that the debts were tainted with immorality: A.I.R. 1922 All. 79, *Foll.* (*Walsh, Ag. C.J. and Dalal, J.*). SITA RAM *v.* BENI PRASAD. **84 I.C. 790=47 All. 263= 22 A.L.J. 1097=6 L.R.A. (Civ.) 109= A.I.R. 1925 All. 221.**

———While the pious duty attaches to the son even during the life-time of the father, where partition has taken place before the suit is brought, the property of the sons cannot be proceeded against in satisfaction of a simple money debt: 41 Mad. 136, *Foll.* (*Ross and Kulwant Sahay, JJ.*). RAM GHULAM SINGH *v.* NAND KISHORE. **88 I.C. 813=4 Pat. 469=6 P.L T. 613= 1925 P.H.C.C. 341= A.I.R. 1925 Pat. 688.**

———*Son's shares even after partition are liable for the pre-partition debts of their father.*

A son is not liable unless the self-acquired property of the father or property which had been joint between them has devolved upon the son. Ancestral property which descends to a father under the Mitakshara Law is not exempted from liability to pay his debts because a son is born to him. It would be a pious duty on the part of the son to pay his father's debts. The ancestral property in which the son as the son of his father acquired an interest by birth is liable for the father's debts. A son in possession of property which had been joint and which fell to his share in partition is liable in suit brought after partition, impleading also the son, for the father's debts incurred before the partition and which are not illegal or immoral: 24 Mad. 555 and 38 Mad. 1120, *Foll.*; 41 Mad. 136, *Cons.*; 40 M.L.J. 473,

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Diss. (*Ramesam and Jackson, JJ.*). RAMACHANDRA JAGANNATH RAO *v.* VISWESAM.
80 I.C. 228=19 M.L.W. 691=34 M.L.T. 243=47 Mad. 621=A.I.R. 1924 Mad. 682=46 M.L.J. 530.

——Son's sons are liable for the debts incurred by their grandfather after their separation from him only to the extent of any of his assets that have come into their hands. (*Hallifax, A.J.C.*). BED PRASAD *v.* NAGKCHED PRASAD. **73 I.C. 884=21 N.L.R. 12=A.I.R. 1924 Nag. 410.**

——Debts incurred by father before partition but not charged on family property would not bind son's share after partition: 41 Mad. 136, *Foll.*

The mere fact that the father had been incurring debts and it was for that reason that the partition was effected by persons interested in the minor's behalf, would not necessarily make the partition other than *bona fide*. (*Abdur Rahim and Oldfield, JJ.*). VENKATA REDDI *v.* SATYANARAYANA MOORTHI. **62 I. C. 980=13 M.L.W. 516=1921 M.W.N. 261=A.I.R. 1921 Mad. 470=40 M. L. J. 473.**

—Debts—Son's liability—Pious duty.

——*Exemption from liability—Onus of proof.*

Under Hindu Law it is the pious duty of the son to pay out of ancestral property the debts of the father incurred by him on account of trade liabilities, even though the trade may have been started by the father. Where the sons claim to exclude a joint family property from the operation of a decree passed against their father, the burden lies upon them to prove that the debt payable under the decree was for an immoral or illegal purpose. (*Shingne, J.*). SHANKAR *v.* PREMCHAND.
32 Bom. L. R. 919.

——It is well established that the pious obligation upon which the doctrine of antecedency is founded extended to grandsons as well as to sons. (*Dawson-Miller, C.J. and Foster, J.*). KULDIP SAHAY *v.* RAM BUJHAWAN MAHTO.
83 I. C. 385=3 Pat. 425=5 P. L. T. 115=A.I.R. 1924 Pat. 454.

——A mortgage which is not binding on the estate in the father's lifetime would not be binding on the sons, for the mere circumstance of pious obligation of Hindu sons to pay their father's debts: 21 C.W.N. 957 (P. C.), *Foll.* (*Dalal and Daniels, A.J.Cs.*). RAM SARUP SINGH *v.* JAGESHUR SINGH.
73 I.C. 466=26 O.C. 341=A.I.R. 1923 Oudh 150.

——*Pious obligation of sons during his lifetime is only contingent.*

Under the Hindu Law, subject to certain exceptions, the whole of the undivided estate of a joint family is liable in the hands of sons for the debts of their father. The sons by reason of their duty to pay their father's debts cannot recover property unless the debts are taken for illegal or immoral purposes. There is a pious obligation on the sons to pay such debts. Where the father is alive, the obligation is only contingent, for the father may discharge the same in his lifetime or there may be ample personal estate belonging to the father available out of which the debts might be discharged or no joint family property left from which their satisfaction might be possible, it makes no difference in principle whether the property passes out by foreclosure or sale, what matters is, that it should have passed out to pay off or satisfy an antecedent debt. (*Kanhaiya Lal, J.C.*). BINDESHARI SINGH *v.* AUDESH PRASAD SINGH.
68 I. C. 283=25 O. C. 16=A.I.R. 1922 Oudh 85.

HINDU LAW—Debts—Son's liability—Surety.

—Debts—Son's liability—Pre-birth.

——*Debt contracted before son was born, will bind him as an antecedent debt.*

Per *Hallifax, A.J.C.*—Where the son of a Hindu father was not in existence on the date of the mortgage which formed the consideration for a mortgage executed by his father, of the joint ancestral property, the previous mortgage is an antecedent debt such as would bind the share of the son; the question of the interpretation of *Sahu Rim's* case does not arise in such a case as on the date of the conception of the son the property was subject to the mortgage; in other words, the father's debts are incurred in such a case irrespective of the credit obtainable from immovable assets which do not personally belong to him, but which are joint family property. (*Hallifax, Kotval, Macnair and Batten, A. J. Cs.*). SHEONARAIN *v.* NATHU. **65 I.C. 786=5 N.L. J. 114=19 N.L.R. 81=A.I.R. 1922 Nag. 1.**

——A Hindu son is bound by a charge on ancestral property created by his father before his birth. (*Coutts and Ross, JJ.*). RAMCHANDRA PRASAD *v.* MAHABIR PRASAD SINGH. **64 I. C. 247 (Pat.).**

——Debts of father—Sons are liable to pay even in father's life-time: A. I. R. 1924 P.C. 50, *Rel. on.* (*Mullick and Ross, JJ.*). RAGHUNATH PRASAD *v.* BASDEO PRASAD. **83 I.C. 1012=3 P. L.R. 328=6 P. L.T. 764=A.I.R. 1925 Pat. 823.**

——Pious obligation of sons arises in father's life time—Only family property in the hands of the son, is liable. (*Dalal, J. C. and Wazir Hasan, A.J.C.*). KALKA DEVI *v.* GANGA BAKHSH SINGH.
83 I.C. 127=12 O.L.J. 306=A.I.R. 1925 Oudh 435.

——*Son's pious duty arises only after father's death.*

The pious obligation of sons to pay their father's debts only arises at the death of their father. There is no pious duty on obligation during the life-time of the father to pay whatever debts the father may incur. *See* A. I. R. 1924 P. C. 50 (*Macleod, C. J. and Crump, J.*). SHIVRAO RAMRAO *v.* LAXMIBAI SUBRAO. **76 I.C. 638=A.I.R. 1924 Bom. 523.**

——As long as the father is alive the sons' pious obligation does not arise and their share is not liable to attachment and sale in execution of a money-decree against the father. (*Gokul Prasad, J.*). RAM KISHORE *v.* ABDUL KARIM.
77 I.C. 909=A.I.R. 1923 All. 173.

—Debts—Son's liability—Surety.

——*Suretyship debt of father binding on sons.*

An undertaking of suretyship for the payment of an amount due to the principal debtor is binding on the sons of the surety both for the principal amount and interest thereon, even if the liability as a surety is accepted by the father in respect of a debt which though not already due but which is promised to be advanced subsequently: 26 All. 611 and 39 Cal. 843, *Foll.* (*Sulaiman and Kendall, JJ.*). CHUKKAN LAL *v.* KANHAIYA LAL. **119 I.C. 86=1929 A. L. J. 199=A. I. R. 1929 All. 72.**

——A surety debt which is neither illegal nor immoral is binding on sons after father's death. (*Kennedy, J.C. and Raymond, A.J.C.*). MOHAN *v.* MT. BHAGBAI. **98 I.C. 136=19 S.L.R. 165=A. I. R. 1926 Sind 294.**

——A Hindu is not bound to pay his father's debts under a contract of suretyship guaranteeing payment of money payable in instalments which are paid after his death, but a Hindu son is liable for his father's liability for the instalments advanced

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before his death. (*Hallifax and Kotval, A.J.Cs.*). KANTICHAND *v.* UDAYABHUSHA. **80 I.C. 349= 22 N.L.R. 158=A.I.R. 1925 Nag. 7.**

———*Liability incurred by father who stood surety for guardian of a minor under Guardians and Wards Act binds son.*

What a guardian appointed under the Act is required to do is to give a bond, with or without sureties, engaging duly to account for what he may receive in respect of the property of the ward. The undertaking is simply an undertaking to make good a sum of money. The person standing surety cannot be said to have stood surety for the honesty of the guardian and his son is bound if liability is incurred under the surety bond. (*Ross and Kulwant Sahay, JJ.*). BRIJ NATH PRASHAD *v.* BINDESHWARI PRASAD. **86 I.C. 791=6 P.L T. 560= A.I.R. 1925 Pat. 609.**

———Son is liable to pay—Suretyship debt of father: 23 Bom. 454; 26 All. 611: 41 Mad. 1071, *Foll.* (*Hallifax, A.J.C.*). MAYARAM *v.* BHAIRON. **71 I.C. 351=19 N.L.R. 29= A.I.R. 1923 Nag. 115.**

—Debts—Son's liability—When enforceable.

———*Son's pious obligation exists even in life-time of father.*

The Law is now well established that under the Hindu Law the pious obligation of a son to pay his father's debts exists whether the father is alive or dead.

Observations of their Lordships in *Sahu Ramachandra* v. *Bhup Singh*, 44 I.A. 126 regarding the pious obligation of sons as not existing during life-time of father disapproved: 1 I.A. 321; 4 I.A. 247; 13 I.A. 1; 15 I.A. 99; 16 I.A. 1;17 I.A. 11; 44 I.A. 1; 15 All. 75; 28 Bom. 383 and 22 Mad 49, *Ref.* (*Lord Dunedin.*) RAJA BRIJ NARAIN RAI *v.* MANGLA PRASAD RAI. **77 I.C. 689= 21 A.L.J. 934=5 L.R P.C. 1=28 C.W.N. 253= 5 P.L.T. 1= 2 Pat. L.R. (Civ) 41= 1924 M.W.N. 68= 19 M.L.W. 72= 33 M.L.T. 457=51 I.A. 129= 46 All. 95= 26 Bom.L.R. 500=11 O.L.J. 107= 1 P L.R. 1924=41 C.L.J. 232= A.I.R. 1924 P C. 50=46 M L J. 23 (P.C.).**

———Pious obligation of sons and grandsons can be enforced during father's life-time: A.I.R. 1924 P.C. 50, *Foll.* (*Lindsay and Sulaiman, JJ.*). B. GAURI SHANKAR *v.* PT. SHEO NANDAN. **78 I.C. 911=46 All. 384=22 A.L.J. 369= 5 L.R.A. (Civ.) 306=A.I.R. 1924 All. 543.**

———It is now well settled that a son's liability to pay his father's debts arises even before the death of the father and consequently their estate would be liable equally with their father's estate. (*Phillips, J.*). PARTHASARATHI APPA RAO *v.* TURLAPATI SUBBA RAO. **84 I.C. 276= 35 M.L.T. 84= 1924 M.W.N. 517= A.I.R. 1924 Mad. 840=47 M.L.J. 483.**

———*Son's liability to pay father's debts in father's lifetime.*

The principle of Hindu Law that the creditor can bring the ancestral estate to sale in execution of decree against the father for debts not tainted with immorality or illegality and bind the shares of the sons and grandsons is not overruled by the decisions in *Sadhu Ram Chandra* v. *Bhup Singh*, 39 All. 437 (P.C.) and *Chet Ram* v. *Ram Singh*, A.I.R. 1922 P.C. 247. (*Kotval and Prideaux, A.J.Cs.*). MITSUI BUSSAN KAISHA LTD. AMRAOTI *v.* PADUMRAO. **76 I.C. 349=A.I.R. 1924 Nag. 232.**

———**The doctrine of a pious duty is not independent of the legality of the mortgage by the manager**

HINDU LAW—Debts — Son's liability—Miscellaneous.

of a Hindu family. The mere circumstance of a pious obligation does not validate the mortgage. (*Dalal, J.C. and Simpson, A. J. C.*). MAHADEO BAKHSH SINGH *v.* SURAJ BAKHSH SINGH. **80 I.C. 447=10 O.L.J. 252=A.I R. 1924 Oudh 34.**

———The pious obligation of a Hindu son to pay his father's debts cannot be enforced in the lifetime of his father and the son has the right to object to the payment of such debts from his share of the family property when the father is alive. (*Gokul Prasad and Lindsay, JJ.*). SHEODAN SINGH *v.* BHAGWAN SINGH. **64 I.C. 75=43 All. 496= 19 A.L.J. 431=A.I.R. 1922 All. 323.**

———*Exists during father's lifetime.*

Where the debt is incurred by each of the heads of the four different branches of the joint family and all the other defendants are their sons and grandsons so that all the interests were involved, the charge would be binding upon the property in the hands of all the defendants. The doctrine of the liability of sons for father's debt during the lifetime of the father is too well established at the present day to admit of its being questioned by a reference to the texts of the commentators: 15 Cal. 717 and 20 Cal. 328, *Foll.* (*Dawson Miller, C. J. and Bucknill, J.*). HARI PRASAD SINGHA *v.* SOURENDRA MOHAN SINGHA. **66 I.C. 945= 1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.**

———*Ready money debt.*

The son's obligation to pay off his father's debts attaches to an antecedent debt as also to a ready money debt and it can be enforced during the father's life-time by the attachment of the son's share in the joint family property. (*Ayling and Coutts Trotter, JJ.*) RAJARATNAM CHETTY *v.* ADILAKSHMAMMAL. **62 I.C. 218=28 M.L.T. 278.**

—Debts—Son's liability—Miscellaneous.

———*Son bound to discharge father's civil liability and not criminal.*

If the liability of the father arises directly from a criminal act, *i.e.*, an act for which the father may or may not have been successfully prosecuted, but which the evidence on the record is sufficient to prove to have been criminal, the son is not bound, but if there is a civil liability and subsequently the transaction becomes a criminal one, the son is bound to meet the civil liability to the extent of the family property but he is not concerned with the criminal matter. Where it is possible to separate the civil liability from a criminal action, the civil liability itself is not infected with criminality, so as to be not binding on the son: 6 All. 234, *Rel. on*; A.I.R. 1926 All. 89, *Expl.*; 28 All. 718; 14 A.L.J. 610; A.I.R. 1924 All. 745, *Dist.* (*Cases of other High Courts considered.*) (*Kendall and Niamatullah, JJ.*). KRISHNAPAL SINGH *v.* DISTRCT JUDGE OF AGRA. **112 I.C. 748=51 All. 386= 26 A.L.J. 1353=A.I.R. 1928 All. 582.**

———Mortgagor, Karta, father liable to make restitution under Contract Act, S. 65—Son is bound to discharge that liability as any other debt, if debt is not illegal or immoral. (*Raza and King, JJ.*). SHAMBHOO SHUKUL *v.* DHANESHAR SINGH. **101 I.C. 265=4 O.W.N. 256=A.I.R. 1927 Oudh 177.**

———The right to enforce payment of a Hindu's debts against his son is a different matter from that Hindu's right to alienate his son's share in the joint family property himself for the satisfaction of those debts. (*Batten, J. C. and Hallifax, A.J.C.*). RAM PRASAD *v.* MOHAN LAL. **71 I.C. 17=19 N.L.R. 6=6 N.L.J. 121= A.I.R. 1923 Nag. 117.**

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———Debts under deed of which father was not executant—Father adopting such debts as joint family debts—Sons are liable. (*Jwala Prasad and Ross, JJ.*). MICHU MISSIR *v.* BALBHADRA PRASTI. **62 I. C. 116=2 P.L.T. 147= A.I.R. 1921 Pat. 367.**

—Debts—Trade.

———*Some members of the family trading in partnership with strangers—Debt of that firm not binding on minors of the family.*

In all joint families if a person who is not the father has the power of management the criterion by which the binding nature of debts should be decided is whether they were borrowed for the benefit of the family and would bind the minors,

A, *B* and *C*, the deceased father of suing minors, were undivided brothers and formed members of a joint Hindu family governed by the Mitakshara Law. *A* and the son of *B* who was the second executant of the promissory note in suit were the managing members. *A* and his deceased brother *D* had been carrying on a speculative trade for which the suit money was borrowed on behalf and for the benefit of the joint family including the minors along with their partners,

Held, that the business which was started by two members of the family in partnership with strangers was not a business which was of such a nature as would bind the minors of the family: A.I.R. 1922 P. C. 237; 42 Cal. 225; A.I.R. 1922 Mad. 236; A.I.R. 1922 P.C. 397 and 6 C.W.N. 429, *Rel.on*; A.I.R. 1926 Mad. 323; A.I.R. 1927 Mad. 792 and A.I.R. 1929 Mad. 153, *Ref.*; (1928) M.W.N. 576, *Dist.* (*Kumaraswamy Sastri and Walsh, JJ.*). RAMALINGA CHETTY *v.* VELLORE MERCANTILE BANK. **30 M.L.W. 1036=A.I.R. 1930 Mad. 136= 57 M.L.J. 822.**

—Family arrangement—Binding nature.

———A transaction between the members of the same family who are *sui juris* and understand their own interests and where each party is prepared to press his claim but where they, in order to avoid litigation and for the benefit and preservation of the family property to the peace or security of the family, come to an arrangement amicably and peacefully, such an arrangement is binding on the parties. (*Mukerji and Ashworth, JJ.*). SIDH GOPAL *v.* BEHARI LAL. **107 I.C. 247=50 All. 284= 28 A.L.J. 978=A. I. R. 1928 All. 65.**

———*Family arrangement is valid unless vitiated by fraud, undue influence or coercion.*

A famil settlement is *inter alia* an arrangement by which the method of enjoying the ancestral property comes to be settled between the parties and to family arrangements great importance is attached by the Courts. In the absence of proof of mistake, inequality of position, undue influence, coercion, or like ground, a partition or family arrangement made in settlement of the disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from: and this principle is applicable where some of the members of the family are minors, or where the settlement has been effected by a qualified owner whose act in this respect will bind the reversioner: 34 C.L.J. 323 and 23 C.W.N. 118, *Foll.*

The doctrine of legal benefit is applicable, though at the same time the Court should not be disposed to scan with too much nicety the *quantum* of consideration in case of family settlement. The legal justification of the transaction should be tested on much wider grounds in the cases where there is a family arrangement in existence. (*Dawson Miller, C. J. and Foster, J.*). DAUGAL RAM *v.* JAIMANGAL SARAN. **95 I.C. 1051= 5 Pat. 480=1926 P.H.C C. 195= A.I.R. 1926 Pat. 364.**

—Family arrangement—Compromise of doubtful claim.

———Bona fide *settlement of family dispute by widow is binding on reversioners.*

A settlement of family disputes between the widow and a claimant to the estate which took place more than forty years prior to suit and has not been questioned till the date of suit must be held to be a settlement of *bona fide* family disputes binding on the estate, in the absence of anything in the evidence available to suggest the contrary.

Per *Reilly, J.*—"I do not agree with the suggestion made at one stage of the arguments that because there was this dispute so long ago there is a presumption that it was a *bona fide* dispute. In such a case, the circumstances must be examined so far as evidence regarding them is available."

If a person putting forward a claim to the estate believed in good faith that he had some right in the family properties, whether that claim was valid in law or not, and the dispute between him and the widow was compromised with the aid of mediators, that compromise is binding on the reversioners: 51 I.A. 145; 47 M. 181; 46 M.L.J. 172 (P.C.); 44 I.A. 229: 45 C. 17; 34 M.L.J. 1 (P.C.), *Dist.* (*Phillips and Reilly, JJ.*). VEERANNA *v.* SEETANNA. **59 M.L.J. 139.**

———*Abandonment of claim must be by one entitled to it.*

The real consideration and motive of a compromise is not the sacrifice of a right but the abandonment of a claim. There can be no abandonment of a claim except by the person who has the title or set up his own title to the thing claimed. *A*, while compromising with *C*, cannot abandon a claim that may possibly be made by *B*, but not made by *B* and without *B's* knowledge, and, therefore, such a compromise between *A* and *C* is not a *bona fide* family settlement in compromise of a doubtful claim; and whatever surrender is made by *C* is not binding on members of the joint family. (*Ramesam, J.*). VENKATASUBBAYYA *v.* KOTAMMA. **95 I.C. 222=A.I.R. 1926 Mad. 578= 50 M.L.J. 369.**

———Where the transaction is the result of a *bona fide* compromise of genuine dispute between the widow and her daughters on the one hand and the reversioner on the other, an arrangement under which some lands are given to the daughters and widow is given some lands for maintenance, the compromise cannot be impeached. (*Lord Dunedin.*) SURESHWAR MISSER *v.* MST. MAHESHRANI MISRAIN. **57 I.C. 325=43 Cal. 100= 47 I.A. 233=18 A.L.J. 1069= 28 M.L.T. 154=1920 M.W.N. 472= 12 M.L.W. 461=41 C.L.J. 433= 25 C.W.N. 194=3 Pat. L.R. 305= A.I.R. 1921 P.C. 107=39 M.L.J. 161 (P.C.).**

—Family arrangement—Contrary to law.

———*Is not permitted.*

It is perfectly open to the members of a Hindu family when partitioning certain property amongst themselves, to come to an agreement that on the death of any one of them his share should pass to the other or others and that the right of inheritance should devolve on the last survivor after the death of all the others. What it is not competent

HINDU LAW — Family arrangement—Division of property.

for them to do is to lay down a rule of inheritance for the property in the hands of this last survivor, in derogation of the ordinary rule of Hindu Law: 18 W.R. 359, *Ref.* (*Mears, C.J. and Piggott, J.*). BAGESHAR RAI *v.* MT. MAHADEO. **79 I.C. 514= 22 A.L.J. 419=5 L.R.A. (Civ.) 282= 46 All. 525= A.I.R. 1924 All. 461.**

—Family arrangement—Division of property.

———Where the sons of the cousin of *S*, contested the validity of an arrangement by which the property of *S*, was divided between the cousins and his daughters, and the parties remained in possession for over 14 years under the arrangement,

Held, having been in possession for 14 years after their father's death who was a party to the agreement, the sons were estopped: 40 All. 487, *Foll.*

Held further that the arrangement cannot amount to a family arrangement under the Hindu Law. (*Ryves and Gokul Prasad, JJ.*). BAHADUR SINGH *v.* RAM BAHADUR, SRI RAM.

71 I.C. 405=21 A.L.J. 140= 45 All. 277=4 L. R. A. Civ. 105= A.I.R. 1923 All. 204.

—Family arrangement — Legal necessity unnecessary.

———Where the transaction was really one in the nature of a family arrangement and both the brothers were entitled to a half share in the house and for that purpose to have it partitioned by metes and bounds, but the house could not be partitioned in equal shares without a great inconvenience.

Held, that the only other course to adopt was that one party should take compensation for his share from the other and that it is not necessary, in order to support a transaction of that sort, to show that there was any actual legal necessity for such a course, but that it must be made out by the party challenging the transaction that the course adopted was so detrimental to the interests of those who are interested as minors that it would be inequitable to allow the transactions to stand. (*Dawson-Miller, C.J. and Foster, J.*). DANGAL RAM *v.* JAIMANGAL SURAN. **95 I.C. 1051= 5 Pat. 480=1926 P.H.C.C. 195= A.I.R. 1926 Pat. 364.**

—Family arrangement—Minors bound.

———Dispute regarding management of family trust referred to arbitration by all adult members of the family—Award is binding even on the minor members of the family who were then alive in the absence of fraud: 17 Cal. 557, *Foll.* (*Krishnan and Venkatasubba Rao, JJ.*). KESHAVA RAO *v.* NATHRAVATI. **105 I.C. 837= A.I.R 1928 Mad. 200.**

—Family arrangement—No bona fide dispute.

———*No family arrangement if there is no* bona fide *dispute.*

Where under a deed of settlement between a Hindu widow and her daughters, the latter got some properties which they purported to alienate.

Held, that during the life of the widow, the daughters had no manner of right to the properties, that there could be no *bona fide* dispute between the mother and the daughters in respect of the property, that therefore it was not a family arrangement binding on the grandsons when they become entitled to succeed to the properties. (*Spencer and Devadoss, JJ.*). JOGA YERRAYYA *v.* SALLEYYA PATRUDU. **69 I.C. 389= 16 M. L.W. 752= A.I.R. 1923 Mad. 168.**

HINDU LAW—Family arrangement—Valid arrangement.

—Family arrangement—No transfer.

———*Widow and brother of the last holder—Each taking a share under family arrangement—No transfer.*

Wherever doubts and disputes have arisen with regard to the rights of different members of the same family, and fair compromises have been entered into to preserve the harmony and affection or to save the honour of the family, those arrangements have been sustained by the Court even although they may rest upon grounds which would not have been considered satisfactory, if the transaction had occurred between mere strangers.

There was a contest between a widow and the brother of her deceased husband for possession of the family estate, that dispute was settled by a definite arrangement, under which the widow obtained absolute title in a fractional share of the estate. The widow claimed that as her own property and more besides in her right, and, in consideration of her being allowed to retain that as an absolute property, she gave up her claim to the remaining property. The other party, on his side, consented to the widow retaining the one anna share in the village in question on the latter giving up her claim to the remaining property.

Held, that such a compromise was a legal and enforceable one as it was nothing more than a family settlement in which each party took a share of the family property by independent title and it was not a transaction to which S. 6, T. P. Act, would apply: A.I.R. 1921 All. 248; A.I.R. 1923 Bom. 276; A.I.R. 1918 P.C. 70 and A.I.R. 1914 P.C. 44, *Foll.*; A.I.R. 1927 Nag. 312 and A.I.R. 1921 Bom. 446, *Dist.* (*Findlay, J.C.*). GULJAR *v.* MOHANLAL. **108 I.C. 440=11 N.L.J. 70.**

———The deed of compromise did not expressly purport to transfer or convey anything. The widow was to have the lands for a certain limited interest. This interest was less than that of a Hindu widow's estate, which she claimed, but it was more than the bare right to maintenance which was all the minor was prepared to allow her,

Held, there was no such "transfer" here as is mentioned in S. 10. (*Marten and Fawcett, JJ.*). BASANGOWDA VIRUPAXGOWDA *v.* IRGOWADATI KALLANGOWDA. **73 I.C. 196= 25 Bom. L.R. 293=47 Bom. 597= A.I.R. 1923 Bom. 276.**

—Family arrangement—Stranger.

———*Family arrangement is not possible where one party to it is a stranger.*

Where the defendant is a perfect stranger to the family, he cannot be in possession of the family property under a family arrangement. A family arrangement pre-supposes a claim by some member of the family to part of the family property, which is settled by an arrangement between the members of the family recognising the claimant's real or supposed rights. There can be no question about this in a case where a stranger is in possession of part of the family property. (*Baker, Offg. J. C.*). LALLU PRASAD *v.* BABULAL. **76 I.C. 218= A.I.R. 1924 Nag. 214.**

—Family arrangement—Valid arrangement.

———Settlement between widow and her deceased husband's separated brother blaiming, under will, her husband's estate—Widow getting a portion of estate for life with no power of alienation—Brother taking remainder absolutely.

HINDU LAW — Family arrangement — Valid arrangement.

Held: that there was nothing in law to prevent such a settlement from coming into operation. The reversionary estate in the brother which had the character of a mere *spes successionis* was converted into an absolute estate in remainder, which could be sold in a decree against him: A. I. R. 1922 P. C. 356; A. I. R. 1925 P. C. 272 and A. I. R. 1922 Oudh 236, *Foll.* (*Wazir Hasan and Raza, JJ.*). CHINTA RAM *v.* RAM SAMUJH. **99 I. C. 500= 3 O.W.N. 767.**

———*Right of survivorship given up—Transaction is valid.*

Where the document embodied a mutual bargain, supported by legal consideration, by which each party gave up the possibility of his surviving his brother, with the consequential financial advantage in that case, in consideration of obtaining for his wife a far more assured monetary position than she would otherwise have had, as the widow of a deceased Hindu member of a joint family,

Held, the transaction is valid and binding. (*Mears, C. J. and Banerji, J.*). LAXMI CHAND *v.* MUSSAMMAT ANANDI. **71 I.C. 574= 21 A.L.J. 73=45 All. 245=4 L.R.A. Civ. 306= A.I.R. 1923 All. 109.**

—Gift.

Absolute estate.
Construction.
Death bed.
Father's power.
Formalities.
Law applicable.
Objects of.
Powers of donor.
Presumption.
Proof of.
Revocation.
Widow.
Miscellaneous.

—Gift—Absolute estate.

———*Gift to widow of pre-deceased son—No deed to evidence—Nature of donee's interest—Absolute interest held to have been gifted.*

When a property is given to a person whether that person is man or woman the grant must be taken to be an absolute grant. If a person says: "I give this property to a particular woman" there is no rule of Hindu Law which limits that grant to the life time of that particular woman.

A Hindu having no son or adopted son made a gift of a plot of land to the wife of his predeceased son because she wanted to be maintained. There was no document evidencing the gift from which the precise nature of the gift could be construed.

Held, that the gift was of an absolute interest. The gift could not be in lieu of maintenance as the donee was not a person who would be entitled to claim maintenance and the gift to her stood on the same footing as a gift to a stranger: 24 W. R. 395 and 30 All. 84 (P. C.), *Rel. on.* (*Mukerji and Mitter, JJ.*). (SREEPATI) BHUSAN MONDAL *v.* SARBESWAR MONDAL. **34 C.W.N. 409= A.I.R. 1930 Cal. 474.**

———A Gujar, made a gift with all rights to a Gujar widow "*bahamah wajah*"—words which mean literally "with all causes" but which can only be taken to mean "with all rights."

Held, the gift created an absolute estate. (*Stuart, J.*) ABHEY SINGH *v.* HIMTA. **65 I.C. 658= A.I.R. 1923 All. 234.**

HINDU LAW—Gift—Construction.

—Gift—Construction.

———*Wife to hold from generation to generation—No other person to have power of interference—Full proprietary rights including rights of alienation held to have passed to wife.*

If the donor does not confer upon the lady express power of alienation, such power may nevertheless be deduced from the terms of the gift if the words used are sufficient to confer upon her absolute ownership, unless the circumstances or the context show that such absolute ownership was not intended. There is no magic in the use of any particular word or form of words: the document must be construed as a whole and its fair import deduced in the ordinary way and if the conclusion come to is that it confers the estate out and out with no reservation the right of alienation will be included just as much as any of the other incidents of ownership, and just as much where the gift is to a female as where it is to a male.

A sonless Hindu gifted his property to his wife in the following terms that "with a view to safeguard the aforesaid property, I, while in the enjoyment of sound health and unimpaired intellect, without reluctance and coercion, have specifically gifted the zamindari in the aforesaid villages with all the original and accreted rights, cultivated lands Seer, Saer, Jalkar, bankar and all the rights held by me to my wife, and I do hereby covenant and reduce to writing that the said lady shall, gene ration after generation, remain in possession and enjoyment of zamindari haqiat in the said villages on payment of the Government revenue. Now after the execution hereof, if I or any one of my heirs and co-sharers lays any sort of claim to the aforesaid property against the donee, the same shall be deemed false and untenable. With the exception of the lady donee, no one else shall have any power of interference and meddling with regard to the gifted property."

Held, that reading the deed as a whole it must be construed as conferring upon the wife an absolute, *i.e.*, alienable and heritable estate in the property: 7 Cal. 304 (P.C.) and 24 Cal. 834 (P.C.), *Ref.*; A.I.R. 1928 Oudh 203, *Affir.* (*Other case-law considered.*) (*Sir George Lowndes.*) JAGMOHAN SINGH *v.* PANDIT SRI NATH. **A.I.R. 1930 P.C. 253 (P.C.).**

———*Gift to daughter and after her death to her male heirs—Her heirs take independently and not through her—They take absolute estate—Heirs not living at the date of settlement would be excluded.*

The settlement in relation to her provided: "As to one quarter of the said rents, dividends and profits upon trust to pay the same to my daughter Krishnabai during her life for her sole and separate use and after her death in trust for the male heirs of the said Krishnabai share and share alike." The settlor died and then Krishnabai died after him, leaving six sons, all of whom were living at the date of the settlement. The heirs of the settlor contended that the limitations in favour of her male heirs after her death were contrary to Hindu Law and void, and that in consequence there was a resulting trust in favour of the settlor,

Held, that the true interpretation of the settlement was that the persons who answer the description of male heirs at the date of Krishnabai's death were the persons in whose favour an independent gift was made, that the male heirs of Krishnabai did not take by inheritance from her but that by operation of the Hindu Law there would be excluded from that class people who were not living when

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the deed was executed and that the estate conferred on such heirs was an absolutele estate. (*Lord Buckmaster.*) MADHAVRAO GANPATRAO DESAI *v.* BHALABHAI RAGHUNATH AGASKAR.

107 I.C. 119=52 Bom. 176=55 I.A. 74=47 C.L.J. 198=30 Bom. L.R. 282=27 M.L.W. 400=26 A.L.J. 560=32 C.W.N. 925=A.I.R. 1928 P.C. 33=54 M. L. J. 245 (P.C.).

——*Life-estate with powers of disposition can be created—Deed—Construction.*

There is ample authority in this country as well as in England for holding that there may be a life-estate with powers of disposition.

Where the adoptive mother entered into an agreement which provided "I have, therefore, henceforward given all the property belonging to my husband as per the schedule below, to my adopted son *S*, the said *S*, shall therefore enjoy the said property with all the rights; the remaining property shall be enjoyed independently by myself alone and that the property which remains after being utilised by me during my life-time shall be enjoyed after my death by the said *S*."

Held, that the mother intended to reserve to herself a life-estate with full powers over the corpus during her life and as to whatever property was left the adopted son was to succeed. (*English and Indian case-law discussed.*) (*Krishnan and Odgers, JJ.*). VENKATA CHANDI KAMBA *v.* VENKATA RAO.

105 I.C. 775=1927 M.W.N. 215=A I.R. 1928 Mad. 39=53 M.L.J. 557.

——"*Donees, wives of the donor, to be responsible for loss or gain*"—*No power to alienate—Only limited estate conveyed.*

Where a deed of gift stated that the donor had made a gift of the property with all its inherent and adventitious rights to his wives *G* and *N* in a certain proportion and that the donor had withdrawn his possession and had put the donees in possession, and the deed finally provided that the donees, while in possession and occupation of the gifted property, would be "responsible for loss or gain" and that neither he nor his heirs shall have any claim whatsoever with regard to the subject-matter of the gift and finally there was a declaration that the donees would have no right to alienate the property.

Held: that the wives took nothing more than the limited estate peculiar to Hindu females. (*Lindsay and Sulaiman, JJ.*). JAVITRI *v.* GENDAN SINGH.

102 I.C. 167=49 All. 779=25 A.L.J. 500= A.I.R. 1927 All. 767.

——*Gift for maintenance—As long as donees live reversioners not to claim—Limited estate is conveyed.*

Where the sole surviving male member of a family, having dependent on him his brother's widow, a daughter's son and the widows of two predeceased sons of his own, executed a deed under which he made a grant of a share in one village to a daughter's son and shares in two other villages to his deceased brother's widow and then granted the shares in all the other villages together with a house to his sons' wives in the following words: "The rest of the shares and the house I have given to my sons' wives on this condition that the said widows should remain in possession of the properties given to them and should maintain themselves with the profit thereof.....My sons' wives and my younger brother's wife should remain in possession of their shares which I have given them for their whole life and on the death of one of the sons' wives the other shall get her share also. In

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short, so long as the three Musammats are, or any of them is, alive, none of my reversioners shall have a claim to their shares,

Held: that the grant of the entire property to the sons' widows was as life-interest to the ladies and not a widow's estate. (*Banerji, J.*). TIRLOKI NATH *v.* EMPEROR.

100 I. C. 381=7 A.I. Cr. R. 194=8 L. R. A. Cr. 22=28 Cr.L.J. 301=A.I.R. 1927 All. 742.

——*Will in favour of two persons—They take as tenants-in-common.*

When a deed of gift or a Will is in favour of two persons without any definite specification of the extent of their shares, they take as tenants-in-common and not as joint owners.

The principle of joint tenancy is unknown to the Hindu Law except in connexion with the joint Hindu family: 33 All. 665; 26 Bom. 445 and 39 P. R. 1909, *Rel. on.* (*Shadi Lal, C J. and Agha Haidar, J.*). MT. JIO *v.* MT. RUKURAN.

100 I.C. 54=8 Lah. 219=28 P.L.R. 78=A.I.R. 1927 Lah. 126.

——*Donees members of joint family—Joint tenancy—If created.*

Where the deed of gift does not specify the shares of the donees, and beyond stating that the land is gifted to the two donees who are members of the joint Hindu family, does not in any way lay down any conditions as to the future enjoyment of the property,

Held: that the gift does not create a joint tenancy so as to entitle one donee to succeed to the rights of the other by right of survivorship on the death of the latter. *Case-law considered.* (*Jai Lal, J.*). JOWALA RAM *v.* MT. CHANDAN.

96 I.C. 751=A.I.R. 1926 Lah. 677.

——Brothers take under a gift by mother's mother as tenants-in-common and not as joint tenants. (*Kinkhede, A.J.C.*). MT. JIRABAI *v.* MT. RAMDULARIBAI.

89 I.C. 991=A. I. R. 1926 Nag. 48.

——*Gift to woman—Words indicating absolute estate are not affected by sex of the grantee.*

Per *Dawson-Miller, C. J.*—There is nothing in the Hindu Law which prohibits a woman, whether wife or widow, from acquiring an absolute estate in property including the power of alienation. If words of grant are used importing the transfer of full proprietary rights, then effect must be given to them irrespective of the sex of the grantee. It may appear, however, from the context or from the surrounding circumstances that a limited power of disposal was intended to be conferred, even where an estate of inheritance is granted. Where ambiguity exists in the document itself, or where the words are not of sufficient amplitude to confer full powers of alienation, it is legitimate to assume that the grantor had in mind the ordinary disability which the Hindu Law attaches to a woman's rights over property, and this may be considered in determining the intention even where an estate of inheritance is granted. But where words are used which in their context express an intention of transferring full rights of ownership, the other principles of interpretation are of minor importance and should not be allowed to restrict the natural meaning of the words. (*Dawson-Miller, C.J. on difference between Das, J. and Foster, J.*). HITENDRA SINGH *v.* RAMESWAR SINGH.

88 I.C. 141=87 I.C. 849=4 Pat. 510=6 P.L.T. 634=A.I.R. 1925 Pat. 625.

HINDU LAW—Gift—Construction.

——*Gift to be construed with due regard to Hindu notions and wishes.*

Per *Das, J.*—In construing a deed of gift by a Hindu to his wife the Court is bound to proceed on the assumption that a Hindu knows that, as a general rule, women do not take absolute estates of inheritance which they are enabled to alienate. This does not mean that, where there are words of sufficient amplitude conveying in the terms of the gift itself the fullest rights of ownership, including the power to alienate, the Court will refuse to construe the deed of gift so as to deny to the donee the right to alienate. But that, in construing a deed of gift executed by a Hindu husband in favour of his wife, the Court would be right in leaning towards a construction, which is in consonance with the ordinary notions and wishes of the Hindus with respect to devolution of property and in harmony with the law by which the parties are governed.

The ordinary notions and wishes of Hindus are well known and have been recognised by the Judicial Committee.

Per *Foster, J.*—The Courts should examine the documents of transfer with the eye to the ordinary Hindu's inclinations; he does not usually intend to make a wife absolute owner by a deed of transfer. In the earlier interpretations of this rule of the Privy Council the Courts went almost so far as to import a strong presumption that the grantee was to receive a limited estate, and it was held that something express is necessary to exclude what is tacitly implied, *Expression facit cessare tacitum.* But the rule adopted in modern times is that if by a construction of the document the grant of an absolute estate can reasonably be extracted, there is no need to insist on an express and distinct grant of an absolute estate, *Expressio corum quae insunt nihil operatur.* Express words are not essential: the fact that the donor is a Mithila wife is not fundamental; it is to be seen whether the words are of sufficient amplitude to convey an absolute estate: A.I.R 1922 P.C. 80, *Foll.* (*Dawson-Miller, C.J. on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH.

87 I.C. 849=88 I.C. 141=4 Pat. 510=
6 P.L.T. 634=A.I.R. 1925 Pat. 625.

——Where one of the legatee's wife was given an absolute estate, and the two daughters of the testator also were given estates which were antagonistic to the interest of his wife, the natural inference would be that the nature of the estate given to the wife was also the same. (*Sulaiman and Mukerji, JJ.*). LAKSHMI NARAIN *v.* MT. SUMARNI KUAR. **79 I.C. 389=46 All. 439=**
5 L.R.A. Civ. 342=A.I.R. 1924 All. 731.

——*Gift to adopted son as such is invalid if the adoption is invalid in Law.*

M adopted his illegitimate son *R* and then made a gift of certain properties to him. The gift deed ran thus:—With a view to perpetuate my line and to have an heir to look to the performance of the religious duties and also for the management of the property, I take you in adoption according to our religion and you have been given in adoption by your natural mother of her free will. So I take you in adoption according to Danpratingrah on Margashirsh Sud 2nd shake 1819. You are clothed with all the rights that my natural born son might have got. You should continue our line and lead a prosperous life. You asked me to pass a Malikpatra in your favour and so I have passed it. The property is given to the full ownership of Ramaswami,

HINDU LAW—Gift—Formalities.

Held: that the intention of the donor was to give the property to *R* as his adopted son capable of inheriting in the same way as a natural born son and that since the adoption was invalid the gift also failed and could not take effect. (*Macleod, C.J. and Crump, J.*). KALLYANTAI FATHER APPASWAMI DHARMAR *v.* SHIVAPPA NAGAPPA HARGAPUR. **76 I.C. 405=**
A.I.R. 1924 Bom. 516.

——"Jo waste guzari ke digayi" conveys limited estate: 34 All. 234, *Dist.* (*Scott-Smith and Brasher, JJ.*). MT. MALAN *v.* KISHORE CHAND.
71 I.C. 833=A.I R. 1923 Lah. 17.

——*Donor to get back property if he returned from Port Blair—Condition is enforceable.*

Where a transfer deed by a person under sentence of transportation provides that the property conveyed shall go to transferee and pass to his heirs in the ordinary course of inheritance subject to the single contingency that if the plaintiff returns, it will go back to him,

Held, the clause providing that in the event of the plaintiff's return all the properties shall revert to him, is legal and enforceable equally upon transferee and upon his heirs: 6 M I. A. 555; 16 Cal. 383; 9 M.I.A. 136, *Foll.* (*Krishnan and Venkatasubba Rao, JJ.*). VENKATARAMA AIYAR *v.* AIYASAMI AIYAR. **63 I.C. 673=**
1922 M.W.N. 657=16 M.L.W. 552=
31 M.L.T. 465=A.I.R. 1923 Mad. 67=
43 M.L.J. 340.

—Gift—Death bed.

——The principles of the Mahomedan Law of *Marz-ul-maus* are not applicable to the Hindu Law. Under the Hindu Law a deed of gift made by a person during disease is valid. (*Dalal, J.C.*). SAT NARAIN v. KRISHNA DATT. **87 I C. 900=**
12 O.L.J. 275=2 O.W.N. 243=
A.I.R. 1925 Oudh 383.

—Gift—Father's power.

——Gift of Rs. 15,000 out of estate worth a lac is excessive and if made out of caprice, cannot be upheld. (*Kotval, Offg.J.C. and Prideaux, A.J.C.*). MUKUNDRAO *v.* WAMAN RAO. **98 I.C. 652=**
A.I R. 1927 Nag. 97.

——Gift of joint family proprety even within the limits of the donor's share is illegal—Reasonable gift by father is allowable in favour of daughter but not of widow or mother. (*Coutts-Trotter, C.J. and Ramesam, J.*). M. SUBBARAO *v.* ADEMMA.
83 I.C. 72=20 M.L.W. 440=1924 M.W.N. 680=
A.I.R. 1925 Mad. 60=47 M.L.J. 465.

——*Gift of money to daughter is valid if reasonable.*

Where a father made a gift to his daughter of a sum of Rs. 5,000 and a usufructuary mortgage,

Held, the father has undoubtedly the power under the Hindu Law of making within reasonable limits, gifts of immovable property to a daughter. Similarly, gift of sums of money, if reasonable, will be upheld. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYAN ANNAVI.
68 I.C. 451=45 Mad. 489=1922 M.W.N. 399=
30 M.L.T. 255=26 C.W.N.929 =20 A.L.J. 839=
49 I.A. 168=24 Bom. L.R.1209=16 M.L.W. 639=
37 C.L.J. 15=A.I.R. 1922 P.C. 201=
43 M.L.J. 428 (P.C.).

—Gift—Formalities.

——*Delivery of possession not necessary.*

It is not essential that possession of the gifted property should be actually transferred from the

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donor to the donee especially when the latter is a minor and is living with the former. But before such a gift can be upheld it must be established that there was a real and *bona fide* intention to pass title and that from the date of the transfer the donor was holding the property in trust for the donee. (*Tek Chand and Agha Haidar, JJ.*). SURWAN DAS *v.* MANSA RAM. **119 I.C. 271= 11 L. L. J. 497=A.I.R. 1930 Lah. 145.**

———*Credit entry in accounts in favour of grand-daughter—Donor not rendering accounts—Donor manipulating accounts as she liked—No gift to grand-daughter.*

One *B*, an Agarwal Jain, credited certain sums in her account books in the name of her grand-daughter *M*, who was a minor, at the time of adopting a son to herself and that of son's marriage. The said sums were not deposited by *M* with *B* after *M* had received them from *B*. Although loans were made from *B's* money to the debtors and the interest from the debtors was credited in *B's* account books in *M's* name. *M* was not charged with any commission. No accounts were rendered and no correspondence passed. Whenever *B* wanted, she manipulated the account and transferred amount as she pleased,

Held, that although among the Agarwal Jain community there was a practice on the occasion of adoptions and marriages to make money presents to relatives on a munificent scale still *B* did not make herself the bailee of *M* by an unequivocal act which may change the character of her own continuous possession. The sums, therefore, never formed the subject of a completed gift. (*Viscount Sumner.*) HARIRAM SEROWGEE *v.* MADAN GOPAL BAGLA. **114 I.C. 565=1929 A. L. J. 406= 49 C. L. J. 335=33 C. W. N. 493= 31 Bom. L. R. 710=1929 M. W. N. 422= 30 M.L.W. 835=A.I.R. 1929 P. C. 77= 57 M. L. J. 531 (P.C.).**

——The Hindu law in case of gifts has been expressly abrogated by S 129.T. P. Act and a gift to a sentient being under Hindu Law must be made in accordance with S. 123, T. P Act. (*Kulwant Sahay and James, JJ.*). DEBI SARAN KOIRI *v.* NANDALAL CHAUBEY. **A.I.R. 1929 Pat. 591.**

——Where the father makes a gift in favour of his minor son and as the guardian of the donee, gets donee's name mutated in his place, that constitutes a valid acceptance of the gift on donee's behalf. (*King, J.*). KRISHNA PAL SINGH *v.* SRI RAJ KAUR. **104 I. C. 299=1 L. C. 97= A.I. R. 1927 Oudh 278.**

———*Delivery of possession is unnecessary but acceptance by donee is essential.*

Delivery of possession is not essential for gift. (16 All. 185; 27 Bom. 31; 21 P. L. R. 1901; 52 P.R. 1908. *Foll.*). But there must be acceptance on the part of the donee. Where there is acceptance the mere fact that mutation is not made in the donee's name does not invalidate the gift. (*Scott-Smith and Harrison, JJ.*). BHAGWAN SINGH *v.* KIRPA RAM. **89 I.C. 326=A.I.R. 1925 Lah. 648.**

——Assuming that delivery of possession was essential under the Hindu Law to complete a gift of immovable property, that law has been abrogated by S. 123 of the Transfer of Property Act in cases where the instrument of gift has been registered: 3 C.P.L.R. 37 and 5 C.P.L.R. 63, *Overruled.* (*Baker, J.C. and Prideaux, A.J.C.*). BHAGWAN PRASAD *v.* HARISING. **83 I.C. 41=22 N.L.R. 124= A.I.R. 1925 Nag. 199.**

HINDU LAW—Gift—Law applicable.

———*Acceptance is necessary—Acceptance of the deed of gift is* prima facie *evidence of the acceptance of the gift.*

Under Hindu Law express acceptance is necessary for the completion of a gift even assuming that under Hindu Law acceptance of gift by the donee may be presumed.

Until he signifies his dissent, the Court must be satisfied that there was acceptance by the donee before it can give effect to a deed of gift relied upon by a party to the suit. Acceptance of a deed of gift is *prima facie* evidence of the acceptance of the gift but the donee's whole conduct concerning the acceptance has to be carefully scrutinised in order to determine the question whether there was an acceptance of the gift in fact. The two points ought to be very carefully considered by the Court whenever a question of acceptance is raised, *viz.*, (1) whether the donee is in possession of the deed of gift and (2) whether he is in possession of the properties gifted. (*Das and Ross, JJ.*). JAMUNA PRASAD *v.* SHEORATI KUER. **78 I.C. 469= A.I.R. 1925 Pat. 251.**

———*Gift for religious purposes need not be in writing.*

A dedication of a small portion of the joint Hindu family lands to an idol of a temple by the father or manager of the family on the occasion of the funeral of the deceased member is not by the law of India required to be in writing and is valid and binding on the other members of the family as a gift ordained 'for pious purposes': 24 Mad 440; 37 Cal. 128, *Foll.* (*Prideaux, A.J.C.*). VITHAL DAS MARWARI *v.* GOMA. **79 I.C. 173= 20 N. L. R. 60=A.I.R. 1924 Nag. 254.**

——The question as to delivery of possession being required under the Hindu Law to validate a gift can arise only between the donor and the donee and cannot be raised by a third party: 11 C.P.L.R. 11 and 11 Cal. 121 (P.C.), *Foll.* (*Hallifax, A.J.C.*). MT. KRISHNABAI *v.* DEBI SINGH. **71 I.C. 409=A.I.R. 1923 Nag. 195.**

——Under the law as it existed before the enactment of the Transfer of Property Act mere execution and registration of a document was not sufficient to create a trust. To complete a gift there must be a transfer of ownership from the donor to the donee. (*Mears, C.J. and Banerji, J.*). RAM DHAN *v.* PRAYAG NARAIN. **62 I.C. 862=43 All. 503=19 A.L.J. 447= A.I.R. 1921 All. 37.**

—Gift—Law applicable.

———In respect of family property Hindu Law recognises no perpetuities except in estates dedicated to religious or charitable uses. (*Courtney-Terrell, C.J. and James, J.*). MADHUSUDAN DEB *v.* KHESTABASI SAHU. **121 I.C. 462=8 Pat. 932= A.I.R. 1930 Pat. 137.**

——The doctrine of part performance, which has in certain English cases been applied to pre nuptial settlements in consideration of marriage, cannot be applied to a gift by way of sankalap at the time of the marriage, which is a sacrament and not the outcome of a contract: A.I.R 1928 All. 641, *Appl.* (*Sen and Weir, JJ.*). HIRA MANI SINGH *v.* ANMOL SINGH. **117 I.C. 351=26 A.L.J. 944= A.I.R. 1928 All. 699.**

———*Gift of an "estate"—Statute with regard to estates applies.*

Obiter—Conditions laid down by Act 1 of 1869 are the only conditions of a valid gift of "estate" property by a taluqdar and no other conditions are necessary for the validity of such a gift, as special

HINDU LAW—Gift—Objects of.

laws override general laws. Therefore, the validity of the gift by a taluqdar of "estate" property should be determined with reference to the special provisions in Act 1 of 1869 and without reference to the general provisions of Hindu Law or of the Transfer of Property Act. (*King, J.*). KISHNA PAL SINGH *v.* SRI RAJ KUAR. **104 I.C. 299= 1 L.C. 97=A.I.R. 1927 Oudh 278.**

—Gift—Objects of.

——A gift to a person not in existence at the time is invalid according to Hindu Law. (*Scott-Smith and Harrison, JJ.*). BHAGWAN SINGH *v.* KIRPA RAM. **89 I.C. 326=A.I.R. 1925 Lah. 648.**

—Gift—Powers of donor.

——Donor can bestow absolute estate and add defeasance clause—Consent of donee unnecessary for validity of the clause : 16 Cal. 383 (P.C.) and 9 M.I.A. 123 (P.C.). *Foll.*; 24 Cal. 834 (P.C.), *Dist.* (*Sen and Weir, JJ.*). HIRA MANI SINGH *v.* ANMOL SINGH. **117 I.C. 351=26 A.L.J. 944= A.I.R. 1928 All. 699.**

——*Gift to nephew or son—Gift to daughter or daughter-in-law—Difference between.*

Cases of gifts to a daughter or a widowed daughter-in-law having some sort of a moral claim on the donor stand on a much higher footing than the sons of a separated brother, at least so far as the question of the quantum of the gift is concerned. A gift that might be reasonable in the case of either of these persons may be unreasonable in the case of a nephew, or possibly even a son: 35 Mad. 628, *Rel. on.* (*Kotval, Offg. J. C. and Prideaux, A.J.C.*). MUKUND RAO *v.* WAMAN RAO. **98 I.C. 652=A.I.R. 1927 Nag. 97.**

——*Widow, full proprietor—Gift subject to usufruct during her lifetime is valid.*

A Hindu widow who is the full proprietor of immovable property, can by a registered document, duly signed and attested, validly make an immediate gift of it, although she reserves to herself the enjoyment of the usufruct or profits of a part of the property for her life-time and without retaining any power of alienation over it. (*Mears, C.J., Piggott, Gokul Prasad, Kanhaiya Lal and Sulaiman, JJ.*). LALLU SINGH *v.* GUR NARAIN. **68 I.C. 798=45 All. 115=20 A.L.J. 744= A.I.R. 1922 All. 467 (F.B.).**

—Gift—Presumption.

——*English presumption of advancement does not apply in India.*

The English Law presumption, of the wife's advancement does not exist in the Indian Law, but on the contrary the presumption here, is that, where a document is taken in the name of a man and his wife, the former providing the money, the transaction is, so far as the wife is concerned, benami for the husband. The mere fact, therefore, that money was deposited in the name of the wife does not justify a presumption that she was the beneficial owner of the money: A.I.R. 1925 P.C. 81, *Rel. on.* (*Phillips and Odgers, JJ.*). PARVATHI AMMAL *v.* M. R. SIVARAMA IYER. **97 I.C. 998= A.I.R. 1927 Mad. 90.**

——The presumption which applies in the case of a Hindu husband's gift to his widow, that only a life-estate is acquired, does not necessarily *proprio vigore* apply in the case of gift to a daughter: 9 C.P.L.R. 95; 32 Cal. 1051; A.I.R. 1923 Mad. 207 and 16 Mad. 466 (P.C.), *Rel. on.* (*Findlay, J.C. and Macnair, A.J.C.*). RAM LAL *v.* INDRAJRAJ SINGH. **102 I.C. 785=10 N.L.J. 146= A.I.R. 1927 Nag. 273.**

HINDU LAW—Gift—Widow.

—Gift—Proof of.

——An oral gift must be established by satisfactory oral evidence. (*Adami and Das, JJ.*). RAMESHWAR NARAIN SINGH *v.* RANI REKNATH KOERI. **67 I.C. 451=A.I.R. 1923 Pat. 165.**

—Gift—Revocation.

——*Conditional gift—Gift can be revoked if condition not justified.*

Under Hindu Law, if a person makes a gift to another in expectation that the donee will do more work in consideration of the gift, it follows that if the donee failed to do that which it has conditioned he should do, gift is revocable : 5 N.W.P.H.C.R. 5, *Rel. on.* (*Sen and Niamatullah, JJ.*). BALBHADAR SINGH *v.* LAKSHMI BAI. **1930 A.L.J. 623= A.I.R. 1930 All. 669.**

—Gift—Widow.

——*Mithila school—Gift by husband to wife for consideration, conferring absolute estate—Wife takes absolute estate.*

Under the Mithila Law a simple and pure gift by the husband to the wife does not convey to her absolute ownership and she takes it only for her life without any right of alienation unless power of alienation is expressly conferred on her.

Where a gift by a husband to his wife was one for consideration and provided: "The said Musammat should have and hold possession of the gift properties and enjoy the produce thereof generation after generation, and I, the executant, and my heirs and representatives neither have nor shall have any demand or dispute with respect to the gift properties or the consideration thereof as against the said Musammat, her heirs and representatives. Should I, the executant, my heirs and representatives make any claim or put forward any demand in respect of the gift properties or the consideration thereof the same shall be deemed null and void,

Held : that it was clear that all the rights of ownership were actually conveyed to the wife : A.I.R. 1925 Pat. 625. *Affir.* (*Mr. Ameer Ali.*) HITENDRA SINGH *v.* RAMESHWAR SINGH BAHADUR. **109 I.C. 858=7 Pat. 500= 55 I.A. 197=28 M.L.W. 12= 9 P L T. 295=32 C.W.N. 762= 26 A.L.J. 652=48 C.L J. 83= A.I.R. 1928 P.C. 112=55 M.L.J. 615 (P.C.).**

——*Gift by husband to wife by a deed of gift—Her power to transfer must be determined by construction placed upon it.*

When a husband governed by the Mitakshara law makes a gift in favour of his wife, the property transferred by gift becomes her stridhan and she would ordinarily have the power to transfer it. Such stridhan would descend by intestate succession to her heirs and not to her husband's heirs. But there are peculiar restrictions to the widow's right to transfer landed property if the gift has been made in a particular fashion. Therefore, in order to ascertain whether the widow has not the right to transfer the property, one must look at the deed of gift and find whether full proprietary estate is conferred or not: 12 M. I. A. 448; 30 All. 84 (P.C.) ; A. I. R. 1916 P. C. 20; A.I.R. 1922 P. C. 193 and A. I. R. 1922 P. C. 63, *Rel. on.* (*Stuart, C. J. and Raza, J.*). JAGMOHAN SINGH *v.* SRI NATH. **107 I.C. 866=3 Luck. 302= 5 O.W.N. 1=A.I.R. 1928 Oudh 203.**

——*Gift to wife—Mithila School—Gift may confer right to alienate gifted property—Construction of the deed of gift.*

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Per *Dawson Miller, C. J.*—Where the donor (a Hindu governed by Mithila School) made *heba-bil-ewaz* to his wife of his share in taluka Laheri "with trees, fruit-bearing and non-fruit-bearing, and ahar and pokkar and reservoir and tank and katcha and pakka wells and sair and salt sairs and houses occupied by tenants and all his zamindari rights which up to now have (or has) been in his possession without the co-partnership of any one," and then recited that he had put the Mst. in possession and directed that by becoming possessed of the property she should spend the produce with sons, generation after generation and the declarant, his heirs and representatives, shall have no concern in demanding the subject of the heba or the consideration money from the Mst. or her heirs and representatives,

Held, the words "with sons, generation after generation" used in their context convey an estate of inheritance and the words zemindari rights and representatives (*qaim moqaimian*) indicated right of alienation.

Held, further that words directing the grantee to spend the produce would not affect the power of alienation. Such words are not uncommonly used in India in conveyances which transfer an heritable and alienable estate: 24 Cal. 834 (P. C.), *Foll.* (*Dawson-Miller, C. J. on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **88 I.C. 141=87 I.C. 849=4 Pat. 510=6 P.L.T. 634=A.I.R. 1925 Pat. 625.**

———*Estate when absolute.*

A Gujar, made a gift with all rights to a Gujar widow "*bahamah wajah*"—words which mean literally "with all causes" but which can only be taken to mean "with all rights."

Held, the gift created an absolute estate. (*Stuart, J.*). ABHEY SINGH *v.* HIMTA. **65 I.C. 653=A.I.R. 1923 All. 234.**

———*Construction—Express words are not necessary to pass full estate.*

It is not the law that in the case of gift to a Hindu widow she has no power to alienate unless such power is expressly conferred. It is possible by the use of words of sufficient amplitude to convey, in the terms of the gift itself the fullest rights of ownership, including, of course, the power to alienate. (*Lord Buckmaster.*) T. B. RAMCHANDRA RAO *v.* A. N.S. RAMCHANDRA RAO. **67 I.C. 408=45 Mad. 320=30 M.L T. 154=35 C.L.J. 545=16 M.L.W. 1=1922 M.W.N. 359=26 C.W.N. 713=20 A.L.J. 684=24 Bom. L.R. 963=49 I.A. 129=A.I.R. 1922 P.C. 80=43 M.L.J. 78 (P.C.).**

—Gift—Miscellaneous.

———The dedication by gift of a small portion of family property to an idol is not invalid. (*James and Chatterji, JJ.*). HARIHAR PRASAD *v.* GURU-GRANTH SAHEB. **11 P.L.T. 658.**

———*Gift by limited owner is valid and binding until it is set aside by next reversioner.*

An alienation by a limited owner is valid and binding until it is set aside, at the instance of the next reversioner. It is merely voidable and therefore remains valid until the person who has a right to challenge it exercises that right. Where, therefore, in a joint Hindu family the person, who has a right to challenge the gift, is the husband of the donee, who gives his express assent to the gift, the donee obtains an absolute title to the property gifted to her by her father-in-law and accordingly

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the property does not become available in execution of a decree for debts against the husband: 19 Cal. 123 (P.C.); A.I.R. 1924 All. 51; 23 O.C. 234; 106 I.C.816; A.I.R. 1922 Mad.112; A.I.R. 1928 Lah. 9; A.I.R. 1923 Mad. 46 and A.I.R. 1924 Oudh 138, *Rel. on.* (*Fforde and Johnstone, JJ.*). MT. PIARI *v.* KISHORI RAWANJI. **122 I.C. 734=A.I.R. 1930 Lah. 223.**

———*Gift by father to son*—Nemo allegans turpitudinem suam est audiendus—*Applicability of the maxim.*

Father made a gift in favour of his minor son. During the donee's lifetime the donor did or said nothing to suggest that the gift was fictitious. On the contrary, all his acts and statements tended to show that he intended to make a real gift. But when the minor donee died, it became convenient to the donor to ignore the gift and to claim that he remained all along owner of the estate and that the gift was meant only to enable the Court of Wards to take charge of the property. He also got a deed of relinquishment executed by the widow of the donee in his favour reciting that the gift in her husband's favour was fictitious.

Held that the maxim *nemo allegans turpitudinem suam est audiendus* would be applicable, and the donor or his representatives cannot be allowed to take advantage of his own wrong doing and deny that the gift was fictitious. (*King, J.*). KRISHNA PAL SINGH *v.* SRI RAJ KUAR. **104 I.C 299=1 L. C. 97=A. I. R. 1927 Oudh 278.**

———Voidable gift is valid until avoided. (*Kotval, A. J. C.*). BAKARAM *v.* HIRALAL. **71 I.C. 39=A.I. R. 1923 Nag. 96.**

—Impartible Estate.

Accretions.'
Alienation.
Custom.
Debts.
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Maintenance.
Proof of.
Rights of junior members.
Separation.
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—Impartible Estate—Accretions.

———The produce of an impartible estate does not necessarily belong to and form an accretion to the original property: A.I.R. 1924 Pat. 451, *Foll.* (*N. R. Chatelrjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.**

———Rent which has become due is produce of the impartible estate whether that produce has actually come into the hands of the owner or not. There is no distinction between realized rent and unrealized rent in this respect: A.I.R. 1924 Pat. 451, *Foll.* (*N.R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 385=42 C.L.J. 280=A. I. R. 1926 Cal. 1.**

———*Moveable property cannot be incorporated with immovable.*

There can be no incorporation of movable properties with an impartible estate. In order that there may be incorporation, the property to be incorporated must be of the same nature as the impartible property. If the impartible estate is immovable property only immovable property can be incorporated. Incorporation involves altering the ordinary course of succession. Thus the holder

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of the impartible estate by purchasing a cow or a horse, for example, would be altering the course of succession to it by declaring his intention to incorporate it with the estate which is prohibited by law. (*N.R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

———*Land Tenure—Ghatwali—Produce of impartible estate is not necessarily accretion—No distinction between realised and unrealised rents — Unrealised rents are liable to attachment in execution.*

The produce of an impartible estate does not necessarily belong to and form an accretion to the original property, and there is no distinction between realised rent and unrealised rent. In the absence of any intention on the part of the late ghatwal to treat the produce of the estate as an accretion to the ghatwali estate, the unrealised rents are liable in execution to attachment and sale. (*Das and Ross, JJ.*). JUGAL KISHORE *v.* MT. SONABATI KUMARI. **97 I.C. 343=7 P.L.T. 626=A.I.R. 1926 Pat. 518.**

———*Income is no accretion.*

The income received from an impartible Raj is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort or that had come to him in *circumstances entirely dissociated from the ownership of Raj.* It is, therefore, a strong assumption to make that the income of the property of this nature is so affected by the source from which it came that it still retains its original character. (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I.C 812=3 Pat. 880=5 P.L T. 513=A.I.R. 1924 Pat. 721.**

———*Rent unrealised or realised is produce and is not necessarily accretion.*

The produce of an impartible estate does not necessarily belong to and form an accretion to the original property. Rent which has become due until death of holder is produce of the impartible estate whether that produce has actually come into the hands of the owner or not. There is no distinction between realised rent and unrealised rent in this respect. (*Das and Ross, JJ.*). APARNA DEBI *v.* SHRI SHRI SHIVA PRASAD SINGH.

83 I.C. 623=3 Pat. 367=5 P.L.T. 111=1924 P.H.C.C. 207=A.I.R. 1924 Pat. 451.

———*Property acquired with income from the estate is no accretion.*

The produce of the impartible estate ordinarily does not belong to and form an accretion to the original property. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort, or that had come to him in circumstances entirely disassociated from the ownership of the Raj.

Quaere.—Whether it be possible in any circumstances to treat movable property as an accretion to a landed estate of this character. (*Lord Buckmaster.*) RANI JAGADAMBA *v.* WAZIR NARAIN.

77 I.C. 1041=37 C.L.J. 287=50 I.A. 1=4 P.L.T. 319=2 Pat. 319= 32 M.L.T. 157=25 Bom. L.R. 676=1923 M. W.N. 460=28 C.W.N. 98=18 M.L.W. 555=4 L.R.P.C. 65=A.I.R. 1923 P.C. 59=44 M.L.J. 503 (P.C.).

———*Accretions become also impartible.*

When a Zemindar adds further property to his Zemin all that he can be said to do is to impose on it a condition of impartibility which he is competent to do. He cannot be said to impose

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thereby a new line of descent on the property different from that of the ordinary law. The only question to be decided in such cases is to find out whether it was intended by the acquirer to incorporate them with the original estate. (*Wallis, C.J. and Krishnan, J.*). GURUSAMI PANDIAN *v.* KALAI PANDIA.

61 I.C. 242=44 Mad. 1=A.I. R.1921 Mad. 340.

———*Enlargement of zamin rights in zamin properties—New acquisition are* prima facie *zamin properties.*

Where the properties were zamin properties to start with and the subsequent acquisition only resulted in an enlargement of the zamin rights in them and the new rights acquired were not kept separate they must be taken to have passed as part of the zemindari unless there is clear evidence that they were dealt with as the zemindar's private property. (*Wallis, C.J. and Krishnan, J.*). GURUSAMI PANDIYAN *v.* KALAI PANDIA.

61 I.C. 242=44 Mad. 1=A.I.R. 1921 Mad. 340.

—Impartible Estate—Alienation.

———*Ordinarily impartible estate is alienable unless custom of inalienability is proved.*

In the Madras Presidency zamindaries are impartible by usage as they are descendable only to a single heir, the other persons being entitled only to maintenance and the incidents of inalienability is not a necessary incident of such impartibility. On the other hand, an impartible estate is alienable by the holders unless there is also a custom of inalienability with regard to the particular estate. (*Madhavan Nair and Thiruvenkatachariar, JJ.*). THIRUMALAI SOURI NAICKER *v.* VENKATACHALAM CHETTY. **116 I.C. 571=A.I.R. 1929 Mad. 234.**

———*In the absence of custom estate is alienable.*

The Patia Killa is an impartible estate devolving in primogeniture. Therefore the Mitakshara Law cannot be invoked by members of the family as such by reason of their rights as co-parceners subject to alienation. A custom, however, to the effect that the estate is not alienable except for necessity may be established by evidence.

Held, on the facts that no such custom was made out and that the Patia Raj is freely alienable by the Rajah for the time being. (*Courtney-Terrell, C.J. and James, J.*). RAJA MADHUSUDAN DEB *v.* KHESTABASI SAHU. **8 Pat. 932.**

———*Impartible estate is alienable in the absence of a custom to the contrary.*

The general rule is that an impartible Raj is alienable by will as well as *inter vivos* as the title to prevent alienation rests upon the present co-ownership of the person who wishes to retain it, but in the case of an impartible Raj, such present co-ownership does not exist, inasmuch as it is so connected with the right to partition that, where that right does not exist, present co-ownership falls with it. But this general rule might be displaced by proof of a family or local custom restricting alienation, the onus of proving such custom being cast upon the person who alleges it.

That there had been no instance of a will purporting to dispose of a particular impartible estate is no proof of a custom of inalienability in respect of that estate. (*Lord Warrington.*) SRI PRATAP CHANDRA *v.* RAJA JAGDISH CHANDRA.

102 I. C. 599=54 Cal. 956=54 I. A. 289=25 A.L.J. 628=29 Bom. L.R. 1136=31 C.W.N. 943=1927 M.W.N. 513=4 O.W.N. 650=46 C. L. J. 136=39 M.L.T. 1=8 P.L.T. 623=27 M.L.W. 119=A.I.R. 1927 P. C. 159=53 M.L.J. 30 (P.C.).

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———In a case where for upwards of a century there has been nothing military or feudal in the tenure and the estate has been an ordinary zemindari, no inalienability can result from the ancient nature of the tenure. (*Lord Warrington.*) SRI PRATAP CHANDRA *v.* RAJA JAGDISH CHANDRA.
102 I.C. 539=54 Cal. 955=34 I.A. 289=25 A.L.J. 628=29 Bom.L R. 1136=31 C.W.N. 943=1927 M.W.N 513=4 O.W.N. 650=46 C.L.J. 136=39 M.L.T. 1=8 P.L.T. 623=27 M.L.W. 119=A.I.R. 1927 P.C. 159=53 M.L.J. 30 (P.C).

———The question of indivisibility is not the same as the question of inalienability.

All the properties that are indivisible are not necessarily inalienable: 10 All. 272 (P.C.) and 22 Mad. 383, *Rel. on.*

Village of Vellikurichi belonging to the family of Nayaks was held to be alienable: (1851) Mad. S. Ad. 87, *Not accepted*; 21 Mad. 310, *Dist.* (*Ramesam, J.*). VENKATACHALAM CHETTY *v.* VISWANATHA BANGARU. **102 I.C. 618=A.I.R. 1927 Mad. 725.**

———*Impartible estate is alienable by the holder unless there is custom to the contrary.*

The ordinary rule is that the holder of the impartible estate can alienate it at his pleasure: 22 Mad. 383 (P.C.), *Foll.* This clearly affirms the right of his creditors to proceed against the estate for the satisfaction of their claim against him. It follows, therefore that the holder of an impartible estate is not entitled, in answer to an attachment of the estate in execution of a decree against him, to raise the contention that he has no disposing power over the estate held by him unless there is a custom in the family to that effect, and the burden of proving the custom is on him. (*Kinkhede, A.J.C.*). THAKUR RAGHURAJ SINGH *v.* THAKUR DEBI SINGH. **97 I.C. 721=A.I.R. 1927 Nag. 15.**

———Holder has absolute power of disposal—Interest of the holder is not analogous to that of Hindu widow: A.I.R. 1924 Pat. 451. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I.C. 385=42 C. L. J. 280=A.I.R. 1926 Cal. 1.**

———*Impartible estate is alienable by will in absence of family custom or tenure otherwise.*

The succession to an impartible estate which is ancestral property of a joint Hindu family governed by the Mitakshara is "designated by survivorship." But where the question is not one of succession, but the power of testamentary disposition over an impartible estate such estate is not inalienable by will or otherwise by virtue only of its impartibility, in the absence of proof of some special family custom or tenure attaching to the zemindari and having that effect. The reason why an impartible Raj has been held to be alienable in various cases is that in such an estate the co-parcenary which under the Mitakshara Law is created by birth does not exist and the reason for restraint upon alienation therefore ceases to exist in the case of an impartible estate. The principle of survivorship, which governs succession in ordinary joint family under the Mitakshara, has to be followed in the case of impartible estates only for a particular purpose, *viz.*, to find out a successor; where one has not been appointed by will and it is only for the purpose of determining who is entitled to succeed, that the estate is to be treated as the property of the joint family. The same rule holds good even where according to family custom the members of the joint family not only got maintenance but education and marriage expenses also, so that

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there was actual enjoyment by the members of the family so far as was consistent with the impartibility of the estate and thus the jointness was not only notional but actual. For as there is no coparcenary in law, and the estate is to be treated as joint only for a particular purpose, the distinction is not material. (*N. R. Chatterjea and Chotzner, JJ.*). PROTAP CHANDRA DEO DHABAL DEB *v.* SRI RAJA JAGADISH CHANDRA DEO DHABAL DEB. **82 I.C. 886=40 C.L J. 331=A.I.R. 1925 Cal. 116.**

———*Alienation in* 1794 *and* 1819 *are governed by* 10 *All.* 272.

It was the settled law in India until the decision of the Judicial Committee in 10 All. 272, that the holder of an impartible estate had only a limited estate and except for special justifiable causes had no power of alienation beyond his life-time. The subsequent holder might indeed confirm the grant and such confirmation operated as confiscation and re-grant and the grantee could not claim to hold under the original grant upon the death of the grantor. The reversal of this accepted interpretation of the law does not displace its application to the contract contained in the transaction of 1794 and 1819 since the parties must be deemed to be bound by the law as then understood: 27 Mad. 141 (P.C.), *Foll.* (*Das and Ross, JJ.*). DEBI SINGH *v.* F.E. CHRISTIAN. **84 I.C. 429=1924 P.H.C.C. 201=A. I. R. 1924 Pat. 776.**

———*Suit against estate—Only the holder need be made a party.*

The plaintiffs took objection to the sale held in execution of a decree in a mortgage suit on the ground that the property mortgaged formed part of the estate in which the plaintiffs were interested as co-owners and that they were not made parties to the mortgage suit The evidence, oral and documentary, proved that the estate was impartible, and the revenue records, settlement proceedings and judicial decisions showed that the mortgagor or his lineal ancestors were each the sole proprietor.

Held, the estate was impartible and the objection therefore could not be allowed, as the members other than the owner of the impartible estate have no manner of interest in the estate and were consequently not necessary parties to the mortgage suit. (*Das and Adami, JJ.*). DWARKA PRASAD MARWARI *v.* JAI BARHAN. **67 I.C. 686=A.I.R. 1922 Pat. 322.**

—Impartible Estate—Custom.

———*Pachchis Sawal is document of superior authority for proving customs of descent.*

"Pachchis Sawal" is a record of great authority for the purpose of proving customs of descent in respect of estates referred to in that document and stands on higher footing than the inferences to be drawn from the historical accounts of the nature of the Raj given by Sterling, Hunter, Maddox or Toynbee: (1825) 4 Sel. Rep. of S.D.A. 49; 32 Cal. 158; 47 I.C. 36; 6 Sel. Rep. of S.D.A. 49 and 3 W. R. 116, *Ref.* (*Jwala Prasad and Scroope, JJ.*). AMARENDRA MANSINGH *v.* BANAMALI SINGH. **123 I.C 770=11 P.L.T. 268=A. I. R. 1930 Pat. 417.**

———*Custom as to inalienability—Proof of—Nature of evidence.*

The fact that there is no evidence of a sale of any portion of the estate is in favour of the existence of custom of inalienability but this is not sufficient. The absence of evidence of an alienation without evidence of any facts which would make

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it probable that an alienation would have been made cannot be accepted as proof of a custom of inalienability. Also, evidence which is as consistent with there being a custom as with there being no custom at all is not evidence of a custom modifying or varying the general law.

Where the estate has remained intact for several centuries, the fact is no doubt to be borne in mind, but it also must be remembered that according to the law as understood prior to the decision in the case of *Sartaj kuari* in 1889, an impartible Raj had always been considered as inalienable. And if the Rajas were following what they believed to be the law, it was not the custom because custom is something in derogation of the law. Hence that fact by itself cannot he held to be sufficient proof (in the absence of custom) of inalienability.

In considering whether the evidence proves the custom of inalienability, Courts have to bear in mind that if there was any occasion when having regard to human nature, there was likelihood of alienation, and alienation was not effected, it would be evidence of inalienability.

The fact that the bulk of the estate has existed from ancient times and that it has not been split up and dissipated in the course of centuries is certainly in favour of inalienability by custom. But it is useless to refer to the state of affairs before the British Government was established, because at the time these Rajas were in the position of military chiefs, and Courts have no materials of that period for determining the question of custom. After British Administration was established and before Sartaj Koeri's case was decided in 1889, the law as laid down by the Courts was that an impartible estate was inalienable. But where a supposed custom has followed the ordinary law as laid down by the Courts, though it was wrongly assumed to be ordinary law, that supposed custom which did not modify the understood general law and which had, therefore not independently the force of law, cannot be recognised by Courts as a custom having the force of law, even after it is established that the supposed ordinary law which it was alleged to have followed was not the ordinary law: 43 I.C. 871, *Foll.* (*N.R. Chatterjee and Chotzner, JJ.*). PROTAP CHANDRA DEO DHABAL DEB *v.* SRI RAJA JAGADISH CHANDRA DEO DHABAL DEB. **82 I. C. 886= 40 C.L J. 331=A.I.R. 1925 Cal. 116.**

———*Custom as to inalienability—Proof of.*

The fact that no instance is available of special provision having been made by any holder of the estate for the benefit of his wife or children, during a long course of years does not prove the custom of inalienability of the estate in a case where in the majority of cases the succession devolved upon the eldest son, or where there was no son, upon the brother, and it was only in the last case on the death of the last holder and under special circumstances that it devolved upon a somewhat distant agnate: 18 Mad. 287, *Foll.* (*N. R. Chatterjee and Chotzner, JJ.*). PROTAP CHANDRA *v.* JAGADISH CHANDRA. **82 I.C. 886=40 C.L.J. 331= A.I.R. 1925 Cal. 116.**

———*Is creature of custom but does not show that family does not follow Hindu Law.*

An estate only becomes impartible by custom, and the custom has in each case to be proved. But it is a custom which is usually found to exist where the estate belongs to a King or independent Chief, or a semi-dependent Chief of sufficient importance. The Prince, to use a neutral term, regards the whole

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estate which his predecessor had as necessary for the support of his dignity or gadi, and he takes it of his princely power and keeps it, giving appanages or maintenance to junior members of the family. The custom of impartibility in such a case affords no *indicia* whereby to determine that a family does not follow Hindu Law as a whole. Regulation X of 1800 points to the frequency of this custom among Hindus in parts of Bengal. (*Lord Phillimore.*) SAHDEO NARAIN *v.* KUSUM KUMARI. **71 I. C. 769=2 Pat. 230= 4 P. L. T. 217=50 I.A. 58=37 C. L. J. 369= 25 Bom. L. R. 560=1923 M.W.N. 377= 32 M.L T. 121=27 C.W.N. 991= 18 M.L.W. 597=A. I. R. 1923 P.C. 21= 44 M.L.J. 476 (P.C.).**

—Impartible Estates—Debts.

———The debts of a previous holder are not binding unless charged upon the estate. (*N.R. Chatterjea and Chotzner, JJ.*). PROTAP CHANDRA DEO DHANBAL DEB *v.* SRI RAJA JAGADISH CHANDRA DEO DHANBAL DEB. **82 I.C. 886= 40 C.L.J. 331=A.I.R. 1925 Cal. 116.**

—Impartible Estate—Incidents of.

———An impartible estate is by its very nature incapable of common enjoyment or being the subject of co-ownership, and in that sense there can be no jointness in estate. But the receipt of maintenance (whether under the law or under custom) may, in the absence of other circumstances be the only mode in which jointness in estate may be kept up in an impartible estate. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 383=42 C.L.J. 280= A. I. R. 1926 Cal. 1.**

———No co-parcenery exists in an impartible zamindary, which is merely a creative of custom. (*Viscount Cave.*) BISHEN PRAKASH NARAYAN SINGH *v.* JANKI KOER. **62 I. C. 289= 24 C.W.N. 857=28 M. L. T. 105= 12 L.W. 349 (P. C.).**

—Impartible Estate—Maintenance.

———A khorposh grant heritable in the male line and revertible to the grantor on failure of male line of descent does not carry with it the right to sub-soil, in the absence of clear words or necessary implication: 33 Cal. 203 (P.C.) and 19 C.W.N. 102, *Foll.* (*Case-law reviewed.*) (*Dawson Miller, C. J. and Kulwant Sahay, J.*). UDAI PARTAB NATH *v.* JAGAT MOHAN. **106 I. C. 399=6 Pat. 638=9 P.L.T. 25= A. I.R. 1928 Pat. 66.**

———A member is not entitled to maintenance from an impartible estate unless he establishes a right to maintenance by custom or relationship or in any other way: 45 I.A. 148 and A.I.R. 1921 P.C 62, *Rel. on.* (*Lord Warrington.*) SHRI PRATAP CHANDRA *v.* RAJA JAGADISH CHANDRA. **102 I.C. 599= 54 Cal. 955=54 I.A. 289=25 A.L.J. 628= 29 Bom. L.R. 1136=31 C.W.N. 943= 1927 M.W.N. 513=4 O.W.N. 650=46 C.L.J. 136= 39 M.L.T. 1=8 P.L.T. 623=27 M.L.W. 119= A.I.R. 1927 P.C. 189=53 M.L.J. 30 (P.C.).**

———*Minor member's right to maintenance—It shows jointness.*

If a junior member's right to maintenance is based upon law the receipt of maintenance shows jointness because that is the only way in which he can participate in the family property (the impartible estate). The mere receipt of maintenance, in all circumstances is not sufficient to constitute jointness. But in the absence of other circumstances going to show separation, the receipt of maintenance indicates jointness. Whether it does

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so or not depends upon the circumstances of each case. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

——In all cases of korposh grants, there is always the possibility of a reversion to the parent estate on the extinction of heirs of the grantee. (*N. R. Chatterjee and Paton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

—Impartible Estate—Proof of.

——The mere fact that rents are credited to the account books of the impartible estate or treated as part of the income of the estate is not sufficient to affect the property with the character of impartibility: 44 Mad. 1, *Foll.* (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v* SIVA PRASAD SINGH. **93 I.C. 385=42 C L J. 280= A. I. R. 1926 Cal. 1.**

——In each case for partition of a Deshgat watan, the question must be determined whether it is impartible. Experience has shown that in case of these watans, impartibility is the rule rather than the exception and so evidence is admissible to show that the custom exists in other families, not being in any way conclusive by itself but as assisting to show that the custom set up in a particular case is not an unusual one in the District of the parties: 11 Bom. 94, *Ref.* (*Macleod, C. J. and Crump, J.*). MAHADEVAPPA *v.* KASHIRAO.

77 I.C. 92=25 Bom. L.R. 797= A.I.R. 1923 Bom. 467.

——The evidence based merely on the fact that the witnesses have never known a case of partition does not afford in law sufficient proof of a valid custom, which would suffice to rebut the presumption of law that the property is partible. (*Schwabe, C. J. and Wallace, J.*). KUNHI KUTTY *v.* RAMAN.

172 I.C. 145=46 Mad. 597=18 M.L.W. 525= 1923 M.W.N. 173=A.I.R. 1923 Mad. 452= 44 M.L.J. 274.

—Impartible Estate—Rights of junior members.

——*Right of maintenance is by custom—Maintenance grants do not convey full proprietary rights.*

Per *Dawson Miller, C.J.*—The right of the junior members of the family to maintenance out of an impartible estate does not arise out of co-ownership but out of the custom which is a modification of the ordinary Mitakshara Law. The right to maintenance is a personal and not a real right and a khorposh estate goes back to the parent raj on the extinction of male line of descent not by survivorship but by reversion.

Per *Kulwant Sahay, J.*—In an impartible raj the junior members of the family have not the ordinary co-parcenary rights which members of a joint Hindu family have; and the grant of maintenance by the holder of the raj to the junior member of the raj cannot and does not amount to a partition and such grants do not by themselves amount to a conveyance of full proprietary rights including rights to minerals and sub-soil rights: 10 All 272 (P.C.), *Foll.*; A.I.R. 1921 P.C. 62, *Dist.* (*Dawson Miller, C. J. and Kulwant Sahay, J.*). UDAI PRATAP NATH *v.* JAGAT MOHAN.

106 I.C. 399=6 Pat. 638=9 P.L.T. 25= A.I.R. 1928 Pat. 66.

——The junior members of the family by an agreement may give up their rights to the impartible estate just as they may do with respect to partible property. (*N. R. Chatterjee and Panton,*

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JJ.). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I. C. 385=42 C. L. J. 280= A.I.R. 1926 Cal. 1.**

——*Junior members have only the right of contingent succession.*

From the very nature of an impartible estate it cannot be the subject of joint ownership. Joint enjoyment with a right to partition cannot exist in such an estate. Apart from the right of the junior members to maintenance the junior members can have no present interest in the estate; they can only have a contingent right of succession. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I. C. 385=42 C. L. J. 280= A. I. R. 1926 Cal. 1.

——*Junior members cannot insist on joint residence.*

In the case of impartible estates, the junior members cannot insist upon joint residence and mess, and the fact, therefore, that such a member is residing or messing separately, does not necessarily raise a presumption of separation though taken along with other facts it may do so. The question of onus of proof would depend upon how far the facts are admitted by each side. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I. C. 385=42 C. L. J. 280= A. I. R. 1926 Cal. 1.

——*Junior members have no interest by birth.*

In an ordinary joint Mitakshara family the junior members have an interest accruing by birth in ancestral property, and such interest carries with it a right to maintenance until partition is effected. Such a right is a real right and can be enforced against a stranger. In an impartible estate, however, the junior members do not acquire an interest by birth. There being no joint ownership in the sense of joint enjoyment with a right to partition; the question is:—has a junior member any right to maintenance and if so, whether under the law or under custom. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I. C. 385=42 C. L. J. 280= A.I.R. 1926 Cal. 1.**

——*Right of maintenance is under custom.*

An impartible estate is a creature of custom, and the right of junior members to maintenance is also under the same custom. The custom has origin in an agreement by which the members agree that one of them (the eldest) in certain order of succession should hold the estate, the other members being entitled to maintenance. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I. C. 385=42 C. L. J. 280= A.I.R. 1926 Cal. 1.**

——In impartible estates junior members get maintenance in the form of grants, but they are ordinarily grants for life. (*N. R. Chatterjee and Panton, JJ.*) PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH. **93 I.C. 385=42 C.L.J. 280= A.I.R. 1926 Cal. 1.**

——Mere grant of mouzahs for maintenance does not show the junior member's right to maintenance. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

——*No right to the corpus of the estate nor income therefrom.*

The holder of the impartible estate can alienate it at his pleasure; 10 All. 272 (P.C.) and 22 Mad.

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383 (P.C.), *Foll.* If therefore the holder of the impartiable estate sells a portion of it and converts in into money, it is no longer a part of the impartible estate. It is not a question of an intention to sever but actual conversion of the estate into money. The junior members have no right whatsoever to what is not impartible estate, and the money to which it is converted is freed from the rights of the junior members whatever they may be, and becomes the absolute property of the estate. If the junior members have no proprietary right to the corpus, they have none to the money to which the corpus may be converted nor to the income of the estate. Moneys received on account of mining leases, or royalties from mines or compensation under the Land Acquisition Act at the best stand on the same footing as a sale, and junior members cannot have any right to any of them as the holder of the estate has an unrestricted power of alienation. (*N.R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PROSAD SINGH.
93 I.C. 385=42 C.L.J. 280=
A.I.R. 1926 Cal. 1.

———*No right to maintenance under the law.*

Before *Sartaj Kuari's* case, 10 All. 272 (P.C.) the junior member's right to maintenance from an impartible estate was recognized; such right seems to have been based upon the very nature of an impartible estate, *viz.*, that one person was to hold the estate and the others were entitled only to maintenance. But after it was laid down in *Sartaj Kuari's* case, 10 All. 272 and in the 1st *Pittapur* case, 22 Mad. 383 (P.C.) that there is no co-parcenary in an impartible estate, the right of the junior members to maintenance under the law was expressly negatived in two cases and the view was modified in 43 All. 228 (P.C.). (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I. C. 385= 42 C.L.J. 280= A. I. R. 1926 Cal. 1.**

———Junior members have no right of maintenance by law in the Zemindari Maintenance grants not made in recognition of any rights but made as matters of grace cannot be relied on as keeping alive any right of succession. (*Wallis, C. J. and Krishnan, J.*). GURUSAMI PANDIYAN *v.* KALAI PADIA.
61 I.C. 242=44 Mad. 1=
A.I.R. 1921 Mad. 340.

———Relation of former Zamindar—Right to maintenance—Custom must be proved. (*Macnair, A.J.C.*). DHARAMSINGH *v.* LAKNATH SINGH.
62 I.C. 198=4 N.L.J. 1=
A.I.R. 1921 Nag. 56.

—Impartible Estate—Separation.

———*Evidence of separation—Nature of.*

A mere separation in food, mess or worship that is in the general status of the family or even a partition of partible property *inter se* would not destroy that national jointness which entitles a member of the junior branch to succeed to the impartible estate and that the presumption of jointness can be rebutted only by showing that there was an intention expressed or implied on behalf of the junior members of the family to give up their chance of succession to the impartible estate. Such intention can be implied both from circumstantial evidence and from the conduct of the parties. But the conclusion must be irresistable and the circumstances must point not to mere separation in general but separation relating to immovable property itself, that is to say, an abandonment of the right to succeed to it,

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Held, on the evidence in the case that in respect of the Majhauli Raj the two branches had not separated in such a manner so as to destroy the right of succession. Value of circumstances such as distance of relationship, separation in worship and existence of enmity discussed. *Case-law reviewed.* (*Sulaiman and Kendall, JJ.*). RAM SUNDAR MAL *v.* COLLECTOR OF GORAKHPUR. **1930 A.L.J. 724= A.I.R. 1930 All. 797.**

———*Mere separation in general status does not destroy notional jointness—Presumption of jointness can be rebutted by express or implied intention to give up chance of succession.*

A mere separation in food, mess or worship, that is to say, in the general status of the family, or even a partition of the partible property *inter se* would not destroy that notional jointness which entitles a member of the junior branch to succeed to the impartible estate, and the presumption of jointness can be rebutted only by showing that there was an intention express or implied on behalf of the junior members of the family to give up their chance of succession to the impartible estate.

But in the case of impartible property where the estate cannot be divided and a separated junior member cannot get any share on a partition, ordinary facts, which would be some evidence of separation with regard to partible property, would not be sufficient. Separation of the general status of the family does not necessarily imply a clear intention to renounce or surrender the right to succeed in case succession opens. There must be such evidence, direct or circumstantial, as would show an intention express or implied to give up the right to succession. It is not correct to say that in the absence of direct and positive evidence showing a clear abandonment or renunciation of the right to succeed, mere circumstantial evidence and inferences deducible from conduct would be wholly insufficient to prove an expression of an intention to give up such right. Such intention can be implied both from circumstantial evidence and from the conduct of the parties. But the conclusion must be irresistible and the circumstances must point not to mere separation in general status but separation relating to the impartible property itself that is to say, an abandonment of the right to succeed to it.

In the case of a partible estate distant relationship would indeed leave but a very weak presumption of jointness. But if in the case of an impartible estate no occasion for such succession has so far arisen, the presumption of law cannot disappear. The burden still is on the party who alleges that the estate was the separate property of the last male holder. Mere separation of the place of worship does not imply any intention on the part of the junior members to give up their right of succession to the estate.

The mere existence of strained relations would not be tantamount to an abandonment by the junior branch of their right of succession. On the other hand, they might very well entertain the hope of ultimate succession and look forward to the day when the last holder who had no male children died leaving a widow whom they could supersede.

Separation or partition *inter se* among the members of the junior branch of their partible property is no evidence of the abandonment of their right of succession. The junior members are entitled to deal with their partible property in any way they like, and their action cannot imply any intention on their part to give up their chance of succession

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to the impartible estate itself: A.I.R. 1928 P.C. 68, *Foll.*; 9 M. I. A. 539 and 13 M. I. A. 113, *Dist.*; A.I.R. 1921 P. C. 62; 10 All. 272; 38 All. 590; A. I. R. 1915 P.C. 30, *Distinguished in* 38 All. 590; A. I. R. 1923 Mad. 402; 1 Cal. 153 (P.C.); 29 Cal. 828 (P.C.); 9 M.I.A. 66 (P.C.) and 13 M.I.A. 333, *Ref.* (*Sulaiman and Kendall, JJ.*). RAM SUNDAR MAL *v.* COLLECTOR OF GORAKHPUR. **1930 A.L.J. 724= A.I.R. 1930 All. 797.**

———Though general status is divided there may be jointness as to impartible estate unless there is renunciation by junior members: 1 Cal. 153 (P. C.), *Foll.* (*N.R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

———Since a partition of partible properties does not effect a separation the fact that a junior member had separate properties or that he dealt with them without reference to the impartible estate cannot necessarily effect a separation. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. 93 I.C. 385= **42 C.L.J. 280=A.I.R. 1926 Cal. 1.**

———*Strong evidence is required to establish separation.*

It is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever, and this is also true with regard to an impartible estate; but as in that case, the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation. (*Lord Buckmaster.*) RANI JAGADAMBA *v.* WAZIR NARAIN.

77 I.C. 1041=37 C L.J. 287=50 I.A. 1= 4 P.L.T. 319=2 Pat. 319=32 M.L.T. 157= 25 Bom. L.R. 676=1923 M.W.N. 460= 28 C.W.N. 98=18 M.L.W. 555= 4 L.R.P.C. 65=A.I.R. 1923 P.C. 59= 44 M.L.J. 503 (P.C.).

—Impartible Estate—Succession.

———With regard to Killayat and Garhjat estates of Orissa, Pachchis Sawal records the custom of exclusion of females from succession to the estate. (*Jwala Prasad and Scroope, JJ.*). AMARENDRA MAN SINGH *v.* BANAMALI SINGH.

123 I.C. 770=11 P.L.T. 268= A.I.R. 1930 Pat. 417.

———*Senior most collateral succeeds.*

Unlike ordinary joint Mitakshara family, in joint impartible estate governed by Mitakshara Law, the members do not acquire any right by birth, but have *spes successionis* and upon the death of the present holder the estate devolves on the senior most collateral by survivorship. The mother or any other female member is excluded without any proof of custom. (*Jwala Prasad and Scroope, JJ.*). AMARENDRA SINGH. MAN SINGH *v.* BANAMALI **123 I.C. 770=11 P.L.T. 268= A.I.R. 1930 Pat. 417.**

———*Customary law of succession applies—Impartible estate is presumed to be joint for purposes of succession.*

Impartible estates are the creatures of custom, and where no special custom is proved, the customary law of succession applies with such qualifications only as flow from the impartible nature of the subject, and consequently for purposes of succession, and impartible estate must be considered joint family property unless it were shown to be separate, and in order to establish that an impartible estate has ceased to be joint family property for the purpose of succession, it is necessary to

HINDU LAW—Impartible Estate—Succession.

prove an intention expressed or implied on behalf of the other members of the family to give up their chance of succession to the impartible estate: A. I. R. 1921 P. C. 62, *Rel. on.* (*Cases fully discusssd.*)

The fact that the members of the joint family or of any branch of the family have exercised their right of partition over their other partible property, should not be held to divest them of their interest in the impartible estate. (*Sir John Wallis.* KONAMMAL *v.* ANNADANA JADAYA GOUNDER.

103 I.C. 354=51 Mad. 189= 55 I.A. 114=27 M.L.W. 497= 5 O.W.N. 411=1928 M.W.N. 252= 30 Bom. L.R. 892=47 C.L.J. 488= 9 P.L.T. 347=26 A.L.J. 642= 32 C.W.N. 983= A.I.R. 1928 P. C. 68= 54 M.L.J. 504 (P.C.).

———Females are not excluded by any family custom or usage from succession to the Jheria Raj. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I.C. 385=42 C.L.J. 230= A.I.R. 1926 Cal. 1.

———Rule that joint and self-acquired properties follow different course of succession applies to impartible estate also: 9 M.I.A. 539, *Foll.* (*N.R. Chatterjee and Panton, JJ.*). PRYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I.C. 385= 42 C.L.J. 280=A.I.R. 1926 Cal.1.

———Rule of survivorship applies—Joint step-brother can succeed in preference to the deceased's widow (*N.R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

———In cases of impartible estate "successor" does not necessarily mean successor by survivorship." (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH.

93 I.C. 385=42 C.L.J. 280= A.I.R. 1926 Cal. 1.

———*Junior line succeeding under agreement—Rights of senior line not affected—By a unilateral act like giving notice, the holder cannot terminate joint status with regard to impartible property.*

It is a well-settled proposition of law that the succession to an impartible estate is governed by the rule of survivorship if it is joint family property and by the rule of inheritance to separate property if it is separate property.

Where the result of the arrangement was practically to substitute the junior line for the senior line to succeed to the estate but there was no evidence of any further interference with the right of senior line,

Held, it did not affect the Jaghir being held as joint family property and the right of survivorship subsisting in the senior branch as well as in the junior branches. The possession of the second line being consistent with the joint family rights continuing, it cannot be treated as making the Jaghir the separate property of the 2nd line by adverse possession. The effect of that possession is no more than that of the arrangement itself. Where that line becomes extinct, a new position would arise and there is nothing to prevent the senior line from claiming the Jaghir by survivorship.

It is very doubtful if the owner of an impartible estate can get himself divided in status with reference to that estate by a mere unilateral declaration so as to destroy the joint family right of succession by survivorship to it which the members have.

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To show that an impartible estate has become the separate property of the holder it is not absolutely necessary to prove that there was some express division in which that property was involved or that the rights of others in it were abandoned. Each case has to be decided on its own facts.

If an impartible estate is the joint property of a family, the junior members have a right in it which, however unreal it may be for the purposes of actual enjoyment and preventing alienation, is still real and gives a chance of succession by survivorship.

The case of *Satraj Kuari* v. *Deoraj Kuari*, 10 All. 272 which has stood "too long to be now touched" and First *Pittapur* case 22 Mad. 383 must be confined to alienation and cases in 41 M. 778; 24 C.W.N. 226; 37 M.L.J. 188 and 24 C.W.N. 857 may be ignored. An impartible zamindari (1) may be the self-acquired property of a particular member and therefore his separate property as in the *Sivagunga* case or (2) might be renounced by a member of the family as in the *Padamatur* case so that he becomes completely separate from other members of the family *quoad* that property or (3) might be wholly allotted to a member in a family partition dealing with it and other properties of the family as in the case in *Vadrevu Ranganayakamma* v. *Batti Ramaiya*, 5 C.L.R. 439.

The holder of an impartible estate cannot, by giving a registered notice to the junior members that he intends to be divided in status as regards all the partible properties and impartible properties, put an end to the rights of junior members over the impartible estate. Such a notice destroys the undivided status only as to the partible properties, the principle being, one member cannot compel another member of the joint family to continue undivided when the latter wishes to divide and is willing to *share the property.*

A junior member may, while dividing himself as to partible properties, also separate himself even as to the impartible estate. (*Krishnan and Ramesam, JJ.*). ANNADANA JADAYA *v.* KONNAMMAL.
71 I.C. 533=17 M.L.W. 107=
1923 M.W.N. 15=A. I. R. 1923 Mad. 402.

——*In absence of special custom ordinary Hindu Law applies—If property is co-parcenary property, nearest co-parcener of senior line will succeed—If it is separate property, ordinary rule of nearness in blood applies though senior line will be preferred as between claimants of same degree.*

In the case of impartible estates, in the absence of a special custom governing the succession to it, the rule of succession must be taken to be that of the ordinary Hindu Law by which the parties are governed with such modifications only as flow from the impartible character of the estate. The difference recognised in the Mitakshara between succession to ancestral or self-acquired property must arise with regard to succession to impartible estates also. To apply the rules of succession to impartible property one must treat it for a moment as ordinary partible property and see to whom it would pass as such. If it passes to a single individual he or she would be the person entitled to the zemindari. But if it passed to two or more as equally entitled to it further rules have to be applied to determine which one of them should be selected as the zamindar as only one person can be the zemindar at a time.

If the zamindari is property in which the right of survivorship subsists, it would pass like ordinary joint family property by the rule of survivorship, and when there are more persons than one coming within that rule it will pass to the nearest co-parcener of the senior line and not to the co-parcener nearest in blood to the propositus. If on the other hand the zemindari is taken to be the separate property of the last zemindar the Mitakshara rule of succession to separate or self acquired property will apply and on the death of the last zemindar his mother will succeed if there are no nearer heirs and on her death it must pass to this zemindar's nearest reversioners under the rule that the nearest in blood excludes the more remote. But whereas both claimants fall in the category of nearest in blood, a further rule has to be applied to choose between them. In a case of collateral succession though the rule of seniority of line is not applicable in the first instance but the ordinary Mitakshara rule of nearness in blood applies, the former rule applies for the choice of one from among those equal in degree. (*Wallis, C. J. and Krishnan, J.*). GURUSAMI PANDIYAN *v.* KALAI PANDIA. 61 I. C. 242=44 Mad. 1=
A.I.R. 1921 Mad. 340.

——*Estate may be separate or joint family—If latter, succession is by survivorship.*

The fact that a raj is impartible does not make it separate or self-acquired property; a raj, though impartible, may in fact be self-acquired or it may be family property of a joint undivided family; if it is the latter, succession will be regulated according to the rule which obtains in an undivided joint family, so far as the selection of the person entitled to succeed is concerned, *i. e.*, the person will be designated by survivorship, although then according to the custom of impartibility, he will hold the raj without the others sharing it. (*Case-law fully discussed.*) 10 All. 272 (P.C.); 41 Mad. 778 (P.C.), *Dist.* The eldest of the senior branch would be the head of a joint family and he is entitled to succeed by survivorship. (*Lord Dunedin.*) BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH. 60 I.C. 534=
43 All. 228=48 I.A. 193=19 A.L.J. 317=
23 Bom. L.R. 654=33 C.L.J. 388=26 C.W.N. 564=
1921 M.W.N. 300=2 P.L.T. 257=
A.I.R. 1921 P.C. 62=40 M. L. J. 387 (P.C.).

——*Partition proved—Succession is as between divided members.*

A general partition between the Zemindar and the other members of his joint family putting an end to their co-parcenary must be held to put an end to their interests if any in the impartible estate also. When that fact is found and it is decided that when the succession opened there was no co-parcenary between the last holder and the person who claims to be his successor, the ratio of the rule of succession by survivorship is gone and succession must then be traced as between divided members. (*Wallis, C.J. and Krishnan, J.*). GURUSAMI PANDIYAN *v.* KALAI PANDIA. 61 I.C. 242=
44 Mad. 1=A.I.R. 1921 Mad. 340.

——The Munagala Zemindari in the Kishna District is impartible and the succession is according to the custom of primogeniture. (*Wallis, C. J. and Sadasiva Aiyar, J.*). KESARA VENKATAPPAYA *v.* NAYANI VENKATARANGA RAO. 59 I.C. 978=
43 Mad. 288=38 M.L.J. 143.

—Impartible Estate—Miscellaneous.

——The Dompara Raj is an ancient impartible estate coming down from the Hindu period. (*Jwala Prasad and Scroope, JJ.*). AMARENDRA MANSINGH *v.* BANAMALI SINGH. 123 I.C. 770=
11 P.L.T. 268=A.I.R. 1930 Pat. 417.

HINDU LAW — Impartible Estate — Miscellaneous

———*Income Tax Act, S.* 12.

The income of an impartible estate is that of the incumbent for the time being and the fact that he is bound to maintain his sons does not entitle him to treat the income as that of the undivided family.(*Dawson-Miller, C.J. and Foster, J.*). RAJA SHIVA PRASAD *v.* EMPEROR.

82 I.C. 633=5 P.L.T. 497=1924 P.H.C.C. 234=2 P. L. R. Cr. 233=4 Pat. 73=A. I. R. 1924 Pat. 679.

———The rule of impartibility so far as has been known, never attaches itself to small estates. (*Ashworth, J.C. and Simpson, A.J.C.*). THAKUR RUDRA PRATAP NARAIYAN SINGH *v.* V. NIRMAN PRASAD SINGH. **74 I. C. 225=9 O. L. J. 552=A.I.R. 1923 Oudh 61.**

—Joint family.
Alienation.
Ancestral property.
Benami.
Breaking of.
Constitution of.
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Dancing Girl.
Dayabhaga.
Exclusion.
Family property.
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—Joint family—Alienation.
Attachment.
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Burden of proof.
Consent.
Father.
Liability.
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Necessity.
Partition.
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Subsequent birth.
Suit to enforce.
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What is.

—Joint family—Alienation—Attachment.

———The attachment of the undivided interest of a co-parcener creates a charge on his interest which is not extinguished by the death of that co-parcener : 5 Cal. 148 (P.C.); 16 All. 449, *Foll.* (*Sulaiman and Daniels, JJ.*). FAQIR CHAND *v.* SAINT LAL. **89 I.C. 291=48 All. 4=23 A.L.J. 877 =6 L.R.A. Civ. 511=A.I.R. 1926 All. 157.**

———*Decree against undivided son—Liability of share to attachment depends on son's right to enforce partition.*

A decree-holder holding a decree against an undivided son only has the right to attach and sell the undivided share in the possession of the father only if the son has the power to bring about a partition in his father's lifetime. The general rule of Hindu Law in the Punjab is that the son cannot enforce such partition : 113 P. R. 1886 and 58 P.R. 1880, *Foll.*; 105 P. R. 1917 (F.B.), *Expl.* (*Campbell, J.*). GAHRU RAM *v.* TARA CHAND. **89 I.C. 176=A.I.R. 1926 Lah. 85.**

—Joint family—Alienation—Benefit.
See HINDU LAW—ALIENATION—NECESSITY—BENEFIT TO ESTATE.

—Joint family—Alienation—Consent.
See HINDU LAW—ALIENATION—NECESSITY—CONSENT OF CO-PARCENERS.

—Joint family—Alienation—Father—Benefit.

———Sale of joint property for purchasing better land is one for benefit of family. (*Krishnan and Odgers, JJ.*). MUTHUSWAMI PILLAI *v.* SANDANA VELAN. **101 I.C. 619=A.I.R. 1927 Mad. 649=53 M.L.J. 218.**

—Joint family—Alienation—Father—Burden of proof.

———Where joint family property is mortgaged by a Hindu father, and the property is sold in execution of a decree on the mortgage, the onus of proving that the debt had been contracted for an immoral purpose lies on the son of mortgagor: 13 Cal. 21, *Foll.*; 39 All. 437, *Foll.* (*Dalal, J.*). BISHUNATH RAI *v.* JODHI RAI. **82 I.C. 180=5 L.R. A. Civ. 690=A.I.R. 1925 All. 120.**

—Joint family—Alienation—Father—Gift.

———Gift by father of 1-8th share of entire property to a Brahmin richer than himself and a legal practitioner is not valid. It is not a gift of a reasonable portion of the family property for charitable purposes. (*Dalal, J.*). SOHAN LAL *v.* PEARE LAL. **117 I.C. 826=A.I.R. 1929 All. 865.**

———Gift of portion of family property by father—Gift beyond authority and so invalid—Son not avoiding gift—Still donee cannot sue father's representatives for possession : 33 All. 783 (F.B.); A.I.R. 1917 P.C. 61, *Rel. on* ; 19 Cal. 123, *Discussed* : 10 A.L.J. 112, *Dist.* (*Dalal, J.*). SOHAN LAL *v.* PEARE LAL. **117 I.C. 826=A.I.R. 1929 All. 865.**

—Joint family—Alienation — Father — Immoral debt.

———Mortgage by father for immoral purposes—Personal money-decree passed against father—Joint ancestral estate attached in execution—Fathers's share cannot be released, but the son's share is to be released : 3 Cal. 198 (P.C.); 5 Cal. 148 (P.C.) and 16 All. 449, *Rel. on* ; 27 All. 16 (F.B.) and A.I.R. 1925 All. 327, *Ref* ; A.I.R. 1924 P. C. 50, *appl.* (*Sulaiman and Daniels, JJ.*). SHIVA NATH PRASAD *v.* TULSI RAM. **89 I.C. 480=48 All. 1=23 A.L.J. 865=6 L.R.A. Civ 523=A.I.R. 1925 All. 801.**

—Joint family—Alienation—Father—Powers of.

———The father of an undivided family subject to the Mitakshara law has full power of disposition over his self-acquired immovable property : 20 All. 267 (P.C.) and 10 Bom. 528, *Foll.* (*Zafar Ali and Campbell, JJ.*). WAZIR SINGH *v.* MOTI SINGH. **94 I.C. 492=7 Lah. 522=27 P.L.R. 846=A.I.R. 1926 Lah. 395.**

———After adoption, adopted son becomes co-parcener with adoptive father—Latter cannot dispose of joint family property. (*Shadi Lal, C. J. and Le Rossignol, J.*). PARMA NAND *v.* SHIV CHARAN DAS. **59 I.C. 256=2 Lah. 69=3 L.L.J. 82=21 P.L.R. 1921=A. I. R. 1921 Lah. 147.**

HINDU LAW—Joint family—Alienation—Father—Son bound.

—Joint family—Allenation—Father—Son bound.

——Property gifted to wife—She mortgaging it and borrowing money for payment of previous debts binding on the family, in payment of her own debts and in payment of debts incurred on account of expenses for defence of her husband in a criminal case—Decree is binding on sons for the amounts excepting the debts incurred by the mother on her own behalf : 24 Bom. 135 and 34 Mad. 188, *Foll.* (*Sulaiman and Kendall, JJ.*). TARA KISAN *v.* HARKISHEN DAS. **108 I.C. 114=50 All. 447=26 A.L.J. 116=A.I.R. 1928 All. 251.**

——A man who is a single owner and has no co-parcener can dispose of property whether it is ancestral or not in any manner he pleases. An alienation made by the father at a time when there was no co-parcener is a valid alienation and is binding on a subsequently born son. (*Lindsay, J.C.*). KANAHAI LAL *v.* B. NAWAB BEGAM. **62 I.C. 811=8 O.L.J. 285=A.I.R. 1921 Oudh 171.**

—Joint family—Alienation—Father—Validity of.

——Mortgage by father to recover his self-acquired property—Sons are not bound—But if a decree is passed against father sons are bound unless they prove immorality or illegality of debt: 17 O.C. 318; A.I.R. 1924 Oudh 394; A.I.R. 1923 Oudh 227 and A.I.R. 1924 Oudh 34, *Appl.* (*Hasan and Raza, JJ.*). NAND LAL *v.* UMRAI. **93 I.C. 655=29 O.C. 260=3 O.W.N. 359=1 Luck. 360=A.I.R. 1926 Oudh 321.**

——*Mortgage neither for necessity nor to discharge antecedent debt—Only father's share is liable.*

The words "would not bind more than his own interest" appearing in the third proposition of law laid down by the Privy Council in *Brij Narain* v. *Mangal Prasad*, A.I.R. 1924 P.C. 50 do not mean that the father is declared, to be competent to bind his own interest in a joint family estate by executing a mortgage deed to discharge his debt even though the debt is not incurred for legal necessity and is not an antecedent debt. All that the words mean is that if the deed is not found to be valid as a mortgage a simple money decree will be passed and the share of the father alone and not the whole estate will be available to the decree-holder in execution. (*Kendall, A.J.C.*). JOKHU PANDE *v.* MATA PRASAD TEWARI. **83 I.C. 1044=27 O.C. 161=A.I.R. 1925 Oudh 94.**

——No mortgage can be enforced against property belonging to a joint family unless it is established that its consideration was taken for the payment of an antecedent debt of the father independent of the mortgage or for legal necessity. (*Kanhaiya Lal, J.C.*). RATAN *v.* SHEO LAL. **76 I.C. 1055=A.I.R. 1925 Oudh 35.**

——The mere circumstances of the pious obligation of a Hindu son to pay the father's debt does not validate a mortgage which is invalid for want of legal necessity or of the necessity for the payment of antecedent debt : A.I.R. 1923 Oudh 150 ; A.I.R. 1924 P.C. 50, *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). GAJADHAR BAKSH SINGH *v.* BAIJNATH. **79 I.C. 104=27 O.C. 133=11 O.L.J. 264=A.I.R. 1926 Oudh 9.**

——*Alienation by father for debt barred at date of alienation binds sons.*

A right to receive the payment of a debt, as distinct from a right to enforce its payment, subsists, even after the remedy by action has become barred by time; and if the debt exists and the debtor is willing to pay it by an alienation of the family property, such an alienation, if otherwise valid, can bind his sons and grandsons to the same extent as if the said debt had been received by the debtor, and was sought to be recovered by the creditor by the atttachment and sale of the family estate : 33 Mad. 308; 6 Mad. 293; 43 All. 604; A.I.R. 1922 All. 402, *Foll.* ; 8 A.L.J. 1099; 35 All. 207; 41 Bom. 347, *Dist.*(*Walsh, Ag. C.J., Piggott, Kanhaiya Lal, Daniels and Mukerji, JJ.*). GAJADHAR *v.* JAGANNATH. **80 I.C. 684=22 A.L.J. 601=5 L.R.A. Civ. 458=46 All. 775=A.I.R. 1924 All. 551 (F.B.).**

HINDU LAW — Joint family — Allenation — Necessity.

—Joint family—Alienation—Liability.

——*Joint mortgage by some members—One of them can be made liable for the whole debt.*

Where some of the members of the joint family mortgage the joint properties, each of them representing to the mortgagee that he had whatever share or interest did not belong to the others, it is no defence to a suit on the mortgage against one of them that the suit is time-barred as against others in view of the covenant to pay jointly and severally. In such a case one of the mortgagors can be made liable for the whole debt and he can have his remedy by contribution against other mortgagors. (*Rankin, C.J. and Majumdar, J.*). BEHARI LAL *v.* INDRA NARAYAN. **104 I.C. 206=45 C.L.J. 571=31 C.W.N. 985=A.I.R. 1927 Cal. 665.**

—Joint family—Alienation—Manager.

——Suit on mortgage by manager of joint family property—Court has power to enquire into propriety of transaction as also question of rate of excessive interest, onus of proving which lies on mortgage : A.I.R. 1919 P.C. 12 and A.I.R. 1923 P.C. 37, *Rel. on.* (*Wazir Hasan, C.J. and Srivastava, J.*). RAM SARAN MISRA *v.* JHULLAR SINGH. **7 O.W.N. 479=A.I.R. 1930 Oudh 333.**

—Joint family—Alienation— Necessity.

——A creditor who lends after satisfying himself as to the existence of necessity is not bound to see to the application of the money in the case of an alienation by the manager of joint Hindu family. (*Ramesam and Jackson, JJ.*). GANGADHARA PRAHARAJ *v.* SRI DINABANDHU SANTRA. **1929 M.W.N. 845.**

——*Enquiry by alienee—When necessary.*

In the case of an alienation of joint family property where the existence of the debts turns out to be true *bona fide* enquiry on the part of the lender as a mode of justifying the transaction is necessary. It is only where the debt turns out not to be true and the representations made to the creditor turn out to be false that a second heading namely whether the lender made *bona fide* enquiries and got satisfied by his enquiries that there is a necessity becomes material. (*Ramesam and Jackson, JJ.*). GANGADHARA PRAHARAJ *v.* SRI DINABANDHU SANTRA. **1929 M.W.N. 845.**

——A sale-deed by the manager of a joint Hindu family of ancestral property without any legal necessity is void from its inception: A.I.R. 1922 Oudh 257; A.I.R. 1923 P.C. 189, *Rel. on.* (*Wazir Hasan, Ag. C.J. and Pullan, J.*). SHEO RAJ *v.* AJUDHIYA. **116 I.C. 195=6 O.W.N. 213=4 Luck. 503=A I.R. 1929 Oudh 284.**

——Alienation by a junior member, though not a karta, if for necessity is valid: A.I.R. 1921 Pat. 48 and A.I.R. 1922 Pat. 553, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). RAMDAS SINGH *v.* TANAK SINGH. **111 I.C. 51=9 P.L.T. 758=A.I.R. 1928 Pat. 557.**

HINDU LAW — Joint familiy — Alienation — Necessity.

———*Son's liability.*

The managing co-parcener of a joint undivided estate cannot alienate or burden the estate *qua*-manager except for purposes of necessity; but if he is the father and reversioners are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt: A.I.R. 1924 P.C. 50, *Foll.* (*Tek Chand and Agha Haidar, JJ.*) KALI CHARAN *v.* JAGANNATH. **103 I.C. 227= A.I.R. 1927 Lah. 812.**

———Where the facts were: firstly, that the alienor was a man of excellent character; secondly, that he had a son whose interests he was not likely deliberately to prejudice; thirdly, that the alienation remained unchallenged for a long time, and fourthly, the other property of the alienor was under mortgage,

Held, that necessity for alienation may be inferred from these facts. (*Fforde and Campbell, JJ.*). SUCHA SINGH *v.* KALOO. **96 I.C. 5 (Lah.).**

———*Alienation by manager—If sale for consideration is not much over the legal necessity and the transaction is not an improper one, sale should not be set aside.*

In cases where the part of the consideration not justified on the grounds of legal necessity is small, sale should not be set aside, and where it is insignificant the sale should even be upheld: 48 All. 183, *Rel. on.*

Where it is necessary to sell property in order to discharge a binding legal obligation, the purchase price must occasionally exceed the actual cash requirements, and unless it appears that the transaction itself was an improper one or that some more advantageous arrangement could have been made, the Courts should be slow to set aside a sale to a *bona fide* purchaser merely because the consideration paid is somewhatgreater than the actual requirements of the joint family. (*Dawson-Miller, C.J. and Foster, J.*). ACHUTAN AND JHA *v.* SURJANARAIN JHA. **95 I.C. 991= 5 Pat. 746=7 P.L.T. 719=1926 P.H.C.C.274= A.I.R. 1926 Pat. 427.**

———*Mortgage by some members—Legal necessity must be proved for rate of interest also.*

It is incumbent on those who support a mortgage made by some of the members of a joint Hindu family to show not only that there was necessity to borrow but that it was not unreasonable to borrow at some such high rate and upon some such terms, and if it is not shown that there was necessity to borrow at the rate and upon the terms contained in the mortgage that rate and those terms cannot stand. (*Wazir Hasan and Neave, A.J.Cs.*). BAKHTAWAR SINGH *v.* BAKHTAWAR SINGH. **78 I.C. 232= A.I.R. 1925 Oudh 235.**

———*Alience must prove at least* bona fide *enquiry.*

The lender is bound to enquire into the necessities for the loan, and to satisfy himself as well as he can, with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. If he does so enquire, and acts honestly, the real existence of alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and under such circumstances, he is not bound to see to the application of the money. (*Scott-Smith and Fforde, JJ.*). RODHA RAM *v.* AMAR CHAND. **77 I.C. 333=4 Lah. 208= A. I. R. 1924 Lah. 141.**

HINDU LAW—Joint family—Alienation—Partition.

———*Legal necessity—Recitals are sufficient where evidence is impossible.*

A recital is not a substitute for evidence of the facts which a creditor must prove. No party can be asked to prove what is impossible and when the proof of the facts justifying legal necessity of representations in respect of such a necessity has become impossible by lapse of time, the recital would be sufficient evidence to support the deed, provided that there are independent circumstances which are such as would justify a reasonable belief in the truth of the recital: 36 All. 187 and 44 Cal. 186, *Foll.* (*Wazir Hasan, A.J.C.*). RAM NATH *v.* RAM HARAKH. **75 I.C. 770= 80 I.C. 471=10 O.L.J. 245= A.I.R. 1924 Oudh 49.**

———*Mortgage by Karta for business—Onus is on mortgagee to prove necessity for business.*

When the manager of a joint Hindu family mortgages joint estate, it must still be incumbent on the parties supporting the mortgage to prove that the money raised on the mortgage was required for family purposes No doubt if the family is carrying on trading business, it would be very much easier to prove that the money was required for the purposes of that trade, and so for family purposes, than if the family were mere agriculturists. But it is not necessary inference that because the manager was carrying on business and because he raised moneys by mortgaging family property, that the money was necessarily required for the purpose of the joint family business. (*Macleod, C.J, and Crump, J.*). VITHAL YESHWANT *v.* SHIVAPPA MALLAPPA. **72 I.C. 659=25 Bom. L.R. 323=47 Bom. 637= A.I.R. 1923 Bom. 265.**

———A co-parcener in a joint Hindu family cannot be predicated to have any share of his own in the joint family property until partition and therefore any alienation by him of the joint family property without any benefit to the family cannot be upheld even to the extent of his share: 21 P.R. 1912, *Foll.* (*Le Rossignol and Wilberforce, JJ.*). MUNSHI LAL *v.* SOHAN LAL. **66 I.C. 881= 3 L.L.J. 137.**

———*Mortgagee praying for personal decree against executants—No question of legal necessity arises.*

Where joint family property is mortgaged but the mortgage debt is not sought to be enforced against the mortgaged property and only a simple money decree is asked for in respect of it, then no question of legal necessity arises and in the absence of fraud, undue influence, or other circumstances which would invalidate the contract, the members who entered into the mortgage, are clearly liable and the representatives of the executants who are dead are liable to the extent of the assets of the executants who are dead which have come into their hands: 39 All. 437, *Rel. on.* (*Daniels and Lyle, A.J.Cs.*). PRAG DIN *v.* BHAGWATI SHAI. **66 I.C. 687= 3 O. L. J. 418=A.I.R. 1921 Oudh 193.**

—Joint family—Alienation—Partition.

———*Alienee's right to get vendor's share is only equitable.*

The right of the purchaser to have the property of his purchase allotted exclusively to his vendor's share is not an absolute right, but is in the nature of an equitable right and the Courts do as a matter of fact take this into consideration in adjusting the equities between the parties, as far as

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possible. (*Kinkhede, Offg. A.J.C.*). BHANRAO *v.* GANGI. **95 I.C. 734=23 N.L.R. 184= 9 N.L.J. 170=A.I.R. 1926 Nag. 453.**

———Where a member of a Hindu joint family mortgaged his undivided share and in the subsequent partition the property to which the mortgage related was allotted wholly to another member of the family but was sold in execution of the mortgage decree obtained by the mortgagee,

Held,—he (the member to whom the property had been allotted in partition) could recover the property sold. (*Daniels and Neave, JJ.*). NARAIN *v.* RAM SARAN. **85 I.C. 490=22 A.L.J. 353= 5 L.R.A. Civ. 751=A.I.R. 1924 All. 871.**

———Mortgage by one member—Partition—Mortgaged property allotted to another and other property allotted to mortgagor—Substituted property comes under the mortgage. (*Prideaux and Kinkhede, A.J.Cs.*). BALIRAM SINGH *v.* RAMCHANDRA. **78 I.C. 77=A.I.R. 1924 Nag. 393.**

—Joint family—Alienation—Rights of alienee.

———*Purchaser of undivided share is not entitled to joint possession.*

A purchaser of an undivided share of a joint Hindu family, if out of possession, should not be given joint possession with the other co-parceners but should be left to his remedy of a suit for partition : A.I.R. 1926 Bom. 399 and 39 Mad. 265, *Rel. on.* (*Macnair, A.J.C.*). KAMTA PRASAD *v.* MADHAVRAO. **116 I.C. 648= 12 N.L.J. 1=25 N. L. R 28= A.I.R. 1929 Nag. 60.**

———Alienation by the manager—Vendee is justified in insisting on other adult members to be parties to the contract. (*Fforde and Addison, JJ.*). SHAM DAS *v.* KISHAN CHAND. **110 I. C. 850= 9 Lah. 67=29 P. L.R. 310= A.I.R. 1928 Lah. 154.**

———The purchaser of an undivided share of a Hindu co-parcener gets only an equity to enforce partition and takes the share when partitioned subject to all the liabilities on it in the hands of his vendor. (*Coutts Trotter, C.J., Krishnan and Curgenven, JJ.*). K. VENKU REDDI *v.* M. VENKU REDDI. **100 I.C. 1018=50 Mad. 535= 1927 M.W.N. 267=25 M.L.W. 784= 38 M.L.T. 342=A. I. R. 1927 Mad. 471= 52 M.L.J. 387 (F.B.).**

———Family divided in status but property not divided—Alienation by one member—Alienee need not sue for general partition. (*Spencer, J.*). VENKIAH *v.* GURAVIAH. **96 I.C. 290= 23 M.L.W. 604=A. I. R. 1926 Mad. 757= 50 M.L.J. 669.**

———*Execution purchaser of co-parcener's interest gets under certain circumstances good title to what he purchases.*

It is well established law that in families governed by the law of the Mitakshara no co-parcener has in the joint family property any separate and defined share, although in Northern India at least a co-parcener of such joint family property has a right to obtain a partition and on such partition he will obtain a separated and defined share of the joint family property. A creditor of a co-parcener may, under certain circumstances, obtain a partition of his debtor's share in joint family property, and when in execution of a decree a Court sells what is joint family property, as the property of the judgment-debtor the purchaser at the Court sale may under certain circumstances obtain a good

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title to what he purchases. (*Sir John Edge.*) SAT NARAIN *v.* BEHARI LAL. **84 I. C. 883= 1925 M.W.N. 1=23 A.L.J. 85=6 L.R.P.C. 1= 6 Lah. 1=21 M.L.W. 375=27 Bom. L.R. 135= 52 I.A. 22=29 C.W.N. 797=26 P.L.R. 81= A.I.R. 1925 P. C. 18=47 M.L.J. 857 (P.C.).**

———Sale of his share by a co-parcener—Suit for partition by the purchaser—Suit lies—Share purchased from the vendor to be given to him if possible : 11 Bom. H. C. 72 and 11 Bom. H. C. 76, *Foll.* (*Macleod, C. J. and Shah, J.*). DHULABHAI DABHAI *v.* LALA DHULA. **64 I.C. 115= 46 Bom. 28=23 Bom. L. R. 777= A. I. R. 1922 Bom. 137.**

———Sale by co-owner of specific portion and delivery of possession—Alienee's possession is adverse to other co-owners—A co-owner's possession of the area cannot be adverse to his co-sharers until he has definitely declared to them his intention of holding on his own behalf, but this principle does not applly to the alienee of a co-sharer whose possession must be regarded as adverse to the co-sharers from its commencement. (*Broadway, J.*). ANWAR *v.* KISHAN SINGH. **71 I.C. 171= A.I.R. 1922 Lah. 205.**

———*Purchaser's right is only on equity to work out his rights by partition suit—Courts must decree possession to co-parceners.*

A purchaser has only an equity as against the other members of the co-parcenary to work out his interests by a suit for a general partition. In cases where possession of the property is claimed by a co-parcener on the ground of the invalidity of the alienation as against him, the Court must decree possession and simply declare the right of the purchaser to a partition. (*Kumaraswami Sastri and Devadoss, JJ.*). SUBBE GOUNDAN *v.* KRISHNAMACHARI. **68 I.C. 869=45 Mad. 449= 1922 M. W. N. 269=15 M L.W. 537= 30 M. L.T. 217=A.I.R. 1922 Mad. 112= 42 M.L.J. 372.**

———Vendee from some of the members—Transferee from all the members can challenge the sale —No condition to re-pay the sale price to the former, can be imposed for his obtaining possession. 33 All. 783, *Rel. on.* (*Dalal and Wazir Hasan, A. J. Cs.*). RAGHUBAR PANDE *v.* GOKUL PRASAD. **65 I.C. 107=24 O. C. 307= A.I.R. 1921 Oudh 188.**

—Joint family—Alienation—Setting aside.

———*Mesne profits from alienee—When can be claimed.*

In a suit to set aside a sale by a member of a joint Hindu family which is voidable no mesne profits can be allowed up to the date of suit when no notice is given to the alienee questioning the alienation: A.I.R. 1924 Mad. 81, *Foll.* (*Ramesam, J.*). (NAGUR) PICHAI ROWETHER *v.* RAKAPPA. **100 I.C. 202=A.I.R. 1927 Mad. 528.**

———*Binding portion of consideration must be distributed over all shares.*

Three brothers, one of them being a minor, formed a joint family. The major brothers and their mother, on behalf of the minor brother, sold the joint family property. The minor, on attaining majority, brought a suit to set aside a sale for want of necessity. It was found that two-thirds of the consideration was not for necessity and the remaining one-third had benefitted the plaintiff.

Held, that according to accepted equitable principles, in the absence of anything appearing to the contrary, the consideration for the sale must be

HINDU LAW — Joint family — Alienation — Setting aside.

distributed over the whole of the property sold in proportion to the value of each part. There is no ground for supposing that one portion of the consideration is allocated to a particular share and the other portion to the other share or shares. The valid portion of the consideration, as well as the invalid portion, must be distributed over the shares of the three brothers equally. The consequence of this apportionment is that the plaintiff's one-third share must be treated as charged to the extent of one-third of the valid portion of the consideration: A. I. R. 1924 Nag. 109 and 37 Mad. 435, *Foll.*; 12 N. L. R. 161, *Diss. from.* (*Kinkhede, A.J.C.*). RADHA KISHAN *v.* BISAN SINGH. **101 I.C. 262= A.I.R. 1927 Nag. 379.**

———*Mesne profits against alienee—When allowed.*

Where a sale-deed, challenged as being one without necessity, has not been unconditionally set aside, but the plaintiff is held entitled to get it set aside on payment of his quota of the valid portion of the consideration, the vendee must necessarily be deemed to be lawfully in possession until the sale is set aside, and he is therefore not accountable for mesne profits: A.I R. 1918 P. C. 118, *Foll.* (*Kinkhede, A. J. C.*). RODHA KISAN *v.* BISAN SINGH. **101 I.C. 262= A.I.R. 1927 Nag. 379.**

———Mortgage set aside—Court may in equity order payment of certain amount as condition precedent to recovery of property. (*Wazir Hasan, A.J.C.*). GAURI SHANKAR *v.* BADRI NATH. **88 I.C. 474= A.I.R. 1925 Oudh 685.**

———Right of the co-parcener to challenge alienation is not lost even where a manager is able to give discharge: 31 All. 156, *Foll., though doubted*; 35 All. 380, *Appr.* (*Daniels, J.*). ISH DAT TEWARI *v.* TAMESHAR. **79 I.C. 296= 5 L.R.A. Civ. 357= A.I.R. 1924 All. 916.**

—Joint family—Alienation—Subsequent birth.

———Members of a joint Hindu family born after the alienation of the family property by another member of that family cannot question the validity of that alienation: 33 All. 283; A.I.R. 1925 P.C. 33 and A.I.R. 1924 All. 798, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). BELI RAM *v.* SARDARI LAL. **A.I.R. 1930 Lah. 613.**

———*Subsequently born co-parceners get neither a new cause of action nor a new starting point for limitation.*

Where a suit is brought to contest an alienation of joint family property it is from the date on which the cause of action arose that period of limitation must be reckoned. Subsequent birth of a co-parcener does not create a fresh cause of action or a new starting point from which limitation should be reckoned. By the express terms of the section the extended period of three years after majority can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. A person who was not in existence at the time does not come within this description and therefore is not entitled to the three years' extension. (*Sir Lawrence Jenkins.*) RANODIP SINGH *v.* PERMESHWAR PERSHAD. **86 I.C. 249=23 A.L.J. 176= 27 Bom. L.R. 175=21 M.L.W. 236= 52 I.A. 69=6 L.R P.C. 47=1925 M.W.N. 262= 12 O.L.J. 74=2 O.W.N. 1=47 All. 165= 27 O.C. 343=29 C.W.N. 666=26 P.L.R. 113= A.I.R. 1925 P.C. 33=48 M.L.J. 29 (P.C.).**

———*No new cause of action, nor new starting point for limitation.*

HINDU LAW — Joint family — Alienation — Validity of.

A son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation when the purchaser takes possession (see Art. 126, Limitation Act), and a new cause of action does not accrue upon the subsequent birth of a son in the family.

The after-born son does not acquire a fresh cause of action and a fresh period of limitation does not start from the date of his birth. In his case the time from which the period of limitation is to be reckoned is the date of the transfer and when he was not born on that date and was under no disability he cannot obtain the benefit of the provisions of S. 6 of the Limitation Act. He can take advantage of any cause of action existing at his birth and sue within the period of limitation but cannot start a fresh period at his birth: 8 W.R 285; 4 All. 120, *Foll.*; 24 O.C. 330; 1 Lah. 558, *Ref. to.* (*Dalal, J.*). SIKANDAR SINGH *v.* BACHCHU PANDE. **82 I.C. 307=5 L.R A. Civ. 663= A.I.R. 1925 All. 54.**

———A co-parcener not born on date of alienation by his father and uncle and who separated before suit can't set aside the alienation: A.I.R. 1922 All. 342, *Dist.* (*Daniels, J.*). ISH DAT TEWARI *v.* TAMESHAR. **79 I.C. 296=5 L.R A. Civ 357= A.I.R. 1924 All. 916.**

———*No new cause of action.*

Although it cannot be disputed that a subsequently born Hindu son has a right to avoid an alienation which took place at a time when other members of the family, not parties to the deed, were alive, it does not follow that he has a fresh start for the purpose of limitation from the time of his birth. When an alienation is made which is not justified by necessity a cause of action arises in favour of the other members to have it set aside and to recover possession from the alienee but there is only one cause of action in favour of the other members of the family. Successive causes of action cannot arise as new members are born year after year: 33 All. 654; 19 A.L.J.R. 978. *Dist.* (*Sulaiman and Kanhaiya Lal, JJ.*). SITA RAM *v.* CHEDDI SINGH. **83 I.C. 1052=5 L.R.A. Civ. 634= 22 A.L.J. 809=46 All. 882=A.I.R. 1924 All. 798.**

———*Mortgage after birth, to discharge mortgage executed before birth is binding.*

Where the entire consideration for the mortgage deed in suit consisted of money due on a previous deed executed by persons who were on that date sole owners of the property, the minor members born after the previous mortgage but before the mortgage in suit cannot dispute the consideration of the mortgage in suit: 33 All. 283 and 20 A.L.J. 333, *Ref.* (*Mears, C.J. and Piggott, J.*). PARTAP SINGH *v.* BOHRA NATHU RAM. **79 I.C. 234= 45 All. 49=A.I.R. 1923 All. 197.**

—Joint family—Alienation—Suit to enforce.

———Mortgage suit against family—All members joined as parties, and not only the Karta—Suit by miner members to set aside mortgage decree—Mortgagee cannot plead that they were not necessary parties. (*Das and Adami, JJ.*). GANGANAND SINGH *v.* RAMESHWAR SINGH BAHADUR. **102 I. C. 449=6 Pat. 388= 8 P.L.T. 730=A.I.R 1927 Pat. 271.**

—Joint family—Alienation—Validity of.

———*Manager—Alienation by—Subsequent assent of junior members, if can validate.*

Quaere.—Whether in the case of alienation of joint family property the later assent by the mem-

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bers will help to validate a transaction which was void at its inception. (*Ramesam and Jackson, JJ.*). GANGADHARA PRAHARAJ MAHAPATRO *v.* SRI DINABANDU SANTRA MAHAPATRO.

1929 M.W.N. 845.

——A member of a Hindu joint family who was never in exclusive possession of a plot cannot transfer it by the deed of 'birth' which generally implies an under-proprietary right: 14 O. C. 41; A.I.R. 1924 Oudh 60; A. I. R. 1927 Oudh 467, *Rel. on.* (*Raza, J.*). DUKHI SINGH *v.* SARJU DEVI.

107 I.C. 178=4 O.W.N. 1225= A.I.R. 1928 Oudh 113.

——*Transfer by one member to another member is void.*

A member of a joint undivided Hindu family cannot legally transfer a portion of the joint family property to another member of the family. No interest can pass under such transfer and it need not be set aside: 41 Mad. 612, *Dist.* (*Rafique and Stuart, JJ.*). RAM CHAND *v.* MATHURA CHAND.

60 I.C. 896=19 A.L.J. 299= A.I.R. 1921 All. 298.

—Joint family—Alienation—What is.

——Permanent lease is an alienation—Legal necessity or the benefit of the joint family estate must be proved: A.I.R. 1917 P.C. 33, *Foll.* (*Kendall and Niamatullah, JJ.*). BASDEO NARAIN *v.* MUHAMMAD YUSUF. **116 I.C. 491=51 All. 285= 26 A.L.J. 1313=9 L.R.A. Rev. 321= A. I. R. 1928 All. 617.**

—Joint family—Ancestral property.

——*Ancestral property of sole surviving co-parcener and self-acquisition—Difference between.*

Per *Patkar, J.*—"There is a substantial difference between the self-acquired property of a person and the ancestral property which comes into his hands and of which he is possessed as the sole surviving co-parcener. He can make a gift or a bequest of the self-acquired property even though a son born or adopted be in existence, but in respect of the ancestral property of which he is possessed as the sole surviving co-parcener. he cannot make a gift or bequest as soon as a son is either born or adopted." (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL.

32 Bom. L.R. 1217=A.I.R. 1930 Bom. 517.

——A substantial nucleus of ancestral property in certain property owned by a person gives the character of ancestral property to all the property owned by him. (*Tek Chand and Agha Haidar, JJ.*). BELI RAM *v.* SARDARI LAL.

A.I.R. 1930 Lah. 613.

——The mere fact that the name of common ancestor appears in the settlement pedigree table is, by itself and without more, insufficient to prove that the land in possession of his descendants was once held by him: A. I. R. 1927 Lah. 477, *Rel. on.* (*Tek Chand, J.*). KISHAN SINGH *v.* LACHHMAN DAS. **122 I.C. 109=A.I.R. 1930 Lah. 238.**

——There is no presumption that the property in the hands of a member of a Hindu family is joint or ancestral property. The character of such property must be established by the plaintiff who seeks to lay a claim to it: 8 N. L. R. 82 and A.I.R. 1926 Nag. 389, *Foll.* (*Findlay, J.C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I. C. 609=A.I.R. 1930 Nag. 225.**

——*House is no nucleus.*

A house in which the members reside cannot in law furnish a nucleus for acquisitions so as to clothe them with the character of ancestral property: A.I.R. 1926 Nag. 389, *Foll.* (*Findlay, J.C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I. C. 609=A.I.R. 1930 Nag. 225.**

HINDU LAW—Joint family—Ancestral property.

——Even the joint acquisitions of two brothers without the aid of any income from the ancestral nucleus would not make the property in their hands "ancestral property." (*Findlay, J. C. and Subhedar, A.J.C.*). TRIMBAKDAS *v.* MT. MATHABAI. **124 I.C. 609=A.I.R. 1930 Nag. 225.**

——There is no presumption in Hindu Law about any property being ancestral: 12 Bom. 122, *Rel. on.* (*Stuart, C. J. and Srivastava, J.*). MT. BRIJ KUNWAR *v.* SANKATA PRASAD. **123 I.C. 849= 6 O W.N. 963=A.I.R. 1930 Oudh 39.**

——*Additions to ancestral house—When not ancestral property.*

No doubt where a Hindu father and son live together and have an ancestral house any addition made to that house is to be presumed to have been built out of the nucleus of joint family property. But this does not apply to a case where the father and son carry on their independent callings and are not shown to have any common fund or funds or to have pooled their incomes: A.I.R. 1927 Mad. 676, *Rel. on.* (*Broadway and Harrison, JJ.*). THARESHER *v.* RAM CHAND. **119 I.C. 239= 11 L.L.J. 85=A. I. R. 1929 Lah. 468.**

——*Nature of the property must be proved—No presumption either way.*

There is no presumption that the property in the hands of a separated member of a Hindu family is joint family or ancestral property. The joint or ancestral character of the property in dispute must be established by one who claims a share in such property.

Where the Courts below accepted as true the evidence that *S* and *C* were separate in mess as well as in property in the absence of any evidence to prove that the property in dispute originally belonged to a common ancestor of *S* and *C* or that it was acquired by *S* with the aid of ancestral nucleus, the lower Courts were perfectly justified in holding that the property in suit which admittedly stood recorded in the sole name of *S* was his self-acquisition and not joint ancestral property in which *C* or his descendants had any interest: 8 N. L. R. 82 and A. I. R. 1926 Nag. 389, *Foll.* (*Subhedar, A.J.C.*). HARI *v.* BANGH.

120 I. C. 402 (Nag.).

——*Suit for recovery of possession of ancestral property—Burden of proving that property is ancestral is on plaintiffs.*

Ordinarily as between two Hindu brothers there is a presumption of jointness; but once a suit is brought for the recovery of possession of a certain property that has passed out of the family of which the plaintiffs are members, and when in that suit it is contended by the defendants, that the property sought to be recovered by the plaintiffs was not the ancestral property of the plaintiffs, the burden of proving that the property was ancestral lies on the plaintiffs: 35 Cal. 1089 (P.C.), *Foll.* (*Iqbal Ahmad, J.*). LACHMAN DUBE *v.* AMBIKA DUBE. **100 I. C. 444= A.I.R. 1927 All. 366.**

——The share which a co-parcener takes as the share of him and his branch on his separation is ancestral property. (*Sir John Edge.*) HARI BAKHSH *v.* BABU LAL. **83 I.C. 418= 22 A.L.J. 254=34 M.L.T. 70=5 Lah. 92= 5 L.R.P.C. 113=51 I.A. 163=28 C.W.N. 983= 1924 M.W.N. 650=20 M.L.W. 406= 26 Bom. L.R. 1108=A.I.R. 1924 P.C. 128= 47 M.L.J. 938 (P.C.).**

HINDU LAW—Joint family — Ancestral property.

——Per *Bucknill, J.*—Property from mother is not : 25 M. 678; 35 Cal. 1039; 3 P.L.J. 188, *Foll.* (*Dawson Miller, C. J. and Bucknill, J.*). HARI PRASAD SINGH *v.* SOURENDRA MOHAN SINGH.
66 I.C. 945=1 Pat. 506=3 P.L.T. 709=A.I.R. 1922 Pat. 450.

—Joint family—Benami.

——Property standing in wife's name is not presumed to belong to her husband unless it is proved that husband advanced money for its purchase : 8 Mad. 214, *Rel. on* ; A I.R. 1925 P. C. 181, *Expl.* (*Krishnan and Venkatasubba Rao, JJ.*). OFFICIAL ASSIGNEE OF MADRAS *v.* NATESA GRAMANI.
98 I. C. 660=38 M. L. T. 153=A. I. R. 1927 Mad. 194

——There is no presumption that a property standing in the name of a Hindu female, who is a member of joint Hindu family belongs to the joint family and is not her stridhan property ; 26 Cal. 871 (P.C.); 13 Cal. 181 (P.C.); 8 Mad. 214; 29 Bom. 306, 3 Pat. L. W. 341 and 33 C.L.J. 201, *Foll.* (*Mookerjee and Chotzner, JJ.*). BHUBAN MOHINI DASI *v.* KUMUD BALA DASI.
82 I.C. 934=28 C.W.N. 131=39 C.L.J. 140=A.I.R. 1924 Cal. 467.

——Where property is purchased by a joint Hindu family in the name of a female member thereof who has right to maintenance out of joint family property, she cannot be said to have such an interest in the purchase as would take her case out of S. 66, C.P. Code: 12 Bom, L. R. 317 and 29 All 557, *Foll.* (*Tudball and Sulaiman JJ.*). BAIJNATH DAS *v.* BISHEN DEVI. **63 I.C. 676=43 All. 711=19 A. L. J. 787=A.I.R. 1921 All. 185.**

——*Property standing in the name of a daughter-in-law cannot be presumed to be joint family.*

As the normal state of a Hindu family is one of jointness in mess, worship and estate, the presumption is that all property acquired by or in the possession of a joint member is joint property. But it is well settled that as such presumption is founded on the fact of union, there can be no presumption where the disputed property stands in the name of a non-co-parcener, such as a son-in-law, or a female member of the family. Thus because the property stands in the name of a daughter-in-law of the family, it cannot be presumed that she is not the beneficial owner. (*Mookerjee, Ag. C. J. and Fletcher, J.*). PROTAP CHANDRA *v.* SARAT CHANDRA. **62 I.C. 348=33 C.L.J. 201=25 C. W.N. 544=A.I.R. 1921 Cal. 101.**

—Joint family—Breaking of.

——*Effect of conversion.*

Where a member of a joint Hindu family becomes a convert to another religion, there is a break in the joint status of the famliy: 29 All. 487 and 33 All. 356 (P. C.), *Rel. on.* (*Sulaiman and Kendall, JJ.*). MT. BHAGWAN DEI *v.* SHIB SINGH.
A.I.R. 1930 All. 341.

—Joint family—Constitution of.

——Under the Hindu Law there can be no joint family consisting of two females. All that can happen is that a female can succeed as an heir in certain cases. (*Misra and Raza, JJ.*). KHUSHWAQT RAI *v.* JAGANNATH PRASAD SANDAN.
119 I.C. 872=A.I.R. 1930 Oudh 184.

——*Illegitimate sons—If co-parceners with father —Joint family.*

A father and his illegitimate sons living with him do not form a joint Hindu family with all its legal implications and consequences nor has the father power to admit his illegitimate son as a co-parcener. But on the death of the father the illegitimate sons form a joint Hindu family in regard to the properties which they inherit from him and they have no power to dispose of the property by will. (*Madgavkar and Patkar, JJ.*). SHAMU *v.* BABU ABA. **110 I. C. 116=52 Bom. 300=30 Bom. L.R. 438=A.I.R. 1928 Bom. 153.**

HINDU LAW—Joint family—Customary Law.

——*Existence of property is not a necessary incident, to joint status.*

There is nothing in Hindu Law which states that the properties to be called joint family properties should be immovable properties or that there should be any minimum value which is required to constitute a joint family. Nor is there anything in Hindu Law which says that possession of property is necessary requisite for the constitution of a joint family. A joint family is composed of persons who live together and who are joint in food and worship and the possession of property is not a condition precedent to the establishment of their status. (*Kumaraswami Sastri and Krishnan, JJ.*). JANAKI RAM CHETTY *v.* NAGAMONI MUDALIAR. **93 I.C. 662=49 Mad. 98=22 M.L.W. 301=A.I.R. 1926 Mad. 273=50 M.L.J. 413.**

——There is no rule of Hindu Law under which a daughter's son and his maternal grandfather are deemed to be members of a joint Hindu family. (*Sulaiman, J.*). DUNGAR *v.* JAHANGIR.
87 I.C. 698=A.I.R. 1925 All. 775.

—Joint family—Contract.

——Manager of joint family can enter into a valid contract on behalf of the joint family. (*Shadi Lal, C. J. and Broadway, J.*). GHULAM HUSSAIN *v.* TULLA SHAH RAM SARAN.
120 I.C. 170=A.I.R. 1930 Lah. 142.

——*Contract in favour of manager personally—Not enforceable by other members of his family after his death.*

Where A executed an agreement to sell in favour of *B* personally and received Rs. 2,000 as earnest money, and thereafter *B* died,

Held, that the other members of the joint family of which *B* was the manager cannot sue to enforce the contract against *A* but that *A* was bound to refund the earnest money received by him. (*Das and Macpherson, JJ.*). RAMDULARI KUER *v.* JANG BAHADUR. **77 I.C. 378=1923 P.H.C.C 247=A.I.R. 1923 Pat. 589.**

—Joint family—Customary Law.

——*Son in Punjab is entitled to claim joint possession with father.*

In the Punjab a son is entitled to sue at any rate, for joint possession of the family property, although he is not entitled to claim partition of such property during the lifetime of his father: A.I.R. 1923 Lah. 255, *Foll.* ; 105 P. R. 1917, *Ref.*; 85 P.R. 1915, *Rel. on.* (*Bhide, J.*). HARDAYAL MAL *v.* MULK RAJ. **113 I.C. 344=A.I.R. 1928 Lah. 911.**

——The Courts are not bound to convert a sale executed by the manager of a Hindu joint family into a mortgage, even if necessity for one-fifth or one-sixth of the total consideration has not been established. (*Shadi Lal, C.J. and Johnstone, J.*). NATHU *v.* FATTU. **110 I.C. 269 (Lah.).**

——Mere attachment of ancestral property of a joint family, governed by the customary law which imposes a restriction on alienation by proprietor of his ancestral property does not give a cause of action to his sons to get a declaration that their

HINDU LAW—Joint family—Dancing girls.

reversionary rights should not be affected. (*Shadi Lal, C.J. and Lumsden, J.*). CHET RAM *v.* SPEDDING AND CO., LTD. **74 I. C. 479= 5 L.L.J. 234=A.I.R. 1924 Lah. 52.**

—Joint family—Dancing girls.

———Three dancing-girls living together—One only earning and purchasing property in her own name—No joint funds available for purchase—Purchase is not for the whole family. (*Krishnan and Venkatasubba Rao, JJ.*). KANNAMMAL *v.* RAMATHILAKAMMAL. **97 I. C. 632= A. I. R. 1927 Mad. 38.**

—Joint family—Dayabhaga.

———*No joint family of father and sons.*

Under the Dayabhaga there cannot be a joint family consisting of the father and the sons because so long as the father is alive he is the master. The sons may acquire separate properties of their own but they have no concern whatsoever with the joint family property if any property can be so called during the life-time of the father. Sons after the death of the father may form a normal Hindu joint family. But the test is whether they are joint in food, worship and estate. (*B. B. Ghose and Panton, JJ.*). GOURANGA SUNDAR MITRA *v.* MOHENDRA NARAYAN. **104 I. C. 694= 46 C.L.J. 175=A.I.R. 1927 Cal. 776.**

———A person in more affluent circumstances supporting his brothers—Poor brothers do not form joint family with him. (*B. B. Ghose and Panton, JJ.*). GOURANGA SUNDAR MITRA *v.* MOHENDRA NARAYAN. **104 I. C. 694=46 C.L.J. 175= A. I. R. 1927 Cal. 776.**

———Self-acquisitions—Dayabhaga— Presumption that all property acquired during the time the family remains joint does not apply when family consists of father and his sons : 31 Cal. 448, *Expl.* (*Greaves and Mukerji, JJ.*). JASODA SUNDARI *v.* LAL MOHAN. **91 I. C. 681=42 C. L. J. 486= A. I. R. 1926 Cal. 361.**

———*New trade started by* Karta—*Adjudication of adult members—Minor's share in family property is not liable.*

In a joint family governed by the Dayabhaga School carrying on ancestral trade the inability of a *Karta* to impose on a minor co-parcener the risks and liabilities of a new business started by himself is well-established. No property belonging to the minor can vest by the adjudication in the Receiver. (*Sir Lawrence Jenkins.*) SANYASI CHARAN MANDAL *v.* KRISHNADHAN BANERJI. **67 I.C. 124= 20 A.L.J. 409=24 Bom. L.R. 700=35 C.L.J. 498= 1922 M.W.N. 364=30 M.L.T. 228= 49 Cal. 560=26 C.W.N. 964=16 M.L.W. 536= 49 I.A. 108=A.I.R. 1922 P.C. 237= 43 M. L. J. 41 (P.C.).**

———*Acquisition in the name of a member—Presumption is, it is self-acquisition.*

Under the Dayabhaga School of Hindu Law where one of the members of a joint family acquires property in his own name during the life-time of his father the burden of proving that the property was not the self-acquired property of that member, but in reality belonged to the father, lies on the party making the assertion. (*Newbould and Abdul Majid, JJ.*). NIBARAN CHANDRA SEN GUPTA *v.* SASHI BHUSAN SEN. **60 I.C. 729 (Cal.).**

—Joint family—Exclusion.

———*Ouster—When presumed.*

Where for a long series of years the income payable to the tenants-in-common of a Hindu family is in fact enjoyed by them in shares contrary to those to which they are entitled originally by law,

HINDU LAW—Joint family—Family property —Burden of proof.

the members acting on that view not by an agreement with each other but by way of admission in certain documents or proceedings, neither an ouster of co-tenants resulting in adverse possession of properties, nor some conveyance or agreement regarding the same can be presumed : A.I.R. 1928 Bom. 287, *Rel. on* ; 29 Bom. 300 ; 20 Bom. L. R. 967 ; A. I. R. 1922 Bom. 150 ; 18 Cal. 10 (P. C.) ; 47 Cal. 274 and 8 B. H. C. (A. C.) 166, *Ref.* ; *Fisher and Taylor* v. *Prosser*, (1774) 1 Cowp. 217, *Dist.* (*Marten, C.J. and Murphy, J.*). MULJI NAROTAM *v.* MIRALAL RAMCHANDRA. **121 I.C. 459= 31 Bom. L.R. 1067=A.I.R. 1929 Bom. 424.**

———*Notice—Ouster—What is.*

Mere notice by one co-sharer who redeemed mortgaged joint property to the other to the effect that, if he did not pay his share of the amount required for paying off the mortgage, he will have no right over the property redeemed is not sufficient to constitute ouster. If since the date of the notice the defendant has not been in possession of the family property sufficiently long, it cannot be presumed that such long possession amounts by itself to an ouster. (*Macleod, C.J. and Shah, J.*). KESHAV NARAYAN SHASTRI PRABHAVE *v.* RAMCHANDRA GANESH PRABHAVE. **77 I. C. 521= A. I. R. 1922 Bom. 156.**

—Joint family—Family property—Accretions.

———Properties purchased with the assistance of the joint funds are joint properties liable to be divided amongst the members of the family: 29 All. 244, *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I.C. 574=11 O.L.J. 286= A.I.R. 1924 Oudh 360.**

—Joint family—Family property—Burden of proof.

———*No presumption as to possession of property—* Onus *is on the person alleging its existence.*

While there is a presumption that a Hindu family is joint until the contrary is proved, there is no presumption that a Hindu family is possessed of property. The party alleging that the property held by an individual member of a joint family is family property, must show that the family was possessed of some property with the aid of which the property in question could have been acquired. If this is shown, and only then, the *onus* shifts to the party alleging self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate: A.I.R. 1927 Mad. 38, *Foll.*; 33 All. 677 ; A.I.R. 1923 Mad. 262 ; A.I.R. 1929 P. C. 1; 32 I. C. 12 and 35 Cal. 1035, *Rel. on*; 3 Cal. 315 (P.C.), *Disc.* and *Dist.* (*Ananthakrishna Ayyar, J.*). C. SANKARANARAYANA MUDALIAR *v.* TANGARATNA MUDALIAR. **A.I.R. 1930 Mad. 662.**

———*Burden of proof as to property being joint depends upon circumstances.*

The *onus* of proof in a case where the property is said to be the joint property of a joint family must depend upon the circumstances of each particular case. Where the family was joint in mess and estate at the time of the acquisition and there was a nucleus of joint fund, however small it may be, the *onus* is undoubtedly upon a member of the family to prove that the property, though purchased in his name, was not a joint property. But the only fact that two brothers lived together alone does not throw any burden of proof on the plaintiff more than is to be borne by him as plaintiff in a case to prove that the property was purchased by

HINDU LAW—Joint family—Family property —Common stock.

one through whom he claimed. (*Suhrawardy and Graham, JJ.*). TRAILOKYANATH *v.* CHINTAMANI DATT. **95 I.C. 426=30 C.W.N. 588= A.I.R. 1926 Cal. 813.**

—Joint family — Family property — Common stock.

———*Property thrown in common stock is joint property.*

Whether property is joint family property does not merely depend upon whether it is acquired with joint family funds or whether there is a nucleus of the joint family property. Even property acquired by one of two joint brothers by his own exertions and thrown into common stock is to be regarded as joint family property, and their male issue necessarily acquires a right in it by birth : A.I.R. 1926 Bom. 408, *Rel. on.* (*Jackson, A.J.C.*). PUNJI *v.* GOVIND. **122 I.C. 446= A.I.R. 1930 Nag. 7.**

—Joint family—Family property—Conduct of members.

———Property treated by the members as joint family property will be so treated by the Court also. (*Napier and Odgers, JJ.*). KRISHNASWAMI BATTAR *v.* SREENIVASA BATTAR. **76 I. C. 881= 30 M.L.T. 168=A.I.R. 1922 Mad. 341= 42 M.L.J. 124.**

—Joint family—Family property—Exchange.

———Where the gift was in consideration of the money derived from the joint family fund,

Held, this property must bear the character of the source of its acquisition and be deemed joint family property. (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I.C. 574= 11 O.L J. 286=A.I.R. 1924 Oudh 360.**

—Joint family—Family property—Joint acquisitions.

———*Brothers may make property joint without nucleus—It is a question of their intention.*

Where property is acquired in the course of a business carried on by members of a Hindu family by their joint labour, the property so acquired may become joint family property, notwithstanding the fact that it was acquired without the aid of ancestral nucleus. In such cases it is a question of proof whether they intended to acquire the property as partners or as members of a joint family.

Two brothers carried on a joint trade for 25 years and during the whole of that period they had a common mess, they lived with their mother under the same roof and conducted themselves in every particular as members of a co-parcenary. From the funds of the joint trade they acquired immovable properties, obtaining sale-deeds indifferently in the name of one or the other and later on they executed deed of partition as between themselves :

Held, that the brothers must be deemed to have traded jointly and acquired the property not as partners but as members of a co-parcenary : A.I.R. 1926 Bom. 408, *Ref.* (*Venkatasubba Rao, J.*). VASUDEVA RAO *v.* SAKARAM RAO. **108 I.C. 301= 27 M.L.W. 750=A.I.R. 1928 Mad. 412= 54 M.L.J. 239.**

———*Brothers acquiring property by joint labour—Property is presumed to be joint family property and not merely joint.*

Where the members of a joint family acquire property by or with the assistance of joint family funds or by their joint labour, such property is the joint property of the persons who have acquired it, whether it is an increment to ancestral property or

HINDU LAW—Joint family—Family property —Nucleus.

whether it has arisen without any nucleus of descended property. If a single individual acquires a fortune by his own exertions, without any assistance from the ancestral property his issue would certainly take no interest in it. If several brothers did the same, the property would, in the absence of any indication of any intention to the contrary, be owned by them as joint family property, and in that case their male issue would acquire a right in it by birth, for under Mitakshara system there can be no joint family property in respect of which the male issue of the joint owners do not take a share by birth. If there is satisfactory evidence of an intention to treat the property not as joint family property but as joint property only, *i.e.*, as the joint self-acquisition of the acquirers, it will be given effect to. But the presumption is in favour of its being regarded as joint family property: 25 Mad. 149 and 34 Mad. 211, *Ref.* (*Baker, J.C.*). MOTILAL *v.* HARJIMAL. **87 I. C. 809= A.I.R. 1926 Nag. 146.**

—Joint family—Family property—Liability to attachment.

———The liability of the estate of a joint Hindu family to be taken in execution proceedings is not removed by the subsequent filing of the suit for partition : A.I.R. 1927 Oudh 180, *Foll.* (*Stuart, C. J. and Raza, J.*). BALBHADDAR SINGH *v.* HARDEI. **108 I.C. 111=5 O.W.N. 91.**

—Joint family—Family property —Nucleus.

———*Small nucleus—No presumption that subsequent acquisitions are joint.*

Where the nucleus proved is very small no presumption of jointness of subsequently acquired property arises. In order to raise any presumption based on family nucleus it must be shown that it was possible to have incurred the cost of the property claimed as joint, from that family source : A. I. R. 1926 Lah. 333 ; 29 All 244 ; A. I. R. 1923 All. 574 and A.I.R. 1926 Nag. 389, *Foll.* (*Addison and Coldstream, JJ.*). KAUSHI RAM *v.* SHANKAR DAS. **111 I.C. 596=10 L.L.J. 93= A. I. R. 1928 Lah. 397.**

———*No nucleus—Joint brothers purchasing property—Presumption is that they are joint tenants.*

Joint family property can come into existence without a pre-existing nucleus : 32 Bom. 479, *Foll.*

Where three brothers are joint at the time of a purchase there is no presumption that they are each possessed of separate property and that each contributes from his separate property to make up the purchase money. On the other hand, the inference from the facts, that the brothers are joint, that there are no other co-sharers and that the brothers, after the purchase, own the property in equal shares, is that the purchase is made with joint funds. (*Macnair, A. J. C.*). MOHANSINGH *v.* PUNJI. **103 I C. 812=A.I.R. 1927 Nag. 327.**

———Property acquired jointly by father and son is joint family property even though there is no nucleus: 9 Bom. 438, *Disappr.* (*Macleod, C. J. and Coyajee, J.*). HARIDAS *v.* DEVKUVARBAI. **97 I.C. 820=50 Bom. 443=28 Bom. L.R. 637= A.I.R. 1926 Bom. 408.**

———It is necessary to establish the existence of a nucleus of joint family property before the property in the possession of any one member can be presumed to be joint family property. (*Suhrawardy and Graham, JJ.*). TRAILOKYANATH CHAR *v.* CHINTAMONY DUTT. **95 I.C. 426= 30 C. W.N. 588=A.I.R. 1926 Cal. 813.**

HINDU LAW—Joint family—Family property—Nucleus.

——Where the nucleus of ancestral property is very small there cannot be any presumption that any subsequent acquisitions were made with the assistance of that nucleus: 29 All. 244 (P.C.); A.I.R. 1923 All. 574, *Dist.* (*Scott-Smith and Le-Rossignol, JJ.*). IQBAL SINGH *v.* JANG BAHADUR.
93 I.C. 634=A. I. R. 1926 Lah. 333.

——Where there is a nucleus of groves of joint family property acquisition of land by the eldest member and planting a grove thereon will be deemed to be joint family property. (*Wazir Hasan, J.C.*). HAR DATT LAL *v.* DHANDHI SINGH.
84 I.C. 1011=11 O.L.J. 660=28 O C. 113=A.I.R. 1925 Oudh 93.

——*Nucleus insufficient to acquire property—No presumption arises as to its being joint family property.*

If there is a large family nucleus and if the property in the possession of a member of the joint family can be ordinarily traceable to the income of the family nucleus, such property would be considered joint family property till it is affirmatively shown that that property was acquired without the help of and without detriment to the family nucleus. When it is found that the family nucleus is of such a character that it could not have yielded any appreciable income and when there is no proportion between the family nucleus and the fortune acquired in the course of a few years, the matter does not rest with mere presumptions alone. The Court has to see whether the acquisitions were made by a member unaided by the family nucleus. (*Case-law discussed.*) (*Spencer and Devadoss, JJ.*). VADAMALAI *v.* SUBRAMANIA. **71 I. C. 130=16 M.L.W. 936=1923 M.W.N. 57=A. I. R. 1923 Mad. 262.**

——Properties acquired by the Karta of a joint family in the benami name of a third person with the income of ijmali properties, must partake of the nature of a joint family estate. (*Chaudhuri and Newbould, JJ.*). BISWAMBHAR HAIDAR *v.* GIRIBALA DASI. **25 C.W.N. 356=A.I.R. 1921 Cal. 571.**

—Joint family—Family property—Partibility.

——*Joint property cannot be impartible even by custom, as such a custom would be unreasonable.*

To hold that the property belonging absolutely to several members of the family is indivisible between them is opposed to all fundamental principles of law: 4 Mad. H.C.R. 447, *Rel. on.*

Such a custom, even if it exists, is unreasonable. A single family cannot create such a custom by not alienating property for 50 or 100 years. (*Ramesam, J.*). VENKATACHALAM CHETTY *v.* VISVANATHA BANGARU. **102 I.C. 618=A.I.R. 1927 Mad. 725.**

—Joint family—Family property—Practice.

——*Document in the name of the senior member—Property belongs to family.*

It is within the knowledge of the common course of human affairs of every Judge in India that in a very large number, if not the majority, of documents to which a joint Hindu family is a party as a whole, the name of the senior member alone is entered as the representative of the family more especially if all the members of the family are brothers. (*Hallifax, A.J.C.*). GANIA *v.* GANGA PRASAD. **77 I.C. 738=6 N.L.J. 269=A.I.R. 1924 Nag. 112.**

—Joint family—Family property—Presumption.

——*Property jointly acquired without family funds—Character.*

HINDU LAW—Joint family—Family property—What is.

Property jointly acquired by members of a joint family, though without the assistance of joint family property must be presumed to be joint family property, unless the acquirers intended to hold the property as co-owners between themselves in which case it would be their joint property. (*Shingne, J.*). RANGU *v.* LAKSHMAN.
32 Bom. L.R. 948=A.I.R. 1930 Bom. 438.

——*Properties in the hands of a member—Presumption, whether ancestral.*

There is no presumption that the properties in the hands of a member of a joint Hindu family is joint family or ancestral property but the joint or ancestral character of property must be established by the person who claims a share in such property. (*Subhedar, A.J.C.*). HARI *v.* BANGA.
120 I.C. 402 (Nag.).

——Property standing in the name of any one member may be presumed to be joint—Such presumption can, however, be rebutted. (*Kulwant Sahay and Macpherson, JJ.*). BAKSIRAM MULCHAND *v.* DWARKA PRASAD. **115 I. C. 237=10 P.L.T. 474=A.I.R. 1928 Pat. 438.**

——Where there is property standing in the name of a junior member, the presumption is that it is a joint family property: 26 M.L.J. 248 (P.C.), *Foll.* (*Ramesam, J.*). NATESA AIYAR *v.* SAHASRANAMA AIYAR. **103 I.C. 814=A.I.R. 1927 Mad. 773=53 M.L.J. 550.**

——Property purchased while family is joint would presumably be joint family property. (*Napier and Odgers, JJ.*). KRISHNASWAMI BATTAR *v.* SREENIVASA BATTAR. **76 I.C. 881=30 M.L.T. 168=A.I.R. 1922 Mad. 341=42 M.L.J. 124.**

——All the property in the hands of the members of a joint Hindu family is to be treated as a joint property, but it is open to any member to show that any particular property is his separate property. (*Shadi Lal. C. J, and Le Rossignol, J.*). PARMA NAND *v.* SHIV CHARAN DAS. **59 I.C. 256=2 Lah. 69=3 L.L.J. 82=21 P.L R. 1921=A.I.R. 1921 Lah. 147.**

—Joint family—Family property—Tenancy.

——Onus *of proving self-acquisition applies to tenancy also.*

The ordinary rule of Hindu Law that properties acquired while the family was joint and with the help of joint family property should be regarded as joint family property and that the burden of proof that it was self acquired property of a single member should be on that member, is applicable where the property in question is a tenancy. (*Mukerji and Boys, JJ.*). ACHARJI AHIR *v.* HARAI AHIR. **1930 A.L.J. 974.**

—Joint family—Family property—What is.

——*Acquisitions from income of family property are also family property.*

Where Brit Mahabrahmani is ancestral property and the income derived therefrom goes to support the entire family, the income derived by any member of the family, therefrom is not his exclusive property and therefore any property acquired or built upon such fund forms joint family property. (*Misra and Raza, JJ.*). GAYA DIN *v.* GUR DIN.
118 I.C. 87=6 O.W.N. 249=A.I R. 1929 Oudh 257.

The property in the hands of the adoptive father inherited by him from his maternal grandfather is joint family property in the sense that the son has a right in it, as a co-parcener by adoption.

HINDU LAW—Joint family—Father—Acknowledgment.

27 Mad. 382 ; 39 Mad. 930, *Ref.* and 35 Cal. 1039, *Foll.* (*Ramesam and Jackson, JJ.*). VENKATA SESHAMMA *v.* APPA RAO. **80 I. C. 79= 20 M.L.W. 181=A.I.R. 1925 Mad. 125,**

—Joint family—Father.
Acknowledgment.
Compromise.
Decree against.
Duties of.
Insolvency of.
Manager.
New business.
Powers of.
Representation.
Right to sue.
Self-acquisitions.
Suit for accounts.
Will.

—Joint family—Father—Acknowledgment.

———The father in a joint Hindu family is an agent duly authorised to acknowledge a debt binding on the family so as to extend the period of limitation: 17 Bom. 512; 37 Cal. 461, *Ref. to.* (*Dalal, J.C.*). SITLA BAKHSH SHUKLA *v.* JAGATPAL SINGH. **86 I.C. 693=12 O.L.J. 114= A.I.R. 1925 Oudh 394.**

—Joint family—Father—Compromise.

———Compromise made by Hindu father as the manager of the joint family in good faith is binding upon his sons unless it is proved that the father did not act *bona fide* in making it: A.I.R. 1927 Lah. 620, *Foll.* (*Zafar Ali, J.*). MT. RAM RAKHI *v.* BRIJ BHUSHAN. **110 I.C. 118= 29 P.L.R. 50=A.I.R. 1928 Lah. 235.**

———A Hindu father has full authority to act on behalf of his adopted son and to enter into a compromise in a suit on mortgage of joint family property in respect of his interest in the property. (*Lord Blanesburgh.*) SAIYID MEHDI ALIKHAN *v.* CHAUDHRI GHANSHIAM SINGH. **104 I. C. 375= 46 C.L.J. 209=4 O.W.N. 837= 1927 M.W.N. 723=29 Bom. L.R. 1376= 32 C.W.N. 93=39 M.L T. 300= A.I.R. 1927 P.C. 204=53 M.L.J. 345 (P.C.).**

———*Bona fide* settlement of doubtful claim by father as manager is binding upon sons: 24 I.C. 491, *Foll.* (*Shadi Lal, C. J. and Zafar Ali, J.*). MT. MAYA WANTI *v.* SALIG RAM. **103 I. C. 372= A. I. R. 1927 Lah. 620.**

———*Compromise not binding on son living—Sons born subsequently are not also bound.*

One Rajaram's share was decreed in a partition suit along with a considerable amount. Rajaram's minor son was a party to the partition suit. Rajaram for himself and his minor son, released the right to the sum, on his opponent Tuljaram agreeing not to prosecute the appeal against the partition decree. The appeal was therefore not prosecuted. The minor son of Rajaram on attaining majority filed a suit for recovering the sums, which was dismissed by both the Courts in India but the Privy Council, holding that the arrangement by Rajaram did not bind Rajaram's son remanded the case for ascertainment of son's share. Before the suit came on for trial Rajaram got two more sons who were added as co-defendants. The new born sons pleaded that the arrangement by Rajaram failed wholly,

Held, that what the agreement purported to do was to release the whole of the debts that were then owing to the joint family in consideration of Tuljaram not prosecuting his appeals and when the attempted arrangement failed so far as the infant was concerned, it failed, in the events that have happened, to convey any of the joint estate at all. The appellants are therefore entitled to succeed. (*Lord Buckmaster.*) T.R. VENKATA RAO *v.* T. V. TULJARAM RAO. **74 I C 765=26 C W N. 646= 45 Mad. 298=1922 M.W.N 392=30 M.L.T. 272= 49 I.A. 91=36 C L.J. 319=24 Bom. L R. 1191= 20 A.L.J. 833=A.I R. 1922 P.C. 69= 43 M.L.J. 298 (P.C.).**

HINDU LAW — Joint family — Father—Decree against—Execution sale.

———The minor sons of a Hindu father are bound by a *bona fide* compromise of a doubtful claim entered into by their father as Manager of the joint family. (*Scott-Smith and Leslie Jones, JJ.*). SHAMBU NATH *v.* DWARKA DAS. **60 I.C. 524 (Lah.).**

—Joint family—Father—Decree against—After-born son.

———The subsequent birth of a son does not operate retrospectively so as to affect a sale in execution of a decree passed against the father, where the sale took place before his birth: A.I.R. 1922 Nag. 101, *Foll.* and 26 M.L J. 576, *Dist.* (*Baker, J.C.*). NARAYAN *v.* DHUDABAI. **92 I.C. 663= 21 N.L.R. 38=A.I.R. 1925 Nag. 299.**

—Joint family—Father—Decree against—Binding nature.

———*How far binding, must be decided on the facts of each case.*

The question how far the sons are bound by a decree against the father must be decided with reference to the particular facts of the case; if the father is manager and the question in issue is one which equally affects him and the other members of the family and if the suit is properly defended the adjudication will bind all the persons interested along with the father for the reason that in that case it must be presumed that the father represents the interests of all. If the sons are of full age and are aware of their litigation and take no steps to be brought on the record but acquiesce in the conduct of the litigation by the father, the case will be still stronger and they will be clearly bound by the decision, and the case is still stronger, where not only is the son of full age and aware of the litigation and takes no steps to be brought on the record and acquiesces in the litigation, but actually conducts the litigation of the father: 14 M.I.A. 367, *Rel. on.* (*Ramesam, J.*). KANYADHARA TATAYYA *v.* K. RAGHAVAYYA. **99 I.C. 539=38 M.L.T. 107=A.I.R. 1927 Mad. 406.**

—Joint family—Father—Decree against—Death of father.

———Father—Decree against father passed — Father dying—Property which father could have sold while alive, is attachable under decree. (*Sulaiman and Mukerji, JJ.*). BINDA PRASAD *v.* RAJ BALLABH. **91 I.C. 785=48 All. 245= 24 A.L.J. 273=A.I.R. 1926 All. 220.**

—Joint family—Father—Decree against—Execution sale.

———*Omission to state whether son's share was being sold is not conclusive that his interest was not sold.*

Although the proclamation of sale in execution of a decree against the father may not state that the son's interests are being put up for sale yet the circumstances may be such as to fully justify a Court in holding that those interests were actually sold: 22 Bom. L.R. 970, *Rel. on.* (*Fawcett and Madgavkar, JJ.*). DAYANAND PANDURANG *v.* DAJI NARAYAN. **98 I. C. 754=50 Bom. 793= 28 Bom. L.R. 1082=A.I.R. 1926 Bom. 548.**

HINDU LAW — Joint family — Father—Decree against—Execution sale.

———Decree against father—Sons' shares can be sold unless debt is tainted with immorality: A.I.R. 1924 P.C. 50 (P.C.), *Foll.*

The question is not what the judgment-creditor could have attached, but what the Court intended to and did actually sell at the Court-sale. This must in each case be a question of fact, on which it would be impossible for the Courts to lay down any rule of law. (*Fawcett and Madgavkar, JJ.*). DAYANAND *v.* DAJI. **98 I. C. 754=50 Bom. 793=28 Bom. L.R. 1082=A. I. R. 1926 Bom. 548.**

———Auction sale of family property—Son's share also passes—Son must challenge it within limitation if he wants to avoid. (*Devadoss and Wallace, JJ.*). NARAYAN *v.* VENKATASWAMI. **98 I. C. 31=24 M.L.W. 475=1926 M.W.N. 767=A.I.R. 1926 Mad. 1190=51 M.L.J. 845.**

———*When son's share also passes.*

When the decree which is executed is made in a suit to which the sons were not parties and the property sold is the joint property of the father and the son, the sale is good on the principle of Hindu Law that it is the pious duty of a Hindu son to pay his father's debt in respect of which the decree was made was contracted by the father to the knowledge of the lender for the purposes of immorality. (*Sir John Edge.*). SAT NARAIN *v.* BEHARI LAL. **84 I. C. 883=1925 M.W.N. 1=23 A.L.J. 85=6 L.R.P. C. 1=6 Lah. 1=21 M.L.W. 375=52 I.A. 22=29 C. W. N. 797=26 P. L. R. 81=27 Bom. L. R. 135=A.I.R. 1925 P. C. 18=47 M. L. J. 857 (P.C.).**

———*Whole interest of family passes under the sale unless proclamation states otherwise.*

Where a decree is passed against the father carrying on business in the name of the family as manager, the whole of the family property is liable for the family debt, and when the property of the debtor is put up for sale, the whole interest of the family passes to the purchaser unless it is clearly stated in the proclamation that the interest of the father alone is sold under the decree. (*Macleod, C.J. and Crump, J.*). AMOLAKCHAND LADURAM *v.* MOTILAL AGIARIRAM. **87 I. C. 953=27 Bom. L. R. 437=A.I.R. 1925 Bom. 497.**

—Joint family—Father—Decree against—Liability of son's property.

———In execution of a decree against the father of a joint family the property both of himself and his sons in the joint family property can be taken in execution: A.I.R. 1924 P.C. 50, *Foll.* (*Rowland, J.*). JIWAN RAM RAMCHANDRA *v.* SITA RAM KHEMKAR. **118 I. C. 141 (Pat.).**

———Where a father has contracted a debt for his own personal benefit, the creditor may obtain a personal decree against the father alone and may enforce the decree by attachment and sale of the entire co-parcenary property including the interest of the son therein. The son cannot recover the property unless he proves that the debt was tainted with immorality or illegality. (*Shadi Lal, C. J. and Dalip Singh, J.*). MADAN MOHAN SINGH *v.* DAULAT RAM. **110 I.C. 730 (Lah.).**

———*Son's share is liable unless debt is proved to be immoral or illegal.*

A manager cannot partition or alienate the estates qua-manager except for purposes of necessity, but where the family consists of father and sons, the father may lay the estate open to be taken in execution proceedings upon a decree for payment of a debt incurred by him, so long as it is not incurred for an immoral purpose: A.I.R. 1924 P.C. 50, *Foll.* (*Macleod, C. J. and Coyajee, J.*). DE SOUZA *v.* WAMANRAO. **91 I.C. 984=27 Bom. L.R. 1451=A. I. R. 1926 Bom. 117.**

HINDU LAW — Joint family — Father—Decree against—Rights of son.

———If the managing member of joint undivided estate is the father and the other members are the sons, he may by incurring debt so long as it is not for an immoral purpose lay the estate open to be taken in execution proceedings upon a decree for payment of that debt: A.I.R. 1924 P. C. 50 (P.C.). *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). GOKARAN SINGH *v.* JOKHU SINGH. **79 I.C. 21=11 O.L.J. 405=A.I.R. 1924 Oudh 407.**

———In execution of a decree against the father personally the shares of the sons cannot be attached and sold during the life-time of the father. (*Stuart and Kanhaiya Lal, JJ.*). KISHAN SINGH *v.* CHHAJJU SINGH. **79 I. C. 238=45 All. 90=A.I.R. 1923 All. 206.**

———*Decree against father can be executed against sons' interest also.*

It is competent for the holders of a simple money-decree against father to attach the joint family property of father and his minor sons in the hands of their judgment-debtor and to bring to sale the right, title and interest of the father and of the sons in satisfaction of their decree; 30 All. 156, *Foll.* (*Piggott and Walsh, JJ.*). MOHAN LAL *v.* BALA PRASAD. **69 I.C. 754=44 All. 649=A.I. R. 1922 All. 310.**

—Joint family—Father—Decree against—Mortgage-decree.

———*Money decree against father is binding on son unless debt is immoral or illegal.*

A money-decree against the father of a joint family in satisfaction of debt not incurred for an illegal or immoral purpose is binding on the son: A.I.R. 1924 Oudh 394 and A.I.R. 1925 All. 180, *Ref.*

Where a mortgage decree provides for the recovery of the balance due from the mortgagors, if the mortgaged property was found insufficient to discharge the decretal amount there is a declaration in the decree that a debt is due from the mortgagor to the mortgagee for which mortgagor's son can be made liable. (*Shadi Lal, C.J. and Dalip Singh, J.*) KRISHNA KISHORE *v.* HEM RAJ. **116 I.C. 182=A.I.R. 1928 Lah. 815.**

—Joint family—Father—Decree against—Necessity immaterial.

———*Taint of immorality should be proved.*

When the property is sold in auction in execution of a decree against the father it is not open to his sons and grandsons to have the sale set aside on the mere ground that the debt on the basis of which the decree had been obtained had been contracted without any legal necessity or was not in lieu of any antecedent debt. It is further necessary for the plaintiffs then to establish that that debt had been tainted with illegality or immorality: A.I.R. 1923 All. 591, *Ref.*; A.I.R. 1924 P.C. 50, *Foll.* (*Sulaiman and Mukerji, JJ.*). GAJADHAR PANDE *v.* JADUBIR PANDE. **83 I. C. 31=47 All. 122=22 A.L.J. 980=5 L.R.A. Civ. 780=A. I. R. 1925 All. 180.**

—Joint family—Father—Decree against—Rights of son.

———If the auction-purchaser buys the shares of the sons in execution of the decree against the father, the sons cannot claim their shares without

HINDU LAW — Joint family — Father—Decree against—Sons bound.

setting aside sale. (*Devadoss and Wallace, JJ.*). NARAYANA *v.* VENKATASWAMI. **98 I.C. 31= 24 M. L. W. 475=1926 M.W N. 767= A.I R. 1926 Mad. 1190=51 M.L.J. 845.**

—Joint family—Father—Decree against—Sons bound.

———*Father not described as manager—Yet the decree binds sons.*

The circumstances that neither the father of *A*, *B* and *C*, nor *C* himself, who were parties to a prior suit, was described expressly as manager of the family, does not by itself make the decision in the prior suit not binding in a subsequent suit on *A*, *B* and *C* who are members of an undivided family. To such a case the provisions of S. 11, Expl 6, C. P. Code, apply and the decision in prior suit becomes *res judicata* as against *A*, *B* and *C*: A.I.R. 1927 P. C. 56; 30 Mad 324 and 22 Mad. 461, *Rel on.* (*Ananthakrishna Ayyar, J.*). SETHURATNAM IYER *v.* CHINNA SOLAN. **122 I.C. 164= A.I.R. 1930 Mad. 206.**

———*Decrees.*

A decree against father in respect of joint family properties binds sons, father being deemed to be their representative. (*Spencer and Devadoss, JJ.*). MEYYAPPAN SERVAI *v.* MEYYAPPAN AMBALAM. **83 I.C. 985=19 M L W. 484= 34 M.L.T. 209=A.I.R. 1924 Mad. 571= 46 M L.J. 471.**

———*Foreclosure decree against father—Binds sons though not parties to foreclosure suit, unless the debt is illegal or immoral.*

A foreclosure decree against their father could not be considered a nullity simply because the plaintiffs were no parties to the suit in which the decree was passed. If the debt is such as the manager of the joint Hindu family had authority to contract and for which he could bind the joint family property, the decree cannot be disturbed merely on the ground that the plaintiffs, minor members of the family at the time of the suit, were not impleaded in the suit.

According to the principles of Hindu Law a Hindu son cannot escape liability under a decree obtained against his father and *karta* of the family unless he proved that the debts were contracted for immoral or illegal purposes.

The burden lies on the sons to prove the illusory character or immorality of the debt. (*Case-law reviewed.*) 7 O.L.J. 164, *Diss.* (*Dalal, J. C. and Simpson, A.J.C.*). MAHADEO BAKHSH SINGH *v.* SURAJ BAKHSH SINGH. **80 I. C. 447= 10 O. L. J. 252=A.I.R. 1924 Oudh 34.**

—Joint family—Father—Decree againt—Subsequent partition.

——*Liability of the estate is not affected.*

Where a Hindu joint family consists, of a father and sons and the father has incurred debts and a decree has been passed on the basis of those debts, the estate can be taken in execution proceedings unless the debts had been incurred for immoral purposes: A. I. R. 1924 P. C. 50, *Foll.*

And in no circumstances can that liability of the estate to be taken in execution proceedings be removed by the subsequent filing of a suit for partition. (*Stuart, C. J. and Raza, J.*). JAGESHWAR PANDEY *v.* MANIAM. **101 I.C. 907= 2 Luck. 561=4 O.W.N. 408= A.I.R. 1927 Oudh 180.**

HINDU LAW—Joint family—Father—Insolvency of.

—Joint family—Father—Duties of.

———*Father is bound to maintain a joint son, independent of any right to maintenance of the son.*

Where there is joint family property in which the son has a share, though the father is not under an absolute obligation to maintain his adult son, he is bound as the manager of the family to maintain him as a member of the undivided family: 2 Bom. 573, *Foll.*

This obligation is independent of the consideration whether, on account of the lunacy of the son, the father as the manager of the family would be bound to maintain him on the ground that he would be disqualified from inheriting or enforcing partition of his share from the joint family property during the period of lunacy. (*Shah and Fawcett, JJ.*). CHANVIRGAUDA SHIVANGAUDA *v.* DIST. MAGISTRATE, DHARWAR. **100 I.C. 575= 51 Bom. 120=29 Bom. L R. 52= A.I.R. 1927 Bom. 91.**

—Joint family—Father—Insolvency of.

———*After partition—Official Receiver cannot proceed against sons' shares.*

Where a Hindu co-parcener becomes insolvent and the Official Assignee of his estate subsequently brings a suit for partition and separate shares are allotted also to the sons of the co parcener without making a provision for the satisfaction of the insolvent co-parcener's debts, the share of the sons of the insolvent co-parcener do not vest in the assignee. The Receiver cannot take any proceeding against the sons' separate shares where he fails before the partition to obtain an order declaring the sons' shares to be liable for the father's debts: A. I. R. 1925 P. C. 18, *Rel. on*; A.I.R. 1926 All. 447, *Not foll.* (*Stuart, C. J. and Raza, J.*). TRAYAMKESHAR PRASADH *v.* BASANT KUMAR MUKERJI. **123 I.C. 61=6 O.W N. 977= A I.R. 1930 Oudh 36.**

———*Power of Hindu father over son's property is "property."*

The power of a Hindu father over the family property including son's interest therein must be deemed to be 'property' within S 28 and, as such, to vest in the Court or the Receiver: A.I.R. 1925 P.C. 1, *Expl.*; *Gilchrist, In re. Armstrong*, 17 Q.B.D. 521, *Dist.*; A. I. R. 1925 Bom. 416, *Diss. from*; A.I.R. 1923 Mad. 55 and A.I.R. 1924 Mad. 550, *held not overruled by* A.I.R. 1925 P.C. 18 (P.C.). (*Phillips and Madhavan Nair, JJ.*). SUBRAMANIA AIYAR *v.* T. V. KRISHNA AIYAR. **102 I.C. 266= A.I.R. 1927 Mad. 701.**

———*Son's share does not vest in Official Receiver—Only father's power to sell vests—Power continues even after father's death.*

Official Receiver in whom the property of an insolvent Hindu governed by the Mitakshara is vested under the Provincial Insolvency Act (5 of 1920) is entitled to sell the joint family property of the insolvent and his sons for his debts where they are neither illegal nor immoral, *i.e.*, such debts as the sons would, on account of their pious obligation, be bound to pay from their joint property. It is the power of sale that vests in him and not the share of the son itself: A.I.R. 1925 P.C. 18, *Expl.*; A.I.R. 1925 Mad. 52, *Overruled*. This power continues even after the father's death by virtue of S.17. Section 28 by itself is enough to vest the power of disposing whole family property in the Receiver in insolvency of a Mitakshara Hindu father. It is not necessary to pray in aid the definition of "property" in S. 2 (d) for this purpose.

HINDU LAW—Joint family—Father—Insolvency of.

Per *Venkatasubba Rao, J.*—The expression 'property' in S. 2 (d) of the Provincial Insolvency Act includes the qualified and restricted power of a Hindu father. (*Krishnan, Ramesam and Venkatasubba Rao, JJ.*). BALAVENKATASEETHARAMA CHETTIAR *v.* OFFICIAL RECEIVER, TANJORE.

97 I.C. 825=49 Mad. 849=24 M.L.W. 345=1926 M.W.N. 743=A.I.R. 1926 Mad. 994=51 M.L.J. 269 (F B.).

——*Son's shares vest in Official Receiver—They can be sold for just debts of father.*

Where in the case of a Hindu joint family the father is adjudged an insolvent, even the sons' shares vest in the Official Receiver and he can dispose of the same to pay the debts of the father unless they are incurred for immoral purpose; and the pious obligation of the sons will prevent them from contending that their shares are not liable to be sold: A.I.R. 1925 Pat. 127; A.I.R 1924 P.C. 50 (P.C.); A.I.R. 1923 Lah. 1 (F.B.), *Foll.* (*Ross and Kulwant Sahay, JJ.*). CHAIRMAN, DIST. BOARD, MONGHYR *v.* SHEODUTT SINGH. **98 I.C. 364=5 Pat. 476=1926 P.H.C.C. 321=8 P.L.T. 278=A.I.R. 1926 Pat. 438.**

——Father's power to alienate family property for just purposes does not vest in Official Assignee: A.I.R. 1925 P. C. 18, *Foll.* (*Macleod, C. J. and Coyajee, J.*). SHRIPAD GOPALKRISHNA *v.* BASAPPA RUDRAPPA. **89 I. C. 996=49 Bom. 785=27 Bom. L. R. 934=A.I.R. 1923 Bom. 416.**

——Shares of the undivided sons also vest in the Official Receiver but they can bring a suit for partition on the ground of father's debts being illegal or immoral. (*Devadoss, J.*). G. NARASIMHULU *v.* P. BASAVA SANKARAM. **85 I.C. 439=20 M.L.W. 946=A.I.R. 1925 Mad. 249=47 M L.J. 749.**

——*Official Assignee is placed in father's position as regards his powers in respect of the joint family property.*

When the estate of the insolvent vests in the Official Assignee, the right of the father to dispose of the son's interest in ancestral immovable estate for the payment of his debts vests in the Official Assignee. Upon general principles of the Hindu Law governing the rights of the father and his son in the co-parcenary property an order of adjudication against the father has only the effect of replacing the father by the Official Receiver and the order does not by itself vest in the latter the interests of the son in the property. As the son's share is in certain cases liable for the debts of the father, the Official Receiver may be able to enforce that liability, provided that he takes appropriate proceedings for the purpose and satisfies the conditions which alone render the son's interest liable for the father's debts. The joint family property can be attached and sold in execution of a decree for money passed against the father, and the sale affects the interest of the son as well as that of the father, and in principle there is no real difference between an individual creditor realizing his debt from the co-parcenary property and an Official Assignee who represents the general body of the creditors seizing it for the satisfaction of their debts. Section 60, C.P.C., mentions *inter alia* the property over which or the profits of which the judgment-debtor "has a disposing power which he may exercise for his own benefit". And this is exactly the phraseology which has been used in the Insolvency Act, and it would be most undesirable that the same expression used in two enactments dealing with the rights of the creditors should receive two different interpretations. The son has his remedy, but the proper mode of asserting such equities is by suit or other proceeding against the Official Assignee. For instance, if the sons of an insolvent alleged that certain of his debts had been incurred for immoral purposes and were not binding upon their interests in ancestral immovable estate, they might maintain these allegations in a suit against the Official Assignee: and, in effect, seek to have the property marshalled so as to apply the property other than such interests of theirs to the payment of such debts: 7 Bom. 438; 21 Bom. 205; 19 Mad. 74; 158 P.R. 1919; A.I.R. 1922 All. 79, *Foll.*; 49 I.C. 848; 5 O.L.J. 665, *Dist.*; 42 Cal. 225, *Dist.* (*Shadi Lal, C.J., Chevis and Abdul Raoof, JJ.*). BIHARI LAL *v.* SAT NARAYAN. **69 I.C. 486=3 Lah. 329=A.I.R. 1923 Lah. 1 (F.B.).**

HINDU LAW—Joint family—Father—Representation.

—Joint family—Father—Manager.

——Where the father is alive he is the *de jure* manager and in the absence of evidence that he was incapacitated from being guardian of his minor son, he must be deemed to be the guardian. (*Ashworth, J.C.*). JAMNA PRASAD *v.* BALBHADDAR. **74 I.C. 353=25 O C. 388=9 O.L.J. 601=A.I.R. 1923 Oudh 147.**

—Joint family—Father—New business.

——Father starting new business—Money cannot be raised on family estate though the business may be a profitable one, to himself and his sons: (*Case-law discussed.*) (*Mears, C.J. and Mukerji, J.*). INSPECTOR SINGH *v.* KHARAK SINGH. **112 I.C. 881=50 All. 776=26 A.L.J. 577=A.I.R. 1928 All. 403.**

—Joint family—Father—Powers of.

——*Acknowledgment of pre-partition debt.*

Where a Hindu Father executes a promissory note after partition partly in lieu of debts contracted before partition and partly in respect of fresh advances the old liability is replaced by the promissory note and the creditor can only proceed under the latter instrument. (*Kumaraswmai Sastri and Reilly, JJ.*). SUBRAMANIA MOOPANAR *v.* SUBBIAH AYYAR. **1930 M.W.N. 658.**

——There is no statutory power given to a Hindu father to tie up his property for what he conceives to be the benefit of his children. (*Marten, C. J. and Crump, J.*). VENKATARAMAN *v.* JANARDHAN. **106 I.C. 79=52 Bom. 16=29 Bom. L.R. 1522=A.I.R. 1928 Bom. 8.**

——In the case of a Mitakshara father who is the karta, an implied authority to make an admission for the benefit of his minor sons may well be presumed. (*Mukerji and Mitter, JJ.*). SURENDRA NATH *v.* SAMBHU NATH. **104 I.C 219=55 Cal. 210=A.I.R. 1927 Cal. 870.**

—Joint family—Father—Representation.

——*Suit on mortgage by father—Son when bound by the decree.*

Where certain minor sons in a joint Mitakshara family are completely represented in a suit on the mortgage of the joint family property by the father and have raised every possible defence available to the minor members of a joint Mitakshara family, the mere fact that one such son was not joined as party to the mortgage action cannot entitle him for a declaration that the decree in the mortgage suit was not binding as against him and his interest in the joint family property after the judicial sale of the property mortgaged: 17 A. 587 (F.B.) treated as *overruled* by A.I.R. 1924 P.C. 50 (*Case-*

HINDU LAW—Joint family—Father—Representation

law considered.) (*Adami and Wort, JJ.*). RAGHUNANDAN PRASAD SINGH *v.* GHANANAND SINGH.
A.I.R. 1930 Pat. 521.

———Where the effect of a revenue partition is to bind the father of a Hindu joint family conclusively, his son will be equally bonud although his name may not have been entered in the revenue papers. (*Sulaiman and Ryves, JJ.*). GAJADHAR SINGH *v.* HARI SINGH. **87 I.C. 647= 47 All. 416=23 A.L.J. 291=6 L.R.A. Civ. 237= A. I. R. 1925 All. 421.**

———The presumption that when a Hindu father, a member of a joint family, sues or is sued, it is to be presumed that he sues or is sued in a representative capacity does not apply where several of the co-parceners have affixed their signatures to the bond in suit as executants and are made defendants in suit. (*Baker, J.C.*). NARAYAN *v.* DHUDABAI. **92 I.C. 663=21 N.L R. 38= A.I.R. 1925 Nag. 293.**

———There is a great distinction between cases in which a Hindu father sues in respect of a contract which he is empowered under the Mitakshara Law as manager to make on behalf of the family and cases in which a father sues in respect of rights in immovable property, rights which he can only hold in an equal measure with other co-parceners.

The question as to whether a Hindu father sufficiently represents all the co-parceners in a given litigation is a question which has to be decided with reference to the circumstances of the case. (*Foster, J.*). HUKUM MAHTO *v.* SANT SAHO.
78 I.C. 19=A.I.R. 1925 Pat. 308.

—Joint family—Father—Right to sue.

———*Father can sue without impleading his minor sons.*

There is no valid reason for drawing a distinction between the powers of a manager to sue on behalf of the joint Hindu family for a debt due to the family in his own name alone without impleading the other members and to sue for possession of immovable property belonging to the joint Hindu family without impleading the other co-parceners. At any rate, especially in the case of a father of a joint Hindu family, the consideration is even a stronger in favour of holding that he could sue both on behalf of himself and his minor sons without impleading the minor sons. The position will be different where co-parceners other than the father or the manager are suing, and, therefore, limitation runs even against a minor member of a joint Hindu family as regards adverse possession if his father who was joint with him was a major at the time that the adverse possession began: A. I. R. 1926 P. C. 16, *Dist.* (*Harrison and Dalip Singh, JJ.*). SHARAM SINGH *v.* SADHA SINGH. **110 I.C. 293=A.I.R. 1928 Lah. 484.**

———Suit by Hindu father for recovery of joint family land binds all co-parceners—Such suit must be deemed to be a representative suit on behalf of all the co-parceners. (*Foster, J.*). HUKUM MAHTO *v.* SANT SAHO. **78 I.C. 19= A.I.R. 1925 Pat. 308.**

—Joint family—Father—Self-acquisitions.

———Son cannot object to attachment of father's self-acquired property in execution of decree against father: 4 P. R. 1913, *Dist.* (*Bhide, J.*). RAGHBIR SINGH *v.* PAT-RAM GANGA-RAM.
115 I.C. 478=30 P.L.R. 29=10 L.L.J. 543= A.I.R. 1929 Lah. 181.

———Amongst Hindus an adult son usually lives with his father even when there is no joint family property and it cannot be said that a father whose property is self-acquired intends to make it joint family property simply because he does not turn out his son as he is of age and can earn his living. (*Kumaraswami Sastri and Reilly, JJ.*). PERIAKARUPPAN CHETTI *v.* ARUNACHALAM CHETTI.
102 I.C. 290=50 Mad. 582=25 M.L.W. 688= 1927 M.W.N. 287=A.I.R. 1927 Mad. 676= 52 M.L.J. 571.

HINDU LAW—Joint family—Law as to.

———The sons do not take a right by birth in his self-acquisitions of their father : 13 C.P.L.R. 137; 3 N. L. R. 182; 4 N.L.R. 9; 5 N. L. R. 103, *Foll.* (*Mittra, A. J. C.*). MAROTI *v.* TUKARAM.
76 I.C. 934=19 N.L.R. 99= A.I.R 1921 Nag. 138.

—Joint family—Father—Suit for accounts.

———In a suit for accounts against a joint family the son is not liable for the period of management by his father. (*Chaudhuri and Newbould, JJ.*). BISWAMBHAR HALDAR *v.* GIRIBALA DASI.
25 C.W.N. 356=A.I.R. 1921 Cal. 571.

—Joint family—Father—Will.

———A Hindu father has no interest in co-parcenary property after his death which he can vest in the trustees of any settlement. whether that settlement is made by deed or by will. (*Marten, C.J. and Crump, J.*). VENKATARAMAN *v.* JANARDHAN.
106 I.C. 79=52 Bom. 16=29 Bom. L.R. 1522= A.I.R. 1928 Bom. 8.

———Father cannot bequeath by Will joint family property : 43 Mad. 824, *Foll.* (*Spencer and Odgers, JJ.*). DEIVACHILA AIYANGAR *v.* VENKATACHARIAR. **88 I.C. 967=22 M.L.W. 188= 1925 M.W.N. 556=A.I.R. 1926 Mad. 46= 49 M.L.J. 317.**

———Father and son being co-parceners, former cannot appoint testamentary guardian for son for the co-parcenary property : 41 Mad. 561 (F. B.), *Foll.* (*Spencer and Odgers, JJ.*). DEIVACHILA AIYANGAR *v.* VENKATACHARIAR. **88 I.C. 967= 22 M.L.W. 188=1925 M.W.N. 556= A.I.R. 1926 Mad. 46=49 M.L.J. 317.**

—Joint family—Law as to.

———The law governing the descent of the zamindari of Sadak Arjuni, Bhandara District, is that which governs the estate held by a joint Hindu family. (*Mohiuddin and Macnair, A. J. Cs.*). MT. SARJABAI *v.* GANGARAM. **118 I.C. 871= A.I.R. 1930 Nag. 35.**

———*Law of joint family and that of survivorship are closely connected.*

So closely is the law of joint family and survivorship connected with the law of succession and inheritance that it is often very difficult to say precisely where the Hindu Law of succession and inheritance can be separated from the rest of the Hindu Law of the joint family. (*Kumaraswami Sastri, J.*). HAJEE ABOO BUCKER *v.* EBRAHIM HAJEE. **70 I.C. 715=31 M.L.T. 183= A.I.R. 1921 Mad. 571.**

—Joint family—Manager.
Acknowledgment.
Arbitration.
Bond in favour of.
Compromise.
Contract.
Decree against.
De facto.
Discharge.
Exclusive possession.
Insolvency of.
Liability of members.

HINDU LAW—Joint family—Manager—Acknowledgment.

Liability to account.
Loan.
Powers of.
Presumption.
Representation.
Right to sue.
Who can be.

—Joint family—Manager—Acknowledgment.

——The *karta* has the same authority to acknowledge a debt as he has to incur it, and the acknowledgment need not be expressed as having been made in his capacity of *karta*. (*Buckland, J.*). HARI MOHAN GHOSE *v.* SOURENDRA NATH MITTER. **88 I.C. 1023=41 C.L.J. 535= A.I.R. 1925 Cal. 1153.**

——A Hindu Manager can bind himself in an acknowledgment of a time-barred debt but he cannot bind his co-parceners. (*Broadway and Campbell, JJ.*). THAKAR DAS *v.* MT. PUTLI. **82 I.C. 96=5 Lah. 317=A.I.R. 1924 Lah. 611.**

——*Acknowledgment by one member—When binds others.*

If one of the members of a joint Hindu family makes an acknowledgment in a statement before a Court and there are circumstances which indicate that that member was making that statement on behalf of the family, other members of the family are bound by the acknowledgment. (*Kanhaiya Lal, J.C.*). RAM AUTAR *v.* BENI SINGH. **68 I.C. 196=25 O.C. 89=10 O.L.J. 7= A.I.R. 1922 Oudh 135.**

—Joint family—Manager—Arbitration.

——*Reference to arbitration—When manager can make.*

A manager of a joint Hindu family, even when he is not the father, has the power to bind the family by a reference of a dispute with any outsider regarding family property, to arbitration, provided such reference be for the benefit of the family; and minors in the family are bound by the reference, and consequently by the award made upon it: 14 C.L.J. 183, *Rel. on*; 27 Bom. 287, *Foll.* (*Jai Lal and Bhide, JJ.*). NANAK CHAND *v.* BANARSI DAS. **A.I.R. 1930 Lah. 426.**

——*Manager can refer to arbitration disputes on behalf of co-parcenary firm.*

The Manager of a joint Hindu family is entitled to refer to arbitration disputes on behalf of the co-parcenary business or firm. It makes no difference if the family is constituted not of father and son but of brothers: A. I. R. 1927 Lah. 362, *Rel. on*; A. I. R. 1926 All. 238, *Dist.* (*Jai Lal, J.*). SHIV DAYAL MAL SHANKAR DAS *v.* MOHAN LAL CHUNI LAL. **122 I.C. 231=A.I.R. 1930 Lah. 388.**

——*Bona fide* reference to arbitration of dispute as to succession to family property is binding on others in the absence of fraud or good reasons to the contrary. (*Chevis and Scott-Smith, JJ.*). DWARKA DAS *v.* KISHAN KISHORE. **61 I.C. 628= 2 Lah. 114=3 L.L.J. 349=73 P.L.R. 1921= A. I. R. 1921 Lah. 34.**

—Joint family—Manager—Bond in favour of.

——Promissory note in favour of manager for money advanced out of joint funds—Surviving member can sue on it without succession certificate under Succession Certificate Act, S. 4: A.I.R. 1921 Mad. 68 (F.B.), *Foll.* (*Beasley, J.*). ARUNACHALLAM CHETTY *v.* JAGANNATHA PILLAI. **98 I. C. 872=24 M. L. W. 659= 1926 M.W.N 804= A.I.R. 1926 Mad. 1188.**

——Bond held in the name of manager is presumed to be joint property—Separate private transactions by individual members do not disprove it—Evidence meagre on both sides—Presumption is not displaced. (*Viscount Cave.*) BANDHU RAM *v.* CHINTAMAN SINGH. **66 I.C. 402= 26 C. W.N. 406=3 P. L. T. 295= 20 A L. J. 495=A.I.R. 1922 P.C. 215 (P.C.).**

HINDU LAW — Joint family — Manager—Contract.

—Joint family—Manager—Compromise.

——*Compromise by manager is binding.*

In a Hindu family consisting of two brothers the elder brother of the two brothers should be presumed to be the head or the manager of the family in the absence of any evidence to the contrary and a compromise entered into by him is binding upon the younger brother. (*Shadi Lal, C.J. and Agha Haidar, J.*). SANT RAM *v.* HIRA NAND. **A.I.R. 1930 Lah. 719.**

——Compromise by, if reasonable, binds minor members. (*Mears, C.J. and Banerjee, J.*). TULSHI *v.* BISHNATH RAI. **71 I. C. 623=21 A.L.J. 175= 4 L.R.A. Civ. 134=A.I.R. 1923 All. 284.**

—Joint family—Manager—Contract.

——*Specific performance of—When can be enforced against minor.*

A contract entered into by a manager on behalf of the joint family at a time when one of the members was a minor cannot be enforced as against the minor. There is no reason to limit this rule to cases where the contract on behalf of the minor is a contract for the purchase of immovable property. Nor can it be said that the principle has no application to a case where there is a contract to sell for the purpose of necessity,

Held, however that a contract by the manager can be enforced except with reference to the share of the infant in the property contracted to be sold, unless the contract is of such an indivisible character that no specific performance can be ordered. (*Jack and Mitter, JJ.*). NRIPENDRA CHANDRA SARKAR *v.* EKHERALI JOARDAR. **57 Cal. 269= 34 C.W.N. 272=A.I.R. 1930 Cal. 457.**

——Transactions entered into by manager—Word 'heir' used in such transaction does not mean heirs of manager only. (*Das and Ross, JJ.*). HASAN IMAM *v.* BRAHMDEO SINGH. **A.I.R. 1930 Pat. 301.**

——Contract entered by family through manager—Through manager it can sue for matters arising out of that contract.

The managing member of a joint family business can sue in matters affecting the business, without joining in the suit the other members of the family. (*Macleod, C.J and Coyajee, J.*). MADIVELLAPPA *v.* MALLAPPA. **96 I.C. 281= 28 Bom. L.R. 711=A.I.R. 1926 Bom. 414.**

——*Contract to sell property—Sale not for necessity—Specific performance of only vendor's share can be had.*

The managing member of a joint Hindu family, who, for purposes not binding upon the other co-parceners and without their concurrence, agrees to convey a specific item of joint family property, cannot 'perform' his contract in its entirety and the case falls within the provisions of S. 15. The purchaser in such a case cannot enforce specific performance of the entire contract. But Courts will grant specific performance by a conveyance of the share which the vendor had in the property at the date of the contract, if the purchaser elects to pay the entire consideration, and the share should be specified in the decree. (*Mitchell, A.J.C.*). SINGHAI RAM LAL *v.* KANHAYA LAL. **96 I.C. 949= A I.R. 1926 Nag. 493.**

HINDU LAW — Joint family — Manager—Contract.

——A contract of partnership entered into by the Manager of a joint Hindu family with strangers does not *ipso facto* make the other members of the family partners: 41 M. 454, *Ref.* (*Baker, J.C.*). SHEO NARAIN *v.* BABULAL. **85 I.C. 775= A.I.R. 1925 Nag. 268.**

——Contract by the Manager of a Hindu joint family in his individual capacity does not bind other co-parceners but the manager is not deprived on this account, of his right to enforce the contract. (*Kennedy, J.C. and Lobo, A.J.C.*). TANUMAL *v.* GANGARAM. **94 I.C. 547=A.I.R. 1925 Sind 103.**

——Where a contract is by manager on behalf of a family, and for the benefit of the family and the manager dies, it can be enforced against the survivors even when some of the survivors are minors: 22 Bom. L.R. 997, *Foll.* (*Ramesam and Jackson, JJ.*). NARAYANA CHETTY *v.* MUTHIA CHETTY. **80 I.C. 658=20 M.L.W. 103= 34 M.L.T. 350=1924 M.W.N 482= 47 Mad. 692=A.I.R. 1924 Mad. 680= 46 M.L.J. 575.**

——Manager contracting to sell family property —Sale not binding on other members—Other members not consenting—Sale of vendor's share only can be enforced on payment of contracted consideration: 37 Mad. 387, *Appr.*; 26 Mad. 74 and 32 Mad. 320, *Overruled.* (*Wallis, C.J., Oldfield and Kumaraswami Sastri, JJ.*). BALUSWAMI AIYAR *v.* LAKSHMANA AIYAR. **63 I.C. 374=44 Mad 605= 13 M.L.W. 562=1921 M.W.N. 316= A.I.R. 1921 Mad. 172=41 M.L.J. 129 (F.B.).**

—Joint family—Manager—Decree against.

——*Manager entering into partnership with strangers—Adult co-parceners not liable for partnership—Liability if their consent was not taken.*

A preliminary decree was passed against *A* personally declaring him to be a partner with *P* and for rendition of partnership accounts. During continuance of further proceedings *A* died and *P* prayed to substitute the son and the brother of *A* as legal representatives on the ground that *A* entered into the partnership as manager of the joint Hindu family consisting of himself, his brother and son. There was no allegation that the brother had given his consent to *A* for carrying on the new business with *P*. The Court holding that *A* could not even if he entered the business as manager make other members partners with *P*, substituted only the son of *A* on the ground that trade debts of the father are binding on son,

Held further, that the Court was correct in refusing to substitute the brother as legal representative: 15 N. L. R. 21, *Rel. on*; 46 Cal. 962, *Ref.* (*Subhedar, A.J.C.*). KASHIBAI *v.* SHRIKUMAR. **A. I. R. 1930 Nag. 10.**

—— *Suit for trespass—Manager, resisting suit on the ground that property belongs to family—Decree binds members.*

Where in a suit the plaintiff contends that the defendant has wrongfully encroached on his land and the defendant who is the manager of a joint Hindu family contends that the land is his family property the suit cannot be said to be brought on a trespass pure and simple. If the defendant as manager of the joint family puts forward a title to the plaint property and if it is found against him, the other members of the joint family are also bound. (*Devadoss, J.*). (MADA PEDDA) SUBBANNA *v.* KURNAM DHANDRA BAYAMMA *alias* RAMA BAYAMMA. **86 I.C. 498=21 M.L.W. 300= A.I.R. 1925 Mad. 640.**

HINDU LAW — Joint family—Manager—Exclusive possession.

——*Execution of decree against manager—Interest of all members passes unless contrary is shown.*

In the absence of any objection by any member of the family, when joint family property is put up for sale in execution of a decree against a manager, it may be inferred that the intention was to pass the interest of all the members of the family in the property, though it may be open to the other members of the family to dispute that intention, and to satisfy the Court either that the alienation, was not binding on them or that the debt incurred by their father was not binding on them, or on any other ground that their interests in the family property had not passed to the auction-purchaser: 44 Cal. 524, *Foll.* (*Macleod, C. J. and Crump, J.*). DADA JIVAPPA *v.* YESU. **73 I.C. 402= 25 Bom. L.R. 494=A.I.R. 1923 Bom 450.**

——*Suit by or against manager—No presumption that suit is representative.*

If it is shown that the debt is incurred by the Karta of a family for the purposes of the family trade or for its benefit otherwise and he is sued as manager and a decree is substantially against the family in the name of its manager, all the members of the family will be liable for the decretal amount. These facts, however, must be proved by evidence. There is no presumption of law that a suit by or against a manager of a joint family is in his representative capacity as manager; and where the question itself is not raised as to his having represented the family, a Court will be acting rightly in holding that he sues or is sued in his own personal capacity. (*Abdul Raoof and Harrison, JJ.*). MELA MAL *v.* GOURI RAJMAL. **66 I.C. 485=3 Lah. 288=A.I.R. 1922 Lah. 200.**

——*Decree against manager binds minor members.*

Decree passed against the managing members a joint family as the legal representatives of their deceased father against whom the suit had been originally filed in order to make him reimburse mesne profits which he had realised out of the joint family property to the plaintiff—another member of the family with whom he had been joint—is binding on minor members of the family though they were not made parties to the suit or the execution proceedings that followed: 36 All. 383 (P.C.), *Foll.* (*Kanhaiya Lal, A. J. C.*). RAM NIDH *v.* ISHURDIN. **63 I.C. 288=24 O.C. 161= A.I.R. 1921 Oudh 117.**

—Joint family—Manager—De facto.

——A *de facto* manager can deal with the family property for proper family purposes, and a mortgage by him of such property for such a purpose is binding on the family. (*Abdur Rahim, Offg. C. J. and Odgers, J.*). SADAYAPPA ASARI *v.* RAGHAVA ASARI. **62 I.C. 220=27 M.L.T. 325.**

—Joint family—Manager—Discharge.

——Where there is a division of status, the person who was the managing member before there was such a division, ceases to represent the family afterwards and debts renewed by him subsequently would not bind the persons who were already divided in status. (*Kumaraswami Sastri and Reilly, JJ.*). VENKATA KRISHNAYYA *v.* RANGAYYA. **117 I. C. 720=A.I.R. 1928 Mad. 865.**

—Joint family—Manager—Exclusive possession.

——*Manager cannot claim exclusive possession against other members.*

Manager of a joint Hindu family is no more entitled to exclusive possession of any part of the joint family property than any other member is.

HINDU LAW—Joint family — Manager—Insolvency of.

If another member takes exclusive possession of a part or of the whole of the property and thereby ousts the Manager from joint possession, the latter can be restored to that joint possession, but he cannot be put in exclusive possession, as admittedly he has no right to it: 7 N.L.R. 82 ; 1 All. 77, *Dist.* (*Hallifax, A.J.C.*). KHEDU SINGH *v.* BHAGWAN SINGH. **79 I.C. 400=A. I. R. 1924 Nag. 163.**

—Joint family—Manager—Insolvency of.

———On the insolvency of the Manager of a Hindu joint family business, the Official Receiver can attack colourable transfers of the family property made shortly before the adjudication though such transfers were made by the senior members of the family and the manager was only a junior member. (*Walsh, Ag. C.J. and Ryves, J.*). NARAIN DAS *v.* BANKIM CHANDRA. **85 I.C. 396=49 All. 912= A.I.R. 1925 All. 194.**

———*Shares of other members do not vest in Official Assignee.*

On the insolvency of the managing member of a joint Hindu family the Official Assignee succeeds to the undivided interest of the insolvent in the joint property and his rights as managing member so far as they can be exercised for his own benefit; but he is not entitled to have vested in him the shares of the other members though he is entitled to deal with them as the insolvent would lawfully have done if there be no insolvency: A. I. R. 1923 Mad. 55, *Foll.*; A.I.R. 1923 Lah. 1 (F. B.), *Not foll.* (*Schwabe, C. J. and Coleridge, J.*). VARADARAJAN *v.* SRINIVASA RAO. **75 I.C. 471= A.I.R. 1924 Mad. 792.**

———*Minor co-parcener's share does not vest in Receiver.*

Although the manager and the other adult members of the family are adjudicated insolvents, the property of the minor co-parceners does not vest in the Receiver: 42 Cal. 225 and 19 Mad. 74, *Foll.* The Full Bench Ruling, 3 Lah. 329, has distinguished the case in 42 Cal. 225. (*Abdul Raoof, J.* BASHESHER NATH *v.* GANGA RAM. **73 I.C. 281=A.I.R. 1923 Lah. 572.**

—Joint family—Manager—Liability of members.

———Lease of fields taken by person as manager of joint Hindu family of himself and his brother—Fields cultivated by brother for certain years—Rent for those years can be recovered from him by lessor, though he be not actual party to lease: 1 N. L. R. 178, *Rel. on.* (*Subhedar, A. J. C.*). NARAIN *v.* NILKANTH. **A.I.R. 1930 Nag. 54.**

———Where the managing member of a joint family misappropriated, in the interests of joint family business, the money of a public trust,

Held, the other members of the joint family were jointly with the managing member and severally, liable to re-pay the amount with the interest which the trust would have reasonably acquired. (*Sir John Edge.*) JAI NARAIN *v.* PRAG NARAIN. **85 I.C. 2=1925 M.W.N. 13= 21 M.L.W. 162=2 O.W.N. 157= 6 L.R.P.C. 73=27 Bom. L.R. 713= 29 O.W.N. 775=3 Pat. L.R. 255= A.I.R. 1926 P. C. 11=48 M.L.J. 236 (P.C.).**

—Joint family—Manager—Liability to account.

———The manager of a joint Hindu family after the date of division in status, is under an obligation to account for his management of the whole of the family property, he being co-owner in possession of the property of the separated member of the family: 18 Cal. 10 (P.C.) and A.I.R. 1927 Mad. 801, *Foll.* (*Phillips and Thiruvenkatachariar, JJ.*).

HINDU LAW — Joint family — Manager — Liability to account.

RAMAKRISHNA AYYAR *v.* MUTHUSWAMI AYYAR. **121 I. C. 609=52 Mad. 672=29 M.L.W. 360= A.I.R. 1929 Mad. 436=56 M. L. J. 657.**

———Manager is not bound to render accounts to the co-parceners of the profits of the joint-family during continuance of jointness. (*Simpson, A.J.C.*). LACHMI NARAIN *v.* SALIG RAM. **83 I.C. 833= 11 O L.J. 154=A.I.R. 1924 Oudh 428.**

———Manager cannot be freed from the liability of rendering accounts simply because he has said that he possesses no account books and the plaintiff has been unable to prove the existence of such. (*Broadway and Zafar Ali, JJ.*). RAM KISHAN *v.* RANSHAU. **77 I.C. 532=A.I.R. 1923 Lah. 551.**

———*He is liable to account only for what he actually receives.*

In the absence of proof of direct mis-appropriation or fraudulent and improper conversion of the moneys to the personal use of the manager (Karta) he is liable to account for what he received and not for what he ought or might have received if the moneys had been profitably dealt with. (*Sir John Edge.*) A. PERRAZU *v.* A. SUBBARAYADU. **61 I.C. 690=3 Pat. L.T. 1=26 C W.N. 1= 30 M.L.T. 1=43 I.A. 280=44 Mad. 656= 19 A. L. J. 621=23 Bom. L. R 920= 34 C. L. J. 56=14 M. L. W. 270= 1921 M. W. N. 540=A.I.R. 1922 P. C. 71= 41 M.L.J. 33 (P.C.).**

———*Manager to maintain accounts to show savings effected—Suppression of account-books—Manager will be charged with value of net income.*

The Karta of a joint Mitakshara Hindu family is not accountable for the rents, issues and profits which came into his hands during his management of the properties as Karta. But he is still bound to keep true and correct accounts and to show the savings effected from the income of the joint family properties.

Where the Karta of the joint family properties has suppressed his books of account with the result that it is impossible to discover what are the savings effected from the income of the joint family properties, the only possible way, to discover those savings is to see what was the income of the joint family properties and what expenses were incurred by the joint family year by year. The Karta must be charged with the utmost value of the whole net produce deducting therefrom what is proved by him to have been spent for the joint family. Such an enquiry is always directed against trustees and agents who do not keep true and faithful accounts. *Lipton* v. *White*, (1808) 15 Ves. 432 and *Gray* v. *Haig*, (1854) 20 Beav. 219, *Ref.*

The rule is founded on the principle that every presumption consistent with established facts ought to be made against a trustee or an agent who, by his tortious acts has made it impossible for the plaintiff to discover his property. Although a Karta of a joint Mitakshara Hindu family is neither a trustee nor an agent in the strict sense of those terms; but as it is his duty to conserve the joint family properties and to disclose those properties to the members of the joint family at the time of partition the rule stated above is applicable in his case. This method of investigation is hardly a satisfactory one, and may even lead to injustice so far as the Karta is concerned; but the Court deals severely with any irregularities on the part of the agent and it strictly requires that he, who is the person trusted, shall

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act in all matters, relating to such agency for the benefit of his principal, and it is imperative upon him to preserve correct accounts of all his dealings and transactions in that respect and the loss and still more the destruction of such evidence by the agent, falls most heavily on himself.

Where the joint family has a money lending business, but where having regard to the attitude taken up by the Karta it is impossible to determine what the value of that business is, the only reasonable way of dealing with this matter would be to assume that the Karta of the joint family must have invested the net income derivable from the properties less the expenditure in each year, in the money lending business and to charge him with interest at such a rate as in the opinion of the Court fairly represents the profits usually made by the employment of money in such a business. *Burdick* v. *Garrick*, (1870) 5 Ch. 233, *Ref.* (*Das and Ross, JJ.*). GOBIND DUBE *v.* PARAMESHWAR DUBE. **62 I.C. 83=2 P.L.T. 365= A.I.R. 1921 Pat. 487.**

—Joint family—Manager—Loan.

——When the manager of a joint Hindu family incurs a debt and gives a promissory note therefor the creditor may sue him upon the note and make him personally liable but he cannot make the other members of the family liable by suing on the note. (*Shingne, J.*). MANCHERSHA *v.* GOVIND. **32 Bom. L.R. 1035=A. I. R. 1930 Bom. 424.**

——Where the manager of a joint family borrows money on a promissory note for a joint family business, the other members of the joint family are liable on the note, though the note was executed by the manager in his sole name : Authorities on P. 249, Mulla's Hindu Law, *Foll.* (*Broadway and Skemp, JJ.*) MEHLU MAL *v.* BHOLU. **102 I.C. 295=9 L. L. J. 186=28 P.L.R. 277. A. I. R. 1928 Lah. 81.**

——When the whole of the money borrowed by manager for the family is spent on it or by it, whether on necessities or luxuries the question of the actual existence of the necessity does not arise. (*Hallifax, A.J.C.*). RAMBHAU *v.* WAMAN RAO. **107 I. C. 657=A.I.R. 1928 Nag. 251.**

——*Debt by the manager for the construction of new house on old site is a legal necessity though new house is more spacious.*

Where a manager borrows money to construct a new house on old site the mere fact that it was on a larger and more extensive scale, does not make the loan any the less for necessity where there has been no proof that the construction was not a reasonable and natural one in the circumstances and the work had already been commenced and it would have been uneconomic and indeed a disastrous step to have left matters as they were and the net result had been that the family property had been improved and increased in value and was capable of producing a larger income. (*Findlay, C.J.*). JAGO KALAR *v.* NILKANTH. **105 I.C. 471=A.I.R. 1928 Nag. 78.**

——*Promissory note by karta in his own name—Other members not liable on the note—Creditor can sue on the original debt, all the members—Members can plead debt was not justified.*

The karta of a joint Hindu family, by executing a promissory note unconditionally in his own name for family purposes cannot thereby bind the other members of the family or the interest of any other member of the joint family property. The other members of the joint family would only be bound

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by a promissory note or bill of exchange signed by the Karta for family purposes if the name of each member of the joint family to be charged appears on the instrument itself and is disclosed in such a way that on any fair interpretation of the document his name is the real name of the person liable upon the bill: 46 Cal. 663; A.I.R. 1925 Cal. 1062 and 30 Mad. 88, *Foll.*; 23 Mad. 597 and A.I.R. 1922 All. 116, *Diss. from*; 11 C.W.N. 139, *Dist.*

A debt contracted under a promissory note signed by a karta for family purposes does not attract the Hindu doctrine of family responsibility for family debts, and such a doctrine is incompatible with the object and effect of the law relating to negotiable instruments.

If a person has lent money to the karta of a joint family for family purposes upon the security of a promissory note, he is entitled to recover the full amount due under the promissory note, irrespective of whether the money was or was not borrowed or applied for family purposes but if he elects to pursue this course, he is restricted to the remedy that he possesses against the party to the promissory note, and must follow the special procedure provided in respect of negotiable instruments. On the other hand in a suit aptly framed he may claim in the alternative the amount of the original debt for which the promissory note was given as security, and may proceed under the Hindu Law against the property of the joint family as a whole; but if he chooses to adopt the alternative the coparceners will be entitled to raise the defence that the debt was not contracted or the proceeds of the loan applied for family purposes. In short the plaintiff in such a case may enforce the rights that he possesses either under the law relating to negotiable instruments or under the Hindu Law: but whichever remedy he pursues he is bound by the rules of the Code that he invokes. (*Page, J.*). RAM GOPAL *v.* DHIRENDRA NATH. **101 I.C. 573= 54 Cal. 380=31 C. W. N. 397= A.I.R. 1927 Cal. 376.**

——Where the elder brother releases his interest in the family, the next brother becomes the manager and loans contracted by him for benefit of the family are binding on the family including the sons of elder brother, the sons remaining joint inspite of the release by the father. (*Venkatasubba Rao, J.*). BALASUNDARACHARI *v.* KANNIAPPA. **107 I.C. 132=39 M.L.T. 443= A.I.R. 1927 Mad. 1165.**

——The karta of a Hindu joint family cannot bind the members of the family by his signature alone on a promissory note, no other names appearing upon the document as those of persons to be charged: A.I.R. 1923 Bom. 244 and A.I.R. 1922 All. 116, *Foll.*; 46 Cal. 663 (P.C.), *Dist.* (*Buckland, J.*). HARI MOHAN GHOSE *v.* SOURENDRA NATH MITTER. **88 I.C. 1025=41 C.L.J. 535= A.I.R. 1925 Cal. 1153.**

——*Promissory note by karta—Other members not liable on the note.*

Where a promissory note is signed by the karta alone of a joint Hindu family he cannot be said to have signed on behalf of the other members of the family if their names do not appear in the pro-note. Such promissory note gives no cause of action against other members of the joint family than the karta himself, and hence no question under S. 91, Evidence Act, arises. Such a case is different from one where the pro-note is merely inadmissible for non-compliance with the provisions of the

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Stamp Act. (*Buckland, J.*). HARI MOHAN GHOSE *v.* SOURENDRA NATH MITTER. **88 I.C. 1025= 41 C.L.J. 535=A. I. R. 1925 Cal. 1153.**

——Manager alone is liable for the debt incurred by him where it is not incurred for family purposes. (*Shadi Lal, C.J. and Le Rossignol, J.*). BARU *v.* BALLA. **103 I.C. 770=6 L.L.J. 441= A.I.R. 1925 Lah. 141.**

——There is no presumption that a debt contracted by the manager of a Hindu family is contracted for the benefit of the family: 34 A. 135, *Ref.* (*Martineau and Zafar Ali, JJ.*). KHAZAN MAL *v.* JAGAN NATH. **74 I.C. 484=4 Lah. 200= 5 L.L.J. 236=A.I.R. 1924 Lah. 44.**

——*Promissory note by karta—Suit against other members for the debt—When lies.*

A suit upon a promissory note executed by the manager of a joint family and brought against the other members (undivided younger brothers of the executant) after his death is maintainable where the plaint mentions the fact of the loan and alleges that it was incurred for family purposes. (*Wallace, J.*). SUPPAI GOUNDAN *v.* MURUGAPPA CHETTIAR. **19 M.L.W. 605=A.I.R. 1924 Mad. 710.**

——There is no presumption in law that a document signed in his personal capacity by one who is the manager of a joint Hindu family is signed by him as such manager. It is essential for the plaintiff to prove that there was necessity for these loans sought to be repaid under the suit promissory notes. (*Wallace, J.*). SUPPAI GOUNDAN *v.* MURUGAPPA CHETTIAR. **19 M.L.W. 605= A.I.R. 1924 Mad. 710.**

——*Suit on pro-note by manager cannot be treated as one for original debt.*

A suit which is primarily a suit on a promissory note by manager cannot be treated as a suit for the debt for which the promissory note was passed. If that were permissible difficulties would arise because the issues in a suit on a promissory note would be entirely different from the issues which would be raised in a suit against the whole family to recover debt. Defences which would be open to members of the family when sued for a debt would not be open to the person who passed the note. (*Macleod, C. J. and Crump, J.*). VITHAL RAO SHESHGIRI RAO *v.* VITHAL RAO SOUDEKAR. **72 I. C. 242=25 Bom. L. R. 151= A.I.R. 1923 Bom. 244.**

—Joint family—Manager — Powers of — Acts binding.

——*Averting loss in family business—Mortgage therefor is binding—Test of justification.*

The criterion to be applied to a transaction such as a mortgage by a manager is not whether it ultimately turned out to be for the benefit of the family, but whether it was a transaction which at the time it was entered into was such that a prudent man would have entered into it in the expectation that it would be for the benefit of the joint Hindu family.

Where a mortgage deed was proved to have been executed by adult members of a joint Hindu family on their own behalf and as guardians of minor members, and where the minors challenged the mortgage on the ground that it was not for legal necessity or for the benefit of the family estate and where it was proved that the consideration of the mortgage was borrowed for purchasing a house in which the joint family had been carrying on jajmani business and it was established by evidence that if the adult members had failed to purchase the house which was offered to them at a

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concession, there would have been a loss to the family in the jajmani business,

Held, that as the danger to be averted was the loss of the possession of the house which had been in the possession of the family for 40 years, and which had been of material assistance to the family in conducting its business of jajmani, the adult members were justified in executing the mortgage in question and that the transaction was a transaction for the benefit of the family: 6 M.I.A. 393, *Foll.* and A.I.R. 1924 P.C. 50, *Ref.* (*Mukerji and Bennet, JJ.*) GOBINDJI *v.* LALLAMUL HARDEO DAS. **1930 A.L.J. 1170=A. I. R. 1930 All. 767.**

——Manager for securing economical management of family property taking up management of neighbouring property and creating charge on family property to secure honest management—Manager does not exceed his powers nor does he burden family property without legal necessity. (*Ashworth, J.*). MT. ASHRAFUNNISSA BEGAM *v.* SAHDEO PANDEY. **117 I.C. 609= A.I.R. 1929 All. 479.**

——*Transaction by manager can be maintained either on the ground of necessity or of benefit.*

A transaction by a manager of a joint Hindu family can be maintained on two grounds, either: (1) that of necessity or (2) that of benefit. If the transaction is beneficial to the family, to establish that there existed a pressure on the family estate and that there was need for the transaction is unnecessary.

Where the family is in danger of losing the entire property and the manager pays off the mortgage by executing another mortgage, his action is justifiable on the ground of legal necessity: 6 M. I. A. 393 and A. I. R. 1925 Oudh 459, *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). GAJRAJ SINGH *v.* MT. MULAN KAUR. **105 I.C. 593=4 O.W.N. 981= A.I.R. 1927 Oudh 521.**

——*Karta—Position of, in the joint family*—Bona fide *partition by manager is binding unless other members are prejudiced.*

In a Hindu family the *karta* occupies a position superior to that of the other members in so far as he manages the family property or business or looks after the family interests on behalf of the other members. In fact he exercises a complete authority over the family affairs, as the common interests requiring protection, so long as full and absolute confidence is reposed in him by the other members and no separation is effected, but that authority does not include authority to transfer or alienate the family property except for family purposes. A partition of the family property between his branch and the other branches of the family is not an alienation and if he acts in good faith and in the interest of the family to which he belongs or of which he is the manager that partition is binding on the adult members of the family, and particularly on those who are absent on employment elsewhere or are minors unless there is anything to show that they were prejudiced by it. (*Kanhaiya Lal and Ashworth, JJ.*). JAGMOHANDAS *v.* KUNWAR SINGH. **96 I.C. 135=A.I.R. 1926 All. 532.**

——*Acts of manager are binding if they are for family benefit or interest.*

The mere fact that a certain person is the manager of a joint family is not enough to make his acts binding upon the other members of the family and it must be shown by the party relying

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upon the acts of the manager and seeking to bind the other members of the family, that the acts were done by the manager either for the benefit or for some interest of the family. (*Greaves and Mukerji, JJ.*). SUBASHINI DASI *v.* HABU GHOSE. **89 I.C. 100=A.I.R. 1926 Cal. 247.**

———Where the manager of a joint Hindu family purchased a share in a village, part of which was already owned by the family, and in order to pay off the mortgage decree which was binding on the purchased share, executed mortgage of the joint family property.

Held, that though the purchased property yielded a small profit, the purchase was not speculative but was prudent and was binding on the family. (*Das and Ross, JJ.*). BENI MADHO SINGH *v.* CHANDER PRASAD. **83 I.C. 603=3 Pat. 451=6 P.L.T. 233=A.I.R. 1925 Pat. 189.**

———Manager's acts bind all unless they are prejudicial to them or are not for their benefit. (*Jwala Prasad and Ross, JJ.*). NANA OJHA *v.* PRABHUDAT OJHA. **75 I.C. 508=5 P. L.T. 284=A.I.R. 1924 Pat. 647.**

———New business started by Karta for benefit of family—Karta can raise money on joint property. (*Broadway and Zafar Ali, JJ.*). CHALA RAM *v.* KISHEN CHAND. **88 I.C. 762=A.I.R. 1923 Lah. 462.**

———To save other properties from sale at execution, manager sold the mortgaged property. But full purchase money could not be paid by the purchaser and the manager became a surety to the mortgage executed by the purchaser in order to be able to find money to set aside the execution sale before confirmation.

Held, there was legal necessity for the last transaction and the manager was justified in becoming a surety to the mortgage. (*Das and Adami, JJ.*). KANHAILAL KHENKA *v.* THAKUR PRASAD SINGH. **79 I.C. 9=2 Pat. L.R. Civ. 285=5 P.L.T. 594=A.I.R. 1923 Pat. 268.**

———*Purchase of property if a prudent act is binding.*

The *karta* of a joint family is entitled to borrow money in order to purchase property under certain circumstances. Provided that the transaction is one into which a prudent owner would enter, the manager of a joint family is entitled to bind the joint family properties by a mortgage executed by him. It is wholly immaterial whether the minors join in the mortgage or not. As a matter of law, they cannot join in the transaction; the transaction binds the joint family properties, although there be no registration, and consequently no execution on behalf on the minors. (*Das and Bucknill, JJ.*). KUMAR KALIKNAND SINGH *v.* SHIVA NANDAN PRASAD SINGH. **63 I.C. 625=3 P.L.T. 149=A.I.R. 1922 Pat. 122.**

—Joint family—Manager—Powers of— Acts not binding.

———The manager of a joint family cannot validly give up a valuable claim of the family and extinguish it without any return or consideration. No such waiver or giving up by the manager can be regarded as binding on the minor members of a family and therefore on the family as a whole. (*Srinivasa Ayyangar and Jackson, JJ.*). DASARATHARAM *v.* NARASA REDDI. **109 I.C. 329=51 Mad. 484=28 M.L.W. 77=A.I.R. 1928 Mad. 601=55 M.L.J. 109.**

———The manager of a joint Hindu family property is, in the absence of evidence of necessity for the same, not justified in accepting the contract postponing the redemption of a mortgage for forty years. (*Wazir Hasan, A.J.C.*). MT. KANIA FIZZA BIBI *v.* DATADIN. **90 I.C. 184=2 O.W.N. 650=A.I.R. 1925 Oudh 678.**

—Joint family—Manager—Powers of—Borrowing for business.

———The manager of a joint family business has an implied authority to contract debts for the ordinary purposes of the family business. (*Addison, J.*). MAULUK CHAND KISHANJI *v.* DAYA KISHAN. **106 I.C. 183 (Lah.).**

———The manager of a trading family has wider powers than those of the manager of a non-trading family. There is no deviation from the fundamental principle that what is done must be for the benefit or necessities of the family, but acts as the incurring of debts and drawing of negotiable instruments are necessities to a trading family while they would not be to a non-trading family. Even where the debts in fact are incurred merely for personal purposes of the manager they will bind the family if they are within the ostensible authority of the manager as conducting the family business. So it is, that those who deal with him and to whom he incurs debts are not put upon enquiry as to whether the debts where incurred for the benefit or necessities of the family so long as they are incidental to the family business: *Mayne, 9th Edition*, pp. 398-399, *Rel. on*; 34 Bom. 72; 35 Mad. 692 and 42 Mad. 629, *Foll.* (*Wallace and Thiruvenkatachariar, JJ.*). RAJAGOPALA AIYAR *v.* RAMANCHETTIYAR. **1927 M.W.N. 879=A.I.R. 1927 Mad. 1190.**

———*When co-parceners are personally liable.*

The Manager of a joint family business has an implied authority to contract debts for the ordinary purposes of the family business. Where such debts have been incurred, the other co-parceners, whether they be adults or minors, are liable, but to the extent only of their interest in the joint family property. They are not liable personally, unless, in the case of adult co-parceners, the contract sued upon, though purporting to have been entered into by the Manager alone, is in reality one to which they are actual contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified; and in the case of minor co-parceners, unless the contract has been ratified by them on attaining majority: 29 All 166, *Foll.* Mulla's Hindu Law, 3rd Edn., pp 219 and 211, *Ref.* (*Broadway and Abdul Raoof, JJ.*). BISHEN SINGH *v.* KIDAR NATH. **62 I.C. 800=2 Lah. 159=76 P.L.R. 1921=A.I.R. 1921 Lah. 61.**

—Joint family—Manager—Powers of—Contribution.

———Where debts binding on the joint family were renewed in favour of another by the manager subsequent to the filing of a suit for partition.

Held, that though the renewal by the managing member, subsequently to a division may not bind other members they were in equity bound to contribute towards the debts which were discharged by the renewal: 39 M. 288; 44 B. 179, *Foll.* (*Phillips, J.*). VISVASANKARA NARAYANA AIYAR *v.* KASI AIYAR. **86 I.C. 225=21 M.L W. 25=A.I.R. 1925 Mad. 453.**

—Joint family—Manager—Powers of—General.

———The manager can represent the co-parcenary in all suits affecting its interest, can make

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contracts, refer to arbitration and compromise, any claim and can do all acts which he thinks necessary or beneficial to the estate. (*Scott-Smith, J.*). MITHAND *v.* SHIVRAM. **60 I.C. 484 (Lah).**

—Joint family—Manager—Powers of—Giving discharge.

———Money lent by manager—Death of lender—If money be private property of lender only person holding heir certificate alone can give discharge—If money was joint manager can give discharge. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). SHAKAR KHAN *v.* LAKHIMAL. **94 I.C. 664= A. I. R. 1926 Sind 56.**

———The managing member of a joint Hindu family can give good receipts on behalf of the family which will bind the family: 34 All. 549; 38 Mad. 118; 45 Bom. 446, *Foll.* (*Daniels and Dalal, JJ.*). BAIJNATH *v.* RAM BILAS. **80 I.C. 12=5 L. R. A. Civ. 386= A.I.R. 1924 All. 738.**

———*Manager can give discharge in respect of debts due to family business.*

Though ordinarily one out of several joint creditors cannot give a valid discharge for the amount of a joint debt, the managing member may do so where the payment is made to him in discharge of a debt due on account of a joint business carried on in the interests of a joint Hindu family and such payment is made to him as representing all its members: 14 O. C. 45 and 18 O. C. 154, *Dist.*; 33 All. 272, *Foll.* (*Kanhaiya Lal, J.C.*). SHEO CHARAN DAS *v.* BRIJ BAHADUR SINGH. **81 I.C. 303=26 O.C. 286=A.I.R. 1924 Oudh 161.**

———*Mortgage in favour of minor—Tender of mortgage money to Manager, if good tender.*

If, in executing a mortgage in favour of a minor, the transaction is really entered into by the joint family consisting of the father and the son, and if at the time of deposit the mortgagee is still a minor, then it might well be held that an offer to pay the mortgage money to the managing member of the joint family is a good and valid tender in the eye of the law. (*Lindsay and Stuart, JJ.*). SHEO SARAN CHAUDHRI *v.* RAM LAGAN DAS. **64 I.C. 413= 44 All. 64= 19 A.L.J. 852=A. I. R. 1922 All. 355.**

—Joint family—Manager—Powers of—Guardianship.

———Where a managing member is the next friend or guardian of his minor brothers, his powers are controlled by the provisions of the law and he cannot do any act in his capacity of managing member which he is debarred from doing as next friend or guardian without leave of the Court: 36 Mad. 295 (P. C.), *Foll.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). CHAGANMAL AILDAS *v.* TEJOOMAI. **103 I.C. 460=A.I.R. 1927 Sind 268.**

———*Manager cannot apply for appointment of guardian under Guardians and Wards Act.*

It is not open to the manager of a co-parcenary to apply under the Guardians and Wards Act (8 of 1890) to be appointed guardian of the property of minor co-parceners. Though it may perhaps be open to the managers in a Presidency town to apply to a Chartered High Court under its extraordinary jurisdiction to sanction an intended sale and to sell the property under the authority of such sanction, it would not be possible for them to sell or otherwise alienate any single item of the co-parcenary property in the mofussil unless they come to a partition with the minor co-parceners and have such item allotted to their share at such partition: 16 Bom. 634; 19 Bom. 96; 25 Bom. 353; 25 All. 407 and 43 Bom. 519, *Foll.* (*Rupchand Bilaram, A.J.C.*). LAKHMICHAND ISARDAS *v.* FIRM OF KHUSHALDAS MANGATRAM. **88 I. C. 116=18 S.L.R. 230=A.I.R. 1925 Sind 330**

HINDU LAW—Joint family—Manager—Representation.

—Joint family—Manager—Powers of—Minor.

———Transaction entered into by manager on behalf of minors need not be of a defensive nature—If the transaction be shown to be for the benefit of the estate and such as a prudent owner would have carried out with knowledge that was available to him at the time, it cannot be set aside by anybody.

The degree of prudence which might be required from a person who was not the sole owner would be somewhat greater than that which might be expected in the case of a sole owner, and might well be held to be what would be demanded in ordinary cases from a trustee: A.I.R. 1928 All. 454 (F. B.), *Foll.*; 6 M. I. A. 393 (P.C.), *Expl.* (*Kendall and Niamatullah, JJ.*). BASDEO NARAIN *v.* MUHAMMED YUSUF. **116 I.C. 491= 51 All. 285=26 A.L.J. 1313=9 L.R.A. Rev. 321= A.I.R. 1928 All. 617.**

—Joint family—Manager—Powers of—Prudent Acts.

———Acts of manager cannot be called avyavaharik merely because they involve risk to family property: A. I. R. 1926 Pat. 17 and A. I. R. 1926 Lah. 41, *Rel. on.* (*Macnair and Subhedar, A.J.Cs.*). NARAYANARAO *v.* SETH HANUMATRAM. **A.I.R. 1930 Nag. 273.**

—Joint family—Manager—Presumption.

———If a Hindu family is presumed, a manager also must be presumed and the senior member of the family would have a legal right to physical possession of the family property until the family is dissolved. (*Campbell, J.*). THE FIRM RAGHBIR SINGH *v.* NARIJAN SINGH. **72 I.C. 569= A.I.R. 1923 Lah. 48.**

—Joint family—Manager—Representation.

———Contract on behalf of the joint family—Manager effectively represents all members in suit on it—On death of manager it is only necessary to substitute his successor—Other co-parceners need not be joined: 33 All. 272 (P.C.); A.I.R. 1914 P.C. 136 and A. I. R. 1922 Bom. 281, *Rel. on*; A. I. R. 1928 Pat. 250, *Dist.* (*Tek Chand and Agha Haidar, JJ.*). ATMA RAM *v.* BANKU MAL. **A. I. R. 1930 Lah. 561.**

———Omission to describe karta of family as such in plaint—Plaintiff is not barred from claiming that managing member represents family (*obiter*). (*Courtney-Terrell, C.J. and James, J.*). GOBIND GORHI *v.* BALDEO RAM. **A.I.R. 1930 Pat. 293.**

———In a suit against a joint Hindu family the karta can effectively represent all other members of the family although he may not be described as a party in that capacity in the records of the case: A. I. R. 1914 P.C. 136; 1 Pat. L.W. 197 and 34 All. 549, *Foll.*; 1 Pat. L. J. 468, *Diss. from.* (*Adami and Chatterji, JJ.*). LALCHAND *v.* SHEOGOBIND. **121 I.C. 330=8 Pat. 788= A.I.R. 1929 Pat. 741.**

———The fact that the karta did not contest the suit does not necessarily mean that he was careless of the interest of the family: A.I.R. 1924 Mad. 571, *Foll.* (*Adami and Chatterjee, JJ.*). LALCHAND THAKUR *v.* SHEOGOBIND THAKUR. **121 I.C. 330= 8 Pat. 788=A.I.R. 1929 Pat. 741.**

———*Manager sued with other members—He enjoys double capacity, one as karta and the other as member* (*Walsh, J.*)—*He is not presumed to represent the family* (*Iqbal Ahmad, J.*).

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Walsh, J.—When the karta together with the other members of the joint family is sued, it must be taken that he enjoys the dual capacity which he enjoys in the family, that is to say, he is sued both as the karta representing the family and managing the family, and as a member of it, having an undivided interest.

Iqbal Ahmad, J.—When the manager of a joint Hindu family is impleaded as a defendant to the suit, the presumption is that he is sued in that capacity. But if along with the manager certain other members of the family are joined as defendants to the suit, the presumption must be the other way, because if the manager was being sued as representing the family, there could be absolutely no reason for joining some other members of the family as defendants in the suit. (*Walsh and Iqbal Ahmad, JJ.*). THAKUR LAL SINGH *v.* JAGRAJ SINGH. **107 I. C. 693=50 All. 546=26 A.L.J. 229=A.I.R 1928 All. 86.**

———*Senior member representing family—Decree binding as* res judicata.

In the case of a Hindu family where all have rights, it is impossible to allow each member of the family to litigate the same point over and over again and each infant to wait till he comes of age, and then bring an action, or bring an action by his guardian before ; and in each of these cases, therefore, the Court looks to Explanation 6 of S. 11 of the C. P. Code, to see whether or not the leading member of the family has been acting either on behalf of minors in their interest, or if they are majors, with the assent of the majors : A.I.R. 1925 P.C. 272, *Ref.* (*Lord Phillimore.*) LINGANGOWDA DOD BASANGOWDA PATIL *v.* BASANGOWDA BISTANGOWDA PATIL. **101 I. C. 44=25 M. L. W. 789=25 A. L. J. 319=31 C. W. N. 570=1927 M. W. N. 352=4 O. W. N. 424=29 Bom. L. R. 848=45 C.L.J. 504= 8 P.L.T. 462=51 Bom. 450=54 I. A. 122=A. I. R. 1927 P. C. 56=52 M. L. J. 472 (P.C.).**

———Entry in revenue papers of a person as representing the family—Suit questioning the entry —Person can be sued as representative of the family —Such representative's confessing judgment that the family had no right in the land, is binding on the family in absence of fraud or collusion, etc.: 16 All. 231, *Foll.* (*Ashworth, J.*). RAM LAL KOERI *v.* PANCHU AHIR. **100 I. C. 316=8 L.R.A. Rev. 69=A. I. R. 1927 All. 813.**

———*Mortgage by manager for necessity—Decree against manager is binding on all members.*

A decree for foreclosure obtained against the manager of a joint family alone on the basis of a mortgage executed by him for legal necessity is binding upon other members of the family who have not been impleaded in the suit. If a Hindu father can effectively represent his sons there is no reason why a brother or an uncle who happens to be the manager of the family should not similarly be able to effectively represent his younger brothers and nephews in the suit brought against him to enforce a mortgage executed for family necessity. The real point which has to be borne in mind in such cases is whether the deed was not executed for legal necessity. If such be the case it affects the entire family property and if a suit is brought on the basis of that deed against the manager alone the decree passed in such a suit is binding on all the members of the family. (*Gokaran Nath Misra and Raza, JJ.*). PIRTHIPAL SINGH

HINDU LAW—Joint family—Manager—Representation.

v. RAMESHWAR. **99 I. C. 154=2 Luck. 288=3 O.W.N. 954=A.I.R. 1927 Oudh 27.**

———The karta of a joint family has full authority to act for the family and the leave of the Court need not be obtained before a payment is made to him under a decree in favour of the joint family merely because a minor member of the family is concerned. (*Ross and Kulwant Sahai, JJ.*). JHAKHRI GOPE *v.* PHAGU MEHLO. **103 I. C. 75=8 P. L. T. 708=A.I.R. 1927 Pat. 329.**

———*Decree in a representative suit by manager is binding on the minors as well as those who are not then born unless fraud or collusion is proved—Carelessness on manager's part, does not make decree the less binding on the other members.*

A manager of a joint Hindu family represents the family and, therefore, all its members, as against a third party. When he institutes a suit as manager in the interests of the family against a stranger all the members must be deemed to be represented in it through him. The result of the suit binds not only the manager but all the members of the family unless, of course, any fraud or collusion were established which would vitiate the decree. The mere ground that in the opinion of the minor sons their fathers did not look after the case sufficiently well, or that they were careless or negligent in the conduct of their case, would not be a good ground for ignoring the effect of the decree. The question of carelessness or negligence may arise in cases where a suit is instituted by a guardian on behalf of his ward and the question of a case being properly and fairly fought out may also arise when a limited owner, like a Hindu widow, is representing the estate for the time being. But these considerations cannot arise when the manager of a family, not as a mere reversioner, but as proprietor in whom the interest actually vests, institutes a suit and instead of impleading all the members of the family sues on their behalf as manager. A decree obtained under such circumstances is binding not only on all the members of the family who are then alive but also on those who are born subsequently: 34 All. 572 (F.B.), *Foll.*; A.I.R. 1922 All. 342, *Dist.* (*Sulaiman. J.*). RAM RATAN *v.* DURGA KOERI. **89 I.C. 120=6 L.R.A. Civ. 545=A.I.R. 1926 All. 201.**

———*Until partition joint property is one unit—Manager represents the family in suits.*

There is not only unity of title but unity of possession and enjoymeut with all the incidents of the right of survivorship attached to it; therefore in suits the manager is deemed to represent a joint family. In the same way, when all members join in suing. each member is deemed to sue not in his individual right but by way of enforcing a joint right. (*Kinkhede, A.J.C.*). KISAN *v.* SITARAM. **81 I.C. 1009=A.I.R. 1925 Nag. 160.**

———*Manager's name alone recorded in revenue papers—Manager represents junior members also.*

It is a common, though not an invariable, practice, in the case of a *zemindari* owned by a joint family for the name of manager alone to be recorded in the revenue papers. In such cases the manager is recorded in a representative capacity, and it is really the joint family which is the recorded co-sharer. Therefore an order passed under S. 111 (1) (b) of the U.P. Land Revenue Act will be binding on the junior members whose names are not recorded in the revenue papers wherein the name of the manager alone is recorded: 86 All. 383 and 24 O.C. 143, *Foll.*; 20 O.C. 241, *Dist.*

HINDU LAW—Joint family—Manager—Representation.

(*Daniels, J.C.*). SHEO BAKSH SINGH *v.* INDRA BAHADUR SINGH. **87 I.C. 185=12 O.L.J. 239 2 O.W.N. 209=28 O.C. 194= A.I.R. 1925 Oudh 392.**

———Where the bond was executed by the *kartas* of the family and the suit was for enforcement of the mortgage against the joint family impleading the *kartas* of the family and other members whose existence was known to the plaintiffs,

Held, the non-joinder of two members of family could not defeat the suit against all. (*Jwala Prasad and Kulwant Sahay, JJ.*). PARMESHWAR PANDEY *v.* RAJ KISHORE PRASAD NARAYAN SINGH. **80 I.C. 34=3 Pat. 829=5 P.L.T. 646= A. I. R. 1925 Pat. 59.**

———*Suit against adult members is deemed as one against whole family.*

Where all the adult members of a joint Hindu family appear on the record as defendants it is a legitimate presumption that they are acting as managers on behalf of themselves and of the minor members, though it is not formally stated in the plaint that the defendants were being sued as managers and therefore the addition of minor members defendants, after limitation does not justify dismissal of suit: 34 All. 549 (F.B.), *Foll.* (*Daniels and Neave, JJ.*). CHETAN SINGH *v.* SARTAJ SINGH. **79 I.C. 1001=46 All. 709= 22 A.L.J. 702=5 L.R.A. Civ. 480= A.I.R. 1924 All. 908.**

———The manager is the accredited agent of the family and where he acts as a prudent owner for the purpose of benefiting the estate or averting any danger to it, his action binds the family though he be not the father of the members of the joint family. On occasions including foreclosure suits the manager so effectively represents the joint family that the whole family is bound. (*Kennedy, J.C. and Raymond, A.J.C.*). NARUMAL MULCHAND *v.* NICHUMAL. **76 I.C. 778=18 S.L.R. 1= A.I.R. 1924 Sind 124.**

———*Suit against manager and adult members—Minor members are also bound by decree if the whole family is represented.*

Where a suit was brought against the manager and the adult members were also joined party defendants,

Held, that the minor members must be taken to have been duly represented. It is not necessary that he should have been described as manager or that in the plaint it should have been stated specifically that the defendants to the suit represented not only themselves but also the minor members. It is sufficient if in reality the whole of the family is represented by the persons who are named as defendants to the suit. It is true that it is unnecessary to make every adult member a defendant if they are represented by the managing member, but if for the sake of precaution the adult members are made parties, that does not affect the real nature of the suit. (*Mears, C.J. and Banerjee, J.*). TULSHI *v.* BISHNATH RAI. **71 I.C. 623= 21 A.L.J. 175=4 L.R.A. Civ. 134= A.I.R. 1923 All. 284.**

———*Karta can represent whole family—Karta need not say he sues as such if it is obvious on the pleadings.*

A suit by a karta of a Hindu family on behalf of all the members is deemed to be a valid suit and will within O. 34, R. 1, Civil P.C. It is not necessary that the karta should mention expressly that the suit is instituted by him in his capacity as karta, provided the fact that the suit is brought by him in his representative capacity is obvious from the pleadings in the case: 5 C. 148 (P.C.); 11 B. 37, *Ref.* (*Jwala Prasad, A.C.J. and Das, J.*). JAG SHAH *v.* RAMCHANDRA PRASAD. **63 I. C. 564=2 P.L.T. 553=6 P.L.J. 640= 1921 P.H.C.C. 289=A. I. R. 1921 Pat. 377.**

HINDU LAW—Joint family—Partnership.

—Joint family—Manager—Right to sue.

———It is open to the karta to bring a suit in his own name or to join the other members of the family; but the fact that he has joined the other members does not necessarily derogate from his power as karta. (*Ross and Kulwant Sahay, JJ.*). JHAWKHRI GOPE *v.* PHAGU MAHTO. **103 I.C. 75=8 P.L.T. 708=A.I.R. 1927 Pat. 329.**

———*Suit by manager on promissory note—Other members not necessary parties.*

Where plaintiff was the manager of the undivided family and sued on a promissory note passed in his name by the defendant and the adult coparceners were not made parties to the suit,

Held, that the other members were not necessary parties and that the suit was not bad for non-joinder : 33 All. 272 and A.I.R. 1914 P.C. 136, *Foll.*

The Privy Council decisions do affect the various rulings of Bombay High Court which go to the extent of saying that in every case where a contract is entered into on behalf of a joint family by a co-parcener, he cannot sue alone, but must join the other co-parceners as parties to the suit. (*Fawcett, J.*). RAMNATH DWARKANATH WAIWOODE *v.* RAMRAO BALKRISHNA DHOTRE. **64 I.C. 966= 46 Bom. 358=23 Bom. L.R. 1135= A.I.R. 1922 Bom. 281.**

———Manager can sue for debts due to the family: 35 Mad. 685; A.I.R. 1914 P.C. 136, *Rel. on.* (*Krishnan, J.*). SUBRAMANIA GURUKAL *v.* RAMAKRISHNA AIYAR. **70 I.C. 160=16 M.L.W. 31= A.I.R. 1922 Mad. 407.**

—Joint family—Manager—Who can be.

———Son may become karta of the joint family during the lifetime of his father : 49 I.C. 907, *Ref.* (*Kinkhede, Offg. A. J. C.*). KALOO SINGH *v.* MT. SUNDERABAI. **95 I. C. 707= A. I. R. 1926 Nag. 449.**

—Joint family—Partnership.

———There is no material difference between an ordinary partnership firm and a Hindu joint family consisting of adult co-parceners who actively conduct the business of the firm.

Where a partnership composed of the members of a joint Hindu family is dissolved but no general notice of the dissolution is given, and the firm is continued by one of the partners, an acknowledgment of a debt due to a creditor signed by a partner who serves in the firm on salary, in the name of the original firm, is binding upon all the members of the firm as the original firm must be deemed to have continued and the member signing to have authority as partner to bind his late partners along with himself by the acknowledgment : 10 Bom. 358, *Dist.* (*Mirza, J.*). KRISHNABAI *v.* VARJIVANDAS JAGJIVANDAS. **32 Bom. L.R. 201= A.I.R. 1930 Bom. 236.**

———*Co-parcener entering into partnership with strangers—Other members of family are not partners.*

Partnership is a particular relationship and *prima facie* a partnership suit should be kept to accounts between the partners that are concerned. One individual *A* is entitled to enter into a partnership with another individual *B*, although *B* may happen to be a member of a joint Hindu

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family; but it does not necessarily follow that because he enters into a partnership with one co-parcener *B*, he thereby becomes a partner with the other members of *B's* joint family of whose existence he may not even be aware; and in the suit primarily based on an ordinary partnership the dissolution and the accounts should be confined to the relations between the parties, without prejudice to any claim that *A* may subsequently have against the other co-parceners of *B*: 41 Mad. 454: A. I. R. 1921 All. 306; 27 Bom. 157 and A.I.R. 1922 P. C. 237, *Rel. on.* (*Marten, C. J. and Patkar, J.*). LAXAMAN KUSHABA *v.* BHIKCHAND RAICHAND.
122 I.C. 843=31 Bom. L.R. 1179=
A.I.R. 1930 Bom. 1.

———*Junior co-parceners may also contract debts for family firm if authorised.*

It is wrong to say that in a joint Hindu family trading partnership only the manager of the family has authority to contract debts and that no other co-parcener has that authority. Ordinarily the manager of a joint Hindu family alone is entitled to contract debts on behalf of the family trading firm so as to bind the other co-parceners personally, but, it may be that a co-parcener other than the manager of the family is authorised expressly or by implication to contract debts on behalf of the firm and if he is so authorised debts contracted by him on behalf of the firm are binding on other co-parceners personally: 23 Mad. 597. *Rel. on.* (*Jai Lal, J.*). LAL CHAND *v.* GHANAYA LAL.
120 I. C. 611=A I.R. 1930 Lah. 243.

———*Presumption is of continuity of partnership.*

Where brothers of a Hindu joint family carry on business of partnership, the presumption is that a partnership continues so long as the business continues; it is possible for a partner to separate himself from his co-partner by an unequivocal expression of intention to dissolve at once just as a co-parcener can separate from his family. (*Percival, J. C. and Barlee, A. J. C.*). DWARKADAS JAVERMAL *v.* DAVID SASSON. **121 I.C. 865=**
A.I.R. 1930 Sind 83.

———Where one member enters into partnership with strangers, there is no presumption that he does so in representative character so as to make other members liable as partners—If they are sought to be made liable, it can be done by evidence of consensus or by evidence to prove agency through which contract of partnership was brought into existence: 12 A.L.J. 79; A.I.R. 1922 P.C. 215; 39 I.C. 498; 40 I.C. 463; A.I.R. 1929 P.C. 1, *Dist.*; 6 M.L.W. 417; 20 M.L.T. 565; A.I.R. 1924 All. 414; A.I.R. 1926 All. 337; A. I. R. 1929 All. 148; 25 All. 378; A.I.R. 1921 All. 306; 41 Mad. 454; 27 Bom. 157; 3 Bom. L.R. 144; 40 Cal. 523, *Rel, on.* (*Sulaiman and Sen, JJ.*). MIRZA MAL BHAGWAN DAS *v.* RAMESHAR. **118 I. C. 145=**
1929 A. L. J. 641=51 All. 827=
A. I. R. 1929 All. 536.

———Manager by reason of having minor son is not bound to continue partnership with a stranger. (*Sulaiman and Ashworth, JJ.*). BANKEY LAL *v.* NATHA RAM. **107 I.C. 576=A.I.R. 1929 All. 199.**

———Per *Sulaiman, J.*—Relations of strangers with joint Hindu families, when they enter into transactions of partnership, are not governed strictly by the Hindu Law but by the Contract Act. (*Sulaiman and Ashworth, JJ.*). BANKEY LAL *v.* NATHA RAM. **107 I. C. 576=A.I.R. 1929 All. 199.**

———Where a joint family is a partner, the partnership is not dissolved on the death of the managing member of the family inasmuch as a joint family does not die on the death of the manager. (*Sulaiman and Kendall, JJ.*). GAURI SHANKAR *v.* KESHAB DEO. **114 I.C. 881=1929 A.L.J. 204.**
A.I.R. 1929 All. 148.

———A joint family can become a partner in partnership business: A. I. R. 1926 All. 337, *Foll.* (*Sulaiman and Kendall, JJ.*). GAURI SHANKAR *v.* KESHAB DEO. **114 I.C. 881=1929 A.L.J. 204=**
A.I.R. 1929 All. 148.

———When members of a family trade together and are partners in a joint firm they are all personally liable for the debts of that firm: 41 Mad. 824, *Dist.* (*Phillips and Reilly, JJ.*). SOMASUNDARAM CHETTIAR *v.* KANOO CHETTIAR.
118 I.C. 494=1929 M.W N. 262=
A.I.R. 1929 Mad. 573.

———*Younger brother is as much entitled to manage business as elder brother.*

If two partners of a firm are brothers, they are equally entitled to participate in the management of the business of that firm and it is in the fitness of things that either of them may at all opportune times attend to the business and do all that is needful. Even according to Hindu Law a younger brother is as much entitled to take part in the management of the business as his elder brother. (*Zafar Ali, J.*). GHULAM MAHOMED *v.* SOHNAMAL.
101 I.C. 742=9 L.L.J. 233=28 P L.R. 307=
A.I.R. 1927 Lah. 385.

———*One co-parcener is the agent of every other as in ordinary firm.*

As between the partners and the outside world, whatever may be their private arrangements between themselves each partner is the unlimited agent of every other in every matter which is partnership business or which he represents as partnership business and not being in its nature beyond the scope of the partnership. This rule applies equally to joint Hindu family firms and ordinary partnership concerns: 34 P. R. 1906; 31 M.L.J. 93; 60 P.L.R. 1915, *Dist.* (*Zafar Ali, J.*). GULAM MUHAMMED *v.* SOHNAMAL.
101 I.C. 742=9 L.L.J. 233=28 P.L.R. 307=
A.I.R. 1927 Lah. 385.

———One partner in Hindu family business cannot refer a matter in litigation to arbitration and so bind the other partners. A reference to arbitration is not an ordinary incident of the family business. (*Le Rossignol, J.*). GAINDA MALL *v.* FIRM NIHAL CHAND CHHAJU MALL.
84 I.C. 726=6 L.L.J. 502=
A. I. R. 1925 Lah. 261.

———*Manager entering into partnership with strangers—Other members of family are not necessarily partners.*

Where the managing member of a joint family enters into a partnership with strangers he does not thereby make other members of the family partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Contract Act. In such a case the family as a unit does not become a partner, and only such of its members as in fact enter into a contractual relation with the strangers will be governed by the Act. (*Rupchand Bilaram, A. J. Cs.*). HARNAMDAS *v.* FIRM OF MAYADAS LAKMICHAND. **87 I. C. 905=**
A. I. R. 1925 Sind 310.

———*Manager entering into partnership—Other members are not necessarily partners—Son working for the father is not necessarily a partner.*

Though a person carrying on business is a co-parcener or even a manager in a joint family, it

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does not necessarily follow that all his co-parceners are his partners in that business, entitled with him to his rights and liable like him for its liabilities: 27 Bom. 157, *Foll.*

A contract of partnership entered into by the manager of a joint Hindu family with the strangers does not *ipso facto* make the other members of the family, partners, and not being partners the other members whether divided or undivided cannot institute any suit in respect of the partnership: 41 Mad. 454; 43 All. 116, *Foll.*

The mere fact of a son helping his father in the business and the business being carried on in their joint names is not sufficient to establish a partnership between them. (*Raymond, A.J.C.*). HEMRAJ KANJI *v.* TOPAN VISHINJI. **86 I.C. 950= A.I.R. 1925 Sind 300.**

———*Manager entering into partnership—Other members are not necessarily partners.*

Other members of a joint family must not be treated as necessarily or *ipso facto* partners in any partnership into which a member of the joint family, or even the manager of the joint family, may see first to enter: 41 Mad. 454 and 30 M.L.J. 241, *Appr.*; 61 P.R. 1915, *Dist.* (*Piggott and Ryves, JJ.*). KHARIDHAR KAPRA & CO. *v.* DAYA KISHAN. **43 All. 116=A.I.R. 1921 All. 306.**

—Joint family—Plea of.

———A decision whether persons form members of the joint Hindu family or not is ordinarily a question of fact when the correct legal principles on which the point should be decided have been appreciated. (*Wilberforce and Abdul Qadir, JJ.*). MST. MAYA WANTI *v.* ISHAR SINGH. **67 I. C. 789=3 L. L. J. 552= A. I. R. 1921 Lah. 267.**

—Joint family—Presumption—Absence of.

———*Presumption of jointness ceases when one branch has separated—Entries in revenue papers are not much helpful in determining status—In large family the presumption grows weaker as the relationship becomes more distant.*

A family is presumed to be joint until the contrary is established, but no such presumption arises where it is established that before the suit one or more members of the family had separated. A member of a joint family can separate himself from the other members of the joint family, and would on such separation be entitled to have a share in the property of the joint family ascertained and partitioned off for him, but the remaining co-parcener, without any special agreement between themselves may continue to be co-parceners and to enjoy as members of a joint family what may remain after such a partition of the joint family property is made or live separately from each other. But where one branch of the family was separate, the ordinary presumption that the remaining branches of the family had continued joint ceases to apply. The definition of shares in revenue papers by itself affords very slight indication of a separation in a Hindu family. Such entries are usually made in the Revenue records by those responsible for their preparation to make the record definite and precise. The acquisition of some property in the name of one member of the family and of another property in the name of another member, would similarly be inconclusive, but where there is a long series of dealings by different members of the family independently of each other, the same consideration would not be applicable.

HINDU LAW — Joint family — Presumption — Burden of proof.

Where a Hindu family is a fairly large family comprising several members, the ordinary presumption that a family is joint grows weaker as the relationship becomes more distant, or the branches multiply. (*Walsh and Kanhaiya Lal, JJ.*). DARBARI LAL *v.* MT. PARBATI. **91 I.C. 841= A.I.R. 1926 All. 256.**

———Presumption is not that every Hindu is member of joint family, nor that joint family owns joint property. The property standing in each man's name is *prima facie* his own. (*Kinkhede, A.J.C.*). TANIABAI *v.* RANGNATH. **96 I.C. 963=9 N.L.J. 183=A.I.R. 1926 Nag. 476.**

—Joint family—Presumption—Basis of.

———Presumptions in the case of a joint Hindu family owning property are to be drawn from the facts of each particular case. (*Krishnan and Venkatasubba Rao, JJ.*). KANNAMMAL *v.* RAMATHILAKAMMAL. **97 I. C. 632= A. I. R. 1927 Mad. 38.**

—Joint family—Presumption—Brothers.

———*Brothers and their sons messing and living together—Presumptions and rules of burden of proof discussed.*

Where Hindu brothers and their sons live and mess together there is a presumption that they are members of a joint family. But there is no presumption that that family owns a joint family property in the absence of any proof of a nucleus; at the same time it would seem that there can be no presumption that any property which is in existence and is in possession of one member of the joint family is necessarily his separate property, or is his self-acquisition. The party who wishes to make out that it is his separate property over which he had absolute power of disposal should establish that case. No presumption can be made in his favour: 33 All. 677 and 35 All. 564, *Foll.* (*Sulaiman and Kendall, JJ.*). GAYA PRASAD *v.* JASWANT RAI. **A.I.R. 1930 All. 550.**

———There is no presumption that if there are two brothers they should be considered as members of a joint Hindu family. Where two brothers constitute a joint Hindu family there is no presumption, that one brother must necessarily buy property for the benefit of the other brother. (*Devadoss, J.*). VENKATARAMA CHETTIYAR *v.* MARUTHAPPA PILLAI. **86 I.C. 886=21 M L.W. 226= A.I.R. 1925 Mad. 448.**

—Joint family—Presumption—Brothers and uncles.

———The ordinary presumption of Hindu law is that brothers and uncles are joint. (*Sulaiman, Ag. C.J. and Kendall, J.*). DEO NARAIN *v.* PHAGU. **121 I.C. 817=A.I.R. 1930 All. 541.**

—Joint family—Presumption—Burden of proof.

———*Property in one line for generations—That line need not prove that it was dissociated from the other line generations ago.*

When it appears from facts that through generations a property has been possessed in a certain single line, it can never be said that it lies upon that line to establish that it was dissociated generations ago, from another line which appears on the scene as a claimant and proposes no facts of jointness, such as living in the same home, sharing in food or worship, or quoad estate participating in the enjoyment or fruits thereof. To put, in consequence of a stretch of the doctrine of onus, an unnatural and forced construction upon the actual facts of family life and development is not warrant—

HINDU LAW — Joint family — Presumption— Business.

ed by the law of India. (*Lord Shaw.*) YELLAPPA RAMAPPA *v.* TIPPANNA. **114 I.C. 13= 31 Bom. L.R. 249=53 Bom. 213=56 I.A. 13= 1929 A.L.J. 4=49 C.L.J. 104=29 M.L.W. 231= 33 C.W.N. 238=A.I.R. 1929 P.C. 8= 56 M.L.J. 287 (P.C.).**

—Joint family—Presumption—Business.

———*Business carried on by a co-parcener is not presumed to be a joint family one.*

A presumption that business carried on by one member of a Hindu joint family is a joint family business does not obtain. It must be shown in each case that the business was established with the help of family funds. Therefore, simply because a person carrying on business is a co-parcener in a Hindu joint family, it does not follow as a necessary corollary that all his co-parceners are his partners in the business: 27 Bom. 157 and 2 S.L.R. 13, *Foll.* (*Rupchand Bilaram, A. J. C.*). MOTHARAM DOULATRAM *v.* PAHLAJRAI GOPALDAS.

80 I.C. 141=19 S.L.R. 286=A.I.R. 1925 Sind 159.

—Joint family—Presumption—Father and son.

———*Father and sons must be held joint unless proved to the contrary.*

The presumption under Hindu Law is that a father and son are joint and unless it is proved that they are separated it must be held that they are still joint.

Plaintiff's father *B*, a Hindu, came to Burma and resided there for some 32 years before his death and acquired some property. Defendant, *B*'s son by the second wife, lived with his father in Burma. Plaintiff sued defendant for partition of his father's estate. Plaintiff's case was that he, his father and defendant formed a joint family and on his father's death he was entitled to one-half share of the estate. Defendant denied that plaintiff was a member of the joint family and contended that the fact that the deceased lived in Burma with defendant, whilst plaintiff lived in India and had apparently nothing to do with the deceased and defendant, except for a single meeting with his father, for 15 years, was incompatible with their being members of a joint family,

Held, (*Das and Carr, JJ.*), that the plaintiff was entitled to partition as it was not proved that the father and son ever separated or that there was partition between the father and son. The mere fact that the son lived in India and that the father came away to, and stayed in Burma, did not prove the partition or separation between the father and son: 32 Mad. 377, *Rel. on.*

Pratt, J.—The fact that the deceased brought his sons by one wife to Burma, and he did not bring plaintiff the son by his other wife, and plaintiff did not at majority or at any time join his father in Burma, justifies the presumption that plaintiff was separate and was not a member of a joint family with his father after the latter came to Burma. (*Das, J. on difference between Pratt and Carr, JJ.*). RAGHUBAR DAYAL *v.* RAMDULARE.

111 I.C. 839=6 Rang. 367= A.I.R. 1928 Rang. 206.

———Joint family is presumed till disproved where father and sons do joint business. (*Raymond and Madgavkar, A. J. Cs.*). CHETANAND MOHANDAS *v.* MESSRS. RALLI BROTHERS.

83 I.C. 135=A.I.R. 1925 Sind 153.

———There is an initial presumption in favour of jointness in a Hindu family and this presumption is particularly strong in the case of a father and his only son. (*Daniels and Lyle, A.J.Cs.*). MT,

HINDU LAW — Joint family — Presumption — Jointness.

PARBATI *v.* SAIYED MUHAMMAD HADI.

68 I.C. 534=9 O.L.J. 304=A.I.R. 1923 Oudh 31.

—Joint family—Presumption—Jointness.

———Every Hindu family is presumed to be joint unless division is proved and burden of proving it is on party alleging it. (*Sulaiman and Kendall, JJ.*). BHAGWAN DEI *v.* SHIB SINGH.

A.I.R. 1930 All. 341.

———The presumption of jointness in a normal Mitakshara family is so strong that in the absence of contrary evidence the entire property which a person seeks to dispose of may be taken to partake the character of joint family property: 29 All. 244 (P.C.), *Foll.* (*Tek Chand and Agha Haidar, JJ.*). BELI RAM *v.* SARDARI LAL.

A.I.R. 1930 Lah. 613,

———The presumption of jointness between parties one of whom was five degrees removed from the common ancestor whereas the other was removed by four degrees would be very weak indeed: 10 B.H.C.R. 444 and A.I.R. 1929 P.C. 8, *Rel. on.* (*Misra and Raza, JJ.*). KHUSHWAKT RAI *v.* JAGANNATH PRASAD TANDAN. **119 I.C. 872= A.I.R. 1930 Oudh 184.**

———Presumption is that every Hindu family is joint—Onus is on the person alleging to prove that it is otherwise—Purchase of property in the name of one or other member of family is immaterial: 22 Cal. 85 (P.C.), *Foll.* (*Fforde and Haidar, JJ.*). SANWAL DAS *v.* KUREMAL. **109 I.C. 779= 9 Lah. 470=10 L.L.J. 27=29 P.L.R. 635= A.I.R. 1928 Lah. 224.**

———The legal presumption is that a Hindu family is joint and undivided in business as well as in other respects: 33 P.R. 1870, *Foll.* If any member sets up that a particular portion of the property formed his separate property the onus of proving that, lay on the member who so claimed: 40 Cal. 523, *Foll.* (*Addison, J.*) MAULUK CHAND KISHANJI *v.* DAYA KISHAN. **106 I.C. 183 (Lah.).**

———Where jointness up to a certain date is proved. the onus of proving a separation subsequent to that date is on the party alleging such separation. (*Lord Sinha.*) DEO NARAIN PANDE *v.* AGYAN RAM PANDE. **101 I.C. 249= 1927 M.W.N. 96=31 C.W.N. 533= A.I.R. 1927 P.C. 52=53 M.L.J. 658 (P.C.).**

———Where it is proved or admitted as to a Hindu family that it lives in commensality and possesses joint property, the presumption of law is that all the property they are possessed of is joint. (*Zafar Ali, J.*). BALBADHAR SINGH *v.* SHANKAR DAS. **101 I.C. 652= A.I.R. 1927 Lah. 825.**

———*Presumption is that family continues joint until contrary is proved—Definition of shares in revenue papers is not sufficient indication of separation.*

In a joint Hindu family, the presumption is until the contrary is proved, that the family continues joint. That presumption is peculiarly strong in the case of the sons of one father and gets weaker as the branches multiply.

A definition of shares in revenue and village papers affords, by itself, but a very slight indication of an actual separation in a Hindu family, and certainly in no case it can be regarded, standing alone, as sufficient evidence upon which to find, contrary to the presumption in law as to jointness, that the family to which such a definition referred had separated: A.I.R. 1925 P.C. 132, *Foll.* (*Kanhaiya Lal and Ashworth, JJ.*). TULA RAM *v.* BHOLA SINGH. **96 I.C. 176 (All.)**

HINDU LAW — Joint family — Presumption — Jointness.

———The legal presumption is that a Hindu family is joint and hence it is for the party alleging separation to prove it. (*Misra and Raza, JJ.*). MT. JAGWANTI *v.* BACHAND SINGH. **95 I.C. 774= 13 O.L.J. 744= A.I.R. 1926 Oudh 511.**

———If nucleus for a joint family is proved to exist, the burden of proving separation is on the person alleging separation: 29 All. 244 (P.C.), *Ref.* (*Hasan and Misra, JJ.*). ABHAIDAT SINGH *v.* RAGHO INDAR PARTAB SAHAI. **91 I.C. 976= 1 Luck. 1=3 O.W.N. 40=13 O.L.J. 37= A.I.R. 1926 Oudh 77.**

———All property belonging to family is presumed to be joint. (*Sulaiman, J.*). MUNESHAR TEWARI *v.* RAM NARAIN. **86 I.C. 852= A.I.R. 1925 All. 820.**

———*Suit for partition dismissed as being for partial partition—Presumption of jointness attaches.*

A suit instituted by a member of a joint Hindu family for partition of the family property was dismissed by the Court on the ground that all the family properties had not been brought into the hotchpot. There was no subsequent division of the property by metes and bounds,

Held, that the presumption of jointness attached to all the properties, and unless it was established that any particular item was acquired with separate funds by any individual member, all the properties in the hands of the members were liable to be divided. (*Mears, C.J. and Mukerjee, JJ.*). HAZARI LAL *v.* RAM LAL. **88 I.C. 422= 47 All. 746=23 A.L.J. 621= 6 L.R.A. Civ. 379= A.I.R. 1925 All. 813.**

———*Every Hindu family is presumed to be joint unless division is proved.*

In the case of Hindu joint family the presumption is, in the absence of the proof of division, that the family was joint in food, worship and estate, but the presumption is not applicable after there has been a separation in the sense of disruption such as would put an end to a joint family.

In the absence of evidence as to nucleus, the property may readily be presumed as joint from the subsequent conduct of the parties.

Court has to be exceedingly careful to arrive at a conclusion one way or the other where the question of inclusion of Hindu ladies is concerned, as long as it does not appear that they ceased to get maintenance from the family. (*Rankin and Mukerji, JJ.*). KUMUDINI DASSYA *v.* MUKTA SUNDRI DASSYA. **80 I.C. 432= A.I.R. 1925 Cal. 257.**

———*Presumption is that family is joint but to establish partition, no formal separation on any specified date need be proved—Purchase by members specifying shares does not prove partition.*

The defendants in a suit by the widow to recover possession of specified share of her husband on the ground of separateness, start with a certain presumption in their favour; but the presumption is not a very strong one where the relationship is not a very near one. The widow is not bound to prove that a formal separation, accompanied by an apportionment of such goods or properties as it was desired to divide immediately and an ascertainment of shares in respect of other landed properties, took place in any formal manner or at any specified date. The plaintiff can succeed if she can produce evidence to satisfy the Court that the position of her husband and the defendants up to the time of the death of her husband was such that they could not have been living as members

HINDU LAW — Joint family — Presumption — Possession of property.

of a joint undivided family. It is by no means an unusual thing for members of a joint family, when acquiring landed property by purchase, to cause to be specified in their document of title the shares which they would respectively take upon a partition. Where this is not done the ordinary inference from the document, on the face of it, would be that the vendees are taking in equal shares, and the members of the family may well think it convenient that such a presumption, where it is not in accordance with the facts, should be rebutted by specification of shares; no clear inferences in favour of separation or the break up of the joint family can be drawn from a transaction of this sort. (*Piggott and Walsh, JJ.*). MT. JAI RAJI *v.* BHAGWAT PRASAD PANDE. **65 I.C. 844= A.I.R. 1923 All. 225.**

———*Presumption of jointness—Rebuttal.*

The presumption in the case of Hindu families is in favour of jointness. Where a guardian was appointed for three minors who constituted a joint family, and after each one attained majority his share was given to him and during their minority as well as afterwards the accounts of the income were kept separate in the name of each minor and after all the brothers attained majority the income was divided among them and one of them admitted that he had no concern in the property of another brother,

Held, that the presumption of jointness was rebutted. (*Broadway and Abdul Raoof, JJ.*). GOBIND SAHAY *v.* BAL KAUR. **63 I.C. 559 (Lah.)= 4 U.P.L.R. 1.**

—Joint family—Presumption—Joint tenancy.

———*Trust by father of his self acquired property—Sons appointed trustees—Sons become joint trustees as they would become joint tenants in case of gift.*

When a father makes a gift of or bequeaths self-acquired property of his to his children who are members of a joint family, the ordinary presumption is that they take that property as joint tenants and not as tenants-in-common. [A. I. R. 1923 P.C. 160, *Rel.*] There is very little difference between the conferring of the office of trustee as regards a trust founded by the father by dedication of properties and the gift of properties to the sons. In the case of properties given to them absolutely, of course, they will have full powers of alienation; in the case of a trust they would have such powers as the law gives the trustee. The nature of the estate taken either in property or in the trust must be the same, *viz.*, joint estate. (*Kumaraswami Sastri and Krishnan, JJ.*). SALAKSHI AMMAL *v.* DORAIMANIKKA NADAN. **90 I.C. 829=48 Mad. 827=1925 M.W.N. 582= A.I.R. 1926 Mad. 51=49 M.L.J. 341.**

—Joint family — Presumption — Possession of property.

———There is no presumption that a Hindu family has any joint property, and it is necessary to establish the existence of a nucleus of joint family property before the property in the possession of any one member can be presumed to be joint family property: 33 All. 677, *Foll.* (*Marten, C.J. and Patkar, J.*). DAJI RAMJI *v.* LAXMAN RAOJI. **100 I.C. 937=29 Bom. L. R. 122= A.I.R. 1927 Bom. 110.**

———*No presumption exists as to joint family possessing property.*

There is no presumption that a family, because it is joint, possesses joint property or any property. But where it is proved or admitted as to a Hindu

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family that it lived in commensality and possessed joint property, the presumption of law is that all the property they are possessed of is joint. It is necessary to establish the existence of a nucleus of joint family property before the property in the possession of any one member can be presumed to be joint family property: 33 All. 677 and 13 Bom. 61, *Foll.* (*Zafar Ali and Jai Lal, JJ.*). ANANT RAM *v.* ABDUL HAR. **103 I. C. 479= 28 P. L. R. 610=9 L.L.J. 223= A.I.R. 1927 Lah. 793.**

———Possession of joint property is not presumed. (*Addison, J.*). BHAGWAN DAS *v.* MT. CHETON BOI. **96 I.C. 247=A.I.R. 1926 Lah. 566.**

———There is a presumption that a Hindu son and his father are joint in estate, but there is no presumption that the joint family which they constitute possessed any property at all. (*Dalal and Simpson, A.J.Cs.*). RAM RAJ SINGH *v.* AVADHA BEHARI LAL. **80 I.C. 480=10 O.L.J. 235= A.I.R. 1924 Oudh 28.**

—Joint family—Presumption—Rebuttal of.

———Presumption is in favour of jointness—But presumption is weakened by parties living and holding properties separately for several years. (*Dhobley, A.J.C.*) LAXMAN BHAT *v.* MST BONABAI. **64 I.C. 906=A.I.R. 1921 Nag. 144.**

———Presumption is of jointness—Presumption is displaced by proof that some members are separate: **30 Cal. 725** (P.C.), *Foll.*

Where the cultivation is joint and the brothers divide the produce only so far as is necessary for household expenses and keep the rest joint for the purposes of *len den*, the mere fact that the brothers were living and messing separately does not necessarily indicate separation in estate. (*Kotval, A.J.C.*). MT. SUWA *v.* DUKALU. **59 I.C. 499= A.I.R. 1921 Nag. 109.**

—Joint family—Presumption—Transaction by member.

———*Transaction entered into even by a junior member relating to family is presumed to be a family transaction.*

In the case of every transaction relating to a joint family the presumption is that although the transaction may be carried on in the name of one or another member of the family it is a family transaction and the member in whose name the transaction is carried on represents the joint family.

One of the members of a joint Hindu family was implicated in a criminal case and a compromise was effected whereby it was agreed that a portion of joint family property was to be sold, in consideration of all the disputes between the family and the opposite party, including the criminal case, being settled. The transaction was entered into by a junior member of the family. The other members disputed that the sale deed was illegal,

Held, that the ordinary presumption was that the joint family was bound by such a compromise even though entered into by a junior member and the plaintiffs must prove that it was not a family transaction. (*Kulwant Sahay and Macpherson, JJ.*). RAM DAS SINGH *v.* KANAK SINGH. **111 I.C. 51= 9 P.L.T. 758=A.I.R. 1928 Pat. 557.**

—Joint family — Presumption — Uncle and nephew.

———*Presumption of jointness applies.*

Where the members of a Hindu family are related to each other as uncle and nephew, and there is no clear and cogent proof of partition the presumption of Hindu Law that the family is joint

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will prevail, and the property purchased in the name of one of them will be considered joint family property. (*Tek Chand and Agha Haidar, JJ.*). PHULLO *v.* INDAR. **121 I. C. 431=11 L.L. J. 226.**

—Joint family—Proof.

———*Migration of a branch of family does not imply separation.*

The migration of a branch of the family in itself establishes nothing regarding the question of jointness or separation. Members of a joint Hindu family migrating to another district might or might not separate from their family. (*Stuart, C.J. and Nanavutty, J.*). NANAK PRASAD *v.* GAYA PRASAD. **118 I.C. 803=A.I.R. 1929 Oudh 289.**

———The support on a liberal scale of poor relations and even the payment of the expenses of their marriage ceremonies are not in themselves without other evidence, proof of a joint family: 8 Bom. 154 and 10 C. W. N. 338 (P.C.), *Appl.* (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. **93 I.C 385= 42 C L.J. 280=A.I.R. 1926 Cal. 1.**

———An agreement was followed by an arbitration award and the award was duly registered. Under the award the house in dispute was assigned to the widows of one of the brothers. The widow alienated the house,

Held, that the onus was shifted on to the persons challenging the alienation to prove that the property was joint Hindu family property at the time of alienation by widow. A decree for maintenance against the male members of the family on the ground that the widow was entitled to be maintained out of her husband's share of the joint property does not help the plaintiffs to prove that there was any joint Hindu family. (*Scott-Smith and Moti Sagar, JJ.*). KARAM SINGH *v.* MT. HAR KAUR. **76 I C. 747=A I.R. 1923 Lah. 371.**

—Joint family—Rights of co-parceners.

———*While family is joint no suit for possession of a co-parcener's share lies.*

In a joint family no co-parcener can say that he has a specific share in the property. His share is liable to fluctuate and consequently if one of the co-parceners brings a suit against others for declaration of his share and possession of the same in the alternative on the allegation that the co-parceners in possession treated the property as their separate property and if the Court finds that the property is joint family property, and there is no indication in the plaint that the plaintiff wanted to come out of the family and to separate his status the declaration should be confined to the jointness of the property without specifying shares. (*Mukerji and Bennet, JJ.*). KAULESHAR RAI *v.* BANWARI RAI. **123 I.C. 375= A. I. R. 1930 All. 362.**

———Property vested in co-parcener—Subsequent insanity does not divest: 22 Cal. 864, *Foll.*; A. I. R. 1922 Nag. 161, *Expl.* (*Findlay, J.C. and Staples, A.J.C.*). DADA *v.* CHANDRABHAGA BAN. **116 I.C. 663=25 N L.R. 61=12 N.L.J. 44= A. I. R. 1929 Nag. 93.**

———*Hindu co-parcener becoming lunatic — If manager can be appointed to his share.*

If a member of a joint Hindu family under the Mitakshara Law be a lunatic, where it is shown that his property is being wasted, the Civil Courts have power to appoint a manager of the lunatic's share under the Lunacy Act, although no doubt a strong case must be made out for the appointment of a manager: 6 Cal. 539 and 12 O. C. 209, *Foll.*

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(*Case-law discussed*). (*Findlay, J. C. and Staples, A. J. C.*). DADA *v.* CHANDRA BHAGA BAI.
116 I.C. 663=25 N L.R. 61=
12 N.L.J. 44=A.I.R. 1929 Nag. 93.

———An agreement which absolutely takes away from members of the family their inherent right to have a partition effected as owners of the joint family property and consequently deprives them of one of the incidents of ownership is void and legally unenforceable. (*Raza and Nanavutty, JJ.*). BRIJLESHARI PRASAD *v.* KASHI PRASAD.
110 I. C. 886=5 O.W.N. 589=
A.I.R. 1928 Oudh 365.

———*Co-parcener has indefeasible right of partition.*

In the absence of a separation or division of the joint family property, a member of the joint family has an indefeasible right to demand partition and his right is not affected by a deed executed by his father on the basis that there was no joint family or joint family property. (*Sir Lancelot Sanderson.*) MUKUND *v.* BALKRISHNA. 105 I.C. 703=
52 Bom. 8=54 I. A. 413=
29 Bom. L.R. 1496=46 C L.J. 413=
32 C.W.N. 203=39 M.L.T. 521=
27 M L.W. 198=1927 M.W.N. 732=
4 O.W.N. 845=A.I.R. 1927 P. C. 224=
53 M.L.J. 468 (P.C).

———Undivided co-parcener remaining absent for a long time—No adverse possession can arise as against him unless abandonment or exclusion is proved—Alienation of his share is inoperative. (*Odgers, J.*). GOVINDASWAMI CHETTIAR *v.* KOTHANDAPANI CHETTIAR. 99 I.C 158=
24 M.L.W. 766=A.I.R. 1927 Mad. 111=
52 M.L.J. 203.

———Adverse possession cannot arise against a co-parcener without his knowledge. (*Obiter*). (*Odgers, J.*). GOVINDASWAMI CHETTIAR *v.* KOTHANDAPANI CHETTIAR. 99 I.C. 158=24 M. L.W. 766=
A.I.R. 1927 Mad. 111=52 M.L.J. 203.

———Permanent lease of joint property granted by all members except one—Partition by Civil Court—The member not concurring in the lease takes his share free from the lease: 26 Cal. 434; 1 I. A. 106, *Foll.*; 1 C. W. N. 62, *Diss.* (*Chatterjea, Ag. C. J., Walmsley, Cuming, Page and Chakravarti, JJ.*). NIRANJAN MUKHERJI *v.* SOUDAMINI DASI.
93 I.C. 516=53 Cal. 694=43 C.L.J. 383=
30 C.W.N. 511=A.I.R. 1926 Cal. 714 (F.B.).

———Manager expending income on mistress, in making improvement on her property—Survivors cannot realize moneys from the property nor sue for possession thereof. (*Lord Phillimore.*) DEBI RAI *v.* PAHLAD DAS. 86 I. C. 251=
6 L. R. P. C. 92=21 M. L. W. 183=
A. I. R. 1925 P. C. 38 (P.C.).

———*Suit by member for declaration of title to specific share does not lie in absence of partition being claimed.*

The exact extent of the share owned by a member of a joint Hindu family in the joint family properties can only be determined at the time when separation between the members actually takes place. Therefore, so long as the family remains joint and in the absence of any suggestion that a separation is desired, no member of a joint Hindu family can sue for a declaration that he necessarily has a certain specified share in the joint family property. (*Walsh, Ag. C. J, and Sulaiman, J.*). RAM SARUP *v.* MT. KATAULA.
83 I.C. 227=5 L. R. A. Civ. 723=
A. I. R. 1925 All. 211.

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———Alienation by manager without necessity can be wholly set aside and not only to the extent of the challenging co-parcener's share: 6 P.R. 1893 and 20 W.R. 192, *Not foll.*; 39 All. 500 (P.C.), *Foll.* (*Campbell, J.*). CHORANJI LAL *v.* KARTAR SINGH.
79 I.C. 171=A.I.R. 1925 Lah. 130.

———A member of a joint Hindu family cannot dispose of by will any portion of joint family property. (*Devadoss, J.*). CHITTAMBALA MUDALIAR *v.* PARTHASARATHI MUDALIAR. 84 I.C. 905=
20 M.L.W. 659=1923 M.W.N. 90=
A.I.R. 1925 Mad. 194=47 M.L.J. 801.

———*Purchaser—Co-parcener acquiescing in possession of—Not entitled to mesne profits.*

A co-parcener can recover possession of the joint family property from an outsider but if he stands by it and allows the outsider to remain in possession he cannot demand account for the past profits though his interest in the property remains unaffected by the acquiescence. The possession of a purchaser of a particular portion of a joint family property or the purchaser of interest of one of the members of the joint family in any particular item of joint family is not wrongful possession against the other members, though the purchaser is not entitled to possession, he is not liable to account for the mesne profits. (*Macleod, C.J. and Shah, J.*). GANGABESAN JEEWANRAM *v.* VALLABHDAS SHANKARLAL. 87 I C. 703=48 Bom. 428=
26 Bom. L. R. 464=A.I.R. 1924 Bom. 433.

———A decree against a co-parcener without specific mention of his representative capacity does not entitle the decree-holder to attach the interests of other co-parceners not parties to the decree by name or by implication. (*Macleod, C. J. and Shah, J.*). NAMDEO TUKARAM *v.* VISHNU CHINTAMAN. 80 I C. 425=26 Bom. L.R. 497=
A.I.R. 1924 Bom. 395.

———*Impartible estate—Rights of co-parceners in.*

Where the estate is impartible, the members of the joint family have none of the rights of co-parcenership except a right of succession by survivorship, limited by the rule of impartibility which allows only one member at a time to hold. They cannot demand partition or assert any right to any individual share in the estate nor can they restrain alienation. (*Dawson-Miller, C.J. and Foster, J.*). RAJA SHIV PRASAD SINGH *v.* EMPEROR.
82 I. C. 653=5 P.L.T. 497=1924 P.H.C.C. 234=
2 Pat.L.R. Cr. 233=4 Pat. 73=
A.I.R. 1924 Pat. 679.

———*Will made by all co-parceners is valid.*

If a Hindu is the absolute owner of the property, whether ancestral or self-acquired, he can bequeath it by will, and in principle there is no objection to the same power being accorded to two or more Hindus, provided they together have the entire ownership of the whole of the co-parcenary property. (*Mears, C. J. and Banerji, J.*). LAXMI CHAND *v.* MUSSAMMAT ANANDI. 71 I.C. 574=
21 A.L.J. 73=45 All. 245=
4 L.R.A. Civ. 306=A.I.R. 1923 All. 109.

———A gift even of his own share by an undivided co-parcener is invalid. (*Baker, Offg. J. C.*). MULLA FAIZ ALI *v.* MT. HARKUAR.
77 I.C. 80=A.I.R. 1923 Nag. 334.

———*Arrangement between co-parceners—Validity of.*

A co-parcener made an arrangement with others by a deed of settlement signed by the former and presented for registration by the latter, by which, if the village profits to be shared, were not suffi-

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cient to meet the expenses, the latter were to lose their shares in the villages. Subsequently it was found that the profits were insufficient to meet the expenses and the other co-parceners accordingly passed a letter to the effect that they will not take a share.

Held, the arrangement is perfectly a good one and is sufficient to convey their shares according to Hindu Law, if accepted by one party and acted upon by another even though the document is not in fact signed by the person to whom it is addressed. The letter is only a piece of evidence not constituting an acceptance of the earlier proposal but showing that it had been accepted and that it is admitted that the happening of the conditions upon which the first agreement was to operate had in fact occurred. (*Lord Buckmaster.*) PANDURANG KRISHNAJI *v.* M. TUKARAM. **65 I.C. 954= 24 Bom.L.R. 557=35 C.L.J. 409=15 M.L W. 486= 20 A.L.J. 305=18 N.L.R. 1=26 C.W.N. 201= 30 M.L.T. 249=49 Cal. 334=49 I.A. 16= 5 N.L.J. 6=A.I.R. 1922 P.C. 20= 42 M.L.J. 436 (P.C.).**

———While the manager of a Hindu joint family can sue to recover the entire alienated family property on behalf of the family, individual members cannot claim to do so but can only maintain the suit in respect of their own shares. (*Daniels, A.J.C.*). MAHESH DAT *v.* RAM ASRE.

67 I.C. 814=9 O.L.J. 138=A.I.R. 1922 Oudh 114

—Joint family—Rights of Members.

———Where some of the members of a joint Hindu family sued on a mortgage impleading the other members also as defendants and the mortgaged property was purchased in execution by the plaintiff,

Held, that the other members of the family who were impleaded as defendants were also entitled to the property along with the plaintiff. (*Sulaiman, A.C.J. and Kendall, J.*). MAN SINGH *v.* RAMLAL. **121 I.C. 819=1930 A.L.J. 671.**

———*Mortgage—Suit on—Minor member not impleaded as a party—Decree—Junior member, if bound.*

Where a suit was instituted on a mortgage executed by the members of a joint Hindu family, and in that suit a junior member of the family was not impleaded as a party and a decree was obtained in the suit and the property was sold in execution of the decree, the decree and the sale are binding on the entire family inclusive of the member was not impleaded as a party. (*Sulaiman, A.C.J. and Kendall, J.*). DEO NARAIN SINGH *v.* PHAGU SINGH. **121 I.C. 817 (All.).**

———Where a promissory note executed by one of three brothers was in revival of a note executed by their father and one of the brothers got subsequently divided from the family,

Held, that all the brothers were liable for the debt due under the promissory note. (*Madhavan Nair, J.*). KRISHNAMURTHI AYYANGAR *v.* LAKSHMANASWAMI CHETTI. **1929 M. W. N. 603.**

———*If a member has properly litigated a family right it cannot be litigated again.*

In the case of a joint Hindu family, where all have rights, it is impossible to allow each member to litigate the same point over and over again and the Court has in each case to look to Expl. (6) to S. 11, to see whether or not the member, who though not its karta, represented the family, in compromising a previous suit, has been acting either on behalf of minors, or in their interest, or

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if there are majors, with the assent of the majors : A.I.R. 1927 P.C. 56, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). RAM DAS SINGH *v.* TANAK SINGH. **111 I.C. 51=9 P.L.T. 758= A.I.R. 1928 Pat. 557.**

———*Bond in favour of one member—He can sue alone.*

If a bond is in favour of one member alone of a joint Hindu family, he is competent to sue alone on the bond.

Assuming that all the members of a joint Hindu family are necessary parties to such a suit, the provision of law is complied with, even by making them as defendants in the case. (*Jai Lal, J.*). BIRU RAM *v.* MIRAN. **99 I.C. 565= A.I.R. 1927 Lah. 129.**

———Relinquishment by a member of his interest found to be invalid—The member continues to be joint owner.

He cannot be treated as dead in the eye of the law: 6 Bom. L.R. 925 and 14 N.L.R. 56, *Ref. to.* (*Kinkhede, A. J. C.*). JANARDHAN KASHINATH KASAR *v* JANARDHAN VISHWANATH SASTRI. **101 I.C. 839=A.I.R. 1927 Nag. 214.**

———A member of a joint Hindu family cannot dispose of by will any portion of joint family property. (*Devadoss, J.*). CHITTAMBALA MUDALIAR *v.* PARTHASARATHY MUDALIAR. **84 I.C. 905= 20 M.L.W. 659=1925 M.W.N. 90= A.I.R. 1925 Mad. 194=47 M.L.J. 801.**

———Even where a person is not a karta of a Hindu joint family there may be circumstances which would entitle a Court to hold that the person sued was sued as representing the entire family. (*Dalal, J.C.*). THAKURAIN ANPURNA KUAR *v.* JAGESHAR MISRA. **87 I.C. 208= A.I.R. 1925 Oudh 638.**

———No member of a joint family has a right to incur debts for buying property. (*Spencer and Devadoss, JJ.*). SUBBARAYA MUDALI *v.* THANGAVELU MUDALI. **72 I.C. 815=A. I. R 1924 Mad. 33= 45 M L J. 44.**

———Single member may have entire alienation set aside if his rights are infringed: A.I.R. 1924 Oudh 120 ; 39 All. 500; 56 I.C. 766, *Foll.* (*Wazir Hasan, J.C.*). MAMU LAL *v.* BISHAMBAR NATH. **79 I.C. 35=11 O.L.J. 415=A.I.R. 1924 Oudh 378.**

———*Mortgage taken by some members of joint Mitakshara family can be enforced by them without other members.*

Where only some of the members of a joint Hindu family got a mortgage bond which contained no indication as to whether it was made out of their separate funds or joint family funds and a suit was brought on it.

Held, (1) that there was no ground on principle why any distinction should be drawn between the plaintiff who had a beneficial interest in the mortgage and who represented both themselves and other members of the family, and a *benamidar* who has no beneficial interest at all.

(2) That the question was one of authority and if they were authorised to enter into the transaction on behalf of the family it must be taken that they were equally authorised to institute a suit to enforce it : 42 Mad. 348 ; 24 Cal. 644, *Foll.* (*Miller, C.J. and Kulwant Sahay, J.*). HIT LAL MAHTON *v.* JIBOO MAHTON. **75 I. C. 378=3 Pat. 81= 5 P. L.T. 142=A.I.R. 1924 Pat. 458.**

———*Debt by one member—All members are liable if creditor proves necessity or* bona fide *inquiry.*

A creditor is entitled to a decree as against the entire joint family, if he can establish that there

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was legal necessity for the loan taken by one of the members of the joint family. If he is unable to establish legal necessity, he is still entitled to succeed, if he shows that there was representation made to him as to existence of a legal necessity and that he made an honest enquiry and that he was satisfied that there was such a necessity. (*Das and Adami, JJ.*). CHINTAMANI MAHAPATRA *v.* SATYABADI KAR. **70 I.C. 226=1 Pat. 715= A.I.R. 1923 Pat. 71.**

———*Some members entering into contracts not for family purposes—They are liable but minor members are not.*

Members of a joint family cannot escape from liability to perform contracts entered into by them on the ground that their contracts were not such as would bind the joint family and that they had no property other than that which is the property of the joint family. If they could escape from any liability it would be necessary for every person with whom they sought to make a contract to assure himself that the business to which the proposed contract would relate was business of the joint family, and that no member of the joint family was a minor. Under such circumstances, it would be difficult to carry on business with persons who happened to be members of a joint family of the Province of Madras.

But the minor's interest in the joint property of the family will not be affected by any decree against the other members in transactions which are in the course of any family business. (*Sir John Edge.*) P.M. SADASHIO MUDALIAR *v.* A.R. HAJEE FAKIR MAHOMED SAIT. **72 I.C. 48= 32 M.L.T. 99=27 C.W.N. 677=37 C.L.J. 569= 17 M.L.W. 288=A.I.R. 1922 P.C. 397= 44 M.L.J. 396 (P.C.).**

———*Junior member has no authority to bind the family by acknowledgment—Text Harita.*

Per *Krishnan and Odgers, JJ.*—The words "remotely absent" in the text of Harita, cannot be constructed so as to bring within their scope the case of a manager, who though absent from his home is in correspondence with the junior members and is the controlling manager. Therefore apart from the authority given, a junior member is not entitled under Hindu Law to act as the manager so as to bind the family by his acknowledgment. (*Kumaraswami Sastri, Krishnan and Odgers, JJ.*). P. RAMA PATTER *v.* A. VISWANATH PATTER. **66 I.C. 155=45 Mad. 345= 15 M. L. W. 130=1922 M.W.N. 27= 30 M.L.T. 209=A.I.R. 1922 Mad. 23= 41 M.L.J. 567.**

———Where the plaintiff sues as a member of a joint family to recover joint family property from the defendant, another member of the joint family, who claims to hold it adversely, no decree for mesne profits should be passed but a decree for joint possession of an undivided share in the property, should be passed. (*Daniels, J.C.*). GOKUL PRASAD *v.* KAILAS NATH. **65 I.C. 345= 8 O.L.J. 596=A.I.R. 1922 Oudh 55.**

———*Contract by co-parcener—When binding.*

Where a contract is made by a member of a joint Hindu family, unless it is shown that that member was the manager of the family or that the contract was entered into in the course of the family business or that the other members derived a benefit from it the other members are not liable on the contract. (*Lyle, A.J.C.*). RAMDHIR SINGH *v.* MATA PRASAD. **69 I. C. 846=8 O.L.J. 617.**

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———*Debt for defending members in a criminal charge is a necessity and does not depend upon the result of the trial.*

The rule of Hindu Law upon which the act of the *karta* and his dealing with the family property are binding upon the other members of the family does not restrict it to the *karta* alone. It is wide enough to authorise any member of the family to deal with the family property, such as to incur debts, provided the act is done in times of distress and for family necessity. The defence of a member of a joint family in a criminal charge is regarded among the Hindus as a pious and necessary act in order to remove the stigma of disgrace upon the whole family consequent upon the conviction of one member. The question whether there existed legal necessity for raising the loan cannot be made to depend upon the result of the trial. (*Jwala Prasad and Ross, JJ.*). DHANUKTHARI SINGH *v.* RAMBIRICH SINGH. **70 I. C. 391= 1 Pat. 171=A.I.R. 1922 Pat. 553.**

———Partition in status but not by metes and bounds—One member can sue others for joint possession of defined share. (*Banerji, Piggott and Walsh, JJ.*). SHEODAN KURMI *v.* BALKARAN KURMI. **59 I. C. 116=43 All. 193= A.I.R. 1921 All. 337.**

———Transaction by all adult members—Minors impeaching transaction—Onus of proof is on them. (*Ayling and Seshagiri Aiyar, JJ.*). KRISHNA AIYAR *v.* MADHAVA PANIKKAR. **63 I. C. 258= 30 M.L.T. 26=A.I.R. 1921 Mad. 381.**

———*Reference to arbitration by some members only—Award is not binding.*

Only some members of a Hindu family cannot bind the family property by submitting to an arbitration of a claim made by a third person or by entering into an arrangement with him. Such an arbitration will not affect the family property or even the shares of the members submitting to the arbitration. (*Abdur Rahim and Oldfield, JJ.*). BHUMI REDDI SURANNA *v.* BHUMI REDDI APPADU. **60 I.C. 615=1921 M. W. N. 28= A.I.R. 1921 Mad. 232.**

———Decree on the basis of contract by one member is not binding on others unless he entered into the contract, as the head or others derived benefit thereunder. (*Lyle, A.J.C.*). T. RANDHIR SINGH *v.* MATA PRASAD. **8 O.L.J. 617=A.I.R. 1921 Oudh 258.**

—Joint family—Self-acquisition—Blending of.

———*Unless kept strictly separate self-acquisition goes to common income of family.*

In the absence of any evidence that a Hindu is keeping his self-acquisitions strictly separate, the presumption is that the whole income of the family from whatever source derived, goes into the common chest of the family. The manager of such property is, therefore, incompetent to make a will of the property in favour of his wife in presence of sons: 29 All. 244 (P.C.) and A.I.R. 1917 P. C. 128, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). BELI RAM *v.* SARDARI LAL. **A.I.R. 1930 Lah. 613.**

———Joint family of manager and his younger brothers and their sons—No separate accounts kept of property acquired under gift—Income and expenditure of both lumped up together—Property acquired under gift is sufficiently blended with ancestral property: 29 All. 244 (P. C.) and A.I.R. 1923 P.C. 57, *Ref.* (*Fawcett and Madgavkar, JJ.*). BABANA SANGAPPA *v.* PARAVA NINGBASAPPA. **100 I.C. 147=50 Bom. 315=28 Bom. L.R. 1446= A.I.R. 1927 Bom. 66.**

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——Where a separated Hindu who has no son mixes his self acquisitions with the ancestral property and keeps one account no intention on his part to throw self-acquisitions into common stock can be inferred. (*Kumaraswami Sastri, Offg. C. J. and Curgenven, J.*). ALAVANDAR GRAMMANI *v.* DANAKOTI AMMAL. **59 I.C. 775=A.I.R. 1927 Mad 383.**

——*Superstructures built by co-parcener on joint family land at his expense are presumed to be his.*

Very strong evidence is required to show that property originally self-acquired was afterwards voluntarily thrown by the owner into the joint stock with the intention of abandoning all separate claims upon it: 2 O. L. J. 237, *Foll.*

Where a member of a joint family built superstructures on joint property with his own money,

Held, that in the absence of any evidence that the joint family fund contributed to the money with which the superstructures were raised or that there was any nucleus possessed by the family productive of any income whatsoever which might be presumed to have been utilized for the purpose of building structures and lastly in the absence of a case or evidence to the effect that the member deliberately made a gift of his self-acquisitions in favour of the joint family as a whole, the principle of self-acquisition becoming joint family property when the member who made the acquisitions has thrown into the common stock is not applicable: A.I.R. 1921 P.C. 35, *Expl.* (*Wazir Hasan, J.*). KALI PRASAD *v.* CHANDRIKA PRASAD. **103 I.C. 746=4 O.W.N. 667=A.I.R. 1927 Oudh 335.**

——A separate or self-acquired property of a member of a joint family may become joint family property if it has been voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it. (*Ross and Kulwant Sahay, JJ.*). GAJADHER PRASAD *v.* LACHANWAN LAH SAHU. **103 I.C. 354=8 P.L.T. 759=A.I.R. 1927 Pat. 339.**

——Where the member of a joint Hindu family does not intend to blend his self-acquisitions with the ancestral property but he always treats them as his own over which he has full disposing power the self-acquired property is not to be considered as joint family property. (*Scott-Smith and Le Rossignol, JJ.*). IQBAL SINGH *v.* JANG BAHADUR. **93 I.C. 634=A.I.R. 1926 Lah. 333.**

——*No registered deed is necessary for blending.*

There is no authority for the proposition that when a co-parcener throws self-acquired property into the common stock of the co-parcenary consisting of himself and others, a registered deed is necessary to effect the transaction: A.I.R. 1925 Mad. 1174 and 8 L. W. 400, *Expl.*; Per *Srinivasa Iyengar, J.*, in 32 I.C. 955, *Doubted.* (*Odgers, J.*). RAMASWAMI *v.* RAJU. **96 I.C. 1051=1926 M.W.N. 635=A.I.R. 1926 Mad. 963=51 M.L.J. 167.**

——Self-acquired property may be impressed with the character of joint property by its being dealt with as joint family property: A.I.R. 1923 P.C. 57, *Foll.* (*Kumaraswami Sastri, J.*). SHYAMA BHAI *v.* PURUSHOTHAMA DOSS. **90 I.C. 124=21 M.L.W. 551=A.I.R. 1925 Mad. 645.**

——When a person made deposits out of his separate acquisition in the Bank in the joint names of himself and of his wife and made them payable to either or to the survivor he intended that there should be a provision for his widow in case he died before her and cannot be claimed by his co-partners as being part of joint family property. (*Scott-Smith and Moti Sagar, JJ.*). MT. UTTAM DEVI *v.* DIN NATH. **75 I.C. 774=A.I.R. 1923 Lah. 359.**

HINDU LAW—Joint family—Self-acquisition—Gains of science.

——*Gains of science—When are self-acquisition.*

All acquisitions by members of a joint Hindu family are *prima facie* partible and the burden of proof lies on those who assert to the contrary. The gains of science are exempted from this rule only when the education which made such gains possible is affirmatively shown to have been acquired without detriment to the family estate: A.I.R. 1917 P.C. 105 and A.I.R. 1921 P.C. 35, *Foll.* (*Harrison and Coldstream, JJ.*). KANSHI RAM *v.* SHANKARDAS. **111 I.C. 596=10 L.L.J. 93=A.I.R. 1928 Lah. 397.**

——*Gains made by a member without the aid of joint family funds are self-acquired property.*

The acquisition of distinct property by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition. 6 B. 225; 45 C. 666, *Ref.* Hindu law texts regarding gains of science establish it as a rule of Hindu Law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance; but that it is otherwise when the science has been imparted at the expense of persons who are not members of the acquirer's family. Acquisition, made as a Government servant, which is kept quite separate from the joint family funds, is impartible and the acquirer could deal with it as he chose. (*Scott-Smith and Moti Sagar, JJ.*). MT. UTTAM DEVI *v.* DIN NATH. **75 I.C. 774=A.I.R. 1923 Lah. 359.**

——*Earnings without the help of joint family funds are self acquisitions.*

No doubt when it is proved and admitted that a Hindu has lived in commonsality and possessed joint property, if any member of the family claims any property as his separate, the burden lies upon him to prove that it was acquired in circumstances which would constitute it his separate property. But where the deceased was a member of a joint family and it was not shown that he acquired any education at the expense of the joint family or that any money was contributed out of the joint family funds to help him in any of his undertakings.

Held, that the property left by him was his separate property: 16 Bom. L. R. 101 (P. C.) and 12 S.L.R. 116 (P.C.), *Ref.*

Every member of a joint family who is found to be in possession of a property at his death cannot necessarily be said to have acquired the property as a member of the joint family. (*Kennedy, J. C. and Raymond, A. J. C.*). SANT SINGH *v.* RARI BAI. **76 I.C. 408=17 S.L.R. 206=A.I.R. 1924 Sind 17.**

——*Gains of science—When not self-acquisition.*

In a joint Hindu family the rule is that the acquisitions of the members are joint property and partible and impartibility is the exception. One of the recognised exceptions is property acquired by the possession of special "science" or "learning". Where this is acquired outside the family and has to be paid for in one form or another at the expense of the family it is acquired "to the detriment of the family property". In that case it is a family investment, and the emoluments which its possessor is thus enabled to obtain, are joint property of the family as fruits of the investment thus made in the person of one of its more

HINDU LAW—Joint family—Self-acquisition—Nucleus.

gifted members. But the individual can sever from the family at will on the footing of bringing his accumulations into hotchpot as part of the family property and without capitalising future earnings or being under future liability as to what he may make thereafter. So personal earnings and acquisitions may remain partible throughout the unseparated member's life, if he was originally equipped for the calling or career, in which the gains were made by a special training at the expense of the patrimony. (*Case-law referred to*).

A post in the Covenanted Civil Service of India is a post to which the rule would apply.

An Indian Civil Servant is not always what is commonly called a scientific man, but his is certainly a special and in many cases an eminently learned profession. The presumption, even in the case of such special gains, is that the acquisitions of all members are partible, until the contrary is proved. The personal and the family elements in the ultimate gains cannot be distinguished. There is equally little ground for contending that partibility depends on *causa proxima* or is negatived by the intervention of the personal element of the individual co-parcener's character. Changes with regard to gains of science have been in the direction of narrowing the category of partible gains. From maintenance out of the family funds during the period of education, the basis of partibility changed to the receipt of the education itself as the family expense, and then education generally was narrowed to specialised education, which is now the basis. No corresponding change, however, is to be traced upon the question, what is science, in the sense in which the text of the Mitakshara uses the term. On the contrary, while the principle has remained the same, the application of it has tended to widen, as changing times have brought up fresh instances of callings, to which special science and not the native wit of man is the means of entrance. (*Lord Sumner*). AMARNATH *v.* HUKAM CHAND NATHU MAL. **60 I.C. 379= 2 Lah. 40=48 I.A. 162=19 A.L.J. 249= 23 Bom.L.R. 671= 25 C.W.N. 534= 33 C.L.J. 355=14 M.L.W. 435= 1921 M.W.N. 175=2 P.L.T. 201= A.I.R. 1921 P.C. 35=40 M.L.J. 327 (P.C.).**

—Joint family—Self-acquisition—Nucleus.

———Throwing into the common stock depends on the *animus*. Where in the case of a Sourashtra trading family there was some nucleus and the father and sons jointly worked and property was purchased out of the family funds,

Held, that under those circumstances the property became the property of the joint family and that the onus of proving self-acquisition was on the party alleging it. (*Kumaraswami Sastri and Reilly, JJ.*). RENGANATHA AYYAR *v.* VENKATATHRI AYYAR. **1930 M.W.N. 793.**

———Where there is admittedly a nucleus which is by no means negligible and properties are purchased while the parties continue joint, the burden of proving self acquisition is on the party pleading it. (*Kumaraswami Sastri and Reilly, JJ.*). RENGANATHA AYYAR *v.* VENKATATHRI AYYAR. **1930 M.W.N. 793.**

———Property acquired by member of joint family not shown to have nucleus is not always joint family property. (*Sen and Niamatullah, JJ.*). DURGA *v.* CHANHARJA. **122 I.C. 418= 1930 A.L.J. 775= A.I.R. 1930 All. 536.**

HINDU LAW—Joint family—Self-acquisition—Nucleus.

———No nucleus proved—Burden of proving that property is not self-acquired is on the propounder. 9 Mad. 477, *Dist.* (*Ramesam and Reilly, JJ.*). RAMASWAMY PILLAI *v.* MARIMUTHU GOUNDAN. **113 I.C. 865=A. I. R. 1928 Mad. 764.**

———*One member holding property cannot be presumed to be joint family property unless nucleus is proved* (per *Venkatasubba Rao, J.*).

It is not correct to say that, to start with, a presumption should be made that the family is possessed of joint property and therefore it cannot be presumed from the mere fact that a member of the family holds property that it is joint family property. Something more must be shown. The party alleging that the property held by an individual member is joint family property must show that the family was possessed of some property with the aid of which the property in question could have been acquired. If this is shown and only then, the onus shifts to the party alleging self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. (*Krishnan and Venkatasubba Rao JJ.*)., KANNAMMAL *v.* RAMATHILAKMMAL. **97 I.C. 632=A.I.R. 1927 Mad. 38.**

———*Acquisition of property while family was joint —Person alleging that it was separate property must prove it.*

Where it is proved that there is a joint family and where it is also proved that that joint family has some joint property, the presumption will arise that all property acquired while the family still remains joint is joint family property and that the onus of proving that any particular item of property allged to be joint, is in fact separate property, will lie upon the person who asserts it to be so: 33 All. 677, *Foll.* (*Lindsay and Kanhaiya Lal, JJ.*). MAHADEO KASANDHAN *v.* GAYA DIN KASANDHAN. **96 I.C. 184 (All.).**

———*Party alleging nucleus of joint property must prove it—Nucleus too small as compared with acquisitions—Property cannot be held to be joint.*

There can be no presumption that a joint family had a nucleus, nor that it had joint property. Those who allege existence of such a nucleus must prove it and once they so prove, the onus is shifted to the other side to show that the acquisition by one member was not a joint acquisition: 33 All. 677 and 8 N.L.R. 82, *Ref.* If there is a large family nucleus and if the property in the possession of a member of the joint family can be ordinarily traceable to the income of the family nucleus, such property would be considered joint family property till it is affirmatively shown that that property was acquired without the help of and without detriment to the family nucleus; but where the family nucleus is so small that it could not by any stretch of imagination have been the means of acquiring any portion of the property standing in the name of a member, such property cannot be held to be joint-family property: A.I.R. 1923 Mad. 262 and 2 Lah. 40 (P. C.), *Rel. on.* (*Kinkhede, A.J.C.*). BIRDICHAND LALCHAND *v.* POPAT LAL. **95 I.C. 183=A. I. R. 1926 Nag. 389.**

———Joint family proved to have some joint property—Onus of proving any property to be self-acquired by any particular member is on the party setting up the plea. (*Baker, J.C.*). MOTILAL *v.* HARJIMAL. **87 I. C. 809= A. I. R. 1926 Nag. 146.**

HINDU LAW—Joint family—Self-acquisition—Nucleus.

———*Person claiming self-acquisition must prove there was no help from nucleus.*

Property which is incapable of yielding any income might not be treated as a nucleus for the purpose of affecting the presumption as to subsequent acquisitions. But this proposition might apply for instance, to an ancestral house and not to a business, when the management of an ancestral business is taken over by a member of the family. The state of that business, when such member took over the management, is a fact peculiarly within his knowledge and if he wishes to show that the business was ended or yielded no income it is for him to prove it and not call the other side to prove the contrary. (*Lindsay and Daniels, JJ.*). SUKHNANDAN *v.* BRIJNANDAN. **73 I. C. 1052= 5 L.R.A. Civ. 39=A.I.R. 1923 All. 574.**

———Where the family is joint and there is a nucleus of joint property, properties acquired are *prima facie* joint properties and the burden of proof is on the party setting up a case of separate estate. (*Mookerjee and Panton, JJ.*). NIBARAN CHANDRA *v.* NIRUPAMA DEBI. **69 I.C 476= 34 C. L. J. 563=26 C. W. N. 517= A.I.R. 1921 Cal. 131.**

———*Onus is on person setting it up.*

Where nucleus is admitted or proved, the burden of proving that particular property is the self-acquisition rests on party alleging it. (*Mr. Ameer Ali.*) RAJANGAM AYYAR *v.* RAJANGAM AYYAR. **69 I. C. 123=37 C.L.J. 435=21 A.L.J. 460= 27 C.W.N. 561=46 Mad. 373=50 I.A. 134= 31 M.L.T. 136=16 M.L.W. 615= A.I.R. 1922 P.C. 266=44 M.L.J. 745 (P.C.).**

—Joint family—Self-acquisition—Plea of.

———It is only when self acquisition is claimed that it is necessary for the other members of the joint family to prove that they had also contributed to the acquisition of the property. (*B.B. Ghose and Panton, JJ.*). GOURANGH SUNDAR *v.* MOHENDRA NARAYAN. **104 I.C. 694= 46 C.L.J. 175=A.I.R. 1927 Cal. 776.**

—Joint family—Self-acquisition—Presumption.

———*Dayabhaga law—Property acquired in name of manager will be presumed to be family property.*

In the case of a family governed by the Dayabhaga Law, the father is the owner of the entire property and on his death his sons take the property as co-owners and not as joint owners. But where the property is held jointly and where there is a nucleus of family property and where one of the members of the family has been left in the management of the property, properties acquired in the name of the manager will be presumed to be the property of the family, unless the manager shows that he had a separate income apart from the yields of the joint family property out of which he may have acquired the property: 31 Cal. 448, *Dist.*; 31 All. 477, *Expl.* (*Mukerji and Bennet, JJ.*). GOSWAMI SADANAND *v.* GOSWAMI INDRA NAND. **123 I.C. 763=A.I.R. 1930 All. 383.**

———*Property acquired by a member—Presumption.*

There is no presumption that any property acquired by an individual member of a joint Hindu family, which is not shown to have possessed any nucleus, is joint family property. (*Sen and Niamatullah, JJ.*). DURGA PRASAD *v.* CHAUHARJA PRASAD. **122 I C. 413=1930 A.L.J. 775= A.I.R. 1930 All. 536.**

———Property acquired by members of joint family without aid of joint family property will be joint family property unless acquirers intend to hold it

HINDU LAW—Joint family—Self-acquisition—Presumption.

as co-owners: 32 Bom. 479; 10 Bom. L.R. 175; A.I.R. 1926 Bom. 408 and 25 Mad. 149, *Rel. on*; 9 Bom. 438, *held not good law.* (*Shingne, J.*). RANGU NYAHALCHAND SHET VANI *v.* LAKSHMAN MARTAND KULKARNI. **A.I.R. 1930 Bom. 438.**

———*If nucleus could not have helped acquisition it is not joint property.*

The proposition that mere possession of joint family property by a joint Hindu family would raise a presumption of law that all the property in the possession of a co parcener is joint family property would be strictly correct only if the joint family property possessed by the joint Hindu family was such as would have enabled and led to the acquisition of the other property. If having regard to the nature of the income from the admitted joint family property or otherwise, the same could not have possibly helped in or led to the acquisition of the subsequent property, then there is no presumption that the subsequent property is joint family property. (*Ananthakrishna Ayyar, J.*). C. SANKARANARAYANA MUDALIAR *v.* TANGARATNA MUDALIAR. **A.I.R. 1930 Mad. 662.**

———No doubt various presumptions arise from the relations *inter se* of the members of a joint Hindu family. But where there is evidence of circumstances which point to an acquisition by one member either for himself personally or for the benefit of the family, the presumptions are superseded by the circumstances which have been found obtaining in the particular case, and the Court considering all the circumstances has to draw an inference therefrom one way or another. (*Page and Mallick, JJ.*). SITA NATH CHAKRAVARTI *v.* BIBIN BEHARI CHOWDHURY. **117 I. C. 529= 32 C.W.N. 644.**

———There is no presumption that the members of a joint Hindu family possess their self-acquisitions as joint co-parcenary property. (*Addison and Coldstream, JJ.*). KANSHI RAM *v.* SHANKAR DAS. **111 I.C. 596=10 L.L.J. 93=A.I.R. 1928 Lah. 397.**

———In the case of a joint Hindu family even if there is no nucleus of ancestral property but if two members of the family are joint in worship and live in commensality and carry on a business jointly and are treating that business as that and acquiring property with the proceeds of that business, that property would be deemed to be the joint family property : 32 Bom. 479; 10 Bom. L. R. 175, *Foll.*; A.I.R. 1926 Bom. 408, *Ref.*; 33 All. 677; 27 M.L.J. 677; A.I.R. 1926 Nag. 389 and A.I.R. 1927 Mad. 38, *Dist.* (*Fforde and Agha Haidar, JJ.*). SANWAL DAS *v.* KUREMAL. **109 I.C. 779= 9 Lah. 470= 10 L.L.J. 27=29 P.L.R. 635= A.I.R. 1928 Lah. 224.**

———Where a conveyance is taken in the name of one of two undivided brothers forming a joint Hindu family, in the absence of evidence as to utilisation of family funds for the purchase, no inference can be drawn of its being a joint purchase, from the bare facts of the undivided status of the vendees. (*Waller and Madhavan Nair, JJ.*). SUBBALAKSHMI AMMAL *v.* NARSIMIAH. **102 I.C. 360= 38 M.L.T. 226=25 M.L.W. 563= A.I.R. 1927 Mad. 586=52 M.L.J. 482.**

———The ordinary presumption is that as long as family continues to be joint, properties acquired by a member of joint family are all joint properties and were acquired for the benefit of the family. (*Sulaiman and Lindsay, JJ.*). HARKESH SINGH *v.* MT. HARDEVI. **102 I.C. 66=49 All. 763= 25 A.L.J. 413=A. I. R. 1927 All. 454.**

HINDU LAW—Joint family—Self-acquisition—Presumption.

——Property purchased with the profits derived from a joint business cannot be presumed to be joint and the Hindu Law of joint property is not applicable to such property. Burden of proving that such property is joint is on the party alleging it to be so. (*Suhrawardy and Graham, JJ.*). GHOLAM SIDHIQUE KHAN *v.* JOGENDRA NATH MITRA.
96 I.C. 199=43 C.L.J. 452=31 C.W.N. 205=A.I.R. 1926 Cal. 916.

——There is a presumption in favour of jointness of subsequently acquired properties where the family is a joint one; but according to the circumstances of each particular case the strength of the presumption varies a great deal. (*Suhrawardy and Graham, JJ.*). TRAILAKYANATHCHAR *v.* CHINTAMONY DUTT. **95 I.C. 426=30 C.W.N. 588=A. I. R. 1926 Cal. 813.**

——In the absence of evidence that the property is purchased by money of the junior member or he had separate funds the presumption is that the property is acquired by the head of the family for the family and the presumption applies also to a family consisting of father and sons, in the Dayabhaga School: 16 Bom. L. R. 101 (P.C.), *Foll.* (*Greaves and Mukerji, JJ.*). JASODA SUNDARI *v.* LAL MOHAN. **91 I.C. 681=42 C.L.J. 436=A. I. R. 1926 Cal. 361.**

——Property acquired by son during father's life-time—Son having sufficient private means—Property will be presumed to be son's self-acquired one: 16 Bom. L.R. 101 (P.C.), *Dist.* (*Suhrawardy and Cuming, JJ.*). CHOONI LAL KHEMANI *v.* NILMADHAL BARIK. **86 I. C. 734=41 C.L.J. 374=A.I.R. 1925 Cal. 1034.**

——Acquisition during joint living is presumed to be for benefit of family. (*Greaves and Cuming, JJ.*). SASHI KUMAR SARKHEL *v.* CHANDRA KUMAR SAMADDAL. **68 I. C. 322=35 C.L.J. 348= A.I.R. 1923 Cal. 204.**

—Joint family—Self-acquisitions—Rights of co-parceners.

——Co-parcener can have self-acquisitions—They are separated property, unless arising from family business or blended with family estate. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANIAN CHETTY. **113 I.C. 897=49 C.L.J. 93=1929 M.W.N. 39=29 M.L.W. 91=6 O.W.N. 104=1929 A.L.J. 9=31 Bom. L.R. 280=33 C.W.N. 435=10 P.L.T. 283=A.I.R. 1929 P.C. 1=56 M.L.J. 435 (P.C.).**

—Joint family—Self-acquisition—What is.

——Property acquired from maternal grandfather is self-acquired property and not ancestral property. (*Kulwant Sahay and Macpherson, JJ.*). CHATTRA KUMARI DEVI *v.* MOHAN BIKRAM SHAW. **121 I.C. 337 (Pat.).**

——Father bequeathing his self-acquired property to his son in lieu of certain expenses incurred by him—Property acquired is not ancestral property in son's hands, but self-acquired: A.I.R. 1923 P.C. 160, *Ref.* (*Rupchand and Wild, A.J.Cs.*). HASSANAND *v.* DEUMAL GIRDHARIMAL. **123 I. C. 703=A.I.R. 1930 Sind 174.**

——Absolute bequest to widow—Widow bequeathing the property to her son—Son gets it as personal property: 23 Cal. 262 and 6 W.R. 71, *Dist.* (*Suhrawardy and Mallick, JJ.*). GOHALI SAHA *v.* DEBENDRA NATH. **114 I. C. 404=32 C.W.N. 272=A.I.R. 1928 Cal. 285.**

——*Son first proprietor of land—Land is son's self-acquisition.*

HINDU LAW—Joint family—Self-acquisition—What is.

A land was granted in lease to the father for a period of 10 years on some conditions upon the fulfilment of which he was to get proprietary right in the land. He died without fulfilling the necessary conditions. The lease was then renewed in favour of his son with the same conditions which he fulfilled and got proprietary rights in it. He subsequently alienated it,

Held, that the son was the first proprietor of land and that it was self-acquired property in his hands and as such alienation cannot be questioned by his sons: A.I.R 1921 Lah. 63; 5 P.R. 1918 and 129 P.R. 1916, *Foll.* (*Broadway and Agha Haidar, JJ.*). SARWAN SINGH *v.* LAL SINGH. **112 I. C. 168=10 L.L.J. 541.**

——Property going into the hands of sons' sons under a bequest from their grandfather after the cessation of life-estate created in their father's favour is not joint in their hands. (*Stuart, C.J. and Raza, J.*). DEBI PRASAD *v.* KRISHNA KUNWAR. **104 I. C. 847=4 O. W. N. 1041=A.I.R. 1928 Oudh 26.**

——Property got by gift or will by one member is not presumed to be attached with incidents of joint family property: A.I.R. 1926 Mad. 273 and 24 Mad. 429, *Rel. on.* (*Venkatasubba Rao, J.*). RAJAGOPALA PILLAI *v.* P. VEERAPERUMAL PILLAI. **102 I. C. 681=39 M.L.T. 76=A.I.R. 1927 Mad. 792=53 M.L.J. 232.**

——*Jagir or pension is self-acquisition.*

A pension is always allowed on condition of good conduct and loyalty to Government and though it may be continued from father to son, each recipient possesses unrestricted power of expending his pension. The same may be said of jagir moneys paid by way of charity or dharamath. (*Zafar Ali and Campbell, JJ.*). WAZIR SINGH *v.* MOTI SINGH. **94 I.C. 492=7 Lah. 522=27 Punj. L.R. 846=A.I.R. 1926 Lah. 393.**

——*Property purchased by income from priestly offerings is self acquired.*

Income derived from sources as priestly offerings is the personal income of the recipient and does not form part of his family funds, and consequently the property acquired by him with that money is his own self-acquired property and he has full power of disposition over it. (*Zafar Ali and Campbell, JJ.*). WAZIR SINGH *v.* MOTI SINGH. **94 I.C. 492=7 Lah. 522=27 Punj. L.R. 846=A.I.R. 1926 Lah. 393.**

——Property purchased by father before the birth of any son to him is separate property and descends to his sons as tenants-in-common. (*Ashworth, A.J.C.*). MATHRADASS *v.* RAMJI MAL. **85 I.C. 1006=A.I.R. 1925 Oudh 619.**

——*Property got by collateral succession—When is not self-acquisition.*

Under the Hindu Law the property obtained by collateral inheritance is regarded as the separate property of the person by whom it is inherited. An exception is, however, made where joint family funds are used in the process of its acquisition or where it is voluntarily thrown into the common stock, or is otherwise impressed with the character of joint family property by subsequent treatment. (*Lindsay and Kanhaiya Lal, JJ.*). MT. PHULWANTI KUNWAR *v.* JANESHAR DAS. **83 I.C 782=46 All. 575=22 A.L.J. 521=5 L.R.A. Civ. 785=A.I.R. 1924 All. 625.**

——*Property ceasing to be joint property—Acquisition by a co-parcener afterwards—If joint property,*

HINDU LAW—Joint family—Self-acquisition—What is.

The fact that a person who subsequently acquired the house which was once joint family property but which lost that character owing to an award, was at one time a co-parcener with another cannot make the house joint family property in his hands. It is only in very special circumstances that such a result could follow. (*Shaw, Ag. C. J. and Crump, J.*). JAMNADAS KASHIDAS *v.* VALLABHDAS KASHIDAS. **84 I. C. 878=25 Bom L.R. 1340= A.I.R. 1924 Bom. 239.**

——Where after the joint family property is disposed of by valid or voluntary alienation, the family separates and if a purchase is made of the property by one of such separated members, with his own funds, it is his self-acquired property.

The doctrine laid down in *Visalatchi Ammal* v. *Annaswamy Sastri*, 5 M. H. C. R. 150 is applicable to the case of a mortgage or to a wrongful dispossession of joint family property, but will not apply to a case where the joint family disposed of the property by valid and voluntary alienation. (*Schwabe, C.J. and Wallace, J.*). MAHOMED MARKAYAR *v.* BANSI LAL. **71 I.C. 855=1922 M.W.N. 824= A.I.R. 1923 Mad. 248.**

——*Gift or devise from father is self-acquired property in hands of donee or devisee.*

In the absence of any express limitation or condition to the contrary all property obtained by gift or devise becomes self-acquired in the hands of the donee or devisee. Consequently any property so obtained by gift from the father, grandfather or great-grandfather will become self-acquired property in the hands of the donee, if it was not ancestral property in the hands of the donor or was acquired by him without any detriment to the joint estate. (*Kanhaiya Lal, J.C.*). KANHAI LAL *v.* RAM RATAN. **68 I. C. 217= 25 O.C. 80=A.I.R. 1922 Oudh 138.**

——Purchase of joint family property at a sale by the Revenue authorities for arrears of revenue by a member of the family out of his self-acquired funds is not joint family property but is the self-acquired property of the member. (*Macleod, C.J. and Fawcett, J.*). CHOKHU *v.* TATYA. **59 I.C. 569=22 Bom. L.R. 1297.**

——Property is *prima facie* impartible where it is allotted by the State to a person in consideration of the discharge of particular duties or as payment for an office even though the duties or office may become hereditary in a particular family.

Property purchased by a Patwari, out of the savings from his emoluments as a Patwari, is his self-acquired property. (*Mitra, A. J. C.*). SHEO RAM *v.* SHRIDHAR. **17 N.L.R. 97= A.I.R. 1921 Nag. 86.**

—Joint family—Self-acquisition—What is not.

——Joint family house repaired by self-acquisitions does not become self-acquired property of the repairing co-parcener: 45 C. 666 (P.C.), *Ref.* (*Kincaid, J.C. and Lobo, A.J.C.*). JETHANAND UDHANDAS *v.* KEWALRAM. **97 I.C. 505=20 S.L.R. 295= A. I. R. 1926 Sind 216.**

——*Money received by co-parcener by giving his son in adoption is not self-acquired property.*

Where the question was whether money received by a co-parcener in a Nattukottai family on his giving his son in adoption was his self-acquired property,

Held, in these families male member was valued for his earning capacity and the test appeared to be whether the acquisition of money was made at the expense of or to the detriment of the joint family property; if it was, it cannot be self-acquisition. The transfer of boys, by adoption was much to the detriment of their natural family, as it was to the advantage of their adoptive family (in consideration of which detriment and advantage these payments were made) and the property so acquired cannot be self-acquisition of the co-parcener in the absence of a custom to the contrary. (*Ayling and Odgers, JJ.*). RAMASWAMI CHETTY *v.* PALANIAPPA CHETTY. **76 I.C. 798= 18 M.L.W. 656=1923 M.W.N. 841= A.I.R. 1924 Mad. 354.**

HINDU LAW—Joint family—Separate property.

——Merely from a transfer of *Khata* from the name of father in joint family to that of one of the sons no presumption arises that the subject of the transfer has ceased to be joint family property and become the self-acquisition of that particular son. (*Kotval, A.J.C.*). MT. KASHI *v.* PANDURANG. **69 I.C. 612= A. I. R. 1923 Nag. 75.**

—Joint family—Self-acquisition—Will.

——In a Hindu joint family the father can dispose of his self-acquired property by will: 12 Mad. 126 and 22 Mad. 9, *Rel on.* (*Coutts Trotter, C.J. and Wallace, J.*). VENKATA SUBBA RAO *v.* LAKSHMI KANTAMMA. **A.I.R. 1929 Mad. 785.**

———Self-acquired property can be disposed of even by will by the co-parcener who acquired it. (*Baker, Offg. J. C.*). DEBICHARAN *v.* SHANKER RAO. **80 I.C. 322=7 N.L.J. 1= A.I. R. 1924 Nag. 71.**

—Joint family—Separate property.

——*On partition share allotted to mother absolutely —On her death her share to go to her grandsons—Share in hand of grandson is his separate property.*

Under the settlement by a consent partition decree between sons and grandsons the mother was allotted an amount of money as her stridhan with full rights of ownership. In the event of her dying intestate, after setting apart a sum for her funeral ceremonies, the rest was to be divided between her grandsons. In the suit for partition between one of the grandsons and his son a question arose whether or not the sum so received was the separate property of the grandson,

Held, that the money was given to the grandson as his own separate property and that his son had no interest in it. (*Kemp, Ag. C. J. and Murphy, J.*). JAMNABAI *v.* VASUDEO SAGARMAL. **124 I.C. 793=32 Bom. L.R. 48= A.I.R. 1930 Bom. 302.**

——*If owner waives his right and voluntarily throws it into common stock it can become joint property.*

Property originally self-acquired may become joint property if it has been voluntarily thrown into the joint stock with the intention of abandoning all separate claims upon it. Question whether he has done so or not is entirely one of fact to be decided in the light of all the circumstances of the case. But a clear intention to waive his separate rights must be established and will not be inferred from acts which may have been done merely from kindness or affection. (*Rankin, C. J. and C. C. Ghose, J.*). RAJANI KANTA DEB *v.* BASHIRAM MESTARI. **121 I.C. 409=49 C.L.J. 532= A.I.R. 1929 Cal. 636.**

——Property derived from maternal grandfather mixed with ancestral properties for a long time—Presumption is that they were thrown into common stock: A. I. R. 1923 P. C. 57, *Rel. on.* (*Ramesam, J.*). AHOBILACHARIAR *v.* TULASI AMMAL. **103 I.C. 281=39 M.L.T. 276= A.I.R. 1927 Mad. 830.**

HINDU LAW—Joint family—Separate property.

———Blending of separate earnings by individual member with joint family funds—Whole becomes joint family property: 45 Cal. 733 (P.C.) and A. I. R. 1923 P. C. 57, *Foll.* (*Phillips and Odgers, JJ*). PARVATHI AMMAL *v.* M. R. SIVARAMA IYER. **97 I.C. 998= A.I.R. 1927 Mad. 90.**

———*Tenancy in the name of one member may be for family.*

It is open to the Court to find on the evidence that in spite of the fact that the name of only one member of a joint family was recorded as tenant of a holding in the village papers, the tenancy was really vested in the joint family. (*Piggott, J.*). BIJAI *v.* NARAIN. **88 I.C. 592= A. I. R. 1926 All. 45.**

———Property purchased in the name of one member—To make it joint, jointness in mess and estate and existence of sufficient estate to acquire it must be proved. (*Suhrawardy and Graham, JJ.*). TRAILAKYANATH CHAR *v.* CHINTAMONY DUTT. **95 I. C. 426=30 C.W.N. 588= A.I.R. 1926 Cal. 813.**

———Where a Christian and his Hindu relations lived as members of a joint family and it was found that there was no intention to keep the various properties separate and that all the properties were treated as the common property of the whole family,

Held, this necessarily implied an agreement between the members, that they were all to share the properties alike. (*Phillips and Madhavan Nair, JJ.*). JOGI REDDI *v.* CHINNABIREDDI. **90 I. C. 1016=22 M.L.W. 116= A.I.R. 1925 Mad. 1195.**

———*Conversion of separate property into joint property.*

A consciousness on the part of the owner of a separate property that the property is his own separate property and a clear intention to waive his rights in such separate properties is presumed where such separate property is converted into joint family property by the process of throwing it into the common stock. (*Phillips and Odgers, JJ.*). MAYANDI SERVAI *v.* SANTHANAM SERVAI. **81 I.C 1031=20 M.L.W. 812= A.I.R. 1925 Mad. 303.**

———*Blending of joint with separate property makes property joint.*

When members of joint family, who have control over the joint estate, blend that estate with property in which they have separate interests, the whole property becomes joint. Whether separate estate is brought into a joint family account or the joint family property is brought into the separate accounts, the result is the same. The real question for determination is what is the true conclusion to be drawn when people united by bonds of close relationship and living as a joint family, draw for the joint family expenses out of a fund enriched by other contributions. If the members of a joint Hindu family confuse the incomes of their joint properties with their separate properties, their intention presumably is that the properties acquired with such mixed-up funds are for the joint family. (*Lord Buckmaster.*) RAJANIKANTA *v.* JAGAMOHAN PAI. **73 I.C. 252=-50 Cal. 439=50 I. A. 173=18 M. L. W. 387= 32 M. L. T. 149=37 C. L. J. 515= 25 Bom. L.R. 683=1923 M.W.N. 438= 27 C.W.N. 997=4 L.R.P.C. 70= A.I.R. 1923 P.C. 57=44 M.L.J. 561 (P.C.).**

—Joint family—Survivorship.

———Where immediately after the son was adjudged an insolvent, his father who formed a Hindu joint family with him willed away his properties to his wife and soon after died,

Held, that the will was invalid and as the insolvent took his father's estate by survivorship the same vested in the Receiver. (*Addison, J.*). MT. PIARI BAI *v.* TULSE DAS TARLOCHANMAL. **100 I.C. 110=9 L.L.J. 30= 28 P.L.R. 134= A.I.R. 1927 Lah. 152.**

HINDU LAW—Joint family—Survivorship.

———Decree against co-parcener—Co-parcener's interest ceases after his death and there remains nothing to be sold in execution. (*Walsh, J.*). UDRAJ SINGH *v.* SHYAM LAL. **93 I.C. 385= A.I.R. 1926 All. 338.**

———*Lease which is joint family property though in name of manager passes by survivorship.*

Ordinarily in the case of a lease taken by the manager of a joint Hindu family in his own name but with family funds and really on behalf of the whole family, it is universally accepted that the lease and the benefits of it belong to the whole family and if it is heritable it will pass by survivorship and not by inheritance, whatever the mutual rights and liabilities of the lessor and the members of the family other than the manager may be. This principle applies to an occupancy holding: 13 C. P. L. R. 137; 7 N.L.R. 36 and 10 N.L.R. 64, *Foll.* (*Hallifax, A.J.C.*). BARATI *v.* SURIT. **92 I.C. 916= A.I.R. 1926 Nag. 277.**

———The Hindu Law of succession by survivorship and the vesting of a son's interest by birth is not applicable to a tenancy governed by the Central Provinces Tenancy Act. (*Baker, Offg. J.C.*). MST. GOWRA *v.* CHAITRAM. **78 I.C. 63= A.I.R. 1924 Nag. 372.**

———The status of joint ownership with rights of survivorship cannot be acquired by prescription. (*Ayling and Odgers, JJ.*). RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. **70 I.C. 653= 1922 M.W.N. 481= A.I.R. 1923 Mad. 11.**

———*Right of survivorship is incidental to right of joint possession.*

The so-called right of survivorship of each of the daughters of a deceased male Hindu in respect of the property inherited by them from him is incidental to the right of joint possession and enjoyment of the estate with the others who are jointly entitled and cannot exist separately when the right of joint possession and enjoyment has been lost, *e.g.*, by adverse possession by one of the daughters: 9 M.I.A. 539, *Foll.* (*Wallis, C.J. and Seshagiri Aiyar, J.*). IVATURY ATCHAMMA *v.* I. BAPIAH. **60 I.C. 583=44 Mad. 131=13 M.L.W. 407= A.I.R. 1921 Mad. 24=40 M.L.J. 83.**

———*Benares School—Succession is by survivorship —Incidents of the law of survivorship.*

The system of a joint family and the rules of succession governing that family is a peculiarity of the Hindu Law of the School of Benares. The rule of succession is known as one of survivorship, where no member has any definite or defined share and, therefore, cannot transmit it to his heirs, but a member who dies or somehow or other ceases to be a member of the family causes no change in the status of the family. The properties owned by the joint family continue to be owned by the surviving members thereof after the death or extinction of one member of it. If once the members of the family in the property belonging to it are ascertained and defined, the family ceases to be a joint family under the Mitakshara, in spite of there being no division by metes and bounds and in spite of the members continuing to live in commensality. Such an intention of separation

HINDU LAW — Joint family—Trade—Carrying on.

among the members of the family and the definition of their shares in the family property may be either by deed or may be evidenced by the conduct of the parties. In either case, it will be the intention of the parties that will determine whether they really have separated themselves or not: 21 W.R. 214 (P.C.), *Ref.* (*Jwala Prasad and Ross, JJ.*) SADANANDA BARPANDA *v.* BAIKUNTHANATH BARPANDA. **63 I.C. 833=2 P.L.T. 299= A.I.R. 1921 Pat. 298.**

—Joint family—Trade—Carrying on.

———Where a Hindu owner of a firm dies leaving no issue but his widow and mother, and after his death the business is continued through the same munims and gumashtas, and a son is adopted to the widow, the business descends to the adopted son and the presumption is that it was continued by the mother and widow for the benefit of the son whom they ultimately adopted to the dead owner, if the business still was carried on after adoption and during the minority of adopted son it was carried on for the benefit of the adopted son by the *de facto* guardians. (*Addison, J.*). JOTI PERSHAD *v.* HIRA LAL. **117 I.C. 911= 11 L.L.J. 233=A. I. R. 1929 Lah. 559.**

—Joint family—Trade—Enquiry into necessity.

———*Joint family business resulting in loss—Whether manager should put in more money or mortgage property rather than to sell it are questions for the manager and not for the lender or purchaser.*

Where there is joint family business, the manager has authority to raise money not only for the payment of debt, but also for the purpose of carrying on the business. Where such a business had recently resulted in loss whether the managing member was justified in putting more money into it, and whether he should have raised money by mortgage instead of by sale are questions for the manager to decide and it would be unreasonable to require a lender or purchaser to go into questions of this kind, as to which he would rarely be in a position to form a sound opinion. (*Sir John Wallis.*) NIAMAT RAI *v.* DIN DAYAL. **101 I.C. 373= 8 Lah. 597=54 I.A. 211=29 Bom.L.R. 886= 25 A.L.J. 599=45 C.L.J. 548=1927 M.W.N. 453= 4 O.W.N. 537=28 P.L.R. 463=8 P.L.T. 647= 26 M.L.W. 442=32 C.W.N. 233=9 L.L.J. 496= 39 M.L.T. 345=A. I. R. 1927 P.C. 121= 52 M. L.J. 729 (P.C.).**

———Where a family business is carried on *bona fide* for the benefit of the family and with the assent of all the adult members it is within the competence of the manager to borrow money from time to time for the purposes of the business and the lender is not bound to enquire into the necessity for each advance that may be made: A.I.R. 1924 All. 379, *Foll.* (*Kanhaiya Lal and Ashworth, JJ.*). GOPAL BHAGAT *v.* RAGHUBIR RAM. **98 I.C. 631 (All.).**

———*Creditor need not prove necessity for each advance.*

There is no difference between an ancestral and non-ancestral business. The ordinary presumption is that money required for carrying on family business is for family necessity and that the business is carried with the consent and acquiescence of all the members of the family. Creditor therefore need not prove legal necessity or family benefit for each advance. The manager has the power to contract debts for the purpose of the family business: 34 All. 135, *Dist.*; 6 C. W. N. 429, *Expl.* and *Dist.* (*Sulaiman and Ryves, JJ.*). MAHABIR PRASAD *v.* AMLA PRASAD. **79 I.C. 517= 46 All. 364=22 A.L.J. 295=5 L.R.A. Civ. 264= A.I.R. 1924 All. 379.**

HINDU LAW — Joint family — Trade — Minor members.

—Joint family—Trade—Extension of.

———*Extension of business is not new business.*

An ancestral business does not lose its character as such and become a new business by a mere extension of the same by a manager.

Where the manager of a Hindu ancestral firm, after his father's death, starts a trade in English piece-goods whereas till then the firm was trading only in country-made cloths, the character of the ancestral business is not thereby completely altered so as to make it a new business, but it amounts only to an extension of the ancestral business. (*Wallace and Thiruvenkatachariar, JJ.*). RAJAGOPALA AIYAR *v.* RAMAN CHETTIYAR. **1927 M.W.N. 879=A.I.R. 1927 Mad. 1190.**

—Joint family—Trade—Heritable asset.

———In Hindu Law a business is a distinct heritable asset. Where a Hindu dies leaving a business it descends like other heritable property to his heirs. (*Addison, J.*). JOTI PERSHAD *v.* HIRA LAL. **117 I.C. 911=11 L.L.J. 233= A.I.R. 1929 Lah. 559.**

—Joint family—Trade—Liability of members.

———*Adult member merely taking active part—Not a partner—No personal liability.*

The mere fact that an adult member of a Hindu family takes an active share in the family business without any other evidence of a consensual act on his part will not create any relationship other than that of members of a Hindu joint family trading together. Thus he cannot be said to be a partner so as to be personally liable for debts incurred in the business. The creditor's remedy is in such a case confined to the family assets invested in the business: 41 Mad. 1, *Ref.* (*Coutts-Trotter, C. J. and Ramesam, J.*). BALA VENKATA SITHARAMA CHETTIAR *v.* SIVAGURUNATHA CHETTIAR. **1930 M.W.N. 437.**

See also **1930 M.W.N. 371.**

—Joint family—Trade—Minor members.

———Whole joint family property is liable for ancestral family business—But minor member is not personally liable nor his self-acquired property: A. I. R. 1924 All. 379 and 34 Bom. 72, *Rel. on.* (*Sulaiman and Kendall, JJ.*). GAURI SHANKAR *v.* KESHAB DEO. **114 I.C. 881=1929 A.L.J. 204= A.I.R. 1929 All. 148.**

———*Acts of manager are binding on minor members, if they are incidental to the family business such as money-lending or buying or selling immovable property—What are incidental acts.*

Where a minor is a member of a joint Hindu family and as such entitled to a share in an ancestral trade, the manager of the family can, so long as it is beneficial to the minor, continue the trade on the minor's behalf. Minor members of the family are bound by the acts of the manager which are necessarily incident to and flowing out of the carrying out of such trade. An ancestral trade, like other Hindu property will descend upon the members of a Hindu undivided family and such family can by its managers enter into co-partnership with a stranger. The power of a manager to carry on a family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes of that trade. Though such power of the manager for an infant heir to charge an estate not his, is under Hindu Law, a limited and qualified power; it can only be exercised rightly

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in a case of need, or for the benefit of the estate. Where a business like money-lending has to be carried on in the interests of the family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts and compromising or discharging claims ordinarily incidental to the business. Without a general power of that sort, it would be impossible for the business to be carried on at all. Where the family trade is that of dealing in immovable properties it would undoubtedly be an act necessarily incidental to the carrying on of such trade to sell property which had been purchased for the purpose of sale. Even if the general business of a family be not that of dealing in property but lending money on mortgages and if in the course of such business the family had to purchase properties in satisfaction of their debts in order to avoid loss, it would again be an act incidental to the carrying on of such trade to sell such property and convert it into cash when a favourable opportunity offers itself to the manager: 1 B.H.C. App. 51; 34 Bom. 72; 33 All. 272 (P.C.); 6 M.I.A. 393 (P.C.); 20 C.W.N. 645; 20 W.R. 38; 3 N. W. P. H. C. 4; 32 Bom. 577; 28 C. L. J. 250; (1912) M. W. N. 167; (1918) M. W. N. 892; 12 A. L. J. 641; 42 All. 559; 39 C.L.J. 256 (P.C.) and 39 All.437 (P.C.), *Discussed*. (*Rupchand Bilaram, A. J. C.*). LAKHMICHAND ISARDAS *v.* FIRM OF KHUSHALDAS MANGATRAM.

88 I.C. 116=18 S.L.R. 230= A.I.R. 1925 Sind 330.

———*Trade debts bind Minor's share also.*

Where an accredited agent of the family, who carries on a business on behalf of the family, contracts debts for purposes of the trade, the purpose for which he contracts the debt is a family purpose because the trade is a family concern and the creditors are entitled to go against the whole of the family property and a minor member is bound inasmuch as the debt is borrowed for a family purpose. (*Spencer and Devadoss, JJ.*). SUBBARAYA MUDALI *v.* THANGAVELU MUDALI.

72 I. C. 815=A.I.R. 1924 Mad. 33=45 M.L.J. 44.

———Under Hindu Law a joint family which carries on a trade handed down from its ancestors becomes a trading family. In such a family the shares of the minor co-parceners in the family property are liable for debts contracted by the managing member for the purposes of the family trade. (*Scott-Smith and Leslie Jones, JJ.*). DAYAL SINGH *v.* DAHAL SINGH. **60 I.C. 610 (Lah.).**

—Joint family—Trade—New business.

———*New business—Acquiescence by adult co-parceners in—Mortgage therefor is binding on all.*

Where the manager of a Hindu joint family started a groundnut business with the family funds and carried it on with the assistance and concurrence of the only other adult member of the joint family who when he became the manager carried on the business and mortgaged the family properties for debts incurred in that business,

Held, that in the absence of evidence that the business was their separate business the mortgage would be binding on the interest of the other co-parceners, including minor members, in the joint family property : 51 I.C. 597 ; A.I.R. 1922 P. C. 237 and A.I.R. 1922 P.C. 397, *Dist.* (*Coutts-Trotter, C.J. and Madhavan Nair, J.*). LAKSHMIAH *v.* OFFICIAL ASSIGNEE OF MADRAS. **A.I.R. 1930 Mad. 776.**

———Debt by manager for trade started by him does not bind co-parceners unless perhaps its profits are enjoyed by co-parceners. (*Ramesam and*

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Venkatasubba Rao, JJ.). VENKATASWAMI NAICKER *v.* PALANISWAMI CHETTIAR. **117 I. C. 716= 52 Mad. 227=28 M. L. W. 762= A.I.R. 1929 Mad. 153=56 M. L. J. 380.**

———*Business started by Hindu Manager is not ancestral business—Use of minor's share in trade cannot make minor a partner.*

A business started by a Hindu manager of a coparcenary is not an ancestral business in which his minor sons are interested, even if it be started out of ancestral funds. The trade must be ancestral or at any rate it must be a trade in which all the members of a joint family have interest ; merely by using a minor's share in trade a father or other manager cannot make the minor a partner and liable for trade debts : 34 Bom. 72, *Rel. on.* (*Barlee, J.C. and Kalumal, A.J.C.*). THAKURDAS *v.* TOPANDAS. **120 I. C. 499=A.I.R. 1929 Sind 217.**

———Ancestral property cannot be transferred to raise money to start or carry on a new business even for family benefit. [But see A. I. R. 1928 All. 454 (F.B.).]

A karta is not to be allowed to involve the joint ancestral property in the risk of loss through business ventures. (*Sen and Weir, JJ.*). PARSOTAM NARAIN *v.* BENARES BANK LTD.

111 I. C. 694=A.I R. 1929 All. 59.

———*New business by father is ancestral as against sons.*

A Hindu father by starting a business with the aid of family funds can make that a family business. In such a case an alienation made by the father, for raising funds for *carrying on that business* is binding upon the son, on the ground that it was for legal necessity.

A person had an extensive ancestral money-lending business. He started a new business in cotton trading and mortgaged certain property of the family to carry on that business,

Held, that the business started by the father was an ancestral trade as against his sons in the sense that the father is an ancestor, though it was not an ancestral trade in the hands of the father himself. The mortgage debt incurred for carrying on that trade was for legal necessity and therefore binding on the sons: A.I.R. 1924 Mad. 791; A.I.R. 1927 Mad. 792; 41 Mad. 824; A.I.R. 1924 All. 379, *Rel. on*; 29 C.L.J. 280; 6 M.L.W. 417; A.I.R. 1927 Mad. 53; A.I.R. 1922 Mad. 236; 42 Mad. 761; (1928) M. W. N. 576; 6 C. W. N. 429 and A.I.R. 1922 P. C. 397, *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). VENKATASAMI NAICKER *v.* PALANISWAMI CHETTIAR. **117 I. C. 716=52 Mad. 227= 28 M.L.W. 762=A.I.R. 1929 Mad. 153= 56 M.L.J. 380.**

———*New business—What is—Test is, if particular enterprise is not within* kulachara.

Too narrow a construction should not be allowed to be placed on such expressions as "family trade or business". With changes of civilizations and conditions what should be applied is not a rigid rule of law but the principle on which it is based.

If a family business should be found to have consisted in the purchase and sales of one commodity, purchase and sale of another commodity should not be held to be outside the scope of the family business. Generally speaking, each case will have to be determined only with regard to its particular facts. The question to be determined in each case should be whether having regard to the recognised business, profession, means of livelihood or what is called *kulachara* of the family, the

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particular enterprise or embarking was only within the reasonable limits of the exercise thereof or really having regard to its nature or extent, a new speculative enterprise.

Where the family business had been one of purchase and sale of piecegoods, the mere circumstance that the father ceased for some reason to carry on such business for a few years before his death is not sufficient to make a similar business started by the son sometime afterwards any the less a family business: 41 Mad. 824, *Appr.* (*Coutts-Trotter, C.J. and Srinivasa Aiyangar, J.*). DAMODHARAM CHETTY *v.* BANSILAL ABURCHAND. **111 I.C. 297=51 Mad. 711=28 M.L.W. 521=A.I.R. 1928 Mad. 566=55 M.L.J. 471.**

——The manager of a Mitakshara family has no authority to start a new business and he cannot alienate family property in order to raise money for the purposes of the business: A.I.R. 1928 All. 403, *Foll.*; A.I.R. 1922 P. C. 237, *Expl.* (*Lindsay and Sulaiman, JJ.*). RATTAN CHAND *v.* RAM KISHAN MURARJI. **114 I. C. 743=26 A.L.J. 777=A.I.R. 1928 All. 447.**

——*Business similar in nature to family business is not a new venture.*

It has no doubt been settled that in the case of joint Hindu family it is not open to a member to carry on a new venture so as to make his other co-parceners liable for any loss in that venture. But where for example a family lives by entering into contracts and making profits therefrom, it cannot be said that because a contract entered into at one stage is a new venture in the sense that such a contract was not taken up before, it makes the contract a new venture in the sense that the other members are not liable. The question often is the difference in degree or the difference in kind, and so long as the business is a business which is similar in nature it cannot be said that the business is a new venture which could not bind the other members of the family. (*Kumaraswami Sastri, J.*). NARAYANA SAH *v.* SANKARA SAH. **99 I.C. 377=24 M.L.W. 621=A.I.R. 1927 Mad. 53=51 M.L.J. 621.**

——*Manager cannot commence new trade without consent of adult co-parceners.*

Where the manager of a Hindu family enters into illegal transactions without the consent of other co parceners, he cannot saddle the family with the losses incurred therein: and where the managing co-parcener without the concurrence of the adult co-parceners living at the time commences a new trade or business, the trade or business is not binding on the family unless it is proved that they have acquiesced in the transaction he having no power to start it. (*Spencer and Kumaraswami Sastri, JJ.*). TAMMIREDDI *v.* GANGIREDDI. **70 I.C. 337=45 Mad. 281=16 M.L.W. 55=30 M.L.T. 323=A.I.R. 1922 Mad. 236=42 M.L.J. 570.**

—Joint family—Trade—Partnership by one co-parcener.

——*Other co-parceners are not necessary parties to a suit for dissolution.*

Where a member of a joint Hindu family enters into a partnership, he might be representing the family of which he may be a member and may as such be accountable to the other members of the family; but so far as other parties to the deed of partnership are concerned, they must confine themselves to the terms of the deed itself and cannot be permitted to travel beyond it by raising a plea that his brother, a person not party to the said deed, should have been impleaded in a suit for dissolution of partnership. (*Tek Chand and Agha Haidar, JJ.*). MANOHAR LAL *v.* RAM RICHHPAL. **A.I.R. 1930 Lah. 655.**

HINDU LAW — Joint family—Trade—Whether joint or separate.

—Joint family—Trade—Position of members.

——Members are in the position of partners in regard to other persons dealing with the business —Acknowledgment of liability by a member in usual course of business binds other members and extends period of limitation: 10 All. 418, *Foll.*; 32 All. 51, *Dist.* (*Bennet, J.*). DEBI DAYAL *v.* BALDEO PRASAD. **111 I. C. 143=50 All. 982=26 A. L. J. 1036=A. I. R. 1928 All. 491.**

—Joint family—Trade—Presumption.

——The mere fact that proprietors of several firms are members of a Hindu family does not necessarily raise a presumption that the business of those firms is a joint business: 27 Bom. 157, *Rel. on.* (*Bhide, J.*). HEM SINGH SANT SINGH *v.* NARAIN SINGH. **A.I.R. 1929 Lah. 772.**

—Joint family—Trade—Separate business.

——Where the family was not a trading family and the family funds were not contributed towards the business which was carried on in the individual *Vilasam* of one of the members,

Held, that the other members of the family cannot be held liable for the debts of the business. (*Kumaraswami Sastri and Pakenham Walsh, JJ.*). CHOKKALINGAM PILLAI *v.* PICHAPPA CHETEIAR. **1929 M.W.N. 847.**

—Joint family—Trade—Whether joint or separate.

——The question whether a particular trade carried on by a manager of joint family is joint family trade or not, is essentially one which should be decided mainly on evidence in each case: 51 I.C. 597; A.I.R. 1922 P.C. 237 and A.I.R. 1922 P. C. 397, *Dist.*; 36 I. C. 787, *Ref.* (*Coutts-Trotter, C.J. and Madhavan Nair, J.*). LAKSHMIAH *v.* OFFICIAL ASSIGNEE OF MADRAS. **A. I. R. 1930 Mad. 776.**

——*Firm is joint if members are undivided and family funds are expended for the business.*

The mere circumstances that some of the co-parceners in the family are carrying on a certain business does not make the business joint family business, but where the evidence makes it clear that the co-parceners are undivided, that the joint family assets are devoted to finance the business of the firm, and that all the co-parceners take more or less an active part in the management of that business, the conclusion that the business in question is a joint family business will be justified. (*De Souza, A. J. C.*). DETARAM *v.* VISHINDAS. **105 I. C. 854=23 S. L. R. 54=A.I.R. 1928 Sind 57.**

——Business started by one member, but in which other members also worked without salary and maintaining themselves partly by means of funds provided by family property is a joint property and not self-acquisition of the promoting member. (*Kincaid, J. C. and Lobo, A. J. C.*). JETHANAND UDHAVDAS *v.* KEWALRAM. **97 I.C. 505=20 S.L.R. 295=A.I.R. 1926 Sind 216.**

—Maintenance.

Amount of.
Arrears of.
Attachment of right.
Charge.

HINDU LAW — Maintenance — Amount of — Alteration in.

Claim for.
Decree.
Deed.
Liability.
Persons entitled to.
Suit for.
Transfer of family property.
Widow.
Will.
Miscellaneous.

—Maintenance—Amount of—Alteration in.

———*Rate incorporated in compromise decree—When Court can alter.*

Odgers, J.—Where the rate of maintenance has been made the subject of a compromise which has been incorporated in a decree, a Court in a subsequent suit to enforce the charge has no power, without consent or overriding the decree, to alter the rate of maintenance. (*Phillips, Offg. C.J., Odgers and Srinivasa Ayyangar, JJ.*). THIMMANAYANIM *v.* VENKATA NAYANIM.
109 I.C. 872=27 M.L.W. 544=A.I.R. 1928 Mad. 713 (F. B.).

———*Change of circumstances—Amount can be altered.*

The amount of maintenance, whether it is fixed by decree or by agreement, is liable to be increased or diminished, if there has been such a change of circumstances as would justify a change in the rate. Thus the rate of maintenance may be enhanced, if the income or the estate has materially increased or there has been a material increase in the cost of living. (*Jai Lal, J.*). SANSAR CHAND *v.* MT. SHANTI DEVI. **96 I.C. 255=8 L.L.J. 355=27 P.L.R. 691=A.I.R. 1926 Lah. 539.**

———A maintenance allowance is liable to be increased or decreased by change of circumstances: 27 M.L.J. 656, *Foll.* (*Spencer, J.*). NARASAMMA *v.* VENKATARAJU. **93 I.C. 686=23 M.L.W. 364=A.I.R. 1926 Mad. 534.**

———*Enhancement in suit.*

The amount of maintenance allowance to a Hindu widow whether under agreement or under a decree is liable to be enhanced in a suit brought for the purpose. (*Kincaid, J.C. and Lobo, A.J.C.*). KEWALMAL *v.* ISRIBAI. **93 I.C. 353=A.I.R. 1926 Sind. 135.**

—Maintenance—Amount of—Appellate Court.

———*When can interfere.*

When determining the amount of maintenance payable to a Hindu widow an appellate Court should be extremely reluctant to interfere with the decision of a Court below and should hesitate to do so unless there are some special circumstances which indicate that there has been a miscarriage in the way in which the amount of maintenance has been arrived at: L.R. 5 I.A. 55 (P.C.), *Foll.*

Where the lower Court took into consideration in fixing the amount of maintenance the value of the estate, the position and status of the lady's deceased husband, her position and status and the expenses which she must be expected to meet in her state of widowhood,

Held, that the question was considered in a practical and reasonable manner and there was no ground for interference. (*Stuart, C.J. and Raza, J.*). SURAT SINGH *v.* MT. BITTAN KUAR. **102 I.C. 17=4 O.W.N. 419=A.I.R. 1927 Oudh 531.**

—Maintenance—Amount of—Estimation.

———Direction in husband's will allotting a fixed sum as maintenance without bequeathing specific

HINDU LAW — Maintenance—Amount of—How determined.

property in her favour is merely indicative of husband's estimate. It is not obligatory upon Courts to award exactly that amount in a suit for maintenance by the widow. (*Spencer, J.*). NARASAMMA *v.* VENKATARAJU. **93 I.C. 686=23 M.L.W. 364=A.I.R. 1926 Mad. 534.**

—Maintenance—Amount of—How determined.

———*Private funds not to be taken into account if family income is sufficient.*

Under the Hindu Law as administered in Madras Presidency in cases where a joint Hindu family possesses properties the income from which is not only enough but more than enough for the purpose of paying maintenance to all the members depending upon the same, the fact that one is in possession of private funds which also yield an income should not be taken into account for such purposes: 38 Mad. 153, *Expl.*; 2 Bom. 573, *Not appr.*; 21 All. 232, *Doubted*; 4 Mad. 171; 5 Mad. 71; 41 Mad. 1075 and 36 Mad. 203, *Ref.* (*Ananthakrishna Ayyar, J.*). KETHIREDDI KODANDARAMI REDDI *v.* KETHIREDDI CHENCHAMMA. **A.I.R. 1930 Mad. 479.**

———*Facts to be considered enunciated.*

Maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the condition and necessities and rights of the members, on a reasonable view of change of circumstances possibly required in the future, regard being had to the scale and mode of living, and to the age, habit, wants and class of life of the parties. It is out of a great category of circumstances, small in themselves that a safe and reasonable induction is to be made by a Court of law in arriving at a fixed sum. The discretion exercised in making this induction when agreed to by two Indian Courts or even by one, should not be lightly interfered with: 5 I.A. 55, *Rel. on.* (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH. **116 I.C. 409=1929 M.W.N. 468=8 Pat. 840=56 I.A. 182=6 O.W.N. 526=30 M.L.W. 1=49 C.L.J. 579=31 Bom.L.R. 816=10 P.L.T. 345=1929 A.L.J. 695=33 C.W.N. 637=A.I.R. 1929 P.C. 128=57 M.L.J. 50 (P.C.).**

———*Scale must be suited to widow's husband's position in life.*

The test in determining maintenance allowance to a Hindu widow is whether the scale is suited to her husband's position in life. No doubt there may be circumstances in which the past mode of life of the widow may have been demonstrably on a penurious and miserly scale, or on the other hand, on a quite extravagant scale, having regard to the total income of the husband, but the general principle that can be applied is that the sum awarded must enable the lady to live as consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's life time. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH. **116 I.C. 409=1929 M.W.N. 468=8 Pat. 840=56 I.A. 182=6 O.W.N. 526=30 M.L.W. 1=49 C.L.J. 579=31 Bom. L.R. 816=10 P.L.T. 345=1929 A.L.J. 695=33 C.W.N. 637=A. I. R. 1929 P.C. 128=57 M.L.J. 50 (P.C.).**

———*Subsistence includes residence.*

An appropriate test for what a Hindu woman should be allowed as subsistence is to be found

HINDU LAW — Maintenance—Amount of—How determined.

under the ancient Hindu texts as adapted to modern circumstances. Subsistence or maintenance must include residence and should not be confined to food and raiment: A.I.R. 1926 P.C. 73, *Ref.* (*Marten, C. J. and Patkar, J.*). CHARANDAS VASSONJI *v.* NAGUBAI MANGLOREKAR.

31 Bom. L.R. 1128=A.I.R. 1929 Bom. 452.

———*Concubine—Maintenance for.*

The amount of maintenance to be awarded to a concubine in continuous keeping covers the expenses for her establishment and clothing. The value of the property is not the sole criterion, but regard must be had to the extent of property to the manner of the woman's life and the way in which she was treated by her paramour. (*Marten, C. J. and Patkar, J.*). CHARANDAS VASSONJI *v.* NAGUBAI MANGLOREKAR. **31 Bom. L.R. 1128=A. I. R. 1929 Bom. 452.**

———*Illegitimate son of sudra—Not mere compassionate allowance to be allowed.*

The illegitimate son of a Sudra, claiming maintenance, is not only entitled to mere compassionate maintenance, and if he is accustomed to a certain mode of life, the Court should not be niggardly in determining the quantum of maintenance, provided the amonnt of maintenance awarded does not work hardship upon the family: 12 C. L. J. 173; 17 Mad. 160; 34 Mad. 68; A.I.R. 1926 Mad. 261; 12 M.I.A. 203, *Ref.*; 27 Mad. 32, *Dist.* (*Devadoss and Walsh, JJ.*). RATHINASABAPATHY ODAYAR *v.* GOPALA ODAYAR. **121 I.C. 126=29 M.L.W. 696=A.I.R. 1929 Mad. 545=56 M. L. J. 673.**

———Maintenance of abandoned wife—She is entitled to be kept in the manner she is accustomed to, if family can afford, without injustice to the husband and to the family. (*Phillips and Odgers, JJ.*). GOPALA PATTAR *v.* PARVATHI AMMAL. **117 I.C. 785=A. I. R. 1929 Mad. 47.**

———*Widow—Rate of maintenance should not exceed the income derivable from her husband's share—Rate should be such as to enable her to live comfortably according to her social status.*

No hard or fast rule can be laid down as to what particular fraction of income derivable from her husband's share in the family should be awarded as maintenance to the widow. All that can be stated is that in no event she can be allowed a rate of maintenance which would exceed the income from her husband's share of the family properties. Having due regard to that limit, the circumstances of each case have to be taken into consideration in fixing the rate of maintenance. The rate should be so fixed as to enable the widow to live comfortably according to the standard of living usually adopted by the members of the families occupying a social status similar to that of her husband. (*Coutts-Trotter, C. J. and Sundaram Chetty, J.*). PANCHAKSHARA *v.* PATTAMMAL. **39 M L.T. 32=A.I.R. 1927 Mad. 865.**

———*Principles—Amount sufficient for comfort enjoyed during husband's life-time consistent with the similar rights of other members of the family to maintenance should be fixed.*

The principle which should govern the Court, in fixing the maintenance of a Hindu widow is first to look to the mode of life of the family during her husband's lifetime and the amount must be fixed so as to be sufficient to allow to the widow as far as may be consistently with the position of the widow in something like

HINDU LAW — Maintenance — Amount of — Procedure.

the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime. Then to see what the husband's state is and also to see how far the estate is sufficient to supply her with the maintenance on this scale without injustice to the other members of the family who have also their rights to maintenance out of the estate, like hers. (*Kajiji, J.*). BAI PRATAPGAVARI *v.* MULSHANKAR PREMCHAND. **80 I.C. 173=26 Bom.L.R. 269=A.I.R. 1924 Bom. 353.**

———*Circumstances to be taken into consideration—What are.*

No hard and fast rule can be laid down that a widow is entitled to a particular fraction of the income. The circumstances of each case must be considered, such as the value of the estate and its income, the position and status of the deceased husband and his widow, the expense involved by the religious and other duties which she has to discharge and so forth, and the fact that she has been given a separate property for her maintenance if such be the case. (*Woodroffe and Walmsley, JJ.*). KRISHNA BHAMINI DASI *v.* BROJA MOHINI DASI. **66 I.C. 38=25 C.W.N. 403=A.I.R. 1921 Cal. 617.**

—Maintenance—Amount of—Objections to.

———*Widow—Expenses of vritham—Question as to allotment was not allowed to be challenged in appeal for the first time.*

Where it is found that of the several vrithams and ceremonies which a widow is enjoined by the Shastras to perform, only one has to be performed by her at a comparatively late stage in her lifetime, but all the other ceremonies may be performed at any time she likes, the contention that the amount for these ceremonies should be made payable only when such vritham or ceremony is about to be performed and that the direction ordering a consolidated amount to be paid immediately for all of them is unwarranted, should not be entertained for the first time in appeal and especially when the amount which may have to be allocated for it, will, at the most, be a small amount. (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M.L.W. 328=A.I.R. 1928 Mad. 216=54 M.L.J. 530.**

—Maintenance—Amount of—Procedure.

———*Application for enhancement.*

In a suit by widow for maintenance defendants were likely to get accretion to their property. In decreeing amount of maintenance High Court allowed widow to apply for enhancement in case accretion took place. Privy Council approved of the procedure to one by separate suit. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH. **116 I.C. 409=1929 M.W.N. 468=8 Pat. 840=56 I.A. 182=6 O.W.N. 526=30 M.L.W. 1=49 C.L.J. 579=31 Bom. L.R. 816=10 P.L.T. 345=1929 A.L.J. 695=33 C.W.N. 637=A.I.R. 1929 P.C. 128=57 M.L.J. 50 (P.C.).**

———*Reference to Commissioner not necessary.*

The question of determining the amount of bare maintenance need not be referred to the Commissioner. It can and should ordinarily be fixed by a rough and ready reference to the general condition of the family as disclosed in the evidence. (*Shah, Ag. C. J. and Kincaid, J.*). BHIKUBAI YESHWANTRAO *v.* HARIBA SWALARAM. **94 I.C. 665=49 Bom. 459=27 Bom. L.R. 13=A.I.R. 1925 Bom. 153.**

HINDU LAW — Maintenance — Amount of — Quantum.

—Maintenance—Amount of—Quantum.

——The fact that a widow has got jewels of her own does not affect the *quantum* of maintenance, which would otherwise be fixed having regard to the extent of her husband's property. (*Kumaraswami Sastri, J.*). SHYAMA BHAI *v.* PURUSHOTHAMADOSS. **90 I.C. 124=21 M.L.W. 551=A.I.R. 1925 Mad. 645.**

——Quantum *of maintenance should be decided in suit itself.*

In all cases where a right to maintenance has been allowed, the *quantum* of maintenance should be decided in the suit itself even though the parties may not have in the first instance provided the Court with the materials. The parties entitled to maintenance who are generally females should not be left to separate proceedings. (*Macleod, C. J. and Crump, J.*). NILAWA IRAYA MATHAPATI *v.* REVANSHIDAYA SHIDLINGAYA. **79 I.C. 208= A.I.R. 1923 Bom. 419.**

—Maintenance—Amount of—Rate.

——No widow, whether single or joint with her co-widow, is entitled to claim any specific share of the income which is attributable to her husband's shares. All that she is entitled to is an allowance sufficient for her comfort.

Where out of three widows claiming maintenance two were wives of one deceased co-parcener and the third was the wife of another deceased co-parcener,

Held, that there is no reason to differentiate between the three claimants as regards the rate of maintenance. (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M.L.W. 328= A.I.R. 1928 Mad. 216=54 M.L.J. 530.**

——*Agreement fixing particular rate does not bar subsequent claim for higher rate.*

In the absence of any undertaking in an agreement by a maintenance holder under the Hindu Law to get a specific rate for all time, the Court is not prevented by such agreement from giving a higher rate of maintenance to such a holder when the circumstances warrant such a change: 14 M. L. J. 339 and A. I. R. 1924 Mad. 687, *Rel. on.* (*Devadoss, J.*). CHINNAMMAL *v.* VENKATASAMI NAICKEN. **101 I.C. 752=A.I.R. 1927 Mad. 703.**

—Maintenance—Arrears of.

——*Widow not bound to reside, with her husband's relatives—She is entitled to maintenance from time of change of residence.*

A Hindu widow is not bound to reside with the relatives of her husband; the relatives of her husband have no right to compel her to live with them; and she does not forfeit her right to property or maintenance merely on account of her going and residing with her family, or leaving her husband's residence from any other cause than unchaste or improper purposes: (1873) I.A. Supp. 203 (P.C.), *Foll.*

As a general rule, a widow cannot claim arrears of maintenance for the period she was living in her husband's family unless she was kept there under circumstances of extreme penury and oppression. She, however, is entitled to arrears from the time she changes her residence, and under no circumstances can the right be post-dated from the institution of the suit for maintenance. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN SAHEBA *v.* HOMESHWAR SINGH. **116 I. C. 409= 33 C.W.N. 637=1929 A.L.J. 695=10 P.L.T. 345= 31 Bom. L.R. 816=49 C.L.J. 579=30 M.L.W. 1= 6 O.W.N. 526=56 I.A. 182= 1929 M.W.N. 468=8 Pat. 840= A.I.R. 1929 P.C. 128=57 M.L.J. 60 (P.C.).**

HINDU LAW—Maintenance—Arrears of.

——It is not necessary that there should be a distinct demand in cases of maintenance in order to sustain a claim for arrears: 36 Bom. 131, *Rel. on.* (*Devadoss and Walsh, JJ.*). RATHINASABAPATHY ODAYAR *v.* GOPALA ODAYAR. **121 I.C. 126= 29 M.L.W. 696=A.I.R. 1929 Mad. 543= 56 M.L.J. 673.**

——Widow residing with her brother during the period for which arrears of maintenance is claimed —Claim cannot be disallowed. (*B. B. Ghose and Roy, JJ.*). ROHINIKUMAR PAL *v.* KUSUM KAMINI PAL. **105 I. C. 725=55 Cal. 438= 32 C.W.N. 43=A.I.R. 1928 Cal. 196.**

——*Arrears even for 8 years can be claimed.*

In a joint family, a widow is entitled to claim arrears of maintenance even for 8 years and the Courts will not disallow the claim, unless abandonment or waiver is expressed or can be implied from the circumstances. (*Phillips, Offg. C.J. and Reilly, J.*). KRISHNAMACHARIAR *v.* CHELLAMMAL. **107 I. C. 641=A.I.R. 1928 Mad. 561.**

——*Widow—Husband dead 26 years before—No demand prior to 3 years of suit—Court can cut down period for which arrears are granted.*

If the defendants want to plead that the plaintiff is disentitled to recover any arrears of maintenance they must plead and prove the circumstances amounting to an abandonment. But it does not follow that because they have not pleaded such facts the plaintiff is entitled to all the arrears she claims especially in a case where her husband died 26 years before suit and when it does not appear that any demand was made prior to three years before suit. In these circumstances a discretion remains with the Courts while not disallowing totally the arrears claimed by the plaintiff, to cut down the period for which arrears may be granted. In such a case, if the plaintiff is anxious to get the whole of the amount it is for her to adduce evidence that she was in need of those arrears: 24 Mad. 147 (P.C.); 43 Bom. 66, *Ref. to.* (*Ramesam, J.*). LAKSHMAMMA *v.* VENKATASUBIAH. **87 I.C. 210= 1925 M. W. N. 213= A.I.R. 1925 Mad. 795=43 M.L.J. 266.**

——*Wife—Compelled to live separately—Husband and his heirs are liable for arrears of maintenance—Husband's obligation to maintain wife—Nature of.*

The plaintiff was the wife of a Zamindar. The Zamindar fell under the influence of a concubine and once during his absence at another place, poison was found in the food meant for the wife. Thereupon the wife left the Zamindar's house to live with her parents. The Zamindar harassed her with false criminal complaints, which ended in failure. Afterwards the wife endeavoured to persuade her husband to take her back and allow her to live with him. But he always put her off saying that he would make some arrangement for her. Then after having lived away from him for nearly 23 years, the wife sued him for arrears of maintenance for 12 years (the maximum period allowed by the Limitation Act, Art. 128.)

Held, that the plaintiff was justified in living separately from her husband and that the delay in filing the suit for maintenance was due to her having been ever hopeful of being taken back by her husband one day.

Held, further that the death of her husband pending the suit did not deprive her of her rights to maintenance and that she could enforce the right against her husband's heirs at law.

Per *Spencer, Offg. C.J.*—The obligation of a husband to maintain his wife is one arising out of the

HINDU LAW — Maintenance — Attachment of right of.

status of marriage. It is a liability created by the Hindu Law. in respect of the jural relations of a Hindu family. When there is no contract between the parties to a marriage, as among Hindus, a suit for maintenance is not a suit based upon contract, but it is a suit arising out of a civil relation resembling that of a contract, which is specially provided for in Art. 128 of the Limitation Act.

Per *Srinivasa Aiyangar, J.*—The principle of Civil Law "*actio personalis moritur cum persona*" does not apply to the right of a Hindu wife against her husband for maintenance as there is no reason for extending the rule to an action which is based on an obligation arising out of the status. The true view of the Hindu Law would seem to be that the wives of co-parceners are also members of the joint family, though they may not be entitled to share in the estate of the family, or to enforce any partition and as such members the obligation of the family, and of its estate to maintain them cannot be doubted. Though the Hindu Law imposes an obligation on the Hindu husband to support his wife, without any reference to any property or share possessed by him, even as it imposes similar obligations on sons to maintain their mother and father, yet when the joint family is possessed of property, a claim by a wife against her husband need not be regarded merely as a suit for enforcement of any personal obligation, but may well be regarded as a suit against the family itself, represented by her husband, through whom alone so long as he is alive she has to obtain the relief. On his death the true legal representatives in the action would be the surviving co-parceners of the family or the personal legal representatives of the deceased husband. The arrears of maintenance due and payable to a wife by her husband can also be held to be a debt within the meaning of Hindu Law; which has regard only to undischarged obligations and to which the distinction between debts and damages is foreign. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). LAKSHMI DEVI AMMA *v.* NAGANNA NAIDU.

87 I. C. 571=21 M. L. W. 461=
A.I.R. 1925 Mad 757.

—Maintenance—Attachment of right of.

——Where husband's property is attached under Ss. 87 and 88, Cr.P. C., the wife's right of maintenance will be defeated by such attachment as such right of maintenance is only a personal obligation. (*Addison and Bhide, JJ.*). DURGI *v.* SECY. OF STATE.

117 I.C. 669=
10 Lah. 263=30 P.L R. 384=
A. I. R. 1929 Lah. 528.

—Maintenance—Charge.

——Maintenance of an abandoned wife can be made a charge upon the husband's share.

In this respect it is difficult to make any distinction between the position of a widow and that of an abandoned wife: 27 Mad. 45, *Expl*; 9 Bom. H. C. R. 283; A. I. R. 1927 Mad. 1187 and A.I.R. 1925 Mad. 757, *Foll.* (*Phillips and Odgers, JJ.*). GOPALA PATTAR *v.* PARVATHI AMMAL.

117 I.C. 785=A.I.R. 1929 Mad. 47.

——Maintenance charged by decree takes precedence over subsequent purchaser. in execution of money-decree binding on estate: 43 Mad. 800 and 2 Bom. 494, *Foll.* (*Phillips, Offg. C.J., Odgers and Srinivasa Ayyangar, JJ.*). THIMMANAYANIM *v.* VENKATAPPA NAYANIM.

109 I.C. 872=
27 M.L.W. 544=A.I.R. 1928 Mad. 713 (F.B.).

——*When charge can be made on the whole property.*

MUSLIM LAW—Maintenance—Claim for.

No doubt generally speaking if the yield from what may be regarded as the possible share of the deceased co-parcener in the property should be the maximum of maintenance allowable to his widows the payment of such maintenance might reasonably be charged on such interest alone. But if there are any special circumstances, there is no reason why the payment of such maintenance should not be charged on the entire property in the hands of the co-parcener: 27 Mad. 45, *Foll.* (*Srinivasa Aayangar and Reilly, JJ.*). KARUPPA *v.* CHINNA NALLAMMAL.

1927 M.W.N. 775=
A. I. R. 1927 Mad. 1189.

——The right of a Hindu widow to maintenance is not a charge on property, and she cannot retain possession of property in lieu of maintenance. (*Raza, J.*). MT. PHULJHARI *v.* HAR PRASAD.

93 I. C. 378=1 Luck. 318=3 O. W. N. 181=
13 O. L. J. 548=A.I.R. 1926 Oudh 338.

——*Charge by decree of Court takes precedence over debts.*

Generally, in the administration of a Hindu's estate binding debts would take precedence over mere claims for maintenance or residence on the part of the female members of the family. but if by the time a debt is sought to be recovered from a family property a claim for maintenance has by decree of Court been made a charge on that property, the charge will take precedence over the debt: 27 Mad. 45; 22 Mad. 305; 25 I. C. 759; 4 All. 296 and 5 All. 367, *Ref.* (*Oldfield and Seshagiri Aiyar, JJ.*). SOMASUNDARAM CHETTY *v.* UNNAMALAI AMMAL.

59 I.C. 398=43 Mad. 800=
28 M. L. T. 317=1920 M. W. N. 458=
12 M.L.W. 163=39 M.L.J. 179.

—Maintenance—Claim for.

——Wife leaving husband's house with her children, alleging that the husband being under the influence of a concubine was cruelly ill-treating her and had decided to give her daughters in marriage to undesirable persons—Husband instituting proceedings for the custody of the children—Wife's charges against the husband disproved in the custody proceedings—Wife living away from her husband for 23 years.

Held, that there was no real attempt to enforce a claim for maintenance or to procure a return to her husband's house during the long series of years which had elapsed prior to the bringing of this action and that the plaintiff voluntarily lived apart from her husband for a period of 23 years without justification and, therefore, the claim for maintenance must be disallowed: A.I.R. 1925 Mad. 757, *Reversed.* (*Lord Carson.*) NAGANNA NAIDU *v.* LAKSHMI DEVI AMMA GARU.

110 I C. 30=
43 C.L.J. 171=28 M.L.W. 105=
A.I.R. 1928 P.C. 187=55 M.L.J. 242 (P.C.).

——*Refusal by wife to live with husband—No separate maintenance.*

A wife, who is voluntarily living apart from her husband for no improper motive, may at any time return to her husband and claim to be maintained by him, but she cannot be held to be entitled to separate maintenance when the husband is willing to keep her in his house and she refuses to accept his offer without sufficient justification: 31 Mad. 338, *Ref.* (*Shadi Lal, C. J. and Bhide, J.*). SHER SINGH *v.* SHAM KAUR.

108 I.C. 175=
A.I.R. 1928 Lah. 502.

——*Widow—Claim arises since husband's death.*

Unless there is any waiver or abandonment of her right to maintenance by the widow she is entitled to maintenance from the death of her

HINDU LAW—Maintenance—Claim for.

husband. Such a waiver cannot necessarily be inferred either from the fact that no formal demand was made or from the circumstance that she is living in her parental house: 15 M. L. T. 95 and 24 Mad. 147 (P.C.), *Rel. on.* (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M.L.W. 328= A.I.R. 1928 Mad. 216=54 M.L.J. 530.**

———*Wife cannot claim unless there is legal cruelty or abandonment.*

In the absence of proof of continued ill-treatment amounting in law to legal cruelty and in the absence of clear proof of abandonment on the part of the husband, the wife cannot claim separate maintenance from him. When a wife departs from husband's house, it is a part of a Hindu husband's duty to go and ask the wife to return. That the husband has married a second wife is no excuse for a wife to abandon her husband's protection or to refuse to live with him. There can be no claim to separate maintenance where the wife is not justified in living apart from her husband: 31 Mad. 338, *Foll* (*Odgers and Curgenven, JJ.*). A. SEENAYYA REDDI *v.* A. MANGAMMA. **99 I.C. 974=A.I.R. 1927 Mad. 1159.**

———*It is a personal obligation of the husband—Debts take precedence over widow's right of maintenance.*

The maintenance of a wife by husband is a personal obligation upon him arising from the existence of the relations. It is independent of the possession of any property by the husband and it is inevitably postponed to the claims of creditors. Of course, it is postponed to any alienation of the husband's property and any attempt to create a charge in favour of the wife would *a fortiori* be postponed in the event of an alienation of the husband's property to creditors and on bankruptcy the whole of his property vests for the benefit of his creditors in the Official Assignee: 27 Mad. 45, *Foll.* (*Coutts-Trotter, C. J. and Srinivasa Iyengar, J.*). UNNAMALAI AMMAL *v.* F. W. WILSON. **103 I.C. 869=39 M.L.T. 212=A.I.R. 1927 Mad. 1187.**

———Joint family debts take precedence of a widow's right to maintenance which has not ripened into a charge. (*Venkatasubba Rao, J.*). JAMNABHAI AMMAL *v.* BALAKRISHNA. **102 I.C. 101= 39 M L.T. 64=26 M. L. W. 24= A.I.R. 1927 Mad. 1092=53 M. L. J. 176.**

———Maintenance can be claimed in administration suit but arrears must be claimed in a separate suit. (*Rutledge, C.J. and Mya Bu, J.*). C. S. MAHA SABHA *v.* ANNA SOHAN LAL. **104 I.C. 119= 6 Bur. L.J. 105=A.I.R. 1927 Rang. 256.**

———A widow cannot claim to keep a portion of the family lands against an adopted son in lieu of maintenance. (*Kotval and Prideaux, A. J. Cs.*). MT. ANNAPURNABAI *v.* RUPRAO. **78 I.C. 284= A.I.R. 1924 Nag. 319.**

—Maintenance—Decree.

———Where upon a true construction of the decree for maintenance no charge was created on the estate but only a personal decree was passed against the judgment-debtor.

Held, that after the death of the judgment-debtor the decree-holder would not be entitled to any maintenance by execution of the decree against the holders of property after the judgment-debtor. (*B.B. Ghose and Panton, JJ.*). RADHA BALLAB DAS *v.* KRISHNA PRIYASHI DASYA. **120 I.C. 705=49 C.L.J. 267=A.I.R. 1929 Cal. 423.**

———*Widow—Personal decree for arrears against co-parceners—When can be passed.*

HINDU LAW——Maintenance—Deed.

Although the co-parceners are under no personal obligation to maintain the widow of a co-parcener and their obligation springs only from their possession of the property of the family, yet if the income for any particular period has been already received by the defendants and not duly accounted for by them, there can be no serious objection to any personal decree being passed in respect of such a period. (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M.L.W. 328= A.I.R. 1928 Mad. 216=54 M.L.J. 530.**

———*Illegitimate daughters—Maintenance by consent.*

Where illegitimate daughters, though not entitled to maintenance from their father's family, were given a decree for maintenance by the trial Court in order to avoid any further litigation with the consent of the opposite party but they appealed against the decree for maintenance.

Held, that it was not a consent decree, and since there was a breach of agreement on the part of the daughters, they are not entitled to maintenance. (*Phillips, Offg. C.J. and Ananthakrishna Aiyar, J.*). NAGARATHNAMMAL *v.* CHINNU SAH. **107 I.C. 419=1927 M.W.N. 750= A.I.R. 1928 Mad. 127=53 M.L.J. 861.**

———A widow's right to recieve maintenance is one of an indefinite character which, unless made a charge upon the property, is enforceable only like any other liability in respect of which no charge already exists. (*Addison, J.*). BELI RAM *v.* PREM KUER. **100 I.C. 504= A.I.R. 1927 Lah. 218.**

———*Decree is executable against other properties if charged properties are exhausted.*

Where maintenance is awarded to a Hindu widow by a decree which charged specific properties for its payment, the decree may be executed against other properties in the event of the exhaustion of the charged ones, provided that the other properties sought to be proceeded against belonged to the widow's husband. No application under O. 34, R. 6, Code of Civil procedure is requisite. (*Mullick and Bucknill, JJ.*). SHACHARI PEARI *v.* RAM KISHORI KUER. **74 I.C. 867=2 Pat. 796= A.I.R. 1924 Pat. 262.**

—Maintenance—Deed.

———*Unchastity bars claim for maintenance.*

A Hindu wife is entitled to maintenance from her husband so long as she is chaste though perhaps if having been unchaste she is penitent, she has a right to a bare subsistence. This incident of chastity attaches even where the maintenance is granted by a registered deed of annuity containing no such specific *dum casta* clause: 39 Mad. 658, *Ref.* (*Kulwant Sahay and Macpherson, JJ.*). SITA DEVI *v.* GOPAL SARAN. **111 I.C. 762=9 P.L.T. 397=A.I.R. 1928 Pat. 375.**

———The words "for ever" and "in proprietary rights" would not necessarily enlarge the scope of a maintenance grant: 23 All. 194 (P.C.); 23 All. 324 (P.C.) and 25 Bom. 563, *Rel. on.* (*Findlay, J.C. and Macnair, A.J.C.*). RAMLAL *v.* INDRARAJ SINGH. **102 I.C. 785=10 N.L.J. 146= A.I.R. 1927 Nag. 273.**

———Words "with absolute rights, etc." in maintenance deed are not to be construed in a different manner from similar words in other documents. (*Venkatasubba Rao, J.*). NARAYANASWAMY DEVAROYAR *v.* THANGAVELU PADAYACHI. **82 I.C. 67=1924 M.W.N. 871= A.I.R. 1924 Mad. 800.**

HINDU LAW—Maintenance—Liability.

—Maintenance—Liability.

———*Income from ancestral property alone bears all maintenance charges.*

The income from ancestral property alone bears all maintenance charges. Therefore, the income from Deshmukhi and Patwaripari should not be taken into consideratiou in fixing a person's maintenance allowance because the income from these sources is dependant on personal service. (*Subhedar, A.J.C.*). SHAMRAO *v.* CHANDRABHAGABAI.

118 I.C. 868=A.I.R. 1929 Nag. 366.

———*Widows of one branch not provided for at partition—If other branches are liable.*

Co-parceners belonging to different branches of joint family do not continue to be responsible for the maintenance of widows and of persons, who are entitled to a share belonging to another branch even though they do not make provision for them at the time of partition or obtain their consent to it : 35 Mad. 147, *Expl.* (*Rup Chand, A.J.C.*). RAMBHABAI *v.* DOONGERSI NAGJI. **116 I.C. 105= A.I.R. 1929 Sind 102.**

———*Manager is bound to maintain widow and children of deceased male member.*

A grandfather may be under no personal obligation to maintain his grandchildren, but the manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and their children, and on the death of one of the male members he is bound to maintain his widow and his children. (*Campbell and Tek Chand, JJ.*). BHAGWAN SINGH *v.* MT. KAWALKAUR. **101 I.C. 201=8 Lah. 360= 9 L. L. J. 117=28 P. L. R. 201= A.I.R. 1927 Lah. 280.**

———*Liability to maintain wife is personal one—No charge is created on property unless declared by Court.*

The liability of the husband to maintain his wife or to provide for her maintenance is a personal one quite independent of any property in his possession. It does not form any charge on property although if he has property, charge will be given against the property : 29 Mad. 508 and 16 M. L. T. 551, *Dist.* ; 27 Mad. 45, *Rel. on.* (*Devadoss, J.*). RATTAMMA *v.* SESHACHALAM SARMA. **101 I.C. 806=1927 M.W.N. 314= A.I.R. 1927 Mad. 502=52 M.L.J. 520.**

———*Whole family property is liable.*

If the sons divide the family property after the death of the father they must make provision for the maintenance of the mother and for the maintenance of any widows of the family.

The whole of the family property would be liable for the maintenance of the mother and the other widows and apportionment between sons and stepsons cannot be made. (*Devadoss, J.*). YANDRU VEERANNA *v.* YANDRU SITAMMA. **98 I.C. 536= 1926 M.W.N. 921=A.I.R. 1927 Mad. 83.**

———*Sale to defeat daughter-in-law's right to maintenance.*

The maintenance of the widow of a pre-deceased son is a charge on the properties of her father-in-law in the hands of a genuine purchaser for consideration if the sale is made with an intention to defeat the rights of the widow and the purchaser had knowledge of her existence. (*Cuming and B. B. Ghose, JJ.*). ABU MAHOMED BARKET ALI *v.* SARASWATI DASI. **97 I.C. 194=43 C.L.J. 604= A.I.R. 1926 Cal. 1068.**

———Daughter-in-law's right against father-in-law's self-acquisition is merely moral.

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This being so, a widowed daughter-in-law has no sort of right or control over his alienations during his lifetime and she cannot possibly be allowed to realise her maintenance from the property which he has seen fit to sell or gift, although this doubtless has the effect of depriving the widow of her legal rights of maintenance before they are fully born, for during the father-in-law's lifetime her rights are merely in embryo, being nebulous moral rights which she cannot enforce. (*Abdul Rioof and Harrison, JJ.*). MT. BHAGWANTI *v.* THAKUR MAL. **91 I.C. 476=A.I.R. 1926 Lah. 198.**

———Heir is legally bound to maintain out of estate inherited, persons whom late proprietor was morally or legally bound to maintain.

The reason is that the estate is inherited subject to the obligation to provide for such maintenance. (*Scott-Smith and Fforde, JJ.*). MT. BHOLI BAI *v.* DWARKA DAS. **84 I.C. 168=5 Lah. 375= A.I.R. 1925 Lah. 32.**

—Maintenance—Persons entitled to.

———The term dasiputra no doubt originally meant sons of a female slave, but in Western India, at all events, it has come to mean sons by a kept mistress of one of the lower castes.

Dasiputras are entitled to maintenance during their lives out of their father's estate : 1 Bom. 97 and 4 Bom. 37 (F.B.), *Rel. on.* (*Sir George Lowndes.*) RAOJI *v.* KUNJALAL HIRALAL AGARWALA. **123 I.C 709=34 C.W.N. 627= 51 C.L.J. 434=A I. R. 1930 P.C. 163 (P.C.).**

———*Father in-law gifting portion of his self-acquired property to one of his sons—Widow-daughter-in-law is entitled to maintenance out of such property.*

Father-in-law is under a moral obligation to maintain a widow of a pre-deceased son and this moral liability becomes a legal obligation in the hands of his surviving sons who inherit father's estate ; and no distinction should be drawn in this respect between property which is inherited from the father-in-law and property which is gifted by him. Thus if father-in-law gifts a portion of self-acquired property to one of his sons, daughter-in-law is entitled to maintenance out of such property : 25 Bom. 263. *Not foll.*; A.I.R. 1924 Cal. 364; 11 All. 194 and 22 Mad. 305, *Rel. on.* (*Dalal, J.*). JEOT RAM *v.* MT. LANJI. **119 I.C. 253= A I.R. 1929 All. 751.**

———Illegitimate son of a Sudra is entitled to maintenance: A.I.R 1927 Mad. 386; 17 Mad. 160 ; 34 Mad. 68; A.I.R. 1926 Mad. 261, *Rel. on.* (*Devadoss and Walsh, JJ.*). RATHINASABAPATHY ODAYAR *v.* GOPALA ODAYAR. **121 I.C. 126= 29 M.L.W. 696=A.I.R. 1929 Mad. 545= 56 M.L.J. 673.**

———*Concubines are entitled.*

A concubine is entitled to maintenance from the estate of the paramour even though the connexion with him is an adulterous one : 26 Bom. 163 ; A.I.R. 1926 P.C. 73, *Rel. on* ; A.I.R. 1924 Bom. 311, *Not appr.*; A.I.R 1923 Bom. 130, *Ref.* (*Macnair, A. J. C.*). KAMPTABAI *v.* LIMABAI. **117 I.C. 209=12 N.L.J. 51= A.I.R. 1929 Nag. 127.**

———*Daughter-in-law—Right against persons setting father-in-law's property by inheritance or survivorship.*

When a Hindu joint family consists of a father and sons but is possessed of no family property, the widow of one of the sons, dying in the lifetime of his father and brother, is entitled to maintenance

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as against the property which the father acquires after the death of her husband and which on the death of the father comes into the possession and enjoyment of the surviving son and the son of the latter, whether such possession is in the right of an heir or in the right of a survivor: 11 All. 194 (F.B.), *Foll*; 17 Cal. 373 ; 22 Cal. 410 ; 29 Cal. 557 ; 11 Bom. 199; 23 Bom. 608; 22 Mad. 305; 31 Mad. 338, *Rel. on.* (*Wazir Hasan, Ag. C. J., Misra and Pullan, JJ.*). JAI NAND *v.* MT. PARANDEI.

118 I.C. 419=6 O.W.N. 436=4 Luck. 491= A.I.R. 1929 Oudh 251 (F B.).

——Illegitimate daughters are not entitled to maintenance from their father's family : A.I.R. 1927 Mad. 386, *Foll.* (*Phillips, Offg. C. J. and Ananthakrishna Aiyar, J.*). NAGARATHNAMMAL *v.* CHINNU SAH. **107 I.C. 419=1927 M.W.N. 750= A. I. R. 1928 Mad. 127=53 M.L.J. 861.**

——*Illegitimate daughter of Sudra is not entitled.*

An illegitimate daughter of a Sudra is not entitled to any maintenance out of the estate of her putative father. There is no legal basis in Hindu Law for the view that the father is bound to maintain his illegitimate daughter; he is under no more than a personal obligation to do so under the Cr. P. Code. (*Krishnan and Odgers, JJ.*). VELLAIYAPPA CHETTY *v.* NATARAJAN. **100 I.C. 655= 50 Mad. 340=25 M.L.W. 493= A.I.R. 1927 Mad. 386=52 M.L.J. 229.**

——*Illegitimate son of a Sudra is entitled to maintenance for life out of his father's estate in the hands of his co-parceners.*

The fact that the woman kept is a dasi or slave, or a dancing-girl is immaterial.

His right to maintenance is in recognition of his status as a member of his father's family and the maintenance is in lieu of his rights in his father's estate: *Case-law discussed.* (*Krishnan and Odgers, JJ.*). VALLAIYAPPA CHETTY *v.* NATARAJAN. **100 I.C. 655=50 Mad. 340= 25 M.L.W. 493=A.I.R. 1927 Mad. 386= 52 M.L.J. 229.**

——*Permanent concubine is entitled.*

Provided the concubinage be permanent, (awarudha stri) until the death of the paramour, and sexual fidelity to him be preserved, the right to maintenance is established, although the concubine be not kept in the family house of the deceased : 26 Bom. 163, *App.* (*Lord Darling.*) NAGUBAI MANGLORKAR *v.* MONGHIBAI.

96 I.C. 20=50 Bom. 604=53 I.A. 153= 24 A.L.J. 729=1926 M. W. N. 514= 3 O. W. N. 599=44 C. L. J. 53= 24 M. L. W. 309=28 Bom. L.R. 1143= 31 C. W. N. 128=A. I. R. 1926 P.C. 73= 51 M.L.J. 577 (P.C.).

——*Illegitimate sons of Sudra are entitled to maintenance.*

In order to give rise to the rights of an illegitimate son of a Sudra either to succession or maintenance, all that is necessary is that the connexion between the parents should be continuous and neither adulterous nor incestuous. The fact that the woman kept is a dasi or a dancing-girl makes no difference as regards the rights of the illegitimate children. (*Kumaraswami Sastri, J.*). NATARAJAN *v.* MUTHIAH CHETTY. **95 I.C. 972= 22 M. L. W. 650=1926 M. W. N. 73= A.I.R. 1926 Mad. 261.**

——*Persons not entitled to succeed—Right to maintenance of.*

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According to the Hindu Law, persons who by reason of certain circumstances are not entitled to a share in the estate, are entitled to maintenance by those to whom the estate passes by survivorship. The liability to maintain is on the co-parceners by virtue of the fact that they take the estate of their deceased relations. Under the Hindu Law even though the parties are not Sudras but belong to the higher classes, *e.g.*, Vysias, they still have got rights to get maintenance though they may have no right of succession. When the parties are Sudras there is the limitation that where the father is a member of a joint and undivided family and the properties of the father pass by survivorship to other members of the family, the illegitimate children of Sudras, in case the father had no self-acquired property, would not succeed to his estate but have only rights of maintenance out of the property, and such a maintenance can be made a charge on the family property. (*Kumaraswami Sastri, J.*). NATARAJAN *v.* MUTHIAH CHETTY. **95 I.C. 972=22 M.L.W. 650= 1926 M.W.N. 73=A.I.R. 1926 Mad. 261.**

——*Illegitimate daughter is entitled to maintenance until she is married or attains majority.*

So far as Hindu Law is concerned, the maintenance of females goes as a necessary corollary to their exclusion from inheritance and so long as they are members of the family, there is no reason why maintenance should not be given to them. If maintenance is given to an illegitimate daughter, it cannot be for her lifetime for she could not be in a better position than a legitimate daughter, but can only be given until she attains the age of 18 or is married earlier, and if she belongs to the caste of the dancing-girl, maintenance should continue till her marriage in case she were to marry or till she is able to earn her living according to the rules of her caste : (*Case-law considered.*) (*Kumaraswami Sastri, J.*). NATARAJAN *v.* MUTHIAH CHETTY. **95 I.C. 972=22 M.L.W. 650= 1926 M.W.N. 73=A.I.R. 1926 Mad. 261.**

——*Avaruddha stree—Meaning of—Woman of alien faith is no Dasi or avaruddha—Not entitled to maintenance.*

The literal translation of "avaruddh stree" is a "protected or confined woman." It really applies to a woman kept permanently by a person in his house as confined under his own protection in a manner so as to make it impossible for her to have connexion with a stranger. The English expression "continuously kept concubine" is the closest approach to the meaning of "avaruddh stree" and connotes an open residence and avowed connexion with the man. The woman in order to come within the definition of the term "avaruddh stree" must be a concubine living, under a man's immediate protection and control. The connection should not be secret, but the evidence must show that she lived with the man openly as a member of his family. Unless the woman is such as may be considered fit to work in a household she would not fall under the category of "woman kept in concubinage," or "permanent concubine." In order to fulfil this condition she must be a woman occupying a recognized status in the house and living in the family as a member thereof. Liability to maintenance in the case of such females exists only where the connexion was of a permanent nature, analogous to that of the female slaves who in former times were recognized members of a man's family. The word "dasi" or "stree" as used in the

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Mitakshara cannot include within its definition a woman professing a faith different from the Hindu faith. A dasi or an avaruddh stree as used in the Yajnavalkya Samhita, and interpreted in the Mitakshara, must belong to one of the four castes, and, therefore, must be a Hindu. (*Ashworth and Misra, JJ.*). MT. HAIDARI *v.* NARIANDRA BIKRAMAJIT SINGH. **93 I. C. 677=1 Luck. 184=13 O. L. J. 245=3 O. W. N. 284=A. I. R. 1926 Oudh 294.**

——*Permanently kept concubine is entitled.*

A concubine is entitled to maintenance against the estate of the man who kept her, but this rule is applicable only to those women who are continuously and exclusively kept in a man's family and are, in other words, what is known as "Avaruddha Stree" and who remain chaste : 33 M.L.J. 455 and A.I R. 1923 Bom. 150, *Foll.* The rule in favour of the maintenance of concubines is not limited only to cases where there are no other heirs and the property would otherwise escheat to the Sovereign : 33 M. L. J. 455, *Foll.* (*Spencer and Ramesam, JJ.*). RAMA RAJA *v.* PAPAMMAL. **90 I. C. 983=48 Mad. 805=22 M. L. W. 710=A. I. R. 1925 Mad. 1230=49 M. L. J. 348.**

——*Illegitimate sons of durgas are entitled.*

Among the regenerate classes according to the Mayukh illegitimate sons are entitled to maintenance which does not cease on their attaining majority though they are not entitled to marriage expenses. (*Macleod, C.J. and Shah, J.*). MOTICHAND GIRDHARSHET *v.* CHANDRABAI. **80 I.C. 418=26 Bom. L. R. 488=A.I.R. 1924 Bom. 421.**

——A kept mistress whose husband is alive is not an *avarudha stree*; consequently she is not entitled to maintenance out of the estate of her paramour on his death. (*Shah, Ag. C.J. and Crump, J.*). ANANDILAL BHAGCHAND *v.* CHANDRABAI. **80 I.C. 536=48 Bom. 203=26 Bom. L. R. 63=A. I. R. 1924 Bom. 311.**

——*Widowed daughter-in-law is entitled to maintenance from her father-in-law's heirs of donees even if the property is father-in-law's self-acquired property.*

A widowed daughter-in-law has no legal right to maintenance as against the self-acquired property of her father-in-law if her husband died during the lifetime of her father-in-law. But although the obligation of the father-in-law is only moral and not legal when he has no ancestral assets in his hands, the position of the heir who takes his estate by inheritance is different. What is a moral obligation in respect of the father ripens into a legal obligation when the estate passes into the hands of his heirs. The principle is applicable even when the father-in-law has made a testamentary disposition of his property or has during his lifetime made a gift of his property: 10 W.R. (F.B.) 89; 37 Mad. 396; 11 All. 194; 29 Cal. 557; 23 Bom. 608; 22 Mad. 305; 25 Bom. 263, *Dist.*; 17 C.W.N. 1141, *Foll.* (*Mookerjee and Chotzner, JJ.*). GOPAL CHANDRA PAT *v.* KADAMBINI DASI. **73 I.C. 235=A.I.R. 1924 Cal. 364.**

——*Concubine can claim maintenance only if she was an avaruddha-stree.*

In order to entitle a concubine of a deceased Hindu to claim maintenance for herself from the heirs of the Hindu, she must show that she was an "*avarudha stree*" that is to say she must show that she lived as his permanent concubine openly and as a member of his family.

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The deceased Vasanji had a wife and two sons. He was on bad terms with them and they lived in a house at Mandvi while deceased himself lived in another house at Masjid Bunder. He appears to have formed connection with plaintiff about 1915; she lived at several different places in the city and the deceased maintained and visited her. But there was no evidence that they ever openly lived together. She appears to have had her own establishment, and to have paid her own rent. He fell ill in her house, and was there for a short time until just before his death. This connection was not precisely secret but on the evidence it could not be said that she lived with him openly as a member of his family,

Held, plaintiff was a "*Bhujishya*" but not "*avarudha*" and therefore was not entitled to claim maintenance from the estate of the deceased. (*Shah, Ag.C.J. and Crump, J.*). BAI MONGHIBAI *v.* BAI NAGUBAI. **69 I. C. 291=24 Bom. L. R. 1009=47 Bom. 401=A.I.R. 1923 Bom. 130.**

——*Woman living in adultery with a Hindu.*

A concubine who lives with a Hindu up to the time of his death is in general entitled to maintenance from his estate in the hands of his widow. The right of maintenance cannot be extended to a case of adulterous connection.

If the plaintiff's claim fails under Hindu Law she cannot fall back on an agreement between her and the widow with regard to the maintenance inasmuch as it is a mere promise to pay unsupported by consideration. (*Daniels, A.J.C.*). CHANDRA KUNWAR *v.* MT. RUKMIN. **66 I.C. 86=9 O. L. J. 60=25 O. C. 145=A. I. R. 1922 Oudh 27.**

—Maintenance—Suit for.

——*Partition during the pendency of the suit is affected by "dis pendens."*

Where a widow of a co-parcener has instituted a suit for a declaration that her right of maintenance should be made a charge on the joint family property before partition, the doctrine of *lis pendens* would apply, and any partition which takes place subsequent to the institution of her suit cannot affect her right. (*Rupchand, A.J.C.*). RAMBHABAI *v.* DOONGERSI NAGJI. **116 I.C. 105=A. I. R. 1929 Sind 102.**

——*Excessive claim by widow—But defendants failing to give information and raising vexatious pleas—Order directing defendants to pay costs is proper.*

Where, in appeal from a suit for maintenance by widow of a deceased co parcener against surviving co-parceners, the defendants contended that as the claim of the plaintiff was considerably exaggerated and the lower Court decreed less than half of what she claimed, the proper order as to costs should have been to direct the parties to pay and receive proportionate costs. but it was found by the lower Court that. as the defendants withheld all the information from the plaintiff as to the resources of the family, the plaintiff was not in a position to know what the income of the family was and also that the defendants put forward in the lower Court some vexatious pleas as to the maintainability of the suit.

Held, that the direction that the defendants should not only bear their own costs but pay the plaintiff's costs also was a proper one. (*Wallace-*

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and Thiruvenkatachariar, JJ.). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M. L. W. 328=A. I.R. 1928 Mad. 216=54 M.L.J. 530.**

———Widow—Suit by, for maintenance—Right to maintenance, and rate thereof only, should be considered. (*Spencer, J.*). NARASAMMA *v* VENKATARAJU. **93 I.C. 686=23 M.L.W. 364=A.I.R. 1926 Mad 534.**

———*Agreement not to molest husband—Maintenance in consideration of—Validity.*

A suit is not maintainable by a wife for an allowance for maintenance on an agreement, for which the sole consideration is a stipulation that the wife is not to communicate with or molest her husband : 16 W.R. 250, *Foll.*

In such a case there can be no question of S. 25, Contract Act, applying ; for obviously no natural love and affection can exist between the parties. The wife must establish some valid and legal consideration for any such agreement. (*Findlay, J.C.*). MT. I. *v.* MR. G. **98 I.C. 217=9 N.L.J. 143=A.I.R. 1926 Nag. 501.**

———A member of a joint Hindu family, who cannot file a suit for partition without the consent of certain members of that family, if he is driven out from the family, can sue for maintenance out of the family property: 16 Bom. 29 (F.B.), *Ref.* (*Macleod, C.J. and Shah, J.*). BHUPAL TAVANAPPA KASTURI *v.* TAVANAPPA GANGARAM KASTURI. **64 I.C. 568=46 Bom. 435=23 Bom. L.R. 1236=A.I.R. 1922 Bom. 292.**

———*Leper husband—Wife can live separately and claim maintenance.*

That a Hindu husband is suffering from a loathsome disease such as leprosy is a good defence to his suit for the restitution of conjugal rights, and if a leprous husband cannot enforce co-habitation upon an unwilling wife, he equally cannot make his disease a defence to her suit for maintenance so long as he has means to maintain her. If a wife cannot be penalised by depriving her of her *Sridhanam* for her refusal to live with a husband, who is suffering from a loathsome disease, it is equally impossible to conceive that the ancient law-givers intended that she should be allowed to starve for an act which no code of humanity or morality would condemn. Granting that desertion by the wife is a good defence to a wife's suit for maintenance, it by no means follows that such a defence can be pleaded irrespective of the wife's counterplea that the separation from her husband is for good and sufficient cause. (*Spencer and Venkatasubba Rao, JJ.*). H. SHEENAPPAYYA *v.* RAJAMMA. **69 I.C. 25=45 Mad. 812=16 M.L.W. 139=1922 M.W.N. 459=31 M L.T. 412=A.I.R. 1922 Mad. 899=43 M.L.J. 174.**

———*Form of decree—Decision as to who should pay.*

In a suit by a Hindu widow for maintenance against several defendants in possession of her husband's estate, the Court should direct that the amount should be paid by one or more of them on particular dates, but it need not decide as to who is legally entitled to the estate. (*Tudball and Sulaiman, JJ.*). SARASUTTI TEWARIN *v.* NANDAN **60 I.C. 99=18 A.L.J. 828=2 U P.L.R. All. 260.**

—Maintenance—Transfer of family property.

———*Suit for maintenance by wife against husband—Husband disposing of his property pending suit—Lis pendens does not apply.*

When a wife brings a suit against the husband for maintenance and asks for a charge on the property belonging to him, she does not ask for any

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right directly and specifically in respect of the property. In order to get maintenance properly paid she is entitled to ask for a charge and the Court in decreeing maintenance gives her charge on the property. The charge so given takes only from the date of the decree. (*Devadoss, J.*). RATTAMNA *v.* SESHACHALAM. **101 I.C. 806=1927 M.W.N. 314=A.I.R. 1927 Mad. 502=52 M.L.J. 520.**

———*Purchase with knowledge of maintenance right—Subject to such right.*

Though it cannot be laid down that a person entitled to maintenance out of and residence in the family property has a vested and indefeasible lien on the family property merely by reason of the fact that she is entitled to such maintenance and residence yet she has a right and that right cannot be defeated by a trick. Where then the purchaser of family property knows that a person entitled to maintenance from and residence in family property is actually confined to that property for the purpose and where he knows that his purchase of such property will defeat that right of maintenance and residence then he is presumed to have purchased with such intention and the Courts will not permit his intention to be carried into effect. That is they will decree that he has bought subject to the right of the person to be maintained and provided with residence. (*Kennedy, J. C. and DeSouza, A.J.C.*). MOOLCHAND KISINDAS *v.* THAKURBAI. **96 I.C. 997=A.I.R. 1926 Sind 18.**

—Maintenance—Widow.

———A simple money creditor of a joint Hindu family has no priority over a charge for maintenance created by decree in the absence of fraud or collusion. (*Wallace and Ananthakrishna Ayyar, JJ.*). SEETHARAMANJACHARYULU *v.* VENKATASUBBAMMA. **1930 M.W.N. 625=32 L.W. 416=A.I.R. 1930 Mad. 824=59 M.L.J. 485.**

———*Maintenance in lieu of share—Subsequent unchastity if affects.*

Where a widow gives up her claim to share as an heir in the property of her deceased husband on certain terms and conditions, her subsequent unchastity is no defence unless there is an express stipulation to that effect: 26 All. 321, *Foll.* (*Percival, J.C. and Aston, A.J.C.*). VERHOMAT *v.* MT. RADHANBAI. **A.I.R. 1930 Sind 223.**

———Allowance made many years before to a widow in family—Family circumstances changed—It cannot form precedent to claim for maintenance by another widow in the family. Nor the fact that the maintenance then allowed was one-fourth of the then net income can be used as a principle of law to be applied in all cases. (*Lord Shaw.*) MT. EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH. **116 I.C. 409=1929 M.W.N. 468=8 Pat. 840=56 I.A. 182=6 O.W.N. 526=30 M.L.W. 1=49 C L.J. 579=31 Bom. L.R. 816=10 P.L.T. 343=1929 A.L.J. 695=33 C.W.N. 637=A.I.R. 1929 P.C. 128=57 M.L.J. 50 (P.C.).**

———*Income of family property large—Co-parceners cannot insist upon widow living frugally and thus award small amount as maintenance.*

Widow is not bound to reside with the co-parceners nor are they under any personal obligation to maintain her. Their liability to do so arises only if they have taken the assets of her deceased husband either by inheritance or by survivorship. It is also the chief element to be considered in fixing the widow's maintenance. The right of the widow to maintenance out of the estate of her deceased husband in the hands of his heir or

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successor is in the nature of a burden upon the estate subject to which he takes the property and her right is to be maintained in comfort having regard to the extent of the assets of her husband taken over by his successor. The standard of comfort must necessarily vary with the means of the family, due regard being also paid to the wants of the other members of the family who also have to be maintained out of the income of the family properties. Each case has to be decided upon its facts. The co-parceners of her deceased husband who have taken his properties by survivorship have no right to prescribe any arbitrary standard as regards the comforts the widow is entitled to have or the style in which she should live. It is not open to them to say: "Though we get a large income from the family properties we prefer to live as frugally as possible and we would go on saving the bulk of our income as the family has been doing heretofore and you should also be content with barest necessaries of life." (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712=28 M.L.W. 328=A.I.R. 1928 Mad. 216=54 M.L.J. 530.**

———*A grant out of love and affection is not affected by subsequent unchastity.*

A grant by a husband to his wife, which is not a provision for maintenance but a grant of a different character, over and above the requirements of maintenance, made out of the love and affection which he bore to the grantee, is not affected by the subsequent unchastity of the wife and the husband is not entitled to rescind it or to revoke it on that ground. (*Kulwant Sahay and Macpherson, JJ.*). SITA DEVI *v.* GOPAL SARAN.

111 I.C. 762=9 P.L.T. 397=A.I.R. 1928 Pat. 375.

———*Agreement securing maintenance becomes inoperative on her unchastity.*

The unchastity of a Hindu widow disentitles her to receive maintenance and the mere fact of the maintenance being secured to her by an agreement will not prevent her being deprived of such right after she has become unchaste. All that such an agreement does is to fix the amount of maintenance: 26 All. 321, *Dist.*; 17 Mad. 392 and 15 All. 382, *Rel. on.* (*Iqbal Ahmad, J.*). BIRJBHUKAN DUBE *v.* MT. RAM DULARI. **103 I.C. 393=A.I.R. 1927 All. 695.**

———*Past maintenance—No demand necessary—Failure to pay is withholding.*

In order to entitle a widow to past maintenance no demand is necessary. The non-payment of maintenance to a person entitled thereto constitutes *prima facie* proof of wrongful withholding. The claim for past maintenance is a legal right and unless adequate grounds are shown for inferring that she has waived or abandoned that claim, the defendant cannot escape liability: 24 Mad. 147 (P.C.); 21 M.L.J. 482 and 21 M.L.J. 706, *Rel. on.* (*Coutts-Trotter, C.J. and Sundaram Chetty, J.*). PANCHAKSHARA CHETTY *v.* PATTAMMAL.

39 M.L.T. 32=A.I.R. 1927 Mad. 865.

———*Non-residence with relatives is neither a ground for refusing maintenance nor for reduction.*

A Hindu widow is not bound to reside with the relatives of her husband; that the relatives of her husband have no right to compel her to live with them; and that she does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purposes.

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If non-residence at her husband's house is no ground for refusing maintenance to a Hindu widow, it is equally no ground for reducing it: 12 B.L.R. 238 (P.C.); 36 Bom. 131; 29 Cal. 557 and 5 I.A. 55 (P.C.), *Foll.* (*Wazir Hasan, J.*). MT. BHAIRON DEI *v.* RAM SEWOK LAL.

1 L.C. 648=A.I.R. 1927 Oudh 623.

———*Income of property insufficient for maintaining widow, she is not bound to keep corpus intact for reversioners.*

Where the income of the estate is insufficient for the maintenance of the widow, the Hindu Law does not impose upon her any obligation to preserve the corpus and keep intact for the benefit of the ultimate reversioner. Any such onerous duty is not cast upon a Hindu widow. She can certainly alienate the property for necessary purposes and the most obviously necessary purpose is her own maintenance. (*Venkatasubba Rao, J.*). RAMALINGA *v.* PARVATHAMMAL. **97 I.C. 759=1926 M.L.W 657=A.I.R. 1926 Mad. 1122.**

———Widow—Unchastity—Return to chastity—Bare maintenance is due. (*Shah, Ag. C.J. and Kincaid, J.*). BHIKUBAI YESHWANTRAO *v.* HARIBA SWALARAM. **94 I.C. 665=49 Bom. 459=27 Bom. L.R. 13=A.I.R. 1925 Bom. 153.**

———An agreement by a widow not to claim enhancement of the maintenance is a binding agreement and must be enforced: 14 M.L.J. 339, *Dist.* (*Phillips and Venkatasubba Rao, JJ.*). MAULESWAR RAO *v.* DURGAMBA. **78 I.C. 831=47 Mad. 308=19 M.L.W. 165=34 M.L.T. 47=1924 M.W.N. 266=A.I.R. 1924 Mad. 687=46 M.L.J. 189.**

———*Widow can get her maintenance charged on what would have been her husband's share.*

Obiter—The right of a widow under the Hindu Law to be maintained out of her late husband's share in the family property in the hands of surviving co-parceners, it is true, creates no immediate charge upon the property but if it became necessary to do so, she could, by proper steps obtain such a charge upon a reasonable portion of the joint property not exceeding her husband's share: 27 Mad. 45, *Foll.* (*Dawson-Miller, C. J. and Foster, J.*). RAJASHIVA PRASAD SINGH *v.* KING EMPEROR. **82 I.C. 653=3 P. L. T. 497=1924 P.H.C.C. 234=2 Pat.L.R.Cr. 233=4 Pat.73=A.I.R. 1924 Pat. 679.**

—Maintenance—Will.

———*Widow's right to, cannot be defeated by will.*

A Hindu from the Punjab is *prima facie* subject to the principles of the Mitakshara School of Hindu Law and the principles of that School impose a primary duty and charge upon a husband of maintenance of his wife or wives, and a testator cannot by will defeat that claim. (*Rutledge, C.J. and Mya Bu, J.*). C. S. MAHA SABHA *v.* ANNA SOHAN LALL. **104 I.C. 119=6 Bur. L.J. 105=A.I.R. 1927 Rang. 256.**

———Maintenance and right of residence awarded by will—Claim for, is not one under rules of Hindu Law.

Where the lady claims maintenance under the terms of the will, she cannot be said to claim a right of maintenance as against her step-son or even against her own son under the rules of Hindu Law. (*Mookerjee and Chotzner, JJ.*). PULIN BEHARI DEY *v.* SATYA CHARAN. **70 I.C. 548=36 C.L.J. 367=A.I.R. 1923 Cal. 79.**

—Maintenance—Miscellaneous.

———The existence of debts diminishes the estate out of which the maintenance is to be paid. (*Macnair, A.J.C.*). KAMPTA BAI *v.* UMABAI. **117 I.C. 209=12 N.L.J. 51=A.I.R. 1929 Nag. 127.**

HINDU LAW—Maintenance—Miscellaneous.

———*Daughter-in-law—Father-in-law may assign a portion of joint property for her maintenance.*

It is quite in keeping with the sentiments of a Hindu father-in-law to assign some portion of the joint family property to his daughter-in-law in lieu of her right to maintenance so that she may enjoy its usufruct during her lifetime. Even if such portion is mutated in her name her possession does not go to convert the property into a stridhan nor does her possession become adverse to the legal heirs of father-in-law: 27 Cal. 515 (P. C.), *Ref.* (*Kinkhede, A.J.C.*). YESHAWANT *v.* DAULAT.

89 I.C. 663=A.I.R. 1926 Nag. 129.

———Widow—Mithila School—Grant of immovable property by karta of joint family for maintenance does not constitute her stridhan, nor does it create a widow's estate—After widow's death properties revert to donor.

The estate created by a maintenance grant, leaves a residuary estate still untransferred in the grantors, just as happens in the case of grants of leases and usufructuary mortgages. The reversion in such circumstances would be not the reversion as the term is used in Hindu Law, but the reversion of English Law such as is vested in a lessor for a term: 6 M. I. A. 1 (P. C.), *Dist.* (*Dowson Miller, C. J. and Foster, J.*). PHEKU PANDE *v.* GENA LAL PANDE. **96 I. C. 161= 1926 P.H C.C, 241=A.I.R. 1926 Pat. 481.**

———A provision for the future maintenance of his wife by a husband is not illegal under Hindu Law. (*Schwabe. C. J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). MADAM PILLAI *v.* BADRAKALI AMMAL. **68 I.C.687=45 Mad. 612= 15 M.L.W. 464=1922 M.W.N. 345=30 M.L.T. 274= A.I.R 1922 Mad. 311=42 M.L.J. 410 (F. B.).**

—Marriage.

Ceremonies.
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—Marriage—Ceremonies.

———*Contract of betrothal in regard to unborn daughter is void.*

A contract of betrothal made in regard to a girl not born at the time of the contract is null and void and cannot form a basis for damages: 60 P. R. 1886, *Foll.*

B arranged for the marriage of *A* with the cousin of *P* whom *B* gave his own daughter *M* in exchange and in consideration for this *A* bound himself to place his daughter if and when one was born at the disposal of *B* to be given away in marriage by him to any one he liked or to find a wife for a member of *B*'s family whenever required to do so,

Held, that the arrangement was void and unenforceable, both by reason of uncertainty as well as being contrary to public policy. (*Tek Chand and Agha Haidar, JJ.*). ATMA RAM *v.* BANKU MAL.

A.I.R. 1930 Lah. 561.

———*Ante-natal betrothal of children is not permissible.*

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It is essential in a contract of betrothment under Hindu Law that both persons whom it is intended to unite in marriage must be in existence at the time and Hindu Law does not permit of ante-natal betrothal of children. (*Tek Chand and Agha Haidar, JJ.*). ATMA RAM *v.* BANKU MAL.

A.I.R. 1930 Lah. 561.

———*Non-performance of prescribed rites vitiates marriage.*

Per *Spencer, Offg. C.J.*—In order to constitute a lawful marriage among Hindus, it is essential that certain nuptial rites should be performed; otherwise the marriage is only a Gandharva marriage or a marriage importing an amorous connection founded on reciprocal desire, *i.e.*, a marriage in a form which has become obsolete. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1= A.I.R. 1925 Mad. 497.**

———*Saptapadi and Vivaha homa—Non-performance of—Marriage—Validity of.*

No prescribed ceremony is necessary to constitute marriage, provided that if any ceremony is customary and regarded by the caste as essential then it must be performed. The ceremony of *Saptapadi* is necessary to complete a marriage performed according to the orthodox rites, and that of *Vivah Hom* is also usually performed, but their non-performance does not invalidate a marriage, *if otherwise completed.* (*MacColl, J.*). RAMPIAYAR *v.* DEWA ROMA. **76 I.C. 475=1 Rang. 129= A.I.R. 1923 Rang. 202.**

———Among Vaishnabs, a marriage by what is known as the Kantibadal ceremony is valid. (*Ghose, J.*). BENODE BEHAY AUDIKARY *v.* SHASHI BHUSAN BHUR. **59 I.C. 882=24 C.W.N. 958.**

—Marriage—Custom.

———Woman marrying second husband—Second husband should refund costs of first marriage (*obiter*). (*Hallifax, A.J.C.*). KSHAMADHER PRASAD *v.* MT. SARASWATI. **108 I.C. 446= 11 N.L.J. 74=A.I.R. 1928 Nag. 196.**

———*Sword marriage—Tanjore Royal family—Sword wives have the status of permanent concubines.*

A sword marriage is an institution peculiar to Kshatriyas and it is not common to persons of other castes. It is a form of union which by custom has been recognised by Rajputs and some other communities. No such general custom amongst Marattas exists. In the Tanjore Raja's family there were unions by which women were admitted to the seraglio and were known as sword wives. But the sword wives though of a much higher status than dancing girls had only the status of permanent concubines attached to the Palace and their issues could claim only the rights of illegitimate offspring. (*Subject elaborately discussed.*) (*Spencer, Offg.C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1=A I.R. 1925 Mad. 497.**

———*Permanent concubine—Status of.*

The position in the Hindu households of permanently kept concubines who often reside in the same building is very analogous to the married wife. There is nothing in the ceremonial law or Shastras prohibiting permanently kept women in Hindu households from performing the various vrathams or ceremonies which married women perform, and the performance of such ceremonies does not necessarily show that the women must have been married. The tying and wearing of talis are not inconsistent with the permanent

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concubinage though they betoken the negation of relations such as those with dancing girls and temporarily kept mistresses. Even the observance of sattee does not necessarily indicate legitimate wifehood ; it is quite in keeping with the idea of permanent concubinage (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*No presumption exists against customary form of marriage being Brahma or Asura.*

It is therefore manifest that there may be customary forms of marriage which are perfectly valid and which do not strictly come within the definitions of any of the eight forms. When customary forms of marriage are allowed, they may be (provided such is the custom) in any one of the eight forms or an approach to any one of them. It is not correct to say that unless it be shown that the customary marriage is in the *Asura* form, it must always be conclusively presumed that it is in the *Brahma* form. (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PATTAN. **90 I.C. 358= 48 All. 126=23 A.L.J. 981=6 L.R.A. Civ. 557= A. I. R. 1926 All. 1.**

———*Dangua wife—Rajbansis of Bengal.*

When a widow lives by herself and a man goes to the house with a dang or stick in his hand and strikes a blow with it on the roof of the house and so enters in and takes possession of the woman such woman is called a Dangua wife. (*C. C. Ghosh and Panton, JJ.*). SANTALA BEWA *v.* BADASWARI DASI. **75 I.C. 11=27 C.W.N. 669= 50 Cal. 727=A. I.R. 1924 Cal. 98.**

———*Marriage between Khatri male and Brahmani woman is not valid.*

It would be dangerous to extend custom by such logical processes as analogy. The final presumption in the case of high caste Hindus is in favour of such Hindus following their personal law, and the onus of proving any special or general agricultural custom lies on the person asserting its existence. It cannot be held that by custom general or special a marriage between a Khatri male and a Brahmani woman is valid: 50 P. R. 1900, *Dist.* (*Broadway, J.*). PARS RAM *v.* HUKMAN SINGH. **73 I.C. 239=A.I.R. 1924 Lah. 243.**

———*Marriage with wife's sister's daughter allowed by custom.*

The marriage of a Hindu with his wife's sister's daughter is not illegal. The custom of allowing a Brahmin to marry his wife's sister's daughter has been recognised by judicial decisions ; that custom applies especially in the case of Sudras, such as Telugu Velamas who generally follow the Brahmin custom. The rule in *Grihya Parisishta* prohibiting such a marriage among the twice-born classes is merely directory and not mandatory. (*Wallis, C.J. and Krishnan, J.*). RAMAKRISHNA RAO *v.* SUBBANNA RAO GARU. **59 I.C. 268= 43 Mad. 830=1920 M.W.N. 474=12 L.W. 155= 39 M. L.J. 183.**

—Marriage—Dissolution.

———A marriage is not severed by mere desertion. (*Kumaraswami Sastri and Odgers, JJ.*). PICHAI PILLAI *v.* GOPAL PILLAI. **70 I.C. 122= 15 M.L.W. 15=A.I.R 1921 Mad. 647= 42 M.L.J. 276.**

—Marriage—Divorce.

———*Divorce at wife's request—She should return ornaments given by her husband.*

With Hindus, among whom divorce and remarriage are permitted, it is a very common if not universal custom that when a woman is divorced for misconduct or at her own request she returns to her husband all the ornaments he has given her, whether at the wedding or later. (*Hallifax, A.J.C.*). KSHAMADHAR PRASAD *v.* MT. SARASWATI. **108 I. C. 446=11 N. L. J. 74= A. I. R. 1928 Nag. 196.**

—Marriage—Factum valet.

———It is established that when a person not strictly entitled to do so gives a girl in marriage the doctrine of *factum valet* prevails. (*MacColl, J.*). RAMPIAYAR *v.* DEVA RAMA. **76 I.C. 475= 1 Rang. 129=A.I.R. 1923 Rang. 202.**

—Marriage—Forms of.

———The marriage in the *Bhaisnaba* form has to be established by legal evidence. It cannot be said to be proved by the mere fact of the parties living as husband and wife and of having such repute in the village wherein they lived. (*Graham and Mitter, JJ.*). GOPAL JANA *v.* BROJA MOHAN SWAMI. **34 C.W.N. 944.**

———Gandarva form of marriage was even in ancient days considered lawful only for the warrior tribe. It has now become obsolete. (*Pullan and Bisheshwar Nath, JJ.*). RAM PEARY *v.* KAILASHA. **7 O. W. N. 753= A. I. R. 1930 Oudh 426.**

———Gandharva form was lawful only among warrior tribe—It is obsolete now. (*Srivastava and Pullan, JJ.*). RAM PEARY *v.* MT. KAILASHA. **A.I.R. 1930 Oudh 426.**

———Rakshasa form of marriage, *viz.*, the seizure of a maiden by force from her house, is at the present day practised among certain class of Gonds of Berar and of Betul. (*Hallifax, A.J.C.*). GARAB SINGH GOND *v.* EMPEROR. **103 I.C. 195= 28 Cr. L.J. 659=A.I.R. 1927 Nag. 279.**

———The widow re-marriage in the *karao* form is a *Brahma* form of marriage. (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PHALTAN. **90 I.C. 358=48 All. 126=23 A.L J. 981= 6 L.R.A. Civ. 557=A.I.R. 1926 All. 1.**

———*Asura form—Incidents of.*

Although presents made to the bride's parents which are either small or relatively small having regard to the scale on which the rest of the expenses of the marriage are incurred do not necessarily make a marriage an Asura marriage ; a substantial contribution towards the expenses of the marriage must be regarded as equivalent to taking a bride price, and lends support to the suggestion that the marriage is in Asura form. The prevalence of a general custom of taking contribution from the bridegroom's party among Asaris renders every Asari marriage an Asura form of marriage, and on the ground of the general prevalence of such a custom any particular marriage cannot be regarded as one in the Brahma form. (*Ramesam, J.*). SAMU ASARI *v.* ANACHI AMMAL. **91 I.C. 561=22 M.L.W. 462= A.I.R. 1926 Mad. 37=49 M.L.J. 554.**

———*Asura form—Incidents of.*

A marriage by exchange, where a girl from one family is married to a boy of another family and *vice versa*, is not an Asura Marriage as the essence of the Asura form is the taking price for a bride. (*Baker, J.C.*). PUNJABRAO *v.* ATAMARAM. **87 I.C. 1018=A.I.R. 1926 Nag. 124.**

———*Forms other than Brahma and Asura are obsolete.*

Per *Kumaraswamy Sastry, J.*—So far as the eight forms of marriage referred to in the Sastras are concerned, it is now accepted law that all except

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the Brahma and the Asura forms are obsolete. (*Spencer, Offg. C. J. and Kumaraswamy Sastry, J.*). MAHARAJAH OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

———Bridegroom paying money to bride's parents for expenses of marriage as a condition of the contract—Marriage is in Asura form: 3 M. L. J. 261, *Foll.* (*Spencer and Ramesam, JJ.*). RATNATHANNI *v.* SOMASUNDRA MUDALIAR. **62 I.C. 931= 13 M L W. 582=1921 M.W.N. 635= A.I.R. 1921 Mad. 608=41 M.L.J. 76.**

—Marriage—Identity of caste.

———Pratiloma marriages, that is, marriages in the reverse order of castes, have been held to be invalid in the Bombay Presidency: 2 Bom. L. R. 128; 14 Bom. L. R. 547, *Ref. to.*

But the marriage of a Brahmin male with a Dharala woman of the Sudra caste is a marriage of the Anuloma type, valid in Hindu Law. The issue of such a marriage is legitimate: 46 Bom. 871, *Foll. Hindu texts reviewed.* (*Patkar and Shingne, JJ.*). NATHA *v.* CHHOTALAL. **32 Bom. L.R. 1348.**

———Marriage *inter se* between different sub-divisions of Sudra caste are valid: 13 M.I.A. 141 and 14 M.I.A. 346, *Foll.* (*Tek Chand and Johnstone, JJ.*). SOHAN SINGH *v.* KABLA SINGH. **112 I.C. 593= 29 P L R. 423=10 Lah. 372= 10 L.L.J. 348=A.I.R. 1928 Lah. 706.**

———*Marriage with woman of lower grade in same caste—Effect of.*

A man may marry a woman of a lower class or grade within his caste and may, by such a marriage fall into the class or grade to which his wife belongs, but in the absence of any clear and definite evidence to show that such a marriage would not be recognised as valid by the custom of the community to which either the husband or the wife belongs neither he nor his issue can lose their right of inheritance in the family property. (*Sulaiman and Kanhaiya Lal, JJ.*). HAR PRASAD *v.* KEWAL. **83 I.C. 163=22 A L.J. 1009= 47 All. 169=6 L. R. A. Civ. 7= A. I. R. 1925 All. 26.**

———Anuloma marriage between a vaishaya male and an illegitimate girl of a vaishya, born of a Sudra woman is valid.

Marriage out of practice or obsolete is not necessarily prohibited by Hindu Law. (*Macleod, C.J. and Shah, J.*). BHAI GULAB *v.* JIVANLAL HIRALAL. **65 I.C. 602=24 Bom. L.R. 5= 46 Bom. 871=A.I.R. 1922 Bom. 32.**

———If there has been a marriage in fact, there would be a presumption in favour of there being a marriage in law.

Under the Hindu Law in Bengal a marriage between members of different sub-castes of the Sudras is valid, unless a special custom or usage is proved to the contrary: 13 M.I.A. 141 (P.C.) and 14 M.I.A. 346 (P.C.), *Foll.*; 1 Cal. 1 and 48 Cal. 649, *Ref.* (*Sanderson, C.J. and Richardson, J.*). BISHWANATH DAS *v.* SARASIBALU DASI. **66 I.C. 890= 48 Cal. 926=25 C. W. N. 639= A. I. R. 1921 Cal. 48.**

—Marriage—Legitimacy.

———*Capacity to perform sradh is a test.*

Per *Kumaraswami Sastry, J.*—One test of the legitimacy of children is the capacity to perform funeral ceremonies and sradhas. The importance of the sradha ceremonies from a legal point of view cannot be overrated. The competence of a person to offer these oblations forms the test of his title to the inheritance. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

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—**Marriage—Prohibited degrees.**

———*Maternal aunt.*

The marriage by the chadar andazi ceremony with his maternal aunt by an Arora, who is governed by Hindu Law, cannot be a legal marriage. (*Harrison, J.*). SODAGAR *v.* EMPEROR. **107 I.C. 98=29 Cr.L.J. 210=9 A.I.Cr.R. 513= A.I.R. 1928 Lah. 165.**

———*Sagotras.*

So far as twice born classes are concerned, marriages between members of the same gotra and Pravara are absolutely forbidden, and, if performed, would be invalid; among Sudras this rule does not apply. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*), MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1= A.I.R. 1925 Mad. 497.**

—Marriage—Presumptions as to legality.

———*Bairagi—Marriage with a woman of different sect.*

Owing to their belief in the efficacy of ritual observances, choice in matrimony among the Bairagis is very little fettered. And so unless it is shown to the satisfaction of the Court that a formal admittance to the sect is a necessary preliminary on the part of the woman to constitute a legal marriage among the Bairagis, the marriage of a Bairagi with a female of a different sect cannot be annulled. (*Cuming and Pearson, JJ.*). ADWAITA DAS BAIRAGI *v.* LALIT MOHAN MOHANTI. **121 I. C. 413=33 C. W. N. 967= A.I.R. 1930 Cal. 57.**

———Presumption is in favour of marriage in approved form: 11 M.I.A. 139 (P.C.) and 33 Cal. 700 (P.C)., *Rel. on.* (*Kinkhede, A.J.C.*). BHAGWANDAS *v.* GAJADHAR. **98 I.C. 669=23 N.L.R. 9= 9 N.L.J. 221=A. I. R. 1927 Nag. 68.**

———*Should be presumed to be in the approved form.*

The leading principle is that a marriage is presumed to be in an approved form unless it is shown to be in a disapproved form. This is a reasonable principle and is not contradicted by anything in the Hindu Law texts. If a marriage is valid at all the natural presumption is that it is valid in all respects and carries the full privileges and obligations of an approved marriage: *Case-law discussed.* (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PALTAN. **90 I. C. 358=48 All. 126= 23 A.L.J. 981=6 L.R.A. Civ. 557= A.I.R. 1926 All. 1.**

———Per *Kumaraswami Sastri, J.*—The mere designation of sword wife does not raise any necessary implication of marriage. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———*Long co-habitation cannot establish marriage where proof to the contrary exists.*

Though where nothing more is known than that persons have been living together as husband and wife and treated as such by the community for a long series of years, a presumption of marriage may, if nothing more appears, be drawn, the presumption will be considerably weakened and it will be altogether rebutted where facts are shown which make it more consistent with continued concubinage than with legal marriage.

The so-called sword wives of the Tanjore Raja were held to be mere concubines though permanent

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concubines and though treated in many respects as legally married wives. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———There is a presumption, in the absence of any evidence to the contrary, that the marriage was in one of the approved forms. (*Dalal, J.C.*). MT. UMRAO KUAR *v.* SARABJIT SINGH. **85 I.C. 618= A.I.R. 1925 Oudh 620.**

—Marriage—Re-marriage.

———Discarded wife of Kori cannot re-marry in absence of legal divorce. (*Subhedar, A. J. C.*). EMPEROR *v.* BHAIYA LAL. **118 I.C. 681= 30 Cr. L.J. 960=1929 Cr. C. 454= A.I.R. 1929 Nag. 278.**

———*Re-marriage not censured by the caste should be considered to be in the Brahma form.*

When re-marriage is allowed by the custom of a caste, such a marriage may not have any disapprobation attaching to it. On the other hand even among castes which allow the validity of re-marriages such marriages may be regarded as not praiseworthy and of superior form but as blameworthy and of inferior form.

If a virgin widow has not passed out of her parents' family and is still under its control, and her parents or other legal guardians in pursuance of the caste custom which allows such marriage, give her away in marriage a second time as if she were a maiden, the marriage though a widow marriage, would undoubtedly be in the *Brahma* form if there is no social censure attaching to it. On the other hand, if a widow, who is not a virgin, herself enters into a matrimonial alliance in a form considered blameworthy by the caste, though recognized by custom as valid, and there is no gift of her by legal guardians it may be difficult to see any analogy between such a marriage and the *Brahma* form of marriage even though there be no consideration paid to her guardians. It may rather be an approach to the *Gandharba* form where the marriage takes place with the mutual desire of the parties. In this latter case, it would be of an inferior form, particularly when such a marriage is looked down upon by the caste people; but if such a marriage is not considered the least blameworthy, it would be deemed to be of the *Brahma* form. (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PALTAN. **90 I.C. 358= 48 All. 126=23 A.L.J. 981=6 L.R.A. Civ. 557= A.I.R. 1926 All. 1.**

———*All ceremonies are not necessary to validate a widow re-marriage of a* Khatri *girl.*

It is not necessary for the validity of a marriage by a *Kkatri* widow that all the usual ceremonies which have to be performed in the case of a *Khatri* girl on her first marriage should be performed and in such cases if the parties go through such ceremonies as they can reasonably arrange for and clearly and unequivocally express their intention to enter into the marriage relation with each other and as a fact thereafter live together as husband and wife, such a union is a valid marriage: 49 P.R. 1903, *Foll.* (*Martineau, J.*). MT. RAM RAKNI *v.* DAULAT RAM. **90 I.C. 1056=26 P.L.R. 744= A I.R. 1926 Lah. 31.**

———*Re-marriage during lifetime of first husband —Custom as to, must be proved.*

Sagai in the form of remarriage of widows is the normal condition in all except the five or six highest castes of Hindus in Bihar. But a custom

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of *sagai*, while the first husband is still alive is, even assuming the custom to be a valid defence under S. 494, something which would require strict proof in respect of the particular caste in the particular area and in respect of the conditions in which the custom operates: 19 Cal. 627, *Dist.* (*Macpherson, J.*). FAGU TANTI *v.* CHOTE LAL TANTI. **96 I.C. 115=7 P.L.T. 443=27 Cr. L.J. 867= A.I.R. 1926 Pat. 346.**

—Marriage—Restitution of conjugal rights.

———*Living in adultery with wife's sister—Defence to husband's suit for restitution.*

Under the Indian Law cruelty in the legal sense need not necessarily be physical violence. A course of conduct which if persisted in would undermine the health of the wife is a sufficient justification for refusing to the husband a decree for restitution of conjugal rights.

A woman was married when she was 10 years of age. After consummation of marriage at the age of 15 years she came to her husband's place but found him living in adultery with her elder sister from whom he had two children. She protested against this conduct of her husband, who subsequently executed an agreement in her favour covenanting to give up his illicit connexion, but he had not kept his agreement. The wife obtained a decree for maintenance. Subsequently the husband sued for restitution of conjugal rights,

Held, that decree for conjugal rights should not be passed: *Russel* v. *Russel*, (1897) A. C. 393 and *Swatman* v. *Swatman*, 164 E.R. 1467; 8 All. 78; 34 Cal. 971; A.I.R. 1924 Mad. 49 and 11 M.I.A. 551, *Rel. on.* (*Gokaran Nath Misra, J.*). MT. CHILHA *v.* CHEDI. **115 I.C. 299=6 O. W.N. 10= 4 Luck. 355=A.I.R. 1929 Oudh 121.**

———While Hindu Law lays down the duty of the wife of implicit obedience to her husband, it does not provide any such procedure as compulsion by Courts to force her to return to him against her will: A.I.R. 1927 Bom. 264, *Foll.* (*Bhide, J.*). GURMUKH SINGH *v.* MT. HARBANS KUAR. **113 I.C 777=A.I.R. 1928 Lah. 902.**

———*Defences—Abandonment and ill-treatment.*

The principle, that where a wife is turned out or ill-treated so as to make it impossible for her to live with her husband, or where the breach between the husband and wife is irremediable so that it is impossible for the latter to return to the former after many years' separation without leading to fresh trouble and dispute, she is entitled to maintenance by living separate from him applies equally to the case of a Hindu or a Mahomedan whether the question arises under S. 488, Criminal P.C., or in a suit for restitution of conjugal rights: 170 P.L.R. 1914, *Ref* (*Kinkhede, A. J. C.*). MT. KURSHID BEGUM *v.* ABDUL RASHID. **100 I.C. 169=A.I.R. 1927 Nag. 139.**

——— *Principles to be followed—Legal cruelty in England and in India—Fear of bodily injury is not necessary—Cessation of marital relations is good cause—Personal violence to wife is not justified.*

Courts in India have jurisdiction to entertain suits for restitution of conjugal rights and to grant relief when the parties are Hindus or Mahomedans' 28 C. 37, *Ref.* and they are enjoined to decide according to justice, equity and good conscience.

Cruelty in the legal sense need not necessarily be physical cruelty. A course of conduct which, if persisted in would undermine the health of the wife, is sufficient justification for refusing to the husband a decree for restitution of conjugal rights.

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When a husband, who is guilty of a course of conduct which would be regarded as cruel to the wife, comes before a Court seeking its aid to compel his wife, to submit to his embraces; it is the duty of the Court to see whether the health of wife is likely to suffer by forcing her against her will to live with him.

In a case of restitution of conjugal rights by the husband the facts found were :—

1. The husband charged the wife with the attempted murder of her husband by poison.

2. He insulted her on more than one occasion and called her by the most vile epithet.

3. He treated her with loathing and disgust and abused her when she took some butter-milk to him, and he expressed his disgust by getting up from his unfinished meals.

4. He sent word through a servant that if she went back to him she would be dragged out by a Pariah and slippered.

5. He threatened her with violence by saying that he would lash her to pieces with a knife and allowed the second wife to abuse her and to say that she (meaning the 1st defendant) deserved to be made to stand in the road and be spat on by the passers by, that it was enough that she had not wronged its (child's) neck and thrown it into the well and that if she touched the child again she would be beaten with broom-stick.

6. He used personal violence by pushing her by neck. The mother-in-law and the paternal aunt who treated her with kindness turned against her after the charge of an attempted murder was ventilated by the husband.

It was further found that the husband had no marital relations with his wife (1st defendant) for a period of more than 7 or 8 years,

Held, that these circumstances are sufficient to make out cruelty under English Law.

Held, further that it would be cruel now to force the wife to go back to her husband against her will.

No doubt, some times the Hindu Society overlooks personal violence to the wife by the husband, but when a Court's intervention is asked for, the Court should not be guided by the public opinion in a country village, but by what is just and equitable in the circumstances. (*Phillips and Devadoss, JJ.*). KONDAL RAYAL REDDIAR *v.* RANGANAYAKI AMMAL. **74 I.C. 166=46 Mad. 791= 18 M.L.W. 465=1923 M.W.N. 499= A.I.R. 1924 Mad. 49=45 M.L.J. 186.**

———Marriage during minority of both the boy and girl—Repudiation after puberty or before consummation is not allowed in Hindu Law and is no defence to a suit for restitution of conjugal rights.

Among the Hindus, marriage generally takes place at a very early age, when in fact both the boy and girl are minors. It is also well known that among the Hindus a marriage once performed cannot be dissolved, for any reason whatever, and it would be repugnant to all notions and sentiments of Hindu society if the wife was given a freedom to repudiate her marriage as soon as she came of age or before consummation had taken place, merely on the ground that the marriage had been performed during her minority. (*Abdul Raoof and Moti Sagar, JJ.*). MUNSHI *v.* MT. BHAGWANI. **64 I.C. 356=18 P.L.R. 1922= A.I.R. 1922 Lah. 79.**

—Marriage—Validity.

———European lady convert into Hinduism after renouncing her own religion—She marrying a Hindu in accordance with Hindu religious rites—Marriage is valid: A.I.R. 1922 Bom. 32 and 14 Bom. L.R. 547, *Rel. on.* (*Venkatasubba Rao, J.*). RATANSI *v.* ADMINISTRATOR-GENERAL OF MADRAS. **111 I.C. 364=52 Mad. 160=1928 M.W.N. 848= A.I.R. 1928 Mad. 1279=55 M.L.J. 478.**

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———*Macpherson, J.*—The marriage of a person converted to Hinduism by the Arya Samaj rites with a Hindu is valid. (*Kulwant Sahay and Macpherson, JJ.*). SITA DEVI *v.* GOPAL SARAN NARAYAN SINGH. **111 I. C. 762=9 P.L.T. 397= A.I.R. 1928 Pat. 375.**

———In the charge of bigamy, where in the first marriage the giving away of the bride was with the consent of the legal guardian who was in jail,

Held, that the first marriage was valid and hence the subsequent marriage with the same woman constituted bigamy. (*Cuming and Gregory, JJ.*). BENODIN HOWLADAR *v.* EMPEROR. **100 I. C. 711=28 Cr.L.J. 327=7 A.I.Cr.R. 515= A.I.R. 1927 Cal. 480.**

———An illegitimate son of a Sonar father and Mallahin woman being a Sudra cannot validly marry a Baniya girl: 28 All. 458 and 10 A.L.J. 181, *Foll.* (*Walsh and Pullan, JJ.*). MUNNI LAL *v.* MT. SHYAMASONARAIN. **97 I.C. 347= 48 All. 670=24 A.L.J. 757= A.I.R. 1926 All. 656.**

———Pat *marriage—Incidents of.*

Though a *pat* marriage may be most secular still it also has religious significance; for a son of a *pat* marriage is a legitimate son of his father, and entitled to succeed to his father's property. The wife by this ceremony is looked upon as a wife with a wife's duties, responsibilities and privileges.

A *pat* marriage is not merely a civil contract, and as such liable to be declared invalid because of fraud practised by one of the contracting parties on the other. The religious bond between the parties created by the marriage prevents it from being declared invalid on the ground that the woman while being married knowingly concealed from her would-be husband her pregnancy by some other person. (*Prideaux, A.J.C.*). MANI *v.* ZEBOO. **95 I.C. 705=22 N.L.R. 134= 9 N.L.J. 160=A.I.R. 1926 Nag. 488.**

———The marriages between members of different Sudra castes are valid under the Hindu Law. Marriage between a Kayastha and a Dom is valid. The Bengali Kayasthas are treated as Sudras in Calcutta High Court.

Per *Greaves, J.*—Upon the authorities it does not appear that if a marriage is otherwise valid it becomes invalid because it is opposed to the usages of the community and is not recognised by them as valid. (*Greaves and Panton, JJ.*). BHOLANATH MITTER *v.* EMPEROR. **81 I.C. 709= 51 Cal. 488=28 C. W. N. 323= 26 Cr.L.J. 997=A.I.R. 1924 Cal. 616.**

———A marriage is not invalidated for want of the guardian's consent. (*Martineau, J.*). BALLU MAL *v.* HARDAWARI MAL. **79 I.C. 451= 6 L.L.J. 219=A.I.R. 1924 Lah. 570.**

———*Marriage duly solemnised—Invalidity of.*

A Hindu marriage is a sacrament and a marriage which is duly solemnised and is otherwise valid is not rendered invalid merely because it is brought about without the consent of the guardian in marriage or even in contravention of an express order of the Court. A marriage tainted by fraud is a voidable transaction, but it is binding until it is set aside by a competent Court. Unless it is decided to be invalid, it can sustain an indictment for

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bigamy. (*Shadi Lal, C.J.*). GAJJA NAND *v.* EMPEROR. **64 I. C. 500=71 I.C. 215=24 Cr.L.J. 87=23 Cr.L.J. 20=8 P.L.R. 1922= 2 Lah. 288=108 P.L.R. 1921=A.I.R. 1922 Lah. 139.**

—Marriage—Who can give in marriage.

———*Right of father to arrange for marriage of his children is personal—It cannot be delegated except by testamentary provision.*

Under Hindu Law, as in most other systems of law, the right of a father to arrange for the marriage of his children is personal to him. He cannot delegate it to another person except by making a testamentary provision under certain conditions. He cannot, in his lifetime, assign it so as to substitute another person in his place. Indeed the power which the father possesses in this matter is in reality not a right strictly so called. It is a duty which he owns to the child and which, by the very nature of his relationship he is peculiarly fitted to perform to the benefit of the latter. In discharging this duty he is not to derive any ulterior gain for himself but must act in a manner which is most conducive to the interests of the child. (*Tek Chand and Agha Haidar, JJ.*). ATMA RAM *v.* BANKU MAL. **A.I.R. 1930 Lah. 561.**

———*Marriage arranged by mother—Father's consent not obtained—Marriage is not invalid.*

In the absence of the father and paternal male relations, the right of selecting a husband for a female infant devolves upon the mother and the mother is, according to the rules of Hindu Law, fully competent to give her daughter in marriage. In the absence of force or fraud a Hindu marriage otherwise legally contracted and performed with the necessary ceremonies is not invalidated by the absence of consent of the father: (64 P.R. 1884, *Dist.*; 20 P.R. 1916, *Foll.* (*Moti Sagar, J.*). JAGAN NATH *v.* BASANT RAM. **75 I.C. 24= A.I.R. 1923 Lah. 595.**

———Under Hindu Law the mother is, after the father, the guardian of the minor daughter, and her right to select a bridegroom for the girl is prior to that of the paternal kindred. The consent of the girl's uncle, therefore, is unnecessary. (*Abdul Raoof and Martineau, JJ.*). MT. JIWANI *v.* MULA RAM. **67 I.C. 253=3 Lah. 29=67 P.L R. 1922=A.I.R. 1922 Lah. 112.**

—Marriage—Miscellaneous.

———No obligation on mother to marry her sons by borrowing on security of property inherited from her father—(*Obiter*). 50 M.L.J. 221, *Not shaken by* 54 M.L.J. 618. (*Ananthakriskna Ayyar, J.*). ANANDRAO *v.* VENKATASUBBA RAO. **123 I.C. 812=1930 M.W.N. 40=31 M.L.W. 692=A.I.R. 1930 Mad. 287=58 M.L.J. 127.**

———A marriage gift to a son-in-law at the time of marriage made by the bride's parents or grandparents may be of a portion of the donor's property, but it cannot be of the property of the bride herself unless the girl could not be married unless accompanied by such a gift. (*Ramesam, J.*). P. GUNDAPPA *v.* NARASAPPA. **99 I.C. 691=A. I. R. 1927 Mad. 455.**

—Minority and guardianship.

———Although the appointment of a guardian by the Court supersedes the powers of natural and testamentary guardians, the powers of a natural guardian in the absence of such appointment are unaffected by the restrictions which the Guardians and Wards Act places upon the powers of guardians

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appointed by the Court. The validity of his acts must be determined by the general principles which govern the relations of a minor to the manager of his estate or, in the words of the Guardians and Wards Act, he may do all acts which are reasonable and proper for the realization, protection or benefit of the property. (*Rupchand Bilaram, A. J. C.*). LAKHUMICHAND ISARDAS *v.* FIRM OF KHUSALDAS MANGATRAM. **88 I.C. 116=18 S.L R. 230=A.I.R. 1925 Sind 330.**

—Minority and guardianship—Benefit to estate.

———A party filling a fiduciary character like that of a guardian is authorized to perform any act which is manifestly for the infant's benefit: 6 M. I. A. 393 (P.C.), *Foll.* (*Rupchand Bilaram, A. J. C.*). LAKHUMICHAND ISARDAS *v.* FIRM OF KHUSHALDAS MANGATRAM. **88 I.C. 116=18 S.L.R. 230=A.I.R. 1925 Sind 330.**

———Guardian taking crops of third person for benefit of estate—Estate is liable for value of the crops: 28 Bom. 330 and 40 Mad. 632. *Foll.* (*Kotval, A. J.C.*). CHATARIA *v.* DAWALAT. **66 I.C. 468=5 N.L.J. 206=A.I.R. 1922 Nag. 48.**

—Minority and guardianship—Brother.

———*Brother—When* de facto *guardian of his minor sister.*

The elder brother of his minor sister assumed control and management of the family property and the minor sister was allowed to live in her family and received support from out of the family property during her minority,

Held, that there was enough to hold that the elder brother occupied fiduciary relationship of a *de facto* guardian. (*Sundaram Chetty, J.*). SORIMUTHU THONDAMAN *v.* PERUMAL AMMAL. **A.I.R. 1930 Mad. 708.**

—Minority and guardianship—Compromise by guardian.

———*Improper compromise by* de facto *guardian does not bind minor.*

Where the *de facto* guardian of a minor reversioner entered into a compromise by which substantial rights of the minor were given up to the plaintiffs, who, the guardian should have known, had no manner of right thereto,

Held, that inference that the compromise was obtained improperly, is almost irresistible. The guardian could not bargain away the ward's right which was only a *spes successionis*. It was not a settlement of a *bona fide* family dispute such as has been recognised by the Privy Council. The minor himself could not be considered a party to the suit, as no guardian had been appointed. He, therefore, could not be personally bound as a party to the compromise and decree: A.I.R. 1917 P. C. 95, *Foll.* (*Ryves and Gokul Prasad, JJ.*). NARAIN SINGH *v.* RAJ KUMAR SINGH. **66 I.C. 62=44 All. 428=20 A.L.J. 251=A.I.R. 1922 All. 217.**

—Minority and guardianship—Father's power to appoint.

———Whether a Hindu father has power to appoint a testamentary guardian of joint family property by will was gravely doubted. (*Marten, C. J. and Crump, J.*). VENKATARAMAN *v.* JANARDHAN. **106 I.C. 79=52 Bom. 16=29 Bom. L.R. 1522=A.I.R. 1928 Bom. 8.**

———Where the property is a Hindu joint family property the father is not competent to appoint by will a guardian of the property of his minor son to take effect after the death of the testator. (*Krishnan, J.*). K. SUBBARAYADU *v.* K. SUBBANNA. **85 I.C. 457=A.I.R. 1925 Mad. 371=47 M.L.J. 765.**

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——A Hindu father can by word or writing nominate a guardian for his children, the nomination taking effect after his death, and he is unrestricted in the choice of a guardian and may exclude even the mother from the guardianship. (*Mears, C J. and Sulaiman, J.*). DEBA NAND *v.* ANANDMANI.

59 I C. 909=43 All. 213=A.I.R. 1921 All. 346.

——Testamentary guardian—Sole owner of ancestral property can appoint guardian for son to be adopted after his death: 41 Mad. 561 (F.B.) and 43 Bom. 778 (P.C.). *Dist.* (*Ayling and Odgers, JJ.*). VENKATARAMA NAGANATHA RAO *v.* K. RAMAYAMMA. **62 I.C. 437=44 Mad. 189=13 M.L.W. 91=A. I. R. 1921 Mad. 132=40 M.L.J. 46.**

——*Father's power to exclude mother by testamentary appointment.*

The father acts as guardian by delegation until superseded, as he is the person next after the sovereign who would best look to the interests of the minor. There is no presumption, however, that he will make the best choice of a guardian when necessary. The reasons for the implied delegation of the sovereign's guardianship to the father do not apply so far as the delegation of the power of appointment is concerned. The mother is the sovereign's delegate next after the father and she cannot be excluded by the father's selection and testamentary appointment of a guardian: 13 M.I.A. 209, *Dist.*; (1917) M.W.N. 744 and 40 Mad. 672, *Foll.* (*Kotval, A. J. C.*). JIWANDAS *v.* RAJRANI. **64 I.C 433=A.I.R. 1921 Nag. 97.**

—Minority and Guardianship—Grand-mother.

——In the absence of the father and the mother the paternal grandmother is a natural guardian of her grandchildren: 38 Mad. 1125 and 26 Cal. 820, *Ref.* (*Devadoss and Jackson. JJ.*). SUBAYYA *v.* SUBAMMA. **106 I.C. 863=1927 M.W.N. 911=A. I. R. 1928 Mad. 42=53 M.L.J. 677.**

—Minority and guardianship—Husband.

——*Husband is entitled to the custody of his minor wife unless good cause is shown to the contrary.*

Under Hindu Law the husband is the natural guardian of his minor wife, unless good cause be shown to the contrary. The fact that a girl is not mature would be a ground for the Court refusing to give the custody of his wife to a husband unless her parents were dead and the Court could be convinced that no attempt to enter into conjugal relations would be made before maturity; 23 W.R. 178 and 28 Cal. 37, *Appr.* (*Macleod, C.J. and Coyajee, J.*). NAVANITLAL *v.* PURSHOTTAM. **94 I.C. 11=50 Bom. 268=28 Bom. L. R. 143=A. I. R. 1926 Bom. 228.**

—Minority and guardianship—Joint family.

——No guardian in respect of the minor's interest in the property of an undivided Hindu Mitakshara family should be appointed: 25 All. 407, *Rel. on.* (*Lindsay and Sulaiman, JJ.*). RATTAN CHAND *v.* RAM KISHAN. **114 I. C. 743=26 A.L.J. 777=A.I.R. 1928 All. 447.**

——Court cannot appoint one member guardian of another in respect of joint family property. Under the Hindu Law itself the active eldest member is manager of joint family property without any order of Court. (*Dalal, J.C.*). BALBIR *v.* CHEDI LAL. **85 I. C. 276=A.I.R. 1925 Oudh 642.**

—Minority and guardianship—Liability.

——Neither the minors nor their estates are liable for the debts borrowed by a guardian which do not purport to bind their estate. (*Subhedar, A.J. C.*). HAZARIMAL *v.* GOVINDA. **119 I.C. 683 (Nag.).**

HINDU LAW — Minority and guardianship—Mother.

—Minority and guardianship—Marriage.

——*Minor is obliged to provide for marriage expenses of sister suitably to position of family.*

By general principles of Hindu Law a minor is under an obligation to provide out of the family property the funds necessary for performing the marriage ceremonies of his sister in a manner suitable to the social position of the family and its pecuniary resources: 32 All. 325. *Foll.* Such provision is "necessary" and one which the minor is "legally bound" to make within S. 68.

Per *Daniels, A.J.C.*—Providing for the marriage of a sister is certainly not what is ordinarily understood by the phrase "supplying an infant with necessaries suited to his condition in life". (*Daniels and Wazir Hasan, A.J.Cs.*). JAI INDRA BAHADUR SINGH *v.* MT DILRAJ KUAR. **61 I.C. 278=8 O. L. J. 94=A. I. R. 1921 Oudh 14.**

—Minority and guardianship—Mother.

——*Widow is competent to collect debts, even mortgage debts as a natural guardian of her minor son.*

A widowed mother of a Hindu minor as his *de facto* and natural guardian has full power to collect debts. The mere fact that there is a lien on property for the debt cannot make any difference. The mortgagors of the property mortgaged to her late husband can pay the mortgage amount to her in good faith in the ordinary course of business. (*Addison, J.*). LABHU RAM *v.* SAZAWAR. **100 I.C 129=A.I.R. 1927 Lah. 237.**

——Mother as guardian of the minor son is not competent in law to revive time-barred debt due from the deceased father: 7 O.C. 46, *Foll.* (*Stuart, C.J. and Wazir Hasan, J.*). BRAMHADIN *v.* RAM LAKHAN. **99 I.C. 215=3 O.W.N. 980=A.I.R. 1927 Oudh 52.**

——Under Hindu Law in the absence of any custom to the contrary, the mother is a *de jure* guardian of the minor after the death of the father. (*Campbell and Dalip Singh JJ.*). ICHHAR *v.* NATHA. **98 I.C. 514=8 L.L J. 479=27 P. L. R. 623=A. I. R. 1926 Lah. 693.**

——On the death of a Hindu leaving sons, all of whom are minors, and separate property, the minors' mother is their natural guardian in respect of the property. (*Mears, C.J. and Mukerji, J.*). SWARATH RAM *v.* RAM BALLABH. **89 I.C. 27=47 All. 784=23 A. L J. 625=6 L.R.A. Civ. 465=A.I.R. 1925 All. 595.**

——Mother is the lawful guardian of her infant sons where the sons are the sole owners of their property: A.I.R. 1922 Nag. 201, *Expl.* and A.I.R. 1924 Nag. 354, *Foll.* (*Kinkhede, A.J.C.*). SHAMPURI *v.* RAMCHANDRA. **88 I.C. 268=A.I.R. 1925 Nag. 385.**

——*Mother is guardian of minor son's person and property after father.*

There is no support in Hindu Law for the proposition that a Hindu mother is not the legal guardian of the property of her minor son, after the father. On the contrary there is overwhelming authority in support of the proposition that under Hindu Law after the father the mother is the natural and legal guardian of her minor son's person and property, in a family where a minor son is the sole owner of the property and there are no other undivided co-parceners entitled to a share therein: A.I.R. 1922 Nag. 201, *Not foll.* and *Dist.*; 10 N.L.R. 183. (*Kinkhede, A. J. C.*). GANPAT SAMLAJI *v.* MAHADEO. **78 I.C. 956=25 N.L.R. 8=A.I.R. 1924 Nag. 354.**

HINDU LAW — Minority and guardianship — Mother.

———The mother continues to be the natural guardian of her infant son, even after her re-marriage if the infant son lived with her. (*Shah and Crump, JJ.*). REWJI THAKARAM PATIL *v.* HEMRAJ SADURAM. **75 I.C. 561=A.I.R. 1923 Bom. 213.**

———*Right to guardianship—Not lost by re-marriage of mother.*

A Hindu widow, who is allowed to re-marry by the custom of her caste, does not, on re-marriage, lose her right of guardianship of her minor son. (*Prideaux, A.J.C.*). SHAHU *v.* MOHIDIN.

63 I.C. 397=4 N.L.J. 80.

—Minority and guardianship—Powers of.

———The powers of a *de facto* guardian are the same as those of a lawful guardian under the Hindu Law: A.I.R. 1928 Mad. 226; 38 Mad. 1125 and 12 C.L.J. 586, *Foll.* (*Devadoss and Mackay, JJ.*). ALAGUMPERUMAL KARALAYER *v.* VINAYAGATHAMMAL. **117 I.C. 731=29 M.L.W. 6= A.I.R. 1929 Mad. 110=55 M.L.J. 861.**

———*Guardian cannot bind minor's estate with personal covenant to sell even for necessary purposes.*

The Full Bench case in 42 Mad. 185 means that so far, and only in so far, as the contract by the guardian embodies the personal Hindu Law liability of the minor, it is enforceable against the minor and in so far as it goes beyond it, comes under the general rule that a guardian cannot bind his ward by a personal covenant.

Hindu Law does not compel a minor to discharge debts for necessary purposes by contracting to sell his property; it merely compels him to discharge the debts; it does not lay down the method in which he shall discharge or restrict him to any one method; it is not concerned with what method he adopts provided the debts are discharged and therefore a guardian of a Hindu minor cannot bind his award by a personal covenant for sale of the minor's estate though contracted for necessary purposes so that specific performance of the contract may be decreed against the minor: A.I.R. 1924 Mad. 863, *Reversed*; 42 Mad. 185 (F.B.), *Expl.*; 15 Cal. 8 (P.C.), *Dist.*; 18 Mad. 415, *Diss. from*; 39 Cal. 232 (P.C.), *Rel. on.* (*Wallace and Thiruvenkatachariar, JJ.*). RAMAKRISHNA *v.* CHIDAMBARA. **108 I.C. 282=27 M.L.W. 322= 1928 M.W.N. 185=A.I.R. 1928 Mad. 407= 54 M.L.J. 412.**

———*Liability of minor for contracts by guardian explained.*

Thiruvenkatachariar, J.—As regards the powers of a natural guardian of a minor to deal with the minor's estate and bind the minor by his contracts the following propositions are well established: (1) the guardian may in case of necessity sell or mortgage his ward's property to the extent of such necessity; (2) the guardian may also without charging the estate contract loans for necessary purposes which he could not otherwise meet; the term "necessary purposes" being understood as comprising all that is necessary to meet the wants of the minor and of other members of the family who have claims either against him personally or against his estate. The creditor in such cases cannot enforce the claim against the minor personally, but may enforce it against his properties; and (3) the guardian cannot enter into any covenants in the name of the ward so as to impose a personal liability upon him. (*Wallace and Thiruvenkatachariar, JJ.*). RAMAKRISHNA *v.* CHIDAMBARA. **108 I.C. 282=27 M.L.W. 322=1928 M.W.N. 185= A.I.R. 1928 Mad. 407=54 M.L.J. 412.**

HINDU LAW — Partition — Accounts—Absence of fraud.

———There is no distinction between the expressions 'manager' and '*de facto* guardian', because both as a matter of fact do guard, manage or look after the interest of the minor as regards his person or property, or both. (*Kinkhede, Offg. A. J. C.*). PUNJABRAO *v.* RAMAKRISHNA. **95 I. C. 553= 9 N. L. J. 70=A.I.R. 1926 Nag. 332.**

———A guardian of Hindu infants is not authorised to carry on trade embarking the minor's property in the business in order to liquidate family debts. Minors do not become partners by virtue of any contract of partnership made by their guardian. (*Abdur Rahim and Sadasiva Aiyar, JJ.*). VENKATASURYANARAYANA *v.* A. RAMAYYA. **62 I. C. 802= 1921 M.W.N. 100=13 M L.W. 551= A. I. R. 1921 Mad. 98=40 M. L. J. 153.**

—Minority and guardianship—Who can be.

———*Minor widow—Nearest sapinda of husband is preferred to her father.*

If a Hindu female becomes a widow when she is a minor, the eldest among the nearest sapindas of her husband becomes her guardian in preference even to her father or other paternal relations: 16 Cal. 584; 2 Hay. 196; 8 B. H. C. A. C. 31 and 17 Cal. 298, *Rel. on.* (*Devadoss and Mackay, JJ.*). ALAGUMPERUMAL KARAYALAR *v.* VINAYAGATHAMMAL. **117 I. C. 731=29 M.L.W. 6= A.I.R. 1929 Mad. 110=55 M.L.J. 861.**

———The ordinary rule of Hindu law as stated in the text books is that no relation except the parents is entitled as of right to the guardianship of a minor and that failing the father and mother another relative must derive his authority from the Courts. (*Campbell, J.*). CHANDULAL *v.* MUKANDI. **87 I.C. 40=26 P.L.R. 120=A.I.R. 1925 Lah. 503.**

—Partition.

Accounts.
Agreement.
Alienation.
Award.
Burden of proof.
Custom.
Daughters.
Declaration of intention.
Division in status.
Effect of.
Equities.
Evidence of.
Father.
Female sharer.
Institution of suit.
Minor.
Partial partition.
Provision.
Re-opening of.
Re-union.
Right to.
Shares.
Subject-matter.
Suit for.
Miscellaneous.

—Partition—Accounts—Absence of fraud.

———*No accounting for past transactions.*

In an ordinary suit for partition in the absence of fraud or other improper conduct, the only account the manager is liable to render is as to the existing state of the property divisible. The parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters: 43 Cal. 459, *Foll.* (*Courtney-Terrell, C.J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A.I.R. 1930 Pat. 260.**

HINDU LAW — Partition — Accounts—Absence of fraud.

———*Manager is not liable to pay interest on savings from income till date of decree.*

In ordinary suit for partition where no fraud or improper conduct is alleged against the manager, he is not liable to pay interest on the savings from income, bonds realised, savings withdrawn from Bankers, from the date when savings were made or bonds realised and savings withdrawn nor from the date of institution of the suit for partition but only from the date of decree. (*Courtney-Terrell, C. J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A.I.R. 1930 Pat. 260.**

———*Manager is not liable for barred debts.*

No relief can be granted against the manager in respect of barred debts in the absence of fraud or dishonesty on his part. (*Courtney-Terrell, C.J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A. I. R. 1930 Pat. 260.**

———*Manager need only account for existing state of property—Subsequent to suit for partition, he must strictly account.*

In an ordinary suit for partition, in the absence of fraud or other improper conduct, the only account the karta or manager is liable for, is as to the existing state of the property divisible, and the parties have no right to look back and claim relief against past inequality or enjoyment of the members or other matters. In the absence of any proof of fraud what the Court has to proceed upon is the assets of the family as they existed at the date of the suit; but subsequent to the date of the suit, the parties become only tenants-in common or co-sharers and therefore the karta is strictly bound to account for all receipts and expenses and can take credit only for such expenses as have been incurred for the benefit or necessity of the estate, and the net income after deduction of such expenses will have to be divided equally between him and the plaintiff: 43 Cal. 459, *Rel. on.* (*Coutts-Trotter, C.J. and Sundaram Chetty, J. and afterwards Srinivasa Aiyangar, J.*). SRI RANGA THATHACHARIAR *v.* SRINIVASA THATHACHARIAR. **104 I.C. 472=50 Mad. 866=26 M.L.W. 125= 39 M.L.T. 234=A.I.R. 1927 Mad. 801= 53 M.L.J. 189.**

———*Accounts to be submitted by the Manager is of the existing assets on the date of partition—Propriety of past transactions cannot be questioned.*

All that a co-parcener seeking partition is entitled to is an account of the property which exists at the date of the partition or at the date when owing to demand for partition there had been a severance of *status*. The manager being the accounting party has to file an account as to the properties available for partition. But the other members of the family are not bound to accept the statement of the manager and it is the duty of the Court to try to discover what properties do really belong to the family. Any member also is at liberty to show that the expenditure which the manager says has been incurred has not been incurred or that savings have not been entered into account. But the account is merely an enquiry into the existing assets and that the head of the family cannot be called upon to defend the propriety of his past transactions except in case of fraud, misappropriation or gross reckless waste. (*Spencer and Kumaraswamy Sastri, JJ.*). TADIBULLI TAMMIREDDI *v.* TADIBULLI GANGIREDDI. **70 I.C. 337= 45 Mad. 281=16 M.L.W. 85= 30 M.L.T. 323=A.I.R. 1922 Mad. 286= 42 M.L.J. 570.**

HINDU LAW—Partition—Accounts—Manager.

———*Manager's duty to account is only on the basis of what is available for partition.*

In an ordinary suit for partition, in the absence of fraud or other improper conduct, the only account the Karta is liable, for, is as to the existing state of the property divisible; the parties have no right to look back and claim relief against past inequality of enjoyment of the members or other matters. But the Karta is the accountable party and the enquiry directed by the Court must be conducted in the manner usually adopted to discover what in fact the property now consists of, not what the Karta says it is. (*Mookerjee and Panton, JJ.*). NIBARAN CHANDRA *v.* NIRUPAMA DEBI. **69 I.C. 476=34 C. L. J. 563= 26 C.W.N. 517=A.I.R. 1921 Cal. 131.**

———*Manager is liable to account for assets as they existed at time of partition.*

A Hindu manager is not responsible for the manner in which he has disposed of the family income in the past, except in the case of a fraud or misappropriation, but when a partition is demanded he cannot evade his liability to give an account of the assets of the family as it existed at the time of partition. The parties are not bound to accept the statement of the Karta as to what the properties consist of, and the manager is the accountable party and the Court can order an account to be taken: 43 Cal. 459, *Ref.* (*Phillips and Krishnan, JJ.*). K. KRISTNAYYA *v.* K. GURAVAYYA. **70 I.C. 143= 14 M.L.W. 668= 1921 M.W.N. 742=A.I.R. 1921 Mad. 443= 41 M.L.J. 503.**

—Partition—Accounts—Agreement.

———*Agreement to maintain separate accounts does not necessarily show agreement to debit amounts in partition.*

The mere fact that a certain agreement was come to, that accounts should be opened in the name of each of the co-parceners in which the separate expenditure of each co-parcener, should be entered, does not show that it was also agreed that the amounts should be debited in partition, because it might well be that it was, thought advisable to keep the accounts in this way, just to show whether the enjoyment during the state of non-division was fair, as between the parties. (*Wallis, C.J. and Hughes, J.*). L. VARADA RAGHAVIAH *v.* L. VENKATA RAMAYYA. **61 I.C. 772= 13 M.L.W. 262=A.I.R. 1921 Mad. 542.**

—Partition—Accounts—Excluded co-sharer.

———*Excluded member is entitled to mesne profits.*

There is no absolute rule that in a partition suit each and every claim for mesne profits is necessarily unsustainable. Where plaintiff was excluded from the property the claim clearly lies: 32 Mad. 271; 44 Bom. 179, *Dist.*; 7 Mad. 564; 9 N.L.R. 145, *Foll.*; 19 Bom. 532, *Appr.* (*Findlay, Offg. J. C.*). NILKANTH *v.* GAJANAN. **92 I.C. 365= A.I.R. 1926 Nag. 243.**

—Partition—Accounts—Manager.

———*Manager is not accountable for rents and profits but is bound to keep proper accounts.*

The manager of a joint Mitakshara Hindu family is not accountable for the rents, issues and profits, which came into his hands during his management of the properties as manager. But he is still bound to keep true and correct accounts and to share the savings effected from the income of the properties: A.I.R. 1921 Pat. 487, *Rel. on.* (*Courtney-Terrell, C. J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A.I.R. 1930 Pat. 260.**

HINDU LAW—Partition—Accounts—Manager.

——— *Plaintiff can demand accounts to ascertain the amount of savings available for partition.*

A member of a joint family, in asking for an account in a partition suit, cannot object to the various items of past expenditure by the karta, but he can call for an account for the purposes of ascertaining how much was saved each year out of the income so that it may be at the disposal of the joint family for partition. (*Mullick, J.*). SITA RAM *v.* HANUMAN PRASAD. **100 I.C. 632= 8 P.L.T. 145=A.I.R. 1927 Pat. 413.**

———*Manager's liability to account—Capital monies traced into his hands must be accounted for.*

A managing member is not bound to give a general account of his dealings and in the absence of fraud or misappropriation the managing member cannot be called upon to justify his past transactions : the manager is not bound to keep general accounts and co-parceners cannot complain if the manager in his discretion favours in his expenditure one of the co-parceners at the expense of the others. In this matter there is no difference between the position of an infant co-parcener and another. In respect of assets proved to have come into the hands of the manager, he has to account. It is not enough for him to say that he has no longer got those assets. Once it had been proved that the assets came into his hands, the co-parcener is not required to prove that they remained in his hands at the date of the partition. Capital monies proved to have come into the hands of a manager must be considered as available for partition in the absence of some evidence showing what has happened to them: 32 Mad. 271; 41 M.L.J. 503, *Foll.* (*Schwabe, C. J. and Waller, J.*). OFFICIAL ASSIGNEE OF MADRAS *v.* N. RAJABADAR PILLAI. **78 I.C. 536=1924 M.W.N. 192= 19 M.L.W. 597=34 M L.T 341= A.I.R. 1924 Mad. 458=46 M.L.J. 145.**

———*Manager liable to account for profits subsequent to suit.*

In a partition suit the plaintiff is not ordinarily entitled to claim an account of past profits but he is entitled to have an account taken of the profits of the properties subsequent to the date of suit. A member of a Hindu family suing for partition and for the profits of his share is really suing for an account of the profits received by the person in possession so that the proceeds received by the latter which are also divisible property, may be divided and his share therein also given to him. Such profits awarded to him is not awarded as *mesne profits* received by a person in wrongful possession but as appurtenant to the plaintiff's right in his share of the lands. (*Oldfield and Venkatasubba Rao, JJ.*). T. RAMASWAMI AIYAR *v.* T. SUBRAMANIA AIYAR. **74 I. C. 804= 16 M.L.W. 297=46 Mad. 47= A I.R. 1923 Mad. 147=43 M.L.J. 406.**

—Partition—Accounts—Mesne profits.

———*Manager cannot be called upon to render account for the suit period.*

Mesne profits cannot be claimed by co-parceners for the period between filing a partition suit and the passing of decree therein ; the manager of a joint family is not obliged to keep accounts of the family property immediately the suit for partition is filed. Although there is a severance of interest from the date of the suit it does not follow that the family property does not remain joint till it is actually divided: 44 Bom. 179, *Rel. on* ; 15 N.L.R. 31, *Ref.* (*Baker, J. C.*). JANARDHAN *v.* WASUDEO. **79 I.C. 19=A.I.R. 1924 Nag. 315.**

HINDU LAW—Partition—Accounts—Past transactions.

———*Suit impeaching alienation by manager—Mesne profits before suit cannot be granted against alienee.*

It is not usual to allow mesne profits before suit, in suits for partition against managers of joint families and unless it is shown that there was no necessity for the sale as a whole, the purchaser from the manager should not be made to account for the profits which the family might have received if they had retained possession of the property. (*Schwabe, C. J.*). MEENATCHI AYYAN *v.* RANGA CHARLU. **1922 M.W.N. 719= A.I.R. 1923 Mad. 120=16 M.L.W. 595.**

———*Mesne profits cannot be decreed in the absence of exclusion.*

In a suit for partition between one brother and the auction-purchaser in execution of a decree against another brother, the auction purchaser will not get mesne profits unless it is shown that he was obstructed in taking possession of any part of the joint property. (*Kotval, A.J.C.*). RAM NATH *v.* SITARAM. **74 I.C. 81=19 N.L.R. 147= A.I.R. 1923 Nag. 288.**

—Partition—Accounts—Mode of taking.

———*Propriety of expenditure by manager cannot be questioned.*

It is not open to any member of the family to assert that any particular item of expenditure incurred by the manager was improper. What can only be shown is that no such expenditure was in fact incurred. The propriety of the expenditure cannot be questioned by any member of the family. (*Courtney-Terrell, C. J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A.I R. 1930 Pat. 260.**

———*Account to be ordered is of assets and liabilities as on date of plaint.*

An account in a partition suit is an account of the assets and liabilities of the joint family, as they existed on the date of the plaint. What has to be ascertained is what are really the assets of the joint family and if any of the co-parceners has attempted to misappropriate any of the joint family property by putting it in the name of third parties, or otherwise, it may still be followed and made available for division. But it is not the case that disproportionate expenditure by any co-parcener in the past is a matter, which can be taken into account, when a partition in being effected. (*Wallis, C.J. and Hughes, J.*). L. VARADA RAGHAVIAH *v.* L. VENKATA RAMAYYA. **61 I. C. 772= 13 M.L.W. 262=A.I.R. 1921 Mad 542.**

—Partition—Accounts—Nature of.

———*Object is only discovery of property liable for partition.*

The nature of account which a manager is liable to render is unlike that required of a trustee and the object of taking accounts is to discover what are the joint family properties liable to be partitioned : A.I.R. 1930 Pat. 1 ; A I.R. 1921 Pat. 487, *Foll.* (*Courtney-Terrell, C.J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A. I. R. 1930 Pat. 260.**

—Partition—Accounts—Past transactions.

———*Not ordinarily ordered.*

In a partition suit the Court will not, except in special circumstances, order an account to be taken of past transactions. Where it is impossible to predicate how much will ultimately be realized out of the outstanding debts, it is sufficient to give the plaintiff a declaration that he is entitled to his proportionate share of whatever may be recovered.

HINDU LAW—Partition — Accounts—Presumption.

Any property acquired by a member with his own money after the passing of the preliminary decree for partition would not be liable to partition, but when, it is shown that he possessed ancestral funds from which such property could be acquired, it lies on him to show that these funds were not employed for the purpose. If he fails to discharge this burden, it must be presumed, that the property was acquired with money belonging to the joint family, and it is, therefore, liable to partition. (*Broadway and Brasher, JJ.*). LACHHMAN DAS *v.* NANAK CHAND. **70 I. C. 810= 3 P.W.R. 1923=A.I.R. 1923 Lah. 20.**

—Partition—Accounts—Presumption.

———Presumption is that Government demands regarding properties must have been paid and expenses on this account must therefore be deducted. (*Courtney-Terrell, C. J. and Kulwant Sahay, J.*). JYOTIBATI *v.* LACHHMESHWAR. **A.I.R. 1930 Pat. 260.**

—Partition—Agreement.

———By an unregistered deed of 1908 a father of joint Hindu family purported to make a division between himself and his minor sons. The minor sons brought a suit in 1912 for a declaration that they continued as members of an undivided family and that the partition deed was fraudulent and not binding on them. The suit, however, ended in a compromise decree in 1914 under the terms of which the properties were divided,

Held, that the suit, when instituted was a suit for declaration and therefore not a suit for partition at all,

Held, further: that the partition was effected by the compromise decree in 1914. (*Coutts Trotter, C. J. and Walsh, J.*). DORAISWAMI NADAN *v.* NAGASAMI NAICKEN. **121 I C. 863= A.I.R. 1929 Mad. 898.**

———Deed—Construction—Partition-deed between father and son providing that if either should fail to pay debts allotted to him under the deed, and thereby caused loss to other, it should be collected from property allotted in partition—Father paying debts allotted to son can get personal decree against son: 33 M.L.J. 58; A.I.R. 1924 All. 105, *Dist.*; 29 Mad. 441; 36 Mad. 348 and 34 Mad. 479, *Rel. on.* (*Odgers, J.*). RAMASAMI AYYAR *v.* DORAISAMI AYYAR. **114 I.C. 226=A.I.R. 1929 Mad. 137.**

———*Partition suit –Compromise—If all parties to the action should join.*

A compromise of a partition suit is not necessarily ineffectual because every party to the action does not join in it. It is undoubtedly true that in some cases there may not be a valid and lawful compromise unless all the parties join in effecting it; but each case must depend upon its own facts.

Where one member, on receiving a certain sum of money goes out of the family altogether and the property then belongs to the remaining members, such a compromise is a valid and lawful compromise. (*Venkatasubba Rao, J.*). THIRUVENGADA *v.* THANGAVELU. **108 I.C. 221= A.I.R. 1928 Mad. 594.**

———*Step-mother given a share for maintenance—Nature of estate in the share.*

Prima facie, when an arrangement is come to by which the step-mother is to receive a sum for maintenance the presumption would be that in no case could an absolute interest be intended to be conferred. But a presumption of this kind must yield to other circumstance that the lady was being made responsible for a definite share of the debts

HINDU LAW—Partition—Alienation.

which had been incurred by her late husband; when such a transaction has stood for a very long period of time, it would not be disturbed. (*Lord Shaw.*) SAHIB RAI *v.* SHAFIQ AHMAD. **101 I.C. 426=4 O.W.N. 534=1927 M.W.N. 490= 26 M.L.W. 82=31 C.W.N. 972= A.I.R. 1927 P.C. 101=53 M.L.J. 507 (P.C.).**

———*Partition suit by blind co-parcener compromised by recognising his title—Agreement is conclusive.*

Where in a partition suit the defendant pleads that plaintiff is not entitled to any share as he is congenitally blind, but the defendant does not proceed with the trial of the issue and enters into an agreement with the plaintiff by which the dispute is settled and one of the conditions of which is the recognition of the plaintiff's title by the defendant, the agreement is binding on the defendant and his descendants and is conclusive of the plaintiff's right to share in the joint property. (*Lindsay and Kanhaiya Lal, JJ.*). BUDH SAGAR *v.* BISHUN SAHAI. **86 I.C. 554=47 All. 327= 23 A.L.J. 141=A.I.R. 1925 All. 366.**

—Partition—Alienation.

———*Co-parcener's right to mortgage challenged—His long silence raises presumption of absence of his claim.*

Although time cannot run against a claim to partition joint family estate unless there has been definite exclusion, yet the fact that when a co-parcener's right to mortgage was challenged 14 years prior to suit and he took no steps, strongly suggests that at that time when evidence might have been more readily available he had no great faith in the value of his claim. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANIAN CHETTY. **113 I.C. 897=49 C.L.J. 93=1929 M.W N. 39= 29 M.L.W. 91=6 O.W.N. 104=1929 A L.J. 9= 31 Bom. L.R. 280=33 C.W.N. 435= 10 P.L.T. 283=A.I.R. 1929 P. C. 1= 56 M.L.J. 435 (P.C.).**

———Order vesting insolvent's property in Official Assignee is not analogous to attachment. (*Phillips, Offg. C. J., Ramesam and Madhavan Nair, JJ.*). OFFICIAL ASSIGNEE, MADRAS *v.* RAMACHANDRA. **112 I.C. 541=51 Mad. 417=1928 M W.N. 294= 28 M.L.W. 109=A.I.R. 1928 Mad. 735= 55 M.L.J. 175 (F.B.).**

———*Prior alienation by co-parcener—Co-parcener cannot insist that the part sold must go to his vendee.*

If there are numerous items of property and if the joint family consists of a large number of members, it would not be proper for any member to alienate any specific item in favour of a stranger and insist upon that item being conveyed to his vendee. Whether it is an actual sale, or contract of sale, the question, whether the vendee or one who has contracted to buy a specific item of the joint family property should be given that item would depend upon the circumstances of each case. (*Devadoss, J.*). VENKATARAMAYYA *v.* RAGHAVALU. **85 I.C. 1054= 21 M.L.W. 62=A.I.R. 1925 Mad. 492.**

———A sale by the father, after the separation in status between him and his adopted son cannot bind the son to the extent of the son's share. (*Ramesam and Jackson, JJ.*). VENKATA SESHAMMA *v.* APPA RAO. **80 I.C. 79=20 M L W. 181= A.I.R. 1925 Mad. 125.**

———*Alienee from co-parcener must sue for partition—Purchased property might be allotted to purchaser.*

HINDU LAW—Partition—Alienation.

The purchaser of an unascertained share of joint family property must bring a suit for partition in which the whole of the joint family property should be included and all necessary parties joined. In a suit of that nature the Court in making the partition would endeavour to give effect to the alienation and so to marshal the family property among the co-parceners as to allot that portion of the family estate or so much of it as may be just, to the purchaser : A. I. R. 1922 Bom. 137 ; A.I.R. 1922 Bom. 413, *Foll.* (*Baker, J.C.*). NARAYAN *v.* DHUDA BAI. **92 I.C. 663= 21 N. L. R. 38=A.I.R. 1925 Nag. 299.**

———A member of a joint family by purporting to alienate his own share does not effect separation. (*Dalal and Simpson, A.J.Cs.*). DWARK PRASAD *v.* RAM DEBI. **77 I. C. 329=10 O.L.J. 360= 27 O C. 140=A.I.R. 1924 Oudh 120.**

———*Alienee should be given the portion sold to him by allotting it to his vendor.*

A purchaser from one member of a joint family, of a property, can enforce the sale only by a partition of the entire family property and if in such partition the property sold, can, with due regard to the interests of the other sharer, etc., be wholly allotted to the vendor's share, the purchaser will be entitled to the whole property which the vendor professed to convey to him. In other words, the alienee will be decreed the possession of the specific property purchased by him, if that can be done, without substantial injustice to the other members and no co-parcener has a right to insist, in the absence of proof of such injustice, on his being given on division a share in the alienated item: 25 Mad. 690 ; 38 M. 684, *Appl.* (*Schwabe, C.J. and Wallace, J.*). BEEVI AMMAL *v.* RADHAKRISHNA IYER. **72 I.C. 81=17 M.L.W. 332= 32 M.L.T. 263=1923 M. W. N. 202= A.I.R. 1923 Mad. 467=44 M.L.J. 309.**

———*Alienee of part suing the alienee of the whole of the property for partition—Suit, if lies.*

The purchaser of an unascertained share (in a joint family property) cannot insist upon the possession of any definite piece of property. The remedy of the purchaser lies in a suit to have that share and interest ascertained by instituting a suit for general partition in which the whole of the joint family property should be included and all necessary parties joined: *Pandu Fithoji* v. *Goma Ramji*, 43 B. 472. In a suit of that nature the Court in making the partition would endeavour to give effect to the alienation and so to marshal the family property amongst the co-parceners as to allot that portion of the family estate, or so much of it as may be just to the purchaser'': 11 B. H. C. R. 76. When however, it has been proved that the whole of the family interest in the property has been disposed of by joint action between the members of the family or by separate action against which no dispute has been raised. then an action for partition between strangers in respect of a particular item may be allowed in the plainest of cases. (*Macleod, C.J. and Coyajee, J.*). ISHRAPPA GANAPPA HEGDE *v.* KRISHNA PUTTA SHANKAR HEGDE. **67 I.C. 833=46 Bom. 925= 24 Bom. L.R. 428=A.I.R. 1922 Bom. 413.**

———*Decree against family property and separate property of a co-parcener—Co-parcener's property earned after separation cannot be proceeded against.*

Where the decree was against the joint family property including the separate property of a certain member of a joint family and the member quitted the family :

HINDU LAW—Partition—Burden of proof.

Held, all of his property that remains liable for the satisfaction of the decree is (1) his share in the joint family property, (2) his separate property such as it was up to the date on which he quitted the family. His separate property acquired after he quitted the family is not and never was joint family property. (*Le Rossignol and Campbell, JJ.*). GOKUL CHAND *v.* HUKAM CHAND NATHU MAL. **65 I.C. 731=3 Lah. 14=A.I.R. 1922 Lah. 84.**

———*Suit against father by sons—Alienees from father included so as to set aside alienations—When alienee is entitled to a return of his purchase money.*

In suits for partition between sons and their father in which alienees are joined for the purpose of setting aside the father's alienations of the joint family property, the setting aside of the alienations cannot be made conditional on the refund by the sons of the moneys paid to the father in consideration of the alienations on the ground that the father becomes liable to make such a refund on the setting aside of the alienations and that his sons at the same time incur a pious obligation to discharge the liability. The setting aside of such alienations can be made conditional on the refund to the alienees of such part of the consideration as is shown to have been advanced by them for necessary purposes, including in that term the discharge of the father's debts antecedent to the alienations in discharge of which the son's shares have been brought to sale by reason of their pious obligation to discharge their father's debts, and a similar equity would be recognized if it were shown that the purchase-money has been carried to the joint family assets, but the setting aside cannot be made conditional on the refund by the sons of the consideration for the alienations paid by the alienees to the father. (*Wallis, C. J. and Seshagiri Aiyar, J.*). SREENIVASA AIYANGAR *v.* KUPPUSWAMI AIYANGAR. **64 I.C. 698=44 Mad. 801= 14 M. L. W. 78=1921 M. W. N. 630= A. I. R. 1921 Mad. 447.**

—Partition—Award.

———*Award granting extra sum to eldest brother is not invalid.*

An award is not illegal within the meaning of para. 14 (c) of Sch. II of Civil Procedure Code, simply because the arbitrator to whom Hindu brothers have referred a dispute as to partition has allowed the eldest brother a certain sum of money in excess of his share in consideration of his having to care for and to educate his younger brother for many years. But the sum awarded to the eldest brother in such a case cannot be called *Jeshtabhagam.* (*Krishnan and Waller, JJ.*). VAITHINATHA AIYAR *v.* SUBRAMANIA AIYAR. **78 I.C. 238=A.I.R. 1925 Mad. 301.**

—Partition—Burden of proof.

———*Plaintiff to prove that property is joint.*

The burden of proving in an action for partition of joint family property that any particular item of property is joint, primarily rests upon the plaintiff. Circumstances no doubt may readily cause the onus to be discharged, but where this has not been done and in the face of direct evidence accepted by the High Court, Privy Council is not at liberty to speculate as to alternative possibilities. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANIAN CHETTY. **113 I.C. 897=49 C.L.J. 93= 1929 M.W.N. 39=29 M L.W. 91=6 O.W.N. 104= 1929 A.L.J. 9=31 Bom. L.R. 280= 33 C.W.N. 435=10 P.L.T. 283= A.I.R. 1929 P.C. 1=56 M.L.J. 435 (P.C.).**

HINDU LAW—Partition—Burden of proof.

———*Divided member suing for declaration of title to his share—Plaintiff to prove the suit is within* 12 *years of partition.*

In a suit by a Hindu for a declaration of his title to a one half-share in certain property, it was common ground between the parties that there was no joint family on the date of the suit. It was also admitted by both parties that for the last eight or nine years they had been living and messing separately. According to the plaintiff every joint family property had been divided between them except the property in dispute. Bar of limitation was pleaded in defence.

Held, that the *onus* lay on the plaintiff to prove the point of time at which the status to the joint family broke and that the alleged partition by which his one half-share to the property was determined did take place within twelve years immediately preceding the institution of the suit: A. I. R. 1925 P. C. 132 and A.I.R. 1926 All. 453, *Expl.* and *Rel on.* (*Wazir Hasan and Raza, JJ.*). SARJOO PRASAD *v.* DEO DAT LAL. **105 I.C. 410= 4 O.W.N. 958= A. I. R. 1927 Oudh 499.**

———Where the family is admitted to be separate on the date of the suit, it is on the party that alleges that the acquisitions were made at a time when the family was joint, to prove that they were so made: 3 Cal. 315 (P.C.), *Foll.* (*Kanhaiya Lal and Boys, JJ.*). PRATAP NARAIN SINGH *v.* RAM KUMAR SINGH. **94 I.C. 944=24 A.L.J. 513= A.I.R. 1926 All. 453.**

———*Separation—Party alleging must prove.*

It is well-established law that those who allege that the members of a joint Hindu family had separated must prove, unless it is admitted, that there was a separation at some material time. A separation proved to have taken place at a time subsequent to the material time does not shift the burden of proving separation at the material time, on the opposite party. (*Sir John Edge.*) MT. BHAGWANI *v.* MOHAN SINGH. **88 I.C. 385= 29 C.W.N. 1037=23 A.L.J. 589=41 C.L.J. 591= 22 M.L.W. 211=1925 M.W.N. 421= A.I.R. 1925 P.C. 132=49 M.L.J. 55 (P.C.).**

———*Congenital blindness—Proof of.*

The *onus* of proving that a party was congenitally blind so as to be excluded from a share in joint property lies on the party asserting the same. (*Lindsay and Kanhaiya Lal, JJ.*). BUDH SAGAR *v.* BISHUN SAHAI. **86 I.C. 554= 23 A.L.J. 141=47 All. 327=A.I.R. 1925 All. 366.**

—Partition—Custom.

———*Nattukottai Chetties—Custom as to Moopu and Patni Bhaga.*

Among the Nattukottai Chetties inhabiting seven villages in the Madura District, Madras Presidency, there exist customs by which where a man marries a second wife in the life of the first, the first wife is entitled to have some property set aside for her maintenance which would descend to her son if she had one, and is then called *Moopu* and by which the property is notionally divided after the death of the father, one moiety going to the sons of the first wife and the other to the sons of the second. An agreement to the same effect does not show that the custom does not exist. (*Lord Phillimore.*) PALANIAPPA CHETTIAR *v.* ALAGAN CHETTI. **64 I. C. 439= 26 C.W.N. 417=15 M.L.W. 521= 30 M.L.T. 208=48 I.A. 539=44 Mad. 740= 1921 M.W.N. 687=A.I.R. 1922 P.C. 228 (P.C.).**

———*Custom of impartibility cannot be inferred from estate remaining undivided for a long period.*

HINDU LAW—Partition—Declaration of intention.

The fact that for a number of generations a particular estate has remained undivided would not by itself show that this was on account of a family custom or tenure of the estate. The custom of impartibility must be strictly proved in order to control the ordinary Hindu Law of Property. Exclusive Managership is unknown to Hindu Law and there must be clear arrangement to prove its existence. (*Dhobley, A. J. C.*). KRISHNA RAO *v.* NILKANTHA. **69 I.C. 800=18 N.L.R. 163= 5 N.L.J. 25=A.I.R. 1922 Nag. 52.**

—Partition—Daughters.

———*Life-estate can be partitioned.*

The right of partition or separate enjoyment is a necessary incidence of co-ownership, whether permanent or temporary, and therefore daughters in joint possession of a life-interest in property are entitled to a partition of the property so as to enjoy their respective rights separately and conveniently but so as not to impair the reversionary rights: 12 All. 51 (P.C.) and 33 All. 443, *Foll.* (*Abdul Raoof and Jai Lal, JJ.*). MT. LORANDI *v.* MT. NIHAL DEVI. **95 I.C. 701=6 Lah. 124= 26 P.L.R. 759= A.I.R. 1925 Lah. 403.**

———*If destroys right of survivorship.*

By a partition deed two step-sisters who inherited their father's properties divided his immovable properties. It closed with the following words :— Henceforth the only relationship between us will be one of friendship and not of property,"

Held, that the parties intended not merely to give their present right to the properties but to exclude the right of succession by survivorship in case one of them predeceased the other. (*Krishnan and Waller, JJ.*). RUKMANI AMMAL *v.* NARASIMHACHARIAR. **78 I.C. 173=19 M.L.W. 465= 34 M.L.T. 29=A.I.R. 1924 Mad. 696= 46 M.L.J. 285.**

—Partition—Declaration of intention.

———*Sale-deed by one brother to another—Apportionment of debts and properties therein—Intention to separate.*

In a previous suit brought for specific performance of an agreement for sale of his property, the sale-deed executed through Court by a Hindu vendor in favour of his brother, showed that some debts were taken as binding on both brothers and others on vendor's brother alone, and that some items of property were to go to the heirs of vendor.

Held, that there was an unmistakable intention that the brothers should thereafter be separate: 3 Bom. 54, *Rel. on*; 25 Mad. 690, *Expl.* and *Dist.*; 39 Mad. 265, *Dist.*; A. I. R. 1916 P. C. 104, *Ref.* (*Ramesam and Jackson, JJ.*). LAKSHMI ACHI *v.* NARAYANASAMI. **53 Mad. 188=30 M.L.W. 799= A.I.R. 1930 Mad. 57=57 M.L.J. 746.**

———*Notice of intention to separate withdrawn—No separation.*

Even where an unequivocal wish to separate is once declared by a notice, a separation will not be effected in law, if it be found, as a fact, that the intention was given up as the result of a subsequent agreement of all the parties including the member demanding a separation, by which the notice was expressly or impliedly withdrawn: A.I.R. 1928 All. 422, *Expl.*; 32 All. 415 and A.I.R. 1925 P.C. 49, *Rel, on*; A.I.R. 1928 All. 419, *Ref.* (*Mears, C.J. and Mukerji, J.*). BANKEY BEHARI LAL *v.* BRIJ BEHARI LAL. **116 I.C. 285= 51 All. 519=1929 A.L.J. 115= A. I. R. 1929 All. 170.**

HINDU LAW—Partition—Declaration of intention.

———*Partition—Test of—Intimation of intention to separate—Conduct as intention.*

To prove whether a joint Hindu family is separated the test is whether there has been an unambiguous and definite intimation of intention on the part of one member of the family to separate himself or to enjoy his share in severalty. If so, that has the effect of creating a division in interest. That expression of intention may be by the institution of a suit or by some express intimation, or may be inferred from a consistent long course of conduct.

The members of a joint Hindu family lived separately and had their properties divided excepting a particular property which was left undivided and for a large number of years the income of this property was divided in equal shares.

Held, that the joint Hindu family separated as regards the interest in the property although no actual partition took place: A.I.R. 1924 Bom. 31; A.I.R. 1922 P.C. 201; A.I.R. 1916 P.C. 104, *Foll.*; 18 Bom. 611, *Not foll.* (*Marten, C.J. and Murphy, J.*). MULJI NAROTAM *v.* HIRALAL RAMCHANDRA.

121 I.C. 439=31 Bom. L.R. 1067=
A.I.R. 1929 Bom. 424.

———*Submission to arbitration—Separation effected.*

Submission by members of joint family, for partitioning their shares by metes and bounds to an arbitration, operates as a disruption of the joint status involving the conversion of a joint tenancy into a tenancy-in-common: 35 All. 80 (P.C.); A.I.R. 1916 P.C. 104; A.I.R. 1917 P.C. 39 and A.I.R. 1922 P.C. 353, *Rel. on*; A.I.R. 1925 P.C. 49, *Dist.* (*Das and Allanson, JJ.*). BALMAKUND LAL *v.* MT. SOHANO KUERI. **119 I.C. 817=8 Pat. 153=**
10 P.L.T. 259=A.I.R. 1929 Pat. 164.

———*Unambiguous declaration of intention—Filing of plaint, application for mutation, notice, reference to arbitration—Intention inferred from conduct—Renunciation of intention—No separation.*

Partition is the severance of the status of a joint family, which may be effected by the exercise of individual volition indicating an intention to separate from the other members of the family.

The said intention must be manifested clearly and unambiguously.

The intention to separate may be established either by explicit declaration or from a uniform and consistent course of conduct of the party concerned or of other members of the family. The intention may be declared orally or in writing, and may manifest itself from the filing of a plaint for partition, from an application for mutation of names to the Tahsildar in specific shares with a view to separate enjoyment, from a written notice served upon the members of the family demanding a partition of the property, from an agreement executed by the various members of the family whereby the shares of the individual members are defined with the object of securing separate enjoyment of the profits, or from an agreement of reference to arbitration for the partition of the property. Instances like these may be enumerated but cannot be exhausted.

It is not necessary that there should be a consensus or agreement among the co-parceners for the severance of status of a joint family.

Where severance is effected by explicit declaration, the result is decisive, and the legal result cannot be affected or controlled by the subsequent conduct of the parties.

In the absence of an explicit declaration, an inference in support of the intention may be

HINDU LAW—Partition—Declaration of intention.

drawn from evidence of conduct which will necessarily be different according to the varying postures of each case.

Where there is evidence of intention to separate, this can only be annulled by clear evidence of the renunciation of such intention, and in some cases, by consensus or agreement on the part of the members of the family to re-unite.

Partition may also result from a definement or ascertainment of shares with a view to separate enjoyment of property.

The separation of one member of a co-parcenary is not necessarily a separation of the other members *inter se*: A.I.R. 1927 P.C. 224 and 1 I.A. 55, *Dist.*; 31 All. 412 (P.C.); A.I.R. 1925 P.C. 49; 26 A.L.J. 349; A.I.R. 1922 P.C. 201; 4 Cal. 434 and A.I.R. 1926 Mad. 388, *Discussed.* (*Sen and Niamatullah, JJ.*). MT. RAM KALI *v.* KHAMMAN LAL.

111 I.C. 33=51 All. 1=26 A.L.J. 857=
A. I. R. 1928 All. 422.

———*Separation—Unambiguous declaration of intention—How evinced.*

What may amount to a separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into a tenancy-in-common must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation, but to have that effect the intention must be unequivocal, and clearly expressed, and the intention to separate may be evinced in different ways either by explicit declaration or by conduct, and it is for the Court to determine whether the conduct of the parties showed that there is such an unequivocal and explicit intention to separate: A. I. R. 1927 Oudh 265, *Rel. on.* (*Raza and Nanavutty, JJ.*). BRIJLESHARI PRASAD *v.* KASHI PRASAD.

110 I. C. 886=5 O. W. N. 589=
A I.R. 1928 Oudh 365.

———An agreement appointing a certain person to partition the joint family property of the parties to a Hindu family and agreeing to accept the partition made by the arbitrator is sufficient to effect a severance in interest: A. I. R. 1922 P. C. 353, *Foll.* (*Mukerji and Ashworth, JJ.*). PARSHADI LAL *v.* HURDAS RAI. **101 I.C. 554=8 L.R.A. Rev. 130=**
A.I.R. 1927 All. 790.

———*Claim for share by one member—Subsequent appointment of arbitrators to partition properties—Severance of joint family.*

Where a member of a joint Hindu family governed by the Mitakshara claims his share of the family property and the members of the family agree to appoint an arbitrator to partition the property among them, the claim and the agreement effect a severance of the joint status of the family. What may amount to a separation, or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into a tenancy-in common, must depend on the facts of each case: A. I. R. 1922 P. C. 353 and 35 All. 80 (P. C.), *Foll.* (*Spencer, Offg. C. J. and Viswanatha Sastri, J.*). PERIASWAMI *v.* KANDASAMI. **99 I.C. 720=**
A.I.R. 1927 Mad. 1128.

———*Will by a co-parcener with consent of other co-parceners makes him divided in status.*

(*Obiter*)—If a person who is a member of an undivided family wants to get himself divided, he can do so by simply making a statement in the will.

HINDU LAW—Partition—Declaration of intention.

"I want to get myself divided and want to execute this will." So if a person who is a member of an undivided family leaves a will with the consent of the other co-parceners has become divided in status. (*Kumaraswami Sastri and Ramesam, JJ.*). LAKSHMAMMA *v.* SREERAMULU. **104 I.C. 650= A.I.R. 1927 Mad. 1066.**

———*Definite and unambiguous intention to separate by one member is sufficient to effect separation—Inference of intention from conduct.*

What may amount to a separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into a tenancy-in-common must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation. The intention to separate may be evinced in different ways, either by explicit declaration or by conduct. If it is an inference derivable from conduct, it will be for the Court to determine whether it was unequivocal and explicit : A.I.R. 1916 P.C. 104, *Foll.*

Therefore, mere conduct, as can be based upon evidence of the nature of separate arrangements for food, separate control of servants, the carrying on of separate business by a member does not collectively establish separation where there is no evidence upon which Court can rely to establish anything in the nature of a declared intention to separate : 4 M.I.A. 137 (P. C.) and 11 M. I. A. 75 (P. C.), *Rel. on.* (*Stuart, C.J. and Wazir Hasan, J.*). BISHUNATH KAUR *v.* SHEO BAHADUR SINGH. **104 I.C. 587= 4 O.W.N. 550=A.I.R. 1927 Oudh 265.**

———*Unequivocal intention to separate is enough—Partition by metes and bounds is not necessary.*

Partition is a severance of joint status and as such it is a matter of individual volition. All that is necessary to constitute a partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Once a member of a joint family has clearly and unequivocally intimated to his co-sharers his desire to sever himself from the joint family, his right to obtain and possess his share is unimpeachable, whether or not the co-sharers agree to a separation and there is an immediate severance of the joint status. It is a mistake to suppose that there can be no partition until there is a division of the joint family property by metes and bounds : 11 M.I.A. 75, *Foll.* (*Wasir Hasan and Raza, JJ.*). BANSIDHAR *v.* MATA DIN. **98 I.C. 303=3 O.W.N. 849.**

———*Notice of intention to separate to other co-parceners is not necessary.*

For the severance of interest notice to other co-parceners of the intention to separate unequivocally expressed is not a condition precedent. The separation is an act of individual volition and does not depend for its effect on the consent or agreement of the other co-parceners. A separation may take place even in the absence of other co-parceners : 43 I.A. 151 ; A.I.R 1922 P.C. 201 ; A.I.R. 1922 P.C. 358, *Ref.*; 44 I.A. 358, *Rel. on.* (*Wasir Hasan and Neave, JJ.*). MT. RACHCHAPALI *v.* MT. CHANDRESAR. **78 I.C. 256=10 O.L.J. 595= 27 O.C. 114=A. I. R. 1924 Oudh 252.**

———*Unilateral intention not communicated is not sufficient to effect division in status.*

An agreement between all the co-parceners is not essential to the disruption of the joint status; and separation, so far as the separating member is concerned, is a matter of individual volition. The intention to separate may be evinced in different ways either by explicit declaration or by conduct, and if it is an inference derivable therefrom, it will be for the Court to determine whether the conduct or declaration was unequivocal and explicit. Coupled with declarations or conduct, there must be a communication of intention to the other members ; then alone a division in status would result. A document therefore, which merely contains a declaration or affords evidence of conduct, does not of itself create a division in status. (*Spencer and Venkatasubba Rao, JJ.*). SARASWATAMMA *v.* PADDAYYA. **71 I.C. 274=46 Mad. 349= 18 M.L.W. 418=A.I.R. 1923 Mad. 297= 44 M.L.J. 43.**

———*Clear declaration of intention will effect.*

Unequivocal and manifest declaration of an intention to become divided in estate amounts to a valid separation and a disruption of the joint family: 8 W. R. 82 ; 35 All. 80 ; 43 Cal. 1031, *Foll.* (*Jwala Prasad and Adami, JJ.*). RAMJATAN RAI *v.* BALIRAM PRASAD. **70 I.C. 846= A.I.R. 1923 Pat. 25.**

———*Co-parcener claiming his share and reference to arbitration for partition—Severance effected.*

It is settled law that in a joint Hindu family subject to the law of the Mitakshara, a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place ; and the commencement of a suit for partition has been held to be sufficient to effect a severance in interest even before decree. Where it was proved that the transferor claimed his half share of the ancestral property and that after discussion, all the joint holders signed the agreement for appointing the arbitrator to partition the property and agreeing to accept whatever partition he might make,

Held, the claim and agreement were quite sufficient to effect a severance in interest and to prevent the share of the transferor from passing by survivorship. In these circumstances the sale by vendor could not be set aside at the instance of the joint owners but only (if at all) at that of the vendor, or his representatives : 11 M. I. A. 75 ; 4 Cal. 434 (P. C.) ; A. I. R. 1916 P. C. 104 ; A.I.R. 1917 P.C. 39, *Foll.* (*Viscount Cave.*) SYED KASIM *v.* JORAWAR SINGH.

68 I.C. 573=49 I. A. 358= 16 M.L.W. 223=31 M.L.T. 46=5 N.L.J. 209= 18 N. L. R. 127=50 Cal. 84=25 Bom. L.R. 1= 37 C.L.J. 73=21 A.L.J. 57=27 C.W.N. 179= A.I.R. 1922 P.C. 353=43 M.L.J. 676 (P.C.).

———*Definite intimation of intention to separate creates division.*

Under the Law of Mitaksharn an unambiguous and definite intimation of intention to separate has the effect of creating a division of interest and after notice to that effect no obligation rests on the joint family in respect of the son's marriage : *Girja Bai* v. *Sadashiv Dhundiraj*, A.I.R. 1916 P. C. 104, *Foll.* (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYAN ANNAVI. **68 I. C. 451= 45 Mad. 483=1922 M. W. N. 399= 30 M. L. T. 256=26 C. W. N. 929= 20 A.L.J. 839=49 I.A. 168=24 Bom. L.R. 1209= 16 M. L. W. 639=37 C. L. J. 15= A. I. R. 1922 P.C. 201=43 M.L.J. 428 (P.C.).**

———*Specification of shares in a Will is sufficient to constitute separation.*

HINDU LAW—Partition—Declaration of intention.

The fact that the shares were specified in the Will was held to suffice to constitute a separation in law, an unequivocal declaration by a member of the co-parcenary body of his intention to be divided in status being sufficient to effect a severance without an agreement between all the co-parceners being required. (*Broadway and Martineau, JJ.*). JUMMA RAM *v.* MUNGAL RAI. **67 I. C. 812= A. I. R. 1922 Lah 473.**

———*Clear and unequivocal declaration of intention constitutes severance in status.*

To constitute a severance in status, a declaration of intention by a member of a joint Hindu family must be absolutely unequivocal. It must be couched in such a language or the behaviour must be such that the Court can draw no other inference from the circumstance than that the party did desire to separate himself from one from whom it is now alleged that he did separate: 35 All. 81, *Ref. to.* (*Napier and Odgers, JJ.*). KRISHNASWAMI BATTAR *v.* SREENIVASA BATTAR. **76 I.C. 881= 30 M.L.T. 168=A.I.R. 1922 Mad. 341= 42 M.L.J. 124.**

—Partition—Division in status.

———*Separation—Division of interest necessary.*

In order to constitute separation it is not necessary that there should be any partition of the property by metes and bounds. What is necessary to establish separation is that there must be a division of interests and not of the property itself: 11 M.I.A. 75, *Foll.* (*Misra and Raza, JJ.*). KHUSHWAQT RAI *v.* JAGANNATH PRASAD TANDAN. **119 I.C. 872=A.I.R. 1930 Oudh 184.**

———*Ascertainment of shares is presumptive proof of separation.*

A mere ascertainment of shares of the members of a joint family is not conclusive evidence of separation, but there is a presumption that there was separation and the burden of proving that notwithstanding the ascertainment of shares of the various members of the family, the family continued to be joint family lies on the person making the assertion: A.I.R 1925 P.C. 49, *Foll.* (*Ashworth and Iqbal Ahmad, JJ.*). MT. BETI *v.* SIKHDAR SINGH. **108 I.C. 721=50 All. 180= 25 A.L.J. 1014=A.I.R. 1928 All. 39.**

———*Physical division of property is not necessary.*

Physical or *de facto* division is not essential to a separation. If the parties agree to hold the property in defined shares as separate owners, such an agreement, evidencing as it does an intention to separate (for intention is the decisive test), operates as an immediate partition; there is a division of title and interest, what is postponed being a division by metes and bounds: 11 M.I.A. 75 (P.C.), *Foll.* (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOS. **112 I.C. 184=28 M.L.W. 824= A.I.R. 1928 Mad. 1064=55 M.L.J. 132.**

———In a suit by a grand-daughter for her father's share who died separate against his brothers, if she is unable to prove the specific items of property held by her father, she is entitled to demand that the equivalent of his share shall be divided and given to her. (*Hallifax and Mitchell, A.J.Cs.*). JIJI BAI *v.* CHOUDHARY. **99 I.C. 448= A.I.R. 1927 Nag. 113.**

———*Shares of members defined—Severance in status is effected—One member being minor is no bar to partition.*

Partition or separation, which means the severance of the status of jointness, is a matter of "individual volition": A.I.R. 1916 P.C. 104, *Foll.*

HINDU LAW — Partition — Effect of — Joint business.

But when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share although the property itself has not been actually severed and divided. Such members may elect either to have a partition of their shares by metes and bounds, or to continue to live together and enjoy their property in common as before. Whether they do one or the other will affect the mode of enjoyment, but not the tenure of the property or their interest in it. Their interest is determined by the allotment to them of defined shares which converts them from joint holders into tenants-in-common. The fact that one member is a minor does not prevent a partition from taking place: 30 Cal. 738 (P.C.), *Foll.*; 11 M.I.A. 75 (P.C.), *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). MT. MENDA KAUR *v.* MIRTINJAI BUX SINGH. **105 I.C. 337=1 L.C. 516=A.I.R. 1927 Oudh 489.**

———Either a Hindu is divided or he is not. If he is divided, then there can be no joint family property. It is true that part of the original possessions of the co-parcenary may for purposes of convenience be left undemarcated, but the interests of the separate members will be not undivided but separate: 30 Cal. 738 (P.C.), *Foll.* (*Kincaid, J.C. and Lobo, A J.C.*). JETHANAND UDHAVDAS *v.* KEWALRAM. **97 I.C. 505= 20 S.L R. 295=A.I.R. 1926 Sind 216.**

———Where the plea of out and out division was raised and proved false in the lower Court,

Held, that it could not be pleaded for the first time in appeal that there was at least a severance in status. (*Venkatasubba Rao, J.*) N. ACHYUTAM *v.* V. SURAYYA. **79 I.C. 902=1924 M.W.N. 485= A.I.R. 1924 Mad. 845.**

—Partition—Effect of—Interpretation of decree.

———*Partition decree without actual partition—Later decree declaring alienation void is not a decree for physical possession.*

Where the estate had not been partitioned,

Held, a decree declaring certain alienation by father void, cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDAR. **69 I. C. 273= 31 M.L.T. 217= 16 M.L.W. 780=1922 M.W.N. 791= 27 C.W.N. 299=21 A.L.J. 201=37 C.L.J. 457= A.I.R. 1922 P.C. 347=44 M.L.J. 728 (P.C.).**

—Partition—Effect of—Joint business.

———*Family business becomes an ordinary partnership governed by Partnership Act.*

Where a separation is effected between brothers and the business is carried on by the brothers, the business becomes an ordinary partnership subject to the Partnership Act. On the death of one brother the partnership is dissolved and a right to an accounting arises. If, however, on the brother's death the widow of the deceased brother is admitted as a partner to a new partnership, then the date of dissolution would only be the rising of the suit,

HINDU LAW—Partition—Effect of—Jointness of father and son.

and no limitation can apply. The fact that the brother's share still continued to be dealt with in the books is no evidence of a partnership with his widow. (*Lord Dunedin.*) MUSAMMAT JATTI *v.* BANWARI LAL. **74 I.C. 462=21 A.L.J. 582=18 M.L.W. 273=50 I.A. 192=4 Lah. 350=25 Bom. L.R. 1256=33 M.L.T. 283=1923 M.W.N. 687=4 L.R P.C. 135=28 C.W.N. 785=A.I.R. 1923 P.C. 136=45 M.L.J. 355 (P.C.).**

—Partition—Effect of—Jointness of father and son.

———*One brother separating from other two—Separation of the other two* inter se *can be presumed but not that of the separated brother and his sons,* inter se.

Although, when it is established, that one brother has separated from two other brothers (the three forming members of a joint Hindu family governed by the Mitakshara Law) there is a presumption that the two remaining brothers have separated *inter se*, there is no presumption that such a brother has separated from his own sons. In fact the presumption is the other way to the effect that such a brother with his descendants will form the members of a joint Hindu family governed by the Mitakshara Law: A.I.R. 1924 P.C. 126, *Foll.* (*Stuart, C.J. and Raza, J.*). DY. COMMR., PARTABGARH *v.* SHEO NATH. **100 I.C. 689=2 Luck. 459=4 O.W.N. 215=A.I.R. 1927 Oudh 149.**

———*Separation between branches—No presumption of separation within the branches.*

The fact of a separation having been effected between brothers, who constitute a joint Hindu family governed by the Mitakshara, raises no presumption that there was a separation within each branch or a separation of the joint family; constituted by one of the brothers and his descendants: A.I.R. 1924 P.C. 126, *Foll.* In the absence of any evidence to the contrary the presumption that the descendants of each branch remained joint amongst themselves continues. (*Kanhaiya Lal and Ashworth, JJ.*). JAGMOHAN DAS *v.* KUNWAR SINGH. **95 I. C. 135=A.I.R. 1926 All. 532.**

———*Partition between father and son—Grandson is presumed to continue to be joint with his father.*

In ordinary cases of partition between a Hindu father and his sons, the grandsons, though they take an interest in the family property as from their birth, can only derive that interest through their fathers with whom the presumption is, that they remain joint after partition, but there is no presumption that the grandson remains joint with his grandfather. (*Macleod, C.J., and Crump, J.*). JADAVBAI LAKHICHAND *v.* MULTANCHAND HARABHCHAND. **87 I.C. 936=27 Bom. L.R. 426=A.I.R. 1926 Bom. 350.**

———*Partition between brothers does not necessarily create partition between the brothers and their own sons.*

When a Hindu governed by the law of the Mitakshara, who has sons living, separates from his brothers, there is no presumption of law that he separates also from his sons and that he and his descendants cease to constitute amongst themselves a joint family: 30 Cal. 725 (P.C.), *Expl.*; A.I.R. 1924 P.C. 126, *Ref.* (*Sir John Edge.*) LALA JAINARAIN *v.* PRAG NARAIN. **85 I.C. 2=1925 M.W.N. 13=21 M.L.W. 162=2 O.W.N. 157=6 L.R.P.C. 73=27 Bom. L.R. 713=29 C.W.N. 775=3 Pat. L.R. 255=A.I.R. 1925 P.C. 11=48 M.L.J. 236 (P.C.).**

HINDU LAW — Partition — Effect of—Presumption of tenancy-in-common.

———*Separation between brothers—No separation between brothers and their descendants.*

The effect of the separation and partition between brothers does not cause by implication of law a separation between a brother and his descendants or make them cease to constitute amongst themselves a joint family unless it was proved that they had agreed not to continue to be a joint Hindu family: 30 I. A. 130; 30 I. A. 139; A. I. R. 1923 P.C. 136, *Dist.* (*Sir John Edge.*) HARI BAKHSH *v.* BABU LAL. **83 I.C. 418=22 A.L.J. 254=34 M.L.T. 70=5 Lah. 92=5 L.R.P.C. 113=51 I.A. 163=28 C.W.N. 953=1924 M.W.N. 650=20 M. L. W. 406=26 Bom. L.R. 1108=A. I. R. 1924 P.C. 126=47 M.L.J. 938 (P.C.).**

—Partition—Effect of—Minor.

———*Son separating from his father and minor brother—Minor's share ascertained but not partitioned—Father managing minor's share.*

X separated from his father and minor brother but in the partition that took place although the share of the minor was ascertained it was not actually separated from the father's share. Further the father all along was managing not only his share but that of his minor son also. But since the mother of the minor was dead and the father had married again there was fear that subsequent births would reduce the minor's share and so it was in the interest of the minor that there should be separation,

Held, that the circumstances showed that the father and the minor son did not continue to be joint but there was complete separation: 30 Cal. 725 (P.C.); A.I.R. 1925 P.C. 93; A.I.R. 1925 P.C. 49, *Rel. on.* (*Sulaiman and Sen, JJ.*). KUNDAN LAL *v.* RAJ BEHARI LAL. **121 I.C. 243=1929 A.L.J. 597=A.I.R. 1929 All. 513.**

—Partition—Effect of—Presumption of tenancy-in-common.

———*Partition decree defining shares—Brothers living jointly subsequently—Tenancy-in-common to be presumed.*

Two of the three members of a joint Hindu family lived joint even after partition decree was passed and the other member became separate. These two members were not co-plaintiffs but only one was plaintiff and the other defendant. The decree in the partition was based on a compromise which not only defined the shares of the different members but further declared that all the disputes between the members were settled by the compromise and that they would not have any claim against one another. The two members though living joint, their conduct was consistent with their being tenants-in-common,

Held, that though living jointly they must be deemed to be separate and the compromise decree was binding on them: 10 M.L.W. 438, *Ref.*; 30 Cal. 231 (P. C.); A. I. R. 1925 P. C. 132, *Dist.*: A. I. R. 1925 P. C. 49, *Cons.*; 1 All. 437, *Not appr.* (*Ramesam and Jackson, JJ.*). SOUNDARARAJA AIYANGAR *v.* RUKMANI AMMAL. **119 I.C. 157=A.I.R. 1929 Mad. 500.**

———*Document by one member—Shares allotted to members—Option given to live joint or separate—Presumption is of joint tenancy even if they live joint.*

Where a farighkhati executed by a member of a joint Hindu family states in clear terms that the defined shares in the whole joint family property have been allotted to the co-parceners and also given

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them the liberty either to live together or to separate their own shares, the effect of the deed is to cause a separation in estate and interest between all the co-parceners. The clause giving the parties the option of being joint or separate is not inconsistent with a separation in estate. The remaining members, though living together are, in reality holding their shares in the eye of the law separately: 30 Cal. 725 (P. C.); 30 Cal. 738 (P. C.) and A. I. R. 1922 P. C. 353, *Foll.* (*Broadway and Agha Haidar, JJ.*). HIRA SINGH *v.* MT. MANGLAN.

106 I.C. 877=9 Lah. 324=29 P.L.R. 697=A.I.R. 1928 Lah. 122.

———*Two divided brothers living together.*

The mere fact that two divided brothers live together would not make them members of an undivided Hindu family. It is not uncommon for divided members either for the sake of convenience or for the sake of economy or for the sake of peace living together in the same house. (*Devadoss, J.*). SADASIVAM PILLAI *v.* SHANMUGAM PILLAI.

98 I. C. 268=25 M.L.W. 119=A.I.R. 1927 Mad. 126.

———*Partition between branches—Separation within the branches to be presumed.*

Where a partition of the joint family property has taken place, there is no longer a presumption that in a particular branch the father and his sons continued to remain joint. It is a question of fact whether they remained joint and the burden of proof is on those who allege jointness. (*Mullick and Ross, JJ.*). RAGUNATH PRASAD *v.* BASDEO PRASAD. **88 I. C. 1012=3 Pat. L.R 328=6 P. L. T. 764=A. I. R. 1925 Pat. 823.**

———After a co-parcener's conversion there is a disruption of the entire joint family and all the members must be deemed to be separate unless the re-union is established: (1903) 30 Cal. 725, *Foll.* (*Jwala Prasad and Ross, JJ.*). RAM PERGASH SINGH *v.* MT. DAHAN BIBI.

78 I. C. 749=3 Pat. 152=5 P.L.T. 203=1924 P. H. C. C. 85=A.I.R. 1924 Pat. 420.

———Though the family ceases to be joint in the true conception of that term, still the members thereof remain co-owners of the family property business where each member is found to be managing the business and posssessing the property at each particular place on behalf of the rest. Therefore one member in possession of one portion of the property is not in law excluded or ousted from the other portions so as to disentitle him to his share of those portions, however long their enjoyment by others. A suit for his share is governed by Art. 127 of the Limitation Act. (*Broadway and Zafar Ali, JJ.*). BHAGAVAN DAS *v.* MT. PARBATI.

72 I. C. 742=29 P. W. R. 1923=A. I. R. 1923 Lah. 569.

———*Presumption is that partition is complete—But it can be rebutted by circumstances to the contrary.*

There is no doubt that there is a presumption that when there is a partition in a family, there is a total partition but this is a presumption which can be rebutted, and the circumstances in each case will show how much importance is to be attached to the presumption and what amount of evidence would be necessary to rebut it. Where there was a division into three shares two allotted to each of two major sons and the remaining to the father and three minor sons jointly,

Held, the latter remained joint. The mere mention of 1-6th share, in order to determine the

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share of each, does not prove that all were separate nor rebut the presumption that the father and the minor sons were joint. A mere mis-statement by the pleader in a previous suit that they were separate does not rebut the presumption that they were joint nor does it amount to an intention to separate when the subsequent or previous conduct of the parties was not consistent wiih such an intention. (*Phillips and Devadoss, JJ.*). CHELASWAMI ATCHAMMA *v.* VENKATASUBBAYYA.

70 I. C. 749=16 M. L. W. 268=1922 M.W.N. 487=A.I.R. 1922 Mad. 423.

———*After partition members are tenants-in-common.*

When once anything has occurred which effects a separation of the members of a joint family, they are to be considered as holding the joint family property as tenants in-common; and if it is sought to show that any portion of the joint family property is to be held by the members of the family as joint tenants and not as tenants in-common, that must be proved like any other fact. *Dictum of Sargent, C. J.*, in 18 Bom. 611, *Diss. from*; 35 Bom. 293, *Foll.*; 30 Cal. 725 (P.C.). *Ref.* (*Macleod, C. J. and Fawcett, J.*). RAMACHANDRA AVUDHUTRAO *v.* TUKARAM BABAJI. **61 I.C. 761=45 Bom. 914=23 Bom. L.R. 311=A.I.R. 1921 Bom. 276.**

—Partition—Effect of—Re-union.

———*Mitakshara School—Re-union need not be express.*

The agreement to remain united or to re-unite need not be express and special, but may be inferred from the conduct of the parties and the surrounding circumstances: A. I. R. 1925 P.C. 126, *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). MT. MENDA KUAR *v.* MRITANJAI BUX SINGH.

105 I.C. 337=1 L C. 516=A. I. R. 1927 Oudh 489.

—Partition—Effect of—Separating members.

———Where after separation of two brothers from other branch of the family, they lived under the same roof, had a common mess and continued to trade jointly and live as members of a co-parcenary,

Held, that they must be considered to have remained united: A.I.R. 1925 P C. 49, *Rel. on.* (*Venkatasubba Rao, J.*). VASUDEVA RAO *v.* SAKARAM RAO. **108 I C. 301=27 M L.W. 750=A.I.R. 1928 Mad. 412=54 M.L.J. 239.**

—Partition—Effect of—Separation of one.

———*Some members dividing—Position of others.*

According to Hindu Law a partition between co-parceners may be partial either in respect of property or in respect of the persons making it. In the case where all co-parceners effect a separation of some of the joint property, they are, in the absence of any indication to the contrary, tenants-in-common with reference to the excepted property unless and until a special agreement to hold as joint tenants is proved. But where the partition is partial not in respect of property but in respect of the persons making it, the remaining co-parceners without any special agreement amongst themselves may continue to be co-parceners and enjoy as members of a joint family the remaining property and the question whether or not they continue to be joint or separate is to be determined on the evidence in each case. *Shingne, J.*). MARTAND *v.* RADHABAI. **32 Bom. L.R. 924.**

———Where one member of a joint Hindu family separates, the presumption of jointness is, in the first instance, put an end to, and the burden of

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proving that the remaining members continued to be joint or that they re-united would be on them who assert such jointness. And although where one of the remaining members is a minor it is difficult to prove re-union; still it can be shown that in spite of separation of one member others continued to be joint. (*Sulaiman and Sen, JJ.*). KUNDANLAL *v.* RAJ BEHARILAL. **121 I.C. 243= 1929 A.L.J. 597= A.I.R. 1929 All. 513.**

———Where one member separates from the rest, continuance of jointness between the remaining members is not the same as their re-union. (*Sulaiman and Sen, JJ.*). KUNDANLAL *v.* RAJ BEHARILAL. **121 I.C. 243=1929 A.L.J. 597= A.I.R. 1929 All. 513.**

———One member separating—No presumption about others remaining united—But their union can be inferred from conduct: A.I.R. 1925 P.C. 49, *Rel. on.* (*Sulaiman and Kendall, JJ.*). GAURI SHANKAR *v.* KESHAB DEO. **114 I.C. 881= 1929 A.L.J. 204= A.I.R. 1929 All. 148.**

———*Separation of some members—Effect of.*

After separation has once occurred in a joint Hindu family, there arises no presumption either in favour or against the joint status of the remaining members and their joint or separate status must be proved in the ordinary way. A.I.R. 1923 P.C. 136 and A.I.R. 1925 P.C. 49 (P.C.), *Foll.* (*Odgers, J.*). CHALLA ELLAMANDA *v.* CHALLAPEDA ELLAMANDA. **114 I.C. 229 (Mad.).**

———One person separating—Others may continue joint without special agreement—Each case is to be decided on particular facts. A.I R. 1923 P.C. 136; A.I.R. 1925 P. C. 49 and A.I.R. 1927 Bom. 68, *Foll.* (*Patkar and Baker, JJ.*). BHIMABAI *v.* GURUNATH GOUDA. **114 I.C. 392=30 Bom.L.R. 859= A.I.R. 1928 Bom. 367.**

———There is no presumption that when one co-parcener separates from the others, the latter remain united. (*Sen, J.*). PADARATH PATHAK *v.* JAGDEO PATHAK. **8 L.R.A. Rev. 303= A.I.R. 1927 All. 844.**

———One brother separating or expressing intention to separate—Intention of other brothers to separate cannot be inferred. (*Fawcett and Madgavkar, JJ.*). BABANNA SANGAPPA *v.* PARAVA NINGBASAPPA. **100 I.C. 147=50 Bom. 815=28 Bom L.R. 1446= A.I.R. 1927 Bom. 68.**

———*One member separating—Whether other members continued to be joint is to be gathered from evidence.*

A member of a joint family can separate himself from the other members and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him, and the remaining co-parceners, without any special agreement amongst themselves, may continue to be co-parceners and to enjoy as members of a joint family what remains after such a partition of the family property.

The question whether the remaining members of the family continued joint or separate has to be determined by evidence. 30 Cal. 725 (P. C.), *Ref.*; A.I.R. 1925 P.C. 49, *Foll.*; A.I.R. 1921 Bom. 276, *Not foll.* (*Fawcett and Madgavkar, JJ.*). BABANNA SINGAPPA *v.* PARAVA NINGBASAPPA. **100 I. C. 147=50 Bom. 815= 28 Bom. L.R. 1446=A.I.R. 1927 Bom. 68.**

———*One co-parcener separating from others—Presumption is that the latter also separate.*

When it is proved that one member of a joint Hindu family has separated from his co-parceners, any person, who subsequently alleges that the remaining co-parceners are to be considered a joint Hindu family among themselves must prove one of two things. He must either prove that there was no separation among the remaining members originally or he must prove that there has been a separation followed by a subsequent re-union. 30 Cal. 725 (P.C.). *Foll.*; A.I.R. 1925 P.C. 49, *Expl.* (*Stuart, C.J. and Gokaran Nath Misra, J.*). SARJU PRASAD SINGH *v.* NAND GOPAL SINGH. **104 I.C. 315=4 O.W.N. 765= A. I. R. 1927 Oudh 580.**

———*One brother separating—Others are not presumed to have separated.*

The mere fact that one of three brothers separated from his two brothers raises no presumption of any separation between the two latter. It is not necessary to prove any special agreement between the latter two to remain united. A.I R. 1925 P.C. 49, *Foll.* (*King, J.*). RAM BHAROSE MISRA *v.* THAKURDIN PANDE. **102 I.C. 174=1 L. C. 30= A I.R. 1927 Oudh 579.**

———*One co-parcener separating—Presumption as to jointness ceases to exist.*

In a case where only one co-parcener separates from the others : (1) the presumption of Hindu Law as to jointness ceases to apply to the remaining co-parceners; (2) the ascertainment and the fixing of the share of every co-parcener may amount to a separation of all, and (3) an agreement amongst the members other than the outgoing member to continue as between themselves the status of co-parceners or to form a new joint family consisting of themselves must be proved. But a member who is a minor is incompetent to enter into such an agreement. 30 Cal. 725 (P.C.); A.I.R. 1923 P. C. 136, *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). MT. MANDA KAUR *v.* MIRTINJAI BUX SINGH. **105 I.C. 337=1 L.C. 516= A.I.R. 1927 Oudh 489.**

———*Shares of all defined—Others are to hold their property as separate.*

Where, in the deed of partition, the shares of other co-parceners also are defined on separation of one member, the legal inference is that they are to hold the property allotted to them in those shares as separate owners. (*Shadi Lal, C. J. and Zafar Ali, J.*). TIRKHA MAL *v.* GURJI MAL. **91 I. C. 571=A.I.R. 1926 Lah. 185.**

———When one member of a joint Hindu family separates, there is no presumption that the remaining members remain united or to re-unite must be proved like any other fact. A. I. R. 1923 P. C. 136, *Foll.* (*Shadi Lal, C. J. and Zafar Ali, J.*). TIRKHA MAL *v.* GURJI MAL. **91 I. C. 571=A.I.R. 1926 Lah. 185.**

———*One co-parcener may separate from others—If other members are joint can be inferred from their conduct.*

A member of a joint family can separate himself from the other members of a joint family and the remaining co-parceners without any special agreement among themselves may continue to be co-parceners and to enjoy as members of a joint family. In such a case the fact that the remaining member continued to be joint may, if disputed, be inferred from the way in which the family business was carried on after the previous co-parceners had separated from them. 30 Cal. 725 (P. C.); A. I. R. 1925 P. C. 49, *Foll.* (*Dalal, J. C.*). JANG BAHADUR SINGH *v.* TEJ BAHADUR SINGH. **89 I.C. 550=A.I.R. 1926 Oudh 133.**

HINDU LAW—Partition—Effect of—Separation of one.

———*Partition decree is evidence of others remaining joint.*

A member of a joint family can separate himself from the other members of the joint family and is on separation entitled to have his share in the property of the joint family ascertained and partitioned off for him. The remaining co-parceners without any special agreement amongst themselves may continue to be co-parceners and to enjoy as members of a joint family what remained after such a partition of the family property. In a suit for partition which proceeds to a decree, the decree for partition is the evidence to show whether the separation was only a separation of the plaintiff from the co-parceners or was separation of all the members of the joint family from each other. (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA. **87 I.C. 333=23 A.L.J. 746=29 C.W.N. 846=6 P.L T. 133=52 I.A. 83=21 M.L.W. 439=1925 M.W.N. 330=48 Mad. 254=27 Bom. L.R. 735=3 Pat. L.R. Civ. 126=A.I.R. 1925 P.C. 49=48 M.L.J. 83 (P.C.).**

———*No presumption that others remain joint or separate.*

When the separation of one co-parcener is proved there is no presumption that the others remained united. There is in fact no presumption remaining either way and an agreement amongst the remaining co-parceners either to remain united or to re-unite must be proved like any other fact; if separation of one member takes place it is not the necessary result in law that the other members must be taken to have separated *inter se.* 30 Cal. 725; 41 All. 361, *Foll.* (*Daniels, J.*). SAHEB SINGH *v.* INDAR KUMAR. **78 I. C. 828=A.I.R. 1924 All. 730.**

———*No presumption that others remain joint or separate.*

Where partition takes place under the decree of Court the effect of the decree on the remaining co-parceners must be determined by the terms of the decree or by the scope of the suit. 33 M.L.J. 759, *Foll.* Where two members of a joint family sue for partition it does not necessarily divide them *inter se.* When one co-parcener separates from others there is no presumption that the latter remained united or became divided. Either allegation must be proved like any other fact. 45 M.L.J. 255 and 30 Cal. 231, *Expl.* (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). SENGODA GOUNDAN *v.* MUTHU GOUNDAN. **78 I. C. 927=47 Mad. 567=19 M L W. 533=34 M.L.T. 255=1924 M.W.N. 376=A.I.R. 1924 Mad. 625=46 M.L.J. 404.**

———*Others become separate* inter se.

Separation of one member involves separation of the remaining members *inter se.* An agreement by the remaining members to remain united or to re-unite must be proved like any other fact. 30 Cal. 725, *Foll.* (*Baker, Offg. J.C.*). BABOOLAL *v.* DHIRA. **81 I.C. 591=7 N.L.J. 77=A.I.R. 1924 Nag. 88.**

———*No presumption that others are joint or separate.*

Even in case where the disruption of the share of every member of the family is made incidentally with the sole object of determining the share of the outgoing member and the intention of the other members is to continue to be joint there is not necessarily a division amongst them as necessary corollary of law following from the fact of separation of one member only. But there is no presumption of such a continuance either. The joint residence, the joint mess and the absence of any actual partition of any property are all consistent with tenancy-in-common. (*Wazir Hasan, A. J. C.*). MAHABIR PRASAD *v.* SURAJPAL SINGH. **80 I. C. 475=10 O.L.J. 240=27 O.C. 94=A.I.R. 1924 Oudh 46.**

HINDU LAW—Partition—Equities.

———*Partition by one co-parcener breaks joint family.*

There is no presumption, when one co-parcener separates from the others, that the latter remain united. An agreement amongst the remaining members of joint family to remain united or to re-unite must be proved like any other fact. (*Lord Dunedin.*) MUSAMMAT JATTI *v.* BANWARI LAL. **74 I.C. 462=21 A.L.J. 582=18 M.L.W. 273=50 I.A. 192=4 Lah. 350=25 Bom.L.R. 1256=33 M.L.T. 283=1923 M.W.N. 687=4 L.R.P.C. 135=28 C.W.N. 785=A.I R. 1923 P.C. 136=45 M.L.J. 355 (P.C.).**

———The claim of one member to have a partition does not mean that the other co-parceners are *ipso facto* divided as between themselves. (*Rankin, J.*). SASHI BHUSAN *v.* HARI NARAYAN. **66 I. C. 705=48 Cal. 1059=25 C.W.N. 990=A.I.R. 1921 Cal. 202.**

———Where one co-parcener separates from others there is no presumption that the rest remain united. (*Scott-Smith and Leslie Jones, JJ.*). NILKANTH *v.* JAI GOPAL. **60 I.C. 696 (Lah.).**

———*Does not automatically separate the remaining members.*

Where a step-son separates from a family consisting of himself, his father, his step-mother and his step-brother, his separation does not automatically separate the remaining members of the family, who may remain united. It has to be seen whether they did or did not continue to be joint. Person alleging that after separation the remaining co-parceners are to be considered as a joint Hindu family must prove that there was no separation among the remaining members originally and where the evidence shows that they clearly desired to live together and did continue to live jointly, they cannot be deemed to have separated. There can be no question of re-union as they had never disunited. A.I.R. 1924 P. C. 126; A. I. R. 1925 P.C. 49; A.I.R. 1927 Oudh 149 and A. I. R. 1927 Oudh 580, *Ref.*; A.I.R. 1927 Oudh 489, *Dist.* (*Stuart, C.J. and Raza, J.*). MT KALAWATI *v.* RAGHURAJ SINGH. **121 I.C. 882=6 O.W.N. 737=10 L.R.A. Rev. 329=A.I.R. 1929 Oudh 427.**

—Partition—Effect of—Subsequent acquisition.

———*One member separating—Separate acquisitions by others, subsequently, are joint.*

Where one member of a joint family separates and the others continue to have a common mess and abode and a common account, separate acquisitions by the latter are not inconsistent with their having remained joint and the fact that the conveyances were taken in the name of one or other brothers, is not necessarily conclusive of the fact that they were separate acquisitions. (*Greaves and Chakravarti, JJ.*). NALINAKSHYA GHOSAL *v.* RAGHUNATH GHOSAL. **85 I.C. 662=A.I R. 1925 Cal. 754.**

—Partition—Equities.

———To determine whether partition is equal or unequal, mere acreage is not a satisfactory test of value, as much depends upon the productivity of the lands allotted to each share. (*Sir John Wallis.*) SENNIMALAI GOUNDAN *v.* SELLAPPA GOUNDAN. **114 I. C. 568=33 C.W.N. 407=29 M.L.W. 439=A.I.R. 1929 P.C. 81=56 M.L.J. 511 (P.C.).**

HINDU LAW—Partition—Equities.

——Where a Hindu father alienates the whole of the immovable properties and the son sues to set aside the alienation it would be unfair, in making a division, to allot the whole of the immovable property to the vendor's share and allot the outstandings to the son's share notwithstanding that the values of the shares may be equlled by such a process. (*Odgers, J.*). VARADARAJULU *v.* VALAYUDU. **90 I. C. 743=22 M.L.W. 230=A.I.R. 1925 Mad. 1160.**

—Partition—Evidence of—Admission.

——*Admission of shares is admission of partition—But definition of shares in revenue papers is not evidence of it.*

The clear admission of the plaintiffs in their plaint that they and their brother owned the land in equal shares, is inconsistent with the position that they held the land as co-parceners, for until partition takes place the shares of the several coparceners in a joint Hindu family cannot be defined.

A definition of shares in revenue papers is not standing alone, sufficient evidence of separation between the members of a Hindu family. (*Martineau, J.*). DATARAM *v.* BADLU. **67 I.C. 148=A. I. R. 1922 Lah. 450.**

—Partition—Evidence of—Agreement unnecessary.

——*Acts of parties may suffice.*

It is not necessary that definite evidence should be given of a formal agreement between the parties to enable a Court to hold that a separation has taken place. An inference of separation having previously taken place, may be drawn from the subsequent acts of the parties without any proof of a formal agreement. But where the parties are found living together in the same house and meeting their expenses out of a common fund, it would require very strong evidence to lead to the conclusion that they had put an and to their state of jointness. (*Dawson Miller, C. J. and Foster, J.*). TARINI PRASAD SINGH *v.* NANU PRASAD SINGH. **72 I.C. 1006=A.I.R. 1924 Pat. 163.**

—Partition—Evidence of—Cessor of commensality.

——Cessor of commensality does not conclusively prove partition and so it has to be considered whether other evidence supports or negatives theory that cessor was adopted with view to partition in legal sense. 14 M.I.A. 412 (P.C.) and 31 Cal. 262 (P. C.), *Rel. on.* (*Mohiuddin and Jackson, A. J. Cs.*) JAITARAM *v.* NAROTTAM. **A.I.R. 1929 Nag. 131.**

——*Separate living by itself does not prove partition.*

As regards cases where the only evidence is that the parties were living separatly and nothing further appears, the Court cannot draw the presumption that they were living separately because of a partition. Unless there is something to show that there was a partition, separate living may be due to several causes, for example, convenience, and does not necessarily import a division, 31 Cal. 262 and 35 All. 80, *Ref.* (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MOOKKA KONE *v.* AMMAKUTTI AMMAL. **108 I.C. 760=51 Mad. 1=27 M.L.W. 611=A.I.R. 1928 Mad. 299=54 M.L.J. 174 (F.B.).**

——*Mere cessor of commensality and residence is not sufficient to constitute separation.*

Mere cessor of commensality and residence is not sufficient to constitute 'separation' in the eye of

HINDU LAW—Partition—Evidence of—Dealings inter se.

law. There must be a disruption of the joint family status; and this could be only by a partition, either made by the father in his own lifetime of co-parcenary property, or even of his own separate or self-acquisitions, or by the sons in their capacity as co-owners, after their father's death. (*Kinkhede, A.J.C.*). KALIRAM KUNBI *v.* BAJILAL. **97 I. C. 730=9 N. L. J. 163=A. I. R. 1927 Nag. 107.**

——A separation in mess and worship may be due to various causes and yet the family may continue joint in estate. In other cases a separation may take place and yet a partition of the family property may be postponed. 35 All. 80 (P.C.), *Foll.* (*Kanhaiya Lal and Boys, JJ.*). PARTAP NARAIN *v.* RAM KUMAR. **94 I.C. 944=24 A.L.J. 513=A.I.R. 1926 All. 453.**

——*Dwelling apart and documents in one member's name are not inconsistent with jointness.*

It is not always necessary for the preservation of the joint nature of the family property that members of the family should live in commensality; they may dwell and mess apart and yet remain joint in property. Every Hindu family is presumed to be joint in food, worship, and estate and the property is presumed to be joint and undivided. The use of the name of one co-parcener in a document does not by itself show that the transaction was separate or that there had been a separation between him and the rest of the family. The presumption with regard to the property in the name of a co-parcener is a presumption as to the continuance of a juridical relationship combined with a presumption as to the ordinary practice of Hindu families and it applies as much in the case of father and son governed by Mitakshara law as to the case of properties of other co-parceners. (*Kinkhede, A.J.C.*). GANGABAKAS *v.* NARAIN. **86 I. C. 505=A.I.R. 1925 Nag. 284.**

——Where a division of the property was effected by private arbitration and the parties thereafter lived separately, the presumption of jointness comes to an end, although the property has not been divided by metes and bounds. 11 M.I.A. 75, *Foll.* (*Mookerjee and Cuming, JJ.*). SARADA PRASANNA ROY *v.* UMA KANTA. **77 I.C. 450=37 C. L. J. 233=50 Cal. 370=A. I. R. 1923 Cal. 485.**

——*Separation in food and residence is not conclusive proof of partition.*

From the separation of the members of the family in food, residence, and worship, it does not necessarily follow that the family had divided where, in order to manage the family business and property at different places, the members had to go to and live in those places separately. (*Broadway and Zafar Ali, JJ.*). BHAGWAN DAS *v.* MT. PARBATI. **72 I. C. 742=29 P.W.R. 1923=A.I.R. 1923 Lah. 569.**

—Partition—Evidence of—Dealings inter se.

——*Dealings between parties is a strong evidence in favour of the partition—Onus to prove separation is on the party asserting it.*

The circumstance that there have been dealings between the parties themselves is a strong evidence that there has been partition. The question of jointness of the members of the Hindu family is ultimately a question of fact to be determined on evidence before the Court. But where nucleus of joint family property is admitted, the initial onus of proving that separation did take place in fact is on the party asserting that there

HINDU LAW — Partition—Evidence of—Deed inadmissible.

was separation. The Court may take into consideration cessor of commensality as one of the matters in finding out whether there has been separation or not. But it is not conclusive. (*Das and Ross, JJ.*). HARNARAYAN *v.* SURESH PANDE.
78 I.C. 472=A.I.R. 1925 Pat. 161.

—Partition—Evidence of—Deed inadmissible.

———*Division in status can be inferred from conduct —If property in a person's hands are joint or separate can be found.*

Although a deed of partition requiring registration but unregistered is inadmissible as evidence of a partition or of the terms of the partition, the fact of a partition can be found with reference to other evidence. A.I.R. 1922 All. 493, *Rel. on.*

The fact of a division in status can always be inferred from the conduct of the family, and if there is unimpeachable evidence to show that the family lived as divided, there is no reason why a division in status cannot be inferred from such conduct merely because the deed of partition is inadmissible in evidence. 41 Bom. 466, *Rel. on.*

Again though the deed of partition itself being inadmissible, no secondary evidence can be given as to the terms of the partition, and, therefore, it is not open to the Courts to consider what were the properties that fell to the share of a particular member in the partition, this does not prevent the Court from finding whether or not all the suit properties were being enjoyed by that member as separate properties at the time of his death. A.I.R. 1926 Mad. 191, *Appr.*

Further, the unregistered deed of partition is certainly evidence that there was a talk of partition on the date of the document. (*Ramesam, J.*). AHOBILACHARIAR *v.* THULASI AMMAL.
103 I.C. 281=39 M.L.T. 276= A.I.R. 1927 Mad. 830.

———*Subsequent separate enjoyment—Part-performance of contract of partition.*

Even if the terms of the partition cannot be proved, the deed of partition being inadmissible for want of registration, if there is later enjoyment of certain items as separate property, such enjoyment amounts to partial performance of the contract of partition and its terms; and in such a case the partition can be given effect to by reason of its partial performance even though the terms of the partition as it took place at the time cannot be proved. (*Ramesam, J.*). AHOBILACHARIAR *v.* THULASI AMMAL. **103 I.C. 281=39 M.L.T. 276= A.I.R. 1927 Mad. 830.**

—Partition—Evidence of—Defining shares.

———*Defining shares is enough.*

If the members of a joint family agree that certain shares of certain properties or portions thereof should be taken by them, then that would be quite sufficient to give them a divided status. The subsequent conduct of the parties is only evidence of what they agreed to. If the arrangement itself is clear the subsequent conduct is not of great importance. But conduct inconsistent with the arrangement may be taken as evidence of there being no arrangement. (*Devadoss, J.*). SADASIVAM PILLAI *v.* SHANMUGAM PILLAI. **98 I.C. 268= 25 M.L.W. 119=A.I.R. 1927 Mad. 126.**

—Partition—Evidence of—Exclusive possession.

———*Separate possession of shares for a number of years—Partition is not necessarily to be inferred.*

No inference can be drawn necessarily from the fact that the parties had been in separate possession of their shares of the homestead for many

HINDU LAW — Partition—Evidence of—Facts not proving.

years, that there must have been a partition of the whole property. (*Greaves and Cuming, JJ.*). PURNA CHANDRA SINGHA *v.* RADHIKA MOHAN DEB.
90 I.C. 722=A.I.R. 1926 Cal. 370.

———Long continued exclusive possession by some members raises presumption of partition. (*Kinkhede, A.J.C.*). DEORAO *v.* VITHAL.
87 I.C. 1000=A.I.R. 1925 Nag. 363.

—Partition—Evidence of—Facts not proving.

———*Facts and circumstances which prove neither separation nor joint status.*

Entries in *khewats* and other similar village papers showing that the shares of co-owners have been specific, afford by themselves no proof that the owners were members of a joint Mitakshara family or had separated. Payments jointly of Government revenue, taxes, income tax and such like payments do not by themselves indicate that the parties making such payments were joint or separate. The parties may have been carrying on business as partners and not as Hindu co-parceners. For the same reason the fact that money had been lent on mortgages, or had been applied in the purchase of property, does not by itself indicate that the money was or was not the separate money of Hindu co-parceners. The books of account of a joint family would, if produced, show whether the moneys or payments had been advanced or paid from a joint Hindu family fund or from a partnership fund. The fact that two or more Hindus had a banking account does not by itself prove that the moneys received by the bank were moneys of a Hindu joint family or Hindus who were partners in farming or other business. (*Sir John Edge.*) JAG PRASAD RAI *v.* MT. SINGARI. **86 I.C. 122= 6 L.R.P.C. 111=27 Bom. L.R. 760= 29 C.W.N. 941=23 A.L.J. 97=2 O.W.N. 229= A. I. R. 1925 P.C. 93=49 M. L. J. 162 (P.C.).**

———*Mere ascertainment of shares and filing partition suit is evidence of intention to separate.*

The mere fact that the shares of the co-parceners have been ascertained does not by itself necessarily lead to an inference that the family had separated nor the mere filing of a suit for partition is an evidence of separation although it would afford evidence that an intention to separate had been entertained. 43 I.A. 151 and 44 I.A. 159, *Ref.* (*Sir John Edge.*) PALANI AMMAL *v.* MUTHUVENKATACHALA. **87 I.C. 333=23 A.L.J. 746= 29 C.W.N. 846=6 P. L. T. 133=52 I.A. 83= 21 M.L.W. 439=1925 M.W.N. 330= 48 Mad. 254=27 Bom. L. R. 735= 3 Pat. L. R. Civ. 126=A.I.R. 1925 P.C. 49= 48 M.L.J. 83 (P.C.).**

———The following cases were held not sufficient to indicate partition :—

(1) A deed executed by two brothers with intent to admit a third brother of theirs who had passed into another family by adoption, into the original co-parcenary.

(2) A recital in a deed that the property of the family would be divided at some future time.

(3) Mere definition of shares.

(4) Constant assertions by one of the brothers that he was adopted into another family.

(5) Execution of some lease deeds in the name of one member only, and

(6) Assignment of pro-notes by one of the brothers to the other. 30 C. 738 (P. C.), *Dist.* (*Krishnan and Ramesam, JJ.*). VENKATACHALA *v.* ARUNTHAVATHACHI. **72 I.C. 548=17 M.L.W. 755= 1923 M.W.N. 225=A.I.R. 1923 Mad. 568.**

HINDU LAW—Partition—Evidence of—Gift of share.

—Partition—Evidence of—Gift of share.

———*Father gifting his share to adopted son or reserving only right of maintenance do not create divided status.*

If a father makes over his share to his son by a gift deed then unless there are express words in the document to show that from the date of the deed he becomes divided in status from the son, the mere gift of the father's share to the son would not create a divided status between the father and the son, even though the son is an adopted son, nor would the fact that the father reserved to himself only a right to maintenance by itself create a divided status between him and the son. (*Devadoss and Madhavan Nair, JJ.*). SWAMINATHAN *v.* SUBRAMANIA AYYAR. **116 I. C. 360= A.I.R. 1928 Mad. 1082.**

—Partition—Evidence of—Intention necessary.

———Separation is the result of intention among the members—Separation can be by deed or acts or by both—If the deed be unequivocal in its language and the intention of the parties is clear from it, it would not be necessary to prove acts in support of the deed. 30 Cal. 738 (P. C.), *Foll.*; A. I. R. 1925 P. C. 49, *Dist.* (*Mears, C. J. and Mukerji, J.*). JAI NARAIN RAI *v.* BAIJNATH RAI. **108 I.C. 449=30 All. 615=26 A.L.J. 349= A. I. R. 1928 All. 419.**

———*Ascertainment of shares does not amount to partition—Intention to divide is necessary.*

The mere fact that the shares which co-parceners would be entitled to in the event of partition had been ascertained does not necessarily amount to any intention to separate. In order to effect a partition, although it is not necessary that the property should actually be divided by metes and bounds, still it is necessary that there should be a clear and unequivocal expression of intention on the part of one or more of the co-parceners to separate from the rest of the joint family and to hold his or their share or shares separately. Even the fact that a suit has been brought for a partition, if the suit is subsequently withdrawn, is not in itself conclusive evidence that there ever was an effective partition by the party who instituted the suit. A. I. R. 1925 P. C. 49, *Rel. on.* (*Dawson Miller, C. J. and Foster, J.*). RAGHUNANDAN PRASAD *v.* MAHABIB MAHTON. **96 I. C. 448= 7 P L.T. 775=A.I.R.1926 Pat. 545.**

—Partition—Evidence of—Joint payment of taxes.

———Joint payment of taxes or Government revenue does not necessarily indicate joint or divided status of parties. Also a joint purchase is not necessarily indicative of a purchase for a joint family. A. I. R. 1925 P. C. 93, *Foll.* (*Sen and Niamatullah, JJ.*). MT. RAM KALI *v.* KHAMMAN LAL. **111 I.C. 33=51 All. 1=26 A.L.J. 857= A. I. R. 1928 All. 422.**

—Partition—Evidence of—Official records.

———U. P. Land Revenue Act, S. 44—Mere entry in khewat, recording members of Hindu family, as co-sharers, does not prove separation so as to raise presumption under S. 44.

Once this presumption is removed the members are faced with the presumption of Hindu Law that a family once found to be joint remain joint until there is proof of separation and the onus of such proof is on persons alleging separation. 11 O.C. 381, *Ref.* and A.I.R. 1926 Oudh 499, *Dist.* (*Pullan and Srivastava, JJ.*). THAKUR SRI RAM SINGH *v.* SURAJPAL SINGH. **A.I.R. 1930 Oudh 221.**

HINDU LAW—Partition—Evidence of—Official records.

———Entering widow's name in place of that of husband is not sufficient—Application by mother to enter share in minor son's name is also not sufficient—They are not unequivocal intention to separate. (*Jackson, A.J.C.*). TAIN *v.* KRISHNAPPA. **118 I.C. 685=25 N.L.R. 208=A.I.R. 1929 Nag. 289.**

———*Entries in Record-of-Rights.*

Entries in the Record-of-Rights containing specification of shares are not very important in deciding the question whether the family was joint or separate at the date of the publication of the Record-of-Rights. (*Doss and Allanson, JJ.*). BALMOKUND LAL *v.* MT. SOHANO KUERI. **119 I. C. 817=8 Pat. 153=10 P.L.T. 259= A.I.R. 1929 Pat. 164.**

———*Entries in village records—No presumption of joint or separate estate.*

A definition of shares in the revenue and village papers by itself affords a very slight indication of an actual separation in a joint family and is insufficient to prove, contrary to the presumption of law, that the family to which the entries referred had separated. The mere fact that one member of the family is recorded as tenant of one plot and another member as tenant of another plot does not by any means suggest that the family was separate. A.I.R. 1925 P.C. 132, *Foll.* (*Sulaiman and Kendall, JJ.*). SURAJ PRASAD *v.* BACHHRAJ. **110 I.C. 25=26 A L.J. 437.**

———*Definition of shares in revenue papers is not sufficient to prove separation.*

A definition of shares in revenue and village papers, by itself, affords a very slight indication of an actual separation in a Hindu family, and is insufficient to prove, contrary to the presumption of law, that the family to which the entries refer had separated. The Collector's book is kept for purposes of revenue and not for purposes of title. The fact of a person's name being entered in the Collector's book as an occupant of land does not necessarily of itself establish that person's title or defeat the title of any other person. The same rule applies to entries of the names of persons in settlement khewats as the names of co-sharers in a mouza. 42 All. 368 (P.C.), *Foll.*; 13 Bom. 75, *Ref. to.* (*Sir John Edge.*) BHAGWANI *v.* MOHAN SINGH. **88 I.C. 385= 29 C.W.N. 1037=23 A.L.J. 589=41 C L.J. 591= 22 M.L.W. 211=1925 M. W. N. 421= A.I.R. 1926 P.C 132=49 M.L.J. 55 (P.C.).**

———The mere fact that the name of a Hindu widow is entered in the revenue papers does not necessarily raise the presumption that she is the widow of a separated Hindu. (*Lindsay and Sulaiman, JJ.*). UMAN SHANKER *v.* MT. AISHA KHATUN. **77 I.C. 869=46 All. 729= A.I.R. 1924 All. 88.**

———Entries in revenue papers alone cannot be accepted as indicating a state of separation between two co-parceners of a Hindu family. (*Wasir Hasan, A.J.C.*). JAISI RAM *v.* RAJ BAHADUR KUMARI. **83 I.C. 363=11 O.L.J. 87= A. I. R. 1924 Oudh 326.**

———*Mutation in one member's name does not indicate separation.*

Even where property is held by a joint Hindu family mutations are often made in favour of individual members of the family. Unsupported by any other circumstances of division, they do not raise a presumption of separation. (*Dalal, J.C. and Neave, A.J.C.*). AVADH RAM SINGH *v.* MABHUB KHAN. **79 I.C. 725=10 O.L.J. 525= A.I.R. 1924 Oudh 255.**

HINDU LAW — Partition—Evidence of—Official records.

———*Substitution of son's name for father's in khewat is evidence of partition.*

Where the family is found to be not joint there is no presumption as to the date when the partition took place. Entries specifying shares in the Khewat to which parties would be entitled on partition are no evidence of partition. Where, however, father's name was expunged and minor sons' names under the guardianship of their grandmother were put in, respecting only certain property standing in the name of the father,

Held, this fact was strong evidence of partition between the father and the sons. (*Simpson, A.J.C.*). DHANUTAL KHAN *v.* RAM LAL KALWAR.
75 I. C. 227=10 O. L. J. 412=
A.I.R. 1924 Oudh 154.

———*Mutation entries Land and Registration papers —Value of.*

No general rule can be laid down that statements in Mutation Petitions and Land Registration Records giving the shares of each member of a joint family are evidence of separation. Each case must depend on its own facts. If the documents show a clear and unequivocal intention to separate they will be proof of such separation; if not the mere fact that entries or declarations are made showing what in the event of a partition will be the share of the respective members of the joint family will not suffice to establish disruption of the joint family. (*B. N. Mullick and Bucknill, JJ.*). SRI GOBIND PERSHAD *v.* BRIJ RAJ KUMAR.
61 I. C. 369 (Pat.).

—Partition—Evidence of—Possession of property.

———Possession of property is not necessary to decide status. (*Kumaraswami Sastri and Krishnan, JJ.*). JANAKIRAM CHETTY *v* NAGAMANI MUDALIAR. **93 I. C. 662=49 Mad. 98=22 M.L.W 801=**
A.I.R. 1926 Mad. 273=50 M.L.J. 413.

—Partition—Evidence of—Proof of date.

———*Date of partition need not be proved.*

To prove that the parties who are Hindus and members of the same family are separate all that it is necessary to prove is that they have separated and are separated, not that they did separate on a particular occasion. (*Hallifax and Prideaux, A.J.Cs.*). MURLIDAS *v.* HARIDAS. **62 I.C. 246=**
4 N.L.J 43=A.I.R. 1921 Nag. 34.

—Partition—Evidence of—Rebuttal.

———Where a deed divides the joint property into certain shares and gives each man an absolute and individual right, it can be shown by the conduct of the parties that, subsequent to that, they did not divide their properties which they had already got in common and continued to treat the properties as joint properties. (*Kumaraswami Sastri and Reilly, JJ.*). MAHALAKSHMAMMA *v.* SURYANARAYANA.
117 I. C. 113=51 Mad. 977=28 M.L.W. 919=
A.I.R. 1928 Mad. 1113=55 M.L.J. 733.

—Partition—Evidence of—Reference to arbitration.

———*Recitals in—Evidence of separation.*

Where all co-parceners of a joint family prior to final division executed a mukhtiarnama appointing certain persons as arbitrators for partition and recited in the document that they had already been living separately,

Held, that the document evidenced a severance of status between the parties. (*Madhavan Nair, J.*). LAKSHMAKKA *v.* BALA RANGAPPA.
91 I.C. 285=A.I.R. 1926 Mad. 388.

HINDU LAW—Partition—Evidence of—Several indications.

—Partition—Evidence of—Relinquishment of share.

———A family does not continue to be joint in cases where there is a relinquishment by the father of his share subject to a provision for maintenance. 6 Mad. 71, *Doubted.* (*Ramesam and Jackson, JJ.*). RAMACHANDRA JAGANNATH RAO *v.* VISVESAM.
80 I.C. 228=19 M.L.W. 691=
34 M.L.T. 249=47 Mad. 621=
A.I.R. 1924 Mad. 682=46 M.L.J. 590.

—Partition—Evidence of—Separate dealings.

———The fact that different members of an alleged joint family executed separate deeds of mortgage is evidence showing separate dealings by the members and the mortgage deeds cannot be rejected as evidence, simply because the mortgages were not enforced. (*Ashworth and Iqbal Ahmad, JJ.*). MT. BETI *v.* SIKHDAR SINGH. **108 I.C. 721=**
50 All. 180=25 A.L.J. 1014=A.I.R. 1928 All. 39.

—Partition—Evidence of—Several indications.

———*Separate residence—Separate dealing with property, and separate entry in revenue papers show partition.*

Separation in food and residence for a long time between two brothers of a Hindu family, independent transactions of property such as mortgages and leases and appropriation of the proceeds thereof to personal uses, description of one of the brothers as being separated in the Record-of-Rights prepared under the Bombay Land Record-of-Rights (1903), enjoyment of the properties by the widow of one of the brothers after his death and the entry in the mutation register prepared under Bombay Land Revenue Amendment Act (1913), of the name of widow as the owner of the properties, all these facts clearly show that there had been a partition between the two brothers during their lifetime. (*Sir Binod Mitter.*) GANGABAI *v.* FAKIRGOWDA SOMAYAPPAGOWDA DESAI.
123 I.C. 166=32 Bom. L.R. 368=57 I.A. 61=
A.I.R. 1930 P.C. 93=58 M.L.J. 322 (P.C.).

———*Separate living and dealing with property if enough proof.*

Where persons belonging to a Hindu family have been living for a long time separate from one another and their property has also been separately dealt with, it would not be necessary to ask for evidence of separation. If the conduct of members of the family is consistent only with separated status of family, that must be the conclusion drawn from facts proved irrespective of the question that there is no formal proof of separation. 18 Cal. 302 (P.C.) and 31 Cal. 262, *Foll.* (*Gokaran Nath Misra and Nanavutty, JJ.*). DURGA *v.* LAL BAHADUR. **112 I. C. 387=5 O.W.N. 992=**
4 Luck. 138=A.I.R. 1928 Oudh 509.

———*Entry in revenue records, separate residence, dealing with property, etc., prove partition.*

Where actual direct evidence as to partition of a joint Hindu family is not available, but there are series of indications, *e.g.*, entries in the revenue papers defining the shares of the family members, their separate residence, cultivation and dealings, institution of a suit by all the members as co-plaintiffs, without any assertion in the plaint as to the existence of the joint family, no one of which is itself sufficient to establish it, a presumption as the same is justified by the cumulative effect of those indications. 4 O.L.J. 124 and 31 All. 412 (P.C.), *Foll.* (*Raza, J.*). RAMESHWAR SINGH *v.* RAM BAHADUR SINGH. **99 I.C. 839=**
A.I.R. 1927 Oudh 591.

HINDU LAW—Partition—Evidence of—Several indications.

———*Entry in revenue records, separate residence, and dealing with property, etc., prove partition.*

Where actual direct evidence as to partition of a joint Hindu family is not available, but where are a series of indications, *e.g.*, entries in revenue papers defining the shares of the family members, their separate residence, cultivation and dealings, institution of a suit by all the members as co-plaintiffs, without any assertion in the plaint as to the existence of the joint family, none of which is itself sufficient to establish it, a presumption as to the same is justified by the cumulative effect of those indications. 4 O.L.J. 124, *Foll.* (*Misra and Raza, JJ.*). MT. JAGWANTI *v.* BACHAND SINGH.

95 I.C. 774=13 O L.J. 744=A.I.R. 1926 Oudh 511.

———*Separate living for a very long period with a portion of joint property raises presumption of partition.*

Where there was a quarrel among the family members, and the plaintiff had been living separately from the family for years, and also had obtained exclusive possession of some of the family property,

Held, it is difficult to hold that there was not a partition especially when the share which the plaintiff obtained was not inadequate. (*Simpson, A. J. C.*). JANGI SINGH *v.* GANGA SINGH.

77 I.C. 391=10 O.L.J. 393=A.I.R. 1924 Oudh 115.

———Where there was no commensality in living and no co-worship but there were separate transactions and separate definement of shares in the Revenue records, the conclusion is irresistible that the family was separate although there had been no regular partition. (*Coutts and Ross, JJ.*). TARA PRASAD JHA BALIASEY *v.* MAYA DEBYA.

65 I.C. 687=1922 P.H.C.C. 91=A.I.R. 1922 P. 30.

———*Long course of separate living, etc., may be enough proof.*

Though there is no proof of a formal partition the long course of separate living and separate dealing with properties by each branch and the absence of proof of any joint dealings at all regarding them, coupled with the fact that the sons apparently also became divided between themselves are strong evidence in support of a finding of complete separation between the two branches of a family. (*Wallis, C. J. and Krishnan, J.*). GURUSWAMI PANDIYAN *v.* KALAI PANDIA.

61 I.C. 242=44 Mad. 1=A.I.R. 1921 Mad. 340.

—Partition—Evidence of—Suit.

———*Is evidence of separation.*

Although the mere fact that a suit for partition was instituted would not have the necessary effect of establishing separation, yet in the absence of any satisfactory explanation or evidence to the contrary it would be evidence of such a separation. A. I. R. 1916 P. C. 104; A.I.R. 1917 P.C. 39 and A.I.R. 1928 All. 422, *Rel. on*; A.I.R. 1925 P.C. 254, *Ref.* (*Sulaiman and Kendall, JJ.*). PARAS RAM *v.* MEWA KUNWAR.

1930 A.L.J. 890=A.I.R. 1930 All. 561.

———The filing of a plaint claiming partition shows a clear intention of separation. (*Chatterji, J.*). RAM BALAK *v.* AMBIKA SINGH.

10 P.L.T. 373=A.I.R. 1929 Pat. 366.

———*Suit is only presumptive evidence of separation.*

Ashworth, J.—The bringing of a suit for partition is only presumptive evidence of separation and evidence may be rebutted by other evidence such as the fact of the withdrawal of the plaint on the ground that separation had not taken place or was not desired (but not merely by evidence of withdrawal of the plaint). A.I.R. 1925 P.C. 49, *Foll.* (*Ashworth and Iqbal Ahmad, JJ.*). SHAGUNCHAND *v.* DATA RAM.

101 I.C. 868=49 All. 665=25 A.L.J. 369=A.I.R. 1927 All. 565.

HINDU LAW—Partition—Father.

———*Suit withdrawn—Intention to divide negatived.*

When there is a definite intention to divide, that intention should be given effect to; but where that intention has been expressed by the filing of a partition suit but shortly afterwards negatived by the withdrawal of the suit, the mere filing of the suit cannot be deemed to be a sufficient proof of that intention and no severance in status is effected. 33 M.L.J. 75; 9 M.L.W. 617, *Foll.* (*Phillips, J.*). KRISHNASWAMI NAIDU *v* PERUMAL.

83 I.C. 84=20 M.L.W. 540=1924 M.W.N. 742=A.I.R. 1925 Mad. 112.

—Partition—Father.

———*No power to bind sons or to represent them.*

Where a partition is *bona fide* and the creditor knowing of the partition takes a promissory note from the father in which are included sums which were due by the father before the partition. the promissory note cannot bind the sons. On partition the father ceases to represent the other members of the joint family and he has no authority to bind them. (*Kumaraswami Sastri and Reilly, JJ.*). SUBRAMANIA *v.* SUBBIAH. **1930 M.W.N. 658.**

———*Father is competent in his lifetime to effect separation in family.*

The father is in his lifetime competent under Hindu Law to effect a separation in the family if he gives his sons equal share with himself. A deed of partition giving separate shares to the sons has the effect of a partition. The mere fact that the share of one son is not separated by metes and bounds or that the father describes the sons as joint does not affect the status of the family split up by the deed of partition. 2 Mad. 317, *Not ref.* (*Mukerji and Niamatullah, JJ.*). NIRMAN BAHADUR *v.* FATEH BAHADUR.

1929 A. L. J. 1233=A.I.R. 1929 All. 963.

———Immoral debts of father do not create charge on family property—Individual property of sons acquired by partition is not liable to attachment in execution of money-decree against father. A.I.R. 1927 All. 714, *Rel. on.* A.I.R. 1927 Mad. 682, *Not appr.* (*Sulaiman and Pullan, JJ.*). RAM SARAN DAS *v.* BHAGWAN SINGH.

A. I. R. 1929 All. 775.

———The liability of the sons for the father's debts incurred before partition is not affected by a partition if it was made to defeat or delay the creditors. (*Mukerji and Niamatullah, JJ.*). KISHAN SARUP *v.* BRIJ RAJ SINGH. **121 I.C. 257=1929 A. L. J. 941=51 All. 932=A. I. R. 1929 All. 726.**

———Decree against father after partition cannot be executed against sons, for the father no longer represents them. (*Mukerji and Niamatullah, JJ.*). KISHAN SARUP *v.* BRIJ RAJ SINGH.

121 I.C. 257=1929 A.L.J. 941=51 All. 932=A.I.R. 1929 All. 726.

———*Partition before attachment of joint property in execution of decree against father is valid.*

The sons of a Hindu at any time up to attachment of the joint family property can enter into a partition with their father with the express object of avoiding attachment of what up to the time of the partition has been joint family property. If they do so, their individual property acquired by the partition will not be liable to attachment. The

HINDU LAW—Partition—Father.

partition can only be set aside on evidence showing fraud, and the mere fact of the desire to save their property will not be sufficient to justify an inference of fraud. 37 All. 214, *Disc.* (*Ashworth and Kendall, JJ.*). GAYA PRASAD *v.* MURLIDHAR.
104 I. C. 406=25 A. L. J. 829=A.I.R. 1927 All. 714.

——Son is not liable for father's antecedent debts after partition. (*Kanhaiya Lal and Ashworth, JJ.*). JAGDISH PRASAD *v.* SRI DHAR. **97 I.C. 503=A.I.R. 1927 All. 60.**

——Father in his lifetime can partition amongst minor sons *inter se.* 2 Mad. 317 and 40 Cal. 966, (P.C.), *Rel. on.* (*Fawcett and Madgavkar, JJ.*). BAPU HAMBIRA *v.* SHANKAR BHAU. **93 I.C 213=28 Bom. L.R. 46=A. I. R. 1926 Bom. 160.**

——*Private partition by father binds sons.*

It is competent to the father of a joint Hindu family in his capacity of managing member of the family to refer to arbitration the partition of the joint family property, and the award made on such a reference if in other respects valid will be binding on the sons unless there is any fraud or collusion on his part. 16 All. 231 ; 27 Bom. 287. *Foll.* (*Baker, J. C.*). SAWAI BALCHAND *v.* LACHMAN PRASAD. **78 I.C. 1045=A.I.R. 1924 Nag. 148.**

——*Father's insolvency—No separation between sons.*

The effect of the order directing a division of the father insolvent's share and delivery of the same to the Official Assignee is only a severance of the status so far only as he is concerned and his sons continue joint with benefit of survivorship *inter se.* (*Kumaraswami Sastri, J.*). Y. S. MASILAMONY MUDALI, *In re.* **62 I. C. 376=13 M.L.W. 332=1921 M.W.N. 168=A.I.R. 1921 Mad. 217.**

—Partition—Female sharer—Grand mother.

——Under the Mitakshara, on partition between the father and son, the grand-mother is not entitled to a share. (*Case-law considered.*) (*Kemp, Ag. C. J. and Murphy, J.*). JAMNABAI *v.* VASUDEO SAGARMAL. **124 I.C. 793=32 Bom. L. R. 48=A.I.R. 1930 Bom. 302.**

——*Is entitled to a share.*

In the Mitakshara School, where the original owner of the property dies leaving a widow and where his son also dies subsequently, leaving a widow and sons, in a partition between these sons, their grand-mother, *i. e.*, the widow of the original owner, is entitled to a share. 34 All. 505 (F. B.), *Dist.* (*Case-law discussed.*) (*Walsh, Ag. C. J. and Sulaiman, J.*). KANHAIYA LAL *v.* MT. GAURA. **83 I.C. 147=47 All. 127=22 A.L.J. 890=6 L.R A. Civ. 1=A.I.R. 1925 All. 19.**

——A grand-mother gets an equal share with her grandsons on partition between them. 9 W. R. 61, *Foll.*; 34 All. 505, *Dist.* (*Gokul Prasad, J.*). KANHAIYA LAL *v.* MT. GAURA. **71 I.C. 564=A.I.R. 1923 All. 436.**

—Partition—Female sharer—Mother.

——Where there is a partition between a Hindu father and his sons, the wife of the Hindu father has a right to a share equal to that of the father or the sons. 32 Cal. 234 and 34 All. 505, *Ref.*; 33 All. 118 and 3 All. 88 (F.B.), *Dist.* (*Mukerji and Bennet, JJ.*). PARTAB *v.* DALIP.
1930 A.L.J. 793=A. I. R. 1930 All. 537.

——The proposition that a Hindu mother is entitled to a share on partition is not well known, and a non-assertion of her right by the mother in previous partition does amount to acquiescence of no right. (*Mukerji and Bennet, JJ.*). PARTAB *v.* DALIP. **1930 A.L.J. 793=A.I.R. 1930 All. 537.**

HINDU LAW — Partition — Female sharer — Mother.

——*Mother's right to share arises only on partition being actually effected by sons.*

Mother's right to claim share arises only on partition, no matter whether the partition is made amicably or as a result of a decree by a suit. The bringing of a suit for partition by one of the sons does not confer any right on the mother to have a share. If the suit for partition is withdrawn, the mother cannot claim any share, nor can she insist that the suit must be carried on to a decree. If the partition suit is dismissed by the Court for some reason or other, then the mother could not get any share in the property. It is only when the property is actually partitioned that the mother would get a share equal to that of the sons. She is not even a necessary party to suit having no interest in the property when the suit is brought. She can only come in to watch the proceedings and guard her interest when the partition is effected. Then too she will not be entitled to any share in the property in which the sons had no interest and which could not be the subject of partition. 27 Cal. 77, *Foll.* (*B. B. Ghose and N. K. Bose, JJ.*). BALDEO DAS *v.* SOROJINI DASI. **34 C.W.N. 160=A.I.R. 1929 Cal. 697.**

——In the case of a partition between a son and a grandson of a female, the grandson being the son of a son other than the surviving son the female is entitled to a share equal to that of her sons. 34 All. 505 (F.B.), *Dist.* (*Mears, C. J. and Mukerji, J.*). BABUNA KUNWAR *v.* JAGAT NARAIN SINGH. **109 I.C. 61=50 All. 532=26 A.L.J. 293=A.I.R. 1928 All. 330.**

——At a partition between brothers after the demise of their father, their mother would be entitled to a share equal to the share of one of them, and the fact that one of the brothers is dead and his interest in the joint ancestral estate is represented at the partition by his only son, makes no difference in principle. 34 All. 505, *Dist.* (*Wazir Hasan and King, JJ.*). BRIJMOHANLAL *v.* MT. BITANA. **102 I.C. 354=1 L.C. 6=A.I.R. 1927 Oudh 233.**

——*Maintenance in lieu of share—Mother's suit for share not maintainable.*

Where there is a separation between two brothers in fact, each appropriating to himself a specified share of the profits of the immovable property and by the same transaction granting maintenance to their mother, the provision for maintenance is a provision in lieu of her share in the estate and a suit by the mother for her share is not maintainable. (*Case-law referred to.*) (*Stuart, C. J. and Hasan, J.*). MT. RAJAM *v.* DHARMA RAJ.
100 I. C. 621=4 O.W.N. 168=A.I.R. 1927 Oudh 136.

——*Mother or step-mother at partition among her sons or step-sons or grandsons takes an equal share—Death of mother pending partition—Her share lapses.*

When after her husband's death her son comes to a partition with her step-son or step-son's son a mother, as also a step-mother, is entitled to an equal share with her own son or step-son and that the same is the case with the grand-mother and further that the nephews take in a partition with their uncle their father's share, *i.e.*, they take *per stirpes* and not *per capita.* (*Text and Case law cited.*) She is not bound by a partition made behind her back without setting apart a share for her, and she is entitled to sue for re-opening the partition and for the allotment of her share. 31 Cal. 262 (P.C.), *Rel. on.*

HINDU LAW — Partition — Female sharer — Mother.

A purchaser from a son takes subject to the mother's right, and stands in his vendor's shoes in so far as the mother's share at a partition is concerned : 34 C.L.J. 29 and 3 All. 88, *Rel. on.*

If the mother or step-mother dies when the matter of the extent of the shares allottable at the partition to the different claimants is still *sub judice*, her death reduces the number of the participators of shares with the result that her share on her death must be re-distributed amongst all of them. (*Kinkhede, Offg. A.J.C.*). BHANRAO *v.* GANGI. **95 I. C. 734=9 N.L.J. 170=23 N.L.R. 184=A.I.R. 1926 Nag. 453.**

———*Mother takes equal to sons, but only half as much if she has got income producing stridhan—Stridhan does not include jewels.*

According to all the leading authorities of the Mitakshara School, both mothers and step-mothers are equal sharers with the sons : 8 Cal. 537 and 47 I.C. 204, *Foll.*; 16 Cal. 758 (P.C.), *Not foll.* She is, however, entitled to only half as much if she has got stridhan, but it cannot be said that when the text-writers lay down that the possession of stridhan should by itself reduce the claim of the widow to one-half, they meant to include ornaments within the term. A share given to a widow on partition is in lieu of maintenance, and it is difficult to understand how a widow can possibly maintain herself out of ornaments. Stridhan in the text clearly means stridhan capable of producing an income. (*Das and Adami, JJ.*). BASHIT NARAYAN SINGH *v.* BINDESHWARY PRASAD SINGH. **97 I.C. 289=7 P.L.T. 599=A.I.R. 1926 Pat. 537.**

———*Share is given in lieu of maintenance.*

The share allotted to a widow on partition of joint estate left by her husband among his sons is not given her in the character of an heir to her husband (owing to the presence of the sons) but in lieu of maintenance. (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKER. **78 I.C. 574=11 O.L.J. 286=A.I.R. 1924 Oudh 360.**

———The share allotted to a widow on partition between the sons of her husband can be held by her for her life only. On her death it devolves on her husband's next heirs. (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I.C. 574=11 O.L.J. 286=A.I.R. 1924 Oudh 360.**

———*Mother is entitled to a share on partition between sons.*

A female member of a joint Hindu family has no right to claim a partition, but if she happens to be a mother and a partition is made at the instance of her sons she is entitled to a share equal to that of each of her sons as a necessary corollary to such a partition. (*Kanhaiya Lal, J.C.*). MURLIDHAR *v.* MULCHAND. **73 I.C. 39=10 O.L.J. 226=A.I.R. 1924 Oudh 54.**

———It is only on the event of a partition amongst her sons that the mother becomes entitled to a share in lieu of maintenance. (*Mookerjee and Chotzner, JJ.*). JADU NATH SARKAR *v.* HARAN CHANDRA SARKAR. **78 I.C. 687=49 Cal. 1043=36 C.L.J. 217=A.I.R. 1923 Cal. 221.**

———Partition between one brother and transferee from the other brother—Mother is entitled to an equal share. After her death half of her share will go to the transferee. (*Kotval, A.J.C.*). RAM NATH *v.* SITARAM. **74 I.C. 81=19 N.L.R. 147=A.I.R. 1923 Nag. 288.**

———*Partition among sons—Mother is entitled to share—Stranger purchaser party to partition is also liable—Stridhan given by husband or father-in law should be deducted from mother's share.*

HINDU LAW — Partition — Female sharer — Step-mother.

Though a mother cannot compel a partition so long as the sons remain united, if a partition does take place between the sons, she is entitled to a share equal to that of a son in the co-parcenary property, and she is entitled to a similar share on a partition between the sons and the purchaser of the interest of one or more of them. If the mother has received stridhan from her husband or father-in-law, its value should be deducted from her share. Stridhan received from the family of the father of the lady should not be deducted. (*Mookerjee and Buckland, JJ.*). JOROBONDHU PAL *v.* RAJENDRA NATH. **66 I.C. 121=34 C.L.J. 29=A.I.R. 1921 Cal. 351.**

———*Share allotted to mother of parties—Sons have vested interest in the share during her life.*

The share allotted to a Hindu woman on partition among her sons is an interest in lieu of the right to maintenance which is carved out of the son's shares and at the death of the mother goes back to and becomes part of the shares out of which it came. Hence during her lifetime her sons have not merely a *spes successionis* in her share but a vested interest: 15 Cal. 292, *Ref.* (*Rankin, J.*). SASHI BHUSAN *v.* HARI NARAYAN. **66 I.C. 705=48 Cal. 1059=25 C.W.N. 990=A.I.R. 1921 Cal. 202.**

—Partition — Female Sharer — Step-grandmother.

———*Step-grand-mother takes equally with son and step-grandson.*

On a partition between the sons and a step-grandson governed by the Mitakshara School of Hindu Law, the step grand-mother is entitled to share equally with the sons and the step-grandson : 38 All. 83; 31 Cal. 1065, *Foll.* ; 16 Cal. 758 (P.C.) ; 34 All. 505, *Dist.* (*Wort and James, JJ.*). SHRIRAM PANDE *v.* HARICHARAN. **9 Pat. 338=A.I.R. 1930 Pat. 315.**

—Partition—Female sharer—Step-mother.

———*On partition between sons, even a step mother without a son is treated like a son.*

The proposition that in a partition between brothers who are the sons of different mothers, the property is first divided into equal shares among all the brothers and then the shares of all the sons of each mother are put together and again equally divided between them and her, is not correct. The word "mata" does include even a step-mother, without sons ; therefore mother gets the same share as a son. (*Hallifax, A.J.C.*). PADAM SINGH *v.* SUBRANSAI. **94 I.C. 791=22 N.L.R. 28=A.I.R. 1926 Nag. 291.**

———*Step-mother is entitled to a share equal to that of a step-son.*

The word 'mata' means not only a mother but also includes a step-mother. A step-mother does occupy the same position as a mother and she is entitled to a share out of the joint estate equal to that of a step-son under Mitakshara: 8 Cal. 537; 17 Bom. 271; 39 Bom. 373; 38 All. 83; 47 I.C. 204, *Appl.*; 47 P.R. 1914, *Dist.* (*Shadi Lal, C. J. and Addison, J.*). TEGH INDAR SINGH *v.* HURNAM SINGH. **90 I.C. 1035=6 Lah. 457=7 L.L.J. 425=26 P.L.R. 680=A.I.R. 1925 Lah. 568.**

———Under the Mitakshara, on a partition between the father and his sons, the step mother is entitled to a share; 31 Bom. 54, *Foll.* (*Macleod, C. J. and Shah, J.*). HUSBANNA DEVENNA *v.* DEVANNA SANNAPPA. **80 I.C. 468=56 Bom. 465=26 Bom. L.R. 424=A.I.R. 1924 Bom. 444.**

HINDU LAW—Partition—Female sharer—Step-mother.

———*Step-mother's share is equal to that of any son.* The rule under the Mitakshara School of law is that a step-mother is entitled upon partition of a joint family property among sons and step-sons to get a share equal to that of a son. Where it was argued that the step-mother's share in Mitakshara Law shoud come out of the aggregate of the shares given to her own sons but not out of the joint estate.

Held, the argument was untenable: 38 All. 83: *Foll.* (*Wazir Hasan and Neave, A. J. Cs.*). GAYA PRASAD *v*, GIRJA SHANKER. **78 I. C. 574= 11 O.L.J. 286= A.I.R. 1924 Oudh 360.**

—Partition—Female sharer—Unmarried daughter.

———Unmarried daughter is not entitled to share. (*Mohiuddin, A.J.C.*). DHAROPSING *v.* RAJARAM. **108 I.C. 447=A.I.R. 1928 Nag. 193.**

—Partition—Female sharer—Widow.

———On partition, portion of property given to widow in lieu of maintenance and recorded in her name—Purchaser at rent sale of that portion takes absolute property: 16 Cal. 511; 17 C. W. N. 937 and 1 Cal. 133, *Dist.*; 34 I. C. 581, *Rel. on.* (*Adami and Chatterji, JJ.*). INDRASAN PANDE *v.* KABUTRA KUER. **119 I.C. 556= A.I.R. 1929 Pat. 237.**

———*Share, much over her claim for maintenance—Widow takes only limited estate.*

In 1884 there was a partition between three brothers and the widow of the deceased fourth brother. She was given exactly ¼th share. She dealt with the property as her own and added to the property out of the savings of the income. This share was much over and above her claim for maintenance.

Held, that in the circumstances of the case the property given to her became a widow's estate: 34 All. 234, *Dist.* (*Piggott and Walsh, JJ.*). JHABBULAL *v.* JWALA PRASAD. **66 I.C. 986= A.I.R. 1922 All. 531.**

—Partition—Female sharer—Wife.

———Partition during life time of father at instance of son—Mother takes equally with sons: 34 All. 505, *Rel. on.* (*Stuart, C.J. and Srivastava, J.*). RAMPAL SINGH *v.* BALDEO BAKHSH SINGH. **122 I.C. 321=7 O.W.N. 222= A.I.R. 1930 Oudh 210.**

———*Wife gets a share equal to that of son.*

In the Central Provinces, when a father makes or enforces a partition of the ancestral family property with his sons, a share equal to that of a son must be allotted to the father's wife, subject to diminution on account of any stridhan she may have received from her husband or father-in-law: 8 Cal. 17; 32 Cal. 234 and 17 Bom. 271, *Foll.* (*Hallifax and Mitchell, A.J.Cs.*). RADHA KISHANLAL *v.* HAR KISHANLAL. **98 I.C. 37=A.I.R. 1927 Nag. 55.**

—Partition—Institution of suit.

———Minor is incapable of exercising intention to separate—Minor is separated from family only after decree—Therefore property of minor son dying pending suit by his elder brother as guardian vests in father by survivorship. (*Ramesam and Jackson, JJ.*). PURUSHOTTAM RAO *v.* RAM RAO. **121 I.C. 837=52 Mad. 856=30 M.L.W. 251= A. I. R. 1930 Mad. 326=57 M.L.J. 720.**

———A suit by a minor for partition, if it ends in a decree for partition, has the effect of creating a division of status from the date of the plaint: A.I.R. 1925 Mad. 717, *Foll.*; 41 Mad. 442, *Expl.*

The fact that the preliminary decree in the case is passed on a consent statement does not make any

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difference. (*Coutts-Trotter, C.J. and Sundaram Chetty, J. and afterwards Srinivasa Aiyangar, J.*). SRI RANGA THATHACHARIAR *v.* SRINIVASA THATHACHARIAR. **104 I.C. 472=50 Mad. 866= 26 M.L.W. 125=39 M.L.T. 234= A.I.R. 1927 Mad. 801=53 M. L. J. 189.**

———*Minor—Severance dates from date of decree and not from date of suit.*

The institution of a suit by a minor member through his next friend for partition of joint family, property has not the same effect as the institution of a similar suit by an adult member of the family, that is to say, the mere institution of the suit by the minor does not effect a partition of the family, but separation only takes place when the suit is decreed: 41 Mad. 442 and 42 All. 461, *Foll.* 4 P.L.J. 38, *Diss.*: 43 Cal. 1031 (P.C.), *Dist.*; A. I. R. 1925 Mad. 717, *Not foll.*

A minor co-parcener is incapable of expressing a clear and unequivocal intention to separate. If he through a next friend files a suit for a partition, a division of status is effected not by the institution of the suit, but by the subsequent decree of the Court and there is no principle of justice or equity by which a minor plaintiff can be deprived of the advantage he would derive from the death of co-parceners during the interval between the filing of such a suit and the preliminary decree therein; nor the co-parceners born during the same interval have their interest acquired by birth in the joint family property, affected by a decree for partition which in effect dates back to the filing of the minor co-parcener's plaint. A Court in passing a preliminary decree in a partition suit brought by a minor Hindu should not make the decree take effect from the date of the institution of the suit. (*Kincaid, J. C. and Lobo, A.J.C.*). JETHANAND UDHANDAS *v.* KEWALRAM. **97 I.C. 505= 20 S.L.R. 295=A.I.R. 1926 Sind 216.**

———The filing of a suit for partition does not effect severance of interest of the parties in a case where the plaintiff is a minor. (*Hallifax and Macnair, A.J.Cs.*). JANGLIA *v.* JHINGRYA **63 I.C. 594=A.I.R. 1921 Nag. 71.**

—Partition—Minor.

———*Guardian can declare intention to separate on behalf of minor.*

In the case of adult and minor alike there must be a definite and unambiguous indication of intention to separate. If the guardian of a minor without such definite indication confines himself to praying for partition, the Court will insist upon being satisfied that it is for the minor's benefit; but if the guardian declares that there has been partition, and merely prays for allotment, the Court cannot hold the partition in suspense. For once it is assumed that the Court may act for the minor and vicariously exercise his volition, there is nothing in logic to prevent the guardian doing the same. After all under Hindu Law a minor can express either himself or through his guardian an intention to do that which is clearly not against his own interest: 39 Mad. 159 (F.B.); 4 P. L. J. 38, *Foll.*; A. I. R. 1925 Mad. 717, *Expl.*; 41 Mad. 442, *Not appr.*; 3 M. H. C. R. 94 and 31 Bom. 373 (P. C.), *Dist.* (*Jackson, J.*). HENNUMULA AKKANNA *v.* SRI RANGARAJA BHATTAR VENKATA PERUMALAL BHATTAR AYYAVARULU. **123 I.C. 806= 1930 M.W.N. 32=A.I.R. 1930 Mad. 486.**

———The rule that the filing of a plaint for partition or such other clear and unequivocal expression of intention to become divided creates a severance of status is inapplicable to the case of a

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minor. (*Mukerji and Niamatullah, JJ.*). KISHAN SARUP *v.* BRIJ RAJ SINGH. **121 I.C. 257= 1929 A.L.J. 941=51 All. 932= A.I.R. 1929 All. 726.**

———Father with his minor sons suing grandfather and uncles for partition—Pending suit grandfather dying—Subsequently father dying—Major son desiring to continue the suit—Mother as guardian of minor sons refusing to continue,

Held, that although where a partition has been actually effected either by a decree or agreement by the father it may be binding on his minor sons and can only be questioned on some ground as fraud or collusion, still; if the intention to separate has not been carried into effect, the sons shall not be necessarily bound by the partition. While therefore, the filing of the plaint by the father may be deemed to have effected his separation from the family because he did not revoke his declaration of intention, yet it did not necessarily effect a division between the minor son and the other members. Before the partition was completed by a decree representation was made to the Court that it would not be in the interests of the minor son to become separated from the other members of the family and the Court was bound to take that view into consideration. So far as the minor's pecuniary interest was concerned, it was obvious that a separation effected before the death of his grandfather would be less beneficial to him than the separation after that date : 12 Bom. L. R. 621; 52 I. C. 614; 11 Bom. L. R. 396; A.I.R. 1922 P. C. 201, *Expl.* and *Dist.*; A.I.R. 1923 P. C. 136; 30 Cal. 725 (P. C.), *Cons.*; 11 L.W. 611; A.I.R. 1925 Mad. 112; A.I.R. 1925 P. C. 49; 33 M. L. J. 759, *Rel. on.* (*Phillips and Madhavan Nair, JJ.*). GANAPATI *v.* SUBRAHMANYAM CHETTY.

122 I.C. 167=30 M.L.W. 254=52 Mad. 845= A. I. R. 1929 Mad. 738=57 M. L. J. 374.

———*Father assuming hostile attitude towards his minor son—Next friend of minor entitled to sue for partition.*

Where the father of the minor adopts a persistent hostile attitude towards the minor, the next friend of the minor is entitled to exercise on behalf of his minor ward an intention to separate and obtain a partition, and to demand in the interest of the minor that his share should be set apart and secured for him, and where such a suit for partition is brought and the shares of the father and the minor son are set apart, the father must be regarded as having separate interests. (*Kanhaiya Lal and Ashworth, JJ.*). JAGDISH PRASAD *v.* SRI DHAR. **97 I.C. 503=A.I.R. 1927 All. 60.**

———*Stranger given a share—Minors interested may impeach.*

If on partition a share is given to a stranger the partition may be impeached by minors interested as disposition of property made without consideration and that it cannot be supported as a *bona fide* settlement of a disputed claim : 40 Cal. 966 (P.C.), *Foll.* (*Kumaraswami Sastri and Reilly, JJ.*). ENNI SOORANNA *v.* VARABATI VARAHALU. **101 I.C. 828= A.I.R. 1927 Mad. 708.**

———Partition between father and son—Son's son, if minor, need not be given separate share. (*Hallifax and Mitchell, A. J. Cs.*). RADHA KISHANLAL *v.* HARKISHANLAL. **98 I.C. 37=A.I.R. 1927 Nag. 55.**

———All co-parceners, minors—Partition effected by their respective brothers acting as guardians, and not unusual nor unfair and acted on by the minors after majority was held valid : 30 Cal. 788 (P.C.). *Ref. to*, (*Krishnan, J.*). DEVARAJULU NAIDU *v.* KONDAMMAL.

80 I.C. 929=20 M.L.W. 754= A.I.R. 1925 Mad. 427.

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—Partition—Partial partition.

———*Suit for partial partition should be dismissed.*

Where plaintiffs only ask for a partial partition there being other joint property not included in the suit, the proper course for the Court to adopt is to dismiss the plaintiffs' suit. The Court has no power to force the plaintiffs to sue for partition of property against their will. (*Broadway and Hilton, JJ.*). CHANDI SHAH *v.* BAHADRA SHAH.

120 I.C. 545=A.I.R. 1930 Lah. 286.

———*Properties not divided—Members are tenants-in-common.*

Where there is partition between brothers and property is left undivided the position of parties some after partition, is that of tenants-in-common as regards the property which is left undivided: A.I.R. 1916 P. C. 104; A.I.R. 1924 Bom. 31, *Foll.* (*Baker, J.*). MALHARI VAMAN *v.* VINAYAK RAVJI. **119 I.C. 779=31 Bom.L.R. 649= A.I.R. 1929 Bom. 323.**

———*Property not divided, remaining in certain person's possession—When such possession is adverse.*

In a partition of family property when some property is left undivided and is allowed to remain in possession of a certain person, the person holding such property is merely a co-owner. In order to claim adverse possession the burden is on him to prove that he repudiated the title of other members (having interest in the property) to their knowledge and that he has done some acts adversely to the knowledge of such members. Mere failure on the part of such members to prove the permissive possession does not go to establish his title by adverse possession : A.I.R. 1924 Mad. 113, *Rel. on.* A mere mortgage of that property by him alone, does not by itself show that the act is an adverse one. It must be proved that the mortgage was made with the knowledge of other members interested : A.I.R. 1923 All. 291, *Appr.* (*Madhavan Nair, J.*). VAIYAPURI CHETTIAR *v.* SUBRAMANIA CHETTIAR. **114 I.C. 337=A. I. R. 1929 Mad. 27.**

———*Subsequent suit for partition of property left out in the first suit—When maintainable.*

If, in the previcus suit for partition, a property is left out either intentionally or by mistake and no objection is taken by any party to a partial partition and the property in that suit are partitioned, a subsequent suit for partition of the property so left out and still held in joint possession is maintainable. Where properties included in the previous suit are left out of partition with the consent of parties who agree that they should remain in joint possession of the parties they may also be partitioned in a subsequent suit; but where the decree in the previous suit dealt with the properties included in that suit and directed that some of them should remain joint between the co-parceners, a subsequent suit for partition thereof cannot be maintained in view of the provisions of S. 11, C. P. Code. (*Suhrawardy and Graham, JJ.*). SASI MOHAN SAHA *v.* HARI NATH. **110 I.C. 60= 47 C. L. J. 436=32 C. W. N. 1023= A.I.R. 1926 Cal. 469.**

———*Partition, if effected is presumed to be complete.*

When there is a disruption of a joint Hindu family, there is a strong presumption that a complete partition has taken place and the burden of proving should be heavily laid on the party who

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alleges that a particular property continued to be joint in spite of partition. (*Bhide, J.*). DAULAT SINGH *v.* GURDIT SINGH.

109 I.C. 714=10 L.L.J. 336.

———*Presumption of complete partition arises.*

Where a partial partition is proved, the presumption is that there has been a complete partition both as to parties and property. (*Zafar Ali, J.*). SHEO RAM *v.* MAM RAJ. **99 I.C. 592=28 P.L.R. 14=A.I.R. 1927 Lah. 107.**

———*Suit for partial partition, when maintainable—Properties left out, out of ignorance in the first suit—Subsequent suit not barred.*

In a partition all the properties of the family should be included. It is not open to a member of the joint family to ask for a partition of a certain item and leave the rest except in cases where some of the items could not be divided by reason of their being in possession of usufructuary mortgagees or being under a long lease or set apart for maintenance of a widow or some member of the family or some other reasons. It is not left to the option of the plaintiff in a partition suit to ask for relief in respect of certain properties and then to say that he would ask for partition of the other properties at some future time, when the circumstances above adverted to are not present.

When parties are ignorant as to the existence of some family property and divide the property that is known to them and if afterwards it be discovered that some property belonging to the joint family has been left undivided, there could be no omission to sue within the meaning of R. 2 of O. 2 unless the plaintiff was at some time prior to the suit aware or informed of the claim or of the facts which would give him a cause of action, and therefore it cannot be said that he ought to have included it in the previous suit. (*Devadoss, J.*). SUBRAMANIAM *v.* LAKSHMINARASAMMA.

98 I.C. 538=38 M.L.T. 82=A.I.R. 1927 Mad. 213.

———Partition should be presumed to have been a complete one: 35 All. 564, *Dist.* (*Boys and Banerji, JJ.*). ROSHAN LAL *v.* MAHARAJ PRASAD. **89 I.C. 344=6 L.R.A. Civ. 512=A.I.R. 1926 All. 166.**

———*Suit for partial partition—When lies.*

A suit for partial partition would not ordinarily lie. In certain cases partial partition may be allowed but there must be circumstances which militate against the division of all the family properties and which would be a sufficient reason for the Court to hold that the suit for partial partition should be allowed. If some property belonging to the plaintiff and the defendants was in the hands of a third party claiming adversely to them, or if some property was alienated by one of the co-sharers and if there was some difficulty in including such alienee in the suit, then the Court would not be inclined to hold that such properties should be brought into the suit. But where the only allegation is that the other properties are in the possession of the tenants of the plaintiff, a suit for partition of some only of the lands belonging to the parties cannot be maintained. (*Devadoss and Jackson, JJ.*). G. A. SUBRAMANIAN *v.* A. RAMACHANDRA RAO. **85 I.C. 503=A.I.R. 1925 Mad. 333=47 M.L.J. 908.**

———*Portion left undivided—Position of members as to.*

Once it is held that there has been partition, the presumption must be that as regards that portion of the estate which remained undivided, the members of the family, would hold as tenants-in-common unless and until a special agreement to hold as joint tenants is proved: A. I. R. 1922 P. C. 201; A.I.R. 1916 P.C. 104, *Foll.*; 18 B. 611, *Dist.* (*Macleod, C. J. and Crump, J.*). DAGADU GOVINDA *v.* SAKUBAI NANA. **73 I.C. 369=47 Bom. 773=25 Bom. L.R. 806=A.I.R. 1924 Bom. 31.**

———*Burden of proving incompleteness of partition is on one who alleges.*

Where it is admitted that a partition has taken place the presumption is that all the property belonging to the joint family has been divided and the burden of proving that some of the property was left undivided and continued to be joint, lies upon the person alleging it. (*Kotval, A.J.C.*). ANANDRAO *v.* DADA. **71 I.C. 43=A.I.R. 1924 Nag. 65.**

———*A widow of one of the members can demand partition of undivided portion as partial partition effects severance in status even with regard to property not divided.*

When members of a joint family divide portions of the family property, a state of severance would in all probability result though it depends upon the circumstances in each case, and the facts proved, whether family still remained joint, each member holding his share of the property divided as his own separate property, and all the members holding the undivided property as members of a Hindu joint family. Where it was found that a very large portion of the family property was divided in 1889 amongst the members and from that date they began to separate, and had separate business and enjoyment in respect of their respective properties, it would be a legitimate presumption that they intended from that date to live divided, and consequently they would own the property still remaining undivided as tenants-in-common and therefore a widow of one of the members is entitled to a formal partition of the property left undivided. (*Macleod, C. J. and Crump, J.*). KASTURIBHAI NANIBHAI *v.* BAI MAHALAXMI. **77 I. C. 914=A.I.R. 1923 Bom. 464.**

———*When allowed and when not—General rule—Reasons for the rule—Exceptions.*

The general rule is that all property held in co-tenancy should be included in a partition suit. A co-tenant whose title to an undivided share of joint property is admitted clearly is entitled to partition as a matter of right; a difficulty in making a division of the subject-matter or a resulting prejudice to some of the co-tenants is not a sufficient ground for refusing a partition; and it has sometimes been maintained that partition may be claimed though it be impossible to divide the property without materially impairing its value or even totally destroying it. But although as a general rule all joint property of the co-tenants must be included in a partition suit, it is within the power of co-tenants by mutual agreement to make a partition of a part only of the joint property, retaining the rest in common. Exceptions to the rule that a suit cannot lie for partition of a portion of the family property have been recognised when different portions of the family property are situated in different jurisdictions, and separate suits for separate portions have sometimes been allowed, where different rules of substantive or adjective law prevail in the different Courts, Again a suit for partial partition has been allowed when the portion excluded is not in the possession of co-parceners and may consequently be deemed not to be really available for partition; a suit for partial partition has also been allowed when the portion

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excepted is impartible property. In another class of cases the rule has been relaxed namely where portion excluded is held jointly with strangers who have no interest in the family partition. The rule that a partition suit should embrace all the joint property is neither arbitrary nor technical: it is founded on sound and weighty reasons. If the rule were not recognised and firmly applied, multiplicity of litigation would be the inevitable result. If suits for partition were allowed to be instituted in fragments, the jurisdiction of the Trial Court and the forum of appeal might be altered; it might be of paramount importance to a party litigant whether he should have a first appeal or a second appeal to the High Court and whether he should at all be permitted to seek the judgment of the Judicial Committee with regard to the matters in controversy. The rule further ensures a just partition; parties might otherwise be greatly prejudiced as regards equitable distribution, retention of possession, liability for improvements and adjustment of accounts.

If the plaintiff declines to have a partition of the entire estate the suit will stand dismissed. (*Case-law discussed*). (*Mukerjee and Cuming, JJ.*). RAJENDRA KUMAR BOSE *v.* BROJENDRA KUMAR BOSE. **77 I.C. 790=37 C.L.J. 191= A.I.R. 1923 Cal. 501.**

——*Presumption is that all property was partitioned.*

If a property stood in the name of *K*, one of the four brothers, this is not even *prima facie* evidence that the property was obtained by *K*, for himself if at the time of acquisition, the family was still joint. After partition there is no presumption with regard to any property that it was excluded from the partition and the burden lies upon him who alleges exclusion, to establish his assertion. Separate possession is not conclusive evidence of partition and must be interpreted in the light of all the circumstances of the case. (*Mookerjee and Cuming, JJ.*). KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **72 I.C. 680=36 C.L.J. 434= A. I. R. 1923 Cal. 18.**

——*Separation, as to part of property dissolves joint family.*

The very conception of a joint Hindu family involves joint ownership of all the family property by its members and consequently the moment the partition takes place, even though it is partition of only a portion of the joint property, the members cease to be members of a joint Hindu family: 18 B. 611, *Diss.* (*Le Rossignol and Martineau, JJ.*). BENI PARSHAD *v.* MT. GUR DEVI. **73 I.C. 894= 5 L.L.J. 185=4 Lah. 252= A.I.R. 1923 Lah. 497.**

——Where separation is proved the onus is shifted on the person who alleges that a particular item is joint property. (*Campbell, J.*). NARSINGH DAS *v.* UTTAM CHAND. **76 I.C. 852= A.I.R. 1923 Lah. 332.**

——Division as to part of the estate and joint tenancy as to the rest is permissible. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYAN ANNAVI. **68 I.C. 451=45 Mad. 489= 1922 M.W.N. 399=30 M.L.T. 255= 26 C.W.N. 929=20 A.L.J. 839=49 I.A. 168= 24 Bom. L R. 1209=16 M.L.W. 639= 37 C.L.J. 15=A.I.R. 1922 P.C. 201= 43 M.L.J. 428 (P.C.).**

——*Service inam—Partition—Subsequent enfranchisement—Divided member can prove that the inam was kept undivided at partition.*

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The fact of partition from the person in whose name the service inam is enfranchised is not conclusive against a claim to co-parcenary rights in the enfranchised inam lands. Whether the co-parcenary right survives, will have to be determined as a fact in each case. It may be that the office with the inam attached to it was allotted at partition to the co-parcener then holding office as a part of his share. In such a case persons divided from him would obviously have no rights after enfranchisement. It may be that in view of the peculiar nature of the tenure and the legal impossibility of severing the lands or any portion of them from the office, the inam was kept undivided on the understanding that although till enfranchisement only the office-holder could enjoy it, yet in the event of enfranchisement, all members would be entitled to share. It may be that the other co-parceners were actually allowed by the office-holder to enjoy some portion of the inam land or its profits. If a divided member claims to share in an enfranchised service land, the onus lies on him of proving, not only that he is a member of the orginal service family, but that at any partition which has taken place the inam was kept out of partition as undivided property in which all the shares retained joint rights.

View of Spencer, J., in (1918) M.W.N. 849, *dissented from*; 26 Mad. 339 and 30 Mad. 434 (F.B.), *Ref. to.* (*Ayling and Odgers, JJ.*). DEVULAPALLI VENKATA SUBBA ROW *v.* K. SATYANARAYANAMURTI. **60 I.C. 27=44 Mad. 179= A.I.R. 1921 Mad. 86=40 M.L.J. 31.**

—Partition—Provision.

——*Bombay School—Son can claim partition against father's wishes—Father can insist upon provision for payment of his untainted debts being made before granting partition.*

In Bombay Presidency the right of a son to a claim of partition from his father and against his wishes is recognised. As a necessary corollary to it, the corresponding right of the father to claim, that before such partition takes place the payment of an untainted debt due by him should be provided for, must be given effect to. Therefore, in a suit filed by a son against his father for partition it is open to the father to insist upon his debts which are not tainted being discharged before any partition takes place.

Creditors of a Hindu father obtained mortgage decrees against him for debts contracted by him without necessity but not for illegal or immoral purpose. The decrees gave a right to claim money-decree for balance as the claim was not barred. In a suit for partition by the son against the father to which the mortgagees decree-holders were made parties the son claimed that the decree should not bind his interest in the property and asked for an injunction to restrain execution against the creditors,

Held, that it is not open to the son to urge that the claim of the creditors as a simple money claim against his own interest should not be provided for in this suit or that the creditors should be referred to separate proceedings to enforce their claim so that he might be able to further delay the creditors by raising the alleged point of limitation, when the personal claim of the creditors was in time when the injunction was asked for. (*Rupchand and Wild, A.J.Cs.*). GANGARAM RAMDAS *v.* LALUMAL CHANDUMAL. **A.I.R. 1930 Sind 138.**

——*Son suing for partition is liable for the marriage expenses of sisters married and to be married.*

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Per *Ramesam and Reilly, JJ.*—In a co-parcenary consisting of father and sons, the obligation of maintaining and marrying the daughters is not only on the father and through him on the co-parcenary but it is obligation on the co-parcenary itself, because such an obligation, being only a historical remnant of the daughter's original right to a share in the co-parcenary property, is created by birth. Hence if a son institutes a suit for partition against his father and brothers, his share in the family property cannot escape the liability of share in the expenses of the marriage of a daughter (his sister), who was married after the institution of the suit and of those that are still to be married. *Jackson, J.*, contra: A. I. R. 1922 P.C. 201, *Dist.* (*Other case-law considered.*) (*Ramesam, Jackson and Reilly, JJ.*). C. SUBBAYYA *v.* RAMAYYA.

121 I. C. 113=30 M. L. W. 923=
A.I.R. 1929 Mad. 586=57 M.L.J. 826 (F.B.).

——Provision cannot be made in a partition decree for the marriage expenses of the unmarried members: A.I.R. 1922 P. C. 201, *Foll.* (*Madgavkar and Patkar, JJ.*). GANESH *v.* SHRINIWAS.

113 I.C. 620=30 Bom. L.R. 457=
A.I.R. 1928 Bom. 211.

——*Suit filed—An unmarried member cannot claim his marriage expenses.*

The institution of a suit for partition by a member of a joint Hindu family effects a severance of the joint status of the family and a member of the family who is then unmarried is not entitled to have a provision made in the partition for his marriage expenses, although he marries before the decree in the suit is made: A.I.R. 1922 P. C. 201; A.I.R. 1927 Bom. 651, *Foll.* and 31 M.L.J. 147, *Dist.* (*Mohiuddin, A.J.C.*). DHAROPSING *v.* RAJARAM. **108 I.C. 447=A.I.R. 1928 Nag. 193.**

——In a suit for partition, a party should be disallowed not only prospective marriage expenses, but also expenses incurred after the date of the suit for partition and before the trial whether the parties live jointly or separately: A.I.R. 1922 P. C 201, *Foll.* (*Marten, C. J. and Crump, J.*). PRANJIVAN KASHIRAM *v.* MOTIRAM MANCHARAM.

103 I.C. 720=29 Bom.L.R. 1412=
A.I.R. 1927 Bom. 65.

——Joint family of father and sons—Before partition provision must be made for debts by father and joint family. (*Campbell and Dalip Singh, JJ.*). SAT NARAIN *v.* SRI KISHEN DAS. **93 I.C. 612=**
7 Lah. 376=28 P.L.R. 245=A.I.R. 1926 Lah. 264.

——One co-parcener meeting from his private property expenses due from joint estate should be proportionately reimbursed by others before partition.

Thus where he has paid out of his private property maintenance to the widow and the daughter of the last owner, he is entitled to reimbursement by the other co-parceners for their share of the expenses before a partition of the joint estate is made. (*Scott-Smith and Fforde, JJ.*). MT. BHOLI BAI *v.* DWARKA DAS. **84 I.C. 168=5 Lah. 375=**
A.I.R. 1925 Lah. 32.

——Provision for the marriage of unmarried co-parceners cannot be reserved at the time of partition: 45 Mad. 489 (P.C.), *Foll.* (*Scott-Smith and Fforde, JJ.*). MT. BHOLI BAI *v.* DWARKA DAS.
84 I.C. 168=5 Lah. 375=A.I.R. 1925 Lah. 32.

——*Maintenance—Provision should be made at partition.*

When joint property is partitioned, provisions may be made for the maintenance of such female members of the family as are entitled to maintenance from the estate. (1843) Fulton 189, *Foll.* (*Mookerjee and Chotzner, JJ.*). GOPAL CHANDRA PAL *v.* KADAMBINI DASI. **73 I.C. 235=**
A.I.R. 1924 Cal. 364.

HINDU LAW—Partition—Re-union—Father.

——*Members have not absolute right to residence in a particular house or room.*

It is quite wrong to say that the member of a joint Hindu family have rights *in rem* to residence in a particular house. It is true that while the common house is being used as a family house, they have a right to reside there but whether they have a right to any particular separate room is doubtful, but on partition it is clearly a matter for the tribunal arranging the partition to say whether it is in the general interest of the co-parceners that residence should be given in a particular house or not. Some other provision can be made if there are more houses than one to choose from. It may be for the general advantage of the family that provision should be made in money instead of in kind. (*Schwabe, C. J. and Waller, J.*). OFFICIAL ASSIGNEE OF MADRAS *v.* N. RAJABADAR PILLAI.

78 I. C. 536=1924 M. W. N. 192=
19 M. L. W. 397=34 M. L. T. 341=
A.I.R. 1924 Mad. 458=46 M.L.J. 145.

——Provision for the marriage or upanayanam of some of the members among whom the property is being divided cannot be claimed: A.I.R. 1922 P.C. 201, *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I. C. 574=**
11 O. L. J. 286=A.I.R. 1924 Oudh 360.

—Partition—Re-opening of.

——When inequality results in unfairness and prejudice to the minor, he can bring a suit for re-opening partition and limitation runs from the date of the minor's knowledge. (*Kinkhede, A. J. C.*). JAIN *v.* TUKARAM. **104 I. C. 493=**
A. I. R. 1927 Nag. 350.

——When a co-parcener brings a suit for re-opening a partition, other co-parceners who do not impeach the partition should not be allowed to get any benefit from the re-opening. (*Kinkhede, A. J. C.*). JAIN *v.* TUKARAM. **104 I. C. 493=**
A. I. R. 1927 Nag. 350.

—Partition—Re-union—Effect of.

——*Re-union cancels partition.*

Re-union cancels the partition and remits the parties to their original status and they thus become subject to all incidents of a Hindu co-parcenary: 10 M.I.A. 403 (P.C.); A.I.R. 1923 P.C. 136; A.I.R. 1925 P.C. 93; and A.I.R. 1925 P.C. 49, *Foll.*; 19 M.L.J. 723; 17 Cal. 33 and 19 Cal. 634, *Rel. on.* (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOSS. **112 I.C. 184=**
28 M.L.W. 824=A.I.R. 1928 Mad. 1064=
55 M.L.J. 132.

——*Re-union restores parties to original status.*

Per *Phillips, J.*—A re-union between the parties restores them to their original status and when a partition is effected, the shares are the same as they would be at the original partition irrespective of the amount of capital contributed by each co-parcener: 15 M.L.T. 352, *Not foll.*; 39 Bom. 734; 10 M.I.A. 403, *Foll.* (*Phillips and Krishnan, JJ.*). K. KRISTNAYYA *v.* K. GURUVAYYA. **70 I.C. 146=**
14 M.L.W. 668=1921 M.W.N. 742=
A. I. R. 1921 Mad. 443=41 M.L.J. 503.

—Partition—Re-union—Father.

——Fathers can re-unite, carrying by their act, into the re-united family also their sons. (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOSS. **112 I.C. 184=28 M.L.W. 824=**
A. I. R. 1928 Mad. 1064=55 M.L.J. 132.

HINDU LAW—Partition—Re-union—Minor.

—Partition—Re-union—Minor.

———*Arrangement by father to give to members of a separated branch properties out of ancestral estate is not binding on minor sons.*

A declaration of family arrangement purporting to give shares in the plaintiff's ancestral property to the members of the different branches of the disrupted joint family was executed by the father of the plaintiff. Under law there could not be any re-union and the act was done not to settle any dispute but simply out of charity and compassion. The plaintiffs were not the parties to the declaration nor was it to their advantage, and some of them were minors. The declaration was never intended to be enforced, was not acted upon and the plaintiffs were all along in possession of the property,

Held, that the declaration could not affect the plaintiffs. (*Adami and Fazl Ali, JJ.*). LAKSHMIDHAR *v.* KRISHNACHANDRA.

A. I. R. 1929 Pat. 548.

—Partition—Re-union—Plea of.

———The question of the re-union of a Hindu family and the facts relevant to prove such re-union is a matter of law. (*Wilberforce, J.*). NARAINDAS *v.* MAHNGA RAM. **59 I.C. 706= 45 P.W.R. 1921.**

—Partition—Re-union—Presumption against.

———*After partition presumption is against re-union.*

As the presumption is in favour of union until a partition is made out, so after a partition the presumption would be against a re-union. To establish it, it is necessary to show, not only that the parties, already divided, lived, or traded together, but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents. (*Venkatasubba Rao, J.*). RAJAGOPALA PILLAI *v.* P. VEERAPERUMAL PILLAI. **102 I.C. 630=39 M.L.T. 76= A.I.R. 1927 Mad. 792=53 M.L.J. 232.**

—Partition—Re-union—Presumption of.

———Minor son continuing to live joint with father even after majority and conducting his business—Re-union can be presumed. (*Kendall, A.J.C.*). B. ONKARESHWAR PRASAD *v.* B. DUSHYANT PRASAD. **82 I.C. 10=A.I.R. 1925 Oudh 56.**

—Partition—Re-union—Proof of.

———*Agreement to re-unite can be inferred from conduct.*

To establish re-union after general partition one must prove that there was some agreement to re-unite, though that agreement may be inferred from subsequent conduct: 40 Cal. 323, *Rel. on.* (*Sulaiman and Kendall, JJ.*). GAURI SHANKAR *v.* KESHAB DEO. **114 I.C. 881=1929 A.L.J. 204= A.I.R. 1929 All. 148.**

———*Re-union presumed from conduct.*

Where it is necessary, in order to ascertain the share of the outgoing co-parceners, to fix the shares which the others are, or would be, entitled to, the separation of one may be said to be the virtual separation of all. And even though there is no evidence of any specific agreement among the remaining co-parceners to remain united, such a re-union shall be presumed by the evidence showing that they did so remain: 30 Cal. 725 (P.C.), *Expl.* (*Jackson, A.J.C.*). KRISHNAPPA *v.* KASHINATH. **113 I.C. 677=A.I.R. 1929 Nag. 364.**

———After partition members living together and managing property in common—Family represented as a joint in litigation,

Held, that though the evidence was consistent with re-union did not necessarily prove it as the allegation of jointness might have been merely for the purposes of litigation: 30 Cal. 738 (P.C.), *Rel. on*; A.I.R. 1923 P.C. 136; A.I.R. 1928 Mad. 1113 and A.I.R. 1920 P.C. 24, *Ref.* (*Jackson, A.J.C.*). RAGHUNATH *v.* MT. YAMUNABAI. **121 I.C. 662= A.I.R. 1929 Nag. 362.**

HINDU LAW—Partition—Re-union—Succession after.

———*Intention to re-unite must be established.*

Re-union among co-parceners, though provided for by the text books, is of very rare occurrence; and to establish it, is necessary to show not only that the parties, already divided, lived or traded together but that they did so with the intention of thereby altering their status and of forming a joint estate with all its usual incidents. (*Das and Adami, JJ.*). PAN KUER *v.* RAM NARAIN.

117 I.C. 33=10 P.L.T. 217=A.I.R. 1929 Pat. 353.

———Where separation of the members of a joint Hindu family is once clearly proved, the mere fact of their subsequent living together and helping one another in their work is not sufficient to justify the finding of their re-union in property. (*Mukerji, J.*). MT. BACHHI KUNWAR *v.* RAM LAKHAN MAL. **110 I.C. 390=A. I. R. 1928 All. 640.**

———*Partition by registered deed—Re-union cannot be proved by unregistered deed.*

No doubt a person can prove a division in status by an unregistered partition deed, but he cannot prove by an unregistered document following a registered partition deed, which has divided the property into specific plots, either a re-union of the property or a re-union of status, which necessarily involves the re-union of the property: A.I.R. 1919 P.C. 44, *Dist.*; A. I. R. 1916 P. C. 104 and A.I.R. 1917 P.C. 12, *Rel. on.* (*Kumaraswamy Sastri and Reilly, JJ.*). MAHALAKSHAMMA *v.* CHATURVEDULA SURYANARAYANA.

117 I.C. 113=51 Mad. 977=28 M.L.W. 919= A. I. R. 1928 Mad. 1113=55 M.L.J. 733.

———*Re-union must be strictly proved.*

A re-uniting is for obvious reasons, of very rare occurrence, and when it happens it must be strictly proved as any other disputed fact is proved: A.I.R. 1925 P.C. 49 (P.C.) and 30 Cal. 725 (P.C.), *Foll.*

Jointness in residence, food and worship does not necessarily connote re-union; no more than is separation in these respects, conclusive proof of partition. (*Venkatasubba Rao, J.*). BABU *v.* GOKULDOSS GOVARDHANDOSS. **112 I. C. 184=28 M.L.W. 824= A.I.R. 1928 Mad. 1064=55 M.L.J. 132.**

———When co-parceners in a Mitakshara family had separated an agreement to re-unite must be proved like any other fact, and if that is not proved, they remain separate. (*Sir John Edge.*) JAG PRASAD RAI *v.* MT. SINGARI. **86 I.C. 122= 6 L.R. P.C. 111= 27 Bom. L.R. 760= 29 C.W.N. 941=23 A.L.J. 97=2 O. W.N. 229= A. I. R. 1925 P.C. 93=49 M.L.J. 162 (P.C.).**

———*Re-union to be proved by direct evidence.*

Mere mention in a release deed by one co-parcener that a previously separated co-parcener has re-united, is not by itself sufficient to prove re-union. It might be strong corroboration of any direct evidence that may be adduced to show that the co-parceners have re-united. (*Macleod, C.J. and Crump, J.*). JADAVBAI LAKKHICHAND *v.* MULTANCHAND HARAKHCHAND. **87 I.C. 936=27 Bom. L.R. 426= A.I.R. 1925 Bom. 350.**

—Partition—Re-union—Succession after.

———*D* separated and subsequently re-united with his father—*D* dying in state of re-union leaving

HINDU LAW—Partition—Re-union—Succession after.

behind father and separated brothers—Brothers succeed to property which fell to *D's* share at partition in preference to father. (*Srivastava, J.*). MATHURA *v.* BINDRA. **7 O.W.N. 562= A.I.R. 1930 Oudh 336.**

———*Re-united member is preferential heir to separated member of equal degree.*

In cases in which separation once takes place and then afterwards co-parceners through affection re-unite and there takes place an entire unity of interest among them, a re-united co-parcener shall take the heritage in preference to, and in utter exclusion of a separated claimant of an equal degree, whether brothers of the whole or half-blood or sons of such brothers or uncles. (*Jwala Prasad and Ross, JJ.*). SADANANDA BARPANDA *v.* BAIKUNTHA NATH BARPANDA. **63 I.C. 833=2 P.L.T. 299= A.I.R. 1921 Pat. 298.**

—Partition—Re-union—Who can re-unite.

———A re-union after partition can only take place between a father, brother or paternal uncle. (*Adami and Fazl Ali, JJ.*). LAKSHMIDHAR *v.* KRISHNACHANDRA. **A.I.R. 1929 Pat. 548.**

———Under the Mitakshara law re-union cannot take place with any person except with a father, a brother or a paternal uncle. The text on the point cannot be read as illustrative but must be read as restrictive : 33 Cal. 371, *Rel. on.* (*Das and Adami, JJ.*). PAN KUER *v.* RAM NARAIN. **117 I. C. 33=10 P. L. T. 217= A. I. R. 1929 Pat. 353.**

———According to the Mitakshara School, a member of a joint Hindu family, once separated, can re-unite with his father, brother or paternal uncle but not with any other relation. (*Broadway and Agha Haidar, JJ.*). HIRA SINGH *v.* MT. MANGLAM. **106 I. C. 877=9 Lah. 324=29 P.L.R. 697= A.I.R. 1928 Lah. 122.**

———A re-union in estate properly so-called can only take place between persons who were parties to the original partition : 30 Cal. 725 (P.C.), *Foll.* (*Devadoss and Jackson, JJ.*). PICHAYYA *v.* SARVAYYA. **106 I.C. 649=26 M.L.W. 746= A.I.R. 1927 Mad. 1118.**

———*Re-union is possible with father, brother or paternal uncle only and that must be after partition and must be of estate.*

Where it appeared that there had been a separation but subsequently two brothers had entered into an agreement whereby they had agreed to live together and to hold the property in certain specified shares,

Held, that there was no re-union in the sense that the two brothers became co-parceners of a joint Mitakshara family. It depends upon the evidence in each case as to whether the parties have re-united.

For a re-union two things are essential ; firstly, that one can re-unite with his father, brother or paternal uncle, in other words, the re-union is restricted to these three classes of cases only. Secondly the re-union must take place after separation so that the parties seeking to re-unite must have separated before the re-union. The effect of a re union is to place the united co-parceners in the same position as they would have been in, had no partition taken place and property of the united members stands on exactly the same footing as that of members who have always been undivided so that upon the death of any one of the re united members his share will pass by survivorship to the remaining members and will not get into the hands

HINDU LAW—Partition—Shares.

of any divided members so long as there are undivided members in existence. In order to constitute a re-union there must be a junction of estate with an intention to re-unite ; the re-union must be a re-union of property so that the united co-parceners can say "the property which is mine is thine, and that which is thine is mine." (1892) 16 Mad. 440 ; (1867) 7 W.R. 35: (1910) 37 Cal. 703, *Foll.* (*Jwala Prasad and Ross, JJ.*). MANA OJHA *v.* PRABHUDAT OJHA. **75 I.C. 508=5 P. L. T. 284= A. I. R. 1924 Pat. 647.**

———Re-union cannot take place with any person indefinitely but only with a father, a brother, or a paternal uncle. (*Jwala Prasad and Ross, JJ.*). SADANANDA BARPANDA *v.* BAIKUNTHANATH BARPANDA. **63 I.C. 833=2 P.L.T. 299= A.I.R. 1921 Pat. 298.**

—Partition—Right to.

———A Hindu son has an unrestricted right to institute a suit for partition of co-parcenary property during the lifetime of his father : 5 All. 430; 31 Cal. 111; A.I.R. 1922 Pat. 96 and 16 Bom. 39, *Foll.* (*Rupchand Bilaram, A.J.C.*). DOONGERSI AVCHAR *v.* HARIBHOY PRAGJI. **101 I.C. 438= A.I.R. 1927 Sind 160.**

———Decree against undivided son—Liability of share to attachment depends on son's right to enforce partition—In Punjab son cannot enforce partition : 113 P.R. 1886 and 58 P.R. 1880, *Foll.*; 105 P.R. 1917 (F.B.), *Expl.* (*Campbell, J.*). GAHRU RAM *v.* TARA CHAND. **89 I. C. 176= A.I.R. 1926 Lah. 85.**

———*Co-parceners excluded from possession are entitled for partition.*

The fact that minor co-parceners live separately in a house built by their mother will not constitute separation from the other members. Nor will the fact that the co-parceners were not in possession at the date of suit, bar their right to claim a partition. Co-parceners are entitled to claim partition even though they are excluded from possession. A claim for partition is one of the modes of enforcing a right to share in joint family property. (*Ashworth, J.C. and Simpson, A.J.C.*). THAKUR RUDRA PRATAP NARAYAN SINGH *v.* THAKUR NERMAN PRASAD SINGH. **74 I.C. 225= 9 O.L.J. 552=A.I.R. 1923 Oudh 61.**

———Insanity at the time when the succession opens is sufficient to disqualify and under the Mitakshara Law a person who is at the time insane is not entitled to share upon a partition in a joint family ; if he is not entitled to share, he is not entitled to demand partition. (*Prideaux, A.J.C.*). VITHOBA *v.* WAMAN. **68 I.C. 111= 18 N.L.R. 80=A.I.R. 1922 Nag. 161.**

—Partition—Shares.

———*In determining shares, shares allotted to members already separated must be taken into account.*

In Madras Presidency, when there has been a partition of one or more members in a joint Hindu family, the other members remaining united, the partition is to be taken into account in determining the shares due to the various branches in a subsequent partition as laid down in 5 Mad. 362, and the subsequent partition should not be made *rebus sic stantibus* as at the time of such subsequent partition. The share fraction which has already been allotted and given to the separated coparcener of a branch during the first partition should be taken into account in ascertaining the share fraction in working out the partition sought subsequently by that branch ; 5 Mad. 362, *Appr.* ; 39 Bom. 734, *Not foll.* ; A. I. R. 1927 Mad. 53,

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Affirmed. (*Cass-law considered.*) (*Coutts-Trotter, C.J., Wallace, Ananthakrishna Ayyar, JJ.*). NARAYANA SAH *v.* SANKARA SAH. 121 I.C. 1= 53 Mad. 1=30 M. L. W. 751= A.I.R. 1929 Mad. 865=57 M.L.J. 685 (F.B.).

——*Co-parcener building with his self-acquisition on ancestral land in ignorance of other's rights—Rights of.*

When a person builds with his self-acquisition on land which is ancestral and in which a person subsequently gets an interest by birth and when it cannot be said that the builder built with knowledge of another person's rights in the land and without his consent or against his will, the proper rule on partition is to allot the building and site to the person who built the superstructure and taking into consideration the value of the site to give the share of its value or equivalent joint property to the other co-parcener; a co-parcener claiming a share is not entitled under such circumstances to the value of the building also or to require its demolition. *Case-law discussed.*

The fact that a house is built by one member of a joint family on joint family land cannot be regarded as sufficient by itself to show that he intends to waive his rights to the house as his separate property if he built it with his separate funds. (*Kumaraswami Sastri and Reilly, JJ.*). PERIAKARUPPAN CHETTI *v.* ARUNACHALAM CHETTI. 102 I.C. 290= 1927 M.W.N. 287=50 Mad. 582=25 M.L.W. 688= A.I.R. 1927 Mad. 676=52 M.L.J. 571.

——*Partition in one branch—At subsequent partition vested rights of members of other branches should not be affected.*

It is a recognized principle of Hindu Law that in the case of a joint family consisting of more branches than one the principle of survivorship and the principle of representation in each branch cannot affect the rights of the other branches and that it is only in the case of one branch being entirely extinct that the other branches get any advantage by survivorship. Therefore where there is a partition effected between the members of one branch and one of such members goes out, it ought not to affect the vested rights of the other members to their shares in the joint family property. 39 Bom. 734, *Diss.*; 5 Mad. 362, *Foll.* (*Kumaraswami Sastri, J.*). NARAYANASWAMI SAH *v.* SANKARA SAH. 99 I.C. 377=24 M.L.W. 621= A.I.R. 1927 Mad. 53=51 M.L.J. 621.

——*Shares need not be equal.*

A member of a joint Hindu family may of his own free will accept as his share as small a portion of the joint property as seems good to him, and renounce all claims to the rest. There is no absolute rule that the partition must be equal although generally speaking it is so. (*Baker, J.C.*). SAWAI BALCHAND *v.* LACHMAN PRASAD. 78 I.C. 1045=A.I.R. 1924 Nag. 148.

——Adopted son takes one-fourth and real son three-fourths. (*Shadi Lal, C.J. and Le Rossignol, J.*) PARMA NAND *v.* SHIV CHARANDAS. 59 I.C. 256=2 Lah. 69=3 L.L.J. 82= 21 P.L.R. 1921=A.I.R.1921 Lah. 147.

——In a partition among the members of a joint Hindu family each member represents his sons, if any, and the rule applies also to where the sons are minors. (*Daniels and Wasir Hasan, A. J. Cs.*). RAM BAHADUR SINGH *v.* NIRBHAI SINGH. 59 I.C. 564=23 O.C. 339.

HINDU LAW—Partition—Subject-matter.

—Partition—Subject-matter.

——Brothers inheriting property from father and maternal grand-father—Properties getting mixed up—Properties cannot be consolidated as to give one cause of action for partition. 25 Mad. 678 (P.C.), *Dist.* (*Mukerji and Bennet, JJ.*). SHAM SUNDER SINGH *v.* JAGANNATH SINGH. 122 I.C. 403=A.I.R. 1930 All. 371.

——*Mortgaged property is partible even after preliminary decree.*

Where joint family property is mortgaged even though a preliminary decree may have been obtained by the mortgagee with regard to the mortgaged property, interest of the mortgagors is not extinguished and the property can be made available for partition and included in the partition suit, for the interest is subsisting till final decree is made. (*B. B. Ghose and N. K. Bose, JJ.*). BALDEO DAS *v.* SAROJINI DASI. 34 C. W. N. 160= A. I. R. 1929 Cal. 697.

——*Self-acquisitions spent on maintaining family should be inferred to be treated as joint property.*

If the manager of the family having joint family funds in his hands spends on the maintenance of the family not only the joint family funds but also a considerable part of his self-acquired property, the reasonable inference is that he meant to treat that part of his self-acquired property as joint family property. A. I. R. 1923 P.C. 57, *Foll.* (*Phillips, Offg. C.J. and Reilly, J.*). KRISHNAMACHARIAR *v.* CHELLAMMAL. 107 I. C. 641= A. I. R. 1928 Mad. 561.

——Where two separate funds are mixed, one being joint family property and the other separate property, the mingling makes them both joint family property. (*Phillips, Offg. C. J. and Reilly, J.*). KRISHNAMACHARIAR *v.* CHELLAMMAL. 107 I.C. 641=A.I.R. 1928 Mad. 561.

——The Jajmanka and other books of the Pandas are capable of partition. 45 All. 415, *Ref.* (*Das and Allanson, JJ.*). RAJRANI DEBYA *v.* GOMTI DEBYA. 111 I.C. 673=7 Pat. 820= 9 P.L.T. 456=A.I.R. 1928 Pat. 466.

——Where at a partition between brothers, one of them brought his self-acquired properties into the partition in order to silence any claim his brothers or their issue might thereafter make, but took them out again and continued to enjoy them as his self-acquisitions,

Held, such a course of action, if unaccompanied by any other evidence of an intention to convert the property to ancestral, is insufficient to impress upon it the quality of family property. (*Kumaraswami Sastri, Offg. C.J. and Curgenven, J.*). ALAVANDAR GRAMANI *v.* DANAKOTI AMMAL. 99 I. C. 775=A. I. R. 1927 Mad. 383.

——*Religious office.*

Right to Pala or turn of worship is transferable and partible. 42 Cal. 455, *Foll.* (*Adami and Macpherson, JJ.*). JAGDEO SINGH *v.* RAMSARAN PANDE. 97 I. C. 332=6 Pat. 245= 1926 P.H.C.C. 349=A.I.R. 1927 Pat. 7.

——The right of worship of an idol cannot be made the subject of partition. The joint owners of such a right are entitled to perform their worship by turns. 14 Bom.L.R. 166, *Ref.* (*Lord Shaw.*) PRAMATHA NATH *v.* PRADHYUMNA KUMAR. 87 I. C. 305=52 I. A. 245=1925 M. W.N. 431= 2 O. W. N. 557=27 Bom. L. R. 1064= 22 M. L. W. 492=52 Cal. 809=30 C.W.N. 25= 3 Pat. L.R. 315=23 A.L.J. 537=41 C.L.J. 551= A.I.R. 1926 P.C. 139=49 M.L.J. 30 (P.C.).

HINDU LAW—Partition—Subject-matter.

——*A portion of property was set apart for gift in* Krishnarphan *to a temple—Compromise between the temple and one of the heirs who pays money and keeps the property does not make property joint.*

One of the houses belonging to the father was on a partition award between a Hindu father and his two sons set apart as a gift in *Krishnarpan* to a temple for meeting the expenses of certain ceremonies at the temple. The house passed on the death of the father who managed it during his lifetime into the possession of defendant (one of the sons) who was charged with the obligation of handing it over to the temple in gift. The temple sued the defendant for possession of the house, but the suit ended in a compromise under which the defendant paid Rs. 2,125 to the temple and retained possession of the house. On suit by the other son,

Held, that the plaintiff had no claim to the house, since the defendant was not a trustee under the arrangement made with his father and did not hold the property on his account but by virtue of the power given to the father by the award to appoint any person to manage the house. (*Shah, Ag. C.J. and Crump, J.*). JAMNADAS KASHIDAS *v.* VALLABHADAS KASHIDAS. **84 I.C. 878= 25 Bom. L.R. 1340=A.I.R. 1924 Bom. 239.**

——'*Birt Jajmani*'—*Partition of, how effected.*

The division of the birt jajmani cannot be carried out by allotting clients to one party or the other but only by the division of books and other accessories. 43 All. 20; 43 All. 35 and 15 C.L.J. 376, *Ref.* (*Ryves and Daniels, JJ.*). RAM CHANDAR *v.* CHHABBU LAL. **75 I.C. 323=45 All. 445= 21 A.L.J. 358=4 L.R.A. Civ. 200= A.I.R. 1923 All. 350.**

——*Watans usually partible.*

Per *Crump, J.*—Whether it be a case of a Desai, Deshmukh, Nadgowda, or a Deshpande, the general rule must be taken to be that such watans are ordinarily partible and impartibility is an exception, which may be established by evidences. 4 Bom. 494 (P. C.), *Ref.* (*Macleod, C. J. and Crump, J.*). MAHADEVAPPA *v.* KASHI RAO. **77 I.C. 92= 25 Bom. L.R. 797=A.I.R. 1923 Bom. 467.**

——*Common way is not divisible property.*

Both under Mitakshara and the Vyavahara Mayukha the land reserved as common passage at the time of previous partition between the parties is not divisible subsequently. 36 Bom. 379, *Ref.*

Per *Crump, J.*—Even under other systems of Law a suit for partition of the common way will not lie. (*Shah, Aq. C. J. and Crump, J.*). SHANTARAM BALKRISHNA *v.* WAMAN GOPAL WADEKAR. **68 I.C 682=24 Bom. L.R. 1029= 47 Bom. 389=A. I. R. 1923 Bom. 85.**

——*Jewels of wives—Not partible.*

If jewels are given to the wives of co-parceners they became their property, and would not be the subject of partition. The general rule even among the members of the Vysia community is that jewels given to ladies which they are allowed to retain in their possession for their own use are presumably given to them. 15 M. L. J. 352, *Foll.* (*Wallis, C. J. and Hughes, J.*). L. VARADA RAGHAVIAH *v.* L. VENKATA RAMAYYA. **61 I.C. 772=13 M.L.W. 262=A.I.R. 1921 Mad. 542.**

—Partition—Suit for.

——Partition in 1910 between father and sons evidenced by kabuliyat—One of sons applying for decree in terms of kabuliyat setting up agreement that father's share is joint and partible—Application struck off—Father gifting away property—

HINDU LAW—Partition—Miscellaneous.

Declaratory suit that property was joint and partible filed in 1922.

Held, that even if the agreement set up by *A* be held proved, the jural relations of the parties *inter se* might be that of joint tenants not as members of a joint family which no longer existed but under a special agreement made after severance and thus, as the property was not joint family property, Art. 120, Lim. Act, applied instead of Art. 127. A. I. R. 1924 P. C. 150; A. I. R. 1916 P.C. 104 and 15 Bom. 135, *Rel. on*; 13 All. 282; 23 Bom. 137 (F.B.); 41 Bom. 588; A.I.R. 1922 Mad. 150 (F.B.); 43 Mad. 288 and A.I.R. 1924 Bom. 31, *Ref.* (*Patkar and Wild, JJ.*). KRISHNAJI ANNAJI *v.* ANNAJI DHONDAJI. **31 Bom. L. R. 1240=54 Bom. 4= A. I. R. 1930 Bom. 61.**

——Where defendant in a partition suit has only pleaded that plaintiff did not bring into hotchpot a certain property but did not file a list of such properties, the objection should not be entertained. (*Misra and Raza, JJ.*). GAYA DIN *v.* GUR DIN. **118 I.C. 87=6 O.W.N. 249=A.I.R. 1929 Oudh 257.**

——*Offer to include omitted property if proved joint—Suit should not be dismissed.*

An offer by the plaintiff in a suit for partition to include other property, not mentioned in the plaint, which may be proved to be joint, is sufficient to cure the defect of omission of any properties from the partition and the suit is not liable to be dismissed on the technical ground of certain items not having been included in the plaint. (*Misra and Srivastava, JJ.*). HIRA LAL *v.* KALI CHARAN. **117 I.C. 412=6 O.W.N. 142=A.I.R. 1929 Oudh 162.**

——A suit for partition does not become barred by limitation by the inclusion of some other meaningless reliefs. (*Venkatasubba Rao, J.*). K. SUBRAYA CHETTI *v.* NAGAPPA CHETTI. **103 I.C. 150=39 M.L.T. 182= A.I.R. 1927 Mad. 805=53 M.L.J. 311.**

——Suit by minor—New co-parcener conceived after filing of suit and born before preliminary decree—Plaintiff's share is undiminished. 41 Mad. 442 and 42 All. 461, *Dist.* (*Spencer and Devadoss, JJ.*). KRISHNASWAMI THEVAN *v.* PULUKARUPPA THEVAN. **88 I.C. 424=21 M.L.W. 675= 48 Mad. 465=A.I.R. 1925 Mad. 717=48 M L J. 354.**

——Under the Hindu Law it is open to the grandsons to claim partition as against their grandfathers. In a suit of partition by sons against their father, grandsons are proper, but not necessary parties. (*Das and Adami, JJ.*). DIGAMBAR MAHTON *v.* DHANRAJ MAHTON. **67 I.C. 156= 1 Pat. 361=3 P.L.T. 238=A.I.R. 1922 Pat. 96.**

——The rule that a defendant in a suit for partition by a member of a joint Hindu family is entitled to have his share partitioned from the shares of the other defendants is not confined to Hindu coparceners. (*Macnair, A. J. C.*). ANWAR KHAN *v.* YAKUB KHAN. **61 I.C. 596=A.I.R. 1921 Nag. 163.**

—Partition—Miscellaneous.

——*Partition by will must be with consent of all members.*

Even the head of a joint Hindu family has no right to make a partition by will of joint property among the various members of the family except with their consent. They have independent right in it with which he cannot interfere. Its validity can only depend on their acceptance of such an arrangement. 35 All. 337 (P. C.), *Foll.* (*Sulaiman and Lindsay, JJ.*). HARKESH SINGH *v.* MT. HARDEVI. **102 I.C. 66=49 All. 763= 25 A.L.J. 413=A.I.R. 1927 All. 454.**

HINDU LAW—Partition—Miscellaneous.

———*Modes of partition.*

A partition may be effected in respect of each property by metes and bounds or by an interchange of separate or distinct properties, and it may similarly be effected by an auction sale of any of the properties with the right of purchase restricted to the members of the family who have a joint interest therein to be followed by a distribution of the sale proceeds realized from the same. (*Kanhaiya Lal and Ashworth, JJ.*). JAGMOHAN DAS *v.* KUNWAS SINGH. **95 I C. 135=A.I.R. 1926 All. 532.**

———*No nucleus—Joint residence and earnings—Presumption is property is joint.*

If members of a Hindu family with no nucleus of family property choose to live together, work jointly together, throw all their earnings into common stock and have one food, in such a case the presumption is that they must have intended their property to be joint family property. (1912) M.W.N. 972 and 25 Mad. 149, *Rel. on.* The first requisite for a joint family is the family unit and the second requisite is the possession by it of property.

Two brothers out of four belonging to a family with no property left home for service elsewhere and the rest two began a joint business together and continued to live together. After the demise of one of these two the other brought a suit on a mortgage in favour of the deceased brother,

Held, that the suit was maintainable. (*Odgers, J.*). RATNA MUDALIAR *v.* VIJIARANGA. **95 I.C. 581= 23 M.L.W. 716=A.I.R. 1926 Mad. 762.**

———Appointment of guardian for minor's property does not cause disruption. (*Buckland, J.*). HARI MOHAN GHOSE *v.* SOURENDRA NATH MITTER. **88 I.C. 1025=41 C.L.J. 535=A.I.R. 1925 Cal. 1153.**

———*After-born sons have share in father's property.*

Where a partition has taken place, sons born after the partition are entitled to a share in the property allotted to their fathor at the partition and similarly the father's acts are binding on such sons. (*Kendall, A.J.C.*). B. ONKARESHWAR *v.* B. DUSHYANT PRASAD. **82 I.C. 10= A. I. R. 1925 Oudh 86.**

———*Mode of partitioning—Revenue-paying mahals.*

Where the property in dispute was *zemindari* property consisting of Government revenue-paying *mahals* or portions of a *mahal*,

Held, it is the exclusive function of the Courts of Revenue to determine the mode of partition and no clause can be inserted in the decree for partition that in actual partition entire *mahal* should be allotted to parties so far as possible. (*Wazir Hasan and Neave, A.J.Cs.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I.C. 574=11 O.L.J. 286=A.I.R. 1924 Oudh 360.**

———*Portion reserved for the parents for their life—Sons have a vested interest.*

Where at a partition between sons, a portion is left for the parents, to be divided among sons after parents' death, the sons get a vested remainder and not a contingent interest in the land. If a son mortgages his interest in that portion during the lifetime of the parents the right of the auction-purchaser under the mortgage decree to sue for possession accrues on the death of the parents. (*Macleod, C.J. and Crump, J.*). RAGHUNATH VITHAL *v.* MADHAV RAVAL. **76 I.C. 217= 25 Bom.L.R. 456=A.I.R. 1923 Bom. 416.**

———Partition by mother in favour of daughters—Daughter's son is bound by deed if he does not claim as reversioner, but under the deed. (*Das and Adami, JJ.*). PANDE SATDEO NARAIN *v.* RAMAYAN TEWARI. **71 I.C. 705=2 Pat. 335= 4 P.L.T. 147=A.I.R. 1923 Pat. 242.**

HINDU LAW — Religious endowment—Acquisitions.

—Religious ceremonies—Presumption.

———Where a ceremony is admittedly performed, the presumption is that it was performed in accordance with the Shastras. (*Kumaraswami Sastri and Venkatasubba Rao, JJ.*). RUKMANI AMMAL *v.* ANKAMA NAIDU. **96 I.C. 26=23 M.L.W. 664= 1926 M.W.N. 938=A.I.R. 1926 Mad. 744.**

—Religious ceremonies—Shradha.

———Homam *is performed in shradhas only among twice-born.*

The performance of the *homam* or the giving of oblations in the sacred fire that is lighted is an important point in shradha performed by the twice-born. The *homam* is not necessary for shradh performed by Sudras. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 705= 48 Mad. 1=A.I.R. 1925 Mad. 497.**

———Where the son is too young to be capable of performing the shradh ceremony, the widow may perform it.

A boy of seven is too young to be capable of performing the ceremony. (*Coutts and Mcpherson, JJ.*). SAMARENDRA NARAIN SINGH CHAUDHURY *v.* MAHADEO RAUT. **63 I.C. 296 (Pat.).**

—Religious endowment.

Acquisitions.
Alienation.
Complete dedication.
Construction of dedication.
Debts.
Decree against shebait or mahant.
Devolution of office.
Endowment how created.
Idol.
Illusory endowment.
Management.
Offerings.
Partial dedication.
Position of manager.
Position of mahant.
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Position of trustee.
Private trust.
Removal of mahant, shebait or trustee.
Rights of founder.
Subject of endowment.
Suit for accounts.
Transfer of right of management.
Worship.
Miscellaneous.

—Religious endowment—Acquisitions.

———Even private property of mahant descending to chela according to tenets of the mutt—Fact that succession to property is in spiritual line for several generations, does not prove property to be trust property. 1 Lah. 540, *Dist.* (*Sulaiman and Kendall, JJ.*). GOSHAIN SHEO GHULAM PURI *v.* SHIAM LAL BHAGAT. **107 I.C. 252=50 All. 485= 26 A.L.J. 193=A.I.R. 1928 All. 257.**

———*Additional emoluments must be for Thakur's benefit.*

If additional endowments are allowed they must be accepted with the terms and conditions of the deed. But always such endowments must be for the benefit of the Thakur and the new rules must not be inconsistent with the rules already made. (*Greaves and Chakravarty, JJ.*). SRIPATI CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 340= 41 C.L.J. 22=A. I. R. 1925 Cal. 442.**

HINDU LAW — Religious endowment—Acquisitions.

———Where with the income of the originally endowed properties, the *shebait* purchased other properties and all along treated them as the properties of the *math*,

Held, that the properties so acquired belonged to the *math*. (*Richardson and Shamsul Huda, JJ.*). KARTICK CHANDRA *v.* GOSHAIN RUDRANANDA GIR. **66 I.C. 894=25 C.W.N. 908= A.I.R. 1921 Cal. 482.**

———*Head of Asthan—Acquisitions by, presumed to be of Asthan—Personal acquisitions to be strictly proved.*

The head of an asthan has no property other than asthan property and his income consists of the profits of the property and offerings made to him in the character of trustee of the institution. It follows that his subsequent acquisitions must be presumed to have been made with the aid of such income and consequently will follow the same character as the nucleus. But the law does not disable him from owning property of his own, and those who allege the separate and personal character of property found in his possession must discharge the onus that lies on them to prove their case. (*Daniels and Wazir Hasan, A.J.Cs.*). RAMPAT *v.* DHURGA DHARATHI MAHANT. **60 I.C. 440=7 O.L.J. 547=23 O.C. 303.**

———*Gadisar of Bairagi Mandir—Acquisitions by, presumed to be of Mandir.*

Any property acquired by a *Gadisar* of a *Bairagi Mandir* must be regarded as the property of the *Mandir* and not as his private property unless there is evidence that he had any source of wealth apart from the funds of, and contributions to, the *Marhi* which came to him as '*Gadisar*'. (*Fawcett and Raymond, A.J.Cs.*). RAMDAS *v.* AJUDHIADASS. **63 I.C. 685=14 S.L.R. 137.**

—Religious endowment—Alienation.

———*Transferable and heritable lease — When shebait can grant.*

A shebait can, without legal necessity, grant a transferable and heritable lease which is permanent in so far that so long as the rent is paid regularly, tenant will continue to enjoy the land and which leaves to the idol's estate the benefit of an augmentation of rent which is not fixed and can be enhanced. Such a lease is binding on the succeeding shebait. 13 M.I.A. 270, *Ref.*; A.I.R. 1927 P.C. 33, *Dist.* (*Cuming and S. K. Ghose, JJ.*) BHABANI CHARAN *v.* SUCHITRA BAISNABI. **51 C.L.J. 25= A.I.R. 1930 Cal. 270.**

———*Alienation by manager of Math—Suit by alienor to set aside—Maintainability.*

Where property belonging to a Math was improperly alienated and the manager who made the alienation sued to set it aside,

Held, that the plaintiff being a manager and not owner was not bound by his own transaction and that he was entitled to a decree. 41 Mad. 124, *Rel. on.* (*Mears, C.J. and Dalal, J.*). BHAGWAT PRASAD *v.* BINDESHWARI DAS. **1930 A.L.J. 964.**

———Where a succeeding shebait gifted certain property to the idol and made it a condition that certain heirs of his should succeed to the office and the condition was held to be invalid in law,

Held, that the gift could not take effect since it was made subject to a condition. (*Rankin, C. J. and C. C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARI SEAL. **34 C.W.N. 177=51 C.L.J. 80= A.I.R. 1930 Cal. 495.**

———Alienation not justified by real necessity is void—In case of public trust, even the trustee who

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alienates can bring suit for recovery of property—No personal estoppel. (*Wallace and Tiruvenkatachariar, JJ.*). SIVASWAMI IYER *v.* THIRUMUDI CHETTIAR. **118 I.C. 493=30 M.L.W. 574= A.I.R. 1930 Mad. 405=57 M.L.J. 219.**

———*Suit to set aside alienation by succeeding Mahant is governed by Art. 144 and time begins to run from date of alienation.*

Where the properties are endowed properties belonging to a math or idol, the possession of same by a puchaser under a sale deed executed by the Mahant becomes adverse to the math or idol as also the succeeding Mahant from the date of possession after purchase under Art. 144 and if further such a sale-deed follows, a mukarrari lease in favour of a member of the joint Mitakshara family of whom purchaser is one, setting aside mukarrari lease would not entitle the succeeding Mahant to step into shoes of mukarrari and keep possession subject to payment of rent when suit to set aside purchase is barred under Art. 144. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAM CHARAN DAS. **11 P.L.T. 403=A.I.R. 1930 Pat. 455.**

———*Property belonging to institution cannot be given as gift.*

Where certain property is admittedly endowed property, persons ostensibly in possession for and on behalf of the foundation have no power to make gift of any portion of the property to any one. (*Shadi Lal, C. J. and Agha Haidar, J.*). BIRAIN DAS *v.* MANGAL SINGH. **A.I.R. 1929 Lah. 868.**

———*Immediate cause of borrowing should be considered not the* causa causans.

To determine whether mortgage by shebait of Muth property is binding on Muth, it is the immediate, not the remote, cause, the *causa causans*, of the borrowing which has to be considered.

Where the immediate cause of the borrowing was the Muth's need of money to carry on and pay for its services, and the remote cause of the Muth's need was due to profligate expenditure of the shebait,

Held, that a decree should be pronounced declaring that the debt should be paid by the shebait personally or else realized from the profits of the debutter property. 2 I.A. 245 (P. C.), *Foll.* (*Lord Atkinson.*) NILADRI SAHU *v.* CHATURBHUJ DAS. **98 I.C. 576=6 Pat. 139=53 I.A. 253= 25 A.L.J. 8=28 Bom. L.R. 1418=44 C.L.J. 434= 31 C.W.N. 221=1926 M.W.N. 857= 38 M.L.T. 24=25 M.L.W. 736=8 P.L.T. 440= A.I.R. 1926 P.C. 112=51 M.L.J. 822 (P.C.).**

———*Powers of widow and manager of endowment compared and distinguished.*

No doubt a shebait or a mohunt has under special circumstances the power to alienate or grant a mokarrari lease of the trust property and so far the similarity of his position to that of a Hindu widow is maintainable, but a Hindu widow has an estate in the property unknown to English Law and unlike any other that may be created under the general law. Though she gets a limited interest in the property, she has got powers which are not enjoyed by life-tenants; she cannot be removed from possession of the property but a shebait is liable to be dismissed for acts or breach of trust; she is not accountable to any one for the income of the property in her charge, whereas a shebait is subject to the rights of the beneficiaries to ask for accounts. The widow does not hold the estate in trust for the reversioner, but the shebait, though not a trustee in the strict sense of the term, is the

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manager or custodian of the debutter property. (*Suhrawardy and Duval, JJ.*). BEHARILAL *v.* MURALIDHAR. **90 I.C. 567=A.I.R. 1926 Cal. 287.**

———Manager of endowment can grant mourasi mokurrari lease for unavoidable necessity.

The power of a mohunt to alienate debutter property is, like the power of a manager of an infant heir, limited to cases of unavoidable necessity. 36 Cal. 1003 (P.C.), *Foll.* (*Suhrawardy and Duval, JJ.*). BEHARILAL *v.* MURALIDHAR.

90 I.C. 567=A.I.R. 1926 Cal. 287.

———*Manager cannot create interest beyond his life.*

A mohunt is incompetent to create any interest in respect of the muth property to endure beyond his life. The tenant or transferee acquires a right similarly limited. If the successor of the mohunt permits the tenant to continue in possession and receives rent from him during his life, the tenancy thus created will be a new tenancy created by himself for his lifetime. It is within the power of every successive trustee to continue tenancy during his life and consequently his possession in that never becomes adverse to the successor of the last mohunt. A. I. R. 1922 P. C. 123, *Foll.* (*Suhrawardy and Duval, JJ.*). BEHARILAL *v.* MURALIDHAR. **90 I.C. 567=A.I.R. 1926 Cal. 287.**

———*Time runs from the date of death of previous mahant.*

In a suit to set aside an alienation made by a predecessor Mahant the successor Mahant cannot get a fresh start for the purpose of limitation from the date of his succession as Mahant. The possession of the transferee becomes adverse from the date of the transfer if the transfer is without any legal and justifying necessity and even though his possession is permissive during the lifetime of his vendor Mahant, the cause of action in any event accrues on the death of his vendor and not on the date of the succession of the successor Mahant. 23 Cal. 536; 37 Cal. 885 (P.C.) and 17 C.W.N. 873, *Appr.* (*Mullick and Kulwant Sahay, JJ.*). BADRI NARAYAN SINGH *v.* KAILASH GIR. **93 I. C. 303= 5 Pat. 341=7 P.L.T. 453=1926 P.H.C.C. 37= A.I.R. 1926 Pat. 239.**

———*Alienation by mahant of Asthan is* ultra vires.

Asthan is merely an institution of ascetics and sanyasis having no worldly connections of wealth or family and the mahant is presumed to have no property other than that of the institution and the offerings made to him. But he may hold private property, the character of which he must prove as such. In absence of such proof an alienation by a mahant is *ultra vires*. The fact of many alienations by successive mahants means so many breaches of trust. (*Daniels and Wasir Hasan, A.J.Cs.*). RAM PAT *v.* DURGA BHARTI.

60 I.C. 440=7 O.L.J. 547=23 O.C. 308.

———Where a Mahant alienates the property of the shrine and the worshippers thereof challenge the alienation, they cannot sue for possession of the shrine's property but can bring a suit for a declaration that the alienation is invalid. 30 P.R. 1908, *Foll.* (*Dalip Singh, J.*). THAKARDWARA SAHAWARAN *v.* JIWAN DAS. **108 I.C. 270.**

———*Time runs from the date of alienation or of alienor's death.*

Each succeeding mahant does not acquire a fresh start of limitation from the date of his succession as mahant and the possession of the transferee becomes adverse to the institution from the date of the unwarranted transfer or at any rate from the date of the death of the alienor. (*Case-law considered.*) (*Adami and Macpherson, JJ.*). GOPALCHARJYA GOSWAMI *v.* BHIM KALI CHAUDHARY. **97 I.C. 637=8 P.L.T. 87= A.I.R. 1927 Pat. 49.**

———The fact that the alienation of a Swasthivachakam inam is in favour of a member of the family does not validate the transfer. 6 Mad. 76; 38 Mad. 850 and A. I. R. 1922 Mad. 197, *Foll.* (*Devadoss and Wallace, JJ.*). VENKATA RAO *v.* PAPAYYA. **98 I.C. 848=24 M.L.W. 674.**

———*Power of manager to alienate debutter property is to be exercised only as defensive measure.*

The power of a shebait to alienate the corpus of debutter property is to be measured by the exigencies of the occasion. An alienation of such property cannot be justified unless it is impracticable duly to carry out the service and worship of the deity, and matters incidental thereto, or to preserve the dedicated property, without incurring the expenditure to defray which it is proposed to effect the alienation; and further, unless the required expenditure cannot be met out of the income of the endowment, and without alienating the corpus of the estate. In short, the shebait's power of alienation must be exercised for purposes of defence and not of aggrandisement, as a shield and not as a sword.

Where there is an "imperious necessity," or an "unavoidable necessity" in the above sense compelling the shebait to alienate the property, such an alienation clearly is "for the benefit of the deity," but if there is no such necessity, the fact that the value of the estate will be increased if an alienation by sale, mortgage, exchange, or otherwise is effected will not justify such a transaction, although thereby it may be that the endowment can be benefited. 27 Mad. 465; 40 Mad. 709 (P.C.); A.I.R. 1923 All. 298 and A.I.R. 1925 All. 333, *Foll.*; 36 Cal. 975 and 35 Cal. 226, *Diss.* (*Page, J.*). NAGENDRA NATH *v.* RABINDRA NATH.

94 I.C. 212=53 Cal. 132=30 C.W.N. 389= A.I.R. 1926 Cal. 490.

———Where an alienation of temple properties is made by a member of an undivided Hindu family who are *pujaris* of the temple, and beneficially interested in the trust, any member is entitled to maintain a suit to recover the properties on behalf of the temple trust. 32 Mad. 167, *Dist.*; 33 Cal. 507, *Ref.* (*Wallace and Madhavan Nair, JJ.*). CHINNATHA ROWTHER *v.* KARUNJI ANDI.

93 I.C. 644=23 M.L.W. 647= 1926 M. W.N. 192=A.I.R. 1926 Mad. 838.

———A gift in favour of a co-shebait is not invalid if it is for the benefit of an endowment. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 850= 41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

———*Mahant has right to mortgage or sell for Sradh of the deceased Mahant, if otherwise there are no funds available.*

The manager of an endowed property has the authority to alienate or mortgage the endowed property if an occasion should arise when it becomes necessary in the interest of the endowment to do so. If it is necessary to perform the Sradh of deceased Mahant and there is absolutely no money for the purpose, the manager for the time being has authority to charge or sell a sufficient portion of the endowed property for that purpose. If, however, he has, as part of the income of the endowment, a fund sufficient to carry out the Sradha

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then he has no authority to mortgage the capital of which he is the trustee. The creditor must satisfy himself that there was no fund available in such a case, for the purpose of performing the Sradha or satisfying the necessity that had arisen. (*Dawson Miller, C.J. and Kulwant Sahay, J.*). RAM NARAYAN DAS *v.* MAHANT GOPAL DAS.
76 I.C. 68=5 Pat. L.T. 339=A.I.R. 1924 Pat. 611.

———The Mohunt is not therefore the absolute owner thereof and cannot alienate the property but for necessity. The surplus income must be used as accretion to the trust property. (*Kanhaiya Lal, A.J.C.*). GAURI NATH KAKAJI *v.* RAM NARAIN.
60 I.C. 467=7 O.L.J. 643.

———*Alienation of office of Pujari to person outside the family of grantees is invalid.*

Fifty years ago a Guru owned a temple at Sadashivgad and he appointed a certain person as a priest to perform "Puja" and other services to the deity on receipt of a certain quantity of paddy. The plaintiff was the third Guru in order of descent. The defendant was the son of the original Pujari who had two sons, the defendant and Dattatraya, the plaintiff's case being that Dattatraya having a half interest in the office of Pujari, transferred or surrendered it to him.

Held, that the alienation of a share in a pujari right by one member of the family is invalid whether it is made in favour of an outsider altogether or whether it is made in favour of the original grantor of the office.

Obiter, if one of the members of the family wishes to get rid of his duties as well as his rights he could only do so in favour of the remaining members of the family. 6 Mad. 76, *Ref.* (*Macleod, C. J. and Crump, J.*). RAGHUNATH VITHAL BHAT *v.* PURNANAND SARASWATI. **72 I.C. 312=25 Bom. L.R. 207=47 Bom. 529=A.I.R. 1923 Bom. 358.**

———*Perpetual allowance out of temple funds is invalid beyond lifetime of grantor.*

A gift by owner who is also the manager of a temple property in the form of a *Sanad* purporting to make a certain allowance yearly from generation to generation out of the *Sansthan* funds, cannot be given effect to as against the temple estate, beyond the lifetime of the grantor. (*Macleod, C.J. and Crump, J.*). RAMCHANDRA MAHADEO *v.* NARAYAN RAO BHAGWANT RAO. **77 I.C. 463=A.I.R. 1923 Bom. 296.**

———*Matathipathi can alienate Mutt properties only for unavoidable necessity—He has unlimited powers over the surplus income.*

A Shebait or Matathipathi cannot alienate mutt properties unless constrained to do so by unavoidable necessity and the same rule must apply to the creation of debts binding on mutt properties, for the enforcement of such debts may result in the alienation of such properties through Court sale. In every case the question is one of the legitimacy of the purpose for the debt and of the financial necessity to borrow at the particular time. The Matathipathi has a large dominion over his surplus income and he is not bound to account for it and his discretion to use it as he likes is unfettered. Where there is no established or local custom to feed every Brahmin, the debt incurred for feeding every Brahmin is not a debt binding on the successor. A.I.R. 1922 P.C. 123, *Rel. on.* (*Krishnan and Ramesam, JJ.*). L. THIRTHA SWAMIAR *v.* THIRTHA SWAMIAR. **72 I. C. 109=17 M.L.W. 274=A.I.R. 1923 Mad. 288=44 M.L.J. 187.**

HINDU LAW—Religious endowment—Construction of dedication.

———*Mahant's interest is that of life-tenant—Alienations by Mahant prejudicial to interest of Math can be avoided by successor.*

The head of a mutt cannot enter into a transaction the effect of which is to destroy the trust property altogether nor is he competent to alienate the endowed property except for the benefit of the endowment. The real owner of the property is the deity or the charitable purpose for which the endowment was created. His interest in the property is that of a life-tenant. A Mahant cannot enter into a compromise which is prejudicial to the interest of the endowment and his successor-in-office is entitled to avoid it. The *shebait* of an idol has no sort of an estate in the properties endowed whereas the head of the institution has a life-estate in the properties which are the subject-matter of the endowment. It is doubtful if the Mahant of the endowment should be described as a trustee. (*Jwala Prasad, Ag.C.J. and Das, J.*). RAM PADARATH SINGH *v.* MAHANTH BASDEO DAS. **63 I.C. 231=3 P.L.T 264=1922 P.A.C.C. 188=A.I.R. 1922 Pat. 178.**

———Property transferred by Acharya to his wife—Suit to recover property by next Acharya—Transferee not proving property to be acquired with exclusive property of transferor or what were his official perquisites—Suit should be decreed. (*Mr. Ameer Ali.*) MST. KAMLA LACHHMI *v.* MAHANT BASDEO PRASAD. **58 I. C. 900=23 O. C. 171=28 M. L. T. 404=1920 M. W. N. 553=7 O. L. J. 434=2 U. P. L. R. 130=25 C. W. N. 217=13 M.L.W. 156=A. I. R. 1921 P.C. 126 (P.C.).**

———*Creditor making enquiry as to necessity—Alienation is binding.*

A mortgage of trust property by the mahant effected after the creditor had satisfied himself as to the existence of necessity is enforceable, and the creditor need not show that the money was actually applied for the purpose for which it was borrowed. (*Daniels and Wazir Hasan, A. J. Cs.*). DURGA BHARATI *v.* NAGESWAR NATH. **60 I.C. 544=23 O. C. 320.**

—Religious endowment—Complete dedication.

———*Statement that dedication is for benefit of family God—Effect of.*

A statement in the dedication, that the transaction was for the benefit of the family God and with the object of increasing the income of the debutter property, is attributable to the notion which unfortunately prevails amongst shebaits that their own interests and those of the deity are always identical. No legal inference that the dedication was completely for religion follows from such a statement. (*Mukerjee and Guha, JJ.*). BARBONI COAL CONCERN, LTD. *v.* PARICHARAK.
A.I.R. 1930 Cal. 526.

—Religious endowment—Construction of dedication.

———*Grant for support of persons visiting an ascetic—Nature of.*

Where the grantor dedicated certain properties for the support of the visitors attracted to the abode of an ascetic and subsequently out of its income a math was built and the property came to be held by chelas,

Held, that the grant was an endowment of which the grantor was manager and not owner. The property being inalienable, the previous alienations in breach of trust cannot validate the same. (*Mears,*

HINDU LAW—Religious endowment—Construction of dedication.

C.J. and Dalal, J.). BHAGWAT PRASAD *v.* BINDESHWARI DAS. **1930 A.L.J. 964.**

——*Bequest subject to conditions — Conditions cannot be repudiated.*

A bequeathed certain property *X* to an idol without leaving directions as to succession of shebaits. *B*, a shebait, added certain properties *Y* providing for the line of shebaits and certain restrictions which were not impossible to perform. In a contest between successors of *A* and *B*,

Held, that regarding property *Y*, that the provision as to who should be shebait should be regarded as a condition. The successors of *A* need not take advantage of the gift, but if the gift is taken and the conditions insisted on, it must be observed and they cannot claim any right in the additional property *Y*, while repudiating the conditions attached. A. I. R. 1926 Cal. 561, *Diss.* and 17 Cal. 3 (P.C.), *Rel. on.* (*Case-law referred.*) (*Rankin, C.J. and C. C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARI SEAL.
34 C.W.N. 177=51 C.L.J. 80=A.I.R. 1930 Cal. 495.

——*No instrument—Grant to be construed according to usage.*

In the absence of a written grant creating a trust or where the terms of a written grant are ambiguous or where there is no direct evidence of the terms of the grant, usage can be looked into to determine the nature of the grant. 40 M.L.J. 289 and A. I. R. 1921 Mad. 467, *Dist.* (*English cases referred.*) (*Kumaraswami Sastri and Walsh, JJ.*). KUMARASWAMI ASARY *v.* LAKSHMANA GOUNDAN.
31 M.L.W. 498=A.I.R. 1930 Mad. 549.

——"Khairat" and "bishun pirit" with reference to endowed property indicate that property was not private property of mahant, but was for certain religious and charitable purposes. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAMCHARAN DAS.
11 P.L.T. 403=A.I.R. 1930 Pat. 455.

——Where profits of a mortgagee were not all applied to charity but were merely treated as the purse from which the expenses of the charity were met,

Held, that there was no dedication of the mortgage to charity. 45 Mad. 281, *Reversed.* (*Lord Phillimore.*) GANGI REDDI *v.* TAMMI REDDI.
101 I.C.79=50 Mad. 421=54 I.A. 136=4 O. W. N. 482=29 Bom. L. R. 856=25 A.L.J. 593=45 C.L.J. 512=31 C.W.N. 799=1927 M.W.N. 502=26 M.L.W. 139=8 P.L.T. 681=A. I. R. 1927 P.C. 80=52 M.L.J. 524. (P. C.).

——*Consecration of deities proves dedication of temple.*

There can be no consecration of deities in a temple unless the donor divests himself of the property. Hence, where deities have been consecrated in a temple, the temple must be held to have been dedicated to the deities. (*Chatterjee and Cuming, JJ.*). SRI SRI GOPAL JEW THAKUR *v.* RADHA BINODE MONDAL. **88 I.C. 616=41 C.L.J. 396=A.I.R. 1925 Cal. 996.**

——*Private debutter properties—Description of.*

In the case of private debutter properties it is not unusual to describe them as "ancestral" or as "our debutter properties" and the heirs of the founder describe their interest as shebaits according to the share they have in secular properties. (*Chatterjee and Cuming, JJ.*). SRI SRI GOPAL JEW THAKUR *v.* RADHA BINODE MONDAL.
88 I.C. 616=41 C.L.J. 396=A.I.R. 1925 Cal. 996.

HINDU LAW—Religious endowment—Construction of dedication.

——The rules laid down in a deed of endowment for the worship of the Thakur and for the management of the charities, if any, connected with the endowment are binding. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

——Rules as to the appointment of *Shebaits* and their succession in the document of endowment are binding. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE.
28 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.

——After the death of the settlor the rules contained in a deed of endowment are unalterable by any successor-in-estate or office. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

——A dedication to a Thakur irrevocable. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

——*Inam title-deed—"Devadayam" indicates grant to deity rather than to Archaka—Evidence of user when allowed.*

Where the Inam title-deed described the lands in suit as *Devadayam* and other documents pointed to the same conclusion,

Held, that the lands were granted to the Deity as an endowment and not to the Archakas. Evidence of user and enjoyment however long uninterrupted and undisputed would be evidence of the grant only where the terms of the grant itself are ambiguous or where there is no reliable or cogent evidence to prove them. In the absence of persons interested in setting up the rights of the deity as against the Archakas, the dealings of the Archakas with the properties as if they were their own, are not of much evidentiary value. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). NARAYANAMURTHI *v.* ACHAYYA SASTRULU. **85 I.C. 188=20 M.L.W. 687=A.I.R. 1925 Mad. 411=47 M.L.J. 714.**

——*Dedication—Inference from long course of conduct and holding out to public.*

Where the facts as found were that the founder of the temple dreamt that he should instal at his house an idol of the god Subramaniaswami and that the god would come to his house and enable him to foretell events. He did install that idol at his house, and allowed Brahmins and other Hindus of various castes to worship the idol as if it was a public idol. He acted as the *pujari* of the idol, and received as the *pujari* offerings made to the idol by worshippers and fees which he charged in respect of processions and other religious services. The number of Hindu worshippers increased and with the offerings and fees he purchased some jewels for the idol, built for himself another house in the village to which he and his family removed, and he extended the house in which the idol was and added to it covered rooms for the accommodation of the worshippers during the ceremonies of worship. He also built in the village a rest-house for the use of worshippers of the idol. On certain days in each week the Hindu public was admitted by him free of charge to worship in the greater part of the temple, to one part only on payment of fees, and to the inner shrine apparently not at all. With the income which he derived from offerings and fees at the

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temple he efficiently maintained the temple as if it were public temple and discharged all the expenses connected with the temple and the worship of the idol there. He applied the balance of the income he so obtained to the support of himself and his family and in acquiring for his own benefit and that of his family some immovable property which he possessed before he died.

Held, that the founder held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship, and that the inference is that he had dedicated the temple to the public. (*Sir John Edge.*) PUJARI LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR.

81 I.C. 518=19 M.L.W. 253=33 M.L.T. 466=26 A. L. J. 169=1924 M.W.N. 278=5 L.R.P.C. 125=29 C.W.N. 112=A.I.R. 1924 P.C. 44 (P.C.).

——Where a family God was installed by an ancestor of the family in his house, but subsequently the idol was installed by another member of the family in a temple whose site was purchased in his name,

Held, the new temple was only an enlargement of the original institution and the real founder is the person who originally installed the idol. (*Krishnan and Ramesam, JJ.*). NARAYANA CHETTY *v.* ELAYAPERUMAL CHETTY. **73 I.C. 381=19 M.L.W. 221=1924 M.W.N. 281=A.I.R. 1924 Mad. 400.**

——*Dedication vests property in idol only when founder has title.*

Dedication vests the property in the idol, only when the founder has title. The ceremony divests the proprietorship of the temple from the builder and vests it in the images, which by process of vivification has acquired existence as a judicial personage, for as Vignaneswara says a gift consists in the relinquishment of one's own right and the creation of the right of another. (*Mookerjee and Chotzner, JJ.*). ANANDA CHANDRA CHAKRABARTI *v.* BROJA LAL SINGHA.

74 I. C. 793=36 C. L. J. 356=50 Cal. 292=A. I. R. 1923 Cal. 142.

——*Keeping book of* Panth *in guru's house—House does not become temple.*

The property of a *sadhu* cannot necessarily be presumed to be devoted to religious purposes for the reason that it descended from *Guru* to *Chela*. A secular property, even if acquired by a *Sadhu*, does not change its character unless dedicated for a special purpose—religious, charitable, etc. The story that a copy of the sacred book of the *panth* or *cult* was kept in a *nicme* in the house does not lead to the conclusion that the house thereby became a temple. (*Broadway and Zafar Ali, JJ.*). KISHAN DAS *v.* LACHMAN SINGH. **75 I. C. 94=5 L. L. J. 351 and 6 L. L. J. 89=A. I. R. 1923 Lah. 545.**

—Religious Endowment—Debts.

——*Trustees buying goods for temple necessity—Temple funds are liable for price.*

Although there is a great distinction between a Mutt and a temple, there is no distinction between the borrowing powers of a surusi of a Mutt and the borrowing powers of the trustee of a temple.

Where the trustees of a temple purchased goods on credit, not for their private purposes and in the discharge of the duties under which they lay in the performance of the worship and feeding of the worshippers and the goods so bought were legitimately applied for these purposes, the temple

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funds in the hands of the trustees are liable for the price of the goods so bought. 50 Mad. 497 (P.C.), *Appl.*; 43 M.L.J. 147 and 6 Pat. 139, *Ref.* (*Beasley, C. J. and Walsh, J.*). T. S. VENKATABALAGURUMURTHI CHETTIAR *v.* T. A. BALAKRISHNA ODAYAR. **1930 M.W.N. 925.**

——*Creditor advancing money to Devasthanam must show justification for it.*

In lending moneys to managers of religious institutions, it is not enough that the purposes are necessary, but the creditors must also show that they made enquiries and satisfied themselves that on the occasion on which they made the advance, the loan was justified by the state of the institution's finance. Moreover it is necessary at every time that the debt is either renewed or transferred to a new person, to show not merely that in its origin there was a nucleus of binding debt but that at the subsequent time it was necessary to borrow to pay off the old debt. If that were not so, the door to fraud would be wide open. (*Pandalai, J.*). (MUTTAVI) VENKATACHARYULU *v.* (VEMAVARAPU) RAMAKRISHNA RAO. **121 I. C. 153=A.I.R. 1930 Mad. 439.**

——Debt binding on temple—Temple authorities delaying or withholding payment is no ground for not allowing creditor to enforce the debt against temple—Binding nature of debt must be proved by creditor. 2 I.A. 145 (P.C.) and A.I.R. 1926 P.C. 112, *Ref.* (*Curgenven and Ananthakrishna Ayyar, JJ.*). PACKIRIA PILLAI *v.* SUBBIA MUDALIAR.

113 I.C. 554=A.I.R. 1928 Mad. 1059.

——*Mutt—Head of—Money borrowed for feeding Brahmins and re-building dilapidated structures is for necessity.*

Money borrowed by the head of a Mutt to perform the necessary duties relating to the Mutt, including feeding as many Brahmins as attend a particular festival lasting for a period of two years and rebuilding a dining hall which was falling to pieces and was directed by Government to be repaired, is for necessary purposes and is binding on the Mutt. 40 Mad. 709 (P.C.), *Expl.* (*Mr. Ameer Ali.*) VIBHUDAPRIYA *v.* LAKSHMINDRA. **101 I.C. 545=50 Mad. 497=29 Bom. L.R. 955=54 I.A. 228=45 C.L.J. 613=1927 M.W.N. 507=25 A.L.J. 697=31 C.W.N. 1021=39 M.L.T. 45=26 M.L.W. 829=A.I.R. 1927 P.C. 131=53 M.L.J. 196 (P.C.).**

——The debt incurred by the head of a Mutt for purchasing a house to be used as a granary when all the lands of the Mutt are in the hands of the lessees and there is no pressing necessity for a granary is not binding on the mutt properties. (*Devadoss, J.*). SUNDARAPPIER *v.* S. L. S. K. V. CHOKKALINGA THAMBIRAN. **86 I.C. 291=A.I.R. 1925 Mad. 1059.**

——Debt by head of Mutt—Suit against debtor's successor—Debt not binding on Mutt properties—Plaintiff not showing that debtor kept something for himself out of the savings, cannot get decree against his personal assets in defendant's hands. A. I. R. 1923 Mad. 288, *Dist.* (*Devadoss, J.*). SUNDARAPPIER *v.* S. L. S. K. V. CHOKKALINGA THAMBIRAN. **86 I.C. 291=A.I.R. 1925 Mad. 1059.**

——*Borrowing for defending mahant's title to the endowment is for necessity.*

Mahant of an endowment is the proprietor of the properties although he holds the properties in trust. 26 C.W.N. 537, *Foll.* He has very large administrative powers over the affairs of the Asthal and undoubtedly he has power to sell or mortgage the property in case of need or for the benefit of

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the Asthal. Money borrowed to defend that the title of a Mahant is money borrowed for legal necessity. (*Das and Bucknill, JJ.*). KEDAR NATH GOENKA *v.* MAHANTH JAGGAR NATH DAS. **74 I.C. 134= 1 Pat. L.R. 73=A.I.R. 1924 Pat. 355.**

——*Borrowing on mutt's credit—Mutt properties liable though debt is not charged on them.*

Where the head of a temple having to carry on, in the proper discharge of the duties of his office, the worship in the temple, finds himself without the necessary funds to do so and borrows with an express stipulation that the creditor should be repaid from the temple properties,

Held, for a debt properly borrowed on the credit of Mutt funds, Mutt properties can be made liable, though no charge had been created: 32 M. L. J. 259, *Ref.*; 43 Mad. 795, *Foll.* (*Ayling and Krishnan. JJ.*). SUNDARESAN CHETTIAR *v.* VISVANATHA PANDARASANNADHI AVERGAL. **72 I.C. 103= 45 Mad. 703=16 M.L.W. 83= 1922 M.W.N. 444=31 M L.T. 66= A.I.R. 1922 Mad. 402=43 M.L.J. 147.**

——*Debt for Mutt necessities—Mutt properties liable though debt is not charged on them.*

Where the head of a Mutt borrows money for necessary purposes binding on the trust, the creditor is entitled to a decree against the properties of the Mutt even though the debt was not charged on the properties of the Mutt The case of a head of Mutt who is a *sanyasi* stands in this respect on a different footing from that of a trustee or executor were in the absence of a charge created on the trust the creditor has to look to the personal liability of the trustee or executor: 32 M.L.J. 259; 6 L.W. 640, *Rel.* (*Sadasiva Iyer and Spencer, JJ.*). RAJAGOPALACHARY *v.* RAGAVENDRA ROW.

59 I.C. 287=43 Mad. 795= 1920 M.W.N. 568=28 M.L.T. 269= 12 L.W. 139= 39 M.L.J. 174.

—Religious endowment—Decree against shebait or Mohant.

——Possession acquired and retained under execution sale against shebait—Succeeding shebait suing for possession—Time begins from alienor shebait's death: A. I. R. 1923 P. C. 175; A.I.R. 1926 P. C. 9, *Foll.*; A. I. R. 1922 P. C. 123, *Dist.* (*Suhrawardy and Mukerji, JJ.*). RAJA MANINDRA NARAIN ROY *v.* EXECUTORS TO THE ESTATE OF LATE BHUBAN CHANDRA. **95 I.C. 644= 43 C.L.J. 394=30 C.W.N. 740= A.I.R 1926 Cal. 913.**

——*Suit about—Form of decree—Plaintiff's right should not be left to be worked out in execution.*

Where the plaintiff's shebaiti "rights and profits appurtenant thereto" (to the temple) were declared and the plaintiff was ordered to be "put into possession of the same,"

Held, the Court should settle the mode in which the right of the plaintiff should be exercised and worked out before passing the decree, and should not leave such matters to be determined in execution proceedings. (*Chatterjee and Cuming, JJ.*). KALI KANTA CHATTERJEE *v.* SURENDRA NATH CHUKRAVARTY. **93 I.C. 769=41 C.L.J. 128= A.I.R. 1925 Cal. 648.**

——*Asthan* property cannot be attached and sold in execution of personal decree against the Mohant: 15 Cal. 329 (P.C.), *Foll.* (*Lindsay, J.C.*). GOBIND DAS *v.* NARINDRA BAHADUR SINGH.

61 I. C. 757=8 O.L.J. 210= A. I. R. 1921 Oudh 119.

HINDU LAW — Religious endowment — Devolution of office—Mahantship.

—Religious endowment — Devolution of office—Election.

——*Persons whose names were not in the voter's list voting—Election, when invalid—English Law as to election.*

Where there is nothing in the scheme which ordains that the right to vote is dependent on the entry of the name in the voters' list, it cannot be maintained as a matter of principle that the election is invalidated by the fact that persons were permitted to participate in the election, though their names had not been previously placed on the register of voters. The Common Law of England relating to parliamentary elections should not be applied to regulate the election of temple trustees in this country, though the principles which underlie that law may be invoked, if they appear to the Court to be in conformity with the rules of justice, equity and good conscience. 15 M.L.T. 331, *Ref.* (*Mookerjee, C. J. and Chotzner, J.*). RAGHUNATH SARMA *v.* JIBAN CHANDRA SARMA. **70 I.C. 874=50 Cal. 202= 27 C.W.N. 312=A.I.R. 1923 Cal. 467.**

—Religious endowment — Devolution of office—Gir Gossains.

——Gir Gossains—Succession is governed by Gotia relationship. In the absence of a chela the nearest Gotia succeeds. (*Richardson and Shamsul Huda, JJ.*). KARTICK CHANDRA *v.* GOSSAIN RUDRUNANDA GIR. **66 I.C. 894= 25 C.W.N. 908=A.I.R. 1921 Cal. 482.**

—Religious endowment—Devolution of office—Gurushipp.

——*Relationship of guru and chela as father and son—Extention of.*

For purposes of inheritance the relationship of a guru and his chela is that of father and son. This relationship can be carried further so that a chela is for these purposes, the grandson of his guru's guru and two chelas of the same guru are brothers. There is obviously no limit as to how far this relationship can extend. (*Hallifax, A.J.C.*). MOHANT NANKISHOR DAS *v.* KALA BAI. **94 I.C. 703=A.I.R. 1926 Nag. 351.**

——Math—Heir designated by the Guru—Absence of formal initiative ceremonies during life-time of guru is not material and heir will succeed. (*Macleod, C.J. and Shah, J.*). KRISHNAGIRI TRIKAMIGIRI *v.* SHERIDDAR KAVLEKAR. **67 I.C. 129=24 Bom. L.R. 140= 46 Bom. 655=A.I.R. 1922 Bom. 202.**

——Succession to — Bombay Deccan — Private property passes from guru to chela. (*Kincaid, J.C. and Raymond, A.J.C.*). GOSAI GOWARDHANGIR *v.* GOSAI VASHINGIR. **63 I.C. 370=15 S.L.R. 38= A.I.R. 1921 Sind 1.**

—Religious endowment—Devolution of office—Mahantship.

——*Mahant validly nominated by predecessors, can only be evicted by suit brought with Collector's sanction on proper grounds.*

P had been nominated as mahant by her husband who had been a mahant before her, with the consent of the bhek. Certain barbers of Lahore along with one *G* brought a suit for declaration that the property was wakf, and for injunction restraining *P* from interfering with it, alleging that *G* had been appointed a mahant by the barbers of Lahore.

Held, that the suit by the barbers did not lie. The property was *wakf* and the succession was from guru to chela. The custom that each mahant

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nominated his successors was established. The barbers had never exercised the right to appoint a mahant and, therefore, had no power to do so. *P* had been validly nominated by the last mahant and was in possession of the property as such and she could only be evicted by a suit brought with the Collector's sanction on propor grounds. (*Addison and Bhide, JJ.*). BISHAMBAR DAS *v.* MT. PHULGIRI.

A.I.R. 1930 Lah. 715.

———The rule of succession to the office of a mahant must depend on the peculiar custom and usage of the particular math and in the absence of proof of such custom or usage upon the general Hindu Law on the subject. (*Das and Kulwant Sahay, JJ.*). DEWA DAS *v.* SHEW PRASAD.

120 I.C. 779=10 P.L.T. 433=A.I.R. 1929 Pat. 531.

———*Principle of succession to office of mahant enunciated.*

Generally, the usage or custom of mahanths is, that the mahanth or principal of every math or monastry selects his principal and most worthy pupil to succeed to him at his decease; that after his death the mahanths of other similar institutes in the vicinage convene an assembly of the order, and perform his bhandara, or funeral obsequies at which they generally confirm the nomination made by the deceased, and install the pupil he selected as his authorized successor: that if the mahanth for the time being does not find any of his pupils worthy of the office he selects some one from any other math of the order and appoints him his successor, and his appointment is confirmed by the mahanths convened at the bhandara: but where a mahanth died without appointing a successor there his successor is selected generally from amongst his pupils by the mahanths convened at his bhandara, and invested with the mahanthship of the math; that if the person nominated by the late mahanth be found by them to be unworthy of that office, then they (the convened mahanths) elect a fit person and appoint him successor of the late mahanth. In short, the installation of the successor by an assembly of mahanths at the obsequies of the deceased mahanth is in all cases indispensable and conclusive; and, consequently, the appointment of a successor by the late mahanth is not final so long as it is not confirmed by the mahanths convened at the bhandara. (*Das and Kulwant Sahay, JJ.*). DEWA DAS *v.* SHEW PRASAD. **120 I.C. 779=10 P. L. T. 433=A. I.R. 1929 Pat. 531.**

———Mahant can nominate chela's chela to exclusion of junior chela: 6 S.D.A. 262 at p. 328; 5 W.R. 57 Mis. A.; 7 C. W. N. 145; 21 C. L. J. 96; A.I.R. 1923 Pat. 218, *Dist.* (*Das and Kulwant Sahay, JJ.*). DEWA DAS *v.* SHEW PRASAD. **120 I.C. 779=10 P.L.T. 433=A. I. R. 1929 Pat. 531.**

———*Practice maintained for* 300 *years should not be departed from.*

Where for 300 years the succession to the mohantship had been maintained strictly within the family by the adoption by the reigning mohant of his agnatic nephew it would be contrary to good sense to depart from the practice though a custom to that effect was not proved. (*Das and Bucknill, JJ.*). RAGHUNATH DAS *v.* SHEOKUMAR MISSIR.

67 I. C. 464=A.I. R. 1923 Pat. 309.

———*Satlakha Asthan in Behar—Succession devolves upon chief disciple—If chief disciple be disqualified previous mahants should select the successor.*

Satlakha is a *mourasi Asthan*, that is to say, one in which the office of mahant is hereditary and, apart from custom, devolves upon the chief disciple of the existing Mahant. If therefore a party wishes to prove that some other mode of devolution is customary, the onus rests on him to prove it. The principle *chela* or pupil is entitled to succeed on the death of the presiding mahant of *mourasi* or hereditary math. If the principal pupil be personally unfit to succeed, or be disqualified by any of those causes which, according to the *shastras*, are sufficient for such disqualification, then in that case the presiding mahant should, during his life-time, select one properly qualified from among his pupils to succeed him. The person so selected will succeed. No doubt different customs prevail in different muths; and, where such are proved to exist, they must govern the order of succession. (*Dawson Miller, C. J. and Jwala Prasad, J.*). (MAHANTS) JAGERNATH DASS *v.* JANG BAHADUR RAI.

71 I. C 887=4 P. L. T. 285=1923 P. H. C. C. 33=A. I. R. 1923 Pat. 218.

—Religious endowment—Devolution of office—Nomination.

———In the absence of contrary usage or proof that the ordinary devolution is opposed to the object of trust, the management devolves according to ordinary rules and the shebait cannot nominate a successor by will: 35 Cal. 226 and A. I. R. 1922 All. 285, *Foll.*; 6 Bom. 298, *Dist.* (*Martineau and Moti Sagar, JJ.*). MT. SHAM DEVI *v.* RAM NATH.

91 I.C. 465=A.I.R. 1926 Lah. 273.

———Per *Page, J.*—Mourashi muth—Senior chela succeeds in absence of valid nomination by last Mohunt: 6 S.D.A. Beng. 262 and 43 Cal. 707 (P.C.), *Foll.* (*Walmsley and Page, JJ.*). GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS.

89 I.C. 804=52 Cal. 743=29 C.W.N. 931=A.I.R. 1925 Cal. 1107.

—Religious endowments—Devolution of office—Proof.

———The mahant of mutt died without appointing a successor. The plaintiff, a mahant of another mutt, claimed that he had right to appoint a successor al eging that the former mutt was a subordinate gadi to his,

Held that the burden is upon the plaintiff to prove his allegations. (*Sir George Lowndes.*) BABA JWALA DAS *v.* PIR SANT DAS.

A.I.R. 1930 P.C. 245 (P.C.).

—Religious endowment—Devolution of office—Shebaitship.

———Endower appointing himself first shebait with power to appoint successor—Right to appoint successor is not exhausted by exercise of power and endower can revise his decision.

Further, like all testamentary dispositions, his nomination is to speak as on his death and his last direction is to cancel all previous declarations on the subject. (*Niamatullah and Kisch, JJ.*). ISHRI PRASAD MISIR *v.* RAM KRISHAN DAS.

A.I.R. 1930 All. 620.

———*Shebait not founder, adding to dedicated properties—Power to alter line of succession.*

Additions to an existing foundation are not uncommonly made by persons who hold the office of shebait and it is not uncommon for them to purport to give directions which would alter the devolution of the office, making the course of succession to depart either from the course laid down by the terms of the original dedication or from the course in which the Hindu Law, in the absence of any direction by the founder, would require it to go. But such a shebait who is not the founder of

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the endowment or the dedicator of the idol cannot at his own hand alter the line of succession to the office of shebait: 17 Cal. 3 (P.C.) and A.I.R. 1926 Cal. 561, *Rel. on.* (*Rankin, C.J. and C.C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARI SEAL. **34 C.W.N. 177=51 C.L.J. 80= A.I.R. 1930 Cal. 495.**

——*Power to appoint successor—When can be exercised.*

In the absence of a provision in the deed prescribing the mode of devolution to the office of shebait and in the absence of a custom to the contrary, the power to appoint a successor to a shebait reverts to the heirs of the founder of the trust and a shebait has no right to appoint a successor to himself: 28 All. 689; 29 All. 663 and 18 All. 227, *Ref.* (*Ashworth and Iqbal Ahmad, JJ.*). GANGA CHARAN *v.* RAM CHANDRA. **106 I.C. 389=50 All. 165= 25 A.L.J. 902= A.I.R. 1928 All. 33.**

——*Succession by nomination of successor is not hereditary within Limitation Act, Art.* 124.

Where succession to a religious office is by nomination by the holder in office of his successor, it is not a hereditary succession within Art. 124. Hereditary succession is succession by the heir to the deceased under the law; the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but, the right of the latter should not depend upon the choice of any individual. Therefore the only article applicable to cases of succession after nomination is Art. 120. Article 144 also is not applicable as the claim to possession is also barred if the claim to office is barred under Art. 120. (*Krishnan and Venkatasubba Rao, JJ.*). PARAMANDA *v.* RADHAKRISHNA. **97 I.C. 437= A.I.R. 1926 Mad. 1012=51 M. L. J. 258.**

——The succession to the office of a shebait is governed by the original grant and where no special direction or usage exists, the heirs of the donor succeed. (*Greaves and Chakravarty, JJ.*). SRIPATI CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

——*Shebait—Order of succession cannot be altered unless power is reserved.*

Unless the donor makes a reservation to alter the order of the devolution of the office of shebait laid down in the deed he has no right to do so. The shebait appointed contrary to the order laid down has no right to sue for arrears for rents of the debutter property. (*Woodroffe and Cuming, JJ.*). GOURI KUMARI DASI *v.* RAMANIMOYI DASI. **70 I.C. 175=50 Cal. 197=26 C. W. N. 920= A.I.R. 1923 Cal. 30.**

—Religious endowment—Devolution of office—Stranger.

——*Stranger cannot succeed to office.*

In order to be entitled to succeed to hereditary shebaitship it is not necessary to show that the claimant is one of the heirs of the founder's heirs. It is enough if he can make out that he is the heir of the last shebait. But where the person claiming the right is a mere stranger to the shebaitship and the dedicated properties he cannot succeed in his suit. The rights of the parties are to be governed by the founder's will: 22 C.L.J. 404, *Foll.* (*Rankin, C.J. and C. C. Ghose, J.*). PANCHANAN BANERJI *v.* SURENDRA NATH MUKERJEE. **50 C.L.J. 382= A.I.R. 1930 Cal. 180.**

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—Religious endowment—Devolution of office—Trusteeship.

——*Devolution depends upon usage in absence of trust deed.*

The devolution of the trust upon the death of default of each trustee depends upon the term upon which it was created, or the usage of each particular institution where no express trust deed exists.

Where it appeared that the Rajah of Tanjore founded several religious institutions and acquired lands and gave them as endowments to temples, and that the pagodas were managed by the senior members as hereditary trustees,

Held, that the founders of the institutions intended that their successors who occupied the Raj should continue to have the sole management of the temples and pagodas and the endowments attached to them and therefore to divide these properties among the many claimants to the estate of the Raja would be a policy inconsistent with the intentions of the founder of the institution when he endowed the temples with lands. (*Spencer and Kumaraswami Sastri, JJ.*). AYISWARYANANDAJI *v.* SIVAJI RAJA SAHEB. **92 I.C. 928=49 Mad. 116= A. I. R. 1926 Mad. 84=49 M. L. J. 568.**

——*Trustee may appoint as his successor a person, who was not in existence at testator's death.*

Where in pursuance of the will the testator's widow as executrix, carried out his instructions and during her lifetime acted as the first shebait of the endowment and by her will she appointed the testator's graud-nephew, to be her successor though he was not in existence at the testator's death,

Held, a trusteeship with power to appoint a successor is well-known to and recognised by Hindu Law. The appointment is not inconsistent with the Hindu Law and usage, and so is valid. (*Sanderson, C. J. and Richardson, J.*). MATHURA NATH MUKHERJEE *v.* LAKHI NARAIN GANGULY. **75 I. C. 435=50 Cal. 426=A.I.R. 1924 Cal. 68.**

——*Acquisition of trusteeship by prescription.*

A trusteeship with power to appoint a successor is well-known and recognised by law, and may be prescribed for. When title is acquired by statutory operation, the title of the true owner is not revived by his re-entry; in other words, even if the lawful owner should acquire possession he is not thereby remitted to his original rights. (*Mookerjee, A.C.J. and Fletcher, J.*). KASSIM HASSAN *v.* HAZRA BEGAM. **60 I. C. 165=32 C.L.J. 151.**

—Religious endowment—Devolution of office—Will.

——*Term of office of shebait appointed by testator ending—Shebaitship goes to heirs of testator without clear words directing otherwise—Will—Construction.*

Without clear words to that effect it is impossible to impute to the testator the intention that from time to time persons might be appointed to the office of shebait of his family idol, merely by virtue of their being chosen to act as trustees of his trust fund. When for any reason, the term of office of the shebaits appointed by the testator comes to an end, the rule of Hindu Law gives the office of shebait to heirs of the founder. A fundamental change in the normal devolution of the office is not to be read into a clause which finds place in a will merely as one of a series of directions to the trustees of the testator's trust fund as to the payments by way of legacy which are to be made thereout. A clause in a will declaring that "the trustees or trustee for the time being shall be

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competent to exercise all the power and discretion hereby confided to the trustees herein named" cannot be applied beyond the immediate intention which is confined to the residue of the testator's estate, and has no reference to the property dedicated : 19 Cal. 513 (P.C.) and 17 Cal. 3 (F.C.), *Rel. on.* (*Rankin, C. J. and C. C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARI SEAL.

34 C.W.N. 177=51 C.L.J. 80=A.I.R. 1930 Cal. 495.

———*Mohunt appointing by will, chief chela and successor—Mohunt can revoke the will.*

Where the Mohunt of a muth appoints by a will a certain person as his chief chela and successor, the clause appointing the latter the chief chela cannot alter the character of the document as a will and make it irrevocable by its author. Assuming that the will gave the person appointed chief chela that status, or recognized him to have that status, he cannot claim the successorship to the mohunt's office, without proving that as chief chela he had an unqualified right for the mohuntship, where the testator has cancelled his previous arrangement. (*Walmsley and Page, JJ.*). GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS.

89 I. C. 804=52 Cal. 748=29 C. W. N. 931=A.I.R. 1925 Cal. 1107.

———*Shebaitship—Bequest to unborn persons not valid—Bequest reverts to founder's heirs—Succession to shebaitship varied if, directions as to management cease to be operative—Gift to idol and right of residence to members of shebait's family—Persons not born at testator's death are also entitled to residence.*

The will purporting to create a religious endowment and to appoint shebaits ran as follows: "When you all have ceased to be, he who shall be of the Hindu persuasion and senior in age amongst your legal heirs shall have the management conferred upon him." On the death of all the persons living at the time of the death of the testator, the bequest so far as it provides that the person senior in age among the heirs of the first shebaits should be appointed shebait, fails, and the shebaitship reverts to the heirs of the founder. In such a case as the above, it cannot be said that the shebaitship is not an hereditary office. Though, no emolument or interest in property is attached to the office, it is within the rule. But a founder who is competent to provide for the Government and administration of a trust can give a direction for its management which is not inconsistent with its character as a religious and charitable trust. The test of each case is whether the direction given by the founder is consistent with the nature of the endowment as a religious and charitable trust or is a colourable devise for the evasion of the law against perpetuities. The directions as to management will not cease to be operative simply because the original provisions as to the devolution of the shebaitship ceases to be operative owing to succession to the shebaitship being varied.

Where the will virtually made no gift to any unborn person and the entire gift was to the idol but where members of the family of the original shebaits were entitled to reside in the trust house, to repair it, if necessary, to get maintenance out of the offerings to the idol and to enjoy certain other rights.

Held, that the directions were not inconsistent with the character of a religious trust recognised by Hindus and that the members of the family of the original shebaits were entitled to the rights

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conferred on them by the will irrespective of their having come into existence or not at the time of testator's death, though the provision in the will as to succession to the shebaitship failed so far as it bestowed the same on such of the seniormost among the heirs of the original shebaits as were not alive at the testator's death : 23 Mad. 271 ; 29 Cal. 716; 20 C. W. N. 314, *Foll.*; 3 C.L.J. 606 ; A.I.R. 1924 Cal. 68 and A.I.R. 1923 Cal. 27, *Dist.* (*Suhrawardy and Duval, JJ.*). PROMOTHO N. MUKERJEE *v.* A. C. BANERJEE. **85 I.C 875=40 C.L.J. 564=29 C.W.N. 17=A.I.R. 1925 Cal. 225.**

—Religious endowment—Endowment, how created.

———*No instrument in writing necessary.*

A dedication of the family property for the purpose of a religious charity may be validly made without any instrument in writing even if it be an appropriation of landed property. But it must be shown that there was real *Sankalp* or *Samarpan.* (*James and Chatterji, JJ.*). HARIHAR PRASAD *v.* GURUGRANTH SAHEB. **11 P.L.T. 638.**

———*Execution of instrument in writing is not necessary for valid dedication.*

In order to constitute a valid dedication the execution of an instrument in writing is not necessary. In many cases, dedication is a matter of inference from a long course of conduct, from user, and from the application of the income of the property about which endowment is claimed. This test, however, is not always conclusive. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMANACHARYA. **114 I.C. 734=1929 A.L.J. 229=A.I.R. 1928 All. 689.**

———*Gift in trust to an idol must be in writing and registered.*

To effect a valid trust the law requires an unmistakable intention to dedicate and an overt act carrying that intention into execution. An abandonment of the trust property by the author and its publication by an overt act or necessary to constitute a valid trust under Hindu Law, but the provisions of the Trust Act further require that there should be a registered deed (S. 5), and so do the provisions of the Transfer of Property Act also. Where the author, after effecting the registered deed, renounced the world by taking sanyas, but remained in management of the trust property nor as owner but as manager.

Held, that there was sufficient divesting of the property: 39 All. 553 (P.C.) ; 42 Mad. 440 and A. I. R. 1924 Nag. 254, *Ref.* (*Kinkhede, A.J.C.*). KESHAV *v.* SHRI LAKSHMINARAYANA SAUSTAN.

96 I.C. 635=A.I.R. 1926 Nag. 86.

———*Conduct of parties may prove dedication—Instances of personal appropriation cannot alter character of debutter properties.*

A deed of dedication is not essential for the purpose of valid dedication which may be inferred from application of proceeds and family conduct : 8 W. R. 42 ; 12 Bom. 247 ; 36 Cal. 1003 and A.I.R. 1923 Cal. 60, *Foll.*

One test of a *bona fide* or a nominal endowment is to see how the founder treated the property, or how his descendants have treated it ; and if whether the income of the endowed lands has been continually applied to the object of dedication : 20 Cal. 116 (F.B.); 15 C. W. N. 126, *Foll.*

A few instances where some of the properties have been dealt with as secular cannot alter the character of debutter properties: 14 M. I. A. 263 (P.C.), *Foll.*

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This principle applies also in cases where the fact of the dedication has to be inferred from the treatment of the property by the family. Although the question whether instances of personal appropriation or merely avidence of breaches of trust or are evidence of there being no endowment is sometimes a difficult one, yet it cannot be affirmed that an endowment cannot be proved from treatment of the properties, merely because there was personal appropriation by the shebaits in some instances: 23 Cal. 645.

The mere fact that the rents of a particular property are applied for the worship of the deity for a long period may not be sufficient to establish that the property is debutter, because the worship of family deities may be and sometimes is carried on with the income of a specified property belonging to the family. But such fact may in certain circumstances have an important bearing in determining whether the property is debutter: 2, Cal. 341 and 36 Cal. 1003 *Foll.* (*Chatterjee and Cuming, JJ.*). SRI SRI GOPAL JEW THAKUR *v.* RADHA BINODE MONDAL. **88 I.C. 616=41 C.L.J. 396= A.I.R. 1925 Cal. 996.**

——*Legal title may vest in idol, or a trustee, or some person subject to charge for religious purpose.*

Property may be dedicated to religious purposes, *e.g.*, to the worship or service of a god in such a manner that upon dedication the proprietary title to such property passes in its own entirety and in perpetuity to the idol and where there is dedication in this form the title to the property will vest in the idol without the necessity for the creation of a trust, or the intervention of a trustee: 12 Bom. 247, *Foll.*

The dedication, however, may be in a form in which the property is vested in a trustee who pursuant to the provisions of the trust, is under an obligation to administer the property wholly for religious purposes; or again, the property may be transferred in beneficial ownership to secular persons subject to a charge thereon for religious purposes: 8 M.I.A. 66; 12 Bom. 247; 32 Cal. 129; 44 I.A. 187, *Foll.* (*Page, J.*). ADMINISTRATOR-GENERAL OF BENGAL *v.* BALKISSEN MISSER. **84 I.C. 91=51 Cal. 953=A.I.R. 1925 Cal. 140.**

——*Dedication to idol—Existence of temple is not necessary.*

A certain village was purchased in the name of a deity and the income of the village was applied for worship and other charitable purpose by the Hindu family. But the idols were kept for some years in an ordinary house and not installed in a temple. In fact no temple was ever built but at the date of the suit it was found that the family intended to build one for the purposes of installing the Gods therein,

Held, that the village was validly dedicated as the building of a temple is not an absolutely necessary requisite. (*Lindsay and Kanhaiya Lal, JJ.*). SARAB SUKH *v.* RAM PRASAD. **78 I.C. 1018= 46 All. 130=A.I.R. 1924 All. 357.**

——*Dedication does not require idol but purpose and property must be definite and there must be consecration—Even prior breach of trust by trustee can't be pleaded against him when he seeks to avoid repetition of breach.*

A place dedicated for worship according to Shastric ceremonies at the time of performing *Vrikshotsava* or tree festival ceases to be private property according to Hindu religious ideas, and the case of

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reservoirs is included in the rule. To effect a valid dedication it is not necessary to establish the image of an idol. The religious purpose must be clearly specified and the property intended for the endowment set apart for the object. The designation *Debutter* is not conclusive though valuable evidence of the intentions of the founder. If there has been a valid dedication a breach of trust on the part of a shebait or even of the donor himself will not invalidate or annul the trust or alter the original nature of the grant. A former abuse of trust cannot be pleaded against a trustee who seeks to prevent a repetition of abuse, even if he himself were formerly implicated in the same indefensible courses against which he is seeking to protect property. The misconduct of the trustees cannot be put forward as a valid reason for holding that the author of the trust had no intention of acting seriously or for determining his intention at the time when he founded the trust.

If property has been set apart for religious purposes, that constitutes dedication and such property must be treated as partaking of a trust or religious endowment, though the mere erection of a temple and the planting of a grove may not without consecration amount to such a setting apart as constitutes dedication: 39 Cal. 430; 25 Cal. 112; 37 Cal. 128; 19 Cal. 203; 16 All. 412, *Foll.* (*Mookerjee and Rankin, JJ.*). CHANDRA MOHAN GANGULI *v.* JNANENDRA NATH BANERJEE. **81 I.C. 874= 27 C.W.N. 1033=A.I.R. 1924 Cal. 400.**

——A trust, according to the Hindu Law, cannot fail for want of the appointment of trustees and the Court will appoint a manager on the failure of those entitled to appoint him. (Page 923, paragraph 2111 of Gour's Hindu Code).

Where a trust was created for three purposes, namely (a) for a *sada barat*, (b) for the construction of a shiwalaya and (c) for expenses in connection with the sati of the family,

Held, that the intention of the creators of the trust was to create a trust of a public and religious character: 23 Bom. 659, *Ref.* (*Abdul Raoof, J.*). KIDAR NATH *v.* WAZIR CHAND. **75 I.C. 903= A.I.R. 1924 Lah. 692.**

——*Dedication can be inferred from conduct—Founder prescribing line of succession and directing that descendants of daughters should participate in offerings—Dedication is valid.*

The execution of a document is not essential for the purpose of a valid dedication. It may be inferred from the application of the proceeds and from the family conduct. The proof of the intention becomes almost conclusive, where the usage is immemorial, though the intention may be presumed from a number of instances extending over a limited period provided the existence of an invariable practice is made out by clear evidence. The founder can give directions for the management of the trust which are not inconsistent with its character as a religious trust, and which do not amount to a colourable device for the evasion of the law of perpetuities. It is competent to the founder to prescribe the line of succession to the shebaitship in the descendants of his sons and also to direct that the descendants of his daughters should participate in the offerings dedicated to the idol established by him. (*Mookerjee and Chotzner, JJ.*). RAMBRHAMA CHATTERJEE *v.* KEDAR NATH BANERJEE. **72 I.C. 1026= 36 C. L. J. 478=A.I.R. 1923 Cal. 60.**

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———Charity—Deed is not necessary for dedication. (*Spencer and Kumaraswami Sastri, JJ.*). TAMMIREDDI *v.* GANGIREDDI. **70 I.C. 337=45 Mad. 281=16 M.L W. 55=30 M.L.T. 323=A.I.R. 1922 Mad. 236=42 M.L.J. 570.**

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———An idol is a juridical entity in Hindu law: A.I.R. 1922 P.C. 123, *Foll.* (*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBINDA RAMANUJ DAS. **114 I.C. 571=33 C.W.N. 346=29 M.L.W. 428=56 I.A. 104=1929 A.L.J. 414=49 C. L. J. 321=31 Bom. L.R. 715=1929 M.W.N. 427=56 Cal. 894=A.I.R. 1929 P. C. 66=56 M.L.J. 636 (P.C.).**

———*Person not manager though in charge of deity cannot represent idol.*

The Civil P.C. contains no rule for regulating the conduct of suits on behalf of a Hindu idol. A Hindu idol has juridical status with the power of suing and being sued. Its interests are attended to by a manager. But where a person even though he has the deity in his charge, is not in law the manager of the deity, he is not competent to represent the deity, in an action: 33 All. 735 (F.B.); A. I. R. 1923 All. 160; A.I.R. 1925 P.C. 139, *Ref.*; 37 Cal. 885 (P.C.); 40 Mad. 212 (F.B.), *Dist.* (*Sen, J.*). GOPALJI MAHARAJ *v.* KRISHNA SUNDAR. **1929 A.L.J. 1251=A.I.R. 1929 All. 887.**

———In a suit for the adjustment of rights as to the worship and possession of a family deity, declaration of a fractional share in the deity should not be made; the right to worship the deity only should be declared. (*Mukerjee and Garlick, JJ.*). UPENDRA NATH *v.* BAIKUNTHA NATH. **119 I.C. 801=33 C.W.N. 96=A.I.R. 1929 Cal. 237.**

———*The idol of a Hindu temple is a juridical entity holding dedicated property—It sues and can be sued through manager.*

The idol of a Hindu temple is a juridical entity. It derives its legal existence from the time of vivification and consecration. It holds and owns the property dedicated to it in an ideal sense. It can sue and can be sued through the manager, and its estate is represented by the shebait, who manifests the will of the deity and represents its dealings with the outer world: 37 Cal. 885 (P. C.); A. I. R. 1922 P. C. 123; A. I R. 1925 P.C. 139; 32 Cal. 129 (P. C), and 2 I.A. 145 (P.C.), *Rel. on.* (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMAN ACHARYA. **114 I.C. 734=1929 A.L.J. 229=A.I.R. 1928 All. 689.**

———*Succeeding shebaits form a continuing representation of idol's property.*

Succeeding shebaits in fact form a continuing representation of the idol's property. There is, therefore, no proper scope for the theory that, where a shebait dies, a creditor who claims to be paid out of the idol's property in respect of a debt incurred by such shebait, can bring an administration suit on behalf of himself and all other creditors of the deceased shebait: 29 Bom. 96 and 32 Bom. 381. *Considered*; A.I.R. 1925 P.C. 139, *Ref.* (*Fawcett and Mirza, JJ.*). GULABBHAI *v.* SOHANG DASJI. **110 I.C. 263=52 Bom. 431=30 Bom.L.R. 535=A.I.R. 1928 Bom. 183.**

———*Temple is not a juridical person.*

An idol is a juridical person and similarly a Mutt but to extend this doctrine to include the building in which the idol is deposited as in some way itself becoming a religious institution is a most unwarranted extension of this doctrine and

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would result in two juridical persons co-existing in the same institution. (*Harrison and Dalip Singh, JJ.*). THAKARDWARA AMRITSAR *v.* ISHAR DAS. **110 I C. 384=9 Lah. 588=30 P.L.R. 41=A.I.R. 1928 Lah. 375.**

———The broad proposition that in every case where questions of deb sheba arise the idol is a necessary party to be brought on the record is not correct: A.I.R. 1925 P. C. 139, *Dist.* (*Rankin, C.J. and C. C. Ghose, J.*). BROJENDRA NATH SEAL *v.* LALIT MOHAN. **102 I.C. 409=45 C.L.J. 41=A.I.R. 1927 Cal. 262.**

———*Idol is a juristic person and the shebait is its representative—It can sue and be sued—It is not movable property and cannot be therefore be degraded, injured or destroyed by the shebait—Idol can express its will through shebait.*

Hindu idol is according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a "juristic entity." It has a judicial status with the power of suing and being sued. Its interests are attended to by the person who has the Deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on anology, be given to the manager of the estate of an infant heir.

The person founding a Deity and becoming responsible for these duties is *de facto* and in common parlance called shebait. This responsibility is, of course, maintained by a pious Hindu, either by the personal performance of the religious rites or as in the case of Sudras by the employment of a Brahmin priest to do so on his behalf. Or the founder, anytime before his death or his successor likewise, may confer the office of Shebait on another. The duties of Diety from the time of the consecration of the idol, are duties to something existing which, though symbolising the Divinity, has in the eye of the law a status as a separate *persona*. The position and rights of the Diety must, in order to work this out both in regard to its preservation, its maintenance and the services to be performed, be in the charge of a human being. There may be, in the nature of things, difficulties in adjusting the legal status of the idol to the circumstances and requirements of its protection and location and there may, no doubt also be a variety of other contacts of such a *persona* with mundane ideas, but an argument which would reduce a family idol to the position of a mere movable chattel is one to which the Board can give no support. There is no ground for the proposition that Hindu family idols are properly in the crude sense maintained, or that their destruction, degradation or injury are within the power of their custodian for the time being. Such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognised. It is open to an idol acting through its guardian the Shebait, to conduct its worship in its own way at its own place always on the assumption that the acts of the shebait expressing its will are not inconsistent with the reverent and proper conduct of its worship by those members of the family who render service and pay homage to it.

Where the will of a shebait provided among other things "it is hereby declared that unless and until another Thakur Bari is provided and dedicated as aforesaid the said Thakur (God) shall not on any account be removed from the said premises and in the event of another Thakur Bari being provided and dedicated as aforesaid, the Thakur

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shall be located therein but shall not similarly be removed therefrom on any account whatsoever."

Held, that this should be taken as the will of the idol itself expressed through its guardian and not the will of the founder disposing of his property by will and must be given effect to as such. (*Lord Shaw.*) PRAMATHANATH *v.* PRADHYUMNA KUMAR.

87 I.C. 305=52 I.A. 245=1925 M.W.N. 431=2 O.W.N. 557=27 Bom. L.R. 1064=22 M.L.W. 492=52 Cal. 809=30 C.W.N. 25=23 A.L.J. 537=41 C.L.J. 551=A.I.R. 1925 P.C. 139=49 M.L.J. 30 (P.C.).

———*Old idol destroyed—New idol treated as renewal of old.*

An idol was destroyed by ruffians. The devotees thenceforward worshipped on earthern *Ghot* as representing the same deity. Then a new idol was set up. The people offered puja to it in the same way as to the old idol. The *Ghot* also was requested to be thrown away.

Held, in the circumstances of the case, that the new idol was treated by the people as a renewal of the old one. (*Chatterjee and Cuming, JJ.*). KALI KANTA CHATTERJEE *v.* SURENDRA NATH CHUKRAVARTY. 95 I.C. 769=41 C.L.J. 128=A.I.R. 1925 Cal. 648.

———*Restoration of image—Intention of people concerned is important.*

Where the image is not *Anadi*, the restoration after the prescribed period is blameworthy but not invalid. In a question as to the restoration of an image, the question to be considered is whether it was meant to be and treated by the people concerned as restoration of the old image. (*Chatterjee and Cuming, JJ.*). KALI KANTA CHATTERJEE *v.* SURENDRA NATH CHUKRAVARTY. 95 I.C. 769=41 C.L.J. 128=A.I.R. 1925 Cal 648.

———*Adverse possession affects both shebait and idol.*

Adverse possession affects the right and interest of the idol as well as the right and interest of the shebait, and where adverse possession is proved, time will also run against the idol even where no shebait has been appointed. But in cases where shebait has not been appointed, it is permissible to file a suit for possession in the name of the idol although no doubt the Court will appoint some person to act as agent *ad litem* for the idol: 33 All. 735; 35 Cal. 691; 32 Cal. 129; 37 Cal. 885, *Foll.* (*Page, J.*). ADMINISTRATOR-GENERAL OF BENGAL *v.* BALKISSEN MISSER. 84 I.C. 91=51 Cal. 953=A.I.R. 1925 Cal. 140.

———A decree for mesne profits passed against an idol is recoverable from endowed property and not from the manager personally: 35 Cal. 691, *Foll.*; 2 I. A. 145, *Dist.* (*Mukerji and Dalal, JJ.*). SRI GANESHJI *v.* LALTA PRASAD. 82 I.C. 312=22 A.L.J. 768=5 L.R.A. Civ. 583=46 All. 842=A.I.R. 1924 All. 801.

———*Person occupying position of manager qua performance of trust duties—Right to act on behalf of idol.*

The fact that a person is not the manager or trustee under the particular deed of endowment which he desires to set up for the benefit of the idol, would not prevent him from having a right to act on behalf of the idol in the litigation, if he occupied a position of manager or trustee *qua* the performance of those ceremonies of worship or charities for the benefit of which the trust monies were directed to be applied. (*Piggott and Walsh, JJ.*). DARSHAN LAL *v.* SHIBJI MAHARAJ BIRAJMAN. 71 I.C. 520=45 All. 215=20 A.L.J. 977=4 L.R.A. Civ. 50=A.I.R. 1923 All. 120.

HINDU LAW — Religious endowment—Management.

———The deity is conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. (*Mookerjee and Chotzner, JJ.*). RAMBRAHMA CHATTERJEE *v.* KEDAR NATH BANERJEE.

72 I.C. 1026=36 C.L.J. 478=A.I.R. 1923 Cal. 60.

———*Worshipper cannot re-place an old idol by new.*

A worshipper has not as such, a right to remove an old idol in the temple and put in a new one even though the old one is broken. Such an act cannot be regarded as an act of worship. (*Oldfield and Devadoss, JJ.*). CHAKRAPANI *v.* LAKSMAPERUMALLU. 72 I.C. 328=17 M.L.W. 62=1923 M.W.N. 89=A.I.R. 1923 Mad. 369=44 M.L.J. 90.

—Religious endowment—Illusory endowment.

———Dedication to idol to save property from creditors—Dedication can be impeached—To test reality of dedication settlor's dealing with the property should be looked to: 27 Cal. 242, *Foll.* (*Chotzner, J.*). KALIMALA DEBI *v.* NAGENDRA NATH. 99 I.C. 917=44 C.L.J. 522=A.I.R. 1927 Cal. 244.

—Religious endowment—Management.

———When the words used in the trust are very general, namely, "member of his family" a widow of the manager of the trust is entitled to manage the trust and the properties. (*Krishnan and Venkatasubba Rao, JJ.*). KESHAVA RAO *v.* NATHRAVATI. 105 I.C. 837=A.I.R. 1928 Mad. 200.

———*Donors of subsequent endowment cannot interfere with management of original endowments.*

It is open to a person interested in the maintenance and worship of family idols to create additional endowments for the benefit of such idols. It is also open to such donors to lay down rules for the management of the subsequently endowed properties and to nominate the persons who should be the managers thereof. But such managers, although they may be described by the donor as shebaits, do not become shebaits of the family idols in the sense in which the shebaits nominated by the original founders are; nor do they become entitled to interfere in the management of the originally endowed properties. (*Rankin, C.J. and C.C. Ghose, J.*). BROJENDRA NATH SEAL *v.* LALIT MOHAN.

102 I.C. 409=45 C.L.J. 41=A.I.R. 1927 Cal. 262.

———Uncle and nephew, *Y* and *S* respectively, creating trust at partition between them and managing by rotation—Will by uncle authorising his sons and nephew or his sons after him to manage—Nephew dying after will and uncle becoming sole trustee,

Held, that as *Y* survived *S*, on the death of *S*, *Y* became the sole trustee by survivorship. The will of *Y*, came into operation only after his death. This will cannot be deemed to have been revoked by *S*'s death and *Y* being the sole trustee he could provide a method for the management of the trust properties and that is what was done by his will.

Held further, that as the plaintiff did not claim any right as executor or as legatee under the will, S. 187, Succession Act, was inapplicable,

Held, further, that Art. 144, Limitation Act, would govern the case. (*Waller and Madhavan Nair, JJ.*). DURAI *v.* DURAISWAMI PILLAI.

103 I.C. 194=39 M.L.T. 214=A.I.R. 1927 Mad. 948.

———Management of trust properties by rotation is recognized. (*Waller and Madhavan Nair, JJ.*). DURAI *v.* DURAISWAMI PILLAI. 103 I.C. 194=39 M.L.T. 214=A.I.R. 1927 Mad. 948.

HINDU LAW — Religious endowment — Management.

———*Removing idol to new temple—When allowed.*

Where all the worshippers of a temple, who are in management of it, decide to build a new temple, the old one being in ruins and the site on which it stood becoming insanitary and inconvenient for worshippers, then, unless there is clear prohibition against their demolishing the old temple and building a new temple, the Court is not entitled to prevent the whole body from removing the temple with its image to a new site in the circumstances. *Hindu texts and case-law referred to.* (*Devadoss, J.*). VENKATACHALA MUDALIAR *v.* SAMBASIVA MUDALIAR. **105 I.C. 711= 25 M.L.W. 377=38 M.L.T. 270= A.I.R. 1927 Mad. 465=52 M.L.J. 288.**

———*Person building a temple either out of his own funds or funds collected by subscriptions is entitled to direct the manner and person by whom it is to be managed.*

Where a person collects subscriptions from various persons and builds a choultry or a temple he has a right to direct in what manner the institution should be managed and what right the trustees should have in the management of that institution. This is recognised by the Hindu Law. There is nothing illegal or improper in a person who builds a temple, whether out of his own funds or out of the funds collected by subscriptions or getting donations from people to create a trust and endow it, directing by the deed of endowment, in what manner and by whom it should be managed. (*Devadoss, J.*). VENKATARAMA *v.* DAMODARAM. **98 I.C. 208= A.I.R. 1926 Mad. 1150=51 M. L. J. 457.**

———Where a grant was in favour of a goddess with a condition of inalienability by way of gift or deed of inheritance, and where the vahivat in the grant was meant to be assigned to the family of the original grantee,

Held, that the right to officiate and to enjoy the net profits cannot be placed absolutely on a par with the rights to succession in ordinary Hindu private property; and that the moment any descendant passes out of the family, as for example by adoption or by marriage, the right, *ipso facto*, ceases: *Case-law reviewed.* (*Macleod, C.J. and Madgavkar, J.*). RANCHHOD *v.* BAI JAYANTI. **95 I.C. 85=28 Bom.L.R. 463= A.I.R. 1926 Bom. 309.**

———*Scheme of management—Departure from established practice—When made.*

In framing a scheme of management, due consideration is to be given to the established practice of the institution, but that does not mean that the scheme and any rules thereunder must always conform to such established practice. A scheme in fact supersedes established practice and the interests of the institution and the facilitating of the work of management are the primary matters for consideration both in preparing the scheme and making any modifications in it. There should be means of progress, even if it involves some departure from established practice. (*Fawcett and Madgavkar, JJ.*). SHANKAR LAL *v.* DAKOR TEMPLE COMMITTEE. **94 I.C. 47=28 Bom. L.R. 309= A.I.R. 1926 Bom. 179.**

———*Partition of a Mohuntship is illegal—Mahant appointing two successors and dividing properties between them is partition.*

The headship of a muth is not a matter of partition.

HINDU LAW—Religious endowment—Offerings.

Where a muth of the mourashi class had only one mohunt and the reigning mohunt appointed two successors to himself, one as a *gadinashin* mohunt and another as a *paricharak* mohunt and cut away a considerable amount from the parent foundation and gave it to the newly created office and also provided that one mohunt should pay tribute to the other but the division in the office was not to terminate until there was a failure on the part of one of the mohunts to nominate his successor,

Held, that there was a partition in the office of mohunt which was illegal. (*Walmsley and Page, JJ.*). GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS. **89 I.C. 804=52 Cal. 748= 29 C.W.N. 931= A.I.R. 1925 Cal. 1107.**

———Where a religious institution is governed by a scheme, the appointment of a manager by the District Court for the purposes of suing is not *ultra vires.* (*Ramesam, J.*). RAMANUJACHARYULU *v.* BUCHI MANGARAO. **91 I.C 565=22 M L.W. 485= A.I.R. 1925 Mad. 1279.**

———Combining office of archaka and that of trustee is not desirable; but where some authority to supervise management can be appointed, archaka need not be removed on ground of such combination. (*Abdur Rahim and Moore, JJ.*). SRINIVASACHARYULU *v.* D. PRATYANGA RAO. **64 I.C. 816=30 M.L T. 101= A.I.R. 1921 Mad. 467.**

———Trusteeship hereditary—Devolves like any other family property—Widows and daughters of divided members are not excluded from trusteeship, in the absence of special custom: 29 Mad. 283 (P.C.), *Foll.*; 1 Mad. 343, *Diss.*; 29 Mad. 283 (P.C.), *Rel. on.* (*Wallis, C. J. and Seshagiri Ayyar, J.*). MEENAKSHI ACHI *v.* SOMASUNDARAM PILLAI. **59 I.C. 464=44 Mad. 205= A.I.R. 1921 Mad. 388.**

—Religious endowment—Offerings.

———*Partition of offering—Suit by female is maintainable.*

Where the plaintiff a female heir prayed with regard to her share in the offerings of the temple that she should be allowed to take a turn at the worship in the temple so that her full share in the offerings might be secured to her without any future trouble and litigation.

Held, that such a suit is maintainable: 39 All. 651 and 19 All. 428, *Dist.* (*Mears, C.J. and Banerjee, J.*). KUNJ BEHARI LAL *v.* MT. NARAINI. **71 I.C. 1026=45 All. 437=A.I.R. 1923 All. 425.**

———*Offerings made to deity belonging to endowment, but those made to Mahant are his personal property*—Promani *given to Mahant is his personal property.*

There is a fundamental distinction between the offerings made to the deity and the offerings made to the Mahant personally. If offerings are made to the deity, they belong to the endowment and must be applied by the Mahant for the purpose of the endowment; on the other hand, if offerings are made by the faithful to the Mahant personally, they do not become merged in the income of the endowment: 23 Cal. 645, *Foll.*; 6 Bom. 122; 26 Cal. 356 and 40 M. 212, *Ref.*

Where a particular offering is made to the deity or to the Mahant personally depends upon the intention of the faithful devotee and no inflexible rule can be formulated. But so far as the *promani* is concerned there can be no doubt that it is made to the Mahant personally and becomes his personal property. (*Mookerjee, A.C.J. and Fletcher, J.*). KUMUD BAN *v.* TRIPURA CHARAN. **60 I.C. 464=35 C.L.J. 188=A.I.R. 1921 Cal. 783.**

HINDU LAW — Religious endowment — Partial dedication.

—Religious endowment—Partial dedication.

———*Shebaits having beneficial interest in endowed property—Law applicable to complete dedications not applicable.*

In cases in which the shebaits have beneficial interests in the dedicated property, and such interests descend beneficially and the several shebaits are in separate enjoyment of their respective interests in severalty, it is difficult to see why the principles applicable to cases of complete dedication should necessarily be applied.

Where a debuttar was always treated as one of those less perfect dedications in which the shebaits have treated the property as secular in all respects but subject to a religious charge a suit by one of the shebaits and for his share of the rent only is maintainable: 41 I.C. 837, *Dist.*; 32 Cal. 129 (P.C.), *Ref.* (*Mukerji and Guha, JJ.*). BARBONI COAL CONCERN LTD. *v.* PARICHARAK. **A.I.R. 1930 Cal. 526.**

———*Reserving surplus offerings for founder and his family is not illegal.*

There is nothing illegal in the founder of a temple in creating a trust and reserving for himself and his family the surplus offerings left over after paying for the maintenance of the temple provided that it does not offend against the law of perpetuities: 40 M. L. J. 289; A.I R. 1923 Cal. 60 and A. I. R. 1926 Mad. 538, *Ref.* (*Kumaraswami Sastri and Walsh, JJ.*). KUMARASWAMY ASARY *v.* LAKSHMANA GOUNDAN. **31 M.L W. 498= A.I.R. 1930 Mad. 549.**

—Religious endowment—Position of manager.

———Successor in management is legal representative of previous manager. (*Banerji and Niamatullah, JJ.*). MT. MOTI BALA DEBI *v.* SATYANAND TIRTHA SWAMI. **123 I. C. 376= 1930 A.L.J. 836=A.I.R. 1930 All. 348.**

———*Manager can sue on debt due to temple—Putting forward some claim against temple is no bar.*

Where the plaintiff sued in terms as manager of the temple and also stated in the plaint that the members of his family have been managers of the said temple from times immemorial.

Held, plaintiff could sue to enforce mortgage bonds in favour of temple though the plaintiff did put forward a certain claim against the temple that, however, was a matter which was foreign to the scope of the suit, and was really outside the controversy between the plaintiff as representing the temple and the defendants who had to satisfy the claim under the mortgages. (*Shah and Crump, JJ.*). VINAYAK SHIV RAO ARAS *v.* ATMARAM RAYAJI NETRAMALI. **76 I.C. 182= 24 Bom. L.R. 1308=A.I.R. 1923 Bom. 170.**

—Religious endowment—Position of Mohant.

———Mahant in possession of property of idol or math can sue to recover property, provided he does not claim it as his own, as any person who may sue as next friend of the idol. (*Wort and Fasl Ali, JJ.*). NAURANGI LAL *v.* RAM CHARAN DAS. **11 P.L.T. 403=A.I.R. 1930 Pat. 455.**

———*Mohunt of several asthals can divide different asthals between his successors* (Obiter).

Mohunt who has a number of separate asthals, which by usage have all been held by one man has authority to provide for their division between his successors, or to saddle the property of one or more of the component asthals with a reservation in favour of the others. The essence of the law governing these Mutts lies in the following of custom or usage: A.I.R. 1917 P. C. 190 and 2 M.H.C.R. 19, *Dist. Prima facie* such a separation

HINDU LAW — Religious endowment—Position of Mohant.

would be improper, unless there were special circumstances justifying it. (*Lord Phillimore.*) RAM CHARAN RAMANUJ DAS *v.* GOBINDA RAMANUJ DAS. **114 I.C. 571=33 C.W.N. 346= 29 M.L.W. 428=56 I.A. 104=1929 A.L.J. 414= 49 C.L.J. 321=31 Bom. L.R. 715= 1929 M.W.N. 427=56 Cal. 894= A.I.R. 1929 P.C. 65=56 M.L.J. 636 (P.C.).**

———*Head of a mutt is not trustee in English sense of the word—He may have obligations similar to those of a trustee—Where public are interested in the performance of certain obligation by the head of mutt, they can bring a suit under S.92, Civil P. C.*

A head of a Mutt is not a trustee in the English Law sense. The head of a mutt may be answerable as a trustee, "in general sense," for maladministration and he has to administer as trustee for general pious and religious purposes in view of the duties and obligations attached to his office. If these are not merely voluntary, *viz.*, if the head is bound to carry them out, he must be answerable if he does not, notwithstanding that he may have a very wide discretion as to the application of the mutt funds and other properties for this purpose. If the public or a portion thereof are interested in the performance of these duties and obligations which are or ought to be employed at least as to some part of them in the maintenance of a public and religious and charitable endowment the only way the public can interfere is by a suit under S. 92, Civil P.C. The head of the mutt may have obligations similar to those of a trustee; he will almost invariably be under a legal obligation to support his disciples and perform the usual ceremonies. *Case-law fully discussed.* (*Odgers and Jackson, JJ.*). NELLIAPPA ACHARI *v.* PUNNAIVANAUM ACHARI. **101 I.C. 420=50 Mad. 567= 25 M.L.W. 461=1927 M.W.N. 233=39 M.L.T. 37= A.I.R. 1927 Mad. 614=52 M.L.J. 416.**

———*Mahanths are only managers of the institution and no property is vested in them.*

The Mahanths of maths, called by whatever names, are only the managers or custodians of the institution and in no case is any property conveyed to or vested in them; nor are they "trustees" in the English sense of the word, although they are answerable as trustees in the general sense for mal-administration: A.I.R. 1922 P.C. 123, *Foll.*; 27 Mad. 495, *Not foll.* (*Mullick and Kulwant Sahay, JJ.*). BADRI NARAYAN SINGH *v.* KAILASH GIR. **93 I.C. 303=5 Pat. 341=7 P.L.T. 453= 1926 P.H.C.C. 37=A.I.R. 1926 Pat. 239.**

———Marriage of mohunt does not necessarily entail forfeiture of office. (*Das and Bucknill, JJ.*). RAGHUNATH DAS *v.* SHEO KUMAR MISSIR. **67 I. C. 464=A.I.R. 1923 Pat. 309.**

———*Position is like that of a manager of a joint family—Transaction in ordinary course of management is binding on the math.*

There is no difference at all between the case of a Mahant and the manager of a joint Hindu family. The *karta* of a joint family must have a large discretion in the matter of granting leases and his discretion ought not to be fettered unduly. The same rule applies to a Mahant. The Court, of course, must be satisfied that he entered into the transaction in the ordinary course of management. In such a case the transaction is binding. (*Jwala Prasad, C.J. and Das, J.*). JAI KRISHNA PURE *v.* BHUKAL GOPE. **65 I.C. 290=1922 P.H.C.C. 118= 6 P.L.J. 638=A.I.R. 1922 Pat. 165.**

HINDU LAW — Religious endowment—Position of shebait.

—Religious endowment—Position of shebait.

———*Donor's intention that the office should remain in family is important part of the trust.*

While in form and according to Hindu ideas, in truth, the gift is made directly to the deity, the enjoyment of the office of shebait is regarded as a matter of some distinction and advantage. So far from being regarded as a minor or extraneous question whether the office of shebait shall be held by one preson or another, the intention that the members of the donor's family shall have the right of acting as shebaits is, in general, part of the very texture of the donor's gift: 2 I.A. 145 (P.C.) and 32 Cal. 129, *Rel. on.* (*Rankin, C. J. and C.C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARI SEAL. **34 C.W.N. 177= 51 C.L.J. 80=A.I.R. 1930 Cal. 495.**

———*Shebait is not trustee but manager—Limitation Act, S.* 10, *does not apply.*

The shebait under the Hindu Law is not a trustee for the idol and no legal estate vests in him. He is only a manager of the estate bestowed upon the idol which is the real owner: A.I.R. 1922 P.C. 123; 13 M.I.A. 270 (P.C.) and 27 C.L.J. 605, *Rel. on.* Limitation Act, S. 10, does not apply to a suit for accounts against him. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMAN ACHARYA. **114 I.C. 734=1929 A.L.J. 229=A.I.R. 1928 All. 689.**

———Shebait suing another in respect of debuttar property for idol's benefit must be regarded as representing idol, and not suing in his personal capacity: A.I.R. 1925 Cal. 996, *Foll.* (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMAN ACHARYA. **114 I. C. 734= 1929 A.L.J. 229=A.I.R. 1928 All. 689.**

———Suit in respect of properties belonging to idol can be maintained only by shebait and as long as he does not refuse to do so neither a worshipper nor the idol, can sue on behalf of the idol: 32 Cal. 129 (P.C.); A.I.R. 1925 P.C. 139 (P.C.), *Rel. on.* (*Chotzner, J.*). KALIMATH DEBI *v.* NAGENDRA NATH. **99 I.C. 917=44 C.L.J. 522= A. I. R. 1927 Cal. 244.**

———*Shebait cannot be called upon to furnish security for receiving payment of surplus sale-proceeds of debuttar property.*

In a suit for the establishment of the shebaitship and consequent right to the surplus sale proceeds on behalf of the idol of property sold for arrears of Government Revenue, Court cannot order the shebait to give security for the amount of surplus sale proceeds. Apart from express statutory provisions of this nature it is not open to the Court to direct security to be given in a case of this nature. If the property is wasted, proceedings can be taken to restrain the waste or recover the property that has been wasted in a proper suit. (*Greaves and Mukerjee, JJ.*). NEWAL KISHORE *v.* SECY. OF STATE. **89 I.C. 671=29 C.W.N. 891= A. I. R. 1926 Cal. 187.**

———*Shebait's position differs from that of a trustee.*

The position of a shebait is not the same as that of a trustee in English Law in whom the property is vested. The shebait is only a manager, the property being vested in the deity. The possession and management remains with the shebait, and the right of suit is vested in the shebait though the property is vested in the Thakur: 48 I.A. 302 and 32 Cal. 129, *Foll.* (*Chatterjea and Cuming, JJ.*). SRI SRI GOPAL JEN THAKUR *v.* RADHA BINODE MONDAL. **88 I.C. 616=41 C. L. J. 396= A. I. R. 1925 Cal. 996.**

HINDU LAW — Religious endowment—Position of trustee.

———A shebait is only an officer subject to the limitations and entitled to the rights which are applicable to the guardian of a minor. A shebait has no right to the property. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840= 41 C.L.J. 22=A.I.R. 1925 Cal. 442.**

———Shebaits acting together can change rules for benefit of endowment without changing founder's rules in vital matter. (*Greaves and Chakravarty, JJ.*). SRIPATI CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L. J. 22= A.I.R. 1925 Cal. 442.**

———*Suit by one co-trustee against another for excess realised by the other is maintainable.*

Half the income of trust property was to be applied to the purposes of the temple and the other half to be distributed among the heirs of the founder who were all co-trustees. The properties were placed in the hands of the Rajah of Avagarh.

The Rajah however gave a larger share to some of the heirs. The co-trustees brought a suit for the recovery of the excess so got.

Held, that the dispute virtually was between different persons claiming income of the trust property and that the plaintiffs were entitled to the excess.

Held, further that the fact that the manner indicated in the trust was not followed regarding the payment for some years did not destroy or prejudice the plaintiffs' right.

Held, further that it was not a voluntary payment by the Raja as he did not pay out of his personal fund. (*Sulaiman and Kanhaiya Lal, JJ.*). SRI GAT ASHRAM *v.* JAISHTU MADHO. **80 I.C. 406=22 A.L.J. 641=5 L.R.A. Civ. 410= 46 All. 651=A.I.R. 1924 All. 504.**

———Where the founder imposed no condition as to the location of the deity it was not open to any subsequent shebait to impose restrictions which would fetter those who subsequently as heirs of the founder become shebaits

Held each shebait was entitled to remove deity from Thakurbari to his place at the time of his turn of worship. (*Greaves, J.*). PROMATHA NATH MULLICK *v.* PRADYUMNA KUMAR MULLICK. **76 I.C. 985=26 C.W.N. 909= A.I.R. 1923 Cal. 99.**

———*Shebait must carry out directions of founder.*

A shebait is, on the one hand, bound to carry out all legitimate directions given by the founder at the time of the establishment, and is, on the other hand, free to manage the trust without interference by him or his representatives. (*Mookerjee and Chotzner, JJ.*). RAMBRAHMA CHATTERJEE *v.* KEDAR NATH BANERJEE. **72 I.C. 1026= 36 C.L.J. 478=A. I. R. 1923 Cal. 60.**

—Religious endowment—Position of trustee.

———Dharmakartha deciding in good faith that temple is fit for entire renovation—Court will not disturb such decision. (*Wallace and Srinivasa Ayyangar, JJ.*). PANCHAPAGESA GURUKKAL *v.* SEVUGAM CHETTIAR. **112 I.C. 65= A.I.R. 1929 Mad. 118.**

———*Head of Mutt and trustee of idol—Distinction.*

In the case of a religious institution the property is vested in the idol and the trustee is only a manager for the time being. In the case of a Mutt the head of the Mutt for the time being is entitled to use the income of the Mutt property subject to the maintenance of the Thambirans and the

HINDU LAW — Religious endowment—Position of trustee.

ascetics attached to the Mutt. In the case of a trustee of a temple he is not entitled to use any portion of income for himself. In the case of a *wakf*, if the deed of trust make provisions for the maintenance of the Muttavalli or the trustee for the time being, he may use the income for himself as allowed by the deed of trust, but in the case of Hindu religious institutions no trustee of any institution is entitled to use any portion of the income for himself if the property is vested in the idol. (*Devadoss and Waller, JJ.*). RAMA REDDY *v.* RANGA DASAN. 96 I.C. 371=49 Mad. 543= 23 M.L.W. 657=A.I.R. 1926 Mad. 769= 50 M.L.J. 589.

——Dharmakartha has no right to issue a permanent license to occupy temple property: A.I.R. 1925 P. C. 65 (P.C.), *Foll.* (*Ramesam, J.*). RAMANUJACHARYULU *v.* BUCHI MANGARAO. 91 I. C. 565=22 M.L.W. 485= A.I.R. 1925 Mad. 1279.

——*Dharmakartha's position is different from that of a shebait or Mattan—It is one of mere trustee.*

The position of Dharmakartha is not that of a shebait of a religious institution or of the Mattan of a Mutt. These functionaries have a much higher right with the larger power of disposal and administration and they have a personal interest of a beneficial character. But a Dharmakartha is literally, and no more than, the manager of a charity, and his rights apart, it may be in certain circumstances, from the question of personal support, are never in a higher legal category than that of a mere trustee. (*Lord Shaw.*) SHRINIVAS CHARIAR *v.* EVALAPPA MUDALIAR. 68 I.C. 1= 48 Mad. 565=16 M. L.W. 247= 31 M. L.T. 1=49 I.A. 237=24 Bom.L.R. 1214= 21 A.L.J. 250=27 C.W.N. 317=36 C.L.J. 524= A.I.R. 1922 P.C. 325=43 M.L.J. 536 (P.C.).

——*General trustee not entitled to possession of properties which third persons are entitled to manage —Possession of such manager is adverse to trustee.*

The property of an endowment may consist partly or wholly in the right to enjoy the revenues of property which is in the possession of persons who have the right and the duty to manage the property, collect the revenue and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenue so handed over by them among the several purposes of the endowment. All this is compatible with there being a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee would not be entitled to the possession of the properties out of which this portion of the revenue comes. His rights do not commence until after the collection of the revenues by and under the management of those who hold possession. It must be remembered that after all, the general trustee is only a representative of the idol who is a juridical personage, and who is the true owner and there is nothing legally incongruous in that personage having other subordinate representatives who have the right to manage certain special portions of his property, and pay over the income so collected to the endowment, and even to some degree to control its use. Such rights would not be inconsistent with the existence of a general trustee, but they would be fatal to his claim to possession of the properties from which these revenues are derived. Possession would be in the hands of those entitled to manage these special properties and their possession would be adverse to his. (*Lord Moulton.*) AMBALAVANA PANDARA SANNIDHI AVERGAL *v.* SRI MINAKSHI SUNDARESWARAL DEVASTANAM OF MADURA. 56 I.C. 730= 43 Mad. 665=47 I.A. 191=18 A.L.J. 594= 28 M.L.T. 83=12 M.L.W. 212= 25 C.W.N. 1=1921 M.W.N. 11= A.I.R. 1921 P.C. 97=39 M.L.J. 50 (P.C.).

HINDU LAW — Religious endowment—Removal of Mohant, Shebait or Trustee.

—Religious endowment—Private Trust.

——*Partition deed providing for management of endowment interpreted.*

Where as regards the family charity a partition deed provided that the eldest member from among the four branches of the family should exercise supervision and after him those that come next in the order of seniority should take and manage it, and the question was whether on a proper construction of the deed the right to manage the family charity vested in the eldest member of all the four branches of the family or in the eldest member of senior line:

Held, that under the terms of the deed of partition, the management vested in the senior of the four brothers and after them, in the senior member of the four branches and not in the senior member of the first branch alone: 27 Mad. 192, *Foll.* (*Kumaraswami Sastri, J.*). SWAMINATHA AIYAR *v.* RAMASWAMI. 99 I.C. 823=38 M.L.T. 8= A.I.R. 1927 Mad. 1155.

——Property may remain private, the public being allowed to visit it. (*Wilberforce and Abdul Qadir, JJ.*). SADHUDAS *v.* MUSTAQ SHAH. 3 L.L.J. 514=A.I.R. 1921 Lah. 343.

—Religious endowment—Removal of Mohant, Shebait or Trustee.

——*Mismanagement or failure in some important duty to be proved—Mere refusal to show account is not misconduct.*

Even if a person as one of the heirs of the founder of the trust is entitled to complain of waste or mismanagement of the trust fund, yet, in order that he may bring a case for account, still more a case for the framing of a scheme of the removal of a shebait it is necessary that he should show that there has been some default on the part of the shebait, either mismanagement or failure in some important duty. It is not a sound proposition that he is a person who has any right to see the account and mere refusal by shebait to allow him to see the account will not amount to misconduct. (*Rankin, C.J. and Mukerji, J.*). FULMANI DASI *v.* PRIYA NATH SEN. A.I.R. 1930 Cal. 583.

——Mahant setting up adverse title is liable to be removed: 31 Mad. 212, *Foll.* (*Broadway and Brasher, JJ.*). AJUDHIA DAS *v.* LOKU MALIK. 72 I.C. 803=A. I. R. 1923 Lah. 131.

——Among Gir Gossains marriage is not allowed and by custom if any one of the Gir Gossain sect drinks wine or marries or becomes addicted to vice, the Punch can dismiss him and install another *shebait* in his place. (*Richardson and Shamsul Huda, JJ.*). KARTICK CHANDRA *v.* GOSSAIN RUDRANANDA GIR. 66 I.C. 894=28 C. W.N. 908= A.I.R. 1921 Cal. 482.

——*Removal by temple committee for misconduct— Dismissed trustee can question dismissal if natural justice not done—But Courts should be wary of interfering with findings of fact by temple committee.*

Temple trusteeships are in the nature of freehold offices held under a corporation, and in England to

HINDU LAW—Religious endowment—Rights of Founder.

justify the removal of a freehold officer during good behaviour, it must be shown that he has been removed and removed by competent authority and with due observance of the rules of natural justice and also for cause which is sufficient to justify his removal. On these principles the dismissed trustee can question their own dismissal, both in point of procedure and in point of cause and also the regularity of the appointments of their next successors. Such removals and appointments must be made by a majority of the temple committee.

It is doubtful whether it is open to dismissed temple trustees as defendants in a suit to question the appointment of the members by whom they were removed, for, failure to submit accounts and failure to keep any proper accounts are sufficient in law for dismissal of temple trustees.

Per *Seshagiri Iyer, J.*—In cases where *quasi* judicial tribunals are invested with power of removal or suspension, it is necessary that their findings of fact should be respected by Courts, provided they have adhered to the principles of natural justice and provided they have given notice and afforded opportunity to the defendants, who had been removed of being heard. (*Wallis, C. J. and Seshagiri Aiyar, J.*). SUNDARESA GURUKKAL *v.* K. SUBRAMANIA MUDALI.

61 I.C. 741=13 M.L.W. 212=A.I.R. 1921 Mad. 511.

—Religious endowment—Rights of Founder.

———*When founder can alter the line of succession to the office of shebait.*

The creator of an endowment in favour of family deity, having once executed debuttar or trust deed and disposed of shebaitship cannot subsequently alter the line of succession to the office of shebait in the absence of any reservation to that effect in the trust deed: 50 Cal. 197; 30 C.W.N. 930; 40 C.L.J. 22; 52 I. A. 345, *Expl.* and *Dist.*; 40 I. A. 137; 16 I. A. 137, *Ref.*

Per *Mitter, J.*—The texts of Hindu Law which suggest that donor can remove a shebait, during his life time refer only to public endowments as for instance dedication of tanks and wells to the public. (*Graham and Mitter, JJ.*). SM. MONORAMA DASI *v.* DHIRENDRA NATH BASU. **34 C.W.N. 1087.**

———*Private endowments—Appointing shebaits—Powers of founder.*

The *shebaitship* is ordinarily vested in the heirs of the founder in default of evidence that he has disposed of it otherwise or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution: 16 I.A. 137; 40 I. A. 97, *Ref.* Where the founder has not laid down an order of succession of *shebaits* in the deed of dedication, he can certainly confer a *shebaitship* upon some person other than the person carrying on the *sheba*. But it is not the law, nor is there in the ruling of the Privy Council in 52 I.A. 245 to suggest that even if the line of succession of *shebaits* is laid down in the deed of endowment it could be altered by the donor during his lifetime. (*Graham and Mitter, JJ.*). MANORAMA DASI *v.* DHIRENDRA NATH BASU. **34 C.W.N. 1087.**

———Supposing that the consensus of the whole family can convert an absolute debuttar property into secular property, such consensus must be of all the members male and female, who are interested in the worship of the deity. (*Chatterjea and Page, JJ.*). CHANDI CHARAN DAS *v.* DULAL PAIK.

98 I.C. 684=54 Cal. 30=30 C.W.N. 930=44 C.L.J. 479=A.I.R. 1926 Cal. 1083.

HINDU LAW—Religious endowment—Rights of Founder.

———*Shebaitship devolves on the heirs of founder unless contrary is shown.*

According to Hindu law, when the worship of a Thakur has been founded the Shebaitship is held to be invested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution: 17 Cal. 3 (P.C.), *Foll.* (*Lord Shaw.*) PRAMATHA NATH *v.* PRADHYUMNA KUMAR. **87 I.C. 305=52 I.A. 245=1925 M.W.N. 431=2 O.W.N. 557=27 Bom. L.R. 1064=22 M.L.W. 492=52 Cal. 803=31 C.W.N. 25=3 Pat. L.R. 315=23 A.L.J. 537=41 C.L.J. 551=A. I. R. 1925 P.C. 139=49 M.L.J. 30 (P.C.).**

———Donor can alter rules save when he has expressly precluded himself or when third party's rights or right of property of shebait, will be prejudiced or when the gift will be fundamentally affected. (*Greaves and Chakravarty., JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE.

82 I.C. 840=41 C.L.J. 22=A.I.R. 1925 Cal. 442.

———In the absence of usage or a course of dealing which points to a contrary conclusion the shebaitship vests in the founder and the heirs, the moment a trust in favour of an idol is created. (*Das and Macpherson, JJ.*). DEOKINANDAN *v.* BRIJNANDAN. **76 I.C. 89=5 P.L T. 231=A.I.R. 1924 Pat. 502.**

———*Shebait cannot convert trust property into secular property without consent of whole family.*

Shebaits cannot, by their dealings give the trust property a different turn. It is the members of the family interested who by their consent may convert the *debutter* property into secular property. It is not the dealings, but the family *consent* that changes the original character of the property. (*Woodroffe and Suhrawardy, JJ.*). MANMOHAN GHOSE *v.* SIDHESHWAR DUBEY. **76 I.C. 213=27 C.W.N. 218=A.I.R. 1923 Cal. 177.**

———*Shebaitship vests in founder—Priest appointed by shebait does not get independent rights in management.*

The *shebait* appoints the purohit to conduct the worship; that does not transfer the management of the debuttar estate from the shebait to the purohit. Where the appointment of a purohit has been at the will of the founder, the mere fact that the appointees have performed the worship for several generations, will not confer an independent right upon the members of the family so appointed and will not entitle them as of right to be continued in office as priest. When the worship of an idol has been founded, the shebaitship is vested in the founder and his heirs, unless he has disposed of it otherwise or there has been some usage or course of dealing which points to a different mode of devolution. Where the worship of an idol was established by the ancestor of the testatrix she cannot be regarded as a founder because of her subsequent benefaction which is nothing beyond an accretion or addition. (*Mookerjee and Rankin, JJ.*). KALI KRISHNA RAY *v.* MAKHAN LAL MUKHERJEE. **72 I.C. 686=36 C.L.J. 441=27 C.W.N. 411=50 Cal. 233=A.I.R. 1923 Cal. 160.**

———*Shebaitship—Vests in founder or founders, unless disposed of—Rule applies both to public and private endowments.*

When worship of an idol has been founded, the shebaitship is vested in the founder and his heirs,

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unless he has disposed of it otherwise, or there has been some usage or course of dealing which points to a different mode of devolution. Where one person provides the site of the temple, another builds the temple and establishes the idol, while a third dedicates property for the performance of the daily services of the idol, *prima facie*, all the persons who establish the worship are entitled to take part in the management.

If a number of persons provide the original endowment, they may apparently together constitute the founder: *Re St. Leonard*, (1884) 10 App. Cas. 304. But persons who, subsequent to the foundation, furnish additional contributions do not thereby become joint founders; their benefaction is regarded as nothing beyond an accretion to an existing foundation.

These rules apply equally in the case of private and public endowments. (*Mookerjee and Chotzner, JJ.*). ANANDA CHANDRA CHAKRABARTI *v.* BROJA LAL SINGHA. **74 I.C. 793=36 C.L.J. 356=50 Cal. 292=A. I. R. 1923 Cal. 142.**

——*Defendant's family successively trustees for long time—Inference of hereditary trusteeship can be drawn.*

Where from documents, members of the family of the defendants were the persons who took the greatest interest in the *kattalais* and they were successively the trustees of the *kattalais* from 1816 to 1909 and there was nothing in the succession inconsistent with their being hereditary trustees,

Held, it was a proper inference to draw from the documents, that the members of the defendant's family were holding as hereditary trustees. (*Phillips and Ramesam, JJ.*). KANDASWAMI IYER *v.* CHITAMBARAM CHETTIAR. **70 I.C. 598=16 M.L.W. 340=31 M.L.T. 217=1922 M.W N. 704=A.I.R. 1923 Mad. 209.**

——*Shebait, Office of—Vests in heirs of founder—Widow of founder cannot make appointment by will altering mode of devolution.*

The office of a shebait is vested in the heir or heirs of the founder, provided that there is no usage, course of dealing or circumstance showing a different mode of devolution. A different mode of devolution must, of course, mean some mode warranted by law. Whether a widow could make such an appointment by Will so as to bind the plaintiff after her death must depend upon the terms of the deed of endowment. If the right to do so cannot be found there, it cannot exist in law. To hold that she could do so on some general principle of law analogous to the right of the beneficial owner is giving a higher right to a Hindu widow as the heir of her deceased husband than has ever been recognized by Hindu Law or custom. (*Piggott and Walsh, JJ.*). GOSWAMI PURAN LALJI *v.* RAS BEHARI LAL. **67 I.C. 328=44 All. 590=20 A.L.J. 527=A.I.R. 1922 All. 285.**

——Right of descendant of founder to nominate trustees—Court is not bound to uphold the right, if in its opinion the person appointed trustee is not fit for his office.

The interests of the trust are supreme and the Court must have regard to such interests in dealing with the question whether the persons appointed as trustees are persons who can be properly entrusted with the management of the institution: 41 Cal. 1085 (P.C.), *Foll.* (*Abdul Rahim and Burn, JJ.*). VAITHINATHA AIYAR *v.* THYAGARAJA AIYAR. **68 I. C. 631=A.I.R. 1921 Mad. 563=41 M. L. J. 20.**

HINDU LAW—Religious endowment—Transfer of right of management.

—**Religious endowment—Subject of endowment.**

——Dedication can be made by manager of part of joint family property to idol at funeral of a deceased member. (*Spencer and Ramesam, JJ.*). AUDIAPPA NAIDU *v.* MUTHULAKSHMI ACHI. **91 I. C. 610=1925 M. W. N. 653=A. I. R. 1925 Mad. 1281.**

—**Religious endowment—Suit for accounts.**

——*Suit against co-trustees for account—No allegation of breach of trust—Suit is not maintainable.*

A mere suit, asking the co-trustees to render an account of their management, without any allegation of breach of trust which has been committed or is about to be committed, is not maintainable and to hold that such a suit is maintainable is to allow any trustee wantonly to sue his co-trustees for accounts: A. I. R. 1927 Bom. 424, *Appr.*; A.I.R. 1922 Mad. 17 (F.B.); A. I. R. 1921 Mad. 388 and Mad. Appeals Nos. 323 and 368 of 1919, *Dist.* (*Ramesam and Jackson, JJ.*). NARAYANAN THIRUMPUMPU *v.* MOOTHA PODUVAL. **122 I. C. 460=31 M.L.W. 24=1930 M.W.N. 199=53 Mad. 214=A.I.R. 1930 Mad. 295.**

——*Shebait, when can sue co-shebait for accounts.*

A shebait cannot be allowed to take his stand upon the general law which allows one trustee to call for an account from a co-trustee as much for his own protection as for the preservation of the trust unless there is an instrument settling the rights and liabilities of shebaits *inter se* and authorizing a shebait to call for an account form a co-shebait. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMAN ACHARYA. **114 I.C. 734=1929 A.L.J. 229=A.I.R. 1928 All. 689.**

—**Religious endowment—Transfer of right of management.**

——*Sale for pecuniary benefit is bad.*

A shebait is incompetent to sell his religious office for his own pecuniary benefit even if he sells to the person next in succession to the office. Where a widow who is representative of the debuttar estate in certain testamentary proceedings withdraws her caveat and receives a certain sum of money in satisfaction of her right of residence, maintenance and all other claims including claim to the debuttar estate it is a bad bargain on her part and cannot be supported. The transaction cannot be upheld on the ground of a *bona fide* compromise: 1 Mad. 235 (P.C.); 17 Cal. 557; 26 Bom. 131 and 1 C.W.N. 493, *Foll.*; A.I.R. 1926 Cal. 490; 35 Cal 226, *Ref.*; 36 Cal. 975; 6 Bom. 298 and 15 Mad. 183, *Dist.* (*Rankin C. J. and C. C. Ghose, J.*). PANCHANAN BANERJEE *v.* SURENDRA NATH MUKERJI. **50 C.L.J. 382=A.I.R. 1930 Cal. 180.**

——*Religious office is inalienable—Alienation is void and can be so declared even at alienor's instance—Rule of "necessity" cannot apply to sale of office.*

In the absence of custom or usage to the contrary, or any term to that effect in the deed of endowment, a religious trust or the right of management of a religious or charitable endowment or a religious office attached to a temple or any other endowment cannot be alienated by the holder. Any such alienation is void and may be declared void even at the instance of the alienor: 89 Mad. 456; 14 M.I.A. 289; 1 C.W.N. 493 and 42 Cal. 455, *Rel. on.*

The rule of necessity extends only to an alienation of the temporalities of the idol. It does not,

HINDU LAW—Religious endowment—Transfer of right of management.

and cannot be made to apply to an alienation of the spiritual rights and duties the fulfilment of which is the primary function of a shebait. To apply such a rule to the spiritual duties of a shebait would be to contravene a fundamental principle of the Hindu Law, and to violate the religious instincts of all orthodox Hindus. In the nature of things there can be no necessity for a voluntary transfer of the spiritual duties of a shebait and the doctrine that a shebait at his own will and pleasure is at liberty to alter the line of shebaits on the ground that to do so will be "for the benefit of the deity," offends against the Common Law of India, and is in conflict with the uniform rulings of the Judicial Committee of the Privy Council : 27 Mad. 435, *Ref.*; 6 Bom. 298, *Diss.* (*Page, J.*). NAGENDRA NATH *v.* RABINDRA NATH. **94 I C. 212= 53 Cal. 132=30 C.W N. 389= A. I. R. 1926 Cal. 496.**

———The office of shebait is inalienable either by sale or by gift. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22=A. I. R. 1925 Cal. 442.**

—Religious endowment—Worship.

———Where a family has a right of worship with some emoluments attached to it, the Court may assign certain days for facility of worship and for the purpose of enabling such party to receive offerings offered : A.I.R. 1925 P.C. 139 and A.I.R. 1923 All. 425, *Rel. on.* (*Mukerjee and Bennet, JJ.*). GOSWAMI SADANAND *v.* GOSWAMI INDRA NAND. **123 I.C. 763=A.I.R. 1930 All. 383.**

———*Compromise to perform puja by rotation—Idol cannt be moved.*

Where there are more than one shebait and it is compromised to worship and perform Puja by each of them in turn, it is not admissible to move the idol from place to place according to the convenience of co-shebaits but it should be kept in a place where it can be conveniently worshipped in turn by parties. (*Suhrawardy and Jack, JJ.*). SIRISH CHANDRA *v.* DEBENDRA NATH. **50 C.L.J. 333=A.I.R. 1929 Cal. 828.**

———Civil P. C., O. 1, R. 9—Deity installed in family dwelling house by ancestors of parties—Suit for adjusting rights of worship is maintainable, though deity be unrepresented (Deity's property being not likely to be affected) and female members of family be not joined : A.I.R. 1925 P. C. 139, *Dist.* (*Mukerji and Garlick, JJ.*), UPENDRA NATH GHOSE *v.* BAIKUNTHA NATH GHOSE. **119 I.C. 801=33 C. W. N. 96= A.I.R. 1929 Cal. 237.**

———*Right of worship at a temple is not an unrestricted right—There is distinction between temple and inner sanctuary.*

A right of worship at a temple is not an absolutely unrestricted right. It must be subject to reasonable regulations for preventing overcrowding, etc. There is a distinction between the temple and the inner sanctuary. Every Hindu has ordinarily a right to enter a Hindu temple and obtain sight of the idol and perform his act of worship from a distance in the main body of the temple without any payment of fees. In the case of the inner sanctuary or the Holy of the Holies the access is not equally free and is regulated by special rules for the special right to enter and perform worship therein. (*Fawcett and Madgavkar, JJ.*). SHANKARLAL *v.* DAKHOR TEMPLE COMMITTEE. **94 I. C. 47=28 Bom. L. R. 309= A.I.R. 1926 Bom. 179.**

HINDU LAW — Religious endowment — Miscellaneous.

———Turn of worship—Custom excluding sonless widow from inheritance of such turn is valid—Custom applies whether share was acquired by inheritance, testamentary device or transfer *inter vivos.*

A turn of worship, in respect of alienation or heritability, may be subject to the operation of valid customs: 42 Cal. 455, *Foll.* (*Mookerjee and Chaudhuri, JJ.*). RADHARANI DASI *v.* DAYALCHAND. **62 I. C. 222=33 C.L.J. 141= A. I. R. 1921 Cal. 785**

—Religious endowment—Miscellaneous.

———*"Jeerna" and "Sarvanga Vykalyam", meaning of—Renovation—When allowed.*

The word "jeerna" means not "reduced to ruins" but dilapidated; and the expression "Sarvanga Vykalyam" means not partial but general dilapidation. And where it is found that a temple is in a state of disrepair and decrepitude and dilapidation in many respects, it is a fit one for complete renovation because the essence of a building is its structual coherence and consistency and a building must be said to have attained the condition of "jeerna" when time has seriously impaired such coherence and consistency. (*Wallace and Srinivasa Ayyangar, JJ.*). PANCHAPAGESA GURUKKAL *v.* SEVUGAM CHETTIAR. **112 I.C. 65= A.I.R. 1929 Mad. 118.**

———*Religious endowments are not held in trust in its technical sense.*

Act 2 of 1882 which excluded Hindu religious endowments from the operation and scope of the Act, thereby predicates that Hindu endowments are not held in trust in its technical sense. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v* GURU REVTE RAMAN ACHARYAR. **114 I.C. 334= 1929 A.L.J. 229=A.I.R. 1928 All. 689.**

———Suit for declaration of right to hold office-involving right to worship and receive emoluments is maintainable: 9 M.L.J. 355, *Dist.* ; 5 Mad. 313 and 2 Mad. 62 (P.C.), *Rel. on.* (*Kumaraswami Sastri, J.*). ANNA RANGACHARIAR *v.* V. PARTHASARATHY IYENGAR. **98 I.C. 229= A.I.R. 1927 Mad. 131.**

———*Katlais Trustees or their incomes are not subject to Ulthurai trustees though idol is interested in their due performance.*

The Katlais are independent institutions and the other trustees are not subject to control of the Ulthurai trustees, the common bond between them all being that they are supposed to exist for the glorification of the Deity, (Thyagarajaswami) either directly, by service rendered within the temple or indirectly, by charities carried on outside the temple in the name of the Deity. The income of the various Katlais does not belong to Thiyagarajaswami (the idol) and cannot be mixed up and utilised for all the purposes of the temple indiscriminately though the idol is interested in the proper performance of the distinct duties attached to each Katlai. These trusts are somewhat analogous to temple services inams. In the present case the surplus income of Annadana Katlai cannot be utilised for the repairs or other expenses in connection with the temple. In framing the scheme for a temple having several Katlais some of which have borrowed heavily in the past it is very necessary that the scheme should contain stringent prohibitions against the borrowing or lending of money by the trustees from or to the trust funds or from one Katlai to another Katlai: 17 Mad. 199,

HINDU LAW — Religious endowment — Miscellaneous.

Appr. (*Spencer and Ramesam, JJ.*). GYANA SAMBANDA PANDARA SANNADHI *v.* VAITHILINGA MUDALIAR. **74 I.C. 115=18 M.L.W. 247= A. I. R. 1924 Mad. 168.**

——*Constructions on wakf property—Suit by some members of public for demolition.*

Where the defendants had raised some constructions which interfered with the exercise of certain rights to which the public were entitled,

Held, that a suit, by persons who were members of the public affected and some of whom were also trustees of the *wakf* to which the rights mentioned referred, for the demolition of the constructions should be decreed. (*Daniels and Neave, JJ.*). MT. PUTLI KUNWAR *v.* PT. JANKI DAS. **81 I.C. 294= 46 All. 813=22 A.L.J. 747=5 L.R.A. Civ. 603= A.I.R. 1924 All. 850.**

——Temple on communal site from funds collected from community is public temple. (*Kotval and Prideaux, A.J.Cs.*). AMBADAS *v.* KASHIBAI. **71 I.C. 979=A.I.R. 1923 Nag. 27.**

——*Repairs of Mahant's house should be made out of endowment funds.*

The dwelling house of the Mahant is part and parcel of the endowment and must be maintained in a suitable condition so as to be proper residence for the spiritual head of the religious foundation. So long as the Mahant remains in office, he must be treated with the diguity which belongs to the holder of the office : 17 I. C. 969, *Foll.* (*Mookerjee, Ag. J. and Fletcher, J.*). KUMUD BAN *v.* TRIPURA CHARUN. **60 I.C. 464= 35 C. L. J. 188=A.I.R. 1921 Cal. 783.**

——During the lifetime of his guru a chela who is of age may be a member of the Punch. (*Richardson and Shamsul Huda, JJ.*). KARTICK CHANDRA *v.* GOSSAIN RUDRANANDA GIR. **66 I.C. 894=25 C.W.N. 908=A.I.R. 1921 Cal. 482.**

——*Suit for declaration of right for joint possession by an heir of founder against another in possession—No prayer for scheme—Suit is maintainable.*

The fact that the persons entitled to the office of the trustee may not be able to work harmoniously together is not a ground for dismissing a suit by one of the heirs of the founder for a declaration of his right to share in the management and for joint possession of the trust properties with the heir who is in present possession and management. If it is found that a scheme of management is necessary in the interests of the institution, such a scheme may be settled either by the heirs themselves or by resort to the Court. In the absence of such a scheme the plaintiff is entitled to the rights of the joint management and possession claimed in the plaint. (*Wallis, C. J. and Seshagiri Aiyar, J.*). MEENAKSHI ACHI *v.* SOMASUNDRAM PILLAI. **59 I. C. 464= 44 Mad. 205=A.I.R. 1921 Mad. 388.**

—Religious office—Archak.

——*Archak appointed by shebait is not entitled to be continued in office as of right.*

It must not be overlooked that the *pujari* or *archak* is not the shebait ; he is appointed by the *shebait* as the *purohit* to conduct the worship ; but that does not transfer the rights and obligations of the *shebait* to the *purohit*, and he is not entitled to be continued as a matter of right in his office as *pujari*. (*Mookerjee and Chotzner, JJ.*). ANANDA CHANDRA CHAKRABARTI *v.* BROJA LAL SINGHA. **74 I.C. 793=36 C.L.J. 356=50 Cal. 292= A. I. R. 1923 Cal. 142.**

HINDU LAW—Religious office—Priest.

—Religious office—Birt Jajmani.

——Pragwals—Defendant can be restrained by injunction from using same kind of flag as plaintiff and diverting pilgrims going to plaintiff. (*Piggott and Kanhaiya Lal, JJ.*). BENI MADHO *v.* HIRA LAL. **59 I.C. 873=43 All. 20= A.I.R. 1921 All. 316.**

——Daughters are entitled to the *Birt Jajmani* of their deceased father and to succeed to any position of the same by virtue of a will left by the father: 39 All. 196 and 15 C.L.J. 376, *Ref.* (*Tudball and Kanhaiya Lal, JJ.*). LOKYA *v.* SULLI. **43 All. 35=A.I.R. 1921 All. 286.**

——The so-called right on the part of a Purohit to Birt is, in law, no right at all and does not amount to "property" for the purposes of S. 42, but it is a mere *spes successionis* or contingent right, which is dependent for its existence on the pleasure of the Jajmans. (*Martineau, J.*). BISHIN DATT *v.* KRISHEN DUTTA. **67 I.C. 439=3 L.L.J. 414= A.I.R. 1921 Lah. 138.**

—Religious office—Birt Mahabrahmani.

——*Is heritable, partible immovable property.*

Under Hindu Law Brit Mahabrahmani (the right to receive offerings from jajmans) is considered as immovable property and therefore heritable and partible : 1 O. D. 2 ; 5 O C. 255, *Dist.*; 11 O. C. 212 and 23 O.C. 252, *Diss. from*; 8 O. C. 339; A.I.R. 1924 Oudh 252; A. I. R. 1923 All. 350; A. I. R. 1921 All. 286; 15 C. L. J. 376; 36 Bom. 94; A. I. R. 1921 Bom. 209, *Foll.*; A. I. R. 1921 All. 316; 20 O. C. 265, *Ref.* (*Misra and Raza, JJ.*). GAYA DIN *v.* GUR DIN. **118 I.C. 87=6 O. W N. 259= A.I.R. 1929 Oudh 257.**

—Religious office—Contract.

——A contract for the division of money of articles received as charity by Maha Brahmins can be enforced only between the immediate parties to the agreement: 20 O. C. 265, *Dist.* (*Lindsay, J.C.*). MAHESH PRASAD *v.* BHARATH. **59 I.C. 677= 23 O.C. 252.**

—Religious office—Injunction.

——Defendant prohibiting plaintiff from officiating as the family priest of a certain caste—Suit for injunction lies—But plaintiff's acquiescence is bar to granting of relief ; 36 Bom. 94, *Foll.*; 3 Bom. 232, *Ref. to.* (*Macleod, C. J. and Fawcett, J.*). GIRJASHANKAR DAJI *v.* MURLIDHAR NARAIN. **59 I.C. 271=45 Bom. 234=A.I.R. 1921 Bom. 209.**

—Religious office—Maintenance.

——*Kulurbidu pattam, South Canara—Junior members are not entitled to maintenance out of pattam properties.*

The *pattam* of *Kulurbidu* in South Canara is a religious office. By custom the villagers have to appoint to the office a member of the Aliyasanthana family to which the last *pattam* holder belonged though, only in the absence of a member of the family a stranger can be appointed to the office. No junior member of the family of the *pattam* holder has a right to claim maintenance out of the income of the *pattam* property. (*Sadasiva Ayyar and Spencer, JJ.*). M. NAGARAJA *v.* DEVARAJU KARNATHAYA BELLALA. **67 I.C. 84= 45 Mad. 62=14 M.L.W. 310= 1921 M.W.N. 626=A.I.R. 1922 Mad. 224= 41 M.L.J. 340.**

—Religious office—Priest.

——*In Bihar and Orissa jajman may appoint any priest he likes and may dismiss even hereditary priests.*

Both the hereditary priest as well as those appointed by the sacrificer or jajman stand on the same

HINDU LAW—Religious office—Pujarees.

footing in the matter of dismissal. As to whether a priest, of whatever class he may be, is competent to perform the ceremonies and whether he is faultless or not must rest entirely upon the conscience faith and judgment of the jajman, and a Court of Justice will be incompetent to deal with such a question. He may be guided by his sentiments of good and evil, or even by caprice and superstitions : 12 C.L.J. 74; 13 C.L.J. 449; 20 All. 234; 26 M.L.J. 482; (1850) S.D.A. 296; (1852) S.D.A. 398; (1857) S. D. A. 362; 14 C. W. N. 1037 and 13 C L.J. 449, *Foll.*; (1818) 2 Select Rep. S.D.A. 332, *Held overruled.*

So far as the Provinces of Bihar and Orissa are concerned, it is well settled that a jajman has a right to appoint any priest he chooses to perform the religious ceremonies and to dismiss any priest who formerly used to perform the ceremonies whether appointed by himself or by the former generations, that is hereditary priest ; and this is in accordance with the correct interpretation of the texts on the subject. (*Courtney-Terrell, C. J. and Jwala Prasad, J.*). DINANATH JHA *v.* GANESHDUTT JHA. **116 I.C. 513=10 P.L.T. 147= 8 Pat. 677=A.I.R. 1929 Pat. 103.**

—Religious office—Pujarees.

——*Suspension of Pujari by temple committee must be through trustee.*

It is well settled that if the temple committee wants to control the servants of the temple such as pujaris it can act only through the trustee and not directly, and therefore an order of suspension of some of the pujaris passed by a member of the temple committee is illegal and invalid : 35 Mad. 631 ; 22 Mad. 361 ; and 39 Mad. 700, *Rel. on.* (*Waller and Madhavan Nair, JJ.*). PERIA MANIYAN *v.* PERIA PAYYAN. **110 I.C. 702=A. I. R. 1928 Mad. 854.**

——A *pujari* of a Thakur cannot claim the right of a *shebait*. He is only a servant appointed by a *shebait* for the performance of the ceremonies. (*Greaves and Chakravarty, JJ.*). SRIPAT CHATTERJEE *v.* KHUDIRAM BANERJEE. **82 I.C. 840=41 C.L.J. 22= A.I.R. 1925 Cal. 442.**

——Public temple in Madras—Sudras may be Pujarees. (*Sir John Edge*) PUJARI LAKSHMANA GOUNDAN *v.* SUBRAMANIA AYYAR. **81 I. C. 518= 19 M.L.W. 253=33 M. L. T. 466=22 A.L.J. 169= 1924 M.W.N. 278=5 L.R.P C. 125= 29 C.W.N. 112=A. I. R. 1924 P.C. 44 (P.C.).**

——*Pujaree can be a Mahomedan if usage permits it.*

In considering the question whether a non-Hindu can officiate as priest in a Hindu temple what has to be looked at is what has been the usage in the past,

Held, the Mahomedan Mali who was also one of the pujarees was entitled to continue his right acquired by custom. The rights of receiving offerings and performing the duties of pujaree which were very simple were connected and the Mahomedan pujari was entitled to both. (*Stuart, J.*). BABA *v.* SUKKHA. **77 I.C. 918= A.I.R. 1923 All. 165.**

—Religious office—Right of parsaipan.

——The right to parsaipan in Nimar is similar to the pala or turn of worship at a temple and is not immovable property but is moveable property : 4 Cal. 683 ; 39 Cal. 227 and 46 Cal. 455, *Rel. on.* (*Kinkhede, A.J.C.*). KALURAM *v.* NAGULAL. **115 I.C. 170=A.I.R. 1929 Nag. 81.**

HINDU LAW—Residence—Right of.

——*Nature of—Transferability, conditions of.*

The right to receive remuneration or fees for the performance of certain services as a parsai is not "a mere possibility" and can be the subject of transfer : 39 All. 196, *Appr.* ; 43 Cal. 28, *Ref.*

It is transferable beyond the lifetime of the transferor when the transferee, besides being a relation and a possible heir, is a holder of a share in the parsaipan in his own right and has his own turn by rotation of enjoying the remuneration : 6 Bom. 298, *Rel. on* ; 5 N.L.R. 15, *Dist.* (*Kinkhede, A.J.C.*). KALURAM *v.* NAGULAL. **115 I.C. 170= A.I.R. 1929 Nag. 81.**

—Residence—Alienation.

——*Alienation by husband — Maintenance not charged on property—Widow cannot resist purchaser's claim.*

All the right which the wife has during her husband's lifetime is matter of a personal obligation arising from the very existence of the relation and quite independent of the possession by the husband of any property, ancestral, or self-acquired. Therefore the wife cannot resist the claim of the purchaser of a house based on a sale-deed executed by her husband during his lifetime on the ground of the right of residence unless a charge has been created on it in her favour: 17 Bom. 398, *Ref.* (*Shah and Crump, JJ.*). MT. GANGABAI *v.* MT. JANKIBAI. **59 I.C. 583=45 Bom. 337= A. I. R. 1921 Bom. 380.**

—Residence—Charge.

——*Residence or maintenance not charged on property—Creditor's claims not affected.*

A widow's claim for maintenance or residence is not a charge on the family property unless it is fixed thereon by a decree, etc., and it cannot be enforced against a creditor who has lent money for family necessities. There is no distinction between the position of a mother and that of other women under Hindu Law in this respect. (*Shadi Lal, C.J. and Bhide, J.*). MT. TARA DEVI *v.* SARUP NARAIN. **114 I C. 707=10 Lah. 706= 30 P.L.R. 90=A.I.R. 1930 Lah. 117.**

——*Right of maintenance or residence is not a charge on property—Lawful debts take precedence.*

The right of a Hindu widow to residence in the ancestral dwelling house, as well as to maintenance out of the family property, or the self-acquired property of her husband, is not a charge on such property, and, as a general rule, takes no precedence over debts contracted by the deceased in the ordinary way of business or living : 36 P.R. 1907 and A.I.R. 1926 Lah 167, *Foll.* (*Zafar Ali, J.*). MT. PARBATI *v.* WIRUMAL HAVELI RAM. **104 I.C. 118=A.I.R. 1927 Lah. 883.**

—Residence—Right of.

——*Widow's right of residence charged on property —Sale by son—Acquiescence by widow—Purchaser not bound.*

A Hindu widow had deliberately been living away from her son's house for five years. She knew of the mortgage by her son and his intention to sell the house to purchasers, and yet she deliberately abstained from sending any notice to the purchasers warning them not to purchase the house and that it was subject to her right of residence.

Held, that the law did not compel the purchasers to submit to the charge of residence in such a case: 12 Bom. L.R. 1075; 9 Bom. L. R. 382; 7 Bom. 282; 13 Bom. 101 and 2 Bom. 494, *Rel. on.* (*Madgavkar, J.*). GOTIRAM NANA NEVADE *v.* KESARBAI KEWALCHAND. **123 I.C. 511=31 Bom. L.R. 1276= A.I.R. 1930 Bom. 47.**

HINDU LAW—Residence—Right of.

———*Sale of family house for no necessity—Widow's right of residence not affected.*

A Hindu widow is in the absence of any special circumstances entitled to reside in the family dwelling-house in which she lived with her husband, and further if the family dwelling-house is sold by the surviving co-parcener or co-parceners without necessity, her right is not affected by such sale. But if the sale is for a family necessity, she is liable to be evicted. (*Broadway and Hilton, JJ.*). BUDH SINGH *v.* MT. SAHIB DEBI. **120 I.C. 788= A.I.R. 1930 Lah. 288.**

———The right of residence is a right to a provision for residence and is included in the general right of maintenance. 4 S. L. R. 278, *Foll.* (*Rupchand, A. J. C.*). RAMBHABAI *v.* DOONGERSI NAGJI. **116 I.C. 105= A.I.R. 1929 Sind 102.**

———*Right of residence in ancestral house is indefeasible.*

If a Hindu widow is living in the ancestral family house, then any transfer or purchase of the same will be subject to that right. But when she is living in the family dwelling-house, which is not ancestral, she has a right of residence in it unless the property is transferred for family necessity. (*Addison, J.*). BELI RAM *v.* PREM KUAR. **100 I.C. 504= A. I. R. 1927 Lah. 218.**

———*Right of residence given under husband's will—Different from right under Hindu Law.*

Where the Will by a Hindu testator provided: "My elder wife shall have the right of residence for the term of her natural life in the three storeyed portion of my house in, Mukherji's Street,"

Held, that the gift to the widow was for her life and the title of the widow was to occupy the whole of the three-storeyed portion of the house and that no question arose as to any other right of widow to have a residence provided for her under the general Hindu Law. (*Viscount Haldane.*) ANNADA PRASAD DAS *v.* AMBIKA PRASHAD DAS. **97 I.C. 761=53 Cal. 948=53 I A. 201= 45 C.L.J. 50=1926 M.W.N. 689=24 M L.W. 448= 28 Bom. L.R. 1399=31 C.W.N. 150= A.I.R. 1926 P.C. 96=51 M.L.J. 785 (P.C.).**

———*Is included in the right to maintenance.*

The right of residence of a Hindu widow is a right to a provision for residence and is included in the general right of maintenance. Like the right of maintenance it is an equitable and not a legal right. A Hindu widow is not entitled to maintenance plus residence: 4 S.L.R. 278, *Foll.* (*Kincaid, J.C. and Lobo, A.J.C.*). KEWALMAL *v.* ISRIBAI. **93 I.C. 353= A.I.R. 1926 Sind 135.**

———*Concubine's right of residence in paramour's house.*

The concubine has no right to reside in her paramour's house if during the latter's lifetime she could not have occupied the whole of his house. It cannot be said that her right of maintenance corresponds to the full value of the house. 26 Bom. 163 and 12 Bom. H.C.R. 229, *Foll.* (*Batten, J.C.*). LALA BEHARI LAL *v.* MT. ACHRAJ KUNWAR. **68 I C. 394= A.I.R. 1923 Nag. 52.**

———*Right given in a particular house—When residence can be provided for elsewhere.*

Where a Hindu widow was owner of a family dwelling-house subject to a right of residence of her mother-in law, and disputes arose between them,

Held, that the mother-in-law should be allowed to reside in the same family house, although another house belonging to the family was available for her residence but liberty was given to the widow to apply again, so that in future, if the family disagreements became so acute that it really would not be desirable that the widow and her mother-in-law should be living under the same roof, it should be possible for the widow to come to the Court and ask that residence should be provided for her mother-in-law elsewhere. The order was rather unusual but one warranted by the circumstances of the case. (*Macleod, C.J. and Shah, J.*). LAKSHIMIBAI NARAYAN RANGO *v.* NARBADABAI RANGO. **24 Bom. L.R. 235= A. I. R. 1922 Bom. 28.**

HINDU LAW — Reversioner — Decree for or against.

—Residence—Widow.

——— *Failure of widow to reside with her husband's relatives—No forfeiture of her rights.*

A Hindu widow is not bound to reside with the relatives of her husband. The relatives of her husband have no right to compel her to live with them and she does not forfeit her right to property or maintenance merely on account of her going and residing with her family or leaving her husband's residence from any other cause than unchaste or improper purposes. 12 Bom. L.R. 238 (P.C.), *Foll.* (*Wallace and Thiruvenkatachariar, JJ.*). SRINIVASA AYYAR *v.* LAKSHMI AMMAL. **108 I.C. 712= 28 M.L.W. 328= A.I.R. 1928 Mad. 216= 54 M.L.J. 530.**

———When a family house is sold for debts binding on family, a widow of a co-parcener cannot claim right of residence therein. 12 Mad. 260 (F.B.), *Foll.* (*Venkatasubba Rao, J.*). BALASUNDARA *v.* KANNIAPPA. **107 I.C. 132= 39 M.L.T. 443= A.I.R. 1927 Mad. 1165.**

———Debts by husband for family purposes—Sale of family house for such debts—Widow can be evicted from possession thereof. (*Le Rossignol and Martineau, JJ.*). MT. LAKHO *v.* LACHMAN DAS. **94 I.C. 181= A.I.R. 1926 Lah. 241.**

—Reversioner.

Consent to alienation.

See HINDU LAW—ALIENATION—WIDOW—CONSENT OF REVERSIONER.

Decree for or against.

Estoppel.

See HINDU LAW—ALIENATION—WIDOW—CONSENT OF REVERSIONER.

Proof of title.

Remote reversioner.

Representation.

Right of.

Suit by.

—Reversioner—Consent to alienation.

See HINDU LAW—ALIENATION — WIDOW—CONSENT TO ALIENATION.

—Reversioner—Decree for or against.

———*Suit to contest widow's alienation—Decree therein, binds whole reversion—But suits to contest other alienations not barred.*

It is well settled that a suit for declaration by a reversioner to contest an alienation made by a widow in possession is a representative suit on behalf of all the reversioners and a decree fairly and properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand and the alienee or his representatives on the other. A. I. R. 1925 P.C. 272 and A.I.R. 1925 Lah. 89, *Rel. on.* But such decree does not bar suits by reversioner against other alienees and in respect of other portions of the property although a reference is made incidentally to some of these alienations in the

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previous judgment. (*Harrison and Tek Chand, JJ.*). THAKAR SINGH *v.* UTTAM KAUR. **118 I.C. 449= 30 P.L.R. 328=10 Lah. 613= A.I.R. 1929 Lah. 295.**

———*Decree in favour of reversioner—Enures for benefit of even a reversioner not born at date of decree.*

A decree in a suit for a declaration that certain mortgage-deeds and previous decrees obtained by a person shall not affect the plaintiff's reversionary rights does enure for all reversioners who may be entitled to succession when the succession opens out whether they were or were not in existence at the time the decree was obtained irrespective of the decree being *ex parte*. A.I.R. 1915 P.C. 124; A.I.R. 1916 P.C. 117; A.I.R. 1922 All. 301 (F. B.) and 41 Mad. 659, *Foll.* (*Dalip Singh, C.J. and Zafar Ali, J.*). NARAIN DAS *v.* WARYAM SINGH. **111 I.C. 139=10 L.L.J. 378= A.I.R. 1928 Lah. 545.**

———Although a reversioner can plead that another reversioner who brought a previous suit did not represent him because he did not contest the suit *bona fide*, such a plea is not open to an alienee. 33 M.L.J. 471; A.I.R. 1922 All. 301 (F.B.); A.I.R. 1922 All. 342; A.I.R. 1917 P.C. 196 and 84 P.R. 1898, *Dist.* (*Dalip Singh, C.J. and Zafar Ali, J.*). NARAIN DAS *v.* WARYAM SINGH. **111 I.C. 139=10 L.L.J. 378= A.I.R. 1928 Lah. 545.**

———A decree in a declaratory suit by a presumptive reversioner impeaching in the widow's lifetime an alienation by her is conclusive of actual reversioner's rights. But the applicability of the principles is less obviously just, where it operates to bind the ultimate reversioner by the result of a suit in which the plaintiff reversioner had failed. (*Lord Blanesburgh.*) KESHO PRASAD SINGH *v.* SHEO PARGASH OJHA. **82 I.C. 962= 46 All. 831=51 I.A. 381=23 A.L.J. 168= 27 Bom. L.R. 130=40 C.L.J. 461= 21 M.L.W. 295=6 L.R.P.C. 1= 29 C.W.N. 606=A.I.R. 1924 P.C. 247= 47 M.L.J. 824 (P.C.).**

———*Decree against next reversioner binds remote reversioners.*

On the death of *J*, widow of *K*, *R*, daughter of *K*, succeeded to his property and sued successfully next reversioners *S* and *C* for a declaration of her title. The present plaintiffs who were remoter relations sued *R*, *S* and *C* for possession of *K's* property alleging that *S* and *C* did not plead in the previous suit a custom debarring daughters, from succeeding to their father.

Held, that the suit was not maintainable. (*Mears, C.J. and Gokul Prasad, J.*). BIND BAHADUR SINGH *v.* MT. RITURAJI SINGH. **68 I. C. 776=20 A.L.J. 702= A.I.R. 1922 All. 420.**

———*Decree against immediate reversioner is binding on actual reversioner.*

Where a Hindu widow mortgaged the properties of her husband, and on her death the daughter, the immediate reversioner, contested the mortgage suit on facts, questioning the mortgage for want of legal necessity, and a decree was passed in favour of the mortgagee, held in suit by the actual reversioners, in which substantially the same issues were raised, that the suit was barred by S. 11. The principle of *res judicata* is applied rightly so as to bind reversioners by decisions in litigations, fairly and honestly conducted, whether given, for or

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against Hindu females who represented the estate. (*Mookerjee and Buckland, JJ.*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE. **64 I.C. 980= 49 Cal. 45=33 C.L.J. 421=25 C.W.N. 585= A.I.R. 1922 Cal. 321.**

———Declaratory decree against widow's alienation obtained by one reversioner does not operate as *res judicata* in favour of another reversioner subsequently suing for possession.

No reversioner can be held to derive his title from another reversioner. He derives his title from the last full owner, the title in question being the title to the estate. 22 All 33 (F.B.) and 10 Cal. 324 (P.C.), *Foll.*; 38 Mad. 406 (P.C.), *Dist.* (*Rafique and Stuart, JJ.*). DARBARI LAL *v.* GOVIND RAM. **63 I. C. 524=43 All. 558= 19 A. L. J. 514=A.I.R. 1921 All. 237.**

—Reversioner—Proof of title.

———*Onus of proving that property belongs to last male-holder is on reversioner.*

The onus of proving that the property claimed by the reversioners was the property of the last male-holder is heavily upon the plaintiffs. There is no presumption that any property in the possession of a Hindu widow or Hindu female was the property either of her husband or of any male ancestor. 26 Cal. 871 (P.C.) and 33 M.L.J. 655, *Foll.* (*Ananthakrishna Ayyar, J.*). VENKATARAMAYYA *v.* VENKATAPPAYA. **122 I.C. 653= 1929 M.W.N 664=A.I R. 1930 Mad. 337.**

———It is incumbent on a plaintiff suing as the reversionary heir of a Hindu proprietor who died leaving a widow, to show that the property claimed in the suit and found in her possession was vested in the husband. (*Ananthakrishna Ayyar, J.*). CHINNA VENKATAIAH *v.* VENKATANNA. **120 I. C. 573 (Mad.).**

———*Absence of nearer reversioners to be proved.*

A person claiming as nearest reversioner to a deceased person must establish that there was no intermediate heir in existence with a better claim to succeed to the property of the deceased than he asserts. A. I. R. 1921 Oudh 104; 21 I. C. 274; 1 O.L.J. 447; 2 O.L.J. 246, *Foll.*; 15 O.C. 364 and 23 All. 72 (P.C.), *Ref.* (*Misra and Nanavutty, JJ.*). SARFARAZ KHAN *v.* MT. RAJANA. **112 I. C. 834=4 Luck. 39=6 O W.N. 1285= A. I. R. 1929 Oudh 129.**

———*Absence of nearer reversioners to be proved.*

It is incumbent upon a person claiming as a reversioner not only to establish particular relationship with the last male owner set up by him but also to give some evidence showing *prima facie* that there are no nearer heirs. 15 O. C. 364; A I.R. 1921 Oudh 104; A.I.R. 1927 All. 767 and 40 Mad. 654, *Foll.* (*Srivastava, J.*). GANGA DAS *v.* KASHI RAM. **112 I.C. 147=5 O.W.N. 932.**

———*Remote reversioner—Suit by—His right of suit must be proved—When a remote reversioner can sue for rights of reversion.*

A declaratory suit must be brought by the presumptive reversionary heir, that is to say, by the person who would succeed if the widow were to die at that moment, and such a suit may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. This rule is not inapplicable to the case where a nearer female heir intervenes provided that she would be the heir to the estate if the widow were to die at that moment. 6 Cal. 764 (P.C.), *Expl.*; but it can be conceded that even without any express proof of refusal, concurrence or collusion on the part of

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the female there may be special circumstances in which a Court may exercise its discretion and grant the declaratory relief to a remoter heir. In such a case the Court must exercise a judicial discretion in determining whether the remote reversioner is entitled to sue, and would probably require the nearer reversioner to be made a party to the suit.

Where in a suit by a remote reversioner for a declaration that a will set up by a widow, under which she claimed absolute estate, was not genuine, the next presumptive reversioner who was minor daughter of the deceased and was living with the widow was not impleaded and the will was found not genuine,

Held, that as the will imperilled the interest of the daughter also, the declaration that the will was not genuine should be granted. (*Sulaiman and Kendall, JJ.*). MT. DEOKI *v.* JWALA PRASAD.

113 I. C. 737=50 All. 678=26 A.L.J. 449= A. I.R. 1928 All. 216.

———*Reversioner need not prove that the land was ancestral—All he should prove is that he is next heir.*

In a suit by the next heir to set aside an alienation by a female holder who has the customary life-interest in the estate, it is not ordinarily necessary for the plaintiff to aver or to prove that the land was ancestral. All that he has to prove, in order to establish his *locus standi* to maintain such a suit, is that he is the next heir to the estate; in other words, that if the female holder, the alienor, had not existed, he would have inherited the property. He would, under the circumstances, be entitled to sue to set aside an alienation even of land which is the self-acquired property of last male owner and, therefore, it is not necessary for the success of the suit that such property should have been held by the common ancestor of the plaintiff and last male owner. (*Jai Lal, J.*). MT. JANLAV *v.* AHMAD.

106 I.C. 817=A.I.R. 1928 Lah. 221.

———*Absence of nearer heirs to be proved.*

It is incumbent on a plaintiff seeking to succeed to property as a reversioner to establish affirmatively the particular relationship which he puts forward. He is also bound to satisfy the Court that to the best of his knowledge there are no nearer heirs and for this purpose he can rely on the statement of witnesses called for defence. He cannot be expected to do anything more. It is for those, who claim that their kinship is nearer than that of the plaintiff, to prove that relationship. 40 Mad. 654, *Foll.* (*Lindsay and Sulaiman, JJ.*). JAVITRI *v.* GENDAN SINGH. **102 I.C. 167= 49 All. 779=25 A.L.J. 500= A.I.R. 1927 All. 767.**

———*Plaintiff to prove he is nearest reversioner.*

Where plaintiff claims certain relief as the nearest reversioner, it is for him to adduce *prima facie* evidence of his being nearest reversioner. It is not sufficient to rely upon the statements in the plaint or on an unapproved genealogical trees. 23 All. 72 (P.C.) and 40 Mad. 654, *Foll.* (*Curgenven, J.*). T. SESHAMMA *v.* Y. VENKATA REDDI.

100 I.C. 600=38 M. L. T. 43 = A.I.R. 1927 Mad. 1149=52 M.L.J. 155.

———Common ancestor must be proved by a reversioner to succeed as collateral heir. 6 Cal. 626, *Foll.* (*Findlay, Offg. J. C. and Prideaux, A. J. C.*). SHANKAR RAO *v.* PANDURANG. **92 I.C. 646= 9 N.L.J. 22=A. I. R. 1927 Nag. 66.**

———When in defence to a suit by the reversionary heir of a Hindu with respect to property lately in possession of a widow the plea of acquiescence by

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inaction on the part of the plaintiff is set up, it must be very clearly made out. (*Kinkhede, A.J.C.*). NARAYAN *v.* MT. TULSHI. **80 I.C. 607= A.I.R. 1925 Nag. 104.**

———*Suit for declaration that alleged adoption is invalid—Burden of proving validity of adoption lies on defendant.*

There is no difference between a case where a reversioner can only sue for a declaration and one where he seeks to enforce his right to possession. There is no doubt that if a plaintiff is entitled to claim immediate possession and asks for it, it would lie on those setting up an adoption in defence to prove it: and in a suit for declaration by plaintiff that adoption is invalid once the plaintiff is established to be the reversioner, it lies on the defendants to establish the adoption. 34 Mad. 329, *Foll.* (*Prideaux, A.J.C.*). LAXMAN *v.* BHULABAI. **78 I.C. 862=A.I.R. 1925 Nag. 61.**

———The fact that no other reversioner comes forward and shows a superior claim over the plaintiff within 12 years does not raise a presumption in plaintiff's favour, and therefore his claim as a reversioner must be decided on its merits. 1899 A.W.N. 191, *Dist.* (*Gokul Prasad, J.*). JAGANNATH PRASAD *v.* RAM LAL. **70 I.C. 585= A.I.R. 1922 All. 412.**

———Suit by—Plaintiff must prove that he is nearest reversioner. (*Lyle, A.J.C.*). BHIMA SINGH *v.* MT. SUNDAR. **69 I.C. 421=9 O.L.J. 186= 26 O.C. 109=A.I.R. 1922 Oudh 218.**

—Reversioner—Remote reversioner.

———*Alienation in favour of next presumptive reversioner—Contingent reversioner can challenge.*

Where a suit is directed against alienations in favour of next presumptive reversioner the contingent reversioner from the nature of things is the only person entitled to challenge the transaction, and there does not seem to be any reason for holding that a suit by him is not competent. 34 All. 207 and 46 I.C. 85, *Ref.* (*Sen and Niamatullah, JJ.*). BECHU AHIR *v.* HANSRAJ AHIR.

A.I.R. 1930 All. 734.

———Next reversioner refusing to object to grant of probate—Person next in succession can intervene. 6 Cal. 764 (P.C.), *Rel. on.* (*Lort-Williams, J.*). SHIB CHARAN DAS, *In the goods of.*

121 I.C. 687=56 Cal. 1070=A.I.R. 1930 Cal. 150.

———*Remote reversioner cannot bring suit for possession.*

A remote reversioner can sue for a declaration if the next reversioner refused without sufficient cause to institute proceedings or has concurred in the act alleged to be wrongful or has colluded with a limited heir or is precluded from suing by his own act or conduct or is from poverty not in a position to sue. But there is no authority under which a remote reversioner can under similar circumstances bring a suit for possession. (*Shadi Lal, C.J. and Tapp, J.*). AMAR NATH *v.* MT. RALLI. **121 I.C. 70=A.I.R. 1930 Lah. 211.**

———*Possession of alienee from widow after her death becomes adverse to all reversioners whether next or remote.*

Possession of alienee from a widow becomes adverse on her death to all the reversioners whether next or remote. The remote reversioner cannot contend that the possession of an alienee became adverse only after expiry of twelve years from the death of the widow. It would be absurd to hold that a remote reversioner should have twelve years for a suit for possession, such period

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commencing to run after expiry of twelve years from the death of the widow. A.I.R. 1922 Lah. 380, *Rel. on.* (*Shadi Lal, C.J. and Tapp, J.*). AMAR NATH *v.* MT. RALLI. **121 I.C. 70=A.I.R. 1930 Lah. 211.**

———*Next reversioner colluding and prejudicing the reversion—Next presumptive reversioner can sue.*

Where the next reversioners filed a suit challenging genuineness of a will left by the last male owner, and under which his widow got absolute rights, but withdrew the suit later on unconditionally on receipt of a consideration and thus precluded themselves from suing by their fraudulent or collusive conduct, thereby prejudicing the reversion, it was open to the next succeeding reversioner to file a suit to establish their rights. 33 M.L.J. 471; 6 Cal. 764 (P.C.) and 18 Mad. 53, *Foll.* (*Kumaraswami Sastri and Reilly, JJ.*). (GARAPATI) BULLIRAJU *v.* (GARAPATI) BUTCHI SEELAYYAMMA.

115 I.C. 348=A.I.R. 1930 Mad. 412.

———*Prohibition against remote reversioner filing suit when nearer is alive is based upon expediency.*

Per *Kumaraswami Sastri and Reilly, JJ.*—Where a Hindu widow makes an alienation or adoption, the cause of action of all the reversioners, whether presumptive or remote is the same; and so a remoter reversioner has a right to impeach the transaction which right he can enforce; though under ordinary circumstances, the person who is to file the suit is the next presumptive reversioner. The rule of law that the suit be filed by the next presumptive reversioner unless the remoter reversioner can show that the next reversioner disabled himself from filing the suit either by concurrence in the transaction or by collusion with the widow is based on principles of expediency and to prevent multiplicity of suits rather than on a negation of the rights of the remoter reversioner to impeach the transaction. A.I.R. 1915 P.C. 124; 6 Cal. 764 (P.C.); 10 B.H.C. 351; 14 M. I. A. 176 (P.C.); 41 Mad. 659 and 6 Cal. 764 (P. C.), *Rel. on.* (*Coutts-Trotter, C. J., Madhavan Nair and Jackson, JJ.*). ANNAPURNAMMA *v.* APPAYYA SASTRI.

119 I.C. 389=52 Mad. 620=29 M.L.W. 858=A.I.R. 1929 Mad. 577=56 M.L.J. 760 (F.B.).

———Distant reversioner can sue if nearer ones have colluded or precluded themselves from interfering. 6 Cal. 764 (P. C.), *Foll.* (*Das and Ross, JJ.*). AMBICA PRASAD *v.* CHANDRAMANI KUER.

117 I.C. 867=8 Pat. 396=10 P. L. T. 607=A.I.R. 1929 Pat. 289.

———*Remote reversioner when can sue for declaration.*

A suit for declaration by a Hindu reversioner must always be brought by a reversioner nearest in succession. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings or he has precluded himself by his own act or conduct from suing or has colluded with the widow the next presumable reversioner will be entitled to sue and he must state in his plaint the circumstances under which he claimed to sue in the presence of the nearest reversioner.

In the presence of daughters and daughter's son, even if daughter's son be a minor, a remote reversioner is not entitled to sue. 40 All. 518; 249 P.W.R. 1912 (F. B.); 60 P.R. 1916 and 6 Cal. 764 (P.C.), *Foll.* (*Fforde and Addison, JJ.*). MT. VIRANWALI *v.* KUNDAL LAL. **112 I. C. 35=9 Lah. 106=A. I. R. 1928 Lah. 267.**

———*When remote reversioner can sue.*

If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue. 6 Cal. 764 (P. C.), *Foll.* (*Boys and Kendall, JJ.*). SITA SARAN *v.* JAGAT. **102 I.C. 296=49 All. 815=25 A.L J. 636=A.I.R. 1927 All. 811.**

———Remote one suing as nearest one—Plaint not to be construed as alleging that nearest reversioner has colluded or is precluded from suing, or has refused to sue. 35 All. 326, *Foll.* (*Boys and Kendall, JJ.*). SITA SARAN *v.* JAGAT. **102 I.C 296=49 All. 815=25 A.L.J 636=A.I.R. 1927 All. 811.**

———*Nearest one compromising with alleged adopted son—If remote reversioner can sue.*

Even where the nearest reversioner enters into a compromise with the alleged adopted son of the male holder by his widow, and is thus prevented from claiming the property of the last male holder, the next remote reversioner does not thereby acquire any right to challenge an alienation by widow during the life time of that nearest reversioner. (*Iqbal Ahmad, J.*). MITTHAN LAL *v.* NABI BAKHSH. **102 I. C. 245=A.I.R. 1927 All. 508.**

———Nearest reversioner, a minor—A more distant reversioner cannot sue except as minor's next friend. (*Boys and Ashworth, JJ.*). KALI CHARAN *v.* BAGESHRA KUNWARI. **89 I.C. 374=47 All. 929=23 A.L J. 653=A.I.R. 1925 All. 585.**

———*Remote reversioner when can sue.*

The rule is that a suit for declaration that an alienation by a widow is invalid must originally be brought by the reversioner nearest in succession at the time. If the nearest reversionary heir refuses without sufficient cause to institute proceedings, or if he has precluded himself by his own act or conduct from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled to sue. (*Daniels and Neave, JJ.*). BECHU PANDE *v.* MT. DULHMA. **80 I.C. 4=5 L R. A. Civ. 661=A.I.R. 1925 All. 8.**

———A remote reversioner can challenge alienation where the immediate reversioner is a female—Custom (Punjab).

The object of the rule clearly is to permit the nearest male reversioner who has not colluded or otherwise disqualified himself from maintaining the suit to protect the estate. 6 Cal. 764. *Dist.* (*Le Rossignol, J.*) JAWAHARA *v.* DATA RAM. **79 I.C. 497=A.I.R 1925 Lah. 156.**

———Where under the Hindu Law the daughter and her son are admittedly the next reversioners, and have given consent to the alienation, remote reversioners have no right to question it. (*Abdul Raoof and Martineau, JJ.*). ARJAN *v.* HARI RAM. **80 I.C. 522=6 L.L.J. 93=A I.R. 1924 Lah. 464.**

———In the absence of connivance or collusion between the donor and the nearer reversioner the remoter reversioners cannot sue for declaring gift void after donor's death. (*Neave, A.J.C.*). AWANAI DIN *v.* RAM SAHAI. **83 I.C. 1055=27 O.C. 173=11 O.L.J. 236=A. I. R. 1924 Oudh 381.**

———Where the daughter's son has precluded himself from denying a gift by accepting it, even if he is a nearer reversioner, a remoter reversioner is entitled to sue for a declaration that the gift is not binding on him. (*Rijves and Gokul Prasad, JJ.*). JAGDEO TIWARI *v.* KUBER NATH PANDEY. **71 I. C. 755=A. I. R. 1923 All. 312.**

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———*When remote reversioner can sue.*

Where a will alleged to have been made by the last owner is impugned, the suit to set it aside must be brought by the presumptive reversionary heir, but if the nearest heir had refused, without sufficient cause, to institute proceedings or had precluded himself by his own act or conduct from suing or had colluded with the widow or had concurred in the act alleged to be wrongful and, if the next presumptive reversioner stated in the plaint the circumstances under which he claimed to sue, a Court would exercise a judicial discretion in determining whether he was or was not competent to sue. 6 Cal. 764, *Ref.* (*Abdul Raoof and Campbell, JJ.*). SUNDAR LAL *v.* KULLA RAM. **65 I.C. 820 (Lah.).**

———Entire reversionary interest thrown under cloud by a stranger's assertions—Next reversioners can sue for declaration. 45 I.A. 21, *Foll.*; 39 Mad. 634 (P C.), *Dist.* (*Daniels, J.C. and Dalal, A. J. C.*). BHAGWAN DIN *v.* MT. INDRANI. **65 I.C. 117= 8 O. L. J. 563=24 O. C. 297= A.I.R. 1921 Oudh 233.**

—Reversioner—Representation.

———*Collusive suit by presumptive reversioner—Actual reversioner not affected.*

A suit by reversioners which is dismissed without evidence being adduced, if proved to be collusive, being instituted with a view to create evidence in favour of the donees, does not bind the reversioner who happens to succeed to the estate. (*Sulaiman and Pullan, JJ.*). GADHU SINGH *v.* BANSGOPAL. **A.I.R. 1929 All. 859.**

———A decree dismissing a suit by the next reversioner is, unless *mala fides* can be established, binding upon all other reversioners. A.I.R. 1925 Lah. 89, *Foll.* (*Shadi Lal, C.J. and Zafar Ali, J.*). MAI DHAN *v.* MANSA RAM. **103 I.C. 454= 28 P L.R. 369=A.I.R. 1927 Lah. 835.**

———One of two reversioners agreeing with the daughter-in-law of the last holder whereby she was allowed to have life-estate with no power of alienation.

Held, that the agreement entered into by one of the two reversioners should be presumed to be made as representing the whole reversionary body and *D's* possession of the whole property must be held to be permissive under the agreement. (*Stuart, C.J. and Gokaran Nath Misra, J.*). RAM ABHILAK *v.* MT. CHAURASI. **101 I.C. 730=13 O.L.J. 839= A.I.R. 1927 Oudh 582.**

———Widow — Alienation by — Suit by reversioner for declaration that alienation is not for legal necessity—Other reversioners are bound. A.I.R. 1924 P.C 247, *Foll.* (*Daniels, J.*). INDAR DAT PANDE *v.* RAM PARSAN PANDE. **98 I.C. 505 (All.).**

———Suit to contest alienation by widow by one reversioner is on behalf of all. (*Ramesam, J.*). VIRARAGHAVAYYA *v.* RAMAKOTAYYA. **96 I.C. 132=23 M.L.W. 805= A.I.R. 1926 Mad. 508.**

———*Compromise by one reversioner with a limited owner—Not binding on reversion.*

The interest of a Hindu reversioner has been defined as *spes successionis*, that is, a mere possibility of succession. Such a possibility gives no interest to the reversionary heir in the estate of the deceased, present or future, vested or contingent. 45 Cal. 590 (P.C.) and 6 P.L.J. 604, *Foll.* An alienation by way of compromise entered into between a limited owner and persons who had no *bona fide* claim to the property at the time of the compromise is not binding on the reversioners.

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3 P. L. J. 83, *Foll.* (*Adami and Sen, JJ.*). BALJNATH RAI *v.* MANGLA PRASAD NARAYAN SAHI. **90 I.C. 732=5 Pat. 350=6 P.L.T. 731= 1925 P.H.C.C. 271=A.I.R. 1926 Pat. 1.**

———*Suit by reversioner is in a representative character—Decree against binds reversion.*

A possible reversioner to the estate sued for declaration that the widow had no right to execute a gift. The defence, *inter alia*, was that the widow held adversely to the estate of her husband and had matured in herself an absolute title and was, therefore, competent to execute the deed of gift. This defence succeeded in respect of that portion of the property which had been recorded in the widow's name on the death of her husband. The suit succeeded in respect of that portion of the property which came to be recorded in the name of the widow on the death of her son. After the failure of the reversioner, his brother started a fresh campaign of litigation on the same allegations as had been made by the former plaintiff.

Held, the decree in the previous suit should be treated as concluding the later suit brought by the other reversioner. 19 A.L.J. 749, *Foll.* (*Mukerji and Boys, JJ.*). BANSIDHAR *v.* DULHATIA. **87 I.C. 235=47 All. 505=23 A.L.J. 329= 6 L.R.A. Civ. 303=A.I.R. 1925 All. 483.**

———*Suit by contingent reversioner binds actual reversioner.*

A declaratory suit by a contingent reversioner is a representative suit on behalf of all reversioners. The cause of action for such a suit is the common injury to the reversionary right. The actual reversioner is, unless and until he gets it set aside, bound by any decree passed in a previous declaratory representative suit by a contingent reversioner. (*Wallace and Jackson, JJ.*). HUSSAIN REDDY *v.* VENKATA REDDY. **83 I.C. 140=20 M.L W. 552= 1924 M.W.N. 730= A.I.R. 1925 Mad. 86=47 M.L.J. 543.**

———One reversioner does not claim through another even if latter be his father—Admission by one does not bind another even though they be father and son. 22 All. 33 and 28 Mad. 57, *Ref.* (*Drake Brockman, J.C.*). GULAB THAKUR *v.* FADALI. **68 I.C. 566= A.I.R. 1921 Nag. 153.**

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———A Hindu reversioner cannot bind his expectant interest or his future rights. 21 All. 71 (P.C.); 24 All. 94 (P.C.); A.I.R. 1915 P.C. 124 and A.I.R. 1916 P.C. 117, *Ref.* (*Sen and Niamatullah, JJ.*). RAGHUBIR *v.* NARAIN. **A.I.R. 1930 All. 498.**

———*Reversioner's right to sue challenging last holder's alienation during widow's life.*

Though ordinarily a reversioner is not entitled to bring a suit to impugn the transactions by the last male holder during the lifetime of the widow, still in very exceptional circumstances where it is proved to the satisfaction of the Court that the reversion is likely to be jeopardised by collusion or other act of the widow dethroning or imperilling the reversionary right, the reversioner would be entitled to bring a suit for a declaration or any other appropriate relief. (*Marten, C. J. and Patkar, J.*). SHANKARBHAI *v.* BAI SHIV. **32 Bom. L. R. 1013.**

———Widow allowing transferees from herself or trespassers to remain in possession of absolute occupancy holding during her life—Reversioner on her death or re-marriage is entitled to its possession.

Where the reversioner during the lifetime of the widow sells the holding in his own right and the lambardar obtains possession on the ground

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that the transferees are trespassers, the reversioner is entitled on re-marriage of the widow to possession of the holding in a suit against the lambardar. 6 C. P. L. R. 135; 5 N. L. R. 172; 8 N. L. R. 154, *Rel. on.* (*Macnair, A.J. C.*). GANPAT *v.* NARAYAN. **123 I.C. 906=A.I.R. 1930 Nag. 204.**

——Per *Kinkhede, A. J. C.*—Till female owner dies, reversionary right is mere possibility—Object of declaratory suit during lifetime of female owner is simply to remove apprehended danger to interests of all reversioners, presumptive and contingent alike. A. I. R. 1915 P. C. 124, *Foll.* (*Findlay, J. C. on difference between Kotval and Kinkkede, A. J. Cs.*). NOKSING *v.* BHOLUSING. **123 I. C. 417= 12 N.L.J. 185=A.I.R. 1930 Nag. 73.**

——*Actual reversioner succeeds in his own right.*

The person who ultimately happens to be the reversioner becomes entitled to the reversion really in his own right and not as the heir or representative of his father or other remoter ancestor. A. I. R. 1918 P. C. 196, *Foll* (*Srinivasa Ayyangar and Cornish, JJ.*). VENKATARAMANI *v.* SUBRAMANIA. **108 I.C. 639=A.I.R. 1928 Mad. 945.**

——*Is a mere* spes successionis *and cannot be bargained with.*

The interest of a Hindu reversioner expectant upon the death of a Hindu female is no more than a *spes successionis*, which is neither property nor clothed with the alienability incident thereto. It is not, therefore, open to him or to his guardian, if he is a minor, to bargain with it. (*Kinkhede, A. J. C.*). MAROTI SURYABHAN *v.* RAWANT RAO. **107 I.C. 897=A.I.R. 1928 Nag. 262.**

——*Is only a* spes successionis—*Bargain in respect of it is invalid.*

A Hindu reversioner has no right or interest *in praesenti* in the property which the female owner holds for her life; until it vests in him on her death, should he survive her, he has nothing to assign or to relinquish or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is mere *spes successionis*. His guardian, if he happens to be a minor, cannot bargain with it on his behalf or bind him by any contractual engagement in respect thereto. A.I.R. 1927 P.C. 95, *Foll.* (*Coutts-Trotter, C.J. and Srinivasa Iyengar, J.*). K. NARAYANA *v.* K. SUDARSANAM. **1927 M.W.N. 390= A.I.R. 1927 Mad. 1184.**

——*Migration from Oudh to Khandesh—No abandonment of personal law—Benares school applies.*

Long before living memory, a family of Raghuvamshis migrated from Oudh to Khandesh. In spite of the departure from the customs of Oudh in some matters, there was no proof showing that the personal law as to succession had been given up or that any particular custom of adoption had been engrafted on the personal law.

Held, that the family continued to be governed by the Benares school of law and that adoption, without express authority, was, therefore, invalid. A.I.R. 1921 P.C. 59; 12 M.I.A. 81 (P.C.); A.I.R. 1915 P.C. 86; 29 Cal. 433 (P.C.); A.I.R. 1923 Cal. 485 and 1 S.D.A. (Beng.) 56, *Rel. on.* (*Martin, C.J. and Murphy, J.*). MOTI SINGH *v.* MT. DURGABAI. **114 I.C. 379=53 Bom. 242= 30 Bom. L.R. 1615=A.I.R. 1929 Bom. 57.**

——*Reversioner can file suit under S. 42, Sp. Rel. Act and petitions under O. 21, Rr. 89 and 90.*

In the case of a reversioner entitled to property after the death of a Hindu female his interest is in the estate, and though it might be said to be contingent and not vested, still it is interest enough

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for the purpose of enabling him to file a suit for declaration under the Specific Relief Act, to file a petition under O. 21, R. 89, and to restrain waste, and it is also enough for the purpose of applying under O. 21, R. 90. 4 Pat. L. J. 360, *Foll.* (*Ramesam, J.*). ADANAMOLI CHETTI *v.* CHINNASWAMI REDDI. **97 I.C. 574=24 M.L.W. 406= 1926 M.W.N. 631=A.I.R. 1926 Mad. 959.**

——*Suit to set aside danger to reversioners' interests—Result affects reversioners as a body.*

Reversioners possess individually a *spes successionis*, the bare possibility of succeeding to the estate of the last owner in case the widow dies leaving any one of them surviving entitled to take immediate possession after her, unless the husband has left the power to her to adopt a son. But the *spes* is common to them all; so is the danger by the widow's act against the interests of the reversioners. The right to sue to set aside that common danger is given to the person, who, if the widow died at the moment, would take the estate. But the result, favourable or otherwise, affects the reversioners as a body. 38 Mad. 406 (P.C.); 39 Mad. 694 (P.C.); A.I.R. 1924 P. C. 247, *Foll.* (*Mr. Ameer Ali.*) MATA PRASAD *v.* NAGESHWAR SAHAI. **91 I.C. 370=28 O.C. 352=52 I.A. 398= 24 A.L.J. 1=47 All. 883=1926 M.W.N. 83= 43 C.L.J. 51=6 L.R.P.C. 195=3 O.W.N. 1= 13 O.L.J. 19=28 Bom. L.R. 1110= 30 C.W.N. 626=A.I.R. 1928 P.C. 272= 50 M.L.J. 18 (P.C.).**

——Reversioners can redeem in widow's life-time a mortgage by her husband. 8 O.C. 349, *Foll.* (*Neave, A.J.C.*). BASAWAN *v.* NATH. **82 I.C. 747=11 O.L.J. 452=A.I.R. 1925 Oudh 307**

——*Expectant reversioners' right of suit for declaration before reversion opens has statutory recognition.*

It is true that the reversion is an expectancy but expectant reversioners' right to sue for a declaration has a statutory recognition and they would on the death of the restricted owner in their lifetime have the immediate title without the intervention of any Court. And there would be no principle of justice, equity or good conscience that would empower the Court to deprive them of their legal title or to impose any restriction in derogation of it. (*Sir Lawrence Jenkins.*) OBALA KONDAMA NAICKER AYYAN *v.* KANDASAMY GOUNDAR. **79 I.C. 961=22 A. L. J. 16= 1924 M. W. N. 86=19 M. L. W. 107= 5 L. R. P. C. 19=26 Bom. L. R. 198= 51 I. A. 145=34 M. L. T. 20=47 Mad. 181= 39 C. L. J. 194=28 C. W. N. 1050= A. I. R. 1924 P.C. 56=46 M. L. J. 172 (P.C.).**

——The reversioner has no right to challenge an alienation made by the father as manager of a joint Hindu family which the son, who had a right to challenge it, did not challenge during the father's lifetime. (*Ryves and Daniels, JJ.*). JAGESOR PANDE *v.* DEO DAT. **74 I.C. 931=45 All 654= 21 A.L.J. 608=4 L.R.A. Civ. 324= A. I. R. 1924 All. 51.**

——Actual reversioner can resist suit for possession by person claiming under invalid alienation by widow. (*Kumaraswami Sastri, J.*). NAYAKAMMAL *v.* MUNUSWAMY MUDALIAR. **84 I.C. 231=20 M.L.W. 222=A.I.R. 1924 Mad. 819.**

——*Reversioner cannot release his rights in widow's favour.*

During the life of a Hindu widow the reversion remains contingent, and there is no one who possesses a vested interest in the remainder

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which can be disposed of by any means known to law. (*Macleod, C. J. and Shah, J.*). GANGABAI JOSHI *v.* HARI GANESH. **62 I.C. 680= 45 Bom. 1167=23 Bom. L.R. 500= A. I. R. 1921 Bom. 446.**

——*Is mere* spes successionis—*Cannot be transferred.*

The interest of a Hindu reversioner is an interest expectant on the death of a qualified owner; it is not a vested interest, it is a *spes successionis* or a mere chance of succession, it cannot be sold, mortgaged, assigned or relinquished for a transfer of a *spes successionis* is a nullity and has no effect in law. But though a transfer of his interest by a reversioner is void, he may, by becoming a party to a compromise, and by taking the benefit of the compromise be estopped from claiming as a reversioner. 21 A. 71 (P. C.); 29 Cal. 355; 24 A. 94 (P. C.); 38 M. 406 (P.C.); 45 C. 590 (P.C.), *Foll.* (*Mukerji, A.C.J. and Fletcher, J.*). ANNADA MOHAN *v.* GOUR MOHAN. **65 I.C. 27= 48 Cal. 536=33 C.L.J. 457=25 C.W.N. 496= A.I.R. 1921 Cal. 501.**

——*Contract as to future rights to settle dispute is valid.*

It is not open to a reversioner to assign his *spes successionis* or to relinquish what he does not possess; but it is open to him to enter into a contract with reference to his future rights in order to settle disputes then existing between himself and the other persons claiming that right. (*Kanhaiya Lal, A.J.C.*). WAZAN SINGH *v.* RATAN SINGH. **61 I.C. 940=24 O.C. 151=8 O.L.J. 120= A.I.R. 1921 Oudh 105.**

——A reversionary heir cannot enter into a valid agreement in regard to such interest as he has in the estate of the person whose reversionary heir he claims to be. (*Das and Adami, JJ.*). BHAGWATI KUER *v.* JOGDAM SAHAY. **62 I.C. 933= 2 P. L. T. 471=6 P. L. J. 604= A. I. R. 1921 Pat. 260.**

—Reversioner—Suit by—Costs.

——*Suit against alienees—Costs should be proportionate to alienees' interest.*

In the suit, in which a reversioner plaintiff impleads various alienees as party defendants, if the judgment should go against the alienees, it is the established practice and in consonance with the reason of the thing that any costs that may be allowed to the plaintiff should be, so far as each set of defendants is concerned, proportionate to the value of the property in which such set of defendants may be interested. (*Srinivasa Ayyangar, J.*). SHRI RANGANATH *v.* RAJAGOPALACHARIAR. **A.I.R. 1928 Mad. 16.**

—Reversioner—Suit by—Declaratory.

——Where during the lifetime of a Hindu widow the reversioner sued for a declaration that a certain alienation was void and also applied for the appointment of a receiver,

Held, that a receiver cannot be appointed in such a case. (*Marten, C.J. and Patkar, J.*). SHANKERBHAI *v.* BAI SHIV. **82 Bom. L. R. 1013.**

——*Alienation by widow—Suit by male reversioner for declaration—Not barred by existence of female lives between him and estate.*

A person who is not the immediate reversioner but who is the immediate male reversioner, is entitled to sue for a declaration, declaring the invalidity of transfers made by the widow of the last male owner notwithstanding that there may be other female lives between him and the estate.

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Such a reversioner is entitled to maintain a suit for a declaratory nature, in the lifetime of next reversioner even if the act or transaction which throws a cloud on the reversion be one of a trespasser claiming title to the estate: 4 P.L.J. 734 and A.I.R. 1929 Pat. 164, *Ref.* (*Fazl Ali and Chatterji, JJ.*). SAKALDIP SINGH *v.* IMRIT BARHI. **120 I. C. 292=10 P. L. T. 630= A. I. R. 1930 Pat. 71.**

——*Widow admitting her husband died joint—Daughters can sue for declaration he died separate.*

The right of the presumptive reversioner to sue for a declaratory decree under S. 42 is not restricted to the class of transactions referred to in Illus. (*e*) and (*f*) to that section. Such a reversioner is entitled to bring a suit of a declaratory nature for the protection and preservation of the reversionary estate, although the widow is living and capable of bringing a suit on her own account, and there are no charges of collusion and fraud against the widow. 30 Mad. 195, *Rel. on.*

Where a widow was a party to solemn transactions by which she admitted that her husband, at the date of his death, was joint with his nephews,

Held, that a suit by the daughters against the nephews for a declaration that their father died separate and for protection of reversionary estate is maintainable, so long as these transactions stood, it was not possible for the widow to institute a suit for the protection of her husband's estate and she was thus concluded by her own acts and transactions. It is not necessary that the acts and transactions of the widow should be challenged in this suit. 6 Cal. 764 (P.C.), *Appl.*; 34 Cal. 329, *Ref.*; 8 Cal. 12, *Expl.* and *Dist.* (*Dass and Allanson, JJ.*). BALMAKUND LAL *v.* MT. SOHANO KUERI. **119 I. C. 817=8 Pat. 153=10 P.L.T. 259= A.I.R. 1929 Pat. 164.**

——*Property sold subject to mortgage—Mere declaration challenging mortgage cannot be sued for.*

A decree was obtained against a limited owner, and in execution property was sold subject to a bogus mortgage. Reversioner sued for declaration that the mortgage was not binding beyond the life of the limited owner.

Held, that such a suit would be maintainable if it be brought before the sale took place. But after the sale, unless he gets the sale set aside, no declaration regarding the mortgage will be of any use to him or should be made in his favour. (*Srinivasa Ayyangar and Reilly, JJ.*). PALANIAPPA *v.* APPAVU. (*Reilly, J.*). MEENAKSHI *v.* PALANIAPPA THEVAN. **113 I. C. 873= A.I.R. 1928 Mad. 1138.**

——*Reversioner cannot sue for declaration of his reversionary right.*

It is now well settled that a mere presumptive reversionary heir, who has a mere possibility of succession or *spes successionis* upon the death of a Hindu widow, is not entitled to maintain a suit for a declaration of his presumptive reversionary right. A reversioner as such cannot, under S. 42, Specific Relief Act, claim to be entitled to any legal character or any right to property. Even assuming that the word "right" may include rights, present, future, vested or contingent, a declaration that he is the next presumptive reversioner would be refused as it would be premature. As the actual succession will depend upon the state of things existing when the widow dies, it is impossible to predicate before

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the widow's death who would be the next reversionary heir of the deceased full proprietor. The declaration, therefore, is futile and must be refused. (*Sulaiman and Kendall, JJ.*). MT. DEOKI *v.* JWALA PRASAD. **113 I.C 737=50 All. 678= 26 A.L.J. 449=A.I.R. 1928 All. 216.**

———Declaratory suit in widow's lifetime, attacking will by her, does not lie, but where lower Court had allowed the suit which is also supported by special reasons, High Court would not interfere. (*Martineau and Campbell, JJ.*). MT. TEHL KUAR *v.* AMAR NATH. **79 I.C. 670=17 P.W.R. 1923= A. I. R. 1925 Lah. 2.**

———*Widows refusing to sue—Reversioner can sue.*

Where a widow is in collusion and another widow refuses to sue or join in suit the reversioners are entitled to sue. 6 Cal. 764, *Foll.*

A document on the face of it created a mortgage on the property. The widows as representing the estate could have sued to set it aside but they deliberately made it impossible for them to do so.

Held, the reversioners should be allowed to bring a suit when the evidence is fresh so as to enable the Court to decide exactly what was done. It would be inequitable to hold that they must wait until the widows are both dead. (*Stuart and Ryves, JJ.*). SURAJ MAL *v.* NATHWA.

76 I.C. 983=4 L.R.A. Civ. 66=21 A.L.J. 50= 45 All. 255=A. I. R. 1923 All. 161.

———*Property neither alienated nor charged—No cause of action for declaration.*

Where defendants who claimed to be agnates advanced Rs. 400 and promised a monthly allowance of Rs. 13 per month to the widow on her agreeing to refrain from alienating the property of her husband and the deed contained a statement that defendants were the next reversioners, and plaintiff, sister's son of deceased, sued as reversioner for a declaration,

Held, that as neither the property was alienated nor a lien created, the plaintiff had no cause of action to maintain the suit. If subsequently defendants were found to be strangers plaintiff could sue them for recovery of the property. (*Abdul Raoof and Moti Sagar, JJ.*). DAS MAL *v.* RAM CHAND.

76 I.C. 946=4 Lah. 116=A.I.R. 1923 Lah. 406.

———*Reversioner not entitled to possession—Can sue for mere declaration.*

Where plaintiff, a reversioner, sues for a declaration that an adoption by the last male owner did not take place and the plaintiff is not entitled to possession of any properties on such declaration, he need not ask for any further relief, such as injunction, if it is unnecessary for him to do so. (*Kotwal and Prideaux, A. J. Cs.*). DEORAO *v.* MT. ANNAPURNABAI. **A.I.R. 1922 Nag. 185.**

———Under the Oudh Estates Act the succession to collaterals opens on the death of the widow just as under the ordinary Hindu Law, and the reversioner during the lifetime of the widow has no more than an expectancy, and so has no interest in the property which he is competent to transfer or bind.

In a suit by a reversioner for a declaration that the alleged will of the deceased giving his widow power to adopt was void, the Court can only make a declaration binding on the widow. But it is not within its competence to make a valid declaration that would create in the reversioner's favour an interest in the property that did not otherwise exist. (*Sir Lawrence Jenkins.*) THAKURAIN

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HARNATH KUAR *v.* THAKUR INDAR BAHADUR SINGH. **71 I.C. 629=50 I A. 69=37 C.L.J. 346= 45 All. 179=27 C.W.N. 94=26 O.C. 223= 18 M.L.W. 383=33 M.L.T. 216= 9 O.L.J. 652=5 P.L.T. 281=2 P.L R. Civ. 237= A.I.R. 1922 P.C. 403=44 M L.J. 489 (P.C.).**

———*Declaration of reversionary right, when granted.*

When reversioners sue for a declaration of their reversionary right, such a suit will not lie except when such declaration is incidental to some other relief which they can claim. 38 Mad. 406 (P.C.); 39 Mad. 634 (P.C.); 45 Cal. 510 (P.C.); 40 Mad. 871 and 2 I.A. 179 (P.C.), *Foll.*; 41 All. 492, *Ref.*

Reversioners can sue for a declaration that the adoption of a certain person by the widow's late husband was valid. 42 Mad. 219, *Dist.* (*Phillips and Odgers, JJ.*). KILLI LATCHAMMA *v.* KILLI APPANNA.

70 I.C. 190=14 M.L W. 302=1921 M W.N. 771= A.I.R. 1921 Mad. 710=41 M.L.J. 386.

———*Transfer by widow without written instrument—When declaration is granted.*

Where a Hindu widow transfers possession without a written instrument, a reversioner should not be given a declaratory decree, unless there is strong evidence that the conduct and declarations accompanying the transfer clearly constitute an injury, and it is necessary to perpetuate testimony in favour of such reversioner. (*Mitra, A. J. C.*). UJARIA *v.* KISHAN LAL. **60 I.C. 343=16 N.L.R. 209.**

—Reversioner—Suit by—Extent of.

———Reversioner suing to set aside adoption and declaration that sales by alleged adopted son are not binding—Adoption held not proved—Sales are not binding. but equities between reversioner and purchasers, which may arise when reversioners sue for possession, cannot be considered in such a suit. (*Coutts-Trotter, C.J. and Ramesam, J.*). SURAPPA *v.* SUNDARAMMA. **107 I.C. 141=A.I.R. 1928 Mad. 176.**

—Reversioner—Suit by—Limitation.

———In 1899 a Hindu widow sold certain property left by her husband and in 1905 she adopted a minor boy. The latter died in 1909 while still a minor and the adoptive mother who succeeded him died in 1921 without disputing her previous alienation. A reversioner having instituted a suit in 1923 to recover possession of the property sold,

Held, that the suit was not barred by limitation because time commenced to run neither from the date of the adoption nor from the death of the adopted boy but from the death of the widow. (*Beasley, C. J.*). VENKATANARASIMHAYYA *v.* RAJAYA LAKSHMANNA. **1930 M.W.N. 811.**

———*Suit by reversioner to set aside collusive mortgage and sale is governed by Art.* 125—*Limitation Act, Art.* 125.

A suit by a reversioner on the allegation that the widow executed a sham mortgage to defeat the reversioner's rights and got the property sold in a collusive suit is governed by Art. 125 of the Limitation Act and the reversioner need not sue to set aside the mortgage. (*Spencer, Offg. C.J.*). POOCHAMMAL *v.* SUNDARAMMAL, **80 I.C. 554= 19 M.L.W. 564=34 M.L.T. 281= 1924 M.W.N. 322=A.I.R. 1924 Mad. 617.**

—Reversioner—Suit by—Mesne profits.

———*Suit to recover possession from alienees from widow—Mesne profits.*

A voidable transaction is good as against third parties till it is set aside, but as regards the person who has a right to avoid it, it is in a state of

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suspense until such party exercises his option and that if he avoids it, it is treated as void from the outset against him. On this principle mesne profits are always allowed in a suit by reversioners to recover property from a transferee from a Hindu widow after her death. (*Daniels and Lyle, A.J.Cs.*). MOHAMMAD HADI *v.* MT. PARBATI.

68 I.C. 549=25 O C. 2=9 O.L.J. 312= A.I R 1922 Oudh 91.

—Reversioner—Suit by—Objection to.

———The last male holder died and his property vested in two widows of his two uncles. Each widow adopted a son and a suit to have both the adoptions declared invalid was instituted by next reversioner.

Held, that both widows having adopted and so having attempted to defeat the rights of the next reversioner on the death of both the widows no objection can be taken to the suit as framed. (*Macleod, C. J. and Coyajee, J.*). HANMAVVA *v.* VENKAPPA. **91 I.C. 303=27 Bom.L.R. 1331= A.I.R 1926 Bom. 26.**

—Reversioner—Suit by—Possessory.

———*Tenancy beyond lifetime by limited owner terminates on death of limited owner and reversioner can sue for possession.*

The limited owner has no power to grant a tenancy beyond his own life as against the reversioner and once the reversioner elects to treat the interests granted to the tenant as an interest extending only for the lifetime of the grantor, then in such a case it terminates upon the death of the grantor and there is therefore nothing more to be done to terminate the tenancy. The tenant becomes a trespasser if he refuses to turn out and the reversioner is entitled to bring a suit in ejectment without giving any notice whatever. (*Dawson Miller, C.J. and Mullick, J.*). RAGHUBIR SINGH *v.* JETHU MAHTON. **70 I. C. 290=2 Pat. 171= 1922 P.H.C.C. 353=4 P L.T. 396= A.I.R. 1923 Pat. 130.**

———*Donee of the widow in possession—Reversioner might treat it as nullity and need not sue for a declaration.*

In a suit for recovery of possession from the donee of the widow, the reversioner is not bound to ask for declaration. The reversioner might at his option affirm the alienation or treat it as a nullity without the intervention of any Court leaving it to the defendants to plead and prove the circumstances which they relied on for showing that the gift, lease, or any derivative dealings were not in fact voidable but were binding on the reversionary heirs. (*Dawson Miller, C.J., Mullick, Jwala Prasad, Coutts and Das, JJ.*). RAM SUMRAN PRASAD *v.* GOBIND DAS. **68 I.C. 700= 2 Pat. 125=1 P.L.R. 1=3 P.L.T. 704= 1922 P.H.C.C. 291=A.I.R. 1922 Pat. 615 (S.B.).**

—Reversioner—Suit by—Rights of.

———*Suit by one for declaration and partition—Suit decreed—Another reversioner who was defendant in the suit can also apply in execution for partition and possession.*

In a suit by one of three reversioners where the other two were made defendants 2 and 3 for a declaration that all the three were entitled to the suit propery as reversioners and for partition and for recovery of one-third share of the suit property, issue 2 raised the question whether plaintiff, defendants 2 and 3 were reversioners. The issue was decided in plaintiff's favour and the suit decreed. Defendant 3 filed another suit for his one-third share wherein defendant 1 contended that the suit was unnecessary in view of decree in plaintiff's suit. Defendant 3 applied in execution for partition;

Held, it was not open to defendant 1 to contend that defendant 3 was not entitled to ask for a decree for his share on payment of Court fees as in a partition decree and especially so in view of his objection in the suit by defendant 3: 35 M.L.J. 153, *Dist.* (*Ramesam and Devadoss, JJ.*). APPALA NAIDU *v.* ANNAM NAIDU. **111 I.C. 688= A.I.R. 1928 Mad. 555.**

HINDU LAW—Schools of law—Bombay School.

———Reversioner may enforce right without setting aside widow's alienation within the period laid down in Limitation Act, Art. 91: 33 Cal. 257; 31 Bom. 1 and 34 Cal. 329, *Foll.* (*Shah, Ag. C.J. and Fawcett, J.*). HANAMGOWDA SHIBGOWDA PATIL *v.* IRGOWDA SHIBGOWDA PATIL. **84 I.C. 374= 43 Bom.. 654= 26 Bom. L. R. 829= A.I.R. 1925 Bom. 9.**

———Reversioners can sue for declaration that their rights are unaffected by compromise between co-widows falsely alleging the property to have been *wakf* even originally. (*Martineau and Campbell, JJ.*). MT. TEHL KUAR *v.* AMAR NATH. **79 I.C. 670=17 P. W. R. 1923= A. I. R. 1925 Lah. 2.**

———*Reversioner has a right to bring single suit against different alienees from widow.*

A reversioner is entitled to bring a single suit against any number of persons who may be holding different portions of the last male holder's property though they may be holding under different title-deeds executed at different dates.

A reversioner under Hindu Law cannot bring suit to recover different pieces of property by virtue of his right as reversioner. (*Mukerji and Dalal, JJ.*). DARBARI LAL *v.* GOVIND SARAN. **80 I.C. 31=46 All. 822=22 A.L.J. 753= 5 L.R.A. Civ. 555=A. I. R. 1924 All. 902.**

———Daughter in possession as heiress and receiving profits—Next reversioner cannot sue for declaration of his share after her death. It would be useless to give a declaration which may never have any effect. (*Lindsay and Ryves, JJ.*). MUNNU LAL *v.* RAJA RAM. **66 I. C. 899= 20 A. L. J 282=A.I.R. 1922 All. 100.**

—Reversioner—Suit by—Trespasser.

———Reversioner suing trespassers—Not very strong proof of death of nearer reversioner is necessary. A prudent man might within the meaning of the definition of "proved" in S. 3, Evidence Act, consider the death of the nearer reversioner sufficiently probable on very little evidence. (*Ashworth, J.*). BADAL *v.* SARASWATI. **103 I. C. 329=A.I.R. 1927 All. 687.**

—Schools of law—Benares School.

———*Domicile—Situation of property does not necessarily determine.*

A family which migrated from Oudh to C. P. is governed by the Benares School of Law. Assuming the family has not migrated, it would be governed by the Benares School which prevails in C. P. The place where a person's property is situated is not a decisive factor in the determination of his domicile. (*Kotval and Prideaux, A. J. Cs.*). GOVIND *v.* RADHABAI. **68 I.C. 325. A.I.R. 1923 Nag. 7.**

—Schools of Law—Bombay School.

———*Maharashtra Brahmin in Nagpur—When Bombay School applies.*

The mere fact that a resident in Nagpur is a Maharashtra Brahmin does not mean in the

HINDU LAW—Schools of law—Bombay school.

absence of proof of his immigration from Maharashtra, that he is governed by the Bombay School of Hindu Law: Special Appeal No. 270 of 1877; 14 N. L. R. 82; A. I. R. 1921 P. C. 59 and A. I. R. 1924 Cal. 383, *Dist.*; 11 C.P.L.R. 49 and 2 C.P.L.R. 18, *Rel. on.* (*Jackson and Mohiuddin, A. J. Cs.*). RAMCHANDRA *v.* RAMABAI. **123 I.C. 907= A. I. R. 1930 Nag. 267.**

———The usual law as to Hindus in the province of Berar is the same as the Hindu Law in the Presidency of Bombay: 48 Cal. 30, *Ref.* (*Lord Phillimore.*) HARIGIR *v.* BHARATHI.

88 I.C. 343=21 N.L.R. 127=22 M.L.W. 355= 1925 M.W.N. 414=A.I.R. 1925 P.C. 127 (P.C.).

—Schools of law—Dayabhaga.

———*'Sodara' does not include half-brother.*

The word 'sodara' in Sloka 29 of the Dayabhaga refers to uterine brother and does not include a half-brother. Sloka 29 refers to all the slokas from 10 to 28 which precede it. (*Greaves and Cuming, JJ.*). SUKHAMAYEE BISWAS *v.* MONORANJAN CHAUDHURY. **89 I.C. 827= A. I. R. 1926 Cal. 428.**

—Schools of law—Mitakshara.

———*In Berar Mitakshara is paramount and Mayukha secondary.*

The Mitakshara, in Berar, is paramount and the Mayukha is of secondary consideration, being only relied upon where the Mitakshara is silent or doubtful.

Mitakshara is silent on the point whether the father's sister is a gotraja sapinda or a bandhu, but according to Mayukha she is more than a bandhu, so, in Berar, she is a preferential heir to a father's sister's son who is necessarily a bandhu. (*Case-law referred to.*) (*Baker, J. C. and Prideaux, A.J.C.*). GANAPATI *v.* SALU. **89 I. C. 345= A. I. R. 1926 Nag. 15.**

———*In Sind Mitakshara is followed in preference to Mayukha.*

It is the practice in Sind to construe the Mitakshara in the light of the Mayukha and to follow the latter unless it is in direct conflict with the former. There is nothing in the history of Sind or its people to warrant the inference that at any time before the British conquests of 1843, Sind came under the influence of the Mayukha School. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). BODOMAL *v.* MT. KISHNIBAI. **93 I. C 844= 20 S. L. R. 150=A. I. R. 1926 Sind 231.**

—Schools of law—Mithila School.

———The Law of Mithila School is the Law of the Mitakshara except in a few matters in respect of which the Law of the Mithila School had departed from the Law of the Mitakshara: A. I. R. 1925 P.C. 280, *Foll.* (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAYAN SINGH *v.* BISHESWAR PRATAB NARAIN. **101 I. C. 289=5 Pat. 777= 8 P. L. T. 510=A.I.R. 1927 Pat. 61**

———*Mithila School is a slight departure from Mitakshara.*

The Law of the Mithila School is the Law of the Mitakshara except in a few matters in respect of which it has departed from the Law of the Mitakshara. (*Sir John Edge.*) SOURENDRA MOHAN *v.* HARI PRASAD. **91 I. C. 1033= 24 A. L. J. 33=1926 M. W. N. 49= 5 Pat. 135=7 P.L T. 97=28 Bom. L. R. 1126= 30 C.W N. 482=52 I. A. 418=42 C.L.J. 592= A.I.R. 1925 P. C. 280=50 M.L.J. 1 (P.C.).**

—Stridhanam.

Husband's rights.
Limited estate.

HINDU LAW—Stridhanam—Power of disposal.

Personal grant.
Plea of.
Power of disposal.
Presumption.
Reversion.
Succession.
Sulka.
What is.
What is not.

—Stridhanam—Husband's rights.

———Husband can use in case of necessity—Right does not extend to husband's creditor, or any other person. (*Phillips, Offg. C.J. and Reilly, J.*). NAMMALWAR CHETTI *v.* THAYARAMMAL.

105 I.C. 793=50 Mad. 941=26 M.L.W. 602= 39 M L T. 332=1927 M.W.N. 846= A.I.R 1927 Mad. 1031=53 M.L.J. 802.

—Stridhanam—Limited estate.

———*Daughter inheriting stridhan takes a limited estate.*

A female taking property by inheritance from her mother, does not take it as her own stridhan, but takes it with a limited estate, with the reverter after her death to the heirs of her predecessors, *i.e.*, the mother: 25 A. 476 (P.C.), *Foll.*; 28 Mad. 1 and 17 Cal. 911, *Ref.* (*Mears, C.J. and Piggott, J.*). SHAH BEHARI *v.* MUSAMMAT RAMKALI. **74 I.C. 495=45 All. 715=4 L.R.A. Civ. 601= 21 A L.J. 656=A.I.R. 1924 All. 15.**

—Stridhanam—Personal grant.

———*Trust property granted to widow—No stridhanam right.*

The trust property given by Government to her by a grant in order that she should manage it, as head of the family for the time being, creates a right which is different from the right of a widow who enjoys a property for her lifetime after the death of her husband, and acquires no prescriptive right by managing the property. There can be no Stridhanam right in trust property. (*Spencer and Ramesam, JJ.*). RY. PRATAB SIMHA RAJA SAHEB *v.* RY. SIMJI RAJA SAHEB. **98 I.C. 442= 1926 M.W.N. 793=A.I.R. 1927 Mad. 50= 51 M.L.J. 652.**

—Stridhanam—Plea of.

———*Sulka—Proof of.*

The question whether certain property is sulka stridhan or not is not a question of law, pure and simple. Unless evidence is led to show the circumstances under which the gift was made and that it was intended to be the price of the bride or given to the girl for services mentioned in the texts, the property cannot answer the description of Sulka. (*Kendall and Niamatullah, JJ.*). BHOLA RAM *v.* DHANI RAM. **111 I.C. 165= 26 A.L.J. 1203=A.I.R. 1929 All. 25.**

—Stridhanam—Power of disposal

———Stridhan except Saudayik cannot be disposed of by woman without husband's consent during coverture: 21 Mad. 100, *Diss. from* and 30 Bom. 229, *Foll.* (*Prideaux, A. J. C.*) VITHU *v.* MAROTI. **107 I.C. 198=10 N.L.J. 266=A.I.R. 1928 Nag. 92.**

———*Stridhan property obtained before marriage and obtained subsequent to marriage from the saving of her income—Presumption is that she is owner and competent to dispose.*

The property which a Hindu lady obtains before her marriage, and property which she acquires subsequent to her marriage in her own interest, either by purchase from the savings of her income or in other ways, is property which she is competent to dispose of in her lifetime, and the provisions of S. 110, Evidence Act, undoubtedly

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are sufficient to establish her title to all the porperty in her possession at the time of her death and are sufficient to show that she has power to dispose of all such property unless and until it is established that she did not have that power.

Under S. 110, Evidence Act, the presumption is that she has power to dispose of all those articles, and until that presumption is rebutted by direct evidence, which the Court accepts, it remains: 26 Cal. 871 (P.C.), *Foll.* (*Stuart, C.J. and Rasa, J.*). RAJ BACHAN SINGH *v.* SRI THAKURJI MAHARAJ. **4 O.W.N 1179= A.I.R. 1927 Oudh 618.**

———Per *Das, J.*—Mithila School—Gift from husband is heritable but inalienable, except for necessary purposes, even with husband's consent.

Per *Foster, J.*—The wife must preserve the corpus of the property while her husband lives, spending only the income subject to his permission, and after his death must preserve it for her heirs. (*Dawson Miller, C.J. on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **88 I.C. 141=87 I.C. 849= 4 Pat. 510=6 P. L. T. 634=A.I.R. 1925 Pat. 625.**

—Stridhanam—Presumption.

———In the absence of restricting clauses the estate conveyed to a daughter by a man governed by the Berar Personal Law is non restricted estate and the property received is her stridhan: A.I.R. 1924 Nag. 83, *Diss. from*; A. I. R. 1925 Nag. 329 (F. B.), *Foll.* (*Macnair, A. J. C.*). GOVIND *v.* CHINTAMAN. **105 I.C. 840=A.I.R. 1928 Nag. 55.**

———Savings from widow's estate are presumed to be accretion to the estate unless it is shown that they were treated as stridhan—Widow's obtaining decree for arrears of rent is not by itself proof of such treatment: A.I.R. 1922 P.C. 39, *Ref.* (*Jackson, J.*). P. SUBBAMMA *v.* M. VENKATAKRISHNA RAU. **80 I.C. 290=A.I.R. 1925 Mad. 151.**

———Under Hindu Law, there is no presumption that property standing in the name of a female is not her *stridhan* but joint family property. (*Abdur Rahim, C.J. and Odgers, J.*). SADAYAPPA ASARI *v.* RAGHAVA ASARI. **62 I.C. 220=27 M.L.T. 325.**

—Stridhanam—Reversion.

———*Stridhan property reverting after extinction of a limited estate does not become limited estate itself.*

There is no authority in support of the proposition that when property reverts to the heirs of the last female full owner after the extinction of a limited estate under the Mitakshara law, it loses its original character and assumes the character of a limited estate. Such a proposition is self-contradictory and is antagonistic to the very notion of the rule of reverter which when translated into practice means that when determining the heir who is to succeed to the property, it must be assumed as if the intermediate limited heir who has died did not exist, and the original inheritance opened out to the next heir to the estate of the last full owner. (*Eforde and Jai Lal, JJ.*). DHANNA MAL *v.* PARMESHARI DAS. **111 I.C. 251= A. I. R. 1928 Lah. 9.**

—Stridhanam—Succession—Blood relations.

———*On failure of husband's heirs, blood relations succeed.*

In the case of stridhan property on the death of a childless Hindu female, the property devolves first on her husband's heirs, if there are no other nearer heirs and on failure of those heirs it devolves on the blood relations of the deceased: 37 Mad. 293; A. I. R. 1921 Bom. 188 and

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A. I. R. 1926 All. 663, *Foll.* (*Misra and Nanavutty, JJ.*). SITAL *v.* HARPAL. **111 I.C. 521= A.I.R. 1929 Oudh 11.**

———On failure of husband's heirs the stridhan of a widow goes to her blood relations in preference to the Crown. (*Patkar, J.*). SOMBHAI *v.* JAGJIVAN. **114 I.C. 377=30 Bom. L. R. 987= A. I. R. 1928 Bom. 380.**

———Approved form of marriage—On failure of husband's heirs, blood relations succeed and not the Crown: 37 Mad. 293, *Foll.* (*Macleod, C.J. and Shah, J.*). GANPAT RAM *v.* SECY. OF STATE. **62 I. C. 109=45 Bom. 1106= 23 Bom. L.R. 462=A. I.R. 1921 Bom. 138.**

—Stridhanam—Succession—Brother.

———Both under the Mayukha and Mitakshara the full brother of a Hindu woman would exclude her half sisters, with respect to succession to her absolute property: 37 Mad. 293 and 45 Bom. 1106 *Ref. to.* (*Kumaraswami Sastri, J.*). GANSHAMDOSS NARAYANDOSS *v.* SARASWATHI BAI. **87 I.C. 621=21 M.L.W. 415=1925 M.W.N. 285= A.I.R. 1925 Mad. 861.**

—Stridhanam—Succession—Custom.

——— *Nattukottai Chettis—Daughter dying issueless—Reverter to parents — Daughter dying leaving female issue—No custom of reverter.*

There is a custom, in the Nattukottai Chetti caste, having the force of law that, if the daughter of the family dies issueless, the stridhanam will revert to her parents, but there is at present no clear custom having the force of law, by which such reverter occurs when the daughter has a female issue and dies leaving such issue. (*Wallace and Jackson, JJ.*). PALANIAPPA CHETTIAR *v.* V. N. S. CHOCKALINGAM CHETTI. **30 M.L.W. 1040=A.I.R. 1930 Mad. 109= 57 M.L.J. 817.**

———*Rule of succession—Form of marriage—Custom of caste.*

The rule of succession to stridhan property left by a woman married in *karao* form ought, in the first instance, to be determined with reference to the particular custom of the caste. Where the incidents of such custom can be traced they will have to be given the force of law. The rule of succession ought to vary according as the marriage is or is not blameworthy. (*Sulaiman and Daniels, JJ.*). MT. KISHAN DEI *v.* SHEO PALTAN. **90 I.C. 358=48 All. 126=23 A.L.J. 981= 6 L.R.A. Civ. 557=A.I.R. 1926 All. 1.**

—Stridhanam—Succession—Daughter.

———Where a Hindu woman dies leaving dowry properties and her husband and a number of daughters, the husband cannot dispose of the properties by will. The properties would descend to the daughters. (*Kumaraswami Sastri, J.*). GANSHAMDOSS NARAYANDOSS *v.* SARASWATHI BAI. **87 I. C. 621=21 M.L.W. 415= 1925 M.W.N. 285=A.I.R. 1925 Mad. 861.**

———Gift from father after marriage as also the accretions to it got with its help are Anvadheyaka stridhana and daughters and sons succeed equally under the Mayukha. (*Kotval, A.J.C.*). SHRIRAM *v.* RAJARAM. **78 I. C. 367= 19 N.L.R. 193=A.I.R. 1924 Nag. 83.**

—Stridhanam—Succession — Daughter's daughter.

———*Daughter's daughter is preferred to daughter's son.*

Under the Mitakshara Law the daughter's daughter is entitled to succeed in preference to the

HINDU LAW — Stridhanam — Succession — Daughter's daughter.

daughter's son: 28 Mad. 1 (F.B.), *Foll.*; 25 All. 468 (P. C.), *Dist.* (*Sulaiman and Kendall, JJ.*). AMARJIT UPADHIYA *v.* ALGU CHAMBE.

113 I.C. 765=51 All. 478=1929 A.L.J. 150= A I.R. 1929 All. 71.

———*Daughter's daughter is preferred to son's son.*

Daughter's daughter is preferred to son's son for succession to the grandmother's stridhan: A. I. R. 1924 All. 15, *Foll.*; 25 All. 468 (P. C.) and 23 All. 369, *Expl.* (*Sulaiman and Boys, JJ.*). MT. RAM KALI *v.* MT. GOPAL DEI. **96 I.C. 757= 48 All. 648=24 A.L.J. 742=A.I.R. 1926 All. 557.**

———Unmarried daughters are given preference over married daughters, but no preference is given to a daughter's unmarried daughter over a daughter's married daughter. (*Sulaiman and Boys, JJ.*). MT. RAM KALI *v.* MT. GOPAL DEI.

96 I.C. 757=48 All. 648=24 A.L.J. 742= A.I.R. 1926 All. 557.

—Stridhanam—Succession—Daughter's son.

———The succession of daughter's sons is through their mother and is mediate and not immediate succession and so persons claiming through their mothers stand in the same category as the daughters. (*Patkar and Wild, JJ.*). HANMANT RAMCHANDRA KULKARNI *v.* SECY. OF STATE.

54 Bom. 125=32 Bom. L.R. 155= A.I.R. 1930 Bom. 254.

———Daughter's son is a preferential heir to stridhan as compared to a son: 25 All. 468 (P. C.), *Expl.*; 28 Mad. 1 (F. B.); A I.R. 1924 All. 15 and A. I. R. 1926 All. 557, *Ref.* (*Fforde and Jai Lal, JJ.*). DHANNA MAL *v.* PARMESHARI DAS.

111 I.C. 251=A.I.R. 1928 Lah. 9.

—Stridhanam—Succession—Form of marriage.

———Approved form of marriage—Husband's heirs exclude father's heirs. (*Dalal, J.C.*). MT. OMRAO KUAR *v.* SARABJIT SINGH. **85 I.C. 618= A.I.R. 1925 Oudh 620.**

—Stridhanam—Succession—Non-heirs.

———A step-son has no claim to stridhanam as under Mayukha and Mitakshara, the succession is confined to the issue of the female who has the stridhanam. (*Fawcett, J.C. and Kennedy, A.J.C.*). LALSING MAL SINGH *v.* GIRDHARIDAS.

60 I.C. 263=14 S.L.R. 224.

—Stridhanam—Succession—Order of.

———In absence of special custom, Hindu Law rules should be applied—In absence of issue, husband or his heirs succeed—But husband is not to be considered *propositus.* (*Wazir Hasan, Ag. C. J. and Raza, J.*). RAJ BACHAN SINGH *v.* BHANWAR LALJI. **118 I.C. 760= 6 O.W.N. 287=4 Luck. 690= A.I.R. 1929 Oudh 296.**

———*Sulka—Failing husband's heirs, blood relations inherit.*

Under Hindu Law stridhan other than sulka passes to daughters and daughters' sons, and sons and sons' sons, and in default of such heirs, if the woman was married in an approved form, it goes to her husband and to his heirs, and on failure of such heirs, to her blood relations. (*Ross, J.*). SURAJDEO NARAYAN PRASAD *v.* RAMDEWAN PANDE. **103 I. C. 869= A. I. R. 1927 Pat. 392.**

———*Brother's sons can inherit in absence of husband's sapindas.*

Stridhan property of a childless Hindu female devolves on her death on her husband, and failing the husband, on his sapindas, and on failure of the husband's sapindas, it devolves on the blood relations of the deceased. So in absence of husband's sapindas or any nearer heir the brother's sons can inherit the stridhan property of their father's sister: 37 Mad. 293 and 45 Bom. 1106, *Foll.* (*Daniels and King, JJ.*). MOTICHAND *v.* KUNWAR KALIKANAND. **97 I.C 245=48 All. 663= 24 A.L.J. 753=A.I.R. 1926 All. 663.**

HINDU LAW—Stridhanam—Succession—Son.

———The stridhan property of an issueless woman goes to her husband and after him to his heirs in order of their succession to him (*Ashworth and Raza, JJ.*). RAMPAL SINGH *v.* BAJRANG SINGH. **92 I.C. 126=1 Luck. 50=13 O.L.J. 684= 3 O.W.N. 73=A.I.R. 1926 Oudh 211.**

———*Marriage in approved form—If no issue, husband and his heirs inherit.*

The stridhan of a female married according to the orthodox form who has left no issue devolves under the Mitakshara School of Hindu Law, on the husband and failing him on his sapindas. Thus the husband's daughter's son's son would have preference over the wife's sister or the sister's son. The term sapinda means a relation allied to the *propositus* by affinity of blood. (*Abdur Rahim, Offg. C.J. and Moore, J.*). MATHOSRI RAMA BAI *v.* SIVAJI RAJAH SAHIB. **59 I.C. 265= 12 M.L.W. 171=1920 M.W.N. 501.**

—Stridhanam—Succession—Reversion.

———On death of granddaughter of deceased grandmother, property reverts to grandmother's heirs and not to granddaughter's heirs: 25 All. 468 (P.C.) and 25 All. 476 (P C.), *Rel. on.* (*Courtney-Terrell, C.J. and James, J.*). SANKAR PRASAD MISRA *v.* BRAJAMOHAN DEB.

A.I.R. 1930 Pat. 357.

—Stridhanam—Succession—Second marriage.

———The second marriage of a Hindu woman of the Mali caste does not affect the rights of the collaterals of her first husband to succeed to her stridhan property. (*Kanhaiya Lal, J.*). MT. RUKKA *v.* CHHIDDU. **84 I.C. 522=5 L.R.A. Civ. 160= A.I.R. 1924 All. 464.**

—Stridhanam—Succession—Sister.

———*Sister excludes sister's son.*

Where a Hindu woman devises by a will her property to her half-sister who after having become a widow has embraced Islam and married a Mussalman, and where the devisee dies leaving a full sister who has also embraced Islam and married a Muhammadan after her widowhood, and a full sister's son; both under the Mayukha and the Mitakshara, the full sister excludes thes ister's son as regards succession to the property. (*Kumaraswami Sastri, J.*). GANSHAM DASS NARAYAN DASS *v.* SARASWATHI BAI. **87 I. C. 621= 21 M.L.W. 415=1925 M.W N. 285= A. I. R. 1925 Mad. 861.**

—Stridhanam—Succession—Son.

———*Son as heir takes absolute estate—Property not ancestral in his hands and can be disposed by will.*

In Bombay Presidency, a daughter inheriting to her father takes an absolute estate and when upon her death the property passes by inheritance to her son he takes as her heir and not as her father's heir. The estate in his hands is therefore his absolute property which he can validly dispose of by will and not an ancestral property: 25 Mad. 678 (P.C.); 27 Mad. 300 (F. B.) and 27 Mad. 382, *Expl.*; 29 All. 667 and A. I. R. 1923 Pat 492, *Ref.* (*Madgaonkar and Wild, JJ.*). MANIBHAI KAMESHWAR *v.* SHANKAR LAL KAMESHWAR. **32 Bom. L. R. 183=A. I. R. 1930 Bom. 236.**

HINDU LAW—Stridhanam—Succession—Son.

———*Sons take as tenants-in-common.*

The stridhan property of mother is inherited by the sons without any right of survivorship attaching to it. They inherit as tenants in common and not as joint tenants with right of survivorship: 27 Mad. 300 (F.B.) and 36 Bom. 424, *Foll.* (*Mukerji, J.*). JUMNA DAS *v.* KUNWAR BAI.
87 I.C. 440=6 L. R. A. Civ. 243=
A.I. R. 1925 All. 447.

———The son is a preferential heir to a son's son in respect of the non-technical stridhan of a Hindu female governed by Mayukha. A Hindu female inheriting her father's estate gets an absolute estate and the estate devolves to her son in preference to a grandson by a pre-deceased son. (*Fawcett, J. C. and Kemp, A.J.C.*). DOWLATT RAM *v.* NARAIN DAS. **60 I.C. 923= 14 S.L.R. 231.**

—Stridhanam—Succession—Unmarried female.

———*Succession is confined to father's family.*

The case of a unmarried woman is treated as analogous to that of a childless woman married in a disapproved form, the succession in both cases being confined to the father's family. (*Drake-Brockman, J.C.*). MADHO *v.* SAMPAT. **69 I C. 758=**
5 N.L.J. 249=A.I.R. 1921 Nag. 151.

———In Berar, the father's sister excludes the father's male Gotraja's sapindas in regard to succession to the stridhan of a deceased unmarried woman: 10 N.L.R. 24, *Foll.* (*Drake-Brockman, J.C.*). MADHO *v.* SAMPAT. **69 I.C. 758=**
5 N L.J. 249=A.I.R 1921 Nag. 151.

—Stridhanam—Sulka.

———*Immovable property can be sulka stridhan.*

It may be that in ancient days when sulka stridhan was first recognized only articles of comparatively small value were the subject of it but given all other conditions there appears to be no reason why a woman may not acquire immovable property in the same manner and subject to the same conditions as would be annexed to movable property. (*Kendall and Niamatullah, JJ*) BHOLA RAM *v.* DHANI RAM. **111 I.C. 165=**
26 A.L.J. 1203=A.I.R. 1929 All. 25.

—Stridhanam—Sulka—What is.

———Fact of gift being made in contemplation of marriage does not give rise to inference that it was price for marriage—Distinct allegation and cogent evidence that gift was prompted by desire to benefit parents induced thereby to give girl in marriage is necessary to prove character of property—Every ante nuptial settlement is not sulka. (*Kendall and Niamatullah, JJ.*). BHOLA RAM *v.* DHANI RAM.
111 I.C. 165=26 A. L. J. 1203=
A.I.R. 1929 All. 25.

———The essential characteristic of sulka is that the lady's own children are absolutely excluded by her parents and other maternal relations in the matter of inheritance. (*Kendall and Niamatullah, JJ.*). BHOLA RAM *v.* DHANI RAM.
111 I.C. 165=26 A.L.J. 1203=
A,I.R. 1929 All. 25.

—Stridhanam—What is.

———Stridhan is not confined to six kinds of Manu. (*Page, J.*). SORAT CHANDRA *v.* CHERUSILA DASI. **112 I. C. 508=55 Cal. 918=**
A.I.R. 1928 Cal. 794.

———Gifts made by the father, presumably out of affection at the time of the marriage, constitute stridhan: 39 Mad. 298, *Ref.* (*Findlay, Offg. J.C.*). MT. JANKU *v.* ZEBOO. **93 I. C. 685=**
A.I.R. 1926 Nag. 350.

———Property bought out of income of property given in lieu of maintenance to widow is stridhan but income itself is not, nor is the property: 31 M.L.J. 465, *Expl.* (*Hallifax A J.C.*). GIRJA BAI *v.* BABULAL. **93 I.C. 624=A.I.R. 1926 Nag. 342.**

HINDU LAW—Stridhanam—What is not.

———Property acquired by a Hindu widow by adverse possession becomes her stridhan property. (*Ashworth and Raza, JJ.*). RAMPAL SINGH *v.* BAJRANG SINGH. **92 I.C. 126=1 Luck. 50=**
13 O.L.J. 684=3 O.W N. 73=
A.I.R. 1926 Oudh 211.

———Ornaments presented to wife and daughter are stridhan. (*Dalal, J.C.*). HURKISHAN DAS *v.* MT. SUNDRA BIBI. **89 I.C. 424=**
A.I.R. 1926 Oudh 43.

———In Bombay and Berar property inherited by a woman from father is her absolute estate. On her death it would devolve on her daughter in preference to her son: 31 Bom. 453, *Foll* (*Baker, J.C.*). KRISHNA *v.* BAYAJI. **87 I.C. 1010=**
A.I.R. 1925 Nag. 342.

———Per *Das, J.*—Gift by husband after marriage is *saudayica* gift and is wife's stridhan. (*Dawson Miller, C.J. on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH.
88 I.C 141=87 I.C. 849=4 Pat. 810=
6 P.L T. 634=A. I. R. 1925 Pat 625.

———Surrender of tenancy by son to landlord—Mother setting it aside and becoming tenant—Acquisition is the mother's stridhan. (*Kotval, AJ.C.*). PREMLAL *v.* BHAGCHAND. **69 I.C. 669=**
19 N.L.R. 4=A.I.R. 1923 Nag. 34.

—Stridhanam—What is not.

———*Stridhan passing to daughter as heir—Daughter takes limited estate.*

A daughter taking as heir to her mother, property which was stridhan in the hands of the mother, does not take it as her own stridhan, but takes it with a limited estate, with reverter after her death to the heirs of her predecessor: 25 All. 475 (P. C.) and A. I. R. 1924 All. 15, *Foll.* (*Fforde and Jai Lal, JJ.*). DHANNA MAL *v.* PARMESHARI DAS. **111 I.C. 231=A I.R. 1928 Lah. 9.**

———Stridhan inherited by a female does not become her stridhan: A.I.R. 1926 All. 557, *Foll.* (*Lindsay and Sulaiman, JJ.*). JAVITRI *v.* GENDAN SINGH. **102 I. C. 167=49 All. 779=**
25 A. L. J. 500=A. I. R. 1927 All. 767.

———Ornaments made over to girl's father for the girl at the time of betrothal do not become stridhan of the girl and a suit for their recovery is maintainable on breach of contract of marriage. (*Lindsay, J.*). CHEDI LAL *v.* JAVAHIR LAL.
98 I. C. 1052=49 All. 186=
A. I. R. 1927 All. 160.

———*Stridhana inherited by a female does not becomeh er stridhana.*

The property which a woman has taken by inheritance from a female is not her stridhan in the sense that on her death it passes to her own stridhan heirs. What is once descended as stridhan does not so descend again: 25 All. 468 (P.C.), *Foll.* (*Sulaiman and Boys, JJ*). MT. RAM KALI *v.* MT. GOPAL DEI. **96 I. C. 757=48 All. 649=**
24 A.L J. 742=A.I.R. 1926 All. 557.

———*Partition—Mother getting a share does not take it as stridhan.*

Under the Mitakshara Law, in the absence of any express contract to the contrary, the share obtained by a mother on a partition of ancestral property amongst the sons does not become her stridhan property: 34 All. 284 (P.C.), *Foll.* (*Kinkhede, Offg. A.J.C.*). BHAURAO *v.* GANGI.
95 I. C. 734=23 N.L.R. 184=9 N.L.J. 170=
A.I.R. 1926 Nag. 483.

HINDU LAW—Stridhanam—What is not.

———Where a Hindu widow by reason of her being in possession of her husband's property, obtains a fuller estate in the property, the fuller title is an accretion to her estate as a widow and cannot be regarded as her stridhana. (*Ashworth and Misra, JJ.*). RAM SHANKAR SINGH *v.* LAL BAHADUR SINGH. **92 I.C. 637=1 Luck. 98=13 O L.J. 216=3 O.W.N. 267=A.I.R. 1926 Oudh 277.**

———*Property held by widowed daughter-in-law—Property is not stridhan.*

Property held by a Hindu widowed daughter-in-law claiming as the widow of her deceased husband becomes an accretion to her late husband's estate and not her stridhan and any alienation by her of such property is voidable at the option of the heirs of her father-in-law. (*Dawson Miller, C.J. and Foster, J.*). JAGMOHAN SINGH *v.* PRAYAG NARAYAN SINGH. **87 I. C. 473=3 P. L.R. Civ. 251=6 P.L.T 206=1925 P.H.C.C. 140=A.I.R. 1925 Pat. 523.**

———*Widow entering upon property as widow and holding adversely that property—The acquisition is not stridhan.*

A Hindu widow is not a tenant for life but as a widow's estate in her deceased husband's estate and if possessing as a widow, she possesses adversely to any one as to certain parcels, she does not acquire the parcels as stridhan but she makes them good to her husband's estate: A.I.R. 1924 P. C. 121, *Foll.* (*Das and Adami, JJ.*). CHAKRADHAR JHA *v.* SHABHANT MISHRA. **88 I.C. 767=6 P.L.T. 363=1925 P.H.C.C. 133=A. I. R. 1925 Pat. 460.**

—Succession.

Ascetic.
Bandhus.
Brother.
Burden of proof.
Co-heirs.
Converts.
Custom.
Dancing girls.
Daughter.
Daughter in-law.
Daughter's son.
Degraded woman.
Exclusion from.
Female heirs.
Half blood.
Heritable property.
Illegitimate children.
Mother.
Non-heirs.
Per capita and per stirpes.
Primogeniture.
Pupil.
Rules of.
Samanodakas.
Sapindas.
Shebaitship.
Sister.
Sister's son.
Son.
Son in-law.
Succession certificate.
Survivorship.
Tenancy lands.
Vested interest.
Widow.
Miscellaneous.

—Succession—Ascetic.

———Hindu texts applicable to the disinheritance of ascetics do not apply to Sudras unless some usage or custom to the contrary is proved: 40 Cal. 545; 40 Mad. 846; 39 Bom. 168, *Foll.* (*Daniels and Dalal, JJ.*). SOBHADHI LAL *v.* GOBIND SINGH. **80 I.C. 579=46 All. 616=22 A.L.J. 470=5 L.R A. Civ. 364=A. I. R 1924 All. 742.**

———*Sudra ascetic—Succession to, is regulated by ordinary law.*

All authorities are in favour of the proposition that a Sudra could not enter the order of Yathi or Sanyasi, therefore devolution of property left by a deceased person of the caste referred to who has become an ascetic and renounced the world is regulated by the ordinary law of inheritance in the absence of proof of any general or special usage to the contrary: 22 Mad. 302, *Foll.* (*Macleod, C.J. and Kanga, J.*). NARASINDAS GURU SITARAM DAS *v.* KHANDERAO VINAYAK JOSHI. **70 I. C 860=A.I.R 1922 Bom. 295.**

—Succession—Bandhus—Atma bandhus.

———Mother's brother's son excludes mother's sister's son; 44 Mad. 753 (P. C.), *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). RAMI REDDI *v.* N. GANGIREDDI. **87 I.C. 609=48 Mad. 722=21 M.L.W. 476=1925 M.W.N. 335=A. I. R. 1926 Mad. 807.**

———Mother's sister's son and mother's brother's son are both entitled to succeed equally under the Bombay School. (*Macleod, C. J. and Shah, J.*). RAJAPPA RANAPPA KUNDAGOD *v.* GANAPPA JOTUPPA MANDVE. **77 I.C. 219=47 Bom. 48=24 Bom. L.R. 789=A.I.R. 1922 Bom. 420.**

———Mitakshara Law—Atma Bandhus *ex parte paterna* exclude, those *ex parte materna*—Paternal aunt's son's son excludes maternal uncle: 18 Mad. 193 and 20 Mad. 342, *Foll.* (*Miller and Sadasiva Aiyar, JJ.*). SUBRAMANIA MUDALIAR *v.* RANGANATHAN CHETTIAR. **44 Mad. 114=A.I.R. 1921 Mad. 590.**

—Succession—Bandhus—Father's sister's son's son.

———Father's sister's son's son is a heritable bandhu and succeeds in the absence of nearer heirs. *Case-law discussed.* (*Kanhaiya Lal, J.*). HARIHAR PRASAD *v.* RAM DAUR. **82 I.C. 1032=47 All. 172=22 A.L.J. 1012=6 L R.A. Civ. 50=A.I.R. 1925 All. 17.**

———*Father's sister's son's son excludes sister's daughter's son.*

Under the Mitakshara, father's father's daughter's son's sons are in the thirteenth place and father's daughter's daughter's son is in the seventeenth place, and so the former exclude the latter: Trevelyan's Hindu Law, 2nd Edn., pp. 403 and 404 and Rajkumar Sarvadhikari's Law of Inheritance, *Ref. to.* (*Rafique and Stuart, JJ.*). SHAM DEVI *v.* BIRBHADRA PRASAD. **62 I. C. 432=43 All. 463=19 A.L.J. 312=A.I R. 1921 All. 178.**

—Succession—Bandhus—Males and females.

———Female bandhus take after male bandhus are exhausted.

Brother's daughter's son is a preferential heir to a son's daughter: A. I. R. 1924 P. C. 209, *Expl.* (*Ramesam, J.*). AVUDAI AMMAL *v.* RAMALINGA REDDIAR. **97 I.C. 314=A.I.R. 1926 Mad. 1163.**

———In Bombay Presidency father's sister's son was held to be preferential heir to the daughters of father's brother. There is no case in the Bombay Presidency which decides that some preference is not to be given to male bandhus over female. Throughout the rest of India preference for the male would be certain: **26 Bom. 710; 45 Bom. 353.**

HINDU LAW—Succession—Bandhus—Males and females.

or custom to the contrary is proved: 40 Cal. 545; 40 Mad. 846; 39 Bom. 168, *Foll.* (*Daniels and Dalal, JJ.*). SOBHADHI LAL *v.* GOBIND SINGH. **80 I.C. 579=46 All. 616=22 A.L.J. 470=5 L.R A. Civ. 364=A. I. R 1924 All. 742.**

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—Succession—Bandhus—Atma bandhus.

———Mother's brother's son excludes mother's sister's son; 44 Mad. 753 (P. C.), *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). RAMI REDDI *v.* N. GANGIREDDI. **87 I.C. 609=48 Mad. 722=21 M.L.W. 476=1925 M.W.N. 335=A. I. R. 1926 Mad. 807.**

———Mother's sister's son and mother's brother's son are both entitled to succeed equally under the Bombay School. (*Macleod, C. J. and Shah, J.*). RAJAPPA RANAPPA KUNDAGOD *v.* GANAPPA JOTUPPA MANDVE. **77 I.C. 219=47 Bom. 48=24 Bom. L.R. 789=A.I.R. 1922 Bom. 420.**

———Mitakshara Law—Atma Bandhus *ex parte paterna* exclude, those *ex parte materna*—Paternal aunt's son's son excludes maternal uncle: 18 Mad. 193 and 20 Mad. 342, *Foll.* (*Miller and Sadasiva Aiyar, JJ.*). SUBRAMANIA MUDALIAR *v.* RANGANATHAN CHETTIAR. **44 Mad. 114=A.I.R. 1921 Mad. 590.**

—Succession—Bandhus—Father's sister's son's son.

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—Succession—Bandhus—Males and females.

———Female bandhus take after male bandhus are exhausted.

Brother's daughter's son is a preferential heir to a son's daughter: A. I. R. 1924 P. C. 209, *Expl.* (*Ramesam, J.*). AVUDAI AMMAL *v.* RAMALINGA REDDIAR. **97 I.C. 314=A.I.R. 1926 Mad. 1163.**

———In Bombay Presidency father's sister's son was held to be preferential heir to the daughters of father's brother. There is no case in the Bombay Presidency which decides that some preference is not to be given to male bandhus over female. Throughout the rest of India preference for the male would be certain: **26 Bom. 710; 45 Bom. 353.**

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Cons. (*Lord Phillimore.*) KENCHAVA SANYELLAPPA HOSMANI *v.* GIRIMALLAPPA CHANNAPPA SOMASAGAR. **82 I C. 966=26 Bom.L.R. 779=20 M.L.W. 417= 48 Bom. 569=51 I. A. 368=22 A L.J. 962=5 L.R.P.C. 182=40 C.L.J. 447=29 C.W.N. 271=1924 M.W.N. 719=35 M.L.T. 241=3 Pat. L.R. 9=A.I.R. 1924 P. C. 209=47 M.L.J. 401 (P.C.).**

——*Son's daughter's son is preferred to sister's daughter—Males are preferred to females only where Bandhus are equally remote from propositus.*

Per *Shah, J.*—Son's daughter's son can be preferred as being a nearer bandhu to the sister's daughter, though they are both equally removed from the propositus. In the case of bandhus equally removed from the propositus one in the direct line of descent should be preferred to one in a collateral line.

As regards the question about ranking all female bandhus after the male bandhus it seems that the two decisions 45 Bom. 353 and 45 Bom. 768 of Bombay High Court proceed upon a somewhat incomplete relation of the position of the female bandhus in Bombay Presidency, and do not give that effect to the test of propinquity which alone is to be determinative of the right to inherit in the case of distant blood relations. Among bandhus of the same class, and of the same degree of nearness to the propositus in the same branch, the males are preferred to females : for instance in the case of sister's son and sister's daughter, the son would be preferred to the daughter. But whether it is proper to go beyond that is a point which requires consideration.

Per *Macleod, C.J.*—Though some may think that High Court in deciding that all male bandhus should be preferred to female bandhus without regard to propinquity has gone too far, still there is no authority for the proposition, that bandhus of different sex but of equal propinquity should take equally. (*Macleod, C.J. and Shah, J.*). DATTATRAYA BHIMRAO SABNIS *v.* GANGABHAI GANESHBHAI NAVAR. **77 I.C. 17=46 Bom. 541=24 Bom. L.R. 69=A. I. R. 1922 Bom. 321.**

——Bombay School—Male excludes female though latter is nearer: 26 Bom. 710, *Dist.* (*Macleod, C. J. and Fawcett, J.*). GIRI MALLAPPA CHANNAPPA *v.* KENCHAMA SAN YELLAPPA. **61 I.C. 294=45 Bom. 768=23 Bom. L. R. 213=A.I.R. 1921 Bom. 270.**

——*Female bandhu though nearer is excluded by male Bandhu.*

Female bandhus are excluded by the nine classes of bandhus mentioned in the Mitakshara. Female Bandhus though nearer in degree are excluded by male bandhus. Hence, a brother's daughter is excluded by mother's sister's son : 31 Mad. 321, *Ref.* (*Macleod, C.J. and Fawcett, J.*). BALAKRISHNA BHIMAJI *v.* RAMKRISHNA GANGADHAR. **59 I.C. 771=45 Bom. 353=A.I.R. 1921 Bom. 189.**

—Succession — Bandhus — Mitakshara list not exhaustive.

——The enumeration of bandhus in the Mitakshara is not exhaustive. Maternal uncle is a bandhu nearer in degree than maternal uncle's son. (*Daniels, J.*). JAGANNATH SINGH *v.* GANGOO SINGH. **93 I. C. 626=A.I.R. 1926 All. 541.**

——*Father's sister's son's daughter's son is heritable bandhu—Succession depends upon propinquity.*

The father's sister's son's daughter's son of the propositus is an heir entitled to succeed. The enumeration of bandhus as heir in the Mitakshara is illustrative and not exhaustive ; 48 I.A. 86 (P.C.), *Foll.*

The succession under the Mitakshara Law depends upon propinquity and upon religious efficacy and therefore cognates who trace their relationship through one or more females are not excluded. There are two known tests of capacity for inheriting among bandhus which must be satisfied and these are : (1) that sapinda relationship ceases in the case of bhinnagotra sapindas or bandhus after the 5th degree from the common ancestor when the descent is through a female and after the 7th degree from the common ancestor when the descent is through a male ; (2) there must be an element of mutuality between the claimant and the propositus ; in other words, they must be so related that they are sapindas of each other. *The "line theory" of bandhu relationship expanded by Dr. Sarwadhikari dissented from* A.I.R. 1925 Mad. 807 ; 48 Mad. 722, *Rel. on.* (*Case-law discussed.*) (*Spencer and Venkatasubba Rao, JJ.*). KESAR SINGH *v.* SECY. OF STATE. **93 I. C. 651=49 Mad. 652=1926 M.W N. 540=24 M.L.W. 878=A.I.R. 1926 Mad. 881=51 M.L.J. 16.**

—Succession—Bandhus—Nearness of blood.

——*Succession among bandhus of same class how regulated.*

In determining priority among bandhus of same class nearness of blood should be considered to be the governing factor unless the contestants are equal in degree in their relationship to the common ancestor, in which case efficacy of oblations may be a test for preference : A.I.R. 1922 P.C. 33, *Foll.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). CHENGIAH *v.* SUBBARAYA AIYAR. **31 M.L.W. 592=A.I.R. 1930 Mad. 555=58 M.L.J. 562.**

——Matri bandhus—Mother's father's sister's grandson is preferred to mother's father's brother's great grand-son: A.I.R. 1925 Mad. 807 ; A.I.R. 1928 Cal. 289, *Rel. on* ; A.I.R. 1925 Bom. 451 (F. B.), *Doubted.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). CHENGIAH *v.* SUBBARAYA AIYAR. **31 M.L.W. 592=A.I.R. 1930 Mad. 555=58 M.L.J. 562.**

——Daughter's grandson excludes sister's grandson. (*Spencer, Offg. C.J. and Kumaraswami Sastri J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I. C. 705=48 Mad. 1=A. I. R. 1925 Mad. 497.**

——*Propinquity alone is the ground of preference—Maternal uncle is to be preferred to father's sister's grandson.*

Nearness of blood is the governing principle in the Succession of Bandhus. (1) The nearer in degree on whichever side is to be preferred to one more remote (2) of those, equal in degree, one related on the father's side is to be preferred to one related on the mother's side, (3) when the side is the same, the circumstance of one being related through a male and another through a female makes no difference. Consequently a maternal uncle being nearer in degree than father's sister's grandson is a preferential heir : 16 Mad. 23 ; 19 Mad. 405 (P.C.), *Appr.* ; A. I. R. 1914 P.C. 1 ; 41 I.A. 290 (P.C.), *Ref. to.* (*Ameer Ali.*) A. S. VEDACHELA MUDALIAR *v.* SUBRAMANIA CHETTIAR. **64 I.C. 402=26 C.W.N. 159= 24 Bom. L.R. 649=30 M.L.T. 198=44 Mad. 753=48 I.A. 349=14 M.L.W. 402=1921 M.W.N. 669=2 P.L.T. 707=A.I.R. 1922 P.C. 33= 41 M. L. J. 676 (P.C.).**

HINDU LAW—Succession—Bandhus—Non-heirs.

—Succession—Bandhus—Non-heirs.

——Mitakshara School of Hindu Law prevailing in the Punjab—Father's sister is not a bandhu or an heir.

She is a total stranger and is not entitled to sue: 161 P. R. 1919 and 163 P. W. R. 1915, *Dist.*; A. I. R. 1921 Lah. 149 and 1 Lah. 608, *Ref.* (*Addison, J.*). AMAR NATH *v.* MT. VED KAUR.

117 I.C. 664= A.I.R. 1928 Lah. 956.

——*Brother's daughter is not a bandhu.*

A brother's daughter is not a bandhu with rights of inheritance: 3 All. 45; 5 All. 311; 28 All. 187; 28 All 307; 16 Cal. 367 and 51 P.R. 1916, *Foll.* 161 P.R. 1919; 20 All. 191, *Diss. from*; 180 P.R. 1889, *Dist.* (*Leslie Jones and Wilberforce, JJ.*). MT. SUJAN DEVI *v.* JAGIRI MAL. **59 I.C. 124=3 L.L.J. 32.**

—Succession—Bandhus—Order of.

——*Atma bandhus exclude pitri bandhus and matri bandhus—Mother's sister's son's son is atma bandhu and excludes mother's paternal aunt's son—Bandhu in a female line, when can inherit.*

In families governed by Mitakshara the right of succession amongst the three classes of bandhus, *viz.*, atma bandhus, pitri bandhus and matri bandhus is governed by the propinquity of the class and therefore a pitri bandhu does not succeed until the class of atma bandhus is exhausted and a matri bandhu does not succeed until the class of atma bandhus and pitri bandhus are exhausted. Mother's sister's son's son is an atma bandhu and excludes mother's paternal aunt's son who is a matri bandhu: 37 All. 604 (P.C.); 28 Mad. 115; 9 Bom L.R. 1129, *Ref.*

The rule of the Mitakshara in preferring the nearer to the more remote class of bandhus, is not dependent on individual propinquity or on the efficacy of offerings to a deceased person. But a bandhu must, in order to be heritable in a female line, fall within the fifth degree from the common male ancestor and must be so related to the deceased person that they were mutually sapindas of one another, that is to say, where the Mitakshara applies, persons connected by particles of one body: 42 Cal. 384 (P.C.), *Ref.* (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. **60 I. C. 251=48 I. A. 86= 19 A. L. J. 208=23 Bom. L.R. 692= 33 C.L.J. 263=25 C.W.N. 842=6 P L. J. 140= 14 M.L.W. 20= 1921 M.W. N. 153=2 P.L T. 97= A.I.R. 1921 P.C. 53=40 M.L.J. 270 (P.C.).**

—Succession—Bandhus— Precedence.

——Father's half sister's son has precedence over mother's sister's son. (*Case-law considered.*) (*B.B. Ghose and Cammiade, JJ.*). JATINDRA NATH *v.* NAGENDRA NATH. **108 I.C. 246=55 Cal. 1153= 47 C.L.J. 265=32 C.W.N. 548= A.I.R. 1928 Cal. 289.**

——*Father's sister should be preferred to a father's sister's son.*

Mitakshara is silent on the point whether the father's sister is a gotraja sapinda or a bandhu, but according to Mayukha she is more than a bandhu, so, in Berar, she is a preferential heir to a father's sister's son who is necessarily a bandhu. *Case-law referred to.* (*Baker, J.C. and Prideaux, A.J.C.*). GANPATI *v.* SALU. **89 I.C. 345= A.I.R. 1926 Nag. 15.**

——*Vyavahara Mayukha—Father's sister's son is preferred to maternal uncle.*

In Bombay Presidency, under Vyavahara Mayukha, a father's sister's son is a preferential heir to the maternal uncle.

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Per *Shah, J.*—The father's sister's son has closer affinity with the propositus on account of his connection through the paternal grandfather than the maternal uncle who is connected with the deceased through his maternal grandfather and also judged by the test of religious benefit to the propositus resulting from oblations offered by the two bandhus in question, the father's sister's son should be preferred to the maternal uncle. (*Macleod, C.J., Shah and Coyajee, JJ.*). SAKHARAM NARAYAN *v.* BALKRISHNA SADASHIV MODAK.

94 I.C. 817=49 Bom. 739=27 Bom. L.R. 1003= A.I.R. 1925 Bom. 451 (F.B.).

——Father's father's son's daughter's son is preferred to sister. (*Broadway and Abdul Raoof, JJ.*). TIRATH RAM *v.* MST. KHAN DEVI. **60 I.C. 101= 3 L.L.J. 35=A.I.R. 1921 Lah. 149.**

—Succession—Bandhus—Spiritual benefit.

——Where the parties are related in the same degree, the preferential right should be in him who confers the greatest spiritual benefit on the deceased: 19 Mad. 405 (P.C.), *Foll.* (*B. B Ghose and Cammiade, JJ.*). JATINDRA NATH RAY *v.* NAGENDRA-NATH. **108 I.C. 246=55 Cal. 1153=47 C.L J. 265= 32 C.W.N. 548=A.I.R. 1928 Cal. 289.**

—Succession—Brother.

—— *Divided brother re-uniting with father—Brothers if entitled to succeed in preference to father.*

Where a certain property fell to the share of *D* at a partition and he subsequently re-united with his father and died in the state of the re-union leaving behind him his re-united father and two separated whole brothers,

Held, that the brothers will succeed to the property in preference to the father in spite of the fact that *D* had re-united with his father. (*Bisheshwar Nath, J.*). MATHURA *v.* BINDRA **7 O.W.N. 562= A.I R. 1930 Oudh 336.**

——Mitakshara—Undivided brother excludes divided brother. (*Rupchand Bilaram, A.J.C.*). DEVIBAI *v.* DAYABHOY MOTILAL. **89 I.C. 164= A. I. R. 1926 Sind 42.**

——Under the Vyavahara Mayukha a brother's son is excluded by the brother (uncle of the former) when the inheritance to another deceased brother opens. (*Shah, Ag. C.J. and Kemp, J.*) HARIBHAI GULAB *v.* MATHUR LALLU. **77 I C. 224= 47 Bom. 940=25 Bom. L.R. 929= A. I. R. 1924 Bom. 140.**

—Succession—Burden of proof.

——The burden of proving that the Hindu Law of Succession in Sind is different from that generally prevailing in the Presidency of Bombay lies on him who avers it. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). BODOMAL *v.* MT. KISHNIBAI. **93 I. C. 844=20 S L.R. 150= A.I.R. 1926 Sind 231.**

—Succession—Co-heirs.

——*Partition among co-widows of husband's property—Co-widows dealing with respective shares as absolute owners—Rights of survivorship held to be given up by each of co-widows under partition.*

After the death of the husband, his property was divided by an oral partition between two co-widows. Ever since that partition each of the co-widows had been dealing with the properties that fell to her share as if she took the same with absolute rights under the partition. At a time when no dispute arose whether right of survivorship was given up by the widows each widow executed sale deeds with reference to property that fell to her share, specifically purporting to confer absolute title to the alienees using the vernacular expression

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ordinarily in use to connote the idea of conferring absolute rights on the alienees.

Held, that the partition was absolute and that rights of survivorship had been given up by each of the co-widows under such a partition arrangement : 3 M.H.C.R. 268, *Foll.* ; A.I.R. 1919 P.C. 27 ; 22 Mad. 522 ; 26 M. L. J. 479 ; 28 M. L. J. 685 and A.I.R. 1924 Mad. 75, *Rel. on.* (*Ananthakrishna Ayyar, J.*). MINAKSHI AYI *v.* SUBRAMANIAN CHETTIAR. **123 I.C. 35=1929 M.W N. 667= A.I.R. 1930 Mad. 175.**

———*Daughters putting an end to right of survivorship amongst them by partition.*

Daughters entering into partition intending to exclude survivorship—Unless it is shown that they were conscious of their right of survivorship and intended to give up such right no act on their part putting an end to survivorship will be effective—Whether survivorship was put an end to will depend upon partition deed construed as a whole : A.I.R. 1927 Mad. 115, *Foll.* (*Madhavan Nair, J.*). PIRMANAYAGAM PILLAI *v.* ARUMUGHAM PILLAI. **118 I. C. 97=A I. R. 1929 Mad. 710.**

———Daughters inheriting the property of their father, dispossessed—Suit for recovery of possession and mesne profits decreed—Death of one of them during an appeal against the final decree for mesne profits,

Held, that a decree for mesne profits should be considered as part of the estate of the father of the two sisters, since the deceased, had not treated her share of the decretal amount as distinct from the paternal estate The other sister was, therefore, entitled to realize the entire decree : 10 Cal 324 (P. C.), *Rel. on* ; 22 Mad. 356 ; 28 Mad. 1 ; 10 Bom. 478 ; 41 All. 350 and 20 Cal. 433 (P.C.), *Disc.* (*B. B. Ghose and Bose, JJ.*). BHARATESWARI DAS *v.* BHAGABAN CHANDRA. **115 I. C. 513=33 C. W. N. 193= A. I. R. 1928 Cal. 759.**

———*Co-widows take husbands' property as joint estate with right of survivorship—Partition between them does not defeat survivorship.*

Under Mitakshara two or more lawfully married wives take a joint estate for life in their husbands' property with rights of survivorship and equally beneficial enjoyment, and there is no objection to a transaction which is merely an arrangement for separate possession and enjoyment, leaving the title to each share unaffected although the widows nevertheless remain co-parceners, with a right of survivorship with them and there can be no alienation by one without the consent of the other. Therefore a partition between widows can in no circumstances have the effect of defeating the right of survivorship and whatever be the authority under a friendly arrangement of each widow to enjoy the usufruct of a separate portion of the estate, there can be no right of alienation by a co-widow alone without the consent of the other which will bind the other co-widow after her death: 1 Mad. 290 (P.C.) ; 11 M.I.A. 487 (P.C.) ; 16 Mad. 1 and 31 Bom. 560, *Appl.* (*Stuart, C.J. and Rasa, J.*). GAYA KUNWAR *v.* GAURI NATH.

94 I. C. 932=29 O. C. 282=13 O.L.J. 516= 3 O. W. N. 414=A.I.R. 1926 Oudh 401.

———*Right of survivorship can be given up.*

There is no legal obstacle to prevent one of two co-widows from so far releasing her right of survivorship as to preclude her from recovering from an alienee after the other co-widow's death property given by way of partition to the latter and alienated by her : 22 Mad. 522, *Foll.* (*Spencer and Viswa-*

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nath Sastri, JJ.). MEDAI DALAVOY KALIANI ANNI *v.* MEDAI DALAVOY THIRUMALAYAPPA MUDALIAR. **92 I.C. 355=A I.R. 1927 Mad. 115.**

———Sisters take as tenants-in-common, not as joint tenants : 23 Cal. 670 (P.C.), *Rel. on.* (*Greaves and B.B. Ghose, JJ.*). GOUR CHANDRA DAS *v.* SUBASHINI DASI. **90 I C. 523=42 C.L.J. 200= 30 C.W.N. 39=A.I.R. 1926 Cal. 240.**

———Daughters amongst themselves take by survivorship—Agreement to relinquish survivorship right is valid : 11 M.I.A. 487 (P.C.) and 2 I. A. 113 (P.C.), *Ref.* (*Adami and Das, JJ.*). MT. ANMOLE KUER *v.* KAMLA DUTT MISIR. **95 I.C 648=A.I.R. 1926 Pat. 392.**

———*Daughters can put an end to survivorship.*

Where a Hindu dies and his daughters make a division of his properties and arrange that each will enjoy her particular share with full right, *i.e.*, with right of alienation of sale, etc., there is no right of survivorship and on the death of any one of them her share will go to her own heirs and not to her surviving sisters. (*Jackson, J.*). A. LATCHAMMA *v.* S. SUBBARAYUDU. **82 I.C. 788= A.I.R. 1925 Mad. 343.**

———*Daughters succeeding—Partition—Alienation by one of her share—Suit for possession by reversioners is not maintainable in the life of the surviving daughter.*

Two daughters succeeded to the estate of their deceased father. They partitioned the property by a deed agreeing to enjoy severally, for ever and absolutely, the properties comprising their respective shares. After the partition one of them sold absolutely some of the items allotted to her and died leaving the other sister surviving her. A suit was brought by the sons of the surviving daughter for declaration of the invalidity of the alienation by the deceased daughter and for possession of the properties,

Held, the suit for possession was not maintainable till the death of the surviving daughter but that the suit for the declaration of the invalidity of the alienation was maintainable. (*Oldfield and Venkatasubba Rao, JJ.*). AMMANI AMMAL *v.* PERIASAMI UDAYAN. **74 I C. 68=32 M.L.T. 323= 1923 M.W.N. 652=A.I.R. 1924 Mad. 75= 45 M.L.J. 1.**

———Co-widows must be treated as one person. (*Kotval and Prideaux, A.J.Cs.*). MT. ANNAPURNABAI *v.* RUPRAO. **78 I.C 284=A.I.R. 1924 Nag. 319.**

———Where the property is given by paternal grandfather to his grandsons, as Yautuk or affectionate gift, the donees do not become joint tenants with right of survivorship: 28 Cal. 670 (P.C.), *Ref.* (*Mookerjee and Cuming, JJ.*). SARADA PRASANNA ROY *v.* UMA KANTA. **77 I. C. 450=37 C L.J. 233= 50 Cal. 370=A.I.R. 1923 Cal. 485.**

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———*Law applicable to.*

A mere conversion to a religion would not necessarily involve the adoption of the laws as to inheritance and succession obtaining among the adherents of that religion. But when the converts aim at identifying themselves with the rest, strong evidence would be needed to show that they kept their own laws relating to social relations, marriage, inheritance and succession uninfluenced by the rules of law obtaining among the adherents of the religion to which they became converts. (*Kumaraswami Sastri, Devadoss and Wallace, JJ.*). MUKKA KONE *v.* AMMAKUTTI AMMAL **108 I.C. 760=51 Mad. 1=27 M.L.W. 611= A.I.R. 1928 Mad. 299=54 M.L.J. 174 (F.B.).**

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———A Hindu converted to Mahomedanism—His Hindu widow cannot inherit his estate: 33 All. 356, *Dist.*; A. I. R. 1927 Mad. 72, *Foll.* and A.I.R 1922 L.B. 15, *Ref.* (*Heald and Maung Ba, JJ.*). O.V.N.O.T. CHIDAMBARAM CHETTIAR *v.* MA MYEIN ME. **111 I.C. 2=6 Rang. 243= A.I.R. 1928 Rang. 179.**

———A Hindu daughter cannot inherit from her father who has been converted to Mahomedanism because of Act 21 of 1850: 40 Mad. 1118, *Foll.*; 11 All. 100. *Not foll.* (*Curgenven, J.*). SUNDRAMMAL *v.* AMEENAL. **98 I.C. 867=24 M.L.W. 675= 1926 M.W.N. 952=A.I.R. 1927 Mad. 72.**

———A convert or an outcaste retains his right of inheritance whether the right occurs before or after the conversion to another religion or exclusion from caste. (*Jwala Prasad and Ross, JJ.*). RAM PERGASH SINGH *v* MT. DAHAN BIBI. **78 I. C. 749=3 Pat. 152=5 P.L.T. 203= 1924 P.H.C.C. 85=A.I.R. 1924 Pat. 420.**

———A person who ceases to be a Hindu in religion and becomes a Christian cannot elect to be bound by the Hindu Law in the matter of succession, after the passing of the Indian Succession Act. A Hindu convert to Christianity is now governed solely by the Succession Act. (*Lord Shaw*) KAMAWATI *v.* DIGBIJAI SINGH. **64 I.C. 559=30 M.L.T. 47= 1922 M.W.N. 336=15 M.L.W. 1= 26 C.W.N. 490=24 Bom. L.R. 626= 48 I.A. 381=43 All. 525= A.I.R. 1922 P.C. 14=42 M.L.J. 87 (P.C.).**

—Succession—Custom.

———*Nattukkottai Chettis—Stridhanam—Reverter to parent's family.*

There is a custom, in the Nattukottai Chetti caste, having the force of law that, if the daughter of the family dies issueless, the stridhanam will revert to her parents, but there is at present no clear custom having the force of law, by which such reverter occurs when the daughter has a female issue and dies leaving such issue. (*Wallace and Jackson, JJ.*). PALANIAPPA CHETTIAR (*died*) *v.* V. N. S. CHOCKALINGAM CHETTI. **30 M.L.W. 1040=A.I.R. 1930 Mad. 109= 57 M.L.J. 817.**

———*Custom recorded in* wajib-ul-arz—*Interpretation of.*

Where a clause in *wajib ul-ars* recording a custom with regard to inheritance to Hindu daughters and daughter's sons records that daughters obtained no share by inheritance in any case, where there is or is not male issue, the custom so recorded should be interpreted to mean, that daughters and their sons do not inherit whether there are sons or not of their father, but that if there are no collaterals they will come in under the provisions of the Hindu Law and succeed to a life-estate: A.I.R. 1923 P.C. 70 (P.C.), *Rel. on.* (*Pullan, J.*). RAMAI AHIR *v.* NARAIN DEI. **7 O.W.N. 471= A.I.R. 1930 Oudh 247.**

———*Agarwals—Son is entitled to his mother's stridhan.*

Under the Mitakshara law as modified by the customs and usages of the Agarwalla community relating to stridhan, a son is entitled after his mother's death to whatever belonged to his mother during her lifetime. (*Viscount Sumner.*) HARIRAM SEROWGEE *v.* MADAN GOPAL BAGLA. **114 I.C. 565=1929 A.L.J. 406=49 C.L.J. 335= 33 C.W.N. 493=31 Bom. L.R. 710= 1929 M.W.N. 422=30 M.L.W. 835= A.I.R. 1929 P.C. 77=57 M.L.J. 581 (P.C.).**

HINDU LAW—Succession—Dancing girls.

———Jangra Sangra Chauhan Thakur—Daughters are excluded from inheriting father's property movable and immovable—But no inference from this of exclusion from mother's or grand-mother's stridhan can be drawn: 5 I.A. 1 and A.I.R. 1922 Oudh 278, *Rel. on.* (*Wazir Hasan, Aq. C.J. and Raza, J.*). RAJ BACHAN SINGH *v.* BHANWAR LALJI. **118 I.C. 760=6 O.W.N. 287= 4 Luck. 690=A.I.R. 1929 Oudh 296.**

———Kadwa Kunbis—Property inherited by a childless woman from her father—After her death property devolves on her father's relations and not on her husband. (*Marten and Fawcett, JJ.*). RATILAL NATHALAL *v.* MOTILAL SANKALCHAND. **88 I.C. 891=27 Bom. L. R. 880= A. I. R. 1925 Bom. 380.**

———Mere proof of custom of division by *istribant* (Division by wives) does not entitle the descendant of one wife however remote in degree to have preference over the descendants of the other wife, though nearer in degree: 19 O. C. 165, *Diss.* (*Wazir Hasan and Neave, A.J.Cs.*). BRIJRAJ BUX SINGH *v.* RAGHURAJ. **84 I.C. 227= 11 O.L.J. 586=A.I.R. 1925 Oudh 173.**

———*Custom excluding daughters—Burden is on the party alleging custom.*

Where the defendants set up a particular custom by which succession follows a particular line to the exclusion of daughters, it is for them to prove such a custom. (*Chatterjee and Pearson, JJ.*). DHARINI KALIANI *v.* SISURAM KALITA. **70 I.C. 36=39 C.L.J. 100= A.I.R. 1924 Cal. 530.**

———Muraos—Custom—Property of first husband—Son by second husband cannot succeed. (*Daniels, J. C. and Dalal, A. J. C.*). BHAGWAN DIN *v.* MST. INDRANI. **65 I.C. 117= 24 O. C. 297=8 O.L. J. 563= A.I.R. 1921 Oudh 233.**

———*Thiyas—Deviation from general law—Strong and strict proof of custom is necessary—Onus of proof is on party asserting custom.*

Plaintiffs asserted that among the Thiyas or the Ezhuvas, (1) woman married in the family take life-estates in accordance with the ordinary law (2) after them the heir or heirs are first, the male members of each degree or their descendants and secondly the females of each degree when no such males exist, the females being admitted to the succession, only when representatives of nearer degree in the order, sons and daughters, parents, paternal uncles and aunts, grand parents and paternal great uncles and aunts and so on with their descendants are wanting.

Held, that the burden of proof of this customary scheme of inheritance is on plaintiffs. It is not necessary or possible to regard: 15 Mad. 281 as enunciating more than a rule as to burden of proof or its weight. Strong and direct evidence of the custom must be required. It is doubtful whether the argument from analogy can be excluded, when it can be ligitimately employed; that is when the similarity between the classes of cases is sufficient to justify its employment: 38 Mad. 48, *Dist.* (*Oldfield and Hughes, JJ.*). RAMAN *v.* MUTHU. **62 I.C. 534=13 M.L.W. 218=1921 M.W.N. 233= A. I. R. 1921 Mad. 661=40 M.L.J. 301.**

—Succession—Dancing girls.

———*Dancing girl—If can inherit to her husband.*

No custom among dancing girls could ordinarily provide for a case of a dancing girl succeeding to the properties of her husband because the very idea is that the "dancing girls" do not marry and

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do not have legal husbands whose properties they could "inherit." A daughter of such girl cannot, therefore, inherit her father's property absolutely. (*Ananthakrishna Ayyar, J.*). RAMAYYA *v.* GARAPATI RAMAYYA. **118 I.C. 779= A.I.R. 1930 Mad. 329.**

———*Sons of dancing woman have heritable blood between them.*

The rule of collateral succession obtains among the legitimate descendants of the two sons of a dancing woman whose paternity is unknown, *i.e.*, each branch can inherit to the other.

In the case of a dancing-woman or a Hindu prostitute her religion is Hindu and her customs, manners and observances are Hindu, and her sons are Hindus, and the Hindu Law therefore is applicable to them.

It is not necessary that in order to have heritable blood inheritance should be traced through the father. It logically follows that the sons of a dancing-woman or a prostitute have heritable blood between them. Hence, there is heritable blood between the lines of their legitimate descendants. (*Case-law discussed.*)

Per *Wallace, J.*—Illegitimate children *inter se* when there is no contest between them and legitimate children, inherit to their mother and to one another. (*Devadoss and Wallace, JJ.*). VISWANATHA MUDALI *v.* DORAISWAMI MUDALI.

91 I.C. 193=48 Mad. 944=1926 M.W.N. 182= 1926 M.W.N. 613=A.I.R. 1926 Mad. 289= 49 M.L.J. 684.

———Amongst the dancing girl's caste, the sons and daughters inherit equally, contrary to ordinary Hindu usage. (*Schwabe, C.J. and Coleridge, J.*). B. CHANDRAMMA *v.* NAGANNA. **75 I.C. 170= 18 M.L.W. 309=1923 M.W.N. 567= A.I.R. 1924 Mad. 94=45 M.L.J. 228.**

—Succession—Daughter.

———*Daughter succeeding as daughter acquires no title by adverse possession.*

Where a daughter's name is entered in the revenue registers in place of her mother distinctly on the ground that she is entitled to succeed under the Hindu Law as the daughter of her father, she acquires no better title by adverse possession than the limited title of a Hindu female which comes to an end on her death. (*Wasir Hasan, J.*). BEHARI *v.* RAMKARAN. **112 I.C. 400= 5 O.W.N. 193=A.I.R. 1928 Oudh 227.**

———Mithila system—An unmarried daughter is preferred to a married daughter—Married daughters inherit irrespective of their having issue or possibility of issue, or those who have no issue are not likely to have issue. (*Das and Allanson, JJ.*). RAJRANI DEBYA *v.* GOMTI DEBYA.

111 I.C. 673=7 Pat. 820=9 P.L.T. 436= A.I.R. 1928 Pat. 466.

———*Rich and poor—Comparative poverty is the test.*

If a marked difference is found in the financial position of the sisters, and one of those sisters is in straitened circumstances, that is sufficient to bring into operation the authority of the Mitakshara that the sister who is "unprovided for" shall take precedence over the sister who is "enriched". The case has to be looked at from the point of view of comparative poverty of the claimants, and it is not essential that the poor sister should be bound to point to some definite acquisition of property by the rich sister. It is sufficient if her surroundings are such that she should be regarded as a rich woman. The ordinary case is that she has married into a family of position and wealth. (*Mears, C.J. and Piggott, J.*). MANKI KUNWAR *v.* KUNDAN KUNWAR. **87 I.C. 121=47 All. 403= 23 A.L.J. 183=A.I.R. 1925 All. 375.**

HINDU LAW—Succession—Daughter.

———Bombay School—Daughters take absolute estate by inheritance as tenants-in-common. (*Macleod, C.J. and Coyajee, J.*). KISAN TUKARAM TAKLE *v.* BAPU TUKARAM GHADLING. **89 I.C. 196=27 Bom. L.R. 670= A.I.R. 1926 Bom. 424.**

———*Aroras of Amritsar — Son of pre-deceased daughter cannot succeed along with daughters of the propositus.*

Aroras of Amritsar Town are ordinarily governed by the Hindu Law and among them a son of predeceased daughter does not succeed, along with the daughters of the propositus, to his mother's father's property by the principle of representation unless a special custom to that effect is proved: 4 Lah. 236 and 4 L. L. J. 336, *Foll.* (*Abdul Raoof and Jai Lal, JJ.*). MT. LORANDI *v.* MT. NIHAL DEVI. **95 I. C. 701=26 P.L.R. 759=6 Lah. 124= A.I.R. 1925 Lah. 403.**

———(*Madras*)—*Daughter as heiress takes restricted interest.*

It is now settled beyond dispute that a daughter as heiress of her father takes a restricted interest similar to that taken by a widow with a similar power on disposal. This power is conditional; she can dispose of the inheritance for legal necessity but it lies on the alienee to prove the existence of this necessity, and this is so even though the absence of the necessity be not pleaded by the reversioner. The reversioners (grandsons) on the mother's death can treat the alienation as a nullity without the intervention of any Court. (*Sir Lawrence Jenkins.*) KONDAMA NAICKER *v.* KANDASAMI GOUNDAR. **79 I. C. 961= 28 C.W.N. 1050=22 A L.J. 16=1924 M.W.N. 86= 19 M.L.W. 107=5 L.R.P.C. 19=26 Bom. L.R. 198= 51 I.A. 145=34 M.L.T. 20=47 Mad. 181= 39 C.L.J. 194=A.I.R. 1924 P.C. 56= 46 M.L.J. 172 (P.C.).**

———Among Vadnagar Nagar Brahmans the daughters inherit an absolute estate and on the death of one of the daughters her share does not go by survivorship but devolves on her own issue. (*Lindsay and Kanhaiya Lal, JJ.*). JAWAHIR LAL *v.* JARAN LAL. **79 I. C. 861=46 All. 192= 22 A.L.J. 49=5 L.R.A. Civ. 130= A.I.R. 1924 All. 350.**

———According to Vatan Act neither the daughters of the deceased last male vatan holder, nor his brother's widow can claim priority over male members of the same vatan family: 19 Bom. L.R. 730, *Dist.* (*Macleod, C.J. and Crump, J.*). GAVARAMA KOM GAUDAPPA *v.* MALLANGOWDA CHANAGOWDA. **76 I. C. 559=A.I.R. 1923 Bom. 382.**

———(Bengal)—Childless widowed daughter though of child bearing age but belonging to caste permitting widow re-marriage cannot succeed along with daughter having son, in the absence of a custom to that effect. (*Teunon and Chaudhuri, JJ.*). BINODINI HAZRANI *v.* SUSTHEE HAZANI. **48 Cal. 300=26 C.W.N. 29=A.I.R. 1921 Cal. 295.**

———*Maharashtra and Berar—Daughter succeeds to father as stridhan.*

In Maharashtra and Berar where the Mitakshara is paramount and the Mayukha a secondary authority, the property inherited by a daughter from her father is her stridhan and devolves on unmarried daughter, married daughter who is unprovided for; married daughter who is provided for

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daughter's daughter; daughter's son; son and son's son. *Case-law discussed.* (*Prideaux, A.J.C.*). GOVINDA *v.* MT. DOOMI. **65 I.C. 671= 5 N.L.J. 187=A.I.R. 1921 Nag. 142.**

—Succession—Daughter-in-law.

——— *Bombay School—Daughter-in-law succeeds in preference to brother's grandson.*

In Western India, *i.e.*, according to the Bombay School, the compact series ends with the brother's son and does not include the grandson. This view has not been overruled by the Privy Council: A.I.R. 1915 P.C. 70, and therefore the daughter-in-law is entitled to preference over the grandsons: A. I. R. 1915 P. C. 70 *Expl.* and *Dist.* (*Madgaonkar, Patkar and Murphy, JJ.*). APPAJI JIJAJI VAIDYA *v.* MOHAN LAL RAVJI GUJAR.

32 Bom.L.R. 709=A.I.R. 1930 Bom. 273. (F.B.).

——— Apart from some special custom the widow of pre-deceased son is not entitled to succeed in preference to a nephew. The widow has only a right of maintenance. (*Johnstone, J.*). SARUPA *v.* MT. DHUNDAN. **122 I.C. 89=11 L.L.J 219= A.I.R. 1930 Lah. 286.**

——— Daughter-in-law is no heir either to her father-in-law or to her mother-in-law: A.I.R. 1927 Oudh 240, *Foll.* (*Misra and Raza, JJ.*). KUSHWAQT RAI *v.* JAGANNATH PRASAD TANDAN.

119 I.C. 872=A.I.R. 1930 Oudh 184.

——— *Mitakshara—Daughter-in-law is not entitled to inherit.*

According to the law of the Mitakshara prevalent in the United Provinces the widow of a pre-deceased son is not entitled to inherit any property of her father-in-law. *Case-law discussed*: 7 I. A. 212 and 5 Bom. 110 (P.C.), *Dist.* (*Gokaran Nath Misra, J.*). KRISHNA KUMARI *v.* RAJENDRA BAHADUR. **104 I.C. 155=2 Luck. 43=13 O.L.J. 846= 6 O.W.N. 1150=A.I.R. 1927 Oudh 240.**

——— Widow of a pre-deceased son has no preference over nephew—No custom exists to the contrary—Custom (Punjab). (*Broadway and Moti Sagar, JJ.*). CHINT RAM *v.* MT. SHIB DEVI.

4 L. L. J. 10=A.I.R. 1922 Lah. 207.

—Succession—Daughter's son.

——— A daughter's son excludes a daughter's son's son: 25 M. 678, *Ref. to*; 27 M. 382, *Foll.* (*Napier and Odgers, JJ.*). KRISHNASWAMI BATTAR *v.* SREENIVASA BATTAR. **76 I. C. 881= 30 M.L.T. 168=A.I.R. 1922 Mad. 341= 42 M.L.J. 124**

——— *Dayabhaga school—Childless widowed daughter is excluded by sons of deceased daughter.*

Where the rival applicants for succession certificate to the estate of a Hindu governed by Dayabhaga School are a widowed daughter with no children and sons by another daughter previously deceased, the latter are to be preferred to the widowed daughter notwithstanding the fact that under the provisions of the Hindu Widows' Remarriage Act there is always the possibility of her marrying again: 19 W. R. 189, *Diss.*; 2 W. R. 176; 6 W.R. 147 and 19 C.W.N. 472, *Foll.* (*Piggott and Walsh, JJ.*). PRAMILA DEVI *v.* CHANDRASEKHAR.

60 I.C. 777=43 All. 450=19 A.L.J. 272= A.I.R. 1921 All. 122.

—Succession—Degraded woman.

——— There is heritable blood between a prostitute and her sister who as sister is the heir of the prostitute (Bhavin). On the analogy of Hindu Law such a sister is a sapinda heir. (*Fawcett and Patkar, JJ.*). NARAYAN PANDLIK *v.* LAKSHMAN DAJI. **106 I.C. 87=51 Bom. 784= 29 Bom. L.R. 930=A.I.R. 1927 Bom. 456.**

HINDU LAW—Succession—Exclusion from.

——— *What constitutes degradation for purposes of inheritance.*

Whether a woman was degraded or not is a question of fact to be found in each case. Unchastity *ipso facto* does not produce degradation: 31 Mad. 100, *Foll.*

When special legal consequences follow from the fact of a person being degraded, the Court will not assume that the person has become degraded by the mere fact that that person has lived a life of unchastity. Unless there has been formal expulsion from caste on account of unchastity, or the circumstances lead to an irresistible inference that the person concerned either treated herself as an outcaste or was treated by her community as such, the Court will not be justified in proceeding on the footing that the fallen woman is a degraded woman and must be so regarded for the purposes of law. (*Venkatasubba Rao, J.*). KOTHANDARAM NAIDU *v.* SUBBIER. **102 I. C. 429= 38 M.L T. 278=26 M.L W. 54= A.I.R. 1927 Mad. 576=52 M.L.J. 514.**

——— Degradation does not sever the tie of kinship previously existing, either between her husband's relations or her blood relations: 23 Mad. 171, *Rel. on.* (*Venkatasubba Rao, J.*). KOTHANDARAM NAIDU *v.* SUBBIER. **102 I.C. 429=38 M.L.T. 278= 26 M.L.W. 54=A.I.R. 1927 Mad. 576= 52 M.L.J. 514.**

——— As regards succession to a degraded woman, husband's brother is preferred to maternal uncle. (*Venkatasubba Rao, J.*). KOTHANDARAM NAIDU *v.* SUBBIER. **102 I.C. 429=38 M L.T. 278= 26 M.L.W. 54=A.I.R. 1927 Mad. 576= 52 M L.J. 514.**

——— Succession to a prostitute's stridhan—Ordinary law applies—Dayabhaga law—Son excludes married daughter. (*Suhrawardy and Duval, JJ.*). SHAIKH TALEB ALI *v.* SHAIKH ABDUL RAZACK.

89 I.C. 141=29 C.W N. 624= A. I. R. 1925 Cal. 748.

——— There is nothing in the Hindu Law which states that when an unmarried woman has fallen from chastity no one can succeed to her property except the Crown. (*Stuart, J.*). MT. BHANGA *v.* DIN MOHAMMAD. **65 I.C. 593=A.I.R. 1923 All. 233.**

—Succession—Exclusion from.

——— *Unchastity not condoned—Woman not entitled to inherit.*

Where the wife was proved to have been unchaste during her husband's lifetime and there was no evidence of condonation on his part.

Held, that she was disentitled to inherit.

Quaere: whether the plea of condonation can at all be raised under the Bengal law of inheritance. (*Mitter, J.*). RANI DASSYA *v.* GALAPI DASSYA.

34 C.W.N. 648.

——— *Lunacy as a bar to inheritance—What is.*

The mere failure to conduct the family business is not a sign of insanity, and a man, who was never placed under restraint, who left the hospital, when under observation, of his own will and who took part in the funeral ceremonies of his brother and the marriage ceremonies of his daughter, is not a lunatic although he may be eccentric and of weak intelligence. (*Wazir Hasan, Ag. C. J. and Pullan, J.*). BALBHADDAR SINGH *v.* SHAMSHER SINGH. **6 O.W.N. 109= A.I.R. 1929 Oudh 305.**

——— *Dumbness should be congenital to amount to disqualification.*

Dumbness should be congenital in order to be sufficient to disqualify an heir from inheriting

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under Hindu Law: (1867) 4 B. H. C. A. C. 135, *Cons.* and *Appr.*

There is a special reason for treating the dumbness on the same footing as deafness with reference to which it is laid down that it should be congenital in order it may constitute a disqualification. (*Shah and Fawcett, JJ.*). SAVITRIBAI GANESH *v.* BHANBAT SHANKAR BHATT. **100 I. C. 586= 51 Bom. 50=29 Bom. L R. 64= A. I. R. 1927 Bom. 103.**

——Deafness and dumbness must be congenital: 45 Cal. 17 (P C.) and A.I.R. 1923 Nag. 151, *Foll.* (*Findlay, J.C.*). MT. DHANIYA BAI *v.* MT. KAUSALYA BAI. **101 I.C. 650=10 N.L.J. 61= A.I.R. 1927 Nag. 235.**

——*Unchaste daughter, if excluded.*

A daughter who is unchaste is not under the same rule of exclusion as a widow and is not prohibited by reason of such unchastity from inheriting her father's or mother's estate. (*Coutts-Trotter, C. J.*). ANNAPURNAMMA *v.* VENKAMMA. **97 I.C. 604=24 M L.W. 318= 1926 M.W.N. 661=A.I.R. 1926 Mad. 1017= 51 M.L.J. 387.**

——Marriage with woman of lower grade in same caste is valid and in absence of communal custom rendering it invalid, does not disentitle the man marrying or his issue from inheritance in the family property. (*Sulaiman and Kanhaiya Lal, JJ.*). HAR PRASAD *v.* KEWAL. **83 I.C. 163= 47 All. 169=22 A.L.J. 1009=6 L R.A. Civ. 7= A.I.R. 1925 All. 26.**

——*Murderer cannot succeed.*

A murderer must for the purpose of the inheritance, be treated as if he were dead when the inheritance opened and as not being a fresh stock of descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed through him: 27 M. 591, *Ref.*; 32 B. 275, *Dist.* (*Lord Phillimore.*) KENCHAVA SANYELLAPPA HOSMANI *v.* GIRIMALLAPPA CHENNAPPA SOMASAGAR. **82 I.C. 966=26 Bom. L.R. 779=20 M.L.W. 417= 48 Bom. 569=51 I.A. 368=22 A.L.J. 962= 5 L.R.P.C. 182=40 C.L.J. 447=29 C.W.N. 271= 1924 M.W.N. 719=35 M. L. T. 241=3 Pat. L.R. 9= A.I.R. 1924 P. C. 203=47 M.L.J. 401 (P. C.).**

——*Disgusting disease—When a bar to succession.*

Deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test. Satisfaction of this test alone will deprive a person of the position of being joint owner of certain family property and of the ability to make a valid adoption of a son: 38 Mad. 250; 5 B. H. C. A. C. 145, *Appr.*; 22 Cal. 843 (P.C.), *Foll.* (*Lord Shaw.*) RAMABAI *v.* HARNABAI. **80 I.C. 193=26 Bom. L.R. 308= 1924 M W.N. 357=22 A.L.J. 384= 34 M.L.T. 81=48 Bom. 363=6 L.R.P.C. 92= 20 M.L.W. 8=51 I. A. 177=29 C.W.N. 129= A.I.R. 1924 P.C. 125=46 M.L.J. 537 (P.C.).**

——Dumbness in order to exclude a person from inheritance must be incurable though it need not be congenital: 18 Cal. 327, *Foll.* (*Kajiji, J.*). BAI PRATAPGAVARI *v.* MULSHANKAR PREMCHAND. **80 I.C. 173=26 Bom. L.R. 269= A.I.R. 1924 Bom. 353.**

——*Unchaste daughter under Mitakshara can inherit.*

HINDU LAW—Succession—Exclusion from.

The Hindu Law of Mitakshara as distinguished from Dayabhaga does not require that an unchaste or immoral daughter should not succeed. Such a condition is laid down in the case of widows, but not in the case of a daughter. (*Jwala Prasad and Ross, JJ.*). RAM PERGASH SINGH *v.* MT. DAHAN BIBI. **78 I.C. 749=3 Pat 152=5 P L.T 203= 1924 P.H C.C. 85=A.I.R. 1924 Pat. 420.**

——*Insanity need not be congenital.*

Insanity, as a ground of exclusion from inheritance under Hindu Law, need not be congenital: 43 Mad. 464, *Foll.* (*Macleod, C.J. and Crump, J.*). BAPUJI NARSO *v.* DATTU ANTAJI. **73 I. C. 279= 25 Bom. L.R. 404=47 Bom. 707= A.I.R. 1923 Bom. 425.**

——*Leprosy of anaesthetic type is no ground for exclusion.*

Leprosy to be a ground of exclusion must be of the sanious or ulcerous and not of the anæsthetic type. The presumption of Hindu Law is against disqualification and the burden of proof of disqualifications lies on a person who seeks to exclude another who would be an heir, should no case of exclusion be established. Where it is contended that a person is excluded from inheritance by reason of disease, the strictest proof of the disease as will disqualify him at the time the succession opened will be required. (*C. C. Ghose and Panton, JJ.*). SURENDRA NATH DE *v.* ASHUTOSH NANDI. **75 I.C. 474=27 C.W N. 959= 50 Cal. 604= A. I. R. 1923 Cal. 331.**

——A Hindu who is congenitally blind is excluded from the inheritance and the rule has not become obsolete. *Texts and case-law discussed.* 43 Mad., 4. *Foll.* (*Schwabe, C.J., Oldfield and Coutts-Trotter, JJ.*). PUDIA NADAN *v.* PAVANASA NADAN. **69 I.C. 313=45 Mad. 949=16 M.L.W. 563= 1922 M.W.N. 693=31 M.L.T. 320= A.I.R. 1923 Mad. 215=43 M.L.J. 596 (F.B.).**

——*Blindness from birth, not cured by 50 years can be presumed incurable.*

A co-parcener is excluded from inheritance if he is born blind and is incurably blind. Where the plaintiff is aged 50 and has not yet been cured, it may safely be presumed that his blindness is incurable: 43 Mad. 4, *Diss.*; 45 Cal. 17 (P.C.); 46 B. 455: 11 W.R. 11 (F.B.), *Appr.* (*Batten, J.C.*). NANA *v.* JOGILAL. **71 I.C. 566=6 N.L.J. 81= 19 N.L.R. 69=A.I.R. 1923 Nag. 151.**

——Dumbness congenital and incurable is a ground for exclusion: (1867) 4 Bom. H.C. (A.J.C.) 135, *followed.* (*Macleod, C.J. and Shah, J.*). BHARMAPPA, ADOPTIVE FATHER, BHARMAGAUDA MUDIGANDAR *v.* UJJANGAUDA, ADOPTIVE FATHER, BHARAMGAUDA. **66 I.C. 216= 46 Bom. 455=23 Bom. L R. 1320= A.I.R. 1922 Bom. 173.**

——*Murderer's lineal descendants are also excluded from inheriting to property of the murdered—Basis of such exclusion.*

It is compatible with justice, equity and good conscience that the exclusion of a murderer from the inheritance of the man whom he had murdered must be taken to include his direct lineal descendants. Therefore, as the plaintiff's father had murdered his brother with the sole object of securing his property, they are excluded from inheriting the property of their deceased uncle as their succession is opposed to public policy. It is generally recognised that the exclusion of the murderer is not based on the principles of either Hindu, Mohammadan or Customary Law, but on public policy and justice and it is from this standpoint rather

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than that of the personal law of the parties that the question is to be approached. (*Broadway and D. Abdul Qadir, JJ.*). HAR BHAGWAN *v.* HUKAM SINGH. **68 I.C. 769=4 L.L.J. 245=3 Lah. 242=A.I.R. 1922 Lah. 243.**

———The rule of public policy which excludes a murderer from the estate of the murdered person is applicable to Hindus also. The exclusion extends both to the legal and beneficial estate: 27 Mad. 591, *Dist. from.* (*Macleod, C. J. and Fawcett, J.*). GIRI MALLAPPA CHANNAPPA *v.* KENCHAVA SAN YELLAPPA. **61 I.C. 294=45 Bom. 768=23 Bom. L.R. 213=A.I.R. 1921 Bom. 270.**

—Succession—Female heirs.

———The title to an absolute occupancy field acquired by a mother by prescription after her son's death is a limited title of a female heir, and on her death the person entitled to inherit the property would be the reversionary heir of the son. (*Kolhatkar, A.J.C.*). MAHEPAT *v.* MUKUND RAO. **114 I.C. 454=A.I.R. 1928 Nag. 329.**

———Berar—Daughter-in-law inherits in preference to paternal cousins, of her husband: 4 Bom. 219, *Foll.* (*Mitchell, A.J.C.*). GANPAT *v.* BUDHMUL. **98 I.C. 1062=A. I. R. 1927 Nag. 86.**

———*Obiter.*—A step-mother cannot inherit from her deceased step-son: 28 All. 187; 16 All. 221; 37 Mad. 286, *Foll.* (*Sulaiman, J.*). RAM PRASAD *v.* BABU LAL SONAR. **86 I.C. 849=6 L.R.A. Civ. 182=A.I.R. 1925 All. 417.**

———According to the Hindu Law of the Bombay School, a daughter's daughter inherits as a bhinna gotra sapinda after all the sagotra sapindas are over and not as a sagotra sapinda. (*Kinkhede, A. J. C.*). GHUNAJI *v.* TULSI. **82 I.C. 457=20 N.L.R. 182=A.I.R. 1925 Nag. 98.**

———A re-married Hindu widow is not entitled to inherit as a gotraja sapinda to the relations of her first husband, and her husband's father's sister is a preferential heir to her: 29 Bom. 91 (F.B.), *Dist.* (*Macleod, C. J. and Shah, J.*). PRANJIVAN HARGOVAN *v.* BAI BHIKHI. **63 I.C. 947=45 Bom. 1247=23 Bom. L.R. 553=A.I.R. 1921 Bom. 57.**

———A paternal uncle's daughter is not a gotraja sapinda—Hindu Law is opposed to succession of females and therefore female heirs recognised by law are only exceptions to the general rule. (*Heaton and Crump, JJ.*). KRISHNA BAI GOVIND JOSHI *v.* KESHAV GAJANAN POTBHRE. **59 I.C. 511=22 Bom. L. R. 1162.**

—Succession—Half-blood.

———Mitakshara—Preference of whole blood to half-blood is restricted to cases of brothers and their sons only: 24 Bom. 317, *Foll.*; A. I. R. 1926 Nag. 218, *Diss. from*; A. I. R. 1915 P. C. 81, *Expl.* (*Hallifax and Ghulam Mohiuddin, A. J. Cs.*). LALDAS *v.* GURUDAS. **113 I.C. 893=11 N.L.J. 169=24 N.L.R. 172=A.I.R. 1929 Nag. 2.**

———*Distinction between full and half blood should be restricted to cases mentioned in texts.*

Where the text writers meant that there should be a difference between the relations of full blood and half blood, that was specially enumerated. Where there is no such distinction made in the text, the words should be construed as including both full blood and half-blood: 32 Cal. 261 and 40 Cal. 82, *Ref.* (*B. B. Ghose and Cammiade, JJ.*). JATINDRA NATH *v.* NAGENDRA NATH RAY. **108 I.C. 246=55 Cal. 1153=47 C.L.J. 265=32 C.W.N. 548=A. I. R. 1928 Cal. 289.**

HINDU LAW—Succession—Heritable property.

———The distinction between the whole blood and the half-blood observed in the case of brothers and their sons according to Hindu Law does not extend to the uncles of the deceased, that is, the sons of his grandfather, in the Bombay Presidency: *Case-law considered*, 37 All. 545 (P.C.), *Expl.*; 24 Bom. 317, *Foll.* (*Shah, Fawcett and Madgavkar, JJ.*). SHANKAR BAJIJOSHI *v.* KASHINATH GANESH. **100 I. C. 430=51 Bom. 194=29 Bom. L.R. 1=38 M.L.T. 167=A.I.R. 1927 Bom. 97.**

———Whole and half-blood—Preference extends to sapindas other than brothers and their sons: 24 Bom. 317, *Dissented*; 37 All. 545 (*P.C.*), *Foll.* (*Kotwal, A. J. C.*). NARAIN *v.* HAMRAJI, **91 I.C. 989=21 N.L.R. 163=A.I.R. 1926 Nag. 218.**

——— Sapindas up to 7th degree—Whole blood excludes half-blood if otherwise equal in degree—Beyond 7th degree no difference exists between them: 24 Bom. 317 and 37 All. 545 (P.C.), *Foll.* (*Hallifax, A.J.C.*). ATMARAM *v.* PANDU. **89 I.C. 178=A.I.R. 1926 Nag. 154.**

———*Consanguine brother preferred to uterine brother—The word "Sodara" used in the Mitakshara, does not mean uterine brothers.*

Hindu Law contemplated generally no competition between consanguine and uterine brothers, though it propounds settlement of rights between full and consanguine brothers. Under the Hindu Law a consanguine brother is entitled to succeed in preference to a uterine brother. The word 'Sodara' used in the Mitakshara is not indicative of the brothers born of the same mother, but of different fathers. In the Mitakshara, Chap. II, S. IV, paragraphs 5 and 6 (Stokes' Hindu Law Book, page 445) where the subject of the brothers' right to inheritance is dealt with, nothing beyond the difference between brothers of the whole blood and brothers of the half-blood is indicated. The brothers there referred to are all sons of the same father.

The sons of the same mother by different fathers though born of the same womb belong to a different family and as such are entirely outside the category of the class of heirs under the heading of "brothers." (*Macleod, C.J. and Shah J.*). EKOBA PARASHRAM *v.* KASHIRAM TOTARAM. **66 I. C. 341=24 Bom. L.R. 229=46 Bom. 716=A. I. R. 1922 Bom. 27.**

—Succession—Heritable property.

——— *Right to place platforms on portions of ghat to help pilgrims and receive remuneration is inheritable property.*

Right to place platforms on portions of the ghat for the purpose of helping pilgrims who come to Benares to bathe in the Ganges, and to enable their owner to obtain remuneration for services which are rendered to the brothers cannot be said to be a mere right to obtain alms. It is a right to property and is a right which is heritable under the Hindu Law: 39 All. 196 and 10 Cal. 73, *Ref.*; 18 A.L.J. 983, *Dist.* (*Mears, C. J. and Banerji, J.*). SURAJ PRASAD *v.* GANESH RAM. **63 I. C. 94=43 All. 581=19 A.L.J. 316=A.I.R. 1921 All. 235.**

———*Copyright can be inherited.*

Whether a right of survivorship would or would not apply to a copyright in books published by one co-parcener, the right can be inherited by the heirs of the author who owned the copyright. (*Banerji and Gokul Prasad, JJ.*). GHAFOOR BAKSH *v.* JWALA PRASAD. **61 I.C. 394=43 All. 412=19 A.L.J. 180=A.I.R. 1921 All. 95.**

HINDU LAW—Succession—Illegitimacy.

—Succession—Illegitimacy.

———*Meaning of, in Western India.*

The term dasiputra no doubt originally meant sons of a female slave, but in Western India, at all events, it has come to mean sons by a kept mistress of one of the lower castes. (*Sir George Lowndes.*) RAOJI *v.* KUNJALAL HIRALAL AGARWALA.

123 I.C. 709=34 C.W.N. 627=51 C.L.J. 434=A.I.R. 1930 P.C. 163 (P.C.).

—Succession—Illegitimate children.

———"If a son born of a Sudra wife is not entitled to more than one-tenth share of his father's inheritance, much less can he (as nephew) be held entitled to inherit a larger share of the inheritance of his uncle". (*Patkar and Shingne, JJ.*). NATHA *v.* CHHOTALAL. **32 Bom. L.R. 1348.**

———An illegitimate son of a sudra is entitled to a certain share in the inheritance from his father. But if there is no authority to show that the principle can be extended to the case of other illegitimate persons claiming succession to the property of their relations other than the father. (*Graham and Mitter, JJ.*). GOPAL JANA *v.* BROKA MOHAN SWAMI. **34 C.W.N. 944.**

———*No right to collateral succession.*

The illegitimate son of a Sudra does not acquire by birth an interest in the property of his putative father's father and therefore cannot get the father's share if the putative father dies undivided from his brother or brother's sons or other collaterals: 7 Mad. 407; 8 Mad. 557; 25 Mad 429; 27 Mad. 32; 24 M.L.J. 271; A.I.R. 1928 Mad. 127 and 10 Mad. 334, *Affirmed*; 38 Mad. 1144 and 39 Mad. 136, *Dist.*; 12 Mad. 401; 15 Mad. 307; 23 Mad. 16; 25 Mad. 519; 41 Mad. 44 and *other cases discussed.* (*Devadoss, and Walsh, JJ.*). RATHNASABAPATHY ODAYAR *v.* GOPALA ODAYAR. **121 I.C. 126=29 M.L.W. 696=A.I.R. 1929 Mad. 545=56 M.L.J. 673.**

———Illegitimate sons are not entitled to any share in the family property of their deceased father when there are collaterals in existence: 27 Mad. 32, *Foll.*; 18 Cal. 151, *Dist.* (*Phillips, Offg. C.J. and Ananthakrishna Aiyar, J.*). NAGARATHNAMMAL *v.* CHINNU SAH. **107 I.C. 419=1927 M.W.N. 750=A.I.R. 1928 Mad. 127=53 M.L.J. 861.**

———*An illegitimate son cannot succeed a collateral as an heir.*

There is distinct authority for holding that an illegitimate son is not a collateral heir. By an exceptional rule he takes his father's estate by the right of inheritance and also succeeds by right of survivorship. But there is no authority for holding that he succeeds to the estate of collaterals as an heir: 21 All. 99, *Foll.* (*Stuart, C.J. and Raza, J.*). RAJ FATEH SINGH *v.* BALDEO SINGH.

109 I. C. 310=3 Luck. 416=5 O.W.N. 143=A. I. R. 1928 Oudh 238.

———*Dasiputra—Who is.*

The fact that the husband was indifferent to his wife living with a stranger, does not conclusively show that the husband had divorced her. Consequently the son born of the stranger is by adulterous intercourse and not a dasiputra of the stranger: A.I.R. 1923 P.C. 8 and 40 Bom. 369, *Dist.* (*Macleod, C.J. and Coyajee, J.*). VITHABAI *v.* PANDE.

96 I.C. 358=28 Bom. L.R. 595=A.I.R. 1926 Bom. 301.

———*Illegitimate son is not an heir to collaterals of his putative father.*

Though the illegitimate son of a Sudra ranks as a sapinda of his putative father, and the latter is entitled to succeed to his property if he died without issue, he has never been regarded by any of the Courts in India as an heir to his putative father's collateral relations: 41 Mad. 44 (F.B.,) *Ref.* (*Spencer and Kumaraswami Sastri, JJ.*). AYISWARYANANDAJI *v.* SIVAJI RAJA SAHEB.

92 I. C. 928=49 Mad. 116=A.I.R. 1926 Mad. 84=49 M.L.J. 568.

HINDU LAW — Succession — Illegitimate children.

———*No sapindaship exists between the offspring of an illegitimate son and those of a legitimate son.*

Where a common ancestor has several branches descendants and the descendants of one of the branches trace their connection with the common ancestor, through a person who was an illegitimate son, the members of the other branches cannot claim to be sapindas with them. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.

93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

———*Illegitimate son of Sudra takes half of what he would have taken if he were legitimate—Competition between adopted son and illegitimate son.*

An illegitimate son of Sudra takes in the estate of his deceased father half of that which he would have taken had be been legitimate, not a half share which the other participants take: A.I.R. 1923 P.C. 8 (P.C.), *Foll.*

Per *Kumaraswami Sastri, J.*—In cases of competition between an adopted son and an illegitimate son of a Sudra, it would be unreasonable and against all precedents in computing the shares, to treat the illegitimate sons as legitimate, presume that the adoption was after the birth of the illegitimate son, add to it the consequence that the adoption is invalid and hold that the illegitimate son could therefore get the whole property and then it should be divided by half, so as to give the illegitimate son and the adopted son equal shares. The proper course is to assume the adopted son to be in the same position as a natural born son, imagine the illegitimate sons to be legitimate sons, see what shares they would get on that footing, and give the illegitimate sons one half of it. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.

93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

———The doctrine of representation applies to illegitimate sons as well as to legitimate sons. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.

93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

———Illegitimate sons by a Mohammadan mistress is not an heir: 27 Mad. 13, *Ref.* (*Macleod, C.J. and Crump, J.*). SITARAM PANDURANG *v.* GANPAT DAULAT RAM. **73 I. C. 412=25 Bom. L. R. 429=A.I.R. 1923 Bom. 384.**

———*Sudras—Illegitimate son is co-parcener with his father.*

The illegitimate sons in three High classes never take by inheritance but are only entitled to maintenance from the estate of the father. The illegitimate son of the Sudra might however under certain circumstances inherit either jointly or severally. Plaintiff an illegitimate son of one *R*, sued defendant on a bond,

Held, if *R* was not a Sudra even the succession certificate would not enable the plaintiff to sue but if he was a Sudra the plaintiff would be a co-parcener with his father: 4 Bom. 87; 11 Cal. 702 and 18 Cal. 151, *Foll.* (*Prideaux, A.J.C.*). GANULAL *v.* KASHIRAM. **68 I.C. 417=A.I.R. 1923 Nag. 67.**

———Dasiputra *must be the issue of a permanent mistress.*

HINDU LAW — Succession — Illegitimate children.

Where the defendants alleged that they were the descendants of one *D* who was the *Dasiputra* of one *J*, and the evidence showed that they had used the same family surname as *J*, had been living in the same family *wada* and had paid assessment direct to Government and that in a letter written by the father of the plaintiffs, to defendant, such terms were used as would ordinarily be used to a relation and not to a stranger,

Held that as assuming *D* was the illegitimate son of *J*, it does not follow that *D* was the issue of a permanent mistress. (*Macleod, C.J. and Coyajee, J.*). GANGARAM B. MAHADIK *v.* BAPUSAHEB *alias* KRISHNARAO D. MAHADIK. **84 I.C. 508= 24 Bom. L.R. 826= 46 Bom. 1022= A.I.R. 1922 Bom. 354.**

———Under Hindu Law, because the illegitimate son of a Sudra cannot inherit the separate property of his father's legitimate son, as a brother, a son of a legitimate son of a Sudra cannot inherit the property of an illegitimate son of his ancestor. (*Macleod, C.J. and Shah, J.*). ZIPRU CHINDHU SHIMPI *v.* BOMTYA DAGADU KUMBHAR. **64 I.C. 975=46 Bom. 424=23 Bom. L.R. 1195= A.I.R. 1922 Bom. 176.**

———*Son born of adulterous intercourse not entitled to succeed.*

Where the husband of a Sudra woman left the village, throwing her on her own resources but had not abandoned her, that six months after she went to live with another man whom she re-married according to *Churi* form according to caste usage, that when her husband returned, he did not take steps to take her back and that a son was born to her from her second husband about 2 years after her husband's return,

Held, that the son so born was not entitled to succeed to the property of the second husband of his mother. There having been no abandonment by the 1st husband the *Churi* marriage was invalid. The connection between the sudra woman and her second husband was at its commencement adulterous and the son born to them would not be the heir of the second husband of his mother if he was conceived during that adulterous connection. If the connection had come to an end, *i.e.*, if the marriage tie between her first husband and herself had been dissolved before the son was conceived he though an illegitimate son, would be able to inherit. He is however entitled to receive suitable maintenance out of his father's estate: 1 Bom. 97; 33 Mad. 366; 17 Bom. L.R. 584, *Ref.* (*Dhobley, A.J.C.*). SHEONANDAN SINGH *v.* PRANSINGH. **64 I. C. 897=18 N.L.R. 115= A. I. R. 1922 Nag. 244.**

———Illegitimate daughter of Sudra succeeds to mother's estate in absence of nearer heirs. (*Macleod, C.J. and Fawcett, J.*). DUNDAPPA BASAPPA *v.* BHIMAVA. **59 I.C. 561=45 Bom. 557= A.I.R. 1921 Bom. 137.**

———"*Dasi*", *meaning of—Son of exclusive and permanent concubine entitled to succeed.*

Under the Bengal School of Hindu Law, correctly interpreted, an illegitimate son of a Sudra is entitled as a Dasiputra to a share of the inheritance, provided that his mother was in the continuous and exclusive keeping of his father, and he was not the fruit of an adulterous or an incestuous intercourse. This right is not subject either to the condition that his mother was a slave woman in thtee chnical sense of the term or to the condition that a marriage could have taken place between

HINDU LAW—Succession—Mother.

his father and his mother: 1 Cal. 1 and 19 Cal. 91, *Overruled.*

The term '*Dasi*' is not exclusively applicable to a female slave, but includes a Sudra woman kept as concubine. *Dasyadi sudra putra* in *Dayabhaga*, Chapter 9, para 29, includes the son of a *dasa* or the like; it is not restricted only to the son of a *dasi* or the *dasi* (slave woman or wife of a *dasa*); also the term *apatinita* means, not 'a maiden' but 'not married to sudra to whom she bears a son.'

Per *Chatterjea J.*—Having regard to the fact that more than a century the right of an illegitimate son of a Sudra by a kept woman has not been recognized in Bengal, and having regard to the opinions of writers on Hindu Law in Bengal, I think we should not revive such a right which is opposed to the usage and sentiments of the people of Bengal, even if it is deducible from the texts of *Jimutavahana* or any other authority (*Mookerjee, A.C.J., Fletcher, Chatterjea, Teunon and Richardson, JJ.*). RAJANI NATH *v.* NITAI CHANDRA. **63 I.C. 50=48 Cal. 643=25 C. W N. 433= A.I R 1921 Cal. 820 (F.B.).**

———Illegitimate son of Sudra can succeed only on proving that connection between parents was not adulterous: 39 M. 136 (F.B.). *Foll.* (*Kumaraswami Sastri and Odgers, JJ.*). PICHAI PILLAI *v.* GOPAL PILLAI. **70 I.C. 122=15 M L.W. 15= A.I.R. 1921 Mad. 647=42 M.L.J. 276.**

———*Onus of proving that they are the offsprings of incestuous or adulterous connection is on person setting up the contention.*

Whether the existence of the connection of an adulterous nature between the parents, is called (1) a condition for an illegitimate son (not *prima facie* an heir) claiming the inheritance or (2) a limitation upon the right of an illegitimate son (*prima facie* an heir), to inherit, the burden of proving, that the connection between the mother and the father of the illegitimate child involved criminal offence and grave misconduct of adultery is on the person who sets up the contention.

There is no question of incestuous connection where the parties belong to two well defined distinct sub-castes. (*Sadasiva Aiyar and Napier, JJ.*). PALANI AMMAL *v.* KUPPUSAMI GOUNDAN. **62 I.C. 769=13 M.L.W. 511= A.I.R. 1921 Mad. 291.**

———*Father—Illegitimate son is entitled to half the share of a legitimate son.*

The illegitimate son of a Sudra is a member of the joint family and is entitled to maintenance. His right in the co-parcenary is an inchoate right during the father's lifetime, but ripens into a legal right on the death of the father. The fact that the illegitimate son cannot demand a partition in his father's lifetime, any more than the son of the holder of an impartible zemindari, does not prevent his being a member of the joint family with rights specially defined by the law. On the father's death, the son is entitled to a share in the joint family property equal to half that of a legitimate son. *Case-law discussed.* (*Mitra, A.J.C.*). MAROTI *v.* TUKARAM. **76 I.C. 934=19 N.L.R. 99= A.I.R. 1921 Nag. 138.**

—Succession—Mother.

———The adoptive mother inherits the property from the adopted son in preference to her co-widow: 23 Mad. 1 (P.C.), *Foll.* (*Macnair, Offg. C. J. and Staples, A.J.C.*). YAMUNABAI *v.* JAMUNABAI. **12 N.L.J. 75=26 N.L.R. 39= A.I.R. 1929 Nag. 211.**

———Mother is entitled to an equal share with each of her sons: A.I.R. 1926 Nag. 291, *Foll.* (*Hallifax, A.J.C.*). HONIA MALI *v.* CHINDHIA. **107 I. C. 528 (Nag.).**

HINDU LAW—Succession—Mother.

——Re-married widow can succeed to her son by first husband where the son dies after re-marriage. 11 N.L.R. 116, *Ref.* (*Kinkhede, A.J.C.*). HUSSAINBHAI BOHRA *v.* BHANSILAL. **79 I.C. 48= A.I.R. 1924 Nag. 338.**

——The preponderance of authorities is in favour of the mother, not the father, inheriting the son's property under the Mitakshara Law. (*Ashworth, J.C.*). SUBEDAR SINGH *v.* BHIKAM SINGH. **69 I.C. 649=9 O.L.J 435=26 O.C. 52= A.I.R. 1922 Oudh 277.**

—Succession—Non-heirs.

——*Dayabhaga School—Daughter's daughter's son is not an heir.*

A daughter's daughter's son cannot be an heir under the Dayabhaga School of Hindu Law and cannot as such be a reversionary heir of an agnatic relation of his mother's mother's father. A.I.R. 1926 Cal. 460, *Foll.* (*B.B. Ghose and Roy, JJ.*). DINTARINI DEBI *v.* AMBICA PRASAD SANYAL. **105 I.C. 841=A.I.R. 1927 Cal. 970.**

——Maternal great-great-grandfather's daughter's son's son is no heir under Dayabagha. (*Greaves and Mukerji, JJ.*). SHAMBO CHANDRA *v.* KARTICK CHANDER. **97 I.C. 845=54 Cal. 171= 44 C.L.J. 470=A.I.R. 1927 Cal. 11.**

——A great-grandson of the sister of the father of the deceased is not entitled to inherit as *bhinna gotra sapinda* of the deceased. (*Ryves and Gokul Prasad, JJ.*). SHEO NANDAN *v.* MUNNI. **71 I.C. 1013=21 A.L.J. 288= 4 L.R.A. Civ. 155=A.I.R. 1923 All. 398.**

——In the absence of any custom a wife's sister can never be an heir under the Hindu Law. (*Chatterjee and Pearson, JJ.*). NEARAM KACHARI *v.* ARDARAM KACHARI. **64 I.C. 145= 35 C.L.J. 34=A.I.R. 1921 Cal. 558.**

——Mitakshara—Paternal grand aunt's great-grandson is not a heir. 6 Cal. 119 (F.B.) and 22 Cal. 339, *Foll.*; 37 All. 604 (P.C.), *Dist.*; 44 Mad. 114, *Ref.* (*Sadasiva Aiyar and Napier, JJ*). CHINNA PICHU AIYANGAR *v.* PADMANABHA IYENGAR. **59 I.C. 690=44 Mad. 121=A.I.R. 1921 Mad. 671.**

——Under the Hindu Law, a sister's daughter is not a heir. 7 N.L.R. 116, *Foll.* (*Macnair, A.J.C.*). SAROO *v.* BANI. **62 I.C. 257=4 N.L.J. 7= A.I.R. 1921 Nag. 6.**

—Succession—Per capita and per stirpes.

——Under Hindu Law in Bombay Presidency the widows of gotraja sapindas succeeding as heirs take in their interest as gotraja sapindas and therefore inherit *per capita* and not *per stirpes*. 17 Bom. 303; 30 Bom. 431 and *other cases referred*. (*Marten, C.J. and Patkar, J.*). KALLAVA PARBHU DESAI *v.* VITHABAI APPU DESAI. **32 Bom. L.R. 995=A.I.R. 1930 Bom. 396.**

——The right of divided sons, grandsons and great-grandsons of the last male owner to succeed to his divided property is the same as in the case of undivided family property, *i.e.*, *per stirpes*. (*Macleod, C. J. and Crump, J.*). GANGADHAR NARAYAN *v.* EBRAHIM BAVA. **72 I.C. 307= 25 Bom. L.R. 197=47 Bom. 556= A. I. R. 1923 Bom. 265.**

——Father's brother's sons take *per capita*. 17 Bom. 303, *Rel. on.* (*Shah and Crump, JJ.*). NARSAPPA *v.* BHARMAPPA. **69 I.C. 251= 45 Bom. 296=A.I.R. 1921 Bom. 408.**

—Succession—Primogeniture.

——*Existence of custom whereby estate descends to single heir does not raise presumption of primogeniture.*

HINDU LAW—Succession—Rules of—Alteration.

The fact that there is a custom in family whereby the estate descends to a single heir does not raise necessarily a presumption that the rule of primogeniture applies to the family. If the heir according to lineal primogeniture is more remote in degree from the ancestor than the other persons who may be collaterals coming within the line of heirship then unless there is proof to the contrary nearness of the degree will prevail over directness of line. (*Kanhaiya Lal and Mukerji, JJ.*). HARBAKSH SINGH *v.* DAL BAHADUR SINGH. **88 I.C. 255=47 All. 186=22 A.L.J. 1079= A.I.R. 1925 All. 155.**

—Succession—Pupils.

——*Disciples of yati are entitled to succeed.*

On the death of a yati who can hold private property, his disciples are entitled to his moveable as well as immovable property, in the absence of his preceptor. 30 O.C. 281, *Ref.* (*Raza and Hasan, JJ.*). PARBHUDAYAL *v.* LALTA DAS. **92 I.C. 764= 29 O.C 127=13 O L.J. 384=A.I.R. 1926 Oudh 293.**

——The "Sishya" or disciple of a Sudra inherits his property and prevents an escheat to the Government. The text making a disciple preceptor and fellow pupil heirs are not obsolete. (*Ayling and Odgers, JJ.*). SAMBASIVA PILLAI *v.* SECY. OF STATE. **63 I. C. 659=44 Mad. 704= 13 M.L.W. 638=1921 M.W.N. 481= A.I.R. 1921 Mad. 537=41 M L.J. 109.**

—Succession—Rules of—Agnates.

——Under Mitakshara Law as applied in Madras, the agnates are to be preferred to the sister's sons. 38 Mad. 45, *Ref.* (*Phillips and Venkatasubba Rao, JJ.*). MURARI RAO *v.* BALVANTH DIKSHIT. **76 I.C. 342=46 Mad. 955=18 M L.W. 363= 1923 M.W.N. 761=A.I.R. 1924 Mad. 98= 45 M L.J. 309.**

—Succession—Rules of—Alteration.

——Agreement attempting for all times to alter the Hindu Law of succession is unenforceable as it is not competent for owners of property to enter into it. (*Das and Adami, JJ.*). PAN KUER *v.* RAM NARAIN. **117 I.C. 33=10 P.L.T. 217= A.I.R 1929 Pat. 353.**

——The person is not at liberty to dictate the mode of succession to the property when such mode is opposed to the ordinary law. (*Kanhaiya Lal and Mukerjee, JJ.*). HARBAKSH SINGH *v.* DAL BAHADUR SINGH. **88 I.C. 255=47 All. 186= 22 A.L.J. 1079=A.I.R. 1925 All. 155.**

——*Deed—Construction—Provision to alter rules of succession cannot be enforced—Perpetuities.*

Where by Clause (*a*) of a deed, a right of pre-emption was created among the parties to the partition and by Clause (*b*) if any co-sharer dies *lawalad*, the property left by him was to be divided amongst his near co-sharers according to their shares, and by Clause (*c*) no co-sharer could have the right of creating title in favour of a daughter's son in his divided share directly or indirectly.

Held, paragraphs (*b*) and (*c*) of the deed could not be looked upon as creating a legal contractual relationship—between the parties to the deed. Paragraph (*a*) undoubtedly creates a legal contractual relationship, but paragraphs (*b*) and (*c*) go much further. The intention there is to alter the rules of succession and to restrain the right of transfer. The attempt to alter the rules of succession is obnoxious in view of the well-known Tagore case, and the restrictions laid down in paragraphs (*b*) and (*c*) cannot be enforced. (*Stuart, J.*). MT. MAHADAI KUAR *v.* BAGESHAR RAI. **69 I. C. 777=A.I.R. 1922 All. 293.**

HINDU LAW—Succession—Rules of—Collateral succession.

—Succession—Rules of—Collateral succession.

———In deciding succession among gotraja sapindas, contention that seven degrees must be exhausted in one line before going to next is unsupportable. The construction is against the whole scheme of collateral succession and would postpone the heirs specifically mentioned in the Mitakshara as entitled to preference. (*Case-law referred.*) (*Kumaraswami Sastri, J.*). V. V. SUBRAMIAH *v.* NATARAJA PILLAI. **53 Mad. 61=31 M.L.W. 617= A.I.R. 1930 Mad. 534=58 M.L.J. 468.**

———In cases of collateral succession after the death of a Hindu widow the property inherited is the separate property of all the reversioners and does not go to the head of the family only. (*Sulaiman and Kanhaiya Lal, JJ.*). SHIB DEO MISRA *v.* RAM PRASAD. **87 I.C. 938=46 All. 637= 22 A.L.J. 690=A.I.R. 1925 All. 79.**

—Succession—Rules of—Counting of degrees.

———According to the view of the Allahabad High Court the counting of degrees is from the common ancestor. 32 All. 594; A.I.R. 1914 P.C. 1, *Rel. on.* (*Sulaiman and Pullan, JJ.*). PHULCHAND *v.* GOBARDHAN DAS. **119 I.C. 855= 1929 A.L.J. 970=A.I.R. 1929 All. 739.**

———The counting for fixing on heritable bandhus should be not from the propositus but from the common ancestor. 42 Cal. 384 (P.C.); 48 I.A. 86 (P.C.), *Foll.* (*Mukerji and Dalal, JJ.*). RAM SIA *v.* BUA. **84 I.C. 360=22 A.L.J. 861= 5 L.R.A. Civ. 715=47 All. 10= A.I.R. 1924 All. 790.**

—Succession—Rules of—Dayabhaga and Mitakshara.

———*Dayabhaga and Mitakshara are radically distinct.*

The scheme of the Dayabhaga is radically distinct from and to some extent incompatible with the scheme of the Mitakshara, and the one cannot well be made to supplement the other so far as the law of inheritance is concerned. 16 C.L.J. 14, *Rel. on.* (*Greaves and Mukerji, JJ.*). SHAMBO CHANDRA DE *v.* KARTICK CHUNDER. **97 I.C. 845= 54 Cal. 171=44 C.L.J. 470=A.I.R. 1927 Cal. 11.**

—Succession—Rules of—Equitable estate.

———Theory of legal and equitable estates is no part of Hindu Law. (*Lord Phillimore.*) KENCHAVA SANYELLAPPA HOSMAN *v.* GIRIMALLAPPA CHANNAPPA SOMASAGA. **82 I.C. 966= 26 Bom. L.R. 779=20 M.L.W. 417= 48 Bom. 569=51 I.A. 368=22 A.L.J. 962= 5 L.R.P.C. 182=40 C.L.J. 447= 29 C.W.N. 271=1924 M W N. 719= 35 Mad. 241=3 Pat. L.R. 9= A.I.R. 1924 P.C. 209=47 M.L.J. 401 (P.C).**

—Succession—Rules of—Escheat.

———*Escheat results only in absence of blood relation.*

Before the Crown gets the property by escheat it must be shown that the propositus died without any relations or any heirs at law. 12 M.I.A. 448 (P.C.), *Ref.*

Blood relations would at any rate succeed to the exclusion of the Crown. A.I.R. 1921 Bom. 138, *Rel. on.* (*Fawcett and Patkar, JJ.*). NARAYAN PUNDLIK *v.* LAKSHMAN DAJI. **106 I.C. 87= 51 Bom. 784=29 Bom. L.R. 930= A.I.R. 1927 Bom. 456.**

—Succession—Rules of—Husband and wife.

———*Husband's collaterals become wife's collaterals.*

A female by her marriage leaves the gotra of her father and enters the gotra of her husband and becomes the gotraja sapinda of his gotraja sapindas, *i.e.*, the collaterals of her husband become her own collaterals. (*Kinkhede, A.J.C.*). BHAGWANDAS *v.* GAJADHAR. **98 I.C. 669= 23 N.L.R. 9=9 N.L.J. 221=A.I.R. 1927 Nag. 68.**

HINDU LAW—Succession—Rules of—Sind.

———*Collateral of husband is collateral of wife.*

A collateral of the husband of a widow must be deemed, in Hindu Law, to be also her own collateral. In Hindu Law the husband and wife are treated as consisting of one body and on that theory the collateral heirs of the husband would also be the collateral heirs of the widow. S. D. 7 of 1926, *Rel. on.* (*Gokaran Nath Misra, J.*). JODHA *v.* DARBARI LAL. **104 I.C. 193=2 Luck. 612= 1 L.C. 285=A.I.R. 1927 Oudh 339.**

—Succession—Rules of—Maintenance.

———*Person inheriting bound to provide for maintenance, etc., which the last holder was legally or morally bound to provide for.*

Where a person takes a property either by inheritance or survivorship he is legally bound to maintain those whose maintenance was a charge upon it in the hands of the last holder. A female heir is under exactly the same obligation to maintain the members of a family as a male heir would be by virtue of succeeding to the same estate. The obligation extends even to the King when he takes the estate by escheat or by forfeiture. The duty of the person who inherits is to provide for the maintenance, education, marriages, sradhs and other usual religious expenses of the co-parceners and of such members of their family as they are, or were, when alive, legally or morally bound to maintain. (*Adami and Sen, JJ.*). BAIJNATH RAI *v.* MANGLA PRASAD NARAYAN SAHI. **90 I.C. 732=5 Pat. 350=6 P.L.T. 731= 1925 P.H.C.C. 271=A.I.R. 1926 Pat. 1.**

—Succession—Rules of—Non-heirs.

———There is no authority in the Hindu Law by which the property inherited by a widow on the death of her first husband would devolve on her second husband. the question whether she has married again in accordance with the custom of her caste being immaterial. (*Pullan, A.J.C.*). GANGA *v.* PANCHAN. **80 I.C. 591=27 O.C. 383= A.I.R. 1925 Oudh 97.**

—Succession—Rules of—Representation.

———*A nephew excludes a grand-nephew.*

There is no principle of representation among brother's son and brother's grandson. A nephew is therefore entitled to succeed in preference to a grand-nephew. 15 W.R.C.R. 482; 16 Mad. 11 and 30 Mad. 348, *Rel. on*; A.I.R. 1915 P.C. 70 (P.C.), *Expl.* (*Sulaiman, Ag. C.J. and Weir, J.*). SHER SINGH *v.* BALDEO SINGH. **110 I.C. 712= 50 All. 904=26 A.L.J. 1309=A.I.R. 1928 All. 612.**

———Succession—Mayukha system—Sons of predeceased brothers take along with surviving brothers. (*Marten and Fawcett, JJ.*). KESARLAL GIRDHARLAL *v.* JAGUBHAI HIRALAL. **94 I.C. 686=49 Bom. 282=27 Bom. L.R. 226= A.I.R. 1925 Bom. 406.**

—Succession—Rules of—Reversion.

———Where a widow gets property on partition, she would have a Hindu widow's estate which would go to the line of her husband on her death. 34 All. 234 (P.C.), *Foll.* (*Sulaiman and Banerji, JJ.*). MUNNI LAL *v.* MT. PHULA. **103 I.C. 322= 25 A.L.J. 772=A.I.R. 1927 All. 679.**

—Succession—Rules of—Sind.

———Where a rule of succession among Hindus has been declared to be of general authority in the Bombay Presidency it should be held to be the

HINDU LAW—Succession—Rules of—Sind.

rule also in Sind, except where an invariable and ancient special usage is alleged and proved. 2 S.L.R. 59, *Foll.* (*Kennedy, J. C. and Rupchand Bilaram, A.J.C.*). BODOMAL *v.* MT. KISHNIIBAI.
93 I.C. 844=20 S.L.R. 150=A.I.R. 1926 Sind 231.

———Where a rule of succession is of general authority in Bombay Presidency it is held to apply also in Sind, unless the person alleging to the contrary sets up an invariable and ancient special usage. (*Fawcett, J.C. and Kemp, A. J. C.*). DOWLAT RAM *v.* NARAYAN DAS. **60 I. C. 929= 14 S. L. R. 231.**

—Succession—Rules of—Spiritual benefit.

———*Test of spiritual benefit, when applied.*

According to the Mitakshara and the Viramitrodaya, in doubtful cases the rule as to how it should be determined that a person has more blood particles in common with the propositus is that it should be decided in accordance with the efficacy of oblations offered to the ancestors. (*B. B. Ghose and Cammiade, JJ.*). JATINDRA NATH *v.* NAGENDRA NATH. **108 I. C. 246= 55 Cal. 1153=47 C. L. J. 265=32 C.W.N. 548= A. I. R. 1928 Cal. 289.**

———The doctrine of spiritual benefit does not play any part in the Mithila system of Hindu Law. (*Das and Allanson, JJ.*). RAJRANI DEBYA *v.* GOMTI DEBYA. **111 I.C. 673=7 Pat. 820= 9 P. L.T. 456=A.I.R. 1928 Pat. 466.**

———*Succession in Dayabhaga School is based on spiritual benefit.*

The foundation of the theory of inheritance as propounded in the Dayabhaga proceeds on the doctrine that only those can inherit who can confer spiritual benefit on the owner whose property they claim to inherit and therefore, unless a person is in a position to confer spiritual benefit on the owner of the property whose property he claims he is not and cannot be an heir of such a person and cannot therefore claim to inherit such property. A daughter's son's son cannot inherit the property of his father's maternal grandfather. 13 W. R. 49 (F. B.) and 9 Cal. 563, *Foll.* (*Greaves and B. B. Ghose, JJ.*). NEPAL DAS *v.* PROBHAS CHANDRA. **90 I.C. 499=42 C.L.J. 221=30 C.W.N. 357= A. I. R. 1926 Cal. 460.**

———The preferable right to perform the *Shradh* (funeral oblation to the last owner) is a primary fact to be taken into consideration in determining the rule which is to govern the right of succession. (*Prideaux, A.J.C.*). PANDU *v.* ABDUL KADAR.
65 I. C. 693=3 N. L.J. 138=A.I.R. 1922 Nag. 109.

—Succession—Rules of—Sudras.

———In Madras Presidency among Sudras an illegitimate son takes equally with a lawfully married widow. (*Sir Lawrence Jenkins.*) KAMALAMMAL *v.* VISVANATHASWAMI. **71 I.C. 643= 50 I.A. 32=37 C.L.J. 363=46 Mad. 167= 25 Bom. L. R 577=27 C.W.N. 1021= 17 M. L. W. 298=32 M.L.T. 48= A.I.R. 1923 P.C. 8=44 M.L.J. 465 (P.C.).**

—Succession—Rules of—Tenancy-in-common.

———Two separated co-parceners succeeding to the estate of a third separated co-parcener inherit as tenants-in-common. (*Macleod, C. J. and Crump, J.*). JADABAI LAKHICHAND *v.* MULTANCHAND HARAKHCHAND. **87 I.C. 936=27 Bom. L.R. 426= A. I. R. 1925 Bom. 350.**

—Succession—Samanodakas.

———Under the Mitakshara the samanodakas extend beyond the fourteenth degree from the common ancestor and include all agnates whose descent from the common ancestor can be traced

HINDU LAW—Succession—Son.

40 Mad. 654, *Not foll.*; 10 Bom. 372 and 32 All. 594, *Rel. on*; 9 All. 467 and 30 All. 510 (P.C.), *Expl.* (*Jackson and Mohiuddin, A.J.Cs.*). BAJIRAO *v.* ATMARAM. **A.I.R. 1930 Nag. 265.**

———*Samanodaka and Sakulyas—Kinsmen ex parte materna are not Sakulyas.*

Though every person is competent to present libation of water to every other, the law of inheritance has given a limited signification to the term "Samanodaka." It is not every person who is competent to present the water that must be considered an heir, and among the Samanodakas those alone are entitled to the inheritance who are also Sakulyas or allied by the family with the deceased. The kinsmen *ex parte materna* are excluded from Sakulyas. (*Greaves and Mukerji, JJ.*). SHAMBHU CHANDRA *v.* KARTICK CHUNDER.
97 I.C. 845=54 Cal. 171=44 C.L.J. 470= A.I.R. 1927 Cal. 11.

—Succession—Sapindas.

———Father's paternal uncle's son's son succeeds in preference to paternal uncle's son's son's son. (*Kumaraswami Sastri, J.*). SUBRAMIAH *v.* NATARAJA. **53 Mad. 61=31 M.L.W. 617= A.I.R. 1930 Mad. 534=58 M.L.J. 468.**

———The paternal uncle's sons's son is a *gotraja sapinda* and succeeds in preference to the sister's son who is only a bandhu. (*Macleod, C.J. and Heaton, J.*). ANNAYA MADVALYA *v.* SIDAYA MURGAYYA. **59 I.C. 125=22 Bom. L.R. 1092.**

—Succession—Shebaitship.

See RELIGIOUS ENDOWMENTS—DEVOLUTION OFFICE—SHEBAITSHIP ALSO RIGHTS OF FOUNDER.

—Succession—Sister.

———*Mayukha Law—Full sister cannot inherit before half-brother.*

Though the proper place for a full sister in the line of inheritance is after the grandmother as laid down by the Mayukha, she can inherit only after the compact series of heirs specified in the Mitakshara is exhausted, and she cannot have priority over a half-brother. 32 Bom. 300 and 38 Bom. 438, *Foll.* (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). BODOMAL *v.* MT. KISHNIBAI.
93 I.C. 844=20 S.L.R. 150=A.I.R 1926 Sind 231.

———*Sister preferred to brother's daughter.*

Under Hindu Law a sister is at least bandhu while a brother's daughter is not, so that the former is a preferential heir to the latter. On sister's death property passes to her husband or his heirs. (*Martineau, J.*). MT. PURO *v.* SULAKHAN MAL.
76 I.C 121=A.I.R 1925 Lah. 62.

—Succession—Sister's son.

———*Sister's son is preferred to half-brother.*

Under the Dayabhaga School a sister's son is a preferential heir to a step-brother. The mere fact that a half-brother can confer spiritual benefit does not necessarily mean that he is entitled to inherit. (*Greaves and Cuming, JJ.*). SUKHAMAYEE BISWAS *v.* MONORANJAN CHAUDHURY.
89 I.C. 827=A.I.R. 1926 Cal. 428.

———*Step sister's step-son is not an heir.*

The step-son of a step-sister of the deceased is not his heir under the Mitakshara School of Hindu Law. (*Spencer and Ramesam, JJ.*). C. SAMINATHA CHETTY *v.* ANGAMMAL. **65 I.C. 736= 45 Mad. 257=15 M.L.W. 48= 30 M.L.T. 252=1921 M.W.N. 889= A.I.R. 1922 Mad. 46=42 M.L.J. 4.**

—Succession—Son.

———*All sons, irrespective of separation, should succeed equally to their father's self-acquired properties*

HINDU LAW—Succession—Son.

In the absence of any text to the contrary self-acquired property is not subject to the rights of survivorship but is governed by the general rules of inheritance according to which all sons of the deceased should succeed in equal shares irrespective of any consideration of their being united or separate. The rule is equally good in a case where a son is separated and the father acquires the property after such separation. 9 M.I.A. 539 and 30 Mad. 348, *Rel. on*; 17 A.L.J. 151, *Foll.*; 20 All. 267 (P.C.) and A.I.R. 1921 Mad 168, *Ref.*; 22 Bom. 101 and 32 Mad. 377, *Diss. from.* (*Stuart, C.J. and Srivastava, J.*). BADRI NATH *v.* HARDEO.

123 I.C 861=7 O W.N. 1=A.I.R. 1930 Oudh 77.

———A son joint with the father at his death succeeds to the occupancy holding to the exclusion of the son who had separated from him. 13 C. P. L.R. 137, *Foll.* (*Hallifax, A.J.C.*). DULRU *v.* SHIOLAL. **102 I. C. 711=A.I.R. 1927 Nag. 272.**

———Sons, grandsons and great-grandsons exclude the widow from the heirship of a man. (*Wazir Hasan and Neave, A.J.C.*). GAYA PRASAD *v.* GIRJA SHANKAR. **78 I.C. 574=11 O. L J. 286=A.I.R. 1924 Oudh 360.**

———Where a man dies leaving a widow who is pregnant at the time and a daughter and self-acquired property and there is a dispute between the widow and the daughter which is compromised by a release deed executed by the widow, the deed is not binding on the son who is subsequently born to the widow. (*Mookerjee and Panton, JJ.*). KUSUM KUMARI *v* DASARATHI SINHA.

67 I C. 210=34 C.L.J. 323=A. I. R. 1921 Cal. 437.

—Succession—Son-in-law.

———*Legal position of 'Ghardamad'—Acquisition of—Essentials.*

There are two points which are the most important of any to which regard is to be had in determining whether the legal position of a ghardamad has been acquired: one, there must be the definite intention on the part of the parties that that status should be acquired, and another is that the person adopted as a "ghardamad" should in the same way as a Hindu, who is adopted as a son, definitely forego his title to succeed to any property of his natural father. (*Das and Rowland, JJ.*). NAIKA UROAN *v.* BUTNA UROAN.

11 P.L.T. 194=A.I.R. 1930 Pat. 278.

———Title in bhinhari land does not pass through a female line and is not acquired by a 'ghardamad.' (*Das and Rowland, JJ.*). NAIKA URAON *v.* BUTNA URON. **11 P.L.T. 194=A.I.R. 1930 Pat. 278.**

—Succession—Succession certificate.

———*Debt due to a co-parcener—Persons taking by survivorship are entitled to suecession certificate.*

The preambles of the Succession Certificate Act (1889) and the Succession Act (1925) both talk of "legal representatives" and "succesors," terms which are not strictly applicable to the case of the survivors of a joint Hindu family. Accordingly when a creditor, who holds a debt as a member of a joint Hindu family, dies and the debt passes by survivorship to the remaining members, the survivors cannot be compelled to take out a succession certificate in order to obtain a decree in a suit for recovery of the debt. But it does not necessarily follow that the converse proposition is true and where the survivors choose to call themselves "legal representatives" and ask for succession certificate their application should be dismissed. The claimants may very well say that they represent the deceased person's estate and on that right they should be allowed to collect the debts with the help of a certificate. (*Mukerjee and Bennet, JJ.*). BANWARI LAL *v.* MAKSUDAN LAL.

122 I.C. 183=1930 A L.J. 280=A.I.R. 1930 All. 99.

HINDU LAW—Succession—Tenancy lands.

———*Self-acquisitions of father—Son must get succession certificate to realise debts of father.*

It is doubtful whether the succession to the self-acquired property of a Hindu father would, where there is an undivided son, be by survivorship rather than by inheritance. Assuming that the imperfect right of a Hindu son in his father's self-acquisition may have sufficient efficacy to entitle him to succeed to it to the exclusion of a divided son, it does not follow that the self-acquired property does not form part of his father's "effects" within the meaning of S. 4. Property over which a person has absolute powers of disposal and over which co-parceners have no power of control forms part of his "effects" so as to attract the provisions of S. 4. 32 Mad. 377, *Dist.* 14 Mad. 377, *Foll.* (*Wallis, C.J., Oldfield and Kumaraswami Sastri, JJ.*). VIRAVAN CHETTIAR *v.* SRINIVASA CHARIAR. **62 I.C. 944=44 Mad. 499=12 M.L W. 475=1921 M.W.N. 290=A I.R. 1921 Mad. 168=40 M.L.J. 431 (F.B.).**

—Succession—Survivorship.

———*Self-acquired property of father inherited by sons living as joint family—Survivorship applies.*

The two tests applicable for determining whether a particular property was co-parcenary property subject to the right of survivorship are community of interest and unity of possession. Where the self-acquired property of the father devolved on his sons who were living as members of a joint family and on the death of one of his sons the question was raised whether his interest devolved on his widow.

Held, that property would go to the surviving brothers of the deceased by survivorship and not to the widow. (*Hasan and Bisheshwar Nath, JJ.*). LAKHPATI *v.* PARMESHWAR MISRA.

7 O.W.N. 107.

———*Illatom son-in-law has no right of survivorship.*

Where at the time when an illatom son-in-law was taken into the father-in-law's family under an arrangement that he was to get a share equal with the other sons, there was only one son and another son was born subsequently, but predeceased the father,

Held, that the illatom son-in-law was entitled only to a third share. An illatom son-in-law has no right of survivorship. (*Kumaraswami Sastri and Reilly, JJ.*). ENNI SOORUNNA *v.* VARABATI VARAHALU. **101 I.C. 828=A.I.R. 1927 Mad. 708.**

———Daughter's sons succeeding to grandfather get ancestral estate in which their sons have interest.

The doctrine of survivorship is not limited to unobstructed succession and to the succession to the joint property of re-united co-parceners but it applies also to widows and daughters. 25 Mad. 678, *Expl.*; 35 Cal. 1039 (P.C.); 9 M.I.A. 539, *Expl.* and *Foll.* (*Das and Kulwant Sahay, JJ.*). MAN SINGH *v.* NAWALAKHBATI. **73 I.C. 822=2 Pat. 607=4 P.L.T. 335=A.I.R. 1923 Pat. 492.**

—Succession—Tenancy lands.

———*Survivorship applies to tenancy lands also.*

On the death of a separated Hindu zamindar his property must be divided among his sons and his grandsons by a pre-deceased son, the latter being entitled to the share to which their father would have been entitled had he been alive. The same

HINDU LAW—Succession—Vested interest.

rule applies to the devolution of the tenancy rights possessed by the deceased by virtue of S. 22 of the Agra Tenancy Act. In S. 22 the word "descendants" would imply that there may be more than one descendant and they also may be in different degrees. No particular principle is involved in the rule which may indicate that the remote descendants were to be excluded by the nearer ones. (*Mukerji, J.*). RAMRUP PANDE *v.* SARJU PANDE.
87 I.C. 668=A. I. R. 1925 All. 786.

—Succession—Vested interest.

——Grant of land by owner as maintenance to a woman *S*, not his wife—Nephews *B* and *P* inheriting estate—*P* dying leaving two sons during the lifetime of *S*—On death of *S*, *B* claiming exclusive right to her property.

Held, that the principles of succession to a Hindu widow's estate did not apply as *H* had a vested remainder in the property and on his death it became vested in his heirs *P* and *B*, and on *P*'s death the interest vested in *P* became vested in his sons. A.I.R. 1927 All. 679, *Dist.* (*Kendall and Niamatullah, JJ.*). RUSTAM SINGH *v.* BHOLA SINGH. 116 I.C. 274=1929 A.L.J. 389=
A.I.R. 1928 All. 615.

—Succession—Widow.

——A widow, having a son born to her by a person of her caste, would neither entail forfeiture, nor would she be deprived of her husband's estate, which she had inherited. 14 W.R.O.C.J. 23, *Ref.*; 19 W.R 367 (F.B.); 5 Cal. 776 (P.C.) and 2 All. 150 (F.B.), *Foll.* (*Ross and Chatterji, JJ.*). BAKSHISH RAI *v.* MT. RAJO KUER. A.I.R. 1930 Pat. 564.

——Under Hindu Law the doctrine of representation does not apply to the case of widows. (*Shadi Lal, C J. and Hilton, J.*). NAMBAT RAI *v.* MT. KARTAR DEVI. 120 I.C. 178=A.I.R. 1930 Lah. 207.

——Hindow Widows' Re-marriage Act is inapplicable in the case of a widow who is permitted by the custom of her caste to re-marry and she does not forfeit the property inherited by her from her first husband. 31 All. 161; 32 All. 489; A.I.R. 1921 Oudh 233, *Rel. on.* (*Raza and Nanavutty, JJ*). RAM LAL *v.* MT. JAWALA.
109 I.C. 791=5 O.W.N. 454=3 Luck 610=
A.I.R. 1928 Oudh 338.

——Property got by will of his maternal grandfather is not ancestral property of the devisee. Hence his widow has a preferential right of inheritance over his father. (*Spencer and Odgers, JJ.*). SUBRAMANIA AIYAR *v.* NALLA KAYANDAN.
93 I.C. 122=1926 M.W.N. 291=
A.I.R. 1926 Mad. 634.

——A father is a more distant heir to an issueless son's self-acquisition than his widow. (*Kinkhede, A.J.C.*). MT. JIRABAI *v.* MT. RAMDULARIBAI. 89 I.C. 991=A.I.R. 1926 Nag. 48.

——Re-marriage—Widow allowed to marry husband's brother by caste—Widow can inherit both brother's property. 32 All. 489, *Ref.* (*Sulaiman, J.*). NAGAR *v.* KHASE. 86 I.C. 893=
6 L R.A. Civ. 267=A.I.R. 1925 All 440.

——*Widow inheriting as a* gotraja sapinda *to female—Widow takes absolute estate.*

In the Bombay Presidency under Hindu Law a widow inheriting as a *gotraja sapinda* from a female takes an absolute estate which would go on her death to her heirs and not revert to the heirs of the last female owner. 24 Bom. 192 (F.B.), *Foll.* (*Macleod, C.J. and Shah, J.*). NARAYAN MORESHWAR WELANKAR *v.* WAMAN MAHADEO KULKARNI. 63 I.C. 1001=46 Bom. 17=
23 Bom. L.R. 587=A.I.R. 1922 Bom. 134.

HINDU LAW—Texts— Mayukha.

——A widow on re-marriage forfeits all her rights to her husband's property. A decree obtained against a Hindu widow by consent at a time when she had re-married is not binding on the estate. 41 Mad. 1078, *Foll.* (*Wallis, C. J. and Spencer, J.*). VENKATACHELLAM CHETTY *v.* RAMA MUDALI. 59 I.C. 91=12 M.L.W. 322.

——*Re-marriage allowed by custom—Widow does not forfeit her rights in husband's property—Hindu Widows' Remarriage Act* (1856).

A Hindu widow of the Murao caste does not forfeit her right to her deceased husband's property by re-marriage. The re-marriage among Muraos is recognised by the custom of the brotherhood and does not depend upon any statute for its validity. Act XV of 1856 is inapplicable to the case of a widow who is permitted by the custom of her caste to re-marry and she does not forfeit the property inherited by her from her former husband. 31 All. 161 and A.I.R. 1921 Oudh 130, *Foll.* (*Daniels, J.C. and Dalal, A.J.C.*). BHAGWAN DIN *v.* MST. INDRANI. 65 I.C. 117=8 O. L. J. 563=
24 O. C. 297=A.I.R. 1921 Oudh 233.

—Succession—Miscellaneous.

——Zamindari of Sadak Arjuni, Bhandara District—Joint family law applies. (*Mohiuddin and Macnair, A.J.Cs.*). MT. SARJABAI *v.* GANGARAM.
118 I.C. 871=A.I.R. 1930 Nag. 35.

—Texts—Commentaries.

——The commentaries on Hindu Law are only commentaries; they do not enact, they explain and are evidence of the congeries of customs which form the law. 47 I.A. 213 at 227; 24 All. 278, *Foll.* (*Lindsay and Kanhaiya Lal, JJ.*). JAWAHIR LAL *v.* JARAN LAL. 79 I.C. 861=
46 All. 192=22 A L J. 49=
5 L.R.A. Civ 130=A.I.R. 1924 All. 350.

——*Different decisions of different High Courts—Reason for this is the dominating influence of particular commentaries.*

The reason for the different results at which the Courts in the Bombay Presidency and the other Courts of India have arrived lies in the dominating influence of the particular commentaries. Further, it must always be remembered that the commentaries are only commentaries.

They do not enact; they explain and are evidence of the congeries of customs which form the law. (*Lord Dunedin.*) BALWANT RAO *v.* BAJI RAO.
57 I.C. 545=48 Cal 30=47 I.A. 213=
16 N.L.R. 187=18 A L.J. 1049=
22 Bom L.R. 1070=28 M L T 157=
12 M.L W. 679=1920 M.W N. 483=
3 N.L J. 251=25 C.W.N. 243=
A.I.R. 1921 P.C. 59=39 M.L.J. 166 (P.C.).

—Texts—Dattaka Mimamsa.

—— *Dattaka Mimamsa is a work of independent authority.*

The Dattaka Mimamsa is a treatise of high authority in the Benares School and has been recognized by the Privy Council as having acquired by long acceptance an independent authority. 21 All. 412 (P.C.), *Ref.* (*Sulaiman and Iqbal Ahmad, JJ.*). GOPI NATH *v.* MT. KISHNI. 105 I.C. 851=
25 A. L. J. 1009=A.I.R. 1927 All. 694.

—Texts—Mayukha.

——*Mayukha does not record custom of daughter taking absolute estate.*

The Mayukha was not written till some time in the seventeenth century. The treatise is a record of pre-existing custom but it does not record the custom of a woman taking an absolute

HINDU LAW—Texts—Mitakshara.

estate in property inherited from her father that is a later interpretation of the work. 1 Bom. H. C. 130 and A.I.R. 1924 All. 350, *Ref.* (*Hallifax, A.J.C.*). NARAIN *v.* MOTISA. **99 I. C. 461= A. I. R. 1927 Nag. 121.**

—Texts—Mitakshara.

———No distinction exists between the word "Stridhan" and the expression "property that the widow can deal with at pleasure."

The fact that other schools make such a distinction will not affect a consideration of the law according to the Mitakshara School. (*Walsh and Ashworth, JJ.*). HUKUM CHAND *v.* SITAL PRASAD. **107 I.C. 244=50 All. 232= 25 A.L.J. 922=A.I.R. 1928 All. 52.**

—Texts—Rules of.

———The Jain books, called Arhan Niti, Bhadrabahu Samhita and Vardhaman Niti are not authoritative or binding on Courts of law. (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL *v.* MANILAL. **32 Bom.L.R. 1217=A.I.R. 1930 Bom. 517.**

———Having regard to the long course of decisions, a question as to devolution of property cannot be re-agitated in the light of certain texts, which at the best are moral objurgations and cannot be given effect to in their literal sense to affect rights in property. (*Ross and Chatterji, JJ.*). BAKSHISH RAI *v.* MT. RAJO KUER. **A.I.R. 1930 Pat. 564.**

———The texts from Arhan Niti, Bhadrabahu Samhita and Vardhaman Niti are conflicting and relate to a society of the Jains when a widow was to a son, and would not be binding on the Courts in view of the Privy Council decisions that Jains are governed by Hindu Law in the absence of a custom. (*Marten, C.J. and Patkar, J.*). BHIKUBAI CHUNILAL AMBAIDAS *v.* MANILAL BHAGCHAND RAYCHAND. **A.I.R. 1930 Bom. 517.**

———*Rules on sacredotal architecture are not all equally binding.*

All the rules laid down in the treatises such as Uttara Kamika Agama and Poorva Kamika Agama, though they are books which deal with sacredotal architecture, are not equally binding and mandatory. (*Wallace and Srinivasa Aiyangar, JJ.*). PANCHAPAGESA GURUKKAL *v.* SEVUGAM CHETTIAR. **112 I.C. 65=A.I.R. 1929 Mad. 118.**

———*Disputed doctrine—Judge need only see if it has been accepted.*

The duty of a Judge who is under the obligation to administer Hindu Law is not so much to enquire whether a disputed doctrine is fairly deducible from the earliest authorities as to ascertain whether it has been received by the particular school, which governs the district with which he has to deal and has there been sanctioned by usage. 12 M.I.A. 397 (P.C.), *Foll.* (*Das and Adami, JJ.*). PAN KUER *v.* RAM NARAIN. **117 I.C. 33= 10 P.L.T. 217=A.I.R. 1929 Pat. 353.**

———*Hindu Law—What is—Rules contained in Sanskrit books.*

What is ordinarily understood as Hindu Law is not the customary law of the country like the common law of England. Neither is it a statute law in the sense that some king or legislature framed the law and enforced its acceptance by the people. The Hindu Law as is commonly understood is a set of rules contained in several Sanskrit books which the Sanskritists consider as books of authority on the law governing Hindus. There are several treatises on law and they are not of equal authority in all the provinces. (*Kumaraswami*

HINDU LAW—Widow—Acceleration.

Sastri, Devadoss and Wallace, JJ.). MOOKKA KONE *v.* AMMAKUTTI AMMAL. **108 I.C. 760= 51 Mad. 1=27 M.L.W. 611= A.I.R. 1928 Mad. 299=54 M.L.J. 174 (F.B.).**

———*Rules cannot be construed with the light of foreign legal conceptions.*

From the year 1774, the Legislature, British and Indian, has affirmed, time after time, the absolute enjoyment by the Hindus and Muhammadans of their laws and customs so far as they are not in conflict with the statutory laws. It would be a serious inroad into their rights if the rules of the Hindu and Muhammadan laws were to be construed with the light of legal conceptions borrowed from abroad. (*Mr. Ameer Ali.*) VIDYAVARUTHI THIRTHASWAMIGAL *v.* BALUSWAMI AYYAR. **65 I.C. 161=15 M.L.W. 78=3 P. L.T. 245= 26 C.W.N. 537=20 A.L.J. 497=24 Bom. L.R. 629= 30 M.L.T. 66=48 I.A. 302=44 Mad. 831= 1921 M.W.N. 449=A.I.R. 1922 P.C. 123= 41 M.L.J. 346 (P.C.).**

—Texts—Sources.

———Per *Coutts-Trotter, J.*—The Hindu Law is the result of many ingredients : (1) Smritis or Records of Pronouncements, among whom foremost is Manu, (2) Yajnavalkya and the commentary on his work, *viz.*, Mitakshara, (3) Custom, and (4) Judicial decisions of Indian Courts and of the Privy Council. (*Schwabe, C.J., Oldfield and Coutts Trotter, JJ.*). PUDIAVA NADAN *v.* PAVANESA NADAN. **69 I.C. 313=45 Mad. 949=16 M.L.W. 563= 1922 M.W.N. 693=31 M.L.T. 320= A.I.R. 1923 Mad. 215=43 M.L.J. 596 (F.B.).**

—Widow.

Acceleration.
Accumulations.
Acquisition.
Administratrix.
Adverse possession.
Compromise.
Co-widows.
Debts.
Decree for or against.
Maintenance.
Nature of estate.
Necessity.
Powers of.
Re-marriage.
Representation of estates.
Surrender.
Unchastity.
Waste.
Widow's estate.
Will.
Miscellaneous.

—Widow—Acceleration.

———Gift to daughter by widow of estate supposed to be willed to her by her husband—Will found not to be genuine—Gift did not accelerate daughter's estate. (*Oldfield and Devadoss, JJ.*). RAMALAKSHMI *v.* NAGARATHNAM. **71 I.C. 343= 1923 M.W.N. 172=17 M.L.W. 11= A.I.R. 1923 Mad. 335=44 M. L. J. 677.**

———Where a male holder dies leaving two widows and one of the widows surrenders all her interest in her husband's estate to the other, there is no acceleration of the right of the male reversioner on the death of the surrenderee widow if the widow surrendering her interest survives her. (*Sadasiva Iyer and Napier, JJ.*). MUTHIALA CHENGAPPA *v.* BUDRAGUNTA. **60 I.C. 135=1921 M.W.N. 29= A.I.R. 1921 Mad. 246.**

HINDU LAW—Widow—Accumulations.

—Widow—Accumulations.

——*Income from husband's estate—Widow has absolute power of disposal.*

A Hindu widow has absolute right to the income from her husband's property in her possession and she has absolute power of disposition over her savings from such income either by will or otherwise, unless it is shown that she intended to treat the savings as accretions to the husband's property. 25 Mad. 351; 28 Mad. 1 (F.B.); 11 M.L.W. 112; A I.R. 1922 Mad. 457 (F.B.); A.I.R. 1925 P.C. 105, *Foll.*; 20 Cal. 433, *Disc.* and *Rel. on*; A.I.R. 1925 Mad. 151; A.I.R. 1927 Mad. 715, *Expl.*; 43 Mad. 629; A.I.R. 1928 Cal. 794; A.I.R. 1922 P. C. 39, *Dist.* (*Ramesam and Jackson, JJ.*). PIRAMANAYAKAM PILLAI *v.* S. KRISHNASWAMI PILLAI. **121 I.C. 492=1929 M.W.N. 355.**

——Accretions made by a Hindu widow to her husband's estate partake of the nature of that estate. (*Ashworth and Misra, JJ.*). RAM BAHADUR SINGH *v.* LAL BAHADUR SINGH. **92 I.C. 637= 1 Luck. 98=13 O.L.J. 216=3 O.W.N. 267= A.I.R. 1926 Oudh 277.**

——*Mother inheriting to son—Has absolute power of disposal over income—When such income becomes accretion to the estate.*

The owner of a Zemindari died during his minority leaving his widowed mother. The estate was under the management originally of the Court of Wards and later, of Court Receivers. She executed a will by which she disposed of the "Government promissory notes and cash of the Estate."

Held, that on the death of her son she became entitled to the estate and its income to hold for her own life, and that income included the interest on investments on all monies received in respect of the estate collected before the death of her son. To that income she remained entitled until her death. That income or any part of it she could, while she remained entitled to it, have added as an accretion to the estate if she had wished to do so. In the absence of any evidence to suggest that she had ever added any part of that income as an accretion to the estate, she was entitled to dispose of it by will or otherwise. (*Sir John Edge.*) APPA RAO *v.* PARTHASARATHY. **87 I.C. 324= 52 I.A. 214=1925 M.W.N. 441=3 P.L.R. 208= 29 C.W.N. 989=23 A.L.J. 261=6 L.R. P.C. 82= 48 Mad. 312=27 Bom. L.R. 823= A.I.R. 1925 P.C. 105=48 M.L.J. 627 (P.C.).**

——*Savings from husband's estate—If stridhan.*

Savings from the income of the husband's estate are ordinarily presumed to be accretion to the estate unless it is shown that they were treated by the widow as her Stridhan. A.I.R. 1922 P. C. 39, *Ref.*

The bare fact that a widow has obtained a decree for arrears of rent is not proof that she so dealt with the property as to make it remain her own. (*Jackson, J.*). P. SUBBAMMA *v.* M. VENKATAKRISHNA ROW. **80 I.C. 290=A.I.R. 1925 Mad. 151.**

——*Unappropriated income from husband's estate—If becomes part of estate.*

If the widow has made no attempt to dispose of the savings from her husband's estate they must follow the estate from which they arose. It is open to the limited owner to hold the income in suspense with intent to appropriate it for her personal use later on.

The test to be applied to cases of this description is, to determine from the surrounding circumstances whether she intended to treat the income as part and parcel of the estate of her husband or whether she treated it as a temporary saving liable to be applied by her subsequently for her own purposes. 10 C. 384; 16 C.W.N. 834, *Foll.* (*Das and Ross, JJ.*). SHEONANDAN PRASAD *v.* DAMODAR PRASAD. **78 I.C. 306=A.I.R. 1924 Pat. 711.**

HINDU LAW—Widow—Acquisition—Burden of proof.

——*Income of property—She has full control over it—If it becomes accretion to estate depends upon widow's intention.*

A Hindu widow has absolute control over the income of the property which she inherits from her husband, subject of course to the payment of the debts left by him and unless it can be shown that she intended to make the savings part of the estate of her husband, she would have full power of disposal over it. Where the estate is under litigation and the income of the estate is being deposited in Court subject to the result of the suit which the widow has filed, there is nothing to raise any presumption that she intended the income to be an accretion to the estate. If she clearly wants to treat the property as property over which she had absolute dominion the fact, that she purported to deal with properties to which she had no such right along with properties over which she had a right of disposal, would not indicate an intention on her part to treat one as an accretion to the other. That she purported to act beyond her powers as regards some of the items cannot defeat her right to disposal of items over which she had absolute disposing power. (*Schwabe, C. J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). ZAMINDAR OF BHADRACHALAM *v.* SRI RAJA VENKATADRI APPA RAO. **70 I.C. 689=46 Mad. 190=16 M.L.W. 369= 1922 M.W.N. 532=31 M.L.T. 221= A.I.R. 1922 Mad. 457=43 M.L.J. 486 (F.B.).**

——*Maintenance grant—Accumulation goes to her heirs.*

The substance of a maintenance grant is that it is the rents, issues and profits that are alienated and not the immovable properties out of which such rents, issues and profits arise and which remain the property of the grantor annexed to his estate. In order that there may be accretion, there must be an estate to which the accumulation may accrete. Therefore, the accumulations made by a Hindu widow from the property held under a lease from her husband by way of maintenance grant would go to her heirs. (*Das and Adami, JJ.*). RAMESHWAR NARAIN SINGH *v.* RANI REKNATH KOERI. **67 I. C. 451=A.I.R. 1923 Pat. 165.**

——*Accumulations whether part of estate depends upon intention of the widow.*

Where the question was whether the arrears of rent due to a widow at her death were her assets or formed part of the estate,

Held, that the test to be applied to such cases is to determine from the surrounding circumstances the intention of the widow. That is to say, did she intend to treat the disputed property as part and parcel of the estate of her husband or did she treat it as a temporary saving liable to be applied by her subsequently for her own purposes. (*Dalal, A.J.C.*). CHANNU LAL *v.* MT. RAJ KUAR. **67 I.C. 16=9 O.L.J. 24=A.I.R. 1932 Oudh 48.**

—Widow—Acquisition—Burden of proof.

——*Property purchased by widow benami from surplus income—Reversioner must prove that widow intended to make it an accretion.*

In a suit to set aside a deed of gift executed by a Hindu widow in respect of property which the

HINDU LAW—Widow—Acquisition—Burden of proof.

reversioners allege was acquired by her with the surplus income of her deceased son's estate, the plaintiffs, in order to succeed, have to make out that although this property was purchased with the income of the son's estate, this was not treated by the widow as her own separate property. The fact that the purchase was made in the benami of another person and that it is not made in widow's name is an indication that she wanted to treat this property as her own separate property and not to form an accretion to her son's property. That realizations from the property in dispute and the properties which admittedly belonged to the son were entered in the same collection papers is not a circumstance which, standing by itself, can justify the conclusion, that the widow wanted to treat this property on the same footing as the property which devolved on her from her son. 10 Cal. 324 (P.C.), *Dist.*; 20 Cal. 433 (P. C.), *Foll.* (*Rankin, C.J. and Mitter, J.*). NIRMALA SUNDARI *v.* DEVA NARAYAN.
104 I.C. 284=A.I.R. 1927 Cal. 868.

———Reversioners should prove property in widow's possession to have originally vested in her husband or to have been accumulated by her with intention of adding to husband's estate. 26 Cal. 871; 20 Cal. 433 at 442, *Foll.* (*Kinkhede, A. J. C.*). JAIKRISHNA *v.* MT. SAVITRI. **79 I C. 627= 7 N.L.J. 187= A.I.R. 1924 Nag. 406.**

———*Reversioner succeeds if the acquisition is part of the estate.*

Where the houses in question were built by the widow after the husband's death, it would only in the event of the Court being able to hold with absolute certainty that they represented or were in substitution of a certain part of the husband's estate that they would revert on the widow's death to the husband's heirs or failing them would escheat to the Crown. 26 Cal. 871 (P.C.), *Ref.* (*Macleod, C. J. and Shah, J.*). GANPAT RAMA *v.* SECY. OF STATE. **62 I.C. 109=45 Bom. 1106= 23 Bom. L.R. 462=A.I.R. 1921 Bom. 138.**

—Widow—Acquisition—Intention.

———*Property purchased by widow—Gift thereof—Reversioner cannot question.*

A widow purchased certain properties, the price of which she raised partly by mortgaging her husband's property and partly by mortgaging the purchased property itself. It was not, however, proved that the amount raised by mortgage of husband's property was in fact applied towards payment of the purchase price of the land. She subsequently gifted the property and in a suit by the reversioners to set it aside,

Held, that it was her acquired property and the reversioners were not entitled to control her dealings with it and that their proper remedy would be only to impugn the mortgages of her husband's estate. 2 P. R. 1910, *Appl.* (*Tek Chand and Hilton, JJ.*). MAHNA SINGH *v.* THAMAN SINGH.
11 Lah. 393=31 P.L.R. 755.

———The widow can either spend the income which she inherits from her husband or accumulate it for her own benefit and in cases where she purchases properties or invests her savings and indicates by her conduct an intention that the properties purchased out of her savings should form part of her husband's estate, such savings should follow the same rule as regards devolution to her husband's estate and should be treated as accretions to the estate. (*Prideaux, A. J. C.*). YESHODA BAI *v.* GOVIND GOPAL. **109 I.C. 569 (Nag.).**

HINDU LAW—Widow—Acquisition—Intention.

———*Question as to accretion to husband's estate depends upon her conduct.*

Whether a Hindu widow, who purchases immovable property out of the profits of the estate of her deceased husband, intends to treat the acquisition as an increment to her husband's estate or not, depends on her actual conduct in making and dealing with the acquisition. 10 Cal. 324; 14 Bom.L.R. 159 (P.C.); 41 Cal. 870 and 14 Cal. 387, *Rel. on.* (*Findlay, J.C.*). MT. RUKHMABAI *v.* JAIPAL.
100 I.C. 457=23 N.L.R. 108= A.I.R. 1927 Nag. 122.

———*Acquisition from income of limited estate when becomes accretion to estate.*

If a certain property is purchased by a Hindu widow out of the savings from the income of her husband's property, it is presumed to belong to the estate, but it is open to her to treat that property as her own and if she expresses that intention either by words or by conduct, then it will no longer be considered to belong to her husband's estate but would be regarded as her stridhan. 10 Cal. 324 (P.C.), *Foll.* (*Gokaran Nath Misra, J.*). KRISHNA KUMARI *v.* RAJENDRA BAHADUR.
104 I.C. 155=2 Luck. 43=13 O.L.J. 846= A.I.R. 1927 Oudh 240.

———*Whether widow's self acquisitions form part of husband's estate depends on her intention.*

Whether the after purchases form accretions to the corpus of a deceased husband's estate or stridhanam of the widow depends upon her intention, which has to be gathered in every case from her manner of dealing with the property.

When it is shown that the corpus of the estate has been all along in the possession of a Receiver there is no room for presuming that the widow intended to make the investments of the funds received by her part of her husband's estate, when she did not get her husband's estate into her possession. 10 Cal. 324 (P.C.); 25 Mad. 351; 28 Mad. 1; 14 Cal. 387 (P.C.); 20 Cal. 433 (P.C.) and A.I.R. 1922 Mad. 457, *Ref.* (*Spencer and Kumaraswami Sastri, JJ.*). AYISWARYANANDAJI *v.* SIVAJI RAJA SAHEB. **92 I.C. 928=49 Mad. 116= A.I.R. 1926 Mad. 84=49 M.L.J. 568.**

———Accretion partake of nature of main estate—Question whether certain property is accretion is one of intention, but in absence of contrary evidence purchase from income is accretion. (*Martineau and Campbell, JJ.*). MT. TEHL KUAR *v.* AMAR NATH. **79 I.C. 670=17 P. W.R. 1923= A.I.R. 1925 Lah. 2.**

———*Property purchased from income of limited estate—When becomes accretion to estate.*

Where out of savings which a Hindu widow, who inherited ancestral property belonging to her minor son, made from the income of the property, she purchased the property belonging to her brother at a Court sale and subsequently conveyed the property back to her brother and on the widow's death the reversioners sued to recover the property as an accretion to the ancestral property,

Held, the property belonged to the widow's brother, for there was never any intention on the widow's part that the property should form an accretion to the ancestral property in her hands. Under Hindu Law, a widow has an absolute control over the income of the ancestral property which she inherits from her husband and can dispose of it as she pleases. If she invests it then it will depend upon the facts proved whether she has shown an intention that the investment shall be an accretion to the ancestral property or

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whether she can hold it in the same manner as the savings with which she has purchased it. That must be a question of fact in each case. The fact that the investment is in the widow's name cannot in itself be a presumption that the investment is intended to be an accretion to the ancestral property. (*Macleod, C.J. and Shah, J.*). KESHAV PANDURANG LOKHANDE *v.* MARUTI KRISHNA SHINDE. **62 I.C. 954=46 Bom. 37=23 Bom. L.R. 803=A. I R. 1922 Bom. 144.**

—Widow—Acquisition—Nature of.

——*Widow in possession of husband's estate setting possession of his brothers' shares also and treating both alike—Acquiescence in reversioner's assertion that she holds only widow's estate—Nature of possession.*

It cannot be laid down as a rule that in no case can the possession of a Hindu female without title mature into absolute ownership. The determination of the case must be based upon the particular circumstances of each case.

A widow first entered into possession of a one-third share of the property belonging to her husband as a Hindu widow. Subsequently she augmented that share by acquiring possession over the shares of her husband's brothers. She made no distinction between her possession over the share of her husband and her possession over the rest of the property. In a previous suit by a reversioner, she alleged that she was in possession of only a widow's estate in respect of the entire property. She acquiesced in this assertion and never questioned it. There was no evidence that subsequent to this litigation she at any time to the knowledge of the reversioners made any assertion claiming to hold the property as an absolute owner,

Held, that the widow was in possession of the property in dispute only as a life-estate holding and the fact that she made certain transfers would not change the character of her possession : 29 Cal. 664 (P.C.) and 22 Cal. 445, *Rel. on*; A.I.R. 1924 P.C. 121, *Discussed*. (*Srivastava, J.*). DEO DATT *v.* RAJ BALI. **112 I.C. 266=5 O.W.N. 653=A.I.R. 1928 Oudh 411.**

——This presumption, however, cannot be extended to the case of property held by a Hindu female not as Hindu widow's estate but as a life-estate under a will of deed *inter vivos*. If the property which has been obtained by a widow under a bequest from her husband is a property to which she would not be entitled as heir to her husband, the savings from the income of such property and everything purchased out of such savings would belong absolutely to herself and would constitute her stridhana. Such property would on her death pass to her heirs and not to the heirs of the last male holder: 1 Cal. 104 (P.C.) and 20 Cal. 433 (P.C.), *Foll.* (*Gokaran Nath Misra, J.*). KRISHNA KUMARI *v.* RAJENDRA BAHADUR. **104 I.C. 165=2 Luck. 43=13 O.L.J. 846=A.I.R. 1927 Oudh 240.**

——Oral invalid gift to brother's widow—Title acquired by donee by prescription becomes stridhana and does not enure for benefit of heirs. (*Hasan and Raza, JJ.*). A.I.R. 1924 P.C. 121, *Dist.*; 43 Mad. 244 (P.C.), *Foll.* (*Stuart, C.J., Hasan and Ashworth, JJ.*). MT. MALUKA KUNWAR *v.* PATESWAR SINGH. **96 I.C. 672=1 Luck. 273=29 O.C. 378=13 O.L.J. 665=3 O.W.N. 536=A.I.R. 1926 Oudh 371 (F.B.).**

——*Occupancy rights acquired by widow in inherited lands do not enure to husband's estate.*

When a Hindu widow succeeding to the Abadkar rights left by her husband on certain land, acquires occupancy rights therein, she must be

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deemed to acquire them in her own right and not as representing her husband's estate. 129 P.R. 1916, *Foll.* (*Broadway and Jai Lal, JJ.*). NARAIN SINGH *v.* MT. SADA KAUR. **88 I.C. 64=6 Lah. 134=26 P.L.R. 169=A.I.R. 1925 Lah. 305.**

—Widow—Acquisitions—Presumption.

——Widow's purchasing property does not raise presumption that money has come from savings of husband's property: 2 C.W N. 197 and 26 Cal. 871, *Foll.* (*Sulaiman, Ag. C.J. and Kendall, J.*). BAIKUNTH NATH *v.* JAIKISHAN. **113 I.C. 266=51 All. 341=A.I.R. 1929 All. 449.**

——Prima facie *presumption is acquisition is part of the estate.*

The *prima facie* presumption is that it has been the widow's intention to keep the estate one and entire and that the after-purchases are an increment to the original estate. Property acquired by a Hindu widow, with accumulations of the income of her husband's estate, does not constitute her stridhan but forms part of the corpus of the estate and as such is inalienable except for purposes that would justify alienation of the original estate. The buildings being on land belonging to the estate would go with the estate : A.I.R. 1924 Nag. 406 ; A.I.R. 1922 Bom. 144 ; A.I.R. 1926 Mad. 84 ; 14 Cal. 387 (P.C.) ; 10 Cal. 324 (P.C.) and 41 Cal. 870, *Foll.*; A.I.R. 1918 P.C. 156, *Dist.* (*Prideaux, A.J.C.*). YESHODA BAI *v.* GOVIND GOPAL. **109 I. C. 569 (Nag.).**

——*No presumption that acquisitions were kept separate from corpus of the property.*

Though it is open to a life-owner to keep the income and the acquisitions separately from the corpus, yet without specific evidence and proof of the intention of the life-owner to keep such an acquisition separately, the Court cannot presume that it was so done. (*Devadoss, J.*). SRINIVASA AIYANGAR *v.* ALAMELU AMMAL. **101 I.C. 571=A. I. R. 1927 Mad. 715.**

——*No presumption that savings are increments to corpus of estate.*

There is no necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. That which becomes vested in her own right and which she can dispose of a pleasure is her own property not limited but absolute, exclusive and separate in every sense of the term, and devolves as such. There is no presumption that savings or purchases with savings effected by a widow are increments to the corpus of the husband's estate and pass together with it. (*Scott-Smith and Brasher, JJ.*). MT. MALAN *v.* KISHORE CHAND. **71 I.C 833=A.I.R. 1923 Lah. 17.**

——*Presumption is of self-acquisition.*

The presumption in the case of properties acquired by Hindu widows and life-tenants, is that they are self-acquisitions and the onus is on those who assert the contrary. (*Wallis, C.J. and Oldfield, J,*). RAMAYYA *v.* MAHALAKSHMI. **64 I.C. 481=14 M. L. W. 33=1921 M. W. N. 434=A.I.R. 1922 Mad. 357.**

——*Purchase by widow cannot be presumed to be accretion to limited estate.*

Where there is no evidence that certain property was purchased by the widow out of the income of the estate held by her as a Hindu widow, no presumption, that the property purchased forms an accretion to the estate held as a Hindu widow, can be made where she is in possession of other pro-

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perty with an absolute title. (*Daniels and Lyle, A. J. Cs.*). KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. **9 O.L.J. 262=A.I.R. 1922 Oudh 231.**

——*Acquisitions with the income become part of the estate.*

Where a limited owner like a widow acquires properties out of the income of her husband's estate, the presumption is that the acquisitions are impressed with the same character as the funds employed for their acquisition. The mere fact that the acquisition is made by the widow in the name of her daughter does not rebut the presumption. In considering whether the acquisition was intended to be a gift to the daughter, one important test is the character of the possession of the proprties, *i.e.*, whether they were in the possession of the widow or in the exclusive possession of her daughter: 6 M. I. A. 35; 13 M. I. A. 232; 6 I. A. 233; 9 M.I.A. 123; 26 C. 227, *Ref.* (*Mookerjee and Buckland, JJ.*). SRIMATI CHARUSILA DASI *v.* SRIMATI MRINALINI DASI. **64 I.C. 531 (Cal.).**

——There is no presumption that any properties bought by a widow with the surplus income are accretions to her husband's estate; she has absolute power of disposal over the surplus income. (*Abdur Rahim, Offg C.J. and Odgers, J.*). RAMAKRISHNA PRABHU *v.* NARAINA. **62 I.C. 215=11 L. W. 112.**

—Widow—Acquisition—When accretion.

——Where a Hindu widow who was cultivating her *Sir* land purchased certain bullocks for purposes of cultivation,

Held, that the bullocks did not form part of her estate after her death. (*Stuart, C. J. and Hasan, J.*). SARNAM *v.* BISHESHAR BAKHSH SINGH.

7 O. W. N. 128.

——*Unrealised rent decrees—Become part of estate after widow's death.*

In the case of a Hindu widow income from the husband's estate which accrues and is saved but not alienated follows the estate. Where the widow merely established her title to the recovery of rent due from the estate and she never realized the decrees during her lifetime,

Held, that the rent decrees become part of the estate on the death of the widow. (*Stuart, C. J. and Hasan, J.*). SARNAM *v.* BISHESHAR BAKHSH SINGH. **7 O.W.N. 128.**

——Property purchased by the widow in execution of rent-decree obtained by her against tenants holding under her husband is an accretion. (*Mitter, J.*). GANGA DAYAL MISSIR *v.* CHHAKINA BHANU. **46 I. C. 149=105 I. C. 22=A.I.R. 1927 Cal. 806.**

——*Purchase by the widow treated as part of husband's estate becomes accretion to the estate.*

In this case the tenant's rights had been bought in part by release of the arrears of rent and in part by payment of cash from accumulated savings and the property was not only not treated as Sridhan from the beginning but the widow knew and attempted to treat it as her husband's property by an effort to urge the necessities of his debts,

Held, that the tenant's rights so acquired would obviously be an accretion to the husband's property, and if it should be proved that she segregated it as stridhan it would require some unequivocal act as proof. (*Lord Buckmaster.*) NABA KISHORE MANDAL *v.* UPENDRA KISHORE MANDAL. **65 I. C 305=20 A.L.J. 22=35 C.L.J. 116=1922 M.W.N. 95=26 C.W.N. 322=3 P.L.T.311=24 Bom. L.R. 346=15 M. L.W. 417=30 M.L.T. 234=A I.R. 1922 P.C. 39=42 M.L.J. 253 (P.C.).**

HINDU LAW — Widow—Adverse possession—Absolute title.

—Widow—Administratrix.

——*Widow as administratrix granting permanent leases—Leases in excess of powers as administratrix and not for necessity—Reversioners can impeach.*

A will provided, "In case it becomes necessary to grant any permanent leases to tenants the executors shall be competent to grant them under the signature of my wife and at the end of each year they shall submit and explain an account of the income and expenditure to her." The wife made certain permanent leases to have money which was required for purposes quite different from what it was the duty of the wife to perform as an administratrix;

Held that the lady was not competent to grant the leases as the administratrix,

Held further, that the leases which were granted by the lady were granted by her in the exercise of her right as the owner of a widow's estate as heir of the testator and, as such, not being supported by legal necessity, the reversioners were entitled to recover possession after the death of the widow: *English cases referred.* (*B. B. Ghosh and Camminde, JJ.*). ANANDA BANDHU DAS *v.* AMBICA CHARAN PHATTACHARJEE. **107 I. C.747=47 C.L.J. 569=55 Cal 892=A.I R. 1928 Cal. 412.**

——Alienation by widow—Sale made after obtaining Letters and Court's permission—Sale is as valid as if made by any other administrator: 26 Cal. 607; 23 C.W.N. 652 and 23 C.W.N. 1045, *Ref.* (*Walmsley and B.B. Ghose, JJ.*). RAKHAL CHANDRA *v.* PROSAD CHANDRA. **90 I.C. 229=A.I.R. 1926 Cal. 73.**

——Widow is entitled in preference to reversioner for the letters of administration. (*Buckland and Cuming, JJ.*). LAKSHMI SUNDARI *v.* NITYANANDA DHUPI. **64 I.C. 61 (Cal.).**

—Widow—Adverse possession—Absolute title.

——*Widow in possession of property which she is not entitled to inherit—Possession is adverse unless she declares herself a life-tenant or holds with reversioner's consent.*

It is a settled rule of law that the possession of a Hindu female, in respect of the property to which she has come into possession but is not entitled to it by way of inheritance under the Hindu Law, must be deemed to be adverse to the reversioners and cannot be considered to be that of a mere life-estate holder, unless an arrangement or an agreement to that effect is proved to have been arrived at between her and the reversioners or unless she has herself declared that she held only as a limited owner possessed of a life-estate: 22 Cal. 445 (P.C.); 29 Cal. 664 (P.C.); A.I.R. 1919 P.C. 60 and A. I. R. 1927 Oudh 138, *Foll.*

But the mere fact that a Hindu female declares that she is in possession of such property by way of inheritance does not show that she declares herself to be in possession as a limited owner. The real view in such a case would be that she not being entitled to possession by way of inheritance, her possession must be deemed to be that of a trespasser and consequently adverse against the reversioners, unless they prove that it was with their consent. (*Misra and Nanavutty, JJ.*). CHANDRA SHEKHAR SINGH *v.* JAGJIWAN BUKHSH SINGH. **115 I.C. 279=A. I. R. 1929 Oudh 215.**

——*Widow obtaining possession not as a Hindu widow—Possession is adverse to any reversioner of her husband's estate.*

HINDU LAW—Widow—Adverse possession—Absolute title.

Where a Hindu widow is not entitled to a Hindu widow's possession at the time when she obtained possession of certain property, she obtains an absolute title in the property by adverse possession and that absolute title is acquired not only against the reversioners of the property but as against any reversioner to her husband's property: A. I. R. 1924 P. C. 121, *Dist.*; A. I. R. 1919 P. C. 44 and A. I. R. 1924 All. 740, *Foll.* (*Ashworth and Kendall, JJ.*). RIKHDEO TEWARI *v.* SUKHDEO TEWARI. **102 I.C. 175=49 All. 713=25 A.L.J. 580=A.I.R. 1928 All. 45.**

———Widow in possession of last male holder's estate, but not as heir, is not in the position of trustee ceasing to hold office. (*Kumaraswami Sastri and Reilly, JJ.*). MUTHUSWAMI *v.* PONNAYYA. **110 I.C. 613=51 Mad. 815=28 M.L.W. 182=1928 M.W.N. 398=A.I.R. 1928 Mad. 820=55 M.L.J. 436.**

———When a Hindu widow is in possession of any property by adverse possession, then the property would become her stridhan, and it was only if the property is held in possession by a Hindu widow claiming as the widow of her deceased husband, then the property becomes an accretion to her husband's estate : A. I. R. 1925 Pat. 523, *Foll.*; A. I. R. 1924 P. C. 121, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). SURAJ BULLI SINGH *v.* TILAKDHARI SINGH. **107 I.C. 151=7 Pat. 163=9 P.L.T. 370=A.I.R. 1928 Pat. 220.**

———*Possession by widow in her own right, is adverse to reversion.*

When a Hindu widow who would not be entitled to anything more than maintenance out of her husband's estate, obtains possession of the property not as the result of an arrangement with the husband's heirs but absolutely in her own right, her possession becomes adverse to them and their rights are barred at the expiration of 12 years from the date of the husband's death : A.I.R. 1924 P.C. 121, *Dist.*; 29 Cal. 664 (P.C.), *Foll.* (*Misra and Raza, JJ.*). RAJ BAHADUR SINGH *v.* KANHAIYA BAKHSH SINGH. **99 I.C. 890=4 O.W.N. 350=A.I.R. 1927 Oudh 138.**

———Caste custom causing forfeiture of widow's property by reason of her re-marriage—Adverse possession by a widow of a portion of property forming her husband's share—Acquisition by her of the remaining portion which belonged to his brother with moneys from the property adversely held—Such acquisition being made by the widow in her own right does not enure for the benefit of her husband's estate : 10 Cal. 324 and 14 Cal. 387, *Dist.* (*Iqbal Ahmad, J.*). TARIF *v.* PHOOL SINGH. **99 I.C. 578=A. I. R. 1927 All. 274.**

———Arrangement between widow and reversioners—Widow allowed to remain in separate enjoyment of husband's share—Arrangement is valid—Mutation in widow's name does not change devolution: A.I.R. 1926 P.C. 54, *Rel. on.* (*Kinkhede, A.J.C.*). SUMITRABAI *v.* HIRBAJI. **97 I.C. 983=A.I.R. 1927 Nag. 25.**

———Widow taking possession on the death of her deceased son's widow, does so in her own right and the adverse possession cannot be referred to her husband's or son's estate. (*Dalal, J. C.*). DRIGBIJOY SINGH *v.* DRIGPAL SINGH. **90 I. C. 825=A.I.R. 1926 Oudh 126.**

———*Possession taken when there was no right as a widow will presumably create absolute title.*

Under certain circumstances the possession of a Hindu widow may be adverse to the reversioners

HINDU LAW — Widow — Adverse possession — Limited estate.

of her deceased husband to the extent only of a widow's estate, but where she has no right when she takes possession to a widow's estate, and she makes transfers of the property as absolute owner and not as that of a Hindu widow, her possession must be deemed to be that of an absolute owner. (*Dalal, J.C.*). LAL BAHADUR SINGH *v.* MATHURA SINGH. **87 I.C. 164=A.I.R. 1925 Oudh 669.**

———*Undivided brother's widow holding adversely can acquire full ownership.*

A widow of undivided brother holding portion of joint property for over the statutory period can acquire full ownership of that portion by adverse possession and not only a widow's estate: A.I.R. 1924 P.C. 121, *Dist.*; 41 A. 729, *Foll.*; 32 C. 445 (P.C.) *Ref.* (*Daniels and Neave, JJ.*). KALI CHARAN *v.* MT. PEARE. **83 I.C. 754=46 All. 769=22 A.L.J. 725=5 L.R.A. Civ. 677=A. I. R. 1924 All. 740.**

—Widow—Adverse possession—Burden of proof.

———Widowed daughter-in-law possessing for more than 12 years property held by deceased mother-in-law—Reversioner must prove that daughter-in-law only prescribed for widow's title: 22 Cal. 445, *Foll.*

The fact that in a previous suit she sided with a person who claimed to be the adopted son of her husband and alleged that certain items (other than the property now in dispute) were in her and the adopted son's joint possession and the circumstances that in the previous suit she adopted the pleadings filed by the adopted son, cannot preclude her from claiming that she did not prescribe for only a widow's title in respect of the properties in suit, where she did not set up title to the property in dispute in the previous suit as the widow of her husband. (*Devadoss and Jackson, JJ.*). SEKHARD RAO *v.* K. RAMARAJU SESHAYYA. **86 I.C. 296=A. I. R. 1925 Mad. 1066.**

—Widow—Adverse possession—Limited estate.

———Widow forfeiting by reason of unchastity her widow's estate but continuing to be in possession for more than twelve years after such forfeiture but not claiming as absolute owner—Her possession after forfeiture completes her title to widow's estate only which she had forfeited—After her death husband's reversioner held entitled to succeed: A.I.R. 1924 P.C. 121; A.I.R. 1929 Lah. 327, *Foll.* (*Shadi Lal, C.J. and Broadway, J.*). MAHAJAN *v.* MT. PURBHO. **123 I.C. 276=31 P.L.R. 233=A.I.R. 1930 Lah. 504.**

———Where a Hindu widow being in possession as widow, possesses adversely to any one certain parcels she does not acquire the parcels as stridhan, but she makes them good to her husband's estate: A. I. R. 1924 P.C. 121, *Foll*; A.I.R 1925 Bom. 465, *Dist.* (*Mirza and Murphy, JJ.*). ANANT DATTATRAYA *v.* MAHADEO WASUDEO. **119 I.C. 786=31 Bom. L.R. 628=A.I.R. 1929 Bom. 333.**

———Widow forfeiting by reason of re-marriage her widow's estate but continuing to be recorded in possession as widow without reversioner's objection for more than 12 years after re-marriage—She must be presumed to be in possession of widow's estate only—What she acquired by adverse possession was absolute title to such limited interest only : A. I. R. 1927 All. 274; A. I. R. 1925 All. 369 ; A.I.R. 1924 P.C. 121, *Foll.* (*Addison, J.*). DESA *v.* DANI. **119 I. C. 238=A. I. R. 1929 Lah. 327.**

HINDU LAW — Widow — Adverse possession — Limited estate.

——Caste custom entailing a forfeiture of widow's estate on re-marriage—Widow continuing in possession in spite of the forfeiture—Her adverse possession could prescribe a title only to the limited estate of which she was possessed prior to forfeiture: A I.R 1924 P.C. 121; A.I.R. 1925 All. 369, *Foll.*; A.I R 1924 All. 740, *Dist.* (*Iqbal Ahmad, J.*). TARIF *v.* PHOOL SINGH. **99 I.C 578= A. I. R. 1927 All. 274.**

——*Continuing in possession after re-marriage—Prescription benefits first husband's estate.*

Where after re marriage, a Hindu widow remains in possession of her husband's lands for 12 years but does not claim to do so in her own right but only as her first husband's widow, she acquires the property for her first husband and on her death, his reversioners succeed to the estate. (*Mukerji, J.*). UMRAO SINGH *v.* PIRTHI. **86 I.C. 445= 6 L.R.A. Civ. 117=A I.R 1925 All. 369.**

——Where a Hindu widow held property claiming as an heir, though she was only entitled to maintenance,

Held, that her possession is adverse to the last male owner's heirs, *i.e.*, the reversioners whose title is destroyed by S. 28 of Limitation Act, that she did not acquire the property as stridhan, but only as an accretion to the husband's property, and therefore after her death the property would go to her daughter as her husband's heir in preference to husband's brothers and nephews. (*Lord Dunedin.*) MT. LAJWANTI *v.* SAFA CHAND. **80 I.C. 788=22 A.L.J. 304=34 M.L.T. 87= 5 Lah. 192=5 L R.P.C. 94=20 M.L.W. 10= 51 I.A. 171=28 C.W.N. 960= 1924 M.W.N 442=2 Pat. L.R. Civ. 245= 26 Bom L.R. 1117=6 P.L.T. 1= A.I.R. 1924 P.C. 121=47 M.L.J. 935.**

—Widow—Adverse possession—Reversioner.

—— There cannot be adverse possession against reversioners during the lifetime of widow. (*Sulaiman and Pullan, JJ.*). PHULCHAND *v.* GOBARDHAN DOSS. **119 I.C. 855= 1929 A.L.J. 970= A.I.R. 1929 All. 739.**

——Where the original owner has ceased to be in possession and his widow and his reversioners successively take no steps to recover possession within the period of limitation, the reversioners will be barred by limitation. (*Ashworth, J.*). JAIDEO SINGH *v.* MUNSHI DHOOM SINGH. **116 I.C. 740= A.I.R. 1929 All. 419.**

——No length of possession adverse to the widow would bar the reversioners, who have 12 years reckoned from the widow's death to sue: 9 Cal. 934 (F.B) and 21 Cal. 8 (P.C.), *Foll.*; A.I.R. 1925 P. C. 249, *Expl.* and *Dist.*; 23 Bom. 725 (P.C.), *Dist.*; 9 W. R. 505 (F.B.), *Diss. from.* [But see A.I.R. 1928 Cal. 670 and A.I.R. 1928 All. 561, (F.B.)]. (*Mukerji and Mullick, JJ.*). SIVA PRASAD *v.* BHADRAMONI DASSI. **114 I.C. 139= 48 C L.J. 368= A.I.R. 1929 Cal. 93.**

——Possession adverse against a widow is not adverse against reversioners, especially when widow was not on good terms with reversioners. (*Tek Chand, J.*). LAJPAT RAI *v.* SOHNA. **115 I.C. 71=11 L.L.J. 91= 30 P.L.R. 296= A.I.R. 1929 Lah. 432.**

——*Possession adverse to Hindu widow is not adverse to reversioners (Obiter).*

Possession adverse to a Hindu widow is not adverse to the reversioners, and therefore a suit brought by the reversioners within 12 years of the widow's death is not barred by limitation:

HINDU LAW — Widow — Adverse possession — Reversioner.

A.I.R. 1925 P.C. 249, *Expl.*; A.I.R. 1928 All. 561 (F.B.); A.I.R. 1929 Cal. 93, *Appr.* and *Foll.* (*Further case-law discussed*). (*Phillips and Thiruvenkatachariar, JJ.*). AYYASWAMI AYYAR *v.* MAHADEVA AYYAR. **119 I.C. 57=29 M.L.W. 590= 1929 M.W.N. 314=A.I.R. 1929 Mad. 421= 56 M.L.J. 441.**

——*Widow's possession is not adverse to reversioners nor that of person in possession with her consent.*

The possession of a Hindu widow for her life, is a possession to which she is entitled by virtue of law, and it cannot be deemed to be adverse against the reversioners in the sense that it might extinguish their rights. Similarly if any person during the lifetime of the widow comes into possession of the property with the consent of the widow, his or her possession cannot be deemed to be adverse to them. (*Misra and Nanavutty, JJ.*). CHANDRA SHEKHAR SINGH *v.* JAGJIWAN BAKHSH SINGH. **115 I.C. 279=A.I.R. 1929 Oudh 215.**

——If adverse possession against a widow is sought to be made adverse also against the reversioner, it can only be so in a case where the widow has been in actual possession and has been dispossessed: A.I.R. 1928 Cal. 670, *Not appr.*; A.I.R. 1925 P. C. 249, *Expl.*; A. I. R 1928 All. 561 (F. B.), *Rel. on*; 9 M. I. A. 539 and 23 Bom. 725 (P. C.), *Cons.* (*Raza and Pullan, JJ.*). MT. LACHMIN *v.* ESHURI PRASAD. **115 I.C. 101=6 O.W.N. 138= 4 Luck. 592=A.I.R. 1929 Oudh 153.**

——Mother taking possession of deceased's property—His widow living but minor, and unable to look after property—Mother's possession is not adverse but only nearest reversioner's possession, before her time. (*Raza and Pullan, JJ.*). MT. LACHMIN *v.* ISHURI PRASAD. **115 I C. 101= 6 O.W.N. 138=4 Luck. 592= A.I.R. 1929 Oudh 153.**

——*Adverse possession against widow bars reversioners.*

Where a Hindu widow has lost her title and interest in the husband's property by adverse possession, the adverse possession also bars the right of reversioners. There is no difference between the loss of the reversioners' rights by adverse possession against a widow, and the loss of such rights by an adverse decree against her: 9 W. R. 505; 9 M. I. A. 603 and *Golukmoni* v. *Digumber De*, 2 Boul. Rep. 193, *Foll.*; A. I. R. 1925 P. C. 249, *Expl.* (*Page, J.*). AURABINDO NATH *v.* MONORAMA DEBI. **112 I.C. 496=55 Cal. 903= 32 C.W.N. 913=A.I.R. 1928 Cal. 670.**

——Possession adverse against widow is not so against reversioner: 13 C.P.L.R. 81, *Ref.* (*Findlay, J. C.*). DEORAM GUJAR *v.* BIJU GUJAR. **101 I.C. 822=10 N.L.J. 90= A.I.R. 1927 Nag. 226.**

——*Possession by widow is not adverse to reversioners.*

Two Hindu brothers were joint. One died shortly before the other and left a widow, surviving him. The two brothers together had owned certain property. On the death of one of them, with the consent of the other, the name of the widow was recorded with respect to half the share. On the death of the other brother the name of the widow was recorded in respect of the remaining share which stood in his name. The widow continued to be in possession of the entire share till her death. Before her death she made a transfer by way of sale of a half share in favour of another.

HINDU LAW — Widow—Adverse possession — Reversioner.

Held, that ordinarily a Hindu widow would claim to be in possession in the right of her husband. As there was absolutely nothing before the sale-deed to show that there was any assertion of an adverse title by the widow in herself, namely, title adverse to her husband's estate and to the estate that would go to the reversioners, her possession previous to the sale must be held to be permissive and not adverse to the reversioners. (*Sulaiman and Mukerji, JJ.*). BINDRABEN *v.* RAM NARAIN.
85 I.C. 449=6 L.R.A. Civ. 127=A.I.R. 1925 All. 330.

——Adverse possession, starting in the lifetime of last male owner will continue to run during the widow's possession—Adverse possession begun in widow's life tenancy—Limitation against reversioners runs from widow's death. (*Dalal, A.J.C.*). BHAGWANDIN *v.* AJUDHIA. **87 I.C. 1021=A.I.R. 1925 Oudh 729.**

—Widow—Adverse possession—Starting point.

——Widow having claim for residence and maintenance continuing in possession after death of last male holder but not as heir—Her possession is not wrongful at least till reversioners demand possession from her—Any sums spent by her for purposes binding on reversioners can be recovered by her. *Case-law referred to.* (*Kumaraswami Sastri and Reilly, JJ.*). MUTHUSWAMI *v.* PONNAYYA.
110 I.C. 613=51 Mad. 815=1928 M W.N. 398=28 M.L.W. 182=A.I.R. 1928 Mad. 820=55 M.L.J. 436.

—Widow—Adverse possession—Test of.

——Land granted for maintenance—Purchases made out of savings from the income of such land do not amount to denial of title of the heir of last male holder. (*Kinkhede, A.J.C.*). YESHAWANT *v.* DAULAT. **89 I.C. 663=A.I.R. 1926 Nag. 129.**

——*If widow's possession is adverse is a matter of legal inference from documents.*

Where widows are entitled only to maintenance out of the estate of their deceased husbands their possession could be considered adverse to the reversioners unless they prove that it was the result of some arrangement between them and the rightful owner. The question as to the nature and effect of possession of property by a Hindu widow, *i.e.*, whether possession is only in lieu of maintenance or is adverse to the reversioners is one to be decided by legal inferences drawn from documents: 19 O.C. 221; A.I.R. 1923 Oudh 31, *Dist.*; 29 Cal. 664: 42 All. 152, *Foll.* (*Dalal, A. J. C.*). BHAGWAN DIN *v.* AJUDHIA. **87 I. C. 1021=A. I. R. 1925 Oudh 729.**

——*Dayabhaga—Two widows entitled to joint possession—One widow not participating in profits for 15 years—Other widow's possession is adverse.*

Two widows were in joint occupation of certain properties as the heirs of their husbands who were brothers and members of a Dayabhaga Hindu joint family. Subsequently one of the widows became a Vaishnavi and left her husband's home and lived by begging or in her daughter's house. For 15 years she never paid any visit to her former home and did not participate in the profits of the property,

Held, that under these circumstances, the other widow who remained in possession of the property should be held to have been in adverse possession. (*Teunon and Newbould, JJ.*). CHAITANYA KRISHNA MANDAL *v.* SOUDHYAMONI DASI. **64 I. C. 778=27 C.W.N. 624=A.I.R. 1921 Cal. 535.**

HINDU LAW—Widow—Compromise.

—Widow—Compromise.

——*Compromise by widow in disputed litigation is binding upon reversioner.*

A suit by a Hindu widow against mother-in-law for recovery of possession of her husband's property was referred to arbitration and according to the award the widow relinquished six annas share of the property in order to get possession of remaining ten annas; the mother-in-law's right to maintenance was mentioned as a reason for the partial relinquishment. A decree followed which dismissed the suit as regards the six annas share. A reversioner of the original owner sued the lessee from the mother-in-law to recover the six annas share, who claimed the share under a permanent lease from the mother-in-law,

Held, that as the widow had relinquished the six annas share as a matter of compromise to get possession of the 10 annas, that being a compromise of a disputed litigation was binding upon the reversioner unless he could show fraud or any other similar ground: 33 All. 356 (P.C.) and A.I.R. 1922 P.C. 356, *Rel. on.* (*B. B. Ghose and S. K. Ghose, JJ.*). UPENDRA NATH MUKERJEE *v.* GURUPADA HALDER. **34 C.W.N. 404=A.I.R. 1930 Cal. 508.**

——*Widow cannot release claim to debuttar property by way of compromise.*

Where a widow who is a representative of the debuttar estate in certain testamentary proceedings withdraws her caveat and receives a certain sum of money in satisfaction of her right of residence, maintenance and all other claims including claim to the debuttar estate it is a bad bargain on her part and cannot be supported. The transaction cannot be upheld on the ground of a *bona fide* compromise: 1 Mad. 235 (P.C.); 17 Cal. 557; 23 Bom. 131 and 1 C.W.N. 493, *Foll.*; A.I.R. 1926 Cal 490; 35 Cal. 226, *Ref.* 36 Cal. 975; 6 Bom. 298 and 15 Mad. 183, *Dist.* (*Rankin, C.J. and C. C. Ghose, J.*) PANCHANAN BANERJEE *v.* SURENDRANATH MUKERJEE. **30 C.L.J. 382=A.I.R. 1930 Cal. 180.**

——Where widow agrees by way of compromise that her husband died joint and that she is entitled only to maintenance, she cannot be said to represent estate and compromise by her does not bind reversioners.

Per *Mukerji, J.*—The moment she says that her husband died joint she disclaims all title to represent her husband's estate for on her own admission there is no estate to represent. Her act therefore cannot bind those whose allegation is that there was such estate and that on the death of the widow the estate would devolve on them: 33 All. 356 (P.C.); A. I. R. 1925 P. C. 272, *Dist.* (*Mukerji and Niamatullah, JJ.*). NIRMAN BAHADUR *v.* FATEH BAHADUR SINGH. **1929 A.L.J. 1233=A.I.R. 1929 All. 963.**

——Per *Niamatullah, J.*—Compromise by *pardanashin* widow not with full appreciation of circumstances and not after taking legal advice does not bind reversioner. (*Mukerji and Niamatullah, JJ.*). NIRMAN BAHADUR *v.* FATEH BAHADUR SINGH.
1929 A.L.J. 1233=A.I.R. 1929 All. 963.

——*Widow compromising* bona fide *for benefit of the estate—Alienation binds reversioner.*

An alienation, by way of compromise will, if the compromise be reasonable and prudent and for the interest of the estate, fall within the power of the holder of a Hindu woman's estate, either being an alienation induced by necessity or as being in a parallel position to such an alienation.

HINDU LAW—Widow—Compromise.

A Hindu widow admitted before arbitrators a will by her husband whereby he devised all his property to his sister's son in case his daughter was married to his sister's son. A decree was passed in terms of the award. Subsequently, differences arising between her and the son-in-law, she adopted a son.

In a suit to recover possession of suit property by the adopted son, who challenged the compromise and the alienation.

Held, that inasmuch as the admission by the widow was a reasonable one and in the interests of the estate and the parties concerned, the decree embodying the compromise was binding on the adopted son ; (*Case-law discussed*) ; A.I.R. 1922 P.C. 356, *Foll.* : 33 All. 356, A.I.R. 1914 P. C. 44; 9 M.I.A. 539 A. I. R. 1925 P. C. 249 ; 37 Bom. 172 and 30 Mad. 3, *Rel. on* ; 22 Bom. L.R. 768 and 20 Bom. L.R. 947, *Not foll.* (*Marten, C.J. and Crump, J.*). RAVJI ANDU *v.* RAMA KRISHNA. **106 I.C. 206= 29 Bom. L. R. 1346=A.I.R. 1928 Bom. 14.**

———Bona fide *compromise binds reversioners.*

A compromise not vitiated by fraud or collusion, but made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner, is binding on the heirs in reversion, and in this respect a compromise stands on the same footing as a decree on contest: A.I.R. 1922 P.C. 356, *Rel, on.* (*Venkatasubba Rao, J.*). SHANMUGA MUDALIAR *v.* KAVERI AMMAL.

109 I.C. 539=A.I.R. 1928 Mad. 708.

———*Contract Act, S. 39—Widow getting life-estate by compromise on condition of abstaining from adoption—Widow subsequently adopting—She loses all advantages under the compromise.*

The provisions of S. 39 are in conformity with the law as prevailed in England.

Where a widow enters into a compromise with the sole person entitled to the estate, whereby she obtains a life-estate in the property on condition that she would not exercise the right of adoption conferred by her husband, she cannot take any advantage under the compromise if subsequently she adopts in pursuance of the authority of her husband : A.I.R. 1927 Oudh 12 and *Mersey Steel & Iron Co.* v. *Naylor Benzor & Co.*, (1884) 9 A.C. 434, *Rel. on.* (*Stuart, C.J. and Wazir Hasan, J.*). BISHUNATH KUAR *v.* SHEO BAHADUR SINGH.

104 I.C. 587=4 O.W.N. 550=A.I.R. 1927 Oudh 265.

———*Widow can validly compromise to secure peace and prevent waste.*

A Hindu widow who is entitled to the whole estate can, though she is an executrix, legally compromise with the other members of her husband's family for the purpose of procuring peace in the family and to prevent the estate being wasted in ligitation if the compromise is reasonable. (*Sanderson, C.J. and Panton, J.*). SUDHIR CHANDRA *v.* INDUMATI CHAUDHURANI.

43 C.L.J. 206=A.I.R. 1926 Cal. 711.

———*Compromise should be beneficial to estate and fair from the standpoint of reversioners.*

A Hindu testator authorized by his Will his widow to adopt a son to him. The testator left besides the widow five daughters. The widow was appointed executrix. When she applied for probate of the Will, one of the daughters filed a caveat. The estate was placed under the control of administrator *pendente lite.* Subsequently. the widow and the objector compromised and the latter withdrew her caveat on receipt of a sum of money which was paid out of the estate. The arrangement was found beneficial to the family,

HINDU LAW—Widow—Compromise.

Held, that the arrangement was a proper one and that the daughter was not bound to suffer any deduction from her dues under the will on account of the sum which she had received in consideration of the compromise.

Per *Rankin, J.*—A Hindu widow is entitled to protect the right that her husband has purported to give by his Will that she should make an adoption and to make a compromise in defence of that provided always that transaction, as a whole, was fair and reasonable from the point of view of reversioners. (*Sanderson, C.J. and Rankin, J.*). SUDHIR CHANDRA DASS *v.* INDUMATI CHAUDHURANI.

94 I.C. 616=43 C.L.J. 187= A. I. R. 1926 Cal. 627.

———A *bona fide* compromise of a litigation, by a Hindu widow representing the reversioners in the exercise of her discretion and in the belief that it would be in the best interests of the estate, is binding on the reversioners. (*Phillips and Ramesam, JJ.*). RAMA AIYAR *v.* NARAYANASAMI AIYAR.

96 I.C. 483=23 M.L.W. 496= 1926 M.W.N. 958=A.I.R. 1926 Mad. 609. 51 M.L.J, 313.

———*Compromise by widow—When binding on reversioners.*

A compromise entered into by a Hindu widow *bona fide* for the benefit of the estate and not for her own personal advantage binds the reversioners as much as a decree against her obtained after litigation. But a compromise which admits a claim for an amount far in excess of what was due and which could never have been supported had the case come to trial, is not for the benefit of estate. (*Neave, A.J.C.*). BASAWAN *v.* NATHA.

82 I.C. 747=11 O.L.J. 452= A.I.R. 1925 Oudh 30.

———Bona fide *and reasonable compromise is binding on estate.*

A Hindu woman might be party to a litigation concerning considerable immovable property, might be successful in the first Court and be threatened with an appeal, and have then a suggestion from the adversary that, if she would part with a single item of property or a few *bighas*, he would let the judgment stand. She would have, if every compromise by her is void, to refuse the suggested compromise and be prepared to fight the case up to the Privy Council. Or it might be put in another way. Her opponent could never suggest a compromise because he would know that any compromise would be upset. It would be very undesirable in the interests of property owners that this extreme doctrine should be upheld.

A compromise made *bona fide* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest. (*Lord Phillimore.*) RAMSUMRAN *v.* MT. SHYAM KUMARI.

69 I.C. 71=49 I.A. 342=31 M. L.T. 200= 1 Pat. 741=27 C W.N. 269=3 P.L.T. 749= 21 A.L.J. 18=16 M.L.W. 956=37 C.L J. 356= 25 Bom L.R. 634=4 L.R.P.C. 17= A.I.R. 1922 P.C. 356=44 M.L.J. 751.

———Bona fide *compromise of litigation binds reversioner.*

A *bona fide* compromise of a litigation by a Hindu widow in the exercise of her discretion and in the belief that it would be in the best interests of the estate is binding on the reversion. The validity of such a compromise does not depend on proof of necessity as in the case of an alienation by the widow and the reversioner can avoid the com-

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promise on proving that it was not arrived at with due care and caution and was such as really showed negligence on the part of the widow: 10 L.W. 594, *Diss. from*; 31 M.L.J. 87; 33 All 356 (P.C.). (*Abdur Rahim and Oldfield, JJ.*). KADAKKARAI NADAN *v.* NADAKKANU NADAN. **62 I.C. 752= 13 M.L.W. 533=1921 M. W. N. 342= A.I.R. 1921 Mad. 475.**

——*Compromise by widow for protection of estate binds reversioner.*

A compromise of a doubtful claim by the holder of a limited interest binds the reversionary heir if it is established that the compromise was a fair and an honest one and that such holder entered into the transaction as representing the estate and for the protection of the estate, and not as representing herself and for her own protection. (*Das and Adami, JJ.*). BHAGWATIKOER v. JAGDAM SAHAY. **62 I. C. 933=2 P.L.T. 471= 6 P.L.J. 604=A.I.R. 1921 Pat. 260.**

—Widow—Co-widows.

——*Co-widows in separate possession of husband's property—One cannot, when other's consent is not asked for, charge the property even for necessary purposes.*

It is well-settled that if a Hindu dies leaving two widows, they succeed as joint tenants with a right of survivorship. They are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom. Each can deal as she pleases with her own life-interest, but she cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivor or a future reversioner. If they act together they can burden the reversion with any debts contracted owing to legal necessity, but one of them acting without the authority of the other cannot prejudice the right of survivorship by burdening or alienating any part of the estate. Where they have partitioned the estate among themselves, the mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned to her, does not imply a right to prejudice the claim of the survivor to enjoy the full fruits of the property during her lifetime, and a mortgage by a co-widow, even for necessary purposes, when the concurrence of her co-widow is not asked for is not binding upon the estate so as to prejudice the rights of the surviving co-widows: 11 M.I.A. 487 (P.C.) and 16 Mad. 1 (P.C.), *Rel. on*; 14 M L.J. 189, *Expl.*; *Remarks in* A.I.R. 1928 All. 92 *to the contrary held as obiter*; A.I.R. 1926 Oudh 401, *Affirmed.* (*Lord Salvesen.*) GAURINATH KAKAJI *v.* MT. GAYA KUAR. **111 I.C. 485=55 I.A. 399= 5 O.W.N. 661=28 M.L.W. 378=10 P.L T. 199= 1928 M.W.N. 758=26 A.L.J. 1174= 8 C.L.J. 405=33 C.W.N. 39= 31 Bom. L.R. 1= A.I.R. 1928 P.C. 251=55 M.L.J. 339 (P.C.).**

——*One widow can alienate for necessity—Other widow need not join in the alienation.*

If there are two co-widows enjoying their husband's estate as co-parceners one of them can conclude a donation, mortgage or sale of immovable property during a season of distress for the sake of the family and especially for pieus purposes. Therefore, the argument that even where legal necessity exists an alienation by one co-widow will not bind the estate unless the other co-widow joins in the alienation is not acceptable.

Where it was found that the co-widow consented to alienation by the other co-widow for necessity, but did not join in the alienation,

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Held, it is not necessary for the purpose of binding the estate in the hands of the reversioners that she should actually join in executing the deed: A.I.R. 1926 Mad. 6, *Diss. from*; 11 M.I.A. 487 (P.C.), *Ref.*; 33 Cal. 1079, *Rel. on.* (*Lindsay and Banerji, JJ.*). JAI NARAIN SINGH *v.* MUNNA LAL. **107 I.C. 699=50 All. 489=26 A.L.J. 268= A.I.R. 1928 All. 92.**

——*An alienation by one of the co-widows has no legal effect after her death.*

When two co-widows succeed as co-heirs to the estate of their husband, they take it as joint tenants with rights of survivorship and of equal beneficial enjoyment, and an alienation made by one of such co-widows has no legal effect after her death. (*Tek Chand, J.*). MT. BAL KAUR *v.* MT. HAR KAUR. **108 I.C. 184=A.I.R. 1928 Lah. 242.**

——*Co-widows—Partition between—Nature of and incidents of—Powers of alienation—One widow cannot alienate without other's consent even for necessity.*

The estate of co-widows or other co-heiresses in Hindu Law is a joint estate, but it is unlike other joint estates. It is indivisible: (2 Mad. 194, *Foll.*) Strictly, it can never be divided, so as to create separate estates such that each sharer is the owner of her share at her death, the reversioner's estate falls in. Such a division is impossible in law. Such partition as is permissible is merely for the convenience of their enjoyment by the sharers and may be of two kinds; (i) so as to last during the lifetime of both the widows; (ii) so as to bind them until the death of all of them. In the latter case if one of the widows dies before the other, without alienating the property, it passes to the heirs of her private property and not to the other co-widow, or their reversioners, the dictum to the contrary in 3 M. H. C. 268 *not being good law*: A. I. R. 1924 Mad. 75 and 43 Mad. 855, *Foll.* By the very nature of the arrangement, there can be no survivorship if the partition is of the second kind. But if it is of the first kind, it cannot affect the right of survivorship of the other. One of the co-widows can alienate her share, which may be defined or undefined, according as there is a partition or not. If the alienor dies before the co widow, the alienation ceases to be operative if there is no partition, or if the partition is of the first kind, the property goes to the co-widow by survivorship. But if the partition is of the second kind, the property continues to be enjoyed by the alienee, until the other co-widow dies. 22 Mad. 522; 23 Mad. 504 and A.I.R. 1924 Mad. 75, *Foll.* The *obiter dictum* to the contrary, in 33 All. 443, *Not foll.* Except for the limited purposes mentioned above, *i.e.*, during the lifetime of the alienor in a partition of the first kind, or during the lifetime of all the co-widows in a partition of the second kind, there can be no alienation by a widow of her interest: 1 Mad. 290 (P. C.); 16 Mad. 1 (P. C.), *Foll.* and whether there is necessity or not, an alienation by one co-widow cannot bind the reversioner: 3 M. H. C. R. 424; 24 Cal. 339; 43 Mad. 855; 23 Mad. 504 and 33 All. 443, *Foll.* If an alienation for necessity is to bind the reversioners, all the co-widows must join in it. (*Ramesam and Venkatasubba Rao, JJ.*). APPALASURI *v.* KANNAMMA NAYURALU. **90 I.C. 881=22 M.L.W. 287= 1925 M.W.N. 622=A.I.R. 1926 Mad. 6= 49 M.L.J. 479.**

——*Alienation by widow in a case of co-widows—Neither objecting to a transfer by the other is not consent to the transaction.*

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The circumstance that neither of the co-widows objected to a transfer made by the other cannot be construed to mean more than that neither objected to the other making a transfer, provided that transfer did not affect her own interests in the event of her succeeding to the estate by survivorship and it is not correct to draw an inference that the failure to object by either lady can imply that she consented to a transfer by the other which would have the effect after the lifetime of the transferor. (*Stuart, C.J. and Raza, J.*). GAYA KUNWAR *v.* GAURI NATH. **94 I.C. 932=29 O.C. 282=13 O.L.J 516=3 O.W.N. 414=A.I.R. 1926 Oudh 401**

———*Widow entitled under custom to succeed to widow's estate held by another widow—Former can restrain alienation by latter.*

The restrictions imposed by the Hindu Law on a widow's power of alienation of her husband's estate are inseparable from her estate, and their existence does not depend on that of heirs capable of taking on her death. Hence where under the customary law a widow is entitled on the death of another widow, to succeed to the estate held by the latter as a life tenure, the former can restrain an alienation by the latter. (*Shadi Lal, C.J. and Le Rossignol, J.*). MT. SURJA *v.* MT. DALELO. **87 I.C. 937=7 L.L.J. 474=26 P L.R. 269=A.I.R. 1925 Lah. 573.**

———Where two widows made a gift of a portion of their husband's property to the daughter of one of them,

Held, that the gift would enure for the benefit of the daughter or her heirs during the lifetime of both the widows. The death of one of the widows will not affect the rights of the daughter during the lifetime of the surviving widow. (*Macleod, C. J. and Shah, J.*). DHANJI NATHA *v.* DHUMA HIRAJI MALI. **80 I.C. 234=26 Bom. L.R. 277=A.I.R. 1924 Bom. 382.**

———Two widows holding widows' estate—One surrendering her interest in favour of the other—Male reversioner's rights are not accelerated on the death of surrenderee widow. There can be no acceleration of the right of a male reversioner by transactions between two or more joint female heirs without the knowledge or consent of the reversioner. (*Sadasiva Iyer and Napier, JJ.*). MUTHIALA CHENGAPPA *v.* BUDEAGUNTA. **60 I.C. 135=1921 M.W.N. 29=A.I.R. 1921 Mad. 246.**

———Where a co-widow who is a defendant is willing to be made a co-plaintiff a decree for the whole property belonging to both the widows should be passed though the suit is by one widow on behalf of herself and her co-widow and though the defendant co-widow said in her written statement that a separate suit for her half share will have to be brought. (*Sadasiva Iyer and Spencer, JJ.*). RAMACHARI *v.* SARASWATI AMMAL. **60 I.C. 246=1920 M.W.N. 721=12 L.W. 544.**

—Widow—Debts.

———*Satisfying debt not immediately payable is binding.*

Though any act for which the character of "legal necessity" or of "benefit to the estate" can be claimed must be an act of a defensive nature, but it does not follow that an act is not of a defensive nature which is done for the purpose of satisfying a debt which is not immediately payable: A.I.R. 1930 Nag. 96, *Ref.* (*Jackson, A.J.C.*). YASODA *v.* SHAMJI. **123 I.C. 899=A.I.R. 1930 Nag. 218.**

HINDU LAW—Widow—Debts.

———Widow incurring debt in course of management of property on credit of estate—No charge created—Still estate in reversioner's hands is liable for such debt. 3 Bom 237; A.I R. 1928 Bom. 310; 19 All. 300, *Not foll.*; 33 Mad 492; 26 Bom. 206, *Foll.* (*Jackson, A.J.C.*). KONGSHI *v.* KANDAJI. **117 I.C. 266=A.I.R. 1929 Nag. 191.**

———A reversioner is not liable to satisfy a personal debt not secured on the property though property incurred by a widow in the course of management of the property: 3 Bom. 237, *Foll.* 26 Bom. 206 (F. B.), *Dist*; *Case-law considered.* (*Fawcett and Mirza, JJ.*) BHAGWANTRAO *v.* RAMANATH. **111 I.C. 704=52 Bom. 542=30 Bom. L.R. 881=A.I.R. 1928 Bom 310.**

———Expenses of pilgrimage to be good should be a small portion and must be for spiritual benefit of husband or father—Mother's authority to spend for spiritual benefit of deceased son is not the same as of the wife of the deceased—Residence of parties, custom of caste, etc., will be scrutinized in the case of distant pilgrimages. A.I.R. 1922 P. C. 261, *Foll.*

Pilgrimages in general regarded as spiritual acts are not absolutely necessary, but only, at the most commendable; and while the Courts do not disallow any expenditure reasonable, under the circumstances, out of the estate, they would also scrutinize with care such expenditure. (*Madgavkar, J.*). BAI CHANHAL *v.* CHIMANLAL. **111 I.C. 626=30 Bom. L. R. 685=A.I.R. 1928 Bom. 238.**

———Interest on the expenses incurred for pilgrimage should not be allowed without sufficient reason and in the absence of an agreement to pay it. (*Madgavkar, J.*). BAICHANCHAL *v.* CHIMANLAL. **111 I. C. 626=30 Bom L.R. 685=A.I.R. 1928 Bom. 238.**

———Where the interest on the amount charged is clearly entered in the bond, it cannot be said that the widow of the debtor was wrong in admitting the interest charged. (*Addison, J.*). ABDUR RAHMAN *v.* RURA. **114 I.C. 52=A.I.R. 1928 Lah. 962.**

———*Litigation expenses are binding only if they were incurred for protecting her title.*

The law applicale in cases where a reversioner is sought to be bound with costs of litigation incurred by a Hindu widow is that if she has incurred debts to meet the costs of litigation brought againt her, in order to protect her title to the estate, the debts so incurred would be binding on the reversioner. If, however, she has incurred debts in litigation undertaken by herself not with the object indicated above those debts will not be binding on the reversioner: 4 All 532; 12 Cal. 52; A. I. R. 1917 P. C. 33; A.I.R. 1923 All. 298; A. I. R. 1926 All. 511; A. I. R. 1926 Cal. 1046 and 22 P. R. 1890, *Cons.* and *Rel. on.* (*Misra and Nanavutty, JJ.*). JAGDAT SINGH *v.* RAWAT KANHAIYA BAKSH. **112 I C. 238=5 O.W.N. 715.**

———*Expenses for daughter's marriage need not necessarily be restricted to one fourth of the estate.*

Daughter's marriage is a primary duty of a Hindu and to limit the amount to be spent for her marriage to a fourth part of the estate left by the father would in many cases make it impossible for the widow to give her daughter in marriage. The texts prescribing this portion are not imperative, but only directory, and only indicate what should be considered as reasonable. (*Greaves and B. B. Ghose, JJ.*). SAILABALA DEBI *v.* BAIKUNTH NATH. **91 I.C. 186=A.I.R. 1926 Cal. 486.**

HINDU LAW—Widow—Debts.

——Debts contracted by mother for marriage of her son are not binding on reversioners. (*Devadoss, J.*). RAJAGOPALA CHARIAR *v.* SAMI REDDI. **93 I. C 49=1926 M. W. N. 266= A.I.R. 1926 Mad. 517=50 M.L.J. 221.**

——*No debt by widow is a charge on property unless it is charged.*

Even the fullest legal necessity cannot make a debt incurred by a Hindu widow a charge on her husband's estate after her death unless she specifically creates that charge. The debt is her own personal debt, payable out of the income of the estate, until she declares her inability to pay it herself by alienating a part of the estate to pay it: 4 Mad. 375; 25 Cal. 565 and 30 All. 394, *Rel. on.* (*Hallifax, A.J.C.*). BISHWESHWARDAS DAGA *v.* AUJOR SINGH. **94 I.C. 394= A.I.R. 1926 Nag. 334.**

——A debt incurred by a Hindu widow but not for legal necessity cannot bind the estate of the husband in the hands of the reversioners: 19 All. 300, *Foll.* (*Neave, A.J.C*). CHHOTEY LAL *v.* RAM BALI. **91 I.C. 125 (Oudh).**

——*Widow can charge properties with payment of debts borrowed for family business inherited by her, and for completing a house left incomplete by her husband—Tests—Prudence and necessity.*

Per *Spencer, J.*—A widow can contract a debt for the purpose of a family business, to which she has succeeded, and by a specific charge make it payable out of assets of business even as against the reversioners. If the widow has built any houses which have greatly increased the value of the estate, the reversioners are not entitled to approbate the accession to the estate, caused by the construction of the houses and at the same time to reprobate the debts incurred for the purpose of constructing them.

Per *Devadoss, J.*—If widow mortgages or alienates any portion of the estate inherited by her for the purpose of building a house, such alienation would not bind the reversion. But a widow is not a trustee for the reversioner or a mere manager on behalf of the reversioner. She is entitled to the use of the property as long as she lives and she has power under the Hindu Law to bind the estate with debts incurred for necessary purposes. Where for example a husband leaves a house, which is almost complete and leaves a large quantity of materials and a site with a foundation on it for the construction of a house the widow would be perfectly entitled to complete the house and to use the materials for such construction, as was planned by the husband, provided she acts in a prudent manner.

A widow cannot start a new trade. But where the trade was started by the husband and was continued by the widow the case is different. Where it is incidental or necessary for the carrying on of the trade to incur debts, it cannot be said that the debts are incurred without necessity. The word "necessity" should be understood as meaning in the sense of being necessary. A widow who succeeds to her husband's property and finds a flourishing business or trade is not bound to wind it up and invest the capital on land. The real question to be considered in each case is whether the widow by doing such act is endangering the reversion, or whether the act which she does is an act, which any prudent manager would do. Where the family is a trading family or the caste to which the parties belong is a trading class or caste, such as Vysia Komatti Chetties or the Nattukottai Chetties of Southern India it would be against all principle to hold that a widow is not entitled to carry on the trade of the husband, provided, of course she carries that on, as a prudent person would: 28 M.L.J. 696; 42 All. 109; 11 L.W. 55; 26 Bom. 206 (F.B.), *Foll.*; 42 Mad. 761 and 35 Mad 560, *Dist.* (*Spencer and Devadoss, JJ.*). SUBRAMANYA CHETTY *v.* RAMAKRISHNAMMA. **84 I.C. 868= 20 M.L.W. 627=1924 M.W.N. 794= A.I.R. 1925 Mad. 403.**

HINDU LAW—Widow—Decree for or against—Mortgage decree.

——*Debts for necessity bind reversioners.*

In circumstances of necessity a widow can bind the estate and a debt incurred by her for family necessity can be enforced against the assets of the estate in the hands of the reversioners after the widow's death. (*Jackson, J.*). VENKAYYA *v.* M. BANGARAYYA. **82 I.C. 464=A.I.R. 1925 Mad. 401.**

——The personal bond executed by a widow, though for legal necessity, is not binding on her husband's estate. (*Kendall and Pullan, A.J.Cs.*). MT. RAJ KUNWARI *v.* MT. RANI MAHARAJ KUNWAR KUNWARI. **82 I.C. 832= A. I. R. 1925 Oudh 243.**

——*Recitals in bond by widow do not prove legal necessity.*

For substantiating that a debt incurred by a widow was incurred for the purposes of re-paying the debts of her late husband, the recitals in a bond executed by the widow that she had borrowed money for paying the debts of her husband cannot be relied upon. (*Kendall and Pullan, A.J.Cs.*). MT. RAJ KUNWARI *v.* MT. RANI MAHARAJ KUNWAR KUNWARI. **82 I. C. 832= A. I. R. 1925 Oudh 243.**

——*New business by widow—Debts therefor—If reversioners are bound.*

The debts incurred by a Hindu widow in the course of the business of an oil mill beneficial to the estate started by her by means of an engine which she had purchased out of the income of the property for giving effect to a religious purpose and which on the completion of this purpose she devoted to the oil business instead of disposing of it are binding on the reversioners. (*Baker, J.C.*). THAKUR KALLU SINGH *v.* BHUVAJI. **79 I.C. 633=A.I.R. 1924 Nag. 384.**

——The mere borrowing of the money by a widow for her daughter's marriage expenses is not in itself quite sufficient to justify the loan without and proof that there was in fact necessity for borrowing the money for that purpose. (*Dawson-Miller, C.J. and Mullick, J.*). AJTI CHAUDHARI *v.* JANAK LAL CHAUDHARI. **75 I.C. 946= 1923 P.H.C.C. 322=A.I.R. 1924 Pat. 336.**

——*Simple money bond by widow—Life-interest only is liable to be sold.*

No question of legal necessity arises as the bond is simple, there is no charge on the property in case of an execution of a decree obtained on a simple money bond, executed by a limited owner (namely widow) but only the life-interest is liable to be sold in such an execution. (*Gokul Prasad and Stuart, JJ.*). BHUP SINGH *v.* JHAMMAN SINGH. **66 I. C. 724=4 U.P.L.R. (All.) 21.**

—Widow — Decree for or against —Mortgage decree.

——The secured creditor of a Hindu widow, on the security proving insufficient to satisfy his decree thereon, is entitled to proceed against the other properties. (*Neave, J.*). JAGANNATH PRASAD *v.* JADO RAI. **86 I.C. 963=6 L.R.A. Civ. 87= A.I.R. 1925 All. 382.**

HINDU LAW—Widow—Decree for or against—Personal.

—Widow—Decree for or against—Personal.

———*Decree against, binds her and not the estate unless specific intention appears to that effect.*

Where a creditor files a suit against a limited owner (*e.g.*, daughter) as such and not against the estate of the last male holder and a decree is passed personally against the limited owner, the decree and the auction-sale of property following thereon does not bind the reversioner, although the foundation of the decree be a liability which might bind the reversion: A.I.R. 1925 Cal. 401, *Affirmed*. (*Lord Phillimore.*) LALIT MOHUN PAL ROY *v.* SHRIMATI DAYAMOYI ROY CHOWDHURANI. **105 I.C. 469= 1927 M.W.N. 95=29 Bom. L.R. 759= 25 M.L.W. 709=45 C.L.J. 404= A.I.R. 1927 P.C. 41=52 M.L.J. 426 (P.C.).**

———Property held by widow, sold in execution of simple money decree against her—Auction-purchaser obtains only widow's interest. (*Sulaiman and Boys, JJ.*). MOTI SHAH *v.* GHANDHARP SINGH. **96 I.C. 595=48 All. 637= 24 A.L.J. 873=A.I.R. 1926 All. 715.**

———*Decree for profits in favour of—Intention to appropriate it as her assets expressed—Decree will become her assets.*

Where a widow filed a suit for surplus and mesne profits in respect of certain property which she had mortgaged and during the pendency thereof had in another document, expressed her intention of appropriating it as her own assets, and she died, after the decree was passed in her favour in the said suit.

Held, there is no reason why a widow should be precluded from exercising an act of appropriation with regard to the property to which she has established her title and which is being wrongfully withheld from her by a person in unlawful possession of it. As the widow had entered into an agreement as to the manner in which that property should be appropriated there was manifestation of intention sufficient to make it part of her assets. (*Daniels, J.C.*). SHAM NARAIN *v.* JADUNATH SINGH. **68 I.C. 242=25 O.C. 41= A.I.R. 1922 Oudh 118.**

—Widow—Decree for or against—Purchaser's title.

———Person litigating in respect of debt binding on husband's estate is ordinarily presumed to intend to obtain decree against that estate—But when in numerous previous proceedings binding nature of debt not mentioned and properties worth Rs. 2,000 sold for Rs. 197, then inference is that only widow's interest was litigated upon. (*Phillips and Reilly, JJ.*). THIRUMALAISWAMI NAIDU *v.* VENKATARAMA AYYAR. **119 I.C. 316= A.I.R. 1929 Mad. 601.**

———*Decree for rent against widow—Rent sale passes widow's estate.*

Where property held by a limited owner has been sold and purchased by a third person in execution of a decree for rent against the limited owner, the sale would *prima facie* affect the interest of the limited owner alone, and unless it is established that the sale was held in terms of the rent law the absolute title cannot be conveyed to the purchaser. (*Cuming and B. B. Ghose, JJ.*). UPENDRA NATH *v.* KIRAN CHANDRA. **97 I.C. 149=43 C.L.J. 562= A.I.R. 1926 Cal. 1046.**

———*Mortgage-decree against widow—No finding as to necessity—Widow not representing estate—Decree not binding on reversion.*

HINDU LAW—Widow—Decree for or against—Reversioner.

In a suit against a widow to enforce a mortgage by her, if there is a finding that the debt was binding on the estate and the sale proclamation states that the debt for which the property was being sold was for necessity and the whole right of the defendant was being sold in execution, then it is the most proper construction of the proceedings in the suit and execution that the whole property was intended to pass to the purchaser. But where the evidence that the debt is binding on the estate is wanting and where the proceedings in the suit do not show that the widow represented the estate so as to attract the application of *res judicata* in a subsequent case, it is not permissible merely by reference to the proclamation to say that the whole property has passed though it has not been shown that there was necessity.

The mere fact that the mortgage suit arose out of widow's own acts would not prevent her from representing that estate. Whether the limited owner represented the inheritance must be gathered from the nature of the suit, and the defence put forward, the issues tried and raised and decided in that former suit. (*Ramesam and Venkatasubba Rao, JJ.*). AUKULA SANASI *v.* RAMACHANDRA ROW. **95 I.C. 691=1926 M.W.N. 319= A.I.R. 1926 Mad. 692=51 M.L.J. 73.**

———Sale in execution of decree against widow—In deciding validity suit and claim forming basis of suit must be examined. (*Kendall and Pullan, A.J.Cs.*). MT. RAJ KUNWARI *v.* MT. RANI MAHARAJ KUNWAR KUNWARI. **82 I.C. 832= A.I.R. 1925 Oudh 243.**

———Execution sale of entire estate against widow is equivalent to private alienation: 45 Bom. 105; A.I.R. 1923 Pat. 122 *Foll.*: 10 C. 985 (P.C.) and 1 Cal. 133 (P.C.). *Foll.* (*Ryves and Daniels, JJ.*). JHARI KOERI *v.* BIJAI SINGH. **74 I.C. 865= 45 All. 613=21 A.L.J. 563=5 L.R.A. Rev. 11= A.I.R. 1924 All 109.**

—Widow—Decree for or against—Reversioner.

———*Widow not taking possession cannot represent reversioners.*

A female who has never taken possession cannot be said to represent the estate effectively in any proceeding relating to the possession of the estate; and an order entirely overlooking the rights of the widow and not giving opportunity to her of defending the estate cannot be effective against the reversioner: A.I.R. 1925 P.C. 249. *Dist.* (*Dalal, J.*). KALI PRATAP MISIR *v.* AMLA PAT TEWARI. **120 I.C. 447=A.I.R. 1930 All. 307.**

———*Decree against widow obtained without fraud or collusion is binding on reversioners.*

The deceased, who had no other heir except his widow, had made a will whereby he had made his nephew his residuary legatee, who instituted a suit for declaration on the basis of the will. During the pendency of that suit, a creditor of the deceased sued the widow who was then in possession of some of the items of the deceased's property, and obtained a decree against her without there being any fraud or collusion between him and the widow. In execution of that decree not only the properties in possession of the widow but other property of the deceased also was sold,

Held, that the estate of the deceased was sufficiently represented by the widow and the decree obtained against her and the sale in execution thereof of all the properties sold was binding on the legatee, the true representative: 33 Mad. 6; 32 Cal. 296; 26 Mad. 230; 14 M.I.A. 605 and

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1 Marsh. 614 *Rel. on*; 31 I.C. 920, *Foll.*; 33 Mad. 75; 35 I.C. 124 and A.I.R. 1926 Mad. 487, *Expl.* and *Dist.*; A.I.R. 1927 Mad. 197, and *other cases referred.*

Held further, that although the creditor's suit was instituted during the pendency of the legatee's declaratory suit, S. 52, T. P. Act, would not affect the sale in execution because the interest of both the widow as well as the legatee were really identical. (*Madhavan Nair and Reilly, JJ.*). CHATURBHUJADOSS KUSHALDOSS *v.* RAJAMANICKA MUDALI. **1930 M.W.N. 994= A.I.R. 1930 Mad. 930.**

——If a widow had only a widow's estate, the charge created by a decree on the property in her possession would not persist beyond her death unless it was made for legal necessity. (*Reilly and Cornish, JJ.*). C. MEENAMBAL AMMAL *v.* ABURUBAMMAL. **1930 M. W. N. 337= A.I.R. 1930 Mad. 688.**

——Where a Hindu widow in the capacity of lambardar recovered certain profits which she ought to have paid to her co-sharers but she did not pay it and a suit was filed against her and a decree obtained against her but she died during the pendency of execution proceedings,

Held, that execution cannot proceed against the reversioners. (*Dalal, J.*). RANDHIR NARAIN *v.* JAGANNATH. **112 I.C. 699.**

——Where in a litigation, properly entered into and properly conducted, the estate is represented by a Hindu widow and certain results are arrived at that result may be binding on the reversioners. (*Marker, C.J. and Crump, J.*). RAVJI ANDU *v.* RAMA KRISHNA. **106 I.C. 206= 29 Bom.L.R. 1346=A.I.R. 1928 Bom. 14.**

——*Decree against the widow for a just debt binds reversion.*

The husband's estate in the hands of his widow is liable for his just debts, and therefore, the reversioners cannot be allowed to go behind the decree which has been obtained against his widow for that debt and the sale of the land in execution of that decree to an outside auction-purchaser is binding upon them. 39 P.R. 1915, *Foll.*; A.I.R. 1922 Lah. 299, *Rel. on*; A.I.R. 1922 Lah. 277, *Ref.* (*Addison, J.*). BURA *v.* WARYAM SINGH. **108 I.C. 882 (Lah.),**

——Where the estate of a deceased Hindu has vested in a female heir, a decree fairly and properly obtained against her in regard to the estate is, in the absence of fraud, or collusion, binding on the reversionary heir. (*Stuart, C.J. and Raza, J.*). GANPAT PANDE *v.* BENDESHARI PARTAB. **100 I.C. 481=2 Luck. 133=4 O.W.N. 140= A.I.R. 1927 Oudh 305.**

——A Hindu widow cannot make an admission in derogation of the rights of the reversioners which has or may have the effect of destroying the estate of the reversioner, and so a decree of a Court based (without contest) on such an admission is as void or voidable as the admission. (*Ashworth and Misra, JJ.*). RAM SHANKAR SINGH *v.* LAL BAHADUR SINGH. **92 I.C 637=1 Luck. 98= 13 O.L.J. 216=3 O. W. N. 267= A.I.R 1926 Oudh 277.**

——Bona fide *suit by or against widow representing the estate binds the reversioners—Adverse possession which bars widow bars also reversioners.*

A Hindu widow represents the estate in suits brought by her or against her for possession of the estate or any part of it, and she and the reversioners are equally bound by any final

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decree which a Court makes in such a suit, provided that the suit was fought out according to law and was not collusive or fraudulent. Adverse possession which bars her, bars also the reversionary heirs after her. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI. **92 I.C. 85= 28 Bom.L. R. 173=30 C.W.N. 313= 6 L.R.P.C. 169=52 I.A. 322=42 C.L.J. 563= 48 Mad. 883=1926 M. W. N. 11= A.I.R. 1925 P.C. 249=49 M.L.J. 769 (P.C.).**

——*Decree against widow binds reversioners, if obtained fairly and properly.*

A Hindu widow represents the estate for the time being though her rights are to a certain extent qualified. If she fights a case against a third party she is representing the estate and is fighting the case in a representative character on behalf of all the subsequent reversioners. A decree fairly and properly obtained against her in the absence of any fraud or collusion, would be binding on the reversionary heirs. It is only when the decree relates to a matter personal to her, that it would not be binding on the reversioners. 37 All. 496 ; 40 All. 593, *Foll.* (*Walsh, and Sulaiman, JJ.*). SARJU PRASAD *v.* MANGAL SINGH. **87 I.C. 294=47 All. 490= 23 A.L.J. 254=6 L.R. A. Civ. 201= A.I.R. 1925 All. 339.**

——An *ex parte* decree unless there be anything special which would suggest that it was not fairly and properly obtained, would be binding on the reversioners. (*Walsh and Sulaiman, JJ.*). SARJU PRASAD *v.* MANGAL SINGH. **87 I. C. 294= 47 All. 490=23 A.L.J. 254=6 L.R.A. Civ. 201= A. I. R. 1925 All. 339.**

——*Decision that Will set up by a Hindu widow, under which she and her brother are joint legatees of her husband's property, is genuine, does not bind the reversioners—Widow does not represent reversion, when she asserts an absolute right in herself.*

Where a Hindu widow, in whom her husband's estate has vested, represents the estate in litigation, to which she is a party, the decision in such litigation, fairly and honestly conducted, given for or against her, will bind the reversioners : 9 M. I. A. 539 (P.C.) ; 11 Cal. 186, (P. C.) and 40 All. 593 (P.C.), *Foll.* The rule of *res judicata* as enacted in S. 11 of the Civil P. C., is not strictly applicable, as the reversioners do not claim under the widow ; but the principle of *res judicata* applies. This rule can be applied only if the widow did, as a matter of fact, represent the estate in the prior litigation. The question, in each case, will be whether the estate was properly represented by the widow, in the prior suit. If, for instance, she had litigated in assertion of an absolute right, inconsistent with her representative character, she could not, in any sense of the word, be said to have represented the estate, or the interest of the reversioners in such litigation, and a decision given therein, upholding such contention of hers, would not obviously be held binding on them : 43 Bom. 869 ; 43 Bom. 249, *Foll.* Hence in contending that a Will alleged to have been left by the husband, was genuine and that she herself was a joint-legatee under it, along with her brother, she is not only not representing the estate or the interests of the reversioners in such litigation, but is setting up a case, in direct opposition to their interests. It cannot, therefore, be held that the decision in the suit that the Will is genuine is

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binding on the reversioners. (*Wallace and Madhavan Nair, JJ.*). (ALLA) VIRASWAMI *v.* POLA VARAPU NAYUDAMMA. **91 I.C. 497= 22 M. L. W. 178=A. I. R. 1925 Mad 1270= 49 M. L. J. 430.**

———Decree against widow can be executed against husband's estate in reversioner's hands if the debt sued on is such, as to bind the estate. 34 Mad. 188, *Foll.*; A.I.R. 1924 All. 109, *Ref.* (*Wazir Hasan, A.J.C.*). BHUDHAR SINGH *v.* GANGA BAKHSH SINGH. **84 I.C. 394=11 O.L.J. 754= 28 O C. 80=A.I.R. 1925 Oudh 272.**

———Reversioner's interest not protected by widow—Reversioners are not barred by decision against widow. (*Le Rossignol and Harrison, JJ.*). BAJRANG DAS *v.* GHANI RAM. **82 I.C. 987= A. I. R. 1923 Lah. 299.**

———*Decree against, fairly obtained—Reversioners are bound thereby—No contest by widow—When decree binds reversion.*

The reversioners are bound by a decision fairly obtained against a Hindu widow unless it could be shown that there had not been a fair trial of the right in that suit. In other words, unless that decree could have been successfully impeached on some special ground, it would be an effectual bar to any new suit. In the absence of fraud or collusion a decree obtained against a Hindu widow has a binding effect on all the reversioners: A.I.R. 1918 P.C. 87; 9 M.I.A. 539 and 34 All. 385, *Foll.* A decree in a suit against a Hindu widow respecting property of her husband of which she is in possession as such widow, may be binding on the reversioners notwithstanding that the widow did not contest the suit, provided that the plaintiff's case was properly and fairly stated and the widow had reasonable opportunities, of which she did not choose to avail herself, of defending the suit. (*Stuart and Sulaiman, JJ.*). JAI NARAIN SINGH *v.* GITA PERSHAD. **70 I.C. 862=A.I.R. 1922 All. 473.**

———*Mortgage right—Sold in execution of decree against widow—Sale is binding on reversioner.*

Where a widow sub-mortgaged her mortgagee rights under a mortgage taken by her husband and in the sub-mortgagee's suit the mortgage right was sold in execution and the mortgagor then redeemed the property in possession of the purchaser at the auction sale,

Held, a usufructuary mortgage is not immovable property so that if the mortgage were redeemed during the widow's life-time the widow could spend the money as she would be entitled to do. The reversioner therefore cannot claim against the party redeeming to be again put in possession of the property until redeemed a second time. The mere fact that the widow was in possession as mortgagee would not cause those mortgage rights to be treated in law as immovable property as all that the widow was entitled to was a right to retain possession of the property as security for the debt until she was redeemed. (*Macleod, C.J. and Coyajee, J.*). BAI JADI *v.* PURSHOTTAM NAROTTAM DAVE. **70 I.C.959=24 Bom. L R. 729= A.I.R. 1922 Bom. 387.**

———A valid decree may be made involving a declaration that an alienation by a Hindu widow is partially valid and partially void as against the reversioners. (*Mukerjee and Buckland, JJ.*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE. **64 I.C. 980=49 Cal. 45=33 C.L.J. 421= 25 C.W.N. 585=A.I.R. 1922 Cal. 321.**

HINDU LAW—Widow—Nature of estate.

———*Decree for sale for legitimate portion of mortgage money—Reversioners are bound.*

A mortgage was granted for a loan which was in part not for legal necessity; but the decree in the mortgage suit remedied this defect by directing a sale of hypothecated property for so much of the mortgage money as could be deemed to have been raised for legitimate objects,

Held, that the execution purchaser cannot be called upon to submit to redemption in whole or in part, with regard to the property in his hands. (*Mukerjee and Buckland, JJ.*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE. **64 I.C. 980= 49 Cal. 45=33 C.L.J. 421=25 C.W N. 585= A. I. R. 1922 Cal 321.**

———Decree against widow—Widow representing estate—Decree binds reversioners, as *res judicata* (*Oldfield and Venkatasubba Rao, JJ*). NACHIKALAI *v.* AIYAKANNU. **70 I.C. 387=16 M L.W 94= 1922 M.W. N. 418=31 M.L T. 129= A.I.R. 1922 Mad. 233=43 M.L.J. 95.**

—Widow—Maintenance

See HINDU LAW—MAINTENANCE—WIDOW.

—Widow—Nature of estate.

———*Reversioner executing deed declaring widow to be absolutely to her husband's self-acquisition—Nature of estate taken by widow.*

A Hindu died separate leaving his widow and a brother. The brother executed a farkhat giving to widow the self-acquired estate belonging to the deceased in these terms: "We hereby declare that we have no right, title and interest whatsoever in the said property under any circumstances whether you adopt a son and give it to him or whether you give it to your daughter or whether you alienate to anybody in any way as full owner thereof." After widow's death the brother claimed as reversioner and the granddaughter of the widow brought a suit claiming as the *stridhan* heir.

Held, that the farkhat cannot be regarded as a family arrangement by which the brother gave these properties to the widow in gift, for the reason that he had no interest which he could transfer by way of gift or otherwise. The expressions in the farkhat are merely designed to show that the brother had no claim upon this property, and that the widow took this property which belonged to her husband as her husband's heir. Therefore it could not be her stridhan, as it would be property inherited by her from her husband. Under the ordinary Hindu Law she takes a widow's estate in it, and on her death it would revert to her husband's heirs: 23 Mad. 504, *Dist.*; 34 All. 234 (P.C.), *Expl.* and *Rel. on.* (*Baker, J.*). VATSALABAI VINAYAK *v.* VASUDEO VISHNU. **31 Bom. L.R. 666= A.I.R. 1929 Bom. 348.**

———*Karnam inam held by husband granted to his widow and daughter by Government after his death on condition of paying certain quit rent—Grant confers absolute estate.*

Where karnam inam lands held by the husband were enfranchised by the Government in favour of the widow and daughter under the terms: "This inam being held for karnam service now otherwise provided for, will be subject to the payment of an annual quit rent of Rs. 11 which is hereby imposed upon it in commutation both of the service and the reversionary interest possessed by the Government in the inam. The inam is now confirmed to you in freehold, in other words, the inam will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the above mentionod quit rent,"

HINDU LAW—Widow—Nature of estate.

Held, that the widow and daughter obtained an absolute right to the property and their interests were not merely that of a Hindu widow or daughter succeeding to the property of her husband or father having only a limited right therein : A.I.R 1922 P.C. 96, *Appl.* (*Kumaraswami Sastri and Reilly, JJ.*). PALANIYANDI *v.* VEYILAMUTHU PILLAI. **112 I.C. 320=52 Mad. 6= 28 M.L.W. 530=1928 M W.N. 723= A. I. R. 1929 Mad. 93=55 M.L.J. 579.**

———Widow becoming owner on husband's death —In absence of evidence to the contrary, presumption is that she succeeded as Hindu widow. (*Sulaiman and Kendall, JJ.*). RAM SARAN DAS *v.* CHHOTE LAL. **110 I.C. 365=A.I.R. 1928 All. 868.**

———When a custom is proved as affecting persons otherwise subject to the Mitakshara School, and that custom is said to confer on the widow a right to deal with property at her will, the property is her stridhan and will devolve as her stridhan: 1 All. 688 (P.C.). *Foll.* (*Walsh and Ashworth, JJ.*). HUKUM CHAND *v.* SITAL PRASAD. **107 I.C. 244= 50 All. 232=25 A.L.J. 922=A.I.R. 1928 All. 52.**

———The mere fact that the widow is found in possession of property of the acquisition of which no account is given does not necessarily give rise to the presumption that she inherited it as a widow: 26 Cal. 871 (P.C.), *Foll.* (*Patkar, J.*). SONBHAI *v.* JAGJIVAN. **114 I C. 377= 30 Bom. L. R. 987=A.I.R. 1928 Bom. 380.**

———A service inam enfranchised in the name of a Hindu widow and confirmed to her in freehold confers absolute property and not merely a widow's estate although some other persons are joined with her as grantees. (*Jackson, J.*). KARNAM VENKATA SUBBA RAO *v.* ADINARAYANA RAO. **92 I.C. 472= 22 M.L.W. 631=A.I.R. 1926 Mad. 227= 50 M.L.J. 46.**

———Presumption—Widow taking possession of her husband's estate is as Hindu widow and not as a trespasser. (*Ashworth and Misra, JJ.*). RAM SHANKAR SINGH *v* LAL BAHADUR SINGH. **92 I.C 637=1 Luck. 98=13 O.L.J. 216= 3 O.W.N. 267=A.I.R. 1926 Oudh 277.**

———*Deed purporting to convey full right to widow* —Prima facie *widow gets full rights.*

If a deed purports to convey full proprietary rights to a Hindu widow it will be construed to convey full proprietary rights to her, unless there is anything in the context or surrounding circumstances to qualify such a meaning: 30 All. 84 (P.C.), *Foll.* (*Simpson, A. J. C.*). JAI KARAN SINGH *v.* MT. UMARI KUNWAR. **90 I C. 674= 2 O.W.N. 751=A.I.R. 1926 Oudh 749.**

———*Widow inheriting ex-proprietary rights—Release of—Right of reversioners.*

A Hindu widow inheriting ex-proprietary rights is in exactly the same position as regards the ex-proprietary rights as one who had inherited proprietary rights. The reversioners therefore would have a right to challenge any alienation which she may have made and she will not have the full rights of an ex-proprietary tenant to relinquish any part of the holding for the relinquishment of a holding amounts to a transfer and it is certainly an alienation: 4 P. L. J. 548, *Ref. to.* (*Pullan, A.J.C.*). SHEONANDAN SINGH *v.* JAI RAM SINGH. **79 I.C. 1022=11 O.L.J. 608=27 O C. 378= A.I.R. 1926 Oudh 73.**

———*Woman's property got by succession from male and female is limited.*

Under the Hindu Law of the Benares School there is no distinction as to the nature of the estate

HINDU LAW—Widow—Powers of.

taken, between property inherited by a woman from a male and property inherited by her from female. In both cases she takes it not absolutely as her *stridhan* but a qualified estate alienable only under the condition applicable to such an estate and with reverter after her death to the heirs of her predecessor-in-title: A.I.R. 1924 All. 15, *Foll.* (*Sulaiman and Mukerji, JJ.*). LAKSHMI NARAIN *v.* MT. SUMARNI KUAR. **79 I.C. 389=46 All. 439= 5 L.R.A. Civ. 342=A.I.R. 1924 All. 731.**

———There is no presumption that property standing in the name of a Hindu widow, even though purchased in her name, belongs to her husband. (*Lindsay and Sulaiman, JJ.*). MT. MAHRANA KUNWAR *v.* EV. DAVID. **77 I.C. 57= 21 A.L.J. 737=4 L R.A. Civ. 483= 46 All. 16=A.I.R 1924 All. 40.**

———Under Hindu Law, a widow takes only a limited life-interest in the estate and the nature of her interest can never alter even though there can be a complete want of heirs: 8 M.I.A. 529 (P.C.), *Foll.* (*Shadi Lal, C.J. and Le Rossignol, J.*). DALIPA *v.* DULLU. **93 I.C. 413=4 L.L.J. 336= A.I.R. 1921 Lah. 176.**

———Life-interest granted by custom is not wider than that under Hindu Law—Next heir can challenge unauthorized alienations by widow.

A right to succeed and a right to challenge alienations by the last owner are not co-extensive, for if the last owner has absolute control over the property, his heir will not have any right by reason of his right of inheritance to challenge alienations made in his lifetime by the late owner. The case, however, is very different if the late owner had only a limited interest in the property. In that case it is the right of the next heir to restrict the enjoyment of that interest within the proper limits: 135 P. R. 1908, *Foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). DALIPA *v.* DALLU. **93 I.C. 413= 4 L.L.J. 336=A.I.R. 1921 Lah. 176.**

———The onus of proving that the properties in dispute descended on a lady in her capacity of a Hindu widow lies on the party alleging to that effect : 2 O. C. 286 (P. C.), *Ref.* (*Wazir Hasan, A.J.C.*). JAGMOHAN SINGH *v.* RAM DAYAL SINGH. **61 I.C. 133=8 O.L.J. 4=A.I.R. 1921 Oudh 42.**

—Widow—Necessity.

See HINDU LAW—ALIENATION—NECESSITY—WIDOW—RELIGIOUS CEREMONY.

—Widow—Powers of.

———*Status of widow in joint Hindu family and in separated Hindu family—Extent of her rights enunciated.*

In a joint Hindu family a widow is not entitled to any property as a Hindu widow. She has only a right to be maintained out of the income of the family property. If the family is separated, she only acquires a Hindu widow's estate in the property left by her husband and by no agreement with the reversioner or adverse possession can she enhance her right and ripen it into full proprietorship: A.I.R. 1924 P. C. 121, *Foll.* (*Sulaiman and Kendall, JJ.*). MT. BHAGWAN DEI *v.* SHIB SINGH. **A.I.R. 1930 All. 341.**

———*Powers of widow to contract debts binding on her husband's estate discussed.*

Hindu widow fully represents the estate for the time being. This being so, she must by the nature of circumstances from time to time enter into transactions for the proper management of the estate. If she incurred a debt for lawful purposes or entered into any transaction giving rise to pecuniary liabilities in respect of which she

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could validly create a charge upon the estate, there seems to be no reason why the creditor should not be allowed to recover his debt or to enforce his claim against the estate in the hands of the reversioners. To hold otherwise would lead to obvious inconvenience and hardship and would create unnecessary difficulties in the path of the widow's making proper management of the estate. It should, however, be borne in mind that the position in a case in which a Hindu widow incurs a liability personal to herself or borrows money on her personal security and not as representing the estate, would obviously be different: 6 Cal. 36 and 35 Mad. 108, *Rel. on.* (*Pullan and Srivastava, JJ.*). BISHESHWAR BUKHSH SINGH *v.* JANG BAHADUR SINGH. **122 I.C. 614=7 O.W.N. 173=A.I.R. 1930 Oudh 225.**

———A Hindu widow can keep a debt of her husband alive by making payments under S. 20, Limitation Act: 35 All. 227 (P.C.), *Dist.* (*Venkatasubba Rao, J.*). CHEGAMULL SUGANMULL *v.* V. GOVINDASWAMY CHETTY. **112 I.C. 491= A.I.R. 1928 Mad. 972.**

———*Expenses of litigation brought about by her folly are not binding on reversioners.*

A widow who, having got undisputed possession of her husband's property, chooses to squander her widow's interest, cannot burden her husband's property to the prejudice of the reversioners with the expense of attempting to escape by litigation from the results of her own folly: 12 Cal. 52, *Dist.* 31 Cal. 433, *held overruled*; 35 Cal. 420 (P.C.), *Ref.* (*Phillips and Reilly, JJ.*). THIRUMALAISAMY NAIDU *v.* VENKATARAMA AYYAR. **119 I.C. 316= A. I. R. 1929 Mad. 601.**

———Husband's estate cannot be charged to meet costs of frivolous litigation. (*Das and Fazl Ali, JJ.*). RAM ASRE *v.* AMBICA LAL. **119 I.C. 547= 11 P.L.T. 6=A.I.R. 1929 Pat. 216.**

———A limited owner cannot make the estate liable for the payment of rent. (*Das and Fazl Ali, JJ.*). RAM ASRE *v.* AMBICA LAL. **119 I.C. 547= 11 P.L.T. 6=A.I.R. 1929 Pat. 216.**

———*Widow can bind his estate by acknowledging or paying husband's barred debts.*

A Hindu widow is entitled to bind the estate of her husband by acknowledging or paying debts contracted by the husband which have become barred by time, and there is no difference between a debt which had become barred by time during the lifetime of the husband and the one which becomes barred after his death, as the duty of the widow to pay time-barred debts of her husband is based on her pious obligation to discharge all his liabilities: 11 Bom. 320, *Foll.*; 39 Bom. 113, *Dist.* (*Shadi Lal, C.J. and Jai Lal, J.*). SANTU RAM *v.* DODAN BAI. **103 I.C. 706= A.I.R. 1927 Lah. 657.**

———*Creating an endowment of about 1/55th of the entire estate of her husband by the widow for the benefit of her, as well as her husband's, soul is valid.*

It is a well-established religious belief amongst the Hindus of this country that the erecting of a temple and making an endowment for its upkeep is considered to be an act of high religious merit, and as one, which, if done by a widow, would benefit not only her soul but also the soul of her husband.

Where a widow makes an endowment of about 1/55th of the entire property left by her husband for the upkeep of a thakurdwara built by her for the benefit of her soul as well as that of her husband and his ancestors, the act of the widow in building the temple and her further act of making an endowment for its upkeep is an act which confers spiritual benefit upon her husband and it is, therefore, valid. (*Wazir Hasan and Gokaran Nath Misra, JJ.*). INDAR BUX SINGH *v.* SHEO NARAIN SINGH. **104 I.C. 676=4 O.W.N. 820= A.I.R. 1927 Oudh 450.**

HINDU LAW — Widow — Representation of estate.

———*Sonless widow succeeding her husband takes absolute estate, but her power of alienation is limited like that of a co-parcener.*

A sonless widow succeeds as any other male member to the entire estate of her husband (movable and immovable) and takes possession of it as an absolute owner thereof. Her interest is not in any way limited nor does she hold a life-estate only as sometimes it is supposed to be. Only her power of disposition is a qualified one and is analogous to the power of a male co-parcener in a joint Mitakshara family. In this respect the property inherited by a widow from her husband differs from the properties which a woman receives as her stridhan. (*Jwala Prasad and Bucknill, JJ.*). RAM SUMRAN PRASAD *v.* GOVIND DAS. **99 I.C. 782= 5 Pat. 646=7 P.L.T. 821=A.I.R. 1926 Pat. 582.**

———*Reversioners not bound by acknowledgment of.*

An acknowledgment by a Hindu widow is not operative against the reversioners. (*Walmsley and B. B. Ghose, JJ.*). MOHINI MOHAN MISRA *v.* SRIMATI SARAT SUNDARI DEBI. **86 I.C. 353= A.I.R. 1925 Cal. 862.**

———*Widow need not pay husband's debts out of the income of husband's property.*

Under the Hindu Law a widow has absolute power of disposal over the income of the property inherited by her from her husband. She is entitled to spend the whole income and is not bound to make any savings to pay off the debts of her deceased husband. (*Simpson and Gokaran Nath Misra, A.J.Cs.*). THAKUR BISHO NATH *v.* RAM RATAN. **89 I.C. 581=12 O.L.J. 406= 2 O.W.N. 522=A. I. R 1925 Oudh 529.**

———A Hindu widow can incur expenses for the well-being of the estate and borrow money for the purpose, and such debt binds the reversioner. (*Das and Adami, JJ.*). RADAKISHUN *v.* JAGSAHU. **60 I. C. 173=3 U.P.L.R. (Pat.) 14.**

—Widow—Re-marriage.

———Where a lessee from a Hindu widow ejected by the next reversioner after the re-marriage of the widow, sued for possession,

Held, that plaintiff was liable for but not entitled to mesne profits but the defendant reversioner was bound to pay money found to be binding on the property. (*Kinkhede, A.J.C.*). MT. BANI *v.* NARSOO. **78 I.C. 639=A. I. R. 1924 Nag. 378.**

—Widow—Representation of estate.

———Widow represents not only in dispute between her husband's estate and another estate but also when there are rival claimants to his estate: 11 Cal. 186 (P.C.); 10 Cal. 985 (P.C.) and 14 C.L.J. 90, *Foll.* (*Ramesam and Odgers, JJ.*). NAGAYYA *v.* KARUPPAPAYYEE AMMAL. **120 I.C. 379= A.I.R. 1930 Mad. 344.**

———Alienations by a widow in certain circumstances may be binding upon the reversioners, but it is difficult to say that a covenant for renewing a lease to take effect after the death of the widow would be so binding under any circumstances. (*B. B. Ghose and Cammiade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I.C. 298= 55 Cal. 841=47 C.L.J. 376=32 C.W.N. 439= A.I.R. 1929 Cal. 50.**

HINDU LAW — Widow — Representation of estate.

——In absence of fraud or collusion, therefore, a decree in respect to a mortgage executed by testator on a claim binding on the inheritance obtained against the widow in possession is binding on all the succeeding heirs, and other persons entitled to possession of the property after widow's death; 9 M.I.A. 539 (P. C.); 15 N. L. R. 24; 30 Mad. 3; 34 All. 385; A.I.R. 1928 P.C. 87; 37 All. 496 and A.I.R. 1925 P.C. 249, *Foll.* (*Kolhatkar, A. J. C.*). MAHADEO KUNBI *v.* SABYA. **112 I.C. 248= 11 N.L.J. 162=A.I.R. 1929 Nag. 27.**

——A reversioner is bound by the result of litigation carried on *bona fide* by the last female holder. (*Ross and Chatterji, JJ.*). SHIVA SHANKAR *v.* KALIOJHA. **118 I.C. 309=8 Pat. 471= 10 P.L.T. 565=A.I.R. 1929 Pat. 392.**

——Where a decree is passed against Hindu widow for a personal act of not giving profits to co-sharers whose profits she has collected as lambardar, she is not representing the estate but is representing herself and her liabilities cannot be passed on to the reversioner: A.I.R. 1918 P. C. 87, *Rel. on.* (*Dalal, J.*). RANDHIR NARAIN *v.* JAGGANATH. **112 I.C. 699=10 L.R A. Rev. 96.**

——Widow declaring the decree in favour of the estate as satisfied and absolving the judgment-debtor from further liability—Reversioners are bound in the absence of fraud and collusion. A.I.R. 1927 Oudh 305, *Ref.* (*Stuart, C.J. and Raza, J.*). SHIAN BAHADUR *v.* NAGESHAR SAHAI. **105 I. C. 895=1 L.C. 589= A.I.R. 1927 Oudh 520.**

——*Female heirs represent entire estate and by so framing suit as to warn reversioners, creditor can obtain decree binding on whole estate.*

If the decree against a Hindu female is merely a personal decree it binds only her personal and not the reversionary interest, but a creditor suing such a female can so frame his suit as to make it clear that he intends to bind the entire estate and not merely the limited or personal interest of a female so as to put other persons interested, on their guard and to enable them to protect the estate if they care to do so, for a Hindu female heir represents the entire estate in respect of her own as well as the reversionary interest. (*Newbould and B. B. Ghose, JJ.*). DAYAMOYEE'RAY CHOWDHURY *v.* LALIT MOHAL PAL RAY. **82 I.C. 1001= A.I.R. 1925 Cal. 401.**

——As against a reversioner the acknowledgment by a limited female heir of mortgage debt, or a renewal of the mortgage by a trespasser, cannot extend the period of limitation: 35 All. 227 (P.C.), *Foll.* (*Kinkhede, A.J.C.*). LAXMI *v.* VENKATRAO. **82 I.C. 1052= A.I.R. 1925 Nag. 207.**

——*Mortgage by—Providing also for personal liability—Suit for balance against reversioners out of the assets of widow in their hands will lie.*

A Hindu widow with a limited share in property made transfer by way of usufructuary mortgages and shortly after died. Her husband's reversioners took possession of mortgaged property. In the mortgage deeds, there was a clause to the effect that the mortgagees were entitled to recover their money by suit from the movable and immovable property and person of the executant in case of the mortgaged property going out of the possession of the mortgagees upon the claim of any one for any reason. In a suit by the mortgagees against the reversioners for the balance due to them on the

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date of the widow's death, from out of the assets of the widow in the hands of the reversioners,

Held: that the words (of the clause) were wide enough to enforce personal liability after the death of the executant without any reservation and that if the widow had any assets, the mortgagees were entitled to enforce their claim against those assets. (*Dalal, A.J.C.*). CHHANNU LAL *v.* MT. RAJ KUAR. **67 I.C. 16=9 O.L.J. 24=A.I. R. 1922 Oudh 48.**

—Widow—Surrender—Consent of reversioner.

——*Relinquishment in favour of second reversioner with consent of first reversioner is valid.*

Under Hindu Law, a Hindu lady in possession can relinquish, and by relinquishing anticipate for the reversioners their period of succession; and if she does this in favour of second reversioners with the consent of the first, then or afterwards expressed, the relinquishment is valid: 42 Mad. 25, *Foll.*; A.I.R. 1927 Oudh 278, *Diss. from*; A.I.R. 1923 All. 190 *Ref.* (*Dalal, J.*). MT. CHITO *v.* JHANNI LAL. **124 I.C. 713= A.I.R. 1930 All. 395.**

——A Hindu widow can only surrender her husband's estate to the nearest reversionary heir, and the mere fact that the nearest reversionary heir happens to be the father of one of the persons to whom the estate is surrendered cannot go to show that he consented to the surrender. (*Kendall, J.*). JAGWANTI *v.* UDIT NARAIN. **102 I. C. 8= A.I.R. 1927 All. 587.**

——The surrender by a widow of her life-interest in favour of the next reversioner to be valid must be total not partial. It must be a *bona fide* surrender, not a device to divide the estate with the reversioners: 42 Mad. 523 (P.C.); A.I.R. 1919 P.C. 75; A.I.R. 1924 All. 166 and A.I.R. 1921 P.C. 107, *Rel. on.* (*Kinkhede, A. J. C.*). DAWALAT *v.* MAGORAO. **103 I.C. 720=23 N.L.R. 57= A.I.R. 1927 Nag. 230.**

——*Widow cannot validly surrender in favour of a secondary male heir with the consent of the nearest female heir.*

Though a widow can renounce in favour of the nearest reversioner, if there be only one, or of all the reversioners nearest in degree, if more than one at the moment, there is no good authority for holding that under Hindu Law a widow can relinquish her estate in favour of a secondary male heir, merely with the consent of the nearest female heir, so as to accelerate the succession of the former: 22 O.C. 166 and 42 Mad. 25, *Dist.* (*King, J.*). KRISHNAPAL SINGH *v.* SRI RAJ KAUR. **104 I. C. 299= 1 L.C. 97=A.I.R. 1927 Oudh 278.**

—Widow—Surrender—Co-widow.

——*One co-widow cannot surrender the husband's estate without conjunction of the other co-widow.*

One co-widow without the conjunction of the other co-widow cannot surrender the estate of their husband at all because all the widows have equal rights in their husband's estate and without all the widows joining, there can be no surrender of that estate as the surrender requires that the whole of the estate should be dealt with in the matter of surrender. (*Krishnan, J.*). B. ANNA NAIDU *v.* V. JAGGU NAIDU. **79 I.C. 656= A.I.R. 1925 Mad. 153.**

——*Quaere*: Whether, where one co-widow surrenders her widow's estate in favour of the other, the latter holds it as *stridhanam*. (*Sadasiva Iyer and Napier, JJ.*). MUTHIALA CHENGAPPA *v.* BUDRAGUNTA. **60 I.C. 135=1921 M.W.N. 29= A.I.R. 1921 Mad. 256.**

HINDU LAW — Widow — Surrender—Device to divide.

—Widow—Surrender—Device to divide.

———*Gift of major portion to distant reversioner—Subsequent gift of whole estate to nearest reversioner will not operate as valid surrender of widow's interest.*

An alienation by a widow of her deceased husband's estate held by her may be validated if it can be shown to be a surrender of her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time of the alienation. In such circumstances the question of necessity does not fall to be considered. But the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner.

Where a Hindu widow executed a deed of gift of the whole of her husband's property with the exception of a small portion of property which she kept for herself in favour of her husband's brothers son and later she executed a deed of gift of the whole property in favour of her daughter who was her next reversioner and subsequently she adopted a son and the son sued to recover the property from the daughter,

Held, that the son was entitled to possession and the gift of the property to her daughter could not be supported as, having regard to the earlier deed, the widow had put it out of her power to surrender her whole interest in the estate in favour of the nearest reversioner: A. I. R. 1918 P C. 196. *Foll.* (*Marten, C.J. and Crump, J.*). SAKHARAM *v.* THAMA. **107 I.C. 265=51 Bom 1019=29 Bom. L.R. 1571=A.I.R. 1928 Bom. 26.**

———*Surrender meant as a device to divide the estate is not* bona fide, *nor is it valid where widow retains possession of the property.*

The mere fact that some provision is made for the benefit of the surrenderer *i.e.*, widow, does not render the surrender invalid, but if the transaction is a device to divide the estate the surrender is clearly not *bona fide*, but the converse is not necessarily true, for want of good faith may be evidenced by other circumstances: 42 Mad. 523 (P.C.), *Foll.*

At the date of surrender *S*, the widow was about 75 years old, whereas the age of her son the reversioner was 55. Her son and her daughter were living together with *S* as members of one family Subsequent to the surrender, the reversioner did not exercise any act of exclusive ownership from which unequivocal enjoyment or possession could be inferred. *S* was more anxious that her daughter should be provided for than that her son should take immediate possession of the estate and it was fairly certain that on her death the reversioner would not carry out her wishes. It was not her intention that she should forthwith divest herself of the estate or that the surrenderee should enter into possession.

Held, that from these circumstances the inference that the surrender was not *bona fide* must be drawn. (*Venkatasubba Rao and Madhavan Nair, JJ.*). SUBRAMANIA PILLAI *v.* PIRAMU AMMAL. **90 I.C. 1024=A.I.R. 1925 Mad. 1111=49 M.L.J. 128.**

———*Real self-effacement and absence of device to divide the estate with reversioners.*

The conditions of a valid surrender are the self-effacement of the widow and the absence of a device by the widow to divide the estate with the reversioners. A stipulation that the reversioners are to divide the property in shares different form what they would get as reversioners does not

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make the surrender invalid. (*Ramesam, J.*). SAMBASIVA SASTRIAL *v.* RAMASWAMI SASTRIAL. **86 I. C. 772=A.I.R. 1925 Mad. 803=48 M.L.J. 353.**

———*Device to divide the estate with the reversioner is no valid surrender.*

Where a widow gifted all the immovable properties left by her husband in equal shares to her own sister's son and the son of one of her husband's brothers keeping for herself a right to enjoy a small portion for her maintenance and got a deed from her husband's brothers releasing their reversionary right in favour of the donees and gave in consideration therefor a pronote for Rs. 1 200.

Held, that it was clearly a device to divide the estate between the reversioners and widow and as such it was an arrangement which cannot be held to be a *bona fide* surrender with the assent of the reversioners, to which effect can be given. The donees having prevented the reversioners from recovering a sum of Rs. 1,200 the reversioners were held to be not estopped from impeaching the gift and claiming the reversionary right. (*Ayling and Odgers, JJ.*). K. KOTAYYA *v.* PEDDI VEERAYYA. **77 I.C. 758=1923 M.W N. 679=A I.R 1924 Mad 177.**

———*Surrender in favour of next reversioner to be valid must be total and* bona fide.

There are two conditions which must be fulfilled to make a surrender by the widow, with consent of the next heir valid. The first is that the surrender must be total, not partial. The second is that the surrender must be *bona fide* surrender, not a device to divide the estate with the reversioner, when both the conditions are fulfilled the surrender by the widow in 1911 could not be challenged by the reversioner: 46 I.A. 72 and 47 I A. 233. *Foll.* (*Shah, Ag. C.J. and Crump, J.*). NARU HARI GUJAR *v.* SAI DEVJI. **76 I.C 265=25 Bom.L.R. 68=47 Bom. 431=A.I R. 1923 Bom. 191.**

———*Valid surrender—Essentials are* bona fide *and absence of device to divide the estate.*

Where succession is regulated by the Mithila School of Law, a female succeeding to a male takes an absolute interest in the movable property, and hence she may retain the movable property and surrender the whole of the immovable property.

There are two conditions which must be fulfilled to make a surrender by the widow with consent of the next heir (necessity being out of the question) valid. The first is that the surrender must be total, not partial. The second is that the surrender must be a *bona fide* surrender, not a device to divide the estate with the reversioner.

To make an arrangement, a device to divide the estate with the reversioners, it is no tnecessary that the lady surrendering should take part of the property directly. An arrangement by which the reversioner, as a consideration for the surrender, promised to convey a portion of the property to a nominee or nominees of the lady surrendering, might well fall under the description of a device to divide the estate. (*Lord Dunedin.*) SURESHWAR MISSER *v.* MT. MAHESHRANI MISRAIN. **57 I.C. 325=48 Cal. 100=47 I.A. 233=18 A L.J. 1069=28 M L.T. 154=1920 M.W.N. 472=12 M L.W. 461=41 C.L J 433=25 C.W.N. 194=3 Pat. L.R. 305=A. I. R 1921 P.C. 107=39 M.L.J. 161 (P.C.).**

HINDU LAW—Widow—Surrender—Device to divide.

——*Surrender can be by several successive acts.*

What is necessary to bring the doctrine of surrender into effect is that the widow should part with the whole of the interest; it does not matter whether it was done by one single act or by a number of successive acts.

As regards the question whether an undertaking by the reversioner to discharge the existing debts of the widow would invalidate an arrangement of this kind, case must be judged on its own circumstances and the test to apply is to see if there is a *bona fide* surrender and not a device to divide the estate with the reversioner. (*Wallis, C.J. and Oldfield, J.*). SURYARAO BAHADUR *v.* VENKATA SURYANARAYANA. **64 I.C. 488=14 M.L.W. 29=1921 M.W.N. 431=A.I.R. 1921 Mad. 332=41 M.L.J. 208.**

—Widow—Surrender—Divesting whole.

——Mother got son's watan property by adverse possession and the rest as mother. She made a gift of the property inherited as mother alone, in favour of her daughter. It was contended that the gift was invalid as a surrender as it was not of the whole estate.

Held, that the surrender was valid as the watan property was not inherited by the mother, as an heir, but was acquired by her by adverse possession and as she had divested herself of the whole of the property which came to her as heir: A.I.R. 1918 P.C. 196 and A.I.R. 1921 P.C. 107, *Rel. on.* (*Patkar and Baker, JJ.*). ANNA *v.* GOJRA. **114 I.C. 390=30 Bom.L.R. 867=A.I.R. 1928 Bom 333.**

——A surrender by a Hindu widow in favour of the nearest reversioner must be not only absolute but complete: A.I.R. 1918 P.C. 196, *Foll.* (*Kendall, J.*). JAGWANTI *v.* UDIT NARAIN. **102 I.C. 8=A.I.R. 1927 All. 587.**

——*Surrender if of whole property is valid though effected in several stages.*

If a widow brings about a complete effacement of herself with the result that the entire estate vests in the next reversioner, the surrender is complete and effective, though the same might have been obtained by a process consisting of several stages: 19 Cal. 236, *Expl.*; 42 Mad. 523 (P.C.), *Foll.*

The question of necessity arises when there is only a partial surrender or transfer: 24 A. L. J. 250 and 24 A. L. J. 541, *Ref.* (*Sulaiman and Mukerji, JJ.*). MARU *v.* HANSO. **93 I.C. 543=48 All. 485=24 A.L.J. 541=A.I.R. 1926 All. 413.**

——Surrender by widow to landlord is not equivalent to an acceleration of the succession and that is not equivalent to the death of the widow. (*Hallifax, A.J.C.*). MT. BAYAN BAI *v.* PARAO. **93 I.C. 456=A.I.R. 1926 Nag. 431.**

——A surrender of a part of the husband's estate, the other part coming to possession of the reversioners after the death of the lady, is not valid according to law. But at the same time it cannot be questioned so long as the lady is alive. (*Suhrawardy and Cuming, JJ.*). INDRA NARAIN MANNA *v.* SARABASOVA DASI. **87 I.C. 930=41 C.L.J. 341=A.I.R. 1925 Cal. 743.**

——Acceleration in reversioner's favour is invalid unless widow divests herself of entire interest in whole estate. (*Baker, J. C.*). MT. BHAGWATI BAI *v.* DADU KHUSHIRAM. **81 I.C. 878=A.I.R. 1925 Nag. 95.**

——*Gift as a dowry in marriage of her daughter to the daughter amounts to acceleration.*

Widow made a gift of the entire estate in her daughter's favour on the occasion of her marriage.

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On the death of the daughter, her daughter succeeded to the properties and remained in possession for over 12 years. Then the widow died and reversioner sued to recover the gifted property,

Held, that the plaintiff's right to succeed accrued upon the death of the daughter and that event having taken place more than 12 years prior to the institution of the suit, and daughter's daughter having been in possession for more than 12 years without having any right, her possession thus amounted to adverse possession and the plaintiff's claim was beyond time and was rightly dismissed by the lower Appellate Court. It makes no difference that the transfer was made as a marriage gift: 42 Mad. 523 and 47 Cal. 466. *Foll.* (*Banerji, Ag. C.J. and Ryves, J.*). MT. SARTAJI *v.* RAMJAS. **79 I.C. 25=46 All. 59=21 A.L.J. 798=4 L.R.A. Civ. 505=A. I. R. 1924 All. 166.**

——*Surrender, unless of the entirety of the husband's estate, not effective.*

A deed of release in favour of a reversioner mentioned that all immovable properties were released and added if through mistake or omission or for any other reason any immovable property was left out of the Schedule there would be no hindrance to the title or possession of the reversionary heir in respect of the immovable property left out of the Schedule if such had happened; with reference to the movable properties, the widow declared that she would retain the same in her possession and that after her demise the said releasee would be the owner of the same,

Held, the terms of the deed of release were not sufficient to pass the entirety of the estate left by the last male owner, to releasee and that being so, inasmuch as there was not a total surrender by the widow of her estate which was inherited from the last male owner in favour of releasee it can hardly be contended that the deed passed any title binding as against other reversionary heirs. (*Ghose and Panton, JJ.*). JARI LAL PAL *v.* LAL BEHARI HAZRA. **75 I.C. 625=A. I. R. 1923 Cal. 499.**

——*Conveyance for consideration to next heir is not relinquishment—For a relinquishment there must be some act justifying inference that she is civilly dead—Relinquishment, nature of.*

Although actual transfers by Hindu widows have, in many cases, been supported by reference to the theory of the relinquishment of the widow's entire interest, there is relinquishment in the true sense of the term, when there is disclaimer by the widow at the time of the death of her husband, or the renunciation of the world by her afterwards, or some act by her which might, in the eye of law, justify the inference that the widow is civilly dead. It is only when the widow is dead, either actually or civilly, that the law steps in and gives the estate of her husband to the next reversioner. There are cases in the books which are called cases of relinquishment but which are in fact not cases of relinquishment at all where alienations by Hindu widows have been upheld by arguing from analogy. But analogy denotes only a partial similarity; and it does not follow that, because where a widow renounces the world, the next reversioners take the estate by operation of law, there is also a succession by operation of law where, as a result or a transaction not amounting to a relinquishment, properly so called, but capable of being suppported by reference to the theory of relinquishment, the estate comes to the next reversioners, *e.g.*, a Hindu widow may sell for valuable con-

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sideration the entire estate of her husband to the next reversioner or to a stranger with the assent of the next reversioner. The transaction will be upheld by applying the analogy of a relinquishment of her estate by the Hindu widow; but it can hardly be argued that there is relinquishment properly so-called, in such a case, or that the title of the reversioner arises by operation of law. The truth is that the law on the subject has grown, from precedent to precedent, and it is impossible to argue that because a certain legal incident is true of a certain proposition, it must also be true of every proposition which may have been logically drawn from the first proposition, or which is capable of being supported by reference to the first proposition. It is one thing to say that because upon the death of a widow either actual or civil, the estate would at once vest by operation of law upon the next heir of her husband, therefore the widow can operate her own death by conveying absolutely the estate of her husband to one who, at the moment of the conveyance, is the next heir of her husband; it is another thing to say that when the widow does convey the estate to the next reversioner, the reversioner takes the estate by operation of law and not by virtue of the conveyance. It does not follow that, because the heir takes by operation of law when there is real relinquishment by the widow, that is to say, when she elects to die a civil death, he also takes by operation of law when, as a result of a transaction which may be supported by reference to the theory of relinquishment, but which in fact is not relinquishment, the estate is carried from the widow to the heir or to a stranger with the consent of such heir. It cannot be laid down as an inflexible rule applicable to all cases that the heir takes by operation of law whenever as a result of a transaction to which the widow and the heir are parties, the entire estate becomes vested in the heir or goes to a stranger with the consent of such heir. A relinquishment becomes operative only when the widow acts upon the declaration and withdraws herself from the estate. A widow cannot be said to have withdrawn her life-estate, if notwithstanding her paper declaration, she continues to be in possession of the estate. (*Das and Kulwant Sahay, JJ.*). MANSINGH *v.* NAWALAKHBATI. **73 I.C. 822= 2 Pat. 607=4 P.L.T. 335=A.I.R. 1923 Pat. 492.**

———Surrender, doctrine of—Whole estate not transferred—Doctrine does not apply, 23 C.W.N. 777, *Ref.* (*Wazir Hasan, A.J.C.*). RAM BODH SINGH *v.* RAM NARAYAN SINGH. **65 I.C. 776= 8 O.L.J. 512= A.I.R. 1921 Oudh 238.**

—Widow—Surrender—Effect of.

———*Surrender does not defeat charge created on property.*

. er *Reilly, J.*—By surrendering her widow's interest to her husband's reversioner a widow cannot defeat the charge created by the consent decree on the house in her possession. (*Reilly and Cornish, JJ.*). C. MEENAMBAL AMMAL *v.* ABURUBAMMAL. **1930 M.W.N. 337= A.I.R. 1930 Mad. 688.**

———*Right to challenge prior alienation by widow vests in the reversioner on date of surrender, but he cannot exercise that right in widow's lifetime.*

The whole doctrine of surrender and consequent acceleration of the estate of the reversioners has no basis in Hindu Smritis, but has been evolved by Courts of Justice on general principles of jurisprudence, and the surrender by the widow and the acceptance of the estate by the reversioner are

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purely matters of contract. So far as reversioners are concerned their position is quite different from that of an adopted son: 41 Mad. 75, *Foll.* Widow cannot by making a surrender in favour of the next reversioner defeat rights created by herself and creation of which was within her authority, and the reversioner cannot claim on the basis of the surrender to defeat such rights. Although the right to challenge the alienation by the widow vests in the next reversioner at the date of the surrender, yet by reason of the fact that the accrual of that right prematurely is due to the action of the widow, he is debarred, until the death of the widow, from challenging transfers made by the widow, which but for the surrender would have been good for the widow's life: 42 Mad. 523, *Dist.* (*Case-law discussed*). (*Sulaiman and Boys, JJ.*). LACKHMICHAND *v.* LACHHO. **100 I.C. 764= 49 All. 334=26 A.L.J. 161= A.I.R. 1927 All. 258.**

———Alienation by widow life holder—Daughter succeeding widow but not challenging alienation within limitation—Surrender by daughter in favour of next reversioners does not give them right to challenge alienation by widow in daughter's lifetime.

When a reversioner obtains the estate through the surrender by the life-estate holder of her estate, he is not entitled to question her alienations during her lifetime but must wait till her death to do so. (*Waller and Madhavan Nair, JJ.*). (VENKA) RAMAYYA *v.* (VENKA) NARAYYA. **100 I. C. 639= 39 M. L. T. 440= A. I. R. 1927 Mad. 530= 52 M. L. J. 634.**

———Gift by widow — Subsequent surrender — Surrenderee reversioner cannot challenge the gift during widow's lifetime. *Page, J.*, in A.I R. 1926 Cal. 121, *Not foll.* (*Curgenven, J.*). KARUPPA PILLAI *v.* IRULAYEE. **100 I.C. 580= 25 M. L. W. 303= A. I. R. 1927 Mad. 429= 52 M. L. J. 195.**

———When a reversioner obtains the estate through the surrender by the life-estate holder of her estate, he is not entitled to question her alienations during her lifetime but must wait till her death to do so. (*Coutts-Trotter, C.J. and Krishnan, J.*). SUNDARASIVA ROW *v.* I. VIYAMMA. **91 I. C. 401=48 Mad. 933=22 M L. W. 398= 1925 M. W. N. 643= A. I. R. 1925 Mad. 1267= 49 M. L. J. 266.**

———After surrender widow cannot sue for rent accrued due before. (*Jwala Prasad, A. C. J. and Das, J.*). PHULBATI KUER *v.* SHEIKH FARMAN. **63 I. C. 448=2 P.L.T. 606=1921 P.H.C.C. 292= A. I. R. 1921 Pat. 408.**

—Widow—Surrender—Formalities.

———*Deed of surrender not necessary.*

A Hindu widow can surrender her whole interest in the whole estate in favour of the nearest reversioner and this applies equally to a daughter. It is not necessary for the widow in such a case to execute any formal deed of surrender: A.I.R. 1918 P.C. 196 and A.I.R. 1919 P.C. 75, *Foll.* (*Hasan and Pullan, JJ.*). BIJORI SINGH *v.* KALICHARAN. **111 I.C. 475=5 O.W.N. 293.**

———*No writing necessary—But if there is writing it must be registered.*

A surrender by Hindu widow of her interest is not a transfer of any kind, but is merely an abandonment of an interest, which the next reversioner takes in his own right and not because anything is conveyed to him by the widow. Such an abandonment can be effected without a written instrument though if one is executed it would un-

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doubtedly require registration, under S. 17 of the Registration Act: 42 I.C. 939, *Appr.* (*Hallifax, A.J.C.*). GAURI BAI *v.* GAYA BAI. **97 I.C. 995= 22 N.L.R. 169=A.I.R. 1927 Nag. 44.**

———*No particular form is necessary.*

It is competent for a Hindu widow to surrender the estate in favour of the next reversioner and by a voluntary act remove herself from the succession as effectively as if she had died at that moment. If there is a *bona fide* and entire renunciation on the part of the widow of her right to hold the property this voluntary self-effacement whether termed surrender or relinquishment or abandonment of her rights may be effected by any process having that effect. (*Madhavan Nair, J.*). G. KOTIREDDI *v.* B. SUBBAREDDI. **82 I.C. 1025= A. I. R. 1925 Mad. 382.**

—Widow—Surrender—Ignorance of rights.

———*Surrender in ignorance of her right is invalid.*

Where a widow surrenders in ignorance of her rights and without realizing the true position of affairs, the surrender is not valid in law: A.I.R. 1919 P.C. 75, *Dist.* (*Reilly and Pandalai, JJ.*). KRISHNA BHATTA *v.* SUBBANNA SASTRI. **119 I. C. 169=A.I.R. 1929 Mad. 611.**

—Widow—Surrender—Omission of portion.

———Surrender must be of whole estate but omission of small portion is immaterial. (*Prideaux, A.J.C.*). MT. SUPDI *v.* MARUTI. **67 I. C. 960= A.I.R. 1922 Nag. 187.**

—Widow—Surrender—Prior alienation.

———*Surrender after alienations not binding on the estate is invalid.*

A widow can accelerate the estate of the reversionary heir by conveying absolutely and destroying her life-estate so that the whole estate should get vested in the reversioner. But where she has made some alienation not binding on the estate she is unable to surrender the whole of the estate and therefore the surrender which she makes after the alienations, is invalid: A.I.R. 1918 P C. 196 and A.I.R. 1928 Bom. 26, *Rel. on.* (*Phillips and Odgers, JJ.*). VIJIARAGHAVACHARIAR *v.* RAMANUJACHARIAR. **114 I.C. 233=1928 M.W.N. 540= 29 M.L.W. 95=A.I.R. 1929 Mad. 37= 55 M. L.J. 859.**

—Widow — Surrender—Provision for maintenance.

———*Receipt of maintenance in lieu of estate is valid.*

Where a dispute arises between a widow or other limited heir and the next reversioner as to the right of inheritance to a male, and a compromise is entered into whereby the widow or other limited heir relinquishes her right of succession to the property in consideration of a provision for her maintenance for her life, the compromise amounts to a *bona fide* surrender of the whole estate. (*Shadi Lal, C.J. and Hilton, J.*). BHUTA SINGH *v.* MANGU. **120 I.C. 598=A.I.R. 1930 Lah. 9.**

———*Although it is permissible for a widow to reserve some small interest in property for maintenance if the profits of whole property is reserved, surrender is invalid.*

Although a widow, if she is going to surrender her life-estate to the next reversioner, must make a complete surrender and must practically efface her interest, it is permissible for her to reserve some small interest in the property for her maintenance, if that is not inappropriate or excessive. If it appears that as a consideration for the surrender she got the whole of the profits of the property for the whole of her life for her maintenance, the

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transaction cannot be treated as a valid surrender of a widow's estate. (*Reilly and Pandalai, JJ.*). KRISHNA BHATTA *v.* SUBBANNA SASTRI. **119 I. C. 169=A.I.R. 1929 Mad. 611.**

———A surrender by Hindu widow is valid even though there is an agreement to maintain the widow: A.I.R. 1923 Bom. 432; A.I.R. 1921 P.C. 107, *Foll.*; 44 Bom. 255, *Held no longer good law.* (*Patkar and Baker, JJ.*). ANNA *v.* GOJRA. **114 I.C. 390=30 Bom. L. R. 867= A.I.R. 1928 Bom. 333.**

———*Reserving annuity does not, but not abandoning rights in the property does, invalidate surrender.*

The reservation of an annuity does not necessarily negative the intention of self-effacement which is so very essential for accelerating the succession: A.I.R. 1919 P.C. 75, *Rel. on.*

But where there is conduct on the part of the widow which shows that the surrender was not acted upon by her, and that she did not abandon possession, it may very well be inferred that there was not such complete self-effacement and abandonment as would preclude her from asserting any further claim to the estate in the event of grantee pre-deceasing her. (*Kinkhede, A.J.C.*). DAWALAT *v.* HAGO RAO. **103 I.C. 720= 23 N.L.R. 57=A.I.R. 1927 Nag. 230.**

———Conveyance of small portion for widow's maintenance does not change nature of transaction from being acceleration. That being so, Art. 125 cannot apply, but Art. 120 is applicable: A.I.R. 1919 P.C. 75 and A.I.R. 1921 P.C. 107, *Foll.*; 44 Bom. 255, *Not foll.* (*Findlay, J.C.*) PAIKU *v.* BHIWA. **101 I.C. 275= 10 N.L.J. 33=A.I.R. 1927 Nag. 193.**

———An agreement by widow to surrender her interest in return for a place of residence and an allowance of certain amount per month for a maintenance is effective as a valid surrender: 42 Mad. 523 (P.C.) and 48 Cal. 100 (P.C.), *Rel. on.* (*Hallifax, A.J.C.*). GOURI BAI *v.* GAYABAI. **97 I.C. 995= 22 N.L.R. 169=A.I.R. 1927 Nag. 44.**

———Where two co-widows who were wards of Court under Bengal Court of Wards Act (1879) and whose property was in Court's possession, surrendered their interest in their husband's estate without the sanction of Court of Wards to the nearest reversioners who in return agreed to pay a fixed monthly allowance to the widows for their lives.

Held: that the surrender was void under Hindu Law as well as in contravention of S. 60 of the Bengal Court of Wards Act: 46 I.A. 72 and 47 I.A. 233, *Ref.* (*Sir John Edge.*) MANSINGH *v.* MAHARANI NAWLAKHBATI. **94 I.C. 830=5 Pat. 290= 53 I.A. 11=24 A.L.J. 250=43 C.L.J. 259= 1926 M.W.N. 332=7 P.L.T. 223= 28 Bom.L.R. 841=31 C. W. N. 49= A.I.R. 1926 P.C. 2=50 M.L.J. 332 (P.C.).**

———*Transfer for valuable consideration is no surrender—Provision for maintenance does not invalidate surrender.*

A Hindu widow is entitled to surrender her estate in favour of the reversioner at any time. But it may be either by way of a transfer of her interest in the estate for valuable consideration or it may be an absolute surrender which has the effect of accelerating the succession of the reversioner.

The fact that some maintenance was agreed upon to be paid by the reversioner to the widow does not affect the surrender. But the question has to be decided upon the circumstances of each case

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whether the surrender was not a mere device for dividing the property or for transferring it for valuable consideration.

Where a widow, in consideration of Rs. 3,000 in cash and Rs. 1.800 a year with power to recover, in case of default of payment, with interest at 12 per cent. per annum from all the properties agreed to give up all the properties which she had in favour of the reversioner:

Held, that it was not a deed of surrender such as is contemplated under the Hindu Law so as to operate as an acceleration of the inheritance of the reversioner, but it was a transfer of the interest of the widow for valuable consideration. (*Chatterjea, Ag. C.J., Rankin and Chakravarti, JJ.*). PRAFULLA KAMINI ROY *v.* BHABANI NATH ROY.
97 I.C. 236=30 C.W.N. 1011=A.I.R. 1926 Cal. 1211.

——Surrender with a reasonable provision for maintenance and residence is not invalid—Surrender in favour of next reversioner and third party is also valid: 42 Mad. 864 and 25 C.W.N. 194 (P.C.), *Rel. on.* (*Greaves and Cuming, JJ.*). ABHOYA PADA *v.* RAMKINKAR. **89 I.C. 717=A.I.R. 1926 Cal. 228.**

——Whole immovable property relinquished—House retained for residence alone—Movables of small value not shown to have been inherited from husband also retained—Some paddy was agreed to be given by the surrenderee—Valid surrender was held to have been made: 19 Cal. 236 and A. I. R. 1923 P. C. 189, *Dist.* (*Suhrawardy and Duval, JJ.*). GOPAL CHANDRA DUTT *v.* SURENDRA NATH DUTT. **85 I.C. 804=A.I.R. 1925 Cal. 1004.**

——*Provision for maintenance does not vitiate surrender.*

A gift of an estate by a widow in possession, in favour of the next reversioner, which operates as an acceleration of the estate to the latter, is not vitiated by its containing a reasonable provision for the maintenance of the widow: 42 Mad. 523 (P.C.); 47 Cal. 466 (P.C.) and 48 C. 100 (P.C.), *Foll.* (*Ryves, and Daniels, JJ.*). ADHAR SINGH *v.* BABU RAM MANDAR SINGH. **73 I.C. 990=45 All 610=21 A.L.J. 548=4 L.R.A. Civ. 289=A.I.R. 1924 All. 114.**

——*Receipt of maintenance does not vitiate surrender.*

A Hindu widow can renounce her estate in favour of the next reversioner and voluntarily efface herself from the succession as effectually as if she had then died, and this voluntary self-effacement may be effected by any process having the effect of a surrender, relinquishment or abandonment provided it is a *bona fide* and is of the whole property. The receipt of maintenance in lieu of her estate amounts to a complete renunciation of the estate. (*Viscount Cave.*) BHAGWAT KOER *v.* DHANUKDHARI PRASAD SINGH. **59 I.C. 445=12 L.W. 105=17 A.L.J. 1036=19 M.W.N. 60=1 P.L.T. 18=2 U.P.L.R. 27=46 I.A. 259=22 Bom. L.R. 477=47 Cal. 466=24 C.W.N. 274=37 M.L.J. 513 (P.C.).**

——*Surrender can be subject to reservation of absolute estate in certain properties for maintenance.*

Surrender subject to reservation for maintenance is invalid. 47 Cal. 466 (P.C.), *Foll.*

In the case of widows entitled to maintenance it is open to them to get properties absolutely in lieu of their claim, a surrender by a widow is not invalid where, the bargains for an absolute estate in a portion of the estate of her maintenance so long as

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the lands allotted to her for maintenance are not in excess of her requirements for maintenance and the transaction is otherwise fair. The reservation for maintenance need not be only of life-estate. (*Kumaraswami Sastri and Devadoss, JJ.*). KARUPPA GOUNDAN *v.* MUDALI GOUNDAN. **67 I.C. 397=31 M.L.T. 472=1922 M.W.N. 259=A.I.R. 1921 Mad. 681=43 M.L.J. 36.**

—Widow—Surrender—Several reversioner.

——A surrender by a Hindu widow, in order to be valid, must be in favour of the nearest reversioners. So a surrender by a Hindu widow in favour of hes daughters' sons is not valid, if the daughterr themselves were alive at the time and there is no evidence they either knew or acquiesced in the transaction. (*Sir L. Sanderson.*) NARAYANASWAMI AYYAR *v.* RAMA AYYAR. **34 C.W.N. 1045=A.I.R. 1930 P. C. 297 (P.C.).**

——*It must be to whole body of persons entitled.*

It is well-established doctrine of the Hindu Law that a surrender by a limited heir is not valid unless it comprises her whole interest in the whole property and is in favour of the whole body of persons entitled to succeed to the estate immediately after the limited owner. (*Shadi Lal, C.J. and Dalip Singh, J.*). MT. NIKKO *v.* DAYA RAM. **111 I.C. 282=29 P.L.R. 569.**

——Surrender is complete effacement and must be of whole property to all existing reversioners. (*Phillips and Ramesam, JJ.*). RAMA AIYAR *v.* NARAYANASAMI AIYAR. **96 I.C. 483=23 M.L.W. 496=1926 M W N. 958=A.I.R. 1926 Mad. 609=51 M.L.J. 313.**

——A surrender to be valid must be in favour of the nearest revorsioner if there be only one or all the reversioners nearest in degree if there be more than one: 42 Mad. 532, *Foll.*: 22 A.L.J. 472; 42 Bom. 719, *Rel. on.* (*Daniels and Neave, JJ.*). BECHU PANDE *v.* MT. DULHMA. **80 I.C. 4=5 L.R. A. Civ. 661=A.I.R. 1925 All. 8.**

——A relinquishment by a widow in favour of one out of several reversioners during her life-time is not valid. (*Daniels and Dalal, JJ.*). PRAG NARAIN *v.* MATHURA PRASAD. **79 I C. 575=22 A.L.J. 472=5 L R.A. Civ. 362=A. I. R. 1924 All. 740.**

——*Transfer must be in favour of the nearest reversioner.*

Surrenders of life-estate, under Hindu Law, are simply cases of accelerating succession to the next heir, which mean that the female life-tenant effaces, herself and succession of the whole estate goes on to the next heir just as if the life-tenant had died. But a transfer in favour of any person other than the nearest reversioner is an alienation and not a surrender: 27 I.C. 167; 16 Bom. L.R. 699; 39 Bom. 87, *Foll.* (*Chevis and Harrison, JJ.*). WAZIRI MAL *v.* GANGA RAM. **69 I.C. 573=A.I.R. 1924 Lah. 370.**

—Widow—Surrender—Subsequent adoption.

——*Surrender is an act within the capacity of widow—So alienee gets a title that cannot be defeated by subsequently adopted son.*

Held, per *Macleod, C.J.*—That an adopted son cannot impeach prior alienations by widow which she is legally entitled to make. The ruling of the Privy Council in 47 I.A. 233 which would appear to be inconsistent with the decision in 44 Bom. 255 has afforded a very wide scope for future litigation. It offers a temptation to next reversioners to induce young widows to surrender their life-estate in return for maintenance, and it will be difficult to

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draw the line between a promise to pay maintenance, and an arrangement which is a device to divide the estate between the reversioner and the widow. The alienation by a widow of her life-estate to any one other than the next reversioner can be set aside by her adopted son as the adoption puts an end to the life-estate and so divest the estate of any one claiming under a title derived from her. (Mayne, 9th Edn, p. 271) but the surrender of the life-estate to the next reversioner gives a title to him which is not dependent on the continuance of the life-estate but results from its extinction, and cannot be questioned by the subsequently adopted son. The title of one claiming either by purchase or by inheritance from the next reversioner is equally indefeasible.

Per *Crump, J.*—The effect of the surrender by the widow is that the then reversioner takes an absolute estate and as the surrender is an act which is by Hindu Law within the competence of widow the son adopted after the surrender cannot question it. The general rule is that adoption cannot divest any estate of inheritance unless that estate is at the time of the adoption, vested in the adopting widow. (*Macleod, C.J. and Crump, J.*). RAMA NANA BABAR *v.* DHONDI MURARI TARADE.

76 I C. 607=28 Bom. L.R. 361=47 Bom. 678=A.I.R. 1923 Bom. 432.

—Widow—Unchastity.

——Unless a widow kept unsullied her husband's bed up to the time of her husband's death she would not be entitled to inherit her husband's estate. (*Mitter J.*). (SM.) RANI DASSYA *v.* (S.M.) GOLAPI DASSYA **A.I.R 1930 Cal. 779.**

——*Dayabhaga — Condonation of unchastity——Inheritance.*

On the subject of inheritance by widow condonation by husband of widow's unchastity does not come in for the purpose of determining whether the widow who had become unchaste during her husband's lifetime is entitled to inherit or not: (*Oxiter*). 36 Bom. 138 and 40 All. 178, *Dist.*; 5 Cal. 776, *Ref.* (*Mitter, J.*). (SM.) RAMI DASSYA *v.* (SM.) GOLAPI DASSYA. **A.I.R. 1930 Cal. 779.**

——Subsequent unchastity does not divest estate. (*Daniels, J.C. and Dalal, A.J.C.*). BHAGWAN DIN *v.* MST. INDRANI. **65 I.C. 117=8 O.L.J. 563=24 O.C. 297=A.I.R. 1921 Oudh 233.**

—Widow—Waste

——Permission granted to cut and remove trees of spontaneous growth and subject to periodical cutting for cash consideration—Transaction is for benefit of estate and done in ordinary course of management and is binding on reversioners.

Within the limits imposed upon her a female holder has the most absolute power of enjoyment: A.I.R. 1915 P.C. 18, *Foll.* She is forbidden to commit waste or to endanger the property in possession. (*Gokaran Nath Misra and Srivastava, JJ.*). RAJINDRA BAHADUR SINGH *v.* MALHOO KHAN.

112 I.C. 156=A.I.R. 1929 Oudh 93.

——*Widow—Committing waste, may be deprived of management.*

Though thirty years have elapsed since the widow mismanaged the property and that the other acts of waste were committed when she was out of possession and in receipt of pittance, but when it is certain that, if she is allowed to manage the property, it will be ruined,

Held, that there is ground to deprive the widow of management. (*Findlay J.C. and Macnair, A.J.C.*). MT. RUPA *v.* CHAUDHARI BHAIRAON PRASAD. **103 I.C. 353=A.I.R. 1928 Nag. 93.**

HINDU LAW—Widow—Widow's estate.

——A Hindu widow can waste neither movable nor immovable property. (*Findlay, J. C. and Macnair, A.J.C.*). MT. RUPA *v.* CHAUDHARI BHAIRAON PRASAD. **103 I.C. 353=A.I.R. 1928 Nag. 93.**

——*Waste—What is—Waste and alienation distinguished.*

Where a widow or other limited heir is in possession of the property inherited by her, she is considered to commit "waste" only when she does an act which constitutes danger to the property or, in other words, which diminishes the value of the estate or when her act is injurious to the reversioners, *i. e.*, when the title of those next in succession is endangered. In such cases the next reversioner can bring a suit to restrain such "waste" and can also ask the Court to remove the widow from possession of the property. But if the widow heir has only alienated the propery either by sale or mortgage or gift it cannot be said that she has committed an act which has diminished the value of the estate or has endangered the title of the reversioners. The widow is entitled to possession for her lifetime and is entitled to transfer that possession to another person up to a period not exceeding her own lifetime, and the mere fact that transfer is without consideration and without any legal necessity does not itself amount to waste: 6 M.I.A. 433 (P.C.) and 37 All. 177, *Rel. on.* (*Misra J.*). MT. DHUP RANI *v.* CHHAIL BEHARI.

111 I.C. 248=5 O.W.N. 556.

——*Waste of husband's movable property--Reversioner can bring action to prevent her—Transferees from widow without consideration can be made to restore.*

On principle there is no reason for refusing to hold a widow in possession of her late husband's estate accountable for waste in the sense of making her replace the movable corpus which she has made away with, if she is in a position to do so, allowing her of course to enjoy the income of the fund replaced. She is not a trustee of her deceased husband's estate, or a tenant-in-tail, or for life, or the manager of a joint family, but the owner of a widow's estate with all the peculiar incidents of such ownership. As the owner of such widow's estate, she is under a clear duty to abstain from wasting the movable corpus of the estate just as a tenant-in-tail or for life is bound to abstain from committing waste, and if she commits a breach of that duty, there is no reason why she should be allowed to go free and not be held accountable.

It is open to the reversioners to file a suit praying that such movable corpus may be so reduced into possession and handed over to a Receiver appointed in the suit subject to any question of limitation, and transferees from the widow without consideration may be made to replace any part of the movable corpus of the estate of the last male owner which can be traced to their hands on the equitable principle, which imposes upon people into whose hands the property of other persons has come without consideration, the duty of accounting for it and restoring it. (*Wallis, C.J. and Krishnan, J.*). VENKANNA *v.* NARASIMHAM. **66 I. C. 10=44 Mad. 984=14 M.L.W. 193=1921 M.W.N. 590=A.I.R. 1921 Mad. 234=41 M. L. J. 279.**

—Widow—Widow's estate.

——Both under Hindu Law and Punjab Customary Law the respective rights of a widow in possession of her husband's estate and her reversioners are analogous. (*Harrison and Tek Chand, JJ.*). THAKUR SINGH *v.* UTTAM KUER.

118 I. C. 449=10 Lah. 613=30 P. L. R. 328=A.I.R. 1929 Lah. 233.

HINDU LAW—Widow—Widow's estate.

———One of the necessary incidents of a Hindu widow's estate is to give to the female, power to transfer the property absolutely in case of legal necessity. (*Lindsay and Sulaiman, JJ.*). BALBHADAR SINGH *v.* UDAI NARAIN SINGH.
100 I. C. 516=A.I.R. 1927 All. 741.

———Widow has larger power than holder of life-estate in lieu of maintenance. (*Kanhaiya Lal, J.*). GOPI KOERI *v.* MT. RAJ ROOP KOER.
78 I. C. 191=A. I. R. 1925 All. 190.

——— *If can be created by grant or will.*

Per *Spencer, Offg. C. J.*—It is possible to create a widow's estate by will or by grant, and it may even be acquired by prescription.

Per *Kumaraswami Sastri, J.*—The question whether it is open to a stranger to create what would strictly be a Hindu widow's estate in property by a grant or devise is not free from doubt. There is, however, nothing to prevent a grant imposing many of the limitations which would be imposed by Hindu Law upon a widow succeeding as heir without altering the course of succession. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR.
93 I.C. 705=48 Mad. 1=A.I.R. 1925 Mad. 497.

———A Hindu woman who is a life tenant is not in the same position as a Hindu widow. (*Wallis, C. J. and Oldfield, J.*). RAMAYY *v.* MAHALALSHMI.
64 I.C. 481=14 M.L.W. 33=1921 M.W.N. 434=A.I.R. 1922 Mad. 357.

—Widow—Will.

———A Hindu widow succeeding to her husband and adopting a son to him cannot will the property got by succession. (*Sen and Niamatullah, JJ.*). MT. BULAGAN *v.* RATAN LAL.
110 I. C. 546=26 A.L.J. 1196=A.I.R.1928 All. 656.

———A legatee under a will made by a Hindu widow does not take any interest whatsoever, not even a voidable interest: A. I R. 1924 Mad. 676; 1 Lah. 588 and 17 Bom. 690 (F. B.), *Rel. on*; 34 Cal. 329 and 18 W.R. 359, *Expl.* (*Jwala Prasad and James, JJ.*). JAGDEO SINGH *v.* RAJA KUER.
103 I.C. 482=6 Pat. 788=8 P.L.T. 437=A.I.R. 1927 Pat. 262.

———Widow's estate—Stridhan—Wife living separately from her husband—Property inherited from her father—Will by wife without husband's consent is valid: 30 Bom. 229, *Cons.* (*Macleod, C. J. and Coyajee, J.*). BHAGVANLAL CHUNILAL *v.* BAI DIVALI. **88 I.C. 750=27 Bom. L. R. 633=A.I.R. 1925 Bom. 445.**

———A legatee under the will of a Hindu widow by which she bequeaths her husband's property derives no title under the will even to maintain a suit in ejectment against a trespasser. (*Wallace, J.*). SRINIVASACHARIAR *v.* RAGHAVACHARIAR.
79 I.C. 1011=34 M.L.T. 287=19 M.L.W. 621=1924 M.W. N. 628=A.I.R. 1924 Mad. 676=46 M.L.J. 560.

———Property acquired by a Hindu widow by pre-emption by virtue of her being in possession of her husband's estate, but without raising the pre-emption money for her husband's estate and without any detriment to it does not become a part of the husband's estate and can be willed away by the widow. (*Banerji, Tudball and Gokul Prasad, JJ.*). SRI RAM JANKIJI *v.* JUGDAMBA PRASAD.
61 I.C. 3=43 All. 374=19 A.L.J. 129=A.I.R. 1921 All. 11.

———Widow has no power to make a will: 8 M.I.A. 529 (P.C.), *Foll.* and 32 Bom. 59, *Appr.* (*Broadway and Abdul Raoof, JJ.*). TIRTHA RAM *v.* MT. KHAN DEVI. **60 I.C. 101=3 L.L.J. 35=A.I.R. 1921 Lah. 149.**

—Widow—Miscellaneous.

———Widow executing deed styled as settlement deed and conferring absolute right over husband's properties in her possession, to grantees, her minor grandsons—She agreeing not to alienate those properties but providing that she would enjoy them in her life and after her decease, grantees were to get and enjoy them—Deed was not will, but settlement operating as immediate and irrevocable disposition in favour of the grantees subject to her life-interest—Title conferred under it being good at its inception would remain so even after widow's death unless avoided by reversioners: A. I. R. 1924 Mad. 676, *Dist.*; 34 Cal. 329, *Ref.*; A. I. R. 1922 P. C. 281, *Appl.*; 3 O. W. N. 767; and 38 Cal. 468 (P. C.), *Rel. on.* (*Madhavan Nair, J.*). PIRMANAYAGAM PILLAI *v.* ARUMUGHAM PILLAI. **118 I. C. 97=A. I. R. 1929 Mad. 710.**

———Suit by widow in possession having claim against reversioners—Time runs from date of payment or at least from the time rightful person claimed the estate—Her continuing in possession will not enlarge the period. (*Kumaraswamy Sastri and Reilly, JJ.*). MUTHUSWAMI *v.* PONNAYYA.
110 I. C. 613=51 Mad. 815=28 M.L.W 182=1928 M.W.N. 398=A.I.R. 1928 Mad. 820=55 M.L.J. 436.

———*Widow—Maintained by nephews—Funeral expenses of.*

Where a widow who was a member of a divided Hindu family and had no self-acquired property of her husband and who was being maintained by her husband's nephew and great nephew each of whom contributed half,

Held, it would be equitable and logical that they should pay for her funeral expenses in like proportion. (*Jackson, J.*). SHIVA AITHALA *v.* RANGAPAYYA AITHALA. **92 I.C. 523=A.I.R. 1926 Mad. 233=49 M.L.J. 719.**

———*Alienee* benamidar *can't sue for declaration of title on widow's death.*

An alienation by a Hindu widow is not void but merely voidable. Tranferees of widow who are *benamidars* for her have no title whatever after the death of the widow whom alone they represented, to sue for declaration of title. (*Dawson Miller, C. J. and Mullick, J.*). BHIKARI BEHARA *v.* SRIMATI SITAMONY DEVI. **78 I.C. 467=A.I.R. 1924 Pat. 706.**

—Will.

Absolute estate.
Charity.
Construction.
Contingent bequest.
Gift.
Joint tenancy.
Life-estate.
Partition by father.
Persona designata.
Presumption.
Proof of.
Revocation.
Setting aside.
Suit on.
Testamentary capacity.
Testamentary guardian.
Testamentary power.
Unborn child.
Validity of bequest.
Vested interest.

HINDU LAW—Will—Absolute estate.

—Will—Absolute estate.

———*Widow obtaining estate under Will from husband can get absolute estate—Hindu devising estate in three shares, his two widows and daughters-in-law as heirs—No provision for dealing with property after their death—Widows got absolute estate.*

The proposition that under the Hindu Law in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate unless the power of alienation is conferred upon her in express terms is not sound. If words are used conferring absolute ownership on the wife, the wife enjoys the right of ownership without their being conferred by express and implied terms unless the circumstances of the case are sufficient to show that such absolute ownership was not intended : A.I.R. 1922 P.C. 193 and A.I.R. 1922 P.C. 80, *Ref.*

Where a testator nominated as his heirs not only his two widows but also his daughter-in-law and all three were put in the same category as heirs and the words used in conferring the gift were : "As regards the details of shares, there shall be three equal shares. The three persons are the heirs to whatever is left from the property after meeting the expenses," and the will contained no provision for dealing with the properties after the deaths of the three devisees :

Held that the words used conferred full rights of ownership and there was nothing in the circumstances or in the context to indicate that it was the testator's intention to limit the estate of any of the three persons to a life-estate or to a limited estate similar to a "widow's estate" under the law of inheritance. (*Lord Lancelot Sanderson.*) SHALIG RAM *v.* CHARANJITLAL. **A.I.R. 1930 P.C 239 (P.C.).**

———*Widow under her husband's will cannot get power of alienation unless specially conferred by words of sufficient amplitude—Words that "my wife is the only hakdarulu" are not in themselves sufficient to confer absolute estate.*

If a Hindu woman takes immovable property given her by her husband she takes it as widow's estate under the Hindu law, and has no right of alienation, unless the gift was coupled with an express power of alienation, and unless there are words of sufficient amplitude to confer the power upon her.

Under a Will a Hindu testator, after stating that neither his younger brother nor his other heirs had any manner of right, stated that "my wife is the only one entitled (hakdarulu) and no one else" and gave her some amounts due under decrees in his favour,

Held, that the word "hakdarulu" would not of itself confer upon the widow an absolute estate in the immovable property and was merely declaratory of her rights as heir-at-law, *i.e.*, the right of a Hindu widow: A. I. R. 1928 P.C. 156; 42 Mad. 283 and A. I. R. 1922 P. C. 80, *Rel. on.* (*Odgers and Jackson, JJ.*). I. CHALAPATHI RAO *v.* P. G. SUBBA RAO. **117 I.C. 289=A.I.R. 1929 Mad. 691.**

———Where a testator in Berar bequeaths his property in favour of his daughter, who is married in Central Provinces, the daughter takes the property as stridhan, *i.e.*, according to Berar law. (*Macnair, A.J.C.*). GOVIND *v.* CHINTAMAN. **105 I.C. 840= A.I.R. 1928 Nag. 55.**

———*Devise in favour of wife—Grant of absolute ownership enough—Express additional terms not necessary.*

The view that under the Hindu Law, in the case of immovable property given or devised by a husband to his wife, the wife has no power to alienate unless the power of alienation is conferred upon her in express terms is not sound. If words are used conferring absolute ownership upon the wife, she enjoys the right of ownership without their being conferred by express or additional terms, unless the circumstances or the context are sufficient to show that such absolute ownership was not intended. (*Coyajee and Fawcett, JJ.*). BAI SURAJ *v.* JIJIBHAI BHAVSANG. **86 I.C. 196= A.I.R. 1925 Bom. 38.**

———Where a sum of money is given on account of affection to a particular individual who would not inherit to the testator in case of intestacy, the individual gets an absolute estate in the money and therefore his sons cannot claim a share in it: 24 Mad. 429, *Dist.* (*Devadoss, J.*). THAMBIRAN CHETTY *v.* NATARAJA CHETTY. **83 I.C. 127= A. I. R. 1925 Mad. 370.**

———Testator's property devised to widow and predeceased son's widow—Each takes absolute interest in half the property: 23 Cal. 670, *Foll.* (*Dalal, J. C.*). MT. UMRAO KUAR *v.* SARABJIT SINGH. **85 I.C. 618=A.I.R. 1925 Oudh 620.**

———Where one of the legatee's wife was given an absolute estate and the two daughters of the testator also were given estates which were antagonistic to the interest of his wife the natural inference would be that the nature of the estate given to the wife was also the same. (*Sulaiman and Mukerji, JJ.*). LAKSHMI NARAIN MISIR *v.* MT. SUMARNI KUAR. **79 I.C. 389=46 All. 439= 5 L.R.A. Civ. 342=A.I.R. 1924 All. 731.**

———Widow made absolute owner of husband's property by husband's will—Authority to adopt also given by will—Authority to adopt does not make the absolute ownership limited. (*Martineau and Campbell, JJ.*). SHEO NARAIN *v.* ARYAVART SARB DESHAK SABHA. **70 I.C. 1006= 6 L.L.J. 214=A.I.R. 1923 Lah. 398.**

———"*Malik*" *denotes absolute estate—Legatee being a Hindu woman—Presumption of limited gran not to affect use of 'Malik.'*"

The ordinary meaning of the word Malik in reference to property is 'absolute owner' and if the testator used the word it is to be presumed that he uses it in its ordinary meaning. The fact that the legatee of a Hindu is a woman points to a probability that the testator intended that after her death his property should return to his heirs-at-law, that is his own family. But it is a very weak indication of that probability, not nearly as strong by itself as the indication of the contrary to be found in the use of the word malik. There may, however, be other evidence tending either way in the remaining terms of the will and the circumstances in which it was made and that evidence requires examination in each case.

A will terminated as follows :—"But if the aforesaid Basanti Bai, testator's sister, is alive after my death, then she is to maintain herself out of the rents during her life and at her death may make a disposition of it according to her own pleasure but nobody at all shall have authority to mortgage or sell the property." There was also the statement that the testator had "no heirs of any kind whatever besides Basanti Bai." There was the bequest to the Temple which was to have effect, if the testator survived Basanti Bai,

Held, the legatee took an absolute estate : 30 All. 84, *Foll.* (*Hallifax, A.J.C.*). SUNDRABAI *v.* JAGANNATH. **69 I.C. 286=A.I.R. 1923 Nag. 56.**

HINDU LAW—Will—Absolute estate.

———*Widow made absolute owner—No express words are necessary—Direction in favour of daughters as to whatever property remains after widow's death—No trust in their favour is created.*

If words are used conferring absolute ownership upon the wife, the wife enjoys tbe rights of ownership, without their being conferred by express and additional terms, unless the circumstances or the context are sufficient to show that such absolute ownership is not intended. Where a Will gave certain property to the testator's wife and stated "As to whatever property there may remain after her death, my wife shall leave the said property to my two daughters."

Held, that the Will created no trust in favour of the daughters for to create a trust, the subject-matter on which the trust is to operate must be certain to enable the Court to give it administration. (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **65 I.C. 974=46 Bom. 153=35 C. L.J. 314=15 M.L.W 412=20 A.L J. 289=24 Bom L.R. 551=26 C.W.N 12)=30 M.L.T. 149=49 I.A. 1=A.I.R 1922 P.C. 193=42 M.L.J. 385 (P.C).**

———Under a will made in favour of a daughter and grand daughter with a provision that in case of death of the daughter, the grand-daughter will take the entire estato including that of the daughter,

Held, that both the daughter and grand-daughter take an absolute ownership in the property. Mere absence of an express power of alienation does not suffice to qualify tbe presumption of absolute ownership implied in the word '*malik*'. From the fact that the testator arranged for the divesting of the estate of the daughter on her death it does not follow that the testator did not intend that estate to be absolute. There is nothing in Hindu Law repugnant to the divesting of the estate provided that the event upon the happening of which the estate is to be divested happens if at all, at the close of a life in being at the time of the death of the testator and that the gift be in favour of a person in existence. (*Drake-Brockman, J.C. and Hallifax, A.J.C.*). MANGALJI *v.* RAMBHAOO.

64 I.C. 752=4 N.L.J. 253=A.I. R. 1922 Nag. 73.

———"*Malik*" *denotes full ownership—Widow being required to sell to testator's descendants and co-sharers for proper price, if she desired to sell, does not curtail her estate.*

Ordinarily a Hindu leaving property to his widow to be enjoyed by her after his death would desire that the widow should take the usual widow's estate, so that the property should not go out of the testator's family. But it cannot be contended that, if the husband's devise in terms confers upon the widow an absolute estate, even then the widow can only take the limited widow's estate. The word *malik* denotes an absolute owner. The fact that the widow was enjoined, if she should sell, to sell in the first instance to the testator's heirs and co-sharers for a proper price, *i.e.*, the highest price obtainable in the market at the time and that if, however, the heirs or the co-sharers refused to purchase the property paying the proper price, then the widow was to be at liberty to sell the property to others, does not curtail the estate given to her. (*Richardson and Chaudhury, JJ.*). SUDHAMONI DAS *v.* SURAT LAL. **66 I.C. 628=25 C. W. N. 527=A.I.R. 1921 Cal. 727.**

———"*Malik*" *signifies absolute ownership although donee may be the testator's widow.*

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The use of the word "malik" implies "absolute ownership" unless there is anything in the context or surrounding circumstances to qualify such meaning; and it is not so qualified by the fact that the donee is widow of the testator: 30 All. 84 (P.C.), *Foll.* (*Broadway and Abdul Raoof, JJ.*). MOHANLAL *v.* NIRANJANDOSS. **60 I. C 619=2 Lah. 175=A.I.R. 1921 Lah. 11.**

—Will—Charity.

———*Alienation by widow contrary to intention of testator is invalid.*

According to the Will, the income of the shop was set apart or ear-marked to be paid after the expiration of each month to a *Thakardawara*. No *Thakardawara* was specified in it and the provision that the rent was to be paid after the expiration of each month clearly signified the object of the testator to be that the shop should remain under the management and under control of his successors. The alienation of the shop by the widow of the testator in favour of the charity funds was challenged by reversioners.

Held, the widows in the present case had to carry out the wishes of the testator in the way ordained by him and that the alienation by them was in contravention of its Will and not binding on the reversioners. (*Broadway and Zafar Ali, JJ.*). BHAGAT RAM *v.* RAM SARUP CHELA. **76 I.C. 539=5 L.L.J. 332=A.I.R. 1923 Lah. 352.**

———A bequest of properties for *dharmadayam*, or in charity is void for uncertainty. *Case-law reviewed.* (*Aston, A. J. C.*). FAKIRO RAMJI *v.* VALABDAS GANGARAM. **76 I.C. 209 Sind.**

—Will—Construction—Absolute estate.

———*Gift to wife—Wife to hold from generation to generation—No other person to have power of interference—Full proprietary rights including rights of alienation held to have passed to wife.*

If the donor does not confer upon the lady express power of alienation, such power may nevertheless be deduced from the terms of the gift if the words used are sufficient to confer upon her absolute ownership, unless the circumstances or the context show that such absolute ownership was not intended. There is no magic in the use of any particular word or form of words; the document must be construed as a whole and its fair import deduced in the ordinary way and if the conclusion come to is that it confers the estate out and out with no reservation the right of alienation will be included just as much as any of the other incidents of ownership, and just as much where the gift is to a female as where it is to a male.

A sonless Hindu gifted his property to his wife in the following terms that "with a view to safeguard the aforesaid property, I, while in the enjoyment of sound health and unimpaired intellect, without reluctance and coercion, have specifically gifted the zamindari in the aforesaid villages to my wife and I do hereby covenant and reduce to writing that the said lady shall, generation after generation, remain in possession and enjoyment of zamindari haqiat in the said villages on payment of the Government revenue Now after the execution hereof, if I or any one of my heirs and co-sharers lays any sort of claim to the aforesaid property against the donee, the same shall be deemed false and untenable. With the exception of the lady donee, no one else shall have any power of interference and meddling with regard to the gifted property."

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Held, that reading the deed as a whole it must be construed as conferring upon the wife an absolute, *i.e.*, alienable and heritable estate in the property. 7 Cal 304 (P.C.) and 24 Cal. 834 (P.C.), *Ref.*; A I.R. 1928 Oudh 203, *Affir.* (*Other case-law considered.*) (*Sir George Lowndes.*) JAGMOHAN SINGH *v.* PANDIT SRI NATH.

A.I.R. 1930 P.C. 253 (P.C).

———*Person bequeathing all his properties to his daughter—Words "have been transferred" unattended by any qualification were sufficient to confer absolute estate on daughter.*

Under a bequest or gift a woman gets the estate which Hindu Law confers upon her unless there are words to restrict or amplify it. Where, therefore, under Hindu Law a bequest to a woman would convey the whole estate (*i.e.*, bequests in favour of women other than wife, such as daughter), it is permissible to construe the will free from any presumptions created by her sex. If the words used would invest a male legatee with absolute estate, so would they invest a female legatee as well.

A person made a will in favour of his daughter which stated that all the testator's properties "have been transferred" to his eldest daughter.

Held, that the words "have been transferred" unattended by any qualification were sufficient to confer absolute estate on the daughter. A.I.R. 1925 Mad. 254 and A. I. R. 1924 Mad. 855, *Rel. on*; 2 M.I.A. 7; 42 Cal. 561 *and other cases considered.* (*Curgenven, J.*). KOTAYYA *v.* KARANCHELI VARDAHAMMA. **A.I R. 1930 Mad. 744.**

———A father by his will devised one-half and certain properties to his two daughters each to get one-half and certain other properties to his sister's two sons. There was a clause in the will as follows: "My daughters . . . and my sister's sons . . . shall each enjoy . . . his or her respective portion of the property devised to them hereditarily and at their pleasure, with right of alienation by gift, sale or otherwise," and further,

"If, out of the said two daughters, to either there is no issue, her property shall after her death pass to the other to whom there is issue. If to neither of them there is issue, then the property remaining at the time of the death of the said two shall pass to the nephews of the testator."

Held, that the words "there is issue" mean that the issue must be living at the time of the death of each daughter respectively and that the will must be construed as giving an absolute estate to the daughters and providing for the devolution of whatever property may be left at their death. Such an estate is not unknown to Hindu Law. 5 C.W.N. 300 and 12 C.W.N. 412, *Rel. on.* (*Phillips and Reilly, JJ.*). P. KANNAMMA *v.* M. MACHAMMA.

107 I.C. 497=27 M.L.W. 156=1927 M.W.N. 909=A.I.R. 1928 Mad. 297.

———*Property given to grand-daughter—After her it was to go to her sons and failing sons to daughters—If she left no issue property to go to a thakurbari—Grand-daughter takes absolute estate.*

A will executed by a testator provided: "After the death of me, the executant my grand-daughter Mt. *P.* shall be the absolute proprietor (malik mustakkil) like me of all the properties, movable and immovable, now in my possession and those which will be acquired by me in future and shall remain as such. The husband of *P* shall have no right or authority to transfer or mortgage the property and shall acquire no sort of title to the property at any time or under any circumstances. After the death of my grand-daughter, male issue born of her shall be the absolute owners and possessors of the properties in equal shares and shall enjoy the income thereof. In case there be no male issue, her female issue shall be absolute owners and possessors of the properties in equal shares and shall enjoy the income thereof.

In case, God forbid, my grand-daughter dies without leaving behind her any male or female issue born of her womb, all the properties acquired at present and also that may be acquired hereafter shall belong to the thakurbari erected by me on the other side of the river Phalgo."

Held, that the gift to the grand daughter was that of an absolute estate and the agnates of the testator had no right to the property. A.I.R. 1928 P. C. 33, *Ref.* (*Ross and Wort, JJ.*). NAND KISHORE *v.* PASUPATI NATH. **103 I.C. 323=7 Pat. 396=A.I.R. 1928 Pat. 348.**

———*Gift absolute in favour of a lady—Conditions in restraint are void.*

Previous portion of a clause in a Will stated that the property was given to testator's daughter-in-law with power to make gift, sale, mortgage or any permanent maurasi makurari settlement. But the latter portion of the clause stated that any transfer by her should be made with the consent of her husband and other sons of the testator and his grandson.

Held, the intention of the testator was to make an absolute gift in favour of the lady and the subsequent restrictions must therefore be considered as repugnant to the gift. (*Walmsley and B.B. Ghose, JJ.*). DAYAMAJI *v.* SANKAR NATH.

87 I.C. 159=42 C.L.J. 30=A.I.R. 1926 Cal. 417.

———*Legatee was to get the testator's entire property and be his waris and janashin, subject to certain conditions, viz., not to change Hindu religion and not to alienate, etc., on pain of special course of inheritance—Will confers absolute estate—Conditions are void as repugnant—Absolute gift is liable to be defeated on the happening of some future event.*

The first condition placed by the testator in the forefront of the Will was that the legatee shall not change his Hindu religion. The second condition was that the bequeathed property should not be alienated either in whole or in part nor should it be partitioned at any time. The third condition was the special course of inheritance, and the dispositive words used in the first part of the Will were that that the legatee shall get, after the testator's death, all that same imlak and riasat and shall be his waris and janashin.

Held, the proper construction of such a Will is that the estate conferred by the first part of the Will is an estate of inheritance and the testator intended to give an absolute and not only a life-estate and that the clauses specifying the conditions were not intended to express the nature of the estate conferred, but merely to specify the conditions with which the testator desired to fetter the estate already created by him in the first part of the Will, and that, therefore, such of the conditions as are repugnant to that estate must be declared void a srepugnant and rejected as surplusage. The conditions did not define the quality of the estate, but were conditions of defeasance of that estate, which were intended to have the effect of divesting the estate conferred by the Will on the happening of one or other of the contingencies stated in the clauses. A gift may be absolute in

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the first instance, but liable to be defeated on the happening or not happening of some future event. *Case-law discussed.* (*Stuart, C. J. and Hasan, J.*). JAGDEO SINGH *v.* DEPUTY COMMR., PARTABGARH. **96 I.C. 47=2 Luck. 507=29 O.C. 176=13 O.L.J. 762=3 O.W.N. Sup. 56=A.I.R. 1926 Oudh 431.**

——*A Hindu female legatee is not presumed to take only life-estate—Disposition by a full owner is presumed to pass an absolute estate till contrary is proved—"Enjoy" refers to full ownership and not only to income.*

The Will of a Hindu who had an absolute estate in the properties purported to be bequeathed by the Will contained the following:—The following are the particulars as to how each of the legatees should enjoy after my lifetime. The Will then gave the list of properties which the testator's elder sister *A* was to enjoy and then of the properties which the testator wanted his adopted sisters *B* and *C* and her daughter *D* should enjoy. There was no provision in the Will whatever for any gift over or any remainder to any person. There were no words whatsoever in the Will restrictive of the scope of the estate given within the limits of a life estate; also there were no words authorising the legatees to alienate the property.

Held, that the Will gave whatever rights had been enjoyed by the testator in the properties to the legatees and that was an absolute estate. The expression "enjoy" in the Will meant enjoy the benefit of the ownership of the property and not merely the income of the property. The fact that a legatee is a Hindu woman does not give rise to any presumption that the estate given to her is only a life-estate. The question as to whether the estate given to her was intended to be an absolute or limited one must be decided on the language of the Will taken as a whole. When a person having an absolute estate in the properties makes a disposition of them, in the absence of anything to indicate that he was limiting the estate given in some manner, the disposition must be taken to pass the whole of the estate. (*Krishnan and Odgers, JJ.*). RAJAMANICKA CHETTIAR *v.* A. MANICKAM CHETTIAR. **84 I.C. 902=20 M.L.W. 672=1925 M.W.N. 120=A I.R. 1925 Mad. 254=47 M.L.J. 723.**

——A Hindu testator devised his estate by a Will to his three daughters one of whom was a childless widow. A life-estate was created in favour of each of the daughters but it was provided in the Will that if any or both of the daughters who were not widows got any male issue she or they, as the case may be, were to take the estate absolutely. One of the two daughters did get a son who died in his infancy.

Held, that the daughter who got a son took an absolute estate only subject to the life-interest of the remaining two daughters. (*Macleod, C. J. and Shah, J.*). BAI KAMALA *v.* REVASHANKAR RANCHHOD. **80 I.C. 520=26 Bom. L. R. 249=A. I. R. 1924 Bom. 350.**

——*Devise to son's daughter in terms—"You shall enjoy after my death all properties movable and immovable" passes absolute estate.*

Where words used are sufficient to create absolute estate there is no presumption that a woman, even the testator's widow, takes only a life-estate.

Where a Hindu bequeathed his properties to his son's daughter, by a will in the following terms:—

HINDU LAW—Will—Construction—Illustration.

"You shall enjoy after my death all the properties movable and immovable.....You can enjoy all the said properties attending to my obsequies after my death and settling the matters of the debts, etc., incurred by me,"

Held, that the will conferred an absolute estate, and that where the words used were sufficient to create an absolute estate, there was no presumption with regard to a distant female connection or even the testator's widow that a gift or immovable property passed only a life estate. (*Phillips and Odgers, JJ.*). YELLAPPA *v.* GOLASAMI. **82 I. C. 490=20 M. L. W. 579=1929 M.W.N. 895=A. I. R. 1924 Mad. 855.**

——*Bequest to Hindu widow—Words giving absolute estate used—Widow gets absolute estate.*

Where a Hindu testator, after providing for certain legacies and giving certain directions to the executors, stated in the Will: "The executors should deliver over the aforesaid my properties and cash and the other properties to my wife Kanchi Pushpammal after she attains the age of 20 years."

Held, the widow got an absolute estate in the residue of the testator's properties under the Will. Courts are not to presume that a testator who sat up to write a Will has not cared to say what is to become of the bulk of the property. (*Coutts-Trotter and Ramesam, JJ.*). KANAKAMMAL *v.* BAKTAVATSULU NAIDU. **70 I.C. 321=16 M.L.W 970=31 M.L.T. 459=1923 M.W.N. 70=A.I.R. 1923 Mad. 207=44 M. L. J. 23.**

—Will—Construction—Estate of inheritance.

——*Bequest without express words of inheritance carries estate of inheritance.*

It is well established that if an estate were given to a man simply without express words of inheritance, it would in the absence of conflicting contest carry by Hindu Law an estate of inheritance. The principle is of general application. I. A. Sup. Vol. 47 (P. C.); 30 All. 84; A. I. R. 1922 P. C. 63 and 24 Cal. 834, *Ref.* (*Rankin, C. J. and Mitter, J.*). BIPRADAS GOSWAMI *v.* SADHAN CHANDRA. **120 I.C. 810=56 Cal. 790=A.I.R. 1929 Cal. 801.**

—Will—Construction—Exclusive property.

——*Where legatee is to be owner of property without any co-parceners, property is exclusive.*

Where the terms of a will clearly lay down that the legatee is to be the owner of the property without any co-parcener and that no one except him shall have any right in the property the intention of the testator is that the property in the hands of the legatee should be his exclusive property and should not partake of the incidents of ancestral property. (*Stuart, C.J. and Srivastava, J.*). MT. BRIJ KUNWAR *v.* SANKATA PRASAD. **123 I. C. 849= 6 O. W. N. 963=A. I. R. 1930 Oudh 39.**

—Will—Construction—Illustration.

——*Property divided by testator among sons—Clause that certain houses should remain joint, does not deprive sons of right to have them partitioned.*

A testator after dividing some of his moveable and immovable properties among his three sons put down a clause regarding the remaining immovable properties that "all the property, *viz.*, houses, should remain joint of all three brothers as heretofore."

Held, that the clause could not be interpreted as meaning that the houses were not to be partitioned during the lifetime of the sons of the testator. The clause merely recited the fact that whereas some other properties had been dvised separately by the

HINDU LAW—Will—Construction—Illustration.

testator to his sons these houses had not been divided and were to remain joint.

The testator did not expressly or by implication intend to deprive his sons of one of the necessary incidents of ownership of joint property, namely, the right to have it divided. (*Tek Chand and Agha Haidar, JJ.*). DAMODAR DAS *v.* SHIB SAHAI.

A.I.R. 1930 Lah. 625.

——A person bequeathed his property to his widows and after the death of the surviving widow to *R*, declaring that *R* would be the owner after his death. He then provided that *R's* son would be the owner after *R*, if *R* would die without leaving any son, *D* would be the owner. Before the death of the surviving widow *R* died without leaving a son,

Held, that the widows took not a Hindu widow's interest but only a life-interest under the will.

Held further, that *R's* son was not intended to take any vested interest with his birth in the lifetime of *R*, but was to succeed only after *R's* death. Bequest in favour of *D*, therefore, was not successive but alternate to that in favour of *R's* son. (*Sulaiman and Kendall, JJ.*). DARSHAN SINGH *v.* WALI KHAN. **116 I. C. 30=1929 A.L.J. 274= A.I.R. 1929 All. 102.**

——*Widow disposing of "promissory notes" to be construed to be disposing of the interest on the notes.*

The owner of a Zemindari died during his minority leaving his widowed mother. The estate was under the management originally of the Court of Wards and later, of Court Receivers. She executed a will by which she disposed of the "Government promissory notes and cash of the estate."

Held, that she was, after the death of her son, entitled to hold during her life as part of the estate the promissory notes or other investments which represented monies received by the Court of Wards in respect of the estate so that she might receive for her own use and as part of her income such interest as might be payable under them, but that by her will she did not bequeath these promissory notes which represented monies which had been received by the Court of Wards before the death of her son, she only dealt with the promissory notes to which she was absolutely entitled as representing money which had been received after her son's death by the Court of Wards as the receivers. That was the only reasonable construction of her will, and the will did not fail on the ground of the widow's want of disposing power. (*Sir John Edge.*) APPA RAO *v.* PARTHASARATHY. **87 I. C. 324= 52 I.A. 214=1925 M.W.N. 441=3 Pat. L.R. 208= 29 C.W.N. 989=23 A.L.J. 261=6 L.R.P.C. 82= 48 Mad. 312=27 Bom. L. R. 823= A.I.R. 1925 P.C. 105=48 M.L.J. 627 (P.C.).**

——*Legal heirs of the grantees to be shebaits—On the death of persons living at testator's death, the office reverts to founder as being a bequest in favour of unborn persons—But directions as to management stand—Gift to idol—Right of residence of unborn persons.*

The will purporting to create a religious endowment and to appoint shebaits ran as follows: "When you all have ceased to be, he who shall be of the Hindu persuasion and senior in age amongst your legal heirs shall have the management conferred upon him." On the death of all the persons living at the time of the death of the testator, the bequest so far as it provides that the person senior in age among the heirs of the first shebaits should be appointed shebait, fails, and the shebaitship reverts to the heirs of the founder. In such a

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case as the above it cannot be said that the shebaitship is not an hereditary office. Though, no emolument or interest in property is attached to the office it is within the rule. But a founder who is competent to provide for the Government and administration of a trust can give a direction for its management which is not inconsistent with its character as a religious and charitable trust. The test of each case is whether the direction given by the founder is consistent with the nature of the endowment as a religious and charitable trust or is a colourable devise for the evasion of the law against perpetuities. The directions as to management will not cease to be operative simply because the original provisions as to the devolution of the shebaitship cease to be operative owing to succession to the shebaitship being varied.

Where the will virtually made no gift to any unborn person and the entire gift was to the idol but where members of the family of the original shebaits were entitled to reside in the trust house, to repair it, if necessary, to get maintenance out of the offerings to the idol and to enjoy certain other rights,

Held, that the directions were not inconsistent with the character of a religious trust recognised by Hindus and that the members of the family of the original shebaits were entitled to the rights conferred on them by the will irrespective of their having come into existence or not at the time of testator's death though the provision in the will as to succession to the shebaitship failed so far as it bestowed the same on such of the seniormost among the heirs of the original shebaits as were not alive at the testator's death. 23 Mad. 271; 29 Cal. 716; 20 C.W.N. 314, *Foll.*; 3 C.L.J. 606; A. I. R. 1924 Cal. 68 and A.I.R. 1923 Cal. 27, *Dist.* (*Suhrawardy and Duval, JJ.*). PROMOTHO NATH MUKHERJEE *v.* ANUKUL CHANDRA BANERJEE. **85 I.C. 875= 40 C.L.J. 564=29 C.W.N. 17=A.I.R. 1925 Cal. 225.**

——*Only part of the income to be spent on idol—Bequest of property is not to idol.*

The will of a Hindu testatrix addressed to her grandson directed that out of the income of specific property, he should perform the worship of the family idols but there was no provision for the worship of the idols after the death of the grandson. The balance of the income was to be divided between the representatives of the three branches of her own family. In administration proceedings taken on the death of the grandson it was decided that out of the produce of the houses belonging to the estate of the testatrix, the worship of the idols should be performed and that the surplus be paid equally to the three branches of the family. This was adopted in a decree of 1888 to which the branch of the respondents of the family was a party.

Held, (1) There was no gift of the whole property to the idols. (2) The burdens of performing different duties which involved ownership were cast on the grandson appointed by their will. (3) No heritable *shebaitship* was established. (4) The representatives of the three beneficiaries under the will were entitled to the residue absolutely and in equal shares. (5) As the gift was a private trust the settlement of a scheme under S. 92, C.P.Code (1882), could not be ordered. (6) The order in the administration suit was binding on all the parties and operated as *res judicata*. (*Lord Buckmaster.*) GOPAL LAL *v.* PURNA CHANDRA BASAK. **67 I.C. 561=20 A.L J. 626= 36 C.L.J. 57=49 Cal. 459=27 C.W.N. 174= 24 Bom. L.R. 937=49 I.A. 100=16 M.L.W. 963= A.I. R. 1922 P.C. 253=43 M. L.J. 116 (P.C.).**

HINDU LAW—Will—Construction—Legatee.

—Will—Construction—Legatee.

———*Daughter's son to inhert if born—Nature of estate—If property vests in daughter's son on birth —Or if he is devisee bequest to unborn person.*

The Will should be construed as giving a contingent remainder to the daughter's son, such contingent remainder being converted into a vested remainder after the birth of the first daughter's son subject to its diminution as the number of daughter's sons is augmented by further births and that the disposition in favour of the daughter's son was void owing to the rule in Tagore's case as they were not in existence at the testator's death, and as the son that was born to the daughter died in 1881, Madras Act I of 1914 did not operate to validate the transfer,

Held, per *Jackson, J.*—The Will made the male born to the testator's daughter heir to the real property given to his wife and daughter after their death, and without any intention that the property should vest in him at birth and come to him by survivorship. If, however, the alternative and perfectly reasonable construction is adopted, so that the property vested in the male issue from the moment of birth, the Will cannot be validated by the retrospective effect of Act I of 1914. (*Ramesam and Jackson, JJ.*). SIVARAMA AIYAR *v.* GOPALAKRISHNA CHETTIAR. **82 I.C. 1044= A.I.R. 1925 Mad. 88=47 M.L.J. 337.**

—Will—Construction—Life estate.

———*Life-estate in favour of daughter and remainder to her unborn son—Son born and predeceasing his mother.*

Held, that the daughter had a life-estate and under the terms of the will the property was to go to her children. The moment therefore a child was born, the estate vested in the child and succession would have to be traced through the child and not through the heirs of the testator.

Held, therefore, that the daughter took a life-estate under the will, that her son acquired a vested interest in the property, the gift to him being valid by reason of the provisions of Act VIII of 1921 and that on the death of this child his heirs and not the heirs of the testator were entitled to the property. (*Kumaraswami Sastri, J.*). PERIANAYAGI AMMAL *v.* RATNAVELU MUDALIAR. **76 I.C. 1042=18 M.L.W. 625=32 M.L.T. 137= A.I.R. 1924 Mad. 316.**

—Will—Construction—Meaning of words.

———"*Acquired by me*" - *Meaning of.*

The phrase "acquired by me" sometimes may be ambiguous in a document executed by a Hindu. It may mean that the property is self-acquired in the legal sense of the term or it may mean that the property was acquired during the regime or by the activities of the person executing the document and not necessarily self-acquired in the legal sense of the term, *i.e.*, without using ancestral funds. (*Ramesam and Reilly, JJ.*). RAMASWAMY PILLAI *v.* MARIMUTHU GOUNDAN. **113 I.C. 865= A.I.R. 1928 Mad. 764.**

———"*Santanam*" *explained.*

The word "Santanam," a Telugu word, used for issue in a will, besides meaning child, has a certain implication of succession or heirship. (*Phillips and Reilly, JJ.*). P. KANNAMMA *v.* M. MACHAMMA. **107 I.C. 497=27 M.L.W. 156= 1927 M.W.N. 909=A.I.R. 1928 Mad. 297.**

———The word "Santanam" used in a will does not include an adopted son, where the issue is of a female, for an adoption is always made to the husband. (1916) 1 M.W.N. 306 and A.I.R. 1915 P.C. 70, *Dist.* (*Phillips and Reilly, JJ.*). P. KANNAMMA *v.* M. MACHAMMA. **107 I.C. 497= 27 M.L.W. 156= 1927 M.W.N. 909= A.I.R. 1928 Mad. 297.**

HINDU LAW—Will—Construction—Trusts.

———"*Santhathi*"—*Meaning of.*

S had a daughter *K* by his first wife, *G*. Contemplating to take a second wife, *S* made a settlement with *G* containing the clause, "If *K* happens to have no issue (santhathi), then the property should go to the children of the second wife."

Held, that the word "santhathi" (issue) is wide enough to include adopted son. (1916) 1 M.W.N. 306 and A.I.R. 1928 Mad. 126, *Foll.* (*Srinivasa Aiyangar and Ananthakrishna Aiyar, JJ.*). TIRUPATHI NAICKEN *v.* VENKATASUBBA NAICKER. **112 I.C. 243=28 M.L.W. 819.**

—Will—Construction—Reversion.

———*Prior estate for life—Creation of subsequent estates—Period of ascertainment.*

Where a Hindu testator after providing for a life-estate for the maintenance of his widowed daughter gives over the property on her death to his son or grandson or any other heirs then living the properties would pass to the person who was the testator's heir on the death of the tenant for life, and not to the person who was the heir of the testator at the date of his death. (*Walmsley and Greaves, JJ.*). RAJANI KANT MANDAL *v.* KANTI CHANDRA MANDAL. **64 I.C. 237 (Cal.).**

—Will—Construction—Rules of.

———*Communal customs and predilections should be looked to.*

In considering Hindu Wills the Court should not overlook the customs and habits and the predilections of the class to which the testator belonged. It is very common for Hindus as well as Muhammadans to set apart property ostensibly for charitable or religious purposes with a direction that out of the income of the property certain amount should be spent for charitable or religious purposes, but the real object in such cases is to benefit the person who is to manage the property set apart for such purposes by enabling him to enjoy income. (*Devadoss, J.*). SWAMINATHA PILLAI *v.* DURAISAMI PILLAI. **101 I.C. 82= A.I.R. 1927 Mad. 681.**

———*Deed in favour of female has to be interpreted in the same way as any other deed.*

A deed in favour of a Hindu female has to be interpreted in the same way as any other deed.

One *R*, the husband of *K*, made a Will leaving his property to his widow and after her death to one *P*, brother's grand-daughter, whom he had brought up. The Will stated that "after my death *K* will be the owner (malik) of the property and after her death *P* will be the owner (malik) of the property.

Held, that under the Will *K* inherited an absolute right in the property. 35 Cal. 896, *Expl.*; 1 P.L.W. 375, *Dist.*; 27 P.R. 1893, *Diss. from*; 61 P.R. 1911, *Foll.* (*Wilberforce, J.*). DHANPUT RAI *v.* BADRI DAS. **65 I.C. 455=3 L.L.J. 1= A.I.R. 1921 Lah. 227.**

—Will—Construction—Trusts.

———*Bequest in favour of wife and nephew subject to trust—Grantees appointed shebaits of the trust—On the death of wife and nephew shebaitship devolves on founder's heirs.*

The testator having devised a house to the use of his wife and his nephew *K* during their joint lives and to the survivor during life with remainder to the use of the sons of *K* and their heirs male as tenants-in-common in equal shares made it clear

HINDU LAW — Will — Construction — Void bequest.

that the bequest was subject to a trust to permit each part or portion of the said house as had been used as *thakoor baree* to continue to be so used for the purpose of the deity. He then proceeded as follows: "I direct the executrix and executor (whom I hereby appoint shebaits of my *thakoor*) to allow the silver articles which have been used in the worship to continue to be so used." At the end of the will the wife of the testator and *K* were appointed executrix and executor. It was also provided that they should spend certain amounts for the pooja, etc., of the deity The testator further directed that certain other trusts of a private character should be given effect to.

Held, that it was not the intention of the testator that whoever might become trustee of the trust fund should succeed to the office of shebait and that after the lifetime of the two persons named as shebaits in the will the office devolved on the heirs of the founder under the Hindu Law.

Held also, that the will contained no power on *K* or any other person to appoint successors to the office of shebait. (*Rankin, C.J. and C.C. Ghose, J.*). ASHUTOSH SEAL *v.* BENODE BEHARY SEAL.
34 C.W.N. 177=51 C.L.J. 80=A.I.R. 1930 Cal. 4 5.

—Will—Construction—Void bequest.

———*Bequest to adopted son—If son predeceased testator's widow without leaving any heir, property to go to nephew—Nature of estate taken by son—Gift over to nephew if valid.*

A testator by his will constituted his adopted son as malik of his property and provided that he would be entitled to the same in absolute right with powers of gift and sale. The will then stated that in case the son would die without leaving any other heirs in the lifetime of the testator's widow the property would go to certain of the testator's nephews. The son died without leaving issue or without having disposed of the property by gift or sale in the lifetime of the testator's widow.

Held, that whether the interest created by the will in favour of the adopted son be taken to be absolute or not, in either case the gift over in favour of the nephews was void and inoperative. If it were intended by the testator that in case the adopted son, who would take an absolute interest, failed to dispose of the property and died issueless within the lifetime of the widow, the property should go to the nephews, the provision as to gift over is void as formulating a law of succession unknown to Hindu Law. If, however, the interest in favour of the son was not intended to be absolute, even then the gift over was inoperative for the will clearly showed that the intention of the testator was that the distribution of the funds bequeathed was to take place on his death. For the bequest to the nephews to take effect, the contemplated contingency of the son's dying issueless should have taken place before the testator's death. *Edwards* v. *Edwards*, (1852) 15 Beav. 357, *Appl.*; A.I.R. 1915 P. C. 101; 19 C.W.N. 439; A.I.R. 1914 P. C. 60 and A.I.R. 1921 Bom. 261, *Dist.* (*Mukerji and Bose, JJ.*). SATYA RANJAN *v.* ANNAPURNA DASI.
114 I.C. 666=48 C.L.J. 523=A.I.R. 1929 Cal. 145.

———*Estate-in-tail male void under Hindu Law.*

A devise to "My natural father and his male heirs" is one to the male heirs in succession. When a person bequeaths property to some one and his male heirs, he means that the property should devolve upon the legatee and the male heirs in succession. The words, therefore, create an estate-in-tail in favour of male heirs and such an estate is unknown to Hindu Law and such bequests cannot, therefore, be valid. (*Devadoss and Waller, JJ.*). MADURA HINDU PERMANENT FUND LTD. *v.* KAMALAKSHI AMMAL.
94 I.C. 487=1926 M.W.N. 137=A.I.R. 1926 Mad. 492=50 M.L.J. 355.

HINDU LAW—Will—Contingent bequest.

———*Devise to testator's father and his male heirs—Court cannot give the property absolutely to the father.*

When a person devises property to a certain person and certain heirs and when he lower down, instead of repeating the expression, uses the expression 'aforesaid person and his heirs' it cannot be said that he intended to change the course of the devolution of the property already provided for in the preceding clause of the Will. *Doe* v. *Fyldes*, 2 Confer 833, *Foll.*

So, when a testator devises property to his father and his male heirs, the Court is not justified in creating a new Will for the testator by giving the property absolutely to the father and overlooking the intention of the testator to bequeath the property to father and his male heirs. (*Devadoss and Waller, JJ.*). MADURA HINDU PERMANANT FUND LTD. *v.* KAMALAKSHI AMMAL.
94 I.C 487=1926 M.W.N. 137=A. I. R. 1926 Mad. 492=50 M.L.J. 355.

—Will—Contingent bequest.

———*Vesting held in abeyance till a contingency is bad.*

A testator cannot provide for a contingency that might occur at any uncertain moment after his death leaving the property not vested in any one in the meantime. Such a provision in the Will is invalid: 12 L. W. 17, *Rel. on.* (*Spencer, J.*). VENKATAPATHI RAJU *v.* SURYANARAYANA.
98 I.C. 671=A.I.R. 1927 Mad. 206.

———*Property bequeathed to widow and on her death, to cousin—Cousin takes contingent interest defeasible by his predeceasing widow.*

It is settled law that during a Hindu widow's lifetime a vested interest in the property held by her cannot be acquired by any other person. The direction in a Hindu testator's will to the effect that the property should descend on his death to his widow in complete ownership and after the latter's life-time to the testator's cousin conveys no more than a mere contingent interest to the cousin which is defeasible by his predeceasing the widow in which case of course his heirs have no right of inheritance as against the reversioners of the widow. (*Pullan, A.J.C.*). JAGMOHAN SINGH *v.* SHEO MANGAL SINGH.
82 I.C. 583=11 O.L.J. 729=A.I.R. 1925 Oudh 127.

———*On the happening of the contingency bequest vests.*

A Hindu will provided that, *M* one of the two sons, *M* and *V* of the testator should give one-half of the property to *V* if the latter should turn to good ways and reside with *M* respectably after the death of the testator which took place immediately after the date of the Will. The two brothers lived in amity for 2 or 3 years, and then *V* transferred his one-half share in the property. The transferee brought a suit for possession against him, also joining *M* as a party,

Held, that S. 118 of the Succession Act was applicable and that on the happening of the uncertain event, namely the reformation of *V* half of the estate which under the Will vested in *M* became vested in *V* and his transferee was entitled to the

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same. (*Macleod, C.J. and Crump, J.*). SHANKAR MAHABLESHWAR *v.* MANJUNATH SUBBA.
74 I.C. 298=A.I.R. 1924 Bom. 298.

—Will—Gift.

———Gift to *A* and if he should die without leaving male issue, then over, is good gift—But defeasance clause attached again to gift over makes it invalid. 38 Bom. 399, *Ref.*

A Hindu may create a life-estate or successive life-estates. But a series of absolute estates defeasible in succession on the happening of an uncertain event cannot be considered as a succession of life-estates. It can only be considered as an attempt to create estate of inheritance which is not recognised by Hindu Law. (*Macleod, C. J. and Fawcett, J.*). BAI DHANLAXMI *v.* HARIPRASAD UTTAMRAM. **62 I.C. 37=45 Bom. 1038=23 Bom. L. R. 433=A. I. R. 1921 Bom. 262.**

—Will—Joint tenancy.

———*Will in favour of two persons—They take as tenants-in-common.*

When a deed of gift or a Will is in favour of two persons without any definite specification of the extent of their shares, they take as tenants-in-common and not as joint owners.

The principle of joint tenancy is unknown to the Hindu Law except in connexion with the joint Hindu family. 33 All. 665; 26 Bom. 445 and 39 P. R. 1909, *Rel. on.* (*Shadi Lal, C.J. and Agha Haidar, J.*). MT. JIO *v.* MT. RUKURAN.
100 I.C. 54=8 Lah. 219=28 P.L.R. 78=A.I.R. 1927 Lah. 126.

———*Bequest to persons who would not inherit to testator or would inherit his property as obstructed heritage—No presumption about legatees taking as joint tenants exists.*

Per *Kumaraswami Sastri, J.*—In cases where the donees are the sons and grandsons and would succeed to the property of the testator in the absence of any testamentary disposition and take the property as ancestral property, the presumption may be drawn, where the Will is silent as to the nature of the estate conferred, that they would take it as unobstructed heritage with the same incidents as would follow if there was no will. But where the donees, though members of a joint undivided family, are not related to the testator or though related to him would in the absence of any will either immediately or at a later stage take the property as obstructed heritage and only as tenants-in-common there is no reason for applying the presumption that the testator by devising the property to them intended that there should be a joint tenancy.

Per *Krishnan, J.*—Where there is nothing in the will to show definitely and clearly that the bequest was to the family and not to the individual members thereof separately, the ordinary presumption that when there are several joint donees, they take as tenants-in-common, applies. (*Kumaraswami Sastri and Krishnan, JJ.*). JANAKIRAM CHETTY *v.* NAGAMANI MUDALIAR. **93 I.C. 662=49 Mad. 93=22 M.L.W. 801=A.I.R. 1926 Mad. 273=50 M.L.J. 413.**

———*Intention to create joint tenancy depends on facts and circumstances—Joint tenancy not repugnant to Hindu Law.*

A Hindu by his Will left some property to his senior wife and her daughter jointly, to his junior wife separately, and provision was made for the joint payment of debts by the mother and daughter.

Held, that the dictum of the Judicial Committee in 23 Cal. 670 (P.C.) that "the principle of joint

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tenancy appears to be unknown to the Hindu Law, except in the case of a co-parcenary between members of an undivided family," treated as a broad statement of law is not strictly accurate and therefore the question of the testator's intention to create joint tenancy has to be considered with reference to the facts of each case. 23 Cal. 670 (P.C.), *Dist.*; 25 Mad. 678 (P.C.) and 11 Cal. 1 (P.C.), *Foll.* (*Phillips, J.*). MUTHUKARUPPA MUTHIRIAN *v.* SIVABHAGYATHAMMAL. **90 I.C. 880=22 M.L.W. 511=A.I.R. 1926 Mad. 33=49 M. L. J. 358.**

———*Bequests to two or more members—Each takes as self-acquisition.*

Per *Kennedy, J.C.*—Property bequeathed to a Hindu is, like property, the subject of a gift, acquired by the legatee as a purchase or conquest taken by himself individually, and is his self-acquired property; and therefore where such bequest is made to two or more persons, the interest of each co-sharer does not ordinarily pass on his death by survivorship to the other co sharers but passes to his heirs and reversioners. (*Kennedy, J.C. and Rupchand Bilaram, A.J.C.*). VISHNOMAL UDHANDAS *v.* LALIBAI. **93 I.C. 550=A.I.R. 1926 Sind 121.**

———*Gift to two daughters married in different families—Presumption is that they do not take as joint tenants.*

A will bequeathed the property to the two daughters *M* and *N* of the testator in equal shares, subject to a life-estate of *B*, his wife. The pertinent words were "*meri har do dukhtaran mazkurabala be hissa nisf nisf malik hongi.*"

Held, the gift to the daughters was in definite shares, they being married in different families and on the death of any one of them her heirs would step into her shoes. (*Campbell, J.*). TASADDUG HUSSAIN *v.* RAM KISHEN. **79 I.C. 86=A.I.R. 1925 Lah. 59.**

———*Bequest to two members of joint family—Legatees take as co-parceners.*

Where there is a bequest to two persons, *e.g.*, to two sons who form members of a joint family the ordinary presumption is that the grant is to them as co-parceners. Unless the father in disposing of the properties expresses that they should be deemed self-acquired in the hands of the sons the properties should be treated as ancestral. (*Kumaraswami Sastri, J.*). SHYAMA BHAI *v.* PURUSHOTHAMADOSS. **90 I.C. 124=21 M.L.W. 551=A.I.R. 1925 Mad. 645.**

—Will—Life-estate.

———*Testator not limiting nature of estate—Widow has widow's estate only.*

In the absence of any words or any expression limiting the nature or extent of the interest of the testator's wife it should be presumed that she has a Hindu widow's estate during her life-time. 9 M.I.A. 539 (P.C.); 15 N.L.R. 24; 30 Mad. 3; 34 All. 385; A.I.R. 1918 P.C. 87; 37 All. 496 and A.I.R. 1925 P.C. 249, *Foll.* (*Kolhatkar, A.J.C.*). MAHADEO KUNBI *v.* BABYA. **112 I. C. 248=11 N.L.J. 162=A.I.R. 1929 Nag. 27.**

———*Will bequeathing in favour of testator's widow for life with remainder to another—Ordinary widow's estate is not created.*

Where a will was set up in favour of the testator's wife for life with remainder to another,

Held, that under it the widow was not given only a Hindu widow's estate. Such an estate was irreconcilable either with a vested or a contingent remainder. Only two interpretations of the will

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were possible. One was that she was given an absolute but defeasible estate, and the other was that she was given only a life-estate. Whichever construction be put on the will testator's reversioners could not succeed, unless they claimed as heirs of the widow. If a life-estate was given the remainderman would succeed. (*Ashworth, A.J.C.*). SHEO MANGAL SINGH *v.* JAGMOHAN SINGH.

86 I.C. 29=12 O.L.J. 30=A.I.R. 1925 Oudh 329.

——*Will conferring full authority to widow over property with remainder to son—Widow does not take absolute estate.*

A will provided: "I appoint my wife Bai Rukhi *alias* Juma to be the owner of my property. Therefore after my death my wife is to take my property into her possession with full authority. And after doing the same my wife Bai Rukhi *alias* Juma is to consume, enjoy or do what she likes with respect to what remains out of my property, and after the death of my wife my son Chimanlal is the owner of my estate; the said Chimanlal may do what he likes with respect to my property.

Held the testator did not intend that the widow should have absolute powers of disposition during the life-time of the son.

Held further that the son took vested interest in his life-time, and on his death that would go to his mother, who would under Hindu Law take only a limited interest, and if the disposition in her favour did not give her an absolute interest in the first instance, the fact that she succeeded as heir of her son would not enlarge that estate. (*Macleod, C.J. and Crump, J.*). MULCHAND JEKISUNDAS *v.* BAI RUKSHMANI. **72 I.C. 282= 25 Bom. L. R. 189=A.I.R. 1923 Bom. 216.**

——*Absence of words giving absolute estate—Bequest conveys only a widow's estate.*

A bequest to a Hindu widow of immovable property by her husband in the absence of words giving an absolute estate with powers of alienation confers only the limited estate which under Hindu Law a widow takes as heir in her husband's property. (*C. C. Ghose and Panton, JJ.*). BANKU BEHARI DE *v.* BISSESWAR LAL MARWARI.

76 I.C. 598=A.I.R. 1923 Cal. 575.

——*Devise to widow as 'malik' but asking her to apply and spend it in good way—Only gets life-estate but with full powers of disposition by acts* inter vivos.

Where a Hindu testator devised the residue of his estate to his widow in the following words:—"As to whatever surplus of my property may remain over after my decease, the *malik* thereof shall be my wife. She shall during her life-time apply and spend the same in a good way....."

Held, the words "she shall during her life-time apply and spend the same in a good way," cut down the absolute estate created by the use of the word *malik* to a life-estate and therefore the widow took a life-estate with full powers of disposition by acts *inter vivos* and not an absolute estate.

The use of the word "*malik*" in connection with a device to the widow imports full proprietary rights, unless there is something in the context to qualify it. The fact that the donee is a Hindu widow does not by itself furnish such qualification. (*Kanga, J.*). MITHABAI *v.* MEHERBAI.

64 I.C. 397=46 Bom. 162= 23 Bom. L.R. 858=A.I.R. 1922 Bom. 179.

——A Hindu directed by his Will that his second son was to pay a certain sum annually to the fourth son out of the property bequeathed to the second son.

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Held, that the grant was perpetual and heritable and not merely a life-grant. (*Sanderson, C.J. and Richardson, J.*). NILADRINATH MUKERJI *v.* SAROJNATH MUKERJI. **62 I.C. 681 (Cal.).**

—Will—Partition by father.

——Will by father dividing ancestral property among sons is inoperative as Will but can operate as family arrangement. A.I.R. 1926 P.C. 54 and 35 All. 337 (P. C.), *Foll.* (*Devadoss, J*). SADASIVAM PILLAI *v.* SHANMUGAM PILLAI.

98 I. C. 268= 25 M.L.W. 119=A. I. R. 1927 Mad. 126.

—Will—Persona designata.

——By his will a testator directed his widow to adopt the plaintiff who was his near relative. The will further provided that if he survived, he himself would adopt. If he did not, in that case on the basis of this will the plaintiff alone was the owner of all his movable and immovable property. The widow did not adopt the plaintiff.

Held, that the testator intended the gift of the property to be made to the plaintiff as *persona designata* without making the gift conditional on his adoption by the widow. (*Patkar and Baker, JJ.*). BHIMAVA BHIMAPPA *v.* KRISHTAGOWDA.

113 I.C. 251=30 Bom. L.R. 908.

——*Bequest to adopted son—Failure of adoption—If gift fails—Test is if gift is as adopted son or as* persona designata.

Where a deed contains a testamentary disposition in favour of a person believed to be the adopted son, it is a question for consideration whether on the failure of adoption the gift also fails. The Court has to decide in each case, after considering the language of the document and the surrounding circumstances, whether the adoption was the reason or motive for making the gift or bequest, or whether the mention of the donee or legatee as an adopted son was merely descriptive of the person to take under the gift or bequest and he was to take the property even though his adoption may not be valid. 9 Cal. 463 and 28 All. 488, *Ref.*

But this is the law with respect to cases where there is an express gift or bequest in favour of an alleged adopted son. If the instrument however does not mention any gift *inter vivos* to the adopted son or any testamentary disposition in his favour, the deed cannot be treated as a deed of gift. 63 P.R. 1912, *Dist.* (*Shadi Lal, C.J. and Lumsden, J.*). ISHAR SINGH *v.* SURAT SINGH. **74 I.C. 294= 4 Lah. 356=6 L.L.J. 82=A.I.R. 1924 Lah. 103.**

——*Bequest to adopted son—Adoption not the motive of bequest—Grantee is* persona designata.

Where there is absolutely nothing in the Will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift in the absence of anything of the kind, interpreting the language of the gift in its ordinary meaning, the Court must treat it as a gift to donee as a *persona designata* and hold the gift as valid.

The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. 11 Cal. 463 (P.C.), *Foll.*; 31 All. 5, *Ref.* (*Macleod, C.J. and Shah, J.*). BAI DHONDUBAI *v.* LAXMAN T. JAVADEKAR. **68 I.C. 804=24 Bom. L.R. 794= 47 Bom. 68=A.I.R. 1922 Bom. 352.**

—Will—Presumption.

——The fact of a person having made a will in respect of a property raises the presumption about the property being self-acquired property as long as

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there is no evidence to show that the property is ancestral. (*Stuart, C.J. and Srivastava, J.*). MT. BRIJ KUNWAR *v.* SANKATA PRASAD.
123 I.C. 849=6 O.W.N. 963=
A. I.R. 1930 Oudh 39.

——Evidence as to terms of disposition unsatisfactory— Court can presume dispositions were according to ordinary Hindu Law. (*Spencer, Offg. C.J. and Srinivasa Aiyangar, J.*). RANGAPPA NAYAKER *v.* RANGASAMI NAYAKER. 88 I.C. 249=
1925 M.W.N. 232=A I.R. 1925 Mad. 1003.

—Will—Proof of.

——*Declaration by testator at the time of registration, is enough.*

Proof that the testator declared at the time of registration, with a full understanding of the contents of the document, that it embodied his wishes in regard to the disposition of his property after his death, would be sufficient to make it a valid Will under Hindu Law. (*Hallifax and Kotwal, A.J.Cs.*). NILKANTH RAO *v.* GUNA BAI.
96 I.C. 401=A .I. R. 1926 Nag. 482.

——*Title of the person attacking the will, presumption as to the testator's intention to make a will and the admissions of testator's widow are relevant.*

A person, on his death, left a widow but no children and no near relatives except such as were relations of his wife. The appellants, who successfully opposed the registration of the will of the deceased, brought a suit against the widow and respondent—sister's son of the widow, in whose favour the will was made for a declaration that they had the position of the nearest agnates of the deceased and that the so-called will was not executed in fact and was, if executed, executed by the testator while in an unsound state of mind. The appellants failed to prove their agnate relationship, but they alleged that the deceased had an intention to make a will, but a will in favour of charity. The lower Courts first approached the question of genuineness of the will.

Held, (1) The natural order was first to take up the question whether the persons who were attacking the will had any title to raise the question.

(2) Upon the admission of the appellants, whose right to prevail was only upon intestacy, that the deceased had an intention to make a will, raised a presumption of the genuineness of the will.

(3) The conduct of the widow in admitting the genuineness of the will but trying to resile from the admission, when the second respondent, who took the properties under the will, would not go along with her also proved its genuineness. (*Lord Dunedin.*) PALCHUR SANKARA REDDI *v.* PALCHUR MAHALAKSHMANA. 70 I.C. 949=
27 C.W.N. 414=17 M.L.W. 1=
31 M.L.T. 307=A.I.R. 1922 P.C. 315 (P.C.).

——*Proof of execution is necessary.*

Much technical proof may not be necessary for a Hindu will, but there must be some evidence to show that a document purporting to be a will by a Hindu was executed by him. (*Broadway and Abdul Qadir, JJ.*). HAR BHAGWAN *v.* HUKAM SINGH. 68 I.C. 769=4 L.L.J. 245=
3 Lah. 242=A.I.R. 1922 Lah. 243.

—Will—Revocation.

——Birth of son does not effect revocation of will already made. 30 Mad. 369 (F. B.), *Foll.* (*Kumaraswami Sastri, Offg. C.J. and Curgenven, J.*). ALAVANDAR GRAMANI *v.* DANAKOTI AMMAL.
99 I.C. 775=A.I.R. 1927 Mad. 383.

——The oral revocation of a written and registered will, that revocation amounting in itself to a

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nuncupative will, needs to be proved by the most unexceptionable evidence. (*Kumaraswami Sastri, Offg. C. J. and Curgenven, J.*). ALAVANDAR GRAMANI *v.* DANAKOTI AMMAL. 99 I.C. 775=
A.I.R. 1927 Mad. 383.

——*Devised property conveyed to another by donor after devise—Devise inoperative.*

A will operates only with respect to the property which remains in the hands of a testator at the time of his death. The testator may effect a sale or conveyance of the devised property and thus withdraw it wholly or partially from the operation of the devise by vesting the property in another. In short, if a testator after devising an estate sells or conveys it in whole or in part to a third person the devise is rendered inoperative and the devisee can have no claim to the property sold or to the proceeds thereof. A devise is also as a general rule deemed to have been revoked or adeemed if the property is converted during the testator's lifetime either by operation of law or by an order of a Court of competent jurisdiction. (*Gokaran Nath Misra, J.*). KRISHNA KUMARI DEBI *v.* RAJENDRA BAHADUR SINHA. 104 I.C. 155=
2 Luck. 43=13 O.L.J. 846=6 O.W.N. 1150=
A.I.R. 1927 Oudh 240.

——There is no legal bar to the variation by means of an unregistered will of the terms even of a registered will; because a will executed by a Hindu is not compulsorily registrable under the law. (*Rupchand Bilaram, A.J.C.*). SHAMBAI *v.* GOVARDHAN. 78 I.C. 249=19 S.L R. 220=
A.I.R. 1925 Sind 195.

—Will—Setting aside.

—— Where a person is impugning a Will on the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lies upon him to establish that. (*Hasan and Raza, JJ.*). BALDEO SINGH *v.* MT. GULAB. 92 I.C. 237=13 O.L.J. 293.

—Will—Suit on.

—— *Suit by legatee against executor* de son tort *in possession of sufficient assets—Personal representatives when necessary parties.*

The rule that an executor *de son tort* could not be sued by a legatee, in the absence of the legal personal representative, applies only where there is any legal representative. At any rate when a representative of the deceased or a person in possession of the estate is proved to have received enough to pay all demands against the estate in full, no such rule can apply.

Per *Kumaraswami Sastri, J.*—When the same heirs are brought on record in a suit covering both the personal properties of the widow and the properties in which she has a limited estate, the legal representatives should be said to be on record as her own legal representatives. It seems that in order to apply the doctrine that a person claiming under colour of a hostile title cannot be made executor of his own wrong, a claim must be made *bona fide*. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). ZAMINDAR OF BHADRACHALAM *v.* VENKATADRI. 70 I.C. 689=
46 Mad. 190=16 M.L.W 369=1922 M.W N 532=
31 M.L.T. 221=A.I.R. 1922 Mad. 457=
43 M.L.J. 486 (F.B.).

——*Probate is not necessary unless executor is to prove his right in Court as plaintiff.*

Per *Macleod, C.J.*—There is no necessity for an executor or executrix under a will executed by a Hindu to obtain probate. It is only when proceedings have to be taken in a Court of Justice and

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when it is necessary in such proceedings for the plaintiff to prove his title under the will to the reliefs he claims that the Court will insist upon probate or letters of administration being granted before the plaintiff can take advantage of the decree. (*Macleod, C.J. and Shah, J.*). SHANKAR DAJI *v.* DATTATRAYA VINAYAK. **63 I.C. 248= 45 Bom. 1186=23 Bom. L R. 814= A. I. R. 1921 Bom. 385.**

—Will—Testamentary Capacity.

——*Widow has no right to make will of movable and immovable property inherited from her husband.*

She cannot, however, dispose of the corpus of such property by her will. So long as she remains in enjoyment of the estate she may spend, or accumulate, or otherwise dispose of the income that accrues therefrom as she chooses. If, at her death, or when her widow's estate is otherwise determined, it appears that she had not already disposed of the income current or accumulated which she was entitled to enjoy while she was alive, such income "will follow the estate from which it arose," and will pass to the heirs of her husband. 41 All. 350 and 10 Bom. 478, *Diss. from*; 17 Bom. 690; 31 Cal. 214; 28 Mad. 453 and 8 Mad. 290, *Ref.* (*Page, J.*). SARAT CHANDRA *v.* CHARUSILA DASI. **112 I. C. 308=55 Cal 918=A I R. 1928 Cal. 794.**

——Will by member of joint family does not operate upon joint family property but his separate property only. (*Shadi Lal, C.J. and Le Rossignol, J.*). PARMA NAND *v.* SHIV CHARANDAS. **51 I C. 256=2 Lah. 69=3 L.L.J. 82= 21 P.L.R. 1921=A.I.R. 1921 Lah. 147.**

—Will—Testamentary guardian.

——The only adult co-parcener of a Mitakshara family consisting of himself and his minor co-parceners is not competent to appoint a testamentary guardian to the co parcenary properties of the minor co-parceners. 41 Mad. 561 (F. B.), *Foll.* (*Kumaraswami Sastri and Curgenven, JJ.*). RAMASWAMI PILLAI *v.* KASINATHA IYER. **108 I.C. 529=1927 M.W.N. 356= A.I.R. 1928 Mad 246.**

——Where the property is a Hindu joint family property the father is not competent to appoint by will a guardian of the property of his minor son to take effect after the death of the testator. (*Krishnan, J.*). K. SUBBARAYUDU *v.* K. SUBBANNA. **88 I.C. 457=A.I.R. 1925 Mad. 371=47 M.L.J. 765.**

—Will—Testamentary power.

——*Testamentary power is subject to right of testator's widow to maintenance.*

The right of a Hindu to make a Will is subject to his making an adequate provision for the maintenance of his widow. He cannot so dispose of his property as to free it from her claim of maintenance. Hence where testator bequeaths his residential house to some of his sons and also declares in his will that his widow is to retain possession of all the property of the testator during her lifetime the widow has an interest in the house for her lifetime. *Weatherall* v. *Thornburgh*, 8 Ch. D. 261; 24 Cal. 44; 26 Bom. 319, *Ref.* (*Rupchand Bilaram, A. J. C.*). DEVIBAI *v.* DAYABHOY MOTILAL. **89 I.C. 164=A.I.R. 1926 Sind 42.**

—Will—Unborn child

——*Bequest made not successive but alternate to that in favour of an unborn person is not void.*

Although a bequest in favour of an unborn person, and all those that are to follow such bequest are void, yet where a bequest is intended to be not successive but only alternate to that in favour of an unborn person in case the unborn person does not

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exist when the previous interest is exhausted, the bequest is not void. 9 Beng. L.R. 377 (P.C.), *Dist.*; 16 Bom. 492 and 15 Cal 409, *Rel. on.* (*Sulaiman and Kendall, JJ.*). DARSHAN SINGH *v.* WALI KHAN. **116 I.C. 30=1929 A.L J. 274= A.I.R. 1929 All. 102.**

——*A rule of succession in favour of unborn persons cannot be created.*

Where a testator made a gift of his self-acquired property in moieties to his sons without power of transfer and upon the son's death life-interest was created in favour of sons' sons who were alive at the time of making the bequest and upon the conclusion of the life-estates other life-estates were to arise in favour of grandsons who were not in existence,

Held, that those provisions of will which purport to create a rule of succession in favour of unborn persons were void, and the provisions creating a rule of succession in favour of born persons were good. (*Stuart, C.J. and Rasa, J.*). DEBI PRASAD *v.* KRISHNA KUNWAR. **104 I. C. 847= 4 O.W.N. 1041=A.I.R. 1928 Oudh 26.**

—Will—Validity of bequest.

——*Will by father of ancestral property who adopts a son is not valid.*

On the ordinary principles of Hindu Law and the nature of a joint co-parcenary, an adopted son's interest begins from the date of his adoption, and as a will though made by that adoptive father previously, can only take effect from the death of the testator, the disposition of ancestral property made by the will, even with the consent of the adopted son himself, is not valid A.I R. 1927 P.C. 189 and A.I.R. 1926 Bom. 378, *Rel. on*; 40 Bom. 668, *Expl.* (*Madgavkar, J.*). SHEORAM PANDURANG *v.* RAMKRISAMA SHEORAM. **31 Bom. L.R. 1246=A.I.R. 1930 Bom. 58.**

——*Absolute estate given—Restraint on alienation is bad.*

If on a true construction of a deed of transfer an absolute interest is transferred by it the covenant in restraint of alienation if any would be void. This is enacted by S. 10 of the Transfer of Property Act and the principle underlying it has been applied to Hindus. 5 Cal. 438 (P. C.); 24 Cal. 834 (P.C.); 24 Cal. 406 and 38 Mad. 867, *Ref.* (*Venkatasubba Rao, J*). MRS. M. E. D'CRUZ *v.* NAGIAH NAIDU. **114 I.C. 837=29 M.L.W. 1= A.I.R. 1929 Mad. 64=55 M.L.J. 688.**

——Will of co-parcener of re-united family cannot operate as will—Such will, if acted upon, binds co-parceners as a family arrangement. 35 All 337 (P.C.) and A. I. R. 1926 P. C. 54, *Foll.* (*Jackson, A.J.C.*). KRISHNAPPA *v.* KASHINATH. **118 I.C. 677=A.I.R. 1929 Nag. 364.**

——It is doubtful whether mere right to maintenance can be given by a will. (*Macnair, A J.C.*). GOPAL *v.* BAJRANG. **117 I.C. 286= A.I.R. 1929 Nag. 67.**

——*Bequest of ancestral property not being illegal or against public policy is not void ab initio but only voidable.*

The bar to the disposition of ancestral property by will under Hindu Law is not based on public policy and cannot be said to be a part of the general law of the country of which ignorance cannot be excused. The question is one of private rights under the personal law of the parties concerned. The bequest of ancestral property therefore not being illegal, is not void *ab initio* but only voidable. *Re Oliver's Settlement*, 1 Ch. 191; *Re Beale's Marriage Settlement*, 1 Ch. 256; *Re*

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Wright, 2 Ch. 288 and *Re Nash*, 2 Ch. 450, *Dist.*; 40 Mad. 1122; 43 Mad. 824 and A.I.R. 1926 Bom. 378, *Ref.* (*Addison and Bhide, JJ.*). KISHAN CHAND *v.* NARINJANDAS. **113 I. C. 298= 10 Lah. 389=30 P.L.R. 562=A.I.R. 1928 Lah. 967.**

———A Hindu son, if he is a co-parcener with his father, acquires by birth a right in the joint family property and the father cannot, by will, exclude him from the right of survivorship. (*Harrison and Dalip Singh, JJ.*). TARA SINGH *v.* RAM SARAN. **110 I.C. 18=A.I.R. 1928 Lah. 499.**

———Father cannot make a will in respect of joint family property when there are other co-parceners. (*Sulaiman and Banerji, JJ.*). MUNNI LAL *v.* MT. PHULA. **103 I.C. 322= 25 A.L.J. 772=A. I. R. 1927 All. 679.**

———Bequest to take effect at the expiry of a life-estate—Bequest is not invalid if donees would be in being before expiry of life-estate. (*Devadoss, J.*). S.R. SWAMINADHA AIYAR *v.* SWAMINATHA AIYAR. **99 I.C. 772=38 M.L.T. 32=A.I.R. 1927 Mad. 458.**

———Any conditions imposed by the testator as to the mode in which the estate which had become the absolute property of the legatee should devolve on the legatee dying intestate is repugnant to the grant and as such void according to Hindu Law. (*Rupchand Bilaram and Lobo, A.J.Cs.*). NANDIRAM TAHILRAM *v.* MOTIRAM PESSUM LAL. **103 I.C. 849=A.I.R. 1927 Sind 234.**

———*Will by a member of his interest is invalid, but such an invalid Will can operate as family arrangement if consented to by all members.*

A Will by a member of a joint Hindu family of his interest is not a valid devise as a co-parcener's power of alienation is founded on his right to partition. That right dies with him, and the title of his co sharers by survivorship vesting in them at the moment of his death, there remains nothing upon which the Will can-operate. 8 M. H. C. R. 6, *Rel. on.*; 5 Bom. 48, *Ref.* But a Will which does not operate as a will at all is good evidence of a family arrangement contemporaneously made and acted upon by all the parties. 35 All. 337, *Foll.*

B and *L*, two brothers forming a joint Hindu family, executed a joint will whereby they agreed that A, wife of *B*, on the death of *B* should have and enjoy for her life an interest in a moiety of the joint property equivalent to the interest which the widow of a sonless and separated Hindu would have in her deceased husband's estate.

Held, the Will although invalid as a Will was a good evidence of a family arrangement by consent of both the brothers and that the interest which *A* obtained by the mutual agreement of the brothers should continue for her benefit for her life, notwithstanding the birth, if it should happen, of "male issue" to *L*, as a co-sharer in a Mitakshara joint family without having obtained partition can with the consent of all his co-sharers mortgage or charge the share to which he would be entitled on a partition of the joint family property; but the consent of all the co-sharers must be obtained; and a father who is a co-sharer with a minor son cannot give such a consent for his minor son. 43 All. 228, *Rel. on*; 3 Beng. L.R. 31 (F.B.), *Re.* (*Sir John Edge.*) SETH LAKHMICHAND *v.* MT. ANANDI. **95 I.C. 566=48 All. 313= 53 I. A. 123=24 A.L.J. 609= 28 Bom. L.R. 910=43 C.L.J. 513= 1926 M.W.N. 529=3 O.W.N. 581=31 C. W. N. 101= A.I.R. 1926 P.C. 54=51 M.L.J. 52 (P.C.).**

HINDU LAW—Will—Vested interest.

———*Will of ancestral property is incompetent.*

A member of an undivided family cannot make a bequest of ancestral property. His interest in such property ceases at his death. As any will by him takes effect as from the date of his death, any attempt to deal by will with ancestral property even the undivided share belonging at that time to the testator, must be incompetent. (*Macleod, C.J. and Coyajee, J.*). JAMNADAS *v.* GORDHANDAS. **93 I.C. 181=28 Bom. L.R. 532= A.I.R. 1926 Bom. 463.**

———Father and son—Will by father of whole ancestral property is invalid although son consents—It would be different if effect is given to the disposition during father's lifetime. (*Macleod, C.J. and Coyajee, J.*). BHIKABHAI *v.* PURSHOTTAM. **96 I.C. 421=50 Bom. 558=28 Bom. L R. 695= A.I.R. 1926 Bom. 378.**

———*Obiter.*—A father in a joint Hindu family can with the consent of all the other co-parceners bequeath a portion of his ancestral property to his daughter provided the portion is reasonable in extent. 40 Mad. 1122, *Ref.* (*Phillips, J.*). THAYAMMAL *v.* PERUMAL CHETTY. **91 I. C. 914= A.I.R. 1926 Mad. 284=49 M.L.J. 734.**

———Will providing for wife's maintenance and a share to several heirs and an endowment to temple is not against notions of Hindus. It does not disinherit the natural heirs and there is nothing unusual about it. (*Kinkhede, A.J.C.*). BAYA *v.* BHAURAO. **78 I.C. 865=A.I.R. 1924 Nag. 375.**

———A bequest made by a person to relatives would be wife who is in existence at the time of the testator's death is valid, notwithstanding the provisions of S. 99 of the Indian Succession Act. 13 C. L. J. 85, *Foll.* (*Batten, Offg. J. C.*). MT. RAMDULARI *v.* BISHWESHWAR DAYAL. **69 I.C 876=18 N.L.R. 143=A.I.R. 1923 Nag. 105.**

———*Deed altering succession is void.*

Where a deed recited that from the day of its execution the executant Ram Dat would cease to have any connection with his son Karam Chand and that after the death of Ram Dat and his wife Karam Chand would have no rights as a son and the other sons would perform the funeral ceremonies,

Held, while it contains no mention of a gift of the property being made to any person, it purports to alter the rule of Hindu Law regarding succession. Such an attempt to alter the mode of succession is void. (*Broadway and Martineau, JJ.*). MADAN LAL *v.* LABHU RAM. **67 I.C. 431= A.I.R. 1922 Lah. 421.**

———Sections 10 and 11 of Transfer of Property Act have no application to wills; they apply only to transfers *inter vivos*. Where a will is made by husband in favour of one or more wives with a condition that any one of the co-widows will not transfer her share without the consent of others, the gift by one if made without the consent of others is invalid. (*Lyle, A.J.C.*). MT. MAKHANA *v.* BINDESHRI PRASAD. **65 I.C. 457=8 O. L. J. 656= A.I.R. 1922 Oudh 168.**

———A will of joint family properties by a Hindu co-parcener in favour of his wife is invalid under Hindu Law as on his death the property passes to the other co-parceners by survivorship. (*Wallis, C.J. and Krishnan, J.*). SUBBARAMI REDDI *v.* RAMAMMA. **59 I.C. 681=43 Mad. 824= 12 L.W. 249.**

—Will—Vested interest.

———Legatee to get property after death of testator and his wife—Legatee and his heirs have

HINDU LAW—Will—Vested interest.

vested interest after testator's death and are entitled to redeem the mortgage by testator under S 91, Cl. (*a*) or (*b*) or Transfer of Property Act. 33 All. 558 and 38 Cal. 463 (P.C.), *Appr.*; 30 All. 497; 36 Mad. 426; A.I.R. 1921 Mad. 272 and A.I.R. 1925 Mad. 1219, *Dist.* (*Kolhatkar, A.J.C.*). MAHADEO KUNBI *v.* BABYA. **112 I.C. 248= 11 N.L.J. 162= A.I.R. 1929 Nag. 27.**

———Where the important clause in the will ran thus: "These the testator's daughters have no power to make sale, gift, mortgage, etc. After these, their issues shall use and enjoy them from son to grandson and so on in succession so long as the sun and the moon may last."

Held, that a son of a daughter does not get a vested estate immediately on his birth, but after the death of the mother, *i. e.*, after the termination of the preceding life-estate. (*Coutts-Trotter, C. J. and Ramesam, J.*). PERIYANAYAKI AMMAL *v.* RATNAVELU MUDALIAR. **83 I.C. 23= 20 M.L.W. 449=1924 M. W. N. 516= A.I.R. 1925 Mad. 61=47 M.L.J. 310.**

HINDU TEMPLE.

See HINDU LAW—RELIGIOUS ENDOWMENT.

HINDU WIDOWS RE-MARRIAGE ACT (XV of 1856).

—Applicability.

———*Re-marriage of widow under customary law—Forfeiture.*

Where parties were governed by customary law in the Punjab and the widow re-married by way of *Karewa*,

Held, that Act XV of 1856 did not apply so as to save a forfeiture of the widow's right of inheritance. (*Jai Lal, J.*). MT. PARJI *v.* MANGTA. **12 L.L.J. 196.**

—Custom in Punjab.

———The Act does not override the custom prevailing in Punjab as regards non-forfeiture of widow's rights over her deceased husband's property by virtue of S. 7 of Act IV of 1872 (Punjab Laws Act). (*Kennedy, J. C. and Raymond, A.J.C.*). SANT SINGH *v.* RARI BAI. **76 I.C. 408= 17 S.L.R. 206= A.I.R. 1924 Sind 17.**

—Custom of re-marriage.

———*Applicability.*

The provisions of the Hindu Re-marriage Act, 1865, are inapplicable in the case of a widow who is permitted by the custom of her caste to re-marry and such a widow does not by re-marrying forfeit the property inherited by her from her deceased husband. (*Hasan, J.*). GAJADHAR *v.* SUKHDEI. **121 I.C. 899=7 O.W.N. 206.**

—Succession to son.

———Re-married widow can succeed to her son. (*Woodroffe and Ghose, JJ.*). HAR KISHORE SEAL *v.* THAKURDHAN BHAISHNAB. **70 I.C. 479= 72 I.C. 1048=26 C. W. N. 925= 39 C.L.J. 88=A.I.R. 1922 Cal. 140.**

—S. 2—Applicability.

———Forfeiture enacted by S. 2 applies even to communities in which re-marriage is by custom permissible. 22 Bom. 321; 1 Mad. 226; 26 Mad. 143; 19 Cal. 289 and 22 Cal. 589, *Rel. on*; 41 Mad. 1078; 11 All. 330; 31 All. 161; 32 All. 489 and A.I.R. 1927 All. 523, *Dist.* (*Pandalai, J.*). GAJAPATHI NAIDU *v.* JEEVAMMAL. **30 M.L.W. 338= A.I.R. 1929 Mad. 765=57 M.L.J. 253.**

———Section 2 not only applies to widows who could not re-marry before the passing of Act, but also to those who were not so precluded from re-marrying, either by law or by custom. (*C. C. Ghosh and Panton, JJ.*). SANTALA BEWA *v.* BADASWARI DASI. **75 I.C. 11=27 C.W.N. 669=50 Cal. 727= A.I.R. 1924 Cal. 98.**

HINDU WIDOWS RE-MARRIAGE ACT (1836), S. 2—Gift by father-in-law.

———Both under the Hindu Law and by the enactment of 1857 a Hindu widow loses her estate on re-marriage. It may be that certain classes of Hindus recognise widow re-marriage either by custom or as a tenet of their sect but even where this is so it would be necessary to establish affirmatively that this recognition carries with it the right to retain the deceased husband's estate, for to do so is against both the general rule of the Hindu Law and against the provisions of the statute. (*Coutts and Adami, JJ.*). SURAJ JOTE KUER *v.* ATTAR KUMARI. **67 I.C. 550=1922 P.H.C.C. 235= 3 P.L.T. 551=1 Pat. 706=A.I.R. 1922 Pat. 378.**

—S. 2—Custom.

———If a Hindu widow is allowed to re-marry by the custom of her caste, there is no need for recourse to the Act for the validity of her marriage and therefore there is no forfeiture under that Act of her right to maintenance if she re-marries. On the other hand, if her re-marriage is not permitted by the custom of her caste and is only valid under the Act, there would be a forfeiture of her right to maintenance. 31 All. 161, *Rel. on.* (*Mukerji and Bennet, JJ.*). BAL KRISHNA SHARMA *v.* PAIJ SINGH. **A.I.R. 1930 All. 593**

———A custom permitting a widow to retain her first husband's property after re-marriage cannot prevail to violate the express statutory enactment to the contrary in S. 2. Any custom repugnant to the enactment will be held to have been swept away thereby. 22 Bom 321 (F. B.), *Ref.* (*Pandalai, J.*). GAJAPATHI NAIDU *v.* JEEVAMMAL. **30 M.L.W. 338=A.I.R. 1929 Mad. 765= 57 M.L.J. 253.**

———Hindu Widows Re-marriage Act is inapplicable in the case of a widow who is permitted by the custom of her caste to re-marry and she does not forfeit the property inherited by her from her first husband. 31 All. 161; 32 All. 489; A.I.R. 1921 Oudh 233, *Rel. on.* (*Raza and Nanavutty, JJ.*). RAM LALL *v.* MT. JAWALA. **109 I.C. 791= 3 Luck. 610=5 O.W.N. 454=A.I.R. 1928 Oudh 338.**

———*Re-marriage allowed by custom—Widow does not forfeit her rights in husband's property.*

A Hindu widow of the Murao caste does not forfeit her right to her deceased husband's property by re-marriage. The re marriage among Muraos is recognised by the custom of the brotherhood and does not depend upon any statute for its validity. Act XV of 1856 is inapplicable to the case of a widow who is permitted by the custom of her caste to re-marry and she does not forfeit the property inherited by her from her former husband. 31 All. 161 and A.I.R. 1921 Oudh 130, *Foll.* (*Daniels, J.C. and Dalal, A.J.C.*). BHAGWAN DIN *v.* MT. INDRANI. **65 I.C. 117=24 O.C. 297= 8 O.L.J. 563=A.I.R. 1921 Oudh 233.**

———Custom allowing re marriage—Custom allowing retaining of property inherited from first husband or his descendants—Section 2 does not apply. (*Kanhaiya Lal, A.J.C.*). NARPET *v.* MT. JANAKA. **61 I.C. 303=24 O.C. 11=A.I.R. 1921 Oudh 130.**

—S. 2—Gift by father-in-law

———A gift of immovable property by a father-in-law to a widowed daughter-in-law in the absence of words of limitation in the gift deed enures for her lifetime notwithstanding re-marriage. Such a gift is not one of the modes by which rights and interests are acquired by a widow under S. 2.

HINDU WIDOWS RE-MARRIAGE ACT (1856), S. 2—Re-marriage under old law.

(*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). SESHA SASTRULU *v.* KOVI VENKAMMA.
84 I.C. 148=19 M.L.W. 510=34 M.L.T. 168=
1924 M. W. N. 456=A.I.R. 1924 Mad. 600=
47 M.L.J. 1.

—S. 2—Re marriage under old law.

———A Hindu widow who is permitted to re-marry prior to 1856 does not forfeit all her rights and interests in her deceased husband's property under S. 2 31 All. 161, *Foll.* (*Dalal and Pullan, JJ.*). MANGAT *v.* BHARTO. 100 I.C. 734=
49 All. 203=25 A.L J. 151=
A.I.R. 1927 All. 523.

—S. 2—Re-marriage with Muhammadan.

———Embracing Islam and marrying Muhammadan after widowhood—Right to property bequeathed by Hindu sister or left by a sister converted to Islam and married to Muhammadan after widowhood is not affected. (*Kumaraswami Sastri, J.*). GANSHAMDOSS NARAYANDOSS *v.* SARASWATHI BAI. 87 I.C. 621=21 M. L W. 415=
1925 M.W.N. 285=A.I.R. 1925 Mad. 861.

—S. 2—Rights accruing after re-marriage.

———A Hindu widow is entitled, notwithstanding re-marriage, to any right or interest which had not vested in her at the time of re-marriage. 11 W. R. 82, *Foll.* She can even after re-marriage inherit the property of her son by first marriage when the son died after re-marriage. (*Das and Ross, JJ.*). MT. PATTI *v.* NIRDHAN GOPE. 74 I.C. 815=
4 P.L.T. 650=1 Pat. L R. 390=
A.I.R. 1924 Pat. 233.

—S. 2—Succession to daughter.

———A Hindu widow can after her re-marriage succeed to the estate of her daughter by her former husband where the daughter dies after her re-marriage. 29 Bom. 91, *Foll.* (*Macleod, C. J. and Shah, J.*). BHIKU KRISHNA BADHADE *v* KESHAV RAMJI BADHADE. 80 I.C. 512=26 Bom. L.R. 235=
A.I.R. 1924 Bom. 360.

—S. 2—Succession to relations.

———A re-married Hindu widow is not entitled to inherit as a *gotraja sapinda* to the relations of her first husband, and her husband's father's sister is a preferential heir to her. 29 Bom. 91 (F.B.), *Dist.* (*Macleod, C.J. and Shah, J.*). PRANJIVAN HARGOVAN *v.* BAI BHIKHI. 63 I.C. 947=45 Bom. 1247=
23 Bom. L.R. 553=A.I.R. 1921 Bom. 57.

—S. 6—Proof of re-marriage.

———To prove the re-marriage of a Hindu widow the same religious rites and ceremonies that are necessary to constitute her first marriage valid should be shown to have been observed in her re-marriage.

Where therefore a Hindu widow had been validly married in the Brahma form of marriage but the observance of the aforesaid rites and ceremonies in her re-marriage was not established,

Held, that re-marriage according to the particular form had not been proved. (*Srivastava and Pullan, JJ.*). RAM PEAREY *v.* MT. KAILASHA.
7 O W.N. 753=A.I.R. 1930 Oudh 426.

—S. 7—Consent of mother-in law.

———*Sufficiency of.*

Hindu Law like other systems of law does not invest a mother-in-law with the power to give her widowed daughter-in-law in marriage. Even S. 7, Act XV of 1856, does not mention the name of mother-in-law among persons who are authorized to give their consent to the marriage of a widow; she does not possess this right even though the widow is under her guardianship. (*Tek Chand and*

HINDU WILLS ACT (1870), S. 3—Will and codicil.

Agha Haidar, JJ.). SANT RAM *v.* EMPEROR.
30 P.L.R. 573=1929 Cr. C. 305=
A.I.R. 1929 Lah. 713.

HINDU WILLS ACT, (XXI of 1870).

—Attestation.

———Section 50 of the Succession Act, which is made applicable to Hindu Wills, by the Hindu Wills Act, does not require the witnesses to attest in the presence of each other. (*Kumaraswami Sastri, J.*). GANSHAMDOSS NARAYANDOSS *v.* SARASWATHI BAI. 87 I.C. 621=21 M L.W. 415=
1925 M.W.N. 285=A.I.R. 1925 Mad. 861.

—Executor.

———*Position of.*

The Hindu Wills Act makes no distinction between Reality and Personality and the effect of the Hindu Wills Act is to place the executor in India on the same footing as an English executor. (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. 83 I.C 812=3 Pat 880=
5 Pat. L.T 513=A I.R. 1924 Pat. 721.

—Moffussil will.

———Will by Hindu *re* property in the moffussil—Estate vests in executor on date of death—Non-obtaining of probate does not affect his powers. (Observations of P.C. in 22 Cal. 788 at 796 treated as *obiter—Calcutta view dissented from*). (*Coutts Trotter, C. J., Phillips and Kumaraswami Sastri, J.J.*). RAMIAH *v.* VENKATASUBBAMMA.
94 I.C. 83=49 Mad. 261=1926 M.W.N. 297=
A.I.R. 1926 Mad. 434=50 M.L.J. 308 (F.B.).

—S. 1—Hindu, who is.

———An European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer and advocate of Hinduism and its practices; but if he resides long in India, abdicates his religion by a clear act of renunciation and adopts Hinduism by undergoing formal conversion, gives up along with Christianity his Christian name and deliberately assumes a Hindu name, marries in accordance with Hindu religious rites a person who is a Hindu by race and religion, and cuts himself off from his old environment and takes to the Hindu mode of life, in such a case it should be concluded that he has become a Hindu. (*Venkatasubba Rao, J.*). RATANSI D. MORARJI *v.* ADMINISTRATOR-GENERAL OF MADRAS. 111 I.C. 364=52 Mad. 160=
28 M L.W. 674=1928 M W N. 848=
A.I.R. 1928 Mad. 1279=55 M.L.J. 478.

—S. 2—Bequest to unborn persons.

———The rule of Hindu Law, that a bequest cannot be made in favour of unborn persons, is not abrogated by virtue of S. 2 of the Hindu Wills Act in respect of Wills governed by that Act. (*Wallis, C.J. and Ramesam, J.*). SOUNDARARAJAN *v.* NATARAJAN. 62 I.C 987=44 Mad 446=
1921 M.W N. 210=13 M.L W. 662.
A.I.R. 1921 Mad. 258=40 M.L.J. 354=

—S. 3—Will and codicil.

———*Subsequent revocation of Will—Codicil cannot be deemed to be also revoked.*

Where the testator after making his Will and Codicil, made deeds of gifts in favour of his daughter in which he expressly referred to both the Will and the Codicil in the earlier part of the passage, yet in the subsequent portion he cancelled only "the said Will" and not "the Will and the Codicil",

Held, it would be contrary to established principle of construction if it is held that the term

HUSBAND AND WIFE—Civil marriage.
"Will" when used for the second time signifies what is described immediately before by the phrase "Will and Codicil." It must be held accordingly that this clause in the deed of gift operated to revoke the Will but not the Codicil.
The Codicil cannot be deemed an integral component of the Will and the mere fact of the revocation of the Will cannot operate to revoke the Codicil in view of the provisions of S. 57 of the Succession Act. (*Mukerjee and Cuming, JJ.*). SURENDRA NATH CHATTERJEE *v.* SIVADAS MOOKERJEE.
69 I.C. 867=35 C.L.J. 433=A.I.R. 1922 Cal. 182.

HIRE.
See CONTRACT ACT, CH. IX.

HIRE PURCHASE CONTRACTS.
See (1) CONTRACT—HIRE PURCHASE.
(2) CONTRACT ACT, Ss. 78, 178 AND 179.
(3) PENAL CODE, S. 406.

HOLDER FOR VALUE.
See NEG. INST. ACT, Ss. 9, 15, 17, ETC.

HOLDER IN DUE COURSE.
See NEG. INST. ACT.

HOLDING.
See (1) LANDLORD AND TENANT.
(2) LEASE.
(3) OCCUPANCY HOLDING.
(4) T.P. ACT, Ss. 105—117.

HOLIDAYS.
See NEG. INST. ACT.

HOMICIDE.
See (1) HINDU LAW—SUCCESSION.
(2) MAHOMEDAN LAW—SUCCESSION.

HONORARY MAGISTRATE.
See CR. P. CODE, S. 15.

HOROSCOPE.
See (1) EVIDENCE.
(2) EVIDENCE ACT, S. 32.

HOSTILE WITNESS.
See EVIDENCE ACT, S. 154.

HOTCHPOT RULE.
See HINDU LAW—PARTITION.

HOUSE-BREAKING.
See PENAL CODE, Ss. 441 AND 460.

HOUSE TRESPASS.
See PENAL CODE.

HUNDI.
See (1) NEG. INST. ACT, S. 5.
(2) PROMISSORY NOTE.

HUNTER'S STATISTICAL ACCOUNT.
See EVIDENCE ACT, Ss. 48 AND 87.

HURT.
See PENAL CODE.

HUSBAND AND WIFE.
See also (1) DIVORCE ACT.
(2) RESTITUTION OF CONJUGAL RIGHTS.
Civil marriage.
Contract in wife's favour.
Damages in divorce.
Dissolution of marriage.
Divorce suit.
Liability for wife's debts.
Presumption of marriage.
Putative marriage.
Restitution of conjugal rights.
Validity of marriage.

—Civil marriage.
———A civil marriage before a Registrar between persons professing Roman Catholic religion is valid and binding. (*Blackwell and Kemp, JJ.*). (PETER PHILIP) SALDANHA *v.* (ANNE GRACE) SALDANHA. **32 Bom.L.R. 17=A.I.R. 1930 Bom. 105.**

—Contract in wife's favour.
———*Husband can sue for specific performance.*
It is a common practice in India that people, while paying money from their own pockets, purchase property for various reasons in the name of the members of their families. Such transactions are well known as *benami* transactions and their validity has been recognized by the highest Courts of Justice. A husband is therefore competent to sue for specific performance of a contract of sale in favour of his wife. (*Shadi Lal, C. J. and Agha Haidar, J.*). RADHA KISHAN *v.* SHANKAR DAS.
100 I.C. 422=9 L.L.J. 199=28 P.L.R. 620=A.I.R. 1927 Lah. 252.

—Damages in divorce.
———*Principles governing the award of damages discussed.*
The damages in divorce are not punitive. The means of the co-respondent are an irrelevant consideration except in so far as they were of assistance to him for seducing the wife. It is not the intention that a man should make a profit out of the dishonour of his wife. The only question is what the petitioner has lost in his wife, whether the co-respondent can pay that loss or not is immaterial. When damages have been assessed, in the absence of an order to the contrary, they must be brought into Court and dealt with in pursuance of the Judge's order. They may be ordered to be paid out to the petitioner, but this course is the exception and not the rule. They may be settled on the wife, or on her children, or otherwise dealt with, in the discretion of the Court, on well-established principles. (*Schwabe, C. J., Coutts-Trotter and Ramesam, JJ.*). J. R. FREER *v.* H. A. JOHNSON.
78 I. C. 120=19 M.L.W. 374=35 M.L.T. 163=A.I.R. 1924 Mad. 446=46 M.L.J. 282 (F.B.).

—Dissolution of marriage.
———*Proof of.*
The fact that a second marriage in the Karao form during the lifetime of the first husband is recognised as valid amongst a particular class of people carries with it inevitably the proposition that the first marriage can under some circumstances be regarded as no longer a valid marriage. (*Boys, J.*). ASLOP *v.* EMPEROR. **1930 Cr. C. 1137.**
———*Burden of proof.*
When a particular relationship such as marriage has been shown to exist between two persons, there is a presumption in favour of its continuance, and the burden of proving that they do not stand to each other in that relationship lies on the person who affirms it. (*Shadi Lal, C.J. and Agha Haidar, J.*). GHULAM MOHIUDDIN *v.* KHIZAR HUSSAIN.
114 I.C. 74=10 Lah. 470=30 P.L.R. 7=A.I.R. 1929 Lah. 6.

———*Adultery—Burden of proof.*
In an application for dissolution of marriage by husband on the ground of the wife's adultery, direct evidence will not ordinarily be available, but there ought to be such clear and cogent evidence both as to inclination, opportunity and conduct as to lead to the inevitable inference that the offence has been committed. The burden of proving misconduct of the wife in such a case is heavily upon the husband. The withdrawal of a previous charge against the adulterer amounts in law to a condonation of such offence if committed

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prior to that date. (*Chotzner, J.*). R. M. WATSON *v.* F. E. WATSON. **94 I.C. 528=43 C.L.J. 37= A.I.R. 1926 Cal. 703.**

—Divorce suit.

———*Mental incapacity—Proof of.*

Where a contract of marriage is attempted to be set aside, it must be proved not only that the person attempting to set aside was eccentric or deficient to a certain extent merely in his mental capacity, but that the whole mental being was so affected that he was incapable of appreciating not necessarily the nature of the act but its validity. (*Kennedy, J.C.*). G. E. G. R. *v.* E. M. R.

79 I.C. 535=A.I.R. 1925 Sind 95.

———*Costs—Liability of husband.*

The general principle is that the wife, who is charged rightly or wrongly by her husband in Divorce Court, is entitled to be given her costs in defending that suit. The proper way of doing that is to give her taxed costs. (*Schwabe, C. J. and Ramesam, J.*). ROSE CHARLOTTE PRITCHARD *v.* WALTER EDGAR PRITCHARD. **74 I.C 139= 18 M.L.W. 354=A.I.R. 1924 Mad. 150= 45 M.L.J. 327.**

———*Burden of proof.*

In divorce cases the petitioner must be sworn and he must prove his case because amongst other things the Judge has to satisfy himself whether there is any collusion between the parties and he has further to satisfy himself as to the complete honesty and truth of the petition. (*Mears, C. J., Walsh and Gokul Prasad, JJ.*). WILLIAM FITZ-ROY HOWARD *v.* DORIS MAY HOWARD.

69 I C. 509=44 All. 728=20 A.L.J. 853= 4 L. R. A. Civ. 1=A.I.R. 1923 All. 43 (F.B.).

———Divorce—Jurisdiction—Indian Courts have no jurisdiction to dissolve marriage of non-domiciled parties but can decree judicial separation. (*Macleod. C. J , Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I.C. 654= 25 Bom. L.R. 945=47 Bom. 843= A. I. R. 1923 Bom. 321 (F.B.).**

———*Adultery—Proof.*

Per *Macleod, C. J.*—The mere fact that two people of opposite sexes are together under the same roof is not sufficient *to establish adultery.* From the reports of Divorce cases, it has always been considered that there must be some evidence that they occupied the same room. (*Macleod, C.J., Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I C. 654=25 Bom. L.R. 945= 47 Bom. 843=A.I.R. 1923 Bom. 321 (F.B.).**

———*Proof of acts of adultery.*

It is an absolutely fixed rule of practice in the Divorce Courts in England that the evidence of the husband or the wife alone is never accepted without some corroboration either by a witness or at least by strong surrounding circumstances. (*Schwabe, C. J., Coutts-Trotter and Ramesam, JJ.*). ARULANANDAN *v.* ARUL PRAKASAM.

72 I.C. 134=17 M.L.W. 235=32 M.L.T. 245= A.I.R. 1923 Mad. 375=44 M.L.J. 385.

———*Proof of adultery in contested cases—Corroboration.*

In divorce cases in accordance with the rules of practice prevailing in the Divorce Courts in England, the evidence of one witness is not sufficient to establish adultery in contested cases where the evidence is absolutely uncorroborated. A particular act of adultery can be established by uncorroborated evidence of one witness, provided there is evidence of a similar character in regard to other offences which can be and are treated as

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corroboration. (*Mears, C.J. and Banerji, J.*). W. A. COLLARD *v.* MARIE AGNES COLLARD. **69 I.C. 579=44 All. 254=20 A. L. J. 82= A. I. R. 1922 All. 7.**

—Liability for wife's debts.

———Ordinarily husband is not liable for any debts incurred by his wife merely by the virtue of relationship of husband and wife, but if wife is managing the household of husband, then she is to that extent his agent and binds him for any liability incurred by her in managing the household. If, however, articles of necessity are supplied to wife, then to that extent husband is liable because of his legal duty to maintain his wife, and the consequent implied agency of the wife to pledge the credit of her husband. If the husband and wife are living separately by mutual consent and the wife has no other means of subsistence even then the husband can claim to be absolved from liability by proving *inter alia* that under the terms of the separation he had agreed to make her an allowance and that such allowance has been paid by him, otherwise his normal liability to maintain his wife continues. (*Jai Lal, J.*). KANSHI RAM *v.* B. NISBETT SHEDMAN. **116 I.C. 618= A.I.R. 1929 Lah. 18.**

—Presumption of marriage.

———*Straits Settlements—Chinese domiciled in—T'sip or secondary wife of—Proof of—Presumption of, from recognition of son.*

Held, on the evidence that *P* was not a t'sip or lawful secondary wife of the settlor and that the association between them was merely of a temporary or casual character. The mere fact of recognition of a person as a son cannot raise any presumption of marriage between the parents. According to Chinese custom a t'sip cannot be put away who has borne a son and in the Straits Settlements there is no divorce provided for by the laws of the Chinese. According to the law operative in the Straits Settlements the son of a t'sip or secondary wife will be legitimate being a son by a lawful wife. The Chinese custom of legitimation of a natural son by subsequent recognition is not part of the law operative in the Straits Settlements. Legitimation of a child, whose parents are not husband and wife, is unknown and repugnant to the common law of England, and no hardship (much less injustice or oppression) need result from a refusal to admit a modification in this respect of the English Law in its application to Chinese. (*Lord Russell of Killowen.*) KHOO HOOI LEONG *v.* KHOO CHONG YEOK. **124 I.C. 884= 1930 A.C. 346=59 M.L.J. 256 (P.C.).**

———A Mahomedan lady lived continuously with another man and had children who were treated by her, her relatives and friends as issues of that man. The latter had absolute power of disposal over her money. The incomes both of the man and the woman were jointly assessed with taxes by the municipality.

Held, that the reasonable conclusion was that the woman was married to the man. A.I.R. 1916 P.C. 27, *Rel. on.* (*Stuart, C.J. and Wazir Hasan, J.*). ABDUL HAKIM KHAN *v.* SAADAT ALI KHAN. **119 I. C. 596=A. I. R. 1929 Oudh 126.**

———*Habit and repute create presumption of legal marriage—But presumption may be displaced by proof that legal marriage was impossible.*

The law presumes in favour of marriage and against concubinage, when a man and woman have co-habited continuously for a number of years, and

HUSBAND AND WIFE—Putative marriage.

this presumption of law can be repelled only by strong, distinct and conclusive evidence. The mere fact that the direct evidence of the marriage which took place many years ago is unsatisfactory, cannot displace this presumption. But marriage is not constituted, but evidenced by habit and repute. (*Campbell* v. *Campbell*, 1 H.C. (So.) 182). Though the presumption, in cases of co-habitation, is in favour of marriage, it is otherwise if the connection is known to have been in its origin illicit. A connection, however, commencing in adultery may, on ceasing to be adulterous, become matrimonial and may be evidenced by habit and repute, the parties being at liberty to inter-marry. The fact that the parties lived together continuously for many years may be regarded as evidence of a marriage having taken place, provided a marriage between them was legally possible.

The consent of the first husband is necessary to the validity of the second marriage by a married woman. 8 Mad. 440, *Dist.* (*Leslie Jones and Broadway, JJ.*). INDAR SINGH *v.* THAKAR SINGH.

63 I.C. 387=2 Lah. 207=3 L.L.J. 317=94 P.L.R. 1921=A.I.R. 1921 Lah. 20.

—Putative marriage.

———*Wife—Rights of.*

Cases of the instance of the so-called wife on her rights although are more rare, cases of the assertion of the legitimacy of children born of the marriage subsequently declared null are numerous in every system, accepting the doctrine of putative marriage. It is wrong to say that a marriage which is null cannot be a putative marriage. It is just when a marriage is declared null that the doctrine of putative marriage becomes necessary. It is true that all civil rights appendent to real marriage are not produced by a putative marriage. But those rights which are consistent with a real marriage not existing do subsist. Alimony is such a right. The duty of a husband to support his wife is quite apart from his duty to co-habit with her. Therefore, a wife in a putative marriage when the marriage is found null is entitled to alimony. (*Viscount Dunedin.*) EUGENE BERTHIAUME *v.* DAME ANNE-MARIE YOONNE DASTONS.

122 I. C. 312=21 M. L. W. 106=A. I. R. 1930 P. C. 31 (P.C.).

—Restitution of conjugal rights—Arbitration.

———The question of restitution of conjugal rights cannot be referred to arbitration as that matter must be decided by the Court itself. 37 P.R. 1895, *Foll.* (*Addison, J.*) MALKA *v.* SARDAR.

116 I. C. 215=30 Pat. L.R. 122=11 L.L.J. 89=A.I.R. 1929 Lah. 394.

—Restitution of conjugal rights—Coveting of wife's property.

———*Grounds for refusal.*

If a husband's real object in suing for restitution of conjugal rights is to covet his wife's property, a Court of Justice will not encourage a covetous husband by subjecting his wife's person to his full and absolute control and forcing her to go under his domain both physically and mentally. Any reprehensible conduct on the husband's part if properly proved affords good ground for refusing to him the assistance of the Court. (*Kinkhede, A.J.C.*). MT. KURSHID BEGUM *v.* ABDUL RASHID.

100 I.C. 169=A.I.R. 1927 Nag. 139.

—Restitution of conjugal rights—Cruelty.

———Perpetual beating by husband—Husband is not entitled to any relief. (*Mears, C.J. and Lindsay, J.*) TANNI *v.* KALLU.

108 I.C. 433=25 A.L.J. 1100=A.I.R. 1928 All. 106.

HUSBAND AND WIFE—Restitution of conjugal rights—Cruelty.

———Husband accusing his wife of adultery—Accusation unfounded—Facts constitute legal cruelty. (*Stuart, C.J. and Wazir Hasan, J.*). MT. MAQBOOLAN *v.* RAMZAN.

101 I.C. 261=2 Luck. 482=4 O.W.N. 247=A.I.R. 1927 Oudh 154.

———Where an order for maintenance had to be executed by imprisonment of the husband who had alleged wife's unchastity,

Held, there is reasonable apprehension of bodily injury if she returns to her husband. (*Stuart and Mukerji, JJ.*). BABU RAM *v.* MT. KOKLA.

79 I.C. 634=46 All. 210=22 A.L.J. 68=5 L.R.A. Civ. 43=A. I. R. 1924 All. 391.

———*Legal cruelty in England and in India.*

Cruelty in the legal sense need not necessarily be physical cruelty. A course of conduct which, if persisted in would undermine the health of the wife, is sufficient justification for refusing to the husband a decree for restitution of conjugal rights. When a husband, who is guilty of a course of conduct which would be regarded as cruel to the wife, comes before a Court seeking its aid to compel his wife, to submit to his embraces it is the duty of the Court to see whether the health of wife is likely to suffer by forcing her against her will to live with him.

In a case of restitution of conjugal rights by the husband the facts found were :—

1. The husband charged the wife with the attempted murder of her husband by poison.
2. He insulted her on more than one occasion and called her by the most vile epithet.
3. He treated her with loathing and disgust and abused her when she took some buttermilk to him, and he expressed disgust by getting up from his unfinished meals.
4. He sent word through a servant that if she went back to him she would be dragged out by a Parish and slippered.
5. He threatened her with violence by saying that he would lash her to pieces with a knife and allowed the second wife to abuse her and to say that she (meaning the 1st defendant) deserved to be made to stand in the road and be spat on by the passers-by, that it was enough that she had not wrong its (child's) neck and thrown it into the well and that if she touched the child again she would be beaten with broom stick.
6. He used personal violence by pushing her by neck. The mother-in-law and the paternal aunt who treated her with kindness turned against her after the charge of an attempted murder was ventilated by the husband.

It was further found that the husband had no marital relations with his wife (1st defendant) for a period of more than 7 or 8 years.

Held that these circumstances are sufficient to make out cruelty under English Law.

Held, further that it would be cruel now to force the wife to go back to her husband against her will.

No doubt, sometimes the Hindu Society overlooks personal violence to the wife by the husband, but when a Court's intervention is asked for, the Court should not be guided by the public opinion in a country village, but by what is just and equitable in the circumstances. (*Phillips and Devadoss, JJ.*). KONDAL RAYAL REDDIAR *v.* RANGANAYAKI AMMAL.

74 I.C. 168=46 Mad. 791=18 M.L.W. 463=1923 M.W.N. 499=A.I.R. 1924 Mad. 49=45 M.L.J. 166.

HUSBAND AND WIFE—Restitution of conjugal rights—Cruelty.

———A decree for restitution of conjugal rights can be refused only on grounds which would justify the wife in refusing to return to live with her husband. Where the plaintiff systematically treated his wife with physical cruelty which exceeded the bounds of physical punishment or the sake of discipline,

Held, that there was ample justification for the refusal of the decree. 9 Bom. 529; 5 Ind. Dec. (N S.) 353; 21 Bom. 610; 22 Ind Dec. (N.S.) 409; 34 Cal. 971, *Ref.* (*Hallifax, A.J.C.*). DAMODHAR GANESH *v.* PARBATI. **69 I.C. 498=A.I.R. 1924 Nag. 72.**

—Restitution of conjugal rights—Delay in suing.

———Where in a suit for restitution of conjugal rights in 1918 the facts found were: that the marriage took place in 1902 when the girl was 12 years of age; that when the girl arrived at the age of puberty some time about 1909, the husband endeavoured to get her into his house, but she then became ill and continued ill for some three years, that after that the girl's father fell ill and ultimately died, and that subsequent to that his own sister, who had been married to his wife's brother in exchange, contracted consumption which further postponed the consummation of the marriage,

Held, that the delay in filing the suit was justified. (*Shadi Lal and Broadway, JJ.*). MT. DAULAN *v.* ABDUL HAQ. **79 I.C. 236=5 L. L J. 95.**

—Restitution of conjugal rights—Difference in ages

———Wife of seven years—Husband of 54 years—Marriage not consummated—Restitution should be refused. 187 P.W.R. 1918, *Foll.*; 67 P.W.R. 1918, *Dist.* (*Bhide, J.*). GURMUKH SINGH *v.* MT. HARBANS KUAR. **113 I. C. 777=A.I.R. 1928 Lah. 902.**

—Restitution of conjugal rights—Facts to be considered.

———In a suit for restitution of conjugal rights the Court must consider the entire conduct of the parties as to be able to judge whether the plaintiff deserves at the hands of the Court the relief which he seeks, and whether such a relief is not unreasonable in the particular case against the defendant. (*Case-law referred to.*) (*Marten, C.J. and Madgavkar, J.*). BAI JIVI *v.* NARSINGH LAL BHAI. **101 I.C. 403=51 Bom. 329=29 Bom.L.R. 332=A.I.R. 1927 Bom. 264.**

—Restitution of conjugal rights—Failure to perform obligations.

———The grant of a decree for restitution of conjugal rights is discretionary with the Courts and though ordinarily such a decree will be refused only if the husband has been guilty of legal cruelty towards his wife, he may disentitle himself to this relief by his gross failure to perform the obligations which the marriage contract had imposed on him for the benefit of the wife. 11 M.I.A. 551; 148 P.L R. 1916 and A.I R. 1924 Lah. 188, *Ref.* (*Tek Chand, J.*). IMAM BAKHSH *v.* MT. AMIRAN. **107 I.C. 607=A. I. R. 1928 Lah. 700.**

—Restitution of conjugal rights—Mahomedan law.

———In the case of Mahomedans a suit for restitution of conjugal rights is in the nature of a suit for specific performance, being founded on a contract of a marriage, which the Mahomedan Law regards as a civil one. Even, therefore, if the validity of the marriage be established, the relief of restitution of conjugal rights may be refused on such grounds as that its enforcement would be prejudicial or dangerous to the health, happiness or life of the wife.

Not only a defence of actual violence of such a character as to endanger the wife's health and safety or to render it unsafe for the wife to return to her husband's domain, but also of a "reasonable apprehension of it" would among them constitute a valid defence to a suit for restitution of conjugal rights. (*Kinkhede, A. J. C.*) MT KURSHID BEGUM *v.* ABDUL RASHID. **100 I. C. 169=A. I. R. 1927 Nag 139.**

HUSBAND AND WIFE—Restitution of conjugal rights—Neglect.

———The principle, that where a wife is turned out or ill-treated so as to make it impossible for her to live with her husband, or where the breach between the husband and wife is irremediable so that it is impossible for the latter to return to the former after many years' separation without leading to fresh trouble and dispute, she is entitled to maintenance by living separate from him applies equally to the case of a Hindu or a Mahomedan whether the question arises under S. 488, Cr. P. Code, or in a suit for restitution of conjugal rights. 170 P.L.R. 1914, *Ref.* (*Kinkhede, A.J.C.*). MT. KURSHID BEGUM *v.* ABDUL RASHID. **100 I.C. 169=A.I.R. 1927 Nag. 139.**

———*Though validity of marriage is established, relief as to restitution is discretionary.*

In the case of Muhammadans a suit for restitution of conjugal rights is in the nature of a suit for specific performance, being founded on a contract of marriage, which the Mahomedan Law regards as a civil one. Even, therefore, if the validity of the marriage be established, the relief of restitution of conjugal rights may be refused on such grounds as that its enforcement would be prejudicial or dangerous to the health, happiness or life of the wife. 11 M.I.A. 551 and 40 All. 332, *Ref.* (*Findlay, Offg. J. C.*). MT. KHURSHID BEGAM *v.* ABDUL RASHID. **92 I. C. 913=9 N. L. J. 11=A.I.R. 1926 Nag. 234.**

———*Mahomedan wife need not prove that extent of cruelty which is necessary to obtain divorce.*

In a case where a Mahomedan wife seeks to resist the enforcement of a claim for restitution of conjugal rights, it is not necessary for her absolutely to establish that there was cruelty such as would justify a divorce from her husband but it is enough if she proves that there has been ill-treatment of some sort which would create in her an apprehension as to her life or safety : 11 M.I.A. 551, *Foll.* (*Mukerji, J.*). ASMATI BIBI *v.* SAIMUDDI PATHAN. **79 I.C 991=A.I.R. 1925 Cal. 533.**

—Restitution of conjugal rights—Marriage by coercion.

———Suit by husband—Wife coerced into the marriage ceremony—Suit should be dismissed—Plea of non-existence of marriage includes plea of invalidity. (*Wilberforce and Abdul Qadir, JJ.*). MT. RAM JAWAI *v.* GOKALCHAND. **64 I.C. 150=3 L.L.J. 559=A.I.R. 1921 Lah. 291.**

—Restitution of conjugal rights—Neglect.

———In a suit for restitution of conjugal rights by husband, long neglect on plaintiff's part is sufficient to entitle the wife to refuse to go to him and she is within her legal rights in denying the plaintiff's claim to restitution of conjugal rights as against her. (*Kinkhede, A.J.C.*). MT. KURSHID BEGUM *v.* ABDUL RASHID. **100 I. C. 169=A.I.R. 1927 Nag. 139.**

HUSBAND AND WIFE — Restitution of conjugal rights—Neglect.

——Where the husband did not care to bring the wife to his house some two years after puberty,

Held, the claim for restitution should be refused. (*Shadi Lal, C.J. and Zafar Ali, J.*). MT. NAWAL BIBI *v.* ALLAH DITTA. 73 I. C. 896= 5 L.L.J 505=A.I.R. 1924 Lah. 188.

—Restitution of conjugal rights—Parties to suit.

——Where in a suit by the husband for restitution of conjugal rights the father-in-law was also made a defendant along with the wife and where the father-in-law pleaded that there was no cause of action against him,

Held, that his words and conduct showing his unwillingness to let his daughter live with plaintiff was ground for cause of action against him. (*Mukerji, J.*). MT. KHATOON BIBI *v.* NAZIAR. 78 I.C. 1043=A.I.R. 1924 All. 815.

—Restitution of conjugal rights—Suit for ——*Jurisdiction of British Indian Courts.*

Courts in India have jurisdiction to entertain suits for restitution of conjugal rights and to grant relief when the parties are Hindus or Mohammedans: 28 C. 37, *Ref* and they are enjoined to decide according to justice, equity and good conscience. (*Phillips and Devadoss, JJ.*). KONDAL RAYAL REDDIAR *v.* RANGANAYAKI. 74 I. C. 166= 46 Mad. 791=18 M.L.W. 465=1923 M.W.N. 499= A.I.R. 1924 Mad. 49=45 M.L.J. 186.

—Restitution of conjugal rights—Validity of marriage disputed.

——*Finding as to performance of necessary rites and ceremonies must be given.*

When in a suit for restitution of conjugal rights, the validity of the marriage itself is disputed, it is not enough to find that the marriage took place, leaving it to be presumed that the rites and ceremonies necessary to constitute a legal marriage in the particular case were performed; the Court must find specifically what these rites and ceremonies are and whether they were performed. (*MacColl, J.*). RAMPIAYAB *v.* DEVA RAMA. 76 I.C. 475=1 Rang. 129=A.I.R. 1923 Rang. 202.

—Restitution of conjugal rights—Violation of marital rights.

——*Defences founded on.*

In a suit for restitution of conjugal rights an Indian Court may well admit defences founded on the violation of marital rights. 11 M. I. A. 551 (P.C.) and *Mackenzie* v. *Mackenzie*, (1895) A.C. 884, *Rel. on.* (*Stuart, C. J. and Wazir Hasan, J.*). MT. MAQBOOLAN *v.* RAMRAU. 101 I. C. 261=2 Luck. 432=4 O.W.N. 247= A. I. R. 1927 Oudh 154.

—Validity of marriage.

——*Validity is determined by law of the place where it is effected.*

If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or the ceremony which constituted the marriage according to the law of the place would not constitute marriage in the country of the domicile of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicile would be considered a good marriage. (*Viscount Dunedin.*) EUGENE BERTHIAUME *v.* DAME ANNE-MARIE YVONNE DASTOUS. 122 I.C. 312= 31 M.L.W. 106=A.I.R. 1930 P.C. 31 (P.C.).

IDENTIFICATION OF PRISONERS ACT (1920); S. 5—Thumb impressions.

——The Law of the place where a marriage is contracted determines the validity of a marriage. (*Robinson, J.*). MA TWE *v.* LWE HAIN. 59 I.C. 555=13 Bur L.T. 105=22 Cr. L.J 123.

HYDERABAD ASSIGNED DISTRICTS LAND REVENUE CODE, 1896.

See BERAR LAND REVENUE CODE, 1896.

HYPOTHECATION.

See (1) CONTRACT ACT, SS. 172—179.
(2) T. P. ACT, SS. 58 AND 100.

IDAT.

See MAHOMEDAN LAW—DIVORCE.

IDENTIFICATION OF PRISONERS ACT (XXXIII of 1920).

—S. 5—Thumb impressions.

——It is not wrong on the part of the Court to take finger-prints of accused in its presence and to have them compared by an expert with the disputed finger-prints. (*Jwala Prasad and Macpherson, JJ.*). BASGIT SINGH *v.* EMPEROR. 104 I. C. 626= 6 Pat. 305=28 Cr L J. 850= A.I.R. 1928 Pat. 129.

——A Court can direct an accused person to give his thumb impression in Court. A.I.R. 1924 Rang 115 (F.B), *Foll.*; A.I.R. 1922 Pat. 73, *Dist* (*Mullick and Wort, JJ.*). LAHURI SAHA *v.* EMPEROR. 106 I.C. 212=6 Pat. 623= 8 P.L.T. 847=28 Cr L.J 1028= 9 A.I. Cr. R 173=A.I.R. 1928 Pat. 103.

——Under S. 5 thumb impressions can be taken of a person by the order of a Magistrate and are admissible in evidence. (*C.C. Ghose and Duval, JJ.*). EMPEROR *v.* KIRAN BALA DASI. 93 I.C. 73= 43 C.L.J. 79=30 C.W.N 373= 27 Cr. L.J. 409=A.I.R. 1926 Cal. 331.

IDIOT.

See HINDU LAW—SUCCESSION.

IDOL.

See HINDU LAW—RELIGIOUS ENDOWMENT.

IGNORANCE OF LAW.

See (1) LIMITATION ACT, S. 5.
(2) MAXIMS.
(3) PENAL CODE, S. 79.

ILLATOM.

See HINDU LAW—ADOPTION.

ILLEGAL CONSIDERATION.

See CONTRACT ACT, S. 23.

ILLEGAL CONTRACT.

See CONTRACT ACT, S. 23.

ILLEGAL GRATIFICATION—*See* PENAL CODE, SS. 161, 163.

ILLEGALITY.

See C. P. CODE, S. 115.

ILLEGAL OMISSION.

See PENAL CODE, S. 44.

ILLEGITIMACY.

See (1) EVIDENCE ACT, S. 112.
(2) HINDU LAW—(*a*) LEGITIMACY.
(*b*) SUCCESSION.
(3) LEGITIMACY.
(4) MAHOMEDAN LAW—LEGITIMACY.
(5) CR. P. CODE, S. 488.

IMAGE.

See HINDU LAW—RELIGIOUS ENDOWMENT.

IMMORAL CONTRACT.

See (1) CONTRACT ACT, S. 23.
(2) HINDU LAW—DEBT.

IMMORAL CUSTOMS.

See CUSTOM.

IMMORAL DEBT.

See HINDU LAW—(1) DEBT.
(2) JOINT FAMILY.

IMPARTIBLE ESTATE — Acquisitions out of income.

IMMOVABLE PROPERTY.

See (1) GENERAL CLAUSES ACT, S. 3 (25).
(2) REGISTRATION ACT, S. 2 (6).
(3) T. P. ACT S. 3.
(4) CR. P. CODE, SS. 145—147.

IMPARTIBILITY.

See IMPARTIBLE ESTATE.

IMPARTIBLE ESTATE.

See also HINDU LAW—IMPARTIBLE ESTATE.

—Acquisitions out of income.

———*If an accretion.*

The general rule as to accretions is that property acquired by a person out of the income of the property of which he is not the absolute owner must be deemed to be his exclusive property and cannot be considered to be an accretion to the property in his possession, unless it is clear from the intention of the person who acquired that property that he intended to incorporate the property so acquired by him with the property in his possession. 29 Cal. 433 (P.C.), *Foll.* (*Stuart, C. J. and Misra, J.*). AHMAD AZIM *v.* SAFI JAN. **97 I.C. 897=2 Luck. 335= 3 O.W.N. (Sup.). 102=A.I.R. 1926 Oudh 561.**

———The income of an impartible estate is not so affected by its source that it should be assumed to form an accretion of the estate and property acquired by savings from the income of the impartible estate does not become a part of that estate but remains the separate property of the holder. A.I.R. 1923 P.C. 59, *Foll.* (*Dawson Miller, C.J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PRASAD. **93 I.C. 454=5 P.L.T. (Sup.) 1= A. I. R. 1925 Pat. 68 (F.B.).**

—Alienability.

——— In the absence of proof of custom restricting alienation an impartible estate is alienable. A.I.R. 1927 P.C. 159, *Foll.* (*Viscount Sumner*). K. BAIJNATH PRASAD SINGH *v.* KEDAR NATH GOENKA. **106 I.C. 646=30 Bom. L.R. 115= 32 C.W.N. 481=5 O W.N. 93=47 C.L.J. 134= 27 M.L.W. 802=54 M.L.J. 6 (P.C.).**

—Alienation.

———*Law as understood up to a particular year would govern contracts prior to that year even when they fall to be determined after change in the law.*

It was the settled law in India until the decision of the Judicial Committee in 10 All. 272, that the holder of an impartible estate had only a limited estate and except for special justifiable causes had no power of alienation beyond his life-time. The subsequent holder might indeed confirm the grant and such confirmation operated as confiscation and re-grant and the grantee could not claim to hold under the original grant upon the death of the grantor. The reversal of this accepted interpretation of the law does not displace its application to the contract contained in the transactions of 1794 and 1819 since the parties must be deemed to be bound by the law as then understood. 27 Mad. 141 (P.C.), *Foll.* (*Das and Ross, JJ.*). DEBI SINGH *v.* F. E. CHRISTIAN. **84 I.C. 429= 1924 P.H.C.C. 201=A.I.R. 1924 Pat. 776.**

—Assets.

———In an impartible estate income after his death owing to lease by late Zamindar is not his assets in his successor's hands. (*Krishnan and Waller, JJ.*). BOMMAYYA NAICKEN *v* SUBRAMANIA IYER. **83 I.C. 165=1924 M W N. 342=34 M L.T. 290= A.I.R. 1924 Mad. 707=46 M.L.J. 374.**

—Burden of proof.

———Where there is a dispute with respect to an estate being impartible or otherwise, the onus lies on the party who alleges the existence of a custom different from the ordinary law of inheritance according to which custom the estate is to be held by a single member and, as such, not liable to partition. In order to establish that any estate is impartible, it must be proved that it is from its nature impartible and descendible to a single person, or that it is impartible and descendible by virtue of a special custom. A.I.R. 1928 P. C. 10, *Foll.* (*Mohiuddin and Macnair, A.J.Cs.*) MT. SARJABAI *v.* GANGARAM. **118 I.C. 871= A.I.R. 1930 Nag. 35.**

IMPARTIBLE ESTATE — Contract by widow proprietress.

———Where there is a dispute with respect to an estate being impartible or otherwise, the onus lies on the party who alleges the existence of a custom different from the ordinary law of inheritance according to which custom the estate is to be held by a single member and as such not liable to partition. In order to establish that any state is impartible, it must be proved that it is from its nature impartible and descendible to a single person, or that it is impartible and descendible by virtue of a special custom. Any such special custom modifying the ordinary law of succession must be ancient and invariable and must be established to be so by clear and unambiguous evidence. The custom must be proved by something like what we should call in this country immemorial usage : 13 M.I.A. 542 (P.C.), *Ref.*

If an impartible estate existed as such from before the advent of British rule, any settlement or re-grant thereof by the British Government must, in the absence of evidence to the contrary, and unless inconsistent with the express terms of the new settlement, be presumed to continue the estate with its previous incidents of impartibility and succession by special custom. (*Lord Sinha.*) MARTAND RAO *v.* MALHARRAO. **107 I.C. 7= 55 Cal. 403=24 N.L.R. 25=55 I A. 45= 47 C.L.J. 150=30 Bom. L.R. 251=27 M L W. 350= 32 C W.N 621=11 N.L J. 26=1928 M.W.N. 942= A.I.R. 1928 P.C. 10=54 M L J. 397 (P.C.).**

———The ordinary presumption is that a village is partible and alienable ; the burden is on the party who alleges to prove that the village forms an exception to the ordinary rule. A.I.R. 1922 Nag. 52, *Foll.*; 2 Mad. H.C.R. 19; A.I.R. 1922 Nag. 197, *Dist.* (*Baker, J.C.*). ABDUL HAQ *v.* MEGHRAJ. **78 I.C. 780=7 N.L.J. 110= A.I.R. 1924 Nag. 133.**

—Contract by widow proprietress.

———*Binding nature of.*

A widow by the Will of her husband became the proprietress for life of his estate. She appointed a practising Pleader as Manager of the estate under an *ekrarnama.* It was provided by the *ekrarnama* that he was to receive a big monthly salary and if he resigned, a monthly pension as compensation for his leaving the profession and as provision for his old age. The *ekrarnama* stated that the successive holders of the estate "should fully comply with the terms."

Held, the *ekrarnama* not being in terms a contract, binding the Executor or Administrator of the Maharani, the estate was not bound as there was no binding contract, and the widow's personal estate was not bound as the work done was for the estate and not personal to her. (*Sir Robert Stout.*) MAHARAJA KESHAO PRASAD SINGH *v.* SIR SARAN LAL. **77 I.C. 44=15 M.L.W. 589= 26 C.W.N. 689=30 M L T. 50=48 I.A. 329= A.I.R. 1922 P. C. 226 (P.C.).**

IMPARTIBLE ESTATE—Inference of impartibility.

—Inference of impartibility.

———The fact that for a number of generations a particular estate has remained undivided would not by itself show that this was on account of a family custom or tenure of the estate. The custom of impartibility must be strictly proved in order to control the ordinary Hindu Law of Property. Exclusive managership is unknown to Hindu Law and there must be clear arrangement to prove its existence. (*Dhobley, A. J. C.*). KRISHNARAO *v.* NILKANTHA. **69 I.C. 300=5 N.L.J. 25=18 N.L R. 163=A.I.R. 1922 Nag. 52.**

—Joint family.

———*Rights of co-parcenership.*

Where the estate is impartible the members of the joint family have none of the rights of coparcenership except a right of succession by survivorship limited by the rule of impartibility which allows only one member at a time to hold. They cannot demand partition or assert any right to any individual share in the estate nor can they restrain alienation. (*Dawson-Miller, C. J. and Foster, J.*). RAJA SHIVA PRASAD SINGH *v.* KING-EMPEROR. **82 I.C. 653=5 P.L.T. 497=1924 P.H.C.C. 234=2 Pat. L.R. Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.**

—Maintenance to junior members.

———There is very little analogy between the cases of political pensions granted under Regulation III of 1818 and cases of maintenance which under the Hindu Law is payable to a widow or to a junior member of an impartible estate. (*Kumaraswami Sastri and Curgenven, JJ.*). SATRAJI DONGOR-CHAND *v.* MADHAO SINGH. **103 I.C. 339=38 M.L.T. 299=25 M.L.W. 640=1927 M.W.N. 374=50 Mad. 711=A.I.R. 1927 Mad. 604=52 M.L.J. 622.**

—Produce of estate.

———*Rent unrealised or realised is produce and is not necessarily accretion.*

The produce of an impartible estate does not necessarily belong to and form an accretion to the original property. Rent which has become due until death of holder is produce of the impartible estate whether that produce has actually come into the hands of the owner or not. There is no distinction between realised rent and unrealised rent in this respect. Rent is deemed to accrue from day to day and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof. (*Das and Ross, JJ.*). APURNA DEBI *v.* SHRI SHIVA PRASAD SINGH. **83 I.C. 623=3 Pat. 367=5 P.L T. 111=1924 P.H.C.C. 207=A.I.R. 1924 Pat. 451.**

—Succession.

———*Devolution is under Hindu Law subject to incident of impartibility.*

Where the family of the tenure-holder was governed by the Mitakshara Law,

Held, that the devolution of immovable property in the family must be governed by that law subject to the question of impartibility, unless either there be some special custom of the family to the contrary or unless there be some peculiar feature inherent in *ghatwali* tenures which prevents the operation in the case of impartible property. In a Mitakshara family living in commensality, the inheritance even of impartible estates is confined to male members to the exclusion of females unless the estate itself is separate or self-acquired property. The fact that a Raj is impartible, does not, in a case governed by the Mitakshara Law, make it separate or self-acquired property. It may be self-acquired or it may be the property of a joint undivided family. In the latter case, succession will be regulated according to the rule of survivorship but as one person alone can hold the estate at a time, the person designated is the eldest member of the senior branch of the joint family. (*Dawson-Miller, C. J. and Foster, J.*). FULBATI KUMARI *v.* MAHESHWARI PRASAD. **74 I.C. 668=4 P.L.T. 473=1923 P.H.C.C. 161=2 Pat. 685=A.I.R. 1923 Pat. 453.**

IMPARTIBLE ESTATE—Zemindari estate.

—Succession certificate.

———An application for decree under O. 34, R. 6, can be maintained by a person who succeeds to an impartible estate and it is not necessary for him to obtain succession certificate as a condition precedent inasmuch as the succession is one by way of survivorship. (*Das and Adami, JJ.*). SHIVA PRASAD SINGH *v.* BENI MADHAB CHOWDHURY. **70 I.C. 24=1 Pat. 387=4 P.L.T. 6=A.I.R. 1922 Pat. 529.**

—Zemindari estate.

———*For ancient custom to apply, Zamindari must be of considerable age.*

It is always difficult to distinguish between Zamindaris of which the holders were entitled to the soil as ancient Chieftains and cases where from office-holders or rent-collectors they developed in course of time into proprietors of the soil. But it is settled law that unless considerable age can be ascribed to any particular zamindari, of whichever class it may be, it cannot claim to be governed by either ancient or invariable custom. (*Lord Sinha.*) MARTAND RAO *v* MALHAR RAO. **107 I.C. 7=55 Cal. 403=24 N.L R. 25=55 I.A. 45=47 C.L.J. 150=30 Bom. L.R. 251=27 M.L.W. 350=32 C.W.N. 621=11 N.L.J. 26=1928 M.W.N. 942=A.I.R. 1928 P C. 10=54 M.L.J. 397 (P.C.).**

———Amgaon Zamindari in C. P. is not an impartible estate. A.I.R. 1923 Nag. 201, *Reversed*. (*Lord Sinha.*) MARTAND RAO *v.* MALHAR RAO. **107 I.C. 7=55 Cal. 403=24 N. L. R. 25=55 I.A. 45=47 C. L. J. 150=30 Bom. L R. 251=27 M.L.W. 350=32 C.W.N. 621=11 N.L.J. 26=1928 M.W.N. 942=A.I.R. 1928 P C. 10=54 M.L.J. 397 (P.C.).**

———*Amgaon Zamindari is an impartible estate.*

The Amgaon Zamindari before the Thirty Years Settlement was of the nature of a Raj and therefore impartible and subject to the rule of single succession, the other members of the family of the Zamindari of the moment being entitled to suitable maintenance and not to any specific share in the income. 43 All. 228, *Ref.* It was an estate of an exactly similar character that was conferred by Government on the Zamindar at the Thirty Years Settlement. 27 Cal. 515, *Ref.* In addition a custom had by that time grown up in the Amgaon family that the estate should be held as an estate of that nature and subject to those conditions. Nothing occurred at the Thirty Years Settlement or has occurred since, to alter the nature of the grant or to effect the validity of the family custom. 15 N.L.R. 176, *Ref.* The Zamindari is therefore declared to be impartible. Important history of the C.P. Zemindaris traced. (*Batten, J.C. and Hallifax, A.J.C.*). MALHAR RAO *v.* MARTAND RAO. **85 I.C. 658=6 N. L.J. 189=A.I.R. 1923 Nag. 201.**

IMPARTIBLE PROPERTY.

See (1) HINDU LAW—PARTITION.
(2) IMPARTIBLE ESTATE.

IMPERIAL BANK OF INDIA ACT (1920), Sch. I, Part 1—Construction of memorandum.

IMPERIAL BANK OF INDIA ACT (XLVII of 1920), Sch. I, Part 1—Construction of memorandum.

——Among the objects for which a company was "to raise money by the issue of shares preference, ordinary or deferred, debentures, debenture stock, bonds and other securities, and to invest the moneys so raised or any part thereof, upon any of the investments specified in this Memorandum." Upon the securities of the promissory notes executed by the company in favour of its directors who in their turn endorsed them in favour of the Imperial Bank of India, and also upon the securities of debentures issued by it in favour of the Imperial Bank creating charges upon all the company's undertakings, properties and assets including its uncalled capital, the company borrowed money from the Imperial Bank of India. The position as stated in one of the debentures was this: "The company in consideration of . . . now paid on loan to them by the Imperial Bank of India against certain securities authorised by Act XLVII of 1920, do hereby as an integral part and collateral security for the said loan undertake to pay . . ."

Held, (1) on construction of the clause in "Memorandum" that the company was empowered to raise money by the issue of debentures and invest the same or any part of it;

(2) that the promissory notes were the original security and the other forms of security were when the loans were given collateral to that security so as to fall within the terms of Sch. I, Part 1, Cls. 5 and 6 of the Imperial Bank of India Act. (*Costello, J.*). IMPERIAL BANK OF INDIA, LTD. *v.* BENGAL NATIONAL BANK, LTD. **57 Cal. 328= A.I.R. 1930 Cal. 536.**

—Sch. I, Part 1—Inter-relation of.

——The specific prohibition as to power to transact banking business contained in Part 2 of the schedule is subject to the provisions contained in Part 1, Sch. I and in sub-cl. (*a*) read with the operative part of the clause. (*Costello, J.*). IMPERIAL BANK OF INDIA, LTD. *v.* BENGAL NATIONAL BANK, LTD. **57 Cal. 328= A.I.R. 1930 Cal. 536.**

IMPLIED AUTHORITY.

See (1) CONTRACT ACT, CH. X.
(2) PRINCIPAL AND AGENT.

IMPLIED CONTRACT.

See CONTRACT ACT, SS. 9, 69 & 70.

IMPLIED DEDICATION.

See (1) DEDICATION.
(2) HINDU LAW—RELIGIOUS ENDOWMENT.
(3) MAHOMEDAN LAW—WAQF.

IMPLIED WARRANTY.

See CONTRACT ACT, S. 113.

IMPOSSIBILITY OF CONTRACT.

See CONTRACT ACT, S. 56.

IMPORT AND EXPORT OF GOODS ACT (XI of 1916).

—S. 4—Scope.

——Under Export and Import Act (XI of 1916), a notification was issued prohibiting the export of certain goods and in a suit by plaintiffs for the recovery of the amount spent by them in purchasing permits for exporting defendant's goods,

Held, that export of goods made under a permit issued to another was not prohibited.

Held further that such export was not contrary to the provisions of S. 4, Act XI of 1916, read with S. 167, Sea Customs Act, or to public policy. A.I.R.

INCOME-TAX—Tax in respect of coal mines.

1925 Sind 55 and 32 Bom. 449, *Dist.* (*Percival, J.C. and Wild, A.J.C.*). JAR HUSSAIN HYDER *v.* MADHOWJI THAWAR. **123 I.C. 299= A.I.R. 1930 Sind 175.**

IMPRISONMENT.

See (1) PENAL CODE, SS. 53—75.
(2) CR. P. CODE.

IMPROVEMENTS.

See T. P. ACT, SS. 51, 72, 76 & 108.

INADEQUACY OF CONSIDERATION.

See CONTRACT ACT.

INAM.

See GRANT INAM.

INCITEMENT.

See (1) PENAL CODE.
(2) ABETMENT.

INCOME-TAX.

—Rate of assessment.

——The rate to be assessed upon the income, profits and gains of the accounting period is to be determined by the fact as to who was in fact carrying on the business and making such income, profits and gains during the accounting period. (*Walsh and Banerji, JJ.*). NEHAL CHAND *v.* KISHORE LAL OF CAWNPORE. **102 I. C 189= 49 All. 611=25 A.L.J. 366=A.I.R. 1927 All. 397.**

—Sale of whole concern.

——*Profit is not taxable in all cases.*

Income-tax being a tax upon income, the sale of a whole concern which can be shown to be a sale at a profit as compared with the price given for the business, or at which it stands in the books, does not give rise to a profit taxable to income-tax.

It is easy enough to follow out this doctrine where the business is one wholly or largely of production, *e.g.*, dairy farming business or a sheep-rearing business, but where a business consists entirely in buying and selling goods, it is more difficult to distinguish between an ordinary and a realization sale, the object in either case being to dispose of goods at a higher price than that given for them and thus to make a profit out of the business. In such a case, a profit made by the sale of the whole of the stock, if it stood by itself, might well be assessable to income-tax. But the case is different where the sale is only a slump transaction. *J. and M. Craig (Kilmarnock), Ltd.* v. *Inland Revenue*, 1914 S.C. 338, *Appl.* (*Lord Phillimore.*) WILLIAM RICHARD DOUGHTY *v.* COMMISSIONER OF TAXES. **102 I. C. 17=A.I.R. 1927 P.C. 76 (P.C.).**

—Second income-tax.

——A second income-tax cannot be imposed though a tax on professions, trades or callings can be imposed. If the method of assessment in reality makes the tax one on income, it is illegal and *ultra vires* even though it purports to be a tax on persons practising a profession or carrying on a trade or calling. The tax which can be imposed without the sanction of the Governor-General in Council, on professions, trades or callings must be one which is not a second tax on the incomes of such persons, *i.e.*, there must be a flat rate imposed by the tax on each profession, trade or calling, or rather on all persons practising a particular profession or carrying on a particular trade or calling. (*Addison and Coldstream, JJ.*). DISTRICT BOARD, SIALKOT *v.* SULTAN MD. KHAN. **106 I.C. 882= 29 P.L.R. 177=9 Lah. 340=A.I.R. 1928 Lah. 53.**

—Tax in respect of coal mines.

——*Tax on gross revenue and income-tax—Distinctions.*

A percentage tax upon the gross revenues of coal mines is indirect taxation. Though the tax is call-

INCOME-TAX—Validity of assessment.

ed a tax on "gross revenue," such gross revenue is in reality the aggregate of sums received from sales of coal, and is indistinguishable from a tax upon every sum received from the sale of coal. The general tendency of a tax upon the sums received from the sale of the commodity is that traders would seek to recover it in the price charged to a purchaser. Under particular circumstances the recovery of the tax may, it is true. be economically undesirable or practically impossible, but the general tendency of the tax remains It is not analogous to an income-tax, which has always been regarded as the typical example of a direct tax. There are marked distinctions between a tax on gross revenue and a tax on income, which for taxation purposes means gains and profits. There may be considerable gross revenues, but no income taxable by an income-tax in the accepted sense (*Lord Warrington of Clyffe.*) KING *v.* CALEDONIA COLLIERIES, LTD. **111 I.C. 216=A.I.R. 1928 P.C. 282 (P.C.).**

—Validity of assessment.

——Assessment for a year, in which source of income, which existed in the previous year is non-existent is valid. (*Rankin, C.J., C.C. Ghose and Buckland, JJ.*). *In the matter of* BEHARI LAL MULLICK. **103 I.C. 609=54 Cal. 630=31 C.W.N. 557=A.I R. 1927 Cal. 553.**

—What is.

——Per *Rankin, C.J.*—The income-tax is one tax and not an aggregate of different taxes. (*Rankin, C.J., C.C. Ghose and Buckland, JJ.*). *In the matter of* THE ASSESSMENT OF BEHARI LAL MULLICK. **103 I.C. 609=54 Cal. 630=31 C.W.N. 557=A. I. R. 1927 Cal. 553 (F.B.).**

INCOME-TAX ACT (II of 1886) (Repealed by VII of 1918).

—S. 39—Civil suit.

——If assessment is *ultra vires*, a suit in Civil Court is maintainable. (*Macleod, C.J. and Coyajee, J.*). HAJI RAHEMTULLA *v.* SECY. OF STATE. **92 I.C. 351=27 Bom.L.R 1507=A. I. R. 1926 Bom. 50.**

——*Super-tax.*

Unless the super-tax has been charged, paid or recovered in the assessment year, the jurisdiction of the Civil Court to entertain a suit in respect of the same is not barred under S. 8 of the Super-tax Act read with S. 39 of the Income-tax Act, II of 1886. (*Raymond and Kennedy, A. J. Cs.*). SECRETARY OF STATE *v.* SETH KHEMCHAND THACOMAL. **78 I.C. 438=18 S.L.R. 9=A. I. R. 1926 Sind 67.**

——*Civil Court—Jurisdiction to rectify Collector's assessment.*

The term "income" signifies that comes in. The entire income of land is "income" within the meaning of S. 3 (5) of the Income-tax Act. In the matter of assessment of tax on income the Collector has power to decide what is the income and what are the outgoings which ought to be legitimately deducted. If the Collector makes any mistake in his decision, the Civil Court has no jurisdiction to rectify it in a suit brought before it for the purpose. (*Ross, J.*). SECRETARY OF STATE *v.* A. H. FORBES. **62 I. C. 394=3 Pat. L.T. 125=A.I.R. 1922 Pat. 361.**

—S. 39—Profits in States.

——The Income-tax Collector of a district in British India cannot assess income tax on a person residing in a State on profits made by him in another State unless it is proved that those profits arose or were received in British India. (*Macleod,*

INCOME-TAX ACT (1918), S. 2—Adjustment after registration.

C.J. and Coyajee, J.). HAJI REHEMTULLAH *v.* SECRETARY OF STATE. **92 I.C. 351=27 Bom. L.R. 1507=A.I.R. 1926 Bom. 50.**

—(VII of 1918)—(Now repealed by XI of 1922).

—Applicability

——*The Act applies to proceedings started thereunder but continued under the Act of* 1922.

On 10th June, 1921, a notice under S. 17 (2) of the Income-tax Act of 1918 was issued to an assessee in respect of the income of the year ending on June 15th. 1921. Returns were received on 22nd August, 1921, and 23rd March, 1922. but they were not accepted and on 31st March. 1922, which was the last day on which the Act of 1918 was in force it was recorded that notice under S. 18 (2) of the Act would issue at some later time. On 21st April, 1922, a definite order was made for the issue of this notice and from that day onwards proceedings were conducted under the Income-tax Act of 1922.

Held, that the Income-tax Act of 1918 and not that of 1922 was applicable to the proceedings.

Held further that under the Act of 1918, if loss is incurred by an unregistered firm wherein an assessee is a partner his share of that loss must be deducted from his other income in ascertaining his total assessable income. (*Baker, J.C.*) ARJUN KHEMJI & CO. *In re.* **80 I.C 362=A.I.R. 1925 Nag. 65.**

—Income.

——Income is the annual or periodical yield in money or reducible to a moneyvalue arising from the use of real or personal property or from labour or servicerendered. (*Dawson Miller, C.J., Mullick and Bucknill, JJ.*). *In the matter of* JYOTI PRASAD SINGH DEO OF KASHIPUR. **60 I C. 357=2 Pat. L.T. 188=6 P.L.J. 62=1921 P.H C.C. 81=A.I.R. 1921 Pat. 103 (F.B.).**

—Interpretation.

——Per *Mukerji, J.*—Income-tax Act of 1918 effected a radical change in the scheme and scope of operation of this branch of law. The Act of 1918 professes to be a consolidating and amending statute on any point specifically dealt with in the Act: the law is to be ascertained by interpreting the language used in the statute in its natural meaning uninfluenced by considerations derived from the previous state of the law. (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECRETARY OF STATE. **83 I.C. 273=40 C.L.J.110=28 C.W.N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34.**

—Scheme of Act.

——Scheme of the Act explained by *Mukerji, J.*—*Case-law discussed.* (*Chatterjea, Mukerji and Chotzner, JJ.*) ROGERS PRATT SHELLAC CO. *v.* SECRETARY OF STATE. **83 I. C. 273=28 C.W.N. 1074=40 C.L.J. 110=52 Cal. 1=A. I. R. 1925 Cal. 34.**

—Scope.

——The Income-tax Act creates a special jurisdiction and provides a special remedy. (*Raymond and Kennedy, A. J. Cs.*). DAYARAM RAMDAS *v.* SECRETARY OF STATE. **78 I. C. 940=18 S L.R. 68=A.I.R. 1926 Sind 130.**

—S. 2—Adjustment after registration.

——Adjustment can be made during the financial year in which Collector's certificate of registration in force in respect of the income for the previous year in which the firm was not registered. (*Schwabe, C. J., Oldfield and Coutts-Trotter, JJ.*). SECY. BOARD OF REVENUE *v.* MD. S. H. MEAN SAHIB & CO. **68 I. C. 655=45 Mad. 977=16 M.L.W. 333=1922 M.W.N. 583=A.I.R. 1923 Mad. 34 (F.B.).**

INCOME-TAX ACT (1918)., S. 2—Agricultural income.

—S. 2—Agricultural income.

———*Permanently settled Zamindari—Income from forest and fisheries is not liable to income-tax.*

Under the Income-tax Act (VII of 1909) the income from the forests and fisheries in a permanently settled Zamindari under Madras Permanent Regulation (1802) is not liable to income-tax. Where the assessee objects to the assessment, (*a*) on the ground that the income is agricultural income within the meaning of S. 4 of the Act and, therefore, not chargeable to income-tax; and (*b*) that the assessment is illegal as contravening the terms of his permanent *sanad* of the Zamindari and the provisions of Regulation XXV of 1802.

Held, under the terms of the *Sanad* granted under the Permanent Settlement Regulation the *Peishkush* was fixed in commutation not only of the rentals of the cultivated land but also of all income which may be derived from forest and fisheries as well. The term 'Agricultural income' in the Income-tax Act does not exclude income derived from forest and fisheries. (*Ayling, Coutts-Trotter and Ramesam, JJ.*). SECY. TO THE CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* ZAMINDAR OF SINGAMPATTI. **70 I.C. 504=45 Mad. 518=15 M. L. W. 496=1922 M.W N. 353=31 M.L.T. 21=A.I.R. 1922 Mad. 325.**

———*Salami and abwabs.*

Salami paid for the settlement of waste lands or abandoned holdings is agricultural income exempt from assessment but not *salami* paid for recognition of a transfer of a holding from one tenant to another. Illegal *abwabs* such as *uttarayan* do not constitute agricultural income and are assessable. (*Mookerjee, A.C.J., Fletcher and Walmsley, JJ.*). BIRENDRA KISHOR *v.* SECRETARY OF STATE.

61 I.C. 112=48 Cal. 766=23 C. W. N. 80=A.I.R. 1921 Cal. 262.

—S. 2—Business.

———"*Business*" *includes manufacture.*

Under S. 2, cl. 3 of Act VII of 1918 "business" includes among other things any "manufacture".

Where a foreign Company had a manufacturing branch in an Indian town,

Held, per *Chatterjea, J.*—It was liable to assessment. (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECRETARY STATE.

83 I.C. 273=40 C.L.J. 110=28 C.W.N. 1074.= 52 Cal. 1= A I.R. 1925 Cal. 34.. (F. B.).

—S. 2—Joint Hindu family.

———*Assessment to super-tax.*

The registration of the brothers as a firm as defined under S. 2 (12) of Act VII of 1918 precludes the assessment of the family as an undivided family to super-tax on the income derived from the business of this firm unless the firm so registered has been shown to carry on its business on behalf of and for the benefit of the joint family.

The mere constitution of partnership between some members of the family will not preclude the assessment, in cases where the partnership is conducted on behalf of and for the benefit of the joint family. (*Ayling, Coutts-Trotter and Ramesam, JJ.*). COMMR. OF INCOME-TAX *v.* DORAISWAMI.

74 I.C. 22=18 M.L.W. 96=1923 M.W.N. 13=46 Mad. 673=33 M. L. T. 266=A.I.R. 1923 Mad. 682=45 M.L.J. 150 (F. B.).

—S. 3—Income, what is.

———Money received by a registered Club from its members is not taxable not being "income., *New York Life Insurance Company* v. *Styles*, (1889)

INCOME-TAX ACT (1918), S. 3—Profits outside India.

L. R. 14 App. Cases 381 and *Carlisle and Silloth Golf Club* v. *Smith*, (1913) 2 K. B. 75, *Rel. on.* (*Martineau, J.*). UNITED SERVICE CLUB, SIMLA *v.* EMPEROR. **61 I.C. 886=2 Lah. 109=96 P. L. R. 1921=A.I.R. 1921 Lah. 208.**

—S. 3—Money due but not realized.

———*Money-lending firm—Income becoming due but not realised in cash or by adjustment of accounts is not assessable.*

Interest which became due to a money-lending firm in the year of account, but was not realised in cash, or by adjustment in the accounts, is not liable to income-tax under Act VII of 1918.

Per *Ayling and Napier, JJ.*—If a person entitled to receive interest agrees with his debtor to let the money stand in the hands of the debtor, either by way of deposit, or as a fresh loan or investment that would amount to a constructive "receipt or adjustment," and would justify the inclusion of the sum in question, as profits or income, just as much as if it had been received in cash, such an agreement might be express or implied; but should not be inferred, solely from the failure to take any steps for realisation.

Per *Sadasiva Ayyar, J.*—The interest which became due to a firm of Nattukottai Chetties in British India, which was not realised in cash, or by adjustment of accounts, would be such income as would be liable to be taxed, under the Income-tax Act VII of 1918, if such interest money had become due to the assessee, in the manner and in the sense that it was so completely under his control that by an act of his will he could receive it in cash, without great trouble than is involved in drawing money from his bankers. If it has not become due in that sense, it is not such an income as would be liable to payment of tax.

Per *Krishnan, J.*—It may be said that wherever the payer deals with a sum of money due to the payee in any manner according to the directions or instructions of the payee so as to obtain a valid discharge for himself and the payee obtains the benefit thereof, there would be a case of realisation by the payee. (*Wallis, C.J., Ayling, Sadasiva Aiyar, Napier and Krishnan, JJ.*). SECY., BOARD OF REVENUE, INCOME-TAX, MADRAS *v.* ARUNACHALAM CHETTIAR. **59 I.C. 482=44 Mad. 65=13 M.L.W. 336=A.I.R. 1921 Mad. 427 (S.B.).**

—S. 3—Profits outside India.

———Where assessee received large profits in British Baluchistan which is exempted from the operation of Income-tax Act and invested them in the Punjab in buying immovable property,

Held, the money was received in Baluchistan and by whatsoever process that may have been transmitted into the Punjab, it cannot be said to have been received a second time in the Punjab, and therefore it is exempt from income-tax. (*Shadi Lal, C.J., Scott-Smith, Broadway, Abdul Raoof and Martineau, JJ.*). SUNDER-DAS *v.* KING-EMPEROR. **77 I.C.616=3 Lah. 349=A.I.R. 1923 Lah. 14 (F.B.)**

———Accrues, arises or is received in British India —Factory and income received outside British India—Head Office in British India which controls the business—Company is not liable to assessment. A.I.R. 1921 Bom. 159 43 Mad. 75: A.I.R. 1923 Lah. 14, *Ref.* (*Schwabe, C.J., Oldfield and Coutts Trotter JJ.*). SECY. BOARD OF REVENUE *v.* RIPON PRESS, ETC. **77 I.C. 621=17 M.L.W. 584=32 M.L.T. 306=1923 M.W.N. 321=46 Mad. 706=A.I.R. 1923 Mad. 674=44 M.L.J. 523 (F. B.).**

INCOME-TAX ACT (1918), S. 3—Profits outside India.

——Manufacture outside British India—Seat of management in British India—Income finally accounted for in British India—Income not necessarily assessable—Question falls within S. 51. *Commissioner of Taxation* v. *Kirk*, (1900) A.C. 580. *Dist.* (*Macleod, C.J. and Shah, J.*). THE AURANGABAD MILLS, LTD., *In re*. **64 I.C. 9=45 Bom. 1286=23 Bom. L.R. 570=A. I. R. 1921 Bom. 159.**

—S. 3—Tea garden.

——Where in a tea garden tea is grown and made ready for the market by mechanical process, the income must be apportioned and that portion of it which comes from the manufacturing process is assessable. *Inland Revenue Commissioners* v. *Ransem*, (1918) 2 K.B. 709; *Mitchell* v. *Egyptian Hotels*, (1915) A.C. 1022 and *Commissioners of Inland Revenue* v. *Maxse*, (1919) 1 K B. 647, *Foll.* (*Mookerjee, Ag.C.J., Fletcher and Chaudhuri, JJ.*). KILLING VALLEY TEA CO., LTD. *v.* SECY. OF STATE. **61 I.C. 107=48 Cal. 161=A.I.R. 1921 Cal. 40 (F.B.).**

—S. 3—Variation of exchange.

——Profits made by variation of exchange by sending of remittance by a banker of Indian currency to Penang are assessable to income-tax. (*Schwabe, C.J. and Coutts-Trotter, J.*). SECRETARY, BOARD OF REVENUE *v.* ARUNACHALAM CHETTIAR. **77 I.C. 216=47 Mad. 197=18 M.L.W. 776=33 M.L.T. 119=A.I.R. 1924 Mad. 208=45 M.L.J. 707 (S.B.).**

—S. 5—Royalty upon coal.

——Income from royalty upon coal is not income from business—Such income falls under cl. (*vi*)—Local cess cannot be deducted in assessing income-tax. (*Dawson-Miller, C. J., Mullick and Bucknill, JJ.*). *In the matter of* JYOTI PRASAD SINGH DEO OF KASHIPUR. **60 I.C. 357=2 Pat. L.T. 188=6 P.L.J. 62=1921 P.H.C.C. 81=A.I.R. 1921 Pat. 103 (F.B.).**

—S. 5—Scope of.

——Section 33 (1) was not intended in any way to enlarge the scope of S. 5 or to bring into the net any income accruing outside British India merely because that income was received through or from a business connection in British India. (*Schwabe, C.J. and Wallace, J.*). BOARD OF REVENUE *v.* MADRAS EXPORT CO. **71 I.C. 756=46 Mad. 360=17 M.L.W. 161=32 M.L.T. 37=A.I.R. 1923 Mad. 422=44 M.L.J. 290.**

—S. 8—Business premises.

——Section 8 concerns property of the nature of residential property. Business premises, such as shops, offices and godowns are not included in the term "house property." (*Robinson, C.J. and Maung Kin, J.*). ROWE & CO. *v.* SECRETARY OF STATE. **67 I.C. 781=11 L.B.R. 299=1 Bur. L.J 46=A.I.R. 1921 L.B. 30.**

—S. 9—Business premises.

——Per *Gokul Prasad and Knox, JJ.* (*Piggott, J. dissenting*).—Under the Income-tax Act (1918) as it stands the allowance on account of the annual value of business premises owned and occupied by the assessee, is not liable to assessment at all (*Knox, Piggott and Gokul Prasad, JJ.*). *In the matter of* JOHN & CO., **43 All. 139=A.I.R. 1921 All 257 (F.B.).**

—S. 9—Expenses of under-writers.

——Money paid to the under-writers on an issue of certain preference shares by a Company is not an item of expenditure within S. 9 (2) (*ix*). (*Macleod, C.J. and Shah, J.*). TATA IRON & STEEL CO., LTD. *Inre* **64 I.C. 12=45 Bom. 1306=23 Bom.L.R. 576=A.I.R. 1921 Bom. 391.**

INCOME-TAX ACT (1918), S. 9—Losses.

—S. 9—Interpretation.

——The words "machinery or plant which has been sold or discarded as obsolete" in Cl. 7 of sub-S. 2 of S. 7 do not include the case of a sale of machinery which is not sold as obselete. The words "as obsolete" govern both 'discarded' and 'sold.' (*Schwabe, C.J. and Wallace, J.*). BOARD OF REVENUE MADRAS *v.* RAMANADHAN CHETTIAR. **79 I C. 608=19 M L.W 34=33 M.L.T. 252=1924 M.W.N. 142=A.I.R. 1924 Mad. 455=46 M.L.J. 42.**

——'*Profits.*'

'Profits' in S. 9 of the Act means chargeable income and must be computed from the gross income after allowing for the sums paid and debited as detailed in sub-S. (2).

The assessing officer is not entitled to allow any deduction for sums paid or debited other than those properly paid and debited as detailed in sub-S. (2). (*Macleod, C.J. and Shah, J.*). THE TATA INDUSTRIAL BANK LTD, *In re*. **66 I.C. 979=24 Bom. L.R. 118=46 Bom. 567=A.I.R. 1922 Bom, 75.**

——"*Owned.*"

Per *Robinson, C.J. and Maung Kin, J.* (*Heald, J.*, contra).—"Owned" does not mean only the full ultimate legal title but the allowance should also be granted to an assessee holding some lesser degree of ownership. The Burma Railways are owners of the Railway system and all its premises for the purpose of S. 9 (2) (*i*). (*Robinson, C.J., Maung Kin and Heald, JJ.*). BURMA RAILWAYS COMPANY *v.* SECRETARY OF STATE. **64 I.C. 801=11 L.B.R. 33=A.I.R. 1921 L.B. 9 (F.B.).**

—S. 9—Litigation expenses.

——*Expenses for protecting profits from income-tax and for refund of tax are not for earning profits.*

Expenditure incurred in employing accountants and lawyers in the matter of a dispute between assessees and Government as to the amount of excess profits duty payable for the year ending March 1920, the year in which Excess Profits Duty Act applied and similar expenses incurred in arriving at the income on which income-tax assessment was made or was to be made cannot be brought into account in arriving at the proper assessment of the income-tax. These monies are expended not for the purpose of earning profits at all but for the purpose of in one case, protecting profits from Government's claim to income-tax and in the other case of getting back from Government the excess profits duty claimed by or paid to the Government in respect of some past period. The amount paid to the Government in the nature of a fine arising out of a matter connected with the business and costs incurred in resisting the imposition of such fine are not charges that could be deducted. (*Schwabe, C.J. and Coutts-Trotter, J.*). SECRETARY, BOARD OF REVENUE *v.* B. MUNISWAMI CHETTY. **77 I. C. 39=18 M.L.W. 792=33 M.L.T. 122=47 Mad. 653=A.I.R. 1924 Mad. 203=45 M.L.J. 711 (S.B.).**

—S. 9—Losses.

——*Set off.*

Where the subsidiary business engaged in, is connected with the main business, and is a proper employment of the assessee's capital or labour, it is, for the purpose of assessment, to be treated as a part of the business of the firm. If the firm in one branch makes a loss, that loss may be set off against the profits made in its head office or other branches. (*Schwabe, C.J. and Coutts-Trotter, J.*). THE SECRETARY, BOARD OF REVENUE, LAND

INCOME-TAX ACT (1918), S. 9 — Managing company.

REVENUE AND SETTLEMENT, INCOME-TAX *v.* B. MUNISWAMI CHETTY & SON.
77 I.C. 39=18 M L.W. 792=33 M.L T. 122=47 Mad. 653=A.I.R. 1924 Mad. 205=45 M.L.J. 711 (S B.).

—S. 9 Managing company.

——Where the Secretary of State, as owner, had the B.N. Railway constructed and managed by the Company,

Held, that the liability to pay tax depends on the special agreement between the two parties and their relation to one another and that the Company is liable only in respect of its share of the surplus profit in return for its service as the managing Company. (*Woodroffe, Greaves and Ghose, JJ.*). B.N.RY. CO., LTD. *v.* THE SECRETARY OF STATE FOR INDIA. **70 I.C. 46=27 C.W.N. 34=49 Cal. 815=A.I.R. 1922 Cal. 503 (F.B.).**

—S. 11 – Interest.

——Interest paid by share-holders on loans from the Company is not liable to tax 14 A C. 351, *Foll.* (*Ayling, Coutts-Trotter and Ramesam, JJ.*). BOARD OF REVENUE *v.* MYLAPORE H.P. FUND.
76 I. C. 833=35 M.L.T. 60=20 M. L. W. 27=1923 M.W.N. 409=47 Mad. 1=A.I R. 1923 Mad 684 (S.B)

——*Compound interest added to principal on non payment is not taxable.*

Where compound interest is payable by a debtor to his creditor with yearly rests and the creditor adds to the principal amount the interest which has accrued due at the end of the year but does not receive payment either in cash or by counter-credit in the debtor's accounts, such interest is not taxable income. (*Ayling, Krishnan and Ramesam, JJ.*). BOARD OF REVENUE *v.* PYDAH VENKATACHALAPATHY GARU. **69 I.C. 405=16 M.L W. 174=1922 M W.N. 480=31 M L.T. 255=A.I.R. 1922 Mad. 426 (F.B.)**

—S. 12—Losses.

——Losses incurred by an assessee as a member of a company or firm are to be taken into consideration in fixing the amount of his total income. (*Baker, J. C. and Hallifax, A.J.C.*). BALKISHAN NATHAM *v.* COMMISSIONER OF INCOME-TAX.
78 I.C. 572=A.I.R. 1924 Nag. 153.

—S. 19—Meaning of section

——The meaning of S. 19 of the Indian Income tax Act, 1918, is that, if the total income actually received has been ascertained by the Collector, the Collector is to compute the income-tax and super-tax, which would have been payable if income-tax and super tax had been levied in the previous year with reference to the true amount of the income so ascertained and then the difference between the sum so computed and the aggregate of the sums already paid by the assessee for the previous year ought to be paid by, or refunded to the assessee as the case may be.

The section does not mean that if no super-tax or income-tax had been demanded or paid for the previous year on the provisional assessment, nothing shall be paid for the year of assessment. (*Schwabe, C. J. and Waller, J.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* M. S. S CHIDAMBARAM CHETTIAR. **79 I. C. 798=19 M.L W. 129=1924 M. W. N. 35=A. I. R. 1924 Mad. 485.**

——Section 19 simply means that if at the end of the year it is found that the amount at which income was assessed has been either exceeded or reduced, there is a right and a duty to deal with the matter accordingly. (*Schwabe, C.J., Oldfield and Coutts-Trotter, JJ.*). SECY., BOARD OF REVENUE *v.* MD. S.H. MEAN SAHIB & CO. **68 I.C. 655=45 Mad. 977=16 M.L.W. 333=1922 M.W.N. 583=A.I.R. 1923 Mad. 34=43 M.L.J. 434 (F.B.).**

—S. 25—Scope of.

——Section 34 of the Income tax Act, 1922, re-enacts S. 25 of the Act of 1918 and it applies not only to the present and future but also the past. (*Schwabe, C.J. and Waller, J.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* N. S. S. CHIDAMBARAM CHETTIAR. **79 I.C. 798=19 M L.W. 129=1924 M W N. 35=A.I.R. 1924 Mad. 485.**

—S. 26—Interpretation – Demand.

——The word "demand" covers a case of enhancement by the Commissioner under S. 22 or by a Chief Revenue Authority under S. 23 or under S. 24 where the Collector or the Commissioner orders a man to pay double the rate. It applies to a determination of a sum or extra sum to be payable by the assessee in such manner as to bind the assessee. (*Rankin, C. J. and Mitter, J.*). TRICUMCHAND DANSING *v.* CHIEF REVENUE AUTHORITY, BENGAL. **110 I.C. 124=55 Cal. 565=32 C.W.N. 287=A.I.R. 1928 Cal. 837.**

—S. 26—Scope.

——*Section does not provide for appeal to Commissioner.*

Section 26 only relates to a mistake in the demand of any assessment, and cannot enable the discontented assessee, who has paid the amount demanded from him, to re-open the question of the assessment. The section provides for the rectification of mistakes caused by the demand not corresponding to the assessment, and does not provide for an appeal to the Commissioner from the order of the Collector under S. 26 either rectifying the mistake or refusing to rectify a mistake on an application made by the assessee. (*Macleod, C. J. and Coyajee, J.*). THE JUBILEE MILLS, LTD. *v.* THE COMMISSIONER OF INCOME TAX. **89 I.C. 595=27 Bom. L.R. 400=A.I.R 1925 Bom. 257.**

—S. 26—Time for applying.

——An application under S. 26 made more than a year from the date of original demand but within a year from the revised order of assessment is within time. (*Rankin, C. J. and Mitter, J.*). TRICUMCHAND DANSING *v.* CHIEF REVENUE AUTHORITY, BENGAL. **110 I.C. 124=55 Cal. 565=32 C.W.N. 287=A. I R. 1928 Cal. 837.**

—S. 31—Company and share-holder.

——Per *Woodroffe and Greaves, JJ.* (contra *Ghose, J.*)—A company is not an agent within the meaning of Ss. 31 and 34 of the non-resident shareholders as it is not in receipt of any income of the shareholders within the meaning of S. 31. (*Woodroffe, Greaves and Ghose, JJ.*). IMPERIAL TOBACCO COMPANY OF INDIA, LTD. *v.* SECY. OF STATE FOR INDIA. **67 I.C. 902=49 Cal. 721=26 C.W.N. 745=37 C.L.J. 257=A.I.R. 1922 Cal. 454 (S.B.).**

—S. 33—English Law and Indian Law.

——*Difference between.*

Per Curiam.—Under the English Act it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts, however, in the case of any person residing out of British India all profits or gains accruing or arising to such person whether directly or indirectly through or from any business connexion in British India shall be deemed to be income accruing or arising within British India. There is no such provision in the English Act and that distinguishes the English Acts and the cases.

INCOME-TAX ACT (1918), S. 33—Foreign company.

decided thereunder from the Indian Acts. 5 H. and N. 71; (1896) A C. 325; (1920) 3 K. B. 275, *Ref.* (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECY. OF STATE.

83 I.C 273=40 C.L.J. 110=28 C.W.N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34.

—S. 33—Foreign company.

——*Per Curiam*—Where Company was incorporated in America with its headquarters there and had a branch at Calcutta purely for buying purposes,

Held, it was liable to assessment. A. I. R. 1923 Mad. 422, *Dissl. from.* (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECY. OF STATE. **83 I.C. 273=40 C.L.J. 110=28 C.W N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34.**

—S. 33—Object.

——The latter part of S. 33 (1) relating to assessment in the agent's name, merely provides machinery by which the tax can be levied where the non-resident cannot himself be got at. (*Wallis, C. J., Ayling and Krishnan, JJ.*). COMMISSIONER OF INCOME-TAX *v.* BHANJEE RANJEE & CO.

64 I.C. 239=44 Mad. 773=14 M.L.W. 75=1921 M.W.N. 531= A.I.R. 1921 Mad. 212=41 M.L.J. 191 (S.B.).

—S. 33—Scope of.

—— *Foreign firm purchasing in British India as agents are not liable.*

Section 33 (1) is not a charging section at all, but a machinery section and is not intended to impose any taxation upon any income which would not otherwise be liable to tax, but points to the method of collecting the income-tax, where a person whose income is to be taxed is not himself available.

The condition precedent to assessability is business in British India and not merely a business connection in British India and it is not laid down in the Act that the two phrases are identical in meaning. The test is :—

Is the non resident firm by its agency out here in British India, making profits in British India which pass to it through the hands of its agent ?

If it is, then S. 33 (1) applies. If not, not S. 33 (1) was not intended in any way to enlarge the scope of S. 5 or to bring into the net any income accruing outside British India merely because that income was received through or from a business connection in British India. (*Schwabe, C. J. and Wallace. J.*). THE SECRETARY, BOARD OF REVENUE, INCOME-TAX, MADRAS *v.* THE MADRAS EXPORT COMPANY, MADRAS. **71 I.C. 756=17 M L W. 161=32 M. L. T. 37=46 Mad. 360=A.I.R. 1923 Mad. 422=44 M.L.J. 290.**

——It makes no difference with regard to S 33 (1) whether the non resident entitled to the income is a British subject or a foreigner. (*Wallis, C. J., Ayling and Krishnan, JJ.*). COMMISSIONER OF INCOME TAX *v.* BHANJEE RANJEE & CO.

64 I C. 239=44 Mad. 773=14 M. L. W. 75=1921 M. W. N. 531=A.I.R. 1921 Mad. 212=41 M. L. J. 191 (S.B.).

—S. 36—Attachment.

——There is nothing in the Income-tax Act or the Land Revenue Code which renders it obligatory for the person who is actually effecting the attachment to give a receipt. (*Kennedy, J.C. and Aston, A.J.C.*). EMPEROR *v.* GULABRAI.

83 I.C. 899=16 S. L. R. 161=26 Cr. L.J. 195=A. I. R. 1921 Sind 51.

INCOME-TAX ACT (1918), S. 51—Appeal to Privy Council.

—S. 36—Warrant of distraint.

——Under the Income tax Act no warrant is necessary at all for effecting the distraint of the defaulters' movable property under S 36 as arrears of income-tax are to be recovered as arrears of land revenue and under S. 154 of the Land Revenue Code no warrant is necessary to enable a Tapedar or a Munshi who can read and write and who is acting under the orders of the Collector or the Mahalkari to distrain.

Although the Income-tax Act provides a form of warrant, that is for the convenience and instructions for the Revenue Officers and there is nothing in the Income-tax Act which renders the form obligatory. Of course, if a warrant is issued it is expedient to issue it in the form as appended to the Act. But this does not take away from the Collector the right to collect the income tax without warrant (*Kennedy, J. C. and Aston, A. J. C.*). EMPEROR *v.* GULABRAI. **83 I. C. 899=26 Cr. L. J. 195=16 S. L. R. 161=A.I.R. 1921 Sind 51.**

—S. 40—Jurisdiction.

——A charge under S. 177, Penal Code, within the meaning of S. 40 of the Income tax Act can be legally tried only at the place where the verification is made. (*Oldfield and Ramesam, JJ.*), MOHIDIN PAKKIRI MARAKAYAR, *In re.* **68 I.C. 843=45 Mad. 839=16 M L W 335=31 M.L.T. 282=1922 M.W.N. 690=23 Cr.L.J. 619=A.I.R. 1923 Mad. 50=43 M.L.J. 475.**

—S. 43—Total profits.

—— In arriving at the "total profits" for the purposes of the rule, income-tax payable at stations outside British India is not to be deducted. (*Wallis, C. J., Oldfield and Kumaraswami Sastri, JJ.*). CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH CO., LTD. **63 I. C. 485=44 Mad. 489=13 M.L.W. 468=1921 M.W.N. 296=A.I.R. 1921 Mad. 298=40 M.L.J. 560 (S.B.).**

—S. 46—Mode of recovery.

—— Where a Police Officer attached monies in a shop in pursuance of a distress warrant issued by the Collector for recovery of income-tax, the Collector may on receipt of a certificate from the Income-tax Officer recover the amount specified therein as if it were an arrear of land revenue, and in areas notified by the Commissioner arrears may also be recovered by any process enforceable for the recovery of any arrear of any Municipal tax or local rate. But in the absence of orders under S. 46 (3) (4) the Collector cannot issue distress warrant for realisation of arrears of income-tax. (*Ross, J.*). JAIRAM SAHU *v.* KING-EMPEROR. **72 I.C. 954=4 Pat.L.T. 171=1923 P.H.C.C. 111=1 Pat. L.R. Cr. 68=24 Cr. L.J. 490=A.I.R. 1923 Pat. 388.**

—S. 46—Mode of service.

—— S. 46 of the earlier Act does not require that service of a notice must be made personally by the officer of the Court himself. It does not exclude any of the other forms of service permitted by O. 5 of the C. P. Code. (*Hallifax, A J.C.*). THE LOCAL GOVERNMENT *v.* ISMAIL BHAI. **68 I.C. 623=23 Cr. L. J. 591=A I.R. 1922 Nag. 187.**

—S. 51—Appeal to Privy Council.

——A decision under S. 51 of the Income-tax Act of 1918 is merely advisory, and not in the

INCOME-TAX ACT (1918), S. 51—Appeal to Privy Council.

proper or legal sense of the term final, and therefore no appeal lies to His Majesty in Council. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **84. I.C. 31= 51 Cal. 504=A.I.R. 1924 Cal. 668.**

——Subject to the provisions of Ss. 109 and 110 C. P. Code, there is a right of appeal to His Majesty in Council against the decision of the High Court on a reference to it under S. 51 of the Indian Income-tax Act, 40 Cal. 21, *Dist.* (*Schwabe, C.J. and Coutts Trotter, J.*). SECRETARY, BOARD OF REVENUE *v.* MADRAS EXPORT COMPANY. **76 I.C. 375=18 M.L.W. 392=A.I.R. 1924 Mad. 63.**

——*Order under S. 51—No appeal lies to Privy Council as it is not a final order—Appeal to Privy Council—General right—Principles discussed.*

No statute, Imperial or Indian, is to be found, giving expressly, or by implication, a right of appeal, either with or without the leave of the High Court of Bombay, to His Majesty in Council from a decision or order made, or judgment given by the High Court under the provisions of the 51st section of the Indian Income-tax Act of 1918, neither can any such Statute be found giving a general right of appeal to His Majesty in Council from the orders or judgments of any class of Courts, as the 3rd section of the English Appellate Jurisdiction Act, 1876, gives a general right of appeal to the House of Lords from the judgments or orders of the Courts therein mentioned.

The words "original jurisdiction" in Cl. 39 of Letters Patent (Bom.) are only used in contradistinction to the words "made on appeal" mentioned earlier in the clause. The appeal is competent if the decision and order of the High Court under S. 51 of the Income-tax Act are within Cl. 39 of the Letters Patent. It must be either a final judgment or a final decree or a final order. A final judgment as understood in English litigation is nothing more than that there should be a proper *litis contestatio* and a final adjudication between the parties to it on the merits.

The fact that the functionary who states a special case for the opinion of the Court is or is not bound to act upon it, does not necessarily determine whether the order and decision of the Court is or is not merely advisory. In order to determine whether an order made by a Court on a case stated is final or merely advisory, it is necessary to examine closely the language of the enactment, whether statute, rule or order, giving the power to state a case.

When a case is stated for the "opinion" of the Court, that would serve *prima facie* to indicate that the order made by the Court was only advisory. Where the case is referred for the "decision" or "determination" of a question, there is a *prima facie* difficulty in holding that the order embodying this determination or decision is advisory, but the use of these words or one of them is not decisive.

The decision, judgment or order made by the Court under S. 51 of the Income-tax Act is merely advisory and not in the proper and legal sense of the term final, and an appeal from it is incompetent. (*Lord Atkinson.*) TATA IRON & STEEL CO. *v.* CHIEF REVENUE AUTHORITY. **74 I.C. 469= 4 L.R.P.C. 170= 1923 M W.N. 603= 25 Bom. L.R. 908=21 A.L.J. 675=50 I.A. 212= 18 M.L.W. 372= 47 Bom. 724=39 C.L.J. 16= 28 C.W.N. 307=33 M L.T. 301= A.I.R. 1923 P.C. 148=45 M.L.J. 295 (P.C.).**

INCOME-TAX ACT (1918), S. 51—Duty of Revenue Authority to state a case.

—S. 51—Application for refund.

——An application for refund of income-tax already paid by mistake is not in the course of assessment under the Act and it does not come within S 9. (*Macleod, C.J. and Coyajee, J.*). THE JUBILEE MILLS, LTD. *v.* THE COMMISSIONER OF INCOME-TAX. **89 I.C. 595=27 Bom. L.R. 400= A.I.R. 1925 Bom. 257.**

—S. 51—Contents of reference.

——*Obiter*—Whilst it is quite proper for Income-tax Commissioner to state his opinion upon the questions involved, it is his first duty to state clearly and fully the material facts admitted or proved in evidence before him. (*Dawson Miller, C.J. and Foster, J.*). RAJA SHIVA PRASAD SINGH *v.* KING-EMPEROR. **82 I C. 653=5 P L.T. 497= 1924 P. H. C. C. 234=2 Pat. L.R.Cr. 233= 4 Pat. 73=A.I.R. 1924 Pat. 679.**

—S. 51—Discretion of Revenue Authority.

——*Chief Revenue Authority is entitled, in the exercise of its discretion, to refuse to make a reference to the High Court.*

Under S. 51 the Chief Revenue Authority is authorized to come to the decision that reference to High Court is unnecessary. It is not incumbent on the Chief Revenue Authority to m reference whenever an application fo· a reference is made. But S. 51 is rather too wide in its terms. There certainly might be cases in which, if the application for a reference were refused, the Court might consider that it was a case in which it was incumbent for the Chief Revenue Authority to make the reference. (*Macleod, C. J. and Fawcett, J.*). *In the matter of* SPECIFIC RELIEF ACT. **45 Bom. 1064=23 Bom. 609=63 I.C. 775= A.I.R. 1921 Bom. 452.**

—S. 51—Duty of Revenue Authority to state a case.

——*Principles discussed.*

If the assessee applies for a case, the Authority must state it, unless he can say that it is frivolous or unnecessary. He is not to wait for the Court to order him to do it; it will be a misfeasance and a breach of the statutory duty if he does not do it. The word "may" in the section does not mean "shall". Neither are the words "it shall be lawful" those of compulsion. Only the capacity or authority or power is given to the authority. But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it. (*Julius* v. *Bishop of Oxford*, 5 A.C. 214, 222, *Foll.*).

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.

Supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the Court to control him and to order him to state a case. If there is a point of law it ought to be decided in a regular manner and upon proper materials.

Ordering a case to be stated does not depend upon the question whether the Chief Revenue

INCOME-TAX ACT (1918), S. 51—Nature of High Court's jurisdiction.

Authority had reasonable grounds for being satisfied that a reference was unnecessary.

The question whether capital placed in a particular investment was capital employed in the business is not a pure question of fact, upon which the decision of the Income-tax Commissioner would be conclusive but is a question of law or of mixed law and fact, the decision of the Revenue Authority, upon which would be open to review. (*Lord Phillimore.*) ALCOCK & CO. *v.* REVENUE AUTHORITY. **75 I. C. 392=23 Bom. L.R. 920=21 A.L.J. 689=50 I.A. 227=1923 M.W.N. 557=47 Bom. 742=33 M.L.T. 267=18 M.L.W. 918=4 L.R.P.C. 188=39 C. L. J. 302=28 C.W.N. 762=A.I.R. 1923 P.C. 133=45 M.L.J. 592 (P.C.).**

—S. 51—Nature of High Court's jurisdiction.

——Nature of High Court's jurisdiction is appellate and not original—Procedure applicable to appeals from mofussil and from Original Side respectively must be applied according as assessee resides within or outside ordinary original jurisdiction. (*Mookerjee, A.C.J., Fletcher and Walmsley, JJ.*). BIRENDRA KISHOR *v.* SECY. OF STATE. **60 I.C. 112=48 Cal. 766=25 C.W.N. 80=A.I.R. 1921 Cal. 262 (F.B.).**

—S. 51—Necessity of reference.

——It would be open to the Court to consider the grounds on which the Chief Revenue Authority was satisfied that a reference was unnecessary (*Macleod, C.J. and Fawcett, J.*) *In the matter of* THE EXCESS PROFITS DUTY ACT, 1919. **68 I.C. 964=45 Bom. 881=23 Bom. L.R. 139=A.I.R. 1921 Bom. 119.**

——If to the Revenue Authority, which is entrusted with the assessment, is left, the duty of deciding whether and to what extent it requires assistance in making it, full effect will be given to each part of the language employed in the Income-tax Act. (*Wallis, C. J, and Oldfield, J.*). CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* ANANTAPUR GOLD MINES, LTD. **64 I.C. 682=44 Mad. 718=14 M.L.W. 108=1921 M.W N. 502=A.I.R. 1921 Mad. 524=41 M.L.J. 177.**

—S. 51—Questions of fact and law.

——*Question as to nature of business of company is one of fact.*

Under S. 51 (1) power is given to the High Court to decide questions which have arisen with reference to the interpretation of any of the provisions of the Act or of any rule thereunder. No power is given to the High Court to deal with questions of fact by way of appeal against decisions of the Revenue Authorities. What is the business of a company is merely a question of fact. (*Robinson, C.J., Maung Kin and Pratt, JJ.*). AHLONE LAND CO., LTD. *v.* SECRETARY OF STATE. **67 I.C. 633=11 L.B.R. 309=1 Bur. L.J. 53=A.I.R. 1922 L.B. 35 (F.B.).**

——The question whether income can be said to accrue or arise in British India would ordinarily be a question of fact, but whether income accruing outside British India can be taxed as accruing in British India because the company is registered in British India is a question of law and falls within the purview of S. 51 of the Indian Income-tax Act. (*Macleod, C.J. and Shah, J.*). THE AURANGABAD MILLS, LTD., *In re.* **64 I.C. 9=45 Bom. 1286=23 Bom. L.R. 570=A.I.R. 1921 Bom. 159.**

—S. 51—Right to begin.

——The objector who questions the assessment should begin and should have the right to reply. *Marquis of Chandos* v. *Inland Revenue Commissioners*, (1851) 16 Exch. 464 and *Drake* v. *Attorney-General*, (1843) 10 Cl. and F. 257, *Foll.* (*Mookerjee, Ag. C.J., Fletcher and Chaudhuri, JJ.*). KILLING VALLEY TEA CO., LTD. *v.* SECY. OF STATE. **61 I.C 107=48 Cal. 161=A.I.R. 1921 Cal. 40 (F.B.).**

—S. 51—Scope of.

——Where a reference is made under S. 51 in pursuance of an order of the High Court under S 45 of the Specific Relief Act, and the latter order has not been appealed against, it cannot be objected at the hearing of the reference that the order under S. 45 was made without jurisdiction. (*Wallis, C.J., Ayling and Krishnan, JJ.*). DEPUTY COMMR. AND SECY. TO THE CHIEF COMMR. OF INCOME-TAX, MADRAS *v.* ABDULLA SAHIB & CO. **70 I.C. 30=14 M.L.W. 413=A.I.R. 1921 Mad. 717 (F.B.).**

——The effect of S. 51 is not to partially repeal S. 106 even to the limited extent of allowing the High Court to exercise original jurisdiction when there are allegations of bad faith. (*Wallis, C.J. and Oldfield, J.*). CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* NORTH ANANTAPUR GOLD MINES, LTD. **64 I. C. 682=44 Mad. 718=14 M.L.W 108=1921 M W.N. 502=A. I. R. 1921 Mad. 524=41 M. L. J. 177.**

—S. 51—Time for reference.

——An application to the Chief Revenue Authority to refer a question to the High Court under S. 51 must be made in the course of assessment, and before the disposal of the case. (*Macleod, C.J. and Shah, J.*). PANA LAL GANESHDAS, *In re* **64 I.C. 610=46 Bom. 707=23 Bom. L.R. 1267=A.I.R. 1922 Bom. 345.**

—S. 51—Unpaid compound interest.

——Compound interest added to principal on non-payment is not taxable. (*Ayling, Krishnan and Ramesam, JJ.*). CHIEF COMMISSIONER OF INCOME-TAX *v.* VENKATACHALAPATHY GARU. **69 I.C. 405=16 M.L.W. 174=1922 M W.N. 430=31 M.L T. 255=A.I.R. 1922 Mad. 426 (F.B.).**

—S. 52—Jurisdiction of Civil Court.

——Unless an Income-tax Officer assesses something which is not an income or levies an assessment on classes of income exempted by the Act, he does not overstep the limits of his jurisdiction and his assessment does not cease to be under the Act within the meaning of S. 52 of the Act of 1918. Where an Income-tax Officer purports to tax an income and income only his order is one under the Income-tax Act and if it is wrong it can be rectified on appeal to the Commissioner. There is no jurisdiction in a Civil Court in such a case to question the propriety of the order (S. 52 of the Act). (*Raymond and Kennedy, A.J.Cs.*). DAYARAM RAMDAS *v.* SECRETARY OF STATE. **78 I C. 950=18 S.L.R. 68=A.I.R. 1923 Sind 130.**

—S. 52—Reference to High Court.

——Section 52 of the Income-tax Act prohibits among other things, any application against the Chief Revenue Authority under S. 45 of the Specific Relief Act directing him to make a reference to the High Court under S. 51 of the Income-tax Act, 1918. (*Wallis, C.J. and Oldfield, J.*). CHIEF COMMR. OF INCOME TAX, MADRAS *v.* ANANTAPUR GOLD MINES, LTD. **64 I.C. 682=44 Mad. 718=14 M.L.W. 108=1921 M.W.N. 502=A.I.R. 1921 Mad. 524=41 M.L.J. 177.**

—S. 52—Wrong assessment.

——*Civil suit—Maintainability.*

Where a certain income is outside the scope of the Act, such as agricultural income or income not

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earned in or brought into British India, any assessment in respect of such income would be outside the scope of the Act and a civil suit to recover it would not be barred by reason of S. 52. (*Devadoss and Mackay, JJ.*). SETHUPATHI AVERGAL *v.* SECY. OF STATE **114 I.C. 829=52 Mad. 12=28 M.L.W. 667=A.I.R. 1929 Mad. 179=55 M.L.J. 770.**

INCOME-TAX ACT (XI of 1922).

—Applicability.

——— Proceedings started under the Act of 1918 but continued under the Act of 1922—Act of 1918 was applicable to the proceedings. (*Baker, J.C.*). ARJUN KHEMJI & CO., *In re.* **80 I C. 362=A.I.R. 1925 Nag. 65.**

—Application of law.

——— If the Crown, seeking to recover tax, cannot bring the subject within the letter of the law, the subject is free. But the Court cannot undertake, out of its own notions of what is fair, to adapt or re-arrange the machinery of the Act upon a matter of such characterand importance as maintenance allowance. *Partington* v. *Attorney General*, (1869) 4 H.L. 100, *Rel. on.* (*Rankin, C.J., Ghose and Buckland, JJ.*). BIJAY SINGH DUDHURIA., *In re* **57 Cal. 918=A.I.R. 1930 Cal. 641 (F.B.).**

—Avoiding tax.

——— Any subject of the State is entitled to escape paying taxes if he can devise a lawful method of doing so but by dividing what is in fact a single transaction between two documents he does not achieve the device which he seeks; nor does he change the nature of the transaction. (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **123 I.C. 617=9 Pat. 194=A.I.R. 1930 Pat. 33 (F.B.).**

——— *Ashworth, J.*—It is not unlawful to avoid, by any means not forbidden by law, rendering oneself liable to the payment of income-tax, though it is an offence by false return or by concealment to evade payment of income-tax. *Partington* v. *Attorney General*, (1869) 4 H.L. 100, *Foll.* (*Sulaiman, Banerji and Ashworth, JJ.*). *In the matter of* MAKUND SARUP. **107 I.C. 683=50 All. 495=26 A.L.J. 280=A.I.R. 1928 All. 81 (F.B.).**

—Construction.

——— *Equitable construction cannot be placed upon Taxing Act such as Income-tax Act.*

The scope of Income-tax Act cannot be extended by analogy, nor can a beneficient or equitable construction be placed upon it in order to prevent a real or supposed anomaly, because such a construction is not admissible in a taxing Act. Hence if the Crown cannot bring the subject within the letter of the statute, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be. (1922) 1 A C 417 and *Partington* v. *Attorney-General*, (1869) L.R. 4 H. L 100, *Foll.* (*Shadi Lal, C.J., Broadway, Zafar Ali, Tek Chand and Jai Lal, JJ.*). (BHAGAT) JIWAN DAS *v.* INCOME-TAX COMMISSIONER, LAHORE. **117 I. C. 657=10 Lah. 657=30 P.L.R. 489=A.I.R. 1929 Lah. 609.**

——— The Income-tax Act like other statutes must be read according to the ordinary and natural construction of the words with only such aid as is afforded from within the four corners of the statute itself read as a whole. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). KING-EMPEROR *v.* RAJAH PROBHAT CHANDRA. **102 I.C. 845=54 Cal. 863=45 C L J. 323=31 C.W.N. 765=A.I.R. 1927 Cal. 432 (F.B.).**

INCOME-TAX ACT (1922) — Permanent Settlement Regulation.

—Fixed capital.

——— 'Fixed capital' is capital which has been expended not merely for the production of profits in any given year but for the production of profits over an indefinite number of years. (*Le Rossignol and Martineau, JJ.*). PUNJAB NATIONAL BANK *v.* EMPEROR. **96 I.C. 380=7 Lah. 227=27 Pat. L.R. 416=A.I.R. 1926 Lah. 373.**

—Interpretation.

——— "*Income.*"

Income-tax Act as its name denotes deals with the taxation of "income" under several heads and one is "property": S 6 (3). So far as property is concerned notional income is taken. In other cases "income" means actual money or money's worth. *Tenant* v. *Smith*, (1892) A.C. 150, *Dist.* (*Courtney-Terrell, C.J., Ross, Wort, Kulwant Sahay and Macpherson, JJ.*). RAJENDRA *v.* COMMR. OF INCOME-TAX. **118 I.C. 53=10 P.L.T. 505=9 Pat 1=A.I.R. 1929 Pat. 449 (F.B.).**

—Liability to taxation.

——— *Basis of.*

The Indian law bases the liability of a person to taxation on the place where the income accrues or arises or is received, but not on the place of his residence. (*Shadi Lal, C.J., Broadway, Zafar Ali, Tek Chand and Jai Lal, JJ.*). JIWAN DAS *v.* INCOME-TAX COMMR., LAHORE. **117 I.C. 657=10 Lah. 657=30 Pat.L.R 489=A. I.R. 1929 Lah. 609 (F.B.).**

—Motives of assessee.

——— It is not proper to take the motives of the assessee, in bringing about a particular arrangement, into consideration, and a subject is entitled if he can, in any legal manner, to circumvent the incidents of a particular taxing or financing Act. (*Coutts-Trotter, C.J., Wallace, Beasley, Jackson and Srinivasa Aiyangar, JJ.*) COMMR OF INCOME-TAX *v.* IBRAHIMSA. **110 I C. 207=51 Mad 455=1928 M W. N. 312=27 M L W 601=A I R. 1928 Mad. 543=54 M.L.J. 524 (F.B.).**

—Notice.

——— Nowhere in the Act is there any provision making it necessary for the officer serving the notice to state the section under which a notice is served or to state the section under which his powers have been granted. (*Courtney-Terrell, C.J., Das, Adami, Wort and Allanson, JJ.*). RAM KHELAWAN UGAM LAL *v.* COMMR. OF INCOME-TAX. **114 I.C. 211=7 Pat 852=9 P.L T. 653=A.I R 1928 Pat. 529 (F.B.).**

— Permanent Settlement Regulation.

———*If repugnant to each other.*

The subject matter of the two legislations Bengal Regulation (I of 1793) and Income-tax Act are different; the later statute is on a subject which is financially and economically different from that dealt with in the statute of 1793; one deals with revenue assessed on lands, the other is a tax on profits.

(*Mukerji, J. and Suhrawardy, J., concurring*). —It may not perhaps be right as a matter or method of construction in order to construe the Income-tax Act (XI of 1922) to put it side by side with Regulation 1 of 1793 without taking into account the events that have have happened during and the changes that have been wrought by the long years that separate the two enactments. If the income tax was sought to be levied upon Permanent Settlement Zemindars while Regulation I of 1793 was yet in sight it would perhaps have been understood as having taken away from the fixity

INCOME-TAX ACT (1922) — Permanent Settlement Regulation.

of the State demand and altered the income and profits the unalterable character of which the Regulation had assured. The two enactments are not necessarily inconsistent or repugnant to each other and the Permanent Settlement Regulation 1 of 1793 may very well stand as an exceptional proviso under the Income tax Act, XI of 1922. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). EMPEROR *v.* RAJAH PROBHAT CHANDRA. **102 I.C. 845=54 Cal. 863=45 C. L. J. 373=31 C.W.N. 765=A. I. R. 1927 Cal. 432 (F.B.).**

——Per *Rankin, J.* (Contra *Page, J.*)—Notwithstanding Permanent Settlement Regulation non-agricultural income from permanently settled estates is not exempt from Income-tax Act.

Legislature has freely legislated so as to prevent zamindars from exacting excessive rents, imposing illegal cases, imposing undesirable conditions of tenancy, evicting tenants for inadequate reason, and so forth; this is no more than an exercise of the power expressly reserved by the Regulation. The Bengal Act X of 1859 and the Bengal Tenancy Act of 1885 represent this exercise of power. Incomes from fisheries and pasturage in permanently settled estates are not exempt from Income-tax Act notwithstanding Permanent Settlement Regulation of 1893.

Per *Page, J.*—"The Legislature is entitled to abrogate, modify or destroy any right or privilege even if it be of its own creation. Although it is competent to the Legislature to withdraw or modify an exemption from taxation by a subsequent enactment, this can be done expressly or in general terms or by implication." (1922) 45 Mad. 518, *Foll. partly.* (1916) 2 A.C. 429; (1920) 3 K.B. 109, *Foll.* Where the intention of the Legislature to abrogate or modify existing rights is manifest as a necessary implication from the language used in the repealing statute, it matters not, that the existing rights are not therein expressly and specifically modified or cancelled. The income derived from fisheries and the income derived from land used for stacking timber which accrues from the permanently settled estates cannot lawfully be charged with income-tax. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR., **84 I.C. 31=51 Cal. 504=A.I.R. 1924 Cal. 668.**

—S. 1—Avoiding tax.

——A man who is liable to pay a tax is entitled to take shelter under all devices which he may adopt within the law to avoid payment of the tax. Indeed the whole scheme of the Income-tax Act contemplates that people liable to be assessed with income-tax were likely to shirk making true disclosures and if they did go wrong, they were to be treated with more or less leniency. (*Mukerji and Nidmatullah, JJ.*). GANGA SAGAR *v.* EMPEROR. **120 I.C. 435=1930 Cr. L.J. 26=31 Cr. A. 88=1929 Cr. C. 647=A.I.R. 1929 All. 919.**

—S. 2—Agricultural income.

——Where the father, a zamindar, under his will directed his executrix to pay a sum of money per month to his daughter, but the sum not having been paid fell into arrears and was recovered by the daughter by obtaining a decree, the sum so recovered not being agricultural income, was not exempt from assessment. (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). LAKSHMI NARASAYAMMA RAO *v.* COMMR. OF INCOME-TAX. **119 I.C. 387=52 Mad. 827=30 M.L.W. 184=1929 M.W.N. 573=A.I.R. 1929 Mad. 598=57 M.L.J. 36 (S.B.).**

INCOME-TAX ACT (1922), S. 2—Market.

——*Mutation fees.*

Mutation fees paid by the tenant to the landlord as such upon succeeding to the holding or tenure by inheritance is income derived from land used for agricultural purposes within S. 2. The fact that the realization of these fees is illegal or unenforceable is immaterial. A.I.R. 1928 Pat. 468, *Affirmed.* (*Courtney Terrell, C.J., Ross, Wort, Kulwant Sahay and Macpherson, JJ.*). RAJENDRA *v.* COMMR. OF INCOME-TAX. **118 I. C. 893=10 P L.T. 505=9 Pat. 1=A.I.R. 1929 Pat. 449 (F.B.).**

——*Nazar or salami.*

Salami or nazar paid by a tenant to a landlord for his recognition as a tenant of a non-transferable holding is rent or revenue within the meaning of S. 2 (1) (*a*) and is therefore exempt from taxation: A.I.R. 1925 Cal. 929, *Foll.*; A.I.R. 1921 Cal. 262, *Disappr.* (*Dawson Miller, C.J. and Ross, J.*). MAHARAJADHIRAJ OF DARBHANGA *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **111 I.C. 638=7 Pat. 550=9 P.L.T. 439=A.I.R. 1928 Pat. 468.**

——Fees received from land used for storing purchases of crops (*paiath*) do not come within the definition of "agricultural income" as given in S. 2, nor does punyaha nazar or nazar paid by tenants of agricultural holdings at the beginning of the zemindari year, nor does nazar paid for petitions presented by the zamindar dealing with questions of succession. But nazar paid for recognition of succession or partition or for settlement is an income derived from land. (*Rankin, C.J. and Mazumdar, J.*). EMPEROR *v.* PROBHAT CHANDRA. **106 I. C. 353=31 C.W.N. 1047=A.I.R. 1927 Cal. 793.**

——*Nazar or salami.*

Per a *majority of the F.B., Walmsley, J. dissenting.*—Nazar or salami paid by a tenant to landlord for the recognition of a non-transferable holding is rent or revenue within the meaning of the expression as it occurs in S. 2 (1) (*a*) and is exempt from assessment to income-tax by virtue of the provisions of S. 4 (3) (*viii*) of the same Act: 48 Cal. 766, *Overruled.* (*Walmsley, Greaves, C.C. Ghose, B.B. Ghose and Mukerji, JJ.*). NAWABZADI MEHAR BANO KHANUM *v.* SECY. OF STATE FOR INDIA. **89 I.C. 997=42 C.L.J. 151=29 C.W.N. 989=53 Cal. 34=A.I.R. 1925 Cal. 949 (F.B.).**

——*Income from pasturage.*

Income from pasturage is derived from land which is used for "agricultural purposes" and is, therefore, in the case of a permanently settled estate, within the exemption given by S. 4, sub-S. (3), cl. (*viii*) of the Act to "agricultural income" as defined by S. 2, sub-S. (1), cl. (a). Even to income derived from fees realised from graziers who graze their cattle in the forest areas and waste land there is nothing to render inapplicable the definition of "agricultural income" contained in cl. (*a*). The income-tax is one tax, and income assessed under one schedule cannot be assessed all over again under another. There is no legal presumption of a general character against "double taxation" in any wider sense. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **84 I.C. 31=51 Cal. 504=A.I.R. 1924 Cal. 668.**

—S. 2—Market.

——The word "market" in the section implies a real centre of economic exchange. The purchase by jails of aloe leaves for preparing fibre out of them through prisoners by crude methods is merely an artificial condition having no relation to a market for agricultural produce. (*Courtney Terrell,*

INCOME-TAX ACT (1922), S. 2 (1) (c)—House for agricultural purposes.

C.J., Das and Kulwant Sahay, JJ.). J.M. CASEY *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **123 I.C. 610=9 Pat. 185= A.I.R. 1930 Pat. 44 (S. B.).**

—S. 2 (1) (c)—House for agricultural purposes.

——It is open to the income-tax authorities to hold that a particular building on account of its size or situation is not a building which the receiver of rent or revenue does require by reason of his connexion with the land as a dwelling-house, and in that case it would be open to them to assess the income from the entire building, but the moment they find that the house is required by the receiver of the rent or revenue by reason of his connexion with the land as a dwelling-house or a store-house or other out building, it is beyond their jurisdiction to determine what portion of the building is or should be required by the assessee as such receiver of the rent or revenue. A.I.R. 1928 Pat. 468, *Affirmed.* (*Courtney-Terrell, C.J., Ross, Wort, Kulwant Sahay and Macpherson, JJ.*). RAJENDRA *v.* COMMR., INCOME-TAX. **118 I.C. 593= 10 P.L.T. 505=9 Pat. 1= A.I.R. 1929 Pat. 449 (F.B.).**

——An assessee by his connexion with agricultural land requiring a dwel linghouse—Such house is exempt from income-tax and the Commissioner cannot consider whether the house is more or less than that actually required. (*Dawson Miller, C.J. and Ross, J.*). MAHARAJADHIRAJ OF DARBHANGA *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **111 I.C. 638=7 Pat. 550=9 P.L.T. 439= A.I.R. 1928 Pat. 468.**

—S. 2 (1) (c)—Interpretation.

——*Terms "requires" and "by reason of his connexion with the land."*

The word "requires" means that the assessee demands to appropriate the building for the purpose of a dwelling-house or as a store-house or other out-building and the words 'by reason of his connexion with the land" mean that only the fact of his being a receiver of rent or revenue or the fact of his being a cultivator or the fact that he is a receiver of ent in kind entitle him to claim any building as a dwelling house, a store-house or an out-building. If he should not occupy any of these positions in connexion with the land he is not entitled to claim as tax free, accommodation of the kind specified. In other words, expression "by reason of his connexion with the land" is merely used to explain the nature of the class of persons entitled to exemption. The phrase has a qualitative and not quantitative significance. Of course there must be *bona fide* use of building as a dwelling house, store-house or out-building and the assessee is not at liberty to claim arbitrarily the exemption of any building which he may at his own choice describe as a dwelling-house, store-house or out building without regard to actual facts. A.I.R. 1928 Pat. 468, *Affirmed.*

Macpherson, J.—The connotation of the expression "by reason of his connexion with the land requires" must be "needs as appropriate and convenient for his calling as a receiver of the rent or revenue derived from the land." The language implies an intention to discriminate between the requirements of the assessee as the landlord and his requirements as an individual. If the whole building is not a building which the assessee as receiver of the rent or revenue of the land "by reason of his connexion with the land requires" as a dwelling-house, it is not such a building as is described in S. 2 (1) (c) read with the proviso and therefore the notional income thereof is not agricultural income so as to be under S. 4 (3) (*viii*) outside the application of the Act and the building falls within S. 9. A.I.R. 1928 Pat. 468, *Diss. from.* (*Courtney-Terrell, C.J., Ross, Wort, Kulwant Sahay and Macpherson, JJ.*). RAJENDRA NARAYAN *v.* COMMR. OF INCOME-TAX OF BIHAR. **118 I.C. 593=10 P.L.T. 505=9 Pat. 1= A.I.R. 1929 Pat. 449 (F.B).**

INCOME-TAX ACT (1922), S. 2 (14)—Application for registration.

—S. 2 (2)—'Assessee.'

——*Representative of the estate.*

It would be difficult from the definition of "assessee" to exclude the representative of the estate responsible for the payment of the income-tax, and a person representing an estate for the payment of income-tax would also represent it for the payment of refund. (*Stuart, C.J. and Raza, J.*). GOBIND SARAN *v.* COMMR. OF INCOME-TAX, U.P. **105 I.C. 556=1 L.C. 499= A.I.R. 1927 Oudh 465.**

—S. 2 (2)—Deceased person.

——There is no provision in the Act for the assessment to income tax or to super-tax of the estate of any deceased person. (*Greaves, J.*). MITCHELL *v.* MCNEILL & CO. **103 I.C. 120= 31 C.W.N. 630=A.I.R. 1927 Cal. 518.**

—S. 2 (4)—Extraction and sale of coal.

——The extraction and selling of coal is a business but road cess and public works cess is assessable not on the business but on the immovable property owned by the person or persons carrying on the business. It is the property that is liable, and not the person. 38 Cal. 372 (P.C.). *Foll.* (*Chatterjea, C.C. Ghose and Cuming, JJ.*). ISABELLA COAL CO. *v.* COMMR. OF INCOME-TAX. **89 I.C. 789=53 Cal. 76=29 C.W.N. 923= A.I.R. 1926 Cal. 396 (S.B.).**

—S. 2 (4)—Sale of Mill.

——The negotiation of the sale of a large Mill is "business". (*Walsh and Ryves, JJ.*). CHUNNILAL, *In re.* **86 I.C. 189=47 All. 368= 23 A.L.J. 65=6 L.R.A. Civ. 198= A.I.R. 1925 All. 469.**

—S. 2 (11)—'Commercial year.'

——The expression "commercial year," for which there is no definition in the Act, means any period for which the accounts of the concern are made up and such period, provided it satisfies the condition laid down by the Central Board of Revenue, may be deemed to be the previous year on which the assessment of any given year is based. (*Le Rossignol and Martineau, JJ.*). NANAK CHAND *v.* COMMISSIONER OF INCOME-TAX. **96 I.C. 368=7 Lah. 223=27 Pat. L.R. 405= A.I.R. 1926 Lah. 421.**

—S. 2 (11) (b)—Business for part of year.

——An assessee whose businss has not been in existence for a whole year previous to the 1st April is liable to tax for only the next year on profits gained in the incomplete previous year. (*Le Rossignol aud Martineau, JJ*). NANAK CHAND *v.* COMMISSIONER OF INCOME-TAX. **96 I.C. 368= 17 Lah. 223=27 P.L.R. 405=A.I.R. 1926 Lah. 421.**

—S. 2 (14)—Application for registration.

——An application for registering a firm under R. 2 of the Income-tax Rules, 1922, must be made on or before the date on which a return is due under sub-S. (2) of S. 22. (*Shah, Ag. C., J. and Kincaid, J.*) PURSHOTTAM BHANJI & CO., *In re* **86 I.C. 851=27 Bom. L.R. 223= A.I.R. 1925 Bom. 247.**

INCOME-TAX ACT (1922), S. 2 (14) — Certificate of registration.

—S. 2 (14)—Certificate of registration.

——Where a firm applied for renewal of a registration certificate about four months before the beginning of the financial year (*i.e.*, 1st April) under S. 2 (14) and where in the certificate granted it was stated that it would take effect from the beginning of the year (*i.e.*, 1st April) onwards,

Held, that the firm must be considered to be registered under S. 2 (14) for that year (*i.e.*, 1st April onwards) and not for the year in which the certificate was granted. 46 All. 1, *Dist.* (*Kotwal, A.J.C.*). HUSSAINBHAI BEHARI *v.* COMMISSIONER OF INCOME-TAX. **89 I.C. 92=A.I.R. 1925 Nag. 415.**

—S. 2 (14)—"Instrument," meaning of.

——A partnership agreement, drawn up in the form of a unilateral agreement, executed by the gumashta (managing) partners in favour of the capitalist partners, is an instrument of partnership within the meaning of S. 2 (14). (*Wild, J.C. and Rupchand, A. J. C.*). BULCHAND KESHAVDAS *v.* COMMR. OF INCOME-TAX. **A.I.R. 1930 Sind 301.**

—S. 2 (14)—Joint Hindu family.

——Where a set of persons formerly assessed as members of an undivided Hindu family apply to be registered as a firm the Income-tax Officer has power to call for evidence of dissolution of the joint family for the purposes of registration under S. 2 (14) over and above the deed of partnership presented with the application. (*Rankin, C. J., Ghose and Buckland, JJ.*). *In the matter of* BISESHWERLAL BRIJLAL. **34 C.W.N. 363= A.I.R. 1930 Cal. 449 (S.B.).**

—S. 2 (14)—Refusal to recognise firm.

——*Legality.*

Where an instrument of partnership specified the individual shares of the partners and the prescribed particulars, it is not within the competence of the income-tax authorities to refuse to recognise a firm as a "registered firm" by the simple process of refusing to register it, and thereby depriving the firm of the right of challenging their assessment on the ground that such an order was wrong in law. (*Wild, J.C. and Rupchand, A.J.C.*). BULCHAND KESHAVDAS *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **A. I. R. 1930 Sind 301.**

—S. 2 (14)—Right to registration.

——*Income tax Officer—Power to call for evidence.*

A set of persons purporting to constitute a firm as described by S. 2 (14) cannot get themselves registered as such as of right by merely making an application in the prescribed form with the instrument of partnership enclosed. The Income-tax Officer has power to investigate the reality of their constituting a firm and call for evidence as to reality of the instrument produced and reject the application if he is not satisfied with the evidence. He is not required to show that his investigation is permitted by express terms of a section. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* BISESHWARLAL BRIJLAL.

34 C.W.N. 363=A.I.R. 1930 Cal. 449 (S.B.).

——The certificate to be given in the form prescribed in the Income-tax Rules is not that the profits will be divided or credited within some fixed period. Thus where a certificate is given in good faith and the persons constitute a firm and intend to divide the assets whenever it may be necessary or convenient for them to do so, that firm is entitled to be registered. (*Macnair, Offg. J. C. and Jackson, A. J. C.*). COMMISSIONER OF INCOME-TAX *v.* KIKABHAI. **121 I.C. 38=A.I.R. 1930 Nag. 6.**

INCOME-TAX ACT (1922), S. 3 — Basis of taxation.

—S. 2 (14)—Subsequent registration.

——When a firm does not apply for registration as prescribed by statutory rules prior to the last day by which its return of income for the year was due, it cannot be held to be a registered firm for the year in question by filing the application prior to the assessment.

The very latest date on which a return was due from the objectors under sub-S. (2) of S. 22 of the Indian Income-tax Act was the 5th of July, 1922. On this date there was not even in existence "an instrument of partnership specifying the individual shares of the partners." The applicants presented their application to the Income tax Officer on January 2nd, 1923, who actually registered their firm by an order which purported to effect registration from January 30th to March 31st, 1923.

Held, that the mere blunder of an Income-tax Officer could not make the objectors "registered firm" for the purposes of assessment during the financial year 1922-23, if they were not such within the meaning of the definition. (*Banerjee, Ag C.J. and Piggott, J.*). *In the matter of* LALLA MAL HARDEO DAS COTTON SPINNING MILL CO. OF HATHRAS. **75 I.C. 337=46 All. 1=21 A.L.J. 703= 4 L.R.A. Civ. 451=A.I.R. 1924 All. 137.**

—S. 2 (15)—Bonus shares.

——Distribution of profits accumulated by a Company in the form of bonus shares—Shareholders left with no option to take profits in any other form—Bonus shares do not form "income, profits or gains" to the share-holder within S. 2 (15). (*Robinson, C. J., Heald and Beasley, JJ.*). STEEL BROTHERS & CO., LTD. *v.* GOVERNMENT. **82 I.C. 665=2 Rang. 211= A.I.R. 1924 Rang. 337 (F.B).**

—S. 2 (15)—Partnership.

——*Partner's drawings—No presumption that they are profits.*

Where a partner draws money in the course of business that will be taken into consideration at the end of the year and if there are any overdrawings by one partner they will be debited to the account of that partner or set off against his profits, and because a partner draws some moneys during the year of account it cannot be said at once that that represents his share of the profits. (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). CHETTIAPPA CHETTIAR *v.* THE COMMISSIONER OF INCOME-TAX. **122 I.C. 349=31 M.L.W. 215= 1930 M.W.N. 25=A.I.R. 1930 Mad. 119 (S.B.).**

—S. 3—Annuity for maintenance.

——*Liability to tax.*

A Hindu stepson belonging to the Mitakshara School of Hindu Law, paying annuity to his stepmother by way of maintenance, is not entitled to claim an exemption from being assessed with respect to the amount of annuity paid by him; and further the fact that the lady can in case of default resort to the corpus of the property does not make any difference with this assessability. *London County Council* v. *Attorney-General*, 4 Tax Cases 265; 26 Cal. 441 and 9 Bom. 279, *Ref.* (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). BIJAY SINGH DUDHURIA, *In re.* **A I.R. 1930 Cal. 641 (F.B.).**

—S. 3—Basis of taxation.

——Under the Act the income of the year previous to the year of assessment is not to be taken as merely a guide to the ascertainment of the income of the year of assessment, but as the actual sum which is subject to taxation.

INCOME-TAX ACT (1922), S. 3—Firm, what is.

A. I. R. 1927 Cal 553, *Foll.*; *Brown's case*, (1921) 2 A. C. 22, *Not foll.* (*Coutts-Trotter, C. J., Beasley and Mackay, JJ.*). COMMR. OF INCOME-TAX *v.* KARUPPIAH KANGANI **116 I.C. 700=29 M L.W. 61=A.I.R 1929 Mad 36=55 M.L.J. 844 (F B.).**

—S. 3—Firm, what is.

——Association, formed among certain ice-manufacturing firms to prevent under-selling with a fixed rate to be paid by it for ice manufactured, is a firm. (*Wazir Hasan and Ashworth, JJ.*). D. M. STEWART *v.* LUCKNOW ICE ASSOCIATION. **92 I.C 257=13 O L.J. 381=A.I.R. 1926 Oudh 191.**

—S. 3 —Government's liability.

——Although Government Trading Taxation Act only came into force on 1st April, 1926, a State or Government liable to income-tax under the provisions of the Act is liable to assessment with reference to transactions which took place during the year 1925-1926 by virtue of Income-tax Act, S. 3. (*Mukerji and Niamatullah, JJ*). *In the matter of* RAMPRASAD. **1930 A L J. 579=A I.R. 1930 All. 389.**

—S. 3—Liability of fund to taxation.

——*Fund claiming exemption—Essence is mutuality and aim must be not to make profit.*

The object of a fund was to enable persons to save money and to secure loans at favourable rates of interest. The capital paid up or subscribed was made up of shares limited in number and in value, and the shareholders and subscribers constituted the controlling authority while membership was restricted to such shareholders or subscribers. Outside these members was a class called monthly depositors who were practically on the same footing as subscribers, but not subject to the losses and liabilities of the Fund. Loans were granted to any one and were of two kinds, "terms loans" restricted to subscribers and monthly depositors and "temporary loans" to any constituents. Profits were distributed in the way of dividends in the ordinary business fashion. There was no hint that the aim of the company was not to make a profit.

Held, that there was no purpose of mutual benefit, no society of persons banded together to lend money to each other, no benefit to be obtained by or derived from membership alone and therefore the fund was not exempt from payment of tax and should be assessed as a company. *New York Life Insurance Co.* v. *Styles*, (1899) 14 A.C. 381 and A.I.R 1923 Mad. 684 (S.B.), *Expl.* and *Dist.* (*Coutts-Trotter, C.J., Wallace and Beasley, JJ.*). INCOME TAX COMMR. *v.* TENNORE H. P. FUND. **A.I.R. 1927 Mad. 1078=53 M.L.J. 881 (F.B.).**

—S. 3—Partnership, what is.

——Persons agreeing to work on profit basis—No liability of loss—Control of business with the proprietor—There is no partnership. (*Phillips, Offg. C.J., Ramesam and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* MD. KASSIM. **106 I.C. 303=26 M.L.W. 659=1927 M.W.N. 869=A. I.R. 1927 Mad. 1053=54 M.L.J. 219 (S.B.).**

—S. 3—Permanent Settlement.

——The income derived from forests and fisheries in permanently settled estates is not liable to be taxed under the Income-tax Act. A.I.R. 1922 Mad 325 (F.B.), *Foll.*; A I.R. 1924 Cal. 668; A.I.R. 1926 Cal. 819; A.I.R. 1927 Cal. 482 (F. B.) and A. I. R. 1924 Pat. 474, *Diss. from.* (*Devadoss and Mackay, JJ.*). SETHUPATHI AVERGAL *v.* SECY. OF STATE **114 I.C. 829=52 Mad. 12=23 M. L. W. 667=A.I.R. 1929 Mad. 179=55 M.L.J. 770.**

INCOME-TAX ACT (1922), S. 4—Agricultural income.

—S. 3—Scope of.

——The object of the Income-tax Act is to charge income acquired in British India, and it is not in the contemplation of the Act to claim anything in respect of something done in the territory of a Government which may have sovereign rights within its own territories. (*Mukerji and Niamatullah, JJ.*). *In the matter of* RAMPRASAD. **1930 A.L.J. 579=A.I R. 1930 All. 389.**

——The provisions of S. 3 are subject to provisions of S. 18. (*Robinson, C.J. and May Oung, J.*). CHAMBERS, D. F. *v.* EMPEROR **83 I. C. 20=1 Rang. 335=A.I.R 1924 Rang. 30.**

—S. 3—Toddy shops.

——A body of individuals, who have agreed to take in auction, work and share the profits from several toddy shops, can be taxed under S. 3, Income-tax Act, on the combined profits of the shops. (*Phillips Offg. C. J., Ramesam and Beasley, JJ.*). COMMR. INCOME-TAX *v.* MOHIDEEN. **106 I.C. 226=31 M L T. 612=26 M L W 655=1927 M W N 874=A.I.R. 1927 Mad. 1052=53 M.L.J. 719 (S.B.).**

—S. 3—Trustees.

——Body of trustees comes within meaning of "other association of individuals" (*Addison and Bhide, JJ.*) HOTZ TRUST OF SIMLA *v.* COMMR. OF INCOME TAX. **A.I.R. 1930 Lah. 929.**

—S. 4.

Accruing.
Agricultural income.
Casual and non recurring receipts.
Foreign business.
Foreign firms and persons.
Interpretation.
Permanent Settlement.
Profits out of mortgage.
Residence.
Taxable income or profits.
Trust.
Miscellaneous.

—S. 4—Accruing.

——*Interest accrues within S. 4 not when it falls due but when it is actually received.*

Interest on a mortgage cannot be said to accrue to the assessee as it falls due every year but it is accrued within the meaning of S. 4 when it is actually received. The words "Income arising or accruing" are not equivalent to the words "debts arising or accruing" To give them that meaning is to ignore the word "income." The words mean "money arising or accruing by way of income." There must be a coming in to satisfy the word "income." *St. Lucia Usines and Estate Co., Ltd.* v. *Colonial Treasurer of St. Lucia*, (1924) A C. 508, *Rel. on.* (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L.T. 729=9 Pat. 48=A.I.R 1929 Pat. 476 (F.B.).**

——In determining whether any income, profits or gains arise or accrue, one must not be content to look only at the last stage of the accrual, but must take into consideration the previous stages as well. (*Rutledge, C. J., Das and Brown, JJ*). COMMR. OF INCOME-TAX, BURMA *v.* MESSRS. STEEL BROTHERS & CO., LTD. **94 I.C. 466=3 Rang. 614=A.I.R. 1926 Rang. 97 (F.B.).**

—S. 4—Agricultural income.

——Assessee cultivating plants not commonly cultivated and preparing fibre therefrom by machinery and selling in market—Whole profit is exempted. (*Courtney-Terrell, C.J., Das and Kulwant Sahay,*

INCOME-TAX ACT (1922), S. 4—Agricultural income.

JJ.). J.M. CASEY *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. 123 I.C. 610= 9 Pat. 185=A.I.R. 1930 Pat. 44 (S.B.).

——*Jalkar—Liability to tax.*

There is no analogy between the position of a permanently settled proprietor in Bengal who has entered into a permanent engagement based on gross produce in which fisheries have been included and a conquered Raja who by right of conquest was deposed from his position and reduced to that of a tenure-holder. The latter is not exempt from paying tax in respect of jalkar. (*Mullick, Ag. C.J. and Sen, J.*). RADHA MOHAN *v.* COMMR. OF INCOME-TAX. 104 I. C. 841= 9 P.L.T. 147=A.I.R. 1928 Pat. 58.

——Profits from the working of quarries and the sale of stone is not agricultural income nor the quarries themselves are land used for agricultural purposes. (*Walsh and Banerji, JJ.*). *In the matter of* SHIB LAL GANGA RAM. 103 I. C. 477= 25 A. L. J. 816=A.I.R. 1927 All. 703.

——*Income from toddy.*

Income derived from toddy is agricultural income when it is received by the actual cultivator whether owner or lessee of the land on which the trees grow. If the income is obtained by a person who has not produced the trees from which toddy is tapped, or has not done any agricultural operation whereby those trees have been raised, it is not agricultural income within the meaning of the Act. (*Phillips, Offg. C. J., Ramesam and Beasley, JJ.*). COMMISSIONER OF INCOME-TAX *v.* YAGAPPA NADAR. 105 I C. 489=50 Mad. 923= 26 M. L. W. 578=1927 M.W.N. 843= A.I.R. 1927 Mad. 1038=53 M. L. J. 666 (F.B.).

——*Manufacture of salt.*

It would be a gross misnomer to hold that "agricultural purposes" could be held to cover the process of flooding the land occupied by letting in the sea-water and then extracting the sodium chloride (salt) from it by eliminating the other chemical constituents. (*Coutts-Trotter, C.J., Wallace and Beasley, JJ.*). COMMISSIONER OF INCOME-TAX *v.* LINGA REDDI. 104 I. C. 703=50 Mad. 763= 26 M. L. W. 239=39 M L.T. 204= 1927 M. W. N. 804=A. I. R. 1927 Mad. 849= 53 M. L. J. 377 (F.B).

——Income derived from letting land for stocking timber is not "agricultural income". (*Abdul Raoof and Jai Lal, JJ.*). HAR PARSHAD *v.* EMPEROR. 86 I.C. 1028=A.I.R. 1925 Lah. 433.

——Income from fisheries and income from land used for stacking timber is not agricultural income. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. 84 I.C. 31= 51 Cal. 804=A.I.R. 1924 Cal. 668.

——Income derived from markets or moorings or ferries cannot be regarded as agricultural income. (*Dawson-Miller, C.J. and Mullick, J.*). MAHARAJADHIRAJ OF DHARBHANGA *v.* COMMISSIONER OF INCOME-TAX. 78 I.C. 783=3 Pat 470= 2 Pat. L.R. Cr. 25=1924 P.H.C.C. 69= 5 P L.T. 459=A. I. R. 1924 Pat. 474.

—S. 4—Casual and non-recurring receipts.

——A receipt of a casual and non-recurring nature arising from business or the exercise of a profession, vocation or occupation does not come within exception. (*Walsh and Ryves, JJ.*). CHUNNI LAL, *In re.* 86 I.C. 189=47 All. 368= 23 A.L.J. 65=6 L.R.A. Civ. 198= A.I.R. 1925 All. 469.

INCOME-TAX ACT (1922), S. 4—Foreign business.

——*Isolated transaction—Unusually heavy commission is not of "casual or non-recurring" nature.*

The adventure of a business man who is enabled through his business associations to negotiate a large transaction and thereby to earn a heavy commission, may undoubtedly be in fact non-recurring in the sense that so successful an adventure would not be likely to occur again. But on the other hand, it is a class of transaction which might occur to any such business man once only or half a dozen times again, during the course of the year. Profits arising from such a transaction are not of a casual or non-recurring nature. (*Walsh and Ryves, JJ.*). CHUNNI LAL, *In re.* 86 I.C. 189=47 All. 368= 23 A.L.J. 65=6 L.R.A Civ. 198= A.I.R. 1925 All. 469.

—S. 4—Foreign business.

——The interest received by the assessee at Hyderabad (Deccan) on Government of India Promissory Loan Notes enfaced for payment at Hyderabad (Deccan) Treasury is income accruing or arising in British India within the meaning of S. 4 (1) of the Act and the same is liable to be assessed to super-tax: 43 Mad. 75 and A.I.R. 1921 Mad. 427. *Appr.*; *Colquhoon* v. *Brooks*, (1888) 21 Q.B.D. 52, *Dist.* (*Marten, C.J. and Blackwell, J.*). COMMR. OF INCOME TAX *v.* BANSILAL MOTILAL. 32 Bom. L.R. 671=A.I.R. 1930 Bom. 381.

——*Remittance from assessee's foreign business—Presumption—Onus.*

If there are profits in an assessee's foreign business sufficient to cover remittances to British India during the year of assessment the presumption is that the remittances were from profits and not from capital and that the onus of showing that they were from capital and not from profits lies upon an assessee and also the onus of showing that they were profits earned more than three years before the date of the remittance or remittances. (*Beasley, C.J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. A.I.R. 1930 Mad. 457=58 M.L.J. 602 (S.B.).

——Where an assessee carries on money-lending business outside British India, if it can be shown that the foreign business has a debtor and that debtor is unable to repay the foreign business debt and the assessee takes the debtor's land in British India in satisfaction of his claim against his debt, the land so taken in British India is not taxable as foreign profits under S. 4 (2). (*Beasley, C. J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. A.I.R. 1930 Mad. 457=58 M.L.J. 602 (S.B.).

——Money remitted from foreign business—Presumption that it is out of profit is mixed question of law and fact—Onus of rebuttal is on assessee. (*Beasley, C. J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. A.I.R. 1930 Mad. 449=58 M.L.J. 581 (S.B.).

——Assessee receiving remittances from money-lending business outside British India—Use to which such remittances are put does not alter character in which it was received. (*Beasley, C.J., Ramesam, Pandalai, Eddy, and Cornish, JJ.*). S.A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. A.I.R. 1930 Mad. 449= 58 M.L.J 581 (S.B.).

——Assessee receiving remittance from business in foreign country—Presumption is that it is out

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of profits. *The Scottish Provident Institution* v. *John Allan*, 88 L.T. 478 and A.I.R. 1926 Mad. 767, *Rel. on.* (*Beasley, C. J., Ramesam, Pandalali, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS.

A.I.R. 1930 Mad. 447= 58 M.L.J. 581 (S.B.).

——Section 4 (2) is for the purpose of ascertaining the profits of a partner and got from business carried on outside British India and when such profits come into British India that will be taken into consideration in assessing him. If a firm receives such profits from another firm it is the firm that should be taxed. (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). CHETTIAPPA CHETTIAR *v.* THE COMMISSIONER OF INCOME-TAX.

122 I.C. 349=31 M. L. W. 215= 1930 M.W.N. 25=A.I.R. 1930 Mad. 119 (S.B.).

——Person residing in British India purchasing goods in British India—Profits derived by sale in foreign country—Profits not received in or brought into British India—No part of profits are liable to income-tax. A. I. R. 1925 Cal. 34; A. I. R. 1926 Rang. 97, *Discussed* and *Dist.*; 43 Mad. 75, *Dist.*; A.I.R. 1923 Mad. 422, *Rel. on. Commissioner of Taxation* v *Kirk*, (1900) A.C. 588, *Not appl.*; *Sulley* v. *Attorney-General*, (1860) 5 H. N. 711, *Appl.* (*Shadi Lal, C.J., Broadway, Zafar Ali, Tek Chand and Jai Lal, JJ.*). JIVAN DAS *v.* INCOME TAX COMMISSIONERS, LAHORE. **117 I.C. 657= 10 Lah. 657=30 P. L R. 489= A.I.R. 1929 Lah. 609 (F.B.)**

——Joint Hindu trading family entitled to a share in a money-lending concern in Malay States—Remittance to the family taxable as foreign profits. (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). ARUNACHALAM CHETTIAR *v.* COMMISSIONER OF INCOME-TAX, MADRAS.

1929 M.W.N. 642=30 M.L.W. 541= A. I. R. 1929 Mad. 769=57 M.L.J. 300 (F B).

——Partition of joint Hindu trading family—A member getting foreign business as his share—Profits in the year of partition not changed into capital but remain profits and are taxable as such: *Inland Revenue Commissioners* v. *Burrell*, (1924) 2 K.B. 52; *Inland Revenue Commissioners* v. *Blott*; and *Inland Revenue Commissioners* v *Greenwood*, (1921) 2 A.C. 171, *Dist.* (*Kumaraswami Sastri Odgers and Wallace, JJ.*). ARUNACHALAM CHETTIAR *v.* COMMR. OF INCOME-TAX, MADRAS.

1929 M.W.N. 642=30 M.L.W. 541= A.I.R. 1929 Mad. 769=57 M.L.J. 300 (F.B.).

——Lender in British India lending money on tavanai system to another outside British India—Unpaid interest added to principal under that system is interest received though not actually paid in cash, for purposes of assessment and such interest must be deemed to have accrued in British India: 43 Mad. 629; A.I.R. 1929 Mad. 34, *Rel. on*; A.I.R. 1927 Mad 841, *Appl.*; A.I.R. 1922 Mad. 426, *Dist.*; A. I. R. 1921 Mad. 427, *Ref.* (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). LAKSHMANAN CHETTIAR *v.* COMMR. OF INCOME-TAX, MADRAS. **30 M.L W. 82=1929 M.W.N. 640= A.I.R. 1929 Mad. 675=57 M.L.J. 60 (S.B.).**

——Goods sold by agent in Europe and money forwarded to India through Bank—Agent getting a part of the proceeds by compromise between him and principal in Kabul—Agent is liable to pay tax on such amount. (*Zafar Ali and Jai Lal, JJ.*). TORA GUL BAI *v.* COMMR. OF INCOME-TAX.

102 I C. 298=8 Lah. 336=9 L.L.J. 405= 28 P.L.R. 705=A.I.R. 1927 Lah. 512.

INCOME-TAX ACT (1922), S. 4—Foreign firms and persons.

——*Interest due credited though not actually paid is income.*

Where the debit entries made on account of interest due by the assessee to his creditors in foreign places were treated as payments of interest though interest had not actually been paid and such debits were allowed as an expenditure in computing the profits of the assessee's business in British India,

Held, that credit entires made on account of interest due by debtors in foreign places to the assessee must be treated as payments though that interest had not been actually paid and was income received in British India. (*Coutts Trotter, C.J., Wallace and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* SUBRAMANIAM CHETTIAR. **104 I.C. 645= 50 Mad. 765=26 M. L. W 223= 1927 M.W.N. 598=39 M.L.T. 540= A.I.R. 1927 Mad 841=53 M.L.J. 379 (F.B.).**

——*Receipt of income in British India—Presumption—Burden of proof.*

Sums remitted to British India are to be deemed to have accrued or arisen in the year of remission unless they accrued or arose more than three years before. The burden of proving that the profits accrued or arose more than three years back is on the assessee, the matter being peculiarly within his knowledge and not within the knowledge of the income tax authorities. (*Coutts-Trotter, C. J., Beasley and Srinivasa Aiyangar, JJ.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* S.K.R.S.L.L. FIRM SIVAGANGA CIRCLE. **104 I C. 352= 50 Mad. 853=1927 M.W.N. 777= 26 M.L W. 123=39 M.L.T. 153= A.I.R. 1927 Mad. 772=53 M L.J. 416 (F.B).**

——Bank's Head Office in British India—Branch outside—Profits of latter brought entirely in British India office by book transfer are "received or brought into" British India. (*Spencer, Krishnan and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* NEDUNGADI BANK. **98 I.C. 1=49 Mad. 910= 1926 M.W.N. 740=24 M.L.W. 685= A.I.R. 1926 Mad. 1048=51 M L.J. 401 (F B.).**

——Money due to assessee from Native State and paid by being credited to his account in a bank in that State but afterwards transferred to his account with another branch of the same bank in British India is not received in British India. (*Dawson-Miller, C.J. and Mullick, J.*). SAIYID ALI IMAM *v.* EMPEROR. **85 I.C. 164=4 Pat. 210= 6 P. L. T. 47=3 Pat. L. R. Cr. 85= 1924 P H.C.C. 349=A.I.R. 1925 Pat. 281.**

—S. 4—Foreign firms and persons.

——*"Accruing or arising in British India"—Meaning.*

Held, that in the case of Government of India Promissory Loan Notes repayable at Calcutta the interest received by the assessee at Hyderabad (Deccan) was liable to be assessed to income-tax and super-tax. Meaning of expression "accuring or arising" in S. 4 (1) of the Income-tax Act, *Disc.* (*Marten, C.J. and Blackwell, J.*) COMMISSIONER OF INCOME TAX, BOMBAY *v.* RAJA BAHADUR.

32 Bom. L.R. 671.

——*Scope of jurisdiction of the Income-tax Officer in foreign firms.*

Any inquiry for the purpose of ascertaining whether a sum is taxable or not, and whether it is profits or capital got back and who is to pay the tax, is within the scope and jurisdiction of the Income-tax Officers and for that purpose the accounts of the foreign firm may be scrutinized. It

INCOME-TAX ACT (1922), S. 4—Foreign firms and persons.

is not therefore correct to say that in the case of foreign firms whose profits are brought into British India and taxable under S. 4 (2), the other provisions of the Income-tax Act are inapplicable. (*Kumaraswami Sastri, Odgers and Wallace. JJ.*). ARUNACHALAM CHETTIAR *v.* COMMR. OF INCOME-TAX, MADRAS. **1929 M.W.N. 642= 30 M.L.W. 541= A. I. R. 1929 Mad. 769= 57 M. L. J. 300 (F B.).**

———Remuneration by Foreign Government paid to its servant for work done in British India is not income accruing or arising in British India: A.I.R. 1925 Cal. 34 and A.I.R. 1921 Bom. 159, *Cons.* : *Commissioner of Taxation of Kirk*, (1900) A.C. 588; 43 Mad. 75; and A.I.R. 1926 Rang. 97 (F.B.), *Dist.*; A.I.R. 1923 Mad. 574 (F.B.); A.I.R. 1923 Lah. 14 and A.I.R. 1925 Pat. 281, *Ref.* (*Pratt, Offg. C. J., Cunliffe and Ormiston, JJ.*). COMMISSIONER OF INCOME-TAX, BURMA *v.* PHRAPHRAISON SOLARAK. **114 I.C. 296=6 Rang. 598= A.I.R. 1929 Rang. 1 (F.B.).**

———*Foreign company lending money in British India and receiving interest in British India—The income accrues or arises in British India.*

A foreign company was lending money regularly in British India from time to time, and was receiving interest in respect of such money-lending operation. It sent its offers to Bombay which were accepted in Bombay, its own moneys were paid in Bombay and its interest thereon was earned in Bombay,

Held, that there was an income accruing or arising in British India within the meaning of S. 4 either from "the business carried on" thereby the company within the meaning of S. 10, or else under another heading of S. 6, *viz.*, sub-S. (*vi*) "other sources": *Greenwood* v. *F. L. Smidth & Co.*, (1922) 1 A.C. 417 and *Grainger & Son* v. *Gough*, (1896) A.C. 325, *Dist.* (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* BOMBAY TRUST CORPORATION. **113 I.C. 593=52 Bom. 702= 30 Bom. L.R. 1172= A.I.R. 1928 Bom. 448.**

———Non-resident Limited Company registered in London under English Companies Act—Gains arising whether directly or indirectly from any business connexion or property in British India, is chargeable. (*Rutledge, C.J., Das and Brown, JJ.*). COMMR. OF INCOME-TAX, BURMA *v.* MESSRS. STEEL BROTHERS & CO. **94 I.C. 466= 3 Rang. 614= A.I.R. 1926 Rang. 97 (F. B.).**

—S. 4—Interpretation.

———The word "or" means what it says, and the two expressions "accruing or arising" are different from the expression "received" and are intended to catch income which would not necessarily be received in British India. (*Marten, C.J. and Blackwell, J.*). COMMR. OF INCOME-TAX *v.* BANSILAL MOTILAL. **32 Bom. L.R. 671= A.I.R. 1930 Bom. 381.**

———Per *Blackwell, J.*—The words "accruing or arising" are used with reference to the place from which the income is derived. (*Marten, C.J. and Blackwell, J.*). COMMR. OF INCOME TAX *v.* BANSILAL MOTILAL. **125 I.C. 691= 32 Bom. L.R. 671= A.I.R. 1930 Bom. 381.**

———The two terms "arising" and "accruing" denote the same idea or ideas very similar, and the difference only lies in this that one is more appropriate than the other when applied to particular cases: A.I.R. 1925 Cal. 34, *Foll.*; (*Shadi Lal, C.J., Broadway, Zafar Ali, Tek Chand and Jai Lal,*

INCOME-TAX ACT (1922), S. 4—Permanent settlement.

JJ.). JIWAN DAS *v.* INCOME-TAX COMMISSIONER, LAHORE. **117 I.C. 657=10 Lah. 657= 30 P.L.R. 489= A.I.R. 1929 Lah 609 (F.B.).**

———The word "wholly" in the section must be read in its ordinary acceptation and is in this respect closely akin to the word "solely:" *Lamblon* v. *Kerr* (1895) 2 Q. B. 233, *Ref.* (*Findlay, J.C. and Macnair, A.J.C.*). COMMR. OF INCOME-TAX, NAGPUR *v.* M.E.R. MALAK. **105 I.C 155= A.I.R. 1928 Nag. 10.**

———The receipt of the income referred to in S. 4 must refer to the first occasion upon which the recipient got the money under his own control. (*Dawson-Miller, C.J. and Mullick, J.*). SAIYID ALI IMAM *v.* EMPEROR. **85 I.C. 164=4 Pat. 210= 6 P.L.T. 47=3 P.L.R. Cr. 85= 1924 P.H.C.C. 349= A.I.R. 1925 Pat. 281.**

—S. 4—Permanent settlement.

———*Regulations do not exempt zamindar from any general taxation of income.*

While the regulations contain assurances against any claim to an increase of the jama based on an increase of the zamindari income, they contain no promise that a zamindar shall in respect of the income which he derives from his zamindari be exempt from liability to any future general scheme of property taxation, or that the income of the zamindari shall not be subjected with other incomes to any future general taxation of income such as income-tax: A.I.R. 1925 Cal. 598, *Affirmed*. (*Lord Russell of Killowen.*) PROBHAT CHANDRA BARUA *v.* EMPEROR. **A.I.R. 1930 P.C. 209 (P.C.).**

———*Government can vary but by clear and specific statute—Income-tax is increase in revenue.*

Per *Dawson-Miller, C.J.*—Though the legislature has power to vary or modify the bargain entered into between the Government and the proprietors by the Permanent Settlement, yet this can only be done by clear and specific language in a statute and not by general implication. The applications for settlement made by the proprietors at the time of permanent settlement were, as a rule, a counterpart of the actual settlement made and were part of a single transaction completed at the same time, just as a *kabuliyat* is a counterpart of a patta. The Income-Tax Act, if and in so far as it charges income derived from property included in the original settlement with the proprietor and assessed to revenue, varies the terms of Reg. I of 1793. The Income-Tax Act of 1922 is not explicit enough in its terms to repeal the exemption created by the Permanent Settlement Regulation; for such repeal cannot be effected merely by words of general import or by implication. By the Permanent Settlement it was the revenue or rent payable to Government as the paramount landlord that was fixed in perpetuity. The effect of the imposition of income-tax on the profits arising out of *jalkar*, *hat* and *ghatlag* is in fact to increase the revenue under another name. The jama permanently fixed at the date of the settlement was calculated on a percentage of the rents and profits at that time derived from the ownership of the land. Income-tax is based upon the same rent and profits as they now exist and it is impossible to escape from the conclusion that a tax under whatever name upon the same sources of income would increase the duty payable under the name of revenue and which by the Permanent Settlement it was agreed should then be fixed for ever: 45 Mad. 518, *Foll.* (*Dawson-Miller, C.J. and Mullick, J.*). MAHA-

INCOME-TAX ACT (1922), S. 4—Profits out of mortgage.

RAJADHIRAJ OF DHARBHANGA *v.* COMMISSIONER OF INCOME-TAX. **78 I.C. 783=3 Pat 470=2 Pat.L.R Cr. 25=1924 P.H.C C 69=5 P.L.T. 459=A.I.R. 1924 Pat. 474.**

—S. 4—Profits out of mortgage.

——Usufructuary mortgagee leasing mortgaged property to mortgagor—Whether money received from such mortgagor is assessable (*Quaere*). (*Courtney Terrell, C. J., Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **123 I.C. 617=9 Pat. 194=A.I.R. 1930 Pat. 33 (F.B.).**

——Usufructuary mortgagee leasing to mortgagor by same transaction at rent equal to interest at specified rate—Government revenue payable by mortgagor—Mortgagee entitled to take possession on default and proceed against mortgagor personally—On reduction of principal, rent to be proportionately reduced—Interest reserved held assessable: 35 All. 48 (P.C.), *Rel. on*; A.I.R. 1928 Mad. 543 (F.B.) and A.I.R. 1928 All. 81 (F.B.). *Expl.* and *Dist.* (*Courtney-Terrell, C. J, Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **123 I.C. 617=9 Pat. 194=A.I.R. 1930 Pat. 33 (F.B.).**

——Mortgage with possession but mortgagor's lessee actually in possession—Mortgagee entitled to lease money—In default the amount to be recovered from mortgagor and added to mortgage money—Mortgagor on default executing deed of charge for the amount—Land subsequently sold to mortgagee—Lease-money cannot be considered as agricultural income in mortgagee's hands—Amounts added by charge deed were deemed actually realized on date of sale and not date of charge deed. (*Zafar Ali and Addison, JJ.*). MAHOMED YAKUB KHAN *v.* COMMR. OF INCOME-TAX. **115 I.C. 851=30 P.L.R. 30=A. I. R. 1929 Lah. 206.**

——Mortgagee getting fresh mortgage for consolidated amount of original principal and its interest—Original bond is not extinguished for income-tax purposes. (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L.T. 729=9 Pat. 48=A.I.R. 1929 Pat. 476 (F.B.).**

——Mortgagee purchasing property for mortgage amount—Property represents principal and accumulated profits is not out of the provisions of the Income-tax Act. *Scottish and Canadian General Investment Co., Ltd.* v. *Esson* 8 Tax Cas. 265 and *Californian Copper Syndicate* v. *Harris*, 5 Tax Cas. 159, *Rel. on.* (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L. T. 729=9 Pat. 48=A.I.R. 1929 Pat. 476 (F.B.).**

——Where a mortgagee purchases property in execution of his mortgage decree the real value of the property for computing for the purpose of Income tax Act is not the value of the property put by the Civil Court Commissioner but the price actually paid by the mortgagee represents the true value of the property. (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L.T. 729=9 Pat. 48=A.I.R. 1929 Pat. 476 (F.B.).**

——*Mortgagee purchasing mortgaged property—Profits arising out of sale accrue on date of confirmation of sale.*

The profits or gains arising to the assessee from the buying in of the mortgaged property are deemed to have arisen on the date when the sale is confirmed The obtaining of a decree is not equivalent to the realization of profits, neither is the entering up of satisfaction of the decree by the Court under Civil P. C., O. 21, R. 72 material for the calculation of profits. The profits cannot be said to have accrued when the Court enters up satisfaction of the decree. But the profit becomes realisable profit only on the date when the sale becomes absolute. (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L.T. 729=9 Pat. 48=A.I.R. 1929 Pat. 476 (F.B.).**

INCOME-TAX ACT (1922), S. 4—Residence.

——Purchase by mortgagee of mortgaged property—Appropriation of the realization declared by assessee—Income-tax officer cannot insist that appropriation must be first to interest and then to principal: A. I. R. 1922 P. C. 233, *Cons.* (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P.L.T. 729=9 Pat. 48=A. I. R. 1929 Pat. 476 (F.B.).**

——Usufructuary mortgagee leasing mortgaged property to mortgagor on fixed annual payments—Payments are agricultural income and should be excluded: *Commissioner, I. T, Madras* v *Subramania*. Referred case 18 of 1925, decided on 9th November, 1925, *Dissented from.* (*Sulaiman, Banerji and Ashworth, JJ.*). *In the matter of* MAKUND SARUP. **107 I.C. 683=50 All 405=26 A.L.J. 280=A. I. R. 1928 All. 81 (F.B.).**

——Usufructuary mortgagee leasing property back to mortgagor—Rent received is agricultural income (Per Full Bench: *Jackson, J.* contra): 35 All. 48 (P.C.), *Ref.*; Madras R. C 18 of 1925, *Overruled.*

It had been assumed for the purposes of the reference that the lands were used for agricultural purposes, the income under reference was the amount agreed to be paid as rent by the mortgagor-lessee in respect of such lands, and there was no stipulation as to interest in the usufructuary mortgage (*Coutts-Trotter, C.J. Wallace. Beasley, Jackson and Srinivasa Aiyangar, JJ.*). COMMR., INCOME-TAX *v.* IBRAHIMSA. **110 I.C. 207=51 Mad. 455=1928 M.W.N. 313=27 M.L.W. 601=A.I.R. 1928 Mad 543=54 M.L.J. 524 (F.B.).**

—S. 4—Residence.

——An assessee who was a resident of a village in British India started business and prospered in Ceylon. He was physically present in British India when the profits to be taxed accrued in Ceylon. But he was not physically present in British India when the remittances were received, nor was he so present during the year of assessment.

Held, that he could properly be described as "residing" in British India within the meaning of the Act. (*Coutts Trotter, C. J., Beasley and Mackay, JJ.*). COMMR. OF INCOME-TAX *v.* KARUPPIAH KANGANI. **116 I. C. 700=29 M.L.W. 61=A. I. R. 1929 Mad. 35=55 M.L.J. 841 (F.B.).**

——*Company can have residence in two places—In such a case second residence must have control and management of portion of business as a whole.*

A company resides for the purpose of income-tax where its real business is carried on, *i.e.*, where the central management and control of a company abide. When the central management and control of a company abide in a particular place, the company is held, for purposes of income-tax, to have a residence in that place, but it does not follow that it cannot have a residence elsewhere. If it can be shown that the central management and control of a company for partnership are divided between

INCOME-TAX ACT (1922), S. 4—Taxable income or profits.

two localities, each of them may be said to be a residence of the company for the purposes of the Income-tax Act. But the suggested second residence must not merely have a delegation of management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole. (*Coutts-Trotter, C. J. Beasley and Srinivasa Aiyangar, JJ.*). COMMISSIONER OF INCOME-TAX *v.* T. S. FIRM, TANJORE.

104 I.C 223=50 Mad. 847=26 M.L W. 119= 39 M L T. 101=A. I. R. 1927 Mad. 732= 53 M.L.J. 249 (F.B.).

—S. 4—Taxable income or profits.

——If a man claims an interest in the capital of a business and in the end receives a sum in satisfaction of all claims he may have in the capital of the business, that income is not liable to income-tax. The sum of money is not "income, profits or gains" within the meaning of S. 4 at all: A I.R. 1929 Cal. 212, *Dist.* (*Rinkin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* N. S. MUNDY.

34 C W.N. 788=A.I.R. 1930 Cal. 625 (F. B.).

—— Assessee in satisfaction of loan taking from debtor money debts, mortgage items and rubber plantations—Loss inourring in first two businesses —Rubber plantations sold at profit—Assessee getting deduction as business loss on the loss incurred on the first two items—Income tax authorities assessing on the profit made in sale of rubber plantation—Assessment held to be correct: A I.R. 1924 Mad. 208 (S.B.), *Cons*; 7 Tax Cases 125; 11 Tax Cases 297 and 2 Tax Cases 8, *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). LAKSHMANAN CHETTIAR *v.* COMMISSIONER OF INCOME TAX.

31 M L.W 228= A I.R. 1930 Mad. 121=58 M L.J 68 (S.B.).

—— Money-lending business generally taking lands in satisfaction of debts due—Lands sold for profits—Such profits are profits derived from such business. (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). CHETTIAPPA CHETTIAR *v.* THE COMMISSIONER OF INCOME-TAX. **122 I.C. 349= 31 M.L.W. 215=1930 M.W.N. 25= A.I.R. 1930 Mad. 119 (S.B.).**

——Compensation for abrupt loss of office as managing agents is "receipt arising from business" and liable to levy of income tax. (*Rankin, C. J., Buckland and Mukerji, JJ.*). *In the matter of* TURNER MORRISON & CO., LTD. **117 I.C. 689= 33 C.W.N. 112=56 Cal. 211= A.I.R. 1929 Cal. 212 (F.B.).**

——Judgment-debtor giving security for certain sum to stay execution of partition decree—Interest on security paid to decree-holder—Receipt of interest is income—Exception to S. 4 (3) (7) does not apply. (*Stuart, C J. and Srivastava, J.*). COMMISSIONER OF INCOME-TAX *v.* JUGMOHAN DAS.

112 I C. 201=A.I.R. 1929 Oudh 125.

——*Interest is income though added to capital.*

Interest does not cease to be an income, profit or gain because at the end of a certain specified period it is added to the capital so that it may bear interest. An agreement as to compound interest does not effect capitalization *In re Cravens, Mortgage Davies* v. *Craven*, (1907) 2 Ch. 448; *In re Morris, Mayhew* v. *Halton*, (1922) Ch. 126. *Rel. on.* (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD.

122 I.C. 705=10 P.L.T. 729=9 Pat. 48= A. I. R. 1929 Pat. 476 (F.B.).

INCOME-TAX ACT (1922), S. 4—Trust.

——Revenue assessed on land on basis of rental value considering profits from quarries—Owner is not relieved from being assessed to income-tax. (*Walsh and Banerji, JJ.*). *In the matter of* SHIB LAL GANGA RAM.

103 I. C. 477=25 A.L.J. 816= A.I.R. 1927 All. 703.

——The profits or losses arising from wagering contracts are to be taken into account in an assessment for income-tax purposes. (*Walsh and Ryves, JJ.*). CHUNILAL KALYAN DAS, *In re.*

86 I.C. 95=47 All. 372=23 A L J. 63= 6 L.R.A. Civ. 204=A.I.R. 1925 All. 287.

——Remuneration obtained for selling cotton of a firm—Assessee himself a cotton merchant—Remuneration is not exempt from tax. (*Macleod, C.J. and Coyajee, J.*). COMMR. OF INCOME-TAX *v.* SIR PURSHOTTAMDAS THAKORDAS. **87 I.C. 706= 27 Bom. L.R. 478=A.I.R. 1925 Bom. 318.**

——*Issue of new share to share-holders is not income.*

The issue of new shares to share-holders representing their share in the accumulated surplus is not taxable as income and no super tax is payable on the value of such shares. *Brewery Case*, 1914 A. C. 231 *Dist. Blott's Case*, 1921, A. C. 171, *Foll.* (*Coutts-Trotter, C. J. and Ramesam, J.*). COMMISSIONER OF INCOME TAX, MADRAS *v.* BINNY & CO., MADRAS. **82 I.C. 17=47 Mad. 837= 20 M.L.W. 611=1924 M W.N. 531= A.I.R. 1924 Mad. 802=47 M.L.J. 242.**

—S. 4—Trust.

——Trust deed vesting property in head of community—Many purposes of trust neither religious nor charitable—No specific property exclusively set aside for charitable or religious purposes—Income of whole property is assessable: A. I. R. 1928 Nag. 10, *Affirmed.* (*Lord Tomlin.*) MD. IBRAHIM RAZA MALAK *v.* COMMR. OF INCOME-TAX.

A.I.R. 1930 P.C. 226 (P.C.).

——Money sent from outside to British India and spent on religious institution in British India—It must be impressed with such trust before its leaving for British India for being exempted from tax. (*Phillips, Offg. C. J., Ramesam and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* MD. KASSIM ROWTHER. **109 I.C. 322=27 M L.W. 817= A.I.R. 1928 Mad. 371=54 M.L.J. 226.**

——Fund alleged as for charitable purposes found completely within assessee's volition—No deduction can be claimed. (*Findlay, J. C. and Prideaux, A. J. C.*). COMMR. OF INCOME-TAX *v* BANSILAL ABIRCHAND. **108 I.C. 805=24 N L R. 76= A.I.R. 1928 Nag. 102.**

——Alleged trust deed giving absolute power of disposal to the spiritual head—Object to serve some needs of a community—No ultimate and permanent dedication to religious object—Income of property is not exempt. (*Findlay, J. C. and Macnair, A. J. C.*). COMMR. OF INCOME-TAX, NAGPUR *v.* M. E. R. MALAK. **105 I.C. 155= A.I.R. 1928 Nag. 10.**

——Income from an office held on condition that such income would be devoted to charitable purposes is not exempt although the money is spent for such charitable purposes. A. I. R. 1925 All. 115, *Rel. on.* (*Pratt, C. J., Cunliffe and Maung Ba, JJ.*). COMMR. OF INCOME-TAX *v.* A. EGGAR.

100 I.C. 255=4 Rang. 538= A.I.R. 1927 Rang. 95 (F.B.).

——Property set apart in trust—Income to be applied for charitable purpose—Income invested in

INCOME-TAX ACT (1922,) S. 4—Trust.

business—Profits are liable to be assessed—English principles applies to Indian Act: A.I.R. 1925 All 115, *Foll.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). COMMR. OF INCOME TAX *v.* THEVARA PATASALA.

96 I.C. 957=49 Mad. 833=1926 M.W.N. 620=24 M.L.W. 183=A.I.R. 1926 Mad. 949=51 M.L.J. 123 (F.B.).

———Income derived from profits in trade or business though the income may be dedicated to an idol, is not income from trust property. (*Walsh, Ag. C. J. and Ryves, J.*) *In the matter of* LACHHMAN DAS NARAIN DAS OF CAWNPORE.

84 I.C. 207=47 All. 68=22 A.L.J. 913=5 L.R.A. Civ. 640=A.I.R. 1925 All. 115.

—Miscellaneous.

———*Distinction between rent and interest laid down.*

Per *Das, J.*—There is a clear distinction between rent and interest. Rent is the return from land for the use of one's land and signifies the sum payable in respect of the use of land. Interest is the return from money for the use of one's money and signifies the sum payable in respect of the use of money. Rent issues out of the land demised, whereas interest is revenue derived from the money lent. (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA.

123 I.C. 617=9 Pat. 194=A.I.R. 1930 Pat. 33(S.B.).

———*Scope of.*

Per *Chatterjea, J.*—Reading Ss. 4 and 6 of Act XI of 1922 (Ss. 3 and 5 of Act VII of 1918) together, all income derived from business accruing, arising or received in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India is taxable income. (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECY. OF STATE.

83 I. C. 273=40 C.L.J. 110=28 C.W.N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34.

—S. 5—Income-tax Officers.

———The Income-tax Officer appointed by the Commissioner of Income-tax "to deal with those persons whose cases may be handed over to him by the said Commissioner of Income-tax from time to time" is not an Income-tax Officer directed to function as such in respect of any class of persons as contemplated by S. 5 (4) and assessments by such an officer cannot be supported in law. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In re* LACHIRAM BASANTALAL.

33 C.W.N. 1206=A. I.R. 1930 Cal. 297 (S.B.).

—S. 6—Capitalised rent.

———The capitalised value of the rent paid in a lump sum is not in all cases to be regarded as income. (*Dawson-Miller, C. J. and Foster, J.*). RAJA SHIVA PRASAD SINGH *v.* KING EMPEROR.

82 I.C. 653=5 P.L.T. 497=1924 P.H.C C. 234=2 Pat. L.R. Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.

—S. 6—Exemptions.

———The classes of the income specified in S. 6 are liable to the tax only subject to the exceptions set out in S. 4, Cl. 3. (*Coutts-Trotter, C.J., Wallace, Beasley, Jackson and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME TAX *v.* IBRAHIMSA.

110 I.C. 207=51 Mad. 455=1928 M. W. N. 313=27 M.L.W. 601=A I R. 1928 Mad. 543=54 M. L. J. 524 (F.B.).

—S. 6—Income from Jalkars.

———*Income from fisheries included in revenue of permanently settled estates is exempt.*

INCOME-TAX ACT (1922), S. 6—Test for taxability.

The income from the jalkars included in the assets upon which the jamas of the permanently settled estates were assessed under Regulation 1 of 1793 at the time of the Permanent Settlement is not liable to assessment to income tax under Act 11 of 1922. (*Cuming and Page, JJ.*). EMPEROR *v.* INDU BHUSAN SARKAR.

93 I.C. 539=53 Cal. 524=30 C.W.N. 524=44 C.L.J. 427=A. I. R. 1926 Cal. 819.

—S. 6—Losses.

———*Taxable income.*

The loss incurred by an assessee in respect of the unregistered partnership trade can be set off against the profits made by him in his individual trade. (*Schwabe, C.J. and Waller, J.*). COMMR. OF INCOME-TAX, MADRAS *v.* M. AR. A. ARUNACHALAM CHETTIAR.

77 I.C. 772=47 Mad. 660=19 M L.W. 125=1924 M.W.N. 326=34 M.L.T. 332=A.I.R. 1924 Mad. 474=46 M.L.J. 68.

—S.6—Royalties.

———Royalties paid to lessor are nonetheless income though they are paid for rights the exercise of which involves a waste of the capital. (*Dawson-Miller, C.J. and Foster, J.*). RAJASHIVA PRASAD SINGH *v.* KING EMPEROR.

82 I. C. 653=5 P.L.T. 497=1924 P.H.C.C. 234=2 Pat. L.R.Cr. 233=4 Pat. 78=A.I.R. 1924 Pat. 679.

—S. 6—Salami.

———Transactions by which a lump sum is paid under the name of *salami* for the granting of the lease are more in the nature of an out and out sale of property and the sum so received by the lessor is in no sense income within the meaning of the Indian Income-tax Act. (*Dawson Miller, C.J. and Foster, J.*). RAJASHIVA PRASAD SINGH *v.* KING-EMPEROR.

82 I.C. 653=5 P L.T. 497=1924 P.H.C.C. 234=2 Pat. L.R. Cr. 233=4 Pat. 73=A.I.R. 1924 Pat. 679.

—S. 6—Sale of timber.

———The amounts received by sale of timber trees are income liable, as such, to income-tax. (*Beasley, C.J., Ananthakrishna Ayyar and Curgenven, JJ.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* T. MANAVEDAN TIRUMALPAD

1930 M.W.N. 716=32 M.L.W. 170=A.I.R. 1930 Mad. 764 (F.B.).

—S. 6—Scope of Act.

———All income from 'business' arising or received or deemed so to arise or be received in British India is taxable under the Income Tax Act (VII of 1918), Ss. 3 and 5. (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC COMPANY *v.* SECRETARY OF STATE.

83 I.C. 273=52 Cal. 1=28 C.W.N. 1074=40 C.L.J. 110=A.I.R. 1925 Cal. 34.

—S. 6—Temporary shops.

———Assessee taking land on lease and erecting temporary shops for purposes of letting—Such income comes under S. 6. (6) and should be assessed under S. 12. (*Mukerji and Bennett, JJ.*). *In the matter of* BASANT RAI TAKHAT SINGH OF AGRA.

124 I.C. 34=1930 A.L.J. 643=A.I.R. 1930 All. 288.

—S. 6—Test for taxability.

———Interest unrealized, but credited in accounts is not income accruing or received for income-tax purposes—Test is whether it is available to assessee at his pleasure: A.I.R. 1916 Nag. 180; *Gresham Life Assurance Society* v. *Bishop*, (1920)

INCOME-TAX ACT (1922), S. 8 — Annuity for maintenance.

A.C. 287; *St. Lucia Usines and Estates Co.* v. *St. Lucia*, (1924) A.C. 508, *Cons.*; *Sadasiva Ayyar, J.*, in A.I.R. 1921 Mad. 427 (S.B.), *Foll.*; A.I.R. 1927 Lah. 512; *J.P. Hall & Co., Ltd.* v. *Commissioners of Inland Revenue*, (1921) 3 K.B. 152; *Gresham Life Assurance Society* v. *Styles*, 3 T.C. 185, *Rel. on*; A.I.R. 1928 Nag. 241, *Appr.* (*Findlay, J. C., Prideaux and Kinkhede, A.J.Cs.*). COMMISSIONER OF INCOME-TAX, NAGPUR *v.* S.M. CHITNIVIS.
117 I.C. 258=12 N.L.J. 17=
25 N.L.R. 35=A.I.R. 1929 Nag. 50 (F.B.).

—S. 8—Annuity for maintenance.

——The annuity paid by the assessee as maintenance allowance to his step-mother in pursuance of a consent-decree is not deductable in computing the tax payable by him. It is not covered by any of the exceptions enumerated by the Act. (*Rinkin, C.J., C.C. Ghose and Buckland, JJ.*). BIJAY SINGH DUDHURIA, *In re.* 57 Cal. 918=
A.I.R. 1930 Cal. 641.

—S. 8—Co-operative Society.

——Co-operative Society investing fluid assets in Government securities as per Government Orders—Such investment not being part of their business, interest on those securities is assessable. (*English cases discussed*). (*Coutts Trotter, C. J., Odgers, and Beasley, JJ.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* MADRAS CENTRAL URBAN BANK, LTD., MYLAPORE. 118 I.C. 107=
29 M.L.W. 433=52 Mad. 640=
A.I.R. 1929 Mad. 387=56 M.L.J. 431 (F.B.).

—S. 8—Costs of realization.

——The assessee cannot claim to deduct as part of his expenses a sum which he says represents the costs of collecting the interest on the securities: A.I.R. 1927 Pat. 133, *Rel. on.* (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. 123 I.C. 617=9 Pat. 194=
A.I.R. 1930 Pat. 33 (S.B.).

——Income-tax is to be levied upon all interest receivable by assessee on securities—Commission for its realization cannot be deducted. (*Fasl Ali and Chatterji, JJ.*). A. H. FORBES *v.* COMMR., INCOME-TAX. 119 I.C. 402=10 P.L.T. 424=9 Pat. 139=
A. I. R. 1929 Pat. 419.

—S. 8—Deductions.

——Securities purchased—Vendor paid cost plus interest from last payment to date of sale—Interest paid is not admissible deduction from interest subsequently drawn. (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA.
123 I.C. 617=9 Pat. 194=
A.I.R. 1930 Pat. 33 (S.B.).

——Interest on money borrowed from Bank by a private individual as distinguished from a person carrying on business cannot be deducted from taxable income. (*Dawson Miller, C.J. and Foster, J.*). (MAHARAJA GURU) MAHADEO ASHRAM PRASAD SAHI BAHADUR *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. 100 I.C. 897=6 Pat. 29=
8 P. L.T. 359=A.I.R. 1927 Pat. 133.

—S. 9—Building for agricultural purposes.

——Power of income-tax authorities to exempt portion of building not required by assessee as receiver of rent or revenue explained. A. I. R. 1928 Pat. 468, *Affirmed.* (*Courtney-Terrell, C.J., Ross, Wort, Kulwant Sahay and Macpherson, JJ.*). RAJENDRA NARAYAN *v.* COMMR. OF INCOME-TAX.
118 I.C. 593=10 P. L.T. 505=
9 Pat. 1=A.I.R. 1929 Pat. 449 (F.B.).

INCOME TAX ACT (1922), S. 9 — Permanent Settlement.

—S. 9—Company building houses.

——Assessees a company doing business to acquire land, build houses and let premises to tenants—Assessees are liable to income tax under S 9. (*Rinkin, C.J., C. C. Ghosh and Mukerji, JJ.*). *In the matter of* COMMERCIAL PROPERTIES, LTD. 113 I.C. 848=55 Cal. 1057=32 C.W.N 413=
A.I.R. 1928 Cal. 456.

—S. 9—House-tax.

——Assessee not liable to enhanced tax because of the addition of the amount of house-tax to the annual rental of the property. (*Tek Chand and Agha Haidar, JJ.*). *In the matter of* CHHUNNA LALA. 121 I.C. 508=30 P. L.R. 429=
A I R. 1929 Lah. 503.

—S. 9—Income from profits of land.

——It is abundantly clear that the Legislature has deliberately included income from profits of land wherever situate, be the area permanently settled or non-permanently settled, as being assessable to income-tax. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). KING EMPEROR *v.* RAJAH PROBHAT CHANDRA.
102 I.C. 845=54 Cal. 863=45 C.L.J. 323=
31 C.W.N. 765=A.I.R. 1927 Cal. 432 (F.B.).

—S. 9—Interest on mortgage.

——An amount of interest due on a mortgage debt but not actually paid is an allowable item of expenditure under head "house property income under S. 9." (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* THE ASSESSMENT OF BEHARI LAL MULLICK. 103 I. C. 609=
54 Cal. 630=31 C.W.N. 557=
A.I.R. 1927 Cal. 553 (F.B.).

—S. 9—Limited interest.

——Where the assesses have only a limited interest, namely the interest of a lessee for fifty years, S. 9 inapplicable. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). GOOPTU ESTATE, LTD., *In re.* 126 I.C. 193=57 Cal. 910=50 C.L.J. 375=
34 C.W.N. 327=A.I.R. 1930 Cal. 1 (F.B.).

—S. 9—Notional income.

——Assessee owner of property consisting of building—Income-tax is charged upon bases of notional income. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). GOOPTU ESTATE, LTD., *In re.*
50 C.L.J. 375=34 C.W.N. 327=
A.I.R. 1930 Cal. 1 (F.B.).

—S. 9—Permanent Settlement.

——Bengal Permanent Settlement Regulation (1 of 1793)—Estates were not relieved from aiding subsequent necessities of the Government nor are they exempt from general tax like income-tax. (*C.C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). EMPEROR *v.* RAJAH PROBHAT CHANDRA BARUAH. 102 I.C. 845=45 C.L.J. 323=
31 C.W.N. 765=54 Cal. 863=
A.I.R. 1927 Cal. 432 (F.B.).

——*Income from land in permanently settled estates, is assessable.*

Per *C.C. Ghose, J.*—(*Buckland and Panton, JJ., concurring*)—Income from land subject to the exemption in the Income-tax Act is liable to be assessed, to Income-tax and therefore even having regard to the terms of the Permanent Settlement Regulation income derived from land such as Jalkar, ground rent for potteries and brickfields, fees for tying boats, storing crops and cart stands yearly nazar and nazar on petitions, ground-rent in Bazar and stall fees in permanently settled estates subject to the exemption provided by the legislature is liable to assessment to income-tax. *Mukerji and*

INCOME-TAX ACT (1922), S. 9—Rents from Nizam's state.

Suhrawardy, JJ., contra. A.I R. 1924 Cal. 668, *Affirmed*; 53 Cal. 524 ; A.I.R. 1926 Cal. 819 ; 95 I.C. 539, *overruled*. (*C.C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). KING EMPEROR *v.* RAJAH PROBHAT CHANDRA. **102 I. C. 845= 54 Cal. 863=45 C L J. 323=31 C W.N. 765= A.I.R. 1927 Cal. 432 (F.B.).**

—S. 9—Rents from Nizam's state.

——*Income taxable under Income-tax Act.*

The rents realized from the tenants of Kosgaon and Dhotra villages, situate in the Dominions of His Exalted Highness the Nizam and brought into Dewalghat in Berar, are taxable under the Income-tax Act, though these villages form part of one single jagir consisting of four villages which jagir was granted revenue free to the ancestors of Nawab Mohammad Salamullah Khan, Khan Bahadur, C.I.E., and owing to distribution of territories two of them, *i.e.*, Kosgaon and Dhotra, happened to go to Nizam's territory. (*Hallifax and Mohiuddin, A.J.Cs.*). COMMR. OF INCOME-TAX *v.* MAHOMED NURULLA KHAN. **107 I.C. 661= A.I.R. 1928 Nag. 146.**

—S. 9—Vacant house.

——If a man owns a house ready for his own occupation, ready for him to live in when he chooses to do so, he is assessable, though he may not reside in it one day in a year. *Queen* v. *Assessment Committee of St. Poneras*, 2 Q.B.D. 581, *Rel. on.* (*Coutts-Trotter, C.J. and Beasley, J.*). COMMR. OF INCOME-TAX *v.* NARAYANA DEO. **91 I.C. 940= 49 Mad. 22=22 M.L.W 822= A.I.R. 1926 Mad. 287=50 M. L. J. 63.**

—S. 10.

Business expenses.
Depreciation.
Interest on money borrowed.
Local taxes.
Losses.
Obsolete machinery.
Profits.
Scope and Interpretation.
Miscellaneous.

—S. 10—Business expenses.

——*Minimum royalty of a mining lease.*

Although in some cases the royalty based upon the amount of mineral raised may be treated as a capital expenditure that is to say, as part of the purchase price for the mineral, minimum royalty of a mining lease may properly be considered as rent and if paid in arrears it should be deducted as though it had accrued in the year in which it was paid : *Countess* v. *Black*, (1881) 6 A. C. 315, *Ref.* (*Courtney-Terrell, C. J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMR. OF INCOME-TAX.
9 Pat 240=A. I R. 1930 Pat. 81 (S.B.).

——Government supplying raw material to a company on payment at a fixed rate and an additional sum if profits of company exceed certain percentage—Additional sum paid is not assessable (*Mukerji and Bennet, JJ.*). *In the matter of* INDIAN TURPENTINE AND ROSIN CO., LTD., CAWNPORE. **114 I. C. 865=26 A. L. J. 1329= A.I.R. 1929 All. 118.**

——Assessee can claim deduction of expenditure only if expenditure is actually incurred or liability incurred is satisfied before close of year. (*Hallifax, and Kinkhede, A.J Cs.*). COMMR. OF INCOME-TAX *v.* JAI NARAIN MOTIRAM.
128 I.C. 467=A.I.R. 1929 Nag. 243.

INCOME-TAX ACT (1922), S. 10—Business expenses.

——Mortgagee purchasing mortgaged property in execution of his decree—Another person claiming share therein—Mortgagee depositing security to safeguard the interest of such person—Amount so deposited is not deductible expenditure — If claimant successful mortgagee would be entitled to deduct it as loss under S. 24. (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD. **10 P. L. T. 729=9 Pat. 48= A. I. R. 1929 Pat. 476 (F.B.).**

——*Mutation expenses.*

As the profits accrue to the assessee at the date when the sale by him becomes absolute the expenses incurred by the assessee subsequent to that date for taking delivery of possession and effecting mutations must be entirely ignored : *Commissioner of Taxes* v. *Melbourne Trust Ltd.*, (1914) A. C. 1001, *Rel. on.* (*Das, Kulwant Sahay and Wort, JJ.*). *In the matter of* RAGHUNANDAN PRASAD.
10 P.L.T. 729=9 Pat. 48= A I.R. 1929 Pat. 476 (F.B.).

——Agreement between District Board and Tramway Co. for free use of road for laying down tramway—Tramway Company agreeing to pay moiety of profits exceeding 4 p.c. upon capital for time being—Payment of half profits is not rent and cannot fall under Cl. (5) of sub S. (2)—It is not sum paid on account of local rate, nor is it "any expenditure (not being in nature of a capital expenditure) incurred solely for purpose of earning such profits or gains." (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* HOWRAH AMTA LIGHT RY. CO., LTD. **115 I.C. 38=32 C.W.N. 757= A.I.R. 1928 Cal. 579 (S B.),**

——Money paid to a competitor to induce him not to compete with the assessee is not expenditure incurred solely for the purpose of earning such profits or gains : *City of London Contract Corporation Ltd.* v. *Styles*, (1887) 2 Tax Cas. 239 and *John Smith & Son* v. *Moore*, (1921) 2 A.C. 13, *Rel. on.* (*Coutts Trotter, C. J., Beasley and Madhavan Nair, JJ.*). COMMR., INCOME-TAX *v.* ALAGANAN.
110 I.C. 629=27 M.L W. 776= 1928 M.W.N. 328=A.I.R. 1928 Mad 902, 55 M.L.J. 66 (F.B.).

——The question whether expenditure in a business is current, as opposed to capital, must essentially be one of degree and therefore one of fact : *Smith* v. *Incorporated Council of Law Reporting for England and Wales*, (1914) 3 K.B.D. 674; *Usher's Wiltshire Brewery* v. *Bruce*. (1915) A.C. 433 and *Currie* v. *Inland Revenue Commissioners*, (1921) 2 K.B. 332, *Rel. on.* (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMISSIONER OF INCOME-TAX. **110 I.C. 601=6 Rang. 175= A.I.R. 1928 Rang. 152.**

——Where a Bank made itself liable for paying a certain proportion of the sums which were invested with itself for the benefit of its employees,

Held, that it is no "expenditure" for the purpose of the business but only a liability: *Smyth* v. *Stretton*, (1904) 90 L.T. 756, *Dist.* (*Spencer, Krishnan and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* NEDUNGADI BANK. **98 I.C. 1= 49 Mad. 910=1926 M W N. 740= 24 M.L.W. 685=A. I. R. 1926 Mad. 1048= 51 M L.J. 403 (F B.).**

——*Payment on capital advanced, out of profits.*

Payments to be made in certain proportion out of the profits on the capital advanced for the purposes of the business cannot be treated as expenditure incurred solely for the purpose of earning

INCOME-TAX ACT (1922), S. 10—Depreciation.

such profits or gains within the meaning of Cl. (*ix*) of sub-S. (2) of S. 10. (*Shah, Ag.C.J. and Kincaid, J.*). COMMISSIONER OF INCOME-TAX *v.* HAJI JAMAL NUR MAHOMED & CO. **86 I.C. 848= 49 Bom. 362=27 Bom L.R. 219= A.I.R. 1925 Bom. 251.**

—S. 10—Depreciation.

——Sum earned by acts done in carrying on business in house property is assessable—Assessee is, however, entitled to allowance for depreciation as mentioned in S. 10 (2) (*vi*). *Commissioner of Taxes* v. *Melbourne Trust Ltd*, (1914) A.C. 1001; *In re Spanish Prospecting Co.*, (1911) 1 Ch. 92 and *Assets Co., Ltd.* v. *Forbes*, (1897) 3 T.C. 542, *Rel. on.* (*Rankin, C.J, C.C. Ghose and Buckland, JJ.*). GOOPTU ESTATE LTD. *In re.* **50 C.L.J. 375= 34 C.W N 327=A.I.R. 1930 Cal. 1 (F.B.).**

——Assessee owning number of businesses, *A*, *B*, *C* and *D*—Profits and gains of business *A* insufficient to cover full depreciation—Excess depreciation can be set off against profits and gains of other businesses in *B*, *C* and *D*. (1911) 1 Ch. 92, *Ref.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMR. OF INCOME TAX *v.* SUPPAN CHETTIAR & CO. **123 I.C 801=1930 M W.N. 20= 31 M.L.W. 141=A.I.R. 1930 Mad. 124= 58 M.L.J. 48 (S.B.).**

——Depreciation on buildings and machinery can be set off against gains accruing from other sources. (*Tek Chand and Agha Haidar, JJ.*). KARAM ILAHI *v.* CHIEF COMMR., INCOME-TAX. **116 I.C. 547=11 Lah. 38=30 P.L.R. 380= A.I.R. 1929 Lah. 356.**

——One trading company, succeeding to the business of another, is entitled to carry forward depreciation to which full effect could not be given in years previous to succession—Calculation must be made on original cost to the company to which it succeeded and not on value at which assets were taken over by succeeding company. *Scottish Shire Line, Ltd.* v. *Inland Revenue*, (1912) 6 Tax Cas. 91, *Foll.* (*Coutts-Trotter, C.J., Odgers and Beasley, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* MASSEY & CO., MADRAS. **115 I.C. 814=29 M.L W. 476= A.I.R. 1929 Mad. 453=56 M.L.J. 451 (F.B.).**

——The exact amount of depreciation of any plaint within a given period is a question of degree and therefore a question of fact. *The Peninsular and Oriental Co.* v. *Lee*, (1900) 4 Tax Cas. 177, *Rel. on.* (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME TAX. **110 I C. 601= 6 Rang 175=A.I.R. 1928 Rang. 152.**

——*Taking ore from a mine is using the mine.*

There is no other way of using a colliery or mine except by digging the coal or minerals out of it. So, the taking of ore from a mine is rather the use than the destruction of the estate the partial exhaustion being but the incidental consequence of the use. 32 Cal. 837, *Foll.* (*Chatterjea, C. C. Ghose and Cuming, JJ.*). ISABELLA COAL CO. *v.* COMMR. OF INCOME TAX. **89 I.C. 789=53 Cal. 76= 29 C.W.N. 923=A.I.R. 1926 Cal. 396 (S.B.).**

——Depreciation, in high class Government securities purchased by assessee bank not for trading, does not come under S. 10 or any other provision of the Act. (*Le Rossignol and Martineau, JJ.*). PUNJAB NATIONAL BANK *v.* EMPEROR. **96 I.C. 360=7 Lah. 227=27 Pat.L.R. 416= A I.R. 1926 Lah. 373.**

——Owners of rice mill letting it for working can deduct depreciation. (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). COMMR., INCOME-TAX *v.* GIN AND RICE FACTORY, GUNTUR. **97 I.C. 850= 50 Mad. 529=24 M.L.W. 680= 1926 M.W.N. 808=A.I.R. 1926 Mad. 1032= 51 M. L. J. 360 (F B.).**

INCOME-TAX ACT (1922), S. 10—Interest on money borrowed.

——The question whether certain expenditure incurred in renewing certain parts of a motor car was expenditure incurred in merely renewing wasting assets or was capital expenditure for which no deduction of tax could be claimed was a question which would turn upon evidence and by which, by directing the Commissioner of Income-tax to make reference to the High Court on the point, no useful purpose would be served. (*Kumaraswami Sastri, J.*). RATNA SINGH, *In re.* **85 I.C. 478= 20 M.L W. 859=A.I.R. 1925 Mad. 157.**

—S. 10—Interest on money borrowed.

——*Capital borrowed in British India for foreign business.*

The interest paid in British India for capital borrowed in British India for the purpose of business conducted by the assessee in foreign territory is a permissible allowance under S. 10 (2) if the profits or gains of such business are brought into British India. The assessee does not lose his right merely because he has not brought in British India his foreign profits for the accounting period or for three preceding years in their entirety. In such cases deduction should be allowed subject to the limitation that the amount so set off does not exceed the amount brought into British India and taxed in the accounting period. (*Tek Chand and Agha Haidar, JJ.*). HAR KISHAN LAL *v.* COMMISSIONER OF INCOME-TAX, PUNJAB. **A.I.R. 1930 Lah. 982.**

——Where a partner as partner lends money beyond the initial capital to the partnership at an agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the "previous year" should be deducted in computing the profits or gains of the partnership within the meaning of S. 10 (2) (*iii*). A. I. R. 1928 Mad. 923, *Foll.*; A. I. R. 1924 All. 137, *Dist.* (*Tek Chand and Agha Haidar, JJ.*). BHOLA SHAH-NARSINGH DAS *v.* COMMISSIONER, INCOME-TAX, PUNJAB. **12 L.L J. 129= A I.R. 1930 Lah. 738.**

——*Capital contributed by partners.*

The assessee partnership claimed a deduction of certain amount from the gross profits, basing their claim on S. 10 (2) (*iii*). It was contended by the assessees that the amount was interest on capital borrowed from the individual members of the partnership. But there was no agreement entered into before the partnership was started to contribute any capital or to lend any moneys, nor was there an agreement to pay interest.

Held, that as there was not a definite and enforceable agreement to pay interest the case would not come within S. 10 (2) (*iii*). 51 Mad. 787 (F. B.), *Dist.* (*Beasley, C.J., Ananthakrishna Ayyar and Curgenven, JJ.*). PERIASAMY NADAR *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **A.I.R. 1930 Mad. 1003=59 M.L.J. 778 (F. B.).**

——Money lent by partner in addition to initial capital at reasonable rate of interest and used as capital expenditure—Interest paid on such loan must be deducted. A.I.R. 1924 All. 137, *Dist.*; A.I.R. 1928 Mad. 923 (S.B.), *Appr.* (*Rutledge, C.J., Brown and Ormistone, JJ.*). COMMR. OF INCOME-TAX *v.* K.K.C.T. CHETTYAR FIRM. **126 I.C. 213= 8 Rang. 277=A.I.R. 1930 Rang. 249 (F.B.).**

INCOME-TAX ACT (1922), S. 10—Interest on money borrowed.

———In the case of a firm the payment of interest made by partnership to a partner on loans advanced by him cannot be held to be in any way dependent on the earning of profits. (*Rutledge, C.J., Brown and Ormistone, JJ.*). COMMR. OF INCOME-TAX *v.* K. K. C. T. CHETTYAR FIRM. **126 I.C. 213= 8 Rang. 277=A.I.R. 1930 Rang. 249 (F B).**

———The question where a partner as partner lends money beyond the initial capital to the partnership at no agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the year of assessment be deducted in computing the profits or gains of the partnership within the meaning of S. 10 (2) (*iii*), is a question of law. A.I.R. 1928 Mad. 923, *Rel. on.* (*Zafar Ali and Addison, JJ.*). BHOLA SHAH NARSINGH DAS *v.* COMMISSIONER OF INCOME-TAX, LAHORE. **116 I. C. 454= 11 L. L. J. 94=30 Pat. L. R. 232= A.I.R. 1929 Lah. 404.**

———In order to claim an allowance in respect of interest paid on borrowed capital it must be interest paid during the year of account. It may be interest actually paid in cash which is the cash basis of accounting or it may be by adjustment which is the mercantile basis of accounting, whichever method be adopted. The whole question depends upon what the arrangement was between the assessee and his creditor.

When loans are taken on tavanai system, the interest due at the end of each tavanai should be treated as interest paid and added to the principal and no allowance can be granted in respect of tavanai periods not ending in the year of account under S. 10 (2) (*iii*), 43 Mad. 629, *Rel. on.* (*Coutts-Trotter, C.J., Beasley and Mackay, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* PETHUPERUMAL CHETTIAR. **115 I.C. 485=29 M.L.W. 66= A.I.R. 1929 Mad. 34=55 M.L.J. 850 (F.B.).**

———Firm carrying on a banking business—Money borrowed by the firm and invested in a separate branch of piecegoods business—Accounts of the branches kept separate—Piecegoods branch closed—Interest on the money borrowed can be deducted in the assessment of the banking business. (*Coutts-Trotter, C.J., Beasley and Madhavan Nair, JJ.*). COMMR., INCOME-TAX *v.* A. L. A. R. BROS., DEVAKOTAH. **112 I.C. 697= 52 Mad. 296=1928 M.W.N. 510=28 M.L.W. 616= A.I.R. 1928 Mad. 1229=55 M.L.J. 600 (F.B.).**

———*Partnership—Additional capital borrowed from a partner—Loan used for capital expenditure—Interest paid thereon is exempt.*

Per *Full Bench.*—Where a partner as partner lends money beyond the initial capital to the partnership at an agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the year of assessment must be deducted in computing the profits or gains of the partnership within the meaning of S. 10 (2) (*iii*).

Per *Coutts-Trotter, C. J. and Ramesam, J.*—Wherever a sum is borrowed and it is afterwards used for capital expenditure, it is not open to the Commissioner to find that it is not borrowed capital. It is not the character of the lender that determines whether the sum borrowed is capital or not.

Per *Wallace and Beasley, JJ.*—If two partners agree on a nominal capital and then each lends additional capital at a fancy rate of interest calculated so high or with so little relation to the market rate, as to be obviously designed to absorb all probable profits, and thus enable them to submit a nill profits return, it would surely be open to the Commissioner to find that there was no genuine borrowing of capital.

Per *Thiruvenkatachariar, J.*—It is a question of fact in each case whether the further advance made by a partner over and above the capital agreed to be put in by him is really a loan by him to the partnership or an increase of his capital in the business made with the consent of the other partners. (*Coutts-Trotter, C. J., Ramesam, Wallace, Beasley and Thiruvenkatachariar, JJ.*). COMMR., INCOME-TAX *v.* SUBRAMANIAN CHETTIAR. **110 I. C. 889=51 Mad. 787= 1928 M W N. 474=28 M.L.W. 190= A.I.R. 1928 Mad. 923=55 M.L.J. 416 (S.B.).**

———(*Obiter*)—Capital borrowed means capital borrowed and used. (*Coutts-Trotter, C. J., Wallace and Beasley, JJ.*). COMMR., INCOME-TAX *v.* SOMASUNDARAM. **109 I.C. 369=24 M.L.W. 432= A.I.R. 1928 Mad. 487=542 M L J. 436 (F.B.).**

———Interest on money borrowed from Bank by a private individual as distinguished from a person carrying on business cannot be deducted from taxable income. (*Dawson Miller, C.J. and Foster, J.*). MAHADEO *v.* COMMISSIONER OF INCOME TAX. **100 I. C. 897=6 Pat. 29=8 P.L.T. 359= A.I.R. 1927 Pat. 133.**

—S. 10—Local taxes.

———A colliery is a premises used for the purposes of the business of extraction and sale of coal, and the road public works cess paid on account of the colliery is a local rate. (*Chatterjea, C. C. Ghose and Cuming, JJ.*). ISABELLA COAL CO. *v.* COMMISSIONER OF INCOME-TAX. **89 I.C. 789= 53 Cal. 76=29 C.W.N. 923= A. I. R. 1926 Cal. 396 (F.B.).**

———Income-tax on trading companies by the Municipality in the shape of a license fee can be deducted as a proper business allowance. (1911) A. C. 150, *Foll.*; 44 Mad. 489, *Dist.* (*Coutts-Trotter, C.J. and Wallace, J.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* NEDUNGADI BANK, LTD., CALICUT. **81 I.C. 454=20 M.L.W. 87= 1924 M.W.N. 580=35 M L.T. 53=47 Mad. 667= A.I.R. 1924 Mad. 693=47 M.L.J. 160.**

———Bihar and Orissa Mining Settlement Act, 1920 (B. & O. Act IV of 1920), S. 23 (3)—Jharia Water-Supply Act, 1914 (B & O. Act V of 1914), S. 45—Rates under are not local rates in respect of premises but come under Cl. (*ix*) and should be deducted from taxable income: 6 P. L. J. 62 (F.B.), *Foll.* (*Dawson Miller, C. J. and Jwala Prasad, J.*). K. M. SELECTED COAL CO., *In re.* **83 I.C. 920=3 Pat. 295= 6 P.L.T. 376=A.I.R. 1924 Pat. 670.**

—S. 10—Losses.

———*Theft of money used for lending from business.*

Per *Full Bench.*—Loss incurred by theft of money used in the money-lending business and (from the stronghold) in the business premises (none of the thieves being then servant of the assessee),

Held, not incidental to the business of the assessee, and not allowed for in computing income-tax (*Ananthakrishna Ayyar, J.*, contra): 2 I.T.C. 4, *Dist.*: *Other Tax cases* and *other cases considered.* (*Beasley, C.J., Ananthakrishna Ayyar and Curgenven, JJ.*). RAMASWAMI CHETTIAR *v.* COMMISSIONER OF INCOME-TAX. **A.I.R. 1930 Mad. 808 (F.B.).**

———Loss incurred by a firm in standing surety to another firm is not loss in the course of the

INCOME-TAX ACT (1922), S. 10—Losses.

business and so cannot be deducted from the total assessable income for income-tax. (*Broadway and Zafar Ali, JJ.*). *In the matter of* ISHAR DAS.
92 I.C. 249=A.I.R. 1926 Lah. 168.

———*Embezzled sums and boarding expenses, etc., of servants are deductible.*

Sums embezzled should be excluded from assessment. The boarding expenses of servants, and payment to a servant of his expenses incurred in going to his home from the place of employment and back again are likewise deductible. These are not in any sense gratuities and there is no charitable element in these payments. These payments are made to servants in order to retain their services for the benefit of the business and to increase their efficiency. (*Ross and Kulwant Sahay, JJ.*). JAGARNATH THERANI *v.* COMMR. OF INCOME-TAX.
86 I.C. 777=4 Pat. 383=6 P.L.T. 166=A.I.R. 1925 Pat. 408.

—S. 10—Obsolete machinery.

———A machine was declared to be obsolete. It was discarded because it was obsolete and also because it broke down past repairs. The machine was then sold,

Held, that the machine was sold in consequence of its having become obsolete within the meaning of S. 10 (2) *vic* (*Mukerji and King, JJ.*). *In the matter of* SWADESHI COTTON MILLS CO., LTD.
114 I.C. 897=26 A.L.J. 1319=A.I.R. 1929 All. 70.

———Under the Income-tax Act, 1918, the assesee furnished a return in which certain deductions of Rs. 72,000 and odd for obsolescence of machinery were claimed for the year ending June 30, 1921. Under that Act this was the basis for tax for the year 1921-1922. When the new Act came into force the income of the year 1921-1922 furnished the basis for tax for the year 1922-23.

Held, that the deduction was permissible under S. 10 (2). (*Macleod, C.J. and Shah, J.*). RAJA GOKALDAS MILLS LTD., *In re*. **80 I.C. 282=48 Bom. 389=26 Bom. L.R. 812=A.I.R. 1924 Bom. 346.**

—S. 10—Profits.

———*Whether money received is capital or profits is question of fact.*

Whether money received in a transaction is really the value of the capital, which has changed its shape, or whether there are profits is a question of fact. The presumption generally is that money sunk in business brought back not only itself but something more by way of profits. (*Mukerji and Niamatullah, JJ.*). *In the matter of* RAM PRASAD.
1930 A.L.J. 579=A.I.R. 1930 All. 389.

———"Profits" implies a comparison between the state of a business at two specific dates usually separated by an interval of a year, and if the company is to be regarded as dealing in house property by letting it out for premium and rent in the course and for the purposes of its business, the money value of the extent to which at the end of a year it betters its position by such means will be assessable as profit. If its position is bettered by other means, from causes not directly connected with the business of the company, the enhanced value though realised is not part of the profits of the business. Everything depends upon what the business is. *In re Spanish Prospecting Co.*, (1911) 1 Ch. 92; *Californian Case*, (1904) 5 T.C. 159 and *Tebrau Case*, (1910) 5 T.C. 658, *Rel. on.* (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). GOOPTU ESTATE LTD., *In re*. **50 C.L.J. 375=34 C.W.N. 327=A.I.R. 1930 Cal. 1 (F.B.).**

INCOME-TAX ACT (1922), S. 10—Scope and interpretation.

———The interest paid in British India for capital borrowed in British India for the purpose of a business conducted by the assessee in foreign territory is a permissible allowance under S. 10 (2) if the profits or gains of such business are brought into British India. The assessee does not lose this right merely because he has not brought in British India his foreign profits for the accounting period or for three preceding years in their entirety provided of course that the permissible deduction should be allowed subject to the limitation that the amount so set off does not exceed the amount brought into British India and taxed in the accounting period. (*Tek Chand and Agha Haidar, JJ.*). HARKISHAN LAL *v.* COMMISSIONER OF INCOME-TAX, PUNJAB. **A. I. R. 1930 Lah. 982.**

———Ordinarily profit arising out of an isolated transaction outside the scope of the business does not fall to be chargeable as a business profit. Where therefore a firm purchases property and sells it at profit after six or seven years, the Income-tax Officer cannot treat the difference in prices as a business profit and cannot tax them in the absence of legal evidence that it is profit out of business. *Beynon & Co., Ltd.* v. *Ogg*, 7 Tax Cases 125, *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). VIRAPPA CHETTIAR *v.* COMMR. OF INCOME-TAX.
31 M.L.W. 173=1930 M.W.N. 14=A.I.R. 1930 Mad. 123=58 M.L.J 95 (S B.).

———Destination of profits has got nothing to do *prima facie* with the question of liability to pay income-tax. What may be done with the profits after the tax has been paid upon them is immaterial. (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). *In the matter of* HOWRAH AMTA LIGHT RY. CO., LTD. **115 I.C. 33=32 C.W.N. 757=A.I. R. 1928 Cal. 579 (S.B.).**

———Company running a Club—All share-holders not members of Club—All members not share-holders—Company making profit out of the Club is not a mere mutual trading society making "*quasi* profit" by trading with its own members and returning such "profits" to the members and is liable to pay income tax on full amount of profit. *New York Life Insurance Co.* v. *Styles*, (1889) 14 A.C. 381, *Dist.* (*Rankin, C. J., C. C. Ghosh and Buckland, JJ.*). *In the matter of* DIBRUGARH DISH CLUB LTD. **112 I.C. 732=55 Cal. 971=32 C.W.N. 691=A. I. R. 1928 Cal. 577 (S.B.).**

———Remittances from abroad to a firm are presumed to be profits. *Scottish Provident Institution* v. *Allen*, (1903) A. C. 129, *Foll.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). NARAYAN *v.* NALLATHAMBI. **97 I.C. 395=49 Mad. 465=1926 M.W.N. 622=24 M.L.W. 343=A.I.R. 1926 Mad. 767=51 M.L.J. 138 (F.B.).**

—S. 10—Scope and Interpretation.

———Under S. 10 read with S. 3 income-tax is payable by an association of individuals in respect of the profits or gains of a business carried on by it. A body of trustees is a unit for purposes of such taxation. (*Addison and Bhide, JJ.*). HOTZ TRUST OF SIMLA *v.* COMMISSIONER OF INCOME-TAX. **A.I.R. 1930 Lah. 929.**

———*Meaning of "any business" and "profits or gains."*

If "any business" in S. 10 (1) means all the businesses put together, then in proviso (*b*) "profits or gains" will mean the aggregate profits or gains of all the businesses together. A.I.R. 1924 Mad. 474 and A.I.R. 1929 Lah. 556, *Rel. on.* (*Kumaraswami*

INCOME-TAX ACT (1922). S. 10—Scope and interpretation.

Sastri, Curgenven and Walsh, JJ.). COMMR. OF INCOME-TAX *v.* SUPPAN CHETTIAR & CO.
123 I.C. 801=31 M.L.W. 141=1930 M.W.N. 20= A I R. 1930 Mad. 124=58 M.L.J. 46 (S B.).

———Section 10 deals solely with the profits or gains of any business carried on by the assessee. A.I.R. 1929 Lah. 556, *Diss. from.* (*Macnair and Munje, A.J.Cs.*). COMMR. OF INCOME TAX *v.* BALLARPUR COLLIERIES, CHANDA. **122 I. C. 689= 26 N.L R. 75=13 N L.J. 7= A I.R. 1930 Nag. 183.**

———So far as S. 10 (2) (*vi*), Income-tax Act, is concerned, the scope of the Indian Act is absolutely the same as that of the English Act. (*Coutts-Trotter, C.J., Odgers and Beasley, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* MASSEY & CO., LTD., MADRAS. **115 I. C. 814=29 M L W. 476= A.I.R. 1929 Mad 453=56 M.L J. 451 (F.B.)**

———The expression "the business," interest on capital in respect of which is sought to be excluded from taxation, means the business whose profits are being assessed in the year under consideration. (*Coutts-Trotter, C.J., Wallace and Beasley, JJ.*). COMMR., INCOME-TAX *v.* SOMASUNDARAM.
109 I. C 369=27 M.L W. 432= A.I.R. 1928 Mad. 487=54 M L.J. 436 (F.B.).

———"*Obsolete*" *meaning of.*

Obsolete machinery means machinery which, though it is able to perform its function has become in common parlance out of date and performs its function so indifferently or at such a cost that a prudent man instead of continuing to use such machinery would discard it and install more modern and more labour-saving machines. The word "obsolete" is quite inapplicable to a new motor-car which is only useless for its purpose because it has been broken to pieces in an accident. (*Coutts-Trotter, C J. and Beasley, J.*). RATHAN SINGH *v.* COMMR. OF INCOME TAX.
92 I. C. 1051=23 M. L. W. 267= A. I. R. 1926 Mad. 462=50 M.L.J 157.

———*Separate heads of reliefs are disjunctive not alternative—Old car purchased for using parts and bits for repairs of other cars—Cost is deductible under cl. (ix).*

The various reliefs by way of deductions specified in S. 10 of the Act are cumulative and disjunctive and not alternative and exclusive. If any deduction claimed falls within the express words of any one of the sub-sections it is not open to Government to say that it is really covered by the general provision of sub-S. (*vi*). The cost of an old car for the sole purpose of using bits and parts of it for carrying out repairs to the owner's other cars on the road, stands on the same footing as if he had obtained and used new parts for repairing his fleet of motor cars from time to time. Such costs fall within the scope of S. 10 (2), cl. (*ix*). (*Coutts Trotter, C.J. and Beasley, J.*). RATHAN SINGH *v.* COMMR. OF INCOME TAX. **92 I C. 1051= 23 M.L.W. 267=A.I.R. 1926 Mad 462= 50 M.L.J. 157.**

———'*Obsolete.*'

The expression "obsolete" in S. 10 (2) (*vii*) of the Income-tax Act of 1922 includes cases of unfitness arising from whatever cause whether it is due to total destruction or supersession by new invention. (*Kumaraswami Sastri, J.*). RATNA SINGH, *In re.* **85 I.C. 478=20 M L.W. 859= A.I.R. 1925 Mad. 157.**

—S. 10—Miscellaneous.

———A firm is the assessee in respect of the profits and gains of the business of the firm. A partner is not assessed with regard to the profits of the firm and is therefore not an assessee. A.I.R. 1924 Mad. 474 (S.B.), *Diss. from.* (*Macnair and Munje, A.J.Cs*). COMMR. OF INCOME TAX *v.* BALLARPUR COLLIERIES, CHANDA. **122 I C. 689= 26 N.L.R. 75=13 N L.J. 7= A.I.R. 1930 Nag. 183.**

INCOME-TAX ACT (1922). S. 12—Accounting principles.

———Debt discharged by consideration other than cash—True value of consideration must be looked to. A I.R. 1929 Pat. 476 (F B.), *Dist.* (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMISSIONER OF INCOME TAX **9 Pat. 240= A.I R. 1930 Pat. 81 (S B.).**

———Provident Fund started by company—Part contributed by deductions of employee's salary—Part contributed by company—Provident Fund subsequently transferred to trustees—There was no obligation on the company to make periodical payments to the trustees—Deductions from salaries or contributions by company not actually paid to trustees—Trustees having power to call on the company to make up shortage of its liabilities—Company held not entitled to deduct from their income sums merely c rried forward as a book liability in favour of employees or trustees—Cash payments however could be deducted—Actual payment to employee was not necessary—Actual payment to trustees so as to lose proprietary right of control was sufficient. (*Rutledge, C.J., Brown and Chari, JJ*). COMMISSIONER OF INCOME TAX *v.* BURMA CO-OPERATIVE LTD. **119 I.C 746= 7 Rang. 6 8= A.I.R. 1929 Rang. 193 (S.B.).**

—S. 11—Conditions for deductions.

———An assessee is not entitled to deduct an expenditure (adat, interest, etc.) not actually incurred by him before the close of the account year and a deduction can be claimed only if the expenditure is actually incurred or the liability incurred is satisfied before the close of the year. (*Hallifax and Kinkhede, A..J. Cs.*). COMMISSIONER OF INCOME-TAX *v.* JAINARAIN MOTIRAM.
123 I C. 467= A. I. R. 1929 Nag. 243.

—S. 11—Profession-tax.

———Profession-tax paid under S. 111 of the Madras City Municipal Act cannot be allowed as proper deduction from the taxable income as an expenditure incurred solely for the purposes of the profession of the assessees within the meaning of S. 11 of the Income-tax Act.

The profession tax is a payment made out of the income of the tax-payer and is quite different from license fee though the payment is to be made in the manner of a license fee. The question, however, depends upon the nature of the profession-tax levied. (*Coutts-Trotter, C. J., Krishnan and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* KING AND PARTRIDGE. **92 I C. 943=49 Mad. 296= 1926 M W N. 478=24 M.L W. 566= A.I.R. 1926 Mad. 368=50 M.L.J. 176 (F.B.).**

—S. 12—Accounting principles.

———If the expenditure required to obtain the income from the capital asset is negligible the case is the simple case of a man in receipt of a clear revenue therefrom. If some considerable expenditure is necessary before the annual return can be obtained then the history of the year will be stated in the form of a "Trading" or "Revenue" account or account of the receipts and expenditure during the year. It is essential when accounting on this basis, to exclude from either side of the account, matters which in substance represent only a rise or fall in

INCOME-TAX ACT (1922), S. 12—Bonus shares of Company.

the value of the asset from which revenue is derived as distinct from net revenue itself or which represent only a change in the form of the investment, whether the change be a change into money or into some other form of property. (*Rankin, C.J., C.C. Ghose and Buckland, JJ.*). GOOPTU ESTATE. *In re.*
50 C.L.J. 375=34 C. W. N. 327=
A.I.R. 1931 Cal. 1 (F.B.).

—S. 12—Bonus shares of Company.

———Distribution of profits accumulated by a Company in the form of bonus shares—Shareholders left with no option to take profits in any other form—Bonus shares do not form "income, profits or gains" to the share-holder within S. 2 (15) and S. 12. (*Robinson, C. J., Heald and Beasley, JJ.*). STEEL BROTHERS & COMPANY *v.* GOVERNMENT.
82 I.C. 665=2 Rang. 211=
A.I.R. 1924 Rang. 337 (F.B.).

—S. 12—Interpretation and scope.

———*Income from zamindari is assessable under S.* 12 (1).

The words of S. 12 (1) are clear and emphatic and are expressly framed so as to make the sixth head in S. 6 describe a true residuary group embracing within it all sources of income, profits and gains, provided the Act applies to them, that is, provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India as provided by S. 4 (1) and are not exempted by virtue of S. 4 (3). Therefore, Ss. 6 and 12 of the Act bring into charge for the purposes of income-tax the income derived from a zamindari and the zamindar is assessable in respect of income, profits and gains derived from that source after making allowance for the jama assessed and paid. A.I.R. 1925 Cal. 598, *Affirmed.* (*Lord Russell of Killowen.*) PROBHAT CHANDRA BARUA *v.* EMPEROR.
125 I.C. 871=
57 I.A. 228=34 C.W.N. 1017=52 C.L.J. 225=
A. I. R. 1930 P.C. 209 (P. C.).

—S. 12—'Other sources.'

———*Income from settlement to collect particular kind of earth.*

An income from the settlement of the right to collect a particular kind of earth in particular area during a particular season for the purpose of extracting saltpetre and which is not casual or non-recurring is taxable under the head "income" from "other sources". (*Dawson-Miller, C.J. and Foster, J.*). (MAHARAJA GARU) MAHADEO ASHRAM PRASAD SAHI BAHADUR *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA.
100 I. C. 897=6 Pat. 29=8 P. L.T. 359=
A.I.R. 1927 Pat. 133.

—S. 12—Salami.

———Assessees taking lease from *R*—This lease subject to building lease demised to Tata Bank—Tata Bank paying salami—Tata Bank going into voluntary liquidation for purpose of amalgamation with Central Bank—Assessees taking advantage of forfeiture clause of re-entry—Central Bank compromising by paying one lakh of rupees—Income-tax authorities claiming this sum assessable income—Sum held to be salami but not assessable. A.I.R. 1924 Pat. 679, *Ref.* (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). GOOPTU ESTATE LTD., *In re.*
50 C.L.J. 375=34 C.W.N. 327=
A.I.R. 1930 Cal. 1 (F.B.).

—S. 12—Water-taxes.

———Taxes payable under Act III of 1914 and Act IV of 1920 are not to be deducted from royalty in determining assessable income. 34 Cal. 257 and

INCOME-TAX ACT (1922), S. 13—Equitable estoppel.

6 P.L.J. 62, *Appl.* (*Dawson-Miller, C.J. and Jwala Prasad, J.*). COMMR. OF INCOME-TAX, BIHAR AND ORISSA *v.* SHIVA PRASAD SINGH.
91 I.C. 476=
4 Pat. 752=A I.R. 1926 Pat. 109.

—S. 13—Applicability.

———Where the method of accounting is one regularly employed by the petitioner assessee, the proviso to S. 13 does not come into operation. (*Broadway and Tapp, JJ.*). FEROZE SHAH *v.* COMMR. OF INCOME-TAX, PUNJAB.
A.I.R. 1930 Lah. 197.

———Proviso to S. 13 applies only when no method of accounting has been regularly employed or when the method employed is such that in the opinion of the Income-tax Officer the income, profits and gains cannot properly be deducted therefrom and not to a case where the Income-tax Officer has a doubt as to the genuineness of accounts. The section applicable in such cases is S. 23 (2). (*Le Rossignol and Martineau, JJ.*). KESARI DASS *v.* INCOME-TAX COMMISSIONER.
94 I.C. 150=7 Lah. 138=27 Pat. L.R. 325=
A.I.R. 1926 Lah. 201.

—S. 13—Basis of accounting.

———*Assessee may adopt either.*

It is open to a trader to adopt either the mercantile basis of accounting or the cash basis. He is not forced to adopt one in preference to the other but he cannot adopt both, and once an assessee has adopted the mercantile basis of accountancy it is upon that basis and upon that alone that he is to be assessed. (*Coutts-Trotter, C. J., Wallace and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* SUBRAMANIAM CHETTIAR.
104 I. C. 645=
50 Mad. 765=26 M L.W. 223=
1927 M.W.N. 598=39 M.L.T. 540=
A.I.R. 1927 Mad. 841=53 M.L.J. 379 (F.B.).

—S. 13—Computation of income.

———Where the computation of income, profits and gains for a particular year has been made under the provisions of S. 13 upon such basis and in such manner as the Income-tax Officer may determine the assessee is entitled to show that income, profits and gains included in the assessment for a subsequent year were included in that computation and it is a question of fact, to be decided on the evidence in each particular case: *K. T. S. K. S. Chettiar* (Misc. Appln. No. 17 of 1927); *Commissioner of Income-tax* v. *Muthu Sarvarayadu*, Income-tax Cases 208, *Expl.* and *Dist.* (*Heald, Offg. C.J., Chari and Ormistone, JJ.*). COMMR. OF INCOME-TAX *v.* C. T. V. S. CHETTYAR FIRM.
122 I. C. 902=7 Rang. 644=
A. I. R. 1929 Rang. 248 (F.B.).

—S. 13—Decision about method of accounting.

———*If can be questioned by assessee.*

The Income-tax Officer should be the sole arbiter on the question of the possibility of deducing the income, profits and gains from the method of accounting employed and the assessee is not entitled to challenge his opinion. (*Le Rossignol and Martineau, JJ.*). FIRM GOKUL CHAND *v.* COMMR. OF INCOME-TAX.
94 I.C. 128=
A. I. R. 1926 Lah. 446.

—S. 13—Equitable estoppel.

———Method of accounts accepted by the Income-tax Officer in one transaction—He cannot object to same method in similar other transactions. (*Findlay, J.C. and Pridseaux, A.J.C.*). COMMR. OF INCOME-TAX *v.* BANSILAL ABIRCHAND.
108 I.C. 805=25 N.L.R. 76=
A.I.R. 1928 Nag. 102.

INCOME-TAX ACT (1922), S. 13—Evidence.

—S. 13—Evidence.

——The Income-tax Officer should be governed in his procedure by judicial considerations. He should base assessment on legal and not mere hearsay evidence which may be the evidence of his officers or of members of the public, but without evidence to the effect that those items which do not appear in an account should find a place therein, he is not entitled to assume on mere general hearsay that those items should appear in the account. Should he however find on good evidence that even one substantial item is missing, he would be entitled to treat the whole account as unreliable. (*Le Rossignol and Martineau, JJ.*). BRIJ NATH *v.* COMMISSIONER OF INCOME-TAX.

94 I.C. 156=A.I.R. 1926 Lah. 233.

—S. 13—Interest.

——Interest due to the assessee but not paid to him—Amount of such interest shown on the credit side for himself—It is not to be treated as income or profit. A. I. R. 1927 Mad. 841, *Dist.* (*Hallifax and Mohiuddin, A.J.Cs.*). COMMR. OF INCOME-TAX *v.* NANHELAL. **111 I. C. 159= 24 N.L.R. 176=11 N L.J. 101= A.I.R. 1928 Nag. 241.**

—S. 13—Losses.

——Assessee is entitled to deduct from his estimated income actual losses suffered in particular year and amount of irrecoverable debts that should have been discovered in particular year. (*Mukerji and Niamatullah, JJ.*). SHIVA PRASAD *v.* COMMR. OF INCOME-TAX, U.P. **124 I.C. 467= A.I.R. 1929 All. 819.**

——Stock jobbing business carried on for several years—Accounts kept on the method of: (1) spreading losses and profits over whole term of years, or (2) taking final account when transaction closed—Method was approved, (*Findlay, J.C. and Prideaux, A.J.C.*). COMMR. OF INCOME-TAX *v.* BANSILAL ABIRCHAND. **108 I.C. 805= 24 N.L.R. 76=A.I.R. 1928 Nag. 102.**

—S. 13—Notice.

——The Income-tax Officer is not empowered by S. 13 to dispense with a notice under S. 23 (2). (*Zafar Ali and Addison, JJ.*). RAMPARTAP SUKH DIAL *v.* COMMR. OF INCOME-TAX, DELHI.

122 I.C. 238=10 Lah. 833=31 Pat.L.R. 135= A.I.R. 1930 Lah. 277.

—S. 13—Random assessment.

——If an assessee does not choose to make an honest statement of account, so that the amounts of profits may be strictly determined, he cannot complain if a random assessment is made upon him. *Macpherson* v. *Moore*, 6 Tax Cases at pp. 114, 115, *Rel. on.* (*Rutledge, C. J., Carr and Brown, JJ.*). COMMR. OF INCOME-TAX *v.* CHAN LO CHWAN. **115 I.C. 897= 7 Rang. 281=A.I.R. 1929 Rang. 102 (F.B.).**

—S. 13—Validity of decision.

——Money-lending business—Amounts received from debtor not properly appropriated—Assessing officer holding as interest payment not exceeding amount due as interest—Decision is proper. A.I.R. 1922 P. C. 233, *Rel. on.*

Kulwant Sahay, J.—"A creditor is entitled to keep the amounts received by him from his debtor in suspense and in case the creditor *bona fide* keeps the amount in suspense he is entitled to say that he is not liable to assessment so long as the appropriation has not been made and the account has not been settled; but if it is found that suspense account is not kept *bona fide*, the Income-tax Department would be entitled to find for themselves what was the amount received on account of interest. (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMR. OF INCOME-TAX.

9 Pat. 240=A.I.R. 1930 Pat. 81 (S.B.).

INCOME-TAX ACT (1922), S. 14—Partition.

—S. 13—Valuation of stock.

——When the opening and closing stocks of a business are both undervalued the real profits of the company of a particular year cannot be ascertained by merely raising the valuation of the closing stock without taking into consideration the similar undervaluation of the opening stock. A. I. R. 1928 Bom. 510, *Affirmed.* (*Lord Buckmaster.*) COMMR. OF INCOME-TAX, BOMBAY PRESIDENCY *v.* AHMEDABAD N. C. MILLS CO., LTD.

121 I.C. 543=1930 A.L.J. 76=34 C.W.N. 262= 51 C.L.J. 128=32 Bom. L.R. 358= 1930 M.W.N. 343=31 M.L.W. 297=57 I.A. 21= A. I. R. 1930 P.C. 56=58 M L.J. 204 (P.C.).

——Stock undervalued both at the beginning and at the end of the year—Rectifying value of stock only at the end and not at the beginning of the year is wrong—Both errrors should be corrected. (*Marten, C. J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* AHMEDABAD COTTON MILLS CO., LTD.

112 I.C. 887=52 Bom. 669= 30 Bom. L.R. 1160= A.I.R. 1928 Bom 510.

——Stock valued at cost price—Market price less in year of assessment—Assessee not claiming loss on that head—Cost price should be considered. (*Findlay, J. C. and Prideaux, A. J. C.*). COMMR. OF INCOME-TAX *v.* BANSILAL ABIRCHAND.

108 I.C. 805=24 N L.R. 76=A.I.R. 1928 Nag. 102.

——Method of valuing a stock for one year cannot be changed in taking value of the stock for the succeeding year. (*Coutts-Trotter, C. J. and Krishnan, J.*). COMMR. OF INCOME-TAX *v.* CHENGALVARAYA. **91 I.C. 137=48 Mad. 836= A.I.R. 1925 Mad. 1242=49 M.L.J. 425.**

—S. 14—Applicability.

——The whole object of the section is to exempt from taxation in the hands of an individual that which has already been taxed in the hands of the joint family as such. If, however, the individual receives an income *aliunde* from property which has not been taxed, as that of a Hindu joint family, then it would appear that the provisions of S. 14 have no application whatever. (*Dawson-Miller, C.J. and Macpherson, J.*). AMBIKA PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA.

93 I.C. 999=5 Pat. 20=7 P.L T. 391= A.I.R. 1926 Pat. 256.

—S. 14—Impartible estate.

——The income of an impartible estate is that of the incumbent for the time being and the fact that he is bound to maintain his sons does not entitle him to treat the income as that of the undivided family. (*Dawson-Miller, C.J. and Foster, J.*). RAJA SHIVA PRASAD SINGH *v.* KING-EMPEROR.

82 I. C. 653=5 P.L.T. 497= 1924 P.H.C.C. 234=2 Pat L.R. Cr. 233= 4 Pat. 73=A. I. R. 1924 Pat. 679.

—S. 14—Partition.

——Joint Hindu trading family entitled to a share in money-lending business in Malay States—On partition, business becoming the share of one person—Remittance prior and subsequent to partition—The person getting business not liable for the remittance prior to partition. (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). ARUNACHALAM CHETTIAR *v.* COMMR. OF INCOME-TAX, MADRAS.

1929 M.W.N. 642=30 M.L.W. 541= A.I.R. 1929 Mad. 769=57 M.L.J. 300 (F.B.).

INCOME-TAX ACT (1922), S. 16—Bonus on shares.

—S. 16—Bonus on shares.

——Assessee a share-holder in a company—Company keeping aside for some years a certain sum to be distributed as bonus to the directors—Assessee objecting to such payment—Matters compromised after some years and the assessee paid a lump sum as his share in the amount reserved—The amount is part of his income in the year of receipt and does not represent assessee's profits for the previous years. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* VERNON MILWARD BASON.

12 I.C. 718=55 Cal. 987=32 C.W.N. 574= A.I.R. 1928 Cal. 729 (F.B.).

—S. 16—Calculation of total income.

——Super-tax—Total income of individual partner in a registered firm means actual income in the previous year without deducting taxes and receipts exempt from income-tax—Subsequent increase of his share does not furnish a basis of his income. (*Macleod, C.J. and Shah, J.*). COMMISSIONER OF INCOME-TAX *v.* PHILIP SEDDAN MELLOR.

81 I. C. 489=26 Bom. L. R. 366=48 Bom. 504= A.I.R. 1924 Bom. 361.

—S. 22—Entering firm to inspect accounts.

——*Forcible entry—Legality of.*

Although an Income-tax Officer is empowered under S. 22 (4) of the Income-tax Act to serve the proprietors of a firm with a notice to produce their accounts, there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice. He has no authority under the Act to enter the firm's premises in order to inspect the accounts, or to remain on the premises for that purpose against the will of the proprietors, and if he does so he commits criminal trespass and the proprietors have a right to forcibly turn him out as S. 99, Penal Code, would not deprive them of their right of private defence. (*Martineau, J.*). ACHHRU RAM *v.* EMPEROR. **95 I C. 308=7 Lah. 104=27 P.L.R. 298= 27 Cr. L.J. 772=A.I.R. 1926 Lah. 326.**

—S. 22—Foreign business.

——Assessee in British India carrying on foreign business—Income-tax Officer can require him to produce such account books of his foreign business only as are necessary to enable him to check return—If assessee fails to produce them, Income-tax Officer cannot in all cases make assessment under S. 23 (4), but it has got to be shown that assessee could produce them. (*Beasley, C.J., Anantha-krishna Ayyar and Curgenven, JJ.*). MOHAMED KASSIM ROWTHER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **32 M.L.W. 165= 1930 M.W.N. 717=A.I.R. 1930 Mad. 763 (F. B.).**

—S. 22—Foreign firm.

——Section 22 (4) empowers Income-tax Officer to require agent to produce account books kept in places outside British India for his inspection. A.I.R. 1928 Bom. 448 and A.I.R. 1928 Bom. 465, *Ref.* (*Rutledge, C.J., Chari and Brown, JJ.*). SOMASUNDARAM *v.* COMMR. OF INCOME-TAX.

123 I. C. 126=7 Rang. 595= A.I.R. 1930 Rang. 10 (S.B.).

—S. 22—Non-production of accounts.

——The proviso to sub-S. (4), S. 22, when read with S. 23 (4) only limits the power to call for accounts for more than three years prior to the previous year when the Income-tax Officer has to make the assessment to the best of his judgment where the conditions mentioned in S. 23 (4) exist. Where, however, during the course of the enquiry, the Income-tax Officer is not going to make the assessment to the best of his judgment owing to want of materials but proceeds to make an enquiry as regards the truth or otherwise of the allegations made by the assessee in his return there is nothing to prevent the Income-tax Officer from requiring the assessee to produce any evidence including accounts. And on non-production of the account books the case will be governed by Evidence Act, S. 114, Illus. (*g*) and (*h*). (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). SANKARALINGA *v.* COMMR. OF INCOME-TAX. **31 M.L.W. 738= A.I.R. 1930 Mad. 209=58 M.L.J. 260 (F.B.).**

INCOME-TAX ACT (1922), S. 22—Notice.

——Assessee making return and complying with notice under S. 23 (2)—Still notice under S. 22 (4) for producing accounts even of previous years can be issued and order can be passed under S. 23 (4). A.I.R. 1928 Cal. 587 (S.B.); A.I.R. 1928 Pat. 529 (F.B.) and A.I.R. 1928 All. 283, *Appr.*; A.I.R. 1928 Lah. 219, *Not foll.*; A.I.R. 1927 Mad. 49 (F.B.), *Expl.* and *Dist.* (*Coutts-Trotter, C.J., Beasley and Reilly, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* B. M. RAMASWAMI CHETTIAR. **116 I. C. 566= 52 Mad. 194=29 M.L.W. 273= A.I.R. 1929 Mad. 60=56 M.L.J. 141 (F.B.).**

——Where the requisition under S. 22 (4) is not complied with the assessment made by the Income-tax Officer to the best of his judgment under S. 23 (4) is legal. (*Obiter*). (*Kulwant Sahay and Fasl Ali, JJ.*). DAMODAR PRASAD *v.* COMMR. OF INCOME-TAX. **120 I.C. 639=10 P.L.T. 444= 8 Pat. 796=A.I.R. 1929 Pat. 409.**

——Double notice to assessee under Ss. 22 (4) and 23 (2)—Assessee failing to comply with notice under S. 22 (4)—Income-tax Officer has jurisdiction to so assess under S. 23 (4). (*Walsh and Banerji, JJ.*). *In the matter of* CHANDRA SEN JAINI.

108 I.C. 234=50 All. 589=26 A.L.J. 340= A.I.R. 1928 All. 283.

—S. 22—Notice.

——Under S. 22 (2) the Income-tax Officer must give the proposed assessee at least thirty days time within which to file a return. If this minimum is denied the notice becomes entirely illegal and no subsequent extension of time will cure the defect that initially lay in the notice issued. (*Mukerji and Niamatullah, JJ.*). *In the matter of* KAJORI MAL KALYAN MAL OF GENERAL GANJ, CAWNPORE. **122 I.C. 741=1930 A.L.J. 78= A.I.R. 1930 All. 209.**

——Person carrying on business at different places—Separate notices requiring separate returns of each branch not necessary. (*Boys, Kendall and Young, JJ., on difference between Mukerjee and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1=1930 Cr. C. 113= A.I.R. 1930 All. 49 (F.B.).**

——Notice under S. 22 (4) issued by the Income-tax Officer at the place where a person has a principal place of business is not invalid because it includes accounts and documents connected with the assessee's branch shop. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1= 1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.),**

——Notice to produce documents in existence—Assessee producing different ones through gomastha—Notice to gomastha to produce former documents—Notice is sufficient and on failure to comply with notice Income-tax Officer can properly make assessment to best of his judgment under S. 23 (4). (*Kulwant Sahay and Fasl Ali, JJ.*). JANGI BHAGAT

INCOME-TAX ACT (1922), S. 22—Notice.

RAMAUTAR *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **121 I C 332=8 Pat. 877= A. I. R. 1930 Pat. 127.**

———Even after an assessee has made a return of his income under S. 22 (2) assessment can be made under S. 23 (4) for non-compliance with the terms of a notice under S. 22 (4). A. I. R. 1928 Pat. 529 (F. B.); A. I. R. 1928 Cal. 587 (S. B); A. I. R 1928 All. 283, *Foll.*; 106 I. C. 193; A. I. R. 1927 Pat. 390, *Deemed overruled*; A. I. R. 1928 Lah. 219, *Not foll.* (*Rutledge, C. J., Brown and Carr, JJ.*). COMMR. OF INCOME-TAX, BURMA *v.* R. M. P. CHETTYAR FIRM. **117 I.C. 564=7 Rang. 26= A.I.R. 1929 Rang. 38 (F.B).**

———There is nothing to justify the view that a notice under S. 22 (4) can only be given to a person who has not made a return and that if it is given after a return has been filed, such a notice is illegal. (*Walsh and Banerji, JJ.*). *In the matter of* CHANDRA SEN JAINI. **108 I.C. 234= 50 All. 589=26 A.L.J. 340=A.I.R. 1928 All. 283.**

———The notice under S. 22 (4) and S. 23 (2) may be comprised in one document without committing any illegality. A. I. R. 1928 All. 283, *Rel. on.* (*Rankin, C. J., C.C.Ghose and Buckland, JJ.*). *In the matter of* HARMUKHRAI DULICHAND. **114 I.C. 90=56 Cal. 39=32 C.W.N. 710= A.I.R. 1928 Cal. 587 (F B.).**

———No notice can be issued under S. 22 (4) when enquiry under S. 23 (3) has started. (*Shadi Lal, C. J. and Bhide, J.*). KHASHI RAM KARAM CHAND *v.* COMMR. OF INCOME-TAX, PUNJAB. **103 I C. 524=A.I.R. 1928 Lah. 219.**

———*Income-tax Officer can issue notice under S. 22 (4) after return has been made.*

There is no basis for the argument that the notice contemplated by S. 22 (4) is a notice which can be served only before a return has been made under the earlier part of the section. 106 I. C. 193; A. I. R 1927 Pat. 390, *Overruled*; A. I. R. 1928 Cal. 587, *Rel. on.*

The condition precedent entitling the officer to serve that notice is clearly that a notice has been served under sub-S. (2), S. 22 and if that is complied with, the section, construing it by itself, is sufficiently complied with. There is no warrant in the statute for saying that after a return is made the power given by cl. (4), S. 22 is gone. (*Courtney-Terrell, C J., Das, Adami, Wort and Allanson, JJ.*). RAM KHELAWAN UGAM LAL *v.* COMMR. OF INCOME-TAX. **114 I.C. 211=7 Pat. 852= 9 Pat.L.T. 653=A.I.R. 1928 Pat. 529 (F.B.).**

———A notice under S. 22 (4) concerns only the stage before the filing of a return. (*Mullick, Ag. C.J. and Sen, J.*). BRIJ RAJ RANGLAL *v.* COMMR. OF INCOME-TAX. **106 I.C. 193= 8 Pat.L.T. 686=A.I.R. 1927 Pat. 390.**

—S. 22—Re-opening of decision.

———Decision about assessment arrived at by predecessor can be re-opened by succeeding Income-tax Officer if fresh facts come to light—Income-tax Officer however is to be guided by principles of natural justice and assessment cannot be arbitrarily changed. A.I.R. 1930 Mad. 209, *Expl.* and *Appr.* (*Tek Chand and Agha Haidar, JJ.*). DEOKINANDAN & SONS *v.* COMMR OF INCOME-TAX, DELHI. **A.I.R. 1930 Lah. 605.**

———When in a previous year of assessment a decision is arrived at after investigation and enquiry, that certain amounts standing in the name of certain ladies in the petitioner's accounts were stridhanam amounts belonging to them, and as such the interest paid in respect of the said amounts, is held to be a valid deduction, it is still open to the income-tax authorities to re-open the question of the ownership of the amounts in a subsequent year of assessment, and the authorities not constituting a Court, are not barred by principle of *res judicata*. *Case-law discussed.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). SANKARALINGA *v.* COMMR. OF INCOME-TAX. **31 M.L.W. 738=A. I. R 1930 Mad. 209= 58 M.L.J. 260 (F.B.).**

INCOME-TAX ACT (1922), S. 22—Time-limit.

—S. 22—Return regarding branch business.

———An Income tax Officer of an asesssee's principal place of business has jurisdiction to compel such assessee to submit a return and produce accounts in respect of a branch business even though he has submitted a return, to produce accounts, and otherwise complied with all the requirements of the law before the Income-tax Officer of the place where he has such a branch business. (*Boys, Kendall and Young, JJ., on difference between Mukerjee and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J 1= 1930 Cr. C. 113=A. I. R. 1930 All. 49 (F.B.).**

—S. 22—Revised return.

———There is nothing in cl. (3) which says that any offence committed with respect to a return made under cl. (2) must be condoned if the revised return be true. All that cl. (3) provides is that this return would be treated as a return made in due time, provided it is made before an assessment has been made (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR *v.* EMPEROR. **120 I.C. 435= 1930 A L.J. 26=31 Cr. L J. 88= 1929 Cr. C. 647=A.I R. 1929 All. 919.**

—S. 22—Scope.

———Sub-clause (4) is very wide and gives the Income-tax Officer very wide powers. Where profits were received at Rawalpindi from business in Kashmir (Native State),

Held, it was competent for Income-tax Officer at Rawalpindi to ask the assessee to produce account book relating to Kashmir business. (*Broadway and Zafar Ali, JJ.*). RADHA KISHAN *v.* COMMR. OF INCOME-TAX. **101 I. C 321= A.I.R. 1927 Lah. 5.**

—S. 22—Summary assessment.

———When a man has submitted a return, has complied with the terms of a notice (if any) issued under S. 22 (4). Income tax Act, and has further complied with the terms of a notice issued under S. 23 (2), he should not be subjected, for any subsequent default, to the drastic penalty of a summary assessment, which carries with it the further penalty of the loss of right to appeal, by issuing against him a notice under S. 22 (4) after the commencement of an inquiry under S. 23 (3). A. I. R. 1927 Lah. 5, *Dist.* (*Shadi Lal, C. J. and Bhide, J.*). KHUSHI RAM KARAM CHAND *v.* COMMR. OF INCOME-TAX, PUNJAB. **108 I C. 524= A.I.R. 1928 Lah. 219.**

—S. 22—Time-limit.

———Section 22 (4), Income-tax Act, no doubt standing by itself is uncontrolled by any time-limit. But a time limit is imposed by the four words "having made a return," as used in S. 23 (4). (*Boys, Kendall and Young, JJ., on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1=1930 Cr. C. 113= A.I.R. 1930 All. 49 (F.B.).**

INCOME-TAX ACT (1922), S. 22—Validity of return.

—S. 22—Validity of return.

——*Letter with statement of income in Hindi.*

A merchant sent a letter to the Income-tax Officer stating that he had made a mistake in the figures supplied by him on 25th July. This letter was received in the office of the Income-tax Officer on 7th November. Attached to this letter was a statement of the income in Hindi. Along with this letter and the enclosure, the merchant sent one of the printed forms in Hindi in which an assessee is required to make a statement of his income, and in his letter suggested that the Income-tax Officer might enter the figure contained in the enclosure into the blank form and substitute the fresh return in place of the return made on 25th July,

Held, that the letter and its enclosure and the blank form sent by the merchant did substantially amount to the making of a return (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR *v.* EMPEROR.

120 I.C. 433=1930 A.L.J. 26=31 Cr. L.J. 88=1929 Cr. C 647=A.I.R. 1929 All. 919.

——When a person, without being called upon under S. 22 (2) to furnish a return of his income for the previous year, voluntarily files a return of such income in the prescribed form and duly verified in the prescribed manner, the question whether the return voluntarily filed is a valid return or not is an important question of law and it is necessary to state the case to the High Court. (*Tek Chand and Agha Haidar, JJ.*). GULLI CHAND TULSI DAS *v.* COMMR. OF INCOME TAX.

118 I.C. 535=10 Lah. 773=31 P. L. R. 23=A.I.R. 1929 Lah. 246.

——Statutory R. 19 which embodies the form of return to be submitted by the assessee has the same force as a section in the Act and a return which completely ignores its provisions cannot be considered as any return. A.I.R. 1927 Mad. 49, *Dist.* (*Rutledge, C.J. Carr and Das, JJ.*). COMMISSIONER OF INCOME-TAX *v.* A.R.A.N. CHETTIYAR FIRM. **110 I.C. 29=6 Rang. 21=A.I.R. 1928 Rang. 108 (F.B.)**

—S. 23—Adjournments.

——*Letter granting—If notice.*

Where an assessee applies for an adjournment by post or by a telegram of an enquiry in respect of which he has been required by notice under S. 23(2) to produce evidence and the Income-tax Officer grants an adjournment, the letter (or the telegram where it is a telegram) intimating the fact of the adjournment to the assessee is neither a notice under S. 23 (2) nor a requisition within the meaning of S. 63. It is merely an act of consideration and supererogation, the omission of which will not entail any legal consequence and therefore, an assessment under S. 23 (4) in default of assessee's appearance on the adjourned date cannot be objected to. 2 Indian Tax Cases 3, *Dist.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMISSIONER OF INCOME-TAX *v.* S. M. PERIANNA PILLAI.

122 I.C. 449=31 M.L.W. 78=A.I.R. 1930 Mad. 113=58 M.L.J. 10 (S.B.).

——*General power of adjournment discussed.*

The power of an officer entrusted with an enquiry to adjourn the proceedings, as occasion requires, is so necessary, convenient and universally conceded that unless it is expressly withheld by statute or rule having the force of law, it must be taken to vest in him. An Income-tax Officer has, therefore, the power of adjournment in an enquiry under S. 23 (3). (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMISSIONER OF INCOME-TAX *v.* S. M PERIANNA PILLAI.

122 I.C. 449=31 M. L.W. 78=A.I.R. 1930 Mad 113=58 M.L.J. 10 (S.B.).

INCOME-TAX ACT (1922), S. 23—'Assessment to best of judgemnt.'

—S. 23—Appeal.

——On reading, therefore, the two Ss. 22 and 23 it is abundantly clear that a right to make an assessment to the best of the officer's judgment cannot be made after an enquiry has been started so as to shut out an appeal simply because at any time after the enquiry has been started the assessee fails to produce an account as asked for. (*Boys, Kendall and Young, JJ., on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE.

1930 A.L.J. 1=1930 Cr. C 113=A.I.R. 1930 All 49 (F B.).

——No appeal lies from an assessment made under S. 23 (4). (*Fazl Ali and Chatterji, JJ.*). MOHANLAL HERDEO DAS *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **122 I.C 810=10 P.L.T. 769=9 Pat. 172=A.I.R. 1930 Pat. 14.**

——Person assessed under S. 23 (4) is not entitled to appeal on the ground that he was not liable to be assessed under the Act. (*Shadi Lal, C.J., Broadway, Fforde, Zafar Ali, and Jai Lal, JJ.*). DUNI CHAND *v.* COMMISSIONER OF INCOME-TAX. **117 I.C. 69=10 Lah. 596=30 P. L.R. 613=A.I.R. 1929 Lah 593 (F.B.).**

——Mere fact that assessment purports to have been made under S. 23 (4) does not shut out appeal but it must be shown that circumstances of the case bring it within S. 23 (4). (*Shadi Lal, C.J., Broadway, Fforde, Zafar Ali and Jai Lal, JJ.*). DUNI CHAND *v.* COMMISSIONER OF INCOME-TAX.

117 I.C. 69=10 Lah. 596=30 P. L.R 613=A.I.R. 1929 Lah. 593 (F.B.).

——Where a person puts in a statement of his income on a requisition by the income-tax authorities, the enquiry falls under S. 23 (3) and not 23 (4) and, therefore, an appeal lies under S. 30 from the order of assessment. (*Coutts Trotter, C.J. Krishnan and Beasley, JJ.*). RAMASWAMIAH *v.* COMMR. OF INCOME-TAX MADRAS.

93 I.C. 1067=49 Mad. 831=24 M.L.W. 771=A.I.R. 1927 Mad. 49.

—S. 23—'Assessment to best of judgment.'

——*Income-tax Officer cannot arbitrarily change assessment.*

Where Income-tax officials have after enquiry proceeded to assess the assessee on a certain basis, though they may be entitled to re-open the enquiry they cannot arbitrarily change the assessment simply on the ground that the succeeding officer does not agree with the preceding officer's finding. The principles of natural justice or judicial dealing which Courts impose upon Income-tax Officers would prevent them capriciously setting aside the order of their predecessors based on an enquiry. But if fresh facts come to light which on an investigation would entitle the Income-tax Officers to come to a different conclusion from that of his predecessor he is entitled to re-open the question. (*Kumaraswamy Sastri, Curgenven and Walsh, JJ.*). SANKARALINGA *v.* COMMR. OF INCOME-TAX. **31 M.L.W. 738=A.I.R. 1930 Mad. 209=58 M.L.J. 260 (F.B.).**

——*Assessment should not be purely arbitrary.*

Where an assessee withholds the materials for a regular assessment, the assessment to the best of the Income-tax Officer's judgment must necessarily be to some extent arbitrary, but it must

INCOME-TAX ACT (1922), S. 23—'Assessment to best of judgment.'

also be reasonable and the materials or reasons on which it is founded must be so stated that the Commissioner may be in a position to ascertain whether or not it is reasonable.

Where the assessment under S. 23 (4) is entirely arbitrary and does not purport to be founded on any materials or reasons beyond the Income-tax Officer's private opinion, the assessment is illegal. (*Heald, Offg. C.J., Chari and Ormistone, JJ.*). CHETTIAR S.P.K.A.A.M. FIRM *v.* COMMR. OF INCOME-TAX. **121 I.C. 790=7 Rang. 669= A.I.R. 1930 Rang. 35 (S.B.).**

——Section 23 (4) says that the Income-tax Officer shall make the assessment "to the best of his judgment.' This means that he must make it according to the rules of reason and justice and not according to private opinion; according to law and not humour; and that the assessment is to be not arbitrary, vague and fanciful but legal and regular.

Where the assessee has admittedly filed complete accounts and there is no suggestion that the accounts are false or fraudulent and where there are available the actual assessments for the previous years which may be presumed to have been regularly and properly made, an assessment which should have been made to the best of the Income-tax Officer's judgment but which does not even purport to be based upon the material which were admittedly available or on any material at all beyond the Income-tax Officer's whim or humour, can hardly be regarded as an assessment in respect of which the discretion given to the Income-tax Officer by S. 23 (4) has been properly exercised, and is an assessment in respect of which the Commissioner ought to have exercised the discretion given to him by S. 33. (*Heald, Offg. C.J. and Maung Ba, J.*). CHETTYAR P. K. N. P. R. FIRM *v.* COMMR. OF INCOME-TAX. **8 Rang. 203= A.I.R. 1930 Rang. 33.**

—S. 23—Bad debts.

——Assessee claiming to deduct bad debt becoming irrecoverable some years before it is written off—Bad debt should be written off within fair and reasonable time—Commissioner has no arbitrary discretion to say that bad debt should be written off in particular year—Every case should be decided on its facts. (*Marten, C.J. and Blackwell, J.*). COMMISSIONER OF INCOME-TAX *v.* VALLABHADAS MURLIDHAR. **54 Bom. 430=32 Bom.L.R. 309= A.I.R. 1930 Bom. 201.**

—S. 23—Compliance with notice.

——The parties were asked by the Income-tax Officer by notice under S. 22 (4) to produce their books of account on the date fixed in the notice. They entered appearance but produced no account books. An adjournment was given to enable the parties to produce any evidence in their possession. On the date fixed for hearing on the officer requesting them to produce the evidence the parties turned round saying that they had no evidence. They did not make any affidavit in support of their statement nor did they try to convince the officer of the truth in any way,

Held, that there was no compliance with all the terms of the notice so as to bring the case under S. 23 (4). (*Fazl Ali and Chatterji, JJ.*). MOHUNLAL HERDEO DAS *v.* COMMR. INCOME-TAX OF BIHAR AND ORISSA. **122 I.C. 810=10 P.L.T. 769= 9 Pat. 172=A I.R. 1930 Pat. 14.**

——Income-tax Department should not as a rule take a stand on technical ground under S. 23 (4)

INCOME-TAX ACT (1922), S. 23—Interpretation.

where there is a substantial compliance with the requisition of notice under S. 22 (4). (*Fazl Ali and Chatterji, JJ.*). MOHUNLAL HERDEO DAS *v.* COMMR. OF INCOME-TAX, BEHAR AND ORISSA. **122 I.C. 810=10 Pat.L.T. 769=9 Pat. 172= A.I.R. 1930 Pat. 14.**

—S. 23—Denial of accounts.

——*Presumption.*

Even when an assessee denies the existence of accounts or documents, the Income-tax Officer can presume the existence of such accounts or documents. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A L.J. 1=1930 Cr.C. 113= A. I.R. 1930 All. 49 (F.B.).**

—S. 23—Duty of Assistant Commissioner.

——It is the duty of the Assistant Commissioner to satisfy himself that the proceedings of the Income-tax Officer were in order and the mere fact that he professes to act under S. 23 (4) would not be enough to prevent the Assistant Commissioner from satisfying himself that the Income-tax Officer's claim was correct. (*Broadway and Zafar Ali, JJ.*). RADHA KISHEN *v.* COMMR. OF INCOME TAX. **101 I.C. 321=A.I.R. 1927 Lah. 5.**

—S. 23—Failure to produce accounts.

——*Effect of.*

The failure to produce books of account required by the authorities by a notice under S. 34 entails the same consequence as in the case of a failure to make a return under S. 22 and the Income-tax officer is entitled, in such a case, to make the assessment under S. 23 (4). (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* KEDARNATH KESRIWAL. **34 C.W.N. 1093 (F. B.).**

—S 23—Foreign business.

——Assessee in British India carrying on foreign business—Income-tax Officer can require him to produce such account books of his foregin business only as are necessary to enable him to check return—If assessee fails to produce them, Income-tax Officer cannot in all cases make assessment under S. 23 (4) but it has got to be shown that assessee could produce them—Income-tax Act, S. 22 (4). (*Beasley, C.J., Ananthakrishna Ayyar and Curgenven, JJ.*). MOHAMMAD KASSIM ROWTHER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **32 M.L.W. 165=1930 M.W.N. 717= A.I.R. 1930 Mad. 763 (F.B.).**

—S. 23—Interpretation.

—— Per *Mukherji, J.*—It is the ordinary privilege of a subject that he shall not be taxed on his income without a proper investigation. It is open to the assessee to prove what his income is before he is assessed on the income. If it had been the intention of the legislature that the mere word of the Taxing Officer should be final, one should find clear indication of that in the language of the statute. (*Boys. Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1=1930 Cr. C. 113= A.I.R. 1930 All. 49 (F. B.).**

——*Section contemplates three cases.*

There are clearly three cases contemplated by sub-S. (4) and the words "having made a return" are descriptive of the third class provided for by sub-S. (2), S. 23. (*Courtney-Terrell, C.J., Das, Adami, Wort and Allanson, JJ.*). RAMKHELAWAN UGAM LAL *v.* COMMR. OF INCOME-TAX. **114 I.C. 211=7 Pat. 852= 9 P. L. T. 653= A. I.R. 1928 Pat. 529 (F.B.).**

INCOME-TAX ACT (1922), S. 23—Nature of provisions.

—S. 23—Nature of provisions.

———*Section is mandatory.*

Per *Mukerjee, J.*—The provisions of sub-S. (2) of S. 23 are mandatory. (*Greaves and Mukerji, JJ.*). NIRMAL KUMAR SINGH NAWLAKSHA *v.* THE SECRETARY OF STATE FOR INDIA. **88 I.C. 404= 29 C.W.N. 591=A.I.R. 1925 Cal. 890.**

—S. 23—Non-compliance by assessee.

———A combined notice under Ss. 23 (2) and 22 (4) is a valid notice, and on a non compliance of the terms of such a notice, an assessment under S. 23 (4) could be justified. A.I.R. 1928 Cal. 587 (S.B.); A.I.R. 1928 All. 283; A.I.R. 1929 Rang. 38 (F.B.) and 2 Tax Cas 324, *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* SIVASWAMY CHETTIAR. **31 M.L.W. 160=1930 M.W.N. 23= A.I.R. 1930 Mad. 127=57 M.L.J. 854 (S.B.).**

———In respect of an assessee who has submitted a return of his income under S. 22 (2), a notice issued under S. 22 (4) is valid so as as to justify an assessment under S. 23 (4) in the event of non-compliance to the terms of the notice. 52 Mad. 194. *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMR. OF INCOME-TAX *v.* SIVASWAMY CHETTIAR. **31 M.L.W. 160= 1930 M.W.N. 23=A.I.R. 1930 Mad. 127= 57 M.L.J. 854 (S.B.).**

———It is the duty of an assessee to keep and present his accounts to show the actual income made by him. If he fails to do this he must put up with the estimate by the officers made with the best of his ability, although it is true that the officer is not entitled to make a guess without evidence: A.I.R. 1929 Pat. 476 (F.B.), *Rel. on.* (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMR. OF INCOME-TAX. **9 Pat. 240= A.I.R. 1930 Pat. 81 (S.B.).**

———Where the requisition under S. 22 (4) is not complied with the assessment made by the Income-tax Officer to the best of his judgment under S. 23 (4) is legal. (*Obiter*) (*Kulwant Sahay and Fazl Ali, JJ.*). DAMODAR PRASAD *v.* COMMISSIONER OF INCOME-TAX. **120 I.C. 639= 10 P.L.T. 444=8 Pat. 796=A.I.R. 1929 Pat. 409.**

———Return made by assessee—Notice under Ss. 23 (2) and 22 (4) served—Notice under S. 23 (2) complied with but not under S. 22 (4)—Assessment can be made under S. 23 (4). A. I. R. 1927 Pat. 390, *Diss.*; A.I.R. 1926 Lah. 161, *Expl.*; A.I.R. 1925 Cal. 890, *Foll.* (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). *In the matter of* HARMUKHRAI DULICHAND. **114 I.C. 90=56 Cal. 39= 32 C.W.N. 710=A.I.R. 1928 Cal. 587 (S.B.).**

—S. 23—Non production of pakki rokar.

———Where the assessee has deliberately withheld the pakki rokar and the ledger, the Income-tax Officer is justified in refusing to allow the assessee to produce kachchi rokar which would be of no value as evidence and to pass order under S. 23 (4). (*Tek Chand and Agha Haidar, JJ.*). MANOHAR LAL *v.* COMMISSIONER OF INCOME-TAX. **118 I.C. 436= 10 Lah. 691=30 P. L.R. 743= A.I.R. 1929 Lah. 173.**

—S. 23—Notice.

———Per *Mukerji, J.*—An Income-tax Officer has no jurisdiction to issue a notice under S. 22 (4), after the commencement of an enquiry under S. 23 (3) —*Niamatullah, J.*, contra: A.I.R. 1928 Lah. 219, *Rel. on.*; A.I.R. 1928 All. 283; A.I.R. 1928 Cal. 587 and A.I.R. 1928 Pat. 529, *Diss. from.* (*Boys*

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Kendall and Young, JJ. on difference between Mukerji and Niamatullah, J.). In the matter of LACHHMAN PRASAD BABU RAM OF CAWNPORE: **1930 A.L.J. 1=1930 Cr. C. 113= A.I.R. 1930 All. 49 (F B.).**

———Income-tax officer not satisfied that statement is genuine or complete—Notice stating particulars and grounds of objections should ordinarily issue—Assessee persistently making false returns—Such notice is not obligatory. (*Rutledge, C.J., Carr and Brown, JJ.*). COMMISSIONER OF INCOME-TAX *v.* CHAN LO CHWAN. **115 I. C. 897= 7 Rang. 281=A. I. R. 1929 Rang. 102 (F.B.).**

———Per *Greaves, J.* (*Mukerji, J. dissenting*). Section 23 does not impose upon the Income-tax Officer any obligation to directly specify the points upon which evidence should be given. (*Greaves and Mukerji, JJ.*). NIRMAL KUMAR SINGH NOULAKSHA *v.* THE SECY. OF STATE FOR INDIA. **88 I.C. 404=29 C.W.N. 591=A.I.R. 1925 Cal. 890.**

—S. 23—Objections by assessee.

———If assessee disputes authority of the Income-tax Department to adopt flat rate, then question of law may arise for consideration whether in absence of reliable data of income from certain source, Income-tax-Officer can make assessment based on formula by taking certain percentage of gross turnover as representing fair margin of profit. (*Hallifax and Kinkhede, A.J.Cs.*). COMMISSIONER OF INCOME-TAX *v.* JAI NARAIN MOTI RAM. **123 I.C. 467=A.I.R. 1929 Nag. 243.**

—S. 23—Procedure.

———Income-tax Officer's procedure must be governed by judicial considerations—Hearsay evidence is no basis for proper assessment. (*Le Rossignol and Martineau, JJ.*). BRIJNATH *v.* COMMISSIONER OF INCOME-TAX. **94 I.C 186= A.I.R. 1926 Lah. 233.**

—S. 23—Re-assessment.

———Assessment under S. 23 (4)—Re-assessment under S. 34 within one year is competent: 1 Ind. Income-tax Cas. 256 and 2 Ind. Income-tax Cas. 173, *Foll.* (*Tek Chand and Agha Haidar, JJ.*). MANOHARI LAL *v.* COMMR., INCOME-TAX. **118 I.C. 436=10 Lah. 691=30 P. L.R. 743= A.I.R. 1929 Lah. 173.**

—S. 23—Rejection of accounts.

———Notice under S. 23 (4)—Accounts produced—Notice under S. 23 (2) is essential before accounts can be rejected—Income-tax Officer should proceed judicially. (*Le-Rossignol and Martineau, JJ.*). DUNICHAND *v.* COMMR., INCOME-TAX. **94 I.C. 614= 7 Lah. 201=8 L.L.J. 106=27 P. L.R. 836= A.I.R. 1926 Lah. 161.**

———Assessee attending Income-tax office with his evidence in obedience to notice issued under S. 23 (2)—Income-tax Officer's not accepting the evidence as conclusive does not bring the case under sub S. 4. (*Dawson Miller, C. J. and Macpherson, J.*). RAGHU NATH MAHADEO *v.* COMMR. OF INCOME-TAX. **89 I.C. 675= 6 P.L.T. 555=A.I.R. 1925 Pat. 692.**

—S. 23—Several places of business.

———Person carrying on business at Cawnpore, Bombay and Calcutta—Headquarters at Cawnpore—Income-tax Officer, Cawnpore issuing notice under S. 23 (2) to submit total income—Return submitted for Cawnpore and Bombay business—Return for Calcutta submitted to Calcutta Officer—Notice under S. 23 (2) on 11th August 1927 combined with notice under S. 22 (4)—Accounts produced of Bombay and Cawnpore business—Accounts

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examined—Fresh notice under S. 22 (4) on 18th February 1928 to produce Cawnpore accounts—Further notice under S. 22 (4) on 22nd February 1928 for property accounts and trial balances of Calcutta shop—Letters written on 24th February 1928 to Calcutta Income-tax Officer to examine accounts at Calcutta and send report—Assessment under S. 23 (4) held not correct. (*Boys, Kendall and Young, JJ. on difference between Mukerjee and Niamatullah, JJ.*). *In the matter of* LAKSHMAN PRASAD BABURAM OF CAWNPORE. **1930 A.L.J. 1= 1930 Cr. C. 113= A. I. R. 1930 All. 49 (F.B.).**

——*Applicability.*

An Income-tax Officer of the principal place of business is not bound to accept the report of the Income-tax Officer of a place where assessee is carrying on a branch business nor is he bound to refer the matter back to the latter officer for further enquiry. The former can assess the assessee according to his judgment under S. 23 (4). (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE.

1930 A.L.J 1=1930 Cr. C. 113= A. I. R. 1930 All. 49 (F. B.).

—S. 23—Validity of return.

——*Whether a blank return is a return or not within S. 23 (4) is a question of law.*

The assessee was served with a notice under S. 22 (2) of the Act, calling upon him to furnish a return of income. He signed a prescribed form and refraining from making any entries in the various columns, wrote the word "blank" against the item "total" This was accompanied by a covering letter, in which it was explained that the assessee carried on no business in the place and received no income at that place, and that the writing of the word "blank" on the prescribed form meant that the assessee had no income of any kind whatsoever.

Held, that the question whether such a return accompanied by such a covering letter was "no return" for the purposes of assessment under S. 23 (4) is one of law which should be referred to the High Court. (*Broadway, Ag. C.J. and Bhide, J.*). RATTAN CHAND-DHUNI CHAND *v.* INCOME-TAX COMMISSIONERS. **111 I.C. 149=9 Lah. 188= A. I. R. 1928 Lah. 944.**

——Return made by signing of a prescribed form with all various columns left blank and the word "blank" written against the item of "total" is no return under S. 23 (4). (*Harrison and Dalip Singh, JJ.*). *In the matter of* RATTAN CHAND DHUNI CHAND. **A.I.R. 1928 Lah. 729.**

—S. 23—Waiver of notice.

——Assessee's agent present at examination of return filed under S. 22 and knowing all matters questioned by Income-tax Officer, but not applying to produce further evidence waives notice under S. 23 (2). (*Mukerji, J., Dissenting*). (*Greaves and Mukerji, JJ.*). NIRMAL KUMAR SINGH NOWLAKSHA *v.* THE SECRETARY OF STATE EOR INDIA. **88 I.C. 404=29 C.W.N. 591= A.I.R. 1925 Cal. 890.**

—S. 24—Bad debts.

——Assessee has unqualified right to write off debt as bad debt both as regards the year and the amount: A.I.R. 1922 All. 402 and A.I.R. 1924 All. 551 (F.B.), *Cons.* (*Findlay, J. C., Prideaux and Kinkhede, A. J. Cs.*). COMMISSIONER OF INCOME-TAX, NAGPUR *v.* S. M. CHITINIVIS. **117 I.C. 258=12 N.L.J. 17=25 N.L.R. 35= A. I. R. 1929 Nag. 50 (F.B.).**

INCOME-TAX ACT (1922), S. 25—Re-assessment. —S. 24—Burden of proof of losses.

——An assessee is entitled to have his losses set off against his income in any year, but he cannot claim that right unless he proves the losses; and the losses cannot be held to be satisfactorily proved by merely showing the figures for purchases and sales during the year without showing the opening balance in hand at the beginning of the year. (*Mohiuddin and Staples, A.J.Cs.*). COMMISSIONER OF INCOME-TAX, NAGPUR *v.* RADHAKRISHNA RAMANARAIN. **117 I. C. 217= A. I. R. 1929 Nag. 153.**

——When once income has been admitted, the burden of proving losses is on the assessee, who alleges them and the losses cannot be said to be satisfactorily proved unless all the particulars with regard to them are clearly shown; and a very important particular with regard to such losses must be the opening balance at the beginning of the financial year in which the losses are said to have occurred: A.I.R. 1924 Cal. 337, *Dist.* (*Mohiuddin and Staples, A. J. Cs.*). COMMISSIONER OF INCOME-TAX, NAGPUR *v.* RADHAKISHAN RAMANARAIN. **117 I.C. 217=A.I.R 1929 Nag. 153.**

—S. 24—Commission for recovering interest.

——The payment of a commission to the bankers by the assessee for realization of interest cannot be held to constitute loss of profits or gain in the sense the expression is used in S. 24. (*Fazl Ali and Chatterji, JJ.*). A. H. FORBES *v.* COMMR., INCOME-TAX. **119 I. C. 402=10 Pat. L.J. 424= 9 Pat. 139=A.I.R. 1929 Pat. 419.**

—S. 24—Depreciation.

——Loss in S. 24 (2) refers to loss of "profits or gain." Phrase 'loss of profits or gain' when the loss is under the head of business means loss on the year's working. An assessee can claim, in the case of business which has resulted in a loss, that the amount of that loss shall be increased by adding the amount of diminution of value of building, machinery, etc. (*Macnair and Munje, A.J.Cs.*) COMMR. OF INCOME-TAX *v.* BALLARPUR COLLIERIES, CHANDA. **122 I.C. 689= 26 N.L R. 75=13 N L.J. 7= A.I.R. 1930 Nag. 183.**

—S. 24—Purchase of shares.

——Purchase of shares—Price exceeding face-value paid—Excess is no loss. (*Mukerji and Niamatullah, JJ.*). GANGASAGAR *v.* EMPEROR. **120 I.C. 435=1930 A. L. J. 26=31 Cr L.J. 88= 1929 Cr.C. 647=A.I.R. 1929 All. 919.**

—S. 24—Registered firm.

——A registered firm can be held to be an assessee. (*Macnair and Munje, A.J.Cs.*). COMMR. OF INCOME-TAX *v.* BALLARPUR COLLIERIES, CHANDA. **122 I C. 689=13 N.L.J. 7= 26 N.L.R. 75=A.I.R. 1930 Nag. 183.**

—S. 25—Cessation of business.

——Firm ceasing to do business—Tax for period of business can be levied. (*Walsh, Ag.C.J. and Banerji, J.*). *In the matter of* DINANATH HEM RAJ. **100 I. C. 756=25 A. L. J. 225= 49 All. 616=A. I. R. 1927 All. 299.**

—S. 25—Re-assessment.

——Where re-assessment was not made until more than a year had elapsed after the expiration of the year of assessment.

Held, the assessee was not liable to any further tax than that already demanded for the year in question. (*Dawson-Miller, C. J. and Mullick, J.*). MAHARAJADHIRAJ OF DHARBHANGA *v.* COMMISSIONER OF INCOME-TAX. **78 I.C. 783= 3 Pat. 470=2 Pat. L.R.Cr. 25=1924 P.H.C.C. 69= 5 Pat.L.T. 459=A.I.R. 1924 Pat. 474.**

INCOME-TAX ACT (1922), S. 25—Sale of business.

—S. 25—Sale of business.

———*Refund of overpaid tax.*

When a company sells the business, including the good-will and the benefit of all running contracts the ownership of the business is changed, but the business is not "discontinued" and a refund of the overpaid tax cannot be granted under S. 25 (3). (*Macleod C. J. and Coyajee, J.*). COMMISSIONER OF INCOME-TAX, BOMBAY *v.* SANJANA & CO. **92 I.C. 517=50 Bom. 81= 27 Bom.L.R 1471=A.I.R. 1926 Bom. 129.**

—S. 25-A—Joint family business.

———Business started by brothers forming undivided family governed by Dayabagh school of Hindu Law—Heirs continuing business separated in mess, worship and forming as many branches as original brothers—Separate accounts with respect to business and in addition separate independent business—Main business accounts not adjusted—Separate returns in compliance to notice under S. 38—Separate assessment with regard to each separate independent business of each branch together with share in main branch for particular period—Assessment of main business as unregistered firm held justified. (*Rankin, C.J., C.C. Ghose, and Buckland, JJ.*) *In the matter of* GANGA SAGAR, ANANDA MOHAN SHAHA. **123 I.C 312= 33 C. W. N. 1190=A.I.R. 1930 Cal. 178 (F.B.).**

—S. 25-A—Scope.

———Section 25-A is not retrospective. (*Kumaraswmi Sastri, Odgers and Wallace, JJ.*). ARUNACHALAM *v.* COMMR. OF INCOME-TAX. **1929 M.W.N. 642=30 M.L.W. 541= A.I.R. 1929 Mad. 769=57 M.L J. 300 (F.B.).**

—S 26—Foreign business.

———Branch and older firm at Ipoh, a place outside British India—Older firm wound-up—Assets in shape of outstandings divided between partners —Part falling to share of assessed firm—During the year of assessment remittance from Ipoh assessed to income tax to extent of profits made there—Accounts did not conclusively prove remittance to be outstandings—Assessment held good. (*Kumaraswami Sastri, Walsh and Curgenven, JJ.*). *In the matter of* FIRM, P L S.K.R. **A.I.R. 1930 Mad. 104 (S B.).**

—S. 26—Joint Hindu family.

———*Applicability where disruption of the family takes place.*

The legal effect of the disruption of a family is to be determined according to the facts of each case. The business of a family can continue in spite of its disruption. The question really is whether the business was discontinued or not in consequence of the breaking up of the family. (*Zafar Ali and Addison, JJ.*). KALU MAL *v.* COMMR. OF INCOME TAX. **117 I.C. 228= A. I. R. 1929 Lah. 461.**

———In cases where there has been a partition of an undivided Hindu trading family, and the business falls to the share of one member S. 26 applies and the person who becomes entitled to the business in the year in question, cannot escape liability unless he can bring himself within any other section exempting him from it. (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). ARUNACHALAM CHETTIAR *v.* COMMR. OF INCOME-TAX, MADRAS. **1929 M.W.N. 642=30 M.L.W. 541= A. I. R. 1929 Mad. 769=57 M.L.J. 300 (F.B.).**

———*Conversion into a Registered Firm.*

The conversion of a joint Hindu family into a registered firm does not in any way affect the profits made by the joint Hindu family business before the conversion of the legal liability to income-tax which already existed before the conversion The liability to assessment is not conclusive as to the chargeability in respect of the period for which such assessment is made: A. I. R. 1925 All. 535, *Foll.* (*Walsh and Banerji, JJ.*). NEHALCHAND, *v.* KISHORI LAL OF CAWNPORE. **102 I.C. 189=49 All. 611=25 A L.J. 366= A. I. R. 1927 All. 397.**

INCOME-TAX ACT (1922), S. 27—Sufficiency of cause.

—S. 26—Liability of successor.

———There is nothing in the Act which would justify the income-tax authorities in imposing on a successor during the first year of assessment after the conversion a liability in respect of its predecessor which its predecessor would not have been liable to pay if it had continued in existence without any conversion. So a new Company is not liable to pay super-tax in respect of a year for which its predecessor was not liable for super-tax.

Where a firm which, as it was a registered one was not liable to pay super-tax was succeeded by a Company which not being registered was liable to pay super-tax,

Held, that the Company was not liable to pay super-tax in respect of the profits made by the firm before the conversion. (*Walsh and Sulaiman, JJ.*). BEGG, SUTHERLAND & CO, *In re.* **88 I.C. 239=47 All. 715=23 A.L.J 685= 6 L.R.A. Civ 333=A. I. R. 1926 All. 535.**

—S. 27—Interference by High Court.

———*Revision.*

High Court cannot revise order under S. 27 and interfere with the discretion of the Income-tax Officer, since there is no question of construction of the Act on which the officer could be said to have gone wrong, the question of sufficient cause being one of fact left entirely to the discretion of the officer. (*Kumaraswami Sastri, J.*). SIVA PRATAP BHATTADU *v.* THE COMMR. OF INCOME-TAX, MADRAS. **84 I.C. 131=20 M.L.W. 395= 1924 M.W.N. 785=A.I.R. 1924 Mad. 880.**

—S. 27—Sufficiency of cause.

———*Discretion—Sufficiency of cause should not be decided arbitrarily.*

Under S. 27, the Income-tax Officer has a discretion. This discretion consists of a power to decide whether the cause shown is or is not sufficient. He must not decide this question capriciously, arbitrarily or in manner which is unsound. A.I.R. 1930 Rang. 35, *Rel. on.*

An assessee, a Hindu undivided family carrying on a money-lending business being thereunto required by notice under S. 22 (2) submitted a form of return, but it was not in form prescribed under R. 5 (*a*) under S. 59. The Income-tax Officer acting under S. 22 (4) called for complete accounts of business. Books were filed, but the Income-tax Officer was of opinion that the assessee had suppressed certain books and for this default and for the default in respect of the return, made assessment under S. 23 (4) to the best of his judgment. The assessee applied to the Income-tax Officer under S. 27 for cancellation of assessment which was refused,

Held, the discretion was properly exercised. (*Rutledge, C.J., Brown and Ormistone, JJ.*). COMMR. OF INCOME-TAX *v.* P. K. N. P. R. CHETTYAR FIRM. **8 Rang. 209=A.I.R. 1930 Rang. 78 (F.B.).**

——— *Question of law.*

The question of the sufficiency of cause is different from the question of the sufficiency of

INCOME-TAX ACT (1922), S. 27—Sufficiency of cause.

evidence, since the determination of the sufficiency of cause involves the question whether the judicial discretion has been exercised in a sound and reasonable manner or has been exercised capriciously, arbitrarily, or in a judicially unsound manner and therefore, does involve a question of law. (*Heald, Offg. C.J. and Maung Ba, J.*). CHETTYAR P. K. N. P. R. FIRM *v.* COMMR. OF INCOME-TAX.
8 Rang. 203=A.I.R. 1930 Rang. 33.

———There was an assessment made to the best of the judgment and assessee applied to cancel the same. It was alleged that assessees account books were produced in a criminal case. But the criminal case was disposed of long before best judgment assessment was made. And further the assessee failed to produce within a month's time allowed to him a copy of application said to have been made for return of account books,

Held, that it was not proved that assessee was prevented by sufficient cause from making the return. (*Mukerji and Niamatullah, JJ.*). RAMKUMAR MOHAN LAL, *In re.* **119 I.C. 569=1929 A.L.J. 536=30 Cr.L.J. 1084.**

—S. 28—Concealment, what is.

———An assessee received a decretal debt and interest in respect of it. The amount of interest was not included in his return. Though the assessee followed cash system of accountancy, the receipt of the amount of decretal debt including interest was not entered in the khata nor was interest entered in the kasar khata. The assessee credited the whole amount in his cash book and posted it immediately in the "ravangi khata" which meant and dealt with the items issued in cash by the owner of the shop to his servants for Court and other expenses. There was no other instance in which payments received in satisfaction of debts were posted in the ravangi khata. The assessee did not along with his return submit any explanation why the amount of interest was not shown therein,

Held, that the assessee was guilty of concealment of income within the meaning of S. 28. (*Mohiuddin and Subhedar, A. J. Cs.*). COMMR. OF INCOME-TAX *v.* JAMBUDAS. **122 I.C. 379=A.I.R. 1930 Nag. 200.**

—S. 28—Condition precedent.

———Before the power to levy penalty under S. 28 is exercised, proper proceedings under the Act must have been started. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I.C. 73=1927 M.W.N. 611=27 M.L.W. 294=A.I.R. 1928 Mad. 257=54 M.L.J. 298 (F.B.).**

—S. 28—Revision.

———*Commissioner—Powers of.*

If on the materials, with reference to any original assessment itself it should on revision appear to the Commissioner that there has been any concealment within the meaning of S. 28, then S. 33 would undoubtedly empower him to levy penalty. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I. C. 73=1927 M.W.N. 611=27 M.L W. 294=A.I.R. 1928 Mad. 257=54 M.L.J. 298 (F.B.).**

—S. 29—Time limit.

———*Notice must be issued within reasonable time.*

No period within which a notice demanding income-tax is to be issued is prescribed in the Act and therefore *prima facie* a notice issued about 14 months after the expiration of the year of assessment would not necessarily be too late.

It was not intended by prescribing a form of notice to create a limitation period within which such notice must be given. Although no time is prescribed for issuing the notice it may be said that such a notice must be issued within a reasonable time. What would be a reasonable time might vary according to circumstances. (*Dawson-Miller, C.J. and Macpherson, J.*). RAJENDRA NARAYAN, *In re,* **91 I.C. 288=5 Pat. 13=7 P.L.T. 269=1925 P.H.C.C. 217=A.I.R. 1925 Pat. 581.**

—S. 30—Ad interim order.

———*Can be challenged in Appeal against final order.*

There is nothing in the Act to warrant the suggestion that a wrong order passed by an Income-tax Officer as a preliminary to his passing an order under S. 23 of the Act may not be made a ground of appeal when appealing against the final order of assessment, unless a separate appeal or application for review, where no appeal is allowed, has been successfully filed against such order. As a matter of fact, the tendency of the legislature has always been to prevent appeals against interim orders, leaving it open to the party aggrieved to challenge such orders when appealing against the final order. (*Wild, J.C. and Rupchand, A.J.C.*). BULCHAND KESHAVDAS *v.* COMMR. OF INCOME-TAX. **A.I.R. 1930 Sind 301.**

—S. 30—Assessment in appeal.

———An Assistant Commissioner of Income-tax when hearing an appeal under Ss. 30 and 31 of the Indian Income-tax Act cannot assess a source of income which was not assessed at all by the Income-tax Officer. (*Ross and Kulwant Sahay, JJ.*). JAGARNATH THERANI *v.* COMMR. OF INCOME-TAX. **86 I.C. 777=4 Pat. 385=6 P.L.T. 166=A. I. R. 1925 Pat. 408.**

—S. 30—Bar of appeal.

———Per *Mukerji, J.*—An appeal is shut out under S. 30 not by way of punishment to the assessee but it is shut out because there are no materials which can be properly placed before an appellate Income-tax Officer. On reading, therefore, the two Ss. 22 and 23 it is abundantly clear that a right to make an assessment to the best of the officer's judgment cannot be made after an enquiry has been started so as to shut out an appeal simply because at any time after the enquiry has been started the assessee fails to produce an account as asked for. (*Boys, Kendall and Young, JJ. On difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1=1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).**

———Per *Broadway, J.*—The proviso to S. 30 (1) distinctly lays down that no appeal shall lie in respect of an assessment under sub-S. (4), S. 23 and this clearly means that every matter, that has to be decided before the assessment is arrived at, is rendered unappealable. (*Shadi Lal, C. J., Broadway, Fforde, Zafar Ali and Jai Lal, JJ.*). DUNI CHAND *v.* COMMR. OF INCOME-TAX. **117 I.C. 69=10 Lah. 596=30 P.L.R. 613=A.I.R. 1929 Lah. 593 (F.B.).**

———The mere fact that the assessment purports to have been made under sub-S. (4) does not shut out the appeal: it must be shown that the circumstances of the case bring it within the scope of that sub-section. When the Assistant Commissioner is satisfied that the assessment was made, not

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ostensibly but genuinely, the appeal is barred by the proviso to S. 30 (1) and it is immaterial whether the order of the Income-tax Officer is impeached on the ground that the assessee was not amenable to the provisions of the statute, or on any other ground mentioned in the sub-section. (*Shadi Lal, C.J., Broadway, Fforde Zafar Ali and Jai Lal, JJ.*). DUNI CHAND *v.* COMMR OF INCOME-TAX.
117 I.C. 69= 10 Lah. 596=30 Pat. L.R. 613= A I.R. 1929 Lah. 593 (F.B.).

—S. 30—Defective appeal.

———*Rejection in limine.*

Where the petition of appeal to the Assistant Commissioner of Income-tax is defective as not being verified in the prescribed form and not bearing the signature of the appellant, there is no provision requiring the Assistant Commissioner to call upon the petitioner to rectify the mistakes in the memorandum of appeal and he is entitled to reject the appeal in limine. (*Kulwant Sahay and Fasl Ali, JJ.*). DAMODAR PRASAD *v.* COMMISSIONER OF INCOME-TAX. **120 I.C. 639= 10 P.L.T. 444=8 Pat. 796=A.I.R. 1929 Pat. 409.**

—S. 30—Limitation.

———Section 30 uses the word "ordinarily" and thus there is nothing to prevent the authorities entertaining an appeal preferred after the expiration of 30 days. (*Greaves, J.*). MITCHELL *v.* MCNEILL AND CO. **103 I. C. 120= 31 C.W.N. 630=A. I. R. 1927 Cal. 518.**

—S. 30—Meaning of proviso.

———Assessment under S. 23 (4) and a dismissal of an application under S. 27 for a fresh assessment, is not an assessment made under S. 23 (4) read with S. 27 which would preclude an appeal being filed from it under the proviso to S. 30. What the proviso means is that there shall be no appeal against (i) an assessment made under S. 23 (4) and (ii) when the assessment under S. 23 (4) is cancelled and a fresh assessment under S. 27 is made. (*Pratt, Offg. C.J. and Cunliffe, J.*). CHETTYAR, A.K.A.C.T.V.V. *v.* COMMISSIONER OF INCOME-TAX. **116 I.C. 479=6 Rang. 652= A.I.R. 1929 Rang. 8.**

—S. 30—Question of law.

———The question whether the Income-tax Officer legally proceeded to assess the assessee under S. 23 (4) is one of law and therefore no appeal lies to the Assistant Commissioner under S. 30. (*Zafar Ali and Jai Lal, JJ.*). KHASHI RAM KARAM CHAND *v.* COMMISSIONER OF INCOME-TAX, PUNJAB. **100 I. C. 774= A.I.R. 1927 Lah. 288.**

—S. 30—Reference to High Court.

———Assessee held to be a resident of British India and assessed under S. 23 (4)—Appeal on the ground that he was not a resident of British India dismissed as not tenable under S. 23 (4)—Commissioner declining to make reference—Commissioner was directed to refer the question of law whether proviso to S. 30 bars appeal or not. A.I.R. 1926 Lah. 400, *Dist.* (*Harrison and Dalip Singh, JJ.*). DHUNI CHAND *v.* COMMISSIONER OF INCOME-TAX, LAHORE. **113 I. C. 312= 9 Lah. 464=29 P.L.R. 552= A.I.R. 1928 Lah. 864.**

———It would not be in the interests of justice to put such a construction on the proviso to S. 30 (1) as to prevent the High Court from enquiring into the case submitted whether the Income-tax Authorities had acted legally in assessing under S. 23 (4). (*Rutledge, C.J., Carr and Das, JJ.*). COMMR. OF

INCOME-TAX ACT (1922), S. 33—Exercise of discretion.

INCOME-TAX *v.* A.R.A.M. CHETTIYAR FIRM. **110 I.C. 29=6 Rang. 21= A. I. R. 1928 Rang. 108 (F.B.).**

—S. 31—Contents of order.

———The Assistant Commissioner must state facts and give reasons for his findings, and if he does not do so, he fails to perform his duty properly. (*Zafar Ali and Addison, JJ.*). RAM PARTAP SUKH DIAL *v.* COMMR. OF INCOME-TAX, DELHI. **122 I.C. 238=10 Lah. 833=31 P.L.R. 135= A. I. R. 1930 Lah. 277.**

———*Reasons and basis of assessment must be given.*

Where the Assistant Commissioner is satisfied that the account books produced before him are not the complete accounts and the assessee does not produce his accounts to enable the Assistant Commissioner to arrive at a correct estimate of the income, the only course open to the Assistant Commissioner is to make an estimate of the income to the best of his judgment, but this does not mean that the Assistant Commissioner acts under S. 23(4) of the Act. But he is entitled to make an assessment to the best of his judgment. He must of course give reasons and the basis of his assessment for the purpose of enabling the Commissioner to see whether the estimate was made according to the best of the Assistant Commissioner's judgment or was wholly arbitrary. (*Heald, Offg. C.J., Chari and Brown, JJ.*). COMMR. OF INCOME TAX *v.* E. M. CHETTYAR FIRM **122 I. C. 898= 7 Rang. 635=A.I R. 1930 Rang. 4 (S.B.).**

—S. 31—Fresh evidence.

———An appellant in income-tax proceedings has no higher right in adducing fresh evidence in appeal than he would have in a civil case under O. 41, R. 27, C. P. Code. (*Heald, Offg. C.J., Chari and Brown, JJ.*). COMMISSIONER OF INCOME-TAX *v.* E. M. CHETTYAR FIRM. **122 I.C. 898= 7 Rang. 635=A.I.R. 1930 Rang. 4 (S.B.).**

—S. 31—Notice.

———The proviso to S. 31 contemplates merely a notice by the Assistant Commissioner that he proposes to enhance the income. It is not necessary under that proviso to give notice that the Assistant Commissioner proposes to enhance the assessment to any particular figure or to disclose the materials on which the enhancement is about to be made. (*Heald, Offg. C.J. Chari and Brown, J.J.*) COMMR. OF INCOME-TAX *v.* E.M. CHETTYAR FIRM. **122 I.C. 898=4 Rang. 635= A.I.R 1930 Rang. 4 (S.B.).**

—S. 33—Exercise of discretion.

———Where the assessee has admittedly filed complete accounts and there is no suggestion that the accounts are false or fraudulent and where there are available the actual assessments for the previous years which may be presumed to have been regularly and properly made, an assessment which should have been made to the best of the Income-tax Officer's judgment but which does not even purport to be based upon the material which were admittedly available or on any material at all beyond the Income-tax Officer's whim or humour, can hardly be regarded as an assessment in respect of which the discretion given to the Income-tax Officer by S. 23 (4) has been properly exercised, and is an assessment in respect of which the Commissioner ought to have exercised the discretion given to him by S. 33. (*Heald, Offg. C.J. and Maung Ba, J.*). CHETTYAR P.K.N.P.R. FIRM *v.* COMMR. OF INCOME-TAX. **8 Rang. 203= A.I.R. 1930 Rang. 33.**

INCOME-TAX ACT (1922), S. 33—Interpretation.

—S. 33—Interpretation.

———Though the power under S. 33 is called "the power of review" in the marginal note to the section, the real jurisdiction given under this section is not by way of review, but by way of what is generally known as revision or superintendence, and such power cannot be regarded as being larger than the power of a Court of appeal. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I.C. 73= 1927 M W N. 611= 27 M.L.W. 294= A.I.R. 1928 Mad. 257=54 M.L.J. 298 (F.B.).**

—S. 33—Limitation.

———*Power should be exercised within reasonable time.*

Even though no limitation of time is prescribed for interference by way of revision under S. 33 the Court would almost always incline in favour of taking the view that such exercise of power should be within a reasonable time of the proceedings sought to be revised, reasonable time being computed by the Court having regard to all the other provisions of the Act, to the facts of the particular case and the special features, if any, in it. (*Coutts Trotter, C J., Beasley and Srinivasa Aiyangar, JJ.*) COMMR. OF INCOME-TAX MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I.C. 73= 1927 M W N. 611=27 M.L W 294= A.I R. 1928 Mad. 257=54 M.L.J. 298 (F.B.).**

———Income-tax Commissioner's powers of review under S. 33, in respect of an assessment proceeding are subject to the limitation imposed by S. 35 (*Zafar Ali and Jai Lal, JJ.*) *In the matter of* ASSESSMENT OF GANESH DAS OF AMRITSAR. **100 I. C. 675=8 Lah. 354=9 L.L J. 352= 28 Pat. L R. 694=A.I.R. 1927 Lah. 248.**

—S. 33—Notice.

———Sufficient notice should be given to an assessee when an order is passed against him under S. 33 by the Commissioner in circumstances where he is really exercising the duties of an Income-tax Officer under S. 23 (2) and is in effect calling on the assessee to give evidence to support his original return. (*Dawson Miller, C. J. and Foster, J.*). SACHCHIDANANDA SINHA *v.* COMMR. OF INCOME TAX, BEHAR AND ORISSA. **88 I C. 1014= 2 Pat. L.R. Cr. 180=3 Pat. 664=5 P.L T 608= A.I.R. 1924 Pat. 644.**

—S. 33—Re-assessment.

———For purposes of initiating proceedings of re-assessment, S. 33 of the Act is subject to the provisions of S. 34 of the Act and the Commissioner has no right of initiating or independently starting re-assessment proceedings. (*Coutts Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I C 73=1927 M.W N. 611= 27 M.L.W. 294=A.I.R. 1928 Mad. 257= 54 M L.J. 298 (F B).**

———There is nothing in S. 33 which prevents the Commissioner from enhancing an assessment more than one year old made by a subordinate officer. (*Coutts-Trotter C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR OF INCOME TAX. MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I.C. 73= 1927 M W N. 611=27 M.L W. 294= A.I.R. 1928 Mad. 257=54 M. L. J. 298 (F B.).**

—S. 33—Rectification.

———*Limitation.*

The expression "subject to the provisions of this Act" in S. 33 (2) includes the restriction as to limitation imposed on other Income-tax Authori-

INCOME-TAX ACT (1922), S. 33—Review pending application for reference.

ties, and, consequently, rectification of a mistake by Commissioner to the prejudice of the assessee after the expiry of one year from the date of the demand made upon the assesee is not authorized by law. (*Zafar Ali and Jai Lal, JJ.*). JESA RAM *v.* COMMR. OF INCOME-TAX. **101 I.C. 139= 8 Lah. 347=28 P.L.R. 212=9 L L.J. 373= A. I. J. 1927 Lah. 421.**

—S. 33—Reference to High Court.

———Order passed under S. 33 and not in appeal—Whether High Court can direct Commissioner to state case. (*Quaere*). (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*) RAJNITI PRASAD SINGH *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **123 I. C 617=9 Pat. 194A I.R. 1930 Pat. 33 (S.B.)**

———Review order by Commissioner under S. 33—Commissioner refusing to state case on application by assessee—High Court has no power requiring him to do it: A. I. R 1923 P. C. 138, *Expl.*; A.I R. 1926 Mad. 1051 (F B.), *Diss. from*; 4 Pat. 224, *Expl.* (*Heald and Otter, JJ*). CHETTYAR V. E. A. FIRM *v.* COMMR. OF INCOME-TAX. **121 I.C. 769=7 Rang. 881=A.I.R. 1930 Rang. 37.**

———The failure of the Commissioner in his duty under S 33 will not give the High Court jurisdiction to require the case to be referred under S. 66 (3) since that sub-section relates back to sub-S. (2) and sub S. (2) deals only with order under S. 31 or S. 32 and not with order under S. 33. (*Heald, Offg. C.J. and Maung Ba, J.*). CHETTYAR P.K.N.P.R. FIRM *v.* COMMR. OF INCOME TAX **8 Rang. 203= A. I R. 1930 Rang. 33.**

———Order on review under S. 33—Commissioner cannot be required to make a reference. (*Macleod, C. J and Crump, J.*). R K. MOTISHAW *v.* COMMISSIONER OF INCOME TAX, BOMBAY. **98 I C. 299= 28 Bom. L.R. 1096= A.I.R 1926 Bom. 566.**

———No application lies to the Commissioner of Income tax to state a case to the High Court in respect of any orders passed under S. 33 of the Act as S. 66 (2) refers in express terms to applications in respect of orders under S. 31 or S. 32 and omits all reference to orders under S. 33. (*Robinson, C.J. and U. Ba J.*). SIN SING HIN *v.* THE COMMR. OF INCOME-TAX. **89 I.C. 785=4 Bur.L J. 102= A.I.R. 1925 Rang. 252.**

—S. 33—Res judicata.

———*Civil P. C , S.* 11

Principle of *res judicata* does not apply for orders passed under S. 33, Income-tax Act (*Coutts-Trotter C. J., Odgers and Beasley, JJ.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* MASSEY & CO , LTD. MADRAS. **113 I.C. 814= 29 M.L.W. 476=A.I R 1929 Mad. 453= 56 M L.J. 451 (F.B).**

—S 33—Review pending application for reference.

———During the pendency of an application under S. 66 (2) the Commissioner can exercise his power of review under S 33. (*Heald, Offg C.J., Chari and Ormistone, JJ.*). COMMR OF INCOME-TAX *v.* C. T. V. S. CHETTIAR FIRM. **122 I.C. 902= 7 Rang. 644=A.I.R. 1929 Rang. 248 (F.B).**

——— Per *Otter, J.*—Where an application is pending under S. 66 (2) question whether or not such application is a bar to proceedings under S. 33 is a question of law and Commissioners must state a case on such a question. (*Heald and Otter, JJ.*). C.T.V.S. CHETTYAR FIRM *v.* COMMISSIONER OF INCOME-TAX. **122 I.C. 902=7 Rang 644= A.I.R. 1929 Rang. 245.**

INCOME-TAX ACT (1922), S. 34—Assessment under wrong head.

—S. 34—Assessment under wrong head.

——It is always open under S 34 to an assessee to show in any way he can that the income, profits or gains alleged to have escaped assessment have not in truth and in fact escaped assessment, and for this purpose it is not true that income, profits, or gains have necessarily escaped assesement because they have not been assessed under the right head. But if it is once shown that income has escaped assessment, the assessee cannot under S. 34 resist proceedings to assess it merely by showing that other income, profits or gains have been assessed at too a high a figure. (*Rankin, C.J., C. C. Ghose and Buckland, JJ.*). SAKYENDRA MOHAN ROY CHOWDHURY, *In re.*

34 C.W.N. 816=A. I. R. 1930 Cal. 627 (F.B.).

—S. 34—Escaping assessment.

——The words "escaped assessment" in S. 34 apply to the cases where the Income-tax Officer has deliberately adopted an erroneous construction of the Act, as well as to a case where the officer has not considered the matter at all, but simply omitted the assessable property from his view and from his assessment. (*Coutts-Trotter, C. J. and Beasley, J.*). COMMR. OF INCOME-TAX *v.* NARAYANA DEO. **91 I.C. 940=49 Mad. 22=22 M.L.W. 822=A.I.R. 1926 Mad. 287=50 M.L.J. 63.**

—S. 34—Failure to produce accounts.

——*Effect of.*

The failure to produce books of account required by the authorities by a notice under S. 34 entails the same consequence as in the case of a failure to make a return, and the Income-tax officer is entitled, in such a case, to make the assessment under S. 23 (4). (*Rankin, C.J., C.C. Ghose and Buckland, JJ.*). *In the matter of* KEDARNATH KESRIWAL.

34 C.W.N. 1093 (F.B.).

—S. 34—Limitation.

——*Scope and applicability of.*

The limitation of one year applies only to the notice. If a notice calling upon the assessees to file a return of the additional income is given within the time therein limited, the rest of the assessment proceedings need not be completed within that time. (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). *In the matter of* KEDARNATH KESRIWAB. **34 C.W.N. 1093 (F.B.).**

—S. 34—Past interest.

——Amount received from debtor in prior years appropriated to interest in assessment year is taxable: *Commissioner of Taxes* v. *Melbourne Trust Ltd.*, A. I. R. 1914 P. C. 230, *Rel. on.* (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMISSIONER OF INCOME-TAX. **9 Pat. 240=A.I.R. 1930 Pat. 81 (S.B.).**

—S. 34—Raising of rate.

——In a case where the rate is sought to be raised under S. 34 of the Act, an Income-tax Officer is not bound to determine afresh the correct taxable income of the assessee. (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). PALANIAPPA CHETTIAR *v.* COMMISSIONER OF INCOME-TAX. **122 I.C. 339=31 M.L.W. 91=A.I.R. 1930 Mad. 126=58 M.L.J. 23 (S B.).**

—S. 34—Re-assessment without notice.

——Income-tax officer re assessing without notice as prescribed in S. 34—Assistant Commissioner setting aside his order—Commissioner cannot under S. 33 proceed to re-assess himself. (*Coutts-Trotter, C. J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR & CO. **108 I.C. 73=1927 M.W.N. 611=27 M.L.W. 294=A.I.R. 1928 Mad. 257=54 M.L.J. 298 (F.B.).**

INCOME-TAX ACT (1922), S. 35—Enhancement without notice.

—S. 34—Re-opening assessment.

——Section 34 does not point to an intention to give to the assessee a right to re-open the whole assessment before being rendered liable to further tax. It is not for the Court to determine whether the administrative inconvenience entailed by such a right would be much or little, or whether it would afford any sufficient reason for refusing to the assessee a right to re-open the whole matter. Nor is it for the Court to consider whether there is any real injustice or inconvenience in refusing this right to an assessee who has failed to make a return. (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). *In re* SATYENDRA MOHON ROY CHOWDHURY.

34 C.W.N. 816=A. I. R. 1930 Cal. 627 (F.B.).

—S. 34—Revision.

——The power of re-assessment is given in express terms only to the income-tax officer and not to any other officer, the Assistant Commissioner or the Commissioner. But if the Income-tax officer should make a mistake, and after having started re-assessment proceedings fail to re-assess the parties, the proceedings of the Income-tax officer would be open to revision by the Commissioner under S. 33 and he may thereupon pass any order as he thinks fit. But the condition precedent to this exercise of the power of re-assessment is the proper service of notice indicated in S. 34. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* ABDUL KADIR MARACAYAR. **108 I. C. 73=1927 M. W. N. 611=27 M. L. W. 294=A.I.R. 1928 Mad. 257=54 M. L. J. 298 (F.B.).**

—S. 34—Tax on escaped income.

——There is no provision in law for the recovery of taxes on "escaped income" for more than one year. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR *v.* EMPEROR. **120 I. C. 435=31 Cr. L. J. 88=1930 A. L. J. 26=1929 Cr. C. 647=A. I. R. 1929 All. 919.**

——Whatever may be the reason for which the Income-tax Officer fails to assess any income within the period prescribed by law, he is not competent to assess it after the period of limitation prescribed therefor has expired.

The income assessed in the hands of an assessee to whom it is subsequently found not to belong, is an income which has escaped assessment within the meaning of S. 34. (*Zafar Ali and Jai Lal, JJ.*). *In the matter of* ASSESSMENT OF GANESH DAS OF AMRITSAR. **100 I. C. 675=8 Lah. 354=9 L.L.J. 352=28 P.L.R. 694=A.I.R. 1927 Lah. 248.**

—S. 35—Applicability.

——Separate returns of 5 concerns filed to avoid heavy assessment—Notice served—Applicant mixing one more losing concern with the five and applying for reduction—Application is not maintainable. (*Dawson Miller, C. J. and Foster, J.*). TRIKAMJEE JIWAN *v.* COMMR. OF INCOME TAX. **86 I.C. 170=4 Pat. 224=1925 P.H.C.C. 17=A.I.R. 1925 Pat. 352.**

—S. 35—Enhancement without notice.

——The Income-tax Officer is not competent to rectify a supposed mistake which has the effect of enhancing assessment, without issuing notice to the assessee under S. 35, and where the Assistant Commissioner refuses to cancel such enhanced assessment, there arises a question of law, *viz.*, "as

INCOME-TAX ACT (1922), S. 37—False accounts.

the rectification was *ultra vires*, was the Assistant Commissioner's order refusing to cancel the assessment based on the rectification, in accordance with law " which must be stated to the High Court. (*Zafar Ali and Addison, JJ.*). DELHI CLOTH AND GENERAL MILLS CO., LTD, *v.* COMMR. OF INCOME-TAX, DELHI. **117 I. C. 383 = A.I.R. 1929 Lah. 326.**

—S. 37—False accounts.

——S. 37 being a penal section, has to be construed strictly. There is no reference whatsoever in the section itself to S. 196, I. P. C., therefore, a person cannot be prosecuted under S. 196 for producing account books in pursuance of notice under S. 23 (2) where the books were found to be false. (*C. C. Ghose and Cammiade, JJ.*). LAL MOHAN PODDAR *v.* EMPEROR. **104 I. C. 903 = 31 C. W. N. 996 = 46 C.L.J. 550 = 8 A.I.Cr. R. 445 = 28 Cr. L. J. 887 = A.I.R. 1927 Cal. 724.**

—S. 40—Agent.

——*Income on behalf of principal—What is—Companies in Bombay, Madras and Calcutta started for taking over business of one American Company—Practically all sharers of Bombay Company held by American Company or its nominees—Profits paid to American Company as dividends on shares after deducting income-tax—Manufacturer's profit paid for goods sold to Bombay Company—Liability to tax.*

A Bombay Company was incorporated in Bombay to take over the Bombay business of the American Company of New York. Then by agreement the American Compauy agreed to sell to the Bombay Company its good-will in a defined territory and also its interest in any land in that territory, and all plant, etc. to which the American Company was entitled in the said territory. Practically all the shares of the Bombay Company were held by the American Company or its nominees. So also two more Companies, one in Madras and another in Calcutta, were started for taking over the business of the American Company in certain other areas. The main business of the Bombay Company was the purchase and sale of the well-known Remington typewriters. The American Company received the dividends on the shares it held in the Bombay Company after income-tax being deducted on those dividends. But the Crown alleged that, apart from its profit by way of dividends in the Bombay Company a manufacturer's profit assessed at 5 per cent. had been made by the American Company, in respect of the goods sold by it from time to time to the Bombay Company and claimed that the Bombay Company as agent was liable to be assessed under S. 42 in respect of this manufacturer's profit, and further that the Bombay Company as such agent was liable for super-tax not merely on the dividends on the Bombay shares, but also in respect of the dividends payable to the American Company in respect of its holdings in the Madras and Calcutta Companies.

Held, that the Bombay Company was the agent of the American Company within S. 43, but that the former was not in receipt on behalf of the latter of this manufacturer's profit of 5 per cent. and consequently could not be assessed under S. 42, or otherwise in respect of any profits made by the American Company on the sale of its goods to the Bombay Company, and further that the Bombay Company was not liable to be assessed to super-tax upon dividends paid to the American Company by the Calcutta Company or Madras Company; nor upon dividends on its own shares paid by it to the American Company: A.I.R. 1928 Bom. 448 and A.I.R. 1922 Cal. 454, *Foll.* (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* REMINGTON TYPEWRITER CO. **113 I.C. 602 = 52 Bom. 726 = 30 Bom. L. R. 1190 = A.I.R. 1928 Bom. 465.**

INCOME-TAX ACT (1922), S. 40—Nature of provisions.

——*"Receipt on behalf of"—Ground of liability.*

Sections 40, 42 and 43 should be read jointly and not disjunctively. The term "agent" in S. 40 is extended by S. 43, and "income, profits or gains" are extended by S. 42 and therefore such agent should be "in receipt on behalf of" the non-resident, of the income, in order to make the agent liable to be assessed. (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* BOMBAY TRUST CORPORATION. **113 I.C. 593 = 52 Bom. 702 = 30 Bom. L.R. 1172 = A.I.R. 1928 Bom. 448.**

—S. 40—Business connection.

——*Meaning of—Bombay Company financed by Hongkong Company—Money offered and accepted in Bombay—Relationship of debtor and creditor—Agency—Liability to tax.*

The expression "business connexion" in Ss. 42 and 43 is not confined to a connexion in the business of a resident person which gives rise to a pecuniary interest in the assets of that business.

Where a Bombay Company was being substantially financed to the extent of 15 or 16 times its paid-up capital by a Hongkong Company incorporated in Hongkong, who was prepared to lend them almost unlimited sums at 1½ per cent. interest without security, and in its turn the Hongkong Company was risking double the amount of its paid-up capital and all its available deposits and the deposits were offered and accepted in Bombay,

Held, that there was a strong business connexion between the two companies. The business interests of the Hongkong Company were practically entirely wound-up in the business welfare of the Bombay Company and further that the relation between the two companies was that of borrower and lender; but having regard to S. 43, the Bombay Company, though deemed to be an agent of the Hongkong Company for the purposes of Ss. 40 and 42 should not be assessed as they were not in receipt of income. A.I.R. 1922 Cal. 454 (S.B.), *Expl.* and *Foll.* (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* BOMBAY TRUST CORPORATION. **113 I.C. 593 = 52 Bom. 702 = 30 Bom. L.R. 1172 = A. I. R. 1928 Bom. 448.**

—S. 40—Nature of provisions.

——*Business carried on by trustees—Applicability.*

Section 40 was enacted to provide for certain special cases without its affecting in any way the liability to be taxed under the charging sections. It is merely a machinery section and not a charging section making the trustees liable for beneficiaries in certain cases, where the beneficiaries are difficult or impossible to get at and where the trustee acts as a conduit-pipe for the conveyance of the income to the beneficiaries. It does not affect the charging Ss. 3 and 10 of the Act under which the trustees as an association of individuals, carrying on a business, are liable to be assessed in respect of the gains of the business carried on by them. In fact it is clear that this is the only way that the profits and gains of the business carried on by the trustees can be taxed.

Section 40 is not therefore applicable to trustees who are liable under the general provisions of the Act to be assessed: *English cases referred.* (*Addison and Bhide, JJ.*). HOTZ TRUST OF SIMLA *v.* COMMR. OF INCOME-TAX. **A.I.R. 1930 Lah. 929.**

INCOME-TAX ACT (1922), S. 42—Agent.

—S. 42—Agent.

———*Meaning.*

The "agent" mentioned in S. 42 (1) must be the agent in receipt of income on behalf the non-resident arising from the business connexion. A.I.R. 1928 Bom. 448, *Foll.* (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* REMINGTON TYPEWRITER CO. **113 I.C. 602=52 Bom. 726=30 Bom. L.R. 1190=A.I.R. 1928 Bom. 465.**

—S. 42—Business connection.

———*Relation between company and share-holders.*

Kemp, J.—The relation between a company and its share-holders is not a business connexion under S. 42 (1) or S. 43. (*Marten, C.J. and Kemp, J.*). COMMR. OF INCOME-TAX *v.* REMINGTON TYPEWRITER CO. **113 I.C. 602=52 Bom. 726=30 Bom. L.R. 1190=A.I.R. 1928 Bom. 465.**

—S. 42—English law.

———*Profits when taxable—Indian law—Distinction.*

Per *Curiam*—Under the English Act it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts, however, in the case of any person residing out of British India all profits or gains accruing or arising to such persons, whether directly or indirectly, through or from, any business connection in British India shall be deemed to be income accruing or arising within British India. There is no such provision in the English Act, and that distinguishes the English Acts and the cases decided thereunder from the Indian Acts. 5 H. & N. 71; (1896) A. C. 325; (1920) 3 K.B. 275, *Ref.* (*Chatterjee, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC COMPANY *v.* SECY. OF STATE. **83 I.C. 273=52 Cal. 1=28 C.W.N. 1074=40 C.L.J. 110=A.I.R. 1925 Cal. 34 (F.B.).**

—S. 42—Foreign Company.

———*Interest by money lending if taxable.*

Where a foreign company lends money in British India and receives interest in respect of such money-lending business such interest is a profit or gain accruing or arising to a person residing out of British India from a business connexion in British India and therefore falling under the words of S. 42. A. I. R. 1928 Bom. 448, *Affirmed.* (*Viscount Dunedin.*) COMMR. OF INCOME-TAX, BOMBAY PRESIDENCY *v.* BOMBAY TRUST CORPORATION, LTD. **121 I.C. 532=1930 A.L.J. 73=34 C.W.N. 230=32 Bom.L.R. 361=57 I. A. 49=31 M.L.W. 582=A.I.R. 1930 P.C. 54=58 M.L.J. 197 (P.C.).**

———Per *Curiam*—Where Company was incorporated in America with its headquarters there and had a branch at Calcutta purely for buying purposes,

Held, it was liable to assessment: A. I. R. 1923 Mad. 422, *Diss. from.* (*Chatterjea, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECY. OF STATE. **83 I. C. 273=40 C.L.J. 110=28 C.W.N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34.**

—S. 43—Interpretation.

———*'Through' meaning.*

The word "through" in S. 43 should not be construed as meaning "from." Section 43 is not intended to include any person who might have to transmit moneys to a non-resident, whether or not he knew that such moneys represented the income, profits or gains of the non-resident. (*Marten, C. J. and Kemp, J.*). COMMR. OF INCOME-TAX, BOMBAY *v.* BOMBAY TRUST CORPORATION. **113 I.C. 893=52 Bom. 702=30 Bom. L.R. 1172=A.I.R. 1928 Bom. 448.**

—S. 43—Money lending by foreigners.

———*Ground of liability.*

The word "agent" in S. 43 is not over-ridden as regards its meaning by S. 40 and is not restricted only to agents in receipts of the profits and gains.

Where therefore a foreign company lends money to a person in British India, the latter has a business connexion with the foreign company and "through him" the company is in receipt of profits or gains and the person in British India is by S. 43, put artificially in a position of the agent and of the assessee under S. 42. 52 Bom. 702; A.I.R. 1928 Bom. 448; 113 I.C. 593, *Reversed.* (*Viscount Dunedin.*) COMMR. OF INCOME-TAX, BOMBAY PRESIDENCY *v.* BOM. TRUST CORPORATION, LTD. **121 I. C. 532=1930 A.L.J. 73=34 C.W.N. 230=32 Bom. L. R. 361=57 I. A. 49=31 M.L.W. 582=A.I.R. 1930 P.C. 54=58 M.L.J. 197 (P.C.).**

INCOME-TAX ACT (1922), S. 52—Essentials.

—S. 46—Distress warrant.

———*Recovery of tax—Authority of Police officer.*

Where a Police Officer attached monies in a shop in pursuance of a distress warrant issued by the Collector for recovery of income-tax, and was assaulted by the accused,

Held, the Collector may on receipt of a certificate from the Income-tax Officer recover the amount specified therein as if it were an arrear of land revenue, and in areas notified by the Commissioner arrears may also be recovered by any process enforceable for the recovery of an arrear of any Municipal tax or local rate. But in the absence of orders under S. 46 (3) (4), the Collector cannot issue distress warrant for realisation of arrears of income-tax. The Collector has no authority to issue distress warrant for the realisation of arrears of income-tax under S. 46 (3) to an officer of the Police and the police officer executing such a warrant cannot be said to be acting in execution of his duty as a police officer. On this ground therefore the charge under S. 353 must fail if there was resistance to the police officer. If it was a fact that the money belonged to the petitioners Nos. 2 and 3 and that they were separate from petitioner No. 1 against whom distress warrant was issued, then clearly the seizure of the money was illegal. (*Ross, J.*). JAIRAM SAHU *v.* EMPEROR. **4 P.L.T. 171=1923 P.H.C.C. 111=72 I.C. 954=1 Pat. L.R.Cr. 68=24 Cr.L.J. 490=A.I.R. 1923 Pat. 338.**

—S. 50—Delay in refund.

———*Power to extend time.*

The possible hardship in individual cases where there has been delay on the part of the income-tax authorities in England in making the refund there, such delay not being due to the default of the assessee, can only be obviated by an amendment of S. 50 by giving the Income-tax Commissioner power to extend the time in suitable cases. (*Phillips, Offg. C. J., Ramesam and Beasley, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* BINNY AND CO. (LONDON). **106 I. C. 127=50 Mad. 920=26 M.L.W. 679=1927 M.W.N. 837=39 M.L.T. 481=A.I.R. 1927 Mad. 1039=53 M.L.J. 672 (F.B.).**

—S. 50—Interpretation.

———*"Tax was recovered", meaning.*

The words "tax was recovered" in S. 50 mean "tax was received by the Government." (*Phillips, Offg.C.J., Ramesam and Beasley, JJ.*). COMMR. OF INCOME-TAX *v.* BINNY & CO. **106 I.C. 127=50 Mad. 920=26 M.L.W. 679=1927 M.W.N. 837=39 M.L.T. 481=A.I.R. 1927 Mad. 1039=53 M.L.J. 672 (F.B.).**

—S. 52—Essentials.

———*Verification of untrue statement.*

The essence of offence under S. 52 and Penal Code, S. 177 lies in the verification of an

INCOME-TAX ACT (1922), S. 52—Time of offence.

untrue statement, and provided the statement was deliberately false or not believed to be true, subsequent rectification cannot make it any the less an offence, though it may be considered as an extenuating circumstance in awarding sentence. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR *v.* EMPEROR. **120 I.C. 435=1930 A. L. J 26=31 Cr L.J. 88=1929 Cr. C. 647=A.I.R. 1929 All. 919.**

—S. 52—Time of offence.

——An offence under S. 52 is committed on the day a return, made under S. 22, is verified by a party. (*Mukerji and Niamatullah, JJ.*). GANGA SAGAR *v.* EMPEROR. **120 I.C. 435=1930 A.L.J. 26=31 Cr.L.J. 88=1929 Cr. C. 647=A.I.R. 1929 All. 919.**

—S. 55—Dividends already super-taxed.

——*Super-tax levied on income of company—Liability of share-holders to be assessed on dividends paid to them.*

In computing the amount on which super-tax is payable by an individual or Hindu undivided family under the Income-tax Act of 1922 the amount received as dividends from a Registered Company should not be deducted. There is nothing in the Act from which it can be inferred that in computing the taxable income of individuals or Hindu undivided families for purposes of super-tax dividends upon which super-tax has been paid by the Company should be deducted. The intention of the Legislature was to charge super-tax upon the income of companies as well as upon the income of individual share-holders including in the income of the latter the dividends received from the company although they had already been charged to super-tax at the flat rate of 1 anna. Super-tax must be separately paid on the profits of a company by the company itself at the smaller rate and by the share-holder on the dividends received by him out of those profits as part of his income, the rate payable by him being on a sliding scale according to the amount of his total income. (*Dawson-Miller, C.J. and Mullick, J.*). MAHARAJADHIRAJ OF DHARBHANGA *v.* COMMR. OF INCOME-TAX. **78 I.C. 783=3 Pat. 470=2 Pat.L.R. Cr 25=1924 P.H.C.C. 69=5 P.L.T. 459=A.I.R 1924 Pat. 474.**

—S. 55—One man Company.

——*Assessee owning all shares except 3 held by his subordinates—Assessee having full control over the Company—Company doing no business apart from receiving dividend and debiting it in assessee's account as loan—Liability to super-tax.*

In the year 1921 the assessee formed four private companies. Each of these companies took over a particular block of investments belonging to the assessee and the *modus operandi* was substantially the same in each case. For example, one of the companies was incorporated with a nominal capital of Rs. 10 millions divided ultimately into 9,99,900 shares of Rs. 10 each and one hundred preference shares of Rs. 10 each carrying a fixed cumulative preferential dividend of six per cent. Its issued and subscribed capital consists of Rs. 3,48,004 fully paid ordinary shares all held by the assessee, and three fully-paid preference shares held by three persons who were his subordinates and entirely under his control. Its primary object as set out in its Memorandum of Association was to enter into an agreement, under which the assessee sold to the company his 498 shares in consideration of the company allotting him, 3,48,000 fully paid shares of Rs. 10 each in its capital.

INCOME-TAX ACT (1922), S. 55—Rate of super-tax.

By a contemporaneous indenture, the assessee executed a declaration of trust which recited an agreement that the 498 shares should not be transferred until the company should call upon the assessee to do so, and that in the meanwhile the assessee and his nominees would hold the 498 shares as agents and trustees of this company.

As regards the interest and dividends on the 498 shares they were ultimately paid to the assessee throughout, the dividends were credited in the company's book and then debited in assessee's current account. Thus, the interest and dividends received were treated as loans to the assessee. These loans carried interest which also was credited to the company but no interest was paid in cash. The assessee was the governing director of the company and he had the entire control and management. He had the power to nominate two other ordinary directors but no such directors were nominated. The Income-tax Commissioner was of opinion that the companies were not genuine one man companies and that the interest and dividends on the securities and shares were really the income of the assessee personally so as to render him liable to be assessed in respect thereof.

The total income of the assessee for the financial year 1925-26 was calculated at Rs. 11,35,102 and super-tax was assessed on it. The assessee disputed two items, one of Rs. 2,76,500 on account of interest arising from Government Securities and Bonds, etc., and the other of Rs. 1,14,004 on account of dividends on shares in limited companies on the ground that they formed income of four private companies formed by him and that therefore those companies were liable to super-tax in respect of them,

Held, that the Court is entitled to go into the question as to whether the so-called one man company is really a business carried on by the assessee himself for the purposes of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself disguised under the legal entity of a limited liability company.

The company was formed by the assessee purely and simply as a means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as a legal entity to ostensibly receive the dividends and interest and hand them over to the assessee as pretended loans. *Salomon* v. *Salomon*, (1897) A. C. 22 and *Inland Revenue Commissioners* v. *Samson*, (1921) 2 K. B. 492, *Rel. on.* (*Marten, C.J. and Kemp, J.*). SIR DINSHAW MANEKJEE PETIT, BART., *In re*. **102 I.C. 49=29 Bom. L.R. 447=51 Bom. 372=A.I.R. 1927 Bom. 371.**

—S. 55—Rate of super-tax.

——*Club forming into company on 1st April, 1925—Super-tax for year commencing from 1st April, 1925, would be at the flat rate of one anna in a rupee.*

The Western India Turf Club was originally an unregistered association; but as from the 1st April, 1925, it was converted into a company by being registered under the Companies Act as a company limited by guarantee, the object of the company being to take over the assets, effects and liabilities of the Western India Turf Club. The question that arose was at what rate that company should pay super-tax for the tax-year commencing on the 1st April, 1925,

INCOME-TAX ACT (1922), S. 55—Rate of super-tax.

Held, that for the purpose of assessment to super-tax the total income, not of the registered company itself, but of the predecessor-in title of the company must be considered and the rate to be applied was the flat rate of one anna in the rupee. A.I.R. 1926 Bom. 539, *Affirmed*; A.I.R. 1925 All. 535, *Doubted*. (*Lord Chancellor*.) COMMR. OF INCOME-TAX, BOMBAY *v.* WESTERN INDIA TURF CLUB, LTD. **106 I.C. 642=52 Bom. 123=55 I.A. 14=30 Bom, L.R. 105=47 C.L.J. 96=5 O.W.N. 38=32 C.W.N. 457=27 M.L.W. 404=26 A. L. J. 474=A. I. R. 1928 P. C. 1=54 M. L. J. 1 (P.C.).**

———*Club forming into limited Company on 1st April*, 1925—*Super-tax for previous year should be calculated at one anna per rupee over Rs.* 50,000—*Finance Act* (XIII *of* 1925), *S.* 7.

The Western India Turf Club was converted into a limited Company by being registered under Companies Act as a Company limited by guarantee. For the financial year 1925-26 it was called upon to put in a return of income for the previous year, namely, 1924-25. It accordingly put in its return of income showing the income earned by the Club as an unregistered firm during the previous year 1924-25, when the Company was not in existence. For the purposes of aseessment, the Income-tax Officer determined the total Income to be Rs. 15,03,522 under S. 23 (1) of the Act, and calculated super-tax thereon at Rs. 4,59,153 by applying to it the scale rates applicable to an unregistered firm.

Held, that the Company is liable to be assessed at the rate of one anna in the rupee for super-tax in respect of the excess over Rs. 50,000 of total income of the Turf Club for the previous year. A. I. R. 1925 All. 535, *Expl.* and *Dist.* (*Macleod, C.J, and Crump, J.*). THE WESTERN INDIA TURF CLUB, *In re*. **98 I.C. 226=50 Bom. 648=28 Bom. L.R. 1236=A.I.R. 1926 Bom. 539.**

—S. 56—Super-tax paid for another.

———*Firm dissolved by death of partner—Surviving partner paying super-tax in respect of profits of deceased partner—If recoverable from estate of deceased partner.*

A partner of a firm died and his interest therein ceased from his death. The surviving member was charged super-tax in respect of the profits of the deceased partner computing the total income as under Proviso to S. 56. The partner made the payment and sought to recover it from the estate of the deceased partner.

Held, that the payment was voluntary and thus not recoverable. (*Greaves, J.*). MITCHELL *v.* MC NEILL. **103 I.C. 120=31 C.W.N. 630=A.I.R. 1927 Cal. 818.**

—S. 59—Registration of firms.

———*Expiry of term fixed in instrument of partnership—Right to registration.*

There was a contract of partnership for a term of years constituted on a written agreement. After the expiry of the term the partnership was continued under the same conditions by a verbal arrangement. The assessees partners applied under R. 4 for registration of the written agreement, the term of which had expired.

Held, that it could not be registered as at the time that the assessees applied for registration there was no operative document to be registered. *Clark* v. *Leach*, 1 De. G. J. and S. 409 (414) and *Neilson* v. *Mossend Iron Co.*, 11 A. C. 298, *Appr.* (*Coutts-Trotter, C.J., Beasley and Reilly, JJ.*). COMMISSIONER OF INCOME-TAX, MADRAS *v.* KRISHNA AYYAR AND SONS. **115 I.C. 254=52 Mad. 367=29 M.L.W. 103=A.I.R. 1929 Mad. 67=56 M.L.J. 151 (F.B.).**

INCOME-TAX ACT (1922), S. 63—Adjournment.

—S. 60—Co-operative society.

———*Interest on investment under Government orders—Liability to tax.*

The investment of their fluid assets (40 per cent. of their total liabilities which under Government orders they are entitled to keep in a fluid form by a registered Co-operative Society in the Government securities is not part of the business of the company and hence interest on such investments is "income" and so is liable, to assessment. (*English cases discussed.*) (*Coutts-Trotter, C. J., Odgers and Beasley, J.*). COMMR. OF INCOME-TAX, MADRAS *v.* MADRAS CENTRAL URBAN BANK, LTD. **118 I.C.107=52 Mad.640=29 M.L.W. 483=A.I.R. 1929 Mad. 387=56 M.L.J. 481 (F.B.).**

—S. 60—Foreign Co-operative Society.

———*Co-operative Society registered in England—Share-holders consisting exclusively of two other societies in England—Profits distributed among members—Liability to be assessed to income-tax.*

A Society was incorporated in England in 1923 under the Industrial and Provident Societies Act of 1893 and the shares were owned exclusively by two other co-operative societies. The Apex society carried on business in India for growing tea, etc., and except a very small quantity of useless tea disposed of locally the goods were consigned to the society in England and the Branch Societies delivered the goods to their members on a system the object of which was to eliminate the profits of the middleman and the question arose whether the Company was assessable of Income-tax in India in respect of the amounts charged on the branch societies, but it appeared that such profits were distributed among the share-holders,

Held, that the Society was a mutual Co-operative Society earning no profit and was therefore not liable to assessment under S. 60 of the Income-tax Act.

Per *Coutts-Trotter, C.J.*—"When we are considering whether there exists or does not exist a taxable income we are concerned not with whether it is possible for the Society within the meaning of its rules to receive taxable profits but whether in the year of assessment they have in fact received such profits." (*Coutts-Trotter, C.J., Odegrs and Beasley, JJ.*). ENGLISH AND SCOTTISH CO OPERATIVE SOCIETY *v.* THE COMMISSIONER OF INCOME TAX, MADRAS. **1929 M.W.N. 534.**

—S. 63—Adjournment.

———*Prayer for adjournment by post or telegram—Intimation of adjournment—Effect of omission.*

Where an assessee applies for an adjournment by post or by a telegram of an enquiry in respect of which he has been required by notice under S. 23 (2) to produce evidence and the Income tax Officer grants an adjournment, the letter (or the telegram where it is a telegram) intimating the fact of the adjournment to the assessee is neither a notice under S. 23 (2) nor a requisition within the meaning of S. 63. It is merely an act of consideration and supererogation, the omission of which will not entail any legal consequence and therefore, an assessment under S. 23 (4) in default of assessee's appearance on the adjourned date cannot be objected to : 2 Indian Tax Cases 3, *Dist.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMISSIONER OF INCOME-TAX *v.* S. M. PERIANNA PILLAI. **122 I. C. 449=31 M. L. W. 78=A.I.R. 1930 Mad. 113=58 M. L. J. 10 (S.B.).**

INCOME-TAX ACT (1922), S. 63—Firm.

—S. 63—Firm.

———*Service of notice—On whom to be made.*

In the case of an unregistered firm a notice under S. 23 (2) of the Income-tax Act need not be served only on the member of the firm who made the return but under S. 63 (2) of the Act it can be served on any member of the firm and such service is good service. (*Coutts-Trotter, C.J. and Krishnan, J.*). COMMR. OF INCOME-TAX, MADRAS *v.* THILLAI CHIDAMBARA NADAN. **90 I. C. 549=48 Mad. 602=22 M. L. W. 206=A.I.R. 1925 Mad. 1048=49 M. L. J. 124.**

—S. 63—Joint family.

———*Service on agent.*

The special provision in sub-S. (2) as regards service of notice in the case of joint Hindu family, does not exclude the operation of sub-S. (1) as regards service of notice on such a family.

Where, therefore, the assessees were a Hindu undivided family residing in the Madras Presidency and carrying on business in Rangoon through an agent,

Held, that the service on the agent of the notice under S. 22 (2), Income-tax Act, was a good service. (*Rutledge, C.J., Carr and Das, JJ.*). COMMR. OF INCOME-TAX *v.* A.A.N. CHETTIAR FIRM. **110 I.C. 29=6 Rang. 21=A.I.R. 1928 Rang. 108 (F.B.).**

—S. 63—Mode of Service.

———*Applicability of C. P. C.*

Section 46 of the earlier Act does not require that service of a notice must be made personally by the officer of the Court himself. It does not exclude any of the other forms of service permitted by O. 5 of the C. P. Code. (*Hallifax, A.J.C.*). THE LOCAL GOVERNMENT *v.* ISMAIL BHAI. **68 I. C. 623=23 Cr.L.J. 591=A.I.R. 1922 Nag. 187.**

—S. 64—Cessation of business.

———*Tax for period of business.*

Where a business was carried on in a particular place, the fact that it no longer existed would not make the income exempt from assessment. (*Walsh, Ag. C.J. and Banerji, J.*). *In the matter of* DINA NATH HEM RAJ. **100 I.C. 756=49 All. 616=25 A.L.J. 225=A.I.R. 1927 All. 299.**

—S. 64—Jurisdiction.

———*Principal office of assessee in one area—Branches in other income-tax areas—Power of officer at former area to assess on profits in other areas.*

The provisions of sub-S. (4) of S. 64 of the Income-tax Act do not oust the jurisdiction of the Income-tax Officer of the area in which the principal place of business of the assessee is situated so far as the assessment of the profits or gains of a branch business situated in another area and proceedings relating thereto are concerned. (*Walsh, and Mukerji, JJ.*). LACHHMAN PRASAD, *In re.* **88 I.C. 216=47 All. 631=23 A.L.J. 379=6 L.R.A. Civ. 325=A.I.R. 1925 All. 385.**

—S. 64—Place of business.

———*What is.*

Ordinarily the principal place of business of a firm or company is the place at which the persons directing the company or firm do their business. The fact that goods are manufactured in one place does not make that place necessarily the principal place of business. Where business is carried on in many places, or at different branches, it may be said that the business is carried on in each of those places, though neither of them may be the principal place of business. (*Walsh, Ag.C.J. and Banerji, J.*).

INCOME-TAX ACT (1922), S. 66—Application to Commissioner.

In the matter of DINA NATH HEM RAJ. **100 I.C. 756=49 All. 616=25 A.L.J. 225=A.I.R. 1927 All. 299.**

—S. 64—Procedure.

———*Determination of dispute—Power of Income-tax officer.*

When a question has arisen within S. 64 (3) the Act does not say who shall set the Commissioner in motion, but the reasonable inference to be drawn from the language used is that, that is the duty of the Income-tax officer. The Income-tax Officer cannot himself decide this question, or act as though it had been determined in accordance with the provisions of this section, and that if he proceeds to pre-judge the issue, or to act as though it had been determined and to assess the firm as though their principal place of business was in his own jurisdiction, in spite of the dispute being still undetermined, he is doing something not authorized by the Act, in other words, an illegality. (*Walsh, Ag.C.J. and Banerji, J.*). *In the matter of* DINA NATH HAM RAJ. **100 I.C. 756=49 All. 616=25 A.L.J. 225=A.I.R. 1927 All. 299.**

—S. 66.

Application to commissioner.
Contents of reference.
Fee.
Limitation.
Object and scope.
Order to state case.
Procedure.
Questions not raised before Commissioner.
Questions of fact.
Questions of law.
Miscellaneous.

—S. 66—Application to Commissioner.

———*Application for reference rejected — Notice subsequently erroneously issued under S. 29 instead of under S. 45—Fresh application for reference to re-agitate previous unsuccessful points—If maintainable.*

Acting under S. 33 the Commissioner assessed the petitioner to an additional sum. On the Commissioner refusing to refer the case to the High Court, an application was made to the High Court, to take action, which was rejected. A notice of demand was then issued as headed under S. 29, and the assessment was described under Ss. 23 and 33, while in fact it ought to have been headed as under S. 45. Petitioner paid the money and then applied to the Commissioner to refer not only the legality of the demand, but also all the other points which he had unsuccessfully attempted to agitate before and contended that as S. 29 was wrongly invoked and quoted, he was entitled to agitate all the points contended on the previous unsuccessful application,

Held, that the other points could not be agitated as no special jurisdiction had been created by the error in quoting S. 29. (*Harrison and Dalip Singh, JJ.*). MOHAMED FARID MOHAMAD SHAFI *v.* COMMR. OF INCOME-TAX. **112 I.C. 833=A.I.R. 1928 Lah. 701.**

———*Statement of questions of law—Commissioner confining reference to one point only—Objection.*

The application under S. 66 (2) to the Commissioner should state the questions of law which the petitioner desires to be referred to the High Court and the Commissioner should also specify the question or questions of law which the applicant considers ought to have been referred to the High

INCOME-TAX ACT (1922), S. 66—Application to Commissioner.

Court by the Commissioner. If the Commissioner confines his reference to one point out of several points, objection cannot be taken to his action. (*Broadway and Zafar Ali, JJ.*). *In the matter of* ISHARDAS. 92 I. C. 249=A.I.R. 1926 Lah. 168.

——*No appeal—Maintainability.*

An application under S. 66 (2) for a reference to the High Court is incompetent where the assessment has been accepted without appeal. Under S. 66 (2) the assessee may only apply in cases where there has been an appeal from an assessment by the Income-tax Officer under S. 31 or S. 32. A.I.R. 1923 P.C. 138, *Ref.* (*Dawson Miller, C.J. and Foster, J.*). TRIKAMJEE JIWAN *v.* COMMR. OF INCOME-TAX. 86 I. C. 170= 4 Pat. 224=1925 P. H. C.C. 17= A. I. R. 1925 Pat. 352.

——*Order under S.* 33.

No application lies to the Commissioner of income-tax to state a case to the High Court in respect of any orders passed under S. 33 of the Act as S. 66 (2) refers in express terms to applications in respect of orders under S. 31 or S. 32 and omits all reference to orders under S. 33. (*Robinson, C.J. and U Ba, J.*). SIN SENG HIN *v.* THE COMMISSIONER OF INCOME-TAX. 89 I.C. 785= 4 Bur.L.J. 102= A. I. R. 1925 Rang. 252.

——*Procedure—Refusal to state a case—Revision.*

The petitioners applied to the Commissioner under Cl. (2) of S. 66 to refer to the High Court certain questions of law which they alleged arose out of the order passed by the Assistant Commissioner. The Commissioner, instead of accepting or rejecting the application as required by the section, referred it to the Income-tax Officer for disposal who withheld the application and informed the petitioners that it had been withheld.

Held, that the Commissioner has no power under the law to refuse to pass any order on an application or to delegate his authority to any Subordinate Officer, that the procedure adopted by the learned Commissioner in this case was quite illegal and that he himself ought to have passed definite orders accepting or rejecting the application and that the refusal by the Commissioner to state the case, whatever may be the grounds for his refusal, is tantamount to a refusal on the ground that there is no question of law involved and the High Court, if it is not satisfied of the correctness of the Commissioner's decision has power to require the Commissioner to state the case and to make a reference to the High Court. (*Moti Sagar, J.*). THE FIRM GOKAL CHAND JAGANNATH OF SIALKOT *v.* THE COLLECTOR, INCOME-TAX, SIALKOT. 76 I.C. 139=A.I.R. 1924 Lah. 662.

—S. 66—Contents of reference.

——*Questions of fact and law.*

In cases of reference under S. 66 it is the duty of the Commissioner of Income-tax to find all the relevant facts. He is not merely required to state the questions of law and give his opinion; he is required above all things to state the facts upon which the question of law must be decided. (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). GANGASAGAR ANANDA MOHAN *v.* COMMR. OF INCOME-TAX, BENGAL. 111 I.C. 828= 55 Cal. 953=A.I.R. 1928 Cal. 836.

——*Statement of fact—Point of law—Opinion of Commissioner.*

It is not sufficient for an assessee to suggest to the Commissioner the questions of law. It is for the Commissioner to find the facts first and

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then to state the point of law which arises out of those facts and on which he desires opinion of the High Court. He may then, if he likes, give his own opinion on the case. (*Mullick, Ag. C.J. and Sen, J.*). BIJ RAJ RANG LAL *v.* COMMISSIONER OF INCOME-TAX. 106 I.C. 193=8 P.L.T. 686= A.I.R. 1927 Pat. 390.

——*Statement of fact—Opinion of Commissioner.*

Obiter—Whilst it is quite proper for Income-tax Commissioner to state his opinion upon the questions involved, it is his first duty to state clearly and fully the material facts admitted or proved in evidence before him. (*Dawson Miller, C.J. and Foster, J.*). RAJA SHIVA PRASAD SINGH OF JHARIA *v.* KING-EMPEROR. 82 I.C. 653= 5 P.L.T. 497=1925 P.H.C.C. 234= 2 Pat. L.R. Cr. 233=4 Pat. 73= A. I. R. 1924 Pat. 679.

—S. 66—Fee.

——*Joint application by several assessees—Validity.*

It is not competent for four separately assessed persons to combine their applications for a case to be stated in one document, where the points to be raised are the same. Their cases must be separately stated and they must pay a separate fee of Rs. 100 for each separate assessment under the Act. Where more than one assessee puts in one joint application with one fee only of Rs. 100, the application is not proper even in the case of any one of them. (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). COMMISSIONER OF INCOME-TAX *v.* MOTHAY GANGA RAJU. 100 I.C. 291= 50 Mad. 335=38 M.L.T, 109=25 M.L.W. 321= 1927 M.W.N. 171= A.I.R. 1927 Mad. 545= 52 M.L.J. 273 (S.B.).

——*Several points of law—One fee.*

Fee is to be paid in respect of the application and not in respect of each point raised therein. The section contemplates each application is a case and sub-S. (5) shows that each case may raise several questions of law. (*Robinson, C.J. and Baguley, J.*). CHOKKALINGAM *v.* COMMR. OF INCOME-TAX. 84 I.C. 321=3 Bur. L.J. 252=2 Rang. 579= A.I.R. 1925 Rang. 94.

—S. 66—Limitation.

——Where the order of the Assistant Commissioner of Income-tax, dated 23rd February, 1928, was not communicated to the assessee till 25th March 1928, application made by the assessee under S. 66 (2) within one month from the latter date is within time. (*Wild, J.C. and Rupchand, A.J.C.*). BULCHAND KESHAVADAS *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. A. I. R 1930 Sind 301.

——*Commencement—Passing of the order—Meaning.*

There is nothing in the language of S. 66 (2) to hold that the expression "passing of the order" should be interpreted as the communication of the order to the party and it would be straining the law to hold that an order passed by the Income-tax Commissioner can be ignored for the purpose of limitation until it has been duly communicated by post to the assessee. (*Fazl Ali and Chatterji, JJ.*). MOHANLAL HERDEO DAS *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. 122 I.C. 810= 10 P.L.T. 769=9 Pat. 172=A.I.R. 1930 Pat. 14.

——*Exclusion of time for obtaining copies of order.*

On general principles and in view of S. 29, Lim. Act the period required for obtaining the copies of the order under S. 31 or 32 of the Act shall be excluded in computing the period of limitation for an application for reference by an assessee under

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S. 66 (2) (3): A.I.R. 1928 Rang. 152; A. I. R. 1929 Lah. 170 and 34 All. 496, *Ref.*; A. I. R. 1926 Bom. 566 and A.I.R. 1927 Mad. 545, *Not appr.* (*Fazl Ali and Chatterji, JJ.*). MOHANLAL HERDEO *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA.
122 I.C. 810=10 P.L.T. 769=9 Pat. 172=A.I.R. 1930 Pat. 14.

———Where the order of the Assistant Commissioner of Income-tax, dated 23rd February 1928, was not communicated to the assessee till 25th March 1928, application made by the assessee under S. 66 (2) within one month from the latter date is within time. (*Wild, J. C. and Rupchand, A.J.C.*). BULCHAND KESHAVDAS *v.* COMMR. OF INCOME-TAX. **A.I.R. 1930 Sind 301.**

———*Limitation Act, S. 29—Applicability.*

Provisions under S. 29, Limitation Act, apply to the proceedings under Income-tax Act. (*Tek Chand and Agha Haidar, JJ.*). MUHAMMAD HAYAT HAJI MUHAMMAD SARDAR *v.* COMMISSIONER, INCOME-TAX, PUNJAB & N. W. F. P.
117 I.C. 881=A.I.R. 1929 Lah. 170.

———*Waiver by Commissioner—Validity.*

Where the order of the Assistant Commissioner under S. 31 of the Act disposing of the case on appeal was dated 27th May 1926, but the application to the Commissioner to refer the points of law was not made until 3rd July 1926, and the Commissioner himself waived the irregularity as to limitation by considering the application on merits and refusing to accede to it,

Held, that it is not open to an executive officer to waive a provision of a statutory enactment in such a manner. (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME-TAX.
110 I.C. 601=6 Rang. 175=A.I.R. 1928 Rang. 152.

———*Exclusion of time for obtaining copies.*

Where the Assistant Commissioner's order was dated 27th May 1926, and application to Commissioner was made on 3rd July, but in fact the bare result of the order was communicated to the applicant on 1st June 1926, and an application to obtain the reasons supporting the order was made on the 12th, but the actual order containing the reasons was not furnished to the applicant until 26th June, 1926,

Held, that although no conduct of the assessee himself could have enlarged to his advantage the statutory period under the section, neither can any conduct of the executive diminish the full period of time allowed to reflect upon and decide whether action should be taken by way of approach to the High Court. (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME-TAX.
110 I.C. 601=6 Rang. 175=A.I.R. 1928 Rang. 152.

———*Power to extend time.*

There is no provision for an official or even for the Court to extend the time allowed under S. 62 (2). (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). COMMR., INCOME-TAX *v.* MOTHAY GANGA RAJU. **100 I.C. 291=50 Mad. 335=38 M.L.T. 109=25 M.L.W. 321=1927 M.W.N. 171=A.I.R. 1927 Mad. 545=52 M.L.J. 273 (S.B.).**

———*Power to extend time.*

Period for limitation for a requisition on the Commissioner to state a case cannot be extended by High Court. (*Macleod, C.J. and Crump, J.*). R. K. MOTISHAW *v.* COMMR., INCOME-TAX, BOMBAY. **98 I. C. 299=28 Bom. L. R. 1096=A.I.R. 1926 Bom. 566.**

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———*Application for reference after one month—Maintainability.*

Where application upon which a reference is based is presented more than a month after the order has been passed which gives rise to that application no reference is competent. (*Harrison and Campbell, JJ.*). BANJI LAL *v.* EMPEROR.
90 I.C. 1018=6 Lah. 373=26 P.L.R. 796=A.I.R. 1925 Lah. 615.

—S. 66—Object and scope.

———Section 51 (1) of the Act of 1918 is not similar to S. 66 of the present Act. (*Beasley, C.J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS.
A.I.R. 1930 Mad. 449=58 M.L.J. 581 (S.B.).

———Section 66 (1) is not intended to benefit an assessee but is merely to enable the Commissioner when he feels any difficulty with regard to a question of law to refer the matter himself to the High Court. (*Beasley, C. J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMR. OF INCOME-TAX, MADRAS.
A.I.R. 1930 Mad. 449=58 M.L.J. 581 (S.B.).

———*Refusal on the ground that no question of law arises.*

Sub-section (3) is limited to a case of refusal on the ground that no question of law arises and the section cannot be construed to cover a refusal on some other ground especially as another remedy is open under S. 45, Specific Relief Act. A. I. R. 1923 P.C. 138 and A. I. R. 1926 Cal. 998, *Foll.* (*Fawcett, Ag. C. J. and Mirza, J.*). MADHAVDAS JETHABAI, *In re.* **113 I.C. 619=30 Bom. L.R. 1114=A.I.R. 1928 Bom. 434.**

—S. 66—Order to state case.

———*Failure of assessee to apply to Commissioner to state case—Right to apply to High Court.*

After an order has been made an assessee who has neglected to make application to the Commissioner to refer a question of law arising out of that order within one month of the making of that order cannot, many months afterwards, ask the Court to require the Commissioner of Income tax to refer the same question to the High Court merely because it is one of importance: A. I. R. 1923 P. C. 138, *Dist.* (*Beasley, C. J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMR. OF INCOME-TAX, MADRAS.
A.I.R. 1930 Mad. 449=58 M.L.J. 581 (S B).

———*Commissioner setting aside penalty imposed by Income-tax Officer and imposing fresh penalty after enquiry—Power of High Court to direct statement of case.*

Where a Commissioner of Income-tax sets aside a penalty imposed under S. 28 by the Income-tax Officer and after giving an opportunity, to show cause himself imposes penalty, it is not open to the High Court to call upon the Commissioner to state a case for reference to High Court. A. I. R. 1924 Pat. 644, *Dist.*; A. I. R. 1925 Pat. 352, *Doubted.* (*Kulwant Sahay and Fazl Ali, JJ.*). JANGI BHAGAT RAMAUTAR *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **121 I.C. 332=8 Pat. 877=A.I.R. 1930 Pat. 127.**

———*Order under S. 33—Applicability.*

The failure of the Commissioner in his duty under S. 33 will not give the High Court jurisdiction to require the case to be referred under S. 66 (3) since that sub-section relates back to sub-S. (2) and sub-S. (2) deals only with order under S. 31 or S. 32 and not with order under S. 33. (*Heald, Offg. C.J.*,

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and Maung Ba, J.). P. K. N. P. R. CHETTYAR FIRM *v.* COMMR. OF INCOME-TAX. 8 Rang. 203= A.I.R. 1930 Rang. 33.

———*Points of law not raised before Commissioner —Applicability.*

An application seeking for a mandamus against the Commissioner of Income-tax requiring him to state a case on points of law quite different from those raised before the Commissioner when he was asked to state a case, should not be allowed. (*Cunliffe and Baguley, JJ.*). A.K.A.C.T.V. CHETTIAR FIRM *v.* COMMISSIONER OF INCOME-TAX, BURMA. 113 I. C. 810=6 Rang. 492= A. I. R. 1928 Rang. 281.

———*Procedure—Jurisdiction of High Court to direct case when should be questioned.*

As a rule it is better in a statement of a case to confine the case to findings of fact, and to the expression of the Commissioner's opinion upon the points raised, and not to burden the case with arguments, or to question the jurisdiction of the Court, to require a case to be stated. This does not, however, mean that the Commissioner, or any other body, in a case where the Act provides for a case to be stated for the opinion of the High Court, has no right to question the jurisdiction of the Court in directing the particular case in question. An order for a case to be stated, is in the nature of what is known in Calcutta and in England as the issue of rule *nisi* to show cause on certain questions indicated in the order made by the High Court. The Commissioner, or other authority, in stating the case in effect shows cause against the contention of the other side, and in showing cause he is clearly at liberty, when he appears before the Court to argue the case, to take the objection that under the law there was no power to issue the rule, or to direct the case to be stated, and that, therefore, the High Court had no jurisdiction to decide the question raised in the case. (*Walsh, Ag.C.J. and Banerji, J.*). *In the matter of* DINA NATH HEM RAJ. 100 I.C. 756= 49 All. 616=25 A.L.J. 225=A.I.R. 1927 All. 299.

———*Question about jurisdiction decided by proper authorities—Assessment by proper officer — Interference by High Court.*

The High Court has no power under S. 66 to overrule a decision of the Income-tax Officer concerning his power to assess where the question as to his jurisdiction having arisen has been decided by proper authorities.

Under S. 66 (1) the Commissioner may on his own motion refer a case to the High Court or any question of law arising in the determination of the question under S. 64, but this is the only way in which the determination of such question can be brought before the High Court. But where there is a total failure on the part of the Income-tax Authorities to apply the plain provisions of S. 64, and an illegal assumption of authority by the Income-tax Officer to assess, the existence of an alternative remedy under S. 64 (3) cannot be held to be a bar to the right of the appellant to have a case stated, and to the jurisdiction of the High Court to answer those questions in the way in which it holds they ought to be answered. (*Walsh, Ag. C. J. and Banerji, J.*). *In the matter of* DINA NATH HEM RAJ. 100 I.C. 756= 49 All. 616=25 A.L.J. 225=A.I.R. 1927 All. 299.

———*Who must apply.*

Clause 1 to S. 66 refers to the reference of a question of law either by the Commissioner on his own

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motion or on reference from any Income-tax Authority subordinate to him. It does not contemplate a reference at the instance of an assessee. Nor has the Lahore High Court any power to issue mandamus directing him to refer questions of law to it for opinion. A. I. R. 1926 Mad. 1051 (S.B.); A.I.R. 1926 Pat. 305; A.I.R. 1925 Pat. 352, *Rel. on*; A.I.R. 1924 Pat. 644, *Doubted.* (*Broadway, Ag. C. J. and Bhide, J.*). MD. FARID, MD. SHAFI *v.* COMMR. OF INCOME-TAX. 105 I.C. 167=A.I.R. 1927 Lah. 513.

———*Error of law—What is—Presumption from previous year's accounts.*

When the account books of the previous years do not support the verified return and assessee's statement on oath, and the assessee fails to make use of the opportunity given to him, to substantiate his allegation, the Income-tax Authorities are entitled to draw a presumption from the state of matters which had admittedly existed in previous years and in doing so no error of law is committed by the Income-tax Authorities which would justify the High Court, calling on the Commissioner of Income-tax for a reference. A.I.R. 1924 Cal. 337, *Dist.* (*Findlay, J. C.*). BHIKAJI VYANKATESH DRAVID *v.* COMMR. OF INCOME-TAX. 103 I.C. 38=A. I. R. 1927 Nag. 283.

———*No refusal under Cl.* (2)—*Application, if lies.*

Where a question of law arose in a proceeding in connexion with an assessment, other than a proceeding under Chap. 8, in which there had been no order under S. 31 or S. 32,

Held, that there was no refusal under S. 66 (2) and that the Commissioner of Income-tax cannot be compelled to state the case to the High Court under Cl. (3). (*Stuart, C.J. and Raza, J.*). GOBIND SARAN *v.* COMMR. OF INCOME-TAX. 105 I. C. 556=1 L.C. 499=A.I.R. 1927 Oudh 465.

———*Order on review under S.* 33—*Application, if lies.*

When the Commissioner has made an order in review under S. 33, the assessee, dissatisfied with the order, cannot require the Commissioner to state a case under S. 66. (*Macleod, C.J. and Crump, J.*). R.K. MOTISHAW & CO. *v.* COMMR. OF INCOME-TAX, BOMBAY. 98 I.C. 299= 28 Bom. L. R. 1096=A.I.R. 1926 Bom. 566.

———*Application to Commissioner time-barred—Power of High Court to direct statement of case.*

Where an application to the Commissioner under S. 66 (2) is rejected as time-barred, no application lies to the High Court under S. 66 (3).

Under S. 66 (3) High Court has no power to compel the Commissioner to state a case in review proceeding, but in a proceeding duly instituted under the Specific Relief Act, the Court in its discretion might order the Commissioner to refer to the High Court such question of law. A.I.R. 1923 P. C. 138; 47 Bom. 742 (P.C.), *Expl.* and *Dist.* (*Cuming and Page, JJ.*). SARAT KUMAR ROY *v.* COMMR., INCOME-TAX, BENGAL. 96 I.C. 702=30 C.W.N. 831= A.I.R. 1926 Cal. 998.

———*Objection—When maintainable.*

The competency of the High Court to issue the mandamus under S. 66 (3) should be questioned at the hearing of the application made under the said section, and not after the order passed on the application. A.I.R. 1925 Pat. 352, *Foll.* (*Le Rossignol and Martineau, JJ.*). FIRM GOKULCHAND *v.* COMMR. OF INCOME-TAX. 94 I.C. 128= A.I.R. 1926 Lah. 446.

INCOME-TAX ACT (1922), S. 66—Order to state case.

——*Application to Commissioner barred—Effect.*

The High Court may be moved under S. 66 (3) only when the assessee is competent to apply to the Commissioner under S. 66 (2) but where the assessee is debarred from making such application to the Commissioner, he is not entitled to move the High Court for requiring the Commissioner for stating the case. (*Le Rossignol and Martineau, JJ.*). BANARSI DAS *v.* COMMISSIONER OF INCOME-TAX. **96 I.C. 382=7 Lah. 226=27 P.L.R. 411= A.I.R. 1926 Lah. 400.**

——*Powers of High Court.*

The Commissioner ought to state a case where a real point of law arises, and if he improperly declines to do so the Court may compel him to do so under the general powers of the Specific Relief Act. This principle applies also to orders under S. 33. A.I.R. 1923 P.C. 138 (P.C.), *Foll.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). ABDUL KADIR MARAKAYAR & CO., *In re.* **99 I. C. 221= 49 Mad. 725=24 M.L.W. 664= A.I.R. 1926 Mad. 1051=51 M.L.J. 650 (S.B.).**

——*Absence of income—Assessee's verified statement—Order of assessment—Question of law.*

An assessee having in a verified return of income stated that he derived no income from *bastu* lands, was assessed 2½ per cent. of the rental in absence of any evidence from assessee by Income-tax Officer and Assistant Commissioner, Income-tax. The application of the assessee to state a case under S. 66 being dismissed, the High Court issued a mandamus requiring Commissioner to state the case.

Held, upon the hearing of the case, that the assessment was bad and should be cancelled, holding that a question of law arose though Commissioner held that the question was one of fact. Income-tax Authority must prove that there is income from a source where assessee verifies that he has none from that source. (*Sanderson, C.J. and Richardson, J.*). *In the matter of* BISHNU PRIYA CHOWDHURANI. **79 I.C. 305= 50 Cal. 907=A.I.R. 1924 Cal. 337.**

—S. 66—Procedure.

——The High Court should require, before they seek to entertain any question under S. 66 that the preliminary requirements of the section are strictly complied with. The stringency of these requirements is clearly deliberate. It is the intention of the enactment that the High Court is not to be flooded with such applications. The object is salutary and should be enforced. (*Lord Blanesburgh.*) THE TRUSTEES, CORPORATION (INDIA), LTD. *v.* THE COMMR. OF INCOME-TAX, BOMBAY PRESIDENCY. **123 I.C. 177=51 C.L.J. 489= 34 C.W. N. 709=A. I. R. 1930 P.C. 151 (P. C.).**

——*Questions of fact—Points of law.*

High Court has to accept the facts as found by the Commissioner of Income-tax and if necessary may call for further facts by asking him to make a fresh statement of them under S. 66 (4). But though ordinarily the Income-tax Commissioner would be the officer who would frame the points of law that arise in the case stated by him and though he would be expected to give his own opinion on those points of law, for the benefit of the High Court, S. 66 requires the High Court to decide the questions of law that arise in the case, *i.e.*, the High Court is entitled to "re-settle the issues" as it were and to decide those issues. (*Mukerji and Niamatullah, JJ.*). SHIVA PRASAD *v.* COMMR. OF INCOME-TAX, U. P. **124 I.C. 467= A.I.R. 1929 All. 819.**

INCOME-TAX ACT (1922), S. 66—Questions not raised before Commissioner.

——*Further findings—Remand.*

Where a case referred to High Court under S. 66 (2) had ultimately to be decided on the findings which did not appear in the statement of the case as made by the Commissioner, High Court sent back the case for further findings as required. (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). MARTIN & CO., *In re.* **50 C.L.J. 300=A.I.R. 1929 Cal. 753 (S.B.).**

——*Order as to costs—Review.*

By S. 66 (6) costs are in the discretion of the Court. The Court after having exercised its discretion is *functus officio* and cannot re-open the matter. All questions relating to costs and all submissions in which costs are involved must be argued and decided at the time of the hearing and before a final order is drawn up.

A notice was issued to the Income-tax Commissioner to show cause why he should not state a case. The Commissioner showed cause and in the result the application was dismissed on the ground that it was impossible to frame a question of law on which a case could be stated and the Court hearing the matter directed the applicant, after hearing both parties, and for reasons which it considered adequate at the time, to pay the costs of the application. An application was afterwards made to reduce the amount after issuing notice to the Government Advocate on a sort of re-hearing,

Held, that the High Court could not grant the application. (*Walsh and Ryves, JJ.*). (FIRM) RAM GOPAL-MOOL CHAND *v.* INCOME-TAX COMMISSIONER. **87 I.C. 797=6 L.R.A. Civ. 218= A.I.R. 1925 All. 403.**

——*Direction to state case—Statement of question of law.*

When a Judge directs the Commissioner of Income-tax to state a case for the opinion of the High Court under S. 66 of the Income-tax Act he can state what in his opinion is the question of law that should be considered in the case since a reference can be directed only on a point of law. (Contra *Coutts-Trotter, C.J.*). (*Coutts-Trotter, C.J. and Krishnan, J.*). COMMR. OF INCOME-TAX *v.* CHENGALVARAYA. **91 I.C. 137=48 Mad. 836= A.I.R. 1925 Mad. 1242=49 M.L.J. 425.**

——Clause 36 of the Letters Patent (Calcutta) appliesin case of difference of opinion. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **84 I.C. 31=51 Cal. 504=A.I.R. 1924 Cal. 668.**

—S. 66—Questions not raised before Commissioner.

——*Power of High Court to direct statement of case.*

If a point of law is not raised before the Commissioner of Income-tax within the time specified by S. 66 (2) it cannot be raised at all and the Commissioner cannot be required to state a case to the High Court raising that question. A.I.R. 1928 Mad. 889 (F.B.), *Confirmed*; A.I.R. 1928 Rang. 281, *Ref.*; A.I.R. 1929 All. 819, *Expl.* (*Beasley, C.J., Ramesam, Pandalai, Eddy and Cornish, JJ.*). S. A. SUBBIAH IYER *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **A.I.R. 1930 Mad. 449= 58 M.L.J. 581 (S.B.).**

——*Interference by High Court.*

It is not open to the assessee to raise before the High Court any question other than that referred to. (*Rutledge, C.J., Brown and Ormistone, JJ.*). COMMR. OF INCOME-TAX *v.* P. K. N. P. R. CHETTIAR FIRM. **8 Rang. 209= A.I.R. 1930 Rang. 78 (S.B.).**

INCOME-TAX ACT (1922), S. 66—Questions not raised before Commissioner.

———*Power of High Court to direct statement of case.*

An assessee is entitled to move the High Court for a direction to the Commissioner to refer questions of law raised by him in his petition to the High Court even though they may not have been raised before him in the course of the proceedings under S. 62 (2) provided they are questions of law arising out of the Commissioner's order passed in appeal. (*Hallifax and Kinkhede, A. J. Cs.*). COMMR. OF INCOME-TAX *v.* JAI NARAIN MOTIRAM. **123 I.C. 467=A.I.R. 1929 Nag. 243.**

———*Power of High Court to direct statement of case.*

The expression "any question of law" in S. 66 (2) only means any question of law previously raised before the Commissioner and not any question of law which the assessee may deem to be an arguable one thereafter. If the point of law is not raised before the Commissioner within the time specified by S. 66 (2), it cannot be raised at all and the Commissioner cannot be required to state a case raising that point. (*Coutts-Trotter, C. J., Beasley and Ananthakrishna Ayyar, JJ.*). *In the matter of* THIRUVENGADA MUDALIAR. **110 I.C. 742= 27 M.L.W. 729=A.I.R. 1928 Mad. 889= 55 M.L.J. 19 (S.B.).**

—S. 66—Questions of fact.

———*Firm owned by father and son—Firm assessed but certain additional amount added for rates purposes being son's share of profits from another firm—Father claiming deduction of amount as bad debt and urging that profits by son should not be taken as income of assessee firm—Question if one of law.*

A firm was owned by *C* and his only son *H*. The Income-tax Officer assessed the firm at a certain sum to which he added for rate purposes a certain amount being a share of the profits derived by *H* from another firm in which he was a partner and which had been separately assessed. *C* claimed the deduction of a certain amount as a bad debt and also urged that the profits earned by *H* as partner of the other firm should not have been taken to be the income of the assessee firm for rate purposes,

Held, that on the facts found no question of law arose on which the Income-tax Commissioner could be called upon to state the case. (*Tek Chand and Agha Haidar, JJ.*). DEOKINANDAN & SONS *v.* COMMR. OF INCOME-TAX, DELHI.

A I.R. 1930 Lah. 606.

———*Power of High Court.*

When a reference is made to High Court under S. 66, High Court is not entitled to scrutinize evidence, as Commissioner's decision upon the evidence is final. (*Kumaraswami Sastri, Walsh and Curgenven, JJ.*). *In the matter of* FIRM P. L. S. K. R. **A. I. R. 1930 Mad. 104 (S.B.).**

———*Accounts whether true or not—Finding—Power of High Court to interfere.*

The question whether or not the accounts disclosed by the assessee do or do not disclose his true income is itself a question of fact, behind which the High Court cannot go. *James Cycle Co., Ltd.* v. *Commissioners of Inland Revenue*, 12 Tax Cases 103, *Rel. on.* (*Courtney Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMISSIONER OF INCOME-TAX.

9 Pat. 240=A.I.R. 1930 Pat. 81 (F.B.).

———*Power of High Court to interfere—Non-mention of reasons for finding—Effect.*

INCOME-TAX ACT (1922), S. 66—Questions of fact.

The Act gives no directions as to whether the officer deciding an appeal must set out fully the considerations which have led him to a certain decision. It is a matter of propriety rather than of law and is a matter in which the High Court has no business to interfere. The High Court has no jurisdiction to consider the findings of fact arrived at by an Income-tax Authority and it is immaterial whether the grounds stated for those findings are sound or not sound or whether no reasons at all have been stated. (*Carr and Cunliffe, JJ.*). E. M. CHETTYAR FIRM *v.* COMMISSIONER OF INCOME-TAX. **A.I.R. 1930 Rang. 224.**

———*Finding as to completeness or genuineness of statement.*

Whether a statement given by the accused is incomplete and fraudulent or not, is a question of fact for the determination of the Income-tax Authorities and not a question on which High Court can interfere. (*Rutledge, C. J., Carr and Brown, JJ.*). COMMISSIONER OF INCOME-TAX *v.* CHAN LO CHWAN. **115 I.C. 897=7 Rang. 281= A. I. R. 1929 Rang. 102 (F.B.).**

———*Finding by Commissioner—Binding nature.*

It is the function of the Commissioner of Income-tax to find the facts and it is for the High Court to accept his findings on all matters of mere fact. (*Rankin, C.J., C. C. Ghosh and Mukerji, JJ.*). *In the matter of* COMMERCIAL PROPERTIES, LTD. **113 I. C. 848=55 Cal. 1057=32 C. W. N. 413= A.I.R. 1928 Cal. 456 (F.B.).**

———*Whether expenditure is capital or current if one of fact or law.*

The question whether expenditure in a business is current, as opposed to capital, must essentially be one of degree and therefore one of fact. *Smith* v. *Incorporated Council of Law Reporting for England and Wales*, (1914) 3 K.B.D. 674; *Usher's Wiltshire Brewery* v. *Bruce*, (1915) A.C. 433 and *Currie* v. *Inland Revenue Commissioners*, (1921) 2 K. B. 332, *Rel. on.* (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME-TAX.

110 I. C. 601=6 Rang. 175= A. I. R. 1928 Rang. 152.

———*Interference when justifiable.*

Unless a finding of fact has been come to by some improper process or by failure to give effect to some rule of law it is binding upon the High Court. (*Dawson-Miller, C.J. and Foster, J.*). (MAHARAJA GARU) MAHADEO ASHRAM PRASAD SAHI BAHADUR *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **100 I. C. 897=6 Pat. 29= 8 P. L. T. 359=A.I.R. 1927 Pat. 133.**

———*Whether assessee is a joint family member or separated member.*

The question whether an assessee is a member of a joint family sharing in the funds, or whether he is separate, is a pure question of fact. (*Piggott and Walsh, JJ.*). MAKHAN LAL RAM SARUP, *In re.* **86 I. C. 27=23 A.L.J. 40=6 L.R.A. Civ. 174= A.I.R. 1925 All. 298.**

———*Whether expenditure incurred in renewing parts of motor car is a capital expenditure—Whether loss caused by total damage to car is one of law.*

Reference was directed on the question whether an assessee being a motor service company was entitled to deduction for the loss occasioned by one of its cars becoming so damaged that it had to be sold only as scrap iron, such question being held to be of considerable importance. But it was held that the question whether certain expenditure incurred in renewing certain parts of a motor car

INCOME-TAX ACT (1922), S. 66—Questions of fact.

was expenditure incurred in merely renewing wasting assets or was capital expenditure for which no deduction of tax could be claimed was a question which would turn upon evidence and by which, by directing the Commissioner of Income-tax to make reference to the High Court on the point, no useful purpose would be served. (*Kumaraswami Sastri, J.*). RATNA SINGH, *In re.*
85 I. C. 478=20 M. L. W. 859=
A. I. R. 1925 Mad. 157.

——*Whether advance by a partner to the firm is a* bona fide *loan.*

The question whether there has been an advance of capital by particular partners, or a *bona fide* borrowing of money by the firm, in which the lender happens to be a partner must be treated as one of fact in each case. (*Banerjee, Ag. C.J. and Piggott, J.*). *In the matter of* LALLA MAL MARDEO DAS COTTON SPINNING MILL CO. OF HATHRAS.
75 I.C. 339=46 All. 1=21 A.L.J. 703=
4 L.R.A. Civ. 451=A.I.R. 1924 All.137.

—S. 66—Questions of law.

——The question whether the Assistant Commissioner of Income-tax could or could not set aside in appeal the order of Income-tax Officer refusing to register an instrument of partnership, is a question of law.

The question whether a deed of partnership and the application for its registration fulfilled the requirements of R. 2 of the rules made under the Income-tax Act, and also the question whether for the purposes of R. 2 and S. 2 (14) of the Act it is obligatory that the instrument of partnership should be signed by all the partners, and if so under what provision of law, are similarly questions of law arising out of the order of the Assistant Commissioner when his assessment was on the assumption that the assessee firm was an unregistered firm. (*Wild, J. C. and Rupchand, A.J.C.*). BULCHAND KESHAVDAS *v.* COMMR. OF INCOME-TAX, BOMBAY. **A.I.R. 1930 Sind 301.**

——*Whether accounts were maintained on mercantile basis or otherwise.*

The finding that certain accounts were maintained on the mercantile system is one of fact and a question of law can only arise out of such a finding if a legitimate and reasonable inference is deducible that such finding is not based on any evidence. (*Broadway and Tapp, JJ.*). FEROZE SHAH *v.* COMMR. OF INCOME-TAX, PUNJAB.
A.I.R. 1930 Lah. 197.

——*Two inferences possible from facts—One inference drawn by the Commissioner.*

If one of two possible inferences is drawn by the Commissioner no question of law arises in the case. (*Subhedar, A. J. C.*). NARAIN *v.* COMMR. OF INCOME-TAX, NAGPUR. **121 I.C. 648 (Nag.).**

——*Exercise of judicial discretion.*

The question of the sufficiency of cause is different from the question of the sufficiency of evidence, since the determination of the sufficiency of cause involves the question whether the judicial discretion has been exercised in a sound and reasonable manner or has been exercised capriciously, arbitrarily or in a judicially unsound manner and, therefore, does involve a question of law. (*Heald, Offg. C. J. and Maung Ba, J.*). P.K. N. P.R. CHETTYAR FIRM *v.* COMMR. OF INCOME-TAX. **8 Rang. 203=**
A.I.R. 1930 Rang. 33.

——*Finding of fact, when involves question of law —Principle.*

INCOME-TAX ACT (1922), S. 66—Questions of law.

Under S. 66, Income-tax Act, only questions of law can be referred to the Court. The High Court has no jurisdiction to consider any question of fact and the finding of the Assistant Commissioner or the Commissioner on questions of facts is final. However, the question whether there was any evidence on which an Assistant Commissioner or the Commissioner could come to a finding of fact is a question of law. If there was any evidence upon which it was reasonably possible for the Commissioner to come to the conclusion at which he arrived, the High Court will not consider whether on that evidence that finding was correct because the High Court is not a Court of appeal in respect of the findings of fact arrived at by the Commissioner. Even where the finding of fact is an inference from other facts the question whether such an inference has been properly drawn is not a question of law. An inference of fact drawn from other facts admitted or proved is itself a finding of fact. *American Thread Co.* v. *Joyce*, 6 Tax Cases 1 ; *Queen* v. *Special Commissioner of Income-tax*, 3 Tax Cases 289, *Rel. on.* (*Heald, Offg. C. J., Chari and Brown, JJ.*). COMMR. OF INCOME-TAX *v.* E. M. CHETTYAR FIRM.
122 I.C. 898=7 Rang. 635=
A. I. R. 1930 Rang. 4 (S.B.).

——*Whether interest paid by firm to a lender partner can be deducted in calculating tax.*

The question where a partner as partner lends money beyond the initial capital to the partnership at no agreed rate of interest and the money is used for capital expenditure, the interest paid by the partnership to him in the year of assessment be deducted in computing the profits or gains of the partnership within the meaning of S. 10 (2) (*iii*), is a question of law : A. I. R. 1928 Mad. 923, *Rel. on.* (*Zafar Ali and Addison, JJ.*). BHOLA SHAH NARSINGH DAS *v.* COMMR. OF INCOME-TAX, LAHORE.
116 I.C. 454=11 L.L.J. 94=30 Pat.L.R. 232=
A.I.R. 1929 Lah. 404.

——*Whether Income-tax Officer can rectify mistake so as to enhance assessment.*

The Income-tax Officer is not competent to rectify a supposed mistake which has the effect of enhancing assessment, without issuing notice to the assessee under S. 35, and where the Assistant Commissioner refuses to cancel such enhanced assessment, there arises a question of law, *viz.*, " as the rectification was *ultra vires*, was the Assistant Commissioner's order refusing to cancel the assessment based on the rectification, in accordance with law " which must be stated to the High Court. (*Zafar Ali and Addison, JJ.*). DELHI CLOTH AND GL. MILLS CO. *v.* COMMR. OF INCOME-TAX.
117 I. C. 383=A.I.R. 1929 Lah. 326.

——*Whether a sum already assessed in previous year is included.*

In a particular year an assessment was made on actual receipts. It was objected by the assessee that a certain sum already assessed in previous years was included in the receipts. Assistant Commissioner in appeal found that as the estimate of income in those years was not assessment strictly on accrued basis but merely on best available data, there was no conclusive proof that such sum had already been included in the assessment of the previous years,

Held, that a question of law arose from the order whether or not the assessee was entitled to show that the actual receipts had in fact been included in the estimates of the previous years and the Commissioner must state and refer the case on

INCOME-TAX ACT (1922), S. 66—Questions of law.

the question. (*Heald and Otter, JJ.*). C. T. V. S. CHETTYAR FIRM *v.* COMMR. OF INCOME-TAX.
122 I. C. 902=7 Rang. 644=A.I.R. 1929 Rang. 245.

——*Whether a blank return is a return or not within S.* 23 (4).

The assessee was served with a notice under S. 22 (2) of the Act, calling upon him to furnish a return of income. He signed a prescribed form and, refraining from making any entries in the various columns, wrote the word "blank" against the item "total." This was accompanied by a covering letter, in which it was explained that the assessee carried on no business in the place and received no income at that place, and that the writing of the word "blank" on the prescribed form meant that the assessee had no income of any kind whatsoever,

Held, that the question whether such a return accompanied by such a covering letter was "no return" for the purposes of assessment under S. 23 (4) is one of law which should be referred to the High Court. (*Broadway, Ag. C.J. and Bhide, J.*). RATTANCHAND DUNICHAND *v.* INCOME-TAX COMMISSIONER. **111 I.C. 149=9 Lah. 188=A.I.R. 1928 Lah. 944.**

——*Finding of fact on insufficient evidence.*

A decision on questions of fact must always be considered by an appellate Court from the point of view whether, although the decision is indubitably one of fact, there was sufficient evidence to come to a proper conclusion. If a decision of fact is founded upon insufficient evidence, a question of law is produced which may be considered by a Court of appeal. (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME-TAX.
110 I. C. 601=6 Rang. 175=A.I.R. 1928 Rang. 152.

——*Whether Income-tax Officer can levy a flat rate of* 10 *per cent. when accounts for year of assessment cannot be separated.*

Where the Income-tax Officer assessed the income of the assessee at a flat rate of 10 per cent. as the accounts for the year in question could not be separated from accounts of the other years and the assessee applied for a reference under S. 66 (2), but a reference was refused on the ground that no question of law arose,

Held, the following point of law would arise for decision, *viz.*, that, whether in the case of a contract spread over a number of years when accounts for the year under assessment cannot be separated, the Income-tax Officer is legally justified in assessing profits at a flat rate without informing the assessee of the information or evidence on which the rate is based and without giving him any opportunity to produce evidence in rebuttal. (*Broadway and Bhide, JJ.*). R. B. L. PANNALAL *v.* COMMR. OF INCOME TAX. **104 I.C. 127=9 L. L. J. 463=A. I. R. 1927 Lah. 691.**

——*Effect of disruption of joint Hindu family.*

The question as to the disruption of a joint Hindu family is one of fact but the legal effect of the disruption is a question of law. (*Broadway, Ag. C.J. and Bhide, J.*). NATHUMAL *v.* INCOME-TAX COMMR., PUNJAB. **103 I.C. 522=30 P.L.R. 134=A.I.R. 1927 Lah. 616.**

——*Whether assessment under S.* 23 (4) *is legal.*

The question whether the Income-tax Officer legally proceeded to assess the assessee under S. 23 (4) is one of law and therefore no appeal lies to the Assistant Commissioner under S. 30. Reference to High Court under S. 66 was ordered.

INCOME-TAX ACT (1922), S. 66—Questions of law.

(*Zafar Ali and Jai Lal, JJ.*). KHUSHI RAM *v.* COMMR. OF INCOME-TAX. **100 I.C. 774=A.I.R. 1927 Lah. 288.**

——*Inference from proved facts—Presumption as to good faith of assessee.*

The proper legal effect of proved facts is a question of law. 46 Cal. 189, *Foll.*

The normal presumption is in favour of good faith and not of bad faith on the part of the assessee. He is therefore entitled to ask the Crown to start with a presumption that an entry in the account books is made in the ordinary course and with no intention to conceal the income, and that it is for the Crown to prove the contrary. (*Kinkhede, A. J. C.*). JAMBUDAS *v.* INCOME-TAX COMMR., C. P. **104 I.C. 336=A.I.R. 1927 Nag. 336.**

——*What is receipt for income-tax purposes.*

For the purposes of calculating the profits of a business, mere entries in books of account are not by themselves conclusive, and the question, as to what constitutes receipts for the purposes of the Income-tax Act is a question of law and not a question of fact,

The assessee made advances of grain and cash on sewai to his debtors and took instalment bonds from them for the cash or grain advanced plus sewai, *i.e.*, one-fourth, on it. For example, if he advanced Rs. 100 to his debtor, he would add Rs. 25 on account of sewai to Rs. 100 and would take a bond for Rs. 125 from the debtor payable by certain instalments and would debit Rs. 125 to his debtor's khata and credit Rs. 25 to the kasar khata.

Held, that whether these entries on the credit side in the kasar khata constitute income or not is a question of law. (*Findlay, Offg. J.C. and Wadegaonkar, A.J.C.*). PANDURANG RAMCHANDRA PANDE *v.* COMMISSIONER OF INCOME-TAX. **91 I.C. 980=21 N.L.R. 175=A. I. R. 1926 Nag. 180.**

——*Whether assessment without notice under S.* 23 (2) *is legal.*

An Income-tax Officer refused to accept the return filed by the assessee as correct but he assessed the tax without serving any notice as provided for by S. 23, cl. (2) and gave no opportunity to him to produce evidence in support of his case. The assessee then made an application after the required deposit to the Commissioner under cl. (3) of S. 66 of the Act, praying that he might refer to the High Court a question of law which he submitted arose out of the proceedings but the Commissioner refused the application,

Held, that the question raised was a question which challenged the very foundation of the assessment and it arose upon the proceedings in the case. Therefore the Commissioner's decision refusing to refer the case under cl. (2) of S. 66 of the Act was not correct, and though the point had not been taken in the Court below and the question had not been found referred to in the judgment of the Commissioner, the question was one of law "arising out of such orders" as contemplated by S. 66, cl. (2). (*Suhrawardy and Chakravarti, JJ.*). NIRMAL KUMAR SINGH NOWLAKSHA *v.* THE COMMISSIONER OF INCOME-TAX, BENGAL.
85 I.C. 520=29 C.W.N. 28=A.I.R. 1925 Cal. 173.

——*Whether opportunity to be heard was given to assessee—Whether joint family income can be assessed with personal income—Whether Commissioner can review order under S.* 33.

INCOME-TAX ACT (1922), S. 63 —Miscellaneous.

The assessee owned two houses, one at Allahabad and the other at Solon, which were both joint family properties. He was taxed on the income from the houses along with his personal income. The assessee's application, for review of the order or for reference to the High Court, was refused by the Commissioner of Income-tax on the ground that he had no power to review his own order and that no question of law necessitating a reference to the High Court arose in the case. The assessee moved the High Court to call upon the Commissioner to state a case on the following points :—

1. Whether reasonabbe opportunity of being heard was given to the assessee.

2. Whether in view of S. 14, income derived as a member of a joint Hindu family can be assessed jointly with the assessee's personal income.

3. Whether the Commissioner can review his order under the S. 33 on sufficient grounds.

Held, that the High Court would be justified in calling upon the Commissioner of Income-tax to state a case on all the points. (*Jwala Prasad and Kulwant Sahay, JJ.*). SACHCHIDANAND SINHA *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **84 I.C. 792=2 Pat. L.R. Cr. 122= A.I.R. 1925 Pat. 155.**

—S. 66—Miscellaneous.

———*Commissioner acting on his own motion under S. 33 imposing penalty and tax contrary to law—To whom does reference lie* (Quaere).

If a Commissioner of his own motion under S. 33 imposes tax and penalty, is there any authority to which reference can be made if the tax and penalty are arbitrary and contrary to the provisions of Acts? (*Quaere*). (*Courtney-Terrell, C. J., Kulwant Sahay, Fazl Ali, James and Dhavle, JJ.*). SURAJMUL BRIJLAL *v.* COMMR. OF INCOME-TAX, BIHAR. **A.I.R. 1930 Pat. 533 (F.B.).**

———*Assessee dying pending reference—Abatement.*

Proceedings before the High Court on reference under S. 66 (2) is not a suit and, therefore, if the assessee dies pending reference no question of abatement arises. The High Court has to deal with a reference which it had to decide, whether or not the assessee or his heirs appear.

As the heirs are directly interested in the result the High Court in its discretion allowed the case to be argued on behalf on the heirs. (*Courtney-Terrell, C.J., Das and Kulwant Sahay, JJ.*). MAHARAJADHIRAJA OF DARBHANGA *v.* COMMR. OF INCOME-TAX. **9 Pat. 240=A.I.R. 1930 Pat. 81 (S.B.).**

———*Order of High Court refusing to require Commissioner to state case—Appeal to Privy Council—Letters Patent, Rangoon, cl. 37—C. P. Code, S. 109.*

Proceedings connected with the assessment of income-tax normally and mainly are concerned with issues of fact and where neither the Commissioner nor the High Court is of opinion that any question of law has arisen in the course of the assessment, it may be that the legislature did not think it convenient or desirable that the Judicial Committee should be called upon to review an order which in the opinion of the High Court turned solely upon question of facts. Therefore, the High Court has no jurisdiction to grant leave to appeal to His Majesty in Council from an order of the High Court under S. 66 (3) refusing to require the Commissioner to state a case. 40 Cal. 21 (P.C.), *Rel. on*; A.I.R. 1927 P.C. 242; 2 Income-tax Cases 30; A.I.R. 1921 Bom. 378 and A.I.R. 1923 P.C. 138, *Ref.* (*Page, C.J. and Ba U, J.*).

INCOME-TAX ACT (1922), S. 66-A—Appeal to Privy Council.

CHETTYAR E. M. FIRM *v.* COMMISSIONER OF INCOME TAX. **A.I.R. 1930 Rang. 274.**

———*Oudh Chief Court—Applicability.*

The Oudh Chief Court is a High Court within the meaning of S. 66. (*Wazir Hasan and Ashworth, JJ.*). D. M. STEWART *v.* LUCKNOW ICE ASSOCIATION. **92 I.C. 257=13 O.L.J. 381= A. I. R. 1926 Oudh 191.**

—S. 66-A—Appeal to Privy Council.

———*Whether assessee succeeded to old business—If important.*

A decision that an assessee succeeded to the old business does not involve a question of importance within the meaning of S. 109 (*c*), C. P. Code, which alone can justify a certificate allowing leave to appeal. A.I.R. 1927 Lah. 181, *Ref.* (*Zafar Ali and Addison, JJ.*). NATHU MAL *v.* INCOME-TAX COMMR., PUNJAB. **123 I. C. 530= A.I.R. 1930 Lah. 109.**

———*Cases which fall within requirements of S. 110, C. P. Code.—C. P. Code, S. 110.*

The words "to be a fit one for appeal to His Majesty in Council" coupled with the words "so far as may be" in para. 3, S. 66-A, exclude from any right of appeal cases which fall within the requirements of S. 110 of the Code and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. A.I.R. 1927 P.C. 242, *Foll.* (*Macnair, Offg. J.C. and Jackson, A.J.C.*). M. E. R. MALAK *v.* COMMR. OF INCOME-TAX, NAGPUR. **120 I.C. 409= A.I.R. 1929 Nag. 336.**

———*Determination by Board of two Abidi years to be previous year for assessment—Objection to such order—It was not shown that there were other assessees making accounts according to Abidi year—Sum in dispute about Rs. 20,000—Case if can be certified as fit for appeal.*

The Central Board of Revenue determined the period of the two Abidi years which ended during one calendar year to be the previous year for the purpose of assessment. It was contended by the assessee that it was not within the competence of the Board to pass such an order. The sum in dispute was about Rs. 20,000. It was not shown that there were other assessees who took as their previous year a year which is consistently less than calendar year.

Held, that the point in dispute was not of great public or private importance and the case could not be certified to be otherwise fit for appeal to Privy Council. 23 All. 227 (P.C.) and A.I.R. 1927 P.C. 242, *Ref.* (*Macnair, Offg. J.C. and Jackson, A.J.C.*). M.E.R. MALAK *v.* COMMISSIONER OF INCOME-TAX, NAGPUR. **120 I.C. 409= A.I.R. 1929 Nag. 336.**

———*Certificate of fitness.*

The words "which the High Court certifies to be a fit one for appeal to His Majesty in Council," in sub-S. 2, coupled with the carefully limited referential words to the C. P. Code in sub-S. (3), suffice to exclude from any right of appeal, cases which fall within the requirements of S. 110 of the Code and the words are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council. The words of qualification, "so far as may be" in sub-S. (3) are apt to confine the statutory right of appeal to the cases described in sub-S. (2). A.I.R. 1927 Lah. 181, *Affirmed.* (*Lord Blanesburgh.*) DELHI CLOTH AND

INCOME-TAX ACT (1922), S. 66-A—Appeal to Privy Council.

GENERAL MILLS CO., LTD., *v.* INCOME-TAX COMMISSIONER, DELHI. **106 I.C. 156= 54 I.A. 421=25 A. L. J. 964= 47 C.L.J. 1=32 C.W.N. 237=8 P. L. T. 791= 4 O.W.N. 1053=30 Bom. L.R. 60= 27 M.L.W. 179=1928 M.W.N. 95= 29 P.L.R. 37=A.I.R. 1927 P.C. 242= 53 M.L.J. 819 (P.C.).**

——*Certificate of fitness—Public or private importance.*

The newly added S. 66-A (2) to the Income-tax Act is in terms the same as S. 109 (*c*) of the C.P. Code. Inasmuch as a reference under S. 66 of the Income-tax Act postulates the existence of a question of law, it is perfectly clear that the intention of the Legislature in adding S. 66-A to the Income-tax Act was to enable an appeal to His Majesty in Council in cases in which the High Court could certify that the question of law involved was one of great private or public importance. 28 All. 227; A.I.R. 1924 Mad. 231; A.I.R. 1923 Mad. 232; A.I.R. 1921 Patna 33, *Ref.* (*Broadway and Zafar Ali, JJ.*). DELHI AND GENERAL MILLS CO., LTD. *v.* COMMISSIONER OF INCOME-TAX, DELHI. **100 I.C. 97=8 Lah. 269= 28 P.L.R. 443=A.I.R. 1927 Lah. 181.**

—S. 66-A—Commissioner a party.

——*Case in Civil Court.*

The Act in providing that the Commissioner in proper cases should make references to the Civil Court, merely provides a convenient procedure for obtaining the decision of the Court with regard to the matter in dispute and so when the matter comes before the Civil Court the Commissioner is a party. A.I.R. 1928 P.C. 1, *Rel. on.* (*Macnair, Offg. J.C. and Jackson, A.J.C.*). COMMR. OF INCOME-TAX, NAGPUR *v.* S. M. CHITNAVIS. **119 I.C. 689= A.I.R. 1929 Nag. 265.**

—S. 67-A—Review.

——There is no review of judgment in an income-tax case under S. 66-A. (*Mukerji and Niamatullah, JJ.*). EMPEROR *v.* KAJORI MAL KALYAN DAS. **A. I. R. 1930 All. 211.**

—S. 66-A—Assessment on wrong person.

——*Remedy of assessee—Suit to set aside assessment—Maintainability.*

The Income-tax Act provides persons assessed with a remedy. They can apply to the Income-tax Officer to revise his assessment. They can appeal from his order to the Assistant Commissioner and from the Assistant Commissioner's order to the Commissioner, and they can call upon the Commissioner to refer the matter to the High Court; or, if he refuses to do so, they can apply to the High Court to direct him to make a reference. This should provide all the safeguards necessary. The Act dealt with the matter completely and whenever a statute deals with certain rights it is easy to conclude that it deals with the total ambit of those rights and leaves nothing standing outside the provisions of the statute.

A notice of assessment was served on appellant under the title of proprietor of a certain Pharmacy, calling for a return of his income under the Act, but he sent the form back and never made any return, and the assessment made by the Income-tax Officer was made in default of any return from him. In a suit brought by the appellant in a Civil Court for the return of the money on the ground of his not being the proprietor of the Pharmacy,

Held, that the case did not come within the purview of S. 67 and unless the assessment was set aside or modified, no claim for a refund of the money could be entertained. 42 Cal. 151; A.I.R. 1922 Pat. 361 and A.I.R. 1927 P.C. 113, *Foll.* (*Baguley, J.*). R. N. SINGHA *v.* SECY. OF STATE. **109 I.C. 180=5 Rang. 825= A.I.R. 1928 Rang. 70.**

INCOME-TAX ACT (1922), S. 68—Refund under old law.

—S. 67—Section if ultra vires.

——Section 67 is not *ultra vires*, as a suit for recovery of income-tax wrongly assessed would have not lain against the East India Company. 40 Cal. 391 (P. C.) and 4 M. I.A. 353, *Ref.* (*Baguley, J.*). R. N. SINGHA *v.* SECY. OF STATE. **109 I.C. 180= 5 Rang. 825=A.I.R. 1928 Rang. 70.**

—S. 68—Applicability.

——*Income-tax and super-tax—Computation of —Refund.*

Under the 2nd proviso to S. 68 of the Income-tax Act, 1922, as amended by S. 3 of the Income-tax Amendment Act, 1923, assessment to super-tax for 1921-1922 on the income of 1921-1922 can be made in 1922-1923 under the heading of adjustment in cases in which during provisional assessment proceedings, it was found that the income was below the taxable amount for purposes of super-tax, but the real income is ultimately found in proceedings under S. 68 of the Income-tax Act of 1922 as amended by S. 3 of the Act of 1923 to be large enough to be assessed to super-tax.

The meaning of S. 19 of the Indian Income-tax Act, 1918, is that, if the total income actually received has been ascertained by the Collector the Collector is to compute the income-tax and super-tax, which would have been payable if income-tax and super-tax had been levied in the previous year with reference to the true amount of the income so ascertained and then the difference between the sum so computed and the aggregate of the sums already paid by the assessee for the previous year ought to be paid by, or refunded to the assessee as the case may be.

The section does not mean that if no super-tax or income-tax had been demanded or paid for the previous year on the provisional assessment, nothing shall be paid for the year of assessment.

Section 34 of the Income-tax Act, 1922, re-enacts S. 25 of the Act of 1918 and it applies not only to the present and future but also to the past. (*Schwabe, C. J. and Waller, J.*). COMMR. OF INCOME-TAX, MADRAS *v.* CHIDAMBARAM CHETTIAR. **79 I.C. 798=19 M.L.W. 129= 1924 M.W.N. 35=A.I.R. 1924 Mad. 485.**

—S. 68—Refund under old law.

——*Assessment reduced in appeal after passing of new Act—Right to refund.*

The applicant was assessed to Rs. 1,125 under the Income-tax Act of 1918 on the 17th February, 1922. He appealed and on remand of the case the final assessment in July, 1922, was fixed at Rs. 828-3-0. The applicant claimed a refund of the difference between these two amounts but this was refused on the ground that he was not entitled to it under Act XI of 1922 which came into force on the 1st of April, 1922, prior to the making of the final assessment,

Held, that he had an existing right of refund which was expressly saved by the new Act, S. 68 (1). (*Baker, J. C. and Hallifax, A. J. C.*). THE COMMR. OF INCOME-TAX, C. P. *v.* DHARAMCHAND DALCHAND OF SANGOR. **76 I.C. 82= A.I.R. 1924 Nag. 24.**

INCOME-TAX (AMENDMENT) ACT (1926), S. 8— Retrospective effect.

INCOME-TAX (AMENDMENT) ACT (XXIV of 1926).

—S. 8—Retrospective effect.

——Act is not retrospective. (*Lord Blanesburgh.*) DELHI CLOTH AND GENERAL MILLS CO., LTD. *v.* INCOME-TAX COMMISSIONER. **106 I.C. 156= 54 I.A. 421=25 A.L.J. 964=47 C.L.J. 1= 32 C.W.N. 237= 8 P.L.T. 791=4 O.W.N. 1053= 30 Bom. L.R. 60=27 M.L.W. 179= 1928 M.W.N. 95=29 P.L.R. 37= A.I.R. 1927 P. C. 242=53 M.L.J. 819 (P.C.).**

INCONSISTENT CLAIMS.
See (1) C. P. CODE, O. 6.
(2) PRACTICE.

INCONSISTENT PLEAS.
See C.P. CODE, O. 6, R. 2.

INCORPORATED SOCIETY.
See (1) COMPANY.
(2) CORPORATION.

INCORPOREAL RIGHTS.
See (1) EASEMENTS.
(2) EASEMENTS ACT.

INDEMNITY.
See CONTRACT ACT, Ss. 124-133.

INDEPENDENT ADVICE.
See CONTRACT ACT, S. 16.

INDIAN SOLDIERS LITIGATION ACT (IX of 1918).
See SOLDIERS (INDIAN) LITIGATION ACT.

INDORSEE.
See NEG. INST. ACT.

INDORSEE FOR COLLECTION.
See NEG. INST. ACT.

INDORSEMENT.
See NEG. INST. ACT.

INDORSEMENT IN BLANK.
See NEG. INST. ACT, S. 16.

INFANT.
See (1) CONTRACT.
(2) CONTRACT ACT.
(3) MINORITY.

INFLUENCE—UNDUE.
See CONTRACT ACT, S. 16.

INFORMATION.
See (1) PENAL CODE.
(2) CR. P. CODE.

——Commission of offence. *See* CR. P. CODE, S. 45.

INFRINGEMENT—of Copyright.
See COPYRIGHT ACT.

——Of patent. *See* PENAL CODE.

——Of Trade Mark.
See (1) PENAL CODE.
(2) TRADE MARK.

INHERENT JURISDICTION.
See C. P. CODE, Ss. 151-153.

INHERENT POWER.
See (1) C. P. CODE, Ss. 151-153.
(2) CR. P. CODE, S. 561-A.
(3) CRIMINAL TRIAL.
(4) GOVT. OF INDIA ACT, S. 107.

INHERITANCE.
See (1) BUDDHIST LAW, BURMESE, SUCCESSION.
(2) HINDU LAW, SUCCESSION.
(3) MAHOMEDAN LAW, SUCCESSION.
(4) SUCCESSION ACT.

INHERITANCE REGULATION (BENG. REG. XI of 1793).

—Re-adjustment of revenue.

——*If amounts to new settlement and new title.*

Where a permanently settled estate is subjected to re-adjustment of revenue under Regulation XI of 1793 on account of additional areas coming into cultivation, that does rot amount to new settlement enforcing new title. (*Dawson-Miller, C. J. and Foster, J.*). KESHO PRASAD SINGH *v.* KIRTARATH. **97 I.C. 282=A.I.R. 1926 Pat. 577.**

INJUNCTION—Mandatory injunction.

INJUNCTION.
See also (1) C. P. CODE, O. 39.
(2) SP. REL. ACT, SS. 52 TO 57.

—Against Government.

——*Levy of illegal rate—Permanent injunction—Grant of.*

Since Government can be trusted to see that decrees of Court will be given effect to, permanent injunction need not be granted against the Government restraining them from levying enhanced rate which is declared by the Court as illegal. (*Devadoss and Jackson, JJ.*). SECY. OF STATE *v.* K. RAMANUJA CHARYULU. **85 I. C. 419= 48 Mad. 282=20 M.L.W. 973= 1925 M.W.N. 264=A.I. R. 1925 Mad. 355= 47 M.L.J. 780.**

—Batwara proceedings.

——*Power of High Court to restrain parties to a pending suit from continuing such proceedings.*

Though the High Court has no jurisdiction over the Batwara Court, it will always assert its right to act *in personam* and has complete jurisdiction to restrain the parties to a pending suit from proceeding with batwara proceedings until the determination of the suit. The High Court will not assume that the Batwara Court will take any steps unfair to the parties restrained from proceeding with the batwara proceedings or compel them to act in any way inconsistent with their duty of obedience to the High Court. 34 Cal. 101, *Foll.* (*Das and Foster, JJ.*). AMAR KUMAR *v.* B. COVENTRY. **85 I.C. 551=6 Pat.L.T. 524= A. I. R. 1925 Pat. 710.**

—Co-sharer.

——*Obstruction to user of joint property.*

A co-sharer cannot materially alter the condition of the joint property without obtaining the sanction of his co-sharers.

Plaintiff owned certain land jointly with defendant for the purpose of access of the sweeper to the privies in his house belonging exclusively to him. Defendant built a wall across the joint land so as to put an end to this user of the plaintiff,

Held, that the defendant was not entitled to obstruct the user of the plaintiff, and the plaintiff was entiled to an injunction directing the defendant to remove the obstruction. (*Ross, J.*). DEBENDRA PRASAD SUKUL *v.* SURENDRA PRASAD SUKUL. **59 I.C. 975 (Pat.).**

——*General injunction specifying particular acts restrained—If necessary.*

It is always undesirable that an order should be made forbidding a party enjoined generally from doing particular acts. If once the Court enjoins the defendant against particular acts there is no limit to the number of acts which might have to be mentioned. The general injunction is sufficient. (*Macleod, C.J. and Crump, J.*). KASHI NATH HARI *v.* VISHWANATH BHIKO. **76 I.C. 764= A. I. R. 1923 Bom. 409.**

—Mandatory injunction.

——*Delay in applying—Equitable considerations.*

When a plaintiff has not brought his suit or applied for an injunction at the earliest opportunity, but has waited till the building on defendant's own land has been finished and then asks the Court to have it removed, a mandatory injunc-

INJUNCTION—Obstruction in building wall.

tion will not generally be granted though there might be cases where it would be. Further if a stranger begins to build on land supposing it to be his own and the real owner perceiving his mistake, abstains from setting him right and leaves him to persevere in his error, a Court of Equity will not afterwards allow the real owner to assert his title to the land. But if a stranger builds on land knowing it to be the property of another, equity will not prevent the real owner from afterwards claiming the land with the benefit of all the expenditure upon it. 14 W.R. 926 and 21 All. 496 (P.C.), *Foll.* (*Chatterjee and Cuming, JJ.*). HEMANGINI DEBI *v.* BEJOY SINGH DUDHARIYA.
73 I.C. 223=A.I.R. 1924 Cal. 438.

—Obstruction in building wall.

——*Delay in applying for removal—Injunction—Damages.*

Plaintiff waited for three years after the defendant *bona fide* prevented him from building a wall, and then sued for a permanent injunction that the defendant should not prevent him from building a wall and for damages owing to the defendant's act in preventing the building of the wall three years before the suit. Injunction was granted but damages were refused.

Held, that the damages were rightly refused on the ground of plaintiff's laches. (*Addison, J.*). KUNDAN LAL *v.* GAURI MAL. 108 I.C. 396=
A.I.R. 1928 Lah. 719.

—Obstruction to light and air.

——*Remedy—Injunction—Damages.*

Where the building proposed to be built by defendant will block the plaintiff's windows for the free passage of light and air to which plaintiff has acquired an easement, defendant can be restrained by injunction, from constructing building.

Any act by the defendant which controls or obstructs the light and air to which the plaintiff is entitled is *prima facie* an injury of a serious character. 8 Bom 95, *Foll.*

Prima facie the plaintiff is entitled to an injunction. An injunction is the rule and damages the exception in cases of this nature. It cannot be held that if it was possible for the plaintiff to neutralise the effect of the defendant's buildings, by altering or re-arranging his own buildings: then compensation in money would afford adequate relief. It having been proved that the plaintiff has acquired an easement whereby he is entitled to have free access of light and air through this window, he is *prima facie* entitled to be maintained in his enjoyment of the said easement: 21 M.L.J. 918, *Foll.*

The grant of an injunction is purely a matter of discretion, a discretion which is to be exercised in a judicial manner. 8 P.R. 1909; 172 P.W.R. 1913; 14 Cal. 839; 1 L.W. 166 and 2 P. R. 1893. *Ref.* (*Broadway, J.*). THAKUR DAS *v.* ABDUL HAMID.
67 I.C. 288=72 P.L.R. 1922=
A. I. R. 1921 Lah. 372.

—Person outside jurisdiction.

——*Injunction against person outside jurisdiction when can be issued.*

Although a Court will not issue any injunction against a person not within its jurisdiction, yet when that person has submitted to its jurisdiction, the Court will in the ends of justice restrain that party from doing anything which it considers is improper and will amount to an abuse of the process of the Court. 1 P.L.T. 277, *Foll.* (*Jwala Prasad and Adami, JJ.*). LALOO LAL SHARMA *v.* RADHEY LAL GOSWAMI.
35 I.C. 852=6 P.L.T. 540=A.I.R. 1926 Pat. 171.

INSOLVENCY—Annulment of adjudication.

—Possession.

——*Basis of injunction—Dispossession, what is.*

An owner of land cannot be said to be out of possession so as to disentitle him for an injunction merely because the defendant collects cattle on the land or fixes mangers or pegs or erects a platform thereon. (*Dalip Singh, J.*). MD. AMIN KHAN *v.* BALANDA. 109 I.C. 657=
A.I.R. 1929 Lah. 71.

—Right to.

——*Interference with exercise of a right—Injunction—Compensation—Duty of Court.*

Absolute ownership is not an essential condition for obtaining an injunction. Any person in the enjoyment of a right may apply for an injunction if that enjoyment is interfered with by a person without title. When in a suit for an injunction without a prayer for compensation the Court is of opinion that the injury can be adequately compensated in money, it is bound to pass the amount of that compensation and should not refer the parties to fresh litigation. (*Le Rossignol, J.*). BUTA KHAN *v.* KAMME KHAN. 61 I.C. 870 (Lah.).

—Tenants-in-common.

——*When justifiable.*

Where the parties are not divided but are only tenants-in-common in a house and for the sake of convenience, each is in possession of some particular portion, the principles governing the Court in respect of grant of injunction at the instance of one tenant-in-common as against other are essentially different from those governing the Courts in respect of a grant of injunction between neighbouring owners of land or houses. Where there are no materials on record from which the Court can come to the conclusion whether a proper case has been made out for the grant of an injunction as between tenants-in-common, no injunction can be granted. Justice would not be meted out if an injunction is granted between tenants-in common when there are no proper grounds justifying the same. (*Ananthakrishna Ayyar, J.*). VISVANADHAM *v.* MANGAMMA. 120 I.C. 737=
A.I.R 1930 Mad. 236.

INJURY.

See (1) PENAL CODE. (2) TORT.

INQUIRY.

See CR. PRO. CODE.

INSANE OFFENDER.

See PENAL CODE, S. 84.

INSANITY.

See (1) C. P. CODE, O. 32, R. 15.
(2) Cr. P. C. SS. 464-475.
(3) PENAL CODE, SS. 84, 85.

INSOLVENCY.

See also (1) INSOLVENCY ACT.
(2) PRESS. TOWNS INS. ACT.
(3) PROV. INS. ACT.

—Adjudication set aside.

——*Costs.*

Costs ordered to be paid by a petitioning creditor to a debtor when an adjudication in bankruptcy is set aside cannot be set off to the prejudice of the solicitor's lien against the debts due to the petitioning creditor. (*Blackwell, J.*). EBRAHIM AHMED, *In re.* 32 Bom. L.R. 1076=
A.I.R. 1930 Bom. 516.

—Annulment of adjudication.

——*Composition with creditors—Costs of Official Receiver.*

Where the adjudication is annulled owing to a composition made by the debtor with the creditors, the costs of the official receiver should be recovered

INSOLVENCY—Appeal.

out of the estate of the insolvent. (*Jai Lal, J.*). ARJAN DAS *v.* FAZIL. **110 I.C. 305= A.I.R. 1929 Lah. 89.**

—Appeal.

———*Necessary party—Purchaser of insolvent's property.*

When in an insolvency the Official Receiver sold certain lands of the insolvent and the latter objected to the confirmation of the sale and the same having been unsuccessful he preferred an appeal,

Held, that the purchaser of the property was a necessary party to the appeal. (*Addison, J.*). RAM KARAN *v.* THE OFFICIAL RECEIVER, FEROZEPORE. **121 I. C. 373=31 Punj. L.R. 18.**

—Decree against insolvent.

———*If binding on Official Receiver.*

A decree obtained against the judgment-debtor is not binding against the Receiver in insolvency. There is always a possibility of its having been collusive between the parties, when the judgment-debtor has nothing in the world to bless himself with and does not care whether he has decrees for an unlimited amount against him or not. (*Walsh and Ryves, JJ.*). MIR SHAMAT ALI *v.* RAHIM BUX. **84 I. C. 1008=A.I.R. 1923 All. 33.**

—Decree obtained by insolvent.

———*Debt due prior to adjudication—Validity of decree after adjudication.*

There is this difference between the bankrupt's estate which vests in the trustee on bankruptcy and after-acquired property which also vests on acquisition that the bankrupt can deal with the latter until the trustee intervenes. If he sues in respect of an after-acquired chose-in-action he can obtain a decree and if the decree is satisfied before the trustee intervenes the judgment-debtor obtains a good discharge. The question then remains between the trustee and the bankrupt if the after-acquisition is discovered. In other words, persons who deal with an undischarged bankrupt in good faith for value with regard to an after-acquired property are protected. It is otherwise with regard to property which actually vests in the trustee at the date of the adjudication. (*Macleod, C. J.*). ANDREW ROZARIO *v.* MAHOMED IBRAHIM SARANG.

83 I. C. 34=48 Bom. 583=26 Bom. L. R. 695= A. I. R. 1924 Bom. 460.

—Foreign firm insolvent.

———*Japan firm having branches in India adjudicated—Creditor in India paid dividend by Re-adjustment committee in Japan—Insolvency proceedings in India—Power of Official Assignee to require creditor to refund dividend received in Japan.*

The insolvents Mogi and Co., carried on business in Japan and several other branches in various parts of the world. They banked with the Yokohama Specie Bank Ltd., (the appellants) in its branches at each place. The respondents obtained a decree against Mogi and Co. for 1 lac 84 thousand rupees on the original side of the Calcutta High Court and obtained an order for attachment before judgment of their assets in Bombay. The Yokohama Specie Bank claimed a lien on the goods attached under a deed of hypothecation dated the 14th July, 1920, and the claim was allowed. Before the adjudication, the general creditors of Mogi and Co. in Japan appointed a Re-adjustment Committee consisting of several creditors including the Bank. The Committee carried out in Japan a liquidation of Mogi and Co.'s debts and paid certain dividend.

The Bank also received some dividends. The respondents did not join in the proceedings nor receive

any dividend. Subsequently the Bank lodged a proof or debt, claiming that after all securities had been realised, it still had over one crore and 52 lacs of rupees due to it. Respondents applied to the Court for an order expunging the proof of the Bank's claim or for an order on the Bank to pay to the Official Assignee the amount of dividend received by it in Japan to the Official Assignee.

Held, there was nothing to show that the Official Assignee could successfully sue the Bank for the money received by it in Japan or that the Bank received any money which could be regarded as a part of the common fund available to creditors generally and in consequence of which the payment of dividends to it could be postponed until the other creditors received dividends proportionate to what it had received, and therefore the question whether the Bank was bound to bring in the dividends obtained by it in Japan before dividends were paid to it in the insolvency proceedings in Calcutta, or whether payment to it should be postponed until other creditors have received proportionately, cannot be determined.

Where, by the law of the foreign country, a person other than the Official Assignee is entitled to payment out of movable property there, he cannot be ordered to refund it to the Official Assignee. So far as movable property is concerned the general principle is that it is subject to that law which governs the person of the owner: *Re Artola*, (1890) 24 Q. B. D. 640, *Ref.*

As regards immovables in a foreign country such as Japan, the view of international law taken by English and British Indian Courts is that Indian statutes do not operate unless indeed it is shown that the foreign law will give them effect. If the movable property of an insolvent domiciled in India is dealt with by the Courts in a foreign country in which it is situated in a manner contrary to the rights which Indian Law would have given to the Official Assignee, the person to whom it is adjudged does not hold it wrongfully as against the Official Assignee, nor can he be made to deliver up what the foreign Court has given to him except in a case where he too is domiciled in India and the rights of both parties can be limited to those given to them by Indian Law. In a proper case coming within this exception Indian Law will act *in personam* either to restrain proceedings being had or continued abroad or otherwise to give effect to Indian Law: *Re Artola*, (1890) 24 Q.B.D 640 and *Philips* v. *Hunter*, (1795) 2 H.Bl. 402, *Ref.*.

Except in cases above mentioned by way of exception, where the movable property of an insolvent domiciled in India is situate in a foreign country by whose law a person other than the Official Assignee is entitled to obtain possession of it or to receive payment out of it, such a person cannot be made to refund it to the Official Assignee even if he brings what he has received into India: *Sill* v. *Worswick*, (1791) 1 H. Bl. 665, *Ref.*

In such a case the burden of proving what the foreign law is would be upon the person seeking to shelter under it: *Lloyd* v. *Guibert*, (1865) L.R. 1 Q. B. 115, *Ref.*

Had the insolvent's affairs been liquidated in Japan by any process of law analogous to bankruptcy the receipt of dividends thereunder would have been in no way wrongful on the part of the Bank and postponement of dividends would have been the proper course. (*Chatterjee, Ag. C. J. and*

INSOLVENCY—Fraudulent preference.

Rankin, J.). YOKOHAMA SPECIE BANK LTD. *v.* S. CURLENDER & CO. **96 I.C. 459=43 C.L.J. 436=A.I.R. 1926 Cal. 898.**

—Fraudulent preference.

———*Proof of—Dominant intention of insolvent.*

What has to be decided in all cases where fraudulent preference is alleged is what was the dominant intention in the mind of the insolvent at the time the act was done. It may result in a preference in favour of one creditor; but if the act was done by the insolvent not as free agent but under pressure, or to avoid certain legal consequences with a view to benefitting himself as the primary consideration, then there can be no fraudulent preference. The mere fact that the alleged act was done very shortly before the insolvent filed his petition to be adjudicated, no doubt raises the presumption that the act was intended as a fraudulent preference. But it is necessary to consider all the facts in the case and the surrounding circumstances and arrive at a decision as to what was the principal object of the insolvent in so acting. (*Robinson, C.J. and May Oung, J.*). M. A. RAEBURN & CO. *v.* ZOLLIKFER & CO.

83 I.C. 440=2 Rang. 193=A.I.R. 1924 Rang. 308.

—Gift for residence before.

———*If donee has saleable interest.*

Where in case of a gift, the donor did not pass any deed to evidence the gift but the donee passed a document in favour of donor stating that a certain house was given to him in gift with no power to alienate but only a right to reside in it,

Held, that the donee had no saleable interest in the house on insolvency. (*Macleod, C. J. and Coyajee, J.*). GIRIJAPROSAD *v.* PURSHOTTAM.

94 I.C. 609=28 Bom. L.R. 421=A.I.R. 1926 Bom. 261.

—Going behind accounts.

———*Power of Insolvency Court—Right of creditor to interest.*

In an insolvency proceeding the Court has a right and duty to go behind any accounts stated, or covenant or judgment and in the interest of the other creditors get to the real character of the transaction. Where a debt has been proved the debt includes interest or any pecuniary consideration in lieu of interest. The time at which the creditor claimed to prove is the time at which he filed his application to have his name inserted in the schedule. Where there is a surplus after paying the debts in full the Court will be justified in awarding six per cent. interest on the claim. (*Rankin, C. J. and C. C. Ghose, J.*). KANTI MOHAN MALLICK *v.* J. C. GALSTAUN. **51 C.L.J. 283=A.I.R. 1930 Cal. 547.**

—Insolvency pending suit.

———*Continuance of suit.*

Where the plaintiff is adjudicated an insolvent during the pendency of a suit, the suit cannot be continued except at the instance of the Receiver. (*Abdul Raoof and Martineau, JJ.*). TULSI RAM *v.* DINANATH. **89 I.C. 333=A.I.R. 1926 Lah. 145.**

—Insolvent reversioner.

———*Alienation by Hindu widow with consent of reversioner—Effect of—Surrender and vesting in receiver.*

Where a Hindu lady purports to alienate property to a third party with the consent of the reversioner the transaction operates as a surrender into the hands of the reversioner followed by a conveyance to a third party and if the reversioner is an insolvent the moment the surrender is made the property passes to the receiver in insolvency.

INSOLVENCY—Mortgagor insolvent.

(*Piggott and Walsh, JJ.*). HARI HAR PRASAD *v.* UDAY SINGH. **74 I.C. 113=21 A.L.J. 77=45 All. 260=4 L.R.A. Civ. 70=A.I.R. 1923 All. 190.**

—Joint Hindu family.

———*Adjudication of member not personally liable.*

Where creditors who have obtained a decree against a joint Hindu family apply for adjudication of the members as insolvent, a member who is not personally liable under the decree it being passed against him in his representative capacity, cannot be adjudicated insolvent. (*Tek Chand, J.*). KALU RAM *v.* GITWAR SINGH. **A.I.R. 1930 Lah. 592.**

———*Insolvency of Manager—Rights of Official Assignee.*

On the insolvency of the managing member of a joint Hindu family the Official Assignee succeeds to the undivided interest of the insolvent in the joint property and his rights as managing member so far as they can be exercised for his own benefit; but he is not entitled to have vested in him the shares of the other members though he is entitled to deal with them as the insolvent would lawfully have done if there be no insolvency. A.I.R. 1923 Mad. 55, *Foll.*; A.I.R. 1923 Lah. 1 (F.B.), *Not foll.* (*Schwabe, C.J. and Coleridge, J.*). VARADARAJAN *v.* SRINIVASA RAO. **75 I. C. 471=A.I.R. 1924 Mad. 792.**

———*Father adjudicated insolvent—Liability of son's shares.*

By the insolvency of a Hindu father governed by the Mitakshara Law, his son's interest as well as his own interest in the joint family estate vest in the Official Assignee and the son's property is to be treated as that of his father so far as the Official Assignee in concerned. The son, no doubt, has his remedy but he has to establish circumstances which would show that his share is not liable for the debts of his father: 3 Lah. 329, *Foll.* (*Scott-Smith, J.*). RALIA RAM JOWANDA MAL *v.* OFFICIAL RECEIVER OF THE INSOLVENT'S ESTATE, GUJRANWALA. **69 I.C. 729=A.I.R. 1924 Lah. 297.**

—Jurisdiction.

———*Discretion of Court.*

The jurisdiction in bankruptcy is entirely discretional, and in exercising this discretion the Court is bound to look into the circumstances as a whole. (*C. C. Ghosh, J.*). HARSUKDAS BALKISSENDAS, *Ex parte*. **83 I.C. 941=39 C.L.J. 512=A.I.R. 1924 Cal. 964.**

—Liquidated demands.

———It is only in respect of liquidated demand that insolvency petitions can be presented. (*Schwabe, C.J., Oldfield and Ramesam, JJ.*). SINNAM CHETTY *v.* ALAGIRI AIYAR. **77 I.C. 580=46 Mad. 852=18 M.L.W. 545=1924 M.W.N. 6=A. I. R. 1924 Mad. 438=45 M.L.J. 516 (F.B.).**

—Money decree against third persons.

———*Power of Insolvency Court.*

An Insolvency Court has got power to pass a simple money decree against a third person. (*Sen and Niamatullah, JJ.*). RAM CHARAN SAHU *v.* SALIK RAM SAHU. **121 I.C. 702.**

—Mortgagor insolvent.

———*Insolvency Court awarding compensation to mortgagee with his consent—Right of mortgagee to execute the decree.*

Where the holder a mortgage-decree against the insolvent is a consenting party to a compensation sanctioned by the insolvency Court, then unless the proceedings of the insolvency Court are set aside the execution Court, dealing with an application for execution of the mortgage-decree cannot go behind the order passed in such proceedings. (*N. R.*

INSOLVENCY—Order of adjudication.

Chatterjee and Panton, JJ.). JUGMOHAN PRADHANI *v.* INDRA CHANDRA CHOTARIA.
59 I. C. 95 (Cal.).

—Order of adjudication.

——*Direction that shares of other persons are liable to meet the debts—Legality.*

Where a person is adjudicated insolvent, it is premature and improper to direct that the shares of other persons in the family trade and property are liable for the insolvent's debts. It will be open to the Receiver to be appointed, to deal with the assets other than those belonging to the person adjudicated insolvent, at a later stage by suit or otherwise as may be lawful. 42 Cal. 225, *Foll* (*Oldfield and Seshagiri Aiyar, JJ.*). SATHIAVASAGAM PILLAI *v.* MEENAKSHI SUNDARAM AIYAR.
69 I. C. 485=14 M. L. W. 361=
A. I. R. 1921 Mad. 674.

—Plea of.

——*Execution proceedings—Plea not taken in first Court but only in the High Court and Privy Council—Proceedings if binding on Receiver or parties.*

In the Court of first instance no plea as to insolvency of the judgment debtor was made by the heirs of the judgment debtor. The plea was made both in the High Court and in the petition for leaving to appeal to Privy Council. No notice was given to the Insolvency Court or to the Receiver. It was not known whether the adjudication was annulled. The Privy Council made a declaration while dismissing the appeal that if the insolvency had not been annulled or otherwise terminated on or before the date of order of the Court of first instance, the order would owing to the absence of the Receiver or other representative of the Insolvency Court, be inoperative except in so far as it decided against any asserted interest of the sons and heirs of insolvent, who were parties to the proceedings. (*Lord Phillimore.*) SRIPAT SINGH DUGAR *v.* RAI HARIRAM GOENKA. **74 I.C. 897=26 C.W.N. 739=**
31 M.L T.38=16 M.L.W. 447=
1922 M.W.N. 671=A.I.R. 1922 P.C. 51 (P.C.).

—Principle of law of.

——The underlying principle of the law of insolvency is that an insolvent shall be freed from his indebtedness and shall obtain a discharge within a reasonable period. A Court or a Receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree. (*Shadi Lal, C.J. and Wilberforce, J.*). MANJI *v.* GIRDHARI LAL.
61 I. C. 664=2 Lah. 78=71 P.L.R. 1921=
A. I. R. 1921 Lah. 44.

—Property acquired after.

——*Insolvent's power of disposal.*

All persons dealing with an undischarged insolvent *bona fide* and for a consideration are discharged from making a further payment, to the Official Assignee, provided the transactions took place before the Official Assignee intervened and claimed the property on behalf of the insolvent's estate An insolvent who had not obtained his final discharge has power with respect to after-acquired property to buy and sell and give discharge and do all other acts which he could have done before his insolvency. This law applies to both movable and immovable property. 8 Cal. 556, *Foll.* (*Daniels and Mukerji, JJ.*). CHHOTE LAL *v.* KEDAR NATH.
84 I.C. 289=46 All. 565=22 A.L.J 455=
5 L.R.A. Civ. 329=A.I.R. 1924 All. 703.

——*Right of stranger to dispute title of insolvent.*

A stranger cannot dispute as against an undischarged bankrupt, has title to after-acquired property unless he proves that the Official Assignee has intervened. (*Rankin, J.*). DASARATI SINHA *v.* MAHAMULYA ASH. **60 I.C. 977=47 Cal. 961.**

INSOLVENCY — Receiver, order against, for costs.

—Public examination.

——*Time of.*

A creditor is expected to know when his debtor becomes insolvent and if he wishes to get the insolvent examined the application should be made before the insolvent applies for his discharge. (*Macleod, C. J.*). FARDUNJI DADABHAI DARUWALU, *In re.* **83 I.C. 782=**
26 Bom. L.R. 627=A.I.R. 1924 Bom. 512.

—Receiver, adoption by, of contracts.

——*Procedure.*

The law does not require that the trustee in bankruptcy should give express notice within a reasonable time after the date of the bankruptcy of his adoption of the contract. The law only requires the trustee in bankruptcy to perform the bankrupt's part of it as and when he should have done it himself. *Gibson* v. *Carruthers*, (1841) 8 M. & W. 321, *Ref.* (*C.C. Ghosh and Page, JJ.*). CURRIMBHOY & CO. *v.* Z. A. CREET. **123 I.C. 250=**
50 C. L. J. 208=57 Cal. 170=
A.I R. 1930 Cal. 113.

—Receiver, handing over accounts to.

——*Necessity.*

It is not the duty of an unwilling debtor either under the Insolvency Act or rules thereunder to hand over his books to the Official Assignee before he has been adjudicated an insolvent, nor is it the settled practice of the Calcutta High Court (*Buckland, J.*). GOPALDAS AURORA, *In re.*
94 I.C. 793=30 C.W.N. 173=
A.I.R. 1926 Cal. 640.

—Receiver, interim.

——*Rights of whether date from appointment or adjudication.*

Where an interim Receiver is appointed pending an application to declare certain person as an insolvent it is to the date of the application for adjudication as insolvent that we are to look as the commencement of insolvency and not to the date of the appointment of the Receiver. Hence, if after the application for adjudication as insolvent but before the appointment of the interim Receiver any assets of the debtor are attached by any creditor the proceeds should not be paid to the attaching creditor until the fate of the adjudication application is known. (*Kennedy, J.C.*). FIRM OF ADAMJI JAFFARJI *v.* FIRM OF BASRIO FADOO.
89 I.C. 330=A.I.R. 1926 Sind 77.

—Receiver, order against, for costs.

——*Validity of.*

The Official Receiver or a trustee in bankruptcy may, like any ordinary litigant, be ordered to pay costs in any action taken or defended by him. *John Tweedle & Co. Ltd., In re*, (1910) 2 K. B. 697; *Williams & Co., In re*, (1913) 2 K B. 88 and 7 Bom. 484, *Foll.* (*Wallace and Thiruvenkatachariar, JJ.*). BALAKRISHNA MENON *v.* MANAKKAL UMA. **114 I.C 825=52 Mad 263=**
28 M.L.W. 719=A.I.R. 1929 Mad 105=
55 M.L.J. 873.

——*Nature of liability.*

A simple order for costs against the Official Receiver has the usual meaning of such an order against any litigant, and the Official Receiver is, therefore, in the first instance, personally liable for costs. The circumstance that the Official Receiver had obtained the leave of the Court would only entitle him to claim reimbursement out of the

INSOLVENCY — Receiver, order against, for costs.

estate or from the creditors in whose interest he was acting in the litigation in which he was unsuccessful. 7 Bom. 484; 23 C. W. N. 431; *Pitts* v. *La Fontaine*, 6 A C. 482 and *Ex-parte Angerstein, In re Angerstein*, 9 Ch. A. 479, *Rel. on*; A.I.R. 1928 Mad. 890, *Disc.* and *Dist.* (*Wallace and Thiruvenkatachariar, JJ.*). BALAKRISHNA MENON *v.* MANAKKAL UMA. **114 I.C. 825=52 Mad. 263=28 M.L.W. 719=A.I.R. 1929 Mad. 105=55 M.L.J. 873.**

———*Liability if ceases on discharge.*

If a person was personally liable for costs decreed against him when he was Official Receiver, he is not divested of that liability by ceasing to be Official Receiver. (*Wallace and Thiruvenkatachariar, JJ.*). BALAKRISHNA MENON *v.* MANAKKAL UMA. **114 I.C. 825=52 Mad. 263=28 M.L.W. 719=A.I.R. 1929 Mad. 105=55 M.L.J. 873.**

———*Official Assignee continuing suit started by insolvent—Suit lost—Costs—Official Assignee acting bona fide—Liability if personal.*

It is in the discretion of the Court which decides the case, to direct the Official Assignee, or the trustee in Bankruptcy, to pay the costs personally. If the action is by the insolvents and the Official Assignee continues the action, knowing that the action is wholly unsustainable, or that in the conduct of the action he is guilty of any conduct, which a prudent man would not be a party to, then it would be open to the Court to direct the Official Assignee to pay the costs of the action personally. But where there is a *bona fide* dispute and where the facts are such that it would not be easy to decide, whether the bankrupt has a good case or not, the Official Assignee if he acts *bona fide*, should not be made to pay costs personally, that is, out of his pocket; but he is entitled to have an order made to pay the costs out of the estate. (1919) 2 K.B. 88, *Ref.* (*Devadoss, J.*). ABDUL RAHIM SAHIB & CO. *v.* SHAW WALLACE & CO. **92 I.C. 620=21 M.L.W. 516=A.I.R. 1925 Mad. 736.**

—Receiver, orders of.

———*Interference by Court.*

Where proper reasons are given by a Court for holding that the action of the Receiver was irregular and has prejudiced the general interests of the creditors, it should set aside the order passed by the Receiver. (*Spencer and Venkatasubba Rao, JJ.*). RAMABADRA CHETTY *v.* V. RAMASWAMI CHETTY. **73 I.C 374=17 M.L.W. 622=A.I.R. 1923 Mad. 350=44 M.L.J. 284.**

—Receiver, refusal to appoint.

———*Long delay after adjudication—Legality.*

Refusal to appoint Receiver to the insolvent's property on the ground of lapse of seven years after the order for adjudication is not legal. (*Walmsley and M. N. Mukerji, JJ.*). HORO MOHUN PRAMANIK *v.* MOHAN DAS PALI. **83 I.C. 360=39 C. L. J. 432=A.I.R. 1924 Cal. 849.**

—Receiver, sale by.

———*Proceedings for realisation of assets—Power of insolvent to dispute receiver's order.*

The insolvent has, after adjudication, no legal interest in his estate which vests in the Official Assignee; and he has therefore, no legal right to interfere in the realization of that estate and he cannot be treated as aggrieved by any order passed in the course of such realization. It is true that if any surplus remains after the creditors are paid in full, such amount will be paid over to the insolvent, and it is also true that if a certain proportion of his debt is paid from his assets he will be entitled to a discharge. But these are merely expectations which may or may not be realized. They do not give any legal right to the insolvent to interfere in the realization of his property which is entirely left to the Official Assignee. A.I.R. 1924 Mad. 163, *Disapproved*; 41 All. 243, *Foll.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). HARI RAO *v.* OFFICIAL ASSIGNEE, MADRAS. **94 I.C.642=49 Mad. 461=23 M.L.W. 599=1926 M.W.N. 364=A.I.R. 1926 Mad. 556=50 M. L. J. 358 (F.B.).**

INSOLVENCY—Suit against insolvent.

—Receiver, suits by.

———*Discharge of insolvent by composition—Power of Official Assignee to sue insolvent's debtors.*

A Bankruptcy Court both in England and in India does very often pass conditional orders of discharge which keep alive remedies on one side or the other.

While pending certain proceedings against the debtors to the insolvent's estate by the Official Assignee, the insolvent is discharged on account of a composition between his creditor to which the Official Assignee is a party, it does not lie in the mouth of the Official Assignee to say that the bankrupt's estate is in any way vested in him so as to enable him to prosecute proceedings to recover additional sums of money over and above those provided for, for distribution in the compromise for the benefit of the bankrupt's estate. (*Coutts-Trotter, C. J. and Ramesam, J.*). OFFICIAL ASSIGNEE *v.* NARAYANA GOUNDAN. **97 I.C. 67=A.I.R. 1926 Mad. 1137.**

—Rights of unsecured creditors.

———*Effect of composition.*

An unsecured creditor who has consented to the composition accepted by the Court cannot move the Court in insolvency unless the Official Receiver or Special Receiver has refused to act in the matter and where the Receiver has applied to stop the sale of charged property but had failed, such unsecured creditor has no right to object to the sale. (*Devadoss and Wallace, JJ.*). PONNUSWAMI NAICKER *v.* SUBRAMANIA CHETTIAR. **91 I.C. 460=22 M.L.W. 404=A.I.R. 1925 Mad. 1246.**

—Suit against insolvent.

———*Suit by insolvent as bailee.*

Where an undischarged insolvent who had been entrusted with certain precious stones for sale handed them over to the defendant for having them sold and the latter not having returned the articles or their value he sued to recover the same.

Held, that the property in the articles did not belong to the insolvent and therefore did not vest in the Official Assignee and that the suit by the insolvent having been filed as a mere bailee was maintainable. *Williams on Bankruptcy*, 13 Ed. p.229, *Rel. on.* (*Beasley, C.J., Sundaram Chetty and Walsh, JJ.*). MOONRUMUGAM KONDAN ASARI *v.* CHOCKALINGAM ACHARI. **32 L.W. 443=1930 M.W.N. 869=A.I.R. 1930 Mad. 913 (F.B.).**

———*Cause title—C. P. C. appendix A form* (1).

Obiter.—Where the plaintiff desired to sue the defendant as well as his Official Assignee,

Held, the title of the suit as "Govindji Jivabhai insolvent and on behalf of him Official Assignee" is absolutely wrong. Govindji should have been the 1st defendant, and the Official Assignee, as assignee of the estate and effects of the insolvent Govindji, the 2nd defendant. (*Macleod, C. J. and Crump, J.*) DAMODAR JAGJIWAN *v.* GOVINDJI JIVABHAI. **73 I.C. 240=25 Bom. L.R. 378=A.I.R. 1923 Bom. 392.**

INSOLVENCY—Third person claiming property.

—Third person claiming property.

———*Disallowance of claim—Suit to establish claim—Maintainability.*

A person who claims rights to property taken possession of by the Official Receiver as belonging to an insolvent and whose claim has been disallowed by the Insolvency Court may bring a regular suit to establish his rights. (*Martineau, J.*). SHANCHI KHAN *v.* KARAM CHAND. **73 I.C. 705= A.I.R. 1923 Lah. 150.**

INSOLVENT DEBTORS' ACT (1848, 11 & 12 Vict., Ch. 21).

—S. 7—After-acquired property.

———*Powers of undischarged insolvent.*

All persons dealing with an undischarged insolvent *bona fide* and for a consideration are discharged from making a further payment, to the Official Assignee, provided the transactions took place before the Official Assignee intervened and claimed the property on behalf of the insolvent's estate. An insolvent who had not obtained his final discharge has power with respect to after-acquired property to buy and sell and give discharge and do all other acts which he could have done before his insolvency. This law applies to both movable and immovable property. 8 Cal. 556, *Foll.* (*Daniels and Mukerji, JJ.*). CHOTELAL *v.* KEDAR NATH. **84 I.C. 289=46 All. 565= 22 A.L.J. 455=5 L.R.A. Civ. 329= A.I.R. 1924 All. 703.**

—S. 7—Dealing with property after insolvency.

———*Agent of Court or Official Assignee—Powers of insolvent over after-acquired property.*

A person who has been declared an insolvent under the Insolvent Debtors' Act, 1848, can still enter into transactions dealing with the property which vests in the Court; but he only does so as an agent of the Court; unless and until the Official Assignee intervenes. The title to the property still vests in the Court or the Official Assignee, but if the insolvent enters into transactions with regard to property acquired after the bankruptcy with other persons, which transactions are *bona fide* and for value so far as the other persons are concerned, the Court and the Official Assignee will not be able to repudiate those transactions to the detriment of the persons who have entered into them with the bankrupt.

The insolvent does not retain a proprietary interest in the property; that is vested in the Court by virtue of the insolvency; but, on the other hand, the judgment-debtor has no *locus standi* in his own right and can only object to the attachment through his principal, *viz.*, the Court of insolvency or the Official Assignee. 43 Bom. 890 and *Cohen* v. *Mitchell*, (1890) 25 Q.B.D. 262, *Expl.* (*Kendall, J.*). LAKSHMI CHAND *v.* KEDAR NATH. **99 I.C. 476= A.I.R. 1928 All. 12.**

INSPECTION—Of documents.

See (1) C.P. CODE, O. 11.
(2) CR. P.C., S. 94.

INSTALMENT BOND.

See (1) DEED, CONSTRUCTION.
(2) LIM. ACT, ART. 74.

INSTALMENT DECREE.

See (1) C.P. CODE, O. 20, R. 11.
(2) LIM. ACT, ART. 182.

INSTROKE.

See (1) LANDLORD AND TENANT—MINES AND MINERALS.
(2) MINES AND MINERALS.

INSTRUCTIONS.

See LEGAL PRACTITIONER.

INSURANCE—Fire insurance.

INSTRUMENT.

See DEED.

INSTRUMENTS OF TITLE.

See CONTRACT ACT, SS. 108, 130, ETC.

INSULT.

See PENAL CODE, SS. 504-509.

INSURANCE.

—Beneficiary named in policy.

———*Rights of.*

Where the husband of a lady supplied the *premia* but the name of the step-son of the lady was put as the person to whom the insurance amount was to be given, the amount belongs to the son and not to the husband even assuming that the principle of *benami* transactions were applicable to such a case. (*Shadi Lal, C. J. and Martineau, J.*). MATIN *v.* MAHOMED MATIN. **69 I. C. 788= A.I.R. 1922 Lah. 145.**

—Fire insurance.

———*Condition that claim shall lapse if suit is not filed within 3 months of rejection of claim—If applies to re-insurance also.*

Where a contract of fire-insurance contains a condition providing that the claim shall lapse, if a suit be not commenced by the insured within three months of the rejection of the claim, and contract of re-insurance is effected by the Insurers, the condition will not apply to the contract of re-insurance. (*Robinson, C. J. and Brown, J.*). HIMALAYA ASSURANCE CO, LTD., BY ITS MANAGING AGENT C.M. ALIBHOY *v.* THE BURMA FIRE AND MARINE INSURANCE CO, LTD., BY ITS SECRETARY, G.H.W. CLAY. **84 I.C. 172=3 Bur. L.J. 122= A.I.R. 1924 Rang. 350.**

———*Interpretation of policy.*

The plaintiffs claimed under a policy, the conditions of which provided (1) that if the claim was made and rejected and an action or suit was not commenced within three months after such rejection all benefit under the policy would be forfeited, and (2) that if any difference arose as to the amount of any loss or damage, such difference should, independently of all other questions, be referred to arbitration and that it should be a condition precedent to any right of action or suit upon the policy that the award of the arbitration or umpire of the amount of the loss if disputed should be first obtained.

Held, that when the defendants rejected the claim, the plaintiffs had a right of action in order that it might be decided by the Court whether such rejection was right or wrong and it was only in the event of that question being decided in favour of the plaintiffs that it would become necessary that the amount of loss or damage should be ascertained. (*Macleod, C.J. and Crump, J.*). EAGLE STAR *v.* DINANATH. **72 I. C. 266=25 Bom.L.R. 164= 47 Bom. 509=A.I.R. 1923 Bom. 249.**

———*Mortgage of insured—Premises premises destroyed by fire—Right of mortgagee.*

Where the owner of a mill insures it against fire and then mortgages it to a third person and the premises are destroyed by fire, the Insurance Company is not liable to indemnify the mortgagees against loss: The contract of insurance is one of indemnity and a third party to the contract cannot claim any rights in it. To entitle the mortgagees to any claim on the policy, there must be a covenant to insure for the benefit of the mortgagee or an assignment of the Policy taken.

The right of the mortgagee was to bring the mortgaged property to sale or to follow it in the

INSURANCE—Knowledge of conditions of policy.

hands of a purchaser thereof. If the Insurance Company sold the remnants of the machinery, after the fire under the terms of the Policy then the contract being one of indemnity any salvage belonging to the insurers is presumed to have been abandoned and anything that may remain of the property belongs to the insurers to reimburse themselves so far as they can, by selling the salvage for what it will fetch. (*Robinson, C.J. and Maung Kin, J.*). P. V. CHETTY FIRM *v.* MOTOR UNION INSURANCE COMPANY. **67 I.C. 777=11 L.B.R. 294=1 Bur. L.J. 28=A.I.R. 1923 Rang. 6.**

—Knowledge of conditions of policy.

———*Assured failing to demand issue of policy—Effect.*

Where the alleged assured knew that they were entitled to a policy, and they never demanded the issue of a policy; and they never took any steps to make themselves aware of what the conditions of the policy were although the protection note which they had set out that it was issued subject to the conditions attached to the policy,

Held, they failed in their duty and the assurers were not bound to keep assured informed. (*Robinson, C.J. and May Oung, J.*). S S HAMEED & CO. *v.* UNIVERSAL FIRE INSURANCE CO. **83 I.C. 593=2 Rang. 144=A.I.R. 1924 Rang. 317.**

—Liability of insurer.

———*Parcel sent by post—Damage caused before article reached consignee.*

A certain parcel which had been weighed and duly sent to the addressee was refused by the latter on the ground of shortage in weight and the parcel having been sent to the consignor it was found that it was in a damaged condition and that it contained a stone instead of gold.

Held, that the loss was before the refusal and that the consignor was entitled to recover the value on the basis of the insurance policy he had taken in respect of the parcel.

Per *Obiter*.—The liability of the insurer did not extend to the date of the return of the articles to the consignor after the refusal. (*Rankin, C. J. and Ghose, J.*). COMMERCIAL UNION ASSURANCE CO. *v.* BINJRAJ JOHURMULL. **52 C.L.J. 60.**

—Life insurance.

———*Payment under policy—Proof of death.*

Where the policy requires that proof of the death of the policy-holder should be given, an assurance company cannot be ordered to pay the policy amount until such proof of the death as is required by the company is given or if no rules have been framed by the company as the company thinks sufficient to enable a reasonable person to be satisfied as to the death of another. (*Kumaraswami Sastri, J.*). J. D. JOHN *v.* ORIENTAL GOVT. SECURITY LIFE ASSURANCE CO., LTD. **121 I.C. 155=29 M.L.W. 628=A.I.R. 1929 Mad. 347=56 M.L.J. 299.**

———*Right of nominee in policy to sue the Company.*

A person who is nominated by an assured in his policy of life assurance for receiving money due under it upon his death is not entitled to enforce his claim against the company as he, though a nominee, is no party to the contract and no interest passes to him merely by reason of his being named in the policy and the money forms part of the assets of the deceased and is liable for his debts: *Clever* v. *Mutual Reserve Fund Life Association*, (1892) 1 Q.B. 147, *Foll. Case-law discussed.* (*Rankin, C. J. and C.C. Ghosh, J.*). KRISHNA LAL *v.*

INSURANCE—Marine insurance.

PROMILA BALA DASI. **114 I.C. 658=55 Cal. 1315=47 C.L.J. 587=32 C.W.N. 634=A. I. R. 1928 Cal. 518.**

———*Endowment policy—Insured allotted shares in company—Lien on dividends for premia—Premia unrecovered from dividends—Right of assured to policy amount in full.*

The material provisions in the policy issued by a Life Insurance Company were to the following effect :—

The company guaranteed to the insured that if he paid a certain amount every year for a certain number or years (Endowment period) the society would pay a certain sum to the insured on a certain date. The company also undertook to pay at the end of the so-called endowment period profits after deducting calls payable in respect of the shares taken by the insured in the company. If the insured outlived the period, the society was to have a lien on all the dividends payable on the shares for payment of premium on the policy, the total premium payable being equal to the face value of the policy.

The material provisions in the proposal for the policy consisted of an application for shares known as Bond shares in the capital of the company. The applicant undertook to hold them subject to the provisions of the Memorandum and Articles of Association of the company and the special conditions of such Bond shares combined with insurance benefits.

Dividends on bond shares were stated to be subject to a lien for payment of premiums the total of such premiums being equal to the face value of the policy.

Held, that on a construction of the proposal and the policy the risk of the dividends not being sufficient to cover the balance of the premia was taken by the company and that under the policy the Company was not entitled to deduct from the principal sum when it became due any sum which was still outstanding in respect of the balance of the premia which at that time had not been in fact recovered out of the profits of the company. On payment by the insured of the whole sum which the company required him to pay during the so-called Endowment period under the policy, he was entitled to recover from the company as a debt from the company the principal sum insured, notwithstanding that the balance of the premia had not been recovered out of the dividends of the company. (*Page, J.*). HARICHANDAN JOGA DEVA *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. **90 I.C. 86=52 Cal. 239=A.I.R. 1925 Cal. 690.**

—Life insurance agent.

———*Right to commission on renewals after dismissal.*

In the absence of agreement to the contrary a life insurance agent, whose duties as agent do not end with the first introduction of customers, is not entitled to commission on renewals made after he has been dismissed rightfully. (*Sadasiva Aiyar and Napier, JJ.*). EMPIRE OF INDIA LIFE ASSURANCE CO., LTD., BOMBAY *v.* NANU AYYAR. **60 I.C. 69=44 Mad. 170=A.I.R. 1921 Mad. 309.**

—Marine insurance.

———*What is total loss.*

A ship is not an actual total loss whenever she is under water, nor even when she is submerged in such circumstances as to present the salvers a

INSURANCE—Marine insurance.

problem of some difficulty. (*Viscount Sumner.*) CATES CO *v.* FRANKLIN FIRE INSURANCE CO.
104 I. C. 332=A.I.R. 1927 P. C. 188 (P.C.).

———*Seaworthiness.*

On a time policy there is no warranty of seaworthiness of the vessel. (*Crump, J.*). RAMCHANDRA *v.* GOMTIBAI. **91 I. C. 419=27 Bom. L.R. 1310=A.I.R. 1926 Bom. 82.**

———*Non-payment of premium.*

In a case of marine insurance the non-payment of premium is no defence to the underwriter on a suit by the assured to recover losses. (*Crump, J.*). RAMCHANDRA *v.* GOMTIBAI. **91 I. C. 419=27 Bom. L. R. 1310=A.I.R. 1926 Bom. 82.**

—Power of cancellation.

———*Power of cancellation reserved in policy—Validity.*

The principle that a party cannot take advantage of his own wrong, and cancel a contract without a good and reasonable cause, even where he is empowered to do so under the contract, is not applicable to insurance policies. A condition in a policy of insurance reserving the power of cancellation by Insurance Company at any time before the expiry of its period is not necessarily void or subject to a condition of good cause shown for cancellation. *Sun Fire Office* v. *Hart*, (1889) 14 A. C. 98, *Rel. on*; *New Zealand Spinning Co., Ltd* v. *Societe des Alters et Chantiers de France* (1919) A. C. 1; A.I.R. 1923 Bom. 75 and A.I R 1922 Bom. 44, *Dist.* (*Madgavkar, A.J. C.*). F. O. CHOTIRMAL HIRANAND *v.* OLIVE INSURANCE CO.
101 I.C. 710=19 S.L.R. 346=A.I.R.1927 Sind 116.

—Provision for forfeiture.

———*Validity.*

One of the conditions in a policy of Fire Insurance provided "if claim be made and rejected and an action or suit be not commenced within three months after such rejection..... this policy shall be forfeited."

Held, that such a condition in a policy is a valid condition. But, for the condition to be operative, it must be shown clearly that there has been a repudiation. (*Rutledge, C. J. and Brown, J.*). UNIVERSAL FIRE AND GENERAL INSURANCE CO., LTD. *v.* JAPAN TRADING COMPANY, LTD.
105 I.C. 201=5 Rang. 208=A.I.R. 1927 Rang. 196

—Untrue answers in proposal.

———*Materiality—Enquiry into — Ambiguity in questions—Interpretation—Effect.*

Where in contract of insurance the case is one of express warranty, if in point of fact the answer to a question in the proposal form is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue; the parties having settled for themselves—by making the fact the basis of contract and giving warranty—that as between them their agreement on that subject precluded all inquiry into the issue of materiality. *Newcastle Fire Insurance Co.* v. *Macmorran*, (1815); 3 Dow 255 *Anderson* v. *Fitzgerald* (1853) 4 H.L.C. 484 and *Thomson* v. *Weems*, (1884) 9 App. Cas. 671, *Foll.*

A material mis-statement inducing the contract would avoid it, but the reference to the materiality in a particular condition is not in any sense equivalent to a deletion of the warranty and declaration of the basis of the contract which the signed proposal contains.

In a contract of insurance it is a weighty fact that the questions are framed by the insurer, and

INSURANCE—Untrue answers in proposal.

that if an answer is obtained to such a question which is upon a fair construction a true answer, it is not open to the insuring company to maintain that the question was put in a sense different from or more comprehensive than the proponent's answer covered. Where an ambiguity exists, the contract must stand if an answer has been made to the question. Otherwise the ambiguity would be a trap against which the insured would be protected by Courts of Law. Judgments of Vaughan Williams, L.J. in *Etherington's* case, (1909) 1. K.B. 591 and Moulten, L. J. in *Joel* v. *Law Union* and *Crown Insurance Co.*, (1908) 2 K. B. 863, *Foll.*

But there must also be a fair and reasonable construction of the answer given; and if on such a construction the answer is not true although upon extreme literalism it may be correct then the contract is equally avoided. Lord Watson's view in *Thomson* v. *Weems*, (1884) 9 App. Cas. 671, *Foll.*

It is not sufficient to answer the question, "Has proponent ever been a claimant (On a fire insurance Company)? If so, state when, and name of company?" by answering in the singular and giving one occasion and one occasion alone where in fact there have been more than one occasion. When that question is reasonably construed, it points to the insurer getting the benefit of what has been the record of the insured with regard to insurance claims. To exclude, however, from that record what might in the easily supposed case be all its most important items, however numerous these might be, and to answer the question in the singular, which again in the easily supposed case might be a colourless instance favourable to the claimant, would be to answer the question so as to misrepresent the true facts and situation and to be of the nature of a trap.

However great the *bona fides* of the proponent may be, if he has been led to impose limits upon the question to which it should not reasonably be subject, then the answer so restricted cannot be held to be a true answer. The question should be stated so as to raise the issue in a broader and a just and sound form. That question would be, "Could a man making a proposal for insurance fairly read the question as applying only to a single previous claim?" Such a limitation would result, not in the disclosure which was truly required, but in a failure to reveal essential elements important to be known. (*Lord Shaw.*) CONDOGIANIS *v.* GUARDIAN ASSURANCE CO.
A.I.R. 1921 P.C. 195 (P.C.).

INTENTION.

See (1) CONTRACT.
(2) DEED—CONSTRUCTION.
(3) INTERPRETATION OF STATUTES.
(4) TORT.

INTEREST.

See also (1) CIVIL P.C., S. 34, O. 34, RR. 2 TO 7.
(2) CONTRACT ACT, S. 73.
(3) DAMAGES.

After decree.
As damages.
Compound interest.
Damdupat.
Delay.
Post diem.
Rate of.
When granted.
Miscellaneous.

INTEREST—After decree.

—After decree.

——*Sale proceeds of mortgaged property lying in Court—Right of mortgagee to interest.*

The mortgagees are not entitled to any interest on the mortgage money after the mortgaged properties have been sold and the mortgage has come to an end and they cannot be allowed interest on the sale proceeds of the mortgaged properties while they are lying in the Court. (*Heald and Otter, JJ.*). S. A. S. CHETTIAR FIRM *v.* U. MIN DIN.

118 I.C. 416= A.I.R. 1929 Rang 127.

——*No provision in decree—Power of executing Court to award.*

In a suit for maintenance a decree was passed for a certain sum but there was no mention in it that the plaintiff was entitled to interest on the sum decreed. The executing Court on the application of the decree-holder allowed interest at the rate of 6 per cent. per annum on the arrears from the time they fell due.

Held, that the executing Court had no such power but the decree-holder may bring a suit for damages for detention of the decretal amount. 3 Cal. 603 and 15 C.L.J. 684, *Ref.* (*Suhrawardy and Duval, JJ.*). NARESH CHANDRA BOSE *v.* KRISHNA BHABINI. **94 I.C. 917=53 Cal. 42= A.I.R. 1926 Cal. 505.**

—As compensation.

——It is open to the Court under S. 74 to award by way of compensation interest at the stipulated rate if it is not unreasonable. Interest awarded at two per cent. simple. (*Srivastava and Pullan, JJ.*). RAJ INDAR BAHADUR SINGH *v.* BHAGWAN DIN. **7 O.W.N. 963.**

—As damages.

——Interest can be allowed by way of damages on principles of equity. 20 Mad 491, *Dist.* 42 Mad. 661; 31 Bom. 354 and 22 C.W.N. 488, *Foll.* (*Ryan and Pullan, JJ.*). MOHAMMAD ALI MAHOMMAD KHAN *v.* GUR PRASAD. **105 I.C. 836= 4 O.W.N. 1061= A.I.R. 1928 Oudh 89.**

——*Suit for damages for trespass.*

In an action for damages for trespass interest can be allowed as damages. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJAI COAL CO. **101 I.C. 62=31 C.W.N. 82= A.I.R. 1927 Cal. 117.**

——*Contract Act.*

Interest by way of damages can only be claimed under Contract Act, S. 73. (*Mukerji and Dalal, JJ.*). SAIYID ISMILE *v.* SAIDID MADHI. **80 I.C. 63= 22 A.L.J. 833=5 L.R.A. Civ 625=46 All 897= A.I.R. 1924 All. 881.**

——*Interest Act.*

Interest cannot be awarded by way of damages, apart from the special provisions of the Interest Act. 31 Bom. 354, *Dist.*

It may be allowed on the special ground that the parties are Hindus governed by the law of Mitakshara. 9 M.I.A. 256, 260, *Foll.* (*Fawcett, J.*). A. M. CAMPBELL *v.* WILLIAMS CHARD & CO. **87 I.C. 122=25 Bom. L.R. 837= A.I.R. 1924 Bom. 131.**

——*Interest can be awarded as damages—Contract Act.*

Interest can be awarded as damages under S. 73 of the Contract Act. (*Robinson, C. J. and Beasley, J.*). Y. A. SHAKOOR & CO. *v.* FINLAY FLEMING & CO. **79 I.C. 291=1 Rang. 339= 2 Bur. L.J. 130= A.I.R. 1923 Rang. 265.**

——*Suit for recovery of rent illegally collected.*

Where a lessee for certain years collected the rents from the *ryots* after his lease expired, the lessor is entitled to claim interest on the rents so

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collected, by way of equitable damages, although the Interest Act may not justify the awarding of interest. (*Oldfield and Krishnan, JJ.*). ARUNACHALAM CHETTIAR *v.* B. RAJESWARA SETHUPATHI. **71 I.C. 257=14 M.L.W. 63= 30 M.L.T. 84=1921 M.W.N. 873= A.I.R. 1922 Mad. 55=42 M.L.J. 74.**

—Compound interest.

——*When can be reduced.*

When a compound interest is penal it does not mean that it should be necessarily reduced unless it is either exorbitant or for some other special reason. (*Hilton and Tek Chand, JJ.*). BISHEN DAS *v.* GURDAS MAL. **122 I.C. 477=31 P.L.R. 138= 11 L.L.J. 441= A.I.R. 1930 Lah. 143.**

——*When to be regarded penal.*

Compound interest at a rate exceeding the rate of interest on the principal money, being in excess of and outside the ordinary and usual stipulation, may well be regarded as in the nature of a penalty. 34 Cal. 150 (P.C.), *Foll.* (*Hilton and Tek Chand, JJ.*). BISHEN DAS *v.* GURDAS MAL. **122 I.C. 477=31 P.L.R. 138=11 L.L.J. 441= A.I.R. 1930 Lah. 148.**

——*Defendant signing accounts when submitted—Interest charged at various periods at compound rates—Every occasion when accounts were settled further advances obtained—Agreement to pay compound interest if proved.*

The course of dealing between the parties continued for about 14 years. The accounts were periodically submitted to the defendant and when submitted the defendant signed them and the accounts showed in detail the advances made, the interest charged and the periods at which the rests were made and no objection was made at any time during the period of 14 years. An allegation was also made in the plaint that the plaintiffs' practice was to charge interest with annual rests. There was also an allegation that the defendant was informed of the claim to interest and also compound interest and that he accepted the claim.

Held, there was good consideration for the above mentioned agreement as further advances were obtained on every occasion by the defendant, and that an agreement by the defendant to pay the compound interest charged in the account which were submitted to and accepted by him was proved. (*Sir Lancelot Sanderson.*) HIRALAL SAHU *v.* LACHHMI PRASAD NARAIN SINGH **117 I.C. 496= 1929 A.L.J. 787=33 C.W.N. 921= 31 Bom. L.R. 905=30 C.L.J. 183= 30 M.L.W. 615=1929 M.W.N. 770= 11 Pat. L.T. 21=A.I.R. 1929 P.C. 176= 57 M.L.J. 319 (P.C.).**

——*When can be allowed.*

Compound interest will not be allowed except where there is an agreement, express or implied to pay it, or where the debtor has employed the money in trade and has presumably earned it, or unless its allowance is in accordance with a custom of a particular trade or business. *Ferguson v. Fyffe*, (1841) 8 Cl. & F. 121, *Rel. on.* (*Adami and Chatterjee, JJ.*). RAMKISHUN *v.* BANSI SINGH. **116 I.C. 53=10 P.L.T. 322= A.I.R. 1929 Pat. 340.**

——*Money available on simpler terms—If improper.*

There is no rule, when the terms of a loan were challenged, to lean to their reduction, or to presume that simple interest must always be judicially preferable to compound interest.

Where it appeared that money could be had on simpler terms, charge of 1¼ per cent. compound

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interest to simple on was held proper. (*Ross and Fazl Ali, JJ.*). JAN MOHAMMAD *v.* BIKOO MAHTO.
116 I.C. 33=7 Pat. 798=10 P.L.T. 811=A.I.R. 1929 Pat. 130.

——*When cannot be charged.*

Compound interest ought not to be charged if not agreed to. (*Lord Buckmaster.*) JEWAN LAL DAGA *v.* NILMANI CHAUDHURI. **107 I.C. 337=7 Pat. 305=55 I.A. 107=26 A.L.J. 124=30 Bom. L.R. 305=47 C.L.J. 302=1928 M.W.N. 154=32 C.W.N. 565=27 M.L.W. 740=A.I.R. 1928 P.C. 80=54 M.L.J. 325 (P.C.).**

——*Burden of proof.*

The burden is on the creditor of proving an agreement to pay compound-interest. (*Lord Phillimore.*) RADHA KISHAN *v.* HIRA LAL SHAH.
100 I.C. 668=1927 M W.N. 73=4 O.W.N. 344=45 C.L.J. 318=31 C.W.N. 566=29 Bom. L.R. 791=38 M.L.T. 97=A.I.R. 1927 P.C. 50=52 M. L. J. 715 (P. C.).

——*Difference between interest simple and compound.*

The only difference between simple interest and compound interest is that the former is interest on money willingly lent and the latter on money not willingly lent. (*Hallifax, A.J.C.*). SETH AJODHYAPRASAD *v.* SHIVPRASAD. **97 I.C. 1019=22 N.L.R. 160=A.I.R. 1927 Nag. 18.**

——*Interest simple and compound—Difference.*

Simple interest and compound interest are not two kinds of interest; the only difference between them is that one is paid regularly and the other is not. (*Hallifax, A.J.C.*). (SETH) KISHNALAL *v.* BAPU. **94 I.C. 971=A.I.R. 1926 Nag. 363.**

——*Suit on bond—Liability for interest proved—Stipulation as to compound interest—Burden of proof.*

When the execution of a bond sued on is admitted and it is found that the defendant agreed to pay interest as entered in the bond, the burden rests on him to prove that he did not agree to the stipulation contained in the bond for the payment of compound interest. (*Abdul Raoof and Martineau, JJ.*). HARI RAM SHAH *v.* INAYAT.
85 I.C. 340=6 L.L.J. 400.

——*Contract to pay—Inference from accounts.*

An agreement to pay compound interest can be reasonably inferred from the fact that the debtor has accepted without any objection, accounts which contain clear entries of compound interest. (*Mears, C.J. and Banerjee, J.*). BHAGWAN BAKSH *v.* DAMODARJI JOSHI. **59 I.C. 20=42 All. 230=18 A. L. J. 100.**

—Damdupat.

——*Rule of—Application.*

The rule of damdupat applies only during the contractual relation of debtor and creditor and since in a suit on mortgage the contract is in effect till the expiry of the period of grace, it is as from that date that the account of what is due under the mortgage is settled and the mortgagee is not entitled to interest *pendente lite*. It is however the subsequent interest which is discretionary with the Court. A.I.R. 1925 P.C. 280, *Rel. on*; 47 I. C. 179, *Diss. from* and A.I.R. 1922 Pat. 450, *Ref.* (*Jwala Prasad and Ross, JJ.*). DEBI PRASAD DHUNDANIA *v.* KUSUM KUMARI. **A.I.R. 1930 Pat. 442.**

——*Civil P. C., S. 34—Contractual obligation to pay interest allowed by rule of damdupat coming to end before filing of suit—Discretion of Court to award interest from date of suit in addition to interest allowed by rule.*

INTEREST—Damdupat.

Where the rules of damdupat applies, the contractual obligation, as regards interest, comes to an end as soon as the maximum limit of interest is reached and it is not correct to say that the contractual obligation remains until a decree is passed. When that obligation has come to an end before the suit is filed, the Court has discretion to award interest from the date of suit over and above the amount of interest allowed by the rule. 37 Bom. 326 (P.C.); 22 Bom. 86 and A.I.R. 1924 Nag. 348, *Rel. on*; A.I.R. 1929 Nag. 117; A.I.R. 1922 Nag. 155 and 40 Cal. 710, *Cons.*; 34 Cal. 150 (P.C.), *Not appl.* (*Jackson, A.J.C.*). KISAN RAO *v.* MANGNI RAM.
121 I.C. 45=A.I.R. 1929 Nag. 355.

——*Upto what date applies.*

Damdupat applies until the date is removed from the domain of contract, that is, until the date fixed by the Court in the preliminary decree for sale. (*Macnair, A.J.C.*). NARAYAN *v.* KHIWARAJ.
116 I.C. 432=A.I.R. 1929 Nag. 117.

——*Rule explained.*

The interpretation of the rule of Damdupat that the amount of interest that may be recovered at any time shall not exceed the principal, but that any excess there may be according to the account shall still be recoverable, though not at that time, is directly contradictory of the words of texts which say that when the interest is equal to the principal, it "ceases" (Gautam) or "stops" (Katyayana). 1 B.H.C. 47 and 24 Bom. 305, *Foll.* (*Hallifax, A.J.C.*). GOVIND *v.* MALKARJUNAPPA. **107 I.C. 205=A.I.R. 1928 Nag. 133.**

——*Applicability to mortgage.*

The rule of damdupat is applicable to all mortgages whether the mortgagee is in possession or not, if it is otherwise applicable; but in some cases where the mortgagee is in possession, it does not apply, in the sense of being of any effect, because the payments made every year from the Income of the property keep the amount of the interest below the amount of capital. In each case it is merely a matter of calculation. (*Hallifax, A.J.C.*). MT. SAKHU *v.* KASHIBA. **107 I.C. 199=5 A I.R. 1928 Nag 126.**

——*Original debtor non-Hindu—Debtor's liability transferred to Hindu creditor if affected by Damdupat rule.*

The rule of Damdupat to be applicable must have begun to apply at the time the original contract was made. It can do so only if the original debtor is a Hindu. Once it has begun to be applicable it continues to be applicable, to a Hindu assignee of the debtor, for the assignment does not put the creditor in a worse position than he expected to be in under his contract. 21 Bom. 38 and 21 Bom. 85, *Appl.* (*Kotwal, A.J.C.*). ABDUL GANI *v.* SHAIK NIZAM. **102 I.C. 41=23 N. L.R. 104=A.I.R. 1927 Nag. 249.**

——*Applicability to Muffasil.*

The rule of damdupat is not applicable to the muffasil. Though the mortgage bond may be executed in Calcutta, yet, if the bond comprised properties which are in the muffasil the rule of damdupat cannot be applied. (*Das and Adami, JJ.*). SRIPAT SINGH *v.* NARESH CHANDRA BOSE.
1925 P.H.C.C. 239=A.I.R. 1926 Pat. 94.

——*Sawai interest.*

The plaintiff claimed Rs. 350 as damdupat of Rs. 170 on a bond for Rs. 136 and Rs. 34 Sawai interest.

Held, that he was entitled only to the double of Rs. 136 and not of Rs. 170. (*Kotval, A.J.C.*) SADJA SHEO RAO *v.* KALUSINGH. **88 I.C. 561=21 N.L.R. 45=A.I.R. 1925 Nag. 272.**

INTEREST—Damdupat.

———*Original debtor non-Hindu—Successor Hindu Rule if applies.*

The rule of Damdupat cannot be let in to the prejudice of a Hindu creditor by a non-Hindu debtor assigning his equity of redemption to a Hindu. (*Kinkhede, A.J.C.*). NARAYAN *v.* SYEED HAFIZ. **87 I.C. 264=A.I.R. 1925 Nag. 21.**

———*Usufructuary mortgage—Applicability of rule.*

Ordinarily in usufructuary mortgages where the mortgagee is in possession of the mortgaged property either in lieu of interest entirely or on condition that he was to render account of rent and profits against interest, the rule of Damdupat applies. But where mortgagors have deprived the mortgagees of their possession and departed from the terms of the mortgage the principle does not apply as relationship of the parties is thus changed. (*Macleod, C.J. and Shah, J.*). NILKANTH BALWANT NATH *v.* SHRI VIDYASHANKAR BHARATI.

80 I.C. 393=26 Bom. L.R. 455=A.I.R. 1924 Bom. 387.

———*Power of Court to award interest under S. 34, C. P. C., notwithstanding rule of* damdupat.

The very fact that it is within the discretion of the Court to award interest or not, and to fix the rate of interest makes it manifest that it is a statutory power which does not relate back to the contract nor comprise the enforcement of any part of the contract between the parties. The law recognizes that in claims for money there may be considerable delay between the institution of the suit and the realization of his money for which delay the plaintiff may not be responsible. If the money is carrying interest by contract till the date of payment then probably no interest under S. 209 (new S. 34) will be allowed but merely interest under the contract. But if the money carried no interest *ab initio* or for any reason had ceased to carry interest from and after the date of suit or some earlier date, then the Court may in a proper case apply S. 34. Where interest had ceased on account of rule of *damdupat* even before institution of suit,

Held, that the Court had the power of applying S. 34. (*Kinkhede, A.J.C.*). MOTILAL RAMLAL *v.* RANI. **78 I.C. 711=A.I.R. 1924 Nag. 348.**

———*Applicability of rule after decree.*

The rule of *damdupat* applies only so long as the relation of debtor and creditor exists but not when the contractual relation has come to an end by reason of a decree. Under S. 74 when the puisne mortgagee has paid off the prior mortgagee he acquires in respect of the property all the prior mortgagee's right. If the prior mortgagee is not debarred by the rule of *damdupat* from getting interest in excess of *damdupat* after the date fixed for payment there is no reason why the puisne mortgagee who has stepped into his shoes should be debarred from getting it. (*Kotval, A.J.C.*). NARAYAN *v.* NATHMAL.

65 I.C. 275=17 N.L.R. 200=A.I.R. 1922 Nag. 155.

———*Applicability up to* dies datus.

In a mortgage suit where interest is calculated at the contractual rate up to the date of the *dies datus*, the decree is subject to the rule of *damdupat* up to that date. (*Mitra, A.J.C.*). NARAYAN *v.* WAMAN. **59 I.C 121=A.I.R 1921 Nag. 133.**

—Delay.

———*Decree for money for work done—Plaintiff proved to have been kept out of his money for long time—Interest whether can be awarded—Rate of interest—Interference in appeal.*

Where a considerable sum of money was due to the plaintiff on a certain date for work done by him but he was kept out of it for a long period,

Held, that he would be entitled to interest on the amount decreed.

Held, also that the lower Court erred in exercising its discretion so as to fix the interest at 6 per cent. and that under the circumstances, of the case 12 per cent. rate should be allowed. (*Shadi Lal, C.J. and Abdul Qadir, J.*). KISHEN DAS *v.* SECY. OF STATE. **31 P. L. R. 713.**

INTEREST—Post diem.

———*Vendor to claim interest as per terms of contract—Delay caused by vendor's wilful default—Unavoidable delay—Effect.*

Where the condition of sale provided "The purchaser of the property shall pay the balance of his purchase-money to the said mortgagee within one calendar month from the day of sale and if the same from any cause whatever be not so paid the purchaser shall pay interest on his un-paid purchase-money at a certain rate.

Held, that words 'from any cause whatever did not allow the vendor to claim interest where delay occurred by his "wilful default."

Lapse of time, occasioned merely by the defect of the vendor's title not known to him at the date of the contract, especially where immediate steps are taken by the vendor to remedy the defect, does not exempt the purchaser from paying interest. (*Mulla, J.*). SUBHADRABAI *v.* MAHOMEDBHAI.

77 I.C. 247=25 Bom. L. R. 931=A. I. R. 1924 Bom. 187.

———*Contract to pay—Absence of—Delay in bringing suit—Effect of.*

In the absence of an agreement to pay interest, a creditor is entitled to a reasonable rate of interest and delay in bringing a suit is no ground for refusing interest. (*Wilberforce, J.*). LADHA RAM WADHAWA RAM *v.* MUHAMMAD.

59 I. C. 708 (Lah.).

—Post diem.

———*Expiry of period of mortgage—Right to contract rate or reasonable rate.*

Whether after the expiry of the stipulated period of a mortgage, the contractual rate of interest is to continue to run or not is to be determined according to the terms of each individual mortgage-deed and its surrounding circumstances, if any. And if the Court thinks that contractual rate cannot be allowed, but interest must be given by way of damages, it can determine what the proper rate would be. 19 All. 39 (P.C.), *Foll.* (*Zafar Ali and Dalip Singh, JJ.*). HARI RAM *v.* ZAIDA.

108 I. C. 384=A. I. R. 1929 Lah. 385.

———*Mortgage by conditional sale.*

In the case of mortgages comprising a stipulation of conditional sale a covenant to pay *post diem* interest up to date of redemption must be implied unless there are very strong reasons to the contrary. A.I.R. 1922 Lah. 254 (F.B.), *Foll.* (*Zafar Ali and Addison, JJ.*). BUNYADI BEGAM *v.* CHHANGA SINGH. **115 I.C. 26 (Lah.).**

———*Period fixed for payment—Payment not made within time—Presumption as to interest.*

Where the amount due is not paid within the stipulated time the Courts having regard to the intention of the parties and the common course of events are entitled to presume that the real intention was that interest should be paid till the amounts are actually re-paid and unless there be anything in the document which necessarily indicates that the parties did not intend to pay *post diem* interest, the tendency of the Court is to award it. 19 All. 39 (P.C.); 36 M.L.J. 118; 23 Mad. 584 and A.I.R. 1924 Mad. 736, *Foll.*; 35 All. 534, *Ref.*

INTEREST—Post diem.

(*Ananthakrishna Ayyar, J.*). MARIMUTHU PILLAI *v.* GOPALAKRISHNA AYYAR. **119 I. C. 468=30 M. L. W. 528=1929 M. W. N. 648=A. I. R. 1929 Mad. 774=57 M. L. J. 314.**

———*Time stipulated for payment—Provision for half-yearly interest—Enhanced interest in case of default—Intention to pay* post diem *interest.*

Where a document related that the mortgagor borrowed Rs. 100 from the mortgagee and stated that the amount would be paid within a period of two years and also contained a provision as regards payment of interest once in six months with a further provision that if interest be not regularly paid the interest in arrears should carry an interest at 12 per cent. The document was construed as showing an intention to pay *post diem* interest. 35 All. 534, *Not appr.* (*Ananthakrishna Ayyar, J.*). MARIMUTHU PILLAI *v.* GOPALAKRISHNA AYYAR. **119 I.C. 468=30 M.L W. 528=1929 M.W.N. 648=A.I.R. 1929 Mad. 774=57 M. L. J. 314.**

———*Presumption.*

Where a mortgage-deed does not refer to payment of interest after the date fixed for the payment of the principal, it must be presumed that interest was intended to run until the principal should be paid. (*Macnair, Offg. J.C. and Staples, A.J.C.*). BHASKAR RAO *v.* BALMUKHUND. **A.I.R. 1929 Nag. 162.**

———*Expiry of period of mortgage-deed—Liability to pay contract rate.*

Where there was a provision in a mortgage-deed to pay interest at a certain rate and the mortgagee was to be redeemed within a certain period but there was no express stipulation that after the expiry of that period interest should be paid.

Held, that the same rate of interest (whether simple or compound) shall be payable after the expiry of the period: A.I.R. 1922 Lah. 254 (F.B.) and 19 All. 39 (P.C.), *Foll.* (*Tek Chand and Agha Haidar, JJ.*). ABBAS KHAN *v.* RAM DAS. **112 I.C. 153=9 Lah. 140=29 P. L.R. 359=A.I.R. 1928 Lah. 342.**

———*Mortgage by conditional sale.*

Where the mortgage-deed is silent as to the payment of *post diem* interest and there is no express provision that *post diem* interest is not to be paid, the presumption is that interest was intended to run so long as the principal money was not paid off. 19 All. 39; 20 All. 171; 1 O. L. J. 50 and 7 O.L.J. 348, *Rel. on.* (*Raza, J.*). AMAR SINGH *v.* BAIJ NATH SINGH. **93 I C. 958=A.I.R. 1926 Oudh 378.**

———*Construction of mortgage deed.*

Where the mortgage-deed provided: "It is covenanted that I shall continue to pay interest at the rate of 11 annas per cent. per mensem annually. In case of default in payment of interest it shall be added to the principal and I shall pay interest thereon as well at the aforesaid rate. I, or my heirs or representatives shall have no objection to it, nor shall I mortgage or sell the property to any other person until the payment of the mortgage-money. In case of breach of promise and expiry of the stipulated period the mortgagee shall become the absolute owner of the property mortgaged and I, or my heirs, or representatives, shall have no objection whatever."

Held, that the parties could not have had any other intention than that if the mortgagor failed to pay at the agreed time, the stipulations in the deed would remain in force and that the mortgagor would be bound to continue to pay interest at the agreed rate calculated up to the time of tender of payment of principal and interest or the institution of a suit by the mortgagee: 19 All. 39 (P.C.); 20 All. 171 (P.C.); 25 Cal. 246, *Foll.* (*Mears, C. J. and Piggott, J.*). MAHADEO PRASAD *v.* DHIRAJ SINGH. **77 I.C. 122=44 All. 772=20 A.L.J. 752=A.I.R. 1923 All. 7.**

INTEREST—Rate of—Excessive, what is.

———*Mortgage by conditional sale.*

In the case of mortgages comprising a stipulation of conditional sale, a covenant to pay *post-diem* interest up to the date of redemption must be implied unless there are very strong reasons to the contrary. (*Shadi Lal, C.J. and Lumsden, J.*). RAM SAREN DAS *v.* MULLAH. **78 I C. 103=4 Lah. 346=5 L.L.J. 513=A I.R. 1923 Lah. 648.**

—Rate of—Determination of.

———The rate of interest recoverable from a judgment-debtor has no reference to the purpose towards which the money is applied. It is determined by the market rate then prevailing. (*Jwala Prasad and Ross, JJ.*). MT. DULJIN *v.* MT BIBI ALE FATIMA. **77 I.C. 157=A.I.R. 1925 Pat. 201.**

—Rate of—Excessive, what is.

———*Compound interest at 24 per cent. for a secured debt.*

G, a shrewd man, in order to obtain release of his property from certain previous encumbrances mortgaged his property to one *M*. The term of the mortgage was fixed at 50 years and it was agreed that the mortgagee should take the usufruct in part payment of the interest the other part accumulating at the contractual rate of 12 per cent. per annum. Subsequent to the mortgage, *G* borrowed a further debt from *M* and created a further charge on the same property agreeing to pay interest at 24 per cent. per annum compoundable with six monthly rests. This charge was also for 50 years. *G* brought a suit for redemption contending first that the rate of interest in the mortgage operated as a clog on the equity of redemption and secondly that the rate of interest on the charge created was hard and unconscionable as the principle amount of the deed at the end of fifty years would amount to a big amount.

Held, (1) that under the circumstances the rate of interest at 12 per cent. per annum in the case of mortgage was reasonable; (2) that in the case of charge the rate of interest was hard and unconscionable. 4 Luck. 415 and 6 O. W. N. 1320. (*Wazir Hasan and Pullan, JJ.*). GAJRAJ SINGH *v.* MUNNU LAL. **6 O.W.N. 1329=4 Luck 415=A.I.R. 1930 Oudh 173.**

———*Twelve annas per cent. per mensem, at six monthly rests.*

Interest at the rate of twelve annas per cent. per mensem. Compoundable six monthly is not unreasonable or unconscionable. (*Sen and Weir, JJ.*). PURUSHOTAM NARAIN *v.* BENARES BANK LTD. **111 I. C. 694=A.I.R. 1929 All. 59.**

———*9 per cent. per annum.*

In the Province of Oudh the rate of 9 per cent. per annum is a very fair and reasonable commercial rate of interest. 13 O.L.J. 338, *Dist.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). GAJ RAJ SINGH *v.* MT. MULANKUAR. **105 I.C. 593=4 O.W.N. 981=A.I.R. 1927 Oudh 521.**

———*Rs. 1-8-0 P. C. P. M. compound interest.*

Rate of interest as Rs. 1-8 per cent. per mensem compoundable half yearly was held unduly high. (*Kanhaiya Lal, J.C.*). PRAN *v.* SHEO LAL. **26 O.C. 321=A.I.R. 1924 Oudh 135.**

INTEREST—Rate of—Excessive, what is.

———*24 per cent. per annum—Jurisdiction of Small Cause Court.*

Although in the absence of evidence of custom 24 per cent. per annum is a high rate. Sm. C. Court has jurisdiction to grant it. (*Rankin, J.*). RAKHAL CHANDRA CHATTERJEE *v.* ROHNI KUMAR CHATTERJEE. **74 I.C. 601=27 C.W.N. 549= 37 C.L.J. 399=A I R. 1923 Cal. 650.**

———*15 per cent. for mortgage debt.*

A rate of interest over ten per cent. need not necessarily be treated as excessive rate even where there is ample security for the loan. (*Simpson and Wazir Hasan, A.J.Cs*). BASANT RAI *v.* KESHO RAM. **74 I.C. 346=9 O.L.J. 612=A.I.R. 1923 Oudh 139.**

—Rate of—Invalid pronote.

———*Right to reasonable rate of interest.*

Where the creditor falls back on the original consideration for the promissory note, the note being insufficiently stamped, he cannot claim interest at the rate stated in the promissory note. He can recover interest only at a reasonable rate. 10 L B.R. 54 (F.B), *Ref.* (*Brown, J.*). ISMAIL HUSSAIN IMAMSA *v.* K. PURBHABHAI. **112 I.C. 254=6 Rang. 415=A.I.R. 1928 Rang. 242.**

—Rate of—Mortgage.

———*Power of Court to interfere with contract rate.*

Unless the mortgagor can show any good reason why the contract entered into by him under the mortgage bond should not be enforced, the Court cannot make a new contract for him and interfere with the terms of the contract. The Court cannot reduce the rate of interest or interfere with the stipulation for compound interest merely on the ground that the interest stipulated is considered to be excessive or that the interest has amounted to a large sum owing to the defendant not paying it at the stipulated periods of the rests agreed upon in the bond. A.I.R 1918 P.C. 48; A.I.R. 1918 P.C. 249 and A.I.R. 1924 P.C. 60, *Foll.* (*B. B. Ghose and Panton, JJ.*). RAM KRISHNA KULASI *v.* HERAMBA CHANDRA ROY. **119 I.C. 207=55 Cal. 960= 33 C.W.N. 388=A.I.R. 1930 Cal. 207.**

———*Agreed rate.*

Mortgagors are bound to pay interest at agreed rate. (*Zafar Ali and Bhide, JJ.*). ASA RAM *v.* KISHAN CHAND. **120 I.C. 166= A.I.R. 1930 Lah. 386.**

———*Power of Court to reduce agreed rate.*

Court has no power to reduce the rate of the interest on a mortgage though extortionate when there are no circumstances vitiating the transaction. (*Boys and Kendall, JJ.*). MT. KHALLO *v.* JAWALA PRASAD. **101 I.C. 759=A.I.R. 1927 All. 538.**

———*Extension of time for payment—Interest.*

Where extension of time was granted by the Court for the benefit of the mortgagor, he has no right to have the interest reduced during that period. (*Daniels, A.J.C.*). MT. BISHIRAM *v.* BISHAMPAR NATH. **69 I.C. 667=9 O.L J. 489= A.I.R. 1922 Oudh 268.**

—Rate of—No express agreement.

———*Court rate.*

In the absence of an express agreement interest should be allowed at what is called the sahukara rate of 6 per cent. per annum, that is, the rate at which one money-lender charges interest in his dealing with another money-lender. (*Zafar Ali, J.*). HARU RAM *v.* GHULAM ALI KHAN. **97 I.C. 794=27 Pat. L.R. 257= A. I. R. 1926 Lah. 464.**

—Rate of—Question of fact.

———The question of the rate of interest is a matter to be decided on the facts of each case. (*Baker, J. C.*). DAULAT RAM *v.* GULAB CHAND. **76 I C. 131=A.I.R. 1924 Nag. 346.**

—Rate of—Reduction.

———*Suit against debtor's mother—Reduction of rate—Decree for interest equal to principal—Legality.*

Where it was sought to recover the money from the mother of the original debtor and the mother clearly stated that she had no knowledge of the debt and that no demand had been made from her,

Held, that the Court would not be acting either illegally or inequitably in giving the plaintiff a decree for interest equal to the amount of the original sum reducing the rate of interest. (*Broadway and Zafar Ali, JJ.*). MT. LACHMI *v.* GOPICHAND ARUCHAND. **99 I.C. 542= A.I.R. 1927 Lah. 764.**

———*Agreed rate not proved—25 per cent. compound interest claimed—Considerable part of debt made up of previous interest at 25 per cent.—Award of 6 per cent.*

Plaintiff sued to recover Rs. 528 principal and Rs. 825 15-0 interest charged at the rate of 25 per cent. There had been some agreement express or implied, but it was not proved at what rate the parties had agreed that the interest should be charged. The Court allowed 6 per cent. It was found that up to an appreciable extent the debt as made up of previous interest charged at 25 per cent.

Held, that the rate of 6 per cent. interest allowed by the Court was not too low. (*Harrison, J.*). KEWAL RAM *v.* RAHMAT KHAN. **86 I.C. 176= 26 P.L.R. 29=A.I.R. 1925 Lah. 450.**

———*From date of decree to date of realisation.*

Where interest agreed to was two per cent. per mensem the Court awarded eight annas per cent per mensem from date of decree to date of realisation so that decree-holder may not delay execution of decree. (*Scott-Smith and Zafar Ali, JJ.*). WASAWA MAL *v.* QUZI GHULAM JILANI. **85 I. C. 327=6 L.L.J. 421=A.I.R. 1925 Lah. 128.**

———*No plea of undue influence.*

In a case where undue influence has not been pleaded a Court has no power to reduce the interest solely on the ground that it is excessive. 28 All. 570, *Foll.* (*Daniels, A.J.C.*). FAZAL AZIM *v.* LALA GIRDHARI LAL. **69 I. C. 657=9 O.L.J. 422= A. I. R. 1923 Oudh 8.**

———*Unconscionable rate—Power of Court.*

The defendants borrowed grain valued Rs. 99 which he promised to pay after 16 years and the rate of interest charged was 25 per cent. compound interest. The plaintiff claimed Rs. 1,000 as value of grains, principal and interest included.

Held, a Court is competent to grant relief whenever the rate of interest appears to the Court to be of a penal character, that is, so unconscionable and extravagant that no Court shall allow it. The mortgagors could not possibly have realized the real effect of the stipulations as to interest. (*Batten, J.C.*). HAKUMCHAND *v.* NIDAN SINGH. **67 I.C. 245=6 N.L.J. 256=19 N. L.R. 114= A.I.R. 1922 Nag. 124.**

———*High rate—Absence of undue influence.*

The mere fact that the rate of interest agreed upon is high is not sufficient without evidence of undue influence, for not giving effect to the contract which provided for such interest. (*Teunon and Majid, JJ.*). MANI TARA BOSE *v.* DALIUDDI SHEIKH. **61 I.C. 335 (Cal.).**

———*No undue advantage taken of by promisee of his position.*

Where no undue advantage has been taken by the landlord of his position, the interest contract-

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ed for in a lease must not be reduced. 21 C.W.N. 108, *held obsolete*; 23 C.W.N. 233 (P.C.); 23 C.W.N. 130 (P. C.) and 24 C.W.N. 444, *Foll.* (*Teunon and Chaudhuri, JJ.*). BHUT NATH *v.* RAMA NATH. **48 Cal. 93=A.I.R. 1921 Cal. 199.**

—When granted.

———*Proof of mercantile usage—Interest Act.*

In a claim for price of goods sold and delivered the Court is not bound to take judicial notice of the alleged mercantile usage as to interest, unless such mercantile usage has been pleaded and proved with regard to suit goods; but the claim to interest on the provisions of the Interest Act is a permissible claim and should be awarded. (*Marten, C.J. and Blackwell, J.*). DINANATH NARPATRAI *v.* DIVANCHAND. **A.I.R. 1930 Bom. 444.**

———*Implied agreement for.*

Interest may be allowed on the basis of an implied agreement to pay. (1901) 2 Ch. 548 and (1905) 1 Ch. 307, *Foll.* (*Bhide and Currie, JJ.*). DAVINDAR SINGH *v.* MT. LACHHMI DEVI. **A. I. R. 1930 Lah. 985.**

———*Contract for sale.*

From the time of the contract for the sale of immovable property the vendor becomes a trustee of the property for the vendee, and the vendee becomes a trustee for the vendor in respect of the purchase-money.

Vendor is therefore entitled to interest over the unpaid purchase-money from the time the property vested equitably in vendee to the time of actual realization of the purchase-money. (*Shadi Lal, C. J. and Tapp, J.*). A. TOMLINSON *v.* W. F. HARDING. **120 I.C. 538=30 P.L.R. 699=11 L.L.J. 467=A.I.R. 1930 Lah. 131.**

———*Person while purchasing property in auction-purchase paying all amount of prior mortgage—Right to.*

Where a person discharges in good faith a prior mortgage in respect of the properties which he had purchased in Court auction, that person is entitled to interest on the amount of the prior mortgage. The accidental circumstance, that he became the purchaser in Court auction by payment of money, and as compensation therefor, he happened to be in possession, does not in any way prejudice his right as a person entitled to the rights of the prior mortgagee whom he paid up. 12 M.L.W. 101; 41 Mad. 513 and A.I.R 1924 P.C. 36, *Rel. on.* (*Anantha-krishna Ayyar, J.*). PICHAI KONAR *v.* NARASIMHA RAMA IYER. **A.I.R. 1930 Mad. 471=58 M.L.J. 343.**

———*Rent charged on land—Suit to recover arrears—Interest whether can be awarded.*

Where the leased properties and the other properties of the lessee were charged with the payment of rent due under the lease,

Held, that the landlord was entitled to interest on the arrears of the rent. (*Venkatasubba Rao and Madhavan Nair, JJ.*). NANCHAPHA KOUNDAN *v.* VATASARI ITTICHATHARA MANNADIAR. **31 L.W. 655=1930 M.W.N. 438=A.I.R 1930 Mad. 727.**

———*Equitable principles—Application.*

When once a contract has been executed, then apart from cases where rescission on the ground of fraud is sought, there remains nothing to attract the equitable jurisdiction and interest cannot be allowed on equitable principle. (*Lord Tomlin.*) MAINE AND NEW BRUNSWICK ELECTRICAL POWER CO., LTD. *v.* ALICE M. HART. **119 I.C. 615=1929 M.W.N. 862=1929 A.L.J. 1065=30 M.L.W. 153=A.I.R. 1929 P.C. 185=57 M.L.J. 662 (P.C.).**

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———*Agent called upon to render account and refusing to do so—Liability to interest.*

It is a settled rule of all Courts of equity that an accounting party may under certain circumstances be charged with interest. An agent called upon to render accounts refusing to do so is liable to pay interest. The date of demand should be noted in such case. *Turner* v. *Burkinshaw*, 15 W R. 753, *Ref.* (*Misra and Pullan, JJ.*). RAGHUNANDAN *v.* RAM DAT. **117 I.C. 766=A.I.R. 1929 Oudh 420.**

———*Claim in notice.*

Where a debt is clearly due and creditor demands interest thereon by a notice, the debtor cannot refuse to pay on the ground that it was claimed on the terms of the contract which does not provide for it. It is sufficient that the creditor claimed interest. (*Waller and Madhavan Nair, JJ.*). SITHAMBARAVADIVA AMMAL *v.* THIRUPALKADANATHA PILLAI. **106 I.C. 125=39 M.L.T. 405=A.I.R. 1928 Mad. 56.**

———*Sale of goods—Agreement or mercantile usage.*

Interest is not claimable as of right on the price of goods, the obvious reason being that the price charged includes profit. But such interest may be claimable by virtue of specific agreement or mercantile usage. A. I. R. 1925 Nag. 204, *Ref.* (*Kinkhede, A. J. C.*). DEOLAL *v.* TULARAM RAMSUKH. **109 I.C. 785=A.I.R. 1928 Nag. 319.**

———*Equity.*

A liability to pay interest cannot be implied in the mere act of taking of the money on the ground of equity. (*Boys and Kendall, JJ.*). GULABB SHANKAR *v.* MULCHAND NIMICHAND. **101 I.C. 57=A.I.R. 1927 All. 444.**

———*Loan by money-lender—Presumption.*

In the case of a debt due by a borrower to a money lender the presumption is that both parties intended that interest will be charged, and in the absence of any stipulation as to the rate of interest to be charged interest at a reasonable rate should be allowed. 104 P. R. 101, *Dist.* (*Campbell, J.*). AMAR DAS *v.* HARBHAGWAN INDAR SEN. **102 I. C. 689=A.I.R. 1927 Lah. 554.**

———*Absence of an express or implied contract to pay.*

Neither under the common law nor under the Indian Contract Act can interest be claimed under a debt unless there has been either an express promise to pay interest or such promise is to be implied from the usage of trade or other circumstances. (*Fforde and Campbell, JJ.*). KIRPAL SINGH *v.* JIWAN MAL. **101 I.C. 644=8 Lah. 524=9 L.L.J. 149=28 Pat.L.R. 174=A.I.R. 1927 Lah. 287.**

———*Notice of claim.*

Where a plaintiff has not served any written notice of demand on defendant intimating that he would charge interest the defendant is not liable to pay the same. (*Kinkhede, A.J.C.*). SARJABAI *v.* YADEOSA. **90 I.C. 58=A.I.R. 1926 Nag. 64.**

———*Claim for arrears of maintenance not based on contract.*

A claim for interest depends on contract, express or implied, or some rule of law allowing it. Where a claim for the maintenance does not depend on any contract, express or implied, no interest can be allowed on the arrears. (*Wazir Hasan, A.J.C.*). AHID HUSAIN KHAN *v.* SARJU PRASAD. **88 I.C. 163=A.I.R. 1926 Oudh 147.**

———*Intention—Interest Act.*

Interest Act is not exhaustive of all claims as to interest, and it is open to the Courts in India to award interest in cases not coming within the

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purview of the Act on principles of equity, justice and good conscience. 59 I.C. 708, *Foll.* A creditor is entitled to a reasonable rate of interest where it was obviously not the intention of the parties that the money should be retained by the debtor free of charge. (*Martineau, J.*). ADU RAM SIDHU RAM *v.* TOLA MAL. **89 I.C. 744= A.I.R. 1925 Lah. 651.**

———*Sale of goods—Agreement or usage.*

Interest is not granted on the price of goods sold in the absence of a contract or mercantile usage or unless a written demand is made intimating that interest will be charged as provided by the Interest Act. (*Kinkhede, A.J.C.*). SHEO NARAYAN *v.* DADABHAI. **83 I.C. 268= A.I.R. 1925 Nag. 204.**

———*Interest Act—Agreement.*

Interest could ordinarily be allowed either under the Interest Act or where there is a stipulation.

Interest cannot be claimed simply because some money is due. (*Mukerji and Dalal, JJ.*). SAIYID ISMILE *v.* SAIDID MADHO. **80 I. C. 63= 22 A.L.J. 833=5 L.R.A. Civ. 625= 46 All. 897=A.I.R. 1924 All. 881.**

———*Notice of demand.*

A claim in a suit based on an agreement between the Bank and one of its servants as to security to be given by the servant is outside the ordinary banking business on which alone interest is claimable without notice of demand. (*Dawson-Miller, C. J. and Adami, JJ.*). RAGHUNATH PRASAD *v.* BANK OF BENGAL. **69 I.C. 212= A.I.R. 1924 Pat. 295.**

———*Mortgage debt.*

Where in a suit on mortgage the consideration money was paid and there is nothing in the document to show that the agreement to pay was qualified in its terms, or that there was any idea of substituting a remedy against the property for the initial liability to repay the loan,

Held, that the plaintiff is entitled to decree against the properties for the amount of money lent with the interest due. 4 C.L.J. 510, *Foll.*; 16 Cal. 540; 10 Cal. 740; 22 Cal. 434, *Dist.* (*Robinson, C.J. and Duckworth, J.*). QUAH CHENG GWON *v.* MOUNG PO MYI. **66 I. C. 589= 11 L.B.R. 148=A.I.R. 1921 L.B. 34.**

—Miscellaneous.

———*Implied agreement—Whether interest is payable monthly or annually.*

It is a well-known fact so far as the province of the Punjab is concerned, that in documents where the rate of interest only is specified, and the document is silent as to whether it is payable monthly or annually, it is an understood thing that such interest is payable monthly. (*Shadi Lal, C.J. and Tapp, J.*). TEJA SINGH *v.* SANT SINGH. **121 I. C. 75=30 P.L.R. 741= A.I.R. 1930 Lah. 144.**

———*Principal sum barred—Effect.*

Where there is a special contract to pay interest at specified rate, the principle, that where interest is a mere accessory to the principal and a claim to latter is barred by statute the interest thereon cannot be recovered, does not apply: *Hollis* v. *Palmer*, 2 Bing. N.C. 713, *Appl.* (*Lord Warrington of Clyffe.*) CHEANG THYE PHIN *v.* LAW KIN SANG. **119 I.C. 623=30 M.W.N. 470= 6 O.W.N. 822=A.I.R. 1929 P.C. 240 (P.C.).**

———*Default in payment of interest—Cause of action when arises.*

The terms of a mortgage deed were as follows: (1) The principal and interest at Rs. 3-2-0 p.m.

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were to be re-paid in a period of three years; (2) interest was to be paid every six months; (3) any six-monthly interest unpaid was to be added to the principal and interest at the above rate was to be paid on it; (4) in case of breach of covenant the mortgagee could realise, all the principal at once with interest and compound interest through the Court. The mortgagee put the mortgage in suit within period of limitation from the date when the three years expired but after period of limitation calculated from the date of default to pay interest after expiry of six months.

Held, that in absence of clear provision to the effect that the mortgagee could put the mortgage in suit on default of payment of interest, the cause of action did not accrue of default of payment of interest and suit brought within twelve years from default of payment of principal was in time. A.I.R. 1923 All. 1 (F.B.) and A.I.R. 1922 All. 524. (*Bennet and Iqbal Ahmad, JJ.*) RAMADHAR *v.* RAJ NARAIN. **120 I.C. 552=1930 A L. J. 40= A.I.R. 1929 All. 908.**

———*Mortgage in possession holding over—Interest on surplus profit—Liability when arises.*

Where a mortgagee in possession holds over after payment of everything due to him, interest of on surplus profits is to be calculated not from the date of the suit but from the date when mortgage amount was paid. 7 Bom. 185, *Not foll.*; 16 Bom. 141, *Ref. Ashworth* v. *Lord*, (1837) 36 Ch. D. 545, *Rel. on.* (*Patkar and Murphy, JJ.*). KRISHNAJI VINAYAK *v.* MOTILAL MAGANDAS. **31 Bom. L.R. 476=A.I.R. 1929 Bom. 337.**

———*Mortgage decree—Interest in kind-opportunity to pay value in money.*

It is unusual in adecree in a mortgage suit to direct that interest should be paid in kind instead of in money.

Where in a mortgage-decree the lower Court in accordance with the terms of the mortgage-deeds directed the defendants to give certain amount of rice to the plaintiff.

Held, that defendants should have an opportunity of tendering the market price of the rice. (*Macleod, C.J. and Crump, J.*). SHIV RAO RAMA RAO *v.* LAXMI BAI KOM SUBRAO. **76 I.C. 638= A.I.R. 1924 Bom. 523.**

———*Amount borrowed left with lender on deposit without interest—Right to interest if affected.*

If a person takes loan on interest and leaves the amount borrowed with the lender as a deposit without interest to be drawn on, as he may require, the interest payable under the agreement of loan does not cease to run. The mere fact, that a borrower does not require the money and therefore does not demand it for a long time and that lender is himself able to use it during that time, can make no difference to the lender's right to the interest on the loan, nor can the fact, that the lender did not earmark and put aside the entire amount of the loan or the unpaid part of it; or that after the date of the loan the lender's books do not show a cash balance sufficient to pay the unpaid balance of the loan, be material for the lender's credit may be the equivalent of cash in hand and he may be able to procure the amount as soon as demanded. (*Kotwal, A.J.C.*). BAPU LINGAPPA *v.* RATAN LAL. **69 I.C 205=A.I.R. 1923 Nag. 85.**

———*Appropriation of payment.*

When moneys are received without a definite appropriation on the one side or the other the rule which is well-established in ordinary cases is that in those circumstances the money is first applied

INTEREST ACT (1839), S. 1—Applicability.

in payment of interest and then when that is satisfied in payment of the capital. *Parr's Banking Company* v. *Yates*, (1898) 2 Q.B. D. 460. *Ref. to.* (*Lord Buckmaster.*) MEKA VENKATADRI APPA RAO BAHADUR ZAMINDAR GARU *v.* RAJA PARTHASARATHY APPA RAO BAHADUR ZAMINDAR GARU.
61 I.C. 31=26 C.W.N. 33=30 M. L.T. 36=48 I. A. 150=44 Mad. 570=14 M.L.W. 25=1921 M.W.N. 347=19 A.L.J. 465=23 Bom. L.R. 644=33 C.L.J. 447=A. I. R. 1922 P.C. 253=40 M.L.J. 549 (P.C.).

INTEREST ACT (XXXII of 1839).

—S. 1—Applicability.

——*No time for payment specified.*

Where a debt or sum is not payable at a certain time then interest is payable from the time when demand of payment shall have been made in writing unless there was a stipulation for payment of interest when the Act would have no application, and if an agreement to pay interest cannot also be implied and the debt was not payable on demand the plaintiff is not entitled to any interest till the filing of suit which affords a clear intention to charge interest. 2 P.L.J. 451, *Dist.* (*Chatterji, J.*). RAM BALAK *v.* AMBICA SINGH. 10 P.L T. 373=A.I.R. 1929 Pat. 365.

—S. 1—Applicability of proviso.

——*Scope—Improvement lease—Rent payable on happening of contingency—Suit to recover arrears—Interest whether can be awarded under Act or under proviso—English and Indian Law—Interest as damages under S. 73, Contract Act.*

Where an improvement lease provided that the lands were to be gradually brought under cultivation and until they were so brought nothing would be payable to the Government or to the Jenmi and it further provided that the tenant should pay from the year in which Government revenue was paid rent at a certain rate,

Held, that interest could not be awarded under the Interest Act in respect of the arrears of rent claimed by the lessor,

Held, also that interest could not be awarded under the proviso to the Act on general equitable grounds,

Held, further that no interest could also be granted under S. 73 read with illus. (*n*) because illus (*n*) does not entitle one for interest by way of damages where interest is not allowed by the Interest Act or any other rule of law. It merely states that if a contract to pay sum of money is broken, nothing but interest up to the date of payment can be claimed as damages provided such interest can be claimed under the Interest Act or any other rule of law. 20 Mad. 481, *Foll.*; 26 Cal. 955; 45 I.C. 667; 31 Bom. 354 and 18 All. 240, *Not foll.*; *Other cases considered.*

Per *Madhavan Nair, J.*—The Interest Act is exhaustive and only such equitable grounds as have been generally recognised in Courts of Equity can be relied on in India in awarding interest on equitable grounds. The case in 42 M. 616 is not correctly decided (*Venkatasubba Rao and Madhavan Nair, JJ.*). NANCHAPPA KOUNDAN *v.* VATASARI ITTICHATHARA MANNADIAR 31 L.W 655=1930 M W. N. 438=A.I.R. 1930 Mad. 727.

—S. 1—Arrears of rent

——*Equity.*

Where rent is charged on land, interest can be granted on the arrears of rent on equitable grounds although there are no words allowing interest in the instrument creating charge. *Savlee* v. *Dracks*, (1903) 1 Ch. 781, *Foll.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). NANCHAPPA KOUNDAN *v.* VATASARI ITTICHATHARA MANNADIAR. 31 M.L. W. 655=1930 M.W.N. 438=A.I.R. 1930 Mad. 727.

INTEREST ACT (1889), S. 1—Interest as damages.

—S. 1—Building contract.

——*Right to interest.*

A contract provided that "all work done by the contractor shall be paid for according to the rates herein specified within a reasonable time after it has been inspected and finally approved and passed."

Held, that the money due to the contractor was not a debt or sum certain payable at a certain time.

Held, also that interest was also not claimable under the proviso to the Act and that in the absence of any provision for the payment of interest in the contract or any demand for such payment, no interest could be decreed. (*Wallis, C. J. and Seshagiri Aiyar, J.*). RAJAH OF PITTAPUR *v.* PULLAMRAJU. 60 I. C. 353=A.I.R. 1921 Mad. 76=40 M.L.J. 18.

—S. 1—'Court.'

——*Meaning.*

The words "Court in which such sums or debts may be recovered" in S. 1 refer to the Court which adjudicates as to the actual debts or claim. (*Buckland, J.*). HOGARTH SHIPPING CO. *v.* MITSNI BUSSAN KAISHA LTD, *In re.* 98 I.C. 238=53 Cal. 735=A.I R. 1926 Cal. 1119.

—S. 1—Damages for detention of money.

——*Applicability—Suit for rent.*

It is open to the Court in a suit for rent to award damages for wrongful detention of money even though the claim of the plaintiff is not recoverable either under the Contract Act or under the provisions of the Interest Act. 33 Cal. 998, *Not foll.*; 22 C.W N. 488 and 15 C.L.J. 684, *Foll.* (*Cuming, J.*). BASANT LAL *v.* PURNA CHANDRA BANERJI. 96 I.C. 244=A.I.R. 1926 Cal. 1117.

—S. 1—Date of re-payment not stipulated.

——*No demand.*

Where there is no stipulation in the doocument as to the date on which the principal is to be repaid, nor is there any proof that a demand was made interest cannot be claimed by virtue of S. 1. (*Boys and Kendall, JJ.*). GULAB SHANKAR *v.* MULLCHAND NIMICHAND. 101 I.C. 57=A.I.R. 1927 All. 444.

——Where a contract of loan provided "the agreement is that the sum will be paid on demand up to two years,"

Held, the instrument did not provide a certain time for the payment of the debt and so the plaintiff was not entitled to any interest. (*Fforde and Campbell, JJ.*). KIRPAL SINGH *v.* JIVAN MAL. 101 I.C. 644=8 Lah. 524=9 L.L.J. 149=28 P. L.R. 174=A.I.R. 1927 Lah. 287.

—S. 1—Discretion of Court.

——*Cases not coming under Interest Act.*

The High Courts in India having the powers both of a Court of equity and a Court of law, can award interest in cases which are not provided for by the Interest Act.

It is impossible to say that equitable principles should be applied in cases of contract. A question of equity must apply to all cases. *Miller* v. *Barlow*, 3 P. C. 733, *Foll.* (*Phillips, J.*). NANCHAPPA KOUNDAN *v.* VETESERI TARWAD KARNAVAN. 97 I.C. 453=A.I.R. 1927 Mad. 47.

—S. 1—Interest as damages.

——*Notice of demand.*

Claim for interest in the nature of damages is unsustainable except upon service of written notice

INTEREST ACT (1839), S. 1—Interest on price of goods.

under the Interest Act. (*Kinkhede, A. J. C.*). KRISHNABAI *v* KESHAO RAO. 83 I C. 253= A.I.R. 1925 Nag. 245.

—S. 1—Interest on price of goods.

———*Proof of demand or usage.*

Interest is not granted on the price of goods sold in the absence of a contract or mercantile usage or unless a written demand is made intimating that interest will be charged as provided by the Interest Act. (*Kinkhede, A.J.C.*) SHEONARAYAN *v.* DADABHAI. 83 I C. 268= A.I.R. 1925 Nag. 204.

—S. 1—Liability of lambardar.

———*Interest on profits payable to co-sharer.*

Lambardar's liability for interest on profits claimed by a co-sharer cannot be founded on S. 73 of the Contract Act or on the provisions of the Interest Act. (*Wazir Hasan, A.J.C.*). ADITYA PRASAD *v.* CHHOTE LAL. 78 I. C. 86= 11 O. L. J. 206=5 L.R. Oudh 99= A. I. R. 1924 Oudh 318.

—S. 1—Mercantile usage.

———*Suit for price of goods—Liability for interest.*

In a claim for price of goods sold and delivered the Court is not bound to take judicial notice of the alleged mercantile usage as to interest, unless such mercantile usage has been pleaded and proved with regard to suit goods ; but the claim to interest on the provisions of the Interest Act is a permissible claim and should be awarded. (*Marten, C. J. and Blackwell, J.*). DINANATH NARPATRAI *v.* DIVANCHAND. A. I. R. 1930 Bom. 444.

—S. 1—Money advanced for goods.

———*Breach of contract - Interest on deposit from date of breach—If claimable.*

In a suit to recover money advanced towards a contract for the supply of goods the party making the advance is not entitled to interest from the date of the advance on the ground that the contract was not performed, when the contract did not provide for it and when no demand was made before suit.

Per *F. B* (*Coutts-Trotter, C. J. and Beasley, J.*)—He is entitled to interest for the period between the filing of his plaint and the determination of the suit, but not between the date of advance and the date of performance or breach.

Per *Ramesam, J.* (contra)—In cases where there is a breach of contract on the part of the defendant and the plaintiff is entitled to damages for the breach, he is entitled to interest from the date of the performance (or breach) to the date of suit on any sum advanced to a refund of which he is entitled, besides any other item of damage to which he may be found also entitled. (*Coutts-Trotter, C. J., Ramesam and Beasley, JJ.*). RAMALINGA MUDALIAR *v.* S. R. MUTHUSWAMY AYYAR & SONS. 99 I. C. 609=24 M. L. W. 782= 1926 M. W. N. 990=50 Mad. 94= A. I. R. 1927 Mad. 99=51 M. L. J. 765 (F.B.).

—S. 1—Nature of Act.

——— *If prohibitive in other cases.*

The Interest Act forbids nothing. It permits the Court to allow interest in certain circumstances, but does not limit the allowance of interest to these circumstances. 20 Mad. 481 and 31 Mad. 250, *Diss. from* ; 31 Bom. 354, *Foll.* (*Hallifax, A.J.C.*). HARIDAYAL *v.* SUNDERLAL. 94 I. C. 647= 21 N. L. R. 16= A.I.R. 1926 Nag. 451.

—S. 1—Notice to demand interest.

———*Demand for payment in case of invoice—If involves demand for interest.*

Where a demand for payment is made in the case of an invoice, notice is thereby given to the defendant by reason of the well-known custom of importing firms to demand interest. (*Robinson, C.J. and Beasley, J.*). Y. A. SHAKOOR & CO. *v.* FINLAY FLEMING & CO. 79 I.C. 291= 1 Rang. 339=2 Bur. L. J. 130= A.I.R. 1923 Rang. 265.

INTEREST ACT (1839), S. 1—Right to interest.

—S. 1—Price of goods sold.

———*Mercantile usage not proved—Interest under Act whether can be allowed.*

Where no established usage is proved for claiming interest on the price of goods sold and delivered interest can be awarded under the provisions of the Interest Act of 1839 from the date of the demand for interest. (*Marten, C.J. and Blackwell, J.*). DINANATH *v.* DIVANCHAND. 32 Bom. L.R. 404= A.I.R. 1930 Bom. 444.

—S. 1—Principal and agent.

———*No provision to pay over at fixed time—Liability to pay interest.*

Where it is not shown that an agent was appointed under deed providing payment of sums of money realised by him at a stated time or that money was demanded from him in writing the case is not covered by the provisions of the Interest Act (XXXII of 1839) and the principal is not entitled to claim interest. 41 All. 254, *Ref.* (*Misra and Pullan, JJ.*). RAGHUNANDAN *v.* RAM DAT. 117 I.C. 766= A.I.R. 1929 Oudh 420.

—S. 1—Right to interest.

——— *Sums payable in contingency.*

A sum certain is not payable by the written instrument at a time certain if its payment is contingent upon events which may never happen and the amount payable is capable of ascertainment only if and when those events happen and the time for the happening of those events, if they ever do happen, may be indefinitely postponed and no interest can be allowed on such sum. 7 M.I.A. 268, *Foll.* (*Lord Tomlin.*) MAINE AND NEW BRUNSWICK ELECTRICAL POWER CO., LTD. *v.* ALICE M. HART. 119 I.C. 615=1929 M.W.N. 862= 1929 A.L.J. 1066=30 M. L. W. 153= A. I. R. 1929 P.C. 185=57 M.L.J. 662 (P.C.).

——— *Interest Act—Other cases.*

Interest Act is not exhaustive of all claims as to interest, and it is open to the Courts in India to award interest in cases not coming within the purview of the Act and on principles of equity, justice and good conscience. 59 I.C. 708, *Foll.* A creditor is entitled to a reasonable rate of interest where it was obviously not the intention of the parties that the money should be retained by the debtor free of charge. (*Martineau, J.*). ADU RAM SIDHU RAM *v.* TOLA MAL. 89 I.C. 744= A.I.R. 1926 Lah. 651.

———*Interest Act—Intention of parties—Usage of trade.*

Plaintiff is not entitled to interest under the Interest Act, in the absence of a demand for interest.

Under the rules of English Common Law, interest is not due on money unless interest is intended to be paid or unless it is implied from the usage of trade as in the case of mercantile instruments. Where, therefore, parties commenced dealings on the assumption that no interest would be demanded,

Held, that the plaintiff was not entitled to interest even under general principles of Common Law. 42 Mad. 661 and A.I.R. 1922 Mad. 55, *Dist.* (*Madhavan Nair, J.*). VENKATA REDDIAR & CO. *v.* DESIKA CHARIAR. 92 I.C. 354=22 M.L.W. 490= A.I.R. 1926 Mad. 1279.

INTEREST ACT (1839) S. 1—Right to Interest.

———*Interest Act—Other cases.*

The Interest Act provides that interest would be payable if debts or sums are due by virtue of some written instrument or, if payable otherwise than from the time when demand of payment shall have been made in writing so as such demand shall give notice to the debtor that interest shall be claimed from the date of such demand until the term of payment. Interest depends on contract express or implied or on some rule of law allowing it. If there is no contract, allowance of interest can be made only as a matter of law. 17 A.L.J. 169; 17 A.L.J. 177; 40 All. 497, *Foll.* (*Mukerjee and Dalal, JJ.*). JWALA PRASAD *v.* MOTI MAL.

79 I.C. 1049=46 All. 625=22 A.L.J. 558= A.I.R. 1924 All. 711.

———*No demand.*

In the absence of an express agreement to pay interest or a written demand or notice that interest would be charged under the provisions of Act XXXII of 1839, the claim as to interest cannot be entertained. (*Moti Sagar, J.*). DES RAJ SAWHUNY *v.* TRAYS MOTOR WORKS. **75 I.C. 64= A.I.R. 1923 Lah. 302.**

———*No agreement—No demand.*

No interest is chargeable either under Act XXXII of 1839 or as damages under S. 73 of the Contract Act on a *ruqqa* which made no mention of interest and where no notice had been given that interest would be charged. (*Abdul Raoof and Harrison, JJ.*). RANJIT SINGH *v.* KARIM BAKSH.

68 I. C. 678=A.I.R. 1922 Lah. 475.

—S. 1—Scope.

———It is not correct to say that Courts have power to award interest in all cases where money due is withheld. A.I.R. 1925 Nag. 451; 3 Cal. 654 (P.C.); 42 Mad. 661; 3 Cal. 654 (P.C.); A.I.R. 1916 P.C. 46; A.I.R. 1915 P.C. 116, *Disc.* and *Expl.* (*Macnair, Offg. J.C.*). P. P. DEO *v.* NARAYAN.

116 I.C. 669=25 N.L.R. 81=A.I.R. 1929 Nag. 170.

———*Act if exhaustive.*

Interest Act is not exhaustive of all cases where interest is allowable. The award of interest is more or less a matter of discretion for Court and not of law. (*Wallace, J.*). VENKATACHALAM *v.* PONNUSWAMI. **82 I.C. 536= 1924 M.W.N. 499=A.I.R. 1925 Mad. 46= 47 M.L.J. 312.**

INTERIM ATTACHMENT.

See C. P. CODE, O. 38, R. 5.

INTERLOCUTORY APPLICATION.

See C. P. CODE, S. 115.

INTERLOCUTORY JUDGMENT.

See C. P. CODE, S. 115.

INTERLOCUTORY ORDER.

See C. P. CODE, Ss. 104 AND 115.

INTERNATIONAL LAW.

—Adoption.

———*Law of domicile—Applicability on matters relating to status of parties—Suit for declaration as to the invalidity of adoption—Defendants domiciled in French territory—Ownership of properties in British India, whether can confer jurisdiction.*

Where the suit was filed in Court in British India for a declaration that the adoption of the 2nd defendant by the first defendant was invalid and it appeared that the defendants were French subjects, holding property in British India,

Held, that the question of adoption related to the status of the parties, that the law of domicile, namely the French Law was applicable and that consequently the suit was not maintainable,

Held, also, that the litigation was not with regard to the property situated within British India and that the British Indian Courts could not snatch at jurisdiction on that ground.

Per *Reilly, J.*—The possible convenience of a British subject is no justification for requiring French subjects to submit their family affairs to be investigated by British Indian Courts..... Equitable jurisdiction which can be enforced only *per sonam* never extended to foreign subjects beyond the realm. (*Phillips and Reilly, JJ.*). RAMAKRISHNAYYA *v.* MAHALAKSHMAMMA GARU.

30 L.W. 691.

—Decree against foreigner.

———*Enforceability as test of validity.*

If is a fundamental principle of international jurisprudence that a sovereign of a country acting through the Courts thereof has no jurisdiction over any matters with regard to which he cannot give effective judgment or which he can render effective only by interfering with the authority of a foreign sovereign or the jurisdiction of a foreign Court. Effective judgment means a decree which the sovereign under whose authority it is delivered, has, in fact, the power to enforce against the person bound by it, and which, therefore, his Courts can, if he chooses to give them the necessary means, enforce against such person. (*Rupchand and Bilaram, A.J.Cs.*). DOONGERSI AUCHAR *v.* HARIBHOY PRASJI. **101 I.C 438=A.I.R. 1927 Sind 160.**

—Existing rights and later agreements.

———*Intention of parties.*

Later agreement governs the existing rights of the parties in preference to the earlier agreement in International Law as in Municipal Law. But where the later agreement is silent and does not abrogate the former as a whole or in respect of any particular portion, the earlier agreement may be looked and reconciled if possible, with the later. In all such cases the rule is that intentions of the parties must be given effect to and it must be presumed that the later agreements were entered into with full knowledge and in view of the prior agreements. (*Kincaid, J. C., Aston and Madgavkar, A. J. Cs.*). S. S. "BRAUNFELS", *In re.*

76 I.C. 337=A.I.R. 1925 Sind 4.

INTERPLEADER.

See C. P. CODE, O. 35.

INTERPLEADER SUIT.

See C. P. CODE, O. 35.

INTERPRETATION OF DEEDS.

See DEED—CONSTRUCTION.

INTERPRETATION OF STATUTES.

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Statement of objects and reasons.
Strict construction.
Surplusage.
Miscellaneous.

—Adjective and substantive law.

———The law requiring how a document is to be completed is not a mere rule of procedure but a substantive provision. (*Panton and Mitter, JJ.*). NEPRA *v.* SAJER PRAMANIK. **103 I.C. 662= 55 Cal. 67= A.I.R. 1927 Cal. 763.**

———Where there is a direct provision of positive statutory law that positive provision cannot be overridden by the application of an adjective law. (*Kennedy, J.C., Raymond and Kemp, A.J.Cs.*). MT. HURI *v.* ROSHAN KHUDA BUX. **71 I.C. 161= 16 S.L.R. 112=A.I.R. 1923 Sind 5 (F.B.).**

—Alteration of law.

———*Plain meaning of section is not changed by re-arrangement of section.*

A re-arrangement of a section in a new Code does not necessarily imply a change in the law.

INTERPRETATION OF STATUTES—Ambiguity.

Where the words of a section are clear and unambiguous as those of O. 41, R. 31, it is hardly permissible to curtail their plain operation on a consideration of the arrangement of the section. Nor does the arrangement of rules in O. 41, lead to the conclusion that R. 31 does not apply to judgment pronounced under O. 41, R. 11. (*Chari, J.*). MG. SAW *v.* MAW BWIN BYU. **95 I.C. 881=4 Rang. 66= 3 Bur. L.J. 60=A.I.R. 1926 Rang. 129.**

———Where the terms of an enactment are quite clear, it is unnecessary to enquire into the reason for the change they have made in the previous law. (*Devadoss and Wallace, JJ*). KOTHANDARAMA CHETTIAR *v.* ANNAMALAI PILLAI. **87 I.C. 399=1925 M.W.N. 169= 48 Mad. 488=22 M.L.W. 103= A.I.R. 1925 Mad. 589=48 M.L.J. 406.**

———*C. P. Code* (1908), *S.* 66—*S.* 317 (1882).

The essential difference in the drafting of S. 66 shows that the Legislature did not approve of the narrow construction of S. 317 given to it by decisions of which 21 All. 196 is an example. The section is intended to make it clear that the legislature, disapproving of benami transactions, meant to prevent actions against certified purchasers and their transferees. (*Mears, C.J. and Knox, J.*). ABDUL JALIL KHAN *v.* OBEDULLAH KHAN. **62 I.C. 725=43 All. 416=19 A.L.J. 227= A.I.R. 1921 All. 165.**

—Ambiguity.

———Matter doubtful—Interpretation preventing abuse of process of law should be put. (*Boys, Young and Sen, JJ.*). EMPEROR *v.* HUNANCHAL SINGH. **123 I. C. 673=31 Cr.L.J. 546= 1930 A.L.J. 354=A.I.R. 1930 All. 265 (F.B.).**

———If the Act of the Parliament is clear, the High Court can only give effect to the language used. If the language is capable of two meanings, the Court may no doubt adopt the construction which seems to produce a beneficent result rather than a construction which produces an opposite result; but if the words are clear, the Court can only give to them their natural meaning. (*Beaumont, C.J. and Baker, J.*). SECRETARY OF STATE *v.* VACUUM OIL CO. **A.I.R. 1930 Bom. 597.**

———Per *Bhide, J.*—Where the language of an enactment is somewhat ambiguous and two constructions are possible, the construction most beneficial to the subject will have to be preferred according to the canon of interpretation. (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR. **A. I. R. 1930 Lah. 781.**

———Where words are capable of two meanings, the rule is to adopt that which would give some effect to the words than that which would give none. 42 L. J. Ad. 1, *Ref.* (*Percival, J. C., Rupchand and Wild, A.J.Cs.*). KHUDABUX *v.* PANJO. **A.I.R. 1930 Sind 265 (F.B.).**

———Where there are two possible constructions it is the duty of the Court to use the common-sense construction. (*Young, J.*). MANSA SINGH *v.* EMPEROR. **119 I.C. 570=1929 A.L.J. 1044= 10 L.R.A. Cr. 137=30 Cr. L.J. 1085= 51 All. 996=12 A.I. Cr. R. 337= 1929 Cr. C. 355=A.I.R. 1929 All. 750.**

———It is a cardinal rule governing the interpretation of statutes that when the language of the legislature admits of two constructions, the Court should not adopt a construction which would lead to an absurdity or obvious injustice. (*Shadi Lal,*

INTERPRETATION OF STATUTES—Ambiguity.

C.J., Broadway, Harrison, Tek Chand and Dalip-Singh, JJ.). KHAN GUL *v.* LAKHASINGH.
111 I.C. 175=9 Lah. 701=10 L.L.J. 413=30 P. L.R. 60=A.I.R. 1928 Lah. 609 (F.B).

———If an Act is so drafted as to allow a loophole for malefactors, it is a circumstance more relevant to the amendment of the Act than to the interpretation of its terms. (*Jackson, J.*). CHANDU KUTTI *v.* MAHADEVI. **110 I.C. 738=28 M.L.W. 704=A.I.R. 1928 Mad. 534=55 M.L.J. 450.**

———Per *Fawcett, J.*—A Court, if it finds that the meaning of a statutory provision is not clear in itself, can examine the surrounding circumstances that led to or accompanied its enactment. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyar Khan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULGEE. **104 I.C. 8=51 Bom. 516=29 Bom. L. R. 498=A. I. R. 1927 Bom. 278 (F.B.).**

———A Court is entitled in case of doubt to reject an alternative which must lead to undesirable, if not to, anamolous results. (*Odgers and Curgenven, JJ.*). VENKATANARASAYYA *v.* OFFICIAL RECEIVER, GODAVARI. **104 I.C. 177=26 M. L. W. 61=1927 M. W. N. 429=1927 M.W.N. 702=A.I.R. 1927 Mad. 826=53 M.L.J. 136.**

———Per *Reilly, J.*—It is a well established rule that, when a provision of a statute is susceptible of two interpretations and one of them leads to a manifest absurdity or to a clear risk of injustice and the other leads to no such consequences, the second interpretation must be adopted. (*Ramesam and Reilly, JJ.*). K. R. MUTHU, A. R. ARUNACHALAM CHETTY *v.* DAVID ESQ., THE OFFICIAL RECEIVER, RAMNAD DIST. **99 I.C. 284=50 Mad. 239=24 M.L.W. 730=A.I.R. 1927 Mad. 166=51 M.L.J. 671.**

———Of the two alternative constructions which are both possible, the one which does not lead to an absurdity should be accepted, and specially so when it is one which is most in accordance with the intention of the Legislature so far as it can be gathered from the provisions of the Act taken as a whole. *Grey* v. *Pearson*, 6 H L.C. 61 and *Calguto* v. *Brooks*, 14 A.C. 493, *Ref.* (*Rupchand, A. J. C.*). HAJI DOST MAHOMED *v.* MOHAN DAS LAL CHAND. **91 I.C. 573=20 S.L.R. 238=A. I. R. 1926 Sind 81.**

———Per *Walsh, J.*—Where a section or an Act is capable of two interpretations the purpose of the enactment must be looked into. (*Walsh, Ryves and Mukerji, JJ.*). MUBARAK HUSSAIN *v.* AHMAD. **84 I.C. 749=22 A.L.J. 321=5 L.R.A. Civ. 201=46 All. 489=A.I.R. 1924 All. 328 (F.B.).**

———Per *Richardson, J.*—If there be any doubt as to the meaning of the Act it is permissible to have regard to the state of things to which the Act was intended to apply, the conditions in which it would operate and the class of persons which it was intended to benefit. (*Richardson and B.B. Ghose, JJ.*). SECY. OF STATE *v.* RAJ KUMAR MUKHERJEE. **82 I.C. 69=77 I.C. 1025=27 C.W.N. 472=50 Cal. 347=A.I.R. 1923 Cal. 585.**

———*Context to be looked into.*

When a word has two meanings one of a restrictive nature and the other of a comprehensive character and when we have to decide which of the two meanings would be appropriate, it seems necessary to turn not only to the context in relation to which the word is used but also to the scope and object of the section and to the reason of the rule contained therein. 89 Cal. 1029, *Foll.*; 42 All. 76,

INTERPRETATION OF STATUTES—Amending Act.

Not foll. (*Macleod, C.J. and Shah, J.*). EAST INDIAN RAILWAY CO. *v.* DAYABHAI VANMALIDAS. **67 I.C. 852=47 Bom. 18=24 Bom. L.R. 416=A.I.R. 1922 Bom. 416.**

—Amending Act.

———*S.* 174 (5), *B. T. Act* (1885).

Held, that the change in S. 174 (5) effected by the Amending Act regarding the right of appeal does not take effect retrospectively so as to apply to pending proceedings. Rules as to interpretation of statutes discussed. (*Graham and Mitter, JJ.*). NOGENDRA NATH BOSE *v.* MON MOHAN SINGH. **34 C.W.N. 1009.**

———*S.* 174, *B. T. Act.*

Held, that the new law enacted in S. 174 by the Amending Act does not take effect retrospectively so as to render an appeal incompetent on the ground that some new obligation created thereunder has not been fulfilled. (*Mullick, J.*). ASIKANNESSA BIBI *v.* DWIJENDRA KRISHNA. **34 C.W.N. 820.**

———*Ashworth, J.*—When a short title is given in an original Act, the Act, however subsequently amended, can be called by that short title. To hold otherwise would be to hold that where the legislature had prescribed a short title it was necessary to use a longer one. (*Sulaiman and Ashworth, JJ.*). PHOOL CHAND *v.* RAM NATH. **107 I.C. 570=50 All. 430=26 A.L.J. 142=A.I.R. 1928 All. 186.**

———An act is not to be considered to take away the rights and privileges conferred by a former Act unless it is quite clear from the provision that it does so. (*Cuming and Mullick, JJ.*). SHEBA KALI KUMAR *v.* CHUNI LAL. **103 I.C. 674=31 C.W N. 1007=A.I.R. 1927 Cal. 748.**

———*Declaratory or explanatory acts are retrospective.*

Even when mistakes in legislative enactments are corrected by a later Amending Act, the Amending Act should be read as part of the Act which it was intended to correct. Though the Act is not called a declaratory or explanatory Act, if from the words used in the Act the Court can come to the conclusion that it is declaratory or explanatory Act, retrospective effect will be given to such Act. *The King* v. *Inhabitants of Dursley*, (1832) 110 E.R. 168, *Ref.* (*Devadoss, J.*). BALAJI SINGH *v.* CHUKKA GANGAMMA. **99 I.C. 143=A.I.R. 1927 Mad 85=51 M.L.J. 641.**

———*C. P. Tenancy Acts, IX of* 1898 *and I of* 1920.

The law applicable to the devolution of occupancy holding is the law existing at the date of devolution. The mere fact that during the interval the Legislature thought fit to change the law is no ground for thinking that the old law which it repealed was of the same nature as the repealing enactment itself. (*Kinkhede, A. J. C.*). MULCHAND *v.* CHANDRA SINGH. **95 I.C. 589=9 N.L.J. 207=A.I.R. 1926 Nag 433.**

———When there is an amendment to a statute the real question is whether the amendment affects the determination of particular question and not whether a particular question is excluded from the operation of the amendment. (*Mookerjee and Cuming, JJ.*). NANDA RAM *v.* JOGENDRA CHANDRA DUTTA. **82 I. C. 297=28 C. W. N. 403=39 C.L.J. 222=A.I.R. 1924 Cal. 881.**

———*Amendment.*

Provisions in the old statute to which no reference is made in the amending statute must be construed irrespective of the amendment. (*Mooker-*

INTERPRETATION OF STATUTES— Amending Act.

jee and Cuming, JJ.). NANDI RAM *v.* JOGENDRA CHANDRA DUTTA. **82 I.C. 297=28 C.W.N. 403= 39 C.L.J. 222=A.I.R. 1924 Cal. 881.**

———The object of amending the laws is to end as far as possible the conflict of old decisions. (*Kennedy, J.C. and Madgavkar, A.J.C.*). SAKER CHAND NARSIDAS *v.* YACOOB. **73 I.C. 311= 17 S.L.R. 255=A.I.R. 1923 Sind 14.**

—Analogy.

———Though it may be permissible to construe an Act with reference to another Act when they are *pari materia*, the absence of an express provision in one does not necessarily import intentional omission in the other without clear words to that effect. The Act, as it stands, must be construed within its four corners. (*Suhrawardy and Cammiade, JJ.*). NUDDEA MILLS CO., LTD. *v.* SIDHESWAR CHATTERJEE. **115 I.C. 515= 32 C.W.N. 1055=56 Cal. 280=A.I.R. 1929 Cal. 33.**

———The mere fact that statutory rights to abatement of rent on a lesser ground have been created in some provinces, does not justify the view that such a right exists, as part of the general law of the country. (*Fawcett and Coyajee, JJ.*). VISHVANATH *v.* RAMKRISHNA. **92 I.C. 537=50 Bom. 94= 27 Bom. L.R. 1478=A. I. R. 1926 Bom. 86.**

—Application by Courts.

———*Appellate Court—Law expiring or changing since trial Court's decree procedure.*

Where the plaintiff's suit for ejectment was dismissed under S. 11 of the Rent Act, but when the appeal came on for hearing, the Rent Act expired and the appeal was allowed,

Held, that the case was rightly decided as on the day the lower Appellate Court delivered its judgment, the law applicable was the general law, *i.e.*, T. P. Act, and the tenancy having been validly determined under it a decree ordering ejectment was correct.

It is true that an appellate Court has to decide a case as it was presented before the Trial Court and on a consideration of which the original judgment is based. But if the right claimed is one which has either ceased to exist or been modified by certain events which have transpired since the decree of the Trial Court, the Court is bound to take notice of it in order to give just and proper relief to the parties to the appeal before it. (*Suhrawardy and Graham, JJ.*). SURESH CHANDRA CHATTERJEE *v.* KANTI CHANDRA BHATTACHARJEE. **110 I.C. 715=47 C.L.J. 530= A. I. R. 1928 Cal. 436.**

———The application of Act is when the parties begin to move under it. (*Viscount Dunedin.*) KESHORAM PODDAR *v.* NUNDO LAL. **101 I.C. 38=54 Cal. 508=54 I.A. 152= 1927 M. W. N 340=29 Bom. L.R. 868= 31 C.W.N. 646=38 M.L T. 95=26 M.L.W. 435= 25 A.L.J. 956=46 C.L.J 341= A.I.R. 1927 P.C. 97=52 M.L.J. 655 (P.C.).**

———Where there are two conflicting provisions of the Legislature, and the question is which must be taken to govern the case, it is the duty of the Court to see the terms of which provisions are more appropriate to the circumstances of the case in order to decide whether the one provision or the other governs the rights of the parties. (*Tyabji, A.J.C.*). MUNICIPALITY OF KARACHI *v.* KARACHI ELECTRIC SUPPLY CORPORATION, LTD. **93 I.C. 226=A.I.R. 1926 Sind 115.**

———The rule of Muhammadan Law about missing persons is purely one of evidentiary presumption and is not applicable in the face of Evidence Act, Ss. 107 and 108. 7 All. 297 (F.B.), *Foll.* (*Lindsay and Kanhaiya Lal, JJ.*). MAIRAJ FATIMA *v.* ABDUL WAHEED. **63 I C. 286=43 All. 673= 19 A.L.J. 713=A.I.R. 1921 All. 175.**

INTERPRETATION OF STATUTES — Canning's proclamation.

—Bye-law.

———Subsidiary legislation, by bye-law if it is to be valid must come clearly within the powers given to the body making it by their controlling statute and neither S. 119 (1) nor S. 349 (2) empowers the Corporation to make bye-laws in regard to the refund of taxes. (*Reilly and Cornish, JJ.*). RAGHAVALU NAIDU & SON *v.* CORPORATION OF MADRAS. **31 M.L.W. 721=1930 M. W. N. 427= A.I.R. 1930 Mad. 648.**

———If a bye-law making body promulgates a bye-law under a provision which is inapplicable but it still had an authority to make the bye-law under some other provision of law, the bye-law may yet be quite valid. 18 Mad. 236; A.I.R. 1924 Mad. 92, *Rel. on.* (*Reilly and Cornish, JJ.*). V. M. RAGHAVALU NAIDU & SONS *v.* CORPORATION OF MADRAS. **31 M.L.W 721= 1930 M.W.N. 427=A.I.R. 1930 Mad. 648.**

———A bye-law must conform with the provisions of the enactment under which it purports to be made. A bye-law which differs materially from the Act, should not be enforced. 37 Cal. 545, *Foll.* (*Abdul Qadir, J*). JOTI PERSHAD *v.* EMPEROR. **64 I.C. 129=2 Lah. 239=102 P.L.R. 1921= 22 Cr.L.J. 737=A.I.R. 1921 Lah. 134.**

———The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers of Municipal Boards in India. 24 All. 439, *Foll.* (*Abdul Qadir, J.*). JOTI PERSHAD *v.* EMPEROR. **64 I.C. 129=2 Lah. 239=102 Pat.L.R. 1921= 22 Cr.L.J. 737=A.I.R. 1921 Lah. 134.**

———The validity of bye-laws made by public representative bodies under statutory powers must be approached from a different standpoint from bye-laws of Railway or other companies carrying on business for their own profit. Courts of Justice are slow to condemn Municipal bye-laws as invalid on the ground of unreasonableness and support them is possible by a benevolent interpretation. But if a bye-law necessarily involves that which is unreasonable it is the duty of the Court to declare it as invalid. (*Robinson, J.*). P. S. PILLAI *v.* MOULMEIN MUNICIPAL COMMITTEE. **59 I.C. 545=22 Cr. L.J. 113=13 Bur. L.T. 107.**

—Canning's proclamation.

———*Effect was not altered by* parwana *issued by Chief Commissioner of Oudh in* 1858 *or by making proclamation by Her Majesty in* 1858—*Customary rights enjoyed previous to confiscation also are unenforceable.*

A number of suits were brought by the Secretary of State for the recovery of certain plots of land in the town of Rae Bareli,

Held, that the effect of Lord Canning's proclamation, dated 15th March, 1858, was to divest all land property from proprietors in Oudh and to transfer it to and vest it in the British Government. The *parwana* issued by the Chief Commissioner of Oudh, Major-General Outram, on the 25th March, 1858, could not be taken to have altered the effect of Lord Canning's proclamation or to have operated to divest from the British Government any property which had been vested in it. The mutiny proclamation issued by Her Majesty in Council and published in the Calcutta Gazette of the 1st

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November, 1858, cannot in any way be held to operate in law as a restoration of the property which was confiscated under the proclamation of Lord Canning.

A record of custom in the *wazib-ul-arz*, by itself cannot operate to re-vest property which had been the subject of confiscation. The lands acquired by confiscation, are taken by the Government free of all customary rights which formerly attached to them, and the Government is in no sense the successor in interest either of the native Government or of the zemindars or other persons whose rights were confiscated. Customary rights of occupation cannot be enforced against the Government. (*Lindsay, J.C. and Wazir Hasan, A.J.C.*). SECY. OF STATE *v.* MD. QASIM. **61 I.C. 871=24 O.C. 77=8 O.L.J. 160=A.I.R. 1921 Oudh 88.**

———It is now well-settled law that Lord Canning's proclamation worked a complete confiscation of all rights in the soil of Oudh. The proclamation of Sir James Outram which was issued on the 22nd March, 1858, could not be taken as changing the effect of the proclamation of Lord Canning in so far as it might be inconsistent with it, and could not have the effect of divesting any property from the British Government which had been vested in it. 6 I.A. 63, *Ref.*

The letter of the Financial Commissioner, dated the 7th August, 1868, intended to declare and did declare that the land occupied by houses in the city of Lucknow was the property of the owner of the houses in possession. The declaration was not confined merely to those areas of the city which were known as "mohallas" but extended to all areas constituting a part of the city, including Baraulia, Qutubpur, Khalispur and Iradatnagar. The Financial Commissioner had authority to issue the orders contained in his letter; and that even if it be assumed that authority was originally wanting it was subsequently supplied by implication so as to constitute a ratification of the Financial Commissioner's act by the Government. The orders of the Financial Commissioner contained in the letter of the 7th August, 1868, operated to transfer to the owners of all houses in the city of Lucknow, who were in possession, the proprietary right in the lands occupied by their houses. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*). BARATI *v.* SECY. OF STATE. **61 I.C. 721=24 O.C. 33=8 O.L.J. 233=A.I.R. 1921 Oudh 65.**

—Circulars.

———*Circulars have not the force of law unless issued under some enactment.*

The circulars in the Manual of Civil Circulars issued by the High Court are not on the same footing as rules which are passed in accordance with the prescribed procedure in Part X of the C. P.Code. Unless a particular circular is passed under some enactment, which gives it the force of law, obviously the mere fact that it is issued under the authority of the High Court is not sufficient to give it that force. 22 Bom. L. R. 970, *Rel. on.* (*Fawcett and Madgavkar, JJ.*). DAYANAND *v.* DAJI. **98 I. C. 754=50 Bom. 793=28 Bom. L.R. 1082=A.I.R. 1926 Bom. 548.**

—Codification.

———*Practice.*

When law has been codified, it cannot be modified gradually from day to day as the changing circumstances of a community, require, by rules of practice made to meet these imperceptibly changing conditions. Any modification, however small must be made by the legislature, when a suitable opportunity arrives. (*Cuming and Lort Williams, JJ.*). REBATI MOHAN CHAKRABARTI *v.* EMPEROR. **115 I.C. 258=32 C.W.N. 945=56 Cal. 150=30 Cr.L.J. 435=12 A.I.Cr.R. 265=A.I.R. 1929 Cal. 57.**

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———The words of a statute should not be departed from on the ground that something was omitted to be enacted, and it is bad policy to add to codified law some of the provisions of the English Common Law on the ground that the codified law is silent as to them. (*Devadoss and Waller, JJ.*). PEDDABHA REDDI *v.* VARADA REDDI. **116 I.C. 337=52 Mad. 432=29 M.L.W. 210=2 M.Cr.C. 8=1929 M.W.N. 84=30 Cr.L.J. 613=13 A.I.Cr.R. 21=A.I.R. 1929 Mad. 236=56 M.L.J. 570.**

———It is of the essence of a Code to be exhaustive on matters with which it deals. 29 Cal. 707 (P.C.), *Foll.* (*Harrison and Dalip Singh, JJ.*). FIRM NATHU MAL *v.* FIRM LACHMI NARAIN. **96 I.C. 910=A.I.R. 1926 Lah. 670.**

———Where a statute is expressly said to codify the law it is not permissible to go outside the Code so created, because before the existence of that Code another law prevailed. (*Schwabe, C.J., Phillips, Devadoss, Venkatasubba Rao and Wallace, JJ.*). GOPAL NAIDU *v.* EMPEROR. **73 I.C. 343=46 Mad. 605=24 Cr.L.J. 599=17 M.L.W. 592=32 M.L.T. 352=1923 M.W.N. 425=A.I.R. 1923 Mad. 523=44 M.L.J. 655 (F.B.).**

———The essence of a Code is to be exhaustive on the matters in respect of which it declares the law and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. 29 Cal. 707 (P. C.), *Foll.* (*Raymond, A.J.C.*). FIRM OF NOTANDAS *v.* FIRM PRIBHDAYAL. **63 I.C. 134=15 S.L.R. 61=A.I.R. 1921 Sind 38.**

———Per *Dalal, A.J.C.*—Codification in India is to a certain extent a gamble. First of all Indians have to express themselves in a language which is after all foreign to them. Local Governments do not command the help of men trained in drafting laws and even at the time of legislation it is not settled accurately and in detail what a particular Act is required to provide for. There are vague notions to remedy an evil or to satisfy certain sentiments but the full details are not worked out. (*Simpson, A.J.C.*). ACHAT SINGH *v.* SHAGUNATH KUAR. **90 I.C 470=29 O.C. 51=2 O.W.N. 713=12 O.L.J. 603=A.I.R. 1926 Oudh 2.**

—Common Law rights.

———A statute purporting to create a special jurisdiction must be very strictly construed particularly if it is likely to have the effect of depriving the subject of a common law right. (*Findlay, J.C.*), BALAJI *v.* CHINDYA. **122 I.C. 703=A.I.R. 1930 Nag. 205.**

———It is a cardinal principle of the construction of statutes that no legislative enactment should be so construed as to take away the common law rights of private persons, and the intention of the legislature to do so must be expressly stated or necessarily implied. (*Chari, J.*). SURATEE BARA BAZAAR CO., LTD. *v.* MUNICIPAL CORPORATION, RANGOON. **107 I.C. 849=5 Rang. 722=A.I.R. 1928 Rang. 87.**

———*Right of suit—In the Act.*

When an Act specifically says that the right of action in a Civil Court is not taken away except in the cases specifically mentioned in the Act, it

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would be opposed to the principles of construction of a special Act to hold that it takes away the right of a party to seek redress in a Civil Court in other cases. The right of a person to seek relief in a civil Court is a common law right, and as long as he can show cause of action, he can bring a suit for redress. (*Devadoss and Jackson, JJ.*). JAGANNATHA PILLAI *v.* KATHAPERUMAL PILLAI. 105 I.C. 88= 51 Mad. 76=26 M.L.W. 572=39 M.L.T. 389= 1927 M.W.N. 913=A.I.R. 1927 Mad. 1035= 53 M.L.J. 688.

———Per *Reilly, J.*—It is the duty of a Court to interpret a provision restricting the ordinary right of every man to come to Courts for relief, with the utmost strictness. (*Ramesam and Reilly, JJ.*). K. R. MUDHU A. R. ARUNACHALAM CHETTY *v.* DAVID ESQR., THE OFFICIAL RECEIVER, RAMNAD DIST. 99 I.C. 284=50 Mad. 239= 24 M.L.W. 730=A. I. R. 1927 Mad. 166= 51 M. L. J. 671.

———An enactment of a character which deprives the subject of his right to resort to the ordinary Civil Courts of justice for relief in certain cases ought to be construed strictly and the Court should not extend its operation further than the language of the Legislature requires. (*Ramesam and Curgenven, JJ.*). VAIDYANATHA AIYAR *v.* YOGAMBAL AMMAL. 99 I. C. 452=50 Mad. 441= 25 M.L.W. 660=A.I.R. 1927 Mad. 140= 51 M.L.J. 695.

—Construction nullifying statute.

———In a body of codified law, no one enactment should be so construed as to render the express provisions of another enactment absolutely nugatory. (*Prideaux, A.J.C.*). PUNDLIK *v.* BHAGWANTRAO. 96 I. C. 893=A.I R. 1926 Nag. 491.

—Contract, canons of construction of.

———*When void—When voidable.*

Where the legislature has prohibited the making of a contract, and has expressly provided or, having regard to the language in which the Act is couched has manifested its intention, that the contract should be for all purposes void such contract is utterly null and void.

Where the language that has been employed does not plainly and conclusively indicate the intention of the legislature that the contract should be void for all purposes, if the inhibition is merely for the benefit of a particular person, or persons the Court will lean to the construction that the contract is voidable at the election of the person or persons for whose benefit the inhibitory Act was enacted, provided that such persons are *sui juris*, and capable of managing their affairs in a reasonable and proper manner.

Where, however, the person or persons for whose benefit the inhibition was created are not deemed to be capable of conducting their affairs in a sensible and normal way, and the Act was passed for their protection, or where the contract is prohibited not merely for the benefit or protection of individuals, but because the intention of the legislature was to forbid the making of the contract in the interest of the community generally, and as a matter of public policy, in either case, a contract that contravenes the provisions of the Act is null and void for all purposes. *Magdalen Hospital* v. *Knotts*, (1879) 4 A.C. 324; *Roe* v. *Archbishop of York*, (1805) 6 East 86 *and other cases relied on.* (*Page, J.*). NAWAB OF MURSHIDABAD *v.* BILAS ROY. 118 I. C. 661=56 Cal. 252=A.I.R. 1929 Cal. 433.

INTERPRETATION OF STATUTES — English decisions.

———If there is a particular statutory enactment or a provision or rule having the force of law in a particular State and the highest Court in that State has decided that having regard to the terms of such enactment or rule, a partnership agreement in those circumstances is not illegal, it cannot be held that such an agreement is illegal because the British Indian Courts have held them to be illegal in very similar circumstances. (*Srinivasa Aiyangar, J.*). GANGADARA SAH *v.* SWAMINADHA MUDALI. 92 I.C. 112=22 M. L. W. 679= A.I.R 1926 Mad. 218.

—Declaratory Act.

———An explanatory and Declaratory Act cannot be regarded or construed as if it were an enactment creative or regulative of rights or obligations. (*Venkatasubba Rao and Srinivasa Ayyangar, JJ.*). SECRETARY OF STATE *v.* RAJA PARTHASARATHY. 96 I.C. 1011=49 Mad. 349=1926 M.W.N. 897= A. I. R. 1926 Mad. 706=50 M.L.J. 699.

—Directory and Mandatory provisions.

———Disregard or disobedience of a mandatory provision of law will not result in nullification of the proceedings to which that provision relates. (*Tapp, J.*). NATHU MAL *v.* MALAWA MAL. 122 I.C 561 (Lah.).

———Where the prescription of an Act relates to the performance of a duty by a public officer the breach of such prescription, when it does not cause any real injustice, does not invalidate the act done under the Act and therefore such prescriptions are merely directory. 39 Mad. 485, *Ref.* (*Wazir Hasan, C.J. and Raza, J.*). DIST. BOARD, KHERI *v.* ABDUL MAZID KHAN. 7 O.W.N. 843= A.I.R. 1930 Oudh 434.

———"*May.*'

The word "may make rules" denote the provisions are not mandatory but enabling and permissive.

Held, by the F. B. (*Heald, A. C. J. dissenting*) that the payment of passage allowances to officers of the Corporation cannot be said to have anything to do with public good and so where the statute provided that the Corporation "may" make rules for such allowances, there was no duty imposed on the Corporation which had an unfettered discretion in the matter. (*Heald, A.C.J., Otter and Ormistone, JJ.*). GOVERNMENT OF BURMA *v.* MUNICIPAL CORPORATION OF THE CITY OF RANGOON. 8 Rang. 333= A.I.R. 1930 Rang. 297 (F.B.).

—Ejusdem-generis.

———Where general words follow particular and specific words, they must be confined to things of the same kind as those specified. (*Mirza and Patkar, JJ.*). RAVANSI MIRJI *v.* EMPEROR. 120 I. C. 356=53 Bom. 627= 31 Bom. L. R. 581=31 Cr. L. J. 103= 1929 Cr.C. 41=A.I.R. 1929 Bom. 274.

———General words in a statute are *prima facie* to be taken in their usual sense. General words following specific words in a statute are *prima facie* to be taken in their general sense, unless the reasonable interpretation of the statute requires them to be used in a sense limited to things *ejusdem generis* with those which have been specifically mentioned before. (*N. R. Chatterjea and Chotzner, JJ.*). PROTAP CHANDRA *v.* JAGADISH CHANDRA. 82 I.C. 886=40 C.L.J. 331= A.I.R. 1925 Cal. 116.

—English decisions.

———Where there is a direction in an Act or Regulation that cases should be directed by equity

INTERPRETATION OF STATUTES — English decisions.

and good conscience such a direction should, generally, be interpreted to mean that the rules of English Law, if found applicable to Indian society and circumstances. are to be applied. 11 Bom. 551 (P.C.), *Ref.* (*Lord Tomlin.*) KHAN BAHADUR MEHRBAN KHAN *v.* MAKHNA. **123 I.C. 554= 1930 A.L.J. 544=34 C.W.N. 529=31 M.L.W. 732= 51 C.L.J. 427=A.I.R. 1930 P.C. 142 (P.C.).**

———When the case is not one of legislative omission, the Court cannot take recourse to English authorities fordetermining the intention of the legislature. (*Graham and Mitter, JJ.*). KEDAR NATH *v.* GAYA NATH PODDAR. **A.I.R. 1930 Cal. 731.**

———Words clearly expressing intention of legislature—Definition from English cases should not be accepted. (*Beasley, C.J. and Pandalai, J.*).(SHROFF) VEERAPPA *v.* EMPEROR. **31 M.L.W. 202= 1930 M.W.N. 187=3 M. Cr. C. 156= 31 Cr.L.J. 625=A.I.R. 1930 Mad. 441.**

———The statute law in India is based on the principles of English Law but in its application, the opinion of Indian Courts acquainted with Indian ways of Life and thought should be followed and not of English Courts, which deal with people widely different from Indians in their social habits and intellectual development. (*Dalal, J.C. and Neave, A. J. C.*). MOHAMMAD HASAN *v.* ALI HAIDER. **85 I.C. 509=12 O.L.J. 1= 28 O.C. 8=A.I.R. 1925 Oudh 337.**

———Rules relating to procedure under an Indian Act should not be interpreted by reference to decisions relating to another statute in England even where the language of the two statutes is the same. (*Newbould and B. B. Ghose, JJ.*). BROJO LAL BANERJEE *v.* SHARAJUBALA DEBI. **84 I.C. 154= 51 Cal. 745=A.I.R. 1924 Cal. 864.**

—Equity.

———Where there is direct statutory enactment no equitable doctrine can override it. (*Young, J.*). NANNHUN *v.* HALKA. **A. I. R. 1930 All. 175.**

———It is not the function of a Court to speculate as to the meaning of the legislature but to determine the meaning of words used, Court's duty is not to examine the law to see whether it is equitable or not but to interpret it giving the words their natural meaning even though the interpretation based on recognized principles leads to inequitable results. (*Barlee, J.C. and Kalumal, A.J.C.*). LILARAM *v.* TIKAMDAS. **119 I. C. 537=A. I. R. 1929 Sind 225.**

———*Legislation is presumed not to do anything unfair.*

It is an intelligible principle that the legislature shall not be presumed to have done anything unfair and to have taken away a privilege not having openly stated that they meant to take it away or in such open or clear language that the persons affected might come and resist and use arguments to show why it should not be taken away but having simply used general words quite consistent with their never having thought of the privilege at all. (*Cuming and Page, JJ.*). EMPEROR *v.* INDU BHUSAN SARKAR. **95 I. C. 539=53 Cal. 524= 30 C. W. N. 524=44 C. L. J. 427= A. I. R. 1926 Cal. 819.**

———The Madras High Court has set its face against what may be called the equitable construction of Statutes. (*Kumaraswami Sastri and Devadoss, JJ.*). NAGABHUSHANAM *v.* RAMACHANDRA RAO. **70 I.C. 659=45 Mad. 537=15 M.L.W. 470= 1922 M.W.N. 331=30 M.L.T. 231= A.I.R. 1923 Mad. 241=42 M.L.J. 449.**

INTERPRETATION OF STATUTES — Express words.

—Estoppel against statute.

———*Statute cannot be circumvented by estoppel.*

Where a particular act is declared to be void and unlawful by statute a party cannot by representation, any more than by other means, raise against him an estoppel so as to create a state of things, which he is under a legal disability from creating. (*Shadi Lal, C. J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* RAKHA SINGH. **111 I.C. 175=9 Lah. 701= 10 L.L.J. 413=30 P.L.R. 60= A.I.R. 1928 Lah. 609 (F.B.).**

—Exceptions.

———Per *Wazir Hasan, J.*—It is a well recognized principle of interpretation that an exception does not affect the general rule and it must be confined within its own limits and strictly to the subject-matter entrusted within it. (*Stuart, C. J., Wazir Hasan, Misra, Raza and Nanavutty, JJ.*). GAYA PRASAD *v.* KALAP NATH. **119 I.C. 357= 6 O.W.N 661=4 Luck. 539= A.I.R. 1929 Oudh 389 (F.B.).**

———In order to bring a case within the exception, strict compliance with its terms is necessary. It is one of the established canons of interpretation that exceptions are to be taken most strongly against the party for whose benefit they are introduced. (*Tek Chand. J.*). E. I. RY., CALCUTTA *v.* JOT RAM CHANDRA BHAN. **108 I.C. 189=10 L.L.J. 202= 29 P.L.R. 371=A.I.R. 1928 Lah. 162.**

—Exercise of right.

———*Sanction for any act does not necessarily prevail over all circumstances and considerations.*

Simply because the law declares that a person has a right to do an act, it does not follow that each and every act of his or hers would under all circumstances be upheld as an act done lawfully or in the lawful or proper exercise of a right. The lawfulness or otherwise of any particular act must depend upon the surrounding facts and circumstances existing at the time of the performance of the act, in each case, and it cannot be considered independently of or divorced from such surroundings as if it involved a pure question of law only, and not a mixed question of law and facts. (*Kinkhede, A. J. C.*). PANDURANG *v.* BAYAJI. **95 I.C. 371=8 N.L.J. 14=A.I.R. 1926 Nag. 251.**

—Express words.

———The duty of Court is not to put a construction, which seems to the Court to be best in the sense that it will work out with the most justice or with the least inconvenience, but to put a construction which seems to the Court to be the best in the sense that it is nearest to the language of the legislature. (*Rankin, C.J. and C.C. Ghose, J.*). J. C. MUKERJEA *v.* KARNANI INDUSTRIAL BANK, LTD. **A. I. R. 1930 Cal. 770.**

———Clear words of an Act of Parliament, conveying a definite meaning in the ordinary sense of the words used, cannot be cut down or added to so as to alter that meaning. (*Broadway and Fforde, JJ.*). HARI SINGH *v.* EMPEROR. **96 I.C. 257= 7 Lah. 348=8 L.L.J. 242=27 Cr. L.J. 913= 27 P. L.R. 555=A.I.R. 1926 Lah. 357.**

———The clear words of a statute cannot be destroyed by Courts of law on grounds of equity or unreasonableness. (*Dalal and Wazir Hasan, A.J.Cs.*). BAIJNATH *v.* RAJJU SINGH. **91 I.C. 583=12 O.L.J. 571=2 O.W.N. 872= A.I.R. 1926 Oudh 101.**

———Per *Rankin, J.*—There is no rule which entitles Courts of law to demand express words from

INTERPRETATION OF STATUTES — Expropriating statute.

the Legislature, or to refuse the office of interpretor in the absence of express words. (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **84 I. C. 31=51 Cal. 504= A.I.R. 1924 Cal. 668.**

—Expropriating statute.

———*Land Acquisition Act.*

Where special provisions are made by the legislature for compulsory acquisition of property belonging to a person the provisions of the law must be strictly complied with. (*B. B. Ghose and S. K. Ghose, JJ.*). TARA PRASAD CHALIHA *v.* SECRETARY OF STATE. **34 C.W.N. 323= A.I.R. 1930 Cal. 471.**

———In order to affect the rights of persons who have got an interest in holding, so as to debar them from preventing the total loss of the holding, the statute must either expressly or by plain implications say that they are so debarred. (*Mitter, J.*). SAILAJA SUNDARI *v.* SURJA KANT. **117 I.C. 697=32 C.W.N. 1166= A. I. R. 1929 Cal. 133.**

———*Land acquisition.*

The rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. (*Lord Warrington of Clyffe.*) INGLEWOOD PULP AND PAPER CO., LTD. *v.* NEW BRUNSWICK ELECTRIC POWER COMMISSION. **111 I.C. 261=28 M.L.W. 753= A.I.R. 1928 P.C. 287 (P.C.).**

———Statutes interfering with vested rights have to be strictly construed. (*Kotwal and Prideaux, A.J.Cs. then Hallifax. A.J.C.*). MT. RUPI *v.* SADASHEO. **82 I.C. 1038=A.I.R. 1925 Nag. 190.**

———*Forfeiture clause should be strictly construed.*

Per *Shah, J.*—Courts have to construe Clauses of forfeiture strictly so as to involve least interference with the existing rights consistently with the plain meaning of the words used by the legislature.

Per *Pratt, J.*—It is a recognised principle that the construction which appears the most agreeable to reason and justice should in all cases be presumed to be the true one. (*Shah and Pratt, JJ.*). MADHARAO MORESHWAR BHANDARKAR *v.* KRISHNAJI SATURAO RANE. **68 I.C. 277= 24 Bom. L.R 131=46 Bom. 470= A. I. R. 1922 Bom. 257.**

———If the application of the provisions of an amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases. (*Mukerjee and Chotzner, JJ.*). AJIT SINGH *v.* BHAGABATI CHARAN MUKERJEE. **70 I.C. 370= 36 C.L.J. 263=A.I.R. 1922 Cal. 491.**

———An intention to alienate private rights without compensation should not be imputed to the Legislature, unless expressed in clear terms. *Commissioner of Public Works (Cape Colony)* v. *Logan, Foll.* (*Viscount Cave.*) AUSTRALIA COMMONWEALTH *v.* HAZELDELL, FIRM, **A.I.R. 1921 P.C. 224 (P.C.).**

—Fiction.

———*Fictions should not be introduced save for avoiding injustice.*

Fiction has no place where substantial justice does not require its interference, still less where substantial justice would suffer from its operation.

A statute provided that under certain conditions the fee for an application for review of judgment was half that leviable on the plaint or memorandum of appeal. It was contended that the statute must be interpreted to mean that the fee in question was half that which would be leviable on the plaint or memorandum of appeal if it were presented at the time of the application for review,

Held, that by introducing the term "leviable" that legislature did not intend to introduce a fiction into law, *viz.*, an imaginary presentation of the plaint or memorandum at the time of application for review of judgment, that the term did not refer to the fee that would have been payable if a plaint or memorandum of appeal were filed at the time of the application for review but that it referred to the fee which was leviable at the time at which such plaint or memorandum of appeal was actually filed. (*Mookerjee and Cuming, JJ.*). NANDI RAM *v.* JOGENDRA CHANDRA DUTTA. **82 I.C. 297= 28 C.W.N. 403=39 C.L.J. 222= A.I.R. 1924 Cal. 881.**

INTERPRETATION OF STATUTES—Fiscal Act—Benefit of doubt.

—Fiscal Act—Benefit of doubt.

———A statute relating to taxation, if it is doubtful or difficult of interpretation, is subject to the rule that no tax can be imposed except by words which are clear and the benefit of doubt is the right of the subject. (*Venkatasubba Rao and Madhavan Nair, JJ.*). VULCUN INSURANCE CO. *v.* CORPORATION OF MADRAS. **124 I.C. 511= 58 M.L.W. 337=1930 M.W.N. 29= 31 M.L.W. 438=A.I.R. 1930 Mad. 626.**

———If two constructions of a fiscal enactment are equally possible and reasonable, the construction more favourable to the subject must be enforced. A.I.R. 1928 Lah. 219, *Foll.* (*Coutts-Trotter, C.J., Beasley and Reilly, JJ.*). COMMR. OF INCOME-TAX, MADRAS *v.* RAMSWAMI CHETTIAR. **116 I. C. 566=52 Mad. 194=29 M.L.W. 273= A.I.R. 1929 Mad. 60=56 M.L.J. 141 (F.B.).**

———It is a well-established rule of the interpretation of fiscal enactments that in case of doubt an interpretation which is more favourable to the subject is to be preferred. (*Shadi Lal, C.J. and Bhide, J.*). KHASHI RAM KARAM CHAND *v.* COMMR. OF INCOME-TAX, PUNJAB. **108 I C. 524= A.I.R. 1928 Lah. 219.**

———The well-known principle of interpretation of fiscal enactments is that if the language is at all ambiguous, it must be interpreted in the manner most beneficial to the subject. Taxing statutes must state with the utmost clearness what and whom and in what manner they are taxing. (*Wallace and Srinivasa Aiyangar, JJ.*). MADURA DEVASTHANAM *v.* MADURA MUNICIPALITY. **110 I.C. 89=51 Mad. 301=27 M.L.W 834= A.I.R. 1928 Mad. 569=54 M.L.J. 625.**

———*Ordinary rules are to be applied—Words with clear meaning must be given effect to.*

The principle of construction to be applied to taxing statutes, is that, if the words of the statute are capable of two otherwise equally opposite constructions, the construction to be adopted is that in favour of the tax-payer; but, to ascertain whether the two possible constructions are equally opposite, the ordinary rules of construction of statutes are to be applied. The maxim that clear words are necessary in order to tax the subject does not mean, as often contended that words are to be unduly restricted against the taxing authority. It simply means that in a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be

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implied. One can only look fairly at the language used. A Taxing Act is not to be construed differently from any other Act. The Court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act, by seeming considerations of hardship or business convenience or the like, Courts have to give effect to what the legislature has said. (*Schwabe, C. J., Coutts-Trotter and Ramesam, JJ.*). BEST & CO., LTD. *v.* CORPORATION OF MADRAS. **79 I.C. 928=47 Mad. 262=19 M.L.W. 142=34 M.L.T. 65=1924 M.W.N. 249=A.I.R. 1924 Mad. 420=46 M.L. J. 217 (F.B.).**

———*Letter of the law must be satisfied—Equitable construction is not admissible.*

The principle of all fiscal legislation is that if a person sought to be taxed comes within the letter of the law, he must be taxed however great the hardship may appear to be to the judicial mind. On the other hand, if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction certainly such construction is not admissible in a taxing statute where one would simply adhere to the words of the statute.

It is sound principle that the subject is not to be taxed without clear words to that effect; and that *in dubis* you are always to lean against the construction which imposes a burden on the subject. (*Shadi Lal, C.J., Scott-Smith, Broadway, Abdul Raoof and Martineau, JJ.*). SUNDER DAS *v.* KING-EMPEROR. **77 I. C. 616=3 Lah. 349=A.I.R. 1923 Lah. 14 (F.B.).**

———The Court fees Act is an Act dealing with purely fiscal matters, and the rule of construction adopted by the Courts in England that Statutes imposing pecuniary burdens or encroaching upon or qualifying the rights of the subject must in cases of doubt, be interpreted in favour of the subject, is one which may be properly applied in this country. (*Saunders, J.C.*). JAGANNATH KAHAR *v.* EMPEROR. **65 I.C. 553=23 Cr.L.J. 121=4 U.B.R. 72=A.I.R. 1922 U.B. 14.**

———Crown seeking to recover the tax, must bring the subject within the letter of the law, otherwise the subject is free, however much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject. *Case law discussed.* (*Robinson, C.J. and Maung Kin, J.*). ROWE & CO. *v.* SECRETARY OF STATE. **67 I.C. 781=11 L.B.R. 299=1 Bur. L.J. 46=A.I.R. 1921 L.B. 30.**

—Fiscal Act—Liberal construction.

———*Court-fees Act.*

The Court-fees Act is a taxing statute. Not only has it to be construed with strictness but as pointed out in 43 B. 507, the Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. 32 C.W.N. 781 (P.C.), *Ref. to.* (*Rankin, C.J. and Mukerji, J.*). SHIHAN *v.* ABDUL ALI ABED. **34 C.W.N. 1129.**

———*Court-fees Act.*

The Court Fees Act, being a fiscal enactment, ought to be liberally construed. (*Ramesam and*

INTERPRETATION OF STATUTES—Fiscal Act—Rights to subjects.

Cornish, JJ.). SUBRAMANIA IYER *v.* RAMA IYER. **105 I. C. 881=A.I.R. 1927 Mad. 1002=54 M.L.J. 67.**

—Fiscal Act—Powers of Court.

———Where an intention to levy a tax is apparent on the face of the enactment it is not open to Courts to cut down the general words imposing the tax by reference to extraneous considerations or possible intention of the legislature. Rule applied with reference to the construction of S. 24 of the Stamp Act. (*C.C. Ghose and Buckland, JJ.*). JANARDHAN RAO *v.* SECRETARY OF STATE. **34 C.W.N. 470.**

———Although the Court ought to support if possible the bye-laws and the administrative acts of a public representative body, it is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. (*Rutledge, C.J. and Brown, J.*). MUNICIPAL CORPORATOIN OF RANGOON *v.* SOORATI BARA BAZAR CO., LTD. **102 I.C. 878=5 Rang. 212=A.I.R. 1927 Rang. 183.**

———*Taxing statutes must not be added to.*

Taxation, to be effective, must be imposed by clear words. It is contrary to the established rule as to the construction of taxing statutes to make a generous addition to the language of the Act. (*Viscount Cave.*) ROYAL TRUST COMPANY *v.* MINISTER OF FINANCE. **A.I.R. 1921 P.C. 184 (P.C.).**

—Fiscal Act—Rights of subjects.

———*Income tax Act.*

If the Crown, seeking to recover tax, cannot bring the subject within the letter of the law, the subject is free. But the Court cannot undertake, out of its own notions of what is fair, to adapt or rearrange the machinery of the Act upon a matter of such character and importance as maintenance allowance. *Partington* v. *Attorney-General*, (1869) 4 H. L. 100, *Rel. on.* (*Rankin, C.J., Ghose and Buckland, JJ.*). BIJAY SINGH DUDHURIA, *In re.* **A.I.R. 1930 Cal. 641 (F.B.).**

———*Taxing statutes.*

In a taxing statute unless the matter is made reasonably clear, the parties are entitled to bring their cases under the less onerous of the Act if otherwise they can do so. (*Ananthakrishna Ayyar, J.*). V. AIYASWAMI AIYAR *v.* DIST. BOARD, TANJORE. **121 I.C. 601=52 Mad. 972=30 M.L.W. 289=1929 M.W.N. 773=A.I.R. 1930 Mad. 43=57 M.L.J. 510.**

———*Court-fees Act—Parties can avail of camouflage of law if any—Court should see the form and not the substance.*

Especially in the case of an enactment for revenue purposes, such as the Court-fees Act, it is open to parties to avail themselves of any camouflage that the law allows or does not forbid. It is not open to a Court in such circumstances to neglect the actual form of the claim and determine the question of Court fees having regard to what may be said to be the substance of the claim.

The defendants, against whom a decree for ejectment had been made, appealed to the High Court against the refusal of the lower Appellate Court to grant to them the value of certain improvements consisting of the construction of a pucca building on the site in question. The appellants paid the same Court-fee in the second appeal

INTERPRETATION OF STATUTES—Fiscal Act—Rights of subjects.

as was paid in respect of the plaint by the plaintiff-respondent. The contention had been advanced that, though in a suit for possession the Court-fee payable on a plaint may be as prescribed in a particular manner by the Court Fees Act, still in the memorandum of appeal to the High Court there were grounds taken as regards the title of the plaintiff.

Held, that it cannot be regarded as a memorandum merely confined to the amount of compensation. Even if it were so, if it was sought to be enforced merely as a condition precedent to a right to possession, the subject-matter in dispute would still be only the claim for possession and the fee paid was enough. 23 Mad. 84 and 20 M.L.J. 121, *Rel. on*; Second Appeal 1266 of 24, *Dissented* (*Srinivasa Ayyangar and Reilly, JJ.*). PATHUMMA UMMA *v.* A. MOHIDEEN. **110 I.C. 752= A.I.R. 1928 Mad. 929.**

———It is not proper to take the motives of the assessee, in bringing about a particular arrangement, into consideration, and a subject is entitled, if he can in any legal manner, to circumvent the incidents of a particular taxing or financing Act. (*Coutts-Trotter, C.J., Wallace, Beasley, Jackson, and Srinivasa Ayyangar, JJ.*). COMMR. OF INCOME-TAX *v.* T.K.S. IBRAHIMSA RAVUTTAR. **110 I.C. 207=27 M.L.W. 601= 1928 M.W.N. 313=51 Mad. 455= A.I.R. 1928 Mad. 543=53 M.L.J. 524 (F.B.).**

———Revenue statutes should be construed in favour of the subject. (*Carr and Cunliffe, JJ.*). S. RAMANATHA REDDIAR *v.* COMMR. OF INCOME-TAX. **110 I.C. 601=6 Rang. 175= A.I.R. 1928 Rang. 182.**

———Technicalities in a fiscal statute must be strained in favour of the subject, if they are to be strained at all and not against him. (*Baker, J.C. and Hallifax, A.J.C.*). BALKISHAN NATHAM *v.* COMMR. OF INCOME-TAX. **78 I.C. 572= A.I.R. 1924 Nag. 163.**

———Fiscal Acts should be construed as far as possible in favour of the subject. (*Baker, J.C. and Hallifax, A.J.C.*). COMMR. OF INCOME-TAX C.P. *v.* DHARAMCHAND DALCHAND OF SANGU. **76 I.C. 82=A.I.R. 1924 Nag. 24.**

—Fiscal Act—Stare decisis.

———In the matter of a fiscal enactment where the question is in doubt the rule of *stare decisis* should apply. (*Dalip Singh, J.*). MOTI SINGH *v.* HARBHOJAN SINGH. **103 I.C. 657= A. I. R. 1927 Lah. 635.**

—Fiscal Act—Strict construction.

———Taxing enactments should be strictly construed and the right to tax should be clearly established. Conditions precedent to the imposition of any tax should be strictly complied with. 52 Mad. 779, *Applied*. (*Madhavan Nair, J.*). VASUDEVA RAO *v.* MUNICIPAL COUNCIL, ANANTAPUR. **1930 M.W. N. 821=A.I.R 1930 Mad. 844.**

———*Court-fees Act.*

Per *Kinkhede, A. J. C.*—It is a rule of construction peculiar to fiscal enactments that they must be very strictly construed so as not to impose an unnecessarily heavy burden on the subject. Such an Act being a taxing statute must use very clear and unambiguous language. A.I.R. 1918 P.C. 188; In *Partington* v. *Attorney-General*, (1869) 4 H.L. 122; *Attorney General* v. *Earl of Selborne*, (1902) 1 K.B. 388, *Rel. on*. (*Findlay, J. C., on difference between Kotwal and Kinkhede, A.J.Cs.*). NOKSING *v.* BHOLUSING. **123 I.C. 417= 12 N.L.J. 195 A.I.R. 1930 Nag. 73.**

INTERPRETATION OF STATUTES—Fiscal Act—Strict construction.

———*Equitable—Income-Tax Act.*

The scope of Income-Tax Act cannot be extended by analogy, nor can a beneficient or equitable construction be placed upon it in order to prevent a real or supposed anomaly, because such a construction is not admissible in a taxing Act. Hence if the Crown cannot bring the subject within the letter of the statute, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be. (1922) 1 A.C. 417 and *Partington* v. *Attorney General*, (1869), L.R. 4 H. L. 100, *Foll.* (*Shadi Lal, C. J., Broadway, Zafar Ali, Tek Chand and Jai Lal, JJ.*). JIWANDAS *v.* INCOME-TAX COMMR., LAHORE. **117 I.C. 657=10 Lah. 657=30 P. L.R. 489= A.I.R. 1929 Lah. 609. (F.B.).**

———In applying fiscal statutes, letter of the law and not spirit is to be taken into account. *Partington* v. *Attorney-General*, (1869) 4 H. L. 100 and *Lord Advocate* v. *Fleming*, (1897) A.C. 145, *Foll.* (*Kumaraswami Sastri, Odgers and Wallace, JJ.*). ARUNACHALAM *v.* COMMR., INCOME-TAX. **1929 M.W.N. 642=30 M.L.W. 541= A.I.R. 1929 Mad. 769=57 M.L.J. 300 (F.B.).**

———Taxing enactments should be strictly construed and the right to tax should be clearly established. Conditions precedent to the imposition of any tax should be strictly complied with. (*Coutts Trotter, C.J. and Ananthakrishna Ayyar, J.*). MUNICIPAL COUNCIL CUDDAPAH, *v.* M. &S. M. RY. CO., LTD. **121 I. C. 839= 52 Mad. 779=30 M.L.W. 236= A.I.R. 1929 Mad. 746=57 M.L.J. 471.**

———Unless the language of a fiscal enactment *e.g.*, Court-fees Act, is clear and unambiguous so as to entitle the Court to levy higher duty on a relief it must be construed very strictly and not in a manner that would result in demanding more Court-fee for a less valuable claim. (*Kinkhede, A. J. C.*). PUNJAJI *v.* RAMCHAND. **111 I.C. 650= 24 N.L.R.142=11 N.L.J. 192=A.I.R. 1928 Nag. 316.**

———No equitable construction of the statute is permitted for the purpose of imposing tax upon the subject. It is not by omission but by an express provision that a document can be charged with Court-fee. *Partington* v. *Attorney-General*, 38 L.J. Ex. 205, *Foll.* (*Jwala Prasad, J.*). DAMODAR PRASAD *v.* MASUDAN SINGH. **105 I.C. 108= 9 P.L.T. 19=A.I.R. 1928 Pat. 85.**

———Per *Fawcett, J.*—Fiscal statutes must be construed strictly. 8 Cal. 214, *Rel. on*. (*Fawcett and Patkar, JJ.*). EMPEROR *v.* KADARBHAI USUFALLI. **103 I.C. 593=51 Bom. 896= 28 Cr. L.J. 705=29 Bom. L.R. 987= 8 A.I. Cr. R. 346=A.I.R. 1927 Bom. 483.**

———Fiscal Acts should be construed strictly against the Government. (*Sulaiman and Boys, JJ.*). CHUNNI LAL *v.* SHEO CHARAN. **89 I. C. 122=47 All. 756=23 A.L.J. 725= 6 L.R.A. Civ. 362=A.I.R. 1925 All. 787.**

———*Fiscal statutes must be construed strictly.*

It is a well settled rule of law that charges upon the subject must be imposed by clear and unambiguous language because they operate in some degree as penalties. Therefore statutes imposing pecuniary burden must be construed strictly. (*Raymond and Kennedy, A.J.Cs.*). SECRETARY OF STATE *v.* SETH KHEMCHAND THACOMAL. **78 I.C. 438=18 S.L.R. 9=A.I.R. 1925 Sind 67.**

INTERPRETATION OF STATUTES—Fiscal Act —Strict construction.

———Statutes which impose pecuniary burdens are subject to the rule of strict construction and all charges upon the subject must be imposed in clear and unambiguous terms, as they tend to operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. (*Mookerjee and Chotzner, JJ.*). THADDENS S. NAHAPIER *v.* SECRETARY OF STATE
81 I.C. 751=39 C.L.J. 209=A.I.R. 1924 Cal. 987.

———Although provisions in fiscal statutes are not to be so construed as to furnish a chance of escape and a means of evasion, a fiscal statute must be strictly construed and liability or additional liability cannot be imposed on the subject except by clear and unambiguous terms. (*Mookerjee and Cuming, JJ.*). NANDI RAM *v.* JOGENDRA CHANDRA DUTTA. **82 I.C. 297=28 C.W.N. 403= 39 C.L.J. 222=A.I.R. 1924 Cal. 881.**

———The principle of all fiscal legislation is that if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. *Attorney General* v. *The Earl of Selborne*, (1902) 1 K. B. 388, *Foll.* (*Das and Ross, JJ.*). DEPUTY COMMISSIONER, SINGHBHUM *v.* JAGADISH CHANDRA DEO DHABAL DEB.
62 I.C. 513=2 P. L.T. 683=6 P.L.J. 411= A.I.R. 1921 Pat. 206.

—Fiscal Act—Surplusage.

———Per *Mukerji, J.*—Unless and until the language used in a statute makes the meaning entirely insensible every word used must be given its plain meaning especially in a Fiscal Act. It cannot be said that any word might have been used unnecessarily as a mere tautology or as "harmless words." (*Boys, Kendall and Young, JJ., on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1= 1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).**

—General and special Acts.

———*Two special Acts—Construction—General provisions in special Act—Whether repeals earlier special Act by implication.*

The general rule is that the later statute repeals the earlier statute if both are equally general. But if the later Act is a general Act and the earlier Act a special one, the earlier Act is generally not repealed by the later Act. Where there is a conflict between two special Acts each of which may be described as special in a particular sense the rule is that the Court should lean against repeal of the earlier Act by implication and unless it is absolutely clear that the operation of the first Act has to be curtailed by the later Act the previous Act should be held to continue in force even though the later Act may be regarded as special in some other sense. Rule applied with reference to construction of R. 56 of the Vizagapatam Agency Rules and S. 191 of the Madras Estates Land Act,

Held, that assuming that the Estates Land Act was a special Act, S. 191 of that Act contained a general provision and cannot be taken to repeal

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R. 56 of the Agency Rules by implication. (*Ramesam, J.*). THAMMAYYA *v.* SRI RAJAH DUGARAJ BAHADUR GARU. **1930 M. W. N. 475. A. I. R. 1930 Mad. 963.**

———In the case of general and special Acts, rule of construction is that repeal of special Act by general Act by implication will not be admitted if the two Acts can be reconciled and can stand together. (*Das and Ross, JJ.*). HASAN IMAM *v.* BRAHMDEO SINGH. **A. I. R. 1930 Pat. 301.**

———Where the legislature has in a special Act laid down particular conditions for the exercise of a power by the Court, the Court is not justified in disregarding those conditions and holding by reference to a general Act that it has powers beyond those given by the special Act. (*Heald and Otter, JJ.*). CHETTYAR V. E. A. FIRM *v.* COMMR. OF INCOME-TAX. **121 I.C. 769= 7 Rang. 581=A.I.R. 1930 Rang. 37.**

———*General statute cannot be impliedly repealed by local or special statute.*

A general statute cannot be treated as impliedly repealed by local or special statute because ordinarily the general law of the country is not altered by special legislation made without particular reference to it. A statute must necessarily be repealed by express legislation. Repeal by implication, which whenever it occurs is the consequence of inconsistent legislation, should never be favoured and judicial interpretation should be directed to avoiding consequences which are inconvenient and unjust if this can be done without violence to the spirit or language of a statute. (*Kinkhede, A.J.C.*). RAMANATH *v.* HAZARILAL.
25 N.L.R. 19=A. I. R. 1929 Nag. 246.

———A general Act is to be so construed as not to repeal a particular one, that is one directed towards a special object. A general later law does not abrogate a special one by mere implication. *Mary Seward* v. *Vera Cruz*, (1884) 10 A.C. 59. *Rel. on.* (*Prideaux, Kinkhede and Kolhatkar, A.J.Cs.*). GOLA *v.* EMPEROR. **114 I.C. 273=24 N.L.R. 158= 30 Cr. L.J. 258=12 A.I Cr R. 177= A.I.R. 1929 Nag. 17 (F.B.).**

———Where a special enactment deals with a particular thing or class of things a more general enactment, even though its terms would cover the particular thing or class of things, is excluded from application thereto by reason of the particular enactment. (*Ashworth, J.*). KOKA RAM *v.* SALIG.
114 I.C. 900=9 L.R.A. Rev. 186= A. I. R. 1928 All. 536.

———*Subsequent general statute may not repeal a prior special Act—Subsequent Act making no reference to earlier—Two should be construed together—Each should be construed according to its own terms.*

Per *Ghose, J.*—Where two Acts are inconsistent or repugnant, the latest expression of the will of the Legislature must prevail, provided the Court is satisfied that the repeal of the prior enactment must flow from necessary implication. From this rule, it follows that if one statute enacts something in general terms, and afterwards another statute is passed on the same subject, the subsequent statute will usually be considered as repealing by implication the former statute. In certain cases again special Acts have been held impliedly, to repeal a prior general Act. But in each case it depends on the particular terms of the statute in question. Again prior statutes are not to be held to be repealed by implication by subsequent statute if the two are

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repugnant in cases where the prior enactment is special and the subsequent enactment is general but the guiding rule is that each enactment must be construed according to its own subject matter and its own terms. A general statute may repeal a particular statute if the subject-matter of two legislations is one and the same. But where the Legislature passes a later Act without reference to an earlier Act and that earlier Act is one which has been in force for a long time and is therefore well known, the two Acts should be construed consistently if it is possible to do so. (*C. C. Ghose, Buckland, Suhrawardy, Panton and Mukerji, JJ.*). KING EMPEROR *v.* RAJAH PROBHAT CHANDRA. **102 I.C. 845=54 Cal. 863=45 C. L. J. 323=31 C. W. N. 765=A. I. R. 1927 Cal. 432 (F.B.).**

———Where there is an inconsistency between a general Act and a special Act, the provisions of the latter must override the former. (*Waller, J.*). CORPORATION OF MADRAS *v.* MADRAS ELECTRIC TRAMWAYS LTD. **101 I.C. 396=A.I.R. 1927 Mad. 522=52 M.L.J. 474.**

———*General words in later Act do not take away privilege specially conferred by earlier Acts.*

Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation it cannot be held that earlier and special legislation is, indirectly repealed, altered or derogated from, merely by force of such general words without any indication of any particular intention. (*Cuming and Page, JJ.*). EMPEROR *v.* INDU BHUSAN SARKAR. **95 I.C. 539=53 Cal. 524=30 C.W.N. 524=44 C.L.J. 427=A.I.R. 1926 Cal. 819.**

———*General statute does not repeal particular one.*

It is a cardinal rule of interpretation that a general statute is to be construed as not repealing a particular one, that is, one directed to a special object or a special class of objects. (*Shadi Lal, C.J. and Addison, J.*). RANNUN *v.* KING-EMPEROR. **94 I.C. 901=7 Lah. 84=27 Cr.L.J. 709=27 P.L.R. 583=A.I.R. 1926 Lah. 88.**

———To what extent the provisions of a special enactment override the provisions of a general enactment must depend upon the language of the special Act. (*Mullick, Ag.C.J. and Jwala Prasad, J.*). JAGWA DHANUK *v.* EMPEROR. **93 I.C. 884=5 Pat. 63=7 P.L.T. 396=27 Cr.L.J. 484=A. I. R. 1926 Pat. 232.**

———*Special Acts should be applied unless general one is intended to override special one.*

Where the rights of the parties have been expressly laid down in an Act specifically appropriate to classes of transactions exactly similar to those which are the subject of enquiry, it must be clearly made out that a general Act governs the case which is applicable not to the particular class of transactions or persons before the Court but to a body of persons amongst whom the parties may be brought and it must be very clearly shown that such general Act is intended to override the special Act. (*Tyabji, A.J.C.*). MUNICIPALITY OF KARACHI *v.* KARACHI ELECTRIC SUPPLY CORPORATION, LTD. **93 I.C. 226=A.I.R. 1926 Sind 118.**

———Per *Rankin, J.*—Where the Legislature has given its attention to a separate subject, and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be

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construed in that respect according to its own subject-matter and its own terms." (1898) A.C. 748-754, *Rel. on.* (*Rankin and Page, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR **84 I.C. 31=51 Cal. 504=A.I.R. 1924 Cal. 668.**

———A General Act is to be construed as not repealing a particular one which is directed towards a special object or a special class of objects. (*Kumaraswami Sastri, J.*). *In the matter of* T. A. CHIDAMBARA CHETTY. **61 I.C. 991=45 Mad. 31=13 M.L.W. 374=A.I.R. 1922 Mad. 143.**

———*General statute should yield to particular statute.*

The rule of interpretation of statutes is that a general statute must yield to a special Act applicable to a particular locality. A general statute is presumed to have only general cases in view, and not particular cases which has been already otherwise provided for by Special or Local Act. (*Shadi Lal, C. J. and Abdul Qadir, JJ.*). SIHA SINGH *v.* SUNDUR SINGH. **3 L.L.J. 522=A I.R. 1921 Lah. 280.**

—General and special provisions.

———When there is a section for dealing with a particular form of crime, it requires strong words to show that any section of more general application was intended to deal also with that particular crime. (*Beaumont, C. J., Madgavkar and Baker, JJ.*). JIVANDAS SAVCHAND, *In re.* **A.I R. 1930 Bom. 490 (F.B.).**

Per *Carr, J.*—Where there are two provisions, one general and one dealing expressly with a particular case, the special provision should be followed, even if in its absence the general provision might be applicable. (*Carr and Cunliffe, JJ. on difference Das, J.*). KO MAUNG GYA *v.* DANE LOK. **112 I.C. 427=6 Rang. 474=A.I.R. 1928 Rang. 249.**

———Where there are two provisions one specific and the other general, the specific provision ought to be applied in preference to the general one. (*Mukerji, J.*). RAM NATH *v.* EMPEROR. **84 I.C. 714=47 All. 268=22 A.L.J. 1106=26 Cr.L.J. 362=6 L.R.A. Cr. 25=A.I.R. 1925 All. 230.**

———Per *Fawcett, J.*—Wherever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former; the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply. The general principle is that due effect should be given to every part of a statute. (*Macleod, C.J., Shah and Fawcett, JJ.*). MULJI TRIBHOVAN SEVAK *v.* DAKOR MUNICIPALITY. **69 I.C. 19=45 Bom. 663=25 Bom. L.R. 178=A.I.R. 1922 Bom. 247 (F B.).**

———A particular provision may control or limit a general provision but the intention to limit the operation of the general provision must be clear. (*Shah and Crump, JJ.*). G. S. FERNANDEZ *v.* EMPEROR. **59 I.C. 129=45 Bom. 672=22 Cr.L.J. 17=A.I.R. 1921 Bom. 374.**

———Where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them. If this is impossible, the later will generally override the earlier, but a particular enactment, whenever found, must be construed strictly as against a general provision. (*Mookerjee, A.C.J. and Fletcher, J.*). AMARCHAND ROY *v.* PRASANNA DASI. **61 I.C. 629=25 C.W.N. 9=A.I.R. 1921 Cal. 603.**

———Provisions of law which are exceptions to the general law of evidence must be applied only to

INTERPRETATION OF STATUTES—Hardship.

those cases to which it is confined by the Legislature. (*Maung Kin, J.*). EMPEROR *v.* PYU ZIN.
62 I.C. 188=22 Cr. L.J. 492=13 Bur. L.T. 157.

—Hardship.

———*Principle explained.*

When the words of enactment are clear and imperative, considerations of inconvenience or hardship have no place in its application to circumstances falling within the words. But where there is no express indication in an enactment as to whether the powers given by it were meant to be used in particular circumstances, the fact that great hardship and inconvenience would result thereby is a reason for so construing the words as to meet all attempts to abuse the power, either by exercising them in cases not intended by the statute, or by refusing to exercise them when the occasion for their exercise has arisen. Then again statutes which impose pecuniary burdens are subject to the rule of strict construction and in a case of reasonable doubt the construction most beneficial to the subject is to be adopted though the principle of strict construction is less applicable where powers are conferred on public representative bodies for essentially public purposes. (*Waller and Pandalai, JJ*). GULAM MD. ALI *v.* CORPORATION OF MADRAS.
122 I.C. 360=52 Mad. 866=30 M.L.W. 261=
A.I.R. 1930 Mad. 200=57 M.L.J. 536.

———It is for the legislature to provide a remedy for cases of hardship, if any. They duty of the Courts is to enforce the law as the find it and they cannot allow their interpretation of the law to be influenced by any extraneous circumstances. (*Shadi Lal, C. J., Broadway, Fforde, Zafar Ali and Jai Lal, JJ.*). DUNI CHAND *v.* COMMISSIONER OF INCOME-TAX. 117 I.C. 69=10 Lah. 596=
30 P.L.R. 613=A.I.R. 1929 Lah. 593 (F.B.).

———Where words in a statute are clear and unambiguous, all that the Court has to do is to construe the words as it finds them in their ordinary and natural meaning, and where they have acquired a technical meaning, to give it to them, even though the result of such construction may lead to inconvenience or where any other construction would be less arbitrary. (*Rangnekar, J.*). OMAR TYAB *v.* ISMAIL TYAB. 108 I.C. 495=
30 Bom. L.R. 177=A.I.R. 1928 Bom. 69.

———*Municipal Law.*

Municipalities are statutory bodies and they are created by a statute for the benefit of the public; and it is not proper that any provision of law relating to them should be so construed as to work hardship or injustice. The provisions of Municipal law prescribing periods of limitation under it, should not be understood as if they were articles of the Limitation Act. (*Devadoss, J.*). MUNICIPAL COUNCIL, CHIDAMBARAM *v.* SUBRAMANIA IYER. 112 I.C. 210=28 M.L.W. 501=
1928 M.W.N. 784=1 M. Cr. C. 315=
29 Cr. L.J. 994=11 A.I. Cr. R. 263=
A.I.R. 1928 Mad. 1157=55 M.L.J. 495.

———It is a maxim in the construction of statutes that a statutory provision should be so construed as not to lead to inconvenience. (*Chari, J.*). MANJEEBHAI KHATAW AND CO., *v.* JAMAL BROTHERS AND CO. LTD. 105 I.C. 534=
5 Rang. 483=A.I.R. 1927 Rang. 306.

———It is not for a Court of Justice to refuse to observe the provisions of a statute because hardship will result in consequence. The Court has merely to interpret and apply the law as laid down by the Legislature. (*Robinson, C. J. and Mac-Gregor, J.*). P.R.P. L. CHETTY FIRM *v.* G. LON POW.
68 I.C. 924=11 L.B.R. 363=1 Bur. L.J. 226=
A.I.R. 1923 Rang. 103.

INTERPRETATION OF STATUTES—Harmonious construction—Avoidance of inconsistency.

———*Consideration of, is not the province of Courts.*

Per *Madgavkar, A. J. C.*—The province of the Courts is confined to ascertaining the law and to applying it to the facts of each particular case: it is not for the Courts to judge of the consequences, good or bad or indifferent, of the application of the law, or the hardship resulting in any case or any class of cases. These are matters proper for the Legislature. (*Kent, A. J. C. on difference between Kincaid, J.C. and Madgavkar, A.J.C.*). SODAWATERWALA *v.* MESSRS. VOLKART BROS. 82 I.C. 81=
A.I.R. 1923 Sind 25.

—Harmonious construction—Avoidance of inconsistency.

———It is a well-settled canon of construction that the various sections of an enactment should be so construed as not to render a particular provision in the enactment inconsistent with another provision of the same enactment, and the only possible way to so interpret the provision of S. 44 of the Act as not to be inconsistent with the provisions of S. 273 of the Act is to hold that all that was intended by S. 44 of the Act was to give an option to the landholder to file a suit for ejectment against a trespasser either in the civil or in the revenue Court. (*Iqbal Ahmad, J.*). DEBI SAHAI *v.* DAULAT. 100 I.C. 471=8 L.R.A. Rev. 104=
A.I.R. 1927 All. 346.

———*C. P. Code, O.* 43, *R.* 1 (*w*) *and O.* 47, *R.* 7.

The two provisions of the code are not mutually inconsistent but are really complementary of each other. The one gives the right to appeal and the other defines the extent to which that right can be exercised and according to the well established rule of construction that where two co-ordinate provisions in an enactment are apparently inconsistent an effort be made to reconcile them. The two must be read together and taken together and thus they do not give an unlimited right of appeal. And even assuming that the rule that if two sections of a statute are repugnant the last must prevail and override the earlier applies O. 47, R. 7 should be held to control and restrict the earlier rule. *Ebbs v. Boulnois*, L. R. 10 Ch. 479 and *Wood* v. *Riley*, L.R. 3 C. P. 26, *Foll.*; A.I.R. 1926 Bom. 121, *Diss. from*; 11 P.R. 1913 *and cases of other High Courts referred.* (*Tek Chand, J.*). SIKANDAR KHAN *v.* BALAND KHAN. 101 I.C. 606=28 Cr.L.J. 473=
A.I.R. 1927 Lah. 435.

———It is a well-known canon of construction that the Courts should construe the provisions of legislative enactments in such a way as not to impute inconsistency to the Legislature. Where the provisions are reconcilable, the Courts should try to reconcile. They should not attach importance to a single phrase or clause in one section and overlook the clear provision in other sections which are of a general character. (*Devadoss and Sundaram Chetty, JJ.*). (RACHAMADUGA) RANGIAH *v.* APPAJI RAO. 99 I.C. 241=50 Mad. 300=
1926 M.L.W. 972=26 M.L.W. 865=
A.I.R. 1927 Mad. 163=51 M.L.J. 719.

———In interpreting different provisions of a statute every attempt should be made to avoid inconsistency in the meaning. (*Findlay, J. C.*). ATMARAM *v.* GANPATI. 99 I.C. 635=
23 N.L.R. 20=A.I.R. 1927 Nag. 132.

INTERPRETATION OF STATUTES—Harmonious construction—Avoidance of inconsistency.

———It is one of the cardinal principles of interpretation of Statutes that the construction which produces the greatest harmony and the least inconsistency between different parts of the same Statute should prevail. *Attorney General* v. *Sillem*, (1863) 33 L. J. Ex. 92, *Rel. on.* (*Percival, J. C., Rupchand Bilaram, A. J. Cs*). MAHOMED ABDUL MAJID *v.* EMPEROR. **101 I.C. 471= 28 Cr. L.J. 439=8 A.I. Cr. R. 43= A.I.R. 1927 Sind 173.**

———*Generally words must be construed in their grammatical sense—Reasonableness or otherwise is material only when statute is not clear.*

A section of statute should, if possible, be construed so that there may be no repugnancy or inconsistency between its different portions or members. (*Lord Atkinson.*) CORPORATION OF THE CITY OF VICTORIA *v.* BISHOP OF VANCOUVER ISLAND. **A.I.R. 1921 P.C. 240 (P.C.).**

—Harmonious construction—Same meaning.

———Where similar words have been used in two different sections of the same Act, the legislature must be presumed to have used the words in the two sections in the same sense unless there be something in the context to indicate the contrary. (*Sen and Naimatullah, JJ.*). BALBADAR SINGH *v.* LAKSHMI BAI. **1930 A. L. J. 623= A. I. R. 1930 All. 669.**

———Same meaning should be given to same word in different parts of enactment. (*Sulaiman, Ag.C.J., Mukerji and King, JJ.*). RIAZUDDIN *v.* MT. PHULA DEVI. **1929 A.L.J. 1212= A. I. R. 1929 All. 977 (F.B.).**

———Same word in Cognate Acts bears the same sense. (*Rangnekar, J.*). OMAR TYAB *v.* ISMAIL TYAB. **108 I.C. 495=30 Bom. L. R. 177= A.I.R. 1928 Bom. 69.**

———The same words are to be *prima facie* construed in the same sense in different parts of the same statute. *Spencer* v. *Metropolitan Board of Works*, 22 Ch. D. 142, *Rel. on.* (*Shadi Lal, C.J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* HAKHA SINGH. **111 I.C. 175= 9 Lah. 701=10 L.L.J. 413=30 P.L.R. 60= A.I.R. 1928 Lah. 609 (F.B.).**

———Word occurring more than once in a statute must be given the same meaning unless expressed to the contrary. 13 All 224, *Ref.* (*Macleod, C.J., Shah and Coyajee, JJ. afterwards Fawcett and Madgavkar, JJ.*). HARKISANDAS *v.* BAI DHANU. **98 I.C. 634=50 Bom. 866=28 Bom. L.R. 954= A.I.R. 1926 Bom. 497 (F.B.).**

—Harmonious construction—Sections in same statute.

———Where two co-ordinate sections are apparently inconsistent an effort must be made to reconcile them. (*Mirza and Patkar, JJ.*). RATANSI HIRJI *v.* EMPEROR. **120 I.C. 356=53 Bom. 627= 31 Bom. L.R. 581=31 Cr. L.J. 103= 1929 Cr.C. 412=A.I.R. 1929 Bom. 274.**

———*Rupchand Bilaram, A.J.C.*—It is the duty of the Court to construe the provisions of the statute in such a manner as not to allow one provision to stultify the other, and if possible the provisions in one section should be read as a qualification of the other, so that some effect furthering the intention of the legislature may be given to each. 1 Bom.67 and 26 Cal. 130, *Rel. on.* (*Percival, J.C., Aston, Rupchand Bilaram and Desouza, A.J. Cs.*). EMPEROR *v.* JIAUD. **111 I.C. 865= 22 S.L.R. 349=29 Cr.L.J. 945= A.I.R. 1928 Sind 149 (F.B.).**

INTERPRETATION OF STATUTES—Harmonious construction—Whole statute.

———According to the well-established rule of construction that where two co-ordinate provisions in an enactment are apparently inconsistent, an effort be made to reconcile them ; the two must be read together and taken together and thus they do not give an unlimited right of appeal. And even assuming that the rule that if " if two sections of a statute are repugnant, the last must prevail and override to control and restrict the earlier rule. *Ebbs* v. *Boulnois* L.R. 10 Ch. 479 and *Wood* v. *Reily*, (L.R. 3 C.P. 26, *Foll.*; A.I.R. 1926 Bom. 121, *Diss. from* ; 11 P. R. 1913 *and cases of other High Courts referred.* (*Tek Chand, J.*). SIKANDAR KHAN *v.* BALAND KHAN. **8 Lah. 617= 29 P.L.R. 81=A.I.R. 1927 Lah. 435.**

———One section cannot be used to defeat another section unless it is impossible to effect a reconciliation betweee them. (*Sir Lawrence Jenkins.*) MOHAMMAD SHERKHAN *v.* RAJA SETH SWAMI SAYAL. **66 I.C. 853=44 All. 185= 49 I.A. 60=9. O.L.J. 81=25 O.C. 8= 20 A.L.J. 476=35 C.L.J. 468=1922 M.W.N. 378= 24 Bom. L.R. 695=30 M.L.T. 220=28 C.W.N. 79= A.I.R. 1922 P.C. 17=42 M.L.J. 584 (P.C.).**

—Harmonious construction—Two statutes.

———The language of every enactment must be so construed, as far as possible, as to be consistent with every other which it does not in express terms modify or repeal. (*Mirza and Patkar, JJ.*). RATANSI MIRJI *v.* EMPEROR. **120 I.C. 356= 53 Bom. 627=31 Bom.L.R 581= 31 Cr.L.J. 103= 1929 Cr. C. 41= A.I.R. 1929 Bom. 274.**

———The Court should struggle against repugnancy and should construe an enactment as far as possible in accordance with the terms of the other statute which it does not expressly modify or repeal. (*Shadi Lal, C.J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH. **111 I.C. 175=9 Lah. 701= 10 L.L.J. 413=30 P.L.R. 60= A. I. R. 1928 Lah. 609 (F.B.).**

———The language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not expressly modify or repeal. (*Shadi Lal, C.J. and Le Rossignol, J.*). WADHAVA MAL *v.* KARIM BAKHSH. **86 I.C. 844=6 Lah. 276= 26 P.L.R. 141=A.I.R. 1925 Lah. 415.**

—Harmonious construction—Whole statute.

———Per *Boys, J.*—Any section in any Act must be interpreted in the light of the rest of the Act. (*Boys and Ashworth, JJ.*). KALIKA PRASAD *v.* AJUDHIA PRASAD. **121 I.C. 211= 1929 A.L.J. 448=51 All. 780=A.I.R. 1929 All. 421.**

———It is a settled principle of construction that an Act must be construed, if possible, consistently with itself. (*Coutts-Trotter, C.J. and Walsh, J.*). SAMBAMURTHI AYYAR *v.* RAMAKRISHNA AIYAR. **114 I.C. 847=52 Mad. 337=29 M.L.W. 60= A. I. R. 1929 Mad. 43=55 M.L.J. 837.**

———Parts of an Act must be read together, so as to reconcile them as far as possible. (*Fawcett and Patkar, JJ.*). RATNABAI KARSETJI *v.* NARAYANDAS PRAYAGDAS. **104 I.C. 794=51 Bom. 771= 29 Bom. L.R. 900= A.I.R. 1927 Bom. 474.**

———*Every clause should be construed with reference to its context.*

Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute. [1896] A.C. 735, *Ref.*

INTERPRETATION OF STATUTES—Harmonious construction—whole statutes.

The true meaning of any passage is to be found not merely in the words of that passage but in comparing it with every part of the law, ascertaining also the circumstances with reference to which the words were used, and what was the object appearing from these circumstances, which the legislature had in view. (*Marten, Pratt and Coyajee, JJ.*). GANPAT CHANDRABHAN *v.* TULSHI MARD RAMCHANDRA. **81 I.C. 284=48 Bom. 214=26 Bom. L. R. 118=A. I. R. 1924 Bom. 219 (F. B.).**

———Per *Devadoss, J.*—It is a well-known canon of construction that where a reasonable construction could reconcile the provisions of an enactment, that construction should be adopted. (*Schwabe, C.J., Phillips, Devadoss, Venkatasubba Rao and Wallace, JJ.*). VARISAI ROWTHER *v.* EMPEROR. **73 I.C 163=1923 M.W.N. 477=24 Cr. L.J. 547=46 Mad. 449=17 M.L.W. 722=32 M.L.T. 385=A.I.R. 1923 Mad. 609=44 M.L.J. 567 (F.B.).**

———A section of a statute must be interpreted so as to give effect to all its provisions if it is reasonably possible to do so. (*Robinson, C.J. and MacGregor, J.*). MAUNG THWE *v.* A. L. A. R. CHETTY. FIRM. **68 I.C. 690=11 L.B.R. 335=1 Bur. L.J. 62=A.I.R. 1923 Rang. 71.**

—Headings.

———*Headings have the force of a preamble.*

Per *Ashworth, J.*—It is now settled law that headings prefixed in the Bill passed by the legislature have the force of words used in the preamble of an Act and may be used as "a key to open the minds of the makers of the Act," and in this respect are unlike marginal headings, which have no force for the purpose of interpretation. (*Walsh and Ashworth, JJ.*). DEBI DAS *v.* RUPCHAND. **102 I.C. 792=49 All. 903=25 A.L.J. 609=A.I.R. 1927 All. 593.**

———A heading preceding any section is no doubt meant to express the intention of the Legislature, though it is at least open to question whether the words themselves have any operative effect. (*Dalal and Boys, JJ.*). BALDEO KURMI *v.* KASHI CHAMAR. **92 I.C. 995=24 A.L.J. 337=A.I.R. 1926 All. 312.**

———Though the headings and marginal notes should not be held to govern the clear text of a section, yet they can be taken as an indication of what the Legisiature meant. (*Devadoss and Waller, JJ.*). NARAYANASWAMI *v.* RANGASWAMI. **95 I.C. 731=49 Mad. 716=24 M.L.W. 235=A.I.R. 1926 Mad. 749=50 M.L.J. 547.**

———In construing a statute headings should be ignored and it is only the sections which the Courts are called upon to interpret as being the substantive part of the enactment. (*Sulaiman and Boys, JJ.*). CHUNNI LAL *v.* SHEO CHARAN. **89 I.C. 122=47 All. 756=23 A.L.J. 725=6 L.R.A. Civ. 362=A.I.R. 1925 All. 787.**

———Headings cannot militate against clear language of sections. (*Wallace and Madhavan Nair, JJ.*). KALYANJI *v.* RAMDEEN. **86 I.C. 449=48 Mad. 395=21 M.L.W. 664=26 Cr. L.J. 801=A.I.R. 1925 Mad. 609=48 M. L. J. 290.**

—History of Legislation.

———*When can be looked into.*

There is a *prima facie* presumption that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or, in other words beyond the immediate scope and object of the statute, and an intention to cut down or abolish existing rights must be clear and manifest, and for this purpose the previous history of the legislation may be looked into. A. I. R. 1928 P. C. 16, *Rel. on.* (*Percival, J. C., Rupchand and Wild, A. J. Cs.*). KHUDABUX *v.* PANJO. **A.I.R. 1930 Sind 265 (F.B.).**

———*Should not influence construction.*

The proper way to approach the construction of a statute which is intended to be a Code of law is in the first instance, to examine the language of the statute and ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with that view. *Bank of England* v. *Vagliano Bros.*, (1891) A. C. 107, *Foll.* (*Lort Williams, J.*). RAHIMBUX ASHAN KARIM *v.* CENTRAL BANK OF INDIA, LTD. **119 I. C 23=56 Cal. 367=A.I.R. 1929 Cal. 497.**

———*When should be looked into.*

It is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded ; but when it is contended that the Legislature intended by any particular amendment to make substantial changes in the pre-existing law, it is impossible to arrive at a conclusion without considering what the law was previously to the particular enactment and to see whether the words used in the statute can be taken to effect the change that is suggested as intended. (*Lord Sinha.*) ABDUR RAHIM *v.* SYED ABU MAHOMED BARKAT ALI SHAHA. **108 I.C. 361=55 Cal. 519=55 I.A. 96=9 P.L.T. 65=32 C. W. N. 482=27 M.L.W 339=26 A.L J. 464=30 Bom. L.R. 774=48 C. L.J. 55=1928 M.W.N. 926=A.I.R 1928 P.C. 16=54 M.L.J. 609 (P.C.).**

———To understand meaning of a section, history thereof should be considered. (*Dalal, J.*). MANNI LAL AWASTHI *v.* EMPEROR. **116 I.C. 804=51 All. 459=11 A.I Cr.R. 250=10 L.R A.Cr. 34=30 Cr.L.J. 694=1929 A.L.J. 93=A.I.R. 1928 All. 682.**

———The proper way of construing an Act is in the first place to examine closely the language of the Act itself, and not to start with inquiring how the law proviously stood, and then to base the construction of the Act on that: *Bank of England* v. *Vagliano Bros.* (1891) A. C. 107, *Foll.* (*Marten, C.J., Crump and Blackwell, JJ.*). GANPAT *v.* SOPANA. **107 I.C. 257=52 Bom. 88=30 Bom. L.R. 1=A I.R. 1928 Bom. 35.**

———Per *Tek Chand, J.*—Where there is a positive enactment of the Indian legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any considerations derived from the previous state of the law or of the English law upon which it may be founded. A. I. R. 1928 P. C. 2, *Foll.* (*Shadi Lal, C. J., Broadway and Tek Chand, JJ.*). HEM RAJ *v.* KRISHAN LAL. **111 I.C. 8=10 Lah. 106=29 P.L.R. 446=A.I.R. 1928 Lah. 361 (F.B.).**

———Per *Mukerji, J.*—Reference to the previous state of law would be permissible for the purpose of aiding in the construction of a new statute if

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any provision therein is of doubtful import. (*Chatterjee, Mukerji and Chotzner, JJ.*). ROGERS PRATT SHELLAC CO. *v.* SECY. OF STATE.
83 I.C. 273=40 C.L.J. 110=28 C.W.N. 1074=52 Cal. 1=A.I.R. 1925 Cal. 34 (F. B.).

———When the terms of an enactment are quite clear, it is not proper for the Courts to consider what the previous law on the subject was in order to interpret the existing law. (*Devadoss and Wallace, JJ.*). KOTHANDARAMA CHETTIAR *v.* ANNAMALAI PILLAI. **87 I.C. 399=1925 M.W.N. 169=48 Mad. 488=22 M.L.W. 103=A.I.R. 1925 Mad. 589=48 M.L.J. 406.**

———Per *Mookerjee, J.*—Though reference to the old law is not a valid mode of interpreting new law yet in cases of doubt, old law may be referred to. (*Walsh, Ryves and Mukerji, JJ.*). MUBARAK HUSSAIN *v.* AHMAD. **84 I.C. 749=22 A.L.J. 321=5 L.R.A. Civ. 201=46 All. 489=A.I.R. 1924 All. 328 (F.B.).**

———*Reference to—Improper.*

When a Court has to consider the interpretation which ought to be put upon a section of any statute the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute, intended to embody in a Code a particular branch of the law, is to be treated in this fashion its utility will be almost entirely destroyed and the very object with which it was enacted will be frustrated. (*Sanderson, C.J., Mookerji and Chatterjee, JJ.*). RUGHUMULL KHANDELWAL *v.* THE OFFICIAL ASSIGNEE OF CALCUTTA. **81 I.C. 17=28 C.W.N. 34=A.I.R. 1924 Cal. 424.**

———*Historical survey is permissible only if there is reasonable doubt.*

Per *Mookerjee, J.*—A historical survey is not permissible in the interpretation. Such reference to the history of Legislation can only be legitimately made, when reasonable doubt is entertained as to the true construction of a statute. The operation may, however be easily carried too far, and may, in the case of codifying statutes, lead to results which have been emphatically condemned in decisions of the highest authority. (1891) A.C. 107; (1892) A.C. 481; 23 I.A. 18, *Foll.*

The proper course is, in the first instance, to examine the language of the statute, to interpret it, to ask what is its natural meaning, uninfluenced by considerations derived from the previous state of the law. To begin with an examination of the previous state of the law on the point is to attack the problem at the wrong end; and it is grave error to force upon the plain language of the section of Indian Statute an interpretation which the words will not bear, on tho assumption of a supposed policy on the part of the legislature to adopt or to vary, as the case may be, the rules of the English law on the subject. 35 Cal. 34 (F.B.); 45 Cal. 388; 35 Cal. 701, *Foll.* (*Mookerjee, Richardson, C. C. Ghosh, Cuming and Page. JJ.*). EMPEROR *v.* BARENDRA KUMAR GHOSE. **81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Cr. L.J. 817=A.I.R. 1924 Cal. 257 (F.B.).**

———*When to be considered.*

INTERPRETATION OF STATUTES—Illustrations.

Per *Crump, J.*—Courts are bound to construe a section of an Act according to the plain meaning of the language unless either in the section itself, or in any part of the Act anything is found to modify, qualify or alter the statutory language even if absurdity or anomaly be the result of such interpretation. The proper course in interpreting an Act intended to codify a particular branch of law is first to examine its language for its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. (*Macleod, C.J., Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I.C. 654=25 Bom. L.R. 945=47 Bom. 843=A.I.R. 1923 Bom. 321 (F.B.).**

———Whether the statue codifies or amends the law, if its provisions are expressed in clear and unambiguous terms, resort should not be had to the pre-existing law, although such reference may be useful and legitimate where the provisions are of doubtful import or are couched in language which had previously acquired a technical meaning. (*Mookerjee, Ag. C. J., Fletcher, Chatterjee, Richardson and Ghose, JJ.*). NILAMANIKAR *v.* SATI PRASAD GARGA. **61 I.C. 82=48 Cal. 556=25 C.W.N. 230=A.I.R. 1921 Cal. 397 (F.B.).**

———*Reference only in cases of reasonable doubt.*

Reference to the history of legislation can only be legitimately made when reasonable doubt is entertained as to the construction of a statute; the operation may, however, be easily carried too far. The proper course is, in the first instance, to examine the language of the statute to interpret it, to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law; to begin with an examination of the previous state of the law on the point, is to attack the problem on the wrong end; and it is a grave error to force upon the plain language of the section an interpretation, which the words will not bear, on the assumption of a supposed policy on the part of the Legislature not to depart from the rules of the English law on the subject. (*Mookerjee, Ag.C.J., Fletcher, Richardson, Walmsley and Buckland, JJ.*). SATISH CHANDRA *v.* RAM DAYAL. **59 I. C. 143=48 Cal. 388=22 Cr.L.J. 31=A.I.R. 1921 Cal. 1.**

———The words of a statute must be given their natural meaning without reference to the previous law or previous history of legislation. (*Maung Kin, J.*). KYANKSEMA *v.* APARNA CHARAN. **62 I.C. 342=10 L.B.R. 326.**

—**Illustrations.**

———The power of the Court under S. 22 of the Specific Relief Act should not be cut down by looking into the illustrations attached to the section. (*Ananthakrishna Ayyar, J.*). KESAVABRAHMAM *v.* RAMACHANDRA RAJU. **1930 M.W.N. 638.**

———The general words of a section are not to be controlled by any limiting words that may be used in one or more of the illustrations. (*Dos and Allanson, JJ.*). BALMAKUND LAL *v.* MT. SOHANO KUERI. **119 I.C. 817=8 Pat. 183=10 P.L.T. 259=A.I.R. 1929 Pat. 164.**

———*Rejection.*

It is the duty of the Court to accept if that can be done, illustrations given under the section as being of value in the construction of the text

INTERPRETATION OF STATUTES—Illustrations.

and it would require a special case to warrant their rejection on the ground of repugnancy with the section. A.I.R. 1926 P. C. 242, *Foll.* (*B. B. Ghose and Mullick, JJ.*.) DURGA PRIYA CHOUDHURY *v.* DURGA PADA ROY. **109 I.C. 752=55 Cal. 154= A.I.R. 1928 Cal. 204.**

———*Illustrations are preferred to marginal notes.*

Illustrations do not stand on the same footing as marginal notes. Marginal notes may not be notes enacted by the legislature and they cannot be referred to for the purpose of construing the enactment; on the other hand illustrations are part and parcel of enactment. A.I.R. 1926 P.C. 242, *Ref.* (*Wazir Hasan and Raza, JJ.*). RAM LAL *v.* EMPEROR. **106 I.C. 213=3 Luck. 244= 1 L.C. 579=28 Cr. L.J. 1029=9 A.I.Cr.R. 217= A.I.R. 1928 Oudh 15.**

———*Ramesam, J.*—Illustrations to sections should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark*, (1916) 2 A. C. 575, *Foll.*

Per *Beasley, J.*—It is not that under every circumstance an illustration must be taken as part of the statute. But a Court should not lightly disregard the illustrations merely because they do not seem to be in accord with generally accepted ideas as to the law in other places. 35 M.L.J. 614 (P.C.) and *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark*, (1916) 2 A.C. 575, *Cons.* (*Coutts-Trotter, C. J, Ramesam and Beasley, JJ.*). RAMALINGA MUDALIAR *v.* S. R. MUTHUSWAMI AYYAR & SONS. **99 I.C. 609= 50 Mad. 94=24 M.L.W. 782=1926 M.W.N. 990= A.I.R. 1927 Mad. 99=51 M.L.J. 765 (F.B.).**

———An illustration only simplifies the law as enacted in the Code and cannot certainly be taken to restrict the sense of the section. (*Mukerji, J.*). CHHOTEY LAL *v.* EMPEROR. **85 I.C. 722= 26 Cr.L.J. 578=5 L.R.A.Cr. 199= A.I.R. 1925 All. 220.**

———Illustrations to sections are of very great value in interpreting them. (*Wazir Hasan, J.C. and Kendall, A.J.C.*). MRS. AGNES HARRIET DAVID *v.* MESSRS. MURRAY AND CO., LTD. **79 I.C. 1026= 11 O.L.J. 459=A.I.R. 1925 Oudh 24.**

———If the meaning of the enactment itself is doubtful, a reference to the illustration in order to clear the meaning, would be justified. Doubtful section justifies reference to illustration which otherwise must give way to section. But, if there by any conflict between the illustration and the main enactment, the illustration must give way to the latter. (*Mukerji, J.*). MT. SAJID-UN-NISSA *v.* SAYED HIDAYAT. **80 I.C. 896=22 A.L.J. 425= 5 L.R. A. Civ. 291=A. I. R. 1924 All. 748.**

———Illustrations given in the statute are of relevance and value in the construction of the text. A.I.R. 1916 P. C. 242; 43 I. A. 256 (P. C.), *Foll.* (*Macleod, C.J. and Coyajee, J.*). HALLAPPA KALLAPPA *v.* IRAURPA GIRIMALLAPPA. **67 I. C. 844= 46 Bom. 843=24 Bom. L.R. 406= A. I. R. 1922 Bom. 415.**

———An illustration is useful so far as it helps to furnish some indication of the presumable intention of the Legislature, and does not bind the Courts to place a meaning on the section which is inconsistent with its language. (*Mookerjee, Ag.C.J., Fletcher, Richardson, Walmsley and Buckland, JJ.*). SATISH CHANDRA *v.* RAM DAYAL. **59 I.C. 143=48 Cal. 388=22 Cr. L.J. 31= A.I.R. 1921 Cal. 1 (F.B.).**

INTERPRETATION OF STATUTES — Indian enactments.

—Indian enactments.

———In interpreting the statutory provisions of an Act of the Indian Legislature the Courts should examine the language of the Indian statute uninfluenced by any consideration derived from the English Law upon which it may be founded. A.I.R. 1928 P. C. 2, *Rel. on.* (*Tek Chand and Agha Haidar, JJ.*). SECY. OF STATE *v.* T. SARIN & Co. **120 I.C. 615=A.I.R. 1930 Lah. 364.**

———When construing an Indian Act, words should be given their widest possible meaning consistent with the context, unless there is something in the Act itself to indicate that they are intended to be used in the artificial and technical sense which they have acquired in English Law, or in any other restricted sense. (*Lort Williams, J.*). RAHIMBUX ASHAN KARIM *v.* CENTRAL BANK OF INDIA, LTD. **119 I.C. 23=56 Cal. 367=A.I.R. 1929 Cal. 497.**

———*Fforde, J.*—The construction of an Indian Statute depends entirely upon the meaning of the word therein used and its interpretation must not be influenced by any similar provision of the English Law. A. I. R. 1928 P. C. 2, *Foll.*; A.I.R 1928 Lah. 308. *Diss. from.* (*Shadi Lal, C.J., Harrison, Fforde, Tek Cahnd, Jai Lal, Dalip Singh and Agha Haidar, JJ.*). SUKHAR *v.* EMPEROR. **115 I.C. 6=10 Lah. 283=30 P.L.R. 197= 11 L.L.J. 159=30 Cr.L.J. 414= 12 A.I.Cr.R. 382=A.I.R. 1929 Lah. 344 (F.B.).**

———*Succession Act* (1925).

Where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law or of the English Law upon which it may be founded. These observations apply with peculiar force to testamentary cases which are governed by the Indian Succession Act of 1865 or the probate and Administration Act of 1881 (both now repealed by the Succession Act of 1925). 33 Cal. 116, (P. C.), *Ref.* (*Lord Sinha.* MT. RAMANANDI KUER *v.* MT. KALAWATI KUER. **107 I.C. 14= 47 C.L.J. 171=5 O.W.N. 96=30 Bom. L.R. 227= 32 C.W.N. 402=9 P.L.T. 97=55 I.A. 18= 7 Pat. 221=26 A.L.J. 385=1928 M.W.N. 282= 27 M.L.W. 782=A.I.R. 1928 P.C. 2= 54 M.L.J. 281 (P.C.).**

———When the point to be decided arises under the law of India reference to English Law is unnecessary. (*Lord Shaw.*) INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO. **80 I. C. 1033=5 L.R.P. 121= 26 Bom. L. R. 571=51 Cal. 304= 34 M.L.T. 53=51 I.A. 28=22 A.L.J. 173= 19 M.L.W. 277=1924 M.W.N. 158= 28 C.W.N. 302=A.I.R. 1924 P.C. 40 (P.C.).**

———*Indian Law is not invalid because it conflicts with English Law.*

A statute passed by the Indian Legislature which is intended to have local operation and binds persons so long as they are within the said territories, cannot be rendered invalid by the circumstances that the law which it has enacted is at variance with the English Law on the subject, or that the result ensuing from it may not be recognised by the English Courts. (*Shadi Lal, C.J., Scott Smith, Le Rossignol, Harrison and Fforde, JJ.*). LEE *v.* LEE. **81 I.C. 686=5 Lah 147= A.I.R. 1924 Lah 513. (F.B.).**

INTERPRETATION OF STATUTES—Intention of legislature.

—Intention of legislature.

——The intention of the legislature should be considered as mandatory if the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed. Principles applicable in determining whether a statute is directory or mandatory stated. (*Hasan, C. J. and Raza, J.*). DISTRICT BOARD, KHERI *v.* ABDUL MAJID KHAN.

7 O.W.N. 843=A.I.R. 1930 Oudh 434.

—Intention of legislature—General and particular intention.

——*Latter prevails whether contained in same or different statutes.*

It is a well-established principle that, where a general intention is expressed by the legislature, and also a particular intention, which is incompatible with the general one, the particular intention is considered an exception to the general one. This rule applies whether the general and special provisions are contained in the same statute or different statutes. *Churchill* v. *Crease*, 5 Bing. 180, *Rel. on.* (*Shadi Lal, C. J., Broadway, Harrison, Tek Chand and Dalip Singh, JJ.*). KHAN GUL *v.* LAKHA SINGH.

111 I.C. 175=9 Lah. 701=10 L.L.J. 413=30 P.L.R. 60=A.I.R. 1928 Lah. 609 (F.B.).

—Intention of legislature—Materials for finding.

——Where the language of a statute is plain in itself, it is not open to the interpreter to add to it or to deduct from it or even to consider whether the rule is likely to create hardships in particular cases if it be read in its ordinary sense. The words themselves alone must be considered to see the intention of the law given. (*Mears, C. J. and Mukerji, J.*). AZIZ AHMAD KHAN *v.* CHHOTE LAL.

109 I.C. 38=50 All. 569=26 A.L.J. 298=A.I.R. 1928 All. 241.

——It is a hazardous proceeding to refer to provisions which have been absolutely repealed, in order to ascertain what the Legislature meant to enact in their stead. (*Hallifax and Kotval, A.J.Cs. on difference Macnair, A.J.C.*). KABIRUDDIN *v.* KRISHNA RAO.

109 I.C. 449=A.I.R. 1928 Nag. 136.

——Per *Rupchand Bilaram, A. J. C.*—One of the cardinal rules of interpretation of statutes which is often times referred to as the golden rule is that the grammatical and ordinary sense of the words used by the legislature in expressing its intention is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the statute, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid absurdity, repugnance and inconsistencies. *Pocock* v. *Pickering*, (1852) 18 Q.B. 789, *Rel. on.* (*Percival, J.C., Aston, Rupchand Bilaram and Desouza, A.J.Cs.*). EMPEROR *v.* JIAND.

111 I.C. 865=22 S.L.R. 349=29 Cr.L.J. 945=A.I.R. 1928 Sind 149 (F.B.).

——Intention of an Act ought to be ascertained from the words used in the enactment. *Salomon* v. *Salomon*, (1897) A.C. 22, *Ref.* (*Fawcett and Patkar, JJ.*). EMPEROR *v.* KADARBHAI USAFALLI.

103 I. C. 593=51 Bom. 896=28 Cr. L. J. 705=8 A. I. Cr. R. 346=29 Bom. L.R. 987=A.I.R. 1927 Bom. 483.

——*Expressed in words of enactment.*

Intention of the Legislature is a common but very slippery phrase, which popularly understood, may signify anything from intention embodied in

INTERPRETATION OF STATUTES—Intention of legislature—Presumption.

positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law of Equity what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication. *Salomon* v. *Salomon & Co.*, (1897) A.C. 23, *Ref.* (*Fawcett and Madgavkar, JJ.*). GAMADIA *v.* EMPEROR.

91 I. C. 949=50 Bom. 34=27 Bom. L.R. 1405=27 Cr. L. J. 165=A. I. R. 1926 Bom. 57.

——It is an elementary principle of interpretation that the plain intention of the Legislature as expressed by the language employed is to be accepted and given effect to. If it admits of more than one construction the meaning is to be sought not in the wide sea of speculation and surmise, but from such conjectures as are drawn from the words alone or something contained in them. *Rerigate Rural District Council* v. *Sutton District Water Co.*, (1908) 99 L. T. 168, *Foll.* (*Findlay, Offg. C. J.*). VITHOBA *v.* SADASHEO.

92 I.C. 58=A. I. R. 1926 Nag. 253.

——*Plain meaning to be followed.*

A Court interpreting a statute has no right to scan the wisdom or policy of the Legislature, nor is it entitled to modify the plain meaning of the language used by the Legislature in order to avoid a conflict between two systems of law or undesirable consequences. The intention of the Legislature must be gathered from the language used in the statute. (*Shadi Lal, C. J. Scott-Smith, Le Rossignol, Harrison and Eforde, JJ.*). LEE *v.* LEE.

81 I.C. 686=5 Lah. 147=A.I.R. 1924 Lah. 513 (F.B.).

—Intention of legislature—Penal Act.

——*Paramount object is to ascertain legislative intent.*

Lobo, A.J.C.—An omission which the context shows with reasonable certainty to have been unintended may be supplied at least in enactments which are construed beneficially, as distinguished from strictly, but the tendency of modern decisions upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language, and criminal statutes with a more rational regard to the aim and intention of the legislature than formerly. The paramount object, in construing penal as well as other statutes is to ascertain the legislative intent. (*Percival, J.C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). EMPEROR *v.* NOOR MAHOMED.

103 I.C. 433=22 S.L.R. 157=9 A.I. Cr. R. 66=28 Cr.L.J 913=A.I.R. 1928 Sind 1 (F.B.).

—Intention of legislature—Presumption.

——It is more reasonable to hold that the Legislature expressed its intentions in an unguarded manner than that a meaning should be given to them which could not have been intended. Maxwell, 6th Ed., pp. 148 and 149, *Appr.* (*Sanderson, C.J. and Rankin, J.*). RAM CHUNDER SEROWGIE *v.* GOURI NATH DUTT.

97 I. C. 376=53 Cal. 492=A.I.R. 1926 Cal. 927.

——It is an established axiom of construction that though procedure may be regulated by the Act for the time being in force still the intention to take away a vested right without compensation or any saving is not to be imputed to the Legislature unless it be expressed in unequivocal

INTERPRETATION OF STATUTES—Intention of legislature—Principles.

terms. 41 C. 1125, *Foll.* (*Ross, J.*). GOKARAN PRASAD SINGH *v.* MALIK WARIS ALI.
71 I.C. 957=1 Pat. L.R. Civ. 285=A.I.R. 1924 Pat. 183.

—Intention of legislature—Principles.

———Per *Niamatullah, J.*—It is one of the elementary construction of statute that it should be so read as to avoid introducing what the legislature has not thought fit to introduce, and that a construction which has got that effect should be finally rejected. (*Boys, Kendall and Young, JJ. on difference between Mukerji and Niamatullah, JJ.*). *In the matter of* LAKHHMAN PRASAD BABU RAM OF CAWNPORE.
1930 A.L.J. 1=1930 Cr. C. 113=A.I.R. 1930 All. 49 (F.B.).

———*Whole statute should be looked to.*

Per *Boys, J.*—The Court must in each case apply the admitted rules of interpretation to the case in hand, not deviating from the literal sense of the words without sufficient reason, or more than is justified, yet not adherings lavishly to them where to do so would obviously defeat the intention which may be collected from the whole statute. *River Wear Commissioners* v. *Adamson*, 2 A.C. 743, *Foll.* (*Walsh, Daniels and Boys, JJ.*). RAM SAHAI *v.* DEBI DIN.
97 I.C. 455=49 All. 8=24 A.L.J. 945=A.I.R. 1926 All. 617 (F.B.).

—Intention of legislature—Relevancy of.

———Section 93 of the Ordinance of 1917 (Ceylon Trust Ordinance) is in the following terms :

"Where a person acquired property with notice that another person has entered into an existing contract affecting that property of which specific performance could be enforced the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract : Provided that in the case of a contract affecting immovable property such contract shall have been duly registered before such official."

Held, on a question as to the construction of the final words of the section that the prior registration of the contract was a condition of the application to it of the benefit conferred by the section. The proviso applied even though the contract was incapable of registration for want of proper description. The object in the mind of the legislature in imposing such a condition even if it could be known, would not affect the meaning of the words used. (*Lord Warrington of Clyffe.*) ROBERT HALL *v.* PELMADULLA VALLEY TEA AND RUBBER CO.
1930 M.W N. 211=A.I.R. 1930 P.C. 214 (P.C.).

———In construing an Act the question is not what may be supposed to have been intended, but what has been said. *Brophy* v. *Attorney-General of Manitoba*, (1895) A.C. 202, *Rel. on.* (*Lord Chancellor.*) HENRIETTA MUIR EDWARDS *v.* ATTORNEY-GENERAL OF CANADA.
31 M.L.W. 601=A.I.R. 1930 P.C. 120=58 M.L.J. 300 (P.C.).

———*B. T. Act*, 1885, *S.* 111-*B.*

The Court cannot modify the language of an enactment to meet the intention unless it is impossible for it to resist the conviction that the legislature could not possibly have intended what its words signify and that the modifications are mere corrections of careless language and really give the true meaning. Rule applied to construction of S. 111-B of the B. T. Act. (*Graham and Mitter, JJ.*). JOGENDRA NATH JANA *v.* BAIDYA NATH DAS.
34 C.W.N. 621.

———Per *Bhide, J.*—It is an elementary rule of the construction of a statute that the provisions of an enactment must be construed according to its plain

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wording and nothing can be imported into it merely on the basis of any speculation as to the intention of the legislature. (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR.
A. I. R. 1930 Lah. 781.

———Per *Wazir Hasan, Ag. C.J.*—When the terms of a statute are clear it is contrary to principles of interpretation to first conceive a statute and then to construe it in accordance with that intention. *Leader* v. *Duffy*, (1888) 12 A. C. 294 and *Bank of England* v. *V. Galiano Brothers*, (1891) A. C. 107, *Rel. on.* (*Wazir Hasan, Ag. C.J., Misra and Pullan, JJ.*). GAYA PRASAD *v.* S. FAIYAZ HUSSAIN.
5 Luck. 12=A.I.R. 1930 Oudh 274 (F.B.).

———*Words clear—Supposed intention of legislature need not be found out—Principle explained.*

Where there is a positive enactment of the Indian legislature the proper course is to examine the language of the statute and to ascertain its proper meaning, uninfluenced by any considerations derived from the previous state of the law or the English Law upon which it may be founded. Such an enactment cannot be qualified or neutralized by an indication of intention gathered from previous legislation on the subject and it is only where from the imperfection of the language used it is impossible to know what the intention of the legislature is, without inquiring further the circumstances with reference to which the words were used, these circumstances may be looked into. The office of Judges is *jus dicere* and not *jus dare* to interpret the law and not to make law or give law. It is their duty to abide by the words of the statute without attempting to reform it according to the supposed intention of the legislature, or exclude cases which fall within the express meaning of the rules in order to make the law reasonable. A. I. R. 1928 P.C. 2; 22 Cal. 788 (P.C.); 2 A.C. 734; A.I.R. 1927 P.C. 272; *A.E.* v. *Lockwood*, 9 M. & W. 395; *Rex* v. *Forde*, (1923) 2 K. B. 400; A.I.R. 1925 Sind 49 (F.B.) and 22 S.L.R. 171, *Ref.* (*Wild, J. C. and Rupchand, A. J. C.*). DAILY GAZETTE PRESS *v.* KARACHI MUNICIPALITY.
A.I.R. 1930 Sind 287.

———Where the language of a statute is clear it is not permissible to speculate as to the intention of the legislature. (*Broadway, J. on difference between Zafar Ali and Bhide, JJ.*). THIRAJ *v.* EMPEROR.
119 I.C. 265=30 Cr.L.J. 1019=1929 Cr.C. 205=11 Lah. 55=A.I.R. 1929 Lah. 641.

———The question, while interpreting a Code, is not what the Legislature intended, but what the Legislature has enacted. If the Code is defective it should be amended, but until that is done its plain reading cannot be set aside on assumptions, however well-founded, of what the Legislature intended. (*Jackson, J.*). GOVINDASAMI NAICKER *v.* PERUMAL RAJA.
99 I.C. 893=25 M.L W. 106=38 M.L T. 30=1927 M. W. N. 53=A.I.R. 1927 Mad. 327.

———*Provisions must supersede intention.*

When the Legislature passes an enactment, its provisions must be looked to rather than the intention of the Legislature as revealed in the discussion which preceded the passing of the Act. It is doubtful whether the meaning of definite and unambiguous words can be strained because their natural interpretation would seem to extend the alleged scope of the Act. (*Phillips, J.*). KESAVELU NAICKER *v.* CORPORATION OF MADRAS.
92 I.C. 1053=23 M.L.W. 233=A.I.R. 1926 Mad. 381=50 M.L.J. 301.

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———Per *Daniels, J.C.*—Where the language of an enactment is clear, it is unnecessary to enquire as to the intentions of the Legislature. (*Simpson, A.J.C., on difference between Daniels, J.C. and Dalal, A.J.C.*). ACHAL SINGH *v.* SHAGUNATH KUAR. **90 I.C. 470=29 O.C. 51=2 O.W.N. 713=12 O.L.J. 603=A. I. R. 1926 Oudh 2.**

———When once the intention of the legislature is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands according to the real sense of the words. (*Macleod, C.J. and Coyajee, J.*). EMPEROR *v.* THAKORDAS MOTIRAM. **89 I.C. 1031=26 Cr.L.J. 1463=27 Bom. L.R. 1023=A.I.R. 1925 Bom. 503.**

———The meaning of an Act is not to be interpreted with reference to what its framers intended to do, but with reference to the language which they did in fact employ. 72 I.C. 433, *Ref.* (*Broadway and Jai Lal, JJ.*). NUR MAHOMMAD *v.* LALCHAND.
90 I.C. 254= 7 L.L.J. 201=26 P.L.R. 501=A.I.R. 1925 Lah. 436.

———If the ordinary grammatical construction of a statute will result in a manifest contradiction of the apparent purpose of the Act, the rules of grammar are subordinated to the rules of common sense and the statute is construed with reference to the intention of the Legislature. (*Raymond and Aston, A.J. Cs.*). HYDERABAD MUNICIPALITY *v.* KAZI FAKHRUDIN. **81 I.C. 134=17 S.L.R. 273=25 Cr. L.J. 646=A.I.R. 1925 Sind 90.**

———Though the addition of a qualification or proviso is outside the ordinary canons of interpretation of a statute or other enactment like Cl. 12 of the Letters Patent, Bombay but if it is a modification of the language to meet the intention of the statute or at any rate what is said by authority binding upon the Court to have been its intention, then such modification is legal. (*Fawcett, J.*). K.C. SHRIMAN NEDAN RAJAH KOTAKAL *v.* THE MALBAR TIMBER CO., LTD.
80 I. C. 1049=26 Bom. L.R. 541=48 Bom. 625=A.I.R. 1924 Bom. 412.

———*Words admitting of one meaning—Courts should not speculate on the intention of the Legislature.*

When the words admit of but one meaning Court is not at liberty to speculate on the intention of the legislature and to construe them according to its own notions of what ought to have been enacted. Nothing could be more dangerous than to make such considerations the ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it. But the business of the interpreter is not to improve the statute; it is to expound it. The question for him is not what the legislature meant, but what its language means, *i.e.*, what the Act has said that it meant. To give a construction contrary to, or different from, that which the words import or can possibly import, is not to interpret law but to make it, and the Judges are to remember that their office is *Jus-dicere*, not *Jus-dare*. (*Shadi Lal, C.J. and Martineau, J.*). (BHAGAT) GOVIND DAS *v.* RUP KISHORE. **77 I.C. 409=4 Lah. 367=6 L.L.J. 25=A.I.R. 1924 Lah. 65.**

———*Reasons for a rule are not to be considered.*

Where the legislature enacts a general rule, its operation cannot be governed by such consideration as whether looking to the reasons which led the Legislature to enact it, it is necessary to apply the rule or not in particular cases. If it be held that a rule need not be applied if the mischief it sought to prevent is not likely to happen in a particular case the applicability of the rules would depend upon the result of a preliminary investigation as to the likelihood of the mischief. Where the rule is expressed in unambiguous language it must be applied in every case where the facts to which it is intended to apply exist. (*Kotwal, A.J.C.*). NARAINDAS *v.* KUNJILAL. **78 I.C. 1026=A.I.R. 1924 Nag. 162.**

INTERPRETATION OF STATUTES—Interpretation clause.

———If the language of a statute is clear and unambiguous, the Court must give effect to it and has no right to extend its operation in order to carry out the real or supposed intention of the legislature. It matters not, in such a case, what the consequences may be. Where by the use of clear and unequivocal language capable of only one meaning, anything is enacted by a legislature it must be enforced, even though it be absurd or mischievous. (*Shadi Lal, C.J. and Le Rossignol, J.*). PIARA SINGH *v.* MULA RAM. **75 I.C. 915=4 Lah. 323=5 L.L.J. 551=A.I.R. 1923 Lah. 655.**

———*Intention should be gathered from the words used.*

Whatever the instrument it must receive a construction according to the plain meaning of the words and sentences therein contained. It is arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption, to bend the language in favour of the assumption so made. (*Simpson and Wazir Hasan, A.J.Cs.*). MIRZA SADIQ HUSAIN *v.* MD. KARIM.
70 I.C. 53=25 O.C. 319=9 O.L.J. 456=A.I.R. 1922 Oudh 289.

———The Court must give the provisions of the Act their literal construction. It is arguing in a vicious circle to begin by assuming an intention apart from the language of the Act and having made the fallacious assumption to bend the language in favour of the assumption so made. (*Daniels and Lyle, A.J.Cs.*). NAGESHAR SAHAI *v.* MATA PRASAD. **69 I.C. 730=9 O.L.J. 235=25 O.C. 189=A.I.R 1922 Oudh 236.**

—Interpretation clause.

———When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning alone which must be given to it in interpreting a section of the Act, unless there be anything repugnant to the context. (*Tek Chand and Bhide, JJ.*). DIAL SINGH *v.* GURUDWARA SRI AKHAL TAKHT. **110 I.C. 164=9 Lah. 649=29 P. L.R. 733=A.I.R. 1928 Lah. 325.**

———To define a word by using the word to be defined by the definition offends against all canons of interpretation. (*Wallace and Srinivasa Aiyangar, JJ.*). MADURA DEVASTHANAM *v.* MADURA MUNICIPALITY. **110 I.C. 89=51 Mad. 301=27 M.L.W. 884=A. I. R. 1928 Mad. 569=54 M.L.J. 625.**

———*Transfer of Property Amending Act* (XXVII *of* 1926).

When any phrase or word or expression in an enactment is explained by the Legislature, the Act has to be applied with the authoritative explanation, for the very object of the authoritative explanation is to enable the Court to understand the Act in the light of the explanation and it cannot therefore be said that Act (XXVII of 1926)

INTERPRETATION OF STATUTES—Interpretation clause.

does not apply to pending actions. (*Devadoss, J.*). BALAJI SINGH, *v.* CHAKKA GANGAMMA.
99 I.C. 143=A.I.R. 1927 Mad. 85=51 M.L.J. 641.

———*Cr. P. Code* (*Amended* 1923), *S.* 4—*Words are not to be given all meanings expressed by legislature elsewhere.*

Section 4 of the Cr. P. Code is an interpretation clause or section. Its legitimate function is to declare that certain words and expressions used in the Code shall wherever permissible, not only have the meaning which is generally attached to such words and expressions but such meaning as is assigned to such words and expressions by the intrepretation clause. But by no means it is intended to annex to such words or expressions every incident which may seem to be attached to them by any other Act of the Legislature. 12 Cal. 430, *Ref.* (*Kennedy, J.C., Raymond, Aston, Rupchand Bilaram and Percival, A. J. Cs.*). WALTER JOHN BROOKS *v.* NEE BARWICK.
91 I.C. 99=A.I.R. 1926 Sind 58 (F.B.).

———*Coutts-Trotter, C. J.* (*Obiter*)—Where a statute gives a definition for an instrument, that definition may not be controlled by the understanding of the common people with regard to it. (*Coutts-Trotter, C. J. and Srinivasa Aiyangar, J.*). OFFICIAL ASSIGNEE, MADRAS *v.* BASUDEVADOS BADRINARAYAN. **88 I.C. 401=21 M.L.W. 538=48 Mad. 454=1925 M.W.N. 467=A.I.R. 1925 Mad. 723=48 M.L.J. 423 (F.B.).**

—Judgment statement in.

———Per *Sulaiman, Banerji and Sen, JJ.*—The legislature must be presumed to know the course of judicial decisions. (*Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND. **1930 A.L.J. 402=A.I.R. 1930 All. 225 (F.B.).**

—Jurisdiction.

———(Per *Mears, C.J, Boys and Young, JJ.*)—A jurisdiction existing in a Court can only be taken away by the use of precise and distinct words in a statute, or as some authorities have held, by necessary implication of the words used. *English case-law discussed.* (*Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen, and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND.
1930 A.L.J. 402=A.I.R. 1930 All. 225 (F.B.).

———A statute purporting to create a special jurisdiction must be very strictly construed, particularly if it is likely to have the effect of depriving the subject of a common law right. (*Findlay, J.C.*). BALAJI KUNBI *v.* CHINDYA. **122 I.C. 703=13 N.L.J. 33=A.I.R. 1930 Nag. 205.**

———Jurisdiction conferred on tribunal of limited authority—Conditions and qualifications annexed to grant must be strictly construed. (*Srivastava, J.*). MT. DHANPATI KUER *v.* KANDHIA BAKHSH SINGH. **7 O.W.N. 586=A.I.R. 1930 Oudh 371.**

———*Powers of legislature and of Courts in applying statutes stated.*

It is the function of the legislature to enact the laws and the duty of the judiciary to interpret and enforce them. It is no doubt the characteristic of a good Judge to amplify his jurisdiction where the words of the statute conferring the jurisdiction can reasonably be interpreted as giving him jurisdiction. Where, however, jurisdiction can only be snatched by a strained interpretation of the law, the good Judge becomes a bad citizen. (*Percival, J. C., Rupchand and Wild, A. J. Cs.*). KHUDABUX *v.* PANJO. **A.I.R. 1930 Sind 265 (F.B.).**

INTERPRETATION OF STATUTES — Jurisdiction.

———It is a fundamental canon of construction that in interpreting a statute conferring a special jurisdiction on a Court it must always be presumed that the legislature does not make any alteration in the law beyond what it explicitly declares either in express words or by necessary implication. 11 S.L.R. 128, *Ref.* (*Rupchand and Barlee, A.J.Cs.*). DATTARAM MUNSHILAL *v.* HARJIMAL & SONS.
121 I.C. 161=24 S.L.R. 145=A.I.R. 1930 Sind 170.

———Statute encroaching on ordinary jurisdiction of Court must be construed strictly. (*Rangnekar, J.*). GULAM HUSAIN LALJI SAJAN *v.* CHARA D'SOUZA. **120 I.C. 834=53 Bom. 819=31 Bom. L.R. 988=A.I.R. 1929 Bom. 471.**

———It is a well-established doctrine that a statute interfering with the established state of law must receive a strict construction, and when the language is doubtful, the Courts should lean against an ouster of the jurisdiction of the ordinary tribunals. (*Shadi Lal, C.J., Fforde and Tek Chand, JJ.*). ALI MUHAMMAD *v.* HAKIM. **108 I.C. 748=9 Lah. 504=29 P.L.R. 396=A.I.R. 1928 Lah. 121 (F.B.).**

———It is elementary that a statute which purports to oust the jurisdiction of the Civil Courts must be very strictly construed. 1919 P.H.C.C. 147, *Foll.* (*Ross and Fazl Ali, JJ.*). BALDEO DAS *v.* NILMANI NATH. **113 I.C. 681=8 Pat. 122=9 P.L.T. 627=A.I.R. 1928 Pat. 615.**

———*Inferior Court.*

The rule defining the jurisdiction of an inferior Court, *viz.*, a Court of limited jurisdiction either in point of place or of subject-matter, is not that where it appears upon the face of the proceedings that the inferior Court has jurisdiction, it will be intended that the proceedings are regular; but that, unless it so appears, that is, if it appear affirmatively that the inferior Court has no jurisdiction or, if it be left in doubt, whether it has jurisdiction or not, no such intendment will be made. (*Percival, J. C., Aston, Rupchand Bilaram, De Souza and Lobo, A. J. Cs.*). EMPEROR *v.* NOOR MAHOMED. **105 I. C. 433=22 S.L.R. 157=9 A.I. Cr. R. 66=28 Cr. L.J. 913=A.I.R. 1928 Sind 1 (F.B.).**

———Per *Broadway, J.*—An act by which the jurisdiction of the ordinary Courts is taken away must be strictly construed. 45 I. C. 654, *Rel. on.* (*Broadway, Fforde, Addison, Tek Chand and Dalip Singh, JJ.*). CHETA *v.* BAIJA. **105 I.C. 507=9 Lah. 38=A.I.R. 1927 Lah. 452 (F.B.).**

———It is a cardinal rule of interpretation that an Act by which the jurisdiction of the ordinary Courts of Judicature is taken away must be construed strictly and it is not to be taken away by putting a construction upon an Act of the Legislature to deprive such Courts of its jurisdiction. 8 W.R. 428 (F.B.), *Rel. on.* (*Rupchand Bilaram and Lobo, A. J. Cs.*). SHEWAKRAM GURIDINOMAL *v.* GHULAM SHAH. **103 I.C. 440=A. I. R. 1927 Sind 225.**

———The jurisdiction vested in a superior Court is not to be ousted except by express language or obvious inference from the provisions of a Statute. (*Percival, J. C. and Rupchand Bilaram, A.J.C.*). MAHOMED ABDUL MAJID *v.* EMPEROR. **101 I.C. 471=8 A.I.Cr.R. 43=28 Cr.L.J. 439=A.I.R. 1927 Sind 173.**

———*Disobedience of specific rules.*

When a statute lays down a specific rule as to the manner in which an enquiry is to be held and

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jurisdiction to be exercised, the enquiry held by a superior authority cannot be held to be a proper substitute for the procedure laid down by law if the specific rules have not been followed. (*Newbould and Graham, JJ.*). MAHIBANNESSA BIBI *v.* SECY. OF STATE. **98 I.C. 334=53 Cal. 561= A.I.R. 1926 Cal. 1064.**

———An Act by which the jurisdiction of the ordinary Courts of Judicature is taken away must be construed strictly. 8 W.R. 428, *Ref.* (*Baker, J.C.*) SETH GANESH DAS *v.* HIRALAL. **90 I.C. 279=A.I.R. 1926 Nag. 212.**

———*New matters.*

Where the jurisdiction of a Court is extended by a statute to matters, which would not ordinarily come within its purview that extension of jurisdiction makes the new matters, subject to all the machinery provided by law, for the regulating of its ordinary jurisdiction, as a Court of record. (*Schwabe, C.J. and Coutts-Trotter, J.*). SECRETARY BOARD OF REVENUE, INCOME TAX *v.* MADRAS EXPORT COMPANY. **76 I.C. 375= 18 M.L.W. 392=A.I.R. 1924 Mad. 63.**

———*Strict construction.*

It is clear that provisions granting jurisdiction must be strictly construed. The language used is not to be interpreted so as either to enlarge the jurisdiction or to restrict it. It is an ordinary rule of the interpretation of statutes that where there are apparently conflicting provisions that interpretation should be assigned, if it can be assigned, without straining the language, which would bring them into accord and this not particularly the case when the Court is dealing with a matter of jurisdiction and considering whether that jurisdiction can be enlarged by a provision which applies to a different branch of the subject altogether. (*Robinson, C.J. and Mac Gregor, J.*). CHAN PYU *v.* CHAN CHOR KHINE. **75 I.C. 228=2 Bur.L.J. 42= A. I. R. 1923 Rang. 238.**

———*Special presumptions of England not to be resorted to.*

Per *Richardson, C. J.* and *Newbould, J.*—Indian statutes being of the modern character, it is wholly advantageous and desirable that they should be interpreted by the ordinary canons without resort to an adventitious presumption recognised, it may be, in England but not sanctioned by general principle and not authorized by anything in the Indian General Clauses Act which is itself so far as it goes, a statutory Code of construction. It is for the Legislature when it creates a new jurisdiction to define and limit the extent of that jurisdiction and when question arises as to what powers are or are not conferred, the answer ought to be found within the four corners of the statute. (*Sanderson, C. J.. Teunon, Richardson, Newbould and C.C.Ghose, JJ.*). RAM SAGAR MONDAL *v.* ALEK NASKAR. **67 I.C. 177=49 Cal. 682=23 Cr. L.J. 353= 35 C.L.J. 247=26 C.W.N. 442= A.I.R. 1922 Cal. 59 (F.B.).**

———*Santhal Parganas Settlement Regulation* (III *of* 1872), *S.* 11.

When an enactment says that no suit shall lie in any Civil Court it means that no suit shall lie on any ground whatsoever including the ground of fraud. (*Dawson-Miller, C.J., Mullick and Bucknill, JJ.*). HARE KRISHNA SEN *v.* UMESH CHANDRA DUTTA. **62 I.C. 962=2 P.L.T. 528= 6 P.L.J. 373=1921 P.H.C.C. 209= A.I.R. 1921 Pat. 193 (F.B.).**

INTERPRETATION OF STATUTES—Liability.

———*Notice—Proper issuing authority.*

When an act requires a particular officer to issue a notice, the person to whom the notice is issued is not bound to give any attention to the notice if it is issued by any other person. But such notice is valid if given by some officer who is the direct superior officer of the one mentioned in the Act. (*Kennedy, J. C. and Aston, A.J.C.*). PUNJAB NATIONAL BANK *v.* A. R. GONSALVES, BUNDER INSPR., KARACHI PORT TRUST. **83 I.C. 697= 16 S.L.R. 169=26 Cr. L.J. 137= A. I. R. 1921 Sind 142.**

—Language.

———*Plain language.*

When the provisions of the Code of Criminal Procedure are perfectly plain very little is to be gained by referring to judgments which though correct on the particular facts were never meant to have a general application. (*Jackson, J.*). VENKATASWAMI *v*, BAYYA. **1930 M.W.N. 683.**

———Where the section is worded in such a way that it gives no scope to make distinctions its obvious effect must be carried out. Rule applied with reference to S. 51 (4), Madras Local Boards Act, 1920. (*Ramesam, J.*). VENKATARAMA AYYAR *v.* KUPPUSWAMI AYYANGAR. **1930 M.W.N. 676.**

———The first canon of construction of a statute is that the language of the enactment should be taken as it stands and effect be given to it if it is clear. Rule applied to construction of S. 59 of the Forests Act. (*Pearson and Jack, JJ.*). MEHAR SARDAR *v.* EMPEROR. **34 C.W.N. 956= 52 C.L.J. 171=1930 Cr. C. 908= A. I. R. 1930 Cal. 577.**

———Where there is a positive enactment of the Indian legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of law or of the English law upon which it may be founded. A.I.R. 1928 P.C. 2, *Foll.* (*Stuart, C.J. and Rasa, J.*). SHARFUZZAMAN *v.* H. HUNTER. **121 I.C. 903= 6 O.W.N. 982=A. I. R. 1930 Oudh 20.**

—Later enactment.

———Where there is conflict between regulation and regulation or between regulation and legislative enactment, the rule is that the latter is to prevail. (*Jwala Prasad and Ross, JJ.*). DEBI PRASAD DHUNDHANIA *v.* KUSUM KUMARI. **A.I.R. 1930 Pat. 442.**

———Where there are general words in a latter Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are to hold that earlier and special legislation is indirectly repealed, altered or derogated from, merely by force of such general words, without any indication of a particular intention to do so. The same principle of construction applies to existing common law rights as it does to existing statutory rights. (*Page, J.*). SUNDERMALL *v.* LADURAM KALURAM. **83 I.C. 757=50 Cal. 667= A.I.R. 1924 Cal. 240.**

—Liability.

———If a statute creates a new duty or imposes a new liability, and prescribes a specific remedy in case of neglect to perform the duty of discharge... the liability, the general rule is that no remedy can be taken but the particular remedy prescribed by the statute. (*Suhrawardy, Duval and B.B. Ghose, JJ.*). ASHUTOSH GANGULY *v.* E.L. WATSON. **98 I.C. 116=53 Cal. 929=44 C.L.J. 350= 27 Cr.L.J. 1268=A.I.R. 1927 Cal. 149.**

INTERPRETATION OF STATUTES — Liberal construction.

—Liberal construction.

———*Madhavan Nair, J.*—A generous construction should be placed on the enactment which gives the power to restore. 30 Mad. 274, *Foll.* (*Madhavan Nair and Curgenven, JJ.*). NAMPERUMAL NAIDU *v.* ALWAR NAIDU. **110 I.C. 377= A.I.R. 1928 Mad. 831.**

———Per *Srivastava, J.*—A Court ought not to be alert in placing a restricted construction upon the language of a remedial Act such as the Usurious Loans Act. (*Stuart, C.J., Raza and Srivastava, JJ.*). SARJU PRASAD *v.* GAURI SHANKAR. **115 I.C. 841=5 O.W.N. 780=4 Luck. 1= A.I.R. 1928 Oudh 396 (F.B.).**

———The law does not favour legal and strained intendments, when over-minute precision may confound legal certainty. (*Kennedy, J. C., Aston and De Souza, A.J.Cs.*). EMPEROR *v.* NABU. **90 I.C. 434=20 S.L.R. 34=26 Cr. L.J. 1554= A.I.R. 1926 Sind 1 (F. B.).**

———*None against the words of the statute.*

A liberal view cannot be taken, when, to do so, would involve disregard of the words of the statute.

Per *Venkatasubba Rao, J.*—A liberal construction can be adopted only where two constructions were possible but not otherwise. (*Oldfield and Venkatasubba Rao, JJ.*). GOVINDASAMI *v.* R. SAMI. **69 I.C. 724=16 M.L.W. 911=31 M.L.T. 258= 1923 M.W.N. 42=A.I.R. 1923 Mad. 114= 43 M.L.J. 579.**

———Rules of procedure ought to be liberally construed in order to do justice between the judgment-debtor and the judgment-creditor. (*Dalal, A.J.C.*). HAYAT MUHAMMAD *v.* NAGESHWAR PRASAD. **72 I.C. 390=26 O.C. 306=11 O.L.J. 130= A.I.R. 1923 Oudh 236.**

—Limitation statutes.

———The statutes of limitation are in their nature strict and inflexible and are not susceptible of equitable construction. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAM CHARAN DAS. **11 P.L.T. 403=A.I.R. 1930 Pat. 455.**

———The statutes of limitation are intended to check the tendency which litigants have of dilatoriness and such statutes must have strict operation. (*Mohiuddin, A.J. C.*). NANDU *v.* BHUWANOO. **117 I.C. 282=A.I.R. 1929 Nag. 74.**

———Amending Act (XVIII of 1919)—Objection to award filed before coming into force of Act, but decided after—Amending Act, applies. (*Tudball, J.*). SHEO PRAKASH RAI-GANPAT RAI *v.* SRI RAM-MAHADEO. **63 I.C. 399=19 A.L.J. 404= A.I.R. 1921 All. 63.**

———It would be contrary to sound canons of construction to enlarge the scope of the provisions of a statute of limitations by importing into them words which are not to be found there. (*Mookerji and Panton, JJ.*). MAHARAJA OF COOCH BEHAR *v.* MOHENDRA RANJAN RAI. **66 I.C. 923= 34 C.L.J. 465=A.I.R. 1921 Cal. 277.**

———New rules of limitation, which are regarded merely as matters of procedure, apply to causes of action which arose before the enactment of the rules. (*Wallis, C.J. and Oldfield, J.*). VAITHINATHA AIYAR *v.* GOVINDASWAMI ODAYAR. **62 I.C. 795= 13 M.L.W. 522=1921 M.W.N. 338= A.I.R. 1921 Mad. 650=41 M.L.J. 65.**

—Location of provisions.

———Per *Niamatullah, J.*—The order in which the provisions occur may in some cases assist the Court in construing one of those provisions. But where the arrangement is consistent with a reading which gives effect to the entire language of that provision, its plain meaning cannot be departed from only because a different location of such provisions would have made that meaning clearer. (*Boys, Kendall and Young, JJ. On differencc between Mukerji and Niamatullah, JJ.*). *In the matter of* LACHHMAN PRASAD BABU RAM OF CAWNPORE. **1930 A.L.J. 1=1930 Cr. C. 113= A.I.R. 1930 All. 49 (F.B.).**

INTERPRETATION OF STATUTES—Marginal notes.

———*Place does not override its plain meaning.*

The place at which a particular section is to be found and the heading of the chapter in which it is contained, are not sufficient reasons, for placing an interpretation on the plain words of the section which is not justified by the words themselves. (*Harrison and Zafar Ali, JJ.*). THE PUNJAB COTTON PRESS CO., LTD. *v.* THE SECY. OF STATE. **79 I. C. 208=4 Lah. 428= A. I. R. 1924 Lah. 169.**

—Marginal notes.

———*Agra Pre-emption Act* (1922).

The question whether a marginal note can be referred to for an exposition of the meaning of a section depends upon whether the note has been inserted by or under the authority of the legislature. The marginal notes in the case of Agra Pre-emption Act being inserted under the authority of the legislature, can be referred to while interpreting the sections of that Act. *Claydon* v. *Green*, (1868) 3 C.P. 511, *Dist.*; 26 All. 393 (P.C.), *Ref.* (*Boys, Kendall and King, JJ. afterwards Mukerjee and Sen, JJ.*). RAM SARAN DAS *v.* BHAGWAT PRASAD. **113 I.C. 442=51 All. 411= 1929 A.L.J. 290=A. I. R. 1929 All. 53 (F.B.).**

———Although a marginal note does not form part of a particular section it is of some assistance in properly construing a section. (*Prideaux, Kinkhede and Kolhatkar, A.J.Cs.*). GOLA *v.* EMPEROR. **114 I. C. 273=24 N. L. R. 158= 30 Cr.L.J. 258=12 A.I.Cr.R. 177= A.I.R. 1929 Nag. 17 (F.B.).**

———The marginal note is not a part of the Act. 23 Cal. 55; 24 Bom. 120 and 11 Bom. L. R. 516 (P.C.), *Foll.* (*Patkar and Baker, JJ.*). SHOLAPUR SPG. AND WEAVING CO. *v.* PANDHARINATH. **113 I.C. 148=30 Bom. L.R. 893= A.I.R. 1928 Bom. 341.**

———The marginal note to a section cannot be taken as an index to what the section was meant to apply to. (*Kemp, J.*). JAMNADAS GORDHANDAS *v.* DAMODAR DAS CHUNILAL. **103 I.C. 226= 29 Bom. L.R. 418=A.I.R. 1927 Bom. 424.**

———Referring to the marginal note is not a legitimate canon of interpretation. (*Wallace and Madhavan Nair, JJ.*). NATESA MUDALIAR, *In re.* **99 I.C. 324=50 Mad. 733= 1927 M.W.N. 6=28 Cr. L.J. 116= 38 M.L.T. 166=7 A.I. Cr. R. 263= 26 M.L.W. 890=A.I.R. 1927 Mad. 156= 51 M.L.J. 704.**

———In the case of Indian enactments the marginal notes should not be held to control the clear meaning of the section or to show what the section means when the section is not clear. *Attorney-General* v. *Great Eastern Railway Company*, (1879) 11 Ch. 449, *Appl.* (*Devadoss, J.*). BALAJI SINGH *v.* CHAKKA GANGAMMA. **99 I.C. 143=A.I.R. 1927 Mad. 85= 51 M.L.J. 641.**

———Side notes are no real guide to the intention of the Legislature. The safest guide to it is the

INTERPRETATION OF STATUTES — Marginal notes.

language of the section. A section must be interpreted according to its plain language although the provision of some other Code is abrogated. (*Kotval, A.J.C.*). BHAGIA *v.* KING-EMPEROR.

100 I.C. 820=28 Cr L.J. 340=
7 A.I.Cr.R. 575=A.I.R. 1927 Nag. 203.

———There is no objection to Court's referring for the purpose of explaining the ambiguity, if any, in the section, to the marginal note. 4 All. 387 and 20 Cal. 609, *Rel. on.* (*Kincaid, J.C. and Rupchand Bilaram, A.J.C.*). EMPEROR *v.* LUKMAN.

98 I.C. 49=21 S.L.R. 107=
27 Cr.L. J. 1233=A.I.R. 1927 Sind 39.

———Marginal note is not part of section and it cannot alter obvious meaning of the section. (*Macleod, C.J. and Shah, J.*). MADHAV *v.* EMPEROR.

96 I.C. 121=28 Bom. L.R. 671=
27 Cr. L.J. 873=A.I.R. 1926 Bom. 382.

———Per *Mukerji, J.*—The marginal notes of a section in a Code of Law are certainly no sure guide to the real object of the legislature. But they can sometimes be looked at if there be any doubt about the meaning of the words used. (*Walsh, Kanhaiya Lal and Mukerji, JJ.*). GAJENDRA SINGH *v.* DURGA KUMARI. **88 I.C. 768=47 All. 637=**
23 A.L.J. 561=A.I.R. 1925 All. 503 (F.B.).

———If the language of a statute is not quite clear, the marginal notes in the statute may be used to find out the drift. (*Krishnan, J.*). A. E. SMITH, *In re.* **81 I.C. 72=18 M.L.W. 879=**
33 M.L.T. 185=23 Cr. L.J. 584=
A.I.R. 1924 Mad. 389=45 M.L.J. 731.

———The marginal notes could not be used as an aid for the interpretation of the section. (*Macleod, C.J. and Shah, J.*). PADAMSI NARAIN *v.* THE COLLECTOR OF THANA. **64 I.C.103=46 Bom. 366=**
23 Bom. L.R. 779=A.I.R. 1922 Bom. 161.

—Maxims.

———Deminimis non curat lex.

The principle of *deminimis non curat lex* has no application to prohibitory statute. (*Mitter, J.*). GULMATINNESA *v.* JAGO PALI.

A.I.R. 1929 Cal. 658.

———*Contemporaneous expositions.*

Per *Patkar, J.*—*Contemporanea expositio* as a guide to the interpretation of documents is often accompanied with danger, and great care must be taken in its application. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FREMROZ. **104 I.C. 8=51 Bom. 516=**
29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).

———Generalibus specialia derogantin.

There is no authority for the application of the maxim *generalibus specialia derogantin* to the interpretation of statutes unless the two sections are repugnant. The general rule is that where an Act adds a remedy, it is to be construed as cumulative provided there is nothing else in the Act to the contrary. (*Ashworth, J.C.*). FARZAND ALI *v.* EKADASHI. **73 I. C. 891=**
26 O.C. 10=10 O.L.J. 36=A.I.R. 1923 Oudh 177.

—Meaning of words—Appropriate meaning.

———Words must be given their appropriate meaning and most emphatically so, words of such tremendous import as "the mortgagor" etc., in S. 8 (c), T.P. Act. (*Boys, J.*). MT. MUMTAZ BEGAM *v.* MT. LACHMI. **116 I.C. 807=A.I.R. 1929 All. 174.**

———In a statutory enactment every word used must receive its full and proper connotation in the construction. (*Srinivasa Aiyangar, J.*). OPPORTI RADHI *v.* PAIDA UJJULLE.

106 I.C. 814=A.I.R. 1927 Mad. 998.

INTERPRETATION OF STATUTES—Meaning of words—"From a certain date."

—Meaning of words—"And" and "Or."

———"And" and "or" are sometimes interchangeable. (*Suhrawardy and Cuming, JJ.*). NAYAN MANJARI DASI *v.* CHAIRMAN, HOWRAH MUNICIPALITY. **87 I.C. 229=A.I.R. 1925 Cal. 1067.**

—Meaning of words—"Building."

———*British Columbia Municipal Act of* 1914.

Section 478 does not help to determine the meaning of the word 'building' in S. 197 (1). (*Lord Atkinson.*) CORPORATION OF THE CITY OF VICTORIA *v.* BISHOP OF VANCOUVER ISLAND.

A.I.R. 1921 P.C. 240 (P.C.).

—Meaning of words—"Commonwealth."

———The word "Commonwealth" can and may have both meanings. It may both be a political description and a geographical area and in the Commonwealth Patents Act, Australia both meanings occur. The question is in each section what the true meaning may be; it is a pure question of construction. In the definition of Patent in S. 4 the word "Commonwealth" is used in its geographical sense. (*Lord Buckmaster.*) WESTRALIAN POWELLWOOD PROCESS LIM *v.* REGEM.

A.I.R. 1921 P.C. 228 (P.C.).

—Meaning of words—"Deemed."

———When a person is "deemed to be" something the only meaning possible is that whereas he is not in reality that something, the Act requires him to be treated as if he were. (*Viscount Dunedin.*) COMMR. OF INCOME-TAX, BOMBAY PRESIDENCY *v.* BOMBAY TRUST CORPORATION, LTD.

121 I.C. 532=1930 A L.J. 73=34 C.W.N. 230=
32 Bom.L.R. 361=57 I.A. 49=31 M.L.W. 582=
A.I.R. 1930 P. C 54=58 M.L.J. 197 (P.C.).

———Where a thing is to be "deemed" to be something else it is in truth not that something else but is treated as that something else by a statutory fiction for the purpose of the particular statute. (*Das and Bucknill, JJ.*). CHANDRIKA RAY *v.* RAM KUER THAKUR. **62 I.C. 536=**
1922 P.H C.C. 75=6 P.L.J. 463=
2 P.L.T. 771=A.I.R. 1923 Pat. 88.

—Meaning of words—Different words.

———Per *Sulaiman, Ag. C.J.*—When two distinct words are used in the same section, the ordinary rule of construction is that they do not mean identically the same thing. (*Sulaiman, Ag. C. J. Boys, Banerji, Kendall and Weir, JJ.*). EMPEROR *v.* PHUCHAI. **113 I.C. 417=50 All. 909=**
26 A.L.J. 1257=9 L.R.A. Cr. 149=
10 A.I. Cr. R. 531=30 Cr. L.J. 145=
A.I.R. 1929 All. 33 (F.B.).

—Meaning of words—"Discretion."

———"Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself. (*Shah, Ag. C.J. and Kemp, J.*). BHAGCHAND DAGADUSHA *v.* SECY. OF STATE.

90 I.C. 13=48 Bom. 87=
26 Bom. L.R. 1=A.I.R. 1924 Bom. 1.

—Meaning of words—"From a certain date."

———"*From a certain date*" *means* "*on and after that date.*"

A notification contained in *Fort St. George Gazette* of May 5th of 1922 published fresh rules imposing

INTERPRETATION OF STATUTES—Meaning of words—General words and phrases.

increased institution fees on the suits on the Original Side of the High Court. The words of notification are "the amendments to come into force *from* the date of publication in the *Fort St. George Gazette.*" The notification reached the High Court about 5 P.M. on 5th of May.

Held, per Chief Justice—(1) If the named date is the beginning of a defined limited period, that is, where there is a *terminus a quo* then *prima facie* the *first day* is included. Therefore 'from a named date' means "on and after that day" and the plaints filed on May 5th were subject to the amended rules.

Per *Coutts-Trotter, J.*—Where the statute fixes only the *terminus a quo* of a state of things which is envisaged as to last indefinitely the common law rule obtains that you ought to neglect fractions of a day and the statute or the regulation or order takes effect from the first moment of the day on which it was enacted or passed, that is to say from midnight of the day preceding the day on which it is promulgated; where on the other hand a statute delimits a period marked both by a *terminus a quo* and a *terminus ad quem*, the former is to be excluded and the latter is to be included in the reckoning.

Held, this notification clearly came within the former class and must be taken to have come into force on the first second of the 5th May, that is to say, from midnight of the 4th May and therefore the plaints filed on the 5th May are liable to the enhanced fees laid down by the notification.

Per *Kumaraswami Sastri, J.*—There was nothing to justify charging the people who filed their plaints on 5th May without the knowledge of the notification which only reached the High Court at 5 P.M. with higher fees in respect of plaints filed during the course of the day,

Held, further that the law is that there is no hard and fast rule in deciding whether the word "from" is inclusive or exclusive of the date of notification and that each case must depend upon its own circumstances and subject-matter and therefore justice and equity demand that the date of notification ought to be excluded. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). COURT-FEES, *In re.* **76 I.C. 721=46 Mad. 685=1923 M.W.N. 883=A.I.R. 1924 Mad. 257=45 M.L.J. 557 (S.B.).**

—Meaning of words—General words and phrases.

——General words and phrases, however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act and as not altering the law beyond. (*Kinkhede, A. J. C.*). RAMANATH *v.* HAZARILAL. **25 N.L.R. 19=A.I.R. 1929 Nag. 246.**

—Meaning of words—"Includes."

——The term "includes" indicates that the meaning of the word or the clause is enlarged and the clause or the word includes matters which the ordinary meaning of the clause or word would not include. (*Raymond, A. J. C.*). THE OFFICIAL ASSIGNEE OF BOMBAY *v.* FIRM OF CHANDU LAL CHIMAN LAL. **76 I.C. 657=17 S.L.R. 52=A.I.R. 1924 Sind 89.**

—Meaning of words—Law.

——Per *Das, J.*—Law is one thing and an act done or order issued under the law is another thing. When we speak of 'Law' we mean something which is enforceable and which is not capable of being rejected by the Courts as uncertain, unreasonable or as repugnant to the law of the land. (*Mullick, Coutts and Das, JJ*). EMPEROR *v.* ABDUL HAMID. **68 I.C. 945=3 P.L.T. 585=1922 P.H.C.C. 274=2 Pat. 134=23 Cr.L.J. 625=1 Pat. L.R. Cr. 199=A.I.R. 1923 Pat. 1 (S.B.).**

INTERPRETATION OF STATUTES—Meaning of words—Ordinary sense.

—Meaning of words—Materials for finding.

——In coming to a determination as to the meaning of a particular word in a particular Act of Parliament it is permissible to consider two points, *viz.*

(i) The external evidence derived from extraneous circumstances such as previous legislation and decided cases.

(ii) The internal evidence derived from the Act itself. (*Lord Chancellor.*) HENRIETTA MUIR EDWARDS *v.* ATTORNEY-GENERAL OF CANADA. **31 M.L.W. 601=A.I.R. 1930 P.C. 120=58 M.L.J. 300 (P.C.).**

—Meaning of words—"May."

——The word 'May' does not have the force of 'shall' except where a statute directs the doing of a thing for the sake of justice or the public good. Bishop of Oxford's case, 5 A. C. 214, *Ref. to.* (*Heald, Ag. C. J., Otter and Ormistone, JJ.*). GOVT. OF BURMA *v.* MUNICIPAL CORPORATION OF THE CITY OF RANGOON. **8 Rang. 333=A. I. R. 1930 Rang. 297 (F.B.).**

——Per *Otter, J*—Where a statute directs the doing of a thing for the sake of justice or the public good the word "may" is the same as the word "shall".

Rex v. *Barlow*, 2 Salk 609 and *Macdougale* v. *Paterson* 11 C.B. 755 *Ref.* (*Heald Ag. C.J. Otter and Ormistone, JJ*). GOVT. OF BURMA *v.* MUNICIPAL CORPORATION OF RANGOON. **8 Rang. 333=A.I.R. 1930 Rang. 297 (F.B.).**

——When the word "may" is used, the ordinary rule of interpretation is that the requisite condition being fulfilled the Court will and ought to exercise the powers it may exercise, and the word "may" though primarily permissive is in certain circumstances treated as mandatory. (*Fawcett and Patkar, JJ.*). TULSI LALJI *v.* ONKAR HUNA. **102 I.C. 661=29 Bom.L.R. 897=51 Bom. 492=A.I.R. 1927 Bom. 399.**

——The word "may" in certain circumstances means 'shall'. There may be something in the nature of thing to be done in the object for which it is done or in other circumstances which may convert the option into a duty. (*Wazir Hasan, A.J.C.*). BENGAL AND NORTH WESTERN RAILWAY CO., LTD. *v.* SPECIAL MANAGER, COURT OF WARDS, BALRAMPUR. **89 I.C. 139=12 O.L.J. 162=2 O.W.N. 251=29 O.C. 80=A.I.R. 1925 Oudh 419.**

—Meaning of words—Ordinary sense.

——It is an established principle of construction of statutes that words used in an enactment should be taken in their ordinary sense especially when the sense is appropriate to the context. (*Zafar Ali and Bhide, JJ.*). MULA MAL *v.* EMPEROR. **120 I. C. 188=11 Lah. 24=31 Cr.L.J. 49=1929 Cr. C. 164=A.I.R. 1929 Lah. 607.**

——Words in a statute should be taken to have been used in their ordinary sense. (*Shadi Lal, C.J. and Broadway, J.*). SHIV CHARAN LAL *v.* BHAWANI SHANKAR. **110 I.C. 776=10 Lah. 127=30 P. L. R. 680=A. I. R. 1928 Lah. 495.**

——If the precise words used are plain and unambiguous, a Court is bound to construe them in

INTERPRETATION OF STATUTES—Meaning of words—Ordinary sense.

their ordinary sense, even though they lead to an absurdity or manifest injustice. (*Percival, J.C. and Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). EMPEROR *v.* NOOR MAHOMED.

105 I.C. 433=22 S.L.R. 157=9 A.I.Cr.R. 66=28 Cr. L.J. 913=A.I.R. 1928 Sind 1 (F.B.).

———The first principle of interpretation is to take the ordinary interpretation of the words, and it is only in cases in which there might be more than one ordinary interpretation of words, that one has to look at anything outside to arrive at the meaning. (*Schwabe, C.J. and Coutts Trotter, J.*). THE ADMINISTRATOR-GENERAL OF MADRAS *v.* V. V. RAMIAH. **74 I.C. 182=1922 M.W.N. 571=16 M.L.W. 711=A.I.R. 1922 Mad. 491=43 M.L.J. 347.**

———In the construction of Statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense. *Lord Wenesleydate in Grey* v. *Pearson*, (1857) 6 H.L.C. 61, 106; *Lord Blackburn in Caledonian Railway Company* v. *North British Railway Co.*, (1881) 6 App. Cas. 114 and *Jessel M. R. in* Ex parte *Walton*, (1881) 17 Ch. D. 746, 751, *Foll.*

If the words of an Act are clear the Court must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. If the words of an Act admit of two interpretations then they are not clear ; and if one interpretation leads to an absurdity, and the other does not the Court will conclude that the Legislature did not intend to lead to an absurdity and will adopt the other interpretation. But the Court of Law has nothing to do with the reasonableness or unreasonableness of a provision, except so far as it may help them in interpreting what the Legislature has said. *Lord Esher in Reg.* v. *Judge of the City of London Court*, (1892) 1 Q.B. 273, 290 and *Lord Halisbury in Cooke* v. *Charless A. Vogeler Co.*, (1901) A. C. 102, 107, *Foll.* (*Lord Atkinson.*) CORPORATION OF THE CITY OF VICTORIA *v.* BISHOP OF VANCOUVER ISLAND.

A.I.R. 1921 P.C. 240 (P.C.).

—Meaning of words—Reasonable sense.

———It is an elementary principle of the interpretation of statutes that you must give a reasonable meaning to every expression. (*Walsh, Ag.C.J. and Pullan, J.*). EMPEROR *v.* BHAIRON. **97 I.C. 428=49 All. 240=7 L.R.A. Cr. 183=27 Cr. L.J. 1116=23 A.L.J. 94=A.I.R. 1927 All. 30.**

—Meaning of words—Reference to other Acts.

———It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act in the definition clauses of another statute dealing with matters more or less cognate, even when enacted by the same legislature and much more so when resort is had to the enactments of other legislatures. (*Anglin.*) L. ARTHUR ADAMSON *v.* MELBOURNE AND METROPOLITAN BOARD OF WORKS. **115 I.C. 740=30 M.L.W. 147=A.I.R 1929 P.C. 181 (P.C.).**

—Meaning of words—'Shall.'

———The use of the word "Shall" would not by itself make a provision of the Act mandatory. It is to be construed with reference to the context, in which it is used. (*Mirza and Broomfield, JJ.*). PANDURANG NARAYAN MADHAV *v.* RAMCHANDRA BA PANDITRAO. **32 Bom. L.R. 1252.**

INTERPRETATION OF STATUTES—Penal Act.

—Meaning of words—Technical sense.

———In construing Acts it is a general rule that words must be taken in their technical legal sense unless the contrary intention appears. *Swinburne* v. *Federal Commissioner of Taxation*, (1920) 27 C.L.R. 377, *deemed overruled by Chesterman* v. *Federal Commissioner of Taxation*, (1926) A. C. 128. (*Chief Justice Anglin.*) L. ARTHUR ADAMSON *v.* MELBOURNE AND METROPOLITAN BOARD OF WORKS. **115 I.C. 740=30 M.L W. 147=A.I.R. 1929 P.C. 181 (P.C.).**

—Meaning of words—'The.'

———The definite article "the" is frequently used in legislation in the same sense as the Greek "tis". (*Walsh and Ryves, JJ.*). B. RAM NATH *v.* EMPEROR. **83 I.C. 654=46 All. 611=22 A.L.J. 497=5 L.R.A. Cr. 109=26 Cr. L.J. 94=A.I.R. 1924 All. 684.**

—Meaning of words—Unoccupied.

——— *Financial Commissioner's letter.*

It would be very harsh interpretation of the term 'unoccupied' in the Financial Commissioner's letter of 7th Aug. 1868, to hold that it included the site of a house in ruins in view of the fact that the Financial Commissioner in his letter directs that burial grounds and compounds attached to houses are to be dealt with as "occupied". (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*). BARATI *v.* SECRETARY OF STATE. **61 I.C. 721=24 O.C. 33=8 O.L.J. 233=A.I.R. 1921 Oudh 65.**

—Penal Act.

———Where there is reasonable ground for doubt as to the correct interpretation of an enactment that interpretation should be adopted which is most in favour of the person to be penalised, especially in fiscal and penal statutes. (*Boys, Young and Sen, JJ.*). EMPEROR *v.* HUNANCHAL SINGH. **123 I.C. 673=31 Cr. L.J. 546=1930 A.L.J. 354=A.I.R. 1930 All. 265 (F.B.).**

———Disqualifying provisions in an Act dealing with Municipal elections are penal provisions and therefore ought not to be extended beyond their legitimate limit; but at the same time if there is any doubt the Courts should be careful to see that the intention of the legislature in enacting the section is duly observed. Rule applied with reference to S. 57 of the Bengal Municipal Act. (*Suhrawardy and Costello, JJ.*). SATYENDRA KUMAR DAS *v.* CHAIRMAN OF THE MUNICIPAL COMMRS. OF DACCA. **34 C.W.N. 972.**

———Per *Reilly, J.*—If two interpretations of a section were grammatically possible the ordinary canons of interpretation would compel the Court to adopt in the interest of accused persons the stricter and narrower one, a construction which would give less scope to the exceptional extension of what may be used against an accused at his trial. Observations made with reference to the meaning of the word "confession" in S. 30 of the Evidence Act. (*Waller and Reilly, JJ.*). PERIYASWAMY MOOPPAN *v.* EMPEROR. **32 M. L. W. 527=1930 M.W.N. 358=59 M.L.J. 471.**

———*Criminal Procedure Code.*

In matters of interpretation of rules of Criminal Procedure any doubt felt by the Court ought, as in the case of an actual trial, to be resolved in favour of the accused. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER *v.* EMPEROR. **1930 M. W. N. 249 (F.B.).**

———*Excise Act.*

A penal law like the Excise Act has to be strictly construed and should be interpreted

INTERPRETATION OF STATUTES—Penal Act.

generously in favour of the subject. (*Sen and Niamatullah, JJ.*). RADHEY SHIYAM *v.* MEWA LAL. **116 I.C. 89=51 All. 506= 1929 A.L.J. 212=A.I.R. 1929 All. 210.**

———In construing penal statutes in the case of doubt the construction favourable to the subject should be preferred. (*Broadway, J., on difference between Zafar Ali and Bhide, JJ.*). THIRAJ *v.* EMPEROR. **119 I. C. 265=30 Cr.L.J. 1019= 1929 Cr. C. 205=11 Lah. 55= A. I. R. 1929 Lah. 641.**

———Per *Fforde, J.*—Statutory rules which involve penal consequences for infringement must be strictly interpreted. (*Fforde and Skemp, JJ.*). GOPAL SINGH *v.* CROWN. **116 I.C. 709= 30 P.L.R. 147=30 Cr.L.J. 663= 13 A.I.Cr.R. 94=A.I.R. 1929 Lah. 163.**

———On the ordinary principles of penal legislation a penal provision does not have retrospective effect. (*Carr, J.*). NGA PO NGWE *v.* EMPEROR. **120 I.C. 692=7 Rang. 355=1929 Cr. C. 446= 31 Cr. L. J. 174=A.I.R. 1929 Rang. 278.**

———*Penal Code, S.* 109.

(Per *Baguley, J. in the order of reference*).—Although a Penal law must be interpreted as far as possible in favour of the subject still the Court is not justified in adding at the end of the section a qualifying or explanatory phrase which is not to be found in the section itself. That being so the Court is not justified in saying that the words "punishment provided for the offence" in S. 109 mean punishment provided for the offence either in the Penal Code or in some special or local law. 7 L.B.R. 63, *Discussed* and *Not appr.* (*Rutledge, C.J. and Maung Ba and Heald, JJ.*). EMPEROR *v.* MAUNG PU KAI. **118 I. C. 637= 7 Rang. 329=30 Cr.L.J. 961= 1929 Cr. C. 177=A.I.R. 1929 Rang. 203 (F.B.).**

———A legislation which empowers a State to take possession and dispose of the property of a supposed enemy alien within the country cannot properly be said to be penal. (*Viscount Haldane.*) C.F. ADOLF OTTO INGENOHL *v.* WING ON & CO., LTD. **107 I.C. 352=47 C.L.J. 263= 30 Bom. L.R. 753=A.I.R. 1928 P.C. 83 (P.C.).**

———Provisions of other statute cannot impliedly take away right to prosecute under Penal Code. 22 Cal. 131, *Dist.* (*Wallace, J.*). MALAIAPPA GOUNDAN *v.* EMPEROR. **115 I.C. 242=30 Cr.L.J. 432= 52 Mad. 79=28 M.L.W. 621=1 M. Cr. C. 317= A.I.R. 1928 Mad. 1235=55 M.L.J. 715.**

———*Arms Act.*

A penal enactment like the Arms Act must be construed in favour of the individual person where any doubt exists. (*Findlay, J.C.*). SETH BALKISAN *v.* EMPEROR. **109 I.C. 511=11 N.L.J. 84= 29 Cr.L.J. 575=10 A.I.Cr. R. 348= A.I.R. 1928 Nag. 219.**

———*'Strict construction' means benefit of doubt, if any, should be given to party to be charged.*

Per *Rupchand Bilaram, A.J.C.*—It is no doubt true that a penal statute or a notification conferring criminal jurisdiction in pursuance of powers vested by a penal statute should be construed strictly, and that omissions, if any, may not be supplied lightly, but there is no absolute bar to the omission being supplied in fit cases.

The rule of 'strict construction' of penal statutes as modified in modern times is not so rigid or unbending as it was in times gone by and the rule means very little more than that such statutes are to be fairly construed like all others according to the legislative intent as expressed by the statute itself or arising out of it by necessary implication, but if there be any fair and reasonable doubt, the statutes should be so construed as to give the party sought to be charged the benefit of the doubt. (*Percival J.C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). EMPEROR *v.* NOOR MAHOMED. **105 I.C. 433=22 S.L. R. 157= 9 A.I.Cr. R. 66=28 Cr.L.J. 913= A.I.R. 1928 Sind 1 (F.B.).**

———*Cr. P. Code, S.* 15.

Per *Lobo, A.J.C.*—A notification investing certain Magistrates with certain powers can hardly fall within the category of statutes or notifications which are to be strictly construed. (*Percival, J.C., Aston, Rupchand Bilaram, DeSouza and Lobo, A.J.Cs.*). EMPEROR *v.* NOOR MAHOMED. **105 I. C. 433=28 Cr. L.J. 913= 9 A.I. Cr.R. 66=22 S.L.R. 157= A.I.R. 1928 Sind 1 (F.B.).**

———Provisions of law, which impose a penalty on a person who fails to comply with those provisions, must be strictly construed (*Iqbal Ahmad and Kendall, JJ.*). BAKHTAWAR SINGH *v.* BALWANT SINGH. **102 I C. 633= 25 A.L.J. 661=A.I.R 1927 All. 599.**

———*Cases not falling strictly within the words should not be included.*

Strict construction must be placed upon a penal enactment. In construing such an enactment no case must be held to fall within it, which does not come both within the reasonable meaning of its terms as well as within its spirit and scope.

If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them. 25 Cal. 160; 21 Mad. 4; 6 N.L.R. 53 and 56 P.R. 1911, *Rel. on* (*Tek Chand, J.*). MULTAN MUNICIPALITY *v.* BHAI KISHAN CHAND. **101 I.C. 747=28 P.L.R. 205= A.I.R. 1927 Lah. 276.**

———*Plain and common sense meaning should be taken.*

All penal statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words, used, and must not strain the words on any notion that there has been a slip that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included and would have been included if thought of. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair common sense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. *Dyke* v. *Elliott*, 1871 L.R. 4 P.C. 184, *Ref* (*Fawcett and Madgavkar, JJ.*). GAMADIA *v.* EMPEROR. **91 I.C. 949=50 Bom. 34=27 Bom.L.R. 1405= 27 Cr.L.J. 165=A.I.R.1926 Bom. 57.**

———The person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. *The Gauntlett*, (1872) 4 P.C. 184, *Foll.* (*Sanderson, C. J. and Rankin, J.*). RAM CHUNDER SEROWJIE *v.* GOURI NATH DUTT. **97 I.C. 376=53 Cal. 492= A.I.R. 1926 Cal. 927.**

INTERPRETATION OF STATUTES—Penal Act.

——*Whether command to a rule-making body is directory or mandatory depends on the terms of particular enactment.*

The provisions of a penal statute must be strictly construed; and it is equally true that in penal statutes the duties cast upon bodies with delegated powers are generally construed as imperative rather than directory. But each statute has to be construed according to its own terms and no inflexible rule can be laid down to determine whether the command to a body entrusted with the power of framing rules is to be considered merely as a direction involving no invalidating consequences if disregarded or as coercive with an implied nullification if disobeyed. In each case regard must be had to the scope and object of the enactment in question. (*Fforde and Campbell, JJ.*). EMPEROR *v.* BARKAT.

96 I.C. 152=7 Lah. 507=27 Cr.L.J. 888=27 Pat.L.R. 791=A.I.R. 1926 Lah. 447.

——A penal statute like the Penal Code should be construed with the strict and narrow sense. When an enactment may entail penal consequences no violence must be done to its language in order to bring people within it: but rather care must be taken that no one is brought within it who is not within its strict language: *London County Council* v. *Aylesbury Co.*, 1 Q.B. 106 and *Hull Dock Co.* v. *Browne*, 36 R.R. 459, *Ref.* (*Findlay, Offg. J.C.*). ISMAIL PANJU *v.* KING-EMPEROR. **89 I.C. 523=21 N.L.R. 152=26 Cr.L.J. 1387=A.I.R. 1926 Nag. 137.**

——*Two meanings.*

Where an act is ambiguous and there are two possible interpretations, one of which would mitigate the penalty, and the other would aggravate it, the former should prevail. *Hildesheimer* v. *W. and F. Faulkner, Ltd.*, (1901) 2 Ch. 552, *Foll.* (*Kennedy, Rupchand Bilaram and Lobo, A. J. Cs.*). EMPEROR *v.* AHMED. **96 I.C. 113=29 S.L.R. 163=27 Cr. L. J. 865=A.I.R. 1926 Sind 273 (F.B.).**

——Criminal Statutes must be interpreted strictly. (*Wallace and Madhavan Nair, JJ.*). P. ATHAMU, *In re.* **86 I.C. 283=26 Cr. L.J. 747=20 M.L.W. 914=A.I.R. 1925 Mad. 239.**

—Persona Designata.

——*Presiding Officer of a Court directed to perform functions of newly constituted authority.*

When by an act of the Legislature, a new authority is constituted for the purpose of determining questions concerning rights which are themselves the creations of the Act, and a Judge or Presiding Officer of a Court, as distinct from the Court itself, is directed to perform the functions of the newly created authority, then it must be presumed, unless the contrary is expressly enacted or necessarily implied, that intention of the Legislature was that the Judge or Presiding Officer should perform those functions as a *persona designata* and not as a Court. Such a presumption is stronger in the case of a Court like the Rangoon Small Cause Court which consists of a plurality of Judges when only one particular Judge is invested with the new powers. (*Rutledge, C. J., Heald and Chari, JJ.*). MUNICIPAL CORPORATION, RANGOON *v.* M. A. SHAKUR. **91 I.C. 550=3 Rang. 560=4 Bur. L.J. 202=A.I.R. 1926 Rang. 25 (F.B.).**

—Powers of Court—Addition of words.

——Per *Kinkhede, A.J.C.*—The Courts have to construe the Acts of legislature as found therein, whether they approve of them or not, nor to alter or amend them. They have no power to read into the Court-fees Act or in any other Act or Code a section or words which it does not contain. It is for the legislature and not for the Courts to consider whether the words employed in framing an Act will give effect to the object and policy which the statute may have in view. 11 Bom. 1, *Foll.* (*Findlay, J.C. on difference between Kotval and Kinkhede, A.J.Cs.*). NOKSING *v.* BHOLUSING.

123 I.C. 417=12 N.L.J. 185=A.I.R. 1930 Nag. 73.

——The Judges are not entitled to read words into an Act of legislature unless clear reason for it is to be found within the four corners of the Act itself. *Vickers, Son* and *Maxim* v. *Evans*, (1910) 79 L.J.K. B. 954 and *Everett* v. *Wells*, (1841) 2 M. & G. 269, *Ref.* (*Fazl Ali and Chatterji, JJ.*). ABHAYANAND SINGH *v.* RAMESHWAR SINGH.

9 Pat. 314=A I.R. 1930 Pat. 395.

——If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound these words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. It is not permissible to read into the context words which are not to be found there: *Income-tax Commissioner* v. *Pemsel*, (1891) A.C. 534, *Foll.* (*Sulaiman, Banerji, King, Niamatullah and Sen, JJ*). KAYATHA CO., LTD. *v.* SITA RAM.

118 I.C. 17=1929 A.L.J. 983=A.I.R. 1929 All 625 (F.B.).

——Per *Walsh, J.*—It is undesirable to import into a section, when the Court's duty is to apply the language of the section to the facts before it, any expression which is not found therein. (*Walsh and Mukerji, JJ.*). MAJIAN *v.* SABIR ALI.

107 I.C. 674=A.I.R. 1928 All. 62.

——*Courts cannot supply omission in an Act.*

Courts cannot aid the legislature's defective phrasing of the Act; they cannot add and amend, and by construction make up the deficiencies which are left there. Whether an omission in an Act flowed from forgetfulness of the draftsman or was intentional is no concern of the Courts and it is well-settled that a *casus omissus* cannot be supplied by a Court of Law for that would be to make laws. *Crawford* v. *Spooner*, 6 Moor. P. C. 1, *Foll.* (*Tek Chand and Bhide, JJ.*). GURDIAL SINGH *v.* CENTRAL BOARD, SRI DHARBAR SAHEB.

113 I. C. 769=9 Lah. 689=A. I. R. 1928 Lah. 337.

——It is not the function of a Court to read into an enactment words that are not there. The Courts are to construe its provisions according to their plain meaning and not to supply the deficiencies of the Legislature. *Crawford* v. *Spooner*, 6 Moore P. C. 9, *Foll.* (*Tek Chand, J.*). MUNICIPAL COMMITTEE MULTAN, *v.* BHAI KISHAN CHAND. **101 I.C. 747=28 P.L.R. 205=A.I.R. 1927 Lah. 276.**

——Per *Lindsay, J.* (*Sulaiman J., contra*).—Words not to be found in a section may be supplied by necessary implication if the context so requires. (*Lindsay, Sulaiman and Daniels, JJ.*). RAM SARUP *v.* GAYA PRASAD. **90 I.C. 180=48 All. 175=24 A.L.J. 56=6 L.R.A. Civ. 601=A.I.R. 1926 All. 610 (F.B.).**

——To read into a statute words which are not there is objectionable.

Where the statute merely stated "the fee payable on an application for review shall be that leviable on the plaint, etc.",

Held, that it cannot be read with the addition of the words 'if such plaint, etc., were presented at the time when the application for review is made.

INTERPRETATION OF STATUTES—Powers of Court—Addition of words.

(*Mookerjee and Cuming, JJ.*). NANDI RAM *v.* JOGENDRA CHANDRA DUTTA. **82 I.C. 297= 28 C.W.N. 403=39 C.L.J.222=A.I.R. 1924 Cal. 881.**

———Courts cannot read into statutes provisions which are not there, even if they think that anomalies cannot be avoided otherwise. (*Campbell, J.*). HADAYAT ULLAH *v.* GHULAM MUHAMMAD BEG. **73 I.C. 444=A.I.R. 1923 Lah. 529.**

———To read into a section words limiting its operation would be to usurp the functions of the Legislature which it is not within the competence of the High Court or any other Court to do. (*Dawson-Miller, C.J., Mullick and Jwala Prasad, JJ.*). SHEBALAK SINGH *v.* KAMARUDDIN MANDAL. **68 I.C. 149=23 Cr.L.J. 543= 2 Pat. 94=1 Pat. L.R.Cr. 2=1922 P.H.C.C 241= 3 P.L T. 573=A.I.R. 1922 Pat 435 (F.B.).**

—Powers of Court—Administration of law.

———*Where rule of law is absolute in terms, it must be given effect to.*

Where a rule of law is absolute in terms, the said rule has got to be observed and duly given effect to, and it is no province of a Magistrate to deviate from the said rule. (*Sen, J.*). LUTTUR *v.* EMPEROR. **31 Cr. L.J. 590=1930 A.L.J. 547= A.I.R. 1930 All. 263.**

———*Kemp, J.*—If the language of a legislative enactment unambiguously and without reasonably admitting of any other meaning is in conflict with any principle of International law, the Court must obey and administer it as it stands whatever may be the responsibility incurred by the nation to foreign powers in executing such a law, for the Courts cannot question the authority of Parliament or assign any limits to its power. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULJEE. **104 I.C. 8=51 Bom. 516= 29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).**

———Per *Rupchand Bilaram, A.J.C.*—It is not the duty of the Court to make the law reasonable but to expound it as it stands. (*Kennedy, J. C., Raymond, Aston, Rupchand Bilaram and Percival, A.J.Cs.*). WALTER JOHN BROOKS *v.* NEE BARWICK. **91 I.C. 99=A.I.R. 1926 Sind 58 (F.B.).**

———*Law of the land is to be obeyed.*

The function of the Court is to administer the law as they find it and not to modify it in the light of the laws of another country or in accordance with their own notions of expediency, in order to produce a uniform result. In a vital matter like divorce it is desirable that all civilised countries should observe the same rule regarding jurisdiction, but there is nothing to prevent one country from adopting a rule different from that followed by another country; and if a different rule has been laid down by Municipal law of a country, the Courts of that country are bound to give effect to that rule irrespective of the consequence which may flow from it. (1895) A.C. 517, *Foll.* (*Shadi Lal, C.J., Scott-Smith, Le Rossignol, Harrison and Fforde, JJ.*). LEE *v.* LEE. **81 I.C 686= 5 Lah. 147=A. I.R. 1924 Lah. 513 (F.B.).**

—Powers of Court—Avoidance of absurdity.

———It is one of the cardinal rules of construing a statute that in construing it absurdity should be avoided. (*B.B. Ghose and Panton, JJ.*). SECY. OF STATE *v.* FAKIR MD. MANDAL. **101 I.C. 349= 45 C.L.J. 185=A. I. R. 1927 Cal. 415.**

—Powers of Court—Conflict.

———When a rule of practice or prudence or whatever else it may be called conflicts with the law as laid down by the legislature the Judge is bound to follow the law. 41 Cal. 446, *Ref.* (*Cuming and Lort-Williams, JJ.*). EMPEROR *v.* C. A. MATHEWS. **1929 Cr. C. 609=A.I.R. 1929 Cal. 822.**

—Powers of Court—Court's opinion immaterial.

———The plain intention of the legislature as expressed by the language employed is invariably to be accepted and carried into effect whatever may be the opinion of the judicial interpreter of its wisdom or justice. If the language admits of no doubt or secondary meaning, it is to be obeyed. (*Mitter, J.*). GOPAL CHANDRA *v.* CHARAN KIRTANIA. **117 I.C. 701=32 C.W.N. 1136= A. I. R. 1929 Cal. 141.**

—Powers of Court—Extraneous considerations.

———A document like the Bengal Cess Manual, cannot be referred to for the purpose of construing an Act of the Legislature. The construction which the Court places upon a statutory enactment must depend upon the meaning which the Court attributes to the words which the Legislature has used. (*Cuming and Page, JJ.*). SHEIKH INTAZ *v.* DINA NATH. **96 I. C. 72=53 Cal. 615=43 C.L.J. 425= 30 C.W.N. 803=A.I.R. 1926 Cal. 856.**

———Considerations founded on views as to business which are obviously of practical importance would be rather arguments for the invocation of the legislature than an incentive to the putting of a forced construction on sections of an Act which, in themselves, are capable of only one interpretation. (*Lord Dunedin.*) IMPERIAL BANK *v.* U. RAI G. T. & CO. **76 I.C. 910=33 M.L.T. 395= 1923 M.W.N. 609=51 Cal. 86=1 Rang. 637= 50 I.A. 283=2 Bur.L.J. 254=21 A L.J. 784= 25 Bom.L.R. 1279=39 C.L.J. 186=28 C.W.N 470= A.I.R. 1923 P.C. 211=45 M.L.J. 505 (P.C.).**

—Powers of Court—Law to be followed.

———Per *Kemp, J.*—Where language of an Act is unambiguous, effect must be given to it and it is not the province of the Courts to give any other construction to it than that which it clearly bears. The legislature may by special legislation purport to violate the rule of international law limiting legislation to territorial limits and in such a case the Courts must give effect to it. (*Fawcett and Kemp, JJ.*). TUKAJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I. C. 424=53 Bom. 251= 31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

—Powers of Court—Legality of transaction.

———In any case where law expressly declares certain transaction unlawful the Courts not only may but must regard the reality and not the appearance of the transaction in question. 21 Bom. L. R. 707, *Ref.* (*Madgavkar and Allison, JJ.*). DAMODHER BECHAR *v.* MOHAN JAVER. **31 Bom.L.R. 1422=A.I.R. 1930 Bom. 121.**

—Powers of Court—Meaning of words.

———It is a well-settled rule of interpretation that where a question arises as to the construction of the particular provision of the statute, the proper course is to examine the language of the Act and to find out its natural meaning. If the meaning is plain it is not permissible to give a go-by to that meaning simply on the ground that that meaning would lead to undesirable results. (*Bennet and Iqbal Ahmad, JJ.*). B. HIRDEY NARAIN *v.* EMPEROR. **1929 A.L.J. 1216=1929 Cr.C. 404= A.I.R. 1929 All. 850.**

—Powers of Court—Procedure.

———Where the Act itself lays down a definite procedure there is no room for having recourse to any

INTERPRETATION OF STATUTES—Powers of Court—Raising doubts.

other procedure. (*Cornish, J.*). PERIAMMAL *v.* OFFICIAL RECEIVER OF COIMBATORE.
1930 M.W.N. 651.

—Powers of Court—Raising doubts.

———Per *Jack, J.*—If the words of a statute be plain and clear it is not for the Court to raise any doubt as to what they mean. (*Rankin, C.J., C. C. Ghose, Suhrawardy, Mukerji and Jack, JJ.*). PADAM PRASAD *v.* EMPEROR. 119 I.C. 193=
50 C. L. J. 106=33 C. W. N. 1121=
30 Cr. L. J. 993=1929 Cr. C. 228=
A. I. R. 1929 Cal. 617. (S.B.).

—Powers of Court—Reference to other statutes.

———Courts of Justice, in construing a statute, must endeavour to discover the meaning to be given to it by a consideration of its terms. Little or no assistance is to be obtained by referring to other statutes in which the words used are not the same. (*Page, J.*). CHANDMULL KANGORIA *v.* DEBI CHAND. 80 I.C. 317=51 Cal. 62=
28 C.W.N. 6=A.I.R. 1924 Cal. 405.

———*Act taken from English Law.*

It is most important in this country to construe the terms of an Act taken from the English Law strictly in relation to the immediate context and to decline to be guided by evidence as to their meaning or judicial interpretations of them when they occur in another context or in other statutes. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). TIRUNEELAKANTAM *v.* RAJA RAJESWARA. 70 I.C. 469=46 Mad. 177=
15 M.L.W. 556=30 M.L.T. 317=
A.I.R. 1922 Mad. 263=43 M.L.J. 158.

—Powers of Court—Straining meaning.

———It is not the function of the Court to strain the meaning of a particular section of the Act. If the action aimed at is really a nuisance and if it is in the opinion of the authorities such a process as ought to be brought within the purview of the section, it is open to them to amend the Act. (*Sanderson, C.J. and Panton, J.*). THE SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* TRAILOKYA NATH CHATTERJEE. 72 I.C. 356=
49 Cal. 1014=26 C.W.N. 926=
36 C.L.J. 168=24 Cr. L.J. 386=
A. I.R. 1922 Cal. 194.

—Powers of Court—Subsequent Bill.

———It is not permissible for a Court to refer to a Bill which is not passed into law for the purpose of construing what the provisions of an earlier Act meant. (*Panton and Mitter, JJ.*). NEHRA *v.* SAJER PRAMANIK. 103 I.C. 662=55 Cal. 67=
A.I.R. 1927 Cal. 763.

—Powers of Court—Miscellaneous.

———The duty of the Court is not to put a construction which seems to the Court to be best in the sense that it will work out with the most *justice* or with the least inconvenience but to put a construction which seems to the Court to be the best in the sense that it is nearest to the language of the Legislature. Rule applied to construction of S. 139 of the Calcutta Municipal Act, 1923. (*Rankin, C. J. and C.C. Ghose, J.*). MUKERJEE *v.* KARNANI INDUSTRIAL BANK LTD. 52 C.L.J. 100=
34 C. W. N. 1054.

———Where the construction of a rule law is clear a Court cannot go behind the rule by any inquiry into the reason of the rule. (*Venkatasubba Rao and Srinivasa Aiyangar, JJ.*). ARUNACHALA NAIDU *v.* BALAKRISHNA & CO. 86 I.C. 201=
48 Mad. 559=21 M. L. W. 147=
A.I.R. 1925 Mad. 449=48 M.L.J. 134.

INTERPRETATION OF STATUTES—Precedents.

———Points of convenience or practice cannot control statutes. (*Shah, and Crump, JJ.*). G. S. FERNANDEZ *v.* EMPEROR. 59 I.C. 129=
45 Bom. 672=22 Cr. L. J. 17=
A. I. R. 1921 Bom. 374.

—Powers of Legislature.

———*Invalid act—Subsequent validating act.*

Where an Act of a subordinate legislature is invalid owing to non-compliance with certain conditions required by an Act of Parliament, which constituted the subordinate legislature, the passing of the fresh enactment by a subordinate legislature which complies with the requirements of the Imperial Act and which is validly passed, and which validates acts done under the provisions of the previous Act is not *ultra vires* and invalid. 4 Cal. 172 (P.C.) and *Trustees of the Ottava Roman Catholic Separate Schools* v. *Quebec Bank*, (1920)A. C. 230, *Rel. on.* (*Kumaraswami Sastri, J.*). VYTHILINGA *v.* SADASIVA AIYAR. 116 I.C. 561=
28 M.L.W. 535=A.I.R. 1928 Mad. 1272=
55 M.L.J. 605.

———The mere fact that there was a prior ineffectual attempt to legislate does not take away from the legislature the power to pass a subsequent enactment relating to the same subject-matter and to validate acts done or bodies constituted under the prior enactment. (*Kumaraswami Sastri, J.*). VYTHILINGA *v.* SADASIVA AIYAR. 116 I.C. 561=
28 M.L.W. 535=A.I.R. 1928 Mad. 1272=
55 M.L.J. 605.

———*Power of*

Not only Imperial Parliament but even subordinate legislature can validate acts done under its previous invalid enactments. (*Kumaraswami Sastri, J.*). VYTHILINGA *v.* SADASIVA AIYAR.
116 I. C. 561=28 M.L.W. 535=
A.I.R. 1928 Mad. 1272=55 M.L.J. 605.

—Preamble.

———Where the enacting part of the statute is clear and unambiguous its scope cannot be controlled by the preamble. Observations made with reference to Punjab Custom (Power to Contest) Act of 1920. (*Shadi Lal, C. J. and Agha Haidar, J.*). GHULAM MOHAMMED *v.* ALLAH DITTA.
122 I.C. 226=31 Punj. L.R. 125.

———Where the enacting part of a statute is not exactly co-extensive with the preamble, the former, if expressed in clear and unequivocal terms, will override the latter, but if ambiguous or doubtful phraseology is used in the body of the Act, the preamble may be referred to, to resolve the ambiguity. A.I.R. 1919 P.C. 52 and 45 Cal. 343, *Foll.* (*English-law considered.*) (*Tek Chand and Agha Haidar, JJ.*). RAJ MAL *v.* HARNAM SINGH.
104 I.C. 661=9 Lah. 260=28 P.L.R. 595=
A.I.R. 1928 Lah. 35.

———The preamble of an Act cannot be made use of to control the enactments themselves when they are expressed in clear and unambiguous terms. (*Panton and Miller, JJ.*). NEHRA *v.* SAJIR PRAMANIK.
103 I.C. 662=55 Cal. 67=
A.I.R. 1927 Cal. 763.

———Per *Ashworth, J.*—Preamble does not control unambiguous words of Act. (*Walsh and Ashworth, JJ.*). DEBI DAS *v.* RUPCHAND.
102 I.C. 792=49 All. 903=25 A.L. J. 609=
A.I.R. 1927 All. 593.

—Precedents.

———Though a case under an Act which is no longer in force cannot be treated as an authority, nevertheless, it is a useful guide as to the construction of the Act in force instead. (*Spencer, Krishnan*

INTERPRETATION OF STATUTES—Precedents.

and Beasley, JJ.). BOARD OF REVENUE, MADRAS *v.* MUPPANNA SOMARAZU. **97 I. C. 993= 49 Mad. 903=24 M. L. W. 559= 1926 M. W. N. 734=A. I. R. 1926 Mad. 1038= 51 M. L. J. 354 (F. B.).**

———*Codifying statute—Reference to earlier Case-law allowed.*

The Indian Penal Code is meant to be a codifying statute, as a statute intended to be complete in itself with regard to the subject-matter with which it deals. No doubt a codifying statute does not exclude reference to earlier case-law on the subject covered by the statute for the purpose of throwing light on the true interpretation of the words of the statute where they are, or can be contended to be, open to rival constructions, but it cannot be argued that matter outside of the statute can be invoked, not by way of construing its provisions but of adding something to it which is admittedly not to be found within it. (*Coutts-Trotter, C. J., Phillips, Krishnan, Beasley and Madhavan Nair, JJ.*). TIRUVENGADA MUDALI *v.* TRIPURASUNDARI. **96 I. C. 978=49 Mad. 728= 1926 M W. N. 606=27 Cr. L. J. 1026= 25 M. L. W. 207=A. I. R. 1926 Mad. 906= 51 M. L. J. 112 (F.B.).**

———*Canning's Proclamation*, 1858.

The ruling in *Barati* v. *Secretary of State for India*, 24 O.C. 33, did not mean that the proclamation of acquisition did not apply to any site with debris of houses on it but only that it did not apply to the site of the ruins of a house which some individual claimed a right to re-build. (*Ashworth, J.*). PARASRAM PANDEY *v.* CHHUTTAN LAL. **93 I. C. 841=A.I.R. 1926 Oudh 411.**

—Procedural law.

———A change in procedure cannot retrospectively affect a decided matter. Rule applied with reference to proviso to S. 49 of the Registration Act inserted by Act XXI of 1929. (*Tek Chand and Tapp, JJ.*). SKINNER *v.* SKINNER. **12 L. L.J. 172=A.I.R. 1930 Lah. 1004.**

———Per *Wazir Hasan, J.*—The Codes of procedure neither profess nor are they intended to create new substantive rights which do not exist in law independently of them. Similarly they do not extinguish such existing rights though they may operate to bar remedies of procedure. (*Stuart, C.J., Wazir Hasan and Srivastava, JJ.*). BAHADUR SINGH *v.* RAM PHAL. **7 O.W.N. 232= A.I.R. 1930 Oudh 148 (F.B.).**

———A right of appeal is not a mere matter of procedure. A.I.R. 1927 P.C. 242 (P.C.), *Ref.* (*Patkar and Murphy, JJ.*). PANDARINATH KIKALAL *v.* THAKOREDAS SHANKARDAS. **53 Bom. 453= 31 Bom. L.R 484=A.I.R. 1929 Bom. 262.**

—Proceedings in Legislative Council.

———(*Quaery*) Per *Bhide, J.*—It is doubtful whether Courts can refer to report of Select Committee sitting to amend a statute, while interpreting the same. (*Broadway, J., on difference between Zafar Ali and Bhide, JJ.*). THIRAJ *v.* EMPEROR. **119 I.C. 265=30 Cr. L.J. 1099=1929 Cr. C. 205= 11 Lah. 55=A.I.R. 1929 Lah. 641.**

———It is not proper to refer to the proceedings of the Legislative Council in order to determine the true interpretation of the language of a section. (*Sulaiman and Iqbal Ahmad, JJ.*). ABDUL KHAN *v.* SHAKIRA BIBI. **108 I.C. 573=50 All. 348= 25 A.L.J. 1061=A.I.R. 1928 All. 124.**

———Courts, while interpreting an Act, cannot seek the assistance of the debates in the Legislative Council or the report of the Select Committee. *Rex* v. *West Riding of Yorkshire County Council*, (1906) 2 K. B. 676 (716). *Ref.* (*Tek Chand and Bhide, JJ.*). GURDIAL SINGH *v.* CENTRAL BOARD SRI DARBAR SAHIB. **113 I.C. 769= 9 Lah. 689=A.I.R. 1928 Lah. 337.**

INTERPRETATION OF STATUTES — Publication in Gazette.

———To construe the provisions of a section it is hardly permissible to refer to the report of the Select Committee. (*Mukerji and Mallick, JJ.*). TAMIJANNESA KHATUN *v.* PURNA CHANDRA. **103 I.C. 853=47 C.L.J. 66=A.I.R. 1927 Cal. 821.**

———A Court is not authorized to look into the proceedings of the Legislature to see what took place there during the passage of the Bill which passed into law or what was the reason why a particular clause was put in for the purpose of interpreting a statute (*Suhrawardy, Duval and B. B. Ghose, JJ.*). ASHUTOSH GANGULI *v.* E.L. WATSON. **98 I.C. 116=53 Cal. 929= 44 C.L.J. 350=27 Cr. L.J. 1268= A.I.R. 1927 Cal. 149 (F.B.).**

———The meaning of an Act is not to be interpreted with reference to what the framers intended to do but with reference to the language which they did in fact employ. Proceedings of the Legislature in passing a statute are excluded from consideration on the Judicial construction of Indian as well as of British statutes. 22 C. 788, *Foll.* (*Brasher and Scott-Smith, JJ.*). GHULAM MUHAMMAD *v.* HANNA RAM. **72 I.C. 433=A.I.R. 1924 Lah. 374.**

——— Reference is not permissible to the proceedings of the legislature which result in the provisions of an Act as legitimate aid to its construction. *Case-law discussed.* 14 Cal. 721, *Diss.*; 17 All. 498, *Expl.* (*Mookerjee and Chotzner, JJ.*). DINA NATH PAL *v.* RAJA SATI PRASAD GARGA BAHADUR. **72 I. C. 663=36 C. L. J. 220= 27 C.W N. 115=A.I.R. 1923 Cal. 74.**

—Proviso to a section.

———A proviso to a section should not by mere implication withdraw any part of what the main provision has given. (1897) A.C. 647, *Rel. on.* (*Kumaraswami Sastri, Curgenven and Walsh, JJ.*). COMMR. OF INCOME-TAX *v.* SUPPAN CHETTIAR & CO. **123 I.C. 801=31 M.L.W. 141= 1930 M.W.N. 20=A. I. R. 1930 Mad. 124= 58 M. L. J. 46 (S.B.).**

———*Proviso excepts something out of the section.*

A proviso excepts out of a previous section, or out of the earlier part of the section which contains something which, but for it, would have been within the enacting part. (*Kinkhede, A.J.C.*). BHAGWANDAS *v.* GAJADHAR. **98 I.C. 669= 23 N.L.R. 9=9 N L.J. 221= A.I.R. 1927 Nag. 68.**

———*Proviso cannot extend substantive provision.*

Arguments from a proviso which seek to extend the operative effect of the substantive enactment are not legitimate unless there is real ambiguity in the substantive enactment. *West Derby Union* v. *Metropolitan Life Assurance Co.*, (1897) A.C. 647, *Foll.* (*Sanderson, C.J. and Rankin, J.*). RAM CHUNDER SEROWGIE *v.* GOURI NATH DUTT. **97 I.C. 376=53 Cal. 492=A.I.R. 1926 Cal. 927.**

—Publication in Gazette.

———The text of an Act as published in the Gazette of India must be taken to be the authorized text of the Act and must be followed, even though the intention of the Legislature is not carried out through accidental mistake. (*Adami and Bucknill, JJ.*). RAI BRINANDAN PRASAD *v.* MAHABIR PRASAD. **97 I.C. 316= A.I.R. 1927 Pat. 142.**

INTERPRETATION OF STATUTES — Publication in Gazette.

——Under S. 78 the publication in the Gazette of India is the proper method of proving an Act and if there is a conflict between the publication in the Gazette and that in the other copies of the Act printed by the Superintendent of Government Printing, preference should be given to that in the *Gazette of India*. (*Phillips, J.*). SUBRAMANIA AIYAR *v.* SHANMUGAM CHETTIAR. **92 I C. 566= 22 M.L.W. 538=A.I.R. 1926 Mad. 65= 49 M.L.J. 363.**

—Public policy.

——*Statutes providing for succession should not override principles of public policy.*

Statutes regulating heirship or descent, or giving force to wills and to the devises contained in wills should be read as not intended to affect paramount questions of public policy or depart from well-settled principles of jurisprudence. (*Lord Phillimore.*) KENCHAVA SANYELLAPPA HOSMANI *v.* GIRIMALLAPPA CHANNAPPA SOMASAGAR.

82 I.C. 966=26 Bom. L.R. 779=20 M L W. 417= 48 Bom. 569=51 I.A. 368=22 A.L.J. 962= 5 L.R.P.C. 182=40 C L J. 447=29 C W N. 271= 1924 M W N 719=35 M.L T. 241= 3 P.L.R. 9=A.I.R. 1924 P C. 209= 47 M.L.J. 401 (P.C.).

—Punctuation marks.

——Commas are no part of the statute. (*Lord Warrington of Cliffe.*) LEWIS PUGH EVANS PUGH *v.* ASHOTOSH SEN. **114 I.C. 604=6 O.W.N. 151= 1929 A.L.J. 170=83 C.W N. 323=10 P.L.T. 155= 56 I.A. 93=29 M L.W. 449=49 C L.J. 415= 31 Bom. L.R. 702=8 Pat. 516= A.I.R. 1929 P.C. 69=56 M.L.J. 517 (P.C.).**

——Where the statute has been punctuated, the punctuation marks are part of the statute. (*Schwabe, C.J. and Wallace, J.*). BOARD OF REVENUE, MADRAS *v.* RAMANADHAN CHETTIAR.

79 I.C. 608=19 M.L.W. 34=33 M.L.T 252= 1924 M W.N. 142=A.I.R. 1924 Mad. 455= 46 M.L.J. 42.

——It is not always safe to rely on punctuation as a deciding factor in a question of construction of a section. (*Lentaigne and Carr, JJ.*). JUPITER GENERAL INSURANCE COMPANY, LTD. *v.* ABDUL AZIZ. **76 I. C. 479=1 Rang. 226= A. I. R. 1923 Rang. 185.**

—Qualifying word.

——The general rule is that a qualifying word shall be deemed to qualify the word nearest to it. (*Ashworth, J.*). R. H. LEADON *v.* E. M. LEADON.

94 I. C. 952=13 O.L.J 236=3 O W.N 406= A. I. R. 1926 Oudh 319.

—Re-enactment.

——Reproduction of section forming subject of judicial interpretations in a consolidating Act is clear indication of their acceptance by legislature. (*Mears, C.J. and Sen, J.*). *In the goods of* BALMUKUND DUBE. **A.I.R. 1930 All. 82.**

——Where the High Courts hold a particular view as to the interpretation of a section in an Act and the Act is substituted by another Act which reproduces the language of that section, it is a fair presumption that the correctness of the old view is accepted. (*Sulaiman, Ag.C.J., Mukerji and King, JJ.*). RADHA KRISHNA *v.* TEJ SAROOP.

123 I.C. 321=1929 A. L. J. 1294= A.I R. 1930 All. 69 (F.B.).

——When the legislature repeats in a later enactment an earlier enactment that has obtained a settled meaning by judicial construction the ordinary presumption is that it intends the words to

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mean what they were taken to mean before. 30 Mad. 426 (P.C.), *Foll.* (*Broadway, Addison, Tek Chand, Jai Lal and Bhide, JJ.*). SABHA CHAND *v.* PIARE LAL. **A.I.R. 1930 Lah. 765 (F.B.).**

——When a particular interpretation has been attached to certain words, the same interpretation should be attached to subsequent repealing Acts. (*Dalal, J.*). RAGHURAJ SINGH *v.* HARGOBIND.

119 I.C. 3=1930 A.L.J. 215=A.I.R. 1929 All. 845.

——*Judicial interpretation—Legislative recognition.*

The legislature is presumed to know the current of the judicial pronouncements. When the language of a particular section of a statute has been interpreted in a particular way by the Courts and that language has been reproduced by the legislature in the new Act, Court is entitled to assume that the judicial interpretation has been accepted. *Jay* v. *Johnston*, (1892) 1 Q.B. 25, *Foll.* (*Sulaiman, Banerji, King, Niamatullah and Sen, JJ.*). KAYASTHA CO., LTD. *v.* SITA RAM. **118 I. C. 17= 1929 A.L.J. 983=A.I.R. 1929 All. 625 (F B).**

——It is a well settled principle of construction that the legislature must be presumed to know not only the general principles of law but the construction which the Courts have put upon particular statutes and when a section of an Act which had received a judicial construction is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of the construction. (*Mitter, J.*). BIPUL BEHARI *v.* NIKHIL CHANDRA.

33 C.W.N. 943=A.I R. 1929 Cal. 566.

——When the legislature has copied out part of the language of a section in the old Act, it may be presumed that it accepted the interpretation put upon those expressions by the Courts under the old law. (*Lindsay, Sulaiman and Mukerji, JJ.*). MANOHAR SINGH *v.* SHEO SARAN. **103 I.C. 271= 25 A.L.J. 545=8 L.R.A. Rev. 250= A.I.R. 1927 All. 369 (F.B).**

——*Failure of Government to recast the rule if interpretation is not correct amounts to acquiescence.*

Where a rule is interpreted by Courts in a certain manner, but the Government has intended a different meaning, the failure by Government to recast the rule so as to put their meaning beyond all doubt, as soon as their original drafting has been interpreted in a contrary sense, will amount to acquiescence in the Court's interpretation. (*Jackson, J.*). ATHIMOOLAM SERVAI *v.* GOPALAKRISHNA KONE. **105 I.C. 216=26 M.L.W. 323= 1927 M.W.N. 646=A.I.R. 1927 Mad. 921= 55 M.L.J. 269.**

——Where a section of an act which has received a judicial construction is re-enacted in the same words, such re-enactment is treated as a legislative recognition of that construction. 36 Cal. 543; 39 Cal. 33; 44 Cal. 759 (P.C.); 43 Cal. 103, *Rel. on.* (*Mookerjee and Rankin, JJ.*). MAHOMED MOZAHARLAL AHMAD *v.* MAHAMED AZIMADDIN BHUINYA. **73 I.C. 17=27 C.W.N. 210= 37 C.L. J. 108=A.I.R. 1923 Cal. 507.**

——*Words judicially construed used in subsequent Acts must be given the same construction.*

Where an Act has received a judicial construction putting a certain meaning on its words and the legislature in a subsequent Act in *pari materia* uses the same words, there is presumption that the legislature used those words intending to express the meaning which it knew has been put upon the same words before, and unless there is something to rebut that presumption, the Act should be so

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construed. (*Mukerjee and Panton, JJ.*). ISAN CHANDRA BAKHSH *v.* SAFTULLAH SIKDAR.
68 I.C. 219=35 C.L.J. 36=26 C.W.N. 703= A. I. R. 1922 Cal. 331.

—Repealing Act.

———*Later statute generally repeals earlier—Rule discussed.*

The later statute repeals the earlier if both are equally general but if the later Act is a general Act but the earlier Act is a Special Act, the earlier Act is generally not repealed by the later Act. When there is a conflict between two special Acts, each of which may be described as special in some particular sense, the Court should lean again the repeal of the earlier Act by implication and unless it is absolutely clear that the operation of the first Act has to be curtailed by the later Act, the previous Act should be held to continue in force even though the latter Act may be regarded as special in some other sense. Speciality in respect of locality is given greater importance rather than speciality in respect of subject-matter, otherwise it would be impossible to compare the degree of speciality. 15 Bom.L.R. 60 and *Seward* v. *Vera Cruz*, 10 A.C. 59 *and other English cases, Ref.* (*Ramesam, J.*). GUNEPALLY THAMMAYYA *v.* SRI RAJAH TYADAPPUSAPATI KHANDENDU DORA.
1930 M.W.N. 475.

———*The inference that a later Act necessarily repeals an earlier one is wrong.*

Per *Ashworth, J.*—It is wrong to infer that an intention should be ascribed to a later Act to repeal the provisions of an earlier Act on general principles. The former enactment must be specifically repealed or its continuance must be inconsistent with a provision of a later Act, in which case, repeal will be deemed by necessary implication. (*Sulaiman and Ashworth, JJ.*). PHOOL CHAND *v.* RAM NATH. **107 I.C. 570=50 All. 430= 26 A.L.J. 142=A.I.R. 1928 All. 186.**

———*Old Temporary Act.*

If an Act is a temporary Act it comes to an end for all purposes at the end of the period for which it was enacted and therefore after a temporary Act has thus expired no proceedings can be taken upon it, and it ceases to have any further force. (*Greaves and Chakravarty, JJ.*). KUNDAMUL DALMIA *v.* W. DYER. **86 I.C. 139=29 C.W.N. 281= 52 Cal. 551=A.I.R. 1925 Cal. 571.**

———*Vested rights are not affected.*

Under the ordinary law vested rights are not taken away by the repeal of any act. Though procedure may be regulated by an act for the time being in force, still the intention to take away a vested right without compensation or any saving is not to be imputed to the Legislature in any case unless it be expressed in uvequivocal terms. (*Baker, J.C.*). CHAMPA LAL *v.* KANJILAL.
83 I.C. 752=A. I. R. 1925 Nag. 249.

———British North America Act (1867), Ss. 90 and 56—Provincial Legislation, disallowance of—Private rights completely constituted cannot be affected by disallowance—Crown grant under Vancouver Island Settlers Rights Act (1904) read with amending Act of 1917—Grant remaining unregistered at date of disallowance but grantee entitled to registration at that date—Disallowance of Amending Act of 1917 cannot affect grantee's title—Conflict of laws. (*Mr. Justice Duff.*) WILSON *v.* ESQUIMALT AND NANAIMO RY. CO.
A.I.R. 1921 P. C. 234 (P.C.).

INTERPRETATION OF STATUTES—Retrospective effect—Extent of.

———When the question arises whether a rule framed under an Act of the Indian Legislature has by implication repealed a bye-law made under authority of the local legislature the test to be applied to determine the question raised is whether there is a repugnancy between the two provisions. (*Mukerjee, Ag.C.J. and Fletcher, J.*). INDIAN MOTOR TAXI CAR CO. *v.* CORPORATION OF CALCUTTA.
61 I. C. 641=33 C.L.J. 19=25 C.W.N. 21= 22 Cr.L.J. 401=A.I.R. 1921 Cal. 107.

———*Effect of.*

It is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending action, do not affect them. But there is an exception to the rule namely where enactments merely affect procedure and do not extend to rights of action. *Re, Joseph Suche & Co. Ltd.*, (1875) 11 Ch. D. 48, *Foll.* (*Das and Ross, J.*). KEDAR NATH GOENKA *v.* TARINI PRASAD SINGH. **61 I. C. 4=2 P.L.T. 245= 1921 P.H.C.C. 158=A.I.R. 1921 Pat. 185.**

—Retrospective effect—Declaratory Acts.

———*Clear intention must be manifested.*

Enactments which are declaratory in form are not necessarily retrospective in their operation. *Young* v. *Adams*, (1898) A. C. 469, *Foll.* If an Act touches a right in existence at the passing of an Act no retrospective effect should be given to the Act unless a clear intention to that effect is manifested. *Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 369, *Ref.* (*Panton and Mitter, JJ.*). NEHRA *v.* SAJER PRAMANIK. **103 I. C. 662= 55 Cal. 67=A.I.R. 1927 Cal. 763.**

———*Apply to cases pending at appellate stage.*

A declaratory Act is an Act to remove doubts existing as to the meaning or effect of a statute, and the usual reason for passing a declaratory Act is to set aside what the legislative body deems to have been a judicial error. Declaratory Acts like judgments, decide cases pending when the judgments are given but do not re-open decided cases.

An appealable decree against which an appeal has been filed is not a decided case for applicability of declaratory Acts. (*Kanhaiya Lal and Ashworth, JJ.*). MT. MODI BIBI *v.* KASHI UPADHYA.
96 I.C. 775=A.I.R. 1926 All. 725.

—Retrospective effect—Execution of decree.

———An Act cannot affect the validity of a decree passed before it came into operation, nor can an Act be made applicable to the case of such a decree, simply because an application for its execution is made after commencement of the Act. (*Kinkhede, A.J.C.*). DURGA PRASAD *v.* THAKUR PRASAD.
87 I.C. 72=A.I.R. 1925 Nag. 377.

—Retrospective effect—Extent of.

———When a statute is retrospective with regard to certain sections only and silent as to others the rule to be followed in construing such a statute is that the Court should examine the subject-matter of the enactment of the particular section and decide whether it is to be supposed that retrospective construction was intended by the legislature to be given to it. (*Broadway, Addison and Tek Chand, JJ.*). BHAI KIRPA SINGH *v.* RASSALLDAR, AJAIPAL SINGH. **113 I.C. 529= 10 Lah. 165=A.I.R. 1928 Lah. 627 (F.B.).**

———A statute is not to be construed so as to have a greater retrospective effect than its language renders necessary. (*Broadway, Addison and Tek*

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-*Chand*, *JJ.*). (BHAI) KIRPA SINGH *v.* RASSALLDAR AJAIPAL SINGH. **113 I.C. 529=10 Lah. 165=A.I.R. 1928 Lah. 627 (F.B.).**

—Retrospective effect—Presumption.

——New enactment passed during pendency of action is not retrospective unless so expressed or enactment procedural. (*Sulaiman and Kendall*, *JJ.*). SHEOPUJAN RAI *v.* BISHNATH RAI. **A.I.R. 1930 All. 706.**

——No "Retrospective effect" unless specifically expressed. (*Fazl Ali and Chatterji*, *JJ.*). MT. RAMJHARI KUER *v.* GOKHUL SINGH. **123 I. C. 408=11 Pat. L. T. 398=A. I. R. 1930 Pat. 61.**

——Per *Mallick*, *J.*—It is a well-established principle of law that retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language. (*Cuming and Mullick*, *JJ.*). SHIKHA KALI KUMAR *v.* CHUNI LAL. **103 I. C. 674=31 C.W.N 1007=A. I. R. 1927 Cal. 748.**

——Retrospective effect cannot be given to the provisions of an Act especially when to do so it will destroy existing rights unless it is made clear by express language that such effect was intended. (*Krishnan and Venkatasubba Rao*, *JJ.*). VEERABHADRAYYA *v.* NAGANNA NAIDU. **98 I.C. 828=50 Mad. 201=24 M.L.W. 579=1926 M.W.N. 869=A.I.R. 1927 Mad. 41=52 M.L.J. 38.**

——*Statutes are prospective unless there is clear provision to the contrary.*

The general rule is that all Statutes are to be construed to operate in future, unless from the language a restrospective effect is clearly intended. It is chiefly operative when the enactment would prejudicially affect vested rights or the legal character of past transactions. Every Statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of the transactions or considerations already passed must be presumed, out of respect to the Legislature to be intended not to have a retrospective operation. 18 C. P. L. R. 143, *Foll.* (*Batten*, *J.C.*). HINDU SINGH *v.* MANGAL. **72 I.C. 438=19 N. L. R. 110=6 N.L.J. 227=A.I.R. 1923 Nag. 227.**

——No statute shall be construed so as to have retrospective operation, unless such construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. (*Mittra*, *Offg. A.J.C.*). MT. LAHANI *v.* BALA. **77 I.C. 798=18 N.L.R. 85=A.I.R. 1922 Nag. 227.**

—Retrospective effect—Principles.

——*Agra Pre-emption Amending Act* (*IX of* 1929).

Held, that the Agra Pre-emption Amending Act does not take effect retrospectively so as to apply to pending proceedings. Rules as to interpretation of statutes discussed with reference to giving retrospective effect to an enactment. (*Sulaiman and Kendall*, *JJ.*). SHEOPUJAN RAI *v.* BISNATH RAI. **1930 A.L.J. 842=A.I.R. 1930 All. 706.**

—Retrospective effect—Procedural law.

——The law of evidence is a law of mere procedure and does not affect substantive rights and since "alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be," rules of evidence are retrospective in their operation. *Gardner* v. *Lucas*, 3 A.C. 582 at 603, *Ref.* (*Sulaiman and Kendall*, *JJ.*). PARAS RAM *v.* MEWA KUNWAR. **1930 A.L.J. 890=A.I.R. 1930 All. 861.**

INTERPRETATION OF STATUTES—Retrospective effect—Procedural law.

——No person has any vested interest in procedure. Matters of procedure apply to a pending suit if the law is changed during the pendency of suit. A.I.R. 1925 P.C. 117, *Dist.* (*B. B. Ghose and Panton*, *JJ.*). JANKINATH SINGH *v.* NIRODBARAN RAY. **57 Cal. 148=A.I.R. 1930 Cal. 422.**

——The general rules for the interpretation of statutes is that alterations in the procedure are always retrospective unless there is some good reason against it. (*Shadi Lal*, *C. J. and Agha Haidar*, *J.*). SHIB NARAIN *v.* LACHMI NARAIN. **119 I.C. 733=30 Pat.L.R. 533=A.I.R. 1929 Lah. 761.**

——*Amendment of law.*

An amendment of the law which changes the forum and does not take away the right to institute proceedings, relates to procedure only and has retrospective effect. A.I.R. 1924 Cal. 983, *Appr.*; A.I.R. 1927, P.C. 97, *Dist.*, A.I.R. 1927 Mad. 977, *Ref.* (*Jackson*, *A.J.C.*). GOKAL PRASAD *v.* GOVINDRAO SUBHEDAR. **119 I.C. 682=12 N.L.J. 82=A.I.R. 1929 Nag. 282.**

——*Execution—Change of law after order—No effect.*

Lower Court made an order for execution of a decree, and the order was strictly in conformity with the processual law existing at the time of the order. After the order but before an appeal against it was preferred, the processual law was amended; but the amendment was not retrospective.

Held, that the appellate Court should not interfere with the lower Court's order. Execution legally started cannot by change in the processual law become illegal. *Quilter* v. *Mapleson*, 9 Q.B.D.672, *Dist.* (*Wallace and Madhavan Nair*, *JJ.*). SRI RAJAH SATRUCHERLA *v.* MAHARAJA OF JAIPUR. **114 I.C. 823=A.I.R. 1928 Mad. 1194.**

——*Procedural law has immediate effect.*

Enactments dealing with procedure have an immediate effect and must, unless the contrary is expressed, apply to all actions, whether commenced before or after the passing of the Act. A party has no vested right in mere procedure. The Courts have to adopt the procedure laid down by statutes which are in force for the time being. (*Sulaiman and Banerji*, *JJ.*). NISAR HUSSAIN *v.* SUNDAR LAL. **104 I.C. 292=25 A.L.J. 1025=8 L.R.A.Rev. 264=A.I.R. 1927 All. 657.**

——Statutes relating to procedure have retrospective effect. (*Greaves and Duval*, *JJ.*). RAJIB LOCHAN DHAR *v.* JOGESH CHANDRA DAS GUPTA. **84 I. C. 705=28 C.W.N. 998=26 Cr. L.J. 353=A.I.R. 1924 Cal. 983.**

——Amendment in Cr. P. Code, Sch. II regarding the trial of an offence under S. 477-A of the Penal Code relates to procedure and has retrospective effect. (*Greaves and Duval*, *JJ.*). RAJIB LOCHAN DHAR *v.* JOGESH CHANDRA DAS GUPTA. **84 I.C. 705=28 C.W.N. 998=26 Cr. L.J. 353=A.I.R. 1924 Cal. 983.**

——*Rights and procedure.*

It is settled law that new procedure affects bygone transactions and alterations in procedure are always retrospective. It is clear law that statute cannot deprive a suit or of a right in a pending action of an appeal to a superior tribunal which belonged to him as of right. No appeal is provided for in the Code, under S. 195, Cr. P. Code and further the amendments made affect only

INTERPRETATION OF STATUTES—Retrospective effect—Right to appeal.

procedure. (*Odgers and Wallace, JJ.*). NATARAJA PILLAI *v.* RANGASWAMY PILLAI. **77 I.C. 297=47 Mad. 384=19 M. L. W. 358=34 M. L. T. 56=25 Cr. L. J. 361=A. I. R. 1924 Mad. 657=46 M.L.J. 274.**

—Retrospective effect—Right to appeal.

——Right of appeal to a higher tribunal is a substantive right quite different from procedure and cannot be taken away by a subsequent enactment, even though no occasion for the exercise of that right had occurred due to the pendency of the suit. A I.R. 1928 All. 437 (F.B.), *Foll.*; *Colonial Sugar Refining Co., Ltd.* v. *Irving*, (1905) A.C. 369, *Ref.* (*Sulaiman and Kendall, JJ.*). SHEOPUJAN RAI *v.* BISNATH RAI. **1930 A. L. J. 842=A. I. R. 1930 All. 706.**

——A suit which was instituted before the coming into force of Agra Tenancy Act (XIII of 1926) but was decided after it had come into operation is in the matter of appeals governed by Agra Tenancy Act (II of 1901). A.I.R. 1928 All. 437, *Rel. on.* (*Iqbal Ahmad, J.*). MT. JANAK DULARI *v.* BISHAMBER NATH. **119 I.C. 251=A.I.R. 1929 All. 745.**

——The institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the act a retrospective effect. (*Coutts-Trotter, C.J., Kumaraswami Sastri, Wallace, Beasley and Walsh, JJ.*). VASUDEVA SAMIAR, *In re.* **115 I C. 811=52 Mad. 361=29 M. L. W. 390=1929 M.W.N. 57=A.I.R. 1929 Mad. 381=56 M.L.J. 369 (S.B.).**

——An appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, and the right to continue that proceeding cannot be affected by a new Act, unless it expressly says so.

A suit for arrears of rent for less than Rs. 200 was filed in the Court of the Assistant Collector when the old Tenancy Act was in force. Before it could be decided, the new Act came into force on 7th September 1926. The suit was decreed on 23rd December, 1926,

Held that the right to appeal to the Court of the District Judge was governed by the law prevailing at the date of the institution of the suit, and not by the law that prevailed at the date of its decision, or at the date of the filing of the appeal. *Colonial Sugar Refining Co., Ltd.* v. *Irving*, (1905) A. C. 369; A. I. R. 1927 P.C. 242; A.I.R. 1927 Mad. 977 and A.I.R. 1928 All. 169, *Rel. on*; 26 All. 375, *Held overruled by* (1905) App. Cas. 369 (*Sulaiman, Ag.C.J., Mukerji and Boys, JJ.*). RAM SINGHA *v.* SHANKAR DAYAL. **111 I.C. 6=50 All. 965=26 A.L.J. 998=9 L R A. Rev. 270=A.I.R. 1928 All. 437 (F.B.).**

——A statute giving a right of appeal is not merely procedural and has no retrospective effect. It does not therefore apply to pending suits. *Colonial Sugar Refining Co.* v. *Irving*, (1905) A.C. 369 and 5 L.B.R. 148, *Foll.* (*Rutledge, C.J. and Maung Ba, J.*). SAKEENA BIBI *v.* C. STEPHENS. **97 I.C. 1025=4 Rang. 221=A.I R. 1926 Rang. 205.**

—Retrospective effect—Vested rights.

—— Per *Rankin, C.J.*—"There is a strong current of authority in all Courts to the effect that the legislature, *prima facie*, does not intend to affect rights retrospectively." (*Rankin, C.J. and C.C. Ghose, J.*). JNANENDRANARAYAN BAGCHI *v.* SARADASUNDARI DASI. **57 Cal. 726.**

INTERPRETATION OF STATUTES—Retrospective effect—Vested rights.

——*Right of Appeal.*

It is now authoritatively settled that the right of appeal is not a mere matter of procedure, but is a vested right which inheres in a party from the commencement of the action in the Court of first instance. If according to the law in force at the time when the action was started in the Court of first instance the ultimate decision of such Court was appealable, the right to prefer or prosecute an appeal therefrom is not affected by subsequent change of the law abolishing the appeal or modifying its forum unless it is so provided expressly in the amending statute or follows by necessary implication from its terms. *Colonial Sugar Refining Co., Ltd.* v. *Irving*, (1905) A.C. 369, *Rel. on.* (*Broadway, Addison and Tek Chand, JJ.*). KIRPA SINGH *v.* RASALLDAR AJAIPAL SINGH. **113 I.C. 529=10 Lah. 165=A.I.R 1928 Lah. 627 (F.B.).**

——*Vested rights must be respected.*

Statutes should be interpreted, if possible, so as to respect vested rights and in the absence of anything in an enactment to show that it is to have retrospective operation it cannot be so construed as to have the effect of altering the law applicable to a claim in the litigation at the time when the Act is passed. (*Broadway, Addison and Tek Chand, JJ.*). (BHAI) KIRPA SINGH *v.* RASSALDAR AJAIPAL SINGH. **113 I.C. 529=10 Lah. 165=A.I.R. 1928 Lah. 627 (F.B.).**

——Where vested rights are concerned, an amendment has no retrospective effect unless it is so stated expressly in the Act. (*Mullick, Ag. C.J. and Jwala Prasad, J.*). SUKUL LAKHPAT RAM *v.* RAGHU KOERI. **105 I.C 33=8 P.L.T. 850=A.I.R. 1928 Pat. 109.**

——*Existing rights explained.*

While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Provisions which, if applied retrospectively, would deprive of their existing finality, orders which, when the statute came into force were final, are provisions which touch existing rights. *Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 369, *Rel. on.* (*Lord Blanesburgh.*) DELHI CLOTH AND GENERAL MILLS CO., LTD. *v.* INCOME-TAX COMMISSIONER. **106 I.C. 156=54 I.A. 421=25 A.L.J. 964=47 C.L.J. 1=32 C.W.N 237=8 P.L.T. 791=4 O.W.N. 1053=30 Bom. L.R. 60=27 M L.W 179=1928 M.W.N. 95=29 P.L.R. 37=A.I.R. 1927 P.C. 242=53 M.L.J. 819 (P.C.).**

—— Unless from the language of a statute a contrary effect is clearly intended, even statute which takes away or impairs vested rights, must be presumed not to have a retrospective operation, although this presumption does not apply to provisions which affect only the procedure and practice of the Court. (*Findlay, J.C.*). KEDARNATH BHARGAVA *v.* NET RAM. **101 I.C. 284=23 N.L R. 50=10 N L.J. 29=A.I.R. 1927 Nag. 127.**

—— *General Clauses Act* (1897), *S.* 6.

The repeal or amendment of an Act does not affect a right already in existence unless a contrary intention is made out expressly or by impli-

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cation. (*Dawson Miller, C.J. and Jwala Prasad, J.*). CH. GURSARAN DAS *v.* PARMESHWARI CHARAN.
104 I. C. 580=6 Pat. 236= 8 P.L.T. 851=
A.I.R. 1927 Pat. 203.

———Although a statute cannot take away vested rights, unless it is declared to be retrospective, yet in a matter of procedure it governs all proceedings instituted or to be instituted. 12 Cal. 583 (F.B.), *Foll.* (*Kanhaiya Lal, J.*). KHARAG SINGH *v.* KIDDHA. 96 I.C. 93= A.I.R. 1926 All. 667.

———Vested rights under old Act are not taken away unless expressly provided—New procedure applies to further action. (*Adami and Bucknill, JJ.*). CHOTE LAL NAND KISHORE NATH SHAH DEO *v.* TULA SINGH. 97 I.C. 608=
8 P.L.T. 397=1926 P.H.C.C. 293=
A.I.R. 1926 Pat. 561.

———Vested rights previously acquired cannot be taken away by subsequent legislation unless the latter is expressly retrospective. A. I. R. 1923 Nag. 227, *Ref.* (*Findlay, Offg. J.C.*). ATMARAM *v.* BHAGWAT. 91 I. C. 216=8 N. L. J. 175=
A. I. R. 1925 Nag. 447.

———"It is one thing to say that legislation unless expressly made retrospective shall not affect an existing vested right be it of suit or some other right but it is quite another thing to say that the same principle applies to a possible right of suit which may arise in future and which is not a vested right." 13 C.W.N. 604, *Rel. on.* (*Baker, Offg. J.C.*). GOPAL RAO *v.* HAR PRASAD. 98 I.C. 767=
9 N. L. J. 192.

———*No retrospective effect—Conflict between earlier or later legislation.*

Although a Code is exhaustive with respect to all matters therein specifically provided for, in construction of statutes you must not construe the words so as to take away the rights which already existed before the statute was passed, unless you have plain words which indicate that such was the intention of the Legislature. (*Page, J.*). SUNDERMULL *v.* LADHURAM KALURAM.
83 I. C. 757=50 Cal. 667=A.I.R. 1924 Cal. 240.

———*Right of appeal is not affected by repealing statutes.*

Under the ordinary law, vested right including rights to appeal and to demand a reference that have already accrued are not taken away by the repeal of any Act, but the procedure would be under the new Act. The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal. 38 Mad. 101, *Foll.*; 41 Cal. 1125, *Ref.* (*Baker, J.C. and Hallifax, A.J.C.*). THE COMMR. OF INCOME-TAX *v.* DHARMCHAND DALCHAND OF SANGOR. 76 I.C. 82=A.I.R. 1924 Nag. 24.

———The repealing enactment cannot be given retrospective operation, so as to impose an impossible condition on pain of forfeiture of a vested right. (*Mookerjee and Cholzner, JJ.*). MAKAR ALI *v.* SARFADDIN. 70 I.C. 606=36 C.L.J. 132=
27 C.W.N. 183=50 Cal. 115=A.I.R. 1923 Cal. 85.

———*Principle explained.*

Per *Oldfield, J.*—It is a fundamental rule, when vested rights are in question, that no statute shall be construed, so as to have a retrospective operation, unless such a construction is required plainly by its language. Mere implications cannot fulfil this requirement. Also the postponement of the operation of a statute cannot be recognised as showing that the enactment is to be retrospective in its effects. It would be unsafe in the extreme

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to attempt inferance from such data as to the intention of the legislature and to estimate the probability that a particular interval did or did not involve a general intention to give retrospective effect in all, or any particular classes of cases. (*Oldfield and Seshagiri Aiyar, JJ.*). VISWANATHA SASTRI *v.* SITALAKSHMI AMMAL. 61 I.C. 979=
13 M.L.W. 37=1921 M.W.N. 181=
A.I.R. 1921 Mad. 126.

———*Laws presumed prospective.*

Laws should be construed as prospective, not as retrospective, unless they are expressly made applicable to past transactions and to such as are still pending. Where the law is altered by Statute pending the action, the law, as it existed when the action was commenced, must decide the rights of the parties to the suit, unless the Legislature express a clear intention to vary the relation of the litigant parties to each other. Statutes which take away or impair vested rights under existing laws or attach a new disability in respect of transactions or considerations already passed, must be presumed not to have a retrospective operation. (*Dhobley, A.J.C.*). LAKHMICHAND *v.* BAJIRAO.
69 I. C. 870=5 N.L.J. 251=A.I.R. 1921 Nag. 170.

—Right and remedy.

———It is seldom that an Act can be construed to declare something unlawful unless that Act provides a penalty for breach of the provision. (*Ashworth, J.*). GAURI DATT *v.* BANDHU PANDEY.
119 I. C. 505=10 L.R.A. Rev. 269=
A.I.R. 1929 All. 394.

———Where the statute itself gives a remedy for an infraction of any of its provisions, it is not open to the Court to hold that another remedy not specifically provided for is open. *Shannon Realities Ltd.* v. *St. Michel* (*Ville De*), (1924) A.C. 185, *Rel. on.* (*Devadoss, J.*). MANGALA *v.* AYYATHORAI.
110 I.C. 765=29 M. L. W. 285=
A.I.R. 1928 Mad. 641= 55 M.L.J. 632.

———*New enactment providing new rights and their remedies—Procedure in the new enactment should be followed.*

If a new enactment is such that certain new rights unknown previously to law are created by the new statute and certain remedies are provided for the infringement of such rights, it must logically follow that it was the clear intention of the legislature that such remedies should be enforced only in the manner and by following the procedure indicated. No doubt it is open to the legislature even in other cases to take away any subsisting general right of suit and provide a special remedy instead, but it must be done by express provision and such a general right is incapable of being taken away merely by implication. (*Srinivasa Aiyangar and Ananthakrishna Ayyar, JJ.*). MOHIDEEN PICHAI *v.* TINNEVELLY MILLS CO.
111 I.C. 225=1928 M.W.N. 442=
28 M.L.W. 932= A.I.R. 1928 Mad. 671.

———*Bar of Civil Suits.*

It is an established principle of law that when an act of Legislature gives power to any person for a public purpose from which an individual may receive an injury, then if the mode of redress is also specified in the statute jurisdiction of ordinary Courts will be ousted. (*Tek Chand and Bhide, JJ.*). DEWA SINGH *v.* FAZALDAD. 111 I.C. 508=
10 Lah. 336=A.I.R. 1928 Lah. 562.

———*Crown's prerogative.*

Where the legislature has dealt with the powers under the prerogative, the prerogative must be

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taken to be merged in the statute, and the powers previously within the prerogative can be exercised only in the manner and subject to the limitations contained in the statute. *In re. De Keyser's Royal Hotel Ltd.*, (1919) 2 Ch. 197, *Ref.* (*Taleyarkhan, J.*). MOTOR EMPORIUM CO. *v.* N. H. MOOS.
106 I.C. 127=29 Bom. L.R. 1446=A.I.R. 1927 Bom. 606.

——Where a new right is brought into existence and a remedy in respect of that right is given at the same time by the same statute that remedy is exclusive of any ordinary rights. (*Schwabe, C. J. and Waller, J.*). SECY. OF STATE *v.* KUPPUSWAMI CHETTI. **78 I.C. 82=1924 M.W.N. 138=33 M.L T. 272=A.I.R. 1924 Mad. 521=46 M.L.J. 36.**

——Rights created by a statute can be enforced only in the manner provided under it. (*Drake Brockman, J. C.*). LAKHMICHAND *v.* CHATURBHUJ. **65 I.C. 230=4 N.L.J. 274=A.I.R. 1921 Nag. 60.**

—Rules framed under sections.

——Rules are not *ultra vires* where rule-making authority is not shown to have no authority not only under the Act but under any law whatever. 45 M.L.J. 156, *Foll.* (*Kinkhde, A. J. C.*). KING-EMPEROR *v.* SHRIBALLABH. **88 I.C. 28=26 Cr.L.J. 1084=A.I.R. 1925 Nag. 393.**

——*Practice—Rule of Court.*

Courts must abide by the words of a rule of Court having the force of law without attempting to reform it according to the supposed intentions of the Legislature or attempting to exclude cases which fall within the expressed meaning of the rule in order to make the law reasonable. For the office of Courts is *jus dicere* and not *jus dare.* (*Kennedy, J. C., Raymond and Rupchand Bilaram, A.J.Cs.*). HIRI MAL *v.* HAZARI SINGH.
78 I C. 583=18 S.L.R. 19=A.I.R. 1925 Sind 49 (F. B.).

——Rules and bye-laws made by statutory bodies should be reasonable; otherwise they would be *ultra vires* and void. In the case of rules framed for the guidance of Courts greater reasonableness and fairness is expected. (*Devadoss, J.*). KANNISA *v.* DEVICHAND. **75 I.C. 390=18 M.L.W. 414=1923 M.W.N. 750=46 Mad. 847=A.I.R. 1924 Mad. 46=45 M.L.J. 699.**

——*Rule framed under section of Act is not 'Law' unless Act itself says so—Power to regulate does not imply power to prohibit.*

Where a statute under the authority of which rules are promulgated itself declares that they shall have the same effect as if enacted in the statute, the validity of the rules cannot be canvassed by Courts of Law. Nor can any Court reject them as uncertain and unenforceable.

But where the statute does not so provide their validity can be canvassed and the Court can reject them as unenforceable on the ground of unreasonableness or uncertainty. They do not constitute 'law'. The essence of the law is that it is enforceable as law, and though the Courts may construe it they cannot reject or quash it.

A power to regulate does not involve a power to prohibit.

Per *Mullick, J.*—A notification issued in exercise of a power conferred by statute is as much a part of the law as if it had been incorporated in the statute. The command is, in every sense a command by the appropriate Legislative authority. (*Mullick, Coutts and Das, JJ.*). EMPEROR *v.* ABDUL HAMID. **68 I.C. 945=3 P.L.T. 585—1922 P.H.C.C. 274—2 Pat. 134=23 Cr. L.J. 625=1 Pat. L.R. Cr. 199=A.I.R. 1923 Pat. 1 (S.B.).**

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—Schedules.

——Schedules annexed to an Act and the headings under which they are placed are parts of the enactment. But the same general rule which regulates the effect of the preamble applies also to these headings, namely, that they are not to be taken into consideration if the language of the enactment is clear. (*B. B. Ghose, J.*). ALTAP ALI *v.* JAMSUR ALI. **93 I.C. 909=30 C.W.N. 334=A.I.R. 1926 Cal. 638.**

—Singular and plural.

——Words in singular include plural unless context indicates contrary. (*Robinson, C.J. and Baguley, J.*). CHOKKALINGAM *v.* COMMR. OF INCOME-TAX. **84 I.C. 521=3 Bur. L.J. 252=2 Rang. 579=A.I.R. 1925 Rang 94.**

—Special powers.

——Discretion allowed to authority—It must be exercised in proper manner—If given in wide terms scope of interference is narrowed. (*Broadway and Bhide, JJ.*). DES RAI *v.* EMPEROR. **A.I.R. 1930 Lah. 781.**

——*Permission does not exclude duty.*

Per *Heald, Ag. C. J.*—In enactments which confer powers, and particularly in enactments which confer powers on public authorities, language of mere permission may not preclude the existence of a duty. *Bishop of Oxford's case*, 5 A. C. 214, *Foll.* (*Heald, Ag. C. J., Otter and Ormistone, JJ.*). GOVT. OF BURMA *v.* MUNICIPAL CORPORATION OF RANGOON. **A. I. R. 1930 Rang. 297 (F.B.).**

——*Forum.*

When a special forum is constituted by a special Act, questions arising under that Act must, in the absence of anything to the contrary in the Act or any other enactment, be determined by the forum constituted by the Act. (*Kumaraswami Sastri and Devadoss, JJ.*). OFFICIAL ASSIGNEE OF BOMBAY *v.* SUNDARACHARI, **102 I.C. 702=50 Mad. 776=25 M.L.W. 813=1927 M.W.N. 685=38 M.L.T. 401=A.I.R. 1927 Mad. 684=53 M.L.J. 209.**

——*Successive exercise.*

The general principle of interpretation of statutes requires that in the absence of anything to the contrary in the context or otherwise a power being given for effectuating a purpose may be exercised not only once but as often as may be necessary for effectuating such purpose. (*Srinivasa Iyengar, J.*). EKAMBAR NAICKER *v.* COMMR. OF MADRAS CORPORATION. **99 I.C. 18=1926 M.W.N. 842=A.I.R. 1927 Mad. 22.**

——*Restrictive provision should be strictly construed.*

Where a particular right is created by legislative enactment in favour of one party which is restrictive of the rights of another party, the words of the Act must be strictly construed. The party relying upon the provision of the statute will also have to show that he has strictly conformed to the statutory provisions. (*Chari, J.*). MANJEEBHAI KHATAW AND CO. *v.* JAMAL BROTHERS & CO., LTD. **105 I.C. 534=5 Rang. 483=A.I.R. 1927 Rang. 306.**

——New powers can be conferred only by clear language—The more defective the language the

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stricter should be the interpretation. (*Ashworth, J.*). BRIJ RAJCHANDRA *v.* SUBHADRA KUAR.
94 I.C. 294=13 O.L.J. 435=3 O.W.N. 321= A.I.R. 1926 Oudh 324.

———*Highway powers—Public welfare.*

It does not necessarily follow because certain powers are conferred upon a Municipality by the Legislature that the exercise of the powers is always valid. Powers materially affecting the welfare of the community must necessarily be exercised not arbitrarily or capriciously but in a reasonable manner and with due regard to the well-known maxim which is applied in cases where highways are concerned that regard for the public welfare is the highest law. (*Raymond and Aston, A.J. Cs.*). HYDERABAD MUNICIPALITY *v.* KARJI FAKHRUDIN. **81 I.C. 134=17 S.L.R. 273= 25 Cr.L.J. 646=A.I.R. 1925 Sind 90.**

—Stare decisis.

———Even a long and uniform course of judicial interpretation of an enactment may be overruled if it is contrary to the meaning of the enactment. *Pate* v. *Pate*, (1915) A.C. 100 and A.I.R. 1916 P.C. 182, *Foll.* (*Coutts-Trotter, C. J., Kumaraswami Sastri and Walsh, JJ.*). RATNASABAPATHY CHETTIAR *v.* DEVASIGAMONY PILLAI.
116 I.C. 817=52 Mad. 105=29 M.L.W. 143= A.I.R. 1929 Mad. 53=56 M.L.J. 10 (F.B.).

———Where the question is as to the construction to be put upon a certain statute, a wrong practice of this Court will not override the language of the statute. (*Ashworth, J.*). TULA RAM *v* BOHRA DWARKA DAS. **115 I.C. 655=50 All. 610= 26 A.L.J. 316=A.I.R. 1928 All. 248.**

———*Terms of a statute not clear—Uniform course of interpretation should be followed.*

Where the terms of statute or ordinance are clear, then, even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment; but where such is not the case, then it is the duty of the Court to accept the interpretation so often and so long put upon the statute by the Courts, and not to disturb those decisions. (*Mears, C.J., Piggott, Gokul Prasad, Kanhaiya Lal and Sulaiman, JJ.*). LALLU SINGH *v.* GUR NARAIN.
68 I.C. 798=45 All. 115=20 A.L.J. 744= A.I.R. 1922 All. 467 (F.B.).

—Statement of objects and reasons.

———*Not part of Act.*

Per *Full Bench.*—It is not permissible in India to refer to the statement of objects and reasons which accompanies the draft Bill when it is first introduced in the legislative body. Unlike the preamble, the headings and the marginal notes, the statement of the objects and reasons is no part of the Act as passed by the legislature. 14 All. 145; 22 Bom. 112; A.I.R. 1928 Lah. 35 and A.I.R. 1917 P.C. 42, *Ref.*; 22 Cal. 788, *Expl.* (*Mears, C.J., Boys and Young, JJ.* contra.) (*Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND.
1930 A.L.J. 402=A. I. R. 1930 All. 225 (F.B.).

———In construing the provisions of a statute it is not open to the Court to consider the statement of objects and reasons as they form no part of the statute. (*Mirza and Patkar, JJ.*). RATANSI MIRJI *v.* EMPEROR. **120 I.C. 356=53 Bom. 627= 31 Bom. L.R. 581=31 Cr. L. J. 103= 1929 Cr.C. 41=A.I.R. 1929 Bom. 274.**

———*Should not be looked to.*

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It is well settled that in construing an Act of the legislature where the words are absolutely clear and unambiguous it is not within the province of a Court to look to the statement of the objects and reasons or to the proceedings of the council with a view to discover whether the words used mean something above and beyond what they say. 22 Cal. 788 (P.C.); A.I.R. 1920 P.C. 56 and A.I.R. 1922 Lah. 211, *Foll.* (*Tek Chand and Agha Haidar, JJ.*). RAJ MAL *v.* HARNAM SINGH.
104 I.C. 661=9 Lah. 260=28 P.L.R. 595= A.I.R. 1928 Lah. 35.

———A Court should not in interpreting the Act refer to the objects and reasons given by the Legislature for enacting it. (*Pratt and Duckworth, JJ.*). A. K. R. M. C. T. CHETTY FIRM *v.* MAUNG AUNG BWINT. **66 I. C. 885=11 L.B.R. 354= 1 Bur. L.J. 239=A.I.R. 1923 Rang. 21.**

———The rule of interpretation of statutes is that where the wording of an Act is clear and unambiguous, a Court cannot look to the statement of objects and reasons of the Act or try to discover whether the words used mean something above and beyond what they clearly say. (*Harrison, J.*). RUP KISHORE *v.* BHAGAT. **69 I.C. 748= A.I.R. 1922 Lah. 211.**

———To help the construction of a provision in a statute, statement of objects and reasons of the statute cannot be referred to: 22 Cal. 788, *Appl.* (*Young, J.*). O. RAISEE AND CO. *v.* S. JOSEPH BROS. **64 I.C. 171=13 Bur. L.T. 179.**

—Strict construction.

———Special Acts must be strictly interpreted. (*Johnstone, J.*). MT. QAISAR JAHAN BEGAM *v.* COURT OF WARDS, DELHI. **122 I.C. 569= A. I. R. 1930 Lah. 333.**

———In the case of penal statutes and fiscal enactments a strict construction most favourable to the subject ought to be adopted. (*Mirza and Patkar, JJ.*). RATANSI MIRJI *v.* EMPEROR.
120 I.C. 356=53 Bom. 627= 31 Bom. L.R. 581=31 Cr. L J. 103= 1929 Cr.C. 41=A.I.R. 1929 Bom. 274.

———*Transfer of Property Act, S. 59—Registration.*

Where the statute requires that a particular kind of transfer, as for instance a mortgage, shall be affected by a particular kind of instrument, such a provision must be enforced with great stringency. 40 All. 187, *Foll.*; 42 Cal. 801, *Dist.* (*Dalal and Pullan, JJ.*). MADAN MOHAN PAL *v.* JAI NANDAN LONIA. **100 I. C. 733= A.I.R. 1927 All. 411.**

———Per *Patkar. J.*—In the case of penal statutes fiscal enactments strict construction, most favourable to the subject, ought to be adopted. 31 Mad. 408 and 34 Cal. 257, *Ref.* (*Fawcett and Patkar, JJ.*). EMPEROR *v.* KADARBHAI USAFALLA.
103 I.C. 593=51 Bom. 896=28 Cr.L.J. 705= 8 A.I.Cr.R. 346=29 Bom.L.R. 987= A.I.R. 1927 Bom. 483.

———*Act should be construed strictly but benefit of doubt should be given to subjects.*

The general principle is to construe an Act strictly and where there is any doubt such doubts should be given in favour of the subject. (*Broadway, J.*). MISRI LAL *v.* EMPEROR. **100 I.C. 716= 8 Lah. 320=28 Cr.L.J. 332=7 A.I. Cr. R. 572= 28 P.L.R. 521=A.I.R. 1927 Lah. 338.**

———An Act imposing disabilities should be strictly construed. (*N. R. Chatterjee and Chotzner, JJ.*). PRATAP CHANDRA *v.* JAGADISH CHANDRA.
82 I.C. 886=40 C.L.J. 331=A.I.R. 1925 Cal. 116.

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——Statute imposing restrictions upon the subject's rights should be strictly construed and such restrictions should not be extended beyond what the words used actually cover. (*Abdul Raoof and Moti Sagar, JJ.*). THE ZAMINDRA BANK, SHER PUR KALAN *v.* SUBA. **71 I C 722= A. I. R. 1925 Lah. 418.**

—Surplusage.

——A statute ought to be so construed that, if it can be prevented, no clause, sentence, or word be superfluous. (*Rupchand Bilaram, A.J.C.*). VASANBAI *v.* RADHIBAI. **108 I.C. 657=22 S.L.R. 441= A. I.R. 1928 Sind 118.**

——The settled canon of construction is that a statute ought to be so construed that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant. *Ditcher* v. *Dennison*, 11 Moo. P.C. 324, *Appl.* (*Tek Chand, J.*). SEKANDAR KHAN *v.* BALANDKHAN. **8 Lah. 617=29 P.L.R. 81= A.I.R. 1927 Lah. 435.**

——*Need for caution.*

Per *Boys, J.*—It is a conclusion to be arrived at with great cautions in any case that a section in an Act is surplusage. It calls for still greater caution when the two sections one of which is said to be surplusage, are actually contiguous to each other in the Act and neither could by any possibility have been overlooked when framing the other. (*Mukerji and Boys, JJ.*). CHHOTE LAL *v.* BANSIDHAR. **95 I.C. 998=24 A L.J. 570= A.I.R. 1926 All. 653.**

——*Formalities for a contract.*

When the Legislature, for reasons best known to itself, requires certain formalities to be gone through, or certain formalities to be observed, in order to make a contract valid, or when it requires certain descriptions, or particulars to be given in a contract to make it valid the Court cannot consider any one of the terms or requisites as of no importance. (*Devadoss and Waller, JJ.*). PUBLIC PROSECUTOR *v.* AYITHA. **98 I. C. 472= 49 Mad. 426=23 M.L.W. 559=27 Cr. L.J. 1352= A.I.R. 1926 Mad. 670=50 M.L.J. 659.**

——In construing an Act words found there should not be regarded as surplusage and full effect should be given to them, if a reasonable interpretation can be found. (*Sanderson, C.J., Walmsley, Newbould, Mukerji and Chotzner, JJ.*). BARADA KANTA RAY *v.* SHAIKH MAIGUDDI. **82 I.C. 109=52 Cal. 275=28 C.W.N. 1056= 40 C.L.J. 199=A.I.R. 1925 Cal. 1 (F.B.).**

—Miscellaneous.

——*Contemporaneous interpretation.*

Per *Jack, J.*—It is well recognized that a contemporaneous interpretation is the best and strongest in law. (*Rankin, C.J., C. C. Ghose, Suhrawardy, Mukherji and Jack, JJ.*). PADAM PRASAD *v.* EMPEROR. **119 I.C. 193=50 C.L.J. 106= 33 C.W.N. 1121=30 Cr. L.J. 993= 1929 Cr. C. 228=A I.R. 1929 Cal. 617 (S B.).**

——It is an elementary rule of construction that phrases and sentences of a statute should be construed according to the rules of grammar. (*Broadway on difference between Zafar Ali and Bhide, JJ.*). SHIRAJ *v.* EMPEROR. **119 I.C. 265= 30 Cr.L.J. 1019=1929 Cr.C. 205=11 Lah. 55= A.I.R. 1929 Lah. 641.**

——*All necessary incidents or consequences included.*

It is a well-accepted maxim of interpretation that an enactment includes all the incidents

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or consequences necessarily resulting from it. Thus when money payable under a decree is paid by a judgment-debtor in accordance with the directions of the Court which made the decree, the act of payment must involve, to save itself from utter futility, the necessary consequence of freedom of the judgment-debtor from his liability under the decree. (1894) A. C. 243, *Ref.* (*Wazir Hasan, Ag. C.J., Misra and Raza, JJ*). JAI INDAR BAHADUR SINGH *v.* BRIJ INDAR KUAR. **117 I.C. 758= 6 O W.N. 334=A.I.R. 1929 Oudh 231 (F.B.).**

——*Powers.*

In regard to acts done in pursuance of statutory powers, whatever power is not given expressly or by necessary implication must be deemed to be prohibited. (*Das and Allanson, JJ.*). BANDRI NATH *v.* NARESH MOHON. **119 I.C. 903= 8 Pat. 86=A.I.R. 1929 Pat. 369.**

——*Rating Law.*

It is a canon of Rating Law that the principle of valuation of any given hereditament is the hypothetical value of the hereditament as it stands to any hypotheticai tenant. It is not appropriate to take as a guide the actual rents paid for other and widely dissimilar buildings occupied on different terms of tenancy. (*Pratt, Offg, C. J. and Cunliffe, J.*). MUNICIPAL CORPORATION, RANGOON *v.* E. E DAWOODJEE AND SONS. **112 I.C. 805=6 Rang 669=A I.R 1929 Rang. 92.**

——Per *Walsh, J.*—In the interpretation of every section of a statute a reasonable construction must be given to every word contained therein. (*Walsh, Lindsay and Banerji, JJ.*) EMPEROR *v.* SHERA. **108 I.C. 225=50 All. 625=29 Cr.L.J. 353= 9 A.I. Cr. R.362=9 L R A. Cr. 54= 26 A.L.J. 321=A I.R. 1928 All. 207 (F.B.)**

——Affirmative Act giving new right does not destroy existing right unless legislature apparently intends that the two rights should not co-exist together. (*Page and Mullik, JJ.*). HARENDRA KUMAR RAI *v.* SECRETARY OF STATE. **115 I.C. 85=33 C.W.N 385=55 Cal. 1355= A.I.R. 1928 Cal. 808.**

——Construction leading to anomaly should be accepted only if no other construction is possible. (*Tek Chand and Bhide, JJ.*). DIAL SINGH *v.* GURDWARA SRI AK LAL TAKHT. **110 I.C. 164= 9 Lah. 649=29 P.L.R. 733= A.I.R. 1928 Lah. 325.**

——It is a well-known rule of construction that a statute should not be construed so as to impute absurdity to the legislature. (*Ramesam and Devadoss, JJ.*). SUBRAMANIA AYYAR *v.* SWAMINATA CHETTIAR. **114 I.C 545= 28 M.L.W. 885=A.I.R. 1928 Mad. 746.**

——*Construction leading to absurdity should be avoided.*

There is no obligation on a Court of Law so to construe a clause in an enactment as would lead to a clear absurdity which could not possibly be regarded as contemplated by the legislating authority or agency. On the other hand; that construction alone should be adopted which is in consonance with common-sense, which does not lead to absurd results or enormous practical difficulties. (*Srinivasa Ayyangar and Ananthakrishna Ayyar, JJ.*). MOHIDEEN PICHAI *v.* TINNEVELLY MILLS CO. **111 I.C. 225=1928 M.W.N. 442= 28 M. L. W. 932=A.I.R. 1928 Mad. 571.**

——It is a well-established canon of interpretation that any question of context or repugnance in the subject can arise only if the same expression

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that is defined occurs or is repeated in any particular section. (*Coutts Trotter, C. J., Wallace, Beasley, Jackson and Srinivasa Aiyangar, JJ.*). COMMR. INCOME-TAX *v.* IBRAHIMSA.

110 I.C. 207=51 Mad. 455=1928 M W.N. 313=27 M.L.W. 601=A.I.R. 1928 Mad. 543=54 M L.J. 524. (F.B.).

———An unqualified person who does nothing more than share the profits arising from trade requiring license and carried on by a licensed person is not within the mischief of the statute, which prohibits such unqualified person from carrying on such trade.

A partnership of licensees for carrying on trade requiring license is not illegal though the partnership is not licensed. *Raynard* v. *Chase*, 1 Burr. 2; 11 C.P.L R. 62 and 17 O. C. 193, *Foll*; A. I. R. 1925 Sind 55, *Dist.* (*Aston, A.J.C.*). HASSANAND JETHANAND *v.* BASSANNAL. **108 I.C. 724=23 S.L.R. 389=A.I.R. 1928 Sind 146.**

———Per *Mirza, J.*—The Legislature is presumed not to enact anything contrary to international law or the common law of the realm. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HALIMBHAI *v.* FRAMRAZ.

104 I.C. 8=51 Bom. 516=29 Bom.L.R 498=A.I.R. 1927 Bom. 278 (F. B.).

———For one statute to cancel another, they must be mutually destructive. The question is whether the legislature can be said not to have intended the two rights to exist together. (*Jackson, J.*). PUBLIC PROSECUTOR *v.* RANGANAYAKULU.

101 I.C. 667=25 M L.W. 768=28 Cr. L.J. 491=38 M.L.T. 373=8 A.I. Cr. R. 140=50 Mad. 845=A.I.R. 1927 Mad. 602=52 M.L.J. 653.

———Each Act must be construed with reference to its own provisions. (*N. R. Chatterjea and Cholzner, JJ.*). PROTAP CHANDRA *v.* JAGADISH CHANDRA. **82 I.C. 886=40 C.L.J. 331=A.I R. 1925 Cal. 116.**

———The safest course is to hold fast to the exact language in its ordinary interpretation. (*Walsh, A.J.C. and Sulaiman, J.*). MEHILAL *v.* RAMJI DASS. **80 I.C. 939=22 A.L.J. 864=5 L.R.A. Civ. 720=47 All. 13=A. I. R. 1924 All. 792.**

———*Mandatory provision.*

The test to find out whether the violation of a mandatory provision negatives a transaction or proceeding is the relation which the provision has to the general object intended to be secured by the Act. (*Newbould and Mookerjee, JJ.*). HIRALAL GHOSE *v.* EMPEROR. **83 I.C. 905=52 Cal. 159=28 C.W.N. 968=26 Cr. L.J. 201=41 C.L.J. 224=A.I.R. 1924 Cal. 889.**

———*Violation of provisions of the Statute—Irregularity—Nullity—Distinctive test.*

When the provisions of a statute have been contravened, if a question arises as to how far the proceedings are affected by such contravention the matter must be determined with regard to the nature, scope and object of the particular provision which has been violated. No hard and fast line can be drawn between a nullity and an irregularity. But an irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding or apply to its whole operation, whereas a nullity is a proceeding that is taken without any foundation for it or is so essentially defective as to be of no avail or effect whatever, or is void and incapable of being validated. The test is to see whether the party can waive the objection; if he can waive it, it amounts to an irregularity; if he cannot, it is a nullity. 9 Dow. 28, *Ref.* (*Mookerjee and Chotzner, JJ.*). RAJINI KANTA GHOSE *v.* SHEIKH RAHMAN GAZI. **82 I.C. 507=37 C.L.J. 447=27 C.W N. 765=A.I.R. 1924 Cal. 408.**

IRISH FREE STATE (AGREEMENT) ACT (1922)—Construction of articles of treaty.

———*Extension of Act to a District means extension of substantial portion.*

What is meant by the extension of an Act to a district is, the extension of a substantial portion of the Act and not merely that extension of a particular section or one or more sections. 44 Bom. 217, *Foll.* (*Raymond, A.J.C.*). FIRM OF AYARAM TOLARAM *v.* FIRM OF HITRAM BODRAJ. **66 I.C. 682= 16 S.L.R. 76=A.I.R. 1921 Sind 82.**

INTERROGATORIES.

See C. P. CODE, O. 4.

INTOXICATION.

See PENAL CODE.

IRELAND, GOVERNMENT OF, ACT (1920).—Suit in respect of allowances.

———*Constitution of Irish Free State, Art.* 78.

The appellants, who were formerly established civil servants in the employment of the Crown in Southern Ireland, were, by the several instruments which effected or followed upon the establishment of the Irish Free State transferred to the service of the State. After retirement they being dissatisfied with the retiring allowances granted to them by the Minister of Finance brought an action in the High Court against the Attorney-General of the Irish Free State, claiming a series of declarations as to the allowances to which they were entitled. It was argued on behalf of the respondent that the appellants had only a right to put forward their claim to the Minister of Finance and to receive such compensation as he might award to them,

Held, that the constitution of the Committee set up by the Minister of Finance is an Advisory Committee only with no statutory powers and therefore its conclusions have no binding effect and that the appellants have a legal right which may be asserted in the Courts of the Irish Free State and there was no objection to the form of the action which was brought against the Attorney-General for a declaration of rights and was in accordance with the well-known decisions in *Dyson* v. *Attorney-General*, (1911) 1 K. B. 410; (1912) 1 Ch. 158 *and other cases.* (*Lord Chancellor.*) JOHN HOWARD WIGG *v.* ATTORNEY-GENERAL. IRISH FREE STATE. **115 I.C. 744=A.I.R. 1928 P.C. 239 (P.C.).**

(IRISH) ARTICLES OF TREATY—Art. 10—Overriding Maximum.

———The annual allowance or pension payable to transferred civil servants are governed by Art. 10 and are not limited by the Superannuation Acts. The condition of the overriding maximum and the limitation of 75 per cent., of the bonus in lump sum cannot be maintained. (*Marquess of Reading.*) COMPENSATION TO CIVIL SERVANTS, *In re.* **115 I. C. 25=1929 A.L.J. 129=29 M.L.W. 512=A. I. R. 1929 P.C. 84=56 M.L.J. 363 (P.C.).**

IRISH FREE STATE (AGREEMENT) ACT (1922).—Construction of articles of treaty.

———Articles of treaty should be construed like a statute—Compensation to be awarded to transferred officers is not to be less than that under Government of Ireland Act of 1920 though more can be awarded. (*Marquis of Reading.*) COMPENSA-

IRRIGATION CESS ACT (1865)—Applicability.

TION TO CIVIL SERVANTS, *In re.* **114 I.C. 25=1929 A. L. J. 129=29 M. L. W. 512=A. I. R. 1929 P. C. 84=56 M. L. J. 363 (P.C.).**

IRREGULARITY.

See (1) C. P. CODE, SS. 99—115.
(2) CR. P. CODE, SS. 529—538.

IRRIGATION CESS ACT (VII of 1865)—Applicability.

———In deciding the case between the zamindars and inamdars, the Court has nothing to do with the Act or analogies drawn from it. (*Ramesam, J.*). PITCHIAH *v.* SHREE GOVIND KRISHNA. **A.I.R. 1930 Mad. 942**

ISLANDS.

See CROWN.

ISSUE.

See C.P. CODE, O. 14.

ISTIMRARI MOKARRARI.

See (1) LAND TENURE.
(2) WORDS.

JAGIR.

See GRANT.

JAIL APPEAL.

See (1) CR. P. CODE.
(2) LIM. ACT, 1908, S. 5.

JAINS.

See HINDU LAW—
(1) ADOPTION.
(2) APPLICABILITY.
(3) SUCCESSION, ETC., ETC.

JALKAR.

See FISHERY.

JAMABANDI.

See RECORD OF RIGHTS.

JATS.

See CUSTOM (PUNJAB).

JEWISH LAW.

—Marriage.

———*Dissolution.*

A ritual "get" or "bill of divorcement" executed by the husband is not necessary. A Jewish marriage can be dissolved by the Courts of the State. (*Crump, J.*). R. BENJAMIN *v.* BENJAMIN. **94 I.C. 59=50 Bom. 369=28 Bom. L.R. 328=A. I. R. 1926 Bom. 169.**

———*Jews of Bombay are monogamous — Second marriage is not valid—Divorce on the ground of adultery or cruelty is allowed.*

The Jews in Bombay are, generally speaking, monogamous and cannot, except in certain cases, lawfully contract a second marriage. A divorce is allowed on the grounds of adultery or cruelty *inter alia* amongst them. (*Crump, J.*). R. BENJAMIN *v.* BENJAMIN. **94 I.C. 59=50 Bom. 369=28 Bom. L.R. 328=A.I.R. 1926 Bom. 169.**

JIVAI.

See GRANT.

JODI.

See MAD. EST. LANDS ACT, S. 3.

JOINDER.

———Of Causes of Action.

See C.P. CODE, S. 99, O. 1 AND O. 2, R. 3.

———Of Charges.

See CR P. CODE, SS. 238—240, 439 AND 457.

——— Of Parties.

See C. P. CODE, O. 1, RR. 1, 2 AND 3.

JOINT CONTRACT.

See CONTRACT ACT, SS. 43 AND 45.

JOINT DECREE-HOLDERS.

See C.P. CODE, O. 21, R. 16.

JUDICIAL COMMITTEE ACT—(1814), 7 & 8 Vict., Ch. 69—Criminal case.

See HINDU LAW.
(1) ALIENATION.
(2) JOINT FAMILY.

JOINT LIABILITY.

See TORT.

JOINT MORTGAGORS.

See (1) CONTRACT ACT, SS. 38 AND 45.
(2) T P. ACT, SS. 60 AND 91.

JOINT OWNERSHIP.

See CO-SHARERS.

JOINT POWER.

See HINDU LAW—ADOPTION—POWERS.

JOINT PROMISORS.

See CONTRACT ACT, S. 43.

JOINT TENANTS.

See CO-SHARERS.

JOINT TORT.

See TORT.

JOINT TORT-FEASORS.

See (1) CONTRIBUTION.
(2) TORT.

JOINT TRIAL.

See CR. P.C., S. 239.

JOINT TRUSTEE.

See (1) HINDU LAW—REL. ENDOWMENT.
(2) TRUST ACT, SS. 31 AND 45.

JOURNALIST, PRIVILEGE OF.

See PENAL CODE, S. 490, EXCEP. (9).

JUDGE.

See (1) JUDICIAL OFFICER.
(2) PENAL CODE, S. 19.
(3) PRACTICE.

JUDGMENT.

See (1) C.P. CODE, O. 20 AND O. 41, R. 31.
(2) CR. P. CODE, S. 263 AND SS. 367 TO 370.
(3) EVIDENCE ACT.
(4) GOVT. OF INDIA ACT, S. 107.
(5) PRACTICE.

———Amendment of.

See CIVIL P.C., O 20, R. 3.

JUDGMENT-DEBTOR.

See C. P. CODE SS. 2, 47 AND O. 21.

JUDGMENT-IN-REM

See EVIDENCE ACT, S. 44.

JUDICIAL ACTS.

See EVIDENCE ACT, S. 114.

JUDICIAL COMMITTEE.

See (1) APPEAL.
(2) C. P. CODE, SS. 109, 110.
(3) PRIVY COUNCIL.

JUDICIAL COMMITTEE ACT (1833, 3 & 4, Will. 4, Ch. 41).

—S. 23—Death of party.

———*Order in appeal is fully valid.*

Even though a party before the Privy Council might have died pending the appeal, the order made by the Privy Council in the case nevertheless has full force and effect and is to be carried out by the Courts in India. A. I. R. 1924 Mad. 695, *Foll.* (*Krishnan and Odgers, JJ.*). A. GOPALAKRISHNAYYA *v.* K. VENKATARATNAM. **103 I. C. 618=39 M.L.T. 29=26 M.L.W. 72=1927 M.W.N. 426=A.I.R. 1927 Mad. 1088=53 M.L.J. 226.**

—(1814), 7 & 8 Vict., Ch. 69—Criminal case.

———Special leave for appeal cannot be granted under Judicial Committee Act (1844) in a Criminal case. *Nadan* v. *The King*, (1926) A. C. 482, *Foll.* (*Lords Chancellor, Merrivale, Atkin, Thankerton and Russell of Killowen.*) CHUNG CHUCK *v.* REX. **123 I.C. 731.**

JUDICIAL COMMITTEE RULES, 1925, Rr. 43 (b), 52 and 83—Numerous respondents.

JUDICIAL COMMITTEE RULES, 1925.

—Rr. 43 (b), 52 and 83—Numerous respondents.

———*Deaths—Delay at each stage—Order setting down the appeal for hearing against those on record.*

Where in an appeal to the Privy Council to which there were 185 respondents, all belonging to the same village, represented by same counsels and solicitors, and where all of them with subsequently substituted legal representatives in the case of deceased respondents had identical interests, and where considerable delay in hearing was caused at each stage after the special leave to appeal owing to substitution and revivor proceedings in compliance with Rr. 43 (b), 52 and 83 of the Judicial Committee Rules of 1925, caused by the deaths at intervals of one or more of the respondents, and where further delay in hearing the appeal was apprehended on the same account, on an application by the appellants praying for setting down the appeal for hearing against the surviving respondents with liberty to proceed against the other respondents or their representatives or such order as should seem just, the Judicial Committee directed and ordered setting down of the appeal for hearing against such of the respondents as had appeared or had been served with notice of any order in council bringing them upon record and setting for determination if necessary at the hearing of the appeal all questions as to how any other respondents were to be proceeded against. (*Lords Merrivale, Hanworth and Russell of Killowen.*) (SHAH) ZAHID HUSAIN *v.* MOHAMMAD ISMAIL. **A.I.R. 1930 P.C. 264 (P.C.).**

JUDICIAL DISCRETION.

See (1) DISCRETION.
(2) PRACTICE.

JUDICIAL NOTICE.

See EVIDENCE ACT, S. 56.

JUDICIAL OFFICER.

—Acquiescence of parties.

———*Judge deviating from ordinary procedure—Findings of facts binding.*

Where, with the acquiescence of both parties, a Judge departs from the ordinary course of procedure and decides upon a question of fact, it is incompetent for the parties afterwards to assume that they have then an alternative mode of proceeding and to treat the matter as if it had been heard in due course. *Burgess* v. *Morton*, (1896) A. C. 136; *White* v. *Duke of Buccleuch*, (1847) 1 H. L. (Scotch) 70 and *Bustros* v. *White*, L. R. 1 Q. B. D. 432; A.I.R. 1924 All. 570; A.I.R. 1925 All. 271 and A.I.R. 1925 All. 558, *Rel. on.* (*Weir and Sen, JJ. on reference by Dalal, J.*). MADAN MOHAN GARGH *v.* MUNNA LAL. **116 I.C. 644=26 A.L.J. 804= A.I.R. 1928 All. 497.**

—Consultations with other officers.

———*Impropriety of.*

It is one of the elementary principles of administration of justice that a judicial officer, who is called upon to decide a matter in controversy, must exercise his *own* independent judgment, after hearing the parties concerned. It is the privilege as well as the duty of the presiding officer of a Court of Justice to form his own opinion on the point before him and to act accordingly. He ought not, as if it were, to mortgage his mind to another officer and to seek instructions from the latter, whenever he is called upon to decide a difficult or important matter. A Magistrate who does so, abdicates his proper functions and discloses a lamentable lack of sense of responsibility. (*Tek Chand.*) CHIRANJI LAL *v.* CROWN. **111 I.C. 319=9 Lah. 537=29 Cr. L.J. 815= A.I.R. 1928 Lah. 1.**

JUDICIAL OFFICER — Intervention by superiors.

—Contempt.

———*Need for special protection.*

A Judge by reason of his office is precluded from entering into controversy in the columns of the public press. Whether the comments be of a permissible or of an improper character, he cannot enter the arena and do battle with his adversary upon equal terms. The Judge of a superior Court is moreover precluded by considerations of decency from having recourse to the remedy available to any other citizen, of whom defamatory words are spoken or written, of taking proceedings for libel or slander before the ordinary tribunals which are subject to his own jurisdiction and he requires therefore in the exercise of his office a special protection in order that his authority and dignity may be maintained. (*Courtney-Terrell, C.J. and Adami, Ross, Kulwant Sahay and Fazl Ali, JJ.*). EMPEROR *v.* MURLI MANOHAR. **117 I.C. 180= 9 P.L.T. 837=8 Pat 323=30 Cr. L.J. 741= A.I.R. 1929 Pat. 72 (F.B.).**

—Duty of Magistrate.

———*Magistrate should not allow his executive zeal to outrun judicial discretion.*

It is one of the most important duties of a Court of law to create and maintain confidence in the administration of justice and to conduct itself in such a manner as to produce in the minds of the parties an impression that nothing but absolute justice would be done to them.

Where a Magistrate declined to summon all the witnesses cited on behalf of the accused and took upon himself the duty of arbitrarily selecting only a few witnesses who were to be summoned to give evidence for the defence, adjourned the case for hearing at an out of the way place and continued the hearing in spite of High Court's order directing the Magistrate to give every reasonable facility to the accused to produce his defence evidence, and to hold the trial of the case either at the headquarters of the district or at a place which is either a railway station or easily accessible from a railway station and on closure of the case, called the accused and his counsel in the middle of the night and pronounced judgment at 1 A.M. inflicting upon the convict the maximum term of imprisonment permissible,

Held, that the proceedings taken by the Magistrate show that he did not hear the case with that judicial detachment which should characterise the trial of a criminal case, and that he allowed his executive zeal to outrun his judicial discretion. (*Shadi Lal, C.J.*). TAJ MOHAMMAD *v.* EMPEROR. **107 I. C. 100=29 P. L. R. 14= 29 Cr L.J. 212=9 A.I.Cr.R. 505= A.I.R. 1928 Lah. 125.**

—Intervention by superiors.

———*Invocation of, not allowed.*

The elementary principle of justice is that a person cannot simultaneously perform the functions of a prosecutor and those of a Judge in a criminal case. A Magistrate ceases to be an executive officer when he is sitting in Court to try a criminal case, and thus he cannot be allowed to invoke the intervention of his superior executive officers in a matter concerning the discharge of his judicial duties for which he owes responsibility only to the High Court. (*Shadi Lal, C.J.*). TAJ MOHAMMAD *v.*

JUDICIAL OFFICER — Intervention by superiors.

EMPEROR. 107 I. C. 100=29 P. L. R. 14= 29 Cr. L. J. 212=9 A. I. Cr. R. 505= A I.R. 1928 Lah. 125.

———A superior Court is entitled to give general directions to a lower Court, but it is not proper for it to pass any proceedings with reference to pending matters which might fetter its discretion. (*Devadoss, J.*). SECY. OF STATE *v.* MUTHU ALAGAPPA. 113 I.C. 872= A.I.R. 1928 Mad. 1093.

—Official correspondence.

———The Collector, when party to a suit pending in a lower Court, should not conduct correspondence in his official capacity with the superior Court with reference to evidence in the suit. (*Devadoss, J.*). SECY. OF STATE *v.* MUTHU ALAGAPPA. 113 I.C. 872=A.I.R. 1928 Mad. 1093.

—Private inquiries.

———The practice of holding private consultations by Magistrate with the prosecuting agency before commencing the hearing of the case is highly improper. (*Shadi Lal, C.J.*). TAJ MOHAMMAD *v.* EMPEROR. 107 I.C. 100=29 P.L.R. 14= 29 Cr. L.J. 212=9 A.I. Cr. R. 505= A.I.R. 1928 Lah. 125.

JUDICIAL OFFICERS PROTECTION ACT (XVIII of 1850).

—S. 1—Strictures in order against pleader.

———*Remedy of aggrieved party.*

A notice and an order containing libel were written by the defendant, a judicial officer, and served on the plaintiff, a pleader owing to a difference of opinion which had arisen between the plaintiff and the defendant in the course of a suit in which the plaintiff was acting as a pleader in a suit. The defendant objected to the conduct of the plaintiff acting as such pleader and called upon him to apologise. The plaintiff did not apologise, and in consequence of his refusal the defendant addressed a further communication to the District Judge.

Held, that the Judge in dealing with the conduct of the pleader was certainly acting in discharge of his judicial duty, and he was therefore protected from any liability to be sued in a Civil Court.

Even if it were assumed that he had exceeded the limits of propriety to gratify his own spite, he was protected by the Act, and the remedy for the complainant would be to report the matter to a higher authority. (*Macleod, C.J. and Shah, J.*). VITHUL RAMCHANDRA *v.* RAGHAVENDRA RAMRAO. 62 I.C. 93=45 Bom. 1089= 23 Bom. L.R. 447=A.I.R. 1921 Bom. 158.

JUDICIAL SEPARATION.

See (1) DIVORCE.
(2) DIVORCE ACT.

JURISDICTION.

See also CIVIL P. C., S. 9.

Absence of.
Admiralty.
Appellate Court.
Bar to.
British Indian Court.
Burden of proof.
See EVIDENCE ACT, S. 101.
Civil Court.
Civil and Revenue Court.
Civil and Criminal Court.
Conflict of.
See CIVIL P. C., S. 10.
Consent.
Co-ordinate.

JURISDICTION—Absence of.
Decision as to.
Excess of.
Exercise of.
High Court.
Insolvency Court.
Investment of.
Irregularity.
Matrimonial.
Meaning of.
Objection to.
Ouster.
Pecuniary.
Personal.
Practice.
Presumption.
Procedure.
Rent Court.
Revenue Court.
Small Cause.
Special.
Suspension of.
Venue.
Waiver.
What determines.
Miscellaneous.

—Absence of.

———Claim as correctly valued not appealable—Fictitious value put and appeal made—Decree in appeal is without jurisdiction. (*Mears, C. J. and Lindsay, J.*). BANKEY LAL *v.* PIARE LAL. 95 I.C. 411=A.I.R. 1926 All. 587.

———*Claim for fare and excess fare by railway—Civil Courts, no jurisdiction.*

Where a general obligation is created by statute and a specific statutory remedy is provided, that statutory remedy is the only remedy.

The claim in respect of fare and excess charges due and payable by a passenger according to law, he having travelled without having with him a proper pass or ticket, can only be entertained by a Magistrate under S. 113 and a suit to enforce such a claim is not one for debts or damages and a civil Court has no jurisdiction. (*Macleod, C. J. and Coyajee, J.*). BHIMIJI *v.* B., B. AND C. I. RY. 94 I.C. 742=50 Bom. 215=28 Bom. L. R. 443= A.I.R. 1926 Bom. 266.

———*Effect.*

It is an elementary principle of law that if a Court has no jurisdiction over the subject-matter its judgments and orders are mere nullities and might not only be set aside at any time by the Court in which they are rendered, but be declared void in every Court in which they are presented. But this principle is not applicable to Courts of superior jurisdiction as it is too wide. Their orders and judgments can only be challenged in the ways provided by law. (*Macleod, C.J., Crump and Coyajee, JJ.*). INDIA SPINNING AND WEAVING CO., LTD. *v.* CLIMAX INDUSTRIAL SYNDICATE. 91 I.C. 847=50 Bom. 1= 27 Bom. L.R. 1281=A.I.R. 1926 Bom. 1 (F.B.).

———An offence under S. 148, I. P. C., being triable by a Magistrate with first class power, a trial by a Magistrate with second class power is illegal and without jurisdiction. The District Magistrate cannot give jurisdiction by ordering the Magistrate to act for administrative convenience. (*C. C. Ghose and Duval, JJ*). AZIZUR RAHMAN *v.* EMPEROR. 93 I.C. 1041=43 C. L. J. 214= 27 Cr. L. J. 545=A.I.R. 1926 Cal. 590.

———*Sale of property of persons not parties to suit is nullity.*

JURISDICTION—Absence of.

A Court has no jurisdiction to sell the property of persons who are not parties to the proceedings or properly represented on the record. As against such persons decrees and sales would be a nullity and might be disregarded without any proceedings being taken to set them aside. 32 Cal. 296 (P.C.) and 7 O.L.J. 362. *Foll.* (*Raza, J.*). LACHMI NARAIN *v.* MT. NAZEER FATIMA. **94 I. C. 927= A.I.R. 1926 Oudh 301.**

———*Act of State—Court cannot question.*

No Municipal Court has any jurisdiction to question, control or interfere with the appropriation of the revenue of India by the Local Government provided it is for the purpose of the Government of India. The appropriation will be an act of State which essentially concerns the exercise of Sovereign power. *Salaman* v. *The Secretary of State for India*, (1906) 1 K. B. 613, *Ref.* (*Dawson Miller, C.J., Jwala Prasad and Bucknill, JJ.*). KRISHNA VALLABH SAHAY *v.* GOVERNOR OF BIHAR AND ORISSA. **96 I.C. 791= 5 Pat. 595= 7 P.L.T. 695= A.I.R. 1926 Pat. 305 (F.B.).**

———*Nullifies acts—Consent cannot give.*

If a Court has no jurisdiction over the subject-matter its judgments and orders are mere nullities and may be declared void by every Court in which they are presented. Its judgment is not mere voidable but void and it is wholly unimportant how precisely correct its proceedings and decision may have been. If it has no power to determine the cause its authority is wholly usurped and its judgment and orders are the exercise of arbitrary power under the forms but without the sanction of the law. Jurisdiction cannot be conferred upon it by the consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction. (*Mookerjee and Cholmer, JJ.*). KUNJA MOHAN CHAKRAVARTY *v.* MONINDRA CHANDRA ROY CHAUDHURY. **77 I.C. 253= 27 C.W.N. 542=A.I.R. 1923 Cal. 619.**

———If a proceeding is instituted in a Court which has not got jurisdiction to entertain it the transfer of such proceeding to a Court which has jurisdiction will not cure the defect. (*Lentaigne and Carr, JJ.*). JUPITER GENERAL INSURANCE COMPANY, LTD. *v.* ABDUL AZIZ. **76 I.C. 479= 1 Rang. 226=A.I.R. 1923 Rang. 185.**

———Want of, should be taken cognizance of at whatever stage it may be brought to notice of Court. (*Brown, J.C.*). MAUNG PO SAUNG *v.* MA MUN. **66 I.C. 68=4 U.B.R. 75= A.I.R. 1921 U.B. 15.**

—Admiralty.

———Upon appeal in Admiralty Courts governed by the practice in the High Court in England, facts are not found by the assessors but by the Court itself and the function of the assessors as experts is advisory only. "*Nautilus*" (1927) A.C. 145, *Ref.* (*Lord Merrivale.*) "SINGLETON ABBEY" *v.* "SARA". **108 I. C. 727= 30 Bom. L.R. 833=29 P.L.R. 439= A.I.R. 1928 P.C. 122 (P.C.).**

———*Bombay High Court Admiralty Rules—No writ of summons necessary.*

The Bombay High Court, in its admiralty jurisdiction is not bound by the provisions of the C. P. Code but are governed by its own Admiralty Rules in accordance with the old Admiralty Procedure which it inherited under the old charters.

Under the said Rules it is not essential to issue a writ of summons in addition to issuing warrant of arrest. Not that a writ can never be issued in an Admiralty suit, but it is unnecessary if a warrant is issued. (*Marten, J.*). FREEMAN *v.* S.S. CALANDAR. CAPT. YANORSKY. **76 I.C. 433= 24 Bom. L.R. 1167==A.I.R. 1923 Bom. 51**

JURISDICTION—Bar to.

—Appellate Court.

———Jurisdiction for purposes of appeal follows the jurisdictional value of the suit. (*Addison, J.*). ZUMAN SINGH *v.* BUJA. **100 I.C. 92= A.I.R. 1927 Lah. 187.**

———When the Subordinate Court passes an improper order and the matter is taken up on appeal to a Court which is empowered to hear appeals from the orders of such Subordinate Court the Appellate Court has jurisdiction to set matters right. (*Devadoss, J.*). VIRAJU *v.* BANGARAJU. **91 I,C. 519=A.I.R. 1926 Mad. 631.**

———*Proper appellate value—How determined.*

The value of a suit remains unchanged in all states of the *lis* and determines the *forum* of appeal. For the purpose of determining the proper appellate Court in a civil suit, what is to be looked at is the value of the original suit, that is to say, 'the amount or value of the subject matter of the suit' and that such 'amount or value of the subject-matter of the suit' must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the Court, unless it appears that, either purposely or through gross negligence, the true value of the suit has been altogether misrepresented in the plaint. 13 All. 320; 16 All. 286; 9 N.L.R. 112 and 6 N.L.R. 164, *Foll.* (*Findlay, O.J.C. and Wadegaonkar, A.J.C.*). CHUNNI LAL *v.* KISHANDAS RAMDAS. **89 I.C. 407=A I.R. 1926 Nag. 71.**

———Decree for pre-emption on payment of price plus compensation—Appellate forum must be determined only on the basis of the price made payable. 38 P. L. R. 1902, *Foll.*; 19 P. R. 1908; 19 P. R. 1901 (F. B.), *Dist.* (*Le Rossignol and Harrison, JJ.*). CHIRAGH DIN *v.* SERAJ DIN. **68 I.C. 890=3 Lah. 386=5 L.L.J. 137= A.I.R. 1923 Lah. 107.**

—Bar to.

———*Want of leave.*

Failure to obtain leave in a suit where leave is necessary under the Letters Patent goes to the root of the jurisdiction and the want of jurisdiction in the Court to entertain the suit cannot be overcome or waived by the consent or submission of the parties. 13 Bom.L.R. 191; 11 Mad. 26; 15 Bom. 93; 34 Cal. 619; 35 Cal. 61; 11 C.W.N. 663; A.I.R. 1921 Bom. 267; *Green* v *Rutherforth*, 1 Ves. J. 462; *Queen* v. *Justices of Essex*, 1 Q. B. 38, *Rel. on*; 35 Cal. 394 and 44 Cal. 10, *Expl.* (*Page, J.*). PROVAS CHANDRA *v.* ASHUTOSH MUKHARJI. **122 I.C. 197=56 Cal. 979= A.I.R. 1930 Cal. 258.**

———*Act of a Municipal Board—Civil Courts—Interference.*

If a Municipal Board assumes a power or authority which the law has not given, or acts illegally under cover of and in excess of its statutory powers its action can be challenged in a civil Court but if it confines itself within its statutory powers such exercise of the powers cannot be questioned in a civil suit. 4 Myl. Cr. 249; 2 A.L.J. 222, *Rel. on.* (*Sen, J.*). ATA KARIM *v.* MUNICIPAL BOARD, FATEHPUR. **119 I. C. 248= A. I. R. 1929 All. 756.**

———Res judicata—*Party can waive.*

The bar of *res judicata* is one which does not affect the jurisdiction of the Court but is a plea in bar, which a party is at liberty to waive.

JURISDICTION—Bar to.

(*Suhrawardy and Garlick, JJ.*). RAJANI KUMAR MITRA *v.* AJMADDIN BHUIYA. **114 I.C. 129= 48 C.L.J. 577=A.I.R. 1929 Cal. 163.**

———The Court cannot entertain an appeal which is barred by an express provision of the law. The parties cannot by their conduct give the Court a jurisdiction which it does not possess. (*Cuming and Mukerji, JJ.*). UPENDRA NANDAN *v* BANAMALI CHARAN. **109 I.C. 277=47 C.L.J 595= A.I.R. 1928 Cal. 709.**

———*Civil P. C., S. 9—Burden of proof.*

It is for the party who seeks to oust the jurisdiction of the ordinary Civil Courts to establish his contention. (*Shadi Lal, C.J., Fforde and Tek Chand, JJ.*). ALI MAHAMMAD *v.* HAKIM. **108 I.C. 748=29 P.L.R. 396=9 Lah. 504= A.I.R. 1928 Lah. 121 (F.B.).**

———Party submitting to jurisdiction of revenue Court should not be allowed to sue in civil Court after failure in revenue Court. (*Das and Allanson, JJ.*). RAJ KESHWAR SINGH *v.* SHYAM BIKARI SINGH. **103 I.C. 313=8 P.L.T. 477= A.I.R. 1927 Pat. 286.**

—British Indian Court.

———Where the contract for transport of goods was entered into in Cochin but its performance was to take place in British Indian territory,

Held, that a suit relating to the contract can be filed in a British Indian Court. (*Ramesam, J.*). MADURA CO., LTD. *v.* P. C. XAVIER. **1930 M.W.N. 816.**

—Civil Court—Contribution.

———When a person *A* has no interest in the land except as tenant, and he joins another person *B* in the tenancy, who agrees to pay rent, a suit by *A* against *B* for recovery of rent is a suit between two partners for a contribution and is cognizable by a civil Court. (*Walsh and Dalal, JJ.*). MATA GHULAM SINGH *v.* CHHATAR SINGH. **93 I.C. 1000=24 A.L.J. 585= A. I. R. 1926 All. 422.**

—Civil Court—Ejectment.

———Where a tenant claims adverse possession, he can be ejected as a trespasser through the Civil Court. (*Dalal, A.J.C.*). NAGESHAR SINGH *v.* BALDEO SINGH. **87 I.C. 183=12 O.L.J. 160= 2 O.W.N. 148=28 O. C. 325= A.I.R. 1925 Oudh 442.**

—Civil Court—Finality of decision.

———Where, in a mortgage suit the defendant raised a plea that the Court had no jurisdiction, but did not bring to the notice of the Court S. 5 of Bengal Regulation III of 1872 which also barred the jurisdiction of the Court, and the question was decided against the defendant.

Held, that the Court had jurisdiction to decide whether it has jurisdiction to entertain the suit, and that its decision on the point is final and conclusive in all collateral enquiries. (*Das and Adami, JJ.*). DWARKA PRASAD *v.* JAI BARHAM. **67 I.C. 686=A.I.R. 1922 Pat. 322.**

—Civil Court—Fraud.

———Where fraud or collusion is alleged and one person has derived benefit and another has lost by such fraud or collusion, the jurisdiction of the civil Court certainly arises. (*Dalal, J.*). MUKHTAR AHMAD *v.* LACHMAN PRASAD. **119 I C. 284= A.I.R. 1929 All. 845.**

———*Decision of Revenue Court obtained by fraud—Suit in Civil Court for declaration that it does not affect plaintiff's rights will lie.*

A civil Court has no jurisdiction to set aside the proceedings in a Revenue Court, but it has jurisdiction to declare that the conduct of the parties to the suit in obtaining orders in their favour, has been, in fact, fraudulent and that the plaintiff's interest, if any, in the property in suit is not affected by any decision so fraudulently obtained. No possible ground can be imagined either in law or equity or common sense for the conclusion that, if a person has really been deceived, he cannot sue in a Civil Court to establish the facts in his own favour and to obtain a declaration of the assertion of his true rights to which he has succeeded or which he has inherited. (*Walsh and Ryves, JJ.*). JAMMU *v.* MAHADEO PRASAD. **66 I C. 559= A I.R. 1922 All. 294.**

—Civil Court—Interference by.

———*Panchayat election.*

A suit to obtain a declaration that the election of the members of the Panchayat Court is void, cannot be entertained by a civil Court, nor can it issue an injunction restraining the members from entering upon their duties as panchayatdars. (*Devadoss and Waller, JJ.*). VENKATASIVA RAO *v.* RAMAKRISHNAYYA. **92 I.C. 790=50 Mad. 91= 23 M.L.W. 103=1925 M.W.N. 874= A.I.R. 1926 Mad. 246=50 M L.J. 148.**

———*Special tribunal acting in good faith—Civil Court cannot interfere.*

So long as the special tribunals, like Municipal Boards, act in good faith and fairly, listen to both sides, there is no civil cause of action against their decisions.

Where the petitioner's name was not entered in the electoral roll for 1925-26 on the ground that he had not paid the taxes due by him under the Act for the preceding year.

Held, that the decision of the Revising Board was neither illusory nor unsubstantial and the Civil Court had no jurisdiction to interfere. (*Jackson. J.*). SUBRAMANIA CHETTY *v.* GUDIYATHAM MUNICIPALITY. **93 I C. 658=22 M.L.W. 719= A.I.R. 1926 Mad. 204.**

———*Civil Court cannot interfere where order of a duly constituted Court is legally final.*

It is not competent to a Civil Court to interfere with or question the propriety of an order which has been passed by a duly constituted Court and which the Legislature has declared to be final. (*Raymond and Kennedy, A. J. Cs.*). DAYARAM RAMDAS *v.* SECRETARY OF STATE. **78 I. C. 940=18 S. L. R. 68= A.I.R. 1926 Sind 130.**

———*Can't interfere with honest and fair exercise of discretion of a Municipal Committee.*

Where the action of the Committee is shown to be *intra vires* and it is in no way dishonest or malicious the question of whether it was necessary in the public interest to take action to remove the structures does not arise in Civil Court. (*Harrison and Moti Sagar, JJ.*). MUNICIPAL COMMITTEE OF JHANG *v.* DEVI DAYAL. **79 I.C. 8=A.I.R. 1924 Lah. 699.**

———*Exclusive powers over subject vested in an authority.*

Where an authority is by Statute vested with exclusive powers over any subject matter a Civil Court cannot interfere ; but if the authority purports to exercise these powers on what is not that subject-matter then, the Court will interfere, because the authority is not acting under the Statute and is not protected thereby. (*Ross, J.*). SECRETARY OF STATE FOR INDIA *v.* A. H. FORBES. **62 I.C. 394=3 Pat. L.T. 125= A. I. R. 1922 Pat. 361.**

JURISDICTION—Civil Court—Occupancy rights.

—Civil Court—Occupancy rights.

——Where the tenant defendant did not take the objection that the land was situated in an "estate" as defined in Madras Act I of 1908, nor did he adduce any evidence to prove that the plaintiff was a person owning a village which had been granted in inam to a person not owning the kudivaram and that the grant had been recognised by the British Government,

Held, that the mere existence of occupancy rights in the tenants, even if true, will not take away the jurisdiction of the civil Courts to try suits for recovery of rent. (*Spencer, J.*). SETHU RAMASWAMI *v.* VENKATARAMA SUBBIER.

97 I.C. 4=24 M. L.W. 211=A.I.R. 1926 Mad. 948.

—Civil Court—Partition.

——The jurisdiction of civil Courts to partition houses in *abadi* has never been questioned. A.I.R. 1921 Oudh 144, *Dist.* (*Wazir Hasan, J.*). SURAJ PRASAD *v.* RAGHUNATH PRASAD.

101 I.C. 910=A.I.R. 1927 Oudh 215.

——Tenants-in-common have a right to claim partition of their share in the tenancy holding and a civil Court has jurisdiction to grant the decree prayed for. 18 All. 334, *Rel. on.* (*Hasan and King, JJ.*). RAM-SHANKER *v.* MANDANKANI. PRASAD.

100 I.C. 570=2 Luck. 421=4 O.W.N. 177=A.I.R. 1927 Oudh 147.

——A Civil Court can partition a dwelling house and a *chabutra* attached to it as the latter is only appurtenant to a dwelling house and as no question of division of ground site arises. (*Lindsay, J.C.*). TAJAMUL HUSSAIN *v.* BANDI RAJU.

60 I.C. 433=7 O.L.J. 838=23 O.C. 281.

—Civil Court—Powers of.

——*Case-law discussed.*

The Court having jurisdiction to decide the question whether or not it had jurisdiction includes the power to decide that question rightly or wrongly. No doubt a judgment pronounced by a Court without jurisdiction is void, but the rule is subject to the well-known reservation that when the jurisdiction of Court is challenged or is constructively subject of an issue the Court is competent to determine the question of jurisdiction whether the decision upon the particular question be correct and pass a decree and, simply because a higher tribunal has on a subsequent suit held contrary on the point of jurisdiction that decree does not become a nullity. 48 Cal. 198 (F.B.), *Appr.*; 38 Cal. 639 and 47 Cal. 776, *Dist.* (*Fawcett, J.*). RAJARAM *v.* CENTRAL BANK OF INDIA.

98 I.C. 341=28 Bom. L.R. 879=A.I.R. 1926 Bom. 481.

——*High Court.*

The proceedings of a subordinate legislature like the local legislature can be questioned in the High Court. The High Court is a superior Court of Record and *prima facie* no matter is deemed to be beyond its jurisdiction, unless it is expressly shown to be so. By the word 'jurisdiction' is meant the authority which the Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

The President of the Bengal Legislative Council was held as not immune from the jurisdiction of the High Court. (*C.C. Ghose, J.*). SHANKER ROY CHOUDHURY *v.* H. E. A. COTTON.

85 I.C. 14=40 C.L.J. 515=A.I.R. 1925 Cal. 373.

——*Act not* ultra vires—*Legality of provisions cannot be questioned.*

JURISDICTION—Civil Court—Powers of.

Where the Legislature has acted within its powers, it is not open to a Municipal Court to question the legality of the provisions of the enactment passed by the Legislature. If an enactment or any provision thereof is *ultra vires* of the Legislature, it would be open to the Court to question the legality of the enactment or the provision. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE.

86 I.C. 485=49 Mad. 237=A.I.R. 1925 Mad. 837=48 M.L.J. 204.

——*Acts of State—Agreement between High Contracting Parties on cession of territories—General statement to preserve existing rights—Municipal Courts—Right to adjudicate.*

When a territory is acquired by a sovereign state for the first time that is an Act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can only make good in the Municipal Courts established by the new sovereign such rights as that sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights that does not give a title to these inhabitants to enforce these stipulations in the Municipal Courts. The right to enforce remains only with the High Contracting Parties.

Where Scindia of Gwalior ceded certain districts in exchange for other districts to the British Government and both parties agreed to maintain intact rights of private subjects, on suit by certain persons for a declaration that they were Talukdars.

Held, the whole object of enquiry is to see whether after cession, the British Government has conferred or acknowledged as existing the proprietary right which the plaintiffs claimed. The view of the officials of the Government as to documents would influence them to make up their minds as to what title should be given or recognised, but even then it is what they did after investigation, not what they thought at investigation, that is matter of moment; a mere general statement that existing rights would be upheld could never prevail against exact determinations. Any statement in general terms that rights will be respected must necessarily mean as these rights are on investigation determined by the Government officials. To suppose that by such general statements in a proclamation the Government renounced their right to acknowledge what they thought right and conferred on the Municipal Court the rights to adjudicate as upon the rights which existed before cession, is to misapprehend the law as above set forth. (*Lord Dunedin.*) NAYAK VAJESINGJI *v.* SECRETARY OF STATE.

82 I. C. 779=21 M.L.W. 28=1925 M.W.N. 695=48 Bom. 613=51 I.A. 357=22 A.L.J. 951=5 L. R.P.C. 199=26 Bom. L.R. 1143=40 C.L.J. 473=29 C.W.N. 317=A.I.R. 1924 P.C. 216=47 M.L.J. 574 (P.C.).

——A Civil Court can't grant the plaintiff a declaration to the effect "that the plaintiff is entitled to hold a certain estate for all time as a revenue free and untaxable domain in perpetual succession." (*Mears, C. J. and Piggott, J.*). RAJA UDAIRAJ SINGH *v.* SECY. OF STATE FOR INDIA.

88 I.C. 212=46 All. 553=22 A.L.J. 446=A.I.R. 1924 All. 652.

JURISDICTION—Civil Court—Powers of.

———Civil Court cannot adjudicate on the propriety or otherwise of the dismissal of a *ghatwal* of Birbhum. (*Jwala Prasad and Ross, JJ.*). H. MATHEWSON *v.* SECY. OF STATE.

84 I C. 405=3 Pat. 673=A.I.R. 1924 Pat. 616.

———A public notification under the Burma Municipal Act that a tax has been imposed is conclusive evidence that a tax has been imposed in accordance with law and a Civil Court is debarred from enquiring whether the tax has been legally imposed. (*Pratt, J.*). CHAN HTOON AUNG *v.* AKYAB MUNICIPALITY. **74 I.C. 34=1 Bur L. J. 145=A.I.R. 1923 Rang. 75.**

———A Court, in seisin of one action cannot give itself jurisdiction to deal with the fund lying to the credit of another suit. (*Das and Adami, JJ.*). BENODE BEHARI BOSE *v.* HIRA SINGH.

64 I. C. 308=1921 P H.C.C. 133=A.I.R. 1921 Pat. 172.

———*C. P. Code, O.* 39, *S.* 1—*Co-ordinate Court.*

One subordinate Court has no right to restrain the action of another subordinate Court co-ordinate to itself by any order or *rubkar* and therefore where one subordinate Court appoints a receiver in execution proceedings to take charge of certain properties another Court co ordinate to the same cannot issue a *rubkar* for restraining the receiver to take charge of the properties.(*Jwala Prasad and Adami, JJ.*). CHAUDHURY KEDARNATH THAKUR *v.* MAHMOOD ALI KHAN. **63 I. C. 465=2 P.L.T. 716=6 P.L.J. 268=A.I.R. 1921 Pat. 92.**

—Civil Court—Rent suit.

———*Madras Estates Land Act, S.* 3 (5).

A person who owns the kudivaram already and to whom the melvaram right is subsequently transferred does not become a land-holder and his suit for rent is maintainable in a Civil Court. A.I.R. 1922 Mad. 373 (F.B), *Dist.*; 39 M.L.J. 225 (F.B.), *Foll.* (*Krishnan and Odgers, JJ.*). GANJAM MANIKYAMBA *v.* PASALA MALLAYYA. **82 I. C 929=29 M.L.W 387=35 M.L.T. 70=47 Mad. 942=1924 M.W.N 779=A.I.R. 1924 Mad. 782=47 M.L.J. 393.**

—Civil Court—Suits cognizable by.

———*U. P. Municipalities Act—Questions of title.*

Where there is a clash between Municipal Board on one side and a private individual on the other with reference to some property the matter has got to be adjudicated by the Civil Court which is the only forum for determining the title. The straightforward course in such a case is the institution of a suit in the civil Court. The remedy provided by S 265 may be cheap, swift and within a certain range effective. Section 265, however is not intended to arm a Municipal Board with powers to disturb the possession of any person who asserts a lawful title to the property in controversy. (*Sen, J.*). GAURI SHANKAR *v.* EMPEROR. **120 I.C 547=1930 A.L.J 244=1930 Cr. C. 42=31 Cr. L.J. 183=A.I.R. 1930 All. 26.**

———The proper Court for the determination of the existence of a right to supply or preservation of water which is alleged to have been interfered with in a case under S. 430, Penal Code is the civil Court. (*Rankin, C.J. and Paterson, J.*). ASHUTOSH GHOSE *v.* EMPEROR. **50 C.L.J. 589=34 C.W.N. 86=A.I.R. 1930 Cal. 318.**

———*Ultra vires Act—Suit for an injunction—Punjab Municipal Act.*

The Municipal Committee of Delhi, purporting to act under S. 152, Punjab Municipal Act, issued notices to certain women prohibiting their residence in certain localities on the ground that they were public prostitutes. The women instituted suits against the Committee for an injunction asserting that they were not public prostitutes.

Held, that the civil Courts had jurisdiction to try the suits as it was asserted by the plaintiffs that the action of the committee was *ultra vires*. The committee was not the sole Judge of whether a person was or was not a prostitute and its conclusion could be challenged in a civil Court. 35 Cal. 859, *Ref*; A. I. R. 1926 Mad. 204, *Dist.* (*Shadi Lal, C.J. and Broadway, J.*). MUNICIPAL COMMITTEE, DELHI *v.* MT. MOTI JAN. **123 I.C. 536=31 P.L.R. 547=A.I.R. 1930 Lah. 824.**

JURISDICTION—Civil Court—Suits cognizable by.

———A suit by landlords for the partition of *shamilat* land of a village is cognizable by a civil Court. 144 P.R. 1907. *Foll.*; A.I.R. 1922 Lah. 98, *Dist.* (*Shadi Lal, C.J. and Bhide, J.*) NANDU *v.* JAIMAL. **108 I. C. 170=10 L L.J. 45=A. I. R. 1928 Lah. 150.**

———A civil Court has jurisdiction to determine whether the imposition of a tax is illegal or *ultra vires* and to give relief if it has been levied from persons who for that reason are not liable to pay the same. A I R. 1924 Lah. 147 and 74 P.L R. 1918, *Rel. on.* (*Addison and Coldstream, JJ.*). DISTRICT BOARD, SIALKOT *v* SULTAN MAHOMED KHAN. **106 I. C. 882=9 Lah. 340=29 P.L R. 177=A. I. R. 1928 Lah. 53.**

———A suit between rival claimants of *qabzadari* lands is not a suit between a tenant-in chief and a sub-tenant and, therefore, is maintainable in a civil Court. A I.R. 1926 Oudh 205, *Dist.* (*Stuart, C. J. and Raza J.*). SAHEB DIN *v.* MAHABIR SINGH. **107 I C 326=3 Luck. 273=9 L.R.A. Rev. 350=1 L. C. 677=A. I. R. 1928 Oudh 95.**

———*Suits against Municipal Board.*

If a Board go beyond the powers conferred on them by the Municipalities Act, or if the Board are assuming to themselves an authority which the law does not give them, no doubt, their action can be challenged by a suit in civil Courts. But if they confine themselves within the exercise of powers which the legislature has seen fit to confer upon them, the statutory powers are a sufficient answer to any suit that may be brought. 2 A.L.J. 222, *Ref.* (*Iqbal Ahmad, J.*). MUNICIPAL BOARD, FEROZEPUR *v.* BHOLA NATH. **101 I. C. 446=A.I.R. 1927 All. 432.**

———A suit between rival claimants to a tenancy to which the landlord is not a party is cognizable by the civil Court. 33 All. 795; 35 All. 14; A.I.R. 1924 All 231, *Foll.*; 12 A. L. J. 1322, *Dist.* (*Daniels and King, JJ.*). HARKESH *v* MAMRAJ. **96 I.C. 747 (All.).**

———The Court has jurisdiction to enquire into election matters and if necessary declare the election void as the sanctity of a nomination paper which has been accepted by the Chairman can be questioned after the election. (*Odgers, J.*). DORAISWAMI NADAR *v.* JOSEPH L. MOTHER. **92 I C. 119=1926 M.W.N. 572=24 M. L. W 208=A.I.R. 1926 Mad. 319.**

———*Question of validity of tax.*

It is undoubtedly a principle of English Law that a subject from whom any tax or impost is sought to be levied is entitled to raise before a Court of competent jurisdiction the question whether the authorities levying such tax of import are or are not acting within their statutory powers. (*Mears, C. J. and Piggott, J.*). RAJA UDAIRAJ SINGH *v.* SECRETARY OF STATE FOR INDIA. **88 I.C. 212=46 All. 553=22 A.L.J. 446=A.I.R. 1924 All. 652.**

JURISDICTION—Civil Court—Suits cognisable by.

——Right of the Government to resume the subject of a Saranjam grant cannot be questioned in the Civil Courts. (*Lord Salvesen.*) SECY. OF STATE *v.* LAXMI BAI. 72 I.C. 898=47 Bom. 327=28 C.W.N. 49=17 M.L.W. 405=32 M. L.T. 111=50 I.A. 49=25 Bom L.R 527=37 C L.J. 464=A.I.R. 1923 P.C. 6=44 M.L.J. 471 (P.C.).

—Civil Court—Suit for possession.

——If a grove-holder is ejected illegally by the landlord, whether through the revenue Court or out of Court, a suit for possession by him would clearly lie in the civil Court. (*Misra, J.*). JAGDISH BAHADUR SINGH *v.* RAGHO RAM. 94 I C. 349=29 O.C. 271=13 O.L.J. 265=3 O.W.N 392=A.I.R. 1926 Oudh 458.

—Civil and Criminal Court.

——*Suit to recover balance of expenses ordered by Criminal Court to be paid to witness lies in Civil Court.*

There is no provision in the Code under which the Court can order payment of diet money to a witness. That power is vested in the Court under the general rules of the High Court and therefore a suit for recovery of such money is maintainable in a Civil Court. Section 547, Cr. P. Code does not apply to such a case. (*Suhrawardy and Page, JJ.*). KAMAL MANDALINI *v.* PARAMASUKH CHAKRABUTTY. 90 I.C. 488=29 C.W N. 1033=A.I.R. 1926 Cal. 289.

——*Dispute of Civil nature.*

Where the dispute between the parties was primarily to be one of the civil nature,

Held, that the trying Magistrate would have exercised a better discretion if he had directed the complainant to seek his remedy from a Civil Court. (*Abdul Raoof, J.*). TULSI *v.* CROWN. 92 I.C. 215=7 L.L J. 389=26 P.L.R. 487=27 Cr.L.J. 231=A.I R. 1925 Lah. 599.

——*Order of Magistrate to break open the door and deliver goods to a custodian—High Court cannot interfere.*

One *J* was tenant in the upper storey of a house and had departed after looking up the whole house with petitioner's property in it. He asked the Magistrate to cause the police to break open the house and deliver him his goods. The Magistrate complied The police did this and put the goods into the hands of a custodian. Then *J* applied to the Magistrate for possession of the house and his goods. The Magistrate declined to take any further action and referred *J* to the Civil Court.

Held, the Magistrate had certainly no jurisdiction to direct the look to be broken and the property to be handed over to the third party as custodian. But the High Court has no jurisdiction to interfere in the matter. The remedy of *J.* is clearly by a suit in the Civil Court. (*Stuart, J.*). J. OVID *v.* SETH CHANDRA BHAN. 76 I.C. 650=25 Cr L.J. 218=A.I.R. 1923 All. 473.

——*Order for maintenance against father by Criminal Court—Civil Court can make declaration as to paternity of child.*

The jurisdiction of the Civil Courts to grant a declaratory decree cannot be affected by the provisions of the Cr. P. Code, relating to the maintenance of wives and children. The Civil Courts no doubt have no jurisdiction to cancel an order for maintenance or to grant an injunction against a Criminal Court but there is no reason why the Civil Court having issued a declaration the party who has obtained it should not apply to the Criminal Court, under the provisions of S. 489 of the Cr. P. Code or otherwise, for an order to stay the payment of maintenance. (*Saunders, J.C.*). NGA PO THEIN *v.* MA ME SAN. 70 I.C. 897=1 Bur L.J. 82=4 U B.R. 120=A.I.R. 1922 U.B. 20.

JURISDICTION — Civil and Revenue Courts — Mutual powers.

—Civil and Revenue Courts.
- Appeal.
- Mutual powers.
- Partition.
- Rent Suit.
- Suits cognizable by Civil Courts.
- Suits cognizable by Revenue Courts.
- Suit for ejectment.
- Suit for possession.
- Tenancy suits.
- Title suit.
- Miscellaneous.

—Civil and Revenue Courts—Appeal.

——District Judge remanding case to Revenue Court for trial on merits—Appeal from Revenue Court's decision on merits will lie to District Judge. (*Rafique, J.*). ELAHI BAKSH *v.* LALA SURAJ NARAYAN. 76 I.C. 521=A.I.R. 1923 All. 464.

——An appeal against an order in a suit under S. 95, Agra Tenancy Act, lies to the Revenue Court and not to the District Judge and, consequently, S. 197 does not apply. (*Mears, C. J. and Ryves, J.*). JAGANNATH *v.* BALWANT SINGH. 68 I.C. 247=20 A.L.J. 570=44 All. 692=A.I R. 1922 All. 372.

—Civil and Revenue Courts—Mutual powers.

——Action of Revenue authorities falling within their jurisdiction cannot be questioned in Civil Courts. 30 Mad. 270, *Foll.*; 26 Mad. 268, *Dist.* (*Madhavan Nair, J.*). K. V. DESIKACHARIAR *v.* SECRETARY OF STATE. 115 I C. 241=29 M.L.W. 229=56 M.L.J. 38.

——A wrong decision of the Revenue Court does not give rise to the jurisdiction of a Civil Court. (*Dalal, J.*). RAM LAGAN BHAGAT *v.* PHAKKAR DAS. 118 I.C. 171=9 L R.A. Rev. 141=A.I.R. 1928 All. 343.

——Proceedings of Revenue authorities may be subject to being quashed in the ordinary Courts of law if they are tainted by fundamental irregularity. A. I. R. 1924 P. C. 175, *Ref.* (*Newbould and Graham, JJ.*). MAHEBUNNESSA BIBI *v.* SECY. OF STATE. 98 I.C. 334=53 Cal. 561=A.I.R. 1926 Cal. 1064.

——A decision of the Revenue Court having been given by an authority legally competent to give it and not having been reversed or modified or corrected by the officers having appellate jurisdiction in the matter, cannot, on the ground that this is erroneous in law, be overriden by a decree of the Civil Court. 5 N. L. R. 176, *Foll.* (*Kinkhede, Offg. A. J. C.*). LAL SINGH *v.* WAMAN RAO. 96 I.C. 905=22 N.L.R 114=A.I.R. 1926 Nag. 499.

——Where a matter exclusively within the jurisdiction of the Court of revenue has been tried and decided by that Court, as between the parties no subsequent suit will lie in the Civil Court having for its sole object the annulment of the decree passed by the Court of revenue. 41 All. 203, *Foll.* (*Rasa, J.*). DEBI PRASAD SHUKLA *v.* BAIJ NATH. 95 I. C. 585=A.I.R. 1926 Oudh 506.

——Where a matter exclusively within the jurisdiction of a Court of revenue has been tried and decided by that Court as between the parties, no subsequent suit will lie, in a civil Court, having for its sole object the annulment of the decree passed by the Court of revenue. 41 All. 203 and A.I.R.

JURISDICTION — Civil and Revenue Courts — Mutual powers.

1922 All. 336, *Foll.*; 3 O. C. 65; 18 O. C. 48; 24 O.C. 15; 2 O L.J. 131 and A.I.R. 1924 Oudh 14, *Dist.* (*Raza, J.*). DILAWAR KHAN *v.* MT. KULSUM BIBI. **93 I.C. 162=13 O.L.J. 496=3 O.W.N. 210= A.I.R. 1926 Oudh 205.**

———Where a suit is filed before a Civil Court for a declaration the effect of which, if granted, would be to affect the decision of a Revenue Court in a pending suit within the exclusive jurisdiction of that Court the proper course for the Civil Court to adopt is to refuse the declaration asked for on the ground that such relief, if granted, would be nugatory. (*Lindsay, Sulaiman and Daniels, JJ.*). FATEH SINGH *v.* GOPAL NARAIN SINGH. **89 I.C. 1013=23 A.L.J. 941=48 All. 88= A.I.R. 1925 All. 637 (F.B.).**

—Civil and Revenue Courts—Partition.

———Plaintiff claiming partition of *shamilat* land according to *khewat*—Defendant claiming it to be according to khudis—Civil Court has jurisdiction to try the suit. 112 P.R. 1919 and 98 P.R. 1919, *Foll.* (*Broadway and Skemp, JJ.*). RAM DAS *v.* HARDAYAL. **103 I.C. 485=9 L.L.J. 252= 28 P.L.R. 608=A.I.R. 1927 Lah. 762.**

———*Partition—Allotment of lands cannot be questioned in Civil Court.*

If in a partition proceeding the directions given in the tarz taqusim are not complied with in the actual carrying out of the partition, the party aggrieved has a right of appeal. Subject to that, the final proceedings of the partition Court in the matter of the allotment of lands are conclusive and cannot be challenged in a Civil Court. (*Wazir Hasan, A.J.C.*). BHAWANI PRASAD DUBE *v.* BAIJNATH SINGH. **87 I.C. 416=A.I.R. 1925 Oudh 671.**

———Civil Court can be allowed to partition the buildings before the Revenue Courts have first partitioned the sites on which they stand though the Revenue Courts alone can partition the sites. (*Daniels and Neave, JJ.*). MULTAN SINGH *v.* PUDHAN MAN. **84 I.C. 74=22 A.L.J. 744= A.I.R. 1924 All. 854.**

—Civil and Revenue Courts—Rent suit.

———Standard for assessing Jama fixed by Pattah —Question, if rent fixed is in accordance with standard is one for the Revenue Court. (*Mr. Ameer Ali.*) MAHAMAD ABUL HASAN KHAN *v.* LACHMI NARAYAN. **63 I. C. 694=26 C. W.N. 249= 43 All. 355=48 I.A. 267=24 O.C. 123= 1921 M.W.N. 359=8 O.L.J. 294= A.I.R. 1922 P.C. 41 (P.C.).**

———A suit by a rent free grantee against the zamindar to recover rent wrongfully realised by the latter from the sub-tenant is maintainable in a Civil Court, but a suit for declaration that plaintiff by long and continued holding as rent free grantee has become the proprietor of the land is not maintainable in a Civil Court. (*Rafique and Ryves, JJ.*). SHAM DAS *v.* BAHADUR SINGH. **60 I.C. 831=43 All. 325=19 A.L.J. 89= A.I.R. 1921 All. 195.**

———*Landlord and Tenant—Customary due for village expenses, not part of contract of rent, cannot be recovered through Revenue Court.*

A customary due which residents of the village have been paying, but which is not part and parcel of the contract of rent, is not recoverable in the Revenue Court.

Where the tenants of a village had been paying for many years, a due known as "Gaon Kharch" or village expenses, and where in the Patwari's record, against each amount of rent, a figure was entered for "Gaon Kharch,"

Held, that the "Gaon Kharch" might be a customary due which the tenants had been paying the zamindar for many years but that it was not part and parcel of the contract of rent so as to be recoverable through a Revenue Court. (*Tudball and Rafique, JJ.*). RADHA MADHO LALJI *v.* RAM SEWAK. **62 I.C. 739=43 All. 422= 19 A.L.J. 238=A.I.R. 1921 All. 77.**

—Civil and Revenue Courts—Suits cognizable by Civil Courts.

———Where the Court is of opinion that the suit is not cognizable by the Civil Court, the proper order to make is to return the plaint to the plaintiff for re-presentation to the proper Court and not to dismiss his suit. (*Mukerji and Boys, JJ.*). BABU RAM *v.* RAM NARAIN. **1930 A.L.J. 1251.**

———Where a suit is partly cognizable by the Civil Court and partly by the revenue Court the Civil Court must decide the whole case. If therefore, a tenant brings a suit against the landlord and a subsequent tenant jointly, such suit is not cognizable by the Revenue Court. (*Srivastava, J.*) MINDAI *v.* SAJID ALI. **6 O.W.N. 1094= 11 L.R.A. Rev. 24=A.I.R. 1930 Oudh 69.**

———*Agra Tenancy Act—Question of tort included.*

Any irregularity in following the procedure laid down by the Tenancy Act regarding distraint of crops and the injury resulting from such irregurity may well be left to be dealt with by the Revenue Court; but the broader questions arising in actions based on tort are not excluded from the jurisdiction of the Civil Court, which is more competent to deal with them. (*Niamatullah and Bennet, JJ.*). JOHARI MAL *v.* BALMAKUND. **116 I.C. 802=1929 A.L.J. 890= 10 L.R.A. Rev. 363=51 All, 926= A.I.R. 1929 All. 669.**

———*Void decree of Revenue Court—Matter can be re-agitated.*

A decision of the revenue Court that a person was merely an agricultural tenant bars the jurisdiction of the civil Court to re agitate the matter whether he is grove-holder or an agricultural tenant. A.I.R. 1924 All. 744, *Rel. on.* But when the Revenue Court's decree becomes void through fraud the Civil Court has jurisdiction to determine the question over again as to whether the person was an agricultural tenant or a grove-holder. (*Dalal, J.*). MT. JAHANDAR BEGAM *v.* CHINTA. **116 I.C. 855=10 L.R.A. Rev. 261= A.I.R. 1929 All. 232.**

———*Declaration that a decree is void for fraud.*

The Civil Court is the proper Court to determine the question of fraud and the finding of the Revenue Court is not binding on the Civil Court. Even when a decree is obtained by fraud in the revenue Court, the jurisdiction of the Civil Court arises to have it declared null and void by reason of the fraud. (*Dalal, J.*). MT. JAHANDAR BEGAM *v.* CHINTA. **116 I.C. 855=10 L.R.A. Rev. 261= A.I.R. 1929 All. 232.**

———Where the case relates to a dispute between two rival tenants, it is cognizable by a Civil Court. A.I.R. 1927 Oudh 108; 10 O.C. 23; 16 O.C. 105 and 18 O.C. 48, *Rel. on.* (*Misra and Pullan, JJ.*). AMBIKA PRASAD *v.* BENI MADHO. **118 I.C. 841= 4 Luck. 649=7 O.W.N. 343= A.I.R. 1929 Oudh 529.**

JURISDICTION — Civil and Revenue Courts — Suits cognizable by Civil Courts.

——Where the liability arises out of the existence of the original lease and the relation of landlord and tenant between the parties, but the old contract of lease is terminated and superseded and a new contract substituted by an agreement whereby the relation becomes that of creditor and debtor a suit can be instituted in the Civil Court. (*Harrison, and Dalip Singh, JJ.*). JIWANDAS *v.* SHER MUHAMMAD. **96 I.C. 275=7 Lah. 479= A.I.R. 1926 Lah. 573.**

——A suit for a declaration that a certain land has been partitioned privately by the parties, though in the Revenue papers it is shown as joint property of the parties, and is, therefore, not capable of partition, is a suit cognizable by a Civil Court. (*Abdul Raoof and Harrison, JJ.*). GANGA SINGH *v.* BHAN SINGH. **91 I. C. 528= A.I.R. 1926 Lah. 178.**

——*Oudh Rent Act.*

A dispute between two parties, both claiming to be tenants of the same land under the same zamindar, where the claimant has never held possession of the land, is within the jurisdiction of the Civil Court. 18 O.C. 48, *Foll.*; 16 O.C. 105, *Ref.* (*Daniels, A.J.C.*). GAYA DIN SINGH *v.* CHAUHARJA PANDE. **73 I.C. 238=10 O.L.J. 178=A.I.R. 1924 Oudh 14.**

——A suit for a declaration, that a sum realised on sale of the crop in dispute was due to plaintiff, the crop having been raised by him and not by the defendant, is triable by Civil Court, though no question of title is involved and plaintiff as well as defendant both claim to be tenants under the same landlord. 37 A. 41, *Dist.* (*Banerjee and Gokul Prasad, JJ.*). MIR SINGH *v.* MAKHAN. **74 I.C. 88=21 A.L.J. 300=45 All. 404= 4 L.R.A. Rev. 134=A.I.R. 1923 All. 421.**

——*Agra Tenancy Act.*

Where the tenant claiming ownership of a grove sued for damages for loss caused to the trees,

Held, the suit was triable by Civil Court as no question of determination of tenancy was raised by the plaint. (*Mears, C.J. and Stuart, J.*). RAM PRASHAD *v.* SUMER NATH PANDE. **76 I.C. 12= 21 A.L.J. 33=45 All. 191=A.I.R. 1923 All. 134.**

——Agra Tenancy Act—Recovery of money advanced on mortgage and profits can be sued on in civil Court. (*Piggott and Walsh, JJ.*). GHANSHAM DAS *v.* KALYAN MAL. **62 I.C. 82= 2 U.P.L.R. All. 422=L.R. 2 A. 19 (Rev.).**

—Civil and Revenue Courts—Suits cognizable by Revenue Courts.

——*Suits for profits by co-sharer.*

A suit for profits by a co-sharer must be instituted in a revenue Court if the plaintiff is at the time of the suit recorded as a co-sharer. The plaintiff need not be recorded as a co-sharer during the whole of the period to which the suit relates. It is sufficient that the name was recorded at the time when the suit was brought. Such a suit does not fall within the jurisdiction of a civil Court simply because the plaintiff has not been a co-sharer for the whole of the period for which he claimed profits. 12 O. C. 13, *Rel. on.* (*Raza and Pullan, JJ.*). LACHMAN PRASAD *v.* RAGHUBAR DAYAL. **118 I.C. 807=4 Luck. 667=7 O.W.N. 373= A.I.R. 1930 Oudh 2.**

——*U. P. Land Revenue Act.*

Liability of land to be assessed separately or jointly so also questions regarding validity of engagement with Government and assessment and distribution of revenue do not come within jurisdiction of Civil Court. (*Dalal, J.*). AMIR ULLAH *v.*

JURISDICTION — Civil and Revenue Courts — Suit for ejectment.

TAGDIRUNNISSA BIBI. **118 I.C. 234= A.I.R. 1929 All. 798.**

——Suit by tenant to maintain a person as his sub-tenant is cognizable only by the Revenue Court. (*Hallifax, A.J.C.*). LAKSHMI PRASAD *v.* DADU. **A. I. R. 1923 Nag. 4.**

——*Suit for profits against lambardar.*

Where a lambardar who had paid the profits to the plaintiff as a purchaser from a co-sharer, recovered it back by suit in a Civil Court on the ground that the plaintiff was not entitled to it, and thereupon the plaintiff sued the lambardar under S. 164 of the Tenancy Act, for his share of the profits *held* that the Civil Court decree could not operate as *res judicata*, and bar the suit which is a suit for profits only triable by a Revenue Court. (*Ryves and Gokul Prasad, JJ.*). KUNI BIHARI LAL *v.* GHANSHAM DAS. **65 I.C. 530= A.I.R. 1922 All. 397.**

——Where a purchaser of a share in a village is a recorded co-sharer and is entitled to sue the lambardar for the profits for the years in suit, the only Court which has jurisdiction to try the suit is the Revenue Court. (*Ryves and Gokul Prasad, JJ.*). KUNJ BIHARI LAL *v.* GHANSHAM DAS. **65 I. C. 530=A.I.R. 1922 All. 397.**

——A claim arising out of a recovery of money due under the Agriculturists' Loans Act (1884) is cognizable by the Revenue and not the Civil Court. (*Tudball, J.*). NIHAL CHAND *v.* KANHAI. **62 I. C. 544=19 A.L.J. 360=A.I.R. 1921 All. 80.**

—Civil and Revenue Courts—Suit for ejectment.

——In Revenue Court—Defendant pleading proprietary right—Court referring plaintiff to Civil Court—Civil Court's jurisdiction to decide question of proprietary right is not ousted. 31 All. 323, *Dist.* (*Boys, J.*). SRI NIWAS *v.* AZIZUDDIN. **103 I. C. 285=8 L. R. A. Rev. 11= A.I.R. 1927 All. 690.**

——*Mortgagee of an occupancy holding—Rights of.*

The rights of a mortgagee, especially of a usufructuary mortgagee, of an occupancy holding are proprietary rights. 39 All. 200, *Rel. on*, and therefore a decision purporting to deprvie the mortgagee of all his rights is a decision of proprietary title. Therefore a suit for ejectment of the mortgagee by the zemindar is not cognizable by Revenue Court.

Surrender by tenant of his holding does not make any difference as an occupancy tenant cannot prejudice his mortgagee's rights by surrendering his tenancy. (*Walsh, J.*). TASADDUQ HUSSAIN *v.* CHATTUBHUJ. **97 I.C. 483=A. I. R. 1927 All. 63.**

——A lessee of a grove paying a portion of the produce of the grove as rent is a tenant, and the suit for his ejectment must be brought in the Revenue Court and not in the Civil Court. (*Mukerji, J.*). MAHARAJ DIN *v.* BHAIRON. **92 I.C. 473= A.I.R. 1926 All. 290.**

——*Denial by sub-tenant of his tenancy—Ejectment—Form of decree.*

The Civil Court can eject a trespasser but a mere denial by the sub-tenant of his tenant does not make him a trespasser. Where in an ejectment suit, the defendant is described as sub-tenant but he denies the sub-tenancy and set up as tenant-in-chief, either party may sue for a declaration that he is the tenant-in-chief, and if in such case the Court finds that the defendant is a sub-tenant, the proper decree is for a declaration that the plaintiff is the tenant-in-chief. (*Kanhaiya Lal, J.*). HARBERAN LAL *v.* NAURANGI KUNWAR. **60 I.C. 613= 2 U.P.L.R. All. 302.**

JURISDICTION — Civil and Revenue Courts — Suit for possession.

—Civil and Revenue Courts—Suit for possession.
———The exclusive jurisdiction of the Revenue Courts is limited to suits brought by a tenant on the ground of his being illegally ejected by his landlord. But where a tenant comes into Court on the allegation that he has been dispossessed by the rival tenant, on the allegations made in the plaint the case is excluded from the operation of S. 108, Cl. (10), Oudh Rent Act. 18 O.C. 48; A.I.R. 1924 Oudh 14, *Dist.*; A.I.R. 1927 Oudh 108, *Expl.* (*Srivastava, J.*). MINDI *v.* SAJID ALI.
6 O.W.N. 1094=11 L.R.A. Rev. 24= A. I. R. 1930 Oudh 69.

———Where a plaint as originally drafted would clearly lie in the Civil Court and subsequently evidence showed that in regard to part of the property for which the suit is brought a suit might have laid in the Revenue Court, Civil Court has jurisdiction to grant relief for possession. (*Bennet, J.*). SHEO SARAN RAI *v.* JAIMANGAL MISIR.
121 I.C. 223=10 L.R.A. Rev. 346= A.I.R. 1929 All. 616.

———A suit by reversioners of a Hindu widow for possession against the lessee from the widow after her death, on the ground that the lease became void after the widow's death and the lessee was a trespasser, is cognizable by a Civil Court. (*Walsh, J.*). RAM PRASAD *v.* FATEH SINGH.
96 I.C. 787=A.I.R. 1926 All. 747.

———The remedy of a transferee of an occupancy holding who is illegally dispossessed by the transferring tenant or his heirs does not lie in an application to a Revenue Officer. A suit in the Civil Court is the only remedy open to him for redress against civil trespass. (*Kinkhede, A. J. C.*). BEHARI *v.* BATTOOLAL GUNDALAL. **96 I.C. 353= 9 N.L.J. 123=A.I.R. 1926 Nag. 432.**

———Where in a suit for possession by landlord against defendant as trespasser it is found that a portion of the land is held by the defendant as tenant, Civil Court's jurisdiction as regards that portion is barred. A. I. R. 1925 Oudh 439, *Rel. on.* (*Hasan, J.*). LALTA SINGH *v.* ALI ABBAS.
95 I.C. 435=A.I R. 1926 Oudh 484.

———*Suit for joint possession lies in Civil Court.*
Where upon abandonment of a holding by a tenant it has been jointly cultivated by the co-sharers, subsequent dispossession of the plaintiff by the defendant would entitle the plaintiff to maintain a suit for recovery of joint possession in the Civil Court. It is not at all incumbent on the plaintiff to have recourse to the Revenue Court. There is no law which restricts his right to a claim for a share in the profits only. He is entitled to obtain joint possession of the land which is the joint property of the parties. The case would be different if by some sort of arrangement between the co-sharers each had been in separate possession of a plot of land for a length of time, which separate possession could not be disturbed until an actual partition took place. (*Sulaiman, J.*). BASUDEO PANDE *v.* MOHAN PANDE. **84 I.C. 1000= 5 L.R.A Rev. 113=A.I.R. 1924 All. 865.**

———Civil Court has jurisdiction to try a suit for possession of *ghatwali* land though it cannot restore a *ghatwal* to his service. (*Jwala Prasad and Ross, JJ.*). H. MATHEWSON *v.* SECY. OF STATE.
84 I.C. 405=3 Pat. 673=A.I.R. 1924 Pat. 616.

———*Occupancy holding.*
A suit by the plaintiffs for the recovery of possession of an occupancy holding on the allegation that their father had entrusted it to the ancestor

JURISDICTION — Civil and Revenue Courts — Tenancy suits.

of the defendants as long ago as 1909 and that in spite of the repeated demands the defendants had failed to make over the holdings to the plaintiffs is not triable by a Civil Court. 20 A. L. J. 606 and 17 A.L.J. 60, *Ref.* (*Ryves, J.*). JOKHU GADARIA *v.* DEOKINANDAN PANDEY. **77 I.C. 630= A.I.R. 1923 All. 489.**

—Civil and Revenue Courts—Tenancy suits.
———*Primarily entertainable by a Revenue Court.*
A suit by reversioners for possession of occupancy holding or in the alternative for declaration that a deed of relinquishment executed by the mother of the deceased occupancy tenant is invalid is not cognizable by a Civil Court. The question whether the plaintiffs are the next persons of the widow cannot be decided by a Civil Court. It is a question really cognizable by a Revenue Court. Primarily all suits brought by a person claiming to be a tenant against a landlord in respect of an occupancy tenure are suits entertainable by a revenue Court. (*Pullan, J.*). RAM NARAIN *v.* GAYA DEEN. **118 I.C. 812= A.I.R. 1930 Oudh 12.**

———It is the existence of the relationship of landlord and tenant between the parties which confers jurisdiction upon a Revenue Court to entertain and try suits for rents including a prayer for sale of the holding in default of payment. (*Kolhatkar, A.J.C.*). RAMCHANDRA JAT *v.* SETH BHAGWANIRAM. **113 I.C. 111=A.I R. 1928 Nag. 147.**

———When in a suit instituted in a Civil Court a plea is raised which necessitates a decision as to whether an occupancy tenancy exists that question has to be decided by a Revenue Court. (*Broadway and Fforde, JJ.*). JAI KARAN *v* NATHU RAM.
98 I.C. 339=7 Lah. 332=27 P.L R. 519= 8 L.L.J. 425=A.I.R. 1926 Lah. 338.

———*Suit in Revenue Court—Decree—Civil suit on the same question is barred.*
Where a suit has been brought in a Revenue Court to contest the notice of ejectment under S. 108, Cl. (8) of the Oudh Rent Act and the Revenue Court decrees the suit holding the plaintiff to be a tenant-in-chief and not a sub-tenant, civil suit by the defendant that he was the tenant-in-chief and that the plaintiff in the revenue suit was his sub tenant is not maintainable, the sole object of such a suit being to get the decision of the Revenue Court set aside by the Civil Court. A.I.R. 1926 Oudh 205; A.I.R. 1922 All. 336 and A.I.R. 1925 Oudh 388, *Foll.* (*Raza, J.*). SHEO MANGAL *v.* MATA PRASAD. **95 I.C. 84 (Oudh).**

———A suit for a declaration that the plaintiff is a joint tenant with the defendant and is entitled to joint possession is cognizable exclusively by the Civil Court. 8 A.L.J. 1009 and 35 All. 14, *Ref.* (*Sulaiman, J.*). NOHAR AHIR *v.* PRATAB AHIR.
79 I.C. 367=21 A L.J. 899= 5 L.R.A. Rev. 1=A.I.R. 1924 All. 231.

———Suit for a declaration that the defendant is the sub-tenant of the plaintiff is cognizable by a Revenue and not by a Civil Court. 35 All. 14 and 7 All. 223, *Dist.*
Where the reliefs claimed with regard to the list *A* and list *B* plots were quite different, and one cognizable by a Civil and the other by the Revenue Court,
Held, the Civil Court could grant relief in respect of the part cognizable by it. (*Daniels, J.*). GHISWA *v.* DEO NARAIN. **73 I.C. 947= 4 L.R A. Rev. 450=A.I.R. 1923 All. 568.**

———*Dispute between rival tenants—Suit for a declaration with the object of avoiding the Tenancy*

JURISDICTION—Civil and Revenue Courts—Tenancy suits.

Act—'Exclusive jurisdiction of Revenue Courts'—Doctrine of.

It is a truism to say that a suit for a declaration between two rival tenants may be brought in a Civil Court, though in the more recent rulings of High Court, the doctrine of the "exclusive jurisdiction" of the Revenue Courts in certain matters has been developed, and emphasis directed to the wording of S. 167 which says "no Court other than a Court of Revenue shall take cognizance of *any dispute or matter in respect of which* a suit lies under the 4th Schedule."

If the object of the suit is really to prejudice, if possible, the rights which the defendant rival tenant or the zemindar may have, and which if they wish to establish, they must have recourse to the Revenue Court, *i.e.*, if it is an attempt to evade the provisions of the Tenancy Act, it offends against provisions of S. 167 of the Act.

Under S. 167 of the Tenancy Act, it is beyond the jurisdiction of the Civil Court to make a declaration. The Civil Court cannot investigate even much less find on the allegations of the plaintiffs that he is for one reason or another, an occupancy tenant, nor for the same reasons can it decide whether the defendants are permanent lessees. (*Ryves, J.*). SITA RAM *v.* CHAIT RAM.

71 I.C. 447=4 L.R.A. Rev. 291=A.I.R. 1923 All. 257.

———*Suit against a co-sharer by an ejected tenant—C. P. Tenancy Act of* 1882—*Revenue Court, no jurisdiction.*

In a suit, where the plaintiff alleges that the defendant, a co-sharer *lambardar*, granted his occupancy rights in certain *khudkast* land and after his possession for about five years over it, took it back forcibly, when he had ceased to be a *lambardar* and when the proprietary body had become the owner or landlord of his tenancy land by re-distribution,

Held, that his suit as against a co sharer who is not a *lambardar* is not a suit between landlord and tenant and is triable by a Judge who is not a Revenue officer.

(*Note*: This question of jurisdiction will not now arise since the passing of the new Tenancy Act of 1920). (*Hallifax, A.J.C.*). JAGANNATH *v.* SAHEBRAO. **65 I.C. 127=A.I.R. 1922 Nag. 27.**

—Civil and Revenue Courts—Title suit.

———Whether a person has exclusive proprietary title or title to exclusive possession it is a right in property and, therefore, a question of title, and civil Court has jurisdiction to decide the question. (*Dalip Singh, J.*). NIHAL SINGH *v.* JAGAT SINGH **109 I.C. 644=A.I.R. 1929 Lah. 85.**

———Declaration can be sought in a Civil Court against a person claiming proprietary rights under a perpetual lease. (*Dalal, J.C.*). KALKA SINGH *v.* BISHUNATH SINGH. **89 I.C. 221=12 O.L.J. 638=2 O.W.N. 639=A.I.R. 1926 Oudh 72.**

———*Civil Court has jurisdiction.*

The decision of a rent Court may be final on a question relating to the nature of a tenancy: but where the tenancy is denied and a rival title is set up, whether as a co-tenant or as a co-under-proprietor, the decision of the Revenue Court is not final and the question of the rival title can form the proper subject of adjudication in the Civil Court. As between persons claiming to be co-tenants under a title derived from a common ancestor, the question is really one of inheritance and

JURISDICTION—Consent—Value of.

the Civil Court is not debarred from entering into it. (*Kanhaiya Lal, A.J.C.*). LACHHMAN *v.* RAM SINGH. **61 I.C. 290=24 O. C. 15=A.I.R. 1921 Oudh 125.**

—Civil and Revenue Courts—Miscellaneous.

———*Civil Court can interpret documents of title though result may be prejudicial to a party in a rent Court.*

Civil Courts have jurisdiction to interpret a document bearing upon the rights of the parties to a litigation. The interpretation may have the effect of placing a party in a position which would be highly disadvantageous to him in the Rent Courts but the Civil Courts cannot be deprived of the jurisdiction to interpret a document because of the danger of such a consequence following from the exercise of that jurisdiction. (Although this was the view of the Judge, he followed the uniform course of decisions to the contrary). (*Dalal, J.C. and Wazir Hasan, A.J.C.*). BISHUNATH SARAN SINGH *v.* SITLA BAKHSH SINGH.

79 I.C. 784=10 O.L.J. 315=A.I R. 1924 Oudh 69.

———Where the object of a suit brought in a civil Court, though in form one for declaration of status, is really to forestall a suit under S. 95, Agra Tenancy Act, in the Revenue Court by the defendants, or to strengthen the hands of the plaintiffs in the event of their having to file a similar suit in the Revenue Court,

Held, that the Civil Court has no jurisdiction to entertain the suit. (*Mears, C.J. and Ryves, J.*). JAGANNATH *v.* BALWANT SINGH. **68 I.C. 247=20 A.L.J. 570=44 All. 692=A.I.R. 1922 All. 372.**

—Consent—Submission to.

———Where a person appears unconditionally or without protest, he submits to the jurisdiction. *Manitoba and North-West Land Corporation* v. *Allan*, (1893) 3 Ch. 432, *Rel. on.* (*Marten, C.J. and Kemp, J.*). V. R. NAIK *v.* BALWANT SITARAM. **100 I.C. 951=29 Bom. L.R. 138=A.I.R. 1927 Bom. 135.**

———*Foreign Court—What amounts to.*

Where defendants apply to set aside an *ex parte* decree passed against them in a foreign Court having no jurisdiction and appeal against the decree that amounts to submission to the jurisdiction of such Court. (*Harrison and Addison, JJ.*). HARI SINGH *v.* MAHOMED SAID. **102 I. C. 523=8 Lah. 54=A.I.R. 1927 Lah. 200.**

———*Conduct.*

Where in a suit by the plaintiffs for an injunction restraining the defendants from executing certain decrees got in another Court, the defendant appeared and contested the suit,

Held, the conduct of the defendants amounted to submission to jurisdiction and that the Court had therefore jurisdiction to pass an order for temporary injunction. (*Coutts and Ross, JJ.*). GANGA SINGH *v.* PRITHI CHAND LAL CHOUDHURY. **69 I.C. 891=4 Pat. L.T. 10=1 Pat. 356=A.I.R. 1922 Pat. 34.**

—Consent—Value of.

———*Findings of fact binding.*

Where, with the acquiescence of both parties, a Judge departs from the ordinary course of procedure and decides upon a question of fact, it is incompetent for the parties afterwards to assume that they have then an alternative mode of proceeding and to treat the matter as if it had been heard in due course. *Burgess* v. *Morton*, (1896) A.C. 136; *White* v. *Duke of Buccleuch*, (1817) 1 H. L. (Scotch) 70 and *Bustros* v. *White*, L. R. 1 Q. B. D. 423;

JURISDICTION—Consent—Value of.

A.I.R. 1924 All. 570; A.I.R. 1925 All. 271 and A.I.R. 1925 All. 558, *Rel. on.* (*Weir and Sen, JJ., on reference by Dalal, J.*). MADAN MOHAN *v.* MUNNA LAL. **115 I. C. 644= 26 A.L.J. 804= A.I.R. 1928 All. 497.**

——Where the want of jurisdiction is not apparent on the face of the proceedings but the absence of jurisdiction depends on a fact in the knowledge of a party, then, if he does not bring that fact forward but allows the Court to proceed with the judgment he ought not to be permitted to impeach the jurisdiction in any collateral proceeding. (*Das and Adami, JJ.*). DWARKA PRASAD *v.* JAI BARHAM. **67 I. C. 686= A.I.R. 1922 Pat. 322.**

—Consent—Whether confers.

——Jurisdiction cannot be conferred by consent or waiver. (*Dalip Singh, J.*). LACHHMAN DAS NATHOH MAL *v.* SHAMSUDDIN. **115 I.C. 23= A. I. R. 1930 Lah. 240.**

—— *General principle.*

If a decree is passed *ex parte* by a Court which had no jurisdiction to try it, the defendant, judgment-debtor, can challenge it on the ground that it was passed by a Court which had no jurisdiction. The general principle is that jurisdiction cannot be conferred by consent of the parties and any waiver on their part cannot make for the lack or defect of the jurisdiction. 38 Cal. 639, *Rel. on.* (*Misra, J.*). JAGANNATH *v.* BIKARMAJIT SINGH. **10 L.R.A. Rev. 204= A.I.R.1929 Oudh 383.**

——Consent or silence of parties cannot confer jurisdiction. (*Ross, J.*). SOMAR SAO *v.* BALCHAND. **109 I.C. 46=9 Pat.L.T. 499= A.I.R. 1928 Pat. 451.**

——The provisions of S. 137, Cr. P. Code are imperative and failure to comply with them vitiates the order, when the opposite party appears before the Magistrate, shows cause and alleges that what was claimed as a public pathway was not so, the Magistrate should record evidence on the matter of the complaint as in a summons case. He is not justified in consenting to act so to say, as an arbitrator and to decide the matter simply after a local inspection. Consent of the parties or waiver does not vest him with a jurisdiction to proceed in such a manner. 21 C.W.N. 926, *Rel. on.* (*Iqbal Ahmad, J.*). BHOOR *v.* TARA SINGH. **99 I.C. 415= 25 A.L.J.155= =8 L.R.A.Cr. 25= 28 Cr.L. J. 159=7 A.I.Cr. R. 198=49 All. 270= A.I.R. 1927 All. 267.**

——Where a Court has no jurisdiction to entertain a suit of a particular nature, the consent of parties or their failure to raise the point cannot give jurisdiction to that Court. A.I.R. 1926 Bom. 362, *Foll.* (*Shah and Percival, JJ.*). ABDUR REHMAN *v.* BHARMA BUDHYA. **101 I.C. 338= 29 Bom.L.R. 273= A. I.R. 1927 Bom. 663.**

——*Principle explained.*

Where a Judge is not competent to try a suit or hear an appeal, it is not open to the parties to give the Judge a jurisdiction by apparently submitting to it. 9 All. 191 (P.C.), *Expl.* But there may be cases in which jurisdiction depends on certain allegations of facts and where those facts have been established and have been accepted by a Court and on foot of those facts a judgment has been delivered, a party is not at liberty to question the jurisdiction of the Court. 37 M.L.J. 349, *Rel. on.* In such cases the facts which give the Court jurisdiction are facts to be established by evidence and it is open to a Court to come to a conclusion on the evidence. (*Mukerji, J.*). PEYARE LAL *v.* BANKE LAL. **95 I.C. 406= A.I.R. 1926 All. 650.**

JURISDICTION—Consent—Whether confers.

——No consent of parties could give the Court jurisdiction. (*Phillips, J.*). SUBBAIN GOUNDAN *v.* SENNIMALAI GOUNDAN. **92 I.C. 400= 23 M.L.W. 87.**

——Parties cannot by acquiescence or consent confer upon a Court a jurisdiction which it has not got. (*Sir John Edge.*) BHOGILAL *v.* TEMPLE COMMITTEE. **87 I.C. 313=6 L.R.P.C. 117= 41 C.L.J. 628=1925 M.W.N. 474=22 M.L.W. 246= 30 C.W.N. 459=23 A.L.J. 555=27 Bom. L.R. 879= 2 O.W.N. 535=A.I.R. 1925 P.C. 155= 49 M.L.J. 25 (P.C.).**

——Parties by consent cannot confer jurisdiction where it does not exist. Hence where a Court has no jurisdiction to refer a dispute to arbitration the consent of the parties cannot validate the reference. (*Suhrawardy and Cuming, JJ.*). T. WANG *v.* SONA WANGDI. **87 I.C. 633= 52 Cal. 559=42 C.L.J. 26=29 C.W.N. 886= A.I.R. 1925 Cal. 812.**

——When the Judge has no inherent jurisdiction over the subject-matter of the suit, the parties cannot by their mutual consent convert it into a proper judicial process. It is the settled practice of the Bombay High Court to entertain objections taken for the first time even in second appeal, and even in England the Court can raise the question of jurisdiction at any time in proceedings for divorce. (*Macleod, C.J., Marten and Crump, JJ.*). ALFRED WILKINSON *v.* GRACE WILKINSON. **77 I.C. 654=25 Bom.L.R. 945= 47 Bom. 843=A.I.R. 1923 Bom. 321 (F.B.).**

——If a Court has no power to adjudicate upon a subject-matter which does not fall within its province as defined by law, and if it has no jurisdiction over the subject matter of controversy, the consent of parties cannot confer such jurisdiction. 36 Cal. 193 at 206; 36 Mad. 39, *Ref.* (*Spencer and Venkatasubba Rao, JJ.*). VARADACHARIAR *v.* RAMAKRISHNAMBA. **76 I.C. 781= 32 M.L.T. 258=1923 M.W.N. 208= 17 M.L.W. 744= A.I.R. 1923 Mad. 497= 44 M.L.J. 367.**

——A Court cannot get jurisdiction if it had not any in law, merely because the complainant invoked its jurisdiction. (*Krishnan, J.*). RAMASWAMI CHETTIAR *v.* MUTHUVELU MUDALIAR. **71 I.C. 238=45 Mad. 843=1923 M.W.N. 57= 16 M.L.W. 562=31 M.L.T. 420= 24 Cr.L.J. 110=A.I.R. 1923 Mad. 191.**

——Parties cannot confer on the Court, by their agreement jurisdiction which it otherwise does not possess. (*Adami, J.*). MAHARAJA PRATAP *v.* SUNDER BAN KOER. **71 I.C. 999= 3 Pat.L.T. 628=24 Cr.L.J. 279= A.I.R. 1923 Pat. 76.**

——The argument that the consent of parties would give the Court jurisdiction is a very dangerous argument to use. (*Marten, J.*). JAMES MACKINTOSH CO. *v.* SCINDIA STEAM NAVIGATION CO., LTD. **75 I. C. 221=24 Bom. L.R. 853= 47 Bom. 250=A.I.R. 1922 Bom. 444.**

——No consent by the parties can possibly cure an illegality. (*Shah, Ag. C. J. and Crump, J.*). KARIAJAPPA NINGAPPA, *In re.* **68 I.C. 619= 24 Bom. L.R. 807=47 Bom. 89= 28 Cr. L.J. 587=A.I.R. 1922 Bom. 384.**

——*Suit instituted in Court without jurisdiction —Subsequent confirment of jurisdiction will not validate suit.*

Jurisdiction of the subject-matter is given only by law and cannot be conferred by consent, the objection, that a Court is not given such jurisdic-

JURISDICTION—Consent—Whether confers.

tion by law, cannot be waived by the parties. (*Mookerjee and Chotzner, JJ.*). JOTISH PROKAS CHATTORAJ *v.* BAGLA KANTH CHOUDHURY.

70 I.C. 822=36 C.L.J. 124=A.I.R. 1922 Cal. 275.

——*Departure from ordinary practice by consent will not nullify proceedings.*

No one has a right so to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it had decided against him to turn round and say "You have no jurisdiction." Departures from ordinary practice by consent will not nullify the proceedings or divorce there from the ordinary incidents of procedure unless there is an attempt to give the Court a jurisdiction, which it does not possess, or something occurs, which is such a violent strain on its procedure that it puts it entirely out of its course. (*Oldfield and Ramesam, JJ.*). MUTHIAH CHETTI *v.* PALANIAPPA CHETTI. **70 I C 432=45 Mad. 90=15 M.L.W. 190=1921 M.W.N. 764=A.I.R. 1922 Mad. 447=41 M.L.J. 594.**

—Co-ordinate.

——*Declaration that certain order of Board of Revenue is* ultra vires *cannot be granted.*

Where a question of proprietary or under-proprietary right is involved the Civil Courts have full jurisdiction to determine it and to grant such relief as may be appropriate to the case. But the Civil Courts do not exist for the purpose of reviewing the decision of the Revenue Courts or deciding on their validity. The two classes of Courts are Courts of co-ordinate jurisdiction, and the Civil Courts have no power to control or supervise the decisions of the Revenue Courts except in so far as such power is given them by law. A declaration that an order of the Board of Revenue assessing rent on a certain area held by the plaintiff is *ultra vires*, and inoperative against him cannot be granted by itself apart from any question of proprietary right. 1 O.L.J. 344 and 23 O.C. 342, *Foll.* (*Daniels, J.C.*). UMANATH BAKSHSINGH *v.* JANKI BAKSHSINGH. **86 I.C. 864=12 O.L.J. 226=2 O.W.N. 199=29 O.C. 10=A.I.R. 1925 Oudh 410.**

——*Concurrent proceedings for similar relief—Procedure explained.*

Two points appear to be usual on considering whether the Court should have regard and defer to a jurisdiction with which it may come in conflict or whether the Court can fairly expect that other jurisdiction to defer to it. One is the priority in time and the other is the extent of the relief asked for or obtainable in the other jurisdiction. It is for the Court to say that the action is a collusive action and to recall the order made by it for the appointment of a Receiver. It is of the utmost importance that where concurrent proceedings for similar relief are taken in two different and independent Courts, no order should be passed which may lead to friction or conflict of jurisdiction. No other Court of co-ordinate jurisdiction or independent jurisdiction can treat it as of no effect in an interlocutory proceeding. (*Doss and Ross, JJ.*). SHRIDHAR CHOWDHURY *v.* MUGNIRAM BANGAR. **78 I.C. 620=3 Pat. 357=5 Pat. L.T. 243=1924 P.H.C.C. 54=A.I.R. 1924 Pat. 491.**

—Decision as to.

——Per *Pullan, J.*—It is the true object of the suit which must be considered in order to decide in what Court it should be heard. (*Kanhaiyal Lal, Daniels and Pullan, JJ.*). BALWANT SINGH *v.* SURABJIT. **98 I.C. 983=48 All. 774=24 A.L.J. 1009=A.I.R. 1927 All. 70 (F.B.).**

JURISDICTION—Excess of.

——A Judge may have to decide various matters and various issues which are raised by the parties in the course of the trial, but certainly what the subject-matter of the suit or application is, must be determined by looking into the application itself or the plaint of the suit itself. 44 Cal. 783, *Foll.* (*Majumdar, J.*). SARAT CHANDRA *v.* MON MOHAN. **104 I.C. 349=56 C.L.J. 46=A.I.R. 1927 Cal. 711.**

——*Material issue should not be decided for considering whether it has jurisdiction.*

The Court for the purpose of considering whether it has jurisdiction or not cannot decide a material issue in the case. In order to find out whether the claim of the plaintiff is *bona fide* or not, when a plaintiff claims two items of property and the defence is that there is some dispute as regards one item of the property and the other item has been included in the plaint only to give jurisdiction to a higher Court, the Court would not be justified in deciding whether the plaintiff has a title to the other item, and whether the Court would have jurisdiction if the other item was excluded. The mere fact that the claim to the other item is untenable is not a sufficient reason for the Court to say that the claim is an inflated claim and the suit should have been filed in a Court of lower monetary jurisdiction. 21 Mad. 271, *Rel. on*; 8 Bom. 31, *Dist.* (*Devadoss, J.*). RAJGOPALA AIYAR *v.* MUTHURAMIER. **91 I.C. 737=A.I.R. 1926 Mad. 339.**

—Excess of.

——*Decree on a petition for adjournment.*

A joint petition by both the parties to a suit requesting the Court to adjourn the case for the parties to arrive at the terms of a contemplated settlement is not by itself a compromise when nothing further was done by the parties in furtherance of their original intention. A decree based on the original petition itself as if it were a compromise is without jurisdiction. (*Rankin, C.J. and C. C. Ghose, J.*). HARIDAS MADAK *v.* RAMDAS MADAK. **34 C.W.N. 1068.**

——*Suit in Revenue Court against tenants and trespassers—Decree—Appeal by trespassers alone on the ground of jurisdiction—Suit against them alone dismissed.*

A landlord filed a suit against tenants in respect of rent due and other defendants were joined as trespassers. The suit was decreed against all defendants. The trespassers-defendants only appealed and challenged the decree on the ground of jurisdiction.

Held, that though, when a question of jurisdiction is raised with regard to a suit as framed, the jurisdiction will relate to the entire suit, yet in this case tenants-defendants not being affected the decree against them need not be disturbed but the suit should be dismissed against the trespassers-defendants. (*Wallace and Srinivasa Ayyangar, JJ.*). CHINNASWAMI SERVAI *v.* VENKATASUBBA VATHIAR. **110 I.C. 247=1928 M.W.N. 213=A.I.R. 1928 Mad. 681.**

——In a suit for partition of land a British Court cannot deal with so much of the property which is situated outside its jurisdiction, *i.e.*, outside British India. (*Le Rossignol and Broadway, JJ.*). MOTI RAM *v.* KANHAIYA MAL. **77 I.C. 780=2 L.L.J. 515.**

——*Sanction proceedings—Court cannot order production of documents about which sanction is asked for.*

JURISDICTION—Exercise of.

Where in sanction proceedings under S. 195, Cr. P. Code, in respect of a certain document, the Judge ordered the plaintiff to produce the document,

Held, that the order was without jurisdiction and absolutely repugnant to all those fundamental notions of fairness to a person about to be accused of a criminal offence which lie at the root of the Criminal Law of England and of India alike. (*Schwabe, C.J., Oldfield and Coutts Trotter, JJ.*). MUNISWAMY *v.* RAJARATNAM. **72 I.C. 340= 45 Mad. 928=16 M.L.W 505=24 Cr.L.J. 340= A.I.R. 1923 Mad. 136=44 M.L.J. 774 (F.B.).**

—Exercise of.

———*The very unusual jurisdiction of making a bargain—Practice.*

The Court does not exist for the purpose of making a new contract between the parties, but merely to determine and enforce such a contract, if any, as the parties themselves have made. But in very exceptional circumstances such as to prevent a fraud on a party who has erected buildings on another man's land in consequence of certain expectations held out to him the Court can exercise that very unusual jurisdiction of making a bargain which the parties themselves had not specifically made. This jurisdiction, however, being unusual and at the same time of a powerful character must be exercised with all due discretion. 29 Bom. 580, *Rel. on* and 28 Cal. 693 (P. C.), *Ref.* (*Marten, C J. and Murphy, J.*). GUJRAT GINNING CO. *v.* MOTILAL HIRABHAI SPINNING CO. **123 I.C. 481= 53 Bom. 792= 31 Bom. L. R. 1310= A.I.R. 1930 Bom. 84.**

———A local legislature has no jurisdiction to legislate save for its own province and can have no effect beyond the jurisdiction of its own legislature. (*Remfry, J.*). CHHATTOOLAL MISSER & CO. *v.* NARAIN DAS BAIJNATH PRASAD. **121 I. C. 403=56 Cal. 704= A. I. R. 1930 Cal. 53.**

———Per *Bhide, J.*—When the law vests discretion in a certain authority, the Courts are entitled to see that the discretion is exercised in a proper manner but when the discretion is conferred in wide terms the scope for interference of the discretion is narrowed to a considerable extent. (*Broadway and Bhide, JJ.*). DES RAJ *v.* EMPEROR. **A.I.R. 1930 Lah. 781.**

———*Decree for more than the pecuniary limit.*

The jurisdiction of the Court depends on the valuation of the claim as made in the plaint, and especially in a suit for accounts, the jurisdiction to pass a decree for more than its pecuniary limit is not excluded when it is found on taking accounts that a sum of more than such pecuniary limit is due. 10 Bom. 200; 14 Bom. 19 and A. I. R. 1927 Bom. 83, *Ref.* (*Patkar and Murphy, JJ.*). KRISHNAJI VINAYAK *v.* MOTILAL MOGANDOSS. **31 Bom. L.R. 476= A.I.R. 1929 Bom. 337.**

———*Judicial Order—Construction—Misdescription does not affect jurisdiction.*

An order of the High Court directed : " Let the order of His Majesty-in-Council be sent down to the Small Cause Court Judge at Benares with powers of a Subordinate Judge, for execution, according to law and let the amount taxed by this Court be certified to the Court below." An application to enforce this order was made to the District Judge,

Held, that the misdescription of the Court which was to execute the decree was merely in the nature of a slip and did not affect the jurisdiction of the

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District Judge to execute the decree. (*Mukerji and Sen, JJ.*). SOHAN BIBI *v.* BAIJNATH DAS. **112 I C. 876=50 All. 767=26 A.L.J. 587= A. I. R. 1928 All. 293.**

———Where the Court has jurisdiction to entertain the matter but decides the case erroneously without having regard to the provisions of the law, the judgment is not a nullity but must have due effect if it is not set aside by appropriate proceedings. (*B. B. Ghose and Graham, JJ.*). ISHAN CHANDRA BANIKYA *v.* MOOMRAJKHAN. **97 I.C. 770= 30 C.W.N. 940= 45 C.L.J. 24= A.I.R. 1926 Cal. 1101.**

———*Foreign subject.*

When the jurisdiction of a Court in British India is involved against a subject of a foreign State on the ground that by coming within the physical boundaries of the jurisdiction of that Court he is liable to be sued as if he were a subject of His Majesty, a duty is cast upon the Court to be as jealous in safeguarding his liberties as if he were for all purposes a subject of His Majesty. (*Coutts-Trotter, C.J.*). SETHCHAND MULL DUDHA *v.* PURUSHOTAMDOSS. **94 I.C. 512=50 Mad. 27= 1926 M.W.N. 328=24 M.L.W. 94= A.I.R 1926 Mad 584=50 M.L.J. 348.**

———The jurisdiction of the Court and the occasion when it may be exercised are two distinct things. (*Kennedy, J. C., Raymond, Aston, Rupchand Bilaram and Percival, A J. Cs.*). WALTER JOHN BROOKS *v.* NEE BARWICK. **91 I.C. 99= A.I.R. 1926 Sind 58 (F.B.).**

———*Magistrate.*

Where a Magistrate had jurisdiction in the whole district but under the distribution memo only certain cases were sent to him for trial,

Held, he had jurisdiction to entertain complaints from the other parts of the district. (*Baker, J. C.*). YAKUB *v.* APPASWAMI. **81 I.C. 44= 25 Cr.L.J. 556= A.I.R. 1925 Nag. 40.**

———*Inherent jurisdiction to do substantial justice.*

The law cannot make express provisions against all cases that may possibly arise and there is therefore always an inherent jurisdiction in Courts of law to make order *ex-debitio justice* so that real and substantial justice may be done and to do which all Courts exist. (*Wazir Hasan, A. J. C.*). KUBER SINGH *v.* BACHURAN. **80 I.C. 444= A.I.R. 1925 Oudh 128.**

———*Questions of property—Cognisable but caste questions not.*

Court has jurisdiction to decide that the plaintiffs were entitled to the user of the properties in dispute in accordance with the caste usage and custom because a question of property is involved. But once the Court holds that the plaintiffs have that right then the way in which they might exercise their right is a question which is really one for the castes themselves to decide and not for any particular individual or faction and is certainly a question which no Court would possibly determine. (*Macleod, C. J. and Crump, J.*). CHUNNILAL GULABDAS *v.* CHHOTELAL PRANJIVANDAS. **76 I.C. 635= A. I. R. 1924 Bom. 522.**

———*Existence and exercise of jurisdiction must be distinguished—Illegal exercise can be remedied only by appropriate procedure.*

Jurisdiction in relation to the proceedings of a Court means the authority of a Court to decide a particular cause or matter. Where the authority exists, the proceedings are binding on the parties until set aside by some process known to the law.

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They cannot be set aside or disregarded in a collateral proceeding. There is fundamental distinction between existence of jurisdiction and exercise of jurisdiction, and those proceedings only can be declared null and void and therefore disregarded which have been conducted by a Court not having any authority to conduct them; but where the complaint is as to the mode in which the jurisdiction has been exercised the appropriate procedure provided for the removal of the grievance must be pursued if the complainant is to have any remedy for the injury done or supposed to be done to him. (*Das and Macpherson, JJ.*). JAGDISWAR NARAYAN *v.* MD. HAFIQ HUSSAIN. **77 I.C. 851= 5 P.L.T. 473=1924 P.H.C.C. 142= A.I.R. 1924 Pat. 537.**

———*Voluntary submission by foreigner vests jurisdiction and then foreigner can be restrained from executing decree in another Court.*

The sovereign of a country, acting through the Courts thereof, has a right to exercise jurisdiction over any person who voluntarily submits to his jurisdiction, or in other words, the Courts of a country are Courts of competent jurisdiction over any person who voluntarily submits to their jurisdiction. The Courts of this country would not grant an injunction against persons residing outside their jurisdiction and not subject to the jurisdiction of the Court in cases where they would have no means of enforcing the order. A Court has jurisdiction on the application of the plaintiff in a suit in which the defendants have entered appearance, to issue a temporary injunction restraining the defendant from executing in another Court a decree obtained against the plaintiff. (*Dawson-Miller, C.J. and Ross, J.*). (MAHARAJA) BAHADUR SINGH *v.* SETH HUKUM CHAND. **71 I.C. 11= 4 P.L.T. 48=A.I.R. 1923 Pat. 209.**

———A Magistrate has no right to insist that a complainant proceeding under one of two sections either of which may apply, to the facts he alleges, shall be brought under the one rather than under the other. (*Oldfield and Krishnan, JJ.*). PONNUSWAMI THEVAN *v.* EMPEROR. **65 I.C. 612=15 M.L.W 199=1922 M.W.N. 122= 30 M.L.T. 351=23 Cr. L.J. 148= A. I. R 1922 Mad. 62=42 M.L.J. 139.**

—High Court.

———The Bench taking the criminal appellate and revisional business of the High Court is always authorised to entertain applications in connexion with orders made by Civil Courts under Ss. 195 and 476, Cr. P. Code. 40 Cal. 477, *Rel. on.* (*C. C. Ghose and Pearson, JJ.*). SARAT CHANDRA *v.* HARI CHARAN DE. **51 C.L.J. 45= A.I.R. 1930 Cal. 282.**

———*Ordinance, whether is* intra vires *or* ultra vires *can be examined by High Court.*

High Court can examine an Act of the legislature whether enacted by the legislature itself or by the Governor-General-in-Council or by the Governor-General, in order to see whether the said Act or Ordinance has been made and promulgated within the scope of the powers conferred on the legislature, the Governor-General-in-Council and the Governor-General respectively, by the Government of India Act, 1919. A.I.R. 1920 P.C. 23 and 4 Cal. 172 (P.C.), *Rel. on.* (*Broadway and Bhide, JJ.*). DES RAJ *v.* EMPEROR. **A.I.R. 1930 Lah. 781.**

———Government of India Act (1919), Ss. 106 and 110—Power to issue writs of certiorari falls within original jurisdiction as distinguished from appellate or other jurisdiction—High Court has no

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jurisdiction to issue writ of certiorari against Governor acting with Minister for Public Health. 1 Mad. 89 (F.B.); A.I.R. 1921 Mad. 524; 6 Bom. L.R. 392; 13 Bom 520, *Ref.*; A.I.R. 1919 P.C. 31, *Not foll.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). (PENUGONDA) VENKATARATNAM *v.* SECY. OF STATE. **A.I.R. 1930 Mad. 896.**

———High Court constituted after 1915 can take cognisance of any offence cognizable by High Courts unless prohibited by Letters Patent. (*Jai Lal, J.*). FAKIR SINGH *v.* ALI MAHOMED. **115 I.C 428=30 Cr.L.J. 460=12 A.I.Cr 413= A.I.R. 1929 Lah. 217.**

———Lunacy jurisdiction—High Court has power to interfere with improper order on its own account. (*Rankin, C.J. and Majumdar, J.*). SURAJ BASINI DEBI *v.* MOHENDRA NATH. **103 I.C. 725= 54 Cal. 836=31 C.W.N. 838=46 C.L.J. 197= A. I. R. 1927 Cal. 636.**

———*Habeas corpus.*

High Court has, under its common law powers, jurisdiction to issue a writ for the production of a person outside British India, provided it is satisfied that he is in the custody or control of a person within its jurisdiction and S. 491-A, Cr. P. C. does not deprive it of that jurisdiction. (*Macleod, C.J. and Coyajee, J.*). MAHOMEDALLI *v.* ISMAILJI. **95 I.C. 49=50 Bom. 616=28 Bom.L.R. 471= 27 Cr.L.J. 721= A.I.R. 1926 Bom. 332.**

———It is not possible to deprive the High Court of any powers granted to it by its Charter except by direct legislation. *Case-law referred to.* (*Macleod, C.J. and Coyajee, J.*). MAHOMEDALLI *v.* ISMAILJI. **95 I.C. 49=50 Bom. 616=28 Bom. L R. 471= 27 Cr.L.J. 721=A.I.R. 1926 Bom. 332.**

———The High Court has the power to alter or modify a scheme of management of an institution itself and so rules framed under such scheme are as liable to alteration or modification by High Court as any other provisions of the scheme itself. (*Fawcett and Madgavkar, JJ.*). SHANKARLAL *v.* DAKOR TEMPLE COMMITTEE. **94 I.C. 47= 28 Bom.L.R. 309=A. I. R. 1926 Bom. 179.**

———Each District Court is a Court of general civil jurisdiction and there is no warrant for the High Court to exert its equitable powers against persons residing within the jurisdiction of the District Courts. (*Macleod, C.J., Crump and Coyajee, JJ.*). INDIA SPINNING AND WEAVING CO., LTD. *v.* CLIMAX INDUSTRIAL SYNDICATE. **91 I.C. 847=50 Bom. 1=27 Bom.L.R. 1281= A.I.R. 1926 Bom. 1 (F.B.).**

———High Court has no jurisdiction to entertain reference or give opinion on application submitted to His Highness the Maharaja of Benares, in civil cases, from that State, and decided by His Highness. (*Mears, C.J. and Piggott, J.*). SHEOBODH RAM *v.* SHIVA PRASAD. **86 I.C. 23= 47 All. 322=23 A.L.J. 34=A.I.R. 1925 All. 293.**

———*C. P. Code* (1908).

Where the Small Cause Judge returned a plaint which had been first presented to, and returned by, the Munsif to be presented before the former, and the Munsif adhered to his previous order,

Held, the High Court is entitled to make such an order as would enable the plaintiff to have his action tried. (*Ross, J.*). RAZAUR RAHMAN *v.* ATHAR HUSSAIN. **64 I.C. 496= 2 Pat.L.T. 739=A.I.R. 1922 Pat. 368.**

—Insolvency Court.

———*Ouster.*

The fact that the insolvent makes a deed of trust which is held to be valid, cannot oust the

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Insolvency Court from its jurisdiction. If he commits acts of insolvency and is adjudged an insolvent, the adjudication in insolvency is with the Insolvency Court and the Court must administer the estate as an Insolvency Court. (*Stuart, C.J. and Raza, J.*). SHARFUZZAMAN *v.* H. HUNTER. **121 I.C. 903=6 O.W.N. 982= A. I. R. 1930 Oudh 20.**

——*One of the debtors declared insolvent—Plaintiff must proceed in the Insolvency Court.*

The fourth defendant executed a bond for Rs. 300 for himself and for the minor defendants 1 to 3, they being members of a joint Hindu family. The executant was declared insolvent.

Held, in such a case it was the plaintiffs' business to proceed with their case under the Insolvency Act despite the fact that there were minors concerned who were not bankrupts. (*Prideaux, A.J.C.*). VITHAL *v.* RAMCHANDRA. **72 I.C. 327=19 N.L.R. 128= A.I.R. 1923 Nag. 257.**

—Investment of.

——*Agreement of parties—Deviation from ordinary practice.*

Provided there is no inherent want of jurisdiction in the Court with regard to the subject-matter before it or with regard to person, parties should be held to the agreement that the questions between them should be heard and determined in proceedings quite contrary to the ordinary *cursus curiae*. If, therefore, there is an agreement that the money due under an agreement was to be realized by execution rather than by regular process of separate suit, the agreement can be given effect to. *Pisani* v. *Attorney-General, Gibraltar*, 5 P. C. 516; 2 I. A. 219; 20 Cal. 22 and 11 All. 228, *Foll.* (*B. B. Ghose and S. K. Ghose, JJ.*). HRIDOMOHAN SANYAL *v.* KHAGENDRA NATH. **34 C.W.N. 213= A.I.R. 1929 Cal. 687.**

——*Jurisdiction cannot be vested or divested by agreement of parties.*

The litigants cannot by agreement *inter se* divest a Court of its inherent jurisdiction over the subject-matter of a suit just as they cannot confer jurisdiction by consent where it has none.

In a contract of sub-agency it was agreed that all accounts were to be rendered, and money to be paid at the place *K* where the agent carried on his business and not at *A* where business of sub-agency was to be carried on.

Held, that the special provision in the agreement was intended to confer jurisdiction on the *K* Courts to adjudicate upon disputes, if any, between the parties and that it was not intended to and could not have the effect of divesting the civil Court in *A* of their jurisdiction to entertain suits arising out of the sub-agency which were otherwise cognizable by them. A. I. R. 1923 Lah. 425, *Rel. on.* (*Jai Lal, J.*). JAGANNATH AMAR NATH *v.* BURMA OIL CO. **119 I.C. 481=11 L.L.J. 282= A.I.R. 1929 Lah. 605.**

——No action of any party can confer jurisdiction on the Court where it does not exist. (*Dalal, J.*). SURAJ PRASAD *v.* BALDEO. **108 I.C. 464= 50 All. 254=25 A. L. J. 1032= A. I. R. 1928 All. 111.**

——Where by statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is that the Court will determine the matters as a Court. Its jurisdiction is enlarged but all the incidents of such jurisdiction including the right of appeal from its decision remain the same. 1913 A.C. 546, *Foll.* (*Schwabe, C.J., Ramesam and Waller, JJ.*).

JURISDICTION—Irregularity.

PARTHASARADHI NAIDU GARU *v.* KOTESWARA RAO GARU. **78 I.C. 98=47 Mad. 369= 19 M.L.W. 402=34 M L.T. 50= 1924 M.W.N. 272= A. I. R. 1924 Mad. 561= 46 M. L. J. 201 (F.B.).**

——*False statement to bring case within jurisdiction is abuse of process of Court.*

Plaintiff in order to be able to file a suit at a certain place made wrong statements knowing them to be false.

Held, the Court had no jurisdiction to hear the suit. If a plaintiff makes allegations which he knows to be false and untrue, and makes them with the object of thereby inducing a Court to entertain the suit and thereby assume to invest itself with jurisdiction, such a thing is an abuse of the process of the Court, is a fraud upon the Court and cannot be permitted. (*Mears, C.J. and Banerji, J.*). ABDUL GHAFUR *v.* NURUDDIN AHMAD. **71 I.C. 411=20 A.L.J. 984=45 All. 193= 4 L.R.A. Civ. 28= A.I.R. 1923 All. 137.**

——*No initial jurisdiction—Subsequent investment of—Effect.*

For the validity of a judgment in a suit the jurisdiction of a Court over subject-matter of the suit must exist throughout the proceedings, as well as the time of its instructions as at the time of its disposal. The institution of a suit in a Court without jurisdiction is null and void and the investiture of that Court with jurisdiction at a subsequent period has no effect to cure the nullity. (*Mookerjee and Chotzner, JJ.*). JOTISH PROKAS CHATTERJI *v.* BAGLA KANTA CHOUDHURY. **70 I.C. 822=36 C L J. 124= A.I.R. 1922 Cal. 274.**

——Where a Court has no jurisdiction to entertain a particular type of suit, non-objection by defendants in the first instance cannot confer on the Court jurisdiction to deal with any question arising in the suit except the question of jurisdiction. 9 All. 191, *Ref.* (*Sadasiva Aiyar and Coutts-Trotter, JJ.*). GOVINDASAWMI KADAVARAN *v.* KALIAPERUMAL. **66 I.C. 837=16 M.L W. 155= 1922 M.W.N. 83= A.I.R. 1921 Mad. 696.**

—Irregularity.

——Order passed by a Magistrate after he hands over charge or transfer is without jurisdiction. (*Newbould and Suhrawardy, JJ.*). JAGAT BANDHU SAHA *v.* JAGABANDU SAHA SARDAR. **76 I.C. 432=25 Cr. L.J. 192= 38 C.L.J. 201= A. I. R. 1924 Cal. 192.**

——The only Court which can rectify an improper order as to Court-fee under S. 31 of the Court-fees Act is the appellate or in a case where no appeal lies, the Revisional Court. (*Stuart, J.*). MINGAN *v.* EMPEROR. **81 I. C. 56=25 Cr. L.J. 568= A.I.R. 1923 All. 86.**

——The Court acts without jurisdiction in fixing the valuation on a sale proclamation before the date fixed for the same. (*Coutts and Ross, JJ.*). SUKHRAJ BAHADUR *v.* DEBI BUKHSH. **65 I.C. 360=3 Pat.L.T. 342= A.I.R. 1923 Pat. 102.**

——*Irregular exercise does not destroy jurisdiction.*

There is a fundamental distinction between the existence of jurisdiction and the exercise of jurisdiction. The circumstance that jurisdiction has been exercised in an irregular manner does not destroy the jurisdiction, for a Court has jurisdiction to decide wrong as well as right. (*Mookerjee and Buckland, JJ.*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE. **64 I.C. 980=49 Cal 45=33 C.L.J. 421= 25 C.W.N. 585= A.I.R. 1922 Cal. 321.**

JURISDICTION—Matrimonial.

—Matrimonial.

———*Jews.*

Clause 12 of the Letters Patent gives the High Court jurisdiction to entertain a suit arising out of matrimonial disputes between *Jews*, and in deciding it the Jewish Law must be applied "with such adaptations to the circumstances of the case as justice may require." (*Crump, J.*). RACHEL BENJAMIN *v.* BENJAMIN. **94 I. C. 59= 50 Bom. 369=28 Bom. L. R. 328= A. I. R. 1926 Bom. 169.**

———In proper cases the Court can pass a *decree nisi* for dissolution of marriage among Jews and has power to order permanent alimony. (*Crump. J.*). R. BENJAMIN *v.* BENJAMIN. **94 I.C. 59= 50 Bom. 369=28 Bom. L.R. 328= A. I. R. 1926 Bom. 169.**

—Meaning of.

———*Effect or meaning of Court having jurisdiction to entertain suit explained.*

A Court having jurisdiction to entertain a suit has also jurisdiction to decide it whether the decision on the merits be right or not. If it has decided wrongly, the only remedy for the aggrieved party is to take steps prescribed by law for setting it aside, either by means of an appeal or revision or, where the law provides such a remedy, by means of a fresh suit. (*Ananthakrishna Ayyar, J.*). MANIKYAM *v.* CHANDRASEKHARUDU. **31 M. L. W. 537= A. I. R. 1930 Mad. 573=58 M.L.J. 542.**

———It is the authority to decide a case at all and not the decision given therein which constitutes jurisdiction. Jurisdiction is the power to hear and determine and it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. An irregular exercise of jurisdiction does not render the order made in the case without jurisdiction and such orders regularly made must be set aside and cannot be challenged in a collateral proceeding. A. I. R. 1921 Cal. 34 and 25 Bom. 337, *Rel. on.* (*Mitter and Mallik, JJ.*). MAHOMMED HUSSEIN *v.* KHANAKAZI. **113 I.C. 570= A. I. R. 1928 Cal. 606.**

———Per *Patkar, J.*—The expression "jurisdiction" is of varied signification and would mean the extent of the authority entrusted to a Court to administer justice either as a Court of original jurisdiction or Court of appeal. (*Patkar and Baker, JJ.*). PESTANJI RATANJI DABU & CO. *v.* COLLECTOR OF WEST KHANDESH. **101 I.C. 582= 51 Bom. 416=29 Bom. L.R. 361= A.I.R. 1927 Bom. 272.**

———The word 'jurisdiction' may be used in two senses, *viz.*, in the sense of jurisdiction over the subject-matter of the litigation, or in the sense of power to make the order. (*Pearson and Graham, JJ.*). KAYEM BISWAS *v.* BAHADUR KHAN. **89 I.C. 744=42 C.L.J. 22=30 C.W.N. 41= A.I.R. 1926 Cal. 1258.**

———Jurisdiction falls under four different heads: (1) territorial jurisdiction, (2) pecuniary jurisdiction, (3) jurisdiction of the subject-matter, and (4) jurisdiction of the person. (*Das and Adami, JJ.*). PAWE SATDEO NARAIN *v.* RAMAYAN TEWARI. **71 I.C. 705=2 Pat. 335=4 Pat. L.T. 147= A.I.R. 1923 Pat. 242.**

———Jurisdiction may be defined as the power and authority conferred on a Court to pronounce the sentence of the law or to award the remedies provided by law, upon a state of facts, proved or

JURISDICTION—Objection to.

admitted, referred to the Court for decision, and authorised by law to be the subject of investigation or action by that Court, and in favour of or against persons who present themselves, or who are brought before the Court in some manner sanctioned by law. (*Das and Adami, JJ.*). DWARKA PRASAD *v.* JAI BARHAM. **67 I.C. 686=A.I.R. 1922 Pat. 322.**

—Objection to.

———*Duty to enquire.*

Jurisdiction cannot be conferred by waiver or by consent. Where the defendant challenges the jurisdiction of the Court and the plaintiff keeps quiet, it is the duty of the Court to frame an issue on the question of jurisdiction and decide the same. (*Dalip Singh, J.*). LACHHMAN DAS *v.* SHAMASUDDIN. **31 P.L.R. 734=A.I.R. 1930 Lah. 240.**

———*Estoppel to* forum.

Where in a proceeding in a Revenue Court the defendant contended that the Civil Court was the *forum* and the objection having been upheld by the highest Court the plaintiff filed a suit in the Civil Court,

Held, that the defendant could not raise any objection as to the maintainability of the suit. (*Hasan and Bisheshwar Nath, JJ.*). MAHADEO SINGH *v.* PUDAI SINGH. **7 O.W N. 21.**

———Having regard to the provisions of Ss. 116 and 119 Bihar and Orissa Municipal Act (7 of 1922) no Civil Court has jurisdiction to enquire into a question of fact which the legislature has placed within the jurisdiction of the Municipal authorities the subject-matter of the Act, *e. g.*, imposition of tax on a holding as a dwelling house when the validity of the proceeding under which or by which the Municipal authorities came to assess this holding as a dwelling house is not challenged and is not shown to be *ultra vires* of the authorities. 35 Cal. 859, *Ref.* (*Wort, J.*). COMMRS. OF THE PATNA CITY MUNICIPALITY *v.* KSHETRO DAS BOSE. **11 Pat. L.T. 390=A.I.R. 1930 Pat. 189.**

———Tenant suing proprietor in Civil Court for determining boundary of his holding—Objection as to jurisdiction not raised in both Courts—High Court can allow it to be raised for first time. (*Ashworth, J.*). JADUNANDAN SINGH *v.* BECHAN KOERI. **116 I.C. 870=10 L.R.A. Rev. 278= A.I.R. 1929 All. 442.**

———*Late stage—Technical mistake—Rectification of.*

The Municipal Magistrate of Calcutta passed an order of demolition of a certain structure and made the receiver of the premises in question a party to the proceedings. The point raised was that the order ought to be set aside as the Receiver was made a party without the leave of the Court appointing him.

Held, however as the proceedings had gone on till the final order was passed without any such point of jurisdiction having been raised and as the Receiver had actively participated in the proceedings, the Opposite Party should be given an opportunity of rectifying the mistake by an application to the necessary Court and the order need not be set aside. 15 C.W.N. 925, *Rel. on*; 30 Cal. 721, *Ref.* (*Pearson and Mullick, JJ.*). SATIRANJAN BANERJEE *v.* CORPORATION OF CALCUTTA. **1929 Cr. C. 187= A.I.R. 1929 Cal. 514.**

———*Waiver—Principle explained.*

No doubt a party cannot waive an objection as to jurisdiction based on pecuniary limits, but he can do so if the objection depends upon the proof or disproof of certain facts. A.I.R. 1925 Lah. 290 (F.B.), *Dist.*

JURISDICTION—Objection to.

If the objector first denies them and then admits them in any subsequent proceedings, he must be deemed to have withdrawn his objection as to jurisdiction and then it is not open to him to raise that objection at any stage of the same litigation. (*Jai Lal, J.*). GOKAL CHAND *v.* LILA RAM.
118 I.C. 393=A.I.R. 1929 Lah. 175.

———An objection to jurisdiction, if it is apparent on the face of the record, can be taken at any stage of the litigation. (*Jai Lal, J.*). RAMJI LAL *v.* AMAR SINGH. **119 I.C. 721=11 L.L.J. 236.**

———Where, after question of jurisdiction has been already dealt with and decided, objection is taken to it, the Court is justified in refusing to go into it again. (*Brown, J.*). V.S. AYYAR *v.* MAUNG NYUN. **A.I.R. 1929 Rang. 228.**

———*Costs accepted under protest.*

Where a party accepts costs, though under protest, under a Judge's order which, but for the order, would not at that time be payable, he cannot afterwards object that the order was made without jurisdiction. *King* v. *Simmonds*, 7 Q.B. 289 and *Tinkler* v. *Hilder*, 4 Ex. 187, *Foll.*; 21 C.W.N. 232, *Appr.*; *Obiter of C. J.* in 21 C. W. N. 232, *Diss. from*; *Croft* v. *Lumley*, (1858) 6 H. L. 672, *Appl.*; 12 C.L.J. 556, *Dist.*; *Oliver* v. *Nantilus Steam Shipping Co.*, (1903) 2 K.B. 639, *Cons.* (*Jackson, J.*). RAMASWAMI CHETTIAR *v.* CHIDAMBARAM CHETTIAR. **105 I.C. 620=39 M.L.T. 608=26 M.L.W. 527=A.I.R. 1927 Mad. 1009.**

———The question as to whether Civil Court has jurisdiction to try a suit, though abandoned in the Trial Court can be raised in appeal. 11 Mad. 26 (P.C.), *Foll.* (*Mookerjee and Rankin, JJ.*). RAJENDRA NARAIN CHOWDHURY *v.* SATISH CHANDRA CHOUDHURY. **77 I.C. 795=50 Cal. 948=A.I.R. 1924 Cal. 233.**

———Not taking objection to jurisdiction in lower Courts will not confer jurisdiction on a Court which it does not have otherwise. (*Chevis, J.*). NABI BAKSH *v.* MAHAMMAD ALI. **67 I.C. 305=3 L.L.J. 380=76 P.L.R. 1922=A.I.R. 1921 Lah. 72.**

———An objection to jurisdiction not taken in the lower Appellate Court cannot be entertained in second appeal. (*Rafique and Piggott, JJ.*). LALA *v.* RAM CHANDAR. **63 I.C. 255 (All.).**

———*Taken in appeal—Duties of Appellate Court.*

Where objection is raised to the jurisdiction of the First Court in appeal, the Appellate Court should decide the case on all points and if it opines that the case was under-valued and thus the trial Court should not have entertained it, it should decide whether the under-valuation has prejudicially affected the disposal of the case. If it decides that the other issues were rightly decided by the trial Court, the appellate Court must decide whether the under-valuation has affected the merits. (*Walsh and Ryves, JJ.*). GUMAN SINGH *v.* RAGUNATH SINGH. **63 I.C. 107=3 U.P.L.R. (A.) 201.**

—Ouster.

———*Effect.*

Where a particular Court has jurisdiction to try a suit at the initial stage and passes a preliminary decree for accounts, but its jurisdiction is ousted to deal with further proceedings later on when the amount found due is more than the Court has jurisdiction to pass a decree for, preliminary decree passed by the lower Court is not without the jurisdiction of that Court and is not void. A.I.R. 1925 Cal. 907 (F.B.); A.I.R. 1928 Lah. 157; A.I.R. 1926 Lah. 376 (F.B.) and A.I.R. 1924 Lah. 425 (F.B.), *Dist.* (*Jai Lal, J.*). FAZAL KARIM CHISTI *v.* MUNICIPAL COMMITTEE, JULLUNDUR. **118 I.C. 537=A.I.R. 1929 Lah 107.**

JURISDICTION—Ouster.

———*Suit for accounts—Preliminary decree—Transfer—Powers of the transferee Court.*

When after passing of a preliminary decree for accounts the case is transferred to another Court to deal with further proceedings of the case, the former Court having no jurisdiction to pass a decree for the amount found due, it is no doubt open to the latter Court to consider the question of a *de novo* trial, but that is merely a matter of discretion and the preliminary decree that has been passed must be taken into consideration as it cannot be set aside except in due course of law, *i.e.*, by an appellate Court and the latter Court to which the case has been transferred cannot ignore the preliminary decree and try the case from commencement. It can exercise its discretion to hold a *de novo* trial only from the stage after the passing of the preliminary decree, but cannot go behind it. A.I.R. 1924 P.C. 198 (P.C.), *Ref.* (*Jai Lal, J.*). FAZAL KARIM *v.* MUNICIPAL COMMITTEE, JULLUNDUR. **118 I.C. 537=A.I.R. 1929 Lah. 107.**

———The jurisdiction vested in a superior Court is not to be ousted except by express language or obvious inference from the provisions of a Statute. (*Percival, J.C. and Rupchand Bilaram, A.J.C.*). MAHOMED ABDUL MAJID *v.* EMPEROR.
101 I.C. 471=28 Cr.L.J. 439=8 A.I.Cr. R. 43=A.I.R. 1927 Sind 173.

———Consent of party or his pleader that a Court has no jurisdiction to try the suit does not oust the jurisdiction of that Court to try it. (*Dalal, J.C.*). GURCHARAN *v.* KHAGESAR.
91 I.C. 108=A.I.R. 1926 Oudh 272.

———Where the Legislature by means of an Act confers powers on any person for a public purpose from which an individual may receive injury, if the method of redressing the injury is pointed out by the statute the ordinary jurisdiction of Civil Courts is ousted and in case of injury the party cannot proceed to action if the Act excludes the jurisdiction of the Civil Court. 38 Bom. 642 and 42 Cal. 151, *Ref. to.* (*Raymond and Kennedy, A J.Cs.*). DAYARAM RAMDAS *v.* SECRETARY OF STATE.
78 I.C 940=18 S.L.R. 68=A.I.R. 1925 Sind 130.

———It is clear that litigants cannot by agreement *inter se* divest a Court of its inherent jurisdiction over the subject-matter of a suit any more than they can confer jurisdiction on it by consent where it has none. (*Shadi Lal, C.J. and Zafar Ali, J.*). KIDRI PRASAD *v.* K.R. KHOSALA.
75 I.C. 590=5 L.L.J. 300=A.I.R. 1923 Lah. 425.

———*Contract—Submission clause—Party bringing suit in violation of—Procedure explained.*

The jurisdiction of a Court is not taken away either by a submission clause in a contract, or by the existence of arbitration proceedings the right of a party to seek the assistance of the Courts is unrestricted, and the Courts will not permit their jurisdiction to be ousted.

As the jurisdiction of the Courts is not to be ousted, whenever a party to a submission brings an action in respect of any matter that he has contracted to refer he may be liable to damages for the violation of his contractual obligation, but the Court that has seisin of the suit, is the only Tribunal for the time being invested with the jurisdiction to decide the rights of the parties and the arbitrators become *functus officio*, and their authority to deal with the dispute abates.

JURISDICTION—Pecuniary.

When a party to a contract files a suit in respect of any matter that he has contracted to refer to a private tribunal, the Court is not ousted of its jurisdiction to try the suit. It is open to the other party to apply for stay of the suit on the ground of the contractual liability to refer the matters in dispute to arbitration and the Court may in a proper case hold its hand and refuse to proceed with the trial of the suit. But in the event of no application being made to the Court for a stay of the suit, the Court that has seisin of the disputes between the parties can proceed to adjudicate upon them and its decision is binding upon the parties.

The Court in which the suit is filed acquires seisin of the suit immediately on its institution, and its jurisdiction to try it cannot remain suspended till such time as an application for stay of the suit has been made to it and it decides whether it should proceed with the suit or not. (*Raymond, A.J.C.*). MITSUI BUSSAN KAISHA, LTD. *v.* FIRM OF TOTARAM BHAGWANDAS. **85 I.C. 893= 17 S.L.R. 223=A. I. R. 1921 Sind 166.**

—Pecuniary.

——A Court cannot award damages in excess of its pecuniary jurisdiction. (*Newbould and Graham, JJ.*). NABINCHANDRA DHAR *v.* ABDUL GOFUR. **91 I.C. 436= A I.R. 1926 Cal. 596.**

——A Court cannot grant a decree for possession of immovable property on payment of a sum of money which exceeds the pecuniary limit of its jurisdiction. 16 P.R. 1908 (F.B.) and 19 P.R. 1908 (F.B.), *Foll.* (*Shadi Lal, C.J., Broadway, Harrison, Fforde and Campbell, JJ.*). JASWANT RAM *v.* MOTI RAM. **96 I.C. 890=7 Lah. 570= 9 L.L.J. 68=27 P. L.R. 605= A.I.R. 1926 Lah. 376 (F.B.).**

—Personal.

——*Foreign Courts—Action* in personam *over British subject.*

Neither the fact of possessing property in a foreign country nor entering into a partnership there to deal with that property gives the Courts of the foreign country jurisdiction in an action *in personam* over a British subject not resident in the foreign country at the date of the action provided he neither appeared to the process nor expressly agreed to the jurisdiction of the foreign Court. *Emanuel* v. *Symon*, (1908) 1 K. B. 302, *Foll.* (*Harrison and Addison, JJ.*). HARI SINGH *v.* MAHOMED SAID. **102 I.C. 523=8 Lah. 54= A.I.R. 1927 Lah. 200.**

——*Jurisdiction as to person, if it exists, is not ousted by mode of bringing the person before Court.*

Jurisdiction as to person is conferred on the Court by suing the person in a Court competent to try the cause as against that person, not by the mode which the Court adopts in bringing the person before the Court.

Where the condition for the assumption of jurisdiction as against a person exists, the authority of the Court to try and determine the cause as against him is complete, and the mode which the Court adopts to bring that person before the Court affects the exercise of jurisdiction, and not its existence. 21 Cal. 66; 25 Bom 337, *Foll.*

The fact that the Court disobeyed any particular provision of the statute is not sufficient to establish that there was no jurisdiction in the Court to render judgment in the case. But where the disobedience leads to this result that, as a consequence of the disobedience there is no proper party to the suit, the case is different. (*Das and Adami, JJ.*). PANDE SATDEO NARAIN *v.* RAMAYAN TEWARI. **71 I.C. 705=2 Pat. 335= 4 Pat.L.T. 147=A.I.R. 1923 Pat. 242.**

JURISDICTION—Practice.

—Practice.

——It is a well-established doctrine that a statute interfering with the established state of law must receive a strict construction, and when the language is doubtful, the Courts should lean against an ouster of the jurisdiction of the ordinary tribunals. (*Shadi Lal, C.J., Fforde and Tek Chand, JJ.*). ALI MUHAMMAD *v.* HAKIM. **108 I. C. 748=29 P.L.R. 396=9 Lah. 504= A.I.R. 1928 Lah. 121 (F.B.).**

——Valuation found by sub-Judge was challenged in High Court, which increased the valuation and held that appeal lay to it on the increased valuation though on the valuation of the sub-Judge appeal lay to District Judge. (*Stuart, C. J. and Raza, J.*). UMANATH BAKSH SINGH *v.* RAM BAKHSH. **94 I.C. 343=1 Luck. 202= 6 O.W.N. 1217=13 O.L.J. 229= A.I R. 1926 Oudh 428.**

——*Successor of Judge cannot modify mortgage decree passed by his predecessor while taking accounts as directed in the decree.*

Where a Court, while passing a decree on mortgage ordered, that an account should be taken of the mortgage debt due under the mortgage bond, but his successor, while taking account, did not confine himself to make an order for the amount which on taking the account, he found to be due as the mortgage debt, but proceeded to award interest from the date of the suit on the amount of the mortgage,

Held, that he had no such power, that his duty was to take the account which his predecessor directed to be taken, and he had power, if necessary, to order who should be liable, and to what extent, for the costs of taking the account. (*Sir John Edge.*) SOURENDRA MOHAN *v.* HARI PRASAD. **91 I.C. 1033=24 A.L J. 33=1926 M.W.N. 49= 5 Pat. 138=7 Pat.L.T. 97=28 Bom. L.R. 1126= 30 C.W.N. 482=52 I.A. 418=42 C.L.J. 592= A.I.R. 1925 P.C. 280=50 M.L.J. 1 (P C.).**

——*Vancouver Island Settlers Rights Act* (1904), *S.* 3—*Lieutenant Governor in Council should act judicially in deciding a question under S.* 3—*But he is not bound by technical rules of evidence or procedure—Exercise of discretion—No interference by logal proceedings.*

The statute of 1904 requires that before the authority to issue a Crown grant under S. 3 is acted upon the Lieutenant Governor in Council shall decide the question whether or not there is "reasonable proof" or "improvement" or occupation and of intention to reside and the function of the Lieutenant Governor-in-Council in deciding upon such question is judicial in the sense that he must "preserve a judicial temper" and perform his duties "conscientiously with a proper feeling of responsibility" whether or not the proof advanced is " reasonable proof " is a question of fact for the designated tribunal, and the decision by the Lieutenant Governor in Council in the affirmative cannot be questioned in any Court so long as it is not demonstrated that there was no "proof" before him which acting judicially, he could regard as reasonably sufficient. The Lieutenant Governor-in-Council is not bound by the technical rules of British Columbia law touching the reception of hearsay evidence and there is nothing necessarily incompatible with the judicial character of the inquiry in the fact that such evidence is received.

JURISDICTION—Presumption.

Where there is some evidence in support of the application and there is no adequate reason for holding that this evidence might not be properly considered to be reasonably convincing, the grant made by the Lieutenant Governor in-Council cannot be questioned. As to matters touching the refusal to direct the production of the deponents in support of the application for grant for cross-examination and the refusal to grant an adjournment for the purpose of the opposite party to adduce evidence in opposition to the application, where the opposite party were given the fullest opportunity to present before the Lieutenant Governor in Council everything they might desire to urge against the view that the depositions produced in themselves constituted "reasonable proof" and that they had the fullest opportunity also of supporting their contention that the depositions alone in the absence of cross-examination ought not to be considered sufficient and that further time should be allowed to enable them to prepare their case.

Held, that the appointed authority for dealing with the matter, was the executive Government of the province directly answerable to the Legislature and that the Lieutenant Governor-in-Council was not bound to govern himself by the rules of procedure regulating proceedings in a Court of Justice.

Where it cannot be suggested that they proceeded without any regard to the rights of the respondents the procedure followed must be presumed, in the absence of some conclusive reason to the contrary to have been adopted in the exercise of his discretion under the statute as a proper mode of discharging the duty entrusted to him. His decision taken in the exercise of that discretion are final and not reviewable in legal proceedings. (*Viscount Haldane, Viscount Cage, Lord Carson, Mr. Justice Duff and Sir Robert Stout.*) WILSON *v.* ESQUIMALT AND NANAIMO RAILWAY COMPANY.
A.I.R. 1921 P.C. 234 (P.C.).

—Presumption.

——In questions of jurisdiction the presumption is in favour of giving jurisdiction to the highest Court. 8 All. 438; 4 Bom. 624; 26 Cal. 381 and 3 Bom. 348, *Ref.* (*Rangnekar, J.*). GULAM HUSAIN LALJI SAJAN *v.* CLARA D'SOUZA. **120 I.C. 834= 53 Bom. 819=31 Bom. L.R. 988= A.I.R. 1929 Bom. 471.**

——*Grant of incidental powers—Grant of principal powers cannot be presumed.*

Per *DeSouza, A.J.C.*—Jurisdiction does not arise from an intention presumed to exist in the mind of the author of the notification but from apt words giving effect to that intention. The doctrine of interpretation *ut res magis valet, quam pereat* cannot be invoked so as to confer jurisdiction.

The grant of the incidental or accessory powers does not carry with it the grant of the principal powers. (*Percival, J.C., Aston, Rupchand Bilaram, De Souza and Lobo, A.J.Cs.*). EMPEROR *v.* NOOR-MAHOMED. **103 I.C. 433=22 S.L.R. 157= 9 A.I. Cr. R. 66=28 Cr. L.J. 913= A.I.R. 1928 Sind 1 (F.B.).**

—Procedure.

——*Magistrate clutching at jurisdiction—Trial for lesser offence than that complained of.*

Where the offence complained of was one under S. 430, I.P.C. but the bench tried the accused for a lesser offence under S. 426, I.P.C. and it appeared that they had jurisdiction to try the former and not the latter offence,

Held, that the proceeding was not void. 24 M. 675 and 27 M.L.J. 594, *Foll.* (*Sundaram Chetty, J.*).

JURISDICTION—Procedure.

PICHA KUDUMBAN *v.* SERVAIKARA THEVAN.
1930 M.W.N. 770.

——Preliminary decree for accounts—Amount found due being in excess of Court's jurisdiction—Proper order is to transfer the case to the Court having jurisdiction and not to return the plaint for presentation to proper Court. (*Jai Lal, J.*). FAZAL KARIM *v.* MUNICIPAL COMMITTEE, JULLUNDUR. **118 I.C. 537=A.I.R. 1929 Lah. 107.**

——Where a Judge has jurisdiction to try a case under the ordinary procedure, the mere fact that he tries it under a special procedure is no ground for dismissing that suit. The proper procedure is a remand. (*Broadway and Zafar Ali, JJ.*). BHONDU MAL *v.* MD. AHMAD. **99 I. C. 648= 8 Lah. 156=9 L.L.J. 57=28 P.L.R. 539= A.I.R. 1927 Lah. 174.**

——*Civil Court—Landlord's suit for ejectment—Cognisance of.*

Where the landlord is suing in the Civil Court a tenant for ejectment of the lands in his occupation, when the suit brought by the latter to contest the notice of ejectment has failed, but the landlord has not succeeded in getting possession of the land, the landlord's suit brought in the Civil Court is not maintainable. The proper course for him to take is again to apply to the revenue Court for assistance to eject the tenant under S. 60 of the Oudh Rent Act, and as long as that has not been done, the landlord is not entitled to treat the tenant as a trespasser and to sue for his ejectment in the Civil Court. 1890 S. C. 180 and 1 U. D. B. R. 318, *Rel. on.* (*Misra, J.*). ANPURNA KUER *v.* RAM RATAN SINGH. **97 I. C. 893= 3 O.W.N. Sup. 162=A. I. R. 1926 Oudh 555.**

——Where the plaintiff is absent at the hearing but the Court takes evidence nevertheless for the purpose of taking action under S. 476, Cr. P. C., the evidence cannot be said to have been illegally or improperly taken. (*Wallace, J.*). VENKATASUBBIAH, *In re.* **63 I. C. 440=16 M L. W. 925= 1922 M. W. N. 811=23 Cr L.J. 712= A.I.R. 1923 Mad. 228=44 M. L. J. 74.**

——*Submission to—No inherent lack of jurisdiction—Absence of formality is immaterial.*

If there is submission to the jurisdiction of a Court and if there is no inherent lack of jurisdiction in that Court the absence of formality, (*e. g.*, asking leave of the High Court under Letters Patent which would confer complete jurisdiction on that Court) will not render the judgment of that Court null and void. (*Das and Foster, JJ.*). GANESH NARAIN SAHI DEO *v.* MANIK LAL.
76 I.C. 194=1 Pat.L.R. 318=5 Pat. L.T. 342= A.I.R. 1923 Pat. 562.

——*Suit allowed to be withdrawn with leave to file fresh suit—Circumstances not falling within scope of R. 1, O. 23—Order is not void—Fresh suit is not incompetent.*

An order for withdrawal of a suit with leave to institute a fresh suit, made under O. 23, R. 1 but in circumstances not within the scope of the rule, cannot be treated as an order made without jurisdiction; such order is consequently not null and void. A fresh suit instituted upon leave so granted is not incompetent.

The Court trying the subsequent suit is not competent to enter into the question, whether Court which granted the plaintiff permission to withdraw the first suit with liberty to bring a fresh suit had properly made such order. (Distinction between the existence of jurisdiction and exercise of jurisdiction pointed out.) 44 Cal. 367.

JURISDICTION—Rent Court.

Overruled. (*Mookerjee, Ag.C.J., Fletcher, Chatterjee, Teunon and Chaudhuri, JJ.*). HRIDAY NATH ROY *v.* RAM CHANDRA BARNA SARMA.
48 Cal. 138=A.I.R. 1921 Cal. 34 (F.B.).

—Rent Court.

——Where the decision of the rent Court is not final on the question of title as affected by the plea of adverse possession, the Civil Court is quite competent to come to a finding on that question independently of the judgment of the rent Court. (*Wazir Hasan, J.C.*). SHAHADAT KHAN *v.* KAMDAR KHAN. **89 I.C. 810=A.I.R. 1926 Oudh 181.**

——*Agra Tenancy Act, S. 197—Land situated in Cantonments area—Suit for ejectment from—Rent Court has no jurisdiction.*

The Rent Court has no jurisdiction in the matter where the land in dispute is situated in Cantonments which are under the direct administration of the Government of India. The Tenancy Act does not apply in the case. But where the owner of the land asserts proprietary title, the appeal necessarily lies to the District Judge. Section 197 of the Tenancy Act has thus application and as all the material necessary for determination was before the High Court, it was justified in disposing of the appeal as if the suit had been in fact instituted in a civil Court. Therefore the suit is taken as an ordinary suit for ejectment. (*Stuart, J.*). SECRETARY OF STATE *v.* MULLA.
66 I.C. 382=A.I.R. 1922 All. 57.

—Revenue Court.

——The jurisdiction of the revenue Court as a summary Court is only in respect of claim by the land-holder against the ryot. 38 Mad. 738, *Rel. on.* (*Wallace and Srinivasa Ayyangar, JJ.*). CHINNASWAMI *v.* VENKATASUBBA. **110 I.C. 247= 1928 M.W.N. 213=A.I.R. 1928 Mad. 681.**

——*Mutation proceedings—Question of title is beyond jurisdiction.*

The matter for adjudication in Revenue Court for the purposes of mutation of names is primarily the question of possession and an inquiry into the title of the claimants for mutation of names is wholly beyond the jurisdiction of that Court in the case before it. (*Hasan and Misra, JJ.*). ACHCHE MIRZA *v.* AHMAD SHAH. **97 I.C. 922=1 Luck. 529= 3 O.W.N. 693=A.I.R. 1926 Oudh 594.**

——*Authority in the matter of sales for arrears of revenue.*

The only final authority for the purpose of sales for arrears of Government revenue is the Collector. The Deputy Collector has got only a delegated authority. Omission to give the party concerned notice before a revenue sale is confirmed overruling the Deputy Collector's order to the contrary is not fatal although the Collector is bound ordinarily to give such notice and it is specially so where it is shown that the party concerned had no valid grounds to put forth before the Court. (*Devadoss, J.*). NAGASWAMI AIYAR *v.* RAMASWAMI AIYAR. **85 I.C. 212=A. I. R. 1925 Mad. 288= 47 M.L.J. 755.**

——*Plea of adverse possession.*

When in a suit by a recorded co-sharer for recovery of rent, the plea of adverse possession is set up as a defence, the Revenue Court in Oudh is not only perfectly competent to entertain and decide the plea but when such a plea is raised in a rent suit, it is the duty of the Revenue Court to frame an issue on that behalf and give its decision thereon. 33 All. 791 and 1 O.C. 143, *Foll.* (*Wazir Hasan, J.C.*). SURAJ MAL *v.* SYED MD. TAQI.
80 I.C. 650=A.I.R. 1925 Oudh 153.

JURISDICTION—Special.

——Revenue authorities have jurisdiction to effect a partition of only the agricultural land and have no such jurisdiction with respect to an *abadi* land. (*Shadi Lal, C.J. and Leslie Jones, J.*). MANJI *v.* GHULAM MUHAMMAD. **61 I.C. 415=2 Lah. 73= 3 L.L.J. 75= 68 P.L.R. 1921= A.I.R. 1921 Lah. 157.**

—Small Cause.

——Where a Court of a particular place is vested with the powers of a Small Cause Court to try suits up to a particular amount, whoever occupies that Court is competent to try those suits. (*Brown, J.*). MAUNG TIN *v.* KYINAHON. **121 I.C. 803= 7 Rang. 809=A.I.R. 1930 Rang. 139.**

——*Plaintiff's allegations are to determine jurisdiction.*

In order to decide whether a suit is one of a Small Cause Court nature or not, one should refer to the allegations of the plaintiff contained in the plaint. If those allegations make out a case, which is exempted from cognizance of the Small Cause Court, it is immaterial what the defence raised is and what the actual findings arrived at by the Court are. If the defendant were held to be estopped from contending that the suit was exempted from the cognizance of the Small Cause Court, merely because he had not admitted the commission of any offence, the result would be that the plaintiff would always be entitled to prefer a second appeal if the decision went against him, but the defendant would be estopped from doing so. (*Sulaiman and Boys, JJ.*). DEOGLI RAI *v.* HARAK NARAIN LAL. **97 I.C. 129=49 All. 85= 24 A.L.J. 1017=A.I.R. 1926 All. 760.**

——Civil Court can try Small Cause suit if there is no objection but Small Cause Court cannot try suit if not Small Cause suit. (*Findlay, Offg.J.C.*). ATMARAM *v.* BHAGWAT. **91 I.C. 216= 8 N.L.J. 175=A.I.R. 1925 Nag. 447.**

——It is not for the plaintiff to force the defendant to claim a set-off. Thus where the plaintiff's claim is for an amount beyond the jurisdiction of the Small Cause Court, the plaintiff cannot, by deducting an amount due from him to the defendant on a quite different transaction, bring his suit within the jurisdiction of the Small Cause Court. (*Raymond and Kennedy, A.J.Cs.*). FIRM OF AYASING UTTAMSING *v.* FIRM CHETANDAS TANOOMAL. **87 I.C. 955=A.I.R. 1925 Sind 319.**

——Small Cause Court can entertain a suit for recovery of price of half the produce of land against a Bargadar. (*N.R. Chatterjee, J.*). RAHIMODDIN MOLLAH *v.* NIROD BARANI DEBI. **84 I.C. 685=40 C.L.J. 197= A.I.R. 1925 Cal. 1036.**

—Special.

——Where a tribunal is constituted for a special purpose, the Court cannot restrain persons who are entitled to do so from applying to it. No equity can be founded on the allegation that a Court, legally constituted, is not properly competent to decide questions within its jurisdiction. (*Das and Allanson, JJ.*). RAJESHWAR SINGH *v.* SHYAM BIKARI SINGH. **103 I.C. 313= 8 Pat.L.T. 477=A.I.R. 1927 Pat. 286.**

——*Civil Court cannot deal with cases under the Act unless special tribunal refuses to Act.*

Where a special tribunal out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

JURISDICTION—Special.

If this tribunal had functioned and given a decision, whether right or wrong, the Civil Court would have no jurisdiction. It is only when the special tribunal has refused to function that a Civil Court exercises the jurisdiction which the proper tribunal has failed to exercise. A.I.R. 1923 Mad. 476 and 31 Bom. 604, *Foll.* (*Jackson, J.*). CHIDAMBARAM MUNICIPALITY *v.* GNANASAMBANDHAM. **94 I.C. 546=24 M.L.W. 510= A.I.R. 1926 Mad. 798.**

——When a public body has been created by a statute and that statute empowers Government to frame rules for its working, it is open to Government to create a forum for the purpose of deciding disputes as to elections directed to be carried out under the statute and thereby to exclude the jurisdiction of the ordinary Civil Courts. A.I.R. 1924 Mad. 523, *Foll.* (*Devadoss and Waller, JJ.*). VENKATA SIVA RAO *v.* RAMA KRISHNAYYA. **92 I.C. 790=50 Mad. 91= 23 M.L.W. 103=1925 M.W.N. 874= A.I.R. 1926 Mad. 246=50 M.L.J. 148.**

——A Civil Court exercising special jurisdiction may be *persona designata* and that whether it is so or not will have to be inferred from a consideration of the special powers exercised and the special functions performed by the Civil Court. (*Rutledge, C. J., Heald and Chari, JJ.*). MUNICIPAL CORPORATION, RANGOON *v.* M. A. SHAKUR. **91 I.C. 550=3 Rang 560=4 Bur. L.J. 202= A.I.R. 1926 Rang. 25 (F.B.).**

——It is an elementary principle of law relating to Joint Stock Companies that the Court will not interfere with the internal management of Companies acting within their powers. A. I. R. 1924 Cal. 598, *Foll.* (*Lobo, A. J. C.*). MRS. AMAI FAKIRJI COWASJI *v.* E. A. PEARSON. **97 I.C. 84= A.I.R. 1926 Sind 295.**

——Where the law has given jurisdiction to determine a matter to specific tribunals only, determination of the matter by other tribunals is excluded. (*Prideaux and Kotval, A. J. Cs.*). GANOBA *v.* NARAYAN. **72 I.C. 1016=6 M L.J. 7= A.I.R. 1923 Nag. 112.**

——*Land Acquisition Act—No right of suit.*

Ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. 10 C. 991, *Foll.*

The Land Acquisition Act creates a special jurisdiction and provides a special remedy. It would not be reasonable to hold that the Legislature having provided a special remedy in the Land Acquisition Act intended to make it optional with a party to apply for a reference under S. 18 or to institute a suit in the ordinary Civil Court.

A person having been served with a notice under S. 9 was bound to apply for reference under S. 18 when he was dissatisfied with the award. He cannot maintain a suit in the ordinary Civil Court. (*Chatterjee and Panton, JJ.*). SAILESH CHANDRA SARKAR *v.* BIJOYCHAND MOHATOP BAHADUR. **65 I. C. 711=26 C. W. N. 506= A. I. R. 1922 Cal. 4.**

—Suspension of.

——The jurisdiction of a Court to deal with proceedings ceases when the proceedings are stayed by a superior Court, and any order passed by the lower Court afterwards in the matter is without jurisdiction. (*Greaves and Mukerji, JJ.*). RASH BEHARI MANDAL *v.* HEMANTA KUMAR GHOSE. **88 I. C. 921=41 C. L. J. 349= A.I.R. 1925 Cal. 1023.**

JURISDICTION—Venue.

——*Appeal from interlocutory order—Jurisdiction of Trial Court is not suspended thereby.*

Even if in case of interlocutory appeals the High Court sends for the record for the purpose of dealing with that particular matter, for all other purposes the suit is pending in the trial Court. Therefore the trial Court has jurisdiction during the pendency of such appeal to entertain the application of the representative of the deceased party, to be joined in the suit. (*Macleod, C. J. and Crump, J.*). BHOGI LAL KIRPA SHANKAR *v.* DARASHA KOOVERJEE. **75 I.C. 743= 25 Bom. L.R. 308=A.I.R. 1923 Bom. 303.**

—Venue.

——In a suit for accounts, the determination of the forum of appeal from the preliminary decree depends upon the valuation of the suit for purposes of jurisdiction, and the fact that the amount ultimately to be found may or may not exceed the valuation cannot disturb the course of appeal. (*Shadi Lal, C. J. and Abdul Qadir, J.*). HARI CHAND *v.* MADAN LAL. **31 P.L.R. 536= A.I.R. 1930 Lah. 832.**

——Per *Ramesam, J.*—A Court, where a suit was originally rightly instituted, continues to have jurisdiction over the suit even if the place where the cause of action arises ceases to be situate within its jurisdiction. (*Ramesam and Devadoss, JJ.*). SUBRAMANYA AYYAR *v.* SWAMINATHA CHETTIAR. **114 I. C. 545=28 M. L. W. 885= A. I. R. 1928 Mad. 746.**

——The venue in a particular case is determined by the nature of the claim as brought. 9 N.L.R. 54, *Foll.* (*Prideaux, A.J.C.*). JUGALKISHORE *v.* NAGO. **107 I. C. 671=A.I.R. 1928 Nag. 221.**

——A suit based on hundi can be brought in the High Court in whose jurisdiction the hundi was endorsed and payment was made after default, because an endorsement on the hundi is a part of the cause of action 22 Cal. 451; 4 Bur. L. T. 183; 31 M.L.J. 816; *Read* v. *Brown*, (1889) 22 Q.B.D. 128; and A.I.R. 1926 Sind 31, *Foll.* (*Aston, A.J.C.*). NARAIN & CO. *v.* CHANDIRAM & CO. **107 I. C. 218=22 S. L. R. 305= A. I. R. 1928 Sind 86.**

——Where a lower Court has jurisdiction, an application must be made to that lower Court first and its order obtained thereon before the superior Court is asked to exercise such jurisdiction as it may think fit. (*Boys and Banerji, JJ.*). KAMLAPATI PANTH *v.* EMPEROR. **91 I. C. 51= 48 All. 23=23 A. L. J. 897= 6 L. R. A. Cr. 179=27 Cr. L. J. 19= A. I. R. 1926 All. 27.**

——A Court should look at the substance of the petition and not merely at the heading or sections relied on. (*Devadoss, J.*). RAJARATNAM *v.* SHEIK HASSAN BI. **97 I.C. 1031=24 M.L.W. 254= A.I R. 1926 Mad 968=51 M.L.J. 255.**

——*Venue is determined by construction of plaint only and not by the probable defence.*

The question whether a suit lies in the small cause side or on the original jurisdiction depends upon a construction of the plaint only. What the defence of the defendant in his written statement will be or what attitude the defendant assumed with reference to a demand made by the plaintiff prior to suit is really an irrelevant consideration in the determination of this question. (*Ramesam, J.*). SAMU ASARI *v.* ANACHI AMMAL. **91 I.C. 561=22 M.L.W. 462= A.I.R. 1926 Mad. 37=49 M.L.J. 554.**

JURISDICTION—Venue.

——If cause of action did not occur within the jurisdiction of the Court it cannot entertain a suit that a decree granted by another Court does not bind plaintiff. (*Das and Macpherson, JJ.*). THE BENARES BANK, LTD. *v.* SURENDRA NARAIN SINGH. **75 I.C. 469=A.I.R 1924 Pat. 831.**

——*Contract for sale of goods—Suit for price can be brought where seller resides.*

The plaintiff's firm was at Agra. A contract was made at Budaun with the defendant's firm for sale to that firm of certain goods which were to be delivered at Budaun. The goods were despatched from Agra and delivery was taken at Budaun. As the price was not paid, the plaintiff's firm brought the present suit at Agra for the recovery of the price.

Held, that Agra Court was a proper forum.

Ordinarily if goods are purchased or money is borrowed the payment for the goods or repayment of money must be presumed to have been agreed to be made at the place and the residence of the seller or the lender as the case may be. (*Banerji, J.*). BANGALI MAL *v.* (FIRM) GANGA RAM ASHRAFI LAL. **71 I.C. 431=A.I.R. 1923 All. 465.**

——When after the disruption of joint Hindu family certain immovable properties situate in a Native State (*i.e.*, within the jurisdiction of a foreign Court) by agreement continued joint and this suit was instituted in a Court in British India for accounts,

Held, the British Courts had jurisdiction to deal with the suit as instituted including the immovable property situated in the Native State. (*Broadway and Zafar Ali, JJ.*). RAM KISHAN *v.* RAM SHAN. **77 I.C. 532=A.I.R. 1923 Lah. 551.**

——*Mesne profits.*

In accordance with the general principles of English Law applicable to India, a suit to recover mesne profits of land situated outside British India can be instituted in British India. Although S. 16 of the C.P.Code does not seem to be applicable to cases of land outside British India there is reason to believe that the whole of the section follows the English Law with regard to jurisdiction in case of suits in which specially the decree could be executed by the personal obedience of the defendant. (*Macleod, C.J. and Shah, J.*). MAHADEO GOVIND SUKTANKAR *v.* RAMCHANDRA GOVIND SUKTANKAR. **86 I.C. 510= 46 Bom. 108=23 Bom. L.R. 903= A.I.R. 1922 Bom. 188.**

——*Declaratory suit.*

A suit for a declaratory decree, if capable of valuation, must be filed in the Court where a suit for possession of the property, which is the subject-matter of that declaration would lie. (*Kanhaiya Lal, J.C.*). KAMTA SIROMAN PRASAD SINGH *v.* GAYA DIN PATHAK. **69 I.C. 201= 25 O.C. 184=A.I.R. 1922 Oudh 249.**

——*Appeal.*

The forum of appeal in a rent suit is determined at the date of the institution of the suit, by the amount sued for and cannot be altered by a revival of the suit at a later stage in respect of a portion only of the subject-matter. (*Coutts and Macpherson, JJ.*). CHAUDHURI SHYAM NARAIN SINGH *v.* SHIVCHARAN SAHU. **62 I.C. 886= 1 Pat. 32=1921 P.H.C.C. 345= 2 Pat.L.T. 734=A.I.R. 1922 Pat. 400.**

—Waiver.

——Ordinarily it is no doubt true that there can be no waiver in respect of a plea of jurisdiction just as much as consent of parties cannot invest a Court with jurisdiction. But the position is somewhat altered where a party having a right of appeal against the order deciding the plea of jurisdiction has allowed that order to become final by not filing an appeal against it. A.I.R. 1914 P.C. 140, *Ref.* (*Srivastava, J.*). PANCHU *v.* DY. COMMR., SULTANPUR. **113 I.C. 734=A.I.R. 1929 Oudh 286.**

JURISDICTION—What determines.

——*Objection to inherent jurisdiction only, cannot be waived, but irregularities in initial procedure can be waived.*

It is a settled principle that where a Court has no inherent jurisdiction over the subject-matter of a suit no waiver on the part of the defendant can confer jurisdiction upon it. But where the Court has jurisdiction over the subject-matter, but there are irregularities in the initial procedure, the defendant who without objection goes to trial upon the merits cannot subsequently dispute the jurisdiction of the Court. Section 99, C.P. Code, embodies the rule. The exceptions to the rule are contained *inter alia* in S. 11 of the Suits Valuation Act and S. 21 of the C. P. Code. By virtue of these sections certain defects of jurisdiction are put on a par with "irregularities in the initial procedure." (*Venkatasubba Rao and Madhavan Nair, JJ.*). RAJAGOPALA *v.* TIRUPATHIA PILLAI. **93 I.C. 12=49 Mad. 746= A.I.R. 1926 Mad. 421=50 M.L.J. 161.**

—What determines.

——Suit for recovery of rent—Relationship of landlord and tenant denied—Jurisdiction should be determined by reference to allegations in plaint. (*Jai Lal, J.*). HIRA SINGH *v.* PURAN. **A.I.R. 1930 Lah. 599.**

——Where a person is not suing for a declaration about land on which the revenue assessed is Rs. 3-0 6, but is asking for a declaration that as owner or quondam owner of Rs. 3-0 6 share of the revenue-assessed land, he is entitled to a share in the *shamilat* in proportion, the High Court has jurisdiction to entertain the first appeal if the market value is sufficient to invest High Court with such jurisdiction. (*Dalip Singh and Jai Lal, JJ.*). KHUDA BAKHSH *v.* AHMED. **120 I.C. 795= A.I.R. 1930 Lah. 18.**

——The question in order to exclude the jurisdiction of the Court must be a direct question for determination and not merely incidental for the purpose of deciding whether the plaintiff is entitled to relief or not. (*Wort, J.*). ACHAMBHIT JHA *v.* BANKEY BIHARY LAL. **A.I.R. 1930 Pat. 335.**

——A suit for declaration that property released from attachment in execution of decree is liable to attachment does not lie in a Court other than the Court of Munsif, when the amount of decree is within the pecuniary limit of the jurisdiction of the Court of a Munsif, the value of the property attached is not material. A.I.R. 1916 P.C. 18, *Foll.* (*Stuart, C.J. and Rasa, J.*). CHANDRAPAL DUBE *v.* MD. SALAMATULLAH. **120 I.C. 399= 6 O.W.N. 710=A.I.R. 1929 Oudh 413.**

——It is on the plaint that the question of jurisdiction must be *prima facie* determined, and not by the nature of the defence or the actual evidence eventually given in the case. (*Findlay, J.C.*). JAGO KUNBI *v.* BAJIRAO. **109 I.C. 643= 25 N.L.R. 23=A. I. R. 1928 Nag. 286.**

——The jurisdiction is determined under the Bombay Civil Courts Act by the valuation in the plaint and not by the result of the decree, whatever it might turn out to be. (*Fawcett and Madgavkar, JJ.*). AMBADAS HARI RAO *v.* VISHNU GOVIND. **100 I.C. 109=50 Bom. 839=28 Bom.L.R. 1461= A.I.R. 1927 Bom. 89.**

JURISDICTION—What determines.

———It is the nature of the property at the time of the suit that determines the question of jurisdiction. (*Jai Lal, J.*). AMIR BIBI *v.* DHERU.
103 I. C. 511=A. I. R. 1927 Lah. 615.

———Per *Broadway, J.*—In order to ascertain the nature of a suit the general rule is that the allegations in the plaint must, primarily, be looked to and that these allegations govern the question of jurisdiction. (*Broadway, Fforde, Addison, Tek Chand and Dalip Singh, JJ.*). CHETA *v.* BAIJU.
105 I.C. 507=9 Lah. 38=A.I.R. 1927 Lah. 452 (F.B.).

———*Appeal—Forum.*

It is the money value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. 7 M.H.C.R. 356, *Rel. on.* (*Phillips, Offg.C.J., Beasley and Ananthakrishna Ayyar, JJ.*). DAIVANAYAGA REDDIAR *v.* RENUKAMBAL AMMAL. **106 I.C. 616=50 Mad. 857=39 M.L.T. 417=26 M.L.W. 539=1927 M.W.N. 863=A.I.R. 1927 Mad. 977=53 M.L.J. 637 (F.B.).**

———The description of a suit in the heading of a plaint does not determine the nature of the suit, nor does the main question in the suit determine its nature, *e.g.*, the fact that the main question in a suit is one relating to breach of contract does not make exclusively one for damages for breach of contract. (*Lobo, A.J.C.*). LALCHAND KHUSHALDAS *v.* HUSSAINIO MAMO. **97 I.C. 257=A.I.R. 1927 Sind 78.**

———*Plaint, although mistaken, determines jurisdiction in the absence of* mala fides.

In order to decide in what Court a suit should be brought the first thing to examine is the plaint. Of course, if the plaint is *mala fide*, and a mere cloak to hide the real object of the suit, different considerations may arise; but, in the ordinary way, assuming a plaint to be an honest, even though mistaken attempt to state a claim, it must be judged on its merits. If it breaks down on the merits, the suit fails; but if it is established on the merits, the suit is brought properly in the Court to which the plaint *a priori* applies. (*Walsh, J.*). RAM PRASAD *v.* FATEH SINGH. **96 I.C. 787=A.I.R. 1926 All. 747.**

———In execution proceedings forum of the appeal is determined by the amount of the decree. (*Chatterjee and Panton, JJ.*). NAGENDRA LAL CHAUDHURI *v.* ASHRAF ALI CHAUDHURI.
84 I. C. 741=40 C. L. J. 288=A. I. R. 1925 Cal. 212.

———Jurisdiction for an appeal from an order passed in execution proceedings depends on the value of the suit and not on that of the dispute immediately in concern. 5 C.L.J. 380 and A.I.R. 1923 Lah. 612, *Foll.* (*Zafar Ali, J.*). MUHAMMAD *v.* MUHAMMAD ROSHAN KHAN. **88 I.C. 326=26 P.L.R. 456= A.I.R. 1925 Lah. 534.**

———The valuation put by the plaintiff *prima facie* determines the jurisdiction of the Court unless the suit is obviously overvalued and such overvaluation is *mala fide*. (*Heald and Chari, JJ.*). MAUNG SIT PAUNG *v.* MAUNG TUN.
90 I.C. 728=4 Bur. L.J. 104=A.I.R. 1925 Rang. 278.

———*Substance and not form of plaint determines jurisdiction.*

In determining questions which from time to time arise with regard to cases apparently lying somewhere near the borderland of the jurisdiction of the two sets of Courts, one principle has been consistently laid down and maintained by Allahabad High Court : it is the substance of the relief sought, and not the mere form in which the case is preferred in the plaint, that must be looked to in order to determine the proper forum for the trial of the action. (*Mears, C. J. and Piggott, J.*). RAJA UDAIRAJ SINGH *v.* SECRETARY OF STATE.
88 I.C. 212=46 All. 553=22 A.L.J. 446=A.I.R. 1924 All. 652.

JURISDICTION—Miscellaneous.

———It is perfectly clear on all hands that when a suit is filed in a Civil Court the pecuniary jurisdiction of the Court is primarily determined by the valuation which the plaintiff puts upon the subject-matter of the suit. It is open to a defendant when he appears to answer the suit to raise the plea that the suit has not been properly valued and to show if he can that the Court in which the suit has been brought has no jurisdiction to try it. But clearly if no such plea is taken by a defendant when he has had the opportunity of raising it, it cannot be said that the Court has acted without jurisdiction. (*Lindsay and Sulaiman, JJ.*). MT. KHUDAIJATUL KUBRA *v.* MT. AMINA KHATUN. **80 I.C. 413=46 All. 250=22 A.L.J. 122=5 L.R.A. Civ. 142=A. I. R. 1924 All. 388.**

———Competency of a Court depends on the nature of a suit as also the jurisdiction of the Court. (*Suhrawardy and Chotzner, JJ.*). SARODA SUNDARI BASU *v.* AKRAMANESSA KHATUN.
78 I. C.747=51 Cal. 737=28 C.W.N. 710=A.I.R. 1924 Cal. 783.

———*Initial forum depends upon plaintiff's suit as framed.*

The jurisdiction of a Court to entertain and decide upon a cause of action depends upon the nature of the claim put forward by the plaintiff as his cause of action and the matter involved in it does not depend upon what the defendants may assert by way of defence. It may turn out at the trial that the subject of contest between the plaintiff and defendant is not properly represented by the form in which the plaintiff has chosen to put his claim, but the occurrence of that contingency may only render the plaintiff's suit liable to be dismissed as not proved. It will not affect the jurisdiction under which the suit as brought by the plaintiff fell. 9 W.R. 598, *Ref.* (*Kinkhede, A.J.C.*). LABHUA SAO *v.* CHETAN.
79 I. C. 161=20 N.L.R. 145=A.I.R. 1924 Nag. 275.

———The jurisdiction of a Court to try a suit must be judged by the averments in the plaint unless an averment has been fraudulently made for the express purpose of giving jurisdiction. It does not depend upon the relief the Court finds itself able to give after trial. (*Napier and Krishnan, JJ.*). ELUMALAI CHETTY *v.* P. BALAKRISHNA MUDALIAR. **66 I. C. 168=44 Mad. 965=14 M.L.W. 379=1921 M.W.N. 704=A.I.R. 1922 Mad. 344=41 M.L.J. 297.**

———The jurisdiction of the Court is determined by the allegations made in the plaint. (*Kanhaiya Lal, J.C.*). SHANKAR BAKHSH SINGH *v.* RAM BAHADUR SINGH. **70 I. C. 311=26 O.C. 297=A.I.R. 1922 Oudh 45.**

—Miscellaneous.

———Where the wrong was committed in Persia the Consular Court for the district of Sistan would have jurisdiction to adjudicate on it. (*Viscount Haldane.*) HAVELI SHAH *v.* PAINDA KHAN.
96 I.C. 887=1926 M.W.N. 592=31 C.W.N. 174= A. I. R. 1926 P.C. 88 (P.C.).

———*Occupancy holding—Rival claimants.*

Where the successors of the mortgagor who mortgaged an occupancy holding under a usufructuary

JURISDICTION—Miscellaneous.

mortgage sought to redeem the mortgaged property from the successors of the mortgagee who somehow got their names entered in the revenue papers as occupancy tenants and set up adverse possession,

Held, no question of jurisdiction arises, because the suit so far as the defendants-appellants are concerned is virtually between rival claimants to an occupancy holding. (*Kanhaiya Lal, J.*). MT. DURGA DEVI *v.* GIRWAR SINGH. **70 I.C. 958= A.I.R. 1923 All. 11.**

——It cannot be held that once a Court acquires the initial jurisdiction that jurisdiction continues to cover decisions and orders which may be antagonistic to the circumstances that arise subsequent to the inception of the jurisdiction. (*Wazir Hasan, A.J.C.*). ARJUN SINGH *v.* CHANDAN KUAR. **63 I.C. 321=24 O.C. 167=22 Cr.L.J. 625= A.I.R. 1921 Oudh 6.**

JURISDICTION OF CRIMINAL COURTS.

See (1) CR. P.CODE, SS. 177—189.
(2) PENAL CODE, S. 4.

JURISPRUDENCE.

—Different systems of.

——*Comparative jurisprudence—Systems are not identical but comparative study is useful.*

In all civilized systems of jurisprudence there are many common principles and many historical processes of development which are very similar, and light may often be thrown from one system upon another, but when this is done the comparison must be handled with care. There is a special danger with a Court constituted mainly of Judges trained under the English systems of a too hasty assumption that some foreign system is in a particular matter identical.

Still the exception given by the Roman Law required the double condition not only that the property should be sold but that it should be delivered, though the delivery might be presumed by a fiction however, in this particular case the Roman-Dutch Law as administered in Ceylon has made a further stride. Tradition, whether actual or symbolic, is no longer necessary for consummation of a sale of immovable property, and has been replaced by the delivery of the deed. 3 Sup. Ct. Cire 61, *Foll.* (*Lord Phillimore.*) FERNANDO *v.* GUNATILLAKA. **A.I.R. 1921 P.C. 138 (P.C.).**

JURY.

See (1) CR. P. Code, SS. 274—336.
(2) CRIMINAL TRIAL.

JUS TERTII.

See (1) EJECTMENT.
(2) EVIDENCE ACT, S. 116.

JUSTICE, EQUITY AND GOOD CONSCIENCE.

See (1) INTERPRETATION OF STATUTES.
(2) LETTERS PATENT.
(3) PRACTICE.

JUVENILE OFFENDER.

See (1) CR. P. CODE, S. 562.
(2) REFORMATORY SCHOOL.

KABULIYAT.

See (1) LANDLORD AND TENANT.
(2) LEASE.

KACHHA ADATIA.

See CONTRACT ACT, SS. 30, 182 TO 238.

KANOM.

See MALABAR LAW.

KARACHI PORT TRUST ACT (BOM. VI OF 1886).

—Provident fund.

——A will for a gift or trust in favour of the nominee is not constituted by appointing a person as the Receiver under Rule 14 of the rules framed by the Karachi Port Trust. Therefore on the subscriber's death the fund forms part of his undisposed of estate. (*Kennedy, J.C. and Raymond, A.J.C.*). AIMAI *v.* AWABAI DHANJI SHAH JAMSETJI. **76 I.C. 739=18 S.L.R. 311=A.I.R. 1924 Sind 57.**

—S. 7 (2) (substituted by S. 4 (2) of Amendment Act VI of 1924)—Interpretation.

——*'Being or becoming registered.'*

The word "becoming" has been deliberately used in contradistinction to the word "being" and is intended to connote something different to that which would be conveyed by the word "being". The words "becoming registered" mean "in the process of registration" as contrasted with the words "being registered" which refer to an act previous to the election. Hence, if an Association takes the necessary steps to have itself registered under the law for the time being in force before the election is held, though the registration may not become an accomplished fact before the date of the elections, yet there would be sufficient compliance with the terms and conditions as prescribed in sub-S. 2 to S. 4. (*Raymond, A.J.C.*). RUSTON K. SIDHVA *v.* INDIAN MERCHANTS' ASSOCIATION, KARACHI. **92 I.C. 374=20 S.L.R. 314= A.I.R. 1926 Sind 169.**

—S. 15—Interest.

——*Meaning of.*

The word "interest" in S. 15 means a material interest and not merely a sentimental interest such as a father may have in the prosperity of his son. The word cannot also mean a very remote or speculative advantage. The interest which a paid manager of a firm or its salaried servant may have in either obtaining a contract for the benefit of his company or in executing it is not such an interest as would disqualify him for his appointment as Port Trustee. But where a salaried manager receives also a commission or bonus on the total profits of the business done by the Company, he would be disqualified from being a Port Trustee, but if the Company is a Joint Stock Company such person would be exempted from the disqualification. (*Raymond, A.J.C.*). E. A. PEARSON *v.* THE TRUSTEES OF THE PORT OF KARACHI. **86 I.C. 939= 19 S.L.R.. 15=A.I.R. 1925 Sind 246.**

—S. 46—Position of trustees.

——The position of the trustees of the Port of Karachi is that of statutory bailees having certain rights against and owing certain duties to both the shipowners and the holders of the bills of lading. The onus therefore lies on the shipowners to show that the trustees, either under the statute or in consequence of any act subsequently done by them, hold goods as bailees solely on behalf of the holders of the bills of lading and that they had no remedy whatsoever against the shipowners. (*Rupchand, A. J. C.*). SCINDIA STEAM NAVIGATION CO., LTD. *v.* TRUSTEES OF THE PORT OF KARACHI. **122 I.C. 388=A.I.R. 1930 Sind 36,**

—S. 49—Expiry of free days.

——It is not that as soon as the free days have expired the right of the trustees against the ship comes to an end, and they may only look up to the owner of the goods for further charges and that also provided they comply with the procedure laid down in cl. (2), S. 49. (*Rupchand, A. J. C.*). SCINDIA STEAM NAVIGATION CO., LTD. *v.* TRUSTEES OF THE PORT OF KARACHI. **122 I.C. 388= A.I.R. 1930 Sind 36,**

KARACHI PORT TRUST ACT (1886), S. 50—Option to sell goods.

—S. 50—Option to sell goods.

——Section 50 makes it obligatory on the Board of Trustees to sell the goods only where the lien for freight, primage, or general average has not been discharged and the person claiming such lien calls upon the Board to sell such goods. But where no notice of sale has been given by the owners of a ship in the exercise of their lien, if any, it is only optional with the Board to sell the goods. (*Rupchand, A. J. C.*). SCINDIA STEAM NAVIGATION CO., LTD. *v.* TRUSTEES OF THE PORT OF KARACHI. **122 I.C. 388=A.I.R. 1930 Sind 36.**

—S. 50—Suit for money paid under protest.

——*Liability of the holder of the bill of lading.*

In a suit brought by the owners of a ship for recovery of money paid under protest against the trustees of the Port of Karachi, and *A* the holder of the bill of lading a party defendant *A* contended that the bundles of mat sold by the trustees, under the power conferred to them by S. 50, were not his bundles. This contention he tried to prove by showing marks on certain of the bundles.

Held, that the contention was of no value as against the owner of ship as under the bill of lading they were not responsible for marks or counter marks and it is equally of no value as against the trustees as they were not parties to the bill of lading. 18 S.L.R. 106, *Rel. on.* (*Rupchand, A.J.C.*). SCINDIA STEAM NAVIGATION CO., LTD. *v.* TRUSTEES OF THE PORT OF KARACHI. **122 I.C. 388=A.I.R 1930 Sind 36.**

—S. 56.—By-laws under.

——*Removal of goods.*

Under By-law 6 of the Karachi Port Trust By-laws all goods even if originally irregularly landed must be removed when the storers are called upon to so remove. (*Kennedy, J. C. and Aston, A. J. C.*). PUNJAB NATIONAL BANK *v.* A.R. GONSAVES CO., BUNDER INSPECTOR, KARACHI PORT TRUST. **83 I.C. 697=26 Cr.L.J. 137=16 S.L R. 169=A.I.R. 1921 Sind 142.**

—S. 87—" Person."

——*If includes Board of Trustees.*

The term " person " in S. 87 includes a Board of Trustees and the Karachi Trust Board can claim the privilege of a special notice and a special period of limitation conferred by the section on any person for anything done or purporting to have been done in pursuance of the Act. (*Rupchand Bilaram, A.J.C.*). THE SIND TYPEWRITING CO. *v.* THE KARACHI PORT TRUST. **89 I.C. 376 (Sind).**

KARAMKURI TENURE.

See MALABAR LAW—LAND TENURE.

KASAVARGAM.

See LAND TENURE.

KASBATI.

See LAND TENURE.

KATTALAI.

See HINDU LAW—RELIGIOUS ENDOWMENT.

KATTUBADI.

See MAD. EST. LAND ACT, S. 3 (11).

KAZI.

See MAHOMEDAN LAW.

KEEPING ALIVE.

See T.P. ACT, S. 101.

KHAEKAR TENURE.

See LAND TENURE.

KHASRA PAPERS.

See EVIDENCE ACT, S. 35.

KHEWAT.

See RECORD OF RIGHTS.

LAHORE HIGH COURT RULES—Vol. II, Ch. VI, Para. 67—Procedure in warrant cases.

KHOJAS AND CUTCHI MEMONS.

See HINDU LAW—APPLICABILITY.

KHORPOSH.

See GRANT.

KHOT.

See BOM. SURVEY AND SETTLEMENT ACT (I OF 1865), SS. 37 & 38.

KHOTI SETTLEMENT ACT.

See BOMBAY KHOTI SETTLEMENT ACT (I OF 1880).

KHUDKHAST LAND.

See (1) LANDLORD AND TENANT.
(2) TENANCY ACTS (LOCAL).

KIDNAPPING.

See (1) CR. P. CODE.
(2) PENAL CODE, SS. 359 TO 369.

KNOWLEDGE.

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KRITIMA ADOPTION.

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KULACHAR.

See (1) CUSTOM.
(2) HINDU LAW.

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See (1) CHIT FUND.
(2) MALABAR LAW.

LABOUR AND EMIGRATION.

See ASSAM LABOUR EMIGRATION ACT (VI OF 1901).

LACCADIVE ISLANDS AND MINICOY REGULATION (Mad. Reg. I of 1912).

—Limitation.

——The law applicable to the Islands is to be found in Regulation I of 1912. The Limitation Act has not been applied to these Islands and therefore time for filing an appeal cannot be extended under S. 5 of the Limitation. Act. **13 Mad. 353,** *Appl.* (*Devadoss and Waller, JJ.*). AHMED KOYA *v.* AISAMMA. **93 I.C. 341=49 Mad. 419=23 M.L W. 636=A.I.R. 1926 Mad. 657.**

LACHES.

See (1) ACQUIESCENCE.
(2) EVIDENCE ACT, S. 115.
(3) LIMITATION ACT, S. 5.

LAHORE HIGH COURT RULES.

—Vol. II, Ch. VI, Para. 67—Procedure in warrant cases.

——*Long list of witnesses filed by accused—Court may refuse to summon but cannot order accused to pay for their costs.*

The ordinary procedure in warrant cases is that the costs of causing the attendance of accused's necessary witnesses is usually borne by Government. The Magistrate has no doubt authority to depart from this usual practice, but there should be strong and cogent reasons for making the departure. Where the Magistrate finds that the accused has given a long list of witnesses to defeat or delay the ends of justice, he may decline to compel their attendance, under sub S. (1), but at the same time he must be careful not to do any act which might hamper the accused in his defence. The Court should, in a case of this kind, adopt a reasonable course which would, while avoiding any hardship on either side, promote the ends of justice. (*Shadi Lal, C.J.*). SAYAD HABIB *v.* EMPEROR. **117 I.C. 667=30 Cr.L.J. 814=A. I. R. 1929 Lah. 23.**

LAND ACQUISITION—Basis of valuation.

LAKHIRAJ.

See (1) BENGAL PERMANENT SETTLEMENT REGULATION.
(2) GRANT.
(3) MADRAS PERMANENT SETTLEMENT.
(4) REGULATION XXV OF 1802.

LAMBARDAR.

See (1) CO-SHARER.
(2) TENANCY ACTS (LOCAL).

LAMENESS.

See HINDU LAW—SUCCESSION.

LAND ACQUISITION.

—Basis of valuation.

——Land cannot be valued on the basis of building site and at the same time as a cocoanut tope. A.I.R. 1926 Mad. 945. *Foll.* (*Odgers and Madhavan Nair, JJ.*). LAKSHMINARASAMMA *v.* ASST. COMMR. OF LABOUR. **96 I.C. 577= 23 M.L.W. 731.**

—Claim to compensation money.

——*Land in exclusive possession of a person—He has* prima facie *claim to the compensation.*

Where at the time of acquisition the land acquired is found to be in the sole and exclusive possession of one, that one is *prima facie* entitled to the compensation money and any other person claiming the money must prove a better title in himself. (*Lord Warrington of Clyffe.*) MANCHE ANEGE *v.* MANCHE KOJO. **107 I.C. 347= A.I.R. 1927 P.C. 262 (P.C.).**

—Compensation.

——Where land has been taken by the Government and compensation has been paid to a party who has received more than his own share of the compensation, he must account to the other party, that is, if the landlord receives the whole amount and the tenant has not got any portion of the compensation, the landlord is bound to abate the rent. On the other hand, if the tenant receives the whole of the compensation without paying the share due to the landlord, he is not entitled to retain the whole compensation and refuse to pay the whole of the rent. (*Patkar, J.*). GANU DADU *v.* PANDITRAO. **32 Bom. L.R. 1243.**

—Contingent right.

——Where a possible contingent right to the land acquired is vested in a superior proprietor by way of reversion, even if the right is such as a right in embryo and may never fertilise, when Government compulsorily acquires the land from the usufructuary occupants whoever they are, the superior proprietor is entitled to a portion of compensation money in respect of his possible right of reversion which is cut off for ever by the compulsory acquisition. (*Viscount Dunedin.*) SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO. **A.I.R. 1930 P.C. 261 (P.C.).**

—Increase in award.

——Where the Land Acquisition Judge considers the evidence produced, but without indicating the particular evidence relied on, comes to the conclusion that the award should be increased, and the increase made is not unreasonable, the increase cannot be said to be arbitrary, as it is not always easy to give precise reasoning. 26 Bom. 1 (P.C.), *Foll.* (*B.B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* ALTAF HOOSSEIN. **103 I.C. 714= A.I.R. 1927 Cal. 827.**

LAND ACQUISITION—Toka lands.

—Privy Council, interference by.

——In connexion with proper value to be allowed for compulsorily acquired land, Privy Council cannot interfere with the figures that have been settled by the High Court unless it can be shown that there has been some real mistake in law or palpable omission which would invalidate the valuation. A.I.R. 1925 P.C. 91 and A.I.R. 1925 P.C. 211, *Rel. on.* (*Viscount Dunedin.*) RAI RAM PROTAP CHAMARIA BAHADUR *v.* SECY. OF STATE. **32 M.L.W. 393=34 C.W.N. 1106= A.I.R. 1930 P.C. 283=59 M.L.J. 392 (P.C.).**

—Toka lands.

——*Toka lands—Apportionment of value between Government and Toka tenants—It is not possible to lay down any fixed rule.*

Considering the varying nature of the Toka lands, it is out of question to attempt to rule that in every case where Toka land is acquired by Government, the rate of assessment which it is expected Government would levy In 1929 when the 50 years' period expires, is a certain percentage of the present value of the land, because the rate to be now fixed on the present value of the land must be determined in such case according to the prospects which the land has of improving or decreasing in value, and other varying circumstances. In respect of land held under the Toka tenure the right of Government to increase the Toka rent is not subject to any specific limitation. A declaration by Government of its present policy cannot affect the apportionment to be made by the Court as of the date when the land was notified. Also it is useless to inquire into what a purchaser of Government rights in Toka land would give for such rights, or what a present owner of Toka land would put by at the present moment in order to secure his position in 1919 when the previous settlement came to an end. All such calculations are themselves purely fanciful, and do not in any way assist the Court in arriving at a conclusion which itself can only be based on pure speculation. They merely delude the Court into thinking that it has arrived at a conclusion, not on speculation but on sound reasoning. The Court has to decide the views of Government, and no doubt has to consider that Government are entitled at the end of the period to re-assess the land at a rate entirely within their discretion, and the views of the claimants, the present owners, who may consider that they have rights in the nature of occupancy rights which would entitle them to pay something less than a rack-rent, which otherwise Government would charge on the basis that the lands were liable to be resumed at the end of the period. It is certainly desirable in all these cases that Court should avoid as far as possible fanciful speculation which can be of no assistance towards fixing a figure which is itself a matter of speculation. (*Macleod, C.J. and Crump, J.*). GOVT. OF BOMBAY *v.* KHANDERAO RAMCHANDRA. **77 I.C. 137=25 Bom. L.R. 794= A.I.R. 1923 Bom. 417.**

THE LAND ACQUISITION ACT

(ACT I OF 1894).

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LAND ACQUISITION ACT (I OF 1894) as amended by XIX of 1921 and XXXVIII of 1923, etc).

—Bombay Rent Act (1918).

——The Bombay Rent Act was not intended to apply to premises acquired under the Land Acquisition Act for public purposes. *Dodds* v. *Shepherd*, (1876) 1 Ex. D. 75, *Ref.* (*Setalwad, J.*). BOMBAY MUNICIPALITY *v.* M. DAMODAR BROS.
60 I.C. 571=23 Bom. L. R. 35=45 Bom. 725= A.I.R. 1921 Bom. 214.

—English case-law.

——Per *Dalal, J.*—The principles of English cases are applicable to the Indian Act.

Per *Walsh, Ag.J.C.*—It may possibly lead to misunderstanding to seek guidance from the English decisions. except in so far as it is necessary to explain ambiguous provisions of the Indian statute. It is clearly wrong to follow an English decision where doing so would involve doing violence to a statutory provision in the Indian Act. (*Walsh, Ag.C.J., on difference between Dalal and Pullan, JJ.*). SECY. OF STATE *v.* MD. ISMAIL KHAN.
100 I. C. 749=49 All. 353=25 A.L.J. 177= A.I.R. 1927 All. 246.

—Errors of procedure.

——Where an officer whose duty it is to apply the provisions of an Act, such as the Land Acquisition Act, commits an error of procedure every presumption should be made in favour of the party likely to have been prejudiced by the error. 39 Cal. 33, *Rel. on.* (*Beasley, C.J. and Curgenven, J.*). N. M. VENKATARAMA IYER *v.* COLLECTOR OF TANJORE. **A.I.R. 1930 Mad. 836.**

—Questions of title.

——Court can consider and determine the question of title as between the Government and the private claimant in proceedings under the Land Acquisition Act. 34 Bom. 618, *Foll.* (*Shah and Hayward, JJ., afterwards Shah and Crump, JJ.*). MANGALDAS GIRDARDAS *v.* ASST. COLLECTOR, AHMEDABAD. **64 I.C. 582=45 Bom. 277= 23 Bom. L.R. 143=A.I.R. 1921 Bom. 325.**

—S. 3 (a)—Interpretation.

——The epithet "permanently" is used as an antithesis to "temporarily." (*Viscount Dunedin.*) SECY. OF STATE *v.* TARAK CHANDRA.
103 I.C. 366=54 Cal. 582=54 I.A. 187= 29 Bom.L.R. 953=45 C.L.J. 589= 1927 M.W.N. 436= 31 C.W.N. 950=39 M.L.T. 63= 4 O.W. N. 735=26 M.L.W. 892= A.I.R. 1927 P.C. 172=53 M.L.J. 99 (P.C.).

—S. 3 (b)—Attaching creditor.

——A person may be 'interested' within the meaning of the Act without holding any legal estate in the land. An attaching decree-holder is a person 'interested' in the land within the meaning of the Act. 37 Bom. 76, *Ref.* (*Phillips and Odgers, JJ.*). SIVA PRATAPA *v.* A. E. L. MISSION.
97 I.C. 496=49 Mad. 38=A.I.R. 1926 Mad. 307.

—S. 3 (b)—Government's interest.

——*Government having right to assess land—Land can be notified for acquisition—No fixed rule as to apportionment between Government and actual holder.*

Where Government has no proprietary interest in the land to be acquired but has only a right to levy assessment, with perhaps the additional right to increase the assessment according to certain conditions, the land can be notified for acquisition by Government. 12 Bom. L. R. 34, *Ref.* No universal rule can be laid down prescribing the share of Government in the compensation money, but the area of the land, its position, the nature of its user, and all other circumstances which would relate to the possibility of Government fixing the next assessment have to be taken into consideration. (*Macleod, C.J. and Coyajee, J.*). N.H. MOOS *v.* THE GOVT. OF BOMBAY. **91 I.C. 357= 27 Bom. L.R. 1237=A.I.R. 1926 Bom. 47.**

—S. 3 (b)—Reversioner.

——Reversioner is "person interested." (*Bhide, J.*). GANGI *v.* SANTU. **116 I.C. 335= A.I.R. 1929 Lah. 736.**

—S. 3 (f)—Public purpose.

——Even if only a section of the public is benefited, still the purpose is a public one; the expression includes a purpose in which the general interests of the community, as opposed to the particular interests of the individuals, is directly and vitally concerned. The purpose of providing the panchamas and other coolies of Tanjore with house sites is therefore a "public purpose" within the meaning of S. 4. If the effect of the Government order is to enable it to acquire a particular house site for a particular individual, it is only a matter of detail, which does not affect the general question of the purpose being a public one. A.I.R. 1914 P.C. 20, *Foll.* (*Venkatasubba Rao, J.*). SECY. OF STATE *v.* N. GOPALA AIYAR. **32 M.L.W. 179= A.I.R. 1930 Mad. 793=59 M.L.J. 274.**

—S. 3 (f)—Use of land.

——*Land acquired for one purpose can be used for other authorised purposes.*

A Municipality is not bound to use the land for the purpose for which it is professedly acquired and it is justified in using the land for any purpose for which the statute authorized it to use. 18 Cal. 99 (P. C.), *Rel. on.* (*B. B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* AMULYA CHARAN.
104 I.C. 129=A. I. R. 1927 Cal. 874.

LAND ACQUISITION ACT (1894), S. 3 (f)—"Village sites."

—S. 3 (f)—" Village sites."

——What is spoken of as village site is not land reserved in a village for communal purposes but land which is reserved for being parcelled out as house sites and also all the lands on which houses have been built. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE. **86 I.C. 485=49 Mad. 237=A.I.R. 1925 Mad. 837=48 M.L.J. 204.**

—S. 4—Public purpose.

——"*Public purpose*"—*Provision of house-sites for Panchamas—Proviso to S. 6 not fulfilled—Objection before final declaration—Maintainability—Compensation " out of public revenue "—Payment of cost by grantees at future date—Validity of declaration.*

Provision of house-sites for Panchamas is a "public purpose" within S. 4 of the Land Acquisition Act. Even if only a section of the public is benefited, still the purpose is a public one. The validity of a declaration under S. 6, sub-S. (1) cannot be called in question before the declaration is in fact made. To find out if the requirement of the proviso to S. 6 has been fulfilled, the Court should have regard to the state of things at the time of the declaration. Its validity cannot be made to depend upon some future contingent event. Where the Government proposed to acquire house-sites by advancing 80 per cent. of the cost in the first instance and recover the same from the grantees of the sites in the course of the next twenty years.

Held, the condition in the proviso to S. 6 (1) was fulfilled. (*Venkatasubba Rao, J.*). SECRETARY OF STATE *v.* GOPALA AIYAR. **A.I.R. 1930 Mad. 798=59 M.L.J. 274.**

—S. 4—Scope.

——The intention of the Government amending the Act was that it should only apply to cases of lands which might appear to Government after the Act came into force, to be needed or likely to be needed for any public purpose. (*Macleod, C.J. and Coyajee, J.*). NUR MOHOMED *v.* SECY. OF STATE. **96 I.C. 329=28 Bom. L.R. 582=A.I.R. 1926 Bom. 369.**

—S. 6—Acquisition for quarries.

——Where Government publishes a declaration of its intention to acquire a certain area of land for public purpose, *viz.*, for quarries in particular part of country in connexion with construction of certain building work, and inserts in it the statement contained in S. 3 (1), Land Acquisition (Mines) Act, 1885, the effect of the statement is, that only so much of the minerals would be acquired as might be necessary in the construction of the work. *Lord Provost and Magistrates of Glasgow* v. *Farie*, 13 A.C. 657 and *Midland Ry. Co.* v. *Robinson*, 15 A.C. 19, *Ref.* (*Ross and Chatterji, JJ.*). SECY. OF STATE *v.* GYANENDRA CHANDRA PANDE. **8 Pat. 742=A.I.R. 1930 Pat. 112.**

—S. 6—Contents of declaration.

——It is not necessary that the declaration should on its face show that the acquisition is to be made out of the public revenue; S. 6 proviso, does not say so. (*Krishnan, J.*). KANTIMAHANTI RAMAMURTHI *v.* SPECIAL DEPUTY COLLECTOR, VIZAGAPATAM. **99 I.C. 530=1926 M.W.N. 968=A.I.R. 1927 Mad. 114.**

—S. 6—Contribution by Government.

——Where only 20 per cent. of the cost of acquisition was furnished by the future owners, and the remaining 80 per cent. the Government provided in the first instance, the recovery of which was to be made by instalments during the course of 20 years,

Held, that the conditions of the proviso were fulfilled because in construing the proviso what the Courts must have regard to is the state of things at the time of the declaration. A. I. R. 1930 Mad. 248, *Foll.* (*Venkatasubba Rao, J.*). SECY. OF STATE *v.* N. GOPALA AIYAR. **A.I.R. 1930 Mad. 798.**

LAND ACQUISITION ACT (1894), S. 6—Contribution by private persons.

——Where 20 per cent. of the cost of acquisition of certain lands for building sites is to be levied in the first instance from the private parties and 80 per cent. should be first paid by the Government to be subsequently recouped from the private parties to whom the lands are to be assigned, the provisions of S. 6 (1), proviso, are substantially complied with in that, part of the acquisition costs had to come out of the public revenues at the time of acquisition. A.I.R. 1926 Mad. 1009, *Expl.*; A.I.R. 1927 Mad. 245, *Ref.* (*Sundaram Chetty, J.*). SECY. OF STATE *v.* MURUGESAN. **1929 M.W.N. 779=A.I.R. 1930 Mad. 248.**

——*Compensation of one anna contributed by Government is sufficient to render declaration valid.*

Even where the Government contributes towards the payment of compensation for a piece of land acquired under the Act only one anna out of the public revenue the remainder being paid by private contributions, compensation has been paid partly out of the public revenue, within the meaning of the proviso and the declaration made under S. 6, Cl. (1) is valid. *Chatterton* v. *Cave*, (1878) 3 A. C. 483 and 18 Cal. 99 (P.C.), *Dist.*; A.I.R. 1926 Mad. 1099, *Diss. from.* (*Odgers and Madhavan Nair, JJ.*). SENGA NAICKEN *v.* SECY. OF STATE. **99 I.C. 552=50 Mad. 308=25 M.L.W. 34=A.I.R. 1927 Mad. 245=51 M.L.J. 849.**

—S. 6—Contribution by private persons.

——*Payment of a particle only from public revenues is not sufficient compliance — Contributions from private individuals through public bodies may become part of public revenue—Money paid by private individual into public treasury for being paid as compensation money does not become public revenue.*

The Legislature, when they provided that a part of the compensation should be paid from public revenues, did not mean that this condition would be satisfied by payment of a particle, *e. g.*, one anna in Rs. 5,985. *Chatterton* v. *Cave*, (1878) 3 A.C. 483, *Rel. on.*

Government, or a Local Body like the District Board might receive contributions from private individuals and might spend the same upon public purposes, and such gratuitous contributions may be included in and become part of the public revenues under S. 6. But when money is paid into a Government Treasury by the hand of one private individual for the purpose of being used as compensation to be paid for the acquisition of land and after passing intact through the Treasury is paid out into the hand of another private individual it cannot with any accuracy be described as becoming part of the public revenues. Government has no absolute disposing power over it. Such money is not revenue due to Government on any land, nor is it any cess, tax, duty, custom or other due recoverable under Act 2 of 1864. (*Spencer and Ramesam, JJ.*). PONNAIA *v.* SECY. OF STATE. **97 I.C. 471=24 M.L.W. 513=A. I. R. 1926 Mad. 1099=51 M.L.J. 338.**

LAND ACQUISITION ACT (1894), S. 6—Effect of declaration.

—S. 6—Effect of declaration.

———*Declaration under Cl.* (3) *is conclusive.*

The construction of a public road is *prima facie* a public purpose. Under S. (6), Cl. (3) the declaration in the Gazette is conclusive evidence of the fact that the road is required for a public purpose, and after such a declaration it is not open to the owner to contend in any Court that the land was not needed for a public purpose. *Wijevesekara* v. *Festing*, (1919) A. C. 646, *Foll.* (*Spencer and Ramesam, JJ.*). PONNAIA *v.* SECY. OF STATE.

97 I.C. 471=24 M.L.W. 513=
A.I.R. 1926 Mad. 1099=51 M.L.J. 338.

———Whenever the Local Government does sanction an improvement scheme, there is a duty to announce the fact by notification and the publication of a notification is conclusive evidence that the scheme has been duly framed and sanctioned. This provision does not affect the right of the claimant to institute a suit to have it declared that the Board in framing the scheme acted *ultra vires*. 47 Cal. 500 (P.C.), *Foll.* (*Macleod, C.J. and Coyajee, J.*). MUNICIPAL CORPORATION OF BOMBAY *v.* RANCHORDAS VANDRAVANDAS.

90 I.C. 695=27 Bom. L.R. 1130=
A.I.R. 1925 Bom. 538.

———Where the acquisition has been made for a purpose, which the Legislature has declared to be a public purpose, it is not open to the Court to go into the question whether it is a public purpose or not. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE. **86 I.C. 485=**
49 Mad. 237=A.I.R. 1925 Mad. 837=
48 M.L.J. 204.

———Section 6, Cl. 3 does not take away the right of suit of any subject. What it declares is that when the Government declares a purpose to be a public purpose it shall be conclusive evidence of that. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE. **86 I. C. 485=49 Mad. 237=**
A.I.R. 1925 Mad. 837=48 M.L.J. 204.

———The language of S. 6 is perfectly plain and clearly bars the Courts from enquiring into the question whether the purpose for which land, in respect of which a declaration under S. 6 has been issued, is required for a public purpose or not. 47 Cal. 500 (P.C.); A. I. R. 1921 Cal. 159, *Dist.* (*Ryves and Daniels, JJ.*). SECY. OF STATE *v.* AKBAR ALI. **74 I. C. 8=21 A. L. J. 338=**
45 All. 443=4 L. R. A. Civ. 193=
A. I. R. 1923 All. 523.

———*Public purposes—Declaration in acquisition.*

The fact that the declaration may be conclusive as to the land being needed for a public purpose does not in any way debar the Court from enquiring into the validity of the steps which led up to that declaration. (*Greaves, J.*). MANICK CHAND MAHATA *v.* THE CORPORATION OF CALCUTTA AND CALCUTTA IMPROVEMENT TRUST.

48 Cal. 916=A. I. R. 1921 Cal. 159.

—S. 6—Jurisdiction of Court.

———The land acquisition Court gets jurisdiction only on a reference being made to it by the Collector and its jurisdiction is confined to disposing of the matter so referred. It has no jurisdiction under the Act to consider the legality of acquisition or of the reference. 11 C. L. J. 612, *Foll.* (*Krishnan, J.*). KANTIMAHANTI RAMAMURTHI *v.* SPECIAL DEPUTY COLLECTOR, VIZAGAPATAM.

99 I.C. 530=1926 M.W.N. 968=
A. I. R. 1927 Mad. 114.

LAND ACQUISITION ACT (1894), S. 6—Whether ultra vires.

—S. 6—Piecemeal acquisition.

———*Single holding—Piecemeal acquisition is illegal but where acquisition is interrupted it can be resumed afterwards.*

A declaration may be issued for a quantity of land consisting of several holdings belonging to different owners. It is thus often necessary to make separate awards for different portions of the land covered by a single declaration. There is no objection to separate proceedings being taken in respect of separate holdings. It is however a different matter where there is one holding. In such a case there can be no piecemeal acquisition.

Where the Collector, in obedience to the decision of a Court to which he was subject, desisted, pending an appeal from that decision, from proceeding with the acquisition of the portion of the premises affected by that decision, he is not thereby debarred from further proceeding with the acquisition when a Court, superior to that which gave the decision, declared the latter to be erroneous. (*Woodroffe and Walmsley, JJ.*). R.C. SEN *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA.

64 I.C. 577=48 Cal. 892=33 C.L.J. 509=
A.I.R. 1921 Cal. 340.

—S. 6—Public purpose.

———*Government is the proper authority to decide.*

The Government is the proper authority for deciding what a public purpose is. When the Government declares a certain purpose to be a public purpose, it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE. **86 I. C. 485=**
49 Mad. 237=A.I.R. 1925 Mad. 837=48 M.L.J. 204.

—S. 6—Suit by claimant.

———In a suit for an injunction against the Government restraining them from proceeding with the acquisition of certain lands, the Court ought to take into consideration a notification issued by the Government under S. 6 (1) after the institution of the suit. 44 Cal. 47, *Rel. on.* (*Sundaram Chetty, J.*). SECY. OF STATE *v.* MURUGESAN.

1929 M.W.N. 779=A.I.R. 1930 Mad. 248.

—S. 6—Time for objections.

———When only a preliminary notification has been published under S. 4, and the further stage of making declaration under S. 6 has not yet reached, it is premature to question the propriety of the Government's action, on the ground that it offends against the proviso to S. 6, because it is only the final declaration that can be called in question. (*Venkatasubba Rao, J.*). SECY. OF STATE *v.* N. GOPALA AIYAR. **A.I.R. 1930 Mad. 798.**

—S. 6—Want of bona fides.

———If the provisions of the Land Acquisition Act are not strictly complied with, but are made a cloak for attempting to obtain a transfer of an indefeasible title under the guise of a public purpose, the proceedings do not operate towards the creation of a valid title to the land in Government. 18 Cal. 99 (P. C.), *Foll.* (*Spencer and Ramesam, JJ.*). PONNIA *v.* SECY. OF STATE. **97 I.C. 471=**
24 M.L.W. 513=A.I.R. 1926 Mad. 1099=
51 M.L.J. 338.

—S. 6—Whether ultra vires.

———The provision in S. 6 (3) is not *ultra vires* of the Indian Legislature. (*Devadoss, J.*). VEERARAGHAVACHARIAR *v.* SECY. OF STATE.

86 I.C. 485=49 Mad. 237=
A.I.R. 1925 Mad. 837=48 M.L.J. 204.

LAND ACQUISITION ACT (1894), S. 9—Claim for compensation.

—S. 9—Claim for compensation.

——What the Act does require is that there should be a specific claim namely a claim which states in rupees the value the claimant places upon his property, and where there has been no such claim the provisions of S. 9 (2) cannot be said to have been complied with. A.I.R. 1926 Lah. 401, *Ref.* (*Beasley, C.J. and Curgenven, J.*). CHIGIRUPATI SUBBANNA *v.* DISTRICT LABOUR OFFICER, EAST GODAVARI. **31 M.L.W. 587=1930 M.W.N. 373=A.I.R. 1930 Mad. 618=59 M L.J. 33.**

——*Writing.*

Under S. 9 (2) the claimant is not required necessarily to make his claim in writing so long as he makes a claim for compensation. (*Beasley, C.J. and Curgenven, J.*). CHIGURUPATI SUBBANNA *v.* DISTRICT LABOUR OFFICER, EAST GODAVARI. **31 M.L.W. 587=1930 M.W.N. 373=A.I.R. 1930 Mad. 618=59 M.L.J. 33.**

——Merely placing an uncertified copy of a sale-deed before the Collector is not a sufficient compliance with the provisions of S. 9. (*Broadway and Fforde, JJ.*). ORIENT BANK OF INDIA *v.* SECY. OF STATE. **94 I.C. 245=7 Lah. 416=27 P. L.R. 656=A. I. R. 1926 Lah. 401.**

—S. 9—Compliance with notice.

——*Person asked to appear before Collector—Person appearing but filing petition only on following day is sufficient compliance with notice.*

A notice was served upon a party under S. 9 of the Act directing him to appear before the Collector on a certain date. The party appeared before the Collector on that date. What passed on that day was open to doubt. A petition in writing was filed on the following day before the Collector had made his award.

Held, that the petition filed on the following day in Court must be regarded as a sufficient compliance with the notice under S. 9 of the Act or alternatively that the circumstances disclosed a sufficient reason for allowing the party to come in under cl. (3) of S. 25. 12 C.W.N. 263, *Dist.* (*Richardson and Shamsul-Huda, JJ.*). GYANENDRA NATH *v.* SECY. OF STATE. **61 I.C. 532=25 C.W.N. 71=A.I.R. 1921 Cal. 234.**

—S. 9—Construction of notice.

——A notice was issued to *A* under Ss. 9 (2) and 10 as follows: "The Government are going to acquire lands mentioned in the list hereunder under Act (1) (India) of 1894. You shall appear either in person on 26th October, 1925, before me at Nannilam Camp or by an authorized agent and inform the nature of the right you possess in these lands, the amount due to you out of the amount of compensation to be given for the said right, and objections if any in respect of the measurements made according to S. 8. You should prepare a written statement and the same signed either by you or by your authorised agent should be presented." The notice then called for particulars required under S. 10. It was contended that the notice did not call upon *A* to state his claim to compensation.

Held, that the notice was clearly in accordance with the provisions of S. 9. No other construction could be put upon the notice except that it was a notice calling upon *A* to claim an amount of compensation due to him for such interest as he possessed in the land under acquisition. (*Beasley, C.J. and Curgenven, J.*). N. M. VENKATARAMA IYER *v.* COLLECTOR OF TANJORE. **A.I.R. 1930 Mad. 836.**

LAND ACQUISITION ACT (1894), S. 9—Waiver.

—S. 9—Non-compliance.

——*S. 9 not strictly followed as regards service of notice—Claimant can claim compensation before Court.*

If the provisions of S. 9 have not been strictly followed as regards the service of notice, then it would be absolutely wrong to prevent the claimant from asking for proper compensation on a reference made by the Collector to the Court under the Land Acquisition Act. In such a case it is not possible to apply the penal provisions of S. 25 in order to prevent the claimant from putting forward his claim before the Court. 34 Cal. 470; 30 Cal. 576 and 1 C.W.N. 562, *Ref.* (*B. B. Ghose and S. K. Ghose, JJ.*). TARA PRASAD CHALIHA *v.* SECY. OF STATE. **34 C.W.N. 323=A. I.R. 1930 Cal. 471.**

—S. 9—Omission of notice.

——Although a notice under S. 9 of the Act is imperative, non-service of the notice is not fatal to the proceedings if the party complaining has notice of the proceedings. 43 Mad. 280, *Ref.* (*Chatterjee and Pearson, JJ.*). BURN & CO., LTD. *v.* SECY. OF STATE. **76 I.C. 579=A.I.R. 1923 Cal. 513.**

—S. 9—Period of notice.

——*In notice under S. 9 (3) occupier of land is entitled to fifteen days notice.*

Under S. 9 (3) the occupier of the land, concerning which public notice has been given under Cl. (1), S. 9, is entitled to such notice as will give him in the same manner as the person mentioned in S. 9 (2), fifteen days interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation. (*Beasley, C.J. and Curgenven, J.*). N. M. VENKATARAM IYER *v.* COLLECTOR OF TANJORE. **A.I.R. 1930 Mad. 836.**

——The provisions as to fifteen days' time applies only to the public notification under S. 9 (2) but does not apply to personal notice under S. 9 (3) and therefore merely because a notice under S. 9 (3) did not allow fifteen days time to appear before the Collector the notice is not illegal. (*Dalal and Pullan, JJ.*). BIRBAL *v.* COLLECTOR OF MORADABAD. **98 I.C. 806=49 All. 148=25 A.L.J. 144=A.I.R. 1927 All. 183.**

—S. 9—Service of notice.

——The mere fact that one of the three brothers accepts a notice under S. 9 on behalf of one or other of the brothers does not raise any presumption that he had any authority to do so. Any such authority must be proved on evidence. (*Dawson-Miller, C.J. and Foster, J.*). NITAI DUTT *v.* SECY. OF STATE. **81 I.C. 676=3 Pat. 304=A. I. R. 1925 Pat. 608.**

—S. 9—Waiver.

——The applicant can be said to have waived the requirements of S. 9 only if it is proved that he knew what his legal rights were and consented to forego them. 9 All. 534; A.I.R. 1926 Mad. 732, *Foll.*; 34 Cal. 470 *and English cases referred*; A.I.R. 1927 All. 188, *Diss. from.* (*Beasley, C.J. and Curgenven, J.*). N. M. VENKATARAMA IYER *v.* COLLECTOR OF TANJORE. **A.I.R. 1930 Mad. 836.**

—S. 11—Application for investigating claim.

——*Application for enquiry into the claims of different claimants made before award but adjudicated upon after award—Such adjudication is without jurisdiction.*

Where an application was presented to the Collector some days prior to his making an award to investigate the claims of different claimants but the same was enquired into after the award was made,

LAND ACQUISITION ACT (1894), S. 11—Award —What is.

Held, that Collector's adjudication after enquiry was without jurisdiction,

Held further, that the order passed on such application cannot be an order on an application for review or modification of the award since it was on an application presented before the award was made and therefore the Collector, if he was not able to pass orders upon that application before he made his award, should have referred the question to the Court under S. 30. (*Campbell, J.*). BAGO *v.* ROSHANBEG. **92 I.C. 484=A.I.R. 1926 Lah. 321.**

—S. 11—Award, what is.

———*Proposal by Land Acquisition Officer submitted for approval to Consulting Surveyor is not an award within S.* 11.

A proposal of the amounts to be awarded to the persons whose land is being acquired, drawn up by a Land Acquisition Officer after making the prescribed enquiry and under the instructions for the guidance of Acquiring Officer, submitted for approval to the Consulting Surveyor, does not amount to the making of an award within the meaning of S. 11 of the Land Acquisition Act, and the proposal is not binding upon the Government or the parties interested.

Per *Macleod, C.J.*—The mere signing of a document by an Acquiring Officer, expressing his opinion as to the amount of compensation to be offered to persons whose land is being acquired does not amount to the making of an award within the meaning of S. 11 of the Land Acquisition Act and has no binding effect where the officer himself does not intend the document to be final. Some further formality is required on general principles before it becomes binding on Government and this formality is prescribed by S. 12.

Per *Shah, J.*—An award, when made under S. 11 of the Land Acquisition Act, becomes final and conclusive and although the section makes it obligatory that the award should be filed and this step when taken puts it beyond doubt that the award is made and is final and conclusive, it does not follow that an award can never be final and conclusive unless it is filed. (*Macleod, C. J. and Shah, J.*). PADAMSI NARAIN *v.* THE COLLECTOR OF THANA. **64 I.C. 103=46 Bom. 366= 23 Bom. L.R. 779=A.I.R. 1922 Bom. 161.**

—S. 11—Award, when becomes final.

———*Award is final only when filed.*

An award in land acquisition proceedings becomes final only when filed under S. 12 of the Act. Before such filing it is open to the Collector to destroy the one which he has already signed and to substitute another in its place. (*Macleod, C. J. and Heaton, J.*). KOOVERBAI SORABJI *v.* THE ASSISTANT COLLECTOR, SURAT. **59 I. C. 429= 22 Bom. L. R. 1136.**

—S. 11—Determination of value.

———The Collector must find out the true value of the land and with this view there is no objection to his using any material, even when it may be supplied by the applicant, without giving rise to the implication that he has recognized that a claim as required by the Act has been preferred. (*Beasley and Curgenven, JJ.*). CHIGIRUPATI SUBBANNA *v.* DISTRICT LABOUR OFFICER, EAST GODAVARI. **31 M.L.W. 587=1930 M.W.N. 373= A.I.R. 1930 Mad. 618=59 M.L.J. 33.**

—S. 11—Insolvency of mortgagor.

———If the mortgagor becomes insolvent it is only the equity of redemption that vests in the Official Receiver and if during the pendency of the insolvency proceedings the mortgaged property is compulsorily acquired the mortgagee will be entitled to his mortgaged amount from the compensation received for the property acquired. (*Wallace and Madhavan Nair, JJ.*). PURUSHOTAMA NAIDU *v.* S.N. RAMASWAMI IYER. **20 M. L. W. 667= A.I.R. 1925 Mad. 245.**

—S. 11—Landlord and tenant.

———Where the tenants have come to a settlement with the landlords accepting definite amounts of the compensation moneys, the tenants have no further interest and the landlord is entitled to receive the enhanced compensation money. (*Greaves and Panton, JJ.*). SECY. OF STATE *v.* NARESH CHANDRA BOSE. **95 I.C. 459=44 C.L.J. 1= A.I.R. 1926 Cal. 1000.**

———When occupancy lands are acquired the landlord is entitled to some compensation, if there is no custom of transferability without consent of the landlord or if within the next 20 years, the landlord could have enhanced the rent of the lands. (*Das and Adami, JJ.*). AGHORI KOERI *v.* B. KISHUNDEO NARAYAN. **88 I.C. 397= 3 Pat. L.R. 111=6 P.L.T. 797=A.I.R. 1926 Pat. 16.**

—S. 11—Land resumable by Government.

———Acquisition of land for Municipal Corporation—Where the Government determined to acquire certain land which is held by the claimant under a document giving a permanent interest and containing the following stipulation: "If any portion or the whole of this land be required for the Government we shall give up the same without any compensation."

Held, that the land is not 'required for the Government' within the terms of the stipulation and the claimant is entitled to compensation. (*Woodroffe and Cuming, JJ.*). BEJOY KUMAR *v.* SECY. OF STATE. **84 I.C. 727=40 C.L.J. 301= A.I.R. 1921 Cal. 406.**

—S. 11—Private agreement.

———*Private agreement before institution of proceedings is not invalidated by the institution.*

If the parties before the institution of the proceedings contemplated by the Act, chose to agree, they are perfectly competent to do so and there is nothing whatever in the words of the Act to suggest that this power is thereby taken away. The fact that compulsory powers have been invoked in order to secure property from unwilling vendors, should not be regarded as denuding all parties of the rights they possessed before the proceedings began. This decision does not interfere with the jurisdiction of the Collector to determine what in his view the price should be, after he had evidence of a complete contract on the point, if he thought right to do so. (*Lord Buckmaster.*) FORT PRESS CO. *v.* MUNICIPAL CORPORATION OF BOMBAY. **68 I.C. 980=49 I.A. 331=16 M.L.W. 654= 31 M.L.T. 225=1922 M.W.N. 798=46 Bom. 767= 27 C.W.N. 418=36 C.L.J. 539=24 Bom. L.R. 1228= A.I.R. 1922 P.C. 365=43 M.L.J. 419 (P.C.).**

—S. 14—Government's interest.

———Gountia bhogra *land in Sambalpur—Acquisition—Government's interest in compensation—Apportionment.*

The Government is a person interested within the meaning of S. 14 of the Land Acquisition Act in the amount of compensation paid to a *Gountia* in Sambalpur in respect of *bhogra* land and is also entitled to a share of the compensation. Leaving the tenant's portion the landlord in such cases

LAND ACQUISITION ACT (1894),—S. 16—Ejection of tenants.

will be entitled to sixteen yearss' purchase of the annual rent. The simple method of apportioning this amount is to award one-fourth as the *Gountias'* share and the balance to the Government. (*Ross and Scroope, JJ.*). SECY. OF STATE *v.* BODHRAM DUBEY. **11 Pat.L.T. 374.**

—S. 16—Ejection of tenants.

——On the acquisition of the lands, leases and under-leases come to an end and no notice to the tenants and sub-tenants is necessary before they can be ejected. (*Setalvad, J.*). BOMBAY MUNICIPALITY *v.* DAMODAR BROS. **60 I.C. 571=23 Bom. L.R. 35=45 Bom. 725=A.I.R. 1921 Bom. 214.**

—S. 16—Encumbrances.

——An acquisition under S. 16 vests the land absolutely in Government free from all encumbrances including easements, even if they come into existence only at the time of the acquisition. (*Scott-Smith and Martineau, JJ.*). MITRA *v.* MUNICIPAL COMMITTEE, LAHORE. **89 I.C. 658=6 Lah. 329=26 Pat.L.R. 657=A.I.R. 1925 Lah. 523.**

—S. 18—Application under.

——Where, on notice of a ward by Land Acquisition Officer, the claimant states in a petition: "I will not receive the amount but will contest the matter in the District Court."

Held, that although the section itself was not mentioned in the petition, from the spirit of it, it ought to be construed as a petition under S. 18. (*Ramesam, J.*). MADDUR KRISHNAMMAL *v.* COLLECTOR OF COIMBATORE. **99 I.C. 269=A.I.R. 1927 Mad. 282.**

——*Application not mentioning ground for reference, but mentioning that proceedings should be postponed till decision of suit regarding validity of acquisition and that compensation was low, is not application under S. 18—Though Collector makes reference on such application, District Judge gets no jurisdiction to decide it.*

The Collector in making a reference is only an agent of Government and he is not entitled to waive the requirements of the law on behalf of Government. The act of the Collector in acting on an application will not preclude the District Judge from holding that it was not in compliance with law.

Where the applications contained no request that the matter of the award should be referred for the determination of the District Judge, but they asked that the matter relating to compensation should be postponed until the final decision as to the propriety or legality of Government in acquiring the land had been settled by a competent Court and they mentioned that the amount of compensation awarded by the Collector was low and was not accepted,

Held, that the applications did not comply with the provisions of S. 18, and on a reference made on such applications, the District Judge got no jurisdiction. (*Kanhaiya Lal and Ashworth, JJ.*). SUKHBIR SINGH *v.* SECY. OF STATE. **97 I.C. 566=49 All. 212=25 A.L.J. 35=A. I. R. 1926 All. 766.**

—S. 18—Bar of suit.

——*Omission to apply for reference—No separate suit lies.*

The Land Acquisition Act creates a special jurisdiction and provides a special remedy. It would not be reasonable to hold that the Legislature having provided a special remedy in the Land Acquisition Act intended to make it optional with a party to apply for a reference under S. 18 or to institute a suit in the ordinary Civil Court.

LAND ACQUISITION ACT (1894),—S. 18—Extent of jurisdiction of Court.

A person having been served with a notice under S. 9 was bound to apply for reference under S. 18 when he was dissastified with the award. He cannot maintain a suit in the ordinary Civil Court. (*Chatterjee and Panton, JJ.*). SAIBESH CHANDRA SARKAR *v.* SIR BEJOY CHANDRA MOHTAP BAHADUR. **65 I.C. 711=26 C.W.N. 506=A.I.R. 1922 Cal. 4.**

—S. 18—Burden of proof.

——No doubt initially the burden of proving that the Collector's award is wrong is on the claimant but where District Judge has assessed the value of land acquired by the Secretary of State at a particular rate and the Secretary of State is disputing the assessing value, burden of proving that assessing value is wrong is placed on Secretary of State: A.I.R. 1926 Mad. 961, *Expl.* and *Dist.* (*Fforde and Kemp, JJ.*). SECY. OF STATE *v.* MAKHAN LAL. **118 I.C. 541=A.I.R. 1929 Lah. 112.**

——The award of the acquisition officer is evidence in proceeding under reference under S. 18. Statements in the award, such as statements as to contents of certain documents examined by the acquisition officer, are evidence and need not be proved by the production of the doouments themselves.

The burden of proof is on the claimant to show that the award is wrong and the weight of that burden depends on the nature of the award. 27 M.L.J. 106, *Foll.*; 36 Mad. 395 and 32 Cal. 605 (P.C.), *Dist.* (*Phillips and Odgers, JJ.*). ARUNACHALA AIYAR *v.* COLLECTOR OF TANJORE. **96 I.C. 279=A.I.R. 1926 Mad. 961.**

—S. 18—Choice of forum.

——The plaintiff having made his election under S. 18 and applied to the Tribunal for a stay which has been refused, even assuming that a Civil suit was open to him, must abide by its decision. (*Greaves, J.*). SHOSHI MUKHI DEBYA *v.* KESHAB LALL MUKERJI. **80 I.C. 398=27 C.W.N. 809=A.I.R. 1924 Cal. 212.**

—S. 18—Extent of jurisdiction of Court.

——*Jurisdiction confined to the actual objection.*

The jurisdiction of the Courts under the Act is a special one and is strictly limited by the terms of Ss. 18, 20 and 21. It only arises when a specific objection has been taken to the Collecsor's award and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred and the Court has no power to determine or consider anything beyond it, *e.g.*, question of measurement raised for the first time three years after references were duly made by Collector. (*Sir George Lowndes.*) PRAMATHA NATH MULLICK BAHADUR *v.* SECY. OF STATE. **121 I.C. 536=1930 A.L.J. 126=34 C.W.N. 289=51 C.L.J. 154=32 Bom.L.R. 522=57 I.A. 100=A.I.R. 1930 P.C. 64=58 M.L.J. 223 (P.C.).**

——Unless an objection is specifically taken in the application for reference with regard to a matter stated in the award of the Collector such question cannot be urged at the time of the hearing of the case before the Court. (*B. B. Ghose and Panton, JJ.*). SECY. OF STATE *v.* FAKIR MD. MANDAL. **101 I.C. 349=45 C.L J. 185=A.I.R. 1927 Cal. 413.**

——Although the principle is that the Court in hearing a reference under the Land Acquisition

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Act can only deal with an objection which has been referred to it and it cannot go into any question raised for the first time by a party who had not referred any question or any objection to it under S. 18, yet where the question referred to the Judge is the question of the market-value of the property acquired, addition of parties to the proceeding will in no manner violate the principle and enlarge the scope of his enquiry.

In reference under the Land Acquisition Act the addition of parties is under certain circumstances permissible and it does not matter whether the subject of reference is one of valuation or of apportionment. (*Panton and Mullik, JJ.*). HASHIM IBRAHIM *v.* SECY. OF STATE.

101 I.C. 539=31 C.W.N. 384= A.I.R. 1927 Cal. 352.

———*Claimant must stick to the ground of objection originally raised.*

Where an objectfon has been taken under one of the headings mentioned in S. 18, and a reference made in consequence, it is not open to the claimant to attack the award upon an objection falling under some other heading. In the reference what the Judge has to decide is the matter of the award to the extent comprised within the objection, and apart therefrom the award is final under S. 12 of the Act. (*Pearson and Graham, JJ.*). PROMOTHA NATH MULLICK *v.* SECY. OF STATE.

82 I. C. 3=40 C.L.J. 105= A.I.R. 1924 Cal. 1036.

———The question of title arising between the Government and another claimant cannot be settled by the Judge in a reference under S. 18 of the Act. (*Daniels and Lyle, A.J.Cs.*). MD. WAJEEH MIRZA *v.* SECY. OF STATE.

64 I.C. 93= 8 O. L. J. 426=24 O. C. 197= A.I.R. 1921 Oudh 31.

—S. 18—Grounds of objection.

———Under S. 18 the objector must, if he wishes to take different objections falling under more than one of these heads, expressly state each of his objections and sub-S. (2) requires him to set out the grounds on which his objection is taken. (*Carr and Cunliffe, JJ.*). C. R. M. A. FIRM *v.* SPECIAL COLLECTOR OF PEGU.

8 Rang. 364.

—S. 18—Jurisdiction of Court.

———The Court has no jurisdiction to consider the award only by virtue of the reference made by the Collector and its jurisdiction to deal with the award is confined to the matters referred. 7 Bom. L.R. 981, *Diss. from*; 14 I.C. 270; 1 Lah. 617 and 38 Cal. 230, *Expl.* (*Carr and Cunliffe, JJ.*). C.R.M. A. FIRM *v.* SPECIAL COLLECTOR OF PEGU.

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———The conditions mentioned in S. 18 should be fulfilled, before the Court can have jurisdiction to entertain the Collector's reference. (*Kanhaiya Lal, J.C. and Dalal, A.J.C.*). SAMUEL BURGE *v.* THE IMPROVEMET TRUST.

73 I.C. 127= 26 O.C. 324=A.I.R. 1924 Oudh 127.

—S. 18—Landlord and tenant.

———Where the landlord was satisfied with the sum which was awarded to him by the Collector and never asked for a reference under S. 18, he cannot, notwithstanding any contract between them, deprive the tenant of the additional sum which the latter has been able to obtain from the Land Acquisition Judge under a reference made at his instance alone. (*Mukerjee and Newbould, JJ.*). SASI KANTA ACHARJYA BAHADUR *v.* ABDUR RAHMAN SARKAR.

75 I.C. 203= 38 C.L.J. 265=A.I.R. 1924 Cal. 158.

LAND ACQUISITION ACT (1894),—S. 18—Powers of High Court

—S. 18—Limitation.

———*Per* Mukerji, J.—*Limitation runs from the date of filing of award—Date of award is the date of filing award.* (Niamatullah, J., contra.).

Per *Mukerji J.*—The expression "date of award" being indefinite the legislature meant the date of the filing of the award to be the date contemplated in Cl. (b), sub-S. (2), S. 18. If limitation is to start it ought to start from the date of the filing of the award and not from the making of it 22 Bom. L. R. 1136, *Rel. on.*

Per *Niamatullah, J.*—The date of the award is not the date on which it is filed. A comparison of Ss. 11 and 12 will show that the date of making an award is meant by the Act to be different from the date on which the award is to be filed. Section 18 (2) proviso refers to the former. The date of award is the date on which a formal declaration is made by the Collector of the amount of compensation and of the person to whom the same is payable. (*Mukerji and Niamatullah, JJ.*). SECY. OF STATE *v.* BHAGWAN PRASAD.

1929 A.L.J. 1186= A.I.R. 1929 All. 769.

—S. 18—Mortgagee.

———*Mortgagee can't sue Crown for mortgage balance, after compensation is paid to mortgagor.*

A mortgagee cannot sue the Crown where Collector has paid compensation money to the mortgagor though with notice of the mortgage, in a land acquisition case. He should apply under the Land Acquisition Act for reference to the Court under S. 18 or he may sue the mortgagor for the costs and other amount due to him under the mortgage under S. 31. (*Schwabe, C.J. and Waller, J.*). SECY. OF STATE *v.* KUPPUSWAMI CHETTI.

78 I. C. 82=1924 M.W.N. 138=33 M. L. T. 272= A. I. R. 1924 Mad. 521=46 M. L. J. 36.

—S. 18—Nature of proceedings before Court.

———*Proceedings under, were not independent judicial ones—Claimant cannot make out fresh case.*

The proceedings before the Court are of the nature of objections to the Collector's award, and not a judicial inquiry independently undertaken into such questions as the claimant may raise, and it would not be open to a claimant to make out a fresh case, whether by way of supplementary claims to compensation or otherwise. 145 P. W. R. 1918, *Not appr.* (*Curgenven, J.*). SECY. OF STATE *v.* SUBRAMANIA AYYAR.

A. I. R. 1930 Mad. 576.

—S. 18—Powers of Collector and Court.

———Making reference is an act within the jurisdiction and authority of the Collector. Having made the reference it is not open for the Collector or the Secretary of State to say that the reference was wrongly made, although ground for saying so may be that the application was belated by the owner. The "Court" does not sit on appeal over the Collector and the Land Acquisition Act does not give any authority to the "Court" either in express terms or by implication to go behind the reference. 32 Cal. 605 (P.C.), *Rel. on*; 30 Bom. 275, *Diss from*; A.I.R. 1926 All. 766, *Dist.* (*Mukerjee and Niamatullah, JJ.*). SECY. OF STATE *v.* BHAGWAN PRASAD.

27 A.L.J. 1186= A.I.R. 1929 All. 769.

—S. 18—Powers of High Court.

———A revision over an order by a Collector dismissing an application made by a person under Land Acquisition Act, S. 18, to refer the matter of his right to receive the compensation instead of another, does not lie as the High Court is not competent to revise the order of the Collector.

LAND ACQUISITION ACT (1894), S. 18—Powers of High Court.

65 P.R. 1915 and A.I.R. 1924 Mad. 442 (F.B.), *Foll.*; 67 P. R. 1916, *Not appr.* (*Jai Lal, J.*). MUSHTAQ ALI *v.* SECY. OF STATE. **31 P.L.R. 158= A.I.R. 1930 Lah. 242.**

——The Collector, though he may be acting judicially when exercising his functions under S. 18 and though he may even be called a Court, is certainly not a Court which is subordinate to the High Court for the purposes of S. 115, C. P. Code, and therefore, no revision lies against his decision. *Case law referred*. C.R. 230 of 1927, *Dist.* (*Mohiuddin, A.J.C.*). R. S. SETH GOVERDHAN DAS *v.* COLLECTOR OF BHANDARA. **123 I.C. 911= A.I.R. 1930 Nag. 271.**

——*Order refusing to refer to Civil Court is not revisable by High Court.* (Case-law discussed).

High Court has no power under S. 115, C.P. Code or under S. 107 of the Government of India Act, to revise the order of a Collector acting under the provisions of the Land Acquisition Act refusing to refer to the Court, an application under S. 18 of the same Act by a person interested, requiring him to refer the matter for the determination of the Court. When Collector acts under part III, of which S. 18 forms part, he is acting in a different capacity because he has there to decide certain things but no revision petition lies to High Court because he is not a Court at all. (*Schwabe, C.J., Phillips and Ramesam, JJ.*). ABDUL SATTAR *v.* SPECIAL DEPUTY COLLECTOR, VIZAG HABBOUR ACQN. **84 I.C. 616=47 Mad. 357= 19 M.L.W. 445=34 M.L.T. 18= 1924 M.W.N. 224=A.I.R. 1924 Mad. 442= 46 M.L.J. 209 (F.B.).**

——*Refusal to make a reference—Revision does not lie.*

High Court has not been given power to interfere with the proceedings of the Collector so that if he refuses to do what seems incumbent upon him under the provision of S. 18 of the Land Acquisition Act High Court cannot direct him to make a reference and the proper remedy is either for the Legislature to give the High Court powers of superintendence over the Collector's proceeding under the Land Acquisition Act, or for the Government to draw the attention of their officers to the provisions of the Act and lay down rules for their guidance, if they have not already done so. No doubt as the expression "Person interested" in S. 3 (*b*) of the Land Acquisition Act includes "All the persons claiming an interest in the compensation to be made on account of the acquisition of the land under this Act," and under S. 18, Cl. 1, "any person interested who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of compensation among the persons interested", the Collector is bound to make a reference. But if he fails in the duty imposed upon him by that section the High Court has no power to direct him to perform it. The word 'Court' has not been defined in any Act of the Legislature, but it may be presumed that an officer, to be a 'Court' must be competent to make a judicial decision. (*Macleod, C.J. and Crump, J.*). BALKRISHNA DAJI GUPTE *v.* COLLECTOR, BOMBAY SUBURBAN.

73 I.C. 354=25 Bom. L.R. 398=47 Bom. 699= A.I.R. 1923 Bom. 290.

LAND ACQUISITION ACT (1894), S. 18—Toka tenure.

—S. 18—Property under litigation.

——*Person* prima facie *entitled starting proceedings —Person ultimately succeeding can continue.*

Where during the pendency of a suit or appeal a person who had a decree in his favour and who was *prima facie* entitled to the property institutes or defends proceedings in respect of property sought to be acquired, the proceedings can be continued by the person who ultimately succeeds in the litigation. Any order passed in respect of the property would enure for the benefit of the successful litigant and he is the person who on the reversal of the judgment of the lower Court would be entitled to continue the proceedings. (*Kumaraswami Sastri and Curgenven, JJ.*). VENKATA KRISHNAYYA *v.* SECY. OF STATE. **107 I.C. 503= 39 M.L.T. 551=27 M.L.W. 253= A.I.R. 1928 Mad. 89.**

—S. 18—Reversioners.

——*Whether Hindu reversioner can claim a reference.*

Quaere.—Whether the reversioners have such an interest in the land as to entitle them to claim a reference under S. 18. A. I. R. 1922 Mad. 100; 4 P. L. J. 360 and A. I. R. 1926 Mad. 959, *Ref.*

Where the reversioners were made parties to the proceedings by the acquisition officer and he made an award jointly in favour of them and the widow, and then they claimed and obtained a reference under S. 18 with the result that the compensation was enhanced,

Held, that the objection as to their capacity to obtain reference should not be considered in appeal. (*Waller and Madhavan Nair, JJ.*). CHETTIAMMAL *v.* COLLECTOR OF COIMBATORE. **105 I.C. 219= A.I.R. 1927 Mad. 867.**

—S. 18—Separate enquiry.

——The Court should hold a separate inquiry and its proceedings are not a mere continuation of that of the Collector's. They are judicial proceedings and the decision must be based on evidence before the Court or on admission made by the opposite party. Evidence before the Collector cannot be considered as evidence before the Court except with the consent of parties. 2 L.B.R. 208 and 4 L. B. R. 71, *Foll.* (*Carr and Cunliffe, JJ.*). C. R. M. A. FIRM *v.* SPECIAL COLLECTOR OF PEGU. **8 Rang. 364.**

—S. 18—Tenant.

——A tenant or sub-tenant, even though his interest is not transferable except with the sanction of the superior landlord, has an interest which entitles him to be heard upon the question of adequacy of compensation. *Case-law discussed.* (*Mookerjee and Chotzner, JJ.*). JAGADISHWAR SANYAL *v.* COLLECTOR OF GOALPARA.

84 I.C. 4=39 C.L.J. 574=A.I.R. 1925 Cal. 197.

—S. 18—Toka tenure.

——*Land unfit for quarrying purposes—Should not be valued on the quarrying basis—Toka tenure land—Valuation of occupant's right—Government's interest in the land—Principles of valuation.*

Land should not be valued on the basis that it would be used as a quarry, when the evidence shows that it could not be used as a quarry.

Government had a right to increase assessment on certain quarrying land of the Toka tenure in the possession of an occupant who had to pay for it an annual rent, in the year 1929-30 at the rate of four per cent. on the value of the land. When the land was acquired compulsorily by Government in estimating the value of the interest of Government

LAND ACQUISITION ACT (1894), S. 18—Trust Property.

in the land the assessment was capitalised at four per cent. and it was written back at eight per cent. to the date of the acquisition,

Held, for valuing the interest of Government in the land the assessment on the land could not be expected to increase in 1929 to a higher rate than two per cent.; and that it should be capitalised at six per cent. and written back at the same rate to the date of the acquisition. A method which has been generally used to arrive at the present value of the rent is to capitalise at a certain rate and then write it back to the date of acquisition the rate of capitalization and the rate of writing back being the same. (*Macleod, C. J. and Shah, J.*). THE GOVERNMENT OF BOMBAY *v.* N.H. MOORS.

82 I. C. 641=24 Bom. L.R. 471=47 Bom. 218=A.I.R. 1922 Bom. 254.

—S. 18—Trust property.

———Where trust property is acquired under the Land Acquisition Act, questions which may arise between the trustee and the beneficiaries and their assignees must be left to be debated before the Court having jurisdiction to administer the trust estate. A.I.R. 1925 Cal. 630, *Expl.* (*B.B. Ghose and Cammiade, JJ.*). K. S. BANERJEE *v.* JATINDRA NATH. **108 I.C. 253=A.I.R. 1928 Cal. 475.**

—S. 18—Wakf property.

———When the property acquired is wakf property, although the subject of reference is valuation of the property, it is open to any one of the body of trustees to come forward and ask that he should be allowed to appear in the Court of the Judge and be permitted to place before the Court such material as he may have in his power to enable the Court to arrive at a proper decision as to the value of the trust property. (*Panboi and Mullick, JJ.*). HASHIM IBRAHIM *v.* SECY. OF STATE.

101 I.C. 539=31 C.W.N. 384=A.I.R. 1927 Cal. 352.

—S. 19—Court fee.

———*Proceedings before the Court on a reference by the Collector—The article applicable is Art. 1, Sch. 1.*

Proceedings before the Court on a reference by the Collector under the provisions of S. 19, Land-Acquisition Act, cannot be described as a suit to set aside an award within the meaning of the provisions of Art. 17 (4), Sch. 2, Court-fees Act and the article applicable is Art. 1, Sch. 1, and Court-fees are payable in the appeals *ad valorem* on the difference between the sum awarded by the Court and the sum which the appellant claims should have been awarded. 57 P.R. 1913, *Dist.* (*Rutledge, C.J. and Brown, J.*). SPECIAL COLLECTOR OF RANGOON *v.* KOZI NA. **110 I.C. 870= 6 Rang. 281=A.I.R. 1928 Rang. 197.**

—S. 20—Parties interested.

———The Secretary of State as a party is not interested in the distribution or apportionment of the compensation. His interest ceases when he places the total amount of compensation awarded at the disposal of the Court. Where a wrong award of compensation has been made to a person not a party to the appeal, the Court is precluded from granting any relief. (*Mears, C.J. and Gokul Prasad, J.*). SANWAL DAS *v.* SECY. OF STATE.

77 I.C. 112=20 A.L.J. 604=A.I.R. 1922 All. 438.

—S. 20—"Persons interested."

———"Persons interested" in sub-S. (*b*) means persons interested by reason of their interest in the land acquired as owners, tenants and the like, and not persons interested as acquiring the land through the Secretary of State. Such a person is not entitled to separate notice under S. 20, though he has the right to appear and adduce evidence. (*Pratt and Otter, JJ.*). MANDALAY MUNICIPAL COMMITTEE *v.* MAUNG IT. **117 I.C. 247=7 Rang. 20=A.I.R. 1929 Rang. 115.**

—S. 21—Landlord and tenant.

———As to the basis of apportionment of compensation between a landlord and an occupancy tenant the fair estimate is that in a rupee the landlord should have 10 annas share and the occupancy tenant 6 annas share. After award, if the landlord had objected to it and the tenant had not, then the landlord will be entitled to his proportionate share of the compensation and not the whole. (*Mukerji and Niamatullah, JJ.*). RAHAN LAL *v.* COLLECTOR OF ETAH. **117 I.C. 612=1929 A.L.J. 522=51 All. 765=A.I.R. 1929 All. 525.**

———*Landlord is entitled to compensation given for the land acquired according to terms of the lease.*

Where under a contract in a *maurasi mokarari* lease, the lessor was to get half of the compensation as malgani right, if the land was acquired for the purpose of the Government and the land was subsequently acquired for the public purpose, *viz.*, for the construction of a sewer road in a Municipal area.

Held, that the land must be held to have been acquired for the purpose of the Government and the lessor was, therefore, entitled to half of the compensation under the special provisions contained in the lease. A. I. R. 1921 Cal. 406, *Dist.* (*B.B. Ghose and Roy, JJ.*). RADHA BENODE MONDAL *v.* SURENDRA NATH. **105 I.C. 377=A.I.R. 1927 Cal. 968.**

—S. 21—Persons not affected by objection.

———When in a reference under S. 18, a reference is made to a certain person as one of the claimants the nature of his claim being set out, he is entitled to be present at the hearing of the reference notwithstanding that he was not a person affected by the objection under S. 18. (*Greaves and Chakravarthy, JJ.*). SURENDRANATH TAGORE *v.* K. S. BANERJEE. **86 I. C. 789=29 C.W.N. 340=A.I.R. 1925 Cal. 630.**

—S. 23.

Appeal to Privy Council.
Back and frontage land.
Cancellation of declaration.
Changing place of business.
Damage or loss.
Existing and future advantages.
Expert evidence.
Facts to be considered.
Market value.
Mode of valuation.
Powers under.
Price of similar land.
Price paid by claimant.
Purpose of acquisition.
Rate.
Rent.
Tenant-at-will.
Trees.
Miscellaneous.

—S. 23—Appeal to Privy Council.

———*In land acquisition cases judgment of Indian Courts is not interfered with by Privy Council unless judgment is unsupportable.*

In land acquisition cases Their Lordships do not interfere with judgment of Courts in India as to matters involving valuationof property and

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similar questions, where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached unless there is something to show not merely that on the balance of evidence it would be possible to reach a different conclusion but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied. A.I.R. 1925 P.C. 91, *Foll.* (*Lord Tomlin.*) AHIDHAR GHOSH *v.* SECY. OF STATE.
A.I.R. 1930 P.C. 249 (P.C.).

———The Privy Council is bound by the terms of the Land Acquisition Act, which deals in Ss. 23 and 24 with the considerations that are to be taken into account in determining the value of the land. (*Viscount Dunedin.*) VALLABHDAS NARANJI *v.* COLLECTOR. **115 I.C. 730=33 C W.N 549=29 M L.W. 694=1929 M.W N. 376=31 Bom. L.R. 683=49 C.L.J. 497=A.I.R. 1929 P.C. 112=56 M.L.J. 750 (P.C.).**

—S. 23—Back and frontage lands.

———A frontage of 100 ft. depth should be allowed. 33 Bom. 325, *Rel. on.* (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I.C. 797=A. I. R 1928 Lah. 263.**

———*Market value of undeveloped land—Frontage land—Valuation must be more or less a guess work—Wholesale and retail prices—Difference indicated.*

In all cases where there is a large area of undeveloped land under acquisition, it is the market value of the undeveloped land which has to be considered, and it is too often forgotten that a purchaser of such land will ordinarily expect to make a large profit on the original outlay because in addition he will have further expenditure to make, and there will be the risk that it will be some time before he can dispose of the whole of the land.

Frontage land derives its value from the advantage of much higher rents being received from shopkeepers from the ground floors of the buildings raised thereon, than can be paid by the tenants of tenement buildings. Valuation cases must be dealt with just as much from the point of view of the hypothetical purchaser as of the claimant. The valuation itself must often be more or less a matter of guess work. But it is obviously wrong to fix upon a valuation which, judged by every day principles, no purchaser would be likely to give. A very simple method of valuing land wholesale from retail prices is to take anything between one-half and one-third, according to circumstances of the expected gross valuation, as the wholesale price. (*Macleod, C. J. and Coyajee, J.*). BOMBAY IMPROVEMENT TRUST *v.* MERWANJI MANEKJI. **96 I.C. 425=28 Bom L.R. 701=A.I.R. 1926 Bom. 420.**

———Where the total area was only 1·423 acres,

Held, that for a small plot like this, the distinction between frontage and back did not appear to have much meaning and that there was no good ground for fixing two rates for such a small plot. (*Das and Ross, JJ.*). SECY. OF STATE *v.* MANMATHA NATH. **84 I.C. 371=2 Pat. L.R. Civ. 268=A.I.R. 1925 Pat. 129.**

———*Loss of frontage injuriously affects back—Superior holder's interest.*

By reason of the Government acquiring a part of the frontage of the land belonging to the claimant, the land behind the plot acquired would by reason of such acquisition be injuriously affected. (*Macleod, C.J. and Crump, J.*). GAJANAN VINAYAK

LAND ACQUISITION ACT (1894), S. 23—Damages or loss.

v. THE ASST. COLLECTOR OF SALSETTE THANA. **85 I. C. 11=25 Bom. L.R. 480=A.I.R. 1924 Bom. 54.**

———It is quite true that in calculating the value of a plot of land the price previously paid for a portion of the same area affords infinitely the best material which can possibly exist. If the prices remain stationary, still, if the plot sold had a frontage and the land in question has no frontage it might affect the price. (*Shadi Lal, C.J. and Harrison, J.*). NARSINGH *v.* SECY. OF STATE. **70 I.C. 573=A.I.R. 1922 Lah. 327.**

—S. 23—Cancellation of declaration.

———*Notification published—Government changing its mind and issuing fresh notification cancelling former declaration—Compensation is to be estimated from second notification.*

The Government on 31st May, 1922, published a declaration under S. 6 that the appellants' land was required for a public purpose. That declaration included besides the land which they desired to take from the appellants, certain land belonging to other people. The Government changed their mind about requiring the land of the other people and accordingly on 6th October, 1923, they published another declaration under S. 6, specifying the same land belonging to them, but at the same time, announcing that the former declaration was cancelled.

Held, that the only notification which gave right to take this land was the second notification and therefore that date must be the date taken in determining the amount of compensation to be awarded. (*Viscount Dunedin.*) MA SIN *v.* COLLECTOR OF RANGOON. **116 I.C. 899=33 C.W N. 612=1929 A.L.J. 577=7 Rang. 227=31 Bom. L.R. 753=49 C.L.J. 523=30 M.L.W. 16=1929 M.W.N. 448=56 I.A. 210=A.I.R. 1929 P.C. 126=56 M. L. J. 795 (P.C.).**

—S. 23—Changing place of business.

———*Person changing the place of business not in consequence of the acquisition of the land—He is not entitled to compensation.*

A person is not entitled to receive any compensation under S. 23 for changing the place of business when the change is not in consequence of the acquisition of the land.

Certain premises were vacated not on the ground of its being acquired, but because the lease had expired and lessees were anxious to avoid the expense of carrying on the litigation with regard to ejectment when they knew that they could not stay on the land beyond a few months only.

Held, that the company were not entitled to any compensation. (*B. B. Ghose and Cammiade, JJ.*). SECY. OF STATE *v.* BREAKWELL & CO. **109 I.C. 315=55 Cal. 957=32 C.W.N. 556=A. I. R. 1928 Cal. 761.**

—S. 23—Damages or loss.

———Loss of business means that a man pursuing some trade or business is compelled to give it up or to carry it on elsewhere, which would give him less profit than what he was making at the former place. It is only in this case that the claimant can lay claim to damages on account of loss of business. And a person is not entitled to claim damages for loss of business, which he was making at the former place by using the *corpus*, the result of which use would be to make the property altogether valueless after a lapse of time. (*B.B. Ghose and Panton, JJ.*). MADHAB GOBIND *v.* SECY. OF STATE. **56 Cal. 819=A.I.R. 1929 Cal. 826.**

LAND ACQUISITION ACT (1894), S. 23—Damages or loss.

———Under the provisions of sub S. (3), S. 23, Land Acquisition Act as amended by the Calcutta Improvement Act, cl. (*b*), the owner is not entitled to compensation for having been prevented from taking active steps in order to make an income out of the property.

Where the owner claimed that he was entitled to compensation for being obliged to keep the land vacant after the scheme had been sanctioned as he could not erect any structures for the building of which he had pulled down the old structure.

Held, that he was not entitled to any compensation. (*B.B. Ghose and Cammiade, JJ.*). D. N. ELIAS *v.* SECY. OF STATE. **108 I.C. 251=32 C.W.N. 860= A.I.R. 1929 Cal. 20.**

———The ordinary rule in the case of acquisition of land occupied by tenants, whose tenancies are determined by notice or efflux of time, is that they cannot claim compensation for loss of profits, even though they had reasonable expectation of continuing in possession or of having the lease renewed. *Rex* v. *Liverpool and Manchester Ry. Co.*, (1836) 4 Ad. and E. 650, *Foll.* (*Fawcett and Mirza, JJ.*). DIST. DY. COLLECTOR *v.* MASANGJI. **113 I.C. 169= 30 Bom. L.R. 930= A.I.R. 1928 Bom. 306.**

———In determining the amount of compensation to be awarded for the property acquired under the Land Acquisition Act the Court is required to take into consideration the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his earnings. (*Shadi Lal, C. J. and Bhide, J.*). KRIPA RAM *v.* SECY. OF STATE. **106 I.C. 909 (Lah.).**

———*Market value assessed—Damages for prospective profits cannot be asked in addition.*

The market value of the land is assessed by taking every circumstance into consideration. A person is entitled to claim damages for loss of earnings if he carries on some business in the acquired premises and by virtue of the acquisition he is deprived of his profits by reason of the fact that he cannot find any other place where he can carry on the business in which he was engaged on the acquired premises. He however cannot again ask for damages on the ground that he might have made profits by engaging in a certain trade or business on the land in question. *Ripley* v. *Great Northern Railway Company*, (1875) 10 Ch. A. 435, *Dist.* (*B. B. Ghose and Panton, JJ.*). SURESH CHANDRA *v.* SECY. OF STATE. **100 I.C. 190= A.I.R. 1927 Cal. 357.**

———Per *Walsh, Ag. C.J. and Pullan, J., contra Dalal, J.*—An owner whose land has been acquired for the purpose of opening a market has no right to receive compensation for loss of profits derived from an existing market on other neighbouring land belonging to him. 34 Cal. 470, *Rel.*; 18 C.L.J. 244, *Dist. English case-law referred to.* (*Walsh, Ag.C.J., on difference between Dalal and Pullan, JJ.*). SECY. OF STATE *v.* MD. ISMAIL KHAN. **100 I.C. 749=49 All. 353= 25 A.L.J. 177= A.I.R. 1927 All. 246.**

———The word "acquisition" as used in S. 23 includes the "purpose" for which the land is taken as well as the actual taking. 25 Cal. 346, *Rel. on.*

The claimant's land was acquired for the purpose of lowering the roads adjoining his land. By reason of the lowering of these two roads he was deprived of the right of access to his land from the two roads.

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Held, that he was entitled to compensation for loss of access. (*Das, J.*). M. E. MOOLA *v.* COLLECTOR OF RANGOON. **98 I.C. 461= 4 Rang. 350= A.I.R. 1927 Rang. 29**

—S. 23—Existing and future advantages.

———An owner of land is entitled to the value to himself of the property in its actual condition at the time of expropriation with all its then existing advantages and with all its future possibilities excluding only any advantages due to the carrying out of the scheme for the purposes for which the property is being acquired. (*Lord Blanesburgh.*) ATMARAM BHAGWANT *v.* COLLECTOR OF NAGPUR. **114 I. C. 587=1929 A.L.J. 249= 33 C.W. N. 458=29 M.L.W. 496=6 O.W.N. 417= 12 N.L.J. 37=49 C.L.J. 398=25 N.L.R. 68= 31 Bom. L.R. 728= A.I.R. 1929 P. C. 92= 57 M.L.J. 81 (P.C.).**

———The market value of land acquired under Land Acquisition Act should be calculated with reference to the most lucrative and advantageous way in which the land might be used and its special adaptability. 33 All. 733; A.I.R. 1922 Cal. 386; A.I.R. 1921 Cal. 193 and *Cedarz Rapids Manufacturing and Power Co.* v. *Lacoste* (1914) A. C. 569, *Ref.* (*Adami and Chatterji, JJ.*). RAMESHWAR SINGH *v.* SECY. OF STATE. **8 Pat. 793= A.I.R. 1929 Pat. 733.**

———*Operative effect of special adaptability to be estimated by prudent business consideration.*

The operative effect of special adaptability or future utility must be estimated not by idle speculation and unpractical imagination but by prudent business consideration such as would weigh with an intending purchaser at the imaginary market which would have ruled had the land been exposed for sale when it was subjected to compulsory acquisition. (*Adami and Chatterji, JJ.*). RAMESHWAR SINGH *v.* SECY. OF STATE. **8 Pat. 793= A.I.R. 1929 Pat. 733.**

———*Special adaptability of land and its future use should be considered.*

In assessing compensation not only is the present purpose to which the land is applied to be taken into consideration but also any other more beneficial purpose to which, in the course of events, the land might within a reasonable period be applied and the special adaptability of agricultural lands for building purposes is an element to be considered in fixing the compensation. In estimating, however, the value with reference to the special adaptability of the property and to its future user, the Court should estimate the future utility of the land by prudent business calculations and not by mere speculation and impractical imagination. A.I.R. 1924 Mad. 252 and 32 Cal. 343, *Appl.*

In such cases it is not possible to fix the price with any degree of accuracy especially where the Court deals not with the present use to which the land is put but with the prospective use and valuing it on the basis of special adaptability. 26 Bom. 1 (P.C.), *Ref.* (*Kumaraswami Sastri and Curgenven, JJ.*). VENKATA KRISHNAYYA *v.* SECY. OF STATE. **107 I.C. 503=39 M.L.T. 551= 27 M.L.W. 253= A.I.R. 1928 Mad. 89.**

———The seller is entitled to the value to him of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquir-

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ed. A.I.R. 1925 P.C. 91, *Foll.* (*Lindsay and Sulaiman, JJ.*). MAKHAN DAS *v.* SECY. OF STATE.
100 I.C. 508=25 A.L.J. 137=
A.I.R. 1927 All. 752.

———The fact that the land might in all probability and within a reasonable time be used as "brickfield" land should be considered in awarding compensation. (*Sanderson, C.J. and B.B. Ghose, J.*). MOHINI MOHAN *v.* SECY OF STATE.
101 I. C. 537=31 C.W.N. 382=
A.I.R. 1927 Cal. 298.

———In valuing the potentialities of the land for quarrying purpose a Court should avoid, as far as possible, hypothetical speculations and rely on admitted and proved facts. (*Macleod, C.J. and Coyajee, J.*). LAND ACQN. OFFICER, BANDRA *v.* GULAM HUSSEIN. **96 I.C. 284=28 Bom.L.R. 714=**
A. I. R. 1926 Bom. 433.

———In determining the compensation to be paid for a particular land its potential value should be taken into consideration. (*Greaves and Panton, JJ.*) SECRETARY OF STATE *v.* NARESH CHANDRA BOSE. **95 I.C. 459=44 C.L.J. 1=**
A.I.R. 1926 Cal. 1000.

———*Potential uses should be considered—Advantages to owner and not to the promoters are material—Evidence of offers is admissible—Existence of right of pre-emption affects the value.*

In assessing the value of lands compulsorily acquired, consideration has to be paid to all the potential uses to which the said land can be put. The basis on which compensation for lands taken is to be assessed is the value of the lands to the owner as it existed at the date of the notice and not their value, when taken, to the promoters, but all advantages which the land possesses, present or future, in the hands of the owners may be taken into consideration, and the owner is entitled to have the price assessed in reference to those advantages which would give the land greater value.

The owners are entitled to ask for compensation by estimating the market-value of the property not according to its present disposition but in the most lucrative and advantageous way in which the owners could dispose of it. But in order to apply this principle the objector should have put forward a scheme showing how the site in question could have been developed.

Evidence of offers is admissible, but as an offer amounts merely to an expression of opinion on the part of the person making it, oral offers unsupported by any documentary evidence do not carry any weight or afford any assistance.

Existence of right of pre-emption in a locality also has an important bearing on the price. (*Broadway and Fforde, JJ.*). ABDUL RAHIM *v.* SECY. OF STATE. **97 I.C. 776=8 L.L.J. 363=**
27 P.L.R. 679=A.I.R. 1926 Lah. 618.

———*Value of land in actual condition at the time with all existing advantages and possibilities determines compensation.*

The principle upon which valuation of property compulsorily acquired should be measured is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with its possibilities excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired.

Where the lower Court examined the cases of the sales of property in the district and rejected those

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which, from their different locality and the different possibilities of value due to their position were, in its judgment, inapplicable, and dealt with the case on hand by considering the value of the land immediately adjacent at the rear and excluded from the road as determined by actual sale, then assumed that the land in dispute was added with advantages of the frontage and thus fixed a value for the whole and then took the fractional value of this sum represented by the ratio of the area of the land in question to the entire block and gave to it the whole added value due to the frontage.

Held, that there was nothing wrong in the Court being thus guided to the conclusion and the question as to the amount which they thought right to add for the advantageous position that the property occupied, need not be examined. (*Lord Buckmaster.*) NARSINGH DAS *v.* SECY. OF STATE. **86 I.C. 556=27 Bom. L.R. 783=**
29 C.W.N. 822=26 P.L.R. 205=6 Lah. 69=
23 A.L.J. 113=52 I.A. 133=6 L.R.P.C. 64=
2 O.W.N. 137=A.I.R. 1925 P.C. 91=
48 M.L.J. 386 (P.C.).

———*Value in view of prospective uses (not remote) is to be considered but not the purpose of acquisition.*

The owner is entitled to the value obtainable in open market for the land if put to its most lucrative use. Court may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events at no remote period it may be applied. If the special value exists only for the particular purchaser who has obtained powers of compulsory purchase it cannot be taken into consideration in fixing the price. But when the special value exists also for other possible purchasers, the owner is entitled to have this element of value taken into consideration. 1 K. B.16 at 31 and (1910) 17 C.L.J. 34, *Foll.*

No evidence of former sales can generally be obtained which shall be precisely parallel in all its circumstances to the sale of the land compulsorily acquired, and differences will exist and it is impossible to state with precision what allowance should be made for them.

Where the basis of the calculation is that the lands are valued as building sites, the claimants cannot also have an advantage to which they will be entitled only if the lands have been dealt with as agricultural lands. (*Phillips and Venkatasubba Rao, JJ.*). THAREESAMANA *v.* D. C. OF COCHIN.
77 I.C. 347=18 M.L.W. 356=33 M.L.T. 48=
1923 M.W.N. 682=A.I.R. 1924 Mad. 252=
45 M.L.J. 339.

———*Compensation—Assessment—Special adaptability of the land must be considered—Principle of Act is to provide complete indemnity to owner.*

Clauses 3 and 4 of section 23 provide that in determining the amount of compensation to be awarded for land acquired, the Court shall take into consideration the damage sustained by the person interested by reason of severing such land from his other land, and the damage sustained by reason of the acquisition injuriously affecting his other property. The assessment of the value of the land, regardless of the user for which it is specially fitted, cannot lead to an adequate award of the compensation for the loss sustained by the owner. The special adaptability of the land acquired cannot accordingly be altogether ignored in the determination of its market value. The owner cannot be placed in as favourable a position as he was in

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before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken, by other premises or lands which would be to him of the same value.

Per *Buckland, J.*—The intention of S. 23 is to provide a complete indemnity to a person whose land is compulsorily acquired. Any enhanced value which it may have by reason of the use to which it will be put after acquisition must, of course, be ignored. There are cases where land is used for a special purpose in conjunction with other lands of its owner which are injuriously affected by its acquisition and where the owner will be compelled by law to, or can, provide himself with other land capable of being adapted in such a way as to restore to his land injuriously affected, its former usefulness. One measure of the damage sustained by the acquisition injuriously affecting the other property is the difference between the sum awarded for the land acquired and the costs to the owner of providing himself with other land to be used in a manner similar to that in which the land acquired was used, plus the cost of adapting it to such use. (*Mookerjee and Buckland, JJ.*). CHAIRMAN, SERAMPORE MUNICIPALITY *v.* SECY. OF STATE.
66 I.C. 846=49 Cal. 83=25 C.W.N. 677=A.I.R. 1922 Cal. 386.

———*More beneficial purpose than present one for which land may probably be used within reasonable period must be taken into consideration—Evidence of offers is valuable for determining whether there is a market for the land for such more beneficial use.*

Tribunals assessing compensation must take into account, not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market. The value to be paid for is the value to the owner as it exists at the date of the taking such value consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined. Too much importance must not be attached to evidence of offers in ascertaining the market value of land ; but the position is different where the question is, whether there is a market at all for a tract of land for use for a specified purpose. 10 Bom. L. R. 907, *Dist.* So where the acquired lands could not be profitably used as independent brickfields but there was trustworthy evidence to show that if the acquired lands had been thrown into the market, adjoining brickfield owners would in all probability have come forward to purchase them or to take leases of them for inclusion in their brickfields,

Held, that this possibility must be taken into consideration in calculating the amount to be awarded as compensation upon compulsory acquisition. *English and Indian Case-law discussed.* (*Mukerji and Buckland, JJ.*). MOHINI MOHAN *v.* SECY. OF STATE.
67 I.C. 25=34 C.L.J. 188=23 C.W.N. 1002=A.I.R. 1921 Cal. 193.

———*Basis of compensation.*

In a land acquisition case, the price of the land proposed to be acquired must be fixed in reference to the probable use which would give the owner the best return and not merely in accordance with its present use. (*Abdul Raoof, J.*). HARDWARI MAL *v.* SECY. OF STATE.
64 I.C. 146 (Lah.).

LAND ACQUISITION ACT (1894), S. 23—Facts to be considered.

—S. 23—Expert evidence.

———*Residential quarters—Basing value on hypothetical rent merely, is not enough—Opinion of experts, price paid for adjacent lands and prospects of profits are things to be considered.*

The methods of valuation of land acquired may be classified under three heads: (1) the opinion of valuators or experts, (2) the price paid within a reasonable time in *bona fide* transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages, and (3) a number of years' purchase of the actual or immediately prospective profits from the lands acquired. It is generally necessary to take two or all of these methods of valuation. in order to arrive at a fairly correct valuation. Exact valuation is practically impossible, the approximate market value is all that can be aimed at. (*De Souza, Ag.J.C.*). N.H. MIRCHANDANI *v.* SPECIAL LAND ACQUISITION OFFICER, KARACHI.
101 I.C. 269=A.I.R. 1927 Sind 168.

———Where experts give no real data in support of their opinions, the evidence is admissible but may be excluded from consideration as affording no assistance in arriving at the correct value. 11 C. W. N. 875, 877 ; 10 Bom. L. R. 907, 913 ; 33 Bom. 325, *Foll.* (*Broadway and Fforde, JJ.*). SECY. OF STATE *v.* (SHRIMATI) SARLA DEVI CHAUDHRANI.
79 I.C. 74=5 Lah. 227=A.I.R. 1924 Lah. 548.

—S. 23—Facts to be considered.

———The land acquired was an irregularly shaped piece by the sea and was covered by the tide at various times and for ordinary purposes was practically useless. It was, however, capable of being used for salt works.

Held, that the present market value of that potentiality would decide the amount of compensation. A.I.R. 1914 P.C. 199, *Rel. on.* (*Viscount Dunedin.*) VALLABHDAS NARANJI *v.* COLLECTOR.
115 I.C. 730=33 C.W.N. 549=29 M.L.W. 694=1929 M.W.N. 376=31 Bom. L.R. 683=49 C.L.J. 497=A.I.R. 1929 P.C. 112=56 M.L.J. 750 (P.C.).

———Money paid by lessee to sub-lessee as compensation for using land as brickfield need not be considered in ascertaining market value. (*B. B. Ghose and Panton, JJ.*). SECY. OF STATE *v.* FAKIR MD. MANDAL.
101 I.C. 349=45 C.L.J. 185=A.I.R. 1927 Cal. 415.

———*Leasehold land—Renewal clause has no commercial value.*

Where a lease provided that if the lessee so desires he shall have the right to take a renewed lease for a further term or equal to the term already fixed under the lease, on performing the several conditions imposed, at a rent, which will not be less than the highest rate at which land revenue is assessed on lands in the neighbourhood and under similar covenants and provisions.

Held, the right to renewal of the lease was too hypothetical to be of real commercial value and could not be considered in awarding compensation. (*Rutledge, C.J. and Mya Bu, J.*). W.F. NOYCE *v.* COLLECTOR OF RANGOON.
104 I.C. 373=6 Bur. L.J. 91=A.I.R. 1927 Rang. 246.

———*Court is to consider what price would be paid by a willing purchaser.*

In cases of compensation the Court has to consider what a willing purchaser would give for the land on or about the date of the notification for acquisition. The Judges while ascertaining the

LAND ACQUISITION ACT (1894), S. 23—Facts to be considered.

value of compulsorily acquired lands should consider, when they have worked out the figures according to their calculations from the evidence, how that result would compare with the opinion which they are entitled to form from their own inspection of the land. (*Macleod, C.J. and Madgavkar, J.*). COLLECTOR *v.* THE MANAGER, KURLA ESTATE. **93 I.C. 142=28 Bom.L.R. 67=A.I.R. 1926 Bom. 223.**

——In awarding compensation, any and every element of value which the lands possess to the owner must be taken into consideration in so far as it increases the value to him. In other words, not the land alone but the land with all its potentialities must be considered in assessing the value, but the claimant is not entitled to the hypothetical profit which in certain events he is likely to make. (*Krishnan and Venkatasubba Rao, JJ.*). COLLECTOR OF CHINGLEPUT *v.* KADIR MOHIDEEN. **95 I.C. 883=A.I.R. 1926 Mad. 732=50 M L.J. 566.**

——*Market value—Land situate at a distance from residential quarters—No extra value exists.*

In ascertaining market value of land the fact that it may be possibly used for building purposes, has to be remembered. Where the land is situated in great towns and cities such an element makes a substantial difference. But in small villages, in the case of sites situated at a distance from the residential quarters in a village, it may make no difference; where, whether the value is ascertained by capitalizing its agricultural income or by regarding it as one fit for building purposes does not make any substantial difference, or to put it in other words, where there is no extra value to be given to it, if used for building purposes, there is no question of distribution of this extra value between the zamindar and the tenant. 42 M. 644, *Dist.* (*Ramesam and Jackson, JJ.*). RAJAH OF PITTAPUR *v.* REVENUE DIVISIONAL OFFICER, COCANADA. **86 I.C. 238=21 M.L.W. 88=A.I.R. 1925 Mad. 818.**

——*Higher value is under certain circumstances allowable by reason of advantage accruing from action taken by the Trust in respect of a neighbouring parcel acquired previously—"Market value of land" defined—Other sales are admissible in evidence to prove value.*

The basis on which compensation for lands taken is to be assessed is the value of the lands to the owner as it existed at the date of the notice to treat and not their value when taken to the promoters. All advantages which the land possesses present or future in the hands of the owner may be taken into consideration. The owner is entitled to have the price assessed in reference to those advantages which will give the land the greatest value. The value of an owner's interest is not properly compensated by assessing the amount of pecuniary benefits obtained by past user in disregard of possible benefits in the future. The probability of a more profitable future use is one such advantage which may be taken into consideration. Thus land which may probably be used for building purposes must not be valued on the same basis as purely agricultural land. But although prospective value is a necessary element in the assessment of compensation such value must be entirely excluded where it would arise from the construction of the particular works authorised by the Act which gives compulsory powers.

LAND ACQUISITION ACT (1894), S. 23—Market value.

Where the Improvement Trust authorities intended to keep the previously acquired plot as an open space in order that it might be annexed to the land under consideration and both amalgamated with an existing open square,

Held, the benefit which might accrue to the purchaser from the expression of intention of the Improvement Trust authorities if carried into effect would immediately result in the destruction of his right as purchaser and consequently that is not an element for consideration. In assessing the value of land acquired for the purpose of a scheme sales of other similar lands between the date of the promulgation of the scheme and the date of the declaration are admissible in evidence. (*Mookerjee and Rankin, JJ.*). MANMATHA NATH MULLICK *v.* SECY. OF STATE. **83 I.C. 442=28 C.W.N. 461=A.I.R. 1924 Cal. 575.**

—S. 23—Market value.

——The market value, which under the provisions of S. 23, should be given is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by the business principles prevalent in the locality at that time. (*Stuart, C.J. and Raza, J.*). ALI QUADER *v.* SECY. OF STATE. **121 I.C. 392=7 O.W.N. 392=A.I.R. 1930 Oudh 223.**

——*Market value of land determines compensation.*

In determining the amount of compensation the Court should take into consideration the market value of land at the date of the publication of the notification, that value being the chief index of amount of compensation irrespective of any consideration of how the land is held. 40 All. 367, *Diss. from*; 42 Mad. 644, *Rel. on.* (*Mukerji and Niamatullah, JJ.*). RAHAN LAL *v.* COLLECTOR OF ETAH. **117 I.C. 612=1929 A.L.J. 322=51 All. 765=A.I.R. 1929 All. 525.**

——The correct interpretation of S. 23, sub-S. (1), cl. (1), Land Acquisition Act, as amended by para. 10, cl. (3) of the Schedule to the U. P. Town Improvements Act, 1919 (U. P. Act VIII of 1919) is that the market value of the land to be acquired is to be calculated exclusively in accordance with the use to which the land is being put on the date on which notice issues under S. 29 or S. 36, U. P. Town Improvements Act; and where, on such date the land to be acquired is not being put to any use, its market value may be nil. A.I.R. 1927 All. 752, *Reversed.* (*Lindsay, Sulaiman and Mukerji, JJ.*). SECRETARY OF STATE *v.* MAKHAN DAS. **107 I. C. 587=50 All. 470=26 A.L.J. 69=A. I. R. 1928 All. 147 (F.B.).**

——The market value of the land acquired is the price that the owner willing, and not obliged to sell, might reasonably expect from a willing purchaser with whom he was bargaining for the sale of the property. (*Case-law discussed.*) (*B. B. Ghose and Cammiade, JJ.*). SWARNAMANJURI DASSI *v.* SECY. OF STATE. **112 I. C. 706=55 Cal. 994=32 C. W. N. 421=49 C.L.J. 54=A.I.R. 1928 Cal. 522.**

——There is no difference between the English principle and the Indian in determining the amount of compensation to be awarded for land compulsorily acquired.

The market value of land to an owner can only be tested by what he would get for it if he was willing to sell and not compelled to sell; and there is no intention either under the English or the Indian Act to compensate him for any attach-

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ment by reason of sentiment or family association. A.I.R. 1925 P.C. 91 and 17 C.L.J. 34, *Ref.* (*Rutledge, C.J. and Brown, J.*). REDDIAR *v.* SECY. OF STATE. **109 I.C. 11=5 Rang. 799= A.I.R. 1928 Rang. 65.**

——*Offers—In determining market value* bona fide *offers should only be considered.*

Proof of *bona fide* offers have to be considered by a Court in determining the market value of land compulsorily acquired, but the probative value of offers has been held to be very low, for the offers alleged in land acquisition proceedings are scarcely ever *bona fide*. They can be easily arranged without any loss or inconvenience to either party, and individuals, respectable in their various relations of life, have no compunction in lending themselves to a fictitious transaction which may assist a friend in extracting more than due from Government or a public body at no cost to themselves. (*Rutledge, C.J. and Brown, J.*). REDDIAR *v.* SECY. OF STATE. **109 I.C. 11=5 Rang. 799= A.I.R. 1928 Rang. 65.**

——*Market value of the land means the market value of all interests in the land.*

Market value of the land means the market value of all interests in the land, but where Government have some interest in the land to be acquired, all that the claimant is entitled to is the value of his interest in the land, and it is this value alone that has to be determined by the Court.

Government having an interest limited to the toka claim have an interest in the land. 34 Bom. 618; 10 Bom. L.R. 657 and 33 Bom. 483. *Foll.* (*Taleyarkhan, J.*). GOVERNMENT OF BOMBAY *v.* N.H. MOOS. **106 I.C. 31=29 Bom.L.R. 1450= A.I.R. 1927 Bom. 635.**

——In the case of residential property to arrive at the market value solely on the basis of hypothetical rent may work grave injustice to the owner. An attempt should be made to arrive at an approximate value with reference to each of the three methods above indicated. 11 C.W.N. 875 and 34 Bom. 486, *Rel. on.*

Evidence as to the rents actually paid by *bona fide* tenants about the period of the notification should not be excluded, nor should the rent be calculated as a mere multiple of the carpet area without reference to the amenities of the tenants. (*De Sousa, A.J.C.*). N.H. MIRCHANDANI *v.* SPECIAL LAND ACQUISITION OFFICER. **101 I. C. 269= A.I.R. 1927 Sind 168.**

——Sale nearest in date to the acquisition is the best criterion of the market value at the time of the acquisition. (*Das and Ross, JJ.*). SECRETARY OF STATE *v.* MANMATHA NATH. **84 I.C. 371= 2 Pat. L.R. Civ. 268=A.I.R. 1925 Pat. 129.**

——*Market value is price reasonably to be expected by willing owner from willing purchaser—Genuine sales about the time of the notification are best evidence—Adaptability of agricultural lands as building sites must be considered—Offers are not very important as evidence.*

It is not idle speculation or unpractical imagination that must rule estimates for the purpose of awarding compensation to the owner of land being compulsorily acquired, but it is prudent business considerations such as would prevail with an intending purchaser at the imaginary market which would have obtained if the land had been announced for sale at the time of its compulsory acquisition, that must have the greatest weight. Save by the adoption of such principles the operative effect of special adaptability or future utility of the land must not be estimated. The fairest and the most favourable basis on which compensation should be given to the owner is to take into account the estimate of the market value of the property in accordance with the most lucrative and advantageous way in which such land can be sold in open market at the time of acquisition.

In estimating the market value of the land the best evidence will be the evidence of genuine sales which took place about the time of the notification for acquisition either in respect of the same land or any portion thereof or the sale of lands exactly similar in all its circumstances to the sale of the land under compulsory acquisition. The evidence of offers should not be given much importance in ascertaining the market value of the land. The adaptability of agricultural lands as sites for building is an element to be taken into account in determining the value of the land being compulsorily acquired. But deductions must be made for the payment of the ordinary premium and revised assessment which may be leviable on conversion of agricultural lands into building sites.

On the whole, therefore, the market value of the land may be roughly described as the price that an owner who is willing but who is not obliged to sell the land might consistently with reason expect to get from a willing purchaser with whom he is bargaining for the sale and purchase of the land. 17 C. L. J. 34; 33 Bom. 28; A.I.R. 1924 Mad. 252; 94 C.W.N. 1002; 15 Bom. 279; 1 Bom. L.R. 454; 38 Bom. 37 and 10 Bom. L. R. 907, *Foll.* (*Raymond and Rupchand Bilaram, A.J.Cs.*). KHUSHIRAM DEOMAL *v.* ASST. COMMISSIONER OF SHIKARPUR. **79 I.C. 376=17 S.L.R. 288= A.I.R. 1925 Sind 112.**

——It is difficult to say because there will be some building occupied by the Police on that piece of land acquired by Government a purchaser wishing to buy the rest of the claimant's land would consider that the Police was a drawback which would reduce its value. (*Macleod, C.J. and Crump, J.*). GAJANAN VINAYAK *v.* THE ASST. COLLECTOR OF SALSETTE THANA. **85 I.C. 11= 25 Bom. L.R. 480=A.I.R. 1924 Bom. 54.**

——"Market value of land" means the price which would be obtainable in the market for a concrete parcel of land with its particular advantages and its particular drawbacks both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal right. The market value of land is the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land; in other words, the price which a piece of land fetches when it is offered for sale, the seller being not obliged to sell it and the buyer being under no necessity of buying it. (*Mookerjee and Rankin, JJ.*). MANMATHA NATH MULLICK *v.* SECRETARY OF STATE. **83 I.C. 442= 28 C.W.N. 461=A.I.R. 1924 Cal. 575.**

——*Compensation—Valuation of land should not be less than what the claimant had purchased it for.*

The appellant purchased in July, 1918, for Rs. 92,500 a piece of land with a bungalow on it which was compulsorily acquired by Government in April 1919.

Held, in coming to a decision with regard to the market value of the land on the date of its com-

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pulsory acquisition the two most important questions are (1) whether the claimant has paid so high a price that the Court may consider that he had not displayed the ordinary caution which a purchaser of land should display; and (2) whether there has been any increase in the value of property in the neighbourhood within the few months which elapsed between his purchase and the Government Notification.

The Government have wide powers under the Act to deprive a man of his property and it is only fair that he should be recouped on a liberal scale. Any endeavours to unduly depreciate the value of properties that have to be acquired in order that Government may acquire as cheaply as possible should be condemned equally with the exaggerated valuations put by claimants. (*Macleod, C. J. and Shah, J.*). K. P. FRENCHMAN *v.* ASSISTANT COLLECTOR, HAVELI. **68 I.C. 521= 24 Bom. L.R. 782= A.I.R. 1922 Bom. 399.**

—S. 23—Mode of valuation.

———*Mode of valuation should be left to discretion of Collector and Court.*

No general principle as regards the mode of valuation can be laid down for ascertaining the market value of the land to be acquired. The mode of valuation must, therefore, be left to the discretion of the Collector and the Court having regard to the nature of the property. 33 Bom. 483 and 24 C.W.N. 184, *Ref.* (*B.B.; Ghose and Panton, JJ.*). HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY *v.* SECY. OF STATE. **121 I.C. 737=56 Cal. 989= A.I.R. 1930 Cal. 230.**

———The reversion in the case of a particular land should not be taken to be of less value than the bare land because there are buildings on it. (*B. B. Ghose and Cammiade, JJ.*). K. S. BANERJEE *v.* JATINDRA NATH PAUL. **108 I.C. 253= A.I.R. 1928 Cal. 475.**

———Hypothetical building schemes can be the usual basis of valuation in case of building lands, but the course contemplated in such cases is that a surveyor should be called who would unfold a scheme giving details of the amount to be spent and estimating probable returns which could be tested in cross-examination. 16 Bom. L. R. 55 (P.C.), *Ref.* (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I.C. 797= A.I.R. 1928 Lah. 263.**

———In all valuations, judicial or other, there must be room for inferences and inclinations of opinion, which, being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others. 26 Bom. 1 (P.C.), *Foll.* (*B.B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* AMULYA CHARAN. **104 I. C. 129=A.I.R. 1927 Cal. 874.**

———The rule that under the Act the Court is not entitled to award as compensation to a claimant an amount less than the amount offered by the Collector is not infringed if the Court decreases the amount of market value of the land and awards additional compensation for severance under Ss. 23 (1) (4), provided that the total amount awarded is not less than the amount awarded by Collector. (*Macleod, C.J. and Coyajee, J.*). BAI JADHAV *v.* COLLECTOR OF BROACH. **96 I.C. 316=23 Bom.L.R. 576= A.I.R. 1926 Bom. 372.**

———Where land held by an occupancy tenant is not land situated in the midst of agricultural land and changing conditions have given it an increased value as being a prospective building site, it would

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not be right, first to assess the value of the landlord's interest in the land as agricultural land and then, after deducting that amount, to hand over the balance to the tenant. The right method is to approach the subject from the point of view of what the tenant should get as a tenant of agricultural land and, after capitalizing the tenant's interest, to give the whole of the balance to the landlord. (*Walmsley and Chakravarti, JJ.*). NIBAS CHANDRA *v.* BIPIN BEHARY. **96 I.C. 69= 53 Cal. 407=A.I.R. 1926 Cal. 846.**

———Land acquired under the Act should not be valued as a building site and at the same time valued upon the footing of the produce of fruit of the trees remaining there. 13 C.W.N. 487, *Foll.* (*Spencer and Ramesam, JJ.*). SHANMUGA VELAYUDA MUDALIAR *v.* COLLECTOR OF TANJORE. **93 I.C. 639=23 M.L.W. 336= 1926 M.W.N. 235= A.I.R. 1926 Mad. 945.**

———In the case of cocoanut topes, it is reasonable basis for fixing the market value to calculate ten years' purchase on the average income of the yielding trees plus the value of the timber of the non-yielding trees. (*Spencer and Ramesam, JJ.*). SHANMUGA VELAYUDA MUDALIAR *v.* COLLECTOR OF TANJORE. **93 I.C. 639=23 M. L.W. 336= 1926 M.W.N. 235=A.I.R. 1926 Mad. 945.**

—S. 23—Powers under.

———While the Land Acquisition Act gives the Acquiring Officer very wide discretion as to the scope of the inquiry and as to the materials which he may take into consideration, it requires him to make an award as to the matters mentioned in S. 11 and to have regard to the provisions of Ss. 23 and 24 in determining the amount of compensation as laid down in S. 15. (*Macleod, C. J. and Shah, J.*). PADAMSI NARAIN *v.* THE COLLECTOR OF THANA. **64 I.C. 103=46 Bom. 366= 23 Bom. L.R. 779= A. I. R. 1922 Bom. 161.**

———It is competent to a land acquisition Judge to direct a portion of the compensation money to be paid towards the cost of the proceedings by which the money came to be awarded to an administratrix having a limited power of alienation. 39 Cal. 33, *Ref.* (*Chatterjee and Panton, JJ.*). LALIT MOHAN DEY *v.* H.N. DUTT & CO. **65 I.C. 209 (Cal.)**

—S. 23—Price of similar land.

———Where a Court ignores all the considerations pertinent to claimants' own lands and founds itself exclusively on the evidence as to the price accepted for other plots (acquired at the same time) the conditions of which were not fully before it, the principle applied by the Court in awarding compensation on the basis of compensation accepted by the owners of other lands is erroneous. A.I.R. 1925 Nag. 292, *Reversed.* (*Lord Blanesburgh.*) ATMARAM BHAGWAN *v.* COLLECTOR OF NAGPUR. **114 I.C. 587=1929 A.L.J. 249=33 C.W.N. 458= 29 M.L.W. 496=6 O W.N. 417=12 N.L.J. 37= 49 C.L.J. 398=28 N.L.R. 68=31 Bom. L.R. 728= A. I. R. 1929 P. C. 92=57 M. L. J. 81 (P.C.).**

———Prices which are given by Collector to people whose lands are acquired and who accept them are valuable evidence in ascertaining the market value of the property in suit. 36 Cal. 967 (P.C.), *Foll.* (*B.B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* AMULYA CHARAN. **104 I. C. 129= A.I.R. 1927 Cal. 874.**

———The rates paid for building plots of 4 and 6 cents are no criterion in valuing a block of over seven acres for the whole of which there is no immediate demand and much of which would have to

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be devoted to roads and lanes. (*Waller and Madhavan Nair, JJ.*). CHETTIAMMAL *v.* COLLECTOR OF COIMBATORE. **105 I. C. 219= A. I. R. 1927 Mad. 867.**

———*In case of valuation of large area of land values paid to the lands in the neighbourhood is the real guide—Various portions cannot be separately valued.*

In a case of acquisition of land where a large area has to be valued it is impossible to fix the value of various portions of it at different rates on anything like approaching an accurate basis. The only way in which the market value can be arrived at is to judge from other sales what the whole land would have been likely to realize in the market. It is not possible to divide the whole into separate pieces and give one value to so much of front land, and divide again the interior land into separate portions and value them again at different rates. If a few of the frontage plots are sold for building purposes, that is no evidence that the remainder of the land can be sold for building purposes. The real test by which the market value can be arrived at is to gather from other sales what the whole land would have been likely to realise in the market about the time of acquisition. It is altogether wrong to assume that every square yard of land has a potential value, the present value of which is more than nominal. (*Macleod, C. J. and Coyajee, J.*). THE COLLECTOR *v.* RAMACHANDRA HARISCHANDRA. **91 I. C. 300= 27 Bom. L. R. 1276=A.I.R. 1926 Bom. 44.**

———Evidence relating to the sale of a piece of land in the neighbourhood in which there was a *pucca* building is not inadmissible in a case where land without any building is being acquired. (*Newbould and Ghose, JJ.*). MADAN MOHAN BURMAN *v.* SECY. OF STATE. **78 I. C. 557= A.I.R. 1925 Cal. 481.**

———Price of similar land in similar circumstances is the test—Acceptance of Collector's award as a correct valuation by neighbouring plot owners is best evidence of Collector's proper valuation. (*Baker, Offg. J. C. and Hallifax, A. J. C.*). COLLECTOR OF NAGPUR *v.* ATMARAM BHAGWANT. **A. I. R. 1925 Nag. 292.**

———*Market value is determined by sales in the vicinity.*

The proper method of valuation is to determine the market value of the land as a whole having regard to the sales in the locality.

The mere fact that a parcel of land is bought by a speculator in land with the object of re-selling it at a profit is no ground for disregarding the sale in compensation cases under the Land Acquisition Act.

The expression "market value" means the value which a parcel of land would realise if sold in the market. The test then is the test of a sale in the market. The seller must be a willing seller; a forced sale affords no criterion of market value. The purchaser must be a prudent purchaser, that is, one who makes his offer after making necessary inquiries as to the value of the land. An offer made by one who knows nothing of the value of the land in the locality and who makes no inquiries about it, affords no test of market value. The essential feature of market value is, as the term imports, the value that could be realised on a sale in the open market. The market may be dull or brisk. Whether it be dull or brisk, it cannot be excluded from

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consideration. (*Mulla, J.*). GOVT. OF BOMBAY *v.* MERWAN MOONDIGAR. **82 I.C. 796= 48 Bom. 190=25 Bom. L.R. 1182= A.I.R. 1924 Bom. 161.**

———*Small plots purchased by neighbours fetching much higher value—Market value is the value of land laid out in the most lucrative and advantageous way—Scheme must be actual.*

It is a well-known fact that a purchaser may be willing to pay a sum far in excess of the real value for a small plot of land when that plot of land was needed by him in order to round off his own property or for some other such reason. The fairest and most favourable principle of compensation to the owners is to estimate the market value of the property not according to its present disposition but laid out in the most lucrative and advantageous way in which the owners could dispose of it. Objectors can put forward a scheme showing how the site in question could have been developed by splitting it up in various plots. Scheme for such a development must be put forward and evidence must be led to show that there was any real demand for small houses or shops in the vicinity. The opinion of a Tahsildar based mainly on the objector's opinion as to the value and his claims made before the Tahsildar has practically no evidential value. (*Broadway and Fforde, JJ.*). SECY. OF STATE *v.* (SHRIMATI) SARLA DEVI CHAUDHRANI. **79 I.C. 74=5 Lah.227=A.I.R. 1924 Lah.548.**

———*Acquisition of small plots cannot be the basis for that of big plots.*

The market value of a big piece of land cannot be determined from the acquisition money of parts, for, when very small plots are acquired the actual rates at which they are acquired are not often properly scrutinised, the whole cost of the acquisition being small. (*Krishnan and Ramesam, JJ.*). RATHNAMASARI *v.* SECY OF STATE. **72 I.C. 214=17 M.L.W. 415=32 M.L.T. 279= A.I.R. 1923 Mad. 332=44 M.L.J. 132.**

—S. 23—Price paid by claimant.

———*Acquisition of plots having building stone—Purchase by claimant of one plot two years prior—In absence of any change in circumstances from date of sale to date of acquisition, compensation at the rate of sale should be granted.*

Certain plots which were in hills and were chiefly valuable for the building stone of good quality underlying the surface were acquired by Government on 10th February, 1921. The claimant who had then started quarrying in some of the hills had purchased one of the plots in question on 30th November, 1919 for 7½ annas a square yard. The Assistant Judge decreed compensation to the claimant for all the land in question at 7½ annas a square yard. On appeal, the High Court reduced the award to Rs. 1,000 per acre on the ground that by February 1921 such circumstances as had existed from the middle of 1919 until the end of 1920 had begun to lose their force.

Held, that the High Court did not refer to any evidence supporting the conclusion. Such evidence as was given did not support the suggestion of any such change until the latter part of 1921. Compensation at the rate of 7½ annas a square yard should therefore be decreed. A. I. R. 1926 Bom. 433, *Reversed*. (*Lord Carson.*) GHULAM HUSSEIN AHMED SOMAJI *v.* LAND ACQUISITION OFFICER, SOUTH SALSETTE, BANDRA. **114 I.C. 9= 31 Bom. L.R. 241=29 M.L.W. 507= A.I.R. 1928 P.C. 305=56 M.L.J. 127 (P.C.).**

LAND ACQUISITION ACT (1894), S. 23—Price paid by claimant.

———The price paid by the claimant within a few years of the acquisition should be taken into consideration while awarding compensation and if the Government relied on a depreciation, it is for them to prove the extent of depreciation. 18 Bom. 184; A. I. R. 1922 Bom. 399 and A. I. R. 1924 Bom. 362, *Ref.* (*De Souza, A. J. C.*). N. H. MIRCHANDANI *v.* SPECIAL LAND ACQUISITION OFFICER, KARACHI. **101 I.C. 269= A. I. R. 1927 Sind 168.**

———Price paid for property recently purchased is *prima facie* the market value but where it has been influenced by a boom which is followed by a fall in the price the Court should make a reasonable deduction in awarding compensation. (*Mulla, J.*). GOVERNMENT OF BOMBAY *v.* ISMAIL AHMED HAFIZ MOOSA. **85 I.C. 531= 26 Bom.L.R. 227=A.I.R. 1924 Bom. 362.**

—S. 23—Purpose of acquisition.

———*Advantage to be gained by scheme for which the land is acquired is not to be considered.*

Upon a compulsory acquisition of property the seller is entitled to the value to him of the property in its actual condition at the time of expropriation with all its advantages and with all its possibilities excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired. A. I. R. 1925 P.C. 91, *Foll.* (*De Souza, A.J.C.*). N. H. MIRCHANDANI *v.* SPECIAL LAND ACQUISITION OFFICER, KARACHI. **101 I.C. 269= A.I.R. 1927 Sind 168.**

———*Culturable land acquired for quarrying purposes—Adaptability for quarrying must be considered.*

When a piece of land is compulsorily acquired for quarrying purposes, its special adaptability for quarrying is an element for consideration in fixing the amount of compensation, although no one but the local authority for which the land was being acquired demanded the land as quarry.

The compensation to be paid is the present value of all the gravel that may be expected to be realized in the future. (*Oldfield and Bakewell, JJ.*). RAGHUNATH RAO *v.* SECY. OF STATE. **60 I.C. 187= 44 Mad. 264=13 M. L. W. 11= A. I. R. 1921 Mad. 324.**

—S. 23—Rate.

———Where a land was situated within Municipal limits, surrounded by three roads and a line of railway,

Held, the land near the railway godown possessed a high potential value and assessing its value at four annas a yard was held not wrong. 10 Bom. L. R. 675, *Rel. on.* (*Fforde and Skemp, JJ.*). SECY. OF STATE *v.* MAKHAN LAL. **118 I.C. 541= A. I. R. 1929 Lah. 112.**

———In Cawnpore where the value of land is increasing rapidly, the rate of 16 2/3 years' purchase is too low. (*Tudball and Sulaiman, JJ.*). LUCHMAN PRASAD *v.* SECY. OF STATE. **63 I. C. 682= 19 A.L.J. 672=43 All. 652=A.I.R. 1921 All. 402.**

—S. 23—Rent.

———In calculating the price of a property which is subject to a lease, rent ought to be taken into consideration. (*B. B. Ghose and Cammiade, JJ.*). SWARNAMANJURI DASSI *v.* SECY. OF STATE. **112 I.C. 706=55 Cal. 995=32 C.W.N. 421= 49 C.L.J. 54=A.I.R. 1928 Cal. 522.**

———Market value—Land to be acquired likely to continue to produce rent—Rent is basis on which the value will be calculated. *Earl of Eldon* v. *N. E. Ry. Co.*, (1899) 80 L. T. (N.S.) 723, *Foll.*

LAND ACQUISITION ACT (1894), S. 23—Trees.

(*B. B. Ghose and Cammiade, JJ.*). SWARNAMANJURI DASSI *v.* SECY. OF STATE **112 I.C. 706=55 Cal. 995=32 C.W.N. 421= 49 C.L.J. 54=A.I.R. 1928 Cal. 522.**

———In Calcutta and its suburbs the number of years taken in capitalizing upon a rack rental is usually 20, not 25. (*B.B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* AMULYA CHARAN. **104 I.C. 129=A.I.R. 1927 Cal. 874.**

———Rent of *basti* land is often no criterion for ascertaining the actual value of the land. (*B.B. Ghose and Roy, JJ.*). SECY. OF STATE *v.* ALTAF HOSSEIN. **103 I.C. 714=A.I.R. 1927 Cal. 827.**

———The method of capitalization of the rental value is not a proper method to use for ascertaining the value of garden land surrounding house. It is much better to take the value of the land in the neighbourhood. (*Krishnan and Ramesam, JJ.*). RATHNAMASARI *v.* SECY. OF STATE. **72 I.C. 214=17 M.L.W. 415=32 M.L.T. 279= A.I.R. 1923 Mad. 332=44 M.L.J. 132.**

———*Market value—Building and land—Value must be based on net rental value of the whole.*

When a building and its appurtenant land cannot be valued separately, the market value must be determined on the net rental value and when that is done the building cannot be separated from the land, for it is impossible to say what proportion of the rent is fixed on the building and what on the land. No private agreement to purchase at a certain price can determine the real and precise market value of the land and can only be useful in furnishing an approximate figure. 33 Bom. 325 and 2 Cal. 103. *Foll.*; 25 Ind. Cas. 393, *Dist.* (*Phillips and Devadoss, JJ.*). KATUISSABI *v.* REVENUE DIVISIONAL OFFICER, CALCUT. **70 I.C. 82= 16 M.L.W.391=31 M.L.T. 409= 1923 M.W.N. 54=A.I.R. 1923 Mad. 31.**

—S. 23—Tenant-at-will.

———*Interest of a tenant-at-will may have an appreciable market value.*

On acquisition for a corporation the interest of a grantee was valued at a certain amount and Government, as grantors, were paid capitalised value of the revenue which they recovered from the grantee and one-eighth of the amount awarded as compensation. The grantee was a permanent tenant, but it was the condition in the grant that if the land was required for the Government the grantee will give up the same without any compensation; 53 years had passed after this grant.

Held, that the compensation made by the Judge was *prima facie* fair. (*Mookerjee and Rankin, JJ.*). SECY. OF STATE FOR INDIA *v.* BIJOY KUMAR ADYA. **84 I.C. 732=4 C.L.J. 303= A.I.R. 925 Cal. 224.**

—S. 23—Trees.

———The definition of the land as given in the Act itself includes trees standing thereon and therefore there is no reason why the value of the trees should be excluded in calculating the 15 per cent. allowed by the statute. 42 All. 555 and 40 Mad. 151, *Foll.*

The wells go with the land and, therefore, the value of the wells should also be added to the value of the land as apart from the well. (*Mukerji and Boys, JJ.*). COLLECTOR OF BAREILLY *v.* SULTAN AHMAD KHAN. **51 I.C. 150= 48 All. 498=24 A.L.J. 583=A.I.R. 19 All. 689.**

———If the Court puts a fictitious value on the property, on account of its so-called potentiality for building purposes, then that is an inclusive rate and nothing can be allowed in addition for the

LAND ACQUISITION ACT (1894), S. 23—Miscellaneous.

trees. (*Macleod, C.J. and Coyajee, J.*). COLLECTOR OF THANA *v.* CHATURBHUJ. **95 I.C. 513= 28 Bom. L.R. 548=A.I.R. 1926 Bom. 365.**

—S. 23—Miscellaneous.

———Where a possible contingent right to the land acquired is vested in a superior proprietor by way of reversion, even if the right is such as a right in embryo and may never fertilise, when Government compulsorily acquires the land from the usufructuary occupants whoever they are, the superior proprietor is entitled to a portion of compensation money in respect of his possible right of reversion which is cut off for ever by the compulsory acquisition. (*Viscount Dunedin.*) SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO.

A.I.R. 1930 P.C. 261 (P.C.).

———*Calcutta Act (V of* 1911)—"*Disposition of land as a road*"—*Meaning.*

A Co-operative Insurance Society purchased a large tract of land and proceeded to develop the same by driving roads through it with a view to sell it in plots.

Originally the society had been devising schemes for the development of the property and were not aware of any scheme of the Calcutta Improvement Trust affecting their property but when they came to know of the scheme by which the Trust proposed to construct a hundred feet wide sewer road affecting their property they decided that their own scheme for the development of their own property should be made to run in co-operation with the scheme of the Trust. Some plots abutting on the land were sold by the society and the land was described as land kept fo " proposed drainage road of the Trust." Later on the declaration under S. 6, Land Acquisition Act was published in respect of the scheme of the Trust by which the strip of land left undisposed of the society together with other lands adjoining it were declared for acquisition.

Held, that the mere fact that the society knew before the date of declaration that the Improvement Trust was going to acquire the land for the purposes of building a road and therefore left it open and did no dispose of it by sale could not be considered a disposition of the land as a road. The real disposition of the land was that it was part of a scheme for the purpose of selling it in small plots to purchasers as building sites by driving roads through the area in order to give access to the plot. (*B B Ghose and Panton, JJ.*). HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY *v.* SECY. OF STATE. **121 I. C. 737= 56 Cal. 989=A. I. R. 1930 Cal. 230.**

———*Government taking possession of land and building on it prior to notification—Owner of the land held not entitled to the value of the buildings erected by Government.*

In 1919 Government resolved to acquire the claimant's land under the Act and by arrangement with the suitdars took possession of such land. Government proceeded to erect certain building on the land without the necessary notification which was not served until 4th November 1920, when the Government notified under S. 6 of the Act that the lands were needed for a public purpose and the Collector took order for the acquisition thereof.

Held, that the Government officials were in possession "not as mere trespassers" but under such a colour of title that the building erected by them on the land ought not to be included in the valuation as having become the property of the landowner. Justice of the case was met by holding that the claimant was entitled for compensation for the occupation of the lands by the officials before the notification of 4th November 1920, from the date when the Government took possession. A.I.R. 1927 P. C. 135 and 26 Bom. 1 (P.C.), *Ref.*; 20 Bom. 298; 3 W.R. 71 ; 6 W.R. 228 and 6 B.H.C. A. C. 80, *Cons.* (*Lord Carson.*) VALLABHDAS NARAINJI *v.* DEVELOPMENT OFFICER, BANDRA. **117 I.C. 13=1929 A.L.J. 707=33 C.W.N. 785= 31 Bom. L.R. 834=30 M.L.W. 69=56 I.A. 259= 50 C.L J. 45=53 Bom. 589=1929 M.W.N. 822= A.I.R. 1929 P.C. 163=57 M.L.J. 139 (P.C.).**

LAND ACQUISITION ACT (1894), S. 25—Applicability.

———*As amended by the Calcutta Improvement Act —"Owner".*

Owner includes the owner of a leasehold right. (*B.B. Ghose and Cammiade, JJ.*). B.N. ELIAS *v.* SECY. OF STATE. **108 I.C. 251=32 C.W.N. 860= A.I.R. 1929 Cal. 20.**

———Although there might be a public right of way over a portion of land it does not follow that the claimant is entitled to no compensation at all for his rights as a proprietor. (*Macleod, C.J. and Crump, J.*). GAJANAN VINAYAK *v.* THE ASST. COLLECTOR OF SALSETTE THANA. **85 I.C. 11= 25 Bom. L.R. 480=A.I.R. 1924 Bom. 54.**

—S. 24—Facts to be neglected.

———Per *Walsh, Ag. C. J. and Pullan, J., contra Dalal, J.*—An owner whose land has been acquired for the purpose of opening a market has no right to receive compensation for loss of profits derived from an existing market on other neighbouring land belonging to him. 34 Cal. 470, *Rel.*; 18 C.L.J. 244, *Dist. English case-law referred to.* (*Walsh, Ag. C.J., on difference between Dalal and Pullan, JJ.*). SECRETARY OF STATE *v.* MOHAMMAD ISMAIL KHAN. **100 I.C. 749=25 A.L.J. 177= 49 All. 353=A.I.R. 1927 All. 246.**

—S. 24—Interpretation.

———*Walsh, Ag. C.J. and Pullan, J., contra Dalal, J.*—"Him" in S. 24 (3) cannot be taken to relate to a third person. It can only relate "to the person interested" mentioned in the preceding clause, *i.e.*, the claimant. (*Walsh, Ag.C.J., on difference between Dalal and Pullan, JJ.*). SECY. OF STATE *v.* MD. ISMAIL KHAN. **100 I.C. 749=49 All. 353= 25 A.L.J. 177=A.I.R. 1927 All. 246.**

—S. 25—Appeal.

———*Judge cannot reduce award by Collector—Order reviewing previous order confirming Collector's award—Appeal lies.*

Where the District Judge after confirming the Collector's award, on an application by the Government Pleader reviewed his award and made a fresh award by which the amount awarded by the Collector was reduced,

Held, an appeal lay against the revised award under S. 54 of the Act. Even though the Collector has by mistake awarded the claimant a larger sum than he is entitled to, the District Judge, on a reference made to him under Land Acquisition Act. cannot award a less amount than that awarded by the Collector. (*Tudball and Sulaiman, JJ.*). CHANDRA LAL SAH *v.* COLLECTOR OF BAREILLY. **64 I.C. 624=44 All. 86=19 A.L.J. 871= A.I.R. 1922 All. 203.**

—S. 25—Applicability.

———The stringent provisions of S. 25 (2) can only be applied after a notice which is strictly in compliance with S. 9 (2) and (3) has been served upon the landowner.

Where the notification under S. 9 (3) does not give the claimant a fifteen days' notice as required,

LAND ACQUISITION ACT (1894), S. 25—Method.

it amounts to "sufficient cause" within the meaning of S. 25 (3) for the claimant's omitting to make a claim and he thereby escapes the stringent provisions of S. 25 (2). (*Beasley, C.J. and Curgenven, J.*). N. M. VENKATARAMA IYER *v.* COLLECTOR OF TANJORE. **A.I.R. 1930 Mad. 836.**

—S. 25—Method.

——The method of first valuing the land, and then giving an additional amount as compensation, because some of the land happens to be of higher elevation and the purchaser may sell the stone or earth, removed for the purpose of levelling the land, is not a proper method of valuation. (*Macleod, C. J. and Madgavkar, J.*). THE COLLECTOR *v.* MANAGER, KURLA ESTATE.

93 I. C. 142=28 Bom. L. R. 67=A.I.R. 1926 Bom. 223.

—S. 25—Principle.

——The principle upon which the compensation should be paid to a person for land compulsorily acquired is : " It is the value to the seller of the property in its actual condition at the time of expropriation with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired." A.I.R. 1925 P. C. 91, *Foll.* (*Findlay, J.C.*). PANDURANG FATE *v.* COLLECTOR, NAGPUR. **108 I. C. 745 (Nag.).**

—S. 25—Reduction by Court.

——Court cannot reduce the amount awarded by Collector. (*Phillips and Devadoss, JJ.*). KATHISSABI *v.* REVENUE DIVISIONAL OFFICER, CALICUT.

70 I.C. 82=16 M L.W. 891=31 M.L.T. 409=1923 M.W.N. 54=A.I.R. 1923 Mad. 31.

—S. 25—Reversioner.

——*Reversioners are not bound by the valuation by widow before Collector.*

Section 25 of the Land Acquisition Act (I of 1894) is designed with the purpose of holding claimants to their own bargains and of preventing demands being increased at every stage from the Collector to the High Court. Under S. 25 claimants are estopped from getting more from the Judge than what they claimed before the Collector, and, on the same principle, their legal representatives would no doubt be bound. But although a widow represents her deceased husband's estate for certain purposes and has limited powers of disposal over it, the reversioners are not her legal representatives nor can they be bound by the facts on any principle of estoppel. (*Spencer and Kumaraswami Sastri, JJ.*). GATTINENI PEDA GOPAYYA *v.* DY. COLLECTOR OF TENALI. **67 I.C. 146=45 Mad. 421=15 M.L.W. 366=1922 M.W.N. 188=A.I.R. 1922 Mad. 100=42 M.L.J. 298.**

—S. 25—Scope.

——Section 25 is concerned with the maximum and minimum amounts which the Court may award in each of the three cases: (1) where the applicant has made a claim before the Collector, (2) where without sufficient reason he has failed to make a claim, and (3) where with sufficient reason he has so failed. In the last of these cases the minimum is not to fall below the amount of the Collector's award, but no maximum has to be observed. (*Curgenven, J.*). SECY. OF STATE *v.* C.R. SUBRAMANIA AYYAR. **A.I.R. 1930 Mad. 576.**

—S. 25—Sufficient reason.

——*Notice under S. 9 not valid—Party whether can apply for proper compensation.*

Where a notice dated 24th February 1926 called upon the persons interested in the land to appear before the Collector on the 11th March 1926 and the party did not appear but applied for proper compensation,

Held, that the notice was bad as there was no fifteen days' clear notice and that the party could consequently ask for proper compensation on a reference under S. 18 of the Act. (*B.B. Ghose and S.K. Ghose, JJ.*). TARA PRASAD CHALIHA *v.* SECY. OF STATE. **34 C.W.N. 323=A.I.R. 1930 Cal. 471.**

LAND ACQUISITION ACT (1894), S. 26—Appeal.

——Where the notification of the Government was defective as therefrom it was not possible to locate the portion and no facilities were given to the claimant for identifying the land, and where the notice issued under S. 9 was defective in that it did not give 15 days' time,

Held, that applicant's omission to claim was for sufficient reason within S. 25 (3). (*Krishnan and Venkatasubba Rao, JJ.*). COLLECTOR OF CHINGLEPUT *v.* KADIR MOHIDEEN. **95 I.C. 883=A.I.R. 1926 Mad. 732=50 M.L.J. 566.**

——*Failure to prefer claim owing to wrong impression about procedure—Sufficient reason exists.*

Where the applicants were fighting out the question of re-measurement, and evidently they were under the impression that the question of valuation would be taken after the question of measurement was finished, and apparently had no idea that the very next day after the measurement was completed in their presence, the Collector would make his award without any previous notice to them,

Held, there was sufficient reason for the applicant within S. 25 for the omission to prefer claims before the Collector. (*Chatterjea and Pearson, JJ.*). BURN & CO., LTD. *v.* SECRETARY OF STATE.

76 I.C. 579=A.I.R. 1923 Cal. 513.

——*Person asked to appear before Collector on certain date—Person appearing but filing petition only on following day—S. 25 (3) applies.*

A notice was served upon a party under S. 9 of the Act directing him to appear before the Collector on a certain date. The party appeared before the Collector on that date. What passed on that day was open to doubt. A petition in writing was filed on the following day before the Collector had made his award.

Held, that the petition filed on the following day in Court must be regarded as a sufficient compliance with the notice under S. 9 of the Act or alternatively that the circumstances disclosed a sufficient reason for allowing the party to come in under cl. (3) of S. 25. 12 C. W. N. 263, *Dist.* (*Richardson and Shamsul Huda, JJ.*). GYANENDRA NATH PAL *v.* SECRETARY OF STATE.

61 I.C. 532=25 C.W.N. 71=A.I.R. 1921 Cal. 234.

—S. 26—Appeal.

——*Appeal to Privy Council—Question of valuation—No appeal lies where no error of law or miscarriage of justice exists—Opinions are bound to differ on the value of land which owes its value to results of prospective development to be effected at uncertain date.*

The value to be placed at a given moment on a plot of land, which is not in the market or the subject of bargain and sale, but owes a large part of value it possesses to the prospective results of development work, to be undertaken thereafter at an uncertain time and at an estimated cost, is not only in its essence a question of fact but is one upon which, almost above any other, opinions will differ, without its being possible to give irrefragable reasons for any particular conclusion. Appeals in valuation cases will only be entertained on question of principle. 36 Cal. 967, *Foll.*; 39 I.A. 201,

LAND ACQUISITION ACT (1894), S. 26—Appeal—Copy of award.

per *Lord Macnaghten*; 47 I.A. 255 and A.I.R. 1925 P.C. 91, *Foll.*

Errors in law, including errors in appreciating or applying the rules of evidence or the judicial methods of weighing evidence, are matters that can and will be dealt with on appeal by Privy Council, but when, a difference of opinion has occurred between two Indian Courts upon the number of rupees per yard to be allowed for a plotof land, as to which their Lordships can form no opinion of their own, it would be alike unprofitable and impracticable to embark on a comparison of the decisions of these Courts. In cases relating to the acquisition of land the whole matter, both of fact and law, is a proper subject of appeal in India, for their local knowledge and experience enable the Judges to form useful judgments upon the whole case. So the Privy Council will not review the decree of an Indian Appellate Court merely upon question of value, unless there appears to be error in law or miscarriage of justice. (*Lord Sumner.*) NOWROJI *v.* GOVT. OF BOMBAY. **90 I. C. 48= 52 I.A. 367=23 M.L.W. 46=23 A.L.J. 803= 2 O. W. N. 691=42 C. L. J. 143= 27 Bom.L R. 1140=6 L.R P. C. 154= 49 Bom. 700=30 C. W N. 386= 1926 M. W. N 278=A. I. R. 1925 P.C. 211= 49 M. L. J. 233 (P.C.).**

—S. 26—Appeal—Copy of award.

———*Copy of award must be filed with appeal—Filing can be allowed even at the time of hearing and time extended in proper cases.*

In an appeal from an award of District Judge in a land acquisition case, the appellant failed to file a copy of the award with the appeal. The appeal was filed in 1922. The decision of Lahore High Court in A.I.R. 1925 Lah. 438, under which the amendment to Land Acquisition Act in 1921 was interpreted making the filing of copy of award with appeal obligatory, was in 1925. The appellant's counsel applied during the hearing of the appeal in 1927 for an extension of time under S. 5, Lim. Act, and put in a complete copy of the award together with an affidavit and statement of reasons asking for indulgence.

Held, that the application should be allowed and that the appeal should be heard. A. I. R. 1928 Lah. 216, *Ref.* (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I.C. 797=A. I. R. 1928 Lah. 263.**

———Where a number of separate references under the Land Acquisition Act are heard together and disposed of by one judgment, and where distinct appeals are filed from this judgment, it is absolutely essential that a copy of the award should accompany each memorandum of appeal, and the Appellate Court has no power to dispense with such a copy. (*Scott-Smith and Martineau, JJ.*). MUBARAK ALI SHAH *v.* SECRETARY OF STATE. **94 I.C. 145=26 P L.R. 356= 6 Lah. 218=A. I. R. 1925 Lah. 438.**

—S. 26—Appeal—Court-fee.

———The inference drawn from the discrimination made between the claimant and the Secretary of State in the matter of Court-fees to be paid on appeal from the award of the Land Acquisition Judge in S. 8, Court Fees Act, is no longer warranted by reason of the Land Acquisition Amendment Act making the Judge's decision a decree. (*Walmsley and Chakravarty, JJ.*). SECY. OF STATE *v.* K. S. BANNERJEE. **97 I.C. 140= A. I. R. 1927 Cal. 45.**

LAND ACQUISITION ACT (1894), S. 28—Interest on enhancement.

—S. 26—Award.

———Once a proper reference comes before the District Judge, his final order on it is an award whether he gives an additional amount or he gives no additional amount or whether the acquisition officer's award is not upheld for some other reason. 30 I.C. 637; 54 Cal. 312 and 46 Cal. 861, *Dist.* (*Ramesam and Wallace, JJ.*). K.T. MUTHUVEERAPPA PILLAI *v.* REVENUE DIVISIONAL OFFICER, MELUR. **59 M. L. J. 682.**

———The value of the interest of the superior holder must be included in the award and not deducted from the value of the occupant's interest. (*Macleod, C.J. and Crump, J.*). GAJANAN VINAYAK *v.* THE ASST. COLLECTOR OF SALSETTE THANA. **85 I.C. 11=25 Bom. L.R. 480=A I.R. 1924 Bom. 54.**

—S. 27—Appeal for costs.

———The lower Court upheld the Collector's award but refused Government costs by explaining that the exaggerated demands of landowners were due to the uncertainty of the land market due to the boom and its aftermath. There was nothing in the case inconsistent with the special provisions of the Land Acquisition Act.

Held, that S. 35, C. P. Code, governed the case, and that the lower Court had exercised its discretion in violation of well recognized principles of law and, therefore, an appeal lay for costs only. *Cooper* v. *Whittingham*, (1880) 15 Ch. D. 501; 27 Mad. 341 and 16 Bom. 676, *Rel. on*; *Upmann* v. *Forester*, (1883) 24 Ch. D. 231 and *Civil Service Co-operative Society* v. *General Steam Navigation Co.*, (1903) 2 K.B. 756, *Ref.* (*Martin, C.J. and Murphy, J.*). ASST. COLLECTOR. SALSETTE *v.* DAMODAR DAS. **114 I.C. 397=53 Bom. 178= 30 Bom. L.R. 1622=.I.R. 1929 Bom. 63.**

—S. 27—Extravagant claim.

———Where though claimant's claim was extravagant, but the extravagant amount claimed did not increase the Collector's costs at all and appellant was substantially successful,

Held, that the Collector should pay claimant's costs. (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I.C. 797= A.I.R. 1928 Lah. 263.**

—S. 28—Applicability.

———Interest under S. 28 of the Land Acquisition Act on the excess awarded over the amount given by the Collector should be decreed at 6 per cent. from the date the Collector took possession of the land to the date of payment into Court of the excess which has been awarded to him. (*Krishnan and Ramesam, JJ.*). RATHNAMASARI *v.* SECY. OF STATE. **72 I.C. 214=44 M.L J. 132= 32 M.L.T. 279=17 M.L.W. 415= A. I. R. 1923 Mad. 332.**

—S. 28—Construction.

———*Interest can be allowed in appropriate cases.*

Where it appeared that the claimants did not put forward any extravagant claims but claims which were allowed to a considerable extent,

Held, that they were entitled to interest at 6 per cent.

Quaere: Whether S. 28 is mandatory or not in the matter of award of interest. (*Phillips and Odgers, JJ.*). SUBRAMANIA AIYAR *v.* COLLECTOR OF TANJORE. **97 I. C. 933= A.I.R. 1926 Mad. 1016=51 M.L.J. 309.**

—S. 28—Interest on enhancement.

———*Amount enhanced by District Judgem—Claimant is entitled to interest on difference.*

LAND ACQUISITION ACT (1894), S. 28—Period.

Where the District Judge enhances the amount of compensation as awarded by the Collector, the claimant is entitled to interest on the amount whereby the District Judge enhanced the Collector's award from the date of that award until the date of his own judgment, and if the amount is further enhanced by the High Court, he is entitled to further interest at the same rate from that date until the date of judgment of the High Court. (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I.C. 797= A.I.R. 1928 Lah. 263.**

—S. 28—Period.

———*Interest on excess is payable from taking possession by Collector to payment of excess.*

Land owner is entitled to interest at six per cent. per annum on the excess awarded over the amount awarded by the Collector from the date on which the Collector took possession of land to the date of payment of such excess into Court. (*Das and Ross, JJ.*). SECY. OF STATE *v.* MANMATHA NATH. **84 I.C. 371=2 Pat.L.R. Civ. 268= A.I.R. 1925 Pat. 129.**

—S. 29—Khot and occupant.

———*Occupant in possession of specific area of* warkas.

In the case of *warkas* or *bhati* land in Salsette, it has been a recognised custom to divide the compensation between the occupant and the Khot in the proportion of 2 to 1. But that has been due to the fact that in the case of such lands it is extremely difficult to define and ascertain the value of the respective interests of the Khots and the occupants, with the result that a rough and ready method of division has been adopted for want of a better one. In many cases the claimants against the Khots can hardly be called occupants. The claims are based on the fact that they are occupants of certain defined plots of land for the purpose of cultivating them so that by reason of such rights as occupants, they are entitled to other rights over the adjacent lands either for the purposes of grazing or of gathering *rab* materials. It is not generally shown that in such cases the occupants of cultivated lands have any defined area of *warkas* or *bhati* lands allotted to them, and so in order to divide the compensation between the Khot and the persons who have the right of user, owing to their position as cultivators, it has been found a convenient compromise to divide the compensation between them in that proportion. But it is entirely different where you find a tenant in occupation of a defined area of land, and paying assessment for it. Then undoubtedly he has a right to possession of all that area. (*Macleod, C.J. and Crump, J.*). GAJANAN VINAYAK *v.* ASST. COLLECTOR OF SALSETTE THANA. **85 I. C. 11= 25 Bom. L R. 480= A.I.R. 1924 Bom. 54.**

—S. 29—Land and building separately owned

———*Land and buildings thereon owned separately —Principles of apportionment discussed.*

The matters to be considered when land acquired and the buildings standing thereon are owned separately are (1) right of the owner of land to call upon the owner of buildings to remove the house. If the latter did remove the house, the value to him would be small, and in the ordinary course would be no more than what has been called "demolition value" *viz.*, the value of the materials less the cost of removal; and if he did not remove the house he would lose it; (2) the possibility that (if the land had not been acquired under the Land Acquisition Act) the owner of the land would not have desired or required the removal of the house and might have been willing to pay to owners of the house more than the mere demolition value of the house. In other words, the owner of the land would be possible purchaser, who might be willing to give more for the house than anyone else as he was the owner of the land. (3) If the house owner were called upon to remove the house he would be entitled to a reasonable time for such removal and that during such time the land owner would be kept out of enjoyment of the land. (*Sir Lancelot Sanderson.*) NARAYAN DAS *v.* JATINDRA NATH. **102 I.C. 198=54 Cal. 669= 1927 M. W. N. 459=54 I. A. 218= 29 Bom L. R. 1143=46 C. L. J. 1= 31 C.W.N. 965=8 P.L.T. 663=26 A.L.J. 1= 26 M.L.W. 848=A.I.R 1927 P.C. 135= 53 M.L.J. 158 (P.C.).**

LAND ACQUISITION ACT (1894), S. 30—Appeal and revision.

—S. 30—Appeal.

———A decision on reference under S. 30 is not an award but a decree and appeal does not lie to High Court when it involves amount less than Rs. 5,000. A. I. R. 1922 P.C. 80, *Rel. on*; A.I.R. 1929 Mad. 223, *Foll.* (*Ramesam and Venkatasubba Rao, JJ.*). VENKATA REDDI *v.* ADHINARAYANA. **119 I.C 42=52 Mad. 142=29 M.L.W. 343= A.I.R. 1929 Mad. 351=56 M.L.J. 357.**

———The decision in reference under S. 30 is not an award within the meaning of S. 54, and hence no appeal would lie against it under that section. But the decision is appealable under S. 96, C.P. Code. 40 Cal. 21; 10 C. W. N. 991; A. I. R. 1922 P.C. 80; B L.R. Sup Vol. 985; *National Telephone Co., Ltd.* v. *The Postmaster-General*, (1913) A.C. 546 and A.I.R. 1924 Mad. 561, *Rel. on.* (*Devadoss and Jackson, JJ.*). MAHALINGA KUDUMBAN *v.* THEETHARAPPA MUDALIAR. **115 I.C. 345= 29 M.L.W. 237=1929 M.W.N. 62= A.I.R. 1929 Mad. 223=56 M.L.J. 387.**

———Decision in reference under S. 30 being one on rights of contending parties, is a decree within S. 2 (2), and is appealable under S. 96. B.L.R. Sup. Vol. 985, *Rel. on.* (*Devadoss and Jackson, JJ.*). MAHALINGA KUDUMBAN *v.* THEETHARAPPA MUDALIAR. **115 I.C. 345=29 M L.W. 237= 1929 M.W.N. 62=A.I.R. 1929 Mad. 223= 56 M.L.J. 387.**

———Appeal against decision in reference under S 30, where the amount involved is less than Rs. 5,000 is not an appeal from an award and therefore it lies to the District Court, and not to the High Court. (*Devadoss and Jackson, JJ.*). MAHALINGA KUDUMBAN *v.* THEETHARAPPA MUDALIAR. **115 I.C. 345=29 M L.W. 237= 1929 M.W.N. 62=A.I.R. 1929 Mad. 223= 56 M.L.J. 387.**

—S. 30—Appeal and revision.

———*Order for refund of compensation paid—No appeal but revision.*

An order made by a Court in a proceeding under the Land Acquisition Act directing a party to whom a sum of money awarded as compensation under the Act had been paid under a previous order, to refund the money is not an award or a portion of an award within the meaning of S. 54, and is therefore not appealable. 97 P. R. 1919, *Dist.*; 32 Cal. 921, *Foll.*

There is no provision in the Act empowering the Court to order a person who has received the money awarded to him to refund it. Such an order is without jurisdiction and a revision lies

LAND ACQUISITION ACT (1894), S. 30—Appeal —Court-fee.

against such order. (*Martineau, J.*). MT. GOHAR SULTAN *v.* ALI MUHAMMAD. **63 I.C. 1= 3 L.L.J. 421=A.I.R. 1921 Lah. 153.**

—S. 30—Appeal—Court-fee.

———In the case of an appeal against a decision in reference under S. 30 the Court-fee is to be charged under Art. 1, Sch. I, Court Fees Act. 21 All. 354 and 39 Cal. 906, *Ref.* (*Devadoss and Jackson, JJ.*). MAHALINGA KUDUMBAN *v.* THEETHARAPPA MUDALIAR. **115 I.C. 345= 29 M.L.W. 237=1929 M.W.N. 62= A.I.R. 1929 Mad. 223=56 M.L.J. 387.**

—S. 30—Award—Scope of.

———The award as constituted by statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under S. 31 (2) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, and it would indeed be strange, if a controversy between two people as to the nature of their respective interests in a piece of land, should enjoy certain rights of appeal, which would be wholly taken away, when the piece of land was represented by a sum of money, paid into Court. (*Lord Buckmaster.*) T. B. RAMACHANDRA RAO *v.* A. N. S. RAMACHANDRA RAO. **67 I.C. 408=45 Mad. 320=30 M.L.T. 154= 35 C. L.J. 545=16 M. L.W. 1= 1922 M. W.N. 359=26 C. W.N. 713= 20 A. L.J. 684=24 Bom. L.R. 963= 49 I.A. 129=A I.R. 1922 P.C. 80= 43 M.L.J. 78 (P.C.).**

—S. 30—Custody of compensation money.

———The President of the Improvement Trust Tribunal has jurisdiction, pending the decision of the claims of rival claimants to the compensation money, to pass orders regarding the custody of the money, which is the value of the land compulsorily acquired. (*Dalal, J.*). JUGUL KISHORE *v.* PRATAB DEI. **113 I.C. 7=26 A.L.J. 250= A.I.R. 1928 All. 239.**

—S. 30—Enquiry after award.

———Application for enquiry into the claims of different claimants made before award but adjudicated upon after award—Such adjudication is without jurisdiction. The order passed on such application cannot be an order on an application for review or modification of the award since it was on an application presented before the award was made and therefore the Collector, if he was not able to pass orders upon that application before he made his award, should have referred the question to the Court under S. 30. (*Campbell, J.*). BAGO *v.* ROSHAN. **92 I.C. 484=A.I.R. 1926 Lah. 321.**

—S. 30—Landlord and tenant.

———Where a land has been taken by Government and compensation has been paid to a party who has received more than his own share of the compensation, he must account to the other party, that is, if the landlord receives the whole amount, and the tenant has not got any portion of the compensation, the landlord is bound to abate the rent. On the other hand, if the tenant receives the whole of the compensation without paying the share due to the landlord, he is not entitled to retain the whole compensation and refuse to pay the whole of the rent. 9 Cal. 571; 10 Cal. 544; 10 C. L. R. 526; 28 Cal. 146 and 30 Cal. 801, *Ref.* (*Patkar, J.*). GANU DADU JADHAV *v.* PANDIT RAO. **A I.R. 1930 Bom. 592.**

LAND ACQUISITION ACT (1894), S. 31—Civil suit.

———In the case of property leased for a long term with a progressive rate of rent it is very difficult to come to a definite conclusion as regards the valuation to be put on the interest of the landlord so as to apportion the compensation quite equitably. In the absence of any direct evidence as to what a willing purchaser would pay for the interest of the landlord, the apportionment can be made only in a rough and ready way. (*B. B. Ghose and Cammiade, JJ.*). K. S. BANERJEE *v.* JATINDRA NATH. **108 I. C. 253=A.I.R. 1928 Cal. 475.**

———*Lands in occupation of permanent tenants holding kudivaram interest—Apportionment of compensation money—Landlord does not get merely the capitalized value of rent.*

Where certain lands not governed by the Madras Estates Land Act in the possession of permanent tenants claiming under a document purporting to be a sale of the landlord's kudivaram interest for a cash consideration and an annual rent of Rs. 4 were acquired under the Land Acquisition Act and the Court divided the compensation amount as between the landlord and tenant at 1/3 and 2/3rds but the tenants contended that out of the compensation amount the landlord was entitled to get only capitalized value of the annual rent at 20 years' purchase and that the balance of the compensation amount should be given to them,

Held, that as the landlord had parted only with the kudivaram interest in the land, retaining the melwaram interest with him he had not merely the right to receive the rent and consequently the apportionment by the Court below was not wrong in law. (*Krishnan and Odgers, JJ.*). NATESA AYYAR *v.* KAJA MURUF SAHIB. **100 I. C. 628= 50 Mad. 706=25 M.L.W. 291=38 M.L.T. 128= A. I. R. 1927 Mad. 489=52 M. L. J. 295.**

—S. 30—Reference as claimant.

———Where a mortgagee of property being acquired under the Land Acquisition Act, did not appear before the Collector, not having had notice, but the Collector making a reference under S. 18 referred to the claim of the mortgagee to a share of the compensation, and the Court served notice on him subsequently, but refused to entertain the claim because there was no award in favour of the mortgagee,

Held, that the reference to the mortgagee's claim in the Collector's reference amounted to a reference under S. 30. (*Greaves and Chakravarty, JJ.*). SURENDRA NATH TAGORE *v.* K. S. BANNERJEE. **86 I. C. 789=29 C. W. N. 340= A. I. R. 1925 Cal. 630.**

—S. 31—Applicability.

———The proviso to S. 31, cl. (2) applies only to cases where the person is under a disability or is not served with notice of the proceedings before the Collector. 7 C.W.N. 538, *Not foll.*; 12 Cal. 33, *Dist.* (*Chatterjea and Panton, JJ.*). SAITBESH CHANDRA SARKAR *v.* SIR BEJOY CHANDRA MOHATAB BAHADUR. **65 I. C. 711=26 C. W. N. 506= A. I. R. 1922 Cal. 4.**

—S. 31—Civil suit.

———*No reference made under S. 18—Civil suit by any party interested in the compensation money to recover his lawful share is not barred.*

Although a person accepts without any protest payment of the amount apportioned and tendered

LAND ACQUISITION ACT (1894), S. 31—Dispute about relative rights.

to him by the Collector and thereby, by the second proviso to S. 31 (2) he disentitles himself from making an application for a reference under S. 18, still that person is not exonerated from his liability to a civil suit under Proviso 3 to S. 31 (2), for the words "nothing herein contained" in the third proviso must cover everything that has gone before, including the second proviso. (*Campbell, J.*). BAGO *v.* ROSHAN. **92 I. C. 484= A. I. R. 1926 Lah. 321.**

—S. 31—Dispute about relative rights.

———*Dispute as to relative rights to the compensation—Collector should place the amount before Court for decision of the dispute—Such decision does not form part of award.*

When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end, the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. 17 C.W.N. 935, *Overruled.* (*Lord Buckmaster.*) T. B. RAMACHANDRA RAO *v.* A.N.S. RAMACHANDRA RAO. **67 I.C. 408= 45 Mad. 320=30 M.L.T. 154=35 C.L.J. 545= 16 M.L.W. 1=1922 M.W.N. 359= 26 C.W.N. 713=20 A.L.J. 684= 24 Bom. L.R. 963= 49 I.A. 129= A. I. R. 1922 P.C. 80=43 M.L.J. 78 (P.C.).**

—S. 31—Insolvent claimant.

———Where the Land Acquisition Officer, after a person is adjudicated an insolvent, erroneously pays to his mortgagee, a certain amount as compensation instead of paying the same to Official Receiver who has no notice under S. 31, Land Acquisition Act, of the proceedings, the Official Receiver has a right to sue for the recovery of the amount paid. A.I.R. 1922 Cal. 4, *Rel. on.* (*Aston, A.J.C.*). DHARAMDAS THAWERDAS *v.* SORABJI. **121 I.C. 876=A.I.R. 1930 Sind 75.**

—S. 31—Joint Hindu family.

———Karta of a joint Hindu family is allowed to withdraw the compensation money. 32 C.W.N. 815, *Foll.* (*C.C. Ghose and Mallik, JJ.*). DAYA CHAND *v.* BHIM SINGH. **118 I. C. 851= A.I.R. 1929 Cal. 379.**

—S. 31—Limited owner.

———Sections 31 and 32 apparently provide for the case of persons not having absolute power to alienate the property and so a widow holding a life-estate under the customary law comes under the purview of Ss. 31 and 32 though she has power to alienate for necessity. 24 All. 189, *Appl.* (*Bhide, J.*). MT. GANGI *v.* SANTU. **116 I.C. 335= A.I.R. 1929 Lah. 736.**

—S. 31—Mortgagee and mortgagor.

———A mortgagee cannot sue the Crown where Collector has paid compensation money to the mortgagor though with notice of the mortgage, in a land acquisition case. He should apply under the Land Acquisition Act for reference to the Court under S. 18 or he may sue the mortgagor for the costs and other amount due to him under the mortgage under S. 31. (*Schwabe, C. J. and Waller, J.*). SECRETARY OF STATE *v.* KUPPUSWAMI CHETTI. **78 I.C. 82=1924 M.W.N 138=33 M.L.T. 272= A.I.R. 1924 Mad. 821=46 M.L.J. 36.**

—S. 31—Object of.

———Sections 31 and 32 are intended by the legislature to protect the interest of reversioners when land is taken from the possession of a person who holds it only on a life-estate. (*Bhide, J.*). MT. GANGI *v.* SANTU. **116 I.C. 335= A.I.R. 1929 Lah. 736.**

LAND ACQUISITION ACT (1894), S. 34—Interest.

—S. 31—Wrongful excess payment.

———The 3rd proviso to S. 31 (2) only comes into operation when S. 31 (2) itself has been obeyed, and does not apply to a case of excess payment wrongfully made. 7 Cal. 388 (P.C.), *Foll.* It is not right that Government should throw on a party, whose property it has compulsorily acquired, the risk and burden of recovering the compensation from some one else to whom Government has wrongfully paid it. (*Wallace and Madhavan Nair, JJ.*). DEPUTY COLLECTOR OF COCANADA *v.* MAHARAJA OF PITTAPUR. **93 I.C. 651=49 Mad. 519= 1926 M.W.N. 128=24 M.L.W. 92= A.I.R. 1926 Mad. 492=50 M.L.J. 412.**

—S. 32—Interpretation.

———The words "invested in the purchase of other lands" in S. 32 would include the erection of buildings upon the land. (*Chatterjea and Newbould, JJ.*). GANENDRA MULLICK, *In re.* **67 I.C. 18= 25 C.W.N. 597=A.I.R. 1921 Cal. 536.**

—S. 32—Joint Hindu family.

———Certain joint Hindu family property standing in the name of one *M* as the karta of the family was acquired under the Land Acquisition Act. A certain sum was ordered to be paid as compensation and was in deposit in the Court. *M*'s younger brother applied for the sum being paid. *M*'s minor son claimed the entire amount as *M*'s heir.

Held, that the property acquired being a joint family property and the family being governed by the Mitakshara law, the brother was the proper person to receive the money in deposit as he represented the joint family. (*Suhrawardy and Graham, JJ.*). DIN DAYAL SHAH *v.* RAM BABU. **115 I.C. 363=32 C.W.N. 815.**

—S. 32—Persons incompetent to alienate.

———The compensation money representing the estate of an incompetent person such as idol partakes of the nature of real property and does not lose its character as such because it has been transformed in shape. (*Suhrawardy and Graham, JJ.*). K. C. BANNERJEE, *In re.* **107 I.C. 738=A.I.R. 1928 Cal. 402.**

—S. 32—Power to retain money.

———Under S. 32 the acquisition Court is not absolutely vested with the compensation money. It is apparent that possession of the Receiver is the possession of the Court and the money if made over to the Receiver will remain in *custodia legis*. The law does not vest the acquisition Court with such power as to retain the money in its possession in spite of the direction of a competent Civil Court. (*Suhrawardy and Graham, JJ.*). K. C. BANNERJEE, *In re.* **107 I.C. 738= A. I. R. 1928 Cal. 402.**

—S. 34—Interest.

———On a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his purchase money from the date when he takes possession and the same rule applies even in cases of compulsory acquisitions as the owner is deprived of his property in this case as much as in the other. (*Lord Warrington of Clyffe.*) INGLEWOOD PULP AND PAPER CO., LTD. *v.* NEW BRUNSWICK ELECTRIC POWER COMMISSION. **111 I.C. 261=28 M.L.W. 753= A.I.R. 1928 P.C. 287 (P.C.).**

LAND ACQUISITION ACT (1894), S. 48—Withdrawal after possession.

—S. 48—Withdrawal after possession.

———*After acquisition and taking over possession there can be no withdrawal—Property must be reconveyed by Government to the owner.*

After Collector had taken possession of land acquired under Land Acquisition Act, the owner expressed a desire to gift away the land to Government. The Government thereupon withdrew the further proceedings relating to the compensation and called upon the owner to effect a registered gift deed.

Held, that there can be no withdrawal after possession is taken under an award. To vest the property in the owner Government must execute a written deed according to Government of India Act, S. 30, and therefore any incumbrance created on the property by the owner after the withdrawal is ineffective against the Government, where no written reconveyance by Government to the owner has been effected. 17 M.L.J. 557, *Diss. from.*

The owner at the most can acquire the interest of a trustee for the purpose of reconveying the property to Government and this interest cannot become subject to any mortgage. (*Rutledge, C.J. and Carr, J.*). SECY. OF STATE *v.* CHETTYAR FIRM OF S. R. M. M. R. M. **98 I.C. 323= 4 Rang. 291=A.I.R. 1927 Rang. 14.**

—S. 54—Appeals to Privy Council.

———In appeals involving questions of valuation, the decree complained of will not be interfered with by the Privy Council unless some erroneous principle has been invoked or some important piece of evidence has been overlooked or has been misapplied. (*Lord Blanesburgh.*) ATMARAM BHAGWANT *v.* COLLECTOR OF NAGPUR. **114 I.C. 587= 1929 A.L.J. 249=33 C.W.N. 458= 29 M.L.W. 496=6 O.W.N. 417=12 N.L.J. 37= 49 C.L.J. 398=25 N.L R. 68= 31 Bom. L.R. 728=A. I. R. 1929 P.C. 92= 57 M.L.J. 81 (P.C.).**

———*Appeal to Privy Council regarding award—Wrong principle or neglect or misapplication of important point in evidence is necessary to justify interference.*

The Privy Council will not interfere with judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached, unless there is something to show, not merely that on the balance of evidence, it would be possible to reach a different conclusion, but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle, or because some important point in the evidence has been overlooked or misapplied. (*Lord Buckmaster.*) NARSINGH DAS *v.* SECY. OF STATE. **86 I.C. 556= 27 Bom. L.R. 783= 29 C.W.N. 822=26 P.L.R. 205=6 Lah. 69= 23 A.L.J. 113=52 I.A. 133=6 L R P C. 64= 2 O.W.N. 137=A I R. 1925 P.C. 91= 48 M.L.J. 386 (P.C.).**

—S. 54—Dispute about apportionment.

———The decision in reference under S. 30 is not an award within the meaning of S. 54, and hence no appeal would lie against it under that section. But the decision is appealable under S. 96, C. P. Code. 40 Cal. 21; 10 C.W.N. 991; A. I. R. 1922 P.C. 80; Bom. L.R. Sup. Vol. 985; *National Telephone Co., Ltd.* v. *The Postmaster-General*, (1913) A. C. 546 and A.I.R. 1924 Mad. 561, *Rel. on.* (*Devadoss and Jackson, JJ.*). MAHALINGA KUDUMBAN *v.* THEETHARAPPA MUDALIAR. **115 I.C. 345= 29 M.L.W. 237=1929 M.W.N. 62= A.I.R. 1929 Mad. 223=56 M.L.J. 387.**

LAND ACQUISITION ACT (1894), S. 54 — Time-barred reference.

—S. 54—Interpretation.

———The addition of the words "in any proceeding" in S. 54 by the amending Act does not extend the right of appeal under S. 54 so as to include an order of the Land Acquisition Judge dismissing an application for restoration of a previous application dismissed for default. 39 Cal. 393, *Foll.*; 43 Cal. 665 and 46 Cal. 861, *Ref.* (*Suhrawardy and Duval, JJ.*). BANSHIDHAR MARWARI *v.* SECY. OF STATE. **102 I.C. 479=54 Cal. 312=A I.R. 1927 Cal. 533.**

—S. 54—Letters Patent appeal.

———*Judgment of single Judge confirming award of District Judge—Letters Patent appeal from, is not barred by S. 54.*

The word "only" does not restrict the right of appeal but was intended to make it clear that the *forum* of appeal in land acquisition cases is always the High Court and not the District Court; and that it is immaterial whether the amount of compensation awarded by the Court of first instance does or does not exceed Rs. 5,000 and whether the Court of first instance is the Court of a District Judge or that of a Subordinate Judge or an Assistant Judge. It is beyond dispute that cl. 10 of the Letters Patent gives in express terms a right of appeal, and that right has not been impliedly taken away by S. 54 more especially when the section is merely an enabling section and was enacted in order to confer a right of appeal to His Majesty in Council. (*Shadi Lal, C. J. and Abdul Qadir, J.*). HAR DIAL SINGH *v.* SECRETARY OF STATE. **69 I.C. 428=3 Lah. 420= A.I.R. 1923 Lah. 275.**

—S. 54—Order refusing revision.

———*District Judge's order rejecting revision from Collector's award is appealable.*

Order of the District Judge rejecting an application for revision of the Collector's award has the effect of confirming the Collector's award and is therefore appealable. (*Dawson Miller, C.J. and Foster, J.*). NITAI DUTT *v.* SECY. OF STATE. **81 I.C. 676=3 Pat. 304=A.I.R. 1924 Pat. 608.**

—S. 54—Pending suit.

———The existence of a civil suit, in which the ownership of the land is in question, does not affect the jurisdiction of the District Judge to decide the question referred to him, but it is incumbent on him to decide the question. (*Broadway and Fforde, JJ.*). DEO KARAN DAS *v.* SECY. OF STATE. **94 I C. 249= 7 Lah. 337= 8 L.L.J. 416=27 P. L. R. 532= A.I.R. 1926 Lah. 442.**

—S. 54—Scope.

———Section 54 only contemplates an appeal from a final award, or part of a final award of the Court, and until the District Judge decides the question as to apportionment there is no final award which can be appealed against. (*Broadway and Fforde, JJ.*). DEO KARAN DAS *v.* SECY. OF STATE. **94 I.C. 249=7 Lah. 337=8 L L J. 416= 27 P.L.R 532=A.I.R. 1926 Lah. 442.**

—S. 54—Time barred reference.

———No appeal is competent under S. 54, Land Acquisition Act, from an order of the Divisional Court rejecting a reference under S. 18, on the ground that the application to the Collector was time-barred under sub-S. (2), cl. (1) of that section. 48 P.R. 1914 and 64 P. R. 1914, *Foll.*;

LAND ACQUISITION ACT (1894), S. 55—Validity of sales.

A.I.R. 1926 Rang. 135, *Not foll.*; 39 Cal. 393, *Ref.* (*Broadway, A.C.J. and Bhide, J.*). NOFISUDIN *v.* SECY. OF STATE. 104 I. C. 397= A .I. R. 1927 Lah. 858.

—S. 55—Validity of sales.

———*Sales by Collector through Tahsildar, of lands acquired for, but relinquished, by Railway Company is valid—Non-observance of conditions as to mode of conducting the sale does not necessarily render the sale invalid.*

The collector of a District can effect the sale himself or through the Tahsildar of the Taluk in which the lands acquired for the Railway Company and subsequently relinquished by the Railway Company are situated. The non-observance of some of the rules which were in the nature of instructions as to the conduct of the sale to the Officer conducting the sale, does not render the sale void in the absence of fraud, misrepresentation or mistake in the conduct of the sale. The non observance in this case was as to the condition as to public auction and to the preference to be given to the adjoining land owner. (*Madhavan Nair, J*). RAMA KURUP *v.* RYRU KURUP.

84 I.C. 891=20 M.L.W. 608=38 M.L.T. 122= A.I.R. 1924 Mad. 911.

LAND ACQUISITION (MINES) ACT (XVIII of 1885).

—S. 3 (1)—Effect of statement.

———Where Government publishes a declaration of its intention to acquire a certain area of land for public purpose, *viz.*, for quarries in particular part of country in connexion with construction of certain building work, and inserts in it the statement contained in S. 3 (1), Land Acquisition (Mines) Act, 1885, the effect of the state is, that only so much of the minerals would be acquired as might be necessary in the construction of the work. *Lord Provost and Magistrates of Glasgow* v. *Farie*, 13 A.C. 657 and *Midland Ry. Co.* v. *Robinson*, 15 A. C. 19, *Ref.* (*Ross and Chatterji, JJ.*). SECY. OF STATE *v.* GYANENDRA CHANDRA PANDE. 8 Pat. 742= A. I. R. 1930 Pat. 112.

LAND HOLDER.

See MADRAS ESTATES LAND ACT, S. 3.

LAND IMPROVEMENT (LOANS) ACT (XIX of 1883).

—S. 7—Charge on property.

———Where takavi loan is given by Government to a person when he was occupancy tenant and the malguzar acquires the holding after the loan is given Government has a first charge on the holding and is entitled to proceed to recover the loan as if the said loan were arrears of land revenue. 41 Mad. 491, *Rel. on.* (*Findlay, J.C.*). SECRETARY OF STATE *v.* HARINATH BIKAJI BUX. 122 I.C. 376= 13 N.L.J. 23= A. I. R. 1930 Nag. 195.

—S. 7—Effect of sale by Government.

———Section 161 of the U.P. Land Revenue Act has to be read along with S. 7 of the Land Improvement Loans Act.

Where the debtor borrowed in order to repair a well which was situated on the mortgaged property,

Held, that the property which was mortgaged to the Government was land for the benefit of which the loan had been granted within Cl. (c) and the purchaser gets the land free of all incumbrances, having regard to the provisions of S. 161 of the Land Revenue Act. (*Lindsay and Kanhaiya Lal, JJ.*). JIKAM SINGH *v.* HARGOVIND.

98 I.C. 855=24 A.L.J. 718=A.I.R. 1926 All. 574.

LAND IMPROVEMENT (LOANS) ACT (1883), S. 7—Nature of proceedings.

—S. 7—Nature of proceedings.

———The proceedings of the Collector in recovering loans under S 7 (1) (*a*). Land Improvement Act "as if they were arrears of land revenue" is neither a "suit" nor the execution of the decree of any Court. (*Heald and Mya Bu, JJ.*). COLLECTOR OF AKYAB *v.* PAW TUN U.

109 I.C. 145=3 Rang 806= A.I.R. 1928 Rang. 81.

LANDLORD AND TENANT.

See also (1) LAND TENURE.
(2) LEASE.
(3) T. P. ACT, SS. 106-117.
(4) TENANCY ACTS (LOCAL).

Abadi.
Abandonment.
Abwab.
See also (1) B. T. ACT, S. 74.
(2) MAD. EST. LAND ACT, SS. 3 (11), 143 AND 144.
Accretions.
See also (1) ALLUVION AND DILUVION.
(2) BENG. ALLUVION AND DILUVION REGULATION (1825).
Adverse possession.
See also ADVERSE POSSESSION—LANDLORD AND TENANT.
Alienation.
Appurtenance.
Building by tenant.
Cess.
See also TENANCY ACTS (LOCAL).
Co-sharer.
See also CO-SHARER.
Covenant.
See also T. P. ACT, SS. 10, 102 AND 108.
Creation of tenancy.
Damages.
Denial of title.
Dispossession.
Easement.
See also EASEMENTS ACT, S. 12.
Ejectment.
See also (1) EJECTMENT.
(2) T. P. ACT, S. 111.
(3) TENANCY ACTS (LOCAL).
Encroachment.
Escheat.
Exproprietary tenancy.
Forfeiture.
See also T. P. ACT, SS. 111 (*g*) AND 112.
Grove.
Heritability.
Holding over.
See also T. P. ACT, S. 116.
Homestead.
Ijardar.
Improvements.
Interpretation.
Izaradar.
Khot.
Lambardar.
Lease.
Merger.
Mines and minerals.
See also MINES AND MINERALS.
Mortgage.
Mulgeni lease.
Nature of tenancy.
Non-transferable holding.
See also OCCUPANCY HOLDING.
Notice to quit.

LANDLORD AND TENANT—Abadi—Abandonment.

Occupancy holding.
See also OCCUPANCY HOLDING.
Occupancy rights.
Occupancy tenancy.
Ouster.
Permanent tenancy.
Possession.
Proprietary right.
Putni.
Raiyat.
See also (1) B. T. ACT.
(2) MAD. EST. LAND ACT.
Record-of-Rights.
Reformation.
Relationship.
Rent.
See also T. P. ACT, SS. 108 AND 112.
Rights of landlord.
Rights of tenant.
Settlement.
Shamilat.
Sir Land.
Sub-tenancy.
Surrender.
Tenancy-at-will.
Tenancy right, nature of.
Termination of tenancy.
See also T. P. ACT, SS. 111-115.
Thekadar.
Trees.
Trespass.
Under-proprietary rights.
Wajib-ul-arz.
Waste.
Zamindar.
Miscellaneous.

—Abadi—Abandonment.

———*Reversion to zamindar.*

Under the custom regulating the right of tenants in their houses in the *abadi*, abandonment of the site or the house is sufficient to cause the site to revert to the zamindar. It is not necessary to prove that the tenant has given up all connexion with the village. (*Ashworth, J.*). CHHOTEY LAL *v.* MANZAR AHMAD. **116 I.C. 813= 10 L.R.A. Rev. 282=A.I.R. 1929 All. 439.**

—Abadi—Accretion.

———*Separate sub-division.*

There is no authority for the proposition that the accretion to or an over-growth of an old sub-division of a town within the limits of that town is to be regarded as a sub-division of it, though there are rulings to the effect that the new suburbs beyond the limits of the town constitute new sub-divisions. (*Harrison and Zafar Ali, JJ.*). AHMAD SHAH *v.* THE CHURCH MISSIONARY TRUST ASSOCIATION, LONDON. **75 I.C. 910= A.I.R. 1924 Lah. 700.**

—Abadi—Building.

———*Right of—Kotha in the abadi deh.*

Every proprietor can build a kotha in the abadi deh. In fact the abadi deh is meant for this purpose and for other common purposes of the village, and a suit for an injunction to remove the Kotha is not maintainable in the absence of proof that the erection of the walled enclosure had actually caused material and substantial injury specially if the vacant land of the abadi is not reduced to a small area and the land is not a portion of goredeh or any other land specially reserved for the common purpose of the village.

LANDLORD AND TENANT—Abadi—License.

A.I.R. 1921 Lah. 157, *Dist. Cases referred.* (*Addison, J.*). SOBHA RAM *v.* WARYAM. **119 I.C. 760=A.I.R. 1929 Lah. 499.**

———*Right of—In open spaces in front of houses.*

In Oudh, tenants residing in a village who are in enjoyment of the land in front of their houses, the title of which was with the landlord, are not entitled to put up structures on the land without the consent of the landlord. The landlord may not object to the tenant's use of the open land situate in the *abadi* of a village, of which he happens to be the proprietor, but that would not give a right to the tenants to put up structures upon that piece of land and the landlord would be legitimately entitled to his remedy if he claimed it by coming to the Court for a relief to the effect that the structures complained of may be demolished. (*Misra, J.*). HULAS *v.* BARKATUNNISSA. **94 I.C. 1034=1 Luck. 469=13 O.L.J. 633= 3 O.W.N. 475= A.I.R. 1926 Oudh 393.**

———*Transferability—Custom—Onus.*

In the case of a tenant being allowed to build a house on a site belonging to a *zamindar* in the village *abadi*, where there is no proof of any custom or contract to the contrary, the tenant has only a right to the house so long as he maintains it and is not entitled to transfer it. When a custom of its transferability is set up, it is on the tenant that the burden of proving the existence of the custom lies and it is not for the *zemindar* to prove a custom of forfeiture or escheat if the house is transferred. (*Kendall, A.J.C.*). BHIKARI LAL *v.* HADI ALI KHAN. **82 I.C. 810=11 O.L.J. 738= A.I.R. 1925 Oudh 239.**

———A tenant cannot enclose and construct a house upon a plot of open land in the *abadi* without the consent of the landlord, though he may have been using it for temporary purposes for a long time. 25 I.C. 59, *Foll.* (*Kanhaiya Lal, J.*). MOHAMED TAQI *v.* DORI. **78 I.C. 881= A.I.R. 1924 All. 723.**

—Abadi—Custom.

———*Presumption.*

The custom whereby agricultural tenants occupy sites of the *abadi* on certain conditions is so prevalent and so well known that it will be presumed to exist in the absence of evidence to the contrary. (*Ashworth, J.*). CHHOTEY LAL *v.* MANZUR AHMAD. **116 I.C. 813=10 L.R.A. Rev. 282= A.I.R. 1929 All. 439.**

———*Transferability.*

A custom of transfer of the sites of the houses by ryots can be recognised only when there is absolutely clear evidence to that effect. (*Mukerji, J.*). ALI HUSAIN *v.* SYED MAZAHIR. **79 I. C. 134= 5 L.R.A. Rev. 115=A.I.R. 1924 All. 477.**

—Abadi—Lease.

———*99 years.*

Where no custom prevailed in a hamlet of the transfer of the right of residence by raiyats, a lease for 99 years was held invalid as a lease for 99 years practically amounted to a sale. (*Dalal, J.*). FAZLUL RAHMAN KHAN *v.* BARUMAL. **117 I.C. 817=A.I.R. 1930 All. 213.**

—Abadi—License.

———*C. P.—Revocability.*

A license in respect of an *abadi* plot in the Central Provinces is revocable at will by the grantor unless the licensee is protected by S. 60 of the Easements Act or S. 203 of the Land Revenue Act (II of 1917) or the *wajib-ul-arz* of the village. (*Hallifax, A.J.C.*). RAJARAM *v.* MANOHAR LAL. **67 I.C. 373=A.I.R. 1921 Nag. 147.**

LANDLORD AND TENANT—Abadi—Mahajan.

—Abadi—Mahajan.

———*Possession of—Presumption.*

A Mahajan is as much necessary to village economy as a lohar or a barber. For the purchase and sale of grain and for the advance of money at the right time to agriculturists he is a village necessity, and, therefore, in his case also the presumption arises that he is in possession of the *abadi* site of his shop by leave and license of zamindar. 33 All. 757 (F. B.), *Rel. on.* (*Dalal, J.*). FAZLUL RAHMAN KHAN *v.* BARUMAL. **117 I.C. 817= A.I.R. 1930 All. 213.**

—Abadi—Possession.

———*Evidence of.*

Planting by residents in the *abadi* of trees on vacant land near their houses cannot by itself be any evidence of the establishment of exclusive possession of the vacant land as against other residents. (*Ashworth, J.*). CHERI *v.* RAM SEWAK. **116 I.C. 816=A.I.R. 1929 All. 428.**

———*Of non-proprietor on the death of another non-proprietor—Inference.*

Where a site of the *abadi* belonging to a non-proprietor is after his death taken possession of by another non-proprietor, the latter in order to prove his right to the site must show either that he had a right to inherit it or that the proprietors had consented to his possession of it. Such consent cannot, however, be inferred from the mere fact that he remained in possession without any objection from the proprietors. A.I.R. 1923 Lah. 413, *Expl.* and *Dist.* (*Jai Lal, J.*). NARAIN SINGH *v.* CHUHAR. **119 I.C. 323=A.I.R. 1929 Lah. 213.**

———*House-site—Cultivation.*

A proprietor does not lose his right to the exclusive possession of a house-site because the dwelling house is no more there and he has cultivated the land on which his house formerly stood. 149 P.R. 1919, *Dist.* (*Dalip Singh, J.*). NIHAL SINGH *v.* JAGAT SINGH. **109 I.C. 644= A.I.R. 1929 Lah. 85.**

—Abadi—Proprietary right.

———A proprietor in the village must be presumed to have a share in the village *abadi* like other proprietors. (*Bhide, J.*). JHANDA RAM *v.* GHULAM RASUL. **121 I.C. 384=31 P.L.R. 16= A.I.R. 1930 Lah. 235.**

———Mere inclusion of banjar land in the *abadi* does not divest the original owner of his proprietary rights therein. (*Tek Chand, J.*). AMRIT SARYA RAM *v.* DIWAN CHAND. **114 I.C. 70= A.I.R. 1929 Lah. 625.**

———*Sale of—Effect—Village site.*

On the sale of the proprietary rights of a proprietor in auction the entire land appertaining to the property sold passes to the auction purchaser and by operation of law the proprietor becomes a ryot and his rights in respect of the site occupied by his dwelling house are reduced to the position of the other persons residing in the village. (*Kanhaiya Lal, J.*). SYED ZAHUR HASAN *v.* MT. SHAKER BANOO. **78 I.C. 189= A.I.R. 1925 All. 29.**

—Abadi—Rights of landlord.

———*Extension of Municipal Act — Zemindar's rights to house sites not lost.*

By the mere fact that the Municipalities Act has been extended to a particular mouza, the zemindar is not thereby precluded from claiming those rights over the land on which the houses of the raiyats stand which are admitted to be the universal rights of the zemindars in the province, unless the ryots are able to prove that they received some

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title in the house other than that of raiyat's in an agricultural village. Because a man is the holder of a muafi plot and is entitled to sell a house which he owns by virtue of that title, he is not thereby entitled also to sell a house and site quite separate from the plot in which he holds the muafi rights. (*Walsh and Pullan, JJ.*). RAFI-ULLAH KHAN *v.* MT. MUMTAZ BEGAM. **102 I.C. 586= A.I.R. 1927 All. 609.**

———So long as a person remains a tenant in the village, and so long as his house exists, the zemindars have no right to possession of the site of his house or to possession of the *sahan* of his house. (*Iqbal Ahmad, J.*). RAM PARTAB SINGH *v.* LAL BAHADUR SINGH. **100 I.C. 597= A.I.R. 1927 All. 330.**

—Abadi—Rights of tenant.

———*Appurtenant to tenancy.*

With regard to a tenant of an agricultural village, who occupies a house in the *abadi*, there is a legal presumption that he holds the site as appurtenant to his tenancy and has no right to retain it against the wish of the landlord on ceasing to be a tenant in the village. Of course, like any other presumption, this presumption is open to rebuttal. 13 A.L.J. 745 and 48 I.C. 420, *Foll.* (*Young, J.*). BHAGWAT PRASAD *v.* NABI MOHAMMAD. **A.I.R. 1930 All. 314.**

———*Disability—Removal of manure.*

Tenants who acquire agricultural holdings in the zamindar's village and who must acquire lands on which they build their houses for residence also, be deemed to acquire those rights with all the incidents appertaining to such rights and one of the incidents is their disability to remove the manure from one village to another. (*Hasan, C.J. and Raza, J.*). PARMESHUR DIN *v.* BISWAMBER SINGH. **7 O.W.N. 503=A.I.R. 1930 Oudh 361.**

———*Cannot build on sahan.*

The use of the sahan as a building site is certainly detrimental to the interests of the zamindar, and a tenant cannot construct a building on his sahan (court-yard). 12 A.L.J. 175; 35 All. 292; 25 I. C. 59 and A.I.R. 1924 All. 723, *Rel. on*; *Allahabad Second Appeal* No. 1090 *of* 1924, *Expl.* and *Dist.* (*Dalal, J.*). BANSI KURMI *v.* SUKH MANGAL. **114 I.C. 40=A.I.R. 1929 All. 125.**

———*Mere licensee.*

A tenant occupying land in the *abadi* is in the position of a mere licensee unless he can show that he held under any particular lease. There is a material difference between a license to merely use a piece of vacant land and a license to build on the same. A tenant having a license to use a particular piece of land for tying cattle etc., cannot be allowed to have a building thereon. 29 I. C. 264, *Dist.*; A. I. R. 1926 All. 66, *Foll.* (*Mukerji, J.*). CHHOTKAN KURMI *v.* RAM DEO SAHU. **113 I.C. 756=10 L.R.A. Rev. 158= A. I. R. 1929 All. 76.**

———*Forfeiture.*

The cessation of tenancy works out an automatic forfeiture of the right to occupy the house site which at once escheats to the landlord. (*Kinkhede, A. J. C.*). DAYARAM GANPATSA *v.* DASHRATH RATIRAM. **110 I.C. 834=10 N.L.J. 262= A.I.R. 1928 Nag. 86.**

———*License to use—Limitations.*

If an open piece of land lying close to a tenant's house has been used by him for his domestic or agricultural purposes, there may be a presumption that his occupation of the plot is a part of his

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original contract of tenancy and that he is entitled to its user so long as he is not turned out of the village; but the user must be confined to the way in which it has been exercised in the past for the grant of which alone there can be a presumption. The tenant is a licensee of this plot for the purpose for which he has been using it. He would have no right to alter its user and utilize it for a different purpose altogether. Nor would he be entitled to make constructions on an open site when he has been allowed to use the site for tying cattle or storing heaps of cowdung cakes. 27 All. 356, *Ref.* (*Sulaiman, J.*). B. BHAGWAN RAI *v.* JADDU RAJ RAI. **88 I.C. 746 = A.I.R. 1926 All 66.**

——Where the tenants possess an interest in the village, the landlord is not entitled to eject them from the site of their house in the *abadi* of the village. 21 O. C. 257, *Foll.* (*Misra, J.*). MAHANT DAS *v.* RAM GULAM. **94 I.C. 399 (Oudh).**

—Abadi—Test.

——*Inclusion in Municipality is not enough.*

Mere inclusion in a Municipality is no test as to whether an area is or is not a town. Where in a mouza the dominating population was agricultural,

Held, that though the houses of the neighbouring town adjoined the area the area, could not be, on that account, altered from its old condition as a village site into a town land though some of the old outlying fields of the mouza might have been included in the town. (*Raza and Pullan, JJ.*). FASAHAT HUSAIN *v.* MD. ZAMIN. **118 I.C. 801 = 6 O.W.N. 277 = A. I. R. 1929 Oudh 301.**

—Abadi—Title.

—— *Proof of.*

Where in the entry in the first *abadi* plaintiff's paternal grandfather was recorded as the owner of a particular plot and his name was entered in the subsequent Settlement khasra as owner of the plot, his grandson continued in possession in assertion of his title as owner,

Held, that plaintiff's title to the plot is proved. (*Kendall, J.*). MOHAMMAD HAFIZ ALI *v.* MAHBUB ALI. **95 I. C. 296.**

—Abadi—Transfer.

——*Effect on power of—Co-sharer purchaser.*

The inability of the tenant to sell a house does not cease to operate as soon as the purchaser is a co-sharer in the village, because a co-sharer who cannot build on joint land without the permission and consent of the other co sharers cannot, by merely procuring a sale-deed from one of the tenants of a house improve his position. 4 A.L.J. 196, *Foll.*; 3 A.L.J. 669, *Dist.* (*Mukerji, J.*). BHARTU *v.* DEEDAR SINGH. **113 I. C. 831 = 10 L.R.A. Rev. 196 = A.I.R. 1929 All. 241.**

——*Custom—Inference.*

In the case of transfer of a house in a village *abadi* by a tenant, where the number of instances in which such transfers have been made, is very large and where the instances extend over such a long period of time as to force the instances on the notice of the Zamindar, it would be for the Zamindar to explain why he allowed time after time, year after year, the transfers to go on without a word of remonstrance from him, where the instances are only few, a custom cannot be said to have been established unless it is shown that the instances, although few, were good enough to attract the notice of the Zamindars and to establish conclusively that the Zamindars acquiesced because the custom existed. (*Mukerji, J.*). HAR PRASAD *v.* HORI LAL. **116 I.C. 799 (All.).**

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——*Right to object—Estopped.*

Mere acquiescence in previous sales does not imply the renunciation of the discretionary right of the proprietors to object to a subsequent sale. A.I.R. 1922 Lah. 158 and A I.R. 1923 Lah. 467, *Foll.* (*Tek Chand, J.*). SANT RAM *v.* NAGINA. **111 I. C. 716 = 10 L. L. J. 482.**

——*Right of.*

A non-proprietary resident in a village *abadi* cannot dispose of the site on which his house is built without the consent of the proprietors. The fact that the vendee is a proprietor can make no difference so far as the validity of sale is concerned. 48 P.R. 1899, *Foll.* (*Tek Chand, J.*), SANT RAM *v.* NAGINA. **111 I.C. 716 = 10 L.L.J. 482.**

——*House-site—Only by custom or contract—Inclusion in Municipal area—No effect.*

Occupants of houses in agricultral villages do not, in the absence of a custom or contract to the contrary, by the mere fact of village being included in a Municipality, acquire a right to transfer the site of their houses or to transfer the right of residence along with the materials of their houses and the presumption that the owners of houses in towns have transferable interest in the site of their houses has no application to agriculturists residing in an agricultural village, though that village may be within the limits of a Municipality. 40 All. 584, and A.I.R. 1927 All. 609, *Rel. on*; 40 I. C. 97; 37 All.144; A.I.R. 1924 All. 112, *Dist.* (*Iqbal Ahmad, J.*). SHEO SHANKAR DAS *v.* RAM TAHAI KOERI. **102 I.C. 596 = A.I.R. 1927 All. 605.**

——*Right to object—Estoppel.*

The mere fact of the Zamindar, in some cases foregoing his right of challenging the alienation of sites by occupants of houses, does not debar him from asserting that right in other cases, provided his inaction has not been long enough and the numbers of transfers have not been so large, as to be enough in law to lead to the conclusion, that a custom had grown up in the village entitling the tenants to transfer the sites of their houses. (*Iqbal Ahmad, J*). SHEO SHANKAR DAS *v.* RAM TAHAI KOERI. **102 I.C. 596 = A.I.R. 1927 All. 605.**

——*House—Special contract necessary.*

Where an agriculturist is allowed to build a house for his occupation in the *abadi* he obtains in the absence of a special contract to the contrary, merely a right to use that house for himself and his family so long as he maintains the house and so long as he does not abandon the house by leaving the village, and in the absence of a special grant by the zamindar the tenant has no interest which he can sell by private sale or by sale in execution except such interest as he has in the timber, roofing and wood-work of the house. 20 All. 248, *Foll.* (*Lindsay, J.*). MT. AISHA BEGAM *v.* DAULAT SINGH. **100 I. C. 605 = 8 L.R.A. Rev. 110 = A.I.R. 1927 All. 471.**

——*Presumption.*

Where the sale was to one of the village proprietors it must be presumed to be valid and with consent. (*Addison, J.*). BULA SINGH *v.* RAHIM BAKSH. **100 I. C. 901 = A.I.R. 1927 Lah. 283.**

——*Non-proprietor's right.*

A non-proprietor in a village *abadi* is only the owner of the material of his house and is not competent to sell the site or the right of residence. The sale of the house, therefore, by such non-proprietor owner though it be to one of the proprietors, is not binding on the rest. 24 P. R. 1878 and

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48 P. R. 1899, *Foll.* (*Zafar Ali, J.*). SULTAN MAHOMED *v.* SURKHRUKHAN. **100 I. C. 432= A. I. R. 1927 Lah. 197.**

———*Non-agriculturist—No general right.*

A tenant or other person who is entitled to a site of a house can transfer his right to occupy and that too within narrow bounds. In the absence of an agreement to the contrary the right to occupy the house and site held by a non-agriculturist is not transferable without the consent of the malguzar. (*Hallifax, A.J.C.*) LAKSHMI PRASAD *v.* AHMAD RAGHI. **80 I.C. 635=A.I.R. 1925 Nag. 39.**

———*Tenant allowed to build house and live in abadi cannot sell.*

According to the general custom prevalent in the North Western Provinces, a person, agriculturist or agricultural tenant, who is allowed by a *zamindar* to build a house for his occupation in the *abadi* obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family, so long as he maintains the house, that is, prevents its falling down and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi* under the zemindar, he has, unless he has obtained by special grant from the *zemindar* an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing and wood-work of the house. If such a tenant sells, the alienation is invalid and the landlord is entitled to recover the house and site from the purchaser. 20 All. 248, *Foll.* (*Wazir Hasan, A. J. C.*). MT. AZMATUN-NISSA *v.* GANESH PRASAD. **83 I.C. 51= 11 O.L.J. 750=28 O.C. 119=A.I.R. 1925 Oudh 262.**

———A sale to another tenant is just as much an infringement of the Zamindar's right as a sale to a person residing outside the village, unless the *wajib-ul-arz* expressly permits such a transfer. (*Daniels, J.*). MT. CHAMPA KUNWAR *v.* TULSI RAM. **79 I.C. 954=A.I.R. 1924 All. 921.**

—Abadi—Village.

———*Test.*

A village in which such persons as silversmiths, Jogis, Julahas and Telis reside besides the tenants does not cease to be an agricultural village for that reason. (*Raza, J.*). MD. SHER KHAN *v.* KUNWAR. **114 I.C. 499=A.I.R. 1929 Oudh 314.**

—Abadi—Well.

———*In sahan—Right to.*

A suit by a zemindar against a tenant of his who has a house in the *abadi*, for demolition of a pucca well which the tenant had sunk in the *Sahan* in front of an appurtenant to his house does not lie. 1898 A. W. N. 44; 42 I. C. 51 and 51 I. C. 1006, *Foll.* (*Ryves and Mukerji, JJ.*). MAHADEO RAI *v.* JAN MUHAMMAD. **85 I.C. 1=47 All. 541= 23 A.L.J. 231=A.I.R. 1926 All. 341.**

—Abandonment.

———*Presumption—Reversioner's suit for possession.*

Where a grandmother of a minor is in possession of a house as kamin with his implied permission, he being the rightful owner, the mere fact that another person institutes a suit as a reversioner of the minor's grandfather for possession of the house which is dismissed, does not raise any presumption of abandonment by the plaintiff who can institute a suit for possession of the house after the grandmother's death. (*Jai Lal, J.*). MUHAMMAD DIN *v.* KHUSHI MUHAMMAD. **A.I.R. 1930 Lah. 215.**

LANDLORD AND TENANT—Abandonment.

———*Licensee—Endowment by.*

Where a licensor who has no transferable right in the site executes a deed of endowment of land and building standing on it in favour of a third person or an idol the act of endowment amounts to abandonment of license and the third person or idol is liable to ejectment by the proprietor of land. (*Stuart, C.J. and Raza, J.*). B. KANHAIYA LAL *v.* SYED HAMID ALI. **122 I.C. 774= 7 O.W.N. 271=A.I.R. 1930 Oudh 235.**

———*Inference of—Non-payment of rent.*

In order to entitle a landlord to re-enter it must be shown that there has been transfer by way of gift either of the whole or part of the holding and repudiation or relinquishment or abandonment of the tenancy with reference to the remainder by either the original tenant or the heirs of the said tenant. Mere cessation of payment of rent for a short period prior to the suit is not sufficient to infer abandonment. (*Graham and Mitter, JJ.*). RAMJOY MODAK *v.* DURGA CHARAN. **60 C.L.J. 328=A.I.R. 1929 Cal. 830.**

———*Inference of—Non-user of mineral rights.*

In the case of mineral rights non user is not an abandonment of possession on the part of the owner, whose right is not barred so long as the minerals are not worked by some one else; and by working a part of the minerals or opening up particular quarries, possession over a continuous field of minerals or quarries cannot be obtained. (*Das and Wort, JJ.*). GOPI RAM *v.* JAGARNATH. **A.I.R. 1929 Pat. 685.**

———*Non-transferable occupancy holding.*

Where an entire non-transferable occupancy holding which is mortgaged is purchased by mortgagee in execution proceedings of his mortgage decree, the tenant retains no interest in the property. It is a case of abandonment and the landlord is entitled to *khas* possession. 22 C.W.N. 663 and A.I.R. 1922 Cal. 32, *Dist.* (*Mallick and Garlick, JJ.*). ABDUL HAKIM *v.* ANNADA PROSAD. **114 I.C. 791=A.I.R. 1928 Cal. 669.**

———*Tenant in possession as sub-lessee.*

A landlord is not entitled to treat a holding abandoned where the original tenant is in possession as a sub-lessee without some act of repudiation of tenancy to him. A.I.R. 1924 Cal. 647, *Foll.*; 24 C.L.J. 40, *Dist.* (*Suhrawardy and Cammiade, JJ.*). ATAHARUDDIN TALUQDAR *v.* MURARI MOHUN. **107 I.C. 735=47 C.L.J. 21= A.I.R. 1928 Cal. 193.**

———*Question of intention—Residence in another village.*

Abandonment depends upon the intention of the party concerned. The mere fact that such party is residing in another village does not by itself amount to abandonment. It must be shown that he migrated to the other village with the intention of not returning to the former village and therefore that he intended to relinquish his rights there. (*Jai Lal, J.*). GHANIA *v.* SANTA. **112 I.C. 327= A.I.R. 1928 Lah. 455.**

———*Inference of—Occupancy tenant—Absconding—Non-payment of rent—Long absence.*

Held, that under these circumstances the landlord was justified in assuming that he had abandoned the holding and was also justified in setting the land with another tenant. (*Stuart, C.J. and Rasa, J.*). SAHEB DIN *v.* MAHABIR SINGH. **107 I.C. 326=3 Luck. 273=9 L.R.A. Rev. 350= 1 L.C. 677=A.I.R. 1928 Oudh 95.**

LANDLORD AND TENANT—Abandonment.

———*Rights after.*

An occupancy tenant absconded having failed to pay the rent due from him. He left the village, abandoned the holding and remained absent for more than 12 years. During the period of his absence the landlord settled the holding with another tenant. The absconding tenant returned and the new tenant let out some lands to him

Held, that under these circumstances the landlord was justified in assuming that he had abandoned the holding and was also justified in settling the land with another tenant,

Held, that letting by the new tenant was an act of grace and the absconding tenant cannot hold the land in his own right. The absconding tenant had lost his rights and the new tenant could not confer on him the right of occupancy in the lands to which he was admitted. (*Stuart, C.J. and Raza, J.*). SAHEB DIN *v* MAHABIR SINGH.

107 I. C. 326=3 Luck. 273=9 L.R.A. Rev. 350=1 L.C. 677=A.I.R. 1928 Oudh 95.

———*Inference of—Residence in another village.*

The mere fact that a tenant leaves a particular village and goes to take residence in another village, but retains control over his property situate in the village in which he originally resided, can be no indication of the fact that he intended to leave the village permanently. (*Gokaran Nath Misra, J.*). MAHADEO SINGH *v.* HAR BUKHSH DUBE.

106 I.C. 489=4 O.W.N. 1077=A.I.R. 1928 Oudh 13.

———*Proof of—Non-payment of rent.*

Mere non-payment of rent is not sufficient for establishing abandonment of a *jote* by a raiyat, but that fact, when taken with other circumstances may lead a Court of fact to a conclusion one way or the other according to the circumstances of a particular case. (*Chakravarti, J.*). SK. MOHARAMDI *v.* SHEIK ASMAT. **91 I.C. 493=A.I.R. 1926 Cal. 751.**

———*Inference of—Non-user of mineral rights—Proprietor's intentions.*

Mere non-user does not amount to an abandonment of a tenancy of mineral rights nor does the fact that the proprietor treated the lease as having been surrendered or abandoned in itself prove abandoment by the tenant. What the proprietor understood is of no consequence unless he actually took possession of the demised land and retained possession for the statutory period. *Agency Co.* v. *Short*, (1888) 13 A. C. 793, *Ref.* (*Das and Adami, JJ.*). MIDNAPUR ZAMINDARI CO., LTD. *v.* RAM KANAK SINGH DEO. **91 I. C. 169=5 Pat. 80=7 Pat.L.T. 188=1925 P.H.C.C. 254=A.I.R. 1926 Pat. 130.**

———*Proof of—When not necessary.*

Where the tenant of a non transferable holding sold the entire holding without making any provision for the rent being paid,

Held, it is not necessary for a landlord seeking to re-enter to prove as a fact; that the holding has been abandoned, but it is a direct inference from the fact that the entire holding was sold and possession given to the purchaser. 17 C.W.N. 1105, *Foll.* (*Cuming and Chakravarti, JJ.*). PROSONNA KUMAR DE *v.* ANAND CHANDRA BHATTACHARJEE. **93 I.C. 86=30 C.W.N. 231.**

———*Inference of—Oudh—Sale of a grove.*

According to the usual oustom prevailing in Oudh a tenant is debarred from selling a grove held by him and if he does so, the landlord can treat it as abandoned and sue for recovery of possession from the transferee. A.I.R. 1925 Oudh 319, *Appl.* (*Neave, A.J.C.*). GANESH *v.* SURAJ BAKHSH SINGH. **91 I.C. 1021=2 O.W.N. 944=A.I.R. 1926 Oudh 139.**

LANDLORD AND TENANT—Abwab.

———There is no difference in principle under which the fact of relinquishment is to be ascertained in the case of a *Paikan* tenure and in that of a *raiyat* holding under the B. T. Act. (*Suhrawardy and Chotzner, JJ.*). KASIRAM KAIBORTA *v.* BOGA KAIBORTA. **78 I.C. 503=A. I. R. 1925 Cal. 524.**

———*Permanent tenure—Effect on.*

Although where a tenure is a permanent and transferable one, mere abandonment is not a valid relinquishment yet a voluntary abandonment for a long period without any inevitable *force majeure* or other cause beyond the power of the holder, must be considered to be equal to an express relinquishment; and if a man so abandons his holding for years, neither he nor any one under him can re-claim it. (*Suhrawardy and Chotzner, JJ.*). KASIRAM KAIBORTA *v.* BOGA KAIBORTA. **78 I.C. 503=A.I.R. 1925 Cal. 524.**

———*Inference of—Oudh sale of half a grove.*

Where a grove-holder in Oudh transfers by sale half his grove and remains in possession of the other half, there has been abandonment of half the grove and the landlord is entitled to assert his right of re-entry in respect of that half, and eject the vendee. (*Dalal, J.C. and Wazir Hasan, A.J.C.*). MAHABIR PARSHAD *v.* UMAN SHANKAR. **85 I.C. 527=2 O.W.N. 22=12 O.L.J. 258=28 O.C. 133=A.I.R. 1925 Oudh 319.**

———Where the lambardar agreed not to demand his *haqq*, in consideration of the consent of the co-sharers to his appointment.

Held, any person can agree to abandon a claim to money already due to him. There is nothing invalid in an abandonment for consideration of a payment to which a person is declared entitled by the law. But future right could not be relinquished or transferred to which the holder is not declared entitled by the law, directly or indirectly. (*Hallifax, A.J.C.*). YADO PRASAD *v.* GANGARAM. **70 I. C. 72=A.I.R. 1923 Nag. 211.**

———*Plea—Availability.*

It is not open to a landlord, taking possession of the tenancy with a view to cultivate it, under an agreement with his tenant to set up the plea that the land has been abandoned by the tenant. (*Mukerjee, A.C.J. and Fletcher, J.*). KHETRA NATH MONDAL *v.* LAKHAN SARDAR. **59 I.C. 442 (Cal.).**

—Abwab.

———*What amounts to—Each case depends upon the contract in question.*

In order to determine whether a particular item is abwab, the rule that has been followed is that each case must depend upon the proper construction of the contract before the Court and if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land, *i. e.*, if it is really part of the rent although not described as such, the landlord can recover it. The facts that a certain sum is dealt within the *kabuliyat* in a separate clause or that it is not included in the instalments of rent have an important bearing upon the question of intention of the parties to the contract. They show whether the parties intended to treat a particular item as part of the rent agreed upon to be paid or as something different from the rent. 45 Cal. 259, *Foll.*

Per *Cammiade, J.*—In each case it has to be determined whether or not the item called in question as-

LANDLORD AND TENANT—Abwab.

an abwab is covered by the definition of the term "rent." To put it in other words, it must be found that that item is part of the consideration agreed to be paid or delivered by the tenant for the use and occupation of the land provided that such consideration is lawful. The consideration may be wholly monetary or wholly one in kind, or it may be partly in money and partly in kind. The statute does not restrict consideration in kind to grain or other produce of the soil. The consideration may be a cartload of paddy or a cartload of money and in either case it would be perfectly lawful. (*Mukerji and Cammiade, JJ.*). JOGESH CHANDRA *v.* SHARFODDIN AHAMAD. **105 I.C. 279= 54 Cal. 799=46 C.L.J. 297=32 C.W.N. 81= A.I.R. 1927 Cal. 857.**

——In a pattah a certain amount was stated as the total rent. In addition to this, certain other items in respect of *vet*, cocoanut and begar were shown in a tabulated form and in that form was also shown a sum as the total amount payable for the land. This total was shown as payable in instalments. The body of the lease provided that the cocoanuts were to be supplied and the labour was to be performed specifically on a single occasion,

Held, that the additional items in respect of cocoanut and begar were irrecoverable abwabs. 45 Cal. 259, *Ref.*; 37 I.C. 965, *Dist.* (*Newbould, J.*). ABDUL KARIM CHOWDHURY *v.* PROSANNA KUMAR NATH. **85 I.C. 770=A.I.R. 1925 Cal. 1116.**

——*Abolition—Exceptions.*

The right to *Banker*, *Jhalkar* and *Phulkar* was always an exception from the abolitions made by the regulations which have abolished *Abwabs*. Rent in respect of fruit trees or other classes of trees may well be charged in addition to the ordinary rent for the land, either under an agreement between the landlord and tenant, or if any custom to that effect can be made out. (*Dawson Miller, C. J. and Mullick, J.*). RAMESHWAR SINGH *v.* SHEIKH WAZUL HAQUE. **78 I.C. 463= A. I. R. 1925 Pat. 294.**

——*Enforceability.*

An agreement to deliver ghee and goat in a *Maurasi Mokurrari Kabuliyat* which can be called *abwabs* is not enforceable and the provisions of Act X of 1859 and VIII of 1869 of the Bengal Council govern S. 3 of Putni Regulation. 4 C.L.J. 527, *Dist.*; 17 Cal. 131; 16 I. A. 152 (P. C.), *Ref. to.* (*Suhrawardy and Cuming, JJ.*). RAM TARAN TEWARY *v.* KUMEDA DASI. **68 I.C. 161= 26 C.W.N. 634=A.I.R. 1922 Cal. 80.**

—Abwab—What does not amount to.

——Where from the contracts between the parties it was clear that the consideration for the occupation of land was rent in cash and the price of certain quantities of paddy or ghee or both and these items were to constitute the whole rent payable by the defendants, and the price of paddy and ghee was not in any case intended to be an imposition independent of the rent of the land leased by the landlord,

Held, the amounts claimed for ghee and paddy were part of the total rent of the land and not *abwab* to which objection could be taken. (*Mullick and Atkinson, JJ.*). SADANAND TEWARI *v.* DEB NATH MANJHI. **1922 P.H.C.C. 154= A.I.R. 1922 Pat. 184.**

—Accretions.

——*Nature of tenant's right to.*

Persons who have a status of tenure-holders with regard to the parent tenure, have the same status with regard to accretions. (*Duval and Mitter, JJ.*). KARUNACHANDRA DAS *v.* SECRETARY OF STATE. **100 I.C. 466= A.I.R. 1927 Cal. 513.**

LANDLORD AND TENANT—Adverse possession.

——*Settled on landlords—No separate tenure.*

Where subsequent to the creation of a tenure, there have been accretions to the lands actually leased and these accretions are settled on the landlords by the Government, the accretions would not constitute a separate tenure held by the tenants under the landlords. 26 Cal. 739, *Ref.* (*Walmsley and B.B. Ghose, JJ.*). DHIRENDRA CHANDRA RAI *v.* NAWAB KHAJA HABIBULLA. **87 I.C. 442= 29 C.W. N. 505=A.I.R. 1925 Cal. 758.**

—Adverse possession.

——*Permanent tenancy.*

So long as tenant does not transfer his tenancy the question of interference by landlord does not arise and consequently till such transfer there cannot be any acquisition of permanent and transferable right by adverse possession. A.I.R. 1923 P.C. 118 (P.C.) and 22 C.W.N. 856, *Ref.* (*S.K. Ghose and Pankridge, JJ.*). JANAKI NATH ROY *v.* MOHENDRA NARAIN ROY CHOWDHURY. **A.I.R. 1930 Cal. 94.**

——It is a well-settled rule in this country that amongst co-owners, and tenants-in-common, the possession of one will be presumed to be for the benefit of all and that in order to make out such possession as adverse, there must be an open assertion of hostile title on the part of the person setting up adverse possession and overt acts of dispossession amounting to an ouster of the other co-owner. It does not affect the matter at all whether the parties are members of the same family or are co-heirs or not. The principle rests merely upon their being co-tenants or co-owners and should therefore apply to all co-tenants and co-owners irrespective of their being related as members of the same family or not. A person who takes a transfer from a co-tenant or co-owner steps into the shoes of his transferor. When he takes the assignment he is clothed with all the rights and becomes subject to all the liabilities of his transferor. In short he becomes as much a co-tenant or a co-owner as his transferor was before the transfer. This being the position there is no reason for the rule applicable to co-owners and co-tenants not being applied to the transferee. *Corea* v. *Appuhamy*, (1912) A.C. 230; *Muthunayagam* v. *Brito*, (1918) A.C. 895; *Thomas* v. *Thomas*, (1856) 2 K. & J. 79; 18 Cal. 10; 19 Cal. 255 and A.I.R. 1929 Oudh 284, *Ref.*; A.I.R. 1919 P.C. 44; A.I.R. 1924 Lah. 682; 35 Cal. 961; 23 Bom. 137 (F.B.); 11 M.L.W. 31 and A.I.R. 1922 Lah. 205, *Dist.* (*Shrivastava and Nanavutty, JJ.*). HALIM SHAH *v.* RAHIM BUX. **A.I.R. 1930 Oudh 475.**

——*Trespass during—Ijara lease.*

Possession taken by a trespasser during the currency of the ijara lease does not become adverse to the zamindar until upon expiration of the term, and a suit for possession may be brought within 12 years of that date. 13 Cal. 101 and 1 C.W.N. 246, *Rel. on.* (*Courtney-Terrell, C.J. and Chatterji, J.*). BANKEY BEHARI LAL *v.* GUDO CHOUDHURY. **11 Pat.L T. 447=A.I.R. 1930 Pat. 476.**

——*Evidence of—Entry in village papers.*

The entry in village papers of the defendants as tenants bila faisla is inconsistent with their possession being adverse. These entries must be presumed to be correct unless they are rebutted. (*Shrivastava, J.*). LALTA PERSHAD *v.* HARNAM SINGH. **115 I.C. 302=A.I.R. 1929 Oudh 370.**

LANDLORD AND TENANT—Adverse possession.

———*Long possession—Non-payment of rent.*

The mere fact that the defendants have been in possession for a long time or that they had not paid any rent for the land cannot establish title by adverse possession. A I.R. 1925 Oudh 442; 8 O.L.J. 495, *Ref.* (*Shrivastava, J.*). LALITA PERSHAD *v.* HARNAM SINGH. **115 I C. 302= A.I.R. 1929 Oudh 370.**

———*Lease of sub-soil rights by one without title.*

A mere grant of lease of the sub-soil rights by a taluqdar who has no rights to sub-soil does not in itself give a title by adverse possession. *Ashton* v. *Stock*, 6 Ch.D. 719; *Thornton* v. *Hinshman*, (1907) 1 Ch. 515 and A.I R. 1925 P.C. 42, *Ref.* (*Das and Wort, JJ.*). GOPI RAM *v.* JAGANNATH. **A.I.R 1929 Pat. 685.**

———*Trespasser extracting minerals.*

It is well settled that a trespasser wrongfully extracting minerals acquires possession only of the minerals worked out cannot be said to be in possession of the mine itself, unless it is shown that the working of the minerals has been on a large scale, *i.e.*, unless there has been a "a proper working of the field." (*Das and Wort, JJ.*). GOPI RAM *v.* JAGARNATH. **A.I.R. 1929 Pat. 685.**

———The doctrine that possession of one co-owner is possession of all co-owners cannot apply to a case between the landlord and tenant. (*Das and James, JJ.*). RAMLAKHAN SINGH *v.* BHAIACHATHU SAHI. **117 I.C. 636=A.I.R. 1929 Pat. 624.**

———Mere non-payment of rent or discontinuance of payment of rent by itself does not create adverse possession. 40 Cal. 173 and A.I.R. 1922 P.C. 272, *Foll.* (*B. B. Ghose and Cammiade, JJ.*). BEJOY CHAND MAHTAB *v.* SUKUMARI DEVI. **117 I.C. 842=32 C.W.N. 720.**

———*Through tenant.*

Where a tenant does not attorn to the transferee of land, but pays rent to the landlord himself and then to another transferee from landlord for over twelve years, the title of first transferee is extinguished by prescription. (*Ramesam, J.*). UMMAYA *v.* MUSALIYAR. **104 I.C. 831=39 M.L.T. 211= A.I.R. 1927 Mad. 1157.**

———*Onus.*

The mere fact that the defendant holds some land under the plaintiffs would not be sufficient to throw upon the plaintiffs the burden of proving that in respect of any other land in the estate which the defendant may be found to be in possession of, he has no right as a tenant, and that if the land in dispute does not lie contiguous to any lands of the admitted tenancy; the onus is on the defendant to prove that it is a part thereof. *Case-law discussed.* (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. **95 I.C. 622=43 C.L.J. 387=A. I. R. 1926 Cal. 883.**

———*Assertion of—No ejectment—Effect.*

Where a person enters upon the land as a service tenure-holder and subsequently asserts a title of his own, the fact that the landlord did not proceed to eject him within 12 years of such assertion of his right does not confer upon him any higher right than what he had when he entered into possession of the property as a service tenure-holder under the landlord. (*Greaves and B. B. Ghose, JJ.*). JNAN CHANDRA DHUPI *v.* RAY SATISH CHANDRA CHAUDHURY. **91 I.C. 431=A.I.R. 1926 Cal. 645**

———*Tenant—Can arise only after tenancy ends.*

The tenant himself cannot during the term by any act or declaration of his disseise the landlord. He may by repudiating the landlord's title during the term, forfeit the term, but the landlord is not bound to take advantage of the forfeiture and his estate cannot be affected. A tenant cannot use the statute of limitation to run against his landlord by giving notice to him of an adverse title during the term. The statute of limitation runs against the landlord only when the relationship of landlord and tenant has determined and the landlord is entitled to take possession. (*Newbould and B. B. Ghose, JJ.*). GOPIKA RAMAN ROY *v.* ATAL SINGH. **85 I.C. 678=A.I.R. 1926 Cal. 193.**

———*Tenant—Gift from disqualified owner—No effect.*

Where a tenant holds land on payment of rent and continues to do so without any change in rent of area, the mere fact that a gift is executed in his favour by a disqualified proprietor which turned out to be invalid, being without the sanction of the Court of Wards, does not alter the character of the possession and convert it into adverse possession. 43 Mad. 244 (P.C.), *Dist.* (*Dalal, J.*). ABDULLAH KHAN *v.* AMIR HAIDER KHAN. **91 I.C. 97=A.I.R. 1926 Oudh 198.**

———*Starting point.*

An open and public declaration commnnicated to the landlord by a person in permissive occupation who is not paying rent or rendering services and who is claiming adversely to be an owner will give a starting point for limitation. (*Kennedy, J.C. and Aston, A.J.C.*). SIDIK HAJI YAKUB *v.* MAHOMED FARUQ. **90 I. C. 1007=21 S.L.R. 185= A.I.R. 1926 Sind 71.**

———*Tenant—Right to assert—Limits.*

Authorities in India show that a tenant in India is not precluded by an admission of tenancy from showing that the nature of tenancy asserted by him to the knowledge of the landlord has been for the period prescribed by the Limitation Act *pro tanto* adverse to the right to eject at will or on notice given. The question there is not what was the right which actually existed at the beginning of the tenancy but what was the right which he has openly enjoyed to the knowledge of the owner or his representative for the time being. A manifest assertion by the tenant to the knowledge of the person representing the landlord's interest of a right inconsistent with that claimed by the landlord to treat him as a tenant at-will or from year to year would be a disclaimer of the landlord's title. *Vivian* v. *Mote*, 16 Ch. D. 730, *Ref. to.* (*Jwala Prasad, A.C.J. and Macpherson, J.*). RAM RACHHAYA SINGH *v* KAMAKHAYA NARAIN. **84 I. C. 586=4 Pat. 139=6 P.L.T. 12= 1924 P. H C.C. 313=A.I.R. 1925 Pat. 216.**

———*Starting point—Tenant's assign.*

When a lease expires, the tenant's assign has no right to the possession of the property and if he is in possession, the possession is wrongful. In the absence of evidence from which a fresh tenancy can be inferred time begins to run against the landlord from the expiration of the lease. (*Jwala Prasad, A.C.J. and Macpherson, J.*). RAM RACHHYA SINGH *v.* KAMAKHAYA NARAIN SINGH. **84 I.C. 586=1924 P.H C.C. 313= 6 Pat.L.T. 12=4 Pat. 139= A.I.R. 1925 Pat. 216.**

———*Tenant.*

The possession of a tenant does not become adverse by the mere fact of his repudiating the tenancy unless his repudiation is accepted by the landlord. (*Martineau, J.*). MUHAMMAD HASSAN *v.* SOHARA. **71 I.C. 805=A.I.R. 1924 Lah. 389.**

———*Starting point—Mortgage by landlord—Assertion by tenant against mortgagee.*

LANDLORD AND TENANT—Adverse possession.

In a redemption suit a defendant (not the mortgagee) who was in possession as tenant claimed *miras* rights. The Court expressed itself in favour of the probability of the contention but referred the plaintiff to another suit for ejectment. Plaintiff subsequently, after redemption filed the ejectment suit,

Held, that the mortgagor could not have filed a suit for ejectment before he had redeemed the mortgage and so the tenant could not claim adverse possession of *miras* rights till then. (*Macleod, C.J. and Fawcett, J.*). GITABAI BHAN *v.* KRISHNA MALHARI. **60 I.C. 913= 45 Bom. 661=23 Bom. L.R. 119= A.I.R. 1921 Bom. 295.**

———*Occupancy right—If can be affected.*

Where an occupancy tenant died and the defendant took possession of his *khoti* land and held it adversely for over 12 years, the plaintiff in whose favour the land was relinquished by the alleged occupancy tenant, sued for possession.

Held, that the defendant's adverse possession against the tenant only operates to extinguish his right to the actual possession of the land, and does not operate to annihilate his occupancy tenant's right which he could transfer to the *Khot*. 30 Bom. 290, *Foll.* (*Macleod, C.J. and Fawcett, J.*). VISHNU BHIKAJI *v.* BABLA LACKA. **61 I.C. 594= 45 Bom. 1001=23 Bom. L.R. 411= A.I.R. 1921 Bom. 38.**

—Alienation—Assignment.

———Under the law as it stood before the Transfer of Property Act, tenancies whether of homestead lands or of agricultural land were not transferable, in the absence of a custom to the contrary or of an express contract to that effect. The only recognized exception to this rule was that if one man granted a tenure to another for the purpose of living upon the land, that tenure, in the absence of evidence to the contrary was assignable. (*Mookerjee, A. C. J. and Fletcher, J.*). SULIN MOHAN BANERJEE *v.* RAJ KRISHNA GHOSE. **60 I.C. 826=33 C.L.J. 193=25 C.W.N. 420= A.I.R. 1921 Cal. 582.**

—Alienation—Recognition of transfer.

———*Rent receipts—Construction.*

Where, in the rent receipts granted by the gomastha of the landlord, to the transferee of a tenancy, it was not stated that the transferee was the possessor of the holdings or that he had any interest therein and it was not stated that the rent was being paid on his own behalf,

Held, that the rent receipts, by themselves did not furnish any evidence of recognition of the transfer on the part of the landlord. 34 C. 902 (P. C.), *Dist.* (*Mukerji, J.*). SATISH CHANDRA GHOSE *v.* DEBENDRA NATH DAY. **85 I.C. 636= A.I.R. 1925 Cal. 761.**

———*Receipt by landlord of rent from transferee—Receipt by gomasta.*

Per *Dawson Miller, C. J.*—It is well established that the receipt of rent by the landlord from the transferee of a holding, not transferable by custom, will validate the transfer. But the *gomasta* or patwari of the landlord, although authorised to collect rents on his behalf, has no authority by taking rent from a transferee to create the relationship of landlord and tenant between his master and the transferee. In such cases the landlord would not be generally bound unless he accepted the rent knowing the source from which it came. It does not follow that because the rent collector received rent from the transferee of tenant therefore, the landlord recognised him as a tenant. It must be shown that the landlord had knowledge of the transaction and ratified it either expressly or by implication. (*Dawson Miller, C.J., Das and Adami, JJ.*). BHONA LAL CHOWDHURY *v.* W.A. VINCENT. **65 I.C. 882=3 Pat.L.T. 653= A.I.R. 1922 Pat. 619.**

LANDLORD AND TENANT—Alienation—Transferability.

—Alienation—Suit for possession.

———*Heritable tenure—Sale in execution—Talukdari—Right to recover.*

In 1871 a decree in respect of certain plots was passed by the Settlement Court in favour of one *P* as against the talukdar of the village in which the plots lay. The tenure which *P* acquired in the plots in suit by virtue of the decree of the Settlement Court was heritable tenure. Through the course of succession the plots came to be vested in a widow who executed a deed of gift in respect of those plots in favour of *C* and *G*, the reversionary heirs. In 1901 the talukdar commenced an action for obtaining a declaration as to the invalidity of the deed of gift. A decree was passed in favour of the talukdar. *C* and *G*, the donees, were left to continue in possession of the plots and had consistently been recorded in the village papers as tenants with occupancy rights from year to year. *A* held a simple money decree against *C* and his co-sharers and in execution of that decree he attached the plots in question. The plots were sold by public auction. *A* purchased. *C* and his co-sharers surrendered their rights in the plots in question in favour of the plaintiff talukdar by means of writing and the talukdar sued for the recovery of possession of the plots in suit from the hands of *A*, the auction-purchaser.

Held, that the talukdar was entitled to the possession of the plots in suit from the hands of the auction-purchaser. The donees *C* and *G* were the rightful heirs to the estate of inheritance which would have opened on the death of the widow, had she died on the date when she put them in possession of the plots. The estate of inheritance was accelerated in their favour in the circumstances of the case and, though the gift was invalid, the nature of their possession in law must be treated as an acceleration of their rights as heirs at-law. 10 Cal. 482 (P.C.) and A.I.R. 1918 P.C. 77, *Foll.* (*Wazir Hasan and Rasa, JJ.*). DURGA PRASAD *v.* JAGAT JIT SINGH. **112 I.C. 169= 3 Luck. 487=5 O.W.N. 265=A.I.R. 1928 Oudh 359.**

—Alienation—Transferability.

———*Permanent lease at fixed rent—Implication.*

The fact that the permanent lease at a fixed rental is granted in respect of a raiyati which is transferable, carries with it the plainest implication that the raiyati was a raiyati at a fixed rent which alone is transferable under the law without the consent of the landlord. A.I.R. 1921 Cal. 451 (F.B.), *Rel. on.* (*Mitter, J.*). PYARI MOHAN *v.* SIDDIQUE AHMED. **117 I. C. 675= A.I.R. 1928 Cal. 531.**

———*Of lease.*

Where a person takes a certain piece of land on lease for stacking fuel supplied at a burning ghat, such person is not entitled to transfer that piece to a third person, and any such transfer is not binding on the owner. A. I. R. 1921 All. 294, *Rel. on.* (*Ashworth, J.*). MT. BILASI *v.* BIJAI NARAIN. **102 I.C. 186=A. I. R. 1927 All. 368.**

———*Right of occupancy.*

There is no custom entitling a tenant in the village of Pali Muqimpur to transfer the right of

LANDLORD AND TENANT—Alienation—Transferability.

occupancy of the site of his house in *abadi*. A.I.R. 1926 All. 47, *Dist.* (*Lindsay, J.*). MT. AISHA BEGAM *v.* DAULAT SINGH. **100 I.C. 605= 8 L. R. A. Rev. 110=A. I. R. 1927 All. 471.**

———*Custom—Evidence of.*

Evidence to show that the landlords thought fit on payment of a certain nazar to recognize certain transferees whom they chose to recognize as tenants is not sufficient to establish a custom of transferability. (*Greaves and Duval, JJ.*). RAJANI KANTA GHOSE *v.* NAGENDRA NARAIN. **98 I.C. 1008=A.I.R. 1927 Cal. 232.**

———It is impossible to distinguish between a transfer of a tenancy with the consent of the landlord and a surrender of it to the landlord followed by fresh grant of it to the transferee. (*Hallifax, A.J.C.*). NARAIN *v.* MOTISA. **99 I.C. 461= A. I. R. 1927 Nag. 121.**

———*Custom—Inference—Data.*

Where a large number of instances of transfers of houses in a zamindari village are proved, and it is found that the zamindar has not objected to them, the Court can presume the existence of a custom of transferability. The party relying on the custom need not show that the transfers were without the zemindar's consent. But they will have to show this if the instances they can prove are few in number. (*Mears, C. J. and Sulaiman, J.*). SYED TAJAMMUL HUSAIN *v.* BANWARILAL. **88 I. C. 752= 48 All. 77=23 A.L.J. 932= A.I.R. 1926 All. 43.**

———*Recognition—Test.*

When determining whether the landlord has recognized a particular transfer of tenancy, the Court cannot look at words like "*sarbarahakar*" and similar words used in dakhilas but has to consider whether in fact there has been a recognition. 17 C.W.N. 1088, *Relied on.* (*Greaves and Mukerji, JJ.*). JNANENDRA NATH SINGHA ROY *v.* RAKHYA KALI DEBI. **87 I.C. 986= A.I.R. 1925 Cal. 1245.**

———*Transferable tenure in the hands of a tenant is also transferable in the hands of his transferee.*

The tenancy of the original tenant was treated by the Government as transferable and the rights of the transferee were recognised by the settlement authorities; the person who first took malikana settlement in 1901 for 5 years, on re-settlement with him, took the property subject to the interest of transferee of the original tenant as the holder of a transferable tenure. The person who took malikana settlement received rent successively from the original tenant and from his transferee and passed receipts in their respective names,

Held, the tenure of the original tenants which was treated as transferable when transferee was recorded as a tenure-holder by the Revenue Authorities before the renewal of the malikhana settlement with the plaintiff, must be treated as a transferable tenure also in the hands of the transferee. The balance of modern authorities is in favour of the view that such engagement between the Government and the settlement holder may be invoked by the tenant for his own benefit and protection, even though he may not be himself a party thereto. (*Mookerjee and Cuming, JJ.*). HEMANTA KUMARI DEVI *v.* MIDNAPORE ZAMINDARI CO., LTD. **77 I.C. 261= 35 C. L. J. 493=A.I.R. 1923 Cal. 25.**

———*Recognition—Rent receipt.*

The grant of a rent receipt by Tahsildar cannot in any way amount to recognition of the transfer by landlord. *Russo-Chinese Bank, Ltd.* v. *Li You Sam*, (1910) A.C. 174; 1 P. L. J. 414 and 2 P.L.J. 231, *Rel. on*; (1918) P. H. C. C. 210, *Dist.* (*Coutts and Sultan Ahmad, JJ.*). DEBI DAYAL PANDE *v.* RAM SAKAL PATHAK. **1921 P.H.C.C. 135= 2 Pat. L. T. 4=A.I.R. 1921 Pat. 156.**

LANDLORD AND TENANT—Building by tenant.

—Alienation—Transferee.

———*Prescription against landlord.*

A transferee from a life-tenant cannot prescribe against the landlord during the lifetime of the life-tenant. (*Ross and Wort, JJ.*). CHOTA NAGPUR BANKING ASSOCIATION *v.* KAMAKHYA NARAIN SINGH. **109 I.C. 306=7 Pat. 341= A.I.R. 1928 Pat. 431.**

———*Invalid transfer—No rights—Mere trespasser.*

When a tenant transfers possession of a house to a stranger for consideration and thereby relinquishes all his rights in the house, the abandonment on the part of the tenant is complete; but where the transfer is invalid both for the reason of there being no registered document to prove it and also for the reason that such a transfer is forbidden by the village custom, the transferee acquires no rights under that transfer. His possession therefore is that of a trespasser and the owner of the land, the landlord, is entitled to eject the transferee. A.I.R. 1925 Oudh 262 and 319, *Foll.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). MATHURA *v.* UDEY BHAN SINGH. **106 I. C. 360= 4 O W.N. 913=A.I.R. 1927 Oudh 482.**

—Alienation—Validity of.

———The landlord is entitled to eject a transferee from a tenant of the *abadi* land unless it is shown by the transferee that his transferor had the right to make the transfer. A. I. R. 1925 Oudh 262, *Foll.* (*Wazir Hasan, J.*). DEPUTY COMMR., HARDOI *v.* SITAL SAH. **95 I.C. 449 (Oudh).**

———*House sites in towns.*

The presumptions which obtain in agricultural villages have no application to towns, and the occupiers of houses can freely transfer the sites as of right. (*Ryves and Daniels, JJ.*). SHAHU GOVIND *v.* KUNDAN **74 I.C. 760= 4 L.R.A. Civ. 191=A.I.R. 1924 All. 112.**

—Alienation—What can be transferred.

———Where a fixed-rate-tenant transfers his tenancy, the transferee has a right to occupy the house of the late tenant, in the same way as the fixed rate tenant, if the house is needed for effectual cultivation of the tenancy. A. I. R. 1922 All. 538, *Foll.* Hence, a transfer of the house to the transferee cannot be avoided by the landlord. (*Mukerji, J.*). M. MAHADEO PRASAD *v.* HARBANS SINGH. **89 I.C. 179=A.I.R. 1926 All. 126.**

—Alienation—What is.

———The relinquishment of a holding amounts to a transfer and it is certainly an alienation. (*Pullan, A. J. C.*). SHEONANDAN SINGH *v.* JAI RAM SINGH. **79 I.C. 1022=11 O.L.J. 608= 27 O.C. 378=A.I.R. 1925 Oudh 73.**

—Appurtenance.

———*Question is one of fact.*

The question whether a certain class of land is appurtenant to the holding of a tenant is one of fact depending upon the circumstances of each particular case. (*Mears, C.J. and Gokul Prasad, J.*). BHOJ RAJ *v.* HARDEVA. **77 I.C. 140=44 All. 726= 20 A.L.J. 608=A.I.R. 1923 All. 140.**

—Building by tenant.

———*No prejudice to landlord—Permission unnecessary.*

A tenant may build without landlord's consent either a house or a well inside his house or on

LANDLORD AND TENANT—Building by tenant.

land actually appurtenant to and adjoining his house, which forms part of the site on a portion of which his house stands provided that such construction is not detrimental to the other interests of the Zamindar. 35 All. 292; A.I.R. 1925 All. 341; 4 O.L J. 454 and 6 O.L.J. 281, *Rel. on*; 25 I.C. 59; A. I. R. 1924 All. 723 and 10 I. C. 284, *Dist.* (*Boys, J.*). FARHATULLAH *v.* MOHAMMAD. **A.I.R. 1930 All. 89.**

———*Acquiescence—Kachcha house.*

There can be no acquiescence where a kachcha house is put up in a short time costing little to put up or to pull down. (*Dalal, J.*). BANSI KURMI *v.* SUKH MANGAL. **114 I. C. 40= A. I. R. 1929 All. 125.**

———*Long possession—No right to remain rent free.*

The mere fact of the tenants having constructed a dwelling house on the land in dispute and having been in possession thereof for any length of time will not give them a title to remain on the land permanently as rent free tenants. 3 Cal. 696, *Ref.* (*Kulwant Sahay, J.*). HARIHAR PRASAD *v.* GHARBHARAN KOERI. **88 I. C. 553= 3 Pat. L.R. 174=A.I.R. 1925 Pat. 612.**

———*Estoppel—Plea by tenant—Conditions.*

In order that the tenant might avail himself of the plea of acquiescence or estoppel, it is necessary for the tenant to show that in spending money for the erection of buildings of a permanent character he was acting in an honest belief that he had a permanent right in the land and that the landlord knowing that he was acting in that belief stood by and allowed him to go on with the construction of the buildings. *Case-law discussed.* (*C. C. Ghose and Panton, JJ.*). KAZEMINI MUTWALI *v.* MANIK CHANDRA PRAMANIK. **80 I.C. 580= 27 C.W.N. 969=A.I.R. 1924 Cal. 156.**

———*Reversion of site to zamindar—New building by another—Rights in.*

One Baldeo was a tenant of the zemindar in the village in question and he owned a dwelling house. He mortgaged the dwelling house to the predecessors-in-title of the defendants' first party. After he had made the mortgage he died. After his death for some years the house remained vacant and was practically abandoned. The house fell down and all that remained consisted of mud walls. The site naturally reverted to the zemindar who was the owner of it, and he permitted plaintiff to occupy and build on it. The house standing on the site was built by plaintiff,

Held, the plaintiff is entitled to a declaration that the house is not liable to sale in execution of the decree obtained against Baldeo, by defendant. (*Banerji, Gokul Prasad and Daniels, JJ.*). RUP SINGH *v.* MITTHU SINGH. **21 A.L.J. 280= 4 L. R. A. Rev. 133=A.I.R. 1923 All. 357 (F.B.).**

———*Occupancy tenant—No right.*

It has been held in many cases that ryots in villages, who have acquired rights of user over areas of land adjoining their residential houses to enable them to carry on their lawful callings cannot be restrained in the exercise of such user but there is no authority for the proposition that an occupancy tenant may make permanent constructions upon the land of the Zamindar over which he has no right of user. He would be debarred, even if he had a right of user, from making permanent constructions, unless the rights to make permanent constructions are included in the right of user. (*Stuart, J.*). SAINA *v.* BEHARI LAL. **69 I.C. 795= A. I. R. 1922 All. 273.**

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—Cess.

———Unless the landlord had to pay additional cesses for the additional area for which he claims additional rent from tenant, he is not entitled to recover any cesses from the tenant in respect of the additional rent. (*B. B. Ghose and Panton, JJ.*). RAMKRISHNA KULASI *v.* HERAMBA CHANDRA ROY. **119 I.C. 207=56 Cal. 960=33 C.W.N. 388= A.I.R. 1930 Cal. 207.**

———*Nankar—Right to nature.*

A right to nankar is, as a rule, to be considered an under-proprietary right of a heritable and transferable nature though a person in receipt of such allowance cannot necessarily be considered to be the under-proprietor of lands of which he may be in possession. This will depend upon the circumstances of each case.

Where a nankar has not been decreed by a Settlement Court or where a person is not shown to have been in enjoyment thereof since the time when he lost his zemindari right and where it is shown that he has been granted those rights at a subsequent time it should be open to the zemindar to show that at the time when such grant was made it did not carry with it an estate of inheritance or transferability but was merely a grant of a personal character, limited to the life or lives of the person or persons to whom it has been granted. If, however, this is not proved by the landlord and the mere fact that a nankar has been granted to the persons who were old proprietors is established then the presumption would be, unless shown to the contrary, that the grant was in lieu of old proprietary right of a heritable and transferable character. This would especially be the case where the person to whom the grant was made happened to be a former proprietor of the village and where the entry of the rights was to be found in the under-proprietary register. 1 O.C. 157; 1 O.C. 163; 4 O. & A. L. R. 446; 1 O. L. J. 733; 2 O. L. J. 359; 12 O. C. 124 and 4 O.L.J. 187, *Rel. on.* (*Misra, J.*). SHEO MANGAL *v.* PRAG NARAIN. **115 I.C. 109= A.I.R. 1929 Oudh 348.**

———*Decree for—Nature.*

The usufructuary mortgagee of a landlord's interest becomes the landlord since the date of the mortgage; and the relation of landlord and tenant ceases to exist between the landlord-mortgagor and the tenants. Hence where a landlord after executing usufructuary mortgage of his interest, institutes a suit for cess accrued due to him prior to the date of the mortgage and obtains a decree that decree is not a rent decree but merely a money decree. A.I.R. 1914 P. C. 111, *Appl*; 18 C.W.N. 1016, *Rel. on.* (*Das and Ross, JJ.*). GOSAINDAS *v.* GOLAP SINGH. **118 I.C. 727=8 Pat. 366= A.I.R. 1929 Pat. 321.**

———*Meaning.*

The primary notion of a cess is a payment not for the benefit of the landlord, but a payment for some purpose of public convenience such as sanitation, police and the like. 1 A. L. J. 537, *Foll.* (*Iqbal Ahmad, J.*). TIRKHA RAM *v.* CHHOTEY. **100 I.C. 740=8 L.R.A. Rev. 99= A.I.R. 1927 All. 520.**

———*Test as to.*

In order to determine whether or not the amount claimed was a cess, one has to look for the purpose for which the chaukidara dues were paid by the ryots in the village. (*Iqbal Ahmad, J.*). TIRKHA RAM *v.* CHHOTEY. **100 I.C. 740= 8 L.R.A. Rev. 99=A.I.R. 1927 All. 520.**

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———*Haq chaharum—Vendor and vendee liable.*

The liability for the satisfaction of the claim of haq chaharum lies on the shoulders of both the vendor and the vendee and unless the right is limited by the usage to a right to claim haq chaharum from the vendor the right can be enforced against the vendee also. (1838) S.C. 147; 11 O.C. 64; (1867) N.W.P.H.C. 63 (F.B.); 23 All. 209 and A.I.R. 1922 All. 370, *Foll.* (*Stuart, C.J. and Wazir Hasan, J.*). BHAGAL *v.* DEPUTY COMMR., GORDA.
103 I.C. 476=2 Luck. 602=4 O.W.N. 645=
A.I.R. 1927 Oudh 316.

———*Legality—Test.*

The mere fact that certain cess of fee is paid by the tenant for a number of years is not by itself a sufficient ground for holding that it must have had a legitimate origin. But in considering whether the cess is legal or illegal, the circumstance that it has been paid for a number of years may be taken into consideration. (*Devadoss, J.*). VENKATARAMA IYER *v.* NARAYANSWAMI IYER.
86 I.C. 958=A.I.R. 1925 Mad. 1098.

———*Kaval fee—Legality.*

Regulation I of 1816 regulated or put upon a statutory basis the collections that used to be made for the purpose of maintaining the Police force. When after the death of the Tanjore Raja in 1856 the East India Company annexed the villages that had been in his possesion, the Kaval fee became a legitimate demand. Regulation I of 1816 became applicable to these villages. When in 1862 the villages were restored to the heirs of the late Raja by the Government, the latter simply handed over the villages with the burden for the maintenance of the police which the Government was then maintaining. Therefore the "*kaval*" is not an illegal cess or exaction by the landlord and it has had a legitimate origin, and can be collected from the tenants. (*Devadoss, J.*). VENKATARAMA IYER *v.* NARAYANASWAMI IYER. **86 I.C. 958=**
A.I.R. 1925 Mad. 1098.

———*Sarasari.*

Where wet crops are raised on lands outside the waterspread of the tank of the landlord, by means of rain water collected by tenants by raising ridges round the lands which ridges obstruct the flow of rainwater into the landlord's tank the landlord is not entitled to levy sarasari. (*Devadoss, J.*). V. AMBALAM *v.* PRESIDENT TALUK BOARD, RAMNAD. **90 I.C. 803=21 M.L.W. 274=**
A.I.R. 1925 Mad. 620.

———*Nankar—Payment out of profits.*

Failing a *nankar* allowance being a charge on the zamindari no order can be made for payment thereof out of the profits of the *zamindari*. (*Ashworth, A.J.C.*). CHOTEY LAL *v.* IQBAL NARAIN.
85 I.C. 331=A.I.R. 1925 Oudh 550.

———*On hand-looms—Is only ground rent.*

A cess levied by the zamindar on the weavers at the rate of one rupee per hand-loom is not really a cess. It is really ground rent charged from the various artisans in the village according to the number of hand-looms they have kept and is really a ground rent for the occupation of the site of the *abadi*. 1 A.L.J. 537, *Foll.* (*Gokul Prasad, J.*). MT. BAKHSHI *v.* HYDER KHAN. **75 I.C. 270=**
4 L.R.A. Rev. 448=A.I.R. 1923 All. 371.

———*Record of—Jamabandi—Value.*

Jamabandi would merely contain the account that so much had been collected in a particular year under particular head. It would at the most afford proof that such income had been collected, but it could not by any possibility be considered to be the

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paper in which a Settlement Officer would record the existence of a customary cess in such manner as to bind the inhabitants of the village.

The customary right to collect *Siwai* was not established in this case. (*Stuart, J.*). MD. ASHGHAR ALI KHAN *v.* RAMMON. **71 I.C. 432=**
A.I.R. 1923 All. 378.

———*Recoverability in Revenue Court—Test.*

A customary due which residents of the village have been paying, but which is not part and parcel of the contract of rent, is not recoverable in the Revenue Court.

Where the tenants of a village had been paying for many years, a due known as "Gaon Karch" or village expenses, and where in the Patwari's record, against each amount of rent, a figure was entered for "Gaon Karch,"

Held, that the "Gaon Karch" might be a customary due which the tenants had been paying the zamindar for many years but that it was not part and parcel of the contract of rent so as to be recoverable through a Revenue Court. (*Tudball and Rafique, JJ.*). RADHA MADHO *v.* RAM SEWAK.
62 I.C. 739=43 All. 422=19 A.L.J. 238=
A.I.R. 1921 All. 77.

—Co-sharer.

———*Lambardar.*

A lambardar collecting rents from the tenants and paying the Government revenue is entitled to eject tenants and sue for enhancement of rents in respect of land of the village included in the mahal of which he is the lambardar, and the fact that he does not own any land in the village does not detract him from his power as lambardar, which he would have possessed in any other case. (*Niamatullah, J.*). SHAKUR *v.* B. SANWAL DAS.
11 L.R.A. Rev. 204=A.I.R. 1930 All. 630.

———*Contract with one—Others cannot sue on.*

If a tenant enters into a contract with a co-sharer landlord, the other co-sharers have no right to take advantage of it and sue for enhancement on the basis of that *kabuliat* though it is not executed in their favour. 7 C.W.N. 670, *Dist.* (*Suhrawardy and Costello, JJ.*). BENOD KUMAR *v.* GANGA CHARAN. **A.I.R. 1930 Cal. 595.**

———*Lease by some only—Rights.*

A lease executed by one or more co-sharers is not invalid merely because some other co-sharer has not joined in it. It is a lease which authorises the lessee to take possession of the land and if he takes possession under that lease he is certainly entitled to cultivate the land and he will normally retain possession to the end of his tenancy unless he is ejected by law. Another co-sharer who has not joined in the lease has no right to come and dispossess a tenant by force. A co-sharer acting in this way is not acting in virtue of his right as a co-sharer. He is acting outside the law and his possession is merely that of a trespasser. (*Pullan and Srivastava, JJ.*). DHARKHAN *v.* SHEO NARAIN. **121 I.C. 900=**
7 O.W.N. 434= A.I.R. 1930 Oudh 318.

———*Pakhtidhar rights—Rights of.*

The fact that certain persons are co-sharers in the pakhtidari rights of the village does not give such persons any right to interfere in the lease executed by co-sharers in full control of the patti with regard to fields in the patti in which these persons are not co-sharers. (*Pullan and Srivastava, JJ.*). DHAR KHAN *v.* SHEO NARAIN.
121 I.C. 900=7 O.W.N. 434=
A.I.R. 1930 Oudh 318.

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———*Notice to quit by certificated holder—Sufficiency.*

A notice from the certificated holder alone is a valid one for ejectment of annual tenants and it is not open to an annual tenant, merely because some of the co-landlords may desire that he should be retained in the land, to claim that an ordinary act of management done by the certificated holder who has, moreover, by agreement and by long practice been recognized at the manager of the estate, is not valid (*Findlay, J.C.*). DEWAJI KUNBI *v.* AMRULLASHA. **106 I.C. 813=10 N.L.J. 253= A.I.R. 1928 Nag. 84.**

———*Decree for possession—Form.*

Where a co-sharer landlord sues for possession on the ground that he has not consented to a transfer to new tenants, the proper decree to make is a decree for joint possession with the tenants to the extent of the plaintiff's share. 10 C. L. J. 618; 14 C.W.N. 1011 and 1 P.L.W. 19, *Rel. on.* (*Dawson Miller, C.J. and Foster, J.*) CHANDERCHOOR DEO *v.* BANWARI LALL. **98 I.C. 786=5 Pat. 773= 8 Pat. L.T. 332=A.I.R. 1927 Pat. 35.**

———*Cannot plead their own wrong.*

The co-sharer landlords who have in fact recognized the tenants cannot endeavour afterwards to go back upon their word and turn them out even from their own share in the tenancy, although their co sharers are raising no objection, on the ground that their recognition alone is not that of the whole body of landlords and, therefore is not binding either upon themselves or upon their co-sharers. (*Dawson Miller, C.J and Foster, J.*). CHANDERCHOOR DEO *v.* BANWARI LALL. **78 I.C. 786= 5 Pat. 773=8 Pat. L.T. 382= A.I.R. 1927 Pat. 35.**

———*Suit for rent by one.*

A co-sharer has a right to bring a suit for the entire rent by making his co-sharers parties to the suit. This is a general right which is conferred upon a co-owner irrespective of the special provisions of the Bengal Tenancy Act. 35 Cal. 331, *Foll.* (*Suhrawardy and Duval, JJ.*). MOHINI MOHAN *v.* MEAJAN. **90 I.C. 673=A I R. 1926 Cal. 333.**

———*Share in profit—Right—Proof of.*

It is sufficient for the plaintiff, in order to establish his title to the share of profits, to prove that his name stands recorded in the *khewat* The revenue Court need not go behind the entry in the revenue papers in deciding the case. 33 All. 999, *Appr.* (*Raza, J.*). GAJADHAR SINGH *v.* HUR PRASAD SINGH. **94 I.C. 693=A.I.R. 1926 Oudh 462.**

———*Lease by one—Partition leased land allotted to another—Lessee's rights.*

Where a perpetual lease of a plot of land was granted by one co-sharer and later on in a private partition that plot was allotted to another co sharer.

Held, that the lease was null and void as against that co-sharer who had become owner of that plot but a declaration to the effect that the lessee had no right whatsoever in respect of the leasehold could not be granted to the plaintiff. The lessee may have more than one remedy arising out of the lease as against the lessor. For instance, he may have a claim for compensation or for substitution in place of the leasehold property in the event of his ever being ejected therefrom by the plaintiff or any other co-sharer of the village than the lessor. (*Ashworth and Wazir Hasan A. J. Cs.*). LAL MOHAMMAD KHAN *v.* MST. AMATUL FATIMA.

76 I.C. 534=26 O.C. 239=A I.R. 1924 Oudh 60.

———*Record in one's name—Remedy.*

If one co-sharer wrongfully cultivates *parti* land and gets it recorded in his name and another co-sharer sues for declaration of title and joint possession,

Held, that a decree for joint possession can be passed. 19 A. L. J. 780 and 19 A. L. J. 783, *Foll.* (*Gokul Prasad, J.*). BADRI UPADHIA *v.* DWARKA UPADHIA. **71 I.C. 559=5 L.R.A. Rev. 23= A.I.R. 1923 All. 416.**

LANDLORD AND TENANT—Covenant.

———*Trespasser—Remedy.*

Where the tenancy is extinguished and the holding is in possession of a trespasser, one of several joint owners cannot get a decree for more than his own share. (*Brasher, J.*). DIPA *v.* LAL CHAND. **68 I.C. 428=49 P.L.R. 1922= A.I.R. 1922 Lah. 393.**

———*Recognition.*

Where the Tahsildar has no authority from the landlord, his act in granting a receipt cannot amount to recognition. (*Coutts and Ross, JJ.*). BALGOBIND MANDAR *v.* DWARKA PRASAD.

66 I.C. 55=3 Pat. L.T. 409=1 Pat. 394= 1922 P.H C.C. 142=A.I.R. 1922 Pat. 279.

———*Settlement by some—Rights of others.*

Where the tenants took settlement only from the twelve annas landlords and the twelve annas landlords did not settle the land with them as sixteen annas landlords,

Held, the four annas landlord who made no settlement with tenants is entitled to a decree for joint possession with the tenants. The co-sharer landlord is not debarred from claiming joint possession with the tenants only because the defendant's occupation of the land was acquiesced in without remonstrance for nine years. (*Coutts and Ross, JJ.*). BALGOBIND MANDAR *v.* DWARKA PRASAD. **66 I.C. 55=3 P.L.T. 409=1 Pat. 394= 1922 P.H.C.C 142=A.I.R. 1922 Pat. 279.**

—Covenant.

———*Landlord's—Right of choice.*

If in a *kabuliyat* all the steps which the landlord might take for realizing his dues are stated, he is not bound to take one and not the other. He has a choice and he can proceed in one of the many ways stated in the *kabuliyat*. (*B.B. Ghose and Bose, JJ.*). ARUN CHANDRA SINHA *v.* RAHIM BAKSH JAHAGIRDAN. **120 I.C. 706= 56 Cal. 653=A.I.R. 1930 Cal. 81.**

———*Construction.*

The terms of a *kabuliat* were as follows: 'I am making a settlement to you for ever in *dar mukarari* right at an annual rent of 7 *maps* of saja paddy on the standard of bankuri pai and 1 kahan straw. You will pay the settled saja paddy and straw to me and after me to my heirs every year in the month of Magh without any increase or diminution from the year 1921 B.S.' It contained a clause "*Ukta ek kahan vara mulyadin taka dhaner mulya atash taka haibey.*"

Held, that what had been fixed for ever was the paddy rent and not the price of the paddy and, therefore, the landlord was entitled to the market price of the paddy and straw. Calcutta Second Appeal No. 2488 of 1923, dated 10th February, 1926, *Dist.* (*Garlick and Basu, JJ.*). JOGENDRA KUMARI *v.* JOGENDRA NATH. **49 C.L.J. 274= A.I.R. 1929 Cal. 285.**

———*For renewal—Running with the land.*

Where a covenant for renewal of the entire lease was intended to come into operation after the expiry of the term of that lease, before which, however the lessor would have ceased to have any interest in a certain share,

Held, that it cannot be said that the covenant of renewal with regard to that share was a contract

which in its inception was binding on the land. The covenant with regard to that share must, therefore, be considered to be a mere personal covenant which could be enforced against the lessor if he had got a fresh interest in that share, and not one which can be said to run with the land. (*B. B. Ghose and Camniade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I.C. 298=55 Cal. 841=47 C.L.J. 376=32 C.W.N. 439=A.I.R. 1929 Cal. 50.**

———*To reserve for a grove—Breach—What is.*

If the agreement between the zamindar and the tenant is that the tenant should have a specified area for the purpose of a grove, and the tenant either does not use a definite ascertainable portion, even a small portion of that area for the purposes of a grove, or affirmatively uses a definite ascertainable portion, even a small portion, for some other purposes, he has committed a breach of his contract and the zamindar is entitled to eject the tenant if he has not acquiesced in the breach. A.I.R. 1926 All. 519, *Diss.* (*Boys, J.*). RAGHUNATHA *v.* N. MOHAMMAD ALI HASAN. **106 I.C. 268=8 L.R.A. Rev. 292=A.I.R. 1928 All. 117.**

———*To repair—Nature—Scope.*

A general covenant to repair includes not merely buildings existing when the demise is made, but all those which may be erected during the term. If, however, the covenant to repair is only one to keep in repair the demised premises, it applies to those existing at the date of the lease only unless the new buildings are made part of the old ones. *Field* v. *Curnick*, (1926) 2 K.B. 374, *Foll.*

Where an indenture of lease contained the following proviso : "And at all times during the said term of years keep the said premises in good and substantial repair and the same in good and substantial repair deliver up to the lessor his heirs or assigns at the expiration or sooner determination of the said term and it is hereby agreed and declared by and between the parties hereto notwithstanding anything thereinbefore contained that the said lessee shall be at liberty to make all necessary additions and alterations to the demised premises to improve the buildings with the written consent of the lessor at his own cost during the continuance of the said term and all such changes, additions, fittings and fixtures so made shall become and be considered the property of the said lessor and the lessee shall have no right to remove the same either before or after the expiration of of this lease",

Held, that the covenant to repair was in very general terms and it would extend to the subsequently erected buildings. A.I.R. 1927 Cal. 908, *Affirmed.* (*C. C. Ghose and Buckland, JJ.*). EYRA MEYER AURON *v.* DEBENDRA LALL. **107 I.C. 86=46 C.L.J. 607=32 C.W.N. 154=A.I.R. 1928 Cal. 89.**

———*Grant of heritable interest—Exclusion of heirs.*

After the grant of a permanent heritable interest the grantor and the grantee cannot validly enter into a covenant that a certain class of heirs shall not be entitled to succeed to the property. 40 All. 470 (P.C.), *Foll.* (*Cuming and B. B. Ghose, JJ.*). PANCHUBALA DEBI *v.* JOTINDRANATH GOSWAMI. **98 I.C. 173=53 Cal. 816=43 C.L.J. 567=30 C.W.N. 821=A.I.R. 1926 Cal. 993.**

———*Permission to plant grove—Restriction on power of sale—Validity.*

Zamindar entered into a formal agreement with an occupancy tenant permitting him to convert the plots into groves. This agreement provided that he was to be the owner of one-fourth of the groves and the Zamindar of three-fourths, but reading the deed as a whole his right of ownership was not absolute but restriction was that he was not entitled to sell the share in the groves except to the Zamindar,

Held, the case was not governed by the general custom but by the conditions of the contract entered into between the parties. It was perfectly open to the Zamindar to put restriction,

Held, further though the word "malik" ordinarily connotes full ownership it was not intended in the case to give tenant a full right of ownership. The agreement regarding the sale of the share was very similar to an agreement giving the Zamindar a right of pre-emption and such agreements are binding. (*Daniels, J.*). GULZARI LAL *v.* HAR PRASAD. **85 I. C. 99=5 L.R.A. Rev. 260=A.I.R 1925 All. 97.**

———*Covenant not to assign without lessor's consent—Consent cannot be unreasonably withheld.*

Where a lessee is obliged by a covenant in the lease not to assign his interest without the consent of the lessor but the lessor is not entitled to withhold his consent "unreasonably in the case of a respectable and responsible person", the refusal of consent by the lessor is unreasonable if it is found that the proposed assignees are respectable persons who can be trusted to fulfil their obligations under the lease. Even if it is shown that the proposed assignees are already tenants under the same landlord in respect of another letting and that they have defaulted in paying their rent, their respectability and fitness to be assignees of other lease cannot be affected provided that their not having paid the rent under their own lease has been due to a genuine dispute between the parties. The refusal of consent by the lessors unreasonably will entitle the leseees to assign without their consent. (*Macleod, C.J. and Crump, J.*). RATANJI DORABJI *v.* KISHANDAS TRIBHOVANDAS. **94 I.C. 923=27 Bom. L.R. 340=A.I.R. 1925 Bom. 302.**

———*Price in lieu of kind construction.*

Where the essential sentence in the main body of the lease was, " settling as rent thereof Rs. 87 in cash and 2 *bishas* and 5½ *aris* of *gula* paddy or its price. Rs. 45-8 total Rs. 132-8,

Held, that the use of the word "or" in the passage distinguished this lease from many others which had been considered in reported cases and that under this condition the tenant was entitled, if he preferred it, as he would naturally do when the price of paddy rose, to pay the money value fixed in the lease in lieu of the paddy in kind and he was not bound to pay the market price of the paddy. (*Newbould and B. B. Ghose, JJ.*). OFFICIAL TRUSTEE OF BENGAL *v.* BENODE BEHARI GHOSE MAL. **84 I.C ,147=51 Cal. 943=A.I.R. 1925 Cal. 114.**

———*For quiet enjoyment—Breach—What constitutes.*

Plaintiff repudiated the *Kabuliyat* granting the lease. He also took forcible possession of a certain amount of *juari* harvested in the field and put it in the possession of another person. He also brought a suit for a sum not due namely he claimed Rs. 600 as damages whereas he was only entitled to Rs. 300,

Held, the plaintiff's action in repudiating the lease and the seizure of *juari* grown by the tenant shows eviction in the eyes of

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the law. Any annoyance on the part of the lessor himself which prevents the lessee from enjoying the demised premises in so ample a manner as he may by the terms of the lease amounts to a breach of the covenant for quiet enjoyment. It is not necessary that there should be actual eviction. 24 Cal. 296, *Foll.* (*Prideaux, A. J. C.*). DEBOO *v.* JIWANRAO. **69 I.C. 234=A.I.R. 1923 Nag. 31.**

———*Construction—Penal provision.*

Where under a *puttah*, if the obligations under Cl. 1, which were, "estimating of crops and setting aside on the threshing floor a percentage of the produce, were not complied with. Cl 8 came into force which applied to various contingencies, including the following." "If the yield be carried away..... without acting in accordance with the condition specified in para. 1, in that contingency 'you shall pay at the rate specified in para. herein our *malvaram* paddy in respect of the total yield of paddy calculated at an average of 170 *Kalams* and 4 *Marakals* per rate of *nanja*, the *Kadappu* and *Kar* produce being payable within 15th December and *Samba Pisanam* produce by the 15th March',

Held, the whole question turned upon the meaning of the term "total yield of the produce." The payment of 170 *Kalams* was not for the total yield of one portion, nor was it penal as contended by the appellant, but a substituted rent. Cl. 8 imposed no penalty as such but simply set forth a figure which upon the whole might be reckoned a reasonable practical substitute for the actual percentage which owing to the tenants' conduct had been rendered unascertainable. The substituted rent applied to the yield of each portion of the crop, exactly as the setting aside on the threshing floor was applicable to each portion. (*Lord Shaw.*) RATHAKRISHNA AYYAR *v.* SUNDERSWAMY IYER.

74 I.C. 584=16 M.L.W. 18=43 Mad. 476=31 M.L.T. 31=49 I.A. 211=27 C.W.N. 1=20 A.L.J. 937=36 C.L.J. 460=A.I.R. 1922 P.C. 257=43 M.L.J. 323 (P.C.).

———*For quiet enjoyment—Scope of.*

The landlord's undertaking for quiet enjoyment by the tenant is implied from the relationship of landlord and tenant and the undertaking includes the protection of the tenant from disturbance by strangers claiming by title paramount. (*Sanderson, C. J. and Richardson, J.*). RAM CHANDRA CHATTERJEE *v.* PRAMATHA NATH CHATTERJEE.

63 I.C. 755=35 C.L.J. 146=A.I.R. 1922 Cal. 237.

———*Lessee—Acquiring other co-sharers interests—No power to mullify covenant in his lease.*

A lessee, entering upon land under a lease containing an express covenant forbidding him from converting the land into a garden, cannot deprive the lessor or his successors of their rights, to enforce the express covenant even though the lessee becomes a co-sharer in profits in virtue of his obtaining leases and mortgages from other co-sharers. The lessee however does not become a co-sharer for all purposes. (*Daniels, A. J. C.*). PANDIT SHRINATH *v.* NAJNUNNISSA. **66 I.C. 114=9 O.L.J. 92=A.I.R. 1922 Oudh 16.**

———*Not to sub-let.*

If there is a covenant not to sub-let and the tenant sub-lets without leave to a careless person whereby the premises are damaged, then clearly the landlord would be entitled to recover damages against the tenant for sub-letting without leave. (*Macleod, C.J. and Shah, J.*). GURUSHANTAPPA GURAPPA *v.* MULLAVA SANGAPPA. **63 I.C. 240=45 Bom. 1197=23 Bom. L.R. 523=A.I.R. 1921 Bom. 27.**

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———*Construction—If for renewal of lease.*

A Taraga, the purpose of which was to enable the tenant, or the lessee, to reclaim demised land and make improvements thereon, ran as follows: "I shall well improve the paramba and plant..... &c. When the improvements have survived the period of decay and the cocoanut trees begin to bear their first fruits, I shall take a *taraga* after fixing the rent in accordance with the local custom, on an inspection of the kuzhikonoms,"

Held, that the words meant that the parties intended that if the tenant made any improvement and those improvements were effective, he would be entitled as of right to a lease for another term of 12 years from the date of the expiry of the prior lease, and the rent was to be revised in view of any larger yield from the land that may accrue and also having regard to the custom of the country with respect to a such a lease. 30 Mad. 300, *Dist.*; S. A. 1423 of 1901, *Foll.* (*Abdur Rahim and Odgers, JJ.*). KUTTALI *v.* UMAMMAHA AMMA.

62 I.C. 62=44 Mad. 509=41 M. L. J. 202=13 M.L.W. 208=1921 M.W.N. 163=A.I.R. 1921 Mad. 80.

———*Not to assign.*

In a lease where there is a covenant not to assign and the tenant assigns without leave, then clearly the landlord suffers damage, because he is deprived of the liability of the original lessee under the terms of the lease. (*Macleod, C.J. and Sahay, J.*). GURUSHANTAPPA GURAPPA *v.* MULLAVA SANGAPPA. **63 I.C. 240=45 Bom. 1197=23 Bom. L. R. 523=A.I.R. 1921 Bom. 27.**

—Creation of tenancy—Commencement of.

———*Ordinarily date of document.*

Unless it could be definitely shown that the tenancy was to commence at a particular date different from the date of the document by which it was created, it must be held ordinarily that the year of the tenancy commences from the date of the document. (*B.B. Ghosh and Roy, JJ.*). DINANATH KUNDU *v.* JANAKI NATH.

110 I.C. 368=55 Cal. 435=A.I.R. 1928 Cal. 392.

—Creation of tenancy—How created.

———*Yearly tenant—Contract*—Ad idem—*Assent—Continuance of possession.*

A tenancy from year to year can be created either by contract or by operation of law.

In order to create a tenancy from year to year the acceptance of rent by the landlord must be on payment of such rent by the tenant who admits his position to be that of a tenant from year to year. In other words, the parties must be *ad idem*. Both parties must be of one mind as regards the nature of the tenancy. If, however, the landlord claims to treat the tenants as tenants from year to year but the tenants assert a permanent tenancy and do not admit their position as tenants from year to year and pay rent, the yearly tenancy cannot be established. The payment of rent by the tenants would be in assertion of their rights as permanent tenants. As permanent tenants they are admittedly liable to pay rent, and if they pay rent with an assertion of permanent tenancy the landlord cannot by mere acceptance of such rent treat the tenants as tenants from year to year.

In order to create a yearly tenancy by assent of the landlord, it is necessary that the assent must be a continuance of possession as tenant from year to year. Where, however, the tenant claims to be in possession not as a tenant from year to

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year but as a permanent tenant the landlord cannot by his mere assent to the tenant's continuing in possession convert the tenancy as one from year to year. (*Ross and Kulwant Sahay, JJ.*). KAMAKHYA NARAIN SINGH *v.* KHALIK AHMAD.
102 I.C. 821=8 Pat.L.T. 633=A.I.R. 1927 Pat. 305.

———A tenancy can only be created when both the contracting parties agree to the terms thereof.

Where the landlord was claiming a right to resume the village on the death of the original grantees. while the heirs were claiming a permanent and heritable interest and were willing to pay rent as *istimrari mokararidars* but the landlord was not willing to accept rent from them in that capacity,

Held, that the parties were not *ad idem* and no tenancy from year to year can be held to have been created under circumstances. A.I.R. 1924 Pat. 572; A.I.R. 1925 Pat. 216; A.I.R. 1925 Pat. 357 and A.I.R. 1925 Pat. 499, *Ref.* (*Adami and Kulwant Sahay, JJ.*). KULDIP SINGH *v.* KAMAKHYA NARAIN SINGH. **93 I.C. 300=7 Pat.L.T. 425= 1926 P.H C.C, 34=A.I.R. 1926. Pat. 241.**

———Where one party was claiming a permanent right and the other was not willing to accept that claim and asserting that the other party had no right whatsoever to remain in possession,

Held, that the grant of Marfatdars receipts by the landlord did not create the relationship of landlord and yearly tenant between the parties. (*Jwala Prasad, Ag. C. J. and Kulwant Sahay, J.*). CHARAN MAHTON *v.* KUMAR KAMAKYA NARAYAN SINGH. **86 I.C. 387=6 Pat.L.T. 98= A.I.R. 1925 Pat. 357.**

———*Acts and conduct.*

Acts indicative of establishing the relationship of landlord and tenant can create tenancy. These acts may be expressed, implied or gathered from conduct or circumstances of the parties. A person in wrongful possession or a trespasser may be altered into tenant. He may become a tenant-at-will or a tenant for a term. When the tenancy is to be for term exceeding one year, certain formalities are necessary under S. 107. (*Jwala Prasad, A. C. J. and Macpherson, J.*). RAM RACHHYA SINGH *v.* KAMAKHYA NARAIN SINGH.
84 I.C. 586=1924 P H C C. 313=6 Pat.L T. 12= 4 Pat. 139=A.I.R. 1925 Pat. 216.

———*Acceptance of rent from trespassers.*

Plaintiff landlord is not competent to eject the defendants as trespassers where he accepted rent from them for the lands in suit in the name of the deceased *raiyats*. The effect of this acceptance of rent is to constitute the defendants tenants under the plaintiff. (*Mookerjee and Rankin, JJ*). BALI MOHAMMAD SAHA *v.* JANAKI NATH MAJUMDAR.
72 I.C. 311=A I.R. 1924 Cal. 535.

———*Fixed rate tenancy—Not by contract.*

A fixed rate tenancy cannot be created by contract, because a fixed rate tenant is defined in S. 8 of the Act and no person can be classed as a fixed rate tenant who does not come within the definition. 28 All 747, *Ref.* (*Daniels, J.*). INDER DEO RAI *v.* RAM CHARITTER RAI. **74 I.C. 971= 5 L.R.A. Rev. 28=A.I.R. 1923 All. 560.**

———A tenancy can be created only by a contract either express or implied between the landlord and the tenant or by statute. (*Jwala Prasad and Bucknill, JJ.*). JOGENDRA SINGH *v.* KESHO PRASAD SINGH. **77 I.C. 929=1 Pat. 764= 5 Pat.L.T. 546=1 Pat. L.R. 91= 1923 P.H.C.C. 113=A. I. R. 1922 Pat. 429.**

LANDLORD AND TENANT—Creation of tenancy —Recognition.

—Creation of tenancy—Kabuliyat.

———*Delay in execution—Tenancy not affected.*

Delay in execution of the *kabuliyat* by tenant cannot affect the tenancy which was already granted to him and the landlord is not competent to cancel the arrangement with him so as to enable him to make a new settlement. The knowledge of the 2nd tenant of the first tenancy is immaterial. (*Mookerjee and Chotzner, JJ.*). BHAGU SINGH *v.* MOHESHWAR BARIK. **73 I.C. 291= A.I.R. 1924 Cal. 531.**

—Creation of tenancy—New tenancy.

——— *Continuation after father's death.*

Where the father held the land and, on his death the son inherited the property and held it on payment of rent to the landlord, although this took place after the passing of the Transfer of Property Act, it cannot be said that there was creation of any new tenancy. (*Chatterjea and Pearson, JJ.*). JYOTI PROSAD *v.* DASARATH GHOSE.
63 I.C. 109=36 C.L J. 73= A.I.R. 1921 Cal. 453.

—Creation of tenancy—Proof.

———*Result*

If the origin of tenancy is known if for example it was created by an agreement which is evidenced by writing, inferences from the history of the tenancy and the circumstances obtaining during last fifty years cannot be drawn upon the same principle as are applicable to a tenancy of unknown origin. (*Rankin, C.J. and Mukerji, JJ.*). KAMAL KUMAR *v.* NANDALAL. **116 I C. 378= 33 C.W.N. 211=56 Cal. 738= A. I. R. 1929 Cal. 37.**

———A tenancy can be proved otherwise than by the written lease. (*Suhrawardy and Duval, JJ.*). YEAR MAMUD MONDAL *v.* PAOMOCHA SARKAR.
89 I.C. 18 = A I R. 1925 Cal. 1225.

———*Challenging tenancy—Non payment of consideration.*

It is impossible to challenge tenancies purporting to have been created more than 15 years ago except on the allegation that they never were in fact created and that each transaction was a mere pretence on paper and the ostensible tenant has never had possession of the land. The question of actual payment of the consideration for the lease does not arise as, if the Lambardar did in fact make a person a tenant it does not matter whether he paid him anything or not, nor indeed would it make any difference if he made a false statement of receipt of payment in the deed. (*Baker, J.C. and Hallifax, A.J.C.*). RADHABAI *v.* PANDURANG. **78 I C. 535=A.I.R. 1925 Nag. 63.**

———*Demand for rent.*

Mere demand for rent is not sufficient to create the relationship of landlord and tenant, unless followed by assent in response thereto. But where defendant purchased the holding on the assumption that the holding was transferable and he professed to be tenant in occupation demand by the plaintiff for rent is good evidence or mutual consent to the creation of a tenancy, unless the plaintiff is able to explain that the demand was not unqualified and should be differently interpreted. (*Mookerjee and Rankin, JJ.*). MANMATHA NATH KAR *v.* PROBODHA CHANDRA PATARHI.
73 I C. 416=37 C.L.J. 52= A.I.R. 1923 Cal. 102.

—Creation of tenancy —Recognition.

———*Acceptance of rent.*

Where a holding has been purchased by the landlord in execution of a decree the mere fact that

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after the purchase the tenant continued in possession does not constitute recognition. The only way to prove recognition by the landlord is by proving that the landlord had accepted rent from the tenant. (*Suhrawardy and Jack, JJ.*). SURESH CHANDRA DAS *v.* GOBIND CHANDRA.

33 C.W.N. 1215=A.I R. 1930 Cal. 306.

——Suit against a person for damages for use and occupation does not amount to recognition of tenancy. (*B.B. Ghose and Roy, JJ.*). JOLADHAR MONDAL *v.* AMRITALAL. **105 I.C. 641= A.I.R. 1928 Cal. 87.**

——Joinder in suit for rent of purchaser from recorded tenants against such tenants should not have the effect of the recognition of their tenancy by the landlord. (*Adami, J.*). SARJU MOHTON *v.* MT. BIBI BARSALAN. **103 I.C. 545= 8 Pat.L.T. 305=A.I.R. 1927 Pat. 242.**

——*Acceptance of rent by owner.*

If an owner of land accepts money from a person who is in occupancy of that land as the rent of the land knowing that it is paid to him as the rent of it, that is good evidence that he has already given the payer a lease of that land, or gives it to him at that moment and agrees that he shall be considered to have held it during the period for which the rent is paid, but acceptance of rent by a person authorised by owner only to collect rent, is no such evidence. (*Hallifax, A.J.C.*). JAIRAM *v.* LAXMAN. **91 I.C. 971=8 N.L.J. 211= A.I.R. 1926 Nag. 6.**

——*Rent receipts in the name of old tenant.*

The effect of the use of the word "*marfatdar*" may vary according to the circumstances of each case but the fact that rent receipts were asked for in the name of the purchaser, and the landlord expressly refused to grant receipt in his name and gave receipt in the name of the old tenant (the purchaser being described merely as *marfatdar*) negatives any idea of recognition of the purchaser as the tenant. (*Chatterjea and Greaves, JJ.*). MONMOTHA NATH *v* ANATH BUNDHU.

61 I.C. 469=25 C.W.N. 106=A.I.R. 1921 Cal. 754.

—Creation of tenancy—What is.

——*Admission of payment of melwaram.*

A kudivaram holder cannot be said to be a co-owner with his landlord, and on the acquisition of occupancy rights the tenancy does not cease to be a tenancy. Hence a person who admits that he pays melvaram to another admits that he is a tenant of that person. A. I. R. 1924 P. C. 65 and A.I.R. 1922 P. C. 292. *Rel. on.* (*Wallace and Srinivasa Ayyangar, JJ. afterwards Odgers and Wallace, JJ.*). AIYANARS & KANIYALA SWAMIGAL KOLI DEVASTHANAM *v.* PERIAKARUPPA THEVAN. **118 I. C. 279=30 M.L.W. 583= A.I.R. 1929 Mad. 617.**

——*Payment and acceptance of rent.*

Where the tenant admittedly remains in possession of the land in dispute in a certain year and pays rent for that year which is accepted by the landlord, it is clear that the tenant was admitted into tenancy with regard to the land in possession. (*Misra and Pullan, JJ.*). AMBIKA PRASAD *v.* BENI MADHO. **118 I.C. 841=4 Luck. 649= 7 O.W.N. 343=A.I.R. 1929 Oudh 529.**

——*Fresh lease.*

A fresh lease executed after the expiration of the term of the previous lease creates a new tenancy and is not a confirmation of the previous tenancy. (*Newbould, J.*). GOPALCHANDRA *v.* SATYA BHANU. **92 I.C. 963=A.I.R. 1926 Cal. 634.**

LANDLORD AND TENANT—Creation of tenancy —What is not.

——The question whether the grant of *marfatdari* receipts operates as a recognition of the grantee as a tenant from year to year, is essentially one of fact.

Where for a number of years such receipts are granted without any protest by anybody the inference may be raised that there was a creation of a tenancy. (*Das and Adami, JJ.*). KUMAR KAMEKHYA NARAIN *v.* BECHU SINGH. **88 I.C. 483= 6 Pat.L.T. 361=1925 P.H.C.C. 209= A.I.R. 1925 Pat. 499.**

—Creation of tenancy—What is not.

——*Conduct—Inference from—Fresh term.*

The tenants, on the expiry of the term of their lease, made an application to the landlord asking for a renewal of the settlement. The landlord ordered that settlement for one year should be made with the tenants upon an increased rental. This order carried with it also the condition that a registered *kabuliyat* should be taken from the tenants. No *kabuliyat* was executed. The tenants subsequently delivered over to the landlord about 74 maunds of rice. The tenants stated that this was a part of the rental fixed for a renewed lease. The landlord never intended to treat this money as rent but credited the sum not as rent but as mesne profits in his accounts. The piece of paper, upon which the payment was entered, was in the form of a rent receipt but it was kept in the office of the landlord and was never delivered to the tenants,

Held, that the money, which was received by the landlord, was an advance of the rent which would become payable upon the completion of the contract and in no sense can it be urged that by receiving it and keeping the receipt in his possession the proprietor consented to treat the defendants as tenants holding for a fresh term. (*Mullick and Kulwant Sahay, JJ.*). RIKHI NATH KUARI *v.* RANGO MAHTO. **110 I.C. 494=7 Pat. 675= 9 Pat.L.T. 811=A.I.R. 1929 Pat. 18.**

——The fact that a man takes the site at his own free will, occupies it for a few hours and pays fees, not for the occupation of the site, but for the privilege of selling goods upon the site, does not create the relation of landlord and tenant. (*Stuart, C.J.*). RAM LAL *v.* BADALKHAN. **106 I.C. 491= 1 L.C. 663=3 Luck 282= A. I. R. 1928 Oudh 99.**

——*Mere entry in Revenue Records.*

Where in the Revenue Records the plaintiffs are shown to be owners and the defendants tenants, but it appears from those very records that the defendants never paid any rent and were in possession as trespassers, the relation of landlord and tenant between the parties is not established. (*Zafar Ali, J.*). RAHMAT-ULLAH *v.* NAWAB. **94 I. C. 417 (Lah.).**

——Where there was no intention on the part of the landlord to treat as the grantee of the *marfatdari* receipt as a tenant and where there was no intention on the part of the grantee to pay rent to the landlord except on receipt made out in his name,

Held, that there was no creation of a tenancy in favour of the grantee of the *marfatdari* receipts. (*Das and Adami, JJ.*). KUMAR KAMEKHYA NARAIN *v.* BECHU SINGH. **88 I.C. 483=6 Pat L.T. 361= 1925 P.H.C.C. 209=A.I.R. 1925 Pat. 499.**

——*Mortgagee from occupancy tenant.*

A tenant prohibited by law from making a valid transfer cannot convert his mortgagee into a tenant in his own place since there is no privity of

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contract between the mortgagee and the landlord. The mortgagee does not become a tenant of the landlord even in the case of a fixed rate tenancy though he may have paid the rent with his own hand. (*Mukerji, J.*). KISHUN DAYAL *v.* MT. SAHIBZADA RAVI. **78 I. C. 389=22 A. L. J. 232= 5 L. R. A. Rev. 209=A.I.R. 1924 All. 908.**

———*Mere payment of rent.*

The mere fact that a person pays rent like an ordinary tenant, does not necessarily show that he is a tenant. The question whether a person is a tenant depends on the original agreement between him and the landlord. (*Batten, J.C.*). MANOHARLAL *v.* RAMRATAN. **72 I. C. 1012= A. I. R. 1924 Nag. 67.**

———A lessee who is a *raiyat* for a term of years, cannot create tenancy rights in favour of another extending his own term against the wishes of his landlord. (*Jwala Prasad and Bucknill, JJ.*). JOGENDRA SINGH *v.* KESHO PRASAD SINGH. **77 I.C. 929=1 Pat. 764=5 Pat.L.T. 546= 1 Pat. L.R. 91=1923 P.H.C.C. 113= A. I. R. 1922 Pat. 429.**

—Damages.

———*Quantum—Data.*

In considering what sum should be allowed for use and occupation, or for damages for contumacious holding over, the whole circumstances of the tenancy and the sufficiency in point of time of the notice may properly be taken into consideration. Double the rent may sometimes be taken as a fitting standard. 5 P.R. 1904, *Foll.* (*Tek Chand and Bhide, JJ.*). MUL RAJ *v.* INDAR SINGH. **109 I.C. 90=9 Lah. 576=29 P.L.R. 730= A.I.R. 1928 Lah. 554.**

———*For dispossession—Abandonment.*

Where the lessee was never ejected in execution of a decree or by any other process of law but he himself adandoned possession to suit his own convenience as it was to his profit at the time to do so,

Held, that he could not hold the lessor liable for damages for dispossession. (*Dalal and Wazir Hasan, A.J.C.*). CHHOTEY SINGH *v.* BALDEO BUX SINGH. **88 I.C 947=2 O.W.N. 457= 12 O.L.J. 526= A.I.R. 1925 Oudh 542.**

———*What constitutes.*

Where the landlord claims damages from his tenant for having contravened the condition as to sub-letting, the landlord must prove damages which are just and natural consequences of the tenant's act. The mere fact that the tenant has benefited himself is not sufficient to prove damage. (*Macleod, C.J. and Shah, J.*). GURUSHANTAPPA *v.* MALAVA. **63 I. C. 240=45 Bom. 1197= 23 Bom. L. R. 523.**

———*Right need not be fixed in contract.*

Where the *kabuliyat* provides a remedy (by ejectment) in case of breach of covenant by tenant, that is not the only remedy and there is nothing to take away the right to compensation on breach of covenant under the general law. (*Chatterjea and Newbould, JJ.*). KRISHNA DAS *v.* MOHENDRACHANDRA. **62 I.C. 779=25 C.W.N. 930= A.I.R. 1921 Cal. 62.**

—Denial of title.

———*Attornment to mortgagee.*

The title originally vested in three brothers one of whom became insolvent. Prior to the insolvency the brothers had let the tenant into possession. After the insolvency the three brothers passed a mortgage in favour of the plaintiff and the tenant attorned to him and executed a rent note. The plaintiff having sued to eject the tenant the latter disputed his title,

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Held, that the title of the mortgagor was immaterial after the attornment evidenced by the rent note,

Held also, that the possession of the tenant should be attributed to the rent note and that he was consequently estopped from denying the title of the mortgagee. (*Madgavkar, J.*). NAGINDAS *v.* BAPALAL. **32 Bom. L.R. 692=A.I.R.1930 Bom. 395.**

———*Effect of.*

Where the tenancy under the plaintiff is once denied, the tenants would not be entitled to claim on a future occasion that the tenancy under the plaintiff was subsisting. (*Suhrawardy and Mallik, JJ.*). HATIMULLAH *v.* MAHAMAD AFJU CHOWDHURY. **113 I. C. 13= 32 C. W. N. 391=A.I.R. 1928 Cal. 312.**

———*Rule against—Limit.*

Where a person holding a paramount title steps in and the title of the landlord is put an end to, a tenant who has attorned to the former is not estopped from denying his landlord's title. A.I.R. 1925 Mad. 143, *Ref.* (*Wallace, J.*). LINGAYYA AYYAVARU *v.* GANGIAH. **104 I.C. 892=A.I.R. 1928 Mad. 58.**

———*Subsequent to demise—Good plea.*

A plea cannot be set up by a tenant of which the necessary effect is to impeach the title of the person who gave the possession, that is, his title at the time of the demise. Subject to this requirement being satisfied the title, both before and after that time, may be disputed, *i.e.*, it is always open to the tenant to show, either as against the person from whom the possession was obtained, or as against any one claiming under him, that the title of such person has expired or become defeated at a period subsequent to the demise. (*Ross, J.*). HIRA LAL *v.* SARABJIT KAMKAR. **96 I.C. 442= A.I.R. 1926 Pat. 498.**

———*Limits of rule as to.*

Section 116 is no bar to a tenant showing that his landlord had no title at a date previous to the commencement or that it has expired or has been defeated, because the bar operates only during the continuance of the tenancy. 2 Mad. 226, *Ref.* (*Wallace, J.*). RAMASWAMI THEVAN *v.* ALAYA PILLAI. **79 I.C. 881=A. I. R. 1925 Mad. 143.**

———A mere omission to pay rent is not a denial of the landlord's title. (*Newbould and Rankin, JJ.*). MANMATH KUMAR RAY *v.* JOSALAL PODDAR. **77 I.C. 551=28 C.W.N. 300=A.I.R. 1924 Cal. 647.**

———*What amounts to—Recital in other documents.*

Where a tenant, in the memorandum of appeal in a land acquisition case described himself as the owner of the portion acquired and the question was whether that amounted to a disclaimer of landlord's title.

Held, that does not amount to "a distinct unequivocal renunciation of the tenancy" which is essential to constitute a disclaimer such as the law contemplates.

Courts have to bear in mind not only the nature of the document in which the expressions occur, but also the nature of the proceedings in regard to which the document was drafted. In considering whether what has taken place amounts in law to a denial of the landlord's title the Court must have regard not only to the language used and the circumstances under which it came to be used, but must also consider what the tenant intended by using the particular words under the particular

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circumstances. (*Shadi Lal, C.J. and Fforde, J.*). ZAI-UD-DIN *v.* FAKHR-UD-DIN AHMAD KHAN.
73 I.C. 791=4 Lah. 160=5 L.L. J. 517=
A.I.R. 1923 Lah. 454.

——Where the revenue record which is presumptive evidence and which was unrebutted showed that plaintiffs were tenants,

Held, that they could not challenge the title of their landlord. (*Leslie-Jones and Moti Sagar, JJ.*). MT. JAI KUAR *v.* LABHU. 4 L.L.J. 207=
A.I.R. 1922 Lah. 163.

—Dispossession.

——*Onus—Rent suit.*

Where the tenant raises the plea of dispossession, it is essential for him to establish the plea to defeat the landlord's suit for rent which was justly due to him. (*Rankin, C.J. and Mitter, J.*). SAILENDRA NATH *v.* SATISH CHANDRA. 106 I. C. 841=
46 C.L.J. 558=A. I. R. 1928 Cal. 136.

——*Negatives right to rent.*

Where a landlord has dispossessed the tenant forcibly from some of the lands comprised in the tenancy he is not entitled to recover rent even at a reduced rate. (*Das, J.*). KHUB LAL SINGH *v.* DAROGA SINGH. 108 I.C. 891=A.I.R. 1928 Pat. 428.

——*When tenancy terminates.*

If a tenant is ejected under a decree of a Civil Court, there is a lawful ejectment and clear break in the tenancy. But the mere fact of a forcible or unlawful ejectment does not necessarily break the tenancy unless there is any evidence of subsequent acquiescence therein on the part of the tenant. (*Findlay, Offg.J.C.*). VITHOBA *v.* SADASHEO.
92 I.C. 58=A.I.R. 1926 Nag. 253.

——*What constitutes.*

The refusal by the landlord to recognize lease of mining rights does not amount to dispossession of the lessee. What is wanted on the part of the proprietor is a positive act of dispossession so as to enable him to invoke the doctrine as to lapse of time. (*Das and Adami, JJ.*). MIDNAPUR ZAMINDARY CO., LTD. *v.* RAM KANAI SINGH DEO.
91 I. C. 169=5 Pat. 80=7 Pat. L.T. 188=
1925 P.H.C.C. 254==A.I.R. 1926 Pat. 130.

—Easement.

——A tenant of a proprietor's land cannot acquire an easement over other land belonging to the proprietor. The presumption always is that possession or user is permissive. 14 All. 185 and 29 Cal. 863, *Ref.*; 1 Lah. 206; A.I.R. 1923 Lah. 594 and A.I.R. 1926 Lah. 522, *Dist.* (*Johnstone, J.*). PURAN *v.* GHUNGAR. 119 I.C. 418=
A.I.R. 1930 Lah. 119.

——*Tenant can claim on immemorial user.*

Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user. 6 Cal. 394 (P.C.); 4 Cal. 633 (P.C.) and 30 Cal. 281, *Ref.*; 29 Cal. 363, *Dist.* (*Fazl Ali and Chatterji, JJ.*). KARTIC MANJHI *v.* BANAMALI MUKERJI. A.I.R. 1930 Pat. 7.

——*Village site—Enjoyment—Rights against Government.*

The title to grama natham (*i.e.*, village sites) rests in the Crown and a person who has enjoyed such site must prove in order to support his title either that he received it by grant or that he enjoyed adverse possession of it for 60 years. Hence the enjoyment of such site for a period (say 30 years) cannot raise a presumption that the person in enjoyment held it by immemorial right so as to throw on the Crown the burden of proving the contrary. 4 M.L.T. 440; 27 Mad. 386; 40 Mad. 410 (F.B.) and A.I.R. 1916 P.C. 21, *Rel. on.* (*Jackson and Reilly, JJ.*). JAYARAMA NAIDU v. SECY. OF STATE. 118 I.C. 490=1929 M.W.N. 143=
A.I.R. 1929 Mad. 441.

LANDLORD AND TENANT — Ejectment — Defence.

——*Tenant—Immemorial user—Right to acquire.*

Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user, as there is no reason why an owner of land should not grant any privilege he pleases to his tenant. The relationship of landlord and tenant does not render inapplicable the principle, namely, when enjoyment of a right of this description has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin and the Court should presume a grant or agreement. Where the origin of the tenancy is known, but the origin of the right of easement has not been traced the tenancy does not rebut the presumption of a grant which arises upon proof of immemorial use. L.R. 7 I.A. 240, *Foll.* (*Mookerjee and Chotzner, JJ.*). TINKORI PATHAK *v.* RAM GOPAL. 70 I.C. 663=36 C.L.J. 161=
50 Cal. 356=A.I.R. 1923 Cal. 8.

—Ejectment.

Acquiescence.
Cause of action.
Defence.
Form of.
Grove.
Notice.
Partial ejectment.
Parties.
Possession.
Proof.
Right to.
Tenants.
Title.
Trespasser.
Waiver.
What is.
When can be claimed.
When cannot be claimed.
Miscellaneous.

—Ejectment—Acquiescence.

——*Constructions.*

Where plaintiff acquiesced in the constructions as reasonable appurtenances of the defendant's dwellings and the defendants replaced them as they were before when the purpose for which they were erected was accomplished,

Held, that plaintiff has no cause of action. (*Stuart, J.*). ISH NARAIN *v.* RAMESHAR LOHAR.
78 I.C. 164=22 A.L.J. 244=5 L.R.A. Rev. 91=
A.I.R. 1924 All. 433.

—Ejectment—Cause of Action.

——*Abandonment.*

Limitation for a suit for ejectment of a non-transferable occupancy raiyat for transferring the holding does not run until there is an abandonment of the holding by the tenants. (*Greaves and B.B. Ghose, JJ.*). JNANENDRA NATH *v.* JOGENDRA NATH. 91 I.C. 191=A.I.R. 1926 Cal. 772.

—Ejectment—Defence.

——*Option of renewal—Failure to exercise—No defence to ejectment.*

A lease provided that "on the expiration of the term written in this *patta* you will take a new settlement." The tenant, however, did not exercise his option of taking a new settlement when the term expired nor did he exercise that option within a reasonable time.

LANDLORD AND TENANT — Ejectment — Defence.

Held, that the tenant was not entitled to resist the suit for ejectment by landlord. (*Page and Mullick, JJ.*). BANSIDHAR DURGA *v.* ISHAN CHANDRA. **119 I.C. 144=33 C.W.N. 365= A.I.R. 1929 Cal. 407.**

———*Rent note part of an illegal transaction.*

If in a suit for ejectment on a rent note it is found that the alleged tenant is in possession under the rent note but the rent note forms only a part of other documents forming one transaction and such transaction is illegal, it is open to the tenant to plead that the transaction is illegal. 32 Bom. 449; 38 Bom. 709 and 39 Bom. 358, *Rel. on*; 22 Bom. L. R. 149, *Dist.* (*Marten, C. J. and Patkar, J.*). BHAVAN LALLU *v.* UMAR MOHAMMAD. **100 I.C. 1004=29 Bom. L.R. 97=51 Bom. 43= A.I.R. 1927 Bom. 129.**

———*Permanency—Prescription.*

Persons who are admittedly paying a rent to landlord for lands in their occupation, cannot claim to have prescribed for permanent occupation as long as their possession has never been incompatible with the landlord's title. (*Jackson. J.*). VENKATA RATTAMMA *v.* CHALASANI SREE RAMULU. **99 I.C. 981=25 M.L.W. 76= A.I.R. 1927 Mad. 331=52 M L.J. 100.**

———*Voidable transfer—Reliance on another valid transfer.*

In answer to a landlord's suit for ejectment against a transferee of absolute occupancy tenancy right on the ground that a particular transfer is voidable for want of consent, it is open to the defendants to contend in the alternative, that even if the transfer sought to be avoided be voidable, they are entitled to retain possession under another transfer which is binding as against the landlord. 11 N.L.R. 124, *Rel. on.* (*Kinkhede, A.J.C.*). SHEOBUX *v* SETH JAGANNATH. **90 I C. 364= A.I.R. 1926 Nag. 184.**

—Ejectment—Form of.

———*Forcible expulsion unnecessary—Attornment—Paramount title—Sufficiency.*

To constitute eviction forcible expulsion is not necessary. 18 C.W.N. 552, *Foll.*

It is not necessary that the tenant should go out of possession, and if upon a claim being made by a person with title paramount he consents to an attornment to such person to change the title under which he holds or enters into a new arrangement for holding under him, this will be equivalent to an eviction and a fresh taking. A.I.R. 1921 Cal. 532 and A.I.R. 1922 Cal. 232, *Ref.* (*Cuming and Mukerji, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA. **112 I.C. 172=55 Cal. 1013= 47 C.L.J. 387=32 C.W.N. 559= A.I.R. 1929 Cal. 22.**

———*Physical ouster not necessary.*

Actual physical ouster by a title paramount is not necessary to prove eviction, but there must be clear proof of title of the person claiming paramount title and consequently proof of absence of title of the lessor. (*Walmsley and Chakravarti, JJ.*). RAM RANJAN ROY *v.* JAYANTI LAL. **96 I.C. 11=30 C.W N. 710= 44 C.L.J. 449= A.I.R. 1926 Cal. 906.**

———*Physical act unnecessary.*

To constitute an eviction, a physical act may not be necessary; all that is necessary is some act which constitutes a substantial interference of a permanent nature with the legal right of the tenant to enjoyment of the premises during the term.

LANDLORD AND TENANT—Ejectment—Parties.

(*Pearson, J.*). GOPIRAM BHOTICA *v.* BISSESWAR DUTT. **93 I.C. 81=43 C.L.J. 94= A.I.R. 1926 Cal. 546.**

—Ejectment—Grove.

———*Cause of action—Land ceasing to be a grove.*

Where a land was leased as grove and it later on became waste and houses were built upon it, a cause of action for ejectment arises when the land completely ceases to be a grove, and the mere building of one house would not by itself give rise to such a cause of action. (*Rafique and Piggott, JJ.*). BAKHTI QUAR *v.* GANGA PRASAD. **63 I.C. 226 (All.).**

—Ejectment—Notice.

———*Private land—Annual tenancy—Not necessary.*

The annual tenancy of private land (manjhihas) of a landlord ceases on the termination of the year and to eject the tenant no notice to quit is necessary as in the case of occupancy and non-occupancy riyats, as on the expiry of the lease the tenant becomes a trespasser. (*Jwala Prasad and Wort, JJ.*). PRATAP UDAI NATH *v.* JAGANNATH. **118 I.C. 305=10 P.L.T. 453= A.I.R. 1929 Pat. 444.**

———*Necessity—Anomalous mortgagee.*

In the case of an anomalous mortgage of agricultural land, where the mortgagee who was entitled to remain in possession only during the mortgage term, continues to be in possession after its expiry, he becomes a yearly tenant by implied tenancy and then cannot be ejected without proper notice to quit. (*Krishnan and Waller, JJ.*). GOPI NATH CHOWDHARI *v.* KRISTNO CHOWDHARI. **87 I.C. 669=21 M.L.W. 582=A.I.R.1925 Mad. 881.**

———*Fresh one.*

A defendant's possession after notice to quit is as a trespasser, and no fresh notice is necessary. (*Dhobley, Ag. C.J.*). YESHWANT *v.* SHIWAPPA. **68 I.C. 178= A.I.R. 1923 Nag. 129.**

—Ejectment—Partial ejectment.

———*Area understated—Mistake.*

Where in a suit for ejectment the numbers of the plots in question are given fully, but the total area is understated, such understatement will not defeat the suit as one for ejectment from portion only, provided that it was a mistake which would not mislead anybody. (*B. B. Ghose and Panton, JJ*). MANMOHAN CHOWDHURY *v.* TURNER MORRISON & CO. **33 C W N. 930=51 C.L.J. 320= 57 Cal. 434= A.I.R. 1930 Cal. 69.**

———*Area—Understatement.*

If the whole of the land forming the subject-matter of the tenancy is included in notice and suit in ejecment but there is an understatement of the area the defect would not be fatal. (*Mukerjee and Mullick, JJ.*). BANARDOJA *v.* AJIJUDDIN. **120 I.C. 455=33 C.W.N. 559=49 C.L.J. 555= 57 Cal. 10= A.I.R. 1929 Cal. 651.**

———*Only under special circumstances.*

Partial ejectment can be allowed only under special circumstances, and cannot be decreed as a rule. Either the landlord is entitled to eject the tenant or is not; some strong case must be made out for the purpose of holding that the landlord can eject a tenant from only a part of the tenancy. (*B B. Ghose and Graham, JJ.*). CHANDRA MOHAN *v.* MEHERJAIN BANU. **99 I.C. 216=44 C.L.J. 311= A.I.R. 1927 Cal. 191.**

—Ejectment—Parties.

———*Servant, wife or relative, no good.*

Possession wrongful or otherwise implies more than physical presence of a person and so no suit

LANDLORD AND TENANT — Ejectment—Parties.

for ejectment can be instituted against a servant, wife or relative of a person in possession without impleading latter as defendant. (*Niamatullah, J.*). SHIVALINGA MAHADEO *v.* KUMODINI DEBI.
A.I.R. 1930 All. 224.

———*Death of defendant under tenant—Heirs have no right to continue proceedings.*

The lower Appellate Court decreed the plaintiff's suit for ejectment and directed *khas* possession to be given to the plaintiff as against the defendants who were under tenants on the land. One of the defendants died during the pendency of the appeal. His heirs applied to continue the appeal,

Held, that his heirs had no right to maintain the appeal not having inherited any right from their father as against the landlord. (*Cuming and Roy, JJ.*). ASWINI KUMAR SARDAR *v.* SITAL PARWI. **115 I.C. 605=32 C.W.N. 317.**

—Ejectment—Possession.

———*Decree—Agitation permanent tenancy — No ground to retain possession.*

In an ejectment suit the tenant set up a defence of permanent tenancy which he failed to establish. The suit was decreed. On appeal the decree of the lower Court was confirmed, but, on the tenant giving a purshis, he was permitted to file a separate suit to have his right of permanent tenancy established by a fresh suit." The owner of the land tried to execute the decree and obtain possession. The tenant brought the present suit for a declaration that he was a permanent tenant,

Held, that as the appellate decree in the former stood, the tenant was entitled to bring the present suit, but it did not follow that until he had established his right of permanent tenancy in the present litigation, he was entitled to retain possession merely on the strength of the former order in appeal. (*Madgavkar, J.*). JAYARAM BHIWAJI *v.* DATTARAM JAYARAM. **31 Bom. L.R. 1259= A.I.R. 1930 Bom. 63.**

———*Omission of area under possession.*

If it be a fact that a part of the land of tenancy was excluded from the notice to quit and from the suit in ejectment and of such part the defendants are in possession as tenants under the plaintiff, the plaintiff cannot possibly obtain a decree in the suit. (*Mukerji and Mallik, JJ.*). BUDARDOJI *v.* AJIJUDDIN. **120 I.C. 455=33 C.W.N. 559= 49 C.L.J. 553=57 Cal. 10= A.I.R. 1929 Cal. 651.**

———*Purchase by landlord—Tenant continuing in possession—Suit will not lie.*

Where the plaintiff landlord has purchased defendant-tenant's holding within 12 years of suit but it is found that the defendant has all along up to the date of suit, been in possession as raiyat from before the sale notwithstanding the sale, plaintiff's suit for ejectment of the defendant will not lie. (*Bucknill, J.*). KAILOHI CHANDRA MAHANTI *v.* BADAL MANJHI. **98 I.C. 219= A.I.R. 1927 Pat. 84.**

———*Hostile to landlord—Starting point.*

Where it was found in an ejectment suit by landlord that the defendant had come into possession of the land with the permission of the tenant in possession and after the tenant left the land the defendant was recorded as tenant in the plaintiff's Sherista and continued to remain in possession,

Held, that the possession of the defendant would become adverse only where there was assertion of a hostile title and Art. 144 would apply. (*Sanderson, C. J., Rankin and Graham, JJ.*). PROHLAD CHANDRA MODAK *v.* MOHENDRA CHANDRA RAY. **98 I.C. 94.**

LANDLORD AND TENANT—Ejectment—Proof.

———*Permissive—Alternative case.*

Where a suit was brought against a person described to be tenant, for possession of the leasehold property and the defendant had denied the tenancy and asserted that he had been in adverse possession for a period of more than 12 years and the said tenancy was found to be not established,

Held, the plaintiff is not precluded from asserting and establishing that the possession of the defendant was permissive. 25 All. 256, *Ref.* (*Kanhaiya Lal and Sulaiman, JJ.*). BALKISHEN *v.* RAGHUBIR DAYAL. **74 I.C. 991=45 All. 81= A.I.R. 1923 All. 409.**

—Ejectment—Proof.

———*Relationship—Permanent tenancy—Onus.*

When a tenant in a suit by his landlord to eject him sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant. But before the burden can be so cast on the defendant-tenant the legal relationship between the plaintiff and the defendants must be established to be that of landlord and tenant. A.I.R. 1924 P. C. 65, *Rel. on*; A.I.R. 1922 P.C. 292, *Ref.* (*Wallace and Srinivasa Ayyangar, JJ. afterwards Odgers and Wallace, JJ.*). AIYANARS AND KANIYALA SWAMIGAL KALI DEVASTHANAM *v.* PERIAKARUPPA THEVAN.
118 I.C. 279=30 M.L.W. 583= A. I. R. 1929 Mad. 617.

———*Title of landlord.*

In a suit for ejectment, the fact that the tenants have not been able to establish a clear title is no ground for the landlord getting a decree unless he can prove his title. (*Duval, J.*). LILA SINGH *v.* CHANDRA BADAN SINGH. **108 I.C. 43= A.I.R. 1928 Cal. 348.**

———*Initial onus and shifting of onus.*

In a suit of ejectment the plaintiff must primarily prove his title to obtain possession of the land in suit. Then the onus may shift according to the defence of the defendant. If the defendant admits to be a tenant but claims a higher right than what ordinarily a tenant possesses the onus must be upon him to prove it satisfactorily. If on the other hand, the landlord seeks to eject the defendant whose tenancy he admits the landlord must prove that the tenancy was by some legal means determined. (*Suhrawardy and Jack, JJ.*). NAGENDRANATH VASU *v.* KSHIRADAR RUIDAS.
113 I.C. 575 (Cal.).

———*Permanent tenancy—Onus on tenant.*

It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant. A.I.R. 1924 P.C. 65 and 16 Cal. 223 (P.C.), *Rel. on*; 32 Cal. 51 (P.C.) and 28 Cal. 738, *Dist.* (*Rankin, C.J. and Mitter, J.*). MONMOTHA NATH *v.* RAJESWAR RAI. **107 I.C. 81=55 Cal. 355= 32 C.W.N. 164=A.I.R. 1928 Cal. 315.**

———*Essentials.*

It is incumbent on the plaintiff's landlord seeking to eject persons on the ground that they were tenants to allege and prove not merely his title as landlord but also the determination of the tenancy is one or other of the ways known to law. (*Srinivasa Ayyangar and Ananthakrishna Ayyar, JJ.*). KADIYUM RAYUDU *v.* KAMARASU VEERRAJU. **112 I.C. 257 (Mad.).**

LANDLORD AND TENANT—Ejectment—Proof.

———*Admission and assertion—Failure of latter—Proof of former—Unnecessary.*

If a landlord claims a right to eject and a defendant both denies that right and claims occupancy rights in himself, the rejection of the tenant's claim is no evidence of the landlord's. But if the tenant admits the right to eject, by admitting that he is tenant, but pleads that it is barred by his occupancy right, then the removal of the bar leaves the admission as effective proof of the landlord's right. 43 Mad. 567 (P.C.), *Foll.* (*Jackson, J.*). VENKAT RATTAMMA *v.* CHALASAMI SREERAMULU. **99 I.C. 981=25 M.L.W. 76= A.I.R. 1927 Mad. 331=52 M.L.J.100.**

———*Permanent right.*

In a suit for ejectment if the tenants claim any permanent right it is for them to substantiate it. (*Greaves and B. B. Ghose, JJ.*). BINGSHI BADAN HALDAR *v.* RATAN IJARDAR. **92 I.C. 961 (Cal.).**

———In a suit by which the plaintiff seeks to eject the defendant from certain plots of land upon the allegation that the defendant had purchased the holdings without the knowledge and consent of the landlord from whom the plaintiff has taken *mourashi mokarari* settlement of the holdings, the onus of proving the character of the jamas is on the defendant. 32 Cal. 51; 14 Cal. 382; 15 Cal. 89; 12 M. I. A. 292; 23 C. W. N. 201, *Ref.* (*Mukerji, J.*). SATISH CHANDRA GHOSE *v.* DEBENDRA NATH DEY. **85 I. C. 636= A.I.R. 1925 Cal. 761.**

———*Occupancy right—Onus on tenant.*

When a tenant of land in a suit by his landlord to eject him from the land sets up a defence that he has a right of permanent occupancy therein, the onus of proving that he has such a right is upon the tenant. A.I.R. 1924 P.C. 65, *Foll.* (*Devadoss, J.*). THRIUPUTHI GOUNDAN *v.* SHAMANNA GOUNDAN. **86 I. C. 182=21 M. L. W. 118= A. I. R. 1925 Mad. 477=48 M. L. J. 654.**

———*Permanent tenancy—Onus—Facts to be proved.*

In suits for ejectment where permanent tenancy is alleged by the tenant the question is whether the true inference from facts is that the tenure is permanent or precarious the burden of proof being on the tenant. Where the letting appears to have been made in 1875, but the original purpose of the letting was not known though the date, the names of the parties, the land and the rent are known and where the terms have to be inferred from subsequent conduct of the parties the principle is just as applicable as in cases where the date of the origin of the tenancy and the names of the parties are not known. (*Rankin, J.*). JNANENDRA NATH DUTT *v.* NASEA DASI. **83 I. C. 948= 39 C. L. J. 526=A. I. R. 1924 Cal. 991.**

———Where in an ejectment suit the plaintiffs' main case was that the defendants were on the land and that they were trespassers with no rights to remain on the land and the defendants admitted the plaintiffs' superior title to the land,

Held, that the defendants must show that they had a right to remain. (*Newbould and Panton, JJ.*). PROBODH CHANDRA DAS *v.* BIRSINHA BAGANI. **71 I. C. 319=A.I.R. 1924 Cal. 350.**

———*Initial burden and shifting of onus.*

The landlord before ejecting the tenant must prove that the tenancy was terminable and was validly terminated. The burden is only then shifted to the tenant to prove that he has a permanent right of occupancy. The burden which primarily lies upon the landlord is not affected by the failure of the defendant to prove the alleged permanent tenancy. (*Spencer and Kumaraswami Sastri, JJ.*). SUBBARAYADU *v.* NARASIMHA RAO. **82 I. C. 623=1924 M. W. N. 553= A. I. R. 1924 Mad. 907=47 M.L.J. 558.**

--Ejectment—Right to.

———*Against trespasser—Assertion of title.*

Where a defendant to a landlord's suit for ejectment does not claim to hold the land as a transferee from or even as a licensee under, the tenant lawfully entitled to possess the land but claims adversely to him and where the person in whom the right to the tenancy lawfully vests for the time being, does not acquiesce in such possession, or support it, he is liable under law to be ejected by the landlord as a trespasser, quite independently of the tenant, if it be shown that his interest as landlord and paramount owner is or is likely to be jeopardised by such wrongful entry of the trespasser into possession; the very continuance of the trespass on the land against his will, *i.e.*, after he has signified his intention to treat him as a trespasser, ought to give the landlord a right to institute a suit for ejectment. 11 N. L. R. 124; A.I.R. 1922 Nag. 216, *Ref.* (*Kinkhede and Staples, A.J.Cs.*). MT. GOURA *v.* SHRIRAM. **122 I.C. 259= 25 N.L.R. 198=A.I.R. 1930 Nag. 124.**

———*Termination of tenancy—Forcible eviction.*

The tenant whose right is determined has no right to remain forcibly upon the land and say to his landlord that he will cultivate that land till such time as he is evicted by a Civil Court. From the moment the title of the tenant expires, the landlord is in possession in the eye of the law, and provided that he does not use undue force, he is entitled to go upon the land and if necessary to use force for the purpose of asserting and maintaining his possession. (*Mullick and Bucknill, JJ.*). GITA PRASAD *v.* EMPEROR. **81 I.C. 535= 6 P.L.T. 656=1924 P.H.C.C. 29=25 Cr L.J. 919= 3 Pat. L.R.Cr. 27=A.I.R. 1925 Pat. 17.**

———*Tenancy not proved—Decree on ownership.*

Even where the landlord-plaintiff fails in an ejectment suit to prove specific tenancy set up by him, he is entitled to a decree on the ground of ownership if the defendant is in no way taken by surprise. 25 All. 498, *Foll.* (*Gokul Prasad, J.*). LACHMAN DAS *v.* MULCHAND. **71 I.C. 441= A.I.R. 1923 All. 411.**

—Ejectment—Tenants.

———*Who are not.*

The fact, that the landlord after knowing that the original tenant was dead, passes receipts only in the deceased tenant's name, and enters the name of the defendant only in the column headed "name of person actually making payment," strongly shows that the landlord did not intend to treat the defendant as tenant and so landlord's suit to eject defendant is not barred on account of such receipts. 7 C. W. N. 132, *Rel. on*; 1 Cal. 391 (P.C.), *Dist.* (*Srivastava, J.*). SADHNOO *v.* BAIJU. **114 I.C. 768=A. I. R. 1929 Oudh 333.**

———*Who are not.*

Where a person first claimed the fields for himself under a bequest by another person but afterwards changed the plea and contended that he was entitled to hold as a trustee under the will for the son and widow of that person,

Held, that on the pleadings the person was not a tenant and was liable to be ejected as a trespasser. (*Kotval, A.J.C.*). GANPAT RAO *v.* THALLUA. **105 I. C. 495=24 N. L. R. 3= A. I. R. 1928 Nag. 70.**

LANDLORD AND TENANT—Ejectment—Title.

—Ejectment—Title.

———*Denial—Good only if before suit.*

The denial of a landlord's title, to be valid, must be anterior to the filing of the suit to eject the tenant and a denial of title made in the course of the pleadings in the suit cannot furnish a cause of action. (*Mohiuddin, A. J. C.*). MIR HAIDAR *v.* JANKIRAM. **122 I.C. 271.**

—Ejectment—Trespasser.

———*Subsistence of tenancy—No bar.*

It is not open to a defendant who is sued as trespasser for ejectment by landlord and who does not hold under the tenant, to plead that the tenant has not abandoned the holding. (*Batten, J.C.*). DEBURAM *v.* PRAHLAD PRASAD. **69 I.C. 559= A.I.R. 1923 Nag. 79.**

—Ejectment—Waiver.

———*Continuing after notice.*

Where plaintiffs permitted the defendant to continue in possession for two years after notice and did not sue him for ejectment so long, and for the subsequent years the defendant did not pay any rent nor was it accepted by plaintiffs.

Held, there can be no waiver. (*Dhobley, A.J.C.*). YESHWANT *v.* SHIWAPPA. **68 I.C. 178= A.I.R. 1923 Nag. 129.**

—Ejectment—What is.

———*Not a mere trespass.*

Eviction is not a mere trespass, but something of a grave and a permanent character done by the landlord with the intention of depriving the tenant of enjoyment of the demised premises. *Upton* v. *Townend*, (1855) 17 C. B. 30, *Foll.* (*Cuming and B.B. Ghose, JJ.*). BISESWAR SARKAR *v.* KALI CHARAN. **94 I.C. 418=44 C.L.J. 27= A.I.R. 1926 Cal. 908.**

—Ejectment—When can be claimed.

———*Use for purposes not warranted by grant.*

Where a suit is brought for the demolition of certain buildings erected by the defendants on common land, in which the defendants who are weavers, being permitted to erect their looms, subsequently build kothas on the land without the consent of the proprietors, though the defendants cannot under a well-recognized custom be ejected so long as they use the land for carrying on their trade, yet when they divert the site to another purpose not warranted by the grant and build upon it, they forfeit their rights of use and are liable to ejectment. 54 P. R. 1886, *Foll.* (*Tapp, J.*). HUKAM SINGH *v.* KHAIRU. **31 P.L.R. 181= A. I. R. 1930 Lah. 556.**

———Where a person does not obtain a lease executed and registered in conformity with the provisions of law, he cannot resist ejectment, unless the case may be brought within the range of one or other of the principles of equity established in Maddison Alcerson (where there is parol contract and such performance of it as unequivocally refers to the contract, equity will charge the party with acts done its execution of the contract) or in *Walsh* v. *Landsdale* (enforceable right of specific performance of contract is a good defence to an action for the ejectment.) (*Mukerji and Graham, JJ.*). ARIFF *v.* JADUNATH MAJUMDAR. **112 I.C. 865=55 Cal. 1090=33 C.W.N. 333= A. I. R. 1929 Cal. 101.**

———*Oudh—Land appurtenant to dwelling.*

In Oudh small pieces of land are usually appurtenant to the dwelling house of the tenant and the tenant can only be ejected from such a piece of land when it is established that he has not exercised rights over it for twelve years, or when, if his exercise of rights is less than twelve years, he has not had the permission of the zamindar to occupy it or when he is ejected from the dwelling house itself. A.I.R. 1926 Oudh 393, *Ref.* (*Stuart, C.J. and Gokaran Nath Misra, J.*). RAJKRISHNA *v.* SAHEB BAKHSH. **98 I.C. 1044=3 O.W.N. 937= 8 L.R.A. Rev. 20=A.I.R. 1927 Oudh 37.**

LANDLORD AND TENANT—Ejectment—When cannot be claimed.

———*Non-payment of rent.*

The fact that a lease is silent on the question whether the lessee would be liable to ejectment for non-payment of rent is not in itself an implication that the lessee cannot be so ejected. (*Dalal, J.C.*). KALU SINGH *v.* HANSRAJ UPADHIYA. **78 I.C. 47=A.I.R. 1925 Oudh 270.**

—Ejectment—When cannot be claimed.

———In 1913 the landlord contracted to grant a permanent lease in respect of certain land. No formal lease was executed under the terms of S. 107, T. P. Act. Pursuant to the contract the tenant obtained possession of the land and erected permanent and costly structures thereon. The landlord was aware of the erection of those structures and must have realised that the tenant would not have constructed such a building unless he was assured of the possession of a permanent right in the land. In December, 1918, the landlord gave notice to the tenant of his refusal to specifically perform the contract. The landlord in 1923 brought a suit for ejectment against the defendant,

Held, that the landlord having allowed the tenant to erect structures on his land would not be allowed to eject the tenant as he acquiesced in tenant's conduct. *Ramsden* v. *Dyson*, (1866) 1 H.L. 129 and *Gregory* v. *Mighell*, (1881) 18 Ves. 328, *Foll.*; 21 All. 496 (P.C.), *Dist.*; 28 Cal. 693 (P.C.) and A.I.R. 1925 P.C. 146, *Rel. on.* (*Mukerji and Graham, JJ.*). ARIFF *v.* JADUNATH MAJUMDAR. **112 I.C. 865=55 Cal. 1090=33 C.W.N. 333= A. I. R. 1929 Cal. 101.**

———Although with regard to the homestead land the lessor is a raiyat, the lessee, if he holds other lands as a settled raiyat, in the village, would hold such homestead land as a raiyat and would, therefore, be protected from ejectment. (*Cuming, J.*). PRASANNA KUMAR *v.* KEDARNATH. **90 I.C. 497=A.I.R. 1926 Cal. 299.**

———*Possession over 12 years.*

If a tenant has been in possession of a plot of land as a tenant for more than 12 years, he obtains a right by such possession to remain in actual enjoyment of the land and the landlord cannot deprive him of such enjoyment. 16 C.W.N. 634, *Rel. on.* (*Misra, J.*). HULAS *v.* BARKATUNNISSA. **94 I.C. 1034=1 Luck. 469=13 O.L.J. 633= 3 O.W.N. 475=A.I.R. 1926 Oudh 393.**

———*Criminal complaint—Not 'quasur'—No right to eject.*

If a tenant has a grievance against the landlord and files a complaint in a Criminal Court, his act cannot be considered as a "quasur" making him liable to ejectment. (*Misra, J.*). MOHAMMAD AQIL *v.* SHEO BAKHSH. **91 I.C. 1055=13 O.L.J. 194= A.I.R. 1926 Oudh 265.**

———*Tenants under usufructuary mortgagee.*

Where the landlord grants a usufructuary mortgage of tenancy land and the mortgagee settles the land with tenants, the tenants, after they have acquired occupancy rights, cannot be ejected by landlord after the mortgage is redeemed. A.I.R. 1926 Pat. 605, *Foll.* (*Jwala Prasad and Buckmill,*

LANDLORD AND TENANT—Ejectment—When cannot be claimed.

JJ.). MANJHIL LAL BISWANATH SAH DEO *v.* SHAIKH MOHIUDDIN. **97 I.C. 852= 8 P.L.T. 92=1926 P.H.C.C. 300.**

———*-Landlord leasing his right.*

Nobody but the landlord can eject a tenant for arrears of rent. Landlord who has leased his proprietary rights ceases to be a landlord for the purpose of ejectment. (*Hallifax, A.J.C.*). GANAPATI TELI *v.* DAJI. **68 I.C. 855=A.I.R. 1923 Nag. 35.**

———A transferee of fixed rate tenancy cannot be ejected from the house of the tenant especially when transferee has no other house in the village for his residence and for keeping cattle. (*Stuart and Ryves, JJ.*). THAKURJI MAHARAJ *v.* ANANT BHARTHI. **69 I.C. 834=20 A.L.J 922= 4 L.R.A. Rev. 5= A.I.R. 1922 All. 538.**

———In order to maintain an action for ejectment a plaintiff (landlord) must be entitled to immediate entry into possession and before a landlord can eject his tenant's transferee he must prove abandonment by the tenant. A tenant's holding is one and indivisible : where it is not alleged that he has refused to pay the rent of the whole, he cannot be said to have abandoned the holding while still in possession of part. (*Hallifax, A.J.C.*). JODHRAJ *v.* DAULAT. **18 N.L R. 109= A.I.R. 1922 Nag. 241.**

———*From portion of holding.*

A landlord cannot break up his tenant's tenure into portions and a suit by the landlord to eject a tenant, on service of notice, from a portion of the holdings, on the ground of non-payment of rent, is not maintainable. (*Prinsep and O'Kinealy, JJ.*). RAMAKANIE *v.* GANESH. **64 I.C. 550= 33 C.L.J. 513.**

———A cultivator who is in possession of land as a *bona fide* tenant under a settlement entered into with a *de facto* proprietor who in good faith induced him into the land is not liable to be ejected by the real proprietor as a trespasser on the ground that the *de facto* proprietor had no power or authority to settle the land which was not his. (*Buckland and Cuming, JJ.*). ARABULLA *v.* SUNAMANI DAS. **63 I. C. 962 (Cal.).**

—Ejectment—Miscellaneous.

———*Oudh.*

It is settled rule of law in Oudh that a landlord must have recourse to the ordinary process of law if he wishes to eject a tenant or thekadar and if he does so forcibly the tenant or thekadar is entitled to recover possession of his holding on the ground of illegal ejectment. So another lessee of the same land cannot also recover possession of the land by treating the tenant as trespasser. S. D. No. 9 of 1925; S.D. No 33 of 1891 and 3 U. D. 149, *Ref.* (*Misra and Pullan, JJ.*). AMBIKA PRASAD *v.* BENI MADHO. **118 I.C. 841=4 Luck. 649= 7 O. W.N. 343=A.I.R. 1929 Oudh 529.**

———*Right of re-entry.*

An illegal ejectment of a tenant by the landlord does not give the landlord any right of re-entry. (*Dalal, J.*). NAND LAL *v.* EMPEROR. **112 I.C. 680=27 A.L.J. 92= 29 Cr.L.J. 1096.**

—Encroachment.

———*Adjoining waste of landlord—Cannot be evicted after 12 years.*

An encroachment made by a tenant from the adjoining waste of his landlord is *prima facie* made by him in his character as tenant and if the landlord takes no steps to eviot him for 12 years, his right to recover actual possession becomes barred, although his title to receive fair rent is not barred:

LANDLORD AND TENANT—Ex-proprietary tenancy.

2 C. L J. 125; 8 C. L. J. 557; 53 I. C. 184; A.I.R. 1922 Cal. 185; 35 Mad. 618, *Rel. on.* (*Tek Chand, J.*). AMAR NATH *v.* THAKRU. **117 I.C. 810= A.I.R. 1929 Lah. 469.**

———*On stranger's land—Not liable for additional rent.*

A tenant who has agreed to pay to the landlord rent only in respect of the area actually under cultivation is not liable for the payment of rent to the landlord for the land of a stranger contiguous to that of his own and which was encroached upon by him (*B. B. Ghose and Roy, JJ.*). JATINDRA NATH *v.* TRAILOKAYA NATH. **105 I.C. 737=A.I.R. 1928 Cal. 142.**

———*On stranger's land—For the benefit of the landlord.*

Where during the continuance of the tenancy a tenant encroaches upon land belonging to a third person, his possession of the land so encroached upon is *prima facie* for the benefit of the landlord. In such cases the presumption is that encroachments made by the tenant are a part of the holding and on the termination of the tenancy the tenant must render them up to the landlord whether he has directly undertaken to do so or not : *Andrews* v. *Hailes*, (1853) 22 L. J. Q. B. 409 ; *Earl of Lisburne* v. *Davies*, (1866) 1 C. P. 259 ; 19 C. W. N. 772 and (1918) M. W. N. 38, *Foll.* (*Tek Chand, J.*). NANAK CHAND *v.* GAMAN. **107 I.C. 386= A.I.R. 1928 Lah. 351.**

———*Fair rent.*

If it is a case of encroachment by the tenant, the landlord, notwithstanding the tenant's assertion to hold the land encroached upon as a part of the admitted tenancy, may still have a right to have fair rent assessed for the land. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. **95 I.C. 622=43 C.L.J. 387= A.I.R. 1926 Cal. 883.**

———*Under colour of tenancy—No tenancy and no adverse possession.*

The possession of a tenant who takes into his holding land which has not been let to him and holds it under colour of his tenancy, cannot be said to be adverse as against the landlord nor does he become tenant thereof. (*Kinkhede, A. J. C.*). BANAN *v.* RANJIT SINGH. **89 I.C. 752= A.I.R. 1926 Nag. 99.**

———*Owing to deficiency—No right.*

The lessee is not entitled to encroach on other land of lessor because the amount of land of which possession was given was less than the area stated in the lease. (*Newbould and Cuming, JJ.*). DINANATH DAS *v.* GOPAL CHANDRA DAS. **67 I.C. 90= A. I. R. 1923 Cal. 309.**

—Escheat.

———The right to possession of a permanent lessee on the failure of heirs does not revert to the grantor but escheats to the Crown: 1 Cal 391 (P. C.), *Applied.* (*Cuming and B. B Ghose, JJ.*). PANCHU BALA DEBI *v.* JOTINDRA NATH GOSWAMI. **98 I.C. 173=53 Cal. 816= 43 C.L.J. 567=30 C.W.N. 821=A.I.R.1926 Cal. 993.**

—Ex-proprietary tenancy.

———A tenant of an ex-proprietary holding cannot evade payment of rent to the successor-in-interest of person with whom he enters into an agreement to pay rent. (*Dalal, J.*). NATHU *v.* GANPAT SINGH. **A.I.R. 1930 All. 105.**

———When it is not established or found that a resident of a village is a proprietor in the village,

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the ordinary presumption is that he is a non-proprietor. (*Jai Lal, J.*). HAR NATH *v.* MOHAN LAL. **115 I.C. 422=10 L.L.J. 519= A.I.R. 1929 Lah. 123.**

———*Right to sell house—Title hostile to proprietor—What is.*

Ordinarily a non-proprietor is not entitled to sell a house built and occupied by him but nothing prohibits him from granting a lease of such a house to another person. It is possible that in the case of kamins who are given or permitted to build houses in consideration of their doing service to the proprietors, there is an implied covenant that the grantees shall occupy tho houses personally.

Where it was not established that it was an essential condition, express or implied, of the permission granted by the proprietors to a non-proprietor that the latter shall occupy the house personally.

Held, that the act of a non-proprietor in renting the house to another person did not amount to a breach of the condition of his tenure and therefore to an assertion of title adverse to the proprietors, or that the possession of that person was adverse to the proprietors. (*Jai Lal, J.*). GHANIA *v.* SANTA. **112 I.C. 327=A.I.R. 1928 Lah. 455.**

———*Tenant—Position of.*

An ex-proprietary tenant is not a tenant of the one particular proprietor who purchases the *sir* land but is a tenant of the whole proprietary body. 35 All. 27 (F.B.), *Foll.* (*Dalal, J.*) SOHAN LAL *v.* MAKHAN LAL. **94 I.C. 171 (All.).**

—Forfeiture.

———*Express repudiation.*

The principle of forfeiture by disclaimer is that where the tenant denies the landlord's title to recover rent from him *bona fide* on the ground of seeking information of such title or having such title established in a Court of law in order to protect himself, he is not to be charged with disclaiming the landlord's title. But where the disclaimer is done not with this object but with an express repudiation of the tenancy under the landlord, it would operate as forfeiture. (*Suhrawardy and Mallik, JJ.*). HATIMULLAH *v.* MAHOMED ALIJA. **113 I.C. 13=32 C.W.N. 391= A.I.R. 1928 Cal. 312.**

———*Non-payment of rent—Can be relieved.*

Even where the provision in the lease is to the effect that the forfeiture of the lease should result not on the mere non-payment of any rent on due date but on some subsequent date or on the happening of further conditions the forfeiture can be relieved against. 12 M.L.J. 210; 28 Mad. 389 and 21 M.L.J. 960, *Dist.*; 29 M.L.J. 881 and 24 I.C. 139, *Rel. on.* (*Srinivasa Aiyangar, J.*). RAMBRAHMAM *v.* KOTA RAMI REDDI. **108 I.C. 273= 1927 M.W.N. 305=A.I.R. 1928 Mad. 250.**

———*Relief against.*

Relief against forfeiture cannot be granted in connexion with decrees other than consent decrees. A.I.R. 1925 Bom. 404, *Dist.* (*Madhavan Nair and Jackson, JJ.*). GIRIDHARIDOSS Co. *v.* PARA APPADURAI. **107 I.C. 792=51 Mad. 157= 1928 M.W.N. 79=27 M.L.W. 135= A.I.R. 1928 Mad. 193=54 M.L.J. 316.**

———*Muafi tenure—No provision for forfeiture on transfer—Effect of transfer.*

Per *Kanhaiya Lal, J.*—Where land is granted for planting a grove the person who plants the grove acquires according to the general law a transferable

LANDLORD AND TENANT—Forfeiture.

interest therein, and, in the absence of a custom to the contrary, the trees become his property. The person who plants such a grove possesses all rights in respect of his grove, which are not excluded by custom, or the incidents of the tenure. A.I.R. 1923 All. 553 and A.I.R. 1924 All. 430, *Foll.*

Where one of the incidents of the tenure is that the muafidar shall have no right to alienate his muafi land, but no right of re-entry is reserved to the landlord and the muafidar has planted trees, built structures and constructed a well the muafi cannot be resumed and the muafidar or his descendants cannot be ejected on transfer of the tenure though the sale of the muafi rights can be set aside.

Per *Ashworth, J.*—The provision against transfer would be meaningless unless a provision that transfer will involve forfeiture is read into it. A liability implies a right and a right a remedy. The provisions of law applying in the case of leases, which forbid an unlawful transfer operating as forfeiture, except where there is a contract or custom or usage providing for this, are not applicable to rent-free grants. (*Kanhaiya Lal and Ashworth, JJ.*). GOPAL *v.* COLLECTOR OF ALIGARH. **92 I.C. 134= A.I.R. 1927 All. 232.**

———*Occupancy raiyat setting up higher title.*

An assertion by an occupancy tenant of a higher right than what they actually have, will not cause a forfeiture of their rights as occupancy raiyats. (*Cuming and B. B. Ghose, JJ.*). RAJENDRA KUMAR DAS *v.* SARAT CHANDRA DAS. **96 I.C. 586= A.I.R. 1926 Cal. 1181.**

———*Does not determine lease.*

Denial by tenant of the relationship of landlord and tenant and consequent forfeiture of the lease is not sufficient to determine the lease. A lease is not determined until the landlord does some act showing his intention to determine the lease. (*Newbould and B. B. Ghose, JJ.*). GOPIKA RAMAN ROY *v.* ATAL SINGH. **83 I.C. 678=A.I.R. 1926 Cal. 193.**

———*Waiver of.*

Where the landlord collects the rent after becoming aware of the fact that a forfeiture has been incurred, he waives the forfeiture. (*Madhavan Nair, J.*). KRISHNAN NAMBUDRIPAD *v.* KUNHAN NAIR. **86 I.C. 294=A. I. R. 1925 Mad. 914.**

———*Under decree—Clear language necessary.*

Where the Court said in its appellate judgment "time for payment one month from this date" and did not say anything about non-payment leading to forfeiture being enforced,

Held, where forfeiture is sought to be enforced by a landlord under the terms of a decree, he should prove conclusively that the decree which he is executing has given him that right. The Court ought to lean in favour of the tenant against forfeiture rather than in the landlord's favour. (*Krishnan and Waller, JJ.*). AKKAMMA SHETTI *v.* CHANDRO SHETTI. **78 I.C. 1007= 1924 M.W.N. 92=A.I.R. 1924 Mad. 649.**

———*Relief against—Rules governing.*

It cannot be laid down broadly that if a lease provides for a period of grace, the Court has no power to relieve against forfeiture for default in payment of rent.

Although the Court is not precluded in second appeal from granting relief against forfeiture because the offer to pay the arrears was not made in the lower Courts, still considering all the facts together, *viz.*, the failure of the plea of payment, the failure to offer to pay the arrears during the hearing in the lower Courts and particularly the fact

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that a sufficiently long period of grace given by the lease was allowed to pass without payment, it was held that the lower Appellate Court exercised its discretion properly in refusing to grant the relief. (*Kotwal, Ag. J.C.*). ARJUN *v.* NARAYAN.
71 I.C. 445=19 N.L.R. 50=
A.I.R. 1923 Nag. 193.

———*Right of—Onus—When arises.*

The burden is on the landlord to prove the custom of inalienability and forfeitability as *prima facie* all property should be taken to be alienable. *Prima facie* alienation of any portion of a holding would offend against the rule of inalienability if there is one; and unless it can be shown that, under the very custom which imposes the rule of inalienability, the rule does not apply to partial alienations it must be held that a partial alienation will be sufficient to work a forfeiture. Actual knowledge, as distinguished from means of knowledge, is necessary to infer waiver or implied contract as the Courts have to deal in such cases with intention of the person whose act is said to constitute the waiver or the implied contract. Lessor need not be given actual notice of the forfeiture. Knowledge may be inferred from circumstances, and it is not necessary to have direct evidence of it always. (*Ayling and Krishnan, JJ.*). ZAMORIN RAJA *v.* SAMU NAIR. **15 M.L.W. 164=**
A. I. R. 1922 Mad. 290.

———*Waiver.*

Where subsequent to an alleged forfeiture by reason of the transfer of an occupancy holding the landlord sues the original tenant and obtains a decree for rent it amounts to a waiver of the forfeiture and the landlord cannot sue to eject the tenant on that ground. (*Mookerjee, Ag. C.J. and Fletcher, J.*). RASH BEHARI CHOUDHURI *v.* UPENDRANATH SAHA. **64 I.C. 711 (Cal.).**

———A right to re-enter for breach of a covenant in a lease is waived by the lessor's bringing an action for rent accruing subsequently to the breach with knowledge of its existence. (*Das and Ross, JJ.*). LLEWHELLIN *v.* MAULVI ALI ASGAR.
60 I.C. 476 (Pat.).

—Grove—Character of land.

———*Cultivation—No alteration.*

Mere fact that land was cultivable or has been under cultivation would not by itself prove that the land has lost its character as a grove. (*Srivastava, J.*). PRAG NARAIN *v.* DACHHINA BUX.
116 I.C. 56=A.I.R. 1929 Oudh 397.

——— *Not altered by partial cultivation.*

Where the contract, upon which the tenants were admitted to possession of the plots, was that they were entitled to use them for the purpose of groves, as long as the plots retain the character of groves, the defendants are not liable to ejectment. It is not correct to say that because small portions of the plots have been brought under cultivation, the lands have ceased to retain their character as groves. (*Mears, C.J. and Lindsay, J.*). MAHBUB ALI *v.* CHIDDAN. **95 I.C. 291=24 A.L.J. 599=**
A.I.R. 1926 All. 519.

———*Portion denuded of trees—No alteration.*

Though a portion of grove has been denuded of trees, the grove does not cease to be grove, nor does the landlord get the right of re-entry in respect of the whole or part of the land. (*Piggott and Kanhaiya Lal, JJ.*). CHOKHEY LAL *v.* BEHARI LAL. **60 I. C. 115=18 A. L. J. 820=**
2 U. P. L. R. (All.) 292=42 All. 634.

LANDLORD AND TENANT—Grove—Custom.

—Grove—Consent to plant.

———*Confers right.*

A grove is constituted by a person without any title to the land only on obtaining the permission of the zamindar to plant trees on the zamindar's land. A grove, therefore, which is owned not by the zamindar but by a person other than the zamindar, can come into existence only when it is planted with the zamindar's consent. (*Mukerji and Bennet, JJ.*). AJODHIA *v.* BISHAMBHAR NATH.
A.I.R. 1930 All. 784.

———*Effect—Conversion of tenant into grove-holder.*

When permission is given by the zamindar to plant a grove on the non-occupancy tenure the effect of this is to put an end to the tenancy as such and to substitute therefor a fresh contract between the parties by which the position of the tenant is converted into that of a grove-holder with transferable rights; the case is much stronger where the land is held with occupancy rights. It is most unlikely that the tenant would agree to spend the considerable sum of money necessary to convert the plot into a grove if he was still to remain liable to be turned out of the land and to loss of the trees at any time. (*Daniels, J.*). (SAYED) SULTAN HUSAIN *v.* JWALA. **78 I. C. 480=**
A. I. R. 1924 All. 831.

—Grove—Custom.

———*Transfer—Landlord's rights.*

There is no general custom which enables the landlord to step in, in the case of the transfer of a grove, although he may assert his right when the trees have been cut and the land ceases to be a grove. Under these circumstances the land certainly reverts to the landlord but he acquires no right of entry from sale by a grove-holder unless there is a special custom to that effect. A.I.R. 1927 Oudh 297 and A. I. R. 1927 Oudh 505, *Ref.*; A.I.R. 1926 Oudh 139 and A.I.R. 1925 Oudh 319, *Dist.* (*Pullan, J.*). GADADHAR PRASAD *v.* SUMER SINGH. **6 O.W.N. 465=**
A. I. R. 1929 Oudh 541.

———*Has a right to fruits of trees—No right to land.*

A grove means trees standing on land. A grove-holder has a right to enjoy the fruits of trees standing in the grove and he may transfer such right of enjoyment. He cannot, however, transfer the land after the trees have fallen or have been cut away. 3 A.L.J. 385, *Foll.* (*Dalal, J.*). BATUK PRASAD *v.* BHAGWAN DAS. **110 I.C. 465=**
A. I. R. 1928 All. 659.

———*No ejectment.*

Purchaser of a zamindari at a Court sale under a mortgage decree has no right to eject a grove-holder, although the grove had been purchased by the holder from zamindar prior to mortgage. (*Kendall, J.*). ISHUR DAS *v.* CHIRANJI LAL.
118 I.C. 370=9 L.R.A. Rev. 41=
A.I.R. 1928 All. 169.

———*Cultivation within limits.*

There is no objection if a grove-holder cultivates the grove land, so long as the grove retains the character of grove and no trees are cut down to make room for cultivation. A.I.R. 1926 Oudh 549, *Foll.* (*Raza, J.*). DURGA PRASAD SINGH *v.* MUMTAZ ALI. **105 I. C. 79=4 O.W.N. 842=**
A.I.R. 1927 Oudh 537.

———*Transferability.*

There is no general custom in force in Oudh (as distinguished from a village custom proved by a *wajib-ul-arz* or other evidence) to the effect that a grove-holder has no transferable interest in his trees.

LANDLORD AND TENANT—Grove—Custom.

In the province of Agra, subject to any custom or contract to the contrary, the interest of a grove-holder shall be transferable by voluntary transfer or in execution of a decree by a Civil or Revenue Court or otherwise and the same rule applies to the province of Oudh. A.I.R. 1921 Oudh 13; 15 O.C. 91; A. I.R. 1925 Oudh 319 and 13 O. C. 366, *Discussed.* (*King, J.*). MOHAMAD ALI MD. KHAN *v.* MADARISAH. **102 I. C. 626=1 L. C. 91= A.I.R. 1927 Oudh 297.**

——*Heir can mortgage.*

Where the *wajib-ul-arz* of the village clearly provides for the right of inheritance in a tenant's grove, it follows that on the death of the original grove-holder the grove and the trees thereon devolve by right of inheritance on the next heir under the law. A mortgage by such heir does not amount to an abandonment of his grove-holder's right in them. 15 O.C. 91, *Foll.* (*Wazir Hasan, J.*). RAM RAJ SINGH *v.* TEJ SINGH. **99 I.C. 203=3 O.W.N. 964= 8 L.R.A. Rev. 26=A.I.R. 1927 Oudh 46.**

——*Ordinary presumption—To remain in possession and enjoyment of land and trees—Rebuttal—Onus.*

In the province of Oudh a grove-holder is entitled, unless a custom or contract is shown to the contrary, not only to remain in possession and enjoyment of the trees of his grove, but also to remain in enjoyment of the grove land as long as the grove remains in his possession as grove-holder. When a landlord gives a plot of land to a tenant for planting a grove thereon, the ordinary presumption attaching to such a contract is that the tenant to whom such land has been given is entitled to remain in possession of the land also. In many cases it is absolutely necessary that for the purpose of enjoying the produce of trees, the grove-holder should remain in possession of the land also. It may be that a landlord while granting land for the purposes of planting a grove thereon might enter into a stipulation to the effect that the tenant would remain in possession of trees only and not in possession of the land and that he himself would be entitled to take the produce of the land. But such a contract is so unusual that if a landlord wishes to rely upon it, he must definitely allege and establish it to the satisfaction of the Court. If he fails to do so the ordinary presumption would be that when the land was given for the purpose of planting a grove thereon, the tenant was to enjoy the produce of the land in the shape of grass and self-grown trees as along as he was in possession of the grove standing on that land. (*Misra, J.*). SURAJ BAKHSH *v.* RAM ANAND. **97 I. C. 882=3 O.W.N. 680=A.I.R. 1926 Oudh 549.**

——*Applicability—Presumption.*

Where a general custom exists with regard to groves every person who plants a grove must, in the absence of any evidence of an agreement to the contrary, be held to have acted in accordance with the custom. (*Neave, A.J.C.*). GANESH *v.* SURAJ BAKSH SINGH. **91 I.C. 1021=2 O.W.N. 944= A.I.R. 1926 Oudh 139.**

—Grove—Formation of.

——*What amounts to.*

Guava trees planted by a non-occupancy tenant on his holding without the zamindar's consent, though such consent is legally enjoined, and scattered over a large area without interfering with the agricultural nature of the land cannot constitute a grove or make the tenant a grove-holder. (*Daniels, J.*). HAZARI *v.* RAM DULAR. **86 I. C. 329=A.I.R. 1925 All. 702.**

LANDLORD AND TENANT—Grove—Rights of grove-holder.

—Grove—Plantation.

——*Replacing cut trees.*

Where the only prohibition in the *waji-bul-arz* is that no fresh groves will be planted without the permission of the landlord, the tenant is not prohibited from planting new trees in place of old trees cut in the existing groves. 39 I.C. 974, *Dist.* (*Dalal, J.*). NASRATYAR KHAN *v.* BRIJ LAL. **109 I. C. 672=9 L.R.A. Rev. 12= A.I.R. 1928 All. 119.**

——*Evidence of—Presumption.*

The mere fact that the trees, which are usually of spontaneous growth are to be found on a plot is not necessarily any evidence of the fact that those trees were really self-grown. It is a matter of common knowledge that trees of spontaneous growth, like babul and dhak, are often planted on banjar lands. (*Misra, J.*). SURAJ BAKHSH *v.* RAM ANAND. **97 I.C. 882=3 O.W.N. 680= A.I.R. 1926 Oudh 549.**

——*Subsequent to abandonment—Rights.*

The land in suit was first a grove, then land abandoned for upwards of 12 years and lying waste, then re-occupied by the descendants of the original grove-holders and transferred into a newly planted grove,

Held, the original grove-holders cannot get a preferential right or be differentiated from any other persons who might have come in and planted the trees without the permission of the zamindar. (*Mears, C. J. and Banerji, J.*). HAZARI LAL *v.* NIMAR. **71 I.C. 1038=21 A.L.J. 277= 45 All. 386=4 L.R.A. Rev. 147= A.I.R. 1923 All. 295.**

—Grove—Possession.

——*As long as character is retained.*

A grove-holder is entitled to hold possession of the plot covered by the grove so long as it retains the character of a grove. The mere fact that a portion of the grove has become devoid of trees does not entitle the land-holder to resume that portion of the grove inasmuch as the plot must, in the absence of proof of an agreement or a custom to the contrary, be taken to have been granted as a whole and tenure must, therefore, stand or fall in its entirety. 2 O.L.J. 589 and A.I.R 1926 Oudh 458, *Foll.* (*Rasa, J.*). MATA BHIKH *v.* KALADIN. **99 I.C. 894=8 L.R.A. Rev. 155= A.I.R. 1927 Oudh 135.**

——*Transfer—No right—Resumption of possession.*

Where a tenant having no right to transfer groves does so, the landlord is entitled to resume possession, notwithstanding that there is no provision for re-entry in the event of the tenant transferring the grove. (*Lindsay, J.C.*). JAGMOHAN *v.* DEPUTY COMMR., PARTABGARH. **61 I.C. 945= 8 O.L.J. 124=A.I.R. 1921 Oudh 13.**

—Grove—Right in.

——Collection houses and groves frequently pass with the zamindari. (*Sulaiman and Banerji, JJ.*). SHIKAR CHAND *v.* JAGMANDAR DAS. **106 I.C. 519=25 A.L.J. 873= A.I.R. 1928 All. 29.**

—Grove—Rights of grove-holder.

——*It is property—Can sell or mortgage it.*

A grove-holder may not be the owner of the land; but his interest as a grove-holder including ownership of the trees and the right of enjoyment thereof must be regarded as property within the meaning of S. 6. His interest as a grove-holder is not restricted in its enjoyment to the owner personally nor is there anything in the nature of the tenure

LANDLORD AND TENANT—Grove—Rights of groveholder.

of a grove holder which makes the transfer of his interest opposed to such interest. Therefore a grove-holder has a right to transfer his grove by sale, mortgage or otherwise unless he holds the grove under a special condition subject to which the grant is made a condition which disentitles him to transfer his grove. A.I.R. 1923 All. 553 and A.I.R. 1921 All. 168, *Rel. on.* (*Niamatullah, J.*). SHEO MANGAL SHUKUL *v.* JAGAN LOHAR. **123 I.C. 767=A.I.R. 1930 All. 377.**

———*Not affected by trees falling down.*

Ordinarily, a grove holder does not lose his title as grove-holder on a portion of the land which was once occupied by trees simply because the trees have fallen down. 32 I.C. 368 and 42 All. 634, *Foll.* (*Mukerji, J.*). LODAI RAM *v.* SUKHDEO KOERI. **88 I.C. 540=A.I.R. 1925 All. 776.**

———*Possession—Evidence as to.*

The zamindar sought to eject the plaintiffs from a grove situated on two specified plots of land within the area of his mahal. Plaintiffs pleaded full proprietary title in the grove and were consequently required to establish their title in the Civil Court. The *wajib-ul-arz* of the village recognised the existence of two different kinds of groves (1) groves in which the holders were the owners of the trees alone but had no rights over the land and (2) groves that were in possession of the persons other than the proprietors of the mahal, and in respect of which the possession of the owner (*malik*) was in his own right, and the zamindar had no right to interfere. The plots over which the grove in dispute was standing were included in the latter class.

Held, that the plaintiffs had full proprietary title in the grove, although in the ordinary village papers the plaintiffs and their predecessors-in-title were recorded only as occupancy tenants. (*Piggott and Mukerji, JJ.*). SAHU RAGHUNATH *v.* MAHABIR PRASAD. **87 I.C. 558=23 A.L.J. 401=A.I.R. 1925 All. 439.**

———*Right of transfer.*

The planting of a grove with the permission of a zemindar even on occupancy land has the effect of changing the status of a tenant into a grove-holder and the latter has a transferable right in the trees. 43 All. 606, *Foll.* (*Daniels, J.*). LAL BAIJNATH SINGH *v.* CHANDRAPAL SINGH. **73 I.C. 529=21 A.L.J. 457=4 L.R.A. Civ. 366=A. I. R. 1923 All. 553.**

———*Under different conditions—Enumeration of.*

When land is let for the purpose of planting a grove, the occupier or tenant or licensee to whom the permission to make such use of it is granted by the zemindar, becomes a grove-holder pure and simple, and his rights are transferable. 34 All. 545 and 11 A.L.J. 649, *Foll.*

If the holding or right to occupy derived from the landlord is an occupancy or non-occupancy tenancy within Agra Tenancy Act, then the permission to plant trees is not transferable, nor are the trees themselves. 13 A.L.J. 833 and 42 All. 36, *Foll.*

A tenant cannot make a valid transfer of trees upon an occupancy holding independently of the holding, and therefore not at all because the holding itself is not transferable. 5 All. 616; 10 All. 159; 21 All. 297 and 23 All. 211, *Foll.*

The holding may cease to be an occupancy tenancy by the surrender of it by the tenant. (*Walsh, J.*). JALESAR SAHU *v.* RAJ MANGAL. **63 I.C. 437=43 All. 606=19 A.L.J. 616=A.I.R. 1921 All. 168.**

LANDLORD AND TENANT—Heritability.

—Heritability.

———*Occupancy tenants—Line of one becoming extinct no lapse to landlord.*

Per *Full Bench.*—*A* is the landlord of the holding of which *B*, *C* and *D* are the occupancy tenants. The shares of *B*, *C* and *D* are specified, and it is admitted that they are not members of a joint Hindu family, nor are they "joint tenants" in the sense in which that expression is used in English Law. On the line of *D* becoming extinct (that is, there being no person in existence who is entitled to succeed to *D* under sub-S. (1), S. 59, Punjab Tenancy Act, his share in the holding passes to the other occupancy tenants *B* and *C* and does not lapse to the landlord *A*. (*Aga Haidar, J.*, contra). *William White* v. *Tyndall*, 13 A. C. 263; *United Dairies, Ltd.* v. *Public Trustee*, (1923) 1 K. B. 469; *Holloway* v. *Barkeley*, (1826) B. and C. 2 and A.I.R. 1925 Cal. 1056, *Rel. on*; 109 P.R. 1894 (F.B.), *Appr.*; 100 P. R. 1908; 60 I. C. 513; 60 I. C. 862 and A.I.R. 1926 Lah. 338, *Overruled.* (*Broadway, Addison, Tek Chand, Dalip Singh and Agha Haidar, JJ.*). MOTI LAL *v.* KARTAR SINGH.

A.I.R. 1930 Lah. 515 (F.B.).

———*Legislative right—Apart from its custom.*

Heritability is a right which has been attached by legislation to the tenure of an occupancy raiyat in Bengal, Behar and Orissa, but it is not a necessary condition attaching to the enjoyment of an occupancy right for life. The question of whether an under-raiyat who acquires occupancy right acquires also right of heritability, depends entirely on local custom. (*James and Chatterji, JJ.*). MUCHI RAM BAGAL *v.* BALARAM BHUMIJ.

A.I.R. 1930 Pat. 562.

———*Evidence of.*

Although prior to the Transfer of Property Act a tenancy which was not permanent would not be heritable, successions are in themselves poor evidence that the tenancy is being treated as a tenancy heritable as matter of right. The effect of such evidence is in no way comparable to the effect of a recognition by a landlord of a tenant's claim to transfer the original tenancy to an assignee. (*Rankin, C.J. and Mukerji, J.*). KAMAL KUMAR *v.* NANDALAL. **116 I.C. 378=33 C.W.N. 211=56 Cal. 738=A.I.R, 1929 Cal. 37.**

———*Mukarrari istemrari—Implication.*

The words "mukarrari istemrari" do not in their lexicographical sense primarily imply any heritable character in the grant as the term "mourasi" does; but they simply imply permanency from which in a secondary sense such heritable character might be inferred, it always being doubtful whether they meant permanent during the lifetime of the persons to whom they were granted or permanent as regards hereditary character, and the words do not *per se* convey an estate of inheritance. 30 Cal. 883, *Ref.* (*Sir Lancelot Sanderson.*) KAMAKYA NARAIN SINGH *v.* RAM RAKSHA SINGH.

109 I.C. 663=7 Pat. 649=55 I. A. 212=48 C.L.J. 69=32 C.W. N. 897=28 M.L.W. 41=9 P.L T. 501=30 Bom. L R. 1361=A.I.R. 1928 P. C. 146=55 M.L.J. 882 (P.C.).

———*Right of under-raiyat.*

Under ordinary circumstances the right of an under-raiyat is not heritable. In the case of an under-raiyat who has no right of occupancy his holding is certainly not heritable and there is nothing either in the statutory law or in the case-law which would make an exception in the case of an under-raiyat with right of occupancy.

LANDLORD AND TENANT—Heritability.

(*Newbould and Graham, JJ.*). ISWAR SANT *v.* TORENDRA NATH. **92 I.C. 981=42 C.L.J. 560= A.I.R. 1926 Cal. 163.**

——*Occupancy tenancy.*

Ordinarily tenancy is the result of a personal contract, but its incidents and devolution are governed by statute. If a valid lease has been created by an occupancy tenant, his heir can inherit the occupancy right subject to such lease. (*Mitra, Offg. A.J.C.*). MT. LAHANI *v.* BALA. **77 I.C. 798=18 N. L.R. 85= A.I.R. 1922 Nag. 227.**

—Holding over.

——*Effect—Intention of parties—English law—Applicability.*

The act of holding after the expiration of the term does not necessarily create a tenancy of any kind, it being in each case a question of fact, what the intention of parties was. At the common law, if the tenant continues in possession by consent of his landlord, he is deemed *prima facie* a mere tenant-at will. In England in the absence of rebutting evidence the inference arising from payment and acceptance of rent is that the tenancy is tenancy from year to year and *prima facie* the renewed tenancy is subject to all the terms of the expired tenancy which can be applied to a tenancy from year to year. But these doctrines of English law are not applicable to the whole extent under the Bengal Tenancy Act. (*Rankin, C.J. and C. C. Ghose, J.*). GOPAL CHANDRA *v.* KHATER KARIKER. **33 C.W.N. 1207= A.I.R. 1930 Cal. 262.**

——*Tenant purchasing interest of some owners —Expiry of lease.*

If a tenant who has been granted a lease of a portion of land held jointly by the owners of that portion and the remaining portion is subsequently purchased by him from the owners of the remaining portion, takes a *kabuliat* after he becomes a co-owner, he is definitely attorned to the lessors in respect of their share and notwithstanding that he is a co-owner his possession of the land is that of a tenant under the provisions of the lease and on expiry of the lease unless he informs the lessor to change his possession is that of a tenant holding over within the principles of S. 116, T. P. Act, liable to be converted into tenant by mere assent of the lessors and not that of the co owner in possession of the whole property. (*Rankin, C. J. and B. B. Ghose, J.*). SOLAIMAN *v.* JATINDRA NATH. **33 C.W.N. 1199=A.I.R. 1929 Cal. 553.**

——*Conditions of lease continue.*

At the expiration of the term of a lease the lessee holding over must be taken to have done so on the conditions of the lease. (*Pratt, Offg. C. J. and Ormistone, J.*). G. BHANDARI *v.* R. NIHAL CHAND. **117 I.C. 52=6 Rang. 691=A.I.R. 1929 Rang. 55.**

——*Bar of remedy against.*

Landlord's remedy to recover possession of his property from his tenant becomes barred by limitation where such tenant continues in possession of such property after the termination of the lease for the full term of the statutory period without payment of rent and without any express or implied agreement between him and the landlord that the tenancy was to continue. 18 Bom. 256 *treated as overruled*; A. I. R. 1922 P. C. 184; 22 Bom. 893; 24 Bom. 504 and 28 Bom. L. R. 1357, *Foll.* (*Marten, C. J. and Crump, J.*). PURSHOTTAM *v.* VISHNU. **108 I.C. 859=29 Bom. L.R. 1332= A.I.R. 1927 Bom. 660.**

LANDLORD AND TENANT—Homestead.

——*Essentials—Possession and payment of rent.*

The essence of a title of a tenant holding over is that the tenant holding over after the expiry of the term must be both in possession of the land and paying rent to the landlord for the land in order that any such tenancy may be created or may exist. (*Greaves and B. B. Ghose, JJ.*). EKABBAR ALI *v.* SHEIK ALIM. **91 I.C. 312= A.I.R. 1926 Cal. 696.**

——*For over 12 years—Absolute right.*

Where the tenancy is for a fixed term, and the tenant holds over for 12 years after termination of the tenancy (no new tenancy being created), the landlord is barred, and the tenant becomes the absolute and complete owner of the property. 31 All. 514; 24 Bom. 504 and A.I R. 1922 All. 318, *Foll.* (*Prideaux, A.J.C.*). TUKARAM *v.* GANPAT. **82 I.C. 1031=A.I.R. 1925 Nag. 165.**

——*Remedy—Damages.*

A landlord is entitled to claim damages against a tenant who holds over, either for breach of his contract to yield up peaceful possession or for trespass. It is also well settled that the measure of damages for trespass, whether the claim is founded on contract or on tort, is not the value of the land, but the real damages sustained, which may be considerable or merely nominal. (*Page, J.*). SUNDERMULL *v.* LADHURAM KALURAM. **83 I.C. 757=50 Cal. 667=A.I.R. 1925 Cal. 240.**

——*New tenancy.*

When a tenant holds over after the expiration of the term of the previous tenancy it is considered to be a new tenancy coming into operation after the date of the expiry of the term of the previous tenancy. (*Suhrawardy and Ghose, JJ.*). UDOY CHANDRA BASU *v.* MAHOMED ALI BEPARI. **68 I.C. 589 (Cal.).**

—Homestead.

——*Law governing—Transferability.*

Tenancies of homestead land created for the purpose of habitation and purely of the nature of village service tenure are not governed by the Bengal Tenancy Act or by the Transfer of Property Act and are not transferable except by custom or usage and where there has been an implied surrender of the land and the former tenants have abandoned the land the landlord is entitled to take direct possession of it. 7 C. L. J. 309 and 20 C.W.N. 322, *Foll.* (*Duval and Mitter, JJ.*). ADHAR CHANDRA DEY *v.* BRPIN CHANDRA DEY. **100 I.C. 167=A.I.R. 1927 Cal. 373.**

——*Transferability.*

Under the law as it stood before the Transfer of Property Act, tenancies whether of homestead land or of agricultural lands were not transferable in the absence of a custom to the contrary or of an express contract to that effect. 12 W. R. 495, *Diss.*; 23 C.W.N. 201, *Foll.* (*Cuming and Page, JJ.*). SARADA KANTA SEN *v.* NABIN CHANDRA. **97 I.C. 817=54 Cal. 333=31 C.W.N. 231= A. I. R. 1927 Cal. 39.**

——*Construction.*

The description of "kaimi maurashi" applies very aptly to a non-agricultural tenancy. Where the lessor of homestead described his interest as kaimi maurashi and not as that of an occupancy right,

Held, that the lessor intended to put forward himself as the owner of a permanent heritable tenancy of a homestead land. (*Cuming and Chakravarti, JJ.*). BIDHUMUKHI *v.* GOBINDA CHANDRA. **90 I. C. 104=42 C. L. J. 78= A.I.R. 1926 Cal. 215.**

LANDLORD AND TENANT—Homestead.

——*No right to sell—Plea—Who can raise.*

A plea that a tenant of a house in an agricultural village in the United Provinces has no right to sell more than the materials of his house and that an auction-purchaser of his rights can acquire no right of tenancy, but only a right to the materials, is open only to that landlord of the village and therefore a trespasser cannot by raising such a plea go behind the sale certificate by virtue of which the auction-purchaser enjoys possession of the house and the site. (*Pullan, A.J.C.*). BHAGAN *v.* SUKHDEO SINGH. **89 I.C. 662= A.I.R. 1926 Oudh 53.**

——*Dilapidation—No reversion.*

When a tenant's house falls down, the site does not revert to the landlord. The tenant has a good title to the dilapidated premises. (*Stuart, J.*). MAHADEO *v.* RAM BHAROSE. **75 I.C. 679= A.I.R. 1923 All. 365.**

—Ijaradar.

——*Excavation—Right to compensation.*

Excavation of *ijara* property is a damage to the corpus of the property and the *ijaradar* is not allowed to take away any portion of the soil. Compensation for excavation by a third party is payable to the owner and the *ijaradar* has no right to claim it from the third party. But he can claim it from the owner. (*Adami and Sen, JJ.*). NATHAN PRASAD SHAH *v.* KALI PRASAD SHAH. **90 I. C. 785=7 P.L.T. 158= 1925 P.H.C.C. 317=A. I. R. 1926 Pat. 77.**

——*Rights of—Expiration of ijara.*

Where the lease is an ijara lease of the whole mouza including the man lands and when the period of the ijara expires, it expires in respect of the man lands as well as of the land in occupation of the tenants. The man lands being held as remuneration for collecting rent the ijaradar in no sense becomes raiyat thereof and he does not acquire any tenancy and is not entitled to any notice to quit before he can be ejected. 16 C.L.J. 30, *Dist.* (*Coutts and Macpherson, JJ.*). CHIGU CHOUDHRY *v.* SHRIMATYACHANDMONI DEBYA. **64 I. C. 695=2 P.L.T. 777=A. I. R. 1921 Pat. 504.**

—Improvements.

——*Partial—Nevertheless improvements.*

If a tenant wastes money by doing useless things the landlord would not be bound to pay the amount spent on such fruitless labour, but where the tenant removes stones or levels the ground so as to make it ready for cultivation, it cannot be said that all his labour is wasted and the land is not improved, simply because some more money is necessary to bring the land into actual cultivation. (*Devadoss, J.*). RAMA RAO *v.* APPU. **88 I.C. 924= A.I.R. 1925 Mad. 1226.**

——*Part of the contract—No compensation.*

Where the tenant undertakes to construct embankments and bring the land under cultivation as part of his contract in consideration of the favourable terms on which the lease is granted to him, he is not entitled to claim compensation for such improvements. (*Richardson and Shamsul Huda, JJ.*). MUKBUSOR RAHMAN *v.* RAJ LAKHI DEBYA. **81 I.C. 744=39 C.L.J. 102= A.I.R. 1921 Cal. 789.**

——*Kanara—Custom.*

The customary law of Kanara is that the tenant has not merely the privilege of removing the improvements where they are severable but is entitled to leave them on the land and to be paid compensation by the landlord. 24 M.L.J. 397, *Foll.* (*Ayling and Coutts-Trotter, JJ.*). RAMAPPA *v.* ABDULLA BEARI. **69 I.C. 282= A.I.R. 1921 Mad. 284=41 M.L.J. 127.**

LANDLORD AND TENANT—Interpretation.

—Interpretation.

——"*Town.*"

Mere inclusion in Municipality is no test as to whether an area is or is not a town. A. I. R. 1929 Oudh 301, *Foll.* (*Srivastava, J.*). SOHAN LAL *v.* SHAIKH MOHAMMAD HUSAIN. **7 O.W.N. 547=A. I. R. 1930 Oudh 374.**

——"*Attornment.*"

An attornment to a third party is a disclaimer. But "attornment" in the sense in which the word is used and understood in English law is not a mere agreement in favour of a third party to pay rent, but has been defined as "the act of the tenants" putting one person in the place of another as his landlord. Per *Holroyd, J.*, in *Cornish* v. *Searell*, 8 B. & C. 471, *Ref.* (*Cuming and Mukerji, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA. **112 I.C. 172=55 Cal. 1013=47 C.L.J. 387= 32 C.W.N. 559=A.I.R. 1929 Cal. 22.**

——*Title paramount.*

Title paramount is a title superior to those both of the lessor and the lessee against which neither is able to make a defence. *Neale* v. *Mackenzie*, 1 M. & W. P. 759, *Rel. on.* (*Cuming and Mukerji, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA. **112 I.C. 172=55 Cal. 1013= 47 C. L. J. 387=32 C W.N. 559= A. I. R. 1929 Cal. 22.**

——*Manusham.*

Manusham is not a present, but a consideration given by the lessee for the full term of the kanom. Mad. C. R. P. No. 348 of 1926, *Foll.* (*Thiruvenkatachariar, J.*). KUNHAMMAD *v.* ETAKARATI AHMAD. **113 I.C. 289=A.I.R. 1929 Mad. 195.**

——*Khudkasht—Tenants.*

A khudkasht raiyat is a resident hereditary cultivator in contradistinction to Paikast raiyat, that is a migratory tenant. Where the tenants were resident within the patni mahal, but outside the jungle tract, which did not form part of any village, and where no man could live, and the land was at that time infested with tigers and other wild animals, it would not be reasonable to say that these tenants were not khudkasht tenants although they were residents of contiguous villages within the patni, especially when they belong to a class whose only mode of life is by cultivation. 20 W.R. 426, *Rel. on.* (*B.B. Ghose and Roy, JJ.*). RASH BEHARI *v.* HEMANTA KUMAR. **106 I. C. 71=54 Cal. 788= A. I. R. 1928 Cal. 52.**

——*Muafi rights.*

Muafi rights are rights held by a tenant against the zamindar and against no one else. Such rights cannot be sold because they are resumable by the zamindar and the fact that such a sale is void as against the zamindar makes the sale absolutely void because it can be immediately defeated by the zamindar. (*Pullan, J.*). KUSHAR DAS *v.* BALBADDAR SINGH. **107 I.C. 872=4 O.W.N. 1269= 10 L.R.A. Rev. 2=A.I.R. 1928 Oudh 153.**

——*Thika.*

In Chota Nagpur the terms "thika" and "thikadar" when applied to a tenancy do not necessarily or indeed at least in tenancies originating before this century, even usually connote that the tenancy is not permanent. (*Kulwant Sahay and Macpherson, JJ.*). KRISHNA PRASAD *v.* BUDHAN MANJHI. **111 I.C. 675=7 Pat. 752= 9 P.L.T. 379=A.I.R. 1928 Pat. 451.**

LANDLORD AND TENANT—Interpretation.

——"*Bakasht.*"

The term "bakasht" is the invention of the survey authorities and is used by them to denote actual cultivating possession either of the proprietor or tenure-holders as the case may be. Such an entry does not solve the question whether the land was held by the kothi as proprietors, tenure-holders, raiyats or under raiyats. (*Das and Allanson, JJ.*). DURGA PRASAD *v.* BUSWAN PANDEY.

106 I.C. 272=9 P.L.T. 317=A.I.R. 1928 Pat. 209.

——Everybody who cultivates land does not thereby become a tenant. (*Mears, C. J. and Lindsay, J.*). MAHBUB ALI *v.* CHIDDAN.

95 I.C. 291=24 A.L.J. 599=A.I.R. 1926 All. 519.

——*Muafi khairati.*

The word "muafi khairati" has always been indifferently used for an ordinary or occupancy tenant whose rent is paid in service or for a servant who is allowed to hold land in lieu of his wages. (*Hallifax, A.J.C.*). MANBODH *v.* HIRASAI.

93 I.C. 650=A.I.R. 1926 Nag. 339.

——"*Cultivate and get cultivated.*"

A *patta kaulkarar* executed by the *darmustajirs* in respect of 275 bighas for a period of seven years provided *inter alia* "it behoves that you cultivate and get cultivated the land in the said village."

Held, that the expression was consistent with the status of the grantee being that either of a raiyat or of a tenure-holder. 45 Cal. 805 (P. C.) and 46 Cal. 90 (P. C.), *Dist.* (*Miller, C. J. and Macpherson, J.*). TARNI SINGH *v.* SAT NARAIN.

90 I. C. 895=6 P.L.T. 787=1925 P.H.C.C. 281=A. I. R. 1926 Pat. 9.

——*Borokta.*

The word "borokta" means in due or proper time and does not import any fixity as to rent. (*Chatterjea and Newbould, JJ.*). BISESWAR ROY *v.* BROJO KANTA. **62 I.C. 49=33 C.L.J. 296=A.I.R. 1921 Cal. 424.**

——*Kanganom.*

Kanganom is a portion of produce set aside for the landlord for his supervision at the time of division of the harvest. (*Abdur Rahim and Odgers, JJ.*). RANGACHARIAR *v.* DORAISAMI REDDY.

1921 M.W.N. 600=A.I.R. 1921 Mad. 689=41 M. L. J. 332.

——*Kaimi tenants.*

The word "kaimi" as used in the Record-of-Rights in the Patna and Bhagalpur Districts in connection with tenants means settled raiyats, and to describe them as occupancy tenants does not properly give effect to the meaning of the word "kaimi" as there understood. (*Dawson-Miller, C. J. and Mullick, J.*). PUNIA MAHTO *v.* SHEIK BUNDE ALI. **1921 P.H.C.C. 383=A.I.R. 1921 Pat. 289.**

—Khot.

——*Holding over—Adverse possession.*

Where a khoti tenant in reply to a notice of ejectment by the khot merely replies that he was not the annual tenant but does nothing more and continues to pay rent on the basis of appraisement, he does not acquire the title to permanent tenancy by adverse possession. (*Madgavkar, J.*). SHAIKH ALLI *v.* KHAT SAHIB. **31 Bom. L.R. 342=A.I.R. 1929 Bom. 197.**

——*Power of alienation—Onus.*

There is a presumption that the khot's permission to an alienation of khoti-nisbat lands is necessary in any khoti village in the Kolaba District. The burden of proof undoubtedly rests upon him who alleges to show that an unrestricted right of alienation exists in the village. (*Fawcett and Madgavkar, JJ.*). PURSHOTTAM *v.* GANPAT.

98 I.C. 794=50 Bom. 306=28 Bom.L.R. 750=A.I.R. 1926 Bom. 410.

LANDLORD AND TENANT—Lambardar.

——*Right to Injali trees.*

Where in a suit by Vatandar Khot the question was whether the plaintiff or the defendants were the owners of certain Injali trees standing upon lands which were in the occupation of the vendors of defendants who were not dharekaris, but held their lands since the introduction of the Survey Settlement as tenants of the Khot, subject to certain rights in the nature of the right of occupancy,

Held, that by virtue of Dunlop's Proclamation of 1824, the Khots became the owners of the Injali trees standing in Khoti *nisbat*, and there has been nothing to extinguish those rights or to transfer those rights to the present defendants.

Held, further, that the mere failure on the part of the plaintiff to sign the annual *Kabuliyat* should have this result only, that he would not be entitled for the time being to the right of management of the village. That would not, however, affect any other right which he might have independently of that right of management, such as the right to timber-growing in Khoti *nisbat* lands. 8 B.H.C.R. 1, *Foll.* (*Macleod, C.J. and Crump, J.*). AHMED BABU *v.* GANESH VISHNU. **73 I.C. 1035=25 Bom.L.R. 521=A.I.R. 1923 Bom. 462.**

——*Acquisition—Compensation—Apportionment.*

Certain Bhati lands were acquired under Land Acquisition Act for G.I.P. Ry. in villages Vikhroli and Kanjur. The Khot claimed the whole of the compensation. These grass lands have passed from hand to hand under sale-deeds and the Khot was perfectly aware that the villagers were enclosing these grass lands and were treating them as if they belonged to them.

Held, it is impossible to say that the villagers could not acquire by such action proprietary rights in the lands so enclosed and dealt with. They were entitled to compensation along with the Khot according to the custom of the villages as appears from previous cases. The acquisition of right by prescription is open in law to these villagers against the Khot whatever his rights under the lease may be. 1879 P.J. 274 and 1897 P.J. 9, *Ref.* (*Macleod, C.J. and Shah, J.*). VALLABHADAS NARAYANJI *v.* SPECIAL LAND ACQUISITION OFFICER FOR RAILWAYS. **88 I.C. 427=46 Bom. 272=23 Bom. L.R. 1288=A. I. R. 1922 Bom. 365.**

—Lambardar.

——*Lease of land owned by co-sharers cannot be made by the lambardar alone.*

Where some persons were co-sharers in a village of which one was lambardar and the land in question had been held in severalty by persons other than lambardar as their *khudkasht* for some years with his consent and the lambardar agreed with the persons that they were to have the sole management of the village and were to cultivate all the *khudkasht* land in it but later the lambardar made a perpetual lease of the land,

Held, that the deed of lease was void and the lambardar had no right to grant it.

There is a common delusion that a lambardar has some sort of personal authority in himself to grant leases of land in which he owns a share. Such a grant can of course be made only by the whole body of proprietors though they must frequently make it through the lambardar as their

LANDLORD AND TENANT—Lambardar.

representative. (*Hallifax, A.J.C.*). JAITRAM *v.* GIRDHARI. **104 I. C. 803= A. I. R. 1928 Nag. 16.**

——*Manure—Adverse possession or easement.*

A lambardar cannot obtain rights over manure which is collected year by year by the non-agriculturists in the village by means of adverse possession, nor can he acquire an easement over it. (*Wazir Hasan and Pullan, JJ.*). GAYA PRASAD *v.* SAHDEO SINGH. **112 I.C. 123=5 O.W.N. 296= A.I.R. 1928 Oudh 257.**

——*Duties of:*

There is no statutory provision of the law which requires a lambardar to maintain accounts of collections and expenses, but he is in a fiduciary position in relation to the co-sharers in the matter of collections and disbursements. He holds the position of a constructive trustee and he is bound to use such due diligence and care in the management of the estate as a man of ordinary prudence and vigilance would use in the management of his own affairs and no lambardar is likely to perform his duties efficiently unless he keeps up accounts which are comprehensible to himself and to the co-sharers; and if he does not keep up such accounts, he is liable to suffer in law by his omission. 4 O.W.N. 694, *Ref.*

There are circumstances when, if the lambardar fails to fulfil this obligation, he can be made liable for the gross rental, but it will always remain a question of fact, whether his omission in failing to keep proper accounts affords proof of such misconduct or negligence as would justify a passing of a decree on the basis of demands rather than on recorded collections. (*Stuart, C.J., Wazir Hasan and Raza, JJ.*). CHITAR KET SINGH *v.* KANHAIYA BAKHSH SINGH. **105 I.C. 285= 4 O.W.N. 725=A.I.R. 1927 Oudh 337 (F.B.).**

——*Debit of expenses.*

Festival expenses cannot be allowed to be debited to the proprietary body without any proof that they were incurred at their request as they are not expenses of village management. So also the legal expenses which are not incurred on behalf of that body cannot be debited against them. (*Batten, Offg. J.C.*). GOVINDRAM *v.* MANEKCHAND. **63 I. C. 1000=A. I. R. 1921 Nag. 88.**

—Lease—Construction.

——*No tenancy—Personal obligation not to eject.*

A person occupying certain premises executed a raiyatnama in favour of the owner of the premises in which he recited that he was occupying the premises as raiyat, that he had his stock of wood on them, that a sum of money was paid as rent in advance for four years, and that he would be entitled to retain possession during the period for which rent was paid.

Held, that the raiyatnama amounted to a personal obligation to refrain from ejecting the executant during the term for which rent was accepted. It did not create a tenancy and was not affected by the law of registration or Ss. 105 and 107, T.P. Act. It is binding on the conscience of the recipient of the rent and his representatives other than *bona fide* transferees for consideration. 25 Mad. 603 (P.C.), *Appl.* (*Sen and Niamatullah, JJ.*). S. SAFDAR ALI *v.* AMBIKA PRASAD DUBE. **A. I. R. 1930 All. 678.**

——*Covenant for renewal—Mere contract, not a demise.*

The covenant for renewal does not operate as a present demise but is a mere contract, which can only be given effect to in case of refusal to perform it by the lessor, or by enforcing specific performance of the contract by the lessee. These covenants do not form part of the demise, and as the contract of the lease and the covenant for renewal are two separate contracts, the ratification of the lease does not necessarily amount to a ratification of the covenant for renewal. *Raffety* v. *Schofield*, (1897) 1 Ch. 937; *Sherwood* v. *Tucker*, (1924) 2 Ch. 440; *Hand* v. *Hall*, 2 Ex. D. 353; 17 Cal. 548 and A. I. R. 1922 Cal. 514, *Rel. on.* (*B. B. Ghose and Cammiade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I. C. 298= 55 Cal. 841=47 C. L. J. 376= 32 C.W.N. 439=A. I. R. 1929 Cal. 50.**

LANDLORD AND TENANT—Lease—Duration of.

——*Restraint on transfer—No application to involuntary sales.*

It has been repeatedly held by the Calcutta High Court that a condition in a lease restraining transfer is not applicable to a case of involuntary transfer, unless there are words in the covenant which clearly make it applicable to such a transfer. A sale is made involuntary where it is in execution of a money decree but not of a decree founded on a mortgage or a charge voluntarily made. 42 Cal. 172, *Foll.*, 24 C. L. J. 40, *Dist.* (*Newbould and Suhrawardy, JJ.*). MANMATHA NATH MITRA *v.* CHUNI LAL GHOSE. **70 I.C. 81= 26 C.W.N. 173=A.I.R. 1922 Cal. 96.**

——Plaintiffs leased out a house in Delhi to defendant. One of the clauses ran as follows:—"The tenant will occupy the said house himself or by sub-tenants, but in case the said tenant do sub-let the whole or a large portion of the said house to any Chief for Durbar occasion, the tenant will pay the landlords 25 per cent. of the amount recovered from such Chief and no rent will be payable by the tenant for such portion for such period"

Held, the parties to the lease intended the condition under discussion to apply to occasions on which a number of Ruling Chiefs should congregate at Delhi at one time and create competition for house accommodation, as distinguished from isolated visits of single Chiefs, and the clause applied to the Ruling Chiefs' Conference of 1916. The lease empowered the landlords to demand 25 per cent. of the amount recovered from such Chief, and not to make any deduction for commission paid or expenses incurred. (*Abdul Raoof and Campbell, JJ.*). NAURANG AHMAD *v.* BASHESHAR NATH. **65 I.C. 115=5 P.W.R. 1922=32 P.L.R. 1922= A.I.R. 1922 Lah. 155.**

—Lease—Duration of.

——*No full enjoyment—No extension.*

The mere fact that the tenant has not been able to get full enjoyment under the terms of the lease for a fixed period has not the effect of extending the period of the lease as fixed under terms. (*Srivastava, J.*). PANCHU *v.* DY. COMMR., SULTANPUR. **113 I.C. 734= A.I.R. 1929 Oudh 286.**

——*Not defined—Grantee's life time.*

If a grant be made to a man for an indefinite period, it enures, generally speaking, for his life-time and passes no interest to his heirs, unless there are some words showing an intention to grant a hereditary interest. But that rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained (*Richardson and Shamsul Huda, JJ.*). JOGESH CHANDRA *v.* MOKBUL ALI. **60 I.C. 984= 25 C.W.N. 857=A.I.R. 1921 Cal. 474.**

LANDLORD AND TENANT — Lease — Enlargement.

—Lease—Enlargement.

——*Conduct evidencing.*

Where a tenant took two rooms on two different occasions from the same landlord, but when he took the second room his subsequent conduct clearly showed that he took it as an adjunct to the room of which he was already tenant, with the intention of converting the whole into a single office, and he had been admittedly paying rent in a lump sum and he also removed the partition dividing the two premises,

Held, that he must therefore be deemed to be in the position of a person who has enlarged his original tenancy by the acquisition of additional accommodation for which he pays additional rent. (*Chari, J.*). SOORATEE BARA BAZAR CO., LTD. *v.* HOOSAIN HAMADANEE & CO. **102 I.C. 827= 5 Rang. 139=A.I.R. 1927 Rang. 181.**

—Lease—Joint lease.

—— *Death of one—No right of re-entry.*

In the case of joint tenancy of two persons where one of the lessees dies, the lessor does not get a right of re-entry as to half the property demised because the lease does not come to an end until the death of the survivor of the two lessees and hence the landlord's right of re-entry does not come into being until the death of both the lessees. (*Jwala Prasad and Macpherson, JJ.*). GOPAL OJHA *v.* RAMADHAR SINGH. **82 I.C. 204=A.I.R. 1925 Pat. 228.**

—Lease—Lessee's rights.

——Where mortgagee becomes entitled to possession from mortgagor who had created a valid lease, the lessee is not bound to deliver possession before the end of the terms of lease. (*Dalal and Wazir Hasan, A. J. Cs.*). CHHOTEY SINGH *v.* BALDEO BUX SINGH. **88 I.C. 947=2 O.W.N. 457= 12 O.L.J. 526=A.I.R. 1925 Oudh 542.**

—Lease—Lien.

——*Burma—Lien on the crops.*

It is the usual practice in Burma for landlords to have a lien over the paddy reaped by the tenants over their lands. (*Das, J.*). MAUNG HUN *v.* KO OH. **92 I.C. 688=4 Bur. L.J. 180= A.I.R. 1925 Rang. 366.**

—Lease—Melvaram.

——*Pay of village officers.*

A landlord executed a lease of his melvaram right. Manibha Swathanthram to the village officers towards their pay was to be paid by the landlord out of his melvaram. Government subsequently undertook this payment themselves making a corresponding entry in the peishkush payable by the landlord. In a suit by the landlord to recover this amount the payment of which had become unnecessary by action of the Government,

Held, that the landlord was entitled to a decree. A.I.R. 1927 P.C. 206 and Appeal No. 416 of 1923, *Foll.* (*Ramesam, J.*). DURAISWAMY REDDIAR *v.* P. K. RAMACHANDRA THEVAN. **115 I.C. 236.**

——*Pay of village officers.*

During the continuance of a lease of the melvaram of a zamindari to a rent farmer, the Madras Act II of 1894 was extended to the zamindari and the payments to village officers which were attached to as a burden on the melvaram right were abolished and the peishkush payable by the zamindar was enhanced. The lease was silent as to what should happen when the payments to the village officers were abolished,

Held, per *Sadasiva Aiyar, J.* (*Wallis, C.J., dissenting*) that after the extension of the Act to the zamindari the lessee was bound to pay to the

LANDLORD AND TENANT—Lease—Nature of.

zamindar the money value of the payments to the village officers which (payments) had been abolished and that the remedy given by S. 27 (4) of the Act was not the sole but only a cumulative remedy. (*Wallis, C.J. and Sadasiva Aiyar, J.*). MUTHANAN SERVAI *v.* B. RAJA RAJESWARA SETHUPATHI. **64 I.C 312=13 M.L.W. 646=A.I.R. 1921 Mad. 587.**

—Lease—Nature of.

——*Construction.*

A man who, being the owner of land, grants a lease in perpetuity, carves a subordinate interest out of his own and does not annihilate his interest, and the words "the entire zamindari including all interests therein" do not increase the corpus of the subject of the lease. 36 Cal. 1003 and A.I.R. 1917 P.C. 163, *Ref.* (*Sir Lancelot Sanderson.*) RAJAH BEJOY SINGH *v.* SURENDRA NARAYAN. **111 I.C. 345=56 Cal. 1=55 I.A. 320= 48 C.L.J. 268=26 A.L.J. 1233=33 C.W.N. 7= 28 M.L.W. 855=10 P.L.T. 66=1928 M.W.N. 841= A.I.R. 1928 P.C. 234=55 M.L.J. 456 (P.C.).**

——*Permanency—Test.*

Unless the words clearly indicate permanency of lease, the surrounding circumstances and the entire terms of the lease must be looked into in order to ascertain the nature of the grant.

The property originally belonged to a zamindar from whom the predecessor-in-interest of the defendants first took a lease of the property in 1876 for a term of three years. On the expiry of the term of that lease, other leases were taken for different terms from time to time by the same lessees from the landlord. The lease just before the one in question was taken in 1895. This was for a term of five years, which was to terminate at the end of the Bengali year 1307, corresponding to the middle of April 1901. Before the expiry of the term of that lease, the present defendants took the lease in dispute by executing a *kabuliyat*, dated 21st September, 1900. The most important provisions in it being: "I had been till now in possession of the haut, etc., by taking a temporary miadi, ijara settlement of the same and realising rents. I prayed to you for having granted a bemiadi settlement of the haut, etc.....and you, on receiving a salami of Rs. 3,500 from me and fixing the annual rent at Rs. 800, granted my prayer and made me a bemiadi settlement of the haut.....I appear before you and agreeing to pay a rent of Rs. 800 per annum, I execute this deed of bemiadi kabuliyat." The plaintiffs in the suit acquired the interest which originally belonged to the landlord by virtue of a purchase at a sale in execution of a mortgage decree on 28th April, 1921.

Held, that it can hardly be reasonable to suppose that the tenant paid Rs. 3,500 as salami and consented to increase the rent to Rs. 800 in order to take a lease which might be terminated the next month or the next year at the will of the landlord. Taking all these facts into consideration the only reasonable conclusion was that the lease was a permanent one, instead of giving the lessee a more precarious right than what he had under the temporary lease which preceded it. (*B. B. Ghose and Roy, JJ.*). DINANATH KUNDU *v.* JANAKI NATH. **110 I.C. 388=55 Cal. 435= A.I.R. 1928 Cal. 392.**

——*Building.*

The nature of a lease granted for building purposes does not depend on the character of the building actually constructed. (*Iqbal Ahmad, J.*). SHAHJAHAN BEGAM *v.* MUNNA. **100 I.C. 479= A.I.R. 1927 All. 342.**

LANDLORD AND TENANT—Lease—Nature of.

——"*Bila Miad*"—"*Yearly lease.*"

Where persons were granted a lease *Bila Miad* to cultivate the land and were required under the grant to pay the rent and the lessors were given the right of recovering the rent by suit or by distraint,

Held, that the lease was one from year to year and not perpetual. (*Dalal, J.C.*). KALU SINGH *v.* HANSRAJ UPADHIYA. **78 I.C. 47= A. I. R 1925 Oudh 270.**

——In Chota Nagpur the term *istimrari mokarrari* lease means a lease for life. (*Das and Ross, JJ.*). HARI GIR *v.* KUMAR KAMAKHYA NARAIN SINGH. **78 I.C. 511=3 Pat. 534= 1924 P. H. C. C. 158=3 Pat. 534= A.I.R. 1924 Pat. 572.**

—Lease—Possession.

——*Non-delivery—Right to repudiate.*

Where lessor grants lease of property but fails to give the lessee possession of the whole leasehold, it is open to the lessee to repudiate the entire contract. But if he does not and remains in possession of a portion of the property, he is under certain obligations to his landlord, the owner of the land. This obligation has been recognized on various grounds, such as the doctrine of apportionment of the old lease, or an implied new contract of lease or else a liability to pay a reasonable sum for use and occupation. 23 M.L.J. 119, *Rel. on.* A. I. R. 1925 P.C. 97, *Expl.* (*Phillips and Ramesam, JJ.*). HANUMANTHA GOUNDAN *v.* DORAISWAMI PILLAI. **109 I.C. 465=27 M.L.W. 798= A.I.R. 1928 Mad. 380=54 M.L.J. 354.**

—Lease—Renewal.

——*Nature of right.*

The right of renewal is a privilege granted to the lessee. *Bastin* v. *Bidwell*, (1881) 18 Ch. D. 238 and *Finch* v. *Underwood*, (1876) 2 Ch. D. 310, *Ref.*, and, therefore, the renewal can only be of the contract as made. For example, if the contract is made with tenants, one of them cannot enforce the contract, or where the position of the parties changes, the renewal cannot be enforced. *Finch* v. *Underwood*, (1876) 2 Ch. D. 310 and *Hollies Stores, Ltd.* v. *Timmis*, (1921) 2 Ch. 202, *Ref.* (*B.B. Ghose and Cammiade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I.C. 298=55 Cal. 841= 47 C.L.J. 376=32 C.W.N. 439= A. I. R. 1929 Cal. 50.**

——*Receipt of rent in anticipation—Effect.*

Where there is a contract to renew the lease, taking of the rent by the lessor's transferee during the term of the lease means that the lessor's transferee was precluded from disputing the lessee's right to remain in possession by virtue of the lease. But that cannot import the other condition that he was bound to renew the lease after the term had expired. (*B.B. Ghose and Cammiade, JJ.*). MAHENDRA NATH *v.* KAILASH NATH. **109 I.C. 298=55 Cal. 841=47 C.L.J. 376= 32 C.W.N. 439=A. I. R. 1929 Cal. 50.**

——Covenant for renewal of lease runs with the land. (*Krishnan and Venkatasubba Rao, JJ.*). SECRETARY OF STATE *v.* VOLKART BROS. **102 I.C. 246=50 Mad. 595= 25 M.L.W. 525=1927 M.W.N. 318= 38 M.L.T. 233=A.I.R. 1927 Mad. 513= 52 M.L.J. 443.**

——*Electing to renew.*

Where money is accepted from the lessee whose term has expired only provisionally in case there should be a fresh settlement, the landlord cannot be deemed to have elected to treat the person paying the money as tenant. (*Richardson and Shamsul Huda, JJ.*). MUKHUSOR RAHMAN *v.* RAJ LAKHI DEBYA. **81 I.C. 744= 39 C.L.J. 102=A.I.R. 1921 Cal. 789.**

LANDLORD AND TENANT—Lease—Transfer.

——*No terms—Old terms.*

Where there is a covenant for renewal, if the option does not state the terms of the renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. (*Mookerji and Panton, JJ.*). GURU PROSANNA *v.* MADHUSUDAN CHOWDHURY. **64 I.C. 824=35 C. L. J. 87= 26 C. W. N. 901=A I.R. 1921 Cal. 574.**

—Lease—Specific performance

——*Notice of refusal to perform.*

Where a tenant is in possession of certain land by virtue of an oral contract of permanent lease, which, however, is not reduced to writing and registered, and where the landlord afterwards has given notice of refusal to perform his part of contract, the tenant cannot sue for specific performance of contract by requiring landlord to execute a formal lease after efflux of time since the notice has barred his suit. It is not sufficient to say that the original contract was specifically enforceable. *Walsh* v. *Langsdale*, (1882) 21 Ch. D. 9, *Expl.*; 16 C.L.J. 217 and 17 C.L.J. 167, *Ref.* (*Mukerji and Graham, JJ.*). ARIFF *v.* JADU NATH MAJUMDAR. **112 I.C. 865=55 Cal. 1090= 33 C.W.N. 333=A.I.R. 1929 Cal. 101.**

—Lease—Sub-lessee.

——*Termination—New tenancy.*

A sub lease is determined as soon as the tenant-right on which it is grafted has determined by operation of law even though the landlord has consented to its creation. If the landlord instead of entering into actual possession allowed the sub-lessee to hold on he must be deemed to have thereby offered the tenancy to the occupant, and by acceptance of rent from the cultivator to have created a new tenancy in his favour. *Case-law fully discussed.* (*Kinkhede, A.J.C.*). GOVINDRAO *v.* SARJABAI. **89 I.C. 872=A.I.R. 1926 Nag. 62.**

—Lease—Title.

——*Proof of—When necessary.*

It cannot be said that a zamindar does not show a good title to the underground unless he can disprove that tenure holders of long standing had been given the underground rights, in absence of anything in the history of the land or in the circumstances of the case to raise a reasonable suspicion and in absence of a stipulation imposing such a burden upon him. 45 Cal. 47; *In re, Foot & Hull*, (1879) L.R. 10 Ch. D. 365, *Ref.* (*Rankin, C.J. and Buckland, J.*). JYOTI PRASAD SINGH DEO *v.* H.V. LOW & CO., LTD. **A.I.R. 1930 Cal. 561.**

—Lease—Transfer.

——*Liabilities.*

C on 20th April, 1920, entered into an agreement for a lease with *R*. The agreement provided for a lease of 20 years of certain premises useful for motor business. *R* subsequently started a Ford Motor Company, Burma, and assigned his rights under the agreement to the said company. The Ford Motor Company after entering into possession made extensive alterations paying the rent to *C* and acted just as possessors with full title. No assignment of the agreement for lease of the premises was, however, made to the Ford Motor Company. On 27th August, 1921, *W* entered into an agreement to take over Ford Motor Company as a going concern. The copy of the agreement for lease was delivered to *W*. In a suit by *R* for the recovery of

LANDLORD AND TENANT—Lease—Transfer.

rent paid by him to *C* after 27th August, 1921, and also for a declaration that *W* was liable to reimburse *R* for all sums which *R* may thereafter pay to the landlord *C* under the agreement for lease,

Held, that under the circumstances the intention of *W* when they took over the Ford Motors as a going concern was to take not only the business but the premises, the subject of the agreement of the lease and they were bound to indemnify *R* against all the rents paid by *R* and also all payments which he will subsequently make in virtue of the agreement of lease. (*Lord Shaw.*) WEARNE BROS., LTD. *v.* RUSSA ENGINEERING WORKS.

115 I. C. 724=49 C.L.J. 516=7 Rang. 144= A.I.R. 1929 P.C. 189 (P.C.).

———*Covenant against—Effect.*

The grantees stated that without the grantor's permission they will not be entitled to transfer the *itmam* to others. But there was no clause of re-entry.

Held, such a condition against transfer is often inserted merely as a foundation for a claim to *nazar* (or premium) when a transfor is made, and if it is not void, it does not render an assignment or transfer of the lease inoperative. (*Richardson and Shamsul Huda, JJ.*). JOGESH CHANDRA *v.* MOKBUL ALI. **60 I.C. 984=25 C.W.N. 857= A.I.R. 1921 Cal. 474.**

—Lease—Miscellaneous.

———Holders of permanent leases must be classed as non-occupancy tenants. (*Sulaiman, J.*). DEO NARAIN SINGH *v.* JAGAT NARAIN SINGH.

103 I.C. 237=8 L.R.A. Rev. 261= A.I.R. 1927 All. 662.

———*Failure to prove—Decree.*

A plaintiff who fails to prove a lease may be allowed a decree on the basis of use and occupation where the defendants are proved to have held the land. 31 A. 276, *Foll.* (*Ashworth, J.C.*). AJODHYA SINGH *v.* KAIWAN BABU NAWAB KHUSRO BEGUM. **74 I.C. 582=A.I.R. 1924 Oudh 97.**

—Merger.

———*Purchase by tenant of a share.*

A tenant who purchases a share in the zamindari property does not thereby become *Khudkhast* holder and so does not cease to be tenant of his holding even to the extent of the share purchased by him. (1906) A.W.N. 226 and (1901) A.W.N. 53, *Foll.* (*Dalal, J.*). NIADAR *v.* MOHAMMAD AHMAD.

114 I.C. 870=9 L.R.A. Rev 127= A.I.R. 1929 All. 258.

———*Tenant acquiring share in the proprietary interest.*

There is nothing in law to prevent a co-sharer in a co-parcenary mahal from having tenant rights of any kind and being liable to the payment of rent either to another co-sharer or to the general body of co-sharers, and if a tenant subsequently acquires proprietary rights in the land his tenancy does not automatically come to an end in its entirety; S.A. No. 303 of 1918; Vol. 1, *Unpublished Decisions of the Board of Revenue* A.I.R. 1925 Pat. 77 (1901) A.W.N. 53 and (1906) A. W. N. 226, *Foll.* (*Lindsay and Sulaiman, JJ.*). MT. KESAR KUAR *v.* KALLU RAM. **107 I.C. 562=50 All. 479= 9 L.R.A. Rev. 33=26 A.L.J. 383= A. I. R. 1928 All. 164.**

———The doctrine of merger had no application in Bengal in a case of a co-sharer proprietor purchasing a raiyati jote even under the old law before 1885. 10 W.R. 15; 25 W.R. 503 and 13 C.W.N. 913, *Foll.* (*Dawson-Miller, C. J. and Fosler, J.*). GOPI SINGH *v.* JAGDEO SINGH. **102 I.C. 386= 8 P.L.T. 69=A.I.R. 1927 Pat. 172.**

LANDLORD AND TENANT—Mines and minerals

———*Acquisition of superior and inferior right does not* ipso jure *cause merger.*

Merger is not a thing which occurs *ipso jure* upon the acquisition of the superior with the inferior right. There may be many reasons—convincing reasons arising out of the object of the acquisition of the one right being merely for a temporary purpose, family reasons and others—in the course of which the expediency of avoiding the coalescence of interest and preserving the separation of title may be apparent. In short, the question to be settled in the application of the doctrine is, was such a coalescence of right meant to be accomplished as to exinguish that separation of title which the records contain. A.I.R. 1922 P.C. 94, *Foll.* (*Chatterjea and Page, JJ.*). K. S. BANNERJEE *v.* DHARENDRA KRISHNA DEB. **96 I.C. 659 (Cal.).**

———*Purchase of fractional share by tenant.*

Where both the parties plaintiffs and defendants were admittedly co-sharers in the village by virtue of their purchase of certain fractional shares, but the plots in suit were held from before those purchases by the father of the defendants as a tenant from as far back as 30 years.

Held, that the purchase by the defendant of a fractional share in the village did not terminate their tenancy of the said plots, any more than the purchase of a fractional share by the plaintiff gave him a right to oust the defendants from that tenancy. (*Kanhaiya Lal, J.*). MATA GHULAM *v.* SHEO MANGAL. **34 I.C. 639=4 L.R.A. Rev. 341= A.I.R. 1924 All. 460.**

———*Occupancy tenant.*

In the case of an occupancy tenant who is also a landlord, acquiring by partition a landlord's interest, the doctrine of merger applies. 2 P.L.J. 225, *Dist.* (*Coutts and Macpherson, JJ.*). MULLICK MUKTEAR AHMAD *v.* KALI CHARAN.

1921 P.H.C.C. 357=2 P.L.T. 525= A.I.R. 1921 Pat. 373.

—Mines and minerals.

———*Covenant for title—Onus is on lessees to show that lease offered to them is not secure lease.*

A contract for grant of mining lease in certain mouzas provided that if the lessees did not take the lease within a certain period "except for want of the lessor's title in the said mouzas" the deposit would be forfeited to the lessor. The settlement record showed the lessor as zamindar of the mouzas and also that one of them was settled as a brahmottar and the other as a debuttar with tenure-holders. Further demand was made by the lessees for production of the deeds of brahmottar and debuttar grants for the purpose of satisfying themselves that underground rights had been reserved to the zamindar and also for execution of an indemnity bond. The lessor replied that no deeds could be traced and that he was not prepared to execute an indemnity bond. The lessees thereupon refused to complete the lease and sued for their deposit.

Held, that the exception clause in the contract referred to title to the underground and not title to the mouzas but it did not increase the obligation as to the title lying on the lessor under general law which included not duty to produce satisfactory evidence of title to the underground before the completion of the lease.

That the onus was on the lessees to show that the lease offered to them was not a secure lease. Moreover the title of the zamindar had not been

LANDLORD AND TENANT—Mines and minerals.

shown to be such as prevented him from giving the lessees a secure and valid lease. (*Rankin, C.J. and Buckland, J.*). JYOTI PRASAD SINGH DEO *v.* H.V. LOW & CO., LTD. **A.I.R. 1930 Cal. 561.**

——A Zamindar of a permanently settled estate under the Regulations of 1793 is the owner of the soil, and whatever may be the claim of the Crown against him, as between himself and a tenure-holder he has the right to the minerals unless he has expressly parted with them. (*Mullick and Kulwant Sahay, JJ.*). KAMAKSHYA NARAYAN SINGH *v.* THAKUR JADO CHARAN SINGH.

114 I.C. 194=A.I.R. 1928 Pat. 294.

——*Lease of land—Presumption.*

The mineral rights are in the zamindar and he is not divested of them by a lease of the land unless the minerals are expressly granted. (*Das and Ross, JJ.*). SATYA NIRANJAN CHAKRAVARTI *v.* SUSHILA BALA DASI. **90 I.C. 513= 4 Pat. 799=A.I.R. 1926 Pat. 103.**

——Royalty represents the lessor's share of the profits made from the business. (*Das and Adami, JJ.*). NILKANTH *v.* NIHARAN.

A.I.R. 1922 Pat. 75.

—Mortgage.

——Sir *land—Foreclosure by second mortgagee—Surrender by mortgagor—Effect.*

A subsequent mortgagee who has foreclosed, steps into the shoes of the mortgagor and stands in the same relation to the prior mortgagee as the original mortgagor.

Where *sir* land was mortgaged first to one mortgagee and then to another and where second mortgagee foreclosed the land, he is in the position of a mortgagor to the first mortgagee and is also in the position of a landlord to the original mortgagee inasmuch as the orginal mortgagor still retains under the law the right of an occupancy tenant in the land and so where the original mortgagor surrendered his occupancy rights in the land to the second mortgagee, it is an ordinary surrender by a tenant during the continuance of the mortgage of the first mortgagee and therefore an accretion to the mortgage; so if the first mortgagee obtains a final decree for foreclosure and sues for possession of the field, he is entitled to a decree. 14 N. L. R. 133, *Appl.*; 37 All. 390 and A. I. R. 1921 Mad. 627, *Dist.* (*Staples, A. J. C.*). BHAGWANT RAO *v.* SUBHKARAN. **25 N.L.R. 12= A.I.R. 1929 Nag. 225.**

——*Lease—Diminution of security—Test.*

The test to determine whether lease granted by a mortgagor malguzar is a transaction in the ordinary course of management or intended to diminish the security of the mortgagee, is whether he would have granted the lease himself if he had known that he was to continue indefinitely as a full owner of the property. A. I. R. 1924 Nag 226, *Rel. on.* (*Findlay, J. C.*). MAROTI RAO *v* TULSA BAI.

109 I.C. 459= A.I.R. 1928 Nag. 303.

——*By tenant—Privity—Liability for rent.*

The relationship of landlord and tenant does not exist between a landlord and a mortgagee from tenant. It is either privity of contract or privity of estate which brings such relationship into existence. Even if there be a stipulation in the mortgage-deed for payment of rent by the mortgagee direct to the landlord, it would bind only the parties to the transaction of the mortgage. Being not a party to the transaction, the landlord cannot avail himself of such a stipulation in the mortgage and insist upon payment of rent by the mortgagee. As regards the privity of estate, it arises only when

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the whole of the tenant's interest in the holding is assigned and not where a subsidiary interest like that of a mortgagee is carved out of the tenant's interest. A sale of the holding would constitute such an assignment of the tenant's interest and would render the purchaser liable for payment of rent despite the absence of privity of contract. Voluntary payment of rent by the mortgagee to the landlord would not *per se* fasten such a liability on him. 13 C.P.L.R. 19; 40 Mad. 1111 and 30 Mad. 410, *Foll.* (*Kolhatkar, A.J.C.*). RAMCHANDRA JAT *v.* SETH BHAGWANIRAM. **113 I.C. 111= A.I.R. 1928 Nag. 147.**

——*By muafidar.*

A muafidar who has mortgaged his muafi plots cannot assert against the mortgagee, whom he has ejected, his own want of title. The case might be different if the legislature had expressly enacted that in no circumstance would a transfer of muafi land be recognized. (*Stuart, C. J. and Raza, J.*). SHYAM MANOHAR *v.* BENI MADHO.

110 I.C. 320=5 O.W.N. 545=10 L.R.A. Rev. 29= A.I.R. 1928 Oudh 336.

——*Does not amount to abandonment—Right of re entry.*

The principle determining the title of the landlord to a re-entry in a case of a sale by a tenant of his grove or of his house is essentially different from the principle applicable to a case where the tenant has made only a temporary alienation of the nature of a possessory mortgage. In the former case the sale is a complete evidence of the abandonment of the tenant's right in the property sold and the alienation being invalid the vendee is a pure trespasser as against the landlord, who on abandonment acquires in law a right of re-entry. On the other hand, where there is a transfer by way of a possessory mortgage only, it does not afford any evidence as to the extinction of the tenant's rights. On the contrary it proves the continuance of such rights. In such a case the landlord has no right of re-entry though the mortgage is invalid according to the custom of the village or being contrary to the conditions of the tenure. (*Wazir Hasan, J.*). RAMRAJ SINGH *v.* TEJ SINGH. **99 I.C. 203= 3 O.W.N. 964=8 L.R.A. Rev. 26= A.I.R. 1927 Oudh 46.**

——*By tenant—Foreclosure—Rights of parties.*

Ordinarily, the tenant-right, as between the tenant mortgagor and his transferee, becomes transferred absolutely to the latter the moment the final decree for foreclosure is passed, and nothing remains which the tenant can claim to be his own. If the mortgage on the basis of which such foreclosure is obtained, is a legal, a consented or ratified mortgage, then the transferee's position in order to make the foreclosure binding on the landlord is secure, not only against the tenant, but also against the landlord, because in that case the tenant-right on which the mortgage encumbrance is engrafted becomes validly transferred to the mortgagee as against both the tenant and the landlord. But if the mortgage is neither legal nor consented to by the landlord, nor subsequently ratified by the acceptance of rent by the landlord from the transferee as such, the latter's position is nothing better than that of a mere trespasser liable to be ejected by the landlord on the ground that the tenant's interest having come to an end by reason of the land being foreclosed or put to auction in execution of a decree based on a mortgage, voidable at the instance of the landlord, a right to immediate re-entry into possession has accrued to the

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landlord. 4 N.L.R. 57, *Ref.* (*Kinkhede, A. J. C.*). SHEOBUX *v.* SETH JAGANNATH. **90 I.C. 364= A. I. R. 1926 Nag. 184.**

———*With consent of landlord—Effect.*

By consenting to a mortgage the landlord consents to a foreclosure also provided it takes place so long as the tenant right is subsisting. The consent does not enure for the benefit of the transferee if he has not worked out his rights under the transfer so long as the tenant-right subsisted. 6 C.P.L.R. 109, *Ref.* If the tenancy is determined by forfeiture the mortgage even if valid as against the landlord is also determined. 14 N.L.R. 107, *Ref.* (*Kinkhede, A.J.C.*). SHEOBUX *v.* SETH JAGANNATH. **90 I. C. 364=A.I.R. 1926 Nag. 184.**

———A mortgage of tenancy land by a tenant is not void *ab initio*. A. I. R. 1922 Oudh 287, *Foll.* (*Raza, J.*). SHUNKAR *v.* MT. MAHADEI. **92 I.C. 46=13 O.L.J. 241.**

—Mulgeni lease.

———*Sale—Forfeiture—Limits.*

Where certain mulgeni lessees executed a sale-deed and purported to deliver possession to the vendees though they actually continued in possession under a lease taken at the same time from the vendees, *held* that the mulgeni lease was forfeited and that both the original lease and the under-leases were annulled. (*Spencer, Offg. C.J. and Kumaraswami Sastri, J.*). GOPALA KUDUVA *v.* HAMZU SAHIB. **84 I. C. 625=19 M. L. W. 545= 1924 M.W.N. 477=34 M.L.T. 339= A.I.R. 1924 Mad. 776.**

———*Assignment—Effect.*

An assignment of *mulgeni* lease executed prior to the Transfer of Property Act by the lessee thereof, in breach of his covenant not to assign, is perfectly valid.

Per *Seshagiri Aiyar, J.*—Even in cases where the Act applies, the same result will follow. (*Wallis, C.J., Oldfield and Seshagiri Aiyar, JJ.*). UDIPI SESHAGIRI *v.* SESHAMMA. **61 I.C. 658= 43 Mad. 503=12 M. L.W. 45= 1920 M.W.N. 408=39 M.L.J. 128 (F. B.).**

—Nature of tenancy.

———Where the landlord had, at the date of lease, ceased to have any interest in the property as landlord, the tenancy created by him is not void. 20 Cal. 708 (F.B.), *Foll.* (*Hallifax, A.J.C.*). KARU *v.* PANDIA. **75 I.C. 874=A.I.R. 1924 Nag. 226.**

—Nature of tenancy—Agricultural.

———*Kabuliyat—Construction.*

A tenancy consisted of a tank with its banks and a plot of land adjoining thereto. It was created by a *kabuliyat* by which the tenant got a right to graze cattle on the bank after fencing them all round, rear fish and catch them, and enjoy the fruits of fruit-bearing trees then existing on the bank. The *kabuliyat* was headed as a "kabuliyat for nine years." Below the heading when naming the tenant as executant it spoke of him as Makbulali cultivator for nine years.

Held, that the object of *kabuliyat* was to create an agricultural tenancy in favour of the tenant. (*Mukerji, J.*). RAMA NATH *v.* TARAK NATH. **107 I.C. 756=A.I.R. 1928 Cal. 305.**

—Nature of tenancy—Ascertainment of.

———*Possession.*

Where a tenant cannot or does not produce his lease in writing, he can, nevertheless, establish his tenancy from possession and other circumstances. 24 C.L.J. 539, *Rel. on.* (*Mallik, J.*). RAICHARAN PAL *v.* JADU NATH PAL. **116 I.C. 155= A.I.R. 1928 Cal. 376.**

LANDLORD AND TENANT—Nature of tenancy —Duration.

———*Actual user.*

Where the *kabuliyat* does not render any help in determining the nature of the tenancies, Court can consider the evidence of actual user of the land to find out their nature. (*Suhrawardy and Cuming, JJ.*). SATINDRA MOHAN TAGORE *v.* JAYANABI BIBI. **88 I. C. 492= A.I.R. 1923 Cal. 1183.**

———*Circumstances—Mode of enjoyment.*

When the beginnings of a tenancy are not known and the documents purporting to create the tenancy are capable of dual or multiple interpretations, what has to be considered is the attendant circumstances and in such a case the method in which the tenancy has been and is enjoyed can also be considered in order to come to a proper solution of the question relating to the tenure. (*Walmsley and Mukerji, JJ.*). LAL GHOSE *v.* NILKANTHA DAS. **80 I.C. 898=A. I. R. 1925 Cal. 340.**

———*Conduct of parties.*

When there is no document showing the origin of the tenancy or the incidents thereof at its inception the nature of tenancy is to be gathered from the evidence of the mode of dealing with the demised land and from the acts and conduct of the parties during such period. Such conduct constitutes the best, if not the only evidence for the purpose of proving the nature of the tenancy. 27 Cal. 570, *Ref.* (*C. C. Ghose and Panton, JJ.*). KAZEMINI MUTWALI *v.* MANIK CHANDRA PRAMANIK. **80 I.C. 980=27 C.W N. 969= A.I.R. 1924 Cal. 156.**

———*Conduct of parties.*

Where the terms upon which a tenancy was created cannot be proved by direct evidence the subsequent conduct of the parties may be considered with a view to determine the nature of the tenancy. (*Newbould, J.*). ABHAIPADA SIRCAR *v.* ATOR DOME. **67 I.C. 66=A.I.R. 1923 Cal. 294.**

———*Justice and equity.*

In the absence of any proof of a specific contract or necessary incident of the tenure to the contrary or of any law regulating the relations between the parties, Courts have to fall back under S. 37, cl. (2) of Act XII of 1887 on the rule of justice, equity and good conscience and enforce such equity as the circumstances of the case might justify. (*Lindsay and Kanhaiya Lal, JJ.*). NATHA *v.* GOBIND RAM. **64 I.C. 153=19 A.L.J. 681= A.I.R. 1921 All. 28.**

———*'Itmam' 'Taluk.'*

As applied to a tenure in the permanently settled parts of Chittagong the word "*itmam*" primarily imports a permanent heritable and transferable tenure. It is well settled that the word *taluk* primarily imports permanency. But the terms of a written instrument may be inconsistent with the ordinary implication of either term. Either term may be loosely or mistakenly applied to a tenure which is not in fact permanent and which does not become permanent merely because it is called a *taluk* or an *itmam*. (*Richardson and Shamsul Huda, JJ.*). JOGESH CHANDRA *v.* MOKBUL ALI. **60 I.C. 984=25 C. W. N. 887= A.I.R. 1921 Cal. 475.**

—Nature of tenancy—Duration.

———*Mukarrari istemrari—Heirs in possession —Rent receipts.*

Where, after the death of the original mukararidars, under mukarrari istemrari lease which conveyed a life-estate only, the heirs remained in possession and paid rent to the lessor, the

LANDLORD AND TENANT—Nature of tenancy —Duration.

predecessor-in-title of the plaintiff, but receipts were given in the marfatdari form, *i.e.*, the receipts were made out in the names of the original mukarraridars, but the names of the persons who made the payment were also entered in the documents and lessor refused, when requested by the heirs to accept rent and give a receipt to the person paying the rent in his own name,

Held, that the predecessor-in-title of the plaintiff did not recognize the heirs of the mukarraridars as his tenants from year to year and, therefore, plaintiff's suit for possession brought 12 years after such refusal was barred. 17 C.W.N. 459, *Dist.* (*Sir Lancelot Sanderson.*) KAMAKHYA NARAIN SINGH *v.* RAM RAKSHA SINGH. **109 I.C. 663=7 Pat. 649= 55 I.A. 212=48 C.L.J. 69=32 C.W N. 897= 28 M.L.W. 41=9 P.L.T. 501= 30 Bom. L.R. 1361=A.I.R. 1928 P. C. 146= 55 M.L.J. 882 (P.C.).**

———The reservation of an yearly rent in a lease is only a presumption and not a conclusive proof that the tenancy is an early one. (*Chatterjea and Panton, JJ.*). SARI SARDAMAYI DEVI *v.* SAILABALA DASI. **59 I.C. 788 (Cal.).**

—Nature of tenancy—Horticultural.

———*Test as to.*

The facts were that the jama was described in the documents as consisting of bagat land, that trees and vegetables were planted on it, that it was not a part of, nor did it constitute, one tenancy along with the homestead of the tenant which lay close by and that nobody ever lived on it.

Held, that the tenancy, the origin of which was unknown, must be held, having regard to the surrounding circumstances and the nature of its enjoyment, to have been for horticultural purposes and not for residential purposes. (*Mukerji, J.*). SATISH CHANDRA GHOSE *v.* DEBENDRA NATH DEY. **85 I.C. 636=A.I.R. 1925 Cal. 761.**

—Nature of tenancy—Kabuliyat.

———*Fixed rent.*

The facts that the tenancy is described as heritable one and it is provided that the excess area found to be in the possession of the tenant will be assessed at the rate mentioned in the *kabuliyat* are not sufficient to establish tenancy at a fixed rent. (*Suhrawardy and Duval, JJ.*). ESHAQUE SHEIKH *v.* MALILAL MALO. **81 I.C. 1043= A. I. R. 1925 Cal. 294.**

—Nature of tenancy—Origin of tenancy.

———The evidence afforded by dakhilas is not to be regarded as conclusive as to the origin and nature of tenancy. (*Walmsley and Cuming, JJ.*). SASIBALA DEBI *v.* AMALA DEBI. **66 I.C. 61= 25 C.W.N. 378=A.I.R. 1921 Cal. 379.**

—Nature of tenancy—Patta—Construction.

———*Patta granted under solenama—Use of word* kaimi—*Permanent right whether conferred.*

Where the patta described the right as "*sauba sani sat jotedari*" but the solenama under which it was issued used the word *kaimi*,

Held, that the parties may be taken to have intended to deal with a permanent right. (*Graham and Mitter, JJ.*). ESHAQUE MIA *v.* DULA MIA PATWARI. **34 C.W.N. 887.**

—Nature of tenancy—Service tenure.

———*Not yearly tenants—Onus.*

Per *Odgers and Napier, JJ.*—Where the holder of a service inam is found to be entitled to kudivaram, tenants are bound to prove that they are not tenants from year to year, otherwise they are liable to be ejected on proper notice to quit.

LANDLORD AND TENANT — Non-transferable holding.

Case-law reviewed. A service tenure is not incompatible with a permanent right of occupancy as such a right does not amount to an alienation. (*Napier and Odgers, JJ., then Ayling and Odgers, JJ., afterwards Krishnan and Venkatasubba Rao, JJ.*). VEERASWAMY MUDALI *v.* PALANIYAPPAN. **84 I.C. 799=34 M.L.T. 175= 1924 M.W.N. 466=19 M.L.W. 513= A.I.R. 1924 Mad. 626=46 M.L.J. 515.**

—Nature of tenancy—Tenancy on sufferance.

———There is no such thing as tenancy on sufferance in this country. (*Sanderson, C. J. and Ghose, J.*). REAJUDDIN PATWARI *v.* SYED ABDUL JABBAR. **69 I.C. 504=A.I.R. 1924 Cal. 445.**

—Nature of tenancy—Transfer.

———The fact that rent receipts were granted "*marfatdari*" in the names of the original grantees is not conclusive to show that the tenures were not transferable. (*Richardson and Shamsul Huda, JJ.*). JOGESH CHANDRA *v.* MOKHUL ALI. **60 I.C. 984= 25 C W.N. 857=A.I.R. 1921 Cal. 474.**

—Non-transferable holding.

———*Mortgagee of—Position.*

A landlord purchaser is entitled to ignore the mortgagee of a non-transferable holding whether the mortgage is in respect of the whole or a part. A.I.R. 1928 Pat. 234 and A.I.R. 1929 Pat. 222, *Foll.* (*Courtney-Terrell, C.J. and Jwala Prasad, J.*). PARBHA NARAYAN *v.* RAMADHAR. **10 P.L.T. 396=A.I.R. 1929 Pat. 236.**

———*Transfer—Landlord—If and when can sue for possession.*

The question of the landlord being estopped from suing for the *khas* possession of a non-transferable occupancy holding, which has been transferred to a third party from which third party the landlord has accepted rent and granted a receipt therefor, but describing therein the third party as marfatdar, depends on the facts of each case. 17 C.W.N. 1088, *Foll.*

Where in such a case the landlord had previously declared that on transfer the occupancy holding had become abandoned and subsequently accepted rent from the transferee describing him in the receipt as marfatdar of the original tenant,

Held, that the landlord was precluded from maintaining that the transferee was but an agent of the original tenant inasmuch as he (the landlord) had declared the land abandoned on its being transferred. (*Sanderson, C J. and Richardson, J.*). BAIKANTA NATH *v.* BHUBAN CHANDRA. **A.I.R. 1928 Cal. 273.**

———*Proprietor—When can sue for* khas *possession.*

While the thika lease is running, the proprietor can bring a suit for possession against the transferee of a non transferable occupancy holding because the proprietor is in possession through his tenure-holder. A trespass against the tenure-holder is an encroachment upon the right not only of the tenure-holder but of the proprietor also, and if the tenure-holder is dispossessed, the proprietor has a cause of action and is entitled to recover possession through his tenant. He is not of course entitled to *khas* possession while the tenancy exists, but he is entitled to delivery of formal possession through his tenant and for an order directing that the trespasser shall be ejected. 5 M.L.W. 330 and A.I.R. 1923 Cal. 192, *Rel. on*; 21 Mad. 288, *Dist.*; 10 W.R. (Civ.) 15, *Ref.* (*Mullick, J.*). KULDIP MAHTO *v.* MD. HASHIM. **113 I.C. 585= A.I.R. 1928 Pat. 396.**

LANDLORD AND TENANT — Non-transferable holding.

——*Purchaser—Rights of.*

A purchaser of a non-transferable holding without the consent of the co-sharer landlords is not a tenant of the latter, and any one of them is entitled to eject him from the holding to the extent of his own share in the holding. 10 C.L.J. 618 and 21 C.L.J. 441, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). UCHHAB GENE *v.* UPENDRA NAIK. **103 I.C. 461=6 Pat. 350= A.I.R. 1928 Pat. 173.**

——*Transfer—Landlord's remedy.*

When non-transferable occupancy holding is transferred but the tenant does not repudiate the tenancy, and hence the landlord cannot eject the tenant, proper course for the landlord is to sue for a declaration that the transferee from the raiyat has acquired no interest as against him. A.I.R. 1924 Cal. 900, *Foll.* (*Greaves and B.B. Ghose, JJ.*). JNANENDRA NATH *v.* JOGENDRA NATH. **91 I.C. 191=A.I.R. 1926 Cal. 772.**

——*Sale of in execution.*

A non-transferable occupancy holding is liable to be sold at an execution sale at the instance of an ordinary creditor without the consent of the landlord. A.I.R. 1924 Cal. 52, *Foll.* (*Suhrawardy and Cuming, JJ.*). GURUDAS SAHA *v.* SHEIKH HIRA GAZI. **87 I.C. 740=A.I.R. 1926 Cal. 319.**

——*Remedies on transfer.*

The landlords may, if they choose, ignore the sale of non-transferable occupancy holding and proceed to bring a rent suit as against their tenants. They may, if they choose, bring a suit for ejectment as against the purchaser. (*Das and Ross, JJ.*). LACHMAN SAHAY *v.* GAURI CHARAN MAHTON. **94 I.C. 556=7 P.L.T. 127=1926 P.H.C.C. 99= A.I.R. 1926 Pat. 423.**

——*Co-sharer taking transfer of—Trespasser.*

When one co-sharer landlord takes a transfer of a non-transferable holding from a tenant he may be treated by the other co-sharer landlords as a trespasser.

The fact that in respect of other lands settled in non-transferable right, the plaintiff has taken a transfer and has been for a long period in possession purporting to hold an occupancy right therein is no equitable defence when afterwards his co-sharer seeks to do the same thing as regards a different piece of land altogether and the plaintiff takes objection. (*Rankin and Mukerji, JJ.*). JAGABANDHU KUNDU *v.* RAJMOHAN PAL. **78 I.C. 599=A.I.R. 1925 Cal. 533.**

——*Sale of a share—Effect.*

The sale of a share only of a non-transferable holding does not entitle a landlord to *khas* possession unless there has been an abandonment. There can be no abandonment when there has been all along payment or offer of payment of rent by the tenant. (*Woodroffe and Ghose, JJ.*). SARAT CHANDRA DE *v.* MANORAMA DEBI. **68 I.C. 295= A.I.R. 1923 Cal. 181.**

——Where a transfer is not by way of sale, the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding unless there has been an abandonment. 40 Cal. 870 and 17 C.W.N. 802, *Foll.*; 10 C.W.N. 499, *Not foll.* (*Greaves and B. B. Ghose, JJ.*). AMBIKA DEBI *v.* SWARNAMAYI DASI. **68 I.C. 425=49 Cal. 989= A.I.R. 1922 Cal. 135.**

——*Decree-holder against tenant—Remedy.*

The decree-holder not being the landlord of the holding can, against the will of the judgment-debtor and without the express consent of the landlord, cause a portion of the judgment-debtor's occupancy holding to be sold in execution of a money-decree where there is no local custom of transferability. (*Coutts and Das, JJ.*). RAGHUNATH SAHAY *v.* CHOWA MAHTON. **67 I.C. 882= 3 P.L.T. 525=A.I.R. 1922 Pat. 602.**

——*Purchasers under rent and mortgage decrees—Rights of.*

The plaintiff, being the purchaser of a non-transferable occupancy holding in execution of a decree on a mortgage executed by the original tenant, is not entitled to redeem the purchaser of the holding in execution of a decree for rent obtained by the landlord against the plaintiff's mortgagor after the mortgage-decree was passed and before it was executed. (*Coutts and Ross, JJ.*). MURLIDHAR *v.* SURAT LAL CHOWDHURY. **66 I.C. 152= 1922 P. H. C. C. 135=3 P. L. T. 362= A.I.R. 1922 Pat. 555.**

——*Purchasers of—Rights.*

Purchasers of a non-transferable occupancy holding acquire a good title as against the vendors, but do not acquire a title enforceable as against the landlords of their vendors. 42 Cal. 172 and A.I.R. 1921 Cal. 15, *Foll.* (*Mukerjee and Panton, JJ.*). ABDUL KADER *v.* LAL MAHOMED. **84 I.C. 25=39 C.L.J. 581=A.I.R. 1921 Cal. 775.**

—Notice to quit.

——*Agricultural tenancy—Termination—Fixing of date.*

It is ordinarily necessary that a notice purporting to terminate a tenancy of agricultural land should either ask for possession at the end of agricultural year or at least when the crop of the year has already been harvested or perhaps before it has been put down. If the notice is served which has the effect of terminating the tenancy while the crop is standing, it would involve the loss of crop put down when the tenant is not under notice to quit, and the notice becomes unreasonable and ineffective. Different consideration would arise if crop is deliberately sown or planted in spite of notice to quit. (*Kulwant Sahay and Macpherson, JJ.*). NANDU MAHTON *v.* BHOLU MAHTON. **123 I.C. 609=A.I.R. 1930 Pat. 143.**

——*Sufficiency—English law—If applies.*

The principles governing the sufficiency of notice to quit served by landlords upon tenants are same in India as in England. A.I.R. 1918 P.C. 102, *Foll.* (*Jwala Prasad and Wort, JJ.*). PRATAP UDAI NATH *v.* JAGANNATH. **118 I.C. 306= 10 P.L.T. 453=A.I R. 1929 Pat. 444.**

——*Termination—End of the month—Necessity.*

A lease dated 9th October, 1923 under which a house was let out for 11 months provided that the rent should be paid monthly and that if the landlord wished to have the house vacated, he should give two 'months' previous notice. The landlord gave a notice to the tenant on 21st January 1924 to vacate the house.

Held, that the notice given by the landlord was not invalid though it did not expire with the end of a month of the tenancy. A.I.R. 1924 Nag. 220 and A.I.R. 1924 Lah. 643, *Foll.*; A.I.R. 1923 Lah. 659, *Diss. from.* (*Coldstream, J.*). RAM NATH *v.* BADRI NATH. **106 I.C. 837= A.I.R. 1928 Lah. 348.**

——Where a grant came into existence long before the Transfer of Property Act came into force,

Held, that no notice to eject a service tenant is necessary. (*Duval and Mullik, JJ.*). SATI PRASAD GARGA *v.* MAHESH BHUNIA. **103 I. C. 342= 31 C.W.N. 552=A.I.R. 1927 Cal. 581.**

LANDLORD AND TENANT—Notice to quit.

———A tenant denying tenancy and setting up adverse title in himself cannot plead want of notice to quit. (*Rupchand Bilaram and Lobo, A.J.Cs.*). MT. MULIBAI *v.* MT. VASSIBAI. **104 I.C. 412= A.I.R. 1927 Sind 248.**

———*Necessity of, on the facts.*

Where in an ejectment suit the defendant was found unable to prove anything more than a tenancy-at-will in his favour and retained possession of the property for a considerable period after the institution of the suit and where no statute required notice,

Held, that the suit cannot be dismissed on the ground that there was no previous notice to quit. 18 Bom. 107, *Dist.* (*Campbell, J.*). KAKA *v.* RAM SARAN. **89 I.C. 869=A.I.R. 1926 Lah. 129.**

———*Denial of title.*

Where the tenant denied his landlord's title, when he was asked to take a renewal, no further notice would be necessary though the original notice to quit be insufficient. (*Phillips, J.*). KALLIANI AMMAL *v.* COCHIN SIRCAR. **91 I.C.316=22 M.L.W. 473=A.I.R. 1926 Mad. 143.**

———*Repudiation of license — Transfer — Notice unnecessary.*

Defendants 2 and 3 had originally been in permissive possession of property. They afterwards repudiated their character as licensees and treating the property as their own transferred it to defendant No. 1. The owner of the property sued for *khas* possession of the property. Defendant 1 was in possession of the property at the time of the suit.

Held, that under the circumstances no notice to quit was necessary for sustaining the plaintiff's suit. 8 W.R. 385, *Dist.* (*Suhrawardy and Cuming, JJ.*). CHOONI LAL KHEMANI *v.* NILMADHAB BARIK. **86 I.C. 734=41 C.L.J. 374= A. I. R. 1925 Cal. 1034.**

———*Plea of permanent tenancy—Notice not dispensed with.*

Where in an ejectment suit the tenant sets up a right of permanent tenancy, that does not amount to disclaimer of landlord's title rendering a notice to quit unnecessary. 32 Bom. 78, *Rel. on.* (*Macleod, C.J. and Fawcett, J.*). RAMA RANCHHOD *v.* ABDUL RAHIM. **59 I. C. 278=45 Bom. 303= A.I.R. 1921 Bom. 395.**

———*Sufficiency—Test.*

Where a case is not governed either by the Bengal Tenancy Act or by the Transfer of Property Act, in determining the question whether notice to quit is legally sufficient, there must be a reasonable notice. The notice need not necessarily determine the tenancy at the end of a year, but it will be for the final Court of fact, in each case, to determine what is reasonable notice having regard to all the circumstances, and whether it would not be reasonable in the circumstances of the particular case for it to determine with the year. 36 Cal. 927, *Foll.* (*Chatterjea and Newbould, JJ.*). RATNESHWR DAS *v.* SREE KAMAL DEB. **63 I.C. 191=33 C.L.J. 299= A. I. R. 1921 Cal. 126.**

———*Notice as to a portion—Validity.*

A notice to quit is a notice intended to terminate the tenancy between the landlord and the tenant. Where the notice related only to a portion of the holding, it is not good in law even so far as the portion is concerned. If he terminates any portion of the tenancy he terminates the whole contract and if the tenant elects to retain any portion of his holding that in like manner breaks the bargain and is the commencement of a fresh contract. (*Petheram, C.J. and Tottenham, J.*). ATAL CHUNDAL *v.* KEDAR NATH MOOKERJEE. **64 I.C. 551=33 C.L.J. 515.**

LANDLORD AND TENANT—Occupancy holding.

———*Legality—First time in appeal.*

Where in an ejectment suit no plea as to the legality or sufficiency of notice to quit is relied upon by the plaintiff, the point cannot be raised in the High Court. (*Sadasiva Aiyar and Napier, JJ.*). ITTINAN *v.* GOVINDAN NAMBUDRI. **62 I.C. 390=13 M.L.W. 397.**

—Occupancy holding.

———*Right to trees.*

In the absence of custom or of a contract to the contrary a zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding as long as the relation of landlord and tenant subsists. A tenant has a right to enjoy all the benefits of growing timber on his land during his occupancy. 30 All. 134 and 1864 W.R. 367, *Foll.*; 11 M.I.A. 295, *Dist.* (*Dalal, J.*). RAGHUBANS NARAIN SINGH *v.* MANPHAL SINGH. **95 I.C. 382 (All.).**

———*Transfer—Abandonment—Inference.*

Where there was a transfer of the entire interest of the original tenant to the defendant, the defendant got into possession under that transfer and remained in exclusive possession of the holdings for over nine years and was so admittedly in possession at the date of the institution of the suit for ejectment since the transfer for about nine years and the tenants had no concern with the *jotes* and did not pay rent in respect thereof nor did they make any arrangement for payment of rent,

Held, that these facts taken together constitute abandonment, and retransfer of a portion of the holding to the original tenant after institution of the suit for ejectment would not defeat landlord's right of re-entry. (*Woodroffe and Suhrawardy, JJ.*). SASHI BHUSAN JHA *v.* SK. AHMADULLAH CHAUDHURY. **69 I.C. 1005=A.I.R. 1924 Cal. 372.**

———*Agent's powers of recognition—Onus.*

There is no inflexible rule that a landlord's gumasta has no power to recognise the transfer of a non-transferable holding. The onus is upon the landlord in the first instance to show what the precise authority of his agent is. 15 C.W.N. 953, *Foll.* (*N.R. Chatterjee and Panton, JJ.*). MADAN MOHAN SAHA *v.* PRYANATH DUTTA. **64 I.C. 362 (Cal.).**

———Mere length of possession does not confer right of permanent occupancy. (*Kumaraswami Sastri and Devadoss, JJ.*). TANKU MAHALAKSHMI *v.* CHAMARTY NARASIMHAMURTHY. **1922 M.W.N. 146=15 M.L.W. 449= A.I.R. 1922 Mad. 82.**

———Where the occupancy holding of a certain tenant is acquired by some persons under a foreclosure decree, their becoming tenants of the entire proprietary body is only one of several possibilities, and that status can only arise by its acceptance by both parties. 4 N. L. R. 120, *Foll.* (*Hallifax, A.J.C.*). NILKANTH *v.* KASUBAI. **63 I.C. 46= 4 N.L.J. 55= A I.R. 1921 Nag. 17.**

———Where the rest of the judgment-debtor's occupancy holding has already been sold in execution of a mortgage decree, the remaining portion represents the entire holding and objection can be taken to its sale in execution of a money decree. (*Das and Adami, JJ.*). DEWAN RAM CHOUDHRY *v.* ATUL MUNDER. **62 I. C. 55=2 P.L.T. 341= 6 P.L.J. 202=1921 P.H.C.C. 197= A.I.R. 1921 Pat. 4.**

LANDLORD AND TENANT—Occupancy rights.

—Occupancy rights.

——*Fishery lease.*

A raiyat taking a lease of a fishery only cannot acquire an occupancy right therein, but if a tenant takes a lease of a holding of which part is under water then his right to the acquisition of occupancy rights in the entire holding inclusive of the portion which forms the bed of the water cannot be defeated. The landlord of course may reserve the right of fishery when letting out the land but such a reservation is strictly speaking a re-grant of the right by the tenant to the landlord. A. I. R. 1922 Pat. 9, *Foll.* (*Fazl Ali and Chatterji, JJ.*). JAIGOBIND SINGH *v.* BHAVANI SINGH.

9 Pat. 401=A.I.R. 1930 Pat. 382.

——*Heritability.*

Heritability is a right which has been attached by legislation to the tenure of an occupancy *raiyat* in Bengal, Bihar and Orissa, but it is not a necessary condition attaching to the enjoyment of an occupancy right for life. The question of whether an under-*raiyat* who acquires occupancy right acquires also the rights of an occupancy *raiyat* as defined in the Tenancy Acts, depends entirely on local custom. (*James and Chatterji, JJ.*). MUCHI RAM BAGAL *v.* BALA RAM BHUMIJ.

11 P.L.T. 539=A.I.R. 1930 Pat. 562.

——*Origin unknown—Onus.*

Where tenancy is alleged to be permanent and the origin of the tenancy is taken to be unknown, the tenant must needs prove such facts that the reasonable inference therefrom is that the tenant had been granted a permanent right of occupancy. A.I.R. 1924 P.C. 65; 16 Cal. 223 (P.C.) and A.I.R. 1920 P.C. 67, *Rel. on.* (*Page and Mullik, JJ.*). NIBARAN CHANDRA *v.* KRISTO MOHAN.

112 I. C. 180=55 Cal. 1029=32 C.W.N. 771=A.I.R. 1928 Cal. 697.

——*Evidence of.*

The phrase "on jirayati tenure" is only used where occupancy rights exist. (*Curgenven, J.*). ZAMINDAR OF BODOKIMIDY *v.* BUDANKAYALA BHIMAYYA. **98 I. C. 800=24 M.L.W. 677=A.I.R. 1927 Mad. 76.**

——*By an under-raiyat—Onus.*

The acquisition of an occupancy right by an under *raiyat* is not a normal thing. Proof has to be given of the existence of a custom in the neighbourhood which makes the growth of such a right possible. It is difficult to understand how such a right can accrue to a sub-lessee against the landlord. (*Walmsley and Chakravarti, JJ.*). BASIRUDDIN HAJI *v.* DARBESH KHAN MEA. **96 I.C. 548=A. I. R. 1926 Cal. 1116.**

——Zerpeshgi *lease—Rights of acquisition.*

Where the landlord grants *zerpeshgi* lease, unless there is a restriction in the *serpeskgi* lease itself restricting the power of the *zerpeshgidar* as regards the settlement of *raiyati* lands, the *zerpeshgidar* in the ordinary course of management would be entitled to settle *raiyati* or *bakshi* lands with tenants.

And therefore where *zerpeshgidar* has settled such *raiyati* land with a tenant has been in possession for more than 12 years and has therefore acquired an occupancy right, cannot be ejected by the landlord. If the *zerpeshgidar* has thereby committed any waste or created an encumbrance the remedy of the landlord would be against him. (*Adami and Kulwant Sahay, JJ.*). BHAIRO NATH *v.* SHANKE PAHAN. **97 I. C. 494=6 Pat. 129=8 P. L. T. 31=1926 P.H.C.C. 298=A.I.R. 1926 Pat. 605.**

LANDLORD AND TENANT—Occupancy rights.

——*Threshing floor.*

The fact that plaintiffs were tenants in the village and they had been in occupancy of the plot in suit for more than twenty years and used it as their threshing-floor raises the presumption that they held the land as a part of the contract of tenancy and the burden in the circumstances would be on the landlord to show that the land which is claimed as the threshing-floor was really not held as a part of the contract of tenancy but otherwise. 16 All. 181, *Foll.* (*Sulaiman and Mukerjee, JJ.*). JOGESHWAR PRASAD *v.* SURAJ BALI SINGH.

83 I.C. 249=47 All. 53=5 L.R.A. Rev. 253=A.I.R. 1925 All. 16.

——*Onus—Ryotwari Village.*

In ryotwari villages, the burden of making out occupancy rights lies on the tenant.

A ryotwari village was held by tenants. The lands were being held under muchilikas for terms of years from 1875 to 1896. In all these *muchilikas* the tenants undertook to surrender the lands at the end of the term. There was constant change of tenants in the village and there were also enhancements of rents. Rents continued to be paid by the tenants for 4 years after the expiration of the period of the last set of *muchilikas*. Afterwards the Government enhanced the assessment and consequently the landlord neglected the collection of rents. When this happened the tenants also began to make alienations but they were only a few. In 1917 the landlords sued the ex-tenants for use and occupation. The defendants set up the plea that they were occupancy tenants,

Held, that the defendants were not occupancy tenants. 43 Mad. 567; 41 Mad. 1012; 43 Mad. 166 and 47 Mad. 337, *Dist.* (*Ramesam and Venkatasubba Rao, JJ.*). ANNAMDEVULA THATA *v.* AHAMADULLA KHAN. **90 I.C. 491=22 M.L.W. 528=A.I.R. 1925 Mad. 890=48 M.L.J. 701.**

——*Onus—What are not enough.*

A tenant who sets up an occupancy right has to establish it. By mere length of tenancy, no occupancy right can be acquired. Because a man reclaimed some land in a Zamindari and made it cultivable land he thereby does not get permanent occupancy rights. (*Krishnan, J.*). BANDARU CHELLAMMA *v.* DUNGALA PENTAYYA.

79 I.C. 845=20 M.L.W. 478=1924 M.W.N. 440=A.I.R. 1924 Mad. 828.

——*Relinquishment.*

An agreement to relinquish occupancy rights whether for consideration or otherwise cannot be legally enforced and a relinquishment, unless followed by actual surrender cannot be treated as operative. (*Kanhaiya Lal, J. C.*). MT. BIBI SAIDUNNESA *v.* FAIYAZ HASAN. **69 I.C. 97=9 O.L.J. 319=A.I.R. 1923 Oudh 1.**

——*Onus—Ryotwari land.*

Where the lands are ryotwari lands and the landlord has got a ryotwari pattah in respect of the lands, tenants claiming a right of occupancy in such lands ought to prove that right by strong evidence, the burden of proof lying heavily on them. 21 M. L. J. 845; 24 M. L. J. 571, *Not foll.*; 43 Mad. 567 (P. C.), *Foll.* (*Sadasiva Aiyar and Napier, JJ.*). SUBRAMANIA KARAYALAM *v.* SIVA SUBRAMANIA PILLAI. **62 I.C. 750=14 M.L.W. 40=A.I.R. 1921 Mad. 233=41 M.L.J. 175.**

——*Nature of.*

The ruling in 5 N.L.R. 103 must be regarded as overruled by 6 N. L. R. 6. It is laid down that except in respect of certain incidents specified in

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the Revenue Law the right of an absolute occupancy tenant is a proprietary right, though for convenience he is classed among tenants in the legislation dealing with the subject. (*Hallifax, A.J.C.*). SADARAM *v.* R. S. MANNULAL SAO.
64 I.C. 473=4 N.L.J. 108=A.I.R. 1921 Nag. 21.

—Occupancy tenancy.

——*Death of tenant—Effect.*

Where after creating a usufructuary mortgage an occupancy tenant dies leaving no heirs, the interest of the mortgagee comes to an end and he is liable to be ejected by the landlord. (*Mookerji, J.*). BHAWANI PRASAD *v.* JAI JAI RAM.
114 I.C. 903=9 L.R A, Rev. 170=A.I.R. 1928 All. 414.

——*Transferability—Facts to be proved.*

In order to prove the custom of transferability it is essential for the purchasers of holding from an occupancy tenant to show that they had a right to be recognized by the landlord after purchasing the holdings without the consent of the landlord but in a case where such a transfer was recognised by a landlord after his interest in the land had ceased to exist the recognition is not binding on the purchasers from the landlord of the interest or on the representatives of such a purchaser. (*Kulwant Sahay and Macpherson, JJ.*). FAKIRA SAHU *v.* ANOOPLAL.
106 I.C. 530=9 P.L.T. 178.

——*Incidents of.*

Where occupancy tenants enjoy the rights of grazing in and taking fuel and fodder for their cattle from the village common land they are entitled to have a reasonable area set apart for the purpose. 119 P. R. 1889, *Rel. on.* (*Coldstream, J.*). ASO *v.* BESHAN SINGH. 99 I.C. 818=9 L.L.J. 1=A.I.R. 1927 Lah. 130.

——*Land Acquisition—Compensation—Apportionment.*

Where land held by an occupancy tenant is not land situated in the midst of agricultural land and changing conditions have given it an increased value as being a prospective building site it would not be right first to assess the value of the landlord's interest in the land as agricultural land and then after deducting that amount to hand over the balance to the tenant. The right method is to approach the subject from the point of view of what the tenant should get as a tenant of agricultural land and after capitalizing the tenant's interest to give the whole of the balance to the landlord. (*Walmsley and Chakravarti, JJ.*). NIBAS CHANDRA MANNA *v.* BIPIN BEHARY BOSE. 96 I.C. 69=53 Cal. 407=A.I.R. 1926 Cal. 846.

——*Rights akin—Power to create.*

Though a landlord cannot create an occupancy tenancy by contract, yet a contract by which a landlord agrees to execute in favour of the promisee and register a perpetual lease giving the promisee a right of occupancy in the terms agreed upon between the parties, is legal. 28 All. 747 and 41 All. 223, *Foll.* (*Sulaiman and Boys, JJ.*). DIP CHAND *v.* MUHAMMAD KHALIL. 88 I.C. 162=23 A.L.J. 505=47 All. 626=A. I. R. 1925 All. 584.

——*Purchase by tenant—Effect.*

The purchase by an occupancy tenant of the land under his occupancy has not the effect of extinguishing his occupancy rights. By such purchase he does not become an absolute owner; nor does the land become *khudkhasht.* These rights he will acquire if he becomes the sole proprietor of the patti of the village in which the occupancy tenancy

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land is situated. (*Baker, J. C.*). KESARBAI *v.* JAMADAR. 82 I.C. 126=20 N.L.R. 162=A.I.R. 1925 Nag. 125.

——*Purchase of part of proprietary interest—No merger.*

The tenancy rights of an occupancy tenant who purchases part of the proprietary rights in the village in which the field is situated do not merge in the proprietary rights. The occupancy tenant only becomes a tenant of the proprietary body of which he is himself a member. His tenancy rights do not merge in the proprietary rights unless and until he purchases the entire interest in the village. (*Baker, J.C.*). MT. RANGUBAI *v.* MADHORAO.
81 I.C 276=A.I.R. 1925 Nag. 101.

——*Change in status.*

Where the status of a person was declared as that of an occupancy-holder by Settlement Officer in 1870 but subsequent to the declaration, as a result of decree in an analogous suit, the person was treated by the zamindar and the later Settlement Officers as under-proprietor for nearly 50 years, and he was also recorded as such in the yearly settlement records,

Held, that he should be treated as under-proprietor and not an occupancy-holder. (*Dalal, J.C. and Wasir Hasan, A J.C.*). BEPIN CHANDRA CHATTERJI *v.* DEWAN SINGH. 91 I C. 121=2 O.W.N. 894=A. I. R. 1925 Oudh 732.

—Ouster.

——*Plea if open to tenant.*

It is open to the tenant to prove a cesser of his landlord's title by ouster by the holder of title paramount and to attorn to the latter without actually going out of possession. A.I.R. 1922 Cal. 237, *Ref.* (*Wallace, J.*). RAMASWAMI THEVAN *v.* ALAGA PILLAI. 79 I.C. 881=A I.R. 1925 Mad. 143.

—Permanent tenancy—Court's duty.

——The Court must decide whether the tenancy is a permanent one or not as an inference of law to be drawn from a consideration of all the relevant matters of facts that are proved in evidence before it. A.I.R. 1925 Cal. 309 and 30 C.W.N. 709, *Cons.* (*Page and Mullik, JJ.*). NIBARAN CHANDRA *v.* KRISTO MOHAN. 112 I.C. 180=55 Cal. 1029=32 C.W.N. 771=A. I. R. 1928 Cal. 597.

—Permanent tenancy—Creation of.

——*Lapse of time.*

A tenant cannot, by any amount of declaration and acting on his part, acquire as against the landlord title by adverse possession to the properties covered by the lease and mere lapse of time does not enable a tenant to acquire the right of a permanent tenant. A. I. R. 1924 P. C. 65 and A.I.R. 1923 P.C. 205, *Foll.* (*Ananthakrishna Ayyar, J.*). SALDANHA *v.* ROMAN CATHOLIC CHURCH, MERMAJAL. A I.R. 1930 Mad. 434.

——*Assertion and lapse of time.*

A person who is, in fact, in possession of land under a tenancy or occupancy title cannot, as a general rule, by a mere assertion in a judicial proceedings and the lapse of twelve years without that assertion having been successfully challenged, obtain a title as a permanent tenant to the lands. A.I.R. 1923 P.C. 118; A.I.R. 1924 P. C. 65 and A.I.R. 1923 P.C. 205, *Foll.*; 21 Bom. 509 and 27 Bom. 515, *Dist.* (*Marten, C.J. and Crump. J.*). BHAILAL *v.* KALANSANG. 29 Bom. L. R. 1858=A.I.R. 1927 Bom. 667.

——*Inference from facts.*

Where there was no written lease creating the tenancy; the tenancy had come down to the defen-

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dant by a series of successions, the land was let out for dwelling purposes, and the rent had not been changed for a number of years; whereas the value of the land had increased abnormally,

Held, that the original grant was of a permanent character. (*B. B. Ghose and Graham, JJ.*). BIRESWAR MOOKHERJEE *v.* SM. TROILOKHYA DASI. **96 I.C. 315=30 C.W.N. 709.**

——*By prescription.*

No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands. A.I.R. 1923 P.C. 205, *Foll.* (*Sir John Edge.*) A.S.N. NAINAPILLAI MARAKAYAR *v.* T.A.R.A. RM. RAMANATHAN CHETTIAR. **82 I.C. 226= 5 L.R.P.C. 33=19 M.L.W. 259=22 A.L.J. 130= 51 I.A. 83=34 M.L.T. 10=1924 M.W.N. 293= 47 Mad. 337=28 C.W.N. 809= A.I.R. 1924 P. C. 65=46 M.L.J. 546 (P.C.).**

—Permanent tenancy—Encroachment.

——*Tenant should protect himself.*

The duty of a tenant under a perpetual tenure is to protect himself against illegal encroachments by others on the lands of which he has the exclusive possession. If he fails to do so he cannot prejudice the landlord's claim for rent. (*Lord Salvesen.*) KATYAYANI DEBI *v.* UDOY KUMAR DAS. **88 I.C. 110=6 L.R.P.C. 140=30 C.W.N. 1= 52 I.A. 160=52 Cal. 417=23 A.L.J. 751= A.I.R. 1925 P.C. 97 (P.C.).**

—Permanent tenancy—Incidents of.

——*Right to build.*

A purchaser of a permanent tenure has the right to build permanent structures on the land included in the holding. (*Newbould and Graham, JJ.*). KIRTIBASH DUBEY *v.* INDIAN IRON & STEEL CO., LTD. **91 I.C. 480=A.I.R. 1926 Cal. 536.**

—Permanent tenancy—Nature of.

——*Amalgamation with others—Inference.*

Four holdings were amalgamated into one holding. From among them, the first, second and third holdings were tenancies-at-will at the time and the fourth was a permanent holding. The position of the consolidated holding, was that an unaltered rent had been paid for 57 years and there existed a pucca holding on a small portion of it at some distant time,

Held, that the mere fact of amalgamation of four holdings into one would not change the respective incidents of the holdings in the absence of a contract to the effect that it was intended to change these incidents and give a higher status to the tenant of the amalgamated holding. The fact of unaltered rent and existence of a pucca structure on a portion are not sufficient to raise the reference of permanency. A.I.R. 1924 P.C. 65; 16 Cal. 223 (P.C.); 32 Cal. 41; 32 Cal. 51 and 28 Cal. 738, *Dist.* (*Rankin, C.J. and Mitter, J.*). MONMOTHA NATH *v.* RAJESWAR RAI. **107 I.C. 81=55 Cal. 355= 32 C.W.N. 184=A.I.R. 1928 Cal. 316.**

——*Old unvaried rent—Inference.*

Where the only facts found are that the tenancy is an old one and the rent has not been varied and that the land was let out for the purpose not of building any permanent structure but of raising huts,

Held, that there was no error of law in the judgment of the lower Appellate Court when that Court refused to draw an inference of permanency. (*Cuming and Chakravarti, JJ.*). BAIKUNTHA NATH *v.* SHAIKH HADI. **92 I. C. 899= A. I. R. 1926 Cal. 592.**

LANDLORD AND TENANT—Permanent tenancy —Presumption.

——*Alteration of—Change of incidents.*

Where the tenancy was heritable, was held not for a limited term, was subject to the payment of a fixed rent and was unquestionably transferable the circumstance that one of these elements was altered by agreement of parties namely, that the rent originally fixed was increased, does not destroy the tenancy. The alteration of rent does not necessarily destroy the transferable character of the tenancy. (*Mookerjee and Cuming, JJ.*). PRIYANATH GHOSE *v.* SURENDRA NATH DAS. **69 I.C. 992=35 C.L.J. 440=26 C.W.N. 657= A. I. R. 1922 Cal. 511.**

——*Inference—Language— History of tenure— Conduct of parties.*

Prima facie the use of the word taluka in a lease imports permanency. Even though there are no words of inheritance in a puttah and *kabuliyat* creating a tenure still such incident may be proved by evidence bearing on the history of the tenure and the conduct of the parties. 10 M.I.A. 183; 12 M.I.A. 263; 34 Cal. 902, *Foll.*

Though a particular tenure may not be a permanent tenure it may by reason of an agreement between the lessor and lessee be saleable in execution of a decree for rent,

Held, on the evidence of the case that the tenure in question was permanent, heritable and transferable. 21 C.W.N. 809; 46 I. C. 1; 25 W.R. 536 and 12 W.R. 403, *Ref.* (*Richardson and Panton, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN ROY. **65 I.C. 145 (Cal.).**

—Permanent tenancy—Presumption.

——*Pucca structure—Uniform rent.*

The existance of pucca structure is not essential in all cases in order to establish a permanent tenancy. Where there has been long possession at a uniform rent in a locality where the value of lands have enormously increased and no attempt at ejectment was made and there were several successions to the tenancy even before the passing of the Transfer of Property Act it is a legitimate inference that the tenancy was permanent. A.I.R. 1925 Cal. 309, *Expl.*; 30 C.W.N. 709, *Rel. on.* (*Mitter and Mallik, JJ.*). PRAMATHA NATH DAS *v.* CHAMPA DASI. **118 I.C. 353=56 Cal. 275= A.I.R. 1929 Cal. 473.**

——Mere fact that the rent was not changed for a considerable time would not give raise to any inference of permanent tenancy. A.I.R. 1924 P.C. 65 and 16 Cal. 223 (P.C.), *Foll.* (*B.B. Ghose and Cammiade, JJ.*). BEJOYCHAND MAHTAB *v.* SUKUMARI DEVI. **117 I.C. 842=32 C.W.N. 720.**

——*Clear and unequivocal facts.*

For the purpose of ascertaining the character of the tenancy an inference based merely upon facts which are in themselves ambiguous or equivocal, in the sense that they are not necessarily referable to the existence of a permanent right in the tenant is an inference which is unwarranted in law. (*Rankin, C.J. and Mukerji, J.*). KAMAL KUMAR *v.* NANDULAL. **116 I.C. 378=33 C.W.N. 211= 56 Cal. 738=A.I.R. 1929 Cal. 37.**

——*Long residence—Same rent.*

The mere circumstance that the tenant and his family have for a very long time been allowed to continue residing in the same place without any variation in the rate of rent is a circumstance which by itself is an insufficient foundation for holding that the tenant's right was permanent in its origin. 16 Cal. 223 and A.I.R. 1925 Cal. 309, *Rel. on.*; 34 Cal. 902 and 30 C.W.N. 709. *Cons.*

LANDLORD AND TENANT—Permanent tenancy —Presumption.

(*Rankin, C.J. and Mukerjee, J.*). KAMAL KUMAR *v.* NANDALAL DUBEY. **116 I.C. 378= 33 C.W N. 211=56 Cal. 738=A.I.R. 1929 Cal. 37.**

———*Absence of permanent structure.*

Where land is held for residential purposes, the absence of permanent structures is not to be regarded as evidence negativing the permanency of the tenancy, nor can it be laid down that the existence of permanent structures is the only unequivocal or unambiguous fact for the purpose of an inference in favour of the tenant. A.I.R. 1925 Cal. 309, *Rel. on.* (*Rankin, C.J. and Mukerji, J.*). KAMAL *v.* KUMAR NANDALAL DUBEY. **116 I.C. 378= 33 C.W.N. 211=56 Cal. 738=A.I.R. 1929 Cal. 37.**

———*Building leases.*

Where the land has been leased for building purposes, it cannot be assumed, in the absence of any clear recital in the lease to that effect, that the landlord intended to allow the tenant to remain in permanent occupation at a small rent. The mere fact that valuable buildings were allowed to be constructed on the land cannot be taken as any indication of the intention of the parties to create a permanent tenancy. (*Tek Chand and Bhide, JJ.*). MUL RAJ *v.* INDAR SINGH. **109 I.C. 90= 9 Lah. 576=29 P.L.R. 730=A.I.R. 1928 Lah. 554.**

———*Land let for building.*

If the origin and the nature of a tenancy is not known, and if it is proved that a land was let for building purposes and a building was actually constructed on the same, and remained in occupation of the lessees for a long number of years, these facts, in the absence of anything pointing to the contrary conclusion, should be enough to lead to the presumption that, the tenancy was a permanent one. (*Iqbal Ahmad, J.*). SHAHJAHAN BEGAM *v.* MUNNA. **100 I.C. 479=A. I. R. 1927 All. 342.**

———*Degree of permanence of building.*

A kachcha house is also a building of a permanent character. A pucca building is a building more permanent than a kachcha one, but the mere difference in the degree of permanence cannot alter the nature of the tenancy. The fact that a kachcha house has been in existence for a period of more than 60 years, and has passed by succession to the heirs of the lessee, who originally built the house, may be enough to lead to the presumption that the lease is a permanent one. (*Iqbal Ahmad, J.*). SHAHJAHAN BEGAM *v.* MUNNA. **100 I.C. 479= A.I.R. 1927 All. 342.**

———*Uniform rent—Dwelling purposes.*

Where the origin of the tenancy was unknown, the rent had been paid at a uniform rate for more than 50 years, and the lease was for dwelling purpose.

Held, that the inference that the tenancy was permanent and heritable might be drawn. (*B.B. Ghose and Cammiade, JJ.*). PRAMATHA NATH ROY *v.* BEJOY SINGH DHUDURIA. **99 I.C. 910=44 C.L.J. 587= A.I.R. 1927 Cal. 234.**

———The mere circumstance of the uniformity of rent and long possession does not suffice to raise a presumption of permanent tenancy. A.I.R. 1924 P.C. 65, *Foll.* (*Kinkhede, A.J.C.*). RAM RAO HIJI *v.* DATTATRAYA KRISHNA. **104 I.C. 558= A.I.R. 1927 Nag. 376.**

———Where the origin of the tenancy is known, no presumption of permanency should be made. A.I.R. 1925 Cal. 309, *Appl.* (*Newbould, J.*). GOPAL CHANDRA *v.* SATYA BHANU. **92 I.C. 963= A.I.R. 1926 Cal. 634.**

LANDLORD AND TENANT—Permanent tenancy —Proof.

———From the fact that in some receipts given by servants of the temple tenants or endowed lands in the village were described as 'kudimiars' it cannot be presumed that the defendant had a right of permanent occupancy in the endowed lands. (*Sir John Edge.*) A.S.N. NAINAPILLAI MARAKAYAR *v.* T. A. R. A. R. M. RAMANATHAN CHETTIAR. **82 I.C. 226=5 L.R.P.C. 33=19 M.L W. 259= 22 A.L.J. 130=51 I.A 83=34 M.L.T. 10= 1924 M.W.N. 293=47 Mad. 337= 28 C.W.N. 809=A.I.R. 1924 P.C. 65= 46 M.L.J. 546 (P.C.).**

———*Unknown origin—Constructions.*

The fact that the commencement of the tenancy cannot be determined coupled with the presumption of continuation of the tenancy and coupled also with the fact that a permanent building has been erected on the land at least as far back as witness can remember raises a strong presumption that the tenancy is permanent. (*Pratt and Fawcett, JJ.*). RUKMINI VITHU *v.* RAYAJI DATTATRAYU. **83 I.C. 45=48 Bom. 541= 26 Bom.L.R. 672=A.I.R. 1924 Bom. 454.**

———*Unknown origin—Same rent residential purpose.*

Where the origin of the tenancy was unknown but the original tenant and his successor have been in occupation of the land for over 60 years on payment of rent which was never varied and the tenancy was treated by the landlord as heritable and the land was let out for residential purposes, the inference was that the tenancy was in its inception permanent. The presence of a permanent structure on the land is not essential to establish that the tenancy in its inception was of a permanent character. A dwelling house need not be brick-built in order to indicate that the tenancy was intended in its inception to be of a permanent character. (*Mookerjee and Chotzner, JJ.*). MAKHAN LAL DE *v.* ARUNBALA DEBI. **73 I.C. 2=A.I.R. 1924 Cal. 465.**

———*Alteration of rent.*

Where the original nature of the tenancy is not known, the fact that the rent has been altered once negatives the hypothesis that the rent had been fixed in perpetuity. 16 C.L.J. 322, *Foll.*; 16 C.W.N. 725 and 26 C.W.N. 657, *Ref.* (*Mukerjee and Chotzner, JJ.*). NURUL HUQ *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR. **72 I.C. 979= 38 C.L.J. 121=A.I.R. 1924 Cal. 133.**

———*On facts found.*

Where it is found (1) that the origin of the tenancy and its terms are unknown but it is certain that the tenancies were created more than 30 years ago and possibly 50 or 60 years ago; (2) that the land was let for building purposes and the lessees constructed pucca houses on the parcels of land; and that the tenancies in dispute were transferred from time to time and that the plaintiff acquiesced in these transactions,

Held, that the land was originally let for building purposes on a permanent tenancy. 17 A.L.J. 608, *Foll.* (*Ryves, J.*). NOBIN CHANDRA BOSE *v.* BANDI. **71 I.C. 370=A.I.R. 1923 All. 486.**

—Permanent tenancy—Proof.

———*Right to enhance rent.*

In the case of permanent tenancy the onus is on landlord to prove a right to enhance rent by agreement, usage or otherwise. A. I. R. 1926 Bom. 52, *Foll.* (*Madgavkar and Murphy, JJ.*). MANSUKH PANACHAND SHAH *v.* TRIKAMBHA ICHHABHAI PATEL. **123 I.C. 492=31 Bom. L.R. 1279= A.I.R. 1930 Bom. 39.**

LANDLORD AND TENANT—Permanent tenancy —Proof.

——Permanence is not a universal and integral incident of an under-raiyat's holding. If claimed, it must be established. This may be done by proving custom, contract or a title and possibly by other means. Mere proof of remaining in undisturbed possession of some of the land in question for a long period at a more or less uniform rent is not enough. (*Lord Salvesen.*) SUBRAMANYA CHETTIAR *v.* SUBRAMANYA MUDALIAR.

116 I.C. 601=31 Bom. L.R. 830=
33 C.W.N. 734=30 M.L.W. 30=56 I.A. 248=
52 Mad. 549=1929 M.W.N. 561=
A.I.R. 1929 P.C. 156=57 M.L.J. 1 (P.C.).

——*Incidents—Onus.*

When a person claims to hold land as a permanent tenant, it is for him to prove the existence, the nature and the extent of the interest which the owner of the full rights has granted to him. It is not the business of the landlord to explain the possession. it is the business of the tenant to show that it leads to the inference of a permanent tenancy. 16 Cal. 223, *Foll.* (*Rankin, C. J. and Mukerji, J.*). KAMAL KUMAR *v.* NANDALAL DUBEY. 116 I.C. 378=
33 C. W. N. 211=56 Cal. 738=
A.I.R. 1929 Cal. 37.

——The burden of proving permanent tenancy in derogation of landlord's title is on the person alleging it. 12 M. I. A. 286; 1 Pat L. T. 80, *Foll.* (*Ross and Wort, JJ.*). CHOTA NAGPUR BANKING ASSOCIATION *v.* KAMAKHYA NARAIN.

109 I.C 306=7 Pat 341=A.I.R. 1928 Pat. 431.

——The onus of proving permanent tenancy right is on the tenant 16 Cal. 223 (P. C.); A.I.R. 1920 P. C. 67 and A.I.R 1924 P. C. 65, *Foll.* (*B.B Ghose and Cammiade, JJ.*). BEJOY CHAND MAHTAB *v.* SUKUMARI DEVI. 117 I.C. 842=
32 C.W.N. 720.

——To succeed in a case of permanent tenancy the tenants must prove by unequivocal evidence that they have set up the claim of permanent tenancy to the knowledge of the landlord. (*Fawcett and Madgavkar, JJ.*). SATYADHYANATH *v.* RAGHUNATH. 96 I.C. 827=28 Bom.L.R. 743=
A.I.R. 1926 Bom. 384.

——The onus of proving the existence of a permanent tenure at a fixed rent is on the tenant when the relationship of landlord and tenant is admitted. (*Greaves and Mukerjee, JJ.*). JABEDA KHATUM *v.* MD. MOZAFFAR ALI. 90 I.C. 781=
30 C.W.N. 807=A.I.R. 1926 Cal. 322.

——*Onus and proof.*

When a tenant on lands in India in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such a right is upon the tenant, and proof of long occupation at a fixed rent does not satisfy that onus. 16 Cal. 223 (P.C.) and 48 Mad. 567 (P.C.), *Ref.* (*Sir John Edge.*) A. S. N. NAINA PILLAI MARAKAYAR *v.* T. A. R. A. R. M. RAMANATHAN CHETTIAR.

82 I C. 226=5 L. R. P. C. 33=
19 M. L. W. 259=22 A. L. J. 130=
51 I. A. 83=34 M. L. T. 10=
1924 M. W. N. 293=57 Mad. 337=
28 C. W. N. 809=A. I. R. 1924 P.C. 65=
46 M. L. J. 548 (P.C.).

——Where the tenant sets up a permanent right of occupancy, the burden of proof is primarily on him. Yearly tenants cannot develop themselves into permanent tenants by mere length of occupation coupled with their assertion that they are

LANDLORD AND TENANT—Permanent tenancy —Test.

permanent tenants. (*Krishnan and Odgers, JJ.*). PONNALAGU KONAN *v.* SINNIAH ODAYAN.

70 I. C. 27=1921 M. W. N. 719=
A. I. R. 1921 Mad. 462.

——*Temple property—Rebuttal of presumption against permanency.*

When the question is whether a temple authority had granted a permanent lease or not, the presumption is against the intention to make such a grant, for it is only in exceptional circumstances that a permanent lease of temple property can be justified. 41 Mad. 709; 13 M.I.A. 270 and 15 C.L.J. 227, *Foll.* Where land had been let at the same rate for 32 years and the superstructure on the land was purchased more than 20 years ago and was subsequently mortgaged by the defendant, the presumption against permanency was not rebutted and the land should be surrendered to the trustee after removal of the superstructure. (*Wallis, C. J. and Krishnan, J.*). CHINNAMMAL *v.* RATHNASABAPATHY CHETTIAR. 59 I. C. 241=
1920 M.W.N. 532=12 L.W. 191.

—Permanent tenancy—Rent.

——No express word is needed in a document evidencing a contract to fix the rent in perpetuity. (*Suhrawardy and Cuming, JJ.*). HARA MOHAN BANIKYA CHOUDHURY *v.* HEM CHANDRA CHAKRAVARTY. 87 I.C. 758=42 C.L.J. 172=
A. I. R. 1925 Cal. 1248.

—Permanent tenancy—Test.

——Per *Mukerji, J.*—Abstention to enhance the rent, to lead to an inference, of permanent tenancy should be accompanied by circumstances making it unlikely to be due to mere inaction on the part of the landlord. (*Rankin, C.J. and Mukerji, J.*). KAMAL KUMAR *v.* NANDLAL DUBEY.

116 I. C. 378=33 C. W. N. 211=
56 Cal. 738=A. I. R. 1929 Cal. 37.

——The defendants claimed that they were permanent tenants and not liable to ejectment. It was found that (i) the origin of the tenancy was unknown; (ii) there were permanent pakka buildings on the land which were built long before the present suit to the knowledge of the landlords; (iii) the rent had been nominal (six annas per mensem) and uniform and (iv) the tenancy had been transferred on more than one occasion without any objection on the part of the landlords.

Held, that the interference of permanent tenancy was correct: A. I. R. 1925 Cal. 309, *Foll.*; 27 Cal. 570; 21 All. 496, 16 Cal. 223 and A.I.R. 1923 Cal. 682, *Dist.*; A.I.R. 1919 P.C. 11; A.I.R. 1924 Cal. 465; A.I.R. 1923 All. 486 and 28 Cal. 738, *Rel. on.* (*Bhide, J.*). ISHAR DAS *v.* BALAJI DAS.

111 I.C. 76=10 L.L.J. 251=
A.I.R. 1928 Lah. 720.

——The facts that the tenant soon after the lease sold a portion thereof throwing on the vendees the responsibility of loss or damage which may be caused in case the lessor set up a claim against them, that in his written statement in the ejectment suit he did not plead permanent nature of the tenancy specifically and that in a previous suit he submitted to enhancement of rent, are in favour of the conclusion that the tenancy is not permanent. A. I. R. 1922 Lah. 329, *Affirmed.* (*Lord Blanesburgh.*) DHANNA MAL *v.* MOTI SAGAR.

101 I.C. 355=8 Lah. 573=54 I.A. 178=
29 Bom. L.R. 870=31 C.W.N. 677=
1927 M.W.N. 481=39 M.L.T. 161=
25 A.L.J. 959=28 P.L.R. 658=26 M.L.W. 634=
A.I.R. 1927 P.C. 102=52 M.L.J. 663 (P.C.).

LANDLORD AND TENANT—Permanent tenancy —Test.

——Mere possession of a property for a long time would not confer permanent tenure upon the lessee where the origin of the tenancy is known and the lessee was in possession for a definite term of years. (*Mullick and Jwala Prasad, JJ.*). TEKOIT HARNARAYAN SINGH *v.* DARSHAN DEO.
83 I.C. 741=3 Pat. 403=6 P.L.T. 315= A.I.R. 1924 Pat. 560

——Long possession and uniform payment of rent are not by themselves sufficient to justify the finding that the tenancy was permanent from its inception. 32 C.L.J. 85; 24 C.W.N. *Dist.* (*Mookerjee and Chotzner, JJ*). KEDAR NATH SADHUKHAN *v.* MADHU SUDAN DAS. **75 I.C. 105= 37 C.L.J. 478= A.I.R. 1923 Cal 682.**

——*Long possession, fixed rent building on the land, alienation, etc.*

Although the origin of a tenancy may not be known yet, if there is proved the fact of long possession of the tenure by the tenants and their ancestors the fact of the landlord having permitted them to build a *pucca* house upon it, the fact of the house having been there for a very considerable time, of its having been added to by successive tenants and of the tenure having from time to time been transferred by succession and purchase in which the landlord acquiesced or of which he had knowledge Court is justified in presuming that the tenure is of a permanent nature. There is no reason at all to distinguish in this matter between Madras and other towns in this country, when there are the facts from which the proper inference to be drawn is that there is a permanent tenancy. Those facts result in that inference whether it is in Madras or elsewhere. (*Schwabe, C. J. and Wallace, J.*). ABDUR SALAM *v.* KANDASAMI CHETTIYAR. **71 I.C. 330=1922 M W.N. 639= 16 M.L.W. 473= A.I.R. 1923 Mad. 54=43 M.L.J. 566.**

——Long payment of rent at fixed rate is not by itself sufficient to show permanent tenancy. (*Pratt and Fawcett, JJ.*). NARAYAN RAMACHANDRA THITA *v.* PANDURANG BALKRISHNA DESHPANDE. **76 I.C. 71=24 Bom. L.R. 831=47 Bom. 4= A.I.R. 1922 Bom. 402.**

——*Each case on its facts.*

No doubt long possession by a tenant and his ancestors, and the landlord having permitted them to erect substantial structures which have been added to by successive tenants and the transfer of the said tenure from time to time by succession and purchase with the permission of the landlord would warrant a presumption that the tenancy was of a permanent character. Further a similar presumption may also arise when it can be definitely found that the lease was for building purposes. But in coming to a decision as to whether the tenancy is of a permanent nature in any particular case, it is on the facts of that case alone that the decision must be arrived at. (*Broadway and Abdul Qadir, JJ.*). MOTISAGAR *v.* DHANNAMAL. **72 I.C. 177=29 P.W.R. 1922= A.I.R. 1922 Lah. 329.**

——The mere fact the rent has not been changed for a long time does not show that the tenancy was a permanent one. (*Chatterjee and Pearson, JJ.*). JYOTI PROSAD *v.* DASARATH GHOSH.
63 I.C. 109=36 C.L.J. 73= A.I.R. 1921 Cal. 453.

—Permanent tenancy—Miscellaneous.

——*Contiguous plots.*

A man may have a permanent right of tenancy in a house and site but he would not necessaril y have the same right to another piece of land adjoining it of which settlement was taken for the purpose of enlarging the compound of the house. (*Chatterjea and Cumimg, JJ.*). CHANDICHARAN *v.* ASHUTOSH LAHIRI. **94 I.C. 634=53 Cal. 95= A.I.R. 1926 Cal. 558.**

LANDLORD AND TENANT—Possession.

—Possession.

——In the case of landlord and tenant, landlord is in possession through the tenant. (*Kemp, Ag. C. J. and Murphy, J.*). RATANLAL GHELABHAI *v.* AMARSING RUPSING. **53 Bom. 773= 31 Bom. L.R. 1042=A I.R. 1929 Bom. 467.**

——*Presumption—Constructive possession—Applicability.*

Presumption of possession. which is not necessarily the same thing as actual user, follows title. The nature of possession to be looked for and the evidence of its continuance must depend upon the character and condition of the land claimed adversely. The doctrine of constructive possession applies only in favour of a rightful owner and must not as a rule be extended in favour of wrongdoer whose possession must be confined to the land of which he is in actual possession. (*Raza, J.*). MD. HASAN ALI *v.* HAR NATH KOER.
110 I.C. 569=A.I.R. 1928 Oudh 470.

——*Evidence of.*

The mere existence of a ghura or bitaura on patni land does not establish that the person to whom the ghura or bitaura belongs has got possession over the entire plot or can claim right to the entire plot by adverse possession. (*Raza, J.*). MD. HASAN ALI *v.* HARNATH KOER. **110 I.C. 569= A.I.R. 1928 Oudh 470.**

——When one co-tenant of an occupancy field dies heirless, the lambardar is not entitled to get the undivided fractional share of the deceased co-tenant and so cannot resist the other co-tenant's right to possession of the same. (*Findlay, J.C.*). NAGO RAO *v.* MT. ALOOKHI. **104 I.C. 584= A.I.R. 1927 Nag. 351.**

——*Alteration of character.*

One cannot alter the character of his possession, for instance, possession as a co-sharer to that as the sole owner, by any secret intention in his mind. *Corea* v. *Appuhamy*, (1912) A.C. 230, *Foll.* (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK.
95 I.C. 622=43 C.L.J. 387=A.I.R. 1926 Cal. 883.

——*Landlord's suit for—Onus.*

Because a defendant is found to be a tenant of some land under the plaintiff, the burden is not thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant. The law is equally applicable in the case of a landlord holding zamindari interest, whether he is the owner of a mouza or is the owner of a specific portion of the lands of a mouza after partition. (*Newbould and Graham, JJ.*). RAFAT SHEIK *v.* SACHINDRA KUMAR. **91 I.C. 761= A.I.R. 1926 Cal. 559.**

——*Suit for—Mokarrari grant.*

Mokarrari grants convey only a life-interest to the grantees and not a heritable interest. Such interest comes to an end on the death of the grantee and if the grantee's heirs continue in possession therefter claiming adversely as permanent mokarraridars to the landlord, the landlord's suit for actual possession is not maintainable after the statutory period. (*Adami and Kulwant Sahay, JJ*). KULDIP SINGH *v.* KAMAKHYA NARAIN SINGH. **93 I.C. 300=7 P.L.T. 425= 1926 P.H.C.C. 34=A.I.R. 1926 Pat. 241.**

LANDLORD AND TENANT—Possession.

———*Suit for—Continuance of lease.*

When lands form part of tenant's holding, landlord cannot sue for their *khas* possession until the tenancies are determined, but he is entitled to a decree declaring his title to the land and granting him possession through the tenants by way of receiving rents. Actual possession cannot be claimed by a man who, whether he is the owner or merely a tenant, has created a tenancy under him entitling the tenant, to the exclusive use of the property, unless the man who has created the tenancy has reserved to himself in the lease, the right of re-entry and possession. (*Walmsley and Mukerji, JJ.*). KUMUDINI DASI *v.* SURENDRABALA DASI. **82 I.C. 22=A.I.R. 1925 Cal. 155.**

—Proprietary right.

———*Right of re-entry—Limits.*

To entitle a superior proprietor to bring an action for recovery of possession of land he must have a right of entry either legal or equitable. A superior proprietor has no right of re-entry on the under-proprietary tenure. He cannot bring a suit for ejectment even though persons in possession are trespassers. The fact that the under-proprietors have no title is no ground for holding that the proprietor has a right of re-entry. He must succeed on his own title and not on the weakness of the defendants. The proprietor's only right is to receive rent and no more. This right of his is not in any way affected by the change in possession. But because trespassers have come into possession, the original under-proprietary tenure is not affected in any manner in relation to the proprietor. That tenure carries with it both transferability and hereditability, the two essential elements of ownership which vests in original under-proprietors. 35 All. 273 (P.C.), *Rel. on*; 10 Cal. 1076, *Dist.* (*Wasir Hasan and Srivastava, JJ.*). MD. KHAN *v.* ABDUL RAHAMAN KHAN. **6 O.W.N. 921= A.I.R. 1929 Oudh 524.**

———*Malgusars.*

The malguzar has no proprietary right in the land at all and the mere fact that settlement operations are conducted with him or the revenue is due from him does not confer any right to proprietary possession of the land on the malguzar: 108 P. R. 1892 and A. I. R. 1925 Lah. 391, *Foll.* (*Dalip Singh, J.*). SADHU RAM *v.* CHUHAR KHAN.

108 I.C. 521=A.I.R. 1928 Lah. 690.

———*Oudh—Incidents*—Wajib-ul-arz.

Any presumptions which are in Oudh applicable to the rights of landed proprietor in agricultural villages have no application to the rights of landed proprietors in towns.

Where under a *Wajib-ul-arz*, relation of a licensor and licensee is created between a landed proprietor of a certain town and an occupier of a house in it, the licensor would gain benefit if the occupier dies without heirs. In that case the materials would escheat to the proprietor. At the same time a licensee has no power of transfer of his rights as a licensee, but the fact that he has mortgaged does not give the licensor a right of re-entry. (*Stuart, C. J. and Wasir Hasan, J.*). MD. ALI KHAN *v.* MT. BODIUNNISSA. **110 I.C. 309= A.I.R. 1928 Oudh 438.**

———*Towns—Re-entry—Limits of power.*

In towns, unless a custom to the contrary is established, the occupiers of houses should be considered to have a power of transfer of the right to occupy the sites on which their houses stand, and where such a right is transferred, the proprietor cannot exercise his right of re-entry on the site by

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demolition of the house standing thereon, especially when the site is mortgaged and the mortgagee is only in possession for a specified period on behalf of the mortgagor and after the expiry of that period the latter would be entitled to re-enter into the possession of the property by redeeming it. 9 I. C. 427; 16 I.C. 353; 15 O.C. 91 and A.I.R. 1927 Oudh 46, *Foll.* (*Gokaran Nath Misra, J.*). MD. ALI KHAN *v.* BADRUL NISA. **107 I.C. 181=4 O.W.N. 1106= A.I.R. 1928 Oudh 92.**

———*Assignee of portion of—Position of.*

When only a fraction of proprietary rights in a village is assigned by the landlord the assignee does not become a landlord. But so long as the assignor retains the remaining fraction to himself he continues to be the landlord of the holdings in the village. (*Kinkhede, A. J. C.*). SETH HARBAX *v.* LACHMAN. **82 I.C. 201= A.I.R. 1925 Nag. 183.**

———*Reversion.*

Where the tenure is anything less than permanent and heritable there must be a reversion to the proprietor. (*Ross, J.*). JAG SAH *v.* SRIKANTA PRASAD. **72 I.C. 401=A.I.R. 1924 Pat. 168.**

———Shamilat *rights—Right to.*

Where *shamilat* rights do not exist at the time of a gift and are not conveyed by a deed of gift but such rights come into existence subsequently, all the proprietors including the donee become entitled to shares on it proportionate to their holding. (*Martineau, J.*). AHMADYAR *v.* MUHAMMAD ALI. **3 L.L.J. 445=A.I.R. 1921 Lah. 162.**

—Putni.

———*Resumption of chaukidari chakran lands—Liability for rent.*

When chaukidari-chakran lands in a putni are resumed by the Government and transferred to the Zamindar, the question as to whether the putnidar should pay rent for those lands depends upon the mode in which the rent was assessed at the inception of the putni.

Where there was no indication, so far as could be seen from the kabuliyat, that the profit from chaukidari chakran lands was included in the assets on which the rent was assessed for the putni,

Held, that the zamindar was entitled to have rent assessed upon the lands. (*Suhrawardy and Cuming, JJ.*). PRYAMBADA DEBI *v.* MONOHAR MUKHOPADHYA. **86 I.C. 781=29 C.W.N. 328= 52 Cal. 576=A.I.R. 1925 Cal. 651.**

———Choukidari Chakran lands are not necessarily part of the lands granted by putni lease. (*Suhrawardy and Cuming, JJ.*). PRYAMBADA DEBI *v.* MONOHAR MUKHOPADHYA.

86 I.C. 781=29 C.W.N. 328=52 Cal. 576= A.I.R. 1925 Cal. 651.

———*Chaukidari chakran lands—Rent—Quantum.*

Where the putni lease is silent as to the rent payable for chaukidari chakran lands, the zamindar is entitled to some rent in addition to the amount payable to the chaukidari fund. As to the amount of the rent where there are no materials on record the putnidar is entitled to something for collection charges. (*Chatterjee and Newbould, JJ.*). BEJOY CHAND MOHATAP *v.* KRISHNA CHANDRA.

66 I. C. 837=34 C. L. J. 278= A. I. R. 1921 Cal. 466.

—Raiyat.

———*Oudh—Non-transferability—Customary law.*

In agricultural villages of Oudh the principle of non-transferability was enforced from the earliest times, and has become in absence of contract or

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other custom a part of the customary law of the agricultural villages. (*Stuart, C.J. and Raza, J.*). B. KANHAIYA LAL *v.* SYED HAMID ALI.
122 I. C. 774=7 O. W. N. 271=
A. I. R. 1930 Oudh 236.

———*Powers.*

An occupancy raiyat cannot create a non-occupancy raiyat. Both occupancy and non-occupancy raiyats are held directly under the landlord or tenure-holder. (*Jwala Prasad and Wort, JJ.*). JHAGRU MAIN *v.* RAGHUNATH. 119 I.C. 551=
10 P.L.T. 628=A.I.R. 1929 Pat. 630.

———*Acceptance of under-ryot—Privilege.*

If after the death of the under-ryot his heir, without any direction from the ryot pays rent to the superior landlord representing himself to do so on behalf of the ryot, that will not confer upon him any right if the ryot does not choose to accept him as a tenant. (*B. B. Ghose and Roy, JJ.*). JALADHAR MONDAL *v.* AMRITA LAL.
105 I C. 641=A.I.R. 1928 Cal. 87.

———*Not bound by gomasta setting tenants.*

The gomasta cannot be held to be authorized to settle tenants on the land of the ryot or to recognize any person as tenant, and his mere knowledge that the under-ryot was paying rent to the superior landlord cannot be said to bind the ryot in any way so as to compel him to recognize the under ryot as his tenant. (*B. B. Ghose and Roy, JJ.*). JALADHAR MONDAL *v.* AMRITA LAL.
105 I.C. 641=A.I.R. 1928 Cal. 87.

———*Test as to.*

The question whether the tenants are raiyats ultimately depends on the question of fact and Court must look to the attendant circumstances.

No importance can be attached to the mere form of the kabuliyat or to the use in it of the word "cultivator" Nor does the receipt of rent in which the tenant is described as a raiyat carry the matter any further. 45 Cal. 805 (P.C.); 46 Cal. 90 (P.C.) and 29 Cal. 707 (P.C) *Rel on.* (*Duval and Mitter, JJ.*). KARUNA CHANDRA DAS *v.* SECY. OF STATE.
100 I.C. 466=A.I.R. 1927 Cal. 413.

———*Powers.*

A raiyat at a fixed rate of rent is competent to grant a permanent lease of the land. 25 C.W.N. 9, *Foll.* (*Cuming, J.*). PRASANNA KUMAR *v.* KEDARNATH. 90 I.C. 497=A.I.R. 1926 Cal. 299.

———*Sub-lease by occupancy raiyat.*

An occupancy raiyat who sub-leases his land will be estopped from challenging his covenant not to eject lessee unless the lease shows on face of it that it is occupancy raiyat. 32 C.L.J 296, *Ref.* (*Cuming and Chakravarti, JJ.*). BIDHUMUKHI *v.* GOBINDA CHANDRA. 90 I.C. 104=42 C.L J. 78=
A.I.R. 1926 Cal. 215.

———*Test.*

Where a *kabuliyat* read as a whole is good evidence that the tenancy was a *raiyati* and not a tenure, the mere fact that the person who executed the *kabuliyat* did not belong to the cultivating class is not enough to prove that he was tenure-holder. (*Suhrawardy and Cuming, JJ.*). NABIN CHANDRA CHAKRABARTI *v.* RUSTOM ALI CHOWKIDAR. 87 I.C. 903=
A.I.R. 1925 Cal. 1086.

———*Alteration of status—When not.*

The status of the raiyat plaintiffs cannot be elevated because a condition is annexed to the lease which entitled the landlord to realise rent by summary process. (*Mookerjee and Chotzner, JJ.*). PURNA CHANDRA DAS *v.* ALI MAHAMMAD.
70 I.C. 999=37 C.L.J. 548=A.I.R. 1924 Cal. 520.

LANDLORD AND TENANT—Reformation.

———The test is not the use which the tenant has made of the land but the purpose for which the land is leased. (*Das and Ross, JJ.*). GAYANIDAS *v.* DWARKA MANDAR. 82 I.C. 79=3 Pat. 540=
1924 P.H.C.C. 269=6 P.L.T. 321=
A.I.R. 1924 Pat. 557.

———*Under-raiyati—Transferability.*

Ordinarily the under-*raiyati* is not transferable. But an under *raiyat* may under certain circumstances acquire a right of occupancy and if he so acquires it, his right is transferable. (*Newbould and Cuming, JJ.*). TUKA MEAH *v.* NABIN CHANDRA MAZUMDAR. 65 I.C. 701=
A.I.R. 1923 Cal. 292.

———*Sale of holding in execution.*

An occupancy raiyat, in a village where no custom of transferability without the consent of the landlord exists, can object to the sale of his holding in execution of a money-decree obtained by a creditor who is not his landlord. *Case-law discussed.* (*Das and Adami, JJ.*). DEWAN RAM CHOUDHRY *v.* ATUL MUNDER. 62 I.C. 55=
2 P. L. T. 341=6 P. L J. 202=
1921 P.H.C.C. 197=A. I. R. 1921 Pat. 4.

—Record-of-Rights.

———*Entry in—Value.*

Where it is not proved that the tenure is not a cultivating tenancy in which doami right may arise (or where it is proved affirmatively that it is such a tenancy) there is no presumption that it is non-permanent and resumable like a tenure of the "farming" class, and the onus will of course be upon the plaintiff to rebut by evidence the entry of permanency in the Record-of-Rights. When a claim is raised that occupancy rights accrue by operation of law, it has to be met by plaintiff who seeks a declaration that the entry is wrong. A.I.R. 1924 Pat 560; F.A. No. 66 of 1921 and F. A. No. 183 of 1919, *Dist.* and S. A. No. 27 of 1921, *Ref.* (*Kulwant Sahay and Macpherson, JJ.*). KRISHNA PRASAD *v.* BUDHAN MANJI. 111 I.C. 675=
7 Pat. 752=9 P. L T. 379=
A. I. R. 1928 Pat. 451.

———*Entry—Scope and effect.*

An entry in the Record of Rights operates in the same way between landlord and tenant as between landlords of the same or neighbouring estates and between tenant and tenant. (*B.B. Ghose and Graham, JJ.*). FAZALAR RAHAMAN BISWAS *v.* GOLAM KADER MIA. 96 I.C. 959=30 C.W.N. 689=
A.I.R. 1926 Cal. 862.

———*Entry—Effect on onus.*

Where the defendants, the tenure-holders are recorded in the Record-of-Rights as holding land within the ambit of the zamindari of the plaintiff and that he was paying revenue for the same, the onus of showing the nature of their title is upon the tenure-holders and upon a failure to show that they had had a tenancy therein the plaintiff is entitled to resume. But if it is recorded that the defendants were owners of a non-resumable tenure, the onus is shifted upon the plaintiff to rebut the presumption created by the Record of Rights. (*Dawson Miller, C.J. and Mullick, J.*). KAMKHYA NARAIN SINGH *v.* JAWAHIR KHAN. 94 I.C. 1007=
A.I.R. 1926 Pat. 369.

—Reformation.

———*Rights in.*

The plaintiff and his predecessors-in-title were at all material times entitled to a zamindari which included a certain mouza in which there were four howlas, of which three belonged to the defendants. For many years the northern part of

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mouza (including the defendant's howlas) had been submerged. Later the lands in dispute, which were admittedly within the mouza, were reformed. Upon their reformation these lands were taken possession of by the defendants. The plaintiff claimed them and filed a suit for recovery of possession. The defendants failed to prove that the reformed lands were within their own howlas.

Held, that upon such a state of facts the plaintiff must succeed. (*Lord Tomlin.*) GNANENDRA KUMAR ROY *v.* PRAFULLA NATH THAKUR.

120 I.C. 51=33 C W.N. 984=1929 M.W.N. 616=50 C.L.J. 509=30 M L.W. 1024=A.I.R. 1929 P. C. 200=57 M.L J. 776 (P.C.).

——Land reformed *in situ* belongs not to the zamindar but the Government. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I.C. 287=34 C L.J. 205=A.I.R. 1921 Cal. 661.**

—Relationship.

——The relationship of landlord and tenant under Bengal Tenancy Act may be governed not only by contract but also by status. (*Mukerji and Graham, JJ.*). PRIYA NATH MANNA *v.* OFFICIAL TRUSTEE, BENGAL. **105 I.C. 133=A.I.R. 1928 Cal. 43.**

——*Commencement.*

Tenancy must be deemed to have commenced from the date of occupation by the tenant to the knowledge of the landlord, although informal correspondence for the raising of rent continues subsequently between the parties (*Kanhaiya Lal and Ashworth. JJ.*). JASWANT RAI *v.* J. LUCK.

97 I.C. 71=25 A L.J. 91=A.I.R. 1926 All. 746.

——*Inference as to.*

The parties cannot have a mutual relation in law which is contrary to the true state of facts; if the facts show that the parties are co-ordinate in position, they cannot be treated in law as if they were superior and subordinate holders respectively. Where the plaintiff transferred to the defendant a share of the land,

Held, that the latter was not a tenant of the former. (*Mookerjee, Ag. C. J. and Fletcher, J.*). CHANDRA KANTA CHAKRABARTHY *v.* ADINATH SHOMA. **59 I.C. 565=32 C.L.J. 81.**

—Relationship—Creation.

——*Decree directing payment of rent.*

The suit lands were dense jungle until, in 1828, or later some of the defendants' predecessors began to cultivate them. In 1844 the Revenue Authorities, treating them as *Illam* or unsettled lands which were at the disposal of the Government not having been included in permanently settled estate, assessed them to revenue; after a long struggle the plaintiff's predecessors succeeded in getting the Revenue Authorities in 1852 to reverse this decision and to recognize that these lands formed part of their permanently settled estate. The plaintiff's predecessors instituted suit in 1854 against the defendants' predecessors for possession and mesne profits. The judgment in that suit provided that as long as the defendants were ready and willing to pay rents legally according to the rates prevailing in the village they should not be ousted from their right as jotidars, that the defendants do pay to the plaintiff the mesne profits due to them and the cost to the extent of the claim as well as costs in Court. There was abundant evidence that they were not so willing but entirely disregarded the decree. The present suit for ejectment was filed in 1912.

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Held, that the order cannot be read as establishing the relation of landlord and tenant between the parties. A.I.R. 1926 Cal. 193, *Affirmed.* (*Sir John Wallis.*) KUMAR GOPIKA RAMAN ROY *v.* ATAL SINGH. **114 I.C. 561=1929 A L.J. 246=49 C.L.J. 327=33 C.W N. 463=29 M.L.W. 674=10 P.L.T. 301=31 Bom.L.R. 734=56 I A. 119=56 Cal. 1003=A.I.R. 1929 P C. 99=56 M.L.J. 562 (P.C.).**

——*Occupation.*

The relationship of landlord and tenant does not always arise by contract or agreement. Such relationship may arise by mere occupation of agricultural land. (*Suhrawardy and Jack, JJ.*). CHIRANJIB SEN *v.* MAHENDRANATH BISWAS. **115 I.C. 518=32 C.W.N. 1238=A.I.R. 1929 Cal. 90.**

——*Payment of rent by assignee of an agreement to lease.*

Where a person makes an agreement to take a lease and assigns his rights to a third person before paying any rent or taking possession and the third person instead of paying rent to his assignor or attorning to him pays rent direct to the owner (original lessor) the relation of landlord and tenant cannot be said to have been created between the third person and his assignor. (*Rutledge, C. J. and Maung Ba, J.*). RUSSA ENGINEERING WORKS, LTD. *v.* WEARNE BROTHERS, LTD. **7 Rang. 144=A. I. R. 1929 Rang. 184.**

——*Void lease.*

Where a lease becomes void by reason of the alienation being prohibited by the law, the relation of landlord and tenant does not come into existence and the possession by the alienee becomes wrongful from the commencement. (*Patkar, J.*). GULABBHAI *v.* BHAGWAN. **114 I. C. 266=30 Bom. L.R. 980=A.I.R. 1928 Bom. 377.**

——*Conduct.*

If a stranger who is not a transferee of the tenant's interest to the holding makes a deposit in a rent decree against the tenant and the landlord withdraws the amount, he by his conduct is not bound to treat the trespasser as his tenant. 12 C.L.J. 609, *Doubted.* (*Suhrawardy and Graham, JJ.*). SUKCHAND DAS *v.* GIRDHARI DAS. **97 I.C. 1016=44 C. L. J. 127=A.I.R. 1926 Cal. 1215.**

——*Acceptance of rent.*

There is no authority for the proposition that mere acceptance of rent from a stranger to the holding creates the relationship of landlord and tenant. (*Suhrawardy and Graham, JJ.*). SUKCHAND DAS *v.* GIRDHARI DAS. **97 I.C. 1016=44 C.L.J. 127=A.I.R. 1926 Cal. 1215.**

——*Marfatdari receipts.*

Marfatdari receipts, *i.e.*, receipts granted in the name of payer on behalf of another, do not constitute any relationship of landlord and tenant between the payer and the payee nor any recognition of the payee's right as tenant. (*Jwala Prasad and Bucknill, JJ.*). ABDUL GUFFAR *v.* F. B. DOWNING. **98 I.C. 893=5 Pat. 415=8 P.L.T. 343=A I.R. 1926 Pat. 465.**

——*Conditional decree—Not performed.*

The condition in an ejectment decree as to ejectment was that as long as the defendants are ready and willing to pay rent they should not be ejected. There was absolutely no evidence that the defendants expressed any willingness to pay rent to the plaintiffs or that they had ever paid rent.

Held, that upon proper construction the decree did not constitute the relationship of landlord and

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tenant between the parties. (*Newbould and B. B. Ghose, JJ.*). GOPIKA RAMAN ROY *v.* ATAL SINGH. **85 I. C. 678=A. I. R. 1926 Cal. 193.**

——*Recognition—Test.*

It is not always a fact that where rent receipts are granted with the word "marfatdar" it is conclusive that there was no recognition by the landlord of the person who pays the rent as a tenant (17 C.W.N. 1038, *Foll.*), but the Court should determine in each case whether on a consideration of all the facts a legal inference can be drawn that there has been a recognition establishing the relationship of landlord and tenant between the parties.

Where a tenant died in 1902 and rent had been paid with regard to his share by his heirs from that date till 1918, although the rent receipts had been given to the heirs as "marfatdars",

Held, that a legal inference can legitimately be drawn that the landlords who were entitled to take possession of the share of the original tenant did not do so, but allowed his heirs to remain in possession and received rent from them, and such conduct amounted to recognition of the heirs as tenants. (*Cuming and B.B. Ghose, JJ.*). SADANAND MANDAL *v.* JYOTISH KANTA RAY.

93 I. C. 101=30 C.W.N. 787=A.I.R. 1926 Cal. 952.

—Rent.

See also T. P. ACT, S. 108 AND 112.

Abatement.
Amount of.
Apportionment.
Assessment.
Damages.
Decree.
Deduction.
Enhancement.
Excess area.
Fixity.
Implied contract.
Interest.
Interpretation.
Liability.
Non-payment.
Objections.
Patni lease.
Payment.
Rate of.
Receipt.
Remission.
Rent free.
Right to.
Sale.
Suit for.
Suspension.
Waiver.

—Rent—Abatement—Agreement.

——*Semble.*—Where a permanent tenure is sold for arrears of rent, the purchasers will not be necessarily bound by an agreement between the former tenants and the landlord to the effect that no abatement of rent should be claimed. (*Lord Salvesen.*) KATYAYANI DEBI *v.* UDOY KUMAR DAS. **88 I.C. 110=6 L.R.P.C. 140=30 C.W.N. 1=52 I.A. 160=52 Cal. 417=28 A.L.J. 751=A.I.R. 1925 P.C. 97 (P.C.).**

—Rent—Abatement—Apportionment.

——Where it was found that the abatement claimed by the defendant had not been fluctuating but was uniform throughout, and had been uniformly allowed every year since 1868, that it was not a deduction allowed to the old *Khatedars* personally, but was allowed to particular holdings.

Held, there is nothing illegal in apportioning this abatement to more than one holding after partition of the original holdings and it is not necessary that 60 years should lapse after such apportionment to complete user. (*Marten and Fawcett, JJ.*). KRISHNALAL CHUNILAL *v.* DHIRAJLAL NAVANITLAL. **77 I.C. 502=A. I. R. 1923 Bom. 359.**

—Rent—Abatement—Forfeiture.

——Abatement of revenue on account of the lands being diluviated by the action of a river will not cause forfeiture of the lands. However, the question depends upon the intention of the parties. If the circumstances indicate that in taking abatement of the revenue there was an intention to abandon the land, then after re-appearance the person who took the abatement cannot claim the lands as he had already lost all rights thereto. 41 Cal. 683; 41 I.A. 32 and 18 All. 290, *Foll.*; 14 W.R. (P.C.) 11 and 13 M.I.A. 467, *Dist.* (*Jwala Prasad and Ross, JJ.*). RAMNANDHAN SAHAY *v.* JAIGOVIND PANDEY. **75 I.C. 955=2 Pat. 839=A I.R. 1924 Pat. 213.**

—Rent—Abatement—Limitation.

——Although the question of limitation does not arise in connection with the plea of abatement, the question of acquiescence and the presumption arising from such acquiescence may arise. 2 C.L.J. 5, *Foll.* (*Chatterjea and Panton, JJ.*). RAJ KUMARI BOSE *v.* SURENDRA NATH. **27 C.W.N. 166=A.I.R. 1921 Cal. 806.**

—Rent—Abatement—Possession.

——*Rent neither abates nor is suspended when a land subsequently determined to be a mouza is not given to the lessee.*

Plaintiffs granted a lease of their interest in a mouza to the defendants who obtained possession of all the lands which at that time, in the contemplation of the parties to the demise, formed part of the mouza, and the rent was fixed on this basis. Subsequently a certain land was determined to belong to the mouza and this land was not given possession of to the defendants.

Held, that inasmuch as the defendants had already obtained possession of all the lands in respect of which the rent was fixed, there was no question of abatement or suspension of rent due to the defendants not being given possession of the land subsequently determined to belong to the mouza demised to them. (*Greaves and Cuming, JJ.*). BINOD KUMAR RAY CHOUDHRI *v.* RAM KISHORE KISTRY. **91 I. C. 686 (Cal.).**

——The Kabuliat stated "You shall never be competent to enhance the said jama on any ground nor shall we get abatement of the jama on the ground of diluvion or on any other ground."

Held, that the words "on any other ground" should be taken as referring to cases of like nature as diluvion. A person who has been deprived of possession of part of the demised premises should not be held liable for the whole rent for ever and this principle applies with greater force where the tenant is deprived of any portion of the leasehold property by any act on the part of the landlord himself. But special circumstances of the case and the intention of the parties must be taken into consideration. (*Chatterjea and Panton, JJ.*). MESBAHUDDIN AHMED *v.* ABDUL BORKAT.

65 I. C. 839=34 C. L. J. 119=A. I. R. 1921 Cal. 303.

LANDLORD AND TENANT—Rent—Abatement —Procedure.

—Rent—Abatement—Procedure.

——When deduction or abatement is claimed by tenant in a suit for rent he may insist on a measurement, and an order for measurement must be made if a case justifying or necessitating the order is made out. (*Greaves and M. N. Mukerji, JJ.*). SIVDAS DUTT *v.* BIRENDRA KRISHNA.

94 I.C. 844=43 C.L.J. 116= A.I.R. 1926 Cal. 672.

—Rent—Abatement—When can be allowed.

——Where the lands demised are included in several schedules which are separately assessed, partial dispossession of the tenant from the tenure by the landlord does not entitle the tenant to total suspension of the rent. He can get only abatement thereof. A.I.R. 1925 P.C. 97 and A.I.R. 1927 Cal. 737, *Foll.* (*B. B. Ghose and Bose, JJ.*). DWARKANATH *v.* SRI GOBIND. **112 I.C. 71= A.I.R. 1929 Cal. 180.**

——For claiming abatement of rent the land must be rendered entirely useless for cultivation by its liability to inundation by sea water. But where the land can be cultivated, but its productive powers have deteriorated from its liability to inundation at high water, and paddy can be raised though of an inferior kind to that formerely grown abatement of rent cannot be claimed. (*Fawcett and Coyajee, JJ.*). VISHVANATH *v.* RAMKRISHNA. **92 I.C. 537=50 Bom. 94=27 Bom. L.R. 1478= A.I.R. 1926 Bom. 86.**

——In a suit between one of several co-sharer landlords and the tenants, when the said co-sharer under an arrangement between himself and his other co-sharers and the tenants has been collecting his share of the rent separately, the defendants are not precluded from raising the question of abatement of rent by reason of the constitution of the suit. (*Greaves and M. N. Mukerjee, JJ.*). SIVDAS DUTT *v.* BIRENDRA KRISHNA.

94 I.C. 844=43 C.L.J. 116=A.I.R. 1926 Cal. 672.

——There will be suspension of rent in cases where the landlord has by his action dispossessed or where the lessee has, owing to his action not been able to take possession of a part of the holding sold; and the exception will be that there will be an abatement of rent where this has occurred with knowledge of the tenant before he entered into the land, that a portion of it was in the possession of another. (*Suhrawardy and Duval, JJ.*). JOYRAM CHANDRA LAHIRI *v.* BISU CHARAN BISWAS. **85 I.C. 781=A.I.R. 1926 Cal. 808.**

——*The tenant is entitled to an abatement of rent, where the Government ousts the tenant from a portion of the tenancy by a* diara *proceedings.*

Where it is found that the Government instituted *diara* proceedings with reference to the lands formed in the bed of a river, and the plaintiffs-landlords had notice of the proceedings commenced by the Government, but the plaintiffs did not take any step to resist the proceedings taken by Government, with regard to the creation of a separate estate of the lands in question,

Held, the plaintiffs themselves had in a manner admitted the superior title of the Government to take possession of the lands by proceedings taken under the law; the plaintiffs cannot therefore turn round and say that it was a mere act of trespass on the part of the Government to dispossess the tenant from his tenure and that the tenant is entitled to no relief. In substance, the act of Government is an ouster of the tenant from a portion of the tenancy under the plaintiffs

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by a title paramount and the defendant-tenant is, therefore, entitled to an abatement of rent in proportion. (*Walmsley and B. B. Ghose, JJ.*). JITENDRA NATH ROY *v.* ASHUTOSH GOSWAMI. **70 I.C. 828=27 C.W.N. 381=39 C.L.J. 287= A.I.R. 1923 Cal. 429.**

——In a suit for rent, where there is no contract to the contrary, as soon as the fact of diluvion is established, the tenants are entitled to abatement of rent and the burden thereupon shifts to the landlords to prove the reduced amount of rent justly recoverable by them, which can be done only by proof of the extent of the diluvion. (*Mookerjee, Ag. C. J. and Fletcher, J.*). KRISTA DAS *v.* ABDUL KARIM. **62 I.C. 474=34 C.L.J. 35=25 C.W.N. 328= A.I.R. 1921 Cal. 220.**

—Rent—Abatement—When can be claimed.

——In order to succeed in getting abatement of rent by the application of the principle of eviction by title paramount, it is essential for the lessee to make out, not merely that he had to leave a part of the land demised, not merely that he had to do so against his will, but that he had to do it at the instance of a person who has a right to interfere with his possession, his title being superior to that of the lessor. *Matthey* v. *Curling*, (1922) A.C. 180; *Mayor of Poole* v. *Whit*, 15 M & W. 571 and A.I.R. 1921 Cal. 532, *Rel. on.* (*Rankin, C. J. and Mukerji, J.*). INDU BHUSAN *v.* MOAZAM ALI. **117 I.C. 838=33 C.W.N. 106= 49 C.L.J. 252=A.I.R. 1929 Cal. 272.**

——In a suit by a co-sharer landlord who under an arrangement between himself, his co-sharers and the tenants is entitled to collect his share of the rent separately the tenants are entitled to apply for an abatement of rent. A.I.R. 1923 Patna 397, *Foll.* and 27 Cal. 417, *Dist.* (*Greaves and Mukerjee, JJ.*). SIVDAS DUTT *v.* BIRENDRA KRISHNA DUTT. **88 I.C. 654=41 C.L.J. 330= A.I.R. 1925 Cal. 783.**

—Rent—Abatement—When cannot be claimed.

——*Tenant was held not entitled to any abatement of rent as there was a stipulation in the* kabuliyat *that rent should not be changed.*

A lease provided: "You (lessee) shall not be entitled to take a plea for remission of the jama fixed on the ground of failure of crops on account of inundation or drought, on account of dearth, abandonment, land lying fallow or being in a water-logged condition, dispossession and on any other ground. If you do that, it shall not be entertained. I (lessor) shall not be competent to demand anything in excess of the rent fixed on any ground." Two thirds of land was diluviated by a river and the tenant claimed a proportionate abatement of rent.

Held, that he was not entitled to any abatement on the general principles of law as the *kabuliyat* contained a stipulation that no abatement could be claimed on any ground. (*B.B. Ghose and S.C. Mallik, JJ.*). DWIJENDRA NATH BISWAS *v.* JITENDRA NATH ROY. **114 I.C. 401= 32 C.W.N. 295=A.I.R 1928 Cal. 419.**

——A tenant paying rent for the entire land demised when he was in possession of only a part of it cannot ask for abatement of rent after the lapse of 60 years as he must be deemed to have lost his right by acquiescence and laches. 2 C.L.R. 5, *Foll.* (*B.B. Ghose and Roy, JJ.*). MIDNAPORE ZEMINDARI CO., LTD. *v.* SHIB NARAYAN DUTTA. **103 I.C. 741=A.I.R. 1928 Cal. 197.**

LANDLORD AND TENANT—Abatement—When cannot be claimed.

——Where by a contract the landlord cannot claim to enhance the rent because of the land becoming more productive from some accidental circumstance after the "mulgeni" lease is granted, then, in principle, the grantee cannot claim a reduction of rent because of the deterioration of the soil. (*Faucett and Coyajee, JJ.*). VISHVANATH *v.* RAMKRISHNA. **92 I.C. 537=50 Bom. 94=27 Bom. L.R. 1478=A. I. R. 1926 Bom. 86.**

——After a proprietor has parted with his land in favour of a permanent tenure-holder, he is under no obligation, unless there is a special contract to that effect, to protect the interest of the tenure-holder by building embankments to prevent inundation and, therefore. if the land is inundated, the tenure-holder cannot claim abatement of rent. 1894 W. R Act X. R. 42. *Dist.* A.I.R. 1925 P. C. 97, *Foll.* (*Walmsley and Chakravarti, JJ.*). MAHAMMAD ISMAIL *v.* SURESH CHANDRA. **96 I C. 616=53 Cal. 442=A.I.R. 1926 Cal. 946.**

—— The possession of a trespasser during the continuance of a lease does not become adverse against the lessor, who is in possession by receipt of rent from his lessee; so long such rent is not intercepted by a trespasser. he cannot be said to have been dispossessed and consequently claim for abatement cannot be sustained. It is the lessee's duty to recover possession from the trespasser. (*Mookerji, Newbould and Pearson, JJ.*). CHANDI *v.* KATYANI DEBI. **69 I.C 126=49 Cal 948=35 C.L.J. 292=A.I.R. 1922 Cal. 87.**

——Where the lessee agrees with the lessor not to claim abatement of rent under any circumstances and his interest is sold in auction later on in execution, the auction-purchaser will take it only subject to the contract aforesaid and cannot claim abatement in a suit for rent. (*Mookerji, Newbould and Pearson, JJ.*). CHANDI *v.* KATYANI DEBI. **69 I.C. 126=49 Cal. 948=35 C L.J. 292=A.I.R. 1922 Cal. 87 (F.B.).**

—Rent—Amount of.

——When there has been a variation in the amount of rent, the onus is on the tenants to prove why there has been such variation. (*Cuming and Chakravarti, JJ.*). NRISINHA CHARAN NANDI *v.* BATASI DASHI. **90 I C 602=A.I.R. 1926 Cal. 106.**

——The word used to describe the rent fixed was khajana. There were other payments fixed and the total of these and of the rent was called jama in one place and malguzari in another. In the condition to pay excess rent for lands subsequently found to be culturable the word used was khajana. (*Newbould and Graham, JJ.*). JADUNATH GUHA RAY *v.* ABDUL HAJEE. **91 I. C. 459 (Cal.)**

——Where the defendant took possession of land under a lease and executed a *kabuliyat* and paid rent for at least three years in accordance with it,

Held, even if the *kabuliyat* did not constitute a valid tenancy the defendant was liable to pay compensation for the use and occupation of the land, the measure of that being the amount which he agreed to pay under the lease. (*Daniels and Neave, JJ.*). NAND RAM SINGH *v.* HARI SARAN DAS. **82 I.C. 296=5 L.R.A. Rev. 235=A.I.R. 1925 All. 100.**

—Rent—Apportionment.

——Where the defendant is not in possession of some of the lands demised by reason of eviction by title paramount.

Held, she cannot be called on to pay for the lands of which she has no possession. (*Woodroffe and Cuming, JJ.*). KATYANI DEBI *v.* UDAY KUMAR DAS. **69 I. C. 117=49 Cal. 257=A.I.R. 1922 Cal. 348.**

— Rent—Assessment.

——Where the plaintiff in the first place alleges that there was an existing rental at a certain rate, and in the alternative prays that if it be found that there was no existing rental, a fair and equitable rent might be assessed, there is nothing wrong in making such an alternative prayer (*Kulwant Sahay and Macpherson, JJ.*). BISHESHAR SINGH *v.* PATAN MAHTON. **123 I.C. 615=A.I.R. 1930 Pat. 485.**

——The plots which retain the character of a grove can be distinguished from the plots which do not retain such character, and simply because the plots are situated together in a compact whole it is not necessary that those plots which are devoid of trees should be considered to continue to have the character of a grove for the simple reason that other plots may be considered to be grove land, and so rent may be assessed even on a portion of a grove. when that portion loses the character of a grove: *Kishori Saran* v. *Rameswar*, 4 Unpublished Decisions 171, *Rel. on*; A. I. R. 1926 All. 519, *Dist.* (*Dalal, J.*). MURLIDHAR *v.* SURJA. **119 I C. 256=A.I.R. 1929 All. 699.**

——In the case of a *khudkasht* field, the assessment, for practical purposes, rarely represents anything like the profits which can be secured therefrom. (*Findlay, J. C.*). MAROTI RAO *v.* TULSA BAI. **109 I.C. 459=A.I.R. 1928 Nag. 303.**

——If the tenant is in adverse possession of the absolute interest for over twelve years, the landlord's right is completety extinguished. If the tenant is in adverse possession for such a period in respect only of a limited interest as tenant, then whatever may be the effect of it on the question of the landlord's right to *khas* possession a claim for assessment of rent will not be barred unless as provided for in Art. 130 or Art. 131, Limitation Act. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN MAJUMDAR *v.* JHUMUR PRAMANIK. **95 I.C. 622=43 C.L.J. 387=A.I.R. 1926 Cal. 883.**

——*Limitation Act applies.*

Suits for assessment of rent-free lands are governed by Art. 130. Limitation Act, and have to be instituted within twelve years from the time when the right to assess the land first arises and this right may arise upon a distinct notice of the tenant's claim to hold it rent-free. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN MAJUMDAR *v.* JHUMUR PRAMANIK. **95 I.C. 622=43 C.L.J. 387=A. I. R. 1926 Cal. 883.**

—Rent—Damages.

——If rent is claimed and only damages by way of rent are permissible these can be allowed and decreed.

Where rent is mentioned in the lease, such rent will be the measure of damages though the lease may be inadmissible in evidence on account of its not being registered. Although the figure as to rent mentioned in the lease cannot be looked at in order to establish the rent fixed it may be looked at to establish what damage the landlord suing for arrears of rent is entitled to by way of rent. 41 Cal. 347 and *DeMedina* v. *Polson*, (1815) Holt N. 47, *Ref.* (*Addison, J.*). JAWAHRI MAL *v.* JAGANNATH. **A. I. R. 1930 Lah. 915.**

——If a Court finds that there was no existing rent and assesses a fair and equitable rent or rate of rent, which will operate in future years, it is

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open to it also to make a decree in favour of the plaintiff by way of damages for three years before the institution of the suit at the said rent or rate of rent subject of course to such modifications, if any, as may be required by the fact that while that rent or rate of rent operates in future, the damages are assessable for years already past. A.I.R. 1929 Pat. 233, *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). BISHESHAR SINGH *v.* PATAN MOHAN.
123 I.C. 615=A.I.R. 1930 Pat. 433.

—Rent—Decree.

——Where the landlord had not put the tenant in possession of one shop altogether and in possession of two of the shops only partially,

Held, that he was entitled to a decree for recovery of arrears of proportionate rent. 46 Cal. 956, *Diss. from*; A.I.R. 1922 Cal. 153, *Ref.* (*Dalal, J.*). PIR BAKHSH *v.* RAMESHWAR NATH.
119 I.C. 790=A.I.R. 1929 All. 52.

——Where several tenants enter into an agreement as to rent with the landlord, every one of the tenants is personally liable for the rent. It may be and possibly would be the case, that where only some, out of several joint tenants, are sued for arrears of rent, the decree would be one which could not be executed by the ejectment of the entire body of tenants from the holding. But there would be no bar to the enforcement of the decree personally against the tenants sued. A.I.R. 1927 Pat. 426, *Rel. on.* (*Mukerji, J.*). HAR SARUP *v.* TOHFA SINGH. 111 I. C. 156=10 L.R.A. Rev. 69=
A.I.R. 1928 All. 534.

——Where it is not proved that there was any tenancy held by the defendant under the plaintiff of certain plots, the plaintiff cannot get a decree for rent in respect of wrong lands or without specifying properly what land is covered by the decree. (*Rankin, C.J. and Mitter, J.*). INDU BHUSAN BASU *v.* JATINDRA NATH ROY. 114 I.C. 148=
32 C.W.N. 244.

——Defendants landlords obtained a rent decree against one *H*—uncle of the plaintiff—who was a registered tenant in their sherista and benamidar for the plaintiff, and purchased the holding in execution sale. The plaintiff claiming to be entitled to the holding as owner sued for declaration of title and possession.

Held, that defendants were entitled to put to sale the interest of plaintiff by proceeding against *H* who was represented as tenant in their sherista. (*B.B. Ghose and Cammiade, JJ.*). MAHIM CHANDRA BANIKYA *v.* SARAFATULLA. 114 I.C. 789=
32 C.W.N. 832.

——A decree for the whole amount of rent can be passed against one of several co-tenants. A.I.R. 1926 Pat. 504 and A.I.R. 1927 Pat. 2, *Foll.* (*Das and James, JJ.*). RAGHUNATH DAS *v.* BALESHWAR PRASAD. 105 I.C. 484=9 P.L.T. 137=
A.I.R. 1927 Pat. 426.

——Execution of a rent-decree against some of the tenants is limited to their right, title and interest and does not affect the holding. 42 C. L. J. 232, *Rel. on.* (*Suhrawardy and Page, JJ.*). RAMPADA NAG *v.* KANAI RAI. 98 I. C. 206=
44 C.L.J. 167=A.I.R. 1926 Cal. 1219.

——Where a landlord obtained a decree formal against certain tenants, some of whom were dead at the date of decree,

Held, that decree against all tenants was not a nullity as it is open to the landlord to bring a suit for rent against all or any of the tenants, though a decree against some of the tenants cannot be executed as a rent decree and can only be executed as a money decree. 11 C. W. N. 1026; 18 C. W. N. 170; 33 Cal. 580; 34 All. 604 and A. I. R. 1925 Patna 434, *Appr.* (*Das and Adami, JJ.*). KESHO PRASAD SINGH *v.* SHAMNANDAN RAI.
94 I.C. 28=5 Pat. 233=
7 P.L.T. 628=1926 P.H.C.C. 81=
A.I.R. 1926 Pat. 504.

——The successors-in-interest of tenants are bound by the landlord's decree for arrears of rent against the tenants and a valid sale can be effected to satisfy that liability. (*Kanhaiya Lal, J.*). RAM DALARE *v.* SAHDEO. 83 I.C. 188=
A.I.R. 1925 All. 183.

——In a suit for recovery of arrears of rent the decree must be confined to one for arrears of rent. It cannot direct the ejectment of the tenant in the event of his default. Where it does contain such a direction, it will be expunged by the appellate Court. 2 O.W.N. 19, *Foll.* (*Wazir Hasan, A. J. C.*). MATADEEN *v.* SAIYED MUSTAFA HUSAIN. 88 I.C. 165=12 O.L.J. 200=
2 O.W.N. 217=A.I.R. 1925 Oudh 379.

——*A holding once sold in execution of a rent decree cannot ordinarily be re sold for any other decree for rent due by the same tenant.*

After a holding has been once sold in execution of a rent-decree and has passed out of the possession of the tenant it cannot ordinarily be again sold in execution of any other decree for rent due by the same tenant. An exception however has been made in cases where the executing Court, although irregularly, allows the holding to be sold subject to a liability to satisfy another outstanding decree; in such cases the auction purchaser is concluded by *res judicata* and the landlord is competent to proceed in the first instance against the holding and to call upon the auction-purchaser to discharge the liability which he has undertaken. But the principle has no application at all where the decree-holder is himself the purchaser. 6 C.W. N. 877, *Dist.* Even in a case where the landlord decree-holder purchased subject to liability to satisfy his other decree for arrears of rent, he may bring to sale the other property of the tenant in execution of his unsatisfied decree. (*Mullick and Macpherson, JJ.*). JUGAL KISHORE *v.* BHATU. 80 I.C. 377=
1923 P.H C C. 205=1 Pat. L.R. 311=
2 Pat. 720=4 P.L.T. 640=A.I.R. 1923 Pat. 617.

——On the death of a tenure-holder, if a decree is obtained for rent against some of the heirs the interest of those heirs that are not parties to the decree will not be affected either by the decree or by the sale under that decree. 26 C.W.N. 138, *Ref.* (*Suhrawardy and Cuming, JJ.*). ABDUL GANI *v.* NARENDRA KISHORE ROY. 65 I.C. 592 (Cal.).

——The mere fact that a claim as for mesne profits was made, is not a sufficient ground for not allowing what is clearly due as rent in the alternative, after amendment of the plaint, if necessary. (*Spencer and Devadoss, JJ.*). SARAVANAPERUMAL *v.* SUBBAYYAN. 16 M.L.W. 802=
1922 M.W.N. 763=31 M.L.T.430=
A.I.R. 1922 Mad. 514.

——In order to entitle the execution purchaser to invoke the aid of the principle of representation it is not sufficient to show that the landlord has chosen to obtain a decree for rent against one out of several heirs. It has to be established that all the tenants have held out one of them as their representative in their transactions with the landlord. If they have so held out one of them to represent them in the matter of the tenancy, they cannot complain if a decree for rent is obtained by

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the landlord against that representative, and the entire tenancy brought to sale in execution thereof; such co-owners would be affected by the sale even though they were not parties to the decree. *Case-law referred.* (*Mookerjee, Ag.C.J. and Fletcher, J.*). FAIZANNESSA *v.* GAGANESWARI.

63 I. C. 706=26 C.W.N. 138= A.I.R. 1921 Cal. 434.

———A rent-decree is in no sense a mortgage-decree and does not compel the landlord to proceed against the holding (*Das and Ross, JJ.*). KESHO PRASAD SINGH *v.* MT. PARANJOTA KOER.

62 I.C. 532=6 P.L.J. 354=2 P.L.T. 603= A.I.R. 1921 Pat. 184.

———Where in execution of a rent decree, the landlord brings the holding for sale without notifying that the holding is being sold subject to another rent-decree in his favour and purchases the holding himself he is not precluded from executing the other rent-decree against the properties of the judgment-debtor other than the holding. (*Das and Ross, JJ.*). KESHO PRASAD SINGH *v.* MT. PARANJOTA KOER. **62 I.C. 532=2 P.L.T. 603= 6 P.L.J. 354=A.I.R. 1921 Pat. 184.**

—Rent—Deduction.

———Where a landlord dispossesses the tenant, there is no doubt a suspension of rent; but when a tenant gets mesne profits from the landlord for such dispossession landlord is entitled to deduct the amount of rent payable to him on account of the lands in question. (*B. B. Ghose and Panton, JJ.*). MANMATHA NATH *v.* MOTI LAL MITRA.

33 C.W.N. 614=A.I.R. 1929 Cal. 719.

———*When rent is fixed for area as a whole, landlord depriving tenant of part of area, cannot claim either whole or proportionate rent.*

Where a tenant has never been put in possession of the whole area comprised in the demise, but has taken possession of a portion thereof, the Courts will fix a rate of rent for the area taken possession of, to be paid by the tenant on the ground that, although he has contracted for the whole area, he has elected to go into possession of a portion only of the area. And where under circumstances over which the landlord had no control the tenant has not been given possession of the whole area the Court will decree the rent in proportion to the area of the land of which the tenant has obtained possession. But where rent has been fixed for the entire area as a whole and not at so much per any measurement thereof, and a tenant has been in possession of the whole demised area and subsequently has been deprived of a portion thereof by the action of the landlord, it is not open to the landlord to come to Court and ask the Court to fix a rent for the portion of the area which remains in the possession of the tenant. The landlord is not entitled, after dispossessing the tenant from a portion of the demised area, to sue for rent in respect of the whole or for any portion thereof. (*Greaves and Cuming, JJ.*). SURESH CHANDRA SAMADDAR *v.* MATHURA NATH GAIN. **90 I C. 47= 42 C.L J. 66=A. I. R. 1925 Cal. 1187.**

———In an ordinary Kabuliyat by which a certain quantity of land within definite boundaries is let out and the area is fixed not with reference to actual measurement but by approximate estimate and the rent fixed is a lump sum for the land within the boundaries, the tenant cannot claim reduction of rent due to area being found less than what is mentioned in the Kabuliyat. (*Suhrawardy and Cholzner, JJ.*). ABDUL MANUAF *v.* SHEIKH MUSLIM. **79 I.C. 978=A.I.R. 1925 Cal. 426.**

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—Rent—Enhancement.

———*Where the rent of the holding is not fixed the rent can be enhanced even though the tenancy is permanent.*

When from the stipulation in the patta it appeared that the tenancy was permanent in so far that so long as the rent was paid regularly the tenant was to continue to enjoy the land, but there was nothing to show that the rent was fixed and the tenancy was heritable and transferable and the patta described itself as a raiyati settlement of a tank,

Held, that the stipulations were not inconsistent with the landlord's right to enhance rent. 24 C.W.N. 874 and A.I.R. 1927 P. C. 20, *Ref.* (*Cuming and S.K. Ghose, JJ.*). BHABANI CHARAN *v.* SUCHITRA BAISNABI. **51 C.L.J. 25= A.I.R. 1930 Cal. 270.**

———When there are two joint tenants of a holding the rent of that holding cannot be enhanced by an agreement entered into between the landlord and only one of the two tenants. Under the terms of S. 47 of the old Tenancy Act of 1901, to make an enhancement a registered agreement must be made between the landlord and every one of the non-occupancy tenants. (*Dalal, J.*). TUNGAL *v.* CHANDRABHAN. **108 I.C. 703=9 L.R.A. Rev. 63= A.I.R. 1928 All. 214.**

———In a suit for enhancement of rent, the landlords in order to succeed in showing that there has been an increase in area are bound to prove what was the area of tenancy at the time of its inception. It is not sufficient for them to show that area under cultivation is much larger than the area given in the confirmatory kabuliyat. 5 C.L.J. 538, *Foll.* (*Cuming and Roy, JJ.*). RAMANATH BHATTACHARJEE *v.* JAGANNATH MONDAL.

106 I C. 136=A.I.R. 1928 Cal. 169.

——— *Usually "mokarrari" is used to denote fixity of rent but absence of this word is not conclusive to the contrary.*

Prima facie the rent is liable to enhancement on the application of the landlord or to reduction on the application of the tenant, unless either of them has precluded himself by contract from claiming such enhancement or reduction respectively.

Apparently the word usually employed in creating a fixed rent in perpetuity is the word "mokarrari," though, no doubt, the absence of such word is not conclusive if other words are found in the grant which clearly show that such a rent was intended to be created.

Where a pottah proved "You shall pay the rent year after year according to the kistibandi given in the schedule below. You and your sons and grandsons, etc., in succession, will remain in enjoyment and possession by keeping the boundaries intact as they have been from before. All profits and losses shall be yours, and you shall on no account be competent to pray for a reduction of the rent. You shall abide by the survey and settlement of rent to be made by me when necessary,"

Held, that the pottah did not fix the rent in perpetuity but the landlord maintained his right to enhance the rent. (*Lord Carson.*) KRISHENDRA NATH *v.* KUSUM KAMINI DEBI. **100 I.C. 93= 54 Cal. 166=54 I.A. 48=1927 M.W.N. 41= 31 C.W.N. 514=45 C.L J. 305=25 M.L.W. 631= A.I.R. 1927 P.C. 20=52 M.L.J. 412 (P.C.).**

———*Prima facie* the rent is liable to enhancement unless the landlord has precluded himself by contract from claiming such enhancement and it

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is necessary to have definite materials in the patta before coming to the conclusion that the common law has been excluded. A.I.R. 1927 P.C. 20, *Rel. on.*

Where in the patta it was stated that the tenants were to hold from generation to generation, that they were to get remission of rent and that they should pay cesses separately and in addition to rent,

Held, the landlord was not prevented from enhancing the rent. (*Rankin, C.J. and Mitter, J.*). JONAB BISWAS *v.* SIVAKUMARI DEBI.

104 I.C. 733=46 C.L.J. 253=A.I.R. 1927 Cal. 855.

———The presumption in a suit for enhancement of rent on the ground of increased area must be that the standard of measurement at the time of letting out continues until anything contrary is proved. (*B. B. Ghose and Panton, JJ.*). BIRENDRA KISHORE *v.* BHOLA MIA. **97 I.C. 385= A.I.R. 1927 Cal. 15.**

———Plaintiff gave a notice to the lessee that he would be charged enhanced rent from a certain date and that if he didn't accept the enhancement he was free to vacate the house by that date. On defendant's lessees continuing to occupy the house,

Held, that he should be deemed to have agreed to pay the enhanced rent. (*Wazir Hasan, A. J. C.*). S. BURGE *v.* MOULVI MD. INAMULLAH KHAN.

82 I.C. 585=11 O.L.J. 561=28 O.C. 77= A.I.R. 1925 Oudh 189.

———Where it has been established that the tenures have been held from the time of the Permanent Settlement, the burden is cast upon the landlord of proving that he is entitled to enhance the rent. 13 M.I.A. 248, *Foll.*; 16 C.L.J. 322, *Dist.* (*Newbould and B. B. Ghose, JJ.*). BIRENDRA KISHORE MANIKYA BAHADUR *v.* ALI AHMAD.

84 I. C. 86=39 C. L. J. 605=A.I.R. 1924 Cal. 1015.

———*Rent fixed in perpetuity cannot be enhanced.*

No doubt a suit to enhance rent proceeds on the presumption that a zamindar holding under the Permanent Settlement has the right from time to time to raise the rents of all the rent-paying lands within his zemindari according to the *paraganah* or current rates unless either he is precluded from the exercise of that right by a contract binding on him or the lands in question can be brought within one of the exemptions recognised by Reg. VIII of 1793. Consequently in each case the nature of the tenure and the conditions under which it is held is the primary question to be determined. Where the grants show that the rate of rent was fixed in perpetuity, it is unnecessary to rely upon the doctrine that fixity of rent may be presumed from uniformity of rent for a long series of years. (*Mukerjee and Cholmer, JJ.*). ABINAS CHANDRA DAS *v.* MAJUB ALI CHOWDHURY. **70 I.C. 273= 27 C. W. N. 328=36 C. L. J. 196= A.I.R. 1922 Cal. 461.**

———*In a suit for rent at enhanced rate on ground that tenant has been in occupation of more land than he has been paying rent for, plaintiff need not prove area of holding at inception of tenancy.*

In a suit for arrears of rent at an enhanced rate on the ground that the tenants are in occupation of more lands than those for which they have hitherto paid rent, it is not necessary for the plaintiff to prove the area of the holding at the time of the inception of the tenancy.

In order to determine whether the landlord is entitled to additional rent, the question which has to be solved is, whether the tenant is in occupation of land on which rent has not been assessed and

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for which he is bound to pay rent. The determination of this question may depend upon the consideration of a variety of circumstances. The tenant may be liable to pay additional rent, because since the date of the last assessment, he may have encroached on adjoining waste, or taken possession of accreted land. On the other hand, if he has not encroached upon the adjoining waste of his landlord or if no land has accreted to his holding, and if he is still in occupation of the holding which he held when rent was last assessed, he may be liable to pay additional rent, if it is proved that rent was not assessed at a consolidated sum upon the entire area then in his possession but upon an assumed area or upon an area determined by measurement as the area in his possession. (*Mookerjee, Ag.C.J. and Fletcher, J.*). DURGA PRIYA CHOUDHURI *v.* NAZRA GAIN. **62 I. C. 453= 25 C.W.N. 204=A. I. R. 1921 Cal. 345.**

———A suit for enhancement of rent proceeds on the admission that rent is now paid by the tenant to the landlord and asks for enhancement on any of the grounds mentioned in S. 30 of the Bengal Tenancy Act. A suit for the determination of a fair and equitable rent, on the other hand, proceeds on the assumption that no rent has hitherto been paid by the tenants.

Where the suit is a suit for the determination of fair and equitable rent, plaintiff cannot obtain in the suit a decree for enhancement of rent. (*Das and Bucknill, JJ.*). GOBIND LAL SIJUAR *v.* RAM SARAN LAL. **68 I.C. 433=2 P.L.T. 642= A.I.R. 1921 Pat. 435.**

———Change from grain to money rent or *vice versa* may be treated as an enhancement when the circumstances of the case and the evidence adduced admit of that being done. 23 C.L.J. 636, *Ref.* (*Oldfield and Seshagiri Iyer, JJ.*). PERICHERLA BUTCHIRAJU *v.* ADDEPALLI VENKATA MANGA SEETARAMAYYA. **59 I.C. 258=12 M.L.W. 86.**

—Rent—Excess area.

———There is a difference from one point of view between a case where the tenant asserts that the land encroached upon by him is a part of an admitted tenancy and cases where the tenant sets up a rent free title to the encroached land. The difference is that in one case the assertion means that rent is being already paid for the land and so more rent is not payable, and in the other that no rent is payable because the landlord is not entitled to realize any rent for the land. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. **93 I. C. 622=43 C. L. J. 387= A.I.R. 1926 Cal. 883.**

———In respect of excess lands in occupation of a tenant, the landlord is entitled to recover what is called back-rent; in other words, the landlord is entitled in any litigation to have an enquiry as to the exact area in the occupation of the tenant and the rent recoverable in respect thereof for the years in suit. 26 Cal. 739; 29 Cal. 247 and 21 C.L.J. 309, *Ref.* (*Mookerjee and Rankin, JJ.*). MANMATHA PAL CHOWDHURY *v.* SURENDRA NATH BOSE.

88 I. C. 162=40 C. L. J. 538= A. I. R. 1925 Cal. 463.

—Rent—Fixity.

———Where by the terms of a mukarrari lease the rent was fixed partly in money and partly in kind, the rent does not cease to be a fixed rent for the reason that the rent in kind had a fluctuating value. (*Ross and Chatterjee, JJ.*). KASHI PRASAD *v.* MAHABIR PRASAD. **11 Pat. L.T. 693.**

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——— *Where no enhancement is claimed for a century the inference is fixity of rent.*

Where a tenure has not been held from the time of the Permanent Settlement the landlord is *prima facie* entitled to enhancement of rent, unless there is anything to prevent him from doing so. 13 M.I.A. 248 (P.C.), *Rel. on.*

Where although the tenure had not been held from Permanent Settlement, in the document the word "putni" was used in respect of the taluk and it was stated that Regulation VIII of 1819 should be had recourse to for the purpose of recovering arrears of rent and although a long series of years extending to a century had elapsed when the value of the property had gone up at least 500 per cent. no attempt had been made during all this period to claim any enhancement of rent,

Held, a legitimate inference can be made that the original contract was that the rent should be fixed for ever. (*Sanderson, C.J. and B.B. Ghose, J.*). SARODA PROSAD PAKSARI *v.* UMASHANKAR SANYAL. **99 I.C. 258=44 C.L.J. 385= A.I.R. 1927 Cal. 168.**

———The fact that the holding has been held for a long period at a rent which has not been changed is a factor which must be taken into account while deciding the question whether the holding is held in perpetuity but the fact that the landlord may not have thought fit to enhance the rent for a period of years does not make the inference inevitable that the holding is held in perpetuity at a fixed rent. (*Greaves and Cuming, JJ.*). SATISH CHANDRA *v.* DEBERDRA NATH. **90 I.C. 820= A.I.R. 1926 Cal. 264.**

———Where it is admitted that the lands were originally held on varam tenure, it is for the tenants to prove a contract to adopt a fixed money rent. (*Phillips, J.*). DHARAM *v.* NAYAKKAR. **93 I.C. 14=23 M.L.W. 265=A.I.R. 1926 Mad. 539.**

———A person who is in possession of the watan lands as a tenant of the watandar cannot acquire a right by adverse possession to fixity of rent. A.I.R. 1923 P.C. 205, *Foll.*

Even if he were to acquire a right of fixity of rent as against the immediate holder of the watan that would not prevail against the next holder. (*Macleod, C.J. and Crump, J.*). VISHNU RAMCHANDRA *v.* TUKARAM GANU BOGAR. **87 I.C. 779=49 Bom. 526=27 Bom. L.R. 449= A.I.R. 1925 Bom. 375.**

———Where the inamdars in a Zamin village have been jointly paying for over 50 years a lump sum of Rs. 400 instead of kattubadi at a fixed rate, an implied contract to pay that sum by the inamdars may be inferred whatever might have been the right of the Zamindar originally.

The word "Kham" would seem to mean a rough account of the revenue due. (*Krishnan, J.*). RAMACHANDRA MARDARAJ DEO *v.* TUMBANATHA BEHARA. **76 I.C. 730=19 M.L.W. 49= A.I.R. 1924 Mad. 480.**

———Where variableness of *jumma* is the normal condition, the mere naming a sum certain in connexion with the grant of a descendible tenure does not import of itself fixity to that sum, in the absence of positive words, or of other evidence to show that such was the original design. 13 M.I.A. 270, *Foll.*; 19 W.R. 141 (P. C.), *Dist.* (*Chatterjea and Newbould, JJ.*). BISESWAR ROY *v.* BROJO KANTA. **62 I.C. 49=33 C.L.J. 296= A.I.R. 1921 Cal. 424.**

———The rent was fixed at the rate of 2 annas per bigha in 1866; on the discovery of additional lands in the possession of the tenants the excess area was assessed at annas 2 per bigha in 1881, and, finally, it was provided that if thereafter at any period, excess lands were discovered in the possession of the tenants, the excess area would be liable to be assessed at the rate of two annas per bigha.

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Held, that the rent was fixed in perpetuity at 2 annas per bigha. 47 Cal. 280 (P.C.), *Foll* (*Mookerjee and Panton, JJ.*). AMARNATH BHATTACHARJEE *v.* HRISHIKESH LAHA. **64 I.C 829=35 C.L.J. 138.**

———A tenant whose rent is fixed in perpetuity is a raiyat holding at fixed rates. (*N. R Chatterjea, and Panton, JJ.*). SATISH CHANDRA GHOSE *v.* UPENDRANATH HAZRA. **63 I.C. 592 (Cal.).**

—Rent—Implied contract.

———*The word "hajat" signifies a part of the rent kept in abeyance and the landlord has the option of realising it.*

A kabuliyat first set forth the jamagujasths to be Rs. 13-8-14¾ including hajat. It then stated: "I execute the dowl kabuliyat for a total jama of 13-8-14¾ including hajat . . . for the lands included within the boundaries described below, at 11-5 by keeping Rs. 2-3-14¾ as hajat" and "the aforesaid amount of Rs. 2-3 11¾ which is kept in hajat you shall include it within the talabjama whenever you please and you will realize the rent of Rs. 13-8-4¾."

Held, that the word "hajat" signified that the sum of Rs. 2-3-14¾ was kept in abeyance for some time and it was optional with the landlord to realize the sum of Rs. 2-3-14¾ at any time he liked as a part of the talabjama. On the continuation of the kabuliyat, therefore, the hajat was a part of the rent, and it could be realized as such whenever the landlord desired to do so. A.I.R. 1927 P.C. 250, *Ref.*; 22 C.W.N. 904, *Dist.* (*Mitter, J.*). JITENDRA NATH ROY *v* TEJARAT MEA. **118 I.C. 363= 32 C.W.N. 1240.**

———Where a particularrate of rent has been paid for a number of years, and there is no evidence showing increase, the presumption is that the rate paid for many years is the rate contracted for by the parties. (*Curgenven, J.*). ANDI MOOPAN *v.* MOHIDEEN MEERA BIVI. **98 I. C. 882= A. I. R. 1927 Mad. 226.**

———In general where the relationship of landlord and tenant exists, without any arrangement for the payment of rent properly so called, there is always an implied promise on the part of the tenant to compensate the landlord for use and occupation of the premises. The relationship has been sometimes called in English law a *quasi-tenancy* and that law always implies a contract or promise by the occupier to pay the landlord a reasonable sum for use and occupation. In Bengal and Behar the conditions are special and the law implies a contract to pay not compensation but rent. (*Mullick and Ross, JJ.*). RAM GOBIND *v.* SHASHI SEKHAR. **88 I.C. 959=6 P.L.T. 849= 1925 P.H.C.C. 153=A.I.R. 1925 Pat. 517.**

—Rent—Interest.

———Where a permanent raiyati holding was sold in execution of a decree for arrears of rent, but in the sale processes no indication was given of the stipulation about interest on arrears of rent as stipulated in the kabuliyat,

Held, that the auction-purchaser is not liable to pay the rate of interest stipulated in the kabuliyat as it is not an ordinary incident of tenancy of which the auction-purchaser can be presumed to

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have knowledge. *Case-law discussed.* (*Suhrawardy and Duval, JJ.*). SASHI MOHAN *v.* MEAJAN HAJI. **90 I. C. 570=A.I.R. 1926 Cal. 255.**

———Where a putni was sold for arrears and was purchased by a third party and the defendants amicably settled the question of mesne profits with the purchaser and the defendants had actually realised rents from the tenants for the year 1323 by means of rent suits as appeared from the rent-decrees produced in the case, the plaintiff zamindar was entitled to get interest on the rent for the year 1323. (*N.R. Chatterjee and Chotzner, JJ.*). BIJOY CHAND MOHATAB *v.* KHOKA SINHA.

84 I.C. 425=40 C.L.J. 97=A.I.R. 1924 Cal. 1059.

———If a tenant executes a kabuliyat agreeing to pay interest on arrears of rent at a certain rate, the landlord is entitled to recover interest at that rate even though there is a finding that the rate is penal and hard and unconscionable. (*Newbould and Abdul Majid, JJ.*). TARA PROSANNA BHATTACHARJEE CHOWDHURY *v.* NAZIR MAMUD SARDAR. **61 I.C. 345 (Cal.).**

—Rent—Interpretation

———Tirwa is the share of the rents payable to Government and swamibhogam the revenue derived from the tenants or occupiers over and above what was necessary to pay the tax. (*Lord Salvesen.*) SUBRAMANYA CHETTIYAR *v.* SUBRAMANYA MUDALIAR. **116 I.C. 601=31 Bom. L.R. 830=33 C.W.N. 734=30 M.L.W. 30=56 I.A 248=52 Mad. 549=1929 M.W.N. 561=A.I.R. 1929 P.C. 156=57 M.L.J. 1 (P.C.).**

—Rent—Liability.

———The mere fact that the tenant has not paid any rent after the execution of the kabuliyat does not go to show that the kabuliyat has not been acted upon nor would it absolve him from his liability to pay rent under it. (*Mukerji and Mullick, JJ.*). ISAB *v.* GURU CHARAN SHAHA. **49 C.L.J. 372=A.I.R 1929 Cal. 431.**

———The landlord's right to recover rent must be determined on the status of the defendants. If the defendants are tenants of the holding and do not profess to claim any higher title than that of a tenant they are liable to pay rent. (*Suhrawardy and Jack, JJ.*). CHIRANJIB SEN *v.* MOHENDRA NATH. **115 I.C. 518=32 C.W.N. 1238=A.I.R. 1929 Cal. 90.**

———Kattubadi is in the nature of rent and interest only at 6 per cent. ought to be allowed on arrears of Kattubadi, the policy being only to award 6 per cent. interest on all arrears of rent. The purchaser of a definite extent from one of the agraharamdars is not liable for the entire Kattubadi to the Zamindar jointly and severally with the owners of the remaining portions of the agraharam. His liability rests only on the privity of estate and is limited to the proportionate share due on the portion he purchased. (*Ramesam, J.*). SREE RAJAH VENKATARAMAYYA APPA RAO BAHADUR *v.* SURYANARAYANA. **115 I.C. 351=29 M.L.W. 600=56 M.L.J. 273.**

———A settlement entry itself is no evidence of title. Where, therefore, a land has been given by family arrangement to a certain person for maintenance muafi khairati, a note by the Settlement Officer in the wajib-ul-arz, during the lifetime of such person that the land will be according to the condition of wajib-ul-arz until the village is held by the then malguzar or his descendants, does not prove that a perpetual rent-free grant was made and the landlord is entitled to recover rent from

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the heirs of the person. 13 N.L.R. 179, *Dist.* and 15 C.P.L.R. 9, *Rel. on.* (*Staples, A.J.C.*). MAHASINGA *v.* MANSINGA. **118 I.C. 55=A.I.R. 1929 Nag. 83.**

———When once the relationship of landlord and tenant is established, may be even by a consent decree, the tenant becomes liable for subsequent rents unless there is a change of position by an agreement or by operation of law or in some other valid way. A.I.R. 1923 P. C. 88, *Dist.* (*Adami and Chatterji, JJ.*). DEO LAL *v.* BINDESHWARI NARAYAN. **120 I. C. 776=10 P.L.T. 469=A.I.R. 1929 Pat. 450.**

———Per *Reilly, J.*—The liability of the assignee of a lease-hold by reason of privity of estate to pay rent to the landlord arises with the assignment to him and ceases with the re-assignment by him and the liability and the privity extend to the whole of the premises covered by the assignment and no further. On principle the assignee of a lessee tenant-in-common must be liable for the whole of the rent of the property to which his tenancy-in-common relates (*Ramesam and Reilly, JJ.*). MUSAFKANNI RAVUTHAR *v.* DORAISINGAM. **105 I.C. 179=26 M.L.W. 288=A.I.R. 1927 Mad. 931=54 M.L.J. 30.**

———Where a tenant dies, the liability of his heirs for rent is joint among themselves and a suit for rent cannot be maintained against some only of the heirs. (*Das and Ross, JJ.*). HIRDAY NARAIN SINGH *v.* JUGAL PRASAD SINGH. **97 I.C. 373=8 P.L.T. 201=A.I.R. 1927 Pat. 2.**

———*Transferee landlord's remedy for rent lies against the lessee of the transferrer landlord.*

One *W*, an owner of a piece of land, mortgaged it with *N*. He also gave a lease of the same land to one *G*. *N* sued on his mortgage, but did not make *G* a party. After foreclosing the mortgage *N* gave a lease of the land to *H* whose peaceful possession was interrupted by *G*. *H* then sued both *N* and *G* and it was held that *G's* lease was good. The Court awarded to *H* damages against *N*. *N* sued *H* for arrears of rent for the year for which *H* had appropriated some of the crops,

Held, *N* can obtain his rent if he chooses from *G*, *N* cannot be entitled to two rents and once *G* successfully asserted his title as lessee in the former suits, the contract of landlord and tenant between *N* and *H* fell through. (*Mitchell, A.J.C.*). NARSINGDAS LAXMI NARAYAN *v.* SHEIKH HUSSAIN. **96 I.C. 961=A.I.R. 1926 Nag. 495.**

———Where, after the defendants left the premises at the unqualified disposal of the co sharer landlords after giving due notice of relinquishment, one of the co-sharers allowed the other to take possession of the whole, the defendants, cannot in law be held responsible for his neglect and are not liable for rent or damages. (*Moti Sagar, J.*). RAM GOPAL BHAGWAN DAS *v.* PREMESARI DAS. **78 I.C. 570=6 L.L.J. 197=A.I.R. 1924 Lah. 475.**

———*The lessee is liable for the rent when the landlord has not obstructed him for taking possession.*

Where the lessor has evicted the lessee from a part of the land demised the entire rent is suspended. 19 C.W.N. 871, *Foll.*; 33 Mad. 499, *Dist.*

But where facts indicate an intention that the liability of the defendant lessee to pay a rent for land which was in his possession already did not depend upon the delivery of possession of the other land which was in the possession of another and where the plaintiff-landlord never put any obstruction in the way of defendants recovering possession

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and there is no question of *mala fides* on the part of the plaintiff, the entire rent should not be suspended and the defendant is liable to pay proportionate rent in respect of the land in his possession. (*Chatterjee and Pearson, JJ.*). NAGENDRA CHANDRA LAHIRI *v.* SIR MANINDRA CHANDRA NANDI. **67 I.C. 800=49 Cal. 1019=26 C.W.N. 826=A.I.R. 1922 Cal. 153.**

———A tenant can be made to pay rent on dry lands wilfully left waste. 23 M. L. T. 183, *Foll.* and is also liable to pay wet rents at the highest neighbouring waram rent, when dry crops are raised on wet lands when there is a sufficiency of water in the irrigation source for raising wet crops. 40 Mad 640, *Foll.* (*Spencer and Ramesam, JJ.*). KOTHANDRAMA REDDIAR *v.* CHINNASWAMI REDDI. **64 I.C. 740=14 M.L.W. 618=A.I.R. 1921 Mad. 412=41 M.L.J. 455.**

———If a tenant holding both cultivated and uncultivated land, the latter under a grove tenure, is ejected from the cultivated portion he must pay proportionate rent for the remainder. (*Kanhaiya Lal, A.J.C.*). THAKURAIN GIRRAJ KUNWAR *v.* CHANDRA SEKHAR. **60 I.C. 462=7 O.L.J. 657=2 U.P.L.R. 198.**

—Rent—Non-payment.

——— *Measure of damages—Interest.*

Where the *kabuliyat* provided for cash as well as produce rent and it was also fixed at what rate damages were to be paid for non-payment of the rent in kind,

Held, that if it is proved that the tenant had not the things in kind he should be rendered liable only at the rate fixed in the *kabuliyat* and not at the market rate,

Held, further, that the tenant was entitled to recover interest on the value so ascertained. (*S. K. Ghose, J.*). BISHNU MONDAL *v.* CHARU CHANDRA CHATTERJEE. **52 C.L.J. 179.**

———Non-payment of rent for a long period will not raisean irrebuttable presumption that the tenant held the plots under a rent-free grant. (*Mohiuddin, A.J.C.*). KAMPTA PRASAD *v.* RAMASARAN SINGH. **117 I.C. 287=A.I.R. 1929 Nag. 123.**

———*Mere non-payment of rent for over* 12 *years does not extinguish landlord's right to recover rent.*

The plaintiffs were in actual physical possession of suit lands as tenants without payment of rent to the landlord for more than 12 years. The contention was that the plaintiffs had acquired a rent-free holding by operation of law,

Held, that as there was no allegation and no evidence that the plaintiffs ever refused to pay rent to the landlord, or asserted in his presence a right to hold the lands rent-free, the mere failure of the landlord to realize rent even for more than 12 years would not confer a rent-free title. A rent-free title can be only acquired by adverse possession. 16 C. W. N. 235, *Dist.* (*Ross and Allanson, JJ.*). SHEO NANDAN SINGH *v.* KESHO PRASAD SINGH. **104 I. C. 124=8 P. L. T. 798=A.I.R. 1928 Pat. 63.**

———If a tenant pays no rent, it does not follow therefrom that he is in adverse possession. (*Zafar Ali, J.*). LAL SING *v.* WADHAWA. **100 I.C. 73=A.I.R. 1927 Lah. 759.**

———The mere fact that the putnidar has not paid rent for more than 12 years would not give him a right by adverse possession to hold the land without paying rent. To claim exemption it is essential that he should have for more than 12 years, and to the knowledge of the landlord, asserted his right to hold the lands without payment of rent.

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(*Suhrawardy and Cuming, JJ.*). PRYAMBADA DEBI *v.* MONAHAR MUKHOPADHYA. **86 I.C. 781=29 C.W.N. 328=52 Cal. 576=A.I.R. 1925 Cal. 651.**

———Mere length of enjoyment without payment of rent does not under ordinary circumstances, affect either the relationship of landlord and tenant or the latter's liability to pay to the former what is due to him on account of the assessed rental. (*Kinkhede, A. J. C.*). KHUBCHAND *v.* MULLOO. **89 I.C. 741=A.I.R. 1925 Nag. 452.**

—Rent—Objections.

——— The tenant is not precluded from objecting to collection of illegal rent, by his past acquiescence.

A claim for rent is a recurring claim and it is open to the tenant at any time to take an objection on the ground that the claim contravenes the provisions of the law. (*Dawson Miller, C. J. and Mullick, J.*). W.H. MEYRICK *v.* DIPA PANDEY. **84 I.C. 361=6 P.L.T. 537=3 Pat. 825=A. I. R. 1925 Pat. 185.**

—Rent—Patni lease.

———The grant of a putni connotes that the rent is fixed. 24 C.W.N. 874, *Dist.* (*Sanderson, C. J. and B.B. Ghose, J.*). SARODA PROSAD PAKSARI *v.* UMA SHANKAR SANYAL. **99 I.C. 258=44 C.L.J. 385=A.I.R. 1927 Cal. 168.**

———In the absence of any contract to the contrary it is correct to say that in passing a decree for rent of a patni tenure the Court is not entitled to direct that the defaulting tenure or holding should first be sold and the balance realized from other properties of the defendant, but where the parties have contracted that properties should be sold in a certain order and such contract is not contrary to the provinsions of law the Court should give effect to it. 26 Cal. 103, *Dist.* (*Suhrawardy and Cuming, JJ.*). MANMOHAN SAHA CHOWDHURY *v.* SARIFANNESSA CHOWDHURANI. **87 I.C. 120=A.I.R. 1925 Cal. 1131.**

—Rent—Payment.

———Where a sum is fixed as payable by the tenant in lieu of paddy to be delivered by him as rent, unless there is a strong indication that this money value was placed for some other purpose than that of giving the tenant a choice either to pay money or deliver the paddy, it must be taken that the tenant has the choice either to pay money or to deliver paddy as stipulated. It cannot generally be asked by the landlord that the tenant is bound to pay the present market value of the paddy if he does not deliver the paddy as rent in kind. (*B. B. Ghose and Roy, JJ.*). SAROJ BANDHU *v.* MOTI LAL. **105 I.C. 756=A.I.R. 1928 Cal. 112.**

——— Where parties agree to a certain amount of rent in respect of certain past years, and one of the parties continues to retain the land, it must be deemed that he retains it on the condition of paying a similar rate of rent in future. (*Kanhaiya Lal and Ashworth, JJ.*). PANNA LAL *v.* ROSHAN LAL. **98 I.C. 146=A.I.R. 1927 All. 109.**

———Where the rents were paid according to the Bengali months,

Held, that the tenancy was one which was regulated by the Bengali months in the absence of any proof to the contrary. (*Rankin, C. J. and C. C. Ghose, J.*). KESORAM PODDAR *v.* BINAMALI DAY. **103 I.C. 93=45 C.L.J. 249=A.I.R. 1927 Cal. 941.**

———*Recognised heirs are bound to pay rent and cannot set up right of other heirs of deceased tenant.*

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On the death of a raiyat it is no doubt the duty of the landlord to recognize all the heirs of the deceased tenant as representing the whole body of the tenants, but it cannot be said that it is not also the duty of the heirs after the death of a raiyat to appear before the landlord and get themselves recorded as tenants in the place of their deceased ancestor. It is not unusual in this country, that on the death of a Muhammadan raiyat only the sons who are in possession of the jote, seek for recognition from the landlord as the representatives of the deceased raiyat, in the jote when the daughters of the raiyat who have been married to different families, have left perhaps the village and do not care to possess their shares of the jote and make themselves liable for the rent thereof. In such a case the landlord is entitled to record as his tenants those who take possession of the jote and apply to be recorded as representing the deceased raiyat; when that is done, it is done at the instances both of the landlord and the heirs of the raiyat who take possession of the land and appear before the landlord for recognition as representatives of the deceased jotedars. It is true that such a recognition by a landlord only of the heirs in possession does not in any way affect the rights of the absent heirs. But until such an heir asserts her rights the raiyats who have paid rent after their recognition cannot after years of such payment turn round and set up the right of the absent heirs of the deceased raiyat, who had never been in possession and never cared to appear before the landlord for recognition as one of the heirs. (*Cuming and Chakravarti, JJ.*). ADHAR CHANDRA *v.* ABDUL RAHAMAN. 91 I. C. 656= A.I.R. 1926 Cal. 764.

———Payment of an amount without objection for long time does not preclude question of legality in subsequent suit. 31 Cal. 894, *Foll.* (*Newbould, J.*). ABDUL KARIM CHOWDHURY *v.* PROSANNA KUMAR NATH. 88 I.C. 770= A.I.R. 1925 Cal. 1116.

———*Presumption applies if tenant has held at uniform rate for 20 years before suit—Actual payment of rent is not necessary.*

In order that the presumption under S. 50 (2) of the Bengal Tenancy Act might apply. It is not necessary that the tenant should establish actual payment of rent during the 20 years at a uniform rate; he has to establish that he and his predecessors-in-interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the suit or proceeding. This involves a real distinction for a person may hold as a tenant even though he does not actually pay the rent agreed upon to his landlord. There may be cases in which a ryot might not have paid his rent for many years prior to the institution of the suit for enhancement. But if there has been no change in the rent payable by him he is not to be deprived of the presumption which the law has expressly laid down for his benefit. Omission to pay rent on behalf of the tenant or refusal to receive rent on the part of the landlord does not cause cessation of the tenancy. 11 W.R. 432; 19 W.R. 100; 27 C.L.J. 281; 18 C.L.J. 76; 1 W.R. 45; 5 W.R. Act X 12; 6 W.R. Act X 89; 7 W.R. 407; 8 W.R. 488, *Foll.* (*Mukerjee, Newbould and Pearson, JJ.*). MOHINI KANTA SAHAI CHOWDHURY *v.* PREONATH NEOGI. 67 I.C. 381=49 Cal. 661= 35 C. L. J. 309=A.I.R. 1922 Cal. 141.

———Where from the contracts between the parties it was clear that the consideration for the occupation of land was rent in cash and the price of certain quantities of paddy or ghee or both and these items were to constitute the whole rent payable by the defendants, and the price of paddy and ghee was not in any case intended to be an imposition independent of the rent of the land leased by the landlord.

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Held, the amounts claimed for ghee and paddy were part of the total rent of the land and not *abwab* to which objection could be taken. (*Mullick and Atkinson, JJ.*). SADANAND TEWARI *v.* DEB NATH MANJHI. 1922 P.H.C.C. 154=A.I.R. 1922 Pat. 184.

———A tenant agreed by a *kabuliyat* to pay 60 *aris* of paddy as rent and in default the landlord would be entitled to realise the price 'as stated above,' *i.e.*, Rs. 15. In a suit for the money equivalent of the rent,

Held, that the landlord could recover Rs. 15 only and not the market value. In such contracts whether market-value should be taken or merely the money fixed in the agreement, must be ascertained from the terms of the *kabuliyat* by giving it its most ordinary and natural meaning. (*Sanderson, C.J. and Richardson, J.*). HAMID ALI *v.* RAM KUMAR. 62 I.C. 639 (Cal.).

———The Court is not bound to presume an agreement and consideration for payment of higher rent by reason of mere usage established by long continued payment thereof. (*Sadasiva Iyer and Spencer, JJ.*). RAJA OF RAMNAD *v.* GNANAMUTHU BOTHAGAR. 69 I.C. 535= 1921 M.W.N. 789=A.I.R. 1921 Mad. 386= 41 M.L.J. 495.

—Rent—Rate of.

———*Landlord is not entitled to value paddy at current rate but at rate fixed in the patta.*

After stating that the rent will be payable in cash and in paddy the patta provided that if for an unavoidable reason tenant was unable to pay the paddy its market price at the rate of Rs. 4 per pali should be paid. The amount fixed was Rs. 34-5-0. The total price of the paddy together with road and public works cesses amounting to Rs. 50 were to be paid according to certain kists. In a suit for rent landlord claimed market price prevailing on the date of the suit for non-delivery of paddy.

Held, that the landlord was not entitled to claim the value of paddy at its market price but at its price stated in the patta.

Held, further that the fact that no unavoidable reason was pleaded was quite immaterial because it was too vague for any Court of Justice to take cognizance of. (*B. B. Ghose and Roy, JJ.*). BANGSHIRAM MANDAL *v.* PRASANNAMOYI DEBI. 106 I.C. 25=55 Cal. 874= A.I.R. 1928 Cal. 166.

———In a suit to recover rent which was bhaoli for a certain year, the appellate Court, instead of considering the plaintiff's papers on their own merits, contrasted the rates disclosed by these papers with the commuted rate and, finding that there was a great discrepancy between them, held that the plaintiff's claim was unreliable,

Held, that the commuted rate is not the criterion for the produce of any particular year and the standard adopted by the Court was not a correct standard. (*Das and Ross, JJ.*). BHUNESHWARI KUER *v.* NUMESHWAR SINGH. 111 I.C. 479= 9 P.L.T. 294=A. I. R. 1928 Pat. 353.

———Where the rent was excessive and contrary to law at the time it was fixed, the law applicable would be the law of the time when the tenant was

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admitted to the tenancy even though the law is subsequently changed. (*Dalal, J. C.*). RAMASREY *v.* QUBAL AHMAD. **90 I.C. 103= A. I. R. 1926 Oudh 183.**

———*When dry and garden lands are irrigated with tank water with landlord's permission, the rate to be charged is not the wet rate.*

In a case in which dry and garden lands were irrigated with tank water with the landlord's permission, both the Courts concurred in holding that Rs. 6 per acre the highest wet rate levied by Government in the district—was the reasonable amount of compensation to be paid by the tenant, and in fixing that amount,

Held, that the law was not that the wet rate was the proper rate to fix for such lands, and that the Courts below were perfectly justified in holding that to award a reasonable compensation was the proper method of fixing the rate chargeable.

Held, that the Courts below were right in ordering the omission from the patta of a provision for payment of a certain cess to the village servants and not to the landlord. (*Phillips, J.*). KONDAGUNTA MRUTYANJALAH *v.* MALLE VENKATAPATHIGADU. **90 I. C. 834=22 M.L.W. 734= 49 M.L.J. 333.**

———A landlord is bound by the statement in a sale proclamation as to the rate of rent in respect of a tenancy advertised for sale under a decree for arrears. If the sale proclamation is not forthcoming, the sale certificate would serve as a secondary evidence of the same. (*Mookerjee, Ag. C. J. and Fletcher, J.*). MIDNAPORE ZEMINDARI CO. *v.* ENATULLA SARKAR. **62 I.C. 60 (Cal.).**

—Rent—Receipt.

———*The grant of receipts by a Collector of rents does not amount to transfer of holding.*

The authority to collect rent does not carry with it the authority to grant rent-receipts. The question is not of technicality, but of substance. "An authorised agent" for the purpose of granting rent receipts differs widely from a collecting peon. It is not within the scope of the authority of a rent collector to consent on behalf of his master to the transfer of an occupancy holding. That is an important act to be performed only by a person having some at least of the powers of a manager. Landlords would be in a very difficult position if it were held that Patwaris and other underlings should be presumed till the contrary is shown; to have the power to sign away their master's rights. A person who has conveyed his proprietary interest to another person but whose name is still borne on the Collector's register, by giving a rent-receipt cannot recognize a person as having a right of occupancy in the land who otherwise had no such right.

Per *Adami, J.*—A recognition by a landlord to be effective in favour of a tenant must be clear and certain. 1 P.L J. 414; 2 P.L.J. 231, *Russo Chinese Bank* v. *Li Yau Sum*, (1910) A. C. 174, *Foll.* (*Dawson-Miller, C. J., Das and Adami, JJ.*). BHONU LAL CHOWDHURY *v.* W. A. VINCENT. **65 I.C. 882= 3 Pat. L. T. 653= A.I.R. 1922 Pat. 619.**

———The grant of receipts by a Patwari does not amount to recognition of a transfer of a holding. But where the landlord knows about the Mokarrari and that he is entitled to avoid it but instead of avoiding it he allows his Patwari to collect rent from the Mokarraridar, he must be held to be bound by the fact that for many years the receipts were granted to the Mokarraridar by the landlord's

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Patwari and to have recognised the Mokarraridar. 1 P.L.J. 414, *Dist.* (*Coutts and Sultan Ahmad, JJ.*). SRI RADAKRISHNAJI *v.* SUKH NANDAN SINGH. **2 P.L.T. 1= A.I.R. 1921 Pat. 421.**

—Rent—Remission.

———Where the tenant is evicted or is not secured in his possession of part of leased property the tenant is only entitled to a remission of rent and is not entitled to refuse to pay any rent at all or to throw upon the landlord the burden of proving what rent was payable to him. Ordinarily there would be a proportionate reduction of rent according to area unless one side or the other shows that the lands lost possession of were either of superior or inferior quality when that factor would have to be taken into consideration in ascertaining the proportion. (*Krishnan and Ramesan, JJ.*). SURYANARAYANA RAJU *v.* RAJAH OF TEKKALI. **69 I C. 517= 17 M.L.W. 94= 1923 M.W.N. 189= A.I.R. 1923 Mad. 459.**

—Rent—Rent free.

———Where in a suit for rent the landlord fails to show that he has ever taken rent from the tenant for the holding the Court is entitled to presume a rent free grant. 2 U. P. L. R. 58, *Foll.* (*Courtney-Terrell, C.J. and Chatterji, J.*). JODHA SAHU *v.* TIRBENA SAHU. **A.I.R. 1929 Pat. 748.**

———The existence and regular use of the "ghat" for a long time proves conclusively that it had its origin in an express grant or permission from the Malguzar. On that it might even be possible to say that the defendants are occupancy tenants of that part of the bed of the river covered by their "ghat," paying no rent for it though the definition of "tenant" in the Tenancy Act was certainly meant to refer only to land held and used for agriculture or purposes subservient to it. But anyhow they are at the least licensees of the land, with a right granted to them by the owner to remain in possession of it free of rent as long as they use it as a ghat. (*Hallifax, A.J.C.*). MANSARAM *v.* LUNGRAJI. **107 I.C. 660 (Nag.).**

———*The two classes of muafi kairati tenant.*

A man may be entitled to hold certain land free of rent as long as he performs certain services, both tenure and exemption being dependent on the services and ending with them. That is one class of Muafi khairati tenant. In the other are persons entitled to hold lands as tenants with an added condition that they shall pay no rent as long as they perform certain services, the exemption but not the tenure being dependent on the services and ending with them.

The entry in the *wajib-ul-arz* drawn up in 1910-11 ran: *Ta chakari mof malguzar kaniji naukar hai* (Rent free during service. He is the private servant of the *malguzar*),

Held, he must therefore give up on ceasing to render service, the land, which he is entitled to hold only so long as he does render those services. (*Hallifax, A.J.C.*). BED PRASAD *v.* KANGALU. **67 I.C. 305= A.I.R. 1923 Nag. 163.**

—Rent—Right to.

———The general law allows a landlord to recover rent from every one shown to occupy land within the ambit of his Zamindari. (*Das and Kulwant Sahay, JJ.*). STONEWIGG *v.* KAMESHWAR NARAYAN. **11 Pat. L.T. 444= A.I.R. 1930 Pat. 340.**

———Where there is a tenancy and that tenancy is an indivisible one in which a lump sum for rent is to be paid in respect of the whole of the demised premises, if the landlord interferes with the due enjoyment of the premises or of any part thereof

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by his tenants by evicting them therefrom, it is not open to the landlord to assert that any portion of the rent is payable in respect of any portion of the premises. (*Page and Mallik, JJ.*). DHIRENDRA NATH ROY *v* BHABATARINI DEBI.

119 I.C. 297=33 C.W.N. 367=A.I.R. 1929 Cal. 395.

———A tenant cannot refuse to pay the rent, because the landlord for a number of years made no claim for rent for the land occupied by the tenant. (*Mohiuddin, A.J.C.*). KAMPTA PRASAD *v.* RAMASARAN SINGH. **117 I.C. 287= A.I.R. 1929 Nag. 123.**

———A malguzar of a village is entitled to recover rent from a person in possession of the land in the absence of proof of rent free grant. 15 C.P.L.R. 9, *Foll* (*Staples, A.J.C.*). MAHASINGA *v.* MANSINGA. **118 I.C 55=A I.R. 1929 Nag. 83.**

———The claim of the landlord on the produce of the tenant for his rent is not strictly speaking a lien, because the produce is not in landlord's possession, A.I.R 1925 Rang. 336, *Not appr.* (*Brown, J.*). MG. PO LWIN *v.* MG. SIN HAN.

116 I.C. 478=7 Rang. 100= A.I.R. 1929 Rang. 93.

———A mortgagee purchasing the mortgaged property at a Court-sale and put into possession after confirmation of sale, is entitled to the whole of the grain rented from the land which falls due at the end of the agricultural year in which he makes the purchase. The original landlord is not entitled to apportionment. But where the landlord has equities in his favour or in the case of rent accruing monthly he will be entitled to apportionment. (*Lentaigne, J.*). U KYAN ZAN *v.* AH DOE.

84 I.C. 77=3 Bur. L J. 151=A.I.R. 1924 Rang. 365.

———There is no authority for the proposition that where a lease is determined before its expiry the lessor is necessarily entitled to recover an exact proportion to the period for which the lease had run irrespective of the other considerations. (*Leslie Jones and Wilberforce, JJ.*). KIRPA RAM *v.* STATE OF JAMUNA. **3 L.L J. 120= A.I.R. 1921 Lah. 288.**

—Rent—Sale.

———In order to attract the provisions of Ch. 14, Ben. Ten. Act, it is necessary that the decree-holder should hold the position of a landlord not merely at the time of the decree but also at the time of an application for execution. A.I.R. 1914 P.C. 111, *Foll.*; 25 C.L.J. 626, *Dist.*

Where a landlord has sold his superior interest of an occupancy holding, a subsequent sale of that holding in an execution of a decree for rent of that holding merely conveys right, title and interest of the tenant and not the tenancy. (*Cammiade and S.K. Ghose, JJ.*). RAHIMUDDI *v.* CHADAN.

117 I.C. 686=32 C W.N. 1060= A.I.R. 1928 Cal. 768.

———A landlord may look for his rent from only the registered tenant, but when he proceeds to sell the tenancy it must be considered whether the registered tenant represents the interests of non-registered tenants also (*Cuming and Roy, JJ.*). SAMSENNESSA BIBI *v.* RAHIM PRAMANICK.

104 I.C. 619=A.I.R. 1927 Cal. 900.

———It is not the law that a landlord in every case is entitled to regard as his tenants only those persons whose names are recorded as such in his sherista, and to disregard the interest of co-sharer tenants whose names are not so recorded, but are recorded in Record-of-rights. Whether or not he may do so depends upon the circumstances of each case.

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There is no law which renders it obligatory upon the tenants who are not tenure-holders to get their names recorded in the landlord's *sherista* and, therefore, a sale of a jote in execution of a decree for rent obtained against recorded tenant only does not pass the interest of other tenants not made parties. (*Cuming and Page, JJ.*). KHAYERUNNISA BIBI *v.* FAZAR ALI. **97 I C. 755= A.I.R. 1927 Cal. 25.**

—Rent—Suit for.

———After the dismissal of a suit for ejectment on the ground of limitation, the zamindar brought the present suit for arrears of rent. The defendant's name was entered in the Record-of-Rights as the holder of an *istimirari mukarrari* tenure and the defendant admitted in the box that he was a permanent mukurraridar,

Held, the defendant was bound by his admission and liable to pay the *mukarrari* rent. (*James and Chatterji, JJ.*). SUBA SINGH *v.* KAMAKHYA NARAYAN SINGH. **11 Pat. L.T. 179.**

—Rent—Suit for—Co-sharer.

———In a rent suit by a co-sharer landlord wherein the other co-sharer landlords have not been made parties, it is necessary for the plaintiff to establish that the tenants agreed to pay his rent separately to him. (*Das and Wort, JJ*). RAMDAS SINGH *v.* RAMPAKUR SINGH. **106 I.C. 835= 8 P.L.T. 812=A. I. R. 1928 Pat. 119.**

—Rent—Suit for—Court's duty.

———Where a rent suit was not contested by the defendants at all, although they were fully aware of all the proceedings that were taking place and where the proceedings were not questioned for several years,

Held, that in such circumstances the Court should look, not so much to the outward form of the proceedings in the suit as to the substantial justice of the case, to see if the tenancy was or was not adequately represented in the rent suit. *Case-law referred.* (*Mukerjee and Panton, JJ.*) SARAT CHANDRA MAITI *v.* BIBHABATI DEBI.

66 I.C. 433=24 C.L.J 302=A.I.R. 1921 Cal. 585.

—Rent—Suit for—Damages.

———If rent is claimed and only damages by way of rent are permissible these can be allowed and decreed, where rent is mentioned in the lease, such rent will be the measure of damages though the lease may be inadmissible in evidence on account of its not being registered. 41 C. 347 and *De Medina* v. *Polson*, (1815) Holt N. 47, *Ref.* (*Addison, J.*). JAWAHRI MAL *v.* JAGAN NATH.

A. I. R. 1930 Lah. 915.

—Rent—Suit for—Defence.

———As to whether the full consideration for the assignment did or did not pass is matter which is not available to the lessee as a defence in a suit for arrears of rent by an assignee of the lessor. This is a matter which concerns the assignor and the assignee only. (*Fforde and Bhide, JJ.*). SANT RAM *v.* NARAIN DAS. **121 I.C. 66= A. I. R. 1930 Lah. 442.**

———Against the covenant to pay the rent, eviction by title paramount is a good defence and to constitute it three conditions must be fulfilled. The eviction must have been from something actually forming part of the premises demised; the party evicting must have a good title and the tenant must have quitted against his will. (*Cuming and Mukerjee, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA. **112 I. C. 172=55 Cal. 1013= 47 C.L.J. 387=32 C.W.N. 859=A.I.R. 1929 Cal. 22.**

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———Where the lease was for the land in actual possession of the lessee and it was also provided that the lessor was entitled to charge rent in proportion to land in actual possession.

Held, that a suit for rent was bad not for non-inclusion of other lands, and the landlord's failure to give possession of the other lands was no defence to the suit. (*Rankin and Page, JJ.*). GURU CHARAN *v.* PORT CANNING & LAND IMPROVEMENT CO., LTD. **A.I.R. 1928 Cal. 245.**

———Eviction by a title paramount is a good defence in a suit for rent but the party evicting must have a good title. (*Chatterjee and Newbould, JJ.*). KRISHNA KUMAR SHAHA ROY *v.* PIRU FAKIR. **63 I. C. 502=35 C.L.J. 159= A.I.R. 1922 Cal. 273.**

—Rent—Suit for—Dismissal.

———Suit by a landlord or his thekadar for arrears of rent against the occupancy tenants is not bad even if it did not implead persons in whose favour the holdings were mortgaged by the tenants or their ancestors. (*Raza, J.*). RAM RATAN SINGH *v.* BIPEN CHANDRA CHATERJI. **112 I. C. 436= A I.R. 1929 Oudh 116.**

———A rent suit based on *kabuliyat* cannot be dismissed for defect of parties when all the executants of the *kabuliyat* are before the Court. (*Newbould and Panton, JJ.*). HOSENJAN CHOUDHURI *v.* MAHAFEDJUDDIN. **62 I.C. 619 (Cal.).**

—Rent—Suit for—Essential.

———In order that a suit can be a suit for rent, there must be a lessor and a lessee, and that involves the existence of an agreement to give out the land on one side and to take it on the other side. (*Stuart, C.J.*). RAM LAL *v.* BADAL KHAN. **106 I. C. 491=3 Luck 282=1 L.C. 663= A.I.R. 1928 Oudh 99.**

—Rent—Suit for—Estoppel.

———*Tenants pleading permanent and hereditary* istimrari mukarrari *and not claiming land rent free —In subsequent suit for rent tenant pleading adverse possession on basis of notice to quit served before previous ejectment suit—Tenant held estopped from raising that defence.*

In suits for rent the defendants were the successors of the grantees of *istimrari mukarari* leases of the properties in suit from the predecessors of the plaintiff. The leases were leases for life only. For a number of years after the death of the original grantees their successors continued to pay the rent and they got receipts from the plaintiff's predecessors in the name of the old lessee. Eventually they declared that they would pay no more rent unless they were recognized as permanent tenure holders. In this way payment of rent ceased in the year 1900 ; and in 1904 the tenants applied for mutation of their names in the landlord's papers. In 1904 notice to quit was served upon them without effect; and this notice was repeated in 1915 and 1917. Subsequently a suit in ejectment was filed in 1919 which failed on account of Art. 139, Lim. Act. There in that suit the defendants never claimed to hold land free of rent, but had always taken the position that they were permanent tenure holders. It was contended by them that the notice to quit served on them put an end to tenancy in 1904 and since there had been no relation of landlord and tenant after that owing to 12 years' lapse of period fixed by notice to quit, the plaintiff's right to property was extinguished under S. 28, Limitation Act,

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Held, that the defendants could not be allowed to resile from assertion made by them in the previous suit that they were permanent tenure-holders and maintained that there was no relation of landlord and tenant between them and the plaintiff. It was further held that they might have acquired some sort of interest by adverse possession by which they would have been under no obligation to pay rent to the plaintiff but since that was not their case they were liable to pay rent. 9 W.R. 162, *Ref.* (*Doss and Ross, JJ.*). RAGHUNANDAN SAHA *v.* KAMAKHAYA NARAYAN SINGH. **120 I.C. 35=8 Pat. 581=11 P.L.T. 387= A.I.R. 1930 Pat. 24.**

—Rent—Suit for—Landlord.

———Where a third person takes the produce from the tenant with full notice of the landlord's claim for rent, the landlords can enforce his claim against such third person because his claim is analogous to one for a specific performance under S. 27 (*b*), Specific Relief Act. A I.R. 1925 Rang. 366, *Rel. on.* (*Brown, J.*). MG. PO LWIN *v.* MG. SEIN HAN. **116 I.C. 478=7 Rang. 100= A I.R. 1929 Rang. 93.**

———A landlord is entitled to sue for the rent of the whole period of the tenancy as damages even before the expiration of the period of the lease where the tenant repudiates his liability to pay rent and the landlord is not bound to wait until the rent would become due. (*Broadway and Harrison, JJ.*). BUDHA MAL *v.* SHIB DAYAL. **71 I.C. 826=A.I.R. 1924 Lah. 328.**

———A landlord who recognises a term even by suing for the rent, cannot be heard to say that there was no valid subsisting lease during the period for which he sues for rent. (*Ayling and Coutts-Trotter, JJ.*). RAMAPPA *v.* ABDULLA BEARI. **69 I.C. 282=A.I.R. 1921 Mad. 284= 41 M.L.J. 127.**

—Rent—Suit for—Maintainability.

———*Where there was no fixed rent, the landlord can claim fair and equitable rent.*

A suit was brought for declaration of fair and equitable rent of land which was in the use and occupation of another. In the Record-of-Rights the land was recorded as kavil lagan and no rent was previously fixed for it. The suit also prayed for the back rent that might be found due according to the rate declared,

Held, that since there was no rent fixed previously the plaintiff was entitled to sue for declaration of fair and equitable rent, and although he could not recover back rent he was entitled to get damages for the use and occupation of the land. A.I.R. 1921 Pat. 435, *Dist.* (*Das and Fazl Ali, JJ.*). JAI NARAYAN *v.* KULESHWAR SINGH. **117 I. C. 45=10 P. L. T. 226= A. I. R. 1929 Pat. 233.**

———Where the lands held in tenure by the defendants and their predecessors-in-title got eventually distributed into several separate villages and the fields in each village were amalgamated into a separate area held in occupancy tenure,

Held, that a separate suit for rent in respect of each village could lie. (*Stuart, J.*). BHUP NARAIN *v.* THAKUR RADHAKRISHNA. **78 I.C. 277= 5 L.R.A. Rev. 211=A.I.R. 1925 All.193.**

———A suit for the determination of a fair and equitable rent proceeds on the assumption that no rent has hitherto been settled and paid by the tenant, and when a landlord claims fair rent in respect of past years for which rent has already

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accrued due, a suit for determination of fair and equitable rent does not lie. 29 Cal. 247, *Foll.* (*Das and Adami, JJ.*). PRATAP MAHTON *v.* MT. WAZIR-UN-NISSA. **88 I. C. 687=4 Pat. 604= 6 P.L.T. 307=1925 P.H.C.C. 125= A. I. R. 1925 Pat. 559.**

———A suit by a landlord for the rent of a portion of a holding cannot be decreed in his favour taking the rent claimed as the rent for the whole holding. To decree such a suit would be in effect to allow a splitting up of the tenancy without any ascertainment of the portion of the rent which is due from the particular portion of the holding for which the rent is claimed. (*Coutts and Das, JJ.*). KESHAVA PRASAD SINGH BAHADUR OF DAMRAON *v.* MATHURA KUAR. **69 I. C 704= 1922 P. H. C. C. 336=A.I.R. 1922 Pat. 608.**

———A suit for the determination of fair and equitable rent not for future years but for past years is not maintainable. (*Das and Bucknill, JJ.*). GOBIND LAL SIJUAR *v.* RAM SARAN LAL. **68 I. C. 433= 2 P.L.T. 642=A.I.R. 1921 Pat. 435.**

———It is open to a landlord to sue either the beneficial lessee or his farzidar for rent. (*Coutts and Macpherson, JJ.*). TAHARAT KARIM *v.* MT. BAL KUAR. **64 I.C. 515=2 P.L.T. 740= A. I. R. 1921 Pat. 351.**

—Rent—Suit for—Onus.

———In a suit for arrears of produce-rent, the onus of proving the rate of outturn lies, not on the defendant-tenant, but on the plaintiff-landlord. A.I.R. 1929 Pat. 384, *Not foll.* (*James, J.*). SK. MUHAMMAD IBRAHIM *v.* SK. ABED. **124 I.C. 848= 11 P. L. T. 247=A.I.R. 1930 Pat. 388.**

———In a suit for produce rent the entire onus is on the tenants to satisfy the Court what was the produce during the years in suit. (*Das and James, JJ.*). HAFIZ ZAYAUDDIN *v.* JAGDEO SINGH. **117 I.C. 653=8 Pat. 418=10 P. L. T. 692= A.I.R. 1929 Pat. 384.**

—Rent—Suit for—Parties.

———Where a transferee of an occupancy holding claimed to be added as a party to the rent suit on the ground that he had been recognized as such by the landlord, and the purpose of the rent suit was to bring the holding to sale, the High Court interfered in revision and allowed him to be made a party on the ground that it would be necessary if not in rent suit at least in execution proceedings to determine whether he was in fact recognized as such by the landlord. A. I. R. 1930 Pat. 323, *Ref.* (*Wort, J.*). (MAHANTH) KASHI DAS *v.* KRISHNA GOPAL. **A.I.R. 1930 Pat. 592.**

———It is usual rule that whenever a tenant pleads payment of rent to third person such third person is invariably impleaded as co-defendant. (*Misra, J.*). BISRAM SINGH *v.* DANNA. **113 I.C. 794=A.I.R. 1929 Oudh 459.**

———Where the tenants have been paying certain rent in past years for the land in their occupation, it is not open to one co-sharer to file a suit seeking to recover from them greater amount of rent than has been paid in the past. Whether the claim made is one for enhanced rent, or a claim for rent for excess land taken in occupation by the tenants, the principle is the same, that the question must not be at the mercy of one sharer, but must be decided between the tenants and the whole body of sharers entitled to claim rent as landlords. (*Macleod, C.J. and Coyajee, J.*). VAGHA JESANG *v.* JAGJIWAN AMRITLAL. **90 I.C. 558= 27 Bom.L.R. 1107=A.I.R. 1925 Bom. 542.**

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———In a rent suit a party should not be added so as to make it a complex title suit. However, questions of title can be incidentally investigated for example, where there is a di-pute about the extent of the title of the plaintiff to the arrears claimed. (*Mookerjee and Suhrawardy, JJ.*). ABDUL GAFUR *v.* ALI MIAH, SUB-REGISTRAR. **82 I.C. 369= 28 C.W.N. 805=A.I.R. 1925 Cal. 26.**

———Where one of two co-tenants dies, a suit by the landlord against all the heirs of the deceased tenant for the entire rent is maintainable without making the other tenant a party thereto. (*N.R. Chatterjee and Cuming, JJ.*). MOHENDRA NATH BOSE *v.* ABINAS CHANDRA BOSE. **77 I.C. 364= 27 C.W.N 521=A.I.R. 1923 Cal. 615.**

—Rent—Suit for—Pleas.

———A suit for recovery of rent has always a fresh cause of action and if the rent paid in previous years was not lawfully leviable that does not bar a subsequent plea that the lower rate was payable. (*Dalal, J.*). TUNGAL *v.* CHANDRA BHAN. **108 I.C. 703=9 L.R.A. Rev. 63= A.I.R. 1928 All. 214.**

—Rent—Suit for—Procedure.

———Unless an alternative claim is made, no sum can be decreed as damages for use and occupation, where the suit is for rent; but a prayer to amend the plaint by adding an alternative claim should be granted if the omission in the plaint was due to inadvertence or mistake, and the prayer for amendment is made without inexcusable delay. 21 W. R. 208 and A. I. R. 1925 Rang 282, *Foll.*; 22 Cal. 752; 81 All. 276 and 27 Cal. 239, *Ref.* (*Macnair, A.J.C.*). TRIBENIPRASAD *v.* RAMDAS. **105 I.C. 43=23 N.L.R. 152=10 N.L.J. 169= A.I.R. 1928 Nag. 27.**

———One agreement for the payment of rent can be enforced by a single suit though the agreement may have included different holdings *sir* and *khudkasht* of different periods of time. 29 All. 18, *Dist.* (*Dalal, J.*). NAUBAT SINGH *v.* JAI RAM SINGH. **103 I.C. 880=8 L.R.A. Rev. 300= A.I.R. 1927 All. 724.**

—Rent—Suit for—Proportionate rent.

———One of two joint proprietors cannot sue the tenant for his proportionate share of the rent without the consent of the tenant, unless he makes his joint proprietor a party to the suit. (*Cuming and B. B. Ghose, JJ.*). RADHABINODE *v.* NABA KISHORE. **95 I.C. 244=30 C.W.N. 413= A.I.R. 1926 Cal. 578.**

—Rent—Suit for—Representation.

———A Muhammadan died leaving behind him six heirs. In regard to the land held by him a rent suit was instituted against some of the heirs,

Held, that the defendants could not represent all the heirs. A. I. R. 1921 Cal. 584, *Dist.* (*Mitter, J.*). NARESH CHANDRA *v.* HAIJER SHEIK. **115 I.C. 180=49 C. L. J. 83= A.I.R. 1929 Cal. 28.**

———*Male heir of deceased tenant getting himself recorded as tenant in landlord's books represents tenancy so far as landlord is concerned*

When a raiyat dies it very often happens that the male members of the family are allowed to represent the tenancy. So far as the landlord is concerned they are recorded as tenants in the landlord's sherista. The recorded tenants pay rent for the whole holding and the landlord recognises them as the sole tenants of the holding so far as he is concerned. Such arrangement does not really extinguish the right of the other heirs. If they are

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ignored they have right to establish their rights against the usurper and they may ask the landlord to record them also as joint tenants. But until that is done the landlord has a right to institute suits for rent against the recorded tenants and the decree which the landlord obtains in such a suit would have the character of a rent-decree although it is obtained against one or some of the heirs of a deceased tenant, the principle being that the landlord is not bound to go beyond his books to find out who the tenants are. (*Chakravarty, J.*). SURMAN SHAIK *v.* NAFARCHANDRA PAL.
91 I C 748=A. I. R. 1926 Cal. 517.

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——The landlord is not bound to accept any person as a tenant other than his recorded tenant and he is entitled to bring a suit for rent and obtain a decree as against the recorded tenant even though the landlord brings a suit for possession against the transferee of the tenant which being not proceeded with comes to nothing. (*Cuming and B. B. Ghose, JJ.*). SIATAJ SHAIKH *v.* BISHNUDAS DHAR.
94 I. C. 400= A.I.R. 1926 Cal. 845.

—Rent—Suit for—Title.

——In a suit for rent between landlord and tenant the claim of a third party to title in the property is not triable and such rival claimant cannot be impleaded as a party. (*Johnstone, J.*). JAGAN NATH *v.* NABI BAKHSH GHULAM MOHIUDDIN. **122 I.C. 487= A.I.R. 1930 Lah. 572.**

——In a suit for rent a third party set up by the tenants should not be dragged to convert it into a title suit but the question with regard to the plaintiff's right not only can be raised but must be raised where it is denied by the tenant. 8 Cal. 238, *Expl.* (*Suhrawardy and Cuming, JJ.*). INDRA NARAIN MANNA *v.* SARBASOVA DASI. **87 I.C. 930= 41 C.L.J. 351= A.I.R. 1925 Cal. 743.**

——*Though generally questions of title as between plaintiff and third persons are irrelevant their determination where necessary for determining the relationship between the landlord and tenant is not illegal.*

In a rent suit, there is no rule of law that questions of title which require to be determined are not to be determined : but there are two reasons why, in general, questions of title as between the plaintiff and third persons do not require to be determined. The first reason is that for a claim to rent as distinct from damages mere proof of the plaintiff's title is not sufficient. The second reason is that the plaintiff who as against the third person has no title may have a perfectly good claim against the tenant whom he has inducted for rent. Accordingly, between the landlord and the tenant the question of relationship subsisting between them and the question of the plaintiff's or anybody else's title are distinct questions though they may, for accidental reasons, become entangled. But, the treatment of questions of title arising incidentally as independent and substantive issues is wrong. They are matters bearing upon the sole issue, the question of relationship between landlord and tenant. (*Rankin and Mukerji, JJ.*) CHITPORE GOLABARI CO., LTD. *v.* GIRIDHARI LAL SAROGI. **78 I. C. 353= A.I.R. 1925 Cal. 520.**

——In a suit for rent by a landlord against his tenants, the question of title as between the defendants cannot be determined. (*Teunon and Majid, JJ.*). MANI TARA BOSE *v.* DALINDDI SHEIKH.
61 I.C. 335 (Cal.).

LANDLORD AND TENANT—Rent—Suspension. —Rent—Suit for—Miscellaneous.

——There is no objection for the question of the transferability of a holding without the consent of the landlords being determined in a rent suit. (*Adami, J.*). SARJU MAHTON *v.* MT. BIBI BERSATAN. **103 I.C. 544=8 P. L. T. 305= A.I.R. 1927 Pat. 242.**

—Rent—Suspension.

——*When tenant deprived of occupation of part of the tenure, landlord not entitled to any rent.*

The doctrine of suspension of rent depends solely on this that the rent due is in respect of the land demised. If therefore the tenant is not given occupation of the whole of the land demised, landlord has no right to the entire rent and unless he has a right or some equity to an apportionment he can recover nothing on the contract. The whole basis of doctrine is that rent due is an entire sum.

The landlord dispossessed the tenure-holder from a small part of the land demised and gave *khas* possession to a third person. The land was included in the patta,

Held, that the conduct of the landlord was *mala fide* and he was not entitled to any rent at all. A. I. R. 1925 P. C. 97, *Rel on* ; 24 Cal. 296; 14 C. W. N. 207-*n*; 12 W. R. 109; 46 Cal. 956; A. I. R. 1926 Cal. 908; A. I. R. 1929 Cal. 395; A.I.R. 1925 Cal. 1187; A.I R. 1928 Cal. 479, *Ref.* 28 Cal. 188, *Expl.*; A.I.R. 1927 Cal. 737, *Not foll.* (*Jack and Mitter, JJ.*). ABHOY CHARAN *v.* HEMCHANDRA. **49 C.L.J. 595=33 C.W.N 715= A.I.R. 1929 Cal. 568.**

——The doctrine of suspension of rent depends solely upon this that the rent due is an entire sum in respect of the land demised. Where, therefore, the rent is fixed in a lump there would be suspension of rent on the grounds of dispossession of the tenant by the landlord from a part of the demised premises. So also, if a tenant is not given occupation of the whole of the land demised, the landlord has no right to the entire rent and unless he has a right or some equity to an apportionment he can recover nothing on the contract. A.I.R 1925 P.C. 97, *Expl.* and *Foll.*; A.I.R. 1927 Cal. 737, *Not foll.*; A.I.R. 1928 Cal. 579, *Foll.* (*Mitter, J.*). MAHIN CHANDRA *v.* KARAMALI. **119 I.C. 132= 33 C.W.N. 501= A.I.R. 1929 Cal. 516.**

——The doctrine of suspension of rent depends solely upon this : that the rent due is an entire sum in respect of the land demised. If, therefore, the tenant is not given occupation of the whole of the land demised, the landlord has no right to the entire rent and, unless he has a right or some equity to an apportionment he can recover nothing on the contract. Put the whole basis of the doctrine is that the rent due is one entire sum. A.I.R. 1925 P.C. 97, *Foll.* (*Rankin, C. J. and Mitter, J.*). SOJJAD AHAMAD CHOUDHURY *v* TRIALAKYA NATH CHOUDHURY. **116 I C. 375=55 Cal. 464= 32 C W.N 472= A I.R. 1928 Cal. 479.**

——*Whether suspension of the entire rent should be ordered or only abatement of rent should be allowed depends on facts of each case.*

It is not possible to lay down any hard and fast rule as to when suspension of entire rent should be ordered or when only abatement of rent should be allowed where the tenant has been dispossessed from only a portion of the demised properties. Each case has to be decided on its particular facts. Where a tenant in possession had been dispossessed by the landlord from a considerable portion of the demised property and where the settlement was for a lump sum of rent and not so much per bigha.

LANDLORD AND TENANT—Rent—Suspension.

Held, the tenant was entitled to entire suspension of rent. A.I.R. 1925 P.C. 97 and A.I.R. 1927 Cal. 737, *Dist.* (*Cuming and Mukerji, JJ.*). SURAT KUMAR ROY *v.* SURENDRA NATH. **108 I.C. 587= A.I.R. 1928 Cal. 428.**

——The doctrine of suspension of the payment of rent, where the tenant has not been put in possession of part of the subject leased, applies where the rent is a lump sum for the whole land leased treated as an indivisible subject. It has no application to the case where the stipulated rent is so much per acre or bigha. A.I.R. 1925 P.C. 97, *Foll.* (*Duval and Miller, JJ.*). EBAD ALI *v.* FATIMA BIBI. **100 I.C. 501=A.I.R. 1927 Cal. 951.**

——*English common law rule is to be applied in exceptional cases, as a rule of equity—Court should apportion wherever possible.*

The technicalities of the English common law as to the rule of suspension of rent should not be imported in this country, particularly in the mofussil, irrespective of any consideration whether the application of such rule would meet the ends of justice. To hold that in every case of dispossession of the tenant from a part there should be an entire suspension of rent so as to entitle the tenant to hold the remainder rent free in perpetuity, is not consistent with justice.

The Court should always endeavour to apportion the rent whenever possible and be very careful in applying the rule of suspension of rent which is to be applied in India as a rule of equity, justice and good conscience and which can only be allowed in exceptional cases having regard to the circumstances of the case.

The doctrine of suspension of payment of rent, where the tenant has not been put in possession of part of the subject leased has no application to a case where the stipulated rent is so much per acre or bigha. But it cannot be laid down that where the rent is fixed in a lump, there would be suspension of rent on the ground of dispossession of a part of the demised premises by the landlord and there should not be any apportionment in any case. A. I. R. 1925 P. C. 97, *Expl.* and *Rel. on*; *Reeve* v. *Bird*, (1834) 1 Cr. M. & R. 31; *Stokes* v. *Cooper*, (1814) 3 Camp. 514-*n*; *Neale* v. *Mackenzie*, (1836) 1 M. & W. 747 and *Upton* v. *Townend*, (1885) 17 C.B. 20, *Expl.* (*B. B. Ghose and Roy, JJ.*). SUSHIL KUMAR BISWAS *v.* RAJANI KANTA.
104 I.C. 775=31 C.W.N. 990= A.I.R. 1927 Cal. 737.

——*For suspension of rent, findings as to eviction by lessor must be clear.*

In order to cause suspension of rent on account of eviction by the landlord the finding must be clear that there has been an eviction in fact and that the lessor was a party to the eviction and it must also be found as a fact as to whether the act was done by the landlord with the object of depriving the tenants of the peaceful enjoyment of any portion of the demised premises. These elements are necessary to be found for the purpose of calling into aid the doctrine of suspension of rent on account of eviction by the landlord. The doctrine of suspension of rent has been applied where the rent was fixed in a lump for the whole land leased treated as an indivisible subject and it cannot be applied where the rent is to be fixed according to the area in the possession of the tenant. It does not apply to a case where the tenant is liable to pay rent at so much per bigha per year. A.I.R. 1925 P.C. 97, *Foll.* (*B. B. Ghose and Panton, JJ.*). TARAK SHEIKH *v.* KUNJA BEHARY ROY. **98 I.C. 215= 44 C.L.J. 191=A.I.R. 1926 Cal. 1226.**

LANDLORD AND TENANT—Rent—Suspension.

——To justify a suspension of the entire rent, it must be shown that the eviction was the act of the landlord and was done with the intention of depriving the tenant of the enjoyment of the demised premises or land and not that it was merely accidental resulting from ignorance of the parties as to the real boundaries of the land.

The Common Law doctrine of suspension of rent can only be applied in India as a rule of equity, justice and good conscience and should be applied with caution only where the facts are such that the equities of the case clearly require its application for doing justice between the parties. (*Cuming and B. B. Ghose, JJ.*). MANIK CHANDRA DHALI *v.* HARI MISTRI. **96 I.C. 557=A.I.R. 1926 Cal. 1148.**

——In order to apply the rule of suspension which is a punishment awarded to the landlord for his illegal act or high-handedness, the circumstances of each case must be looked to. Tenants would not be entitled to suspension of rent, only because of a mistake of the landlord in including certain portion of land, in a previous decree, not comprising in the subject-matter of that suit, and consequently having it sold, as the tenants could have corrected the mistake in a subsequent suit. (*Cuming and B. B. Ghose, JJ.*). BISESWAR *v.* KALI CHARAN. **94 I.C. 418=44 C.L.J. 27= A.I.R. 1926 Cal. 908.**

——A landlord is bound to keep his tenant in peaceful enjoyment and possession of the holding. If he disturbs the possession of the tenant he is not entitled to recover rent from the tenant. The tenant's claim for recovery of possession may be barred by lapse of time; but he can still compel the landlord to restore possession of the holding or the portion thereof from which he has been dispossessed by the landlord by withholding payment of rent for the entire area. (*Kulwant Sahay, J.*). JAGAT NARAIN SINGH *v.* TULSI CHAMAR.
96 I.C. 585=A.I.R. 1926 Pat. 513.

——The doctrine of suspension of payment of rent, where the tenant has not been put in possession of part of the subject leased, applies where the rent is a lump rent for the whole land leased treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or bigha. (*Lord Salvesen.*) KATYAYANI DEBI *v.* UDAY KUMAR DAS. **88 I.C. 110= 6 L.R.P.C. 140=30 C.W.N. 1=52 I.A. 160= 52 Cal. 417=23 A.L.J. 751= A.I.R. 1925 P.C. 97 (P.C.).**

——Dispossession by the landlord from a portion of the holding causes suspension of rent of the holding. (*Newbould and Panton, JJ.*). RAMANI KANTA ROY *v.* HARA CHANDRA DAS.
68 I.C. 495=A.I.R. 1923 Cal. 162.

——The tenant is not entitled to a suspension of the entire rent, where the landlord omitted through a *bona fide* mistake, to give possession of a portion of the leased lands which were largely jungle and therefore little known and where there has been for forty years no objection by the tenant. (*Woodroffe and Cuming, JJ.*). KATYAYANI DEBI *v.* UDAY KUMAR DAS. **69 I.C. 117=49 Cal. 257= A.I.R. 1922 Cal. 348.**

——In a suit for rent if allegations of surrender and dispossession are not proved and he is in possession of the holding the mere fact that the plaintiff is unable to establish the identity of the holdings is no reason for depriving him of the rent therefor. (*Teunon and Ashutosh Chaudhuri, JJ.*). BASANTA KUMARI CHAUDHURANI *v.* KRISHNA NALINI DASSYA. **59 I.C. 312 (Cal.).**

LANDLORD AND TENANT—Rent—Waiver.

—Rent—Waiver.

———In order to establish an abandonment of right which is created by a document which is explicit and unambiguous in its terms, something more than a mere non-enforcement of right over a number of years is necessary. So the mere fact of non-realization of rent for a number of years according to the terms of the *kabuliyat*, does not necessarily give rise to the legal inference that there has been a waiver of the right to receive rent fixed under the *kabuliyat*. (*Mitter and Mallick, JJ.*). LAKSHMI CHARAN *v.* NABADWIP CHANDRA.

116 I.C. 733=56 Cal. 201=A. I. R. 1929 Cal. 437.

———*Acceptance of reduced rent from lessee is no bar to claim rent at stipulated rate.*

Mere acceptance of a reduced rent by the landlord for a number of years does not deprive him of his right to claim rent at the stipulated rate. Further, the mere fact that the landlord accepted rent at the original rate from the lessee for a number of years after the expiry of the term of the lease is not sufficient to raise the presumption that the contract for enhanced rent has been waived by the landlord. But where the conduct of the landlord is less equivocal, as for example, when he sues the tenant on the basis of the reduced rent as if that was the rent payable for the land, it may be presumed that the landlord has waived his right to recover a higher rent. 16 C.W.N. 496; 20 C.W.N. 347; 20 C. W. N. 680; 41 Cal. 493; 22 Mad. 261; 6 C.W.N. 60 and 22 C.L.J. 95, *Rel. on.* (*Fazl Ali and Chatterji, JJ.*). KUMAN DAS *v.* RADHIKA SINGH. **10 P.L.T. 669=A.I.R. 1923 Pat. 717.**

———The fact that the landlord has received rent for a long time at a rate lower than that stipulated for in a *kabuliyat* is not conclusive to show that the stipulation in the *kabuliyat* as to the payment of the full rent was never intended to be acted upon or that there was a waiver of that stipulation. (*N.R. Chatterjea and Panton, JJ.*). GOLAK BEHARI BHOWMIK *v.* MANINDRA CHANDRA NANDI. **60 I.C. 86 (Cal.).**

—Rights of landlord.

———Where land has been taken by the Government and compensation has been paid to a party who has received more than his own share of the compensation, he must account to the other party, that is, if the landlord receives the whole amount and the tenant has not got any portion of the compensation, the landlord is bound to abate the rent. On the other hand, if the tenant receives the whole of the compensation without paying the share due to the landlord, he is not entitled to retain the whole compensation and refuse to pay the whole of the rent. (*Patkar, J.*). GANU DADU *v.* PANDIT RAO. **32 Bom. L.R. 1243.**

———The landlord is always entitled to have from his tenant such rents as are fair and equitable unless the tenant can show that the landlord is precluded from having them by reason of any statute or contract. (*Mukerji and Mallik, JJ.*). SATYA PROSANNA *v.* KALI PROSANNA DAS.

34 C.W.N. 43=A.I.R. 1930 Cal. 339.

———Where a person buys paddy from a tenant for consideration, a landlord, if he alleges that the person bought it with the knowledge of his lien, has to prove that it was so purchased. (*Das, J.*). DAW PWA THWE *v.* DAW THE NU.

A. I. R. 1930 Rang. 143.

———There is no principle by which the landlord can get a lien over the paddy of his tenant. Each case must be decided on the evidence in that case. The mere agreement between the landlord and tenant that the latter is not to sell or in any way alienate the paddy before the rent is paid does not give any lien to the landlord. To have it he must have possession of the paddy. A.I.R. 1925 Rang. 366, *Dist.* (*Das, J.*). DAW PWA THWE *v.* DAW THE NU. **A.I.R. 1930 Rang. 143.**

LANDLORD AND TENANT—Rights of landlord.

———*Landlord is not bound by every statement in the receipt given by the gomastha.*

It cannot be affirmed as a general proposition of law that a landlord is always bound by every statement given in the receipts of rent by the gomastha. When an agent of the landlord has accepted from the various tenants in the occupation of a holding at one rental, proportionate parts of the rents, it does not bind the landlord to recognize a separation of the tenancy in absence of evidence to connect the landlord with the receipt of any proportionate rate of rent by the agent. 6 C.W.N. 823; 10 C.W.N. 216 and 16 W.R. 97, *Ref.*; 25 Cal. 531, *Dist.* (*Rankin, C. J. and Mitter, J.*). RAY MONMOTHA NATH MITTER *v.* RAJESWAR RAI CHOWDHARY.

107 I. C. 81=55 Cal. 355=32 C.W.N. 184=A.I.R. 1928 Cal. 315.

———Certain tenants holding lands of the same landlords purchased separately the interest of some other tenants and afterwards amalgamated into one holding. The thicadars recognized the purchases and the amalgamation in good faith and in the ordinary course of business.

Held, that under the circumstances such a recognition must be binding upon the landlord. 2 P.L.J. 151 and A.I.R. 1925 Pat. 796, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). NATHUNI SAHU *v.* BHAGWAN GIR. **115 I.C. 235=7 Pat. 840=9 P.L.T. 493=A.I.R. 1928 Pat. 436.**

———When a landlord is entitled to re-enter by reason of the forfeiture of the lease by the lessee he is also entitled to claim rent or mesne profits up to the date of obtaining possession and the fact that he claims in a suit for ejectment rent or mesne profits till he gets possession cannot be said to be a waiver of the right to re-enter. (*Devadoss, J.*). KORAGALVA *v.* JAIKRI BEARY. **99 I. C. 700=A.I.R. 1927 Mad. 261=52 M.L.J. 8.**

———The malguzar is merely the last reversioner and cannot get possession by ejectment against a distant reversioner simply on the ground that nearer reversioners have not sued in time. (*Hallifax, A.J.C.*). GAURA TELIN *v.* SHRIRAM BHOYER. **92 I. C. 926=A. I. R. 1926 Nag. 265.**

———Where a plot of land had been given to a person to plant a grove thereon, the landlord is not entitled to enter into possession of portions of the grove which had become vacant or to cultivate them himself or to let them for cultivation to others. The plot must be taken to have been granted as a whole and the tenure must stand or fall as a whole unless some custom or contract is shown to the contrary. The mere fact that a portion of the grove has become devoid of trees does not entitle the landlord to resume that portion of it; in short, there can be no resumption piecemeal. 9 O. C. 109 and 2 O L J. 589, *Appr.* (*Misra, J.*). JAGDISH BAHADUR SINGH *v.* RAGHO RAM. **94 I.C. 349=29 O. C. 271=13 O. L. J. 265=3 O. W. N. 392=A.I.R. 1926 Oudh 458.**

———Plaintiff landlord is not precluded from questioning the status of the tenant or the character of the tenancy simply because his predecessor has described the lease as a lease in respect of a non-occupancy raiyat. 21 C. W. N. 188, *Ref.* (*Mukerji, J.*). MUHAMMAD SULAIMAN *v.* UMA CHARAN SIL. **79 I. C. 648=A. I. R. 1925 Cal. 181.**

LANDLORD AND TENANT—Rights of landlord.

——The landlord has no right to rain water till it flows in a defined channel. (*Devadoss, J.*). V. AMBALAM *v.* PRESIDENT, TALUK BOARD, RAMNAD. 90 I.C. 803=21 M.L.W. 274= A. I. R. 1926 Mad. 620.

——A custom, whereby a landlord is entitled to a certain rent for fruit trees in addition to the ordinary rent payable in respect of the land, is not illegal. (*Dawson-Miller, C.J. and Mullick, J.*). RAMESHWAR SINGH *v.* SHEIKH WAZUL HAQUE. 78 I.C. 463=A.I.R. 1925 Pat. 294.

——Where the tenancy has not terminated or where on account of certain circumstances it is not open to the landlord to terminate the tenancy there is no reason why he should be allowed to dispossess his tenant without having recourse to law and then to retain possession which he could not obtain through a Court of law. (*Rupchand Bilaram, A. J. C.*). SECY. OF STATE FOR INDIA *v.* DINSHAW NAVROJI. 87 I.C. 1002= A.I.R. 1925 Sind 275.

——A landlord entitled only to reversion on the ending of the tenancy but not having the right to determine the tenancy cannot eject third person merely because that third person has no title in himself. (*Rankin and M. N. Mukerji, JJ.*). ROMESH CHANDRA MITRA *v.* DAIBA CHARAN DAS. 78 I.C. 497=28 C.W.N. 602= 39 C.L.J. 356=A. I. R. 1924 Cal. 900.

——It is open to the landlord to say that he is not bound by any sub-division made by the tenants of the holding. It is also quite open to him to give effect to the sub-division made by the tenants themselves. (*Ghose, J.*). SADAKALI KHAN *v.* JANAKINATH SINGHA ROY. 69 I.C. 194= A.I.R. 1924 Cal. 463.

——A landlord who has created a tenancy is still competent to carve out another tenancy from the interest he has reserved and interpose the same between himself and his first tenant subject to the qualification that he cannot thereby prejudice the position of the first tenant take away or destroy the value or effect of the prior interest transferred, or, limit its extent or restrain its operation; for the maxim applies that no man can derogate from his own grant. (*Mookerji and Buckland, JJ.*). JAHAR LAL BHUTRA *v.* BHUPENDRA NATH BASU. 67 I.C. 108=49 Cal. 495=34 C.L.J. 79= A. I. R. 1922 Cal. 412.

——*The tenant encroaching on landlord's adjoining waste, landlord can either treat him as trespasser, or as tenant of the additional land.*

If a tenant encroaches upon the adjoining waste land of his landlord, the landlord is entitled to treat him either as a trespasser or as a tenant. If the landlord treats him as a trespasser, the landlord is entitled to sue him in ejectment within 12 years from the date when he becomes aware of the encroachment. If the landlord treats him as a tenant, then he becomes liable to pay additional rent.

Where a *kabuliyat* provided: "If the lands in my possession be surveyed at the instance of the landlord I shall abide by the same and I shall take settlement at the rate then prevailing of all excess lands of whatever kind, found to be in my possession as a result of that survey, whether lying inside or outside the boundaries mentioned in the *kabuliyat* and shall also pay the rent at the aforesaid rate for the period during which lands in excess of the lands mentioned in the *kabuliyat* have been enjoyed secretly,"

LANDLORD AND TENANT—Rights of tenant—Fishery.

Held, that the clause did not entitle the tenant to annex the adjoining land and retain possession thereof against the wishes of the landlord. (*Mookerjee and Panton, JJ.*). ABDUL HOSSEIN *v.* AFSARUDDIN. 67 I. C. 639=34 C.L.J. 481= A.I.R. 1921 Cal. 83.

—Rights of tenant—Admission.

——Once it is ascertained that the disputed lands are the *kasht* lands of the tenants, the admission of the tenants is of no avail to the landlord but in order to determine whether the disputed lands are the *zerait* lands of the *malik* or the *kasht* of the tenants, the admission of the tenants is admissible against them. (*Das and Wort, JJ.*). SANTOKHI MANDHAR *v.* RAMESHWAR SINGH. 114 I.C. 469= 7 Pat. 187=11 P.L.T. 12=A.I.R. 1929 Pat. 41.

—Rights of tenant—Chabutra.

——*Tenant has a right to occupy a chabutra adjoining his house.*

Tenants in a village have a right to occupy a house as appurtenant to their tenancy, *i.e.*, so long as they retain the character of raiya in the village and the same principle may well apply to a chabutra which actually adjoins the house of the tenant and to the use of the necessary amenities for feeding and tying up the cattle which almost every tenant in a village possesses. It is a fair presumption to make that a chabutra, which has been in existence for more than twenty years, without any question by the zamindars was erected and has been occupied with their permission and consent; and so long as the tenants remain raiya of the village, the zamindars are not entitled to have it removed. (*Daniels, J.*). BHARAT INDO *v.* BACHCHAN LAL. 96 I.C. 338= A. I. R. 1926 All. 692.

—Rights of tenant—Eviction.

——A tenant whose lease had determined cannot evict a landlord legally in possession of the property even if that landlord has been let into possession by the quondam tenant. (*Le Rossignol and Wilberforce, JJ.*). MD. MUMTAZ HUSSAIN KHAN *v.* NAURANG AHMAD. 60 I.C. 502= 3 L.L.J. 227=A.I.R. 1921 Lah. 220.

—Rights of tenant—Fishery.

——The settlement of land carries with it the right to fish when there is water upon it unless and until the landlord shows that the fishing right was reserved to him. *Jones* v. *Davies*, (1902) 86 L. T. 477, *Rel. on.* (*Fazl Ali and Chatterji, JJ.*). JAIGOBIND SINGH *v.* BHAWANI SINGH. 9 Pat. 401=A.I.R. 1930 Pat. 382.

——*Rights of fishery, pass to tenant as incidental to the lease.*

The ownership of free natural elements such as air and water and of all wild animals living therein is obtained by occupancy or appropriation. It is a right incidental to the ownership of land upon which the air or the water lies.

A *raiyat* taking a lease of a fishery only cannot acquire an occupancy right therein, but if he takes a lease of a holding of which part is under water, then his right to the acquisition of occupancy rights in the entire holding, inclusive of the portion which forms the bed of the water cannot be defeated.

The landlord of course may reserve the right of fishery when letting out the land, but such a reservation is, strictly speaking, a re-grant of the right by the tenant to the landlord.

The position of *Birtdar*, who is a tenure-holder is even stronger than that of an occupancy *raiyat*;

LANDLORD AND TENANT—Rights of tenant—Grazing.

he enjoys all the rights of his lessor and as between himself and the plaintiff lessee there can be no doubt that, in the absence of any express reservation, he is entitled both to the water and to the fish. (*Mullik and Ross, JJ.*). HENRY HILL AND CO. *v.* SHEORAJ RAI. **64 I. C. 346= 3 Pat.L.T. 53=1922 P.H.C.C. 195= A. I. R. 1922 Pat. 9.**

—Rights of tenant—Grazing.

——A person who is a tenant in one mahal of a village cannot claim to graze his cattle in the waste land in another mahal of that village. (*Hallifax, A.J.C.*). SIDHGOPAL *v.* TARA. **100 I.C. 785= A.I.R. 1927 Nag. 199.**

——Tenants of malguzari villages are entitled to graze 2 bullocks, 1 cow, 1 calf and 1 she-buffalo per 20 acres. (*Prideaux, A.J.C.*). MADHORAO *v.* LAXMANRAO. **87 I. C. 1054= A. I. R. 1926 Nag. 371.**

—Rights of tenant—Inheritance.

——A brother who was separate from the deceased and did not at the date of his death share in the cultivation of the holding, has no right to the tenancy land of the deceased. (*Raza, J.*). DALAI LAL *v.* MT. RAM RATI. **98 I. C. 1051= 8 L.R.A.Rev. 154=A.I.R. 1927 Oudh 66.**

—Rights of tenant—Irrigation.

——*Tenant can use water from the well for irrigating other fields held from other landlord.*

The defendant transferred to the plaintiff a certain plot which was his *sir* land and of which he accordingly became the ex-proprietary tenant. There was a well in the plot. The defendant used the water of the well for irrigating other plots of land which he held as sub-tenant under another landlord. The plaintiff sued for an injunction to restrain the defendant from using the water of the well and for damages. It was not pleaded that the tenant's use of the water had in any way resulted in injury or loss of any kind to the zemindar nor was any custom been alleged by which the zemindar was entitled to limit the use of well in the plots occupied by the tenant,

Held, that the suit should fail. (*Neave, J.*). LACHMI NARAIN *v.* MOOLI. **85 I.C. 537= A.I.R. 1925 All. 571.**

—Rights of tenant—Kattubadi.

——Where there is privity of possession and no privity of contract the tenants are liable only for kattubadi for land in their possession. 11 L.W. 523, *Rel. on.* (*Ramesam, J.*). RAJA OF PITTAPURAM *v.* GOVINDAYYA. **96 I.C. 750=24 M.L.W. 68= A.I.R. 1926 Mad. 897.**

—Rights of tenant—Lease.

——The mere fact that the Settlement authorities did not record the under-tenancies as being included in the defendant's tenancies cannot affect the right of the latter if as a matter of fact they formed the subject-matter of the lease. (*Chatterjea and Panton, JJ.*). RAJ KUMARI BOSE *v.* SURENDRA NATH. **27 C.W.N. 166= A. I. R. 1921 Cal. 806.**

—Rights of tenant—Ownership.

——The *gair majruha lands* and *rastas prima facie* belong to the proprietors unless the tenants prove positively that they are part and parcel of their tenure. (*Jwala Prasad and Adami, JJ.*). SITARAM TEWARI *v.* GYA PRASAD. **A.I.R. 1923 Pat. 37.**

—Rights of tenant—Partition.

——Tenants in common have a right to claim partition of their share in the tenancy holding and

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a Civil Court has jurisdiction to grant the decree prayed for. 18 All. 334, *Rel. on.* (*Hasan and King, JJ.*). RAM SHANKAR *v.* MANDANKANI PRASAD. **100 I.C. 570=4 O.W.N. 177=2 Luck. 421= A.I.R. 1927 Oudh 147.**

—Rights of tenant—Possession.

——A tenant's right to retain possession of plots appurtenant to his residential plot free of rent ceases upon his employment of the plots for purposes of cultivation. (*Ashworth, J.*). SHEO RAJ SINGH *v.* KUNJ BEHARI. **105 I.C. 878= 8 L.R.A. Rev. 297=A.I.R. 1927 All. 720.**

——If a person has been paying rent for the property in dispute to the landlord and if he has no under-proprietary title in that property he cannot convert his derivative possession into a hostile one and thereby acquire title by prescription. A.I.R. 1923 P.C. 118, *Rel. on.* (*Wazir Hasan, A.J.C.*). GAYA PRASAD *v.* ALAM SINGH. **88 I.C. 53= A.I.R. 1925 Oudh 751.**

—Rights of tenant—Removal of manure.

——Tenants, who acquire agricultural holdings in the zamindar's village and who also acquire lands on which they build their houses for residence must be deemed to acquire those rights with all the incidents, appertaining to such rights and one of the incidents is their disability to remove the manure from one village to another. (*Wazir Hasan, C.J. and Raza, J.*). PARMESHUR DIN *v.* BISHAMBHAR SINGH. **7 O.W.N. 503= A.I.R. 1930 Oudh 361.**

—Rights of tenant—Repairs.

——Necessary repairs can be carried out by tenant and expenses deducted from rent. (*Pearson, J.*). GOPIRAM BHOTICA *v.* BISSESWAR DUTT. **93 I.C. 81=43 C.L.J. 94=A.I.R. 1926 Cal. 546.**

—Rights of tenant—Residence.

——A tenant cultivating land in a mahal other than the mahal which is owned by the co-sharer plaintiff is not debarred from acquiring rights of residential nature in plaintiff's mahal. 30 All. 282 (F.B.), *Foll.* (*Stuart, C.J. and Gokaran Nath Misra, J.*). RAJKRISHNA *v.* SAHEB BAKHSH. **98 I.C. 1044=3 O.W.N. 937=8 L.R.A. Rev. 20= A.I.R. 1927 Oudh 37.**

—Rights of tenant—Sahan.

——The ryots in the village are entitled to put to such use their sahan as suits their convenience provided by doing so they do not in any way adversely affect the proprietary rights of the zemindars. 35 All. 292; 4 O.L.J. 454; A.I.R. 1925 All. 341, *Foll.*; 10 I.C. 284; 25 I.C. 59 and (1885) A.W.N. 325, *Dist.* (*Iqbal Ahmad, J.*). RAM PARTAB SINGH *v.* LAL BAHADUR SINGH. **100 I.C. 597= A.I.R. 1927 All. 330.**

—Rights of tenant—Splitting of holdings.

——A holding cannot be split up or sub-divided without the consent of the tenant and a tenant has a right to insist that his holding should be kept intact in the state in which it was first created. As between co-sharers themselves there is no doubt a division of area and the rent. But so far as the tenants are concerned the holding is an undivided one and all the persons who are interested in the different areas comprising the holding are joint landlords in respect of the tenancy. (*Suhrawardy and Duval, JJ.*). MOHINI MOHAN *v.* MEAJAN. **90 I.C. 673=A.I.R. 1926 Cal. 333.**

—Rights of tenant—Status.

——Where the rent of a tenancy created 80 or 85 years ago has been the same, and the tenancy is heritable and one for agricultural purposes, the

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tenant is a raiyat holding at a fixed rate of rent, and such tenant has the right to cut and appropriate trees from his land and has a permanent and transferable right in his holding: 21 C. W. N. 636, *Foll.* (*Rankin, C.J. and Mukerji, J.*). HEMANGINI DASSI *v.* ASUTOSH DAS. **113 I.C. 568=A.I.R. 1929 Cal. 330.**

——A tenancy can only come to an end by the ejectment of the tenant or his relinquishment of the holding. Where on the death of a tenant, his heirs enter into possession, his rights devolve on his heirs, and if no step is taken by the zamindar or by these heirs to divest themselves of the tenancy, it must be held that these heirs continue to be tenants. 11 O. C, 292, *Dist.* (*Wazir Hasan and Pullan, JJ.*). KRIPAL *v.* GURDAS. **105 I.C. 215=4 O.W.N. 673=A.I.R. 1927 Oudh 327.**

—Rights of tenant—Suit.

——A person holding under a lease granted before a suit, is not bound by the decision against his lessor in that suit if he is not a party to it. 33 Mad. 459, *Dist.* 8 All. 324; 32 Cal. 357; 35 Bom. 297; 40 Bom. 679 and 36 California 489, *Foll.* (*Oldfield and Ramesam, JJ.*). MUSSAN HAJI *v.* THAVARA KORAN. **65 I.C. 979=14 M.L.W. 387=1921 M.W.N. 679=A.I.R. 1921 Mad. 708=41 M.L.J. 392.**

—Rights of tenant—Title.

——Where the tenant holding land under a landlord on condition to pay rent to superior landlord made a default in payment of the rent, upon which the superior landlord obtained *ex parte* decree in a rent suit and in its execution sold the lessors right which was again purchased by the tenant,

Held, that the tenant constituted himself as a trustee for the landlord and did not acquire an independent title. (*B.B. Ghose and Roy, JJ.*). MAHORUDDI SHEIKH *v.* SAFED ALI. **105 I. C. 779=A.I.R. 1928 Cal. 103.**

——Where one of the co-heirs obtains possession of the holding and applies for registration of his name and is recognized by the landlord as the sole tenant, the title of the other co-heirs is not extinguished. (*Das and Allanson, JJ.*). HIT NARAIN SINGH *v.* RAMBARAI RAI. **115 I.C. 196=7 Pat. 733=9 P.L.T. 484=A.I.R. 1928 Pat. 459.**

——An open and adverse assertion by a tenant that the land which he has held is rent free may, after the lapse of the period of limitation, create a presumption that the tenure has been held without payment of rent, even as against the landlord. The tenant may be assertion of adverse title acquire a limited interest in the land which he holds. (*Suhrawardy and Cholzner, JJ.*). CHATTRA NATH CHOUDHURY *v.* BABAR ALI. **86 I.C. 835=29 C.W.N. 333=A.I.R. 1925 Cal. 635.**

——A tenant cannot set up an adverse title to the landlord. (*Ryves and Stuart, JJ.*). DEBI PRASAD *v.* MT. GUJAR. **68 I.C. 750=20 A.L.J. 696=A.I.R. 1922 All. 423.**

—Rights of tenant—Transfer.

——There is no general rule of law which can be invoked against the occupier's right to transfer in a town. Whether that right of transfer be in respect of the site, or in respect of the constructions standing on the site, it is for the person who asserts a superior title to establish it and unless a title which prohibits the transfer can be established the transfer will stand good. A.I.R. 1928 Oudh 438, *Rel. on.* (*Stuart, C. J. and Raza, J.*). B. KANHAIYA LAL *v.* SYED HAMID ALI. **122 I.C. 774=7 O.W.N. 271=A.I.R. 1930 Oudh 235.**

LANDLORD AND TENANT—Settlement.

—Settlement.

——*The landlord holding under a settlement can enforce right independent of the settlement.*

Although a person holding settlement from Government of Government *khas* mahal or temporarily settled estate is bound under terms of the settlement to recognize the tenants or tenure-holders mentioned in the settlement papers, there is nothing in the law which prevents the settlement holder from enforcing a right he has obtained otherwise than under settlement from Government. 32 Cal. 463 *n*; 37 Cal. 449; 5 C.L.J. 67; 11 C.L.J. 68; 24 C.W.N. 53 and 3 P.L.J. 394, *Ref.*

The landlord who was a temporary tenant-holder from the Government, purchased the tenants holding in execution of a rent decree and obtained symbolical possession in 1918, but having failed to get actual possession sued the tenant for *khas* possession. Previous to filing the suit the landlord has executed an agreement in favour of the Government and thereby agreeing to respect the rights of the recorded right in settlement papers. The tenants were recorded as settled raiyats in the Record-of-Rights finally published. It was also pleaded that the tenant was recognised as such though no rent was paid as a suit was instituted by the co-sharer of the landlord for rent for period subsequent to 1918 to which the landlord was made a party,

Held. (Per *Suhrawardy, J.*).—That the landlord was entitled to eject the tenant as the suit was brought not as settlement holder but as purchaser and therefore, he had right to enforce his right obtained under the decree as opposed to his rights under the settlement.

That the mere fact the landlord was a party to the rent suit did not constitute any recognition.

Per *Jack, J.*—That in agreement under the settlement with the Government to respect the rights of the tenants as recorded in the Record-of-Rights, the landlord in the circumstances of the case should not be held to have undertaken to forego his existing right under the decree. (*Suhrawardy and Jack, JJ.*). SURESH CHANDRA DAS *v.* GOBIND CHANDRA. **33 C.W.N. 1215=A.I.R. 1930 Cal. 306.**

——A cultivator who has acquired permanent rights of occupancy may purchase the melvaram of the lands so as to become the absolute proprietor, but if he considers himself to be the owner of the kudivaram it is not likely that he would expressly purchase the latter without some indication that he was only doing so to avoid disputes. (*Lord Salvesen.*) SUBRAMANYA CHETTIAR *v.* SUBRAMANYA MUDALIAR. **116 I.C. 601=31 Bom. L.R. 830=33 M.W.N. 734=30 M.L.W. 30=56 I.A. 248=52 Mad. 549=1929 M.W.N. 561=A.I.R. 1929 P.C. 156=57 M.L.J. 1 (P.C.).**

——*Question of* bona fides *of settlement depends on whether it was taken from person actually in possession.*

The principle of the Full Bench decision in 20 Cal. 708 only applies where raiyats are settled upon land by a person in *de facto* possession as landlord who is afterwards found to have no title. It is not applicable to every boundary dispute or in every case where a question of parcel or no parcel arises. The question as to whether a settlement is *bona fide* or not depends on the circumstances as to whether the settlement was taken from a person who although was ultimately found to

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have no title, was at any rate in actual possession of the lands in suit. (*Rankin, C.J. and Mitter, J.*). MOHESHCHANDRA *v.* HEMENDRA NATH.

107 I.C. 93=46 C. L. J. 575=A.I.R. 1928 Cal. 104.

——The Government stands in the same position as an ordinary Zemindar in respect of *Noabad* lands. It may settle lands like any other ordinary Zemindar and is not bound to settle the lands with the party in possession. (*Chatterjee and Pearson, JJ.*). NAZIR AHMED CHOUDHRY *v.* SECRETARY OF STATE. **69 I.C. 74=26 C.W.N. 913=35 C.L.J. 580=A.I.R. 1922 Cal. 337.**

—Shamilat.

——As the rights of a proprietor in the shamilat are not a mere accessory to the land held by him an alienation of the latter does not *ipso facto* convey any rights in the former to the alienee. 115 P. R. 1894; 113 P.R. 1901; 75 P.W.R. 1910; 2 and 3 P.R. 1917; A.I.R. 1921 Lah. 263; A.I.R. 1925 Lah. 105 and A.I.R. 1923 Lah. 350, *Foll.*; 10 P.R. 1894, *Dist.* (*Tek Chand and Bhide, JJ.*). RAHMAN *v.* SAI.

109 I.C. 24=9 Lah. 501=29 P.L.R. 624=A.I.R. 1928 Lah. 922.

——Where the wajib-ul-arzes of a village of 1854, 1882 and 1901-02 contained a condition that the *shamilat* land of the village should not be partitioned, but the condition was absent from the wajib-ul-arz of 1921, which did not expressly say that the lands in dispute will hereafter be subject to partition,

Held, that the condition as regards the imparti-bility of the *shamilat* land of the village is still binding. (*Shadi Lal, C.J. and Bhide, J.*). NANDU *v.* JAIMAL. **108 I. C. 170=10 L.L.J. 45=A. I.R. 1928 Lah. 150.**

——An occupancy tenant who occupied a portion of the *shamilat* land with the consent or the acquiescence of the proprietors for agricultural purposes, cannot be disturbed in his possession so long as he remains a tenant in the village and uses the site for the purpose for which it was given: but if he diverts the site to other purposes, as for instance, to build upon, and disclaiming the title of the proprietors, sets up an adverse title in himself, he forfeits his rights of user and is liable to ejectment at the suit of the proprietors. 65 P.R. 1885, *Foll.* (*Harrison, J.*). BHAG SINGH *v.* KHUSHAL SINGH. **71 I.C. 618=A.I.R. 1924 Lah. 315.**

——*Shamilat* land cannot be treated as an accessory to the *Maliki* land. 75 P. W. R. 1910, *Foll.* (*Abdul Raoof and Moti Sagar, JJ.*). SHANKARI DAS *v.* MALI. **63 I.C. 746=3 L.L.J. 569=A.I.R. 1921 Lah. 263.**

—Sir land.

——Where *sir* land has been distributed and has been held in severalty, each proprietor is the landlord of the land so held by him. 15 C.P.L.R. 143, *Foll.* (*Findlay, J. C.*). MURLIDHAR *v.* HUSSAIN KHAN. **103 I.C. 818=A.I.R. 1927 Nag. 325.**

——If the land is *sir* land occupancy rights cannot be acquired in it. (*Daniels J.*). HAZARI *v.* RAM DULAR. **86 I.C. 329=A.I.R. 1925 All. 702.**

——*Purchaser of entire* sir *rights can only get* khudkhast—Sir *rights though allowed only to proprietors, are distinct from mere proprietary right.*

The purchaser of the rights of three out of four brothers being the joint *sir* holders of a *sir khata* can be ejected by the fourth brother if he takes possession of his (the fourth brother's) portion. When a sale of *sir* rights takes place in this manner the vendors alone lose their rights and obtain instead

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ex-proprietary rights in a proportionate share of the holding and a person jointly interested in the *sir khata* does not lose his *sir* rights.

The acquisition of *sir* rights by purchase is not allowed. What the purchaser who takes actual cultivatory possession of the land under the sale of the entire *sir* gets, is, not as his *sir* but as his *khudkasht*.

A *sir* holder's right consists in exclusive possession together with the fact that no person cultivating under him can acquire occupancy rights. Thus though *sir* rights can only be held by a proprietor they amount to something further and apart from the mere proprietary rights. It is possible that in a joint and undivided village the fact of the proprietary rights in the whole village remaining joint may not come in the way of each proprietor having his own separate *sir* rights. (*Daniels, J.*). RAM PRASAD SINGH *v.* JANKI PRASAD SINGH.

80 I.C. 399=A.I.R 1925 All. 93.

——After the accrual of the ex-proprietary rights it is open to the ex-proprietary tenant to abandon them. (*Daniels and Dalal, JJ.*). ZOLAI MISIR *v.* MUNESHAR KOERI. **84 I.C. 115=22 A.L.J. 463=A.I.R. 1924 All. 737.**

——A vendor holding *sir* land becomes an ex-proprietary tenant of the entire proprietary body and not merely of his vendor. (*Daniels, J.*). LAGAN RAI *v.* RAJA RAI. **77 I.C. 1025=5 L.R.A. Rev. 116=A.I.R. 1924 All. 507.**

——Where the Revenue Officer's sanction is given for the mortgage of cultivating rights in *Sir* land, they enure to the mortgagee even if a mortgagee decree is passed on the basis of an arbitration award based on the original mortgage. (*Baker, J.C. and Prideaux, A.J.C.*). GANPAT RAO *v.* MT. TULSABAI. **78 I.C. 853=A.I.R. 1924 Nag. 419.**

—Sub-tenancy.

——Where in temporarily settled estates Government has prohibited sub-letting lands at a rate higher than that fixed by temporary settlement, contract to sub-let at a higher rent cannot be enforced. 32 Cal. 463 and 37 Cal. 449, *Dist.* (*Suhrawardy and Garlick, JJ.*). BANSIDHAR DOBEY *v.* BUDANGAL DAS. **117 I.C. 604=49 C.L.J. 65=33 C.W.N. 362=A.I.R. 1928 Cal. 763.**

——A sub-tenant having once attorned to his lessors is not at liberty to attorn to some other party. Such an attornment as regards a third party would be wholly null and void. 14 P.R. 1898, *Rel. on*; (1918) M.W.N. 38 and A. I. R. 1925 Mad. 143, *Dist.* (*Martineau and Dalip Singh, JJ.*). OBEDUR RAHMAN *v.* DARBORILAL.

98 I.C. 584=7 Lah. 423=27 P.L.R. 663=A. I.R. 1927 Lah. 1.

——The tenancy of sub-tenant comes to an end on the death of the principal tenant, and it is not necessary for the landlord to issue a notice of ejectment against the sub-tenant. (*Gokaran Nath Misra, J.*). JODHA *v.* DARBARI LAL.

104 I.C. 193=2 Luck. 612=1 L.C. 285=A. I. R. 1927 Oudh 339.

——Sub-tenant remaining in possession after the determination of the lease is liable for reasonable damages for so remaining in possession. (*Odgers, J.*). KUPPUSWAMI PILLAI *v.* MD. KASIM SAHEB. **94 I.C. 308=1926 M. W. N. 236=A. I. R. 1926 Mad. 566.**

——Where a sub-tenant pays part of the rent to the tenant as balance of the rent and part of it directly to the Official Assignee of the insolvent landlord credit must be given for all amounts paid

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to the Official Assignee. (*Coutts-Trotter and Ramesam, JJ.*). M. DORAISWAMY *v.* K. NARAYANA. **68 I. C. 983=16 M.L.W. 137=1922 M.W.N. 462=32 M.L.T. 288=A.I.R. 1922 Mad. 445=43 M.L.J. 288.**

—Surrender.

——Mere getting reduction of rent for diluviated land does not amount to relinquishment of the tenant's rights therein in the absence of proof that he never intended to hold the land when reformed. 41 Cal. 683 (P.C.), *Foll.* (*Duval and Mitter, JJ.*). AZIMUDDIN *v.* ALI HASAN. **100 I. C. 687=A.I.R. 1927 Cal. 921.**

——Where after the death of a Hindu father his sons surrendered the holding to the landlord in satisfaction of the debts due from their father,

Held, that as son who is merely separated in residence and mess, but not in estate, cannot claim his share but the landlord would not be entitled to actual physical possession of the holding until partition among the sons. He could only enjoy what he could legally get by a surrender from a fractional body of co-tenants. (*Kinkhede, A.J.C.*). KALIRAM KUNBI *v.* BAJILAL.

97 I.C. 730=9 N.L.J. 163=A.I.R. 1927 Nag. 107.

——A surrender of an occupancy holding by the tenant after the transfer of a share of the holding is invalid in so far as it professes to affect the interest of the transferee. (*Walmsley and Mukerji, JJ.*). JOGESH CHANDRA ROY *v.* TAZAR ALI. **85 I.C. 757=A.I.R. 1925 Cal. 1238.**

——A transfer of property implies that the person in whose favour the property is transferred acquires the right of the transferor in the said property but such an incident cannot be postulated of a tenant surrendering his tenant right in favour of his landlord. (*Findlay, Offg. J.C.*). MAROTI *v.* KRISHNA RAO. **89 I. C. 174=A.I.R. 1925 Nag. 455.**

——A tenant, even after having created an encumbrance, can surrender his holding. 4 P.L.T. 581 (F.B.), *Foll.* (*Ross and Kulwant Sahay, JJ.*). PRATAP UDAI NATH *v.* MAHABIR SAHU. **88 I.C. 1032=4 Pat. 838=6 P.L.T. 500=1925 P.H.C.C. 320=A.I.R. 1925 Pat. 741.**

——The defendants-tenants gave a notice to the plaintiff and the other co-sharers in the property, that they had vacated the demised premises and that the owners should take possession of the same. It was further stated in that notice that they would not be liable to pay rent any longer if the owners did not take possession.

Held, that the notice was an absolute and an unqualified notice in terms and was therefore a good notice of relinquishment in law. (*Moti Sagar, J.*). RAM GOPAL BHAGWAN DAS *v.* PREMESHRI DAS. **78 I.C. 570=6 L.L.J. 197=A.I.R. 1924 Lah. 474.**

——Surrender which is not *bona fide*, being fraudulent, passes no right to landlord and need not be avoided. (*Jwala Prasad and Ross, JJ.*). RAMORAON *v.* DOMAN KALAL. **75 I.C. 209=2 Pat. 898=4 P.L.T. 562=1924 P.H.C.C. 117=A.I.R. 1924 Pat. 100.**

——After the death of a tenant of a fixed rate holding the zamindar took forcible possession and the successor made no attempt to recover,

Held, the inaction as to the recovery of possession of the holding is equivalent to a surrender of the holding. But that surrender would not affect the mortgage in favour of the plaintiffs.

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(*Mears, C. J. and Banerji, J.*). RAM KHELAWAN *v.* BRIJ LAL. **71 I.C. 991=21 A. L. J. 296=4 L.R.A. Rev. 169=A.I.R. 1923 All. 295.**

——*Decree obtained by mortgagee without impleading landlord, does not affect the landlord.*

Where a ryot mortgages his holding and then surrenders it to the landlord, and the mortgagee sues on the mortgage without impleading the landlord and obtains a decree,

Held, that the purchaser at an auction sale in execution of the decree or his vendee cannot claim possession against the landlord in a suit to enforce the decree in the mortgage suit.

Per *Napier, J.*—In view of the circumstances that in 1897 eleven years prior to the passing of the Act, the land was let as *kamatam* land and continued to be so let until 1905 when the landlord took it under personal cultivation, that thereafter and up to and even at the date of the plaintiff's suit it was cultivated by the landlord himself and that the same was surrounded by the *kamatam* lands of the zamindar, it was too late to contend successfully that the land was not the private land of the zamindar whatever might have been the result if the mortgagee had brought his suit on his mortgage against his mortgagor in 1897 when the latter took the land on lease in 1897 directly after his surrender. The landlord not having been a party to the mortgage suit was not bound by the decree and being himself in possession of his *kamatam* land could not be ejected. (*Sadasiva Aiyar and Napier, JJ.*). RAJA VENKATA RAMIAH *v.* LANKA LAKSHMINARAYANA. **66 I.C. 376=45 Mad. 39=30 M.L.T. 188=15 M.L.W. 218=1921 M.W.N. 615=A. I. R. 1922 Mad. 281=42 M.L.J. 161.**

—Tenancy right, nature of.

——Confusion of thought arises out of regarding the tenancy right as something carved out of the proprietary right which leaves a vacuum when it is destroyed. It is a right superimposed on the proprietorship; an encumbrance differing only in details from possessory mortgage and when it is destroyed it leaves the proprietary right unencumbered in the hands of the owner. Ejectment of a tenant merely extinguishes the tenancy right; it does not transfer it to the ejector. (*Hallifax, A.J.C.*). GANAPATHI TELI *v.* DAJI. **68 I.C. 865=A.I.R. 1923 Nag. 35.**

—Tenancy-at-will.

——*Transferee of a house built on the* abadi *land acquires no right and can be ejected as trespasser by landlord.*

According to the general custom prevalent in the United Provinces of Agra and Oudh a person, agriculturist or agricultural tenant, who is allowed by a zemindar to build a house for his occupation in the *abadi*, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi* occupying under the zemindari he has, unless he has obtained by special grant from the zemindar, no interest which he can sell by a private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing and wood-work of the house.

Where a tenant who had ceased to be one but was allowed to continue in the occupation of a house

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in the village makes a gift of the house with the site, the zemindar owner is entitled to recover possession of the site, the right of ownership embracing within it the right of possession. The transfer is illegal and invalid as against the landlord as it is tantamount to a complete abandonment on the part of the donor of whatever interest he had either in the house or in the occupation of it, in favour of the donee. 20 All. 248; A.I.R. 1915 Oudh 262; A.I.R. 1927 Oudh 482, *Ref.* (*Raza, J.*). MD. SHER KHAN *v.* KUNWAR. **114 I.C. 499= A.I.R. 1929 Oudh 314.**

———When the tenant is a tenant-at-will and his tenancy has been determined by a notice to quit under S. 106, T. P. Act, he is liable to be ejected irrespective of the terms of the contract determining the tenancy. (*Suhrawardy and Duval, JJ.*). BISHNU CHANDRA SEN *v.* BEHARI LAL PRUDHAN. **A.I.R. 1928 Cal. 279.**

———A tenancy-at-will goes on from year to year until put an end to and in the absence of a finding that the tenancy had been put an end to or was not subsisting on the date of the sale, by the tenant to a third person, the possession of the purchaser would not be adverse to the owner. A.I.R. 1922 Cal. 87 : 8 W. R. 55 and A.I.R. 1921 Mad. 42, *Foll.* (*Odgers, J.*). MURUGESA *v.* SYED ALLI. **102 I.C. 844=A.I.R. 1927 Mad. 1139.**

———Permission given to a relation to live on premises on account of relationship constitutes a tenancy-at-will. In such a case if the defendant has improved the property, he is entitled to be compensated at the termination of tenancy for those improvements. 6 Cal. 311, *Rel. on*; 17 Bom. 736; 18 Bom. 66 and 6 Mad. H. C. 175, *Ref.* (*Aston, A.J.C.*). MULIBAI *v.* VASSEBAI. **97 I.C. 248=A.I.R. 1926 Sind 98.**

———It is an ingredient of a tenancy-at-will that it is determinable at the will of either the landlord or the tenant. (*Kennedy, J.C. and Aston, A.J.C.*). SIDIK HAJI YAMB *v.* MAHOMED FARUQ. **90 I.C. 1007=21 S.L.R. 185= A.I.R. 1926 Sind 71.**

———It is settled law both in India and England that in the case of a tenancy-at-will no formal notice is necessary. A demand for possession is sufficient. Tenancy terminable at the will of either party is a tenancy-at-will. Where tenancy is determined by the death of either party there can be nothing that the heir can take. This is also the English Law. (*Dawson Miller, C. J. and Mullick, J.*). RAMDHANI GOPE *v.* C.V. SCOTT. **85 I.C. 77=6 P.L.T. 577=1924 P.H.C.C. 333= A.I.R. 1925 Pat. 256.**

———When a non-proprietor has occupied common land (generally *abadi*) for several years with the consent of the proprietary body, he cannot be ejected so long as he uses that area for the purpose for which it was granted; but the case of tenants-at-will is different. Their possession is on sufferance and they have no occupancy right in the land. (*Le Rossignol, J.*). NIHALA *v.* SHAHAB DIN. **76 I.C. 1013=A.I.R. 1923 Lah. 413.**

———A person who enters on land subject to an agreement to be arrived at as to the rent, etc., and who continues thereon without any concluded agreement having been arrived at is not a '*raiyat*' within the Bengal Tenancy Act and is subject to eviction-at-will after reasonable notice to remove his effects. (*Richardson and Shamsul Huda, JJ.*). BEPIN CHANDRA SARKAR *v.* BASANTA KUMAR CHAKRAVARTI. **59 I.C. 454=23 C.W.N. 773.**

LANDLORD AND TENANT—Termination of tenancy.

—Termination of tenancy.

———Mere payment of rent to a third party claiming paramount title is not enough to determine the original tenancy and discontinuance of the tenancy must be satisfactorily proved by the party who alleges that he took the lease from the paramount title-holder, without reference to the lessor and without giving the lessor to understand that he would thenceforward hold not under the lessor but under the paramount title-holder. 3 C. L. R. 576, *Ref.* (*Cuming and Mukerji, JJ.*). JOGENDRA LAL *v.* MAHESH CHANDRA. **112 I.C. 172= 55 Cal. 1013=47 C.L.J. 387= 32 C.W.N. 559=A.I.R. 1929 Cal. 22.**

———Once it is established that the settlement is made annually the conclusion is irresistible that at the termination of each year the tenancy ceases and that further settlement depends upon the will of the landlord; he can further grant settlement or refuse to grant it at his sweet will. *Richardson v. Langridge*, (1811) 4 Taunt 128, *Ref.* (*Jwala Prasad and Wort, JJ.*). PRATAP UDAI NATH *v.* JAGANNATH. **118 I.C. 305=10 P.L.T. 453= A.I.R. 1929 Pat. 444.**

———A landlord is not entitled to mesne profits for his premises let out by him for immoral purposes, but once the tenancy is determined and the tenant still continues to remain in possession, mesne profits can be allowed, for it cannot be laid down as a general principle that once premises are used for immoral purposes they shall always remain so and that there is no means of terminating the immoral use of premises, should the landlord wish to terminate such an agreement. (*Aston, A.J.C.*). MT. MARIAM BEGUM *v.* MT. MUNGI. **113 I.C. 366=A.I.R. 1928 Sind 173.**

———If a service tenant renounces his character as a service tenant and denies the title, of the landlord to resume the land, the lease to him determines and no notice is necessary to eject him. 25 C.L.J. 332, *Foll.* (*Duval and Mullik, JJ.*). SATI PRASAD GARGA BAHADUR *v.* MAHESH BHUNIA. **103 I. C. 542=31 C. W. N. 552= A. I. R. 1927 Cal. 561.**

———A tenancy does not terminate with the death of the lessee and his heirs and legal representatives are liable for the rent unless and until the lease is determined. (*Dalip Singh, J.*). BHOLA NATH *v.* MAHOMED. **101 I. C. 166=A.I.R. 1927 Lah. 423.**

———A landlord who before the tenancy has expired enters on his tenant's property does not *ipso facto* cause the lease to terminate unless a forfeiture of the tenancy has accrued. (*Martineau and Dalip Singh, JJ.*). OBEDUR RAHMAN *v.* DARBARI LAL. **98 I.C. 584=7 Lah. 423= 27 P. L.R. 663=A.I.R. 1927 Lah. 1.**

———Disclaimer contained in the pleadings of the plaintiff does not entitle the landlord to terminate the tenancy and to obtain possession of the demised premises in the proceedings in which the disclaimer takes place. A.I.R. 1924 Lah. 281 (2), *Foll.* (*Jai Lal, J.*). KARM CHAND *v.* AKBAR KHAN. **98 I.C. 1059=8 L.L.J. 482= 27 P. L.R. 727.**

———When an invalid notice of quitting is accepted by the landlord and the defect is waived by him, the lease will be terminated. (*Young, J.*). F. MURGAN *v.* AHMAD MOOLA. **86 I.C. 512= 4 Bur. L.J. 5=A.I.R. 1925 Rang. 206.**

———When the origin of the tenancy and the circumstances attending its creation are not known, evidence of the mode of dealing with the land

LANDLORD AND TENANT—Thekadar.

demised and the acts and condition of the parties generally constitute the evidence and may be the only evidence available to prove the nature of the tenancy. The purpose of a tenancy may be altered by consent of the contracting parties and when such alteration takes place the incidents of the tenancy may not be identical with those at its inception. 27 Cal. 570, *Foll.* (*Mookerji and Cholzner, JJ.*). MAKHAN LAL DE *v.* ARUN BALA DEBI. **73 I.C. 2= A.I.R. 1924 Cal. 465.**

—Thekadar.

——No thekadar can bind the landlord and so lease executed by thekadar is only effective during the period of theka. A.I.R. 1929 Oudh 12, *Foll.* (*Srivastava, J.*). CHHALTARPAL SINGH *v.* BHADESHWAR PRASAD SINGH. **11 L.R.A. Rev. 18= A.I.R. 1930 Oudh 49.**

——*Onus is on landlord to prove restriction on thekadar's powers as landlord.*

Where the thekadar leases certain land to a person for a certain period and after the expiry of the period the landlord gives a lease of the same to another person, the lessee from the thekadar is entitled to hold the land until he is legally ejected and, as no such ejectment according to law takes place the lessee from landlord cannot claim possession in virtue of their lease. In such a case it is for the landowner to show as against the tenants who have been admitted to tenancy by the thekadar: (*a*) that he restricted his thekadar's ordinary powers as a landlord which was known to the tenants; and (*b*) that the transactions between the thekadar and the tenants were not made in good faith in the ordinary course of village business and management. S.D. 9 of 1892, *Foll.* (*Pullan, J.*). GUR SARAN *v.* JAGANNATH. **107 I.C. 896= 5 O.W.N. 42=10 L.R.A. Rev. 19= A.I.R. 1928 Oudh 240.**

——Even where persons had obtained nothing more than a right as thekadars under the settlement Court decree yet where they have been treated as under-proprietors for a consecutive period of more than 12 years it is not open to the Courts to refuse them recognition as under-proprietors. A.I.R. 1922 P.C. 383, *Foll.* (*Stuart, C.J. and Raza, J.*). GAYA BUX SINGH *v.* HIMMAT BAHADUR SINGH. **101 I.C. 566=A.I.R. 1927 Oudh 556.**

——In a suit by a thekadar against his joint thekadar entrusted with collection of rent and keeping accounts, in which the plaintiff seeks to make the defendant liable not only for the profits which the latter has actually collected but for those which through gross negligence or misconduct he has omitted to collect, the burden of proving such negligence or misconduct rests in the first instance on the plaintiff. 12 All. 301 (F. B.), *Rel. on.* (*Wazir Hasan and Raza, JJ.*). RAM PADARATH *v.* GANGA PRASHAD. **99 I.C. 185= 3 O.W.N. (Sup.) 271=8 L.R.A. Rev. 31= A.I.R. 1927 Oudh 90.**

——It was distinctly stipulated in the theka that the thekadar should not lease out land or create new tenants, and that if the lessor suffered in consequence of the thekadar's action he might sue the thekadar for damages,

Held, that a distinct prohibition does not cease to be a prohibition because the person who acts against the terms of that prohibition is made liable for damages, and therefore the tenants created by the thekadar cannot claim to be tenants. (*Batten, J.C.*). MULLOO *v.* SETH KUNDANLAL. **71 I.C. 863=7 N.L.J. 55= A.I.R. 1923 Nag. 139.**

LANDLORD AND TENANT—Trees—Ownership in.

—Trees—Ownership in.

——*Where there is an entry in Record-of-Rights to the effect that tenant had entire rights on trees, tenant held entitled to tree.*

The entry in the Record-of-Rights was to the effect that the tenant had the entire right in the trees and the pleadings of the tenant made no reference whatever to the custom in that locality or village enabling tenants to cut and appropriate timber nor did he set it out as one of the incidents of the tenancy. All that he stated was that ancestors had planted the trees and he was in the habit of appropriating timber. The entry in Record-of-Rights was made in the presence of landlord and it was not objected to,

Held, that the tenant was entitled to appropriate the timber as well as to cut it. A.I.R. 1922 Pat. 497, *Dist.* (*Wort and James, JJ.*). SHAKRULLAH *v.* BUDHRAJ MISSER. **117 I.C. 192= A.I.R. 1929 Pat. 657.**

——*Where a tree-clad waste was leased for reclamation no rent is payable for the trees that the tenant has saved.*

Where the facts found are that the lessees obtained settlement of tree-clad waste land for the purpose of reclamation and that the lease was of the land and of the trees and not simply of the land apart from the trees that in the course of reclaiming they "saved" the trees in dispute and have been growing lac upon them for twenty years at least without payment of or demand for separate rent for the trees and that they were so in possession of the trees on the claim that they were entitled to them free of separate rent as being included in their holding.

Held, that not only had possession been throughout adverse, but that the trees belonged to the raiyat and no rent or lac-tax was payable to the landlord. (*Adami and Macpherson, JJ.*). UPENDRA SINGH *v.* SURJAN SINGH. **120 I.C. 756= 8 Pat. 266=10 P.L.T. 311=A.I.R. 1929 Pat. 328.**

——Under the law before the passing of the Transfer of Property Act, the ownership in the timber trees would be in the landlord unless the tenant succeeded in proving a custom giving him the right to appropriate them. In the case of permanent tenancies different considerations will arise. 22 Cal. 742, *Foll*; 37 Cal. 815, *Dist.* (*Suhrawardy and Graham, JJ.*). KEDAR NATH BOSE *v.* GOVIND CHANDRA DAS. **108 I.C. 242= 32 C.W.N. 366.**

——The alteration by the Government of the Standing Order No. 18, and the refusal to issue fresh tree pattas are not meant to put an end to the right over the trees of the tree pattadar. Only where the land pattadar and tree pattadar happen to be the same person, the new policy is intended to be carried out and not that the trees should be forcibly taken away from the tree pattadar and granted to the land pattadar. 36 Mad. 148, *Expl.* (*Ramesan, J.*). CHINNAPAN NAIDU *v.* M. RAJU GOUNDAN. **102 I.C. 656= A.I.R. 1927 Mad. 717=53 M.L.J. 104.**

——The trees on a holding partake of the nature of the holding and in the absence of a contract or custom to the contrary a tenant has the same rights in respect of them as he has in the holding: zamindar claiming such trees must prove some special contract or custom. 23 All. 126 and 13 All. 571, *Foll.* (*Kanhaiya Lal, J.*). SAGIVA *v.* BHAGWAN DAS. **82 I.C. 335= A.I.R. 1925 All. 149.**

LANDLORD AND TENANT—Trees—Ownership in.

———The property in trees or in that which is likely to become timber, is in the landlord and the property in bushes in the tenant. (*Das and Ross, JJ.*). MAHARAJA SIR RAMESHWAR SINGH BAHADUR *v.* BASUDEVA SINGH. **60 I.C. 521= 3 P. L.T. 90=6 P.L.J. 127=A.I.R. 1923 Pat. 95.**

—Trees—Presumption.

———It is now a well-recognized presumption that a tenant has a right to cut and sell trees planted by him. 43 All. 606, *Foll.* (*Daniels, J.*). RAM NATH *v.* MATA SAHAI. **72 I.C. 108=5 L.R.A. Rev. 40= A.I.R. 1923 All. 417.**

—Trees—Rights of landlord.

———The timber of a tree belongs to the zamindar when the tree is growing on a tenant's land and that it makes no difference if the tenant happens to be an ex-proprietary tenant who himself has planted the tree. 9 A. L. J. 672; 24 I. C. 81, *Rel. on.* (*Dalal, J.*). NASIR KHAN *v.* FAIZ MOHAMMAD KHAN. **121 I.C. 826=11 L.R.A. Rev. 106= A.I.R. 1930 All. 433.**

———The general law is that the zamindar is entitled to the timber although the tenant may have the right to cut it and so in order to entitle a tenant to appropriate the timber it is incumbent upon him to show either a custom to that effect or that the right to appropriate it was one of the incidences of the tenancy. 22 Cal. 742, *Foll.* (*Wort and James, JJ.*). SHAKULLAH *v.* BUDHRAJ MISSIR. **117 I.C. 192=A. I. R. 1929 Pat. 657.**

———*Even when property in trees is with landlord he is not entitled to go on tenants' land to cultivate lac on them.*

Any tree that a raiyat, clearing land for cultivation saves, saves for himself and not for the landlord and it is his own property, in the absence of such stipulation in that regard or (sometimes) village custom in respect of important fruit trees. Furthermore, even where the timber of a tree or part of it belongs to the landlord, it does not follow that he or any one deputed by him, is entitled to enter upon the holding of the raiyat and cultivate lac on the trees. Thus where a lessor expressly reserved property in the trees growing on leasehold land, but allowed phal phul to the lessee, the ownership of the trees did not carry with it a right to go on the lessee's lands to cultivate shellac on the reserved trees. 24 C. L. J. 21, *Rel. on.* (*Adami and Macpherson, JJ.*). UPENDRA SINGH *v.* SURJAN SINGH. **120 I.C. 756=8 Pat. 266= 10 P.L.T. 311=A.I.R. 1929 Pat. 328.**

———If a tenant improves his land by growing fruit trees, the assessment will be increased, and consequently the landlord's rent will be increased. But the landlord cannot also get rent based on the assessment and in addition rent for the fruit trees. (*Macleod, C. J. and Madgavkar, J.*). GANGARAM *v.* GANESH. **91 I. C. 318=27 Bom.L.R. 1339= A.I.R. 1926 Bom. 49.**

———The tenant has the right to cut but the landlord has the right to appropriate the timber. By the common law the landlord has no right at all in the fruit unless there is a special contract to that effect. (*Mullick, Ag. C.J. and Kulwant Sahay, J.*). BHUPAL MISSIR *v.* SARBAN LAL. **91 I.C. 735= A.I.R. 1925 Pat. 725.**

———Where a relationship of landlord and tenant exists, the property in trees and their timber lies with the landlord and if any custom, deviating from this general proposition, is alleged it must be proved, conclusively by those who maintain it.

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(*Bucknill and Ross, JJ.*). NATHUNI RAI *v.* SIR RAMESHWAR SINGH BAHADUR. **73 I.C. 629= 1 Pat. L.R. Civ. 289=A. I. R. 1924 Pat. 147.**

—Trees—Rights of tenant.

———A tenant has a right to enjoy all the benefits of the growing timber on the land during his occupancy and in the absence of a custom or of a contract to the contrary the landlord has no right to interfere with the enjoyment of his tenant of the trees upon his holding as long as the relation of landlord and tenant subsists. If thus the landlord desires to have the privilege during tenancy of entering upon the tenant's holding and cutting down and removing timber he must procure the consent of the tenant in that behalf. (1864) W.R. Gap. 367 and 30 All. 134, *Ref.*; 22 Cal. 742 and 11 M.I.A. 295 (P.C.), *Dist.* (*Rankin, C.J. and C.C. Ghose, J.*). KAMAL KRISHNA SANYAL *v.* MADHUSUDAN CHOUDHURY. **123 I.C. 316=33 C.W.N. 839= 57 Cal. 344=A.I.R. 1930 Cal. 240.**

———When a tree which ex-hypothesi it was intended that the reclaimer should cut down; the landlord getting rent for the cultivated area, is conserved by the reclaimer, he is not liable by custom or otherwise in the Ranchi District to pay rent or a tax in respect of the tree if he cultivates lac on it, unless on a stipulation in the original settlement to that effect. (*Adami and Macpherson, JJ.*). UPENDRA SINGH *v.* SURJAN SINGH. **120 I.C. 756=8 Pat. 266=10 P.L.T. 311= A.I.R. 1929 Pat. 328.**

———Persons, not in possession of land as groveholders but planting trees thereon during their tenancy, have no right to mortgage the trees. They have only a right to enjoy the produce of the trees as long as they are in possession but cannot have a right of possession over the trees after their ejectment. 2 O.C. 280, *Foll.* (*Gokaran Nath Misra, J.*). GOURI SHANKER *v.* NISAM UDDIN KHAN. **106 I.C. 494=3 Luck. 139=4 O.W.N. 1081= 9 L.R.A. Rev. 348=A.I.R. 1928 Oudh 19.**

———The tenant has to prove an exception to the general law in the form of a local custom entitling him to the timber of the trees. If he does this by producing the Record-of-Rights, this throws the burden on the landlord. (*Ross, J.*). RAMPARICHAN SINGH *v.* BIRANJI PRASAD SINGH. **72 I.C. 157= 4 P.L.T. 245=1923 P.H.C.C. 269= A.I.R. 1923 Pat. 295.**

—Trees—Right to cut.

———An occupancy tenant is not entitled to cut and remove trees standing on the holding. (*Dalal and Pullan, JJ.*). ABDUL AZIZ *v.* BAJAN. **98 I.C. 1058=8 L.R.A. Rev. 73= A.I.R. 1927 All. 176.**

———The landlord has no right to cut down trees forming a grove called Sarna in an Oraon village. A Sarna is not merely the actual tree which is worshipped but comprises the whole body of trees, in the grove in which the trees are worshipped, stand, and ancient custom forbids any one to cut trees or branches of trees standing on the Sarna groves. (*Adami and Kulwant Sahay, JJ.*). PRAYAG RAM TIWARI *v.* DUKHIA MUNDA. **98 I.C. 523= 8 P.L.T. 219=A.I.R. 1927 Pat. 104.**

———*Occupancy tenants cannot cut and use trees of spontaneous growth on their holdings, in absence of custom or contract to contrary.*

In deciding whether there is a custom by which occupancy tenancy of a village are permitted to cut and use trees of spontaneous growth on their own holdings the Court should look at the first *wajib-ul-arz* that was made after such tenants came into

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existence and when it finds that for over thirty-six years from the date of the *wajib-ul-arz* this record of custom has held the field it would be right to apply it. Occupancy tenants in village Vaira Firozepore in Bulandshahr District are entitled to cut and remove trees of spontaneous growth on their holdings. (*Stuart, J.*). CHUNNI *v.* BALDEO SINGH. **A.I.R. 1926 All. 153.**

———The ordinary law is that the tenant has a right to cut the trees and the landlord has the right to appropriate the wood. (*Kulwant Sahay, J.*). DEBI DAYAL SINGH *v.* MT. GANGO KUER.

89 I.C. 1020=A.I.R. 1926 Pat. 68.

———Mukarrari tenure-holders have a right to cut trees from the land comprised in their lease. 21 C.W.N. 636, *Ref.* (*Walmsley and Suhrawardy, JJ.*). M. ZAMINDARI CO., LTD. *v.* JAGAT CHANDRA DOBEY. **76 I.C. 990=A.I.R. 1925 Cal. 139.**

———Where the plaintiffs were originally *muafidars* of the land and at the time of suit they received a share of the produce from the proprietors in lieu of the land revenue which was previously paid to them,

Held, that this fact does not establish the relationship of landlord and tenant between the parties and therefore plaintiffs are not entitled to the price of trees cut by defendants on the land,

Held further that the plaintiffs would be the *ala maliks* and the defendants would be the *adna maliks* and not *vice versa*. (*Scott-Smith, J.*). AYUB *v.* KIRPAL SINGH. **71 I.C. 827=A.I.R. 1924 Lah. 278.**

———The trees upon the land are part of the land and the right to cut down and sell those trees is incident to the proprietorship of the land. 11 M.I.A. 295 (P.C.), *Foll.* (*Fawcett, A.J.C.*). PIR MAKHDUM *v.* MALIK BOOLKHAN.

79 I.C. 819=16 S.L.R. 87=A.I.R. 1921 Sind 109.

—Trees—Sale.

———Even though the sale of a tree on a parti land by a sub-tenant is of no avail as against the zamindar, the purchaser having a possessory title to the tree is entitled to a decree for damages against a person wrongfully cutting and misappropriating it. 24 All. 157, *Foll.* (*Iqbal Ahmad, J.*). JAWAHIR GIR *v.* JAGARNATH PRASAD.

100 I. C. 315=A.I.R. 1927 All. 760.

———Where a tenant has no other rights other than rights in the trees themselves, a purchaser of such trees from the tenant gets only rights in the timber of the trees and no more. Any other rights as to the enjoyment of fruits must be treated as destroyed by the sale and on the extinction or abandonment of these rights, the owner of the land is clearly entitled to recover possession of his land and the purchaser is entitled to remove the timber. A.I.R. 1925 Oudh 262, *Foll.* (*Wazir Hasan, J.*). MAHOMED AKBAR *v.* LACHMAN PRASAD.

105 I. C. 744=4 O. W. N. 970=A. I. R. 1927 Oudh 505.

—Trees—Transfer.

———Unless a tenant having scattered trees in the village has a transferable right to the land on which the trees stand, even if he has a right to transfer the trees themselves, such transfer will not entitle his transferee to more than the timber of the trees. A.I.R. 1927 Oudh 505, *Appr.* and A.I.R. 1925 Oudh 262, *Ref.* (*Stuart, C. J., Wazir Hasan and Raza, JJ.*). BACHCHA *v.* JAMNA DAS.

7 O.W.N. 511=A.I.R. 1930 Oudh 212 (F.B.).

———Where it is found that mango trees were planted presumably with the consent of the zamindar on the occupancy holding by the tenant,

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Held, that the tenant acquired no transferable right in the trees. 13 A.L.J. 833, *Foll.*; 34 All. 545, *Dist.* (*Sulaiman, J.*). (SYED) ABDUL RAUF *v.* RAJU MUHAMMAD SHAH. **75 I.C. 685=A.I.R. 1923 All. 340.**

———Where under the special custom of the village when a tenant, whether he is or is not an occupancy tenant, plants trees upon his holding with the consent of the landlord, they are transferable by the tenant, the landlord's suit for a declaration that those trees could not be brought to Court sale, does not lie. 3 All. 567, *Dist.*; 10 All. 159, *Foll.* (*Stuart, J.*). HAR DAYAL SINGH *v.* GUR DAYAL SINGH. **79 I. C. 542=A.I.R. 1923 All. 181.**

—Trespass.

———Upon the expiration of the terms of a lease the lessee becomes a trespasser unless the landlord chooses to treat him as a tenant for a fresh term. A.I.R. 1922 P.C. 142 and 14 C.W.N. 297, *Foll.* (*Mullick and Kulwant Sahay, JJ.*). RIKHI NATH KUARI *v.* RANGO MAHTO. **110 I.C. 494=7 Pat. 675=9 P. L. T. 811=A. I. R. 1929 Pat. 18.**

———Where a person ceases to be a proprietor or under-proprietor but continues to be in occupation of the land, it is impossible to assume that he is a trespasser. On the contrary, presumption would be the other way. (*Pullan, J.*). JAMWANTI KUAR *v.* RAM TIRATH. **107 I. C. 880=A.I.R. 1928 Oudh 302.**

———A landlord, though he has given lease to a third person is entitled, for the purpose of putting his lessee in possession, to maintain a suit to eject a trespasser. He is not bound to implead the tenant in such a suit. A.I.R. 1923 Cal. 192 and 1 M.L.W. 1047, *Appr.* (*Das and Ross, JJ.*). DAMODAR PRASAD *v.* LACHIMI PRASAD. **110 I.C. 642=7 Pat. 496=94 P.L.T. 477=A.I.R. 1928 Pat. 354.**

———A landlord is bound to maintain his tenant in peaceful possession of the land and if the possession of the tenant is disturbed, he is entitled to maintain an action for possession so that he might put the tenant in peaceful possession of the land. A.I.R. 1923 Cal. 192 and A.I.R. 1928 Pat. 354, *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). BASOO MAHTON *v.* BHAGWAN DAS. **112 I.C. 314=9 P.L.T. 840.**

———Where the plaintiff was the occupancy tenant of a certain holding in dispute and the defendant took forcible possession of that holding without the consent of the plaintiff and the relation of landlord and tenant had never been admitted between the parties by the payment of rent,

Held, that the defendant must be regarded as a sub-tenant and was liable to ejectment and S. 79, N.W.P. Tenancy Act would not apply. A.I.R. 1924 All. 431, *Foll.* (*Kendall, J.*). GANGA *v.* JAI KUMAR. **100 I.C. 352=A.I.R. 1927 All. 849.**

———The circumstances need not be such as to imply a contract by a trespasser coming upon the land of a rightful owner to pay rent in order to enable the rightful owner to recover damages for use and occupation. The plaintiff may waive the trespass and elect to treat the trespasser as a tenant. (*B.B. Ghose and Graham, JJ.*). SAMIULLA *v.* NIL MAMUD. **97 I.C. 564=A.I.R. 1927 Cal. 18.**

———A trespasser cannot by his mere act of trespass acquire for himself the status of the tenant whom he kept out of possession even though the latter's failure to sue him within 2 years may have entailed a loss of his remedy and therefore a mere loss by the tenant of his remedy to sue for possession does not entail a forfeiture or extinction of

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the tenant right under the C.P. Tenancy Law so as to enable the wrong-doer to acquire a new tenant right by prescription as against the tenant. (*Kinkhede, A.J.C.*). BANAN *v.* RANJIT SINGH.
89 I.C. 752=A.I.R. 1926 Nag. 99.

——Where a trespasser evicts the tenant, the landlord is entitled to bring a suit for the purpose of having his rights declared as against such wrong-doer and for the purpose of being put into possession of the land as against him. (*Mookerjee and Chotzner, JJ.*). RAJKUMAR MANDAL *v.* ALI MIA. **70 I.C. 792=37 C.L.J. 94=A.I.R. 1923 Cal. 192.**

——It is open to a landlord, where his title is in jeopardy from the aggressions of a trespasser, or where his title may be injured by a denial of his rights over his land, to bring a suit for possession for having his own rights declared against that trespasser and to claim *khas* possession. When a landlord sues to eject a trespasser from a tenancy holding, it is not open to the defendant, who is not a transferee from the tenant and does not hold under the tenant, to plead that the tenant has not abandoned the holding. (*Prideaux, A.J.C.*). ALLIBHAI *v.* SHAMRAO. **64 I.C. 902=18 N.L.R. 82=A.I.R. 1922 Nag. 216.**

——Even if the settlement is by some of the landlords the title of the tenant cannot be said to be so defective as to render him a trespasser on the strength of it. (*Jwala Prasad, A.C.J. and Ross, J.*). MATHURA PRASAD *v.* NAJU KHAN. **80 I.C. 568=4 P.L.T. 696=6 P.L.T. 142=A.I.R. 1921 Pat. 463.**

—Under-proprietary rights.

——Where the wording of the patta does more than suggest that the holder is an under-proprietor and not a tenant, and there is evidence that the holder managed and cultivated the uncultivated lands, exercised rights of escheat, allowed tenants to settle in the village, to plant trees, to sink wells, and this the holder or his predecessor has done as far back as the memory of man can go, at least from a period prior to annexation, the inevitable conclusion is that the holder is an under-proprietor and not tenant or thekadar. (*Viscount Dunedin.*) BISHNATH SARAN SINGH *v.* CHANDRAPAL SINGH.
A.I.R. 1930 P.C. 248 (P.C.).

——Under-proprietary rights cannot be obtained by prescription unless they have been asserted against a landlord. (*Pullan, J.*). BHAGIRATHI *v.* UDESH SINGH. **118 I.C. 759=A.I.R. 1929 Oudh 523.**

——*Landlord is entitled to a declaratory decree as cloud is cast upon the landlord's title by the tenant claiming under-proprietary right.*

The landlord issued a notice of ejectment to the tenants and they contested the notice on the ground that they were under-proprietors. The Board of Revenue decided that the tenants were not liable to ejectment as they held the plots under a special agreement and a decree of the Court. The landlord brought a suit for a declaration that the tenants are only tenants of certain plots and had no under-proprietary or pukhtadari rights in them,

Held, that it was a case in which a cloud had been cast on landlord's title which had not been finally removed by the decision of the Revenue Courts which were not competent to decide the question of under-proprietary title. The landlord had a right to sue and as his claim was not contested in the sense that the tenants did not assert any pukhtadari or under-proprietary right, the landlord was entitled to a decree. A.I.R. 1923 P.C. 118; 7 O.C. 187 ; 7 O.C. 372, *Dist.* ; A.I.R. 1916 P. C. 150 and A.I.R. 1924 Oudh 69, *Foll.* (*Pullan, J.*). THAKUR DIN *v.* UMA PRASAD DUBEY. **108 I.C. 97=5 O.W.N. 44=A.I.R. 1928 Oudh 249.**

LANDLORD AND TENANT — Under-proprietary rights.

——Where the under-proprietor obtained by compromise, a lease or theka of the whole village,

Held, his rights as under-proprietor in respect of the plots shown to be held by him as *sir* holder were not affected. (*Raza and Pullan, JJ.*). BISHMANATH *v.* SURAJPAL. **106 I.C. 8=4 O.W.N. 1037=9 L.R.A. Rev. 342=A.I.R. 1928 Oudh 33.**

——Long possession, the origin of which is not traced to have begun in under-proprietary rights, cannot create title by adverse possession. A. I. R. 1923 P.C. 118, *Foll.* (*Stuart, C.J. and Wazir Hasan, J.*). JHAGOO SINGH *v.* DEPUTY COMMR., PARTABGARH. **101 I. C. 803=A. I. R. 1927 Oudh 538.**

——Acknowledgments and entries in revenue papers may be considered to be very valuable evidence of the existence of under-proprietary rights when the existence of those rights has not been previously negatived, (by a competent Court, but where the existence of the rights has been previously negatived,) subsequent acknowledgments or entries cannot create such rights. A.I.R. 1922 P.C. 383, *Dist.* (*Stuart, C.J. and Raza, J.*). SHUJAAT HAIDER *v.* ALI AKBAR.
101 I.C. 701=10 L.R.A. Rev. 353=A. I. R. 1927 Oudh 239.

——A man who sets up *sir* rights does not necessarily claim under-proprietary rights. 5 O.L.J. 121, *Foll.* (*Raza and King, JJ.*). MAHMUDAL HASAN *v.* BULDEOSINGH. **100 I.C. 851=A.I.R. 1927 Oudh 183.**

——Per *Wazir Hasan, J.*—The claim for the status of an under-proprietor amounts to no more or less than a claim to hold the village in the right of a heritable and transferable tenure with a liability to pay rent to the taluqdar of the village. (*Stuart, C.J. and Wazir Hasan, J.*). SHEO BAHADUR SINGH *v.* BISHUNATH. **99 I.C. 876=2 Luck. 4=4 O.W.N. 15=8 L.R.A. Rev. 48=A.I.R. 1927 Oudh 74.**

——A perpetual lease, not permitting the lessee a right of transfer against the lessor is merely an occupancy holding and not an under-proprietary one. (*Pullan and Ashworth, A.J.Cs.*). LACHMIPAL SINGH *v.* RAGWAT SINGH. **85 I.C. 468=A.I.R. 1925 Oudh 527.**

——Where certain persons were recognised as under-proprietors in the year 1899 by a judicial decision and were recorded as such in settlement records,

Held, a title so long recognised cannot be overthrown. (*Lord Buckmaster.*) PIRTHIPAL SINGH *v.* GANESH DIN SINGH. **71 I C. 641=32 M.L.T. 109=18 M.L.W. 41=50 I.A. 210 (N.)=4 L.R.P.C. 7=25 O.C. 396=9 O.L.J. 649=37 C.L.J. 219=A. I. R. 1922 P.C. 383=44 M.L.J. 29 (P.C.).**

——The effect of the letters of the Government of India dated the 10th and 19th October, 1859, appended as Sch. I to the Oudh Estates Act, is not to restore all under-proprietary rights which existed before the annexation of Oudh. Before such a right can be relied on, it must be shown that it has been recognised by the Government after the date of Lord Canning's proclamation, either by an entry in the settlement records or by a settlement decree or in some other way. (*Daniels, J.C.*). MOHAMMAD RASHIUDDIN ASHRAF *v.* RAM SUKH.
65 I.C. 514=24 O.C. 342=A.I.R. 1921 Oudh 205.

LANDLORD AND TENANT—Under-proprietary rights.

——In a suit to contest a notice of ejectment the Court should cancel the notice if the tenant shows that he holds an under proprietary tenure.(*Hopkins, S. M. and Porter, J. M.*). KALLU MISIR *v.* BHAGWATI SINGH. **60 I.C. 142=2 U.P.L.R. (B.R.) 81.**

—Wajib-ul-arz.

——Absence of name in the later *wajib-ul arz* as non-proprietor resident does not raise the presumption that he was a proprietor in absence of proof of residence. (*Jai Lal, J.*). HAR NATH *v.* MOHAT LAL. **115 I.C. 422=10 L.L.J. 519= A.I.R. 1929 Lah. 123.**

——The plaintiff who was the malguzar of mauza Marud in the Chhindwara District, sued to eject the defendant who had purchased a house-site from a non-agriculturist. The sale was without the consent of the malguzar. The record was silent as to the circumstances under which the vendor obtained this site,

Held, that under the terms of the *wajib-ul-arz* the plaintiff was not entitled to eject the purchaser as the vendor was a non-agriculturist. (*Mitra, A.J.C.*). RAMA RAO *v.* GOVIND RAO. **4 N.L.J. 85=A.I.R. 1921 Nag. 145.**

—Waste.

——Waste land is to be considered in the possession of the persons having title thereto and therefore the cutting of hogla, which is a wild grass, where it is not supposed to be the exclusive property of any one, is not an act of possession by any party. (*Suhrawardy and Graham, JJ.*). NANDA KUMAR DAS *v.* EMDAD ALI. **98 I.C. 849= 44 C.L.J. 265=A.I.R. 1927 Cal. 49.**

——In Oudh where a proprietor of a village is proved to be in rent collecting possession thereof his possession over the lands situate in that village which bear the character of waste land, tank land and jungle, must be presumed. 8 O.C. 177 and 9 O.C. 33, *Rel. on.* (*Misra, J.*). HULAS *v.* BARKATUNNISSA. **94 I.C. 1034=1 Luck. 469= 13 O. L. J. 633=3 O. W. N. 475= A.I.R. 1926 Oudh 398.**

—Zamindar.

——There can be no presumption that the estate because it is admittedly a samindari is governed by the rules of primogeniture. (*Mohiuddin and Macnair, A.J.Cs.*). MT. SARJABAI *v.* GANGARAM. **118 I.C. 871=A.I.R.1930 Nag. 35.**

——The zamindars, who are paramount owners of a village, can interfere to get rid of a grave made without their knowledge in the vacant site of the *abadi* as soon as they come to know of it. (*Ashworth, J.*). KHUDA BAKSH *v.* JAI SHANKAR. **116 I.C. 628= A. I. R. 1929 All. 386.**

——A zamindar in U.P. is owner of the trees standing on tenant's land as a general rule; but this rule is subject to a custom to the contrary. 5 All. 616; 9 A. L. J. 572 and A. I. R. 1923 All. 406, *Rel. on.* (*Dalal, J.*). HAR SARAN DAS *v.* HARBANS SINGH. **119 I.C. 286=10 L.R.A. Rev. 262= A.I.R. 1929 All. 335.**

——Where the planter gives or gives up something in return for the permission to plant the tree, ordinarily, *i. e.*, in the absence of other special considerations, the tree becomes his property but where he gives or gives up nothing the property in the tree is in the zamindar. A. I. R. 1923 All. 417; A. I. R. 1921 All. 168, *Dist.*; 5 I. C. 256 and 25 I. C. 152, *Foll.* (*Boys, J.*). GOBARDHAN PANDE *v.* DEBI BUX. **115 I.C. 750=A.I.R. 1929 All. 146.**

——When land was used for very many years by ryots in a village for the purpose of crushing sugarcane and other purposes incidental to agriculture, the zemindar has no right to eject the ryots as long as they are his tenants. 29 I. C. 264 and 12 A. L. J. 963, *Foll.* (*Lindsay, J.*). PATI RAM *v.* HUR DAYAL. **93 I.C. 897= A.I.R. 1927 All. 118.**

LANDLORD AND TENANT—Miscellaneous.

——Zamindars as such have *prima facie* title to the gross collections from all the mouzas within their zamindari. The onus is on the party seeking to defeat this right to prove the grant of an intermediate tenure. 12 M. I. A. 292 (P. C.), *Foll.* (*Greaves and Mukerji, JJ.*). BAMACHARAN *v.* PYARI MOHAN. **87 I C. 581= A.I.R. 1926 Cal. 433.**

——If a zamindar transfers his zamindari share in a village it may be presumed that he transfers the property including his share in the *abadi*. 4 All. 381 and 30 Cal. 556 (P. C.), *Foll.*; 24 All. 218, *Dist.* (*Raza, J.*). BALRAM SINGH *v.* GANGA SINGH. **93 I.C. 287=13 O.L.J. 432= A.I.R. 1926 Oudh 358.**

——In the absence of evidence to the contrary, the houses or buildings situate within the zamindari area were presumed to be included in and to pass with the zamindari. (*Sulaiman and Kanhaiya Lal, JJ.*). ABHAINANDAN PRASAD *v.* PASHPAT NATH. **87 I.C. 298=47 All. 470= 23 A.L.J. 283=A. I. R. 1925 All. 449.**

——Where a zamindar sues for a declaration that the defendants who are cultivating the land are his tenants and not under-proprietors, the onus is on the defendants to prove that they are under-proprietors and not tenants. (*Dalal, J. C.*). SULTAN KHAN *v.* HARDWARI. **85 I.C. 850= A.I.R. 1925 Oudh 601.**

——Zamindar owns absolute estate in forests in zemindary. (*Krishnan, J.*). BANDARU CHELLAMMA *v.* DUNGALA PENTAYYA. **79 I. C. 845= 20 M.L.W. 478=1924 M.W.N. 440= A. I. R. 1924 Mad. 828.**

——Where the settlement was made with muafidars and zamindars received only malikana.

Held, the interest of the latter was not a personal right and the right to receive malikana and to hold *sir* land was transferable or liable to be sold in execution. (*Daniels and Lindsay, JJ.*). HANSRAJ *v.* BALDEO SINGH. **71 I. C. 1028= 21 A.L.J. 289=4 L.R.A. Rev. 155= A.I.R. 1923 All. 304.**

—Miscellaneous.

——Where the land had been let to a third person and it appeared that it was the lessee who had allowed the offensive matter to accumulate on the land,

Held, that the owner was not liable to be convicted under the bye-law framed under S. 473 of the Calcutta Municipal Act. (*Cuming, J.*). NANDA LAL ROY *v.* THE CORPORATION OF CALCUTTA. **34 C.W.N. 931.**

——*Government Land Revenue—Arrears of revenue—Meaning explained.*

An arrear of revenue under the Oudh Rent Act means an error not from the point of view of the Government but from the point of view of the persons who ought to have paid it. (*Pullan, J.*). NIL KANTHA *v.* SURAJ PRASAD. **7 O.W.N. 1089.**

——Where what was single crop land is now double crop land, the presumption is that it was done by the tenant and the onus of proving that it was not so done is on the landlord. A.I.R. 1925 Mad. 1222, *Rel. on.* (*Odgers and Wallace, JJ.*). AMBI *v.* KUNHI KANAMMA. **118 I.C. 296= A.I.R. 1929 Mad. 661.**

LANDLORD AND TENANT—Miscellaneous.

——Where the zamindar grants the lease of a land to a *persona designata*, who is also the karta of a joint Hindu family, and the latter throws the profits derived from the leasehold in the common chest, the tenancy does not become the assets of the family, because a tenancy is a creature of contract and it is not open to a lessee by his acts to impose upon the zamindar the other members of his family as co-tenants of the leasehold property. 40 All. 314, *Foll.* (*Sen, J.*). PADARATH PATHAK *v.* JUGDEO PATHAK. **8 L.R.A.Rev. 303= A.I.R. 1927 All. 844.**

——Whether one of the several tenants can be regarded as a representative of the rest must depend upon the circumstances of each case. Such a question is largely, if not essentially, a question of fact. Mere registration of one tenant does not entitle him to become the representative of the non-registered tenants. 17 C. W. N. 833, *Foll.* (*Cuming and Roy, JJ.*). SAMSENNESS BIBI *v.* RAHIM PRAMANIK. **104 I.C. 619= A.I.R. 1927 Cal. 900.**

——It is not only possible but very common for one person to be a tenant of a body of persons of whom he himself happens to be one; the tenant is the individual and the landlord is the corporate body. (*Hallifax, A.J C.*). KAMOD SINGH *v.* KHEMKARAN. **103 I.C. 186=10 N.L.J. 129= A.I.R. 1927 Nag. 263.**

——Unless an agreement to the contrary is proved, a portion of the land held under one engagement cannot be taken away so long as the remaining land cannot be taken away. 9 O.C. 109 and 2 O.L.J. 589, *Foll.* (*Mears, C.J. and Lindsay, J.*). MAHBUB ALI *v.* CHIDDAN. **95 I.C. 291= 24 A.L.J. 599=A.I.R. 1926 All. 519.**

——Ordinarily lands given as Jivai or maintenance to a cadet in the family are part of the Talukdari estate and liable to payment of Jama. (*Fawcett and Madgavkar, JJ.*). SURSINGJI SAJIRAJ *v.* SECY. OF STATE. **99 I.C. 293= 28 Bom. L.R. 1213=A.I.R. 1926 Bom. 590.**

——Where in a suit dispute arises as to the status of a tenant, the kabala by which the predecessor of the tenant purchased the tenancy is admissible to prove what was purchased under it and where the kabala shows that the tenant's predecessor purchased the land and the crops, inference can be drawn that the tenant's predecessor's vendor was a cultivating raiyat. (*Cuming and B.B. Ghose, JJ.*). JAGANNATH MONDAL *v.* BHAJAHARI NATH. **96 I.C. 360=A.I.R. 1926 Cal. 1206.**

——Haquiyat papers being the papers submitted by the Zemindar have no value as evidence against the tenants. (*Suhrawardy and Duval, JJ.*). HEM CHANDRA ROY CHOUDHURY *v.* BENAYAKDAS ACHARJI CHOUDHURY. **86 I.C. 538= A.I.R. 1925 Cal. 1037.**

——*Purchaser of a sale has no right higher than a private purchaser.*

If a proprietor of an estate defaults in paying revenue in order that he may get a higher price at the sale which entitles the purchaser to set aside all interests other than protected interests, his fraudulent motive cannot affect the rights of a *bona fide* purchaser at the sale. But the purchaser although he only joined in the fraud after the defaults in paying revenue had been made, cannot by reason of his entering into the agreement before the sale which was the machinery by which the fraud was to be carried out, and with knowledge thereof, be permitted to enjoy to the detriment of others the benefit which results to a purchaser at a sale for arrears of revenue; and the purchaser does not by this transaction acquire rights higher than those of a purchaser at a private sale. (*Chatterjee and Panton, JJ.*). TEJENDRA CHANDRA DHAR *v.* DURGADAS DUTT. **67 I.C. 398= A.I.R. 1923 Cal. 324.**

——A *Muqarridar* of the Attock District is a tenant and not an inferior proprietor. 10 P.R. 1896, *Foll.* (*Harrison, J.*). KANSH RAM *v.* SHAH NAWAZ. **71 I.C. 811=A. I. R. 1923 Lah. 295.**

——All *khudkasht* land goes with the village, if the decree has not specified particular *khudkasht* fields. But where the decree specifies the *khudkasht* fields by their numbers, it is not open to decree-holder to claim one that is not so specified, especially where the decree does not refer in a general way to lands held in *khudkasht* right, while it does to tenancy and proprietary rights. (*Kotval, A.J.C.*). HAZARILAL *v.* HAZARIMAL. **68 I.C. 476=A.I.R. 1923 Nag. 130.**

——It is settled law in C. P. that if one member of the joint family is tenant of a holding, all the members are not necessarily his co-tenants. 4 C.P. L.R. 57; 8 C.P.L.R. 11 and 1 N.L.R. 178, *Foll.* (*Drake Brockman, J.C.*). JAGANNATH *v.* BEHARI. **59 I.C. 419=A.I.R. 1921 Nag. 137.**

——Where the plaintiffs who sued for a share of the Malikana had joined the rest of the Malikanadars as defendants since those defendants refused to claim their share of the 16 annas Malikana.

Held, following the analogy of S. 148 A of the Bengal Tenancy Act, the plaintiffs would be entitled to a decree giving them a charge on the land and that the 12 years' rule of limitation will apply. (*Das and Adami, JJ.*). RAMESHWAR SINGH BAHADUR *v.* SURAJ NARAIN JHA. **61 I.C. 130= 6 P.L.J. 34=2 P.L.T. 174=A.I.R. 1921 Pat. 47.**

——The claim to Malikana is a claim against the whole estate and the mere fact that the proprietors of the estate have partitioned it among themselves and formed separate smaller estates, cannot affect the plaintiffs' claim to proceed against the original estate. (*Das and Adami, JJ.*). RAMESHWAR SINGH BAHADUR *v.* SURAJ NARAIN JHA. **61 I.C. 130=6 P.L.J. 34=2 P.L.T. 174= A.I.R. 1921 Pat. 47.**

LAND TENURE.

Acquisition by Government.
Assessment.
Birt tenure (Oudh).
Chakdari tenure.
Chakran lands (Bengal).
Digwari tenure.
Dholi tenure.
Ghatwali tenure.
Gountia tenure.
Guzara land.
Hundwa tenure.
Istimrari Mokarrari.
Jagir.
Karam Kozhu tenure.
Khaekar tenure.
Khoti land.
Khudkhast and Sir lands.
Kumki lands.
Mirasi tenure.
Mortgage.
Nadgi tenure.
Nankar.
Natham.
Patni tenure.
Permanent tenancy.
Poramboke lands.

Pradhan.
Rafatanki tenure.
Rent-free tenures.
Resumption and forfeiture.
Ryotwari tenure.
Saunji tenure.
Service tenure.
Talukdari.
Thanadari lands.
Transferability.
Ubari tenure.
Vanta tenure.
Waste land.
Zamindari.
Miscellaneous.

—Acquisition by Government.

——The *gountia's* actual assessment to revenue is based on two factors and none other, namely, the quantity of raiyati lands and the quantity of bhogra lands. The gountia's payment varies inversely with the former and directly with the latter,

Held, that the Government is entitled to a share of the compensation paid for *bhogra* land under S. 14 of the Land Acquisition Act.

Held, also that once the land is acquired it rests in Government free from all encumbrances and entirely loses its *bhogra* character. Incidents of tenure of *gountia* traced. (*Ross and Scroope, JJ.*) SECY. OF STATE *v.* BODHRAM DUBEY. **11 P.L.T. 374.**

——*Compensation—Apportionment of—Communal lands.*

Where, as in Southern Nigeria, lands are held by communities, their usufructuary rights are not affected by British occupation. The head-chief is no doubt authorised to convey a fee-simple but that is only in his capacity as a representative of all the interests affected—not because he is the owner himself. Where such lands are acquired by the Government, the head-chief is not entitled to be compensated otherwise than in his representative capacity. It is the members of the community who are in usufructuary occupation or in enjoyment of the usufruct that are entitled to compensation. (*Viscount Haldane.*) AMODU TIJANI *v.* SECRETARY FOR SOUTHERN PROVINCES, NIGERIA. **A.I.R. 1921 P.C. 212 (P.C.).**

—Assessment.

——*Suti lease—Regulation* 1 *of* 1808.

Village Chincholi was leased by Government in 1831, and the defendants khots were the successors-in-title of the lessee; plaintiff claimed to be the successor-in-title of a person who was in possession of the land in suit prior to the above-mentioned lease plaintiff's title was traced to 1867: a considerable portion of the land was utilised for building purposes up to 1915 only the fixed annual payment was charged but in 1915-16 enhanced assessment was levied; plaintiff claimed that lands were suti and subject only to fixed annual payment and that the defendants were entitled to nothing more than the fixed payment.

Held, that the plaintiff was a sutidar of the lands in suit to which Regulation 1 of 1808 applied; that the lands in suit were subject to a perpetual fixed grain rental commuted into money payment and continued to be invariable until there had been a decennial valuation changing the commutation rate by Government that the tenure did not come to an end by reason of the change in the use of the lands, and that the rates fixed by the survey assessment did not amount to the decennial valuation contemplated in S. 41, Regn. 1 of 1808, and that the assessment in excess of the fixed annual

payment levied invariably from the year 1867 could not be recovered by defendants. (*Patkar and Baker, JJ.*). KISANLAL *v.* JAMNEJAYA. **118 I.C. 244= 30 Bom. L.R. 992=A.I.R. 1928 Bom. 457.**

——*Right of Government.*

The Government has right to levy assessment on all land within its jurisdiction unless it can be proved either by statute or by agreement, express or implied, that a particular portion of land is exempt from assessment. 4 M.I.A. 466 (P.C.); A. I. R. 1915 P.C. 59; 40 Mad. 664; A. I. R. 1924 P. C. 216; 36 Mad. 373 and A.I.R. 1925 Mad. 1134, *Foll.* (*Phillips and Odgers, JJ.*). SECY. OF STATE *v.* SRI KUTHALANATHASWAMI TEMPLE. **115 I. C. 49=52 Mad. 25=29 M. L. W. 185= 1928 M.W.N. 581=A.I.R. 1928 Mad. 1176= 56 M.L.J. 24.**

—Birt tenure (Oudh).

——A decree granting birt rights under the provisions of Circular No. 2 of 1861 is necessarily a grant of under-proprietary rights whether under-proprietary rights are or are not specially mentioned, and if a Settlement Officer forming his own opinion as to what the Circular meant proceeded to give title as birtias to persons under the provisions of that Circular that title can only be held to be title as the under-proprietor. A. I. R. 1922 P.C. 41, *Rel. on.* (*Stuart, C. J. and Raza, J.*). DEPUTY COMMISSIONER, GONDA *v.* KARIMDAD KHAN. **115 I. C. 291=A. I. R. 1929 Oudh 358.**

——In the province of Oudh large proprietors let out lands on favourable terms on security of tenure. These grants of land are called *Birt Bankati* and various kinds of *birts* exist, the incidents of each of which differ from those of others.

In the present case, the defendant held the village Kundarwa under a *birt* grant created so long ago as 1802. The *Pottah* under which the *birt*-holders obtained the village declared that the land of the village was granted to get it cultivated and populated, for the purpose of cleaning the jungle, making the land fit for cultivation, and bringing *raiyat*, which carried with it the duty of sinking wells, etc. It declared that "the *birt*-holder was to enjoy it for five or six years." A comparatively small but gradually ascending rent was fixed for next 4 years. After that he was to pay the revenue to the Sarkar prevalent in the *Taluka* and take the *daswant* prevalent in the *Taluka*. In 1871 the Extra Assistant Commissioner declared the *birt*-holder as an under-proprietor and made a decree upholding in express terms his "possession and occupation as an under-proprietor under the provisions of Circular 11 of 1862 in respect of the village Kundarwa,"

Held, the respondents *birt*-holders, as declared, in the village of Kundarwa held under-proprietary rights. (*Mr. Ameer Ali.*) MAHAMMAD ABDUL HASAN KHAN *v.* LACHMI NARAIN. **63 I. C. 694= 26 C.W.N. 249=43 All. 355=48 I. A. 267= 25 O. C. 123=1921 M.W.N. 359=8 O.L.J. 294= A. I. R. 1922 P.C. 41 (P.C.).**

—Chakdari tenure.

——A "chakdar kasurkhawar" is an inferior proprietor of the land held by him in a zamindari and is not a mere occupancy tenant. The 'Chakdari' tenure occurs in the Multan and other adjoining districts of the South Punjabe. 84 P. R. 1868; *Doie's Settlement Manual*, paras 165 to 171 and *Multan District Gazetteer, Ref.* (*Jai Lal and Dalip Singh, JJ.*). THAKAR DAS *v.* FATEH MUHAMMAD. **11 Lah. 287=12 L.L.J. 119= 31 P. L.R. 592=A. I. R. 1930 Lah. 780.**

LAND TENURE—Chakdari tenure.

——*Merger of.*

Where the defendant had certain chakdari land, but when he acquired superior proprietary rights in the mahal, the Revenue Court ordered the chakdari land to be classed as khalsa land, on the ground that the under-proprietary right merged in the superior proprietary rights,

Held, that this order by a Revenue Court cannot deprive the defendant of his under-proprietary rights and no question of merger can arise unless and until the under-proprietor acquires full proprietary rights in the mahal. (*King, J.*). JADU NATH SINGH *v.* RAM SAHAI. **98 I.C. 677= 2 Luck. 274=3 O.W.N. 900= 8 L.R.A. Rev. 42=A.I.R. 1927 Oudh 18.**

—Chakran lands (Bengal).

——The fact that some wages are paid to the tenant in addition, would not change the chakran character of the holding. (*Duval and Mullick, JJ.*). SATI PRASAD GARGA *v.* MAHESH BHUNIA. **103 I.C. 542=31 C.W.N. 552=A.I.R. 1927 Cal. 561.**

——*Public and private.*

There is no distinction between the rights acquired in respect of chakran lands which are of a private nature and those acquired in respect of chowkidari chakran lands which are of a public nature. (*Greaves and Panton, JJ.*). KHETRA MOHAN GHOSE *v.* LAKHI KANTA. **98 I.C. 862= 44 C.L.J. 271=A.I.R. 1927 Cal. 46.**

——*Resumption by Government.*

The rights created by the Paiks who held the chakran tenure come to an end on the resumption of the land by Government and consequently the evidence as to the rate of rent paid by the tenant to the choukidar, chakran tenure-holder, is of no help to the tenant for proving that he is a tenant at fixed rent and that the rent is not liable to be enhanced. (*Newbould and Graham, JJ.*). HARIHAR ROY *v.* SARATCHANDRA. **91 I. C. 734= A. I. R. 1926 Cal. 661.**

——*Authority to transfer.*

The provision in a pattah by which the chowkidari chakran lands were granted to the effect that in case of the transfer of land, the incidental costs thereof shall be paid by the occupier without objection cannot by itself be construed as giving at express authority to make a transfer as contemplated by the provisions of the second paragraph of Cl. (1) of S. 11 of the Registration Act, VIII of 1819. (*Walmsley and B. B. Ghose, JJ.*). SRIMATI KANCHAN BARANI DEBI *v.* UMESH CHANDRA ROY. **87 I.C. 529=41 C.L.J. 295=A.I.R. 1925 Cal. 807.**

——*Enhancement of rent.*

The putnidar's interest in resumed *chaukidari chakran* lands which were comprised in his *putni*, is derived from the *putni* itself and from nothing else. The *zamindar* cannot therefore claim to vary the *putni* by enhancing the rent in respect of lands which were included in the original demise even assuming that the profits of these lands were not taken into account in fixing the rent. (*Greaves and B. B. Ghose, JJ.*). NARPAT SINGH *v.* RAJA BHUPENDRA NARAIN SINGH. **67 I.C. 440= 36 C.L.J. 145=26C.W N. 943=A.I.R. 1922 Cal. 473.**

—Digwari tenure.

——A digwari cannot either transfer the lands comprised in the digwari grant to another so as to create an interest in them by permanent lease, nor can he himself acquire any interest in the uncultivated land, such as jungle or waste land which is comprised within the Mouza. (*Dawson-Miller, C.J. and Ross, J.*). BAIDYANTH MAHTO *v.* SHYAM MAHTO. **59 I.C. 899 (Pat.).**

LAND TENURE—Ghatwali tenure.

—Dholi tenure.

——The *dholi* tenure is a peculiar kind of tenure to be found in the south-eastern districts of the Punjab. It is a rent-free grant of a small plot of land by the village community for the benefit of a temple, mosque of shrine, or to a person for a religious purpose. In the revenue records the proprietary body are recorded as the owners of the property and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose for which the grant is made, is carried out, it cannot be resumed, but should the holder fail to carry out the duties of his office the proprietors can eject him and put in some one else under a like tenure. Tenure of this kind cannot be alienated by sale or mortgage, and any alienation of that character, if made by the *dohlidar*, would be absolutely void. There is, therefore, no reason why the defendant should not be able to impeach the alienation, more especially because the office of *dohlidar* is similar to that of a trustee, and it is open for one trustee to impeach the validity of an alienation made by his predecessor. (*Shadi Lal, C.J. and Harrison, J.*). SEWA RAM *v.* UDEGIR. **65 I.C. 252=2 Lah. 313=23 P. L.R. 1922= A.I.R. 1922 Lah. 126.**

—Ghatwali tenure.

——Ghatwals are the proprietors of the land and there is nothing in the Bengal (Birbhum) Ghatwali Land Regulation (XXIX of 1814) to take away their rights, the exercise of which came to be restricted, having regard to the local requirements and customs of the Santal village. (*Ross and Chatterji, JJ.*). JUDU DEO *v.* CHIGU MAHARA. **A.I.R. 1930 Pat. 533.**

——Shikmi Ghatwali tenure under the Ghatwal of Rohini is not saleable. It makes no difference that the sub-infeudation was also khorposh. A.I.R. 1928 P.C. 177; 8 Cal. 388, *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). RAMDAS SINGH *v.* BENI DEO. **116 I.C. 41=8 Pat. 116= 10 P.L.T. 143= A.I.R. 1929 Pat. 198.**

——The mouzahs held by ghatwals or digwars may be within the zamindari of the Raja in the geographical limits of whose zamindari they are situate or the ghatwals or digwars may hold directly of the sovereign power as co-ordinate with rather than subordinate to the Raja. But it is always a question of fact whether they are or are not subordinate; and the burden is upon the zamindar to prove that they are part of his zamindari. 13 M.I.A. 438 (P.C.), *Rel. on.* (*Lord Phillimore.*) SECY. OF STATE *v.* RAJA JYOTI PRASHAD SINGH. **94 I.C. 974=53 Cal. 533=53 I.A. 100= 30 C.W.N. 745=24 A.L.J. 761= A. I. R. 1926 P.C. 41 (P.C.).**

——Ghatwali tenure is hereditary. (*Lord Phillimore.*) SECY. OF STATE *v.* RAJA JYOTI PRASHAD SINGH. **94 I. C. 974=53 Cal. 533=53 I.A. 100= 30 C.W.N. 745=24 A.L.J. 761= A.I.R. 1926 P.C. 41 (P.C.).**

——*Accretion.*

The produce of an impartible estate does not necessarily belong to and form an accretion to the original property, and there is no distinction between realized rent and unrealized rent. In the absence of any intention on the part of the late ghatwal to treat the produce of the estate as an accretion to the ghatwali estate, the unrealized rents are liable in execution to attachment and sale. (*Das and Ross, JJ.*). JUGAL KISHORE *v.* MT. SONABAI KUMARI. **97 I.C. 343=7 P.L.T. 626= A.I.R. 1926 Pat. 518.**

LAND TENURE—Ghatwali tenure.

——*Tenures governed by Bengal Ghatwali Land Regulation (XXIX of 1814).*

A person may be a mourashi mokarraridar and also a ghatwal. (918 P.H.C.C. 305 and A.I.R. 1924 P.C. 5, *Ref.*). The distinction between a ghatwali within the Regulation and ghatwali which is outside the Regulation is that in the former case there is no tenure between the zamindar and the ghatwal who holds direct from the Government, while in the latter the tenure exists. In the former case, while the lands of the ghatwali are still deemed to be within the zamindari, the zamindar no longer pays the Government revenue for them and has, therefore, no claim to the under ground rights; his only right connected with these lands is to receive the difference between the rent paid by the ghatwal and the amount of the Government revenue which was assessed on this part of the zamindari. If the Government does not claim the mineral rights there is no one to whom they can belong but the ghatwal. But in the latter case the zamindar still pays the Government revenue on these lands and if the ghatwal claims the minerals he must show some transaction which grants him the minerals either expressly or by necessary implication. (*Das and Ross, JJ.*). SATYA NIRANJAN *v.* SUSHILA BALA DASI.

90 I C. 513=4 Pat. 799=A.I.R. 1926 Pat. 103.

——*Occupancy rights.*

Occupancy rights cannot be acquired in *ghatwali* lands. 33 Cal. 630 and 1 C.L.J. 138, *Foll.* (*Kulwant Sahay, J.*). GOBINDA BAURI *v.* KRISTO SARDAR. **90 I.C. 489=A.I.R. 1926 Pat. 64.**

——*Occupancy rights.*

The incidents of a *ghatwali* tenure widely differ in the different parts of the country in the case of all service tenures, they generally differ and before coming to a conclusion as to whether occupancy rights have accrued in respect of *ghatwali* lands by reason of a custom or usage to that effect, such custom or usage must be pleaded and evidence led as incidents of a *ghatwali* tenure are inconsistent with a right of occupancy rights in land subject to such *ghatwali* tenure. On principle, the lands given to the *ghatwali* should be returned to the landlord free from any incumbrance or rights in favour of any other person. (*Ross and Sen, JJ.*). LAL SINGH BHUMJI *v.* KRISHTO KHUNTYA. **84 I C. 383=6 P.L.T. 534= 1924 P.H.C.C. 304=A.I.R. 1925 Pat. 306.**

——*Alienability.*

Ghatwali tenures may be alienable by custom. But if the Government releases or abolishes the services in some effective and lawful manner the incident of inalienability will pass away. In Kharagdhi, Ghatwali tenures are alienable by custom. (*Das, J.*). NARAYAN SINGH *v.* NAWAB SAIYID. **80 I.C. 544=3 Pat. 915=6 P.L.T. 191= A.I.R. 1925 Pat. 210.**

——*Defective appointment.*

If a person enters into a Ghatwali Jaghir, not having obtained the appointment which is required to make him the lawful holder of it, his possession is without title at all, and until by prescription or otherwise he acquires a right which he is capable of alienating the lack of a sanad of appointment is really the proof of the defect of his title, not of the completeness of it. (*Lord Sumner.*) SATYANARAIN SINGH *v.* SATYA NIRANJAN CHAKRAVARTY. **79 I.C. 825=28 C.W.N. 351= 3 Pat. 183=5 P.L T. 171=51 I.A. 37= 34 M.L.T. 27=A.I.R. 1924 P.C. 5 (P.C.).**

LAND TENURE—Ghatwali tenure.

——*Ghatwali tenures are inalienable and indivisible—Actual appointment of next heir is not necessary—Nature and termination of the tenure—Law regarding ghatwali tenures in general considered—Hundwa estates are ghatwali in nature.*

A Ghatwali tenure is inalienable and indivisible and cannot be sold in execution of a decree against the person of the incumbent of the office of ghatwal for the time being 9 Cal. 187 (P.C.) and 10 M.I.A. 16, *Ref.* Neither by the terms of the grant nor by the general law applying to such ghatwali tenures is an actual appointment of the next heir to be ghatwali in the rooms of his predecessor requisite, nor is actual performance of the stipulated ghatwali services from time to time necessary. Readiness and willingness to perform them when required may be inferred where there is no proof of refusal to perform and where performance within a reasonable time, if required, is not shown to have become impossible. Law relating to ghatwali tenures in general considered.

Hundwa tenure is a Government tenure. It is a perpetual and hereditary tenure, being a service tenure and ghatwali in nature.

To terminate the ghatwali character of the lands, it seems that it is necessary to find something done or omitted to be done on the part of the Government, as the grantors, which would have the legal effect of a surrender, and re-grant of the lands on new terms, or, at any rate, of a release of the right to appoint the ghatwal and call for the performance of the services.

Where a tenure is created, as distinct from a personal employment the tenure-holder has such an interest in the rendering of the services as entitles him to such benefit of the tenure as accrues from his readiness and willingness to perform his obligation. The service is not a mere burden on the land. It constitutes a personal right which cannot be terminated on the ground merely of waiver by grantor or desuetude. (*Lord Sumner.*) SATYANARAIN SINGH *v.* SATYA NIRANJAN CHAKRAVARTY. **79 I.C. 825=28 C.W.N. 351= 3 Pat. 183=5 P.L.T. 171=51 I.A. 37= 34 M.L.T. 27=A.I.R. 1924 P.C. 5 (P.C.).**

——*Forfeiture.*

Government has the power of appointing *ghatwals* and removing them. Upon removal for neglect of duty or misconduct the lands are forfeited to the Government. (*Jwala Prasad and Ross, JJ.*). H. MATHEWSON *v.* SECRETARY OF STATE. **84 I.C. 405=3 Pat. 673=A.I.R. 1924 Pat. 616.**

——*Forfeiture.*

Birbhum *ghatwali* tenures though hereditary are liable to be forfeited on the dismissal of the holder thereof. (*Jwala Prasad and Ross, JJ.*). H. MATHEWSON *v.* SECRETARY OF STATE. **84 I.C 405=3 Pat. 673= A.I.R. 1924 Pat. 616.**

——*Execution—Appointment of Receiver.*

The rents and profits other than surplus being ear-marked for the payment of chowkidars, sardars and Government dues, an order may be made that the surplus be placed at the disposal of the creditors, for there can be no question that the creditors are entitled to that surplus in execution of their decrees, and that for this purpose a Receiver may be appointed. (*Jwala Prasad and Ross, JJ.*). DAMODHAR NARAIN SINGH *v.* GANGA RAM MARWADI. **76 I.C. 8=1923 P.H.C.C. 372= 5 P.L T. 34=3 Pat. 339=A.I.R. 1924 Pat. 269.**

——*Distinction between Kharagpur and Birbhum tenure.*

LAND TENURE—Ghatwali tenure.

The ghatwali tenure in Taluka Dumri is in no way comparable to the Birbhum ghatwali tenures, and Reg. XXIX of 1814 does not apply to it, but in its origin it is rather of the nature of the Kharagpur ghatwalis. One of the main distinctions between these two classes is that the former are inalienable except with the consent of Government by whom the settlements were made and to whom the revenue is paid direct, whereas the latter are alienable subject to the consent of the landlord to whom the rent or revenue is paid. The incidents that are proved to attach to the tenure are:—(1) that it is impartible and permanent, (2) that it descends by lineal primogeniture, and (3) that it is alienable at least with the consent of the Zamindar. (*Dawson Miller, C. J. and Foster, J.*). FULBATI KUMARI *v.* MAHESHWARI PRASAD.

74 I. C. 668=4 P. L. T. 473=1923 P.H.C.C. 161=2 Pat. 685=A.I.R. 1923 Pat. 433.

——*Execution—Sale.*

The only restriction attaching to the saleability in execution of a Ghatwali or Police tenure is the right of Government to prevent the sale on the ground that the Jaghirdar or Ghatwal is liable to Government to render Police and public duties. 2 P. L. J. 725, *Foll.* (*Jwala Prasad and Ross, JJ.*). BHIKHAMBER SINGH *v.* BHAJO HARI MARWARI.

64 I.C. 522=2 P.L.T. 742.

—Gountia tenure.

——Incidents of Gountia tenure in Sambalpur District (Patna) traced. (*Ross and Scroope, JJ.*). SECY. OF STATE *v.* BODHRAM DUBEY.

11 Pat. L.T. 374.

—Guzara land.

——Land held as guzara is land held rent-free. 12 O. C. 225, *Foll.* (*Kendall, A. J. C.*). JAI INDAR BAHADUR SINGH *v.* BACHUN SINGH.

83 I.C. 382=79 I.C. 1051=27 O. C. 273=A.I.R. 1924 Oudh 390.

—Hundwa tenure.

——Hundwa tenure is a Government tenure. It is perpetual and hereditary. It is a service tenure and ghatwali in nature. (*Lord Sumner.*) SATYANARAIN SINGH *v.* SATYA NIRANJAN. **79 I.C. 825=28 C.W.N. 351=3 Pat. 183=5 P.L.T. 171=51 I.A. 37=34 M.L.T. 27=A.I.R. 1924 P.C. 5 (P.C.).**

—Istimrari Mukarrari.

——The phrase "Istimrari Mukarrari" in a Patta in District Hazaribag does not *per se* convey an estate of inheritance. But the Court is competent to see whether the other terms of the instrument, the circumstances under which it was made or the subsequent conduct of the parties show that the intention was to make the grant hereditary. (*Jwala Prosad, Ag.C.J. and Macpherson, J.*). RAM RACHHYA SINGH *v.* KAMAKYA NARAIN.

84 I.C. 586=4 Pat. 139=6 P.L.T. 12=1924 P.H.C.C. 313=A.I.R. 1925 Pat. 216.

——In Chota Nagpur the terms *istimrari mukarrari* lease means a lease for life. (*Das and Ross, JJ.*). HARI GIR *v.* K. KAMAKHYA NARAIN SINGH.

78 I.C. 511=3 Pat. 534=1924 P.H.C.C. 158=A.I.R. 1924 Pat. 572.

—Jaghir.

——*Jagodih tenure.*

Maintenance grants in Ramgarh and Chota Nagpur, like jaghirs, are resumable on failure of the lineal male descendants of the grantee.

The holders of the Jagodih tenure have the status of dependant talukdars holding under the Ramgarh Raj and are to be considered as lease-

LAND TENURE—Khoti land.

holders only within S. 7 of Regulation VIII of 1793. The tenure is a jagir tenure held under the Ramgarh Estate and is resumable on failure of the lineal male descendants of the grantee and it is not a *shamilat* or *shikmi* tenure in the sense in which those terms are used by the Revenue Officer in the Record-of-Rights published in 1914. (*Dawson-Miller, C. J. and Mullick, J.*). KAMAKHYA NARAIN SINGH *v.* JAWAHIR KHAN.

94 I.C. 1001=A.I.R. 1926 Pat. 369.

——*New settlement.*

Where the *jaghir* was specifically mentioned as a service tenure involving the performance of police and other duties and a new settlement with the *Taluqdar* showed that the rent was increased from Rs. 735 to Rs. 1,000 four villages were taken out of the Pargana and set apart for the maintenance of the widows of the previous holder, and a new patta was granted to him by the Maharaja and a new *Parvana* was issued to him at the zamindar's instance for possession of the *jaghir*.

Held, in the face of these facts it is idle to contend that the settlement with the *Taluqdar* was a continuance of the old tenure. Had the *Taluqdar* succeeded to the *jaghir* by right of inheritance the maintenance of the Ranis the widows, would have exclusively devolved on him and the superior landlord would have had no concern with it or the right to take away any part of the property to provide for their maintenance. The Maharaja's interference on behalf of the widows is explainable only on one hypothesis, *viz.*, that he was making a new arrangement by virtue of a right recognized by the authorities.

Resumption in connection with these service tenures does not mean that on failure of the direct male line it "escheats" to the zamindar and becomes what is called his *Sir* or *Khas* property; the *jaghir* retains its character, but the zamindar becomes entitled to make a new settlement with the knowledge and sanction of the authorities. (*Mr. Ameer Ali.*) RAJA SRINATH RAY *v.* MAHARAJA PRATAP UDAI NATH SAHAI. **82 I.C. 879=28 C.W.N. 145=33 M.L.T. 408=1923 M.W.N. 702=A.I.R. 1923 P.C. 217 (P.C.).**

—Karam kozhu tenure.

——Land held on *karam kozhu* tenure whether in North or South Malabar is not liable to forfeiture by alienation. (*Madhavan Nair, J.*). BANATHOOR KRISHNAN NAMBUDRIPAD *v.* KUNHAN NAIR.

86 I.C. 294=A.I.R. 1925 Mad. 915.

—Khaikari tenure.

——History of Khaikari-tenure, its origin and its incidents and rights traced. (*Sen and Niamatullah, JJ.*). GAJE SINGH *v.* MT. UCHABBA.

119 I.C. 514=1929 A.L.J. 309=10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.

——*Right of reversioners.*

A share of pucca khaikari tenure and its appurtenances belonging to a tenant in full heritable right can be inherited by his reversionary heirs even when not joint in cultivation either with him or the limited owner. (*Sen and Niamatullah, JJ.*). GAJE SINGH *v.* MT. UCHHABA. **119 I.C. 514=1929 A.L.J. 309=10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.**

—Khoti land.

——A purchaser of *Khoti Khasgi* lands from one of the co-sharers *Khots*, would be liable to pay *Faida* unless he was able to show that by virtue of some custom or agreement amongst the *Khots* the *Faida* was not payable. (*Macleod, C.J. and Coya-*

LAND TENURE—Khudkhast and Sir lands.

jee, J.). JAYANT BAPSHA SAVANT v. ABDUL RAHIMAN MAHOMED IBRAHIM. 68 I.C. 335= 24 Bom.L.R. 358=46 Bom. 319= A. I.R. 1922 Bom. 235.

—Khudkhast and Sir lands.

———*Bakasht conveys the same meaning as khudkhast—It might imply raiyati lands temporarily come into possession of landlord and under his cultivation.*

The term '*bikasht*' invented by the Revenue Officers to meet a certain contingency conveys to all intents and purposes the same meaning as khudkhast which is admittedly the same as *sir* or *zerait*. It might, however, imply *raiyati* lands that had temporarily come into the possession of the landlord and were temporarily under cultivation. (*Mr. Ameer Ali.*) DHAKESWAR PRASHAD NARAIN SINGH v. MT. GULAB KUER.

97 I.C. 217=5 Pat. 735=53 I.A. 176= 7 P.L.T. 483=31 C.W.N. 341= A.I.R. 1926 P.C. 60 (P. C.).

———*Purchase of* sir *rights.*

Sir rights, though they can only be held by a proprietor, are something beyond and apart from the mere proprietary right. The right of a *sir* holder is a right to exclusive possession coupled with the fact that no person cultivating under him can acquire occupancy rights.

In a joint undivided village each proprietor may have his own separate *sir* although the proprietary rights in the whole village are joint.

The acquisition of *sir* rights by purchase is not allowed. Where the entire *sir* has been sold and the purchaser obtained actual cultivatory possession, the land is treated as his *khudkhast* and not as his *sir*.

The purchaser of the rights of three out of four joint holders of *sir* rights can be ejected by the fourth owner if he takes possession of that owner's portion. In such a case, a person jointly interested in the *sir khata* does not lose his *sir* rights. (*Daniels, J.*). RAM PRASAD SINGH v. JANKI PRASAD SINGH. 80 I.C. 899= A.I.R. 1925 All. 93.

—Kumki lands.

———In the case of lands in South Canara it is usual for pattadars to occupy lands adjoining their patta lands for the purpose of convenient enjoyment of their holdings under patta or for purpose of cultivation, etc. The Government generally grants such land known as kumki land on darkhast to the pattadars. When the land is kumki granted on darkhast, any right previously granted by the wargdor in favour of a tenant as regards the kumki land comes to an end, and even if there is a mortgage right on the land created by the wargdor it comes to an end as soon as the grant is made by the Government to the wargdor or any other person. 35 M.L.J. 120, *Foll.* (*Devadoss, JJ.*). RAMA RAO v. APPU. 88 I.C. 924= A. I. R. 1925 Mad. 1226.

—Mirasi tenure.

———Where the son and successor of a Vatandar was aware of a permanent lease made by his father and for over twenty years received the rent under the permanent lease from the lessee,

Held, the lessee could not be evicted at least during the lifetime of the vatandar who had so continued the permanent tenancy. (*Madgavkar, J.*). NARHAR NARAYAN DESHPANDE v. GANPATI HARI SHINDE. 117 I.C. 433=31 Bom. L.R. 218= A.I.R. 1929 Bom. 174.

LNAD TENURE—Mirasi tenure.

———*Incidents of.*

The special incidents of mirasi tenures are somewhat varied in different villages. Sometimes the mirasidars have got some special rights over waste lands. Some portion of the village land is joint for all the mirasidars and is known as samudayam. Sometimes they are subject to a payment of kist to Government only if they cultivate and they have got the option to cultivate or not if they like. Where the land not held by the original mirasidars is leased out by Government to new tenants or non-mirasidars, the original mirasidars and their descendants have a right to get some special fee from the new tenants called swatanthrams. The mirasidars themselves are regarded as occupancy tenants and their under-tenants known as payakaris have in general no occupancy rights. The share paid by the payakaris is called thunduvaram. The mirasi right is held in shares, pangus, sometimes specified lands being allotted to each pangu and sometimes the pangus not being defined with reference to the lands. Where one Mirasidar is the sole tenant of all the lands of the village he is then known as egabhogam Mirasidar. The muchilikas executed by the tenants in favour of the mirasidars where they indicate absolute rights of the mirasidar are described as swanubhogam muchilikas. 40 Mad. 410 (F.B.), *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). RAMALINGA MUDALIAR v. RAMASWAMI AYYAR.

119 I.C. 577=29 M.L.W. 760=1929 M.W.N. 239= A.I.R. 1929 Mad. 529.

———*Suit for partition.*

Samudayam tenure is a holding in common by the village community known as the mirasidars.

Karaiyeedu tenure consists in a system of shifting severalty of ownership the village lands being re-distributed among the mirasidars at intervals. A suit brought for the partition of the village lands and for change to individual ownership lies whether the tenure of the village is Samudayam tenure or the Karaiyeedu tenure. (*Oldfield and Ramesam, JJ.*). VENKATARAMA AIYAR v. SUBRAMANIA SASTRY. 78 I.C. 37= 20 M.L.W. 122=A.I.R. 1924 Mad. 751.

———*Grant of proprietary rights.*

Plaintiffs were mirasidars under-defendants under Miraspatras of 1859 and 1864 which recited that the grantee would bring the land under cultivation. The quit rent was fixed as the assessment which would be imposed at the survey less the sum of Rs. 50. Beyond this no right was reserved to the Inamdars. The deed contained expressly that the Inamdars "have no right or claim whatsoever to the said lands," and allowed the grantee the right to recover any sort of tax or cess—*Kulbab Kulkanu*—from those who held under him. On the introduction of the Survey Settlement building fine was levied on the mirasidar under rules made under Ss. 65 and 48 of the Land Revenue Code. Plaintiff sued for declaration that he was not liable to pay the fine.

Held, the deed did in fact give the plaintiff rights which might be described as those of a sub-inamdar and they were entitled to a declaration that they were not liable to pay building fine to the inamdar and to an injunction restraining the Inamdar from collecting such fines through the collector. (*Shah Ag. C.J. and Pratt, J.*). DAMODAR MAHADEV BHANDE v. KASHI NATH SADASHIV.

76 I.C. 897=24 Bom. L.R. 1040= A.I.R. 1923 Bom. 72.

LAND TENURE—Mortgage.

—Mortgage.

——*Not adhlaphi tenure.*

One half of a certain area of land was sold and the vendee was to sink a well but not at his own expense, it being specifically agreed that the vendor would pay half of the total expenditure incurred on the sinking of the well and the preparation of the ground for cultivation. The vendee was to be in possession of half of the land not sold, and, out of the produce thereof, recover half of the expenditure which was payable by the vendor and the vendee was to keep strict accounts of the expenses and income.

Held, that the transaction was a lekhamukhi mortgage and an adhlaphi tenure was not created. (*Shadi Lal, C.J. and Broadway, J.*). DITTU MAL *v.* ILAHI BAKHSH. **101 I.C. 549= 9 L.L.J. 63=28 P.L.R. 123=A.I.R. 1927 Lah. 828.**

——*Biswi mortgage.*

Where land held by tenant is mortgaged by the proprietor to the tenant in consideration of money paid by the latter, it is not unusual for the tenant to appropriate a portion of the rent, for which he was originally liable, towards interest due on his loan and to pay the balance, known as *paramsana*, to the mortgagor. *Biswi* is the name usually given in Eastern Oudh to mortgages of this kind. The extinction of the right of redemption of this kind does not destroy the right of the mortgagor or his successors to claim the *paramsana* as rent for the *paramsana* does not fall within the rights to which the mortgagee is entitled. (*Kanhaiya Lal, J.C.*). SAT DEO *v.* JAI NATH. **67 I.C. 808= 9 O. L.J. 141=A.I.R. 1922 Oudh 75.**

—Nadgi tenure.

——*Neglect by tenant.*

If a *nadgi* tenure-holder neglects to cultivate the land, allows the hut to go into disrepair, carries away some of the building materials himself, and allows the rest to be stolen by others, he is liable to be evicted from his holding at the instance of the landlord.

No definite rule can be laid down that the overlord in *nadgi* tenure has to bear the expense of all improvements. (*Marten and Fawcett, JJ.*). MAHABLESHWAR DEVER SHETTI *v.* BADKU VENKA NAIJ. **86 I.C. 24=27 Bom. L. R. 82= A.I.R. 1925 Bom. 178.**

—Nankar.

——*Grant—Presumption.*

A right to nankar is, as a rule, to be considered an under-proprietary right of a heritable and transferable nature though a person in receipt of such allowance cannot necessarily be considered to be the under-proprietor of lands of which he may be in possession. This will depend upon the circumstances of each case.

Where a nankar has not been decreed by a Settlement Court or where a person is not shown to have been in enjoyment thereof since the time when he lost his zemindari right and where it is shown that he has been granted those rights at a subsequent time it should be open to the zemindar to show that at the time when such grant was made it did not carry with it an estate of inheritance or transferability but was merely a grant of a personal character, limited to the life or lives of the person or persons to whom it has been granted. If, however this is not proved by the landlord and the mere fact that a nankar has been granted to the persons who were old proprietors is established then the presumption would be, unless shown to the contrary, that the grant was in lieu of old pro-

LAND TENURE—Patni tenure.

prietary right of a heritable and transferable character. This would especially be the case where the person to whom the grant was made happened to be a former proprietor of the village and where the entry of the rights was to be found in the under-proprietary register. 1 O. C. 157; 1 O. C. 163; 4 O. and A. L. R. 446; 1 O. L. J. 733; 2 O. L. J. 359; 12 O. C. 124 and 4 O. L. J. 187, *Rel. on.* (*Misra, J.*). SHEO MANGAL *v.* PRAG NARAIN. **115 I.C. 109= A.I.R. 1929 Oudh 348.**

——A "Nankar village" means a village held by a proprietor in Mahomedan times in lieu of bread money or remuneration for services. (*Mullick and Kulwant Sahay, JJ.*). KAMAKSHYA NARAYAN SINGH *v.* THAKUR JADO CHARAN SINGH. **114 I.C. 194=A.I.R. 1928 Pat. 294.**

—Natham.

——*Proprietary rights in—Proof of.*

To establish proprietary right to property registered as natham, there must be evidence that the same was dedicated or set apart for the purposes alleged. (*Madhavan Nair, J.*). DESIKACHARIAR *v.* SECY. OF STATE. **115 I C. 241=29 M.L.W 229= 56 M.L.J. 38.**

—Patni tenure.

——*Right of co-sharer—Suit to recover rent—Other co-sharers if necessary parties.*

Where the plaintiffs sued for a declaration that the defendants had no *mirash* right in the plaintiffs' patni lands, that the plaintiffs were entitled to get the said lands assessed to rent and for recovery of fair and equitable rent and it appeared that while some of the lands exclusively belonged to the plaintiffs as regards certain others they had merely the undivided interest as co-sharer.

Held, that the suit could be divided only as regards the plaintiffs' exclusive lands, and that it could not be proceeded with in the absence of the other co-sharers as regards the other lands. (*Rankin, C.J. and C. C. Ghose, J.*). RAJCHANDRA BHOWMICK *v.* NAWAB K. HABIBULLA. **34 C.W N. 379=A.I.R. 1930 Cal. 693.**

——*Right to minerals.*

In the absence of express words mukarrari leases and other grants do not carry with them the rights to the minerals and a patni lease stands on the same footing as a mukarrari lease so far as the right to the minerals is concerned. 5 P. L. J. 563, *Foll.*; 16 C.L.J. 7, *Not foll.*; A.I.R. 1925 P.C. 42 and A. I. R. 1917 P. C. 163, *Expl.*; A.I.R. 1925 Cal. 962 and A.I.R. 1927 Cal. 956, *Dist. from.*

History and incidents of patni tenure discussed—the word '*talukdar*' explained. (*Das and Allanson, JJ.*). MANGOBINDA SAHU *v.* SATYA NIRANJAN. **112 I.C. 659=8 Pat. 190=9 P.L T. 593= A.I.R. 1928 Pat. 482.**

——*Intermediate tenure.*

A Zemindar can create an intermediate *mirasi* tenure between himself and a patnidar and such mirasidar can recover rent from the patnidar. (*Carnduff and Richardson, JJ.*). NILAMBAR *v.* MOBASANUDDIN. **67 I.C. 105=34 C.L.J. 77.**

——*Intermediate tenure.*

There is nothing opposed to law or custom to prevent a Zemindar to create an intermediate tenure between the patnidar and the darpatnidar and a suit for rent by such an intermediate tenure-holder will lie. (*Mitra and Caspersz. JJ.*). MADHU SUDHAN *v.* DEBENDRA. **66 I.C. 200=34 C.L.J. 76.**

——*Sale of—Suit for* khas *possession—Onus.*

Plaintiffs purchased a putni in execution of a decree for arrears of rent. Within 12 years of this purchase they sued for possession of the lands,

LAND TENURE—Patni tenure.

Held, that it was for the plaintiffs to show that the zemindar was in possession of these lands before the creation of the putni and that the possession of the defendants commenced after the putni came into existence or that such possession was not adverse.

The decision of the Judicial Committee in 39 Mad. 617 (P.C.) does not lay down any principle contrary to that laid down in 19 C. W. N. 18. (*Chatterjea and Greaves, JJ.*). MONMATHA NATH *v.* ANATH BANDHU. **61 I.C. 469=25 C.W.N. 106= A.I.R. 1921 Cal. 754.**

——'*Adha*' *and* '*urdha*'.

The words "adha and urdha" in the document conveyed the underground rights to the lessees including the right to work mines and extract coals. (*Jwala Prasad and Adami, JJ.*). RAMLAL KAVIRAJ *v.* SATYA NIRANJAN CHAKRAVERTY. **1921 P.H.C.C. 49=A.I.R. 1921 Pat. 379.**

—Permanent tenancy.

——*Succession—Custom—Onus.*

The rule of succession to a permanent tenure, heritable in its character, is, in the absence of a statute, terms of a grant, if any, or valid and binding custom to the contrary, the same as is applicable to other properties left by a deceased tenant. If a special custom excluding collaterals from inheritance as regards a permanent tenure is pleaded, the party pleading such a custom must have the onus laid on it to prove by satisfactory evidence that such collaterals, though heirs under the personal law of the deceased tenant in respect of all other assets left by him, were excluded from inheritance as regards his rights in the permanent tenure. (*Sen and Niamatullah, JJ.*). GAJE SINGH *v.* MT. UCHHABHA. **119 I. C. 514=1929 A.L.J. 309= 10 L.R.A. Rev. 138=A.I.R. 1929 All. 223.**

——*Proof of.*

The Court has to find whether the tenants' predecessors possessed occupancy rights at the inception of the relation of the parties, and not whether there was a subsequent change in those relations. When the origin of the tenancy is not known, evidence of the acts and conduct of the parties constitutes the best and the only evidence to prove the nature of the tenancy. The Court is entitled to infer from the continuance of land in the same hands at a low and unvarying rent, permanent rights of occupancy. (*Venkatasubba Rao, J.*). CHIDAMBARA GURUKKAL *v.* SIVAGNANASUNDARAM. **79 I.C. 619=1924 M.W.N. 487= A.I.R. 1924 Mad. 833=47 M.L.J. 598.**

—Poramboke lands.

——*Tree patta.*

Where land has been registered as tope poramboke, *prima facie* the paramount title is with Government. Tree pattas not being issued to owners of the land on which the trees stand, the holder of tree patta in respect of land registered as *tope poramboke* is not owner thereof. (*Wallace, J.*). RAMASWAMI THEVAN *v.* ALAGA PILLAI. **79 I.C. 881=A.I.R. 1925 Mad. 143.**

——*In inam village—Burden of proof.*

An inam village belonging to the plaintiff, all lands within the ambit of the village *prima facie* belong to the plaintiff and it is for the defendant to raise the plea that the suit lands are communal poramboke lands and therefore do not belong to the plaintiff and to allege and prove the facts necessary to substantiate the contention. (*Ramesam and Jackson, JJ.*). KANNAYIRAM PILLAI *v.* VIRUDUPATTI GINNING CO., LTD. **81 I.C. 1021= 20 M.L.W. 186=A.I.R. 1925 Mad. 139.**

LAND TENURE—Resumption and forfeiture.

—Pradhan.

——Tenants inducted by Pradhan cannot acquire rights by adverse possession against the landlord. To define the status of a Pradhan in the Santhal Parganas is a somewhat difficult matter. He is not a tenure-holder in the ordinarily accepted sense, but he has all the attributes of a tenure-holder and possibly he has greater rights. The Pradhan although not a tenure-holder as defined in the Bengal Tenancy Act at the present day combines both the attributes of Jeth raiyat or head raiyat of a village and ijaradar or true tenure-holder. (*Coutts and Sultan Ahmad, JJ.*). RAM CHARAN SINGH *v.* E. W. BERRY. **1921 P.H.C C. 8= A.I.R. 1921 Pat. 67.**

—Rafa-tanki tenure.

——The nature of the Rafa-tankidari interest is a question for determination in each case and they cannot be classed as a whole either as tenures or as raiyati holdings.

The status of Rafa tankidars in the particular case was that of tenure-holders and the tenants under them were occupancy raiyats.

In 1838 during the resumption proceedings by the British Government a compromise was entered into between some of the Tankidars and the Government to the effect that on condition of their agreeing to pay rent at a certain fixed rate no enquiry would be made as to the liability of their interests to be resumed. The rates so fixed were known as Rafa tanki, or compromise quit rents, and the holders of these lands came to be known as Rafa-tankidars. In many cases Rafa-tankidars belonged to the raiyati class, but this in itself is not sufficient to show that their interests were necessarily those of raiyats rather than tenure-holders. (*Dawson-Miller, C.J., Mullick, Das, Kulwant Sahay and Jwala Prasad, JJ.*). BALUKI ROOT *v.* SRI KUNJA BEHARI DEBE. **105 I.C. 633=6 Pat. 698=9 P.L.T. 72= A.I.R. 1927 Pat. 209 (F.B.).**

—Resumption and forfeiture.

——Saranjam—*Grant of royal share of revenue—Resumption of grant.*

When a grant of the royal share of the revenue takes place and the grant is resumed by the Government afterwards, the Government do not acquire the *mirasi* or the occupancy right which is a heritable and transferable right in holdings of which the saranjamdar has become the *khatedar* during the continuance of the grant, either by surrender or forfeiture. (*Shah, Ag. C. J. and Fawcett, J.*). SECY. OF STATE *v.* GIRJABAI SHIVDEORAO VINCHURKAR. **89 I.C. 539=49 Bom. 126= 26 Bom. L.R. 1173=A.I.R. 1925 Bom. 197.**

——Resumability of a tenure is different from its forfeiture on account of dismissal of its holder. (*Jwala Prasad and Ross, JJ*). H. MATHEWSON *v.* SECRETARY OF STATE. **84 I.C. 408=3 Pat. 673= A.I.R. 1924 Pat. 616.**

——"*Santhathi Brahmaswam*" *and* "*Adimayavana.*"

No custom in favour of a right of re-entry of landlord who has granted lands on the tenures known as *Santhathi Brahmaswam* and *Adimayavana* is established. (*Schwabe, C. J., Oldfield, Phillips, Devadoss, Wallis and Venkatasubba Rao, JJ.*). AYYAKUTTI *v.* KRISHNA PATTAR. **65 I.C. 942= 45 Mad. 394=15 M.L.W. 650= 1922 M.W.N. 192=31 M.L.T. 1= A.I.R. 1922 Mad. 274=43 M.L.J. 1 (F.B.).**

LAND TENURE—Ryotwari tenure.

—Ryotwari tenure.

———*Unassessed waste lands—Rights of Government—Penal assessment—Effect of.*

Unassessed waste lands in Government ryotwari tracts are at the disposal of the Government till a patta is granted when once patta is granted, the right of the Government is confined to the recovery of the revenue due in respect of it. The penal or *Sivajama* assessment imposed by the Government on trespassers amounts to a condoning of the act of trespass, but does not amount to a recognition of any right, nor any undertaking on the part of the Government to permit the occupation for the future. 91 I.C. 503, *Ref. to.* (*Ananthakrishna Iyer, J.*). SUBBAREDDI *v.* SECY. OF STATE.

124 I.C. 607 (Mad.).

———*Right to vary assessment.*

The proprietorship of the ryotwari holder in his holding is subject to the prerogative which the Crown has, according to the common law of India, of imposing, by an executive act, assessment on land and varying it from time to time. The right of the Government to assess land to land revenue and to vary it is not a right created or conferred by any statute, but the Crown possesses the prerogative of exacting from a subject holding arable land its share of the produce cr the equivalent of such produce. 25 Mad. 457 and 27 Mad. 386, *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). KELU NAIR *v.* SECY. OF STATE.

91 I.C. 82=48 Mad. 586=22 M.L.W. 762=1925 M.W.N. 815=A.I.R. 1925 Mad. 1134=49 M.L.J. 79.

———*Inam—Resumption and re-grant—Resumption declared illegal—Refund of land revenue—Claim for—Maintainability—Patta—Effect of.*

The Government resumed a devadayam inam and granted a ryotwari patta to a certain person in respect of it. The plaintiff derived his title from this person. The resumption by the Government was ultimately held to be illegal by a competent Civil Court. The plaintiff sued the Government for the recovery of the assessment which he had paid.

Held, that as the plaintiff had paid the revenue with knowledge that Government's right of resumption was in litigation there was no question of mistake,

Held further that the issue of a patta not only did not convey the land in question from Government to the plaintiff's predecessor-in-interest but did not even create a contract in respect of the land between them and that the plaintiff was not entitled to refund of land-revenue paid. 23 M. L. J. 746 and 26 Mad. 268, *Foll.*; A. I. R. 1922 P. C. 403, *Dist.* (*Phillips and Odgers, JJ.*). SECY. OF STATE *v.* JANAKIRAMAYYA. **87 I.C. 644=1925 M.W.N. 481=A.I.R. 1925 Mad. 859=48 M.L J. 440.**

———There is absolutely no relation or analogy between the nature of Kumri lands in South Canara and ryotwari holdings. (*Mr. Ameer Ali.*) AMBU NAIR *v.* SECY. OF STATE. **80 I C. 835=26 Bom. L.R. 639=20 M.L.W. 49=51 I. A. 257=1924 M. W. N. 572=35 M.L.T. 128=47 Mad. 572=29 C.W.N. 365=A.I.R. 1924 P.C. 150=47 M.L.J. 35 (P. C.).**

—Saunji tenure.

———Under saunji tenure the saunjidar is entitled to retain possession without paying any rent so long as he gives his services as purohit to the grantor. (*Addison, J.*). SUNDAR *v.* RAM CHAND. **109 I. C. 653=A.I.R. 1929 Lah. 77.**

LAND TENURE—Service tenure.

—Service tenure.

———*Denial of title.*

If a service tenant renounces his character as a service tenant and denies the title of the landlord to resume the land, the lease to him determines and no notice is necessary to eject him. 25 C.L.J. 332, *Foll.* (*Duval and Mullick, JJ.*). RAJA SATIPRASAD *v.* MAHESH BHUNIA. **103 I.C. 542=31 C.W.N. 552=A.I.R. 1927 Cal. 561.**

———*Resumption and regrant—Rival claimant—Adverse possession by.*

The grant of a title deed at the enfranchisement of a service inam (unlike the case of personal inam) confers a new title. The title cannot be questioned by persons unconnected either with the office or with the family of the grantee. The title conferred by enfranchisement is not necessarily confined to grants to persons either holding the office at the time of enfranchisement or those claiming the right to do so, though ordinarily as the land follows the office, the title would be conferred on the office-holder at the time of enfranchisement. It would be open to an outsider claiming an enfranchised service inam to show either that it was not an inam at all liable to resumption or that he had by prescription acquired a title to the property, good, not only as against the service holder, but also against the Government, so that the Government's power of disposition was lost. This would involve adverse possession for sixty years. 44 Mad. 643 (P. C.), *interpreted* and *followed*; 30 M.L.T. 334, *Overruled.* (*Ayling and Odgers, JJ.*). KRISHNA SASTRI *v.* SINGARAVELU. **91 I. C. 130=1925 M.W.N. 218=48 Mad. 570=A.I.R. 1925 Mad. 780=48 M.L.J. 470.**

———*Personal service.*

Where there is no duty or service of a personal nature imposed upon the grantee of the tenure and he is merely required to appoint Police patrols and to pay for them, the tenure is not a service tenure and not ghatwali in its nature. Mere compulsion to pay rent or revenue imposed upon the grantee does not make the tenure a service tenure. (*Das, J.*). NARAYAN SINGH *v.* NAWAB SAIYID.

80 I.C. 544=3 Pat. 915=6 P.L.T. 191=A.I.R. 1925 Pat. 210.

———*Liability to ejectment.*

Per *Odgers and Napier, JJ.*—Where the holder of a service inam is found to be entitled to Kudivaram, tenants are bound to prove that they are not tenants from year to year, otherwise they are liable to be ejected on proper notice to quit. *Case-law reviewed.* A service tenure is not incompatible with a permanent right of occupancy as such a right does not amount to an alienation. (*Napier and Odgers, JJ., then Ayling and Odgers, JJ., afterwards Krishnan and Venkatasubba Rao, JJ.*). VEERASWAMY MUDALI *v.* PALANIYAPPAN.

84 I.C. 799=19 M.L.W. 513=34 M.L.T. 175=1924 M.W.N. 466=A.I.R. 1924 Mad. 626=46 M.L.J. 515.

———*Palayam of Kannivadi.*

Where the Palayam of Kannivadi was originally held in military and police service tenure and the two services were abolished in 1801 and 1816 by Lord Clive's Proclamation and by the Government of Madras respectively the tenure ceased to be a service tenure and consequently became alienable. (*Sir John Edge.*) MALAYANDI APPAYASWAMI NAICKER *v.* MIDNAPORE ZAMINDARY CO.

60 I.C. 953=20 A. L.J. 393=26 C.W.N. 106=48 I. A. 100=44 Mad. 575=34 C.L.J. 6=14 M.L.W. 49=1921 M.W.N. 352=A.I.R. 1922 P.C. 164=40 M.L.J. 537 (P.C.).

LAND TENURE—Talukdari.

—Talukdari.

——Ordinarily lands given as Jivai or maintenance to a cadet in the family are part of the Talukdari estate and liable to payment of Jama. (*Fawcett and Maagatkar, JJ.*). SURSINGI DAJI RAJ *v.* SECY. OF STATE. **99 I.C. 293=28 Bom. L.R. 1213= A.I.R. 1926 Bom. 590.**

——*Properties purchased from income.*

The mere fact that the absolute owner of a certain *talukdari* as well as non-talukdari properties mixed together the incomes of both the properties and purchased further properties does not impress the subsequently purchased properties with the character and status of *talukdari* property and it is only the ordinary rule of succession that would apply to it. (*Kanhaiya Lal and Mukerji, JJ.*). HABBAKSH SINGH *v.* DAL BAHADUR SINGH. **88 I.C. 255=47 All. 186= 22 A.L.J. 1078=A. I. R. 1925 All. 155.**

—Thanadari lands.

——*Rights of holder.*

The holders of thanadari land stand in a certain position to the contiguous zamindar. If the lands are resumed, they are to be settled with the zamindar; and it may be that they may even be described as settled with the zamindar in a in the sense, and that there is a sort of superiority certain zamindar which might entitle him to the surface of the land in case of escheat, but whether this would give him a claim to the minerals is a question. The view that thanadari lands, though made resumable, were not always resumed is a difficult one to support. 6 M. I. A. 101 (P. C.); 10 M. I. A. 16 and 44 Cal. 841 (P. C.), *Ref.* (*Lord Phillimore.*) SECY. OF STATE *v.* RAJU JYOTI PRASHAD SINGH. **94 I.C. 974=53 Cal. 533=53 I.A. 100= 30 C.W.N. 745=24 A.L.J. 761= A.I.R. 1926 P.C. 41 (P.C.).**

——While both Lakhiraj and Thanadari lands were excluded from the operation of the Permanent Settlement, Lakhiraj lands were neither assessed nor settled with the zamindar while Thanadari lands were settled with the zamindar but excluded from the operation of the Permanent Settlement in the sense that the resumption and re-assessment thereof was reserved by the Government. 10 M. I. A. 16 (P. C.) and 42 Cal. 710 (P.C.), *Rel. on.*

Resumption in connexion with Thanadari lands properly so called was concluded within a short time after the Permanent Settlement and the zamindars were not allowed to enjoy the produce of such lands or allowances granted in respect of them to the detriment of the public revenue for any considerable length of time afterwards.

A person who claims under a settlement from the Collector on the lands having been resumed is entitled to prove dispute all this that the resumption took place on the footing that the lands were Thanadari or that the proceedings relating to the resumption were such as were sanctioned by the Regulations or were in accordance therewith and he can show by other evidence as well that the lands were Thanadari lands. (*Greaves and Mukerji, JJ.*). RISHIKESH LAW *v.* MANDAKINI DASI. **97 I.C. 678=44 C.L.J. 7=A.I.R. 1926 Cal. 1185.**

—Transferability.

——Where a man is proved to have hereditary rights and there is nothing to show that they are non-transferable they must be presumed to be transferable. (*Stuart, C.J. and Raza, J.*). DEPUTY COMMR., GONDA *v.* KARIMDAD KHAN. **118 I.C. 291=A. I. R. 1929 Oudh 368.**

——*Raiyati holding in Santhal Parganas.*

LAND TENURE—Waste land.

A raiyati jote in the Santhal Parganas cannot be sold by the regular Courts in execution of a decree except where transferability is recorded in Record-of-Rights. A.I.R. 1928 Pat.105, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). RAMDAS *v.* BENI DEO. **116 I.C. 41=8 Pat. 116=10 P.L.T. 143= A. I. R. 1929 Pat. 198.**

——*Kharposh mukarrari.*

As the khatian jamabandi is not confined to raiyati lands, the entry in this khatian jamabandi of kharposh mukarrari lands does not show that they are raiyati lands, and if according to the rules of the settlement department, in force, under-tenancies are not to be recorded, it must be taken that the tenants entered against the sub-numbers are raiyats and consequently the kharposhdar is a tenure-holder and his interest is transferable. (*Ross and Wort, JJ.*). CHHATRADHARI SINGH *v.* HEMLAL SINGH. **105 I.C. 42=9 P.L.T. 283= A.I.R. 1928 Pat. 105.**

——*Tenure held by villagers as a body—Khatedar —Right of alienation.*

At the time of the first Settlement in Berar it was not uncommon for villagers residing in the villages in their province to apply for and obtain from Government fields on the full survey assessment to be used as grazing grounds the village cattle. As the fields were let on assessment it was necessary to have a *khatedar* or person responsible for that assessment and therefore such fields were entered in the name of a particular villager though they were in reality the property of the villagers as a body. They collected among themselves the annual assessment and paid it to the *khatedar* who in turn paid it to Government. Under such circumstances an alienation by the *khatedar* is void, provided that the alienee knew the want of title in the transferor. (*Prideaux, A.J.C.*). LATIF *v.* PANDHARI. **A.I.R. 1923 Nag. 214.**

——Karamkari *and* Adimayavana *tenures.*

The inference of *prima facie* inalienability from the right of reversion in the landlord is not a necessary or valid inference at all. A permanent right of cultivation does not imply inalienability. No inference of inalienability by custom arises in the case of *Karamkari* and *Adimayavana* tenures. The method of inferring the existence of new incidents for a tenure as the supposed logical result of its known incident seems to be quite an unsafe method to adopt. To find out if any particular right is a customary incident of a tenure, the only safe method is to take evidence of the custom, in the absence of authoritative rulings or statements about it. (*Ayling and Krishnan, JJ.*). ZAMORIN RAJA *v.* SAMU NAIR. **15 M.L.W. 164= A. I. R. 1922 Mad. 290.**

—Ubari tenure.

——The *Ubari* tenure is something of the nature of special grant from Government and is subject to resumption by Government under certain conditions. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. **69 I.C. 971= 20 A.L.J. 945=45 All. 169=A.I.R. 1923 All. 88.**

—Vanta tenure.

——Vanta tenure is prescription of remote antiquity without any deeds or grants. (*Macleod, C. J. and Coyajee, J.*). SHANKAR LAL TAPIDAS *v.* BAJI-KHAN AKTYARKHAN. **69 I.C. 102= 24 Bom. L.R. 709=A.I.R. 1922 Bom. 342.**

—Waste land.

——*Possession and assessment, as evidence of title.*

The fact that a certain piece of land has not been assessed to revenue is no proof that it has not been

LAND TENURE—Zamindari.

cultivated. Nor does the failure to assess take away the plaintiff's possessory right if by actual possession he has acquired such a right. The Revenue Rules permit any person to enter into possession for the purpose of cultivation, of any Government waste land, but provided that if he does so, he shall be liable to be assessed to revenue and to be evicted by the Government. It is for the Government through its officers, to assess to revenue and not for the cultivator to see that he is so assessed. The fact that one of the contestants has been assessed to revenue and the other has not, is no doubt a relevant fact, and there may be cases in which it will suffice to turn the scale, but it is not in itself conclusive nor is assessment a recognition by the Government of a trespasser's possession. Hence, the fact that the plaintiff was not assessed for the land in dispute and the further fact, that defendant ultimately was so assessed, do not by themselves establish plaintiff's want of title. (*Carr, J.*). MAUNG KYE *v.* MAUNG THA HAN. **84 I.C. 961=2 Rang. 438= A.I.R. 1923 Rang. 87.**

—Zamindari.

——There can be no presumption that the estate because it is admittedly a zamindari is governed by the rules of primogeniture. (*Mohiuddin and Macnair, A.J.Cs.*). MT. SURJABAI *v.* GANGARAM. **118 I.C. 871=A.I.R. 1930 Nag. 35.**

——The Dhalbhum Raj in Bengal is an ordinary zemindary and is alienable. (*N. R. Chatterjea and Chotzner, JJ.*). PROTAP CHANDRA *v.* JAGADISH CHANDRA. **82 I.C. 886=40 C.L.J. 331= A.I.R. 1925 Cal. 116.**

——Zamindar owns absolute estate in forests in zemindary. (*Krishnan, J.*). BANDARU CHELLAMMA *v.* DUNGALA PENTAYYA. **79 I.C. 845= 20 M.L.W. 478= 1924 M.W.N. 440= A.I.R. 1924 Mad. 828.**

——*In Sind.*

Though there may have been originally nothing proprietary in the character of some Zemindars in Sind, yet the position was one which readily developed into a proprietary form. 1 S.D. 228l, *Foll.*; 2 S.D. 320, *Not foll.*; 7 S.L.R. 169, *Ref.*

A jaghirdar is merely one who holds as assignment of the Government revenue of certain lands. The landowner in Sind is called the zamindar. The ordinary tenure in Sind is that of a zamindar or landholder who exercises wholly or in part the privileges of the landholder and the extent of such privileges varies according to custom from that of an absolute proprietorship of the land, subject to the payment to Government of whatever may be the customary Government share of the produce, down to that of an ill-defined and often disputed claim to levy a *lapo* or rent on all cultivated land. (*Fawcett, A. J. C.*). PIR MAKHDUM *v.* MALIK BOOLA KHAN.

79 I.C. 819=16 S.L.R. 87=A.I.R. 1921 Sind 109.

—Miscellaneous.

——"*Jote.*"

Jote is a general term with respect to a holding and it is not necessarily equivalent to a "Raiyati jote." A.I.R. 1922 P.C. 241; 21 C. W. N. 188 and 8 C.W.N 117, *Foll.* (*Suhrawardy and Graham, JJ.*). TARINI CHARAN SARDAR *v.* SRISH CHANDRA PAL. **115 I.C. 81=48 C.L.J. 97=32 C.W.N. 587= 56 Cal. 173=A.I.R. 1928 Cal. 880.**

——*Bajeaftidars.*

Bajeaftidars are persons whose lands were resumed by the Government under the various regulations and were assessed to revenue, and whatever their position may have been under the regulations, the custom of the country has recognised them as tenants where they hold an area of 75 or less acres, and persons holding under them are recognised by the custom of the country only as mere tenants-at-will, the only exception being that some of the bajeaftidars were given the same status of tenure-holders as a matter of compromise in the settlement which took place between 1890 to 1900. (*Ross and Foster, JJ.*). GOPINATH SARANJI *v.* AJHARRAL HAQUE. **101 I.C. 119=8 P.L.T. 573= A.I.R. 1927 Pat. 225.**

LAND TENURE—Miscellaneous.

——*Co-sharers*—"Hissedar"

A *hissedar* means a co sharer, that is to say, a person who owns a share in the mahal. A 'mahal' is ordinarily divided into 'annas' and 'pies' share or into 'bighas' and 'biswas' share. It comprises a certain specified area. A person who owns a fractional share in the 16 annas or a fractional share in the 20 biswas necessarily owns a share in the joint Khalsa land as a co-sharer. But there may be proprietors, who have proprietary interests in the mahal and yet do not own a fractional share of the 16 annas or of the 20 biswas, as the case may be.

But where the entire 16 annas comprised in the mahal was exhausted by one group of co sharers, the other groups, though proprietors, could not be called co-sharers, that is, persons who owned specified shares in the 16 annas. (*Sulaiman and Kanhaiya Lal, JJ.*). IMDAL HUSSAIN *v.* HAIDAR BEG. **82 I.C. 196=A.I.R. 1925 All. 135.**

——Shamilat *land.*

The rights of a proprietor in the *shamilat* of a village are not a mere accessory to the land separately held by him and a sale of the latter does not *ipso facto* convey any rights in the former to the purchaser, and a clause in the *wajib-ul-arz* providing that shares in the *shamilat* are proportional to the *khewat* lands held by each proprietor cannot confer any rights in the common land on the purchaser not conveyed by his deed of sale. 1 P. R. 1894; 113 P.R. 1901; 65 P.R. 1899; 42 P.R. 1897, *Foll.*; 96 P R. 1919; 8 P.L.R. 1907 and 9 P.L R. 1907, *Dist.* (*Martineau and Zafar Ali, JJ.*) SHAHADAT *v.* GANESH DAS. **78 I C. 368=A.I.R. 1925 Lah. 105.**

——*Muafi khairati.*

The entry *Muafi Khairati* simply means that the land is held rent free or at a low rent by the favour of or under an agreement with the malguzar. Such an entry does not stand in the way of the landlord recovering the arrears of rent assessed on the holding so recorded. 11 C.P.L.R. 129 and 15 C.P.L.R. 9, *Ref.* (*Kinkhede. A.J.C.*). KHUBCHAND *v.* MULLOO. **89 I.C. 741= A.I.R. 1925 Nag. 452.**

——Manbunda *rent.*

Manbunda rent is a fixed amount independent of the total outturn of crops grown. (*Dawson-Miller, C. J. and Mullick, J.*). RAGHUNANDAN SAHAY *v.* RAMSUNDAR PRASAD. **85 I.C. 172= 4 Pat. 190=3 Pat. L.R. 22=6 P.L.T. 4= 1929 P H.C.C. 355=A.I.R. 1925 Pat. 299.**

——Marfatdari *receipt.*

Marfatdari receipts cannot convey *Raiyati* title to a *Marfatdar.* (*Jwala Prasad, Aq.C.J. and Macpherson, J.*). RAM RAGHHAYA SINGH *v.* KAMAKHYA NARAIN. **84 I.C. 586=4 Pat. 139=6 P.L.T. 12= 1924 P.H.C.C. 318=A.I.R. 1925 Pat. 216.**

——Bobabaing *land.*

There is no reason why persons should not own *bobabaing* land in a village; it is conceivable that *bobabaing* land might often exist in an area which

LAND TENURE—Miscellaneous.

was not originally appropriated to dwelling places, but was subsequently so appropriated. (*Pratt, J.*). MAUNG KYANG PU *v.* MAUNG PU.

89 I C 303=3 Rang. 147=A.I.R. 1925 Rang. 263.

———*Zuripeshgi lease—Occupancy rights in.*

A Zuripeshgi lease is a transaction between debtor and creditor and not a transaction between lessor and lessee. Therefore the Zuripeshgidar is not entitled to claim occupancy right although there was letting of the land in the sense that the Zuripeshgidar was by the terms of the Zuripeshgi lease required to cultivate the lands and to pay yearly and nominal rent. (*Das and Ross, JJ.*). KHARAG NARAYAN *v.* DWARKA PRASHAD SINGH.

78 I. C. 588=3 Pat. 463=A. I. R. 1924 Pat. 580.

LARCENY.

See PENAL CODE, S. 377.

LATHI.

See PENAL CODE.

LAVANGI CRACKERS.

See EXPLOSIVES ACT.

LAW AND EQUITY.

See (1) EQUITY.
(2) PRACTICE.

LAW REPORTS.

See PRACTICE—PRECEDENTS.

LAW REPORTS ACT (XVIII OF 1875).

—Applicability.

———*Privy Council Rulings.*

The Indian Law Reports Act has no application to a decision of the Privy Council, and therefore the Courts are at liberty to refer to an unauthorized report of the decision of the Privy Council and, if they are satisfied that it is a correct report, they are bound to follow it. (*Phillips, J., on difference between Devadoss and Wallace, JJ.*). SHUJAULMULK BAHADUR *v.* UMIRUL UMRA BAHADUR.

91 I.C. 597=48 Mad. 846=1926 M.W.N. 213=A.I.R. 1926 Mad. 20=49 M.L.J. 498.

—S. 3—Private publication.

———A decision published in a private publication not authorized by any Local Government is not absolutely binding. (*Rutledge, C.J., Carr and Chari, JJ.*). EMPEROR *v.* THA SHWE.

98 I. C. 708=4 Rang. 146=5 Bur. L.J. 90=27 Cr.L.J. 1396=A.I.R. 1926 Rang. 164 (F.B.).

———A view expressed in a judgment of a High Court which has not been officially published even without reasons, is entitled to respect, and any examination of it ought to start with the assumption that it is correct and has good reasons behind it. But it is not to be followed blindly, like one that is officially published, though good reasons must be found for not following it. (*Hallifax, A.J C.*). MURALIDHAR *v.* ANAND RAO.

93 I.C. 850=8 N.L.J. 153=A.I.R. 1925 Nag. 414.

—S. 3—Subordinate Courts.

———Per *Dalal, J.*—A Subordinate Court is bound to follow a decision of a Bench of its High Court, and in doing so it would be exercising jurisdiction rightly and not irregularly. 37 All. 359 (P.C.) and A.I.R. 1923 All. 392 (F.B.), *Rel. on.* (*Walsh and Dalal, JJ.*). RAM SAHAI *v.* MADAN LAL.

98 I. C. 376=48 All. 432=24 A.L.J. 430=A.I.R. 1926 All. 346.

LEADING QUESTIONS.

See EVIDENCE ACT, Ss. 141—143.

LEASE.

See also (1) LANDLORD AND TENANT.
(2) T. P. ACT, Ss. 106-117.

Construction.

Forfeiture and ejectment.

See also T. P. ACT, S. 1 (*g*).

LEASE—Construction.

Mokarrari.
Period of lease.
Permanency and heritability.
Purpose of.
Renewal.
Rent and revenue.
Sub-soil rights.
Transferability.
Validity.
Zur-i-peshgi.
Miscellaneous.

—Construction.

———*Tenant or under-proprietor.*

Where the wording of the patta does more than suggest that the holder is an under-proprietor and not a tenant, and there is evidence that the holder managed the cultivated and uncultivated lands, exercised rights of escheat, allowed tenants to settle in the village, to plant trees, to sink wells, and this the holder or his predecessor has done as far back as the memory of man can go, at least from a period prior to annexation, the inevitable conclusion is that the holder is an under-proprietor and not tenant or thekadar. (*Viscount Dunedin.*) BISHNATH SARAN SINGH *v.* CHANDRAPAL SINGH.

A.I.R. 1930 P.C. 248 (P.C.).

———*Clause against objection to dispossession.*

A executed a deed of lease in favour of *B* which contained terms to the following effect: "I shall not be competent to raise any objection on the ground of drought, inundation, etc., and possession and dispossession of any kind," "I shall not claim any dags, etc., which may have been included in the lease but which are owned and possessed by anybody else." *B* being unable to take possession of the land instituted a suit for a declaration of title and recovery of possession with a prayer in the alternative for refund of the premium. It was contended that because of the given conditions *B* was not entitled to a refund.

Held, that the stipulations did not in any way take away from the lessee the ordinary rights that he had of being put in possession and in default thereof claiming a rescission of the contract. (*Mukerji and Mullick, JJ.*). AHAMADAR RAHAMAN *v.* JAMINIRANJAN. **37 Cal. 114=A.I.R. 1930 Cal. 385.**

———The construction of one lease is of very little help in construing another. (*Ross and Chatterji, JJ.*). KASHI PRASAD *v.* MAHABIR PRASAD.

11 Pat. L.T. 695.

———A particular piece of land was leased out "without any interest except to get produce, cultivate the land and pay the rent, without changing the features of the land or having recourse to any illegal act or in any way interfering with the land." The land comprised paddy land and land merely producing thatching grass.

Held, that so far as the other piece of land for producing thatching grass was concerned, it must be considered that growing grass on that piece was a form of cultivation. (*Ross and Wort, JJ.*). RAGHUNANDAN SINGH *v.* RADHAKRISHNA THAKURJI.

A. I. R. 1930 Pat. 297.

———*Ambiguous terms.*

Where the terms of the lease are ambiguous and the original purpose of the tenancy is not clear, it will be open to the Court to refer to the conduct of the parties and other extraneous circumstances in order to determine the nature and the purpose of the tenancy. 15 C. W. N. 896, *Rel. on.* (*Kulwant Sahay and Fasl Ali, JJ.*). JAGADISHWAR *v.* BULAK MAHTO.

121 I.C. 360=10 P. L.T. 359=A.I.R. 1929 Pat. 376.

LEASE—Construction.

——— *Occupancy rights—Claim to.*

A lease from 1914 to 1923 Sambat demised for the year 1914, 25 bighas of land and nine mahua trees and from 1915 to 1923 the entire mouza including the cultivated and uncultivated lands. It was stipulated that the lessee should cultivate the village, keep the tenants contented, settle himself and cause the tenants to settle therein. It was further covenanted that in the event of the rent being paid till term of the lease, after the expiry of the term, the settlement would be made at a proper increased rent for a certain term with the same lessee and no other. Several times the lease was renewed and contained a clause disclaiming raiyati rights. In the Record-of-Rights, the lessee was entered as bemiadi thekadar.

Held, that it was not correct to say that the lease was a cultivating lease in respect of 25 bighas. It was a single lease for the whole village. Although there was the covenant for renewal, the lease did not contemplate permanency of tenure. The lessee was only a tenure-holder holding under a lease and acquired no occupancy rights so long as the lease continued. 25 W. R. 503; 13 C. L. J. 568 and 20 C. W. N. 800, *Ref.* (*Das and Ross, JJ.*). KAMAKHYA NARAYAN SINGH *v.* BECHU SINGH.

115 I.C. 554=A.I.R. 1929 Pat. 68.

——— *Lease of melvaram rights—Liability for village officers' remuneration.*

The plaintiff zamindar executed a *cowlenama* (lease) of certain villages in defendant's favour. It was, in effect, of the right to collect melvaram from the tenants of the villages. The Raja was liable to pay out of the gross yield nine per cent. to the village officers as their remuneration (*maniba swatantrams*). The defendant-lessee made these payments direct to the village officers. The Government having afterwards fixed salaries in cash for the village officers, the nine per cent. became no longer payable to them by the Raja. The Raja accordingly claimed to recover from the defendant-lessee the nine per cent. of the gross produce, contending that the defendant had hitherto been paying the same over to the village officers as an agent of the Raja and that when the obligation of the Raja to make these payments ceased, the defendant-lessee was thereafter receiving the nine per cent. for the Raja's use,

Held, upholding the contentions of the plaintiff, that the nine per cent. was not transferred to the defendant subject to the burden of paying the remuneration, that the payment was really made by the defendant *ad hoc* as an agent of the zamindar who was therefore entitled to recover them as soon as the liability to pay ceased. (*Viscount Dunedin.*) RAJA OF RAMNAD *v.* MUTHANAN SERVAI.

104 I. C. 337=46 C.L.J. 231=39 M.L.T. 258=1927 M.W.N. 713=29 Bom. L. R. 1400=A.I.R. 1927 P C. 206=53 M.L.J. 289 (P.C.).

———Every lease must depend on its particular language and terms. (*Sulaiman and Boys, JJ.*). ABDUL MAJID *v.* NAGESHAR DUT. **98 I.C. 92=A.I.R. 1927 All. 78.**

——— *Tenure—Not raiyati interest.*

One *K* executed in favour of *B* a kabuliyat by which a Sarasari jama was sought to be created in respect of 275 bighas of land. Out of these 275 bighas 160 bighas were cultivated land for which a rental of Rs. 74 was fixed. The remaining 115 bighas were waste land for which no rent was assessed and it was provided in the document that the rent would be assessed therefor when the land would be brought under cultivation. It went on to state that if any market, hat, etc., were established on the land, the landlord would be entitled to make settlements about them separately, and if any portion of the land was acquired for public purposes the landlord would get the price therefor. It further provided that the tenant would enjoy the fruits of the trees on the land paying Falkar and would be liable to pay further compensation if he did damage to the trees, etc. It further stated that if the entire rent for any particular year was not paid in time, the landlord would be entitled to make a fresh settlement of the jama. It stated also that the tenancy that was created was to be heritable.

Held, that the interest created was that of a tenure-holder and not that of a raiyat and the tenure was transferable. (*Greaves and M. N. Mukerji, JJ.*). BHAGWAN DAS *v.* BISWESWAR NATH. **100 I. C. 302=44 C. L. J. 434=A. I. R. 1927 Cal. 220.**

——— Where an ijara lease pertaining to a small plot of land provided "the mortgagee being in possession of the mortgaged property may cultivate or get cultivated the land with due care and diligence and the mortgagee will not allow any one to take possession of the land which is in my possession for a long time...and thereafter shall bring the mortgaged property under my own *sir* possession."

Held, that the term of the lease taken together and read with the circumstances of the lease amounted to an express prohibition to settle the land with the tenant so as to confer a title extending beyond the term of the lease itself. (*Ross and Kulwant Sahay, JJ.*). MT. BRIHASPATI *v.* RAJKUMAR SINGH. **103 I. C. 627=8 P.L.T. 775=A.I.R. 1927 Pat. 401.**

———A mourasi mokarrari kabuliyat provided: "You have been pleased to grant me in accordance with my prayer a Permanent Settlement at a jama of 10 maps of sanja paddy, measured with a Rajhati pai of full measure (the price whereof is Rs. 50) and 10 pons of straw (the price whereof is Rs. 2), the total price being Rs. 52 per annum. Accordingly I give in writing this kabuliyat that I shall deliver the said sanja paddy and straw without variation every year. If I make any default in delivering the sanja paddy, then I shall deliver bari (addition) of two salis of paddy for every map every year."

Held, the parties' intention was that only paddy and straw should be paid as rent. It would be inconsistent with their intention to hold that a fixed sum was agreed upon as that would be wholly inadequate value of the paddy at the date of the suit, and, therefore, in default of payment of the paddy and straw mentioned in the kabuliyat the landlord was entitled to their market value at the date on which they should have been paid and not merely to the sum mentioned in the kabuliyat. (*Chakravarti and Cuming, JJ.*). HEM CHANDRA JELIA *v.* SATYA KINKAR SEN. **91 I.C. 935=43 C.L.J. 171.**

——— *"Raiyat."*

The word "raiyat" used in a lease does not necessarily mean an agricultural tenant. It is often used in the mofussil of Bengal in its wider sense of meaning a tenant in general. The lessee of a piece of homestead land is ordinarily a tenant and not raiyat. (*Cuming and Chakravarti, JJ.*). BIDHUMUKHI *v.* GOBINDA CHANDRA. **90 I.C. 104=42 C.L.J. 78=A.I.R. 1926 Cal. 215.**

LEASE—Construction.

——*Lease or usufructuary mortgage.*

Under the terms of the deed it was agreed that the Ijaradar should remain in possession of the Ijara property, and out of the fixed annual rent, he should pay Government revenue and road-cess into the Government Treasury every year, should deduct and appropriate to himself certain sum every year in lieu of interest on the *Zuripeshgi* money and should pay the remaining sum every year as *haq ajiri* to the owner.

Held, that the *haq ajiri* payment was not rent, that the deed was a usufructuary mortgage and that the person in possession held as mortgagee and not as a tenant. The *haq ajiri* was due from him as mortgagee under an arrangement with the mortgagor and was not due from him as tenant, and further that the *haq ajiri* not being rent, no interest was payable on it, as there was no stipulation in the deed for payment of interest thereon. 1 P. L. W. 795, *Rel.* (*Adami and Sen, JJ.*). NATHAN PRASAD SHAH *v.* KALI PRASAD SHAH.

90 I.C. 785=7 P.L.T. 153=1925 P.H.C.C. 317=
A.I.R. 1926 Pat. 77.

——In order to determine the character of the tenancy, the Court has to look to the intrinsic evidence afforded by the documents themselves creating the tenancy and if the terms are vague or ambiguous, the Court is entitled also to look to the surrounding circumstances and the conduct of the parties.

Where a large portion of the area covered by the tenancy was tank, and in the documents there was no specific mention of the fact that the tenancy was being created for the purpose of agriculture or horticulture, but, on the other hand, the documents in question spoke of conditions to the effect that the rent would be increased proportionately as the lands became cultivable and also that the tenant would be liable to damages if the productive power of the lands be diminished in consequence of negligence on the part of the tenant and where, further more, it had been found the lands were paddy lands and that there were mango trees on the banks the fruits of which the tenant enjoyed.

Held, the lease was governed by the Tenancy Act. (*Mukerji, J.*). MUHAMMAD SULAIMAN *v.* UMA CHARAN SIL.

79 I.C. 648=
A.I.R. 1925 Cal. 181.

——*Lease or agreement to lease.*

Whether a contract is to be construed as a lease or merely as an agreement to lease must be gathered from the terms of the whole document. Where the contract operates as an actual demise it must be deemed to be a lease. 10 Bom. 101, *Ref.* (*Ashworth, J.C.*). MAHOMMED ALI *v.* SYED HASAM JAFAR.

74 I.C. 480=10 O.L.J 109=
A.I.R. 1923 Oudh 237.

——*Lease of melwaram rights—Liability for village officers' remuneration.*

A Zamindar who was entitled to receive from the cultivating ryots, as his *melwaram*, 48 per cent. of the produce, 9 per cent. of which was to be paid by him to village officers as pay, executed a *cowle* to farmers in respect of the said *melwaram* right under which the *cowledars* undertook to make the payment to the village officers themselves. Thereafter the payment to village officers was abolished by Statute and the Zemindar thereupon sued the *cowledars* for the amount which they would have had to pay to the Village Officers, on the ground that the *cowledars* were only agents of the Zemindar and that they had to account to the Zemindar for the said amount.

LEASE—Forfeiture and ejectment.

Held Per *Chief Justice and Coutts-Trotter, J., Kumaraswami Sastri, J.*, diss.—The plaintiff was not entitled to recover the amount and the only remedy of the Raja was under S. 27 (4) of the Madras Proprietary Estates Village Service Act of 1894 by an application to the Collector for increase of rent. (*Schwabe, C. J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). TIRUNEELAKANTAM SERVAI *v.* B. RAJA RAJESWARA SETHUPATHI.

70 I.C. 469=15 M.L.W. 556=
30 M.L.T. 317=46 Mad. 177=
A.I.R. 1922 Mad. 263=43 M.L.J. 158 (F.B.).

——*Lessee or under-proprietor.*

A document was christened with the name of a 'perpetual lease.' After reciting the area of the lands which were the subject-matter of the deed, the document prescribed a jama of Rs. 102-2-0 annually payable by the lessor, and then proceeded as follows:—"I do hereby agree and reduce to writing that the said 'lessee' having his possession over it shall annually pay the pay of the Patwari and Chaukidar, *i.e.*, the entire amount of Rs. 102-2-0 shall be paid to the Government, and he shall remain in possession and enjoyment of the same generation after generation (*naslan bad naslan, batnan and batnan*) and shall exercise all sorts of proprietary powers." It was found that the donee and his sons used to pay rent to the donor and her transferee.

Held, the name "perpetual lease" is not inconsistent with a grant of heritable and transferable right in the property which is the subject-matter of the deed in question. The defendants are not proprietors of the lands in suit, but they are under-proprietors, *i.e.*, they possess heritable and transferable interest in those lands. (*Dalal and Wazir Hasan, A. J. Cs.*). KARIM DAD KHAN *v.* MT. BIBI GHAFURAN.

66 I.C. 110=9 O.L.J. 104=
A.I.R. 1922 Oudh 42.

——A condition in a *kabuliyat* providing for the payment by the lessee of any tax or cess covers the road and the Health Board cess but does not include income-tax on royalty. (*Das and Adami, JJ.*). NILKANTH *v.* NIHARAN.

A.I.R. 1922 Pat. 75.

——The generic meaning of the word "satta" is mercantile traffic or exchange for money. The Satta is merely a commercial agreement regulating the conditions under which a tenant agrees to grow certain crops; but it is, in no sense, a demise of the land.

Where in a suit for declaration that the defendants are occupancy tenants, and not tenants at fixed rates, a *kabuliyat* executed by defendant's predecessor in 1875 is produced by the plaintiff as showing the origin of the tenancy, and where this *kabuliyat* does not refer to any previous tenancy or purport to be a renewal of a previous lease in the absence of evidence to the contrary, the *kabuliyat* must be read as creating the tenancy. 30 C.L.J. 121, *Foll.* (*Ross, J.*). HENRY HALL & CO. *v.* BAWAN THAKUR.

2 P.L.T. 605=
A.I.R. 1921 Pat. 412.

—Forfeiture and ejectment.

——*Option to renew not exercised.*

A lease provided that "on the expiration of the term written in this patta you will take a new settlement." The tenant, however, did not exercise his option of taking a new settlement when the term expired nor did he exercise that option within a reasonable time.

Held, that the tenant was not entitled to resist the suit for ejectment by landlord. (*Page and*

LEASE—Forfeiture and ejectment.

Mullick, JJ.). BANSHIDHAR DURGA DAS DUTTA *v.* ISHAN CHANDRA CHATTERJI. **119 I.C. 144= 33 C.W.N. 365=A.I.R. 1929 Cal. 407.**

———*Clause, if penal.*

Where a clause in the lease ran as follows: "After the expiry of the term I shall give up the land and I shall remove from possession and it will be open to the landlord without notice to settle the land with any one he likes," and there was absolutely no evidence worthy of credit to prove that the tenant was compelled to submit to the terms appearing in the *kabuliyat* or that any undue influence was exercised or could be exercised by the landlord in connexion with it, and the tenant himself did not even speak of any compulsion or undue influence.

Held, that in these circumstances the clause was not penal. A. I. R. 1928 Pat. 62; S. A. No. 1135 of 1917; S. A. No. 992 of 1917; S. A. Nos. 397 and 393 of 1919 and S. A. No. 737 of 1919, *Foll.* (*Miller, C. J. and Mullick, J.*). KUMAN DAS *v.* TILKADHARI SINGH. **107 I. C. 538=9 P.L.T. 184.**

———Cases of unauthorized alienation are generally covered by an express condition in the lease giving a right of re-entry on breach of that condition. (*Fawcett and Madgavkar, JJ.*). PURSHOTTAM *v.* GANAPATI. **98 I C. 794= 50 Bom. 306=28 Bom. L.R. 750= A.I.R. 1926 Bom. 410.**

———Where a lessee of agricultural lands is to enjoy the land without transferring it to anybody and he mortgages it subsequently, the Court will give him time to pay off the mortgage, particularly where the owner has refrained from objecting to a previous mortgage by the lessee. (*Macleod, C. J. and Coyajee, J.*). JANARDAN *v.* MHALAPPA. **94 I. C. 1054=50 Bom. 450= 28 Bom. L.R. 527=A.I.R. 1926 Bom. 304.**

———*Lease of bagat land.*

Where the *kabuliyat* showed that the lease was for a piece of bagat land and it contained no indication that the tenant was to be treated as a raiyat or that the purpose of the tenancy was agricultural or horticultural, and the limitation as to the rights of the tenant indicated in the *kabuliyat* showed clearly that the lease was neither intended to be an agricultural lease nor a horticultural lease,

Held, that the tenant was bound by the contract he made, that is, to give up possession of the land after the expiry of the prescribed period. (*Pearson and Chakravarti, JJ.*). RAJ KRISTO GHOSE *v.* BATA KRISTO GHOSE. **90 I.C. 114= A.I.R. 1926 Cal. 354.**

———A lessee cannot be evicted in the course of any agricultural year, because allowing him to retain possession at the beginning of a year amounts to the grant of a lease for that one year. (*Hallifax, A.J.C.*). FAKIRA *v.* RAMCHANDRA. **93 I.C. 633= A.I.R. 1926 Nag. 335.**

———*Clause of nullity—Relief against.*

A *Mukarrari* lease granted before the enactment of the T. P. Act provided that in default of three instalments of rent the lease should be null and void.

(*i*) *Held*, the distinction between a condition of forfeiture and a clause of nullity was one of doubtful soundness even in English Law.

(*ii*) At any rate, it is not countenanced by S. 114 of the T.P. Act.

(*iii*) So that distinction ought not to be observed even in cases not governed by the Act.

LEASE—Period of lease.

(*iv*) The Court can afford relief in both cases. (*Das and Adami, JJ.*). HIRANANDAN OJHA *v.* RAMDHAR SINGH. **69 I C. 886=1 Pat. 363= 4 Pat.L T. 292=A.I.R. 1922 Pat. 528.**

———Lease of undivided fraction in estate—Subsequent partition decree—Lessee not party to decree—Lessee in possession of whole share allotted under decree to lessor—Lessee cannot be ousted from share in remaining portion leased originally. (*Richardson and Cuming, JJ.*). BAINANDI MANDAL *v.* KAILASH CHANDRA SARDAR. **64 I.C. 448=35 C. L J. 166= A. I. R. 1921 Cal. 623.**

—Mokarrari.

———The words "Istimrari Mokarrari" do not necessarily mean "permanent and heritable" but the nature of the grant is to be determined from the circumstances. *Case-law Ref. to.* (*Greaves and Mukerji, JJ.*). JABEDA KHATUN *v.* MOHOMMAD MOZAFFAR ALI MUSANI. **90 I.C. 781= 30 C.W.N. 807=A.I.R. 1926 Cal 322.**

———In Chota Nagpur the term *istimrari mokarrari* lease means a lease for life. (*Das and Ross, JJ.*). HARI GIR *v.* K. KAMAKHYA NARAIN SINGH. **78 I.C. 511=3 Pat. 534= 1924 P.H.C.C. 158=A.I.R. 1924 Pat. 572.**

———A covenant, in a *Mourasi Mokarrari* lease providing for a payment of a fourth of the purchase money, if the land is sold is not illegal but the landlord must prove what exactly is the amount of the purchase-money (*Buckland, J.*). PROVOSH CHANDRA *v.* PRATIVABALA DEBI. **63 I.C. 337 (Cal.).**

—Period of lease.

———On the termination of a lease, the landlord and the tenants contracted that though the term of the original *kabuliyat* had expired and the rent and the land had diminished still in other respects the terms of the *kabuliyat* were to remain intact and thenceforward the tenants were to hold lands and the rent "bemeadi," *i.e.*, without term by succession. The actual words used were "warishen krame" and "bemeadi."

Held, that the words indicated that the jama was not permanent and that the tenancy was a tenancy-at-will to be extinguished by landlord after one year's notice. A. I. R 1928 Cal. 392, *Dist.*; 1918 P.H.C.C. 11, *Ref.* (*S. K. Ghose and Panckridge, JJ.*). JANAKINATH ROY *v.* MOHENDRA NARAIN ROY CHAUDHURY. **A.I.R. 1930 Cal. 94.**

———*Lease for indefinite period.*

If a lease be made to a man for an indefinite period, it enures, generally speaking, as far as his lifetime, and passes no interest to his heirs unless there are words showing an intention to grant a hereditary interest. 3 Cal. 210 (P.C.); 12 Cal. 117 (P.C.), *Rel. on*; S. A. No. 1524 of 1920 (Mad.); 30 Cal. 20 and 883; 15 Mad. 199; 8 Cal. 664 (P.C.); *Wood* v. *Davies*, (1881) 6 I. R. 50, *Ref.* (*Anantha-krishna Ayyar, J.*). (DUMING ROSARIO) SALDANA *v.* ROMAN CATHOLIC CHURCH, MERMAJAL. **A.I.R. 1930 Mad. 434.**

———*Option to lessee.*

A lease for a particular period, after which an option is given to the lessee to continue in possession on payment of rent enures for lessee's benefit, and the principle of reciprocity or mutuality cannot be invoked. After the expiry of the lease, the lessee can continue in possession as long as he pays the rent, that is, it enures during the lifetime of the lessee. 12 Cal. 117 (P.C.); (1874) P.J. 177 and 36 Mad. 557, *Ref.*; 4 Bom. 424; 11 C.W.N. 809; A.I.R. 1927 P.C. 116, *Foll.*; A.I.R. 1915 P.C. 59 and

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Wood v. *Beard*, (1876) 2 Ex. D. 30, *Dist.* (*Patkar and Baker, JJ.*). ABDUL RAHIM FUNIMULLA *v.* SAREFALI MAHOMADALLI. **114 I.C. 374= 30 Bom. L.R. 1596=A. I. R. 1929 Bom. 66.**

———*Grant for indefinite period.*

The general rule of construction is that if a grant is made to a man for an indefinite period, it enures, generally speaking, at least for the lifetime of the grantee unless there were some words showing the intention that a heritable grant was made.

The terms of the lease were as follows: "You having applied to get settlement of land for the purpose of constructing your basha, I hereby fix annual rent for the said land and settle the same with you; you shall enjoy and possess the said land by constructing your basha and residing therein, regularly paying the rent. To this effect I execute this pottah."

Held, that the tenancy under the lease is not a tenancy at-will or a yearly tenancy. A.I.R. 1926 Cal. 558, *Diss.* The lease would enure for the lifetime of the lessee. (*Greaves and Mukerjee, JJ.*). ASHUTOSH LAHIRI *v.* CHAND CHARAN. **99 I.C. 200=31 C.W.N 46=A.I.R. 1927 Cal. 179.**

———Whether a lease for an indefinite term enures for the life of the grantee depends upon the terms of the document. (*Chatterjee and Cuming, JJ.*). CHANDICHARAN *v.* ASHUTOSH LAHIRI. **94 I.C. 684=53 Cal. 95=A.I.R. 1926 Cal. 558.**

———*Annual rent.*

Where annual rent is payable in the absence of anything to show the contrary it indicates that the tenancy is a yearly one. (*Chatterjea and Cuming, JJ.*). CHANDICHARAN *v.* ASHUTOSH LAHIRI. **94 I.C. 684=53 Cal. 95=A.I.R. 1926 Cal. 558.**

———*Lease for indefinite period.*

If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. 3 Cal. 210 (P.C.), *Foll.* (*Cuming and Chakravarty, JJ.*). BISWAMBHARDAS BORAL *v.* AMIRUDDIN MONDAL. **89 I.C. 298=A.I.R. 1926 Cal. 379.**

———*Lease determinable at will.*

Where in a lease there is an express term that the lessee shall vacate the land in case he fails to pay the rent or whenever the lessor requires him to do so, the lease is not a lease for term exceeding one year though a longer period (*e.g.*, 30 years) is mentioned in the lease and the lessee is liable to ejectment. (*Gokul Prasad, J.*). GHASI RAM *v.* MALOMY CLUB. **75 I.C. 603=A.I.R. 1923 All. 382.**

—Permanency and heritability.

———The absence of the words "from generation to generation" or "you or your descendants" is an important circumstance to be taken into consideration in the construction of the lease claimed to be a "mulgeni" lease. 34 Mad. 231 and 26 Mad. 157, *Ref.* (*Ananthakrishna Ayyar, J.*). (DUMING ROSARIO) SALDANA *v.* ROMAN CATHOLIC CHURCH, MERMAJAL. **A.I.R. 1930 Mad. 434.**

———The clauses in a lease for an indefinite period that "the lessor shall not demand additional rent higher than Rs. 96" or that "the lessee alone shall have the right to make improvements to the exclusion of the lessor," cannot by themselves be taken to mean that the lease is a perpetual one. (*Ananthakrishna Ayyar, J.*). (DUMING ROSARIO) SALDANA *v.* ROMAN CATHOLIC CHURCH, MERMAJAL. **A.I.R. 1930 Mad. 434.**

———In the construction of a lease for an indefinite period clauses which throw the cost of improvements on the lessee indicate some measure of continuity but not necessarily perpetuity. 43 Cal. 382, *Foll.* (*Ananthakrishna Ayyar, J.*). (DUMING ROSARIO) SALDANA *v.* ROMAN CATHOLIC CHURCH, MERMAJAL. **A.I.R. 1930 Mad. 434.**

LEASE—Permanency and heritability.

———Perpetual lease from a person beyond his power cannot be construed as an ordinary lease from year to year entitling the lessee to possession. A. I. R. 1928 All. 617, *Diss. from.* (*Ashworth, J.*). BUNWARI BARBHI *v.* RAM RATAN. **119 I.C. 436= 10 L.R.A. Rev. 293=A.I.R. 1929 All. 387.**

———*Construction—Lease "for hamesha."*

The operation of a perpetual lease cannot be limited to the lifetime of the lessees. Where there is absolutely no reservation of any right of re-entry in favour of the lessor, in a lease for ever (hamesha karita) even in the absence of words indicating that a heritable estate was intended to be created in favour of the lessees, the words "hamesha karita" (for ever) cannot be interpreted to mean "Tumche jeewman paveto" (for your lifetime). *Case-law discussed.* (*Kinkhede, A.J.C.*). BIJU BAPU *v.* MUNNALAL. **110 I.C. 487= A.I.R. 1929 Nag. 23.**

——— The ordinary rule is that the interest in a lease is heritable. (*Bhide, J.*). MAHOMED BUDHA *v.* GHULAM QADIR. **112 I.C. 651.**

———A perpetual lessee of a structure on a piece of land as distinguished from the permanent lessee of the land itself is not entitled to build a projection above the structure, which is actually leased to him. ((*Dalip Singh, J.*). ABDUL RAHIM *v.* MUNICIPAL COMMITTEE, DELHI. **100 I.C. 834= A.I.R. 1927 Lah. 225.**

———Where a lease conferred all rights of cultivation and enjoyment to the lessee and provided for the determination of the tenancy only in the case of non-payment of rent,

Held, that reading the document as a whole the intention of the parties seems to have been to create a permanent lease in favour of the lessees which could be put an end to only in one circumstance, *viz.*, the non payment of rent by them. (*Madhavan Nair, J.*). ELAGAN *v.* NANJAPPA. **85 I.C. 964=A.I.R. 1925 Mad. 919.**

———"*Aulad.*"

The use of the word "aulad" in a lease extends the lease from being a life lease to a lease enjoyable by the aulad, but the meaning given to aulad should not be extended to mean collaterals. 12 Cal. 117 (P.C.) and 31 Cal 561, *Dist.* (*Ashworth, J.*). SITALA BAKHSH SINGH *v.* GULAB SINGH. **93 I.C. 927=3 O.W.N. 213=18 O.L.J. 365= A.I.R. 1926 Oudh 260.**

———"*Perpetual*"—*Meaning of.*

The mere use of the word, "perpetual" in a lease does not transfer heritable interest.

Where in the lease the description of the document was given as perpetual lease given for perpetual cultivation but there were no words indicating future generations, and where it was not stated that those tenants and their successors-in-interest should not be liable to ejectment,

Held, that the lease did not enure for the benefit of the future generations. 3 O.L.J. 232 and 2 O.L.J. 746, *Foll.* (*Dalal, J.C.*). KALKA SINGH *v.* BISHUNATH SINGH. **89 I.C. 221=12 O.L.J. 638= 2 O.W.N. 839=A.I.R. 1926 Oudh 72.**

———*Possession not necessary for permanent lease.*

Delivery of possession is not necessary for the completion of a permanent lease under the Transfer of Property Act, and hence a lessee who never got possession of the land can maintain an action for-

LEASE—Permanency and heritability.

trespass or for injunotion and damages. *English law referred.* (*Das and Adami, JJ.*). MIDNAPUR ZAMINDARY CO., LTD. *v.* RAM KANAI SINGH DEO. **91 I.C. 169=5 Pat. 80=7 P.L.T. 188=1925 P.H.C.C. 254=A.I.R. 1926 Pat. 130.**

——*Construction—Elements necessary to constitute permanent tenancy explained.*

In a suit for ejeotment of the defendants from their homestead situated within Municipal limits the facts found were that the tenancy was 44 or 45 years old, that its origin was not unknown, that the rent was paid uniformly at the rate of Rs. 5-10-0 per year, that there was one case of succession to the defendants from their father and that defendants' father built a house with mud walls and tiled roof, over which there were thatched *chalas*, and also constructed a *pucca* staircase and a *pucca* gateway and the defendants constructed a *pucca* privy.

Held, on those facts, that there were no substantial *pucca* buildings on the land and the inference of permanency was not justifiable from these facts. (*Greaves and Chakravarti, JJ.*). ABDUL HAKIM KHAN CHAUDHURI *v.* ELAHI BAKSHA SHA.

83 I.C. 103=52 Cal. 43=29 C.W.N. 138=A.I.R. 1925 Cal. 309.

——*Construction—Permanent nature—Lease for indefinite term—Bemaiyadi lease—Meaning.*

The material clauses of a lease were :—

(1) The purpose of the lease was to enable the lessee to erect Gola house and to purchase and sell all sorts of commodities therein, or in other words to open his business therein ;

(2) The lease was not limited for any definite period but that it was a bemaiyadi lease or a lease without any term ;

(3) That the lessee shall not have the power to construct any pucca building without the express and written permission of the lessor and if that stipulation be violated and pucca building be raised by the lessee without such permission of the lessor, he, the lessee, shall be liable to be evicted ; and

(4) In case the lessee went to erect pucca building and to have a pucca well or *Indara* he shall have to do so according to the advice of the lessor.

Held, that the erection of pucca buildings for the business as well as for the purpose of residence was in the contemplation of the parties with the condition that permission for erecting pucca structures will have to be taken from the lessor, and that under these circumstances the inference is not unreasonable, that the lease in question was meant to be of a permanent character and not from year to year.

A *Bemaiyadi* lease or a lease without any term may in the circumstances of a particular case be shown not to confer any permanent grant. (*Jwala Prasad and Adami, JJ.*). A. H. FORBES *v.* HANUMAN BHAGAT. **77 I.C. 32=2 Pat. 452=4 P.L.T. 414=1 Pat. L.R. 190=A.I.R. 1924 Pat. 88.**

——' Mireshorotto Janmaiya.'

The most material portion of the lease was thus: "With the trees you have no concern. Now all the trees you will plant there (will be) in your control; (if) on the land trees and buildings you prepare (*lit.* make ready) and (if) afterwards you sell (these) then to my estate you will pay a fourth, without a fourth and without information (to me) you will not be able to sell. Preserving the four boundaries of the land causing to come into being *Mireshorotto* constructing houses continue to make residence,"

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Held, that the lease was permanent and heritable and that by the use of the words *Mireshorotto Janmaiya* it was intended that the tenancy should be heritable and to be enjoyed by the grantee from generation to generation. (*Walmsley and Suhrawardy, JJ.*). (SREEMATI) AJIMANNESSA BIBI *v.* PANNALAL SIL. **27 C.W.N. 1037=A.I.R. 1923 Cal. 705.**

——*Tenancy at fixed rent.*

The use of the words "Putrapautradi Krame" indicate that it is intended to be a perpetual lease.

In the body of the document there was in one place an undertaking by the tenant to pay the 'Nirdaritjama,' fixed rent, and in another portion the tenant undertook to pay in addition to the 'Dharyajama' fixed rent, certain other sums namely, road cesses and public works cess as assessed and any tax or additional amount that may be assessed or settled by the Government in future in respect of lands of the tenancy. The deed further provided that " when the aforesaid village is measured and Jamabandi prepared, I shall be present before the Amin when required and shall cause the measurement and bring enhancement of rent into effect."

Held, on construction, that this tenancy was intended to be a lease at a fixed rent. The restrictive clauses "the tenant undertakes not to excavate any ditch or tank, prepare bricks, construct pucca buildings and cut down trees, etc., without taking a written order expressing consent from the landlord do not modify the nature of the tenancy. 20 C.W.N. 182; 42 Cal. 305, *Rel.*; 30 C.L.J. 32 and 41, *Ref.* (*Mookerjee and Chotzner, JJ.*). GOLAM RAHMAN MISTRI *v.* GURDAS KUNDU CHOUDHRI.

76 I.C. 586=38 C.L.J. 350=A.I.R. 1923 Cal. 505.

——*Perpetual lease.*

The material parts of the lease provided, "From the years 1311 to 1313 B. S., you shall pay jama at the said rate in respect of 550 bighas of land over and above that. You shall abide by such rules as may be enforced in respect of the remaining 264 bighas, 17 cottas of land, the jama whereof remains remitted after the same has been surveyed or brought under cultivation by the Sarkar. Moreover if in the meantime survey of cultivation be made at any time by the Sarkar then you shall pay without any notice and objections jama of *Hasil* (culturable) and *Santpati* (culturable sometimes and patit at others) land in accordance therewith from the said year. You go on enjoying the property with great felicity down to your sons, sons' sons and so on in succession and keeping intact the limits and boundaries on excavating and filling up and making homesteads and gardens and on being vested with right of sale and gift."

Held, that rights are conferred of a permanent and heritable character, but that the lease does not fix maximum rent payable in perpetuity. (*Richardson, and B. B. Ghose, JJ.*). RAJ MOHAN PODDAR *v.* TARAPRASANNA. **A.I.R. 1923 Cal. 354.**

——*Lease by shebait.*

A lease of land was granted in 1824 under a rent note which provided for a payment of a yearly rent and that if the rent was not paid, the lessee should be at liberty to remove the structure which he might have made on the property. The lessor never raised any objection when the lessee sub-let the property, on various occasions, *viz.* 1872, 1883 and 1900,

Held, the lease was a permanent lease which could only be terminated if the rent was not paid.

LEASE—Permanency and heritability.

The disability of a *shebait* to make the permanent grant is not absolute. Under special circumstances it must be presumed that the grant would be valid beyond life of the grantor if a long time has elapsed after the grant. (*Lord Buckmaster.*) BAWA MAGNIRAM SITARAM *v.* KASTURIBHAI MANIBHAI. 66 I.C. 162=26 C. W. N. 473=20 A.L.J. 371=35 C.L.J. 421=24 Bom.L.R. 584=1922 M.W.N. 19=30 M.L.T. 268=46 Bom 431=49 I.A. 54=A.I.R. 1922 P.C. 163=42 M.L.J. 501 (P.C.).

———*Lease to lessee* putra poutradi santati.

Where a lease was granted to the lessee his sons, grandsons and descendants, held that the house would be deemed to have been let absolutely for the period and that on lessee's death before the expiry of the period, it would descend to his heir alienable and never resumable, unless in a particular case, some custom were proved which would exclude the ordinary law: for instance, if it were found that these words applied to a devise of an estate which by custom descended only in the male line, then they could not be held to convey an absolute estate of inheritance. There is no difference whether such words be found in a will or lease. (*Macleod, C. J. and Shah, J.*). CHANDMAL KESARMAL *v.* VISHVANATH BALWANT SOHONI. 67 I.C. 230=24 Bom. L.R. 300=46 Bom. 816=A.I.R. 1922 Bom. 45.

—Purpose of.

———*House let for school—Leasehold vesting in Government—Lease if determined.*

By a lease the lessors let a house to one *K* for a school. The lease recited that the lessors were agreeable according to lessee's proposal to keep the house on lease as long as the lessee liked, for a monthly rental of Rs. 140 and that the lessee would not be entitled to give up the house before he prepared a house of his own for the school, and that the lessors would not be entitled to take hold of the house unless the lessee gave up the same of his own accord. Subsequently the school was removed to another site and the leasehold land was thereafter used as a hostel for students. The school was taken over by the Government and the lease property was transferred by statute to the Governor of Bengal-in-Council. The question of the amount of compensation to be paid to the lessors thus arose.

Held, that the fact that the physical site of the College buildings upon the adjoining land and that the lease property was being used for the purposes of the College other than the actual teaching in a class room would not be such a cessation of the use of the land for purposes of the College as to entitle the lessors to exercise the right to determine the lease, and that the value of the right existing in the lessors was properly established by capitalising the monthly rent. (*Lord Chancellor.*) RAKHAL CHANDRA *v.* SECRETARY OF STATE. 118 I.C. 271=1929 A.L.J. 411=33 C.W.N. 669=1929 M.W.N. 416=30 M.L.W. 831=A.I.R. 1929 P.C. 113=57 M.L.J. 493 (P.C.).

———A tank can be leased for agricultural purposes; for instance, for irrigating adjacent lands or watering the cattle used for cultivation. (*Suhrawardy and Cuming, JJ.*). SATENDRA MOHUN *v.* RAMSUNDER DAS. 88 I.C. 534=A.I.R. 1926 Cal. 239.

———*Horticultural lease.*

Where the lessee is allowed, according to the lease, to enjoy the fruits of the trees on the land and is also allowed to plant and grow more fruit trees, and to enjoy the fruit thereof, but is not allowed to cut down or sell the trees, without the lessor's permission, the tenancy is for horticultural purposes. 17 C.L.J. 411, *Dist*, (*Cuming, J.*). MT. RAKHYAMANI DEBI *v.* PARAMESH CHAKRABARTI. 96 I.C. 89 (Cal.).

LEASE—Renewal—Nature of.

———A lease to a company provided *inter alia*: "You shall keep it as long as you please. You should always keep this land in your possession for the use of your ginning factory. I will not ask it back."

Held, that it was an agreement with a particular company, the original lessees, that they should hold the land as long as they liked. A perpetual lease is determined by the death of the lessee. (4 Bom. 424, *Ref.*). And on the same principle where the company to whom the land is given for a specified purpose is defunct, the lease comes to an end. The lease is not a perpetual one in the sense that the lessees could do what they liked with the land and any diversion of use of the land from the purpose for which the lease was apparently granted would give the lessor a right of re-entry and therefore in the present case the lease came to an end when the land was no longer used for ginning factory. (*Prideaux, A.J.C.*). GOVARDHAN DAS *v.* WAHEDKHAN. 73 I.C. 24=6 N.L.J. 170=A.I.R. 1923 Nag. 243.

—Renewal (Clause for)—Construction.

———A lease for a term of years contained a renewal clause which entitled the lessee after the expiry of the original term to a renewal of the lease for a further period or to a new lease on certain terms. The lessee mortgaged his interest in the property and empowered the mortgagee to sub-let the property during the term of the mortgage as the mortgagor himself might have done and also to do all acts by using the name of the mortgagor without reference to him.

Held, that the mortgagee was not an assignee of the term for the renewal of the lease and that as there was no privity of contract between him and the lessor, he was not entitled to demand a renewal of the lease. (*Greaves and B.B. Ghose, JJ.*). BENOY KRISHNA GAIN *v.* FANENDRA NATH ROY. 91 I. C. 501=A.I.R. 1927 Cal. 100.

———*Rights under.*

Under a lease with a clause for renewal the lessee cannot claim to ask for a condition of renewal in the renewed lease. The utmost right that he has under the renewal clause is the right for a lease for an additional term of the original lease, after the expiry of the original lease. When the lessor does not disturb the possession of the lessee for another term, the lessee has no ground of complaint. After the expiry of the original lease the lessee becomes a tenant from year to year with a right to renewal for another term of the original lease and the lessor can eject him upon proper notice of ejectment. 5 I.A. 164 (P.C.), *Foll.* (*Walmsley and Chakravarti, JJ.*). JOGESH CHANDRA ROY *v.* ANAND CHARAN CHOWDHURY. 93 I. C. 831=53 Cal. 590=A.I.R. 1926 Cal. 1065.

—Renewal—Nature of.

———Covenant for renewal does not run with the land. (*Lord Carson.*) SECY. OF STATE *v.* VOLKART BROTHERS. 111 I.C. 404=51 Mad. 885=55 I.A. 423=26 A.L.J. 1229=30 Bom. L.R. 1378=48 C.L.J. 431=33 C.W.N. 33=28 M.L.W 803=1928 M.W.N. 754=A.I.R. 1928 P.C. 268=55 M.L.J. 656 (P.C.).

LEASE—Renewal—Not Penal.

—Renewal—Not penal.

——An ejectment suit was compromised. The provisions of compromise were that up to 11 years the defendants were to hold the premises on a rent of Rs. 400 per year and that if the defendants wanted to occupy the premises after the expiry of 11 years, without taking a fresh settlement, they would have to pay rent at Rs. 100 per month.

Held, that what the parties intended was that, if the defendants wanted to occupy the premises after the expiry of 11 years, they could either take a fresh settlement or remain in occupation without a fresh settlement on a rent of Rs. 100 per month which the parties at that time thought would be a fair rent after the lapse of 11 years and that the terms were not penal and therefore they were enforceable. 17 C.L.J. 590, *Appl.* (*Adami and Sen, JJ.*). JITENDRA NATH CHATTERJEE *v.* MT. JASODA SAHUN. **92 I.C. 617=7 P.L.T. 299=1925 P.H.C.C. 353=A.I.R. 1926 Pat. 122.**

—Renewal—Of part.

——A lease of land contained the clause for renewal in the following terms: "That the said *F* (*i.e.*, the lessee) his heirs, executors, administrators or assigns fulfilling the covenants and agreements hereinbefore contained and on his part to be performed and yielding and paying at the end and expiration of the aforesaid term of 99 years unto the said United Company (*i.e.*, the lessor) their successors or assigns, the full and just sum of 100 pagodas current money of Fort St. George, then this lease shall and may be renewed for a further term of 99 years upon such terms and conditions as shall be judged reasonable." During the term of lease the lessees transferred their interest in a portion of the property. On expiry of the lease term, they sued for a declaration that they were entitled to renewal for 99 years of the term granted by the said lease as regards the whole of the property demised by the said lease or, alternatively, as regards the part retained by them and specific performance of the covenant for renewal.

Held, that the claim for renewal of the whole was untenable, the lessees having lost interest in a portion of the property and that the covenant was plainly applicable to the premises as a whole and that as the covenant was to renew the lease as a whole, it could not avail the lessees for a renewal of a portion. *Simpson* v. *Clayton*, 8 L. J. C. P. 59, *Dist.*; A.I.R. 1927 Mad. 513, *Reversed.* (*Lord Carson.*) SECY. OF STATE *v.* VOLKART BROTHERS. **111 I.C. 404=51 Mad. 885=55 I. A. 423=26 A. L. J. 1229=30 Bom. L.R. 1578=48 C.L.J. 431=33 C.W.N. 33=28 M.L.W. 803=1928 M.W.N. 754=A.I.R. 1928 P.C. 258=55 M L.J. 645 (P.C.).**

——Lessee cannot ask for renewal of that part of leased property in which he has ceased to have an interest. But as to that part in which he continues to have interest renewal can be granted. (*Krishnan and Venkatasubba Rao, JJ.*). SECY. OF STATE *v.* VOLKART BROTHERS. **102 I.C 246=50 Mad. 595=25 M. L. W. 525=1927 M.W.N. 318=38 M.L.T 233=A I R 1927 Mad. 513=52 M.L.J. 443.**

—Renewal—Specific performance allowed.

—— Per *Coutts-Trotter, C. J. and V. S. Rao, J.* (*Krishnan, J. differing.*)—A contract to grant a renewal of a lease on such conditions as shall be reasonable and proper at the time of such renewal is a contract which is capable of specific performance. Such a contract is not void or uncertainty.

LEASE—Rent and revenue.

(*Krishnan and Venkatasubba Rao, JJ.*). SECY. OF STATE *v.* VOLKART BROTHERS. **102 I C. 246=50 Mad. 595=25 M.L.W. 525=1927 M W.N. 318=38 M.L.T. 233=A.I.R. 1927 Mad. 513=52 M L.J. 443.**

——In paragraph 1 of the Patta it was provided that the lease was for a term of seven years from 1322 to 1328 Fs. Then paragraph 5 ran as follows: "The period of Thikka under this Patta will expire in 1328 (twenty-eight) Fs. 1, the executant, have agreed that I shall execute a fresh Patta for seven years from 1329 (twenty-nine) to 1335 (thirty-five) Fs. with respect to all the Mouzas and the lands leased out on the above amount of Jama and on the condition of this deed and that possession of the Thekadar will continue up to 1335 Fs., etc."

Held, there was a clear agreement between the parties that after the expiration of the first period of seven years the lessee was to continue in possession for a term of another seven years on the same condition as before and therefore the period of the Theka was to extend up to the year 1335 Fs. The lessee being in possession, he could, if he liked, enforce specific performance of the agreement to execute a fresh Patta. 24 C.W.N 463. *Foll.* (*Bucknill and Kulwant Sahay, JJ.*). MOBIT NARAYAN JHA *v.* KAMAL NATH JHA. **84 I.C. 536=1 Pat. L.R. 69=1923 P.H.C.C. 23=A.I.R. 1923 Pat 236.**

—Renewal—Specific performance not allowed.

——Where the head lessee in head lease does not bind himself to take out a lease at the end of 99 years' period fixed in the head lease, but has agreed that if and when the lease is renewed he and his heirs and assigns would pass on the benefit of that renewal to their lessee that is not sufficient to give to the sub lessees the right to the renewal of the lease in perpetuity. (*Shah, Ag. C. J. and Kincaid, J.*). MEGHI MOORJI *v.* TYEBALLI KAMRUDDIN. **90 I.C. 189=26 Bom. L.R 1019=A.I.R. 1925 Bom. 64.**

——Where in the contract for renewal of the lease some method is stipulated for ascertaining the rent the contract with regard to the rent is not incomplete; but where it is stated that the lessor would be at liberty to enhance the rent without any objection on the part of the lessee and no limit is imposed upon the lessor's, claim; nor is any method stated as to how the rent is to be fixed, the contract with regard to rent is too vague and incomplete to be specifically enforced, as the covenant for renewal is vitiated by uncertainty with regard to the rent that the plaintiff would be liable to pay which is a material part of a contract for lease. (*Ghose, J.*). NAVA KISHORE DAS *v.* MADAN MOHAN DAS GOSWAMI. **69 I.C. 600=A.I.R. 1924 Cal. 346.**

—Rent and revenue.

——*Abatement of rent.*

Where the patnidar filed series of rent suits against the darpatnidars holding lands under him, and the darpatnidars defended the suits claiming abatements of rent on various grounds, and also filed cross suits, alleging that they have been deprived by the patnidar of certain lands included in their darpatni leases and claiming on this account an entire suspension of rent or in the alternative an abatement in respect thereof.

Held, on construction of documents, that abatements under various heads, including the claim to the disputed lands, which were included in the darpatnis, should be allowed. (*Sir George Lowndes.*) RAMPATI CHATTERJI *v.* RAMANI MOHAN SEN. **33 C.W.N. 772=A.I.R. 1930 P.C. 198 (P. C.).**

LEASE—Rent and Revenue.

———*Rent in kind mokarrari lease.*

The material passages in the kabuliyat were as follows: "After setting a quantity of 1 bishi 5 aris of paddy the price of which is Rs. 50 as annual gula rent (paddy rent), and Rs. 25 as selami, I execute this mourashi mokarari kabuliyat to the following effect: I shall pay the rent that is, deliver the gula paddy according to the kists noted below year after year. x x x. There shall not be any variations as regards the jama and area settled at any time. If I fail to deliver the gula paddy according to the kists I shall be dealt with according to law x x x. I shall deliver the said paddy measuring it out with a five seer dou after drying and winnowing it and making it fit for being stored in a gola." The schedule which was appended to the kabuliyat contains the following. "Instalment of rent 1 bishi, 5 aris of paddy in the month of Magh,"

Held, that the primary intention of the parties was that the rent should be paid in kind, and not in cash, and in the event of failure to deliver it, the landlord would be entitled to damages by recourse to the Court, which would ordinarily be the market price of the paddy. (*Suhrawardy and Graham, JJ.*) JIVAN MANDAL *v.* RAM MANDAL.

113 I.C. 37=56 Cal. 808=A.I.R. 1928 Cal. 737.

———Where a kabuliyat provided: "when you would measure the lands we shall pay rent, without any objection, for lands found out by your measurement, in accordance with the prevailing rate of tenants holding similar class of lands,

Held, that it means that if the landlord insists upon having a measurement he may do so and then when he does so the whole thing is to be re-assessed on the basis of the prevailing rate for lands of the same plots; in other words, the document is a contract by which the tenant goes on for the present at a fixed jama for a fixed land but there is a right in the landlord to alter that position and to claim prevailing rate for the actual amount of land in the tenant's possession. (*Rankin, C.J. and Mallick, J.*). SUKUMARI MITRA *v.* KUN MONDAL.

105 I.C 605=46 C.L.J. 250=A.I.R. 1927 Cal. 925.

———*Rent in kind or in cash.*

In each case the question, whether rent stipulated for is in kind or cash, depends upon the particular terms of the particular kabuliyat and no hard-and-fast rule can be laid down.

Where a kabuliyat provided: "I do execute this patta that in lieu of the price of Rs. 39 per year as described above with respect to the land you would be liable to deliver within the month of Magh every year at my house 78 aris of paddy. If you do not deliver then I shall be entitled to realize the same with interest and damages at the rate of 4 annas per rupee,"

Held, that the rent provided for was in cash at Rs. 39 per year and not in kind. (*Cuming and Page, JJ.*). KAILASH CHANDRA *v.* HAMID ALI.

98 I.C. 977=A.I.R. 1927 Cal. 243.

———*Rent is debt.*

As soon as a lease is granted rent becomes due and is a debt which is payable to the personal heir of the lessor if the lessor dies before due date for its payment. (*Kotwal, A J. C.*). MARUTI *v.* UKARDA. 22 N.L.R. 13=94 I.C. 741=A.I.R. 1926 Nag. 314.

———The question as to who is entitled to rent depends upon the intention of the term in the lease reserving the rent. (*Kotwal, A. J. C.*). MARUTI *v.* UKARDA. 94 I.C. 741=22 N.L.R. 13=A. I. R. 1926 Nag. 314.

LEASE—Rent and Revenue.

———Where a so-called lease is inadmissible in evidence, compensation for use and occupation can be granted in a suit for rent based on the so-called lease. 31 All. 276, *Foll.* (*Findlay, Offg. J. C.*). MD. IBRAHIM RIZA *v.* YADO. 92 I. C. 353=A.I.R. 1926 Nag. 238.

———*Liability for enhanced assessment.*

An agreement was made in 1882 whereby a tenant took building site from landlord on a fixed rent of Rs. 19 which as agreed between them was not to be enhanced. In 1915 the Government increased the assessment on the land from annas 15, pies 3 to Rs. 59 and odd. The tenant contended that in spite of this increment, landlord should pay the assessment as he had been admittedly paying so long,

Held, that though deed was silent on the point, it was inequitable that the landlord should bear the burden and that the tenant was based to pay the difference between the actual rent he paid and the assessment. (*Shah, Ag. C. J. and Kincaid, J.*). LADHURAM MANORMAL MARWADI *v.* SALE MD. ILLIYAS MEMON. 86 I.C. 96=27 Bom.L.R. 95=A.I.R. 1925 Bom. 168.

———*Apportionment—Putni rent—Putnidar becoming proprietor before the end of year.*

In the case of Putni lands rent does not accrue from day to day but is payable in accordance with the contract. The only statute in this country dealing with apportionment is S. 36, T. P. Act, but that does not apply to agricultural lands and consequently has no application. Therefore, although a putnidar becomes proprietor before the end of the year, he is bound to pay the whole year's rent unless there is any contract to the contrary. (*Greaves and Chakravarti, JJ.*). SATYA BHUPAL BANERJEA *v.* RAJNANDIM DEBI. 83 I.C. 144=28 C.W.N. 1039=A. I. R. 1924 Cal. 1069.

———*Revenue Court—Plea not open*

In a suit filed in a rent Court by the lessor against the lessee for the balance of lease money, it was pleaded in defence that the lessor had improperly deprived the lessee of some portion of the leased land,

Held, that such a plea cannot be admitted in a rent Court. (*Stuart, J.*). MUHAMMAD ALTAF ALI *v.* RANI PHOOL KUNWARI. 71 I.C. 400=A.I.R. 1923 All. 367.

———*Heritable tenure does not mean fixity of rent.*

The document purporting to be a lease provided: "You will enjoy from generation to generation keeping intact the boundaries as before. The profit and loss are yours. You will on no account be entitled to claim a reduction of rent. When required by me you will submit to Jarip Jamabandi. . . . . If any new imposition be made by the Government you will pay it besides the Jama of this Potta."

Held, that the lease was not one for fixed rent. The mere fact that the tenure is heritable and a sum is mentioned as the rent does not show that the rent is fixed. (*Chatterjee and Pearson, JJ.*). KRISHNENDRA NATH SARKAR *v.* RANI KUSAM KAMARI DEBI. 76 I.C. 324=A.I.R. 1923 Cal. 351.

———*Remission not allowed.*

Where the extent did not form an item of consideration at all in fixing the rent of the lands, in other words, the lands were merely leased as villages and the rent had nothing to do with the actual extent and admittedly, no measurements were taken at the time the lands were leased nor at any time thereafter.

LEASE—Rent and Revenue.

Held, the lessee cannot claim more than the area first taken possession of by him under the lease nor remission of rent. (*Krishnan and Ramesam, JJ.*). SURYANARAYANA RAJA *v.* RAJA OF TIKKALI. **69 I.C. 517=17 M.L.W. 94= 1923 M.W.N. 189= A.I.R. 1923 Mad. 459.**

———*Rent-in kind.*

Where rent is fixed in a lease deed in kind, but at the end of the lease, the price of the grain to be given is also approximately given.

Held, that the rent payable is a rent-in-kind, and that the consequence of non-delivery as covenanted is that the lessee is liable for the market value of the crops on the date of the delivery. (*Ross, J.*). JITENDRANATH CHATTERJEE *v.* JAKU MUNDAR. **66 I.C. 780=3 Pat.L.T. 436=A.I.R. 1922 Pat. 4.**

———*Permanent assessment.*

The predecessors-in-interest of plaintiffs were granted in 1790 the talukdari patta of certain land. The taluk was settled with them permanently and the revenue was to be assessed on the cultivated land which would be ascertained by measurement from time to time. The rate to be paid was an increasing rate up to 8 annas per bigha after which it would remain fixed in perpetuity 1-6th of the area cultivated would be free of rent. The mohal was subsequently surveyed from time to time in 1834, 1850-1, 1877-8, 1888-9, 1914 and additional areas were assessed up till 1914 at the rate of 8 annas a bigha, the full amount mentioned in the sanad of 1790, that is, for about or over a 100 years. Then in 1914, the rate was increased to 12 annas.

Held, that by the patta of 1790 the land within the boundaries specified by the plaintiff was permanently settled with the plaintiff and that the revenue was to be assessed from time to time according to the terms of the patta by measuring the lands under cultivation and was to be assessed at an increasing rate up to the maximum of annas 8 per bigha only and the land was not therefore assessable at 12 annas per bigha. (*Woodroffee and Cuming, JJ.*). PARBAT CHARAN SAHA *v.* SECY. OF STATE. **69 I.C. 188=35 C.L.J. 445.**

———*Enhanced rent—Provision for.*

Where a lease provides for the payment of increased rent on the measurement of the land leased, such increased rent can only be claimed from the time the land is measured, and not from any anterior date. (*Mookerjee, A.C.J. and Fletcher, J.*). ROY JATINDRANATH CHOWDHURY *v.* AJODHYA NATH NANDI. **60 I.C. 743 (Cal.).**

—Subsoil rights.

———*Evidence of title to—Duty of lessor—Onus.*

A contract for grant of mining lease in certain mouzas provided that if the lessees did not take the lease within a certain period "except for want of the lessor's title in the said mouzas" the deposit would be forfeited to the lessor. The settlement record showed the lessor as zamindar of the mouzas and also that one of them was settled as a brahmottar and the other as a debuttar with tenure holders. Further demand was made by the lessees for production of the deeds of brahmottar and debuttar grants for the purpose of satisfying themselves that underground rights had been reserved to the zamindar and also for execution of an indemnity bond. The lessor replied that no deeds could be traced and that he was not prepared to execute an indemnity bond. The lessees thereupon refused to complete the lease and sued for their deposit.

Held, that the exception clause in the contract referred to title to the underground and not title to the mouzas but it did not increase the obligation as to the title lying on the lessor under general law which included no duty to produce satisfactory evidence of title to the underground before the completion of the lease.

That the onus was on the lessees to show that the lease offered to them was not a secure lease. Moreover the title of the zamindar had not been shown to be such as prevented him from giving the lessees a secure and valid lease. (*Rankin, C.J. and Buckland, J.*). JYOTI PRASAD SINGH DEO *v.* H.V. LOW & CO., LTD. **A.I.R. 1930 Cal. 561.**

———*Express grant necessary.*

A patni grant does not carry with it the rights to the minerals unless there are express words to that effect. Where the patta provided: "you shall be in possession of all the zemindary rights and interest as prevailing from before in the lands included in the said *mauza* from before."

Held, there was nothing to show that subsoil rights were granted. (*Das and Allanson, JJ.*). MANGOVINDA SAHU *v.* SATYA NIRANJAN. **112 I.C. 659=9 P.L.T. 593=8 Pat. 190= A.I.R. 1928 Pat. 482.**

———*Grant of—Construction.*

Obiter: The question whether a putni tenure transfers all the rights of the Zamindari, including the right to the minerals, is still open. 45 Cal. 87, *Expl.* and *Dist.*; 16 C.L.J. 7 has not been overruled by Privy Council decisions. (*Lord Dunedin.*) SATYA NIRANJAN *v.* RAM LAL. **86 I.C. 289=29 C.W.N. 725=27 Bom.L.R. 753= 23 A.L.J. 712=6 P.L.T. 42=21 M.L.W. 289= 4 Pat. 244=52 I.A. 109=A.I.R. 1925 P.C. 42= 48 M.L.J. 328 (P.C.).**

—Transferability.

———*Construction—Lessor not bound by lessee's transfer unless security accepted—Lessee has no right of transfer and cannot call upon lessor to accept security.*

A lessor stipulated that any transfer by the lessee would not bind him and lessee would be liable for the rent in spite of the transfer and added further that "notwithstanding (the aforesaid provision) if on account of the intricacies of the law any transfer made by you becomes in any binding on me (the lessor), then you and your heirs shall remain bound to pay the fixed amount of rent so long as the transferee will not furnish security in proper quantities of immovable properties to be fixed by me for the due payment of the fixed rent and this shall in no way be varied."

Held, that the passage does not mean that whenever the lessees choose to transfer the leasehold interest, the lessor would be bound to fix the security for the due payment of the rent which the transferee would be required to give and the original lessees would be exonerated from their personal liability to pay the rent. (*Lord Shaw.*) SATYA NIRANJAN CHAKRAVARTI *v.* SURAJUBALA DEBI. **122 I.C. 1=33 C.W.N. 865= 31 M.L.W. 118=A.I.R. 1930 P.C. 13 (P.C.).**

———The executants of a *kabuliyat* had purchased certain jamas in 1822, 1833 and other years. The landlords accepted rent in respect of these jamas from the purchaser all the while. As a consequence of the application for mutation of names in 1842, a *kabuliyat* was executed which was limited to a term of eight years. It was contended that effort at mutation shows that the jamas were transferable.

Held, that the facts were not sufficient to infer that jamas were transferable. 32 Cal. 41 (P.C.)

LEASE—Transferability.

and 32 Cal. 51 (P.C.), *Dist.* (*S. K. Ghose and Panckridge, JJ.*). JANAKINATH ROY *v.* MOHENDRA NARAIN ROY CHAWDHURY. **A.I.R. 1930 Cal. 94.**

——A purchaser, from a permanent lessee who had covenanted not to alienate, if recognized by the lessor is not bound by the covenant against alienation. (*Suhrawardy and Garlick, JJ.*). KHETRU NATH *v.* BAHARALI. **116 I.C. 153=43 C.L.J. 89= A.I.R. 1929 Cal. 228.**

——*Construction—Under-proprietary rights.*

The taluqdar, having the superior proprietary rights, executed in favour of *K* and *D* a lease of a village which granted them the whole village from year to year and generation after generation (*naslan bad naslan*). *K* and *D* applied to the Settlement Court for a decree that they were entitled to under-proprietary rights and produced the lease before the Settlement Officer who ordered that "their claim was dismissed but that they had secured their end". They were never recorded as under-proprietors nor did they exercise their rights as such until the transfer in dispute was made,

Held, that no under-proprietary rights, *i.e.*, to say hereditary and transferable rights in the village were granted to *K* and *D*. The order of the Settlement Officer could only mean that such rights were refused to them. They had therefore no rights of transfer in the village. 14 I.A. 7 and A.I.R. 1927 Oudh 74, *Dist.* (*Stuart, C.J. and Misra, J.*). FATEH BAHADUR SINGA *v.* NAGENDRA BAHADUR. **113 I.C. 799=A.I.R. 1929 Oudh 327.**

——*Law governing.*

Where the lease was executed in the year 1875, long before the present Agra Tenancy Act (1901) was passed, and there was no prohibition against transfers of an interest by a thekadar,

Held, assuming that the interest was transferable prior to 1901, it can be made non-transferable by an express enactment. The law governing the transfer must be that which was in force on the date when the transfer in dispute took place. (*Sulaiman and Mukerji, JJ.*). BALLABHA DAS *v.* MURAT NARAIN SINGH. **96 I.C. 1048= 48 All. 385=24 A.L.J. 489=A.I.R. 1926 All. 432.**

——*Lease governed by T. P. Act.*

Where the lease, read as a whole, shows that the lessor put the lessee in the same position as he himself occupied, except in a few minor matters, and the primary object of the lease is not agriculture,

Held, the lease must be treated as not an agricultural lease, so as to be exempted from the operation of S. 108 of the Transfer of Property Act and to be governed by the Agra Tenancy Act, and the rights under it are transferable. (*Sulaiman and Mukerji, JJ.*). BALLABHA DAS *v.* MURAT NARAIN SINGH. **96 I.C. 1048=48 All. 385=24 A.L.J. 489= A.I.R. 1926 All. 432.**

——*Clause against.*

If a lease creating a permanent tenancy at a fixed rate of rent contains a restriction on the transferability of the tenancy, the restriction is inoperative if there is no re-entry clause in the event of the breach of the covenant. (*Cuming and Chakravarti, JJ.*). RAJENDRA NATH *v.* MOHESHATA DEBI. **91 I.C. 649=53 Cal. 270= A.I.R. 1926 Cal. 533.**

——*Clause against.*

Where a lease lays down that the grantee would enjoy the land by reclamation and cultivation from generation to generation and that the *jama* would be paid into the office of the landlord from year to year,

LEASE—Validity.

Held, that the rent is fixed in perpetuity. The words "*Thicca mokra*" in the deed would only strengthen the view and a clause in deed preventing the alienation of the tenancy without the consent of the landlord would not be a conclusive indication that the rent was not intended to be a permanent one. Such a covenant is inoperative if there is no clause for re-entry. (*Mookerjee and Chotzner, JJ.*). RESHEE CASE LAW *v.* BHUBAN MOHAN PAL. **72 I.C. 1047= A.I.R. 1924 Cal. 361.**

——*Clause of re-purchase does not affect transferability of lease.*

A lessor contracting for a right of re-purchase of lessee's rights does not in any way derogate from the transferable quality of the rights under the lease. The decision of every case will depend on the conditions of the lease. (*Kanhaiya Lal, J.C. and Dalal, A.J.C.*). SHAIKH RUTAB ALI *v.* MOHAMMED ZAMAN BEG. **66 I.C. 106= 9 O.L.J. 101=A.I.R. 1923 Oudh 47.**

—Validity.

——If the landlord lets premises with the knowledge that they would be used as a brothel, then the lease is void on the ground of public policy, and though on the one hand he cannot under those circumstances recover the overdue rent on the other hand he can recover possession of the premises occupied by the defendants under a void lease. (1839) 5 Bing. (N.C.) 666, *Foll.* (*Rupchand Bilaram, A.J.C.*). GOBINDRAM UTTAMCHAND *v.* MOHOMED HUSSAIN. **87 I.C. 802= A.I.R. 1925 Sind 296.**

——*Lease to commence in future.*

A lease to commence in future, is an *inter se termini* which is in an existing real right vested in the lessee which gives him an immediate right of entry. (*Mittra, Offg. A.J.C.*). MT. LAHANI *v.* BALA. **77 I. C. 798=18 N.L.R. 85= A.I.R. 1922 Nag. 227.**

——*Agreement between co-sharers—Not a lease.*

Plaintiff and defendants purchased certain shares in a certain village and entered into an agreement by which one of the defendants was to realise his share of profits from certain tenants, and the plaintiff and the remaining defendants were each to realise the rent from all the other tenants of the village and take all the profits for a period of six years in turn. Plaintiff contended in his suit that the agreement was not valid in law or binding on him and that it, being a lease, could only be made by a registered instrument,

Held, the agreement in question was binding. It could not amount to a lease as one of the essentials of a lease, that there should be a consideration to be rendered periodically or on specified occasions to the lessor, was wanting. (*Lyle, A.J.C.*). SITA RAM *v.* SARJU PRASAD. **68 I.C. 333= 25 O. C. 39=9 O. L. J. 184= A.I.R. 1922 Oudh 201.**

——*Oral lease.*

Where a person is in possession under an oral agreement to lease, and the premises are then let to third party, he must be deemed to have notice of the prior lease. An oral lease is not invalid and where the lessee takes possession the effect is the same as if a document had been executed, provided the specific performance is asked for in the same Court between the parties and at the same time when the subsequent question comes to be determined. (*Sanderson, C. J. and Woodroffe, J.*). BARANASHI DASSI *v.* PAPAT VELJI RAJDEV. **63 I.C. 118=25 C.W.N. 220.**

LEASE—Zur-i-peshgi.

—Zur-i-peshgi.

———The mortgagor is entitled to set off the rent payable to him as against the zuripeshgi money at the time of redemption. 5 Cal 333 *Foll*; 56 I.C. 743, *Dist.* (*Das and Scroope, JJ.*). UMATUS SOGRA *v.* MAHENDRA NARAIN SINHA. **102 I.C. 421= 8 P.L.T. 601=A.I.R. 1927 Pat. 285.**

———*Independent documents.*

The combination of two independent documents which contain no reference to each other cannot create *Zuripeshgi* lease. (*Dalal, J.C.*). KALA SINGH *v.* HANSRAJ UPADHYA. **78 I.C. 47=A.I.R. 1925 Oudh 270.**

———*Lease or mortgage.*

In a *Zuripeshgi* lease properly so-called there is an advance to the lessor in consideration of which the lessee is given possession of the land for a term during which he recoups himself for the sum advanced and interest out of the profits of the land of which he is put in possession. There is no question of redemption upon paying off an advance. The lease terminates at the expiration of the term and the lessor may re-enter as on the termination of any other lease.

Where, however, the interest created in the lessee continues after the expiration of the term until the advance, which is essentially a loan and not an advance of rent, is re-paid, the transaction has the essential characteristics of a mortgage. (*Dawson-Miller, C.J. and Mullick, J.*). MAHARAJA KESHAO PRASAD SINGH BAHADUR *v.* CHANDRIKA PRASAD SINGH. **68 I.C. 394=3 P.L.T. 797= 2 Pat. 217=A.I.R. 1923 Pat. 122.**

—Miscellaneous.

———*Invalid lease—Proof of.*

Even if the registration of a lease deed be invalid, the tenancy can be proved otherwise without proving the written lease which may be inadmissible for want of registration. 41 Cal. 347, *Foll.*

The tenancy can also be proved by the doctrine of part performance. (*Das and Kulwant Sahay, JJ.*). DAMODUR PRASAD *v.* MASOODAN SINGH. **105 I C. 172=8 P L T. 829=A.I.R. 1928 Pat. 89.**

———*Origin—Presumption.*

Where the lease has existed unchallenged and the rent uncharged for over 70 years in spite of attempts at enhancement, the Court should presume a legal origin of the lease. (*Greaves and Mukerjee, JJ.*). JABEDA KHATUM *v.* MAHOMMAD MOZAFFAR ALI. **90 I.C. 781=30 C W.N. 807=A.I.R. 1926 Cal. 322.**

———*Sale of tenancy interest—Position of purchaser.*

When a tenancy interest is sold in execution of a decree against the lessee, a tenancy is created in the name of the purchaser in the terms of the original demise and the covenants therein will be binding on him. (*Suhrawardy and Duval, JJ.*). CHANDRA KUMAR SAHA CHOUDHURY *v.* MAFIZAR RAHMAN CHOUDHURY. **90 I.C. 832 (Cal.).**

———Contracts of leases are, in their very nature founded upon executory consideration inasmuch as the payment of rent on the part of the lessee is to be made in future at the stipulated points of time. (*Wazir Hasan, A.J.C.*). KUNWAR BEHARI LAL *v.* KALKA. **77 I.C. 695=25 O.C. 282= A.I.R. 1923 Oudh 45.**

LEAVE TO SUE.

See (1) C. P. CODE, O. 40, R. 1.
(2) PROV. INS. ACT, S. 16.

LEGACY.

See (1) PROB. ADMN. ACT, SS. 112—145.
(2) SUCCESSION ACT, SS. 129—178.
(3) WILL.

LEGAL PRACTITIONER—Admission.

LEGAL ADVISER.

See (1) EVIDENCE ACT, SS. 126—129.
(2) LEGAL PRACTITIONER.

LEGAL CRUELTY.

See (1) HINDU LAW—MARRIAGE.
(2) HUSBAND AND WIFE.

LEGAL DISABILITY.

See LIM. ACT, SS. 6—8.

LEGAL ESTATE.

See TRUSTS ACT.

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.

LEGAL PRACTITIONER.

See also (1) C. P. CODE, O. 3.
(2) EVIDENCE ACT, S. 126.

Admission.
Arbitration.
Authority to act.
Compromise.
Fees.
Lien.
Misconduct.

See also LEGAL PRACTITIONERS' ACT, 1879, S. 13.

Negligence.
Presence at hearing.
Purchase in execution proceedings.
Relation with client.
Rights and duties.
Status.
Witness.
Miscellaneous.

—Admission.

———*On point of law, not binding.*

An erroneous admission upon a point of law made by legal adviser does not bind his client. Whether this doctrine extends to a case where to re-open the topic which was closed might entail the remanding of the case to the lower Court for a further finding of facts is not very clear. 18 Mad. 73; 23 M.L.J. 327; 27 Cal. 156 and 27 C.L.J. 447, *Ref.* (*Curgenven, J.*). LAKSHMIAYYA *v.* MURAHRI. **31 M.L.W. 516= 1930 M.W.N. 129=A. I. R. 1930 Mad. 547.**

———*Of law or fact, binding.*

Where the pleader of a party makes an admission, whether the admission is of law or an admission of fact, that party is bound thereby and it would be doing great injustice to a Subordinate Court of law to re-open a matter in appeal, which has been decided by that Court on the admission of a pleader of a party. (*Dalal, J.*). NAND KISHORE *v.* GANESH PRASAD. **118 I.C. 166= A. I. R. 1929 All. 446.**

———*Presumption of authority.*

Where a consent decree is passed by a Court on confession of judgment by a party's pleader it must be assumed that the Court must have satisfied itself before the passing of the consent decree that the pleader confessing judgment had authority on behalf of the party to act in the manner in which he did. The person challenging the authority must prove to the contrary by positive evidence. (*Misra and Pullan, JJ.*). PARAN KUER *v.* MANNI LAL. **121 I. C. 283=A. I. R. 1929 Oudh 211.**

———*Authority.*

A pleader has authority to admit certain facts so as to dispense with the necessity of further proof in a criminal case at the appellate stage. 3 Bom. L.R. 467, *Foll.*; 2 Bom. L. R. 751, *Dist.* (*Fawcett and Misra, JJ.*). BANSILAL GANGARAM *v.* EMPEROR. **112 I. C. 110=52 Bom. 686= 30 Bom. L. R. 646=29 Cr. L. J. 990= 11 A. I. Cr. R. 243=A.I.R. 1928 Bom. 241.**

LEGAL PRACTITIONER—Admission.

———*On point of law, not binding but admission of fact binding.*

Per *Ananthakrishna Aiyar, J.*—Though a party might not be bound by admissions made by his counsel on pure questions of law, yet on questions of fact, parties are bound by admissions made by their counsel, whether the admissions be made in the course of the trial in the first Court or in the course of the hearing of the appeal before the lower Appellate Court. 25 M. 367 (P.C.), *Ref.* (*Beasley and Ananthakrishna Aiyar, JJ.*). MLICHI KOTAYYA *v.* NALLAMALLI SREERAMULU. **109 I.C. 178= A.I.R. 1928 Mad. 900.**

———*On point of law, not binding.*

A party cannot be bound by any wrong admission of his pleader as to law, inasmuch as the parties must be presumed to know what is correct law. (*Ashworth and Misra, JJ.*). CHANDOO *v.* MURLIDHAR. **92 I.C. 732=13 O.L.J. 138= A.I.R. 1926 Oudh 311.**

———*On point of law, not binding.*

An erroneous admission by a counsel on a point of law is of no effect and does not preclude a party from claiming his legal rights in the appellate Court. 27 C.L.J. 447 ; 18 W. R. 359 and 27 Cal. 156 (P.C.), *Foll.* (*Suhrawardy and Duval, JJ.*). RAM CHANDRA AGARWALA *v.* SYAMESWARI DASYA. **90 I.C. 98=42 C.L.J. 71=A.I.R. 1925 Cal. 1171.**

———*Minor client.*

The interest of a minor cannot be affected by the admission on a law point by a pleader. (*Kinkhede, A.J.C.*). LAXMI *v.* VENKAT RAO. **82 I.C. 1032= A.I.R. 1925 Nag. 207.**

———*On point of law, not binding but admission of fact binding.*

Admission of pleader on a point of law is not binding on the parties. But an admission of fact by the pleader is binding on his client. Whether the admission is one of law or fact will depend upon the circumstances of every case. (*Dalal, A.J.C.*). KANHAYA BAKHSH SINGH *v.* SHEO NATH. **87 I.C. 956=A.I.R. 1925 Oudh 665.**

———*On point of law, not binding.*

Where the cross objections of the respondent arose from the decree of the first Court and they were included in the grounds of appeal from that decree but were not pressed in the lower Appellate Court owing to misapprehension by the counsel on a point of law.

Held, an erroneous admission by counsel on a point of law is of no effect and does not preclude a party from claiming his legal rights in the appellate Court. (*Kendall, A.J.C.*). THAKUR PRASAD SINGH *v.* PANDIT CHANDRIKA PERSHAD. **81 I.C. 742=11 O.L.J. 436=A.I.R. 1925 Oudh 150.**

———*On a point of law, not binding.*

An admission made by the counsel on a point of law cannot in any way bind client. (*Martineau and Moti Sagar, JJ.*). NANAK CHAND *v.* MIR MUHAMMAD KHAN. **75 I.C. 1048= A.I.R. 1924 Lah. 702.**

———*Binding nature of.*

Parties are bound by admissions of counsel, unless he has been induced or misled by some circumstances to make a statement under a mistake. (*Pratt and Fawcett, JJ.*). DODDAVA KONU PARAHYA *v.* YELLAWA KONU YALLAPPA NINNI. **70 I.C. 417=A.I.R. 1922 Bom. 233.**

—Arbitration.

———*Authority to refer.*

The words used with reference to the power to be exercised by the pleader appointed by the vakalatnama were shalishan or solenama karibain.

LEGAL PRACTITIONER—Authority to act.

Held, that the pleader was vested with sufficient authority to refer the matter to arbitration. Cal. Civil Rule No. 21 of 1926, *Rel. on.* (*Suhrawardy and Graham, JJ.*). BAMA CHARAN *v.* GADADHAR DAS. **56 Cal. 21=A.I.R. 1929 Cal. 322.**

———*Authority to refer.*

A pleader engaged to act or plead in a suit does not possess the power to refer it to arbitration without express authority from the client. Such authority cannot be inferred by the mere circumstance that the pleader, though not formally appointed by a vakalatnamah, was allowed to sign a jawabdawa. (*Tek Chand, J.*). AHMAD *v.* SARDARA. **114 I.C. 712=A.I.R. 1929 Lah. 171.**

———*Authority to refer.*

In a suit for partition, on the motion of the counsel of the parties, a particular person was appointed as a special referee to go into accounts and a consent decree was passed fixing the shares of the parties. Thereupon one of the parties moved the Court to set aside the decree on the ground that the counsel consented to arbitration contrary to his instructions. The Court found that the counsel had limited authority and proceeded with the case.

Held, that if a client objected to important matters of account being referred to private arbitration and to a private referee, and if that was done by mistake of his counsel, the Court was not wrong in taking steps to see that the suit should proceed in the ordinary way. *Neale* v. *Gordon Lennox*, (1902) 1 A. C. 465, *Foll.* (*Rankin, C.J. and Mister, J.*). CHUNILAL MANDAL *v.* HIRA LAL MANDAL. **106 I. C. 309=32 C W. N. 44= A. I. R. 1928 Cal. 378.**

———*Authority to refer.*

A party's agent binds the party by an agreement under S. 9 as much as a party himself. A *vakalatnama* gives sufficient authority to a pleader to agree to make a reference under S. 9 of Oaths Act. 3 A.L.J. 654, *Ref.* (*Sulaiman, J.*). MT. MASITA BIBI *v.* KHUDA BAKHSH. **79 I.C. 246= A.I.R. 1923 All. 65.**

———*Authority to revoke.*

A pleader has no authority to revoke the appointment of arbitrators made by his clients, without instructions from the client, and to appoint a new arbitrator in substitution. (*Kotval, A.J.C.*). KASHI RAM *v.* MT. GUDDOO. **65 I. C. 879= 5 N. L. J. 229=18 N.L.R. 140= A. I. R. 1922 Nag. 32.**

—Authority to act.

———*Offer to be bound by oath of other party.*

A pleader acting for a party or parties to a suit cannot bring it to a close by offering to be bound by the oath of the opposite party in a particular form. But it is quite open to a Court to make an inference from the peculiar circumstances of a case that there was authority on the part of the pleader. Thus where the defendants have put up a common defence and one of the adult defendants was present in Court at the time the pleader made the offer and it appeared that that defendants had been put forward by the others to take all necessary steps in connection with the suit,

Held, that the parties were bound by the pleader's offer. (*Mukerji and Guha, JJ.*). MOULVI MAHOMED MAHMUD *v.* BEHARY LAL SAHA. **34 C.W.N. 310=A.I.R. 1930 Cal. 463.**

———Where in a printed form of the power-of-attorney, the clause authorising an advocate to file an appeal has been struck off by the client, it does not mean that the said power has been taken away.

LEGAL PRACTITIONER—Authority to act.

from him, if it otherwise existed. It only means that the power was not expressly given. (*Jai Lal, J.*). BOORA MAL *v.* TULSI RAM. **116 I.C. 184= A.I.R. 1930 Lah. 68.**

——*Criminal P. C., S.* 493.

It is ordinarily undesirable that any counsel should be brought in to assist the public prosecutor at a very late stage even if acts entirely under the control of the Public Prosecutor, but there might arise special circumstances which would justify such a course.

The word 'act' in S. 493 does not mean some thing other than examining or cross-examining witnesses or addressing the Court. The word is not used in a technical sense in distinction from 'appear and plead' in the opening words of the section. (*Reilly, J.*). VAZ *v.* EMPEROR. **1930 M.W.N. 769.**

——Where a pleader is satisfied that a gumasta is authorized to deliver the vakalatnama signed by the party and accepts it, it is a sufficient authority for him to act on behalf of the party. (*B. B. Ghose and Bose, JJ.*). UTANKA LAL *v.* TARAK NATH. **114 I.C. 156=48 C.L.J.357= A. I. R. 1929 Cal. 11.**

——*Agreement to be bound by the statement of certain witness.*

No special power under the vakalatnama is necessary for a pleader to agree to be bound by the statement of a particular witness. 38 All. 131, *Foll.* (*Walsh and Banerji, JJ.*). DEORAJ MISRA *v.* MT. ABHAI RAJI. **102 I. C. 38=49 All. 842= 25 A.L.J. 729=A. I. R. 1927 All. 584.**

——*Verbal appointment.*

An Advocate, unlike a pleader, can be verbally appointed to act on behalf of his client, and when so appointed, under R. 1 of O. 3 he can appear, plead and act. There is nothing to prevent an advocate, either in the High Court or in the subordinate Courts, to present an application on behalf of his client without any power of appointment or vakalatnama given to him in writing. There is nothing in the Legal Practitioners' Act also against this view. 9 All. 617, *Foll.* (*Jwala Prasad, J.*). LAURENTIUS EKKA *v.* DUKKI KOERI. **92 I. C. 179=4 Pat. 766=7 P.L T. 362= A. I. R. 1926 Pat. 73.**

——*Agreement to pay without authority.*

While a suit was pending the pleader for the defendants stated that if the plaintiff presented probate or Letters of Administration or succession certificate the defendants would have no objection to pay him the amount in dispute with interest thereon for six months,

Held, that the pleader who made the statement had no general or special authority from the defendant which would entitle him to enter into a contract on their behalf to pay a time-barred debt and therefore this statement was not a new contract within S. 25 (3) so as to give rise to a fresh cause of action, especially when there is nothing whatever to show that the record of the statement made by the pleader was signed by the pleader or by any other agent. (*Lindsay and Sulaiman, JJ.*). BANSIDHAR *v.* BABU LAL. **75 I.C. 309= 21 A.L.J. 713=4 L.R.A. Civ. 473= A.I.R. 1924 All. 12.**

——Ex parte *decree—Application to set aside—No fresh Vakalatnama necessary.*

Where an *ex parte* decree is passed against the defendant in the absence of his pleader, the latter need not file a fresh Vakalatnama in order to apply to set aside the *ex parte* decree. It seems to be

LEGAL PRACTITIONER—Compromise — Authority.

taking an extremely narrow view of the rules with regard to Vakalatnamas to say that the effect of the old Vakalatnama had expired as soon as the *ex parte* decree had been passed and that it would be necessary before a pleader could be heard that he should obtain a fresh one. (*Macleod, C.J. and Kanga, J.*). BACHUBBAI JHIVAD *v.* IBRAHIM ISAK MOTIWALA. **69 I.C. 169=47 Bom. 11=24 Bom. L.R. 744= A.I.R. 1922 Bom. 207.**

——*Acceptance of Vakalatnama after filing in Court.*

A Vakalatnama once filed in Court may be subsequently accepted by a vakil or pleader whose name appears in the Vakalatnama. The Court has only to see whether the name of the pleader proposed to be appointed, appears in the Vakalatnama or not and if his name does appear, then the pleader is entitled to sign the Vakalatnama and appear and act in the case. (*Jwala Prasad, J.*). KUNJ BEHARI SINGH *v.* SHEODAHIN PANDEY. **68 I.C. 659=3 P.L.T. 447=A.I.R. 1922 Pat. 504.**

—Compromise—Authority.

——*Nature and extent of.*

The implied authority of counsel is not an appanage of office, a dignity added by the Courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief. *Case-law-referred.* (*Lord Atkin.*) SOURENDRA NATH MITRA *v.* TARUBALA DASI. **123 I.C. 545=34 C.W.N. 453= 1930 A.L.J. 489=32 Bom. L.R. 645=51 C.L J. 309= A.I.R. 1930 P.C. 158=58 M.L.J. 551 (P.C.).**

——*Implied authority.*

An Advocate of the High Court has, when briefed on behalf of a party in a subordinate Court the implied authority of his client to settle the suit. He must be treated as though briefed on the trial of the suit, though he may be engaged to press an interlocutory application. The power to compromise a suit is inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocate of England, Scotland and Ireland, apply in equal measure to India. (*Lord Atkin.*) SOURENDRA NATH MITRA *v.* TARUBALA DASI. **123 I.C. 545=34 C.W.N. 453=1930 A L.J. 489= 32 Bom. L.R. 645=51 C.L.J. 309= A.I.R. 1930 P.C. 158=58 M.L.J. 551 (P.C.).**

——As in Burma barristers merely appear because they are advocates, and not because they are barristers, they must be judged by rules applicable to advocates.

To enter into a compromise an Advocate must "act" for his client and no Advocate can act for his client unless he possesses a power of attorney.

A barrister, in Burma, therefore filing only a notice of appearance and not a power-of-attorney from his client, cannot bind the client by a compromise entered into without his express consent unless the client subsequently ratifies it. 64 I. C. 528; 1 B. L. J. 1; A. I. R. 1925 Cal. 696 and A. I. R. 1926 Rang. 215, *Rel. on*; 13 All. 272 and A. I. R 1924 Cal. 651, *Not foll.* (*Baguley, J.*). DESRAM BARA SINGH *v.* BASWA SINGH. **8 Rang. 290=A.I.R. 1930 Rang. 313.**

LEGAL PRACTITIONER—Compromise — Authority.

——For effecting a compromise on another's behalf neither a general power-of-attorney nor the ordinary powers of a pleader are sufficient, express authority is absolutely necessary. 41 Mad. 233, *Rel. on.* (*Shadi Lal, C.J. and Hilton, J.*). MEHRA *v.* AHMAD. **119 I.C. 430=A.I.R. 1929 Lah. 746.**

—— *Collateral matters.*

The authority of Counsel to compromise a suit *coram judice* in Court is limited to matters involved in the suit and it does not extend to collateral matters. If a bargain is to be made so as to bind a client upon collateral matters then Counsel should take care to get express authority from his client.

In a partition suit where the only point of difference between the parties was as to whether a certain property was joint or dubuttar and Counsel for the plaintiff and the defendant agreed to certain terms of settlement outside Court settling that the attorneys of the parties were to be appointed Commissioners of partition and Receivers of the joint estate and the debuttar property and a certain remuneration was fixed for them, and a decree was passed in terms of the compromise,

Held, that the question whether to appoint a Receiver of the debuttar property was a matter merely collateral to the suit and not within the scope of the general authority of the Counsel and therefore that part of the terms of compromise was, as a matter of law, outside the authority of the Counsel. The fact that it may be a severable part of the agreement was immaterial. (*Rankin, C. J. and Mitter, J.*). JOHURMAL BHUTRA *v.* KEDAR NATH BHUTRE. **104 I. C. 387=55 Cal. 113=31 C.W.N. 953=A.I.R. 1927 Cal. 714.**

——Where a pleader derives his authority from the agent of a party having no authority to confess a judgment he cannot confess a judgment. (*Wazir Hasan and King, JJ.*). MT. MAGBOOLAN *v.* HABIBULLAH. **102 I.C. 470=1 L.C. 19=A.I.R. 1927 Oudh 222.**

——A Counsel should not draft and sign a petition of compromise and an affidavit in a case, in which he was not engaged from before and in which he must know that other lawyers were engaged, without a vakalatnama from the party concerned. (*Ross and Kulwant Sahay, JJ.*). GANAPAT LAL *v.* KING EMPEROR. **102 I.C. 337=6 Pat. 217=8 P.L.T. 470=28 Cr.L.J. 529=8 A.I.Cr. R. 117=A.I.R. 1927 Pat. 199.**

——A vakil has no general power to compromise a suit on behalf of his oleints. A.I.R. 1924 Cal. 651, *Expl.* (*Hasan and Ashworth, JJ.*). DEVENDRA NATH SARKAR *v.* RAM RACHPAL SINGH. **93 I.C. 302=1 Luck. 341=13 O.L.J. 482=3 O.W.N. 277=A.I.R. 1926 Oudh 315.**

——An Advocate of the High Court in the course of conducting the cause is clothed with authority to compromise a suit in which he has been retained as Counsel and such a compromise would be valid and binding upon the parties even though it had been effected contrary to the express instructions of the client, unless the prohibition had previously been communicated to the other side. But the apparent authority of Counsel is restricted to acts and admissions *coram judice* or *in Court*; such acts and admissions *out of Court* do not bind the client unless in fact they are authorised by the client, or by his agent duly authorised by the client in that behalf. A compromise therefore effected by counsel out of the Court, and not assessed to by the client, is only binding upon the client if it is expressly authorised, or subsequently ratified by the client or by his agent authorised in that behalf. (*Page, J.*). ASKARAN CHOUTMAL *v.* E. I. RY. & CO. **88 I. C. 413=52 Cal. 386=29 C.W.N. 366=A.I.R. 1925 Cal. 696.**

——It is doubtful if the Counsel can enter into a compromise so as to make his client's fortune dependent upon the determination of the pleader for the opposite party. (*Lord Shaw.*) JAGATPUR DUGAR *v.* PURANCHAND NAHATTA. **83 I.C. 380=5 L.R. P.C. 145=26 Bom.L.R. 772=35 M.L.T. 136=1924 M.W.N. 646=20 M.L.W. 571=A. I. R. 1924 P.C. 200=47 M.L.J. 136 (P.C.).**

——It has been well established that a Vakil appointed under a usual power of attorney is not endowed with power or authority to compromise the suit, he is thus retained to argue. Where the Vakil never saw his client, a purdanashin lady, never spoke to her in reference to the compromise, nor had any communication with her touching it and yet purported to compromise the suit.

Held, that the Vakil failed in his duty towards his client. (*Lord Atkinson.*) SARATHKUMARI *v.* AMULYADHAN. **71 I.C. 632=17 M.L.W. 481=27 C.W.N. 629=25 Bom. L.R. 548=37 C.L.J. 501=1923 M.W.N. 392=32 M. L. T. 137=A. I. R. 1923 P.C. 13 (P.C.).**

—— *Authority to compromise must be express.*

A pleader who does not hold and has not filed in the suit before the Court his client's general power-of-attorney authorizing him generally to compromise suits on behalf of his client, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his client's vakalatnama giving him authority to compromise the suit before the Court. (*Sir John Edge.*) SORINDRA NATH *v.* HERAMBA NATH. **84 I. C. 721=33 M. L. T. 295=1923 M. W. N. 734=4 L.R.P.C. 138=A.I.R. 1923 P.C. 98=46 M.L.J. 453 (P.C.).**

—— *Express authority not necessary.*

Where the applicant challenged the consent decree on the ground that his Counsel acted on misapprehension against instructions,

Held, on the facts proved that the agent of the appellant acquiesced in the settlement, though under protest, proposed by the Counsel, in good faith in the interest of his chief, that he accepted it, and that the decree was binding on him. Two propositions are well settled; first, that express authority is not needed for a Counsel to enter into a compromise within the scope of the suit; and secondly, that where there is limitation of authority and that limitation is communicated to the other side, consent by counsel outside the limits of his authority would be of no effect. (*Das and Bucknill, JJ.*). NILMONI CHAUDHURI *v.* KEDAR NATH DAGA. **67 I.C. 96=3 Pat.L.T. 371=1 Pat. 489=A.I.R. 1922 Pat. 232.**

—— *Authority of Counsel to compromise.*

Where no limitation is imposed on Counsel's authority, he may bind his client by agreeing to a compromise but, if Counsel is only empowered to compromise on certain terms, he is thereby impliedly prohibited from settling on other terms, and if notwithstanding that prohibition, he does effect a settlement on such other terms, then that settlement does not bind his client. *Case-law discussed.* (*Heaton, A.C.J. and Marten, J.*). JAMSHEDJI NAOROJI GAMADIA *v* SORABJI NAOROJI GAMADIA. **88 I.C. 304=23 Bom. L.R 1137=A.I.R. 1921 Bom. 414.**

LEGAL PRACTITIONER—Compromise — Authority.

———*Construction of Vakalatnama.*

The question whether a party is bound by a compromise filed by his pleader must depend in each case on the terms of vakalatnama. Where by the vakalatnama the plaintiffs agreed that they would be bound by all acts of their pleader in the course of their suit, and they further expressly specified amongst the acts which the said pleader might perform on their behalf the presentation to the Court of petitions relinquishing the claim, compromising the suit or withdrawing from the suit,

Held, that the plaintiffs were bound by the pleader's act in presenting a petition of compromise to the Court and expressing on their behalf agreement to its terms. (*Piggott and Walsh, JJ.*). HUKM SINGH *v.* TUNDA. **60 I.C. 912= 19 A.L.J. 63.**

———*Certifying fact of.*

Where a compromise effected by the parties is merely conveyed to the Court by pleaders on both sides, the question if the vakalatnama did or did not empower the pleader to compromise does not arise. (*Abdur Rahim and Oldfield, JJ.*). PAMBHAYAM CHETTY *v.* KANDASWAMY IYER. **60 I.C. 22=12 M.L.W. 562.**

—Compromise—Barristers in Burma.

———Barristers in Burma appear because they are Advocates and not because they are barristers and so far as regards their power to compromise the suit, they must be judged by rules applicable to Advocates. (*Baguley, J.*). DESRAM BARA SINGH *v.* BASWA SINGH. **8 Rang. 290=A.I.R. 1930 Rang. 313.**

—Compromise—Consent of client.

———*Duty to consult.*

There is a duty upon Counsel to consult his client and take his instructions and when the performance of the duty is omitted for whatever reason, it would be contrary to principle to enforce a decree passed in such circumstances.

When a client is present in the Court he has a right to be consulted before the Counsel gives his consent to a decree and consent given by the Counsel without such consultation is without authority express or implied. *Neale* v. *Gordon Lennox*, (1902) A.C. 465; A. I. R. 1927 Cal. 714 and *Hickman* v. *Berens*, (1892) 2 Ch. 638, *Foll.*; *Mathews* v. *Munster*, (1887) 20 Q. B. D. 141 and A. I. R. 1924 Cal. 651, *Dist.* (*Panckridge, J.*). GHASIRAM GOENKA *v.* HARIBUX GOBERDHONEDAS. **34 C.W.N. 210= A.I.R. 1930 Cal. 477.**

———*Instructions from mukhtar.*

Where the vakalatnama given to a pleader clearly authorised him to enter into a compromise on behalf of his client, and the pleader compromised the suit on the instructions not from the client himself but from a third person who was subsequently appointed as his mukhtar by the client,

Held, that the compromise was binding on the party. (*Tek Chand, J.*). DAYAL SINGH *v.* HARA SINGH KARTA SINGH. **108 I.C. 262= A.I.R. 1928 Lah. 642.**

———A Counsel has no authority to compromise a case without reference to his client. (*Walmsley and B. B. Ghose, JJ.*). SRIMATI TARU BALA DASSI *v.* SOURENDRA NATH MITRA. **88 I.C. 369= 29 C.W.N. 597=41 C.L.J 213= A.I.R. 1926 Cal. 866.**

———*Client absent.*

The authority of Counsel at the trial of an action extends, when it is not expressly limited, to the action and all matters incidental to it; the consent

LEGAL PRACTITIONER—Fees.

of the client is not needed for a matter which is within the ordinary authority of Counsel, and therefore if a compromise is entered into by Counsel in the absence of the client the client is bound. (1902) A.C. 465, *Dist.*; (1866) L.R. 1 Q B. 379, *Rel. on*; 13 All. 272, *Ref.*; 27 Cal. 428. 433 (*Sanderson, C. J. and Richardson, J.*). B. N. SEN AND BROS. *v.* CHUNI LAL DUTT AND CO. **83 I.C. 611= 51 Cal. 383=A.I.R. 1924 Cal. 651.**

—Compromise—Misapprehension.

———The consent given by Counsel or solicitor might be withdrawn by the client if the Counsel or solicitor gave it under a misapprehension, before that consent order had been drawn up and perfected. In India, no less than in England, the Courts are not deprived of their general authority over justice between the parties by an unauthorised act of the Counsel. (*Carr and Brown, JJ.*). KYONE HOE *v.* KYIN SOON SUN. **91 I.C. 509= 3 Rang. 261=A.I.R. 1925 Rang. 314.**

—Compromise—Pardanashin lady.

———Though a clause authorizing a pleader to compromise is to be found in vakalatnamas that are ordinarily filed, it is exceedingly uncommon for pleaders to take the responsibility of entering into a compromise on the strength of the authority conferred by it, the more so in cases where illiterate pardanashin ladies are concerned. Those who assert that this was the position have got to discharge an exceedingly heavy burden indeed and the least that could be expected of them is that they should examine the pleader himself. (*Mukerji, J.*). HRIDAY NATH *v.* NIRODA SUNDARI. **108 I.C 44=A.I R. 1928 Cal. 334.**

—Compromise—Setting aside.

———On principle, there does not seem to be any reason for interfering with a compromise consented to by a pleader duly authorized in this behalf, unless fraud or collusion is imputed to the pleader. (*Jwala Prasad, J.*). LAURENTIUS EKKA *v.* DUKHI KOERI. **92 I.C. 179=4 Pat. 766=7 P.L T. 362= A. I.R 1926 Pat. 73.**

———Before an order passed on the consent of the Pleader, though under a mistake of fact, can be set aside serious and substantial injustice to the party concerned must be established. (*Lord Sumner.*) JAMNABAI *v.* FAZALBHOY HEPTOOLA. **77 I.C. 355=18 M.L W 437=26 Bom. L R. 189= 33 M.L.T. 376=5 L.R.P C. 30= 40 C.L J. 272=A I R 1923 P.C. 184= 46 M L.J. 160=47 M.L J. 164 (P. C.).**

—Compromise—Without authority.

———A consent order was allowed to stand where the defendant did not suffer any loss of right by such order though the defendant contended that his pleader who consented to the order being passed by the Court was not given any permission by him to consent to the order. (*Madhavan Nair, J.*). V. DALEPPADU *v.* T. SURANNA. **85 I.C. 408= 20 M.L.W. 900=A.I.R. 1925 Mad. 278.**

—Fees.

———*Promissory note for.*

There may be cases in which the fee due to a Vakil may be otherwise adjusted though no actual money has passed. Such an adjustment, however, should be something more than a mere agreement to pay. For instance when a promissory note, especially a negotiable instrument is given, it may be equivalent to payment. In such a case a certificate may not be really dishonest even if no fee was received and it may be too strong an

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expression to describe such a certificate as a false certificate. (*Ramesam, J.*). A.V. SUBBA RAO, *In re.* **122 I.C. 799=30 M.L.W. 977= A.I.R. 1930 Mad. 413=57 M.L.J. 780.**

——It is a well recognized rule of law that an attorney is not entitled to any donation irrespective of his just and legitimate costs, during the subsistence of the relationship with his clients. 29 Cal. 595, *Cons.* (*Sen and Heald, JJ.*). PO HTIN MAUNG *v.* SAW HLA PRU. **A.I.R. 1930 Rang. 243.**

——The pleaders' fees to be allowed to a party is what is actually paid or what might reasonably have been paid, whichever is less. (*Hallifax and Mohiuddin, A.J.Cs.*). MT. CHHITIA BAI *v.* RAJKUMAR. **111 I. C. 148=A.I.R. 1928 Nag. 283.**

——*Solicitor in Bombay—Services in moffusil.*

There is no reason why a solicitor practising in Bombay and performing professional services for a client regarding business in the moffusil should not be entitled to send a bill to his client for such professional services, and, if the client declines to pay, why he should not be entitled to come to the Court and ask for a common order to get the bills taxed by the Taxing Master. (*Macleod, C.J. and Coyajee, J.*). NOWROJI *v.* KANGA AND SAYANI. **94 I. C. 149=28 Bom. L.R. 384= A.I.R. 1926 Bom. 272.**

——*Miscellaneous proceedings.*

Where an appeal is expressly from an order passed in miscellaneous proceedings and it is withdrawn on an objection that the order was not final one and that consequently it was not appealable, it is in the discretion of the Court to fix the fees of Counsel as in miscellaneous proceedings. (*Jai Lal, J.*). ABDUL RAB *v.* RAHIM BAKHSH. **94 I. C. 627= 8 L. L. J. 99=27 P. L. R. 238= A. I. R. 1926 Lah. 320.**

——*Quantum meruit.*

In the absence of any special agreement, a pleader shall be entitled to receive fees allowed on taxation between himself and his client for his services until the final decree or order in the proceeding is passed. If a pleader dies before such final decree or order is passed or for any reason the engagement of his services by his client is put an end to, then the pleader will only be entitled to ask the Court to award him certain proportionate fees on the basis of a *quantum meruit*. 12 Bom. 557, *Ref.*

The Court in assessing the *quantum meruit* might be guided by the percentages laid down by law for the regulation of costs between party and party, but is not bound to adopt that guide where circumstances of the case would render it unjust to do so. (*Macleod, C.J. and Coyajee, J.*). MOTILAL GOPALDAS SHET *v.* KRISHNABAI GOPALRAO GARUD. **90 I. C. 604=27 Bom. L.R. 1186= A. I. R. 1925 Bom. 513.**

——*Basis of calculation.*

Pleader's fees in a suit for profits among cosharers need not be restricted to the sum claimed, but it may be assessed on the sum actually awarded. (*Ashworth, A. J. C.*). GHANI AHMAD KHAN *v.* MT. AZIZ BEGAM NABY. **88 I. C. 134= 12 O. L. J. 272=28 O. C. 217= A. I. R. 1925 Oudh 432.**

——*Solicitor and client—Special fee paid but not allowed on taxation.*

Where special fees were paid to Counsel as arranged by the defendant attorney with the Counsel on the express oral instructions of the client who was informed by the defendant that they would not be allowed on taxation and in spite of such information the plaintiff client instructed the defendant to pay the fees to Counsel,

Held, that plaintiff should not be allowed to recover the amount of those fees from the attorney. But the attorney should make an application to the Judge for an order under R. 32 of Chap 36 for an allowance of fees to Counsel, higher or other than the fees set out in the table embodied in that rule,

Held further, that in view of the special circumstances of the case the Court should exercise the jurisdiction vested in it by Chap. 36, R. 32.

When an attorney proposes or is asked by his client to mark on the brief or to pay fees to Counsel which cannot be allowed on taxation by the Taxing Officer he should, in every case, before marking or paying such fees make it clear to his client that such fees will not be allowed on taxation and he should obtain a letter signed by his client authorising or ratifying the payment of such fees; and if, and when such fees are disallowed on taxation the attorney must adopt the procedure laid down by the rules.

An attorney is an Officer of Court and it is an improper proceeding on his part to contest in a Court of Law the amount of a bill of costs which has been taxed by the Taxing Officer. (*Sanderson, C. J. and Richardson, J.*). ROMESH CH. BASU *v.* JABAB CH. MITRA. **84 I C. 817=51 Cal. 829= 28 C.W.N. 597=A.I.R. 1924 Cal. 753.**

——*Basis of calculation.*

In suits falling under Court-fees Act, S. 7 (*iv*) (*d*) the valuation for Court fees and jurisdiction is the same, *i.e.*, the value at which the relief is valued in plaint, which also is the basis for calculating pleader's fees. (*Scott-Smith, J.*). AMIR CHAND *v.* HAKIM ALI. **69 I.C. 577= A.I.R. 1924 Lah. 364.**

——*Actual fee to be marked.*

The actual fees, which it has been arranged to pay to Counsel, must be marked on the Counsel's brief, and no manipulation thereof can be permitted for the purpose of taxation or otherwise. (*Sanderson, C.J. and Richardson, J.*). ROMESH CH. BASU *v.* JABAB CH. MITRA. **84 I.C. 817= 51 Cal. 829=28 C.W N. 597= A.I.R. 1924 Cal. 753.**

——*Solicitor and client—Special fee paid but not allowed on taxation.*

The defendant was the plaintiff's solicitor. He claimed a right to retain out a fund in his hands payable to plaintiff, a certain sum of money he had paid as fee to certain eminent Counsel he had engaged for the client. The fee was a heavy one but the client had been told by the defendant that if he wished to retain those eminent Counsel, he would have to pay a fee which would not be allowed on taxation. The plaintiff consented but no written authority was signed by him. At the time of taxation, the whole of the item in question was disallowed; no reference or review was applied for from the decision of the Master.

Held, that the order of the Master was final, that the defendant cannot, several years afterwards, apply to Court to increase the sums allotted, that he can retain only such monies of his clients as, in accordance with the rule of Court, he is entitled to claim against them and that therefore he cannot retain monies which, though he might have spent, was disallowed by the Taxing Officer. The position of a solicitor who is an Officer of Court in

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different from that of an ordinary agent. (*Page, J.*). JADAB CHANDRA MITTER *v.* ROMESH CHANDRA BOSE. **77 I.C. 1022=27 C.W.N. 537= A.I.R. 1923 Cal. 603.**

——*For services as Commissioner—Impropriety.*

Where a pleader Commissioner sued on a mortgage executed in lieu of fees by defendant for whom he was acting as Commissioner,

Held, it is quite incredible that the duties of a Commissioner should be thought consistent with approaching an individual party and getting him to pay sums of money in discharge of an untaxed bill of costs upon the footing that unless this is done the report will not be filed. No such bargain so procured can stand. It is an improper advantage obtained by an officer of Court by abuse of his position as such officer. It is not the case that the Commissioner is the servant of the party at whose instance the Court makes the appointment. The work done is not work done for that party. It is work done for the Court and the right to sue a party at whose instance the Court appoints a Commissioner is not the right to sue a party for whom the Commissioner has worked. It is necessary that there should be no doubt cast on the broad rule that a Commissioner appointed by a Court must keep himself clear of any ambiguous conduct towards any party in the matter of his fees. (*Rankin and Panton, JJ.*). PRAMATHA NATH SEN GUPTA *v.* SHEIKH ABDUL AZIZ MEAH. **75 I. C. 443=27 C.W.N. 430= 37 C.L.J. 406=A.I.R. 1923 Cal. 436.**

——Filing of *vakalatnama* before date of hearing by one pleader and the conducting of appeal by another does not disentitle the party to full fees. (*Daniels and Lyle, A.J.Cs.*). BABU RAGHU INDRA PROTAP *v.* RAJA SYED ABU JAFAR. **70 I.C. 99=25 O C. 279= A.I.R. 1923 Oudh 55.**

——The mufassil practice in Probate cases is to calculate pleader's fee *ad valorem*. (*Ayling and Odgers, JJ.*). RAJAMANIKKAM *v.* FARRAR. **69 I. C. 954=1922 M.W.N. 626= 16 M. L. W. 455=32 M. L. T. 20= A. I. R. 1923 Mad. 131.**

——*Basis of calculation—Suit in ejectment.*

In a suit to eject the defendant, plaintiff's tenant, from her house, the claim for purposes of Court-fee was valued at Rs. 1,080 (the amount of rent for one year) and for purposes of jurisdiction it was valued at Rs. 15,000, the value of the house. The suit being decreed in the trial Court the defendant appealed to the High Court, valuing her claim at Rs. 1,080 both for Court-fee purposes and for pleader's fees but failed in appeal. A question having arisen how the pleader's fees should be assessed,

Held, the pleader's fees should be assessed on the value of the house. (*Macleod, C.J. and Shah, J.*). BAI METHERBAI NANBHAI BANAJI *v.* MRS. P. R. DADINA. **64 I.C. 1000=46 Bom. 396= 23 Bom. L.R. 1183=A. I. R. 1922 Bom. 171.**

——*Fees not paid—Duty of vakils.*

In the Madras High Court Vakils being allowed to act as well as plead on the Original Side, they are very much in the same position as solicitors in England. It is well settled in England that attorneys or solicitors are not entitled to refuse to go on with an action for want of funds unless they have given their clients sufficient notice of their intention to enable him to make other arrangements.

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A Vakil is not entitled to refuse to take a necessary step in the case, because his own fees have not been paid, and at the same time refuse his consen to the transfer of the case to another Vakil. (*Wallis, C.J. and Krishnan, J.*). MUTHUKRISHNA YACHENDRA BAHADUR *v.* W. H. NURSE. **69 I.C. 695=44 Mad. 978=14 M.L.W. 154= 1921 M.W.N. 562=A.I.R. 1921 Mad. 320= 41 M.L.J. 213.**

—Lien.

——*Priority over costs to be paid.*

Where the petitioning creditor's petition is dismissed with costs to be paid to the debtor, no set-off is permissible to the petitioning creditor against the money ordered to be paid at least to the extent of the lien for costs of the attorneys of the debtor. A. I. R. 1927 Bom. 542, *Ref.*; *Ex parte Cleland, In re, Davis*, (1867) 2 Ch. 808, *Appl.* (*Blackwell, J.*). EBRAHIM AHMED, *In re*. **32 Bom. L.R. 1076= A.I.R. 1930 Bom. 516.**

——*Nature and extent of.*

In India a solicitor has a common law lien for costs over property recovered or preserved or the proceeds of any judgments obtained for the client by his exertions. This lien is a particular lien ; it is not, therefore, available for the general balance of account between the solicitor and the client, but extends only to the costs of recovering or preserving the property in question, including the costs of protecting the solicitor's right to such costs, and of establishing the lien. The lien does not attach to real property, but, with this exception, it applies to property of every description—including costs ordered to be paid to the client. *Shaw* v. *Neale*, (1858) 6 H.L.C. 581 ; 10 Bom. 248 and A.I.R. 1925 Bom. 351, *Foll.*; 43 Cal. 676, *Diss. from.* (*Rangnekar, J.*). SUDANAND *v.* PARASHRAM. **108 I. C. 705=52 Bom. 336=30 Bom.L.R. 153= A.I.R. 1928 Bom. 108.**

——*Priority over mortgagee's lien.*

A solicitor's lien on the property of his client cannot have priority over the lien of a mortgagee who has advanced money to pay off prior incumbrances on the property. (*Rangnekar, J.*). SADANAND *v.* PARASHRAM. **108 I.C. 705= 52 Bom. 336=30 Bom. L.R. 153= A.I.R. 1928 Bom. 108.**

——*Notice of.*

Where a party attaches a decree, which directs payment of costs to the plaintiff, he has notice by that very fact that the plaintiff's solicitors may be entitled to an attorney's lien on that fund for the amount of their costs. The mere fact of there being a fund in Court is sufficient to give notice to the third party of the possibility of a solicitor being entitled to a lien for his costs. So long as the Court has control over the funds, the lien is not liable to be defeated by a third party, such as the assignee of a decree or an attaching creditor of the solicitor's client, even though the third party had no express notice of the lien. (*Marten, C.J. and Blackwell, J.*). TYABJI DAYABHAI & CO. *v.* JETHA DEVJI & CO. **105 I.C. 383=29 Bom. L. R. 1196=51 Bom. 855= A.I.R. 1927 Bom. 542.**

——Scottish Law does not apply in England, nor does it apply in India. (*Marten, C.J. and Blackwell, J.*). TYABJI DAYABHAI & CO. *v.* JETHA DEVJI & CO. **105 I. C. 385=51 Bom. 855= 29 Bom.L.R. 1196=A.I.R. 1927 Bom. 542.**

——*Common fund.*

The attorney's right to a lien for his costs is ancillary to the right he has of recovering his

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costs against his client. Where the attorney is unable to show that he cannot get payment from his client where others besides the client are interested in the fund, the Court would not exercise its discretion in favour of the attorney against the other parties so interested. *Harrison* v. *Cornwall Minerals Rail Co.*, (1884) 53 L.J. Ch. 596, *Rel. on.* (*Mirza, J.*). ANANDRAO *v.* NAPU. **94 I. C. 153= 28 Bom. L.R. 386=A.I.R. 1926 Bom. 289.**

———*Priority over attachment.*

The solicitor's lien independently of the charging order has priority over any attachment by a judgment-creditor so long as the moneys attached remain within the jurisdiction of the Court, that is to say, they are not realised and paid off to the judgment-creditor. 49 L.J.C.P. 524, *Foll.* (*Taraporewala, J.*). VED AND SOPHER *v.* R.P. WAGLE & CO. **88 I.C. 81=49 Bom. 505= 27 Bom. L.R. 586=A.I.R. 1925 Bom. 351.**

———*General and particular.*

Obiter.—In addition to the particular or active lien which an attorney has upon moneys which have been recovered in a suit, the attorney has a general or passive or retaining lien upon all movables, deeds, documents, and so forth that come into his hands unless they come for a specific purpose which would be inconsistent with the right of retainer. (*Rankin, J.*). NARENDRA LAL *v.* TARUBALA DASI. **66 I.C. 209=48 Cal. 817= 25 C.W.N. 800=A.I.R. 1921 Cal. 67.**

—Misconduct—Advertising.

———A pleader's sending a circular post-card merely giving the address and the name and description of himself would amount to an advertisement on his part and therefore to improper conduct and if in addition he falsely stated that he had been authorized to examine the accounts of waqf properties and to issue certificates by the District Court rather aggravates the case than the reverse. Even if auditing is not strictly legal work, yet this very fact of advertising his readiness to take up that work, combined with his misleading statement that he is a High Court Pleader and seeing that this work is connected with the Courts and has to be supervised by the Courts would result in his getting an improper advantage in legal work over his fellow pleader, who did not descend to such devices. It was improper conduct on the part of the District pleader to issue such post-cards and to canvass for this particular work in the way that he did, and accordingly he has committed an offence under S. 26. (*Marten, C.J. and Murphy, J.*). GOVERNMENT PLEADER *v.* S., A PLEADER. **31 Bom. L.R. 625= 53 Bom. 640=A.I.R. 1929 Bom. 335.**

—Misconduct—Breach of duty.

———An attorney was entrusted by one set of clients with Rs. 20,000 to advance on a mortgage of two properties. He deliberately omitted to register the mortgage made in their favour. The result was that that mortgage became useless. The clients afterwards got a mortgage of one of the properties, but they were left without any security on the other, though for some time they were led to believe by the solicitor that they had got a valid security on that property. Further, as regards another set of clients: the solicitor allowed them to advance Rs. 22,000 on the mortgage of this very property without telling them that there was already this other mortgage in favour of the first set of clients which had not been registered, but which, at that date, might still have been registered. The solicitor endeavoured to suppress from his first set

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of clients any knowledge of this second document.

Held, that he was guilty of professional misconduct. (*Marten, C.J., Fawcett and Blackwell, JJ.*). AN ATTORNEY, *In re.* **104 I.C. 681= 29 Bom. L.R. 1066=A.I.R. 1927 Bom. 537.**

———*Complicity in wrongful act by client.*

A sum of Rs. 3,250 was obtained by the attorneys from the Sheriff upon the representation that the money was due to the landlords, a charitable trust, for the rent of the premises and that if it were received from the Sheriff it would be paid in full to the landlords. The money was due for a godown rented by his client for 10 months at Rs. 325 per month, to keep furniture attached before judgment on behalf of his client. The attorney paid the money to his client for payment, but subsequently upon instructions from his client wrote to the landlords denying liability for rent but that he was sending Rs. 474 as a matter of grace.

Held, that the attorney should have insisted on the client paying the money to the trust or refunding it to the Sheriff, and ought not to have made himself a party to the course adopted by his client by addressing the letter to the trust. As an officer of the Court, he owed a duty to the Court as well as to his client. Though his conduct did not involve any moral turpitude there was a breach of duty which the attorney owed to the Court. It was competent to and proper for the Incorporated Law Society to bring the matter to the attention of the Court when the matter was brought to the notice of the Society. (*Sanderson, C.J., C.C. Ghose and Buckland, JJ.*). *In the matter of* TWO ATTORNEYS. **90 I.C. 468=29 C.W.N. 1047= A.I.R. 1925 Cal. 964 (S.B.).**

—Misconduct—Charge against Judge.

———It is the duty of Counsel towards their clients to use their own judgment and experience and discretion and as a result, whatever be their instructions, to exclude all topics and observations of which the case does not properly admit. They should be careful to express anything in a form which will not be unduly insulting or opprobrious to the officer, who has to receive the notice.

Where a notice by a pleader contained the following extracts: "You should not have asked my client to attend the Court at 11 a.m., when he was not going to be examined at that time. He was not bound in law to wait indefinitely till you chose to call him for examination. A witness's time is as much valuable, if not more, than the time of the Court. . . Obviously enough, your order was not only arbitrary and high-handed, but also spiteful and malicious. . . From what is stated above, you will clearly see the enormity of your own acts."

Held, that there was a clear excess of the privilege of the Bar, amounting to improper conduct. (*Fawcett and Mirza, JJ.*). GOVT. PLEADER *v.* L.B. BHOPATKAR. **113 I.C. 519=30 Bom. L.R. 934= A. I. R. 1928 Bom. 338.**

———No practitioner can possibly suggest that because an application that a case should be transferred to the District Judge, had been judicially rejected, there is the slightest ground, in decency or honour, for suggesting that any suspicion has thereby been aroused against the impartiality of the Magistrate. Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite parties on the mere wish of their clients. They are agents, not of the man who pays them,

LEGAL PRACTITIONER — Misconduct — Contempt.

but are acting in the administration of justice, and in matters of making applications to Court they are bound to exercise an independent judgment, and to conduct themselves with a sense of personal responsibility. If they fail to act with reasonable care and caution, they are unfit to enjoy the privileges conferred upon them by law, and serious breaches must be visited with punishment. (*Mears, C.J., Walsh and Sulaiman, JJ.*). *In the matter of* BABU DWARKA PRASAD MITHAL, VAKIL, MUZAFFARNAGAR. **81 I. C. 177=46 All. 121= 21 A. L. J. 833=4 L. R. A. Civ. 615= 25 Cr. L. J. 689=A. I. R. 1924 All. 253 (F.B.).**

—Misconduct—Contempt.

———*Jurisdiction of Subordinate Courts.*

Per *Full Bench.*—No power to punish for contempt of an inferior Court now exists independently of the Indian Penal Code and the Contempt of Courts Act and no disciplinary power over legal practitioners or power to punish for contempt outside the provisions of the Indian Penal Code is vested in the Subordinate Courts. (*Mears, C. J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND. **1930 A.L.J. 402=A.I.R. 1930 All. 225 (F.B.).**

—Misconduct—Defamation.

———Defamatory statements made by an advocate outside his duty as advocate and with no reference to the subject before the Court are irrelevant and are necessarily made in bad faith. A counsel might therefore be proceeded against in an action for defamation.

While examining a witness the counsel of a company asked the witness whether his client company was not the biggest in the town. The witness said "Yes", and the pleader on the opposite side remarked "and it is also the most dishonest in the town."

Held, that the remark was defamatory of the company, had no reference to the subject before the Court and was irrelevant. The counsel therefore could not plead privilege and was liable in damages. *Munster* v. *Lamb*. 11 Q.B.D. 588, *Cons.* and *Foll.* (*Sen and Niamatullah JJ.*). RAHIM BAKHSH *v.* BACHCHA LAL. **115 I.C. 458=1929 A.L.J. 303=51 All. 509= A.I.R. 1929 All. 214.**

—Misconduct—Error of judgment.

———Where circumstances are sufficient to justify the insertion in an affidavit of a paragraph in a qualified manner and it is inserted by the solicitor in an unqualified manner, it is merely an error of judgment on the part of the solicitor to omit an express statement of the limitation to which the deponent's assertion is necessarily subject, and no moral blame should be imputed to the solicitor for the omission. (*Lord Dunedin.*) JONATHAN COLLINS ZIZER *v.* JUDGES OF SUPREME COURT, NIGERIA. **116 I.C. 387=1929 A.L.J 53= 29 M.L.W. 111=A.I.R. 1929 P.C. 33 (P.C.).**

—Misconduct—Exorbitant fees.

———Where a barrister owing to his inability to attend a case, requested another barrister to attend and promised him a portion of his fees, but the latter, alleging the case itself had been transferred to him, obtained from the client who was illiterate, a large amount of fees, quite out of all proportion to the importance of the case and the work done by him, he was held guilty of professional misconduct. (*Lord Warrington of Clyffe.*) WILLIAM EDWARD

LEGAL PRACTITIONER — Misconduct — Misappropriation.

AKAJE *v.* JUDGES OF THE SUPREME COURT OF SEIRRA LEONE. **110 I.C. 321=5 O. W N. 805= 29 P.L R. 522=29 Cr.L J. 689= 28 M L W. 958=10 A .I. Cr R. 511= 1928 M.W.N. 831=A I R. 1928 P.C. 264= 55 M.L.J. 296 (P.C.).**

—Misconduct—Improper complaint.

———To lodge on behalf of a client an obviously improper and groundless criminal complaint against a person is serious misconduct on the part of a practitioner. If it was due to deliberate dishonesty, the practitioner should be removed from the roll of legal practitioners. But even otherwise, if it had its origin in carelessness, incompetence and a lack of sense of responsibility, then too, the conduct of the practitioner is open to severe censure. It is the bounden duty of the practitioner before presenting a complaint to make due enquiries of the clients and to act with such care and prudence that his good faith could never successfully be questioned. He ought not to regard his function as that of a mere machine and his only duty to transmit to the Court any half truths and insinuations which his clients desired him to record. (*Mears, C. J., Piggott and Mukerji, JJ.*). *In the matter of* A VAKIL. **86 I.C. 403=47 All. 377= 23 A.L.J. 125=26 Cr.L J. 776= 6 L.R.A. Civ. 244= A.I R. 1925 All. 247 (F.B).**

—Misconduct—Instigation for false evidence.

———Where a pleader defending an accused person was prosecuted for instigating witnesses to give false evidence, while that proceeding is pending, and before the evidence of the witnesses who are said to have been instigated to give false evidence, has been appreciated by the Court,

Held, that the prosecution is inadvisable. If such a prosecution is to be started it ought to be started after the principal proceeding, in relation to which the offence is said to have been committed, has terminated. (*Shah, Ag C. J. and Crump, J.*). VASUDEO RAMCHANDRA JOSHI, *In re.* **71 I.C. 523=24 Bom L.R. 1153= 24 Cr.L.J. 171=A.I.R. 1923 Bom. 105.**

—Misconduct—Insulting questions to witness.

———In drafting pleadings, counsel should avoid personal ill-will and reckless charges of fraud and criminality. Even when questions as to credit are material, the counsel should satisfy himself, before putting questions, that there is some reasonable ground for believing in the charges he makes against a witness.

A counsel drafted a written statement containing defamatory allegations against a Mukhtar knowing fully well that the allegations had no foundation in fact. Subsequently in the cross-examination of that Mukhtar the counsel asked him if he had not a notice served on him under Cr. P. Code, S. 476. The Counsel had no ground for making the allegation.

Held, that he was guilty of professional misconduct. (*Mears, C.J., Lindsay and Mukerji, JJ.*). A VAKIL, *In re.* **88 I.C. 179=47 All. 729= 23 A.L.J. 469=6 L. R A. Civ. 403= 23 Cr. L. J. 1091=A.I.R. 1925 All. 641 (F.B.).**

—Misconduct—Misappropriation.

———Where a legal practitioner was proceeded against for professional misconduct for having appropriated the client's money and it appeared that after the proceeding was commenced as against him before the Bar Council the vakil paid the amount to the party,

LEGAL PRACTITIONER — Misconduct — Misappropriation.

Held, that such a device should deceive nobody and that far from being an act to be placed to the credit of the Vakil it was the very reverse of it. (*Beasley, C. J., Walsh and Pandalai, JJ.*). *In the matter of* T. N. P., AN ADVOCATE.

1930 M.W.N. 216 (F.B.).

———*Misconduct—Money specifically paid by client towards stamp fees—Legal practitioner appropriating same or part of it towards his fees—Propriety.*

Where money is put into the hands of a legal practitioner by a client for a specific purpose it can be applied only for that specific purpose. Thus money paid for stamp fees cannot be appropriated towards fees due to the vakil.

Where an Advocate having received sufficient sum for paying additional stamp duty failed and neglected to pay the same to the Board of Revenue in time and thereby caused a penalty of Rs. 200 to be imposed and levied on her,

Held, that the Advocate was guilty of professional misconduct and that he should be struck off the rolls for a period of three years. (*Beasley, C.J., Walsh and Pandalai, JJ.*). *In the matter of* T. N. P., AN ADVOCATE. **1930 M.W.N. 216 (F.B.).**

—Misconduct—Proceedings.

———*Pro eedings by Advocate-General—Right of private party to be heard.*

It must depend upon the discretion of the Court having regard to the circumstances of the case to decide whether a private party may be heard or not after proceedings have been taken by the Advocate-General against a legal practitioner for professional misconduct. (*Shah, Ag.C.J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C 353= 26 Bom. L.R. 887=A. I. R. 1925 Bom. 1 (F.B.).**

———In proceedings which affect an officer of the Court personally it is necessary that the rule should be brought on for hearing as quickly as possible. (*Shah, Ag.C.J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353= 26 Bom. L R. 887=A.I.R. 1925 Bom. 1 (F.B.).**

———Where the Advocate-General has not moved the Court at the instance of the representative body of the profession the rule should be served upon the body also in order that they may have an opportunity of representing to the Court the point of view of the profession. (*Shah, Ag.C.J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I. C. 353= 26 Bom. L.R. 881=A.I.R. 1925 Bom. 1 (F.B.).**

———Court should not treat anything in the conduct of the case by the practitioner against whom proceedings are taken as indicating a lack of confidence in his own defence on the merits. (*Shah, Ag. C. J., Kajiji and Kincaid, JJ.*). AN ATTORNEY, *In re.* **84 I.C. 353=26 Bom. L. R. 887= A.I.R. 1925 Bom. 1 (F.B.).**

———*Conviction of Advocate conclusive.*

In the enquiry in respect of the removal of the name of an Advocate from the rolls, the conviction fo the Advocate by the competent Magistrate must be accepted as proper, and cannot be re-opened. (*Mears, C.J., Banerjee and Rafique, JJ.*). TASADDUQ AHMAD KHAN SHERWANI, *In re.* **65 I.C. 560= 44 All. 352=20 A. L. J. 200=23 Cr. L. J. 128= A. I. R. 1922 All. 140 (F.B.).**

———*Reference to Special Bench.*

Reference to a Special Bench in the matter of a legal practitioner's professional conduct is a step which should not be taken lightly unless the Court is satisfied that the question is of such a serious nature that it is in the interest of the profession as a whole and of litigants in general that a full enquiry should be made into it by a Special Bench for that purpose. Where an attorney failed in his duty to disclose documents come to his knowledge subsequent to the filing of an affidavit of documents,

Held, that the matter was not so serious as to justify further investigation by a Special Bench. (*Greaves, J.*). *In the matter of* ATTORNEY. **61 I C. 908=25 C W.N. 99=A.I.R. 1921 Cal. 267.**

—Misconduct—Promoting enmity between classes.

———The moral turpitude is always involved in the commission of an act, which comes within S. 153-A of I.P.C. (*Mears, C.J., Banerjee and Rafique, JJ.*). *In the matter of* TASADDUQ AHMAD KHAN SHERWANI, BAR.-AT LAW. **65 I. C. 560= 20 A. L J. 200=23 Cr. L. J. 128= 44 All. 352=A.I.R. 1922 All. 140 (F.B.).**

—Misconduct—Re-admission to profession.

———The High Court is under a manifest duty to give a legal practitioner, who has been removed from the roll of legal practitioners in consequence of a serious offence in the course of his professional duties but who realises the gravity of his offence and having made up his mind for the future to lead a straightforward and honourable life is able to satisfy the High Court that for the past seven years since his removal from the roll of legal practitioners, it has been his genuine and earnest endeavour to rehabilitate his character, another opportunity of practising the law, by cancelling the order standing in the way of his practising. (*Dawson Miller, C.J., Foster and Kulwant Sahay, JJ.*). MATHURA PRASAD *v.* EMPEROR. **82 I.C. 282=25 Cr. L.J. 1274=A.I.R. 1925 Pat. 250.**

———On a question when and how, a legal practitioner who has been debarred, should be restored to his former position, the test to be applied is whether the sentence of exclusion, however right, has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, and whether, in the interval, his conduct had been so irreproachable that, not withstanding a delinquency in early life, he might be safely entrusted with the affairs of clients and admitted to an honouraele profession without that profession suffering degradation. An application to strike off the rolls or re-admit to them ought not to be looked at with respect to the punishment of the individual himself. The Court has a duty to perform to the suitors and to the profession of the law, and is bound to see that the persons admitted to it are persons on whose integrity and honour, reliance may be placed, persons whose conduct has been such as to inspire confidence in their character. (*Kincaid, J C., Kemp, De Souza and Raymond, A.J.Cs.*) MIRSA JALALUDDIN, *In re.* **79 I.C. 564=16 S.L.R. 11= A I R. 1921 Sind 91 (F.B.).**

—Misconduct—Removal and suspension.

———*Imputation of bad character not necessary.*

A conviction under S. 17, sub-S. (1) of the Criminal Law Amendment Act (XIV of 1908) constitutes a reasonable cause within the meaning of Cl 8, Letters Patent, Lahore, for the removal or suspension from practice of an Advocate or Vakil. Strictly speaking proceedings under Cl. 8 are neither civil suits nor criminal prosecutions. The High Court exercise a special jurisdiction under Cl. 8. The propriety in law or in fact of the conviction cannot be questioned in the proceedings taken by the Court in the exercise of its disciplinary jurisdiction. 22 All. 49 (P.C.), *Ref.* Advocate or Vakil may be struck off the rolls for an offence which has no-

LEGAL PRACTITIONER—Misconduct — Retaining client's money.

relation whatsoever to his character as a legal practitioner but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. It is not necessary that the Act of a legal practitioner which is relied upon for striking his name off the roll should have subjected him to anything like a general infamy or imputation of bad character. 44 Bom. 418 (F.B.); 49 Cal. 732 and 49 Cal. 845 (P.C.), *Rel.* (*Shadi Lal, C.J., Scott-Smith and Abdul Raoof, JJ.*). *In the matter of* ABDUL RASHID. **76 I.C. 385=4 Lah. 271=25 Cr. L.J. 161=6 L.L.J. 491=A.I.R. 1924 Lah. 123 (S.B.).**

—Misconduct—Retaining client's money.

———Retaining monies payable to client is a serious type of professional misconduct. (*Beasley, C.J. Sundaram Chetty and Pakenham Walsh, JJ.*) *In the matter of* VEERARAGHAVACHARI, ADVOCATE. **32 M.L.W. 435=A. I R. 1930 Mad. 927 (F.B.).**

———A pleader retained his client's money with him and did not pay it in spite of repeated demands for a very long period. His explanation was that he had been asked by some relations of his client to keep the money in order that it might be utilized in the purchase of stones for the construction of a temple. This explanation was found by the District Judge to be untrue. It was further found that for the whole of the year while proceedings under the Legal Practitioners Act were hanging over his head he took out no sanad and, therefore, suspended himself as it were from pleading in the Court where his practice lay.

Held, that a lenient view of his case be taken because he evinced some sense of propriety by not attempting to take out a sanad and because the conduct was not necessarily dishonest though it may have been improper but that he should be severely censured. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). *In the matter of* A PLEADER, SHOLINGHUR. **106 I. C. 97=39 M.L.T. 483=26 M.L.W. 652=9 A.I. Cr.R. 168=28 Cr. L.J. 1009=A.I.R. 1928 Mad. 18=53 M.L.J. 669 (F.B.).**

—Misconduct—Rules applicable.

———Charges of professional misconduct must be clearly established and should not be inferred from mere ground for suspicion however reasonable, or what may be mere error of judgment or indiscretion. A.I.R. 1930 P.C. 144 *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). DOGAR MAL AMIR CHAND *v.* P., A PLEADER. **A.I.R. 1930 Lah. 947.**

—Misconduct — Signing dishonest statements without knowledge.

———If a legal practitioner puts his signature to a document he will be bound by all the implications arising from it just as much as if he had written every word of it with his own hand. Practitioners must realise that if they associate themselves with statements which they know are dishonest and untruthful for the purpose of misleading the Court they must on proof of misconduct bear personal responsibility and that it will be no defence for them to say that it was done in the interests of the client or at his instigation or at the instigation of a colleague at the bar, or that they did not read the document or consider it at all. (*Mears, C.J., Lindsay and Dalal, JJ.*). *In the matter of* AHMAD ASHRAF, VAKIL. **98 I. C. 493=48 All. 542=27 Cr. L.J. 1373=A.I.R. 1927 All. 45 (F.B.).**

—Misconduct—Tampering witness.

———An advocate laying himself open to the suspicion of tampering with witnesses in an enquiry before the Coroner, amounts to professional misconduct, though he was not actually professionally engaged in the case. (*Marten, C.J., Fawcett and Blackwell, JJ.*). AN ADVOCATE, *In re.* **104 I.C. 659=29 Bom. L.R. 1062=A.I.R. 1927 Bom. 517.**

LEGAL PRACTITIONER—Negligence.

—Misconduct—Unpreparedness to argue.

———A pleader who has looked into the papers of a case for drafting grounds of appeal, is not guilty of professional misconduct merely because he is not prepared to argue the appeal at the time of the presentation of the appeal papers. (*Ramesam, J.*). TURKA HUSSAIN SAHIB *v.* CROWN. **84 I C 1051=20 M.L.W. 623=1924 M.W.N. 893=48 Mad. 385=26 Cr. L.J. 411=A.I.R. 1924 Mad. 895=47 M.L.J. 661.**

—Negligence.

———The standard of care to be exacted from practitioners in the Colony is pre-eminently a matter for the Judges of the local Court. Privy Council will not interfere in this matter with the order of that Court. (*Lord Dunedin.*) JONATHAN COLLIN ZIZER *v.* JUDGES OF SUPREME COURT, NIGERIA. **116 I.C. 387=1929 A.L.J. 53=29 M.L.W. 111=A. I. R. 1929 P.C. 33 (P.C.).**

———Negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. *In the case of G. M. C.*, 86 L.T. 468, *Foll.* (*Coutts Trotter, C. J., Krishnan and Beasley, JJ.*). MUNUSWAMI NAIDU, *In re.* **96 I.C. 685=49 Mad. 523=1929 M.W.N. 412=24 M.L.W. 100=A.I.R. 1926 Mad. 568=50 M.L.J. 399 (S.B.).**

———*Carelessness of clerk.*

Where an appeal was filed without the order appealed against being stamped and the same was returned and filed again with proper stamp but out of limitation,

Held, a Counsel when filing an appeal ought to see that all the documents which require stamp are properly stamped. He cannot shelter himself behind his clerk, and if his clerk has been guilty of any carelessness he is responsible for that. (*Scott-Smith, J.*). SHAHADAT *v.* HUKAM SINGH. **71 I.C. 736=A. I. R. 1924 Lah. 401.**

———Where it was the duty of the retained pleader to conduct all cases brought to him by the officers of the plaintiff, unless it was shown that there was any special duty cast on the pleader to remind officers of plaintiff that the decrees would be barred, he was not liable for damages for negligence, when those officers had the same knowledge or means of knowledge that the decrees would be time-barred. (*Dawson Miller, C.J. and Foster, J.*). (MAHARAJADHIRAJ SIR) RAMESHWAR SINGH BAHADUR *v.* NARENDRA NATH DAS. **71 I.C. 916=5 P. L. T. 355=2 Pat.L.R. Civ. 205=A. I. R. 1923 Pat. 259.**

———*Alleged negligence of solicitor due to ignorance of statute—Local circumstances, knowledge of, necessary—Interference by Privy Council.*

The question of negligence with regard to the performance of solicitor's duty must, to some extent, be affected by local conditions and local circumstances as to which their Lordships of the Privy Council might not be perfectly informed. The question as to whether a solicitor is negligent or not in omitting to give effect to a statutory provision cannot be disentangled from the consideration of whether the statute which is involved is one which is of constant and common occurrence in practice, or whether it is one unfamiliar and remote. With those circumstances their Lordships

LEGAL PRACTITIONER—Presence at hearing.

declared their inability to deal. (*Lord Buckmaster.*) STEPHENS & CO. *v.* ALLEN.
A.I.R. 1921 P.C. 231 (P.C.).

———Where a pleader allows the essential points in a case to be overlooked the decree cannot be vacated for fraud though the pleader may be liable for misconduct. (*Newbould, J.*). KIRAN CHANDRA *v.* BONO BEHARI DATTA. 59 I.C. 752 (Cal.).

—Presence at hearing.

———When a vakil represents his client the right of audience is, for the time being, vested in him. For the purpose of continuing the hearing or commencing the hearing, he is the appellant. If he is absent there is default. Even if the client is corporeally present in the eyes of the law, he is not present in such a sense as to prevent the absence of the vakil from being a default. If a Judge is anxious to assist a party in distress he can give him a little time to obtain the assistance of a new vakil, or adjourn the case, and make him pay costs or something of that sort, but for a default of this kind, subject to the penalty usually inflicted, the client should not be deprived of the right of having his appeal heard. (*Walsh, Ag.C.J. and Ryves, J.*). SAKALRAJ DUBE *v.* MT. JADU RANI.
80 I.C. 950=3 L.R.A. Civ. 615=A.I.R. 1925 All. 58.

—Purchase in execution proceedings.

———*Sale not invalid.*

Although a pleader purchasing property at an auction sale in execution of a decree in which he was professionally engaged on behalf of the decree-holders infringes certain rules of conduct, the sale does not thereby become invalid. (*Wazir Hasan, Ag. C.J. and Misra, J.*). KAMAKHYA DUTT RAM *v.* SHYAM LAL. 117 I.C. 471=6 O.W.N. 226=
4 Luck. 635=A.I.R. 1929 Oudh 235.

———*Concealment of name—Sale invalid.*

There is no more certain way of taking advantage than the way of concealment, and if an attorney or agent can show he is entitled to purchase, yet if instead of openly purchasing he purchases in the name of a trustee or agent without disclosing the fact, no such purchase as that can stand for a single moment and the advantage he has acquired by concealing the name of the real purchaser must be given up. Even where the Trusts Act does not apply the above principles hold good. *Lewis* v. *Hillman*, 3 H.L.C. 630 and *Macpherson* v. *Watt*, 3 A.C. 254, *Ref.* (*Lord Dunedin.*) NAGENDRA BALA DASI *v.* DINANATH MAHISH.
81 I.C. 752=33 M.L.T. 472=1924 M.W.N. 155=
19 M.L.W. 349=22 A.L.J. 177=51 I.A. 24=
2 Pat. L.R. 96=51 Cal. 299=26 Bom.L.R. 575=
5 L.R.P.C. 110=29 C.W.N. 491=
A.I.R. 1924 P.C. 34=46 M.L.J. 532 (P.C.).

—Relation with client.

———*No general agency.*

There is no such thing as general agency between a pleader and his client. In every suit the contarct of agency becomes complete when the vakalat is executed, and it ends with termination of the suit. *Saffron Walden Second Benefit Building Society* v. *Rayner*, (1880) 14 Ch. D. 406, *Foll.* (*Odgers and Curgenven, JJ.*). SHRI RAJAH PARTHASARATHI APPA RAO *v.* SUBBA RAO.
99 I.C. 456=50 Mad. 249=24 M.L.W. 818=
1927 M.W.N. 32=38 M.L.T. 26=
A.I.R. 1927 Mad. 157=51 M.L.J. 804.

———*No general agency.*

There is no such thing as a standing relation of a legal practitioner to a man. A man is a pleader for another only when that other has occasion to employ him as such. That employment may be

LEGAL PRACTITIONER — Rights and duties — Accepting briefs.

either to conduct a suit or to advise him about some matter in which legal advice is required, but there is no such general relationship as that of solicitor and client of a standing and permanent character upon all occasions and for all purposes. (*Phillips, J.*). PARTHASARATHI APPA RAO *v.* TURLABATI SUBBA RAO. 84 I.C. 276=
35 M.L.T. 84=1924 M.W.N. 517=
A.I.R. 1924 Mad. 840=47 M.L.J. 483.

—Rights and duties—Abandoning issue.

———It is within a vakil's power to abandon an issue which in his discretion he thinks inadvisable to press. 25 Mad. 367 (P.C.), *Foll.* (*Addison, J.*). RAM LAL *v.* LAL CHAND. 109 I.C. 713=10 L.L.J. 383.

———A pleader's general powers in the conduct of an appeal include, in ordinary cases, the abandonment of an issue which in his discretion he thinks inadvisable to press and therefore an issue of fact abandoned by him in the lower Appellate Court cannot be challenged in second appeal. (*Beasley and Ananthakrishna Aiyar, JJ.*). MLICHI KOTAYYA *v.* NALLAMALLI SREERAMALU.
109 I.C. 178=A.I R. 1928 Mad. 900.

—Rights and duties—Accepting briefs.

———*Breach of confidence.*

A counsel ought not to accept a brief in any case in which he would be embarrassed in the discharge of his duty by reason of the confidence reposed in him by the other party in a previous though unconnected case, and if his embarrassment is self-evident and his action an obvious scandal, it can be brought before the general Council of the bar. (*Jackson, J.*). VEDAVALLI AMMAL *v.* GANAPATHY IYER. A.I.R. 1930 Mad. 626.

———*Breach of confidence.*

A, a Barrister, allowed a client *S* to see him and to give his version of the case in full without warning him that he had not yet accepted the case and therefore could not regard himself as his advocate and without warning him that the other side had approached him to represent them in the matter and that he had not yet declined their offer. Subsequently *A* was engaged by the other side.

Held, that there could be no doubt that *S* reposed confidence in *A* by discussing the case in a way he did.

Held further, that the conduct of *A* could not be regarded as professional misconduct but the case came within the ambit "Counsel ought not to accept a brief against a party even though the party refuse to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by that party" and the Court is justified in holding that it would not be fair to *S* to allow *A* to appear for the other side. (1897-01) 2 U. B. R. 368; (1910-13) 1 U. B. R. 50; 26 Bom. 423 and 21 C. W. N. 1137 (P.C.), *Ref.*; 12 Bom. 85, *Dist.* (*Brown and Baguley, JJ.*). U KO KO GYI *v.* U SAN MYA. 8 Rang. 446.

———Where it is sought to restrain a Vakil from appearing for the opposite side, it must be shown that the party who desires to prevent the vakil from appearing should have offered the engagement in the first instance and the Vakil should have refused the engagement on insufficient or improper grounds. The mere fact that instructions were obtained in other proceedings which arose out of a right claimed in the proceedings under consideration, gives only a preferential right to the party to engage the Vakil and if he is prepared to engage him, the Vakil has a duty to appear for him and not to appear on the other side. (*Kumaraswami*

LEGAL PRACTITIONER—Rights and duties—
—Account of clients' money.

Sastri and Wallace, JJ.). GNANASAMBANDHA *v.* RATHNASABAPATHY. **110 I.C. 544= A.I.R. 1928 Mad. 592.**

—Rights and duties—Account of client's money.
——It is the duty of every Advocate who receives money on behalf of his client to conduct litigation with, to keep an account of how that money has been applied. (*Beasley, C. J., Walsh and Pandalai, JJ.*). *In the matter of* T. N. P., AN ADVOCATE. **1930 M.W.N. 216.**

—Rights and duties—Advice from Court.
——It is not right for a Counsel to take advice from the Court as to the kind or amount of evidence which has to be produced in support of his client's case, and even if a Court goes out of the way and gratuitously gives such advice, which itself would be an extremely improper act on its part, Counsel ought not to be guided by such advice, but must exercise his own independent judgment in deciding as to how to proceed in the conduct of his case. (*Tek Chand and Agha Haidar, JJ.*). ALLAH DITTA *v.* MT. BHAGAN. **116 I.C. 555= A.I.R. 1930 Lah. 401.**

—Rights and duties—Affidavits.
——According to the well recognized practice which prevails wherever members of the English Bar practise, the counsel should never file an affidavit in a case in which he is appearing professionally. (*Agha Haidar, J.*). MASHAR KHAN *v.* EMPEROR. **107 I.C. 108=29 Cr. L.J. 220= 9 A.I. Cr. R. 514=A.I R. 1928 Lah. 276**

——A legal practitioner who chooses to file an affidavit in support of a petition of appeal or revision must swear to the facts as they occur and take scrupulous care not to conceal or distort them or confound them with his own impressions hastily formed at the time. From the slip of notes found attached to the record of the appeal or the refusal of the Judge to wait for the records before proceeding with the hearing or from his own failure to make an impression on the Judge the practitioner has no right to assume that the Court had made up its mind or pre-judged the case.

The members of the legal profession are responsible for the fair and honest conduct of a case and they cannot be allowed to make personal attacks or reckless and unfounded charges of impropriety or inattention against a tribunal when the real ground is that the Advocate concerned has failed to make an impression by his arguments on the Court concerned and lost his case in spite of every effort. (*Walsh, Kanhaiya Lal and Ryves, JJ.*). *In the matter of* W. S. DAY, VAKIL. **81 I.C. 937= 5 L.R.A. Civ. 389=25 Cr. L J. 1113= A.I.R. 1924 All. 565.**

—Rights and duties—Application for sanad.
——*Rule* 16, *Nagpur Judicial Commissioner's Court.*

The R. 16 framed by the Judicial Commissioner against a legal practitioner carrying on money-lending business speaks of the state of things obtaining at the date of the application for admission as a pleader and is not made applicable to the pleaders enrolled prior to that date, as it casts on the applicant for enrolment the duty of stating the fact of his carrying on any trade or other business in his application. (*Kinkhede, A.J.C.*). GOPAL RAO *v.* BABU. **107 I.C. 903= A.I.R. 1928 Nag. 273.**

—Rights and duties—Arguments.
——So long as he is not guilty of unnecessary repetition or of irrelevant arguments a Counsel is entitled to present his client's case as he thinks best and it is no ground for a Judge to decline to hear him or to cut short his argument merely because he is expected by the superior Courts to turn out a certain amount of work within a fixed time. (*Jai Lal, J.*). MD. BAKHSH *v.* EMPEROR. **107 I.C. 763= 29 Cr. L.J. 279=A.I.R. 1928 Lah. 319**

LEGAL PRACTITIONER — Rights and duties — Death of party.

——Counsel in a Letters Patent appeal are not confined to the arguments addressed to the single Judge. (*Shadi Lal, C.J. and Harrison, J.*). HIRA LAL *v.* SHERUMAL. **89 I.C. 958= A I.R. 1926 Lah. 113.**

—Rights and duties—Assistance to Court.
——It is the duty of a pleader whether briefed for the accused or for the Crown, as an officer of the Court, when he sees an error being committed, to draw the Magistrate's or the Judge's attention to it. It is the duty of a pleader, according to the high traditions of the English Bar, to assist the Court in the attainment of justice. (*Kincaid, J.C. and Tyabji, A.J.C.*). FAKIR BUX *v.* EMPEROR. **95 I C 753=20 S.L R. 261= 27 Cr L J 833=A I.R. 1926 Sind 244.**

——*Obiter.*—A pleader has duties and obligations to his client in respect of the suit or matter which is entrusted to him and is pending in Court. There is a further and equally important duty and obligation upon him, *viz.*, to co-operate with the Court in the orderly and pure administration of justice. (*Robinson, C.J. and May Oung, J.*). *In the matter of* A PLEADER. **82 I.C. 712=2 Rang. 265= 25 Cr.L J. 1352= A.I.R. 1924 Rang. 320.**

—Rights and duties—Brief for another Counsel.
——If a Counsel holds a brief for another Counsel, it is his duty to inform the reader that he does so. (*Sulaiman, Ag. C J. and Weir, J*). HARNANDAN LAL *v.* SHYAM LAL. **110 I. C. 772= 26 A.L.J. 1393= A.I.R. 1928 All. 718.**

—Rights and duties—Counsel of accused.
——Entire devotion to the interests of the client, warm zeal in the maintenance and defence of his rights and the exercise of his utmost learning and ability, these are the points which can only satisfy the truly conscientious advocate. Every man accused of an offence has a constitutional right to a trial according to law and the duty of his counsel requires him to scan with legal knowledge the forms of the proceeding against the accused. Counsel assigned for the defence of an accused charged with the offence of murder cannot decline the office, nor can he abate a jot of his duty to the accused and to the Court, because of the querulous attitude taken by another Counsel who is asked to associate himself with the Counsel assigned to the accused (*C C. Ghose and Jack, JJ.*). BAZLUR RAHMAN *v.* EMPEROR. **115 I.C. 561=48 C.L.J. 307=33 C.W.N. 136= 30 Cr L.J. 494= A I.R. 1929 Cal. 1.**

—Rights and duties—Death of party.
—— A practitioner who appears for several respondents, one of whom dies before the hearing of the appeal. owes a clear duty to the Court to bring to its notice if he is aware of the fact that one of the respondents for whom he has entered appearance is dead and no longer represented by him. (*Sir John Wallis.*) MD. WAJID ALI KHAN *v.* PURAN SINGH. **114 I.C. 601=57 All 267= 1929 M W.N. 220=56 I.A. 80=33 C.W.N. 318= 29 M.L.W. 423=1929 A L.J. 85=49 C.L.J. 141= A.I.R. 1929 P.C. 58=56 M.L.J. 304 (P.C.).**

LEGAL PRACTITIONER — Rights and duties — Detrimental use of knowledge.

—Rights and duties—Detrimental use of knowledge.

———*Legal practitioner should create confidence that information from client will never be utilized against him.*

Pleaders would do well to avoid any conduct on their part which is reasonably capable of being misunderstood. If a pleader advises or acts for a client he should not appear against him in any subsequent proceeding if he feels that he might in such proceeding even unconsciously use the information gained from his former client against him. Clients should have the fullest confidence in their legal advisers and should not be deterred or hampered in disclosing the strength and weakness of their cases by the fear that their instructions might at some future time be used against them by their legal advisers. (*Devadoss and Wallace, JJ.*). VEERAPPA CHETTIAR *v.* SUNDARESA SASTRIGAL.

92 I.C. 300=48 Mad. 676=22 M. L.W. 606=A.I.R. 1925 Mad. 1201=49 M.L.J. 365.

———It is an elementary principle of professional ethics that it is not proper for a legal adviser to use knowledge obtained in one case to the detriment of his client in another case. Where there is a danger of that occurring in any case it can only be avoided by not allowing the Pleader to accept the later engagement or toact the reunder. (*Spencer and Ramesam, JJ.*). RAMAKRISHNA PILLAI *v.* BALAKRISHNA AIYAR. **62 I.C. 712=13 M.L.W. 541=1921 M.W.N. 646=A.I.R. 1921 Mad. 666=41 M.L.J. 60.**

—Rights and duties—Discovery of Documents.

———It is the duty of an attorney to be extremely careful in ascertaining from his client who has to make an affidavit of this nature, exactly what materials and documents are in his possession. It is further his duty, the moment he finds that there are other documents which have not been disclosed at the very earliest moment to bring these documents to the notice of his opponent and give him an opportunity of inspecting them. (*Greaves, J.*). *In the matter of* ATTORNEY. **61 I.C. 908=25 C.W.N. 99=A.I.R. 1921 Cal. 267.**

—Rights and duties—Discretion in questions.

———While counsel have their privileges they have also their responsibilities and ought never to abuse their position or their privileges and therefore though an advocate may act from a sense of duty towards his client and in entire good faith, he must exercise his own discretion before he puts the question to the witness. (*C. C. Ghose and Cammiade, JJ.*). M. BANERJEE *v.* EMPEROR.

104 I.C. 717=55 Cal. 85=46 C.L.J. 227=28 Cr.L.J. 877=A.I.R. 1927 Cal. 823.

—Rights and duties—Examination of documents.

———During the progress of the hearing of a suit, a counsel has the privilege of examining such documentary evidence as he may have summoned from a witness or a party, before tendering it in evidence. (*Lindsay and Kanhaiya Lal, JJ.*). MT. PHULWANTI KUNWAR *v.* JANESHAR DAS.

83 I.C. 782=46 All. 875=22 A.L.J. 821=5 L.R.A. Civ. 785=A.I.R. 1924 All. 625.

—Rights and duties—Excessive fees.

———It is as much the duty of a counsel to protect his client from the liability to pay excessive fees as to protect him from an adverse decree. (*Mears, C.J. and Piggott, J.*). RAJA UDAIRAJ SINGH *v.* SECY. OF STATE. **82 I.C. 212=46 All. 553=22 A.L.J. 446=A.I.R. 1924 All. 652.**

LEGAL PRACTITIONER — Rights and duties — Resumption of practice.

—Rights and duties—Law of.

———The rights and duties of attorneys are governed by the English common law. (*Marten, C.J. and Blackwell, J.*). TYABJI DAYOBHAI & CO. *v.* JETHA DEVJI & CO. **105 I.C. 383=31 Bom. 855=29 Bom.L.R. 1196=A.I.R. 1927 Bom. 542.**

—Rights and duties—Pardanashin lady.

———Where a pleader acting for a pardanashin lady never sees her, never speaks to her in reference to proceedings nor has he any communication with her upon the points raised in the suit, then he is deemed to have failed in his duty towards her. Conduct of a pleader who does not even take trouble to satisfy himself that he is really engaged on behalf of the pardanashin lady and his vakalatnama is really on her behalf and not on behalf of certain enemies of hers who wanted to ruin her deserves severe condemnation. A.I.R. 1923 P.C. 13, *Rel. on.* (*Gokaran Nath Misra and Nanavutty, JJ.*). MD. JAMIL ATA *v.* MD. HOFIZ ATA. **112 I.C. 522=5 O.W.N. 847=A.I.R. 1928 Oudh 449.**

—Rights and duties—Personal opinion—Expression of.

———Per *Mookerjee, J.*—It is not the duty of the pleader to approach the trial Judge and to apprise him that in his opinion the man, whose fate has been entrusted to his care, has no defence to make.

His duty is to protect his client as far as possible from being convicted except by a competent tribunal and upon legal evidence sufficient to support a conviction for the offence with which he is charged.

A man's rights are to be determined by the Court not by his attorney or Counsel. (*Mookerjee, Richardson, C. C. Ghose, Cuming and Page, JJ.*). EMPEROR *v.* BARENDRA KUMAR GHOSE. **31 I.C. 353=25 Cr.L.J. 817=28 C.W.N. 170=38 C.L.J. 411=A.I.R. 1924 Cal. 257 (F.B.).**

—Rights and duties—Refusing brief.

———The lawyers in their profession have got to do their duty and they cannot refuse to take up a party's case even if the other party is also a lawyer when all the conditions are fulfilled, *viz.*, the tender of a proper fee, the willingness to give complete instructions and the case of the character that the pleader is accustomed to take, and when no allowable, reasonable and honest excuse exists. (*Mears, C.J.*). RAM DULARE LAL *v.* CHHANGAMAL. **117 I. C. 104=1929 A. L. J. 1047=A.I.R. 1930 All. 309.**

———A lawyer has no right to reject a brief when offered to him on payment of fee agreed upon between the parties, on grounds of partisanship for a party to the litigation. A.I.R. 1914 Oudh 372, *Foll.* (*Simpson, A.J.C.*). LALTA *v.* ZAHOOR AHMAD. **88 I.C. 1048=2 O. W. N. 682=26 Cr.L.J. 1272=A.I.R. 1925 Oudh 672.**

———A lawyer has no right to reject a brief when offered to him on payment of fee agreed upon between the parties on grounds of partisanship for a party to the litigation. (*Wasir Hasan, J.C.*). ALLAHABAD BANK, LTD. *v.* THAKUR BAKHSH SINGH. **80 I.C. 826=11 O.L.J. 337=27 O. C. 401=A.I.R. 1924 Oudh 372.**

—Rights and duties—Resumption of practice.

———Where a legal practitioner has been in Government service but has been subsequently discharged and he applies for permission to resume practice, it is incumbent on him to make a full and complete disclosure of the circumstances that led to his discharge. 38 C. 809, *Foll.* (*Mookerjee, A.C.J.,*

LEGAL PRACTITIONER — Rights and duties — Taking instructions.

and Fletcher, J.). *In the matter of* MUKUNDA LAL DHAR. **62 I.C. 831=37 C.L.J. 391= 27 C.W.N. 528=22 Cr. L.J. 591.**

—Rights and duties—Taking instructions.

——Legal Practitioners must make some effort to acquaint themselves with the necessary information for carrying on their business and advising their clients properly. They should not allow their clients to go to Court for trial without the available materials and the relevant documents. It is heart breaking to see how lawyers practitioners go blindly along a beaten path without giving themselves the trouble to understand what their clients really want and without availing themselves of the machinery which the Legislature has provided with such scrupulous care. (*Piggott and Walsh, JJ.*). GOKUL PRASAD *v.* RAM KUMAR. **64 I.C. 878=44 All. 176=19 A.L.J. 971= A.I.R. 1922 All. 254.**

—Rights and duties—Thorough study.

——A part of the duty of a legal practitioner is to thoroughly familiarise himself with all the ins and outs of his client's case and to study it from every aspect. 12 Bom. 85, *Ref.* (*Spencer and Ramesam, JJ.*). RAMAKRISHNA PILLAI *v.* BALAKRISHNA AIYAR. **62 I.C. 712=13 M. L. W. 541= 1921 M.W.N. 646=A.I.R. 1921 Mad. 666= 41 M. L. J. 60.**

—Status.

——The status of an advocate of the Calcutta High Court does not differ from that of a barrister in England. (*Page, J.*). ASKARAN CHOUTMAL *v.* E.I. RY. & Co. **88 I.C. 413=29 C.W.N. 566= 52 Cal. 386=A I.R. 1925 Cal. 696.**

——*Government pleader.*

Court should treat the Vakil for Government with the same stringency as, but with no greater stringency than, any of pleaders appearing for other litigants. (*Rankin and B. B. Ghose, JJ.*). BINDUBASHINI ROY CHOWDHURY *v.* SECY. OF STATE. **79 I.C. 745=51 Cal. 70= 40 C.L.J. 163=A.I.R. 1924 Cal. 774.**

—Witness.

——It is improper for a counsel who is intending to appear as a witness for a party to conduct the case on his behalf. (*Dalip Singh, J.*). SITA RAM *v.* RAM LAL. **117 I.C. 66=A.I.R. 1930 Lah. 361.**

——Vakil should not appear in a case in which he is likely to be an important witness. *Woodroffe, J.*, in 40 Cal. 898, *Foll.* (*Das and Foster, JJ.*). CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAB NARAIN SINGH. **101 I.C. 289= 8 P. L.T. 510=5 Pat. 777=A.I.R. 1927 Pat. 61.**

——It is against the etiquette of the bar that a Counsel should give evidence in the case in which he is engaged as Counsel, and no self-respecting Counsel would like to conduct a case for the defence after having been called as a witness for the prosecution. (*Devadoss, J.*). MANNARGAN *v.* EMPEROR. **91 I. C. 65=27 Cr.L.J. 33= 1925 M.W.N. 702=A.I.R. 1925 Mad. 1153= 49 M.L.J. 95.**

——It is not desirable that members of the legal profession should appear in cases in which they may have to give evidence or in which they may be personally interested. (*Kennedy and Raymond, A. J. Cs.*). R. GHADIALLY *v.* EMPEROR. **81 I.C. 59=18 S.L.R. 30=25 Cr. L. J. 571= A.I.R. 1925 Sind 99.**

——A pleader merely called to give evidence as to what had occurred in a previous suit in which he was engaged as a pleader, cannot be allowed

LEGAL PRACTITIONER—Miscellaneous.

special fees. (*Macleod, C. J. and Shah, J.*). VALI ASMAL *v.* A. U. MALJI. **64 I.C. 78= 46 Bom. 89=23 Bom. L. R. 898= A.I.R. 1922 Bom. 116.**

——*Rule as to exclusion from Court—Applicability to Counsel.*

The rule as to the exclusion of the witnesses from Court until they have been examined is not without exceptions. It does not extend to the parties themselves in Civil cases so long as they conduct themselves properly, or to their solicitors whose assistance is necessary for the proper conduct of the case. The same rule applies in Criminal Cases. There are even stronger raasons for not applying the rule to the Counsel for the parties who have to conduct the case. (*Wallis, C. J. and Krishnan, J.*). VEMUREDDI BABUREDDI, *In re.* **62 I.C. 828=44 Mad. 916= 13 M.L.W. 702=1921 M.W.N. 440= 22 Cr.L.J. 588=A.I.R. 1921 Mad. 424= 41 M.L.J. 158.**

—Miscellaneous.

——*Liability to costs.*

Per *Full Bench.*—The High Court has no power to order a legal practitioner to pay personally the costs of an application or suit except in cases to which S. 35 can be made applicable. (*Mears, C J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVANAND. **1930 A.L.J. 402= A.I.R. 1930 All. 225 (F.B.).**

——*Changing sides.*

P, a legal practitioner, acting for his client *S*, a vendor, sued to set aside an award made in respect of a dispute about conveyance and under instructions from *S* alleged that the agreement by vendee *M* to finance *S* which formed consideration for conveyance being left unperformed by vendee the award which in effect confirmed agreement which was the basis of conveyance was illegal and the conveyance was invalid. Subsequently *S* sued to set aside conveyance on grounds of undue influence, misrepresentation and inadequacy of or failure of consideration. In that suit *P* appeared on behalf of *M* and denied allegations of *S* and affirmed the validity of conveyance,

Held, that *P's* changing sides was bound to embitter litigation and be prejudicial to *S* and that there was a probability of mischief and consequently *P* ought not to appear for *M*. A.I.R. 1917 P.C. 30, *Appr.*; 12 Bom. 91; (1910-13) 1 U.B.R. 50; *Ramkusen* v. *Ellis Munday*, (1912) 1 Ch. D. 831, *Rel. on.* (*Heald, Offg. C.J. and Otter, J.*). MAUNG SEN GYI *v.* J. MANECKJEE. **8 Rang. 44= A. I. R. 1930 Rang. 185.**

——*Mistake of counsel.*

Where the Counsel of the plaintiff committed a blunder which was apparent on the very face of the record,

Held, that plaintiff should not be deprived of a decree if as a matter of fact the pleas of the plaintiff were sustainable and the suit should be decided according to the pleas as put forward prior to the blunder by the Counsel. (*Dalal, J.C.*). DURGA BAKSH SINGH *v.* JAGANNATH SINGH. **91 I.C. 442 (Lah.).**

——*Different parties on the same side.*

When parties are different they are not bound to engage the same pleader though all the parties may be arrayed on the same side. (*Dalal, J. C. and Neave, A. J. C.*). MOHAMMAD HASAN *v.* ALI HAIDER. **85 I.C. 509=12 O.L.J. 1=28 O.C. 8= A. I. R. 1925 Oudh 337.**

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———*Co-plaintiffs.*

Co-plaintiffs cannot sever at the trial but must appear by the same solicitors and Counsel. (*Shah, Ag. C. J. and Marten, J.*). DADABHAI FRAMJI CAMA *v.* COWASJI DORABJI PANDAY. **77 I.C. 83= 24 Bom. L.R. 1111=47 Bom. 349= A.I.R. 1923 Bom. 177.**

———*Private pleader—Appearance by—Prospective orders by Magistrate.*

LEGAL PRACTITIONER—Miscellaneous.

A District Magistrate has no authority to direct other Magistrate subordinate to him by the issue of general prospective orders as to the general exercise of their judicial discretion of allowing a person to practise as a private pleader in their Courts. (*Oldfield and Devadoss, JJ.*). R. NAGASAMI AYER, *In re.* **16 M.L.W. 879= 1922 M.W.N. 809=31 M.L.T. 458= A.I.R. 1923 Mad. 183.**

LEGAL PRACTITIONERS' ACT

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LEGAL PRACTITIONERS' ACT (1926)—Inherent Powers.

LEGAL PRACTITIONERS ACT (XVIII of 1879 as amended by XV of 1926).

—Inherent powers.

———Per *Full Bench.*—Inherent powers of the Supreme Court of Calcutta were not conferred on the Allahabad High Court by the Indian High Courts Act of 1861 and no power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practitioners Act and the Indian Bar Councils Act now exist in the Allahabad High Court in respect of their professional or other misconduct. (*Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND. **1930 A.L.J. 402=A.I.R. 1930 All. 225(F.B.).**

—Interpretation and scope.

———Per *Full Bench.*—The Act does not merely consolidate previous enactments but the whole law on the subject and it does not merely consolidate pre-existing law but also amends it which taken with the consolidation of the same implies both addition to and derogation from the pre-existing law. It is a complete Code in itself as regards the subject it deals with. (*Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ.*). SHANTHA NAND *v.* BASUDEVA NAND. **1930 A.L.J. 402=A. I. R. 1930 All. 225 (F.B.).**

—Nature of proceedings.

———Proceedings under the Legal Practitioners' Act are quasi-criminal and where the facts had already formed the subject of criminal trial which has resulted in an acquittal the principle of "*Autrefois acquit*" must apply. (*Robinson, C.J.*). *In the matter of* MAUNG PO TOK. **88 I. C. 279= 26 Cr. L.J.1111=2 Rang. 491= A.I.R. 1926 Rang. 110.**

—S. 3—"Tout."

———*Order declaring person to be tout when it is not proved that he is so, illegal.*

J gave a petition to the District Magistrate that she had come to arrange a transfer of a case from one Court to another and *F* took money from her promising that he would engage a pleader and that instead of doing that *F* ran away with the money. The District Magistrate endorsed the petition to a Subordinate Magistrate for enquiry and report. The Subordinate Magistrate asked the Secretary of the Bar Association about the antecedents of *F*. The Secretary informed that the Executive Committee of the Bar Association had passed a resolution that *F* was an undesirable man and did not possess good antecedents. The Subordinate Magistrate held that it was not proved that *F* was a tout though it might be that he committed an act of cheating. *F* was present at the inquiry. The District Magistrate stating that he did not agree with this finding declared *F* to be a tout.

Held, that the proceedings against *F* were illegal throughout. There had been no allegation that *F* was a tout. The Subordinate Magistrate did not report name of *F* as having been proved as a tout and District Magistrate could not declare him a tout. The resolution of the Bar Association was not that *F* was a tout but only that he had bad antecedents and the resolution was not passed at a specially convened meeting so as to be evidence under Expl. to S. 36 (1) of the general repute of *F*. The District Magistrate should have heard *F* which he did not do. Lastly, there was no evidence that *F* was a tout as defined in S. 3. (*Addison, J.*). FAKIR CHAND *v.* EMPEROR. **31 P.L.R. 212=A.I.R. 1930 Lah. 405.**

LEGAL PRACTITIONERS' ACT (1879). S. 6—Ladies.

———It is a reasonable and legitimate inference of fact that if a man attends Court every day, looks after the cases of clients, even pays to pleaders and realizes costs and engages pleaders and also realizes their fees, he is not rendering gratuitous service such as a casual friend or acquaintance may do. 40 All. 153, *Rel. on.* (*Suhrawardy and Jack, JJ.*). HARENDRA NARAYAN *v.* SECY., BAR ASSOCIATION, JAMALPUR. **115 I.C. 602= 56 Cal. 800=A.I.R. 1929 Cal. 196.**

———It must be shown that a legal practitioner has either paid the tout for his services in bringing work to him, or that the tout has proposed to the legal practitioner, or to some person interested in the legal business to procure the employment of the legal practitioner on condition that the legal practitioner, or some such person, will pay him something as a reward for bringing him a client. (*Adami and Scroope, JJ.*). UGAM PRASAD PANDAY *v.* KING EMPEROR. **102 I.C. 340=8 P.L.T. 587= 28 Cr.L.J. 532=8 A.I.Cr.R. 207=6 Pat. 567= A.I.R. 1927 Pat. 282.**

———Looking after other people's cases and writing petitions for them cannot by themselves make a person a tout within the meaning of S. 3 of the Legal Practitioners Act. It must be proved that he procured the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner before he can be declared a tout. (*N. R. Chatterjea, Kt. and Panton, JJ.*). KEBAMAT ALI *v.* EMPEROR. **62 I.C. 829=22 Cr.L.J. 589 (Cal.).**

—S. 4—Insolvency Courts.

———Vakils have no right of audience in the Insolvency Court at the Presidency Town of Madras. (*Spencer, Offg. C.J., Devadoss and Srinivasa Aiyangar, JJ.*). G. KRISHNASWAMI AIYAR *v.* T. V. SWAMINATHA AIYAR. **85 I.C. 1025=48 Mad. 331= A.I.R. 1925 Mad. 385=48 M.L.J. 36 (F.B.).**

—S. 4—Object.

———Section 4 of the Act is not intended to override the special provisions relating to insolvency in the Presidency Towns. (*Spencer, Offg. C.J., Devadoss and Srinivasa Aiyangar, JJ.*). KRISHNASWAMI AIYAR *v.* SWAMINATHA AIYAR. **85 I.C. 1025= 48 Mad. 331=A.I.R. 1925 Mad. 385= 48 M.L.J. 36 (F.B.).**

—S. 5—Liability of client for fees.

———Per *C.C. Ghose, J.*—Where an attorney has employed a Counsel under the authority given to him by the party in the retainer filed in the Court he is bound to pay the fees paid to the Counsel on taxation. It is only when the client has instructed the attorney not to brief a particular counsel that the client would be under no obligation to pay fees paid to that particular counsel. *Re, Harrison*, (1908) 1 K. B. 282, *Ref.* (*Rankin, C.J., Ghose and Lort Williams, JJ.*). MT. ATTORMANI DASI *v.* RAMESH CHUNDER BOSE. **52 C.L.J. 197=A.I.R. 1930 Cal. 651 (F.B.).**

—S. 6—Ladies.

———*Woman cannot be admitted and enrolled as pleaders—'Person' in section is a male.*

Under the rules made by the High Court under S. 6 of the Legal Practitioners' Act, women cannot be admitted and enrolled as pleaders. Proceedings relating to the admission of pleaders are administrative and not judicial. From the perusal of the sections it appears that the 'person' referred to is male and not female as the pronoun 'he' is invariably used. (*Dawson Miller, C.J., Mullick and*

LEGAL PRACTITIONERS' ACT (1879), S. 6— Mukhtyar.

Jwala Prasad, JJ.). In the matter of AN APPLICATION BY MISS SUDHANSUBALA HAZRA. 64 I.C. 636=1 Pat. 104=3 Pat. L.T. 69= 1922 P.H.C.C. 97=A.I.R. 1922 Pat. 269 (F.B.).

—S. 6—Mukhtyar.

——In Bombay Presidency "Mukhtyar" is a person who can with the permission of the Court represent an accused in any proceeding within the meaning of S. 4 (1) (r), C. P. Code, and so a general order of a District Magistrate against employment of Mukhtyars in criminal cases in his district is improper. (*Patkar and Baker, JJ.*). BAJI RAO ABAJI, *In re.* 107 I.C. 56= 29 Bom.L.R. 1587=29 Cr. L.J. 226= 9 A.I. Cr. R. 403=113 I.C. 402= A.I.R. 1928 Bom. 33.

—S. 12—Criminal complaint.

——If a complaint is made against a legal practitioner that he has committed an offence, it is a matter which should be tried before a Criminal Court and not by proceedings under the Legal Practitioners Act. If he is convicted by the former then disciplinary action can be taken. Under S. 40 a pleader should not be suspended without an opportunity being afforded to defend himself. *In the matter of* MAUNG KIN SO. 76 I. C. 825= 2 Bur. L.J. 213=25 Cr. L.J. 265.

—S. 12—Discretion.

——The use of word "may" in S. 12 after the words "the High Court" shows that the discretion of the High Court in each particular case is absolute. (*Jack and Mitter, JJ.*). S., A PLEADER, *In the matter of Petitioner.* 1929 Cr. C. 515= 33 C.W.N. 829= A.I.R. 1929 Cal. 771.

—S. 12—Effect of conviction.

——Conviction of a legal practitioner is sufficient without any further enquiry to justify the High Court in taking proceedings under S. 12. It is not permissible to go behind the conviction end the pleader cannot be allowed to have indirect appeals against the judgment of conviction. (*Jack and Mitter, JJ.*). S., A PLEADER, *In the matter of Petitioner.* 1929 Cr. C. 515=33 C.W.N. 829= A. I. R. 1929 Cal. 771.

—S. 12—Gambling.

——The conviction of a pleader under the Gambling Act can hardly be looked upon by itself as sufficient reason for disciplinary action. (*Brown and Maung Ba, JJ.*). G., A PLEADER, *In the matter of.* 1929 Cr. C. 608=A.I.R. 1929 Rang. 352.

—S. 12—Intimidating and assaulting women.

——*Conviction for assaulting woman—No reason for suspension.*

A pleader was convicted under Penal Code for intimidating and assaulting a woman in a most reprehensible manner. It was the first occasion on which disciplinary action was called against him.

Held, that the conviction was not by itself sufficient to show defect of character which unfits him to be a pleader within the meaning of S. 12,

Held further, that though the words "any other reasonable cause" in S. 13 seem to be wide enough to include the case, still the conduct was not such as to justify suspending him from practice. (*Brown and Maung Ba, JJ.*). G., A PLEADER, *In the matter of.* 1929 Cr. C. 608= A.I.R. 1929 Rang. 352.

—S. 12—Mitigating circumstances.

——*Conviction—Circumstances of mitigation—Less severe punishment awarded.*

LEGAL PRACTITIONERS' ACT (1879), S. 13— Charges and threats to Court.

A legal practitioner was convicted of criminal breach of trust and abetment thereof, in respect of certain moneys of a client. It was found that he was to a certain extent the victim of his senior. He paid the amount of defalcation after his conviction. High Court in consideration of the fact that he was victim of circumstances and had expressed his repentance and promised to lead honourable life suspended the practitioner for one year. (*Jack and Mitter, JJ.*). S., A PLEADER, *In the matter of Petitioner.* 1929 Cr. C. 515= 33 C.W.N. 829= A.I.R. 1929 Cal. 771.

—S. 12—Temporary misappropriation.

——Conviction for criminal breach of trust which was found to have been temporary and not an attempt at permanent misappropriation is a temporary aberration on the part of the pleader who was convicted and, therefore, an order of suspension for six months was held sufficient to meet the requirements of the case. (*Sanderson, C.J. and Richardson, J.*). EMPEROR *v.* BRAHMANANDA DUTT. 81 I.C. 949=25 Cr. L.J. 1125= A. I. R. 1925 Cal. 238.

—S. 13.

See also LEGAL PRACTITIONER — MISCONDUCT.

Aggravating circumstances.
Charges and threats to Court.
Client's money.
Duties of legal practitioner.
False statements, contradictions and suppressions.
Fees and non payment.
Identification.
Jurisdiction and procedure.
Mistakes and negligence.
Non-acceptance of brief.
Non-attendance.
Object and scope.
Politics.
Proof of charge.
Renewal of sanad.
Unprofessional conduct.
Working for opposite parties.
Miscellaneous.

—S. 13—Aggravating circumstances.

——*Prevarication during enquiry for technical offence.*

A legal practitioner who had committed a technical offence gave some very shuffling and evasive evidence before the District Judge who called upon him to show cause and his explanation was, to say the least of it, very disingenuous: instead of making a frank admission that he had committed a technical offence and asking for a lenient view to be taken of it, he told some unnecessary lies, shuffled in a very discreditable manner, therby gravely aggravating what might otherwise have been considered an offence of no great magnitude,

Held, that serious notice must be taken of this conduct. The pleader was reprimanded and suspended for two years. (*Courtney-Terrell, C.J., Fazl Ali and Scroope, JJ.*). *In the matter of the* DISTRICT JUDGE, MANBHUM *v.* B., A PLEADER. A. I. R. 1930 Pat. 493 (F.B.).

—S. 13—Charges and threats to Court.

——Making charges against Judicial Officer which thepleader has no prospect of substantiating amounts to misconduct. (*Coutts-Trotter, C.J.,*

LEGAL PRACTITIONERS' ACT (1879), S. 13 — Charges and threats to Court.

Wallace and Beasley, JJ.). In the matter of DHARMARAJA AYYAR. 110 I.C. 815= 1928 M.W.N. 317=28 M.L.W. 202= 51 Mad. 798=10 A.I. Cr. R. 473= 1 M.Cr. C. 279=29 Cr.L.J. 783= A. I. R. 1928 Mad. 918=55 M.L.J. 170 (F.B.).

——*Threat to Magistrate by a pleader is misconduct—Conditional apology is not of any value.*

Letter by a pleader which contains vulgar abuse of the Magistrate, and a demand for an apology, apparently followed by a threat of further proceedings is highly improper. Instructions from a client are no excuse whatever for a Pleader exceeding what is his duty towards the Courts. It is presumed that a pleader knows what his responsibilities are in addressing Magistrates and Judges. A conditional apology by the Pleader for such a letter is valueless. (*Macleod, C. J. and Crump, J.*). GOVT. PLEADER *v.* G. K. TATKE. 72 I.C. 353= 25 Bom. L.R. 264=24 Cr.L.J 353= A.I.R. 1923 Bom. 234.

——Statements gratuitously and unnecessarily made in open Court which contained imputations against the fairness and impartiality of the Court without any foundation amount to professional misconduct. Pleaders have a duty not only towards their clients but also towards the Court of which they are pleaders, and it is part of their duty to co-operate with the Court in the orderly and pure administration of justice. (*Sanderson, C.J. and Richardson, J.*). MOHENDRA LAL ROY, *In re.* 71 I.C. 673=27 C.W.N. 88= 24 Cr.L.J. 209=A.I.R. 1922 Cal. 550.

——*Misconduct—Imputation of prejudice to presiding Judge.*

A letter written by a legal practitioner imputing racial antipathy to a Judge and charging him with having allowed such feelings to influence him in passing unfavourable orders to the practitioner constitutes misconduct. A belated apology in the High Court was held to be insufficient and the pleader was suspended from practice for 3 months. (*Broadway and Martineau, JJ.*). *In the matter of* KHEWAJA FAKHARUDDIN. 67 I.C. 504=23 Cr..L.J. 408 (Lah.).

—S. 13—Client's money.

——A legal practitioner received money from the Court on behalf of his client and retained it in his own hands without any authority from the client so to retain it. Subsequently he chose to treat it as loan and gave security which he felt himself at liberty to withdraw at his own will and pleasure,

Held, that this was a grave offence which amounted to professional misconduct for no practitioner is entitled to hold his client's money in his hands and to use it himself for his own private purposes without the consent of his client. (*Beasely, C.J., Sundaram Chetty and Walsh, JJ.*). *In the matter of* VEERARAGHAVA CHARI, ADVOCATE, HIGH COURT, MADRAS. 32 M.L.W. 438= A.I.R. 1930 Mad. 927 (F.B.).

——Retention of money payable to his client by a pleader for a very long time and refusal to remit the same to that client amounts to misconduct on the part of the pleader. (*Stuart, C.J. and Rasa, J.*). PROBHAT CHANDRA GANGULI *v.* G., A PLEADER. 111 I. C. 880=5 O. W. N. 880= 29 Cr. L. J. 960=11 A. I. Cr. R. 301= A.I.R. 1928 Oudh 464.

——*Appropriation of client's money amounts to misconduct.*

LEGAL PRACTITIONERS' ACT (1879), S. 13— Duties of legal practitioner.

In one case the Vakil was retained by two persons, one a *gosha* lady and the other an old man. They were the plaintiffs in a suit in which there stood to their credit in Court a sum of Rs. 1,218. The Vakil drew that money out of Court, but did not pay it over to the clients.

In another case, the Vakil appeared on behalf of the defendant in a mortgage suit, the defence was that, owing to the refusal of the plaintiffs to take his money at a time when, defendant was willing to pay it, plaintiffs had inflated the claim by claiming interest throughout a long period when they could have had the money but would not take it. In those circumstances, the client's instructions to the Vakil were to admit that Rs. 760 and odd was due, and he handed that sum to him with instructions to deposit it in Court. The Vakil did not deposit it in Court, nor did he disclaim liability formally for the balance of the plaintiffs, claim and after several adjournments he confessed judgment for the whole amount due,

Held, that in both cases the Vakil was guilty of professional misconduct. (*Coutts-Trotter, C.J., Beasley and Srinivasa Aiyangar, JJ.*). NARASIMHACHARIAR, *In re.* 88 I.C. 360=26 Cr. L.J. 1128= 22 M.L.W. 152=1925 M.W.N. 321= A.I.R. 1925 Mad. 797 (F.B.).

—S. 13—Duties of legal practitioner.

——A pleader by virtue of his position is an officer of the Court and it is his duty to protect all minor officials of the Court from any temptation to depart from their duty, (to take a document from record to pleader's house for inspection by his client). Any such conduct on the part of any legal practitioner must be strongly deprecated. (*Courtney Terrell, C.J., Ross and Kulwant Sahay, JJ.*). *In the matter of* B., A PLEADER. 115 I.C. 673= 10 P.L.T. 715=A.I.R. 1929 Pat. 338 (S.B.).

——*Tampering with witnesses of other side.*

Advocates and Pleaders retained in a case ought to be extremely careful in approaching and questioning persons who to their knowledge have been approached and cited by the other side for the purpose of giving evidence, so as to give no room for any suspicion that they are attempting to tamper with the evidence or with the witnesses. (*Coutts-Trotter, C.J., Odgers and Wallace, JJ.*). *In the matter of* N. B. V. S., A PLEADER. 1929 M. W. N. 384 (F.B.).

——*Applications for transfer—Statements of clients should be tested by pleader.*

Although it is perfectly true in one sense that a legal adviser must accept statements of fact from his client yet in applications for transfer statements imputing prejudice or unfairness or corruption to Magistrates should not be made unless the statements of the client as tested by the adviser are found sustainable, unless they are found to be corroborated and unless the adviser has taken some steps not necessarily to pledge himself for his client's veracity but such as to give him, as a reasonable man, ground for belief that the statements at any rate are such as should be properly investigated. The duty of the legal profession is a very serious one both with regard to applications of this kind and also in respect of pleadings.

An application for transfer drafted by mukhtar contained a statement which would have been considered as a statement that there was such a relationship between the Magistrate and the person who was mentioned as having visited him, as to make it undesirable that the Magistrate should sit

LEGAL PRACTITIONERS' ACT (1879), S. 13—Duties of legal practitioner.

and try a case in which the interests of that person were adversely affected. The statement was found to be totally unfounded and untrue,

Held, that the mukhtar was guilty of professional misconduct. (*Courtney-Terrell, C. J., Ross and Kulwant Sahay, JJ.*). *In the matter of* S., MUKHTAR, MADHEPURE. **116 I.C. 762= 8 Pat. 575=10 P. L. T. 711= A. I. R. 1929 Pat. 151 (F.B.).**

——*Warning is not sufficient punishment for defying law—Duties of a Vakil discussed.*

Where it is perfectly clear that a Vakil had deliberately taken the law into his own hands and defied the orders of constituted authority, and where he expressed no regret for his past conduct and has given no assurance as to his conduct in the future,

Held, warning would not be sufficient punishment. Advocates and Pleaders are a privileged classed enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice, but also for giving professional advice, for which they are entitled to be paid, to those members of the public who require their services. Their position, training and practice give them immense influence with the public and their example must necessarily have a much greater effect whether for good or for evil than the example of those who do not occupy this privileged position. It is not necessary in order to enable High Court to exercise its jurisdiction that any offence should have been committed, nor is it necessary that what the pleader had done should subject him to anything like general infamy or imputation of bad character. (*Dawson Miller, C. J., Mullick and Kulwant Sahay, JJ.*). *In the matter of* MADHAVA SINGH, VAKIL. **72 I. C. 875= 1923 P. H. C. C. 42=1 Pat. L.R. Cr. 36= A. I. R. 1923 Pat. 185 (S.B.).**

—S. 13—False statements, contradictions and suppressions.

——Legal practitioner making two contradicting statements one before police and other as witness in Court—He is guilty of grossest misconduct. (*Broadway and Dalip Singh, JJ.*). *In the matter of* LEGAL PRACTITIONERS' ACT, S., PLEADER'S CONDUCT, *In re.* **121 I. C. 297= 1929 Cr. C. 441=31 P. L. R. 224= 31 Cr. L. J. 242=A.I.R. 1929 Lah. 803.**

——*Adjournment asked for in good faith—Absence of sufficient grounds for transfer—Pleader responsible for application is not necessarily guilty of misconduct.*

Although every application for adjournment for the purpose of a transfer indirectly implies that there is a belief in the mind of the accused person that he would not have a fair trial, an application for adjournment under S. 526 does not always amount to an allegation of partiality made by the accused's Vakil against the trying Magistrate. If an application is made in good faith, the mere fact that it turns out subsequently that there are not sufficient grounds for transfer would not lead to a necessary inference that there was misconduct on the part of the practitioners who were responsible for such an application. A.I.R. 1924 All. 253, *Dist.* (*Sulaiman, Ag. C. J., Dalal and Mukerji, JJ.*). *In the matter of* THREE VAKILS OF JHANSI. **110 I. C. 686=29 Cr. L. J. 750= 26 A.L.J. 1230= A.I.R. 1928 All. 396 (S.B.).**

——Bail refused by Dt. Judge—Pleader applying again for bail to Dt. Magistrate without informing him of previous application to Dt. Judge—Pleader is guilty of misconduct.

(The pleader had a good record and was therefore only reprimanded.) (*Broadway and Martineau, JJ.*). EMPEROR *v.* JODH SINGH. **69 I.C. 442=23 Cr L.J. 714= A.I.R. 1923 Lah. 211.**

LEGAL PRACTITIONERS' ACT (1879), S. 13—Fees and non-payment.

——*Telling a lie is misconduct.*

The fact that a man is going to be injured professionally if he does speak the truth is no valid excuse for telling a lie: but, it is an attitude which is not uncommon and which is not of the most serious character. It is very different from the case of a professional man telling a lie fraudulently in the sense of wishing to assist his client in deceiving the Court or even wishing to assist his client in a claim that he is making against another. In this case, the conduct of the pleader was disapproved but no action taken. (*Schwabe, C.J., Coutts-Trotter and Ramesam, JJ.*). *In the matter of* A 1ST GRADE PLEADER. **73 I.C. 329= 17 M.L.W. 358=24 Cr.L.J. 585= A.I.R. 1923 Mad. 485 (F.B.).**

—S. 13—Fees and non-payment.

——Exorbitant fees claimed by pleader do not amount in themselves to misconduct unless there is clear evidence to prove fraudulent conduct on part of pleader. (*Lord Thankerton.*) PLEADER *v.* THE JUDGES OF THE HIGH COURT OF MADRAS. **123 I.C. 184=1930 A L.J. 539= 34 C.W.N. 534=1930 M.W.N. 300= 31 M.L.W. 627=7 O.W N. 517= 51 C.L.J. 418=31 Cr. L. J. 489= A.I.R. 1930 P.C. 144=58 M.L J. 635 (P.C.).**

——*Pleader's duty when client putting off settlement of fees.*

When the client is, for some reason or other, putting off the settlement and payment of fee, a legal practitioner would be well advised if he served a registered notice upon him in good time intimating to him that if the client did not settle and pay his fee he would repudiate all his responsibility as a pleader. 37 Mad. 238 (F.B.) and A.I.R. 1929 Pat. 327, *Expl.* (*Shadi Lal, C.J. and Agha Haidar, J.*). DOGAR AMIR CHAND *v.* P., A PLEADER. **A.I.R. 1930 Lah. 947.**

——*Signing of Vakalat—Failure to pay fee—No duty to defend case.*

Where a pleader signs a vakalatnama on the distinct understanding that a sum paid to him is really in the nature of a part payment, and that the client will settle the proper fee afterwards, and if the client fails to do so, it follows that mere acceptance of vakalatnama cannot cast upon the pleader the duty of defending the case. (*Shadi Lal, C.J. and Agha Haidar, J.*). DOGAR MAL AMIR CHAND *v.* P., A PLEADER. **A.I.R. 1930 Lah. 947.**

——*No remuneration paid to pleader—Pleader is not absolved from his obligation to the client unless instructions are expressly repudiated to the knowledge of the client.*

The absence of the necessary remuneration does not absolve the legal adviser from his obligations to his client unless the matter is brought specifically to the notice of the client. This must be borne in mind by practitioners, particularly those who have the very responsible duty of appearing for very poor clients and especially in criminal cases. It is not right that a legal adviser should come after a lapse of time and should say it is true that he accepted instructions from his clients but those

LEGAL PRACTITIONERS' ACT (1879), S. 13—Fees and non-payment.

instructions were conditional upon his receiving his remuneration. If the client does not produce the necessary remuneration it is the duty of the legal adviser to go back to the client and then and there repudiate the instructions. (*Courtney-Terrell, C.J., Ross and Kulwant Sahay, JJ.*). *In the matter of* F. A MUKHTAR. 115 I.C. 676= 10 P.L.T. 723=A.I.R. 1929 Pat. 337 (S B.).

——*Letters Patent (Calcutta), Cl. 10—Pleader accepting vakalat and papers but not filing the appeal—Nor trying to get extension of time—Pleader's action amounts to grave professional misconduct.*

P came to Calcutta being desirous of presenting a second appeal. The Vakil was at that time absent from Calcutta and *P* approached his clerk. Before *P* left Calcutta, the Vakil who had returned had himself prepared the memorandum of appeal and *P* had signed and handed over a vakalatnama. *P* made certain payment before he left Calcutta in respect of the appeal, but he had not paid the whole of the sum. No specific agreement exempting the Vakil from liability in case of non-payment was entered into. The Vakil subsequently left for the muffasil, relying upon instructions given by him to his clerk to file the appeal when the balance of the sum due had been paid by *P*. The Vakil took no further trouble in the matter. On his return to Calcutta he made enquiries of his clerk and was informed by his clerk that the appeal had been filed although as a matter of fact it was not filed. Shortly afterwards he left Calcutta again having given his clerk instructions to arrange for some one to argue the appeal if it came up for hearing. The Vakil knew nothing of the clerk's deception until he returned on the second occasion to Calcutta. At this time, the negligence, trickery and lies of his clerk were made fully known to him. The Vakil agreed to move an application under S. 5, Lim. Act, and a draft memorandum of appeal and a draft affidavit of the clerk were prepared. But they were not actually filed. All other papers in the case were subsequently returned to *P*.

Held, that the Vakil had accepted *P's* vakalatnama and had promised to file the appeal. It was not an ordinary case of negligence. It was in itself grave professional misconduct and a complete disregard of the client's interest. (*Rankin, C.J., C. C. Ghose and B. B. Ghose, JJ.*). *In the matter of* S., A VAKIL. 114 I.C. 490= A.I.R. 1928 Cal. 820 (F.B.).

—S. 13—Identification.

——*False identification is serious evil—Conscious misconduct not proved, still offender is liable to suspension.*

An applicant for obtaining copies had some reason for concealing his true identity. He therefore had himself taken by a friend to a mukhtar and the friend announced him as the person in whose name he intended to be identified. The mukhtar, who knew the man by sight but did not know his name, nor anything about his identity, rashly accepted the statement of the friend and signed the identification paper. The mukhtar himself was an aged man and no complaint had hitherto been made against him,

Held, that though the Mukhtar was not consciously guilty of misconduct still he was guilty for making a false identification and was liable to suspension for one month. (*Courtney-Terrell, C J., Fazl Ali and Scroope, JJ.*). *In the matter of* THE DIST. JUDGE, GAYA *v.* D., A MUKHTAR. A.I.R. 1930 Pat. 495 (F.B.).

LEGAL PRACTITIONERS' ACT (1879), S. 13—Jurisdiction and procedure.

——*Identification must be genuine—Merely clerk's telling practitioner that he identified the person does not entitle practitioner to pose as identifier.*

A practice of identifying people is fraught with the gravest risk to the practitioner. It is not enough for a person who comes forward as an identifier to rely merely upon the fact that he has been told by his clerk that he (the clerk) identified the person. This does not entitle the practitioner to pose as an identifier. The identification must be a genuine identification as it involves not only an offence on the part of the legal practitioner against the duties of his profession but also an offence against the State and public funds. (*Courtney-Terrell, C.J., Ross and Kulwant Sahay, JJ.*). *In the matter of* I., A MUKHTAR. 115 I.C. 679= 10 P.L.T. 641=A.I.R. 1929 Pat. 339 (S.B.).

—S. 13—Jurisdiction and procedure.

——Enquiry should proceed on formulated charges—Evidence should be carefully taken and judged according to the ordinary standards of proof. (*Lord Thankerton.*) PLEADER *v.* JUDGES OF THE HIGH COURT OF MADRAS. 123 I.C. 184=1930 A.L.J. 539=34 C.W.N. 534= 1930 M.W.N. 300=31 M.L.W. 627= 7 O.W.N. 517=51 C.L.J. 418= 31 Cr. L.J. 489=A.I.R. 1930 P.C. 144= 58 M.L.J. 635 (P.C.).

——*It is duty of applicant to substantiate his allegations and submit himself to cross-examination.*

The proceedings under S. 13, Legal Practitioners' Act (XVIII of 1879), are of a quasi-criminal nature, and in the event of the charge of the professional misconduct being established, the consequences to the legal practitioner concerned are very serious indeed. Such being the case it is the duty of the applicant who is more or less in the position of a complainant to go into the witness-box and substantiate his allegation before producing any other witnesses, and what is more important, to submit himself to cross-examination. (*Shadi Lal, C.J. and Agha Haidar, J.*). DOGAR MAL-AMIR CHAND *v.* P., A PLEADER. A.I.R. 1930 Lah. 987.

——*Evidence in another case incorporated in enquiry—Legality.*

"When evidence has been given in one case upon the issues raised in that case nothing can be more dangerous than to take that evidence and apply it to another case in which other issues arise." Where in a proceeding against a legal practitioner for having tampered with the witnesses on the other side the Magistrate in holding the enquiry merely took the depositions already given in the other case and used them as against the pleader.

Held, that the procedure adopted in the inquiry was wholly illegal. (*Coutts-Trotter, C.J., Odgers and Wallace, JJ.*). *In the matter of* MR. N.B.V.S., A PLEADER. 1929 M.W.N. 384 (F.B.).

——High Court is competent to take action under S. 13, Cl. (f) after such enquiry as it thinks fit. The section does not require that the enquiry should be conducted directly by the High Court; the enquiry may well be made by a Subordinate Court under the direction of the High Court. The only essential is, as pointed out by the Full Bench in *In the matter of Ganapathi Sastri*, 19 M.L.J. 504 that notice must be given to the legal practitioner concerned to show cause against suspension or dismissal and the notice must formulate the charges; with great particularity and precision, so as to enable the practitioner to know the charges he is called upon to meet. The final

LEGAL PRACTITIONERS' ACT (1879), S. 13—Jurisdiction amd procedure.

termination rests with the High Court and with the High Court alone, as was pointed out by the learned Judges in *Russick Lal Nag*, 44 Cal. 639; and even if the alleged misconduct had been brought to the notice of the High Court, without the intervention of the Subordinate Court the High Court is competent and ought in a proper case to take necessary action. (*Sanderson, C. J. and Richardson, J.*). MOHENDRA LAL ROY, *In re*
71 I.C. 673=27 C.W.N. 88=24 Cr.L.J. 209=
A.I.R. 1922 Cal. 550.

———*Misconduct before Subordinate Judge—District Judge can take action—Charge must be precise—Final order is for the High Court.*

The District Judge has jurisdiction to deal with the alleged misconduct of a pleader even, if it does not take place in his Court if he is practising in his Court. Section 13 does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. Section 14 does not specify the nature of the materials upon which the Court concerned may take action. It is plain however that if proceedings are instituted, there must be an enquiry supported by legal evidence. What is essential however is that the charge must be formulated with precision so as to enable the legal practitioner concerned to meet the allegations against him. The ultimate order if any, can be passed by High Court and High Court alone, on the materials supplied by the Subordinate Court. (*Sanderson, C. J., Woodroffe and Mukerjee, JJ.*). RUBINDRA CHANDRA CHATTERJEE, *In re*. 67 I.C. 935=49 Cal. 850=
35 C.L.J. 520=A.I.R. 1922 Cal. 434 (S.B.).

—S. 13—Mistakes and negligence.

———*Throwing away interests of unimportant client in favour of important client is deserving of censure.*

A pleader *N* had two cases to attend on the same day. In one he was an assistant to a senior but in the other he was solely responsible though *B* a relation pleader of his was also engaged on nominal fees to take notes of evidence. On the previous night *N* took detailed instructions from his client who was being prosecuted for bribery in the latter case. His relation *B* was also present but the client remained under the impression that *N* would conduct the cross-examination next day. On the next day, however, *N* presented himself in the former case, the client concerned wherein was important and did not attend the bribery case though requested. The former case was being conducted by his senior who was amply provided with assistance independently of *N*. It was not absolutely necessary for him to be present there. The bribery case was weak, it was then conducted by another pleader and the accused was convicted,

Held, that *N* threw away the interests of an unimportant client in favour of the interests of an important client and in so doing committed an offence deserving of the most serious censure. (*Courtney-Terrell, C.J., Ross and Kulwant Sahay, JJ.*). *In the matter of* N., A PLEADER.
116 I.C. 764=10 P. L. T. 664=
A. I. R. 1929 Pat. 153 (F.B.).

———If a pleader acts *bona fide* in accepting a *vakalatnama* but makes a serious mistake, there is no need for the Court to take up the matter again after a long time has elapsed. The rules, which have been drawn up by the Judges of the High Court, should be strictly observed by pleaders in accepting *vakalatnama*. (*Sanderson, C.J. and*

LEGAL PRACTITIONERS' ACT (1879), S. 13—Non-attendance.

Chotzner, J.). *In the matter of* BABU JNANENDRA CUMAR CHOUDHURY. 65 I.C. 417=
23 Cr. L.J. 65=A.I.R. 1922 Cal. 178.

———A pleader withdrawing money from Court at the instance of his client's relation who was surety for the guardianship of the client and paying the money to the relation on the strength of two previous withdrawals and payments to the relation is negligent of his duty to the Court and also his client but not guilty of grossly improper misconduct in the discharge of the professional duty within the meaning of S. 13 of the Legal Practitioners' Act. (*Sanderson, C. J. and Richardson, J.*). EMPEROR *v.* BHUBANESWAR NAG.
77 I. C. 181=25 Cr.L.J. 325=
A.I.R. 1925 Cal. 146.

—S. 13—Non-acceptance of brief.

———Mere fact that opposite party happpens to be member of the same profession is not a circumstance which entitles a member of the Bar to refuse to undertake the case against him.

It is very important that men at the Bar should understand that they are members of a public profession. That is by their very calling they engage and undertake to act for anybody who fulfils certain conditions. Therefore if a client comes to them with proper instructions and prepared to pay a fair and proper fee and invites them to undertake a case of a kind, which they are accustomed to do and they refuse, such refusal amounts to professional misconduct and should be punished as such. See A.I.R. 1929 All. 367. (*Mears, C. J.*). GOKUL PRASAD *v.* EMPEROR. 115 I.C. 641=
30 Cr. L.J. 522=1929 A.L.J. 616=
10 L.R.A. Cr. 95=A.I.R. 1930 All. 262.

———*Refusal to take up case merely with intention of not appearing against professional brother is professional misconduct.*

A lawyer must, as a general rule, take up a case for any member of the public if (1) a fair and proper fee is tendered to him; (2) adequate instructions are given; and (3) the case is of a class which the lawyer is accustomed to do. No doubt he can legitimately decline to take up the case if, for instance, he has an out-station engagement, or is engaged in some social function, such as a marriage or is incapacitated by ill-health or any reason which a sensible man would recognize adequate. But to refuse to take up a case simply and solely on the ground that the Advocate will not appear against a brother practitioner, or to put forward untrue excuses when the real reason is a disinclination to appear against a brother practitioner, is, in each case, professional misconduct and should be dealt with as such. The reason for the rule is that if lawyers as a body refuse to act against lawyers, they would become a class standing above the law and justice would be denied to the public. (*Mears, C. J.*). MD. INAYAT ALI *v.* FAZAL-UL-RAHMAN. 51 All. 892=
A.I.R. 1929 All. 367.

—S. 13—Non-attendance.

———(*Aga Haidar, J.*).—*Pleader engaged in murder case if unable to attend Court personally should spend whole fee received by him in procuring his substitute*—(*Fforde, J.*).—*His absence can be excused on the ground of physical inability only.*

Aga Haidar, J.—It may sometimes happen that a Counsel may find himself in a position of unforeseen difficulty when with all the best intentions in the world it may become impossible for him to appear on behalf of his client in a case

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and he may be left no alternative except to hand over his brief to another Counsel so that his client's interest may not suffer. But in a murder case when a Counsel has reason to believe that he would not be available at the time when the case would be called on for hearing, because he has other engagements elsewhere, it is his duty to communicate with the person who had engaged him and to return the fee to him. If it is not possible for him to do so and the pressure of overriding circumstances is beyond his control, then he should try his very best and spend the whole of the fee that he has received in briefing a Counsel who would do full justice to his client's case for the remuneration. 3 Bur. L.T. 131, *Ref.*

Per *Fforde, J.*—It is not practicable or indeed desirable to lay down rigid rules of conduct for the Bar. The independence and sense of responsibility of the legal profession should be encouraged rather than the reverse. But when a practitioner has undertaken the duty of appearing to defend a man for his life, he should give exclusive attention to that case, and nothing should be deemed to exonerate him from that obligation except physical inability to attend at the hearing. (*Fforde and Agh Haidar, JJ.*). *In the matter of* F.K. BYRNE. **108 I.C. 257=29 Cr. L.J. 352=10 A.I. Cr. R. 42= A.I.R. 1928 Lah. 448.**

———*Boycott of a Court and throwing up a brief without obtaining client's consent amount to misconduct.*

Where in pursuance of a resolution of the local Bar Association to boycott a Magistrate's Court, a pleader refrained from appearing in Court without first obtaining his client's consent and left his client undefended as a result of which the client was detained in jail for about a month more,

Held, that the pleader was guilty of unprofessional conduct and that an arrangement arrived at with his client for a consent subsequent to the pleader's failure to appear and defend did not affect his liability. A.I.R. 1923 Cal. 212, *Ref.* (*Robinson, C.J. and May Oung, J.*). *In the matter of* A PLEADER. **82 I.C. 712=2 Rang. 265= 25 Cr. L. J. 1352=A.I.R. 1924 Rang. 320.**

———*Refusing to appear in Court is not the proper course for pleaders when ill-treated by any Court.*

Where some pleaders refused to appear in a certain Court in pursuance of a resolution of the Bar Association to boycott that Court as a protest against its ill-treatment of pleaders and proceedings under S. 14 of the Legal Practitioners' Act were drawn up against several pleaders for failure to appear in Court in matters which had been entrusted to them by their clients,

Held, the pleaders deliberately abstained from attending the Court and took part in a concerted movement to boycott the Court, a course of conduct which was not justified. The pleaders had duties and obligations to their clients in respect of suits and matters entrusted to them which were pending in the said Court. There was a further and equally important duty and obligation upon them, *viz.*, to co-operate with the Court in the orderly and pure administration of justice. By the course which they adopted the pleaders violated and neglected their duties and obligations in both these respects if the pleaders thought they had a just cause of complaint, they had two courses open to them: to make a representation to the District Judge or to the High Court. (*Sander-*

LEGAL PRACTITIONERS' ACT (1879), S. 13—Object and scope.

son, C.J., Woodroffe and Mookerjee, JJ.). TARINI MOHAN BARARI. *In re.* **69 I. C. 209= 26 C.W.N. 580=35 C.L.J. 403= A.I.R. 1923 Cal. 212.**

———Per *Curiam.*—When a pleader accepts a Vakalatnama in the ordinary form, he must attend Court on every occasion to protect the interest of the client concerned. Any limitations on this obligation by special agreement must be proved and the onus lies on the pleader. Non-payment is no justification for refusal to attend. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*). EMPEROR *v.* RAJIAN KANTA BOSE. **71 I.C. 81=49 Cal. 732= 26 C. W. N. 589=35 C.L. J. 356= 24 Cr. L. J. 33=A.I.R. 1922 Cal. 515 (S.B.).**

———*Politics—Observing* hartal *through fear of the public wrath, amounts to professional misconduct (according to Sanderson, C. J.)—Does not amount to professional misconduct (according to Woodroffe, J.).*

Per *Sanderson, C. J.*—Failure to attend Court for unreal fear of being put to great inconvenience and humiliation by the irritated public, who were observing *hartal* or bowing down to the popular will rather than doing the pleader's duty to his client and to the Court, amounts to acquiescence in though not actual sympathy with the boycott-of-Court movement and consequently it amounts to grossly improper conduct.

Per *Woodroffe, J.*—Mere lack of courage or unwillingness to face a real or supposed danger arising from the indignant public opinion and the fear of injury physical or otherwise arising therefrom would not amount to unprofessional conduct but to have sympathy with the cause of *hartal* would. (Evidence sufficient to constitute joining the boycott-of-Court movement discussed).

Per *Woodroffe, J.*—A pleader being an officer of Court and thus bound to submit to its authority cannot join in an action to boycott the Court or a particular Judge because of any grievance real or alleged whether touching the Court or of political or other character. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*). EMPEROR *v.* RAJANI KANTA BOSE. **71 I.C. 81=49 Cal. 732=26 C.W.N. 589= 35 C.L.J. 356=24 Cr.L.J. 33= A.I.R. 1922 Cal. 515 (S.B.).**

—S. 13—Object and scope.

———The jurisdiction which the Court exercises under S. 13 is not a vindictive jurisdiction at all. Its main object in such a case is not to allow a man to practise in Courts, when he himself is counselling disobedience to the law and order enforced by Courts. When a man who has offended in that way comes before the Court and honestly expresses his regret and his intention to assist the administration of justice in future, there is no reason why he should not be given an opportunity of showing that his intentions are as he expresses them. (*Schwabe, C.J., Coutts-Trotter and Krishnan, JJ.*). *In the matter of.* A FIRST GRADE PLEADER, GUNTUR. **81 I.C. 57=18 M.L.W. 717= 1924 M.W.N. 18=33 M.L.T. 100=25 Cr.L.J. 569= A.I.R. 1924 Mad. 160=45 M.L.J. 718 (F.B.).**

———A Court is quite competent to order an enquiry into the facts and circumstances of a case whether it came under Cl. (*b*) or whether it came under Cl. (*f*) of S. 13 of the Act. 27 Cal. 1023, *Not foll.*; 24 C. L. J. 191, *Ref.* (*Dawson-Miller, C. J., Foster and Kulwant Sahay, JJ.*). NARENDRA NATH ROY *v.* THE CROWN. **75 I.C. 728= 1923 P. H. C. C. 329=25 Cr. L.J. 40= 3 Pat.L.T. 350=A.I.R. 1924 Pat. 134,**

LEGAL PRACTITIONERS' ACT (1879), S. 13—Politics.

—S. 13—Politics.

——*The conduct of a pleader should not be inconsistent with the position he holds in the administration of justice.*

A legal practitioner, as any other person has a right to entertain political opinions which may or may not be acceptable to the authorities. But having obtained license to practise in Courts, if he acts inconsistently with the position which he has obtained by virtue of the license granted to him, he abuses it and brings himself within the four corners of the Legal Practitioners' Act. A.I.R. 1922 Cal. 515 and A.I.R. 1922 P.C. 351, *Foll.*

The action of legal practitioners counselling the public not to attend Court and thereby interfering with the administration of justice amounts to misconduct within the provisions of S. 13. (*Suhrawardy and Garlick, JJ.*). EMPEROR *v.* KISORI MOHAN. **114 I.C. 96=30 Cr.L J. 232=12 A I. Cr. R. 214=A.I.R. 1928 Cal. 853.**

——*Advising non-payment of taxes or boycott of Courts justifies refusal to issue* sanad.

Courts should not consider what the political opinions of anybody are, whether they are members of the legal or any other profession. But while the Courts will always uphold the liberty of the subject in thought or speech, an applicant who comes to ask for the issue or renewal of a *sanad*, is applying to be treated as a part of the machinery, for the maintenance of law and order in the body politic and to take an active part in administering, for the other subjects of the Crown, the benefits that may be supposed to result from the upkeep of law and order. It is intolerable and illogical that a man should seek to be put in that position, while at the same time he is saying that law and order should be disobeyed, and taxes are not to be paid and that all public offices are to be abandoned, in order to paralyse the very life of the body politic, apart altogether from any other views he may entertain, as to the desirability of the person or the particular members of the Government he attacks, or the particular character of the transactions carried on, in these Courts. A Court would not without stultifying itself, issue a certificate to a man, who, in the same breath that he is asking for it, cuts himself off and announces his intention to do his best to cut off others, from the life of the state. (*Schwabe, C.J., Coutts-Trotter and Krishnan, JJ.*). *In the matter of* SECOND GRADE PLEADER, RAMACHANDRAPURE. **75 I.C. 977=18 M.L.W. 689=1923 M.W.N. 768=33 M.L.T. 98=25 Cr.L.J. 65= A. I. R. 1924 Mad. 129=45 M.L.J. 684 (F.B.).**

——The jurisdiction of the High Court to take action against legal practitioners is not confined to acts in professional capacity but may extend to other activities, for example, organised resistance to payment of tax which entails grave danger to the public peace. (*Lord Buckmaster.*) SHANKAR GANESH *v.* SECRETARY OF STATE. **69 I.C. 367=18 M.L.W. 59=1923 M.W.N. 528=4 L.R.P.C. 36=1 Pat.L.R. Cr. 42=31 M.L.T. 192=49 I.A. 319=49 Cal. 845=27 C.W.N. 343=37 C.L.J. 136=25 Bom.L.R. 131=18 N.L R. 176=A. I. R. 1922 P.C. 351=44 M.L.J. 32 (P.C.).**

—S. 13—Proof of charge.

——Charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however reasonable, or what may be mere error of judgment or indiscretion. An appropriate guide may be found in S. 13 under which a pleader or mukhtar may be suspended or dismissed who is guilty "of a fraudulent or grossly improper conduct in the discharge of his professional duty." (*Lord Thankerton.*) PLEADER *v.* THE JUDGES OF THE HIGH COURT OF MADRAS. **123 I.C. 184=1930 A L.J. 539=34 C.W.N. 534=1930 M.W.N. 300=31 M.L.W. 627=7 O.W.N. 517=51 C.L.J. 418=31 Cr.L.J. 489=A.I.R. 1930 P.C. 144=58 M.L.J. 635 (P.C.).**

LEGAL PRACTITIONERS' ACT (1879), S. 13—Working for opposite parties.

——Where the gravamen of the charge is that the notice was prejudicial to the interests of the client, on whose behalf it was sent by his pleader it must be shown first that the pleader knew the rights of parties and that his client did not know them, or did not intelligently or deliberately realise them and, secondly, that the notice was in fact prejudicial to the interests of his client. 33 Cal. 151 (P.C.), *Rel. on.* (*Lord Thankerton.*) PLEADER *v.* THE JUDGES OF THE HIGH COURT OF MADRAS. **123 I.C. 184=1930 A.L.J. 539=34 C.W. N. 534=1930 M.W.N. 300=31 M.L.W. 627=7 O.W.N. 517=51 C.L.J. 418=31 Cr. L.J. 489=A.I.R. 1930 P.C. 144=58 M.L.J. 635 (P.C.).**

——Charges of professional misconduct must be clearly established and should not be inferred from mere ground for suspicion however reasonable, or what may be mere error of judgment or indiscretion. A.I.R. 1930 P.C. 144, *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). DOGAR MAL-AMIR CHAND *v.* P., A PLEADER. **A.I.R. 1930 Lah. 947.**

—S. 13—Renewal of sanad.

——Where a pleader was committed to prison for default in complying with an order under S. 107, Cr. P. Code, and the pleader later disclaimed and disavowed any intention of either disobeying the order or in any way paralysing the administration of justice,

Held, the *sanads* of the pleaders may be renewed. Where the pleader before he renewed his *sanad* took up occupation on the press and mainly without remuneration held such conduct can be overlooked. (*Schwabe, C. J., Coutts-Trotter and Krishnan, JJ.*). *In the matter of* K., A FIRST-GRADE PLEADER. **92 I.C. 214=1924 M.W.N. 5=27 Cr. L.J. 230=A.I.R. 1924 Mad. 479 (F.B.).**

——The High Court has power to reinstate a legal practitioner who had been dismissed for misconduct of any description. Before the Court should exercise such powers it should be clearly convinced not by mere protestations of repentance or regret but by actual facts that the delinquent has reformed his character and has for a sufficiently long period acted in such a way that he can be trusted to act in future as a worthy member of an honourable profession. The proper course is for the petitioner to apply to a Bench presided over by the Chief Justice and ask for a rule in the matter. (*Dawson Miller, C.J. and Mullick, J.*). MATHURA PRASAD, *In re.* **71 I.C. 122=1 Pat. 684=24 Cr. L.J. 74=4 P.L.T. 303=A.I.R. 1922 Pat. 604.**

—S. 13—Unprofessional conduct.

——Where, in a criminal trial, the legal practitioner appearing for the accused suggests without reasonable grounds that the prosecution story is all a concoction, the legal practitioner is guilty of the grossest professional misconduct. (*Courtney-Terrell, C.J. and Chatterjee, J.*). BANSLOCHAN LAL *v.* EMPEROR. **9 Pat. 31=10 P.L.T. 703=1930 Pat. 195.**

—S. 13—Working for opposite parties.

——Pleader drafting complaint for complainant in one case and acting for accused in a different

LEGAL PRACTITIONERS' ACT (1879), S. 13—Working for opposite parties.

case instituted by same complainant—No offence is committed. 2 P. R. 1904, *Dist.* (*Broadway and Addison, JJ.*). *In the matter of* MEHLAKRISHNA CHANDRA, PLEADER. **109 I.C. 228=8 Lah. 671=29 P.L.R. 126=29 Cr.L.J. 500=A. I. R. 1928 Lah. 65.**

——*Working for both sides, amounts to misconduct.*

A legal practitioner cannot represent conflicting interests or undertake the discharge of inconsistent duties. When he has once been retained and received the confidence of a client, he cannot accept a retainer from or enter the service of those whose interests are adverse to his client in the same controversy or in a matter so closely allied thereto as to be in effect a part thereof. The rule is rigid and is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights or the interests which he should alone represent. Fidelity is required from all who hold fiduciary relations; they must not lightly enter upon such relationships, but if they do, they will not be permitted to be disloyal and of all species of disloyalty, desertion and adherence to the enemy or to the opposite party in a suit is recognised as the worst. (*Mookerjee and Chotzner, JJ.*). EMPEROR *v.* RAJANI KANTA GHOSE. **72 I.C. 22=37 C.L.J. 48=24 Cr.L.J. 294=A.I.R. 1923 Cal. 106.**

—S. 13—Miscellaneous.

——*Fraudulent acts of clerk—Pleader is not necessarily guilty of professional misconduct.*

It cannot be too constantly or too emphatically stated that if a Vakil leaves his money business to be conducted by his clerk, he is responsible for what the clerk does for purposes of civil liability. At the same time, if a Vakil is deceived by his clerk, or if his clerk does acts in fraud of him, then of course, it would not be right to hold that the Vakil himself is guilty of professional misconduct. (*Rankin, C. J., C. C. Ghose and Mukerji, JJ.*). *In the matter of* "A" VAKIL. **114 I.C. 137=30 Cr. L.J. 256=12 A.I. Cr.R. 131=A.I.R. 1928 Cal. 817 (F.B.).**

——A legal practitioner who purchases property *benami* in the name of another person, and not only appears as a pleader in the legal proceedings regarding the property but also takes his fee as pleader in the Courts, while he is really the *de facto* plaintiff commits an offence against propriety and is guilty of grossly improper conduct, as a legal practitioner. (*Kendall, A. J. C.*). SHEO NARAIN LAL *v.* MIR. AMJAD ALI. **81 I.C. 975=25 Cr.L.J. 1151=A.I.R. 1925 Oudh 130.**

——A pleader standing surety to a man arrested under S. 420, Penal Code and convicted under the section and keeping in his possession on behalf this accused properties held later on to have been involved in the offence is not guilty of professional misconduct. (*Robinson, C.J.*). *In the matter of* MAUNG PO TOK. **88 I.C. 279=2 Rang. 491=26 Cr. L. J. 1111=A.I.R. 1925 Rang. 110.**

——*Denying allegiance to British Courts and expressing want of truth in British justice creates liability to disciplinary action—Legal practitioner accepting professorship without permission creates liability to disciplinary action.*

LEGAL PRACTITIONERS' ACT (1879), S. 14—Enquiry into charge.

A pleader, who acts as a professor in a College without the permission of the High Court, contravenes the rules framed by the High Court to regulate the conduct of legal practitioners and renders himself liable to disciplinary action.

A pleader, who proclaimed before a Criminal Court when he was tried for an offence under S. 188, I.P.C., that he owed no allegiance to British Courts and had no faith in British justice renders himself liable to disciplinary action. (*Mookerjee and Chotzner, JJ.*). EMPEROR *v.* BIMALANAND DAS GUPTA. **77 I.C. 986=38 C.L.J. 353=25 Cr. L.J. 522=A.I.R. 1924 Cal. 329.**

——An order of High Court refusing to enrol a person as legal practitioner comes under its disciplinary or administrative powers and no leave to appeal to His Majesty can be granted. 4 Pat. L.J. 423, *Foll.* (*Dawson-Miller, C.J. and Adami, J.*). SUDHANSU BALA HAZRA, *In re.* **70 I.C. 172=1 Pat. 590=4 P.L.T. 229=A.I.R. 1922 Pat. 603.**

—S. 14—Aiding criminal offence.

——Allegations amounting to aiding or conspiring to commit criminal offence—Proceeding under S. 14 should not be taken but a criminal prosecution may be started. A.I.R. 1926 Cal. 502, *Foll.* (*Panton and Mallik, JJ.*). *In the matter of* SATISH CHANDRA SINGHA. **54 Cal. 721=31 C.W.N. 554=A.I.R. 1927 Cal. 536.**

—S. 14—Amendment of petition already filed.

——A certain mukhtear instituted certain proceedings under S. 144 of the Cr. P. Code. After the petition had been filed in Court the mukhtear discovered that he had made a mistake on his description of the dag in his petition, *viz.*, in giving the number. Instead of presenting to the Court a further petition for amendment of the first petition he proceeded to effect an alteration in the petition which had been filed in Court,

Held, that the mukhtear did act in a foolish and reprehensible manner, but that save and except this act of foolishness he did nothing else and did not deserve to be permanently debarred from practice. (*Greaves and Chakravarti, JJ.*). SECY. OF STATE *v.* JOGENDRA CHANDRA. **87 I.C. 843=26 Cr. L.J. 1019=A.I.R. 1926 Cal. 223.**

—S. 14—Causing evidence to disappear.

——Where a sanction was given for the prosecution of a party under S. 471, I. P. C., and the party instructed his pleader to with-draw all documents from the case and the pleader withdrew the same,

Held, that the conduct of the pleader amounted to a charge of aiding and abetting or conspiring to commit a criminal offence, *viz.*, causing evidence to disappear with the intention of screening the offender, an offence punishable under S. 201, and that the correct procedure to be followed is that proceedings under the Legal Practitioners' Act should not be taken, but that if it is thought necessary to take action it should be by way of a criminal prosecution. (*Cuming and B. B. Ghose, JJ.*). *In the matter of* RAJENDRAKUMAR DUTTA. **94 I.C. 893=30 C.W.N. 186=27 Cr.L.J. 701=A.I.R. 1926 Cal. 502.**

—S. 14—Enquiry into charge.

——The provisions of S. 14 indicate that ordinarily an "enquiry" mentioned in S. 14 should be made by the presiding officer of the Court where the misconduct has been alleged to be committed. (*Sulaiman, Ag. C. J., Dalal and Mukerji, JJ.*). *In the matter of* THREE VAKILS OF JHANSI. **110 I.C. 686=26 A.L.J. 1230=29 Cr.L.J. 750=A.I.R. 1928 All. 396 (S.B.).**

LEGAL PRACTITIONERS' ACT (1879), S. 14—Enquiry into charge.

——Section 14 does not limit the consideration of a charge to the Court in which the misconduct is alleged to have been committed. A. I. R. 1922 Cal. 484, *Foll.*; 1 P.L.T. 379 and 10 C. W. N. 1059, *Not foll.* (*Devadoss and Waller, JJ.*). VENUGOPAL NAYUDU, *In re.* **92 I. C. 896=1926 M.W.N. 466=27 Cr. L. J. 384=A.I.R. 1926 Mad. 1044.**

——The enquiry contemplated by S. 14 must be made by the presiding officer of the Court in which the misconduct was alleged and not by the presiding officer of a superior Court. (*Dawson-Miller, C.J., Mullick and Kulwant Sahay, JJ.*). (MUKHTAR) MAUZURUL HAQ *v.* KING EMPEROR.
71 I. C. 703=4 P.L.T. 97=1923 P.H.C.C. 45=24 Cr. L. J. 239=1 Pat. L.R. Cr. 41=A. I. R. 1923 Pat. 135 (S.B.).

——"Such Court" in S. 14 means the Court in which the pleader practises and not necessarily the Court in which the pleader commits the offence charged against him. (*Maung Kin and Duckworth, JJ.*). *In the matter of* MOUNG TUN AUNG GYAW.
72 I. C. 521=11 L. B. R. 111=A. I. R. 1921 L. B. 67.

—S. 14—Nature of proceedings.

——A proceeding under the Act is not a civil proceeding and the provisions of the C. P. Code are wholly inapplicable to a case of misconduct by pleader. Nor can enquiry into the conduct of a pleader be treated as a criminal proceeding, though being penal in its nature it resembles in many respects a criminal case. (*Shadi Lal, C.J.*). LAKSHMI NARAIN *v.* MT. RATNI. **93 I. C. 700=27 P. L. R. 225=27 Cr. L. J. 476=A. I. R. 1926 Lah. 199.**

——Per *Woodroffe, J.*—Proceedings under this section are quasi-criminal proceedings and the pleader may be examined on oath.

Per *Mookerjee, J.*—The proceedings are neither civil nor criminal in their nature. They are special proceedings resulting from the inherent power of the Court over its officers and are regulated by S. 14. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*). EMPEROR *v.* RAJANI KANTA BOSE. **71 I. C. 81=49 Cal. 732=26 C.W.N. 589=35 C.L.J. 356=24 Cr. L. J. 33=A.I.R. 1922 Cal. 515 (S.B.).**

—S. 14—Procedure.

——Additional District Magistrate should follow the procedure laid down in S. 14 (*c*) with reference to a report by a District Magistrate and forward the report through the Sessions Judge. (*Sanderson, C.J. and Richardson, J.*). MOHENDRA LAL ROY, *In re.* **71 I.C. 673=27 C.W.N. 88=24 Cr. L.J. 209=A.I.R. 1922 Cal. 550.**

—S. 14—Recording evidence.

——Where the evidence was not received and recorded as required by S. 14 upon the date on which the enquiry was held it is a substantial defect in procedure. (*Panton and Mallik, JJ.*). *In the matter of* SATISH CHANDRA SINGHA. **54 Cal. 721=31 C. W.N. 554=A.I.R. 1927 Cal. 536.**

—S. 14—Reference.

——*Formalities under S. 14 not observed—Reference is not valid.*

For a proper reference to the High Court the formalities required by S. 14 ought to be fulfilled and in the absence of those formalities being strictly complied with the reference is no valid reference.

A report made by a Magistrate subordinate to the Magistrate of the District was not made also through the Sessions Judges and hence no opinion of the Sessions Judge was before the High Court.

LEGAL PRACTITIONERS' ACT (1879), S. 28—Agreement invalid.

The reference was held to be invalid. (*Sen, Niamatullah and Iqbal Ahmad, JJ.*). *In the matter of* A MUKHTAR OF BANARES. **118 I.C. 712=1929 A.L.J. 1042=30 Cr. L.J. 966=1929 Cr. C. 242=A.I.R. 1929 All. 655.**

——The High Court would exercise its disciplinary jurisdiction even though the reference under S. 14 with regard to the alleged misconduct of a pleader is not made by the trial Court in whose Court the occurrence has taken place but by the appellate Court which has no power to refer it. It would be necessary however that the High Court should make an enquiry. What the nature of that enquiry ought to be is clearly a matter for the discretion of the Court. (*Dawson-Miller, C. J., Mullick and Jwala Prasad, JJ.*). BANMALI DAS, *In re.* **71 I.C. 209=4 P.L.T. 235=1 Pat. L.R. Cr. 57=24 Cr. L.J. 81=1 Pat. 689=A.I.R. 1922 Pat. 608 (F.B.).**

—S. 14—Standing counsel.

——Pleader exclusively retained by a client accepting brief against that client in another suit by opponent, is guilty of professional misconduct.

Held, he acts in violation not only of the principles which govern the conduct of a legal adviser, but of the ordinary principles of good faith as between man and man. Such a course would not have been justified even if the retainer had been first determined. His conduct was "grossly improper conduct in the discharge of his professional duty" within the meaning of the Act. (*Lord Tomlin.*) A., A PLEADER OF AGRA *v.* JUDGES OF THE HIGH COURT OF JUDICATURE, ALLAHABAD.
122 I.C. 4=1930 A.L.J. 134=1930 Cr. C. 205=7 O.W.N. 264=34 C.W.N. 432=31 M.L.W. 298=32 Bom. L.R. 556=31 Cr. L.J. 337=51 C.L.J. 447=A.I.R. 1930 P.C. 60=58 M.L.J. 483 (P.C.).

—S. 14—Transfer of proceedings.

——Section does not contemplate either a preliminary enquiry or a transfer of enquiry. (*Devadoss and Waller, JJ.*). VENUGOPAL NAIDU, *In re.* **92 I. C. 896=1926 M. W. N. 466=27 Cr. L. J. 384=A.I.R. 1926 Mad. 1044.**

—S. 27—Pleader's fees.

——The proper sum as pleader's fee is what is actually paid or what might reasonably have been paid, whichever is less. The rules under the Legal Practitioners' Act are a good general guide to the sum that might reasonably have been paid, but no more. There are several factors to be considered in fixing the pleader's fee, in addition to the valuation of the suit, and even that must be its real value, not the arbitrary or artificial valuation which is often sufficient for all other purposes. (*Hallifax, A.J.C.*). KAMOD SINGH *v.* KHEMKARAN. **107 I. C. 662=A.I.R. 1928 Nag. 175.**

—S. 28—Agreement invalid.

——*Agreement for fees invalid—Pleader can sue under Contract Act, S. 70.*

Section 28 provides for cases in which the parties agree that there ought to be a special fee irrespective of the amount of work which the conduct of the suit may eventually be found to entail. This may be more or less than the "party and party" fee fixed under S. 27. If there is an agreement which is invalid under S. 28, or no agreement at all, the pleader can sue under S. 70 of the Contract Act, and he can get whatever is a fair and just remuneration for the services he has actually rendered. In neither case whether on the valid agreement or under S. 70 of the Contract Act, does

LEGAL PRACTITIONERS' ACT (1879), S. 28— Agreement of fees void ab initio.

the "party and party" fees come into question at all except as one piece of evidence to help in deciding what the proper remuneration would be, where there is an agreement which is invalid under S. 28, the terms of that agreement can be considered in evidence, for what they may be worth, for the decision of the issue of the proper remuneration. 27 Mad. 512, *Foll.*; 136 P. R. 1893, *Diss. from.* (*Hallifax, A.J.C.*). RUKMABAI *v.* BALWANT HARI.
59 I.C. 172=17 N.L.R. 8=A.I.R. 1921 Nag. 122.

—S. 28—Agreement of fees void ab initio.

——Where an agreement is manifestly void from its inception as contravening the provisions of S. 28 and as such an agreement can be described to be one "discovered to be void" within the meaning of S. 65, Contract Act, as explained by Privy Council in A. I. R. 1923 P. C. 189 the client is bound to make compensation to the Vakil for the advantage which he has received under the contract. *Case-law discussed.* (*Madhavan Nair and Cornish, JJ.*). THANGAMMAL AYIYAR *v.* KRISHNAN. 53 Mad. 309=30 M. L. W. 876=
A. I. R. 1930 Mad. 132=57 M. L. J. 756.

—S. 28—Applicability.

——A practitioner admitted as a pleader of the first grade in the Oudh J. Cs'. Court by reason of his being a Vakil of the High Court of Judicature at Allahabad, under para. 267 (5) of the Oudh Civil Digest, does not cease to be a Vakil of the Allahabad High Court and therefore the provisions of S. 28 requiring agreements for fees to be in writing do not apply to him by reason of S. 38 of the Legal Practitioners' Act. 54 P.R. 1881, *Not foll.* (*Dalal and Wazir Hasan, A.J.Cs.*). UMAN SHANKAR SINGH *v.* PANDIT MURLIDHAR.
89 I.C. 187=2 O.W.N. 289=
12 O.L.J. 558=29 O.C. 75=A.I.R. 1925 Oudh 412.

—S. 28—Effect of repeal.

——The repeal of Ss. 28 to 31 of the Legal Practitioners' Act by Act XXI of 1926 does not affect the rights of the parties to an agreement entered into before its operation. (*Kulwant Sahay and Allanson, JJ.*). KUNVAR KAMAKHYA NARAYAN SINGH *v.* KALYAN SINGH. 101 I.C. 559=
8 P.L.T. 175=6 Pat. 614=A.I.R. 1927 Pat. 178.

—S. 28—Oral agreement of fees.

——A suit by a pleader for fees based upon an alleged oral agreement cannot succeed because it is not a valid agreement as it is a special agreement and any special agreement is to be in writing under the provisions of S. 28. (*Greaves, J.*). BEACHARAM LAHIRI *v.* SUDEBI DASI.
67 I.C. 874=26 C.W.N. 709=A.I.R. 1922 Cal. 567.

—S. 28—Scope and effect.

——*Right to recover fee not conditional on agreement satisfying terms of the section.*

Section 28 gives the Court a control over agreements between pleaders and their clients with respect to fees and costs and is not intended to make the right of the pleader to recover his fees, etc., conditional upon the agreement fulfilling the requirements of the section. A sanction for this view is to be found in S. 29 which enables the Court to order an agreement otherwise in order "to be cancelled if the agreement is not proved to be fair and reasonable, and the costs, fees, charges, and disbursements in respect of the business done to be ascertained in the same manner as if no such

LEGAL PRACTITIONERS' ACT (1879), S. 36— Delegation of inquiry.

agreement had been made." (*Madhavan Nair and Cornish, JJ.*). THANGAMMAL AYIYAR *v.* KRISHNAN. 53 Mad. 309=30 M.L.W. 876=
A.I.R. 1930 Mad. 132=57 M.L.J. 756.

——The provisions of S. 28 are very wide and comprehensive and they include services rendered in respect of business done by pleaders, Mukhtears or Revenue-agents even in connexion with cases not pending in Court. All agreements between a legal practitioner and his client, whether in connexion with cases pending in Court or cases not pending in Court, fall within the mischief of the section. 6 Bur. L. T. 18 and 20 C.L.J. 445, *Foll.* (*Kulwant Sahay and Allanson, JJ.*). KUNVAR KAMAKHYA NARAYAN SINGH *v.* KALYAN SINGH.
101 I.C. 559=8 P.L.T. 175=6 Pat. 614=
A.I.R. 1927 Pat. 178.

—S. 28—Suit on adjustment of accounts.

——*Suit to recover remuneration on adjustment of accounts is barred by S. 28.*

The plaintiff, a pleader, acted as the legal adviser of the father of the defendant as also of his paternal grandmother. It was agreed between the parties that the plaintiff would receive his legal fees, if so desired, or some remuneration per day. An account was taken of the sums due to him for his services, and after deduction of the amounts paid and of the amount relinquished, on amicable settlement, it was found on the 11th April, 1914, that a sum of Rs. 5,000 was due to him. On the 10th April, 1917, the plaintiff instituted the present suit to recover the sum thus found due to him on adjustment of accounts.

Held, that the suit was barred under S. 28 of the Legal Practitioners' Act. (*Mookerjee and Chotzner, JJ.*). KALIPADA DAS *v.* DURGADAS ROY. 73 I.C. 10=27 C.W.N. 769=
A. I. R. 1923 Cal. 677.

—S. 28—Validity of agreement.

——Where an agreement between a legal practitioner and his client in respect of fees or remuneration is reduced to writing but is all the same clothed imperfectly in legal forms, in that it was not filed in Court, the equitable doctrine of part performance can be called in aid to supply the defects of forms. But if the agreement is not reduced to writing the doctrine cannot be of any help. A.I.R. 1928 All. 641; A.I.R. 1928 P. C. 273; *Maddison* v. *Alderson*, 8 A. C. 473 and A. I. R. 1929 Cal. 101, *Ref.* (*Fasl Ali and Chatterji, JJ.*). MT. RAMJHARI KUER *v.* GOKHUL SINGH. 123 I.C. 408=11 P.L.T. 398=
A.I.R. 1930 Pat. 61.

—S. 36—Delegation of inquiry.

——If the enquiry is entrusted to a subordinate Court, it is the Subordinate Court which must be satisfied that the person is proved to be a tout. If that authority is not satisfied and does not send up his name, the superior authority which itself made no enquiries cannot include the name of a person who has not been so recommended. (*Sulaiman and Niamatullah, JJ.*). KAPOOR CHAND JAIN *v.* EMPEROR. 1930 A.L.J. 961=
A.I.R. 1930 All. 641.

——The Judge and officers mentioned in the section cannot delegate the task of recording the evidence to a subordinate officer. (*Abdul Raoof, J.*). KISHOR CHAND *v.* EMPEROR. 84 I.C. 462=
5 Lah. 443=26 Cr. L.J. 318=
A.I.R. 1925 Lah. 225.

LEGAL PRACTITIONERS' ACT (1879), S. 36— Delegation of inquiry.

——*Order under, by District Magistrate on evidence recorded by Subordinate Magistrate illegal.*

An order under S. 36 declaring a person to be tout is not valid if made by a District Magistrate on evidence recorded by a subordinate Magistrate, as the order can only be made by the officer mentioned inthe section on evidence recorded by himself. (*Ashutosh Mookerji, Ag.C.J. and Fletcher, J.*). *In the matter of* NAFAR CHANDRA DOME.

60 I. C. 321=22 Cr.L.J. 209=24 C.W.N. 1074.

——The duties to be undertaken under the section cannot be delegated by any of the officers mentioned therein to their subordinates. (*Mitter, C. J., Coutts and Das, JJ.*). MOHANA DAS *v.* EMPEROR. **59 I.C. 322=22 Cr.L.J. 66.**

—S. 36—Interpretation—" Majority of members present."

——" *Majority of members present* "—*Resolution passed by majority of votes but not by majority of members present—Validity.*

The expression "majority of members present" in the Explanation to S. 36 of the Legal Practitioners Act is not the same thing as majority of members voting. Where the only evidence on which a person was declared a tout was a resolution of the Bar Association and it appeared that at the meeting of the Association 64 were present but only 26 voted in favour of the resolution. 14 votes being against it and the rest being neutral;

Held, that there was no legal evidence on which the person could be declared a tout. (*Sulaiman and Niamatullah, JJ.*). BADRI PRASAD *v.* EMPEROR. **1930 A.L.J. 977=A.I.R. 1930 All. 752.**

——The law does not require that all the members should be present at the meeting but requires that a meeting of the association should be convened for the purpose of considering whether a certain person is a tout; and if by a majority of the members present at such a meeting a resolution is passed, it is sufficient. A.I.R. 1927 Pat. 282, *Dist.* (*Suhrawardy and Jack, JJ.*). HARENDRA NARAYAN *v.* SECY., BAR ASSOCIATION, JAMALPUR. **115 I.C. 602=56 Cal. 800= A.I.R. 1929 Cal. 196.**

—S. 36—Interpretation—" Members."

——Whether a resolution passed by a meeting of a Bar Association declaring certain persons to be touts was or was not regularly passed must be determined by reference to the explanation to S. 36, sub S. (1) and not by reference to any rules framed by an Association. The Act only requires that "members" shall vote and that the resolution shall be passed by a simple majority irrespective of the rules of the particular Bar Association. When forwarding the resolution the Secretary of the Bar Association ought to state the total number of members belonging to the Association, the number of those who attended the meeting and the figures of the votes for and against the resolution. (*Banerji and Weir, JJ.*). GHAFOOR KHAN *v.* EMPEROR. **118 I.C. 524=26 A.L.J. 790= 9 L.R.A. Cr. 113=10 A.I. Cr. R. 193= A.I.R. 1928 All. 334.**

—S. 36—Interpretation—" Specially convened."

——The Collector of a certain place wrote to the Secretary of the Bar Association of that place inviting the Association to take steps "to consider the tout evil." After receiving this letter a meeting of the Association was held and the members then present appointed a sub-committee to investigate the prevalence of touting in the place, and to submit to the Association a list of persons whom the sub-committee considered to be acting as touts. That sub-committee presented to the executive committee of the Bar Association a list of persons whom it considered to be touts, and the executive committee thereupon issued a notice to all "resident members" of the Bar Association, *i.e.*, members of the Association resident, summoning an extraordinary meeting of the Association "to consider the tout evil." At that meeting the list of names prepared by the sub-committee of the Association was read out.

LEGAL PRACTITIONERS' ACT (1879), S. 36— Opportunity reasonable.

Held, that it was a meeting "specially convened for the purpose" of preparing a list of touts under S. 36 (1). (*Banerji and Weir, JJ.*). GHAFOOR KHAN *v.* EMPEROR. **118 I.C. 524=26 A.L.J. 790= 9 L.R.A. Cr. 113=10 A.I. Cr. R. 193= A.I.R. 1928 All. 334.**

—S. 36—Jurisdiction.

——*Order declaring tout.*

The list in which the petitioner's name as a tout had been published was applicable to Courts other than that in which the 4th Presidency Magistrate presided and those Courts were not subordinate to his Court,

Held, the order of the 4th Presidency Magistrate was bad as having been made without jurisdiction since the power is limited by S. 36 to his Court and the suits subordinate thereto. (*Newbould and Suhrawardy, JJ.*). JAGAT CHANDRA GHOSE *v.* EMPEROR. **75 I.C. 722=25 Cr. L.J. 34= A.I.R. 1923 Cal. 434.**

—S. 36—Non-attendance of touts.

——Section 36 does not authorize the District Magistrate to compel the attendance of an alleged tout in the proceedings or to receive orders in the case, and therefore he cannot be charged under S. 174, Penal Code, if he fails to attend the Court. (*Carr, J.*). P. J. MONEY *v.* EMPEROR. **111 I.C. 672=6 Rang. 529= 29 Cr. L.J. 912= A.I.R. 1928 Rang. 296.**

—S. 36—Opportunity reasonable.

——Notice to show cause was served on person on 18th December just a few days before X-mas holidays began. On the re-opening of the Court he applied on 2nd January for the issue of summons to a number of witnesses including seven Vakils. The Judge instead of issuing summons and allowing him to take the risk if they were not served in time declined to issue the summons and directed him to produce affidavits from the Vakils. As no affidavits were filed the Judge on the resolution of the Bar Association declared him to be a tout on 3rd January,

Held, that sufficient opportunity was not given to him to satisfy the Court that he was not a tout. (*Sulaiman and Niamatullah, JJ.*). RIYAZUDDIN *v.* BAR ASSOCIATION, AGRA. **1930 Cr. C. 1018=A.I.R. 1930 All. 796.**

——As S. 36 is somewhat exceptional and of a drastic nature, a great deal of care and caution is necessary before action is taken against anybody and full opportunity should be given to the aggrieved party to meet the case for the prosecution. (*Abdul Raoof, J.*). DIWANCHAND *v.* EMPEROR. **92 I.C. 749=27 Cr. L. J. 333= A.I.R. 1926 Lah. 227.**

LEGAL PRACTITIONERS' ACT (1879), S. 36—Opportunity to show cause.

—S. 36—Opportunity to show cause.

———*Tout—Opportunity to show cause must be given—Duties under section cannot be delegated.*

Before directing inclusion of a person's name in the list of touts it is necessary under S.36 of the Act to give the person an opportunity of showing cause against the inclusion. (*Mitter, C.J., Coutts and Das, JJ.*). MOHANA DAS *v.* EMPEROR.

59 I.C. 322=22 Cr. L.J. 66.

—S. 36—Proceedings under.

———*Petition for taking proceedings under, is not necessary—Opportunity for hearing party, if given, is sufficient compliance with section—Enquiry need not be carried on in manner prescribed by Cr.P. Code.*

Where a petition filed in the District Court to have a person included in the list of touts did not give sufficient particulars as to why his name should be included,

Held, that under S. 36 of the Legal Practitioners' Act it is not necessary that there should be a petition at all, it does not contemplate the case of a party making definite allegations against an alleged tout. There is a sufficient compliance with the section if the alleged tout is called upon to show cause why his name should not be included in the list, provided an opportunity was given to him to rebut the evidence tendered and otherwise to place his case before the Court. S. 36 of the Legal Practitioners' Act creates a special jurisdiction, but does not define the details of the mode in which that jurisdiction is to be exercised. The course to be adopted should be such as would do substantial justice to the parties brought before the Court. An enquiry under S. 36 cannot be conducted in the manner prescribed in Cr. P. Code regarding enquiries altogether of a different nature. (*Venkatasubba Rao, J.*). R. VARADACHARIAR *v.* KALYANASUNDARAM.

69 I.C. 433=16 M.L.W. 795=23 Cr. L.J. 705=A.I.R. 1923 Mad. 188=44 M.L.J. 437.

—S. 36—Procedure.

———Inserting a person's name in the list of touts should proceed in accordance with the provisions of the Act. It should not be done in the absence of legal evidence that such person habitually acted as tout. (*Page and Mitter, JJ.*). KHONDKAR MD., *In re.*

116 I. C. 173=49 C.L.J. 118.

—S. 36—Resolutions of Bar Associations.

———A resolution passed by a Bar Association declaring certain persons to be touts is merely evidence upon the value of which the judicial officer to whom it is sent must form his own opinion. (*Banerji and Weir, JJ.*). GHAFOOR KHAN *v.* EMPEROR.

118 I.C. 524=26 A.L.J. 790=9 L.R.A.Cr. 113=10 A.I.Cr.R. 193=A.I.R. 1928 All. 334.

———A resolution or report of a Sub-Committee of only seven members, out of an association of about 22 members, declaring certain persons to be touts, is not a resolution by a majority of the members and hence it cannot be used as evidence of general repute under the Explanation to sub-S. (1) of S. 36. (*Adami and Scroope, JJ.*). UGAM PRASAD PANDEY *v.* KING-EMPEROR.

102 I.C. 340=8 P.L.T. 587=28 Cr. L.J. 532=8 A.I.Cr.R. 207=6 Pat. 567=A.I.R. 1927 Pat. 283.

LEGAL PRACTITIONERS' (FEES) ACT (XXI of (1926), S. 4—Rangoon, taxation rules.

—S. 36—Revision.

———High Court can entertain in exercise of general powers of superintendence an application in revision from an order of District Magistrate including the name of a person in a list of touts under S. 36, Legal Practitioners' Act. 21 All. 181 and A. I. R. 1928 All. 334, *Rel. on.* (*Sulaiman and Niamatullah, JJ.*). KAPOOR CHAND JAIN *v.* EMPEROR.

1930 A.L.J 961= A.I.R. 1930 All. 641.

———High Court can revise order passed under S. 36 in furtherance of justice by virtue of Government of India Act, S. 107. *Cases reviewed.* (*Addison and Hilton, JJ.*). CHATAR BHUJ *v.* EMPEROR.

31 P.L.R. 542= A.I.R. 1930 Lah. 889.

———*High Court can revise order under S. 36—Decision of District Judge against the weight of evidence is no ground for interference.*

The High Court in the exercise of its discretion can send for the record of an enquiry conducted by a District Judge with a view to drawing up a list of persons proved to be touts, and examine such record and thereafter issue such orders or instructions to the District Judge as might appear to be proper. High Court would not interfere in the exercise of its powers of superintendence; where the sole ground upon which interference was asked for was that the decision of the Dt. Judge was against the weight of the evidence. The intention of the Legislature was not to allow anything of the nature of an appeal against the decision of a competent Court under S. 36 of Act No. 18 of 1879. High Court cannot consider whether the circumstantial evidence relied upon by a Dt. Judge, and set forth in his order, was or was not evidence from which High Court would have drawn the same inference. (*Mears, C.J. and Piggott, J.*). KASHI NATH *v.* KING EMPEROR.

74 I.C. 11=79 I.C. 693=45 All. 676=21 A.L.J. 671=4 L.R.A. Civ. 317=A.I.R. 1924 All. 69.

—S. 36—Sufficient enquiry, what is.

———The insertion of names of persons in the list of touts should be made after conducting a proper enquiry under S. 36 of the Legal Practitioners' Act. Where all that was done was the holding of a parade before the judicial officer in the presence of members of the legal profession,

Held, that there was no proper enquiry. (*Page and Mitter, JJ.*). KHONDAKAR MAHAMAD MAKHI, *In re.*

116 I.C. 173=49 C.L.J. 118.

—Sch. 2—Interpretation.

———The expression 'High Court' in the entry in the Schedule refers to High Courts not established by Royal Charter and only to pleaders authorised to practise in Courts subordinate to the High Courts and therefore, Art. 30 of the Stamp Act clearly applies to the advocates of the late J. Cs'. Court, Upper Burma. (*Robertson, C.J., Heald and May Oung, JJ.*). *In the matter of* FIRST GRADE ADVOCATES OF THE LATE COURT OF THE JUDICIAL COMMISSIONER OF UPPER BURMA.

74 I.C. 913=1 Rang. 142=A.I.R. 1924 Rang. 1 (F.B.).

LEGAL PRACTITIONERS, (FEES) ACT (XXI of 1926).

—S. 4—Rangoon, taxation rules.

———Rules 13, 31 (proviso), 54 are governed by R. 3, An Advocate is not precluded from suing for

LEGAL REPRESENTATIVES' SUITS ACT (XII of 1855), S. 1—Damages for malicious prosecution.

his fees. If it is alleged that the Advocate gave bad advice which constituted negligence in his duties and partial failure of consideration, as the part of the consideration which is said to have failed is not ascertainable in money without collateral enquiry, such defence cannot be put up in the suit and the defendant's remedy is by separate suit. 4 L.B.R. 55 (F. B.), *Rel. on.* (*Sen and Heald, JJ.*). PO HTIN MAUNG *v.* SAW HLA PRU.
A.I.R. 1930 Rang. 243.

LEGAL REPRESENTATIVE.

See C.P. CODE, S. 2.

LEGAL REPRESENTATIVES' SUITS ACT (XII of 1855).

—S. 1—Damages for malicious prosecution.

———*Right to sue for damages for malicious prosecution does not survive to a legal representative of the person wronged.*

Section 89 of the Probate and Administration Act and Act XII of 1855 are designed to protect suits for wrongs done to the property of a deceased person but do not extend that protection to compensation for personal injury the right to which dies with the death of the person injured. The right to sue for legal expenses or other losses caused to a person due to a malicious prosecution instituted against him is a personal right and it does not survive to the legal representative of such person. 31 Cal. 993, *Dist.* (*Kanhaiya Lal and Ashworth, JJ.*). MAHTAB SINGH *v.* HUB LAL.
98 I.C. 590=48 All. 630=24 A.L.J. 796=A.I.R. 1926 All. 610.

LEGATEE.

See WILL.

LEGISLATURE—Powers of.

See INTERPRETATION OF STATUTES.

LEGITIMACY.

See (1) HINDU LAW.
(2) MAHOMEDAN LAW.
(3) EVIDENCE ACT, SS. 112, 114.

LEPROSY.

See HINDU LAW—SUCCESSION.

LESSOR AND LESSEE.

See (1) C. P. TENANCY ACT, SS. 106—117.
(2) LANDLORD AND TENANT.

LETTERS OF ADMINISTRATION.

See PROB. AND ADMN. ACT.

LETTERS PATENT—(Allahabad), (1866).

—Power to frame rules.

———The basis of the power of High Court to frame rules is the power of High Court to do all things that may be necessary to do in order to carry out the provisions of the Letters Patent and the C. P. Code. That being the case and it being only a subordinate body in the matter of framing of rules it has no power to so frame rules as to override either the provisions of the C. P. Code, or the Letters Patent. (*Mukerji and Bennet, JJ.*). (CHAUDHRI) PAHUNCHI LAL *v.* BHUP SINGH.
A.I.R. 1930 All. 558.

—Cl.—8—Misconduct of pleader.

———*Notice issued by High Court on 13th June, 1928—Bar Councils Act coming into force on 1st June—Notice is* ultra vires.

LETTERS PATENT—(Allahabad), (1866), Cl. 10—Malicious prosecution.

A notice was issued on 13th June, 1928, by High Court against a pleader calling upon him to show cause why he should not be dealt with under the Legal Practitioners Act for professional misconduct. Objection was taken by the pleader in view of the Bar Councils Act which had come into force on 1st June, 1928,

Held, that the provisions of the Letters Patent, in so far as they may conflict with the provisions of the Act, were abrogated by S. 19 (2) and therefore it was necessary for the case to be either referred to the Bar Council or at any rate for the Bar Council to be consulted. The Court was not properly seised of the case and that the notice issued to show cause was, as framed, *ultra vires* and a nullity. (*Boys, Weir and King, JJ.*). *In the matter of* A VAKIL OF AZAMGARH. **112 I.C. 214=51 All. 76=26 A.L.J. 1039=29 Cr. L.J. 998=A.I.R. 1928 All. 439 (F.B.);**

—Cl. 10—Court-fee.

———Under S. 10 of Letters Patent (Allahabad) no Court-fee can be levied on an appeal from the judgment of a single Judge of the High Court. (*Tudball, J.*). BHADUL PANDE *v.* MANNI PANDE.
63 I.C. 318=44 All. 13=19 A.L.J. 677=A.I.R. 1922 All. 164.

—Cl. 10—Cross-objection.

———The provisions of the Code of Civil Procedure as to cross objections do not apply to appeals under the Letters Patent.

Kausalia v. *Gulab Kuar*, 21 All. 207, *Foll.* (*Mears, C.J. and Banerji, J.*). MT. PURNA KUAR *v.* MANGAT RAI. **70 I.C. 488=A.I.R. 1922 All. 55.**

—Cl. 10—'Judgment.'

———*Adjudication must be final.*

The test is not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not a judgment within the meaning of the Letters Patent. 35 Mad. 1; 17 All. 442, *Foll.* (*Mears, C. J. and Piggott, J.*). DR. SADIQ ALI *v.* ANWAR ALI.
70 I. C. 805=20 A. L. J. 801=45 All. 66=A. I. R. 1923 All. 44.

—Cl. 10—Leave to appeal.

———Leave to appeal is necessary if the judgment appealed against is delivered after the amendment to the section which makes such leave necessary. (*Sulaiman, Ag. C. J.*). BAIJNATH *v.* DOOLAREY HAJJAM.
110 I. C. 719=50 All. 865=26 A.L.J. 1317=A.I.R. 1928 All. 708.

—Cl. 10—Malicious prosecution.

———In a suit for damages for malicious prosecution the question whether the defendant had reasonable and probable cause for instituting criminal proceedings against the plaintiff is a pure question of fact. And where the lower Courts, after judicially considering the evidence, find that the absence of such cause was not proved by the plaintiff the High Court cannot disturb the finding

LETTERS PATENT—(Allahabad), (1866), Cl. 10 —Order on review application.

nor is it a fit case to be certified for an appeal under the Letters Patent. A.I.R. 1926 P.C. 46, *Ref.*; A. I. R. 1928 All. 337; (1889) A. W. N. 189; 11 A. L. J. 125, *Dist.* (*Boys, J.*). SITA RAM *v.* THAKUR PRASAD. **117 I. C. 619= A. I. R. 1929 All. 429.**

—Cl. 10—Order on review application.

——An appeal does not lie against an order rejecting an application for review of judgment even under S. 10 of the Letters Patent. (*Banerji and Gokul Prasad, JJ.*). TIRMAL SINGH *v.* KANHAIYA SINGH. **84 I.C. 585=21 A.L.J. 341= 45 All. 535=4 L.R.A. Civ. 218= A.I.R. 1923 All. 356.**

—Cl. 10—Remand.

——*Order of remand by appellate Court—High Court upholding the order—No appeal lies.*

An auction-purchaser brought an objection under O. 21, R. 90, on the ground that no mention was made in sale proclamation of an existing encumbrance. His application was dismissed and he brought a suit and the Trial Court dismissed it. but the appellate Court held that the plaintiff had a right to sue on the ground of fraud, misrepresentation or material irregularity in the sale, and remanded the case. On appeal High Court upheld the order of remand,

Held, no Letters Patent Appeal was competent. 39 All. 191, *Foll.* (*Mears, C.J. and Banerjee, J.*). GAJADHAR PRASAD *v.* MUHAMMAD ABDUL MAJID. **4 L.R.A. Civ. 227=A.I.R. 1923 All. 396.**

—Cl. 10—Remand by single Judge.

——Appeal lies from an order made by a single Judge of High Court remanding an appeal to the lower Appellate Court for re-hearing. A.I.R. 1925 P.C. 155, *Dist.* (*Mears, C.J. and Mukerji, J.*). ISWARIPRASAD *v.* SHEOTAHAL RAI. **96 I.C. 666=48 All. 684=24 A.L.J. 892= A I.R. 1926 All. 669.**

—Cl. 11—'Civil Courts.'

——The term "Civil Courts" used in the Letters Patent, Cl. 11, does not cover a tribunal created under a particular statute for a particular purpose, *e.g.*, a Court created under the U. P. Municipalities Act. (*Lindsay, Kanhaiya Lal and Daniels, JJ.*). ABDUL RAHMAN *v.* ABDUL RAHMAN. **87 I.C. 51=47 All. 513=23 A.L.J. 385= 6 L.R.A. Civ. 191=A.I.R. 1925 All. 380 (F.B.).**

—Cl. 11—Right of appeal.

——*No appeal lies unless right to appeal is expressly conferred by statute.*

The constitution of the High Court as a Court of appeal is quite a different thing from saying that it has jurisdiction to hear appeals from every decree or order passed by a Subordinate Court. If there is no law or regulation which allows an appeal to it, the High Court cannot assume an appellate jurisdiction. The power of revision and superintendence, however is much wider. (*Sulaiman and Boys, JJ.*). KEHRI SINGH *v.* THIRPAL. **92 I. C. 282=48 All. 104=23 A.L.J. 965= A.I.R. 1926 All. 113.**

—Cl. 12—Joint Hindu family.

——*Jurisdiction under the Act is not generally exercised in the case of a Hindu joint family.*

The jurisdiction of the Court of Chancery with regard to the persons and estates of infants, which descended to the Supreme Court of Calcutta and so to the High Court at Calcutta and so to the Allahabad High Court by virtue of Cl. (12), Letters Patent exists. But the High Court is reluctant to exercise the same in the case of a joint Hindu family as it is sanctioning a wholly new practice. 17 All. 529 and 2 A. L. J. 81, *Foll.*; 16 Bom. 634; 19 Bom. 96 and 25 Bom. 353, *Ref.* (*Boys and Iqbal Ahmad, JJ.*). *In the matter of* GOBIND PRASAD. **112 I.C. 873=50 All. 709= 26 A.L.J. 595=A. I. R. 1928 All. 709.**

LETTERS PATENT—(Bombay), (1865), Cl. 10— Criticism on pending trial.

—Cl. 22—"Court"—Village panchayat.

——*High Court cannot transfer Criminal Proceedings pending before village panchayat.*

A village panchayat constituted under the Local Act VI of 1920 is not a "Criminal" Court within the meaning of Chapter II of the amended Cr. P. Code; therefore, S. 526 would have no application. So also S. 22 of the Letters Patent (Allahabad) does not apply and the High Court has no jurisdiction to direct the transfer of a case from a panchayat constituted under the Local Act.

Per *Kanhaiya Lal, J.*—A village panchayat is a Court for the purpose of S. 22 of the Letters Patent, and in the absence of any limitation imposed by any Act, the High Court has power under that section to transfer any criminal proceeding pending before a village panchayat to another village panchayat empowered to take cognizance thereof. (*Stuart and Kanhaiya Lal, JJ.*). SAT NARAIN *v.* SARJU. **83 I.C. 350= 46 All. 167=21 A.L.J. 925=25 Cr.L.J. 1390= A.I.R. 1924 All. 265.**

——**Bombay (1865).**

—Amendment of.

——The Letters Patent may be varied by legislation or by further Letters Patent issued by His Majesty but in general it is not open for the Letters Patent to be varied by mere resolutions, either of the Local Government or of the Government of India. (*Marten, C.J. and Blackwell, J.*). SHERIFF OF BOMBAY *v.* HOKMAJI MOTOJI & CO. **104 I.C. 685=51 Bom. 749= 29 Bom. L.R. 1071=A.I.R. 1927 Bom. 521.**

—Cl. 10—Criticism on pending trial.

——*Criticism pending trial in public meeting is improper conduct—Disciplinary action.*

While certain persons were on their trial a resolution moved by the second and supported by the third opponent was passed under the presidentship of first opponent, a District Pleader congratulating them upon their sacrifice,

Held, the opponents acted improperly in being parties to a resolution of this character. Anything done or said which may amount to criticism of proceedings pending in a Court of Justice is calculated to hinder the even and impartial administration of justice. Pleaders have privileges, but they have responsibilities also, and a pleader who acts so as to hinder and embarrass the administration of justice is guilty of "improper conduct" within the meaning of those words as used in S. 26, Bombay Pleaders Act and such conduct furnishes "reasonble cause" for the exercise of disciplinary jurisdiction under S. 25. (*Shah, Ag.C.J. and Crump, J.*). GOVERNMENT PLEADER, HIGH COURT, BOMBAY *v.* VINAYAK BALWANT CHAUKAR. **76 I.C. 78=24 Bom. L.R. 1049=47 Bom. 117= A.I.R. 1922 Bom. 361.**

LETTERS PATENT—(Bombay), (1865), Cl. 10—Suspension of sanad.

—Cl. 10—Suspension of sanad.

———*Disciplinary jurisdiction—High Court has full power to suspend the sanad of a pleader if he has been adjudicated an insolvent until he obtains discharge.*

High Court in its disciplinary jurisdiction has full power to suspend the sanad of a pleader, if he has been adjudicated an insolvent, until he obtains a discharge, if in the circumstances of the case, it considers that the insolvency coupled with the surrounding circumstances supplies a reasonable cause for such a suspension. It is largely a matter of discretion. The Chief Justice receiving an application of this kind can well be satisfied from the circumstances that are put forward that there is no objection to grant an insolvent pleader permission to continue to practise, and in doing so he would be acting on behalf of the Court, but if he considers that the case is one where there is reason to doubt the advisability of granting such permission, he can ask the Government Pleader to bring it before the Court in its disciplinary jurisdiction. (*Fawcett and Mirza, JJ.*). GOVT. PLEADER *v.* D.N. DESHPANDE.

114 I. C. 259=52 Bom. 559=30 Bom.L.R. 1011=A. I. R. 1928 Bom. 385.

—Cl. 12—Construction.

———*Despatch and Report of Commissioners for amalgamation accompanying Letters are inadmissible for construing Cl.* 12 (Per *Full Bench, Fawcett and Mirza, JJ.*, contra).

The Despatch of the Secretary of State which accompanied the Letters Patent of 1862 and of 1865 and the Report of the Commissioners who were appointed in 1853 to consider the question of the amalgamation of the Supreme Court and the Company's Courts should not be looked at for the purpose of construing Cl. 12 except in so far as they may deal with the history of the law up to that date and the inconveniences found in the administration of that law. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULJEE.

104 I.C. 8=51 Bom. 516=29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).

—Cl. 12—Equity jurisdiction.

———Per *Fawcett, J.*—The equity jurisdiction of the High Court must be confined within the four corners of Cl. 12 as it at present stands. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULGEE. **104 I. C. 8=51 Bom. 516=29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).**

—Cl. 12—Interpretation—"Suits of every other description."

———*Third party proceedings—Cause of action partly outside jurisdiction—Party outside jurisdiction—Leave to proceed.*

"Suits of every other description" in Cl. 12 of the Letters Patent include third party proceedings and leave of the High Court must be obtained to proceed therein, when part of the cause of action arises outside the jurisdiction of the High Court and the third party also resides outside the jurisdiction. No such leave can be inferred from the fact that leave was obtained to issue the third party notice, as that does not imply a judicial consideration of the question. (*Marten, J.*). WELD & CO. *v.* SHER AHMED EKBAL AHMED. **59 I.C. 12=21 Bom. L R. 808.**

LETTERS PATENT—(Bombay), (1865), Cl. 12—Leave to sue.

—Cl. 12—Leave to sue.

———Leave is necessary and a preliminary condition of jurisdiction. Where the defendant was already dead before leave was obtained under Cl. 12, fresh leave should be obtained in respect of his sons when they are sought to be joined. Leave obtained against a dead person is against no person at all. 15 Bom. 93; A.I.R. 1924 Bom. 109 and 20 Bom. 767, *Ref.* (*Madgavkar, J.*). SHAMCHANDRA RAMPRATAB *v.* BHIKAMCHAND GANESHLAL. **31 Bom. L.R.1002=A.I.R. 1929 Bom. 468.**

———*When refused.*

The plaintiff, an Indian merchant, bought bullion through the defendants in London. The bullion was shipped and was lost on the sinking of the ship. The defendants had insured the gold for its value and upwards, with the result that plaintiff was repaid his entire cost of the purchase of the gold plus a certain additional sum. Plaintiff contended that the defendants ought to have insured not for, say, five or six per cent. above the value of the gold as they in fact did, but for ten per cent. above that value. Accordingly, he claimed the difference between this five per cent. and ten per cent. His claim was based solely on an alleged custom of the bullion market in London,

Held, that substantial part of the cause of action did not accrue in Bombay. At any rate, the case was one of those exceptional cases where leave under Cl. 12 ought not to be given. A.I.R. 1921 Bom. 328, *Rel. on.* (*Marten, C. J. and Kemp, J.*). PHILLIPS A. WATKINS *v.* LAKSHMINARAYAN BASDEODAS. **100 I.C. 946=29 Bom. L.R. 131=A.I.R. 1927 Bom. 660.**

———Under Cl. 12 leave is only required when the cause of action has arisen in part within the local limits of the ordinary original civil jurisdiction. (*Macleod, C. J., Crump and Coyajee, JJ.*). INDIA SPINNING AND WEAVING CO., LTD. *v.* CLIMAX INDUSTRIAL SYNDICATE. **91 I. C. 847=50 Bom. 1=27 Bom. L.R. 1281=A.I.R. 1926 Bom. 1 (F.B.).**

———Where the suit as originally instituted was not merely against a wrong person, but against no person at all, and the plaint was amended by substituting the name of his son,

Held, the case was not one of substitution at all. It was a new suit against a new defendant and leave under Cl. 12 was necessary. (*Mulla, J.*). RAMPRATAB BRIJ MOHANDAS *v.* GAVRISHANKAR KASHIRAM. **85 I.C. 464=25 Bom. L.R. 7=A. I. R. 1924 Bom. 109.**

———*Partition suit.*

The Court has power to grant leave in a partition suit where part of the property is outside British India. The Court should exercise its discretion in not granting leave if it will tend to defer the final decision of the points at issue between the parties. (*Case-law discussed.*) (*Macleod, C. J. and Shah, J.*). GOVIND LAL BANSI LAL *v.* BANSI LAL MOTILAL. **77 I.C. 934=46 Bom. 249=23 Bom. L.R. 1049=A. I. R. 1921 Bom. 328.**

———*Inference of.*

Merely because a notice is ordered to be served by registered post it cannot be assumed that leave is given under Cl. 12 of the Letters Patent. It is extremely necessary before it can be assumed that leave has been granted under Cl. 12 of the Letters

LETTERS PATENT—(Bombay), (1865), Cl. 12—Matrimonial dispute.

Patent, that it must be proved that an application was made to the Judge under Cl. 12 of the Letters Patent, and if the Judge makes the order it should appear clearly on the face of it that he was giving leave under Cl. 12 of the Letters Patent.

Per *Macleod, C.J.*—When a defendant asks the Court to issue a third party notice in a case in which leave has to be obtained under Cl. 12 of the Letters Patent, then an application should be made to the Judge for such leave to be endorsed on the notice in the same way as it is endorsed in a plaint. (*Macleod, C. J. and Heaton, J.*). KARIM ELAHI *v.* SHER AHMED. 59 I.C. 28= 45 Bom. 24=A.I.R. 1921 Bom. 195.

—Cl. 12—Matrimonial dispute.

——Clause 12 of the Letters Patent gives the High Court jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, and in deciding it the Jewish Law must be applied "with such adaptations to the circumstances of the case as justice may require". (*Crump, J.*). RACHEL BENJAMIN *v.* BENJAMIN. 94 I.C. 59= 50 Bom. 369=28 Bom. L.R. 328= A.I.R. 1926 Bom. 169.

—Cl. 12—Mortgage suit—Jurisdiction.

——High Court has no jurisdiction to grant a declaration, as to who out of two competing mortgagees is a prior one when the property mortgaged is situated beyond the jurisdiction of the Court (in this case in Cutch), though the mortgage transactions were entered into in Bombay. 14 Bom. 353, *Considered*; 29 Bom. 249, *Foll.*; 26 Bom L. R. 535, *Doubted*. (*Pratt, J.*). PRANLAL TRIBHUWANDAS *v.* GOCULDAS DAMODAR. 88 I. C.92= 27 Bom. L. R. 570=A. I. R. 1925 Bom. 333.

—Cl. 12—Mortgage suit—Maintainability.

——A suit by mortgagee to enforce his mortgage by sale can be maintained under Cl. 12 even if the mortgaged property is situate wholly outside the limits of the Ordinary Original Civil Jurisdiction of the High Court, and the defendant does not at the commencement of the suit dwell or carry on business or personally work for gain within such limits, but the cause of action has arisen wholly or in case the leave of the Court shall have been first obtained, in part within the said limits. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULJEE. 104 I. C. 8=51 Bom. 516= 29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).

——A suit by mortgagee of land to enforce his mortgage can be maintained under Cl. 12 of the defendant resides within the local limits of the ordinary original civil jurisdiction of the High Court at the commencement of the suit. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI *v.* FRAMROZ EDULJEE.

104 I.C. 8=51 Bom. 516=29 Bom. L.R. 498= A.I.R. 1927 Bom. 278 (F.B.).

—Cl. 12—Pleas as to jurisdiction or leave—Waiver.

——Where plea of jurisdiction or of leave under Cl. 12 is not raised by the defendants at their earliest opportunity, *i.e.*, in the original written statement, they are deemed to have waived the objection. *Moore* v. *Gamjee*, (1890) 25 Q.B.D. 244; 35 Cal. 394, *Rel. on*. (*Madgavkar, J.*). SHAM CHANDRA RAMPRATAP *v.* BRIKAMCHAND GANESH LAL. 31 Bom. L.R. 1002=A.I.R. 1929 Bom. 468.

LETTERS PATENT—(Bombay), (1865), Cl. 12—"Suit for land"—Mortgage suit.

—Cl. 12—'Suit for land.'

——Per *Marten, C.J.*—The words 'suit for land' refer to suits to obtain or recover land, or alternatively to suits which substantially involved the recovery of land or its equivalent. The preposition 'for' in the expression 'suit for land' would seem to indicate that the title to or possession of, immovable property must be the primary object of the action but the primary object of a suit to enforce mortgage by sale is money.

Fawcett, J.—A suit to be one "for land" should substantially relate to land and this should primarily be judged by considering what is the nature of the relief sought by the plaintiff. A suit for land grammatically means a suit for possession of the land and also covers suits for title to or compensation for wrong or trespass to land which are properly local "actions".

Per *Mirza, J.*—A suit for land means a suit which is substantially for land, that is, for the purpose of acquiring title to or control over land. It includes any suit in which a decree is asked for operating directly upon the land. A suit which prays for any relief with reference to any specific immovable property is a suit for land.

Per *Blackwell, J.*—A suit for land means a suit to obtain or recover, land and does not include a suit "substantially" for land where a question of title to the land may be involved.

Per *Patkar, J.*—The words "suit for land" mean a suit in which the substantial question is the right to land. (*Marten, C. J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBAI HAZANALI *v.* FRAMROZ. 104 I. C. 8= 51 Bom. 516=29 Bom. L.R. 498= A. I. R. 1927 Bom. 278 (F.B.).

—Cl. 12—"Suit for land"—Administration suit.

——In an administration suit the High Court can determine the question whether certain immovable property situated outside the territorial limits of its jurisdiction belonged to the deceased at the time of his death in absence of leave under Cl. 12. (*Shah, Ag. C.J. and Crump, J.*). MAHOMEDALLY ADAMJI *v.* ABDUL HUSSAIN.

79 I.C. 780=48 Bom. 331=26 Bom. L.R. 163= A I.R. 1924 Bom. 313.

——Where in a suit for maintenance the plaintiff prays for a decree charging her maintenance on a specified immovable property, the suit is a suit for land within the meaning of Cl. 12. 9 Cal. 535, *Dist.*; 6 Bom. L.R. 958 and 14 Bom. L. R. 701, *Foll.* (*Fawcett, J.*). YESHVADABAI *v.* JANARDHAN RAGHUNATH. 81 I. C. 776=25 Bom. L.R. 1172= A. I. R. 1924 Bom. 141.

——An administration suit is not a suit for land within the meaning of Cl. 12. The High Court, therefore, has jurisdiction to try an administration suit though part of the estate of the deceased consisting of land is outside its Ordinary Original Civil Jurisdiction. But the Court cannot decide as to who is entitled to property outside its Ordinary Original Civil Jurisdiction. (*Macleod, C.J. and Shah, J.*). ABDULL HUSSAIN ADAMJI MASALAWALA *v.* MAHOMEDALLY ADAMJI MASALAWALA.

65 I. C. 160=46 Bom. 772=23 Bom. L.R. 1326= A.I.R. 1922 Bom. 443.

—Cl. 12—"Suit for land"—Mortgage suit.

——According to provisions laid down in Cl. 12, and C. P. Code, O. 34, R. 1 the Bombay High Court has jurisdiction to try suit between the mortgagor and prior and puisne mortgagees even though the property is situate outside Bombay. The suit

LETTERS PATENT—(Bombay), (1865), Cl. 12—"Suit for land"—Mortgage suit.

remains a suit for recovery of debts in certain order, the land being liable to sale in default of payment. A. I. R. 1923 Bom. 333, *Diss. from*; 21 Bom. 701 and A.I.R. 1927 Bom. 278 (F.B.), *Ref.*; A. I. R. 1925 Bom. 333, *Dist.* (*Madgavkar, J.*). SHAMCHANDRA RAMPRATAP *v.* BHIKAMCHAND GANESHLAL. **31 Bom. L.R. 1002=A.I.R. 1929 Bom. 468.**

——In Bombay a suit by a mortgagee of land to enforce his mortgage by sale can be maintained in the High Court under S. 12, Letters Patent even when the mortgaged land is situate wholly outside the limit of the ordinary original civil jurisdiction of the High Court if the cause of action has arisen wholly within the said limits. 50 Bom. 1; A. I. R. 1926 Bom. 1; 91 I. C. 847 (F. B.), *Held overruled*; A. I. R. 1927 Bom. 278 (F. B.), *Foll.*; A. I. R. 1914 P. C. 67, *Held distinguished* in A. I. R. 1927 Bom. 278 (F. B.). (*Zafar Ali and Addison, JJ.*). PURSHOTTAM DAS NATHU RAM *v.* RADHAKISHAN. **120 I.C. 279=11 L.L.J. 306=A.I.R. 1929 Lah. 449.**

——A suit to enforce mortgage by mortgagee of land situate outside the ordinary original civil jurisdiction of the High Court is maintainable in High Court as it is not a suit for land. A. I. R. 1927 Bom. 278 (F. B.), *Foll.* (*Marten, C. J. and Kemp, J.*). RAJARAM TUKARAM *v.* CENTRAL BANK OF INDIA, LTD. **104 I.C. 115=51 Bom. 711=29 Bom.L.R. 659=A.I.R. 1927 Bom. 663.**

——A suit by a mortgagee of land to enforce his mortgage by sale is not a suit for land within the meaning of Cl. 12 of the Letters Patent. 50 Bom. 1; A.I.R 1926 Bom. 1; 91 I.C. 847 (F.B.), *Overruled*; 14 Bom. 353, *Appr.* (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI HASSANALLY *v.* FRAMROZ EDULJEE DINSHAW. **104 I.C. 8=51 Bom. 516=29 Bom. L.R. 493=A.I.R. 1927 Bom. 278 (F.B.).**

——Suit to enforce mortgage—Mortgaged land situate wholly outside—Defendant dwelling, etc., within limits of ordinary jurisdiction of High Court when suit commenced—Suit can be maintained under Cl. 12. (Per *Full Bench, Fawcett and Mirza, JJ.*, contra.) (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HATIMBHAI HASSANALLY *v.* FRAMROZ EDULJEE DINSHAW. **104 I.C. 8=51 Bom. 516=29 Bom. L.R. 498=A. I. R. 1927 Bom. 278 (F.B).**

——Suits by mortgagees to enforce their rights under their mortgages are not suits for land within the meaning of Cl. 12 of the Letters Patent, and such a suit is one to realise and dispose of his and his debtor's interest in the land. The object of the suit is not to obtain land or to obtain a declaration of title to land or to obtain damages for interference with land, but to obtain repayment of debt owing to the plaintiff and for that purpose to realise the security which has been vested in him. 14 Bom. 353; 22 Bom. 701, *Foll.* The personal jurisdiction of the Bombay High Court is exercised under Cl. 12 of the Letters Patent not only in cases where the defendants or some of them reside permanently within the jurisdiction but where, according to the provision of the Letters Patent, they have been lawfully caused to appear upon summons where the cause of action or part of it has arisen in Bombay. (*Scott, C.J. and Heaton, J.*). VENKATRAO SETHUPATHY *v.* KHIMJI ASSUR. **80 I.C. 442=26 Bom. L.R. 535.**

——A suit based on a mortgage of land outside the local limits of the original jurisdiction of the High Court, claiming the usual mortgage decree for sale of the property in default of payment, is a suit for land within the meaning of the clause. Where the whole of the property is outside the jurisdiction, and the defendants also reside outside the jurisdiction, the High Court on its original side cannot entertain such a suit against a defendant who resides outside the jurisdiction. 14 Bom. 353, *Overruled.* (*Macleod, C.J., Crump and Coyajee, JJ.*). INDIA SPINNING AND WEAVING CO. *v.* CLIMAX INDUSTRIAL SYNDICATE. **91 I.C. 847=50 Bom. 1=27 Bom. L. R. 1281=A.I.R. 1926 Bom. 1 (F.B.).**

——Suit by a mortgagee against property outside the jurisdiction and against the mortgagors living outside its jurisdiction can be tried by the Bombay High Court in its ordinary original civil jurisdiction. (*Shah, J.*). GASRAJ FOOAJI *v.* AKUBAI. **80 I. C. 1007=26 Bom.L.R. 539=A.I.R. 1924 Bom. 419.**

—Cl. 12—"Suit for land"—Suit for declaring charge.

——*Suit to declare a charge is suit for land but land being outside jurisdiction Court must have jurisdiction* in personam.

Under Cl. 12 of the Letters Patent the Bombay High Court has jurisdiction *in personam* with respect to lands situated outside its original jurisdiction. A suit by a vendor to declare a charge upon such lands for the unpaid purchase-money against the vendee residing or carrying on business in Bombay is therefore maintainable in the Bombay High Court in its original jurisdiction.

A suit to declare a charge on property in Bombay is a suit for land so as to give the Bombay High Court jurisdiction over the suit which otherwise it would not have. Where the land is situated outside the original limits of its jurisdiction the words "suit for land" must be read as being subject to the qualification or proviso that the High Court has jurisdiction *in personam* similar to that exercised by a Court of Equity in England and by the Mofussil Courts under C.P.C., S. 16 proviso. (*Fawcett, J.*). K. C. SHRIMAN NEDAN RAJAH KOTAKAL *v.* THE MALABAR TIMBER COMPANY, LTD. **80 I.C. 1049=26 Bom. L.R. 541=48 Bom. 625=A.I.R. 1924 Bom. 412.**

—Cl. 14—Construction.

——The natural interpretation of Cl. 14 would be that the words "such causes of action not being for land or other immovable property" are intended merely to qualify the words "several causes of action" that appear just before them. That is to say, in considering Cl. 14 any cause of action which is one for land or other immovable property must be excluded. The word "several" in the expression "several causes of action" of course means "separate." A.I.R. 1927 Bom. 278 (F.B.), *Cons.* (*Fawcett and Kemp, JJ.*). TUKOJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I.C. 424=53 Bom. 251=31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

——Two or more causes of action arising within the jurisdiction of the High Court can be joined together by the plaintiff, without any leave of the Court. Clause 14 should be construed, as far as possible, consistently with the provisions of Rr. 3 and 4 of O. 2. (*Fawcett and Kemp, JJ.*) TUKOJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I. C. 424=53 Bom. 251=31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

LETTERS PATENT—(Bombay), (1865), Cl. 14—Essentials.

—Cl. 14—Essentials.

——To bring a case within the four corners of Cl. 14 it is not necessary that there must be at least one cause of action which the defendant admits has arisen within the original jurisdiction of High Court. 16 Cal. 98, *Rel. on.* (*Fawcett and Kemp, JJ.*). TUKAJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I.C. 424=53 Bom. 251=31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

—Cl. 14—Plea of jurisdiction.

——Although a defendant can set up a plea of want of jurisdiction in respect of a cause of action allowed under Cl. 14 to be joined in the suit with a cause of action which is within jurisdiction, still the mere fact that defendant may succeed in any such plea does not deprive the High Court of jurisdiction to pass an order under Cl. 14. (*Fawcett and Kemp, JJ.*). TUKAJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I.C. 424=53 Bom. 251=31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

—Cl. 14—Scope.

——Clause 14 by its terms necessarily contemplates cases where the other causes of action are not within the original jurisdiction of High Court, and there is nothing in the clause to limit such causes of action to those arising within the extraordinary original civil jurisdiction of the Bombay High Court that is mentioned in Cl. 13, that is to say, a cause of action which has arisen within the limits of the Bombay Presidency proper, or within the jurisdiction of some Court outside that Presidency, but subject to its superintendence. 33 Bom. 564, *Appr.*; 22 Cal. 222 (P.C.), *Expl.* and *Dist.* (*Fawcett and Kemp, JJ.*). TUKAJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I. C. 424=53 Bom. 251=31 Bom.L.R. 7=A. I. R. 1929 Bom. 100.**

—Cl. 14—"Suit for land"—Trespass action.

——The cause of action for trespass on immovable property is not a cause of action for land or other immovable property within the meaning of Cl. 14, if no question of title apparently arises. (*Fawcett and Kemp, JJ.*). TUKAJI RAO HOLKAR *v.* SOWKABAI PANDHARINATH. **117 I.C. 424=53 Bom. 251=31 Bom. L.R. 7=A.I.R. 1929 Bom. 100.**

—Cl. 15—Amendment.

——*Amendment* (1928) *to Cl.* (15) *is retrospective.*

An alteration in Cl. 15 of the Letters Patent of the Bombay High Court effected by a notification in the Bombay Government Gazette of 2nd February 1928, to the effect that no appeal from the judgment of one Judge of the Bombay High Court lies to a Division Bench, if it is made in the exercise of second appellate jurisdiction, except in any case where such single Judge declares that it is a fit one for appeal, has retrospective effect. (*Fawcett and Mirza, JJ.*). BADRUDDIN *v.* SITARAM. **114 I.C. 241=52 Bom. 753=30 Bom. L.R. 942=A.I.R. 1928 Bom 371.**

——The alteration in Cl. 15 of the Letters Patent of the Bombay High Court does not entirely abolish a former right of appeal; it merely restricts it in a reasonable manner. (*Fawcett and Mirza, JJ.*). BADRUDDIN *v.* SITARAM. **114 I.C. 241=52 Bom. 753=30 Bom. L.R. 942=A. I. R. 1928 Bom. 371.**

—Cl. 15—Certificate.

——No appeal lies under Cl. 15 of the Letters Patent in absence of a certificate of the Judge who has disposed of the second appeal that the case is a fit one for appeal whether such Judge be temporary or officiating. A.I.R. 1926 Rang. 1 (F. B.), *Foll.* (*Mirza and Broomfield, JJ.*). SHEIKLAL SHAIKH SHARIF *v.* AHMED KHAN SHARIF KHAN. **32 Bom. L.R. 624=A.I.R. 1930 Bom. 366.**

LETTERS PATENT—(Bombay), (1865), Cl. 15—"Judgment"—"What is".

——Amendment of 1928 applies to judgments of one Judge delivered after 1st February, 1929—Declaration by Judge that case is fit for appeal is necessary. A. I. R. 1928 Bom. 371; A. I. R. 1929 Mad. 381 (F.B.); A.I.R. 1928 Cal. 640 (F. B.) and A. I. R. 1929 Bom. 241, *Ref.* (*Murphy and Broomfield, JJ.*). BALU HARSHET SHETYE *v.* SHRIKRISHNA GOVIND KULKARNI. **32 Bom. L. R. 185=A.I.R. 1930 Bom. 224.**

——Up to 1st February 1929, leave was necessary under the Letters Patent of 1927 and thereafter it is also necessary under the new Letters Patent of 1928 for an appeal from judgment of a single Judge of the High Court in appeal. A.I.R. 1928 Bom. 371, *Ref.* (*Marten, C.J.*). MATHURBHAI GARBADBHAI *v.* NADIAD CITY MUNICIPALITY. **118 I.C. 798=31 Bom. L.R. 473=A.I.R. 1929 Bom. 241.**

——*Oral application—Competency.*

An application to the single Judge, who has disposed of a second appeal, for a declaration that the case is a fit one for appeal to a Division Bench can be made straightaway orally by the pleader, who thinks that his client should appeal, and that no written application is necessary in such a case. The pleaders should be encouraged to make such an oral application at the time, instead of later, when a written application will be necessary and arrangements will have to be made for a special sitting to hear the application by the Judge, who will probably then have forgotten the facts of the case. Such speed is necessary because the certificate that the case is a fit one for appeal can only be granted by the Judge who passed the judgment against which it is proposed to appeal. A.I.R. 1926 Rang. 1 (F.B.), *Foll.* (*Fawcett and Mirza, JJ.*). BADRUDDIN *v.* SITARAM. **114 I. C. 241=52 Bom. 753=30 Bom. L.R. 942=A.I.R. 1928 Bom. 371.**

—Cl. 15—'Judgment.'

——The term "judgment" in the Letters Patent of the High Court means in civil cases a 'decree' and not a judgment in the ordinary sense. (*Sir John Edge.*) BHOGILAL *v.* TEMPLE COMMITTEE. **87 I.C. 313=6 L.R.P.C. 117=41 C.L.J. 628=1925 M.W.N. 474=22 M.L.W. 246=30 C.W.N. 459=23 A.L.J. 555=27 Bom. L.R. 872=2 O.W.N. 533=A.I.R. 1925 P.C. 155=49 M.L.J. 25 (P.C.).**

—Cl. 15—'Judgment'—What is.

——A finding on an issue, which does not merely regulate the procedure in the suit but goes further so as to decide some right affecting the merits of the question between the parties, amounts to a judgment from which an appeal lies under Cl. 15. 32 Bom. 602; 11 Bom. L. R. 241, *Foll.* and A.I.R. 1926 Bom. 186, *Dist.* (*Kemp, Ag. C. J. and Murphy, J.*). SECY. OF STATE *v.* MANSEY LAKHAMSEY. **32 Bom. L.R. 285=A.I.R. 1930 Bom. 262.**

——A suit should not be tried piecemeal, and a decision on an issue to the effect that the trial of the suit should proceed can never amount to a judgment and no appeal lies from such a decision. (*Macleod, C.J. and Coyajee, J.*). GOVERDHANLALJI *v.* CHANDRAPRABHAVATI. **92 I.C. 552=27 Bom. L.R. 1496=A.I.R. 1926 Bom. 186.**

LETTERS PATENT—(Bombay), (1865), C l. 15—"Judgment"—What is.

———*Order allowing transfer of summary suit to short causes—No appeal lies.*

An order amending the title of a plaint by omitting the word "summary" from the same, and transferring the case to the short cause list, from the list of summary suit does not in any way affect the merits of the questions at issue between the parties by determining some right or liability. It is only an order regulating the procedure according to which the suit is to be tried. It is not therefore a judgment and no appeal lies. (*Macleod, C. J. and Crump, J.*). MANI LAL CHUNI LAL CHOKSI *v.* MANI LAL DAMODARDAS MODY. **86 I.C. 100=27 Bom. L.R. 99=A.I.R. 1925 Bom. 159.**

———*Order of Division Court refusing to excuse delay in applying for leave to appeal to Privy Council is 'Judgment.'*

An order passed by a Division Court rejecting an application to excuse the delay in presenting an application for leave to appeal to His Majesty-in-Council beyond the period of limitation is a "judgment" and is appealable as such under Cl. 15, Letters Patent. (*Marten, Pratt and Fawcett, JJ.*). NAGINDAS MOTILAL *v.* NILAJI MORABU.

80 I.C. 862=48 Bom. 442=26 Bom. L.R. 395=A.I.R. 1924 Bom. 399 (F.B.).

———It is doubtful whether an order refusing to grant a sanction to prosecute under S. 195, Cr. P. C., is a judgment within the meaning of Cl. 15. (*Shah, Ag. C. J. and Crump, J.*). ABDUL LATIF USMAN *v.* HAJI TAR MAHOMED. **68 I.C. 33=24 Bom. L.R. 817=23 Cr. L.J. 497=47 Bom. 270=A.I.R. 1922 Bom. 451.**

———An order by which directions under Rr. 130 and 131 of the High Court Rules are refused is not a "judgment" within Cl. 15 and no appeal lies against such order. 8 Beng. L.R. 433, *Foll.* (*Macleod, C. J. and Fawcett, J.*). CHARAN DAS CHATURBHUJ *v.* CHAGANLAL PITAMBARDAS. **59 I.C. 533=45 Bom. 428=A.I.R. 1921 Bom. 320.**

———*Plaintiff allowed to withdraw suit with liberty to file fresh suit—Judgment dealing with all points raised in case.*

The Judge on the Original Side of the High Court delivered a full judgment, dealing with all the points raised in the case, and he came to the conclusion that on the case as then presented by the plaintiffs, the plaintiffs must fail. But the actual result which the learned Judge arrived at was to give the plaintiffs liberty to withdraw their present suit with permission to take such further action as they might be advised to take and he made no order as to costs.

Held, that the order was a judgment within Cl. 15. 8 Beng. L.R. 433, *Discussed.* (*Heaton, Ag. C.J. and Marten, J.*). NARAYANDAS RAGHUNATHDAS *v.* SHANTI LAL BHALABHAI. **45 Bom. 377=A.I.R. 1921 Bom. 267.**

—Cl. 15—Refusal of certificate—Appeal.

———No appeal lies from the order of the single Judge refusing to make the declaration that the judgment is fit to be appealed against. The order making and refusing to make the declaration that the case is a fit one for appeal is in effect a part of the judgment on merits from which no appeal is provided by Cl. 15 of the Letters Patent. (*Murphy and Broomfield, JJ.*). BALU HARSHET SHETYE *v.* SHRI KRISHNA GOVIND KULKARNI. **32 Bom. L.R. 185=A.I.R. 1930 Bom. 224.**

—Cl. 15—Right of appeal.

———A right of appeal from one tribunal to another tribunal which is differently constituted stands on a different footing from the right to appeal from the judgment of a tribunal where only one Judge constitutes the tribunal to the same tribunal where two or more Judges constitute the same tribunal. The former creates not merely a remedial but a substantive right; the latter seems merely to regulate the procedure of the same tribunal. (*Fawcett and Mirza, JJ.*). BADRUDDIN *v.* SITARAM. **114 I.C. 241=52 Bom. 753=30 Bom. L.R. 942=A.I.R. 1928 Bom. 371.**

—Cl. 15—Scope of appeal.

———In a Letters Patent appeal, the appeal Court is not restricted to consider the point on which the Judges in the Court of appeal have differed. The whole decree lies open before the Judges hearing the Letters Patent appeal. (*Macleod, C.J., Kajiji and Kemp, JJ.*). VELJI BHIMSEY & CO. *v.* BACHOO BHAIDAS. **87 I.C. 199=48 Bom. 691=26 Bom. L. R. 349=A.I.R. 1925 Bom. 118.**

—Cl. 19—Jurisdiction.

———Per *Marten, C.J.*—Generally speaking the High Court has succeeded to the jurisdiction conferred upon its predecessor, the Supreme Court, by the Supreme Court Charter, 1823.

Though under Cl. 19 of the Letters Patent of 1865, the law and equity to be applied in each case coming before the High Court in the exercise of its Ordinary Original Civil Jurisdiction is the law or equity which would have been applied if the Letters Patent had not been issued, yet Cls. 11 and 12 govern the local limits of the Court's jurisdiction. In other words, the Court must first acquire jurisdiction under Cls. 11 and 12 before applying the law or equity applicable under Cl. 19. (*Marten, C.J., Fawcett, Kemp, Mirza, Blackwell, Patkar and Taleyarkhan, JJ.*). HALIM BHAI *v.* FRAMROZ. **104 I.C. 8=51 Bom. 516=29 Bom. L.R. 498=A.I.R. 1927 Bom. 278 (F.B.).**

—Cl. 35—Restitution of conjugal rights.

———*Bombay High Court has jurisdiction to entertain suit for restitution of conjugal rights by Christian lady against her Parsi husband.*

While enacting the Divorce Act the intention of the Legislature was to enact it in such a way as to remove the limitation contained in Cl. 35, Letters Patent. The Divorce Act intended it to be sufficient for one party to profess the Christian religion and did not require that both parties should do so. The Bombay High Court, has, therefore, jurisdiction to entertain a suit for restitution of conjugal rights instituted by a lady, who is a Russian and a Christian, against her husband who is a Parsi. 38 Bom. 125; 20 I.C. 492, *Overruled*; 6 M.I.A. 348 (P.C.), *Dist.*; *Chetty* v. *Chetty*, (1909) P. 67, *Rel. on. Other cases referred.* (*Marten, C.J., Mirza and Broomfield, JJ.*). NINA DALAL *v.* MERWANJI PHEROZSHAW DALAL. **32 Bom. L.R. 1046=A.I.R. 1930 Bom. 385 (F.B.).**

—Cl. 36—Difference of opinions.

———*Appeal from a single Judge's decision—Bench hearing it differing—Opinion of senior prevails.*

The natural place to find the rules governing the exercise of the appellate civil jurisdiction over the other Judges of the High Court would be the Letters Patent, while the natural place to find the rules governing the exercise of the appellate civil jurisdiction over the Civil Courts of the mofussil subject to the High Court would be the Civil Procedure Code. The Code makes no provision for an appeal within the High Court, that is to say, from a single Judge of the High Court. This right of appeal depends on Cl. 15 of the Charter. Appeals

LETTERS PATENT—(Bombay), (1865), Cl. 36—Scope.

under the Letters Patent are governed by the Letters Patent, and appeals under the Code are governed by the Code. Further the Code only deals with appeals from certain Courts and does not deal with appeals within the High Court from the decision of one Judge of the Court to another. Therefore when a Bench of two Judges is hearing an appeal from the decision of a single Judge of the same High Court whether on the original side or the appellate, and they differ in opinion, the opinion of the senior Judge would prevail. 26 All. 10; A.I.R. 1921 P.C. 6, *Ref.* (*Marten and Pratt, JJ.*). PANDEY DAGADU MAHAR *v.* JAMNADAS CHOTUMAL MARWADI. **76 I.C. 317=A.I.R. 1923 Bom. 218.**

—Cl. 36—Scope.

——Per *Das and Foster, JJ.*—There is no conflict between the Code and the Letters Patent. The special procedure indicated in the Letters Patent applies to Letters Patent appeals; the procedure indicated in S. 98 of the Code applies to appeals from Subordinate Courts. 43 Bom. 433, *Foll.* (*Dawson-Miller, C. J. on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **87 I.C. 849=38 I.C. 141=4 Pat. 510=6 P.L.T. 634=A.I.R. 1926 Pat. 625.**

——Clause 36 of the Letters Patent of Bombay is not controlled by S. 98 of the C. P. Code. (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. **60 I. C. 822=45 Bom. 718=48 I.A. 181=19 A. L. J. 409=23 Bom. L. R. 623=33 C. L. J. 488=25 C. W. N. 603=14 M. L. W. 7=1921 M. W. N. 408=A. I. R. 1921 P.C. 6=40 M.L.J. 519 (P.C.).**

—Cl. 39—"Final judgment"—Finality of judgment.

——*Order in Civil extraordinary application—No final disposal of rights—Order is not a final order or a final judgment.*

The substantial portion of the order which the applicants complained of in their petition for leave to appeal to His Majesty-in-Council was really passed on the Civil extraordinary application, but it did not finally dispose of the rights of the parties and the suit was left at practically the stage at which it was when filed.

Held, it cannot be said that this is a final order within the meaning S. 109 (*a*) or that it is a final judgment within the meaning of Cl. 39 of the Letters Patent. (*Shah and Crump, JJ.*). SHRINIWAS LAXMIPATIRAO *v.* HANMANT SHRINIWAS DESHPANDE. **79 I. C. 210=A.I.R. 1923 Bom. 39.**

—Cl. 39—"Final judgment"—Reference under Income-tax Act.

——The decision of the High Court on a reference from the Chief Revenue Authority under S. 51 of the Indian Income-tax Act (VII of 1918) is a judgment within the meaning of Cl. 39 of the Letters Patent. (*Macleod, C. J. and Shah, J.*). TATA IRON & STEEL CO. *v.* CHIEF REVENUE AUTHORITY, BOMBAY. **64 I. C. 931=23 Bom. L.R. 1102=A. I. R. 1921 Bom. 128.**

——Calcutta (1865).

—Cl. 10—Misconduct of pleader.

——Pleader accepting client's vakalatnama and papers but not filing the appeal—No specific agreement exempting him from liability in case of non-payment of fees—Pleader also not subsequently trying to file an application to get extension of time—Pleader's action amounts to not ordinary negligence but to grave professional misconduct.

LETTERS PATENT—(Calcutta), (1865), Cl. 12—'Dwelling or carrying on business.'

(*Rankin, C. J., C. C. Ghose and B. B. Ghose, JJ.*). *In the matter of* S., A VAKIL. **114 I. C. 490=A.I.R. 1928 Cal. 820 (F.B.).**

——*Clearest evidence of misconduct is necessary under the section.*

It is not very reprehensible conduct that necessarily amounts to that professional misconduct which entails the serious result of being struck off the roll of solicitors or suspended, or otherwise dealt with by the Court, and in respect of applications under S. 10 of the Letters Patent the Court cannot be too much careful in scrutinizing the materials upon which the jurisdiction of the Court is invoked. At all times it is a serious matter, and the machinery of the Court ought not to be set in motion, except upon the clearest evidence of professional misconduct. A Solicitor, *in re*, 1 Ir. R. 152, *Foll.* (*C. C. Ghose, J.*). *In the matter of* AN ATTORNEY. **91 I.C. 142=52 Cal. 795=A.I.R. 1926 Cal. 1084.**

—Cl. 12—Applicability.

——A suit for judicial separation was brought by the wife against her husband. The parties were members of the Jewish community and professed the Jewish religion. The wife took out summons for an order on the husband to pay to the wife a certain sum on account of and towards the costs of the suit.

Held, that neither Cl. 35, Letters Patent (Calcutta) nor the Divorce Act applied to the case, but the suit came within the ordinary original civil jurisdiction of the High Court under Cl. 12, Letters Patent, and the procedure as regards payment of costs was that laid down by C. P. Code, of which S. 35 did not give the Court power to direct the order prayed for. (*Panckridge, J.*). R. K. SAMUEL *v.* F. H. T. SAMUEL. **34 C.W.N. 319=A.I.R. 1930 Cal. 558.**

—Cl. 12—Construction.

——The construction of Cl. 12 upon which all the High Courts are agreed is that as regards suits for land the High Court can take cognizance if the land is situate wholly within the local limits or where the land is situate in part only within such limits if leave has been first obtained; and that as regards suits other than those for land the High Court has jurisdiction if the cause of action has arisen in part only within the limits if the leave of the Court shall have been first obtained or if the defendant dwells or carries on business or personally works for gain within these limits. (*Rankin, C. J. and Buckland, J.*). MANINDRA CHANDRA *v.* LALMOHUN ROY. **120 I.C. 577=49 C.L.J. 212=56 Cal. 940=A.I.R. 1929 Cal. 358.**

—Cl. 12—Damages for conversion of land.

——In a suit for damages for conversion of land it is open to the plaintiffs to proceed against any one or more of the joint tort-feasors as they may elect. Therefore a suit started against one of the tort-feasors, who resides in Calcutta, can be properly maintained in Calcutta High Court. 13 B.L.R. 91, *Dist.* (*C.C. Ghose and Buckland, JJ.*). GOKULDAS *v.* CHHAGAN LAL. **116 I. C. 727=32 C.W.N. 208=A.I.R. 1928 Cal. 887.**

—Cl. 12—'Dwelling or carrying on business.'

——The dwelling or carrying on business must be of all the defendants. The expression is used not as indicating an individual defendant in a suit, but the party defendants to the suit, which may be one person or several. 13 B.L.R. 91, *Foll.* (*Page, J.*). GOKUL DAS *v.* CHHAGAN LAL. **104 I.C. 721=54 Cal. 655=A.I.R. 1927 Cal. 766.**

LETTERS PATENT—(Calcutta), (1865), Cl. 12—Jurisdiction before 1908.

—Cl. 12—Jurisdiction before 1908.

——The jurisdiction of the High Court as it stood in 1908 when the Civil Procedure Code was republished depended upon S. 9, High Courts Act of 1861. It was to have such power and authority as Her Majesty may by Letters Patent grant and direct. (*Rankin, C.J. and Buckland, J.*). MANINDRA CHANDRA *v.* LALMOHUN. **120 I.C. 577=49 C.L.J. 212=56 Cal. 940=A.I.R. 1929 Cal. 358.**

—Cl. 12—Jurisdiction, extent of.

——*High Court has jurisdiction to pass a decree* in personam *regarding property outside its jurisdiction—But Court will not pass a decree unless it is enforceable effectively by personal obedience.*

Both in India and in England the High Courts, for the purpose of doing equity, possess jurisdiction to pass decrees *in personam* which may affect immovable property situate beyond the jurisdiction of the Court. But while this jurisdiction in equity is to be exercised at the discretion of the Court, the Court will act in compliance with limitations upon its discretion which have long been established. Moreover, the Court will not pass a decree *in personam* which indirectly affects foreign land unless the decree can effectively be enforced by the personal obedience of the defendant within the jurisdiction. It will not pass a decree that will operate in the Courts *loci situs* merely as a *brutum fulmen* (law which is not respected or obeyed.) (*Page, J.*). GOKUL DAS *v.* CHAGAN LAL. **104 I. C. 721=54 Cal. 655=A.I.R. 1927 Cal. 768.**

—Cl. 12—Objection to jurisdiction.

——No leave obtained as to property out of jurisdiction—Objection as to jurisdiction can be taken for first time at appellate stage—High Court has no jurisdiction as to such property. (*Rankin, C.J. and Buckland, J.*). MANINDRA CHANDRA *v.* LALMOHUN ROY. **120 I.C. 577=56 Cal. 940=49 C.L.J. 212=A.I.R. 1929 Cal. 358.**

—Cl. 12—Scope.

——Although the legislature had power in 1908 to override the Letters Patent the legislature has not by introducing S. 21, C. P. Code, overridden the provisions of Cl. 12. (*Rankin, C.J. and Buckland, J.*). MANINDRA CHANDRA *v.* LALMOHUN ROY. **120 I. C. 577=49 C. L.J. 212=56 Cal. 940=A.I.R. 1929 Cal. 358.**

—Cl. 12—"Suit for land."

——A suit by trustees under a composition deed regarding certain properties within the original jurisdiction of Calcutta High Court does not cease to be a suit for land merely because the properties have been entirely swept away by prior encumbrancers. (*Rankin, C.J. and Buckland, J.*). MANINDRA CHANDRA *v.* LALMOHUN ROY. **120 I.C. 577=56 Cal. 940=49 C.L.J. 212=A.I.R. 1929 Cal. 358.**

——A suit for declaring a person as secured creditor of land in a suit for land and if the land in question is outside the local limits of the ordinary original jurisdiction of the High Court, the High Court in the exercise of its ordinary original jurisdiction cannot try the suit. 19 Cal. 361, *Not foll. But see* A.I.R. 1927 Bom. 278 (F. B.). (*Lort-Williams, J.*). J. C. GALSTAUN *v.* DIANA SARKIES. **117 I.C. 854=33 C.W.N. 44=56 Cal. 224= A. I. R. 1929 Cal. 227.**

—Cl. 12—"Suit for land"—Administration of trust.

——If a suit is brought for the administration of a trust which *inter alia* relates to immovable property situate outside the jurisdiction of the High Court, and the only relief sought is that the trustee should be ordered duly to carry out the trust, the suit is not a suit for land. But if the relief claimed is not confined to an order for the enforcement of the trust, and the applicant claims, *e.g.*, a declaration of his right to the possession of trust properties situate outside the jurisdiction, then the suit would be a suit for land, and the Court would have no jurisdiction to entertain it. (*Page, J.*). GOKUL DAS *v.* CHAGAN LAL. **104 I.C. 721=54 Cal. 655=A.I.R. 1927 Cal. 768.**

—Cl. 12—"Suit for land"—Mortgage.

——The practice of the Calcutta High Court for more than half a century has been to regard suits for the enforcement of equitable mortgage of property situate outside the jurisdiction as suits for land. A.I.R. 1927 Bom. 278 (F.B.), *Not foll.* (*C.C. Ghose and Buckland, JJ.*). SATYABARATI SEN *v.* GOPAL DAS. **120 I.C. 720=49 C.L.J. 235=A.I.R. 1929 Cal. 373.**

——Mortgagee's interest is an interest in land. (*Lort-Williams, J.*). J.C. GALSTAUN *v.* DIANA SARKIES. **117 I.C 854=33 C.W.N. 44=56 Cal. 224=A.I.R. 1929 Cal. 227.**

—Cl. 12—"Suit for land"—Originating summons.

——The expression "suit for land and other immovable property" in Cl. 12 means suits in which having regard to the issue raised in the pleadings the decree or order will effect directly the proprietary or possessory title to land or other immovable property.

Where the substantial objects for which the originating summons is taken out are claims *inter alia* that plaintiff is entitled to whole of residuary estate of the testator and that certain dedications of properties made debutter under a will is void and construction of a will is sought merely in furtherance thereof, the proceeding is "a suit for land," for if the Court determines these issues the orders made thereon will necessarily affect title to immovable property situate outside jurisdiction. 29 Bom. 249 and A.I.R. 1927 Cal. 768, *Ref.* (*Page, J.*). PROVAS CHANDRA *v.* ASHUTOSH MUKERJI. **122 I. C. 197=56 Cal. 979=A.I.R. 1930 Cal. 258.**

—Cl. 12—"Suit for land"—Share in sale proceeds of house.

——*"Suit for land" means a suit in which having regard to issues the decree will affect directly title to immovable property—Suit claiming share in sale proceeds of ancestral dwelling house is not a suit for land.*

The term "suits for land or other immovable property" is not limited to suits in which the plaintiff seeks to recover possession of land or other immovable property, but means suits in which, having regard to the issues raised in the pleadings, the decree or order will affect directly the proprietary or possessory title to land or other immovable property.

Where the claim is to a share of the proceeds resulting from the sale of an ancestral dwelling house outside the High Court's jurisdiction, the suit is not "a suit for land or other immovable property" within Cl. 12. A.I.R. 1926 Bom. 1 (F B.), *Ref. But see* A.I.R. 1927 Bom. 278 (F.B.), *overruling* 50 Bom. 1. (*Page, J.*). GOKAL DAS *v.* CHAGAN LAL. **104 I. C. 721=54 Cal. 655=A. I. R. 1927 Cal. 768.**

—Cl. 12—"Suit for land"—Specific performance.

——A suit for specific performance of an agreement to mortgage lands outside the jurisdiction,

LETTERS PATENT—(Calcutta), (1865), Cl. 12—"Suit for land"—Specific performance and damages.

even if the title is accepted, is a suit for land within the meaning of Cl. 12 of the Charter. (*Greaves, J.*). RATANCHAND DHARAMCHAND *v.* GOBIND LAL DUTT. **66 I.C. 484=48 Cal. 882=A.I.R. 1922 Cal. 328.**

—Cl. 12—"Suit for land"—Specific performance and damages.

———A suit for specific performance of an agreement made in Calcutta to sell a tea estate in Assam and for damages, the agreed price under which had also to be paid in Calcutta, is not a suit for land within the meaning of Cl. 12 of the Letters Patent and the High Court has jurisdiction to entertain the suit, having regard to the fact that the agreement which it was sought to enforce was made in Calcutta. (*Sanderson, C. J. and Richardson, J.*). NAGENDRA NATH CHOWDHURY *v.* ERALIGOOL COMPANY, LTD. **70 I.C. 92=49 Cal. 670=27 C.W.N. 65=A.I.R. 1922 Cal. 443.**

—Cl. 12—'Suit'—Meaning of.

———*Proceeding commenced by taking out originating summons is suit.*

A proceeding which is commenced by taking out an originating summons supported by an affidavit is a suit within the meaning of that term in Cl. 12. The term "suit" in Cl. 12 is not to be construed in a restricted sense. An originating summons is therefore to be deemed a suit. If the law were otherwise, a ready method would lie at hand for evading the limits set to the jurisdiction of the Court under Cl. 12. 22 Mad. 256; 29 Bom. 249; A.I.R. 1927 Cal. 281; A.I.R. 1929 Cal. 227 and *In re Fawsitt*, 30 Ch. D. 231, *Rel. on.* (*Page, J.*). PROVAS CHANDRA *v.* ASHUTOSH MUKHERJI. **122 I.C. 197=56 Cal. 979=A.I.R. 1930 Cal. 258.**

—Cl. 13—Appeal.

———The judgment of a Judge on the Original Side transferring probate proceedings to the High Court under Cl. (13) is not appealable. 47 Cal. 1104, *Rel. on.* (*Sanderson, C.J. and Panton, J.*). PRAN KUMAR *v.* DARPOHARI PAL. **100 I.C. 797=54 Cal. 126=31 C. W. N. 254=A.I.R. 1927 Cal. 281.**

———An order of a single Judge transferring a suit from the Small Cause Court to the High Court for trial is not a judgment within Cl. 15, and hence no appeal lies from the order. (*Mookerjee, Ag. C.J. and Fletcher, J.*). KHATIZAN *v.* SONAIRAM DAULATRAM. **60 I.C. 963=47 Cal. 1104.**

—Cl. 13—"For purposes of justice."

———*Balance of convenience must be considered.*

The question of a transfer of a suit from a Sub-Judge's Court to High Court "for purposes of justice" within the meaning of Cl. 13, Letters Patent, is to be determined by reference to the circumstances of each case, and the balance of convenience, having regard to those circumstances, is one of the matters for consideration. (*Pearson, J.*). BROJO GOPAL NAIK *v.* LAKSHMONI DASSI.

105 I.C. 184=54 Cal. 607=A.I.R. 1927 Cal. 791.

—Cl. 13—'Suit'—Meaning of.

———Proceedings for the grant of probate which are contested come within the meaning of the word "Suit" within Cl. (13). *In the goods of Colonel John Shelton, deceased*, (1846) Montrion's Rep. 167, *Rel. on.* (*Sanderson, C.J. and Panton, J.*). PRAN KUMAR *v.* DARPOHARI PAL. **100 I.C. 797=54 Cal. 126=31 C.W.N. 254=A.I.R. 1927 Cal. 281.**

—Cl. 15—Amendment, applicability of.

———The date of presentation of the second appeal to the High Court is not the date which determines the applicability of the amended Cl. 15, requiring permission of the deciding Judge, for further appeal, but the date of institution of the suit is, in each case, the determining factor. *Colonial Sugar Refining Co.* v. *Irving*, (1905) A. C. 369, *Foll.*; A. I. R. 1927 P. C. 242; 32 Bom. 337; 3 Bom. 214; 16 Cal. 267; 3 Cal. 662 and 3 B. H. C. R. 166; *Disc.* (*Rankin, C. J., C. C. Ghose, Suhrawardy, B.B. Ghose and Page, JJ.*). SADAR ALI *v.* DOLILUDDIN OSTAGUR. **113 I.C. 49=48 C.L.J. 150=56 Cal. 512=32 C. W. N. 1130=A.I.R. 1928 Cal. 640 (F.B.).**

LETTERS PATENT—(Calcutta), (1865), Cl. 15—Certificate.

—Cl. 15—Appeal—Difference of opinion in Divisional Bench.

———Where appeal was heard by a Divisional Bench and there was a difference of opinion, the Senior Judge holding that the appeal should be dismissed while the other was in favour of allowing the appeal in part, and they held that as there was a difference of opinion and there was no majority varying or reversing the decree appealed from, the appeal should be dismissed,

Held, that against this decision an appeal under Cl. 15 of the Letters Patent was clearly competent. (*Newbould, B.B. Ghose and Page, JJ.*). SURESH CHANDRA MUKERJI *v.* SHITI KANTA BANERJEE. **78 I.C. 679=51 Cal. 669=28 C.W.N. 637=A.I.R. 1924 Cal. 855 (F.B.).**

—Cl. 15—Appeal—Insolvency proceedings.

———An appeal lies from an order by the High Court refusing to set aside an order for the examination of witness passed by the Registrar in insolvency under S. 36 (1). (*Sanderson, C.J. and Richardson, J.*). SUKHLAL KARNANI BAHADUR *v.* OFFICIAL ASSIGNEE, CALCUTTA. **66 I.C. 715=48 Cal. 1089=25 C.W.N. 750=A.I.R. 1921 Cal. 53.**

—Cl. 15—Appeal—Orders under Companies Act.

———*Order under S. 215, Companies Act, depriving creditor of all rights to take advantage of winding up proceedings is appealable.*

An order depriving a creditor, who has a claim which he has long ago put in the form of a proof of debt against a company, and which the liquidators are willing to admit, of the benefit of the company's winding-up proceedings, is an order which deprives him, of a substantial and important right, and it cannot be held that such an order is not appealable by reason that it is not a judgment under Cl. 15 of the Letters Patent. (*Rankin, C.J. and Mukerji, J.*). LEVY BROTHERS AND KNOWLES, LTD. *v.* SUBODH KUMAR. **103 I.C. 659=31 C.W.N. 894=A.I.R. 1927 Cal. 689.**

—Cl. 15—Certificate.

———A second appeal came up for hearing before two Judges of the High Court on 9th February, 1928. The Judges differed in their opinion and the case was disposed of under S. 98 (2) instead of being referred to in pursuance of the proviso to S. 98, C. P. Code. The amendment to Cl. 15, Letters Patent, came into force on 14th January, 1928. Application for certificate under the amended clause was refused. An appeal having been preferred against this order,

Held, that certificate is a condition attached by the amending Letters Patent only to the case of a judgment of a single Judge and the right of appeal given in the case of a difference of opinion where the Judges are equally divided is dealt with in the amended Letters Patent by being deleted altogether. No appeal therefore lay from the refusal to grant such a certificate. (*Rankin, C. J., C. C. Ghose,*

LETTERS PATENT—(Calcutta)—(1865), Cl. 15—Judgment—Refusal to discharge receiver.

Suhrawardy, B. B. Ghose and Page, JJ.). RAM CHARAN *v.* HAMID ALI. **114 I.C. 493=56 Cal. 507=32 C.W.N. 1153=A.I.R. 1928 Cal. 819 (F.B.).**

—Cl. 15—Judgment—Refusal to discharge receiver.

——Where a Receiver was appointed in a partition suit on the footing of intestacy,

Held, that an order refusing to discharge the Receiver is appealable under the Letters Patent. (*Rankin, C.J. and C.C. Ghose, J.*). BAIDYANATH SEIN *v.* RAJENDRANATH SEIN. **52 C. L. J. 66.**

—Cl. 15—'Judgment', what is.

——The right of the appeal to the High Court depends upon Cl. 15 and whether or not the decision of the learned Judge appealed from is a judgment, depends upon whether or not so far as he is concerned he finally decided the rights of the parties as regards the question on which the appeal is based. (*Rankin, C.J. and C.C. Ghose, J.*). (MAHANT) MURLIDAS *v.* BAIJNATH DAS-RAMNATH DAS. **57 Cal. 736=A.I.R. 1930 Cal. 623.**

——*Order admitting appeal filed after limitation.*

The mere circumstance that an order puts in peril the finality of a decision given in a person's favour does not of itself make that order a judgment within the meaning of Cl. 15, Letters Patent. A decision under S. 5, Limitation Act, admitting an appeal after the period of limitation prescribed merely declares that an appeal is entertainable. It is not a "judgment" and no appeal lies against it under Cl. 15. 33 Cal. 1323; 43 Cal. 857; A. I. R. 1924 Bom. 399; A. I. R. 1922 Cal. 407; 9 Cal. 482 (P. C.) and A. I. R. 1917 P. C. 179, *Ref.* (*Rankin, C.J., Suhrawardy and Graham, JJ.*). BROJO GOPAL *v.* AMARCHANDRA.

114 I.C. 88=32 C.W.N. 935=56 Cal. 135=A.I.R. 1929 Cal. 214 (F.B.).

——An order under S. 195, Companies Act, made by a Court directing the directors of a company to appear before the Court for examination as to their dealings in respect of the affairs of a company is not a judgment within the meaning of Cl. 15, Letters Patent (Calcutta) and therefore is not appealable. (*C. C. Ghose and Buckland, JJ.*). MADAN GOPAL DAGA *v.* SACHINDRA NATH SEN.

109 I. C. 764=55 Cal. 262=A.I.R. 1928 Cal. 295.

——Order giving unconditional leave to defend on a summons under Chap. 13-A of the Original Side Rules is not a judgment within the meaning of Cl. 15 of the Letters Patent. For deciding whether an order is a judgment or not, each case must be decided on its own facts and the nature of the order. (*Sanderson, C. J. and Rankin, J.*). MEGHJEE MANSING *v.* KALOORAM LACHMINARAIN. **96 I.C. 182=53 Cal. 776=30 C.W.N. 706=A.I.R. 1926 Cal. 842.**

——An order setting aside *ex parte* decree and the execution proceedings consequent thereon, on the ground that summons was not duly served, is not a "judgment" within Cl. 15 and is not, therefore, appealable. (*Sanderson, C.J. and Buckland, J.*). BALDEO DAS *v.* SHUBCHURN DAS. **91 I.C. 965=30 C. W. N. 104=A.I.R. 1926 Cal. 327.**

——Where the order was that upon security for a certain amount being given within a certain time, the defendants should have leave to defend, but that in default of the defendants giving security within the time aforesaid, a decree was to be drawn up.

LETTERS PATENT—(Calcutta), (1865), Cl. 15—Scope of appeal.

Held, that it was a judgment within Cl. 15. (*Sanderson, C.J. and Buckland, J.*). CHATTU LAL *v.* MARWARI COMMERCIAL BANK, LTD. **96 I. C. 839=30 C. W. N. 298=A. I. R. 1926 Cal. 668.**

——The judgment given upon a case stated by the Commissioner of Income-tax under S. 66 (2) of the Income-tax Act, 1922 is merely advisory, made by the Court in the exercise of its consultative jurisdiction, and is not a judgment within the meaning of Cl. 15 of the Letters Patent. (*Chatterjea, Greaves and Panton, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **87 I.C. 653=29 C. W. N. 398=52 Cal. 546=A. I. R. 1925 Cal. 598 (F.B.).**

——An order dismissing a suit for want of prosecution under R. 36, Chapter X of the High Court Original Side Rules is a "judgment" within the meaning of Cl. 15 of the Letters Patent and is appealable. (*Sanderson, C.J. and Walmsley, J.*). UDOYCHAND PANNA LAL *v.* KHETSIDAS TILOKCHAND. **81 I.C. 1048=51 Cal. 905=28 C.W.N. 916=A.I.R. 1924 Cal. 1025.**

——No appeal lies from an order made under O. 9, R. 9 restoring a suit, the order not being a judgment under Cl. 15 of the Letters Patent. (*Sanderson, C.J. and Richardson, J.*). MAHARAJ KISHORE KHAUNA *v.* KIRAN SHASHI DASI.

69 I. C. 820=49 Cal. 616=A.I.R. 1922 Cal. 407.

——A decision which sets aside an abatement is a "judgment" within the meaning of Cl. 15 of the Letters Patent, and is therefore appealable. (*Sanderson, C.J. and Richardson, J.*). SARAT CHANDRA SARKAR *v.* MAIHAR STONE AND LIME CO., LTD.

67 I. C. 917=49 Cal. 62=A.I.R. 1922 Cal. 335.

——*Suit on behalf of a lunatic—Application to take plaint off the file—Dismissal—Order of, is not a 'judgment.'*

Where in a suit instituted on behalf of a lunatic defendant applied for plaint being taken off the file or for an inquiry whether it was properly instituted and whether it was for the benefit of the lunatic and the trial Judge dismissed the application on the ground that on evidence before him that can be given upon a mere interlocutory application, he was not prepared to hold that the suit was *mala fide* or entirely unsubstantial so that there would be an abuse of the process of Court and the defendant appealed under Cl. 15 of the Letters Patent,

Held, that the order dismissing the application was not a judgment within the meaning of Cl. 15, Letters Patent, as it does not determine right or of the liability affecting the merits of the controversy between the parties. 8 Bom. L.R. 433, *Referred to*; 47 Cal. 611 and 23 C. W. N. 1017, *Dist.*; *Porter* v. *Porter*, (1888) 37 Ch. D. 420, *Ref. to.* (*Sanderson, C.J. and Richardson, J.*). GOUR MOHAN MULLICK *v.* MOYAN MANJURI DASSI.

69 I.C. 915=26 C.W.N. 242=A.I.R. 1922 Cal. 172.

—Cl. 15—Orders in revision.

——The orders which are made non-appealable are all orders made in the exercise of revisional jurisdiction and an appeal cannot be maintained to test whether an order which purports to have been made in the exercise of revisional jurisdiction was or was not made without jurisdiction. 9 Cal. 482 (P.C.), *Dist.* (*Mookerjee and Panton, JJ.*). BYOMKEO SETH *v.* BHUT NATH. **64 I.C. 689=34 C.L.J. 489=A.I.R. 1921 Cal. 217.**

—Cl. 15—Scope of appeal.

——In an appeal under Cl. 15, the Court is not required to confine itself to facts and circumstances

LETTERS PATENT—(Calcutta) (1885)—Cl. 15—Scope of appeal.

as disclosed by the judgment appealed against under Letters Patent but is entitled to look into the judgment of the lower Appellate Court. A.I.R. 1921 P. C. 80, *Ref.* (*Rankin, C.J. and Mukerji, J.*). JOGESH CHANDRA ROY *v.* SASI KUMAR.

34 C.W.N. 97=A.I.R. 1930 Cal. 321.

——A Bench constituted to hear an appeal under S. 15, Cl. (3) of the Letters Patent is not competent to consider the question as to whether the decision of the Division Bench upon a matter upon which both the Judges were agreed is or is not right. (*Chatterjea, Greaves and Panton, JJ.*). PROBHAT CHANDRA BARUA *v.* EMPEROR. **87 I.C. 653=29 C.W.N. 398=52 Cal. 546=A.I.R. 1925 Cal. 598 (F.B.).**

—Cl. 17—Scope of jurisdiction.

——*Original Side of High Court has jurisdiction to appoint guardian of person and property of minor.*

There is no restriction in the powers granted to either the Supreme Court or the High Court which limits the exercise of guardianship jurisdiction to the town or to European British subjects and even if any such limitation exists, it does not apply where person who is outside the limits of ordinary original jurisdiction or who is not a European British subject desires to avail himself of the jurisdiction of the Court and there is no opposition thereto. 2 Cal. 357; 21 Bom. 137 and 2 N. W. P. H. C. R. 79, *Ref.* and 21 Cal. 206, *Dist.* (*Lort-Williams, J.*). TARUNCHANDRA GHOSH, *In re.*

57 Cal. 533=A.I.R. 1930 Cal. 598.

—Cl. 25—Procedure.

——The initial step is for the trial Judge to reserve a point of law or for the Advocate-General to grant a certificate. The successive stages of the process which follows inevitably may be enumerated :—

(i) The Court reviews the entire case or such part of it as may be necessary.

(ii) The Court finally determines the point or points of law reserved or certified.

(iii) The Court thereupon alters the sentence passed by the Trial Court.

(iv) The Court passes such judgment and sentence as shall seem right to the Court.

The term " thereupon " must be construed with reference to the context ; and it may, with good reason, be interpreted as equivalent to "upon final determination of the point of law reserved or certified in favour of the prisoner." It is not necessary that the contention of the prisoner should succeed in its entirety ; if the opinion of the trial Judge on the point reserved or certified, which forms an ingredient of the reasons for conviction and sentence, is not supported, the conviction cannot be sustained, and it then becomes open to the Court to alter the sentences passed by the trial Judge.(*Mookerjee, Richardson, C.C. Ghose, Cuming and Page, JJ.*). EMPEROR *v.* BARENDRA KUMAR GHOSE. **81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Cr.L.J. 817=A.I.R. 1924 Cal. 257 (F.B.).**

—Cl. 26—Joint trial.

——Where a Judge in his discretion under S. 239, Cr. P. C. desires to try a number of accused jointly it is not a matter for interference on a certificate of the Advocate-General under Cl. 26 of the Letters Patent. A defective summing up to the jury unless it causes a failure of justice is no ground for reversing a conviction. (*Maclean, C.J., Prinsep, Hill, Harrington and Brett, JJ.*). EMPEROR *v.* CHARU CHANDER MUKERJEE. **76 I.C. 966=25 Cr. L.J. 294=38 C.L.J. 309 (F.B.).**

—Cl. 26—Powers under S. 537, Cr. P. Code.

——Per *Rankin, J.*—Section 537 is applicable under Cl. 26 of the Letters Patent. (*Walmsley, Rankin, Cuming, B.B. Ghose and Chakravarti, JJ.*). EMPEROR *v.* COLIN MACKENZIE MACKAY.

93 I. C. 33=53 Cal. 350=43 C.L. J. 310=30 C.W.N. 276=27 Cr. L.J. 385=A.I.R. 1926 Cal. 470 (F.B.).

—Cl. 26—Procedure.

——*Advocate-General must hear both sides—Allegation by parties must be verified.*

Per *Mookerjee and Richardson, JJ.*—It is clear, on the language of Cl. 26, that the Letters Patent requires that the certificate should reflect the judgment of the Advocate-General and is presumably granted in the interest of justice after careful consideration of all available materials. If that judgment is founded on incomplete materials or inaccurate allegations, its weight is obviously diminished in a corresponding degree. In a case where the error ascribed to the Judge depends on the evidence adduced at the trial, it is plainly desirable that the notes of the evidence, as recorded by the Judge, should be laid before the Advocate-General when he was asked to grant the certificate. The requisite materials can always be obtained on application to the Judge. The Advocate-General must hear not merely Counsel for the prisoner, but also Counsel for the Crown before he grants the certificate. The allegations embodied in the petition to the Advocate-General should be verified by Counsel present at the trial or by other responsible person. (*Mookerji, Richardson, C. C. Ghose, Cuming and Page, JJ.*). EMPEROR *v.* BARENDRA KUMAR GHOSE. **81 I.C. 353=28 C.W.N. 170=38 C.L.J. 411=25 Cr. L.J. 817=A.I.R. 1924 Cal. 257 (F.B.).**

—Cl. 26—Verdict of jury.

——Per *Rankin, C. J.*—The verdict of the jury cannot be allowed to stand unless the High Court in review under Cl. 26 be of opinion that the same verdict would have been arrived at, had they been correctly and sufficiently directed. It is not open to direct retrial in such a case. 47 Cal. 671 (F. B.), *Rel. on.*

Per *C. C. Ghose, J.*—The word "thereupon" means that the determination of the point or points of law reserved or certified must be in favour of the prisoner before the Court can interfere with the conviction and sentence. If it be found that the opinion of the trial Judge on the point or points reserved or certified cannot be supported it is not open to the High Court to direct a retrial. No doubt the High Court has power under Cl. 26 to examine evidence and determine for itself whether after the exclusion of the evidence or matter which may be considered inadmissible, the residue and the record are sufficient to justify the conviction. The Court will not substitute its own finding for the verdict of the jury. It must consider whether the evidence on record improperly admitted was of such a nature that it possibly may have considerably influenced the minds of the jury and whether it was reasonably certain that the jury would, not might, have acted on the unobjectionable evidence if the wrongly admitted evidence or matter had not also been presented to them. Section 537, Cr. P. Code, has no application to a case under Cl. 26.

LETTERS PATENT—(Calcutta), (1865), Cl. 28—Scope.

44 Cal. 477 (F. B.), *Appr.*; A. I. R. 1926 Cal. 470 (F. B.), *Not appr.*

Per *Jack, J.*—The Court can, on review, examine evidence for itself and determine without reference to the probable verdict of the jury, whether, excluding inadmissible evidence, the residue is sufficiently justifiable for the conclusion. If the Court is convinced on the evidence that the accused is guilty, he should not be acquitted merely on account of a defective charge. The unanimous verdict of the jurors should not be set aside on the mere speculation that certain allegations might have influenced them to some extent when it is clear that the verdict is entirely justifiable by the evidence. Section 167, Evidence Act, is imperative and applies even to the decision of the High Court when exercising its powers under Cl. 26. (*Rankin, C. J., C. C. Ghose, Suhrawardy, Mukerji and Jack, JJ.*). PADAM PRASAD *v.* EMPEROR.

119 I.C. 193=50 C.L.J. 106=33 C. W. N. 1121=30 Cr.L.J. 993=1929 Cr. C. 228=A.I.R. 1929 Cal. 617 (S.B.).

—Cl. 28—Scope.

——Clause 28 is limited to such officers and Courts as were subject to reference or revision by the High Court at the time of the grant. The Secretary to the Local Government of Bengal acting under Bengal Act I of 1923 in the Goondas Act even on the assumption of his being a Criminal Court does not come under Cl. 28. (*Greaves and Panton, JJ.*). BHIMRAJ BANIA *v.* EMPEROR.

83 I.C. 500=51 Cal. 460=26 Cr. L.J. 20=A.I.R. 1924 Cal. 698.

—Cl. 30—Law applicable.

——*Criminal prosecution for damages—Statement in course of judicial proceeding by party thereto—No absolute privilege applies—Same rule applies even under Letters Patent.*

If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of S. 499, I.P.C. Under the Letters Patent the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise; the Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in S. 499, I.P.C.

If a party to a judicial proceeding is sued in a Civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, his liability, in the absence of statutory rules applicable to the subject, must be determined with reference to principles of justice, equity and good conscience. There is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England. A small minority favours the view that the principles of justice, equity and good conscience should be identical with the rules embodied in the Indian Penal Code. (*Case-law fully discussed.*) (*Mookerjee, Ag.C.J., Fletcher, Richardson, Walmsley and Buckland, JJ.*). SATISH CHANDRA CHAKRAVARTI *v.* RAM DAYAL DE. **59 I.C. 143=48 Cal. 388=22 Cr. L.J. 31=A. I. R. 1921 Cal. 1 (S.B.).**

——*Offence under Penal Code—High Court must apply Penal Code only.*

LETTERS PATENT—(Calcutta), (1865), Cl. 41—Appeal to Privy Council.

——Clause 30 of the Letters Patent which is now in force makes the argument entirely untenable that the High Court is not to administer criminal law as contained in the Indian Penal Code but is to engraft thereon the rules of the Common Law of England. It is indisputable that all persons brought before the High Court for trial in the exercise of its original criminal jurisdiction or in the exercise of its jurisdiction as a Court of Criminal Appeal, Reference or Revision, if charged with an offence under the Indian Penal Code, shall be liable to punishment under that Code and not otherwise. (*Mookerjee, Ag.C.J., Fletcher, Richardson, Walmsley and Buckland, JJ.*). SATISH CHANDRA *v.* RAM DAYAL. **59 I.C.143=48 Cal. 388=22 Cr.L.J. 31=A. I. R. 1921 Cal. 1 (S.B.).**

—Cl. 34—Jurisdiction under Succession Act.

——Court exercising jurisdiction under S. 302 acts in pursuance of testamentary and intestate jurisdiction with which it is vested under Cl. 34, Letters Patent and not of its ordinary original jurisdiction. The Court is moreover not competent on an application under S. 302 to determine any disputed question of title, the jurisdiction of the Court under that section being confined to the issue of directions to the executor relating to management of estate. 12 Bom. 638, *Rel. on.* (*Page, J.*). PROVAS CHANDRA *v.* ASHUTOSH MUKHERJI. **122 I.C. 197=56 Cal. 979=A.I.R. 1930 Cal. 258.**

—Cl. 35—Scope.

——Suit for judicial separation—Parties professing Jewish religion—Wife praying for order on her husband to pay her costs.

Held, that neither Cl. 35, Letters Patent (Calcutta) nor the Divorce Act applied to the case, but the suit came within the ordinary original civil jurisdiction of the High Court under Cl. 12, Letters Patent, and the procedure as regards payment of costs was that laid down by C. P. Code, of which S. 35 did not give the Court power to direct the order prayed for. (*Panckridge, J.*). R. K. SAMUEL *v.* F. H. T. SAMUEL. **34 C.W.N. 319=A.I.R. 1930 Cal. 558.**

—Cl. 36—Difference of opinion in Bench.

——In appeal from subordinate Courts a difference of opinion between two Judges forming a Division Bench is regulated by the provisions of S. 98, C. P. Code, and not by Letters Patent, Cl. 36. A.I.R. 1925 Cal. 845, *Affirmed*; 45 Bom. 718, *Explained.* (*Walmsley and Page, JJ.*). PRAFULLA KAMINI ROY *v.* BHABANI NATH ROY.

91 I.C. 897=52 Cal. 1018=A.I.R. 1926 Cal. 121.

—Cl. 36—Scope.

——Per *Suhrawardy, J.* (*Walmsley, J.*, contra).—To the extent to which S. 98, C.P. Code is inconsistent with Cl. 36 of the Letters Patent the former has, by virtue of the power conferred on the Indian Legislature by Cl. 44 of the Letters Patent superseded or modified the latter. (*Walmsley, Newbould, C. C. Ghose, Suhrawardy and B. B. Ghose, JJ.*). BECHARAM CHOUDHURI *v.* PURNA CHANDRA CHATTERJI. **88 I.C. 637=52 Cal. 894=41 C.L.J. 456=29 C.W.N. 755=A.I.R. 1925 Cal. 845 (F.B.).**

—Cl. 41—Appeal to Privy Council.

——Whether appeal lies to Privy Council from order on certificate by the Advocate-General was not decided as the Privy Council dismissed the.

LETTERS PATENT—(Calcutta), (1865), Cl. 41—Appeal to Privy Council.

appeal on merits. 25 Mad. 61, *Expl.* (*Lord Sumner.*) BARENDRA *v.* EMPEROR. 85 I. C. 47= 29 C.W.N. 181=1925 M.W.N. 26= 3 Pat. L. R. Cr. 1=6 L. R. P.C. Cr. 1= 27 Bom. L. R. 148=6 Pat. L. T. 169= 52 I. A. 40=52 Cal. 197=23 A.L.J. 314= 41 C.L.J. 240=26 Cr.L.J. 431=26 P.L.R. 50= A.I.R. 1925 P. C. 1=48 M.L.J. 543 (P.C.).

——In a criminal case the Court's only power to grant leave to appeal to the Privy Council is under Cl. 41. There is no help if any case does not come under its strict application. 18 C. L. J. 119; 35 Cal. 243; 18 C.L.J. 121 and 7 Bom. H. C. R. 77, *Foll.* (*Mookerjee and Chatterjea, JJ.*). PHILLIP E. BILLINGHURST *v.* EMPEROR. 82 I. C. 763= 38 C. L. J. 406=25 Cr. L.J. 1371= A. I. R. 1924 Cal. 338.

—Cl. 41—Bail.

——High Court has jurisdiction to grant bail, especially when the High Court has declared the case to be a fit one for appeal, or when the Privy Council has granted special leave. (*Sanderson, C.J. and Richardson, J.*). TULSI TELINI *v.* EMPEROR. 72 I. C. 362=24 Cr. L. J. 362= 50 Cal. 585=A.I.R. 1924 Cal. 64.

——Lahore (1919).

—Appeal—New point.

——An appellant is not entitled in an appeal under the Letters Patent to be heard on a point which had not been raised before the Judge from whose judgment he prefers the appeal.

A plaintiff, therefore, who distinctly states in the plaint and admits before the single Judge that his suit is governed by the Punjab Limitation (Custom) Act cannot be allowed to contend in a Letters Patent Appeal that it is not so governed. (*Shadi Lal, C.J. and Broadway, J.*). TEJA SINGH *v.* GURCHARAN SINGH. 31 P.L.R. 282= A. I. R. 1930 Lah. 632.

—Original criminal jurisdiction.

——According to the Letters Patent the Original criminal jurisdiction of the Lahore High Court is co-extensive with that of the Chief Court of the Punjab, which had no original criminal jurisdiction to try any person except the European British subjects. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MOHAMMAD. 115 I.C. 428=30 Cr. L. J. 460= 12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.

——Unless expressly prohibited by the Letters Patent to take cognizance of a certain offence the High Courts constituted after 1915 have the power to take cognizance of all offences which have been made cognizable by such Courts by the statutory laws in force in India. (*Jai Lal, J.*). FAQIR SINGH *v.* ALI MOHAMMAD. 115 I.C. 428=30 Cr. L.J. 460= 12 A.I. Cr. R. 413=A.I.R. 1929 Lah. 217.

—Removal or suspension from practice.

——A conviction under S. 17, sub-S. (1) of the Criminal Law Amendment Act (XIV of 1908) constitutes a reasonable cause within the meaning of Cl. 8, Letters Patent, Lahore, for the removal or suspension from practice of an Advocate or Vakil. Strictly speaking, proceedings under Cl. 8 are neither civil suits nor criminal prosecutions. The High Court exercise a special jurisdiction over legal practitioners in pursuance of the authority conferred upon it by the Letters Patent or an Act of the Legislature and has inherent power to apply such rules of procedure as may ensure a fair trial of the matter requiring adjudication. What is essential is that the parties concerned should have a proper notice and a reasonable opportunity to be heard. The propriety in law or in fact of the conviction cannot be questioned in the proceedings taken by the Court in the exercise of its disciplinary jurisdiction. 22 A. 49 (P.C.), *Ref.* Advocate or Vakil may be struck off the rolls for an offence which has no relation whatsoever to his character as a legal practitioner but the mere circumstance that he has been convicted of an offence does not make it imperative on the Court to remove or suspend him from practice. It is not necessary that the act of a legal practitioner which is relied upon for striking his name off the roll should have subjected him to anything like a general infamy or imputation of bad character. 44 Bom. 418 (F.B.); 49 Cal. 732 and 49 Cal. 845 (P.C.), *Rel.* (*Shadi Lal, C.J., Smith and Abdul Raoof, JJ.*). *In the matter of* ABDUL RASHID. 76 I.C. 385=4 Lah. 271= 25 Cr. L.J. 161=6 L.L.J. 491= A. I. R. 1924 Lah. 123 (S.B.).

LETTERS PATENT—(Lahore), (1919), Cl. 10—Joint order by dissenting Judges.

—Cl. 10—Appeal—Refusal to set aside dismissal.

——An appeal lies under Cl. 10 from an order made by a single Judge rejecting an application for an order to set aside a dismissal of an appeal. 3 Lah. 188; A.I.R. 1922 Lah. 380 and 43 Cal. 857, *Foll.* (*Shadi Lal, C. J. and Fforde, J.*). NANAK CHAND *v.* SAJJAD HUSSAIN. 71 I.C. 824= A.I.R. 1924 Lah. 412.

—Cl. 10—Dismissal of appeal.

——A judgment dismissing an appeal against the appellant is not appealable. (*Shadi Lal, C. J. and Abdul Qadir, J.*). GOPAL DAS *v.* MT. ZAINALA BIBI. 77 I.C. 477=A.I.R. 1923 Lah. 504.

—Cl. 10—Final order, what is.

——After the passing of the preliminary and final decrees in a mortgage suit against father, the son brought an objection against the sale of his share, instituted a suit and got an order of stay. His suit was dismissed and he filed an appeal and, on the day the appeal came for preliminary hearing, a stay order was again granted on 23rd July, 1921, *ex parte*. The decree-holder then applied for the discharge of the stay order, praying in the alternative that security for the amount of the decree and costs be taken. The application of the decree-holder was dismissed on 24th March, 1922, and he filed an L.P.A. against this order on 1st May, 1922. It was contended that the order of the 24th March was not a final order within the meaning of Cl. 10, Letters Patent,

Held, if that objection is acceded to, it would follow that the appellants would be bound by an *ex parte* order without power to question that order. Justice would be done by treating this appeal admitted on 15th May as being one from the order of the 23rd July, 1921, and extending the time within which that appeal would have to be brought. Justice will be met by allowing the appeal on the terms that security be given by the respondent for the full decretal amount without regard to the security of the property attached. (*Shadi Lal, C.J. and Fforde, J.*). BULAJI MAL *v.* SHAMAS DIN. 84 I.C. 24=3 L.L.J. 287=A. I. R. 1923 Lah. 428.

—Cl. 10—Finding of fact.

——*Held*, that in appeal under Cl. 10 of the Letters Patent the High Court can set aside the judgment of a single Judge who has interfered with an erroneous finding of fact in second appeal. (*Shadi Lal, C.J. and Broadway, J.*). HARBANS SINGH *v.* BUR SINGH. 31 Punj. L.R. 331.

—Cl. 10—Joint order by dissenting Judges.

——Clause 10 confers a right of appeal and that right is not extinguished simply because the

LETTERS PATENT—(Lahore), (1919), Cl. 10—Judgment, interlocutory.

Judges while considering the effect of their dissent on the result of appeal joined in making an order that the decree should be framed in a particular way. 10 Cal. 108, *Dist.*; 34 All. 13; 30 Mad. 169 (F.B.); 32 Mad. 95 (F.B.); 28 Cal. 517; 48 Cal. 332; A.I.R. 1922 Cal. 141; A.I.R. 1925 Cal. 845 (F.B.) and 3 Bom. 204, *Ref.*

There would hardly be any case in which the dissenting Judges would not be required to concur in an order disposing of the appeal in accordance with the opinion of the one Judge or the other. A.I.R. 1924 P.C. 50, *Rel. on.* (*Shadi Lal, C.J. and Le Rossignol, J.*). PUNJAB AKHBARAT & PRESS CO. *v.* OGILVIE. **93 I. C. 344=7 Lah. 179=27 P.L.R. 50=8 L.L.J. 13=A.I.R. 1926 Lah. 65.**

—Cl. 10—Judgment, interlocutory.

——The term "judgment" in S. 10 of Letters Patent includes any interlocutory judgment which decides so far as the Court pronouncing such judgment is concerned whether finally or temporarily any question materially in issue between the parties and directly affecting the subject-matter of the suit. 1 Lah. 348 and 35 Mad. 1, *Foll.* (*Shadi Lal, C.J. and Abdul Qadir, J.*). FIRM BADRI DAS *v.* MATHANMAL. **77 I.C. 327=A. I. R. 1922 Lah. 185.**

—Cl. 10—"Judgment"—Reference under Income-tax Act.

——The decision of a High Court upon a case stated and referred to it by the Chief Revenue Authority under the Income-tax Act is not a final "judgment" within the meaning of Cl. 10 of the Letters Patent of the Lahore High Court but is merely advisory and not final. (*Shadi Lal, C.J. and Le Rossignol, J.*). BULAQI SHAH & SON *v.* THE COLLECTOR OF LAHORE. **88 I. C. 570=6 Lah. 30=26 P.L.R. 144=A.I.R.1925 Lah. 336.**

—Cl. 10—"Judgment"—Refusal to transfer case.

——An order refusing to transfer a case pending before a Subordinate Court is not a judgment within Cl. 10 of the Letters Patent as it does not put an end to the proceeding before that Court. A.I.R. 1922 Lah. 380, *Appl.*; A.I.R. 1924 Mad. 90 and 47 Cal. 1104, *Dist.* (*Shadi Lal, C.J. and Broadway, J.*). PAHLAD RAI *v.* SHIV RAM. **102 I.C. 843=3 Lah. 681=29 P.L.R. 16=A.I.R. 1927 Lah. 540.**

—Cl. 10—"Judgment", what is.

——An order passed in an appeal from preliminary decree restraining the trial Court from passing a final decree during the pendency of the appeal amounts to a "judgment" within the meaning of Cl. 10. A.I.R. 1922 Lah. 185, *Foll.*; A. I. R. 1925 P. C. 155, *Ref.* (*Shadi Lal, C.J. and Broadway, J.*). SHIBBAMAL *v.* RUP NARAIN. **111 I.C. 274=29 P.L.R. 571=10 Lah. 132=A.I.R. 1928 Lah. 904.**

——Order directing the issue of notice to the respondents in Europe, which will have the effect of postponing the hearing of the appeal indefinitely, cannot be held to be a judgment. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit or appeal is not a judgment within the meaning of the Letters Patent. However, making the *ad interim* order staying execution absolute constitutes a judgment within the meaning of Cl. 10. (*Shadi Lal, C.J. and Le Rossignol, J.*). SHANKARDAS *v.* SHAMBU NATH. **93 I.C. 351=8 L. L. J. 35=27 P. L. R. 109=A. I. R. 1926 Lah. 174.**

LETTERS PATENT—(Lahore), (1919), Cl. 10—Limitation.

——An appeal lies under Cl. 10 from the order of a Judge in chambers rejecting an application under O. 41, R. 19, C. P. Code, for the re-admission of an appeal dismissed in default. 43 Cal. 837, *Foll.* (*Scott-Smith and Martineau, JJ.*). MOHAR CHAND *v.* HABIB. **89 I. C. 795=A. I. R. 1925 Lah. 617.**

——*Determination of question whether suit can be brought 12 years after mutation is a judgment.*

If the effect of an order, whatever its form may be, and whatever be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment within the meaning of the clause. But it is impossible to lay down any definite rule, and the only thing which can be said is that in determining whether an order constitutes a judgment or not, the Court must consider the nature of the order and its effect upon the civil proceeding in which it was made. Though a mere formal order or an order merely regulating the procedure cannot be viewed as a judgment, it cannot be held that the words "right" and "liability" were used in a narrow sense. The determination of the question whether the plaintiff is entitled to bring his suit after the lapse of twelve years from the date of the mutation is a determination of right, and the adjudication thereupon certainly affects the merits of the question between the parties. (*Shadi Lal, C. J. and Harrison, J.*). RULDU SINGH *v.* SANWAL SINGH. **67 I.C. 388=3 Lah. 188=A.I.R. 1922 Lah. 380.**

—Cl. 10—Land acquisition cases.

——*Judgment of single Judge confirming award of District Judge—Letters Patent appeal from, is not barred by S. 54.*

The word "only" does not restrict the right of appeal but was intended to make it clear that the *forum* of appeal in Land Acquisition cases is always the High Court and not the District Court; and that it is immaterial whether the amount of compensation awarded by the Court of first instance does or does not exceed Rs. 5,000 and whether the Court of first instance is the Court of a District Judge or that of a Subordinate Judge or an Assistant Judge. It is beyond dispute that Cl. 10 of the Letters Patent gives in express terms a right of appeal, and that right has not been impliedly taken away by S. 54 more especially when the section is merely an enabling section and was enacted in order to confer a right of appeal to His Majesty in Council. (*Shadi Lal, C. J. and Abdul Qadir, J.*). HAR DIAL SHAH *v.* SECY. OF STATE. **69 I.C. 428=3 Lah. 420=A.I.R. 1923 Lah. 275.**

—Cl. 10—Limitation.

——The period for an appeal under the Letters Patent is governed exclusively by the Rules made by the High Court, which provide *inter alia* that no copy of the decree, order, or judgment appealed from need accompany the memorandum of appeal. Ignorance of the rules or the fact that the period expired during the vacation is not an excuse for presenting appeal out of time. (*Le Rossignol and Martineau, JJ.*). FATTEH MUHAMMAD *v.* CHOTHU RAM. **60 I.C. 737=3 L.L.J. 361=A.I.R. 1921 Lah. 237.**

——Ignorance of law is no excuse for delay and therefore the fact that the appellant previously was under the impression that limitation was 90 days

LETTERS PATENT—(Lahore), (1919), Cl. 10—New point.

for a Letters Patent Appeal in Lahore is no excuse for not filing it within the 30 days period prescribed by the rules. (*Chevis and Scott-Smith, JJ.*). DYAL SINGH *v.* BUDHA SINGH. **61 I.C. 327= 2 Lah. 127= 3 L.L.J. 415=74 P.L.R. 1921= A.I.R. 1921 Lah. 26.**

—Cl. 10—New point.

——The point not raised before the Division Bench who heard the appeal cannot be taken in an appeal under Letters Patent. (*Shadi Lal, C. J. and Broadway, J.*). JAI PERSHAD *v.* CHARTERED BANK. **120 I. C. 284=30 P.L.R. 433= 11 L.L.J. 425=A.I.R. 1929 Lah. 536.**

——A new plea that the suit is barred by Art. 144 cannot be permitted in appeal since its decision would involve a finding of fact whether the appellant's possession was adverse to the knowledge of the respondent. (*Shadi Lal, C.J. and Le Rossignol, J.*). WAZIR CHAND *v.* NATHU RAM. **80 I.C. 321=6 L.L.J. 151=A.I.R. 1924 Lah. 468.**

——In an appeal under the Letters Patent an appellant is not entitled to be heard on a point which has not been raised before the Judge from whose judgment he is appealing. (*Shadi Lal, C. J. and Abdul Qadir, J.*). MOHAMMED TAQI *v.* HAJI ABDUL RAHIMAN. **79 I.C. 281= A.I.R. 1923 Lah. 151.**

—Cl. 10—Parties.

——An appeal cannot be proceeded with if necessary parties to the appeal are not impleaded. (*Scott-Smith and Martineau, JJ.*). CHAJJU RAM *v.* SINGH RAM. **89 I.C. 298=7 L.L.J. 182= 26 P.L.R. 150=A.I.R. 1926 Lah. 392.**

—Cl. 10—Revision.

——No appeal lies under Letters Patent against order passed in revision. (*Scott-Smith and Martineau, JJ.*). PARJHA MAL CHANDI MAL *v.* MUL CHAND MURARI LAL. **94 I.C. 521=6 Lah. 250= A.I.R. 1926 Lah. 624.**

—Cl. 10—Scope of appeal.

——The use of the word "wherever" in Cl. 10 is not intended to confine the scope of the appeal to the point or points on which there is a disagreement between the Judges. 1 All. 181 (F.B.); 20 C.W. N. 210, *Foll.*; 32 Mad. 95 (F.B.); 11 M.L.J. 10 (F.B.); A.I.R. 1925 Bom. 118, *Ref.* and A.I.R. 1925 Cal. 598, *Dist.*

When once the right of appeal is established, the appellant can raise, not only the points upon which the Judges have differed, but also those on which they have agreed. (*Shadi Lal, C.J. and Le Rossignol, J.*). PUNJAB AKHBARAT & PRESS CO. *v.* OGILVIE. **93 I.C. 344=7 Lah. 179= 27 P.L.R. 50=8L.L.J. 13=A. I. R. 1926 Lah. 65.**

—Cl. 26 — Difference of opinion in Division Bench.

——Where an appeal is heard by a Bench composed of two Judges who differ in opinion the decision of the appeal is regulated by S. 98, C.P.C., if the appeal is from a Subordinate Court under the Civil Procedure Code or any local or special statute. In all other cases the decision is governed by Cl. 26 of the Letters Patent (Lahore). 45 Bom. 718 (P.C.), *Expl.* (*Shadi Lal, C.J. and Le Rossignol, J.*). PUNJAB AKHBARAT & PRESS CO. *v.* C.M.G. OGILVIE. **93 I. C. 344= 7 Lah. 179=27 P. L. R. 50= 8 L.L.J. 13=A.I.R. 1926 Lah. 66.**

——Where the Senior Judge does not press his opinion and instead of deciding the appeal the Division Bench sends it to the Chief Justice who orders the appeal to be heard by a Full Bench, no objection can be taken to the constitution of the Full Bench on the ground that under Cl. 26 the appeal should be decided according to the opinion of the Senior Judge. (*Scott-Smith, Le Rossignol and Abdul Raoof, JJ.*). HILL SAWYERS & CO. *v.* SECY. OF STATE. **61 I.C. 926= 2 Lah. 133=3 L. L. J. 297= 75 P.L.R. 1921=A.I.R. 1921 Lah. 1 (F.B.).**

LETTERS PATENT—(Madras), (1865), Cl. 10—Misconduct.

——Madras (1865).

—Cl. 9—Appearance in insolvency cases.

——Advocates enrolled in the Madras High Court under the provisions of the Bar Councils Act are entitled to act and plead in the insolvency jurisdiction of the High Court. (*Coutts-Trotter, C.J., Kumaraswami Sastri and Walsh, JJ.*). NEWLY ENROLLED ADVOCATES, *Re.* **113 I.C. 876= 28 M.L.W. 543=52 Mad. 92= 1928 M.W.N. 856=A.I.R. 1928 Mad. 1182= 55 M.L.J. 551 (F.B.).**

——Vakils have no right of audience in the Insolvency Court at the Presidency Town of Madras. (*Spencer, Offg. C.J., Devadoss and Srinivasa Aiyangar, JJ.*). KRISHNASWAMI AIYAR *v.* SWAMINATHA AIYAR. **85 I.C. 1025=48 Mad. 331= A.I.R. 1925 Mad. 385=48 M.L.J. 36 (F.B.).**

—Cl. 10—Misconduct.

———Negligence by itself is not professional misconduct; into that offence there must enter the element of moral delinquency. *In the case of* G.M.C., 86 L.T. 468, *Foll.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). *In the matter of* MUNUSWAMI NAIDU. **96 I. C. 685= 49 Mad. 523=1926 M.W.N. 412=24 M.L.W. 100= A.I.R. 1926 Mad. 568=50 M.L.J. 399 (F.B.).**

——*Advocate convicted for perjury in England—Disbarment by Benchers of his Inn—Subsequent good conduct—Admission as Advocate in India—High Court is not bound by the decision of the Benchers—Propriety of conviction cannot be gone into.*

In an inquiry into the conduct of a practitioner under the Letters Patent, the propriety of a conviction and sentence could not be questioned, though the facts of the case might be considered, to see whether the culpability of the individual concerned was such as to disqualify him for his profession.

It is possible that, where the criminal law of the two countries differs in respect of the matters charged, or in a case where it is alleged that there had not been a fair trial in some foreign country, the above rule might be held not to be applicable.

The Madras High Court is not bound to follow the decision of the Benchers of the Inns of Courts. It has, by the Letters Patent, a discretion vested in it, and it must in every case exercise that discretion itself, giving, of course, due weight to the views of the Benchers of Lincoln's Inn in England.

An order for disbarment is not necessarily final or conclusive for all time and it is open to the Court to re-admit a practitioner, after the lapse of time, if it is satisfied that the practitioner has in the interval conducted himself honourably and the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty, so that he may be safely entrusted with the affairs of his clients and admitted to an honourable profession, without its suffering degradation; and in such a case, it is open to the proper tribunal to restore a man to the rolls, whether he be a Barrister, Advocate or Attorney. 6 B. & S. 709 and 12 C.L.J. 525, *Ref.*

LETTERS PATENT - (Madras), (1865), Cl. 11—Original and ordinary original jurisdiction.

No different standard of conduct or character is required from a barrister of Indian race to a barrister of English race and also no different standard of honour should be held to exist for a practitioner at the English Bar of whatever race, and the practitioners of this Court, whether Barristers or Vakils.

In the matter of disciplinary jurisdiction, the English Court cannot be put on the same footing as a foreign Court. (*Schwabe, C. J., Coutts-Trotter and Krishnan, JJ.*). *In the matter of* AN ADVOCATE.

76 I.C. 873=46 Mad. 903=18 M.L.W. 823=33 M.L.T. 110=25 Cr. L.J. 281=A.I.R. 1924 Mad. 265=45 M.L.J. 639 (F.B.).

—Cl. 11—Original and ordinary original jurisdiction.

——*Distinction between ordinary original and original civil jurisdiction of the High Court.*

There is a distinction between the original jurisdiction of the High Court and the ordinary civil jurisdiction of the High Court. All applications to the High Court are either civil or criminal. They are original civil when matters come for the first time to the High Court, and they are appellate civil when they come in the form of appeals. The granting of probates or succession certificates will come within the original civil jurisdiction, but it would not come under ordinary original civil jurisdiction, which, by the Letters Patent, seems to be confined to suits and matters under Cls. 12 to 21, which refer to the exercise by the High Court of its ordinary original civil jurisdiction. (*Wallace and Ananthakrishna Ayyar, JJ.*). *In the matter of* G.A. KUPPUSWAMI NAYAGAR.

A.I.R. 1930 Mad. 779.

—Cl. 12—'Carrying on business, etc.'

——The words "carry on business or personally work for gain" are inapplicable to the Secretary of State for India in Council. 14 Cal. 256, *Rel. on.* (*Coutts-Trotter, C.J. and Beasley, J.*). GOVINDARAJULU NAIDU *v.* SECY. OF STATE.

105 I.C. 576=50 Mad. 449=39 M.L.T. 304=26 M.L.W. 558=A.I.R. 1927 Mad. 689=53 M.L.J. 355.

——Whereas the words "carry on business" apply to a corporate body and to limited companies, and "personally work for gain" to an individual or individuals, the word "dwell" can only apply to an individual in a private sense and not to an entity. (*Coutts-Trotter, C.J. and Beasley, J.*). GOVINDARAJULU NAIDU *v.* SECY. OF STATE.

105 I.C. 576=50 Mad. 449=39 M.L.T. 304=26 M.L.W. 558=A.I.R. 1927 Mad. 689=53 M.L.J. 355.

——*Carrying on business through agent is within the clause.*

"Carrying on business" includes carrying on business through an agent. 12 Ch. D. 522, *Foll.* and 12 B. 507, *Diss.*

Under Cl. 12 of the Letters Patent the power to try suits against persons is expressly conferred in the case of defendants dwelling or carrying on business or personally working for a gain within the jurisdiction and it is impossible to construe 'defendant' to include foreigners in two out of three cases and not in the third, as all three occur in the same sentence. 'Defendant' therefore includes foreigners. (*Schwabe, C.J. and Coleridge, J.*). JANOO HASSAN *v.* BATCHU KAMANDU.

76 I.C. 752=18 M.L.W. 515=1923 M.W.N. 739=33 M.L.T. 19=A.I.R. 1924 Mad. 158=45 M.L.J. 471.

LETTERS PATENT—(Madras), (1865), Cl. 12—"Suit for land"—Specific performance action.

—Cl. 12—Effect of amendment.

——The provisions of the amended Letters Patent cannot be read as conferring jurisdiction upon High Court in a case where one or more of the several defendants reside within its jurisdiction. The real question to be considered is the balance of convenience. Where major portion of the cause of action arises outside Madras, leave to sue in Madras should be refused. (*Schwabe, C. J. and Wallace, J.*). PARAMESWARA *v.* V. MAHADEVI.

72 I. C. 982=1922 M.W.N. 841=A. I. R. 1923 Mad. 272.

—Cl. 12—Jurisdiction—Cause of action.

——A suit, without leave under Cl. 12, to recover goods or price of goods confiscated by Collector of Customs, after seizure thereof by the district officer on the ground that they were smuggled into British India, does not lie on the original side, simply because the order of the Collector was made within its jurisdiction, where the goods were seized outside its limits. (*Coutts-Trotter, C.J. and Beasley, J.*). GOVINDARAJULU NAIDU *v.* SECY. OF STATE.

105 I.C. 576=50 Mad. 449=39 M.L.T. 304=26 M.L.W. 558=A.I.R. 1927 Mad. 689=53 M.L.J. 355.

—Cl. 12—Leave to sue.

——*Leave to sue—Mortgage suit—Mortgaged properties partly within Madras and partly outside—It is immaterial whether or not mortgagors had good title to property alleged to be within the jurisdiction of the Court.*

Where the plaintiff seeks to obtain leave to institute a suit against the defendant on a mortgage by the defendant of certain properties one of which is alleged to be within the original jurisdiction of the High Court, it makes no difference whatever as to the jurisdiction of the Court whether or not the mortgagor had a good title to the property situated within the jurisdiction of the Court. (*Wallis, C.J., Seshagiri Aiyar and Abdur Rahim, JJ.*). NAMBERUMAL CHETTIAR *v.* RAGHAVACHARIAR.

71 I.C. 390=14 M.L.W. 563=A. I. R. 1921 Mad. 701 (F.B.).

—Cl. 12—Scope and effect.

——Clause (12), Letters Patent, does not affect the provisions of Cl. 18. 40 Mad. 810, *Rel. on.* (*Phillips, Offg. C.J., Ramesam and Madhavan Nair, JJ.*). *In the matter of* K. KRISHNA RAO.

112 I.C. 149=51 Mad. 540=28 M L.W. 285=A.I.R. 1928 Mad. 732=55 M.L.J. 171 (F.B.).

—Cl. 12—"Suit for land"—Administration suit.

——An administration suit is not a suit for land. 38 Cal. 130; 29 Mad. 289 and A.I.R. 1922 Bom. 443, *Rel. on.*

And where leave to sue has been granted High Court can decide question of title to land even where the land is wholly outside its jurisdiction. A.I.R. 1924 Bom. 313, *Rel. on.*

But the High Court will not grant leave unless a substantial portion of the cause of action has arisen within the jurisdiction, and, if the leave has been wrongly granted, it is quite open to the defendants to apply for that leave being revoked. (*Venkatasubba Rao, J.*). MT. AMIR BI *v.* ABDUL RAHIM.

110 I.C. 276=28 M.L.W. 583=A.I.R. 1928 Mad. 760=55 M.L.J. 266.

—Cl. 12—"Suit for land"—Specific performance action.

——A suit by a purchaser of lands situate outside the presidency town for specific performance of a contract to sell, made in the presidency town

LETTERS PATENT—(Madras), (1865), Cl. 12—Suit for land—Suit for accounts of trust.

by parties resident therein is not a suit for land within the meaning of Cl. 12 and so is cognizable by the High Court in its Ordinary Original Civil Jurisdiction. *Ramdhone Shah* v. *Nobeenmoney Dosee*, 1 Bourke 218, *Foll.*; 5 Cal. 82, *Diss. from.* (*Case-law-discussed.*) (*Coutts-Trotter, C.J., Ramesam, Odgers, Venkatasubba Rao and Mackay, JJ.*). VELLIAPPA CHETTIAR *v.* GOVINDA DOSS.

118 I.C. 73=52 Mad. 809=30 M.L.W. 169=A.I.R. 1929 Mad. 721=57 M.L.J. 190 (F.B.).

—Cl. 12—Suit for land—Suit for accounts of trust.

———*Suit for account of management of trust is not "suit for land."*

The expression "suit for land" must be construed as an action, the primary object of which is to establish claims regarding the title to property or possession of property and no suit can be described as a "suit for land" as the result of the decision in which the title to, or possession of, immovable property will not in any manner or measure be directly affected.

A suit for an account of the management of a trust is really a suit for administration of a trust and not a "suit for land" and, therefore, is not exoluded from the jurisdiction of the High Court, though the trust properties are in the moffussil. (*Coutts-Trotter, C. J. and Srinivasa Aiyangar, J.*). KRISHNADOSS VITHALDOSS *v.* GHANSHAMDOSS. **90 I.C. 188=22 M.L.W. 160=1925 M.W.N. 395=A.I.R. 1925 Mad. 1094=49 M.L.J. 311.**

—Cl. 13—Amendment of plaint.

———*Amendment ousting the jurisdiction of the Trial Court cannot be allowed.*

No Court will permit a plaint to be so amended as to oust its own jurisdiction to try the suit.

A suit was filed originally in the City Civil Court, Madras, and was transferred to the High Court in the exercise of its extraordinary original civil jurisdiction. Later, an application to amend the plaint was made, the effect of which was to convert the suit into one which the City Civil Court (the forum originally chosen by the plaintiff) would have no jurisdiction to try,

Held, that the amendment could not be allowed as the powers of the High Court under Cl. 18 are those of the City Civil Court itself. A.I.R. 1914 P.C. 41, *Rel. on.* (*Venkatasubba Rao, J.*). SINGARA MUDALIAR *v.* GOVINDASAMI CHETTY.

108 I.C. 413=27 M.L.W. 609=A.I.R. 1928 Mad. 400=54 M.L.J. 145.

—Cl. 13—Powers of Vacation Judge.

———*Suit to be filed in Court outside High Court's Ordinary Original Civil Jurisdiction—Closing of the Court—High Court cannot entertain suit.*

There is no provision of law by which the High Court can in the first instance receive a plaint which ought to be filed in some inferior Court within the Presidency and pass orders pending the disposal of the suit and although the Court in which it was to be filed was closed owing to vacation, the Vacation Judge of the High Court cannot entertain such a suit except perhaps where the claim has arisen within the limits of the ordinary original civil jurisdiction of the High Court and where the High Court has concurrent jurisdiction along with other Courts of the Presidency town. C.M.P. No. 1498 of 1919, *Foll.* (*Ramesam, J.*). JUMNA BAI *v.* RAMANATHAN CHETTIAR.

113 I.C. 412=52 Mad. 52=23 M.L.W. 684=A.I.R. 1929 Mad. 29=55 M.L.J. 690.

LETTERS PATENT—(Madras), (1865), Cl. 15—Court-fee.

—Cl. 13—Procedure.

———A suit was brought in an inferior Court but as the Court was closed owing to vacation, an application was made to the High Court for an order of injunction.

Held, that the procedure followed by the applicant was not correct. The proper procedure to be followed would be that the petition on the face of it should apply for a transfer of the suit in an inferior Court temporarily to the High Court, and the application should be made for injunction and another application for a re-transfer of the case to the original Court. 22 M.L.J. 187, *Foll.* (*Ramesam, J.*). JUMNA BAI *v.* RAMANATHAN CHETTIAR.

113 I.C. 412=52 Mad. 52=23 M.L.W. 684=A.I.R. 1929 Mad. 29=55 M.L.J. 690.

—Cl. 15—Appeal—Interlocutory order.

———Where a civil revision petition is filed and interlocutory applications are made in the civil revision petition for reliefs, the High Court can only act in its exercise of revisional jurisdiction in dealing with these applications and orders passed on such applications in the exercise of that jurisdiction are not appealable under the Letters Patent. (*Kumaraswami Sastri and Wallace, JJ.*). SADAKA MAHOMED *v.* HAYATH BATCHA SAHIB.

107 I.C. 813=51 Mad. 165=1928 M.W.N. 30=27 M.L.W. 18=A.I.R. 1928 Mad. 169=54 M.L.J. 323.

———Under Cl. 15 an order of a merely interlocutory nature passed by a single Judge on the Original Side is not appealable. 35 Mad. 1 (F.B.), *Foll.* (*Schwabe, C.J. and Coleridge, J.*). KAVERIBAI AMMAL *v.* B. MEHTA. **75 I.C. 901=18 M.L.W. 615=1923 M.W.N. 894=A. I. R. 1924 Mad. 234=46 M.L.J. 71.**

—Cl. 15—Appeal—Refusal of pauper petition.

———Whether there may be a right of appeal against an order rejecting an application for leave to file a memorandum of objections in *forma pauperis* or not, the appellate Court should not interfere. The question is one of the exercise of discretion and when the determination complained of is merely the result of the exercise of discretion on the part of the Judge in a matter, which was a proper subject for the exercise of that discretion the appellate Court would rightly decline to interfere. 3 M.H.C.R. 384, *Appl.* (*Devadoss and Wallace, JJ.*). PARVATI AMMAL *v.* VENKATESWARA IYER.

94 I.C. 45=23 M.L.W. 511=1926 M.W.N. 255=A.I.R. 1926 Mad. 656=50 M.L.J. 426.

—Cl. 15—Court-fee.

———*Appeal from order of Judge of High Court—Fee payable is that payable under the Charter Act directly and not under S. 3 of the Court-fees Act.*

Section 3 of the Court-fees Act must be controlled by S. 15 of the High Courts Charter Act. Section 15 of that Act which speaks of the settling fees to be allowed to Sheriffs, Attorneys and all clerks and officers of the Court, will not cover a case of Court-fee payable on a memorandum of appeal from an order of a Judge of a Chartered High Court because S. 3 of the Court-fees Act clearly points to the fee which is to be taken by the officer as a perquisite. The power under which Court-fees are levied on the Original Side of the High Court was derived from the general powers to issue general rules for regulating the practice of Courts. Such powers necessarily include imposition of fees and the collecton of them, and the Court can collect the fees only through its proper officers. The fee

LETTERS PATENT—(Madras), (1865), Cl. 15—Criminal jurisdiction.

leviable on an appeal is the fee payable for the time being to the officers of the High Court by virtue of the High Courts Charter Act directly. (*Coutts-Trotter, J.*). H. MOHAMED ISHAQI SAHIB *v.* MD. MOIDEEN. **70 I.C. 813=45 Mad. 849=1922 M.W.N. 511=16 M.L.W. 210=A. I. R. 1922 Mad. 421=43 M.L.J. 436.**

—Cl. 15—Criminal jurisdiction.

———No appeal lies to the High Court from the decision of a Judge of the High Court in the exercise of criminal jurisdiction. (*Schwabe, C. J., Oldfield and Coutts-Trotter, JJ.*). K. V. MUNISWAMY MUDALIAR *v.* RAJARATNAM PILLAI. **71 I.C. 126=45 Mad. 928=16 M.L.W. 365=1922 M.W.N. 594=31 M.L.T. 287=24 Cr.L.J. 78=A.I.R. 1922 Mad. 495=43 M.L.J. 375 (F.B.).**

—Cl. 15—Difference of opinion in Bench.

———In appeals governed by S. 96, when the two Judges of the High Court are divided in opinion, the judgment of that Judge who confirms the decree of the lower Court prevails. 45 Bom. 718, *Expl.* (*Venkatasubba Rao and Jackson, JJ.*). (ALLAMPATI) VENKATASUBBIAH *v.* CHUTTI VENKATASUBBAMMA. **86 I.C. 857=21 M.L.W. 721=A.I.R. 1925 Mad. 1032.**

—Cl. 15—Effect of amendment.

———*No retrospective effect.*

The amended Letters Patent which came into force on 31st January, 1928, making the judgment of a single Judge of the High Court in a second appeal appealable only with the leave of the Judge does not apply retrospectively to second appeals pending at the time of the amendment. A. I. R. 1928 Cal. 640 (F.B.); *Colonial Sugar Refining Co.* v. *Irving*, (1905) A.C. 369 and *Canada Cement Co., Ltd.* v. *City of Montreal*, (1922) 1 A. C. 249, *Expl.* (*Coutts-Trotter, C. J., Kumaraswami Sastri, Wallace, Beasley and Walsh, JJ.*). VASUDEVA SAMIAR, *In re.* **115 I.C. 811=52 Mad. 361=29 M.L.W. 390=1929 M.W.N. 57=A.I.R. 1929 Mad. 381=56 M.L.J. 369 (S.B.).**

—Cl. 15—"Judgment"—Granting pauper petition.

———Appeal lies from an order by a single Judge on the Original Side giving leave to sue in *forma pauperis*. Such order being a judgment, is within the meaning of Cl. 15 of the Letters Patent. (*Spencer, Offg. C. J. and Srinivasa Ayyangar, J.*). P. BABA SAH *v.* V. M. PURSHOTAMA SAH. **85 I.C. 201=48 Mad. 700=20 M.L.W. 845=35 M.L.T. 136=A.I.R. 1925 Mad. 167=47 M.L.J. 932.**

—Cl. 15—"Judgment"—Order adding party.

———Order adding a party is not a "judgment" and therefore is not appealable. 35 M. 1 (F.B.) and 49 Mad. 539, *Rel. on*; 50 Mad. 770, *Dist.* (*Curgenven and Bhashyam Ayyangar, JJ.*). RAMASWAMY CHETTIAR *v.* KANNIAPPA MUDALIAR. **1930 M.W.N. 971.**

—Cl. 15—"Judgment"—Order allowing evidence refused.

———An order giving permission to a party to adduce in the first appeal Court evidence which that Court had refused time to the party to call, is not a final judgment or order within Cl. 15. (*Wallace and Jackson, JJ.*). SUBBIAH THEVAR *v.* PONNUSWAMI THALAVAR. **105 I.C. 720=A.I.R. 1927 Mad. 1021.**

—Cl. 15—"Judgment"—Order granting review.

———An order which not only grants a review but also amends the decree, is a judgment under Cl. 15 and is therefore appealable. (*Kumaraswami Sastri and Ramesam, JJ.*). GOVINDA CHETTY *v.* RANGAMMAL. **106 I.C. 172=1927 M.W.N. 411=A.I.R. 1929 Mad. 261.**

—Cl. 15—"Judgment"—Orders in ancillary proceedings.

———*Independent proceeding ancillary to suit but not step towards judgment—Order is judgment.*

An order in an independent proceeding which is ancillary to the suit, not instituted as a step towards judgment, but with a view to rendering the judgment effective if obtained, is a judgment within the meaning of Cl. 15 of the Letters Patent.

Where during the pendency of a suit by a Mahomedan widow to recover her share in the properties of her deceased husband in the hands of the other heirs an order was passed to the effect that the plaintiff should be paid a certain sum every month for her maintenance.

Held, that an order imposing an obligation of this nature in a pending suit is clearly more than a mere step towards final judgment or a mere interlocutory order necessary for proceeding with the suit and that it is a "judgment" within the meaning of Cl. 15. (*Spencer, Offg. C.J. and Srinivasa Ayyangar, J.*). YUSUF SAHEB *v.* SUBHAN BIBI. **86 I.C. 909=21 M. L. W. 308=1925 M.W.N. 109=A.I.R. 1925 Mad. 443=48 M.L.J. 395.**

—Cl. 15—"Judgment"—Order in criminal jurisdiction.

———A sanction for prosecution by a single Judge sitting on the Original Side is an order and not a judgment and no appeal lies. (*Schwabe, C.J., Oldfield and Coutts-Trotter, JJ.*). K. V. MUNISWAMY *v.* RAJARATNAM. **71 I.C. 126=45 Mad. 928=16 M.L.W. 365=1922 M.W.N. 594=31 M.L.T. 287=24 Cr. L.J. 78=A.I.R. 1922 Mad. 495=43 M. L. J. 375 (F.B.).**

—Cl. 15—"Judgment"—Orders in partnership suit.

———In a suit for dissolution of partnership and accounts, when the suit came for trial, the Court without determining any of the matters in controversy in the suit passed the following order:—"The whole case is referred to the Official Referee to determine what share the plaintiff had in the business carried on by the deceased *H*, and having determined that to take a full account as in an ordinary partnership action and report to this Court"

Held, that the order is not an *interim* decree or even a judgment within the meaning of Cl. 15 of Letters Patent. 35 Mad. 1 (F.B.), *Ref.* (*Kumaraswami Sastri, J.*). ABDUL WAHAB SAHIB *v.* M. BOKIA BIBI SAHIBA. **73 I.C. 903=A. I. R 1924 Mad. 406.**

—Cl. 15—"Judgment"—Order on application for injunction.

———An order on an application for an *interim* injunction is a judgment within the meaning of this Article, as its effect is to render the final judgment effective, if obtained. 24 Mad. 358, *Foll.* (*Spencer and Devadoss, JJ.*). CHINNAYAMMA *v.* SUBBAMMA. **95 I.C. 956=21 M.L.W. 310=A.I.R. 1926 Mad. 586.**

—Cl. 15—"Judgment"—Order on Official Referee's report.

———An order referring back a report of the Official Referee for further consideration is not a final order determining the rights of the parties

LETTERS PATENT—(Madras), (1865), Cl. 15—"Judgment"—Order refusing inspection.

within the meaning of Cl. 15 as a Judge is not precluded from varying or discharging such report and that it cannot take effect until it has received his imprimatur. Therefore, no appeal lies from that order. (*Phillips, Offg. C.J. and Reilly, J.*). MANECKJI RUSTOMJI *v.* WADIA. **107 I.C. 639=51 Mad. 235=1928 M.W.N. 45=27 M.L.W. 172=A.I.R. 1928 Mad. 470=54 M.L.J. 136.**

—Cl. 15—"Judgment"—Order refusing inspection.

——An order refusing to allow inspection of certain accounts which were disclosed in the affidavit of documents of a party is not a judgment within the meaning of Cl. 15. (*Case-law reviewed.*) (*Kumaraswami Sastri and Reilly, JJ.*). D. K. ASHER *v.* V. C. GOPALARATNAM. **100 I.C. 642=25 M. L. W. 483=1927 M.W.N. 162=A.I.R. 1927 Mad. 409=52 M.L.J. 192.**

—Cl. 15—"Judgment"—Order refusing stay.

——Where an application to the High Court for stay of execution could not have been made independently of and apart from the second appeal pending, it is the appellate jurisdiction of the High Court that is invoked, and the order of dismissal of application is made in exercise of that jurisdiction; over such an order Letters Patent appeal under S. 15 does not lie. *Harichandra Jagadev* v. *Lokeno Patnaik*, S. R. 12781 of 1928, *Rel. on*; A.I.R. 1928 Mad. 169, *Ref.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). KONDALU AIYAR, *In re.* **53 Mad. 158=30 M.L.W. 976=1929 M.W.N. 878=A.I.R. 1930 Mad. 427=57 M.L.J. 783.**

——An order made by a single Judge refusing a stay of execution is not a judgment within the meaning of Cl. 15 and no appeal lies therefrom. 24 Mad. 358, *Foll. Obiter in* 35 Mad. 1, *Diss. from.* (*Oldfield and Ramesam, JJ.*). VAIRAVAN CHETTIAR *v.* RAMANATHAN CHETTIAR. **95 I.C. 808=14 M.L.W. 701.**

—Cl. 15—"Judgment"—Order transferring suit.

——*Order transferring a suit from District Court to High Court is a judgment.*

——An appeal lies from an order of the Judge sitting on the Original Side transferring a suit from the District Court to the High Court under Cl. 13 of the Letters Patent, the order being a judgment within the meaning of Cl. 15 of the Letters Patent. 35 M. 1 (F. B.), *Foll.*; 47 C. 1104, *Not foll.* (*Schwabe, C. J. and Ramesam, J.*). KRISHNA REDDY *v.* THANIKACHALA MUDALI. **73 I. C. 1054=1923 M.W.N. 681=47 Mad. 136=A.I.R. 1924 Mad. 90=45 M. L. J. 153.**

—Cl. 15—"Judgment"—Preliminary issue.

——A decision is a judgment given in an action. Where there is an issue directly to be tried and there is decision of a Judge upon matters in issue in the action between the parties, one cannot but call what he did, a judgment. (*Schwabe, C. J. and Coutts-Trotter, J.*). KANLAL BHOYA *v.* BALARAM PARAMASUKDOSS. **68 I. C. 921=16 M.L.W. 608=31 M.L.T. 284=A.I.R. 1923 Mad. 44=43 M.L.J. 480.**

—Cl. 15—"Judgment"—Refusal to extend time.

——An order refusing to extend time for furnishing security ordered to be deposited for staying an administration suit and thus dismissing the application for stay is not a judgment. 35 Mad. 1, *Applied.* (*Odgers and Curgenven, JJ.*). BALAKRISHNA AYYAR *v.* PARVATHAMMAL. **103 I.C. 125=26 M. L.W. 333=39 M.L.T. 146=1927 M.W.N. 809=A.I.R. 1926 Mad. 155=53 M. L. J. 495.**

LETTERS PATENT—(Madras), (1865), Cl. 15—"Judgment"—Stay of execution.

—Cl. 15—"Judgment"—Refusal to extend time for award.

——An order refusing to enlarge the time for the submission of an award remitted to the umpire on an application under S. 13, Arbitration Act, is a judgment and is appealable. 35 Mad. 1 (F. B.) and 42 Bom. 260, *Rel. on.* (*Coutts-Trotter, C. J., Kumaraswami Sastri and Reilly, JJ.*). MARTIROSI *v.* SUBRAMANIAM CHETTIAR. **109 I.C. 70=51 Mad. 103=1928 M.W.N. 107=27 M.L.W. 51=A.I.R. 1928 Mad. 69=54 M.L.J. 49 (F.B.).**

—Cl. 15—"Judgment"—Refusal to revoke leave to sue.

——An order refusing to revoke an order giving leave to sue on the Original Side of the High Court is not a judgment and thus no appeal lies therefrom. 35 Mad. 1, *Appl.* (*Coutts-Trotter, C. J. and Wallace, J.*). RAJA SURYA RAO *v.* RAJA RAMA RAO. **105 I.C. 159=50 Mad. 770=26 M.L.W. 227=39 M.L.T. 339=A.I.R. 1927 Mad. 846=53 M.L.J. 329.**

—Cl. 15—"Judgment"—Refusal to strike off pleadings.

——An order by a Judge sitting on the Original Side of the High Court refusing to direct certain allegations in defendants' written statement to be struck out at the instance of the plaintiff as being unnecessary and scandalous is not a judgment. (*Spencer, Offg. C. J. and Viswanatha Sastri, J.*). DURGA BAI AMMAL *v.* RAMANATHA RAO. **91 I.C. 566=1925 M.W.N. 785=22 M.L.W. 868=A.I.R. 1926 Mad. 64=49 M.L.J. 632.**

—Cl. 15—"Judgment"—Refusal to transfer case.

——An order refusing to transfer case is not appealable under Cl. 15. A.I.R. 1928 Mad. 209, *Foll.* (*Madhavan Nair and Curgenven, JJ.*). SANKARALINGA REDDIAR *v.* RAMASWAMI REDDIAR. **106 I.C. 890=39 M.L.T. 605=1927 M.W.N. 804=A.I.R. 1928 Mad. 232.**

——An order refusing to transfer a suit from one Court to another cannot be said to put an end to any of the rights of the parties, as its effect is only to allow the proceeding to go on and so no appeal lies against it. A.I.R. 1924 Mad. 90, *Dist.* (*Odgers and Curgenven, JJ.*). NARASA REDDY *v.* HAJI TAR MOHAMMAD AYUB SAIT. **107 I. C. 806=51 Mad. 330=27 M.L.W. 164=A.I.R. 1928 Mad. 209=54 M.L.J. 710.**

—Cl. 15—"Judgment"—Remitting additional issues.

——An order of a single Judge calling for a finding on an issue newly framed by him, or old, whether raised in the pleadings or not is not a judgment within Cl. (15), for no right or title can be said to be adjudicated upon by the mere framing of an issue and by directing that issue to be tried. 35 Mad. 1 (F.B.), *Rel. on*; A.I.R. 1923 Mad. 44, *Dist.* (*Devadoss and Sundaram Chetty, JJ.*). (GUTTA) PUNNAYYA *v.* (KAZA) PARANDAMAYYA. **99 I. C. 586=25 M. L. W. 93=38 M.L.T. 206=A. I. R. 1927 Mad. 317.**

—Cl. 15—"Judgment"—Stay of execution.

——*Judgment is one that puts an end to proceedings before the Court—Appeal lies against stay of execution.*

Per *Krishnan, J.*—The test seems to be not what is the form of the adjudication but what is its effect on the suit or proceeding in which it is made. If its effect, whatever its form may be and whatever may be the nature of the application on which it is

LETTERS PATENT—(Madras), (1865), Cl. 15—"Judgment"—Stay order.

made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not a judgment within the meaning of the Letters Patent.

Per *Waller, J.*—"All orders passed after contest *inter partes* are judgments."

An appeal lies under the Letters Patent against the order of a single Judge refusing stay of execution pending the disposal of an Appeal or Second Appeal in this Court. The fact of there being a declaration is no bar to this Court staying the execution of the decree. 35 Mad. 1, *Foll.*; 24 Mad. 358; 14 L.W. 701, *Diss.* (*Krishnan and Waller, JJ.*). SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR. **79 I.C. 109=47 Mad. 316=19 M.L.W. 427=34 M.L.T. 32=1924 M.W.N. 167=A.I.R. 1924 Mad. 597=46 M.L.J. 138.**

—Cl. 15—"Judgment"—Stay order.

———The word 'judgment' does not include an order granting stay of further proceedings on terms during the pendency of an appeal preferred from preliminary decree in a mortgage suit and an appeal against such order by judgment-debtor dissatisfied by the terms imposed is not maintainable. 35 Mad. 1 (F.B.), *Rel. on*; A.I.R. 1924 Mad. 597; A.I.R. 1927 Mad. 398 and A.I.R. 1927 Mad. 592, *Dist.* (*Wallace and Thiruvenkatachariar, JJ.*). NAGESWARA AYYAR *v.* RAMANATHAN CHETTIAR. **117 I.C. 123=29 M.L.W. 510=A. I. R. 1929 Mad. 197=56 M.L.J. 197.**

———An order granting injunction staying execution proceedings passed by a single Judge of the High Court is a judgment and is appealable. A.I.R. 1927 Mad. 398, *Foll.* (*Ramesam and Madhavan Nair, JJ.*). PETHAPERUMAL CHETTIAR *v.* CHIDAMBARAM CHETTIAR. **102 I.C. 396=38 M.L.T. 364=1927 M.W.N. 259=A.I.R. 1927 Mad. 592=52 M.L.J. 670.**

———An order of a single Judge of the High Court staying execution of a decree of a mofussil Court is a "judgment" within the meaning of Cl. 15 and an appeal therefrom is maintainable under that clause. A.I.R. 1925 P.C. 155, *Expl.*; 35 Mad. 1 (F. B.); A.I.R. 1924 Mad. 597 and L. P. A. No. 240 of 1925, *Foll.*; 24 Mad. 358; 14 L.W. 701, *Not foll.*; A.I.R. 1923 P.C. 148, *Dist.* (*Wallace and Madhavan Nair, JJ.*). JEEYANGARLAVARU *v.* KRISHNAMACHARLU. **100 I.C. 157=50 Mad. 380=25 M. L. W. 511=38 M.L.T. 51=1927 M.W.N. 248=A. I. R. 1927 Mad. 398=52 M.L.J. 161.**

—Cl. 15—"Judgment"—Transposing parties.

———*Order on the Original Side of the High Court transferring defendant as plaintiff is not judgment.*

A determination, call it what you will, which has the effect, whether on a technical ground or on the merits, of putting an end to the proceedings as regards the particular people or *in toto* is a judgment and is appealable; but if the pronouncement leaves the suit free to go on, then it is not a judgment within the meaning of the clause. Every order on a contested petition is not a judgment. The line dividing judgments from orders must be drawn somewhere short of this. An order passed on the Original Side of the High Court transferring certain persons from the position of the defendants to that of plaintiffs is not a decision the effect of

LETTERS PATENT—(Madras), (1865), Cl. 15—Revenue Board.

which is to put an end to the suit or proceeding and therefore it is not a judgment within Cl. (15). 35 Mad. 1 (F.B.), *Appl.* (*Coutts-Trotter, C.J. and Ramesam, J.*). OFFICIAL ASSIGNEE OF MADRAS *v.* RAMALINGAPPA. **94 I.C. 456=43 Mad. 539=23 M. L.W. 592=1926 M.W.N. 366=A.I.R. 1926 Mad. 554=50 M.L J. 361.**

—Cl. 15—Leave to appeal.

———*Second appeal—Decision of single Judge—Leave to appeal—Considerations—Leave whether can be restricted to some points.*

No hard and fast rule can be laid down as regards the grounds on which leave to appeal should be granted by a Judge under Cl. 15 of the amended Letters Patent against his decision passed in second appeal. The mere fact that there was a question of fact involved in the second appeal or that the second appeal was allowed and the decision of the lower Appellate Court reversed or modified, or that the valuation of a second appeal was not insignificant, is not by itself conclusive for the grant of such leave to appeal. Leave to appeal however may be limited to certain points only in which case the appellant will be confined to such points. Where the decision in second appeal was based on the construction of a deed of adoption which contained certain peculiar provisions.

Held, that leave should be refused. Principles applicable to granting of leave to appeal elaborately discussed. (*Ananthakrishna Aiyar, J.*). BULLIRAJU *v.* SATYANARAYANAMURTI. **53 Mad 405=1930 M.W.N. 65=31 M.L.W. 254=58 M.L.J. 388.**

—Cl. 15—Leave to appeal—Refusal.

———The intention of the legislature as appearing from Cl. 15 is that a judgment passed by a single Judge in a second appeal after 1st February, 1929, is final and not appealable and that an appeal could be entertained against the said judgment only if the Judge who decided the second appeal granted leave to appeal. If leave to appeal is refused by such Judge no appeal lies from the order refusing leave to appeal. (*Case-law considered.*) (*Waller and Ananthakrishna Ayyar, JJ.*) RAMANAYYA *v.* KOTAYYA. **121 I. C. 621=52 Mad. 952=30 M. L. W. 386=A.I.R. 1930 Mad 75=57 M.L.J. 398.**

—Cl. 15—New point.

———The question, as to the reasonableness and sufficiency of notice to quit given by a landlord to his tenant for a year, is a pure question of fact and not one of law; and so, if it is not specifically raised in the lower Courts it cannot be raised for the first time in a Letters Patent Appeal in the High Court. 3 M.L.J. 222; A.I.R. 1925 Mad. 346; 29 Cal. 203; 31 Mad. 261 and 35 Bom. 407. *Cons.*; A.I.R. 1924 Mad. 626; 27 Mad. 23 and A.I.R. 1921 Bom. 395, *Ref.* (*Wallace and Srinivasa Ayyangar, JJ., afterwards Odgers and Wallace, JJ.*). AIYANARS AND KANIYALA SWAMIGAL KOIL DEVASTHANAM, KOCHADAI *v.* PERIYAKARUPPA THEVAN. **118 I. C. 279=30 M. L. W. 583=A. I. R. 1929 Mad. 617.**

—Cl. 15—Revenue Board.

———The mere fact that the Civil Procedure Code is made applicable to proceedings under the Act including presumably the proceedings of the Board of Revenue cannot by itself convert the Board of Revenue into a Civil Court subordinate to the High Court unless for some other reason it is a Civil Court subordinate to the High Court, such as is referred to in S. 3, C. P. Code, which it

LETTERS PATENT (Madras), (1865), Cl. 15—Revision and appeal.

is not. Unless it can be said that the Board of Revenue is subject to the superintendence of the High Court when acting under S. 205 it is impossible to hold that it is a Court suberdinate to the High Court.

The Board of Revenue exercises judicial powers and is in that sense a Court as pointed out in 9 Cal. 295 but that does not make it necessarily an inferior Court subject to the High Court as the superior Court. In the absence of any provisions declaring the Board of Revenue to be subject to the appellate jurisdiction of the High Court it must be held that it is not so subject.

Clause 16, Letters Patent, says that every Civil Court of the Presidency is subject to the appellate jurisdiction of the High Court. Section 15, Charter Act (Replaced by S. 107, Government of India Act) provides that every Court subject to the appellate jurisdiction of the High Court is subject to its power of superintendence. Reading these two provisions together every Civil Court of the Presidency is subject to the High Court's power of superintendence, in other words, is subordinate to that Court. 9 Cal. 295 (P.C.), *Foll.*

Revenue Courts, although so designated, on account of their more limited jurisdiction, are nevertheless, properly understood, Civil Courts.

The revenue officers having been by the very terms of the Act, constituted Courts, when hearing certain suits or applications, it is a necessary corollary, that the Board, governed as it is by the same rules of procedure, should also be deemed a Court, when dealing with the same matters at a later stage.

It is wrong to assume that the Courts mentioned in S. 107 of the Government of India Act (S. 15, Charter Act) as being subject to the High Court's appellate jurisdiction, are restricted to such Courts as were in existence, at the time of the passing of the Charter Act or the issue of the Letters Patent. (*Phillips, Odgers and Venkatasubba Rao, JJ.*). RAGHUNADHA PATRO *v.* GOVINDA PATRO. **114 I.C. 161= A.I.R. 1928 Mad. 1032=55 M.L.J. 798 (F.B.).**

—Cl. 15—Revision and appeal.

———Whether it is doubtful whether the decision appealed from was in revision or second appeal but the party aggrieved had a right of second appeal, it must be construed as an appeal and a Letters Patent appeal would lie in an appropriate case. (*Venkatasubba Rao and Madhavan Nair, JJ.*). MEYAPPAN SERVAI *v.* SELAPPA CHETTIAR. **A. I. R. 1930 Mad. 489.**

—Cl. 15—Scope.

———Article 15 of the Letters Patent is not controlled by S. 105, C. P. Code. And it is open to a person though he does not appeal against the order of remand, to attack it in his appeal against the final decree. (*Waller and Madhavan Nair, JJ.*). SRINIVASA VARADACHARIAR *v.* RUNGANAYAKI AMMAL. **118 I. C. 291=30 M.L.W. 787= A.I.R. 1929 Mad. 349.**

—Cl. 15—Scope and nature.

———Per *Thiruvenkatachariar, J.*—Both S. 98, C. P. Code, and Cl. 36, Letters Patent, are mere rules of procedure, differing in that respect from Cl. 15, Letters Patent, which gives a right of appeal in certain cases from the decision of a single Judge or of a Division Bench. (*Kumaraswami Sastri, Ramesam and Reilly, JJ.*). DHANARAJU *v.* MOTIGAL DADA. **116 I.C. 343=29 M.L.W. 823=52 Mad. 563= A.I.R. 1929 Mad. 641=57 M.L.J. 264 (F.B.).**

LETTERS PATENT (Madras), (1865), Cl. 35—Difference of opinions among Judges.

—Cl. 16—Revision—Revenue Court's decision.

———No revision lies under S. 115, C.P.Code, or S. 107 of the Govt. of India Act or Cl. 16 of the Madras Letters Patent against an order of the Revenue Divisional Officer acting under Act III of 1895 as such officer is not a Court subject to the superintendence of the High Court. Meaning of 'appellate jurisdiction' discussed—*Case-law discussed* (*Ayling, Offg.C.J. and Odgers, J.*). PALANIKUMARA CHINNAYYA GOUNDEN, *In re.* **66 I.C. 556=14 M.L.W. 548=1921 M.W.N. 757= A.I.R. 1922 Mad. 337=41 M.L.J. 577.**

—Cl. 18—Scope.

———Clause (12), Letters Patent, does not affect the provisions of Cl. 18. 40 Mad. 810, *Rel. on.* (*Phillips, Offg. C. J., Ramesam and Madhavan Nair, JJ.*). K. KRISHNA RAO, *In re.* **112 I.C. 149=51 Mad. 540=28 M.L.W. 285= A.I.R. 1928 Mad. 732=55 M.L.J. 171 (F.B.).**

—Cl. 26—Altering sentence.

———The expression "alter the sentence" in Cl. 26 of the Letters Patent includes setting it aside. The High Court can on review not merely reduce the sentence but has the power to set aside the conviction. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER *v.* EMPEROR. **1930 M.W.N. 249.**

—Cl. 26—" Decision."

———*Held*, (*Eddy, J. dissenting*) that the word 'decision' in Cl. 26 includes every mental conclusion on which the judgment or charge is based and not merely matters actually stated at the Bar for the direct decision of the Court. It thus includes directions, misdirections or non-directions, to a jury. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER *v.* EMPEROR. **1930 M.W.N. 249.**

—Cl. 26—" Point of law."

———The expression " point of law " in Cl. 26 of the Letters Patent means the same thing as matter of law in S. 418 of the C. P. Code. It includes such misdirection or non-direction as would permit an appeal against the verdict of a jury. And misdirection includes not only an error in laying down the law by which the jury are to be guided but also a defect in summing up the evidence or in not summing it up or in summing it up erroneously.

Per *Eddy, J. dissenting.*—'A point of law' referred to in Cl. 26 means a point of law submitted to and decided by the trial Judge or any direction as to the law given by him in the course of his summing up to the jury. (*Wallace, Madhavan Nair, Jackson, Ananthakrishna Aiyar and Eddy, JJ.*). C. K. N. SUNDARESA IYER *v.* EMPEROR. **1930 M.W.N. 249.**

—Cl. 36—Difference of opinions among Judges.

———Per *Full Bench.*—Whether the appeal is under C. P. Code, or under the Letters Patent, the procedure to be adopted in either case by the High Court in case of an equal division of opinion between the Judges is to be governed by Cl. 36, Letters Patent, and not by S. 98, C. P. Code. A.I.R. 1921 P. C. 6 and A. I. R. 1921 P. C. 80, *Rel. on*; *Case-law discussed.* (*Kumaraswami Sastri, Ramesam and Reilly, JJ.*). DHANARAJU *v.* MOTI LAL DAGA. **116 I.C. 343=52 Mad. 563=29 M.L.W. 823= A.I.R. 1929 Mad. 641=57 M.L.J. 264 (F.B.).**

———*In a Small Cause revision.*

In case of differrence among Judges forming the High Court Bench, S. 98, C. P. Code, does not apply but Cl. 36 of the Letters Patent applies and

LETTERS PATENT (Madras), (1865), Cl. 36—Scope.

senior Judge's opinion prevails. *Case-law discussed.* (*Krishnan and Odgers, JJ.*). NAGAPPA PILLAI *v.* ARUNACHALAM CHETTY. **85 I. C. 1016= A.I.R. 1925 Mad. 281=47 M.L.J. 876.**

—Cl. 36—Scope.

———*Per Thiruvenkatachariar, J.*—Both S. 98, C. P.Code, and Cl. 36, Letters Patent, are mere rules of procedure, differing in that respect from Cl. 15, Letters Patent, which gives a right of appeal in certain cases from the decision of a single Judge or of a Division Bench. (*Kumaraswami Sastri, Ramesam and Reilly, JJ.*). DHANARAJA *v.* MOTI LAL DAGA. **116 I.C. 343=29 M.L.W. 823= 52 Mad. 563=A.I.R. 1929 Mad. 641= 57 M.L.J. 264 (F.B.).**

———The amended Cl. 36 applies to all pending cases. (*Kumaraswami Sastri, Ramesam and Reilly, JJ.*). GURUSWAMI PILLAI *v.* VIRABHADRA TAVULKARAN. **119 I.C. 160=52 Mad. 584= 29 M.L.W. 874=1929 M.W.N. 564= A.I.R. 1929 Mad. 497=57 M.L.J. 22 (F.B.).**

—Cl. 39—Decree in testamentary matter.

———A decree of the High Court in a testamentary matter is appealable to His Majesty in Council when the case is such that if it were an ordinary civil case it would be appealable under S. 109. 40 Cal. 21 (P.C.), *Expl.*; 10 L.B.R. 22, *Not foll.* (*Devadoss and Waller, JJ.*). PARAMASWAMI IYANGAR *v.* PICHAMMAL. **97 I.C. 836= 49 Mad. 954=1926 M.W.N. 931= A.I.R. 1926 Mad. 986=51 M.L.J. 299.**

—Cl. 39—Order in insolvency proceedings.

———*Appeal lies to Privy Council against order under S. 8.*

A judgment passed under S. 8 of the Presidency Towns Insolvency Act by the High Court in its appellate jurisdiction setting aside or annulling a prior order is appealable under Cl. 39 of the Letters Patent to the Privy Council.

In an insolvency matter (original or appellate) an application for leave to appeal lies under Cl. 39 of the Letters Patent, even if no such application lies under S. 109 of the C. P. Code. (*Ramesam and Wallace, JJ.*). ANNAMALAI CHETTY *v.* OFFICIAL ASSIGNEE OF MADRAS. **91 I.C. 126=35 M L.T. 57=22 M.L.W. 362= A.I.R. 1925 Mad. 243.**

—Cl. 39—Order in revision by single Judge.

———*No appeal lies to the Privy Council from the decree or order of one Judge of a High Court.*

By S. 44 of the Letters Patent, the Letters Patent are subject to imperial legislation. So S. 39 of the Letters Patent fails as against S. 111 of the C. P. Code. Hence, though since the amendment of the Letters Patent, the judgment of a single Judge sitting in revision is not appealable to two Judges and therefore may be regarded as a final decree of a High Court from which a right of appeal to the Privy Council is given in all cases by S. 39 of the Letters Patent. Section 111 of C. P. Code, prevails and no appeal lies to the Privy Council from the decree of a single Judge of a High Court. (*Krishnan and Wallace, JJ.*). B. V. SATYANARAYANA VARAPRASADA RAO *v.* B. V. BHASHYAKARULU RAO. **75 I.C. 604= 46 Mad. 958=18 M.L.W. 655=1923 M.W.N. 719= A.I.R. 1924 Mad. 399=46 M.L.J. 117.**

—Cl. 39—Small Cause revision.

———*Small Cause revision, question raised in—Leave must be granted if a substantial question of law.*

Under Cl. 39 of the Letters Patent, leave to appeal to the Privy Council should be granted where the decision of the High Court involves a substantial question of law even in cases of revisions under S. 25 of the Provincial Small Cause Court's Act, if they necessitate the interpretation of the section of the statute which may be of great private importance. In this case the question was about the meaning of S. 12 of Madras Estates Land Act and the right in dispute was not exactly measurable in money. (*Spencer and Kumaraswami Sastri, JJ.*). RAJA OF RAMNAD *v.* KAMATH RAVUTHAN. **66 I.C. 686=1922 M.W.N. 46=15 M.L.W. 140= 30 M.L.T.42=A I.R. 1922 Mad. 34=42 M.L.J. 78.**

—Cl. 39—Suspension of Vakil from practice.

———No leave to appeal to His Majesty in Council can be granted against an order suspending a Vakil from practice which is a disciplinary matter and not a judgment. (*Schwabe, C. J., Coutts-Trotter, Kumaraswami Sastri, Krishnan and Ramesam, JJ.*). *In the matter of* MR. E. RAGHAVA REDDI. **69 I.C. 290=16 M.L.W.328= 1922 M.W.N. 530=31 M.L.T. 173= A.I.R. 1922 Mad. 440=43 M. L.J.382 (F.B.).**

—Cl. 44—Appeal to Privy Council.

———*C.P. Code, S. 111—No appeal lies to the Privy Council from the decree or order of one Judge of a High Court.*

By S. 44 of the Letters Patent, the Letters Patent are subject to Imperial legislation. So S. 39 of the Letters Patent fails as against S. 111 of the C. P. Code. Hence, though since the amendment of the Letters Patent, the judgment of a single Judge setting in revision is not appealable to two Judges and therefore may be regarded as a final decree of a High Court from which a right of appeal to the Privy Council is given in all cases by S. 39 of the Letters Patent. Section 111 of the C.P. Code, prevails and no appeal lies to the Privy Council from the decree of a single Judge of a High Court. (*Krishnan and Wallace, JJ.*). B. V. SATYANARAYANA VARAPRASADA RAO *v.* B. V. BHASHYAKARULU RAO. **75 I.C. 604= 46 Mad. 958=18 M.L.W. 655=1923 M.W.N. 719= A.I.R. 1924 Mad. 399=46 M.L J. 117.**

———**Malta.**

—S. 33—Membership of Senate or Assembly.

———Court of Appeal in Malta is finally to determine all questions which may arise as to the right of any person to be or remain a member of the Senate or the Legislative Assembly and an appeal does not lie to the Board of Privy Council. *Theberge* v. *Laudry*, 2 A.C. 102, *Rel. on.* (*Lord Blanesburgh.*) LORD STRICKLAND *v.* GUISEPPE GRIMA. **124 I.C. 582= A.I.R. 1930 P.C. 227 (P.C.).**

———**Patna (1916).**

—Subordinate Courts.

———The Letters Patent must be read subject to the special legislation in the form the Regulation V of 1893 which declares that the Courts other than the Sessions Court are not subordinate to the Patna High Court as their High Court. (*Adami and Macpherson, JJ.*). SAILENDRA NATH *v.* EMPEROR. **108 I.C. 419=7 Pat. 337= 9 P.L.T. 468=29 Cr.L.J. 427=A.I.R. 1928 Pat. 241.**

—Writ of mandamus.

———*Patna High Court has no power to issue writ of mandamus.*

Patna High Court does not possess any power either under S. 45 or Letters Patent, to issue writ of mandamus similar to those possessed by the Calcutta High Court and the High Courts of Bombay and Madras. (*Courtney-Terrell, C. J., Kulwant*

LETTERS PATENT (Patna), (1916), Cl. 10—"Judgment"—Remand order.

Sahay, Fazl Ali, James and Dhavle, JJ.). SURAJMULL-BRIJLAL *v.* COMMR. OF INCOME-TAX, BEHAR. **A.I.R. 1930 Pat. 538 (F.B.).**

—Cl. 10—"Judgment"—Remand order.

———Where a Judge of the High Court without setting aside the decision of the lower Appellate Court merely remands the case for the finding of an issue with directions to return that finding before finally disposing of the appeal, that is not a judgment within the meaning of the Letters Patent; but where the Judge sets aside the decision of the lower Appellate Court and orders a retrial by that Court, that decision amounts to a judgment within the Letters Patent and in such cases an appeal is permissible from the decision. (*Dawson-Miller, C.J. and Mullick, J.*). AJITI CHAUDHARI *v.* JANAK LAL CHAUDHARI. **75 I.C. 946=A.I.R. 1924 Pat. 336.**

———If a Judge sittings singly sets aside the judgment and decree of the lower Appellate Court and remands the case for re-hearing, the order of remand being a 'judgment' under Cl. 10 of the Letters Patent (Patna) is appealable. (*Dawson-Miller, C. J. and Coutts, J.*). MUNSHI LAL *v.* MAHANTH RAMASIS PURI. **65 I. C. 175=3 P.L.T. 343=1 Pat. 246=A.I.R. 1922 Pat. 384.**

—Cl. 10—Limitation.

———Rule 2, Chap. 7 of the Patna High Court Rules, excludes the applicability of S. 12 of the Limitation Act to appeals under Cl. 10 of the Letters Patent. (*Dawson-Miller, C.J. and Mullick, J.*). DEOKI LAL *v.* RAMANAND LAL. **59 I. C. 179=A.I.R. 1921 Pat. 365 (F.B.).**

—Cl. 27—Declaration of validity of marriage.

———The jurisdiction of the High Court in matters matrimonial is only such jurisdiction as is comprised within the provisions of the Indian Divorce Act. A suit therefore for a declaration that marriage was a valid and lawful marriage does not lie. (*Bucknill, J.*). ADELAIDE CHRISTIANA LISH *v.* DAVID LISH. **72 I.C. 657=1923 P.H.C.C. 127=1 Pat. L.R. 129=A.I.R. 1923 Pat. 301.**

—Cl. 28—Contempt proceedings.

———The rule for contempt proceedings need not be issued by the Court as an entire body and the whole of its judiciary need not be consulted. A single Judge or Division Bench has jurisdiction to issue the rule. (*Courtney-Terrell, C.J., Adami, Ross, Kulwant Sahay and Fazl Ali, JJ.*). EMPEROR *v.* MURLI MANOHAR. **117 I. C. 180=30 Cr.L.J. 741=A. I. R. 1929 Pat. 72 (F.B.).**

—Cl. 28—Procedure in appeals.

———Per *Das and Foster, JJ.*—There is no conflict between the Code and the Letters Patent. The special procedure indicated in the Letters Patent applies to Letters Patent appeals; the procedure indicated in S. 98 of the Code applies to appeals from Subordinate Courts. 43 Bom. 433, *Foll.* (*Dawson-Miller, C.J., on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **87 I.C. 849=88 I.C. 141=4 Pat. 810=6 P.L.T. 634=A.I.R. 1925 Pat. 626.**

—Cl. 29—Rules.

———The High Court Rules of Patna were framed under Cl. 29 of the Letters Patent. Although the rules were not submitted to any Rule Committee they are quite legal. Ss. 122 and 128, C. P. Code do not include the High Court at Patna as it was not established when the C.P. Code of 1908 was enacted. (*Dawson-Miller, C.J. and Mullick, J.*). RAJENDRA KISHORE *v.* KAMAKHYA NARAIN. **60 I.C. 285=2 P.L.T. 112=1926 P.H.C.C. 97=A.I.R. 1921 Pat. 18.**

LETTERS PATENT (Rangoon), (1922), Cl. 10—Jurisdiction.

—Cl. 31-Administrative and disciplinary orders.

———Disciplinary jurisdiction—Right of appeal to Privy Council does not extend to administraive or disciplinary orders of High Court. It may always be necessary in performing administrative acts for the Court or the Judge or the person whose duty it is to carry out these acts to consider and come to a conclusion as to what his powers may be under a particular act of Council and the mere fact that such a consideration arises does not take the case out of the ordinary course. (*Dawson Miller, C.J. and Adami J.*). SUDHANSU BALA HAZRA, *In re.* **70 I.C. 172=A.I.R. 1922 Pat. 603.**

———Rangoon (1922).

—Cl. 7—Advocates of Judicial Commissioner's Court.

———Advocates of the late Judicial Commissioner's Court of Upper Burma should be enrolled in the Rangoon High Court according to their qualifications. The Legal Practitioners Act did not extend to Upper Burma and therefore, the Practitioners of the Judicial Commissioner's Court of Upper Burma do not come within the exception to Art. 30 of the Stamp Act, unless they are Vakils of an Indian High Court who have already paid that fee. (*Robertson, C.J., Heald and May Oung, JJ.*). *In the matter of* FIRST GRADE ADVOCATES OF THE LATE COURT OF THE JUDICIAL COMMISSIONERS OF UPPER BURMA. **74 I.C. 13=1 Rang. 142=A.I.R. 1924 Rang. 1 (F.B.).**

—Cl. 8—Acts not in professional capacity.

———When an officer committed what might have been adequately corrected by the ordinary punishment for an offence of that nature and the offence was not one which subjected the individual who committed it to anything like general infamy or any imputation of bad character so as to render his remaining in the Court as a practitioner improper,

Held, it was not competent to the Court to inflict upon him a professional punishment for an act which was not done professionally and which act *per se* did not render him improper to remain as a practitioner of the Court.

Although High Court has a very wide discretion in the exercise of its disciplinary powers, nevertheless, in a case where the acts charged were not committed in a professional capacity, and where they involve a criminal offence, it would not ordinarily be convenient for the High Court to exercise those powers until the charges have been investigated in a Criminal Court. (*Rutledge, Heald and May Oung, JJ.*). *In the matter of* MAUNG BA KYIN. **76 I.C. 827=2 Bur. L.J. 210=25 Cr. L.J. 267=A.I.R. 1924 Rang. 113 (S.B.).**

—Cl. 8—Appeal against suspension.

———The provisions of the C. P. Code have no application whatever to orders made by virtue of Cl. 8 of Letters Patent and so where a High Court removes or suspends for reasonable cause advocates, pleaders or attorneys of the High Court, the High Court has no power to grant a certificate that the case is a fit one for appeal to His Majesty-in-Council. (*Heald, Offg. C. J. and Otter. J.*). U BA THEIN. **8 Rang. 40=A.I.R. 1930 Rang. 150.**

—Cl. 10—Jurisdiction.

———*M* who had an office in Calcutta but whose head office was in Rangoon entered into an agreement to act as selling agent in Rangoon for *S* to sell dried prawns from Bengal on commission basis. *S* was merchant trading in Bengal and was to deliver prawns to *M* at his office in Calcutta. *M* at his Calcutta office was to make advances to *S*

LETTERS PATENT (Rangoon), (1922), Cl. 11—Application for transfer.

against the value of prawns so delivered. *M* by his Calcutta manager was to ship the prawns to Rangoon. *M* at Rangoon was to sell the prawns for *S* on commission and *M* was to pay *S* the proceeds of the sale of the prawns, less advances, commission and charges. *M* sued to recover a balance of advances made by him in Calcutta in excess of the value of prawns when sold, in Rangoon.

Held, that in the present case no payments by *S* to *M* were contemplated by the contract. *M* was to pay advances to *S* in Calcutta and was to pay *S* the balance of the sale proceeds also presumably in Calcutta. As the amounts were expressly made payable in the agreement they were certainly payable in Calcutta, the reasonable inference also would be that accounts were to be settled in Calcutta and if any amount should be found payable to *M* it should be payable to him in Calcutta just as amounts payable by him to *S* were payable in Calcutta. Calcutta Court had, therefore, jurisdiction to try the suit. (*Heald, Ag. C.J. and Sen, J.*). MAHOMED ESHAK BHIYAT *v.* SARI CHANDRA BOSE. **A.I.R. 1930 Rang. 216.**

—Cl. 11—Application for transfer.

———It is desirable that the application for removal to the High Court of a suit under S. 11 should also be dealt with in the original jurisdiction of the Court. (*Lentaigne and Carr, JJ.*). JUPITER GENERAL INSURANCE CO., LTD. *v.* ABDUL AZIZ.

76 I.C. 479=1 Rang. 226=A.I.R. 1923 Rang. 185.

—Cl. 11—Transfer of Insolvency case in inferior Courts.

———Original Side of the High Court is not competent to transfer insolvency proceedings from one Court to the other. The powers conferred by S. 5 of the Provincial Insolvency Act, which are made subject to the other provisions of the Act, cannot be exercised in such a way as to give the Original Side of the High Court a jurisdiction from which it is expressly excluded by the terms of the Act whether that section is read with S. 24, C. P. Code or Cl. (11) of the Letters Patent. (*Chari, J.*). *In the matter of* THE ESTATE OF OOMER AHAMMED BROS. **100 I.C. 265=4 Rang. 554=A. I. R. 1927 Rang. 105.**

—Cl. 12—Objection as to jurisdiction—Waiver.

———Where in a suit leave of the High Court, although necessary under Cl. 12, Letters Patent, is not obtained, the defendant must raise the objection as to the jurisdiction of the High Court at the first available opportunity. If he fails to do so, and at first submits to the High Court's jurisdiction, such submission constitutes waiver which cures the defect created by omission to apply for leave. (*Doyle, J.*). MAHOMED SIDDIQ *v.* MAHOMED AHMED. **113 I.C. 898=6 Rang. 680=A.I.R. 1929 Rang. 61.**

—Cl. 13—Appeal—Order deciding jurisdiction.

———An order, passed by the Court on its Original Side, deciding that the Court has jurisdiction to entertain a suit, is appealable although appeal will not lie against a similar finding of a Court other than the High Court. C.M.A. 82 of 1925, *Foll.* (*Heald and Darwood, JJ.*). TAR MAHOMED *v.* MT. ZULAIKHA BAI. **105 I.C. 472=A.I.R. 1928 Rang. 20.**

—Cl. 13—Certificate of fitness.

———A certificate declaring that a case is a fit one for appeal can be granted only by the Judge who passed the judgment, because the intention of the Letters Patent is to confine the granting of a certificate to the Judge who actually heard the appeal and passed the judgment. (*Rutledge, C.J.,*

LETTERS PATENT (Rangoon), (1922), Cl. 13—Judgment—Attachment before judgment.

Brown and Maung Ba, JJ.). MA THAN *v.* MG. BA GYAW. **93 I.C. 124=3 Rang. 546=4 Bur. L.J. 185=A.I.R. 1926 Rang. 1 (F.B.).**

———A delay of 4 months was considered as not excusable. Where substantial justice was done to the parties, and the petitioners were attempting to take advantage of a technical defect to which they had once themselves agreed, declaration was refused. (*May Oung, J.*). MAUNG HMAN *v.* MA SHIN. **79 I.C. 441=79 I.C. 744=2 Bur. L.J. 164=A.I.R. 1924 Rang. 45.**

—Cl. 13—Copy of judgment.

———Rule 5 of the Rangoon High Court Appellate Side rules was intended to apply and does apply to appeals against judgments of the Original Side under Cl. 13 of the Letters Patent and therefore in the case of such appeals the memorandum of appeal must be accompanied by a certified copy of the judgment which is under appeal unless the Court dispenses with it. (*Heald and Chari, JJ.*). M. H. ARIFF *v.* PERUMAL. **98 I. C. 689=5 Bur. L. J. 75=A.I.R. 1926 Rang. 143.**

—Cl. 13—Judgment—Acceptance of security.

———An order merely deciding as to the sufficiency of the security offered by the judgment-debtor where execution has been stayed by the appellate Court is not a judgment. (*Heald and Chari, JJ.*). MOOLJEE AND DHARSEE AND CO. *v.* MOOLA. **88 I.C. 740=A.I.R. 1925 Rang. 225.**

—Cl. 13—Judgment—Appointment of Commissioner in partnership suit.

———A decision which affects the merits of the question between the parties by determining some right or liability may rightly be held to be a "judgment." An order which merely paves the way for the determination of the question between the parties cannot be considered to be a "judgment," nor can a mere formal order regulating the procedure in the suit, or one which is nothing more than a step towards obtaining a final adjudication. Where in a suit for dissolution of partnership for accounts thereof being taken and for recovery of plaintiff's share therein a preliminary decree was passed by consent declaring partnership to be dissolved and ordering all proper accounts of the partnership being taken, and where a commissioner was appointed to take accounts and the commissioner applied to the Court for directions with reference to certain questions as regards the accounts and where the Court passed an order giving directions but not deciding on the merits of the suit or the rights and liabilities of the parties as regards the partnership, *Held*, that the order was not a judgment within the meaning of Cl. 13. (*Robinson, C.J. and Brown, J.*). YEO ENG BYAN *v.* BENG SENG AND CO. **84 I. C. 291=2 Rang. 469=A.I.R. 1925 Rang. 43.**

—Cl. 13—Judgment—Appointment of Receiver.

———Where an appeal from an order is allowed by the C. P. Code, the Court will construe such an order as a judgment within the meaning of Cl. 13, and from an order appointing a Receiver under O. 40, R. 1, an appeal lies. (*Rutledge, C. J. and Brown, J.*). A. R. A. ARUMUGAM CHETTYAR *v.* V. K. S. K. N. M. KANAPPA CHETTYAR. **101 I.C. 791=5 Rang. 99=A.I.R. 1927 Rang. 139.**

—Cl. 13—Judgment—Attachment before judgment.

———An order made under the provisions of O. 38, R. 5 is not a "judgment" within the meaning of Cl. 13 of the Letters Patent, because it is a mere interlocutory order which does not affect the merits of the dispute between the parties by

LETTERS PATENT (Rangoon), (1922), Cl. 13—"Judgment"—Decision on preliminary point.

determining some right or liability which is in controversy between them in the suit and therefore no appeal lies from that order. (*Heald and Lentaigne, JJ.*). MENGHA SINGH *v.* SUCHA SINGH.

90 I. C. 995=4 Bur. L.J. 108=3 Rang. 307=A.I.R. 1925 Rang. 267.

—Cl. 13—"Judgment"—Decision on preliminary point.

———*Decision on preliminary point is no judgment.*

The proper procedure, when a preliminary question of limitation is raised, is to hear that question and decide it as a preliminary point and if it is so decided, it cannot be said that the appellate Court which had not heard the appeal on its merits, either confirms or reverses the decree appealed from; and their decision cannot be "a judgment" within the meaning of Cl. 13. (*Robinson, C.J. and Pratt, J.*). TIN TIN NYO *v.* MAUNG BASAING.

77 I.C. 385=1 Rang. 584=A.I.R. 1924 Rang. 148.

—Cl. 13—"Judgment"—Finding as to nature of document.

———*Finding having effect of allowing suit to proceed is not a judgment.*

If the effect of an adjudication " is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding the adjudication is a judgment, otherwise not.

The finding that the parties intended to treat a document on which the suit was filed as an inland and not as a foreign instrument, which had the effect of allowing the suit to proceed, does not amount to a judgment within the meaning of Art. 13. Rang. Civ. F. A. 158 of 1924; Rang. Civil Misc. No. 82 of 1925 and A.I.R. 1928 Rang. 20, *Overruled*; 35 Mad. 1; A.I.R. 1925 Rang. 43 and A.I.R. 1922 Lah. 380, *Rel. on.* (*Case-law discussed.*) (*Pratt, Offg. C.J., Carr, Cunliffe, Ormistone and Darwood, JJ.*). P. K. P. Y. E. CHIDAMBARAM CHETTIAR *v.* N. A. CHETTIYAR FIRM. **114 I. C. 524=6 Rang. 703=A.I.R. 1929 Rang. 41 (F.B.).**

—Cl. 13—"Judgment"—Insolvency proceedings.

———An order by Insolvency Court declining to adjudicate upon the claim that certain property in the hands of Official Assignee was in reality held by insolvent in trust and directing the claimant to enforce his claim by regular suit is not a judgment within Cl. (13) and is not, therefore, appealable. A.I.R. 1927 Rang. 287, *Rel. on* and 35 Mad. 1, *Not foll.* (*Rutledge, C.J. and Brown, J.*). ARJUN IYER *v.* OFFICIAL ASSIGNEE, RANGOON.

111 I.C. 836=6 Rang. 363=A.I.R. 1928 Rang. 246.

—Cl. 13—"Judgment"—Order in Insolvency.

———Order of a Judge directing that the Official Receiver is entitled to a certain amount as commission as against heirs of the estate sold through ths Receiver, is a judgment. A.I.R. 1925 Rang. 43, *Rel. on.* (*Pratt, Offg. C.J. and Cunliffe, J.*). MA HIMANA *v.* OFFICIAL RECEIVER. **114 I.C. 673=A.I.R. 1928 Rang. 301.**

—Cl. 13—Judgment—Order on pauper petition.

———*Order of Judge on original side of High Court refusing to allow person to sue as pauper is appealable as judgment*—(Per *Heald, Ag. C. J.*)—*But not where permission to sue as pauper is given.*

The word "judgment" in Cl. 13 is intended to cover an order as well as a decree, but the effect of the adjudication must be such as to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with is to put an end to the suit or proceeding. If it has the effect, the adjudication is a judgment, otherwise not.

LETTERS PATENT (Rangoon), (1922), Cl. 13—"Judgment"—Refusal to issue commission.

The order of the Judge on the original side of the High Court refusing to allow a person to sue as a pauper is appealable as a judgment inasmuch as the order put an end to the pending proceeding. A.I.R. 1929 Rang. 41 (F.B.), *Foll.*

Per *Heald, Ag. C.J.*—But the case in which permission to sue as a pauper is refused must be distinguished from the case in which such permission is given. A.I.R. 1925 Mad. 167, *Not appr.* (*Heald, Ag. C.J. and Otter, J.*). S.M. MITRA *v.* CORPORATION OF THE ROYAL EXCHANGE ASSURANCE. **A.I.R. 1930 Rang. 259.**

———An order allowing a party to sue in *forma pauperis* is not a "judgment" within the meaning of Cl. 13. A.I.R. 1925 Mad. 167, *Dissented from*; 26 Mad. 437 and 21 All. 133, *Appr.* (*Heald and Chari, JJ.*). MATHAN MYINT *v.* MG. BA THEIN.

95 I.C. 523=4 Rang. 20=5 Bur. L.J. 6=A. I. R. 1926 Rang. 110.

—Cl. 13—"Judgment"—Order returning award.

———*Order returning the award for complying with S.* 11 (2), *Arbitration Act, is not a judgment and no appeal lies therefrom.*

Where the trial Court held that the arbitrators, by not giving notice to the parties before sending the award to the Court, acted with material irregularity and in breach of the statutory obligation imposed by S. 11 (2), Arbitration Act, and ordered the award to be sent back to the arbitrators to enable them to act according to law,

Held, that such an order was not a judgment within the meaning of Cl. 13 of the Letters Patent and no appeal lay on it. 45 Cal. 502 and A.I.R. 1925 Rang. 43, *Foll.* (*Rutledge, C. J. and Carr, J.*). I. E. ABOWATH *v.* A. E. ABOWATH. **114 I.C. 521=6 Rang. 25=A.I.R. 1928 Rang. 110.**

———Order of Court remanding the award for making a fresh award on the ground of arbitrator's misconduct, is a 'judgment'. 8 Bom. L.R. 433; 13 Bom. L.R. 91 and 9 Bom. H.C. R. 398, *Appr.* (*Duckworth and Po Han, JJ.*). SAYA PYE *v.* U. KUNDINNYA. **76 I.C. 525=2 Bur. L.J. 193=1 Rang. 661=A.I.R. 1924 Rang. 47.**

—Cl. 13—Judgment—Refusal to add parties.

———An order tantamount to refusing to join persons as parties finally adjudicates or concludes the matter so far as those persons are concerned and it is consequently a judgment within the meaning of Cl. (13) of the Letters Patent.

An order refusing to allow a person to be joined as defendant in a suit under S. 92, C.P. Code without the permission of Government Advocate is appealable. (*Rutledge, C. J. and Brown, J.*). C. E. DOOPLY *v.* M.E. MOOLA. **103 I.C. 261=5 Rang. 263=A.I.R. 1927 Rang. 180.**

—Cl. 13—Judgment—Refusal to amend plaint.

———An order refusing leave to amend a plaint followed by dismissal of the suit is a "judgment" within Cl. 13 and is appealable. (*Rutledge, C. J. and Brown, J.*). P. M. CHETTYAR FIRM *v.* MA SHWE PON. **101 I.C. 628=5 Rang. 118=6 Bur. L. J. 49=A.I.R. 1927 Rang. 154.**

—Cl. 13—"Judgment"—Refusal to issue commission.

———An order refusing to issue a commission, however serious the ultimate results to the party, is a purely interlocutory order and not a judgment terminating a suit or other proceedings or affecting the merits. A.I.R. 1925 Rang. 225 and 35 Mad. 1

LETTERS PATENT (Rangoon), (1922), Cl. 13—Judgment—Refusal to issue commission.

(F.B.), *Foll.* (*Heald and Lentaigne, JJ.*). MAHOMED HUSSAIN *v.* HOOSAIN HAMADANEE AND CO.
90 I.C. 967=4 Bur. L. J. 103=3 Rang. 293=A.I.R. 1925 Rang. 290.

———Refusal to issue a commission is a matter within the discretion of the Insolvency Judge and no appeal lies under Letters Patent (Rangoon,) S. 13. 13 Mad. 143; 14 Mad. 88 and 28 Mad 20, *Dissented from*; A.I.R. 1925 Rang 43, *Ref.* (*Rutledge, C.J. and Brown, J.*). ABDUL GAFFUR *v.* OFFICIAL ASSIGNEE. **93 I.C. 211=4 Bur. L.J. 254=3 Rang. 605=A.I.R. 1926 Rang. 64.**

—Cl. 13—Judgment—Rejection of claim.

———Refusal of summary remedy given by O. 21, R. 58, C. P. Code, leaves open the right of bringing a regular suit and having the question in issue finally decided. It, consequently, cannot be a "judgment" within the meaning of Cl. 13, Letters Patent. (*Rutledge, C.J. and Brown, J.*) JAMAL BROTHERS AND CO., LTD. *v.* CHIP MOHAND CO.
104 I.C. 330=5 Rang. 381=6 Bur. L.J. 162=A.I.R. 1927 Rang. 287.

—Cl. 13—Limitation.

———The period of limitation for an appeal from a judgment of the original side under Cl. 13 of the Letters Patent is 20 days from the date of the judgment, and in such appeals the memorandum of appeal must be accompanied by a certified copy of the judgment unless the Court dispenses with it, but need not be accompanied by a certified copy of the decree. (*Robinson, C. J. and Brown, J.*). J. N. SURTY *v.* T. S. CHETTYAR FIRM.
98 I C. 417=4 Rang. 265=5 Bur. L.J. 187=A.I.R. 1927 Rang. 20.

—Cl. 13—Limitation for Appeal.

———The words "decree or order" as used in Art. 151 are wide enough to cover a "judgment" in the sense in which that word is used in Letters Patent, Cl. 13 and therefore the period of limitation for an appeal under Cl. 13 of the Letters Patent from a judgment of the High Court on its original side is 20 days from the date of the judgment. (*Heald and Chari, JJ.*). M. H. ARIFF *v.* PERUMAL.
98 I.C. 639=5 Bur. L.J. 75=A I.R. 1926 Rang. 143.

—Cl. 17—Interpretation.

———*"Law" means enacted law, the English Common Law and Equity—Published decisions of the Chief Court are not included,* (*Cunliffe, J., dissenting*).

The word "Law" as used in Cl. 17 of the Letters Patent, merely means the legal enactments of the Indian and Burmese Legislatures, the English Common Law and Equity, etc., which was applied by the late Chief Court of Lower Burma. It cannot of necessity be read as to include the published decisions of that Court, which decisions, until merged in an enactment, or used to modify or repeal any enactment, are not, strictly speaking, law. What the clause meant was that the institution of the High Court did not involve any change in the law to be administered by the Court on its Original Side, and that the enactments and the principles of law which would have been followed by the Chief Court should be followed by the High Court. (*Rutledge, C.J., Heald, Carr, Duckworth, Cunliffe, Chari, Das, Otter and Maung Ba, JJ.*). *In re* MA MYA *v.* MA THEIN. **98 I.C. 526=4 Rang. 313=A.I.R. 1927 Rang. 4 (F.B.).**

—Cl. 17—Law—Applicable.

———The Original Side of the Rangoon High Court will administer the Mahomedan Law in the matter of determining a gift by a Mahomedan.

LETTERS PATENT (Rangoon), (1922), Cl. 37—"Final decree or order."

(*Chari, J.*). MIRZA HASHIM MISHKEE *v.* AGA ABDUL HOOSAIN BINDANEE. **103 I.C. 189=5 Rang. 252=A.I.R. 1927 Rang. 242.**

—Cl. 28—Transfer of Criminal cases.

———The High Court's power of revision are in express terms limited to those conferred by certain sections mentioned in S. 439. Section 526 is not one of these. The Letters Patent does not confer any power of transfer over and above that conferred by S. 523 since Cl. 28 is qualified by Cl. 36. (*May Oung, J.*). ASHU *v.* MG. PO KHAN. **77 I.C. 885=1 Rang. 632=2 Bur. L.J. 236=25 Cr. L.J. 485=A.I.R. 1924 Rang. 100.**

—Cl. 34—Scope.

———Clause 34 of the Letters Patent does not in all cases override the provisions of S. 98 of the Code of Civil Procedure and where that section can properly apply it may be resorted to in spite of the provisions of Cl. 34 when it seems obviously right for the differing Judges to refer the point of law on which they differ. Clause 34 of the Letters Patent applies only to those cases in which the appeals come before the Court by virtue of a right of appeal given by the Letters Patent. Where an appeal lies under the ordinary law of the land, the Letters Patent will not override the provisions of the Code, applicable to the appeal. (*Robinson, C.J. and Pratt, J.*). TIN TIN NYO *v.* MAUNG BA SAING. **77 I.C. 395=1 Rang. 534=A.I.R. 1924 Rang. 148.**

—Cl. 35—Scope.

———Section 35 of the Letters Patent as well as S. 122 of the C. P. Code, and S. 108 of the Government of India Act (1915) merely give the High Court power to make rules and orders for the purpose of regulating proceedings in civil cases. (*Rutledge, C.J., Brown and Maung Ba, JJ.*). MA THAN *v.* MG. BA GYAN. **93 I.C. 124=3 Rang. 546=4 Bur. L.J. 183=A.I.R. 1926 Rang. 1 (F.B.).**

—Cl. 36—Transfer of Criminal case.

———The High Court's powers of revision are in express terms limited to those conferred by certain sections mentioned in S. 439. Section 526 is not one of these. The Letters Patent does not confer any power of transfer over and above that conferred by S. 526 since Cl. 28 is qualified by Cl. 36. (*May Oung, J.*). ASHU *v.* MG. PO KHAN. **77 I.C. 885=1 Rang. 632=2 Bur. L.J. 236=25 Cr. L J. 485=A.I.R. 1924 Rang. 100.**

—Cl. 37—"Final decree or order."

———*Decree of High Court under S.* 91 (3) *of Rangoon City Municipal Act is not appealable to Privy Council.*

In the case of special and often technical enactments, if a person or a Court is specifically, designated to determine disputes arising out of the application of such enactments, the Court or person is not functioning in an ordinary, but in an extraordinary manner and parties to any litigation arising thereunder will not be permitted to appeal further than these specially appointed persons or tribunals.

A decree of the High Court under S. 91 (3) of the Rangoon City Municipal Act is not a final judgment, decree or order within the meaning of Art. 37 of the Letters Patent or S. 109 of the C. P. Code, and is not appealable to His Majesty in Council. 40 Cal. 21; 37 Bom. 506 and A. I. R. 1926 Rang. 25 (F. B.), *Rel. on.* (*Pratt, C. J. and Cunliffe, J.*). MADAN THEATRES, LTD. *v.* CORPORATION OF RANGOON. **99 I.C. 994=4 Rang. 508=6 Bur. L.J. 1=A.I.R. 1927 Rang. 88.**

LIMITATION—Against Crown.
LIABILITY—For Torts.

See TORT.

——Of Agents.

See (1) CONTRACT ACT.
(2) PRINCIPAL AND AGENT.

——Of Guardian:

See GUARDIAN AND WARDS.

——Of Sons for Father's Property.

See HINDU LAW—DEBTS.

LIBEL.

See (1) TORT—DEFAMATION.
(2) PENAL CODE, SS. 499, 500.

LICENSE.

See EASEMENTS ACT, SS. 52—64.

LIEN.

See (1) CONTRACT ACT, SS. 95—105.
(2) LEGAL PRACTITIONER.
(3) T. P. ACT, SS. 55, 101.

LIFE ESTATE.

See T. P. ACT, S. 14.

LIFE INSURANCE.

See INSURANCE.

LIFE-INTEREST WITH REMAINDER OVER.

See T. P. ACT.

LIGHT AND AIR.

See (1) EASEMENTS.
(2) EASEMENTS ACT.

LIGHT OBSTRUCTIONS.

See (1) EASEMENTS.
(2) EASEMENTS ACT.

LIMITATION.

—Against Crown.

——As regards limitation against the Crown, the legal presumption is that unless the Crown is specifically mentioned in a Statute, it is excluded from its operation. (*Kincaid, J. C. and Raymond, A. J. C.*). GANGARAM *v.* SECY. OF STATE FOR INDIA. **86 I.C. 757 (Sind).**

—Alternative remedies.

——There is no provision of law according to which a plaintiff, who upon failing to obtain one remedy sues for an alternative one, is entitled to exclude the time taken up by the former proceedings. (*Curgenven, J.*). PATTRACHARIAR *v.* ALAMELUMANGAI AMMAL. **100 I.C. 40= 25 M. L. W. 11=A. I. R. 1927 Mad. 273.**

—Assumption of title.

——The plea of limitation assumes that the title is in the plaintiff. (*Das and Macpherson, JJ.*). SHASHI BHUSAN BANERJI *v.* RAMJAS AGARWALA. **83 I.C. 205=3 Pat. 85=A.I.R. 1924 Pat. 402.**

—Claim by way of defence.

——Limitation cannot be pleaded against a claim made by way of defence. 5 O. L. J. 768, *Rel. on.* (*Stuart, C. J. and Misra, J.*). MT. RAIS-UN-NISSA *v.* ZORAWAR SAH. **92 I.C. 675=1 Luck. 92= 29 O.C. 118=13 O.L.J. 10=3 O.W.N. 121= A.I.R. 1926 Oudh 228.**

—Compromise.

——No compromise of agreement can prevent the law of limitation from taking effect. (*Ashworth and Misra, JJ.*). CHANDOO *v.* MURLIDHAR. **92 I.C. 732=13 O.L.J. 138=A.I.R. 1926 Oudh 311.**

—Determination of.

——The questions of limitation cannot be decided inferentially. It is on the facts actually found and not merely upon those alleged in the plaint that limitation has to be computed. (*Subhedar, A.J.C.*). IBRAHIM KHAN *v.* NAGOJI. **118 I.C. 62= A.I.R. 1929 Nag. 124.**

——When the law of limitation is to be applied the Court must look at the pleadings and not at the result of the suit. (*Devadoss and Wallace, JJ.*).

LIMITATION—Period of notice under C.P. Code, S. 80.

NARAYANA *v.* VENKATASWAMI. **98 I.C. 31= 24 M.L.W. 475=1926 M.W.N. 767= A.I.R. 1926 Mad. 1190=51 M.L.J. 845.**

—Duty of Court.

——A Court is bound to see whether a plaintiff has brought his suit within the statutory period of limitation. (*Cuming and Page, JJ.*). ABDULGOFUR *v.* ABDUL JOBBOR. **97 I.C. 635= A.I.R. 1927 Cal. 30.**

—Equity.

——Persons who desire the assistance of the Court in obtaining equitable relief must come quickly. In each case it is a question to be decided on the facts whether the delay on the part of the plaintiff in such that the Court ought not to exercise its powers. (*Schwabe, C.J. and Wallace, J.*). ABDUL SHAKER *v.* ABDUL RAHIMAN. **72 I.C. 868=17 M.L.W. 216=1923 M.W.N. 1= 46 Mad. 148=A.I.R. 1923 Mad. 284=44 M.L.J. 107.**

—Fresh cause of action.

——*Starting point.*

Where a debtor annulled the satisfaction of his debt on the ground of coercion and obtained a decree, the oreditor gets a fresh cause of action and time begins to run from the date of the annulment. 9 Cal. 255 (P.C.); 12 M.I.A. 244, *Foll.* (*Wallis, C.J. and Seshagiri Aiyar, J.*). MUTHUVEERAPAH CHETTY *v.* ADAIKAPPA CHETTY. **59 I.C. 472=43 Mad. 845=12 L.W. 240= 1920 M.W.N. 505=39 M.L.J. 312.**

—Law applicable.

——The law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding, unless there is a distinct provision to the contrary. (*Mallik, J.*). KANAI LALL SABUI *v.* PURNA CHANDRA CHATTERJI. **34 C.W.N. 733.**

—Law of.

——The law of Limitation is a branch of the adjective law and governs all proceedings to which it is applicable from the date of its enactment. 1 Pat. L. J. 214 and 11 All. 408 (F.B.), *Foll.* (*Jwala Prasad and Ross, JJ.*). E. O. R. MYERS *v.* DIVAKAR MANILAL & CO. **62 I. C. 100= 2 P.L.T. 667.**

—Nature of plea.

——A plea of limitation is not a mere technical plea. A party who can invoke the law of limitation in his favour is certainly justified in doing so and he ought not to be deprived of the advantages gained on the ground of the alleged technicality of the plea raised. (*Kennedy, J.C. and Raymond, A.J.C.*). MESSRS. MANGHUMAL JETHANAND *v.* MESSRS. ARATMAL SATRAMDAS. **76 I.C. 119= 17 S.L.R. 263=A.I.R. 1924 Sind 47.**

——*Not a technical plea.*

Where the right sought is one involving the dispossession of a perfectly lawful purchaser of property, it is not quite accurate to say that a plea that such a suit has not been brought within the proper period of time limited by the Act is a technical plea, if by a technical plea is meant a plea which asserts rights which have no merits for their support. (*Lord Buckmaster.*) CHARAN DAS *v.* AMIR KHAN. **57 I.C. 606=48 Cal. 110= 25 C.W.N. 289=18 M.L.W. 49=47 I.A. 288= 18 A.L.J. 1095=22 Bom. L.R. 1370= 3 P.W.R. 1921=23 M.L.T. 149=2 U.P.L.R. 124= A.I.R. 1921 P.C. 50=39 M.L.J. 193 (P.C.).**

—Period of notice under C. P. Code, S. 80.

——In the case of a suit alleged to be barred under a special law of limitation, the party is not

LIMITATION—Raising of plea.

entitled to deduct the period of two months for service of notice under S. 80 of the C. P. Code. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I.C. 287=34 C.L.J. 205= A. I. R. 1921 Cal. 661.**

—Plea.

See also LIMITATION ACT, S. 3.

—Raising of plea.

——*In second appeal.*

Where the facts necessary to support a plea of limitation are either admitted or are apparent on the face of the record, Court will not be justified in refusing to entertain the plea, even if raised for the first time in a second appeal. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REOTI RAMAN ACHARYA. **114 I.C. 734= 1929 A.L.J. 229= A.I.R. 1928 All. 689.**

——It is necessary that limitation should be pleaded in all cases. But particularly this is so where the bar is alleged under some special law. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I.C. 287=34 C.L.J. 205= A.I.R. 1921 Cal. 661.**

——*General rule.*

The general rule is that points of limitation should not be allowed to be raised for the first time in appeal where they involve a decision upon questions of fact. Points of limitation should not be decided against the parties unless attention has been drawn to the question of limitation and an opportunity given them to meet it on the evidence.

If limitation is urged as bar, the facts on which it is barred must be proved after an issue has been framed. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN. **66 I. C. 287= 34 C.L.J. 205= A.I.R. 1921 Cal. 661.**

—Remedy barred.

——*Revivor by adding another less effective—Remedy not barred.*

It would be a *reductio ad absurdem* to hold that where a party has allowed a valuable right to be extinguished by the lapse of time he should be allowed to revive his right by claiming in his suit another relief which is still within time but is for other reasons ineffective. (*Bhide and Currie, JJ.*). SAHIB SINGH *v.* GURDIAL SINGH. **A. I. R. 1930 Lah. 693.**

—Revision application.

——Revision applications are not admitted beyond the time allowed for appeals except for special reasons. (*Pullan and Raza, JJ.*). HAMID-UL-NISSA *v.* MOHAMMAD ANWAR. **A.I.R. 1930 Oudh 496.**

—Right of redemption.

——The right to redeem can be exercised at any time before an order absolute for sale had been passed, and therefore the deposit is valid even though made long after the expiry of three years from the date of the decree. There is no period of limitation prescribed for such an application. (*Dalal, A.J.C.*). BANGE BEHARI LAL *v.* GHANI AHMAD. **66 I.C. 944=9 O.L.J. 14= A.I.R 1922 Oudh 33.**

—Starting point.

——Per *Mukerji, J.*—The starting point of limitation does not always synchronise with the cause of action in many cases it does, but in others it dates from some specified events which again is either anterior or posterior to the accrual of the cause of action. The periods prescribed by the Act are more or less arbitrary, and the fixing of the periods is founded on consideration of public policy. (*Walmsley and M.N. Mukerji, JJ.*). SARAT KAMINI DASI *v.* NAGENDRA NATH PAL. **89 I.C. 1000= 29 C.W.N. 973=43 C.L.J. 155= A.I.R. 1926 Cal. 65.**

LIMITATION—Starting point.

——No limitation begins to run against an appellant until a decree is drawn up and signed. (*Kinkhede, A.J.C.*). TUKARAM *v.* LAXMINARAYAN. **89 I.C. 937= A.I.R. 1926 Nag. 207.**

——*Failure to bring suit for declaration of a bare chance—No prejudice can result.*

It is not necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not do so.

A Hindu widow claimed certain properties as the heir of her predeceased natural born son. She willed away the income of the property before her death. Her title was disputed by another lady who claimed to be the adoptive mother of the deceased son. The validity of the adoption was challenged by the natural mother and the matter was before the Courts. The estate was being managed by the Court of Wards, and later, by Court Receivers.

Held, that under the circumstances of the case, the beneficiaries under the will were not bound to sue the testatrix's heir, on her death, for the payment of the legacies if and when he might be in possession of assets out of which the legacies might have been payable. 14 All. 47, *Ref.* (*Sir John Edge.*) APPA RAO *v.* PARTHASARATHY. **87 I.C. 324=52 I.A. 214=1925 M.W.N. 441= 3 Pat. L.R. 208=29 C.W.N. 989=23 A.L.J. 261= 6 L.R.P.C. 82=48 Mad. 312=27 Bom.L.R. 823= A. I.R. 1925 P.C. 105=48 M.L.J. 627 (P.C.).**

——*Omission of names in the decree—Amendment date.*

Where a decree as passed omitted the same of appealing defendants but they did file an appeal and the appellate Court having made an enquiry, the trial Court added their names in the decree.

Held, that the right of the defendants to appeal from those decrees—if they had any right to appeal—arose when the decrees were amended by the addition of their names. (*Kanhaiya Lal, J.*). ISHWAR PRASAD *v.* BABU BISHUNATH. **85 I.C. 627= A. I. R. 1925 All. 567.**

——Where within six years of the denial of the plaintiff's title there is an adjudication by a Civil Court deciding against the defendant, a subsequent denial of the plaintiff's title is a fresh denial and not necessarily in continuation of the preceding one. Time must be calculated only from the later denial. (*Sulaiman and Ryves, J.*). GAJADHAR SINGH *v.* HARI SINGH. **87 I.C. 647= 47 All. 416=23 A.L.J. 291= 6 L.R.A. Civ. 237= A.I.R. 1925 All. 421.**

——Plaintiff's share in mortgaged property wrongly entered in revenue papers, to plaintiff's knowledge—Limitation for declaratory suit to rectify error runs from entry—Assertion of plaintiff's title to larger share, by plaintiff's pleader in redemption suit by plaintiffs and defendants, does not necessarily imply a fresh denial of plaintiff's title by defendants giving rise to fresh cause of action. (*Abdul Raoof and Jai Lal, JJ.*). SUHAWA SINGH *v.* ASA SINGH. **86 I.C. 117=7 L.L.J. 35= A.I.R. 1925 Lah. 417.**

——*Rule in Madras.*

In Madras Presidency where there is an option open to a person to call up the whole debt on default, or not as he chooses, if he does not exercise that option, it will not be held against him that his cause of action had arisen on the default itself. (*Krishnan, J.*). MOHIDEEN KARIYA *v.* PERIYANAYAKAM PILLAI. **84 I.C. 118= 20 M.L.W. 480=1924 M.W.N. 828= A. I. R. 1925 Mad. 233.**

LIMITATION—Starting point.

———*Instalment Bond—Option to sue for whole in case of default—Limitation runs from date of first default.*

The bond amount was payable within six months and was to bear a certain rate of interest. This interest was to be paid month by month, and in the event of failure to pay in any month, compound interest was to accrue on the unpaid interest and the plaintiff was to have a right to file a suit at once, without waiting for the stipulated period of six months. Interest was never paid,

Held, that a suit not brought within three years of the date of the first default of payment of interest was barred by limitation notwithstanding that the plaintiff was entitled at his option not to sue on default in payment of interest but to wait till the expiry of the period of the bond. It is not open to the parties to an agreement to contract themselves out of the Law of Limitation by inserting in their agreement two alternative starting points for limitation. A.I.R. 1923 All. 1 (F.B.), *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). PHERAI *v.* PUDAI RAM. **85 I.C. 280=27 O.C. 318= A.I.R. 1925 Oudh 502.**

———*Instalment bond.*

A suit on an instalment bond which enables the oreditor to olaim the entire amount on default of any one of the instalments is not time-barred in respect of the instalments which fell due within the period of limitation, although the suit is filed after the expiry of the period of limitation from the date on which the earliest instalment in respect of which default was made, fell due. (*Kulwant Sahay and Sen, JJ.*). RAMSEKHAR PRASAD *v.* MATHURA LAL. **90 I.C. 249=4 Pat. 829= 1925 P. H. C. C. 215=A.I.R. 1925 Pat. 557.**

———Per *Crump, J.*—It is only where it is necessary to consider the act plus the consequences as the cause of action, that the time runs from the consequences where those consequences are injurious. (*Shah, Ag. C. J. and Crump, J.*). ABDULLA MAHOMED *v.* A. M. ZULAIKHI. **84 I.C. 796=25 Bom. L.R. 1333= A.I.R. 1924 Bom. 290.**

———The true test to determine when a cause of action has accrued is to ascertain the time when plaintiff could first have maintained his action to a successful result. (*Mookerjee and Suhrawardy, JJ.*). DWIJENDRA NARAIN ROY *v.* JOGES CHANDRA DE. **79 I.C. 520=39 C.L.J. 40=A.I.R. 1924 Cal. 600.**

———For a suit under Art. 120 the starting point of limitation is the date of the first decree and not the date of the appellate decree confirming the same. 46 Cal. 670, *Foll.* (*Phillips and Ramesam, JJ.*). N. PAKURAN *v.* K. KANDAN KUTTY. **70 I.C. 45=16 M.L.W. 285=1922 M.W.N. 561= 3 M.L.T. 169=A.I.R. 1923 Mad. 23.**

———An entry in the Record-of-Rights-of-merely raises a presumption of correctness, and is not a starting point for the computation of the period of limitation. (*Chatterjee and Suhrawardy, JJ.*). S.K. ACHARJI CHOWDHURY *v.* UMED ALI HAWALDAR. **63 I.C. 954=25 C.W.N. 1022=35 C.L.J. 19= A. I. R. 1922 Cal. 251.**

———The limitation for an application for the determination of mesne profits is to be computed from the date of the final decree by which the award of mesne profits was confirmed. 36 All. 350 and 39 All. 641, *Foll.* (*Kanhaiya Lal, J. C.*). KUBER SINGH *v.* MT. RAJ KUNWAR. **68 I.C. 896=25 O.C. 132=10 O.L.J. 56= A.I.R. 1922 Oudh 197.**

LIMITATION (OF SUITS) ACT (1859), S. 17—Public Property.

———Where a borrower executes first a mortgage bond and later on a charge deed and the deed contains a condition to repay the debt at any time before the redemption of the previous mortgage, the date of payment is fixed by the deed, and the limitation does not begin from the date of execution of the bond. (*Lindsay, J.C.*). MAHADEO TEWARI *v.* SITLA BAKSH SINGH. **65 I.C. 408=8 O.L.J. 660= A.I.R. 1922 Oudh 102.**

—Suit for contribution.

———*Execution of a pro-note.*

Where a decree is passed against two judgment-debtors, and one of them satisfies the decree by executing a pro-note in favour of the decree-holder that does not give him a right to contribute as against the other judgment-debtor. The limitation for a suit for contribution will run only from the date of satisfaction of the pro-note. 26 Mad. 322 and 14 M.L.J. 285, *Foll.* (*Curgenven, J.*). SANNASI CHETTI *v.* ARUNACHALA CHETTI. **99 I.C. 438=38 M.L.T. 106= A.I.R. 1927 Mad. 1137.**

—Suspension.

———It is not necessary nor would it be good law to invoke the theory of suspension of limitation in any case in which suspension is not expressly provided for either in the Limitation Act or in some special statute. 11 All. 47 (P.C.); 12 M.I.A. 244 and 43 Mad. 185 (F.B.), *Expl.*; 35 Cal. 209, *Ref.* (*Das, James and Rowland, JJ.*). MAHABIR PRASAD *v.* BHUPAL RAM. **10 P.L.T. 879= A. I. R. 1929 Pat. 694. (F.B.).**

———*Time—When extended.*

The period of limitation is extended where there has been a suspension of the cause of action or where the cause of action accrued not on the date indicated in column 3 of the Schedule to the Limitation Act, but at a subsequent date, for no fault of the plaintiff. An original decree is not suspended by presentation of an appeal, nor is its operation interrupted where the decree on appeal is one of dismissal. 12 M.I.A. 244 and 26 C.W.N. 271, *Ref.*; 46 Cal. 670 (P.C.), *Foll.*

Time runs from the date on which the rights of the party suing are finally settled, giving birth to his cause of action, and once it starts running it cannot be stopped by any act which does not bring about any change in those rights. (*Suhrawardy and Duval, JJ.*). BIJOY CHAND MAHATAB *v.* NILMONI LAHIRI. **85 I.C. 1007=A.I.R. 1925 Cal. 1216.**

—Time granted at debtor's request.

———A verbal promise on the part of the olient to pay the attorney the latter's costs which have become overdue, when money is recovered in certain execution cases—a promise on the strength of which the attorney has not taken steps to enforce payment—is an answer to any objection based on limitation made by the ollent against an application by the attorney for an order for payment. (*Rankin, J.*). NARENDRA LAL KHAN *v.* TARU-BALA DASSI. **66 I.C. 209=48 Cal. 817= 25 C. W. N. 800=A.I.R. 1921 Cal. 67.**

—Transposition of parties.

———Where a party is transposed—No question of limitation arises. (*Ramesam, J.*). PONNAMMAL *v.* PICHAI THEVAN. **99 I.C. 687=24 M.L.W. 826= A.I.R. 1927 Mad. 204=52 M.L.J. 33.**

LIMITATION (OF SUITS) ACT (XIV of 1859)—(Repealed by IX of 1871).

—S. 17—Public property.

———Property which by confiscation has become the property of the State and which the State is

LIMITATION (OF SUITS) ACT (1859), S. 18—Suits before 1862.

claiming as its own is public property. The rule of limitation in Oudh for suit for public property at the time Act XIV of 1859 was applied must have been the sixty years' rule prescribed by the Circular No. 104 of 1860 or else there was no rule of limitation at all. (*Lindsay, J.C. and Wazir Hasan, A.J.C.*). SECY. OF STATE *v.* MD. QASIM.
61 I.C. 871=24 O.C. 77=8 O.L.J. 160=A. I. R. 1921 Oudh 88.

—S. 18—Suits before 1862.
——By S. 1 of the Act of 1859 coupled with Act XI of 1861, suits instituted before January 1862 were to be determined as if the Act had not been passed. 27 Cal. 1004 (P.C.), *Discussed.* (*Mukerji and Bose, JJ.*). KHANTAMOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE. **118 I.C. 566=48 C.L.J. 489=A I.R. 1929 Cal. 149.**

—S. 28—Adverse possession.
——Regulation III of 1793 read with Regulation II of 1805, and Act XIV of 1859 have been always understood as meaning that adverse possession for the prescribed period not merely bars the remedy but gives title. (1854) 1 Boul. Rep. 70; 11 M.I.A. 345 (P.C.); (1869) 12 W.R. 192; 20 W.R. 104; 1 M.I.A. 446 (P.C.) and 3 Cal. 224, *Foll.* (*Mukerji and Bose, JJ.*). KHANTAMOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE. **118 I.C. 566=48 C.L.J. 489=A.I.R. 1929 Cal. 149.**

LIMITATION ACT (IX of 1871)—(Repealed by XV of 1877).

—Art. 129—Possession by setting aside adoption.
——*Twelve years from the date of adoption or death of the adoptive father.*

Article 129 of the Second Schedule of Act IX of 1871 relates to all suits in which the plaintiff cannot succeed without displacing an apparent adoption by virtue of which the defendant is in possession. That article prescribed twelve years as the period of time within which a suit "to establish or set aside an adoption" might be brought, and that such period of twelve years should begin to run from the date of the adoption, or (at the option of the plaintiff) from date of the adoptive father's death. Act IX of 1871 did not give to a reversioner, whose right to sue for possession accrued upon the death of Hindu widow, any further time than the twelve years given by Art. 129 to any plaintiff. (*Sir John Edge.*) VAITHIALINGA *v.* SRIRANGATH ANNI. **92 I.C. 85=28 Bom. L. R. 173=30 C.W.N. 313=6 L.R.P.C. 169=52 I.A. 322=42 C.L.J. 563=48 Mad. 883=1926 M.W.N. 11=A.I.R. 1925 P.C. 249=49 M.L.J. 769 (P.C.).**

—Art. 129—Rights under challenged adoption.
——*C. P. Code* (1859), *S.* 15—*Adopted son not entitled to present possession—Title recognised within 12 years by adversaries—No suit need be brought.*

In 1856, estate of a deceased Raja was confiscated by the Government. Afterwards it was relinquished by the Government in favour of the Raja's heirs in 1862. By the order of re-grant, the estate was to be enjoyed by the Raja's widows during their lifetime, and after them, the Raja's daughter, or failing her, the Raja's next heirs were to inherit the property. In 1863, the senior widow adopted a son to her deceased husband. In 1866, the validity of the adoption was questioned in a suit filed by the other widows. But the decree in the suit expressly refused to adjudicate on the validity of the adoption. The factum of adoption was not disputed by anybody but only its validity. After

LIMITATION ACT (1877), S. 19—Redemption.

the decree was passed in the suit, the other widows recognised (within the period of 12 years from the adoption) the adopted son as their son. The decree only decided that the adopted son had no present right to possession and entrusted the property to a receiver who was to be in possession during the life-time of the widows or during such period as the Court thought fit. The daughter of the Raja predeceased the last surviving widow. After the death of the last surviving widow, in 1912, the Receiver filed an inter-pleader suit. The sons of the adopted son were among the contesting defendants. It was contended that their right had become barred under the Limitation Act of 1871, Art. 129 as the adopted son had not sued to establish the adoption within 12 years from the date on which it had taken place.

Held, that the adopted son's right had not become barred, for the following reasons:—(1) Within twelve years from his adoption the same was recognised by those who had contested it. (2) The decree in the suit of 1866 refused to adjudicate upon the validity of the adoption and a suit by the adopted son in face of this decree would not have lain. (3) A suit filed by him for a declaration that under the terms of the grant he was entitled to succeed to the properties as adopted son on the death of all the widows and on the contingency of the daughter of the Raja predeceasing them would be dismissed on the ground that no Court would grant a declaration of a bare possibility which may or may not ripen. (4) The rival claimants in the inter-pleader suit being in the position of plaintiffs would themselves be debarred from challenging the adoption if the adopted son was debarred from supporting the adoption, as the former had not sued within the period fixed by the Act of 1871, to set aside the adoption.

Per *Spencer, Offg. C. J.*—The adopted son might have sued for a bare declaration but was not bound to do so. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR *v.* SUNDARAM AYYAR. **93 I.C. 703=48 Mad. 1=A.I.R. 1925 Mad. 497.**

——(XV of 1877)—(Repealed by IX of 1908).

—S. 2—Right extinguished by law.
——A right which had become extinguished by the operation of law was not revived by Limitation Acts of 1877 and 1908. 35 All. 227 (P.C.), *Dist.* (*Marten, C. J. and Crump, J.*). NARAYAN *v.* GOVIND. **107 I.C. 60=29 Bom. L.R. 1563=A.I.R. 1928 Bom. 28.**

—S. 19—Redemption.
——*Co-heir—Acknowledgment—Effect of.*

Per *Full Bench*—An acknowledgment made by one of the heirs of the mortgagee who have divided the mortgaged property among themselves without the consent of the mortgagor, is binding on him or his heir so far as regards the property in his possession is concerned, though it may not be binding on the co-heirs of the mortgagee. The mortgagor can therefore claim to redeem that portion of the mortgaged property which is in the possession of the person making the acknowledgment on paying the whole amount of the mortgage money within the period of limitation from the date of the acknowledgment. 17 Bom. 173, *Disc.* and *Dist.*; A.I.R. 1927 Bom. 513; 18 All. 458 and 34 All. 375, *Dist.*; 3 Bom. L.R. 935 and 31 Bom. 619, *Rel. on.* (*Marten, C. J., Mirza and Broomfield, JJ., on difference between Madgavkar and Patkar, JJ.*). MOTILAL JADAV *v.* SAMAL BEGHAR. **A.I.R. 1930 Bom. 466 (F.B.)**

LIMITATION ACT (1877), S. 26—Applicability.

—S. 26—Applicability.

——No specific mention of Crown—It is not applicable to Crown, 1 Bom. 7; 14 Bom. 23; 25 Mad. 457, *Foll.*; 10 Cal. 214 and 5 Mad. H. C. 6, *Dist.* (*Kincaid, J.C. and Raymond, A.J.C.*). GANGARAM v. SECY. OF STATE. **86 I.C. 757=21 S.L.R. 195= A.I.R. 1927 Sind 270.**

—Art. 66—Personal covenant in mortgage.

——When a mortgagee sues on a personal covenant to make the mortgagor responsible for any deficiency in the realisation of the mortgage-debt out of the mortgaged properties, the claim is governed by Art. 66, and not Art 132. 7 All. 509 (P.C.), *Foll.* and 12 Cal. 389, *Ref.* (*Mr. Ameer Ali.*) GANESHLAL PANDIT v. KHETRAMOHAN MAHAPATRA. **95 I.C. 839=5 Pat. 585=53 I. A. 134= 24 A. L. J. 615=28 Bom. L.R. 931= 43 C. L. J. 545=24 M. L. W. 50= 1926 M. W. N. 535=3 O. W. N. 591= 7 P. L. T. 591=31 C. W. N. 25= A.I.R. 1926 P. C. 56=51 M.L.J. 82 (P.C.).**

—Art. 118—Applicability.

——The Act of 1877 applies only to declaratory suits in respect of adoptions and not to suits for possession of immovable property. (*Spencer, Offg. C. J. and Kumaraswami Sastri, J.*). MAHARAJA OF KOLHAPUR v. SUNDARAM AYYAR. **93 I. C. 705=43 Mad. 1=A.I.R. 1925 Mad. 497.**

LIMITATION ACT (1877), Art. 179—Execution of mortgage decree.

—Art. 179—Execution of mortgage decree.

——Under Art. 179, the period of three years runs from the date of the decree appealed against and not, from the date of the order to dismiss the appeal for want of prosecution. In a case a decree *nisi* for sale is made in a mortgage suit, the period of limitation is three years from the date of the decree. It cannot be extended by six months, the period given by the decree for redemption. The decree is operative from its date and it is the length of time during which it is operative that the Limitation Act looks to. (*Lord Atkinson.*) SACHINDRA NATH ROY v. MAHARAJ BAHADUR SINGH. **74 I. C. 660=30 M. L. T. 96= 1922 M. W. N. 336=24 Bom. L.R. 659= 26 C.W.N. 838=49 Cal. 203=48 I. A. 335= A.I.R. 1922 P. C. 187 (P.C.).**

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LIMITATION ACT (1908)—Appeal.

LIMITATION ACT (IX of 1908) (As amended by XXVI of 1920, X of 1922, XXX of 1925, I & IX of 1927 and I of 1929, etc.).

—Appeal.

——Where parties' Counsel have been duly communicated the date fixed for delivery of judgment limitation for appeal will run from such date in spite of the fact that neither the parties nor the Counsel were present. (*Dalip Singh, J.*). B.B. & C. RY. *v.* RAMASARUP MAHRUMAL. **98 I.C. 942= A.I.R. 1927 Lah. 59.**

—Applicability.

——*Laccadive Islands.*

The law applicable to the Islands is to be found in Regulation I of 1912. The Limitation Act has not been applied to these Islands and therefore time for filing an appeal cannot be extended under S. 5 of the Lim. Act. 13 Mad. 353, *Appl.* (*Devadoss and Waller, JJ.*). AHMED KOYA *v.* KILKKAKKAD AISAMMA. **93 I.C. 341=49 Mad. 519= 23 M.L.W. 636=A.I.R. 1926 Mad. 657.**

——*Aden.*

The Indian Limitation Act extends to the whole of British India of which Aden forms part and S. 16 of the Aden Civil and Criminal Justice Act (Act II of 1864) makes any Act or Acts in relation to civil procedure in force for the time being applicable to the Courts at Aden. (*Shah, Ag.C.J. and Crump, J.*). ABDULLA MOHOMED *v.* A.M. ZULAIKHI. **84 I.C. 796=25 Bom. L.R. 1333= A.I.R. 1924 Bom. 290.**

—Applicability of general provisions.

——The general provisions of Limitation Act are founded mainly on equitable considerations which apply as much to the period of limitation prescribed by the special Act, as to period of limitation prescribed by the Limitation Act itself. 34 All. 496, *Foll.* (*Fazl Ali and Chatterjea, JJ.*). MOHANLAL HARDEODAS *v.* COMMR. OF INCOME-TAX, BIHAR & ORISSA. **122 I.C. 810=10 P.L.T. 769= 9 Pat. 172=A.I.R. 1930 Pat. 14.**

——*Quaere.*—If the general provisions of the Limitation Act providing for extending the period of limitation apply only to the period prescribed in the schedule to that Act or also to the periods prescribed in special Acts like the Karachi Port Trust Act. (*Rupchand Bilaram, A.J.C.*). SIND TYPEWRITING CO. *v.* KARACHI PORT TRUST. **89 I.C. 376 (Sind).**

LIMITATION ACT (1908)—Construction.

—Claim of defendant.

——The statute does not apply to the claim of a defendant. (*Scott-Smith and Fforde, JJ.*). MT. BHOLI BAI *v.* DWARKA DAS. **84 I.C. 168= 5 Lah. 375=A.I.R. 1925 Lah. 32.**

—Construction.

——*Favourable to plaintiff.*

Courts in dealing with questions of limitation should, as far as possible, place upon the Act a construction favourable to plaintiffs. (*Beasley, C. J. and Walsh, J.*). SOMISETTI SESHAYYA CHETTY *v.* ROLLA SUBBADU. **1930 M.W.N. 930= 32 M.L.W. 502=A.I.R. 1930 Mad. 991.**

——The statutes of limitation are in their nature strict and inflexible and are not susceptible of equitable construction. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAM CHARAN DAS. **11 P.L.T. 403=A.I.R. 1930 Pat. 455.**

——Limitation Act has to be strictly construed and unless a suit clearly falls within the ambit of the article sought to be applied the decision should be in favour of the continuation of the suit. (*Shadi Lal, C.J. and Broadway, J.*). ASA RAM *v.* DARBA MAL. **121 I.C. 379=30 P.L.R. 440= 11 L.L.J. 431=A. I. R. 1929 Lah. 513.**

——*No exceptions should be made on the ground of hardship.*

In applying the Limitation Act to particular cases the Courts are not warranted in introducing savings or exceptions which are not found in the statute either because these may be within the reason of other exceptions which are to be found in the statute or because of considerations of mere hardship. 28 Cal. 113, *Ref.* (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). HARI MOHAN DALAL *v.* PARMESHWAR SAHU. **117 I.C. 343= 56 Cal. 61=32 C.W.N. 971= A.I.R. 1928 Cal. 656 (S.B.).**

——*Words must not be construed to restrict rights unless so expressed—Provisions cannot be extended to cases not covered by the wording—Form of suit will determine what article should be applied.*

Inasmuch as the Limitation Act is an Act which takes away or restricts rights to start legal proceedings it must receive such a construction as the language in its plain meaning imports. 20 W.R. 375 (P.C.), *Rel. on.* It cannot be interpreted so as to restrict rights unless it is clear that the Legislature intended that this should be done. 5 C.W.N.,

LIMITATION ACT (1908)—Determining article applicable.

355, *Rel. on.* It cannot also be forgotten that the provisions of the Limitation Act must not be extended to cases which are not strictly within the enactment or do not come within the strict meaning of the words used. 15 Bom. 299, *Rel. on.*

The object of the Limitation Act is not to create or define causes of action but simply to prescribe the period within which existing rights can be enforced in the Courts of law. 28 Cal. 37, *Rel. on.*

It therefore follows that whether a particular suit is of the nature contemplated by a particular article must depend upon the form in which the suit is brought and the relief claimed therein; for unless it comes within the wording of the first column of that article in the schedule, the limitation specified in the third column of that article cannot be made applicable to it. (*Kinkhede, A.J.C.*). SECY. OF STATE *v.* BAGMAL KISANDAYAL. **98 I.C. 22=22 N.L.R. 147=9 N.L.J. 193= A.I.R 1927 Nag. 10.**

—Determining article applicable.

———*Form of relief does not determine character of suit.*

It is not the form of the relief claimed which determines the real character of the suit for the purpose of ascertaining under which articles of the Limitation Act the suit falls. Though the relief claimed in the suit is possession of immovable property, yet if the property sued for is held by the contesting defendant under a sale or other transfer which is not void, but only voidable, and he cannot obtain possession without the transfer being set aside, the suit must be regarded as one brought to set aside the transfer though no relief in those terms is prayed for, but the prayer is only for possession of the property. 13 Cal. 308 (P.C.) and 25 Bom. 337 (P.C.), *Foll.*; 44 Bom. 742 (F.B.), *Appr. (Case-law discussed.)* 23 Mad. 271 (P.C.), *Expl. (Wallace and Thiruvenkatachariar, JJ.).* RAMASWAMI *v.* GOVINDAMMAL. **118 I.C. 491= 29 M.L.W. 169=1929 M.W.N. 124= A.I.R. 1929 Mad. 313=56 M.L.J. 332.**

—Effect on rights.

———*Though creditor's remedy may be barred his right is not.*

It is well understood that though remedy which the creditor has may be extinguished the debt may nevertheless subsist, and even after the period of limitation for a suit for recovery of the debt has passed, the creditor has a right to receive the sum due to him from his debtor if the latter is disposed to pay him. It is further clear that a payment made to discharge a time-barred debt could not in law be recovered by the debtor. (*Lindsay and Sulaiman, JJ.*). B. GAURI SHANKER *v.* PT. SHEO NANDAN. **78 I.C. 911=46 All. 384= 22 A.L.J. 369=5 L.R.A. Civ. 306= A. I. R. 1924 All. 543.**

———*Limitation bars remedy but does not extinguish right.*

Limitation bars the remedy but does not extinguish the right. The defendant, though unable to enforce his right by suit, can still rely upon it as a defence to an action brought against him. Limitation is not applicable to fix the period for which interest on the mortgage debt is payable by a mortgagor to a mortgagee, in a redemption suit in which the mortgagee is necessarily a defendant. 147 P.R. 1890 (F.B.), *Foll. (Shadi Lal, C. J. and Broadway, J.).* AKHAR HUSSAIN *v.* RAGHUNANDAN. **8 P.L.R. 1921=A.I.R. 1921 Lah. 351.**

LIMITATION ACT (1908)—Nature and scope. —English principles.

———There is no warrant for importing into the Limitation Act the provisions of a special English statute of limitation such as Ss. 3 and 4, Real Property Lim. Act, 1833. (*Rupchand, A. J. C.*). NENOMAL JIAMAL *v.* CHANDUMAL ASSANMAL. **116 I.C. 581=A.I.R. 1929 Sind 140.**

—Equity.

———There is no question of equity in cases governed by the Limitation Act. A.I.R. 1921 Bom. 379, *Notappr.* (*Sulaiman and Pullan, JJ.*). MAQBUL AHMAD *v.* PATESHRI PARTAB NARAIN SINGH. **118 I.C. 670=1929 A.L.J. 976= A.I.R. 1929 All. 677.**

———It is wrong to import considerations of equity in the application of the statute of limitation. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJAI COAL CO. **101 I.C. 62=31 C.W.N. 82= A.I.R. 1927 Cal. 117.**

———The Limitation Act must be taken to be exhaustive as regards extension of the period of limitation, and no equitable principle can find a place there. 38 Bom. 653, *Diss. from.* (*Dalal, J. C.*). RAM PHER *v.* AJUDHIA SINGH. **87 I.C. 17= 12 O.L.J. 66=2 O.W.N. 144=A.I.R.1925 Oudh 369.**

—Intention.

———The intention of the law of limitation is not to give a right where there is not one but to interpose a bar after a certain period to a suit to enforce an existing right. (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I.C. 812= 3 Pat. 880=5 P.L.T. 513=A.I.R. 1924 Pat. 721.**

———*Per V. Rao, J.*—The intention of the Law of Limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. 21 Cal. 8 (P.C.) and 33 All. 356 (P.C.), *Foll.* (*Spencer and Venkatasubba Rao, JJ.*). AIYAPPARAJU *v.* VENKATAKRISHNAYYA. **72 I. C. 488=1923 M.W.N. 195= 18 M.L.W. 35=A.I.R. 1923 Mad. 462= 44 M.L.J. 303.**

—Law applicable.

———The law of limitation which prevails when a suit is brought, applies to that suit, unless it be shown that one or other of the parties have acquired vested rights under some earlier statute of limitation. 35 All. 227 (P.C.), *Foll.*

Plaintiff whose enjoyment of an easement as against the Crown began in 1865 cannot acquire a prescriptive right against the Crown in view of S. 15, Easements Act, and S. 26, Limitation Act, 1877, does not apply to such a case. (*Kincaid, J.C. and Raymond, A. J. C.*). 'GANGARAM *v.* SECY. OF STATE. **86 I.C. 757=21 S.L.R. 195= A.I.R. 1927 Sind 270.**

———The law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding unless there is a distinct provision to the contrary. 35 All. 227 (P.C.), *Foll.* (*Lindsay and Sulaiman, JJ.*) MT. BEGAM SULTAN *v.* SARVI BEGAM. **90 I.C. 274= 48 All. 121=23 A.L.J. 977=6 L.R.A. Civ. 582= A.I.R. 1926 All. 93.**

—Nature and scope.

———*If a mere adjective or substantive law.*

Per *Page, C. J.*—The law of limitation, in so far as it prescribes the period within which litigants are entitled to pursue in the Civil Courts the remedy in which the law provides for the redress of grievances is a part of the adjective law.

Per *Carr, J.*—The law of limitation is something more than mere adjective law and much

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more than merely rules of procedure. The effect of the law of limitation is to extinguish after the prescribed period a legal right. The law of contract gives the party a right of suit on a contract. But the law of limitation then adds that this right of suit shall cease to exist after a certain period. The result of the two laws together is to create a right of suit available for a certain time. It may be that after the time has elapsed the party has still a moral right to a relief. But it is no longer a legal one. Thus the law of limitation is just as much substantive law as is the law of contract. (*Page, C. J., Carr and Cunliffe, JJ.*). (SHAKOOR) ABDUL GANNY *v.* MRS. T. M. RUSSELL.

A.I.R. 1930 Rang. 228 (F.B.).

——Rules of limitation are *prima facie* rules of procedure, and unless there is something special in the rules which justifies a contrary inference, the rules applicable to an application or appeal would be rules which are in force at the time when the appeal or the application is filed. A statute of limitation is retrospective in its operation and governs all proceedings from the moment of its enactment, even though the cause of action might have accrued before the Act came into existence. 35 All. 227 (P. C.), *Foll.* (*Sulaiman, Ag. C. J.*). BAIJNATH *v.* DOOLAREY HAJJAM.

110 I.C. 719=50 All. 865=26 A.L.J. 1317=
A.I.R. 1928 All. 708.

—Objections.

——Where in an execution case limitation was urged and was denied on the ground that on a particular date an affidavit had been filed to the effect that there were no incumbrances on the property but where there was then no written application to have the property sold and on the date fixed for disposing of the matter, but on the back of the affidavit there was an endorsement of the Court directing that it should be filed,

Held, that it was filed some time later on the same date but that no oral application for sale could have been made then and that therefore the plea against limitation failed. 22 O. C. 76, *Dist.* (*Ryves and Mukerji, JJ.*). P. CHIRAUNJI LAL *v.* GANGA SAHAI. **78 I.C. 631=22 A.L.J. 410=**
5 L.R.A. Civ. 318=A.I.R. 1924 All. 811.

—"Period of limitation."

——*Loose and strict sense.*

The phrase "period of limitations" can be used in two senses (1) a strict and (2) a loose sense. In the strict sense it means such a period that a proceeding to which it is sought to be applied will be in time, if filed within the period, and beyond time, if filed after it. Sections. 3, 5 and 7 to 25 of the Limitation Act, 1908, apply only to "periods of limitation" in the strict sense such as those prescribed by the schedules to that Act and not to periods of limitation in the loose sense such as that prescribed by S. 48 of the C. P. Code.

In the loose sense it means a secondary period which applies as a further check to an application or suit which is found not wanting when the primary or strict period of limitation is applied. Section 48, C.P.Code, 1908, for example prescribes a period of limitation in the loose sense. (*Spencer and Ramesam, JJ.*). SUBBARAYAN *v.* NATARAJAN.

70 I.C. 396=46 Mad. 785=16 M. L. W. 68=
1922 M.W.N. 424=31 M.L.T. 140=
A.I.R. 1922 Mad. 268=43 M.L.J. 168.

—Principles and scope.

——*General principles extraneous to the Act—Examined and explained—No equitable construction.*

LIMITATION ACT (1908)—Principles and scope.

The cases which are said to have sanctioned the application of some general principle enuring to the benefit of the plaintiff and extraneous to the Act itself, may broadly be classified into two groups, *viz.*, those in which the starting point of limitation fixed by the statute has been held to have arisen at a subsequent date and those in which it has been held that the operation of the statute has been suspended after time has begun to run. In the case of such of the articles of the Limitation Act in which the starting point of time synchronises with the cause of action, the test is to ascertain the time when the plaintiff could have maintained his action to a successful issue. In such a case, at the time when the cause of action arises there is no person capable of suing upon it, the statute does not run; similarly it is necessary that there shall be a person to be sued; and it is also necessary that the cause should be complete, that is, all the facts must have happened which are material to be proved in order to entitle the plaintiff to succeed. There are cases in which Courts of equity will interpose to prevent the bar of statutes of limitation, as, for example, if a party has perpetrated a fraud which has not been discovered until the statutable bar may apply to it at law. That the enactment is positive is not allowed to be used against conscience, and an equitable tribunal will supply and administer within its own jurisdiction a substitute for an original legal right of which a party has been fraudulently and unjustly deprived. Except perhaps in cases where injustice has been occasioned by a Court by its own acts or oversights there is no scope for the application of any principles of equity in the administering of the statutes of limitation. The Judicial Committee has not, however much the language used by their Lordships in some of the decisions may suggest the same, laid down any such principle as being of universal applicability and all the decisions of the Judicial Committee as well as most of the cases decided in this country are supportable on grounds which are in no sense founded on any general equitable principle extraneous to or unauthorized by the statute. In cases in which the question arises as to the starting point of time for the purposes of limitation, these decisions are mostly reconcilable with a proper appreciation of what the cause of action means when the starting point is the cause of action or with a proper interpretation of the words used in the third column of the articles in other cases; and in cases where the question of suspension arises, if time has once begun to run it never again ceases to run, but there may be satisfaction of a claim or the cancellation of a cause of action operating to suspend the rights of the plaintiff who may, on the removal of the satisfaction or cancellation, avail of a fresh cause of action which arises by reason thereof. The substitution of a new legal right on principles of equity is hardly permissible under the statute law as it stands and a revival of an old cause of action once satisfied or cancelled is foreign to its conception. In applying the principles of limitation the Indian Courts are not permitted to travel beyond the articles and the exceptions and provisos embodied in the Act itself, and apart from the provisions of the Act itself, there is no principle which can legitimately be invoked to add to or supplement its provisions. (*Walmsley and M. N. Mukerjee, JJ.*). SARAT KAMINI DASI *v.* NAGENDRANATH PAL.

89 I.C. 1000=29 C. W. N. 973=
43 C. L. J. 155=A.I.R. 1926 Cal. 65.

LIMITATION ACT (1908)—Relation with C. P. Code.

—Relation with C. P. Code.

———*Both should be interpreted together.*

Per *Das, J.*—Code of Civil Procedure and the Indian Limitation Act are the two great procedural Codes in India and they were amended in the same year and were to come into operation on the same day. They are statutes in *pari materia* and are to be taken together as forming one system, and as interpreting and enforcing each other. (1784) 1 Leach, C. C. (4th Ed.), p. 355, *Foll.* (*Das, Ross and Kulwant Sahay, JJ.*). BALMUKUND MARWARI *v.* BASANTA KUMARI DASI. **78 I.C. 200= 3 Pat. 371=5 P.L.T. 145=1924 P.H.C.C. 33= A.I.R. 1925 Pat. 1 (F.B.).**

—Retrospective effect.

———*Retrospective unless it confiscates vested right under old Act—If effect of new Act is only to curtail the period it should be given retrospective effect,* e.g., *suit by a minor under the old and new Acts.*

Statutes of limitation cannot be considered as anything else than matters relating to procedure and ordinarily such statutes have their operation from the date fixed in the statute and govern all matters before the Court after the commencement of the operation of the statute. There is, however, one exception and it is that where under the Act as amended the application could not be made the amendment will not apply retrospectively, for the principle is that the effect of an amendment is to regulate and not to confiscate a vested right.

A right to apply under C. P. Code, O. 34, R. 6, accrued to a minor in September, 1908. The mortgagee was under a disability of minority till 23rd September, 1923. Under the old Act the minor could make application within three years of the cessation of the disability. The new Act substituted for this, three years from the date right to apply accrued. On the date of the coming into force of the new Limitation Act the minor had two years and nine months' time under the new Act within which to apply.

Held, that inasmuch as the effect of change was to cut the period within which to apply and not to take away the right, the new Act should be given retrospective operation. (*B.B. Ghose and Panton, JJ.*). KHONDHAR MAHOMED SALEH *v.* CHANDRA KUMAR MUKERJI. **122 I.C. 201= 49 C.L.J. 362=33 C.W.N. 519= 56 Cal. 1117=A.I.R. 1930 Cal. 34**

—Right of limitation.

———No one has a vested right in a period of limitation. (*Sulaiman, Ag. C.J.*). BAIJNATH *v.* DOOLADEY HAJJAM. **110 I.C. 719= 50 All. 865=26 A.L.J. 1317= A.I.R. 1928 All. 708.**

—Scope.

———*Act is a complete Code—Provision saving bar of limitation must be contained or necessarily implied from the Act.*

The Limitation Act, being the enactment of the legislature which has dealt with all matters connected with the limitation of actions, applications, appeals and so on, is really in the nature of the Code. The essence of a Code is its completeness and, therefore, on a proper interpretation and construction of the statute, no Court would be entitled to invoke any principle for the purpose of holding the claim as not barred by the law of limitation which is not contained or necessarily implied in any of the sections or articles of the Limitation Act. A.I.R. 1923 Mad. 461; 18 I.C. 373 and 43 Mad. 185, *Dist.*; 31 Bom. 418 and 35 Cal. 209, *Expl.* (*English cases referred.*) (*Srinivasa Aiyangar and Curgenven, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I.C. 210=51 Mad. 549=29 M.L.W. 460= A.I.R. 1928 Mad. 509.**

LIMITATION ACT (1908), S. 3—Action by Court.

———*Act is complete in itself.*

The Court cannot introduce a new period of limitation on any ground of equity. The Limitation Act is complete in itself and any ground for extension of time, or for the suspension of time must be sought for, within the four corners of the Act itself. (*Devadoss and Jackson, JJ.*). AMMATHAYI AMMAL *v.* SIVARAMA PILLAI. **85 I.C. 272=20 M.L.W. 987= A.I.R. 1925 Mad. 334=48 M.L.J. 74.**

—S. 1—Defence.

———There can be no limitation against a plea in defence. (*Nizmatullah, J.*). BENGALI LAL *v.* BOHRE PANNA LAL. **113 I.C. 750= A. I. R. 1929 All. 77.**

———The Limitation Act applies to the bringing of suits and not to defences. A.I.R. 1921 Bom. 257, *Foll.* (*Cuming and Mukerji, JJ.*). BHOLA NATH BOSE *v.* NAGENDRA BALA. **110 I. C. 571= A.I.R. 1928 Cal. 810.**

———Even though the remedy of a suit may be barred the defence of the invalidity of transfer is not necessarily barred. (*Kinkhede, A.J.C.*). MAROTI SURYABHAN *v.* RAIWANT RAO. **107 I.C. 897=A.I.R. 1928 Nag. 262.**

—S. 2 (3)—Bond, what is.

———A contract to repay a loan of wheat, with interest in kind, is a bond. (*Shadi Lal, C.J. and Le Rossignol, J.*). WADH AWA MAL *v.* KARIM BAKHSH. **86 I.C. 844=6 Lah. 276=26 P.L.R. 141= A.I.R. 1925 Lah. 415.**

—S. 2 (4)—Son in joint family.

———In the case of a new-born son in a Mitakshara family the person or persons through whom he derives this liability must be the other members of the family in whom the property which the son acquires by birth was previously vested. (*Dawson Miller, C.J. and Bucknill, J.*). HARI PRASAD SINGHA *v.* SOURENDRA MOHAN SINGHA. **66 I.C. 945=1 Pat. 506=3 P.L.T. 709= A.I.R. 1922 Pat. 450.**

—S. 2 (8)—Purchaser from Government.

———Where a purchaser of land from Government sued to recover possession within sixty years or but more than 12 years from the commencement of adverse possession but within 12 years of the purchase,

Held, that the suit was barred. Art. 144 applied and there was only 12 years' limitation. Under S. 2 (8) the period runs as against plaintiff's predecessor-in-title, *viz.*, the Government in this case, should be reckoned against plaintiff. (*Walmsley and Buckland, JJ.*). ANANDA MOHAN ROY CHOWDHURY *v.* KINA DAS. **81 I.C. 675=28 C.W.N. 66= A.I.R. 1924 Cal. 394.**

—S. 3—Action by Court.

———An appellate Court is not bound to take notice *suo motu* of the fact that an application made at the Trial Court was barred by limitation. 29 Cal. 167 (P.C.); 12 All. 461 (F. B.), *Dist.*; 15 All. 123, *Ref.* (*Boys and Young, JJ.*). BALDEO PRASAD *v.* SUKHDEO PRASAD. **121 I.C. 552= A.I.R. 1929 All 485.**

———Where the decision on the question of limitation depends on enquiry on facts and the plea has not been raised in the jawab-i-dawa or put in issue, the appellate Court cannot take up the question *suo motu* and dismiss the suit as time-barred. (*Tek Chand, J.*). LAJPAT RAI *v.* SOHNA. **115 I.C. 71=11 L L.J. 91= 30 P.L.R. 296=A. I. R. 1929 Lah. 432.**

LIMITATION ACT (1908), S. 3—Action by Court.

——The Court has to act *suo motu*, if necessary, should it appear that a suit is barred by limitation. (*Fawcett and Madgavkar, JJ.*). VISHVESHVAR *v.* SADASHIV. **93 I.C. 930=27 Bom. L.R. 1456=A.I.R. 1926 Bom. 54.**

—S. 3—Application for transfer.

——Application under S. 39, C. P. Code, is governed by S. 3 (1), Limitation Act, and Court in considering such application must go into the question of limitation. (*Madhavan Nair and Jackson, JJ.*). S. N. SUBRAMANIAN CHETTIAR *v.* RAMANADHAN CHETTIAR. **116 I.C. 113=29 M.L.W. 246=1929 M.W.N. 36=A.I.R. 1929 Mad. 199.**

—S. 3—Arbitration.

——*S. 3 applies.*

Although the Limitation Act does not in terms apply to arbitrations in mercantile references it is an implied term of the contract that the arbitrator must decide the dispute according to the existing law of contract, and that every defence which would have been open in a Court of Law can be equally proposed for the arbitrator's decision unless the parties have agreed to exclude that defence. Section 3 therefore applies to arbitration proceedings. *Tyldesley's case*, 68 L. J. Q. B. 252; *Board of Trade v. Cayzer Irvine & Co.*, (1927) 1 K. B. 269, *Rel. on.* (*Lord Salvesen.*) RAMDUTT RAMKISSEN *v.* E. D. SASSOON & CO. **115 I.C. 713=1929 A.L.J. 254=33 C.W.N. 485=29 M.L.W. 682=6 O.W.N. 473=49 C. L. J. 462=31 Bom. L.R. 741=56 I. A. 128=1929 M.W.N. 546=56 Cal. 1048=A.I.R. 1929 P. C. 103=56 M.L.J. 614 (P.C.).**

—S. 3—Defence.

——The law of limitation does not prescribe any period which is to operate as a statutory bar to a defence. The articles of the Limitation Act apply to suits and applications and not to pleas by way of defence. (*Iqbal Ahmad and Sen, JJ.*). RAM KISHORE AHIR *v.* RAM NANDAN RAM. **108 I. C. 149=25 A.L.J. 1086=A.I.R. 1928 All. 99.**

——There is no bar of limitation to a defence unless the suit for the relief involved in the defence falls within S. 26 or 28. 30 Mad. 444, *Foll.* (*Macleod, C. J. and Heaton, J.*). MAHADEV NARAYAN *v.* SADASHIV KESHAV. **59 I.C. 118=45 Bom. 45=A.I.R. 1921 Bom. 257.**

—S. 3—Effect on rights.

——The law of limitation as distinguished from the law of prescription merely bars the remedy of the plaintiff but does not extinguish his right. A barred debt can constitute a valid consideration for a fresh contract. Limitation affects only the claim of the plaintiff and has no application to a plea urged by the defendant. The defendant may therefore interpose a demand though barred as a defence to the suit. (*Shadi Lal, C.J. and Coldstream, J.*). SULTAN MUHAMMAD *v.* LADHA SINGH. **96 I.C. 844=A.I.R. 1926 Lah. 633.**

——In the case of a personal action for a debt limitation merely bars the plaintiff from having the particular remedy by way of suit and does not extinguish the debt. Thus if the creditor has any form of lien upon property, he can exercise that lien notwithstanding that by the terms of the Limitation Act he could not bring a suit. (*Rankin, J.*). NARENDRA LAL KHAN *v.* TARUBALA DASSI. **66 I.C. 209=48 Cal. 817=25 C.W.N. 800=A.I.R. 1921 Cal. 67.**

—S. 3—Execution cases.

——Any Court having an application for execution made to it must *suo motu* determine the question of limitation. It has not only power but duty to determine such question. 16 All. 390 and 15 Bom. 28, *Ref.*; A I.R. 1924 Mad. 673, *Dist.* (*Boys, J.*). NOOR MUHAMMAD *v.* MAHMUD KHAN FAYAZ KHAN. **A.I.R. 1930 All. 699.**

LIMITATION ACT (1908), S. 3—Institution of suit.

——It is only when the point of limitation is concluded by proceedings in a previous execution that the judgment debtor is not allowed to take the objection of limitation in a subsequent execution of the decree. But so long as an execution application is pending the judgment debtor can show at any stage that the application is barred, and the Court will have no option but to dismiss the application under S. 3, Limitation Act. (1920) P.H.C.C. 109, *Foll.*; 8 Cal. 51 (P.C.) and A.I.R. 1921 P.C. 23, *Ref.* (*Courtney-Terrell, C. J. and James, J.*). ATUL KRISHNA GHOSH *v.* BRINDABAN NAIK. **9 Pat. 306=A.I.R. 1930 Pat. 330.**

—S. 3—Extension.

——*The maxim* "lex non cogit ad impossibilia" *cannot prevail against the express provisions of S. 3.*

The principle that when the law creates a limitation, and the party is disabled from conforming to that limitation, without any default in him, and he has no remedy, law will ordinarily excuse him, is merely an application of the maxim "*lex non cogit ad impossibilia*" cannot prevail against the express provisions of S. 3 any more than principles of equity can prevail against the provisions of statutory law such as S. 49, Registration Act and Ss. 91 and 92, Evidence Act, especially when there is no hardship or impossibility. 10 W.R. 253 and 46 Cal. 526, *Rel. on.* (*Fawcett, Ag. C.J. and Murphy, J.*). SAYAJI RAO GAEKWAR *v.* MADHAO RAO RAGHUNATH RAO. **113 I.C. 369=53 Bom. 12=30 Bom. L.R. 1463=A. I. R. 1929 Bom. 14.**

——Where the law expressly lays down the period within which the applicant is bound to make an application, the Court has no jurisdiction to extend that period. (*Kennedy, J.C. and Madgavkar, A.J.C.*). SAKER CHAND NARSIDAS *v.* YACOOB. **73 I.C. 311=17 S.L.R. 255=A.I.R. 1923 Sind 14.**

—S. 3—Institution of suit.

——*Pauper suit—When commences.*

A pauper suit commences for the purpose of limitation on the day when the petition to sue in *forma pauperis* is presented to the Court under O. 23, R. 2 of C. P. Code, and not on the day when the application being granted it is numbered and registered under O. 23, R. 2.

The absence of signature and verification in the first instance does not prevent the petition as presented for being properly regarded as an application within the explanation to S. 3 of Limitation Act.

A who was dismissed by *B* on June 30, 1925, presented a petition for leave to sue *forma pauperis* for wrongful dismissal on June 28, 1928. There was an endorsement bearing the date June 30, 1928, by the Acting Prothonotary that it was to be interpreted and declared gratis. The petition itself was signed and solemnly declared on July 3, 1928. Leave to sue as a pauper was granted on July 24, 1928.

Held, that the application for leave to sue as a pauper was made when the petition was lodged in the Prothonotary Office on June 28. The signature and verification were not essential in order to constitute an application for permission to sue and could properly be made subsequently. (1887) 4

LIMITATION ACT (1908), S. 3—Institution of suit.

B.H.C. (A.C J.) 39 and 30 All. 95, *Foll.* (*Blackwell, J.*). R. M. VORA *v.* JAPAN COTTON TRADING CO., LTD. **32 Bom.L.R. 1343.**

———When a plaint is returned by a Court for want of jurisdiction and is re-presented to another Court, the suit is considered to be instituted on the date on which the plaint is presented to the latter Court and if by that time the period of limitation prescribed by the law in force (Punjab Act III of 1923 in this case) has expired the suit becomes time-barred. 36 Mad. 482 and A.I.R. 1921 Mad. 654, *Ref.* (*Bhide, J.*). SURAT SINGH *v.* MT. NIHAL KAUR. **117 I.C. 909=A.I.R. 1929 Lah. 877.**

———A suit must be deemed to have been instituted on the date when the plaint was filed in Court and not on the date when it was ordered to be registered. Even if there is a defect in the verification the Court can allow an amendment at any stage; such amendment would not make the suit open to objection on the ground of limitation. (*Mookerjee and Panton, JJ.*). MAHARAJA OF COOCH BEHAR *v.* MOHENDRA RAI. **66 I.C. 923=34 C.L.J. 465=A.I.R. 1921 Cal. 277.**

—S. 3—Intention.

———It appears to be the intention of the Limitation Act that where an appellant has proceeded with due diligence, no right shall accrue to the respondent by reason merely of the lapse of the statutory period. (*Rankin, C. J., Suhrawardy and Graham, JJ.*). BROJO GOPAL *v.* AMAR CHANDRA. **115 I.C. 88=32 C.W.N. 935=56 Cal. 135=A.I.R. 1929 Cal. 214 (F.B.).**

—S. 3—"Making application."

———*Filing notice of motion is making application* (Obiter).

Where an "application" is to be made to the Court within the period of limitation prescribed by any Act, it is deemed to be made for the purposes of limitation when the notice of motion is first filed in the proper office of the Court. *In re, Gallop and Central Queensland Co., Ltd.*, (1890) 25 Q. B. D. 230; A. I. R. 1924 Bom. 36; 17 M. L. J. 215, *Foll.*; 20 Cal. 899, *Not foll.* (*Costello, J.*). ATARMONI DASI *v.* BEPIN BEHARI. **115 I.C. 33=55 Cal. 1341=A.I.R. 1929 Cal. 193.**

—S. 3—Period for suits.

———The period for suits is that prescribed by the 1st schedule and by Ss. 4 to 26. 40 All. 198, *Foll.*; 15 O.C. 373, *Dist.* (*Wazir Hasan, J.C. and Kendall, A.J.C.*). BANS BAHADUR SINGH *v.* SAKAL RAJ KUAR. **81 I.C. 484=11 O.L.J. 297=A.I.R. 1924 Oudh 385.**

—S. 3—Plea of limitation.

———Where a point as to limitation was raised for the first time in application for review, the party was allowed to raise it but was ordered to pay the costs of that application to the other party. (*Lord Phillimore.*) JIJIBHOY N. SURTY *v.* T. S. CHETTYAR. **109 I.C. 1=6 Rang. 302=53 I. A. 161=5 O.W.N. 479=30 Bom. L. R. 842=47 C.L.J. 510=26 A.L.J. 657=32 C.W.N. 845=28 M.L.W. 207=A.I.R. 1928 P.C. 103=54 M. L. J. 696 (P.C.).**

———*C. P. Code, S.* 100.

No doubt, it is the duty of the Court in second appeal to entertain even for the first time the question of limitation; but to remand a case on the ground that further investigation would disclose facts which would show that the plaint is time-barred is wrong. (*Rankin, C.J. and C.C. Ghose, J.*). BAIKUNTH NATH DAS *v.* SHEIKH AZIDULLA. **115 I.C. 606=32 C.W.N. 778=A.I.R. 1928 Cal. 870.**

LIMITATION ACT (1908), S. 3—Plea of limitation.

———Plea of prescriptive right, *i.e.*, positive limitation, cannot be taken at any stage—Plea of prescription belongs to the branch of substantive law of limitation which primarily strengthens the title of a party and, therefore, cannot be taken at any stage.

The plea of limitation which can be taken at any stage of the suit and even in second appeal relates to that part of the law of limitation which is negative in its operation. (*Mohiuddin, A.J.C.*). GULABRAO *v.* MT. MANJOOLABAI. **109 I.C. 293=A.I.R. 1928 Nag. 203.**

———Where the determination of the question of limitation requires an investigation into facts, in order to see whether a particular payment was made in such a manner as to extend time, the question should not be allowed to be raised in appeal for the first time. (*Campbell, J.*). TEJU *v.* RALLA. **94 I.C. 457=27 P. L.R. 432=A.I.R. 1926 Lah. 511.**

———Though point of limitation is not raised in the trial Court nor in the grounds of appeal, it can be raised for the first time at the hearing of appeal. (*Broadway and Fforde, JJ.*). DULO *v.* MD. NATHU. **94 I.C. 251=27 Pat. L.R. 870=A.I.R. 1926 Lah. 451.**

———*Second Appeal—Mixed question.*

Under S. 3 the Court, in second appeal, cannot go into a question of limitation of its own accord and dismiss the suit as barred by limitation although it was not pleaded in defence when such a question is not a question purely of law but is one of mixed fact and law. (*Kinkhede, A.J.C.*). BHUWAN LAL *v.* MANHORI. **78 I.C. 960=A.I.R. 1925 Nag. 178.**

———Where the question as to limitation was raised in the written statement and an issue was framed, but it was not pressed in the trial Court,

Held, that the defendants-respondents were entitled to press that point on appeal. Section 3 of the Limitation Act and S. 184 of the Bengal Tenancy Act are clear upon the point. (*Kulwant Sahay, J.*). PALLAKDHARI THAKUR *v.* BANKEY THAKUR. **89 I.C. 340=3 Pat. L.R. Civ. 132=7 P.L.T. 253=A.I.R. 1925 Pat. 549.**

———The plea of limitation can be taken at any stage of the case, and under S. 3 the Court of Appeal is bound to give effect to this plea when raised. But in order that this plea may be given effect to when raised in appeal it is necessary that the facts showing that the suit is barred should be apparent on the record. (*Newbould, J.*). HEM CHANDRA ROY CHOWDHURY *v.* BIRAJA SUNDARI CHOWDHURANI. **67 I.C. 386=A.I.R. 1923 Cal. 283.**

———It is necessary that limitation should be pleaded in all cases. But particularly this is so where the bar is alleged under some special law. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANANDA MOHAN ROY. **66 I.C. 287=34 C.L.J. 205=A.I.R. 1921 Cal. 661.**

———*General rule.*

The general rule is that points of limitation should not be allowed to be raised for the first time in appeal where they involve a decision upon questions of fact. Points of limitation should not be decided against the parties unless attention has been drawn to the question of limitation and an opportunity given them to meet it on the evidence.

If limitation is urged as bar, the facts on which it is barred must be proved after an issue has been framed. (*Woodroffe and Cuming, JJ.*). SECY. OF STATE *v.* ANAND MOHAN ROY. **66 I.C. 287=34 C.L.J. 205=A.I.R. 1921 Cal. 661.**

LIMITATION ACT (1908), S. 3—Plea of limitation.

——A point of limitation can be taken in second appeal for the first time, if there are sufficient findings of fact on which it could be argued as a question of law. (*Walmsley and Buckland, JJ.*). PANCHANAN *v.* APORNA 63 I.C. 785 (Cal.).

——Although the defendants have not raised a plea in their written statement that the debt for which the mortgagee was executed was time barred, they can raise the same in appeal for the first time. 14 Beng. L.R. 21, *Rel. on.* (*Das and Ross, JJ.*). SADHU SARAN PRASAD SINGH *v.* BRAMDEO PRASAD SINGH. 61 I.C. 20=2 P.L.T. 318=6 P.L.J. 256=A.I.R. 1921 Pat. 99.

——A question of limitation cannot be raised for the first time in appeal. It must be raised by the defendant, in his pleading according to C. P. Code, O. 8, R. 2. (*Ashutosh Mookerji, A.C.J. and Fletcher, J.*). BHUSHAN CHANDRA PAL *v.* NARENDRA NATH KOER. 60 I.C. 280=32 C.L.J. 236.

—S. 3—Presentation of plaint.

——Per *Blackwell, J.*—The moment a plaint is lodged it is presented to the Court within the meaning of S. 3. (*Crump and Blackwell, JJ.*). DHARAMSI MORARJI *v.* OCHHAVLAL HARGOVANDAS. 103 I.C. 540=51 Bom. 848=29 Bom L.R. 981=A.I.R. 1927 Bom. 480.

—S. 3—Presumption.

——Though it is the Court's duty to decide the point of limitation, even if it was not taken by the parties it must be assumed, until the contrary is shown, that the Court decided the question of limitation and if unfortunately it decided wrongly that does not affect its jurisdiction to make the order. (*Mullick and Scroope, JJ.*). LACHUMAN PANDEY *v.* DUKHI SAHU. 101 I. C. 694=8 P.L.T. 494=A.I.R. 1927 Pat. 261.

—S. 3—Revision.

——*Provincial Small Cause Courts Act, S.* 25.

Revision lies from an order wrongly dismissing a suit as time-barred. (*Jai Lal, J.*). MD SHAFI *v.* DELHI HOUSE OF MULTAN. 115 I.C. 757=A.I R. 1928 Lah. 274.

—S. 3—Set-off.

——*Limitation applies.*

So far as the position of a defendant asserting a right to set off is concerned the limitation bar does apply to him. It applies to him as if he were bringing an independent suit of his own, the only difference being that where he is defending himself by way of set-off, if his claim was not barred at the time of the issue of the plaint, he may prosecute a set-off even although the time may have elapsed before his filing, say, a written statement, claiming the set off. But with that exception as to the *terminus ad quem* of the period of time, it is the law in India as well as in England that limitation applies to a set off. (*Rankin, J.*). NARENDRA LAL *v.* TARUBALA DASSI.

66 I.C. 209=48 Cal. 817=25 C.W.N. 800=A. I. R. 1921 Cal. 67.

—S. 3—Time granted at debtor's request.

——A verbal promise on the part of the client to pay the attorney the latter's costs which have become overdue, when money is recovered in certain execution cases—a promise on the strength of which the attorney has not taken steps to enforce payment—is an answer to any objection based on limitation made by the client against an application by the attorney for an order for payment. (*Rankin, J.*). NARENDRA LAL KHAN *v.* TARUBALA DASSI. 66 I.C. 209=48 Cal. 817=25 C.W.N. 800=A.I.R. 1921 Cal. 67.

LIMITATION ACT (1908), S. 4—Application for copies.

—S. 4—Applicability.

——*Sikh Gurdwaras Act* (1925), *S.* 28.

Section 29 (2) (a), Limitation Act as amended in 1922, excludes the applicability of S 4 only when a special or local law expressly excludes it. Sikh Gurdwaras Act, however, does not expressly excludes S. 4 and so its applicability cannot be barred in the case where the Managing committee of a Gurdwara takes proceedings under S. 28, Gurdwara Act, and brings a suit for possession. (*Broadway and Abdul Qadir, JJ.*). JIWAN SINGH *v.* MANAGING COMMITTEE, GURUDWARA TAHLI SAHIB. A.I.R. 1930 Lah. 800.

——Section 4 can be applied to a case in which extension of time has been claimed under S. 14 and a plaintiff is entitled to the benefit of S. 14 and S. 4 tacked together. 24 W. R. 26; A. I. R. 1921 Mad. 654, *Dist.* (*Suhrawardy and Garlick, JJ.*). BEJOY KUMAR *v* KUSUM KUMARI.

33 C.W.N. 221=A. I. R. 1929 Cal. 315.

——*Punjab Limitation (Custom) Act, Ss.* 6 *and* 5.

The words "notwithstanding anything herein contained" do not repeal S. 5 in so far as the applicability of the provisions of Ss. 4 to 25 to suits governed by S. 6 is concerned. They are intended to govern the period of limitation prescribed by the Act, and the object of section was to prescribe a maximum period of one year after the commencement of the Act for a suit for which the period of limitation had commenced to run before the enforcement of the Act. (*Shadi Lal, C. J. and Jai Lal, J.*). MAZULLA KHAN *v.* GHAZI KHAN.

8 Lah. 711=9 L.L J. 420=29 P.L.R. 148=A.I.R. 1927 Lah. 348.

——*Applies to applications to set aside sales on deposit.*

After a sale was held in execution of a decree on 25th August, 1920 the Civil Court closed for the long vacation. When on 25th October it re-opened an application was made to set aside the sale by applicant who also filed a tender offering the whole amount with compensation on the same day. The Judge signed the tender the next day on money being deposited,

Held, S. 4 applied and as the delay in payment was not due to any fault of the judgment-debtor the application was not time-barred. (*Kanhaiya Lal, J*). DURGA PRASAD *v.* BABU LAL.

67 I.C. 321=20 A.L J. 543=A.I.R. 1922 All. 195.

—S. 4—Application for copies.

——Where the time for filing an appeal expires during vacation and the appellant applies for copies on the day the Court re-opens, an appeal filed on the day next after the issuing of the copies is within time. 19 All. 342 and 25 Bom. 584, *Foll.* (*Carr and Maung Ba, JJ.*). MA DAN *v.* TAN CHONG SAN.

115 I.C. 667=6 Rang. 743=A.I.R. 1929 Rang. 96.

——Copying agent, who receives his salary from the Government, is not the agent of the litigant for the purpose of receiving applications for grant of copies. If the period prescribed for the presentation of an appeal expires on a date on which the Court is closed, and if the appellant has not obtained copies of the decrees and judgment before closing the Court, and applies for such copies on the date of re-opening of the Court whilst his right of appeal is still subsisting, he is entitled to the benefit of time requisite for obtaining copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. 19 All. 342, *Foll.* (*Moti Sagar, J.*). NAMAN *v.* GURDATTA.

89 I.C. 437=A.I.R. 1926 Lah. 121.

LIMITATION ACT (1908), S. 4—Extension of time.

—S. 4—Extension of time.

——Where at the instance of the Court a party is informed that his application cannot be received on that day, but the next day limitation expires, he is entitled to the necessary extension of limitation under S. 151, C. P. Code. (*Findlay, O.J.C.*). RAOTMAL *v.* AMARSINGH. **96 I.C. 376= 9 N.L.J. 57=A.I.R. 1926 Nag. 331.**

—S. 4—Fresh period of limitation.

——*Consideration of S. 4 is not to be introduced in wording of Ss.* 19 *and* 20.

It is quite unworkable and really impossible to suppose that the effect of a payment or the effect of an acknowledgment should depend upon the day on which somebody who never brought a suit at all could have brought it. If one was to introduce into the wording of Ss. 19 and 20, the consideration that is brought into force by S. 4, the Lim. Law would become extremely unworkable.

Where interest was paid after the expiration of the period limited for payment on the bond but during the period of the Civil Court vacation and where no suit was instituted on the day that the Court re opened,

Held, that a fresh period of limitation could not be computed, as interest had not been paid before expiration of the prescribed period. 26 Bom. 782, *Foll.*; 15 Bom. L.R. 348, *Diss. from*; A.I.R. 1927 All. 114, *Dist.* (*Rankin, C.J.*). DEBENDRA NATH *v.* KARTIC PRASAD. **114 I.C 493= 55 Cal. 1210=A.I.R. 1929 Cal. 68.**

—S. 4—Interpretation.

——*"Prescribed" means that prescribed by first Schedule and as qualified by Ss.* 5 *to* 25.

"The period of limitation prescribed" in S. 4 of the Act is equivalent to the period of limitation prescribed therefor by Sch. I, as mentioned in the general S. 3, to which S. 4 and most of the following sections of the Act are in the nature of provisos. But the period of limitation mentioned in S. 4 must be understood not only as prescribed in the schedule but also as qualified by Ss. 5 to 22.

An ex-minor brought a suit after three years from the time of his having become major plus some days on which the Court was closed.

Held, that the suit was within time. 37 M.L.J. 256; A.I.R. 1922 Mad. 268, *Dist.*; 36 Bom. 268, *Diss. from*; 26 M.L.J. 23 and 34 All. 375, *Appr.* (*Reilly, J.*). NARASAYYA *v.* KRISHNAMURTHI. **115 I.C. 509=A.I.R. 1928 Mad. 1255.**

——*Meaning of "prescribed."*

The proper construction of the word "prescribed" in S. 4 is 'prescribed by the Act' and not merely by the 1st Schedule. (*Wazir Hasan, J. C. and Kendall, A.J.C.*). BANS BHADUR SINGH *v.* SAKAL RAJ KUAR. **81 I. C. 484=11 O.L.J. 297= A. I. R. 1924 Oudh 385.**

—S. 4—Letters Patent appeals.

——*S.* 4 *and other general provisions do not apply.*

When the special or local law is not in itself a complete Code, the general provisions of the Limitation Act, *e.g.*, Ss. 4, 5, 12 and so on, are ordinarily applicable to proceedings under it, inasmuch as such general provisions do not affect or alter the period prescribed by the special or local law, but only the manner in which that period is to be computed. Letters Patent being a complete Code the provisions of the Limitation Act do not apply to

LIMITATION ACT (1908), S. 4—Payment of money.

proceedings thereunder. (*Chevis and Scott-Smith, JJ.*). DYAL SINGH *v.* BUDHA SINGH. **61 I.C. 327=2 Lah. 127=3 L.L.J. 415= 74 P. L.R. 1921=A.I.R. 1921 Lah. 26.**

—S. 4—Original Side of High Court.

——*Bombay.*

According to prevailing practice in the Bombay High Court, suits on the Original Side can be filed in the summer vacation and therefore the Bombay High Court Original Side is not "closed" within S. 4 in the vacation. A.I.R 1924 Bom. 144, *Foll.*; Bombay Suit No. 1298 of 1924, dated 21 2 24, *Not foll.* (*Crump and Blackwell, JJ.*). DARAMSI MARARJI CHEMICAL CO. *v.* OCCHAVALAL HARGOVANDAS. **103 I. C. 540=51 Bom. 848= 29 Bom. L. R. 981=A.I.R. 1927 Bom. 480.**

——Original Side of High Court is not closed during summer vacation—Whether Court is closed or not is a question of fact. (*Marten, J.*). TATA INDUSTRIAL BANK *v.* ABDUL HUSEIN. **89 I. C. 529=25 Bom. L.R. 1296= A. I. R. 1925 Bom. 145.**

—S. 4—Payment of money.

——Where a decree is passed conditional on payment of money it is open to the party to deposit the money after the re-opening of the Court, if the Court was closed on the last date on which the money could be deposited. A.I.R. 1924 All. 218 (F.B.), *Foll.* (*Piggott and Mukerji, JJ.*). MAHOMED HASHIM *v.* RADHA KISHUN. **87 I.C. 620= 6 L.R.A. Civ. 287=A.I.R. 1925 All. 687.**

——The payment in satisfaction of a compromise decree can be made either directly to the decree-holder or into the Court. If the judgment-debtor chooses to pay the money into the Court and if on the day within which the payment has to be made, the Court is closed, the judgment-debtor can deposit the money in Court at the earliest possible opportunity afterwards, *viz.*, the date of the re-opening of the Court. There is a generally recognised principle of law, under which parties, who are prevented from doing a thing, not by any default of their own, but by the Court itself, are entitled to do it, at the first subsequent opportunity. 35 Bom. 35 and 22 Mad. 179, *Ref. to.* (*Krishnan, J.*). SANKARAN UNNI (MINOR) *v.* KUMMAKATTIL EZHUVAN KANDAN'S SON, RAMAN. **87 I.C. 560=1925 M.W. N. 566=21 M.L.W. 469= A.I.R 1925 Mad. 743=48 M.L.J. 596.**

——*Deposit made on re-opening day the Court being closed on the day of deposit, is valid.*

By an appellate decree, the plaintiff in two pre-emption cases was given one month from the 27th of September, 1921, within which to deposit certain money, if he desired to obtain the benefit of the decree in his favour. The Civil Courts closed for the vacation in that year on the 30th of September and re-opened on the 4th November. On that date the successful plaintiff made the deposit required by the decree,

Held, that the deposit tendered by Muhammad Jan the plaintiff on the 4th November, 1921, was in time under the terms of the decree. Although the parties themselves cannot extend the time for doing an act in Court, yet if the delay is caused, not by any act of their own, but by some act of the Court itself, such as the fact of the Court being closed, they are entitled to do the act on the first opening day. 18 Cal. 631; 22 Mad. 179, *Appr.*; 19 A.L.J. 79; 3 All. 859 and (1884) A.W.N. 217, *Affir.*;

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41 All. 47, *Overruled.* (*Piggott, Lindsay and Sulaiman, JJ.*). M. MUHAMMAD JAN *v.* SHIAM LAL.
78 I.C. 1014=22 A.L.J. 110=4 L.R.A. Civ. 88=46 All. 328=A.I.R. 1924 All. 218 (F.B.).

——*Effect of S.* 10, *General Clauses Act.*

The appellant sued the respondents for joint possession of a plot of land acquired by the defendants. On the 29th November, 1920 a decree of joint possession was passed in the plaintiff's favour subject to his paying one hundred rupees as contribution within six months from the date of the decree. The period of six months expired in the vacation when the Courts were closed, and the appellant deposited his money in Court on the day that the Court re-opened,

Held, that in view of S. 10, General Clauses Act, the payment was in time. 7 N.L.R. 176, *Foll.*; 35 B. 75, *Ref.*; 36 B. 268, *Not foll.*; 41 All. 47, *Ref.* (*Batten, J.C.*). DHAM SINGH *v.* SESHAO PRASAD.
72 I.C. 388=19 N.L.R. 116=A.I.R. 1923 Nag. 246.

——Where on the last day for payment of any sum of money under a decree which fixes a certain period thereof, the Court is closed, the payment made on the re-opening day of the Court is valid. (*Piggott and Walsh, JJ.*). REOTI RAM *v.* SITA RAM. **60 I.C. 894=19 A.L.J. 49=A.I.R. 1921 All. 44.**

——*Pre-emption decree.*

The plaintiff was given a decree on condition that he should pay a certain sum within a certain period. The Court was closed from the next day. The plaintiff tendered the money into Court on the next day on which the Court was open. In the meanwhile the period fixed by the decree had expired,

Held, that the payment was within time. (*Chevis, Broadway and Wilberforce, JJ.*). HIMMUN *v.* FARIJA. **67 I.C. 772=3 L.L.J. 310=A.I.R. 1921 Lah. 6 (F.B.).**

—S. 4—Presenting application.

——*Applicant cannot take advantage of both S.* 4 *and S.* 14.

Provisions of S. 4 can be available only where the period prescribed expires when the Court is closed and the application is made to the proper Court on the day on which the Court re-opens; but if on the re-opening day the applicant files his application in a wrong Court he cannot be entitled to take advantage of both the sections and to tack on the vacation to the period spent in prosecuting the application filed in the wrong Court. 36 Mad. 131; A.I.R. 1921 Mad. 654; 14 A.L.J. 310; A.I.R. 1923 Mad. 114, *Foll.*; A.I.R. 1921 Bom. 379, *Diss. from.* (*Sulaiman and Pullan, JJ.*). MAQBUL AHMAD *v.* PATESHRI PARTAB NARAIN SINGH.
118 I.C. 670=1929 A.L.J. 976=A.I.R. 1929 All. 677.

——What S. 4 says is that, if the time for presenting an application expires while Court is closed, the applicant may present it to the Court on the date when it opens again. The date of presentation goes back to the day when it ought to have been but could not be presented. A.I.R. 1928 Mad. 1255, *Foll.*; 37 M.L.J. 250, *Dist.* (*Waller and Cornish, JJ.*). RATHAI AMMAL *v.* R. SUBRAMANIA AYYAR. **120 I.C. 377 (Mad.).**

—S. 4—Principle.

——Per *Crump, J.*—The principle underlying S. 4 is that when a party has to do something before a certain day and if upon that day or before that day he cannot do that thing by reason of the act of the Court, then he is entitled to an extension of time over that period during which he is delayed by the Court's action. (*Crump and Blackwell, JJ.*). DHARAMSI MORARJI CHEMICAL CO. *v.* OCCHAVALAL HARGOVANDAS. **103 I.C. 540=51 Bom. 858=29 Bom. L.R. 981=A.I.R. 1927 Bom. 480.**

—S. 4—Scope.

——*Plea of limitation in Second Appeal.*

The mere fact that the question of limitation was not raised in the Trial Court or in the first appellate Court or in the memorandum of appeal does not debar the Court of second appeal from going into the question if it arises on the pleadings and no question of fact has to be enquired into to dispose of the question. 34 Cal. 941, *Ref. to.* (*Guha and M. C. Ghose, JJ.*). AFIRUDDI *v.* JOY CHANDRA NAHA. **A.I.R. 1930 Cal. 703.**

——Per *Ramesam, J.*—Section 4 cannot be tacked on prior to the period of extension given by S. 19. 26 Bom. 782, *Foll.* (*Spencer and Ramesam, JJ.*). UMMATHU *v.* PATHUMMA. **63 I.C. 924=44 Mad. 817=13 M.L.W. 631=1921 M.W.N. 442=A.I.R. 1921 Mad. 654=41 M.L.J. 84.**

—S. 4—Suit in wrong Court.

——*Suit to be within time having to take help of S.* 4, *it being instituted in wrong Court—S.* 14 *will not apply to, when instituted in proper Court.*

Where a suit, which, in order to be within limitation, had to take the advantage of a holiday under S. 4, was instituted in a wrong Court, S. 14 will not be applicable to bring it within time when subsequently instituted in a proper Court. A. I. R. 1923 Mad. 114; 116 P. L. R. 1920, *Foll.* A. I. R. 1921 Bom. 379, *Not foll.* (*Broadway and Harrison, JJ.*). DHARMAN RAM LADHA RAM *v.* GANGA RAM. **116 I.C. 315=11 Lah. 12=A.I.R. 1929 Lah. 425.**

——*Suit is barred.*

Section 4 is applicable to the day on which the Court is closed only if such day is at the end of the period of limitation and not otherwise.

Where the last day was the 9th September which was a holiday and the suit was filed in a wrong Court on the 10th and on return thereof the plaintiff represented the same in the proper Court,

Held, that S. 4 cannot operate to exclude the period between the 9th and 10th September, in computing the period of limitation. (*Oldfield and Venkatasubba Rao, JJ.*). GOVINDASAMI *v.* R. SAMI.
69 I.C. 724=16 M.L.W. 911=31 M.L.T. 253=1923 M.W.N. 42=A.I.R. 1923 Mad. 114=43 M.L.J. 579.

——*Suit is time-barred.*

Where on the day the limitation period expires the Court having jurisdiction is closed and on the day of re-opening, the suit is instituted in a Court having no jurisdiction and the plaint is thereafter returned for presentation to the proper Court and is accordingly presented therein, the suit should be held to be barred; for the purposes of S. 4 account cannot be taken of the closing and re-opening of any other Court than that in which the suit was rightly instituted. 36 Mad. 131; 36 Mad. 482 and 8 L.W. 256, *Foll.*

The period allowed by S. 14 cannot be tacked on to the period during which the proper Court was closed, when such latter period precedes the period under S. 14. (*Spencer and Ramesam, JJ.*). UMMATHU *v.* PATHUMMA. **63 I.C. 924=44 Mad. 817=13 M.L.W. 631=1921 M.W.N. 442=A.I.R. 1921 Mad. 654=41 M.L.J. 84.**

LIMITATION ACT (1908), S. 4—Whether Court is closed.

—S. 4—Whether Court is closed.

——Per *Blackwell, J.*—Whether a Court is or is not closed is in each case a question of fact and must depend upon the practice which prevails in the particular Court. (*Crump and Blackwell, JJ.*). DHARAMSI MORARJI *v.* OCCHAVLAL HARGOVANDAS. **103 I C. 540=51 Bom. 843=29 Bom. L.R. 981=A.I.R. 1927 Bom. 480.**

——*Court open during vacation for receiving plants, etc., is deemed to be open.*

When a Court is adjourned for the vacation but the notification states that the Court will be open on certain days for the reception of plaints, petitions and other papers, the Court cannot be treated as closed on those days when it was open for the above purpose. 5 Mad. 189 (F.B.), *Foll.*

As a matter of practice, it is well understood that plaints, which are not presented in the Presidency Small Cause Court on the days when the office is open for receiving them during the vacation, become time-barred after the expiration of the period of limitation appropriate to such suits and plaintiffs cannot claim to exclude the whole of the Small Cause Court's vacation. The words " other papers " are very wide and must include applications for re-trial of the suit. (*Spencer and Venkatasubba Rao, JJ.*). THE BRITISH INDIA STEAM NAVIGATION CO. *v.* H. M. SHARAFALLY.

70 I.C. 888=46 Mad. 938=17 M.L.W. 705=A.I.R. 1923 Mad. 435=44 M.L.J. 100.

—S. 5.

Addition of parties.
Amendment of Act.
Amendment of decree.
Applicability.
Construction.
Criminal Appeal.
Delay in getting copies.
Delay not explained.
Discretion of Court.
Duty of Applicant.
Equitable relief.
Ex parte admission.
Inability without fault.
Laches.
Merits.
Mistake in calculation.
Mistake of Court.
Mistake of fact.
Mistake of law.
Mistake of party.
Mistake of pleader.
Negligence of party.
Negligence of pleader.
Procedure.
Proceedings in wrong Court.
Review.
Sufficient cause.
Technical defect.
Miscellaneous

—S. 5—Addition of parties.

——*In suit and in appeals after time has expired —Effect.*

Section 22 of the Limitation Act does not prescribe any period of limitation for the joinder of a party to a suit under S. 32, C. P. Code (1882), O. 1, R. 10 or to an appeal under S. 559 of the old Code (O. XLI, R. 20) and there is nothing to prevent such a joinder in either a suit or appeal even after it is barred by time. Section 22 of the Limitation Act applies to appeals as much as to suits in principle. But a suit in which a defendant is joined, after the period of limitation has expired, must necessarily be dismissed as against him. In an appeal, however, there may be possibly reasons justifying its admission after time under S. 5 of the Limitation Act. (*Hallifax, A.J.C.*). KUKSA *v.* DAJIBA BHAU.

66 I.C. 217=5 N.L.J. 192=A.I.R. 1922 Nag. 213.

—S. 5—Amendment of Act.

——*Party's knowledge—Effect not appreciated—No excuse.*

While it might be permissible to regard a "mistake of law" as amounting to "sufficient cause" within the meaning of S. 5 in certain circumstances on the ground that an amendment of an Act was not fully appreciated by the Bar, it cannot be so regarded where the alteration of law is proved to be known to the party (even though it may be Government through its law officers) seeking to take advantage of the plea especially when the delay is a long one. (*Broadway and Zafar Ali, JJ*). SECY. OF STATE *v* TIRATH RAM.

104 I.C. 281=9 Lah. 75=A.I.R. 1928 Lah. 216.

——The Limitation Act was amended so as to reduce the period of limitation for application under Art. 177 from six months to 90 days between the death of a defendant on 30th September, 1920 after the passing of the preliminary decree in a suit for dissolution of partnership and his son applying on the 6th January, 1921 to be brought on the record,

Held, that in the circumstances of the case it was in the interests of justice necessary for all parties interested to be added under O. 1, R. 10, C. P. Code. (*Spencer, J.*). V. R. M. RAMASWAMI CHETTIAR *v.* ADAPPA CHETTIAR.

78 I.C. 168=A.I.R. 1925 Mad. 347.

——*Mistake of pleader—Delay was excused.*

Where the applicant's application for leave to appeal to His Majesty-in-Council was out of time by about a fortnight, owing to his local legal advisers not knowing the recent change in law curtailing the period of limitation for such applications but applicant acted in good faith and with due diligence,

Held, the delay should be excused. *In re Coles and Ravenshear*, (1907) 1 K.B. 1 is no longer good law. (1908) W.N. 9, *Foll*; 100 L.T. 259, *Ref.*; 23 Bom. L R. 89 *Foll.*; (1917) 44 I.A. 218, *Ref.* (*Marten, Pratt and Fawcett, JJ.*). NAJINDAS MOTILAL *v.* NILAJI MOROVER. **80 I. C. 862=48 Bom. 442=26 Bom. L.R. 395=A I.R. 1924 Bom. 399.**

——Where an application for leave to appeal to Privy Council was made 29 days beyond time and the party alleged that he was misled by the advice of his Counsel who was not aware of the reduction in limitation brought about by Act XXVI of 1920,

Held, that there was no sufficient cause to excuse delay (*Prideaux and Kinkhede A.J.Cs.*). PADAMARAJ PHULCHAND *v.* MIT-SUI BUSHAN KESHA LTD. **78 I.C. 154=A I R. 1924 Nag. 279.**

——The error that the defendant's heirs were brought on the record more than three months after the death of the original defendant without formally setting aside the abatement of the suit which resulted in consequence of the lapse of three months from the date of the defendant's death, was rightly excused as the application was made within six months, which was the period allowed by the Act of 1908, and the change in the period of limitation effected by Act XXVI of 1920 may not have been and probably was not known to the parties, and the omission to set aside the abatement was a formal defect not affecting the merits

LIMITATION ACT (1908), S. 5—Amendment of decree.

of the order. (*Shah, Ag. C.J. and Crump, J.*). LAXMIBAI JAGANNATH JOSHI *v.* YESHWANT VITHAL BAGKAR. **75 I C. 283=47 Bom. 92=24 Bom. L.R. 909=A.I.R. 1922 Bom. 449.**

—S. 5—Amendment of decree.

———*Amendment unconnected with Grounds of Appeal—No extension.*

It is not every amendment in a decree which has been made *suo motu* by the Court that entitles a party to claim an extension of time under S. 5; whether there is sufficient cause for extension must depend on the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree has been challenged, such appeal should not be admitted out of time.

Where the only mistake was, that in two suits against the same defendant, the decree which should have been attached to the file of the first case was attached to the second and *vice versa*, and the decrees were subsequently amended and it was contended that limitation ran from the date of the amendment,

Held, that no sufficient cause had been shown for extension of the period of limitation for the appeal. The grounds of appeals were not based upon the form which the decrees had taken alter the amendment. 3 C.L.J. 188 and 5 Pat. L. J. 472, *Rel. on*; 32 Cal. 908 and A.I.R. 1921 All. 60, *Ref.* (*Raza, J.*). DEEP SINGH *v.* RAGHUNATH SINGH. **A.I.R. 1930 Oudh 453.**

———Whether a decree is amended or is not amended the date of the decree is the date of the judgment and the fact that the decree is amended does not operate of itself to extend the time, for appealing. 3 C.L.J. 188, *Ref.* (*Rankin, C.J. and B. B. Ghose, J.*). NAGENDRA NATH *v.* AMBICA CHARAN. **50 C.L.J. 12= 33 C.W.N. 958= A.I.R. 1929 Cal. 676.**

———When there has been an amendment of decree and it is reasonable that the time for appealing should be extended recourse has to be had to the power of the Court under S. 5. (*Rankin, C. J. and B. B. Ghose, J.*). NAGENDRA NATH *v.* AMBICA CHARAN. **50 C.L.J. 12=33 C.W.N. 958= A.I.R. 1929 Cal. 676.**

———*Whether pendency of application for amending decree saves limitation depends on the facts of each case.*

Whether an application for review or an application for an amendment is or is not a sufficient ground for extension of time depends upon the particular facts of each case.

Where the fact, that the application for amendment of the decree was pending, did not prevent the petitioner from presenting his application to the High Court for leave to appeal as a pauper mainly upon the merits of the case, and the question of costs in regard to which the application for amendment was made would have been only one of the grounds upon which he would be entitled to assail the decree,

Held, that the pendency of the application for amendment of the decree was not a sufficient ground for extension of time. (*Mullick and Kulwant Sahay, JJ.*). UPENDRA CHANDRA *v.* UMESH CHANDRA. **113 I.C. 580=A.I.R. 1928 Pat. 265.**

———Every amendment made in a decree does not necessarily entitle a party who prefers an appeal against the decree to claim an extension of time under the second paragraph of S. 5. If the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, an admission of the appeal out of time cannot be claimed merely on the ground that an amendment has been made in the decree. (*Rafique and Ryves, JJ.*). GAJADHAR SINGH *v.* BASANT LAL. **61 I.C. 69=43 All. 380=19 A.L.J. 152=A I.R. 1921 All. 60.**

LIMITATION ACT (1908), S. 5—Applicability—Dismissal for default.

—S. 5—Applicability—Companies Act.

———The provisions of S. 5, are applicable to an application for review of an order passed under Companies Act as there is no special period prescribed by the latter Act for such an application. A.I.R. 1928 Nag 194, *Ref.* (*Jackson and Subhedar, A.J Cs.*). KAWDU *v.* BERAR GINNING CO., LTD., AKOL. **116 I.C. 427=A.I.R. 1929 Nag. 185.**

—S. 5—Applicability—Compromise decree.

———As neither S. 5 of the Limitation Act nor S. 10 of the General Clauses Act applies to a compromise decree, a party who was bound to do a particular thing under such decree is not entitled to any extension of time on account of the Courts being closed on that day. On the question of the date, from which the time should be counted,

Held, that it should be counted from the date of decree. (*Daniels, J.C.*). ILAHI RAZA KHAN *v.* MT. TAIKRA BEGAM. **66 I. C. 273=9 O. L. J. 53=A.I.R. 1922 Oudh 145.**

—S. 5—Applicability—Conditions precedent.

———In order that the provisions of S. 5 of the Limitation Act, should be available it should be shown that the party had sufficient cause for not preferring the appeal in time. Where there was nothing to show that the appellant had in any way been misled,

Held, that the section could not be invoked. (*Sanderson, C.J. and Richardson, J.*). JAGANNATH MOTILAL *v.* BALA PRASAD ARJUNDAS. **50 C.L.J. 397=A.I.R. 1925 Cal. 166.**

—S. 5—Applicability—Dismissal for default.

———*Civil P. C., O. 9, R. 4—Time to file application under R. 4 cannot be extended under S. 5.*

Where an application for restoration of the case under O. 9, R. 4, is filed more than 30 days after the date of the dismissal, time cannot be extended under S. 5, Limitation Act, as there is no express provision in that order which makes S. 5 applicable to such application. A.I.R. 1925 Rang. 187, *Rel. on.* (*Sulaiman, J.*) KALI PRASAD TEWARI *v.* PARAMESHWAR PRASAD MARWARI. **113 I.C. 767=51 All. 487=1929 A.L J. 323=A.I.R. 1929 All. 127.**

———*Section 5 made applicable by rule under S. 122 to application under O. 9, R. 9—Rule is intra vires and retrospective.*

The extension of the provisions of S. 5, Limitation Act, to an application under C. P. Code, O. 9, R. 9, is not an enactment of a new period of limitation. Section 5 is not in any way amended or repealed. The change effected by the rule under C.P. Code, S. 122, relates to the procedure governing applications to restore suits, dismissed for default, to the file. The application was governed by Limitation Act, Art. 164, and it continued to be governed by the same article. The rule, therefore, extending S. 5, Limitation Act, to O. 9, R. 9 is *intra vires* and is retrospective. A.I.R. 1925 Mad. 14 (F.B.); 35 All. 227 (P.C.), *Rel. on*; (*Case-law discussed.*) (*Pathak and Murphy, JJ.*). PANDARINATH KIKALAL *v.* THAKOREDAS SHANKARDAS VANI. **53 Bom. 453=31 Bom. L.R. 485=A.I.R. 1929 Bom. 262.**

IMITATION ACT (1908), S. 5—Applicability—Dismissal for default.

——Section 5 has not been made applicable to applications under O. 9, R. 4. (*Jackson, J.*). VEERAYYA *v.* SREESAILAM. **110 I.C. 47= 1928 M.W.N. 239=A.I.R. 1928 Mad. 556.**

——Section 5 has not been made applicable by any enactment or rule to an application under O. 9, R. 9, and therefore, the Court has no jurisdiction to admit the application on the ground that the applicant had sufficient cause for not preferring his application within the time prescribed. (*Macleod, C. J. and Coyajee, J.*). MAHADEO GOVIND *v.* LAKSHMINARAYAN RAMNATH. **90 I.C. 610= 49 Bom. 839=27 Bom. L.R. 1150= A. I. R. 1925 Bom. 521.**

—S. 5—Applicability—Ex parte decree.

——Section 5 does not apply to application under Art. 164. (*Addison, J.*). PAL SINGH *v.* HARNAM SINGH. **100 I.C. 936=A.I.R. 1927 Lah. 342.**

——Section 5 of the Act applies only to appeals or applications for review of judgment or for leave to appeal. The section does not apply to applications to set aside *ex parte* decree or to restore an application dismissed for default. (*Young, J.*). MA NAIV *v.* SOMASUNDARAM CHETTY. **85 I.C. 324=2 Rang. 655=A.I.R. 1925 Rang. 187.**

——The High Court rule under the C. P. Code, under S. 122, extending S. 5 of the Limitation Act to applications under O. 9, R. 13 is *intra vires*. (*Coutts-Trotter, C. J., Ramesam and Wallace, JJ.*). KRISHNAMACHARIAR *v.* SRI RENGAMMAL. **80 I.C. 877=47 Mad. 824= 20 M. L. W. 332=35 M. L. T. 43= 1924 M. W. N. 682=A.I.R. 1925 Mad. 14= 47 M. L. J. 409 (F.B.).**

——Section 5 of the Limitation Act does not apply to an application to set aside an *ex parte* decree. Section 151 of the C. P. Code must not be used to defeat the imperative provisions of S. 3 of the Limitation Act. (*Chevis, J.*). KHAIRATI *v.* UMARDIN. **66 I.C. 270= A.I.R. 1922 Lah. 266.**

—S. 5—Applicability—Land Acquisition Act.

——Section 5 has no application to proceedings under the Land Acquisition Act. (*Das, J.*). KRISTO SINGH SARDAR *v.* SECRETARY OF STATE. **103 I. C. 295=8 P.L.T. 710=A.I.R. 1927 Pat. 333.**

—S. 5—Applicability—Legal representative.

——The provisions of S. 5 of the Limitation Act do not apply to applications to bring on to the record the legal representatives of a deceased respondent. (*Chevis and Harrison, JJ.*). SHAH MUHAMMAD *v.* KHAN BAHADUR CHOUDHARI KARAM ILAHI. **65 I. C. 121=14 P. W. R. 1922= A.I.R. 1922 Lah. 131.**

—S. 5—Applicability—Pauper application.

——Per *Ross, J.*—When an appeal is instituted with an application for leave to appeal in *forma pauperis*, the terms of R. 1 of O. 44 make it clear that the judgment and decree are appealed from and the rejection of the application has no effect necessarily on the appeal from the judgment and decree. There is a distinction between the procedure in a pauper suit and the procedure in a pauper appeal. In the latter case there is an appeal before Court which was presented within the time limited by law but as no part of the Court fee has been paid S. 149, C.P.Code, gives the Court a discretion to allow the payment at any stage. Even if S. 149 had not this effect, this would be a case for the application of S. 5, Limitation Act. (*Mullick and Ross, JJ.*). RAJENDRA PRASAD BOSE *v.* GOPAL PROSAD SEN. **115 I.C. 678=9 P. L. T. 613.**

LIMITATION ACT (1908), S. 5—Applicability—Provincial Small Cause Courts Act.

——Delay in filing an application to appeal in *forma pauperis* cannot be condoned under S. 5. 30 Cal. 790, *Foll.* (*Prideaux, A.J.C.*). SABUDDIN *v.* PUNDLIK. **101 I.C. 320=A.I.R. 1927 Nag. 197.**

—S. 5—Applicability—Privy Council—Appeal.

——An application for leave to appeal to His Majesty in Council clearly comes within the purview of S. 5. Where an affidavit was filed to the effect that the agent of the applicant was coming to Allahabad for the purpose of filing the application that when he reached the Aligarh station, he had an attack of Renal Colic, which confined him to bed till the 2nd of November, following and the affidavit was uncontradicted and supported by a medical certificate.

Held, that sufficient reason had been shown for the delay. (*Banerji and Gokul Prasad, JJ.*). DEO INDER SINGH *v.* KHUSHI RAM. **76 I.C. 375= A.I.R. 1923 All. 536.**

——Section 5 is applicable to an application for leave to appeal to His Majesty in Council. Where an application for review of an order was dismissed after it was granted,

Held, the order being wrong must be ignored and the time taken must be deducted in computing the period of limitation for appeal from the original order. (*Ashworth and Simpson, A.J.Cs.*). BHAGWATI PRASAD *v.* ACHHAIBAR SING. **74 I.C. 214= 9 O.L.J. 531=26 O.C. 24=A.I.R. 1923 Oudh 93.**

—S. 5—Applicability — Provincial Insolvency Act.

——*Petition to adjudicate a person or insolvent—Section inapplicable.*

Although it is true that S. 78, Provincial Insolvency Act, makes S.5, Limitation Act, applicable to appeals and applications under the Provincial Insolvency Act, yet does not extend the application of S. 5, Limitation Act, to petitions to adjudicate a person insolvent. Such petitions are not included in the word "applications" as used in S. 78, Provincial Insolvency Act. Delay in presenting petitions beyond three months will not therefore be excused in any case. 44 M.L.J. 303, *Rel. on.* (*Wild, J.C. and Rupchand, A. J. C.*). BULOMAL VARIOMAL *v.* KUMAR KHAN. **112 I. C. 646=A.I.R. 1928 Sind 177.**

——Section 5 of the Indian Limitation Act did not apply to petitions made under Act III of 1907. But under the new Insolvency Act, S. 5 has been specifically declared to be applicable. (*Broadway and Jai Lal, JJ.*). NUR MAHOMAD *v.* LAI CHAND. **90 I. C. 254=7 L.L.J. 201=26 P. L. R. 501= A.I.R. 1925 Lah. 436.**

—S. 5—Applicability—Provincial Small Cause Courts Act.

——A Court has discretion under S. 5 of the Limitation Act to excuse delay in making the application as required by S. 17 of the Provincial Small Cause Courts Act. 24 C.W.N. 380, *Not appr.*; A.I.R. 1922 Mad. 186, *Appr.*; A.I.R. 1922 Mad. 354 and 37 All. 591, *Ref.* (*Findlay, J.C.*). GOVINDA *v.* JAIRAM. **102 I. C. 228=10 N. L. J. 76= A. I. R. 1927 Nag. 238.**

——The proviso as to a deposit or security being made at the time of presenting an application is merely directory and not mandatory and Court has power to extend the time. A.I.R. 1923 Mad. 354; A.I.R. 1926 All. 602, *Rel. on*; 43 Mad. 579, *Not foll.* (*Prideaux, A. J. C.*). VITHU MHATI *v.* VITHU MAHADJI. **99 I. C. 779= A. I. R. 1927 Nag. 165.**

LIMITATION ACT (1908), S. 5—Applicability—Provincial Small Cause Courts Act.

——The provisions of S. 5 of the Limitation Act do not apply to an application under the Provincial Small Causes Courts Act, S. 17 to set aside an *ex parte* decree. (*Dalal, J. C.*). MT. SITABA *v.* MATA DIN. 89 I. C. 482=2 O.W.N. 440= A. I. R. 1925 Oudh 446.

——*Court can excuse the delay.*

Along with an application to set aside the *ex parte* decree which was passed under the provisions of the Provincial Small Cause Courts Act, the full amount of the decree and costs was not, owing to a mistake on the part of the vakil's *gumasta*, paid within the 30 days. The difference was made up after the 30 days when the error was discovered,

Held, the Court could excuse the delay. The payment of the decretal amount into the Court is not independent of the petition for setting aside the *ex parte* decree. (*Oldfield and Venkatasubba Rao, JJ.*). SUDALAIMUTHU KUDUMBAN *v.* ANDI REDDIAR. 66 I. C. 104=45 Mad. 628= 15 M.L.W. 494=1922 M.W.N. 266= 30 M.L.T. 342=A.I.R. 1922 Mad. 186= 42 M.L.J. 484.

—S. 5—Applicability—Rangoon Rent Act.

——Section 5 does not apply to application under S. 18 of the Rangoon Rent Act to the Chief Judge of the Small Cause Court. (*Young and Baguley, JJ.*). F. MIERS *v.* R. R. KHAN. 84 I.C. 284= 3 Bur. L.J. 157=A.I.R. 1924 Rang 377.

—S. 5—Applicability—Revision to Oudh Chief Court.

——Revision applications cannot be admitted by the Chief Court beyond the time allowed for appeals except for special reasons. (*Pullan and Raja, JJ.*). HAMIDUNNIZA *v.* MAHOMED ANWAR ALI. 7 O W.N. 894=A.I.R. 1930 Oudh 496.

—S. 5—Applicability—Rules of High Court.

——Where in a case the limitation is fixed not under the Limitation Act, but under the rules framed by the particular High Court, the section is not applicable and time cannot be extended if there is no power to extend under the rules. (*Sulaiman, A.C.J.*). BAIJNATH *v.* DOOLAREY HAJJAM. 110 I.C. 719=30 All. 865=26 A.L.J. 1317= A.I.R. 1928 All. 708.

—S. 5—Applicability—Scope.

——Section 5 does not apply to execution applications It applies only to such applications as to which it has been expressly made applicable. (*Sulaiman, J.*). RAM RAJ *v.* MT. UMRAJI. 93 I.C. 292=A. I. R. 1926 All. 345.

—S. 5—Applicability—Setting aside—Award.

——*Scope.*

Section 5 does not apply to applications under Art. 158. (*Addison, J.*). DEVI DITTA *v.* BABU RAM. 100 I.C. 935=8 Lah. 274=28 P.L.R. 441= A.I.R. 1927 Lah. 273.

—S. 5—Applicability—Setting aside—Sales.

——The provisions of S. 5 of the Limitation Act do not apply to an application under O. 21, R. 89. (*Dalal, J.C.*). RAM AUTAR *v.* SHEO PIAREY LAL. 87 I.C. 722=12 O.L.J. 137=A.I.R. 1925 Oudh 411.

—S. 5—Applicability—Special or local law.

——Section 5 under which the Court can excuse delay is not one of the provisions, the application of which is extended by Act X of 1922 to proceedings under a special or local law. (*Oldfield and Ramesam, JJ.*). MITTOOR MOIDEEN, *In re.* 71 I.C. 217=16 M.L.W. 765=24 Cr.L.J. 89= A.I.R. 1923 Mad. 95=43 M.L.J. 561.

LIMITATION ACT (1908), S. 5—Delay in getting copies.

—S. 5—Applicability—Suits.

——*Section does not apply to suits.*

Section 5 of the Limitation Act applies only to those proceedings which are specifically mentioned in that section or to which the section may be made applicable by or under any enactment for the time being in force. A suit is not such a proceeding. (*Dalal, J. C.*). RAM PHER *v.* AJUDHIA SINGH. 87 I.C. 17=12 O.L.J. 66=2 O.W.N. 144= A.I.R. 1925 Oudh 369.

—S. 5—Construction.

——"*For leave to appeal.*"

The words "for leave to appeal" in the section are wide enough to include an application for leave to appeal a a pauper. 13 A.L.J. 635, *Dist.* (*Mukerji and Banerji, JJ.*). RAM CHARAN *v.* BANSIDHAR. 111 I. C. 655=26 A. L. J. 847= A.I.R. 1928 All. 499.

——'*Sufficient cause*'—*Meaning.*

The expression 'sufficient cause' in the context must be regarded merely as indicating that the Court must be satisfied that the delay was an excusable delay. (*Srinivasa Ayyangar and Reilly, JJ.*). SUTHARSANA *v.* SAMARAPURI. 110 I.C. 837=1928 M.W.N. 634= A.I.R. 1928 Mad. 690.

——*English Law is different.*

There is considerable difference between the wording of the English Statute bearing on the point and the language employed in S 5, Limitation Act. (*Srinivasa Ayyangar and Reilly, JJ.*). SUTHARSANA *v.* SAMARAPURI, 110 I.C. 837= 1928 M.W.N. 634=A. I. R. 1928 Mad. 690.

——*Sufficient cause—Liberal construction of.*

In interpreting S. 5 of the Limitation Act the expression "Sufficient cause" must be accorded a liberal construction. But when the time for appeal has once passed, a successful litigant acquires a valuable right which must not be taken away from him unless the Court is satisfied that it is necessary in the interests of justice to extend the time for appeal and unless it is further shown that the petitioner has not been guilty of any inaction or negligence on his part. (*Kennedy, J.C. and Raymond, A.J.C.*). NUR MAHOMED *v.* HASSOMAL. 78 I.C. 953=17 S.L.R. 306=A.I.R. 1925 Sind 60.

—S. 5—Criminal Appeal.

——*Time cannot be extended.*

In an application of a criminal nature it would not be proper to extend the time given for the appeal even if the delay arises in consequence of any genuine mistake which could have been averted by a proper enquiry. (*Kennedy, J.C. and Tyabji, A.J.C.*). GIRIMAL *v.* SHEWARM. 95 I.C. 316=20 S.L.R. 90=27 Cr. L.J. 780= A.I.R. 1926 Sind 215.

—S. 5—Delay in getting copies.

——Where the Counsel for appellant makes a note in the memorandum of appeal that the copy of the judgment of the trial Court was applied for within period of limitation but was not received when the appeal was instituted and the copy is eventually filed only one day late, the necessary extension of time may be allowed. (*Bhide, J.*). LAL DIN *v.* MT. SARDAR BIBI. A.I.R. 1930 Lah. 129.

——Memorandum of appeal was filed in time without the judgment and decree of the lower Court. Two days after expiry of limitation the decree and judgment of the lower Court was filed.

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Held, that the case was a fit case for extension of period under S. 5. (*Wazir Hason, J.*). LAL BHAN PARTAB SINGH *v.* RAJAB. **6 O.W.N. 1035= A.I.R. 1930 Oudh 184.**

———Where the High Court insists also on a copy of the first Court's judgment being filed in appeal, time occupied in obtaining copy of such a judgment, though it cannot be excluded under S. 12, should be allowed under S 5. 40 All. 1 (F.B.), *Ref.* (*Mukerji, J.*). BANKE LAL *v.* BHOLA NATH. **115 I.C. 880=A.I.R. 1928 All. 416.**

———Delay in obtaining copy due to applicants not furnishing date of judgment cannot be excused. (*Dalal, J.C.*). BABU LAL *v.* RAMPHER SINGH. **91 I.C. 425 (All.).**

———Where the copy of the first Court's judgment is applied for within limitation and it is only because of inordinate delay in the preparation of the copy that the appellants are unable to present it with the memorandum, under S 5 time should be extended. (*Harrison and Jai Lal, JJ.*). MT. BHURI *v.* MT. ASGHARI BEGAM. **94 I.C. 959=7 Lah. 447=8 L.L.J. 521= 27 P.L.R. 660=A.I.R. 1926 Lah. 458.**

———Where the delay in producing a copy of the decree was due to the office not informing the applicant of the date when the copy would be ready, limitation was extended under S. 5. (*Abdul Raoof, J.*). MADAN SINGH *v.* PURAN SINGH. **91 I.C. 6=7 L.L.J. 595=26 P.L.R. 738= A.I.R. 1926 Lah. 84.**

———Delay due to obtaining copy of judgment not required to be filed and for consulting a lawyer to prepare grounds of appeal under the Letters Patent is not excused to extend the period of limitation under the section. (*Robinson, C.J.*). CHAN ELLIAM *v.* NEO THEIN THEONG. **92 I.C. 786= 4 Bur.L.J. 138=A.I.R. 1925 Rang 361.**

—S. 5—Delay not explained.

———*Extension cannot be allowed.*

The decree of the trial Court was passed on 29th August, 1924. On 22nd October, 1924, the appeal was filed. Application for copies was made on 17th September, 1924. The application was returned for correction of particulars on 2nd October, 1924. It was re filed on 3rd October, 1924. The copies were ready for delivery on 9th October, 1924. Actual delivery was taken 11th October, 1924. There was no affidavit explaining the delay, or the facts as to what happened between the 3rd and 11th.

Held, that no ground was shown for extension of time under S. 5. (*Dalip Singh, J.*). B. B. & C. I. RY. *v.* RAM SARAP MAHRUMAL. **98 I.C. 942= A.I.R. 1927 Lah. 59.**

———It is a well-recognised prinoiple that a petition filed out of time must show on the face of it the reason for delay, and there must further be an express prayer for condonation of the delay under the section. (*Jwala Prasad, J.*). LAURENTIUS EKKA *v.* DUKHI KOERI. **92 I. C. 179= 4 Pat. 766=7 P.L.T. 362=A.I.R. 1926 Pat. 73.**

———*Delay of 53 days owing to negligence of Dewan of plaintiff—Delay was not excused.*

The reason for not filing the copy of the decree appealed against, along with the memorandum of appeal was that the Dewan of the appellant did not send a copy of the decree along with the papers to be filed and as the last day for filing the appeal was the 7th November, 1918, the clerk of the Vakil for the appellant, filed the appeal without the copy of the decree. On the application to set aside the *ex parte* order excusing the delay, no affidavit had been filed

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either by the appellant or his Dewan or any other person explaining why a copy of the decree was not sent along with the other papers or why there was a delay of 53 days.

Held that the delay has not been properly explained. (*Kumaraswami Sastri, J.*). SUNDARAM IYER *v.* MUTHURAMALINGA. **72 I.C. 308= 17 M.L.W. 352=32 M.L.T. 232=1923 M.W.N. 164= A.I.R. 1923 Mad. 482=44 M.L J. 279.**

—S. 5—Discretion of Court.

———The question whether sufficient cause existed for non-presentation of an appeal within time in the lower Appellate Court is primarily one for decision by that Court. High Court cannot interfere with the exercise of that discretion when exercised in a sound and reasonable manner and after due enquiry and careful consideration of the case, even though the High Court itself would have arrived at a different conclusion if it had heard the case as Court of first appeal. A.I.R 1926 Lah 445, *Foll.* (*Tek Chand, J.*). DISTRICT BOARD, SHAHPUR *v.* SHAMAO DIN. **123 I.C. 83.**

———*Reasonable diligence is the test.*

Where in case of a belated appeal the delay having been due to the mistake of a clerk, the Subordinate Judge refused to exercise discretion favourably on the ground that the mistake of a clerk is tantamount to the mistake of a party.

Held, that the sole index for the exercise of such discretion is whether the appellant has acted with reasonable diligence. A.I.R. 1917 P.C. 156, *Foll.*; A.I.R. 1923 All. 455; A.I.R. 1924 All. 176; 37 All. 267; A.I.R.1926 All. 252 and A.I.R. 1925 Oudh 189 and 374, *Disc.* (*Dalal, J.*). LACHMI CHAND *v.* UNKAR MAL CHOTE LAL. **119 I.C. 447= A.I.R. 1929 All. 351.**

———Where a lower Appellate Court has exercised its discretion to extend or refuse to extend the period of time allowed for filing an appeal the High Court has no jurisdiction to decide whether the Court was or was not right in refusing to extend the time. 9 A.L J. 292, *Foll.* (*Weir, J.*). RAMCHARAN LAL *v.* GHAFOOR. **111 I.C. 816= A.I.R. 1929 All. 31.**

———*Interference with—When justified.*

In matters of discretion a Court of second appeal ought not and ordinarily does not interfere with the exercise of discretion on the part of the subordinate Courts, but that non-interference must necessarily be limited to cases where there is sufficient material on record to justify the exercise of discretion in any particular way. Where, however, it appears that the lower Appellate Court has exercised its discretion in a judicially unsound manner without proper legal materials to support its decision, the High Court will surely interfere.

A memo. of appeal was accepted by the appellate Court after the period of limitation had expired, without enquiring into sufficient cause for condoning the delay in the presentation of the memo. The appeal was accepted on merits setting aside the decree of the lower Court,

Held, that the appellate Court acted wrongly in entertaining appeal as it had no jurisdiction to touch the decree, and decide the case on merits on the basis of time-barred memo. A. I. R. 1917 P.C. 179 and A. I. R. 1924 Bom. 399, *Ref.*; 25 Mad. 166, *Foll.* (*Kinkhede, A. J. C.*). SHRIKISAN *v.* SECY. OF STATE. **114 I. C. 612=11 N.L.J. 186= A.I.R. 1929 Nag. 8.**

———Discretion allowed by S. 5 should be exercised only when application is made beyond time

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but without delay. (*Ashworth, J.*). HARI LAL *v.* PARMESHWARI DAS. 100 I.C. 727= A.I.R. 1927 All. 386.

———Discretion exercised by the lower Appellate Court will not be interfered with by the High Court. (*Jai Lal, J.*). MALAK MD. KHAN *v.* HET RAM. 103 I. C 90=28 Pat.L.R. 257= A.I.R. 1927 Lah. 908.

———No revision lies against an order refusing extension of time under S. 5 where it ought to be extended as at the best it amounts to an error of law. 21 I. C. 872, *Foll.* (*Dalip Singh, J.*). JAGAN NATH *v.* MUNNA LAL. 98 I C 892= A.I.R. 1927 Lah. 43.

———Where discretion has been exercised one way or the other by an appellate Court under S. 5, the High Court will not interfere in second appeal. A.I.R. 1923 All. 455, *Ref.* (*Sulaiman, J.*). RAM RUP *v.* NAIK RAM. 91 I.C. 865=A.I.R. 1926 All. 252.

———The Court of second appeal cannot consider the sufficiency or otherwise of the reasons given by the lower Appellate Court for declining to exercise his discretion under S. 5. (*Shadi Lal, C.J. and Coldstream, J.*). BUR SINGH *v.* FIRM GODHA RAM. 95 I.C. 565=A.I.R. 1926 Lah. 542.

———The discretion under S. 5, is a judicial one and when it is not exercised after appreciation and consideration of such facts as are relevant and after application of the right principles to those facts, the High Court can interfere in second appeal. (*Shadi Lal, C. J. and Le Rossignol, J.*). BACHINT SINGH *v.* HARNAM SINGH. 94 I.C. 396=A.I.R. 1926 Lah. 445.

———Copy of main connected judgment not filed. Time was extended. (*Broadway, J.*). TIRATH RAM *v.* MUNICIPAL COMMITTEE, AMRITSAR. 96 I.C. 416=8 L.L.J. 239=27 P. L.R. 841.

———*Discretion, judicially exercised — Appellate Court will not interfere.*

Where a Judge purporting to exercise discretion does so under the view that there is no general rule when in fact there is one which he ought to follow as being binding upon him, he misdirects himself as to the law to be applied to the case; he does not exercise a judicial discretion and an appellate Court should either remand the case or exercise the discretion itself; but where he does exercise a judicial discretion, the High Court will not interfere in second appeal. 45 Cal. 95, (P.C.); 37 All. 267, *Ref.* (*Ryves and Daniels, JJ.*). SHEIKH AHMAD HUSSAIN *v.* MUHAMMAD FASIH ULLAH. 74 I.C. 1039=21 A.L.J. 319= 45 All. 432=4 L.R.A Civ. 178= A.I.R. 1923 All. 455.

———When an appeal is presented, out of time, the Court when called upon to exercise the discretion vested in it under S. 5 may well be guided by the provisions of S. 14, though it does not in terms apply to appeals. (*Mukerjee and Panton, JJ.*). KAMUDINI RAY *v.* KAMALA KANT SEN. 68 I.C. 575=35 Cal. 106= A.I.R. 1922 Cal. 247.

———In Letters Patent Appeal High Court will not interfere with the discretion of the Judge in Chambers in refusing to excuse delay in presenting the appeal. (*Shadi Lal, C.J. and Martineau, J.*). THE MUNICIPAL COMMITTEE, CHINIOT *v.* BASHI RAM. 69 I.C. 895=A.I.R. 1922 Lah. 170.

—S. 5—Duty of applicant.

———The applicant is only required to satisfy the Court that he was unable to present his appeal in time on account of some misadventure on the *last date* on which it ought to have been presented; it is not necessary for him to account for his inactivity during the entire period prescribed by law. (*Suhrawardy, J., on difference of opinion between Graham and Miller, JJ.*). KARALI CHARAN SARMA *v.* APURBA KRISHNA BAJPEVI. 34 C.W N. 1119.

LIMITATION ACT (1908), S. 5—Ex parte admission.

———An appellant who wilfully leaves the preparation and presentation of his appeal to the last day of the period of limitation prescribed therefor, is guilty of negligence and is not entitled to an extension of time if some unexpected or unforeseen contingency prevents him from filing his appeal within time. 12 N.L.R. 171, *Foll.* (*Subhedar, A.J.C.*). HAKIMIA *v.* J. C. GAMMON. 119 I. C. 679=A.I.R. 1930 Nag. 121.

———Appellant unwell in the last portion of limitation and filing his appeal two days later—Two days delay should be excused, but the whole period of sickness cannot be excused—The period of sickness is not to be added like the period for obtaining copies. (*Baguley, J.*). MA THEIN KHIN *v.* MA U BYA. 119 I.C 215=6 Rang 571= A.I.R. 1928 Rang. 165.

———It is settled law that in order to have the benefit of S. 5 it is the duty of the appellant to explain the delay for every day that elapses beyond the period allowed by the Limitation Act for filing an appeal. (*Tek Chand and Agha Haidar, JJ.*). GEORGE GOWSHALA *v.* BALAK RAM. 103 I.C. 498=A I.R. 1927 Lah. 717.

—S. 5—Equitable relief.

———Persons who desire the assistance of the Court in obtaining equitable relief must come quickly. In each case it is a question to be decided on the facts whether the delay on the part of the plaintiff is such that the Court ought not to exercise its powers. (*Schwabe, C. J. and Wallace, J.*). ABDUL SHAKER SAHIB *v.* ABDUL RAHMAN SAHIB. 72 I.C. 868=46 Mad. 148= 1923 M.W.N. 1=17 M.L W. 216= A.I.R. 1923 Mad. 284=44 M.L.J. 107.

—S. 5—Ex parte admission

———Where an order admitting an appeal and condoning the delay is made *ex parte*, a Court has jurisdiction to re-consider, the question when the appeal comes for hearing. A. I. R. 1917 P. C. 179, *Foll.* (*Weir, J.*). RAMCHARAN LAL *v.* GHAFOOR. 111 I.C. 816=A.I.R. 1929 All. 31.

———Admission of a time-barred appeal on hearing the appellant only on the ground of sufficient cause cannot be revised where the respondent did not object to the admission in the course of his argument. (*Kendall, A.J.C.*). BHARAT *v.* BASANT. 80 I.C. 617=A.I.R. 1925 Oudh 148.

———Where an *ex parte* order is passed excusing the delay under S. 5, Limitation Act, it is open to the other party to apply to have it set aside Courts no doubt have power to excuse the delay in the presentation of a copy of the decree appealed against, if they are satisfied that the discretion vested in them under S. 5 of the Limitation Act should be exercised in favour of the appellant. (*Kumaraswami Sastri, J.*). SUNDRAM IYER *v.* MUTHURAMALINGA. 72 I. C. 308= 17 M.L.W 353=32 M.L.T. 232=1923 M.W.N. 165= A.I.R. 1923 Mad. 482=44 M.L.J. 279.

———The admission of the appeal subject to objection was irregular. An appellate Court ought not to interfere with the discretion exercised by the Court below, merely because, upon the material before it, it might have arrived at a different conclusion. But where no discretion at all is exercised

LIMITATION ACT (1908), S. 5—Ex parte admission.

it is certainly open to the party aggrieved to raise the question on appeal. 41 Mad. 412; 45 I.A. 25 (P.C.). (*Dawson Miller, C. J. and Coutts, J.*). MD. ABDUL KASIM *v.* CHATURBHAJ SAKAI.

64 I. C. 55=1922 P.H.C.C.20=3 Pat.L.T. 110=6 Pat L.J. 444=A.I.R. 1922 Pat. 47.

——An order admitting an appeal *ex parte*, is not binding on the respondent, who can at the hearing raise any objection to such admission, that is legally possible. (*Broadway and Abdul Qadir, JJ.*). BALWANT SINGH *v.* SUNDER SINGH.

63 I.C. 726 (Lah.).

——An *ex parte* order granting an application for exouse of delay in applying for leave to appeal as a pauper, may be considered at the instance of the party prejudicially affected thereby. (*John Wallis, C.J. and Seshagiri Aiyar, J.*). KRISHNASWAMY NAYAKER *v.* VEERAPPA NAYAKER.

60 I.C. 212=12 M.L.W. 500.

—S. 5—Inability without fault.

——Copies of judgment and decree sent to a lawyer for advice lost in transit—New application made on last day of limitation and copies obtained on expiration and appeal filed immediately—Extension under S. 5 was granted. (*Zafar Ali and Jai Lal, JJ.*). MT. ATTRI *v.* RAMKRISHAN.

120 I.C. 169=11 Lah. 111=31 P.L.R. 356=A.I.R. 1930 Lah. 216.

——Delay caused by the appellant not having knowledge of complaint under S. 476, Cr. P. Code, can be excused. (*Fawcett and Mirza, JJ.*). DAJA DEVJI *v.* EMPEROR. **108 I.C. 26=52 Bom. 164=30 Bom. L. R. 76=29 Cr. L. J. 315=9 A. I. Cr. R. 435=A.I.R. 1928 Bom. 64.**

——Where the person who is bound to pay the money produces the money in Court and complies with the rule which requires him to take out a chellan and pay the money at a different place and there is a delay in the actual payment of the money into the treasury bank owing to reasons beyond the control of the person making the payment, the payment must be deemed to have been made on the date the money is produced and the chellan obtained. To hold otherwise would be to penalise a party for events beyond his control. 17 L.W. 187, *Appr.* (*Kumaraswami Sastri, J.*). GOPALAKRISHNA PILLAI *v.* KUNJITHAPATHAM PILLAI.

73 I.C. 651=47 Mad. 543=18 M L.W. 844=33 M.L.T. 106=1923 M.W.N. 811=A.I.R 1924 Mad. 324=45 M.L.J. 849.

——Where the filing of the cross-objection raised a question of proprietary title and thus made the appeal to the Commissioner incompetent,

Held, the delay in filing it in Court of D. J. should be excused as appellant could not take this event into consideration when he filed the appeal. (*Stuart, J.*). LALA BHAGWAN DAS *v.* MOHABAT SHAL. **77 I.C. 955=A.I.R 1923 All. 170.**

——Appeal without judgment copy not possible to be filed before filing of main appeal—Court would excuse delay. (*Mookerjee and Cholzner, JJ.*). TARAKUMAR GHOSE *v.* KUMAR ARUNCHANDRA SINGH. **74 I.C. 383=36 C.L.J. 389=A. I. R. 1923 Cal. 261.**

——The last day for filing an appeal in a Sessions ourt expired during the Court's civil vacation. On that day the Judge held criminal sittings of which, however, neither the appellant nor his Counsel had timely notice. The appeal was filed on the day Court re-opened after the civil vacation.

LIMITATION ACT (1908), S. 5—Mistake in calculation.

Held, that as notice of Judge's intention to hold sittings on the day when limitation for the appeal expired was not given either to the appellant or to his Counsel the appeal ought not to have been dismissed as time-barred but time for the same should have been extended. (*Teunon and Ghose, JJ.*). SONA SHEIKH *v.* NAIB ALI SHEIKH.

61 I.C. 714=22 Cr. L. J. 426.

—S. 5—Laches.

——In exercising discretion in favour of the applicant under S. 5 of the Limitation Act, the Court must be satisfied that the applicant was not guilty of unnecessary laches. (*Wazir Hasan, A.J.C.*). RAJA MUHAMMAD MUMTAZ *v.* UGRAJ SINGH. **86 I.C. 270=12 O.L.J. 94=2 O.W N. 58=28 O.C. 378=A.I.R. 1925 Oudh 371.**

——Mere delay, which is short by the period prescribed by the Limitation Act and which is not of such a character as to give rise to an inference of abandonment of right, is no bar to a suit for specific performance unless it is shown to have prejudiced the defendant. A. I. R. 1922 Lah. 461, *Foll.* (*Moti Sagar, J.*). GOPOLI RAM *v.* DEWAK RAM. **75 I.C. 743=A.I.R. 1923 Lah. 694.**

——A Court is not bound to show indulgence to a litigant who is not prompt in seeking his remedy. (*Abdul Raoof, J.*). MADAN GOPAL *v.* MALAWA RAM. **68 I. C. 777=A.I.R. 1923 Lah. 96.**

—S. 5—Merits.

——*Bad case on merits—No ground for refusal.*

The lower Appellate Court did not apply its mind to the question whether having regard to the circumstances under which the appeal before it was filed after the expiry of the usual period of limitation, appellant should be granted an extension of time. The only ground on which it refused to extend the time was that in its opinion the appellant had a bad case on the merits.

Held, that this is wrong and under the circumstances the High Court should interfere as no proper thought was given to the cause of presenting appeal out of time. The lower Appellate Court had not used its discretion judicially and reasonably. (*Jai Lal, J.*). MAHOMED IQBAL *v.* LABHA MAL.

122 I.C. 575.

——Where the order against which the application for revision is preferred is illegal, the delay which is excusable to a certain extent should not operate as a bar. (*Broadway, J.*). DWARKA DAS *v.* THE CROWN. **86 I.C. 431=26 Cr.L J. 799=6 L.L.J. 160=A.I.R. 1924 Lah. 489.**

—S. 5—Merits—Immaterial.

——That the appellant has a good case on the merits is not a ground for excusing delay in filing the appeal within time. A valuable right accrues to the opposite party by reason of the appeal having become barred by time. 2 Lah. 277, *Foll.* (*Scott-Smith, J.*). LAKHMI DAS *v.* MEHAR CHAND.

73 I.C. 910=A.I.R. 1923 Lah. 144.

—S. 5—Mistake in calculation.

——*Differing opinions of two Judges about limitations—Appellant probably misled—Time should be extended.*

Where there was a case decided by two Judges of the High Court, where one was of opinion that an appeal under S. 476-B, Cr. P. Code, must be treated as an ordinary appeal under the Cr. P. Code, but the other was of opinion that such an appeal must be treated as a miscellaneous civil appeal and regulated by O. 41, C. P. Code,

LIMITATION ACT (1908), S. 5—Mistake in calculation.

Held, that the difference of opinion between two Judges may afford a reasonable ground for a party to suppose that such an appeal was a civil appeal and he had 90 days' time from the date of the order to prefer on appeal and in such a case extension of time should be granted. (*Suhrawardy and Cammiade, JJ.*). RAJANI KANTA KAYAL *v.* BISTO MONI DASI. **104 I.C. 456=46 C.L.J. 40=8 A.I.Cr.R. 433=28 Cr.L.J. 840=A.I.R. 1927 Cal. 718.**

———Discretion under S. 5 should be exercised in favour of a party who has been misled by a judgment of the High Court in computing the period of limitation. (*Findlay, J.C.*). MUKUND RAO DESHMUKH *v.* RAGHO MALI. **102 I.C. 123=A.I.R. 1927 Nag. 247.**

———Where an applicant on his own mistaken view files the appeal on the last possible day extension should not be granted. (*Hallifax and Kotval, A. J. Cs.*). KHWAJA KUTUBUDDIN *v.* KHWAJA GULAM RABBANI. **94 I.C. 121 (Nag.).**

———An appellant who does not display promptitude must suffer if his calculation is wrong. (*Macnair, A.J.C.*). GONDAJI *v.* KISHAN. **61 I. C. 889=A.I.R. 1921 Nag. 151.**

—S. 5—Mistake of Court.

———*Mistake of Court is sufficient excuse.*

Before an appeal is admitted, it is the duty of the Court to see that all the papers that should be filed have been filed before the Court. Where an appeal is filed without a copy of the decree and the Court instead of bringing the omission to the notice of appellant admits the appeal, it cannot subsequently dismiss the appeal on the ground that it had not been filed in time and the appellant should not suffer for the fault of the Court in not discovering his mistake in time. (*Das, J.*). MAUNG PO HLAING *v.* MA PHEE. **A.I.R. 1930 Rang. 235.**

———*Persons misled by order of Court can claim benefit of S. 5.*

An appeal was filed without copy of decree. The appellant had filed an affidavit to the effect that he had made an application for copy but could not get it as no decree was found in the proceedings. The appellate Court granted the application for dispensing with the copy and to prosecute the appeal without it. When the copy was filed, the appeal was time barred and consequently dismissed.

Held, that in view of the steps taken by the appellant when he filed an appeal and the order of the Court dispensing with the copy, the appellant must be considered to have exercised due care and attention. (*Brown, J.*). U PO THET *v.* HANK PAT. **A.I.R. 1930 Rang. 182.**

———Where the date actually entered on the decree apparently misled the appellant it would obviously be a sufficient cause for admitting the appeal after time. (*Mya Bu, J.*). U PO THAW *v.* MA THIT. **A.I.R. 1930 Rang. 67.**

———Where the proper Court-fee was not paid within time owing to the fact that the value of purposes of Court-fee was not correctly given in the copy of the judgment appealed from.

Held, that an extension of time should be granted under the circumstances. (*Bhide, J.*). JOHAGA *v.* BIRCHAND. **112 I.C. 455=29 P.L.R. 410= A.I.R. 1928 Lah. 737.**

———Appellant misled by error of Court and paying insufficient Court-fee due to *bona fide* mistake is protected. (*Jai Lal and Abdul Raoof, JJ.*). RAMZOR SINGH *v.* SECY. OF STATE. **92 I.C. 319=A.I.R. 1926 Lah. 509.**

LIMITATION ACT (1908), S. 5—Mistake of fact.

———*Legal representatives—Wrong.*

Where on the death of the executor of one of two defendants, during the pendency of suit, plaintiff applied for substitution of heirs of defendant on the record and the Court without investigating under R. 5 whether the heirs were proper representatives directed the suit to proceed but subsequently at the appellate stage it transpired that the proper legal representative was the next executor and not heir of defendant and therefore the suit was contended to have abated.

Held, that plaintiff was misled by the order of Court allowing suit to proceed and should be entitled under S. 5 of the Limitation Act to have the abatement, if there was an abatement, set aside. (*Dawson Miller, C.J. and Foster, J.*). TOFA LAL DAS *v.* SYED MOHIUDDIN. **93 I.C. 129=4 Pat. 448=7 P.L.T. 431=1925 P.H.C.C. 345=A. I. R. 1925 Pat. 765.**

———Where a Court dismissed a suit as plaintiff was not ready with his witnesses as he had not paid the process fee in time but the Court drew up a decree after 17 months of such dismissal and that too after it was directed by the High Court so to do.

Held, that an appeal filed within time computed from the drawing up of the decree was in time and that the question of excusing delay did not arise in such a case. (*Kinkhede, A.J.C.*). PANDU *v.* RAJESHWAR. **78 I.C. 996=20 N.L R. 131=A.I.R. 1924 Nag. 271.**

———Court's neglect to do its duty, namely, to draw up a decree, is a sufficient cause for excusing the delay. (*Kinkhede, A.J.C.*). PANDU *v.* RAJESHWAR. **78 I.C. 996=20 N.L.R. 131=A I.R. 1924 Nag. 271.**

———*Wrong order as to jurisdiction, Civil and Revenue Courts.*

A *pattidar* sued for the recovery of revenue paid on account of the defendants, who were sub-*pattidars*. The Munsif before whom these suits were pending thought that they were excluded from the cognizance of the Civil Court. He returned the plaints for presentation to Revenue Court the latter held that the suits were cognizable by the Civil Court. The order of the Revenue Court was upheld in appeal by the Deputy Commissioner. The plaintiffs then came back to the Civil Court and sought relief by filing the same plaints again in the Court of the Munsif. The Munsif then held that the decision in the previous proceedings operated as *res judicata*. The plaintiff then filed two sets of appeals directed against the original order of the Munsif and against the subsequent order. The former set of appeals was barred by time.

Held, that time should be extended under S. 5. (*Kanhaiya Lal, J.C.*). BENO MADHO LALA *v.* SHAMSHAD ALI. **74 I.C. 253=26 O.C. 36=A.I.R. 1923 Oudh 238.**

—S. 5—Mistake of fact.

——— *Fact of death of a party not known to parties for more than three months—Mistake excused.*

The judgment under appeal was given on the 21st of January, 1922. The appeal was filed on the 19th of April, 1922. On the 6th of July, 1922, an application was made to remove from the memorandum of appeal the name of one *R* and substitute the names of *P* and *H* as *R* had died before the presentation of appeal and name had wrongly been continued on the record. *R* had in

LIMITATION ACT (1908), S. 5—Mistake of law.

fact died before the decision of the lower Appellate Court, but his name, by an oversight, was retained in the decree of the lower Appellate Court.

Held, that the retention of the name of the deceased was not intentional, that having regard to this circumstance the mistake should be overlooked and the time for appeal against the heirs of *R* should be extended. (*Abdul Raoof, J.*). KIDAR NATH *v.* WAZIR CHAND. **75 I.C. 903= A.I.R. 1924 Lah. 692.**

—S. 5—Mistake of law.

——Ignorance of law cannot be sufficient excuse for not filing an application in time. 13 Cal. 266, *Dist.*; 12 Bom. 320 and 12 All. 461, *Foll.* (*Mohiuddin, A.J.C.*). NANDU *v.* BHUWANOO. **117 I.C. 282=A.I.R. 1929 Nag. 74.**

——*Misconstruing law is not sufficient cause.*

The words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to the appellant but the mere fact that an appellant has misconstrued one of the rules and by reason of such mistake has omitted to bring his appeal in time is not a sufficient ground for enlarging the time for appeal. 9 Bom. L.R. 893 and *City of Moscow Gas Co.* v. *International Financial Society*, 7 Ch. D. 241, *Rel. on.* (*Broadway and Zafar Ali, JJ.*). SECY. OF STATE *v.* TIRATH RAM. **104 I.C. 281= 9 La 76=A.I.R. 1928 Lah. 216.**

——*Sufficient cause—Test laid down.*

If the mistake or carelessness is real and unintentional and no damage has been done to the other side that cannot be repaired by costs or otherwise, the application must be granted: if on the other hand, the negligence is culpable, or there are *mala fides* on the part of the applicant, or irreparable hurt would result to the other side, the application must be dismissed.

Where a suit by a minor through next friend was conducted by the aged father of the next friend and on the death of a defendant, the suit abated as no L.R.'s were brought on record and ignorance of law was pleaded as an excuse.

Held, that the delay must be excused and the abatement set aside. *Collins* v. *The Vestry of Paddington*, 5 Q. B. D. 368, *Foll.* (*English and Indian cases considered.*) (*Venkatasubba Rao, J.*). RAMCHANDRAN *v.* SABAPATHY MUDALIAR. **108 I.C. 288=27 M.L.W. 756= A.I.R. 1928 Mad. 404=54 M.L.J. 234.**

——Bona fide *ignorance of law can be "sufficient cause."*

Where the appellant was an ignorant milkman without any previous experience of litigation and pleaded his ignorance of his duty to substitute the legal representative of the deceased respondent though he was warned of the respondent's death.

Held, that in the circumstances of the case, the delay was *bona fide* and that sufficient cause was shown within the meaning of S. 5. (*Greaves and Chakravarti, JJ.*). KRISHNA MOHAN GHOSE *v.* SURAPATI BANERJEE. **94 I.C. 929= 29 C.W.N. 472=A.I.R. 1925 Cal. 684.**

——Ignorance of law cannot be accepted as a sufficient cause for not filing an application for leave to appeal as pauper. (*Zafar Ali, J.*). RAMJI LAL *v.* LAKSHMI CHAND HINGAN LAL. **87 I.C. 952=A.I.R. 1925 Lah. 602.**

——The fact of the plaintiff having made a mistake of law does not necessarily preclude him from obtaining the benefit of the section. 45 Cal. 94,

LIMITATION ACT (1908), S. 5—Mistake of pleader—Bona fide.

Foll. (*Daniels, J.*). PRABHU DAYAL *v.* MURLI DHAR. **78 I.C. 677=22 A.L.J. 365= 5 L.R.A. Civ. 298=A.I.R. 1924 All. 867.**

——*Rule newly passed—Ignorance of the rule is sufficient excuse.*

Where the Lahore High Court made a rule on 17-10-1917 that in the case of second appeals the memorandum of appeal shall, in addition to the copies specified in O. 41, R. 1, be accompanied by a copy of the judgment of the Court of the first instance, which was published in the Punjab Government Gazette of the 24th October, 1919, as Notification No. 4685-G and the appeals in question were filed on the 30th October, 1919, in other words, six days after the new rule was published in the Government Gazette,

Held, that there is a sufficient cause within the meaning of S. 5 for admitting the appeals beyond time, as there had not been sufficient time for the new rule to become well-known by the 30th October, 1919. (*Scott-Smith and Moti Sagar, JJ.*). MUHAMMAD HASSAN-UD-DIN *v.* SAIF ALI SHAH. **74 I.C. 451=4 Lah. 122=5 L.L.J. 246= A.I.R. 1924 Lah. 41.**

——Ignorance of law is no excuse for delay and therefore the fact that the appellant previously was under the impression that limitation was 90 days for a Letters Patent Appeal in Lahore, is no excuse for not filing it within the 30 days period prescribed by the rules. (*Chevis and Scott-Smith, JJ.*). DAYAL SINGH *v.* BUDHA SINGH. **61 I.C. 327=2 Lah. 127=3 L.L.J. 415= 74 P.L.R. 1921=A.I.R. 1921 Lah. 26.**

—S. 5—Mistake of party—When sufficient.

——Mistake on the part of counsel's clerk cannot be considered a sufficient ground for extension of time under S 5. A.I.R. 1924 Lah. 401, *Foll.* (*Bhide, J.*). MT. PANA BIBI *v.* MAHLA. **110 I.C. 374= A.I.R. 1928 Lah. 488.**

—S. 5—Mistake of pleader—Bona fide.

——Though an error on the part of an advocate might be sufficient cause within the meaning of S. 5 the mistake or error must be a *bona fide* one, that is, it must have been made in spite of due care and attention having been exercised. Where the advocate does not himself consider that matter and accepts the statement of his clerk that 8 days are allowed for obtaining copies of decree and does not examine the paper himself to see whether the statement was correct, he cannot be said to have exercised due care and attention. A.I.R. 1924 Rang. 148, *Foll.* (*Brown, J.*). HATIN *v.* OSI ULLA. **A.I.R. 1930 Rang. 209.**

——No doubt a *bona fide* mistake on the part of a pleader is sufficient cause for admitting an appeal after time, but no mistake is *bona fide* unless made in spite of due care and attention. Time cannot be excused under S. 5 on the ground that the pleader accepted the statement of the clerk of the Court that an application for copy would not be accepted until decree was signed. 8 L.B.R. 566, *Rel. on.* (*Brown, J.*). MAUNG PO KYAW *v.* MA LAY. **117 I.C. 251=7 Rang. 18= A.I.R. 1929 Rang. 116.**

——Though a *bona fide* mistake on the part of a pleader may be sufficient cause for admitting an appeal after time, no mistake is *bona fide* unless made in spite of due care and attention. A.I.R. 1924 Rang. 148, *Foll.* (*Robinson, C.J. and Brown, J.*). J. P. CHURTY *v.* T. H. CHETTYAR FIRM. **98 I.C. 417=4 Rang. 265=5 Bur. L.J. 187= A.I.R. 1927 Rang. 20.**

LIMITATION ACT (1908), S. 5—Mistake of pleader—Bona fide.

——A *bona fide* mistake on the part of a pleader may be sufficient cause within the meaning of S. 5. But no mistake is *bona fide* unless made in spite of due care and attention. A.I.R. 1927 Rang. 20, *Foll.* (*Maung Ba, J.*). MA NGWE YUN *v.* MA PU. **101 I.C. 363=5 Bur. L.J. 227.**

——*General rule as to discretion must be applied to each case—Discretion must be judicially exercised and on materials judicially cognizable.*

The true guide for a Court in the exercise of discretion is whether the appellant has acted with reasonable diligence in prosecuting his appeal and, that he ought ordinarily to be deemed to have acted with ordinary diligence when the whole period between the date of the decree appealed against and the date of presenting the appeal does not after excluding the time spent in prosecuting with due diligence another proceeding challenging the judgment exceed the period prescribed by law for presenting the appeal. 45 Cal. 94, *Foll.* There may be a general rule as to the exercise of discretion but each case must nevertheless be examined as to its own circumstances to see whether they make it fall within the terms of the general rule. The discretion in admitting an appeal under S. 5 must be judicially exercised and must be based on materials judicially cognisable though it has been held that a *bona fide* mistake of a pleader affords sufficient cause for admitting an appeal after time that mistake must have been one made in spite of due care and attention that had been exercised. Fact that the error had escaped the attention of the counsel for the respondents and also that of the Judge does not affect the matter in the slightest degree. The real question is whether the error was one that is in any way excusable or whether it was one which might easily have occurred even if reasonably due care and attention had been exercised by the Advocate. In some cases, no doubt, such as when there is a real doubt as to the forum or the question is for some reason difficult to decide, the fact that it has not been observed by other people may tend to excuse the mistake. But where there was a mistake that can only be accounted for by the fact that no care at all was taken, that no consideration was given to the question as to the forum in which the appeal lay and the very obvious necessity for considering the value of the lands for purposes of jurisdiction was entirely neglected,

Held, there is no sufficient cause for admitting the appeal after due date. (*Robinson, C. J. and Pratt, J.*). TIN TIN NYO *v.* MAUNG BA SAING. **77 I.C. 385=1 Rang. 584=A.I.R. 1924 Rang. 148.**

——Where the only excuse put forward in the affidavit for not filing the appeal within time was that the appellants had no knowledge, before the order of the District Judge returning the memorandum of appeal, that it had to be presented to the High Court but there was sufficient room to hold that they had such knowledge, and the same pleader had been working for the appellants and had filed various appeals rightly, in connection with this case,

Held, the mistake pleaded in this case was not *bona fide* and extension was refused. (*Abdul Raoof, J.*). UMRAO BAKHSH *v.* MALIK MUHAMMAD KHAN. **72 I.C. 782=28 P.W R. 1923=A.I.R. 1923 Lah. 612.**

—S. 5—Mistake of pleader—Good faith.

——*Counsel's advice.*

When it is established in the first place that a Counsel has given advice with due care and attention but has nevertheless arrived at a mistaken conclusion, and that the appellant, misled by that advice, has in good faith filed an appeal beyond limitation, then when compliance has been made with all these conditions a Court is justified in admitting an appeal filed after limitation, but not otherwise. 28 All. 414 and 29 All. 638, *Held broadly decided. Coles Revenshear, In re*, 1 K. B. 1, *Discussed*; 10 O.C. 291, *Foll.* (*Stuart, C. J. and Wasir Hasan, J.*). CHHOTEY LAL *v.* MT. DEVI BRIJ RANI. **6 O. W. N. 1042=A. I. R. 1930 Oudh 49.**

LIMITATION ACT (1908), S. 5—Mistake of pleader—Oversight.

——Where an appeal is preferred in the wrong Court, on the advice of a pleader, want of good faith need not be necessarily presumed. "In good faith" means honestly though negligently. 21 Bom. 552, *Expl.*; 20 Bom. 133, *Foll.*; 10 All. 524, *Dissented from*; 28 Bom. 235, *Dist.* (*Macleod, C. J. and Fawcett, J.*). DATTATRAYA SITARAM *v.* SECY. OF STATE. **60 I. C. 744=45 Bom. 607=23 Bom. L.R. 89=A.I.R. 1921 Bom. 302.**

—S. 5—Mistake of pleader—Honest mistake.

——An honest mistake that is committed by a litigant because of an incorrect advice given to him by his lawyer, constitutes a sufficient cause for extending the period of limitation for filing an appeal. A. I. R. 1922 All. 490 (F. B.), *Foll.*; 14 A.L.J. 212, *Ref.* (*Iqbal Ahmad, J.*). RAM LAL *v.* MUSTAQ ALI. **101 I.C. 777=8 L.R.A. Rev. 119=A.I.R. 1927 All. 788.**

——The delay in filing an appeal caused by honest mistake of the party's Vakil in calculating the time is sufficient cause for excusing the delay under S. 5. A. I. R. 1925 Mad. 462, *Foll.*; 5 N.L.R. 25, *Dist.* (*Prideaux, A.J.C.*). BABAN *v.* EMPEROR. **96 I.C. 857=7 A. I. Cr. R. 28=9 N.L.J. 180=27 Cr.L.J. 1001=A.I.R. 1926 Nag. 503.**

——An honest though a negligent mistake about High Court practice by a pleader in the muffassil was held to be a sufficient cause for extending the period of limitation under S. 5 in the present state of the profession in the muffasil. (*Mears, C.J., Banerji and Stuart, JJ.*). SHIB DAYAL *v.* JAGANNATH. **68 I.C. 812=44 All. 636=20 A.L.J. 674=A.I.R. 1922 All. 490 (F.B.).**

—S. 5—Mistake of pleader—Mistake in calculation.

——Delay caused by the mistake of the party's Vakil in calculating the time is sufficient cause for excusing delay under S. 5. (*Phillips and Venkatasubba Rao, JJ.*). KANDASWAMI MUDALIAR *v.* ARUNACHALA CHETTY. **86 I. C. 114=21 M.L.W. 24=A.I.R. 1925 Mad. 462.**

—S. 5—Mistake of pleader—Negligence.

——Whether a mistake made by a counsel does or does not amount to sufficient ground for extending time within S. 5, depends upon the peculiar facts of each case and it is not possible to lay down a hard and fast rule applicable to all cases.

But if the mistake on the part of counsel cannot be said to be due to inadvertence or ignorance but is manifestly the result of sheer carelessness, *i.e.*, a total lack of due care and attention; it cannot be a ground for extending time. 93 I. C. 876 and 95 P. R. 1917, *Foll.* (*Tek Chand and Bhide, JJ.*). MUHAMMAD AMIN *v.* CHANAN MAL. **110 I. C. 533 (Lah.).**

—S. 5—Mistake of pleader—Oversight.

——The oversight of an advocate is a sufficient cause for extending the period of limitation. 9 Ch. D. 1, *Referred to.* (*Suhrawardy, J.*, on

LIMITATION ACT (1929), S. 4—Mistake of pleader—Oversight.

difference of opinion between Graham and Mitter, JJ.). KARALI CHARAN SARMA *v.* APURBA KRISHNA BAJPUJI. **34 C.W.N. 119.**

———Where an appeal is filed a day later, through oversight of the counsel's clerk, time may be extended under S. 5. (*Campbell and Dalip Singh, JJ.*). ICHHAR SINGH *v.* NATHA. **98 I.C. 514= 8 L.L.J. 479=27 P.L R. 623= A.I.R. 1926 Lah. 693.**

———Section 5 of the Act must be applied under equity to a case where an appeal is filed in time and no laches can be attributed to the appellant, but the pleader through oversight did not sign the memorandum of appeal. (*Broadway and Abdul Qadir, JJ.*). BALWANT SINGH *v.* SUNDAR SINGH. **63 I.C. 726 (Lah.).**

—S. 5—Mistake of pleader—Party not bound.

———In a matter falling under S. 5, the pleader does not act as an agent of his client and his act or default is not binding upon the latter within the meaning of S. 5. (*Suhrawardy and Graham, JJ.*). AMBIKA RANJAN *v.* MANIKGANJ LOAN OFFICE, LTD. **111 I. C. 708=55 Cal. 798= 32 C.W.N. 372=A.I.R. 1928 Cal. 468.**

—S. 5—Mistake of pleader—Proceeding in wrong Court.

———A mistake of a pleader cannot always and under all circumstances afford ground for extension of time under S 5—Appeal filed in a wrong Court on the advice of a pleader—Appeal filed in proper Court after limitation.

Held, that the appellant was entitled to the extension of time as the appeal was wrongly filed before the District Judge on the advice of a pleader of some standing on whose words he had good reason to rely. A.I.R. 1922 Cal. 247; A.I.R. 1924 Bom. 399; A.I.R. 1922 All. 490 (F.B.); A.I.R. 1918 P. C. 135 and 12 I.C. 677, *Diss.* and *Rel. on*; 34 Cal. 216 and A.I.R. 1923 Pat. 140, *Dist.* (*Suhrawardy and Graham, JJ.*). AMBIKA RANJAN *v.* MANIKGANJ LOAN OFFICE, LTD. **111 I.C. 708=55 Cal. 798= 32 C.W.N. 372=A. I. R. 1928 Cal. 468.**

—S. 5—Mistake of pleader—When sufficient.

———The mistake of the vakil may be pleaded as sufficient ground under S. 5 to excuse limitation, but such mistake is not in all circumstances conclusive ground. (*Ramesam and Jackson, JJ.*). LAKSHMIKANTHAMA *v.* RANGANAYAKULU. **112 I.C. 307=A.I.R. 1929 Mad. 91.**

———The mistake of a legal practitioner or his clerk causing delay of one day was found sufficient cause within the meaning of S. 5 for condoning the delay. (*Tek Chand, J.*). NIYAM DIN *v.* MOHAMMAD IQBAL. **103 I.C. 619=A.I.R. 1928 Lah. 643.**

———An appeal filed on 17th September 1926, was found to be one day beyond time. All the papers of this appeal had been made over to the pleader who thought that the appeal was not due till the 22nd, but at the instance of the appellant it was filed at an earlier date, *viz.*, the 17th.

Held, that it was neither just nor proper that the plaintiff-appellant should suffer for his pleader's mistake and hence he was entitled to an extension of time under the provisions of S. 5. (*Cuming and Cammiade, JJ.*). PROMOTHA NATH MUKERJI *v.* BHABA TARAN GANGULI. **105 I.C. 217= 46 C.L.J. 257=A. I. R. 1927 Cal. 829.**

———Where the delay in filing the copy of the first Court's judgment was due to the fact that the pleader in his remainder for a copy stated by mistake that a copy of the decree was wanted instead of mentioning that a copy of the judgment was required, but the original application was only for a copy of the judgment,

Held, there was sufficient cause to excuse the delay. (*Martineau and Dalip Singh, JJ.*). AMBA PRASAD GOPI NATH *v.* JWALA DAT RAMKANWAR. **94 I.C. 629=8 L.L.J. 101=27 P.L.R. 239= A.I R. 1927 Lah. 92.**

LIMITATION ACT (1908), S. 5—Negligence of party.

———Whether a mistake on the part of a pleader is or is not a sufficient cause for the extension of time will depend on the facts of each case. 95 P. R. 1917, *Foll.* Where a suit is deliberately undervalued in order to minimise the cost of litigation and as a result the appeal is filed in a wrong Court, the delay caused due to such mistake cannot be excused. (*Broadway, J.*). LABHU RAM *v.* MOHAMMAD DIN. **93 I.C. 876 (Lah.).**

———It is not each and every mistake of a Counsel which *per se* is to be considered a sufficient ground for automatically giving his client the benefit of S. 5. Where a party has a vested right in the order of the lower Court in his favour which is sought to be attacked in appeal he should not be deprived of this advantage unless there has been on his part some conduct raising an enquiry against him, or unless there has been some inevitable accident. *Case-law discussed.* (*Findlay, Offg.J.C.*). SADASHIO *v.* BAPU ALIAS SHAMRAO. **92 I.C. 33=A.I R. 1926 Nag. 162.**

———It could not be laid down as an inflexible rule of law that in no case can the circumstance that a litigant has under the erroneous advice of Counsel or Pleader, presented on appeal out of time, be deemed a 'sufficient cause' within the meaning of S. 5. Where the mistake is of such a description that it may arise even amongst practitioners of experience, a litigant should not be made to suffer for such an error.

A person could not deduct the same period twice over and where a legal practitioner thought he could,

Held, that such a mistake cannot be sufficient cause. (*Dawson Miller, C J. and Mullick, J.*). S. C. DEY *v.* MT. RAJWANTI KUER. **63 I.C. 278= 3 P.L.T. 96=6 P.L.J. 237= A.I.R. 1923 Pat. 140.**

—S. 5—Negligence of party.

———Where the applicant has been negligent in leaving the matter in the hands of his counsel without making any enquiry about his application for four months he is not entitled to the benefit of S. 5. Negligence on the part of the pleader's clerk is negligence on the part of the party and is not sufficient cause within the meaning of S 5. 7 S. L. R. 207, *Rel. on.* (*Percival, J. C. and Barlee, A. J. C.*). JHAMANDAS *v.* MT. BIBI AISHAN. **118 I.C 212=A.I.R. 1929 Sind 206.**

———An appellant, filing an appeal after the expiry of limitation owing to stupid misconstruction of the lower Court's order appealed against is not entitled to the benefit given under S. 5. (*Wazir Hasan and Raza, JJ.*). MT. HASIB-UN-NISSA *v.* BISHNATH. **91 I.C. 867=13 O.L.J. 172= A.I.R. 1926 Oudh 206.**

———*Negligence of the pleader's clerk is not sufficient cause.*

The mistake of the clerk of the pleader does not stand on a higher plane than a mistake of a party and is no ground of extension of time under S. 5. (*Dalal, J. C.*). GANESH DAT *v.* HIRDE BIHARI. **82 I.C. 484=A.I.R. 1925 Oudh 189.**

LIMITATION ACT (1908), S. 5—Negligence of party.

———*Negligence of client's agent is not sufficient cause.*

The appeal was decided in the Court below on the 28th March. About 6 weeks later the appellant's agent went to a pleader's clerk and deposited Rs. 6 with him to obtain copies. No instructions were given to the pleader himself. A week later the Subordinate Courts closed for thirty days for the vacation. The copies were not applied for till 27th June, a week after the Courts re-opened, and were obtained on July 3. Even then the copy of the judgment of the Trial Court was not applied for and this was obtained between July 3 and July 5.

Held, that no sufficient cause was proved so as to admit the appeal beyond time. (*Daniels, J.*). MT. MAHTAB KUER v. MT. BIBHMO. 75 I.C. 254= 21 A.L.J. 817=4 L.R.A. Civ. 580= A.I.R. 1924 All. 176.

———*Sufficient Cause—Great laches disentitle party to benefit of section.*

The decision appealed against was dated the 20th June, 1921. An application for copies of the decrees and the lower Appellate Court's order was filed on the 27th June of 1921 and those copies appeared to have been received by the appellant on the 9th of July, 1921. The appeal itself was filed on the 4th of October, 1921, and was returned on the same date on the ground that it was not accompanied by a copy of the judgment of the Trial Court. The appellant appeared to have done nothing further in the matter until the 26th October, 1921, when he applied for a copy of the necessary judgment which was ready on the 31st of that month and actually delivered to the appellant on the 7th of November, 1921. The appeal was then re-filed on the 22nd of November, 1921,

Held, even allowing for the fact that Kangra is at some distance from Lahore and the parties are *Jats*, this delay is unwarranted and time cannot be extended. (*Broadway, J.*). MT. NAZKO v. MT. GOPAL. 79 I.C. 812=A.I.R. 1923 Lah. 208.

———Where there is want of due diligence in the filing of an appeal within the proper time, the appellant is not entitled to any extension of time. (*Chevis, J.*). HEM RAJ v. SARDAR BEANT SINGH. 68 I.C. 792=A.I.R. 1923 Lah. 98.

———Where an appeal which was returned was not represented for 3 weeks though appellant could have easily done so,

Held, no sufficient cause is made out. (*Le-Rossignol, J.*). MT. RAJAN v. KURRIA. 4 L. L. J. 475=39 P. L. R. 1922= A.I.R. 1923 Lah. 95.

———Where the plaintiff failed to bring on record the legal representative of the defendant, though with smallest diligence he would have discovered that defendant had died,

Held, the abatement could not be lightly set aside; the plaintiffs had to satisfy the Court that there was sufficient cause for not applying in time. (*Sanderson, C. J. and Richardson, J.*). SARAT CHANDRA SARKAR v. MAIHAR STONE AND LIME CO., LTD. 67 I.C. 917=49 Cal. 62= A.I.R. 1922 Cal. 335.

———Where the last day of limitation was 25-6-1919 and the appellant applied for copy of the Trial Court's judgment by post on the 24th June, 1919, but the application did not reach the Copyist Department till the 2nd July, 1919.

Held, that period between the 25th June and 2nd July cannot be excused. (*Broadway and Abdul Qadir, JJ.*). GURDIT SINGH v. CHARAN DAS. 72 I.C. 797=A.I.R. 1922 Lah. 415.

LIMITATION ACT (1908), S. 5—Negligence of pleader.

———In two appeals one judgment was passed but two decrees were made. Plaintiff, in second appeal, filed along with the memo. of appeal copies of decree and judgment in one appeal only to which the parties in other appeal were not parties. Subsequently they produced the other decree and prayed for excusing the delay.

Held, it would not be fair to them to extend the time under S. 5. (*Scott Smith and Harrison, JJ.*). MUHAMMUD DIN v. MT. ZEB-UN NISSA. 77 I. C. 541=3 Lah. 215=A.I R. 1922 Lah. 390.

———Where negligence of the party is alone responsible for the delay in filing the copy of the lower Court's decree, time need not be extended. (*Chevis and Le Rossignol, JJ.*) DAIN v. HAYAT. 4 L.L.J. 381=A.I.R. 1921 Lah. 266.

———The delay caused in filing an appeal by applying for a translation of the judgment appealed against due to ignorance or to carelessness cannot be excused under S. 5 of the Lim. Act as an appellant guilty of such delay cannot be said to have acted *bona fide*, *i.e.*, with due care and attention. (*Wilberforce, J.*). KANHAYA v. NUR MUHAMMED. 59 I.C. 965 (Lah.).

—S. 5—Negligence of pleader.

———*No ground for extension of time.*

A woman advised by her pleader filed a suit valuing her claims for jurisdiction and pleader's fee at an amount bringing it within the category of special jurisdiction cases, appeal from which lay to High Court. The case was admitted and registered as special jurisdiction case and was treated as such throughout the proceedings. From the decree in that suit the woman acting on the advice of the same pleader preferred an appeal to the District Court. The appeal was returned for want of jurisdiction and was subsequently presented to High Court. On the day when it was presented to High Court, it was out of time. The woman claimed extension under S. 5.

Held, that there was no likelihood of any reasonable or *bona fide* belief that the suit was not a special jurisdiction case and the appeal lay to the District Court; that the advice given by the pleader was result of negligence and not of any *bona fide* or considered belief and the woman was not entitled to extension of time and the appeal was barred. A.I.R. 1924 Rang 148; 34 Cal. 216, *Foll.* (*Marten, C.J. and Murphy, J.*). BIJUBOO v. RAJAVALLI TAYABALLI. 31 Bom L. R. 954= A.I.R. 1929 Bom. 393.

———The carelessness of the pleader is no ground for extending the period of limitation. (*Wild, J.C. and Rupchand Bilaram, A.J.C.*). MT. UMMA-KULSAM v. GHULAM RASUL KHAN. 114 I.C. 101= A.I.R. 1929 Sind 32.

———Where the appellant's Counsel acted with gross negligence in valuing the appeal, and thus it was presented with insufficient Court-fees and the deficit was made good beyond limitation,

Held, that the delay in making good the deficiency that occurred in consequence of clear negligence cannot be condoned. A.I.R. 1922 Lah. 233; 1 Lah. 234 and 55 P.R. 1913 *Foll.* (*Zafar Ali, J.*). GURSARAN DAS v. DIST. BOARD, JULLUNDUR. 102 I C. 615=9 L.L.J. 290= 28 P.L.R. 338=A. I. R. 1927 Lah. 834.

———Omission to implead a person as respondent owing to negligence in drafting the appeal is no

LIMITATION ACT (1908), S. 5—Negligence of pleader.

ground for extending the time for impleading him. (*Coldstream, J.*). GUJJAR SINGH *v.* KAHAN SINGH. **99 I. C. 619=A.I.R. 1927 Lah. 118.**

———*Negligence of pleader's clerk.*

Negligence of the agent is negligence of the principal and there is no distinction between the two. (*Das and Allanson, JJ.*). GOPAL PATWA *v.* DIGAMBAR SINGH. **101 I C. 448= A.I.R. 1927 Pat. 232.**

———A *bona fide* act is one done with due care and attention.

Where clear provisions of the Court-fees Act were brought to the notice of the party's Counsel and he was asked to make up the deficit Court-fees, but Counsel and the party were both negligent in not paying the deficit Court-fee,

Held, there was no ground to extend the time. (*Addison, J.*). PURAN CHAND *v.* EMPEROR. **92 I C. 991=27 P.L.R. 91=A.I.R. 1926 Lah. 343.**

———The fact that an appeal is presented beyond time owing to forgetfulness of the appellant's Counsel is not a sufficient reason for excusing delay under S 5. (*Dalal. J.C.*). MT. DILAN *v.* RAM BHAROSEY. **85 I.C. 693=A.I.R. 1925 Oudh 374.**

———Where an appeal was filed without the order appealed against being stamped and the same was returned and filed again with proper stamp but out of limitation.

Held, a Counsel when filing an appeal ought to see that all the documents which require stamp are properly stamped. He cannot shelter himself behind his clerk, and if his clerk has been guilty of any carelessness he is responsible for that. (*Scott-Smith, J.*). SHAHDAT *v.* HUKAM SINGH. **71 I.C. 736=A.I.R. 1924 Lah. 401.**

———Where the mistake of pleader is pleaded as a ground for extension of time but it is found that the pleader was negligent in advising his client, no extension would be allowed. (*Prideaux, A.J.C.*). ISHWARDAS *v.* BISMALLAKHAN. **72 I.C. 158= A. I. R. 1923 Nag. 133.**

—S. 5—Procedure.

———A legal duty is cast upon the Judge to determine the question in the first instance as to whether there is sufficient cause for extending the period of limitation under Limitation Act, S. 5. Where the Court below in an application for review which is *prima facie* time-barred without determining the question of limitation proceeds to admit the application for review, the order passed by the Court is not only irregular but is possibly without jurisdiction. If review as apparently time-barred is admitted without cause being shown for the delay the entire proceedings consequently on such review must be set aside as of no legal effect 29 I.C. 975, *Foll.* (*Sen, J.*). NATHU RAM *v.* GANGA BUX. **A I.R. 1930 All 815.**

———Court ought to give detailed reasons while rejecting an appeal under S. 5, for an appealable decree follows such a judgment. (*Dalal, J.*) GAYA PRASAD *v.* RAM SARUP. **112 I.C. 246= A.I.R 1929 All. 101.**

———Where, in ignorance of the death of a respondent, the appeal is heard and a decree is passed against the respondent, the appellate Court is competent to decide the question as to whether the application for substitution should be entertained having regard to the provisions of S. 5 of the Limitation Act and decide the appeal after impleading the representatives afresh. (*Wasir Hasan and King, JJ.*). KALIL AHMED KHAN *v.* KABIR ZAMAN KHAN. **101 I.C. 841=1 L.C. 60= 2 Luck. 592=A I.R. 1927 Oudh 221.**

LIMITATION ACT (1908), S. 5—Procedure.

———The question of extending time under S. 5 arises when a memorandum of appeal accompanied by certified copies of decree and the judgment are filed Parties are not entitled to invite the Court to decide the question of limitation before they actually file an appeal. (*Sulaiman and Banerji, JJ.*). RAM SUGHAR *v.* DHARAM RAJ. **93 I.C. 959=24 A.L.J. 602=A I.R. 1926 All. 555.**

———Application under, made but rejected—Court should record opinion on it. (*B. B Ghose and Chakravarti, JJ.*). ADARPRIYA CHOUDHRANI *v.* RAM PROTAP AGARWALLA. **98 I.C. 748= 44 C L.J. 44=30 C.W.N. 926=A.I.R. 1926 Cal. 1105.**

———Application for setting aside abatement—Court must investigate whether the plaintiff was lawfully prevented from applying within statutory period (*Suhrawardy and Duval, JJ.*). JANKINATH SINGH *v.* NIRODE BARAN. **90 I.C. 811= A.I.R. 1926 Cal. 175.**

———According to the rules framed by the Lahore High Court, an affidavit to account for the delay should be filed along with the memorandum of appeal. (*Shadi Lal, C. J. and Coldstream, J.*). BUR SINGH *v.* FIRM JADHA RAM. **95 I C. 565= A. I. R. 1926 Lah. 542.**

———*Opposite party should be heard—Applicant must show good faith and due diligence.*

Where an application is made to the Court for an extension of time for presentation of the appeal under S. 5 of the Limitation Act, a rule should be issued on the respondent to show cause why an extension of time should not be granted. 41 Mad. 412 (P.C), *Foll.*

If the appellant succeeds in establishing due diligence, good faith and the absence of neglect, he is entitled to argue that it will be sufficient cause within the meaning of S. 5 so as to persuade the Court to extend the time for presentation of the memorandum of appeal

Whether the time should be extended under the section should be answered in the light of the peculiar circumstances of each case. The broad proposition that where there is a chance of mistake the Court should in every case excuse the delay is not supported by authority. (*Suhrawardy and Chotzner, JJ.*). ELAHINEWAZ KHAN *v.* BISESHWAR BAISYA. **79 I C. 924=A.I.R. 1925 Cal. 175.**

———*Criminal appeals.*

A criminal appeal filed after the expiry of the prescribed period of limitation may be admitted if the Court is satisfied that the appellant had sufficient reason for not preferring the appeal within the period of limitation. But if the appellate Court is not satisfied that the appellant had sufficient reason for the delay, it cannot excuse the delay. If in such a case, the appellate Court desires to help the appellant the proper procedure would be to move the High Court to exercise its powers of revision.

In this case where the lower Appellate Court had extended the period of limitation without being satisfied as to the sufficiency of the grounds for doing so and had admitted the appeal, the High Court in revision refused to interfere as there was no grosss miscarriage of justice occasioned by the lower Court's action. 1 Lah. 508 and A.I.R. 1923 Lah. 662. *Ref.* (*Wallace and Madhavan Nair, JJ.*). JANAKIRAMAYYA *v.* N. BRAHMAYYA **88 I.C. 278=26 Cr.L.J. 1110= A. I. R. 1925 Mad. 709=48 M.L.J. 457.**

LIMITATION ACT (1908), S. 5—Procedure.

——If there was no evidence at all before the Court, explaining or accounting for the delay in making the application, any order that may be purported to be made under S. 5 excusing the delay, is an order made without jurisdiction, or is the result of material irregularity in the exercise of jurisdiction. (*Srinivasa Aiyangar, J.*). SUBBAROYA PILLAI *v.* GOVINDASWAMY. 86 I.C. 905= 21 M.L.W. 220=A.I.R. 1925 Mad. 494.

——*Appeal admitted out of time—Preliminary objection raised after one year should not be allowed.*

An appeal presented out of time was admitted by the Court under S. 5. After over a year when the appeal came on for hearing, the respondent raised a preliminary objection to the appeal.

Held, it is not a preliminary point at all, and any such application ought to be made by way of motion and even by way of motion a Court will never allow people to wait upon their rights while the other party incurs expenses in a case of this kind it being open to the respondent to move the Court to set aside the leave. (*Schwabe, C.J. and Wallace, J.*). MURUGAPPA NAICKER *v*, THAYAMMAL. 70 I.C. 827=16 M.L.W. 662= 1922 M.W.N. 727=31 M.L.T. 436= A.I.R. 1923 Mad. 82

—S. 5—Proceedings in wrong Court.

——Where an appeal which lies to the High Court, is filed beyond time but the appellant sufficiently explains the delay by the circumstance that he was prosecuting in good faith the appeal before other Courts, time for filing the appeal should be extended. (*Sulaiman and Pullan, JJ.*). RAM KHELAWAN SINGH *v.* MAHARAJAH OF BENARES. 120 I.C. 125=1930 A.L.J. 225=A.I.R. 1930 All. 15.

——Instead of preferring appeal claimant filing suit against what was subsequently held to be order under S. 47 by High Court—Suit dismissed—Subsequently claimant filing appeal—Time taken in prosecuting suit can be excluded. (*Jwala Prasad and Ross, JJ.*). JIWAN RAM RAM CHANDER *v.* HAZARI LAL BHAGAT. A.I.R. 1930 Pat. 307.

——Where an appeal was filed in time in wrong Court following wrong advice, but was subsequently filed in right Court, by which time the date of limitation had expired,

Held, that the delay could be excused and the period of limitation extended. A.I.R. 1922 All. 490 (F.B.), *Rel. on.* (*Boys, J.*). PARBHU NARAYAN SINGH *v.* JAI MANGAL SINGH. 108 I.C. 123= 9 L.R.A. Rev. 26=A.I.R. 1928 All. 144.

——*What constitutes.*

An appeal was preferred to the Court of the District Judge, but the presiding officer returned the memorandum of appeal for presentation to the proper Court as the value of the claim was below Rs 1,000. Appeal was, therefore, re-presented the same day to the 1st Additional Judge of the District Court, who found that the appeal was presented one day late, but after inquiry held that there was sufficient cause for condoning the delay of one day. He thought that this was not, however, the only thing for him to decide. He considered that he could not condone the delay of eight days caused by the presentation of appeal in the District Court.

Held, that the question of limitation never arose as the District Court and Additional District Judge's Court were part and parcel of the same District Court. No question of the exercise of judicial discretion and condoning delay for sufficient cause within the meaning of S. 5, Lim. Act, ever really arose or could have arisen before him

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so as to necessitate the application of the principle laid down in 5 N.L.R. 25 to the facts and circumstances of the case. A.I.R. 1917 P.C. 156 and S. A. 47-B of 1915, *Foll.*; 5 N.L.R. 25, *Dist.* (*Kinkhede, A.J.C.*). SIRAJUDDIN *v.* SONILAL. 109 I.C. 79= A.I.R. 1928 Nag. 199.

——The circumstances contemplated in S. 14 might and ordinarily would constitute a sufficient cause in the sense of S. 5. 5 All. 591, *Ref.* (*Sulaiman, J.*). RAM RUP *v.* NAIK RAM. 91 I.C. 865= A.I.R. 1926 All. 252.

——If a party files an appeal in a wrong Court under the advice of his pleader, he is not precluded from showing that it was owing to the reliance placed on such advice that he could not present the appeal in the proper forum within the proper time. In such cases the true guide is whether the appellant acted with reasonable diligence in the prosecution of the appeal. 43 Bom. 376 (P.C.) and 45 Cal. 94 (P.C.), *Foll.* (*Suhrawardy and M. N. Mukerji, JJ.*). DEBENDRA NATH *v.* NAGENDRA NATH. 93 I.C. 245=43 C.L.J. 106=30 C W.N. 479= A.I.R. 1926 Cal. 688.

——Bona fide *mistake about forum.*

Where, due to *bona fide* mistake, appeal was presented to a District Judge who dismissed it, which really lay to the High Court, an appeal from the decree of the District Judge, was held to be within limitation by exclusion of the time taken in the Court of the District Judge. (*Chatterjee and Panton, JJ.*). NAGENDRA LAL CHAUDHURI *v.* ASHRAF ALI CHOWDHURY. 84 I.C. 741=40 C.L.J. 288= A.I.R. 1925 Cal. 212.

——Where a responsible officer like the Commissioner never thought that the appeals were not entertainable by him, under the circumstances, if the appellants thought that, they had a right of appeal to the Commissioner and the mistake must be taken to be a *bona fide* mistake until the contrary is shown. (*Mukerji, J.*). CHOLE SINGH *v.* DARYAI SINGH. 82 I.C 594= 5 L.R.A. Rev. 163=A.I.R. 1924 All. 918.

——Where the point of law was a doubtful one and the appellants filed their appeal in a wrong Court but, within 5 days of the return of memorandum of appeal by the wrong Court, filed it in the proper Court.

Held, that extension of time under S. 5 ought to be granted. (*Gokul Prasad, J.*). MT. AKBARI BEGAM *v.* SHAIKH ZAMIN ALI. 79 I.C 402= A.I.R. 1923 All. 364.

——Revision deliberately filed instead of appeal—Revision found not to lie—No sufficient cause exists for excusing delay for filing appeal later on. (*Scott-Smith and Leslie Jones JJ.*). UMED ALI *v.* JHANGMAJHIANA MUNY. 2 Lah. 1= A.I.R. 1922 Lah. 238.

——Delay in filing a criminal appeal should be excused under S. 5 of the Limitation Act where it was erroneously filed in another Court since there is no question of a litigant losing a "valuable right." (*Scott-Smith, J.*). SURTA SINGH *v.* EMPEROR. 59 I.C. 856= 22 Cr. L. J. 125=1 Lah. 508.

—S. 5—Review.

——*Applicability.*

It is possible for a party to make an application for review and at the same time before that is decided to file an appeal. The right course where parties adopt simultaneous remedies or endeavour to do so if the review measures are successful to any extent whatever is that a new decree should be drawn up and the party choosing to file an appeal

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should file it against the decree as it appears in its final shape.

Per *Suhrawardy, J.*—In a proper case the Court may grant time to a party to file an appeal from the final decree in the place of the appeal from the original decree. (*Suhrawardy and Costello, JJ.*). ADITYA KUMAR *v.* ABINASH CHANDRA

34 C.W.N. 1002.

———Where the Court finds that the appellant had presented and prosecuted a petition for review with due diligence, the time spent in prosecuting the infructuous application should be excluded as it is a sufficient cause within the meaning of S. 5 for not preferring the appeal in time. A. I. R. 1917 P. C. 156; 183 P. R. 1888 (F. B.). *Rel. on*; 100 P.R. 1910 and 107 P.R. 1918, *Dist.* (*Tek Chand, J.*). DULLU MAL RAM LAL *v.* GANGA RAM.

117 I.C. 96=11 L.L.J. 491=A.I.R. 1929 Lah. 824.

———The ground that the appellants were presenting, in good faith, an application for review which was granted but was subsequently reversed on a point of law is sufficient for granting extension of time. (*Bhide, J.*). MULKH RAJ *v.* GURU DITTA SHAH HARI CHAND. **120 I. C. 179= 11 L. L. J. 61=30 P L. R. 283= A. I. R. 1929 Lah. 283.**

———Where an application for review is admitted to a hearing and there is a reasonable ground for review inasmuch as the Court had referred to statements that were not a part of the record of the suit, the application is prosecuted *bona fide* and the period should be exempted. A.I.R 1917 P. C. 156, *Foll.* (*Johnstone, J.*). FETEH NUR *v.* JIWAN.

116 I. C. 315=A.I.R. 1928 Lah. 964.

———Where party applies to the High Court for excusing his delay in prosecuting an application for leave to appeal to Privy Council he is bound to satisfy the Court that there are sufficient circumstances existing in his case to account for the delay. Time taken in prosecuting an application for review ought not to be deducted in calculating the period of limitation, unless there is a reasonable ground for asking for a review. A. I. R. 1925 Bom. 135; 45 Cal. 94 (P.C.), *Dist.*; 18 Bom. 48; 15 Cal. 242, *Foll.* (*Marten, C.J. and Blackwell, J.*). SESHAGIRI NARAYAN *v.* VENKATESH LAXMAN.

101 I.C. 432=29 Bom L.R. 344= A.I.R. 1927 Bom. 221.

———If an appellant claims extension of time on account of his prosecuting a review application, all that the applicant has to show is that he prosecuted the review application with due diligence and that there were reasonable grounds for filing such an application for review. If these conditions are fulfilled, the Court is to decide whether it should exercise its discretion to extend time. (*Chakravarti, J.*). RAMDHANI *v.* KHAKSHARDAS.

92 I.C. 1031=A.I.R. 1926 Cal. 677.

———The issue of notice by the Court upon the opposite party is sufficient evidence of the reasonableness of filing the application for review. Prospect of success in such application is not the test. (*Chakravarti, J.*). RAMDHANI *v.* KHAKSHARDAS.

92 I.C. 1031=A.I.R. 1926 Cal. 677.

———Time taken for review in lower Court may be excused but appellant must be otherwise diligent in presenting and prosecuting the appeal and the application for extension of time. (*Suhrawardy and Duval, JJ.*). KRISHNADAS ACHARJEE *v.* RAHIMANNESSA BIBI. **85 I.C. 996=A.I.R. 1926 Cal. 457.**

———In computing the period of limitation for an application for leave to appeal to Privy Council, the time taken up for review of the judgment sought

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to be appealed against should be excluded. (*Shah, Ag. C. J. and Kincaid, J.*). NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL. **85 I.C. 191= 49 Bom. 143=26 Bom. L R. 1261= A.I.R 1925 Bom. 137.**

———A proper application for review of judgment prosecuted with due diligence entitles appellant to exclusion of time but where the application for review does not state the reason and where no reasonable ground for seeking the review is shown extension of time cannot be claimed. (*Sanderson, C.J. and Walmsley, J.*). KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **80 I.C. 786= A.I.R. 1925 Cal. 253.**

———Time in prosecuting a well-founded application for review should be excluded in computing the period of limitation provided for the appeal against the order. (*Zafar Ali, J.*). MUHAMMAD *v.* MUHAMMAD ROSHAN KHAN. **88 I.C. 326= 26 P.L.R. 456=A.I.R. 1925 Lah. 534.**

———The time spent in prosecuting with due diligence a proper application for review of judgment can be deducted. (*Daniels, J.*). PRABHU DAYAL *v.* MURLI DHAR. **78 I C. 617=22 A.L.J. 365= 5 L.R.A. Civ. 298=A I.R. 1924 All. 867.**

———*Want of knowledge of a fact is a good excuse.*

Where a party could not reasonably know a defect in the decree but applied for amendment immediately after knowledge and the application was rejected on a technical ground,

Held, the application could be treated as a review application and prior delay may be excused. (*Hughes, J.*). LAKSHMANA IYENGAR *v.* NARAYAN IYENGAR. **76 I. C. 786=18 M.L.W. 876= 33 M.L.T. 221=A.I. R. 1924 Mad. 225.**

———An appellate Court should not exercise its discretion under S. 5 in the case of an appeal being filed after time owing to review proceedings if the grounds for review seem to be unreasonable. 1 L.B.R. 313, *Foll.* (*Maung Kin, J.*). MAUNG LUN *v.* MAUNG DUN. **74 I.C. 39=1 Bur. L.J. 154= A.I.R. 1923 Rang. 75.**

———The grounds for granting review on account of the discovery of fresh evidence may in certain cases be a ground for also extending time, *i.e.*, when the new evidence was discovered late and could not in spite of due diligence be discovered earlier. 6. Bom. 107 and 42 B. 295, *Dist.* (*Batten, A.J.C.*). INDRARAJBHAN *v.* SITARAM.

78 I.C. 527=A.I.R. 1921 Nag. 174.

———Where a litigant files an application for review on totally insufficient grounds, the time taken by him cannot be deducted under S. 5 of the Lim. Act. 33 C. 1323; 183 P.R. 1888; 45 C. 94, *Rel. on.* (*Maung Kin, J.*). MAUNG DAW NA *v.* MA KAYA. **64 I. C. 516=13 Bur. L.T. 219.**

—S. 5.—Sufficient cause.

———*Application for review time-barred—Proceedings thereon are without jurisdiction.*

Legal duty of Judge to determine question of "sufficient cause" for extension of period—Where review application was *prima facie* time-barred lower Court's order admitting it, without sufficient cause being shown for delay, is not only irregular but without jurisdiction—Proceedings consequent on review must be set aside as of no legal effect. 29 I.C. 975, *Foll.* (*Sen, J.*). NATHU RAM *v.* GANGA BUX. **1930 A. L. J. 1057= A.I.R. 1930 All. 815.**

—S. 5—Sufficient cause—What is.

———Respondent living in different province-dying four days before filing of appeal—Appellants,

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not aware of death—Application to amend memo. of appeal made after expiry of limitation—Time was extended. (*Niamatullah, J.*). CHATUR PRASAD BARA BACHA *v.* BAIJNATH PRASAD.

123 I.C. 824=A.I.R. 1930 All. 131.

———Where a party intending to engage a pleader executes a vaklatnama but by pure mistake omits to mention his name in the said vakalatnama and the pleader in his turn fails to endorse his acceptance and the mistakes are due to pure inadvertence and accident and do not proceed from any dishonest intention there is sufficient cause for extending the period of limitation of an appeal, which, though in proper form has been presented after a short delay. (*Sen and Niamatullah, JJ.*). MOHAMMAD QAMAR SHAN KHAN *v.* MOHAMMAD SALAMAT ALI KHAN. **121 I. C. 546= 1930 A.L.J. 394=A.I.R. 1930 All. 112.**

———*Time spent in prosecuting application for setting aside* ex parte *order should be excused in appeal from original order.*

A judgment-debtor applied under O. 21, R. 2, for an adjustment of the decree. An *ex parte* order allowing the adjustment was made without notice to the decree-holder. The decree-holder subsequently applied for restoration of his case arter setting aside the *ex parte* order but the application war rejected. An appeal was subsequently preferred against the *ex parte* order but beyond limitation.

Held, that the time spent in prosecuting application to set aside the *ex parte* order ought to have been excused. A.I.R. 1921 Lah. 67 and A.I.R. 1917 P.C. 156, *Foll.* (*Bhide, J.*). GHULAM QAZAM *v.* QUTBUDDIN. **113 I.C. 467=30 P.L R. 512= A.I.R. 1930 Lah. 113.**

———Suit instituted in Patna High Court for restitution of conjugal rights—Respondent wife on proper advice from her counsel offered no defence —Suit decreed—Subsequently wife seeking redress by petitioning to ecclesiastical Court at Calcutta where marriage was solemnised and on decree of that Court declaring marriage nullity, petitioning Calcutta High Court for same decree—Solicitors entrusted with petition, for first time coming to know of decree for restitution of conjugal rights against their client and advising her to apply for review of judgment to Patna High Court—Time for review was extended under circumstances. A. I. R. 1917 P.C. 156, *Dist.* (*Wort, J.*). MARY JOSEPHINE CONNALLY *v.* JIAMES SIDNEY OSMAND CONNALLY. **120 I.C. 463=A.I.R. 1930 Pat. 63.**

———*Scope of Ss. 5 and 14 explained.*

Under S. 5 two matters have got to be considered; (1) whether there was sufficient cause for not preferring the appeal within the time prescribed by law, and (2) whether there are circumstances which would justify the Court in exercising the discretion that is granted to it under that section for extending the time for preferring the appeal.

A revenue officer rejected the application of appellant to adduce further evidence and made final order making correction in the record as against appellant. Appellant first appealed against the portion of the order rejecting his application believing *bona fide* that he would thereby get the whole relief that he wanted. The appeal, however, was dismissed. About 17 or 18 days after the appeal was dismissed he again appealed against the other portion of the order whereby correction in the record was made against him.

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Held, that S. 14 constitutes sufficient cause within the meaning of S. 5, but that section would entitle one to the deduction of the period during which the suit or proceeding was prosecuted. A.I.R. 1917 P.C. 156, *Rel. on.*

Held, further, that S. 14 is not exhaustive of all the circumstances that may constitute sufficient cause. In this case as the appellant acted *bona fide* in preparing his first appeal, there was sufficient cause for him for not preferring the present appeal within time. And this case is fit for the Court to exercise its discretion under S. 5, since the 17 or 18 days that elapsed between the dismissal of the first and the preferring of the present appeal is not a period which can be called unreasonable or which would show that there was any want of diligence on the part of the appellant in preferring the appeal. (*Rankin, C. J. and Mukerji, J.*). KAMIRUDDIN MULLIK *v.* BISHUPRIYA. **119 I.C. 383= 33 C.W.N. 76=A.I.R. 1929 Cal. 240.**

———Appeal filed against an order on an application for restitution on Rs. 2 stamp—Court holding that Court-fee was payable *ad valorem*—Applicant taking time to pay deficiency but applying to permit to appeal as a pauper—Prayer to extend time also made—Application was allowed and time was extended. (*Mukerji and Banerji, JJ.*). RAMCHARAN *v.* BANSIDHAR. **111 I.C. 655= 26 A. L. J. 847=A.I.R. 1928 All. 499.**

———*Omission to file copy of award in time—Excused.*

In an appeal from an award of District Judge in a land acquisition case, the appellant failed to file a copy of the award with the appeal. The appeal was filed in 1922. The decision of Lahore High Court in A.I.R. 1925 Lah. 438, under which the amendment to Land Acquisition Act in 1921 was interpreted making the filing of copy of award with appeal obligatory, was decided in 1925. The appellant's counsel applied during the hearing of the appeal in 1927 for an extension of time under S. 5, Lim. Act, and put in a complete copy of the award together with an affidavit and statement of reasons asking for indulgence.

Held, that the application should be allowed and that the appeal should be heard. A.I.R. 1928 Lah. 216, *Ref.* (*Broadway and Skemp, JJ.*). NARSINGH DAS *v.* SECY. OF STATE. **112 I. C. 797=A.I.R 1928 Lah. 263.**

———*C. P. Code, S. 92—Scheme suit.*

In a representative suit about a temple property certain persons, on behalf of the temple, filed an appeal which was returned for representation. It was not represented in time. Certain other persons interested in the temple property and in the result of the appeal then applied to the appellate Court for taking the appeal on file and also paid fresh Court-fee. It was found that the non-representation of the appeal by the original appellant was not *bona fide*.

Held, that the fresh appellants should be considered as constructive parties and thus entitled to continue the appeal, and even assuming the representation was a fresh appeal, time should be excused under S. 5, Lim. Act. (*Kumaraswami Sastri, J.*). KUMARASWAMI *v.* LAKSHMANA. **108 I.C. 298=28 M.L.W. 279= A.I.R. 1928 Mad. 436=54 M.L.J. 629.**

———Where a copy of the order of the Court below on a preliminary issue was not filed along with the copy of the final order, and when it was

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filed the period of limitation had expired, but it was found that preliminary order was not contested,

Held, that it would be but fair to condone the delay under S. 5, Limitation Act. A.I.R. 1926 Lah. 638 and 28 P.L.R. 537, *Ref.*; *vide* A.I.R. 1928 Lah. 46, *Ed.* (*Zafar Ali, J.*). GANESHI LAL *v.* FIRM SHEO SINGH NIHAL SINGH. **106 I.C. 826= 9 L. L. J. 566=A.I.R. 1927 Lah. 905.**

——Two remedies allowed by law—Prosecution of one is good ground for extension of time. (*Obiter*). (*Dalip Singh, J.*). JAGANNATH *v.* MANNA LAL. **98 I.C. 892=A.I.R. 1927 Lah. 43.**

——In an appeal which had been long pending and had numerous parties, a party failed to make an application for bringing the legal representatives of a deceased party living at a long distance within time, due to ignorance of the latter's death. But he had been diligent in making several other applications of the same nature.

Held, under S. 5 time for making an application for setting aside abatement should be extended. (*Zafar Ali and Addison, JJ.*). SHER BAHADUR *v.* ABEZAR. **95 I.C. 236 (Lah.).**

——When the appellants did not appeal in time owing to an omission on the part of the Trial Court in not mentioning their names in decree,

Held, that the delay, if at all, should be excused on the ground of honest mistake. (*Kanhaiya Lal, J.*). ISHWAR PRASAD *v.* BABU BISHUNATH. **85 I.C. 627=A.I.R. 1925 All. 567.**

——Delay in filing appeal—Appellant doubtful whether order appealed against was order or decree and therefore paying insufficient Court-fee—Court-fee made up after time—Delay should be exoused. (*Abdul Raoof and Jai Lal, JJ.*). RAGHBIR SARAN *v.* MT. SOHAN DEVI. **86 I.C. 1=6 Lah. 233= 7 L.L J 149=26 P.L.R. 100=A.I.R. 1925 Lah. 381.**

——Where the appellant has been misled by the rules of the Court followed for a long time, the provisions of S. 5 can be invoked. (*Coutts-Trotter, C.J. and Srinivasa Aiyangar, J.*). BHIMASENA RAO *v.* VENUGOPAL MUDALI. **88 I.C. 443= 48 Mad. 631=21 M.L.W. 672=1925 M.W.N. 190= A.I R. 1925 Mad. 725=48 M.L.J. 384.**

——Where a judgment is delivered on the day preceding the last working day before the Court's vacation for a month and an application for a copy is made on the very day on which the Court opens after the vacation, the applicant is entitled to the indulgence of having his application for copy being accepted as equivalent to an application made a month earlier, nor does he forfeit his claim to indulgence because he arranges to have the copies sent to him by post. (*Simpson, A.J.C.*). SRIPAT *v.* HUBDAR. **90 I. C. 115=2 O. W. N. 678= A. I. R. 1925 Oudh 643.**

——Filing copy of order referred to in the judgment as part of it after expiration of the limitation, where copy of the final judgment is filed in time may be excused under S. 5. (*Zafar Ali, J.*). KHAN MOHAMMAD KHAN *v.* MUSAMMAT NUR JEHAN BEGUM. **82 I.C. 609=6 L.L.J. 340= A.I.R. 1924 Lah. 731.**

——*Delay due to proceedings for obtaining Succession certificate was excused.*

Decree-holder died during the pendency of the execution proceedings on the 21st October, 1918. As his legal representatives did not appear to proceed with the execution, the Court struck off the execution proceeding on the 14th December, 1918. The application for the substitution of their names

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was made on the 19th December, 1921. The delay was due to the fact that the legal representatives were minors, who could not have obtained execution without obtaining a succession certificate under Act VII of 1889. The succession certificate was obtained on the 31st August, 1920.

Held, that there was sufficient reason to excuse the delay within the meaning of S. 5, read with O. 22, R. 9 of the Code of Civil Procedure and Art. 181 of the Indian Limitation Act. (*Kanhaiya Lal, J.C.*). S. AKHTAR HUSAIN *v.* QUADRAT ALI. **73 I.C. 215=26 O.C. 244=A.I.R. 1924 Oudh 83.**

——The appeal was filed with insufficient stamp within limitation but the balance of Court-fees was made up within a week under the orders of the Court.

Held, the mistake clearly was a *bona fide* one, and this is a fit case for the extension of time under S. 5. (*Moti Sagar, J.*). AGHA MUHAMMAD *v.* JADH SINGH. **77 I.C. 416= A.I.R. 1923 Lah. 513.**

——When the delay in filing the appeal is due to the fact that cholera broke out in the appellant's family,

Held, that this was a sufficient ground to extend the time for filing the appeal. (*Chevis, J.*). SURRENDRO AND CO. *v.* PUNJAB TANNERY CO. **68 I.C. 787=A.I.R. 1923 Lah. 100.**

——*Ignorance of a special order is a ground for excusing delay.*

The last day for filing an application (19-2-21) was a holiday as a penultimate Saturday. But the Court sat and the day was treated as not a public holiday with the special permission of the High Court given in its order date 4-2-21. But the Court's order permitting the Lower Court to sit on 19-2-21, though passed on 4-2-21, was despatched to the Lower Court only on 8-2-21, and was presumably received there next day.

Held, that it not being shown what publication of the order there was or that the petitioner who was a resident of mofusil could reasonably be expected to take notice of it, he had sufficient cause for assuming that the Court would as usual, be closed on 19-2-21, the penultimate Saturday, and for postponing the presentation of his petition to the next Court day, 24-2-21. (*Oldfield, J.*). KALIYANA SUNDARAPPA *v.* CHINNASWAMI. **72 I.C. 13=17 M.L.W. 413=1923 M.W N. 211= A I.R. 1923 Mad. 489.**

——Where an appeal against a preliminary decree was filed after passing of the final decree, but the appellant finding that this was not maintainable wished to file an appeal against the final decree and the same was barred by time, the Court may excuse the delay under S. 5 of the Act. (*Hallifax, A.J.C.*). BIHARIDAS *v.* BAJRANGDAS. **67 I.C. 261=A.I.R. 1922 Nag. 179.**

—S. 5—Sufficient cause—What is not.

——Where an appeal lies against the *ex parte* decree, the time taken by the party in applying for setting aside the *ex parte* decree and in preparing an appeal against the order refusing to set it aside cannot be excluded in computing the period of limitation for appeal against the main *ex parte* decree. 1 L.B.R. 313; A.I.R. 1916 P. C. 96 and 21 P.R. 1904, *Dist.*; 23 Cal. 325, *Ref.* (*Brown, J.*). KO THA LIN BWIN *v.* KO HLA KYE. **A. I. R. 1930 Rang. 41.**

——*Court should exercise its discretion in each case.*

In determining whether there is a sufficient cause the discretion of the Court has to be exercised on

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all the facts in each particular case, no wide and general rule can be laid down.

Where, from ordinary point of view, the mistake had been made without any real excuse,

Held, that there was not "sufficient cause" within S. 5. (*Rankin and Page, JJ.*). SOMESWAR PANDIT *v.* KANAKRAM. A.I.R. 1928 Cal. 249.

———That there was serious illness in the petitioner's family and that some time was required in making arrangement in the Court is not sufficient explanation for the delay. Under S. 14, Limitation Act, the appellant who seeks to deduct the period must prove that he carried on the litigation with due diligence. (*Suhrawardy and Chotzner, JJ.*). ELAHINEWAZ KHAN *v.* BISESWAR BAISYA.

79 I.C. 924=A.I.R. 1925 Cal. 175.

———Ignorance of a change in a rule of practice is no excuse where the change was given ample publicity before it was brought into force. (*Kotval, A. J. C.*). GOPAL GANESH *v.* WALABHDAS SANTUKIRAM. 73 I.C. 878=A.I.R. 1925 Nag. 193.

———Where communication between client and pleader was interrupted by heavy rain,

Held, that it was not a sufficient cause to excuse even one day's delay. (*Campbell, J.*). ATA MD. *v.* PIR KHAN. 75 I.C. 1055=A.I.R. 1924 Lah. 899.

———Court holding that defendant was dead—Plaintiff instead of setting aside abatement—Appealing against order, and after its dismissal, applying for substitution of Legal Representatives —No sufficient cause (*Coutts and Das, JJ.*). MT. BIBI KHOZAIMA *v.* OFFICAL LIQUIDATOR.

84 I.C. 1001=2 Pat. 168=A.I.R. 1923 Pat. 417.

—S. 5—Technical defect.

———Appeal against O. 7, R. 10—Returned plaint with endorsement filed with memo. of appeal but not certified copy of order prior to endorsement—Appellant being under belief that filing of plaint with endorsement was sufficient—Objection raised that as appeal was not properly presented within limitation it should be dismissed—Technical non-compliance with O. 43, R. 2 might well be condoned under Limitation Act, S. 5. (*Rupchand and Wild, A.J.Cs.*). GOVERDHANDAS VISHINDAS *v.* MT. RIJHIBAI. A.I.R. 1930 Sind 252.

———An appeal was instituted accompanied by a vakalatnama, which, though accepted by the counsel filing the appeal, was not properly signed. The appeal was returned to remedy the defect. At the time of re-institution the appeal was time-barred.

Held, that the defect was only technical and that it was a fit case for extending the time under S. 5. A.I.R. 1921 All. 210, *Ref.*; 36 All. 46, *Not appr.* (*Bhide, J.*). RAM LAL *v.* BUDHOMAL.

103 I.C. 537=A.I.R 1927 Lah. 618.

———An appeal filed with a defective vakalatnama cannot be considered as properly presented. (*Sulaiman, J.*). RAM RUP *v.* NAIK RAM.

91 I.C. 365=A.I.R. 1926 All. 252.

———Omission to sign a memorandum of appeal by oversight, which was otherwise in order and had been duly presented, is sufficient cause for extension of time under S. 5. (*Scott-Smith and Zafar Ali, JJ.*). FIRM MATHURADAS *v.* FIRM RAMA LAL. 84 I.C. 518=A. I. R. 1923 Lah. 402.

———Where the Vakalatnama filed along with an appeal was accepted by the pleader but by oversight the pleader's name was not inserted in the body of the Vakalatnama,

LIMITATION ACT (1908), S. 5—Miscellaneous.

Held, that the error was such as to support an application to excuse delay under S. 5. (*Banerji, J.*). SHAMBHU NATH *v.* BADRI DAS.

61 I.C. 410=43 All. 392=19 A.L.J. 183=A.I.R. 1921 All. 210.

—S. 5—Miscellaneous.

———*Corporate body as party.*

If a corpotate body chooses to embark on litigation, its officials and advisers must act with at least as much diligence as is expected from an ordinary litigant. The corporate body is not entitled to greater indulgence than a private individual. (*Tek Chand, J.*). DISTRICT BOARD, SHAHPUR AT SARGODHA *v.* SHAMAS DIN.

123 I.C. 83 (Lah.).

———In considering an application for extending period fixed by law for presentation of appeal a distinction must be made between Government and a private person. Though any delay is evidence of laches in the case of a private individual, the same cannot be said of Government and so delay can be condoned if it is inevitable. (*Barlee, J. C. and Kalumal, A. J. C.*). SECY. OF STATE *v.* GURUMUKHDAS. A.I.R. 1929 Sindh 211.

———The period between date of the judgment and the date of signing the decree should be excluded in computing the period of limitation. 13 Cal. 104, *Foll.*; A.I.R. 1922 P.C. 352, *Dist.* (*B. B. Ghose and Graham, JJ.*). ASHUTOSH ROY *v.* MONOMOHON ROY. 97 I.C. 539=A.I.R. 1927 Cal. 65.

———In the absence of proof of sufficient cause under S. 5 extension of time to file appeal cannot be got by a party when he or his attorney has not made any application to the Registrar's Office to ascertain whether the plaintiff had in fact sent in a requisition to have the decree drawn up. (*Sanderson, C.J. and Buckland, J.*). GOBIND LAL DUTT *v.* OFFICIAL ASSIGNEE OF CALCUTTA.

92 I.C. 563=29 C.W.N. 163=A.I.R. 1925 Cal. 291.

———*Pauper appeals.*

An order dismissing the application to appeal as a pauper does not affect the fact that the appeal has been preferred within the prescribed period of 30 days if the appellant has paid the Court-fee in obedience to the Court's order and the presentation of the appeal cannot be held to be after the expiry of limitation and the appellant is entitled to have the appeal heard. There is a distinction between applications to sue as a pauper and applications to appeal as such. In the former the plaint is an integral portion of the application; in the latter the memorandum of appeal is a separate document. A person who wishes to sue as a pauper is expected to put in his application in sufficient time to allow of a suit being filed within limitation, if and after his application to sue has been rejected. In most cases a would-be appellant, who must file his appeal within 30 days, cannot secure a decision on his application within that period. (*Le Rossignol and Campbell, JJ.*). DIYAL DAS *v.* SUNDAR DAS.

65 I.C. 741=3 Lah. 35=26 P.W.R. 1922=A.I.R 1922 Lah. 225.

———A second appeal is not time-barred, because of the copy of the First Court's interlocutory order, which is mentioned in that Court's judgment as being a part of the judgment, is filed after the expiry of the period of limitation, when the points decided by the interlocutory order do not arise in the appeal. (*Martineau, J.*). LAKHMI DAS *v.* ISHAR DAS. 4 Lah. L.J. 20=A.I.R. 1922 Lah. 93.

———An order dismissing an appeal as barred by limitation prescribed therefore after further refusing an application under S. 5 of the Limitation

LIMITATION ACT (1908), S. 6—Acknowledgment of liability.

Act to admit the appeal after the prescribed time is "passed on appeal" under S. 109, C.P. Code. Per *Woodroffe, J., Sanderson, C.J.*, doubting. The appeal involves a substantial question of law. (*Sanderson, C.J. and Woodroffe, J.*). PROMOTHO NATH ROY *v.* W. A. LEE. **62 I.C. 216= 33 C.L.J. 128= A.I.R. 1921 Cal. 415.**

—S. 6—Acknowledgment of liability.

——*Proper time for valid acknowledgment.*

Under S. 6, a minor may institute the suit and make an application within the same period after the disability has ceased as he would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule. The time prescribed therefor in the third column of the first schedule is different from the extended period within which a minor may bring a suit after the disability has ceased. The acknowledgment of liability must, therefore, under S. 19, be given before the expiration of the period prescribed therefor in the third column of the first schedule and not before the expiration of the period within which a minor may bring the suit. 26 Bom. 782; 15 Bom. L.R. 349, *Foll.*; 30 All. 268 and 33 Cal.1047, *Ref.*; 13 Mad. 135; 33 Cal. 1047 (P. C.); A.I.R. 1922 Bom. 183 and A.I.R. 1922 Bom. 168, *Dist.* (*Patkar and Baker, JJ.*). MAGAN LAL HARJIBHAI *v.* AMICHAND GULABJI. **112 I.C. 24= 52 Bom. 521=30 Bom. L R 733= A. I. R. 1928 Bom. 319.**

—S. 6—Adverse possession against lunatic.

——*Lunacy does not prevent limitation running but only gives the lunatic right to sue within 3 years of the ceasing of the disability.*

Lunacy would not by itself prevent limitation from running against a lunatic. Where a person entering into possession of a lunatic's property was in no fiduciary relationship to the lunatic but entered into possession for his own benefit and in assertion of a title hostile to the lunatic, limitation would begin to run from the date when he so took possession though the lunatic would be entitled to sue for recovery of the property within 3 years from the date when his disability ceases, if he dies a lunatic leaving his widow as legal representative, then she could sue within three years of his death; but if the widow fails to sue within the said period for recovery of the property, the reversioners to the estate of the lunatic, would also be barred and they cannot reckon limitation from the death of the widow. (*Kumaraswami Sastri and Devadoss, JJ.*). KALIDINDI SEETARAMARAJU *v.* VEGESANA SUBBARAJU. **70 I.C. 678= 45 Mad. 361=1922 M.W.N. 136= 15 M.L.W. 382=30 M. L. T. 128= A. I. R. 1922 Mad. 12=42 M.L.J. 262.**

—S. 6—Adverse possession against minor.

——*Minority—No ground to stop running of limitation—An extended period alone is given.*

It cannot be said that there can be no adverse possession of property belonging to minor during the continuance of the minority. Section 6 does not prevent the possession being adverse or the running of limitation against a minor. It only gives an extension of limitation in favour of the minor after the cessation of disability on the death of the person subject to it.

Where on the death of a proprietor, the widow of his pre-deceased son enters into possession of half the property, mutation in respect of which is effected in her name, during the minority of his second son who subsequently dies she cannot be dispossessed of that share in a suit brought by a reversioner of the son after 12 years of her possession and she becomes the absolute owner of that share by adverse possession in respect thereof for over 12 years. A.I.R. 1922 Mad. 12; 22 Cal. 445 (P.C.) and A.I.R. 1919 P. C. 60, *Rel. on.* (*Srivastava, J.*). MT. RAM DULARI *v.* SHER BAHADUR SINGH. **113 I.C. 258=3 O. W. N. 832= A.I.R. 1928 Oudh 481.**

LIMITATION ACT (1908), S. 6—Co-parceners.

—S. 6—Application for re-admitting appeal.

——Article 168 applies to an application for the re-admission of an appeal under O. 41, R. 19 under which, if sufficient cause is shown for default, the Court is bound to re-admit the appeal, as such an application is outside the terms of S. 6. (*Shah and Crump, JJ.*). SONUBAI BABURAO *v.* SHIVAJI RAO, KRISHNA RAO. **60 I.C. 919=45 Bom. 648= 23 Bom. L. R. 110= A.I.R. 1921 Bom. 20.**

—S. 6—Birth after cause of action.

——For a suit to set aside an alienation by father the sons were not born on the date of alienation do not get a fresh cause of action from their birth, and at the most can only join in the suit with such sons as were born on the date of alienation and subject to the same period of limitation. A.I.R. 1925 P. C. 33, *Rel. on.* (*King, J.*). DEONANDAN SINGH *v.* MUSAFIR SINGH. **97 I.C. 591= A.I.R. 1927 All. 54.**

——*Elder son's right barred on date of suit—Suit not sustainable.*

Where on the date of the suit by the eldest son who was over 21 the other sons were less than 21 and were within time so far as they were concerned and where they were not born on the date of the alienation by the father but were in existence before the eldest son attained majority,

Held, that the minor plaintiffs being not born when the right to sue accrues, *i.e.*, the date of the alienation, the suit was barred by limitation. (*Chevis and Dundas, JJ.*). LACHMAN DAS *v.* SUNDAR DAS. **59 I. C. 678=1 Lah. 558.**

—S. 6—Burden of proof.

——A plaintiff must prove affirmatively and clearly that his suit is within time. A mere entry that a son was born to a man of the name of the plaintiff's father does not necessarily prove that the entry relates to the plaintiff, unless the entry can be supported by evidence. (*Campbell, J.*). PREM DAS *v.* SARBALAND. **79 I.C. 211= A.I.R. 1923 Lah. 41.**

—S. 6—Co-parceners.

——A Hindu, challenging the alienation by his father, who is not born on the date of alienation, is not entitled to benefit of S. 6 merely on the ground that he was conceived on that date. If he was not born, he could not be said to be a minor and therefore subject to a disability. A.I.R. 1925 Lah. 654 and A.I.R. 1925 P.C. 33, *Ref.* (*Jai Lal and Tapp, JJ.*). MADHO RAM *v.* DHARAM SINGH. **A.I.R. 1930 Lah. 394.**

——*Three years' extension after majority cannot be claimed by a person not born at time of alienation.*

Where a suit is brought to contest an alienation of joint family property it is from the date on which the cause of action arose that period of limitation must be reckoned. Subsequent birth of a co-parcener does not create a fresh cause of action or a new starting point from which limitation should be reckoned. By the express terms of the section the extended period of three years after majority can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. A person

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who was not in existence at the time does not come within this description and therefore is not entitled to the three years' extension. (*Sir Lawrence Jenkins.*) RANODIP *v.* PARMESHWAR. 86 I. C. 249= 29 C.W.N. 666=26 P. L. R. 113=23 A.L.J. 176= 27 Bom.L R. 175=21 M.L.W. 236=52 I.A. 69= 6 L.R.P.C. 47=1925 M.W.N. 262=12 O.L.J. 74= 2 O.W.N. 1=47 All. 165=A.I.R. 1925 P.C. 33= 48 M.L.J. 29 (P.C.).

——*Subsequent birth of other members does not extend time.*

If at the date of the transfer of property belonging to a Hindu joint family there was in existence any person who had a cause of action for a suit to set aside the alienation, time begins to run and cannot be extended by the subsequent birth of other members of the family who would also be entitled to challenge the alienation.

Time for a suit to set aside the alienation will expire either after 12 years from the alienation or 3 years after the attaining of majority of any person who had a cause of action on the date of the alienation. (*Lindsay, J.*). THAKUR PRASAD *v.* GULAB KUNWAR. 87 I.C. 662=6 L.R.A.Civ. 320= A. I. R. 1925 All. 563.

——Where a suit by Hindu co-parceners to set aside an alienation of joint family property is barred by limitation as regards one of the plaintiffs, it is also barred as regards the other plaintiffs though they were minors at the date of the institution of the suit, if they were not in existence at the date of the alienation. A.I.R. 1925 P.C. 33, *Foll.* (*Stuart, J.*). RAM KISHEN *v.* BALDEO KOERI. 86 I.C. 704=6 L.R.A. Civ. 302= A.I.R. 1925 All. 247.

——*Minor born or conceived after the expiry of limitation against all the co-parceners existing at time of sale cannot revive, cause of action.*

A son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation when the purchaser takes possession (see Art. 126, Limitation Act), and a new cause of action does not accrue upon the subsequent birth of a son in the family.

The after-born son does not acquire a fresh cause of action and a fresh period of limitation does not start from the date of his birth. In his case the time from which the period of limitation is to be reckoned is the date of the transfer and when he was not born on that date and was under no disability he cannot obtain the benefit of the provisions of S. 6 of the Limitation Act. He can take advantage of any cause of action existing at his birth and sue within the period of limitation but cannot start a fresh period at his birth. 8 W.R. 285; 4 All. 120, *Foll.*; 24 O.C. 330; 1 Lah. 558, *Ref. to.* (*Dalal, J.*). SIKANDAR SINGH *v.* BACHCHU PANDE. 82 I.C. 307=5 L.R.A. Civ. 663= A.I.R. 1925 All. 54.

——*Co-parcener's existence on date of alienation entitles after-born co-parcener to sue but only within the period within which the former co-parcener could sue.*

Where a co-parcener who could challenge a deed was alive at the execution of the deed, and the plaintiffs were born during his lifetime and within twelve years of the alienation,

Held, they undoubtedly obtained a right to challenge it. A right to sue is not however coparcenary property in which a son acquires interest by birth. Section 6 of the Limitation Act cannot be pleaded by a plaintiff who was not in existence

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when the alienee took possession. He is entitled to take advantage of the existing cause of action so long as it subsists, but he does not obtain a fresh period of 21 years from the date of his birth. Even a co-parcener who challenges an alienation does so in virtue of his own independent right as a person who has acquired interest in the family estate by birth. Plaintiffs cannot rely on S. 7 where there was no joint right when the period of limitation commenced; plaintiffs can bring their suit within three years of the date when the co-parcener could have attained majority. 33 All. 654; 1 Lah. 558; 24 O.C. 330; 4 All. 235; 27 All. 704, *Foll.* (*Daniels, J.*). DHANRAJ RAI *v.* RAM NARESH RAI. 79 I.C. 1019=5 L.R.A. Civ. 325= A. I. R. 1924 All. 912.

——*Subsequently born son has no fresh start for limitation though he can question alienation which was invalid at the time it is made.*

Although it cannot be disputed that a subsequently born Hindu son has a right to avoid an alienation which took place at a time when other members of the family, not parties to the deed, were alive, it does not follow that he has a fresh start for the purpose of limitation from the time of his birth. When an alienation is made which is not justified by necessity a cause of action arises in favour of the other members to have it set aside and to recover possession from the alienee but there is only one cause of action in favour of the other members of the family. Successive causes of action cannot arise as new members are born year after year. 33 All. 654; 19 A.L. J.R. 978, *Dist.* (*Sulaiman and Kanhaiya Lal, JJ.*). SITA RAM SINGH *v.* CHEDDI SINGH. 83 I.C. 1052= 5 L.R.A. Civ. 634=22 A.L.J. 809= 46 All. 882=A.I.R. 1924 All. 798.

——*Son born after, cannot claim benefit of S. 6.*

A son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation, when the purchaser takes possession and a new cause of action does not accrue upon the subsequent birth of a son in the family. In the case of an after-born son the time from which the period of limitation is to be reckoned is the date of the transfer and as he was not born on that date and was under no disability on that date he cannot obtain the benefits of the provisions of S. 6 of the Limitation Act. When he cannot save limitation for himself he can give no benefit under S. 7 to his elder brothers. 40 Cal. 966, *Dist.*; 8 W.R. 15; 23 W.R. 285; 4 All. 120, *Ref.* (*Dalal and Wasir Hasan, A. J. Cs.*). RANODIP SINGH *v.* RAMESHWAR PRASAD. 66 I. C. 938= 9 O.L.J. 45=A.I.R. 1923 Oudh 52.

—S. 6—Death of minor.

——*Suit by reversionary heir for possession of property sold—Limitation.*

The mother and guardian of a minor sold certain property belonging to the ward in 1873, and, the ward having died an infant in 1879 or 1880, she succeeded to his other property and died in 1921 without taking steps to set aside alienation. A reversionary heir instituted a suit in 1922 to recover possession of the property sold from persons holding under the original vendee:

Held, that the suit was barred by limitation because of S. 6 (3) read with Art. 44 of the Limitation Act. The suit became barred on the lapse of three years after the death of the ward, not withstanding the fact that he was succeeded by a female

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heir. 18 Mad. 193 ; 4 M L.J. 275, *Foll.* (*Venkatasubba Rao, J.*). RAMIAH *v.* BRAHMIAH.

59 M. L. J. 196.

———In a suit for possession, where a minor dies before attaining majority his representative would have either the total period of 12 years from the date of accrual of the cause of action or three years from the date of the minor's death, whichever is greater. (*Ryves and Mukerji, JJ.*). ANANTOO *v.* RAMRUP TIWARI. **87 I. C. 315= 6 L.R.A. Civ. 284=A.I.R. 1925 All. 692.**

—S. 6—Determining age.

———*Medical evidence is not of much help in determining age.*

Medical evidence in cases of age of a party to a suit which falls to be decided for purposes of limitation cannot throw much light because from its very nature it is based on conjectures only and it cannot possibly be looked upon for the purposes of determining with precision the exact age of a particular person. In cases when limitation is pleaded in defence, a difference of even a single day settles the fate of the case one way or the other, and no doctor, however conscientious and competent he may be, can give the precise age of a person so as to enable the Court to determine the exact date of that person's birth. (*Tek Chand and Agha Haidar, JJ.*). ZINDA *v.* MT. ROSHNAI. **113 I.C. 53= 10 L. L. J. 183=A.I.R. 1928 Lah. 250.**

—S. 6—Execution application.

———A minor in whose favour a decree is passed can execute the same at any time within three years of his attaining majority. 16 Bom. 536, *Foll.* (*Mirza and Broomfield, JJ.*). RAMKRISHNA *v.* RAMCHANDRA. **32 Bom. L. R. 1093.**

———Section 6, Lim. Act, governs S. 48, C.P.Code, and an application for execution falling as it does under S. 48 is saved by S. 6, Lim. Act, from being time-barred. 16 Bom. 536, *Foll.* ; 37 Mad. 186 and 37 All. 638, *Not foll.* (*Mirza and Broomfield, JJ.*). RAMKRISHNA VITHAL KULKARNI *v.* RAM CHANDRA DATTATREYA GARAWARE.

A. I. R. 1930 Bom. 508.

———Where a minor decree-holder makes an application for execution of his decree after he attains majority the period during which he was a minor shall be deducted for the purpose of computing the period of limitation. 9 Cal. 181 ; 32 Cal. 129 (P.C.) ; 16 Bom. 536, *Rel. on.* (*Jai Lal, J.*). PADHA MADHO PRASAD *v.* GHANAYO LAL.

117 I. C. 909=30 P. L. R. 398= A.I.R. 1929 Lah. 661.

———Where execution application is put in by the next friend of the minor beyond three years since the previous execution application, also by the next friend, such application is not barred by limitation because Ss. 6 and 7 import that during minority the operation of Limitation Act is suspended. 1 Cal. 226 (P.C.) and 9 Cal. 181, *Rel. on.* (*Wallace and Madhavan Nair, JJ.*). MANNARSWAMI AYYAR *v.* RAMASWAMI NAYAKKAN.

119 I.C. 39=1929 M.W.N. 158= 30 M.L.W. 361=A.I.R. 1929 Mad. 394.

———An application for the continuance or revival of a previous execution proceeding struck off or suspended for no act or default of the decree-holder is governed by Art. 181. Such an application is substantially an application for the execution of a decree within the meaning of S. 6 of that Act, which protects the minors, so long as the disability continues, and postpones the commencement of the period of limitation till the date on

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which such disability ceases. (*Kanhaiya Lal, J.C.*). AKHTAR HUSSAIN *v.* QUDRAT ALI. **80 I.C. 775= 26 O.C. 206=11 O.L.J. 133=A.I.R. 1924 Oudh 31.**

—S. 6—Execution proceedings.

———Under S. 6, the last date for a minor decree-holder to apply in execution is within three years after attaining majority. The guardian of a minor can also apply in execution at any time during the minority even though his previous application is more than three years old. 9 Cal. 181; 23 Cal. 374; 20 Cal. 714 and 22 All. 199 (F. B.), *Ref.* (*Madgavkar and Birlee, JJ.*). KASHINATH RAJARAM SOMANI *v.* GOVIND SHANKAR JINSIWALLA.

32 Bom. L.R. 1299=A.I.R. 1930 Bom. 593.

—S. 6—Filing award.

———An application to file an award does not become a suit by the provisions of Para. 20 (2), Sch. II, C.P. Code and hence the applicant cannot claim the benefit of S. 6. (*Pratt and Carr, JJ.*). MA THEIN TIN *v.* MAUNG BA THAN. **76 I.C. 493= 1 Rang. 256=A.I.R. 1923 Rang. 226.**

—S. 6—Idol or math.

———The only disabilities which save the operation of the Limitation Act are those which are created by the statute itself, S. 6 of which recognizes only three classes of persons as being under legal disability, namely, a minor and insane person and an idiot, and does not include idol or math. 28 I. C. 818; A. I. R. 1918 P. C. 130; A. I. R. 1926 Cal. 65 and 47 I. C. 122, *Ref.* (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAM CHARAN DAS.

11 P.L.T. 403=A.I.R 1930 Pat. 455.

—S. 6—Insanity, what is.

———Per *Shah, J.*—To be in a state of great mental weakness on account of serious injuries is not a sufficient condition to constitute insanity within the meaning of S. 6. (*Shah, Ag. C. J. and Crump, J.*). ABDULLA MAHOMED *v.* A.M. ZULAIKHI.

84 I.C. 796=25 Bom. L R. 1333= A.I.R. 1924 Bom. 290.

—S. 6—Interpretation.

———*Alteration of words—Effect.*

The effect of the substitution of the words "make an application for execution of a decree" in S. 6 of the present Act in place of the words "make any application" in S. 7 of the old Act, is that the privilege enjoyed by a minor of making an application within the prescribed period after the cessation of disability has been taken away, and now any application by the minor except an application for the execution of a decree has to be made within the prescribed period from the time when the right to apply accrued. (*B. B. Ghose and Panton, JJ.*). KHONDKAR MAHOMED SAHIB *v.* CHANDRA KUMAR MUKERJI. **122 I. C. 201=49 C.L.J. 362= 33 C.W.N. 519=56 Cal. 1117=A.I.R. 1930 Cal. 34.**

—S. 6—Local acts.

———Section 6 applies not only to period of limitation prescribed by that Act but also to any period prescribed by a special or local Act. (*Hallifax, A. J. C.*). SHANKARGIR GURU *v.* CHINNUJI. **71 I.C. 140=6 N.L.J. 1= A.I.R. 1923 Nag. 164.**

—S. 6—Period for suit.

———The period of limitation prescribed for a suit of the nature to which the provisions of Ss. 6, 7 and 8 of the Limitation Act apply must be taken to be the period reckoned on the basis of the time provided for by the schedule and also of the provisions of S. 8 of the Act. (*Wasir Hasan, J. C. and Kendall, A.J.C.*). BANS BAHADUR SINGH *v.* SAKAL RAJ KUAR. **81 I. C. 484=11 O. L. J. 295= A.I.R. 1924 Oudh 385.**

LIMITATION ACT (1908), S. 6—Person in embryo.

—S. 6—Person in embryo.

——Where a cause of action accrued to a person when he was in embryo, he cannot get the advantage of S. 6 as he cannot be deemed to be a minor in existence on the date of the conception. 2 U. P. L.R. (Lah.) 39 and 173 P.W.R. 1912, *Ref.* (*Shadi Lal, C.J. and Bhide, J.*). MAHOMED KHAN *v.* AHMAD KHAN. **116 I.C. 545=10 Lah. 713=30 P.L.R. 737=A.I.R. 1929 Lah. 264.**

—S. 6—Principal and agent.

——Where an agency does not terminate with the death of the principal but terminates with the completion of a transaction which has occurred in the lifetime of principal, the terminus a *quo* for limitation under Art. 89 begins from the completion of the transaction and the minor claiming through the principal, an amount credited to the name of the principal in a firm account, cannot ask the help of S. 6. (*Johnstone, J.*). RAMJI MAL-NARAIN DAS *v.* GULZARA SINGH. **A.I.R. 1929 Lah. 883.**

—S. 6—Restitution proceedings.

——Section 6 applies to an application made under S. 144, C. P. Code. (*Wazir Hasan and Raza, JJ.*). SANT SAHAI *v.* CHHUTAI KURMI. **92 I.C. 23=13 O.L.J. 731=1 Luck. 40=3 O.W.N. 65=A.I.R. 1926 Oudh 199.**

—S. 6—Reversioners.

——The right to sue for a declaratory decree is vested in the whole body of reversioners in existence at the time of alienation jointly and severally and time begins to run simultaneously against them all and no subsequent disability stops it. 22 All. 33 (F.B.), *Diss*; 21 P.W.R. 1907; 22 P. R. 1907; 41 Mad. 659 (F.B.), *Foll.* (*Broadway and Jai Lal, JJ.*). CHIRAGH DIN *v.* ABDULLAH. **90 I.C. 1022=6 Lah. 405=26 P.L.R. 698=A.I.R. 1925 Lah. 664.**

—S. 6—Right to extension.

——Where any Court is of opinion, on the true construction of a document, that it is taken in the name of a minor or in the name of a minor acting by his guardian; then the minor has got three years from attaining his majority within which to bring his suit on the document. But if on the other hand, a Court is of opinion that the document is taken solely by the guardian, then that extended period would not be open for the benefit of the minor. 28 Mad. 205, *Dist.*; A. I. R. 1924 Bom. 468, *Expl*; 10 Bom. 241, *Foll.* (*Marten, C.J. and Percival, J.*). PANDHARINATH MANIKSHET *v.* AJAMKHA SARDARKHA. **100 I.C. 95=50 Bom. 831=28 Bom.L.R. 1431=A. I. R. 1927 Bom. 61.**

——The extended period under S. 6 can only be claimed by a person entitled to institute the suit at the time from which the period of limitation is to be reckoned. 22 P. R. 1907; 103 P. R. 1907 and A.I.R. 1925 P.C. 33, *Foll.* (*Fforde and Campbell, JJ.*). SAHAMOD *v.* SOLABAT. **97 I.C. 435=8 Lah. 19=28 P.L.R. 283=A.I.R. 1927 Lah. 97.**

——A person cannot take advantage of his minority when limitation has already begun to run before his birth. A. I. R. 1925 P.C. 33, *Foll.* (*Kanhaiya Lal and Boys, JJ.*). NATHA MAL *v.* JHUNAI LAL. **94 I.C. 180 (All.).**

——A suit on a promissory note taken by the guardian of a minor must be instituted by the guardian within three years of its date. Section 6 has no application to such a suit. (*Macleod, C.J. and Shah, J.*). VISHNU NARAYAN *v.* KESHAO GAJANAN. **80 I.C. 474=26 Bom. L.R. 426=A.I.R. 1924 Bom. 468.**

LIMITATION ACT (1908), S. 7—Joint decree-holders.

—S. 6—Setting aside compromise decree.

——Minor must sue within three years of his becoming major, even to set aside a compromise decree sanctioned by Revenue Court. (*Le Rossignol, J.*). THI RAJ *v.* KHEAUSI. **77 I.C. 588=22 P.W.R. 1923=A.I.R. 1924 Lah. 427.**

—S. 6—Transferee of minor.

——An assignee cannot take advantage of S. 6. A.I.R. 1924 Oudh 385, *Expl.* (*Simpson, A. J. C.*). SITLA BUX SINGH *v.* RAM NEWAZ. **90 I.C. 741=2 O.W.N. 811=A.I.R. 1926 Oudh 20.**

——*Transferee cannot take advantage of S.* 6.

The general principle of law is that transferee from a minor cannot claim the benefit of S. 6 of the Limitation Act.

The transferee cannot, therefore, maintain a suit there being no reason for the distinction between a suit brought on the date of the transfer and a suit brought on a subsequent date. As soon as the transfer is made the special privilege which is vested in the minor is extinguished. 9 Cal. 663; 42 Mad 637, *Foll.*; 40 Bom. 564, *Dist.* (*Daniels and Lyle, A. J. Cs.*). MUHAMAD NURKHAN *v.* LACHMI NARAYAN. **66 I.C. 101=9 O.L.J 88=A.I.R. 1922 Oudh 31.**

—S. 7—Applicability.

——Section 7 does not apply to the case of a suit by minor to set aside alienation by a *de facto* guardian. (*Findlay, J.C.*). MAHADEO *v.* SOMAJI. **99 I.C. 1050=A.I.R. 1927 Nag. 145.**

—S. 7—Idol.

——Section 7 is not applicable to a suit to set aside an improper alienation by a shebait of the property belonging to a Hindu God, as the god cannot be deemed a perpetual minor for the purpose of limitation. 37 Cal. 885 (P.C.), *Rel. on* and 32 Cal. 129 (P. C.), *Ref.* and *Expl.* (*Dalal and Boys, JJ.*). CHITAR MAL *v.* PANCHULAL. **93 I.C. 652=48 All. 348=24 A.L.J. 351=A.I.R. 1926 All. 392.**

—S. 7—Interpretation.

——Section 7 refers back to S. 6 to which it serves as an appendix and the words "such disability" in S. 7 means a disability of a kind which is of the nature and existed at the time, referred to in the preceding section. (*Daniels and Lyle, A.J.Cs.*). CHOKHEY SINGH *v.* HURDEO SINGH. **64 I.C. 787=8 O. L. J. 667=24 O.C. 330=A.I.R. 1921 Oudh 196.**

—S. 7—Joint decree-holders.

——Where a joint decree for possession of land and demolition of a construction is passed in favour of a major and a minor although their interests were distinct and separate, the major cannot give a valid discharge for the minor and, therefore, an execution application by the minor within three years from attaining majority is not barred. (*Sulaiman, Ag. C. J. and Weir, J.*). CHIRANJI LAL *v.* RAM SARUP. **118 I.C. 229=1929 A.L.J. 72=A.I.R. 1929 All. 267.**

——*Succession certificate under Act* VII *of* 1889—*Concurrence of all decree-holders necessary.*

Adult certificate-holders are not competent to give a valid discharge to the judgment-debtor without the concurrence of the minor decree-holders.

Where the certificate under Act VII of 1889 was issued in the name of all the decree-holders and where the decree was passed in the name of the adult son and the widow of a deceased person and his three minor sons represented by their adult brother as their guardian.

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Held : *Suhrawardy, J.* (Contra)—Section 7 of the Limitation Act contemplates a case where a decree-holder holds such a legal character as to be able in law to give discharge on behalf of his co decree-holders. 17 A.L.J. 649, *Foll.* (*Walmsley and Suhrawardy, JJ.*). BILWAR BIBI *v.* MAHAMED HABIBAR RAHMAN. **84 I.C. 204=31 Cal. 566=A.I.R. 1924 Cal. 710.**

———Where two of three joint execution creditors are minors, the other execution creditor who is *sui juris* is not competent to grant a valid discharge so as to bind the interest of the minors. (*Moti Sagar, J.*). THE COURT OF WARDS OF NAWABZADA MUHAMMOD ZULIFQAR ALI KHAN *v.* ABRAR ALI. **78 I.C. 285=A.I R. 1924 Lah 681.**

—S. 7—Joint Hindu family—Adverse possession.

———Where co-parceners other than the father or the manager are suing, a limitation runs even against a minor member of a joint Hindu family as regards adverse possession if his father who was joint with him was a major at the time that the adverse possession began. A.I.R. 1926 P.C. 16, *Dist.* (*Harrison and Dalip Singh, JJ.*). SHARAM SINGH *v.* SADHU SINGH. **110 I.C. 293=A.I.R. 1928 Lah. 484.**

—S. 7—Joint Hindu family—Decree in favour of.

———Whether a valid discharge for payments made by the judgment-debtors can be given by a manager of joint Hindu family acting as guardian having regard to O. 32, R. 6, depends upon the construction of the decree.

When the decree dispenses with the separate application and sanction which might otherwise be necessary and allows manager to receive the amount so long as he furnishes security, the manager is competent to grant discharge in favour of the minor and he is not entitled to benefit of S. 7. A.I.R. 1929 Bom. 13; A.I.R. 1921 Bom. 289; 41 All. 435; 31 All. 156 : 36 Mad. 295 (P.C.); A.I.R. 1926 P.C. 16; A.I.R. 1928 Mad. 42 and 38 Mad. 118, *Ref.*; A.I R. 1925 Mad. 78, *Dist.* (*Madgavkar, J.*). MURLIDHAR LAXMAN *v.* SHIVRAM SADASHIB. **121 I.C. 446=31 Bom. L.R. 963=A.I.R. 1929 Bom. 382.**

———The manager of a joint Hindu family can give a valid discharge without the concurrence of the minor members of the family in the case of an application to execute a decree, just as he can in the case of a suit and the mere fact that one of the members is a minor will not prevent time running against all the members of the family. 41 All. 435; A. I. R. 1921 Bom. 289; 42 Bom. 277 and 21 M. L. J. 1088, *Foll.*; 20 Bom. 383, *Dist.* and 34 Bom. 672, *Not foll.* (*Fawcett and Mirza, JJ.*). SUPDU DAULAT SINGH *v.* SAKHARAM RAMJI. **110 I.C. 276=52 Bom. 441=30 Bom. L.R. 537=A.I.R. 1929 Bom. 13.**

———*Decree-holders not proved to be members of a Joint Hindu family.—The adult alone cannot give a valid discharge.*

A joint decree was passed in favour of three persons, two of whom were minors. It was not proved that the decree-holders were members of a joint undivided Hindu family, nor whether they were living under the Mitakshara or Dayabhaga School of Hindu Law, nor whether the major member was acting as karta of a joint Hindu family of which the decree-holders were members,

Held, that the adult member was not able to give a discharge to the judgment-debtors within

LIMITATION ACT (1908), S. 7—Joint Hindu family—Granting discharge.

S. 7, Limitation Act. 25 Mad. 26; 7 All. 313 (F.B.); 27 Bom. 292; 28 Mad. 487; 28 Cal. 465; 25 Mad. 431 (F.B.); A.I.R. 1916 P. C. 148; 36 Mad. 295 (P.C.); A.I.R. 1925 Mad. 78 and 31 All. 156. *Ref.* (*Page and Graham, JJ.*). JUGAL KISHORE DEBI *v.* BAIDYANATH. **104 I.C. 668=47 C.L.J. 38=32 C.W.N. 192=A.I.R. 1927 Cal. 952.**

—S. 7—Joint Hindu family—Decree in favour of minor.

———*Hindu father acting as next friend of plaintiffs cannot give a valid discharge; nor can eldest among brothers—Extension of time is available.*

Where Hindu father and his minor sons sue, the latter suing through the former as next friend, the period of limitation for execution of decree runs against each son from the date of the majority.

Where a decree was obtained in a suit in which the plaintiffs were a father and his three sons and the three sons were described on the face of the proceedings as suing through their next friend and guardian, the first plaintiff, *i.e.*, the father and where the father died before execution,

Held, that an execution application taken out by the eldest son within three years after his attaining majority was not barred though more than three years had passed after the passing of the decree, since neither the father nor the eldest son could give a valid discharge for the defendant,

Held, further that so long as one of the decree-holders was a minor no question of limitation really arose in the case. (*Coutts-Trotter, C.J. and Ramesam, J.*). LAKSHMANAN CHETTY *v.* SUBBIAH CHETTY. **82 I.C. 785=47 Mad. 920=20 M.L.W. 342=35 M.L.T. 92=1924 M.W.N. 773=A.I.R. 1925 Mad. 78=47 M.L.J. 389.**

—S. 7—Joint Hindu family—Granting discharge.

———Time cannot be extended under S. 7 in a suit for accounts where, although one of the plaintiffs is a minor the other can give a valid discharge on behalf of both.

Plaintiffs formed a joint Hindu family. One of them was a minor but the other was the manager of the family as well as his certificated guardian,

Held, that the elder plaintiff could give valid discharge in either of his capacities and no time could therefore be extended. A.I.R. 1916 P. C. 148 and 6 C.L.J. 383, *Dist* (*Cammiade and S.K. Ghose, JJ.*). ASUTOSH GHOSE *v.* SASHI MOHAN. **115 I.C. 354=48 C.L.J. 555=A.I.R. 1929 Cal. 165.**

———The Manager of a joint Hindu family, being member of a joint Hindu family, can give a valid discharge on his own behalf and on that of a minor brother, and therefore the minor cannot take advantage of S. 7. 41 All. 435, *Foll.* (*Kanhaiya Lal and Ashworth, JJ.*). RADHA KANT SHUKUL *v.* BUTAI MISIR. **94 I.C. 922 (All.).**

———A joint elder brother in a Hindu family represents the entire family and can therefore give a discharge within the meaning of S. 7 on behalf of his minor brother. 41 All. 435, *Foll.* (*Mukerji and Boys, JJ.*). SHIAM LAL *v.* MOOLCHAND. **87 I. C. 177=6 L.R A. Civ. 299=A.I.R. 1925 All. 672.**

———*Every adult brother in a Hindu family is not necessarily manager—The question is one of fact and must be alleged and proved as a fact.*

It cannot be predicated of every Hindu family, that an adult brother, as soon as he becomes major becomes the manager and therefore necessarily

LIMITATION ACT (1908), S. 7 — Joint Hindu family— Receipts by manager.

competent to give discharge. Payment to one may not in every case operate as full discharge. This depends upon several questions of fact and upon a variety of circumstances varying with different families, and unless the necessary facts are properly alleged and proved by the party who wants to deprive the person under disability of the benefit of S. 6 of the Limitation Act the claim cannot be thrown out as barred by limitation.

Unless the questions as to whether the major brother was or was not a manager, as a fact and whether, and if so when, he became capable of giving discharge without the concurrence of others, and whether the right of suit was of such a nature as could be enforced jointly, are decided as questions of fact, it is not possible to decide upon the applicability or otherwise of the first or the second part of S. 7. (*Kinkhede, A. J. C.*). SHAMPURI *v.* RAMCHANDRA. **88 I.C. 268=A.I.R. 1925 Nag. 385.**

—S. 7—Joint Hindu family—Receipts by manager.

——The managing member of a joint Hindu family can give good receipts on behalf of the family, which will bind the family. 34 All. 549; 38 Mad. 118; 45 Bom. 446, *Foll.* (*Daniels and Dalal, JJ.*). BAIJNATH *v.* RAM BILAS. **80 I C. 12= 5 L R.A. Civ. 386=A.I.R. 1924 All. 738.**

—S. 7—Joint Hindu family—Redemption suit.

——*Major member not filing suit for redemption in time—Minor member is not barred.*

The right to redeem a mortgage of joint family property vests in all the members of the family whoever is the manager, and it is difficult to see how the right of a minor member to redeem, which was in existence during his minority could be defeated by the fact that a major member did not file a suit to redeem within the period allowed to him. A suit for redemption of a mortgage, limitation of which expired during the minority of the two sons of the deceased mortgagor, brought three years after the attaining of majority of the elder brother but within three years of the attaining the majority of the younger brother, is not barred. (*Macleod, C.J. and Shah, J.*). BAI KEVAL *v.* MADHU KALA. **64 I.C. 972=46 Bom. 535=23 Bom. L.R. 1191= A.I.R. 1922 Bom. 319.**

—S. 7—Joint Hindu family—Running of limitation.

——Where a cause of action accrues to two brothers of a joint Hindu family when they are minors, limitation runs from the date on which the elder of the two becomes major. (*Oldfield and Phillips, JJ.*). KUPPUSAMY IYENGAR *v.* KAMALAMMAL. **59 I.C. 662=43 Mad. 842= 12 M.L.W. 243=39 M.L.J. 375.**

—S. 7—Joint Hindu family—Setting aside alienation.

——The right to impeach an alienation by father or manager of a joint Hindu family is an individual right enjoyed severally by each of the joint members of the family, and consequently a suit by one of the several members of the family is maintainable, and if certain members are minors on the date of alienation any one of such minor members can bring the suit within three years of his date of majority. 41 Mad 102; 43 Bom. 483; 8 A.L.J. 733; 31 All. 156 and A.I.R. 1926 (P.C.) 16, *Ref.*; 34 All. 549, *Dist.* (*Mukerji and Bennet, JJ.*). SHEONANDAN PRASAD *v.* MT. TAHIRAN BIBI. **1930 A.L.J. 852=A.I.R. 1930 All. 861.**

LIMITATION ACT (1908), S. 7 — Joint Hindu family— Setting aside alienation.

——*Declaratory suit by major member—Time-barred suit by major plaintiff—Suit barred against minors as well.*

Plaintiffs brought a suit for declaration to the effect that a mortgage-deed executed by their deceased guardian during their minority was not binding on them. Plaintiffs were members of a joint Hindu family. One of them was major while rest of them were minors. The major plaintiff was the managing member of the joint family and the suit was filed by him on his own behalf and on behalf of the minors. He had, however, filed the suit more than three years after the attaining of his majority,

Held, that the suit of the major plaintiffs and so also of the minors was barred by limitation as the manager (the major plaintiff) could give a valid discharge and acquittance of the claims without the concurrence by the minor members. 38 Mad. 118 and A. I. R. 1921 Bom. 289, *Foll.*; A.I.R. 1926 P.C. 16, *Expl.* and *Dist.*; 31 All. 156, *Ref.* (*Addison, J.*). LUTA RAM *v.* SHIV RAM. **114 I.C. 59= A.I.R. 1929 Lah. 14.**

——If the eldest brother, who is naturally the managing member of the joint family, does not bring a suit within time to set aside an alienation, any suit by a younger brother would be barred inasmuch as the suit is barred against the elder brother. 38 Mad. 118, *Foll.*; A. I. R. 1926 P. C. 16, *Cons.* (*Devadoss and Jackson, JJ.*). KOLA SURAYYA *v.* KOLA SUBAMMA. **106 I.C. 863=1927 M.W.N. 911= A.I.R. 1928 Mad. 42=53 M.L.J. 677.**

——A suit brought by the younger son to recover property of his father passing to a third person after the father's death within three years of attaining majority is not barred by limitation, although the elder son attained his majority more than three years earlier and had taken no steps to question the alienation, (*Daniels, J.*). LACHHMAN PRASAD *v.* SALU SALIK CHAND. **98 I.C. 508= A.I.R. 1927 All. 188.**

——A suit brought by some sons within three years of their majority to set aside alienation by father is not barred though one of the sons had long before three years reached majority. 16 Mad. 486 and 33 Mad. 118, *impliedly overruled.* (*Mr. Ameer Ali.*) JAVAHIRSINGH *v.* UDAIPARKASH. **93 I.C. 216=48 All. 152=53 I. A. 36= 24 A L.J. 97=1926 M.W.N. 197= 3 O.W.N. 365=43 C.L.J. 374= 28 Bom. L.R. 851=30 C.W.N. 698= A.I.R. 1926 P.C. 16=50 M.L.J. 344 (P.C.).**

——*Alienation by father—Elder son attaining majority but not questioning it—Suit by younger son within three years of his attaining majority is not barred.*

A suit brought by the son within three years of his attaining majority to avoid the sale effected by his father is not barred by limitation although the elder son attained his majority more than three years earlier and had taken no steps to question the alienation. A. I. R. 1926 P. C. 16, *Foll.* (*Devadoss and Wallace, JJ.*). NARAYANA NAICKEN *v.* VENKATASWAMI NAICKEN. **98 I.C. 31= 24 M.L.W. 475=1926 M.W.N. 767= A.I.R. 1926 Mad. 1190=51 M.L.J. 845.**

——*Right to challenge alienation is a personal right of every co-parcener.*

The right of avoidance, or of challenging an alienation is a personal right which every co-parcener enjoys in virtue of his position as such co-parcener in a joint family owning joint or ancestral

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poperty and its non-enforcement does not depend upon the sweet will of any particular individual. It is the birthright of every member and cannot be therefore taken away by anything done or omitted to be done by another member of the family, unless that another can bind the other. A minor co-parcener is not bound by the mere failure of the major co-parcener to avoid the alienation within 3 years of his attaining majority. especially where it is found to be not supported wholly by necessity and therefore not binding as against him. (*Kinkhede, A.J.C.*). SHAMPURI *v.* RAMACHANDRA.
88 I. C. 268=A.I.R. 1925 Nag. 385.

———Suit by minor sons to set aside mortgage of ancestral property by father—Minor brother of vendor living at the time of mortgage—Sons can get no benefit thereby. 1 Lah. 558, *Foll.* (*Wilberforce and Abdul Qadir, JJ.*). BER SINGH *v.* HAZARA SINGH. **63 I.C. 760=3 Lah. 99= A. I. R. 1922 Lah. 275.**

———*Rule explained.*

The plaintiffs sued to recover possession of lands after setting aside the sale-deed passed by their mother during their minority. The plaintiffs were brothers, members of a joint family. One of them was more than 21 years of age and manager of the joint family when he filed the suit,

Held, that he could have given a discharge and acquittance of all claims against the defendants without the concurrence of the other plaintiffs as manager of the joint Hindu family and so the entire suit was barred by limitation.

Per *Fawcett, J.*—The main objeot of the Legislature in S. 7 is to limit the indulgence which is otherwise given to minors, so that if there are several minors who can claim the benefit of S. 6, that concession does not extend to cover the whole period of time up to the youngest of the minors becoming a major, but can only be availed of by the eldest of them. 31 All. 156, *Diss. from*; 38 Mad. 118, *Foll.* (*Macleod, C. J. and Fawcett, J.*). BAPU TATYA *v.* BALU RAVJI. **59 I. C. 759= 45 Bom. 446=A. I. R. 1921 Bom. 289.**

—S. 7—Mahomedans.

———*Suit to recover dower by sons.*

The right to recover dower of Mahomedan lady descends to her heirs. The position of the sons *qua* their right to the dower debt is not that of joint tenants but is that of tenants-in-common. Where the right to recover the dower debt was inherited in part by the debtor himself, *viz.*, the husband, S. 7 will not apply to a suit by the minor sons on attaining majority. 7 All. 313 (F.B.), *Dist.* (*Sen and Niamatullah, JJ.*). MAHAMMAD ZAHUR AHSAN *v.* MT. MAIMUNA. **116 I.C. 481= 1929 A.L J. 284=A.I.R. 1929 All. 142.**

———*Individual right to set aside alienation by father.*

The rights of Mahomedan co-heirs to set aside alienation made by father are independent of each other. The fact, therefore, that the eldest brother of the minor plaintiff can no longer sue does not affect the right of the plaintiff to sue. A. I. R. 1926 P. C. 16, *Rel. on*; A. I. R. 1921 Bom. 289 and 38 Mad. 118 (F.B.), *Dist.* (*Addison, J.*). GHULAM RASUL *v.* HUSSAIN BEG. **122 I. C. 92= A. I. R. 1929 Lah. 582.**

———*Joint decree—Minor daughters — Time extended.*

One of several minor Mahomedan daughters, who are joint decree-holders, cannot, after attaining majority give a discharge without the concurrence of others. Section 7 will, therefore, apply and time will not run against any of them till all of them become major for the purpose of the execution of the decree and it would make no difference that there was a next friend who had instituted the suit on minor's behalf. A. I. R. 1929 Lah 14, *Dist.*; 38 Mad. 118; A.I.R. 1921 Bom. 289; A.I.R. 1928 Mad. 42; A. I. R. 1926 P. C. 16, *Ref.* (*Addison, J.*). FAZAL ILAHI *v.* AISHAN.
119 I.C. 234=A.I.R. 1929 Lah. 467.

LIMITATION ACT (1908), S. 8—Period for suit.

—S. 7—Period for suit.

———The period of limitation prescribed for a suit of the nature to which the provisions of Ss. 6, 7 and 8 of the Limitation Act apply must be taken to be the period reckoned on the basis of the time provided for by the schedule and also of the provisions of S. 8 of the Act. (*Wasir Hasan, J.C. and Kendall, A. J. C.*). BANS BAHADUR SINGH *v.* MT. SAKALRAJ KUAR. **81 I.C. 484=11 O.L J. 297= A.I.R. 1924 Oudh 385.**

—S. 7—Reversioners.

———*Section 7 does not apyly to the case of reversioners.*

The plaintiff brought a suit within three years of his attaining majority to set aside an alienation made by a limited owner. At the time of the alienation he was an infant and there were two persons, one his brother and another a cousin, who could have challenged the alienation. They did not choose to challenge it and the plaintiff's suit was more than twelve years after the date of alienation,

Held, that the suit was barred. (*Devadoss, J.*). NEELAKANTAMIER *v.* CHINNU AMMAL.
99 I.C. 668=25 M L W. 161= A.I.R. 1927 Mad. 216=52 M.L.J. 13.

—S. 7—Scope.

———Section 48, C.P.Code, is not a rule of limitation and does not imply that running of time will not be suspended against a minor, because S. 48 cannot override, S. 7, Lim. Act which definitely says that time will not run. (*Wallace and Madhavan Nair, JJ.*). MANNARSWAMI AYYAR *v.* RAMASWAMI NAYAKKAN. **119 I C. 39= 1929 M.W.N. 158=30 M. L W. 361= A.I.R. 1929 Mad. 394.**

—S. 8—Alienation by Hindu father.

———A suit brought by younger son to set aside alienation by father within three years of his attaining majority, though the elder son had attained majority more than three years earlier and had allowed his claim to set aside the alienations to become barred, is not barred. A.I.R. 1926 P.C. 16, *Foll.*; 16 Mad. 436 and 38 Mad. 118, *Not foll.*; A.I.R. 1926 Mad. 1190, *Ref.* (*Kumaraswawi Sastri and Reilly, JJ.*). RAJAGOPALA *v.* SRINIVASA RAGHAVA. **109 I.C. 572=51 Mad. 627= 28 M.L.W. 311=1928 M.W.N. 708= A.I.R. 1928 Mad. 1055=55 M.L.J. 30.**

—S. 8—Cause of action in minority.

———Where plaintiff is minor when cause of action arises time does not run against him until minority is over. A.I.R. 1925 P.C. 33, *Dist.* (*Mukerji and Niamatullah, JJ.*). NIRMAN BAHADUR *v.* FATEH BAHADUR SINGH. **1929 A.L.J. 1233= A.I.R. 1929 All. 963.**

—S. 8—Period for suit.

———The period of limitation prescribed for a suit of the nature to which the provisions of Ss. 6, 7 and 8 of the Limitation Act apply must be taken to be the period reckoned on the basis of the time provided for by the schedule and also of the provisions of S. 8 of the Act. (*Wasir Hasan, J. C. and Kendal,*

LIMITATION ACT (1908), S. 8—Revival of right to sue.

A.J.C.). BANS BAHADUR SINGH *v.* MT. SAKALRAJ KUAR. 81 I. C. 484=11 O. L. J. 297= A.I.R. 1924 Oudh 385.

—S. 8—Revival of right to sue.

———*Revival of right to sue may occur when previous satisfaction is nullified.* (*Case-law fully discussed*)

Ordinarily limitation runs from the earliest time at which an action can be brought and after time has commenced to run there may be a revival of a right to sue when a previous satisfaction of the claim is nullified with the result that the right to sue which had been suspended is re-animated. Whenever proceedings are being conducted between the parties *bona fide* in order to have their natural rights and obligations in respect of a matter finally settled the cause of action for an application or for a suit the relief claimable wherein follows naturally on the result of such proceedings, should be held to arise only on the date when those proceedings finally settle such rights and liabilities (*Mookerjee and Suhrawardy, JJ.*). DWIJENDRA NATH ROY *v.* JOGES CHANDRA DE. 79 I.C. 520=39 C.L.J. 40= A.I.R. 1924 Cal. 600.

—S. 8—Right to extension.

———Where any Court is of opinion, on the true construction of a document, that it is taken in the name of a minor or in the name of a minor acting by his guardian, then the minor has got three years from attaining his majority within which to bring his suit on the document. But if on the other hand, a Court is of opinion that the document is taken solely by the guardian, then that extended period would not be open for the benefit of the minor. 28 Mad. 205, *Dist.*; A I.R. 1924 Bom. 468, *Expl.*; 10 Bom. 241, *Foll.* (*Marten, C. J. and Percival, J.*). PANDHARINATH MANIKSHETH *v.* AJAMKHA SARDARKH. 100 I.C. 95=50 Bom. 831= 28 Bom. L.R. 1431=A.I.R. 1927 Bom. 61.

—S. 9—Appointment of Receiver.

———Where the Receiver, or the Proprietors, or both jointly, could take steps to recover *khas* possession,

Held, the mere appointment of a Receiver could not prevent the statute of limitation running. (*Chatterjea and Panton, JJ.*). PANHAJ MOHAN RAI *v.* BIPIN BEHARI CHAKLADAR. 76 I.C. 511= 38 C. L. J. 220=A.I.R. 1924 Cal. 118.

—S. 9—Execution proceedings.

———Under the Indian Law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted when the decree on appeal is one of dismissal.

Where a decree-holder purchases a property in execution but loses possession of the same in a separate suit by a third party, his fresh application for execution or for revival of execution, if one is maintainable, must be filed within three years of the trial Court's decree. (*Sulaiman and Banerji, JJ.*). SALIG RAM MISIR *v.* LACHMAN DAS. 107 I.C. 42=50 All. 211=25 A.L.J. 937= A.I.R. 1928 All. 46.

———*Injunction ordered by High Court conditionally on paying interest from dismissal of suit—Time for recovering interest runs from dismissal of suit.*

The respondents filed a suit calling in question the validity of petitioner's decree against a common debtor *N* and for an injunction to prevent petitioner from drawing an amount deposited by *N*. The respondent's suit was dismissed by the Subordinate Judge on 22nd December, 1915, and the High Court ordered a new trial on 19th October, 1916. Previously on 28th January, 1916, the High Court granted an injunction on condition that the respondents paid 9 per cent. interest to the petitioner from 22nd December, 1915, the date of the dismissal of their suit by the Subordinate Judge. On 28th October, 1919, the High Court finally dismissed the respondents' suit. On 1st October, 1920 the injunction was dissolved on an appeal to the Privy Council being abandoned. The petitioner applied for execution together with 9 per cent. interest on 23rd February, 1922.

LIMITATION ACT (1908), S. 9—Reversioners.

The appellant clearly could, from 22nd December, 1915 to 19th October, 1916 (at least) the date when the High Court ordered a re-trial, seek execution. It is extremely doubtful whether having regard to S 9, Limitation Act, any deduction ought to be made in favour of the appellant and the application must fail on the point of limitation. 27 All. 334, (P.C.); 28 Mad. 50 and A.I.R. 1919 P.C. 55 (P.C.), *Dist.* (*Odgers and Curgenven, JJ.*). VENKATARAMA AYYAR *v.* S. I. BANK OF TINNEVELLY. 104 I.C. 750=1927 M.W.N. 529=39 M.L.T. 394= A. I. R. 1927 Mad. 927.

———Where the creditor fails to execute decree, the time taken to prove his will cannot be excluded in calculating the period for execution of decree (*Duckworth, J.*). F.N. BROWN *v.* G.H. PAUL. 79 I.C. 284=1 Bur. L.J. 192= A. I. R. 1923 Rang. 98.

—S. 9—Exemptions.

———Exemptions not covered by Ss. 9 and 14 and the other sections should not be imported by Courts to relieve a party from the bar of limitation. (*Abdul Raoof and Moti Sagar, JJ.*). HUKAM CHAND *v.* SHAHAB DIN. 71 I.C. 495= 4 Lah. 90=A.I.R. 1924 Lah. 40.

—S. 9—Reversioners.

———The right to sue for a declaratory decree is vested in the whole body of reversioners in existence at the time of alienation jointly and severally and time begins to run simultaneously against them all and no subsequent disability stops it. 22 All. 33 (F.B.), *Diss.*; 21 P.W.R. 1907; 22 P.R. 1907; 41 Mad. 659 (F.B.), *Foll.* (*Broadway and Jai Lal, JJ.*). CHIRAGH DIN *v.* ABDULLAH. 90 I.C. 1022=26 P.L.R. 695= A.I.R. 1925 Lah. 654.

———*Suit for possession—Time, once it begins to run cannot stop running.*

The father of plaintiff filed a suit during the lifetime of the widow to set aside alienations by her. The suit was held to be not maintainable as he was held not to be the nearest heir, but another *B*. After the widow's death *B* brought a suit to recover possession of the properties. But he was found not to be a reversioner at all. Then plaintiff filed another suit for possession of the properties more than 12 years after the death of the widow,

Held, that limitation when it once begins to run cannot stop running except in the particular exception mentioned in S. 9 of the Limitation Act. 35 All. 227, *Foll.* (*Phillips and Ramesam, JJ.*). V. RANGANATHA RAO *v.* RAMA PANDITHAR. 70 I.C. 446=16 M.L.W. 529= A.I.R. 1923 Mad. 108=44 M.L.J. 87.

———*Suit to declare an adoption invalid—Nearest reversioner forbearing to sue—Suit by next reversioner, born after adoption—No fresh cause of action.*

A suit for a declaration that an adoption is invalid is a representative suit which the nearest reversioner is entitled to bring on behalf of the whole body of reversioners, born and unborn, within

LIMITATION ACT (1908), S. 9—Scope and effect.

the period prescribed in Art. 118, and time begins to run from the time the adoption becomes known to the plaintiff.

The fact that the nearest reversioner did not bring the suit because he had been bribed to give his consent to the adoption and that the next reversioner was born after the alleged adoption and before the suit had become barred under Art. 118, would not give him any fresh cause of action or stop time running which had begun to run against the whole body of reversioners from the date of the adoption. (*Wallis, C.J. and Seshagiri Aiyar, J.*). POLEPEDDI VENKATA SHIVAYYA *v.* POLEPEDDI ADEMMA. **60 I.C. 98=44 Mad. 218= A.I.R. 1921 Mad. 380.**

—S. 9—Scope and effect.

———Section 9 prescribes that once time has begun to run, no subsequent disability or inability to sue stops it. (*Sulaiman and Banerji, JJ.*). RUP KISHOR *v.* PATRANI. **25 A.L.J. 861= A.I.R. 1927 All. 818.**

—S. 9—Succession of limited owner.

———Limitation having once commenced to run in the lifetime of a full owner cannot be taken to be suspended if he dies and is succeeded by a limited owner. (*Adami and Sen, JJ.*). MT. BATISA KUER *v.* RAJA RAM PANDEY. **92 I.C. 177=5 Pat. 441= 7 P.L.T. 393=1925 P.H.C.C. 343= A.I.R. 1926 Pat. 192.**

—S. 10—Adverse possession.

———Where trust property is being adversely possessed, a suit to follow such property in the hands of the adverse possessor will be barred after 12 years. The exception in S. 10 shows that the claim may be defeated by adverse possession. (*Lord Buckmaster.*) SUBBIYA *v.* MD. MUSTAFA. **74 I.C. 492=40 C.L.J. 20=2 Pat. L.R. 104= 18 M.L.W. 903=21 A.L.J. 730=50 I.A. 295= 25 Bom. L.R. 1275=28 C.W.N. 433= 46 Mad. 751=33 M L.T. 285=1924 M.W.N. 26= 4 L.R.P.C. 180=A.I.R. 1923 P.C. 75= 45 M.L.J. 588=45 M.L.J. 763 (P.C.).**

———*No tacking is allowed between persons standing in entirely different categories.*

The executor appointed by will (but who had not taken probate) mortgaged for his own benefit the *debutter* property which according to the Will was not to be alienated on any account and the property was purchased at the sale in execution of mortgage decree by defendant. Plaintiff was granted letters of administration so far as the *debutter* property was concerned and he sued for possession of the property,

Held, the defendant against whom the suit was in time cannot be allowed to contend that the possession of the mortgagor (executor) was adverse to the *debutter* and to tack on to his own possession. He was clearly a person in whom the estate became vested in trust for a specific purpose within the meaning of S. 10 of the Limitation Act. The adverse possession of a person so situated in relation to the *debutter* estate is fundamentally different in quality from the hostile holding of a stranger claimant and it would obviously be unsound on principle to tack together the possession of persons who stand in entirely different categories. There is no cause of action until there is a party capable of suing, so that the Statute of Limitation began to run from the time of granting the letters of administration. (*Mukerjee and Cuming, JJ.*). CHARU CHANDRA

LIMITATION ACT (1908), S. 10—Applicability.

PRAMANIK *v.* NAHESH CHANDRA KUNDU. **74 I. C. 630=50 Cal. 49=36 C.L.J. 35= A. I. R. 1923 Cal. 1.**

—S. 10—Agreement amounting to trust.

———*Liability of Government of India to pay principal and interest on behalf of deposed Rajah of Tanjore is in the nature of trust.*

The plaintiff sued to recover money due on a bond, dated 28th July, 1815, under which the Governor in Council promised on behalf of the East India Company to pay certain principal and interest to one *M*, and his successors in title. The said *M* represented a creditor of the deposed Raja of Tanjore whose debts so far as they had been proved to the satisfaction of the Company under a commission appointed for the purpose, the Company took over, and for the due payment of which they made themselves responsible,

Held, that the obligation to pay was in the nature of trust, that an assignee from the heir of *M*, was entitled to get principal and interest from the Government up to the date of payment, and that S. 10 of the Limitation Act applied. (*Schwabe, C. J. and Wallace, J.*). SECY. OF STATE *v.* RADHIKA PRASAD. **74 I. C. 785=46 Mad. 259= 18 M.L.W. 210=A.I.R. 1923 Mad. 667= 44 M.L.J. 685.**

—S. 10—Alienation by Mahant.

———The limitation for a suit for possession of endowed property by a successor in office of a Mahant who alienated the endowed property runs from the date of the latter's death, as the Mahanth had a life-estate in the endowed properties and time did no begin to run until his death. (*Jwala Prasad, A.C.J. and Das, J.*). RAM PADARATH SINGH *v.* MAHANATH BASDEO DAS. **63 I.C. 231= 3 Pat. L.T. 264=1922 P. H. C. C. 188= A.I.R. 1922 Pat. 178.**

—S. 10—Alienation by trustee.

———A trustee cannot convey a valid title to the transferee and, therefore, Art. 134 does not apply to a suit for the recovery of the temple property, improperly alienated by the trustee. A I.R. 1922 P.C. 123 (P. C.), *Foll.*; 37 Cal 885 (P.C.) and 23 Mad. 271 (P. C.), *Diss.* (*Devadoss and Waller, JJ.*). RAMA REDDY *v.* RANGA DASAN. **96 I.C. 371=49 Mad. 543=23 M L W 657= A.I.R. 1926 Mad. 769=50 M.L.J. 589.**

—S. 10—Alienation of wakf property.

———Article 144 and not Art. 134, governs a suit to set aside an alienation by a Mutawali of ordinary *waqf* property gifted for general pious or religious purposes. Section 10 controls Art. 134 of the Limitation Act of 1908. It clearly shows that the Article refers to cases of specific trust and relates to property "conveyed in trust" There is under Hindu and Muhammadan Law, a distinction between a specific trust and a trust for general religious or charitable purposes. (*Scott Smith, J.*). DIWAN SINGH *v.* SHAM DAS. **65 I C. 722= A. I. R. 1922 Lah. 271.**

—S. 10—Applicability.

———Where the defendant does not purport to hold the property in a manner adverse to trust, and the plaintiffs do not purport to bring their suit either as beneficiaries under the trust, or on behalf of the trust, but for their own personal right to manage or in some way to control the management of the endowment, S. 10 does not apply. 6 All. 1 (P.C.), *Appl.* (*Page, J.*). AURUBINDO NATH *v.* MONORAMA DEBI. **112 I.C. 496=55 Cal. 903=32 C.W.N. 913= A.I.R. 1928 Cal. 670.**

LIMITATION ACT (1908), S. 10—Applicability.

———*Fresh suit based on failure of Trustee to reduce property to possession, S. 10 does not apply.*

If a trustee held money which he ought to have held as trustee in another capacity, he could not be heard to say that he held it in the other capacity and not in the capacity of a trustee, and therefore, in such a case S. 10 would apply and prevent him from relying on the Limitation Act. But a suit based on the failure of a trustee to reduce trust property into possession is barred under the Act, notwithstanding S. 10. Trustees are relieved from indefinite liability except in cases of fraud or fraudulent breach of trust or cases in respect of trust property or the proceeds thereof still retained by trustee or previously received by them and converted to their own use. 27 Mad. 192 and 29 Mad. 283, *Ref.* (*Schwabe, C.J. and Odgers, J.*). C. DORAIVELU MUDALIAR *v.* AUDIKESAVALU NAIDU.

70 I.C. 87=1922 M W.N. 620=
A.I.R. 1922 Mad. 409.

———Section 10 does not apply to obligations in the nature of trusts under Chapter 9 of the Trusts Act. Where money is paid by a trustee in breach of the trust to creditors who receive it with the knowledge of the breach of trust, a suit by beneficiary to recover the money from the creditor does not fall under S. 10. The cause of action arises on the date of the payment. If the beneficiary is a minor at the time, he can rely on S. 6 of the Limitation Act, but there will be no fresh cause of action on his attaining majority. *Soar* v. *Ashwell*, (1893) 2 Q.B. 390, *Ref.* (*Wallis. C.J. and Sadasiva Aiyar, JJ.*). RAJAH OF RAJESWARA DORAI *v.* PONNUSWAMI TEVAR.

61 I C. 907=44 Mad. 277=13 M L.W. 56=
1921 M.W.N. 37=A.I.R. 1921 Mad. 125=
40 M. L. J 52.

—S. 10—Assignment for valuable consideration.

———Section 10 does not apply to a suit against assigns for valuable consideration. (*Stuart and Daniels, JJ.*). HULASI *v.* BABA NARAIN DAS.

89 I.C. 483=6 L. R. A. Civ. 384=
A. I. R. 1925 All. 822.

—S. 10—Constructive trust.

———*Applicability to constructive trusts.*

Per *Dawson Miller, C. J.*—Where a person directs another to acquire property for him (the person directing) and furnishes some money for the purpose but after some time he withdraws from the venture completely but the person directed continues his exertions and entirely as their result, acquires the property; there is only a constructive trust and S. 10 does not apply.

Per *Mullick, J.*—There is no trust at all in such a case and limitation begins to run from the date of the withdrawal of the principal. (*Dawson-Miller, C.J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PRASAD. 93 I.C. 454=8 P.L.T. Sup. 1=
A.I.R. 1925 Pat. 68.

———*Where trust is only a constructive one and S. 10 does not apply.*

In a case where the plaint lands were purchased with the plaintiff's money and in the sale-deed taken by defendants 1 and 2 in their own names there is a recital that the purchase was on behalf of the plaintiff, and defendants were receiving the rent of the lands subsequently, it is difficult to infer the existence of an express trust or anything other than a constructive trust. (1893). L. R. 2 Q. B. 393, *Dist* ; A.I.R. 1921 Mad. 125, *Referred to*

This case being one of a constructive trust or of an obligation in a nature of a trust as the Trusts Act calls it, falling under Chapter IX, S. 10 of the Limitation Act has never been held to apply to such cases. (*Krishnan and Odgers, JJ.*). KRISHNAN PATTER *v.* LAKSHMI. 66 I.C. 858=
43 Mad. 415=1922 M.W.N. 117=
30 M.L.T. 238=16 M.L.W. 886=
A.I.R. 1922 Mad. 57=42 M.L.J. 119

LIMITATION ACT (1908), S. 10—Express trust, what is.

—S. 10—Co-sharers.

———Section 10 of the Act does not apply to a suit by one co-sharer against other for mesne profits as it cannot be said that the defendant co sharers in possession have been holding the profits in trust for a specific purpose within S. 10 of the Act. (*Leslie-Jones and Broadway, JJ.*). SHAMS-TN-NISA *v.* YAKUB BAKSH. 61 I. C. 393=3 U.P L.R. Lah. 53.

—S. 10—Director of company.

———Whether a director whose acts are the subject of construction was a trustee or a partner or an agent to the Company or to the body of shareholders is to be determined according to the circumstances of each case. (*Abdul Raoof and Fforde, JJ.*). DAULAT RAM *v.* BHARAT NATIONAL BANK LTD. 79 I.C 740=5 Lah. 27=
A. I.R. 1924 Lah. 435.

———Section 10 of the Limitation Act does not apply to directors of companies as they are not persons in whom the property of the company is vested, as is contemplated by S. 10 This section applies to cases of express trusts only. (*Shadi Lal, C.J. and Abdul Qadir, J.*). BANK OF MULTAN LTD. *v.* HUKAM CHAND. 71 I.C. 899=
A.I.R. 1923 Lah. 58.

—S. 10—Execution against trustees.

———So long as the original trustees are not removed, and they remain in control of the property it cannot be contended that they are not the proper judgment-debtors to be on record in the execution petition. The crucial date on which the trustees cease to be actual judgment debtors is that on which they are ousted from the control of the trust property. (*Wallace, J.*). PARAKKAT DEVASWOM *v.* VENKATACHALAM. 92 I C. 709=
23 M.L.W. 22=A.I.R. 1926 Mad. 321=
50 M.L.J. 153.

—S. 10—Executor and Receiver.

———Where a suit is filed by executors under a will for the recovery of properties left by the testator and some of the properties are in the hands of Receiver appointed by the Court, the Receiver holds the properties subject to the order of the Court for the benefit of those entitled under the will and there can be no question of limitation as regards such properties. (*Wallis, C.J. and Ramesam J.*). SEERANGATHUNI *v.* VAITHILINGA MUDALIAR. 63 I.C. 104=13 M.L.W. 392=
1921 M.W.N. 248=A.I.R. 1921 Mad. 528=
40 M.L.J. 532.

—S. 10—Express trust, what is.

———Where, pending disposal of a criminal case, property was entrusted to the sipurdar and the reversioners of the owner sued for recovery of the property after seven years,

Held, on construction of the document that the case was one of express trust and S. 10 applies. (*Raza, J.*). AKBAR SINGH *v.* RAJ BAHADUR SINGH.

101 I.C. 427=A.I.R. 1927 Oudh 614.

———Per *Mullick, J.*—It is not necessary that an express declaration should be proved. Inferences can be drawn from the conduct of the parties sufficient to establish an express trust. (Contra *Foster, J.*). (*Dawson Miller, C. J., Mullick and Foster, JJ.*). HARI HAR PRASAD *v.* KESHO PRASAD. 93 I. C. 454=8 P.L.T. (Sup.) 1=
A.I.R. 1925 Pat. 68 (F.B.).

LIMITATION ACT (1908), S. 10—Express trust, what is.

——Two Mahomedan brothers executed a partition deed wherein they stated that their deceased brother entrusted to them a certain amount which one of the two executants undertook to pay to plaintiff on his attaining majority with interest at ¾ per cent.,

Held, that an express trust was created in favour of plaintiff and the amount was not a deposit : 1 L.W. 577 ; A. I. R. 1922 Mad. 57, *Dist.*

Held further, that the partition deed evidenced and acknowledged the trust already created by the deceased brother. (*Devadoss, J.*). MUHAMMAD MATHAR ROWTHAN *v.* KASA ROWTHAN.

85 I.C. 508=20 M L.W. 546=1924 M.W.N. 876= A.I.R. 1924 Mad. 920.

—S. 10—Joint Hindu family.

——Section 10 does not apply to suits for accounts against manager of joint family by a member thereof. Article 120 applies to such suits. (*Chaudhuri and Newbould, JJ.*). BISWAMBHAR HALDAR *v.* GIBIBALA DASI. **25 C.W.N. 386= A.I.R. 1921 Cal. 571.**

—S. 10—Lease by shebait.

——*Lease by a trustee for no necessity is not valid beyond his life—Transfer by a trustee is not governed by Art.* 134 *or* 144 *of the Act and new shebait can eject transferee.*

The language of S. 10 of the Limitation Act gives the clue to the meaning and the applicability of Art. 134. It clearly shows that the article refers to cases of specific trust, and relates to property "conveyed in trust." Neither under the Hindu Law nor in the Mohamedan system is any property "conveyed," to or vested in a *shebait* or *mutwali*, in the case of a dedication. Therefore alienation made by either cannot be treated as an alienation made by a trustee under S. 10. A lease without justification granted by the head of the mutt is valid for his life, and if adopted by his successor would endure during his term of office; but neither the original alienation nor the subsequent adoption would create a bar by adverse possession. Possession of the lessee becomes adverse to the successor only on his accession to the office. (*Mr. Ameer Ali.*) VIDYA VARUTHI SWAMIGAL *v.* BALUSWAMI AYYAR. **65 I.C. 161= 15 M. L.W. 78=3 Pat. L.T. 245= 26 C. W.N. 537=20 A. L.J. 497= 24 Bom. L.R. 629=30 M.L.T 66= 48 I.A. 302=44 Mad. 831=1921 M.W N. 449= A.I.R. 1922 P.C. 123=41 M.L.J. 346 (P C.).**

—S. 10—Legal representative of co-trustee.

——Suit by co-trustee against legal representatives of his co-trustee for recovery of trust property is governed by Art. 120. Section 10 does not apply to such a case. (*Kemp, J.*) JAMUNADAS GORDHAN DAS *v.* DAMODAR DAS. **103 I.C. 225= 29 Bom.L.R. 418= A.I.R. 1927 Bom. 424.**

—S. 10—Principal and agent.

——Section 10 applies only in the presence of a trust between the parties, it does not apply to a suit by principal against his agent. (*Baker, J. C. and Prideaux, A.J.C.*) BHAIYALAL *v.* RAI BEHARILAL. **81 I.C. 505= A.I.R. 1925 Nag. 115.**

—S. 10—Property subsequent to trust.

——It is open to a person to create a trust empowering another to go to a certain place for the purpose of acquiring land for him and the land so acquired would become vested in the trustee from the moment of its acquisition and the trust would fasten to that land exactly as if it had been vested in the trustee at the moment of the creation of the trust. (*Dawson-Miller, C. J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PHASAD. **93 I.C. 454=5 P L T. Sup. 1= A.I.R. 1925 Pat. 68 (F.B.).**

—S. 10—Receiving and holding property.

——*Duty of receiving property and holding it for another can only be discharged by handing it over to the person entitled and not by appealing to the lapse of time.*

Where the duty of persons is to receive property, and to hold it for another, and to keep it until it is called for, they cannot discharge themselves from that trust by appealing to the lapse of time. They can only discharge themselves by handing over that property to somebody entitled to it. Nor can it make any difference whether the duty arises from contract or is connected with some previous request, or whether it is self-imposed and undertaken without any authority whatever. If it be established that the duty has in fact been undertaken and that property has been received by a person assuming to act in a fiduciary character, the same consequences must in every case follow. *Burdick* v. *Garrick*, (1870) 5 Ch. 343 and *Lyell* v. *Kennedy*, (1889) 14 A.C. 437, *Foll.* (*Das and Ross, JJ.*). KHURSAIDI BEGUM *v.* SECY. OF STATE. **94 I.C 433=5 Pat. 539=7 P.L.T. 679= 1926 P.H.C.C. 145= A.I.R. 1926 Pat. 321.**

—S. 10—Recovering property from trustee.

——There is no limitation for suits for recovery of property from trustees. (*Mukerjee and Dalal, JJ.*). BEHARI LAL *v.* SHIV NARAIN. **84 I. C. 631= 22 A.L J. 866=5 L R.A. Civ 697= 47 All. 17= A. I. R. 1924 All. 884.**

—S. 10—Scope.

——An executor *do son tort* does not come within the purview of S. 10 for that section is confined merely to what are called express trustees and has no application to such trusts as the law implies merely from the existence of particular facts or fiduciary relations. A. I. R. 1921 Mad. 125; A. I. R. 1924 All. 884; 94 P. R. 703; 2 Pat. L. J. 642; 7 M. L. T. 143 ; *Re Lacy*, (1899) 2 Ch. 149 and A. I. R. 1927 Lah. 773, *Rel. on*; 24 C. W. N. 752 and A.I.R. 1924 Cal. 160, *Dist.* (*Fforde and Tek Chand, JJ.*). H. P. ROBSON *v.* ADMR GL., PUNJAB. **30 P L.R 503= A.I.R. 1929 Lah. 753.**

——Section 10 is confined to cases in which property has become vested in trust for any specific purpose and excludes from its operation such trusts as the law would imply merely from the existence of particular facts or fiduciary relations. (*Shadi Lal, C.J. and Le Rossignol, J.*). MT. KISHAN DEI *v.* RAM CHAND. **105 I.C. 721=26 P.L.R. 288= A.I.R. 1927 Lah. 773.**

——To a suit for accounts against a trustee *de son tort* S. 10 will not apply, for it applies to cases of express trust. 44 Mad. 277; 45 Mad. 419, *Foll.*; 24 C.W.N. 752, *Not. foll.* (*Mukerji and Dalal, JJ.*). BEHARI LAL *v.* SHIV NARAIN. **84 I.C. 631= 22 A.L.J. 866=5 L.R A. Civ. 697= 47 All. 17=A.I.R. 1924 All. 884.**

—S. 10—Specific purpose.

——The words "for any specific purpose" merely indicate an express trust, *i.e.*, a trust that is not constructive or one arising by implication of law, or such that there is no doubt as to its specified terms nor any uncertainty as to affirming them. 32 Bom. 394; A.I.R. 1922 P.C. 212, *Rel. on*; A.I.R. 1925 Rang. 289, *Dist.* (*Dalal, J.*). LACHHMI PRASAD *v.* GANESH DIN. **A.I.R. 1930 All. 96.**

——The expression "trust for any specific purpose" is merely a more expanded mode of ex-

LIMITATION ACT (1908), S. 10—Specific purpose.

pressing the same idea as that conveyed by the term "express trust of the English Law," both the terms being synonymous in meaning and thus the section excludes from its operation such trusts as the law would imply merely from the existence of particular facts or fiduciary relations. 31 Bom. 222; 4 Cal. 455; A.I.R 1923 Mad 667; A.I.R. 1925 Rang. 289 and A.I R. 1927 Lah. 773. *Rel. on.* (*Kinkhede, A.J.C.*). GANRISHANKAR *v.* IBRAHIM ALI.

116 I.C. 70=A.I.R. 1929 Nag. 298.

———A specific purpose, within the meaning of S. 10, must be a purpose that is either actually and specifically defined in the terms of the will or the settlement itself, or a purpose, which, from the specified terms, can be certainly affirmed.

The purpose of following the property in the hands of the trustees referred to at the end of S. 10 must be the purpose of restoring it to the trustee which is specified in the earlier part of the section. A.I.R. 1922 P.C. 212 (P.C.), *Foll.* (*Fawcett and Patkar, JJ.*). MAHOMEDSA KHADERSA *v.* KHADIRSA HAJISA. 103 I.C. 418=29 Bom. L.R. 241=A.I.R. 1927 Bom. 398.

—S. 10—Suit by co-trustee.

———The words of S. 10, are wide enough to cover a case by one of two trustees who claims against the other that the property ought to be held by the two. (*Schwabe, C. J. and Coutts-Trotter, J.*). SHANMUGAPPA *v.* SANGARAYA CHETTY.

74 I.C. 120=18 M.L.W. 907=33 M.L.T. 225=1924 M. W. N. 90=A.I.R. 1924 Mad. 125.

—S. 10—Suit for accounts.

———*In an express trust part of trust money misappropriated by the trustee—Suit for account and refund of the amount is not barred by lapse of time.*

Where on the death of her husband in 1904, a widow handed over a certain sum of money to her brother for the benefit and education of her two sons and the brother applied part of the trust moneys for that purpose but put the balance amounting to Rs. 1,600 and upwards into his pocket. On his death, his representatives were called on to refund this balance and to account,

Held, that the money being vested for specific purpose a suit for account and refund of the trust property cannot, according to S. 10, Limitation Act, be time-barred by lapse of time. 32 Bom. 394, *Rel. on.* (*Marten, C. J. and Crump, J.*). CHINTAMAN *v.* KHANDERAO. 107 I.C. 705=52 Bom. 184=30 Bom.L.R. 45=A.I.R. 1928 Bom. 58.

—S. 10—Suit for remuneration.

———*Suit to recover remuneration as dwaris of temple is not covered by S.* 10.

A suit by the dwaris of a temple for recovery of certain dues claimed by them as payable as remuneration in respect of their services in connexion with the temple is not a suit covered by S. 10. Such a suit is governed by Art. 120 and neither by Art. 102 nor by Art. 131.

There is a vast distinction between a suit brought to establish a periodically recurring right and a suit brought to enforce payments due as remuneration for the performance of services arising out of that right. Article 131, was intentionally drafted so as to include merely a suit to establish a right. 38 Mad. 916 (F.B.); 34 Bom. 349 and 34 All. 246, *Disc.* (*Dawson-Miller, C.J. and Foster, J.*). BAIDYANATH JIV *v.* HAR DUTT DWARI.

95 I.C. 826=5 Pat. 249=7 P.L.T. 465=1926 P.H.C.C. 1=A.I.R. 1926 Pat. 205.

LIMITATION ACT (1908), S. 10—Trustee, who is.

—S. 10—Suit for scheme of management.

———Where the plaintiffs bring a suit not to assert their own individual rights but on behalf of the general public, who are interested in the institution, for the settlement of a proper scheme of management of the charities and for other reliefs,

Held, there is no limitation, against such a suit. (*Spencer and Devadoss, JJ.*). GOPU NATARAJA CHETTY *v.* RAJAMMAL. 69 I C. 15=16 M.L.W. 122=1922 M.W.N. 464=31 M.L.T. 125=A.I.R. 1922 Mad. 394=43 M.L.J. 448.

—S. 10—Trustee, who is.

———The shebait under the Hindu Law is not a trustee for the idol and no legal estate vests in him. He is only a manager of the estate bestowed upon the idol which is the real owner. A.I.R 1922 P.C. 123; 13 M.I.A. 270 (P.C.); and 27 C.L.J. 605, *Rel. on.* Limitation Act. S. 10 does not apply to a suit for accounts against him. (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVATI RAMAN ACHARYA. 114 I.C. 734=1929 A.L.J. 229=A.I.R. 1928 All. 689.

———*The position of a mutawali is not that of a trustee within S.* 10.

A mutawali or custodian of the endowed property of the temple may, in a general way, be described as a "trustee"—a person in a position of trust with respect to the administration of the temple properties—but no property is vested in him upon trust for any specific purpose. Therefore his position is not that of the express trustee referred to in S. 10, Limitation Act. Whatever sums, therefore, he has received for and on behalf of the idol installed in the temple can be treated only as sums received to the use of the idol, and a suit to recover the money so received is governed by Art. 62. A.I.R. 1922 P.C. 123, *Foll.* (*Mears, C.J. and Lindsay, J.*). JAISHATH MADHO *v.* THAKUR SHI GAT. 108 I.C. 452=50 All. 265=25 A.L.J. 1047=A.I.R. 1928 All. 134.

———There is no authority for converting an executor into a trustee by anything like a performance of his duties *qua* executor. (*Kemp, J.*). JAMNADAS GOVARDHANDAS *v.* DAMODHAR DAS CHUNNILAL. 103 I.C. 225=29 Bom L.R. 418=A.I R 1927 Bom. 424.

———An executor though not a trustee for specific purpose is a trustee with a fiduciary character even as regards, the next of kin. (*N. R. Chatterjee and Panton, JJ.*). PRAYAG KUMARI DEBI *v.* SIVA PRASAD SINGH. 93 I.C. 385=42 C.L.J. 280=A.I.R. 1926 Cal. 1.

———The mere fact that a person comes to land which originally may have been trust property for an idol and places on that land a new namghur and sets up a new idol, does not constitute him a trustee *de son tort* for the original idol that was upon the land and S. 10 does not apply to such a case. 29 Bom. 267, *Distinguished.* (*Greaves and Cuming, JJ.*). ANANTA DEV ADHIKAR GOSWAMI *v.* JOYDEB SARMA. 89 I.C. 133=A.I.R. 1925 Cal. 1254.

——— *Person obtaining jewels under promise to give them to plaintiff is a trustee as per S.* 10.

By some agreement the jewels in question which had been pleged to a third person were settled on the plaintiff to be enjoyed by her during her life without power of alienation and upon her death to be divided between the defendant and other parties to the agreement. At the time the document was executed there was an express promise by the defendant that he would within ten days obtain the

LIMITATION ACT (1908), S. 10—Vesting of property in trustee.

jewels and deal with them in accordance with the document. The defendant got the jewels from the pledgee but did not hand them over to the plaintiff.

Held, that defendant was 'trustee' within S. 10. The phrase "trust for a specific purpose" in this section is merely a more expanded mode of expressing the same idea conveyed by "express trust" in English Law: and it is used in this section in contradistinction to "trusts arising by implication of law, trusts resulting and trusts constructive." The word "vested" in S. 10 means nothing more than properly having control of the property. (*Schwabe, C.J. and Wallace, J.*). KISHTAPPA *v.* LAKSHMI AMMAL. **72 I.C. 842=17 M L W. 487=32 M.L T. 217=1923 M W N. 284=A.I.R. 1923 Mad. 578=44 M.L.J. 431.**

—S. 10—Vesting of property in trustee.

———*Property is not conveyed to shebait under Hindu Law nor to muttawali under Muhammadan Law, and no property vests in them.*

For this section two conditions must combine, *viz.*, the trust must have been created for some specific purpose and the property must have become vested in the trustee with the object of carrying that purpose into effect. Neither under the Hindu Law nor in the Muhammadan system is any property conveyed to a shebait or muttawalli in the case of a dedication. Under the Muhammadan Law the moment *wakf* is created all rights of property pass out of the *wakf* and vest in God Almighty; the curator, whether called mutawalli or sajjadanishin or by any other name, is merely a manager. He is certainly not a 'trustee' as understood in the English system. A.I.R 1922 P. C. 123, *Foll.* Section 10 has no application to the case of an endowment in which there is a dedication in favour of the deity. (*Suhrawardy and Mukerji, JJ.*). GANGAPRASAD CHAUDHURI *v.* KULADANANDA ROY. **94 I.C. 235=44 C.L.J. 399=30 C.W.N. 415=A.I.R. 1926 Cal. 568.**

———*Taking charge and managing of minor's property creates constructive trust and property does not vest in the person taking charge.*

The plaintiff while a minor inherited certain property which the defendant her father, took charge of and managed for her. On suit by minor after attaining majority,

Held, that as a minor cannot create a trust the position was that the defendant, as the plaintiff's father, had taken charge of her property and managed it for her and that therefore there was in fact no trust in that case.

Held also, that as the Indian Trust Act in Chapter IX treats constructive trusts not as trusts but as "obligations in the nature of trusts" and that as the defendant was not a trustee but by his acts had only incurred obligations similar to those of a trustee the provisions of S. 10 of the Limitation Act would not apply. 18 Bom. 119, *Foll.*

The word "vest" implies that the property becomes; in law the property of the trustee. 20 Cal. 51; 44 Mad. 277 and 84 P.R. 1891, *Foll.*; 31 Bom. 418, *Diss.* (*Carr and Brown, JJ.*). MA THEIN MAY *v.* U PO KIN. **86 I.C. 297=3 Rang. 206=A.I.R. 1925 Rang. 289.**

—S. 10—Village pasture lands.

———Where village pasture lands were enjoyed by the *khatedars* as trustees for the villagers a suit by the villagers for possession of the lands from the *khatedar* is not barred by any period of limitation. (*Prideaux, A.J.C.*). NAMDEO *v.* KESHEE. **A.I.R. 1923 Nag. 90.**

LIMITATION ACT (1908), S. 12—Day of judgment or decree.

—S. 12.

Applicability.
Day of judgment or decree.
Decree later than judgment.
Holidays.
Judgment other than appealed from.
Leave to appeal to Privy Council.
Separate application for judgment and decree.
Time requisite.
Unnecessary copies.
Miscellaneous.

—S. 12—Applicability.

———Section 12 does not apply in computing the periods of limitation prescribed for an application under S. 18 (1). Land Acquisition Act, 1894. 79 P.R. 1904, *Foll.* (*Broadway, A. C. J. and Bhide, J.*). NAFISUDIN *v.* SECY. OF STATE. **104 I.C. 397=A. I. R. 1927 Lah. 858.**

———Sections 12 and 14 are only applicable to suits in British India and not to proceedings in foreign Courts. 35 Bom. 139 and A.I.R. 1925 Nag. 321, *Rel. on.* (*Harrison and Addison, JJ.*). HARRISON *v.* MD. SAID. **102 I.C. 523=8 Lah. 54=A I.R. 1927 Lah. 200.**

———Section 12 (4) applies to an application to the Collector to refer a matter to the Court and the applicant is entitled to exclude the time requisite for obtaining the copy of the Collector's award. (*Maung Gyi, J.*). H. N. BURJORJEE *v.* SPECIAL COLLECTOR OF RANGOON. **96 I.C. 110=5 Bur. L.J. 23=A.I.R. 1926 Rang. 133.**

———The provisions of S. 12 are applicable to the pauper appeals. (*Abdul Raoof, J.*). ASHRAF ALI *v.* RAMESHWAR NATH. **77 I.C. 908=A.I.R. 1923 Lah. 684.**

———Where accused was convicted and sentenced to 4 years' rigorous imprisonment and fine,

Held, that the appeal from the sentence lies to the Special Judge and not the High Court. Since Act X of 1922, S. 12 of the Limitation Act has been made applicable to this act also. Time for obtaining copies may be exoluded. (*Oldfield and Ramesam, JJ.*). MITTOR MOIDEEN *v.* EHRE. **71 I.C. 217=16 M.L.W 764=24 Cr. L.J. 89=A.I.R. 1923 Mad. 95=43 M.L.J. 561.**

———Rule 2, Chap. 7 of the Patna High Court Rules, exoludes the applicability of S. 12 of the Limitation Act to appeals under Cl. 10 of the Letters Patent. (*Dawson-Miller, C.J. and Mullick, J.*). DEOKI LAL *v.* RAMANAND LAL. **59 I.C. 179=2 P. L. T. 42=A.I.R. 1921 Pat. 365.**

—S. 12—Day of judgment or decree.

———The date of decree means the date when the judgment is signed and not the date when the decree is signed. (*Hallifax and Kotval A.J.Cs.*). KHWAJA KUTUBUDDIN *v.* KHWAJA GULAM RABBANI. **94 I. C. 121 (Nag.).**

———Where application for copies is made on the same day the judgement is pronounced, that day cannot be excluded twice, once as the day on which judgment was pronounced and the second time as one of the days requisite for obtaining copies. The day on which judgment is pronounced has to be exoluded first and then the time requisite for obtaining copies has to be exoluded. (*Campbell, J.*). ATA MUHAMMAD *v.* PIR KHAN. **75 I C. 1055=A.I.R. 1924 Lah. 599.**

———For the purposes of limitation it is impossible to hold, that the date of judgment should be any other than that upon which judgment is pronounced in Court, when the parties know the effect

LIMITATION ACT (1908), S. 12—Decree later than judgment.

of that judgment, whether it would be necessary for them to appeal or not. (*Dawson-Miller, C. J. and Mullick, J.*). SAGARMAL MARWADI v. LACHMI SARAN MISSIR. 75 I.C. 873=1 Pat. 771= A.I.R. 1923 Pat. 129.

—S. 12—Decree later than judgment.

——The date of a decree for the purposes of the Limitation Act is the date of the judgment and time can only be allowed as time requisite for obtaining copies if the applicant or appellant has actually made an application for a copy. The time requisite for obtaining the copy cannot stop to run until the decree is actually signed. 3 L.B.R. 62 (F.B.), *Rel. on.* (*Brown, J.*). MAUNG PO KYAW v. MA LAY. 117 I.C. 231=7 Rang. 18= A.I.R. 1929 Rang. 116.

——The fact that a decree has not been drawn up is no sufficient reason for not applying for a copy of the decree. 1 S.L.R. 71. *Rel. on.* (*Percival, J.C. and Barlee, A. J. C.*). JHAMANDAS v. MT. BIBI AISHAN. 118 I.C. 212=A.I.R. 1929 Sind 206.

——The period between date of the judgment and the date of signing the decree should be excluded in computing the period of limitation. 13 Cal. 104, *Foll.*; A.I.R. 1922 P.C. 352, *Dist.* (*B.B. Ghose and Graham, JJ.*). ASHUTOSH ROY CHOWDHARY v. MONO MOHAN ROY CHOWDHURY. 97 I.C. 539=A I.R. 1927 Cal. 65.

——An applicant cannot claim as a matter of right a deduction of the period between judgment and signing of the decree, when his application for a copy has not been filed until after the signing of the decree. A.I.R. 1926 Nag. 349, *Foll.*; A.I.R. 1924 Nag. 271, *Expl.* (*Kotval, Offg. J.C., Prideaux and Mitchell, A.J.Cs.*). UMDA v. RUPCHAND. 98 I C. 1057=A. I. R. 1927 Nag. 1 (F.B.).

——Where a decree was signed the next day the judgment was pronounced, the time for filing an appeal runs from the day the judgment was pronounced. A.I.R. 1924 Nag. 271, *Expl.* (*Hallifax, A.J.C.*). DINDAYAL v. ANOPI. 97 I.C. 307= 22 N L R. 60=A. I. R. 1926 Nag. 349.

——The period between the date of judgment and the preparation of decree cannot be excluded as time requisite for obtaining a copy. A.I.R 1922 P.C. 352, *Rel. on.* (*Dalal, J.C.*). RAJA MOHAMMAD MEHDI ALI KHAN v. LAL BAHADUR SINGH. 89 I.C. 479= 12 O.L.J. 444=2 O.W.N 420= A.I.R. 1925 Oudh 600.

——There is no provision requiring a party or his pleader to move the Court to draw up a decree and mere omission to ask the Court to do that which it is the duty of the Court to do on its own motion cannot affect his right to appeal. 38 Bom. 331, *Foll.* Nor is there any obligation on the parties even to apply for a copy of the decree until the Court drew it up. 13 C.P.L.R. 78, *Diss.* (*Kinkhede, A.J.C.*). PANDU v. RAJESHWAR. 78 I.C. 936=20 N.L R. 131=A.I.R. 1924 Nag. 271.

——The period between the delivery of judgment and the preparation and signing of the decree would be excluded from the period of limitation prescribed for filing the appeal if the application for copy is made before the preparation of the decree. 1 P.L.J. 573 (F B.), *Dist.* (*Jwala Prasad and Ross, JJ.*). MOHAMMAD MOIUDDIN ASHRAF v. MOHAMMAD ISHAQ ASHRAF. 75 I. C. 263= 1 Pat.L.R. Civ. 463=A.I.R. 1923 Pat. 329.

——Appellant may be entitled to exclusion of time from date of judgment or from date of copy application up to the date of the preparation of the decree, and may also be entitled to exclude the

LIMITATION ACT (1908), S. 12—Holidays.

time taken by the copying department in preparing and delivering the copy, but he is not entitled to the exclusion of time between the date of preparation of the decree and the date of his application for copy of the decree, (*Shadi Lal, C.J. and Martineau, J.*). THE MUNICIPAL COMMITTEE, CHINIOT v. BASHI RAM. 69 I. C. 895=A.I.R. 1922 Lah. 170.

——Time requisite for obtaining a copy of the decree within the meaning of S. 12 does not begin until the actual application for a copy has been made; and if the appellant does not apply for copies until after the expiration of the period prescribed by the Limitation Act, provided copies were obtainable within that period, he is not entitled to deduct the time between the actual signing of the decree and the delivery of the judgment. 1 P.L.J. 573 (F.B.), *Overruled.* (*Dawson-Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*). JYOTINDRA NATH SARKAR v. LODNA COLLIERY CO., LTD. 62 I.C. 649=2 P.L.T. 361=6 P.L.J. 350= 1921 P.H.C.C. 177=A.I.R. 1921 Pat 175 (F.B.).

——*Delay by Court in preparation of decree should be included in the "time requisite for obtaining copy."*

Where in a suit for accounts the Court gave judgment but the preliminary decree prepared in accordance therewith was not signed by the Judge until about one year and the appellant in the meanwhile applied for a copy of the decree but failing to receive it filed an appeal without such copy:

Held, that as there was an omission of the Court to sign the decree for a long time a liberal interpretation should be given to the words "time requisite for obtaining a copy of the decree" and that there is no substantial reason for excluding, from the time requisite for obtaining copy, any part of the time between the application for a copy and the preparation of the decree. (*Fawcett, J.C. and Raymond, A.J.C.*). K.B. HARJIMAL & SONS v. FIRM OF DHANPATMAL. 62 I. C. 537= 15 S. L. R. 16=A.I.R. 1921 Sind 42.

—S. 12—Holidays.

——Provided copies of judgment and decree have not been obtained previously if the period prescribed for the presentation of an appeal expires on a day on which the Court is closed, and if the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the re-opening of the Court, whilst his right of appeal is still alive he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before expiry of that time it is not barred by limitation. 19 All. 342, *Foll.*; 25 Bom. 584; 25 Bom. 586; 2 Bom.L.R App. 22; 7 C.L.J. 50-n.; A.I.R. 1926 Lah. 121 and A.I.R. 1926 All. 111, *Ref.*; 79 P.R. 1916 *Dist.* (*Zafar Ali and Jai Lal, JJ.*). MT. ATTRI v. RAMKISHAN. 120 I.C. 169= 11 Lah. 111=31 P.L.R. 356=A.I.R. 1930 Lah. 216.

——The order rejecting the plaint was made on 4th October, 1926. The Courts closed for annual vacation on 5th October, 1926, and re-opened on 8th November, 1926. The plaintiff applied for a copy of the order on 23rd November, 1926, and the copy was furnished on the same day. The appeal was filed on the 1st December, 1926,

Held, that under the circumstances the period of vacation can be excluded and the appeal was not barred by limitation. A.I.R. 1921 Pat 175 (F.B.), *Expl.*; 1 P.L.J. 485, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). MUNSHI MAHTON v. LACHMAN LAL. 120 I.C. 765=10 P.L.T. 845= A.I.R. 1929 Pat. 615.

LIMITATION ACT (1908), S. 12—Holidays.

——Where the time for filing an appeal expires during vacation and the appellant applies for copies on the day the Court re-opens, an appeal filed on the day next after the issuing of the copies is within time. 19 All. 342 and 25 Bom 584, *Foll.* (*Carr and Maung Ba, JJ.*). MA DAN *v.* TAN CHANG SAN. **115 I.C. 667=6 Rang. 743= A.I.R. 1929 Rang. 96.**

——*Copies can be applied for when the right of appeal still subsists.*

Time for filing an appeal expired during the vacation. The appellant applied for the copies of judgments and decree after the prescribed period but while the right of appeal was subsisting (before the Court was opened) and obtained the copies two days after the Courts opened. The appeal was filed on the next day of obtaining the copies.

Held. that copies can be applied for at any time when the right of appeal still subsists even though the application is made after the expiry of the period prescribed. The appeal was, therefore, in time. 89 I. C. 437, *Rel. on*; 79 P. R. 1916, *Dist.* (*Addison, J.*). RAMCHAND *v.* RAM RATTAN. **112 I. C. 670=10 L. L. J. 257= A. I. R. 1928 Lah. 655**

——If on the date when the copies of judgment or decree were applied for, the limitation for filing the appeal had not expired in consequence of holidays then the appellant is entitled to file the appeal on the day when he obtained copies. 19 All. 342, *Foll.*; 12 All. 461 (F.B.), *Not foll.* (*Sulaiman, J.*). MEGH BARAN *v.* B. RAMADAS. **89 I.C. 956= 6 L.R.A. Civ. 589=A.I R. 1926 All. 111.**

——Copying agent, who receives his salary from the Government, is not the agent of the litigant for the purpose of receiving applications for grant of copies. If the period prescribed for the presentation of an appeal expires on a date on which the Court is closed, and if the appellant has not obtained copies of the decrees and judgment before closing the Court, and applies for such copies on the date of re-opening of the Court whilst his right of appeal is still subsisting, he is entitled to the benefit of time requisite for obtaining copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. 19 All. 342, *Foll.* (*Moti Sagar, J.*). NAMAN *v.* GURDITTA. **89 I. C. 437=A. I. R. 1926 Lah. 121.**

——The general rule is that the time requisite for obtaining a copy does not begin until an application for copies has been made. 12 All. 461, *Ref. to.*

But the case, where the judgment is not delivered until the last day before vacation and the application is made on the first day, when the Courts re-open it is an exception to that rule and it is reasonable to include vacation as part of the time requisite for obtaining copy. *Subramanyam* v. *Narsimham*, 43 Mad. 640, *Dist.* (*Daniels, A.J.C.*). ABDUL GHAFFOR *v.* MT. RASULUNNISA. **68 I.C. 250=25 O.C. 71=9 O.L J. 436= A.I.R. 1922 Oudh 39.**

——It is no doubt correct that an application for copies may be made so long as the right of appeal was subsisting but there is no warrant for the proposition that, not only the period following the application for copies but all the prior holidays can be excluded. 28 Mad. 452; (1911) 1 M.W.N. 364; 43 Mad. 640; 12 L.W. 460; 36 Mad. 131; 36 Mad. 482 and 36 Bom. 268, *Appr.* and *Foll.*; 19 All. 342; 25 Bom. 584 and 25 Bom. 587, *Doubted.* (*Spencer,*

LIMITATION ACT (1908), S. 12—Judgment other than appealed from.

and Ramesam, JJ.). UMMATHU *v.* PATHUMMA. **63 I.C. 924=44 Mad. 817=13 M L.W. 631= 1921 M.W.N. 442=A.I.R. 1921 Mad. 654= 41 M L.J. 84.**

——Holidays should be taken into consideration in computing the time where judgment was pronounced sufficiently early on the last day preceding the vacation. (*Ayling and Coutts Trotter, JJ.*). MASILAMANI *v.* ARANGA MUDALI. **63 I.C. 922= 12 M.L.W. 460.**

—S. 12—Judgment other than appealed from.

——Where the High Court insists also on a copy of the first Court's judgment being filed in appeal, time occupied in obtaining copy of such a judgment though it cannot be excluded under S. 12 should be allowed under S. 5. 40 All. 1 (F.B.), *Ref.* (*Mukerji, J.*). BANKE LAL *v.* BHOLA NATH. **116 I C. 880=A.I.R. 1928 All. 516.**

——Where the judgment passed on review by the trial Court does not give all facts of the case but is merely supplementary to the first judgment, inasmuch as it modifies a portion of the first it is necessary for the appellant to file copies of both the judgments as the two must be regarded as one judgment, and the appellant is entitled to deduct time spent in obtaining copies of the first judgment also and not only of the second. (*Jai Lal, J*). JAGIRI RAM *v.* DAULATKHAN. **112 I C. 46= A.I.R. 1928 Lah 755.**

——The High Court may allow the deduction of time spent in obtaining copy of the first Court's judgment where the appellant had applied for the same before expiry of the period for filing the appeal, though he is not entitled to the deduction as of right. (*Tek Chand and Agha Haidar, JJ.*). GEORGE GOSHALA *v.* BALOK RAM. **113 I C. 498= A. I. R. 1927 Lah. 717.**

——There is no legal authority empowering the High Court in second appeal to interfere with the provisions of S. 12 and allow an extension of time for obtaining a copy of the order of the Court of first instance. A.I.R. 1925 Rang. 344, *Not foll.*; A.I.R 1923 Lah. 96; A.I.R. 1923 Lah. 461, *Foll.* (*Coldstream, J.*). BABU SINGH *v.* MANGAT RAI. **100 I.C. 854=9 L.L.J. 5=A. I. R. 1927 Lah. 192.**

——Where an application under S. 476 of the Cr. P. Code was treated as a separate miscellaneous civil case, and given a separate number and was treated quite distinct from the civil suit which gave rise to it and when the Court passed its order according to the approved practice, a formal order was drawn up on the printed form provided for such formal order in miscellaneous cases, embodying the result of the judgment passed in the case,

Held, that time taken for obtaining a copy of the formal order should be deducted under the provisions of S. 12 of the Limitation Act 1920 P. H. C. C 75, *Foll.* (*Ryves, J*). DAULAT RAM *v.* KANHAIYA LAL. **87 I C. 417=47 All. 462= 23 A.L.J. 297=26 Cr.L.J. 961=6 L.R.A, Cr. 109= A. I. R. 1925 All. 419.**

——Technically under S. 12 the only deduction should be for the time occupied in obtaining the copies of the decree and judgment of the lower Appellate Court but where the rules of the High Court require that a certified copy of the judgment of the trial Court should also be filed with the appeal, the Court might in its discretion excuse the delay caused in obtaining the copy of the judgment of the Court of first instance. (*Heald and Lentaigne, JJ.*). (MAUNG) PO AUNG *v.* U BYA. **90 I.C. 910=3 Rang. 310=A.I.R. 1925 Rang. 344.**

LIMITATION ACT (1903), S. 12—Judgment other than appealed from.

——Only the time requisite for obtaining copy of judgment appealed against and of the decree can be excluded but not the time taken to obtain copies of the Trial Court's judgment 40 All. 1 (F. B.), *Foll.* (*Abdul Raoof, J.*). CHUHAR MAL *v.* BIRA RAM. 73 I.C. 919=A.I.R. 1923 Lah. 461.

——Only the time requisite for obtaining the copy of the judgment on which the decree appealed against is founded should be excluded. The rule framed by the High Court making it necessary to file a copy of the First Court's judgment with the memorandum of appeal, cannot operate to extend or alter the period of limitation provided by the Act. 40 All. 1, *Foll.* (*Abdul Raoof, J.*). MADAN GOPAL *v.* MALAWA RAM. 68 I.C. 777= A.I.R. 1923 Lah. 96.

—S. 12—Leave to appeal to Privy Council.

——Sub-section (3). S. 12 does not apply to an application for leave to appeal but merely to appeals from decrees. The time requisite for obtaining copy of judgment can be excluded in addition to time for obtaining a copy of the decree only in cases where a decree is appealed from or sought to be reviewed. Therefore in an application for leave to appeal the law permits exclusion only of the time occupied in obtaining copy of the decree and the applicant is not permitted to deduct time required for obtaining copy of judgment. A. I. R. 1925 Sind 60, *Ref.*; A I.R. 1928 P.C. 103 *Dist.* (*Percival, J.C. and Barlee, A.J.C.*). JHAMANDAS *v.* MT. BIBI AISHAN. 118 I.C. 212=A.I.R. 1929 Sind 206.

——The time requisite for obtaining a copy of the decree should be excluded in computing the time prescribed for presenting an application for leave to appeal to Privy Council. Such petition after 90 days is not barred if in support of exclusion of copying time, the copy of decree is filed by applicant. (*Findlay, J.C. and Kinkhede, A.J.C.*). GULABCHANDJI *v.* RAO GULABSINGH. 105 I.C 852= 24 N.L.R. 97=10 N.L.J. 242=A.I.R. 1928 Nag. 63.

——Sub-section (3) of S. 12 does not apply to a case of an application for leave to appeal to His Majesty in Council, and so such an applicant is not entitled to exclude the time for obtaining a copy of the judgment of the High Court. (*Mears, C. J. and Lindsay, J.*). WILAYATI BEGAM *v.* FIRM JHANDU MAL. 92 I.C. 897= 24 A.L.J. 349=A.I.R. 1926 All. 286.

——Time requisite for obtaining a copy of the judgment appealed against may be excluded in calculating limitation even in the case of an application for leave to appeal to the Privy Council. (*Devadoss and Wallace, JJ.*) SECY. OF STATE, *In re.* 90 I.C. 601=48 Mad. 939=22 M.L.W. 330= 1926 M.W.N. 288=A.I.R. 1926 Mad. 1241= 49 M.L.J. 418.

——Time taken in obtaining copy of judgment can be excluded in addition to the time taken for the copy of the decree only where decree is appealed from or is sought to be reviewed.

Therefore time taken in taking copy of judgment cannot be excluded in an application for leave to appeal to Privy Council. (*Kennedy, J. C. and Raymond, A. J. C.*). NUR MAHOMED *v.* HASSOMAL. 78 I.C. 953=17 S.L.R. 306= A.I.R. 1925 Sind 60.

——*Time taken for obtaining copies of decree and judgment, can be excluded.*

In computing the period of limitation under Art. 179 the applicant is entitled under S. 12, Cl. 2 to exclude the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree. Section 12, sub-S. 2 is general in its terms and applied to all applications for leave to appeal including an application for leave to appeal to His Majesty in Council. Under sub-S. 3 of S 12 the time requisite for obtaining a copy of the judgment ought also to be deducted in cases of application for leave to appeal to His Majesty in Council. The provisions of sub-S. 3 are meant to apply generally to cases covered by sub-S. 2 and the reason seems to be this that if the appeal in question is from a decree then it is generally necessary that the judgment on which that decree is based should also be obtained. (*Dawson-Miller, C. J. and Ross, J.*). MAHABIR PRASAD TEWARI *v.* JAMUNA SINGH. 66 I.C. 88=3 Pat. L.T. 289= 1922 P.H C.C. 193=1 Pat. 429= A.I.R. 1922 Pat. 255.

LIMITATION ACT (1908), S. 12—Separate application for judgment and decree.

—S. 12—Separate application for judgment and decree.

——*Time for obtaining copy of judgment plus time requisite for obtaining copy of the decree must be excluded—Overlapping period is, however, to be subtracted from total.*

Where a party applies for a copy of the judgment alone and sometimes later applies for a copy of the decree, the time required for obtaining the copy of the judgment plus the time requisite for obtaining a copy of the decree should be excluded, provided that days on which both copies were being prepared cannot be doubly excluded, from the computation of the period of limitation. It is immaterial whether the period of limitation prescribed in Sch. I to the Limitation Act had expired when a copy of the decree was applied for. A. I. R. 1924 Bom. 425; A. I. R. 1925 All. 436; 33 Mad. 256; 21 C. W. N. 217; A. I. R. 1926 Lah. 529; 18 O.C. 74; A.I.R. 1924 Pat. 113; A.I.R. 1921 Sind 42; A. I. R. 1929 Nag. 264 and A. I. R. 1928 Nag. 131, *Rel. on*; A. I. R. 1928 P. C. 103, *Ref.*; 7 N.L.R. 67; 10 I.C. 866, *Overruled.* (*Macnair, Offg. J.C., Jackson and Subhedar, A. J. Cs.*). BADSHAHA MIYAN *v.* PANDURANG. 123 I.C. 470=26 N.L. R. 66= 13 N.L.J. 51=A.I.R. 1930 Nag. 113 (F.B.).

——*Application for copies of judgment and decree need not be made at the same time provided they are made before the period of limitation.*

The law does not prescribe any particular time for making of applications for copies or require that copies of both decree and judgment must be applied for simultaneously provided they are made before the expiry of the period of limitation prescribed for filing the appeal. The aggregate period taken in obtaining copies of judgment and decree should be excluded when computing limitation, even though applications for those copies were made on different dates.

Where on the dismissal of a suit on 24th August, 1926, the plaintiff applied for a copy of the judgment on 8th September, 1926, and obtained the same on 30th September, 1926, and thereafter applied for a copy of the decree on 7th October, 1926, and obtained it on 12th October, 1926, and the appeal was filed on that day,

Held, that the appeal was not time-barred. (*Kinkhede, A. J. C.*). RAMCHANDRA RAO *v.* MAYARAM. 106 I.C. 57=A.I.R. 1928 Nag. 131.

——(*Obiter*)—Under S. 12 (2) of the Act, when an application is made for copy of a judgment even the period required for obtaining copy of the decree may also be excluded provided the application for the copy of the decree is made before the expiry

LIMITATION ACT (1908), S. 12—Separate application for judgment and decree.

of the extension of time allowed by S. 12 (3) as time required for obtaining copy of the judgment. (*Kinkhede, A.J.C.*). RAMACHANDRA RAO *v.* MAYARAM. **106 I. C. 57 = A.I.R. 1928 Nag. 131.**

——Where on the day the application for a copy of the decree appealed from is made, the appeal would have been in time adding the time required for obtaining a copy of the judgment, the time required to obtain the copy of decree should be also excluded in computing the time allowed for filing of the appeal. A. I. R. 1922 P. C. 352 and A.I.R. 1922 Lah. 423, *Ref.* (*Jai Lal, J.*). RAJARAM *v.* FIRM NANHE MAL. **95 I. C. 302 = A.I.R. 1926 Lah. 529.**

——An appellant would be within time, according to S. 12 if his appeal is filed within the total amount of periods granted to him, namely, the initial period granted by Sch. I, plus the time requisite for obtaining a copy of the decree, plus the time requisite for obtaining a copy of the judgment. Of course, if any of the two periods requisite for obtaining copies overlap each other, one of the overlapping periods has to be left out of account. 42 All. 260. *Not foll.* (*Mukerji and Boys, JJ.*). RAMZAN BAKHSH *v.* MUHAMMAD ISHAQ. **87 I. C. 484 = 23 A.L.J. 342 = 47 All. 509 = A.I.R. 1925 All. 436.**

——*Time for copies of judgment and decree is to be excluded.*

The order appealed against was passed on the 7th January, 1921. On the same day the plaintiff applied for a copy of judgment and that copy became ready for delivery and was delivered to him on the 14th January, 1921. He filed an appeal on the 4th February, 1921, accompanied by a copy of the judgment, but without any copy of the decree, for no decree was then in existence. On the 10th February, 1921, he applied for a copy of the decree. On 15th February, 1921, the formal order was drawn up and a copy of that formal order became ready on the 17th February, 1921 and was delivered to him two days later. On the 23rd February, 1921, he filed the copy of the formal order in the appeal,

Held, that adding the time spent in obtaining the copy of the formal order the appeal was clearly within time. (*Kanhaiya, Lal, J.*). KEDAR NATH *v.* NANAK. **74 I.C. 486 = A.I.R. 1924 All 162.**

——Where the period for obtaining a copy of the judgment and the one for obtaining a copy of the decree are distinct and separate both of the two distinct periods should be excluded in computing the time for the admission of the appeal. (*Macleod, C.J. and Shah, J.*). TIMAPPA GANPUT *v.* MANJAYIR SUBRAYIR. **87 I.C. 545 = 48 Bom. 433 = 26 Bom. L.R. 362 = A.I.R. 1924 Bom. 425.**

——In order that a party may be entitled to deduct the time taken in obtaining a copy, it is necessary for him to make an application for copies of the decree and the judgment before the expiration of the time allowed to him by law to prefer an appeal If this is done there is no reason why the time occupied in obtaining copies of the decree and the judgment should not be deducted as provided by S. 12 excluding the overlapping period. 49 I.A. 307, *Dist.*; 15 Bom. L.R. 681, *Dist.*; (1916) 21 C.W.N. 277 and (1909) 33 Mad. 256, *Foll.* (*Shah, Ag. C.J. and Crump, J.*). MACMILLAN & CO. *v.* K. & J. COOPER. **87 I.C. 93 = 48 Bom. 292 = 25 Bom. L.R. 1309 = A.I.R. 1924 Bom. 185.**

——*The time taken for preferring the copies of judgment and decree is to be excluded though both applied for at different times.*

LIMITATION ACT (1908), S. 12—Time requisite.

The term of 90 days for filing an appeal against the decree expired on the 29th January, 1923, but before the time expired the appellant applied for a copy of the judgment on the 17th November, 1922 and obtained a copy on the 23rd of November, 1922 thus the time for filing the appeal was extended, from the 29th January, 1923 to the 5th of February, 1923; but before the expiry of this extended time, the appellant made an application for a copy of the decree on 31st January, 1923 and obtained a copy on the same date. On the 6th February, 1923 he filed the appeal.

Held, that the appeal was filed within time. (*Jwala Prasad and Adami, JJ.*). JADUNANDAN SAHAY *v.* HANUMAN SAHAY. **77 I.C. 401 = 1923 P.H.C.C. 235 = 4 P.L.T. 619 = A.I.R. 1924 Pat. 113.**

——A party is entitled to exclude both periods one for obtaining copy of judgment and for copy of decree so long as they are not counted twice over. 33 Mad. 256 and 8 M.L.J. 148, *Foll.* (*Spencer and Odgers, JJ.*). VELLIYAMMAL BIBI *v.* KOOLAYANA ROWTHAN. **66 I.C. 23 = 14 M.L.W. 269 = 1921 M.W.N. 557 = 41 M.L.J. 273.**

—S. 12—Time requisite.

——According to practice of Nagpur High Court in the case of an application for copy of the judgment and decree, time begins to run not from the date on which application compliance with which owing to wrong information given in it, is impossible is made but from the date on which correct information is supplied. S. A. No. 227 of 1928 of Nagpur, and *Misc. Judicial Case* No. 25 of 1928 of Nagpur, *Rel. on*; S. A. No. 573 of 1929 Nagpur, *Ref.* (*Macnair, Offg, J.C.*). MOHAMMAD KHAN *v.* MT. FATMA BAI. **121 I. C. 647 = 26 N. L. R. 149 = A.I.R. 1930 Nag. 129.**

——Time which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order cannot be regarded as "requisite" time within the meaning of S. 12 (2). A. I. R. 1928 P.C. 103 and A.I.R. 1922 P.C. 352, *Rel. on*; 12 All. 79, *Diss. from*; A. I. R. 1925 Oudh 600, *Ref.* (*Srivastava, J.*). FAQUIR BUX *v.* BILESHAR. **7 O.W.N. 600 = A.I.R. 1930 Oudh 369.**

——If the applicant does not appear and apply for the copy on the date on which, he is told, the copy of the decree would be ready, any further delay is due to his own default and that period cannot be considered to be time requisite for obtaining the copy unless there are some special reasons why the applicant could not obtain the copies on the day on which they were ready. (*Brown, J.*). HATIM *v.* OSIULLA. **A.I.R. 1930 Rang. 209.**

——The word "requisite" is a strong word; it may be regarded as meaning something more than the word required. It means "properly required" and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. (*Lord Phillimore.*) JIJIBHOY N. SURETY *v.* T. S. CHETTIYAR. **109 I.C. 1 = 6 Rang. 302 = 55 I. A. 161 = 32 C.W.N. 845 = 26 A.L.J. 657 = 47 C.L.J. 510 = 30 Bom. L.R. 842 = 5 O.W.N. 479 = 28 M.L.W. 207 = A.I.R. 1928 P.C. 103 = 54 M.L.J. 696 (P.C.).**

——Any failure in reasonable diligence which produces unnecessary delay owing to default of appellant to do things required by law to be done by him at some stage of obtaining copies will disentitle an appellant to claim the whole of the time actually occupied in obtaining the copy as

LIMITATION ACT (1908), S. 12—Time requisite.

the time unnecessarily occupied is not time "requisite" within S. 12. A.I.R. 1922 P.C. 352; A.I.R. 1925 Cal. 735, *Cons.* (*Rankin, C.J. and C.C. Ghose, J.*). SARAT CHANDRA KHAN *v.* UPENDRA NATH BOSE. **103 I C. 235=54 Cal. 481=45 C.L.J. 553= A.I.R. 1927 Cal 623.**

——*A delay caused by the error of the applicants in making the computation is not to be included in the time requisite for obtaining the copy.*

The judgment of the Trial Court was delivered on the 30th of May, 1925. On the 1st of June following the defendants made an application for copies of the judgment and the decree. On the 8th of July the application was returned to the defendants on the ground that the folios supplied were insufficient. The application thus returned was received by the defendants on the 15th of July. On the 17th of July the application reached back the office with the necessary folios,

Held, that the time requisite for obtaining a copy should be computed from the 17th of July and not from 1st June. A.I.R. 1922 P. C. 352, *Foll.* (*Stuart, C. J., Razi and King, JJ.*). GUDAR PAL *v.* NAGISHER. **101 I.C. 186=2 Luck. 447=4 O.W.N. 220= A.I.R. 1927 Oudh 129 (F.B.)**

——Where necessary stamps and folios were supplied in time, but the Court unnecessarily asked for more folios which were not promptly supplied,

Held, that this delay in supplying additional folios should not count against the appellant. (*B.B. Ghose and Chakravarti, JJ.*). ADARPRIYA CHOUDHRANI *v.* RAMPROTAP AGARWALLA. **93 I. C. 743=44 C.L.J 44=30 C.W.N. 926=A.I.R. 1926 Cal 1105.**

——Where an appeal of one district is heard by the District Judge of another District in his capacity as Additional Judge of the former district and application for copies of judgment and decree is filed in the former District Court and the appellants' deposit of fees is accepted there and an order made for supply of copies but the application is subsequently returned directing it to be presented in the latter Court and copies are obtained from there,

Held, that the time from the date of first application to the date of obtaining copies may be excluded. (*Campbell, J.*). KALIAN SINGH *v.* FAZAL DIN. **94 I. C. 1085=A.I.R. 1926 Lah. 455.**

——No period can be regarded as requisite under the Act which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. A.I.R. 1922 P.C. 352, *Foll.* (*Cuming and Page, JJ.*). MABAREK FAKIR *v.* BHUBAN MOHAN GHOSE. **97 I.C. 728 (Cal.).**

——The time to be allowed for copies should be calculated from the date of application up to the date when the copies were despatched. (*Dalip Singh, J.*). ALLAH BAKSH *v.* ROHTAK MUNICIPALITY. **92 I.C. 966=27 P.L.R. 18=A.I.R. 1926 Lah. 223.**

——The Court in calculating the time requisite for obtaining copies under S. 12, is to consider that the appellant has acted with due diligence, but by due diligence it should not be understood that a party should be ready and willing to pay any sums which are not legally leviable from him (*Kennedy, J.C. and De Souza, A.J.C.*). GANGARAM GHANSHAMDAS *v.* GIRDHARIMAL CHETANMAL. **91 I.C. 406= A.I.R. 1926 Sind 114.**

——In determining what is the requisite time referred to in S. 12, sub-S. (2) of the Limitation Act,

LIMITATION ACT (1908), S. 12—Unnecessary copies.

the conduct of the appellant must be considered, and no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree of order. (*Sanderson, C.J. and Walmsley, J.*). KAMRUDDIN HYDER *v.* M. N. MITTER. **89 I.C. 277=62 Cal. 342=A.I.R. 1925 Cal. 735.**

——Under S. 12 only the time from the date of making the application for copies up to the date on which the copies are ready for delivery can be excluded. The time between the latter date and the date of actual delivery cannot be excluded. The finding as to is one of fact. (*Moti Sagar, J.*). RAM SARUP *v.* ZORAWAR MAL. **73 I.C. 457=A.I.R. 1923 Lah. 696.**

——No period can be regarded as requisite under the Act, which need not have elapsed, if the appellant had taken reasonable and proper steps to obtain an order. There is no warrant for the proposition that, the time actually consumed in obtaining the decree must be deducted. 13 Cal. 104, *Ref. to.* (*Lord Buckmaster.*) PRAMATHANATH ROY *v.* WILLIAM ARTHUR LEE. **68 I.C. 900=31 M. L. T. 193=49 I. A. 307=49 Cal. 999=37 C. L. J. 86=21 A. L. J. 118=27 C W. N. 156=18 M. L. W. 56=1923 M. W. N. 526=A. I. R 1922 P. C. 352=43 M. L. J. 765 (P.C.).**

——Period from the date when copies are ready to the date of actual delivery is not time requisite. (*Martineau, J.*). BAWA SINGH *v.* THAKUR SINGH. **67 I.C. 478= A.I.R. 1922 Lah. 423.**

——From the day when copy is ready, to the day when it is despatched, the time is exoluded. (*Broadway and Abaul Qadir, JJ.*). GURDIT SINGH *v.* CHARAN DAS. **72 I.C. 797=A. I. R. 1922 Lah. 415.**

——Where copies are despatched by post the period intervening between completion and despatch of the copies is also excluded in the Punjab. 8 N.L.R 11 and 10 N.L.R. 139 and 6 O.L.J. 660, *Foll.* and *Appr.* (*Scott-Smith. J.*). GHULLA SINGH *v.* SOHAN SINGH. **69 I.C. 818=3 Lah. 280=4 L.L.J. 500=A.I.R. 1922 Lah. 219.**

——An applicant should pay in advance a sum sufficient for the preparation of the copy. If the applicant is informed that the advance is insufficient and supplies the deficiency on the day immediately following a holiday, he may be given credit for the holidays during which he could not supply the deficiency. But where he supplies the deficiency not on the day immediately succeeding the holidays but on a subsequent day he is not entitled to this privilege. (*Macnair, A. J. C.*). GONDAJI *v.* KISAN. **61 I.C. 889=A.I.R. 1921 Nag. 141.**

—S. 12—Unnecessary copies.

——In reckoning the time for presenting an appeal, the time required for obtaining a copy of the decree and judgment must be exoluded, even though by the rules of the Court it is not necessary to obtain such copies. 28 Bom. 643; A.I.R. 1907 P.R. 524; 24 C.L.J. 295 and *View of Edge, C.J.* in 17 All. 213, *Appr.*; 2 All. 192 and 1 Bom. L.R. 112, *Dist.*; A.I.R. 1927 Rang. 20; 4 Rang. 265; 98 I.C. 417, *Reversed.* (*Lord Phillimore.*) JIJI BHOY N. SURETY *v.* T. S. CHETTIYAR. **109 I.C. 1=6 Rang. 302=55 I.A. 181=32 C.W N. 645=26 A.L J. 657=47 C L.J. 510=30 Bom. L.R. 842=5 O. W N. 879=28 M.L.W. 207=A.I.R. 1928 P C. 103=54 M.L.J. 696 (P.C.).**

LIMITATION ACT (1908), S. 12—Unnecessary copies.

———Time spent in obtaining copy of an order which is not necessary for filing is not excluded. (*Page, J.*). BONOMALI GOPE *v* FAKIR CHAND
106 I.C. 324=46 C.L.J. 452= A.I.R. 1928 Cal 46.

———No period can be regarded as "requisite" under the Act when there is no need at all to apply for and obtain a copy of the decree, the rules of the Court allowing the appellant to file his memorandum of appeal unaccompanied by a copy of the decree. A.I.R. 1922 P.C. 352 (P.C.), *Foll.* and First Appeal No. 256 of 1924 (Rang.), *Appr.* (*Rutledge, C.J. and Chari, J.*). J.N. SURTY *v.* T.S. CHETTYAR FIRM.
98 I.C. 417=4 Rang. 265= 5 Bur. L.J. 187= A.I.R. 1927 Rang. 20.

———In an application for restoration of a suit dismissed for default, the time spent in obtaining copy of the order dismissing the suit for default cannot be excluded. (*Campbell, J.*). MOHAN LAL *v.* SHER MUHAMMAD KHAN. **93 I. C. 1023 (Lah.).**

———The time spent in obtaining a copy of the translation of the judgment appealed against cannot be excluded in computing the period of limitation for an appeal under S. 12. (*Wilberforce, J.*). KANHAYA *v.* NUR MUHAMMAD.
59 I.C. 965 (Lah.).

—S. 12—Miscellaneous.

———The Copying Agency cannot be regarded as other than an agent of the applicant and is not an agent of the Court. Time spent by the Copying Agency in getting the estimate and putting in the application should not be allowed to the applicant. 61 P.L.R. 1911. *Foll.* (*Dalip Singh, J.*). HAJI ABDUL RAHIM *v.* CHET RAM AMAR NATH.
104 I.C. 586=28 P.L.R 605= A. I. R. 1928 Lah. 16.

———Where an application for amendment of a decree is rejected, the period of limitation cannot be computed from the date on which the application for amendment of the decree was rejected. (*Mullick and Kulwant Sahay, JJ.*). UPENDRA CHANDRA *v.* UMESH CHANDRA. **113 I.C. 530= A.I.R. 1928 Pat 265.**

———There can be no saying of limitation apart from the provisions of Limitation Act. (*Harrison and Addison, JJ.*). HARI SINGH *v.* MAHOMED SAID. **102 I C. 523=8 Lah. 54= AI.R. 1927 Lah. 200.**

———Where parties' Counsel have been duly communicated the date fixed for delivery of judgment limitation for appeal will run from such date in spite of the fact that neither the parties nor the Counsel were present. (*Dalip Singh, J.*). B.B & C.I. RY. CO. *v.* FIRM RAM SARUP MAHRU MAL.
98 I.C. 942= A.I R. 1927 Lah. 59.

———Where cause of action arose, on 17-2-13, in the case of breach of contract not in writing and registered, a suit filed on 17-2-16, is in time. (*Campbell and Moti Sagar, JJ.*). AKHTAR BEG *v.* HAQ NAWAZ, ADVOCATE, HIGH COURT, LAHORE.
78 I.C. 87= A.I.R. 1924 Lah. 709.

———*Time required for obtaining certificate includes time during which appeal from order refusing certificate was continued.*

The judgment of the lower Appellate Court was pronounced on the 24th June, 1918, and the appeal to High Court was preferred on the 14th May, 1919. An application for certificate was presented on the 31st July, 1918, and, though it was rejected on the following day, the appellant succeeded in obtaining from the Chief Court order remitting the question of the grant of certificate to the lower Appellate Court who upon re-consideration granted the certificate on the 7th May, 1919.

Held, in the circumstances the application for certificate must be deemed to have been pending during the period from 31st July, 1918 to 7th May, 1919, and this period should be excluded in computing the period prescribed for filing the appeal. (*Shadi Lal, C.J. and Brasher, J.*). MT. CHOTO *v.* MT. SONA DEVI.
70 I.C. 299= A.I.R. 1923 Lah. 11.

LIMITATION ACT (1908), S. 13—Construction and scope.

———*The word 'day' in S. 19 and 'time' in S. 12 have the same meaning.*

The plaintiff filed the suit on 13-7-20, for debts which had been acknowledged in writing on 13-7-17 to be due. The Subordinate Judge held that the provisions of S. 12 do not apply to the computation of a period starting from the signature of an acknowledgment under S. 19 for the reason that the word *time* is used in the latter section and the word *day* in the former and therefore dismissed the suit.

Held, that the two words have the same meaning and therefore the suit is in time. (*Hallifax, A.J.C.*). JAINARAYAN BAPU *v.* VITHOPA.
71 I.C. 556=6 N.L.J. 281= A.I.R. 1923 Nag. 143.

———By S. 12 (1) or S. 8 of the General Clauses Act and S. 160 of the Land Revenue Act the period of limitation is not three years but three years and one day.

Therefore, either the claim in respect of the first year is not time-barred or the claim in respect of the fourth year is not premature, if the suit is brought on the first day of the Revenue year which is the first day of limitation in respect of the fourth year and last day in respect of the first year. (*Hallifax, A.J.C.*). NARAYAN PATAL *v.* ABDUL GHANI. **69 I.C. 527=A.I.R. 1922 Nag. 261.**

—S. 13—Condition precedent.

———*Quaere.*—Whether S 13 applies only to cases where defendant was in India at the time when the transaction took place and left it afterwards, or whether it applies to all cases of persons not in British India. (*Devadoss and Jackson, JJ.*). RATHINA THEVAN *v* PACKIRISAMI THEVAN.
112 I.C. 139=1928 M.W.N. 543= 28 M.L.W. 645= A.I.R. 1928 Mad. 1088.

———In order to get the benefit of S 13 the cause of action or the transaction which gives rise to the cause of action must have taken place in British India. 14 Cal. 457 and 25 Cal. 496, *Dist.*; 5 M.I.A. 234 (P.C.), *Expl.* (*Devadoss and Jackson, JJ.*). RATHINA THEVAN *v.* PACKIRISAMI THEVAN.
112 I.C. 139=1928 M.W.N. 543= 28 M.L.W. 645= A.I.R. 1928 Mad. 1088.

———A suit would be in time provided that the defendant has not been within British India beyond the time allowed by the Indian Law of limitation, to bring the action, wherever the cause of action may have risen. 14 Cal. 457 and 5 M.I.A. 234 (P.C.), *Ref.* (*Macleod, C. J. and Shah, J.*). ISMAILJI HAJI HULIMBHAI *v.* ISMAIL ABDUL KADAR. **63 I.C. 959=45 Bom. 1228= 23 Bom. L.R. 543= A.I.R. 1921 Bom. 460.**

—S. 13—Construction and scope.

———*Chiefs of Foreign States can be held to reside in British India in so far as they actually carry on their business through representatives in British India.*

Section 13 must be read consistently with the provisions contained in Part IV, C.P.Code, for "suit in particular case" against defendants who ordi-

LIMITATION ACT (1908), S. 13—Military occupation of place.

narily would be always out of British India, *e.g.*, (1) the Secretary of State for India in Council; (2) an alien corporation and (3) a Sovereign Prince or Ruling Chief sued in the name of his State

Section 13 must be read so as to avoid the obvious absurdity that arises, if such corporate bodies are deemed to reside out of British India, so that suits against them can never be barred at all. And this can be done by treating them as defendants, who, by reason of their special character, are not absent from British India within the meaning of the section, because they have not got the same liberty as private individuals to reside personally in British India and attend to their affairs and they must do so through agents or representatives. They can be held to reside in British India in so far as they actually carry on business through representatives in British India. 30 C.l. 103; 17 Bom. 662 and 26 Mad. 544. *Rel. on*; 14 Cal. 457 and 25 Cal. 496 (F.B.), *Dist.*; *New York Life Ass. Co.* v. *Public Trustee*, (1924) 2 Ch. 104 and 4 P.L.J. 141, *Cons.* and *Appl.* (*Fawcett, Ag. C. J. and Murphy, J.*). SAYAJI GAIKWAR *v.* MADHO RAO RAGHUNATH RAO. **115 I.C. 369=53 Bom. 12=30 Bom. L.R. 1463=A.I.R. 1929 Bom. 14 (F.B.).**

—S. 13—Military occupation of place.

———The military occupation of Basra in 1914 did not bring Basra within "territories and places" governed by Governor-General of India so as to exclude the operation S. 13. 20 A.L.J. 786, *Foll.* (*Kanhaiya Lal and Sulaiman, JJ.*). FAKRULLAH KHAN *v.* RAM SARUP. **68 I.C. 978=20 A.L.J. 786=45 All. 18=A.I.R. 1923 All. 64.**

—S. 14.

Another civil proceeding.
Applicability.
Cause of like nature.
Computation of time.
Defect of jurisdiction.
Different cause of action.
Good faith and diligence.
Interpretation and scope.
Parties.
Miscellaneous.

—S. 14—Another civil proceeding.

———Where a person does not file a suit within one year after the adverse order under O. 21, R. 103 and chooses to apply for revision of such order, he cannot get the benefit of S. 14 and ask for exclusion of time taken in the revision proceedings. Proceedings contrary to the clearly expressed provisions of law cannot be regarded as civil proceeding in good faith. 39 Mad. 62; A.I.R. 1929 Rang. 297, *Foll.*; 36 Mad. 135 and 23 Cal. 775, *Dist.* (*Patkar, J.*). NARAYAN AMBAJI CHAVAN *v.* HARI GANESH NAVARE. **32 Bom. L.R. 1186=A.I.R. 1930 Bom. 505.**

———*Section 14 applies when a fresh cause of action arises as a result of the judgment in a previous case.*

The purchaser did not buy the goods from the seller according to a previous agreement between them; so the seller sold the goods by public auction and sued the purchaser to indemnify it for loss sustained. But the suit was dismissed. Thereupon the sellers instituted a suit for damages for breach of contract. They further maintained that original cause of action remained suspended from the date of award or the filing thereof or of the execution proceedings up to the date of the judgment of the Court of appeal, that alternatively a fresh cause of action for the same amount arose in consequence of that judgment: that their original claim remained satisfied up to the judgment and that they had a right of set off against the sum which they had been ordered to refund.

LIMITATION ACT (1908), S. 14—Another civil proceeding.

Held, the suit was maintainable either on the ground that upon literal construction of S. 14, Limitation Act, limitation was in suspense or upon the ground that a fresh cause of action arose as a result of the judgment of the Court of appeal. 12 M.I.A. 244 and A.I.R. 1916 P.C. 96 *Foll.*; A.I.R. 1926 Cal. 65; A. I. R. 1924 Cal. 600; A. I. R. 1921 Lah. 71 and 43 Mad. 845, *Ref.* (*Lort-Williams, J.*). ABDUL RAHIM OOSMAN & CO. *v* OJAMSHEE PURSHOTTAM DAS & CO. **120 I.C. 710=56 Cal. 639=A.I.R. 1930 Cal. 5.**

———Proceedings before an arbitrator are proceedings in a Court. (*Lort Williams, J.*). ABDUL RAHIM OOSMAN & CO. *v.* OJAMSHEE PURUSHOTTAM DAS & Co. **120 I.C. 710=56 Cal 639=A I R. 1930 Cal. 5.**

———Arbitrations under the Indian Arbitration Act are not prosecuted by filing suits and preferring appeals from the decrees in such suits, but by procuring awards and filing them in Court and resisting applications to set them aside; so also civil proceedings in a Court cover civil proceedings before arbitrators whom the parties have substituted for the Courts of law to be the Judges of the dispute between them. An arbitrator should, therefore, exclude the time spent in prosecuting in good faith the same claim before an arbitrator who was without jurisdiction. (*Lord Salvesen.*) RAMDUTT RAMKISSEN *v.* E. D. SASSOON & Co. **115 I.C. 713=1929 A.L.J. 234=33 C W N. 435=29 M L W. 682=6 O W. N. 473=49 C. L. J. 462=31 Bom. L. R. 741=56 I.A. 128=1929 M. W. N 546=56 Cal. 1048=A. I. R. 1929 P.C. 103=56 M. L J. 614 (P.C.).**

———Where an application for review is admitted to a hearing and there is a reasonable ground for review inasmuch as the Court had referred to statements that were not a part of the record of the suit, the application is prosecuted *bona fide* and the period should be exempted A.I.R. 1917 P.C. 156, *Foll.* (*Johnstone, J.*). FATEH NUR *v.* JIWAN. **116 I.C. 315=A.I R. 1928 Lah. 964.**

———The term "civil proceeding" used in S. 14 is not meant to cover an application made under Ss. 28 and 29 or S. 42 of the Land Registration Act and the Land Registration Deputy Collector cannot be called "a Court" for the purpose of deciding cases under those sections. (*Adami and Sen, JJ.*). RAMJEE PRASAD *v.* RAI BISHUNDUTT. **90 I.C. 244=7 P. L. T. 61=A. I. R. 1926 Pat. 194.**

———*Review.*

The time spent in prosecuting with due diligence a proper application for review of judgment can be deducted under S. 5. (*Daniels, J.*). PARBHU DAYAL *v.* MURLI DHAR. **78 I.C. 677=22 A.L.J. 365=5 L.R A Civ. 298=A.I R. 1924 All. 867.**

———*Collector having power to determine application under O. 21, R 100, C. P. Code, is Civil Court but not where he had no jurisdiction.*

It is necessary in each case to examine the precise nature of the proceeding and the constitution of the authority before whom such proceeding is taken in order to decide whether it should properly be termed a Civil proceeding in a Court. If the proceeding in question was one which the Collector was competent to determine, he should be regarded as a Court within the meaning of S. 14. Collector is not invested with power to dispose of

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objections under O. 21, R. 58, C.P.Code. It would appear that he has no power under O. 21, R. 100, C.P.Code, which is of the same nature as O. 21, R. 58. When the Collector had no jurisdiction there is no *bona fide* mistake of jurisdiction such as would justify the Court in excluding the time occupied in applying to the Collector from the period of limitation 44 Bom. 50, *Dist.*; 5 N.L.R. 121 at p. 124, *Appr.*; 23 Bom 531 and 44 Bom. 50, *Foll.* (*Baker, Offg. J.C.*). BANDAPPA *v* SHANKAR RAO.

78 I.C. 580=A.I.R. 1924 Nag. 309.

———*Proceeding partially wrong is also covered.* (*Pratt, J.*, contra).

Per *Marten, J.*—The two separate Courts of Poona and Wadgaon have a Common Judge; from the 1st to the 20th of each month, the Judge sits at Haveli, Poona, from 21st to 25th he sits at Wadgaon, and from the 25th to 30th of the month he sits at Lonavli a part of the Wadgaon Court. The plaintiff filed his Darkhast No. 284 of 1912 on the 10th April, 1912. He filed it at Wadgaon quite correctly, but as the Judge was then sitting at Haveli, the Court officials apparently sent the papers to the Judge at Haveli, and he on the 11th April, 1912, gave a notice to the defendants returnable on the 14th or 15th April, 1912 in the Haveli Court. The defendants did not appear, and on the 15th April the Judge sitting in the Haveli Court made the warrant for possession absolute Defendants appealed and on the 26th February, 1913 this order was set aside on the ground that the Judge had no jurisdiction to direct the defendants to appear in the Haveli Court nor to make the order against them in that Court. It was accordingly directed that the Court of first instance should take up the Darkhast at the point where it was when the order for issuing the warrant of possession was passed. The plaintiff appealed to the High Court, but on 3rd February, 1915 his appeal was dismissed. On 29th June, 1915 the Darkhast was brought on again, the plaintiff was present but as the Judge was away the proceedings were adjourned to the next day. The plaintiff this time was not present in Court and accordingly the Darkhast was struck off. The next Darkhast he filed was on the 7th June, 1916.

Held, that it was not time-barred. (*Marten and Pratt, JJ.*). PANDEY DAGADA *v.* JAMNADAS CHOTAMAL. **76 I.C. 317=A.I.R. 1923 Bom. 218.**

———In computing the period of limitation prescribed for preferring an appeal, the appellant is entitled to deduct the period during which an application for review was pending. (*Woodroffe and Ghose, JJ.*). PURNACHANDRA CHATTOPADHYA *v.* MABUL BAKHSH. **68 I C. 200=A.I.R. 1923 Cal. 291.**

———Before the appellant can claim the deduction of the period occupied in review proceedings, it must be found that the proceedings in the review were reasonably presented and in good faith. (*N. R. Chatterjee and Panton, JJ.*). THAKAMANI DASI *v.* PITAMBAR BHUIYA. **62 I.C. 957 (Cal.).**

———*Arbitration proceedings are not covered unless such proceedings oust Civil Court's jurisdiction.*

The mere fact that there is an arbitration pending before an arbitrator does not and cannot oust the jurisdiction of the Civil Court.

Could the defendant have taken the plea that the Civil Court had no jurisdiction to entertain the action because identically the same matter was pending before a certain arbitrator and if it be held that such a plea would be available to the defendant, then it must follow that the right to

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sue remained in suspense until the arbitrator made his award. (*Das and Ross, JJ.*). SHAIKH ABDUL RAHIM *v.* MT. BARIRA. **61 I C. 807=2 P.L.T. 556=6 P.L.J. 273=A.I.R. 1921 Pat. 166.**

———A creditor taking no part in the insolvency proceedings of his debtor cannot, in a suit to recover his debt, exclude the period of insolvency of the debtor from the limitation period either under S. 14 or S. 15 of the Act. (*Maung Kin, J.*). GREENBURGH *v.* XAVIER. **64 I.C. 50=18 Bur. L.T. 197.**

———The fact that S. 14 requires that there should have been "another civil proceeding" does not contemplate a proceeding in a different Court to the one in which the proceeding said to be time-barred is pending. (*Fawcett, J. C. and Raymond, A.J.C.*). IBRAHIM *v.* FIRM OF GULAM HUSSAN.

62 I. C. 507=15 S. L. R. 11=A.I.R. 1921 Sind 13.

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———Section 14 has no application when bad faith is established. (*Das and Fazl Ali, JJ.*). NARPAT SINGH *v.* MAHIDHAR JHA. **122 I. C. 241=8 Pat. 851=A.I.R. 1930 Pat. 54.**

———Time spent in carrying out a wholly independent litigation cannot be excluded from the time given to an appellant to appeal. (*Dalal, J.*). GAYA PRASAD *v.* RAM SARUP. **112 I. C. 246=A.I.R. 1929 All. 101.**

———Section 184 provides the period of limitation, and S. 14, provides, not the period of limitation but means to compute that period which is an entirely different thing. Therefore S. 184 does not exclude the application of S. 14. (*Cuming and Mullik, JJ.*). SATI PRASAD GARGA *v.* GOBINDA CHANDRA SHEE. **56 Cal. 805=33 C. W. N. 227=A. I. R. 1929 Cal. 325.**

———The parties to the two suits were not different, and the previous litigation was carried on with due diligence. There was no want of good faith on the part of plaintiff in instituting previous suit.

Held, that S. 14 is directly applicable. (*Sulaiman, Ag. C. J. and Bennet, J.*). BALDEO PRASAD BABU RAM *v.* HAJI ALI MOHAMMAD USMAN. **112 I.C. 715=1929 A.L.J. 73.**

———The provisions of S 14 are not applicable where a suit is withdrawn by a plantiff under O. 23, R. 1, C. P. Code, with permission to bring a fresh suit, and the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted. 29 Bom. 219 and 39 Mad. 936, *Foll*; 22 All. 248, *Dist.* (*Dalal, J.*). RAHIM ALI *v.* YEHIA KHAN. **114 I.C. 910=9 L R.A. Rev. 178=A.I.R. 1928 All. 402.**

———Provisions of S. 14 can be applied to appeals.

Where the appellant through *bona fide* mistake preferred his appeal in a wrong Court, but lost no time in re-filing it in the proper Court after it was returned to him,

Held, that the provisions of S. 14 would apply and the appeal should be heard. 14 A.L.J. 212 and A.I.R. 1917 P.C. 156, *Foll.* (*Dalal and Pullan, JJ.*). KISHAN LAL *v.* TIKA. **101 I.C. 750=49 All. 555=25 A.L.J. 410=A.I.R. 1927 All. 719.**

———Section 71 (2) of the Village Panchayat Act provides a special rule of limitation which must derogate from the provisions of the general rule embodied in S. 14. (*Lindsay, J.*). RAM LOCHAN RAM LACHMI PRASAD *v.* JAGAT NARAIN DUBE. **98 I. C. 1050=A.I.R. 1927 All. 181.**

———Section 14 is inapplicable to a suit if the former proceeding founded on the same cause of action falls through on the merits and not from

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defect of jurisdiction. (*Shadi Lal, C.J. and Broadway, J.*). ABBAS ALI KHAN *v.* YUSUF ALI KHAN.
101 I.C. 254=28 P L.R. 168=
9 L L.J. 215=A.I.R. 1927 Lah. 186.

——So long as there was no legal impediment to the filing of the suit earlier, no time can be excluded under S. 14 and the third column of Art. 73 operates. (*Ramesam and Wallace, JJ.*). SATYA NARAYANA BRAHMAN *v.* MAGANTI SEETHAYYA.
100 I.C. 776=50 Mad. 417=25 M.L W. 426=
1927 M.W.N. 160=39 M L T. 116=
A.I.R. 1927 Mad 597=52 M.L.J. 396.

——There is no provision of law according to which a plaintiff, who upon failing to obtain one remedy sues for an alternative one, is entitled to exclude the time taken up by the former proceedings. (*Curgenven, J.*). PATTRACHARIAR *v.* ALAMELUMANGAI AMMAL. 100 I C. 40=
25 M.L W. 11=A.I.R. 1927 Mad. 273.

——Section 14 is not applicable to an application for execution. It applies exclusively to suits. (*Sulaiman, J.*). RAMRAJ *v.* MT. UMRAJI.
93 I.C 292=A.I.R. 1926 Lah. 345.

——An application which does not lie in any Court cannot be taken into account for the sake of extending time under S. 14. 22 P. R. 1912, *Foll.* (*Harrison, J.*). MOHAN SINGH *v.* NATHU MAL.
92 I.C. 299 (Lah.).

——To claim exception under S. 14, the claimant must prove that the right to enforce which the exemption is sought, was the subject of litigation in the prior suit. (*Madhavan Nair, J*). A. K. KAMBIL ACHUTHAM *v.* K. ABDU. 91 I.C. 833=
21 M.L.W. 593=1925 M.W.N 361=
A. I. R. 1925 Mad. 675.

——A suit in respect of an order under S 283 of the Code of 1882 made against a minor ought to be filed within one year of his attaining majority under Art. 11.

Where within one year from the date of the order, the minor's grandmother instituted such suit which was dismissed,

Held, it was not afterwards again permissible to bring the suit and the period of limitation cannot be extended. (*Phillips and Venkatasubba Rao, JJ.*). SUBBIAH PANDARAM *v.* ARUNACHALA PANDARAM.
80 I.C. 992=A.I R. 1925 Mad. 379.

——*Plaintiff failing to execute the decree within the given time under a* bona fide *mistake when defending another suit concerning the same subject-matter—Time occupied cannot be deducted.*

Plaintiff obtained a decree for possession on February 15th, 1913. There was an appeal first to the District Court and then to the High Court, which ultimately confirmed the decree on December 10, 1915. He filed his application for execution of this decree on June 28th, 1920. During the interval, however, the defendant filed Suit No. 42 of 1916 for a declaration that the plaintiff's decree had been obtained by fraud. That litigation lasted till July 31st, 1920, and ended in the present plaintiff's favour,

Held, that plaintiff may have been under an honest but mistaken impression that during all this time it would be futile for him to prosecute the application for execution of the decree which was challenged by the suit of 1916. That in a case of this kind it may be desirable that the plaintiff ought to be in a position to deduct the time taken up in defending a litigation of the nature such as in the present case. But that, as it was impossible to bring the case within the provisions of the Indian Limitation Act the application was time-

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barred. (*Shah, Ag. C. J. and Crump, J.*). SOMSHIKHARSWAMI SHIDLINGSWAMI *v.* SHIVAPPA MALLAPPA. 76 I.C. 557=25 Bom.L.R 863=
A.I.R. 1924 Bom. 39.

——Where the Court dealt with an application on the merits and came to the conclusion that the judgment-debtors and the decree holder were alike bound by the order made in the course of the execution proceeding, S. 14 is of no avail. (*Mookerjee and Panton, JJ.*). RAJINI BANDHU CHATTERJEE *v.* KALI PRASANNA CHATTERJEE.
74 I.C. 279=A.I.R. 1924 Cal. 419.

——Section 14 does not apply to an application to set aside an *ex parte* decree. (*Lindsay, J.*). S T. GADRE *v.* BRIJNANDAN SARAN. 84 I. C. 538=
21 A. L. J. 205=45 All. 332=
4 L. R. A. Civ. 144=A.I.R. 1923 All. 319.

——*Section 14 does not apply to insolvency proceedings.*

The original insolvency petition, was presented by a creditor under S. 6 (4) of Act III of 1907, on June 28th, 1919, to the District Munsif of Razole who had no jurisdiction to entertain it. Having been returned by that Court on September 22nd, 1919, it was represented to the District Court which had jurisdiction under S. 3 on October 1st, 1919, on which date more than 3 months had elapsed since the commission of the act of insolvency upon which the petition was grounded. Thus the petition was liable to be rejected as out of order. But the District Judge, on a petition to excuse delay being presented on February 21st, 1921, acted under S. 5 of the Limitation Act, and holding that there was "sufficient cause" for the petition not being presented earlier, excused the delay and proceeded to enquire into the merits of the case.

Held, that S 78 of the new Provincial Insolvency Act (1920) was not in force on 1st October, 1919, and S. 14 of the Limitation Act does not apply to insolvency proceedings. Hence the order of District Judge excusing delay was wrong. 41 M. 169 (F. B.), *Rel. on.* (*Spencer and Venkatasubba Rao, JJ.*). AIYAPPARAJU *v.* VENKATAKRISHNAYYA.
72 I.C. 488=1923 M W.N. 195=
18 M.L.W. 35=A.I.R. 1923 Mad. 462=
44 M.L.J 303.

—S. 14—Cause of like nature.

——Where a suit is dismissed for default of prosecution under O. 9, R. 2, C. P. Code and a fresh one is brought under R. 4 of the same order, S. 14 is not applicable as the prior suit failed for plaintiff's negligence in prosecuting it and not because of defect of jurisdiction or other cause of a like nature within the meaning of S. 14. 6 W. R. 184 (F.B.), *Foll.* (*Subhedar, A. J. C.*). CHITAMAN *v.* KISAN. 116 I.C. 509=25 N.L.R. 99=
A.I.R. 1929 Nag. 219.

——A holder of money-decree against one brother as member of a firm attached certain property to which the other brother of judgment-debtor objected under O. 21, R. 58, C.P.Code. The objection was allowed. After this the decree-holder applied under O. 21, R 50 (2), C. P. Code, but was unsuccessful, the Court holding the order on claim petition as a bar. He then sued as required by R. 63, but was met with the defence of bar of limitation,

Held, that the cause of action on which the application under O. 21, R. 50, was based was the same as the cause of action in the suit and the reason why his application under O. 21, R. 50 was

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held as not maintainable was a reason contemplated by S. 14; therefore the period during which the application under R. 50 was pending should be excluded in computing the one year's period. (*Mears, C. J. and Mukerji, J.*). KANHAIYA LAL *v.* SURAJ KARAN. **108 I.C. 134=26 A.L.J. 127= A.I.R. 1928 All. 10.**

———The interpretation of S. 14 should be a wide one. Where, in a prior suit for declaration of title possession was not prayed for and the suit was dismissed as not maintainable on that ground,

Held, that the defect was of a nature similar to a defect of jurisdiction and that time taken for prosecuting that suit can be deducted under S. 14. (*Odgers, J.*). VENKAMMA *v.* P. PARTHASARATHI & BROS. **98 I. C. 14=24 M. L. W. 634= A.I.R. 1926 Mad. 1081=51 M.L.J. 391.**

———The dismissal of the previous execution application on the ground that the relief asked for was not in conformity with the decree is a cause of a nature similar to defect of jurisdiction. (*Mullick and Bucknill, JJ.*). KISHORE MAL *v.* JAGDISH NARAIN INGH. **75 I.C. 312=3 Pat. 42= A.I.R. 1924 Pat. 471.**

———*Res judicata* does not constitute "other cause of a like nature" under S. 14 (2), 22 All. 248, (F.B.); 10 Cal. 86, *Dist.*; 13 C.L.R. 214 and 32 Cal. 118, *Foll.* (*Coutts and Ross, JJ*). BRAJA GOPAL MUKHERJI *v.* TARA CHAND MARWARI. **63 I.C. 393=2 P.L T. 585= 6 P.L.J. 593= 1921 P.H C.C. 233=A.I.R. 1921 Pat. 225.**

—S. 14—Computation of time.

———*Plaint represented under an order of the Court is to be deemed to be presented when it was first presented.*

There is no provision of law which necessitates or even empowers the Court to return a plaint on the ground that the plaintiff has not mentioned therein the list of the documents on which he relies. The only effect of a person not furnishing the list of documents on which he relies is that, unless the Court permits him to do so, he is not entitled to produce them at a later stage.

Where a plaint is returned under circumstances mentioned above, and it is represented, the suit must be deemed to have been instituted on the date when the plaint was first presented and not on the date on which it was represented after the order of the Court had been complied with. (*Jai Lal, J.*). MUHAMMAD BAKHSH CHIRAG DIN *v.* SIKANDAR KHAN. **122 I.C. 488= A.I.R. 1930 Lah. 480.**

———Defendant, as share-holder of a company, had his shares forfeited more than a year prior to commencement of winding up. The winding up order by the Court was on 21st July, 1923. On 10th October, 1924, the liquidator filed his list of contributories under S. 156, Companies Act. On 13th October, 1925, the Court held that the name of the defendant had been wrongly entered in the list of contributories, and it directed a suit to be filed. A suit was accordingly filed against defendant on his liability under Art. 28 of Table A,

Held, that the period between 10th October, 1924 and 13th October, 1925, cannot be excluded under S. 14. (*Marten, C.J. and Crump, J.*). MANEKLAL *v.* SURYAPUR MILLS CO. **110 I.C. 33= 52 Bom. 477=30 Bom.L.R. 549= A.I.R. 1928 Bom. 252.**

———That in computing the period of limitation for an application for review a party is entitled to exclude the period of the vacation. (*Stuart, C.J.*

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and Raza, J.). SITLA DIN *v.* RAM NARAIN SINGH. **6 O.W.N. 707.**

———Under the Indian Law and procedure an original decree is not suspended by presentation of an appeal, nor is its operation interrupted, where the decree in appeal is one of dismissal. Where a sale is set aside and an appeal against the decree setting aside the sale is dismissed, limitation for a suit by the vendee to recover the purchase-money from the vendor begins to run from the date of the decree setting aside the sale not from the date when the appeal against the decree is dismissed. A.I.R 1921 Bom. 184 and A.I.R. 1918 P.C. 151, *Foll.* (*Zafar Ali, J.*). PIR BAKHSH *v.* CHANNAD DIN. **100 I.C. 19=28 P.L.R. 1= A.I.R. 1927 Lah. 734.**

———*Plaintiff must have been prosecuting the previous suit or his claim must have been adjudicated upon if he wants to apply S.* 14

A putni tenure was sold for arrears of rent under Regulation VIII of 1819 on 15th May, 1916 On 29th May some of the putnidars brought a suit for setting aside the sale. During the pendency of this suit the putni having fallen again into arrears was sold on the 16th November, 1916, a second time and the putnidars applied for amendment for setting aside the second sale also. On 21st February, 1918, both the sales were set aside. But the zamindar appealed and the High Court, reversing the decision, confirmed the sales on the 29th February, 1920. In the meantime one of the putnidars instituted a suit alleging that he had an 8as. share in the purchase at the first sale, he having paid one half of the purchase-money and prayed that the second sale might be set aside. On 24th January, 1917, the purchaser withdrew the surplus sale proceeds from Court and subsequantly the plaintiff on 31st May, 1920, made an application for amendment of his plaint adding a prayer for the recovery of one half of the surplus proceeds,

Held, claim for the surplus sale proceeds came under Art. 62 of the Limitation Act, under which a suit has to be brought within three years from the date on which the money was received by the defendant. The period between the date on which the sale was set aside by the Court below and the date on which the High Court reversed that decision and upheld the sale (23 Feb. 1920) should not be deducted and that the claim for the surplus sale proceeds was barred. 43 Cal. 660, *Dist.* (*Chatterjee and Cuming, JJ.*). NIRANKA CHANDRA *v.* ATUL KRISHNA GHOSE. **83 I. C. 110= 41 C.L.J. 149=28 C.W.N. 1009=A.I.R. 1925 Cal. 67.**

———*Temple trustee is not entitled to deduct period between first Court's decree and the decree in High Court in a suit against the defendants who were the same in a previous suit.*

Where the trustee of a temple filed a suit on 15th August, 1919, against the archakas and staneekas for the recovery of offerings of money taken without right, by the latter from the hundials of the temple during the period 25th August, 1911 to 31st August, 1914, and sought exemption from the obvious bar of limitation, on the ground that a suit filed on 25th August, 1911, by the worshippers against the same defendants for a declaration that the lease to the latter of the said offerings by the Devasthanam Committee was invalid, failed both in the Munsiff's Court on 22nd February, 1913, and on appeal before the Sub-Court on 15th December, 1913, but succeeded in the High Court on 22nd September, 1916,

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Held, that the period between 22nd February, 1913 and 22nd September, 1916, could not be deducted in favour of the plaintiff as the decisions of the Munsif and Subordinate Judge were only declaratory and, therefore, the suit was barred by limitation. (*Ramesam and Jackson, JJ.*). SETHU RAO *v.* SEETHALAKSHMI AMMAL. **89 I.C. 938= 21 M.L.W. 716=A.I.R. 1925 Mad. 1188.**

——Where the plaintiff was given a decree by which it was ordered that on his paying certain sum within a certain date the defendant was to execute a conveyance of certain property to him and where the matter went up in appeal and second appeal,

Held, that the time for the payment of the amount by the plaintiff should be calculated only from the date of the decree passed in the second appeal. 39 Bom. 175, *Foll.* (*Bucknill and Ross, JJ.*). GOBIND PRASAD *v.* JUGDIP SAHAY. **86 I.C. 358= 4 Pat. 378=6 P L T. 547=3 Pat. L.R. 43= 1925 P.H.C.C. 57=A.I.R. 1925 Pat. 369.**

——*Putni sold for arrears—Sale set aside and possession restored—Appeal by purchaser—Time between restoration of possession and decision of appeal cannot be deducted.*

A putni taluk was sold under Regulation VIII of 1819 for arrears of rent for the year 1321 and purchased by one *B*. The defendants sued to set aside that sale. The suit was decreed on the 4th October, 1917, by the Trial Court. The sale was set aside and the defendants were held entitled to possession and they actually got possession in October 1917. There was an appeal by the purchaser but the decree of the Trial Court was confirmed by the High Court on the 12th August, 1919. Plaintiff instituted a suit for rent on the 20th March, 1920. It was originally for rent of 1323 and for the kists up to Falgun 1326. Subsequently on the 4th March, 1921, there was an application for the amendment of the plaint and the arrears of rent for the year 1322 were included in the claim. The defendants were restored to possession of the putni in October, 1917, which was more than 3 years before the 4th March, 1921, and there was nothing to prevent the plaintiff from suing them for rent of 1322 and accordingly the claim for the year 1322 was barred by limitation. The period between the date when defendants got possession and the date of decision in appeal cannot be deducted. (1868) 12 M.I.A. 244, *Foll.*; (1916) 43 Cal. 660, *Dist.* (*N. R. Chatterjee and Chotzner, JJ.*). BIJOY CHAND MOHATAB *v.* KHOKA SINHA. **84 I.C. 425= 40 C.L.J. 97=A.I.R. 1924 Cal. 1059.**

——Per *Spencer and Devadoss, JJ.*—When an appeal to a Superior Court only results in the decree appealed against being confirmed, in India there is no interruption in running of time calculated from the date of the original decree. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. **74 I.C. 416=17 M.L.W. 254= A.I.R. 1923 Mad. 392.**

—S. 14—Defect of jurisdiction.

——*When the previous suit is decided on merit and not on want of jurisdiction, in a subsequent suit filed after limitation—Section 14 cannot be applied.*

Mortgagee filed Darkhast against other properties of mortgagor. The High Court decided that the mortgage decree could not be said to be a personal decree merely because it directed the defendants to pay the amount and that there must be a decree personally made against the mortgagors before it could be executed against property other than the mortgaged property. Thereupon the mortgagee filed an application under O. 34, R. 6 on 10th February, 1920. And the time occupied by the previous darkhast was sought to be excluded in computing limitation under S. 14, Lim. Act,

Held, S. 14 did not apply as the previous darkhast in this case was decided on the construction of the decree and not on the ground of want of jurisdiction or other cause of a like nature. The decree-holder's proper remedy, if any, was to apply under O. 34, R. 6, for a supplemental decree and not execute the previous decree which had not given any personal relief. (*Patkar and Baker, JJ.*). HARI *v.* KRISHNAJI. **113 I.C. 515= 30 Bom. L.R. 724=A.I.R. 1928 Bom. 323.**

—S. 14—Defect of jurisdiction—Change in law.

——*Plaintiff losing time in seeking apportionment of land Revenue in a Civil Court was held to be entitled to the benefit of S. 14.*

Plaintiff who was already the owner of a 12 annas share bought a four anna share of a certain village except a *sir* field from the defendant. The plaintiff sued defendant claiming proportionate land revenue in respect of the *sir* field for five years from 1920 to 1926 as fixed by the Sub-divisional Officer in 1925. But before that he had sued the defendant in 1923 for contribution in the Civil Court but there it was decided that a Civil Court had no jurisdiction to make on apportionment. The defendant contended that plaintiff was not entitled to land revenue for the years 1920 to 1923 as the claim was time-barred,

Held, that the claim was not time-barred and the plaintiff was entitled to get the benefit under S. 14, Limitation Act, as before the new Land Revenue Act came into force, the Civil Court had power to make apportionment and the time which the plaintiff spent in pursuing his remedy of apportionment of land revenue in a Civil Court must be deducted. 6 N. L. R. 27; A.I. R. 1925 Nag. 419, *Ref.* (*Findlay, J. C.*). SADASIVA RAO *v.* LAXMAN RAO. **107 I.C. 910=11 N.L.J. 93=A.I.R. 1928 Nag. 227.**

—S. 14—Defect of jurisdiction — Court not declining to entertain.

——Where a suit to recover money lent upon interest payable on demand was filed before a Union Court and that Court finding that it was desirable, that the suit should be tried by persons versed in law, ordered that it should be conducted in proper Court, and by the time the suit was filed in the Small Causes Court, the cause of action was time-barred,

Held, that the plaintiff is not entitled to deduct the period during which he was prosecuting the suit in the Union Court. (*Page, J.*). BONOMALI GOPE *v.* FAKIR CHAND. **106 I.C. 324= 46 C.L.J. 452=A.I.R. 1928 Cal. 46.**

—S. 14—Defect of jurisdiction—Delay owing to Court's mistake.

——Where owing to some mistakes of the Court itself the plaintiff was driven from Court to Court for a period of six to seven months, after which he could finally file his suit in the right Court,

Held, that he should be given the benefit of S. 14. (*Daniels, J. C.*). RAGHUBAR DAYAL SINGH *v.* KANHAIYA BUX. **89 I.C. 443=12 O.L.J. 297= 2 O.W.N. 383=A.I.R. 1925 Oudh 493.**

—S. 14—Defect of jurisdiction —Fresh suit.

——Where a suit has been instituted in a Court which is found to have no jurisdiction and it is found necessary to raise a second suit in a Court of

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proper jurisdiction, the second suit cannot be regarded as a continuation of the first, even though the subject-matter and the parties to the suits were identical. (*Lord Salvesen.*) RAMDUTT RAMKISSEN *v.* E. D. SASSON AND CO. **115 I C. 713= 1929 A. L. J. 254=33 C. W. N. 485= 29 M. L. W. 682=6 O. W N. 473= 49 C.L.J. 462=31 Bom. L.R. 741=56 I.A. 128= 1929 M. W. N. 546=56 Cal. 1048= A.I.R. 1929 P.C. 103=56 M.L.J. 614 (P.C.).**

—S. 14—Defect of jurisdiction—Presentation to wrong Court.

———*Acknowledgment of liability and* bona fide *prosecution of suit held to have extended period of limitation.*

A firm carrying on business at Amritsar agreed to purchase 2.00,000 francs from a Bank doing business in Bombay, and paid Rs. 10,000 as margin money. The date of delivery was 30th April, 1923. In its correspondence dated 13th July, 1923, and 6th August, 1923 the Bank admitted receipt of Rs. 10,000. On 29th April, 1926, the firm filed a suit to recover the deposit from the Bank in the Court at Amritsar. In this suit the Bank again, in its written statement filed on 1st July, 1926, averred the acknowledgment of deposit money. On 2nd December, 1926 the Court at Amritsar returned one plaint to the firm for presentation to proper Court. The firm brought the present suit in the Bombay High Court on 29th January, 1927. The Bank pleaded bar of limitation.

Held, that Ss. 14 and 19 should be read together.

Held also, that the period of 29th April, 1926 to 2nd December, 1926, must, under S. 14, be deducted from the period of limitation prescribed for the suit.

Held further, that the statements made in the written statement of 1st July, 1926, and those made in the letters of 13th July and 6th August amounted to an acknowledgment of liability under S 19 and therefore the present suit was instituted prior to the expiry of the period of limitation. 26 Bom 782, *Dist.* (*Kemp, Ag. C.J. and Murphy, J.*). DUNICHAND BISHANDAS *v.* CMPTOIR NATIONAL D'ESCOMTE, D'PARIS. **32 Bom. L.R. 58= A.I.R. 1930 Bom. 187**

———Provisions of S. 4 can be available only where the period prescribed expires when the Court is closed and the application is made to the proper Court on the day on which the Court re-opens; but if on the re-opening day the applicant files his application in a wrong Court he cannot be entitled to take advantage of both the sections and to tack on the vacation to the period spent in prosecuting the application filed in the wrong Court. 36 Mad. 131; A.I.R 1921 Mad. 654; 14 A.L.J. 310; A.I.R. 1923 Mad 114, *Foll.*; A.I.R. 1921 Bom. 379, *Diss. from.* (*Sulaiman, and Pullan, JJ.*). MAQBUL AHMAD *v.* PATESHRI PARTAB NARAIN SINGH. **118 I.C. 670=1929 A.L J 976= A.I R. 1929 All. 677.**

———When a plaint is returned by a Court for want of jurisdiction and is represented to another Court, the suit is considered to be instituted on the date on which the plaint is presented to the latter Court and if by that time the period of limitation prescribed by the law in force (Punjab Act III of 1923 in this case) has expired the suit becomes time barred. 36 Mad. 482 and A.I.R. 1921 Mad. 654, *Ref.* (*Bhide, J.*). SURAT SINGH *v.* NEHAL KAUR. **117 I.C. 900=A.I.R. 1929 Lah. 877.**

LIMITATION ACT (1908), S. 14—Defect of jurisdiction—Presentation to wrong Court.

———Where a suit, which, in order to be within limitation, had to take the advantage of a holiday under S. 4 was instituted in a wrong Court, S.14 will not be applicable to bring it within time when subsequently instituted in a proper Court. A.I.R. 1923 Mad. 114; 116 P.L.R. 1920, *Foll.*; A I.R. 1921 Bom. 379, *Not foll.* (*Broadway and Harrison, JJ.*). DHARMAN RAM *v.* GANGA RAM. **116 I.C. 314=11 Lah. 12= A.I.R 1929 Lah. 425.**

———Where a plaint is returned for presentation to proper Court, and the order returning the plaint is appealed against, but before the decision of the appeal the plaint is presented to the proper Court, the period required for the prosecution of the appeal subsequent to the presentation of the plaint to the proper Court cannot be excluded under S. 14, as the plaintiff cannot be said to have prosecuted his appeal in good faith. (*Subhedar, A.J.C.*). CHITAMAN *v.* KISHAN. **116 I.C. 509=25 N.L.R. 99=A.I.R. 1929 Nag. 219.**

———*S. 14 applies when the suit is filed in a wrong Court in good faith.*

A suit for redemption the value of which for the purposes of jurisdiction was Rs. 99, was decreed against the appellant who presented an appeal to the Court of the Senior Subordinate Judge who, after enquiry, held that the suit was for possession by redemption of "land" as the property in suit was initially land and its character had not been changed by anything alleged to have been done thereon by the defendant. He, therefore, returned the memorandum of appeal for presentation to the proper Court The next day, the appellant filed the appeal in the Court of the District Judge though the presentation was not within time. The appellant claimed reduction of the time spent by him in prosecuting his appeal in the Court of the Senior Subordinate Judge under S. 14.

Held, that the provisions of S. 14, Lim. Act, applies to this case as the reasons given by the appellant in support of his contention that the property in suit had changed its character were not such as could summarily be rejected. It had not been shown that the appellant had any motive for filing the appeal in the Court of the Senior Subordinate Judge; he honestly believed that the appeal lay to that Court. (*Jai Lal, J.*). MAULA BAKHSH *v.* UDHAM SINGH. **106 I. C. 812= A. I. R. 1928 Lah. 136.**

———Where the decree on the face of it shows that it has been passed by the Court of the Subordinate Judge, there have been two previous execution proceedings, both in the Court of the Subordinate Judge and some money had been realised, and the heading of the decree showed it was one of the Subordinate Judge's Court; but still the decree-holder filed the next execution application in Munsif's Court and re-filed it in proper Court, beyond limitation,

Held, that the decree-holder was not entitled to the protection of S. 14 as such an act cannot be said to be done with due care and attention. (*Adami and Scroope, JJ.*). SHAIKH FAZLUL JAMIL *v.* SHAIK HELALUDIN. **101 I. C. 674= 8 P.L.T. 561= A.I.R. 1927 Pat. 256.**

———Where a plaint is returned under O. 7, R. 10, C. P. Code, the time to be excluded under S. 14, is the period from the date of presentation until the date of return of the plaint. 3 M. L. J. 190, *Diss.*; 7 M.L.J. 261; 22 Bom. L. R. 1337 and (1337)

LIMITATION ACT (1908), S. 14—Defect of jurisdiction—Presentation to wron ourt.

A.W.N. 302, *Rel. on.* (*Phillips, J.*). SINNA KARUPPAN *v.* MUTHIAH CHETTIAR.
92 I.C. 373=22 M.L.W. 816=
A.I.R. 1926 Mad. 178.

——Under S. 29 (1) nothing in this enactment affects or alters any period of limitation specially prescribed for any suit, appeal or application by any special or local law, and inasmuch as Ss. 71 to 77 of the Registration Act lay down a complete procedure where registration is refused, and as S. 77 limits the period within which suit is to be brought to 30 days, the period cannot be extended under S. 14 of the Limitation Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter. 47 Cal. 300; 24 C.W.N. 29; 30 Cal. 532 and 18 Mad. 99, *Rel. on.* (*Prideaux, A.J.C.*). FATELAL *v.* MT. SITI. 89 I.C. 884=A.I.R. 1926 Nag. 126.

——Where a Court returns a plaint for want of jurisdiction the time occupied in that Court counts towards limitation and saves it under S. 14 from being barred. (*Kinkhede, A. J. C.*). VENKAT BHAT *v.* MT. YAMU. 80 I.C. 286=
A.I.R. 1925 Nag. 54.

——Holidays preceding the period specified by S. 14 cannot be excluded under S. 14. If a plaintiff, after the expiration of the full period of limitation on account of the intervening holiday, files a suit on the re-opening day in a wrong Court, S. 14 can never be of any avail to him. (*Oldfield and Venkatasubba Rao, JJ.*). GOVINDASAMI *v.* R. SAMI.
69 I.C. 724=16 M.L.W. 911=31 M.L.T. 258=
1923 M.W.N. 42=A.I.R. 1923 Mad 114=
43 M.L.J. 579.

——The time during which a Court holds up a case while it is discovering that it ought to have been presented in another Court, is time which ought to be excluded in computing the period of limitation which is applicable, as provided by S. 14. It cannot be said that a plaintiff is not prosecuting a suit with due diligence in a Court of first instance when the delay is caused by the action of the Court itself. (*Walsh, J.*). MT. MARYAM BIBI *v.* RAM DAS. 70 I.C. 613=A.I.R. 1922 All. 404.

——The plaintiff filed a suit in a Court without jurisdiction and his plaint was ordered to be returned for presentation to the proper Court but was actually returned after five days after the order on which day it was presented to the proper Court which dismissed it on the ground of being without the period of limitation.

Held, the five days of delay must be excluded in computing the period of limitation. (*Macleod, C.J. and Shah, J.*). NAGINDAS KAPURCHAND *v.* MAGANLAL PANACHAND. 65 I.C. 160=
46 Bom. 211=23 Bom. L.R. 1023=
A.I.R. 1922 Bom. 160.

——When a party is ordered to take back his plaint and present it in the proper Court, the proceedings do not end until the party gets back his plaint.

Where the first Court was closed when limitation expired and so the plaint filed on the re-opening day was in time, the plaintiff is entitled to take advantage of those days during which the first Court was closed for the vacation, and the calculation should be made in the same way as if the second Court had been closed for the vacation. 36 Mad. 131, *Dissented from.* (*Macleod, C. J. and Fawcett, J.*). BASVANAPPA *v.* KRISHNADAS GOVERDHANDAS. 59 I.C. 743=45 Bom. 453=
A.I.R. 1921 Bom. 379.

LIMITATION ACT (1908), S. 14—Different cause of action.

——Where on the day the limitation period expires the Court having jurisdiction is closed and on the day of re-opening, the suit is instituted in a Court having no jurisdiction and the plaint is thereafter returned for presentation to the proper Court and is accordingly presented therein, the suit should be held to be barred; for the purposes of S. 4 account cannot be taken of the closing and re-opening of any other Court than that in which the suit was rightly instituted 36 Mad. 131; 36 Mad. 482 and 8 M.L.W. 256 *Foll.*

The period allowed by S 14 cannot be tacked on to the period during which the proper Court was closed, when such latter period precedes the period under S. 14. (*Spencer and Ramesam, JJ.*). SIMANATHU *v.* PATHUMMA 63 I.C. 924=
44 Mad. 817=13 M.L.W. 631=1921 M.W.N. 452=
A.I.R. 1921 Mad. 694=41 M.L.J. 84.

——A proceeding may be treated to have been prosecuted in good faith even though it was founded upon an error of law. 45 Cal 94 (P.C.), *Foll.*; 10 All. 587, *held obsolete.* So, where a plaint is returned under C. P. Code, O. 7, R 10, for presentation to the proper Court, the period spent in the first Court may be excluded, in a proper case. (*Wazir Hasan, A. J. C.*). BAHADUR KHAN *v.* ABBU SAHEB. 61 I.C 203=24 O.C. 137=
8 O.L.J. 76=A.I.R. 1921 Oudh 100.

—S. 14—Defect of jurisdiction — Proceedings while exercising different jurisdiction.

——*Proceeding taken in right Court but continued in wrong Court justifies exclusion of time occupied by proceeding in wrong Court.*

On 10th April, 1912, an application to execute a decree was presented to the proper Court (Wadgaon Court). As the Judge happened to sit in the Court at Haveli he passed orders at Haveli on April 15th, 1912. The High Court on appeal held on 3rd February, 1915, that the proceedings from and after 15th April were without jurisdiction. On the direction of the High Court the application was therefore further heard but was struck off on 30th June, 1915. A fresh application was presented on 3rd January, 1919. The application was in time by excluding the period from 15th April, 1912, to 3rd February, 1915,

Held, that the period should be excluded under S. 14 (2) for the decree-holder ought not to suffer because when the proper proceedings were in the Wadgaon Court, the Judge sitting in the Haveli Court wrongly passed the orders on 15th April, 1912, and the proceedings thereon should be treated as a separate proceeding and pertaining to the original proceeding which was held in the Wadgaon Court. (*Macleod, C.J., Kajiji and Crump, JJ.*). PANDU DAGADU MAHAR *v.* JAMNADAS CHOTUMAL MARWADI. 85 I. C. 778=
26 Bom. L.R. 470=A.I.R. 1925 Bom. 113.

—S. 14—Defect of jurisdiction—What is not.

——The rejection of an application that a certain decretal debt be entered in the schedule of creditors of the J.D. during insolvency proceedings for want of affidavit is not due to any defect of jurisdiction and S. 14 is not applicable. (*Mullick and Bucknill, JJ.*). AKHAJ KHALIFA *v.* RAMLAL MARWARI. 79 I.C. 696=1923 P.H.C.C. 271=
A.I.R. 1924 Pat. 40.

—S. 14—Different cause of action.

——While counting limitation for the presentation of an application for the preparation of the final decree, time spent in prosecuting previous applications for the execution of the decree cannot be

LIMITATION ACT (1908), S. 14—Different cause of action.

excluded as the two reliefs being different S. 14 (2) will not be applicable. (*Sulaiman and Pullan, JJ.*). MAQBUL AHMAD *v.* PATESHRI PARTAB NARAIN SINGH. **118 I. C. 670=1929 A.L.J. 976= A.I.R. 1929 All. 677.**

——A suit was filed on a pro-note in a Native State and decreed. A suit was then filed in British India on the basis of the foreign judgment which was dismissed on the ground that the Court in Native State had no jurisdiction. Plaintiff then filed a fresh suit on pro-note in British India and claimed benefit of S. 14,

Held, that causes of action in the two suits in British India were different and S. 14 did not apply. (*Devadoss and Jackson, JJ.*). RATHNA THEVAN *v.* PAKIRISAMI THEVAN. **112 I.C. 139= 1928 M. W. N. 543=28 M.L.W. 648= A. I. R. 1928 Mad. 1088**

——*A person is not entitled to the benefit under the section when there is not the same cause of action and when the suit is not conducted with due diligence and in good faith.*

A Chettiar firm being a partnership of three partners carried on a money-lending business at Thonze by an agent. It made certain advances to a certain person and when accounts were settled between them it was found that he owed a certain sum to the firm. The respondent guaranteed payment of this amount to the firm and gave their agent a promissory note. Two of the three partners sued the debtor to recover the sum. They instituted the suit at Tharrawaddy and they alleged that the defendant had borrowed the sum from their firm at Thonze which is within the jurisdiction of the Tharrawaddy Court. In the plaint they did not refer to the document mentioned above, but they mentioned it in an annexure to their plaint as one of the documents on which they relied.

The suit was filed on the last day of limitation and the third partner—the present appellant—joined the suit as plaintiff later. The suit was found not within jurisdiction of the Court. The plaint was subsequently presented in the Small Cause Court of Rangoon, but before the case came on for trial there, appellant filed an amended plaint in which he claimed to sue alone on the basis of the document as a promissory note. He claimed exemption from the law of limitation on the ground that he had been in good faith prosecuting against the respondent another suit on the promissory note in the Tharrawaddy Court,

Held, that as the latter cause of action, which was based on the document as a promissory note, was not the cause of action in the suit as originally instituted and the appellant was not prosecuting the suit with due diligence and in good faith, he was not entitled to the benefit of S. 14. A.I.R. 1922 P.C. 249. *Foll.* (*Heald and Mya Bu, JJ.*). NATESAN CHETTIAR *v.* SANKARAN CHETTIAR.

105 I.C. 701=5 Rang. 600=A.I.R. 1928 Rang. 21.

——When defendant sued plaintiff for a declaration that a certain sale was invalid and after his suit was finally dismissed, plaintiff sued for possession of the land sold to him,

Held, that the time occupied by defendant's suit cannot be availed of by plaintiff under S. 14, especially where causes of action for two suits were different and defendant's suit was not in a wrong Court. (*Shadi Lal, C.J. and Jai Lal, J.*). MT. SAT BHIRAI KHAURD *v.* AHMAD. **104 I. C. 726= 28 P.L.R. 403=9 L.L.J. 477=A.I.R. 1927 Lah. 785.**

LIMITATION ACT (1908), S. 14—Different cause of action.

——A suit for recovery of rent against a non-occupancy raiyat is barred if not brought within three years from the last day of the agricultural year in which the arrear fell due, under the provision of Art. 2 (*b*) of Sch. III. The period cannot be extended under the provisions of S. 14 owing to pendency of proceedings under S. 46, B.T. Act, as the two suits are not founded on the same cause of action. 3 Cal. 6, *Dist.* (*Greaves and M. N. Mukerjee, JJ.*). PORT CANNING AND LAND IMPROVEMENT CO. LTD. *v.* ACHHIRUDDI MOLA. **92 I.C. 37=43 C.L.J. 43=A.I.R. 1926 Cal. 693.**

——*Claims in defendants' written statements found against but suit dismissed wholly—The pendency of appeal does not save limitation as to the claims made in the written statements.*

The suit was a partition suit. The controversy was between the plaintiff and his son (the 5th defendant) on the one side and the remaining defendants on the other. The question was as to whether the limitation as to the plaintiffs' claim to certain items was saved by reason of a previous litigation in which he and his son (the 5th defendant) had taken part. The previous litigation was also a partition suit by another co-parcener. The plaintiff of that suit claimed on the footing that he had been adopted by a deceased co-parcener. The present plaintiff and his son who were defendants in that suit alleged that the present plaintiff's son was adopted by the deceased co parcener in question, that the adoptive father had been divided from the rest of the family and had left a will. They also alleged that various items were due to the joint family from the father of the plaintiff of that suit. The trial Court found that both the alleged adoptions were false. The alleged division and the will were also found against. As regards the disputed items claimed from the father of the plaintiff of that suit, the trial Court found that some of the items claimed in the present suit were due. But there was no decree in respect of it. As the plaintiff's case had failed the Court dismissed the whole suit. There was an appeal by the plaintiff. The present plaintiff and his son filed a joint memorandum of objections in which they stated that the trial Court's finding as regards the adoption of the present plaintiff's son, the will and the partition were wrong and unnecessary and that his findings about the liabilities and outstandings of the family were not entirely correct. But they contended that the Trial Court having found against the (then) plaintiff's adoption rightly dismissed suit but erred In disallowing costs to them. The (then) plaintiff's father also put in a memorandum of objections in regard to the findings against him about the family's liabilities and outstandings; but that was superfluous as there was neither any decree nor appeal in respect of them. There was no dispute about these matters between the (then) plaintiff and his father. The appellate Court dismissed both the appeal and the memorandum of objections.

Held, that while the appeal was pending, the present plaintiff and his son were not prosecuting their claim in respect of the unadmitted items now in question, within the meaning of S. 14 of the Limitation Act. 43 Cal. 660 (P. C.) and A.I.R. 1923 Mad. 347, *Dist.* (*Ramesam and Reilly, JJ.*). MUDDANNA ADENNA *v.* M. SUBBANNA. **91 I.C. 202= 1925 M.W.N. 241=A.I.R. 1925 Mad. 922.**

LIMITATION ACT (1908), S. 14—Good faith and diligence—Bona fide claim.

—S. 14—Good faith and diligence—Bona fide claim.

——A plaintiff obtained a decree for rent which was revised in appeal on the ground that provisions of S. 12, Rangoon Rent Act, were not satisfied. In Trial Court no specific issue was raised on the point. Plaintiff sued again for the rent,

Held, that the plaintiff was entitled to deduct the whole time required for the previous suit as he was *bona fide* litigating his claim throughout that period. A.I.R. 1916 P.C. 96, *Expl.* (*Pratt, Offg. C.J. and Ormistone, J.*). G. BHANDARI *v.* R. NIHALCHAND. 117 I.C 52=6 Rang. 691. A.I.R. 1929 Rang. 55.

——A claim cannot be said as not *bona fide* when two Courts concur in decreeing the claim, although the final Court of appeal holds the decree to be erroneous. (*N. R. Chatterjea and Graham, JJ.*). DINA NATH SAHA ROY *v.* JADU NATH BISWAS. 86 I.C. 130=29 C.W.N. 202=A.I.R. 1925 Cal. 456.

——Where the defendants were recorded in the revenue record as tenants under the plaintiffs,

Held, that the plaintiff's action in attempting to secure their ejectment as tenants cannot be held to have been other than a *bona fide* proceeding even if their evidence was stigmatized by the Revenue Courts as false. (*Le Rossignol, J.*). YUSIF ALI KHAN *v.* ABBAS ALI KHAN. 84 I.C. 733=6 L.L.J. 522=26 P.L.R. 27=A.I.R. 1925 Lah. 264.

——*What is a* bona fide *claim.*

In a suit by some trustees of a mosque for removal of its manager and for the appointment of a Receiver, the manager (defendant) claimed that the suit was not maintainable and that the mosque owed him considerable sums of money which he had spent out of his pocket. An issue was raised as to the amount payable to or by, the manager and the Trial Court found on evidence that the manager was entitled to be paid a sum of Rs. 3,302 from the mosque and directed the Receiver appointed in the suit to pay up the said sum. The manager thereupon brought a suit for recovery of the amount found to be due to him deducting the amounts actually paid by the Receiver appointed in the previous suit. The trustees pleaded that the suit was barred by limitation,

Held, that the manager was entitled to exclusion of the time spent in the prior suit and in appeal therefrom under S. 14. (*Schwabe, C.J. and Wallace, J.*). KUNHI KUTTIALI *v.* KUNHAMMAD. 78 I.C 139=A.I.R. 1923 Mad. 347=44 M.L.J. 179.

—S. 14—Good faith and diligence—Bona fide mistake.

——Where an application was made under S. 144, C.P. Code under a *bona fide* mistake instead of filing suit for money wrongly paid under a decree in a previous suit, time required for prosecuting the application was excluded. (*Hallifax, A.J.C.*). LAKSMAN *v.* BISHRAM. 71 I.C. 42=A.I.R. 1923 Nag. 94.

—S. 14—Good faith and diligence—Carelessness.

——*Party displaying great carelessness is not entitled to benefit of S.* 14.

Since Act X of 1922 was passed the provisions of S. 14 undoubtedly apply to proceedings under S. 111, Land Revenue Act of 1901. In other words, when a party is required to institute within three months a suit in Civil Court for the determination of such a question and he does institute such a suit and prosecutes it with due diligence he shall

LIMITATION ACT (1908), S. 14—Good faith and diligence—Deligence.

have the right, if it be discovered that the Court in which he has instituted the suit has no jurisdiction, to obtain the extension contemplated in S. 14 when proceeding in the Court which has jurisdiction. 18 O. C. 343 and 4 O.L.J. 553, *held no longer good law.*

But it must be shown that the party can be granted this aid; where the party is guilty of great carelessness and the error committed is not an error which could be committed by a reasonable and prudent man exercising due diligence and caution, the party is not entitled to the benefit of S. 14. 3 O.L.J. 387, *Rel. on.* (*Stuart, C. J. and Raza, J.*). MUHAMMAD NACEMULLAH *v.* RAM PAL. 6 O.W.N. 932=A.I.R. 1930 Oudh 64.

—S. 14—Good faith and diligence—Claimants' suit.

——*Time taken in prosecuting the previous suit in good faith and due diligence should be excluded.*

A person filed an objection petition claiming certain property as his own and seeking to have it exoluded from attachment in execution of a decree. The claim was refused whereupon he field a suit to establish his title. The suit was finally dismissed by the High Court as it considered the application as one under S. 47 against which order they held that the applicant should have preferred an appeal and not filed a suit referred to. The applicant therefore filed the appeal but the appeal was time-barred,

Held, that as the claimant was diligently prosecuting his case, hence time taken in suit ought to be excluded. (*Jwala Prasad and Ross, JJ.*). JIWAN RAM *v.* HAZARI LAL. A.I.R. 1930 Pat. 307.

—S. 14—Good faith and diligence—Diligence.

——*An appellant acted* bona fide *in preferring his first appeal, there was sufficient cause within S. 5—His second appeal therefore will be protected.*

A revenue officer rejected the application of appellant to adduce further evidence and made final order making correction in the record as against appellant. Appellant first appealed against the portion of the order rejecting his application believing *bona fide* that he would thereby get the whole relief that he wanted. The appeal, however, was dismissed. About 17 or 18 days after the appeal was dismissed he again appealed against the other portion of the order whereby correction in the record was made against him.

Held, that S. 14 constitutes sufficient cause within the meaning of S. 5 but that section would entitle one to the deduction of the period during which the suit or proceeding was prosecuted. A.I.R. 1917 P. C. 156, *Rel. on.*

Held further, that S. 14 is not exhaustive of all the circumstances that may constitute sufficient cause. In this case as the appellant acted *bona fide* in preparing his first appeal there was sufficient cause for him for not preferring the present appeal within time. And this case is fit for the Court to exercise its discretion under S. 5 since the 17 or 18 days that elapsed between the dismissal of the first and preferring of the present appeal is not a period which can be called unreasonable or which would show that there was any want of diligence on the part of the appellant in preferring the appeal, (*Rankin, C.J. and Mukerji, J.*). KAMIRUDDIN MALLIK *v.* SM. BISHUPRIYA CHOWDHURANI. 119 I.C. 383=33 C.W.N. 76=A.I.R. 1929 Cal. 240.

LIMITATION ACT (1908), S. 14—Good faith and diligence—Error of judgment.

—S. 14—Good faith and diligence—Error of judgment.

——Mere error of judgment is quite a different thing from bad faith. (*Sulaiman, A.C.J. and Bennet, J.*). FIRM OF BALDEO PRASAD BABU RAM *v.* FIRM OF HAJI ALI MAHOMED USMAN.
112 I.C. 715=1929 A.L.J. 73.

—S. 14—Good faith and diligence—Misconceived Litigation.

——Time spent in previous litigation cannot be excluded, when the previous suit does not fail from any defect of jurisdiction or other causes of like nature but fails because it is misconceived. (*Shadi Lal, C.J. and Tapp, J.*). AMAR NATH *v.* MT. RALLI. **121 I.C. 70=A.I.R. 1930 Lah. 211.**

——Plaintiff's suit was dismissed for default on 27th July, 1926. The plaintiff applied for copy on 29th July, 1926 and obtained it on 5th August, 1926, He appealed against the decree on 2nd September, 1926, and was informed on 27th October, 1926, that he had misconceived his remedy and should apply to set aside the order of dismissal under O. 9, R. 4, C. P. Code. On 18th November, 1926, he made the application.

Held, that the period between 27th July, 1926, and 2nd September, 1926, cannot be exoluded as until 2nd September, 1926, there was neither Court nor proceeding. 89 Mad. 61 and 86 Mad. 131, *Rel. on.* (*Jackson, J.*). VEERAYYA *v.* SREESAILAM.
110 I.C. 47=1928 M.W.N. 239=A.I.R. 1928 Mad. 356.

——Section 14 of the old Act, allowed an applicant the time spent only in making another application, not in conducting a suit, whereas under the present law, allowance can be claimed for the time spent in prosecuting another civil proceeding, whatever its character. Where the proceeding and the remedy have been wholly misconceived, S. 14 has no application because the failure of the appellant in the prosecution of his claim by suit cannot be attributed to anything connected with the jurisdiction of the Court. (*Oldfield and Venkatasubba Rao, JJ.*). C. GANAPATHI MUDALIAR *v.* N. KRISHNAMACHARI. **70 I. C. 743=16 M. L. W. 178=1922 M.W.N. 514=31 M.L.T. 135=A.I. R. 1922 Mad. 417=43 M.L.J. 184.**

—S. 14—Good faith and diligence—Mistake in judgment.

——Where a suit is decided under C. P. Code, O. 17, R. 3, but by mistake R. 2 is metioned in the judgment instead of R. 3 and the party is misled by this and wastes his time in seeking for rehearing and after limitation for appeal is over, files an appeal, he can apply to be excused for the delay. (*Dalal, J.C.*). MT. MAHADEI *v.* TIRBENI.
86 I.C. 356=A.I.R. 1925 Oudh 495.

—S. 14—Good faith and diligence—Negligence in prior proceeding.

——A plaintiff cannot invoke the aid of S. 14 to bring his claim within limitation for the simple reason that the proceedings insolvency failed not for want of jurisdiction or other cause of a like nature within the meaning of S. 14 but on account of the plaintiff's negligence in not effecting service of notice of the order admitting his petition on the defendant according to law. (*Subhedar, A.J.C.*). BALIRAM *v.* SUPADASA. **121 I.C. 55 (Nag.).**

—S. 14—Good faith and diligence—Non-legal proceeding.

——Proceedings coming under S. 14 must be such as are recognized by law as legal in their initiation, though a party has carried the proceeding to the wrong Court. It can hardly be said that a party who is proceeding in ignorance of law has been proceeding with due diligence or in good faith. The word "good faith" connotes due care and attention. (*Foster, J.*). SHEO DHARI RAM *v.* GUPTESWAR PATHAK. **78 I.C. 482=A.I.R. 1924 Pat. 716.**

LIMITATION ACT (1908), S. 14—Good faith and diligence—Want of good faith.

—S. 14—Good faith and diligence—Pauper application.

——Where an application for leave to sue as a pauper has been disposed of and dismissed and where, moreover, it has been found that the application was made in bad faith, any payment of Court-fees made thereafter cannot operate retrospectively for the purposes of calculation of limitation. 2 All. 241 (P.C.), *Dist.*; 20 Bom. 508; 24 Cal. 889, *Rel. on.* (*Findlay, J.C.*). JAGANNATH *v.* NATHOO.
118 I.C. 687=12 N.L.J. 69=A.I.R. 1929 Nag. 268.

—S. 14—Good faith and diligence—Proceeding contrary to law.

——Proceeding contrary to a clearly expressed provision of law cannot be regarded as prosecuting another civil proceeding in good faith in the sense in which the words "good faith" are defined in the Act.

Thus if a person, against whom an order is made under O. 21, R. 63, C. P. Code, instead of bringing a suit applies for revision of the order, and brings a suit when his application for revision is dismissed, he is not entitled to the exclusion of the period for which he was prosecuting his application for revision. 8 L.B.R. 146, *Rel on.* (*Heald and Otter, JJ.*). S.R M.M.A. FIRM *v.* MAUNG PO SAUNG.
120 I.C. 236=7 Rang. 466=A.I.R. 1929 Rang. 297.

—S. 14—Good faith and diligence—Question of fact.

——When application to excute a decree was taken by only one of the several decree-holders and it was dismissed as not in accordance with law and subsequently all the decree-holders joined in the application it was held that the previous application was prosecuted in good faith and the second application is not time-barred. (*Fawcett, J.C. and Raymond, A.J.C.*). IBRAHIM *v.* FIRM OF GULAM HUSSAN. **62 I.C. 507=15 S.L.R. 11=A.I.R. 1921 Sind 13.**

—S. 14—Good faith and diligence—Suit against wrong person.

——In computing the period of limitation for a suit against the Secretary of State, time spent in conducting a suit wrongly filed against Traffic Manager instead of against Secretary of State cannot be deducted. (*Zafar Ali and Addison, JJ.*). CHANDA SINGH *v.* SECY. OF STATE.
96 I.C. 144=A.I.R. 1926 Lah. 572.

—S. 14—Good faith and diligence—Want of good faith.

——*Good faith was held not to be established on the facts.*

Where the suit was prosecuted in wrong Court owing to plaintiff's allegation in plaint that accounts had been made but which was found to be untrue and was left unamended in the plaint when it was presented for the first time in the right Court; and though the matter was brought prominently to the plaintiff's notice when the plaint was again returned to him and it was practically the only matter discussed in his appeal; and the plaintiff was very reluctant to make up his mind to amend the plaint and abandon the allegation that there had been a settlement of accounts,

LIMITATION ACT (1908), S. 14—Interpretation and scope.

Held, that the allegation was made deliberately in the hope of establishing later on an allegation of fact that had been found to be untrue and was now admitted to be untrue; and that whatever may be the full extent of the meaning of "good faith" in S. 14 it cannot cover conduct of that sort. (*Hallifax, A. J. C.*). SHEO NARAYAN *v.* RAM PRASAD. **74 I.C. 317=8 N.L.J. 76= A.I.R. 1923 Nag. 241.**

—S. 14—Interpretation and scope.

——Section 4 can be applied to a case in which extension of time has been claimed under S. 14 and a plaintiff is entitled to the benefit of S. 14 and S. 4 tacked together. 24 W. R. 26; A.I.R. 1921 Mad. 654, *Dist.* (*Suhrawardy and Garlick, JJ.*). BEJOY KUMAR SEN *v.* KUSUM KUMARI DEBI. **33 C.W.N. 221=A. I. R. 1929 Cal. 315.**

——The Act is undoubtedly an exhaustive Code governing the law of limitation in India. The cases in which the running of limitation can be suspended are contained in the sections of the Act. It would be dangerous to lay down generally that there is some principle outside the Limitation Act under which limitation can be suspended. 35 All. 227 (P.C.), *Foll.* (*Lindsay and Sulaiman, JJ.*). RAMCHARAN SAHU *v.* GOGA. **102 I.C. 96= 49 All. 565=25 A.L.J. 426=A.I.R. 1927 All. 446.**

——No equitable grounds for suspension of a cause of action can be added to the provisions of the Limitation Act. (*Ramesam and Wallace, JJ.*). SATYA NARAYANA BRAHMAM *v.* MAGANTI SEETHAYYA. **100 I.C. 776=50 Mad. 417= 25 M.L.W. 426=1927 M.W.N. 160= 39 M.L.T. 116=A.I.R. 1927 Mad. 597= 52 M.L.J. 396.**

——The circumstances contemplated in S. 14 might and ordinarily would constitute a sufficient cause in the sense of S. 5. 5 All. 591, *Ref.* (*Sulaiman, J.*). RAM RUP AGRAHRI *v.* NAIK RAM. **91 I.C. 865=A.I.R. 1926 All. 252.**

——Exemptions not covered by Ss. 9 and 14 and the other sections should not be imported by Courts to relieve a party from the bar of limitation. (*Abdul Raoof and Moti Sagar, JJ.*). HUKAM CHAND *v.* SHAHAB DIN. **71 I.C. 435=4 Lah. 90= A.I.R. 1924 Lah. 40.**

——The interpretation to be put upon the section must be a wide one. "Limitation would without doubt remain in suspense whilst the plaintiffs were *bona fide* litigating for their rights in a Court of Justice." (*Schwabe, C.J. and Wallace, J.*). KUNHI KUTTIALI *v.* KUNHAMMAD. **73 I.C. 139=A.I.R. 1923 Mad. 347= 44 M.L.J. 173.**

——A Berar Court is not a Court contemplated by S. 14. The word 'Court' in that section means Court in British India. 35 Bom. 139. (*Batten, J.C. and Prideaux, A.J.C.*). RAJANNA *v.* NARAYAN. **76 I.C. 308=A.I.R. 1923 Nag. 321.**

—S. 14—Parties.

——A suit against a firm, and a subsequent suit, against the surviving partners of the firm and the heirs of a deceased partner are both against the same parties within the meaning of S. 14 of the Limitation Act. (*Sulaiman, A.J.C. and Bennett, J.*). FIRM OF BALDEO PRASAD BABU RAM *v.* FIRM OF HAJI ALI MAHOMED USMAN. **112 I.C. 715= 1929 A.L.J. 73.**

——*Suit against same defendant in different capacity is not covered.* (*Obiter*).

Where the plaintiff had sued defendant for some cotton yarn as part of the accounts which were presented against the defendant in the partnership and in a second suit by the plaintiff for the price of the same cotton yarn against the same defendant in his personal capacity.

LIMITATION ACT (1908), S. 15—Attachment of mortgaged property.

Held, that the plaintiff could not be said to have been prosecuting with due diligence another civil proceeding which was founded upon the same cause of action. (*Walsh and Banerji, JJ.*). DEVI CHAND *v.* PIRBHU LAL. **102 I.C. 870= A.I.R. 1927 All. 628.**

——Section 14 excludes time taken in proceedings *bona fide* in Court without jurisdiction against the particular defendant. (*Datal, J.C.*). RAM PHER *v.* AJUDHIA SINGH. **87 I.C. 17=12 O.L.J. 66= 2 O.W.N. 144=A.I.R 1925 Oudh 369.**

——Where a prior suit is in different capacity and is on a different cause of action, the period of that suit cannot be excluded as the proceedings were not infructuous on the ground of defective jurisdiction or any other cause of a like nature. (*Robinson, C.J. and Heald, J.*). H. G. HOOSEIN *v.* ASHA BIBI. **76 I.C. 639=1 Rang. 402= A.I.R. 1924 Rang. 123.**

——Section 14 of the Limitation Act renders it essential that the proceedings should be beeween the contesting parties. (*Mookerjee, A. C. J. and Fletcher, J.*). JANAKI NATH *v.* BEJOY CHAND. **64 I.C. 315=60 I.C. 638=33 C.L.J. 366= 26 C.W.N. 271=A.I.R. 1921 Cal. 596.**

——Mis-joinder and non-joinder are only variations of the same defect, namely, the omission to have the proper parties or causes of action included in a suit or application. There is nothing that requires a Court to make an absolute distinction between cases of mis-joinder and non-joinder in regard to S. 14. (*Fawcett, J.C. and Raymond, A.J.C.*). IBRAHIM *v.* FIRM OF GULAM HUSSAN. **62 I.C. 507=15 S.L.R. 11=A.I.R. 1921 Sind 18.**

—S. 14—Miscellaneous.

——Plaintiff suing on a foreign judgment is not entitled to deduct the time during which the defendants were applying before the foreign Courts to set aside the *ex parte* decree; for until it is in fact set aside it remains a final decree capable of execution. (*Case-law discussed*) (*Harrison and Addison, JJ.*). HARI SINGH *v.* MAHOMED SAID. **102 I.C. 523=8 Lah. 54=A.I.R. 1927 Lah. 200.**

—S. 15—Attachment of decree.

——*Execution of decree prohibited—Amounts to injunction.*

An attachment before judgment of a decree and a consequent order issued by the Court attaching the decree absolutely prohibiting the execution of the decree by anybody amounts to an injunction and the period of its pendency is excluded under S. 15 in executing the decree. (*Phillips and Odgers, JJ.*). RAGITHAGIRIPATHY *v.* BHAVANI SANKAR. **80 I.C. 103=19 M.L.W. 650= 1924 M.W.N. 527=47 Mad. 641= A.I.R. 1924 Mad.673=47 M.L.J. 5.**

—S. 15—Attachment of mortgaged property.

——*Estate attached under Chota Nagpur Encumbered Estates Act—Suit if filed, keeps alive claim—If not filed, period of attachment cannot be excluded.*

There is no provision in the Chota Nagpur Encumbered Estates Act providing that a vesting order under S. 2 has the effect of barring the institution of suits. 20 Cal. 609, *Diss.* But if such a suit be instituted, the institution of the suit has the effect of keeping the claim alive as against the person whose estate is attached under the Act. But where no such suit is filed, the period during

LIMITATION ACT (1908), S. 15—Bar of arrest in execution.

which the property was under attachment cannot be excluded by the mortgagee of the attached property from limitation for instituting his suit on mortgage. (*Das and Allanson, JJ.*). KAIRULLAH KHAN *v.* PANDAY LACHMI RAM. **105 I.C. 643= 7 Pat. 109=9 P.L.T. 252=A.I.R. 1928 Pat. 179.**

—S. 15—Bar of arrest in execution.

——*Attachment still open—Period bar therefore not to be excluded.*

Though the decree-holders may have been debarred from one particular mode of execution still it is open to them to executo their decree in any other way, *e.g.*, by attachment and sale of any movable or immovable property of the judgment-debtor. Therefore S. 15 of the Limitation Act does not apply. (*Daniels, J.*). RAM BHAROSY *v.* SOHAN LAL. **82 I.C. 1=5 L.R.A. Civ. 408= A.I.R. 1924 All. 707.**

—S. 15—Condition for applicability.

——*Barring suit or execution—Must be a bar in substance and not merely in form—Decree declaring promisee not entitled to sue on promissory note—Reversed in appeal—Filing of suit effectively suspended till the date of the appellate decree.*

In order to justify application of S. 15 the Court has to see whether the order or decree in a previous litigation between the same parties is in substance and not merely in form one which prevents a party from filing a suit or executing a decree. 5 Pat. L.J. 39; 47 I.C. 907, *Appl.*

A promissory note was executed in 1917 in renewal of a prior promissory note of 1914 executed by the defendant in favour of the plaintiff's father. The plaintiffs' father's sister filed a suit on the promissory note of 1914 alleging that the note was nominally taken in plaintiffs' father's name, with her money and that she was entitled to the amount due on the promissory note. The District Munsif passed a decree in her favour in 1919. Subsequent suit was filed on the 11th October, 1922. The decree in 1919 declared the plaintiff's right and directed the present plaintiffs who were defendants in that suit to endorse the promissory note in her favour. There was an appeal and the Subordinate Judge on 13th October, 1919, reversed the decision of the District Munsif and dismissed the plaintiffs' suit. Both the present plaintiffs and the defendant were parties to the previous suit.

Held, that the effect of the decision of the District Munsif was that the present plaintiffs had no right to recover the money due on the first promissory note, and as they were directed to endorse that note to the plaintiff in that suit they could not, when that decree was in force, claim any money on the renewed promissory note till the decision of the District Munsif was reversed in appeal. The fact that they were defendants in that suit made no difference. (*Kumaraswami Sastri and Madhavan Nair, JJ.*). LAKSHMINARAYAN *v.* LAKSHMIPATI. **105 I.C. 304=1927 M.W.N. 757= A.I.R. 1927 Mad. 997=53 M.L.J. 520.**

—S. 15—Insolvency of judgment-debtor.

——(*Quaere*)—*Whether insolvency operates as stay.*

Quaere.—Whether an order adjudicating a person as an insolvent does not operate as an order staying execution of the decree against him. 42 Mad. 319 and A.I.R. 1923 Bom. 33, *Ref.* (*Ramesam and Devadoss, JJ.*). PARAMESWARAN NAMBUDRI *v.* SESHAN PATTAR. **110 I. C. 518= 51 Mad. 583=28 M. L. W. 60= A.I.R. 1928 Mad. 627=55 M.L.J. 156.**

LIMITATION ACT (1908), S. 15—Receiver in foreclosure suit.

——*Adjudication—No bar to suit—Period of pendency of insolvency—Not to be excluded.*

It cannot be said that when an adjudication order is made, there is any injunction or order against the institution of a suit by a creditor. Section 17 of the Presidency Towns Insolvency Act does not present an absolute bar to the creditor's right to institute a suit but only prevents him from suing without the leave of the Court. And it is only when leave is refused that it can be said that there is an injunction or order staying the institution of the suit. The creditor cannot, therefore, claim a deduction of the time during which the insolvency was pending, in computing the period of limitation in any suit brought by the creditor after the insolvency proceedings are quashed. (*Macleod, C.J. and Shah, J.*). SIDRAJ BHOJRAJ *v.* ALI HAJI. **67 I. C. 757= 24 Bom. L. R. 509=47 Bom. 244= A. I. R. 1923 Bom. 33.**

—S. 15—Interim suspension of right.

——*Application for decree absolute—Order of Court suspending right to apply—Period of suspension to be excluded.*

Subsequent to the date fixed for payment in the preliminary decree obtained by a third mortgagee a second mortgagee obtained a decree on his mortgage in which the Court expressed opinion that the third mortgagee could not sell the property before he had paid off the second mortgage,

Held, that the period from the date of the judgment which contained that opinion to the date when the third mortgagee paid the sum due to the second mortgagee, should be deducted in calculating the time limit for an application for decree absolute by the third mortgagee, assuming Art. 181 applied. (*Mookerjee, Ag. C. J. and Fletcher, J.*). HAMENDRA MOHAN KHASNOBIS *v.* DHARANINATH CHANDRA ROY. **62 I. C. 418=33 C.L.J. 260= 25 C. W. N. 376=A. I. R. 1921 Cal. 381.**

—S. 15—Period of notice of suit.

——*Claim against joint defendants—Notice necessary against only one defendant—Period of notice given excluded with regard to other defendants also.*

If it is necessary, for the plaintiff to bring a suit claiming relief against all the defendants jointly, and if notice under enactment was necessary against one defendant only and was in fact given, the period of notice is to be excluded in computing the period of limitation for the suit and not merely so far as the defendant to whom notice was given is concerned. A. I. R. 1922 Pat. 549, *Ref.* (*Sen and Niamatullah, JJ.*). MD. SHARIF *v.* NASIR ALI. **A.I.R. 1930 All. 742.**

——Suit to recover water cess paid under protest—Period of notice of suit—Exclusion of period of. (*Schwabe, C.J., on difference between Krishnan and Venkatasubba Rao, JJ.*). SECY. OF STATE *v.* VENKATRATNAM **73 I.C. 106=46 Mad. 485= 17 M.L.W. 683=32 M.L.T. 236=1923 M.W.N. 258= A.I.R. 1923 Mad. 652=45 M.L.J. 12.**

—S. 15—Receiver in foreclosure suit.

——*Decree nisi for foreclosure—Receiver appointed pending appeal—Right to apply for final decree accrues from date of discharge of receiver.*

In a case where, after the passing of the preliminary decree for foreclosure in a mortgage suit, a Receiver was appointed at the instance of the defendant pending an appeal to His Majesty in Council and the latter appeal is dismissed for non-prosecution, the right to apply for making decree final accrues from the date of the order giving the

LIMITATION ACT (1908), S. 15—Revival of pending execution.

decree-holder liberty to so apply. The decree-holder is incompetent to make such an application so long as the Receiver is in possession of the mortgaged properties. (*Das and Adami, JJ.*). CHOTTEY NARAIN SINGH *v.* KEDER NATH SINGH.
66 I.C. 97=3 Pat. L.T. 565=
1 Pat. 435=1922 P.H.C.C. 342=
A.I.R. 1922 Pat. 201.

—S. 15—Revival of pending execution.

——*Not prohibited.*

The Limitation Act, as amended, does not prohibit either expressly or by necessary implication the making of an application for revival of execution pending in Court. 27 All. 334 (P.C.) and A.I.R. 1921 All. 99, *Foll.* (*Walsh, Ag.C.J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHATTUR SINGH *v.* KAMAL SINGH. 100 I.C. 692=
49 All. 276=25 A. L. J. 201=
A. I. R. 1927 All. 16 (F.B.).

—*Distinct from a fresh application for execution —If section applies to revival.*

There is an essential difference between an application for the execution of a decree and an application to a Court asking it simply to revive a previous application made for the execution of the decree. It is to an application of the former class that S. 15 would apply and not to an application of the latter class.

Per *Sulaiman, J.*—The question of exclusion of time can only arise when a fresh application for execution is made, whereas it is only a previous application which has not been properly and finally disposed of which can be revived. The application for revival is not a fresh application for execution. The principle is based on equity and justice, and the decree-holder is merely to request the Court to take up and continue the proceedings which have not finally terminated, but which have remained in abeyance for some reason or other beyond his control. It is not correct to say that the amendment of S. 15 was intended to sweep away and replace the old doctrine of revival. The two principles are not co-extensive or identical. The application for revival not being a fresh application for execution cannot be governed by Art. 182. The proper article is Art. 181, 42 All. 564, *Foll.* (*Walsh, Ag. C.J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHHATTAR SINGH *v.* KAMAL SINGH.
100 I.C. 692=49 All. 276=25 A.L.J. 201=
A. I. R. 1927 All. 16 (F.B.).

—S. 15—Scope.

——*If controlled by S. 48, C. P. Code.*

Section 48, C. P. Code is not controlled by S. 15, Lim. Act, and the only exception to sub-S. (1) is that contained in sub-S. (2). (*Obiter*). (*Kulwant Sahay and Macpherson, JJ.*). KIRTYANAND SINGH *v.* PIRTHICHAND LAL. 120 I.C. 315=
A. I. R. 1929 Pat. 597.

——*Does not apply to S. 48, C. P. Code.*

Section 15, Lim. Act applies only to the periods prescribed in the Schedule to that Act and does not apply to the period of limitation prescribed by S. 48, C. P. Code. 45 Mad. 785, *Foll.* (*Wallace and Thiruvenkatachariar, JJ.*). TANDAVAMURTHI *v.* DURGAMBA. 113 I.C. 260=A.I.R. 1928 Mad. 1154.

——*Does not control, S. 48, C.P. Code.*

The prohibition against the execution of decrees more than 12 years old contained in S. 48, C. P. Code is not controlled by S. 15, Limitation Act. (*Spencer and Ramesam, JJ.*). SUBBARAYAN *v.* NATARAJAN. 70 I.C. 396=45 Mad. 785=
16 M.L.W. 68=1922 M.W.N. 424=
31 M.L.T. 140=A.I.R. 1922 Mad. 268=
43 M.L.J. 168.

—S. 15—Several defendants.

——*Several defendants—Plaintiff entitled to deduct time against one defendant entitled against all defendants as well.*

In a single suit brought against several defendants if the plaintiff is entitled to deduct a certain period from the period of limitation in respect of one defendant, he is also entitled to the same period of limitation in the case of the other defendants. A.I.R. 1922 Pat. 549 and A.I.R. 1927 Pat. 344, *Foll.* (*Tek Chand and Bhide, JJ.*). E. I. RY. CO. *v.* RAHIMULLAH ILAHI BAKHSH.
111 I.C. 749=9 Lah. 519=A.I.R. 1928 Lah. 349.

See also (*Coutts and Adami, JJ.*). B. & N. N. RAILWAY CO. *v.* RAM SARUP LAL CHOWDRY.
70 I.C. 109=3 Pat. L.J. 643=1922 P.H.C.C. 234=
A.I.R. 1922 Pat. 549.

—S. 15—Stay against one judgment-debtor.

——*Stay against one judgment-debtor—Period of stay not excluded against other judgment debtors.*

Period which should be excluded from computation because there was a stay order against one judgment-debtor should not be excluded from computation as against the other judgment-debtors, when there is no stay order against them. 30 Mad. 268, *Expl.*; 38 Mad. 419, *Ref.*; A.I.R. 1921 Mad. 116, *Diss.* (*Ramesam and Devadoss, JJ.*). PARAMESWARAM NAMBUDRI *v.* SESHAN PATTAR.
110 I. C. 518=51 Mad. 583=28 M.L.W. 60=
A.I.R. 1928 Mad. 627=53 M.L.J. 156.

——*Suspension.*

Where execution against one of several joint judgment-debtors is stayed, limitation is suspended against the others also. (*Abdur Rahim and Odgers, JJ.*). VELLAYAN CHETTY *v.* MUTHAYYA CHETTY.
61 I. C. 901=13 M.L.W. 59=1921 M.W.N. 188=
A.I.R. 1921 Mad. 116.

—S. 15—Stay of execution.

——*Absolute stay—Contemplated.*

Section 15 contemplates an absolute stay of execution which renders the decree-holder incapable of taking out execution of the decree. (*Kulwant Sahay and Macpherson, JJ.*). KIRTYANAND *v.* PIRTHICHAND. 120 I.C. 315=A.I.R. 1929 Pat. 597.

——*By injunction or by decree being set aside—Period excluded.*

Where a decree-holder is restrained by injunction from executing the decree or where his decree has ceased to exist having been set aside in a separate suit the time of injunction or the period for which the decree ceased to exist should be excluded. (*Dawson Miller, C.J. and Ross, J.*). RANGULAM SINGH *v.* RAJ KUMAR RAI.
102 I.C. 327=6 Pat. 635=8 P.L.T. 770=
A. I. R. 1928 Pat. 86.

——*By agreement.*

Only an agreement to desist from execution would not attract the provision of S. 15, Limitation Act. (*Jackson, J.*). ALAPATI SYAMALADOSS *v.* DORADLA SUBBAYYA. 100 I.C. 20=
38 M.L.T. 42=A. I. R. 1927 Mad. 347=
52 M.L.J. 137.

——*Time given for paying decretal amount—Subsequent application within three years from the expiry of such period is within time.*

Section 15 applies to suits and execution proceedings alike and so the time for which execution

LIMITATION ACT (1908), S. 15—Stay of execution.

proceedings are stayed is excluded 4 All. 60 and 4 All. 155, *Dist.*

Where after stay of execution on application of parties, a certain period is given to the judgment debtor for paying off the decretal amount a subsequent application from execution, made within three years from the expiry of the period given to the judgment-debtor, is within time. (*Kanhaiya Lal and Ashworth, JJ.*). MT. SAHODRA *v.* BHAGWAN DAS. **94 I.C. 482=A.I.R. 1926 All. 473.**

———*Execution suspended by orders of Court—Revival after three years—If valid.*

Where the execution of a decree has been suspended through no act or fault of the decree holder, the execution proceeding will not be time-barred even if the subsequent application is presented more than three years after the order of suspension was passed. 27 All. 334 (P.C.); 43 All. 383 and 37 Cal. 796, *Foll.* (*Walsh, J.*). GANGA JEE *v.* SAT NARAIN LAL. **87 I.C. 205=6 L.R.A. Civ. 249=A.I.R. 1925 All. 572.**

———*By injunction—Period of exclusion—From date of last execution to date of dissolution of injunction.*

On 7th July, 1917, the execution of a mortgage decree for a sale of a house was first taken out. On September 12th, 1917, injunction was granted restraining the sale of half the house. On 19th November, 1917 an application was made to take a step-in-aid of execution with respect to the other half of the house. That half of the house was sold. The injunction was dissolved on 8th November, 1918. Application for execution with respect to the other half was made on January 10th, 1922,

Held, that the last application was made on 19th November, 1917, and limitation began to run from that date. The only period which the decree-holder was entitled to exclude on account of the injunction was from 19th November, 1917, the date on which limitation began to run, to 8th November, 1918, the date on which the injunction was dissolved. Therefore, the application made on 10th January, 1922, having been made more than 3 years after the date of the last application, after deducting the period covered by the injunction the application was time-barred. (*Das and Ross, JJ.*). LAL PASI *v.* RAMSARAN LAL CHOWDHRY. **78 I.C. 478=A. I. R. 1925 Pat. 298.**

———*Stay must be absolute—Stay under O. 21, R. 53 (1) (b)—Does not apply to.*

Section 15 only applies to an absolute stay, and not to a limited stay as would be ordered by the notice under O. 21, R. 53 (1) (*b*). The stay under this rule does not prevent either the holder of the decree sought to be executed or his judgment-debtor from seeking to execute the original decree, and that being the case, time must be taken as running against them. (*Macleod, C. J. and Shah, J.*). SHANBASAPPA NAGAPPA *v.* HOLI-BASAPPA BASAPPA. **80 I.C. 239=48 Bom. 435=26 Bom. L.R. 317=A.I.R. 1924 Bom. 383.**

———*No fault of decree-holder—Right to revive suspended execution.*

Where the execution of a decree has been suspended through no act or default of the decree-holder, the latter has a right to ask the Court to revive and carry through the execution proceedings which have been thus suspended. (*Piggott and Walsh, JJ.*). MADHO PRASAD *v.* DRAUPADI BIBI. **61 I.C. 417=43 All. 383=19 A.L.J. 174=A.I.R. 1921 All. 99.**

LIMITATION ACT (1908), S. 15—Stay of execution.

———*Decree-holder required to produce judgment in a suit—Period till that judgment was passed should be excluded.*

The decree-holder was asked by the executing Court to produce the judgment in a certain suit before a certain date before the decree could be transferred to the Collector for execution. The judgment in that suit was passed at a much later date. Upon the decree-holder's failure to produce the judgment before the required date, the Court dismissed the application for execution. In calculating the limitation for a subsequent execution application by decree-holder,

Held, that the time during which the suit, the judgment in which was required to be produced, continued should be excluded. (*Gokul Prasad and Lindsay, JJ.*). BALDEO SINGH *v.* RAM SARUP. **64 I.C. 598=19 A.L.J. 905=A.I.R. 1921 All. 174.**

———*There must be clear order for stay.*

Although under S. 15 a written order staying the execution of the decree is not necessary, there must be clear order staying the execution of the decree. (*Shah, J.*). VISVANATH PARSHARAM *v.* NARSA TULSIDAS. **60 I.C. 916=23 Bom. L.R. 107=A.I.R. 1921 Bom. 33.**

———*Injunction as to part by another Court—Stay as to the rest by executing Court—Period till both the injunction and stay ceased to be operative to be excluded.*

Sub-section (1) of S. 15 contemplates the stay of execution of a decree either by injunction or by order; an injunction to stay execution may be issued in a proceeding other than the execution proceedings, while an order for stay of execution may be made by the execution Court itself in the course of those proceedings.

Where a decree is stayed by injunction as to part of the properties and by order of the executing Court itself as to the rest, the decree-holder is entitled to deduct the time during which the injunction and the order continued, the date on which the injunction was issued and the order was made, and the date on which the injunction and the order ceased to be operative. (*Mookerjee and Panton, JJ.*). GOVINDA NATH *v.* BASIRUDDIN MANDAL. **64 I.C. 894=34 C.L.J. 163=A.I.R. 1921 Cal. 606.**

———*Injunction — Entire proceedings stayed—Period of stay excluded.*

Where in consequence of an injunction obtained by a claimant to a share in the property sought to be sold in execution, the executing Court stays the whole proceedings, S. 15, Sub-section (1) applies, and the decree-holder is entitled to a deduction of the time between the date when the order for stay was made and the date when that order ceased to be operative. (*Mookerjee and Panton, JJ.*). JIRA BIBI *v.* MAJIRUDDIN CHOWDHURI. **64 I.C. 849=35 C.L.J. 135=A. I. R. 1921 Cal. 594.**

———*Execution suspended by objection found groundless—Subsequent application may be a continuation or revival.*

An application for execution of a decree may be treated as one in continuation or revival of a previous application, similar to scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction, 37 Cal. 796, *Foll.*; 27 All. 334 (P.C.);

LIMITATION ACT (1908), S. 15—Stay on condition of security.

A.I.R. 1921 P.C. 31, *Rel. on.* (*Mookerjee and Panton, JJ.*). AJODHYA NATH PAHARY *v.* SRINATH CHANDRA PAHARY. 68 I.C. 207= 35 Cr.L.J. 84=26 C.W.N. 338= A.I.R. 1921 Cal. 472.

—S. 15—Stay on condition of security.

———*Period from date of order to date of acceptance of security to be deducted.*

Where an order granting stay of delivery of possession is made conditional upon security being furnished and security is subsequently given and accepted, the order of stay must be taken to have been in force from the date of the original order granting stay and the time that elapsed between the date of the stay order and the date of the actual acceptance of the security should also be deducted in favour of the purchaser. (*Krishnan, J.*). THAYYAMUTHU *v.* ODAYAPPAN. 99 I.C. 632=25 M.L.W. 108=1927 M.W.N. 60= A. I. R. 1927 Mad. 391.

—S. 15—Stay-partial.

———*Quaere.*—Whether a partial stay order may be governed by S. 15, Limitation Act. (*Ramesam and Devadoss, JJ.*). PARAMESWARAN NAMBUDRI *v.* SESHAN PATTAR. 110 I.C. 518= 51 Mad. 583=28 M.L.W. 60= A.I.R. 1928 Mad. 627=56 M.L.J. 156.

—S. 15—Suit against Government wards.

———*Government wards, at the dated of cause of action—Ceasing to be wards before hearing—Time is extended by two months.*

Plaintiff is entitled to include in the limitation period the two months required to serve notice as required by S. 31 of the Court of Wards Act, on defendants who were Government wards at the time the cause of action arose, and the extension cannot be refused on the ground that they ceased to be wards before the suit came on for hearing. (*Macleod, C. J. and Shah, J.*). KHANDERAO SHIDRAMAPPA DESAI *v.* CHANMALLAPPA SHIDDAPPA TORGAL. 81 I.C. 750= 26 Bom. L.R. 364=A.I.R. 1924 Bom. 364.

—S. 15—Suit against Municipalities.

———*Section* 15 (2) *does not apply to extend time for filing suit under S.* 167 *of the Bombay District Municipal Act* (1901).

Section 167 of the Bombay Dt. Municipal Act (1901) in plain and unambiguous terms prevents the claimant from commencing his suit after six months from the date of act complained of and thereby expressly exoludes the time being extended, under S. 15, Cl. 2 of the Limitation Act. Public interests require that such suits should be instituted without any delay and the period of six months is sufficiently long to enable a claimant to comply with both the conditions precedent required by S. 167 of the Municipal Act. 32 Cal. 277, *Foll.* (*Rupchand Bilaram, A.J.C.*). REWACHAND FATEHCHAND *v.* KARACHI MUNICIPALITY. 90 I.C. 44= A.I.R. 1925 Sind 322.

—S. 15—Time granted to judgment-debtor.

———*Time for payment given to judgment-debtor operating as stay—Must be excluded.*

An application for execution was made on 21st September, 1923, the judgment-debtor paid Rs. 50 in part payment and prayed for a week's time for payment of a sum of Rs. 200. The Court granted time to the judgment-debtor to pay the money up to 29th September, 1923. No payment was, however, made on this date and the execution case was dismissed on 3rd October, 1923. On 24th September, 1926 such application for execution was filed,

LIMITATION ACT (1908), S. 18—Antecedent fraud.

Held, that the application was not barred. The order granting time prevented decree-holder from taking any further step and the order of 21st September must be considered to be an order of stay of execution and not in furtherance of execution. A. I. R. 1926 All. 473, *Appr.* (*Kulwant Sahay and Macpherson, JJ.*). GANGA SINGH *v.* SHEO PRASAD. 119 I.C. 890=7 Pat. 829= A.I.R. 1929 Pat. 36.

———*Time to judgment-debtor for payment—Does not operate as stay.*

An order merely giving time to judgment-debtor for payment is not an order staying execution or an injunction and S. 15 does not apply in such a case. 40 All. 198, *Foll.* (*Addison, J.*). AMINCHAND *v.* CHEALI. 100 I.C. 475=9 L.L.J. 76= 28 P.L.R. 93=A.I.R. 1927 Lah. 106.

—S. 16—Suit by auction-purchaser.

———*Symbolical possession delivered—Period during which application to set aside sale continued cannot be excluded.*

Symbolical possession is as effective as actual possession against the judgment-debtors; and if the judgment-debtors continued in possession even after symbolical possession is delivered to the auction-purchaser, their possession becomes adverse against such purchaser from that very day. The purchaser therefore has a fresh cause of action for instituting the suit for possession against the judgment-debtor, and such a suit would not be one governed by Art. 138, which evidently refers to a case where the purchaser has not obtained delivery of possession, but Art. 144 would apply, and in such a case the period during which an application to set aside sale continued cannot be exoluded. 35 Cal. 209; 25 C. W. N. 376 and 12 M. I.A. 244 (P.C.), *Dist.* (*Chatterjee and Panton, JJ.*). BROJENDRA KUMAR ROY CHOUDHRI *v.* ASHUTOSH ROY. 70 I.C. 420=26 C.W.N 361=A.I.R. 1921 Cal. 385.

—S. 17—Underlying presumption.

———*Assumes that legal representative holds property in the right of testator.*

Section 17 of the Limitation Act proceeds on the assumption that the legal representative holds the property in the right of the deceased and that it is his duty to sue in respect of a cause of action that has accrued to the testator after his death. (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. 83 I.C. 812=3 Pat. 880= 3 P. L.T. 513=A.I.R. 1924 Pat. 721.

—S. 18—Adjustment of decree.

———*Fraud on judgment-debtors—Right to apply for certifying adjustment.*

Where a settlement had been come to, to satisfy the respective decrees in two suits and the decree-holders represented to the judgment-debtors that this was the case, and on the strength of such representation judgment-debtors signed it, and thought that as it was filed, the two decrees were adjusted,

Held, such conduct could be said to keep the judgment-debtors from the knowledge of the right of applying to the Court for the adjustment of the decree to be certified. (*Rutledge, J.*). R.P.L. CHETTY FIRM *v.* G. LON POW. 70 I.C. 859= 1 Bur. L.J. 43=A.I.R. 1922 L.B. 31.

—S. 18—Antecedent fraud.

———*Fraud antecedent to accrual of cause of action—If comes within S.* 18.

The view that fraud antecedent to the accrual of the right of action can never be considered under

LIMITATION ACT (1908), S. 18—Applicability.

S. 18 is erroneous. Such fraud can and must be considered because fraud is a continuing influence and until that influence ends it retains its power of mischief. 17 Bom. 341, *Foll.* (*Das, J.*). BAJRANG PRASAD *v.* MT. SONEJHARI KUER.

85 I.C. 622=6 P.L.T. 567=A.I.R. 1925 Pat. 521.

—S. 18—Applicability.

———*Case covered by Art.* 62—*Subsequent act of fraud—S.* 18 *does not apply.*

Section 18 cannot apply to a case under Art. 62 where there was no fraud at the date when the payment was made and the cause of action arose, but a subsequent act of fraud was relied on to save limitation. 25 M. L. J. 531, *Dist.* (*Spencer and Ramesam, JJ.*). RAMALAGAU SERVAI *v.* SOLAI SERVAI. **69 I. C. 274=1921 M.W.N. 539=A.I.R. 1921 Mad. 283=41 M.L.J. 274.**

—S. 18—Burden of proof.

———*Party defrauding should show that effects of fraud had been removed.*

Where fraud has been established in a case against a party who is deriving benefit therefrom it is for him to show that the continuing effects of fraud which was perpetrated have been removed. 17 Bom. 341 (P.C.); A.I.R. 1923 Pat. 435 and A.I.R. 1924 Pat. 496, *Foll.* (*Wort, J.*). BEAS SINGH *v.* KHEDU MIAN. **123 I.C. 637=A.I.R. 1930 Pat. 58.**

———*Initial burden to prove date of knowledge on plaintiff—When onus shifts.*

Where the plaintiff alleges fraud and states that he acquired knowledge on a particular date in ordinary cases the initial burden would be on him to lead evidence, *prima facie* at any rate establishing the date of his knowledge. 17 Bom. 341 (P.C.). *Expl.*; 27 All. 540, *Not appr.*

But if notwithstanding the fact that the plaintiff did in most specific terms allege in his suit the date and the circumstances in which he acquired knowledge for the first time, the defendant's pleadings are evasive and do not raise specifically an issue as to the date of the plaintiff's acquisition of knowledge the burden of proving the date is not on him. (*Boys and Bennett, JJ.*). SRI KRISHNA PANDEY *v.* GHANA NAND JOSHI. **1929 A.L.J. 1153=A.I.R. 1929 All. 721.**

———*Proof of fraud essential—Onus on party defrauded.*

Before a plaintiff can avail himself of the provisions of S. 18 it is incumbent upon him to show that he was kept out of the knowledge of his right to institute the suit by means of fraud. (*Cuming and Mallick, JJ.*). HASAN ALI *v.* GURUDAS KAPALI. **116 I.C. 726=49 C.L.J. 16=33 C.W.N. 248=A.I.R. 1929 Cal. 188.**

———*Fraud proved—Starting point must be proved by party committing fraud.*

When once fraud is established, then it is for the decree-holder to establish at what precise point the judgment-debtor had clear and definite knowledge of those facts which would entitle him to set aside the sale. 16 C.W.N. 894, *Foll.* (*Das and Fazl Ali, JJ.*). BABU LAL *v.* PAREM KUMARI. **117 I.C. 46=10 P.L.T. 231=A.I.R. 1929 Pat. 228.**

———*Execution sale—Fraud of the decree-holder to be proved—Fraud of auction-purchaser, if need be proved.*

Where an application under O. 21, R. 90, C. P. Code was made out of time and the judgment-debtor sought the benefit of S. 18 of the Limitation Act.

Held, that it was incumbent on the judgment-debtor to show that he was kept from the knowledge of his right to apply within the period of limitation by the fraud of the party concerned and that the same continued till that date,

Held, also that though the auction-purchaser was a necessary party to such proceedings fraud on his part need not be alleged and proved. (*B. B. Ghose, J.*). KEDAR HURA *v.* ASUTOSH ROY. **99 I.C. 946=44 C.L.J. 565.**

LIMITATION ACT (1908), S. 18—Continuation of fraud.

———*Proof of removal of effects of fraud—Onus on party guilty of fraud.*

The party guilty of fraud must show that the continuing effects of the fraud had been removed. Where the judgment-debtors were kept from knowledge of the sale by the fraud of the decree-holder and consequently must also have been kept from knowledge of their right to apply to set aside sale so long as that fraud continued and its effect was not removed.

Held, unless the decree holder shows that the effect of that fraud was removed, the judgment-debtors were entitled to the benefit of S. 18. 17 Bom. 341 (P.C.) and 19 C.W.N. 553, *Foll.* (*Ross, J.*). MAHABIR RAM *v.* RAMBAHADUR. **72 I.C. 625=4 P. L.T. 306=A.I.R. 1923 Pat. 435.**

———*Party invoking S.* 18 *must prove fraud—Burden then shifts to the other side to prove date of knowledge.*

Where a suit is on the face of it barred, it is for the plaintiff to prove in the first instance the circumstance which would prevent the statute from having its ordinary effect. A person who, in such circumstances, desires to invoke the aid of S. 18, must establish that there has been fraud, and that by means of such fraud, he has been kept from the knowledge of his right to sue or of the title whereon it is founded. Once this is established the burden is shifted on to the other side. (*Mookerjee, Walmsley and Pearson, JJ.*). BIMAN CHANDRA DATTA *v.* PROMOTHO NATH GHOSE. **63 I.C. 94=49 Cal. 886=36 C.L.J. 295=A.I.R. 1922 Cal. 157.**

See also (*Prideaux, A. J. C.*). RAMCHANDRA *v.* HARDEO. **80 I. C. 590=20 N.L.R. 23=A.I.R. 1924 Nag. 94.**

—S. 18—Concealment of sale.

———*Fraud—Judgment-debtor kept in ignorance of a Court sale—Section applied.*

Where a decree-holder not merely failed to serve the judgment-debtor with notice of the intended sale but even after sale actively concealed from him the knowledge of his right to object to the sale.

Held, that S. 18 of the Indian Limitation Act, 1908, applied. (*Spencer and Venkatasubba Rao, JJ.*). MUHAMMAD ROWTHER *v.* SUBBA NAICKER. **72 I.C. 46=17 M.L.W. 152=32 M.L.T. 252=A.I.R. 1923 Mad. 353.**

—S. 18—Continuation of fraud.

———*Decree-holder's fraud—Onus on him to prove opportunity for judgment-debtor to discover fraud and when fraud was discovered.*

Fraud once committed continues and therefore the decree-holders guilty of fraud in bringing about a sale in ignorance of the judgment-debtors must prove that the judgment debtor was given opportunity to discover the fraud and the time when the fraud was actually discovered. (*Jwala Prasad, J.*). THAKUR MAHTON *v.* JAMAN MAHTON. **80 I. C. 761=5 P. L. T. 200=A. I. R. 1924 Pat. 496.**

LIMITATION ACT (1908), S. 18—Discovery of void sale.

—S. 18—Discovery of void sale.

———*Time runs from date of discovery.*

When the true nature of rights bought was not discovered by the plaintiff earlier than the time at which his demand for possession was resisted,

Held, limitation began from the date of resistance. (*Sir Lawrence Jenkins.*) THAKURIAN HARNATH KUAR *v.* THAKUR INDAR BAHADUR SINGH.

71 I.C. 629=50 I.A. 69=37 C L J. 346=45 All. 179=27 C.W.N. 949=26 O.C. 223=18 M. L.W. 383=33 M. L. T. 216=5 Pat. L. T. 231=9 O. L. J. 652=5 P.L.T. 281=2 Pat. L.R. Civ. 237=A.I.R. 1922 P.C. 403=44 M.L.J. 489 (P.C.).

—S. 18—Essentials.

———*Mere fraud insufficient — Party defrauded must have been kept from knowledge of his right or title.*

It is not sufficient to make S. 18 operative that the cause of action should be based on fraud. It is necessary that the right claimed or the title on which it is founded, should have been kept from the knowledge of the applicant by means of fraud, although it may be that in certain circumstances it could be assumed from the act of fraud itself which gave the cause of action that this act of fraud was fraudulently concealed from the person affected. A.I.R. 1923 Pat. 507; 17 Cal. 769 and 30 Cal. 142, *Appr.* (*Rutledge, C.J. and Broun, J.*). BOURAMMAH *v.* A.N.A.N. CHETTIAR.

117 I. C. 63=7 Rang. 104=A. I. R. 1929 Rang. 62.

—S. 18—Fraud by judgment-debtor guardian.

———*Minor decree-holder—Judgment-debtor, getting guardianship by fraud—Time allowed to lapse—Judgment-debtor cannot plead limitation.*

A judgment-debtor, who gets himself appointed guardian of a minor decree-holder without disclosing his indebtedness to the estate, perpetrates fraud and if he allows the period of limitation for the execution of the decree against him to elapse, he cannot plead limitation as a bar to the execution of the decree. (*Greaves and Graham, JJ.*). GOBIND LAL GHOSE *v.* NALINI KANTA GHOSE.

88 I. C. 61=52 Cal. 63=A.I.R. 1925 Cal. 584.

—S. 18—Fraud by third person.

———*Application to set aside execution sale—Decree-holder not party to fraud—S. 18 does not apply.*

A judgment-debtor is not entitled to the benefit of S. 18 for the purpose of making an application under C. P. Code, O. 21, R. 90 to set aside an execution sale if the decree-holder was not a party to the fraud alleged. 17 Cal. 769 (F.B.), *Ref.* (*Cholzner and Graham, JJ.*). AZIZAUNESSA *v.* DWARIKA PROSAD BORAL. **86 I.C. 745=A.I.R. 1925 Cal. 1227.**

—S. 18—Fraud—Contemplated.

———*Active concealment with intention to deceive is fraud.*

If a vendor or a vendee wishes that a sale should not be nullified by a pre-emption suit, it is necessary for him to inform the pre-emptor before the transaction and get his refusal but a mere omission to inform the pre-emptor or the bare fact of concealing the sale transaction from him cannot amount to a fraud, but where there is an active concealment of the transaction coupled with an intention to deceive the pre-emptor there would undoubtedly be a fraud within the meaning of S. 18. (*Sulaiman and Kendall, JJ.*). SHEO SHANKAR *v.* PARTAB NARAIN. **118 I.C. 798=1929 A.L.J. 342=A.I.R. 1929 All. 218.**

LIMITATION ACT (1908), S. 18—Fraudulently keeping from exercising right.

———*Not constructive but actual and active fraud.*

The fraud contemplated by S. 18 is an actual and active fraud and not what is called constructive fraud. The words "has . . . been kept," in S. 18 point to the conclusion, that in order to constitute a fraud, it is not enough that there should be merely a tortuous act unknown to the injured party but that there must be some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts: there must be something actually said or done which is directly intended to prevent discovery. (*Iqbal Ahmad, J.*). GULAB RAI *v.* TULSI RAM. **101 I.C. 322=A.I.R. 1927 All. 437.**

———*Fraud by which party is kept from knowledge of right.*

For purpose of S. 18 it is not the alleged fraud by which dispossession was carried out which is pertinent, but the fraud by which the plaintiffs have been kept from the knowledge of their right to institute a suit. (*Campbell, J.*). NAND RAM *v.* ISHAR. **92 I.C. 597=7 L.L.J. 600=27 P.L.R. 24=A.I.R. 1926 Lah. 128.**

—S. 18—Fraudulent collection of debts.

———*Suit to recover the money—Time runs from plaintiff's knowledge of the collection.*

Where defendant has wrongfully collected the debts due to a deceased's estate and holds them as against the plaintiff the heir of the deceased and has been concealing from the plaintiff the fact of his having made the collection, S. 18 applies and limitation for the suit to recover the money from the defendant runs only from the time that plaintiff comes to know of the collection. (*Tudball and Lindsay, JJ.*). SAHEB RAM *v.* MT. GOVINDI. **60 I.C. 774=43 All. 440=19 A.L.J. 268=A.I.R. 1921 All. 155.**

—S. 18—Fraudulent concealment of execution proceedings.

———*Judgment-debtor's right to apply to set aside sale—Accrues when he became aware of the sale.*

If owing to the fraudulent concealment of the proceedings by the decree-holder all knowledge of the proceedings up to the time of sale is withheld from the judgment debtor, then so long as he does not come to know of the sale the effect of the fraud continues and the only conclusion which can be drawn is that he had been kept from the knowledge of the sale in consequence of the initial fraud practised by the decree-holder. It is only after he becomes aware of the sale that he comes to know of his right to apply. (*Sulaiman and Daniels, JJ.*). MT. SARVI BEGAM *v.* L. RAM CHANDRA SARUP. **88 I.C. 500=47 All. 850=23 A.L.J. 760=6 L.R.A. Civ. 388=A.I.R. 1925 All. 778.**

———Unless there is fraudulent concealment of the execution proceedings on the part of decree-holder limitation could not be extended under S. 18. (*Das, J.*). BAJRANG PRASAD *v.* MT. SONEJHARI KEER. **85 I.C. 622=6 P.L.T. 567=A.I.R. 1925 Pat. 521.**

—S. 18—Fraudulently keeping from exercising right.

———Section 18 does not deal with the exercise of the right, but with the knowledge of the right. Where it was alleged that the decree-holders had fraudulently kept the judgment-debtor from exercising his rights under O. 21, R. 2 by giving him assurances, no extension was granted. (*Robinson, C. J. and MacGregor, J.*). P.R.P.L. CHETTY FIRM *v.* G. LON POW. **68 I.C. 924=14 L.B.R. 363=1 Bur. L.J. 226=A.I.R. 1923 Rang. 103.**

LIMITATION ACT (1908), S. 18—Fraud, what is.

—S. 18—Fraud, what is.

———A mere omission by a mortgagor to inform the mortgagee regarding his want of title in the property mortgaged is not enough to constitute active fraud so as to attract the application of S. 18. The section is directed against cases of active and designed fraud. (*Srivastava, J.*). LALTA SINGH *v.* MUTHUR UPADHIA. **7 O.W.N. 1045.**

———*Actual fraud with intent to keep the person out of knowledge, omission to furnish information—No fraud.*

Per *Fawcett, J.*—Section 18 requires that a person should have been kept from certain knowledge by means of fraud. There must be actual fraud in the means adopted to keep the person out of knowledge, and it is entirely a misuse of words to say that merely because certain persons did not furnish the particulars which they ought to have done under the contract, there was fraud. (*Fawcett and Kemp, JJ.*). RANEEGUNGE COAL ASSOCIATION, LTD. *v.* TATA IRON AND STEEL CO, LTD. **117 I. C. 417= 53 Bom. 271= 31 Bom. L.R. 21= A. I. R. 1929 Bom. 119.**

—S. 18—Inference of fraud.

———*Fraudulent sale without notice to judgment-debtor—Suit to set aside one year later—Fraud not specifically pleaded—Fraud can be inferred and relief given.*

In spite of an order passed in his first execution application that the decree-holder was not entitled to proceed against the shares of the property allotted to a party defendant, the decree-holder again applied by a fresh execution application some time later for the same relief and for the sale of the whole of the property; and without giving any notice to the party defendant had the whole property sold in 1918, and himself became the purchaser; and again without any notice to him the decree-holder managed to get symbolical delivery behind his back. The party defendant came to know about the fraudulent act of the decree-holder only in 1919, when the decree-holder interfered with his possession,

Held, that in the circumstances though S. 18 has been specifically referred to in the plaint, the case would really come under S. 18 and the period before 1919 could not be counted; such an inference could not legitimately be drawn in the particular circumstances of this case, though originally facts bringing a case under S. 18 have to be specifically pleaded. (*Ananthakrishna Ayyar, J.*). CHENGALRAYA *v.* KOLLAPURI. **123 I. C. 24= 1929 M.W.N. 811= A.I.R. 1930 Mad. 12.**

—S. 18—Knowledge of fraud.

———*Nature of knowledge to be proved.*

To show that the plaintiff had knowledge of the transaction beyond the period of limitation, such knowledge must be clear and definite knowledge of the facts constituting the particular fraud. It is not sufficient for the defendant to show that the plaintiff had some clues and hints which, perhaps, if vigorously and acutely followed up, might have led to a complete knowledge of the fraud. 6 All. 406; 16 C.W.N. 894; 18 C.W.N. 1266; 19 C.W.N. 553; 16 I.C. 517; 25 M.L.J. 531 and 40 I.C. 37, *Foll.* (*Mookerjee, Walmsley and Pearson, JJ.*). BINAN CHANDRA DATTA *v.* PROMOTHA NATH GHOSE. **68 I. C. 94=49 Cal. 886= 36 C.L.J. 295= A.I.R. 1922 Cal. 157.**

—S. 18—Negligence.

———*Mere carelessness or negligence—No fraud.*

There is all the difference in the world between a failure to serve the notices and a deliberate contrivance on the part of a party to suppress the notices. The one is due to negligence, carelessness or various other circumstances; the other is the result of a deliberate contrivance on the part of a party for his own advantage. Mere negligence or carelessness on the part of the process-server or the identifier is insufficient as a basis for a finding of fraud. (*Das and Adami, JJ.*). BIHARI LAL MITTER *v.* TANUK LAL MANDER. **97 I.C. 798= 8 P.L.T. 28= A.I.R. 1926 Pat. 397.**

LIMITATION ACT (1908), S. 18—Suppression of powers.

—S. 18—Setting aside sale in execution.

———*Time runs from the date of knowledge.*

The starting point for limitation is the date of the knowledge of fraud committed by the decree-holder who brought about the sale in fraud of the judgment-debtors. Section 18 applies to application under R. 90. (*Jwala Prasad, J.*). THAKUR MAHTON *v.* JHAMAN MAHTON. **80 I.C. 761=5 P.L.T. 200= A.I.R. 1924 Pat. 496.**

———*Section applies.*

Section 18 applies to an application to set aside a sale in execution proceedings. Judgment of *Piggott, J.*, in 17 Cal. 769 at 776, *Foll.*; 14 Cal. 681, *Diss.* (*Mears, C. J. and Banerji, J.*). SHEO RAM KOERI *v.* IKRAMUNNISA BIBI. **71 I.C. 631= 21 A.L.J. 176=45 All. 316=4 L R.A. Civ. 129= A.I.R. 1923 All. 282.**

———*C. P. Code, O. 21, R. 92—Section 18 applies.*

Where fraud is alleged and proved, S. 18 of the Limitatian Act applies and the time for application to have the sale set aside is 30 days from the time the applicant becomes aware of the fraud. Judgment of *Piggott, J.*, in 17 Cal. 769 at 776, *Foll.*; 14 Cal. 681, *Diss.* (*Mears, C.J. and Banerji, J.*). SHEO RAM KOERI *v.* IKRAMUNISSA BIBI. **71 I.C. 631=45 All. 316=21 A.L.J. 176= 4 L.R.A. Civ. 129=A.I.R. 1923 All. 282.**

———*Time for application runs from applicant's knowledge not only of sale but of fraud.*

The applicant for setting aside a sale under O. 21, R. 90, must have knowledge not merely of the factum of the sale, but a clear and definite knowledge of the facts which constitute the fraud before time can run against him. 16 C.W.N. 894, *Ref.* When by a fraud involving suppression of process and submission of false returns the applicant is kept out of knowledge of the sale of his property, such fraud must be held to have a continuing influence in such a case it is for the other side to show that the injured party had clear and definite knowledge of the facts which constitute the fraud at a time from which, taken as a starting point, the suit is barred. (*Teunon and Chaudhuri, JJ.*). BHUSAN MANI DASI *v.* PROFULLA KRISTO DEB. **60 I.C. 801=48 Cal. 119= A. I. R. 1921 Cal. 251.**

—S. 18—Specific allegations of fraud.

———*Fraud must be specifically alleged.*

It is incumbent on a plaintiff seeking the benefit of S. 18 to distinctly allege the particular fraud, by which he has been kept from the knowledge of his right of suit against the defendant, specifically and with detailed particulars. (*Iqbal Ahmad, J.*). GULAB RAI *v.* TULSI RAM. **101 I. C. 322= A. I.R. 1927 All. 437.**

—S. 18—Suppression of powers.

———*Section 18 applies.*

Even after the payment of decretal amount decree-holder's karinda proceeded to sell the judgment-debtor's property and took steps so that no notice of the sale may reach the judgment-debtor.

LIMITATION ACT (1908), S. 18—Suppression of powers.

Thereupon the judgment-debtor applied to have the sale set aside:

Held, that S. 18 would apply to such a case. (*Dalal, J.*). JAGDEO *v.* UJIYARI KUNWAR. 108 I.C. 899=26 A.L.J. 412= A. I. R. 1928 All. 354.

———*Section* 18 *applies.*

The fraud which can be relevant to be considered for the purpose of Art. 164 is not only a fraud with reference to the service of notice but it covers any fraud and S. 18 can be applied. 16 C.W.N. 923, *Dist.* (*Findlay, Offg. J. C.*). M. B. KINKHEDE *v.* MOHANYA. 94 I C. 56=A.I.R. 1926 Nag. 388.

———*Time runs from knowledge of sale.*

Period of limitation for application to set aside execution of sale where notice of the sale was fraudulently suppressed runs from the date when the applicant came to know of the sale. (*Jackson, J.*). PALLAYYA *v.* BHIMARAJU. 85 I.C. 970= 20 M.L.W. 606=1925 M.W.N. 759= 35 M.L.T. 96=A. I. R. 1924 Mad. 859= 47 M.L.J. 535.

—S. 18—Suppression of process against judgment-debtor.

———*Applicability of section—What must be proved—Process fraudulently suppressed—Suit to set aside sale—Sale not known to plaintiff till a few days before suit—Suit maintainable.*

When a judgment-debtor makes an application to have an execution sale set aside under O. 21, R. 90, after the expiry of 30 days he must bring his case within S. 18 of the Limitation Act and to enable him to do so, it is not enough for him to show that the execution proceedings were irregular and fraudulent, but he must carry the fraud further and show that the existence of his right to set aside the sale has been kept concealed from his knowlege by the fraud of the decree-holder or the auction-purchaser. 1 C.W.N. 67, *Foll.* But in order to make limitation operate when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts constituting the fraud at a time which is too remote for the suit to be brought. 17 Bom. 341, *Foll.*

Where in a suit to set aside an execution sale it was found that processes in connexion with the execution case had been fraudulently suppressed and that the plaintiffs came to know of the fraudulent sale only seven or eight days before the institution of the suit,

Held, that it was not an unreasonable inference to draw that as a matter of fact the fraud that had been committed in the execution proceedings continued and by reason of its continuing influence the plaintiffs were kept out of the knowledge of the sale, and the plaintiffs were entitled to the benefit S. 18 of the Limitation Act. (*Greaves and Mukerji, JJ.*). NABIN CHANDRA HALDAR *v.* BIPIN CHANDRA HALDAR. 87 I.C. 355= A.I.R. 1926 Cal. 229.

—S. 19.

- **Acknowledgment.**
- **Acknowledgment to whom.**
- **Admissibility into evidence.**
- **Authority to acknowledge.**
- **Basis of suit.**
- **Effect of.**
- **Essentials of acknowledgment.**
- **Execution.**
- **Form of acknowledgment.**

LIMITATION ACT (1908), S. 19—Acknowledgment, to whom.

- **Implied acknowledgment.**
- **Interpretation.**
- **Lessor and lessee.**
- **Mortgagor and mortgagee.**
- **Proof of acknowledgment.**
- **Scope of.**
- **Miscellaneous.**

—S. 19—Acknowledgment.

———Where a debtor acknowledges the balance claimed by the creditor and promises to pay it after some time, it is a valid acknowledgment. 36 Mad. 68 and 31 Cal. 195, *Ref.*; 30 Bom. L. R. 688; *Rel. on.* (*Baker, J.*). VELCHAND GANESH *v.* BHAGVANDAS BHAICHAND. 32 Bom. L.R. 1390.

———*Nature of.*

Though an unconditional acknowledgment has been held to imply a promise to pay, it is not by itself sufficient to constitute a 'promise' within the meaning of S. 25 (3) of the Contract Act. So an acknowledgment made after the expiry of the period of limitation on the original note cannot form the basis of a suit. (*Ross, J.*). KANAI LAL MARWARI *v.* BABULAL MUCHI. A. I. R. 1930 Pat. 604.

———*Nature of.*

Although an acknowledgment may imply a promise for extending limitation it is, without a promise, insufficient to create a contract and cannot be enforced as such. Being neither contract, grant nor disposition of property nor analogous to any of them, it is not a document contemplated by S. 92 of the Evidence Act. So the prohibition regarding the admissibility of oral evidence is not applicable to an acknowledgment. 52 B. 521; 57 C. 394; 28 A.L.J. 532; 52 A. 169, *Ref. to.* (*Niyogi, A. J. C.*). LALA CHHEDILAL *v.* MANOHARLAL. 26 N. L. R. 320.

—S. 19—Acknowledgment, to whom.

———*Acknowledgment in document to which creditor is not a party is valid.*

It is not necessary that the acknowledgment should be made in a document to which the creditor need be a party and an acknowledgment made in a document to which the creditor is not a party is a valid acknowledgment. 33 Cal. 1047, *Foll.* (*Miller, J.*). MANIKYA BEWA *v.* PUSHPACHARAN. 115 I.C. 263= A.I.R. 1928 Cal. 850.

———*Not necessarily to claimant.*

A general acknowledgment under S. 19 is sufficient and it is not necessary that it should be addressed to the person claiming or to somebody through whom he claims. 37 Bom. 326 (P.C.) and 16 C.W.N. 263, *Appl.* (*Greaves and Rankin, JJ.*). SHAMSUD ALI *v.* MIRIAM ELIAS. 97 I.C. 710= 30 C.W.N. 963=44 C.L.J. 529= A.I.R. 1926 Cal. 1140.

———*Recital in a deed as to subsistence of debt—Sufficient.*

The acknowledgment need not be addressed to the creditor or to any one representing him. A statement contained a *kobala* that a certain mortgage on some of the properties comprised in the *kobala* is still subsisting has the effect of an acknowledgment so as to create a new period of limitation. 33 Cal. 613, *Diss. from*; 33 Cal. 1047 (P.C.), *Foll.*; 14 Cal. 801. (P.C.), *Expl.* (*Greaves and B B. Ghose, JJ.*). AZIZUR RAHAMAN *v.* RAMCHANDRA PODDAR. 91 I.C. 481= A.I.R. 1926 Cal. 686.

———*Need not be addressed to person entitled.*

An admission of liability contained in an endorsement of the Sub-Registrar about admission of execution and receipt of consideration and signed

LIMITATION ACT (1908), S. 19—Acknowledgment, to whom.

by the debtor is acknowledgment within S. 19. An acknowledgment need not be addressed to the person entitled to the property or right. 14 Cal. 801 (P. C.), *Expl.*; 33 Cal. 1017. *Foll.* (*Martineau and Harrison, JJ.*). LABHA MAL *v.* IMAN DIN.
76 I.C. 751=A.I.R. 1923 Lah. 369.

———*Sanad register—Entry signed by Sanad-holder showing him to be mortgagor—Acknowledgment—Sufficient.*

Entries made in a register of Sanads, showing that the Sanad-holder is a mortgage and signed by the Sanad-holder, may be an acknowledgment within S. 19. *Case-law discussed.*

Explanation 1 to S. 19 does away with the necessity of the acknowledgment being addressed to the creditor. 37 Bom. 326 (P.C.), *Foll.* (*Macleod, C.J. and Fawcett, J.*). PRANJIVANDAS PARSHOTTAM DAS *v.* BAI MANI. **61 I.C. 406=45 Bom. 934=23 Bom. L.R. 294=A.I.R. 1921 Bom. 291.**

—S. 19—Admissibility into evidence.

———*No specific mention of debt—Reference to other parts permissible.*

Where a document containing an acknowledgment of debt, does not specifically mention that the debt, is due to the plaintiff a reference to other parts of the deed to elucidate the meaning is permissible. 33 Cal. 1017 (P.C.), *Ref.* (*Bhide and Currie, JJ.*). DAVINDAR SINGH *v.* MT. LACHHMI DEVI. **A.I.R. 1930 Lah. 985.**

———Unstamped unconditional acknowledgment. (*Dalip Singh, J.*). RAM DITTA MAL RAM DHAN *v.* KESAR DAS. **119 I.C. 417=A.I.R. 1930 Lah. 177.**

———*Inadmissible as promissory note—Admissibility to prove acknowledgment.*

Where an instrument, instead of merely saying that the promisor promises to pay to the promisee a certain sum of money to order or to bearer, also adds that the amount for which it was given was due in settlement of a previous account, the instrument, even though inadmissible as a promissory note for want of insufficient stamp yet is admissible to prove an acknowledgment under Limitation Act, S. 19, for what is shut out by S. 35, Stamp Act (1899) is the instrument and not collateral matters connected with the instrument which may be mentioned in the same paper or in the same writing. 3 All. 581 (F.B.), *Rel. on*; A.I.R. 1926 Mad. 1148, *Expl.*; 30 Mad. 386 and 18 Bom. 369, *Dist.* (*Pandalai, J.*). R. RAKKAPPAN AMBALAM *v.* C. SUPPIAH AMBALAM.
A.I.R. 1930 Mad. 485.

———*Receipt inadmissible as bond—Admissible to prove acknowledgment.*

A receipt bearing one anna stamp can serve as proof of acknowledgment of a debt, though it may be inadmissible in evidence as a bond containing express promise to pay, for want of proper stamp. (*Sulaiman and Niamatullah, JJ.*). GOVIND SINGH *v.* BIJAY BAHADUR. **121 I.C. 108=1929 A.L.J. 1279=A.I.R. 1929 All. 980.**

———*Pro-note insufficiently stamped—Cannot be used even as an acknowledgment under S. 19.*

A claim was originally based on a pro-note which was afterwards found to be insufficiently stamped. The plaint was amended and the plaintiff claimed that it might be treated as an acknowledgment of debt under S. 19, Lim. Act,

Held, that the pro-note could not be so used. 8 All. 581 (F. B.), *Dist.* (*Srivastava, J.*). BISHUNATH SINGH *v.* ISHRI DAYAL. **112 I.C. 247=5 O.W.N. 750=A.I.R. 1928 Oudh 408.**

LIMITATION ACT (1908), S. 19—Authority to caknowledge—Administrator.

———*Unstamped acknowledgment—Inadmissible.*

An unstamped acknowledgment is inadmissible in evidence for extending limitation. (*Ross, J.*). RAKHAL CHANDRA CHAKRAVARTY *v.* RAM CHANDRA MARWARY. **1921 P.H.C.C. 304=A.I.R. 1921 Pat. 292.**

—S. 19—Authority to acknowledge—Administrator.

———*Acknowledgment before obtaining letter of administration—Effect.*

An acknowledgment of liability professed to be made on behalf of a deceased's estate by a person whose power to make the acknowledgment solely depends upon his being the administrator of the deceased is not made effectual by his subsequently obtaining letters of administration. (*Ramesam and Cornish, JJ.*). RAJA RAMA *v.* FAKRUDDIN SAHIB.
122 I.C. 504=31 M.L.W. 65=1930 M.W.N. 16=A.I.R. 1930 Mad. 218=58 M.L.J. 210.

———*Acknowledgment as heirs—Sufficient.*

Where an acknowledgment of liability is made by the petitioners for administration in their character of heirs, being the sons and widow of a Mahomedan the acknowledgment has the effect of preventing limitation. (*Ramesam and Cornish, JJ.*). RAJA RAMA *v.* FAKRUDDIN SAHEB.
122 I. C. 504=31 M.L.W. 65=1930 MW.N. 16=A. I. R. 1930 Mad. 218=58 M.L.J. 210.

—S. 19—Authority to acknowledge—Agent.

———*Letter by general agent.*

A letter written by a general agent of the debtor at the desire of the debtor within the period of limitation is an acknowledgment. (*Stuart, C. J. and Wazir Hasan, J.*). RAM PRASAD *v.* SANT DIN.
100 I.C. 734=4 O. W. N. 275=A.I R. 1927 Oudh 613.

———*General agent—Presumption of authority.*

It is unquestionable that no valid acknowledgment can be made by a general agent unless he is expressly or impliedly authorised in that behalf; but the authority may be presumed from the attendant circumstances. The question of authority in each case is one of fact or any inference to be drawn from the surrounding circumstances. (*Kanhaiya Lal, J.*). GANGA RAM *v.* LACHMAN SINGH. **85 I.C. 633=5 L.R.A. Civ 736=A.I.R. 1925 All. 176.**

———*Usually writes letters for principal—If authorised agent.*

The mere fact that the defendant used to write letters on behalf of his principal is not sufficient in law to enable the Court to infer that he was an authorised agent for the purpose of making an acknowledgment of liability. (*Daniels and Neave, JJ.*). UMA SHANKAR *v.* GOBIND NAIDU.
80 I.C. 6=5 L.R.A. Civ. 638=22 A. L. J. 807=46 All. 892=A.I.R. 1924 All. 855.

———Mukhtar-am—*Must be specially authorised to acknowledge.*

A *Mukhtar-am* has no power to acknowledge liabilities within the meaning of S. 19 of the Indian Limitation Act. Such a liability can only be fastened upon the principal by a person duly authorised in this behalf, that is, who has been given authority to make such an acknowledgment of liability. (*Ryves and Gokul Prasad, JJ.*). NARAIN RAO KALIA *v.* MT. MANNI KUAR.
66 I.C. 394=44 All. 546=20 A. L.J. 359=A. I. R. 1922 All. 230.

LIMITATION ACT (1908). S. 19—Authority to acknowledge—Brothers.

—S. 19—Authority to acknowledge—Brothers.

——*Younger brother cannot bind elder father binds by acknowledgment minor son.*

Where there was no evidence to show that the younger brother had been authorised by his brother or his minor nephews to make an acknowledgment,

Held, his acknowledgment is not binding on his brother or his nephews and S. 19 cannot help the plaintiff against them inasmuch as they did not deprive their title or liability through the acknowledgor. But minor son of the acknowledgor derives his liability through his father and an acknowledgment by the father must be held to be binding on him. (*Shadi Lal, C.J. and Abdul Qadir, J.*). RAM KISHAN *v.* HIRDE RAM. **71 I.C. 737=. A.I.R. 1923 Lah. 135.**

—S. 19—Authority to acknowledge—Burden of proof.

——*Onus to prove authority on person relying on acknowledgment.*

The burden of proving why a certain acknowledgment was made by the person while *prima facie* he had no business to do so, lies upon the person who makes it; but in order that it may bind others, some sort of agency and authority must be proved, from the persons attempted to be bound. (*Jackson, J.*). KRISHNAYYA *v.* VENKATAPAYYA. **80 I. C. 940=A.I.R. 1925 Mad. 134.**

—S. 19—Authority to acknowledge—Co-contractors.

——*Special authority to bind—Essential.*

In case of co-contractors, jointly and severally liable, an acknowledgment of liability or a payment by one of them does not deprive the other of the benefit of limitation, unless the payer is authorized to make the payment by the other as an agent on his behalf. (*Stuart, C.J. and Rasa, J.*). OUDH COMMERCIAL BANK, LTD., FYZABAD *v.* BISHAMBHAR NATH. **96 I.C. 353= 2 Luck. 180=6 O.W.N. 1232= A.I.R. 1926 Oudh 601.**

—S. 19—Authority to acknowledge—Co-sharer.

——*Special authority to bind other co-sharers—Essential.*

A note of the Revenue Officer in his report to the effect that a mortgagee made an oral statement of an acknowledgment of the mortgage before him, does not help to extend limitation. A co-sharer as such cannot acknowledge that some other co-sharer is a mortgagee like himself. Authority to acknowledge must be duly proved. (*Stuart, J.*). BHAGWAN DIN *v.* SRI KISHEN. **89 I.C. 161= 6 L.R.A. Civ. 481=A.I.R. 1926 All. 85.**

—S. 19—Authority to acknowledge—Director.

——*Managing Director—Can bind others.*

An acknowledgment signed by a director, who is acting as a manager to do the ordinary acts necessary in the conduct of business of the company, is a sufficient acknowledgment within the meaning of S. 19. (*Rankin, C. J.*). AHMULYA CHARAN *v.* CORAL ENGINEERING WORKS, LTD. **116 I.C. 177=48 C.L.J. 597=33 C.W.N. 833= A.I.R. 1929 Cal. 155.**

—S. 19—Authority to acknowledge—Executor.

——*Can bind the estate.*

An executor has the power as legal representative to admit and dispose of claims against the testator's estate, when he includes such a claim in Annexure B, Sch. 3, Court-fees Act, as owing from the testator and payable from his estate and he may be assumed to acknowledge liability of the estate for the debt within the meaning of S. 19, Limitation Act. (*Ramesam and Cornish, JJ.*). RAJA RAMA *v.* FAKRUDDIN SAHIB. **122 I.C. 504= 31 M.L.W. 65=1930 M. W. N. 16= A. I. R. 1930 Mad. 218=58 M.L.J. 210.**

LIMITATION ACT (1908), S. 19—Basis of suit.

—S. 19—Authority to acknowledge—Guardian.

——De facto *guardian.*

A *de facto* guardian of a Hindu minor has no power to keep a debt alive against the minor. 24 M.L.J. 428, *Diss. from.* (*Kumaraswami Sastri and Curgenven, JJ.*). RAMASWAMI PILLAI *v.* KASINATHA IYER. **108 I.C. 529=1927 M.W.N. 356= A.I.R. 1928 Mad. 226.**

—S. 19—Authority to acknowledge —Limited owner.

——*Hindu widow.*

An acknowledgment by a Hindu widow is not operative against the reversioners. (*Walmsley and B. B. Ghose, JJ.*). MOHINI MOHAN MISRA *v.* SRIMATI SARAT SUNDARI DEBI. **86 I.C. 353= A.I.R. 1925 Cal. 862.**

——*Female heir—Trespasser.*

As against a reversioner the acknowledgment by a limited female heir of mortgage debt, or a renewal of the mortgage by a trespasser, cannot extend the period of limitation. 35 All. 227 (P.C.), *Foll.* (*Kinkhede, A. J. C.*). LAXMI *v.* VENKAT RAO. **82 I.C. 1052=A.I.R. 1925 Nag. 207.**

—S. 19—Authority to acknowledge—Manager—Joint Hindu family.

——Manager, an agent—Could not acknowledge under Lim. Act of 1859. (*Marten, C.J., and Crump, J.*). NARAYAN *v.* GOVIND SAKHARAM. **107 I.C. 60=29 Bom. L.R. 1563= A.I.R. 1928 Bom. 28.**

——*Father can bind by acknowledgment.*

The father in a joint Hindu family is an agent duly authorised to acknowledge a debt binding on the family so as to extend the period of limitation. 17 Bom. 512; 37 Cal. 461, *Ref. to.* (*Dalal, J. C.*) SITLA BAKHSH SHUKLA *v.* JAGATPAL SINGH. **86 I.C. 693=12 O.L.J. 114= A.I.R. 1926 Oudh 394.**

——*Acknowledgment—Manager bound but not others.*

A Hindu Manager can bind himself in an acknowledgment of a time-barred debt but he cannot bind his co-parceners. (*Broadway and Campbell, JJ.*). THAKURDAS *v.* MT. PUTLI. **82 I. C. 96= 5 Lah. 317=A.I.R. 1924 Lah. 611.**

—S. 19—Authority to acknowledge—Partner.

——*Acknowledgment after dissolution — When binds firm.*

Acknowledgment by a partner after the dissolution of the firm binds the firm if the creditor had no notice of the dissolution. 26 Bom. 42 and 41 Mad. 427 (F.B.), *Dist.* (*Dalip Singh, J.*). PAHUMAL NATHUMAL *v.* CHUNI LAL. **118 I. C. 529= A.I.R. 1929 Lah. 266.**

—S. 19—Authority to acknowledge—Trustee.

——Constructive liability acknowledgment by beneficiary. (*Reilly, J.*). AROKIAM ASARY *v.* VAVANA ROWTHAN. **A.I.R. 1927 Mad. 349= 52 M. L. J. 135.**

—S. 19—Basis of suit.

——*Acknowledgment made after debt was barred.*

Section 19, Limitation Act, requires that an acknowledgment should be made before the expiry of the period of limitation. An acknowledgment therefore contained in the sale-deed with respect to some items which had become time-barred at the date of the acknowledgment, cannot serve as a

LIMITATION ACT (1908), S. 19—Basis of suit.

basis of plaintiff's claim. (*Bhide and Currie, JJ.*). DAVINDAR SINGH *v.* MT. LACHMI DEVI.
A. I. R. 1930 Lah. 985.

———*Acknowledgment—Implied promise to pay —Fresh cause of action.*

An unconditional acknowledgment has always been held to imply a promise to pay, because that is the natural inference if nothing is said to the contrary. It can therefore be the basis of a suit. 33 Cal. 1047 (P.C.); 46 Bom. 24, *Rel. on.* (*Jackson, A.J.C.*). GOPAL DAS *v.* RAMNATH. **124 I.C. 624.**

———*Clear acknowledgment before expiry of limitation—Itself a basis.*

An acknowledgment, clear and unconditional and made before the limitation period expires, can itself be the foundation of an action. *Case-law referred.* (*Sulaiman and Niamatullah, JJ.*). GOVIND SINGH *v.* BIJAY BAHADUR. **121 I.C. 108= 1929 A.L.J. 1279=A.I.R. 1929 All. 980.**

———*Ruqqa acknowledging liability—Rate of interest fixed—Amounts to new contract.*

Where a claim was made on the ground of a 'ruqqa' containing an acknowledgment of liability and a post scriptum fixing a rate of interest was also found on it,

Held, that where an acknowledgment contains an entry fixing the rate of interest to be payable by the debtor it amounts to a new contract and constitute a fresh cause of action. (*Shadi Lal, C.J. and Johnstone, JJ.*). WISHWA MITTER *v.* ABDUL RAHIM & SONS. **117 I.C. 377= A.I.R. 1929 Lah. 511.**

———*Acknowledging not creating new contract—No suit lies.*

When from the plaint it is clear that the creditor sues on mere acknowledgment and not on basis of the old debts, and no new contract or no new obligation is created by the acknowledgment the suit cannot succeed. 23 All. 502, *Rel. on.* (*Stuart, C. J. and Raza, J.*). DEO DUTT *v.* MAHARAJ LAL.
121 I. C. 83=6 O.W.N. 902=A.I.R. 1929 Oudh 529.

———*Barred debt—Mere acknowledgment—No promise to pay—Insufficient to create new contract—English and Indian Law.*

Although the English Law makes no distinction between an acknowledgment or promise which is sufficient to extend time in the case of a debt which is not yet barred, and an acknowledgment or promise which is sufficient to create a new contract where the debt has already become barred by lapse of time, in India a distinction has always been drawn between an acknowledgment which is sufficient to extend time under S. 19, Lim. Act, and a promise to pay a barred debt under S. 25 (3), Contract Act, and that a mere acknowledgment of the debt without a promise to pay is insufficient to create a new contract to pay. A.I.R. 1921 Pat. 29, *Foll.*; 8 Bom. 405 and 6 Bom. 683, *Ref.* (*Patkar and Baker, JJ.*). MAGANLAL HARGIBHAI *v.* AMICHAND GULABJI. **112 I. C. 24=52 Bom. 521= 30 Bom. L.R. 733=A. I. R. 1928 Bom. 319.**

———Acknowledgment under S. 19 of Lim. Act cannot be construed as a contract under which the defendant can be held liable for any sum of money. It may extend the period of limitation for three years from its date but it cannot form the basis of a fresh cause of action. (*Devadoss, J.*). SOMASUNDARAM AYYAR *v.* KRISHNA AYYAR.
106 I.C. 619=A.I.R. 1927 Mad. 1200.

———*Acknowledgment cannot be basis of suit independently of original debt.*

A mere acknowledgment of a liability cannot be made the basis of a suit so as to constitute a fresh cause of action but in a suit based on the original consideration the acknowledgment would be a good piece of evidence. (*Sulaiman, J.*). REOTI RAM *v.* LACHMAN PRASAD. **89 I.C. 402= 23 A.L.J. 900=6 L. R. A. Civ. 525= A.I.R. 1926 All. 155.**

LIMITATION ACT (1908), S. 19—Effect of.

———*Acknowledgment, if can be basis of suit.*

It is doubtful if a suit can be maintained on a mere acknowledgment of debt, but an acknowledgment of debt at least implies a promise to pay. (*Le Rossignol, J.*). JALLA RAM *v.* LABHU.
97 I.C. 800=27 P.L.R. 317=A.I.R. 1926 Lah. 472.

———*Pro-note for past consideration—Failing as such—Serves as acknowledgment.*

When a person borrows a certain sum of money and executes a promissory note, he executes it for the consideration received by him and when it is executed in respect of a consideration already passed it is an acknowledgment of the liability to pay the amount mentioned in the note and the acknowledgment can give rise to a cause of action, if the pro-note fails as pro-note for any cause. 6 L.W. 630 and A.I.R. 1922 Mad. 181, *Ref.* (*Deradoss and Waller, JJ.*). KESAVARAMAYYA *v.* VENKATARATNAM. **92 I.C. 626=1926 M.W.N. 141= 23 M.L.W. 678=A.I.R. 1926 Mad. 452= 50 M.L.J. 36.**

———*Acknowledgment—Can form basis of suit.*

A suit is maintainable on the basis of a Ruju or acknowledgment as every acknowledgment implies a promise to pay. (*Kinkkede, A. J. C.*). SITARAM *v.* NANDRAM. **78 I.C. 234= A.I.R. 1925 Nag. 9.**

———*Acknowledgment of old loan with new gives rise to a new agreement.*

Where old loan is acknowledged along with new, the transaction amounts to an agreement. (*Mookerjee and Chotzner, JJ.*). GULJAR MANDAL *v.* SHRIMAN MANDALINI. **72 I.C. 692= 36 C.L.J. 228=A.I.R. 1923 Cal. 71.**

———*Acknowledgment on settlement of account before expiry of limitation—If implied promise to pay.*

The result of certain dealings between the plaintiff and the defendant was that the defendant incurred debts to the plaintiff. When the account of the dealings was made, the defendant signed an acknowledgment for a certain sum. The plaintiff's suit to recover the amount due on the *khata* was dismissed by the Subordinate Judge on the ground that a suit on a *Ruzu Khata* was not to be maintainable,

Held, inasmuch as the acknowledgment made before the limitation period expired implied an unconditional promise to pay, there was no reason why it should not form the basis of the suit. (1906) 33 Cal. 1047, *Foll.* (*Macleod, C. J. and Shah, J.*). CHUNNI LAL RATANCHANDRA GUJARATHI *v.* LAXMAN GOVIND DUBE. **68 I.C. 923= 46 Bom. 24==23 Bom. L.R. 606= A.I.R. 1922 Bom. 183.**

—S. 19—Effect of.

———*Definite sum acknowledged—Limitation saved only to that extent.*

Although no doubt if no definite sum is mentioned and there is acknowledgment in general terms, the amount of debt can be discovered from evidence as mentioned in S. 19, Expl. 1, where a definite sum has been acknowledged, the acknowledgment can be used to save limitation only with respect to sum acknowledged, (*Dalal, J.*). BANS GOPAL *v.* MEWA RAM. **A.I.R. 1930 All. 461,**

LIMITATION ACT (1908), S. 19—Effect of.

——An acknowledgment of liability though made after the expiry of the period of limitation for a suit on the mortgage but within the special period of limitation prescribed by S. 31 gives a fresh period from the date of acknowledgment. 34 All. 875; 49 All. 67; 26 M.L.J. 23; 55 Cal. 1210, *Foll*; 36 Bom 268; 26 Bom. 782, *Dist.*; 45 Mad. 785; 44 Mad. 817; A.I.R. 1928 Mad. 1255, *Ref. to.* (*Beasley, C. J. and Walsh, J.*). SESHAYYA CHETTY *v.* SUBBADU. **1930 M.W.N. 930=32 M.L.W. 502.**

——An unconditional acknowledgment implies a promise to pay. 33 Cal. 1047 (P.C.), *Foll.*; 119 P.R. 1908, *held no longer good law.* (*Shadi Lal, C.J. and Skemp, J.*). FATCH MAHOMED *v.* GANGA SINGH.
115 I.C. 853=10 Lah. 748=30 P.L.R. 226=A.I.R. 1929 Lah. 264.

See also (*Broadway and Harrison, JJ.*). KAHAN CHAND DULA RAM *v.* DAYA RAM AMRIT LAL.
115 I.C. 764=10 Lah. 745=30 P. L. R. 240=A.I.R. 1929 Lah. 263.

——*Acknowledgment does not revive barred debts.*

Acknowledgment only gives a fresh period of limitation from the date of acknowledgment in respect of such items only as were not already barred at the time when the acknowledgment was made. 1 P.L.T. 190, *Foll.* (*Courtney-Terrell, C. J. and Jwala Prasad, J.*). DEORAJ TIWARI *v.* INDRASAN TIWARI. **120 I.C. 470=10 P.L.T. 169=8 Pat. 706=A.I.R. 1929 Pat. 258.**

——*Acknowledgment—If a promise to pay.*

An acknowledgment that a debt was due, without anything more, will be held to imply a promise to pay. 33 Cal. 1047, *Foll.* (*Das and Ross, JJ.*). CHHATERDHARI MAHTO *v.* NAJIB SINGH.
78 I.C. 919=5 P.L.T. 551=A.I.R. 1924 Pat. 806.

——*Fresh period commences from date of acknowledgment.*

Where a mortgage document dated 1906 acknowledged the liability under a mortgage dated 1904 a fresh period of limitation can commence only from 1906, the date of the later mortgage and not from the date fixed for payment of the amount due under that mortgage. (*Kotval and Prideaux, A.J.Cs.*). WAMAN *v.* DEORAO, **6 N.L.J. 14=A.I.R. 1922 Nag. 256.**

—S. 19—Essentials of acknowledgment—Acknowledgment of liability.

——*Contained in sale-deed not intended to take effect—Still an acknowledgment.*

In considering whether a particular document amounts to a proper acknowledgment within the meaning of S. 19, all that one has to see is whether the document contains an acknowledgment of liability in respect of the debt now sued upon. The circumstance that the acknowledgment was contained in a sale-deed executed by the debtor which was not to take affect at all or was executed with an ulterior motive is not a relevant consideration in connexion with the question arising under the Act. (*Ananthakrishna Ayyar, J.*). MARIAPPA GOUNDAN *v.* PALANIAPPA GOUNDEN.
A.I.R. 1930 Mad. 796.

——Section 19 is undoubtedly free from the doctrine of English Law which puts the value of an acknowledgment upon its being the equivalent of a new promise to pay. Under S. 19 there must be no doubt about the identity of the debt; and once it is clear that the defendant admits that he owes the money and it is clear what debt he has admitted, it cannot be said that it is not made to the person claiming or through whom he claims.

LIMITATION ACT (1908), S. 19—Essentials of acknowledgment—Definite acknowledgment.

(*Greaves and Rankin, JJ.*). SHANSED ALI *v.* MARIAM ELIAS. **97 I.C. 710=30 C.W.N. 968=44 C.L.J. 529=A.I.R. 1926 Cal. 1140.**

——*Acknowledging something due or may be due—If sufficient—Written admission of unsettled accounts—Sufficient.*

The word "acknowledgment" is not a word of art, and ought to be construed in its plain literal sense. It need not contain an admission that a precise sum is owing, but an acknowledgment that something is, or may be due is sufficient. Any written admission by the debtor of the existence of unsettled account, either with or without a promise to pay the balance, if any, due, is a sufficient acknowledgment. A statement of accounts by defendant showing a balance due from defendant to plaintiff is sufficient acknowledgment. 33 Cal. 1047 (P.C.), *Rel. on.* (*Raymond, A. J. C.*). GORDHANDAS *v.* FIRM OF GOKAL KHATAVO.
96 I.C. 79=21 S.L.R. 336=A.I.R. 1926 Sind 264.

——*Acknowledging part of claim—Saving as to that part only.*

Where in a suit against Railway for loss of goods, a letter written by Railway Company was relied upon which stated that Railway Company was liable for Rs. 1,000 and nothing more.

Held, the letter saved limitation to the extent of Rs. 1,000 only but not in respect of the whole claim. (*Kennedy and Rupchand Bilaram, A.J.Cs.*). SECY. OF STATE *v.* KOTUMAL MAGHANMAL.
86 I.C. 228=A.I.R. 1925 Sind 8.

—S. 19—Essentials of acknowledgment—Conscious admission.

——*Admission must be conscious—Jural relationship when admission was made must have existed.*

An acknowledgment under S. 19, Limitation Act must be a conscious admission of the existing liability in respect of the property or right which is claimed in the suit and must show an existing jural relationship between the parties at the time when the admission was made. (*Kennedy and Rupchand Bilaram, A. J. Cs.*). RALLIRAM SHEWARAM *v.* FIRM OF BUDHURAM PARMANAND.
79 I.C. 914=17 S.L.R. 324=A.I.R. 1925 Sind 181.

——*Signature obtained by intimidation.*

Acknowledgment of liability to pay a certain sum cannot be held to be binding where it is found that the signature of the executant was obtained by intimidation and that the amount acknowledged has been paid. (*Wilberforce, J.*). BIS RAM *v.* KEWAL RAM. **59 I.C. 781=29 P. L. R. 1921=A. I. R. 1921 Lah. 362.**

—S. 19—Essentials of acknowledgment—Definite acknowledgment.

——*Liability to pay admitted—Creditor can pursue his claim in any way.*

Where the liability to pay the debt is definitely acknowledged by an authorized agent, it is immaterial that the right to enforce the liability in any particular manner is not admitted. The liability to pay having been admitted the creditor can pursue his claim in any way recognized by law. (*Phillips, Offg. C. J., Odgers and Srinivasa Ayyangar, JJ.*). THIMMANAYANIM *v.* VENKATA NAYANIM. **109 I. C. 872=27 M.L.W. 544=A. I. R. 1928 Mad. 713 (F.B.).**

——*Exact nature of right need not be stated but definite acknowledgment essential — Ambiguity—Effect.*

An acknowledgment under S. 19 may be sufficient though it omits to specify the exact nature of the right. But there must be a definite acknowledgment.

LIMITATION ACT (1908), S. 19—Essentials of acknowledgment—Existing liability.

An endorsement on a money bond stated that accounts made up showed a certain sum and that a usufructuary mortgage was executed for a portion of the sum. It was not clear whether the execution of the usufructuary mortgage was in lieu of the whole amount due to the creditor or whether the debtor still held himself bound to pay the balance of the debt

Held, that in order to extend the period of limitation the creditor must show that the debtor signed an acknowledgment to the effect that there was a balance due to the creditor on the bond after crediting the debtor with what was properly due to him in respect of the execution of the usufructuary mortgage deed, and as the endorsement was ambiguous on this point it could not be held to be an acknowledgment deed. (*Stuart and Boys, JJ.*). MEHARBAN SINGH *v.* PANNA LAL. **89 I.C. 617= 23 A.L.J. 869=6 L.R.A. Civ. 399= A. I. R. 1926 All. 75.**

—S. 19—Essentials of acknowledgment—Existing liability.

———*Acknowledgment must be before expiry of the limitation period.*

One condition precedent to the application of S. 19 is that the acknowledgment should have been made before the expiration of the period prescribed for the suit. (*Srivastava and Nanavutty, JJ.*). LALJI *v.* GHASI RAM. **7 O.W.N 420= A.I.R. 1930 Oudh 287.**

———*Answer to interrogatories in previous suit merely stating presence of entry in account-books no acknowledgment.*

The answer given to one of the interrogatories in a previous suit by the firm merely stated an existing fact, namely, that there was an entry in the firm's account-books credited to the name of a certain person.

Held, it was wrong to infer that an acknowledgment of an existing liability was made at the time the answer was given to the interrogatories. (*Johnstone, J.*). RAMJI MAL NARAN DAS *v.* GULZARA SINGH. **A. I. R. 1929 Lah. 883.**

———*Acknowledgment must have been made within period of limitation.*

A letter by the general agent written at the instructions of the judgment-debtor can serve as a valid acknowledgment only when it is shown that it was made within the time prescribed by the law of limitation for the recovery of debt due under a decree and where it is not so shown the acknowledgment does not save limitation. (*Wazir Hasan and Pullan, JJ.*). NARAIN DAS *v.* CHANDRAWATI KUAR. **120 I. C. 825=6 O. W. N. 776= A.I.R. 1929 Oudh 479.**

———*Acknowledgment—If a promise to pay—Express promise to pay—If barred debt also revived.*

No doubt under the English Law an acknowledgment of a debt implies a promise to pay (even a barred debt). But in India in view of the express provision in S. 19 an acknowledgment, in which there is no express promise implying a new contract to pay, must be made before the several components of the account at various dates are barred by time and in this respect an acknowledgment under S. 19, Limitation Act, differs from a promise to pay a barred debt under Cl. (3), S. 25, Contract Act. Where, however, the acknowledgment is not merely an admission of an existing debt but the words there are such from which a clear promise to pay is made out, such as fixing the date of payment and so on, such an acknowledgment would

LIMITATION ACT (1908), S. 19—Essentials of acknowledgment—Existing liability.

come under S. 25 (3), Contract Act, and not only under S. 19, Limitation Act. A.I.R. 1922 Lah. 425 ; A.I.R. 1923 Cal. 659 and A.I.R. 1921 Pat. 29, *Rel. on.* (*Courtney-Terrell, C.J. and Jwala Prasad, J.*). DEORAJ *v.* INDRASAN. **120 I.C. 470= 8 Pat. 706=10 P.L.T. 169=A.I.R. 1929 Pat. 258.**

———*Minor—Must acknowledge before expiry of limitation prescribed for the suit.*

Under S. 6, a minor may institute the suit and make an application within the same period after the disability has ceased as he would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule. The time prescribed therefor in the third column of the first schedule is different from the intended period within which a minor may bring a suit after the disability has ceased. The acknowledgment of liability must, therefore, under S. 19, be given before the expiration of the period prescribed therefor in the third column of the first schedule and not before the expiration of the period within which a minor may bring the suit. 26 Bom. 782 ; 15 Bom. L.R. 348, *Foll*; 30 All. 268 and 33 Cal. 1047, *Ref.* ; 13 Mad. 135; 33 Cal. 1047 (P.C.); A.I.R. 1922 Bom. 183 and A.I.R 1922 Bom. 168, *Dist.* (*Patkar and Baker, JJ.*). MAGANLAL *v.* AMICHAND. **112 I.C. 24=52 Bom. 521=30 Bom. L.R. 733= A.I.R. 1928 Bom. 319.**

———*Acknowledgment implies promise to pay.*

An acknowledgment of debt implies a promise to pay, and though an acknowledgment is required by S. 19, Limitation Act, to be made before the expiry of the period of limitation, a promise under S 25, Contract Act, may be made after the period. (*Prideaux, A.J.C.*). FADALILAL *v.* ROOCHAND. **106 I.C. 661=A.I.R. 1928 Nag. 124.**

———*Admission must be distinct and of an existing liability—Not limited to a debt, can be of any property or right need not be express.*

An acknowledgment must be a conscious and distinct admission of an existing liability or jural relation between the parties but there is nothing in law to require that an acknowledgment should be express. It may be implied provided the implication is a necessary implication so as to render the acknowledgment clear and unequivocal. A.I.R. 1925 Sind 181, *Rel. on.*

An acknowledgment of liability is not limited in respect of a debt. It may be in respect of any property or right which is the subject-matter of the suit, and it need not specify every legal consequence of the thing acknowledged. 25 Cal. 844 (P.C.) and 33 Cal. 1047 (P.C.), *Rel. on.* (*Rupchand Bilaram and Lobo, A. J. Cs.*). HUKUMAT SINGH *v.* NANUMAL RAJHUMAL. **104 I.C. 572= 22 S.L.R. 117=A.I.R. 1928 Sind 45.**

———*Acknowledgment must be clearly of an existing liability.*

An acknowledgment under S. 19 in itself should import that the person, making the acknowledgment is then under an existing liability and such liability cannot be read into it by proof *aliunde*. 26 Mad. 34, *Rel. on.* (*Madhavan Nair, J.*). A. K. KAMBUL ACHUTHAN *v.* K. ABDU. **91 I.C. 833= 21 M.L.W. 593=1925 M.W.N. 361= A.I.R. 1925 Mad. 675.**

———*Statement that a decree was passed does not amount to acknowledgment.*

The mere statement of a fact that a decree was passed against a party, on a certain date, for a certain amount, is not an acknowledgment that that decree is capable of execution, so as to come

LIMITATION ACT (1908), S. 19—Essentials o acknowledgment—Existing liability.

within S. 19. It is merely a statement of a fact that a decree was passed, and not an acknowledgment that there was a present liability under the decree. 18 All. 384, *Foll.* (*Madhavan Nair, J.*). A. K. KAMBUL ACHUTHAN *v.* K. ABDU.
91 I.C. 833=21 M.L.W. 593=1925 M W N. 361=A.I.R. 1925 Mad. 675.

———*Acknowledgment of present liability only necessary—Promise to pay not necessary.*

It is not necessary that there should be a promise to pay the amount due. All that is necessary under S. 19 of the Limitation Act is there should be an acknowledgment of the liability before the claim is barred by limitation. (*Devadoss and Jackson, JJ.*). P. RAMASWAMI *v.* CHANDRA KOTTAYYA. 85 I.C. 297=43 Mad. 693=A.I.R. 1925 Mad. 261=47 M.L.J. 840.

———*New consideration or promise to pay unnecessary—Mere acknowledgment in writing—Sufficient.*

All that is required by S. 19 of the Limitation Act is the acknowledgment of an existing debt. Neither new consideration nor an actual promise to pay is required. Acknowledgment alone is required. That must be in writiog and signed by the defendant and the original debt can be enforced. But a new promise for a new consideration is a cause of action in itself and is in no way obnoxious to the Limitation Act. 10 Cal. 284, *Foll.* (*Newbould and Rankin, JJ.*). IBRAHIM MALLICK *v.* LALIT MOHAN ROY. 79 I C. 489=28 C.W.N. 322=50 Cal. 974=A. I. R. 1924 Cal. 388.

———*Admission after limitation ineffective.*

Admission of mortgage by mortgagee in a suit for possession against mortgagors does not extend period of limitation for redemption when the admission was made after the 60 years had run out. (*Moti Sagar, J.*). PIROZE KHAN *v.* KANHAIYA RAM. 78 I. C. 617=6 L.L.J. 194=A I.R. 1924 Lah. 484.

———*Non-denial of existing debt in a written statement—Intention to represent the debt as subsisting—If can be inferred.*

An admission to prevent the running of the time under the Limitation Act need not be in the full sense of the word an admission of the existence of liability at the date of the admission, if the proper inference to be drawn from the admission, which is made is that it was intended to represent the debt as then subsisting. 33 Cal. 1047, particularly at page 1059; 16 M.L.J. 300; 41 M.L.J. 217, *Foll.*

For the purpose of preventing the running of the statute of limitation it would be quite enough, if there was such a passing over of a certain allegation in silence in a written statement signed by the party making the admission which in law amounted to an admission; because he must be taken to know the law and therefore he would be making an admission at that time; for the purpose of limitation an admission made to some other person is sufficient.

In each case the Court has to consider the circumstances in which the statement was made that there was a debt and see whether it was really intended to convey an impression that that debt was subsisting at the date of the statement or not; and if it can from the circumstances infer that the intention of the person making the statement was to convey the impression that the debt was still subsisting it will be justified in holding that it is an acknowledgment of subsisting liability. (*Schwabe, C.J. and Krishnan, J.*). THE OFFICIAL ASSIGNEE OF MADRAS *v.* N. SUBRAMANIA AIYAR.
77 I.C. 740=19 M.L.W 331=33 M.L.T. 235=1924 M.W.N. 19=A.I.R. 1924 Mad 286=46 M.L.J. 1.

LIMITATION ACT (1908) S. 19—Essentials of acknowledgment—Need not be express.

———*Acknowledgment—Must be before claim is barred.*

An acknowledgment of a debt to be effective for the purpose of saving limitation must be made before the enforcement of it by suit is barred. An acknowledgment of a barred debt is of no avail to save limitation. (*Suhrawardy and Cuming, JJ.*). PANCHANAN PODDAR *v.* KSHITISH CHANDRA.
67 I.C. 298 (Cal.).

—S. 19—Essentials of acknowledgment—Nature of promise.

———*Promise to pay—May be absolute or conditional—Mortgage of joint family—Members of family disputing liability but agreeing to be bound by decision of arbitrator—Agreement to refer and award amount to acknowledgment of mortgage debt.*

An acknowledgment to take a case out of the Statute of Limitations must be either one from which an absolute promise to pay can be inferred, or secondly an unconditional promise to pay the specific debt or thirdly there must be a conditional promise to pay the debt and evidence that the condition has been performed. 33 Cal. 1047, *Rel. on.*

Where there was a mortgage of the joint family property, and the members of the joint family were disputing among themselves as to the liability and all of them were ready to undertake to discharge the liability if it were found by the arbitrators to be existing,

Held, an agreement to refer to arbitration the dispute and the award thereon would amount to an acknowledgment of mortgage debt. (*Boys and Kendall, JJ.*). PHUL SINGH *v.* BHOJRAJ.
102 I.C. 181=49 All. 801=25 A L J. 526=A.I.R. 1927 All. 488.

———*Endorsement of payment—If acknowledgment.*

An endorsement on the back of a mortgage bond was as follows: "Paid on account of the principal as per separate accounts Rupees one thousand seven hundred fifty-one only."

Held, that the endorsement constituted an acknowledgment of the mortgagee's rights to receive the balance of the principal amount.

Whether a particular endorsement does or does not constitute an acknowledgment of the right claimed by the plaintiff must depend upon its terms. (*Mookerjee and Buckland, JJ.*). PRASANNA KUMAR *v.* NIRANJAN RAY. 64 I.C. 988=43 Cal. 1046=33 C.L.J. 433=26 C.W.N. 213=A.I.R. 1921 Cal. 331.

—S. 19—Essentials of acknowledgment—Need not be express.

———*Exact nature of right need not be specified.*

Section 19 does not prescribe that an acknowledgment should be express; it may be implied. Nor is it necessary that it should specify the exact nature of the right. The question as to whether there is or is not an acknowledgment is one of construction of document in which the alleged acknowledgment is contained and to construe the document is function of the Court. 33 Cal. 1047 (P.C.), *Rel. on.* (*Stuart, C.J. and Wasir Hasan, J.*). BALBHADDAR SINGH *v.* SHEO PEARY LAL.
6 O.W.N. 943=A.I.R. 1930 Oudh 87.

LIMITATION ACT (1908), S. 19—Essentials of acknowledgment—Party acknowledging.

—S 19—Essentials of acknowledgment—Party acknowledging

———*Acknowledgment must be by party against whom right is claimed or by person through whom he derives title.*

It is not sufficient to show that an acknowledgment has been made. It has to be shown that it was made by the party against whom the right is claimed or by some person through whom he derives title or liability. 32 Cal. 1077, *Appr.* (*Stuart, C.J. and Raza, J.*). NIGAH ALI KHAN *v.* AQILULLAH KHAN. **6 O.W.N 1068= A. I. R. 1930 Oudh 56.**

—S. 19—Essentials of acknowledgment—Right or liability.

———*Liability in respect of property or right—Not necessary that particular relief should be acknowledged.*

It is a sufficient acknowledgment, if it is of a liability, whether pecuniary or in relation to other obligation, and is in respect of the property or right which is the subject-matter of the suit or application. The acknowledgment need not necessarily be in respect of the particular relief prayed for in a suit or application. The word "exact" in Expl. (1) to S. 19 is intended to qualify the specification of the nature of the property of rights rather than of the properties or right itself. (*Wazir Hasan, A.J.C.*). JOGESHWAR SINGH *v.* BIR RAM. **60 I.C. 189=23 O.C. 176=7 O.L.J. 451= 2 U.P.L.R. (J.C.) 152.**

—S. 19—Essentials of acknowledgment—Signature.

———*Acknowledgment must be signed.*

Section 19 makes it perfectly clear that an acknowledgment must be signed by a person making it. (1891) P.R. 16, *Dist.* (*Banerji, J.*). BHAJA *v.* GANGA RAM. **109 I.C. 398=26 A.L.J. 420= A.I.R. 1928 All. 310.**

———*Initials—Not proper.*

Aoknowledgment merely bearing initials instead of signature is not proper. 15 Mad. 261, *Expl.* and *Dist.* (*Odgers, J.*). LAKSHMANACHARYULU *v.* VENKATRAMANUJA. **96 I.C. 700= 23 M.L.W. 771=1926 M.W.N. 392= A.I.R. 1926 Mad. 827=51 M.L.J. 414.**

———*Actual signature not necessary—Signing in the manner usual to the party sufficient.*

Under S. 19 of the Limitation Act, the actual signature of the acknowledger is not necessary. Aoknowledgment in the acknowledger's handwriting and signed by him in a manner which is customary with him in his communications is enough. Where the habitual method of a Guru while sending communications to his disciples is to subscribe the communication with the words "Shree Hari Sharanam" and not to affix his signatures, any communication of this form and written by the Guru himself personally will be regarded as signed by him even though it may not contain his actual name; so that, any acknowledgment of liability signed in this manner and made in the Guru's own handwriting will save limitation under S. 19. (*Lindsay and Sulaiman, JJ.*). GOPAL DAS *v.* GOSWAMI BANMALI. **75 I.C. 1004= A.I.R. 1925 All. 85.**

———*Plan attached to plaint—Plan unsigned and unverified—Contents of plan cannot be considered as admitted.*

An admission in a plan filed with a plaint, might possibly for certain purposes be regarded as an admission made in the plaint, but such an assumption does not convert an unsigned and unverified plan into writing signed by the plaintiff or plaintiffs. (*Harrison and Campbell, JJ.*). CHIMAN LAL *v.* RAM RIKH. **86 I.C. 869=A.I.R. 1925 Lah. 529.**

LIMITATION ACT (1908), S. 19 — Form of acknowledgment—Account stated.

———*Acknowledgment must be signed.*

Where a certain acknowledgment said to have been made at the time of the settlement by the predecessors-in-title of the defendant was relied on and it was contended that under S. 19 of the Limitation Act a fresh period of limitation arose from the date of that acknowledgment,

Held, the acknowledgment under S. 19 in order to be operative must be signed by the party against whom any particular right is claimed, and if there was no evidence to show that the alleged acknowledgment was ever signed by any of the predecessors-in-title of the present defendant, it was not operative as such. (*Moti Sagar, J.*). PIROZE KHAN *v.* KANHIYA RAM. **78 I.C. 617= 6 L. L. J. 194=A.I.R. 1924 Lah. 484.**

—S. 19—Execution.

———Section 19 applies to execution applications. (*Das and Ross. JJ.*). MT. RESHMA KUARI *v.* RAMESHWAR OJHA. **79 I.C. 897= A.I.R. 1925 Pat. 197.**

———*Acknowledgment saves limitation for execution.*

A letter by judgment-debtor to decree-holder acknowledging his liability to pay the decretal amount is an acknowledgment within S. 19 and saves limitation for execution. (*Kinkhede, A.J.C.*). DAJI MAHAR *v.* MAHADEV KUMBI. **79 I.C. 66= A.I.R. 1924 Nag. 147.**

———Section applies to execution of rent decrees under the Bengal Tenancy Act. (*Chatterji and Newbould, JJ.*). PARESH NATH LAL CHOUDHURY *v.* ISMAIL SARDAR. **64 I.C. 993=26 C.W.N. 486= 34 C.L.J. 195=A.I.R. 1922 Cal. 187.**

———*Acknowledgment in satisfaction petition—Sufficient.*

An acknowledgment of liability made in an application to enter satisfaction *pro tanto* of a decree is sufficient acknowledgment under S. 19. (*Oldfield and Seshagiri Aiyar, JJ.*). VISWANATHA SASTRI *v.* SITALAKSHMI AMMAL. **61 I.C. 979= 13 M.L.W. 37=1921 M.W.N. 181= A.I.R. 1921 Mad. 126.**

—S. 19—Form of acknowledgment.

———Where a document containing an acknowledgment of debt, does not specifically mention that the debt is due to the plaintiff a reference to other parts of the deed to elucidate the meaning is permissible. 23 Cal. 1047 (P.C.). (*Bhide and Currie, JJ.*). DAVINDAR SINGH *v.* MT. LACHHMI DEVI. **A.I.R. 1930 Lah. 985.**

—S. 19—Form of acknowledgment — Account stated.

———*Mutually open account—Balance struck—Constitutes payment—Agreed unstamped statement of accounts items all on one.*

Where there are debts due on both the sides and the accounts are gone through by the parties and a balance struck, this in effect constitutes a payment to the amount of the smaller debt. But it is the striking of the balance that constitutes the payment not the mere existence or even statement in writing or cross demands. Hence it has been ruled that an agreed statement of accounts where all the items are on one side only, if the statement is not signed by the party liable and is inoperative as an acknowledgment will not be allowed to support an action on an account stated in respect of items

LIMITATION ACT (1908), S. 19 — Form of acknowledgment—Adjustment of partnership accounts.

which are statute-barred. 51 Cal. 418; 24 Bom. 394, *Foll.*; 8 Bom. 405; 8 Bom. 194, *Dist.* (*Mookerjee and Chotzner, JJ.*). GULJAR MANDAL *v.* SARIMAN MANDALIN. 72 I.C. 692=36 C.L.J. 228= A.I.R. 1923 Cal. 71.

—S. 19—Form of acknowledgment—Adjustment of partnership accounts.

———*Adjustment carried over to another year—Subsequent adjustment made — Adjustments unsigned—Time runs from subsequent adjustments.*

Plaintiff and defendant carried on business in partnership and there was an adjustment of account in 1827 and a certain sum was found due from the defendant. This amount was carried over to the account of 1329 when another adjustment was made. Defendant had not signed the adjustments. Plaintiff sued for this amount after three years of first adjustment,

Held, a new cause of action arose at the end of 1329 and the suit being within three years from that date was not barred. 15 C. W. N. 882, *Rel. on.* (*Mitter, J.*). SOFOTULLA BEPARI *v.* SODHU MOLLA. 102 I.C. 617=31 C.W.N. 619= A.I.R. 1927 Cal. 495.

—S. 19—Form of acknowledgment—Application for adjustment.

———*Acknowledgment in application for adjustment gives fresh start.*

An acknowledgment by the judgment-debtor o his liability for portion of money by means of an application for adjustment under O. 21, R. 2, gives a fresh start of limitation in respect of the entire amount. (*B.B. Ghose and Bose, JJ.*). HATIMULLA *v.* SUKHAMOY CHAUDHURY. A.I.R. 1930 Cal. 304.

—S. 19—Form of acknowledgment—Banker and customer.

———*Letter forwarding bills against overdraft—Sufficient acknowledgment.*

Where defendants who carried on business in partnership opened an overdraft account with the plaintiff bank and it was arranged that each partner was eligible to sign cheques in the firm's name and the bank agreed to advance money to enable the defendants to purchase materials and on receipt of bills given on payment for goods supplied to customers would collect the same on commission and deduct the same balance from the overdraft, a letter forwarding such bills with request to credit amount to sender's account is sufficient acknowledgment of the debt or payment of the principal. (*Lort-Williams, J.*). BENGAL NATIONAL BANK, LTD. *v.* JATINDRA NATH. 56 Cal. 556=33 C.W.N. 412= A.I.R. 1929 Cal. 714.

———*Current account—Each increase of overdraft is not separate loan.* (*Obiter*).

In the case of a current account between a banker and his customer it is not within the correct interpretation of the Act to regard each increase of the overdraft as a separate loan from the date of which the period of limitation must be computed. 33 Cal. 407 (P.C.), *Doubted.* (*Lort-Williams, J.*). BENGAL NATIONAL BANK, LTD. *v.* JATINORA NATH. 56 Cal. 556=33 C.W.N. 412= A.I.R. 1929 Cal. 714.

—S. 19—Form of acknowledgment—Co-sharers.

———*Letter by one to the other calling for payment of his share of expenses—Acknowledgment of title.*

Where one co-sharer in possession called by letter on the other co-sharer out of possession to pay his share of the monies expended on repairs or surrender his interests in the house,

LIMITATION ACT (1908), S. 19—Form of acknowledgment—Striking balance.

Held, that the letter amounted to an acknowledgment and his possession could not be said to be adverse till the date of the acknowledgment. (*Broadway, J.*). BALMOKAND *v.* WAZIR CHAND. 79 I. C. 279=5 L.L.J. 47.

—S. 19—Form of acknowledgment—Entry in account books.

———*Unsigned entry.*

An entry in the account books unsigned by the party against whom the money is claimed does not save limitation. 34 All. 464, *Foll.* (*Mukerji and Young, JJ.*). MOHAMMAD ABDULLAH KHAN *v.* FORD AND MACDONALD CO., LTD., ALIGARH. A.I.R. 1930 All. 124.

—S. 19—Form of acknowledgment—Nature of specification.

———*Immaterial.*

Where the acknowledgment is contained in a document which does not prove a definite and certain debt any other debt proved is presumed to be the debt, under consideration. The acknowledgment under S. 19 need not be in respect of the particular relief prayed for in the suit, nor need the specification of the nature of the property be exact. (*Wazir Hasan, A. J. C.*). JAGESHOR SINGH *v.* BIS RAM. 60 I.C. 189=7 O.L.J. 451= 23 O.C. 176=2 U.P.L.R. (J.C.) 152.

—S. 19—Form of acknowledgment—Pro-note.

———*Insufficiently stamped renewal pro-note.*

Where a pro-note is granted as a substitute for a previous pro-note, but is not sufficiently stamped, then, although a substituted pro-note, does not operate as a pro-note it remains and is sufficient acknowledgment within the meaning of S. 19. (*Wallace, J.*). GOPALA PADAYACHI *v.* RAJAGOPAL NAIDU. 98 I.C. 75= 1926 M.W.N. 757=A.I.R. 1926 Mad. 1158.

—S. 19—Form of acknowledgment—Schedule of creditors.

———*Signed by insolvent—Amount stated to be due—Valid acknowledgment.*

Where the executants of a pro-note are adjudged insolvents and they file a schedule of creditors signed by them in which the payee of the note is described as one of the creditors and a certain amount is stated therein to be due to him, there is a valid acknowledgment of liability in respect of the amount. A. I. R, 1928 Rang. 326, *Foll.*; 12 Bur. L.T. 83 and 13 Bur. L.T. 197, *Ref.* (*Chari, J.*). LONG HOEK HIN *v.* ENG HOE SENG. 117 I.C. 571=A.I.R. 1928 Rang. 327.

———*Signing schedule mentioning debt acknowledgment.*

The mention of the debt and the signing of the schedule operates as an acknowledgment under the provisions of S. 19. (*Chari, J.*). A. K. R. M. M. C. S. CHETTYAR FIRM *v.* S. C. MUMMEE. 117 I. C. 570=6 Rang. 533= A. I. R. 1928 Rang. 326.

—S. 19—Form of acknowledgment — Striking balance.

———*Striking of balances—Imports promise to pay.*

Striking the balances by the executant of a bond from time to time imports a promise to pay the debt so as to furnish a fresh cause of action. 119 P.R. 1908, *Not foll.*; 33 Cal. 1047 (P.C.); A.I.R. 1922 Bom. 183 and A.I.R. 1929 Lah. 264, *Foll.* (*Fforde and Bhide, JJ.*). DALIP SINGH *v.* JOWHAR SINGH. 116 I. C. 464= A. I. R. 1929 Lah. 521.

LIMITATION ACT (1908), S. 19—Form of acknowledgment—What amounts to acknowledgment.

—S. 19—Form of acknowledgment — What amounts to acknowledgment.

——*Letter—Inevitable deduction from admission is acknowledgment—Doubtful on which side balance would lie sufficient acknowledgment.*

If from the letter it appears that inevitable deduction from the admission is that the party against whom money is claimed acknowledged his liability to pay his debts if the balance should be ascertained to be against him the statement is sufficient acknowledgment. Even where it is doubtful on which side the balance would lie the statement is sufficient acknowledgment within the meaning of S. 19. 33 Cal 1047 (P.C.), *Rel. on*; A. I. R. 1925 All. 340, *Ref.* (*Mukerji and Young, JJ.*). MOHAMMAD ABDULLAH KHAN *v.* FORD AND MACDONALD CO., LTD., ALIGARH. **A. I. R. 1930 All. 124.**

——*Letter assuring payment.*

A letter written by a debtor to the creditor's brother recited: "There is no use creating unnecessary hitch, because I would pay and you would receive the balance, paying and dying cannot be avoided,"

Held, that the letter was a sufficient acknowledgment within S. 19. 33 Cal. 1047 (P. C.) and 10 Mad. 259, *Foll.*; 36 Mad. 68; 23 Bom. 177 and 31 Cal. 195, *Dist.* (*Patkar and Baker, JJ.*). PANDURANG SHEORAM *v.* MARUTI NILOBA.

111 I. C. 617=30 Bom. L.R. 688.

——*Claim dismissed as barred—Subsequent admission in written statement in partition suit—Award on arbitration on the claim accepted—Sufficient promise to pay.*

Plaintiff sued for return of Rs. 500 deposited with defendant 1 and the father of defendant 2. Plaintiff's suit was dismissed on the ground of limitation. In a suit for partition which was instituted by the mother of defendant 2, as his next friend a written statement was put in by defendant 1, in which he admitted this deposit by the plaintiff. In the partition suit the matter was referred to arbitration and an award was made on 10th September, 1924 by which the liability of defendants 1 and 2 was declared in equal shares with regard to whatever was the deposit made by the plaintiff. That award was accepted by a petition to which both defendant 1 and the mother of defendant 2 were parties,

Held, that the written statement coupled with the award and joint petition amounted to a promise by defendant 1 to pay the debt. (*Mitter, J.*). MANI KYA BEUR *v.* PUSHPA CHARAN.

115 I.C. 263= A I.R. 1928 Cal. 860.

——*Promise to pay if found due on comparing accounts.*

A statement contained in a letter that, if upon a comparison of accounts any amount is found due by the writer of the letter he is prepared to pay it, is a sufficient acknowledgment of liability under S. 19, Lim. Act. 33 Cal. 1047 (P.C.) and 12 M L W. 352, *Foll*; 36 Mad. 68 *Ref. to.* (*Kulwant Sahay and Macpherson, JJ.*). JOHARMAL MATHURADAS *v.* HIRA LAL SHEWCHAND. **107 I.C. 533= 7 Pat. 238= A.I.R. 1928 Pat. 221.**

——*Reference to arbitration — Recitals — Non-denial of liability.*

Recitals in a reference to arbitration to settle partnership accounts and not denying any liability to pay under it amount to an acknowledgment to render account in Court to pay what is paid due, although the reference proves infructuous.

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3 S.L.R. 53, *Foll.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). HUKUMATSINGH *v* NENUMAL REJHUMAL. **104 I.C. 572=22 S L.R. 117= A.I R. 1928 Sind 48.**

——*Letter asking copy of account showing amount due.*

Where, in a letter to writer definitely asked the plaintiff to send a copy of the account showing what amount was due by him to the plaintiff.

Held, that it was an acknowledgment within the the meaning of S. 19. 33 Cal. 1047 and 1 Lah. 357, *Foll.* (*Tek Chand, J.*). KIRPA RAMKRISHI RAM *v.* DEVI DIALMAL DHAN RAJ. **101 I.C. 544= 28 P. L. R. 169=9 L. L. J. 146= A.I.R. 1927 Lah. 832.**

——*Deposition in Court—Acknowledgment may be inferred from.*

Per *Ramesam, J.*—An acknowledgment in a deposition need not be express and may be a matter of inference. It can be implied from the facts and the surrounding circumstances and not implied as a matter of law.

Per *Reilly, J.*—When the admission of a liability in the past is made in a deposition given in Court, the Court must be particularly careful to consider whether the witness had an opportunity of denying the continuance of the liability.

Plaintiff (vendor) sued for the recovery of a part of purchase money unpaid. In a previous suit there was a contention that the sale was a nominal one and the defendant (vendee) in order to make out a case that the sale was a real transaction for consideration, stated: "I was directed to pay Rs. 6,000 to defendant's mother Seethalakshmi Ammal in Ex. B. I executed a pro-note in her favour on the date of Ex. B immediately after Ex. B was written and delivered the said pro-note to Subbarama Aiyar. I owed Rs 6,000 more under Ex. B,"

Held, that the statement amounted to an acknowledgment of subsisting liability. (*Ramesam and Reilly, JJ.*). SWAMINATHA ODAYAR *v.* SUBBARAMA AIYAR. **100 I.C. 10=50 Mad. 548= 25 M.L.W. 411=A.I.R. 1927 Mad 219= 51 M. L. J. 856.**

——*Admission of running account—Promise to pay if found due on comparing accounts.*

The writer admitted the existence of a running account between the parties and went on to say that his representatives would compare accounts and pay what was found to be due,

Held, that the words were a clear admission of liability within the meaning of S. 19. 31 Cal. 195, *Dist*; 33 Cal. 1047, *Foll.* (*Ryves and Mukerji, JJ.*). SANT LAL *v.* BENI PRASAD. **87 I. C. 935= 23 A.L.J. 248=6 L.R.A Civ. 301= A. I. R. 1925 All. 340.**

——Mablakbandi *good acknowledgment but not promise to pay.*

A *Mablakbandi* is not a promise to pay under S. 25 of the Contract Act capable of reviving any debt which was time-barred at the date it was made. But it is a good and valid acknowledgment under S. 19 of the Limitation Act so as to preserve any debt due and not barred at the time when the *Mablakbandi* was made. (*Rankin and Mukerjee, JJ.*). KSHITISH CHANDRA DAS *v.* UMED MONDAL. **78 I. C. 189= A. I. R. 1925 Cal. 338.**

——*Letter stating that arrears have not been paid because accounts have not been made up.*

A letter written by the agent of the debtors stating that the arrears have not been paid up for

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the sole reason that the accounts have not been settled is an acknowledgment that accounts have to be settled and that the arrears found to be due, upon settling accounts, will then be paid up Such acknowledgment is enough to extend limitation within S 19. (*Spencer, Offg. C. J. and Srinivasa Ayangar, J.*). ARUNACHALLEM CHETTI *v.* SETHUPATHI. 91 I.C. 338=22 M.L.W 195= A I.R. 1925 Mad 1260.

———*Promise to pay interest at certain rate—Acknowledgment—Not a pro-note.*

A document was in the following terms :—

"Age rupai mau snu tumkare hamare pas jama hainge. Biyaj dar das anne sainkra denge."

Held, that the document does not contain any unconditional undertaking to pay the principal sum of money and the only undertaking given is to pay interest at the rate of ten annas per cent., per mensem. The document clearly is an acknowledgment of a debt and not a promissory note within the meaning of S 4 (*Moti Sagar, J.*). FIRM NAUK CHAND KISHORI LAL *v.* FIRM RAM SARUP GIYA MAL. 78 I. C. 163=A.I.R. 1924 Lah. 684.

———*Admission of debt coupled with denial of liability.*

Where the debtor's statement was: "The debt due to the creditor was a mortgage debt. It ripened into a decree. He gave me a letter that he would proceed against the mortgaged properties only and would not proceed against my person," together at the end with :—"These debts are due by me along with others, but they were paid by me alone. I therefore owe no debt to any of my creditors,"

Held, that the statement was an acknowledgment, within the meaning of S. 19. (*Jackson, J.*). SATYANARAYANAMOORTHY *v.* M. RAMIREDDY.

82 I.C. 933=20 M.L W. 562= 1924 M.W.N. 877=A I.R. 1924 Mad 856.

———*Prayer that account may be taken and settled.*

In a suit for balance due on taking accounts an admission that accounts must be taken and settled is a pertinent acknowledgment though the suit as framed was for definite sum where really the suit is for an amount due on accounts. (*Wallace, J.*). KUMARASWAMY *v.* NARAYANA RAO.

80 I.C 355=19 M L.W. 683=34 M.L.T. 200= 1924 M. W. N. 355=A.I.R. 1924 Mad. 619= 46 M L J. 468.

———*Subsequent endorsements within the time of payments already made.*

The 2nd defendant signed the promissory note on the 12th November, 1913 for rupees 1,500 with interest at 6 per cent. Payments were made of rupees 90 on the 2nd February, 1915, rupees 200 on the 11 January, 1916 and rupees 381-12-0 on the 21st April, 1916 On the 6th November, 1916 the 2nd defendant endorsed on the note the 3 payments which had been made on the previous dates added up the total and signed underneath,

Held, this is an endorsement by which the promisor recorded that he had paid rupees 671-12-0 against the liability which stood against his name on the promissory note and consequently he admitted his liability to pay the balance, and that as a matter of common law an endorsement on a promissory note by the promisor is an acknowledgment of liability which will start a fresh period of limitation from the date on which it was made, and it makes no difference that such endorsement is below on account showing what has already been paid on the promissory note. 40 Mad. 698, *Foll.*

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(*Macleod, C.J. and Crump, J.*). GANESH NARHER JOSHI *v.* DATTATRAYA PANDURANG JOSHI, 72 I.C. 249=25 Bom. L.R. 144=47 Bom. 632= A.I.R. 1923 Bom. 239.

———*Hatchita—Promise to pay amount due on adjustment—Stamped and signed.*

A suit on a *Hatchita* stamped and signed by the debtor, containing a statement of adjustment of accounts and consisting in itself a distinct and unqualified promise to pay the amount found due on adjustment is governed by Art. 115 and not by Art 64. In every case where Art. 64 is made applicable there need not be always a reciprocity of demands (*C.C. Ghose and Panton, JJ.*). SARIFUN MANDALIN *v.* FERADOUL KHANTUN.

76 I.C. 603=A.I.R. 1923 Cal. 578.

———*Acknowledgment need not amount to promise to pay.*

Under the Indian Law there is no necessity to show anything in the acknowledgment from which a promise to pay could be inferred. A statement by the the debtor, *viz.*, "I executed the promissory note and the contents of the note are correct" amounts to acknowledgment of the debt under the note if there is no allegation that the note was satisfied. (*Napier and Odgers, JJ.*). SUBBARAMA AIYAR *v.* VEERABADRA PILLAI. 70 I.C. 593= 14 M.L.W. 148=1921 M.W.N. 475= A.I.R. 1921 Mad 464=41 M.L.J. 270.

———*Promise to pay if found due on comparing accounts—Not conditional on accounts being gone into.*

Defendant wrote as follows in reply to the plaintiff "In case the account is compared now and any amount is due, my client is prepared to pay it. The amount mentioned in your notice is not due as per your accounts. As my client is not aware of certain amounts contained in the *kaichits* given to the aforesaid person, it is not possible to set right the accounts of my client. I am therefore instructed by my client that your client should be made to give forthwith the *kaichits* and accounts and on getting them compared should receive the amount found to be true,"

Held, that there was a sufficient acknowledgment of the liability to save limitation and it was not conditional on the accounts being gone into. 38 Cal. 1017 ; 37 M.L.J. 353 ; 40 Mad. 701 ; 36 Mad. 68, *Dist.* (*Moore, J.*). ARUMUGA CHETTIAR *v.* RAMANADAN. 59 I.C. 983=12 M.L.W. 352.

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———*Statement that creditor owes more than the debtor and calling for payment of balance due after deduction—No acknowledgment.*

A letter sent by the debtor to the creditor stated : "I do not understand why you persist in sending me bills when you yourself owe me Rs. 528. Please deduct your bill from the money you owe me and send the balance of Rs. 181-8 at your earlies. It will oblige. Don't send any more bills please,"

Held, that it is not an acknowledgment of liability coupled with a claim to a set-off within S. 19, but it is one denying any liability A. I. R. 1921 All. 335 and 11 A.L.J. 601, *Dist.* (*Pullan, J.*). JUGAL KISHORE *v.* T. CAUL. 100 I.C. 139= A.I.R. 1927 All. 317.

———*Admitting correctness of account—Not acknowledgment.*

A letter written in reply to a letter sending a statement of account, and stating that the account

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sent is correct is not an acknowledgment. 39 Cal. 789 and A.I.R. 1924 Mad. 352, *Foll.* (*Kumaraswami Sastri and Krishnan, JJ.*). NAGAPPA CHETTY *v.* V. A. A. R. FIRM. **91 I.C. 494=22 M.L.W. 12=1925 M.W.N. 484=A.I.R. 1925 Mad. 1215=49 M. L. J. 306.**

——*Admitting purchase—No admission of title.*

An admission that a certain party has purchased the property is not an admission that that party has acquired a good title in the property, for it is quite consistent with an assertion that the purchase was bad in law and did not operate to confer any title on the alleged purchasers. (*Das and Adami, JJ.*). SHEIKH IMDAD ALI *v.* MUNSHI NANDKUMAR. **88 I.C. 478=7 P.L.T. 9=1925 P.H C.C. 111=A.I.R. 1925 Pat. 473.**

——*Admission of execution not acknowledgment.*

On the back of the note there was in the handwriting of the defendant the words "Execution admitted" and the endorsement of the Munsif showing the date,

Held, the mere fact that in some other case the defendant merely admitted the execution of the document is not an acknowledgment of liability within the meaning of the section. (*Ryves, J.*). LALLU MAL *v.* REOTI RAM. **74 I.C. 353=45 All. 679=21 A.L.J. 669=4 L.R.A. Civ. 315=A.I.R. 1924 All. 70.**

——*Debt admitted but discharge stated—No acknowledgment.*

The statement that there was a debt but it has been discharged is not sufficient. 42 Mad. 637, *Foll.*

Where there was an acknowledgment that there was a mortgage but there was no express statement that it was discharged but there was a statement that in order to pay it off a sale was effected and since the date of the sale the vendees had been in possession of the property,

Held, that the writing did not constitute acknowledgment of liability under S. 19. (*Das and Ross, JJ.*). CHHATERDHARI MAHTO *v.* NASIB SINGH. **78 I.C. 919=5 P. L. T. 551=A. I. R. 1924 Pat. 806.**

——*Debt admitted in statement of accounts stamped and signed—Interest and time for payment mentioned—Not acknowledgment but promise to pay.*

The document executed by the defendants was in the following terms:—"Account of money, in the name of Panaullah Miji and Umer Ali Miji of Nanupur, Mokam Chandpore, amount due. Brought forward from the account of Panaulla Miji at page 24, of this book Rs. 3,535. Interest at the rate of one rupee per cent. per mensem, stipulated time for payment the month of Bhadra of the year 1318 B. S." Then followed the signatures of the executants on one anna stamp,

Held, that it sets out a promise made in writing and signed by the persons to be charged therewith to pay wholly the debt specified therein, and not an acknowledgment within the meaning of S. 19. (*Mookerjee and Rankin, JJ.*). PRASANNA KUMAR PAL *v.* PANULLA MIJI. **79 I.C. 77=A. I. R. 1923 Cal. 659.**

——*Failure to deliver—Oral agreement to pay damages—No acknowledgment.*

Where there was a *sauda* and a date fixed for delivery and defendant failed to deliver and thereafter he said he would pay damages at a certain rate,

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Held, the mere fact that at a later date he said he would pay the damages could not extend the time where the cause of action had already accrued. (*Prideaux, A.J.C.*). KAMAL NARAYAN *v.* BANIRAM. **75 I.C. 440=A.I.R. 1923 Nag. 332.**

—S. 19—Implied acknowledgment.

——*Two bonds—Payments not satisfying either bond—Thumb impression of debtor is admission of debts under both bonds.*

Where in the case of two bonds the payments made have not fully satisfied either bond, and to show the intention of the parties no specific reference thereto is made in the endorsement of payment, the only reasonable implication to be put on endorsements of payments is that the debtor by affixing his thumb-impression thereto admitted by implication that the balance due under each bond is still due from him. (*Findlay, Offg.J.C.*). RAGHOBA *v.* GOPI. **91 I. C. 402=A.I.R. 1926 Nag. 252.**

——*Suggestion as to compromise—Not an acknowledgment.*

Suggestion made by defendant that the matter in dispute might be settled "without prejudice", cannot operate to extend limitation as it does not amount to acknowledgment of liability. (*Baker, J.C. and Prideaux, A.J.C.*). G.I.P. RAILWAY CO. *v.* RADHAKISAN JAIKISAN. **90 I.C. 135=A.I.R. 1926 Nag. 57.**

——*Nature of the implication.*

If an acknowledgment is not express it may be by implication but the implication must be a necessary implication so that the acknowledgment is clear and unequivocal. 8 Bom. 99; 6 Mad. 182; 30 Cal. 699 and 9 Bom. L.R. 715, *Foll.* (*Kennedy and Rupchand Bilaram, A.J.Cs.*). RATLIRAM SHEWARAM *v.* FIRM OF BUDURAM PARMANAND. **79 I.C. 914=17 S.L.R. 324=A.I.R. 1925 Sind 181.**

——*Repudiation of liability.*

The acknowledgment under S. 19 must be an acknowledgment and not a repudiation of liability. (*Kennedy and Rupchand Bilaram, A.J.Cs.*). SECRETARY OF STATE *v.* KOTUMAL MAGHANMAL. **86 I.C. 228=A. I. R. 1925 Sind 8.**

——*Execution on some prior date admitted—No implication as to subsistence of liability.*

In a previous suit the defendant had deposed as a witness "I am the 3rd defendant. I and the 2nd defendant purchased some land from the 1st defendant. For the balance of price due to her, Ex. A was executed."

Held, that this was not an acknowledgment of a liability subsisting at the date when the witness deposed. As the witness did not speak of the price as being still due to the 1st defendant at the time, no implied acknowledgment of liability can be spelt out of the mere statement that the witness on some prior date executed a certain bond. A. I. R. 1922 Mad. 104; 45 M. 443; 26 Mad. 34; 16 Mad. 220, *Foll.*; A.I.R. 1921 Mad. 464, *Doubted.* (*Spencer and Krishnan, JJ.*). MUTHUKUMARA *v.* CHOCKALINGA. **73 I.C. 952=17 M.L.W. 674=A. I. R. 1923 Mad. 634.**

——*Admission of prior liability—Nothing said as to discharge—No acknowledgment of subsisting liability.*

An admission of past liability unaccompanied by an allegation of discharge cannot in all cases be interpreted as an admission of subsisting liability. Liability can only signify present liability at the time of acknowledgment. From the language used and the circumstances in which the acknowledgment is made, it must be decided whether its

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amounts to an implied acknowledgment of subsisting liability. 41 M. L. T. 71, *Not foll.*; 41 M.L.J. 217. *Ref. to*; 36 Mad. 68, *Foll.* (*Ayling and Venkatasubba Rao, JJ.*). KANDASWAMI REDDI *v.* SUPPAMMAL. 70 I.C. 576= 45 Mad. 443=1922 M.W.N. 168=15 M.L.W. 325= 32 M.L.T. 576=A.I.R. 1922 Mad. 104= 42 M.L.J. 268.

——Rubkai *of proceedings—Inference.*

No admission, amounting to an acknowledgment under S. 19 of the Act, can be inferred from the *Rubkai* of proceedings under Regulation XVII of 1806. (*Piggott and Walsh, JJ.*). HARIMRAT *v.* RAMBIT. 63 I.C. 490=3 U.P.L.R. (All) 179.

—S. 19—Interpretation—"Period prescribed"

——Hypothecation bond—Acknowledgment after 12 years but within 2 years provided in S. 31—Saves limitation. (*Beasley, C. J. and Walsh, J.*). SOMISETTI SESHAYYA CHETTY *v.* ROLLA SUBBADU. 1930 M.W.N. 930= 32 M.L.W. 502.

——*Punjab Act (III of 1923), S. 5—Period prescribed in—Applicability.*

The period within which a suit could be instituted is the "period prescribed for the suit" within the meaning of S. 19, Lim. Act. Therefore the period of two years within which a suit could be filed under S. 5, Punjab Act III of 1923 is the "period prescribed for the suit" within the meaning of S. 19, Lim. Act.

On 17th May, 1921, *A* signed a balance in favour of *B* for an amount due and on 7th June, 1924 he acknowledged his liability under that balance. *B* instituted a suit for recovery of the amount on 9th March, 1927.

Held, that the suit was within time. Section 5, Punjab Act III of 1923, prevented the suit from being barred by time for two years from the date on which the Act came into force and therefore the right to sue being alive on 7th June, 1924, when the liability was acknowledged, the acknowledgment extended the time by virtue of S. 19, Lim. Act, by three years from its date. A.I.R. 1925 All 68, *Rel. on*; 12 I.C. 810; 36 Bom. 268; 10 I.C. 910; A.I.R. 1929 Lah. 124 and A.I.R. 1928 Nag. 192, *Dist.* (*Jai Lal, J.*). BUTA SINGH *v.* BHAN SINGH. A.I.R. 1930 Lah. 978.

——*Not restricted to that in Sch. I—Applies to special period under S. 31.*

The term 'period' is not limited to the period prescribed in Sch. I of the Act but has been extended to apply to the special period of two years mentioned in S. 31 of the Act. A. I. R. 1922 Mad. 268, *Expl.*; 30 Mad. 426, *Ref.*; 36 Bom. 268 *Diss. from*; A.I.R. 1925 All. 68; A.I.R. 1927 All. 114 and A. I. R. 1927 All. 577; 26 M.L.J. 268, *Foll.* (*Madhavan Nair, J.*). R. SUBBUDU *v.* SESHAYYA. 30 M.L.W. 419=A.I.R. 1929 Mad. 791= 57 M.L.J. 353.

——*Includes schedule period read with S. 4.*

The "period prescribed" means the period prescribed by the Schedule read with S. 4. Therefore, where an acknowledgment of a debt is made after the expiration of the three years' period prescribed by Sch. I for a suit on a promissory note, but before a suit on the note is actually barred by limitation, it is a good acknowledgment. A.I.R. 1927 All. 114, *Rel. on* and 26 Bom. 782, *Not foll.* (*Mukerji, J.*). ABDUL GHANI *v.* CHIRANJI LAL. 102 I.C. 111=49 All. 726= 25 A.L.J. 589=A.I.R. 1927 All. 577.

LIMITATION ACT (1908), S. 19—Mortgagor and mortgagee.

——*Includes period provided in S. 31.*

A period for a suit can be prescribed by a section of the Act as well as by an article of the schedule.

Acknowledgment under S. 19 though obtained within the special period of limitation under S. 31 gives a fresh period from the time of acknowledgment. 26 Bom. 782, *Dist.* (*Mears, C.J. and King, J.*). SHEO PARTAB SINGH *v.* TAJAMMUL HUSSAIN. 98 I.C. 1005=49 All. 67=24 A.L.J. 1039= A.I.R 1927 All. 114.

——*Section 4 has no application.*

Per *Ramesam, J.*—Section 4 cannot be tacked on prior to the period of extension given by S. 19. 26 Bom. 782, *Foll.* (*Spencer and Ramesam, JJ.*). UMMATHU *v.* PATHUMMA. 63 I.C. 925= 44 Mad 817=13 M.L.W. 631=1921 M.W.N. 442= A.I.R. 1921 Mad. 654=41 M.L.J. 84.

—S. 19—Interpretation—"Prescribed".

——The word "prescribed" does not exclusively refer to the schedule. It means prescribed by any section of the Act or article of the schedule. (*Beasley, C.J. and Walsh, J.*). SESHAYYA CHETTY *v.* SUBBADU. 1930 M W.N. 930=32 M.L.W. 502.

——*I.e. by any law for the time being in force.*

The word "prescribed" is not defined in the Act. It means "prescribed by any law for the time being in force" and not only the periods in the Sch. I to the Act. (*Daniels and Boys, JJ.*). HARISH CHANDRA *v.* MT. KASTOLA KUNWAR. 80 I.C. 743=5 L.R.A. Civ. 657= A.I.R. 1925 All. 68.

——*I.e., by the Schedule.*

The word "prescribed" in S. 19 means prescribed by the schedule and not with reference to S. 4. (*Batten, J.C.*). NANDRAM *v.* RANCHODDAS. 68 I.C. 716=8 N.L.J. 178=19 N.L.R. 135= A.I.R. 1922 Nag. 250.

—S. 19—Lessor and lessee.

——*Adverse possession—Bidding at auction—No acknowledgment of liability to be ousted.*

Where the tenants of a landlord who were in possession of certain tanks belonging to the landlord bid at an auction in connexion with the landlord's advertisement for tenants for the tank lands.

Held, that they might have done so from various motives and their action could not be either disturbance of the adverse possession otherwise constituted, or acknowledgment within the meaning of S. 19 of Limitation Act. (*Rankin and Ghose, JJ.*). GOLAM NAZAR *v.* ABBAS MOLLA. 84 I. C. 657= 40 C.L.J. 160=A.I.R. 1925 Cal. 193.

—S. 19—Mortgagor and mortgagee.

——*Acknowledgment by one of several co-heirs of mortgagee—Not binding on others.*

An acknowledgment made by one of the heirs of the mortgagee who have divided the mortgage property among themselves without the consent of the mortgagor is binding on him or his heir so far as regards the property in his possession though it may not be binding on the co-heirs of the mortgagee. (*Marten, C.J., Mirza and Broomfield, JJ.*). MOTILAL JHDA *v.* SAMAL BECHAR. 32 Bom. L.R. 1096=A.I.R. 1930 Bom. 466 (F.B.).

——*Sub-mortgage—Acknowledgment of mortgage right.*

A sub-mortgage can amount to a valid acknowledgment that the property was on that date held under mortgage right. (*Marten, C. J., Mirza and Broomfield, JJ.*). MOTILAL JADEV J. SAMAL BECHAR. 32 Bom. L.R. 1096= A.I.R. 1930 Bom. 466 (F.B.).

LIMITATION ACT (1908), S. 19—Mortgagor and mortgagee.

——*Redemption by second mortgagee—Admission by first mortgagee regarding subsistence of mortgage if can rely on.*

In a suit for redemption the second mortgagee can rely upon an admission made by the first mortgagee in a deed, executed within sixty years next before the suit, in which deed he admitted that the common mortgagor was the owner and that the suit properties were demised to his family on kanom. Such an admission necessarily implies that the mortgage was then subsisting and that it was liable to be redeemed 26 All. 313, *Rel. on.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). C. AHAMAD HAJI *v.* MAYAN. **30 M.L.W. 1045= A.I.R. 1930 Mad. 65=57 M.L.J. 789.**

——*Written statement in another suit, admitting rights of mortgagee, sufficient acknowledgment.*

A sued *B* and *C* for foreclosure of a mortgage. The suit was *ex facie* time-barred but *A* alleged written acknowledgment on the part of *B* and *C*. One *D* had filed a suit against *B* and *C*. *D* impleaded *A* as a defendant-mortgagee. *B* and *C* in the written statement of *D*'s suit signed by them admitted the allegation of *A*'s mortgage,

Held, that there was sufficient acknowledgment. In *D*'s suit *A* was clearly impleaded by *D* in the character of a mortgagee under the particular mortgage-deed and this was admitted in writing by *B* and *C*. This being so, the requirements of S. 19 were amply satisfied. *D*'s plaint and written statement by *B* and *C* could be read as evidence of acknowledgment. *Farsdon* v. *Clogg*, 10 M. and W. 572, *Rel. on.* (*Stuart, C.J. and Wazir Hasan, J.*). BALBHADDAR SINGH *v.* SHEO PEAREY LAL. **6 O.W.N. 943=A.I.R. 1930 Oudh 67.**

——*Admission of right to redeem—Mortgage held to be executed within period of redemption before acknowledgment.*

Where an acknowledgment by mortgagee contains an admission in unequivocal terms that the mortgagor's right of redemption subsisted till the date of the acknowledgment, the mortgagor should be deemed to have established that the mortgage had been made some time within the period of limitation for redemption (60 years) before the date of such admission 1 All. 117 (F.B.), *Rel. on.* (*Niamatullah, J.*). MIHI LAL *v.* SONI RAM. **115 I.C. 431=A.I.R. 1929 All. 209.**

——*Equitable mortgage—Personal remedy—Limitation—Acceptance of pro-notes towards debt—If time extended.*

Where plaintiffs who were secured creditors and who had a period of twelve years' limitation for instituting a suit to enforce their rights as mortgagees, but a period of only three years' limitation to enforce their rights for the deficiency, if any, arising out of the sale of the mortgaged property from the other property of the debtor, accepted promissory notes in respect of the loan.

Held, that the only purpose for which the promissory notes were taken was to extend the period of limitation in respect of the personal liability of the defendant and the original debt secured by the deposit of title-deeds continued to exist notwithstanding the execution of fresh promissory notes. 17 W. R. 201, *Foll.* (*Rupchand Bilaram, A.J.C.*). PUNJAB NATIONAL BANK, LTD. *v.* MULJI MORARJI. **105 I.C. 765= 22 S.L.R. 222=A.I.R. 1928 Sind 17.**

——*Signed statement mentioning mortgagee in pedigree table and* wajib ul-arz—*Sufficient acknowledgment.*

LIMITATION ACT (1908), S. 19—Mortgagor and mortgagee.

Evidence of a statement mentioning the mortgage in a pedigree of the co-sharers of a village which was the subject of mortgage, signed by the mortgagees, and of an entry signed by them in the village *wajib-ul-arz*, duly verified before a Settlement Officer, the pedigree and *wajib-ul-arz* both forming part of the settlement record, satisfies all the essentials of a valid acknowledgment required by S. 19. 42 All. 575, *Rel. on.* (*Wazir Hasan and Gokaran Nath Misra, JJ.*). SURAJ BAKHSH *v.* GANGA BAKHSH. **105 I.C. 93= 4 O.W.N. 882=A.I.R. 1927 Oudh 457.**

——*Admission of purchase of mortgagee rights—No acknowledgment as to being redeemed.*

When a man says that he purchased a certain mortgage right he only means that he purchased certain property which came into possession of the vendor as a mortgagee. All that he admits is that the vendor came into possession of the property on foot of a mortgagee. No question arises in his mind as to whether the mortgagee subsists or has become time-barred. The statement by itself does not signify to the mind of the person making the statement or to anybody else that the maker of the statement thinks or believes that he is liable to be redeemed at the date of making the statement. Such statement therefore is not an acknowledgment within S. 19 as any acknowledgment of the original transaction would not necessarily amount to an acknowledgment that the liability which would follow from the original transaction subsists at the date of the statement. (*Mukerji, J.*). MT. SHAM DEVI *v.* BHAGWAT DAYAL. **85 I.C. 584=6 L.R.A. Civ. 139= A.I.R. 1925 All. 353.**

——*Execution sale—Prior mortgage mentioned in list of properties to be sold—Sufficient acknowledgment.*

Where a sub-mortgagee in submitting a list of property to be sold in execution of his decree, described the property as subject to prior mortgage

Held, that the description amounted to acknowledgment and saved limitation as against him for redeeming the original mortgage. (*Mukerji and Dalal, JJ.*). SANWAL DAS *v.* SAIJID ALI MADHI. **85 I.C. 330=22 A.L.J. 1018=6 L.R.A. Civ. 718= A.I.R. 1925 All. 174.**

——*Acknowledgment after cessation of interest in mortgaged properties—Who is bound by.*

A person who was a party to the mortgage contract can make an acknowledgment even after interest in the properties had ceased but the acknowledgment binds only him or persons claiming through him, *i.e.*, assignees from him after the acknowledgment (*Coutts-Trotter, C.J. and Ramesam, J.*). YAGNARAYANA *v.* VENKATA KRISHNA RAO. **86 I.C. 434= A.I.R. 1925 Mad. 1108.**

——*Mortgage—Sale of part of mortgage property—Subsequent renewal of mortgage by mortgagor is not acknowledgment but is like part-payment—Limitation commences from latter mortgage, even against intermediate alienee.*

Where after sale of part of the mortgaged property, a fresh deed is executed by the mortgagor in renewal of the original mortgage, there is a new promise to pay by the mortgagor, and the question is not whether it operates as an acknowledgment to save the bar of limitation as against the intermediate alienee because it is a new covenant substituted for the old covenant and not a mere ac-

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knowledgment. There being a new covenant substituted for the old one the period of limitation even as against the alienee is, to be calculated from the date mentioned in the later mortgage and not from that in the original one. The effect of such a new covenant is more analogous to a part-payment under S. 20, Limitation Act, and not merely to that of an acknowledgment. *Chinnery* v. *Evans*, 11 H.L.C. 115; 33 Cal 1077; 17 A.L.J. 763 and 40 M.L J. 126, *Dist*; 1 C.L J. 337, *Foll.* (*Coutts-Trotter, C.J. and Ramesam, J.*). YAGNARAYANA *v.* VENKATA KRISHNA RAO.

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——*Mortgage executed for past balances—Mortgage invalid owing to Tenancy Law of Oudh—Serves as acknowledgment.*

Where a mortgage of tenancy rights was executed in consideration of past debts and was found to be invalid under Oudh Tenancy Law.

Held, that it served as an acknowledgment of old debts on the basis of which a decree can be passed. (*Wazir Hasan, A.J.C.*) UMRAO *v.* NARAIN.

89 I.C. 175=12 O.L.J. 334=2 O.W.N. 318=A.I.R 1925 Oudh 491.

——*Admission as to third party's right in plaint valid acknowledgment of such right.*

In a suit for redemption of mortgage a statement in the plaint made by some of the mortgagors that certain other mortgagors who did not join in that suit as plaintiff had a right to redeem the mortgage was an admission in respect of the latter's right with regard to the mortgaged property and is an acknowledgment within the meaning of S. 19 of the Limitation Act and gives a fresh start to limitation. (*Neave, J.*). KRISHNA MISIR *v.* DWARKA PANDEY. 84 I.C. 5=5 L.R. A. Civ. 530=A.I.R. 1924 All 876.

——*Sale of mortgagee rights—Sufficient acknowledgment of the subsistence of mortgage.*

In 1908 *G* the mortgagee, his brother and his son executed a sale-deed in favour of the defendant of mortgagee rights in a grove. In that sale deed they stated that they were mortgagees of the grove of *K* and they purported to sell their rights as mortgagees to the defendant.

Held, that the very fact of *G* selling his mortgagee rights was an express acknowledgment of the existence of a subsisting mortgage and of subsisting rights which he was competent to sell and the very fact of defendant purchasing those rights was an acceptance on his behalf of an existing mortgage, a mortgage which was in force as a subsisting mortgage on the date of the sale to him, and therefore he cannot set up any defence inconsistent with mortgagee rights. (*Banerji, Ag. C.J. and Ryves, J.*) SIDHARI RAM *v.* DR. GARGI DIN. 89 I.C. 118=4 L.R.A. Civ. 470=A.I R. 1925 All. 456.

——*Rent note signed by sub-mortgagee to mortgagee—Property mentioned as mortgaged to mortgagee—If acknowledgment of liability to be redeemed.*

Wherein a rent note of 1878 given by the sub-mortgagee to the mortgagee the property was described as "the property mortgaged to you."

Held, that the sub-mortgagee's signature on the rent note cannot mean an acknowledgment of liability to be redeemed by the original mortgagor.

If a suit against original mortgagee was barred, it is difficult to see how it would not also be barred against sub-mortgagee, unless he had directly admitted his liability to be redeemed by the mortgagor, and the signature on the rent note did not

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point with reasonable certainty to that liability. (*Macleod, C, J. and Coyajee, J.*). BHAGWAN GANPAT *v.* MADHAV SHANKAR. 70 I.C. 906=24 Bom. L.R. 719=46 Bom 1000=A.I.R. 1932 Bom. 336.

——*Suit for possession of mortgaged property—Bonds given in lieu of interest—Time extended.*

Plaintiffs sued for possession of certain land which had been mortgaged to them and claimed an extended period by reason of the existence of certain acknowledgments by the mortgagor. This extension was claimed on the basis of acknowledgments contained in bonds dated 1899 and 1903 executed by the mortgagor in the plaintiff's favour. In these bonds part of the consideration was entered as being the interest due to the plaintiffs on the mortgage in the suit.

Held, that the admission of liability to pay interest under the mortgage in the bonds of 1899 and 1903 amounts to an acknowledgment of liability under the motgage including liability to give possession to the mortgagee. 25 Cal 844; 54 I.C. 985, *Foll.* (*Leslie Jones and Dundas, JJ.*). ANAND RAM *v.* INAYAT ALI KHAN. 68 I.C. 186=2 L L J 549.

——*Joint mortgagors—Under Acts of 1871 and 1877 acknowledgment must be by all the mortgagors.*

Under the Lim. Acts of 1871 and 1877 an acknowledgment of the right of redemption must be made by all the mortgagees and if not so made, it did not save limitation even against the shares of those who signed it, if the mortgage was indivisible. (*Martineau, J.*). NADAR SHAH *v.* ISHAR DAS. 67 I C 463=5 L L.J. 114.

——*Admission in plaint of the rights of other co-mortgagors—Sufficient acknowledgment.*

Where in a suit for redemption instituted by a co-mortgagor, he admits in the plaint the rights of the other mortgagors not joined as parties to redeem, the statement is an acknowledgment of the other mortgagor's right to redeem within S. 19 of the Lim Act. 36 All. 408, *Foll.*; 11 All. 423, *Ref.* (*Ryves and Gokul Prasad, JJ.*). MAQSUD HUSSAIN *v.* KARIMUDDIN. 64 I.C. 979 (All.).

——*Acknowledgment to one of several mortgagees—If other mortgagees bound.*

A mortgagor whose interest in the property mortgaged to several persons has not wholly ceased to exist can acknowledge in favour of the first mortgagee so as to bind the subsequent mortgagees. (*Sadasiva Aiyar and Burn, JJ.*). LAKSHMANAN CHETTY *v.* MUTHIAH CHETTY. 62 I C. 333=29 M.L.T 189=40 M.L.J. 126.

—S. 19—Proof of acknowledgment.

——*Identity of liability—Proved by independent evidence—Acknowledgment good.*

If the acknowledgment of the liability is capable of being identified with the liability sought to be enforced in the suit by adducing independent evidence, the acknowledgment should be regarded as a good acknowledgment for the purpose of saving limitation. (*Kendall and Niamatullah, JJ.*). JAGANNATH *v.* KUNWAR GIRWAR. A.I.R. 1930 All. 368.

——*Passage in a judgment in prior suit—Statement that a person admitted possession as mortgagee—Denial by the person—Exact statement not before Court—Statement is no acknowledgment.*

A person, against whom an acknowledgment that he was mortgagee of a holding was sought to be proved by reference to a judgment of settlement Court, had in fact in that case maintained that he

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was a full tenant of the holding and had denied that anybody had the right to redeem him. But in the judgment of the settlement Court it was stated "In his examination he admitted that he did not get the mutation of names effected because he held possession as mortgagee." The exact statement of the person in that case, however, was not before the Court,

Held, that the statement did not amount to acknowledgment of liability as mortgagee so as to give fresh start of limitation under S. 19. 12 A. L. J. 374 ; 1 All. 170 (F.B.) ; 17 A.L.J. 330 ; A. I. R. 1925 All. 174, *Dist.* ; 38 All. 540; 8 Bom. 99 and A. I. R. 1925 All. 353, *Rel. on.* (*Dalal, J.*). GAYADIN SINGH *v.* KALKA SINGH.

119 I. C.565=A.I.R. 1929 All. 332.

——*Admission of partnership accounts and of obligation to settle the accounts—Sufficient agreement to pay sum found due not necessary.*

Where a plaintiff in a suit for the making of accounts of a dissolved partnership relies on an acknowledgment, all that the plaintiff is required to prove is that the defendant has admitted from time to time the existence of the partnership accounts between the parties and his obligation to settle such accounts. It is not necessary, for the acknowledgment to be operative, that he should go further and state that he was bound to pay any particular sum or such sum as may be found due by him 37 M L. J. 353 and 40 Mad. 701, *Dist.* (*Rupchand Bilaram and Lobo, A.J.Cs.*). HUKUMATSING *v.* NENUMAL REJHUMAL.

104 I. C. 572=22 S. L. R. 117=A. I. R. 1928 Sind 45.

——*Onus on person relying on acknowledgment.*

A plaintiff who is prosecuting a suit which is on the face of it barred by limitation and who is trying to bring it within limitation by proving an acknowledgment under S. 19 which gives him fresh period, must give cogent proof of his allegation. (*Rafique and Lindsay, JJ.*). COLLECTOR OF ANPUR *v.* JAMNA PRASAD. **66 I.C. 171=44 All. 360=20 A.L.J. 140=A. I. R. 1922 All. 37.**

——*Acknowledgment must be in writing—Identity name and date—Oral evidence admissible.*

Oral evidence is admissible to prove the identity of the debt, property or right in respect of which the acknowledgment is made, or the name of the creditor or of the person entitled to the right of property or the date of an acknowledgment, and these need not appear on the face of the writing, but the writing itself must import an acknowledgment of an existing liability. Such liability cannot be read into it by proof *aliunde* or by subequent admission of the acknowledgor. 26 Mad. 34, *Foll.* (*Dhoble, A.J.C.*). ONKARLAL *v*, RAJ MAHOMED.

65 I.C. 279=17 N.L.R. 209=A. I. R. 1921 Nag. 1.

—S. 19—Scope of.

——Plaintiff relying on acknowledgment of liability in suit on hypothecation bond made after expiry of period of 12 years but within two years provided by S. 31. Section 31 prescribes period of limitation and so suit is within time. A.I.R 1929 Mad. 791, *Impliedly affirmed* ; A. I. R. 1927 All. 114; 34 All. 375; A.I.R. 1925 All. 68; A.I.R. 1927 All. 577; A.I.R. 1929 Cal 68 and 21 I.C. 770, *Appr.*; 36 Bom. 268 and A.I.R. 1921 Mad. 654, *Dist.*; A I.R. 1922 Mad. 268, *Ref.* (*Beasley, C. J. and Walsh, J.*). SESHAYYA CHETTY *v.* ROLLA SUBBADU.

A.I.R. 1930 Mad. 991.

LIMITATION ACT (1908), S. 19—Scope of.

——*Effect of acknowledgment—If dependant on the day when somebody could have brought a suit.*

It is quite unworkable and really impossible to suppose that the effect of a payment or the effect of an acknowledgment should depend upon the day on which somebody who never brought a suit at all could have brought it. If one was to introduce into the wording of Ss. 19 and 20, the consideration that is brought into force by S. 4, the Lim. Law would become extremely unworkable. (*Rankin, C. J.*). DEBENDRA NATH ROY *v.* KARTIC PRASAD DAS. **114 I.C. 483=55 Cal. 1210=A.I.R. 1929 Cal. 68.**

——*Striking balance—Subsequent acknowledgment before limitation—Time runs from acknowledgment.*

On 5th March, 1919, the defendant struck a balance in the plaintiffs' bahi for a certain sum of money. On 29th November, 1923 the defendant sent to the plaintiffs a post-card, duly signed by him, acknowledging liability for the debt due on this balance. The plaintiffs sued on 2nd October, 1925, to recover the sum due on foot of the balance,

Held, that the suit was within time. On 5th March, 1919, when the balance was struck the Punjab Loans Limitation Act of 1904 was in force in which a period of six years was provided for suits of this description. The provisions of S. 19, Limitation Act were clearly made applicable to suits governed by it. Consequently the acknowledgment of 29th November, 1923, in writing being made within six years of the date of the balance gave a fresh starting point of limitation to the plaintiffs. (*Tek Chand, J.*). BALAK RAM *v.* DEV RAJ.

114 I.C. 702=A.I.R. 1929 Lah. 124.

——*Suit on hypothecation bond—Acknowledgment within extra time of two years under S. 31 but beyond ordinary limitation—Acknowledgment still valid.*

Where a suit was brought on a hypothecation bond after the ordinary prescribed period of 12 years and where there was an acknowledgment of liability made after the prescribed period but within the extra period of two years granted by S. 31 the acknowledgment was held to be valid. 26 M.L J. 23, *Foll.* (*Madhavan Nair, J.*). R. SUBBADU *v.* S. SESHAYYA. **30 M L W. 419=A.I.R. 1929 Mad. 791=57 M.L.J. 353.**

——*Acknowledgment ineffectual by law in force at the time.*

An acknowledgment which is ineffectual for the purposes of the law in force at the time of the acknowledgment is no acknowledgment at all. (*Marten, C.J. and Crump, J.*). NARAYAN *v.* GOVIND. **107 I.C. 60=29 Bom. L.R. 1563=A.I.R. 1928 Bom. 28.**

——*Period expiring in Court vacation—Acknowledgment made after expiry of actual period, but before expiry of vacation saves limitation.*

The dealings between the parties ceased on 3rd June, 1921. On 13th June, 1924, that is over three years later, the defendant executed a sarkat admitting liability. The Civil Court vacation extended until 16th June, 1927,

Held, that the acknowledgment must be held to have been made within the period prescribed by limitation for the suit, for that period in reality amounted to not merely the actual period but three years plus the unexpired portion of the vacation. 26 Bom. 782, *Diss.* (*Findlay, J. C.*). JHANKLAL *v.* GULAB CHAND. **110 I.C. 76=24 N.L.R. 83=11 N.L.J. 87=A.I.R. 1928 Nag. 192.**

LIMITATION ACT (1908), S. 19—Scope of.

———*Application restricted to cases satisfying its requirements.*

The word "only" in S. 21 (2) is not a mere surplusage and if effect be given to the word the subsection would not in any way interfere with the operation of Ss. 19 and 20, but would restrict the application of those sections to cases which strictly satisfy their requirements. (*Greaves and Mukerji, JJ.*). RAJTILAK NAYARJAN SUR *v.* MUFIZUDDI TOPADAR. **98 I. C. 381=44 C.L.J. 475=A. I. R. 1927 Cal. 193.**

———*Law applicable is that in force at the date of suit.*

Where an acknowledgment is relied on to save limitation, the law to be applied is not the law in force at the date of the alleged acknowledgment, but the law which was in force at the time of the institution of the suit. 35 All. 227, *Foll.* (*Kanhaiya Lal, J.*). GANGA RAM *v.* LACHMAN SINGH. **85 I.C. 633=5 L.R.A. Civ. 736=A.I.R. 1925 All. 176.**

———*Enforceability of claim when making acknowledgment—Not material.*

Under S. 19 it is not material whether the claim in respect of which acknowledgment was made, could have been enforced against him personally at the time when he made the acknowledgment. (*Jackson, J.*). KRISHNAYYA *v.* VENKATAPPAYYA. **80 I.C. 940=A.I.R. 1925 Mad. 134.**

—S. 19—Miscellaneous.

———*Prescribed—Meaning—Limitation prescribed by Punjab Loans Act II of* 1923.

There is no justification for holding that 'prescribed' in S. 19 of the Limitation Act must be limited to the time mentioned in the schedules to the Act. The period of within which a suit can be instituted is the "period prescribed for the suit" within the meaning of S. 19. Therefore the period of two years within which a suit can be filed under S. 5, Punjab Act of 1923 is the "period prescribed for the suit."

On 17th May, 1921, *A* signed a balance in favour of *B* for an amount due and on 7th June, 1924, he acknowledged his liability under that balance. *B* instituted a suit for recovery of the amount on 9th March, 1927,

Held, that the suit was within time. Section 5, Punjab Act III of 1923, prevented the suit from being barred by time for two years from the date on which the Act came into force and therefore the right to sue being alive on 7th June, 1924, when the liability was acknowledged, the acknowledgment extended the time by virtue of S. 19, Limitation Act by three years from its date. A.I.R. 1925 All. 68, *Rel. on.* (*Jai Lal, J.*). BUTA SINGH *v.* BHAN SINGH. **A.I.R. 1930 Lah. 978.**

—S. 20.

Authority to pay.
Certification of payment.
Interpretation and scope.
Handwriting.
Joint liability.
Mortgagee in possession.
Part-payment of principal.
Payment and appropriation towards interest.
Payment by Court.
Person liable to pay.
Starting point.
Miscellaneous.

—S. 20—Authority to pay.

———*Promisor's agreement with 3rd party for payment of interest—Implied authority established.*

LIMITATION ACT (1908), S. 20—Authority to pay.

Where it is agreed between a third person and the promisor that the former would discharge the latter's debt evidenced by promissory note to the promisee in respect of principal and interest, and it is clear from the promisor's evidence that he left it to the third person to do so, an implied authority from the promisor to the third person to pay the interest on his behalf as it became due is established so as to save limitation under S. 20: A.I.R. 1926 Oudh 248, *Reversed.* (*Sir George Lowndes.*) NATIONAL BANK OF UPPER INDIA, LTD. *v.* BANSIDHAR. **121 I.C. 193=34 C.W N. 145=31 M. L.W. 1=1930 M.W.N. 1=6 O.W.N. 1136=51 C.L.J. 56=32 Bom.L.R. 136=57 I.A. 1=A.I.R. 1929 P.C. 297 (P.C.).**

———*Mortgagor selling equity of redemption but remaining liable for the debt—Payment by him saves limitation.*

Payment of interest by the mortgagor, who remained liable *ex contractu* to pay the debt though he had alienated the equity of redemption is sufficient to save limitation, and as against the purchaser of the equity of redemption the fact that before payment a decree had been passed on the mortgage, does not make his payment ineffective. (*Case-law referred to.*) (*Greaves and Mukerji, JJ.*). RAJTILAK NARAYAN SUR *v.* MUFIZUDDI LOHDAR. **98 I.C. 381=44 C.L.J. 475=A.I.R. 1927 Cal. 193.**

———*Agent need not be authorized to endorse payment.*

Section 20 does not require that the agent "in this behalf" must be more than an agent for the purpose of payment. It does not say that the agent who pays should also be authorized to make the endorsement or get the same done by another. It is enough if he is authorized to make the payment and it is not necessary that he should also be authorized in respect of endorsing the payment. 38 Mad. 438, *Cons.*

Per *Venkatasubba Rao, J.*—The section assumes that authority to make the payment carries with it the authority to make the endorsement. (*Ramesam and Venkatasubba Rao, JJ.*). VENKATESWARULU *v.* SURYAPRAKASAM. **105 I.C. 475=26 M.L.W. 447=A.I.R. 1927 Mad. 959=53 M.L.J. 555.**

———*Agent authorised to pay towards bond—Payment towards interest—If authorised.*

When an agent is authorized to pay an amount towards the total amount of the bond the authority extends to his paying an amount towards the interest due on the bond, and it cannot be held that the general authority to pay towards the total amount of the bond is confined to paying only towards the principal. But where the authority is specific, that is to say, where the agent is authorized only to pay towards the principal, the agent will not be justified in paying towards interest within S. 20. (*Devadoss and Waller, JJ.*). KARUPPAN CHETTI *v.* MARUTHANAYAGAM PILLAI. **98 I.C. 162=24 M.L.W. 638=A.I.R. 1926 Mad. 1176=51 M.L.J. 472.**

———*Payment of interest by agent—Effect.*

Where interest is paid by duly authorized agent of the debtor within his authority before the prescribed period, fresh limitation starts. (*Reilly, J.*). YOODARA SOBHANDRI *v.* CHALLAGULA VENKANNA. **96 I.C. 209 (Mad.).**

LIMITATION ACT (1908), S. 20—Authority to pay.

———*Agreement that promisor should execute and 3rd party to make payment—3rd party is agent of promisor.*

Where a promissory note is executed in pursuance of an agreement between the executant and a third party that the former would execute the pronote but the latter would pay the interest on it and also the principal, there is sufficient evidence of an implied condition that that third party should pay the interest as the duly appointed agent of the executant; but where the payment of interest is made not in consequence of any such agreement, but in consequence of an understanding between the executant and the promisee, there is no payment of interest by an agent to save limitation under S. 20. (*Stuart, C.J. and Ashworth, J.*). NATIONAL BANK OF UPPER INDIA *v.* BANSIDAR. **92 I C. 94=3 O.W.N. 83= A. I. R. 1926 Oudh 243.**

———*Payment by agent beyond his authority—Creditor does not get the benefit of section.*

The agent who can give the creditor the benefit of S. 20 has to act within the terms of his authority. If he exceeds his authority or does something which is not actually covered by his authority he cannot bind the principal so as to give the creditor the benefit of S. 20 of the Limitation Act. The guardian of the minor judgment-debtor executed with the sanction of the Court, a mortgage and directed the mortgagee to pay the amount to the decree holder and obtain a receipt from him and to retain it as a title. The mortgagee nearly a year and a half afterwards paid the money into Court and the decree-holder drew the money from the Court,

Held, that the payment of the money by the Court to the decree holder could not extend limitation in favour of the decree holder. 44 Mad. 971, *Dist.* (*Devadoss and Wallace, JJ.*). BALAGURUSWAMI NAICKEN *v.* GURUSWAMI NAICKEN. **87 I.C. 989=A.I.R. 1925 Mad. 703= 48 M.L.J. 506.**

———*Payment by son—Debt by father for his own purposes—No acknowledgment—No presumption of agency.*

Where a pro-note *prima facie* is for 1st defendant's necessity only and not for family necessity the mere fact that 2nd defendant is his undivided son will not suffice to make a payment by him tantamount to an acknowledgment in law on behalf of his father, for the father's private debt, or suffice to raise any presumption that 2nd defendant acted as his father's agent in making such a payment. (*Wallace, J.*). MAHALAKSHMI *v.* VENKAM SETTI. **32 M.L.T. 317= A. I. R. 1924 Mad. 96.**

———*Part-payment by vendee—Debt not kept alive.*

A vendee has no authority to keep a debt alive by making a part-payment when he was asked to pay it by the sale deed. (*Kumaraswami Sastri and Devadoss, JJ.*). SRI DANTULURI RAMACHANDRA RAJU *v.* MANUKONDA PURUSHOTTAM. **A.I.R. 1922 Mad. 401.**

———*Judgment-debtor.*

Per *Seshagiri Aiyar, J.*—Payment by or by the authority of a judgment-debtor is covered by S. 20. (*Oldfield and Seshagiri Aiyar, JJ.*). VISWANATHA SASTRI *v.* SITALAKSHMI AMMAL. **61 I. C. 979= 13 M.L.W. 37=1921 M.W.N. 181= A.I.R. 1921 Mad. 126.**

———*Actual handing over money not necessary.*

Payment does not cease to be made by an agent because the actual handing over of the money is done by some menial servant under his orders. (*Daniels, A.J C.*). RAM KISHAN DAS *v.* SHYAM SUNDER LAL. **61 I.C. 918=6 O L J 115= A I R. 1921 Oudh 29.**

—S. 20—Certification of payment.

———*Certification of part-payment after expiry of time—When revives limitation.*

Mere payment by the judgment-debtor of a certain amount towards part satisfaction of the decree, certified after the period of limitation for execution, cannot revive limitation unless it is made towards interest as such or towards principal, and the fact of such payments appears in the handwriting of the judgment-debtor. (*Rupchand Bilaram and Lobo, A.J.Cs.*) KHIMANMAL *v.* ASAMAL. **101 I C. 796=A I.R. 1927 Sind 263.**

———*Certification not necessary.*

If the decree holder, when applying for execution, wishes to rely upon S. 20, the fact that he has not certified the payment, until making his application, is no obstacle. 31 I.C 318, *Ref.* (*Jackson, J.*). NARAYANA NAIR *v.* K. RAMAN NAIR. **82 I.C. 743=20 M L W 190= 1924 M.W N. 674=A I R. 1925 Mad. 131.**

———*Part-payment entered in execution petition—Limitation extended.*

If the part-payment of a decree amount is entered in an execution petition presented within three years from the date of such alleged payment, it amounts, if the fact of payment is proved, to a certificate of payment under O. 21, R. 2 and will operate to save limitation under S. 20 of the Limitation Act. 43 Cal. 207, *Ref.* and *Foll.* (*Moti Sagar, J.*). FATTU *v.* NANAK CHAND. **75 I. C. 1029=A I R. 1924 Lah. 676.**

———*Part-payment and certification must be before execution is barred.*

Payments may be certified in the application for execution of the decree. The part payments and the certification must, however, be made before the application for execution is barred

Although the decree holder may either apply to certify payment before the execution or may do so in his application for execution of the decree, the provisions of S. 20 are in no way affected. 43 C 207; 46 C. 22; 22 C.W.N. 325; 23 C.W.N. 320; 20 C. L. J. 131, *Foll.* (*Chatterjea and Suhrawardy, JJ.*). MADAN MOHAN *v.* HARULAL KUNDU. **64 I.C. 72=35 C.L.J. 566=26 C.W N. 534= A I.R. 1921 Cal. 643.**

—S. 20—Interpretation and scope—"As such."

———The words "as such" in S. 20 must mean that there must be at the time of payment some mention that the payment is wholly or partly for interest. (*Macleod, C.J. and Coyajee, J.*). HARMASJI *v.* HAJRAT YARKHAN. **96 I.C. 311= 28 Bom L.R. 369=A.I.R. 1926 Bom. 423.**

———*Mean towards interest.*

The words "as such" in S. 20 mean that the payment must be made on account of interest which fact may be proved from the circumstances of the case from which payment as interest may be distinctly inferred and may be established by evidence. (*Suhrawardy and Duval, JJ.*). ACHOLA SUNDARI *v.* DOMAN SUNDARI. **90 I. C. 774= A. I. R. 1926 Cal. 150.**

—S. 20—Interpretation and scope—"Debt."

———*Includes money payable under decree—Person knowing how to write—Payment must appear in his own handwriting.*

LIMITATION ACT (1908), S. 20—Interpretation and scope—"Decree."

The word "debt" includes money payable under a decree. In the case of a person who knows how to write the payment must appear in that person's own handwriting and he cannot be allowed to adopt by mere signing, any writing made by somebody else as in the case of an illiterate man. 38 Mad. 438; 26 Bom. 246 and 23 Cal. 546 (F.B.), *Rel. on.* (*Maung Ba and Brown, JJ.*). MAUNG TUN HLAING *v.* U AUNG GYAW.

A. I. R. 1930 Rang. 64.

—S. 20—Interpretation and scope—"Decree."

———*Includes a preliminary decree—Payment extends time for applying for final decree.*

A decree for the purposes of S. 20 means, not only a final decree capable of execution but also a preliminary decree for sale and such a preliminary decree constitutes a debt payable by the judgment-debtor within S. 20 (2) Explanation. The time may be extended for an application for a final decree under either S. 19 or S. 20 in a fit case. But the payment in order to extend time must satisfy the requirements of S. 20. 42 Mad. 52, *Ref.* (*Dalal and Pullan, JJ.*). BALDEO SAHAI *v.* JAFAR HUSAIN. **98 I. C. 818=49 All. 147=25 A. L. J. 154=A.I.R. 1927 All. 159.**

—S. 20—Interpretation and scope—Extension of period.

———*Time from date of payment.*

Section 20 applies where the cause of action has already arisen and the plaintiff is seeking to have a fresh period of limitation computed from the time when a payment was made by the debtor. (*Das and Macpherson, JJ.*). MUNDO SINGH *v.* MAHANTH KRISHNA DAYAL GIR. **75 I. C. 98=1924 P.H.C.C. 67=A. I. R. 1924 Pat. 439.**

—S. 20—Interpretation and scope—Instalment bond.

———Time runs from date of default—Oral evidence of payments made admissible. 35 P. R. 1913, *Not foll.* (*Shadi Lal, C.J. and Le Rossignol, J.*). NAND LAL *v.* AKKI. **89 I.C. 294=26 P.L.R. 328=6 Lah. 163=A.I.R. 1925 Lah. 394.**

—S. 20—Interpretation and scope—"Makes the payment."

———*Not necessarily mean person physically making payment.*

The intention of the Legislature in enacting S. 20 appears to have been that a debtor should not be bound by the payment of part of the debt unless the person who in substance, though perhaps not in form, made the payment has stated in writing that such payment had been made. The words "makes the payment" in S. 20 do not necessarily mean the man who physically hands over the money. 26 Bom. 246, *Expl.*; 23 C.W.N. 336, *Foll.* (*Page, J.*). RAMKUMAR SHEO CHAND *v.* NANURAM PODDAR. **94 I.C. 657=53 Cal. 163=A.I.R. 1926 Cal. 510.**

—S. 20—Interpretation and scope—"Payment."

———*Actual passing of money unnecessary—Agreement that creditor should credit amount previously due by him to debtor—Payment sufficient.*

It is unnecessary under S. 20 that money should actually pass, for a settlement of account may be as effectual as a real payment. In fact, a transaction, whereby the parties agree that an amount previously due by the creditor to the debtor shall be treated as amount paid by the latter to the former is in substance identical with a transaction where the debtor receives actual payment and pays the amount back to the creditor. (*Ramesam and Venkatasubba Rao, JJ.*). MARINA AMMAYI *v.* SUNDRAYYA. **117 I.C. 124=A.I.R. 1929 Mad. 432.**

—S. 20—Interpretation and scope—Redemption.

———*Section not applicable.*

Section 20 applies only to cases where the suit is for the recovery of a debt or legacy, and does not operate to enlarge the period allowed by law to the mortgagor to redeem his property. 26 A. 167; 37 P.R. 1883, *Ref.* (*Moti Sagar, J.*). PIROZE KHAN *v.* RANHIYA RAM. **78 I.C. 617=6 L.L J. 194=A.I.R. 1924 Lah. 484.**

—S. 20—Handwriting.

———*Money order coupon in handwriting of debtor—sufficient.*

Where the money order coupon which requests the credit of the sum sent towards the debt is in the handwriting of the debtor, the writing amounts to the fact of payment appearing in the handwriting of the person making the same as required by S. 20, and fresh period of limitation should be computed from the date of the payment. A.I.R. 1926 Cal. 510, *Foll.* (*Dalal, J.*). RAM SARUP *v.* MAHOMED UBAIDULLAH KHAN.

A.I.R. 1930 All. 123.

———*Cheque—Body written by somebody—Signature by debtor—Sufficient.*

The signature of the person making the payment on the cheque is a sufficient compliance with the proviso to S. 20, although the body of the cheque might be written up by a different person. 23 Cal. 546 (F.B.); 35 Cal. 813; 38 Mad. 438; 41 Bom. 166, *Dist.* (*Kulwant Sahay and Adami, JJ.*). KESARI CHAND GHOR *v.* MUKTEWAR TRIGUNAIT.

A I R. 1930 Pat. 372.

———*Illiterate debtor—Affixing mark—Sufficient.*

It is sufficient to give a fresh starting point in the case of an illiterate debtor if the endorsement reciting the fact of payment is followed by a mark of the illiterate debtor. 28 Bom. 262; 41 Bom. 166 and 38 Bom. 438, *Foll.* (*Patkar and Baker, JJ.*). HARI GOVIND *v.* GANGUBAI. **109 I.C. 702=52 Bom. 356=30 Bom L.R. 500=A.I.R. 1928 Bom. 417.**

———*Endorsement by other than the maker—Insufficient.*

In the absence of a mark by the debtor himself under the endorsement, the clear words of S. 20 requiring the payment and the handwriting to be made by one and the same person are not complied with by an endorsement by another person at the instance of the person making the payment. 28 O.L.J 222, *Foll.*; A.I.R. 1921 Pat. 476, *Diss. from.* (*Zafar Ali and Dalip Singh, JJ.*). GANGA RAM *v.* NIKKA SINGH. **108 I.C. 727=29 P.L.R. 438=A.I.R. 1928 Lah. 157.**

———*Payment must appear in the handwriting of the person making the same.*

Under the proviso to S. 20 a fresh period of limitation cannot be computed from the time when the payment was made, unless the fact of the payment appears in the handwriting of the person making the same. (*Kulwant Sahay, J.*). W. K. DANSFOR *v.* B. D. SHAW & CO. **88 I. C. 747=A.I.R. 1925 Pat. 806.**

———*Entry in the hand of debtor's officer—Creditor concurring—Sufficient.*

Where the payment was made by the debtor through the hand of his officer Nasiruddin and the entry was made in the following form "through self and Nasiruddin Pramanik,"

Held, this entry must have been made with the concurrence of the creditor who had the *hatchita* in his custody. When an entry has been so made

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with the mutual consent of the creditor and the debtor, the only two persons interested neither of them can be permitted to repudiate the entry to the prejudice of the other. (*Mookerjee and Chotzner, JJ.*). GULJAR MANDAL *v.* SARIMAN MANDALINI. **72 I. C. 692=36 C.L.J. 228= A.I.R. 1923 Cal. 71.**

——*Illiterate debtor—Another can endorse.*

It is sufficient compliance with S. 20 of the person making the payment, being illiterate, gets another to make the endorsement on his behalf. 7 Mad. 55; 7 Mad 76; 28 Bom. 262; 8 W. R. 513; 185 P.R 1883; 23 C.W.N. 930 and 26 Cal. 246, *Disc.* (*Jwala Prasad, J.*). SRI RAM SINGH *v.* KASHI MOLLAH. **62 I. C. 644= 2 P. L. T. 355=A. I. R. 1921 Pat. 476.**

—S. 20—Joint liability.

——*Some descendants of deceased mortgagor making payment—Others divided before payment—If bound.*

Payment of interest made by some of the descendants of a deceased mortgagor binds also the other descendants even though these latter were divided from the family before the payment was made. Section 21 (2) cannot save them because the categories mentioned in that section are not merely illustrative, and it does not cover cases relating to co-heirs and other persons who derive their liability not from a direct contract with the promisee. 40 Mad. 698; A.I.R. 1921 Mad. 102; A.I.R. 1929 Mad. 419 and 17 I.C. 619, *Rel on*; 14 I. C. 128, *Not foll.* (*Curgenven, J.*). LOKANDHA NAIKO *v.* LOKHONO NAIKO. **A.I.R. 1930 Mad. 738.**

——*Payment by principal—No fresh starting point against surety.*

The liability of the surety is not saved from the bar of limitation by the payment by the principal. 28 Bom. 248 and 21 M.L.J. 455, *Foll*, 105 P. R. 1919, *Not foll.*; 24 M.L.J. 66, *Ref.* (*Wallace, J.*). GOVINDARAJA MUDALI *v.* SAMARAPURI CHETTIAR. **120 I C. 576= A.I.R. 1930 Mad. 112.**

——*One co-mortgagor, making payment, keeps mortgage alive.*

Payment of interest by one of two mortgagors keeps alive the mortgage and not only the personal liability of the person who actually pays interest. 8 A. L. J. 605, *Dist.* (*Banerji and Kendall, JJ.*). GHASI KHAN *v.* KISHORI RAMANJI. **119 I.C. 437=1929 A.L.J. 846= A.I.R. 1929 All. 380.**

——*One mortgagor not signing endorsement—Payment and endorsement by others—No authorisation to sign.*

Where an endorsement on a mortgage deed is not signed by one of the mortgagors and there is nothing on record to show that those who signed the endorsement were specifically authorised for that purpose the mere fact that the payment of the money enures for the benefit of all the mortgagees cannot constitute a specific authorization to sign the endorsement on his behalf within the meaning of S. 20. (*Ramesam and Jackson, JJ.*). THAYAMMAL *v.* MUTHUKUMARASWAMI CHETTIAR. **121 I.C. 858=30 M.L.W. 677= A.I.R. 1929 Mad. 881=57 M.L.J. 588.**

——*Payment of interest by one of co-heirs of a deceased Muhammadan—Limitation saved against other co-heirs.*

A payment of interest due on a promissory note, executed by a deceased Mohammedan, by one of his co-heirs is effectual under S. 20 to save limitation against other co-heirs also, because what S. 20

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requires is only that the payment should be made by a person liable to pay the debt. 24 M L.J. 66; 40 Mad. 698; *Raddon v. Morsey*, 44 E.R. 622; A.I.R. 1927 All. 209; A.I.R. 1926 Cal. 150, *Rel. on*; 61 P.L R. 1917, *Dist.* (*Thiruvenkatachariar, J.*). NARASIMHA RAMA AIYAR *v.* IBRAHIM. **118 I.C. 302=1929 M.W.N. 146= 29 M.L.W. 789=A.I.R. 1929 Mad. 419= 56 M.L.J. 630.**

——*One of three co-mortgagees joint with his son—Son taking lease of the mortgaged property and promising to pay rent to mortgagees but appropriating rent himself—Appropriation by lessee amounts to payment to all the co-mortgagees.*

A mortgagor mortgaged his property with three mortgagees for a certain sum. Later on the mortgagor leased out the mortgaged property to a lessee who was put in its possession. The mortgagor authorized the lessee to pay out of the net profits interests and principal towards the mortgage-debt to the mortgagees. The lessee was the son of *H*, one of the mortgagees forming a joint Hindu family made with him. The lessee made payments to some of the mortgagees and acknowledged liability under the mortgage deed. One of the mortgagees did not get his share,

Held, that the lease must be deemed to be in favour of the joint family of *H* and his sons and the receipt of rents and profits by the son would be tantamount to a payment of interest and principal to *H* and hence to all the co-mortgagees within S.20, it being immaterial whether he did or did not subsequently distribute it amongst all the mortgagees. (*Sulaiman and Kendall, JJ.*). GAYA PRASAD *v.* BABU RAM. **110 I. C. 561=26 A.L.J. 722= A.I.R. 1928 All. 387.**

——*Mortgage — Part-payment—Endorsement by karta of joint family—Fresh period of limitation begins.*

The karta of a joint family is the agent of the entire family duly authorized to make part-payments on behalf of the family and when he makes a part-payment towards the satisfaction of a mortgage bond, the suit brought by mortgagee within 12 years of the part-payment, but after 12 years from execution of the mortgage bond against joint family on that bond, is not barred by limitation under S 20, as fresh period of limitation begins to run from his endorsement. 37 Cal. 461; 31 C.L.J. 7 and 19 C.W.N. 860, *Foll.*; 25 Mad. 220, *Dist.* (*Das and Allanson, JJ*). BAJRANGI PRASAD *v.* KESHO SINGH. **109 I.C. 655=6 Pat. 811= A.I.R. 1928 Pat. 156.**

——*Payment by one of the mortgagors extends period against all.*

Every mortgagor is liable for the entire debt secured by the mortgage. so payment by one of the mortgagors comes within S. 20 and extends period against all and not only the payer. A.I.R. 1926 Cal. 150 and 41 All. 111, *Rel. on.* (*Dalal and Pullan, JJ.*). IBRAHIM *v.* JUGDISH PRASAD. **99 I.C. 424=A.I.R. 1927 All. 209.**

——*Payment by one of the co-mortgagors—Extends time against others.*

The expression "person liable to pay" does not mean the entire body of persons liable to pay the debt but every person liable to pay the debt.

Under the law every mortgagor is liable for the entire debt secured by the mortgage, so payment by one of the mortgagors comes within S. 20. (*Suhrawardy and Duval, JJ.*). ACHOLA SUNDARI *v.* DOMAN SUNDARI. **90 I.C. 774= A.I.R. 1926 Cal. 150.**

LIMITATION ACT (1908), S. 20—Joint liability.

———*Payment by principal—No saving against surety.*

The payment of interest by the debtor within limitation under S. 20 does not give a fresh starting point for limitation against the surety. (*Prideaux, A.J.C.*). SETH ABDE ALI *v.* ASKARAN. **84 I.C. 199=20 N L.R. 140= A.I.R. 1924 Nag. 411.**

———*Joint debtors—Payment by one by authority and in presence of the other—Signature of the other affixed—New period of limitation begins.*

Where two persons are liable on a debt embodied in a Khata and they make payments towards the satisfaction of the debt, then it should be absurd to suppose that the law required that it would be necessary that both persons should make entries in the creditor's book. Where defendant No. 1 authorised the 2nd defendant to make payments towards the reduction of the joint debt and signified that authorisation not only by being present when the payment was made but by signing underneath,

Held, that clearly amounted to an acknowledgment, that the liability was continuing and a new period began against both. (*Macleod, C.J. and Crump, J.*). DEVI CHAND CHATRAJI *v.* JAMSHETJI SHAPURJI. **74 I.C. 302=25 Bom L.R. 354= A.I.R. 1923 Bom. 369.**

—S. 20—Mortgagee in possession.

———Receipt of rent relating to portion of mortgaged property saves limitation against entire property. A.I.R. 1921 Bom. 437 and A.I.R. 1922 Cal. 114, *Rel. on.* (*Wazir Hasan, Ag. C. J. and Misra, J.*). MATA DIN *v.* IFTIKHAR HUSAIN. **118 I.C. 835=5 Luck. 53=6 O.W.N. 393= A.I.R. 1930 Oudh 178.**

———*Simple mortgage—Subsequent usufructuary mortgage in discharge of—Enjoyment of usufruct—Does not amount to payment of interest towards simple mortgage.*

A executed successive mortgages to *B* and *C*, and subsequently mortgaged portions of the properties usufructuarily to *B* in discharge of the prior simple mortgage to *B* under this mortgage. *B* was entitled on dispossession to sue for the amount and recover the same from the properties comprised in the first mortgage. On dispossession, *B* sued to enforce his first mortgage *C* who had sued on his mortgage and purchased some items resisted *B*'s right,

Held, that the enjoyment of the usufruct under the usufructuary mortgage did not amount to a payment of interest due under the simple mortgage. 30 Cal. 527 (P.C.), *Rel. on.* (*Dalal and Pullan, JJ.*). MT. ANPURNA KUNWAR *v.* RAM PADARATH. **100 I.C. 670=49 All. 430=25 A.L.J. 353= A.I.R. 1927 All. 417.**

———*Possession mortgage—Mortgagor in possession under lease—Payment by mortgagor of Government revenue payable by mortgagee—Sufficient payment.*

In a case of a mortgage with possession where the possession of the property is with the mortgagor under a lease by the mortgagee, payment of Government revenue by the mortgagor out of rent payable to the mortgagee, according to the terms of the deeds of mortgage and lease, comes within S. 20 (2) and amounts to receipt of rent by the landlord as mortgagee. (*Krishnan and Venkatasubba Rao, JJ.*). ERESSA MENON *v.* ABDUL RAHIMAN. **97 I.C. 941=A.I.R. 1926 Mad. 1061= 51 M.L.J. 378.**

LIMITATION ACT (1908), S. 20—Part-payment of principal.

———*Receipt of rent.*

The receipt of rent mentioned in sub-S. 2 is not subject to the conditions mentioned in sub-S. 1. (*Krishnan and Venkatasubba Rao, JJ.*). ERESSA MENON *v.* ABDUL RAHIMAN. **97 I.C. 941= A.I.R. 1926 Mad. 1061=51 M.L.J. 378.**

———Ijara *lease*—Ijardar *allowed to hold over after expiry of lease and to receive produce in lieu of interest—Limitation is extended.*

Where after the expiry of an *ijara* lease the *ijaradar* was allowed to continue in possession of the land and to receive the produce of land in lieu of interest payable on the *Zuripeshgi* and on being dispossessed from the land he sued to recover the *Zuripeshgi*,

Held, that the receipt of produce in lieu of interest fell within S. 20 (2) and saved limitation. 24 Bom. 493; 29 Mad. 234, *Rel. upon.* (*Ross, J.*). FOUJDAR SINGH *v.* BAIJU MAHTON. **72 I.C. 492= A I. R. 1924 Pat. 169.**

———*Period not extended in favour of mortgagor.*

Held, that S. 20, sub-S. 2 extends the period of limitation in favour of mortgagee but not in favour of mortgagor. (*Macleod, C. J. and Coyajee, J.*). BHAGWAN GANPAT *v.* MADHAV SHANKAR. **70 I.C. 906=24 Bom. L.R. 713= Bom. 1000=A.I.R. 1922 Bom. 356.**

———*Receipt of rent by mortgagee, is a payment within Cl.* (1).

Section 20, sub-S. (2) of the Indian Limitation Act does not refer expressly to the intention of the party who receive the rent or produce and may well be construed to apply wherever mortgaged land is, in fact, in possession of the mortgagee. In such an event the receipt of the rent and produce of the land may be deemed a payment for the purpose of sub-S. (1). (*Mukerjee and Panton, JJ.*). BAMA CHARAN CHAKRABURTY *v.* NIMAI MANDAL. **64 I.C. 903=35 C. L.J. 58=A.I.R. 1922 Cal. 114.**

———*Mortgagee's suit for money—Possession within 3 years of suit—Suit in time.*

Where the mortgagee filing a suit under S. 68 of the T.P. Act was in possession of the mortgaged property till within 3 years of the date of its suit, S. 20 of the Limitation Act will apply and the suit is within time. (*Lindsay, J. C.*). MAHADEO TEWARI *v.* SITLA BAKHSH SINGH. **65 I.C. 408= 8 O.L.J. 660=A.I.R. 1922 Oudh 102.**

———*Enjoyment of produce by mortgagee—Time extended.*

Time runs from expiry of mortgage term but is extended so long as mortgagee enjoys produce in lieu of interest. (*Macleod, C.J. and Shah, J.*). VITHOBA MAHIPATI *v.* BALAKRISHNA SAKHARAM. **63 I. C. 234=45 Bom. 1206=23 Bom. L.R. 529= A.I.R. 1921 Bom. 437.**

—S. 20—Part-payment of principal.

———*Payment not in writing of the maker—Defendant's admission of claim does not save limitation.*

Under proviso to S. 20, in the case of the part payment of the principal of the debt, the fact of the payment must appear in handwriting of the person making the same. The fact that one of the defendants admitted the claim does not affect the legal question. (*Neave and Kendall, A. J. Cs.*). MT. MOHANYA *v.* PANNA LAL. **79 I.C. 848= 11 O. L. J. 513=A. I. R. 1925 Oudh 34.**

———*Must be in handwriting of debtor.*

Limitation under S. 20 cannot be extended, unless the payment towards the principal is in the

LIMITATION ACT (1908), S. 20—Part-payment of principal.

handwriting of the debtor. (*Coutts, J.*). AMBIKA PRASAD *v.* GAYA LOAN OFFICE, LTD.
A. I. R. 1922 Pat. 446.

———*Writing need show only fact of payment.*

The writing itself need not show that the payment is made in part payment of the principal. It is the fact of the payment which should appear in the handwriting of the person making the same. (*Piggott and Gokul Prasad, JJ.*). CURLENDAR *v.* ABDUL HAMID. **59 I.C. 941=43 All 216= A.I R. 1921 All. 335.**

———*Mere signature of payer appended to statement of payment written by another not enough where payer is literate.*

In case of part-payment of principal where the prayer is literate the condition in S. 20 that the fact of payment must appear in the handwriting of the person making the payment is not satisfied by a mere signature by him being appended to a statement of the fact of payment written by another person. (*Hallifax and Kotval, A. J. Cs.*). R. B. BISHESHWARDAS *v* MADHO RAO. **62 I.C. 297= 17 N L.R. 40=A.I.R. 1921 Nag. 46.**

—S. 20—Payment and appropriation towards interest.

———*Wiping out old balance and adding interest to principal—Must be by agreement of parties—Original agreement not sufficient for every future addition.*

In cases where both parties agree to wipe out the previous balance and add the amount of interest to the principal so as to make it a new debt, it may be conceded that such an act may amount to payment of interest within the meaning of S 20. But such addition of interest to principal must be the result of an agreement between the parties on the date of such payment If either the creditor or the debtor by himself goes on adding interest to principal in his own books, even the same may be in pursuance of an agreement originally made between parties, there would not be each time this is done a fresh payment to the creditor so as to extend the period of limitation under S. 20. 24 Bom. 493 : 13 Bom. L. R 482 ; 9 O C. 221, *Ref.* (*Sulaiman and Kendall, JJ.*) RAJ NARAIN *v.* RAM SARUP. **123 I.C. 820=1930 A.L.J 552= A. I. R. 1930 All. 467.**

———*Payment expressly towards interest—Writing not necessary—If not express payment is towards principal—When writing in the hand of the maker is necessary.*

Section 20 provides for cases in which a payment towards interest or a payment towards principal may be proved to save limitation. If there has been nothing in the handwriting of the debtor, as required by the proviso, the only way in which the creditor can show, that it is open to him to use the payment to save limitation is by proving that at the time it was made it was avowedly made and accepted as a payment towards interest. If it was so made it does not come within the proviso and no writing is necessary. But if there is no question, of the payment being proved to have been made towards interest at the time it was made, then it must be treated as a payment towards principal, in which case the fact of the payment, and not the fact that the payment is towards the principal, must be recorded in the handwriting of the debtor. This is the meaning of the words "paid as such" in the first paragraph of S. 20. (1): A.I.R. 1921 All. 335, *Rel. on*; 9 Bom. L. R. 1329, *Dist.*; 6 M.L.W. 790 and 9 Mad. 271, *Ref.* (*Boys and King, JJ.*). M. B. SINGH AND CO. *v.* SIRCAR AND CO. **1930 A.L.J. 590=A.I.R. 1930 All. 392.**

LIMITATION ACT (1908), S. 20—Payment and appropriation towards interest.

———*Money paid on general account—Not paid for interest.*

If money is paid on a general account without a definite appropriation on the part of the debtor, no part of the money can be said to have been paid for interest "as such." A. I. R. 1929 Oudh 479, *Foll.* (*Srivastava and Nanavutty, JJ.*). LALJI *v.* GHASI RAM. **7 O. W. N 420=A I.R 1930 Oudh 287.**

———*No stipulation for interest—Payment not in handwriting of person making time cannot run.*

Where in the hatchitta no stipulation for interest is made, any payment made must be deemed to be towards part-payment of the principal and if such payment does not appear in the handwriting of the person making it, time cannot run from the date of the payment (*B B Ghose, J.*). KALI KUMAR *v.* PRANBALLAB BANIKYA
43 C.L J. 371=A I.R. 1929 Cal. 432.

———*Payment after expiry of limitation—Suit not filed as Court closed for vacation—If time extended.*

Where interest was paid after the expiration of the period limited for payment on the bond but during the period of the Civil Court vacation and where no suit was instituted on the day that the Court re-opened,

Held, that a fresh period of limitation could not be computed, as interest had not been paid before expiration of the prescribed period. 26 Bom. 782, *Foll.*; 15 Bom. L R. 348, *Diss. from*; A.I.R. 1927 All. 114, *Dist.* (*Rankin, C. J.*). DEBENDRANATH ROY *v.* KARTIC PRASAD DAS. **114 I. C 493= 55 Cal. 1210=A.I R. 1929 Cal 68.**

———*Intention of payment towards intereet—Proof necessary.*

The payment made by the debtor must have been made with the intention that it should be paid towards interest and there should be something to indicate that intention. There must be a definite specification by the debtor, since appropriation by the creditor is not such an indication 31 All. 495 and A.I R 1926 Bom. 423, *Foll.* (*Mackay, J.*). CHINNASWAMY KAVIRAYER *v.* PERIATHAMBI BUTLER. **117 I C. 790=A.I.R. 1929 Mad. 811.**

———*Payment on general account—Not payment for interest—Ordinary law of appropriation does not apply.*

The rule enacted in S 20 is wholly independent from the rule that in absence of defined appropriation money received in respect of a debt should be at first applied in payment of interest and then in payment of the capital Payment of interest must be made "as such" and money paid on a general account without a defined appropriation on the part of the debtor cannot be held to have been paid for interest "as such". 3 Bom 193 ; 31 All. 495 ; 19 I.C. 825 ; A.I.R. 1925 Cal. 1030 *Ref.* (*Wazir Hasan and Pullan, JJ.*). NARAIN DAS *v.* CHANDRAWALI KUAR. **120 I.C. 825=6 O W.N. 776= A.I.R. 1929 Oudh 479.**

———*Appropriation by creditor towards interest, is sufficient—Payment expressly for interest by debtor—Essential to save limitation.*

The creditor is entitled if the debtor makes no stipulation at the time he makes the payment to credit the payment in such a way as would be most profitable to himself. He has a right to appropriate a payment made in a general manner towards interest due to him. But the creditor cannot by his own action and without any act of volition on the

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part of the debtor start a fresh period of limitation. Under S. 20 the debtor must make the payment of interest definitely as interest and it is the act of the debtor which gives limitation a fresh starting point. 31 All. 495; 24 Bom. 493 and 2 U.B.R. 80, *Rel. on*; A.I.R. 1922 P.C. 26 and 44 and A.I.R. 1922 P.C. 233, *Ref.* (*Baguley, J.*). U BA GYI *v.* U THAN KYAUK. **120 I.C. 897= 7 Rang. 522=A.I.R. 1929 Rang. 339.**

——*Payment of interest must be proved—Creditor's admission of receipt not of much weight.*

When a creditor comes into Court with a claim which is capable of being regarded as a stale or time-barred claim, it is to his interest to make allegations which would save the claim from the bar of limitation. Having this view, the mere fact that the statement of receipt of interest is against the pecuniary interest of the person making the admission cannot be regarded as of great weight. Before the Court can hold that there were these payments of interest it must be satisfied that those payments were actually made. (*Srinivasa Aiyangar and Curgenen, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I.C. 210=51 Mad 549= 29 M.L.W. 460=A.I.R. 1928 Mad. 509.**

——*General payment—Appropriation towards interest by creditor—Claim not saved.*

Section 20 seems to contemplate a person liable to pay the amount and the interest making the payment and paying it for interest as such, and it has been repeatedly held by all the Courts in India that if a general payment should be made by a debtor, and a creditor should appropriate a portion of it towards interest, that would not amount to any payment by the debtor of interest as such and would not have the effect of saving the claim from the bar of limitation. *Topham* v. *Booth*, (1887) 35 Ch. Dn. 607, *Dist.* (*Srinivasa Aiyangar and Curgenven, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I. C. 210=51 Mad. 549= 29 M. L. W. 460=A. I. R 1928 Mad. 509.**

——*Agreement as to appropriating towards interest first—General payment and appropriation by creditor—Saves limitation.*

Where according to the terms of a mortgage, any payment made by the mortgagor was to be appropriated first to the interest due and the balance to principal, a general payment of debt and its appropriation by creditor accordingly saves limitation if interest is due at the date of payment and the payment does not cease to be payment of interest as such merely because overdue interest is treated under the deed as principal for the purpose of calculating interest. 31 All. 285, *Dist.*; 43 I.C. 812, *Foll.* (*Krishnan and Venkatasubba, Rao, JJ.*). KRUTTIVENTI PERRAJU *v.* SABBELLA-BAPIREDDI. **99 I.C. 694= 25 M.L.W. 69=A.I.R. 1927 Mad. 284.**

——*Intention of debtor to pay towards interest must be proved—Appropriation by creditor not sufficient.*

Section 20 contemplates that the debtor has paid the amount with the intention that it should be paid towards interest and these must be something to indicate such an intention. The mere appropriation by the creditor of these payments to interest is not such an indication as would enable Court to hold that the payments were made towards interest as such by the debtor. 31 All. 495, *Foll.*

When there is nothing to show for what purpose payments were made towards a debt, the Court is entitled to ascertain the truth from the evidence. 44 Cal. 567, *Foll.* (*Curgenven, J.*). RAVURI VENKANNA *v.* MUDRAGADA CHENDRAMMA. **98 I. C. 281=A.I.R. 1927 Mad 110.**

——*Terms of mortgage and conduct of parties—Inference may be drawn.*

The terms of the mortgage and the appropriation of payment to interest by the creditor, and the conduct of the parties might be taken into account so as to raise the inference that payment was made as such, that is to say, as interest. 31 All. 285, *Foll.* (*Walsh and Kanhaiya Lal, JJ.*). BANDHU SINGH *v.* KAYASTHA CORPORATION, GORAKHPUR. **93 I.C. 295=A.I.R. 1926 All. 329.**

——*Whole amount paid—Interest also paid.*

Where the amount paid was the whole amount which was due, both principal and interest, it is impossible to draw any other inference than that a part of that sum was paid as interest. (*Walsh and Kanhaiya Lal, JJ.*). BANDHU SINGH *v.* KAYASTHA CORPORATION, GORAKHPUR. **93 I.C. 295= A. I. R. 1926 All. 329.**

——*Court can find on evidence whether payment made was for principal or interest.*

Where payments are made for the debt, but there is nothing to show whether they have been made in respect of the principal or interest, the Court is entitled to find out on the evidence for what purpose the payments were made. 44 Cal. 567, *Foll.* (*Suhrawardy and Duval, JJ.*). ACHOLA SUNDARI *v.* DOMAN SUNDARI. **90 I.C. 774= A.I.R. 1926 Cal. 150.**

——*Section 20 mandatory—Payment must be made by person liable or his agent—Appropriation by creditor—Not sufficient.*

The words of S. 20 are mandatory and interest must be paid as such by the person liable to pay the debt or by his agent. An appropriation by the creditor to interest is not such an indication as would enable a Court to hold that the payments were made towards interest. (1914) M. W. N. 910; 31 All. 495 and A I.R. 1924 Mad. 123, *Rel. on.* (*Odgers, J.*). MUSAL NAIDU *v.* VIRASAMI REDDI. **97 I. C. 384=1926 M. W. N. 558= A.I.R. 1926 Mad. 902.**

——*Payments towards debt—Denied by debtor—No evidence let in—Court may presume payments.*

Where a debtor makes a payment, and the decreeholder relies on it as saving limitation as having been made towards principal and interest but the debtor denies the payment altogether and offers no evidence to support his allegations, the Court is entitled to presume that the payment was made towards principal and interest. 31 All. 495, *Expl.* (*Jackson, J.*). S. SUBBAYYA *v.* I. GANGAYYA. **92 I.C. 687=32 M.L.W. 827= A. I. R. 1926 Mad. 183.**

——*Payment must expressly be towards interest—General law does not apply.*

Under S. 20 payment towards interest must expressly be towards interest. It has nothing to do with the general right of the creditor to appropriate money either towards interest or towards principal. (*Suhrawardy and Cuming, JJ.*). MAHAMAD KAMEL *v.* AHMAD ALI. **87 I.C. 746= A.I.R. 1925 Cal. 1030.**

——*Intention to pay for interest—Proof necessary—Fact that interest was due—Not sufficient indication of intention.*

In order to have extension of limitation under S. 10, there must be something to indicate that the debtor made the payment with the intention

LIMITATION ACT (1908). S. 20—Payment and appropriation towards interest.

that it should be taken in reduction or satisfaction of interest due and mere appropriation of the payment by the creditor to interest is not such an indication. The mere fact that the interest was due at the date of the payment is not sufficient indication of the intention of the debtor. Such an indication might be found in the fact that the amount paid and the amount due for interest was exactly the same 21 All. 495 and 15 C.P.L.R. 29, *Rel. on.* (*Hallifax A.J.C.*). JAGO *v.* MAHADEO.
59 I.C. 709=A.I.R. 1921 Nag. 94.

——*Decree payable by instalments.*

The holder of a decree payable by instalments can, after applying for execution, extend the period of limitation by entering the payment of interest towards the overdue instalments. (*Fawcett, J.C. and Kemp, A.J.C.*). PAHLUMAL SEWANMAL *v.* SIDIK. **60 I.C. 935=14 S.L.R. 198.**

—S. 20—Payment by Court.

——*Debtor's assets attached—Court releasing for payment of debts—Act of Court is act of debtor—Payment out of father's money—If payment by debtor.*

If a debtor's presumable assets are so placed by operation of law, *viz.*, a legal attachment, that the Court can release them for the purpose of making payment due from him, then the act of the Court must be treated as the act of the debtor himself the volition of the debtor being neither requisite nor relevant but it cannot be said that the volition of the debtor is neither requisite nor relevant when a Court is paying out moneys belonging to his father and not to the debtor himself. 44 Mad. 971, *Foll.* (*Jackson, J.*). CHANDANA VENKATASUBBAYYA *v.* (GADA) SESHAYYA.
98 I.C. 571=A.I.R. 1927 Mad. 80=51 M.L.J. 610.

——*Court paying money due by judgment debtor—Court is the agent of the debtor—Judge signing treated as his handwriting.*

Per *Sadasiva Aiyar, J.*—A Court paying in the course of its duty the money due by the judgment debtor is a legally constituted agent of the judgment debtor for that purpose and the handwriting of the Judge signing a paper indicating that a sum was paid to the decree holder in the Judge's presence through the Court is the handwriting of the person making the payment. 24 W.R. 20, *Diss.*; 6 Bom. 626 and 31 All. 590, *Dist.*; *Brew* v. *Brew* of (1899) 2 Ir. Rep. 163; *Chinnery* v. *Evans*, (1864) 11 H.L.C. 115 and 35 M.L.J. 571, *Foll.*

Per *Coutts-Trotter, J.*—The principle deducible from *Chinnery* v. *Evans*, (1864) 11 H.L.C. 115 is this:—That if a debtor's assets are so placed, either by his own act or by operation of law, that, if some one other than he alone can release them for the purpose of making payments due from him, then the act of that other in operating upon the debtor's assets must be treated as the act of the debtor himself, the volition of the debtor in such a case being neither requisite nor relevant. If that be so, it appears to me that the words "his agent duly authorised in that behalf" in S. 20 of the Limitation Act are satisfied by the act of the Judge of Court which authorises the payment, and that his handwriting is rightly described as that of the person making the payment. (*Sadasiva Aiyar and Coutts-Trotter, JJ.*). GOVINDASAMI PILLAI *v.* DESAI GOUNDEN.
68 I.C. 100=44 Mad. 971=15 M.L.W. 320=1921 M.W.N. 683=A.I.R. 1921 Mad. 704=41 M.L.J. 423.

LIMITATION ACT (1908), S. 20—Miscellaneous.

—S. 20—Person liable to pay.

——*Hindu widow.*

A Hindu widow can keep a debt of her husband alive by making payments under S. 20 35 All. 227 (P.C.) *Dist* (*Venkatasubba Rao, J.*). CHEGAMULL *v.* GOVINDASWAMI. **112 I.C. 491=A.I.R. 1928 Mad. 972.**

——*Includes subsequent mortgagees and purchaser of equity of redemption liable to pay the 1st mortgagee.*

The expression "person liable to pay the debt" is not confined to the person who under every circumstance must be personally liable to pay, but it includes not only the mortgagor and his personal representative upon whom the contracts would be personally binding but also the second and the third mortgagees and the purchasers of equity of redemption, to whom the principal and interest due to the first mortgagee might with propriety be said to be payable. A.I.R. 1921 Mad. 102, *Foll* (*B.B. Ghose and Cammiade, JJ.*). BHUBAN MOHAN SINGH *v.* RAM GOBIND GOSWAMI.
98 I.C. 202=54 Cal. 179=44 C.L.J. 188=A.I.R. 1926 Cal. 1218.

——*Auction purchaser of judgment-debtor's interest.*

The auction purchaser of the interest of a mortgagor judgment debtor is a person liable to pay within the meaning of S. 20. *Bolding* v. *Lane*, (1853) 1 De. G.J. and S. 122 and *Chinnery* v *Evans*, (1864) 11 H.L.C. 115, *Foll.* (*Willis, C. J and Ramesam, J.*). ASKARAN SOWCAR *v.* VENKATASWAMI NAIDU,
62 I.C. 393=44 Mad. 544=13 M.L.W. 193=A.I.R. 1921 Mad. 102=40 M.L.J. 218.

—S. 20—Starting point.

——The date of endorsement does not avail under S. 20 but the date of actual payment. (*Ramesam and Venkatasubba Rao, JJ.*). MARINA AMMAYI *v.* SUNDRAYYA. **117 I.C. 124=A.I.R. 1929 Mad. 432.**

——*Cheque given—Fresh period from giving of cheque and not its being cashed.*

If a cheque is given in part-payment of a debt, the fresh period of limitation under S. 20 should be computed from the actual giving of the cheque and not from the time when the Bank pays cash for it. *Garden* v. *Bruce*, L.R. 3 C.P. 300, *Exp.* and *Foll.* (*Buckland, J.*). MAURICE MAYAHAS *v.* W. MORLEY. **87 I.C. 518=29 C.W.N. 496=A.I.R. 1925 Cal. 937.**

——*Payment before, but endorsement after expiry—Fresh period begins.*

Where payment is made before the limitation has expired a fresh period begins from the date of payment, though the endorsement of payment is made by the debtor after the limitation has expired 17 Mad. 92, *Foll* (*Bitten. J.C. and Hallifax, A.J.C.*). RAM PRASAD *v.* MOHAN LAL. **71 I.C. 17=19 N.L.R. 6=6 N.L.J. 121=A.I.R. 1923 Nag. 117.**

—S. 20—Miscellaneous.

——*Mere statement of account—Not adjustment.*

A mere statement of account made over to the debtor without any actual settlement of the accounts between the parties does not amount to an adjustment so as to give a fresh start of limitation. (*Kulwant Sahay and Adami, JJ.*). KESARICHAND GOHR *v.* MUKTESWAR. **A.I.R. 1930 Pat. 372.**

——*Two debts—General payment—Appropriation by creditor to one—Limitation not saved.*

Under S. 20 the payment is viewed from the standpoint of the debtor and hence the determining factor is the intention of the debtor in making the

LIMITATION ACT (1908), S. 20—Miscellaneous.

payment and not that of the creditor in appropriating it. Where, therefore, the debtor makes payment to his creditor, whom he owed two debts, the mere appropriation of the payment by the creditor to one of the debts, cannot, in the absence of evidence to show debtor's intention, save limitation. 84 P. R. 1904; A. I. R 1921 All. 335 and 44 Bom. 392, *Dist.* (*Shadi Lal, C.J. and Bhide, J.*). PANNA LAL *v.* RAM SINGH. **116 I.C. 549= 10 Lah. 750=30 P.L.R. 233= A.I.R. 1929 Lah. 288.**

———*Payment made in kind—Agreement to pay in kind to be proved.*

Although payment within S. 20 need not be in cash or currency, yet if it is to be in kind the party alleging that the payment was made must prove that there was an agreement between the parties that the payment should be made in that particular manner. (*Suhrawardy and Page, JJ.*). BHUTNATH DEB *v.* SASHIMUKHI BRAHMIN. **96 I.C. 474=43 C.L.J. 119=30 C.W.N. 883= A.I.R. 1926 Cal. 1042.**

———The payment of interest saves limitation even though a part of the principal is paid at the same time. (*Phillips, J.*). RAMAKRISHNA ANNAVI *v.* PICHANDI CHETTIAR. **74 I.C. 777= 1923 M.W.N. 564=A. I. R. 1924 Mad. 123.**

—S. 21—Authority to borrow.

———*General authority to partner to contract debt—Authority to keep alive a debt presumed.*

An acknowledgment or a payment by a partner without special authority is binding upon the other partner. Under S 21, a partner *ipso facto* has no authority to acknowledge or to make a part-payment; but if he has general authority to contract debts or make payments he has implied authority to keep the debt alive and it is unnecessary to make out special authority. 41 Mad 427 (F.B.), *Foll.* (*Venkatasubba Rao, J.*). CHEGAMULL *v.* GOVINDASWAMI. **112 I.C 491= A.I.R. 1928 Mad. 972.**

—S. 21—Burden of proof.

———The party who pleads S. 21 (2) has to show that he can claim exemption under its terms. (*Curgenven, J.*). LOKANADHA NAIKO *v.* LOKHONO NAIKO. **A.I.R. 1930 Mad. 738.**

—S. 21—Cessation of joint business.

———*Acknowledgment by one of two joint contractors after cessation of their business does not bind the other.*

G and *K* were sub-contractors under *M*. They failed to carry out their sub-contract and were sued by *M* who obtained a decree against them for the performance of which *G* and *K* gave separate sureties. No business was carried on by them after that,

Held, in a suit against both *G* and *K* by one *B* for price of goods sold that an acknowledgment signed by *K* after close of the business was not enough to extend limitation as against *G*. 41 Mad. 427 (F. B.), *Ref.* (*Zafar Ali and Addison, JJ.*), GANDA SINGH *v.* BHAG SINGH. **99 I.C. 563=7 Lah. 403=27 P.L.R. 598= A. I. R. 1926 Lah. 616.**

—S. 21—Co-heirs.

———*Divided descendants of deceased mortgagor—Bound by payments made by some of them—Not saved by section.*

Payment of interest made by some of the descendants of a deceased mortgagor binds also the other descendants even though these latter were divided from the family before the payment was made. Section 21 (2) cannot save them because the categories mentioned in that section are not merely illustrative, and it does not cover cases relating to co-heirs and other persons who derive their liability not from direct contract with the promisee. 40 Mad. 698; A.I.R. 1921 Mad. 102; A.I.R. 1929 Mad. 419 and 17 I.C. 619, *Rel. on*; 14 I.C. 128, *Not foll.* (*Curgenven, J.*). LOKANDHA NAIKO *v.* LOKHONO NAIKO. **A. I. R. 1930 Mad. 738.**

LIMITATION ACT (1908), S. 21—Guardian, acknowledgment by.

———The extension of the sub S. (2) by analogy to co heirs is not warranted. 14 I.C. 128. *Not foll.* (*Thiruvenkatachariar, J.*). NARASIMHA RAMA AIYAR *v.* IBRAHIM. **118 I.C. 302= 1929 M.W.N. 146=29 M.L.W. 789= A.I.R. 1929 Mad. 419=56 M.L.J. 630.**

—S. 21—Co-mortgagors.

———*Payment by one—Mortgage kept alive.*

Payment of interest by one of two mortgagors keeps alive the mortgage and not only the personal liability of the person who actually pays interest. 8 A.L.J. 605, *Dist.* (*Banerji and Kendall, JJ.*). GHASI KHAN *v.* KISHORI RAMANJI MAHARAJ. **119 I.C. 437=1929 A.L.J. 848= A.I.R. 1929 All. 380.**

———*Joint contractors—One not bound by payment of others.*

Whatever may be the law as to executors, it is impossible to say that of two joint contractors—which term has been held to include two mortgagors by the Madras High Court—one contractor is bound by the payments of the other. *Case law discussed.* (*Ramesam and Jackson, JJ.*). THAYAMMAL *v.* MUTHUKUMARASWAMI CHETTIAR. **121 I.C. 856=30 M.L.W. 677= A. I. R. 1929 Mad. 881=57 M.L.J. 988.**

—S. 21—Devisees.

———*Acknowledgment by some—Others not bound.*

Among devisees an acknowledgment by some does not keep alive the creditor's right against others who have not authorised the former to acknowledge liability on their behalf *Fohdam v. Wallis*, 10 Hare 217, *Foll.* (*Ramesam and Cornish, JJ.*). RAJA RAMA *v.* FAKRUDDIN SAHIB. **122 I.C. 504=31 M.L.W. 65=1930 M.W.N. 16= A.I.R. 1930 Mad. 218=58 M.L.J. 210.**

—S. 21—Essentials for saving limitation.

———*Co-obligors—Authority of one to pay for others essential—Authority may be implied.*

When nothing more appears than that one of several co-obligors has made a payment or an acknowledgment of liability, such payment or acknowledgment will not save limitation against the other obligors of the debt. It has to be shown that he made such payment or acknowledgment not only on behalf of himself but also as the duly authorized agent of his co-obligors. Such authority, however, need not be express: it may be inferred from the conduct of several co obligors. (1914) M. W. N. 793, *Ref.* (*Thiruvenkatachariar, J.*). RANGASWAMI AIYANGAR *v.* SOMASUNDARAM CHETTIAR. **107 I.C. 648=27 M.L.W. 820= A.I.R. 1928 Mad. 173=54 M.L.J. 150.**

—S. 21—Guardian, acknowledgment by.

———*Amount not stated—Acknowledgment not proper.*

An acknowledgment which does not states the amount of liability in respect of which the guardian of minor acknowledged his liability is not a proper acknowledgment, (*Mitter, J.*). MANIKYA BEWA *v.* PUSHPA CHARAN. **115 I.C. 263= A.I.R. 1929 Cal. 350.**

LIMITATION ACT (1908), S. 21—Interpretation "chargeable."

—S. 21—Interpretation "chargeable."

———*Not llmited to personal liability.*

The word "chargeable" in S. 21 *prima facie* means every kind of chargeability under a contract and it cannot be limited to personal liability only. (*Ramesam and Jackson, JJ.*). THAYAMMAL *v.* MUTHUKUMARASAMI CHETTIAR.

121 I.C. 858=30 M.L.W. 677=
A.I.R. 1929 Mad. 881=57 M.L.J. 588.

—S. 21—Interpretation "only."

———*Restricts the application of Ss. 19 and 20.*

The word "only" in S. 21 (2) is not a mere surplusage and if effect be given to the word the subsection would not in any way interfere with the operation of Ss. 19 and 20, but would restrict the application of those sections to cases which strictly satisfy their requirements. (*Greaves and Mukerji, JJ.*). RAJTILAK NARAYAN SUR *v.* MUFIZUDDI LOPDAR. **98 I.C. 381=44 C L.J. 475=**
A.I.R. 1927 Cal. 193.

—S. 21—Joint contractors.

———*Acknowledgment by one—Saves limitation as against him alone and not others.*

Other joint contractors cannot be chargeable on account of an acknowledgment made by one of them. But an acknowledgment signed by one of them would surely save the limitation as against himself though not against others. A.I.R. 1922 All 37, *Foll.*; 39 Mad. 288, *Ref.* (*Sulaiman and Kendall, JJ.*). GAYA PRASAD *v.* BABU RAM. **110 I.C 561=**
26 A.L.J. 722=A.I.R. 1928 All. 387.

—S. 21—Joint Hindu family.

———*Acknowledgment in the course of family business by one member—Binding on other members.*

Where a Hindu joint family carries on a business the members of the family are in the position of partners in regard to persons dealing with that business and an acknowledgment of liability made by a member in the usual course of the partnership business and such as is necessary for the business, is binding on the other members of the family as partners and extends the period of limitation. 10 All. 418, *Foll.*; 32 All. 51, *Dist.* (*Bennett, J.*). DEBI DAYAL *v.* BALDEO PRASAD.

111 I. C. 143=50 All. 982=
26 A.L.J. 1036=A.I.R. 1928 All. 491.

—S. 21—Partners.

———*Letter by one forwarding bills against overdraft—Binding on the other.*

Where a firm of partners opens an overdraft account and the bank agrees to collect bills and credit balance after deducting commission to the firm account, any acknowledgment by means of a letter forwarding bills as arranged sent by one of the partners, other having severed his connexion with the partnership, is sufficient acknowledgment in the absence of a notice of dissolution to the bank, and is binding on the other partner. *Tucker* v. *Tucker*, 3 Ch. D. 429; *Watson* v. *Woodman* 20, Eq. 721, *Dist.*; 26 Bom. 42, *Ref.* (*Lort-Williams, J.*). BENGAL NATIONAL BANK, LTD. *v.* JATINDRA NATH. **56 Cal. 566=33 C.W.N. 412=**
A.I.R. 1929 Cal 714.

———*Acknowledging partner must have authority.*

Section 21 (2) simply means that mere acknowledgment or payment by one or more partners is not of itself sufficient to make the other or others chargeable apart from the question of authority. (*Lort Williams, J.*). BENGAL NATIONAL BANK, LTD. *v.* JATINDRA NATH MAJUMDAR.

56 Cal. 556=33 C.W.N. 412=
A.I.R. 1929 Cal. 714.

LIMITATION ACT (1908), S. 22—Amendment in description.

———*Acknowledgment by one in the course of partnership business—Binds the others.*

The mere fact that persons are partners does not make one partner liable under an acknowledgment by another; but if the acknowledgment is done in the course of partnership business, it is binding on the others. (*Bennett, J.*). DEBI DAYAL *v.* BALDEO PRASAD. **111 I.C. 143=50 All. 982=**
26 A.L.J. 1036=A.I.R. 1928 All. 491.

———*Scope explained.*

Section 21 (2) does not say that a person shall not be liable on an acknowledgment signed by the partner but by reason only of a written acknowledgment signed by his partner: and it amounts to saying that if there is no more than a written acknowledgment signed by one defendant, the fact that the other defendant is his partner cannot affect the latter's liability. 41 Mad. 427 (F.B.), *Expl.*). (*Spencer and Odgers, JJ.*). MAHADEVA IYER *v.* RAMAKRISHNA REDDIAR.

92 I.C. 653=23 M. L. W. 199=
1925 M.W.N. 707=A. I. R. 1926 Mad. 114=
50 M.L.J. 67.

—S. 22.

Amendment in description.
Applicability
Effect of subsequent addition.
Joint Hindu family.
Necessary parties.
Partnership.
Proper party but not necessary.
Substitution of parties.
Transposition of parties.
Miscellaneous.

—S. 22—Amendment in description.

———Section 22 has been held to apply to cases where new plaintiff has been introduced and is not applicable to cases where there is only an amendment with regard to the description of the plaintiff. (*Suhrawardy and Graham, JJ.*). ANUKUL CHANDRA *v.* DACCA DIST. BOARD. **113 I.C. 24=**
32 C.W.N. 396=A.I.R. 1928 Cal. 485.

———*Major represented by mistake as minor and suing by next friend*

Where a suit was wrongly instituted by a person as the next friend of the plaintiff but was subsequently allowed to be amended as plaintiff had already attained majority

Held, that when the proper amendment was made, the plaintiff was not introduced as a new party to the suit but was already on the record when the plaint was filed; and consequently the amendment describing him properly at a later stage did not amount to the addition of a new party within the meaning of S. 22. (*Duval and Mitter, JJ.*). NARAYAN CHANDRA *v.* DULAB CHANDRA. **100 I.C. 469=A I.R. 1927 Cal. 477.**

———*Suit in personal capacity—Amended title as administrator.*

Plaintiff brought a suit in his personal capacity against the defendant for a certain sum of money which he alleged that the defendant had realised from plaintiff's tenants but had retained in his own possession. The suit was brought within the period of limitation but after the expiration of that period, the plaintiff prayed to be permitted to sue not only in his personal capacity but also as administrator to the estate of the deceased proprietor and the plaint was amended accordingly. The money belonged to the estate which was inherited by plaintiff and his two sisters and of which the plaintiff was the administrator,

LIMITATION ACT (1908), S. 22—Amendment in description.

Held, that there was no change in 'persona' and the suit was not barred by limitation. 37 Cal. 229 (P.C.), *Dist.*; 43 I. A. 113; 7 C. W. N. 575, *Foll.* (*Suhrawardy and Chotzner, JJ.*). NABA KUNWAR CHOWDHURY *v.* HIGHE ZANY. 79 I.C. 403= 51 Cal. 843=A.I.R. 1925 Cal. 419.

——*Power of Court—Scope of—Change in the name of parties.*

The Court has jurisdiction to add or substitute parties *suo motu*, untramelled by the provisions of the Limitation Act, under O. 1, R. 9 or O. 1, R. 10, sub-R. 2, but it is rightly and finally settled that the Court acting on its own initiative, is no more entitled when making amendments to effect the substitution or addition of parties under these two orders, to disregard the provisions of the Limitation Act, than it would be entitled to do so if the amendment was made upon an application by one of the parties.

Where in the pleadings the defendants are sufficiently described, and, those gentlemen are before the Court, and are parties to the suit an application to amend the plaint, *e.g.*, to substitute for defendants Joharmall Manmull the words "Joharmull Khemka and Manmulla Khemka" would not be for an amendment by which a new party was added, but it would be an amendment merely for the purpose of more clearly describing parties who are already before the Court Such an application would not be within S. 22 of the Limitation Act. (*Page, J.*). SEODOYAL *v.* JOHARMULL.

75 I. C. 81=50 Cal. 543=A. I. R. 1924 Cal. 74.

——*Manager suing on behalf of temple—Temple's name added.*

No substitution or addition of a new plaintiff is made by an amendment where only the description of the plaintiff is corrected. The plaint stated that Hiralal and Tulsiram were managers of the temple. The deed of gift of which the title in suit rested was filed. This deed mentioned the temple as the donee and Hiralal and Tulsiram as the managers.

Held, that the suit was not filed by Hiralal and Tulsiram on their own behalf but on behalf of the temple and the omission to mention the temple in the heading was merely a mistake in the description of the plaintiff. No question of limitation arose when that description was corrected, (*Kotwal, A.J.C.*). BAKARAM *v.* HIRALAL.

71 I. C. 39=A.I.R. 1923 Nag. 96.

—S. 22—Applicability.

——*Defendant added on his own application after time.*

Where in a suit under S. 9, Specific Relief Act, a person is added one year after the date of the suit as defendant on his own application and a decree is passed against him, he cannot avoid the decree by taking advantage of S. 22, Limitation Act. 28 Bom. 11, *Rel. on.* (*Fawcett, Ag.C.J. and Murphy, J.*). BHAUDIN *v.* IBRAHIM. 112 I.C. 786= 30 Bom. L.R. 1403=A.I.R. 1928 Bom. 526.

——*Application under O. 9, R. 13, C. P. Code.*

A "suit" under S. 2 (10) does not include "application" and S. 22 of the Limitation Act does not apply to an application made under O. 9, R. 13 of the Code. (*Das and Bucknill, JJ.*). CHANDRIKA RAY *v.* RAM KUBR THAKUR. 62 I.C. 536= 1922 P.H.C.C. 75=6 P.L.J. 463=2 P.L.T. 771= A.I.R. 1923 Pat. 88.

——*Order 1, R. 10, C. P. Code—Appeals.*

Section 22 of the Limitation Act does not prescribe any period of limitation for the joinder of a party to a suit under S. 32, C.P. Code (1882), O. 1, R. 10 or to an appeal under S. 559 of the old Code, (O XLI. R. 20) and there is nothing to prevent such a joinder in either a suit or appeal even after it is barred by time. Section 22 of the Limitation Act applies to appeals as much as to suits in principle. But a suit in which a defendant is joined, after the period of the limitation has expired, must necessarily be dismissed as against him. In an appeal, however, there may be possibly reasons justifying its admission after time under S. 5 of the Limitation Act. (*Hallifax, A.J.C.*). KUKSA *v.* DAJIBA BHAU. 66 I.C. 217=5 N.L.J. 192= A.I.R. 1922 Nag. 213.

LIMITATION ACT (1908), S. 22—Effect of subsequent addition.

——Section 22 of the Limitation Act, does not apply to proceedings in execution. (*Das and Adami, JJ.*). MT. GULAB KUER *v.* SYED MAHOMED ZAFFER HASAN KHAN. 62 I.C. 30=2 P.L.T. 619= 6 P.L.J. 358=A.I.R. 1921 Pat. 180.

—S. 22—Effect of subsequent addition.

——*Order 1, R. 10, C. P. Code.*

A Court acting under O. I, R. 10 is bound by the provisions of S. 22, Limitation Act, and it is immaterial whether the Court acts *suo motu* or upon the application of a party. 35 Cal. 519, *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). SHER SINGH *v.* SUNDAR SINGH.

A. I. R. 1930 Lah. 747.

——Where an application is made to join certain persons as parties, they become parties to the suit from the time when the application is presented and not when the Court passes its order joining them as parties. 17 Bom. 29; A.I.R. 1927 Mad. 468, *Foll.*; A.I.R. 1925 Mad. 487, *Not foll.*; A.I.R. 1926 P.C. 88, *Dist.* (*Rupchand and Wild, A. J. Cs.*). HASSANAND *v.* NANDIRAM.

A.I.R. 1930 Sind 259.

——When parties are added by the Court after the institution of the suit under R. 10 (2), C. P. Code, S. 22, Limitation Act, provides that the date when they are added is to be deemed to be the date of the institution of suit so far as they are concerned for purposes of limitation and the rights which they may have acquired under the Limitation Act are therefore sufficiently safeguarded. (*Sir John Wallis.*) V. P. R. V. CHOCKALINGAM CHETTY *v.* SEETHAI ACHE. 107 I.C. 237=27 M.L.W. 1= 1928 M.W.N. 20=4 O.W.N. 1231= 47 C.L.J. 136=32 C.W.N. 281=30 Bom. L.R. 220= 6 Rang. 29=26 A. L J 371= A.I.R. 1927 P.C. 252=54 M L.J. 38 (P.C.).

——When a party is added on application, the addition must be deemed to have effect from the date of the application. 17 Bom. 29, *Foll.*, A.I.R. 1925 Mad. 487, *Diss. from.* (*Kumaraswami Sastri and Reilly, JJ.*). S. I. INDUSTRIALS, LTD. *v.* NARSIMHA RAO. 100 I.C. 680= 50 Mad. 372=25 M.L.W. 417= 38 M.L.T. 126=A. I. R. 1927 Mad. 468= 52 M.L.J. 199.

——If a party is added to a pending suit after the lapse of the period of limitation fixed for the suit the bar of limitation would not be saved. 30 M.L.J. 57 and 36 Mad. 378, *Dist.* 40 M.L.J 533, *Foll.* (*Devadoss, J.*). VENKATASUBBAMMA *v.* PULIPULLA REDDY. 83 I. C. 961= A.I.R. 1925 Mad. 917.

——In the case of a person already on record, on the day on which the suit is filed, limitation ceases to run; but in the case of a person newly added as a party to a pending suit the suit shall as regards

LIMITATION ACT (1908), S. 22—Joint Hindu family.

him be deemed to have been instituted, only when he is so added and not when an application to bring him on record is made. (*Devadoss, J.*). AMMAYYA *v.* NARAYANA. **86 I.C. 187=21 M.L.W. 125= A.I.R. 1925 Mad. 487.**

—S. 22—Joint Hindu family.

———*Substitution of the names of co-parceners.*

Section 22 refers to cases where a new defendant is substituted or added. The substitution of the names of the co-parceners for what is admittedly a joint family business is no more than the correction of a mis-description and not an addition of parties and so the section is not applicable. (*Macleod, C.J. and Coyajee, J.*). RAMPRASAD SHIVLAL *v.* SHRINIVAS BALMUKUND. **90 I.C. 685=27 Bom. L.R. 1122= A.I.R. 1925 Bom. 527.**

———*Sons impleaded too late—Effect.*

Where a mortgage was executed by the father of a Hindu joint family and a suit by the mortgagee for possession was originally brought against the father alone and his sons were subsequently brought on the record as defendants at their own instance on the allegation of their being joint with the father, and where at the time that the sons were brought on the record, the suit was barred as against them,

Held, that the entire suit could not be dismissed and that even if the suit be considered to be barred against the sons, relief could be granted to the plaintiff against the joint family property with only the father, the manager of the family, as sole defendant to the suit. 33 All 272; 35 Mad. 685 and 34 All. 549, *Foll.*; 35 Cal. 519, *Dist.* (*Dalal, A J.C.*). MT. RAJAVANTA *v.* RAMESHAR. **87 I.C. 180= 12 O.L.J. 235=2 O.W.N. 225=28 O.C. 393= A.I.R 1925 Oudh 440.**

———*Adult members deemed to represent family.*

Where all the adult members of a joint Hindu family appear on the record as defendants it is a legitimate presumption that they are acting as managers on behalf of themselves and of the minor members, though it is not formally stated in the plaint that the defendants were being sued as managers and therefore the addition of minor members defendants, after limitation does not justify dismissal of suit. 34 All 549 (F.B.), *Foll.* (*Daniels and Neave, JJ.*). CHETAN SINGH *v.* SARTAJ SINGH. **79 I.C. 1001= 46 All. 709=22 A.L.J. 702=5 L.R.A. Civ. 480= A.I.R. 1924 All. 908.**

—S. 22—Necessary parties.

———*Co-sharer's suit for rent—Joining others after time.*

One of the co-sharers cannot sue to recover the arrears of the whole rent even though the right to recover it is conceded to him by the other co-sharers. But if one co-sharer alone sues to recover the whole rent and joins the other co-sharers after period of limitation prescribed for a suit to recover the arrears of rent, though the suit is bad at its inception, it becomes absolutely flawless on other co-sharers being joined as parties so far as the plaintiff's right to recover his own share of rent is concerned and he is entitled to recover his share of rent. (*Niamatullah, J.*). CHAUDHRI JAHANGIRA *v.* SARUP. **123 I.C. 828=A.I.R. 1930 All. 309.**

———*Suit against trustee personally—Idol made party after time—Section applies.*

A brought a suit for possession of certain property on allegation that all right in the property had been transferred to him by a reversioner, *B* who got the property after the death of a widow, and that *C* who was in possession of the property had no title. *C* contended that he was in possession of the property only on behalf of an idol *S*, in whose favour the widow has executed a deed of gift and that *S* was a necessary party to the suit. *A* made an application asking *C* to be described as the representative of *S* and for adding *S* as a defendant,

Held, that originally the claim being against *C* personally the proposed change was obviously intended to change the character of the suit by introducing a new case and it could not be said that the amendment was intended to correct a mis-description and that it did not amount to introduction of new party within the meaning of S. 22. *S* was a necessary party and he being impleaded after 12 years the suit was barred and *A* could not also get any relief against *C* personally as *C* was in possession only on behalf of *S*. 33 All. 735; A.I.R 1925 Cal. 419 and 37 Cal. 229 (P.C.), *Dist.* (*Shrivastava, J.*) AVADH BEHAHI *v.* PARMESHUR DIN. **123 I.C. 894=6 O.W.N. 1036= A.I.R. 1930 Oudh 43.**

LIMITATION ACT (1908), S. 22 — Necessary parties.

———*Where title of an idol is challenged.*

A shebait has a right of suit in matters arising out of the possession and management of the dedicated property. But a case, where the intrinsic title of the idol is challenged, stands on a different footing. In cases where the crucial question is about the ownership, the idol is a necessary party. (*Srivastava, J.*). AVADH BEHARI *v.* PARMESHUR DIN. **123 I.C. 894=6 O.W.N. 1036= A.I.R. 1930 Oudh 43.**

———*Addition of, after time.*

If a necessary party is joined as plaintiff or defendant after time for the suit has run out, the entire suit must be dismissed. (*Addison, J.*). DEVI DAYAL *v.* NARAIN SINGH. **100 I.C. 859= A.I.R. 1928 Lah. 33.**

———*Impleading sub-mortgagee after time.*

Where a sub-mortgage, which was simple, was effected within 60 years on the property sought to be redeemed but the simple mortgagee got a decree and bought the property in auction after 60 years had elapsed, when he was impleaded as defendant in the suit, to redeem the original mortgagee,

Held, that the suit was barred as against him as acquisition of interest by him dated back to the date of simple mortgage. (*Mukerji and Dalal, JJ.*). SANWAL DAS *v.* SAIYID ALI MADHI. **85 I.C. 330=22 A.L.J. 1018= 5 L.R.A. Civ. 718=A. I. R. 1925 All. 174.**

———*Pre-emption suit.*

The suit was for pre-emption. The vendee were several persons, *T, B, D; J*, etc. The plaintiff in his plaint joined as vendee defendants, "*T*, son of *B*" *D, J*, etc., B was not joined The omission was due to an error in the copy of sale deed supplied to the plaintiff,

Held, that there was not a mere mis-description of parties, and *B* could not be joined after the expiry of limitation and that consequently, the whole suit should fail. (*Campbell, J.*). JAWALA DAS *v.* GOPAL LAL. **88 I.C. 555= 7 L.L.J. 76=26 P.L.R. 447= A.I.R. 1925 Lah. 343.**

———*Effect of addition.*

Where a Court orders a necessary party to be added the whole suit shall be deemed to have been instituted when the party is added. 14 All. 524, *Foll.* (*Kennedy and Rupchand Bilaram, A. J. Cs.*).

LIMITATION ACT (1908), S. 22 — Necessary parties.

BALLIRAM SHEWARAM *v.* FIRM OF BUDHURAM PARMANAND. 79 I.C. 914=17 S.L R. 324= A.I.R. 1925 Sind 181.

———*Pre-emption suit.*

Where in a pre-emption suit one of the vendees was not included as defendant till after the expiration of the limitation, due to the mistake of the minor plaintiff's next friend.

Held, that though the plaintiff was a minor the suit should be dismissed. (*Broadway J.*). NAIZ ALI KHAN *v.* MD AFZAL KHAN, MINOR THROUGH MT. GAVHAR BEGAM. 73 I.C 364= A.I.R. 1924 Lah. 230.

———*Benami purchase.*

Where in a proceeding under R. 90 of O. 21, C. P. Code, the ostensible purchaser was made a party within limitation but the real purchaser was joined as a party to the application after thirty days, but the applicant had no means of knowing that the ostensible purchaser was not the real purchaser,

Held, that the addition of party after the prescribed period, does not entail the dismissal of the application as against the newly added real purchaser. (*Stuart, J.*). MT. BHAGGO *v.* MATA PRASAD. 76 I.C 307=A I.R. 1923 All. 462.

———*Suit by executor—Effect of adding co-executor after time.*

Co-executor of a will is a necessary party to a suit by another executor for the recovery of devised properties and where such a co-executor is added as a defendant, he being unwilling to be plaintiff after the limitation period. the whole suit should be held to be barred, though it was originally instituted within the prescribed period. 48 I. A. 603 (P.C.), *Foll.*; 37 Cal. 229 (P.C.). *Dist.*; 25 M.L.J. 452 and 9 L.W. 377, *Diss. from.* (*Wallis, C.J. and Ramesam, J.*). SRIRANGATHUNI *v* VAITHILINGA MUDALIYAR 63 I C. 104= 13 M.L W. 392=1921 M.W N. 248= A.I R 1921 Mad 528=40 M L.J. 532.

—S. 22—Partnership.

———*Names of proper representatives.*

When a suit as originally laid is against the firm the description of the proper representative of that firm can always be corrected and such correction does not amount to either substitution or addition of a new party to the suit. No question of limitation under S. 22 arises in such a case. A.I.R. 1924 Bom. 155 and 22 Bom. 672, *Rel on* (*Kinkhede, A.J.C.*). DEOLAL *v.* TULSIRAM, RAMSUKH. 109 I.C. 785=A.I.R. 1928 Nag. 319.

———*Partner served after time.*

When a suit is instituted against a firm in its name, whether the firm consists of members of a joint family or otherwise and one of the partners is afterwards served with the summons of the suit under O. 30, R. 3, C.P. Code., the original date of institution is to be taken even against the partner who is subsequently served though the firm has been dissolved to the plaintiff's knowledge before the institution of the suit. (*DeSouza, A.J.C.*). DETARAM *v.* VISHINDAS. 103 I.C 855= 23 S.L.R. 54=A.I.R. 1928 Sind 57.

———*Partner substituted after time.*

Suit against firm of "Manmal Chandmul". But defendant described as "Hindumal as owner and Manager of shop Manmal Chandmal"—Chandumal having died before suit, his heirs were brought on record but after the period of limitation,

Held, that though not in form, but in substance, the plaintiff sued the firm of "Manmal Chandmall.

LIMITATION ACT (1908), S. 22—Proper party but not necessary.

If he had simply described the defendant as "the firm of Manmal Chandmal" without mentioning the names of the owners or partners of the firm, the description would have been sufficient, having regard to the provisions of O. 30 of the C.P. Code In that view the further description of the defendant Chandmal Hindumal as "the Manager and owner of the firm" may be treated as a mere surplusage. Therefore the suit was not barred. (*Shah, Ag, C.J. and Crump, J.*). MOTILAL JASRAJ *v.* CHANDMAL HINDUMAL. 77 I.C. 1055= 25 Bom. L.R. 1081=A.I.R. 1924 Bom. 155.

———*New partnership superseding old.*

Where one partnership was the real contracting party but a new partnership with some of the partners of the old firm filed a suit,

Held, that amendment to bring on record the real plaintiffs cannot be taken to date back to the time when the suit was originally instituted. The amendment can only relate to the date on which the application for substitution was made and not to the date when the plaint was filed. 20 C. W. N. 933, *Foll.* (*Kennedy, J.C. and Raymond, A. J. C.*). MESSRS. MANGHUMAL JETHANAND *v.* MESSRS. ARATMAL SATRAMDAS. 76 I.C. 119= 17 S.L R. 263=A I.R. 1924 Sind 47.

———*New partnership superseding old.*

If a firm, newly constituted by the retirement of one partner and joining in of another, brings a suit on a contract entered into by the old firm, it cannot, after the expiration of the period of limitation for a suit on the contract, substitute the names of the partners of the old firm under S. 22 (2). (*Kemp, A. J. C.*). FIRM OF MANGHOOMAL *v.* FIRM ARATMAL. 65 I.C. 26=15 S. L.R. 152= A. I. R. 1922 Sind 13.

—S. 22—Proper party but not necessary.

———Where a party is added to the suit not in order to validate the suit but to settle the dispute finally, the original defendants cannot claim limitation from the date the new party is added to the suit. (*Dalal, J.*). ABDUL HAQ *v.* LALLU. A.I.R. 1930 All. 436.

———Section 22 does apply to a case even where a person is not a necessary party but only a proper party to a suit and such a person cannot be added as a party after the expiry of the period of limitation provided for by that section. 36 Cal. 675, *Foll.*; 12 C. W. N. 84; 32 All. 241 and 33 Cal. 425, *Expl.* and *Dist.* (*Cuming and Mullik, JJ.*). HASAN ALI *v.* GURUDAS KAPALI. 116 I.C. 726= 49 C.L.J. 16=33 C.W. N. 248= A.I.R. 1929 Cal. 183.

———*Failure to add in time—No bar.*

A and *B* executed a bond in favour of two brothers *X* and *Y* members of a joint Hindu family. *X* sued *A* and *B* for the recovery of the amount due on the bond alleging that in a family partition the bond fell to his share. *Y* was not originally made a party to the suit but on defendant's objection *Y* was impleaded after expiry of the period of limitation. The lower Court dismissed the suit on the ground that it was barred by limitation as *Y* was impleaded as a party more than three years after the execution of the bond,

Held, that when *Y* admitted that the bond fell to *X*'s share and that he had nothing to do with it, the mere fact that he was impleaded after the expiry of three years did not in any way affect the maintainability of the suit and that the claim was not barred. 57 P.R. 1905; *Appr.*; A. I. R. 1927 Lah.

LIMITATION ACT (1908), S. 22—Proper party but not necessary.

115, *Dist.* (*Tek Chand, J.*). PADAM SAIN *v.* DATA RAM. **115 I.C. 74=30 P.L.R. 124=A.I.R. 1929 Lah. 503.**

———When a party is brought on the record out of time, the question of limitation does not arise when there is no relief claimed against that party. 6 C.L.J. 558, *Foll.* (*Cuming and Mullik, JJ.*). JADU NATH *v.* AMULYA KRISHNA. **104 I. C. 576=46 C L.J. 118=A I.R. 1927 Cal. 794.**

———Joinder after limitation of proper but not necessary parties is not fatal. 22 Bom, 672 and 28 Bom 11, *Appr.* (*Marten, J.*). COORLA SPG. AND WVG. MILLS CO., LTD. *v.* VALLABHDAS KALLIANJI. **94 I.C. 575=27 Bom. L.R. 1168=A.I.R. 1926 Bom. 547.**

———*Addition of —Section does not apply.*

Where the holder of a bond was not impleaded by the plaintiff assignee until the expiry of the period of the limitation but the assignee admitted that she had authorised her agent to assign the bond for consideration,

Held, S. 22 of the Indian Limitation Act does not lay down that a joinder after the period of limitation shall in all cases necessarily involve a dismissal of the suit. If the presence of a party added after the prescribed period is not necessary to enable the Court to award such relief as may be given in the suit framed by the plaintiff and he is joined *ex majore cautela* the suit is not barred merely because the limitation period had expired at the time when he was impleaded. (*Shadi Lal, C.J.*). KUNJ LAL *v.* HARI RAM. **75 I.C. 781=A I R. 1923 Lah. 438.**

———There may be circumstances in which addition of parties subsequently brought on record may not be essential and may be merely for the protection of the defendant, where it is not essential the suit is not barred 33 Cal. 1079; 33 All. 272; 28 Bom. 11, *Ref.* (*Suhrawardy and Cuming, JJ.*). SITAL PRASAD PODDAR *v.* KAIFAT SHAIKH. **65 I.C. 367=26 C.W N. 488=A.I.R. 1922 Cal. 149.**

———*Redemption suit—Persons interested in the equity of redemption.*

In a redemption suit filed within time if some persons interested in the equity of redemption, and so necessary parties, are sought to be impleaded after the expiry of limitation, S. 22 does not warrant the dismissal of the suit as time-barred.

The persons so sought to be impleaded are merely necessary for the record in order to satisfy the provisions of O. 34. R. 1. It is within the discretion of the Court under O.1, R 10 sub-R. (2) to make these parties co-defendants, and then to consider after they have been made co-defendants what would be the legal result of such addition.

Per *Fawcett, J.*—There is no provision in either the Civil Procedure Code or the Indian Limitation Act which says that a party cannot be added after his right of suit or liability to be sued (as the case may be) is barred by the provisions of the Limitation Act. 28 Bom 11, *Appl.* (*Macleod, C.J. and Fawcett, J.*) SHIVUBAI RAJARAM SHETE *v.* SHIDDHESWAR MARTAND HEDGE. **61 I. C 590=45 Bom. 1009=23 Bom. L.R. 405=A.I.R. 1921 Bom. 152.**

—S. 22 —Substitution of parties.

———*Insolvency* pendente lite.

Where, after the institution of the suit the defendant is adjudicated insolvent and the Receiver is brought on record; he is brought in, not because he is an essential party to the suit in the sense that his absence is fatal to the suit and if he is impleaded at a later date the suit will be regarded as filed on that date, but because of the provisions of S. 29 of the Insolvency Act.

LIMITATION ACT (1908), S. 22—Substitution of parties.

There is a devolution of interest on the Receiver who is merely a continuation of the original defendants Consequently there is no rule of limitation governing the application to bring in the Official Receiver as a party. (*Ramesam, J.*). KALIAPERUMAL *v.* RAMACHANDRA AYYAR. **102 I.C. 444=1927 M.W.N. 245=26 M L W. 171=A.I.R. 1927 Mad 693=53 M.L.J. 142.**

———*Party discharged and reinstated.*

Where the defendants were first made defendants as sons and legal representatives of the deceased tort feasor but were discharged and the estate of the deceased was made defendant and the first defendants were again reinstated as defendants,

Held, the suit must be deemed to be filed as on the date of reinstatement. (*Viscount Haldane.*) HAVELI SHAH *v.* PAINDAKHAN. **96 I.C. 887=1926 M.W.N. 592=31 C W.N 174=A.I.R. 1926 P.C. 88 (P.C.).**

———*Suit after Insolvency —Substitution of Official Assignee.*

When a person is adjudicated an insolvent, the whole of his property passes to the Official Assignee by virtue of the vesting order passed under the Presidency Towns Insolvency Act. Consequently nothing is left vesting in the insolvent which would give him a cause of action. So a suit by an insolvent in his own name, after his adjudication cannot be maintained and the substituting the name of the Official Assignee later on is adding a new plaintiff within Limitation Act, S. 22. (*Macleod C.J. and Crump, J.*). SAYAD DAUD *v.* MULNA MAHOMED. **95 I.C. 538=28 Bom. L R. 554=A.I.R. 1926 Bom. 366.**

———*Mis-description.*

Where the suit was brought against the defendant described as "Agent, E I. Railway," the Railway Company contested the suit considering itself to be the party sued; no specific ground was taken that the proper party had not been sued,

Held, that it was a case of mis description which could be rectified by a formal amendment. (*Chatterjea, Ag. C.J. and Cuming, J.*). GOPIRAM BEHARI RAM *v.* E.I.RY. AND O. & R. RY. **94 I. C. 762=30 C. W. N. 209=A.I.R. 1926 Cal. 612.**

———*Suit against Company—Defendant described as agent.*

When there are two known persons in existence and the plaintiff brings the suit against one of them and afterwards applies to have the other brought on the record as a defendant on the ground that he all along intended to sue theother and that in substance he sued the other and no question of representation arises in the case, the case is not one of mis-description.

Where in a suit against a Railway Company the plaint described the defendant as the "Agent" of the Railway Company and where subsequently the plaintiff sought to amend the plaint by bringing the company on record.

Held, that it was not a case of mis-description. But if the amendment was allowed it would have the effect of adding a new party to the suit, and S. 22 of the Limitation Act would apply. (*Suhrawardy and Duval, JJ.*). AGENT, B. N. RY. *v.* BEHARI LAL. **90 I.C. 426=52 Cal. 783=29 C.W.N. 615=A.I.R. 1925 Cal. 716.**

LIMITATION ACT (1908), S. 22—Transposition of parties.

—S. 22—Transposition of parties.

——Defendant 1 executed a promissory note in favour of defendant 2, a *benamidar* for plaintiff. As the plaintiff, the beneficial owner of the promissory note, was not able to maintain a suit under the Negotiable Instruments Act against defendant 1, defendant 2 desired to be joined as co plaintiff as his independent suit would be time-barred,

Held, that the prayer should not be allowed as defendant 1 would then lose a valuable statutory right acquired by lapse of limitation. (*Allanson, J.*). RAM DAS SAHU *v.* CHHOTA LAL MANDER.

104 I.C. 526=9 P.L T. 238=A.I.R. 1928 Pat. 24.

——Where a person was a defendant to a suit as it was originally instituted, but in the subsequent proceedings his position from that of a defendant was changed into that of a plaintiff,

Held, that the case was entirely covered by sub-S. (2), S 22. (*Wazir Hasan and Gokaran Nath Misra, JJ.*). MOOL CHAND *v.* BHOOP SINGH

103 I C. 473=1 L.C. 546=A.I.R. 1927 Oudh 484

——It is clear from the provisions of sub S. (2) of S. 22 that the provisions of sub-S. (1) of the section will not apply where a defendant, who was made such by the plaintiff at the time of the institution of the suit, is transferred in that suit as a co-plaintiff. (*Adami, J.*). RAJKISHORE LAL NAND KEOLYAR *v.* ALAM ARA BEGUM. **90 I.C. 62= A.I.R. 1926 Pat. 28.**

——The transfer of a party from *pro forma* defendant or otherwise to plaintiff is not an addition of a new party within the meaning of S. 22. 38 Cal. 242, *Foll.* (*Raymond, A.J.C.*). FIRM OF GARIMAL HARIRAM *v.* FIRM RAGHUNATH KALYANJI. **66 I.C. 873=16 S.L.R 71= A.I.R. 1921 Sind 59.**

—S. 22—Miscellaneous.

——*Minor defendant—Appointing guardian* ad litem *after time.*

Subsequent to the discovery that the minor has not been properly represented by a duly appointed guardian it is open to the Court in the exercise of its inherent power under S. 151 to restore the case to its original number on the file and proceed with it after duly appointing a guardian. The restoration of the case and the appointment of a new guardian cannot be held to be tantamount to the addition of a new party to the suit. The appointment of a guardian *ad litem* must always be some time after the institution of the suit and the suit must be deemed to have been instituted against the minor on the date when it was filed, even though on that date the guardian *ad litem* was not or could not have been appointed. 39 All. 8 and A.I.R. 1924 All 225 *Rel. on*; 53 I. C. 184 and A. I. R. 1924 Mad. 489, *Not appr* (*Sulaiman and King, JJ.*). TALIB ALI SHAH *v.* PIARSY LAL.

1930 A.L.J. 938=A.I.R. 1930 All. 644.

——*Transferee* pendente lite.

A transferee *pendente lite* who acquires an interest which may come in conflict with the rights of the decree-holder under the decree cannot plead limitation on the ground that the suit or proceedings should be deemed to have been instituted or taken against him only on the date he was impleaded as a party. (*Niamatullah and Kisch, JJ.*). ZAHURAL HASAN *v.* BADRI NARAIN.

A.I.R. 1930 All. 597.

——*Specific Relief Act, S. 9—Suit under—Person joined as defendant after one year on his own application—He cannot avoid the decree—Evidence Act, S. 115.*

LIMITATION ACT (1908), S. 23—Closing drains.

Where in a suit under S. 9, Specific Relief Act, a person is added one year after the date of the suit as defendant on his own application and a decree is passed against him, he cannot avoid the decree by taking advantage of S. 22, Limitation Act. 28 Bom. 11, *Rel. on.* (*Fawcett, Ag C.J. and Murphy, J.*). BHAUDIN BABU SHAIKASAN *v* IBRAHIM ALI SAHEB SHAI KASAN. **112 I C 786= 30 Bom L.R. 1405=A.I R. 1928 Bom. 526.**

——*Minor defendant — Appointing guardian* ad litem *after time.*

Where in a pre-emption suit, guardian for one of the vendees who is a minor is appointed after the expiry of limitation for the suit, the defect is not fatal to the suit as a plea of limitation. 31 All 55, *Foll.* (*Lindsay and Sulaiman JJ.*). HAR LAL SINGH *v.* RUDRA SINGH. **102 I.C. 624= 49 All. 869=25 A.L.J. 655=A.I.R. 1927 All. 787.**

—S. 23—Adverse possession.

——Section 23 would not apply to a case where the defendant has erected a *chhappar* on plaintiff's land and taken possession of the land adversely to the plaintiffs, as the cause of action is complete as soon as the *chhappar* is erected. 194 P.R. 1912 and 28 C L.J. 494, *Rel. on.* (*Broadway, J.*). LAL SINGH *v.* HIRA SINGH. **60 I.C. 20= 3 L.L.J. 128=A.I.R. 1921 Lah. 242.**

—S. 23—Attachment.

——*Section* 146, *Cr. P. Code—No fresh period of limitation.*

Where there was a dispute between the parties regarding the land in suit and in proceedings under Ch. XII of the Cr P. Code the Magistrate attached the land under S. 146 and appointed a Receiver thereof referring the parties to the Civil Court for the determination of their rights, and where a suit was brought by the plaintiff for a declaration that he was the owner of the land,

Held, further that where it is not known whether it was the plaintiff or the defendant who was guilty of interference with possession or dispossession, all that one can say as to what led the Magistrate to take possession is that it was either his inability to decide who was in actual possession or his decision that neither party was in possession and that neither of these can be said to be a wrong by the defendant and hence no fresh period of limitation began to run under S 23 of the Limitation Act, after the date of the attachment by the Magistrate. (*Kotval, A.J.C.*). YESKNATH *v.* BAHIA.

85 I.C. 631=20 N L.R. 195= A I.R. 1925 Nag. 236.

—S. 23—Attachment and adverse possession.

——*Section* 146, *Cr. P. Code—Effect of order.*

A trespasser's possession is determined upon the Magistrate taking possession under the attachment, for the possession of the Magistrate being in law the possession of the true owner, the true owner must be taken to have been restored to possession constructively on the date of the attachment and must be taken to get a fresh starting point, the case being one of continuing wrong. (*Chatterjee and Cuming, JJ.*). PANNA LAL BISWAS *v.* PANCHU RAIDAS. **65 I.C. 200=51 Cal. 545= 26 C.W.N. 432=A.I R. 1922 Cal. 419.**

—S. 23—Closing drains.

——Action of a person in closing up certain drains which emitted water from another's building on to the former's premises is a continuing wrong within S. 23. (*Shadi Lal, C.J. and Le Rossignol, J.*). CHIRANJI LAL *v.* SHIB LAL. **92 I.C. 224=A.I.R. 1926 Lah. 252.**

LIMITATION ACT (1908), S. 23 — Continuing injury.

—S. 23—Continuing injury.

———Per *Shah, J.*—Where sulphuric acid was thrown at a person and injury was caused to his eye therefrom the continuance of its effect at a later date was not held to be continuing wrong within the meaning of S. 23 of the Limitation Act. (*Shah, Ag. C.J. and Crump, J.*). ABDULLA MAHOMED *v.* A. M. ZULAIKHI. **84 I C. 796= 25 Bom L R. 1333=A.I.R. 1924 Bom. 290.**

—S. 23—Continuing obstruction.

———If it is alleged by the plaintiff that the obstruction caused by closing the main sluice of a tank continued and he was prevented from removing the same by threat of violence it is a continuing wrong under Art. 37 read with S. 23 of the Limitation Act. The suit would be within time if it is brought within three years of the last day to which the wrong continued. (*Hallifax, A.J.C.*). SONA PATIL *v.* LAXMAN. **82 I.C. 482= A.I.R. 1925 Nag. 189.**

—S. 23—Co-owner, obstruction by.

———A suit by one co owner against another for the removal of the actual existing obstructions constructed by the other, on land, which by long usage and by agreement between the parties is reserved for use as a common passage is governed by Art. 144. 6 Cal. 394 (P. C.), *Ref.* Further the wrong is a continuing wrong within S. 23 of the Limitation Act. (*Richardson and Suhrawardy, JJ.*). DWARKA NATH SEN *v.* TARA PRASANNO SEN. **76 I.C. 328=A.I.R. 1923 Cal. 356.**

—S. 23—Declaratory suit.

———The principle of S. 23 which deals with continuing wrongs can have no application to declaratory suit and there is no recurring cause of action for declaratory relief. 20 Cal. 906, *Diss.* (*Mullick and Ross, JJ.*). MUHAMMAD FAHIOMAL HAQ *v.* JAGAT BALLAV GHOSH. **74 I.C. 403= 2 Pat 391=4 P.L.T. 675=A.I.R. 1923 Pat. 475.**

—S. 23—Denial of title

———A declaratory suit under S. 42, Specific Relief Act, can be brought when the plaintiff's title is denied by some person, and the denial itself gives a cause of action for a declaratory relief. To such a suit S. 23, Lim. Act, cannot apply as it refers to a continuing wrong and not to a continuing right. 20 Cal. 906; 26 Mad. 410 and A.I.R. 1923 Pat. 475, *Ref.* (*Patkar and Wild, JJ.*). KRISHNAJI ANNAJEE BULTE *v.* ANNAJEE DHONDAJEE BULTE. **124 I.C. 773=31 Bom. L.R. 1240= 54 Bom. 4=A.I R. 1930 Bom. 61.**

—S. 23—Disconnection of water pipe.

———*U. P. Municipalities Act, S. 228 (b).*

Section 228 (*b*), U. P. Municipalities Act, 1916 refers to the duty of the Board to allow the owner to connect his house for the purpose of obtaining water from the main. If therefore the connexion is cut off and the owner is prevented from obtaining water from the main pipe by means of his communication pipe, there is a continuing breach giving rise to continuing cause of action inasmuch as the owner is continually prevented from connecting his house with main pipe. The duty of the Board is continuing duty and the continuing breach of it gives cause of action to owner from day to day. (*Sulaiman and Pullan, JJ.*). MUNICIPAL BOARD, ALLAHABAD *v.* SARKAR BAHADUR. **118 I.C. 713=1930 A L.J. 94=A.I.R. 1929 All. 870.**

—S. 23—Failure to pay debts.

———Where the vendee agreed to pay off a usufructuary mortgage on the property but no time was fixed for the payment of the money,

LIMITATION ACT (1908), S. 23—Seizure of movables.

Held, that the vendee's failure to pay off the mortgage on the date on which the sale-deed in his favour was executed, constituted breach of covenant on his part, that the breach took place once and for all and that there was no continuing breach which would give successive causes of action to the plaintiff the vendor to sue. 34 All. 429, *Foll.* (*Sulaiman, J.*). RAM NARAIN *v.* NIHAL SINGH. **87 I.C. 804=6 L.R.A. Civ. 222= A.I.R. 1925 All. 488.**

—S. 23—Illegal partnership.

———*Claim for refund of capital.*

An unregistered business association of more than 20 persons was formed in contravention of S. 4 of the Companies Act of 1882 -About 20 years later, the heirs of one of the members brought a suit for a declaration that the partnership was illegal and for the recovery of the share of the capital contributed by their ancestor. They alleged that they had been pressing the other partners to get the partnership registered but that they had refused to do so.

Held, that the cause of action for return of the money accrued as soon as the money was paid and there was no continuing cause of action in plaintiff's favour. (*Gokul Prasad and Lindsay, JJ.*). RAM KUMAR *v.* NEM CHAND. **64 I.C. 447= 19 A.L.J. 836=A.I.R. 1921 All. 73.**

—S 23—Nuisance.

———The causing of a nuisance is a continuous wrong and a fresh period of limitation begins to run at every moment during which the wrong continues. (*Le Rossignol, J.*) RUKNUDU DIN *v.* ALTAF AHMAD. **60 I C. 529 (Lah.).**

—S. 23—Obstruction to use well.

———*'Continuing cause of action' explained.*

A cause of action, in respect of which a plaintiff is entitled to have the prospective damages assessed is distinct from a continuing cause of action, that is to say, a cause of action which arises from the repetition or continuance of acts or omissions of the same kind as that from which the action has been brought. Similarly, where the damage consequent on an act or omission rather than the act or omission itself is actionable, then as the action is only maintainable in respect of the damage, or is not maintainable until the damage is sustained, an action will lie every time damage accrues from the act. 11 A. C. 127, *Ref.*

The obstruction from taking water from a well is a continuing injury. 6 Mad 176 and 28 Mad. 72, *Rel. on.* (*Prideaux, A. J. C.*). HARDEO *v.* RAMCHANDRA. **98 I.C. 679=A.I.R. 1927 Nag. 85.**

—S. 23—Restitution of conjugal rights.

———The cause of action for a suit for restitution of conjugal rights is founded on a breach of the contract of marriage and the breach continues so long as the person of the wife is withheld from the husband and he is denied the undoubted legal right of her conjugal society. This view of the cause of action in a suit for restitution of conjugal rights places it within the purview of S. 23. (*Wazir Hasan, A. J. C.*). MD. HAMIDULLAH KHAN *v.* MT. FAKHRIJAHAN BEGAM. **65 I.C. 452= 8 O L. J. 650=A.I.R. 1922 Oudh 109.**

—S. 23—Seizure of movables.

———Wrongful seizure of movable property is not a continuing wrong within the meaning of S. 23, although the party is deprived of the possession and use of the property during the period it is

LIMITATION ACT (1908), S. 23 — Wrongful distraint.

taken out of his possession. (*Kumaraswami Sastri and Reilly, JJ.*). PANNAJI DEVI CHAND & Co. *v.* SANAJI KAPUR CHAND. **31 M.L.W. 675= 1930 M.W N. 305=A.I.R. 1930 Mad. 635.**

—S. 23—Wrongful distraint.

——*Wrongful distraint —U. P. Tenancy Act, S.* 146.

The wrong inflicted by an unlawful distraint continues and is renewed every day that the distraint lasts the lawful owner of the property being thereby restrained from making use of it or exercising any right of ownership over it. The cause of action therefore for a suit for damages in respect of a wrongful distraint takes its origin from the day on which the distraint comes to an end and the suit may be lawfully instituted within the prescribed limitation period of three months calculated from the said date. (*Piggott, Walsh and Lindsay, JJ.*). JHABBU *v.* MT. BATUL. **73 I.C. 299= 43 All. 208=4 L.R.A. Civ. 48= A.I.R. 1923 All. 146**

—S. 24—'Injury.'

——"Injury" in S. 24 of the Limitation Act includes a legal injury. (*Marten, C.J. and Patkar, J.*). GOVIND NARAYAN *v.* RANGANATH. **34 Bom. 226=32 Bom. L.R. 232= A.I.R. 1930 Bom. 572.**

——Per *Shah, J.*—Section 24 of the Limitation Act relates to an act which does not give rise to a cause of action unless some specific injury actually results therefrom. (*Shah, Ag. C.J. and Crump, J.*). ABDULLA MAHOMED *v.* A. M. ZULAIKHI. **84 I.C. 796=25 Bom. L.R. 1333= A.I.R. 1924 Bom. 290.**

—S. 24—Malfeasance.

——*Suits governed by Art.* 36.

If a suit is for compensation for any malfeasance or misfeasance independent of contract and not otherwise provided for, the limitation will be two years, not from the date of the malfeasance or misfeasance, but from the time when the injury results. (*Adami and Chatterji, JJ.*). JAGANNATH MARWARI *v.* KALIDAS RAHA. **120 I.C. 626=10 P.L.T. 191=8 Pat. 776= A.I.R 1929 Pat. 245.**

—S. 25—Intention of parties.

——If a question of limitation arises, an instrument must be deemed to have been made with reference to the Gregorian calendar, the intention of the parties being quite immaterial. 4 Bom 103; 6 Bom. 83; 24 Cal 382. *Foll.*; 13 A.L.J. 486 and A.I.R. 1925 All. 138, *Not foll.* (*Waller and Madhavan Nair, JJ.*). VENKATA SUBRAMANIA *v.* BHIRAVASWAMI. **105 I C 241=26 M.L.W. 344= 39 M.L.T. 284=A.I.R. 1927 Mad. 917= 53 M.L.J. 447.**

—S. 25—Other calendar mentioned.

——*Presumption as to computation of time.*

If, in the deed or bond concerned, there is a clear statement that re-payments will be made on a particular Marathi month or after so many months calculated according to the Marathi calendar then S. 25 will not affect the date fixed for payment. But the circumstances that a bond bears an Indian date cannot be used in order to draw an inference regarding the meaning of the word "month" used in subsequent clauses in the bond. Therefore, the mere fact that the rate of interest was to be at 1 per cent per mensem for each Marathi month, is an insufficient basis on which to build the theory that for purposes of re-payments also the period was to be calculated on the basis of Marathi months. 11 C.P.L.R. 91 and 6 Bom. 88, *Rel. on*; 36 Cal. 516, *Dist.* (*Findlay, C.J.*). MADHORAO NARAYAN RAO SHATATE *v.* DEEPCHAND. **102 I.C. 588=10 N.L.J. 117=A I.R. 1927 Nag. 259.**

LIMITATION ACT (1908), S. 26 — Customary right.

—S. 25—Starting point.

——*Intention of parties.*

If the starting point is to be calculated, as so many months or so many years from a particular date, that point must be calculated according to the Gregorian calendar. On the other hand, if the starting point is otherwise fixed by the stipulation itself the Court cannot apply S. 25 of the Limitation Act. It is really a matter of interpretation in every case.

Where the intention was that the interest should be payable at the expiry of "six months" according to the Hindi calendar, that is to say, on a particular date and not at the expiry of six months, and that the cause of action should arise on default. (*Mukerji and Dalal, JJ.*). ROSHAN LAL *v.* CHAUDHURI BASHIR. **82 I. C. 330= 47 All. 66=22 A.L.J. 902= 5 L.R.A.Civ. 636=A.I.R. 1925 All. 138.**

—Ss. 26 & 27—*See also* EASEMENT, SS. 15 AND 16.

—S. 26—Ancient lights.

——*Interference with convenience should be proved.*

Per *Rankin, C. J.*—Where there has been an interference with ancient lights, the law refuses an action unless there has been a real interference with convenience or comfort of the dominant premises as regards their nature and situation. *Colls* v. *Home and Colonial Stores, Ltd*, (1904) A. C. 179, *Foll.*; *Kine* v. *Jelly*, (1907) 1 Ch. 480, *Expl.* (*Rankin, C. J. and C. C. Ghose, J.*). DEBENDRA NATH BAGCHI *v.* SURENDRA NATH SUR. **102 I.C. 370= 31 C.W.N. 419=45 C.L.J. 474= A.I.R. 1927 Cal. 345.**

—S. 26—Applicability to Berar.

——Though Easements Act is not in force in Berar, Limitation Act, S. 26 is. (*Prideaux, A.J.C.*). BADRI *v.* JAFARBHAI. **96 I C 546=9 N.L.J. 136=A.I.R. 1926 Nag. 474.**

—S. 26—Burden of proof.

——Where a right to discharge water on another's immovable property is claimed the onus is on the dominant owner to prove all the points which are necessary to establish an easement under S. 26 of the Limitation Act. (*Scott Smith, Offg. C. J.*). BIJA RAM *v.* BRIJ LAL. **91 I.C. 485=84 I.C. 676= 26 P.L.R. 42=A.I.R. 1925 Lah. 297.**

—S. 26—Completion of title.

——A title to easement is not complete merely upon the efflux ion of the period mentioned in the statute, *viz.*, 20 years and however long the period of actual enjoyment may be, no absolute or indefeasible right can be acquired until it is so brought in question in some suit, and until it is so brought in question, the right is inchoate only and in order to establish it when brought in question, the enjoyment relied on, must be an enjoyment for 20 years up to within two years of the institution of the suit. (*Cuming and Mullik, JJ.*). SITL KANTA PAL *v.* RADHA GOVINDA SEN. **119 I.C. 293= 33 C.W.N. 517=56 Cal. 927=A.I.R. 1929 Cal. 342.**

—S. 26—Customary right.

——A customary right of way for all the villagers is not a case of acquisition by prescription and is not governed by S. 26 of the Limitation Act. (*Chatterjea and Panton, JJ.*). MAHOMED NURAL HUQ *v.* BAKSU MANDAL. **65 I.C. 809 (Cal.).**

LIMITATION ACT (1908), S. 26—Defence.

—S. 26—Defence.

———There is no bar of limitation to a defence unless the suit for the relief involved in the defence falls within S. 26 or 28. 30 Mad. 444, *Foll.* (*Macleod, C. J. and Heaton, J.*). MAHADEV NARAYAN DATAR *v.* SADASHIV KESHEV LIMAYE.

59 I.C. 118=45 Bom. 45=A.I.R. 1921 Bom. 237.

—S. 26—Easement, what is.

———Taking a water-course through another person's property is an easement within the meaning of S. 26. (*Addison, J.*). TUNNAN *v.* TOTA.

100 I.C. 498=A.I.R. 1927 Lah. 216.

—S. 26—Extinction of easement.

———*Mere failure to exercise right within 2 years before suit.*

Where an easement to carry water in a channel across the defendant's land for purposes of irrigation was established, the mere failure to exercise the right for a period of two years prior to suit does not extinguish the right of easement, nor does the mere fact that one year the plaintiffs irrigated one of their fields from another well affect their right of easement. 26 C.W.N. 121, *Ref.* (*Pullan, J.*). PARTAB SINGH *v.* HEMRAJ. **118 I.C 521= A.I.R. 1929 All. 497.**

———Where a suit for asserting a prescriptive right is not brought within two years of the termination of the user, the right of user is lost. (*Heald and Mya Bu, JJ.*). MAUNG PWE *v.* MAUNG CHAN NYEIN. **120 I.C. 658=7 Rang. 487= A.I.R. 1929 Rang. 300.**

—S. 26—Fishery.

———*Exclusive right and the right exercised with owner.*

If the right claimed is a mere right to fish not excluding the lawful owner, it would appear to be an easement within the description of the word in the Limitation Act and can be acquired by 20 years' uninterrupted enjoyment. If it is an exclusive right of fishery it is an interest in immovable property and can be acquired by 12 years' adverse possession involving an ouster of the rightful owner. Such a right contains all the essential elements of property and even if it may properly be described as a profit *a prendre*, it has also the distinctive features of an interest in immovable property. Even if S. 26 of the Act should be applicable, this would not bar the operation of Art. 144 and S. 28 if the right came under both descriptions. 2 P L. J. 283, *Foll.*; 5 Cal 945; 12 Bom. 221; 18 Cal. 80, *Ref.* (*Dawson Miller, C.J. and Mullick, J.*). HENRY HILL & CO. *v.* SHEORAJ RAI.

67 I.C. 954=1 Pat. 674=3 P L.T. 477= 1 Pat. L.R. Civ. 34=A.I.R. 1923 Pat. 58.

—S. 26—Grant of easement by co-sharer.

———None of the proprietors can do anything which alters the condition of the joint property without the consent of all the co-sharers, *e.g.*, one co-sharer cannot grant an easement to the detriment of the other co-sharers. (*Addison, J.*). TUNNAN *v.* TOTA. **100 I.C. 498= A.I.R. 1927 Lah. 216.**

—S. 26—Immemorial user.

———The plea that the defendants had been using a particular *Kul* from time immemorial, does not amount to setting up a plea of easement. (*Moti Sagar, J.*). MAUSA RAM *v.* KALU RAM.

80 I.C. 197=A.I.R. 1923 Lah. 605.

—S. 26—Intermittent user.

———*Tanks.*

User of an intermittent nature unaccompanied by assertion of right is very common in this country and arouses no opposition. A pond is not

LIMITATION ACT (1908), S. 26—Presumption.

susceptible of actual physical possession by the legal owner and possession follows title, unless the usurper can prove long and continuous extrusion of rightful owner. (*Le Rossignol, J.*). BHURU *v.* DATU RAM. **74 I. C. 282=4 L. L.J. 461= A.I.R. 1922 Lah. 59.**

—S. 26—Interpretation.

———*Person.*

The term "person" in the first clause of S. 26 cannot be limited to the narrow meaning of individual, but when the claim to a right of way is made in virtue of the occupation of a piece of land, the term means and includes the person in occupation of that land, whether that person is the same individual throughout the period of twenty years or not. (*Brown, A. J.C.*). MAUNG PO HLA *v.* MAUNG PO SEIN. **70 I C. 915= 4 U.B.R. 90=1 Bur L J. 99= A.I.R. 1922 U.B. 23.**

—S. 26—Lost grant.

———The provisions of S. 26 are not applicable where plaintiff sues for a declaration of a right of easement on the basis of lost grant, *e.g.*, right to take water from a tank (*Greaves and Panton, JJ.*). GURU PRASANNA ROY *v.* FULCHAND MONDAL.

67 I C. 244=A. I R 1923 Cal. 291.

—S. 26—Obstruction to light and air.

———*Injunction*—Prima facie *remedy.*

Where the building proposed to be built by defendant will block the plaintiff's windows for the free passage of light and air to which plaintiff has acquired an easement, defendant can be restrained by injunction, from constructing building.

Any act by the defendant which controls or obstructs the light and air to which the plaintiff is entitled is *prima facie* an injury of a serious character. 8 Bom. 95, *Foll.*

Prima facie the plaintiff is entitled to an injunction. An injunction is the rule and damages the exception in cases of this nature. It cannot be held that if it was possible for the plaintiff to neutralise the effect of the defendant's buildings, by altering or re-arranging his own buildings, then compensation in money would afford adequate relief. It having been proved that the plaintiff has acquired an easement whereby he is entitled to have free access of light and air through this window, he is *prima facie* entitled to be maintained in his enjoyment of the said easement. 21 M.L.J. 313, *Foll.*

The grant of an injunction is purely a matter of discretion, a discretion which is to be exercised in a judicial manner. 8 P. R. 1909; 172 P.W R. 1913; 14 Cal. 839; 1 L.W. 166 and 2 P. R. 1893, *Ref.* (*Broadway, J.*). THAKAR DAS *v.* S. ABDUL HAMID.

67 I.C. 288=72 P.L.R. 1922= A.I.R. 1921 Lah. 372.

—S. 26—Presumption.

———Where a right of way has been used peaceably and openly without interruption for 20 years not attributable to any permission or sufferance on the part of any person whatsoever its user as of right may be legally inferred. 1 Lah. 206, *Foll.*; 3 Bur. L. T. 100 and 3 I.C. 271, *Ref.* (*Bhide, J.*). LABHASINGH *v.* SUNDER SINGH.

111 I C. 196=29 P L R. 567.

———An open user continued without interruption for a period of over 20 years and not shown to be attributable to permission or sufferance on the owner's part is *prima facie* evidence of enjoyment as of right, within the meaning of S. 26 of the Limitation Act. Failure on the part of Court to draw such a presumption will be an error of law

LIMITATION ACT (1908), S. 26—Scope.

making a second appeal competent. (*Kinkhede, A.J.C.*). NARAIN *v.* IKRAM. 83 I.C 81= A. I. R. 1925 Nag. 270.

—S. 26—Scope.

———*Statute not exhaustive—Profits a prendre.*

The word 'easement' is wider than the meaning of the word in English Law and would include at least a profit *a prendre*. The object of the Statute was to make more easy the establishment of rights of this description; but it is remedial, and neither prohibitory nor exhaustive and it does not exclude or interfere with other modes of acquiring easements and, therefore it is open to the plaintiff to show, if he can, that he is entitled to a right which may be of that nature although not actually within the strict meaning of the term. 6 Cal. 394 (P.C.) and 1 M.L.J. 47, *Ref.*

Per *Chakravarti, J.*—In Bengal, where the mode of dedication of tanks is so widely known, when one finds that a tank exists from a long time past and the public have enjoyed the use of the water of such a tank, it is open to the Court to presume that the water of such a tank was dedicated by the owner for public use. It is not necessary in such cases to seek the aid of S. 26. (*Pearson and Chakravarty, JJ.*). BHABADEB CHATTERJEE *v.* BHUSAN CHANDRA MUKERJEE. 91 I.C. 712= 100 I.C 321=53 Cal. 1016=A.I.R. 1926 Cal. 507.

———*Section not exhaustive.*

Section 26 provides for the acquisition by peaceable enjoyment without interruption for a period of 20 years of a right of easement either in a water course or in any other matter, but if one is claiming a right given under that section then he has to prove that the right has been exercised for 20 years and that there has been no interruption of the right at any period further back than two years before the commencement of the suit.

The acquisition of the right of easement referred to in S. 26 of the Act is not the only method of acquiring a right of easement. The section is not exhaustive, and if a right of easement is acquired by any other method such as by a grant either proved or implied then S. 26 can have no operation to a suit brought to enforce such a grant. The object of the statute is to make more easy the establishment of rights of easement by allowing an enjoyment of 20 years, if exercised under the conditions prescribed by the Act to give without, more, a title to easement. But the statute is remedial and is neither prohibitory nor exhaustive. A man may acquire a title under it who has no other right at all; but it does not exclude or interfere with other titles and modes of acquiring easements. 6 Cal. 394 (P.C.), *Ref* and *Foll.* (*Dawson-Miller, C. J. and Macpherson, J.*). SHEIK ABDUL GHANI *v.* HARNAM SINGH. 90 I. C. 366=7 P. L. T. 260= 1925 P.H.C.C. 250=A.I.R. 1925 Pat. 748.

———*Section not exhaustive.*

To establish a right of easement it is not necessary for a party to rely on the provisions of S. 26 of the Act if the existence of the right could be otherwise established. (*Richardson and Suhrawardy, JJ.*). ALI MOHAMMAD *v.* SHEIKH KATU. 70 I.C. 263=35 C. L.J. 280=A.I.R. 1923 Cal. 200.

—S. 26—Threat to create easement.

———*Explanation to the section.*

A mere denial of right affords a cause of action. Any person whose property is threatened with a servitude may bring a suit for a declaration that an easement is enjoyed on sufferance and not as of right. The effect of the Explanation to S. 26 of

LIMITATION ACT (1908), S. 28 — Beneficiary under will.

the Limitation Act is to confer an indefeasible right of easement on any person after an enjoyment of anything over nineteen years, provided he waits less than one year before challenging an interruption and the beginning of his enjoyment arose twenty years before suit, but the Explanation does not come into operation if at the time of suit there is no interruption at all. (*Le Rossignol, J.*). CHIRAGH DIN *v.* GHULAM MUHAMMAD. 75 I.C. 608=A.I.R. 1924 Lah. 628.

—S. 26—Uninterrupted enjoyment.

———*Essentials of.*

In order to establish a right of easement it is enough for the plaintiff to prove that he has been exercising the right without interruption, without express or implied permission of the owner of the dominant tenement and without secrecy or stealth. (*Suhrawardy and Cuming, JJ.*). BEHARI LAL MUKERJEE *v.* ASUTOSH BANERJEE. 87 I.C 19=41 C L.J. 379=A.I.R. 1925 Cal. 788.

—S. 26—User not by right.

———Where the plaintiff, in a suit to restrain the defendant from obstructing an artificial water-course fails to prove that he has used the water of the water course as of right, S. 26 of the Act will not avail him. (*Campbell, J.*). BALA SINGH *v.* BALI RAM. 73 I.C. 489=A.I.R. 1923 Lah. 257.

—S. 28—Adverse possession.

———*Where owner's right to sue subsists.*

Acquisition of a good prescriptive title in the property is the corresponding effect of the right to the property being extinguished by determination of the period of limitation to any person instituting a suit. When that right is not determined, a good title in the trespassers cannot follow. 3 Cal. 224, *Ref.* (*Dalal, J.*). OUDH BEHARI LAL *v.* COLLECTOR OF ETAH. 115 I.C. 613= 9 L.R.A. Rev. 263=A.I.R. 1928 All. 625.

———*Perfection of—Owner re-gaining possession.*

If a party who has been 12 years out of possession and whose suit is, therefore, barred, should again get into possession, he is not remitted to his old title. An owner cannot re gain possession extra-judicially after lapse of the period of limitation prescribed for a suit to recover possession. 11 Bom. L R. 237; 1 Boul. 70; 21 All. 204 and 6 C.L.J. 621, *Foll.* (*Kinkhede, A.J.C.*). SONAJI *v.* DATTU. 105 I.C. 835=A.I.R. 1927 Nag. 401.

———A right of property which is vested in one person is not transferred by the mere lapse of time to the person actually in possession. (*Lord Salvesen.*) MUMTAZ ALI *v.* MOHAN SINGH. 74 I.C. 476=50 I A. 202=26 C.C. 231= 21 A.L.J. 757=45 All. 419=33 M.L.T. 321= 19 M.L.W. 283=10 C.L.J. 383= 28 C.W.N. 850=39 C.L J. 295= A.I.R. 1923 P.C. 118=45 M.L.J. 623 (P.C.).

—S 28—Applicability.

———*Person throughout in possession.*

Section 28 operates to extinguish the right to any property of a person who does not sue for its *possession* within the time allowed by law. If a person is throughout in possession of the property S. 28 does not apply. (*Martineau, J.*). CHAUKAR *v.* MANSHA SINGH. 70 I.C 966= A.I.R. 1923 Lah. 247.

—S. 28—Beneficiary under will.

———*Cause of action accruing during administration.*

Where a cause of action has accrued after the death of the testator but before administration is completed the beneficiary will be barred if the

LIMITATION ACT (1908), S. 28—Effect of extinction.

executor fails to sue within the period prescribed by law; for the estate is still the estate of the testator and not the estate of the beneficiary who may be a life-tenant under the will of the testator and consequently a title that may be acquired by a stranger by lapse of time will be a title acquired against the testator and not against the life-tenant (*Das and Ross JJ.*). THE HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I.C. 812=3 Pat. 830=5 P. L T. 513=A.I.R. 1924 Pat. 741.**

—S. 28—Defence if barred.

See LIMITATION ACT, S. 3.

—S. 28—Effect of extinction.

——After the right has been extinguished by the operation of the law of Limitation it cannot come into life again. There is no doubt that the provisions of the Limitation Act apply to suits for possession of Buddhist monasteries (*Maung Kin, J.*) U WISEIKLA *v.* U PARAMA. **79 I.C. 273=1 Bur.L J. 108=A.I.R. 1923 Rang 40**

—S. 28—Essentials for extinction of rights.

——*Possessory title should be perfected in some body.*

Section 28 does not apply unless there is some one in adverse possession of the property. Until some one in an adverse possession, the owner of the property does not lose his right to the property merely because he happens not to be in possession of the property for 12 years. His right is only extinguished at the determination of the period limited by the act to him for instituting a suit for possession of the property. The period cannot be determined unless it has commenced to run and the period will not commence to run until the owner is aware that some one else in possession is also holding adverse to him. A.I.R. 1921 Bom. 368; A.I.R. 1926 Oudh 313, *Rel. on.* (*Raza, J.*). MUBINULNISSA *v.* ALI HUSAIN. **119 I. C 866=6 O.W.N. 652=A.I.R. 1929 Oudh 401.**

——Until some one is in adverse possession, plaintiff's title is not extinguished though he be out of possession for over 12 years. (*Raza, J.*). SUKHDEO *v.* MT. RAM DULARI. **92 I. C. 825=29 O.C. 131=13 O.L.J. 400=A.I.R. 1926 Oudh 313.**

——*Adverse title should have been perfected.*

An owner of property does not lose his right to property merely because he happens not to be in possession of it for twelve years. His right under S. 28 is only extinguished at the determination of the period limited by the Act to him for instituting a suit for possession of the property. (*Macleod, C.J. and Fawcett, JJ.*). SWAMIRAO SHRINIVAS *v.* BHIMABAI PADAPPA. **62 I.C. 101=45 Bom. 1020=23 Bom. L.R 416=A.I.R. 1921 Bom. 368.**

—S. 28—Interpretation.

——*'Right to such property'—Joint right.*

The expression "the right to such property" in S. 28 includes the right to joint possession also. A person whose right to recover joint possession is extinguished under Art. 47 cannot therefore elude the operation of Art. 47, by framing his suit, as one for damages of his share of the produce as the right to claim damages is not separate from the right to claim possession or joint possession. A.I.R. 1921 Mad. 24, *Rel. on.* (*Mohiuddin, A.J.C.*). JAGATRAM *v.* PITAI. **122 I.C. 270=26 N.L.R. 160=13 N.L.J. 85=A.I.R. 1930 Nag. 142.**

LIMITATION ACT (1908), S. 28—Loss of right.

—S. 28—Joint tenants.

——*Effect of adverse possession.*

The so-called right of survivorship of each of the daughters of a deceased male Hindu in respect of the property inherited by them from him is incidental to the right of joint possession and enjoyment of the estate with the others who are jointly entitled and cannot exist separately when the right of joint possession and enjoyment has been lost, *e.g.*, by adverse possession by one of the daughters. 9 M.I.A 539 *Foll.*

The effect of the interests of the excluded sisters being barred and their rights being thus extinguished under the Limitation Act is to enlarge the estate of the adverse possessor and to give her an estate of her own life and the lives of her sisters determinable on the death of the last survivor, and on the death of the adverse possessor such estate will descend to her heirs. (*Willis, C.J. and Seshagiri Aiyar, J.*). IVATURY VOTCHAMMA *v.* BAPIAH. **60 I.C 584=44 Mad. 131=13 M.L.W. 407=A I.R. 1921 Mad. 24=40 M.L.J. 83.**

—S 28—Landlord and tenant.

——*C. P. Tenancy Act, S.* 104 (4).

Section 28, Limitation Act does apply in view of the provision contained in S. 104, sub-S. (4), C. P. Tenancy Act, to a case where the remedy by way of suit by the tenants is lost, having regard to Art. 1, Sch. II Tenancy Act, and the tenancy right is extinguished with the loss of the remedial right to recover possession. 21 All. 204 and A.I.R, 1928 Nag. 280, *Rel. on*; A. I. R. 1926 Nag. 99, *Dist.* (*Findlay, J.C.*). DADOO *v.* SUKHA. **109 I.C. 403=A I.R. 1928 Nag. 281.**

——If a tenant pays no rent, it does not follow therefrom that he is in adverse possession. (*Zafar Ali, J.*). LAL SINGH *v.* WADHAVA. **100 I.C. 73=A.I R. 1927 Lah. 759.**

——Section 28, Limitation Act applies to the right in a tenancy in the Central Provinces. A.I.R. 1926 Nag 99, *Diss. from.* (*Hallifax, A.J.C.*). DHARMU *v.* DAL SINGH **A.I.R. 1927 Nag. 352.**

——Not only the express provisions, but even the underlying principle of S 28 of the Limitation Act does not apply to the law of tenancy in the Central Provinces. (*Kinkhede, A. J.C.*) BANAN *v.* RANAJIH SINGH. **89 I.C. 752=A.I.R. 1926 Nag. 99.**

——A right to levy assessment on rent free land is governed by Art. 130 and under S 28 is extinguished if no suit to enforce the right is brought within the time. 5 Cal 949, *Foll.* (*Shah and Crump, JJ.*). SAKHARAM GOVIND PAGE *v.* TRIMBAKRAO RAMCHANDRA MANTRI. **61 I.C. 40=45 Bom. 694=23 Bom. L.R. 314=A. I. R. 1921 Bom. 303.**

—S. 28—Loss of right.

——*Cause of action accruing during administration—Failure of executor to sue within Limitation—Beneficiary is barred.*

Where a cause of action has accrued after the death of the testator but before administration is completed, the beneficiary will be barred if the executor fails to sue within the period prescribed by law; for the estate is still the estate of the testator and not the estate of the beneficiary who may be a life-tenant under the will of the testator and consequently a title that may be acquired by a stranger by lapse of time will be a title acquired against the testator and not against the life-tenant. (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHA-

LIMITATION ACT (1908), S. 28—Mortgages.

DUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. 83 I.C. 812=3 Pat. 880=5 P.L.T. 513= A. I. R. 1924 Pat. 721.

—S. 28—Mortgages.

———*Subsequent mortgage barred—Conditional decree for redemption.*

If a suit, is brought on the second deed of mortgage, is barred by limitation, the right of the mortgagee setting up such a deed in suit for redemption of the prior usufructuary mortgage, redemption of which is made conditional on payment of mortgage due thereunder and under subsequent deed is not extinguished and the Court can direct payment of what is due under the second or subsequent deed. 37 All. 634, *Diss. from*; A. I. R. 1928 All. 99, *Rel. on*. (*Sen and Niamatullah, JJ.*). JOKHU BHEMYA *v.* SITLA BAKSH SINGH 122 I.C. 411=1930 A.L.J. 750= A.I.R. 1930 All. 416.

—S. 28—Personal action for debt.

———*Nature of the bar.*

In the case of a personal action for a debt limitation merely bars the plaintiff from having the particular remedy by way of suit and does not extinguish the debt. Thus if the creditor has any form of lien upon property, he can exercise that lien notwithstanding that by the terms of the Limitation Act, he could not bring a suit. (*Rankin, J.*). NARENDRA LAL *v.* TARUBALA DASI. 66 I.C. 209=48 Cal. 817=25 C.W.N. 800= A.I.R. 1921 Cal. 67.

—S. 28—Receiver in possession.

———*Rightful owner need not sue.*

Where a Magistrate appoints a Receiver in possession of immovable property, what happens in the eye of the law is that the property is placed in *custodia legis*, *i e.*, in the custody of the Court for the benefit of the person who may eventually and finally succeed in establishing his title to the property. It is not necessary for the person affected by the order to institute a suit for the recovery of possession of the property. He may institute a suit merely to have his right to the property declared. If so, Art. 47 would not apply and *a fortiori* the consequences of the operation of S. 28, Limitation Act cannot follow. 26 Mad. 410; 1 Mad. 309 and 20 All. 120, *Rel. on*; 10 L. W. 637, *Not foll.* (*Srinivasa Ayyangar and Reilly, JJ.*). ALAGARSWAMI THEVAN *v.* RAMABRADRA. 111 I.C. 152=A.I.R. 1929 Mad. 38.

—S. 28—Reversioner's suit.

———*One reversioner suing in time impleading the other as a defendant—Right of the latter.*

Though a suit by one reversioner to recover possession of his share from the alienee from a Hindu widow would be barred under S. 28 read with Art. 141 as being beyond twelve years from the death of the widow, yet when a suit is brought within the proper period of limitation by another reversioner and the other reversioner is made defendant in it and he in his written statement claimed possession of his share, such a claim would not be barred by limitation in spite of the fact that the written statement itself was presented after the lapse of 12 years. 34 Bom. 91, *Foll.*; 26 M.L.J. 494; A.I.R. 1921 Bom. 308; 21 Bom. 509, *Dist.*; 35 Cal. 1065, *Ref.* (*Baker, J.*). RAYEGAVDA HANMANTRYA *v.* RAMLINGAPPA SHIDGAVDAPPA. 119 I.C. 656= 53 Bom. 472=31 Bom. L. R. 647= A. I. R. 1929 Bom. 345.

—S. 28—Scope.

———The rule is now well settled that lapse of limitation, apart from S. 28, bars only the remedy and does not extinguish the title of the claimant. (*Binerji and Niamatullah, JJ.*). MD. RAZA AHMAD *v.* ZAHOORAHMAD. A I.R. 1930 All. 858.

LIMITATION ACT (1908), S. 28—Some reliefs barred.

———*Mortgage followed by sale—Suit to set aside both.*

In 1905 *A*'s father mortgaged his property to *B*. In 1916 there was an award made on the mortgage. In 1918 the father sold the property to *B* to liquidate the mortgage and placed *B* in possession of the property. *A*, who attained majority on 2nd February, 1921, brought a suit on 2nd November, 1924, to recover possession of the property sold by his father. Further he asked that the mortgage-deed and the award of 1916 should be set aside,

Held, that if the suit had been brought only for setting aside the mortgage, it would have been time-barred, but the suit was brought upon the alienation of 1918 in which year the possession was given to the alienee and, was therefore, within time and his prayer that mortgage deed and award should be set aside must be treated as surplusage. 27 Mad. 243 (F. B.), *Foll.* (*Fawcett, Ag. C.J. and Mirza, J.*). CHINTAMAN *v.* BHAGVAN. 113 I.C. 378= 30 Bom. L. R. 1095=A.I.R. 1928 Bom. 383.

—S. 23—Suit for possession of office of mutawalli.

———*Personal action—In such action law of limitation merely bars remedy and not right.*

A suit for possession of the office of mutawalli is an action of a personal character and is not "a suit for possession of any property." In personal actions, the law of limitation bars the remedy but not the right. Where the action for possession of the office is statute barred, right to a particular *wakf* property is not necessarily extinguished under S. 28, which is limited to suits for "possession of property." But a person in adverse possession of property claiming to hold it as mutawalli does not prescribe for more than a mutawalli's right in such property and may acquire to that extent, the status of a mutawalli. The right to office and the right to possession of property are distinct jural concepts, though in the generality of cases the claim to the office of mutawalli and to the property appurtenant thereto are inseparable. This would principally depend upon the terms of the foundation or settlement. 26 Mad 410, *Rel. on*. (*Sen and Niamatullah, JJ.*) ABDUL ALIM *v.* ABDUL HAMID. A.I.R. 1930 All. 866.

—S 29—Bengal Tenancy Act.

———*Applicability of.*

There is no conflict between S. 29 (2) (*b*), Limitation Act, and S. 185 (2), Ben. Ten. Act There is an express reference in S. 29 (2) to S. 3 which itself refers to Ss. 4 to 25 and consequently Ss. 4, 9 to 18 and 22 are specifically made applicable so far as not expressly excluded, and the only reasonable way in which Cl. (*b*) can be read is that the remaining provisions of the Act if they are to apply are to be specially applied. They will not be applied by force of the Limitation Act itself. 3 C. L. J. 347; 10 C.L.J. 517; 9 C.W.N 1025; A.I.R 1922 Cal. 187, *Ref.*; 45 Cal. 934; 46 Cal. 199 and 22 C.W.N. 817, *Dist.* (*Das and Ross, JJ.*). HASAN IMAM *v* BRAHMDEO SINGH. A.I.R. 1930 Pat. 301.

—S. 29—Income-tax proceedings.

———Provisions under S. 29, Limitation Act, apply to the proceedings under Income-tax Act. (*Tek Chand and Agha Haidar, JJ.*). MD. HAYAT, HAJI MD. SARDAR *v.* COMMR. OF INCOME-TAX. 117 I.C. 881=A.I.R. 1929 Lah. 170.

LIMITATION ACT (1908), S. 29—Interpretation.

—S. 29—Interpretation.

——An express exclusion means an exclusion by express words, that is by express reference to the section and not exclusion as a result of a logical process of reasoning A.I.R. 1929 Cal. 325, *Ref* (*Percival, J C. and Barlee, A J.C.*). REWACHAND FATEHCHAND *v.* KARACHI MUNICIPALITY.
122 **I.C. 398=A.I.R. 1930 Sind 93.**

—— *Effect of Amending Act X of* 1922.

The phrase "the remaining provisions of this Act shall not apply" can only mean that the remaining provisions of the Act shall not apply unless they are expressly made applicable by the special or local Act To hold otherwise is to hold that it is a prohibition of the future as well as the past applicati n of those provisions by a special or local Act, which is obviously impossible The amendment of S. 29 of the Limitation Act in 1922 did not restrict its scope but extended it. Under the old S. 29 none of the provisions of the Limitation Act were applicable unless they were expressly included by the special or local Act. Under the new S. 29 some of them are applicable without being expressly included unless they are expressly excluded; the rest remain, as before, applicable only when they are expressly included. (*Hallifax A. J. C.*). MADHO RAO GHOTATE *v.* BALAJI, NARAYAN. **91 I.C. 563=A I.R. 1926 Nag. 236.**

—S. 29—Letters Patent proceedings.

——Per *Cunliffe, J.*—The rules made by High Court under its Letters Patent or by virtue of the C. P. Code will not amount to a special or local law, High Court rules approximate closely to bye-laws which can be altered at will They are subordinate and domestic enactments; they must be *intra vires* of the power from which they are derived and any other power *pari materia*. (*Page, C. J., Carr and Cunliffe, JJ.*). (SHAKUR) ABDUL GANNI *v.* MRS. I.M. RUSSEL. **A I.R. 1930 Rang 228 (F.B.).**

—— *Applicability of the Act.*

When the special or local law is not in itself a complete Code, the general provisions of the Limitation Act, *e.g.*, Ss. 4. 5, 12 and so on, are ordinarily applicable to proceedings under it, inasmuch as such general provisions do not affect or alter the period prescribed by the special or local law, but only the manner in which that period is to be computed. Letters Patent being a complete Code the provisions of the Lim. Act do not apply to proceedings thereunder. (*Chevis and Scott-Smith, JJ.*). DYAL SINGH *v.* BUDHA SINGH. **61 I. C. 327=2 Lah. 127=3 L.L.J. 415=74 P.L.R. 1921=A.I.R. 1921 Lah. 26.**

—S. 29—Municipal Acts.

——Under S. 167, District Municipal Act, read with Ss. 29 and 15 (2), Lim. Act, a plaintiff is entitled to add the period allowed him for notice to the six months within which he has to sue. A. I. R. 1925 Sind 322 *Overruled*. (*Percival, J. C. and Barlee, A.J.C.*). REWACHAND FATEHCHAND *v.* KARACHI MUNICIPALITY. **122 I C. 398=A.I.R. 1930 Sind 93.**

—S. 29—Revenue cases.

——*C. P Land Revenue Act* (1917), *S.* 169 (1) (*b*).

Section 29 (*b*) excludes the operation of S. 14 of the Limitation Act in respect of a suit filed in accordance with an order passed under Cl. (*b*) of S. 169 (1) of the Central Provinces Revenue Act. 47 Cal. 300 (F B.) and 41 Mad. 169 (F.B.), *Ref.* (*Baker, J.C. and Hallifax, A.J.C.*). LAKSHMAN *v.* KESHAO RAO. **73 I.C. 1021=6 N L.J. 208=A.I.R. 1923 Nag. 306.**

LIMITATION ACT (1908) S 31—Period of suit.

—S. 29—Suit under Registration Act.

——*Limitation Act does not apply.*

Under S 29 (1) of the Lim. Act nothing in that enactment affects or alters any period of limitation specially prescribed for any suit appeal or application by any special or local law and inasmuch as Ss. 71 to 77 of the Registration Act lay down a complete procedure where registration is refused and as S. 77 limits the period within which suit is to be brought to 30 days the period cannot be extended under S. 14 of the Lim. Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter. 47 Cal. 300; 24 C. W N. 29; 30 Cal. 532 and 18 Mad. 99, *Rel. on.* (*Prideaux, A.J.C.*). FATELAL *v.* MT. SITI. **89 I. C. 884=A. I. R. 1926 Nag. 126.**

—S. 29—Time required for copies.

——*Income-tax Act.*

On general principles and in view of S. 29, Lim. Act, the period required for obtaining the copies of the order under S. 31 or 32 of the Income-tax Act shall be excluded in computing the period of limitation for an application for reference by an assessee under S. 66 (2) (3). A.I R. 1928 Rang. 152; A.I.R. 1929 Lah. 170 and 34 All. 496, *Ref*; A. I. R. 1926 Bom. 566 and A.I.R. 1927 Mad. 545, *Not appr.* (*Fazl Ali and Chatterji, JJ*). MOHAN LAL HARDEO DAS *v.* COMMR. OF INCOME-TAX, BIHAR AND ORISSA. **122 I.C. 810=9 Pat. 172=10 P.L.T 769=A.I.R. 1930 Pat. 14.**

—S. 31—Foreclosure suit.

——*Limitation bar against subsequent mortgagee.*

Per *Kotval, A. J. C.*—Where the prior mortgagee fails to implead the puisne mortgagee in his suit for foreclosure against mortgagor and the period of limitation runs out as against the puisne mortgagee, who in his suit for foreclosure against the mortgagor obtains possession by a decree, the prior mortgagee cannot on the strength of his title under the foreclosure decree obtained against the mortgagor maintain a suit against the second mortgagee for possession subject to the latter's right to redeem. The suit in effect is one to foreclose the second mortgagee on his failure to redeem the prior mortgagee and an evasion of the law of limitation under which a regular suit for foreclosure is barred and the defendant has acquired an immunity from being compelled to redeem. *Raghunath v. Sheolal*, 13 N. L R. 69, *Foll.*

Per *Dhobley, A J. C.*—Limitation does not affect the subsequent suit, since it is not a suit on mortgage but a suit for possession based on a cause of action long subsequent *Babu Lal v. Jalalshia*, 44 A. L. J. 1146, *Foll.* (*Hallifax, Kotval and Dhobley, A. J. Cs.*). JAGESWAR *v.* MOTI.
66 **I.C 631=5 N. L.J. 157=A.I.R. 1922 Nag. 89 (F.B.).**

—S. 31—Period of suit.

——*Hypothecation bond—Acknowledgment after 12 years but within 2 years provided in S. 31—Saves limitation*

A suit on hypothecation bond was brought long after the period of 12 years prescribed by Art. 132 had expired. Plaintiff however, relied upon an acknowledgment of the liability made after the expiry of the said period of 12 years but within the period of 2 years provided by S. 31,

Held, that S. 31 prescribed a period of limitation and that the suit was within time 49 All. 726; 55 Cal. 1210 and 26 M.L J. 28, *Appr.*; 36 Bom. 268 and 44 Mad. 817, *Dist.*; 45 Mad. 785, *Ref.* (*Beasley*),

LIMITATION ACT (1908), Sch. I — Articles — Construction.

C. J. and Walsh, J.). SOMISETTI SESHAYYA CHETTY *v.* ROLLA SUBBADUL.
1930 M.W.N. 930=32 M.L.W. 502.

—Sch. I—Articles—Construction.

———The language of the third column of the schedule should in general, if not indeed always, be so interpreted as to carry out the true intention of the legislature, that is to say to date the cause of action from the date on which the remedy is available to the party. 26 Mad. 780 and 40 Mad. 1040, *Ref.* (*Rankin, C.J., C.C.Ghose and Buckland, JJ.*). HARI MOHAN DALAL *v.* PARAMESHWAR SAHU. 117 I. C. 543=56 Cal. 61=32 C.W.N. 971=
A.I.R. 1928 Cal. 646.

—Sch. I—Articles — Determination of article applicable.

———*Plaint is the basis.*

The question of the applicability of any particular article of the Limitation Act to a particular suit for a particular relief must be decided on the assumption that the version as given in the plaint is correct and that the relief sought in the plaint flows from such a version. (*Kinkehde, A.J.C.*). SECY. OF STATE *v.* BAGMAL KISANDAYAL. 98 I.C. 22=22 N.L.R. 147=9 N.L.J. 198=
A.I.R. 1927 Nag. 10.

———There is always one article applicable to a case and the Court has to find it though more than one may seem to be applicable and such a construction of the various articles has to be adopted as to confine each article to one exclusive category of suits. One principle in the working out of this process is the maxim *Generalia Specialibus non-derogant, specialia derogant generalibus.* (*Spencer and Ramesam, JJ.*). NARAYANASWAMI NAICKER *v.* PERIASAMY ODAYAR. 68 I.C. 734=
44 Mad. 951=14 M.L.W. 116=1921 M.W.N. 465=
A.I.R. 1921 Mad. 272=41 M.L.J. 163.

—Sch. I—Articles—Two articles applicable.

———The more general article must be governed by that which is more specific. (*Dawson-Miller, C.J. and Foster, J.*). RAMESHWAR NARAIN SINGH *v.* MAHABIR PRASAD. 96 I.C. 529=5 Pat. 759=
8 P.L.T. 124=1926 P.H.C.C. 225=
A.I.R. 1926 Pat. 401.

———Where the relief claimed is covered by two articles of the schedule, one being of general import and the other of special import, applying to the particular facts of any case, the latter shall govern. (*Dawson-Miller, C.J. and Foster, J.*). JOFA LAL DAS *v.* SYED MOINUDDIN MIRZA.
93 I.C. 129=7 P.L.T. 431=4 Pat. 448=
1925 P.H.C.C. 348=A.I.R. 1925 Pat. 765.

———In giving effect to a statute of limitation if two articles limiting the period for bringing the suit are wide enough to include the same cause of action, and neither of them can be said to apply more specifically than the other that which keeps alive rather than that which bars the right to sue should generally, and apart from other equitable consideration, be preferred. (*Dawson-Miller, C. J. and Foster, J.*). JOFA LAL DAS *v.* SYED MOINUDDIN MIRZA. 93 I. C. 129=7 P.L.T. 431=
4 Pat. 448=1925 P.H.C.C. 345=
A. I. R. 1925 Pat. 765.

———If there are two Articles in the Schedule to the Limitation Act, which may possibly govern a case, the one more general and the other more special, the more particular specific article should be regarded as the one governing the case. 16 C. 25; 26 C. 564; 21 M. 141; 23 B. 725 and 26 Bom. 480, *Foll.*

LIMITATION ACT (1908), Art. 2—Damage by canal.

(*Mookerjee and Rankin, JJ.*). MD. MOZAHARAL AHMAD *v.* MD. AZIMADDIN BHUINYA.
73 I.C. 17=27 C.W.N. 210=37 C.L.J. 108=
A.I.R. 1923 Cal. 507.

———The particular article must be applied in preference to a general article wherever possible. (*Le Rossignol and Campbell, JJ.*). KUNJLALL *v.* GULAB RAM. 67 I.C. 365=55 P.L.R. 1922=
A. I. R. 1921 Lah. 335.

—Art. 2—Applicability.

——Article 2 will govern a case only when the defendant did an act in the honest belief that he was empowered to do the act by some enactment but if he acts knowing that he has no power under any enactment so to act, a suit for compensation for the wrongful act will fall under Art. 23. 26 All. 482; 13 Mad. 445; 1883 P.R. 160, *Ref.* (*Rutledge, J.*). MAUNG KYAW NYUN *v.* MAUBIN MUNICIPALITY.
89 I.C. 861=4 Bur. L J. 139=3 Rang. 268=
A.I.R. 1925 Rang. 311.

—Art. 2—Damage by bursting of fittings.

———A case of damage to houses by bursting of Municipal fittings by its negligence is governed by Art. 36 and not Art. 2, Lim. Act. (*Tek Chand and Agha Haidar, JJ.*). MAYA RAM *v.* MUNICIPAL COMMITTEE. 121 I.C. 500=A.I.R. 1929 Lah. 730.

—Art. 2—Damage by canal.

———Where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway and not to the canal and plaintiff's adjacent mills were damaged,

Held, that Art. 2 was not applicable as the act alleged was not done in pursuance of any enactment. 4 Lah. 428; 79 I.C. 208 and 4 Lah. 432; 79 I.C. 185, *Reversed.* (*Viscount Dunedin.*) PUNJAB COTTON PRESS CO., LTD. *v.* SECY. OF STATE.
103 I.C. 1=10 Lah. 161=1927 M.W.N. 334=
4 O.W.N. 471=31 C.W.N. 835=26 M.L.W. 134=
28 P.L.R. 453=39 M.L.T. 343=
A.I.R. 1927 P.C. 72 (P.C.).

———Where the construction of the Raya Branch Tail Distributary of the Upper Chenab Canal caused the flood water to go to the plaintiff's property in the high floods of 1917, and thereby caused them serious damage,

Held, that action of the Canal Officers in constructing this channel came under S.6 of Act VIII of 1873, and whether that action was wise or unwise, any suit for damages consequent thereon must be brought within 90 days of the date of damage. (*Harrison and Zafar Ali, JJ.*). PUNJAB COTTON PRESS COMPANY *v.* SECY. OF STATE.
79 I.C. 185=4 Lah. 432=A.I.R. 1924 Lah. 192.

———*Northern India Canal and Drainage Act, S. 15.*

In the Raya branch canal, a large amount of water collected at more than one point and the Canal Officer cut the channel in various places to allow this surplus water to escape into the lower lands on the west of the distributary. In spite of this action the flood water was held up and diverted from its natural course and eventually reached the property of the plaintiff, and injured it,

Held, that the action taken in dealing with the flood is covered by S. 15, that Art. 2 of the Limitation Act applied and that the *terminus a quo* in calculating limitation is the date of the damage and not the date of the construction of the work which caused the damage. (*Harrison and Zafar Ali, JJ.*). PUNJAB COTTON PRESS CO., LTD. *v.* SECY. OF STATE. 79 I.C. 208=4 Lah. 428=
A.I.R. 1924 Lah. 169.

LIMITATION ACT (1908), Art. 2—Damage by closing of road.

—Art. 2—Damage by closing of road.

———A suit for damages against a Municipality for an alleged omission to complete repairs quickly and the closing of the road at both ends by its servant out of malice would fall within Art. 2 as amended by S. 326, U.P. Municipalities Act. (*Walsh and Dalal, JJ.*). MUNICIPAL BOARD, BENARES *v.* BEHARI LAL. **95 I.C. 1030= 48 All. 560=24 A.L.J. 682=A.I.R. 1926 All. 538.**

—Art. 2—Damage by drain.

———Where the plaintiff sued to recover damages from a Municipal Committee on the ground that it had been negligent in the repairing of a drain outside his house and had thereby caused the fall of a wall and of the roof,

Held, that the suit was governed by Art. 2 of the Second Schedule and that Art. 31 of the Limitation Act had no application. (*Johnstone, J.*). BAIZA KHAN *v.* THE MUNICIPAL COMMITTEE OF AMRITSAR. **122 I.C. 111= 31 Punj. L.R. 159=12 L.L.J. 31.**

—Art. 3—Suit by Government.

———A suit by the Secretary of State for India, whether it be under S. 9 of the Specific Relief Act or otherwise is governed by Art. 149 and not Art. 3 of the Limitation Act. (*Rupchand Bilaram, A.J.C.*). SECY. OF STATE *v.* DINSHAW NAVROJI. **87 I.C. 1002=A.I.R. 1925 Sind 275.**

—Art. 5—Applicability.

———A suit on a negotiable instrument provided for under O. 37, falls under the category of suits of the nature referred to in S. 128 (2) (*f*), and Art. 5 of the Limitation Act of 1908 applies to such suits. 52 Cal. 954; A.I.R. 1925 Cal. 781, *Diss. from.* (*Lobo, A.J.C.*). JETHA DEVJI AND CO. *v.* SRIRAM MOOLCHAND. **98 I.C. 78=21 S.L.R. 257= A.I.R. 1927 Sind 90.**

———Suit under O. 37, are not governed by Art. 5 of the present Limitation Act. (*C. C. Ghose, J.*). RABINDRA NATH DUTT *v.* ABDUL AHAD AND CO. **88 I. C. 400=41 C.L.J. 368=29 C. W. N. 589= 52 Cal. 954=A.I.R. 1925 Cal. 781.**

—Art. 7—Bisardar.

———*Bisardar* means a watchman who is paid by a share of crop which he watches. He is an outdoor servant and is certainly not an artizan, nor a labourer. A suit by him for his wages, therefore will not fall within Art. 7 but will fall under Art. 102. 18 W. R. 298, *Dist.* (*Dalal, J.C.*). GHASI RAM *v.* UMA DUTT. **79 I.C. 576= 26 O.C. 327=10 O.L.J. 345=A.I.R. 1924 Oudh 189.**

—Art. 7—Domestic servant.

———The suit for wages as a domestic servant must be brought within one year after the same became due but where the master instead of paying the salary to the servant then and there, gives credit in his account book and treats the servant as his creditor. Article 7 does not apply. (*Devadoss, J.*). CHINNAN CHETTY *v.* VILATHAN. **106 I.C. 229=39 M. L. T. 415= 27 M.L.W. 30=A.I.R. 1928 Mad. 27.**

—Art. 7—Motor-car driver.

———As a motor-car driver must possess some skill in manipulating the different parts of the mechanism of the car, he should be included in the category of an artisan. There is also no reason why he should be treated differently from a household servant or labourer and given the benefit of a longer period under Art. 102. (*Maung Ba, J.*). R. SEWARAM *v.* LACHMINARAYAN. **104 I.C. 520=5 Rang. 477= A.I.R. 1927 Rang. 279.**

LIMITATION ACT (1908), Art. 10—Determining factor.

—Art. 7—Principal debtor and surety.

———Plaintiff sued the defendants for wages due to him for work done in 1918 as field labourer to defendant No. 1. In 1919 plaintiff, made a demand for wages and defendant No. 2 stood surety promising to pay, the amount due in 1919. The trial Court held that the suit was time-barred against both. On appeal it was held that the suit was not time-barred and the claim was decreed,

Held, in revision that the claim as against the principal debtor was time-barred under Art. 7 of the Lim. Act. (*Maung Kin, J.*). SHWE HLA GYI *v.* SAN DEVE. **64 I. 361=10 L.B.R. 332.**

—Art. 7—Weighman in shop.

———A weighman employed to work at a shop is not a household servant nor is he an artisan. He cannot be treated as a mere labourer employed to do task work, that is, to hold the scales and weigh goods in a shop for a monthly salary. He can be asked to do other work of the shop when free. He has to count and add up, and may have also perhaps to calculate the price on the total quantity weighed and his work, therefore, cannot be treated as purely manual labour so as to make Art. 7 of the Act applicable. He may be regarded in fact a shop-keeper's assistant, and Art. 102 applies to a suit by him to recover his dues from his master. (*Kanhaiya Lal, J.*). MUTSADDI LAL *v.* BHAGARANDAS. **90 I.C. 120=48 All. 164= 23 A.L J. 1059=6 L.R.A. Civ. 596= A.I.R. 1926 All. 172.**

—Art. 10—Agreement to transfer.

———*Mutation of names in pursuance of agreement.*

A Mahomedan lady entered into an agreement with certain persons to transfer a share of her immovable property, to which she might become entitled, in consideration for an advance of money required for litigation. The agreement was registered on 29th January, 1918. She succeeded in establishing her claim and on 5th December, 1921 a mutation was sanctioned by which the particular share was recorded in the name of those persons. On 5th December, 1922 *M* brought a suit of pre-emption,

Held, that the suit was within time, limitation running from the date of the mutation. 54 P.R. 1889, *Rel. on.* (*Shadi Lal, C. J. and Hilton, J.*). MADHO *v.* MT. MEHRO. **124 I C. 338= A.I.R. 1930 Lah. 33.**

—Art. 10—Date of physical possession not proved.

———*Time runs from the date of registration.*

The delivery of possession to vendee on the day of his purchase would be of no avail against the pre-emptor, unless the possession delivered was physical possession. The mere delivery of symbolical proprietary possession would not be sufficient.

When there is no proof that physical possession of the property was taken by the vendee on the date on which the sale-deed in his favour was executed, the period of one year within which the pre-emptor was entitled to exercise his right of pre-emption must be taken to have commenced on the date on which the deed in favour of vendee was registered. (*Martineau, J.*). DHARAM SINGH *v.* KIRPAL SINGH. **69 I.C. 409= A. I. R. 1923 Lah. 31.**

—Art. 10—Determining factor.

———*Actual possession.*

A suit for pre-emption is governed by Art. 10 where the sale is of a specified plot whether in

LIMITATION ACT (1908), Art. 10—Equity of redemption.

actual possession of the vendor or in joint possession of the vendor and others, and actual possession of the property sold is given to the vendee, and the starting point for limitation is the date of possession. The determining factor in such cases is the factum of actual physical possession and not the nature of the whole property of which the plot sold is a part. (*Jai Lal, J.*). JHANDA *v.* DITT.
109 I.C. 382=A.I.R. 1928 Lah. 705.

—Art. 10—Equity of redemption.

——Where the sale was of the equity of redemption,

Held, the property cannot be said to be capable of physical possession within the meaning of Art. 10 and limitation began to run from the date of the registration of the deed of sale. 9 All. 334, *Foll.* (*Kumaraswami Sastri, J.*). VISVANATHAN CHETTY *v.* S. ETHIRAJULU CHETTY.
76 I.C. 467=A.I.R. 1924 Mad. 57=45 M.L.J. 389.

—Art. 10—Full title not passing.

——Limitation for pre-emption, runs from the date of physical possession and where no physical possession is given limitation runs from the date of mutation or under Art. 10 of the Limitation Act from the date of registration of the sale-deed. The underlying principle governing the limitation in pre-emption suits is that it runs from the date of notice. Where full title did not pass although possession was given limitation will begin to run from the date of passing of the full title. 167 P.R. 1883, *Dist.* (*Abdul Raoof and Harrison, JJ.*). TOLA RAM *v.* ZORINDA RAM. 69 I.C. 715=3 Lah. 261=A.I.R. 1922 Lah. 210.

—Art. 10—Land with trespasser.

——Land in the possession of a trespasser at the date of the registration of the sale-deed is not land which does not admit of physical possession. Limitation for the purpose of pre-emption begins therefore to run from the time when the purchaser takes possession. (1888) A.W.N. 227; A.I.R. 1921 Mad. 554; A.I.R. 1926 All. 70 and 16 N.L.R. 37, *Foll.* (*Kotval, A.J.C.*). MOHANLAL *v.* SATYABHAMA.
107 I.C. 194=23 N.L.R. 178=A.I.R. 1928 Nag. 89.

—Art. 10—Lease.

——A suit for pre-emption in respect of a lease must be brought within six years from the date of lease deed and not from the date of its registration. Article 10 does not apply in the case of a lease as this transfer is not a sale. (*Sulaiman and Banerji, JJ.*). GOPAL RAM *v.* LACHMI MISIR.
95 I.C. 138=A.I.R. 1926 All. 549.

——A suit to pre-empt perpetual lease is governed by Art. 120 and not Art. 10. (*Tudball and Rafique, JJ.*). NUKHLAL RAI *v.* HIRANAND SINGH.
62 I.C. 884=19 A.L.J. 442=A.I.R. 1921 All. 154.

—Art. 10—Notice.

——Where the Legislature expressly states that limitation begins from registration without any reference to whether the transaction was with or without notice Courts cannot go into any question of notice in dealing with the question. (*Kumaraswami Sastri, J.*). VISVANATHA CHETTY *v.* ETHIRAJULU CHETTY. 76 I.C. 467=A.I.R. 1924 Mad. 57=45 M.L.J. 389.

—Art. 10—Object.

——The object of the Legislature in enacting Art. 10 of the Limitation Act was to provide a period of one year from the date on which the person entitled to pre-empt was expected to know of the transaction sought to be pre-empted, and this knowledge is conveyed either by the delivery of possession, if the property admits of physical possession, or by the registration of the deed of sale, if it is registered: and so far as the reason of the rule is concerned, it is immaterial whether the registration is effected with or without the consent of vendor. In either case registration is equally effective as presumptive evidence of notice of the transaction to the parties concerned. (*Shadi Lal, C.J. and Wilberforce, J.*). NAGINA SINGH *v.* DUNI CHAND. 62 I.C. 797 (Lah.).

LIMITATION ACT (1908), Art. 10—Property in tenant's possession.

—Art. 10—Oral sale.

——*Mutation of names in pursuance thereof.*

Where an oral sale is completed and mutation is effected in pursuance of such sale, limitation for a suit for pre-emption begins to run from that date. The fact that subsequently a registered sale-deed is executed does not give a fresh start for limitation under Art. 10 of the Limitation Act, time having once begun to run continues to run. 1900 P.L.R. 203; A.I.R. 1926 Lah. 220 and A.I.R. 1925 Lah. 348, *Rel. on.* (*Addison, J.*). GURDASMAL *v.* QADIR BAKHSH. 102 I.C. 423=9 L.L.J. 285=28 P.L.R. 192=A.I.R. 1927 Lah. 388.

—Art. 10—Preferential right by agreement.

——The vendee of a house agreed to live in the house himself and that when he wanted to sell the house to offer it first to the vendor and his heirs at a certain price and to sell the house as a whole and not piecemeal. In a suit by the vendor to enforce the covenant against the vendee himself,

Held, further that the suit was not one to enforce a mere right of pre-emption but was a suit for specific performance and was governed by Art. 113 of the Limitation Act. (*Kincaid, J.C. and Kennedy, A.J.C.*). KHEMCHAND RAMDAS *v.* MOHSON SHAH. 80 I.C. 962=17 S.L.R. 1=A. I. R. 1921 Sind 118.

—Art. 10—Property in tenant's possession.

——Land in possession of a tenant is property which does not admit of physical possession by the new owner within the meaning of Art. 10, Limitation Act, and for the suit of pre-emption of such land, limitation runs from the date of registration. 49 P.R. 1908 (F.B.), *Foll.*

The question whether the subject of a sale does or does not admit of physical possession must be determined with reference to the date of the sale, and it is immaterial whether the property afterwards becomes susceptible of physical possession. A.I.R. 1924 Lah. 302, *Foll.* (*Campbell, J.*). PARTAB SINGH *v.* GULAB. 105 I.C. 501=26 P.L.R. 780=A.I.R. 1927 Lah. 784.

——Property which is in the possession of a tenant does not admit of physical possession within Art. 10. Where on the date of sale the property was in the possession of tenants,

Held, that the subject-matter of the sale did not admit of physical possession and that the second part of the article prescribes the rule of limitation applicable to this case. (*Shadi Lal, C.J. and Fforde, J.*). GANWA *v.* JOTI PRASAD.
73 I. C. 903=5 L.L.J. 539=A.I.R. 1924 Lah. 302.

——*Tenants.*

Where land sold was in the possession of tenants at the date of sale.

Held, that constructive possession was taken by the vendee at the time of the sale and physical possession he took some time later when he ousted the tenants. And therefore limitation began to run from the date when physical possession was taken. (*Le Rossignol, J.*). TULSI RAM *v.* GANWA.
69 I.C. 418=A.I.R. 1924 Lah. 198.

LIMITATION ACT (1908), Art. 10—Property with trespasser.

—Art. 10—Property with trespasser.

———The words "the subject of the sale does not admit of physical possession" in Art. 10 are not applicable to a case where trespasser is in possession of the land sold and the vendor is in consequence unable to put the vendee in actual possession. They refer to the nature of the property sold, *i.e.*, whether it is such as would admit of physical possession being given of it or not. (1888) A.W.N. 227, *Foll.*; 24 All. 17 and 28 All. 424, *Dist.* (*Napier and Krishnan, JJ.*). VELAYUDHAM PILLAI *v.* VELAYUDHAM PILLAI. **62 I.C. 27=13 M.L.W. 268=1921 M.W.N. 207=A.I.R. 1921 Mad. 554=40 M.L.J. 443.**

———Where the property sold is not in the possession of the vendee but in possession of a trespasser and a pre-emptor files a suit for pre-emption,

Held, Per *Krishnan, J.*—Limitation commences only when possession is taken, where the second part of third column of Art. 10 does not apply to the case. 20 All. 315 (F.B.), *Ref.*

Per *Napier, J.*—In such a case where possession is not taken due to the property being in the possession of a trespasser and the vendor consequently being unable to give possession to the vendee, Art. 10 does not apply but Art. 120, applies. (*Napier and Krishnan, JJ.*). VELAYUDHAM PILLAI *v.* VELAYUDHAM PILLAI. **62 I.C. 27=13 M.L.W. 268=1921 M.W.N. 207=A.I.R. 1921 Mad. 554=40 M.L.J. 443.**

—Art. 10—Several Registration officers.

———*Registration not made in the place where property is situate.*

At the place where the sale-deed was registered, only a very small portion of the property comprised in the deed was situated. The rest of the property was situated at a different place. After registration, the registration officer at the latter place was informed of the registration and an entry was made by him in his register,

Held, that time for a pre-emption suit ran from the date of actual registration and not from the date on which the entry referred to was made. (*Lindsay and Kanhaiya Lal, JJ.*). SHEOPUJAN MISRA *v.* MANGU RAI. **86 I.C. 130=23 A.L.J. 104=6 L.R.A. Civ. 264=A.I.R. 1925 All. 324.**

—Art. 10—Symbolical and physical possession.

——— Limitation against the-pre-emptor begins from the date of the physical possession of the purchaser and not symbolical possession. (*Coutts and Bucknill, JJ.*). ACHUTANANDA PARSAIT *v.* BIKI BIBI. **69 I.C. 666=1 Pat. 578=4 P.L.T. 277=A.I.R. 1922 Pat. 601.**

—Art. 10—Undivided share.

———An undivided share which is incapable of physical possession cannot become capable of physical possession merely because a lease of it for a fixed period has been granted. 20 All. 315; 24 All. 17 and 17 A.L.J. 269, *Ref.* (*Sulaiman and Kendall, JJ.*). RAM CHARAN *v.* MATHURA PRASAD. **1930 A.L.J. 375=A. I. R. 1930 All. 255.**

———"Physical possession" means personal and immediate possession. Undivided share in respect of which the vendor has only an actionable claim cannot be considered to be property admitting of physical possession. 24 All. 17 (P.C.), *Rel. on.* (*Srivastava, J.*). HIRDE BEHARI *v.* GANESH DUTT. **111 I.C. 715=5 O. W N. 674=A.I.R. 1928 Oudh 375.**

LIMITATION ACT (1908), Art. 11—Attachment before judgment.

———The transfer of an undivided share in a field cannot be deemed to be capable of physical possession within the meaning of Art. 10. 4 All. 24; A.I.R. 1922 Nag. 14 and 24 All. 17 (P.C.), *Rel. on.* (*Findlay, J.C. and Prideaux, A.J.C.*). BALWANT *v.* SHEODAS. **99 I.C. 659=9 N.L.J. 205=A.I.R. 1927 Nag. 64.**

———*Houses and shops.*

A house or a shop is capable of physical possession and therefore the rule applicable to property such as an undivided share which is not by its nature capable of physical possession cannot be applied to houses and shops over which physical possession is always possible and practicable.

Where the vendee of a shop attempted to take physical possession but found that the house was occupied by a trespasser whom he had to eject by suit,

Held, that limitation for a pre-emption suit against vendee began to run from the date of actual possession obtained by vendee under the decree. (*Lindsay and Kanhaiya Lal, JJ.*). JAGANAYA DASI *v.* TULSA. **89 I.C. 444=48 All. 12=23 A. L. J. 885=6 L.R.A. Civ. 521=A.I.R. 1926 All. 70.**

—Art. 10—Vendee already in possession.

———The plot of land sought to be pre-empted was originally held by the defendant vendee in the character of a tenant of the vendor. The vendor made a mortgage by way of conditional sale in respect of the plot in vendee's favour. On the basis of this mortgage a final decree for foreclosure was obtained against the vendors,

Held, that the vendee did not take physical possession on the plot under the foreclosure decree at all. The plot in suit was held by him in physical possession long before the foreclosure decree and in a right other than the right which arose to him under the decree. Article 10 does not therefore apply but Art. 120 applies. 9 All. 234 and 3 O. C. 184, *Rel. on.* (*Wazir Hasan, J.*). MATADIN *v.* MITHANA. **102 I.C. 22=1 L.C. 38=A.I.R. 1927 Oudh 212.**

———*Time runs from when mutation takes place.*

Where prior to the sale the vendee was already in physical possession of the property sold, as a tenant, and no physical possession could be given to him,

Held, that the subject of the sale did not admit of physical possession and that whether Art. 10 of the Limitation Act or S. 30 of the Punjab Pre-emption Act is to be applied, the date from which limitation runs is the date when the mutation was effected. (*Brasher, J.*). MISRI KHAN *v.* SHAHJI. **71 I.C. 823=A.I.R. 1924 Lah. 394.**

—Art. 11—Attachment before judgment.

———Article 11 applies also to claims in execution in respect of property attached before judgment. A. I. R. 1921 Mad. 163, *Foll.* (*Mohiuddin, A. J. C.*). GOPAL BALKRISHNA *v.* AMRITWAMAN. **116 I.C. 79=A.I.R. 1929 Nag. 128.**

———A suit to contest an order on a claim against attachment before judgment followed by execution after decree is governed by Art. 11 and not Art. 120. (*Krishnan and Ramesam, JJ.*). VELLAYAN ASARI *v.* SIVAGNANAM. **79 I.C. 917=34 M.L.T. 193=A.I.R. 1925 Mad. 49.**

———*Claim proceedings.*

Property attached before judgment is not always property attached "in execution of a decree", within the meaning of the Art. 11, O. 38, R. 11, does not mean that property attached before

LIMITATION ACT (1908), Art. 11—Claim by mortgagee.

judgment becomes property attached in execution of a decree upon the mere passing of a decree for the plaintiff, either within the meaning of Art. 11 of the Limitation Act or of O. 21, R. 57, as execution may never be applied for, but merely enables the decree-holder to apply for execution by sale of the attached property without a fresh attachment. Where, however, there is an order in execution for the sale of the attached property, that order proceeds upon the footing that the property is to be considered as attached in execution by virtue of R. 11, and a claim put in after that order may properly be regarded as a claim to property attached in execution of a decree within the meaning of Art. 11. Cases not governed by Art. 11 must be governed by Art. 120. (*Wallis, C.J., Oldfield, Spencer, Kumaraswami Sastri and Ramesam, JJ.*). ARUNACHALAM CHETTY *v.* PERIASAMI SERVAI.

70 I.C. 439=44 Mad. 902=14 M.L.W. 645=1921 M.W.N. 569=A.I.R. 1921 Mad. 163=41 M.L.J. 252, (F.B.).

—Art. 11—Claim by mortgagee.

———If a mortgagee without possession chooses to prefer an objection under O. 21, R. 58, on the strength of his alleged mortgage, against attachment and sale of property in execution of a money-decree obtained by a third party against his mortgagor, and an adverse order is passed against him in the objection proceedings, such decision is conclusive against him under R. 63 unless he brings a declaratory suit within the period prescribed by Art. 11 of the Indian Limitation Act. (*Tek Chand and Johnstone, JJ.*). NAWAL KISHORE *v.* KHIYALI RAM. **11 Lah. 369=31 P.L.R. 752=A.I.R. 1929 Lah. 868.**

———*Suit by decree-holder under O. 21, R. 63, C. P. Code.*

A house was attached by plaintiff in execution of a decree but an order by the Court was passed on the objector's application proclaiming a mortgage to be a burden on the house, plaintiff made an objection to that order, and an order was passed in his favour allowing a note of his objection to the objector's application to be added to the proclamation; in a suit for a declaration that the mortgage was null and void and ineffectual against the plaintiff,

Held, that the suit comes under Art. 11. (*Dalal and Pullan, JJ.*). G. RAM GOPAL VAISH *v.* MAHANAND LAL. **100 I.C. 763=A.I.R. 1927 All. 420.**

———An order refusing to recognise a mortgage and continuing the attachment free from it is an adverse order of the kind contemplated in O. 21, R. 63 and must be displaced by a suit contemplated by Art. 11. (*Oldfield and Ramesam, JJ.*). MUTTIAH CHETTI *v.* PALANIAPPA CHETTI.

70 I.C. 432=43 Mad. 90=15 M.L.W. 190=1921 M.W.N. 764=A.I.R. 1922 Mad. 447=41 M.L.J. 594.

—Art. 11—Dismissal for default.

———The dismissal of an objection even for default will bar a suit which is brought beyond a year of such dismissal. (*Babington, Bennett, Newbould, Edward Brooks, Henderson and Panton, JJ.*). HARIPADA MAJI *v.* SURENDRA NATH SAMANTHA. **A.I.R. 1922 Cal. 164 (F.B.).**

—Art. 11—Dismissal on preliminary point.

———An order dismissing an objection under O. 21, R. 58, whether it is an order disposing of the case on the merits or whether it is an order which held that the objection was not entertainable on the preliminary ground that a certain legal provision was a bar to the maintainability of the application is a disposal of the application under O. 21, R. 58 after hearing the parties and therefore is an order contemplated in O. 21, R. 63 and Art. 11, Lim. Act. (*Kulwant Sahay and Macpherson, JJ.*). SUBEDAR SINGH *v.* RAMPRIT PANDE.

115 I.C. 703=11 P.L.T. 28=A.I.R. 1929 Pat. 116.

—Art. 11—Essentials.

———*Mere order for attachment without actual attachment.*

For purposes of Art. 11, the property to which a claim is made, or to the attachment of which there is no objection, must be property which had been *de facto* attached. Merely passing an order of attachment is not enough.

No property can be declared to be attached unless firstly order for attachment has been issued; and secondly, in execution of that order the other things prescribed by the rules in the Code have been done.

After an order of attachment had been passed, a claim was put in and rejected. There was no attachment effected at any time,

Held, that the order of rejection need not be set aside within one year, the order being a nullity. A. I. R. 1922 Mad. 447, *Reversed*. (*Lord Shaw.*) A. T. K. P. L. M. MUTHIAH CHETTI *v.* PALANIAPPA CHETTI. **109 I.C. 626=51 Mad. 349=26 A.L.J. 616=55 I. A. 256=48 C. L. J. 11=32 C.W.N. 821=5 O.W.N. 579=28 M.L.W. 1=30 Bom. L.R. 1353=A.I.R. 1928 P.C. 139=55 M.L.J. 122 (P.C.).**

—Art. 11—Official Assignee.

———*Claim by under S. 34, Provincial Insolvency Act.*

An application by an Official Receiver, to a Court which had attached the property of the insolvent at the instance of a creditor, praying that the property may be treated as property vested in the Official Receiver and as therefore not available to the attaching creditor to satisfy exclusively his claim under the decree, is not claim petition which falls within the class of claims and objections dealt with by O. XXI, Rr. 58 to 63, and under O. 38, R. 8 nor an application for rateable distribution under S. 73 of the C. P. Code. His claim (when the vesting in him was after attachment) is a statutory claim which he is entitled to make under S. 34 of the Provincial Insolvency Act, when the claim is disallowed and the Official Receiver brings a suit to enforce the claim neither Art. 11 nor Art. 13 of the Limitation Act apply to such a suit. The suit is clearly within time under Art. 62. (*Sadasiva Iyer and Spencer, JJ.*). OFFICAL RECEIVER, SOUTH MALABAR *v.* VEERARAGHAVAN PATTAR. **69 I.C. 326=45 Mad. 70=30 M.L.T. 77=14 M.L.W. 334=1921 M.W.N. 775=A. I. R. 1922 Mad. 189=41 M.L.J. 334.**

—Art. 11—Order without investigation.

———The intention of R. 63 is to include even orders of summary rejections under the proviso to R. 58. A person against whom an order of a summary rejection under the proviso to R. 58 has been passed would have his natural remedy by filing a suit for declaration in the Civil Court. But, if the objector failed to bring a suit, then that order is an order under R. 63 and is conclusive, and the period of limitation which would apply to such a suit is one year under Art. 11, Limitation Act. A.I.R. 1928 All. 435; 41 Mad. 985; 45 Cal. 785 and A.I.R. 1927

LIMITATION ACT (1908), Art. 11—Order without investigation.

Lah. 680, *Foll.*; 19 O.C. 357; 16 P.R. 1918; 31 I.C. 444; 12 Cal. 108 and 10 All. 479, *Dist.* (*King and Bennett, JJ.*). DURGA DAS *v.* GORI MAL.
116 I.C. 81=26 A.L.J. 794=A.I.R. 1928 All. 327.

——According to the wording of O. 21, R. 63, it is immaterial whether a claim or objection is decided after or without any investigation.

L, a decree-holder, got a buffalo belonging to *G*, the judgment-debtor, attached. *D* objected to the attachment on the ground that the animal belonged to him. *L* stated that he did not wish to contest the objection and the animal was released. The animal was attached a second time, but the same objection was raised by *D* and allowed by the Court after enquiry. The plaintiff instituted a suit under R. 63 for a declaration that the animal belonged to *G*,

Held, that *L* having stated that he did not wish to contest the objection and the animal having been released from attachment, the objection must be taken to be decided and the period of limitation began to run from date of release from attachment. (*Bhide, J.*). DIAL CHAND *v.* LACHAMAN SINGH.
104 I.C. 289=A.I.R. 1927 Lah. 680.

——The order contemplated by O. 21, R. 63, refers to any order passed in a removal of attachment case, which is against a party whether his claim has been investigated or not. 41 Mad. 985 (F.B.); 45 C. 785; 41 All. 623, *Foll.*; 34 C. 491, *Dist.* (*Duckworth and Bo Han, JJ.*). MAUNG PYO ON *v.* MA HLA KYU. **76 I. C. 841=1 Rang. 481=2 Bur.L.J. 173=A.I.R. 1924 Rang. 42.**

——The scope of R. 63 is not so confined as to exclude orders passed under R. 58 from its operation. Consequently a suit by an objector more than one year, after the objection is disallowed without investigation, is barred under Art. 11 of the Limitation Schedule. 41 Mad. 985 (F.B.), *Foll.* (*Ryves and Gokul Prasad, JJ.*). SETH GOBERDHAN DAS *v.* MAKUNDI LAL. **74 I.C. 1024=45 All. 438=21 A.L.J. 342=4 L.R.A. Civ. 185=A.I.R. 1923 All. 435.**

——*Claim dismissed for want of jurisdiction.*

At the auction sale of certain properties in execution of a money-decree, a mortgagee of the properties applied that the sale proceeds should be kept in Court deposit being subject to his hypothecation. His application was dismissed with the order "Sale is concluded already and decree-holder set off the decree amount. Dismissed."

Held, that order did not amount to any order on the claim within the words of O. 21, R. 63. Consequently a subsequent suit is not barred under Art. 11 of the Limitation Act. 39 M.L.J. 350, *Foll.* (*Schwabe, C.J.*). ABDUL KADIR SAHIB *v.* U.T.M. SOMASUNDARAM CHETTIAR. **70 I.C. 648=45 Mad. 827=16 M. L. W. 485=31 M.L.T. 441=A.I.R. 1923 Mad. 76=43 M.L.J. 467.**

——*Refusal to investigate.*

An order refusing to investigate a claim to attached property on the ground of delay in filing it, is an order passed against the claimant within O. 21, R. 63, and Article 11 of the Limitation Act, IX of 1908 applies to a suit to set aside such an order. 41 M. 985 (F.B.); 45 Cal. 785; 41 All. 623 and 66 P.R. 1916, *Ref.* (*Prideaux, A.J.C.*). NARASAYYA *v.* LAXMINARAYAN. **71 I.C. 404=19 N.L.R. 34=6 N.L.J. 66=A.I.R. 1923 Nag. 187.**

——The period of limitation for a suit to set aside an order under R. 63 of O. 21 is one year, even if that order was passed without investigation and not on the merits. 14 N.L.R. 66, *Dist.*; 41 Mad. 985; 45 Cal. 785, *Foll.* (*Hallifax, A.J.C.*). GANGADHARRAO *v.* SYED ABDUL MAJID.
69 I.C. 522=A.I.R. 1923 Nag. 69.

—Art. 11—Parties to suit.

——*Where the judgment-debtor is not made party to the suit.*

If a claim preferred by a party under O. 21, R. 58 against the decree-holder attaching a property is allowed and the judgment-debtor is not a party to such claim suit order is not binding on the judgment-debtor so as to compel him to bring a suit for declaration under O. 21, R. 63. If subsequently the claimant brings a suit for possession against the judgment-debtor, the judgment-debtor is not precluded from setting up his title, for an order in the claim suit does not become final under O. 21, R. 63, against the judgment debtor and is not governed by Art. 11, as against the judgment-debtor: 15 Cal. 674, *Rel. on*; 30 Mad. 335 (F.B.), *Cons.* (*Wort and James, JJ.*). MUSHI LAL *v.* BISHUN PRASAD. **120 I.C. 762=10 P.L.T. 581=A.I.R. 1929 Pat. 604.**

—Art. 11—Pre-emption suit.

——*Where defendant is a* benami *vendee.*

Where a pre-emption suit is brought against two sets of defendants on the allegation that the first set of defendants are only *benami* vendees and that the real vendees are the 2nd set of defendants and that the transaction was entered into with a view to defeat plaintiff's right of pre-emption, it cannot be held that the suit as against the first set of defendants is only a suit for declaration and that the suit is a pre-emption suit only as against the second set of defendant. Article 11 of the Limitation Act applies to such suits. (*Lindsay, J.C.*). JAI JAI RAM *v.* DARSHAN LAL. **63 I.C. 558=8 O.L.J. 320=A.I.R. 1921 Oudh 252.**

—Art. 11—Release of attachment.

——Where the attachment was released within one year after the order dismissing the claim case and execution proceedings were again taken after the lapse of several years,

Held, that a title suit brought to resist the attachment was not barred by limitation. (*Rankin and Page, JJ.*). NAJIMUNISSA BIBI *v.* NACHARADDIN SARDAR. **83 I.C. 233=51 Cal. 548=39 C.L.J. 418=A.I.R. 1924 Cal. 744.**

—Art. 11—Starting point.

——*Order without considering objections.*

If an order in execution proceedings is no adjudication upon the merits of the objection at all, the limitation for a suit does not begin to run till the date on which fresh objections were allowed after a second application for execution by the decree-holders. (*Scott Smith and Abdul Qadir, JJ.*). FATEH DIN *v.* QUTAB DIN. **67 I. C. 543=3 Lah. 7=A.I.R. 1922 Lah. 108.**

—Art. 11-A—Applicability.

——Article 11-A applies only to cases where a person who has been actually dispossessed of the property under O. 21, R. 100, and a suit is subsequently brought for the establishment of his title and his present right to possession. In such a case the suit has to be brought within a year from the date of the order. Where such dispossession is not proved, Art. 11-(A) 'does not apply. (*Kulwant Sahay and Macpherson, JJ.*). SATYANARAIN *v.* JINSI SAH. **117 I.C. 634=10 P.L.T. 872=A.I.R. 1929 Pat. 553.**

LIMITATION ACT (1908), Art. 11-A—Applicability.

——Where the basis of the claim in the suit is the same as that put forward in the miscellaneous objection proceedings to the present possession, Art. 11-A would apply, but where the basis of the claim in the suit is distinct and different and the possession claimed is not present possession but only by way of consequential relief to the decree being set aside, the Article cannot apply. (*Shah and Fawcett, JJ.*). RUKHMABAI DATUSA *v.* FAKIRSA HANUMANTSA. **101 I.C. 40= 51 Bom. 158=29 Bom.L.R. 230= A.I.R. 1927 Bom. 184.**

——A suit not under the provisions of R. 103 of O. 21 of the C.P. Code but based on an entirely different cause of action is not governed by Art. 11-A. (*Suhrawardy and Duval, JJ.*). AMBIKA CHARAN *v.* RAMPROSAD. **90 I.C. 575= 42 C.L.J. 578= 30 C.W.N. 163=A.I.R. 1926 Cal. 377.**

——*Order passed without investigation.*

Article 11-A, refers to a suit by a person against whom an order has been made under C. P. Code (amongst others) upon an application by a person dispossessed of immovable property in the delivery of possession thereof to the decree-holder or purchaser. But the order must be one which has been passed after some investigation. Article 11-A does not apply to an order under O. 21, R. 101, C.P. Code which has been passed without any investigation. (*Chatterjee and Pearson, JJ.*). NIRODE BORANI DASI *v.* MONINDRA NARAYAN CHANDRA. **68 I.C. 524=26 C.W.N. 853=35 C.L.J. 537= A. I. R. 1922 Cal. 229.**

—Art. 11-A — Application for possession dismissed.

——In execution of a decree the decree-holder-plaintiff obtained symbolical possession against the judgment-debtors and wanted to remove certain huts which were on the land and to take *khas* possession; these huts were claimed by the defendants on the ground that they were on the land as tenants in their own right. The executing Court rejected the plaintiffs' application for *khas* possession on the finding that the defendants were on the land in their own right,

Held, that the suit fell within Art. 11-A and should be brought within one year from the date of the order. (*Cuming and B. B. Ghose, JJ.*). DEVAN MANDAL *v.* DHURBA KUMAR. **106 I.C. 371=45 C.L.J. 588= A. I. R. 1927 Cal. 916.**

——*Where suit is brought for a lesser relief.*

Where under a mortgage decree the share of the mortgagor alone was made liable, but by some mistake or other, the sale proclamation proclaimed the whole property for sale and the sale certificate certified that the whole property had been sold and in accordance with the sale certificate the purchaser applied for delivery of possession but as there was some obstruction his petition was dismissed and the purchaser brought a suit not to recover the whole property but to recover the half-share of his mortgagor after effecting a partition,

Held, that the suit was not for the same relief and that it was not barred by Art. 11-A. 12 M. L. W. 408 (P.C.), *Dist.* (*Phillips, J.*). MUTHU PILLAI *v.* ALAGIRISAMI. **91 I.C. 961= 22 M. L. W. 663=1926 M. W. N. 165= A. I. R. 1926 Mad. 282.**

—Art. 11-A—Claim on original title.

——Article 11-A can only apply if the suit as brought is one by a decree-holder or auction-purchaser as such and cannot apply if the plaintiff falls back upon his original title as owner of the property in suit, treating the defendant as holding permissively. A.I.R. 1926 Cal. 377, *Foll.* (*Niamatullah, J.*). LAFARYAH HASAN *v.* UMAR DURAZ ALI **114 I.C. 725=A.I.R. 1929 All. 610.**

LIMITATION ACT (1908), Art. 11-A — Order under O. 21, R. 100, C.P. Code.

——A suit contemplated by R. 103 is not confined to a suit for possession. It may be brought either on account of his right to possession or on account of his title. A suit under R. 103 therefore though brought on strength of title is governed by Art. 11-A and must be brought within one year 44 Bom. 515; A.I.R. 1927 Bom. 184, *Dist.*; 1 Lah. 57, *Rel. on*; (1889) P. J. 101, *Foll.* (*Patkar and Baker, JJ.*). LAKSHMAN RAMJEE *v.* DATTATRAYA RAMKRISHNA. **120 I.C. 362= 31 Bom. L.R. 765=53 Bom. 668= A.I.R. 1929 Bom. 379.**

—Art. 11-A—Computation of time.

——An order was passed under O. 21, R. 100, on 23-12-1919,

Held, a suit under O. 21, R. 103, challenging it must be filed on 23-12-1920, which is the last day of limitation and not 24-12-1920. (*Suhrawardy, and Duval, JJ.*). KUMUD CHARAN ROY *v.* SAMBHU CHANDRA GHOSH. **90 I.C. 827 (Cal.).**

—Art. 11-A—Essentials for application.

——Before Art. 11 (*a*) could be invoked, it should be shown that there was a decree for possession of immovable property or that immovable property was sold in execution of a decree. The article cannot be held to bar suits for recovery of possession of immovable property after proceedings under Chap. 7, Presidency Small Cause Courts Act have failed. (*Coutts-Trotter, C.J. and Auanthakrishna Ayyar, J.*). HYDER ALI SAHIB *v.* AMIRUDDIN SAHIB. **115 I.C. 505= 1929 M.W.N. 174=29 M.L.W. 537= A.I.R. 1929 Mad. 69=56 M.L.J. 199.**

—Art. 11-A—No resistance to purchaser.

——The "resistance or obstruction" contemplated by R. 97, O. 2, C.P. Code, is same overt act of "resistance or obstruction" to the giving of possession by some person who is present at the time. To such case alone Art. 11-A applies.

But where there was no allegation of any such "resistance" or "obstruction" and possession was given to the auction-purchaser behind the back of the person in possession, his suit for recovery of possession from auction-purchaser will not be governed by Art. 11-A. (*Robinson, C. J. and Heald, J.*). T. C. BOSE *v.* O. R. CHOUDHURY. **82 I.C. 865=3 Bur.L.J. 71=A.I.R. 1924 Rang. 261**

—Art. 11-A—Order under O. 21, R. 100, C.P. Code.

——*Subsequent dispossession.*

Defendant No. 1 purchased the land in suit in execution of a mortgage decree and took delivery of the same through the Court. Thereupon the plaintiff, who claimed half of each of plots Nos. 1 to 3 and the entirety of plot No. 4 made an application under O. 21, R. 100. That application was dismissed on the 8th July, 1916. As plaintiff was found to be still in possession of the disputed plots of land, the plaintiff did not bring any suit for recovery of possession within a period of one year from 8th July, 1916. His suit was instituted on the 7th March, 1918 and his cause of action was that after the date of the order passed on the application under O. 21, R. 100, defendants Nos. 1 to 5 entered into a conspiracy and forcibly cut and took away the paddy reaped by the Bhag tenants of the plaintiff and thereby dispossessed the plaintiff,

LIMITATION ACT (1908), Art. 11-A — Order under O. 21, R. 100, C.P. Code.

Held, that Art. 11 (*a*) did not apply. (*C. C. Ghose and Panton, JJ.*). PAHAL GHORAI *v.* HAJI MUNSHI FAZLUDDIN MAHAMMAD.

76 I.C. 407=38 C.L.J. 150=A.I.R. 1924 Cal. 97.

——*Subsequent dispossession.*

Although it is undoubtedly true that a person claiming to get rid of the effect of an order under O. 21, R. 100, C.P.Code is bound to bring his suit for such a purpose within the period mentioned in Art. 11-A, he is not bound to do so when his dispossession has taken place, subsequent to the date of the order made on the application under O. 21, R. 100. Where his application under O. 21, R. 100 was dismissed on the ground that his possession had not been disturbed, as only symbolical possession was taken by his opponent. Time for a suit for recovery of possession, will in such a case run from the date of actual dispossession. (*C. C. Ghose and Chotzner, JJ.*). ATARMOYI DASI *v.* RAMANANDA SEN CHOWDHURY. **84 I.C. 876=50 Cal. 311=A.I.R. 1923 Cal. 601.**

——*P* purchased *N*'s share of family property. *D* purchased the entire property of the family of which *N* was a member and dispossessed *P* who thereupon applied under O. 21, R. 100, C. P. Code for possession. The application was disallowed on 26th August, 1914 and *P* brought the present suit for possession on 30th November, 1915.

Held, that the suit was barred by limitation not having been brought within one year as required by Art. 11-A of the Limitation Act from the date of the order disallowing the application under O. 21, R. 100, C. P. Code. (*N. R. Chatterjee and Panton, JJ.*). MOTO DASI *v.* BEHARI LAL. **59 I.C. 772 (Cal.).**

—Art. 11-A—Parties to suit.

——Where parties arrayed on opposite sides are parties to a suit within S. 47, C.P. Code, neither R. 103 nor Art. 11-A applies. (*Waller and Madhavan Nair, JJ.*). AHMMADKUTTY *v.* CHERUKAVA MOIDUKUTTY. **105 I.C. 414=39 M.L.T. 281=A. I. R. 1927 Mad. 952.**

—Art. 11-A—Purchaser for co-parcener.

——*Suit for partition.*

Certain properties were purchased in Court sale as if belonging to the judgment-debtor who was a member of a co-parcenary and the purchaser got delivery. At the instance of other members it was held that the judgment-debtor had only a share and the properties were delivered back to the members. In a suit for partition and possession of the judgment-debtor's share instituted more than one year from the date of the order as to re-delivery,

Held, that the suit was not barred under Art. 11-A. (*Spencer and Odgers, JJ.*). SHANMUGAM PILLAI *v.* PANCHALI AMMAL. **95 I. C. 209=49 Mad. 596=23 M. L. W. 551=A.I.R. 1926 Mad. 683=50 M.L J. 681.**

—Art. 11-A—Resistance to auction-purchaser.

——*Suit for a lesser share.*

Where the auction-purchaser claims entire possession of a house and his entire claim is resisted and the Court decides against him, a suit for possession of only a portion of the house is governed by Art. 11-A. (*Piggott and Walsh, JJ.*). GANPAT RAI *v.* HUSIANI BEGAM. **60 I.C. 905=19 A.L.J. 53=A.I.R. 1921 All. 92.**

—Art. 11-A—Suit for possession.

——A suit for possession after the execution purchaser's application for actual possession has been disallowed is barred if brought more than one year after the date the application is disallowed. (*Viscount Haldane, Lord Buckmaster, Dunedin and Atkinson.*) BALDEO *v.* KANHAIYA LAL. **58 I.C. 21=24 C W.N. 1001=16 N.L R. 103=12 M.L.W. 408=1920 M.W.N. 545=2 P.L.T. 33 (P.C.).**

—Art. 11-A—Third person's claim allowed.

——Article 11-A applies to a decree-holder and his suit for declaration of his right against third person must be brought within a year after the order of the execution Court. (*Ryves and Stuart, JJ.*). BHIKHARI DAS *v.* ABDULLAH. **68 I.C. 241=44 All. 607=20 A.L J. 578=A.I.R. 1922 All. 403.**

LIMITATION ACT (1908), Art. 12—Landlord and tenant.

—Art. 12—Applicability.

——Article 12 applies to suits brought by parties to the decree which resulted in the sale or by parties to the proceedings in which the sale took place or by persons claiming through them and does not apply to suits brought by persons who are not bound by the sale. Nor does the article affect a defence set up by a party in possession. (*Broadway and Martineau, JJ.*). TARA CHAND *v.* ABDUL AHAD. **67 I.C. 894 (Lah.).**

—Art. 12—Decree holder purchasing without permission.

——Where the decree-holder buys without permission or where he has applied and been refused the permission the sale is voidable only and not void. Article 12 applies, and the suit must be brought within one year. (*Lord Phillimore.*) RADHAKRISHNA *v.* BISHESHAR SAHAY. **67 I.C. 914=16 M.L.W. 190=3 Pat. L.T. 529=31 M.L.T. 209=49 I.A. 312=1 Pat. 733=21 A.L.J. 23=27 C.W.N. 294=37 C.L.J. 430=25 Bom. L.R. 630=A I.R. 1922 P.C. 336=44 M.L.J. 718 (P.C.).**

—Art. 12—Execution sale.

——A suit to set aside the sale must be brought within one year from confirmation of the sale under Art. 12 (*a*). Sch. I, Limitation Act. A.I.R. 1922 P. C. 336, *Foll.* (*Sundaram Chetty, J.*). CHINNAKANNU *v.* PARAMASIVA. **101 I.C. 89=A.I.R. 1927 Mad. 1135.**

—Art. 12—Fraudulent confirmation of sale.

——A suit for possession of land and the right to ask for a declaration that a sale under the Chota Nagpur Tenancy Act has been fraudulently confirmed is clearly not a suit under the Chota Nagpur Tenancy Act. It is governed by Limitation Act, Art. 95. (*Dawson Miller, C.J. and Foster, J.*). RAMISHWAR NARAIN SINGH *v.* MAHABIR PRASAD. **96 I.C. 529=5 Pat. 759=1926 P.H.C.C. 225=8 P.L.T. 124=A.I.R. 1926 Pat. 401.**

—Art. 12—Landlord and tenant.

——*Madras Estates Land Act* (*I of* 1908), *S.* 118.

A sale under S. 118 of the Madras Estates Land Act is not a sale in pursuance of a decree or order of the Collector or other officer of revenue and consequently a suit to set aside the sale is not governed by Art. 12 of the Limitation Act. (*Devadoss, J.*). SUBBAYYA *v.* KRISTAYYA. **100 I.C. 1007=38 M.L.T. 333=A.I.R. 1927 Mad. 488=52 M.L.J. 390.**

——*Madras Estates Land Act, S.* 131.

As a sale becomes final, in the absence of any application under S. 131, Estates Land Act, within 30 days after the date of sale, a suit to set aside the sale brought more than one year after such date is barred by limitation. (*Phillips and*

LIMITATION ACT (1908), Art. 12—Minors.

Venkatasubba Rao, JJ.). KAMULAMMAL *v.* CHOKKALINGAM ASARI. 76 I.C. 840=19 M.L.W. 81=33 M.L.T. 204=1924 M. W. N. 87=A.I.R. 1924 Mad. 278=45 M.L.J. 840.

—Art. 12—Minors.

———A suit brought by the son after attaining majority for setting aside the sale of his share in Court auction in execution of a decree against the father is governed by Art. 12. (*Devadoss and Wallace, JJ.*). NARAYANA *v.* VENKATASWAMI.

98 I.C. 31=24 M. L. W. 475=1926 M.W.N. 767=KARIM. A.I.R. 1926 Mad. 1190=51 M.L.J. 845.

———Where minor is represented by a duly appointed guardian, the decree is not *ab initio* void and Art. 12, Limitation Act, will apply to set it aside. (*Findlay, Offg. J. C.*). SADASHEO *v.* 92 I.C. 241=A.I.R. 1926 Nag. 267.

———*Where no proper appointment of guardian made.*

In execution proceedings against a minor son of the judgment-debtor the application for the appointment of a guardian of the minor was not accompanied with an affidavit and the guardian did not appear and act for the minor and certain property of the minor was sold. After attaining majority the minor brought a suit to set aside the execution sale.

Held, as the application for the appointment of guardian was not made in accordance with O. 32, R. 3 (3), the minor was no party to the execution proceedings and hence the suit to set aside the sale is governed by Art. 144 and not by Art. 12. (*Harrison, J.*). ALAM DIN *v.* ALLAH DAD.

67 I.C. 547=5 L.L.J. 44=A.I.R. 1922 Lah. 447.

—Art. 12—Redemption suit.

———*Property sold in Court auction.*

A mortgagee got the mortgaged property sold under his decree without impleading the sons of the mortgagor who brought a suit for redemption of the mortgage more than one year after the confirmation of the sale:

Held, that a suit for redemption does not lie unless the plaintiffs ask for a decree for setting aside the auction sale which remedy is barred to them under Art. 12. A. I. R. 1920 P. C. 1; 1 P.L.J. 180, *Rel. on.* (*Das and Fasl Ali, JJ.*). BHAN PRASAD *v.* BHIRGU NATH. 116 I.C. 548=10 P.L.T. 214=A.I.R. 1929 Pat. 323.

—Art. 12—Sale of wrong property.

———Where in execution of a decree for sale of the mortgaged property certain property of the judgment-debtor (other than the mortgaged property) was wrongly included in the auction-sale, and the judgment-debtor knew nothing of the sale, his suit to recover possession of the property sold in excess of the decree would not be barred by O. 21, R. 92, nor would it be barred by limitation since the sale being a nullity, as it was not justified by the decree, no question of limitation under Art. 12 would arise. (*Pullan, J.*). NATHA RAM *v.* RAM GIR.

119 I.C. 852=A.I.R. 1929 All. 673.

———Where plaintiff's property is wrongly sold in Court-sale owing to his own mistake, a suit for recovery of the property from its auction-purchaser is governed by Art. 12 of the Act. (*Macleod, C. J. and Coyajee, J.*). NAGA BHATTA *v.* NAGAPPA.

67 I.C. 857=24 Bom. L.R. 423=46 Bom. 914=A I.R. 1923 Bom. 62.

—Art. 12—Starting point.

———Time under Art. 12 runs from the date of the final confirmation of the sale. So long as the sale is under consideration of the revenue authorities, it cannot be said to have been confirmed and become final and conclusive. (*Suhrawardy and Graham, JJ.*). HARI PRASAD *v.* GOPAL CHANDRA.

100 I.C. 997=45 C.L.J. 73=31 C.W.N. 299=A.I.R. 1927 Cal. 315.

—Art. 12—Suit by third party.

———Where the plaintiff in a suit for possession of property sold in execution of a decree was the original owner of the property and was not a party to the decree under which the sale took place nor a representative of any of the parties and was consequently in a position to ignore the sale altogether,

Held, Art. 12 has no application and the suit falls under Art. 144. Article 91 also is not applicable, as it provides for the cancellation or setting aside of an instrument not otherwise provided for and it binds only the parties to the instrument and not strangers. (15 P.R. 1912). (*Scott-Smith, J.*). AZIM KHAN *v.* KARIM. 71 I.C. 822=A.I.R. 1924 Lah. 396.

—Art. 12—Void sales.

———Where the sale is in fact a nullity, no question of limitation under Art. 12 does arise. (*Boys and Iqbal Ahmad, JJ.*). BULAKI DAS *v.* KESRI.

113 I.C. 725=50 All. 686=26 A.L.J. 716=A.I.R. 1928 All. 363.

———Where the sale is a nullity, no question of limitation arises. A. I. R. 1924 Cal. 638, *Foll.* (*Panton and Mallik, JJ.*). UMAMOYEE DASYA *v.* JOTAN BEWA. 105 I.C. 193=54 Cal. 624=A.I.R. 1927 Cal. 781.

———When the sale under the Bengal Land Revenue Sales Act, is a nullity, there is no need to set it aside, and S. 33 of the Sales Act, and Art. 12 of the Limitation Act, are not applicable to such a sale. (*Walmsley and B. B. Ghose, JJ.*). (HAFEZ) AHAMED YAR KHAN *v.* DINANATH SADHU KHAN.

90 I.C. 40=42 C.L.J. 69=A.I.R. 1925 Cal. 1148.

—Art. 13—Decision or order, what is.

———*Proceedings under Presy. Small Cause Courts Act, Ch. 7.*

Orders passed under Chap. 7 of the Presy. Small Cause Courts Act cannot be regarded as a "decision or order" on the question of title. In a subsequent suit against an order under that chapter, there is no necessity to alter or set aside any such "decision or order." Consequently, Art. 13 has no application. The article applicable may be Art. 120 or Art. 144. A.I.R. 1927 Mad. 321 and 7 W. R. 199 (F. B.), *Foll.*; *Person* v. *Glass Brook*, (1868) 3 Ex. 27; 23 All. 313 (P. C.); 10 B. H. C. R. 479 and 11 Bom. 429, *Ref.* (*Coutts-Trotter, C. J. and Ananthakrishna Aiyar, J.*). HYDER ALI SAHIB *v.* AMIRUDIN SAHIB. 115 I.C. 504=29 M.L.W. 537=1929 M.W.N. 174=A.I.R. 1929 Mad. 69=56 M.L.J. 199.

—Art. 13—Suit for declaration of title.

———*Where it is unnecessary to set aside an order.*

Article 13 has no application to a suit for a declaration of title based upon a purchase which has been incidentally held invalid in execution proceedings where there is no prayer for the altering or setting aside of the order. (*Dawson-Miller, C.J., Mullick and Bucknill, JJ.*). LAH SHAH *v.* KADO MAHTO. 60 I. C. 849=2 P.L.T. 345=6 P.L.J. 86=1921 P.H.C.C. 66=A.I.R. 1921 Pat. 1 (F.B.).

—Art. 14—Amendment of settlement entries.

———In the matter of limitation, a suit under S. 83 of the C.P. Land Revenue Act of 1881 for the amendment of Settlement entries is governed by Art. 14, Sch. I of the Limitation Act. A suit of this nature is to be filed within one year of the date on which the assessment is offered to the proprietors after the Record-of-Rights is "duly made and attested."

LIMITATION ACT (1908), Art. 14—Applicability.

(*Hallifax and Dhobley, A.J.Cs.*). ONKARLAL *v.* SHALIGRAM LALA. **65 I. C. 970=5 N. L.J 199= A.I.R. 1922 Nag. 76.**

—Art. 14—Applicability.

——*Orders which must needs be set aside.*

Article 14 applies to acts or orders done in the exercise of powers legally exercised by the Executive and before it can be applied the order must be one which needs to be set aside. If in fact there is no provision of law for setting it aside Art. 14 cannot apply. An order in a mutation case directing mutation in the name of a particular person is not such an order and cannot be directly impugned in a civil suit though another person can show by a civil suit that he is the real owner of the property mutated and having established his claim in that suit can then go to Revenue authorities and ask that mutation be made in his name. (*Hallifax, A.J.C.*). MT. MUNNA *v.* SUKLAL.

78 I.C. 987=A.I.R. 1924 Nag. 142.

—Art. 14—Declaration of Government grant.

——*Fact of grant should be decided before applying the article.*

Where in a suit for declaration that a land was inam land and the mittadar raised a plea that it was a ryoti land,

Held, that the question whether the land was under a grant, or ryoti land should be decided first: without deciding it, it cannot be said that since the order of the Inam Commissioner was not set aside with one year under Art. 14, the defendant is barred from raising the plea. (*Ananthakrishna Ayyar, J.*). PRASANNA CHIDAMBARA REDDIAR *v.* NAGAMMAL. **123 I.C. 341=A.I.R. 1930 Mad. 710.**

—Art. 14—Dispossession.

——Where a person is dispossessed of immovable property by a public servant, it is not the order of the public servant that has to be set aside, but the right of the party to possession that has to be determined. And the party dispossessed is entitled to bring a suit within 12 years from the date of dispossession ; in other words Art. 14 has no application as no order need be set aside in order to obtain relief. (*Case-law-discussed.*) (*Devadoss and Mackay, JJ.*). SECY. OF STATE *v.* ABDUL RAHIM.

114 I.C. 626=1928 M.W.N. 763= A.I.R. 1928 Mad. 1246.

—Art. 14—Enfranchisement of inam.

——A claim for relief inconsistent with an order of enfranchisement of inam is governed by Art. 14 of the Limitation Act if the order of enfranchisement is *intra vires*, *i.e.*, if the inam was granted or continued by Government, and in any case in which it is shown that the inam was not granted or continued by Government, Art. 142 or 144 would apply. (*Ananthakrishna Aiyar, J.*). CHIDAMBARA REDDIAR *v.* NAGAMMAL. **123 I. C. 341= A.I.R. 1930 Mad. 710.**

—Art. 14—Essentials for application.

——It does not suffice for an officer of Government to purport to act in his official capacity to bring his act or order within the purview of Art. 14, or for the subject to allege that the act was wrong or to refrain from expressly asking the Court to set aside the order to take it out of the purview of the article. If that act or order is illegal or *ultra vires*, Art. 14 has no application. 24 Bom. 435; 36 Bom. 325 and A.I.R. 1921 Bom. 381, *Foll.* (*Madgavkar and Patkar, JJ.*). SULEMAN *v.* SECY. OF STATE. **109 I.C. 545=30 Bom. L.R. 431= A.I.R. 1928 Bom. 180.**

——An order to come under Art. 14 must be an order of at least a *quasi-judicial* character and not a mere executive order. 32 Cal. 1107, *Ref.* (*Ramesam and Venkatasubba Rao, JJ.*). RAMESWARAM DEVASTHANAM *v.* SECY. OF STATE. **104 I.C. 781=39 M.L.T. 633= A I.R. 1927 Mad. 1167.**

LIMITATION ACT (1908), Art. 14—Illegal or void orders.

——Suit for declaration that defendants are not permanent tenants of a field and that the order of Revenue Officer to that effect be held as incorrect is governed by Art. 120 and not by Art. 14.

Before Art. 14 can apply, the order must needs be one which must under law be set aside. 19 C.W.N. 1303 and A.I.R. 1925 Cal. 518, *Rel. on.* (*Findlay, J.C.*). BALA *v.* GIRDHAR. **100 I.C. 4=A.I.R. 1927 Nag. 159.**

——The order under Art. 14 must be such an order as the officer is empowered under the law to pass and which would be effective unless set aside, and which further is an order which, under the ordinary law, is liable to be set aside by a suit in the Civil Court.

An order by a Collector refusing to put a party to a partition under the Bengal Estates Partition Act, (V of 1897) in possession of the land allotted to him is an order for which there is no provision of the law. 8 C.L.J. 470 and 29 Bom. 480, *Ref.* (*Suhrawardy and Duval, JJ.*). SIR WASIF ALI MIRZA *v.* SARADINDU NARAIN RAI.

89 I.C. 193=29 C.W.N. 839=A.I.R. 1925 Cal. 953.

—Art. 14—Estates Partition Act.

——Where the suit for declaration of title was brought in the Civil Court more than one year after the order of the Deputy Collector, which was one passed apparently under S. 57 of the Estates Partition Act.

Held, that the suit not being to set aside the order of the Collector was not barred by Art. 14 of the Limitation Act. (*Suhrawardy and Costello, JJ.*). KEDAR NATH SANYAL *v.* NARESH CHANDRA GHOSH. **52 C.L.J. 247.**

——*Partition under—Land not belonging to estate allotted—Suit to set aside—Article does not apply.*

If property which did not fall in any way within the estate which was being partitioned was allocated to one of the persons, who was a party to the partition proceedings it seems incredible to suggest that the person to whom that property so allocated rightly belonged could not within 12 years from the date when his right of action accrued, bring a suit for a declaration of his title and if necessary for recovery of possession of that land in question. Further it matters not whether such claimant was an outsider; that is to say, a person who was not a party to the partition proceedings, or a person who was a party to the partition proceedings. In such a case there is no act or order of an officer of Government in the official capacity which could be regarded as bringing the period of limitation within the purview of Art. 14. (*Adami and Bucknill, JJ.*). AJODHYA PRASAD *v.* RAMKHALAWAN SINGH. **96 I.C. 632=6 Pat. 73= 7 P.L.T. 779=1926 P.H.C.C. 236= A.I.R. 1926 Pat. 421.**

—Art. 14—Illegal or void orders.

——If the order is illegal, the plaintiff is not bound to file a suit to set it aside but is entitled to wait until it is enforced against him and the attempt to enforce it against him gives him a good cause of action. A.I.R. 1922 Bom. 18, *Reversed.* (*Sir John Wallis.*) LAXMAN RAO *v.* SHRINIVAS. **105 I.C. 694=51 Bom. 830=54 I.A. 380= 29 Bom. L.R. 1484=46 C.L.J. 393=39 M.L.T. 527= A I.R. 1927 P.C. 217=53 M.L.J. 475 (P.C.).**

LIMITATION ACT (1908), Art. 14—Illegal or void orders.

———Per *Mukerji, J.*—Article 14 applies to acts or orders which require to be set aside. It does not apply where jurisdiction has been usurped, and the orders is *ultra vires*. An order made without jurisdiction is a nullity and need not be set aside. *Case-law reviewed.* (*Mukerji and Rankin, JJ.*). PEARY LAL RAY CHOUDHURI *v.* SECY. OF STATE. **83 I.C. 446=39 C.L.J. 454=A.I.R. 1924 Cal. 913.**

—Art. 14—Main object different.

———Where the relief sought is primarily a declaration that the plaintiffs are entitled to succeed, a deceased Hindu female owner as her next reversioners, and where for such a declaration the setting aside of the order of a Sub-Divisional Officer would not be necessary, Art. 14 has no application though the plaint may contain a prayer for the setting aside of the order of a Sub-Divisional Officer. (*Adami and Bucknill, JJ.*). HARO MANDAL *v.* DHIRANATH DAS. **90 I.C. 691=7 P.L.T. 67=1925 P.H.C.C. 288=A.I.R. 1925 Pat. 784.**

—Art. 14—Order in Revenue Case.

———Section 3 (5) of the Madras Estates Land Act suggests that the order of the Collector is a temporary one. No finality is given to the order in case a Civil Court does not settle the question. The Collector's decision will be *ipso facto* vacated whenever a Civil Court pronounces on the respective rights of the contending parties. Hence Art. 14 does not apply to a suit to set aside the order. (*Oldfield and Seshagiri Aiyar, JJ.*). J.V. VANNIASAMI THEVAR *v.* J.V.R. CHELLASAMI THEVAR. **62 I.C. 276=13 M.L.W. 104=1921 M.W.N. 193=A.I.R. 1921 Mad. 47.**

—Art. 14—Possession on Record-of-Rights basis.

———A suit for possession on the strength of entries in Record-of-Rights which were challenged by defendant, is not one brought for the purpose of setting aside any order of the Revenue Court, but it is simply an action in ejectment, its main purpose being to recover possession of certain lands allotted to the plaintiff and Art. 14 does not therefore apply to such a case. (*Mr. Ameer Ali.*) DHAKESHWAR PRASAD NARAIN SINGH *v.* MT. GULAB KUER. **97 I.C. 217=5 Pat. 735=53 I.A. 176=7 P.L.T. 483=31 C.W.N. 341=A.I.R. 1926 P.C. 60 (P.C.).**

—Art. 14—Punjab Redemption of Mortgages Act.

———A mortgagor's right to redeem, which would otherwise be within limitation, is barred if the action is brought later than a year of the date of an order passed to the plaintiff's detriment by the Collector on an application under Punjab Act No. II of 1928. When an order passed under a special act is declared by that act to be conclusive, it cannot be ignored and no relief is open to the aggrieved party unless that order be set aside. An individual who takes advantage of a summary procedure must suffer its disadvantages as well as enjoy its benefits. The suit referred to in S. 12 of the Punjab Redemption of Mortgages Act is a suit to set aside an order of an officer of Government within Art. 14. (*Shadi Lal, C.J. and Le Rossignol, J.*). KAURA *v.* RAM CHAND. **88 I.C. 945=6 Lah. 206=26 P.L.R. 383=A.I.R. 1925 Lah. 385.**

———Section 12 of Redemption of Mortgages Act II of 1913 merely points out the results which would ensue if the procedure laid down in that section is not followed. In order to ascertain the period of limitation for such a suit it is necessary that reference should be made to the provisions of the Indian Limitation Act, and the only Article in that Act under which the suit could fall is Art. 14, which provides a period of one year's limitation from the date the order complained against is passed. (*Moti Sagar, J.*). RAM CHAND *v.* KAURA. **75 I.C. 885=A.I.R. 1924 Lah. 690.**

—Art. 14—Resumption of grant.

———Where Government purports to act under powers reserved to them under the terms of a grant, though they may act erroneously in the interpretation of its terms or in finding on facts which justify the resumption, the act is *intra vires* and not *ultra vires* and the act of resumption cannot be regarded as a nullity and Art. 14 applies. 42 Mad. 673, *Doubted* and *Dist.* (*Ramesam and Cornish, JJ.*). BALA TRIPURA SUNDARAMMA *v.* SECY. OF STATE. **106 I.C. 891=27 M.L.W. 101=A.I.R. 1928 Mad. 282.**

—Art. 14—Sind Encumbered Estates Act.

———Manager under the Sind Encumbered Estates Act, S. 7 (2) (c) is an officer of Government within the meaning of Art. 14. A suit to set aside any act or order of the manager in his official capacity should be brought within one year from the date of his order as provided for by Art. 14. (*Aston, A.J.C.*). SUFAN *v.* KHEMCHAND. **A.I.R. 1930 Sind 150.**

—Art. 14—Summary ejectment.

———*Real dispute about title.*

Where a private owner of property claims a declaration of title to the property in his peaceful possession, alleging that it is his own property as against the Government and the Government through its officers asserts a claim to that property as the property of the Government, there is a *bona fide* dispute as to title to the property and the real point of controversy between the two is also one of title to the said property. The mere circumstance that an officer of Government upheld the claim of the Government and gave an order upholding the title of the Government and directing summary ejectment of the private individual from the disputed strip of land, does not alter the nature of the claimants' cause of action nor does it necessitate the asking of any relief other than the one of declaration of title on the part of the private owner. It is sufficient if he establishes his title as against the Government in order to entitle him to hold the property as against the Government. It is wholly superfluous for him to ask the additional relief of cancellation of the order, and therefore such a case is not governed by Art. 14. 24 Bom. 435; 36 Bom. 325 and 39 Bom. 494, *Appr.* (*Kinkhede, A.J.C.*). SECY. OF STATE *v.* BAGMAL KISANDAYAL. **98 I.C. 22=22 N.L.R. 147=9 N.L.J. 198=A.I.R. 1927 Nag. 10.**

———Where the conditions necessary for the exercise of the power of summary eviction conferred by S. 79-A, Bombay Land Revenue Code, do not in fact exist, the District Deputy Collector cannot be held to act in his official capacity if he evicts a person under that section. So, Limitation Act, Art. 14 does not apply to a suit for possession by the evicted person. 24 Bom. 435; 36 Bom. 325 and 30 Mad. 260, *Foll.* (*Shah and Crump, JJ.*). DHANJI JAIRAM *v.* SECY. OF STATE. **61 I.C. 347=45 Bom. 920=23 Bom. L.R. 279=A.I.R. 1921 Bom. 381.**

—Art. 16—Illegal assessment.

———Period of limitation applicable to a suit to recover excess in assessment illegally levied by

LIMITATION ACT (1908), Art. 16—Water cess.

Government is one year and not six months, from the date on which the cause of action arose. A.I.R. 1923 Mad. 652, *Foll.* (*Devadoss, J.*). PITCHAYYA *v.* SECY. OF STATE. **86 I.C. 267=21 M.L.W. 155= A.I.R. 1925 Mad. 474.**

—Art. 16—Water cess.

———*Illegal collection of.*

The period of limitation applicable to a suit to recover amounts alleged to have been illegally collected by the Government from the plaintiffs as water cess on their lands, is one year from the date of payment under Art. 16 and not six months from the date of the distraint of the plaintiff's paddy crop under S. 59 of the Madras Revenue Recovery Act (II of 1864) where the relief claimed is the refund of the amount illegally collected and paid under protest together with interest. (*Spencer and Krishnan, JJ.*). SECY. OF STATE *v.* NAGARAJA IYER. **74 I.C. 281=17 M.L.W. 618= 32 M.L.T. 230=1923 M.W.N. 327= A.I.R. 1923 Mad. 665=44 M.L.J. 645.**

———*Suit to recover water cess paid under protest—Art.* 16 *applies.*

A suit for the recovery for water cess levied under S. 1 of the Madras Irrigation Cess Act, 1855, for the unauthorised use by the plaintiff of water belonging to Government and paid by him under protest is governed by Art. 16, Limitation Act; S. 59 of the Madras Revenue Recovery Act, 1864 does not apply. And even if it applies, S. 15 (2) of the Limitation Act will apply and the two months' period of notice will be deducted in computing the period of six months.

Per *Krishnan, J.*—The suit is one under S. 59 of the Revenue Recovery Act, 1864, and to such a suit the provisions of the Limitation Act, do not apply. 15 I.C. 328, *Foll.*; 23 Mad. 571, *Diss.* (*Schwabe, C J.*). SECY. OF STATE *v.* VENKATRAMAN. **73 I. C. 106=46 Mad. 488=17 M.L.W. 683= 32 M L.T. 236=1923 M.W.N. 258= A.I.R. 1923 Mad. 652=45 M.L J. 12.**

———A suit for the recovery of water cess paid under protest on demand but without any proceedings by way of attachment, sale, etc., is governed by Art. 16 of the Limitation Act and not by S. 47 of Madras Act II of 1864. (*Abdur Rahim and Sundara Aiyar, JJ.*). PANCHALAPALLI PICHI REDDY *v.* SECY. OF STATE. **70 I.C. 884 (Mad.).**

———*Illegal levy.*

Where the Government levy, without any statutory authority, water cess from the *ryots* of a Zemindar and the latter remits the amount to the *ryots* out of the rents payable by them,

Held, that the Zamindar is entitled to sue to recover from the Government the amount so illegally collected, and such suit is governed by Art. 16 of the Limitation Act. (*Wallis, C. J., Ayling and Coutts-Trotter, JJ.*). SECY. OF STATE *v.* ZEMINDARINI OF VEGAYAMMAPETA ESTATE. **59 I.C. 98=12 M.L.W. 334.**

—Art. 22—Injury through third person.

———A suit for damages resulting from injury caused to plaintiff by the defendant through the instrumentality of a third person is governed by Art. 22 and not by Art. 36 and the suit must be brought within one year from the date when the injury is committed. (*Shah, Ag. C. J. and Crump, J.*). ABDULLA MAHOMED *v.* A. M. ZULAIKHI. **84 I.C. 796=25 Bom. L.R. 1333= A.I.R. 1924 Bom. 290.**

—Art. 23—Distinguished from Art. 2.

———Article 2 will govern a case only when the defendant did an act in the honest belief that he was empowered to do the act by some enactment but if he acts knowing that he has no power under any enactment so to act, a suit for compensation for the wrongful act will fall under Art. 23. 26 All. 482; 13 Mad. 445; 1883 P.R. 160, *Ref.* (*Rutledge, J.*). MAUNG KYAW NYUN *v.* MA-UBIN MUNICIPALITY. **89 I.C. 861=3 Rang. 268= 4 Bur. L.J. 139=A.I.R. 1925 Rang. 311.**

LIMITATION ACT (1908), Art. 29—Attachment before judgment.

—Art. 23—Starting point.

———Prosecution terminates by order of discharge by Magistrate—But if matter is taken up in revision by higher authority, prosecution terminates when proceedings in revision come to an end. 23 Mad. 24, *Dist.*; A.I.R. 1922 Bom. 209, *Diss from*; 30 All. 525; A.I.R. 1926 P. C. 46, *Ref.* (*Sulaiman and Niamatullah, JJ.*). B. MADAN MOHAN SINGH *v.* B. RAM SUNDER SINGH. **1930 A.L.J. 885= A.I.R. 1930 All. 326.**

———The suit for malicious prosecution must be brought within one year of the date of discharge of the plaintiff. The cause of action will not be suspended merely on the ground that proceedings may be taken either by Government or by the complainant in order to get the order of discharge set aside. (*Macleod, C.J. and Kanga, J.*). PURSHOTTAM VITHALDAS SHET *v.* RAOJI HARI ATHAVLE. **67 I. C. 754=24 Bom. L.R. 507= 47 Bom. 28=A.I. R. 1922 Bom. 209.**

—Art. 27—Applicability.

———Where the act complained of was that defendant had improperly got away from the plaintiff, a large number of camels controlled by the plaintiff for the purposes of his contract but the real complaint was that the defendant had improperly enticed the jamadars of the plaintiff into breaking their contracts by putting the animals which they had contracted to supply to him at the disposition of the plaintiff himself,

Held, that the suit for compensation was governed by Art. 27. (*Viscount Haldane.*) HAVELI SHAH *v.* PAINDA KHAN. **96 I.C. 887= 1926 M.W.N. 592=31 C.W.N. 174= A.I R. 1926 P.C. 88 (P.C.).**

—Art. 29—Attachment before judgment.

———Article 29 applies to all cases of attachment before judgment where specific property is seized, and the seizure is wrongful not only when the Court had no jurisdiction, but also when the attachment was obtained on insufficient grounds. Further it makes no difference whether the property attached belongs to the defendant or to a third party. 19 Mad. 80, *Expl.*; 38 M.L.J. 324 and A.I.R. 1921 Cal. 774, *Not foll.*; 23 Mad. 621; 31 Mad. 431 and 8 Bom. 17; 29 All. 615; 42 Cal. 85, *Rel. on*; 6 Bom. L R. 704, *Dist.* (*Kumaraswami Sastri and Reilly, JJ.*). PANNAJI DEVI CHAND & Co. *v.* SANAJI KAPUR CHAND. **31 M.L.W. 675= 1930 M.W.N. 305=A.I.R. 1930 Mad. 635.**

———In a suit against the plaintiff by the defendant for recovery of money, plaintiff's property was attached before judgment. The suit was decreed by the first Court but dismissed by the appellate Court. Plaintiff sued to recover compensation for loss of profits, etc.

Held, Art. 29 does not apply to the suit, for Art. 29 is applicable only to those cases in which the seizure is intrinsically wrongful or perhaps to cases where the seizure is made without jurisdiction. The proper article to be applied is Art. 49 and time for suit runs from the date of appellate decree and not from the date of attachment. 42 Cal. 85; 29 All. 615 and 31 Mad. 431, *Dist.*;

LIMITATION ACT (1908), Art. 29—Damages for crops attached.

19 Mad. 80; 39 All. 322 and 6 Bom. L.R. 704, *Referred to.* (*Kanhaiya Lal, J.*). MANGA *v.* CHANGA MAL. 81 I.C. 1038=22 A.L.J. 977=5 L.R.A. Civ. 732=A.I.R. 1925 All. 131.

—Art. 29—Damages for crops attached.

——In the case of a suit for damages representing the value of crops which has been wrongfully attached, cut and removed, the pertinent articles are 48 and 49 and not 29 or 36, Limitation Act. (*Page and Graham, JJ.*). MAHARAJA BAHADUR SINGH BALUCHAR *v.* ACHALA BALA DEVI. 105 I.C. 763=A. I. R. 1928 Cal. 106.

—Art. 29—Essentials for application.

——There can be wrongful seizure only where the property is in possession of the person. No doubt constructive possession also will do, but when there is no right to possession, there can be no wrongful seizure and Art. 29 has no application. 38 All. 676, *Rel. on*; 4 M. L.T. 271, *Dist.* (*Kumaraswami Sastri, J.*). SUBBANNA *v.* NARANAYYA. 123 I.C. 362 =A.I.R. 1930 Mad. 349.

——In order to bring the case under Art. 29, it must be shown that the seizure was wrongful under legal process. Where the writ is issued by Court *prima facie* the seizure is not wrongful.

Where the writ is not without jurisdiction and the Court has jurisdiction over the subject-matter, Art. 29, is inapplicable unless the writ is executed against a person who was no party to the decree or with respect to goods outside the scope of the writ, Art. 29 is inapplicable. 19 Mad. 80 and 55 I.C. 786, *Foll.*

So long as the writ is not set aside, the seizure cannot be said to be wrongful except in instances such as mentioned above. 28 I.C. 463; 29 All. 615, 31 Mad. 431 and 35 I.C. 98, *Dist.* (*Chatterjee and Pearson, JJ.*). ARJAN BISWAS *v.* ABDUL BISWAS. 64 I.C. 513=35 C.L.J. 480=A.I.R. 1921 Cal. 774.

—Art. 29—'Legal process.'

——A distraint effected under Agra Tenancy Act (II of 1901) is a seizure of movable property under legal process because it is done under the special provisions of the Local Act and subject to the due observance of the procedure therein laid down. (*Piggott, J.*). MAN SINGH *v.* RAM NATH. 75 I.C. 922=A.I.R. 1924 All. 828.

——The process meant by Art. 29 refers to the process under which seizure takes place. (*Baker, J.C.*). RAJARAM *v.* MULCHANDA. 84 I.C. 6=20 N.L.R. 189=7 N.L.J. 140=A.I.R. 1924 Nag. 248.

—Art. 29—Scope.

——Article 29 is applicable only to the seizure and does not govern any suits arising out of what happens later at the time of sale. (*Harrison and Zafar Ali, JJ.*). CHANDA SINGH *v.* JAI KISHEN DAS. 85 I. C. 24=5 L.L.J. 389=A. I. R. 1924 Lah. 136.

—Art. 29—Starting point.

——Under Art. 29 time begins to run from the date of the actual seizure and not from the date the seizure is declared wrongful by a competent Court. For the seizure is wrongful *ab initio.* It does not become wrongful when declared to be so by the Court. 19 W.R. 389; 23 Mad. 621 and 31 Mad. 431, *Rel. on.* (*Kumaraswami Sastri and Reilly, JJ.*). PANNAJI DEVI CHAND AND CO. *v.* SANAJI KAPUR CHAND. 31 M.L.W. 675=1930 M.W.N. 305=A.I.R.1930 Mad. 685.

—Art. 30—Burden of proof.

——It is now well settled that all suits against carriers in respect of goods delivered to them for carriage fall under Art. 30 or Art. 31, according as the claim is regarded as one based upon loss of or injury to the goods or non-delivery thereof. The *onus* of proving that the loss took place more than a year before suit and that, therefore, the suit was barred under Art. 30, would lie on the defendants. *View of Chatterjee, J.* in 44 Cal. 16, *held not sound.* (*Mukerji, J.*). RIVERS STEAM NAVIGATION CO., LTD. *v.* BISWESWAR KUNDU. 116 I.C. 148=A.I.R. 1928 Cal. 371.

—Art. 30—Interpretation.

——The words "against a carrier for losing or injuring goods" obviously suggest not a mere loss of the goods to the owner which might be caused by mis-delivery, but an actual losing of goods by the carrier himself. (*Stuart and Sulaiman, JJ.*). JUGAL KISHORE *v.* G. I. P. RY. CO. 66 I.C. 981=20 A.L.J. 792=45 All. 43=A.I.R. 1923 All. 22.

—Art. 30—Loss in transit by Railway.

——*Starting point—When shortage is ascertained.*

Where a parcel consigned to railway arrived on 10th August, 1918, but the consignee ascertained shortage and loss only on 26th August, 1918, when the parcel was opened and delivery was given,

Held, that the cause of action to claim price and damages arose on 26th August, 1918, and not on the 10th August, 1918. (*Kanhaiya Lal, J.*). DEVI DEEN AND SONS *v.* ROHILKHAND AND KUMAUN RY. 75 I.C. 669=A.I.R. 1923 All. 342.

—Art. 30—Starting point.

——Where on the date on which the consignees apply for delivery, the goods are missing and where there is nothing to show that the goods were lost prior to that date, time will run only from that date. (*Mukerji, J.*). G. I. P. RY. *v.* FIRM RADHEY MAL MANNI LAL. 87 I.C. 579=47 All. 549=23 A.L.J. 398=A.I.R. 1925 All. 656.

——A case of loss of portion of consignment undelivered is equivalent to a case of short delivery and time begins to run when the loss occurs, i.e., when the short delivery which constituted the loss is made. (*Ross, J.*). RAMESWAR DASS MALI RAM *v.* E.I. RY. CO. LTD. 71 I. C. 365=4 P.L.T. 331=A.I.R. 1923 Pat. 298.

—Art. 31—Applicability.

——Whether the suit for non-delivery of goods is laid *in tort* or contract, if compensation is claimed for non-delivery of goods entrusted to a carrier the period of limitation is one year as prescribed by Art. 31. 44 Cal. 16, *Not foll.* (*Mullick, Ag. C.J. and Kulwant Sahay, J.*). AGENT OF THE B.N. RY. CO., LTD. *v.* HAMIR MULL CHAGAN MULL. 90 I.C. 374=3 Pat. 106=6 P.L.T. 585=1926 P.H.C.C. 114=A.I.R 1925 Pat. 727.

—Art. 31—Cause of action.

——A suit against a carrier for compensation for non-delivery of goods is governed by Art. 31 whether the non-delivery is due to conversion or to any other reason. (Case-law discussed). Non-delivery may be due to many causes of which conversion is one, but the cause of action is the non-delivery of the goods, whether due to loss, theft, destruction, conversion or mis-delivery to somebody else. (*Baker, J.C. and Prideaux, A.J.C.*). G.I.P. RY. CO. *v.* RADAKISAN JAIKISAN. 90 I.C. 135= A.I.R 1926 Nag. 57.

—Art. 31—Consignor and consignee.

——Article 31 applies whether the claims in suits mentioned therein arise *ex contractu* or *ex-delictu.*

LIMITATION ACT (1908), Art. 31 — Consignor and consignee.

The legislature in enacting Art. 31 was not minded to discriminate between a suit brought by a consignor and a similar suit brought by a consignee. 7 Bom. 478; 12 Cal. 477, *Dist.*; 19 Bom. 165, *Appr.*; 39 Mad. 1, *Not foll.* (*Page, J.*). CHIRANJI LAL RAM LAL *v.* B.N. Ry. CO.. LTD. **86 I.C. 127=29 C.W.N. 277=52 Cal. 372=A.I.R. 1925 Cal. 559.**

——The words of Art. 31 are wide enough to include suits brought by the consignor as well as by the consignee, and it may very well happen that the same person is both consignor and consignee. No distinction should be drawn between a case of action for compensation for non-delivery by a consignor and one by consignee. 42 All. 390; 13 C. W. N. 851, *Foll.* (*Page, J.*). VALLY MOHAMAD HAJI GUNNY *v.* NEDERLANDS NAVIGATION CO. **80 I.C. 612=27 C.W.N. 806=A.I.R. 1924 Cal. 173.**

—Art. 31—Loss in transit by Railway.

——*Starting point.*

Article 31 applies to a suit by a consignee for damages for the loss of goods in transit, the starting point being the date when the Railway Company finally says that the goods cannot be delivered. (*Waller, J.*). SOUTH INDIAN RY. CO. *v.* NARAYANA IYER. **77 I.C. 511=34 M.L.T. 303=A. I. R. 1924 Mad. 567=46 M.L.J. 302.**

—Art. 31—Non-delivery by Railway.

——A suit for non-delivery is governed by Art. 31 and not by Art. 30. A. I. R. 1925 Pat. 727, *Foll.* (*Jwala Prasad and James, JJ.*). GOPI RAM GOURI SHANKER *v.* G. I. P. RY. CO. **103 I.C. 383=8 P.L.T. 767=A.I.R. 1927 Pat. 335.**

——Article 31 and not Art. 115 applies to a suit for damages for non-delivery of goods against a Railway Company. (*Ross and Kulwant Sahay, JJ.*). E. I. RY. CO. *v.* SAGAR MULL. **89 I.C. 672=6 P.L.T. 559=4 Pat. 482=A. I. R. 1925 Pat. 611.**

——A suit against a carrier for compensation for non-delivery of goods consigned to him is governed by Art. 31 and liable to be dismissed if brought after the lapse of one year from the time the goods ought to have been delivered. Article 115 of the Act applies only to suits for compensation for breach of any contract not specially provided for in the Act. (*Ghose, J.*). LAL MOHAN HAZRA *v.* E. I. RY. CO. **70 I.C. 857=A.I.R. 1922 Cal. 330.**

—Art. 31—Sale by Railway.

——Where the Railway Company has sold the goods in exercise of the powers conferred by S. 56 of the Railways Act, a suit by the consignor to recover the surplus sale proceeds from the Railway Company is governed by Art. 62 and not Art. 31. Such a suit is entirely different from a suit for compensation for non-delivery of the goods. (*Oldfield and Ramesam, JJ.*). TARABCHAND *v.* MADRAS AND SOUTHERN MAHRATTA RY. CO., LTD. **62 I.C. 742=44 Mad. 823=13 M.L.W. 693=1921 M.W.N. 422=30 M.L.T. 21=A.I.R. 1921 Mad. 362=41 M.L.J. 205.**

—Art. 31—Starting point.

——In a suit against a carrier for compensation for non-delivery of goods, time begins to run when the goods ought to be delivered, *i.e.*, when consignee is entitled to open delivery. (*Stuart, C.J. and Rasa, J.*). BALA PRASAD *v* B.N.W. RY. CO. **106 I.C. 311=4 O.W.N. 909=A.I.R. 1927 Oudh 478.**

LIMITATION ACT (1908), Art. 32 -Applicability.

——*Part delivery.*

In a suit for non-delivery where no portion of the consignment has been delivered, it is sometimes necessary to take evidence on the question of when the consignment ought to have been delivered, which must in any case be regarded as a question of fact, but where a great part of a consignment has been delivered on a certain day, there is ordinarily no necessity to enter into evidence on the question of when the balance of the consignment ought to have been delivered because the time when the consignment as a whole ought to have been delivered is manifestly the time when the greater part of the consignment arrived at its destination. (*Jwala Prasad and James, JJ.*). GOPI RAM GAURI SHANKER *v.* G I.P. RY. CO. **103 I.C. 383=8 P.L.T. 767=A I. R. 1927 Pat. 335.**

——*Non-delivery.*

When in a suit for compensation for non delivery of goods brought against a Railway company there is nothing to show that the plaintiff was being put off from seeking his remedy on account of any conduct of the defendant, Art. 31 applies to the case. 33 All. 513, *Foll.*; A.I.R 1923 All. 22, *Dist.* (*Mukerji, J.*). DURGA PRASAD BADRI PRASAD *v.* B.B. & C. I. RY. **87 I C. 763=6 L. R. A. Civ. 414=A. I. R. 1925 All. 780.**

——*Non-delivery.*

Under Art. 31 time runs from the date on which the goods ought to be delivered, and the question as to when the recovery of the plaintiff's goods became hopeless is immaterial. (*Scott-Smith and Martineau, JJ.*). SECY. OF STATE *v.* THE DUNLOP RUBBER CO. **88 I.C. 979=6 Lah. 301=26 P.L.R. 490=A.I.R. 1925 Lah. 478.**

——Where no time was fixed for the delivery of goods and the correspondence between the parties showed that the matter was being inquired into and there was no refusal to deliver up to well within a year of the suit, the suit is not time-barred. 42 All. 390, *Expl.*; 33 All. 514, *Dist.* (*Stuart and Sulaiman, JJ.*). JUGAL KISHORE *v.* G. I. P. RY. CO. **68 I.C. 981=20 A.L.J. 792=45 All. 43=A.I.R. 1923 All. 22.**

—Art. 31—Wrongful conversion by Railway.

——A suit against a carrier for compensation for non-delivery of goods is governed by Art. 31, whether the suit is laid in contract on ground of non-delivery or in tort, on the ground of wrongful conversion by the defendant. (*Scott Smith and Martineau, JJ.*). SECY. OF STATE *v.* THE DUNLOP RUBBER CO. **88 I.C. 979=6 Lah. 301=26 P.L.R. 490=A.I.R. 1925 Lah. 478.**

—Art. 32—Applicability.

——Article 32 governs cases against persons who having a right to use property for specific purposes, pervert it to other purposes. (*Tek Chand and Hilton, JJ.*). MATHRA DAS *v.* GOPAL NATH. **11 L.L.J. 493=A.I.R. 1929 Lah. 816.**

——*Defendant having only a right in common.*

Article 32 can properly be applied only where the person proceeded against had, before the perversion in respect of which he is being sued took place, a right to "use the property for specific purposes" peculiar to himself. It is not intended to apply to a case in respect of land in which the person proceeded against had no other right than a right in common with the general public to pass over it. 124 P.R. 1912 and A.I.R. 1928 Lah. 792 (1), *Rel. on*; A.I.R. 1922 All. 320, *held diss. from*

LIMITATION ACT (1908), Art. 32—Common land.

by A.I.R. 1924 All. 450. (*Coldstream, J.*). MAIN PIRTHI *v.* HANS RAJ. 112 I.C. 381= A.I.R. 1928 Lah. 794.

—Art 32—Common land.

——*A* sued for an injunction to compel *B* to remove a kotha built on a part of the village common land. This kotha was built more than two years before, and less than six years before the institution of the suit.

Held, that the notion that Art. 32 applies only to cases *ex contractu* was not correct: therefore the suit was barred not under Art. 120 which did not apply but under Art. 32. A.I.R 1925 Lah. 653, *Appr.*; A.I.R. 1928 Lah. 794, *Dist.* (*Johnstone, J.*). BHAGWANA *v.* BHANWANA. 121 I.C. 186= 31 P.L.R. 14 = A.I.R. 1930 Lah. 283.

——Where a suit was instituted for an injunction that the defendants be restrained from cultivating land on the allegation that according to the custom of the village it was reserved for the common use of all the owners in the village, and that no individual owner was entitled to do anything so as to interfere with such common use:

Held, that the suit was governed by Art. 32 and not by Art. 120. 124 P.R. 1912, *Dist.*; 26 Cal. 564 (F.B.), *Foll.* (*Jai Lal, J.*). GHULAM MUHAMMAD *v.* ABDUL SATAR. 89 I.C. 405= A.I.R. 1925 Lah. 653.

—Art. 32—Cremation ground.

——Where certain persons build on common burning ground, a suit to eject them is governed by Art. 32 as the defendants have a real right in the land itself, parts of which any of them can from time to time temporarily appropriate and use as a support on which to cremate a dead body. A.I.R 1926 Oudh 341 and A.I.R. 1925 Lah. 653, *Rel. on*; A.I.R. 1928 Lah. 792 and A.I.R. 1928 Lah. 794, *Dist.* (*Coldstream, J.*). NAND RAM *v.* JAI CHAND. 112 I.C. 845= A.I.R. 1929 Lah. 186.

—Art. 32—Easement.

——*Increase of burden on the servient tenement.*

Where plaintiff's complaint was that by placing heavier and more beams for supporting a masonry roof on a wall instead of the lighter beams which previously supported the thatched roof and which had rested on the wall, the burden of an existing servitude had been increased,

Held, that Art. 32 did not apply to the case. (*Banerji, Ag. C. J. and Ryves, J.*). MOHAN *v.* BISHAMBHAR SAHAI. 78 I. C. 193= 46 All. 68=4 L. R. A. Civ. 510= A.I.R. 1924 All. 450.

——*Increase of burden on the servient tenement.*

Where the appellants having a right by way of easement to support a thatch against a wall belonging to the plaintiff-respondent, substituted for the thatch a masonry or semi-masonry building and supported the beams necessary for its construction upon the wall in question,

Held, that they thereby undoubtedly increased considerably the burden upon the wall, and that it was a clear case of perversion of a right, within the meaning of Art. 32 of the Limitation Act. A suit brought therefore 2 years after the plaintiff came to know of the perversion is barred. (*Stuart, J.*). BISHAMBAR SAHAI *v.* JANKI DAD. 69 I. C. 819= A.I.R. 1922 All. 320.

—Art. 32—Encroachment on public road.

——Suit for removing encroachment on a public road and not on the property of any particular person is governed by Art. 120 and not by Art. 32. 124 P. R. 1912; A. I. R. 1921 Lah. 242 and

LIMITATION ACT (1908), Art. 36—Damage by canal.

2 L.L.J. 463. *Foll.*; A.I.R. 1925 Lah. 653, *Dist.* (*Bhide, J.*). GURDIT SINGH *v.* HARI SINGH. 110 I. C. 517=29 P. L. R. 308= A.I.R. 1928 Lah. 792.

—Art. 32—Excavation by tenant.

——*Compensation for damage.*

In a suit for mandatory injunction upon the defendants, to fill up a tank which had been excavated on a portion of the land comprising the tenancy held by some of the defendants under the plaintiffs, in breach of a condition in the Kabuliyat, for compensation and for ejectment of the defendants therefrom, the claim for compensation is independent of and not ancillary to the claim for ejectment and can be maintained although the latter claim fails. Article 32 of the Limitation Act applies to such claim for compensation and not Art. 1 of Sch. 3 of the Bengal Tenancy Act. (*Chatterjee and Newbould, JJ.*). KRISHNA DAS ROY *v.* MOHENDRA CHANDRA SIL. 62 I. C. 779= 26 C.W.N. 930=A.I.R. 1921 Cal. 62.

—Art. 32—Public grave-yard.

——Where the defendant who had the right to bury his dead in a grave-yard, planted trees therein and converted it into a grove and the plaintiff, the proprietor of the land, sued for possession of the plot and for removal of the trees,

Held, that plaintiff could not sue for its possession, the plot being a public grave-yard, and that the claim for removal of trees was governed by Art. 32. (*Rasa, J.*). ISMAIL *v.* THAKUR LAL. 93 I.C. 89=13 O.L.J. 428=A.I.R. 1926 Oudh 341.

—Art. 32—Shamilat land.

——*Perversion of use.*

One of the owners of the shamilat which comprised the pattis, reserved for specific purposes, perverted it to other purpose by using it for building purposes. Other co-owner sued for permanent injunction after four years.

Held, that in this case Art. 32 applied because of the perversion to different purpose of the shamilat land in question and hence limitation being two years the suit was time-barred. 124 P.R. 1912, *Dist.*; A. I. R. 1925 Lah. 653; A. I. R. 1926 Oudh 341, *Rel. on*; A. I. R. 1925 Lah. 455, *Expl.* (*Addison, J.*); DEWA SINGH *v.* QARUN. 118 I.C. 447= 30 P.L.R. 399=A.I.R. 1929 Lah. 535.

——*Perversion of use.*

Where a person has a right to use the shamilat plots for grazing purposes but perverts the same to building purposes, a suit against him claiming permanent injunction for removal of the encroachment falls within Art. 32. (*Zafar Ali, J.*). BHAWAN DAS *v.* RAMA NAND. 118 I.C. 73 (Lah.).

—Art. 36—Bursting of Municipal fittings.

——A case of damage to houses by bursting of Municipal fittings, by its negligence is governed by Art. 36 and not Art. 2, Lim. Act. (*Tek Chand and Agha Haidar, JJ.*). MAYA RAM *v.* MUNICIPAL COMMITTEE, LAHORE. 121 I.C. 500=A.I.R. 1929 Lah. 730.

—Art. 36—Damage by canal.

——Where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway and not to the canal and plaintiff's adjacent mills were damaged,

Held, that Art. 2 was not applicable as the act alleged was not done in pursuance of any enactment. 4 Lah. 428. 79 I.C. 208; and 4 Lah. 482, 79 I.C. 185, *Reversed*. (*Viscount Dunedin.*) PUNJAB

LIMITATION ACT (1908), Art. 36—Detention of goods.

COTTON PRESS CO., LTD. *v.* SECRETARY OF STATE. **103 I.C. 1=1927 M.W.N. 334=4 O.W.N. 471=31 C.W.N. 835=26 M.L.W. 134=28 P.L.R. 453=39 M.L.T. 343=10 Lah. 161=A.I.R. 1927 P.C. 72 (P.C.).**

—Art. 36—Detention of goods.

——A suit for damages against defendant at whose instance plaintiff's goods were detained by customs authorities is governed by Art. 36 and not by Art. 49. (*Rankin, C.J. and C.C. Ghose, J.*). IMPERIAL TOBACCO CO. *v.* ALBERT BONNAN. **106 I.C. 277=46 C.L.J. 455=A.I.R. 1928 Cal. 1.**

——Where Collector of Customs detained plaintiff's goods on representation made by defendant maliciously and without reasonable and probable cause,

Held, suit for damages for such detention against defendant was governed by Art. 36. (*Pearson, J.*). ALBERT BONNAN *v.* IMPERIAL TOBACCO CO., LTD. **94 I.C. 444=30 C.W.N. 465=A. I. R. 1926 Cal. 757.**

—Art. 36—Deterioration of fruits.

——Article 36 and not Art. 49 applies to a suit for compensation for deterioration of plaintiff's oranges owing to their detention at the police station. (*Walmsley and Mukerji, JJ.*). ANANDA CHANDRA *v.* BARADA KANTA. **90 I.C. 509=42 C.L.J. 203=A.I.R. 1926 Cal. 177.**

—Art. 36—Goods lost by carrier.

——*If possession of carrier is not lawful, Art.* 36 *applies.*

To give rise to these special privileges or liabilities which attach to transactions by or with carriers, the relationship as between a carrier, and his customer has first to be established and, for the presumption of an implied contract to carry, delivery of the goods so as to enable the carrier to acquire lawful possession of the goods for the purpose of carriage is the indispensable essential.

Plaintiff put the goods on the defendant's ferry boat for conveyance and himself got on to it. He found that the boat was being overloaded and feeling it unsafe to travel on it, he got down and wanted to take down his goods but the defendant refused to allow him to do so. The boat started on its journey with his goods and capsized on the way and the goods were lost. He sued to recover price of the goods.

Held, that as there was no delivery in this case the article applicable to the case was not Art. 30 or 31 but the general article, namely Art. 36. (*Mukerji, J.*). MUJAFFAR AHMED *v.* KARIM BAKSH. **107 I.C. 723=A.I.R. 1928 Cal. 306.**

—Art. 36—Implied contract.

——*Injury by owner of the sub-soil to the surface.*

Where the owner of the sub-soil causes injury to the surface the wrong cannot be said to be independent of a contract so as to be governed by Art. 36; for there is an implied covenant running with the land that the surface owner will have an inherent right of support from the owner of the sub-soil. (*Adami and Chatterji, JJ.*). JAGANNATH MARWARI *v.* KALIDAS RAHA. **120 I.C. 626=10 P.L.T. 191=8 Pat. 776=A.I.R. 1929 Pat. 245.**

—Art. 36—Misappropriation by administrator.

——*Starting point.*

Limitation for a suit against administrator and the surety for their liability to the estate according to the Commissioners's report, runs not from the time that the alleged misappropriation by administrator took place but from the time when the Court confirmed the Commissioner's accounts and the shortage was ascertained. A. I. R. 1924 Rang. 68, *Foll.* (*Rutledge, C.J. and Carr, J.*). HAMADANEE *v.* MA SHWE GON. **98 I.C. 459=4 Rang. 358=A.I.R. 1927 Rang. 28.**

LIMITATION ACT (1908), Art. 36—Suit against directors of company.

—Art. 36—Pledgee and pledgor.

——*Suit to recover pledged property or value.*

Where a pledgee having power to sell for default, takes over in effect, as if upon a sale the pledged property to himself without the pledgor's authority or giving credit for their full value to him the pledgee is guilty of an unauthorised conversion and the pledgor is entitled to have his property back or its full value but only on payment of debt. A suit brought by the pledgor under the above circumstances within three years from the date of the alleged sale is well within time whether the suit be regarded as one for redemption governed by Art. 145 or as one for damages for breach of contract governed by Art. 115. Article 36 has no application to such a suit. 19 Cal. 322 (P.C.), *Rel. on.* (*Coutts-Trotter, C.J. and Pandalai, J.*). RAMASWAMI CHETTY *v.* PALANIAPPA CHETTIAR. **122 I.C. 37=30 M.L.W. 898=A.I.R. 1930 Mad. 364.**

—Art. 36—Starting point.

——If a suit is for compensation for any malfeasance or misfeasance independent of contract, and not otherwise provided for, the limitation will be two years, not from the date of the malfeasance or misfeasance, but from the time when the injury results. (*Adami and Chatterji, JJ.*). JAGANNATH MARWARI *v.* KALIDAS RAHA. **120 I.C. 626=10 P.L.T. 191=8 Pat. 776=A.I.R. 1929 Pat. 245.**

——*Malfeasance.*

Where sulphuric acid was thrown at the plaintiff and injury was caused to his eye,

Held, (*Crump, J.*) that if the act of malfeasance was complete at the time when the vitriol was thrown in the plaintiff's face and the subsequent consequences were no part of the cause of action. (*Shah, Ag. C. J. and Crump, J.*). ABDULLA MAHOMED *v.* A.M. ZULLAIKHI. **84 I. C. 796=25 Bom. L.R. 1333=A.I.R. 1924 Bom. 290.**

——*Compensation for misfeasance—Companies Act, S.* 235.

An application for the recovery of compensation for misfeasance made under S. 235 of the Companies Act is treated as a suit by virtue of sub-S. (3) and such a suit is governed by Art. 36 of the Limitation Act, and as no new rights and liabilities are created, the cause of action does not arise on the date of the winding up order but time must run from the date of the misfeasance for which compensation is sought. (*Martineau, J.*). HUKAM CHAND *v.* BANK OF MULTAN, LTD. **69 I.C. 255=A.I.R. 1924 Lah. 285.**

—Art. 36—Suit against directors of company.

——*Misfeasance.*

A claim against the directors for misfeasance or breach of trust is clearly not "independent of contract and consequently Art. 36 of the Limitation Act does not apply to the case. The relations between the bank and its directors are in part governed by numerous articles in the articles of association which constitute part, though not the whole of a contract between the bank and its directors. The terms of the contract are to be found mainly in the articles of association but partly *dehors* the articles. (*Marten, C. J. and Patkar, J.*). GOVIND NARAYAN *v.* RANGANATH. **54 Bom. 226=32 Bom. L.R. 232.**

LIMITATION ACT (1908), Art. 36—Suit against directors of company.

——*Suit for compensation under S. 235, Companies Act.*

An application under S. 235 of the Companies Act of 1918 to recover compensation from an ex-director of a company in respect of an alleged act of misfeasance or breach of trust, is by virtue of Cl. (3) of the section governed by Art. 36, Limitation Act. A. I. R. 1923 Lah. 58, *Foll.* and A. I. R. 1925 All. 519, *Not foll.* (*Eforde and Harrison, JJ.*). BHIM SINGH *v.* BASHESHAR NATH.
100 I.C. 907=8 Lah. 167=28 P.L.R. 363=
A.I.R. 1927 Lah. 433.

——Whether a director whose acts are the subject of construction was a trustee or a partner or an agent to the Company or to the body of shareholders is to be determined according to the circumstances of each case.

In the particular case the Chairman of the Board of Directors was held to be acting as agent of the company and a suit against him for losses by his negligence was governed by Art. 90 and not Art. 36. (*Abdul Raoof and Fforde, JJ.*). DAULAT RAM *v.* BHARAT NATIONAL BANK, LTD.
79 I.C. 740=5 Lah. 27=A.I.R. 1924 Lah. 435.

—Art. 36—Suit by liquidator of company.

——A suit for recovery of compensation from an officer of company in respect of certain misfeasance committed by him is barred against the liquidator, if it is brought by the liquidator after 2 years. (*Shadi Lal, C. J. and Abdul Qadir, J.*). BANK OF MULTAN *v.* HUKUM CHAND. 71 I.C. 899=
A.I.R. 1923 Lah. 58.

—Art. 36—Trespass.

——A suit for damages for wrongfully cutting lac producing trees and removing the trees is a suit for compensation for trespass upon immovable property within Art. 39 and for wrongfully taking specific movable property within Art. 49. (*Kinkhede, A. J. C.*). NARBADA PRASAD *v.* AKBAR KHAN. 80 I.C. 769=20 N.L.R. 80=
A.I.R. 1924 Nag. 125.

—Art. 36—Wrongful attachment of crops.

——In the case of a suit for damages representing the value of crops which has been wrongfully attached, cut and removed, the pertinent articles are 48 and 49 and not 29 or 36 Limitation Act. (*Page and Graham, JJ.*). MAHARAJ BAHADUR SINGH OF BALUCHAR DISTRICT, MURSHIDABAD *v.* SM. ACHALA BALA DEVI. 105 I.C. 763=
A.I.R. 1928 Cal. 106.

——Where the defendant attached the plaintiff's share of standing crops in execution of a decree against the plaintiff's *bataidar*, and before the date of the order allowing the objection by the plaintiff to the attachment, the crops had become valueless, on plaintiff's suit for damages for wrongful attachment,

Held, Art. 39 and not 36 applies to this case. (*Kotval, A.J.C.*). SURAJ MAL *v.* PRALHAD BHAT.
65 I.C. 665=4 N.L.J. 231=18 N.L.R. 96=
A.I.R. 1922 Nag. 212.

—Art. 37—Continuing obstruction.

——*Starting point.*

If it is alleged by the plaintiff that the obstruction caused by closing the main sluice of a tank continued and he was prevented from removing the same by threat of violence it is a continuing wrong under Art. 37 read with S. 23 of the Limitation Act. The suit would be within time if it is brought within three years of the last day to which the wrong continued. (*Hallifax, A.J.C.*). SONA PATIL *v.* LAXMAN. 82 I.C. 482=
A.I.R. 1925 Nag. 189.

—Art. 39—Injury to crops.

——A suit for compensation for injury to crops by the closing of the main sluice of a tank is governed by Art. 39. (*Hallifax, A. J. C.*). SONA PATIL *v.* LAXMAN. 82 I.C. 482=A.I.R. 1925 Nag. 189.

—Art. 39—Underground trespass.

——A claim for damages for trespass and removal of coal from an underground colliery is covered by Arts. 39 and 49 and time begins to run from the inadvertent wrongful taking or from discovery of fraudulent taking. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJI COAL CO.
101 I.C. 62=31 C.W.N. 82=
A. I. R. 1927 Cal. 117.

—Art. 39—Wrongful attachment of crops.

——Where the defendant attached the plaintiff's share of standing crops in execution of a decree against the plaintiff's *bataidar*; and before the date of the order allowing the objection by the plaintiff to the attachment, the crops had become valueless, on plaintiff's suit for damages for wrongful attachment,

Held, Art. 39 and not 36 applies to this case. (*Kotval, A.J.C.*). SURAJ MAL *v.* PRALHAD BHAT.
65 I.C. 665=18 N.L.R. 96=4 N.L.J. 231=
A.I.R. 1922 Nag. 212.

—Art. 39—Wrongfully cutting trees.

——A suit for damages for wrongfully cutting lac producing trees and removing the trees is a suit for compensation for trespass upon immovable property within Art. 39 and for wrongfully taking specific movable property within Art. 49. (*Kinkhede, A.J.C.*). NARBADA PRASAD *v.* AKBAR KHAN.
80 I.C. 769=20 N.L.R. 80=A.I.R. 1924 Nag. 125.

—Art. 44—Alienation by mother.

——Where the mother alienates her minor son's property, and the son after attaining majority sues for possession of the property sold, the suit is governed by Art. 44 and not by Art. 144. 19 P.R. 1902; A.I.R. 1921 Lah. 257; A.I.R. 1925 Lah. 619 and A.I.R. 1928 Lah. 115, *Foll.* (*Tek Chand and Bhide, JJ.*). DATA RAM *v.* RAGHU NATH.
116 I.C. 893=11 L.L.J. 108.

—Art. 44—Alienation by unauthorised person.

——Where the property of a minor has been transferred by wholly unauthorized person, the transaction is void *ab initio* and it is not necessary for the minor in order to recover possession of property transferred to have the transfer set aside. In such cases Art. 44 will have no application and the suit will be governed by Art. 144. 20 C.W.N. 1016; 30 Mad. 393; 44 Bom. 742; A.I.R. 1925 Lah. 619 and A.I.R. 1928 Lah. 115, *Ref.*; 32 All. 392, *Dist.* (*Bennet and Iqbal Ahmad, JJ.*). DIP CHAND *v.* MUNI LAL. 1929 A.L.J. 1243=
A.I.R. 1929 All. 879.

——A person who is not a *de jure* guardian but purports to assume the guardianship of the estate of a minor (Hindu) is not in a better position than a stranger and has no authority to make any alienations, and Art. 44 does not apply to such a case. 15 N.L.R. 55; 34 All. 213, *Rel. on.* (*Baker, J.C.*). PUNJAB RAO *v.* ATAMARAM. 87 I.C. 1016=
A.I.R. 1926 Nag. 124.

——If a sale is effected by a person who is not the minor's guardian either according to his personal law or by appointment by the Court, such a sale is a nullity and does not affect the minor's property. If, on the other hand, the sale is made

LIMITATION ACT (1908), Art. 44—Alienation by unauthorised person.

by a natural guardian, who goes beyond the scope of his authority, the transaction cannot be regarded as a nullity and will bind the minor unless he succeeds in impeaching it within the period prescribed by law. 42 Bom. 626 and 44 Bom. 742, *Foll.* 32 All. 392, *Dissented.*

A suit by a *quondam* minor to set aside an alienation of his property by his guardian is governed by Art. 44, and if he cannot establish his right to possession without first setting aside the alienation, the suit for possession is also governed by that article, and not by Art. 148. 44 Bom. 742 and 25 Bom. 337 (P.C.), *Foll.* (*Shadi Lal, C.J. and Harrison, J.*). LABHA MAL *v.* MALAK RAM.

89 I.C. 602=6 Lah. 447=7 L L.J. 556=26 P.L.R. 531=A.I.R. 1925 Lah. 619.

——When a sale is made not by a guardian but by a wholly unauthorised person, (in this case by a Mahomedan step-mother) Art. 44 is inapplicable but Art. 142 applies and a suit brought within 12 years from date of sale is within time. (*Campbell, J.*). SADULLAH *v.* SULEMAN. **84 I.C. 923=6 L.L.J. 516=A.I.R. 1925 Lah. 239.**

——Per *M. N. Mukerji, J.*—Article 44 is not applicable to the case of an alienation by an unauthorised person. 34 All, 213, *Foll.* (*Walmsley and Mukerji, JJ.*). UMA CHARAN CHAKRAVARTI *v.* GINRAM BAG. **83 I.C. 1040=39 C.L.J. 394=A.I.R. 1924 Cal. 1008.**

—Art. 44—Alienation without necessity.

——*Made by authorised person.*

An alienation by a natural guardian of the minor's property is a voidable, and not a void transaction; and the fact that it was not for necessity does not alter the nature of the transaction. It is an unauthorized transfer by an authorized guardian and the limitation to set aside such a transfer is prescribed by Art. 44. A.I.R. 1925 Lah. 619 (2), *Foll.* (*Shadi Lal, C. J. and Zafar Ali, J.*). KHUSHIA *v.* FAIZ MAHOMED KHAN.

103 I.C. 365=9 Lah. 33=29 P.L.R. 305=A.I.R. 1928 Lah. 115.

—Art. 44—Authorised guardian.

——Where a person sued to recover possession of certain property on the ground that the sale executed by the guardian during his minority was not for his benefit,

Held, that the suit was governed by Art. 44 and not by Art. 144 of the Limitation Act. (*Tek Chand and Bhide, JJ.*). DATA RAM *v.* RAGHUNATH.

116 I.C. 893=11 L.L.J. 108.

——In the case of an alienation by an authorised guardian the minor must sue within three years of his coming of age. 32 All. 392, *Diss.*: *Case-law referred to.* (*Wilberforce, J.*). TARA CHAND *v.* MURLI DHAR. **61 I. C. 384=3 L.L.J. 280=A.I.R. 1921 Lah. 26.**

—Art. 44—Cause of action.

——*Right to sue accruing on alienation—Minor dying—Starting point.*

A minor's property was alienated by his mother acting as his guardian. The minor died before attaining majority and was succeeded by his mother. After the mother's death the reversionary heirs instituted a suit to set aside the sale more than three years after the minor's death,

Held, that the suit was time-barred.

Where the guardian of a minor alienates the minor's property, the cause of action arises from the date of the alienation. Section 6 only makes minority a cause for suspending limitation. Article 44 cannot therefore be construed so as to give

LIMITATION ACT (1908), Art. 44—De facto guardian.

a new cause of action from the time the minor attains majority. Hence when the minor dies before attaining majority, S. 6 (3) comes into play and the period of limitation is to be reckoned from the death of the minor and the fact that the heir of the minor is a female makes no difference. A.I.R. 1929 Mad. 668 and A.I.R. 1929 Mad. 313, *Ref.*; 38 Mad. 118, *Rel. on* and 18 Mad. 193, *Appr.* (*Venkatasubba Rao, J.*). THELETI RAMALIAH *v.* KENALA BRAHMIAH. **A.I.R. 1930 Mad. 821.**

—Art. 44—Clog on redemption.

——Article 44 refers to suits brought a minor to set aside the unauthorized acts of his guardian, and does not apply to a case where the plaintiff tries to set aside the leases as void as clog on the equity of redemption. (*Baker, J.*). PARASHRAM YESHVANT SHET *v.* LAKSHMIBAI BABAJI.

115 I.C. 405=53 Bom. 360=31 Bom. L. R. 229=A.I.R. 1929 Bom. 186.

—Art. 44—Condition precedent.

——One condition precedent for the application of Art. 44 is that the property should be property belonging to the ward and where it does not so belong, Art. 44 has no application. 23 Mad. 271 (P.C.), *Dist.* (*Wazir Hasan and Srivastava, JJ.*). IQBAL NARAIN *v.* BANKEY LAL. **7 O.W.N. 150=A.I.R. 1930 Oudh 82.**

—Art. 44—De facto guardian.

——Article 44 does not apply to cases of alienations by *de facto* guardians. 34 All. 213; 38 Mad. 1125; 17 Bom. L. R. 1134 and 17 M. L. T. 138, *Rel. on.* (*Kumaraswami Sastri and Curgenven, JJ.*). RAMASWAMY PILLAI *v.* KASINATHA IYER.

108 I.C. 529=1927 M.W.N. 356=A.I.R. 1928 Mad. 226.

——Neither Art. 44 nor Art. 91 applies to a suit to set aside alienations by a *de facto* guardian. The suit can be brought within the ordinary period of 12 years. (*Findlay, J. C.*). MAHADEO *v.* SOMAJI. **99 I.C. 1050=A.I.R. 1927 Nag. 145.**

——Article 44 applies to alienations of unofficial guardians. (*Macleod, C. J. and Crump, J.*). IRANGAUDA FAKIRGAUDA PATIL *v.* NINGAPPA BIN GOPAPPA GOPAGAUDA. **76 I.C. 636=A. I. R. 1924 Bom. 517.**

——Sale by the *de facto* guardian for the benefit of the minor is valid. (*Broadway and Martineau, JJ.*). MADAN LAL *v.* LABHU RAM.

67 I.C. 431=A. I. R. 1922 Lah. 421.

——An alienation by the *de facto* and *de jure* guardian of the minor is voidable and not void and Art. 44 applies to a suit by the minor to set aside the alienation. (*Hallifax, A.J. C.*). KHOLHU *v.* BELSINGH. **66 I.C. 303=17 N.L.R. 183=A.I.R. 1922 Nag. 201.**

——*Muhamadan Law—Alienation by mother—Article not applicable.*

Under the Mahomedan Law a mother has no power as *de facto* guardian of her infant children to alienate or charge their immovable property. If such an alienation is made it is not necessary for the infants to have it set aside within three years after attainment of majority under Art. 44, because the alienation must be deemed to have been effected, not by a guardian but by a wholly unauthorised person. The infant, whose property has thus been alienated, is consequently entitled to institute a suit for recovery of possession within 12 years from the date of sale, or within three years from the attainment of majority, whichever may be the later date. But where the alienation was made in lieu of debts binding upon the infants,

LIMITATION ACT (1908), Art. 44—De facto guardian.

Held, that their suit for possession should be decreed subject to their paying the debts. 45 Cal. 878 (P.C.), *Foll.* (*Mookerjee, A.C.J. and Fletcher, J.*). LALOO KARIKAR *v.* JAGAT CHANDRA SAHA. **62 I.C. 428=33 C.L.J. 256=25 C.W.N. 258=A.I.R. 1921 Cal. 572.**

———A suit for the recovery of property transferred during the minority of plaintiff by his natural guardian must, under Art. 44 of the Limitation Act, be brought within 3 years of attaining majority such a transfer being voidable and not void. (*Mookerjee, C.J. and Fletcher, J.*). BROJENDRA CHANDRA SARMA *v.* PROSUNNA KUMAR DHAR. **59 I.C. 589=24 C.W.N. 1016=32 C.L.J. 48.**

—Art. 44—Joint Hindu family.

———Article 44 has no application where the suit relates to a transaction entered into by an elder brother in his capacity as manager of a joint Hindu family. (*Wazir Hasan, A.C.J. and Pullan, J.*). SHEO RAJ *v.* AJUDHIYA. **116 I.C. 193=6 O.W.N. 213=4 Luck. 503=A.I.R. 1929 Oudh 284.**

———Manager of a joint Hindu family consisting of himself and his two minor brothers is not a guardian within Art. 44. 34 All. 213 (P.C.), *Foll.* (*Macleod, C.J. and Coyajee, J.*). DNYANU YESU JAGDAB *v.* VISHNU PARSHARAM CHITNIS. **87 I.C. 721=27 Bom. L.R. 495=A.I.R. 1925 Bom. 372.**

———Where in a suit for partition the plaintiff asked for setting aside the alienation of some properties which had been alienated by the managing member of the family on behalf of plaintiff and other members,

Held, that the mere description of the manager as guardian of the plaintiff would not at all make him a guardian within the meaning of Art. 44. (*Devadoss, J.*). VEERASAMI NAIDU *v.* SIVAGURUNATH PILLAI. **86 I.C. 234=21 M. L. W. 111=A.I.R. 1925 Mad. 793.**

———Although a person who manages the estate whether of a minor who is the sole owner of the property or of a co-parcenary, in which he has a joint interest with the minor, is entitled to be styled a manager, in matters of alienation, the position of each is different. In one the alienation is by a manager who has no joint interest with the minor while in the other he has. It is to an alienation of the latter kind that the description *alienation by a karta* or manager would strictly apply as it is by a *person having an interest* in the joint property. (*Kinkhede, A.J.C.*). SHAMPURI *v.* RAMCHANDRA. **88 I.C. 268=A.I.R. 1925 Nag. 385.**

———A suit to set aside an alienation by a manager of joint Hindu family and for possession of the property is governed by Art. 144 and not by Arts. 44 or 91 of the Limitation Act. 13 A.L.J. 94; 12 N. L. R. 112, *Foll.* (*Abdul Raoof and Abdul Qadir, JJ.*). SUNDER *v.* SHIAMAN. **68 I.C. 731=A.I.R. 1922 Lah. 386.**

———*Right of manager barred—Effect of.*

The plaintiffs sued to recover possession of lands after setting aside the sale deed passed by their mother during their minority. The plaintiffs were brothers, members of a joint family. One of them was more that 21 years of age and manager of the joint family when he filed the suit,

Held, that he could have given a discharge and acquittance of all claims against the defendants without the concurrence of the other plaintiffs as manager of the joint Hindu family and so the entire suit was barred by limitation. (*Macleod, C.J. and Rawcett, J.*). BAPU TATYA DESAI *v.* BALA

LIMITATION ACT (1908), Art. 44—Transfer by ward.

RAVJI DESAI. **59 I.C. 759=45 Bom. 446=A. I. R. 1921 Bom. 289.**

———*Mother representing minor at partition—No transfer.*

Article 44 must relate to property of which the alleged guardian is the real guardian and over which he has powers of transfer. There is no authority for applying this article to partition deed by adult co-parceners, to which the mother of minor co-parceners is a party as the partition is not a transfer by the mother as guardian within the meaning of Art. 44. 25 All. 407 (P.C.), *Ref.* (*Wallis, C.J. and Krishnan, J.*). VENKATA REDDI *v.* KUPPU REDDI. **61 I.C. 762=13 M.L.W. 260=A.I.R. 1921 Mad. 553.**

———*Sale of minor's property by father.*

Where property which belongs to a minor exclusively is sold by his father as guardian and the minor after attaining majority sues to recover the property, Art. 44 applies to the suit. The mere fact that the father joins in the execution of the deed in his personal capacity and also his brother does likewise in order to remove the apprehensions of the vendee does not take away the case from Art. 44. (*Napier and Krishnan, JJ.*). ARUMUGAM PILLAI *v.* P. AMBALAM. **62 I.C. 630=13 M.L.W. 416=1921 M.W. N. 285=A.I.R 1921 Mad. 425=40 M.L.J. 475.**

—Art. 44—Malabar tarwad.

———A suit by the junior members of a Malabar tarwad to recover possession of immoveable property alienated by the Karnavathi is governed by Art. 144 and not by Art. 91. The fact that the Karnavathi purported to execute the document not only as Karnavathi, but also as guardian of the minor plaintiffs, will not make either Art. 91 or Art. 44 applicable to the suit. (*Phillips and Venkatasubba Rao, JJ.*). KANNA PANIKKAR *v.* MANCHAN. **78 I.C. 564=19 M.L.W. 395=34 M.L.T. 89=A.I.R. 1924 Mad. 607=46 M.L.J. 340.**

—Art. 44—Scope.

———The words of Art. 44 are very general and have application to every case in which a ward on attaining majority impugns the transfer made by his or her guardian during his or her minority and there is absolutely no warrant for restricting the application of that article to cases of transfers made by a certificated guardian. (*Bennett and Iqbal Ahmad, JJ.*). DIBCHAND *v.* MUNNI LAL. **1929 A.L.J. 1248=A.I.R. 1929 All. 879.**

———It is now well settled that Art. 44 applies not only to setting aside the transfer of property made by a guardian appointed by a Court or by will but also to suits for setting aside a transfer of property made by a natural guardian. (*Wallace and Thiruvenkatachariar, JJ.*). RAMASWAMI *v.* GOVINDAMMAL. **118 I.C. 481=29 M.L.W. 169=1929 M.W.N. 124=A.I.R. 1929 Mad. 313=56 M. L. J. 332.**

—Art. 44—Setting aside decree.

———Articles 95, 44 and 91 of the 1st Schedule to the Limitation Act do not apply to a suit to have a decree set aside but the article applicable would be 120. (*Abdul Raoof and Martineau, JJ.*). JITA SINGH *v.* MAN SINGH. **62 I.C. 794=4 L.L.J. 211=2 Lah. 164=79 P.L.R. 1921=A.I.R. 1922 Lah. 166.**

—Art. 44—Transfer by ward.

———*Death of ward—Period of limitation.*

A suit by transferee from minor is governed by Art. 44. 42 Bom. 626; 44 Bom. 742 (F.B.), *Disc. and Foll.*; A.I.R. 1926 Bom. 292, *Not foll.*

LIMITATION ACT (1908), Art. 44—Transfer by ward.

It may be that if the ward dies during his minority Art. 44 will not apply to a suit by his legal representative for recovering the property alienated by the guardian, yet if the ward dies after the attainment of majority, Art. 44 will apply. (*Wallace and Thiruvenkatachariar, JJ.*). RAMASWAMI *v.* GOVINDAMMAL. **118 I.C. 481=29 M.L.W. 169=1929 M.W.N. 124=A.I.R. 1929 Mad. 313=56 M.L.J. 332.**

——*Right of the transferee.*

The remedy contemplated by Art. 44 is open to a ward for three years from the date of his attaining majority, and that remedy is not lost, by the mere fact that he purports to transfer his interest in the property such as it is at the date of the transfer, to a third party.

Where a minor's property was sold by the minor's guardian and the minor after attaining age transferred the same property to another and where the transferee as the principal plaintiff and the transferor as the second plaintiff sued to set aside the sale within three years of the minor attaining majority,

Held, that the suit was not barred by limitation. (*Shah, Ag. C. J. and Kincaid, J.*). HANMANT GURUNATH KULKARNI *v.* RAMAPPA LAGAMAPPA ILAGER. **86 I.C. 879=49 Bom. 309=27 Bom. L.R. 211=A.I.R. 1925 Bom. 292.**

—Art. 44—"Transfer of property."

——*Expression "Transfer of property" in Art. 44 implies that property has changed hands.*

Cases contemplated by Art. 44 are those in which "transfer of property" has been made by a guardian. It implies that the property has changed hands and does not apply to cases where the erstwhile minor is in possession of his property in spite of deeds of transfer executed by the guardian under which either possession does not pass from transferor to transferee, *e.g.*, deed of simple mortgage, or possession has not been parted with though it ought to have been delivered.

A person brought a suit beyond three years of his attaining majority for partition of the house and declaration that the sale effected by his certificated guardian without permission of the District Judge was void and ineffectual as against him. He claimed to be entitled to half share of the house which was so transferred and made the other co-sharer of the house as well as the vendee defendant to the suit. It was found that the plaintiff was all along in possession with the co-sharer,

Held, that Art. 44 did not apply to the case and even if it applied it only barred the remedy of the plaintiff to get the sale-deed set aside but was not fatal to his title which still subsisted and consequently the main relief sought, namely partition as against the co-sharer was not affected by Art. 44. A.I.R. 1916 P.C. 172, *Ref.* (*Banerji and Niamatullah, JJ.*). MD. RAZA AHMAD *v.* ZAHOOR AHMAD. **A.I.R. 1930 All. 858.**

—Art. 44—Void sale.

——Where a sale is void Art. 44 is inapplicable and a suit can be brought by a minor to recover possession within a period of 12 years. (*Kinkhede, A.J.C.*). MAROTI SURYABHAN *v.* RAIWANT RAO. **107 I.C. 897=A.I.R. 1928 Nag. 262.**

—Art. 45—Award.

——*No contest or investigation—Mere confirmation of plaintiff's possession.*

The "award" contemplated by Art. 45 presupposes a contest between the parties and a decision after proper investigation into the points at issue. Where there is nothing to indicate that there was any contest or a decision on any investigation, but the only object of the suit is that the plaintiffs may be confirmed in their possession of the lands, if they succeed in it, and the settlement by the revenue authorities, in so far as it determined the amount of the revenue payable in respect of the disputed property, would in no way be affected, the only result being that the plaintiffs would in that case, obtain the benefit of the settlement which a third person obtained from the Government, Art. 45 does not apply. 6 W.R. 317; 11 W.R. 389; 3 C.W.N. 99 and A.I.R. 1922 Cal. 345. *Ref.* (*Cuming and Mukerji, JJ.*). LAHFA KHATAN *v.* ZAFER ALI. **104 I.C. 655=55 Cal. 201=A.I.R. 1927 Cal. 902.**

—Art. 45—Award, what is.

——An order of the Collector under Bengal Regulation (VII of 1822) directing the entry of defendants' names as tenants with occupancy rights in the settlement record is an award. (*Woodroffe and Walmsley, JJ.*). MIDNAPORE ZEMINDARI CO., LTD. *v.* NARESH NARAIN ROY. **63 I.C. 161=33 C.L.J. 317=A.I.R. 1921 Cal. 368.**

—Art. 45—Omission of formal prayer.

——The suit is not bad because there is no formal prayer to set aside the order of the Collector. (*Woodroffe and Walmsley, JJ.*). MIDNAPORE ZEMINDARI CO., LTD. NARESH NARAIN ROY. **63 I.C. 161=33 C.L.J. 317=A. I. R. 1921 Cal. 368.**

—Art. 45—Suit on title.

——Where plaintiff's title was declared against the defendants and the Revenue authorities who had settled the land with the defendants and the plaintiff later on sued for possession,

Held, that Art. 45 does not apply as the object of the suit was not to set aside an award made by the Revenue authorities. (*Mookerjee and Buckland, JJ.*). MIDNAPUR ZEMINDARI CO., LTD. *v.* NARESH NARAYAN ROY. **65 I.C. 833=49 Cal. 37=33 C. L. J. 497=A.I.R. 1922 Cal. 345.**

—Art. 46—Bengal Survey Act.

——The order under S. 41 of the Bengal Survey Act has, until reversed or modified by competent authority, the force of an order of a Civil Court declaring the parties to be in possession of the land in accordance with the boundary as determined by the Collector. A suit instituted 3 years after the date of the order is not barred by Art. 46 of the Limitation Act. (*Mookerjee and Panton, JJ.*). H. H. MAHARAJA OF COOCH BEHAR *v.* RAJA MAHENDRA RANJAN RAI CHAUDHURI. **66 I.C 923=34 C.L.J. 463=A.I.R. 1921 Cal. 277.**

—Art. 47—Applicability.

——If the whole of the language of Art. 47 be taken into consideration, it is clear that the nature and scope of the suit intended to be comprised in the article must be one whose main object is to set aside the effect of the summary order of a Magistrate with regard to possession in the interest of public peace. (*Srinivasa Aiyangar and Reilly, JJ.*). ALAGARASWAMY THEVAN *v.* RAMABADRA NAIDU. **111 I.C. 152=A.I.R. 1929 Mad. 38.**

——Article 47 is applicable only to a case in which a Magistrate under S. 145, Cr.P. Code, confirms the possession of one party or of the other. 26 Mad. 410, *Foll.* (*Srinivasa Ayyangar and Reilly, JJ.*). ALAGARASWAMI THEVAN *v.* RAMABADRA NAIDU. **111 I.C. 152=A.I.R. 1929 Mad. 38.**

——Article 47 has no relation to any portion of the order of the Criminal Court which has no reference to the question of possession. (*Suhrawardy*

LIMITATION ACT (1908), Art. 47—Applicability.

and Graham, JJ.). RAHINI NANDAN CHADHURI *v.* JADUNANDAN CHADHURI. **97 I.C. 73= 30 C. W. N. 873=A. I. R. 1926 Cal. 1022.**

———*Section* 522, *Cr. P. Code.*

The operation of Art. 47 is not confined to orders under Chapter XII of the Cr. P. Code. An order restoring possession under S. 522 is an order respecting the possession of property within the meaning of Art. 47. (*Ramesam and Venkatasubba Rao, JJ.*). ADINARAYANA *v.* SUBAMMA.

86 I.C. 744=A.I.R. 1925 Mad. 799= 48 M.L.J. 372.

—Art. 47—Appointment of Receiver.

———*Effect of necessity to bring a suit for possession.*

Where a Magistrate appoints a receiver in possession of immovable property, what happens in the eye of the law is that the property is placed in *custodia legis*, *i.e.*, in the custody of the Court for the benefit of the person who may eventually and finally succeed in establishing his title to the property. It is not necessary for the person affected by the order to institute a suit for the recovery of possession of the property. He may institute a suit merely to have his right to the property declared. If so, Art. 47 would not apply and *fortiori* the consequences of the operation of S. 28, Limitation Act cannot follow. 26 Mad. 410; 1 Mad. 309 and 20 All. 120, *Rel. on*; 10 L.W. 637, *Not foll.* (*Srinivasa Ayyangar and Reilly, JJ.*). MAGARASWAMI THEVAN *v.* RAMABADRA NAIDU.

111 I.C. 152=A.I.R. 1929 Mad. 38.

—Art. 47—Joint Hindu family.

———*Order under S.* 145, *Cr. P. Code, against father—Sons bound.*

In proceedings taken under S. 145, an adverse order passed against a Hindu father in possession of the property bought on behalf of the joint Hindu family is binding on his undivided sons though they were not parties to the proceedings. A suit, therefore, by such undivided sons for possession of the properties—subject matter of the proceedings—brought more than three years on such order is barred under Art. 47. (*Odgers and Wallace, JJ.*). VENKATASOMARAJU *v.* ALLURI VARAHALARAJU.

122 I.C. 171=52 Mad. 787=2 M.Cr.C. 183= 1929 M.W.N. 518=30 M.L.W. 201= A.I.R. 1930 Mad. 48=57 M L.J. 228.

———*Section* 145, *Cr. P. Code, order against Manager—Effect on the sons.*

An order under S. 145 was passed against *A* the manager of the family of the plaintiffs, in favour of the defendants. *A* died, and the plaintiffs dispossessed the defendants forcibly. They were convicted and the defendants, were put back in possession by the Criminal Court. The plaintiffs thereupon sued for a declaration that they were the owners in possession.

Held, that whether the order under S. 145 was passed against *A* in his personal capacity or as manager of the family, the plaintiffs are bound thereby and the suit is governed by Art. 47 of the Limitation Act,

Held, further that the plaintiffs cannot claim to enlarge the time by framing the suit as one for declaration. (*Ryves and Gokul Prasad, JJ.*). RAM SAHAI *v.* BINODE BEHARI GHOSH. **71 I.C. 402= 21 A.L.J. 102=45 All. 306=4 L.R.A. Civ. 113= A.I.R. 1923 All. 151.**

———*Order under S.* 145, *Cr. P. Code, against one member.*

An order under S. 145, Cr. P. Code, against one member of a joint Hindu family is not binding on other members even when that member has made an application under that section as the head and manager of the joint family and a suit by another member, succeeding by survivorship to the member against whom the order was passed after 3 years of the order is not barred. (*Lyle, A.J.C.*). RAM LAL *v.* THAKUR DIN.

LIMITATION ACT (1908), Art. 47 — Right accruing after order.

66 I.C. 678=8 O.L.J. 410=A.I.R. 1921 Oudh 191.

—Art. 47—Limitation under special law.

———*C. P. Tenancy Act—Sch.* 2, *Art.* 1.

Where the specific article applicable is the one contained in the Tenancy Act, while the more general article is the one contained in the Limitation Act, the former applies. (*Findlay, J. C.*). RAMRAO *v.* GULABRAO. **105 I. C. 431= 10 N.L.J. 246=A.I.R. 1927 Nag. 402.**

—Art. 47—Order after adjudication by Civil Court.

———When a person is a party to a litigation in a Civil Court and an order is made by the Magistrate with regard to the possession of immovable property as the result of the adjudication in the Civil Court, such a person cannot be properly described as a person bound by the order of the Magistrate; nor is such an order of the Magistrate one promulgated under the Cr. P. Code as required by Art. 47. (*Srinivasa Ayyangar and Reilly, JJ.*). ALAGARASWAMI THEVAN *v.* RAMABADRA NAIDU.

111 I.C. 152=A.I.R. 1929 Mad. 38.

—Art. 47—Order without jurisdiction.

———Where an order is made under S. 145, Cr.P.Code, awarding possession of immovable property but the order is made without jurisdiction a suit to recover possession is, as regards limitation, governed by Art. 142, and not by Art. 47 of the Lim. Act. (*Mookerjee, A.C.J. and Fletcher, J.*). BHARAT CHANDRA *v.* RAM SUNDER CHOUDHURY.

60 I.C. 860 (Cal.).

—Art. 47—Partition suit.

———*Where title has been extinguished by an order under S.* 145, *Cr. P. Code, and Art.* 47, *Limitation Act.*

A suit for partition which seeks for partition of property or to have a share in it, the title to which has already been extinguished by reason of no suit having been instituted to recover possession within three years of the order under S. 145, Cr. P. Code and by virtue of Art. 145 of the Schedule and of S. 28 of the Act, is another name for a suit for recovery of possession and a mere device to evade the provisions of the statute. A.I.R. 1921 All. 92; 15 Bom. 299, *Ref.* (*Mukerji and Mitter, JJ.*). ATAB SUNARRI *v.* TALIB HUSSAIN.

51 C. L. J. 461=A.I.R. 1930 Cal. 612.

—Art. 47—Possession not given by Magistrate.

———Article 47 applies to cases where a person is not given possession by the Magistrate under S. 145, Cr. P. Code. (*Case-law considered.*) (*Devadoss, J.*). ISMALSA *v.* SADASIVA ASARI. **99 I. C. 532= 1927 M.W.N. 35=38 M.L.T. 217= A.I.R. 1927 Mad. 304.**

—Art. 47—Redemption suit.

———Failure to file suit under O. 21, R. 103, Cr. P. Code or within three years of Criminal Court's order refusing right to present possession does not bar the suit for redemption. (*Macnair, A.J.C.*). LINGANNA NAGANNA *v.* AHMADSHAH. **106 I.C. 427= 28 N.L.R. 164=A.I.R. 1928 Nag. 97.**

—Art. 47—Right accruing after order.

———Article 47 has no application to a case where at the time when the Magistrate's order was passed under S. 145, there was no existing right in the

LIMITATION ACT (1908), Art. 47—Successive orders.

plaintiff to sue for possession of the suit properties. 19 Cal. 646, *Foll.*; 38 Mad. 432, *Ref.* (*Waller and Madhavan Nair, JJ.*). W. SUBBALAKSHMI AMMAL *v.* NARASIMIAH. **102 I.C. 360=38 M.L.T. 226=25 M.L.W. 563=A. I. R. 1927 Mad. 586=52 M.L.J. 482.**

—Art. 47—Successive orders.

———Plaintiff obtained an order from Mamlatdar restraining defendant from disturbing his possession. The District Deputy Collector in revision dismissed plaintiff's suit. This order was without jurisdiction. Then plaintiff took proceedings under S. 145, Cr. P. Code, but the Magistrate made an order against him.

Held, that plaintiff's suit brought within 3 years from Magistrate's order was within time. (*Macleod, C.J. and Shah, J.*). VENKATESH REVAL *v.* BHIKU VENKATESH. **62 I.C. 224=45 Bom. 1135=23 Bom. L.R. 478=A.I.R. 1921 Bom. 207.**

—Art. 47—Undivided property.

———An undivided share of the property with regard to which there is an order under S. 145, Cr.P.Code, cannot for the purposes of Art. 47, be regarded as a different property. (*Mukerji and Mitter, JJ.*). ATAB SUNARRI *v.* TALIB HUSSAIN MIA. **A.I.R. 1930 Cal. 612.**

—Art. 48—Against Bank as trustee.

———Where a Bank holding Government Paper held in trust for the plaintiff of which trust it had constructive notice, sold it, and parted with the sale proceeds, and the plaintiff sued the Bank for recovery of sale proceeds with interest.

Held, that the suit is either one for conversion (Art. 48), or for money had and received to the plaintiff's use (Art. 62). (*Macleod, C.J. and Shah, J.*). BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. **67 I.C. 761=24 Bom. L.R. 513=A.I.R. 1923 Bom. 155.**

—Art. 48—Compensation for trees cut.

———Defendant sold standing trees to plaintiff in 1915, by registered-deed for Rs. 200 and covenanted that plaintiff should be at liberty to cut them and remove the timber within one year. Plaintiff did not out within the year. Meanwhile the land had been sold and was pre-empted and the pre-emptor sold the trees to third persons in 1917 who cut them and the plaintiff in 1920 sued for possession of the timber or Rs. 400,

Held, that this was a sale of moveable property and that Art. 48 or Art. 49 does apply. (*Le Rossignol, J.*). BIR SEN *v.* RAJA RAM. **73 I.C. 33=A.I.R. 1924 Lah. 71.**

—Art. 48—Conversion.

———An action of trover claiming damages for the conversion by the defendants of specific moveable property, *viz.*, coal wrongfully gotten from the plaintiffs' mines and sold or otherwise disposed of by the defendants to their own use, is governed by Art. 48. Article 48 alone refers to conversion and conversion cannot be split into two classes, one dishonest and the other not dishonest. "Or" preceding conversion is equivalent to "or by". 1 Pat. L.T. 84, *Appr.* (*Lord Warrington of Clyffe.*) LEVIS PUGH EVANS PUGH *v.* ASHUTOSH SEN. **114 I.C. 604=6 O.W.N. 151=1929 A.L.J. 170=33 C.W.N. 323=10 P.L.T. 155=56 I.A. 93=29 M.L.W. 449=49 C L.J. 415=31 Bom. L.R. 702=8 Pat. 516=A.I.R. 1929 P.C. 69=56 M.L.J. 517 (P.C.).**

———*Scope of.*

"Conversion" in Art. 48 means dishonest conversion, *ejusdem generis* with the words that precede it and the article, in view of the words in the third column, presupposes the existence of the property in the possession of some person. The claim for damages for trespass includes not merely damages for the unlawful entry but also damages for the mischief which the trespasser commits after entry on the land and therefore it is not covered by Art. 48. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJAI COAL CO., LTD. **101 I. C. 62=31 C. W. N. 82=A. I. R. 1927 Cal. 117.**

—Art. 48—Criminal charge.

———*Absence of—Section does not apply.*

A suit was brought in the Small Cause Court for the recovery of certain ornaments or their value from the defendants who were the sons of a person who kept the ornaments promising to return them. There was no allegation of a criminal charge. The suit was dismissed as barred by Art. 48, Limitation Act,

Held, that criminal charge could not be presumed from the application of Art. 48, Limitation Act, and the suit was not barred under article, Ss. 35 and 43-A, from cognizance of a Small Cause Court. (*Dalal, J.*). RAGHUBAR SARAN *v.* JUMNA PRASAD. **116 I.C. 785=A.I.R. 1929 All. 208.**

—Art. 48—Scope.

———Article 48 applies to all conversions, whether dishonest or not. Where the trespass is due to inadvertence or is due to inadvertence and want of reasonable care, both these views of the conversion fall within the terms of Art. 48 under which the limitation period of three years begins to run when the person having the right to possession of the property first learns in whose possession it is. A. I. R. 1927 Cal. 117, *Reversed* and A. I. R. 1929 P.C. 69, *Rel. on.* (*Lord Thankerton.*) ADJAI COAL CO., LTD. *v.* PANNALAL GHOSH. **123 I.C. 726=32 Bom. L. R. 654=34 C.W.N. 483=31 M. L. W. 638=51 C. L. J. 407=A.I.R. 1930 P.C. 113=58 M.L.J. 536 (P.C.).**

—Art. 48—Suit for money.

———Money is "specific movable property" within the meaning of Art. 48 and where it has been lost, acquired by theft or dishonest misappropriation or conversion, or compensation for wrongfully taking or detaining the same Art. 48 will apply. 5 All. 341; 29 All. 579; A.I.R. 1930 All. 397, *Foll.*; 11 C.W.N. 862 and 11 Bom. 133, *Ref.* (*Sen and Niamatullah. JJ.*). BENARES BANK LTD. *v.* RAM PRASAD. **124 I.C. 180=A.I.R. 1930 All. 573.**

———A suit for recovery of money is a suit for specific movable property. 5 All. 341; 29 All. 579, *Foll.* (*Sen and Niamatullah, JJ.*). JAGANJI *v.* BANDAN. **A.I.R. 1930 All. 397.**

—Art. 48—Suit for valuables deposited.

———Article 145 and not Art. 48 governs a suit for the recovery of jewels deposited with the deceased son of the defendant and alleged to be with the defendant after the son's death. (*Devadoss, J.*). S. KRISHNASWAMI AIYANGAR *v.* V. S. GOPALACHARIAR. **84 I.C. 1026=20 M.L.W. 755=1925 M.W.N. 143=A.I.R. 1925 Mad. 185.**

—Art. 48—Value of crops attached.

———In the case of a suit for damages representing the value of crops which has been wrongfully attached, cut and removed, the pertinent articles are 48 and 49 and not 29 or 36, Limitation Act. (*Page and Graham, JJ.*). MAHARAJ BAHADUR SINGH OF BALCHUR *v.* SM. ACHALA BALA DEVI. **105 I.C. 763=A.I.R. 1928 Cal. 106.**

LIMITATION ACT (1908), Art. 49—Articles left in common house.

—Art. 49—Articles left in common house.

——*Starting point.*

The three years' rule applies to a suit for recovery of articles left in the house occupied by the plaintiff along with the deceased son of the defendant and subsequently vacated by the plaintiff, the latter leaving in the house the articles in question and alleged to be in defendant's possession. The suit is not barred if brought within three years after the defendant's refusal to deliver or the defendant's denial that he was in possession of the property. (*Devadoss, J.*). S. KRISHNASWAMI AIYANGAR *v.* V.S. GOPALACHARIAR.

84 I.C. 1026=20 M.L.W. 758=1925 M.W.N. 143=A.I.R. 1925 Mad. 185.

—Art. 49—Attachment before Judgment.

——In a suit against the plaintiff by the defendant for recovery of money, plaintiff's property was attached before judgment. The suit was decreed by the first Court but dismissed by the appellate Court. Plaintiff sued to recover compensation for loss of profits, etc.,

Held, Art. 29 does not apply to the suit for Art. 29 is applicable only to those cases in which the seizure is intrinsically wrongful or perhaps to cases where the seizure is made without jurisdiction. The proper article to be applied is Art. 49 and time for suit runs from the date of appellate decree and not from the date of attachment. 42 Cal. 85; 29 All. 615 and 31 Mad. 431, *Dist.*; 19 Mad. 80; 39 All. 322 and 6 Bom. L. R, 704, *Ref. to.* (*Kanhaiya Lal, J.*). MANGA *v.* CHANGA MAL.

81 I.C. 1038=22 A.L.J. 977=5 L.R.A. Civ. 732=A.I.R. 1925 All. 131.

—Art. 49—Bailment.

——*Ornaments lent for specific use.*

A handed over to *B* certain ornaments to be used in religious procession in 1924. The ornaments were stolen. *B* admitted the liability in 1924, but denied it later on and *A* filed a suit in 1928 for recovery of the ornaments,

Held, that Art. 115 applied to the case and not Art. 49 or Art. 120.; that the ornaments had been taken on loan and the transaction was of the nature of the bailment as defined in S. 148, Contract Act; that the ornaments were to be returned within reasonable time according to S. 46, Contract Act, *i.e.*, when the owner demanded them after the ceremony was complete. Time therefore ran from the date when *B* should have returned the articles to *A* and suit by *A* brought three years after that date was barred by time. (*Pullan and Srivastava, JJ.*). CHATURGUN *v.* SHAHZADI.

A.I.R. 1930 Oudh 395.

—Art. 49—Compensation for trees cut.

——Although to cut down trees in breach of an occupancy tenancy agreement is not only a breach of the agreement but also a trespass to immovable property, yet when the trees have been cut down, they certainly become specific movable property, and if they are taken away and sold, the suit is one for compensation as defined by Art. 49. 25 Cal. 692, *Foll.* (*Walsh, J.*). JAGDISH PRASAD *v.* RAGHUBIR. **94 I.C. 336=A.I.R. 1926 All. 462.**

——A suit for damages for wrongfully cutting lac producing trees and removing the trees is a suit for compensation for trespass upon immovable property within Art. 39 and for wrongfully taking specific movable property within Art. 49. (*Kinkhede, A.J.C.*). NARBADA PRASAD *v.* AKBAR KHAN. **80 I. C. 769=20 N.L.R. 80=A.I.R. 1924 Nag. 125.**

LIMITATION ACT (1908), Art. 49—Joint Hindu family.

—Art. 49—Declaration and possession of movables.

——If, in a declaratory suit in respect of a movable property, the main relief claimed is the same as consequential relief, *i.e.*, the possession of the property and not the declaration whether declaration be necessary or merely ancillary, the suit is governed by Art. 49 and not 120. 15 I.C. 545, *Foll.*; 21 Cal. 157, *Dist.* (*Pratt and Duckworth, JJ.*). PUN AUNG *v.* BRIJLAL. **70 I.C. 841=1 Bur. L.J. 85=A.I.R. 1923 Rang. 11.**

—Art. 49—Deposits.

——Article 49 is not dealing with articles deposited in any sense. (*Schwabe, C.J. and Wallace, J.*). KISHTAPPA *v.* LAKSHMI AMMAL.

72 I.C. 842=17 M.L.W. 467=32 M.L.T. 217=1923 M.W.N. 284=A.I.R. 1923 Mad. 578=44 M.L.J. 431.

—Art. 49—Detention of goods.

——A suit for damages against defendant at whose instance plaintiff's goods were detained by customs authorities is governed by Art. 36 and not by Art. 49. (*Rankin, C. J. and C. C. Ghose, J.*). IMPERIAL TOBACCO CO. *v.* ALBERT BONNAN.

106 I.C. 277=46 C.L.J. 455=A.I.R. 1928 Cal. 1.

——Article 36 and not Art. 49, applies to a suit for compensation for deterioration of plaintiff's oranges owing to their detention at the Police Station. (*Walmsley and Mukerji, JJ.*). ANANDA CHANDRA KACHARU *v.* BARADA KANTA DEY.

90 I.C. 509=43 C.L.J. 203=A.I.R. 1926 Cal. 177.

—Art. 49—Goods deposited.

——When goods are deposited, the article applicable is Art. 145; and the mere fact that the depositor demands the thing and the depositee refuses to return the same does not make Art. 49, applicable to the case. Article 145, is not governed by Art. 49. 26 Bom. 430; 33 Mad. 56, *Foll.*; 31 Cal. 519 and A.I.R. 1923 Mad. 578, *Rel. on.* (*Das and Doyle, JJ.*). MA SHWE ON *v.* MA SAW.

116 I.C. 468=6 Rang. 547=A.I.R. 1928 Rang. 309.

—Art. 49—Illegal distraint.

——*Starting point.*

The cause of action for a suit for compensation for illegal distraint does not only arise on the date of the release of the property from distraint, but the cause of action arises on the date of the actual loss of or damage or at the latest when the plaintiff comes to know of such loss. (*Gokul Prasad, J.*). THAKURAIN ANAR *v.* POHAP SINGH.

66 I.C. 852=A.I.R. 1922 All. 139.

—Art. 49—Intention.

——It is no part of the policy of the Limitation Act to make people determine the lawful possession of others who are looking after their property or who have their property on deposit. The policy of the Limitation Act is that when once that arrangement is stopped the suit should be brought within a limited time. (*Rankin, C.J. and Buckland, J.*). BHUPENDRA NATH *v.* GOONENDRA NATH.

106 I.C. 885=32 C.W.N. 133=A.I.R. 1929 Cal. 42.

—Art. 49—Joint Hindu family.

——*Possession lawful at first and subsequently becoming adverse—Applicability.*

Article 49 is the ordinary article to apply in a case where the original possession of the defendant is lawful but it becomes unlawful by reason of certain facts. The common case is the case where the demand is made by the plaintiff, the plaintiff having a right to determine the possession of the defendants. 21 Cal. 157 (P.C.), *Dist.*

LIMITATION ACT (1908), Art. 49 — Original possession permissive.

Plaintiff and his step-brothers formed a joint Hindu family. Plaintiff's mother and father died in 1905 and 1909 respectively. The mother left certain valuable ornaments which continued to be in the joint family even after the death of the plaintiff's father. During all the time plaintiff was living with the step-brothers. Plaintiff attained majority in 1910. Step-brothers never claimed the ornaments as their own though they were in their possession. In 1920 there was a partition and in September 1920 the plaintiff brought the suit to recover those ornaments. It was contended that the suit was time-barred,

Held, that Art. 49 applied and the suit was not time-barred, as the time began to run against him in 1920 when he claimed that step-brothers should make over the ornaments to him. (*Rankin, C.J. and Buckland, J.*). BHUPENDRA NATH *v.* GOONENDRA NATH. **106 I.C. 885=32 C.W.N. 133= A.I.R. 1929 Cal. 42.**

—Art. 49—Original possession permissive.

———*Failure to return on demand.*

Plaintiff gave two necklaces to the defendant on condition that their price would be paid if they would be approved and they would be returned if they were not approved. The defendant failed to return the necklaces in question to the plaintiff, though the latter demanded them by telegram,

Held, that the defendant's possession of the necklaces became unlawful within the meaning of Art. 49 on his failure to return the same after the receipt of the telegram. (*Wazir Hasan and Raza, JJ.*). KALICHARAN *v.* GANSHI LAL.

105 I.C. 224=A.I.R. 1928 Oudh 47.

———*Demand and refusal to comply essential.*

Where the original possession of property had been permissive a mere allegation on the part of the possessor, of his or her ownership of the property, does not change the character of his or her possession into an unlawful one, and the possession can become unlawful only on his or her refusal to comply with a demand for the return of the property and under Art. 49, Limitation would begin to run only from date of such refusal. (*Robinson, C.J. and Brown, J.*). MA MURY *v.* MA HLA WIN. **85 I.C. 10=2 Rang. 555=. A.I.R. 1925 Rang. 146.**

—Art. 49—Partition of movables.

———A suit for partition of movables of a Mohammadan falls under Art. 120 and not 49. (*Mears, C.J. and Banerji, J.*). MT. BASHIR-UN-NISSA BIBI *v.* ABDUL RAHMAN. **64 I. C. 974= 44 All. 244=20 A.L.J. 71=A.I.R. 1922 All. 525.**

—Art. 49—Removal of coal.

———*Starting point.*

A claim for damages for trespass and removal of coal from an underground colliery is covered by Arts. 39 and 49 and time begins to run from the inadvertent wrongful taking or from discovery of fraudulent taking. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJAI COAL CO.

101 I.C. 62=31 C.W.N. 82=A.I.R. 1927 Cal. 117.

—Art. 49—To recover articles bailed.

———A suit to recover articles bailed is governed by Art. 115 and not by Art. 49 of the Limitation Act. (*Pullan and Bisheshwar Nath, JJ.*). CHATURGUN *v.* SHAHZADEY. **7 O.W.N. 769= A.I.R. 1930 Oudh 395.**

—Art. 49—Value of crops attached.

———In the case of a suit for damages representing the value of crops which has been wrongfully attached, cut and removed, the pertinent articles are 48 and 49. (*Page and Graham, JJ.*). MAHARAJ BAHADUR SINGH OF BALUCHAR, DISTRICT MURSHIDABAD *v.* SM. ACHALA BALA DEVI. **105 I.C. 763=A.I.R. 1928 Cal. 106,**

LIMITATION ACT (1908), Art. 53—Construction of bill.

—Art. 52—Advance of grain.

———A suit to recover advance of grain is governed by Art. 52 and the period, as amended by Punjab Act of 1904, is six years. 2 L.L.J. 191 and A.I.R. 1922 Lah. 271, *Foll.* (*Campbell, J.*). DIWAN SINGH TIRLOCK SINGH *v.* SANDAGAR SINGH. **95 I.C. 25=8 L.L.J. 322=27 P.L.R. 700.**

—Art. 52—Date of delivery.

———Unlike a bill-of-lading a railway receipt when formally made over to a person, is a mercantile document of title to goods and gives the holder thereof the right to lawful possession of the goods and the date of delivery of receipt is the date of the delivery of the goods for the purpose of Cl. 3 in Art. 52. 38 Mad. 664, *Foll.* (*Findlay, J.C.*). SHEOCHARANLAL *v.* RAMRATAN. **108 I.C. 801= A.I.R. 1928 Nag. 181.**

—Art. 52—Fruits in garden.

———*Suit for price of.*

A suit for recovery of the price of fruits standing in a garden and sold to the defendant is governed by Art. 52 of Lim. Act the word "goods" in that article being wide enough to include fruit even before it has been gathered. (*Chevis, J.*). WASU RAM *v.* RAHIM BAKHSH. **66 I. C. 120. (Lah.).**

—Art. 52—Goods sold on credit.

———A suit to recover price of goods by a tradesman on credit for which payments were made on presentation of bill is governed by Art. 52 of the Act and the period of limitation is three years from the date of the delivery of the goods. Article 85 does not apply to such a case. (*Kulwant Sahay, J.*). W. K. DAMSFORD *v.* B.D SHAH AND CO. **88 I.C. 747=A.I.R. 1925 Pat. 806.**

—Art. 52—Price of articles.

———Where the plaintiff is suing for a sum of money as representing the price of certain articles sold by him to the defendant Art. 52 and not Art. 115 of the Lim. Act applies to the case. (*Rattigan, C.J.*). GANGA RAM *v.* NANDA. **65 I.C. 687=2 L.L.J. 191.**

—Art. 52—Tradesman's account.

———*Starting point—Appropriation of payments.*

In the case of a tradesman's account the liability to pay for each item of goods delivered, either day by day or week by week, is in the case of each item the date of delivery of that particular item.

Where payments are made from time to time by the customer and there is no specification as to the items to which the payments are to be credited the trader is entitled to credit the payments to the earlier of the items but not to the entire balance due up-to date so as to save limitation for all the items. (*Walsh and Ryves, JJ.*). ABDUL AZIZ *v.* MUNNA LAL. **63 I.C. 435=19 A.L.J. 555= A.I.R. 1921 All. 325.**

—Art. 53—Construction of bill.

———Thavanai *in a bill of sale.*

The word *Thavanai* was held to mean credit period and to place the suit for the price of goods sold and purchased within Art. 53 of the Lmitation Act in the following circumstances:—In the bill for piecegoods purchased, sent by the vendor to the vendee the following words were found at the top "debit interest at ¾ per cent. per mensem after 60 days *thavanai.*" The question arose whether it was a credit sale or a cash transaction when the plea of limitation was set up as a defence to the suit for the money due, and it was held to be a

LIMITATION ACT (1908), Art. 56—Suit by Contractor against District Board.

credit transaction. (*Venkatasubba Rao and Jackson, JJ.*). K. M. P. R. N. M. FIRM *v.* M. SOMASUNDARAM CHETTI. 85 I.C. 299= 48 Mad. 275=20 M.L.W. 981= A.I.R. 1925 Mad. 161=47 M.L.J. 844.

—Art. 56—Suit by Contractor against District Board.

——*U. P. Local Boards Act, S.* 192.

Where a contractor with a District Board was unable to complete the contract within the stipulated time and he was relieved of his obligations on the apparent understanding that he was to be paid for the work done, and he sued for the same,

Held, S. 192 (1), U. P. Local Boards Act did not apply as it was not a contract by the Board and that Art. 56 applied to the case. (*Stuart, C.J. and Raza, J.*). MATHURA PRASAD *v.* CHAIRMAN, DIST. BOARD, SETOPUR. 109 I.C. 639= 3 Luck. 584=5 O.W.N. 350= A.I.R. 1928 Oudh 297.

—Art. 57—Book accounts.

——Plaintiff sued defendant for a sum of Rs. 1,600 due as principal and interest on book accounts. It was alleged that defendant had struck a balance in favour of the plaintiff for Rs. 756-14-0 and that he had since taken a further sum of Rs. 57 and these items together with interest accrued due amounted to a total of Rs. 1,600.

The accounts on record were not mutual, open and current and there were no reciprocal demands between the parties,

Held, that Art. 85 does not apply but that the article applicable is either 57 or 64. (*Broadway and Moti Sagar, JJ.*). NANAK SINGH *v.* MIHAN SINGH. 4 L.L.J. 69=A.I.R. 1922 Lah. 204.

—Art. 57—Pawnor and pawnee.

——Neither the fact that the pawnee had no power to sell the goods pledged to him, nor the express stipulation that the recovery of the debt should be made out of the proceeds of sale to be held by the pawnor takes away or suspends pawnee's right to sue for the debt under the contract of loan. The suit for the same must be brought under Art. 57 and time runs from the date of the loan. 30 Bom. 218 and 24 All. 251, *Rel. on.* (*Kotval, A. J. C.*). DEBIDIN *v.* GAYA PERSHAD. 104 I.C. 641= A.I.R. 1927 Nag. 346.

—Art. 59—Overdraft.

——An overdraft in the hands of a banker is merely a loan and Art. 59 applies to such overdraft. (*Kemp, J.*). MOTIGAURI *v.* NARANJI DWARKA DAS. 102 I.C. 408=29 Bom. L.R. 423= A.I.R. 1927 Bom. 362.

—Art. 59—Starting point.

——*Loan payable on demand and secured by a mortgage.*

Limitation in the case of money lent under an agreement that it shall be payable on demand runs from the time when the loan is made and it would be anomalous if limitation ran from a different time in a case where the money was lent on an agreement that it should be payable on demand but is also secured by a mortgage-deed. It is not necessary in such cases that an actual demand should be made for limitation to commence. 21 Mad. 139, *Foll.* (*Rutledge, C.J. and Brown, J.*). T. C. BOSE *v.* O'BEDUR RAHMAN CHOWDHARY. 111 I.C. 132=6 Rang. 297= A.I.R. 1928 Rang. 189.

—Art. 60—Applicability.

——Article 60 of the Limitation Act does not apply to a suit for recovery of money deposited

LIMITATION ACT (1908), Art. 60—Deposit and loan.

under an agreement that it shall be payable at a specified time. (*Sen and Niamatullah, JJ.*). BANK OF UPPER INDIA, LTD. *v.* ARIF HUSSAIN. 1930 A.L.J. 1157.

—Art. 60—Balance out of deposits.

——Plaintiff sued the defendant for money which plaintiff's father used to deposit every now and then with the defendant and used to withdraw, when necessary, through himself or through others or get money paid to others; and there was also demand on a certain date.

Held, that the suit was governed by Art. 60. (*Das and Ross, JJ.*). SURAJ PRASAD *v.* BINDHYACHARI PRASAD. 98 I.C. 554=A.I.R. 1927 Pat. 91.

—Art. 60—Banker.

——*Who is.*

Under Art. 60 it is not necessary to prove that the borrower was carrying on business only as banker. A man might become a banker or place himself in the position of banker, with regard to a particular customer, and if the dealings between the lender and the borrower are such that the Court is satisfied that it could be said that the borrower is in the position of a banker to the lender, then the money so lent could be considered as a deposit. (*Macleod, C.J. and Coyajee, J.*). BHIMANNA *v.* VENICHAND. 93 I.C. 215= 28 Bom. L.R. 73=A. I. R. 1926 Bom. 168.

—Art. 60—Banker and Customer.

——In order to create the relation of banker to his customer there is no necessity that the banker should carry on only the trade of a banker. It suffices, if with regard to the particular transaction, he was a banker as regards the particular customer. (*Kemp, J.*). MOTIGAURI *v.* NARANJI DWARKA DAS. 102 I.C. 408=29 Bom. L.R. 423= A.I.R. 1927 Bom. 362.

—Art. 60—Demand.

——Demands properly so called should be distinguished from requests for money on account. (*Richardson and Shamsul Huda, JJ.*). JOGENDRA NATH *v.* DINKUR RAM KRISHNA. 66 I.C. 759= 25 C.W.N. 981=A.I.R. 1921 Cal. 614.

—Art. 60—Deposit.

——The word "deposit" in Art. 60 covers all payments of the customer's moneys made to the banker which make up the credit balance in favour of a customer in the banker's hands. (*Kemp, J.*). MOTIGAURI *v.* NARANJI DWARKA DAS. 102 I.C. 408=29 Bom. L.R. 423= A. I. R. 1927 Bom. 362.

—Art. 60—Deposit and loan.

——*Distinction between.*

It is not clear what the Legislature meant by the word "deposited" in Art. 60 but there must be some difference between "money lent" and "money deposited" and one can only assume that a plaintiff relying upon Art. 60 must prove that something took place between the parties at the time the money passed which would constitute the handing over of the money "a deposit," and "not a loan". Ordinarily when *A* hands over money to *B* on the understanding that it is not a gift, but was to be re-paid when demanded, that would be considered in law "a loan"; and when the plaintiff seeks to prove that the money so handed over was a deposit, the onus would lie upon him to prove that there are additional circumstances which turned the "loan" into a "deposit," there is no distinction in the Act between the money lent and money deposited with regard to the agreement to re-pay. So that it is not the agreement that the

LIMITATION ACT (1908), Art. 60—Deposit by purchaser.

money should be payable on demand that distinguishes a deposit from a loan. There must be something further proved, and it is not possible to define exactly what that something further must be. It has some times been suggested that facts must be proved which create a sort of fiduciary relationship between the lender and the borrower. It cannot be said that that is always necessary. (*Macleod, C.J. and Crump, J.*). GOVIND CHINTAMAN *v.* KACHUBHAI GULABCHAND. **73 I.C. 978=25 Bom. L.R. 503=A.I.R. 1924 Bom. 28.**

—Art. 60—Deposit by purchaser.

———*Breach of agreement to sell—Suit for recovery of deposit.*

In a certain contract for the sale of property the vendor was to satisfy certain conditions before completion of the contract, but no time was specified for it. The vendor mortgaged the property to another and afterwards it was sold in satisfaction of that mortgage. The purchaser then sued for recovery of deposit money.

Held, that the purchaser need not have sued within a reasonable time. It was Art. 97 and not 60 nor 115, that governed such a case, and time was to be counted since when the property was sold in satisfaction of the mortgage, because it was then that the contract, having become impossible of performance, ended. (*Rankin, C. J. and B. B. Ghose, J.*). J. C. GAULSTUN *v.* SAHEBZADI MAMOODI BEGUM. **117 I.C. 700=33 C.W.N. 115=56 Cal. 455=A.I.R. 1929 Cal. 216.**

—Art. 60—Deposit, what is.

———*Relationship of Banker and customer essential.*

Where a partner opened a separate account in his daughter's name in partnership books, and the account had been made up every year and interest added to it and the balance carried forward to the new year and there were payments in of small sums of money from time to time and a withdrawal of Rs. 100,

Held, that the account was not merely a loan to the firm but comes within the definition of a deposit under Art. 60 being moneys of a customer in the hands of his banker payable on demand. Really there is no distinction between a deposit and a loan because they are both moneys lent by the customer to the bank, but it is necessary for the purpose of considering whether Art. 60 applies to see whether the relationship of customer and banker arose between these parties. (*Kemp, J.*). HIRABAI GOPALDAS *v.* DHANJIBHAI B. KAVARANA. **102 I.C. 145=29 Bom. L.R. 427=A.I.R. 1927 Bom. 433.**

—Art. 60—Deposit with right to lend.

———'*Banker*'—*Scope of Art.* 59.

The defendants Nos. 1 and 2 were to hold the money deposited by plaintiff for safe custody and by way of deposit: they were at liberty, if they thought it safe and on their own responsibility and risk, to lend the money to others and that, in case they did so, they were to pay a certain sum to the plaintiff as interest on the money so lent, presumably after realizing such interest from the debtors,

Held, that Art. 60 and not 59 applies to suit for recovery of money.

Article 60 is not limited in its application to claims against bankers only. 16 Cal. 25, *Dist.*; 39 Mad. 1081, *Foll.* (*Richardson and Shamsul Huda, JJ.*). JAGENDRA NATH *v.* DINKAR RAM KRISHNA. **66 I.C. 752=25 C.W.N. 981=A.I.R. 1921 Cal. 644.**

LIMITATION ACT (1908), Art. 61—Contribution. —Art. 60—Essentials.

———To bring the transaction under Art. 60, Limitation Act, it is necessary to show not only that there was a deposit, but that the deposit was under an agreement that it shall be payable on demand. (*Srinivasa Aiyangar and Curgenven, JJ.*). AMMALU AMMA *v.* NARAYANAN NAIR. **111 I.C. 210=51 Mad. 549=29 M.L.W. 460=A.I.R. 1928 Mad. 509.**

—Art. 60—Fixed deposit.

———The money invested in fixed deposit in a bank is not money payable on demand but money payable at a specified time and consequently Art. 60 cannot apply to a suit to recover the same. (*Sen and Niamatullah, JJ.*). BANK OF UPPER INDIA, LTD. *v.* ARIF HUSSAIN. **1930 A.L.J. 1157.**

—Art. 61—Consideration left with mortgagee.

———*Default of mortgagee—Starting point.*

Where a mortgagor leaves a specific portion of the consideration money with the mortgagee to pay off certain creditors, and the mortgagee fails to make such payments, in consequence of which the mortgagor to save his property, makes the payments himself, he can sue for damages. In the absence of proof that he has suffered any more damage, he is not entitled to any more than the amounts paid by him. A suit to recover such damages must be brought within the period prescribed by Art. 61 of the Limitation Act, and time commences to run from the date of actual payment and not from the date of mortgage. (*Banerji and Gokul Prasad, JJ.*). SARJU MISRA *v.* GHULAM HUSAIN. **63 I.C. 87 (All.).**

—Art. 61—Contribution.

———Under Art. 61 the period for recovery of a sum paid by the plaintiff for the use of the defendant is three years from the date when the money is paid. Therefore in a suit for contribution by a co-mortgagee against his co-mortgagee, plaintiff has to establish the date when payment was made by him towards the mortgage and thereby to satisfy the Court that his claim for recovery of that amount was within limitation. (*Gokaran Nath Misra and Raza, JJ.*). BHABHUTI *v.* GUR DASS. **99 I.C. 271=3 O.W.N. 968.**

———Article 61 is applicable to a suit for contribution by a partner of a firm who has paid the whole or more than his share of the amount due from all the partners. 19 All. 244, *Ref.* (*Abdul Raoof and Abdul Qadir, JJ.*). WALAITI RAM *v.* RAM KRISHNA. **72 I.C. 385=5 L.L.J. 310=A.I.R. 1924 Lah. 112.**

———Where plaintiff and defendant were jointly interested in redeeming a mortgage and plaintiff himself filed a suit for redemption and redeemed the mortgage and then sued the defendant for his share of the costs of the litigation and the redemption money,

Held, that in the absence of a finding of a contract to pay at the conclusion of a litigation, defendant's liability to pay cannot be postponed till the conclusion of the litigation. The suit for the recovery of a share of costs and money due for redemption is barred under Art. 61 or 115 if brought more than three years after payment. 3 C.L.J. 93, *Dist.* (*Newbould and Panton, JJ.*). SHAIK JAMAL *v.* SHAIKH CHAND. **70 I.C. 289=A. I. R. 1922 Cal. 79.**

———Plaintiffs and defendants were joint owners of a tank in a Municipality. As the tank was in an insanitary condition, the Municipality ordered the tank to be filled up. Plaintiffs filled up the tank,

LIMITATION ACT (1908), Art. 61—Contribution.

Held, that the liability of the defendants to contribute did not arise in successive fragments as plaintiffs paid money to the contractor from day to day; the liability arose when the tank was filled up and the contemplated benefit conferred. In such circumstances Art. 120 and not Art. 61 was applicable, and the time ran against the plaintiffs from the date of completion of the work. 25 Cal. 844, (P.C.), *Dist.* (*Mookerji, A.C.J. and Fletcher, J.*). UPENDRA KRISHNA MANDAL *v.* NABA KISHORE MANDAL. 62 I.C. 615=25 C.W.N. 813= A.I.R. 1921 Cal. 93.

——*A* was bound under an award to clear a certain canal and was entitled to recover a part of the expenditure from *B* at the beginning of the work. The suit by *A* to recover the amount from *B* is governed by Art. 61 as the clearance expenses were money paid by *A* for *B*. (*Fawcett, J.C. and Kennedy, A.J.C.*). TULSI DAS DULOMAL *v.* WADERAO ALLAHBUX. 60 I.C. 971=14 S.L.R. 219.

—Art. 61—Fine for mis-use of land by another.

——*Suit to recover.*

Where the defendant used the plaintiff's land without his permission for non-agricultural purposes and in consequence thereof the plaintiff had to pay fine to Government and the plaintiff sued the defendant for recovery thereof,

Held, that the suit is governed by Art. 120 and not 61. (*Macleod, C.J. and Shah, J.*). PARNAMACHAND CHANDIRAM MARWADI *v.* KASHINATH DEORAM LONARI. A.I.R. 1922 Bom. 257.

—Art. 61—Land Revenue.

——Where a registered sale-deed provided that the purchaser should pay the revenue on the land sold, but the vendor paid the revenue on behalf of the purchaser, and sued him for revenue paid,

Held, that Art. 61 should apply and not Art. 116. (*Devadoss, J.*). UKKARAN NAIR *v.* UKKARAN NAIR. 94 I. C. 1046=1926 M.W.N. 291= A. I. R. 1926 Mad. 633=51 M.L.J. 159.

—Art. 61—Money decree satisfied by another.

——*Suit for reimbursement.*

The discharge of a money-decree, which might be realized in execution by the sale of immovable properties of the judgment-debtor does not give a person making the payment a charge. The claim is personal claim. 26 Bom. 437, *Rel. on* and Art. 61, Limitation Act is applicable when the case cannot be brought under Art. 132. 26 Mad. 686, *Rel. on.* (*Kumaraswami Sastri and Reilly, JJ.*). MUTHUSWAMI KOVANDAN *v.* PONNAYYA KOUNDAN. 110 I.C. 613=1928 M.W.N. 398= 28 M.L.W. 182=51 Mad. 815= A.I.R. 1928 Mad. 820=55 M.L.J. 436.

—Art. 61—Mortgage debt paid by another.

——Where a person having no interest in the property pays money to liquidate a mortgage decree against the property, his claim to recover the amount is governed by Art. 61. (*Kendall, A. J.C.*). COLLECTOR SINGH *v.* MADARI LAL. 78 I.C. 738=A.I.R. 1925 Oudh 132.

——*L* purchased an oil-well subject to a mortgage in favour of *B* and right of pre-emption in favour of *N*. He made payments to the mortgagee *B* in part satisfaction of the mortgage-decree on the oil-well, such payments being necessary to save the oil-well,

Held, that *L* had a charge for the amounts paid, as against *N* who exercised his right of pre-emption as well as against persons claiming through *N*,

LIMITATION ACT (1908), Art. 61 — Suit to recover deposit under O. 21, R. 89, C. P. Code.

Held, further that Art. 132 applied and not Art. 61. (*Pratt and MacGregor, JJ.*). MA LON *v.* MA NYO. 79 I.C. 766=1 Rang. 714= A.I.R. 1924 Rang. 204.

—Art. 61—Principal and agent.

——A suit by an agent to recover money due to him from the principal on transactions entered into on behalf of the latter is governed by Art. 89 and not by Art. 61 of the Limitation Act. (*Case-law reviewed.*) (*Shadi Lal, C. J. and Abdul Qadir, J.*). BHAGWAN DAS *v.* MUTSADDI LAL. 31 P. L. R. 666.

—Art. 61—Puisne mortgagee paying prior mortgagee.

——Where the subsequent mortgagee himself pays the amount of the prior mortgage which the mortgagor is bound by law to pay, the case is governed by Art. 61 being money payable to the plaintiff for money paid for the defendant. A suit brought more than three years after such payment is barred. (*Sulaiman and Pullan, JJ.*). MOHAMMAD SHAFIQULLAH KHAN *v.* MOHAMMAD SANNIULLAH KHAN. 1930 A. L. J. 57= A. I. R. 1929 All. 943.

——A suit by a puisne mortgagee against the mortgagor to recover personally from him the amount paid by the puisne mortgagee to discharge a decree on a prior mortgage is governed by Art. 61 of the Limitation Act. (*Banerji and Gokul Prasad, JJ.*). BORA SHIB LAL *v.* MUNNI LAL. 63 I.C. 604=44 All. 67=19 A.L.J. 840= A.I.R. 1922 All. 153.

—Art. 61—Rent and taxes paid by vendor.

——In the absence of a contract to the contrary the liability of a vendee of property or the transferee of a lease to pay rents and charges arises only on the date of sale or transfer of the lease and not the date of contract of transfer. There is no distinction between the sale of immovable property and the transfer of a lease in this respect but where the transferee enters into possession on the date of contract, he is bound to pay the charges of such property in his possession, and if the transferor pays the same, he can recover them from the transferee. Section 69, Contract Act applies to such a case. The article of Limitation Act applicable to such a suit is Art. 61 and time runs from the date of payment. Madras S.A. 248 of 1916, *Diss. from*; A.I.R. 1924 Cal. 600; 3 C.L.J. 93; A. I. R. 1925 Cal. 1216; A.I.R. 1925 P.C. 105, *Dist.* (*Devadoss, J.*). SINTHAMANI CHETTI *v.* ARUNACHALAM CHETTIAR. A.I.R. 1927 Mad. 1060.

—Art. 61—Starting point.

——*Vendee undertaking to pay creditor—Failure to pay.*

Part of the consideration in case of purchase of a property was a sum of money to be paid by the vendee to the creditor of the vendor. The vendee failed to pay. On being sued by the creditor for the debt the vendor had to pay double the amount principal and interest included. In a suit by the vendor for compensation,

Held, the plaintiff's cause of action accrued to him on the date he was obliged to pay to his creditor the sum of money which the defendant was himself under an obligation to pay. (*Lindsay, J.*). BRIKANT PANDE *v.* PANDIT JAMNA DHAR. 70 I.C. 582=A.I.R. 1922 All. 409.

—Art. 61—Suit to recover deposit under O. 21, R. 89, C. P. Code.

——Until a sale is confirmed it does not transfer the interest of the judgment-debtor to the auction-

LIMITATION ACT (1908), Art. 61—Supurdar.

purchaser and, therefore, a deposit under O. 21, R. 89 by a purchaser of an equity of redemption after sale has been effected in execution of a mortgage-decree saves the right of redemption from coming to an end. A suit therefore to recover such amount deposited from the mortgagors is not covered by Art. 61, Limitation Act. 42 All. 517, *Rel. on.* (*Banerji and King, JJ.*). NAUBAT LAL *v.* B. MAHADEO PRASAD SINGH. **116 I.C. 297=51 All. 606=1929 A.L.J. 419=A.I.R. 1929 All. 309.**

—Art. 61—Supurdar.

———*Money expended to protect property—Claim for.*

There was a dispute between *A* and *B*, and *C* was put in charge of the property as a supurdar pending the determination of the right of *A* and *B*. After these rights were determined and *C* had restored possession. *C* was sued for their wages by two watchmen whom he had appointed to watch the standing crop. *C* paid up the decrees and instituted a suit against *A* and *B* for recovery of the money he had to pay to the watchmen,

Held, that the suit was governed by Art. 61 or Art. 120 and not by Art. 102. *C* was entitled to be reimbursed by *A* and *B*. The cause of action in favour of *C* arose when he paid up the decrees, and suit by him within three years of payment was in time. (*Srivastava, J.*). LACHMI NARAIN *v.* PUTTI LAL. **A. I. R. 1930 Oudh 420.**

—Art. 61—Surety.

———Where in a suit for recovery of money paid by plaintiffs on defendant's behalf the plaintiffs come into Court asserting that they had been obliged to pay the money as sureties and their whole cause of action is that they had been treated as sureties for defendant. Article 81 and not Art. 61 will apply. (*Le Rossignol and Campbell, JJ.*). KUNJ LAL *v.* GULAB RAM. **67 I.C. 365=55 P.L.R. 1922=A.I.R. 1921 Lah. 335.**

—Art. 62—Applicability.

———*Mortgagor's suit for amounts received by mortgagee.*

Article 62 contemplates a suit in which the plaintiff is entitled to obtain the whole of the money received as soon as it is received. Where a mortgagor receives a certain sum from Insurance Company, the property mortgaged being destroyed by fire, a suit for accounts by mortgagor is governed by Art. 120 and not by Art. 62 inasmuch as the mortgagee has a lien on the moneys he received and is entitled to retain those moneys until his mortgage is satisfied. (*Rutledge, C.J. and Brown, J.*). MA KYIN AIN *v.* A.R.M.A.L.A. CHETTYAR FIRM. **A.I.R. 1930 Rang. 197.**

———*When money is payable forthwith to plaintiff.*

Article 62 applies to suits falling under the category well known in English Law as "suits for money had and received." Such suits arise where money paid into the hands of the defendant is payable forthwith to the plaintiff. 40 Mad. 291, *Foll.* (*Heald and Otter, JJ.*). U SEN PO *v.* U PHYU. **120 I.C. 902=7 Rang. 540=A.I.R. 1930 Rang. 21.**

———*Undertaking to pay lawful, charges during management.*

Article 62 does not apply to transactions, in which the defendant is not under a mere duty to hand over the money which he received, but has other duties as well in respect of it. Where, therefore, under a partition deed it was arranged that the senior co-parcener and the minor should enjoy their share of the property jointly and as manager it was the duty of the senior co-parcener not merely to account for the money received, but to pay the kist and the other expenses as well, as to maintain the minor :

Held, that Art. 62 does not extend to such transaction ; the article applicable is Art. 120. 40 Mad. 291, *Foll.* (*Wallis, C.J. and Krishnan, J.*). VENKATA REDDI *v.* KUPPU REDDI. **61 I.C. 762=13 M. L.W. 260=A.I.R. 1921 Mad. 553.**

—Art. 62—Benami transaction.

———*Money received by benamidar.*

The money which the *benamidar* realises in the decree in his favour is money had and received for the beneficial owners. The mere fact that the defendant (the benamidar) could recover rent for a longer period by reason of his minority does not affect the question. Where the money could not have been realised for the full period claimed if the suit had been brought by true owner ;

Held, since the defendant chose to bring a suit for rent which was in reality payable to the plaintiff and he could obtain a decree for that rent by reason of his minority that does not disentitle the plaintiff from getting the money which has in fact been received by the defendant for the use of the plaintiff. 25 All. 62; 32 Cal. 527 and 37 All. 232, *Ref.* (*Banerji and Gokul Prasad, JJ.*). MAHABIR PRASAD *v.* MT. PARSANDI. **74 I.C. 939=45 All. 410=21 A. L. J. 345=4 L.R.A. Civ. 519=A.I.R. 1923 All. 532.**

—Art. 62—Condition for applicability.

———*Legal relationship essential.*

Although privity of contract is not necessary for the purposes of Art. 62, there must be some privity of a legally recognizable nature such as some knowledge of particular facts in the man who received the money or some mistake or ignorance of facts on the part of the man who paid the money or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and defendant. 41 Mad. 923, *Foll.* (*Shadi Lal, C. J. and Bhide, J.*). MT. SEWAI BAI *v.* WASU RAM. **118 I.C. 444=A.I.R. 1929 Lah. 290.**

———*Money should be due to plaintiff on the date of receipt—Legal relationship.*

The phrase "when the money is received" in the third column of Art. 62 of the Limitation Act shows that Art. 62 applies only to those cases in which on the date of the receipt of the money by the defendant, the receipt is by him, for the plaintiff's use, and does not apply to cases in which the money received by the defendant becomes by subsequent events, money received for the plaintiff's use; in an action for money had and received, there must be, as shown by the English decisions, some privity of a legally recognizable nature between the plaintiff and the defendant. 41 Mad. 923, *Ref.* (*Iqbal Ahmad, J.*). GULAB RAI *v.* TULSI RAM. **101 I.C. 322=A.I.R. 1927 All. 437.**

—Art. 62—Co-sharers.

———*Suit to recover excess collection by a co-tenant.*

Where there has been no division of shares between tenants, they must be regarded as tenants-in-common and where one tenant-in-common sues another tenant-in-common for the recovery of money received by him in excess of his share, the suit is governed by Art. 120 and not by Art. 62. S. C. No. 246 and 15 O. C. 397, *Dist.*; 37 All. 318 *Ref.*; 40 Mad. 291 ; A.I.R. 1922 Mad. 150 (F.B.).

LIMITATION ACT (1908), Art. 62—Co-sharers.

Foll. (*Wasir Hasan and Pullan, JJ.*). SURAJ NARAIN SINGH *v.* NARBADA PRASAD.
115 I.C. 99=4 Luck. 265=
5 O.W.N. 1122=A.I.R. 1929 Oudh 83.

——*To recover share of rent.*

Where by virtue of an arrangement some of the co-sharers have been realizing rent of joint immovable property for division among other co-sharers, the relationship between the latter and the former is that of an agent and principal; and a suit for realisation of the share of rent by the co-sharer is governed by Art. 69 and not Art. 62. 24 All. 27; A.I.R. 1923 P. C. 31 and A.I.R. 1922 Mad. 150 (F.B.), *Rel. on*; 24 Cal. 309; 32 Cal. 527 and A.I.R. 1924 All. 812, *Dist.* (*Zafar Ali and Jai Lal, JJ.*). MT. KISHEN DEVI *v.* BANWARI LAL.
111 I. C. 635=10 L.L.J. 355=
A. I. R. 1928 Lah. 688.

——*To recover share of rent.*

Article 120 and not Art. 62 or 48 or 49 or 109 applies to a suit by one co-sharer against another for a share of the rent collected by the latter, the rent being due in respect of land held by the co-sharers not separately but jointly. (*Sanderson, C.J. and Richardson, J.*). BHUBANESWAR BHATTACHARJEE *v.* DWARAKESWAR BHATTACHARJEE.
66 I.C. 876=34 C.L.J. 508=A.I.R. 1921 Cal. 77.

——*To recover share of rent.*

Where one lease is executed in favour of two persons reserving separate rents for their separate fields and one of the lessors recovers rent due, a suit by the other lessor for the recovery of his share against the co-lessor is governed by Art. 62 as the rent received by the lessor was received to the use of the plaintiff. (*Hallifax, A.J.C.*). GOPAL RAO *v.* AMBABAI. 59 I. C. 455=16 N.L.R. 182.

—Art. 62—Joint creditors.

——*Collection of debt by one—Suit for recovery of share.*

When after partition one brother is recovering outstandings originally due to the joint family there must be an implied contract of agency between one brother and the other and a suit by the other brother for rendition of accounts and recovery of his share of the joint outstandings is governed not by Art. 62 or Art. 120, but by Art. 89. 24 All. 27 (P.C.), *Rel. on*; 24 Cal. 309; A.I.R. 1921 Bom. 384; 32 Mad. 191, *Discussed*; A.I.R. 1922 Mad. 150 (F.B.), *Expl.* and *Dist.* (*Shadi Lal, C.J. and Skemp, J.*). BUR CHAND *v.* GANPAT RAI.
116 I. C. 327=30 P.L.R. 275=
A.I.R. 1929 Lah. 407.

——*Collection by one—Suit for share by another.*

Where certain money bonds remained joint property even after the partition in a Hindu joint family and one of them was realised by the defendants who were some of the separated members, five years before the plaintiffs, the other members, filed a suit for their share of the money realised.

Held, that Art. 62 and not Art. 127 applied as the latter does not apply to a family which has separated prior to the suit and that the suit was barred by limitation. (*Kanhaiya Lal, C. J.*). BHAGWAN DAS *v.* SUKHDEO KORIE.
75 I.C. 953=A.I.R. 1924 All. 812.

——*Money recovered by one heir—Others suing for their share.*

On the death of a Mahomedan his son, the defendant No. 1 obtained a certificate under the Succession Certificate Act for collection of debts due to the estate of the deceased. It was alleged on behalf of the plaintiffs, also the sons of the deceased that the defendant No. 1 realised all the

LIMITATION ACT (1908), Art. 62—Money paid for another.

debts due to the estate of the deceased but has not accounted for the moneys so realised and has not paid to the plaintiffs their share of the same. The plaintiffs therefore prayed for an account of these moneys and for recovery of their share thereof.

It was found that the moneys in question were last collected by the defendant No. 1 in December, 1909, and suit was not instituted till the 19th July, 1916.

Held, that Art. 62 applied and the suit was time-barred. (*C. C. Ghosh and Panton, JJ.*). ABEDUNNISSA BIBI *v.* ISUF ALI KHAN. 74 I.C. 1010=27 C.W.N. 941=50 Cal. 610=A.I.R. 1924 Cal. 142.

——*Collection of debt by a tenant-in-common—Suit for recovery of share by another.*

Where at a partition immovable property is divided, but the debts due to the family are kept joint in the name of one of the members to be realised by him and divided among all the members, all the members become tenants-in-common with respect to the debts. The member realising the debts must be considered as the agent and a suit by the members for the recovery of their share of the debts after their realisation would be governed by Art. 89 and not Art. 62.

Time would not begin to run until a demand was made and refused, or the member realising the debts showed his intention to hold the fund which he had collected against the other members. 24 Cal. 309, *Dist.* (*Macleod, C. J. and Fawcett, J.*). GABU *v.* ZIPRU. 59 I.C. 357=45 Bom. 313=
A.I.R. 1921 Bom. 384.

——Article 62 and not Art. 95 applies where one member of a family which has become divided collects a debt due to the family and keeps the amount and another member files a suit to recover his share. 6 Mad. 402; 25 M.L.J. 531; 32 Mad. 191 and 37 Mad. 381, *Foll.* (*Spencer and Ramesam, JJ.*). RAMALINGAM SERVAI *v.* SOLAI SERVAI.
69 I.C. 274=1921 M W.N. 539=
A.I.R. 1921 Mad. 283=41 M.L.J. 274.

—Art. 62—Joint dealings.

——Where two divided families have joint dealings managed by the eldest member, a suit for account against the manager is governed by Art. 89 and not by 62. (*Lord Phillimore.*) (MARLA) VENKANNA *v.* (MARLA) AGASTHIAH.
32 M.L.T. 86=27 C.W.N. 725=
A.I.R. 1923 P.C. 31 (P.C.).

—Art. 62—Legal representatives.

——Read in the light of S. 2, Art. 62 would include a claim against the legal representatives for money received for the plaintiffs used by them or their father through whom they derived there liability to be sued. A. I. R. 1922 Cal. 499, *Foll.* (*Dawson-Miller, C. J. and Foster, J.*). (MAHARAJATHIRAJ SIR) RAMESHWAR SINGH BAHADUR *v.* NARENDRA NATH DAS. 71 I.C.916=5 P.L.T. 355=
2 Pat. L. R. Civ. 208=A.I.R. 1923 Pat. 259.

——A suit to recover from the defendant as son and legal representative of the plaintiff's late pleader, a certain sum of money received or alleged to have been received by the plaintiff's pleader out of Court for payment to the plaintiffs is governed by Art. 62. (*Greaves, J.*). RAMHARI KAPALI *v.* ROHINI KANTA CHAKRAVARTY.
67 I.C. 943=35 C.L.J. 330=A.I.R. 1922 Cal. 499.

—Art. 62—Money paid for another.

——Sale of patni in a rent decree—Surplus withdrawn by a creditor of one patnidar—Sale subsequently set aside—Zamindar made to pay whole purchase-money—Suit lies by zamindar against the-

LIMITATION ACT (1908), Art. 62—Money paid for another.

creditor—Suit is governed by Art. 120 and not Art. 62. (*Duval, J.*). SHIBA KUMARI DEBI *v.* MT. DAKSHA BALA DASSI CHOWDHURANI.
110 I.C. 49=47 C.L.J. 369=A.I.R. 1928 Cal. 296.

——Article 62 is intended to apply to cases which in English law are described as suits for money had and received. Where after the sale of a putni under Bengal Regulation VIII of 1819 is cancelled by the Trial Court but pending an appeal by the zamindar, the purchaser of the putni pays rent to the zamindar to prevent a further sale under the Regulation and the appeal by the zamindar is subsequently dismissed, Art. 62 applies to a suit by the purchaser of the putni against the zamindar for the sum paid as rent to him. Article 97 does not apply because at the time the money was paid there was no existing consideration. (*Mookerjee, Ag. C. J. and Fletcher, J.*). JANAKI NATH *v.* BEJOY CHAND. **60 I. C. 698=64 I. C. 315=33 C.L.J. 366=26 C.W.N. 271=A.I.R.1921 Cal. 596.**

—Art. 62—Money received by another.

——*Principle.*

The form of suit indicated by this article is applicable where the defendant has received money which, in justice and equity, belongs to the plaintiff, under such circumstances as in law renders the receipt of it a receipt by the defendant to the use of the plaintiff. In the words of Sir Lawrence Jenkins, the article most clearly approaches the formula of "money had and received by the defendant for the plaintiff's use if read as a description and apart from the technical qualifications imported in English law and procedure." A. I. R. 1918 P.C. 151; 32 Cal. 527; 2 Cal. 393; 37 Mad. 381, *Foll.* (*Mukerjee, Walmsley and Pearson, JJ.*). BIMAN CHANDRA DATTA *v.* PROMOTHO NATH GHOSE. **68 I. C. 94=49 Cal. 886=36 C.L.J. 295=A.I.R. 1922 Cal. 157.**

—Art. 62—Mutawalli.

——A mutawalli or custodian of the endowed property of the temple may, in a general way, be described as a "trustee"—a person in a position of trust with respect to the administration of the temple properties—but no property is vested in him upon trust for any specific purpose. Therefore his position is not that of the express trustee referred to in S. 10, Limitation Act. Whatever sums, therefore, he has received for and on behalf of the idol installed in the temple can be treated only as sums received to the use of the idol, and a suit to recover the money so received is governed by Art. 62. A.I.R.1922 P.C. 123, *Foll.* (*Mears, C.J. and Lindsay, J.*). JAISH MADHO ACHARIYAJI *v.* THAKUR SRI GAT ASHRAM NARAINJI. **108 I. C. 452=50 All. 265=25 A.L.J. 1047=A.I. R. 1928 All. 134.**

—Art. 62—Mutual dealings.

——Where there are transactions between two merchants on each side creating independent obligations on the other, and the balance is shifted from one side to the other, the account is a mutual, open and current account. The proper article to apply to such a case is Art. 85 and not Art. 62. A.I.R. 1923 Bom. 82 and 22 Bom. 606, *Ref.* (*Marten, C.J. and Patkar, J.*). APPA DADA PATIL *v.* RAMKRISHNA VASUDEO JOSHI. **121 I.C. 581=53 Bom. 652=31 Bom. L.R. 1187=A.I.R. 1930 Bom. 5.**

—Art. 62—Official Receiver, suit by.

——An application by an Official Receiver, to a Court which had attached the property of the insolvent at the instance of a creditor, praying that

LIMITATION ACT (1908), Art. 62—Refund of consideration.

the property may be treated as property vested in the Official Receiver and as therefore not available to the attaching creditor to satisfy exclusively his claim under the decree, is not claim petition which falls within the class of claims under the C.P. Code. His claim (when the vesting in him was after attachment) is a statutory claim which he is entitled to make under S. 34 of the Provincial Insolvency Act, when the claim is disallowed and the Official Receiver brings a suit to enforce the claim neither Art. 11 nor Art. 13 of the Limitation Act apply to such a suit. The suit is clearly within time under Art. 62. (*Sadasiva Iyer and Spencer, JJ.*). OFFICIAL RECEIVER, SOUTH MALABAR *v.* VEERARAGHAVAN PATTAR.
69 I.C. 326=45 Mad. 70=30 M.L.T. 77=14 M.L.W. 334=1921 M.W.N. 775=A.I.R. 1922 Mad. 189=41 M.L.J. 334.

—Art. 62—Payment under mistake.

——Article 96 should be preferred to Art. 62 in a suit to recover money paid by the plaintiff to the defendant by mistake in excess of the amount legally due. (*Dawson-Miller, C.J. and Foster, J.*). TOFA LAL DAS *v.* SYED MOINUDDIN MIRZA.
93 I.C. 129= 4 Pat. 448=7 P. L. T. 431=1926 P.H.C.C. 345=A.I.R. 1925 Pat. 765.

—Art. 62—Payment under protest.

——*Bombay Land Revenue Code, S.* 153—*Starting point.*

Although the fact that a demand for increased payment might give rise to a cause of action to enable the plaintiffs to seek for a declaration that that particular demand was unauthorised, it does not affect their right to file a suit in which the relief claimed is on a different cause of action arising from the payment under protest made by them on the demand under S. 153 of the Bombay Land Revenue Code. (*Macleod, C. J. and Coyajee, J.*). SURYAJIRAO GANPATRAO *v.* SIDHANATH DHONDDEO GARUD. **89 I. C. 65=27 Bom. L. R. 645=A.I.R. 1925 Bom. 435.**

—Art. 62—Principal and agent.

——One *B* and *Co.*, were managing agents for two companies, *J* and *U*. It was no part of the business of any of these two companies to lend money or to act as bankers. There was at one time more money in *J Co.* and this money *B* and *Co.* employed to continue the business of the *U Co.* The directors of either company were ignorant of this transaction,

Held, that the *U Co.* is liable for the money so employed either for having received the money through their agents rightfully and applied to their purposes or for having received it wrongfully by secret and deceitful misapplication by their own agents. In the latter case the money is recoverable from them as money had and received to the use of the true owner and time begins to run from the date of actual payment. (*Walsh, A.C.J., Banerji and Mukerji, JJ.*). UPPER INDIA RICE MILLS, LTD. *v.* JAUNPUR SUGAR FACTORY, LTD.
49 All. 520=25 A.L.J. 277=A.I.R. 1927 All. 161 (F.B.).

—Art. 62—Refund of consideration.

——*Void agreement—Starting point.*

The period of limitation for a suit for refund of advance paid under a void agreement is three years from the date when the agreement is discovered to be void and ordinarily the time from which limitation will start is the date of the agreement in the absence of special circumstances. When the agreement is one forbidden by law, the plaintiff must

LIMITATION ACT (1908), Art. 62—Refund of consideration.

be deemed to have been aware of the fact when he entered into it. (*Phillips, J.*). AURYAPRABHAKARA RAU *v.* GUMUDU SANYASI. 88 I. C. 557= 1925 M.W.N. 400=A. I. R. 1925 Mad. 885= 48 M.L.J. 598.

——*Void agreement—Starting point.*

Article 62 of the Limitation Act governs a suit for refund of consideration for the mortgage of occupancy land because the contract is *ab initio* void. Such suit must therefore be brought within three years of the date of the deed. (*Baker, J. C.*). OMRAO *v.* RAMADHAR. 81 I.C. 873= A.I.R. 1925 Nag. 130.

—Art. 62—Refund of purchase money.

——If there is covenant express or implied indemnifying party suffering against loss caused by defect in title of executant of document, Art. 116 applies, otherwise Art. 62 or Art. 97. 30 All. 402; 13 A.L.J. 669 and A. I. R. 1929 All. 293, *Ref.* (*Dalal, J.*). BAGESWAR TEWARI *v.* BIKRAMAJIT SINGH. A.I.R. 1930 All. 785.

——*Vendor failing to make out clear title.*

When after payment of the purchase money to the vendor, the vendor was unable to give title and the purchasesr found himself unable to obtain possession,

Held, that from the time when he found himself unable to obtain possession, he had a right to sue for his purchase-money upon a failure of consideration and that the case fell within Art. 97 and that in any case it must fall either within Art. 97, or 62. 19 Cal. 123 (P. C.) and 30 All. 402 and 38 Mad. 1171, *Foll.* (*Walsh and Iqbal Ahmad, JJ.*). KUNDAN LAL *v.* BISHESHAR DAYAL.

103 I.C. 165=25 A.L.J. 841=A.I.R. 1927 All. 734.

——A sale-deed contained a clause that if the minor nephew of the vendor on attaining majority raised any objection to the sale of his share the vendor would make over to the vendee an equal area out of his own land. Mutation of the minor's share of the land was refused in 1907 on objection by the minor's mother; plaintiff sued for declaration that he was owner of the whole land purchased by him. His suit was dismissed, so far as the minor's share was concerned in 1911. In 1917 the minor, having attained majority mortgaged his share to one *G*, who dispossessed the plaintiff from the land in 1919. Plaintiff brought a suit to enforce the indemnity clause contained in his deed of sale in the alternative for Rs. 1,000, being the value of the minor's share :

As regards the claim for recovery of the purchase money, it was governed either by Art. 62 or 97 of the Limitation Act. If the claim was governed by Art. 62, it was barred by time inasmuch as limitation began to run from the date of the sale. If the claim was governed by Article 97, it was equally barred by time, inasmuch as limitation began to run when the plaintiff's title was first denied in 1907 or at the latest when it was declared in 1911 that he had no title. (*Martineau, J.*). TAPAI MAL *v.* JHANDOO. 62 I.C. 953 (Lah.).

—Art. 62—Registered contract.

——*Void* ab initio—*Applicability of the relevant articles.*

If the sale is by a registered document containing covenants as to title and quiet enjoyment and if possession has passed to the vendee the suit by purchaser for return of purchase money is governed by Art. 116, whether the sale deed is void or voidable. Cases of this nature fall under Art. 62, if the transaction is void *ab initio* and under Art. 97

LIMITATION ACT (1908), Art. 62—Suit against Bank.

if the consideration has failed wholly or partially and are covered by Art. 116 where the document containing covenant of title happens to be registered which has the effect of extending three years to six years. *Case-law referred.* (*Kalumal, A.J.C.*). ABDUL RAHIM, FATEH MOHAMED *v.* KADU. 118 I.C. 203=A.I.R. 1930 Sind 12.

——An action for breach of duty declared by S. 108 of the Transfer of Property Act is regulated by Art. 116 of the Limitation Act if the lease is in writing registered, the obligation being deemed to be embodied in the contract, and not by Art. 62 or Art. 97. 19 Cal. 123 and 26 Bom. 750, *Dist.* (*Das and Scroope, JJ.*). NABIN CHANDRA GANGULI *v.* MUNSHI MANDER. 101 I.C. 707= 6 Pat. 606=8 P.L.T. 590=A.I.R. 1927 Pat. 248.

——*Failure of defendant to pay.*

The plaintiff had to satisfy a mortgage. The defendant undertook by writing registered to pay the mortgage amount to the mortgagee and to procure an indemnity or freedom of the mortgaged property from all liability and the plaintiff sold to him in consideration of that contract and of the promise to pay a house and kotha. The defendant did not fulfil his undertaking and consequently the mortgagee sued for and obtained a preliminary decree. The plaintiff induced the mortgagee to accept a renewal of the mortgage and include in the consideration thereof the decretal debt and thus discharge him from the liability and sued defendant for compensation for breach of the contract,

Held, that the suit was governed by Art. 116 and not Art. 111 or Art. 62. (*Kinkhede, A. J. C.*). VINAYAK RAO *v.* SHRIPATRAO. 97 I.C. 185= 9 N.L.J. 107=A. I. R. 1926 Nag. 429.

—Art. 62—Sale of goods by Railway.

——*Suit to recover surplus sale proceeds.*

Where the Railway Company has sold the goods in exercise of the powers conferred by S. 56 of the Railways Act, a suit by the consignor to recover the surplus sale proceeds from the Railway Company is governed by Art. 62 and not Art. 31. Such a suit is entirely different from a suit for compensation for non-delivery of the goods. (*Oldfield and Ramesam, JJ.*). TARABCHAND *v.* M. & S. M. RY. CO. 62 I.C. 742=44 Mad. 823= 13 M.L.W. 693=1921 M.W.N. 422= 30 M.L.T. 21=A.I.R. 1921 Mad. 362= 41 M.L.J. 205.

—Art. 62—Shebait.

——Where the defendants collected rent and profits for the benefit of an idol in a Hindu temple which was a religious endowment and of which defendants were shebaits, and the money received by defendants belonged to the idol and was payable to him,

Held, that to suit for accounts against a shebait Art. 62 applied. A.I.R. 1928 All. 134, *Foll.* (*Sen and Niamatullah, JJ.*). RANGACHARYA *v.* GURU REVTI RAMAN ACHARYA. 114 I.C. 734= 1929 A.L.J. 229=A. I. R. 1928 All. 689.

—Art. 62—Suit against Bank.

——Where a Bank holding Government Paper held in trust for the plaintiff of which trust it had constructive notice, sold it and parted with the sale proceeds, and the plaintiff sued the Bank for recovery of the sale proceeds with interest,

Held, that the suit is either one for conversion (Art. 48), or for money had and received to the

LIMITATION ACT (1908), Art. 62—Uncertified payment.

plaintiff's use (Art. 62). (*Macleod, C.J. and Shah, J.*). BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. **67 I.C. 761=24 Bom. L. R. 513= A. I. R. 1923 Bom. 155.**

—Art. 62—Uncertified payment.

———Where there is a mortgage decree, a payment made out of Court after the preliminary decree and before the final decree should be brought into account when the final decree is passed. But if this is not done that money becomes money in the hands of the mortgagee to the use of the mortgagor. A.I.R. 1922 All. 383, *Cons.* (*Walsh and Banerji, JJ.*). MAHBUB ALI *v.* MUHAMMAD HUSSAIN. **104 I.C. 419=25 A.L.J. 823= A.I.R. 1927 All. 710.**

—Art. 62—Unregistered association.

———*Suit for return of subscription.*

Where an association consists of more than 20 persons but is not registered and the members bring a suit for the return of subscription money paid to the promoter after conversion of the property of the association into cash into which the said money is changed such suit is governed by Art. 120 and not by Art. 62 for such money is not received by the promoter for the use of the members. (*Heald and Otter, JJ.*). U SEIN PO *v.* U PHYU. **120 I.C. 902=7 Rang. 540= A.I.R. 1930 Rang. 21.**

—Art. 62—Wrongful appropriation.

———*J* sued the son of one *H* for an account of the produce of certain fields for some years. He alleged that *H* retained the produce of the fields during these years on his behalf,

Held, that Art. 62 or Art. 89 would govern the suit. (*Macnair, A. J. C.*). LAL SINGH *v.* JIWANRAM. **112 I.C. 126=A. I. R. 1928 Nag. 256.**

———A suit to recover offerings of a shrine from their wrongful appropriator is governed by Art. 62. 41 Mad. 923; A.I.R. 1923 All. 532 and A.I.R. 1922 Cal. 157, *Appl.* (*Martineau, J.*). NIHAL SINGH *v.* SECY. OF GURUDWARA. **92 I.C. 731= A.I.R. 1926 Lah. 228.**

—Art. 63—Interest on mortgage money.

———Where a deed of further charge provided that the interest will be paid year by year; in case of default it will be added to the principal and compound interest will be charged; that the mortgagee might realise the interest every year by suit or might have it added to the principal and that at the time of redemption or foreclosure of a previous mortgage the total interest due would be deemed to be a separate item which the mortgagee would be entitled to recover from the person and other property of the mortgagees,

Held, that the deed gave the plaintiff an option either to sue for his interest year by year or to allow it to be compounded and to sue for it at the time of redemption or foreclosure of the previous mortgage, and therefore, the claim for interest at the time of a suit for foreclosure would not be barred by limitation, nor was a suit for the interest due along with a suit for foreclosure premature. (*Daniels and Lyle, A.J.Cs.*). PRAG DIN *v.* BHAGWATI SAHAI. **66 I.C. 687= 8 O.L.J. 418=A.I.R. 1921 Oudh 193.**

—Art. 64—Accounts stated.

——— *Chithas—Separate debts.*

Chithas having no reciprocal debits and credits but consisting of only one-sided debts taken by the defendants from the plaintiff cannot be said to be "accounts stated" within Art. 64. Each of the items is, a separate debt in itself and each of them will be barred on different dates. (*Courtney-Terrell, C.J. and Jwala Prasad, J.*). DEORAJ *v.* INDRASAN. **120 I.C. 470=10 P.L.T. 169= 8 Pat. 706=A.I.R. 1929 Pat. 258.**

LIMITATION ACT (1908), Art. 64—Applicability.

———*Essentials for applicability.*

A settlement in order to constitute a fresh cause of action in law must be a settlement of a mutual, current and open account, *i.e.*, a settlement in which both parties coming together set off their mutual rights and liabilities and arrive at a particular figure as the result of such set off. Also, under Art. 64, the settlement must be in writing and signed by the defendant or his duly authorized agent. (*Srinivasa Aiyangar, J.*). ASIRVADA NADAN *v.* VEDAMUTHU NADAN. **86 I. C. 942= A.I.R. 1925 Mad. 1147.**

———*What constitutes.*

An account stated implies cross demands and it is the mutual surrender of these cross-demands that creates the new contract when an account is stated between the parties. In the absence of any cross demands there is nothing to take the settlement of account out of the ordinary rule. (*Das and Ross, JJ.*). RAM BAHADUR SINGH *v.* DAMODAR PRASAD SINGH. **60 I.C. 514= 6 P.L. J. 121=2 P.L.T. 308=A.I.R. 1921 Pat. 29.**

———*Effect of.*

An "account stated" does not extinguish the original debts on which the account is based. Therefore, it is open to the creditor to base his suit for the recovery of debts either on the "account stated" or on the original contract.

The Limitation Act does purport to deal with causes of action. (*Jwala Prasad, A C.J. and Das, J.*). BHATU DAS *v.* MUSSAMMAT BIBI IZZATUN NISHA. **63 I.C. 280 (Pat.).**

—Art. 64—Adjustment recorded in account books.

———Credit account of one *D* with *K* was adjusted; balance was struck and the same was signed by *D*. In a suit by *K* for the recovery of the payment,

Held, the balance struck and accepted at the conclusion of the accounts was novation of contract and implies a promise to pay and therefore gave a fresh period of limitation under Art. 64. (*Broadway and Harrison, JJ.*). KAHAN CHAND-DULARAM *v.* DAYARAM AMRIT LAL. **115 I.C. 764=10 Lah. 745=30 P.L.R. 240= A.I.R. 1929 Lah. 263.**

———The entry in the plaintiff's *bahi* signed by the defendants ran as follows:—"We have struck a debit balance against ourselves of Rs. 4,017-5-0 on account of advances and losses of every kind; interest to pay at the rate of Re. 0-7-6 per cent."

Held, the entry is an account rendered adjusting the relations of the parties and is a promise to pay, and the suit therefore falls under Art. 64, the time under which is enlarged to 6 years by Punjab Limitation Act. Article 106 does not apply to the suit as this suit is not for an account, *i.e.*, an unascertained share of the profits of a dissolved partnership. (*Le Rossignol and Martineau, JJ.*). NAND LAL *v.* PARTAB SINGH. **69 I.C. 502=. 3 Lah. 326=A.I.R. 1922 Lah. 425.**

—Art. 64—Applicability.

———*Account kept in terms of grain.*

Even if it were conceded that in order to bring a suit within the purview of Art. 64, it is not necessary to show that there have been cross or reciprocal demands between the parties, the article

LIMITATION ACT (1908), Art. 64—Applicability.

can only apply where the money found to be due is a definite sum entered in the account books and not where account is kept in terms of grain. (*Harrison and Zafar Ali, JJ.*). RAM *v* GAMAN RAM.
82 I.C. 91=A.I.R. 1923 Lah. 645.

——Where there was a current account and a mutual one, and the plaintiffs had claims against the defendants for money advanced plus interest and the defendants could set off, against those claims, their share of any profits made in the transaction in which the parties had a common interest, but the account was not open and current at the time of the suit and the account had been closed and had been settled by the striking of a balance.

Held, the article applicable is Art. 64 which applies to a suit for money payable for money found to be due on accounts stated. (*Le Rossignol and Abdul Qadir, JJ.*). FIRM GURUDAS RAMKOTURAM *v.* BHAGWAN DAS. 68 I.C. 815=A.I.R. 1922 Lah. 182.

—Art. 64—Effect of adjustment of accounts.

——Where an account stated comprises items on both sides and a balance is deducted thereon it being always in favour of one party and not shifting on one party or the other that balance represents the amount of liability for future and is recoverable within three years from the statement of account although some of the earlier items in the account may have been already time-barred. (*Kinkhede, A.J.C.*). SITARAMSA *v.* AMIR BAX.
106 I.C. 53=A.I.R. 1928 Nag. 127.

—Art. 64—Money due on book accounts.

——Plaintiff sued defendant for a sum Rs. 1,600 due as principal and interest on book accounts. It was alleged that defendant had struck a balance in favour of the plaintiff for Rs. 756-14-0 and that he had since taken a further sum of Rs. 57 and these items together with interest accrued due amounted to a total of Rs. 1,600.

The accounts on record were not mutual, open and current and there were no reciprocal demands between the parties.

Held, that Art. 85 does not apply but that the Article applicable is either 57 or 64. (*Broadway and Moti Sagar, JJ.*). NANAK SINGH *v.* MIHAN SINGH. 4 L.L.J. 69=A.I.R. 1922 Lah. 204.

—Art. 64—Partnership.

——*Suit on accounts reciting defendants credits and debits.*

Plaintiffs and defendants were partners in certain transactions and all accounts relating to these transactions were entered either in the books of the commission agents or in those of defendants. After examining the accounts on 3rd August, 1920 an entry was made in the books of the plaintiffs in two columns. On the credit side was shown the plaintiff's share of the profits. On the debit side was shown the plaintiff's share of loss incurred. This was followed by a writing in defendant's own hand to the effect that the above mentioned accounts were correct as having been arrived at as the plaintiff's share of the profit after division.

On 15th June, 1925 the plaintiffs instituted a suit against the defendants for recovery of the sum due on foot of this entry.

Held, that the suit was within time, the Article applicable being 64 and Art. 106 had no application to the case. A.I.R. 1922 Lah. 425, *Foll.* (*Tek Chand, J.*). JAI RAM SINGH *v.* SARDARI MAL.
108 I.C. 600=29 P.L.R. 219=A. I. R. 1928 Lah. 459.

LIMITATION ACT (1908), Art. 65—Registered bond.

—Art. 64—Principal and agent.

——Even in a suit by commission agent, where the accounts were stated and balance struck, Art. 64 applies and not Art. 85. (*Addison, J.*). KARAM CHAND SANT RAM *v.* DAYANAND DAMODAR DAS. 100 I.C. 874=A.I.R. 1926 Lah. 51.

——A suit to recover the losses alleged by the plaintiffs to have been sustained by them in certain dealings in some articles of trade which they undertook as commission agents on behalf of the defendants is governed by Art. 83 and not by Art. 64. (*Campbell, J.*). MUNSHI RAM *v.* BHAGWAN DAS. 92 I.C. 595=7 L.L.J. 596=27 P.L.R. 32=A.I.R. 1926 Lah. 152.

—Art. 64—Stamped and signed Hatchitta.

——A suit on a *Hatchita* stamped and signed by the debtor, containing a statement of adjustment of accounts and consisting in itself a distinct and unqualified promise to pay the amount found due on adjustment is governed by Art. 115 and not by Art. 64. In every case where Art. 64 is made applicable there need not be always a reciprocity of demands. (*C. C. Ghose and Panton, JJ.*). SARIFUN MANDALIN *v.* FERADOUL KHATUN.
76 I. C. 603=A.I.R. 1923 Cal. 578.

—Art. 65—Debt payable in kind.

——A claim for recovery of a debt payable in kind falls under Art. 65 or 115 and not under Art. 120. (*Chevis and Broadway, JJ.*). MUHAMMAD DIN *v.* SOHAN SINGH. 65 I.C. 691=4 L.L.J. 268=A.I.R. 1922 Lah. 271.

——The limitation for a suit for recovery of a debt in kind payable in kind is three years and not six, and a claim for such debt cannot be combined with that for the money so as to make the longer period of limitation govern the whole claim by virtue of a mere conversion or valuation in cash entered in the plaintiff's account book. *Mengha* v. *Hassu*, 41 P. R. 1918, *Foll.* (*Broadway and Harrison, JJ.*). LABH SINGH *v.* RUR CHAND TULSI RAM. 4 L.L.J. 64=A.I.R. 1922 Lah. 122.

—Art. 65—Further charge.

——*Redemption of prior charge—Starting point.*

Where money under a further charge was payable at the time of redemption of the prior mortgage and the mortgage was redeemed under a compromise leaving the right to recover the money under the charge unaffected, a suit for recovery of the money can be brought within three years of the redemption. 3 O.L.J. 714, *Foll.* (*Gokaran Nath Misra, J.*). BRAHMAJIT SINGH *v.* DWARKA SINGH. 99 I.C. 466=3 O.W.N. 976=A.I.R. 1927 Oudh 83.

—Art. 65—Registered bond.

——*Bond debt—Debt due at once if default made—Creditor's option.*

Where a debt incurred on a registered simple bond was to be paid within seven years, but on default to pay interest consecutively for two years it was to become payable at once and a default was made,

Held, that the bond was not a 'single' bond of that there was no 'specified day of payment' that therefore the article that applies for a suit on the bond is not Art. 66 but Art. 80. Where such a condition exists the question is not one of waiver but of a pure contract and the creditor is entitled to adopt either of the two alternatives expressly contemplated by the bond. The original promise to pay the debt within seven years, gave another remedy to the creditor to enforce at the end of that period. The failure to sue within time from the

LIMITATION ACT (1908), Art. 65—Settlement of liquidated damages.

default does not bar the second remedy. 16 O.C. 45, *Doubted* but *Foll.* (*Wazir Hasan, A.J.C.*). HARI LAL *v.* THAMMAN LAL. **70 I.C. 85= 9 O.L.J. 416=26 O.C. 121=A.I.R. 1923 Oudh 19.**

—Art. 65—Settlement of liquidated damages.

———*Starting point.*

In suit for damages for breach of a contract where parties have settled the amount of liquidated damages, prior to the date of the performance of the contract, limitation runs from the time originally fixed for its performance and not from the date of the settlement regarding the liquidated damages. (*Jai Lal, J.*). NAND LAL LAJPAT RAI *v.* RAMJI DAS DWARKA DAS. **99 I.C. 591= A.I.R. 1927 Lah. 122.**

—Art. 65—Starting point.

———A co-sharer sold lands to the plaintiff pending partition proceedings, and agreed in the sale-deed itself that in the event of his not getting the land to his share in the said partition proceedings, he would pay compensation to the plaintiff. The vendor was allotted at the partition a less area than the area sold and the plaintiff sued for compensation,

Held, that Art. 65 along with Art. 116 applied to the case and that time began to run against plaintiff from the date when the vendors were finally allotted a less area. (*Martineau and Brasher, JJ.*). RUKAN DIN *v.* HASSAN DIN. **72 I.C. 897= A.I.R. 1923 Lah. 23.**

———Where defendant agreed to give half of certain lands to plaintiff who was to help him in recovering the same from third persons, and the plaintiff sued the defendant, thereon after the recovery of the lands,

Held, limitation ran from the date of refusal of defendant to give the plaintiff half the land recovered. (*Prideaux, A.J.C.*). SHIRAM *v.* BABAJI. **71 I.C. 40=A.I.R. 1923 Nag. 47.**

—Art. 66—Personal covenant in mortgage.

———Where upon a sale of the mortgaged property under a mortgage decree obtained in a suit on a registered mortgage-deed, there is a deficiency, the period of limitation to recover the same under a personal covenant in the said deed is six years under Art. 116 and not 3 years under Art. 66. A.I.R. 1926 P.C. 56, *Dist.* and *Case-law considered.* (*Coutts-Trotter, C.J., Kumaraswami Sastri and Walsh, JJ.*). RATNASABAPATHY CHETTIAR *v.* DEVASIGAMONY PILLAI. **116 I.C. 817= 52 Mad. 105=29 M.L.W. 143= A.I.R. 1929 Mad. 53=56 M.L.J. 10 (F.B.).**

———In pursuance of a mortgage-decree, mortgaged property was sold, but the net proceeds of the sale were found to be insufficient to pay the amount due under the decree. Steps were taken to get a decree prepared under O. 34, R. 6, for the balance of the amount decreed to be recoverable from the judgment-debtor otherwise than out of the property sold. The suit on mortgage was within time for the relief on personal covenant.

Held, that the proceeding was merely working out the mortgage-decree and no question of limitation arose. And even if governed by the Limitation Act the decree was merely supplemental and if the suit was in time there can be no plea of limitation. (*Wazir Hasan and Gokaran Nath Misra, JJ.*). ABDUL RASHID *v.* MUL CHAND. **114 I.C. 769=5 O.W.N. 1094= 4 Luck. 237=A. I. R. 1929 Oudh 59.**

———A suit on a personal covenant in a mortgage deed is governed by Art. 116 and not by Art. 66 and

LIMITATION ACT (1908), Art. 66—Administration bond.

the period of limitation is 6 years and not 3 years. 12 I.A. 12; 15 Pat. 585 (P.C.), *Expl.* and *Dist.*; 44 I.A. 65, *Appl.* and *Case-law referred to.* (*Kumaraswami Sastri and Reilly, JJ.*). CHENGALAMMA GARU *v.* VEERARAGAVA NAIDU. **28 M.L.W. 624=1928 M W.N. 873= A. I. R. 1928 Mad. 1124=55 M.L.J. 506.**

———Article 66 applies to claims based on a single bond. A single bond means a bond merely for payment of a certain sum of money without any condition in or annexed to it. A mortgage-deed which contains a covenant making the mortgagor personally liable cannot be considered to be a single bond within the meaning of Art. 66. Claim based on such a mortgage-deed is governed by Art. 116 and not by Art. 66. 8 O. C. 77 and 29 Cal. 654, *Rel. on.* (*Gokaran Nath Misra and Srivastava, JJ.*). INDRA BAHADUR SINGH *v.* KHAIRATI LAL. **113 I.C. 483=5 O.W.N. 836= 4 Luck 107=A.I.R 1928 Oudh 465.**

———*Suit for deficiency.*

Where a mortgagee sues on a personal covenant for any deficiency in the realization of the mortgage debt out of the mortgaged properties, the claim is barred in three years, it being governed by Art. 66 and not Art. 132, A.I.R. 1926 P.C. 56, *Foll.* (*Raza, J.*). RAM PRASAD *v.* GURPATRI. **4 O.W.N. 1049=A.I.R. 1927 Oudh 567.**

—Art. 66—Personal decree against mortgagor.

———Where in a suit based upon a registered mortgage executed by the manager of a joint Hindu family, the mortgage prays for an alternative relief that in case the mortgaged property be not liable for payment of the mortgage debt, he should be given a personal decree the limitation for such a relief is governed by Art. 116 and not by Art. 66. (*Case-law discussed.*) (*Gokaran Nath Misra and Srivastava, JJ.*). JAI INDRA BAHADUR SINGH *v.* KHAIRATHI LAL. **113 I.C. 489=5 O.W.N. 836= 4 Luck. 107=A.I.R. 1928 Oudh 465.**

—Art. 66—Principal and surety.

———Where a bond which was executed on by 2 persons one as debtor and the other as surety,

Held that the Article applicable was Art. 66 the suit being certainly one on a single bond executed by 2 persons with a day specified for payment and that the suit was in time as the period of 3 years under Art. 66 is extended to 6 years by the Punjab Loans Limitation Act. 105 P.R. 1919, *Dist.* (*Campbell and Zafar Ali, J.*). NIHAL CHAND *v.* KHUDA BAKHSH. **76 I.C. 150=A.I.R. 1924 Lah. 534.**

—Art. 67—Balances struck in accounts.

———*Punjab Act I of* 1904.

Balances struck mentioning that interest is payable at the Saucara rate are bonds and not mere acknowledgments and period of limitation for suit on basis of balances is six years. (*Martineau and Moti Sagar, JJ.*). NARAIN DAS *v.* MIRAN BAKHSH. **84 I.C. 524=5 Lah. 406= 6 L.L.J. 595=A.I.R. 1925 Lah. 75.**

—Art. 67—Void mortgage.

———Where a house was mortgaged while under attachment, a suit by mortgagee to enforce the personal security is governed by Art. 67, the mortgage being void altogether. Article 97 does not apply to such a case. (*Shadi Lal, C.J.*). GHULAM MULTAZHA KHAN *v.* FAZAL ILAHI KHAN. **27 P.L.R. 801=A.I.R. 1927 Lah. 101.**

—Art. 68—Administration bond.

———*Specific breach—Starting point.*

Where an administration bond contains several conditions, a breach of each one of the conditions

LIMITATION ACT (1908), Art. 68—Administration bond.

gives rise to a course of action and should therefore be taken to be the starting point of limitation in the case of a suit based on that particular breach. Ordinarily, the administrator's work may be said to be completed when he files his final accounts showing how he has dealt with the estate and these accounts have been accepted by the Court; limitation will then begin to run. But it very often happens that there is litigation pending against the administrator and, in such a case the administrator (and consequently his surety or sureties) cannot be absolved until the close of each litigation. 33 All. 414, *Diss.*; 8 L. B. R. 99 and 17 M. L. T. 61, *Foll.*; 12 B. L. T. 225, *Expl.* (*Robinson, C. J. and May Oung, J.*). MAUNG SAN U *v.* MAUNG KYAN MYE. 76 I.C. 802= 1 Rang. 463=A.I.R. 1924 Rang. 68.

——A suit on an administration bond is governed by Art. 68, but so long as the administration is incomplete, any breach of the bond gives a fresh starting point for limitation. (*Brown, A. J. C.*). MA MYO LIM *v.* MA PWA. 4 U. B. R. 22= A.I.R 1921 U. B. 25.

—Art. 73—Exclusion of time.

——So long as there was no legal impediment to the filing of the suit earlier, no time can be excluded under S. 14 and the third column of Art. 73 operates. (*Ramesam and Wallace, JJ.*). MOLLAPUDI *v.* MAGANTI. 100 I.C. 776=50 Mad. 417= 25 M.L.W. 426=1927 M.W.N. 160= 39 M.L.T. 116=A.I.R. 1927 Mad. 597= 52 M.L.J. 396.

—Art. 73—Starting point.

——*Promissory note payable at sight.*

A promissory note that is payable on demand or at sight is governed by Art. 73 of Limitation Act and time runs from the date of the execution of the promissory note. (*Suhrawardy and Duval, JJ.*). DURGA PRASAD SEN *v.* KALI CHARAN AICHRAI. 84 I.C. 475=40 C.L.J. 84=A.I.R. 1924 Cal. 1065.

—Art. 74—Instalment bond.

——Where a bond provided that the principal sum should be re-paid in certain instalments and interest at a certain rate was also provided for,

Held, that a suit to enforce the terms of the bond was governed by Art. 74 of the Limitation Act. (*Stuart, C. J. and Hasan, J.*). MUSAMMAT GAURA *v.* RAM CHARAN. 121 I.C. 891= 4 Luck. 480=7 O.W.N. 230=A.I.R. 1927 Oudh 539.

——Where it was stipulated in a bond that the principal sum borrowed thereunder would be paid back within a period of certain years and the entire principal amount was divided into a number of instalments, each instalment to be payable annually and interest at a particular rate was also provided for,

Held, that it is a bond payable by instalments and the proper article applicable to it is Art. 74 and not Art. 75. A. I. R 1925 Oudh 502, *Foll.* (*Stuart, C. J. and Wasir Hasan, J.*). MT. GAURA *v.* RAMCHARAN. 100 I.C. 655=4 O.W.N. 207= 4 Luck. 480=A.I.R. 1927 Oudh 539.

—Art. 74—Instalment decree.

——In order to constitute waiver of the right to enforce a default clause of an instalment decree payment must be made towards the specific instalments in arrears. A mere acceptance of an amount towards a decree after defaults does not amount to waiver of the default clause. 31 Cal. 83 and 106 I. C. 874, *Rel. on.* (*Bhide, J.*). GOPAL DAS *v.* KANSHI RAM. 113 I.C. 641= A.I.R. 1929 Lah. 390.

LIMITATION ACT (1908), Art. 75—Evidence—Art. 74—Starting point.

——*Default clause—Option of creditor—When it comes to an end.*

Where an instalment bond provided for full payment in case of default and the creditor sued for whole only when the last instalment fell due,

Held, that the claim for nine instalments was barred.

The plaintiff has an option till the last instalment falls due to claim the whole amount including the last instalment. But where the last instalment fell due the option was gone. Where the option is given to obligee to claim the whole amount on default of payment of an instalment without reference to subsequent instalments, the provision cannot be held to extend the period of limitation to three years from the date the last instalment fell due. On the making of a demand the whole amount becomes due and time would begin to run from the date of the demand. If no demand is made the option given to the plaintiff is gone and time begins to run in respect of each instalment as it becomes due. That which was optional on the part of the plaintiff would not affect the right of the defendant. He might well consider the action as accruing from the time that the plaintiff had a right to maintain it. (1919) M.W.N. 82 and (1919) M.W.N. 185, *Dist.*; 8 Bom. 561, *Dist.*; (1843) 4 Q. B. 419, *Foll.* (*Devadoss, J.*). PERIANAN CHETTY *v.* MARIAPPAN ASARI. 77 I.C. 48= 1923 M.W.N. 699= A.I.R. 1924 Mad. 310.

——Where in a suit, mortgagee was empowered to sue on default of payment of the first instalment of interest.

Held, limitation began to run from the first default. (*Rafique and Lindsay, JJ.*). COLLECTOR OF JAUNPUR *v.* JAMNA PRASAD. 66 I.C. 171= 44 All. 360=20 A.L.J. 140=A.I.R. 1922 All. 37.

—Art. 74—Waiver.

——Where the decree-holder accepts the payment of instalments even after the whole decretal amount has become payable by default, his act amounts to a waiver on his part. (*Sulaiman and Pullan, JJ.*). MOHAMMAD UNIS *v.* JANESHAR DAS. A.I.R 1929 All. 881.

—Art. 75—Applicability.

——Article 75 of the Limitation Act will not only prevent a suit to recover the whole sum due under a bond but also a suit for later instalments which individually are not time-barred. The Article contemplates that, in the absence of waiver, an instalment bond is to be treated as a bond not permitting instalments for the purposes of limitation. (*Ashworth, A.J.C.*). BANKEY LAL *v.* RAM LAL. 86 I.C. 918=12 O.L.J. 112= A.I.R. 1925 Oudh 373.

——*Punjab Loans Limitation Act* (1904).

In Punjab a suit on a bond payable by instalments and containing a clause that on default on two instalments the whole should be due is governed by Art. 16 of the Punjab Loans Limitation Act (1904) and not Art. 75 of the Limitation Act of 1908. (*Shadi Lal, C.J. and Abdul Qadir, J.*). SIHA SINGH *v.* SUNDUR SINGH. 3 L.L.J. 522= A.I.R. 1921 Lah. 280.

—Art. 75—Evidence.

——*Oral evidence to prove payment.*

An action was instituted to recover money on a bond payable by instalments with the proviso that default in payment of one or more instalments shall render the whole debt due forthwith. The plaint recited the payment of first two instalments

LIMITATION ACT (1908), Art. 75—Instalment bond.

and a default of the third. The suit was within time if the first two instalments, were really paid.

Held, that S. 20 had no concern with the case and that Art. 75 was applicable and that therefore oral evidence was admissible to prove the payment of the first two instalments. 35 P. R. 1913, *Not foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). NAND LAL *v.* AKKI. **89 I.C. 294= 6 Lah. 163=26 P.L.R. 328=A.I.R. 1925 Lah. 394.**

—Art. 75—Instalment bond.

———*Time runs from date of default.*

An action was instituted to recover money on a bond payable by instalments with proviso that default in payment of one or more instalments shall render the whole debt due forthwith. The plaint recited the payment of first two instalments and a default of the third. The suit was within time if the first two instalments were really paid,

Held, that S. 20 had no concern with the case and that Art. 75 was applicable and that therefore oral evidence was admissible to prove the payment of the first two instalments. 35 P.R. 1913, *Not foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). NANDLAL *v.* AKKI. **89 I.C. 294= 26 P.L.R. 328=6 Lah. 163=A.I.R. 1925 Lah. 394.**

—Art. 75—Option of limitation.

———*C. P. Code, O. 2, R. 2.*

Per *Ramesam, J.*—Cases in which the bond contains words like "when required" or "when you require" or "if you choose" or "the mortgagee will be at liberty to sue," it is easy to hold that there is strictly an option given to the plaintiff and in such cases there should be an overt act to show intention to take advantage of the default clause but when the bond contains no such words, it cannot be assumed that the plaintiff has such option. 37 All. 400 (F.B.) and 24 Cal. 281, *Appr.*; 39 Mad. 981 and 9 M.L.T. 36, *Diss. from.* (*Ramesam and Jackson, JJ.*). MUKYAPRANA BHATTA *v.* T. N. KELU NAMBIYAR. **112 I.C. 270= 1929 M.W.N. 204=A.I.R. 1928 Mad. 705.**

—Art. 75—Starting point.

———*Instalment bond—Waiver.*

Where the plaintiff instituted a suit on an instalment bond and having waived his right to recover the whole amount claimed certain instalments,

Held, that the suit was governed by Art. 75 and not Art. 80 of the Limitation Act.

Held also that the cause of action accrued on each default and that if the suit was brought within three years of that date the suit will not be barred. (*Dalal, J.*). KAUNSILLA *v.* DIP SINGH. **1930 A.L.J. 495=A.I.R. 1929 All. 812.**

———*Creditors option.*

A compromise decree provided that the decree-holder should get a certain sum in full payment of his decree, that the judgment-debtor should pay a sum of money forthwith and the balance in monthly instalments from October, 1924, and in default of payment of four instalments the decree-holder would realize the whole of the decretal amount with interest at a higher rate; the last clause of the agreement was that the house belonging to the judgment-debtor should remain charged for the decretal amount and that the decree-holder should in default of payment realise the same by sale of the house with interest from the date of default of any payment. The initial payment was made and also the first two instalments and thereafter payment ceased. On the 10th of December, 1928, an application for execution of the decree was made. It was argued that under

LIMITATION ACT (1908), Art. 75 — Starting point.

the terms of the compromise the whole debt became due in April, 1925, and that application was more than 3 years after that date.

Held, that when all the clauses of the agreement were read together, the intention of the parties was to leave it at the option of the decree-holder either to enforce the payment of the whole of the decretal amount at once or to continue to abide by the instalments and that he was entitled to recover the instalments which were due for 3 years before the application. (*Ross and Rowland, JJ.*). GANGA BISHUN MARWARI *v.* RAGHUNATH PRASAD. **11 Pat. L. T. 609.**

———*Intention of the parties.*

In an instalment bond with a condition of exigibility on one default the question as to when time begins to run really depends upon the construction of the document and the contract between the parties. When the contract confers on the creditor an option to treat or not to treat the default as enabling him to sue for the whole amount, Art. 75 has no application. (*Case-law considered.*) (*Pearson, J.*). UMEDMULL MANGAL CHAND *v.* MANI RAM. **33 C.W.N. 275=A.I.R. 1929 Cal. 399.**

———*Default in paying instalments converting bond to be payable on demand.*

Where in a mortgage-deed the mortgagor promises to pay interest at the end of every month and the deed further provides that in case of default to pay such interest, the mortgagor shall return the principal as well as interest before the expiry of the mortgage period, whenever the creditor would demand the same, the cause of action arises on the day on which default in paying monthly interest is made and time runs from that day and not when the mortgage period expires. (*English and Indian case-law considered.*) (*Rupchand, A.J.C.*). NENOMAL JIAMAL *v.* CHANDUMAL ASSANMAL. **116 I.C. 381= A.I.R. 1929 Sind 140.**

———*Where mortgagee is given an option.*

Where a mortgage bond provided that in default of payment of instalments of interest, the mortgagee can recover the whole amount when required.

Held, that the stipulation in question gave only the mortgagee an option which is open to him to exercise or not as he chooses; and the time will not run against him unless he exercises the option. 9 L.W. 479; 39 Mad. 981 and 22 Mad. 20, *Rel. on.* (*Wallace and Thiruvenkatachariar, JJ.*). A RANGASWAMY PILLAI *v.* KUPPUSWAMY DEEKSHATAR. **107 I.C. 650=A.I.R. 1928 Mad. 637.**

———Mortgage bond—Principal to be repaid in two years—Interest to be paid monthly—Default in payment of interest entitling mortgagee to recover whole amount on demand—Limitation starts when demand is made. (*Lobo, A.J.C.*). OFFL. RECEIVER *v.* HUSSAIN LAL MUHOMED. **99 I. C. 871=A.I.R. 1927 Sind 151.**

———*Liberty to claim whole amount on default of one kist.*

In instalment bonds, a stipulation that on default of one kist the plaintiffs would be at liberty to claim the whole sum has the same effect as the stipulation that in such an event the whole sum shall become due. Such stipulation does not give the creditor a right to wait until after the period of limitation had expired, and limitation would commence to run from the first default under Art. 75. 31 Cal. 297 and 21 Cal. 542, *Rel. on.* (*Newbould*

LIMITATION ACT (1908), Art. 75 — Starting point.

and Graham, JJ.). BASANTA KUMAR *v.* NABIN CHANDRA. 96 I.C. 694=53 Cal. 277= A.I.R. 1926 Cal. 789.

——Instalment bond allowing recovery of full amount on failure to pay two instalments—Cause of action arises on the date fixed for payment of the second of the two instalments and Art. 75 applied. (*Baker, J.C.*). KISAN *v.* MT. JASODA BAI. 92 I.C. 330=A.I.R. 1925 Nag. 298.

——*Suit in respect of instalments not barred.*

A suit on an instalment bond which enables the creditor to claim the entire amount on default of any one of the instalments is not time-barred in respect of the instalments which fell due within the period of limitation, although the suit is filed after the expiry of the period of limitation from the date on which the earliest instalment in respect of which default was made fell due. (*Kulwant Sahay and Sen, JJ.*). RAMSEKHAR PRASAD v. MATHURA LAL. 90 I.C. 249=1925 P.H.C.C. 215= 4 Pat. 820=A.I.R. 1925 Pat. 557.

——Under the terms of a mortgage-deed, the debt is to be paid by instalments of Rs. 100 each; on default of any one instalment the whole amount is to become due at once. In the year 1903-4 the mortgagors paid only Rs. 44 and in 1913 the mortgagees sued to recover the first two instalments and got a decree. In 1917 the mortgrgees sued for the balance.

Held, that the suit was barred by limitation. (*Macleod, C.J. and Crump, J.*). SRINIVAS LAXMA NAICK *v.* CHANBASAPPA GOWDA. 72 I.C. 290= 25 Bom. L.R. 203=A.I.R. 1923 Bom. 201.

——*Instalments bond.*

Where the money due under an instalment bond is payable in three annual instalments and on default of payment of one of them the whole of the money due was to be immediately payable a suit by the creditor for recovery of the money more than three years after the date of the first default is barred by limitation under Art. 75 of the Lim. Act. 13 C.W.N. 1010; 36 Cal. 394, *Foll.* (*Pearson, J.*). SYAMA CHARAN BARMAN *v.* NARATTAM BORMAN. 65 I. C. 257 (Cal.).

——When the whole money is to be paid on the non-payment of two or three instalments, the cause of action arises on the default of two instalments. (*Prideaux, A.J.C.*). WACHHI *v.* MAROTI. 69 I.C. 237=A.I.R. 1922 Nag. 184.

——*Interest payable annually and principal after a definite time.*

Where a mortgage-deed provides for the payment of interest annually and of the principal at the end of 10 years, and contains a condition that on default in payment of interest for any year, the mortgagee has the option of suing for the whole of the mortgage-money, he is not bound to sue as soon as there is default in any year. He can wait for the full period of 10 years and if he chooses to do so, time will run only from the expiry of that period even as regards the claim for the personal relief. (*Gokul Prasad and Stuart, JJ.*). MATA TAHAL *v.* BHAGWAN SINGH. 63 I.C. 477= 19 A.L.J. 406=A.I.R. 1921 All. 104.

—Art. 75—Waiver.

——*Creditor can waive—Cause of action—Demand.*

It is a well-established principle of law that a person cannot be compelled to take advantage of a forfeiture clause and Art. 75 itself provides that an obligee can waive benefit of the provision giving him the right to recover the whole of the money in the event of default.

LIMITATION ACT (1908), Art. 75—Waiver.

Where the bond provides that in case of default being made in the payment of two instalments the whole amount would become due only if a demand for such amount were made and there is also a stipulation to the effect that even after the whole amount has become payable the creditor would have the option of recovering either the whole of the amount or only the instalments and arrears, the language of the document clearly shows that the intention of the parties was that unless and until plaintiff made a demand the whole of the money should not be payable by the defendant to him. The cause of action therefore arises in such case on the expiration of each of the periods fixed for the payment of instalments. 8 Bom. 561, *Foll.* (*Shadi Lal, C.J. and Tapp, J.*). WASU RAM *v.* MOHAMMAD BAKHSH. 121 I.C. 80= A.I.R. 1930 Lah. 124.

——*Effect of.*

Where the plaintiffs waive the benefit of the provision as to recovery of the whole amount, they will not be able to sue in future for the whole amount at once but they are entitled to sue for instalments as they fall due under Art. 75, the cause of action accruing on each default. The general Art. 80 does not apply in such a case. 35 All. 455, *Dist.* (*Dalal, J.*). MT. KAUNSILLA *v.* DIP SINGH. 121 I.C. 272=A. I. R. 1929 All. 812.

——*Inconsistent plea.*

In an instalment bond with the condition of exigibility on one default a plaintiff alleged that cause of action arose on the date of the first default and that the limitation was saved by payments of interest on subsequent dates, which the plaintiff failed to prove.

Held, that the plaintiff cannot be allowed to set up a plea of waiver. A. I. R. 1926 P. C. 85, *Foll.*; 41 All. 104, *Ref.*; A.I.R. 1927 P. C. 146, *Dist.* (*Mukerji and Bose, JJ.*). SARAT LAKSHI DASSYA *v.* NARENDRA SINGHA. 33 C.W.N. 250= A.I.R. 1929 Cal. 292.

——Optional right to enforce payment may be waived—Waiver must depend upon definite act or performance—No waiver when inconsistent plea is raised—Where there is no waiver limitation runs from the date of first default. (*Case law discussed.*) (*Mukerji and Bose, JJ.*). SARAT LAKSHI DASSYA *v.* NARENDRA SINGHA. 33 C.W.N. 250= A. I. R. 1929 Cal. 292.

——*Mere laches.*

Mere laches on the part of the mortgagee in not selling the mortgaged property or instituting a suit for the recovery of the amount due to him within the period of limitation, is not tantamount of waiver and the mortgagee has to prove express waiver. 5 Cal. 97, *Foll.* (*Rupchand, A. J. C.*). NENOMAL JIAMAL *v.* CHANDUMAL ASSANMAL. 116 I. C. 381=A.I.R. 1929 Sind 140.

——An instalment bond provided that the defendant would pay to the plaintiff a certain amount every year and on default being made in the payment of any three instalments the whole amount would be recoverable at once. No payment was made at all under the bond. Plaintiff brought a suit to recover the amounts of the 7th, 8th and 9th instalments.

Held, that the plaintiff had waived his right to recover the whole amount at once which first accrued to him in default of the first three instalments, and therefore the suit to recover the 7th, 8th and 9th instalments was in time. (*Case-law referred*). (*Hallifax, A.J.C.*). RAJARAM *v.* NARAIN. 97 I.C. 554=22 N. L. R. 126=A.I.R. 1927 Nag. 28.

LIMITATION ACT (1908), Art. 75—Waiver.

——Under the article it is open to the obligee to waive the benefit of the provision to recover the amount in the case of first default. Each case is to be governed by the article applicable to it. 15 A. L. J. 313, *Applied.* (*Sulaiman, J.*). SHIAM LAL *v.* JOTIA. **89 I. C. 383= 23 A.L.J. 896= 6 L. R. A. Civ. 532=A.I.R. 1926 All. 142.**

——Mere abstinence from enforcing a right at the time when the cause of action arose does not amount to waiver. 31 Cal. 297, *Rel.on.* (*Mukerji, J.*). KANHAI *v.* AMRIT. **87 I.C. 162=47 All. 552= 23 A.L.J. 424=6 L.R.A. Civ. 265= A.I.R. 1925 All. 499.**

——*No right apart from Art. 75.*

Article 75 is the only one which recognises the right of the payee to waive his right to sue on the expiration of the first term of payment. The right of waiver does not apply in other cases. (*Wazir Hasan and Neave, A.J.Cs.*). PHERAI *v.* PUDAI RAM. **85 I.C. 280=27 O.C. 318= A.I.R. 1925 Oudh 502.**

——*Where whole amount due on default.*

An unregistered bond provided for the payment of a debt in twelve monthly instalments these instalments including re-payment of the principal as well as of interest. The bond also authorised the plaintiff to sue for the unpaid balance either on default in payment of one of the instalments or on the expiry of one year fixed for payment of the entire debt,

Held, that omission to sue for the whole of the balance does not operate as a waiver and that Art. 75 of the Limitation Act applies to the case, and that the default was made when the first instalment was not paid in full. 31 Cal. 297 and 188 P.R. 1883, *Ref.* (*Neave and Kendall, A.J.Cs.*). MT. MOHANYA *v.* PANNA LAL. **79 I.C. 848= 11 O.L.J. 513=A.I.R. 1925 Oudh 34.**

——*Mere inaction.*

If a creditor simply sleeps on his rights and does nothing for three years it cannot be said that he had agreed to waive the right which accrued to him when the default occurred. (*Macleod, C.J. and Crump, J.*). GANPAT BALAJI *v.* NARAYAN SAWALIRAM. **82 I.C. 203=A.I.R. 1924 Bom. 301.**

——*Parties stipulating that each default should constitute separate cause of action.*

The covenant in the mortgage deed as to re-payments was to the effect that the mortgage money with interest would be paid by monthly instalments of not less than Rs. 20 plus interest, the payment being made on the 1st day of November, 1899, and on the first day of every succeeding month, provided that the entire advance together with interest thereon would be fully liquidated within ten years from the date of the mortgage. It was also agreed that defaults in payment of monthly instalments and interest as agreed should constitute separate causes of action,

Held, by providing that default in the payment of each monthly instalment should constitute a separate cause of action, the parties clearly intended that prompt payments should be made and that the period of limitation should run from the date of default unless the payee waived the benefit of the provisions of prompt payment in case of default. Mere forbearance to sue would not stop limitation from beginning to run. (*Martineau and Moti Sagar, JJ.*). NANAK CHAND *v.* MIR MUHAMMAD KHAN. **75 I.C. 1048= A.I.R. 1924 Lah. 702.**

——*Mere payment of defaulted instalments in lump.*

LIMITATION ACT (1908), Art. 80—Administration.

Where under the decree defendant is to pay the decree-holder by monthly instalments of Rs. 50 and the whole amount to be realised on default of any six instalments and there was default of six instalments upto August, 1916, and on April 9, 1917, a payment of Rs. 5,500 was made, and on January 19, 1918, that is to say, eight months afterwards, a payment of Rs. 400 was made, *i.e.*, eight times the instalments due under the decree,

Held, these circumstances are not alone sufficient to infer that the parties came to an arrangement that there should be an agreement for a new period of limitation. 22 Bom. L.R. 919, *Dist.* (*Macleod, C.J. and Crump, J.*). HANSRAJ GODHAJI *v.* BAPU KRISANASWAMI. **72 I.C. 275= 25 Bom. L.R. 153=A.I.R. 1923 Bom. 207.**

——Where defendant executed a registered bond to plaintiff in 1911 providing for 12 regular half-yearly payments and that in default of any one instalment the whole was due with interest and notwithstanding no instalment was paid, the plaintiff sued in 1921 for recovery of principal only stating that as defendant was poor he did not claim interest,

Held, that the plaintiff cannot be deemed from the fact of his not suing for interest, to have waived the defaults and that the suit was barred. (*Ryves, J.*). JIWAN MAL *v.* JOGESHWAR KASONDHAN. **66 I.C. 655=A.I.R. 1922 All. 113.**

——*Subsequent default.*

A mortgagee who in the past has waived his right on the occurrence of a default, is not bound to give notice before enforcing his penalty on a subsequent default that the waiver will not be repeated. (*Le Rossignol and Harrison, JJ.*). PRATAP SINGH *v.* NATHU. **69 I.C. 706= 3 Lah. 285=A.I.R. 1922 Lah. 416.**

——*Payment should be of the specific instalment in arrear.*

Where money is made payable by instalments but it is provided that on default in payment of any instalment the creditor is entitled to recover the entire amount and also to charge interest, acceptance of any payments by the creditor subsequent to the default may be evidence of his waiver of the benefit of the clause entitling him to charge interest, but the payment must be on account of the specific instalment in arrear and not a mere payment in reduction of the whole debt, *i.e.*, a mere payment on account generally will not suffice. 28 All. 622 and 5 A.L.J. 609, *Ref.* (*Ryves and Gokul Prasad, JJ.*). WIZARAT HUSAIN *v.* MOHAN LAL. **43 All. 38=A.I.R. 1921 All. 318.**

——*Acceptance of overdue payments.*

Where an instalment decree provided for payment of yearly instalments on the 15th February of every year beginning from 15th February, 1912, and the plaintiff accepted payments made later than the due dates.

Held, that from the moment of his acceptance the plaintiff was barred from enforcing the right which was his by reason of the defendant's default and that the defendant became barred from pleading and that limitation ran from 15th February, 1912. (*Kincaid, A.J.C.*). BAHADUR *v.* GELOMAL. **59 I. C. 607=14 S.L.R. 128.**

—Art. 80—Administration.

——*Specific breach—Starting point.*

Where an administration bond contains several conditions, a breach of each one of the conditions gives rise to a cause of action and should, therefore be taken to be the starting point of limitation

LIMITATION ACT (1908), Art. 80—Mortgage-deed.

in the case of a suit based on that particular breach. Ordinarily, the administrator work may be said to be completed when he files his final accounts, showing how he has dealt with the estate, and these accounts have been accepted by the Court; limitation will then begin to run. But it very often happens that there is litigation pending against the administrator and, in such a case the administrator (and consequently his surety or sureties) cannot be absolved until the close of each litigation. 33 All. 414, *Diss.*; 8 L.B.R. 99 and 17 M.L.T. 61, *Foll.*; 12 B.L.T. 225, *Expl.* (*Robinson, C.J. and May Oung, J.*). MAUNG SAN U *v.* MAUNG KYAW MYE. 76 I.C. 802=1 Rang. 463= A.I.R. 1924 Rang. 68.

—Art. 80—Mortgage-deed.

———*Failure to pay instalments—Mortgage suit barred—Personal remedy.*

The trial Court relying on a clause in the mortgage-deed which entitled the mortgagee to sue for the whole amount of principal and interest, on default of payment of annual interest, held that the claim to enforce the charge was barred by time under Art. 132 of the Limitation Act, but it was however of opinion that the personal remedy based on the bond was not barred. It accordingly granted the plaintiff a simple money-decree. The lower Appellate Court holding that the personal remedy also was barred, dismissed the whole suit,

Held, although the relief for recovery of money otherwise than by enforcing the charge would be governed by another article with a different period fixed, yet it would be a startling thing to find that the time for recovery of the amount due by sale of the property has begun to run, while that for recovering it as a simple debt has not yet started; and that the bond does not fall either under Art. 66 or Art. 68 or Art. 75, but falls under Art. 80 read with Art. 116, and that the time began to run against the mortgagee for both the reliefs claimed from the date of the first default, when the money became payable. 19 A.L.J. 406; 15 A.L.J. 313; 3 All. 600 (F.B), *Diss.* (*Mears, C. J., Piggott, Walsh, Ryves and Sulaiman, JJ.*). SHIB DAYAL *v.* MAHIRBAN. 69 I.C. 981= 20 A. L.J. 819=43 All. 27= 4 L.R.A. Civ. 3=A.I.R. 1923 All. 1 (F.B.).

—Art. 80—Registered bond.

———*Whole debt due on default of instalments—Creditor's option—Alternative remedy.*

Where a debt incurred on a registered simple bond was to be paid within seven years, but on default to pay interest consecutively for two years it was to become payable at once and a default was made,

Held, that the bond was not a 'single' bond of that there was no 'specified day of payment' that therefore the article that applies for a suit on the bond is not Art. 66 but Art. 80. Where such a condition exists the question is not one of waiver but of a pure contract and the creditor is entitled to adopt either of the two alternatives expressly contemplated by the bond: The original promise to pay the debt within seven years, gave another remedy to the creditor to enforce at the end of that period. The failure to sue within time from the default does not bar the second remedy: 16 O.C. 45, *Doubted* but *Foll.* (*Wasir Hasan, A.J.C.*). HARI LIAL *v.* THAMMAN LAL. 70 I.C. 85=9 O.L.J. 416= 26 O.C. 121=A.I.R. 1923 Oudh. 19.

LIMITATION ACT (1908), Art. 83—Principal and agent.

—Art. 81—Applicability.

———Where in a suit for recovery of money paid by plaintiffs on defendant's behalf the plaintiffs come into Court asserting that they had been obliged to pay the money as sureties and their whole cause of action is that they had been treated as sureties for defendant, Art. 81 and not Art. 61 will apply. (*Le Rossignol and Campbell, JJ.*). KUNJ LAL *v.* GULAB RAM. 67 I.C. 365=55 P.L.R. 1922= A.I.R. 1921 Lah. 335.

—Art. 81—Mode of payment.

———*Contract Act, S.* 114.

Payment must be in cash or by transfer of property. (*Obiter.*) (*Kinkhede, A.J.C.*). VINAYAKRAO *v.* SHRIPATRAO. 97 I.C. 185=9 N.L.J. 107= A.I.R. 1926 Nag. 429.

—Art. 81—Starting point.

———*Date of payment uncertain.*

After a suit by creditor against surety was decided against surety, the surety applied for review after depositing decretal amount in Court. Review was dismissed and the creditor withdrew the money deposited. In a suit by surety against the debtor,

Held, that the time ran not from the date of deposit and in the particular case the date of dismissal of review not being known, the date of withdrawal was the starting point. (*Boys, J.*). MOHAMED NAQI *v.* HARGU LAL. 82 I.C. 1011= 5 L.R.A. Civ. 694=A.I.R. 1925 All. 164.

———*Payment into Court.*

Under Art. 81 of the Lim. Act time begins to run from the time when the surety pays the creditor and the principal debtor remains liable to be sued for three years only after this payment has been made. Payment may be made in more ways than one and if moneys in Court deposit are placed to the credit of the decree-holder, limitation against the principal debtor starts from that date and not from the date when the creditor actually draws out the money. (*Swinhoe, A.J.C.*) YINKE SUPAYA *v.* MAUNG KIN. 60 I.C. 23= (1920) 3 U.B.R. 261.

—Art. 83—Charge upon immovables.

———Where a registered contract to indemnify contains a provision for a charge on immovable property, Art. 132 applies and not Art. 83 or Art. 116. (*Wallis, C.J. and Oldfield, J.*) RAMASAMI IYENGAR *v.* KUPPUSAMI IYER. 66 I.C. 554= 14 M.L.W. 99=1921 M. W. N. 472= A.I.R. 1921 Mad. 514.

—Art. 83—Express contract of indemnity.

———Where the plaintiff's case was that there was an express contract by the defendant to indemnify him,

Held, that the suit was governed by the special Art. 83 and not the general Art. 61 of the Limitation Act. 15 P.L.R. 1915, *Foll.* (*Addison, J.*). ABDUL KADIR *v.* IMAM DIN. 104 I.C. 418= 9 L.L.J. 165=28 P.L.R. 138= A.I.R. 1927 Lah. 231.

—Art. 83—Money entrusted for payment.

———Money left by *A* with *B* for payment to *C*—Money not paid and damages caused—*B* is liable and can be sued within three years of the damage. 11 A.L.J. 478, *Rel. on*; 34 All. 429, *Dist.* (*Kanhaiya Lal and Ashworth, JJ.*). KEDARNATH *v.* HAR GOVIND. 93 I.C. 913=24 A.L.J. 350= A.I.R. 1926 All. 605.

—Art. 83—Principal and agent.

———A suit by an agent to recover money due to him from the principal on transactions entered

LIMITATION ACT (1908), Art. 83—Principal and agent.

into on behalf of the latter is governed by Art. 83 and not by Art. 61 of the Limitation Act. (*Case-law reviewed.*) (*Shadi Lal, C. J. and Abdul Qadir, J.*). BHAGWAN DAS. *v* MUTSADI LAL.
31 P. L.R. 666.

———Suit by an agent to recover money due to him from the principal on transactions entered into on behalf of the latter is governed by Art. 83 and not by Art. 61. 34 Mad. 167, *Not foll.*; 23 P. R. 1915, *Foll.* (*Shadi Lal, C. J. and Bhide, J.*). GANESH DAS *v.* NARSINGH DAS.
115 I.C. 767=30 P.L.R. 35.

———*Starting point.*

A suit by an agent to recover the amount due from his client must be brought within the period of limitation prescribed by Art. 83 of Sch. 1, Limitation Act. Limitation in such a case operates from the date of the payment on behalf of the principal. 23 P. R. 1915; 59 P. L. R. 1918; A.I.R. 1921 Lah. 167; A. I. R. 1923 Lah. 473; A.I.R. 1926 Lah. 152 and A.I.R. 1927 Lah. 826, *Foll.* (*Addison, J.*). BHAGAT RAM *v.* HARJAS MAL.
112 I.C. 719=A.I.R. 1928 Lah. 424.

———*Starting point.*

Where a commission agent buys goods for principal and they are re-sold by the agent at a loss, a suit by the agent to recover the amount of the said loss with interest and other incidental expenses must be brought within the period of limitation prescribed by Art. 83, Limitation in such a case operates from the date of payment made on behalf of the principal and not from the date of the sale. 23 P. R. 1915; 59 P.L.R. 1918; A.I.R. 1921 Lah. 167 and A. I. R. 1923 Lah. 473, *Foll.* (*Addison, J.*). KIRPA RAM LACHMAN DAS *v.* SAWAN MAL GOPI CHAND. **106 I.C. 40=29 P.L.R. 61=9 L L.J. 493=A.I.R. 1927 Lah. 826.**

———A suit to recover the losses alleged by the plaintiffs to have seen sustained by them in certain dealings in some articles of trade which they undertook as commission agents on behalf of the defendants is governed, by Art. 83 and not by Art. 64. (*Campbell. J.*). MUNSHI RAM *v.* BHAGWANDAS. **92 I.C. 595=7 L.L.J. 596=27 P.L.R. 32=A.I.R. 1926 Lah. 152.**

———*Starting point.*

Where a commission agent buys goods for a principal but through the latter's default in paying for the same they are re-sold by the agent at a loss, a suit by the agent to recover the amount of the said loss with interest and other incidental expenses must be brought within the period of limitation prescribed by the Art. 83, Limitation Act, in such a case operates from the date of the payment made on behalf of the principal and not from the date of the sale. 3 L. L. J. 65, *Rel.* (*Scott-Smith and Fforde, JJ.*). DEVI SAHAI RAMJI DAS *v.* TIRATH RAM. **73 I.C. 143=A.I.R. 1923 Lah. 473.**

———*Starting point.*

Plaintiffs who were commission agents purchased two kothas of gram at the request of defendants and paid the price out their own pooket. Subsequently they sold them at a loss and filed a suit for the recovery of the loss together with interest and certain incidental expenses,

Held, that the suit is governed by Art. 83 (23 P. R. 1915, *Foll.*) and the period of limitation should be calculated from the date of payment by the agent and not from the date of his selling the goods. In the absence of a contract to the contrary, the agent is damnified when he makes the payment.

LIMITATION ACT (1908), Art. 85—Applicability.

34 Mad. 167, *Foll.* (*Abdul Raoof and Martineau, JJ.*). KADARI PERSHAD *v.* HAR BHAGWAN.
66 I.C. 900=3 L.L.J. 65=A.I.R. 1921 Lah. 167.

—Art. 83—Purchaser from widow suing for refund.

———Where an alienation was made by a purchaser from a widow, pending declaratory suit by reversioner, and in the sale deed alienor expressly stipulated for refund of purchase-money with damages, and the Reversioners got the declaration sought for and after the death of the widow they sued and got possession,

Held, that Art. 97 did not apply and that limitation did not commence to run till the vendees were actually dispossessed and from the date of dispossession that suit was admittedly within time. (*Broadway, Ag. C.J. and Bhide, J.*). MT. GOPAL DAI *v.* DHANNAMAL. **106 I.C. 804=9 L. L. J. 468=A.I.R. 1927 Lah. 570.**

—Art. 83—Registered contract.

———A suit for compensation for the breach of a contract to indemnify falls within the purview of Art. 83 and when such a contract is in writing and registered, Art. 116 becomes applicable and by virtue of it the period is extended to six years. *Obiter* in 16 All. 3, *Diss from.* (*Broadway and Abdul Qadir, JJ.*). ABDUL AZIZ KHAN *v.* MUHAMMAD BAKHSH. **64 I.C. 431=2 Lah. 316=3 L.L.J. 542=104 P L.R. 1921=A.I.R. 1921 Lah. 260.**

—Art. 84—Pleader's suit for fees.

———Section 225, Madras Local Boards Acts does not apply to cases where the President of a Board engages a Vakil on behalf of the Board and there is a claim by him for his fees but the ordinary law of limitation, namely three years, applies. If the Board is to sue as plaintiff it may be necessary for the President to obtain the sanction of the Board for instituting a civil suit. (*Devadoss, J.*). VENKATASUBBA RAO *v.* TALUK BOARD PRESIDENT. **111 I.C. 740=29 M.L.W. 517=A.I.R. 1928 Mad. 98=56 M.L.J. 110.**

—Art. 84—'Termination of suit.'

———Per *Panckridge, J.*—In many proceedings of which administration suits are an example, the so-called final decree is very far from being the termination of the suit. (*Rankin, C.J., Ghose and Lort-Williams, JJ.*). MT. ATTOMANI DASI *v.* RAMESH CHANDER BOSE. **62 C. L.J 197=A.I.R. 1930 Cal. 651 (F.B.).**

—Art. 85—Account deliberately closed.

———*Adding new dealings.*

An open account is one which is continuous or current, uninterrupted or unclosed by a settlement or otherwise, consisting of a series of transactions. Where, therefore, an account has been deliberately interrupted and closed, the mere adding later on, in order to avoid limitation at the end of the new dealings the old balance will not make it an open account. A.I.R. 1923 Lah. 347, *Foll.*; 124 P.L.R. 1910, *Dist.* (*Addison, J.*). BHOGWAN DAS KANHAYA LAL *v.* NAND SINGH HARI SINGH.
100 I.C. 815=28 P.L.R. 146=A.I.R. 1927 Lah. 848.

—Art. 85—Acquiescence.

———Words or conduct may amount to acquiescence as to the correctness of an account and may even operate as a settlement. 7 Bom. L.R. 151, *Foll.* (*Madgavkar, J.*). PREMJI VIRJI *v.* SIR EDWARD ELIAS SASSOON. **102 I.C. 225=29 Bom. L.R. 375=A.I.R. 1927 Bom. 225.**

—Art. 85—Applicability.

———A claim for the recovery of the balance due on an account, which is proved to be mutual, open

LIMITATION ACT (1908), Art. 85—Essential for mutuality.

and current account, is governed by Art. 85. (*Sulaiman, Ag. C.J. and Bennett, J.*). BALDEO PRASAD BABU RAM *v.* HAJI ALI MOHAMMAD USMAN. 112 I.C. 715=1929 A. L. J. 73.

—Art. 85—Essential for mutuality.

——Mutual accounts are accounts which show reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of credits and debits. (*Case-law discussed.*) (*Johnstone, J.*). SALAMAT RAI-BASANTA MAL *v.* MUNI LAL-BRIJ LAL. A.I.R. 1930 Lah. 711.

——To be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. 34 Mad. 513, *Foll.*; A.I.R. 1923 Bom. 82, *Ref.* (*Srivastava and Nanavutty, JJ.*). LALJI *v.* GHASI RAM. 7 O.W.N. 420=A.I.R. 1930 Oudh 287.

——*Each party must have paid and received.*

"To constitute mutual account it is not sufficient that one of the two parties should have received money and paid it on account of the other. The reason of that distinction is that in the case of proceedings at law, where each of the two parties has received and paid on account of the other what would have to be recovered would be the balance of the two accounts; and the party plaintiff would be required to prove, not merely that the other party had received money on his account but also to enter into evidence of his own receipts and payments, a position of the case, which to say the least, would be difficult to be dealt with at law. Where one party has merely received and paid moneys on account of the other it becomes a simple case, but it is otherwise where each party has received and paid." (1852) 9 Hare 471, *Foll.*; 6 M.H.C.R. 142; 17 Mad. 293; 6 C. L. J. 158; 34 Mad. 513, *Ref.*

Thus where an account and the agreement upon which it was based provided for a loan by the plaintiffs to the defendants to be discharged by the proceeds of goods transmitted by the defendants to the plaintiffs the account is an account for the money paid and received by the plaintiffs and not an open mutual and current account. (*Page, J.*). TEA FINANCING SYNDICATE, LTD. *v.* CHANDRA KAMAL. 120 I.C. 714=56 Cal. 575=A.I.R. 1929 Cal. 651.

——*Shifting balance.*

Mutual accounts are such as consist of reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits and credits. Although a shifting balance, sometimes in favour of one side and sometimes in favour of the other, is a test of mutuality, its absence is not conclusive proof against mutuality.

Where a man lends money in one capacity, and in another capacity acts as an agent for the borrower and the two accounts are put together, there is a mutuality of dealing between the parties, although the money may have been lent for the express purposes of enabling the borrower to provide business as commission agent to the lender. In such a case Art. 85 applies. 15 I.C. 836; A.I.R. 1922 All. 139; 1 I.A. 346 and A.I.R. 1921 Bom. 451, *Foll.*; 17 Mad. 293; 29 All. 33 and 6 C.L.J. 158, *Ref.* (*Mears C.J. and Mukerji, J.*). DAN DAYAL *v.* BABY LAL. 108 I.C. 694=50 All. 645=26 A.L.J. 353=A.I.R. 1928 All. 236.

LIMITATION ACT (1908), Art. 85—Essential for mutuality.

——*Reciprocity—Shifting balance—Absence of.*

A mutual, open and current account between the parties is such as consists in reciprocity of dealings between them and not merely of items on one side though made up of debits and credits. In such an account each party should be able to say to the other. "I have an account against you." Although a shifting balance is a test of mutuality, its absence is not a conclusive proof against mutuality. A.I.R. 1924 Pat. 107, *Foll.*

The parties were dealing under an agreement under which the plaintiff was acting under instructions from the defendant and was purchasing and selling shellac on account of the defendants, sometimes the transactions resulting in profits and at other times in loss; at one time the accounts stood in favour of the defendant, at another time in favour of the plaintiff, and the last item was entered on 25th April, 1920. The plaintiff brought a suit for the recovery of the amount from the defendant on 3rd April, 1923.

Held, that the account between the parties was a mutual, open and current account, and so Art. 85, Limitation Act, was applicable and thus the suit was within time. (*Kulwant Sahay and Macpherson, JJ.*). JOHARMAL MATHURADAS *v.* HIRA LAL SHEWCHAND. 107 I.C. 533=7 Pat. 238=A.I.R. 1928 Pat. 221.

——Mutual accounts are such as consist in reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits and credits. Although a shifting balance is a test of mutuality its absence is not a conclusive proof against mutuality. 5 Cal. 750 and 6 C.L.J. 158, *Foll.* (*Kulwant Sahay and Foster, JJ.*). FYZABAD BANK, LTD. *v.* RAMDAYAL MARWARI. 74 I.C. 831=4 Pat.L.T. 571=A.I.R. 1924 Pat. 107.

——*Independent obligations on each side is necessary.*

The plaintiffs sued the defendants on accounts claiming Rs. 1,450. The suit was instituted on the 30th of August, 1918. The accounts showed a balance struck of Rs. 361-6 in favour of the plaintiffs on the 20th May, 1913. Thereafter the accounts continued for another year and ended with a total in favour of the plaintiffs of Rs. 832-9. No second balance was struck formally. Interest at 1 per cent. per mensem was claimed bringing the amount in suit up to Rs. 1,450,

Held, that the article applicable was Art. 57 for which the period is six years under the Punjab Loans Limitation Act of 1904, the balance being an acknowledgment starting fresh period of limitation under S. 19 of Act IX of 1908. An account is mutual when there are transactions on each side creating independent obligations on the other, and, where the transactions create obligations on one side only, those on the other being merely complete or partial discharges of such obligations, the account is not mutual. 59 I.C. 669, *Appl.* (*Campbell and Moti Sagar, JJ.*). THAKUR DAS *v.* BISHAN DAS. 79 I.C. 998=A.I.R. 1923 Lah. 636.

——*Reciprocity of transactions—Shifting balance—What is necessary to prove.*

In order that accounts might be mutual, there must be transactions on each side, creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Where there is a case of shifting balance, sometimes in

LIMITATION ACT (1908), Art. 85—Essential for mutuality.

favour of one side, sometimes in favour of the other, it is a test of mutuality, but its absence is not conclusive proof against mutuality. If there is a balance in favour of either party, it follows that there must be mutual liabilities of both parties to each other; if the balance is always in favour of one party in the very nature of the transactions, then the case is one where there are not separate mutual dealings.

In order to prove a mutual and open account current, it is sufficient to prove mutual dealings between the parties consisting of sales made, or services performed, by each party, to or, for the other, creating mutual duties or reciprocal demands. Where there was an obligation, on the one hand, to pay salary and an obligation on the other hand, to account for and pay over to the principal the amounts that may yearly be found due on balance to the principal,

Held, this is mutual account. (*Schwabe, C.J. and Wallace, J.*). KUNHI KUTTIALI *v.* KUNHAMMAD. **71 I.C. 466=17 M.L.W. 243=1923 M.W.N. 81= A.I.R. 1923 Mad. 278=44 M L.J. 184.**

———*Test—Intention of parties and possibility of balance on both sides.*

The fact that the balance was always in fact in favour of the same party does not prevent the account from being mutual, open and current. The test is the intention of the parties and indeed it is quite probable that there may be times at which the balance stood in favour of the defendant though the accounts were never made up at any such time. (*Hallifax, A. J. C.*). PANDURANG *v.* KALLUDAS. **65 I.C. 881=A.I.R. 1923 Nag. 108.**

———*Accounts — Current and mutual—Test of mutuality.*

Where an account does not indicate transactions creating independent obligations on both sides but there is sometimes a credit in favour of the defendant and that only for a few days,

Held, the account is not a mutual account, and in a suit on such an account the plaintiff is not entitled to the benefit of Art. 85 of Sch. 1 to the Limitation Act.

An account current is an open or running account between two or more parties, or an account which contains items between the parties from which the balance due to one of them is, or can be ascertained from which it follows that such an account comes under the term of open account in so far as it is running, unsettled or unclosed. Mutual accounts are such as consist of reciprocity of dealings between the parties, and do not embrace those having items on one side only, though made up of debits and credits.

The tests of mutuality is that the dealings between the parties should be such that the balance is sometimes in favour of the other. An account which consists of entries of payments made by one party in reduction of a debt to another and of payments made by the latter on behalf of the former, is not a mutual account (*Coutts and Ross, JJ.*). GOPAL RAI *v.* HARCHAND RAM ANANT RAI. **66 I.C. 30= 3 Pat.L.T. 492=A.I.R. 1922 Pat. 364.**

—Art. 85—Goods supplied on credit.

———A suit to recover price of goods by a tradesman on credit for which payments were made on presentation of bill is governed by Art. 52 of the Act, and the period of limitation is three years from the date of the delivery of the goods. Article 85 does not apply to such a case. (*Kulwant Sahay, J.*). W.K. DANSFORD *v.* B. D. SHAW & CO. **88 I.C. 747=A.I.R. 1925 Pat. 806.**

LIMITATION ACT (1908), Art. 86 — Mutual account, what is.

———*Price paid from time to time.*

According to the allegations in the plaint business was conducted between the parties on condition that the defendants purchased grain from the plaintiffs' gomashta and paid the price thereof from time to time. The plaint alleged that the cause of action arose on various dates, these dates being the dates on which the different items were debited in the account,

Held, this is not mutual account even if there may have been occasionally a balance in the defendants' favour. (*Ross, J.*). RAM SUNDER *v.* AMRIT PAJIYAR. **72 I.C. 135=1 Pat. L.R. 283= 4 P. L. T. 424=A.I.R. 1923 Pat. 242.**

—Art. 85—Lending or borrowing.

———*Test of mutuality.*

An account in which one party only borrows or lends is not a mutual account. It is not necessary that the balance should actually shift from one side to the other. An account which is settled is not an open account. All that is necessary is that from the nature of the transactions, it is capable of so shifting. (*Madgavkar, J.*) PREMJI VIRJI *v.* EDWARD ELIAS SASSOON. **102 I.C. 225= 29 Bom. L.R. 375=A.I.R. 1927 Bom. 225.**

—Art. 85—Master and servant.

———*Salary credited in accounts—Drawings.*

In order that accounts might be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. 6 M. H. C. R. 142; (1852) 9 Hare, 471, *Foll.*

The defendant was in the employment of the plaintiff. A ledger account was kept in his house in which were debited against him certain sums he drew periodically in advance, credit being given to him periodically on account of the salary due to him,

Held, that such account cannot be called a mutual account. (*Waller, J.*). N. SUBRAMANIAM CHETTIAR *v.* N. P. L. A. R. FIRM. **103 I.C. 48= 39 M.L.T. 365=A.I.R. 1927 Mad. 819.**

———*Advance of salary from time to time.*

The defendant was in the employment of the plaintiff and drew advance against his salary from time to time. His salary was fixed by the year. The plaintiff sued to recover the excess drawn by the defendant over the salary due to him,

Held, that Art. 85 applied and limitation began to run from the end of the year in which the last item is entered in the accounts. (*Baker, J. C.*). MOTIRAO *v.* GAMBHIR PRASAD. **87 I.C. 832= A.I.R. 1925 Nag. 295.**

—Art. 85—Mutual account, what is.

———Where there are transactions between two merchants on each side creating independent obligations on the other, and the balance is shifted from one side to the other, the account is a mutual, open and current account. The proper article to apply to such a case is Art. 85 and not Art. 62. A.I.R. 1923 Bom. 82 and 22 Bom. 606, *Ref.* (*Marten, C.J. and Patkar, J.*). APPA DADA PATIL *v.* RAMAKRISHNA WASUDEO JOSHI. **121 I.C. 681= 53 Bom. 652=31 Bom. L.R. 1187= A.I.R. 1930 Bom. 5.**

———The plaintiff was lending monies to the defendant and debiting to the same the defendant,

LIMITATION ACT (1908), Art. 85 — Mutual account, what is.

in his accounts. The defendant was making purchases on behalf of the plaintiff and advancing monies for these purchases. These amounts were credited by the plaintiff to the defendant in his accounts. The balance was sometimes in favour of the plaintiff and sometimes in favour of the defendant,

Held, that the account was a mutual, open, current account within the meaning of the Art. 85 of the Limitation Act. (*Sulaiman, A.J.C. and Bennett, J.*). FIRM OF BALDEO PRASAD BABU RAM *v.* FIRM OF HAJI ALI MAHOMED USMAN.
112 I. C. 715=1929 A.L.J. 73.

——An account is mutual within the meaning of Art. 85 when there are transactions on each side creating independent obligations on the other. But where the transactions create obligations only on one side, those on the other being merely complete or partial discharges of such obligations the account is not mutual. A.I.R. 1923 Lah. 636, *Foll.* (*Tek Chand, J.*). GONDA SINGH *v.* BHANDA RAM SALIG RAM. 111 I.C. 791 (Lah.).

——In an account where credit and debit entries are carried over from time to time, from year to year from transaction to transaction, the account is a mutual, current and open account within Art. 85. (*Madgavkar, J.*). PREMJI VIRJI *v.* EDWARD ELIAS SASSOON. 102 I.C. 225=29 Bom.L.R. 375=
A.I.R. 1927 Bom. 225.

——It is well-settled that an open account is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise consisting of a series of transactions. A current account has been held to be an open or running account between two or more parties or an account which contains items between the parties from which the balance due to one of them is or can be ascertained. Mutual accounts are accounts which show reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits and credits. (*Scott-Smith and Moti Sagar, JJ.*). RUPCHAND *v.* POHOMAL.
73 I.C. 916=A.I.R. 1923 Lah. 347.

——*Mere totalling up of entries does not close the account.*

The agent for both the parties lent money on behalf of one firm to himself as agent for the other firm. Each of those loans gave rise to a right of setoff or claim against the borrower, and as both plaintiff and defendant were on occasions the lenders, these transactions gave rise to reciprocal demands from time to time. The accounts were never settled.

Held, the fact that the agent for his own convenience totalled up the position and made entries of the result in each firm's books did not close the account. It was continuous and was therefore, an open and current account, and having regard to the mutual loans, it was also a mutual account. 8 L.B.R. 149, *Dist.* (*Robinson, C.J. and MacGregor, J.*). R. M. A. R. R. M. ARUNACHALAM CHETTY *v.* V. E. R. M. N. SOMASUNDARAM CHETTY.
63 I.C. 928=11 L.B.R. 369=1 Bur. L.J. 240=
A.I.R. 1923 Rang. 18.

——*Where there are no reciprocal demands.*

Plaintiff sued defendant for a sum of Rs. 1,600 due as principal and interest on book accounts. It was alleged that defendant had struck a balance in favour of the plaintiff for Rs. 756-14-0 and that he had since taken a further sum of Rs. 57 and these items together with interest accrued due amounted to a total of Rs. 1,600.

LIMITATION ACT (1908), Art. 85 — Principal and agent.

The accounts on record were not mutual, open and current and there were no reciprocal demands between the parties,

Held, that Art. 85 does not apply but that the Article applicable is either 57 or 64. (*Broadway and Moti Sagar, JJ.*). NANAK SINGH *v.* MIHAN SINGH. 4 L. L.J. 69=A.I.R. 1922 Lah. 204.

——Where in respect of transactions between the parties no balance was struck and payments were made by one party not in respect of any particular transaction, but in respect of the account generally and hundies were drawn from time to time by one party at a time when the balance was decidedly in the other party's favour,

Held, that the transactions constituted a case of mutual, open and current account with reciprocal demands within the meaning of Art. 85 of the Limitation Act. (*Daniels, A. J. C.*). BANKE LAL *v.* KANHAIYA LAL. A. I. R. 1922 Oudh 124.

—Art. 85—Principal and agent.

——The phraseology of Art. 85 is wide and comprehensive and does not exclude from its purview the case of a principal and agent between whom a mutual, open and current account has existed. A. I. R. 1928 All. 236, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). JEWAN MAL-GIAN CHAND-HARI RAM *v.* RAM LAL. A.I.R. 1930 Lah. 712.

——Where the accounts between a principal and his agent commenced with principal's payment as margin money but all the subsequent items showed only money spent by agent on behalf of principal, the account could not be called mutual account with reciprocity of dealings and so Art. 85 would not govern the case. A. I. R. 1923 Lah. 347, *Foll.* (*Shadi Lal, C. J. and Bhide, J.*). GANESH DAS *v.* NARSINGH DAS. 118 I.C. 767=
30 P.L.R. 35.

——Even in a suit by commission agent, where the accounts were stated and balance struck, Art. 64 applies and not Art. 85. (*Addison, J.*). KARAM CHAND SANT RAM *v.* DAYA NAND DAMODHAR DAS. 100 I. C. 874=A.I.R 1926 Lah. 51.

——Where a commission agent who as such, received goods from the defendants and also discounted defendants' hundies sues the defendant on a lengthy account showing a shifting balance, sometimes in favour of the plaintiff and sometimes in favour of the defendant, his suit is on mutual, open and current account and so is governed by Art. 85. 23 P.R. 1915, *Dist.*; A.I.R. 1922 Lah. 188, *Appl.* (*Harrison, J.*). FIRM BEHARILAL *v.* HAR NARAIN DAS. 92 I.C. 674=
A. I. R. 1926 Lah. 283.

——*What is mutual account.*

The plaintiffs' firm made advances of money to the defendants. The defendants were dealers in grain and used to send their grain to the plaintiffs' shop. Plaintiffs sold it as commission agents and, after deducting their commission and other charges, credited the amount remaining to the defendants in the account,

Held, that the accounts came within Art. 85. 7 P.L.R. 1917 and 34 Mad. 513, *Dist.*; 14 M. L. T. 498, *Foll.*

An account is mutual when there are transactions on each side creating independent obligations on the other and where the transactions create obligations on one side only, those on the other being merely complete or partial discharges of such obligations, the account is not mutual.

The absence of a shifting balance was not conclusive against the mutuality of the account.

LIMITATION ACT (1908), Art. 85 — Settlement of account.

17 Mad. 293 and 22 Bom. 606, *Foll.* (*Scott-Smith, J.*). RATAN CHAND JWALADAS *v.* ASA SINGH BOGHA SINGH. **59 I.C. 669=31 P.L.R. 1921= A.I.R. 1921 Lah. 369.**

—Art. 85—Settlement of account.

———Where an account stated comprises items on both sides and a balance is deducted thereon it being always in favour of one party and not shifting on one party or the other that balance represents the amount of liability for future and is recoverable within three years from the statement of account although some of the earlier items in the account may have been already time-barred. (*Kinkhede, A.J.C.*). SITARAMSA *v.* AMIR BAX. **106 I. C. 53=A. I. R. 1928 Nag. 127.**

———*Settlement made prior to suit.*

Where there was a current account and a mutual one, and the plaintiffs had claims against the defendants for money advanced plus interest and the defendants could set off, against those claims, their share of any profits made in the transaction in which the parties had a common interest, but the account was not open and current at the time of the suit and the account had been closed and had been settled by the striking of a balance,

Held, the article applicable is Art. 64 which applies to a suit for money payable for money found to be due on accounts stated. (*Le Rossignol and Abdul Qadir, JJ.*). FIRM GURUDAS *v.* BHAGWAN DAS. **68 I.C. 815=A.I.R. 1922 Lah. 182.**

—Art. 85—Striking of balance.

———*Mere delay in suing—Character not changed.*

The plaintiffs sued to recover the balance due on cross-transactions in which each side supplied the other with goods in kind. There were mutual dealings and though balances were struck from time to time these were merely acknowledgments and not agreements to pay.

Held, the case is one not of a stated account but of a mutual, open and current account, where there have been reciprocal demands between the parties. The case is, therefore, governed by Art. 85 and not by Arts. 64 or 57. The mere fact that the plaintiffs have allowed a considerable time to elapse before suing cannot in any way change the nature of the account; nor can it be held that an account becomes closed whenever a balance is struck. (*Chevis and Harrison, JJ.*). JWALA DAS *v.* HUKUM CHAND. **66 I.C. 387=A.I.R. 1922 Lah. 316.**

—Art. 85—Test for application.

———Under Art. 85 the account between the parties must be mutual, open and current indicating reciprocal demands between the parties. It is sufficient if the dealings are such that the balance might have been in favour of either party; it is not essential that the balance should in fact have been in favour of the defendants at some stage.

Per *Crump, J.*—The words "where there have been reciprocal demands between the parties" in Art. 85 taken literally may no doubt give rise to some difficulty, but those words have been interpreted as meaning that the nature of the accounts is such as to create reciprocal demands. They are in fact words in the nature of a definition but are not intended to postulate that there should have been reciprocal demands in fact. (*Shah, Ag. C. J. and Crump, J.*). SATAPPA JAKAPPA *v.* ANNAPPA BASAPPA. **76 I.C. 115=47 Bom. 128= 24 Bom.L.R. 1284=A.I.R. 1923 Bom. 82.**

LIMITATION ACT (1908), Art. 89 — Death of agent.

———*Mutuality and reciprocity.*

The test of applying Art. 85 is mutuality and reciprocity; therefore where there are entries on one side showing cash advances, price of cloth sold, payment made to third person on behalf of the defendants for things supplied and commission charged, for purchases made by plaintiff for defendants and on the other side there are entries showing that the plaintiff firm received various kinds of grains from the defendant and having sold them in the market credited the proceeds to the defendants, the suit comes under Art. 85 of the Limitation Act. (*Abdul Raoof and Harrison, JJ.*). ABDUL HAQ *v.* FIRM SHIVJI RAM. **71 I.C. 259=A.I.R. 1922 Lah. 338.**

———Where the balance claimed is due on a mutual, open and current account and there have been reciprocal demands between the parties the suit is governed by Art. 85 of the First Schedule of the Limitation Act and not by Art. 57 of the Punjab Loans Limitation Act. In order to bring the case within the latter article the plaintiffs have to make out that the claim, was for money payable for money lent. A mere striking of balance is no evidence of a new contract. (*Abdul Raoof and Martineau, JJ.*). RATAN CHAND JOWALA DAS *v.* ASA SINGH, BOGA SINGH. **62 I.C. 898= 4 L. L.J. 217=A.I.R. 1922 Lah. 188.**

———The test for the application of Art. 85 appears to be whether the dealings are mutual, that is to say, entered in an account consisting of mutual items of debit and credit and not whether they might give rise to independent obligations or reciprocal demands, or whether the balance might shift from one side to the other. Art. 85 contemplates mutual dealings, and it was intended that if there was a continuous account of mutual dealings, then for the purposes of a suit that period of limitation should be computed from the close of the year in which the last item admitted or proved was entered in the account. 1 I.A. 346 (P.C.), *Ref.* (*Macleod, C.J. and Shah, J.*). MADHAV MOTIRAM *v.* JAIRAM SAKHARAM. **63 I.C. 950=23 Bom. L.R. 540= A. I. R. 1921 Bom. 451.**

———Although an account may be current and open, to render the Article applicable, however, it is also necessary that each party must have a demand against the other. It is not necessary that any demand should actually have been made. Both parties must, however, have been capable of making a demand. (*Shadi Lal and Broadway, JJ.*). SHOP HARDIAL RAM CHAND *v.* PAKHAR DAS. **67 I.C. 933=3 L L.J. 362= A.I.R. 1921 Lah. 256.**

—Art. 89—Co-sharers.

———*Rent received on behalf of other sharers.*

Where by virtue of an arrangement some of the co-sharers have been realizing rent of joint immovable property for division among other co-sharers, the relationship between the latter and the former is that of an agent and principal; and a suit for realization of the share of rent by the co-sharer is governed by Art. 89 and not Art. 62. 24 All. 27; A. I. R. 1923 P.C. 31 and A.I.R. 1922 Mad. 150 (F.B.), *Rel. on*; 24 Cal. 309; 32 Cal. 527 and A.I.R. 1924 All. 812, *Dist.* (*Zafar Ali and Jai Lal, JJ.*). MT. KISHEN DEVI *v.* BANWARI LAL. **111 I.C. 635=10 L L.J. 355= A.I.R. 1928 Lah. 688.**

—Art. 89—Death of agent.

———*Cause of action during agent's lifetime.*

LIMITATION ACT (1908), Art. 89 — Death of agent.

Where the cause of action arises before agent's death in a suit against his legal representatives, limitation has no fresh starting point after the agent's death. Articles 89 and 120 apply to such cases. (*Phillips, J.*). PARTHASARATHY APPA RAO *v.* JWALAPATI SUBBA RAO. **84 I.C. 276= 35 M.L.T. 84=1924 M.W.N. 517= A.I.R. 1924 Mad. 840=47 M.L.J. 483.**

——*Suit against legal representatives of agent.*

Articles 89 and 90 of the Limitation Act which relate to suits by a principal against his agent do not apply to suits against representatives of a deceased agent. Where there is a continuous and comprehensive agency, time begins to run from the time the agent refuses to render accounts. (*Dawson-Miller, C.J. and Foster, J.*). (MAHARAJADHIRAJ SIR) RAMESHWAR SINGH *v.* NARENDRA NATH DAS. **71 I.C. 916=5 P. L. T. 355= 2 Pat. L.R. Civ. 205=A.I.R. 1923 Pat. 259.**

—Art. 89—Joint Hindu family.

——*Misappropriation by manager.*

A claim by a member of a Hindu joint family against the manager of the joint property in respect of certain family outstandings alleged to have been collected and misappropriated by the latter is governed by Art. 89. A.I.R 1925 Mad. 922, *Reversed.* (*Lord Tomlin.*) MUDANNA VIRAYYA *v.* MUDANNA ADENNA. **121 I.C. 205= 51 C. L.J. 136=31 M.L.W.176= 32 Bom. L.R. 499=1930 M W.N. 60= A.I.R. 1930 P.C. 18=58 M.L.J. 245 (P.C.).**

——*One member collecting outstandings after partition.*

When after partition one brother is recovering outstandings originally due to the joint family there must be an implied contract of agency between one brother and the other and a suit by the other brother for rendition of accounts and recovery of his share of the joint outstandings is governed not by Art. 62 or Art. 120, but by Art. 89. 24 All. 27 (P.C.), *Rel. on*; 24 Cal. 309; A.I.R. 1921 Bom. 384; 32 Mad. 191, *Disc.*; A. I. R. 1922 Mad. 150 (F.B.), *Expl.* and *Dist.* (*Shadi Lal, C.J. and Skemp, J.*). BUR CHAND *v.* GANPAT RAI. **116 I.C. 327=30 P. L. R. 275= A.I.R. 1929 Lah. 407.**

——*Property not included in partition.*

Where in a partition suit a property which was held under a mortgage by the family was not included in the division and subsequently one member recovered the rent and the mortgage-debt and purchased certain property and in a suit by one member to recover his share of the property and the money recovered.

Held, that the claim of the plaintiffs with regard to the rent and the recoveries of the mortgage-debt was not barred by limitation, as it was governed by Art. 89 and not by Art. 62. 22 Bom. L.R. 1289 and A.I.R. 1925 Bom. 148, *Foll.*

Held, further that even if Art. 89 did not apply the suit would be deemed to be one for account which would be governed by Art. 120. A.I.R. 1922 Mad. 150 (F.B.), *Foll.* (*Patkar and Baker, JJ.*). GOVINDDAS *v.* GANPATDAS. **113 I.C. 173= 30 Bom. L.R. 912=A.I.R. 1928 Bom. 365.**

——Where two divided families have joint dealings managed by the eldest member, a suit for account against the manager is governed by Art. 89 and not by 62. (*Lord Phillimore.*) VENKANNA *v.* AGASTHIAH. **32 M.L.T. 86= 27 C.W.N. 725=A.I.R. 1923 P.C. 31 (P.C.).**

LIMITATION ACT (1908), Art. 89—No contract of ageney.

——*Partition—Suit for mesne profits received by one member.*

Where the members of a joint Hindu family become divided in status but the properties have not been actually divided and apportioned among them, and subsequently one of them brings a suit for partition by metes and bounds claiming also an account being taken of the movable properties outstanding and collections made by the various members in respect of the properties.

Held, that the proper article to apply is Art. 120. The period of limitation will run from the demand of the share by the plaintiff or refusal by defendant. If the facts be that the rents and profits were received with the consent of all concerned, by the various members in possession pending final settlement by division, each of such persons might be considered as agent for himself and his co-owners. In such a case Art. 89 will apply. (*Schwabe, C.J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadoss, JJ.*). YERUKOLA ALIAS PENTA JOGULU *v.* YERUKOLA ALIAS PENTA TATAYYA. **71 I.C. 177=1922 M.W.N. 215= 15 M. L. W. 595=30 M L.T. 279= 45 Mad. 648=A.I.R. 1922 Mad. 150= 42 M.L.J. 507 (F.B.).**

——*Partition—Securities realised but not divided. —Suit by others to recover their shares.*

Where at a partition immovable property is divided, but the debts due to the family are kept joint in the name of one of the members to be realised by him and divided among all the members, all the members become tenants-in-common with respect to the debts. The member realising the debts must be considered as the agent and a suit by the members for the recovery of their share of the debts after their realisation would be governed by Art. 89 and not Art. 62.

Time would not begin to run until a demand was made and refused, or the member realising the debts showed his intention to hold the fund which he had collected against the other members. 24 Cal. 309, *Dist.* (*Macleod, C.J. and Fawcett, J.*). GABU *v.* ZIPRU. **59 I.C. 357=45 Bom. 313= A.I.R. 1921 Bom. 384.**

—Art. 89—Joint principals.

——In the case of joint principals, time runs from the date of demand by all the principals and a refusal thereon and a demand by one only and a refusal thereon does not start limitation as against him. (*Das and Kulwant Sahay, JJ.*). JAGDIP PRASAD *v.* MT. RAJO KUER. **75 I.C. 1022= 4 P.L.T. 531= 1923 P.H.C.C. 177= 2 Pat. 585=A.I.R. 1923 Pat. 464.**

—Art. 89—Minors.

——*Agency for a transaction.*

Where an agency does not terminate with the death of the principal but terminates with the completion of a transaction which has occurred in the lifetime of principal, the *terminus a quo* for limitation under Art. 89 begins from the completion of the transaction and the minor claiming through the principal, an amount credited to the name of the principal in a firm account, cannot, ask the help of S. 6. (*Johnstone, J.*). RAMJI MAL NARAIN DAS *v.* GULZARE SINGH. **A.I.R. 1929 Lah. 883.**

—Art. 89—No contract of agency.

——Where there was no specific contract of agency between the parties Art. 120 should be applied and not Art. 89. A.I.R. 1922 Mad. 150

LIMITATION ACT (1908), Art. 89—No demand or refusal.

(F.B.), *Foll.* (*Devadoss and Mackay, JJ.*). NA. AYYAKUTTI THEVEN *v* SIGAPPI ACHI.
114 I.C. 364=A.I.R. 1928 Mad. 1236.

—Art. 89—No demand or refusal.

——In a suit by the principal against agent for rents and profits of the suit property, if there was no demand and refusal of accounts, the agent is liable to account for all the amounts received on behalf of the plaintiff. It is immaterial in such a case whether Art. 89 applies on the ground of agency, or Art. 120 applies on the ground of absence of specific contract of agency. (*Devadoss and Mackay, JJ.*). NA. AYYAKUTTI THEVAN *v.* SIGAPPA ACHI. **114 I. C. 364= A. I. R. 1928 Mad. 1236.**

—Art. 89—Pleader and client.

——Where a person engaged a pleader of several suits and after the death of the pleader sued the pleader's legal representatives for an account of moneys advanced to the pleader in connexion with the suit,

Held, that the suit was barred by limitation in respect of suits disposed of more than three years before the date of suit, as the death of the pleader did not give a fresh cause of action against his legal representatives. 16 M. L. T. 614, *Foll.*; 17 C.W.N. 5 and 25 All. 55, *Diss. from.* (*Odgers and Curgenven, JJ.*). SREE RAJAH PARTHASARATHI APPA RAO *v.* SUBBA RAO.
99 I.C. 456=50 Mad 249=24 M L.W. 818= 1927 M.W.N. 32=38 M.L.T. 26= A.I.R. 1927 Mad. 157=51 M.L.J. 804.

—Art. 89—Produce of fields.

——*J* sued the son of one *H* for an account of the produce of certain fields for some years. He alleged that *H* retained the produce of the fields during these years on his behalf.

Held, that Art. 62 or Art. 89 would govern the suit. (*Macnair, A.J.C.*). LAL SINGH *v.* JIWAN RAM. **112 I.C. 126=A.I.R. 1928 Nag. 256.**

—Art. 89—Purchase on behalf of another.

——Where in a case the plaintiff sued to recover properties in the name of defendants as being purchased for them in trust it was sought to be argued that the parties may be looked upon as principal and agent and when there was a demand and refusal to account, the limitation started,

Held, the starting point was when the agency terminated and in the absence of a specific plea as to agency in the first Court, the same could not be entertained in appeal. (*Krishnan and Odgers, JJ.*). KRISHNAN PATTER *v.* LAKSHIMI. **66 I.C. 858= 30 M.L.T. 238=45 Mad. 415= 1922 M.W.N. 117=A.I.R. 1922 Mad. 57= 16 M.L.W. 886=42 M.L.J. 119.**

—Art. 89—Refusal, what is.

——It is the agent's duty to keep proper accounts of his dealings and a demand by a principal accompanied by non-compliance or evasion or procrastination on the part of the agent would amount to a refusal within the meaning of Art. 89, Limitation Act. (*Aston, A. J. C.*). GANESHDAS LOKURAM *v.* GANGARAM DHINGRA.
123 I.C. 228=A.I.R. 1930 Sind 142.

——The expression 'puting off' is equivalent to postponement, and postponement is by no means tantamount to refusal; on the contrary it implies an admission that an account is due and will be rendered. 43 I. C. 570, *Foll.* (*Das and Ross, JJ.*). SYED HASSAN IMAM *v.* DEBI PRASAD SINGH.
80 I. C. 956=3 Pat. 546=5 P.L.T. 303= 1924 P.H.C.C. 189=A.I.R. 1924 Pat. 664.

LIMITATION ACT (1908), Art. 89—Suit for accounts.

——*Omission to render accounts—Movable property includes money.*

Where the defendant, employed to collect rent by the plaintiff from December, 1907, to October, 1915, was asked to submit accounts up to 12th April, 1914, on or before 13th May 1914, but failed to submit them and a suit was filed against him on 27-8-1918 for accounts for the whole period from 1907 to 1915,

Held, the conduct of the defendant in not complying with the demand to submit accounts amounted to refusal. The claim therefore so far as it related to accounts up to 12th April, 1914, was barred by limitation as the suit was instituted after three years from 12th May, 1914, the date of refusal. But the suit was in time for the accounts from the 13th April, 1914, to the 11th October, 1915. The article applicable is Art. 89 and not Art. 115 or 116 which apply only where there is no specific provision. The term 'movable property' includes money. (*Mookerjee and Buckland, JJ.*). PRAN RAM MOOKERJI *v.* JAGADISH NATH RAY.
68 I.C. 562=49 Cal. 250=26 C.W.N. 61= 35 C.L.J. 111=A.I.R. 1922 Cal. 355.

—Art. 89—Starting point.

——The period in Art. 89 runs either from the termination of the agency or from an earlier date when accounts are demanded and refused. It is difficult to believe, that the legislature could have intended a later date to serve as the starting point, in cases where an account is demanded of an agent, who promises to render it later on, but fails to keep his promise. (*Aston, A.J.C.*). GANESHDAS LOKURAM *v.* GANGARAM DHINGRA.
123 I.C. 228=A.I.R. 1930 Sind 142.

——*Termination of agency by closing the transactions*

Plaintiff had certain transactions in cotton, wheat, etc., with three different firms, which acted as his agents for the purpose. The last date of the transactions was 19th May, 1918. Thereafter no transaction took place, but accounts were not rendered. Subsequently the three firms were merged in the defendant firm; and the latter firm was sued for accounts by the plaintiff as the representative of the three firms in 1924,

Held, that the period of limitation began to run from the date of the last transaction and hence the suit was out of time. 39 Mad. 376, *Rel. on*; 26 Cal. 715 and 12 All. 546, *Dist.* (*Bhide, J.*). RUCHIRAM SUKHA NAND *v.* CHARAN DAS.
110 I.C. 575=A.I.R. 1928 Lah. 833.

——*Where date is fixed for settling accounts.*

In a suit for accounts by the principal against the agent when a date is fixed between them for settling of accounts, limitation begins to run from the date fixed and not from the date of the transaction last entered into by the agent on behalf of the principal. (*Campbell, J.*). LAKHMI CHAND *v.* FIRM CHAJJU MAL. **91 I.C. 487= A.I.R. 1926 Lah. 200.**

—Art. 89—Suit for accounts.

——*Where misappropriation is alleged.*

To a suit by principal, for an account of the management of certain properties of his estate the proper article applicable is Art. 89 even when what is charged includes misappropriation. 41 Mad. 1, *Rel. on.* (*Srinivasa Aiyangar and Curgenven, JJ.*). MADHAVAN NAIR *v.* ZAMORIN OF CALICUT.
109 I.C. 332=A.I.R. 1928 Mad. 906.

——*Provincial Small Cause Courts Act* (1887), *Sch. II, Art.* 31—*Suit for accounts by successor-in-*

LIMITATION ACT (1908), Art. 89 — Suit for accounts.

interest of the principal—Suit is not cognizable by Small Cause Court.

The plaintiffs' father purchased certain property and entrusted the management of the same to the defendant, the maternal uncle of the plaintiffs. The father advanced certain sums of money from time to time to the defendant in order that the same might be lent to the tenants. The father died in September, 1918. The defendant refused to render an account of the monies that he received and realised sometime in 1921. Plaintiffs then filed the suit,

Held, the suit was one for accounts by the legal representatives of the principal against agent, and Art. 89 of the Limitation Act applied. (*Mukerji, J.*). MAHADEO PRASAD v. SOORAJ PRASAD.

85 I.C. 704=6 L.R.A. Civ. 273=
A.I.R. 1925 All. 682.

——The plaintiff engaged the defendant as his agent to look after certain villages and collect the rents, rendering an account to the plaintiff between the parties. There were written agreements between the parties. After some years, the defendant was dismissed,

Held, a suit by the plaintiff for accounts was governed by Art. 89 and not Art. 115 of the Lim. Act. (*Dawson-Miller, C. J. and Foster, J.*). JOGINDRA NARAYAN v. CHINAI MUHAMMAD SIRCAR. 89 I.C. 275=4 Pat. 289=
7 P.L.T. 111=A.I.R. 1925 Pat. 494.

—Art. 89—Termination of agency.

——The agency terminates when the business of the agency has been completed, and the mere liability to render an account is not a continuance of the relation between the agent and the principal. When an agent is instructed to buy and sell goods on behalf of his principal, on agent's carrying out principal's instructions the business of his agency terminates. 12 All. 541 and 26 Cal. 715, *Dist.*; 39 Mad. 376, *Foll.* (*Raymond, A.J.C.*). GORDHANDAS v. FIRM OF GOKAL KHATAVO. 96 I.C. 79=
21 S.L.R. 336=A.I.R. 1926 Sind 264.

——*Death of parties.*

Under the provisions of S. 201 of the Contract Act, an agency is terminated by either the principal or agent dying, and therefore a suit against the agent for accounts for the period during which he acted as agent under the deceased must be brought within three years of the death as laid down in Art. 89 of the Limitation Act. 43 Cal. 248 and A.I.R. 1916 P.C. 148, *Foll.*

The case does not come under S. 209 of the Contract Act or Art. 120 of Limitation Act as there is no question in it of suing the defendant for any act done by him after the death of his late principal, which he might have done as a trustee. (*Chatterjee and Panton, JJ.*). SARASHIBALA DASI v. CHUNI LAL GHOSH. 65 I.C. 219=25 C.W.N. 320=
A.I.R. 1922 Cal. 53.

—Art. 90—Applicability.

——Article 90 is residuary article with regard to actions between principal and agent and should be held to be applicable only if no other article can possibly be regarded as applying to the facts of the particular case. (*Srinivasa Aiyangar and Curgenven, JJ.*). MADHAVAN NAIR v. ZAMORIN OF CALICUT. 109 I.C. 332=
A.I.R. 1928 Mad. 906.

—Art. 90—Clerk in Bank.

——The clerk in a bank in charge of savings bank accounts, through whom alone money could be withdrawn, and who alone could report to the official concerned what a particular depositor desirous of withdrawing money has to his credit money in excess of what he desires to withdraw, so far as he acts within the scope of his authority, is an agent of the bank. (*Sen and Niamatullah, JJ.*). BENARES BANK, LTD. v. RAM PRASAD.

124 I.C. 180=A.I.R. 1930 All. 573.

—Art. 90—Director of company.

——Whether a Director whose acts are the subject of construction was a trustee or a partner or an agent to the Company or to the body of shareholders is to be determined according to the circumstances of each case. (*Abdul Raoof and Fforde, JJ.*). DAULAT RAM v. BHARAT NATIONAL BANK, LTD. 79 I.C. 740=
5 Lah. 27=A.I.R. 1924 Lah. 435.

——The Director who was acting as a Chairman of the local Board of Directors was in the circumstances of this case held to be an agent of the bank and a suit against him for neglect and misconduct was held to be governed by Art. 90. (*Abdul Raoof and Fforde, JJ.*). DAULAT RAM v. BHARAT NATIONAL BANK, LTD. 79 I.C. 740= 5 Lah. 27=
A.I.R. 1924 Lah. 435.

—Art. 90—Interpretation.

——*'Neglect' or 'misconduct.'*

The expression "neglect" or "misconduct" appearing in the third column of Art. 90 has special reference to what is termed negligence or misconduct of the agent in the conduct of the agency and does not cover every failure of duty on the part of the agent. (*Srinivasa Aiyangar and Curgenven, JJ.*). MADHAVAN NAIR v. ZAMORIN OF CALICUT. 109 I.C. 332=
A.I.R. 1928 Mad. 906.

—Art. 90—Municipal Officer.

——*Suit by Municipality.*

A suit by Municipality against its executive Officer for loss sustained by it owing to disregard of directions amounting to negligence or overconfidence in the honesty of others is governed by Art. 90. (*Mears, C.J. and Piggott, J.*). AL. MUKERJI v. THE MUNICIPAL BOARD.

80 I.C. 241=46 All. 175=22 A.L.J. 26=
5 L.R.A. Civ. 113=A.I.R. 1924 All. 467.

—Art. 90—Person entrusted with money.

——*Money entrusted for specific purpose—Retention—Starting point.*

Where various sums of money are entrusted from time to time to a person with specific directions that he should dispose off particular sum in particular manner, the position of person so entrusted is that of an agent, intermediary or middleman. If such person abuses his position and retains the money, it being a suit by the principal against an agent for neglect or misconduct, the suit for recovery of such sums as he wrongfully retains in hand is covered by Art. 90, and time begins to run from the date of the matter comes to the knowledge of the principal. (*Sen and Niamatullah, JJ.*). JAGANJI v. BANDAN.

A.I.R. 1930 All. 397.

—Art. 90—Starting point.

——*Agent making secret profit—Suit by principal.*

In a suit by principal against the agent for recovery of money earned by agent as secret profit, the limitation begins to run from the date the principal comes to know that defendant has made secret profits. (*Boys and Kendall, JJ.*) KISHORI LAL v. JANHARI MAL. 103 I.C. 221=
25 A. L.J. 448=A.I.R. 1927 All. 436.

LIMITATION ACT (1908), Art. 91—Alienation by widow.

—Art. 91—Alienation by widow.

———*Void sale—Suit to set aside.*

Where the alienation was by a Hindu widow of an unrecognised portion of a *bhag* and the reversioner sued to have the same set aside after the lifetime of the widow,

Held, that the alienation being void *ab initio* limitation commenced from the date of the sale-deed and the suit was barred whether Art. 91 or Art. 120 applied to the case. (*Marten, C.J. and Patkar, J.*). SHANKARBHAI *v.* BAI SHIV.

32 Bom. L.R. 1013.

———In the case of a reversioner it is not essential for him to set aside any alienation by the widow; but he can sue to enforce his right as reversioner without setting aside the alienation within the period prescribed by the Limitation Act after the death of the widow. 33 Cal. 257; 31 Bom. 1; and 34 Cal. 329, *Foll.* (*Shah, Ag. C.J. and Fawcett, J.*). HANAMGOWDA SHIDGOWDA PATIL *v.* IRGOWDA SHIVGOWDA PATIL. **84 I. C. 374= 26 Bom. L.R. 829=48 Bom. 654= A.I.R. 1925 Bom. 9.**

———Adopted son may enforce his right to property alienated by widow; (adoptive mother) prior to adoption, without setting aside the transfer. (*Shah, Ag. C.J. and Fawcett, J.*). HANAMGOWDA SHIDGOWDA PATIL *v.* IRGOWDA SHIVGOWDA PATIL. **84 I. C. 374=26 Bom. L. R. 829= 48 Bom. 654= A. I. R. 1925 Bom. 9.**

—Art. 91—Applicability.

———*Where the document is void.*

Where a guardian sells immovable property belonging to a minor without the sanction of the Court and subsequently executes a second sale with the permission of the Court the later transferee can sue for possession outright and need not expressly sue to have the first sale set aside. To such a case Art. 120 and not Art. 91 of the Limitation Act, will apply. (*S. K. Ghose, J.*). NAGENDRA NATH GHOSE *v.* MOHINI MOHAN BOSE.

34 C.W.N. 948.

———*Where plaintiff is not a party to the instrument.*

Article 91 applies to parties to the instrument which is sought to be cancelled and set aside, and has no application to a case where an alienation by an unauthorized person is attacked by the next reversioner or the successor-in-office of a mahant of a religious institution. (*Tek Chand and Hilton, JJ.*). MATHRA DAS *v.* GOPAL NATH.

11 L.L.J. 493= A. I. R. 1929 Lah. 816.

———*Where the deed was a sham transaction.*

A suit for a declaration that a transaction embodied in a particular deed was from the very inception a sham transaction is to be distinguished from a suit for cancellation of the deed. The former kind of suit does not fall within the purview of Art. 91, Sch 2, Limitation Act. A. I. R. 1924 Bom. 174 and 35 Cal. 551, *Foll.* (*Sulaiman and Kendall, JJ.*). MD. NAZIR *v.* MT. ZULAIKAH.

109 I.C. 54=50 All. 510=26 A.L.J. 289= A.I.R. 1928 All. 267.

———A suit to set aside a document which is voidable is governed by Art. 91. 41 M. L. J, 474 and 15 Cal. 58 (P. C.). *Rel. on* (*Devadoss, J.*). VENKAT RAMA AIYAR *v.* KRISHNAMMAL. **99 I.C. 571= 38 M.L.T. (H.C.) 1=25 M.L.W. 550= A. I. R. 1927 Mad. 255=52 M.L.J. 20.**

———*Where plaintiff is not a party to the instrument.*

LIMITATION ACT (1908), Art. 91—Co-sharers.

Where the plaintiff in a suit for possession of property sold in execution of a decree was the original owner of the property and was not a party to the decree under which the sale took place nor a representative of any of the parties and was consequently in a position to ignore the sale altogether,

Held, Art. 12 has no application and the suit falls under Art. 144. Article 91 also is not applicable, as it provides for the cancellation or setting aside of an instrument not otherwise provided for and it binds only the parties to the instrument and not strangers. 15 P.R. 1912. (*Scott-Smith, J.*). AZIM KHAN *v.* KARIM. **71 I. C. 822= A.I.R. 1924 Lah. 396.**

———Article 91 can only be applied when the plaintiff has been himself or through his predecessor-in-interest a party to the instrument assailed. (*Pratt and Duckworth, JJ.*). MI SON MA KHAING *v.* SHWE BA. **74 I.C. 164=1 Bur. L.J. 106= A. I. R. 1923 Rang. 82.**

———Article 91 is restricted to a suit between the parties to the instrument or their successors-in-interest and a plaintiff is not bound to set aside an instrument not executed by himself or by his predecessor-in-title. (*Drake-Brockman, J.C.*). KUNJ LAL *v.* CHANDAR SINGH. **64 I.C. 775= 17 N.L.R. 169= A.I.R. 1921 Nag. 74.**

—Art. 91—Burden of proof.

———The onus is not on the defendant to prove that the plaintiff's knowledge arose more than 3 years before suit. 2 N.L.R. 98, *Dissented from.* (*Sadasiva Aiyar and Spencer, JJ.*). SETHUPATHI AVERGAL v. KUPPUSWAMI AIYAR. **68 I.C. 352= 1921 M.W.N. 722= A.I.R. 1921 Mad. 394= 41 M.L.J. 474.**

—Art. 91—Comparison with Art. 126.

———The language of Art. 91 is almost identical which the description of a suit contemplated by Art. 126 and though the objectives of the suits specified in these Articles are different, the nature of the relief is the same. (*Wazir Hasan, A.J.C.*). MT. KANIZ FIZZA BIBI *v.* DATADIN.

90 I.C. 184=2 O.W.N. 650= A.I.R. 1925 Oudh 678.

—Art. 91—Cancellation when unnecessary.

———*Where document is a sham transaction.*

Where a plaintiff sued for declaration of his title and injunction alleging in the plaint that the settlement deed under which the defendant claimed was a sham and fictitious document under which no property was intended to pass, he is not obliged to get the document set aside, before becoming entitled to the other reliefs. (*Curgenven, J.*). KRISHNASAMI AYYANGAR *v.* KUPPU AMMAL.

120 I.C. 378=30 M.L.W. 796= A.I.R. 1929 Mad. 478.

———A person who is entitled to possession of property need not as a preliminary to that set aside a document which may have been executed by somebody else in order to defeat his title. (*Das and Ross, JJ.*). JAI NARAYAN PANDE *v.* KISHUN DUTTA MISRA. **78 I. C. 705=3 Pat. 575= 5 Pat. L.T. 581=2 Pat. L.R. 306= A.I.R. 1924 Pat. 551.**

—Art. 91—Co-sharers.

———*Lease by Lambardar—Suit to set aside.*

The position of a Lambardar with reference to his co-sharer in the matter of letting out vacant land cannot well be put higher than that of a manager of the joint property of a Hindu family, and therefore a suit by a co-sharer for a declaration that a lease granted by a Lambardar is

LIMITATION ACT (1908), Art. 91—Decree.

invalid against him is within time if brought within 12 years of the date on which the execution of the lease became known to the co-sharer on the principle that a suit for declaration of a right cannot be held to be barred so long as the right to the property in respect of which declaration is sought is a subsisting right. (*Drake-Brockman, J.C.*). KUNJILAL *v.* CHANDARSINGH. **64 I.C. 775= 17 N.L.R. 169=A.I.R. 1921 Nag. 74.**

—Art. 91—Decree.

——*Where it is based on an award.*

An award is an instrument within the meaning of Art. 91 and the plaintiff cannot impeach the decree incorporating the award unless he can show that a suit to set aside the award was brought within the period prescribed by Art. 91. (*Shadi Lal, C.J. and Broadway, J.*). NIDHAN SINGH *v.* E. D. SASSOON & CO. **100 I.C. 596=28 P.L.R. 106= 9 L.L.J. 191=A.I.R. 1927 Lah. 172.**

Per *Das, J.*—Where a person is *prima facie*, bound by a decree, he cannot by suing ostensibly for possession ignore the decree and evade the operation of law; and where such a decree is an impediment to the plaintiffs' way in obtaining relief inconsistent with it, he must bring his suit within the period prescribed by law for setting aside a decree. (*Dawson-Miller, C.J., on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **88 I.C. 141=87 I.C. 849= 4 Pat. 510=6 P.L.T. 634=A.I.R. 1925 Pat. 625.**

——Articles 95, 44 and 91 of the first Schedule to the Limitation Act do not apply to a suit to have a decree set aside but the article applicable would be 120. (*Abdul Raoof and Martineau, JJ.*). JITA SINGH *v.* MAN SINGH. **62 I.C. 794= 79 P. L. R. 1921=2 Lah. 164=4 L. L. J. 211= A.I.R. 1922 Lah. 166.**

—Art. 91—Interpretation.

——*'Plaintiff'.*

The word "plaintiff" in Art. 91 has to be read with the definition in S. 2 so as to include any person from or through whom a plaintiff derives his right to sue. (*Marten, C.J. and Patkar, J.*). SHANKARBHAI DAJIBHAI *v.* BHAI SHIV. **32 Bom. L. R. 1013=A.I.R. 1930 Bom. 545.**

—Art. 91—Joint Hindu family.

——*Where the deed is void* ab initio.

Article 91 does not apply where the plaintiff is not suing to cancel or set aside a sale deed of joint family property, executed by other members of his family but for a declaration that the sale-deed is void *ab initio*. The article applicable is 120 and the period of 6 years begins from the time when the plaintiff came to know of the sale-deed. (*Dalal and Simpson, A.J.Cs.*). DWARKA PRASAD *v.* MT. RAM DEBI. **77 I. C. 329=10 O.L.J. 360= 27 O.C. 140=A.I.R. 1924 Oudh 120.**

——*Alienation by a manager—Suit to set aside.*

A suit to set aside an alienation by a manager of joint Hindu family and for possession of the property is governed by Art. 144 and not by Arts. 44 or 91 of the Limitation Act. 13 A. L. J. 94; 12 N.L.R. 12, *Foll.* (*Abdul Raoof and Abdul Qadir, JJ.*). SUNDER *v.* SHIAMAN. **68 I.C. 731= A. I. R. 1922 Lah. 386.**

—Art. 91—Landlord and tenant.

——*Suit against transferee—Transfer voidable.*

To a suit by the landlord against the transferee of a tenant in C.P. who has taken possession of a holding in execution of a decree on a mortgage voidable at the instance of the landlord. Article 91 of the Limitation Act (1908), first Schedule, is inapplicable. The transfer is binding on the tenant and

LIMITATION ACT (1908), Art. 91—Starting point.

cannot be cancelled by the landlord though it can be declared void as against him. 34 Cal. 329 (P.C.), *Ref. to.* (*Mitra, A.J.C.*). SETH SAGUNCHAND *v.* LALA CHHABILARAM. **76 I.C. 884= 18 N.L.R. 11=A. I. R. 1922 Nag. 60.**

—Art. 91—Malabar Tarwad.

——*To set aside sale by karnavan.*

A suit by the junior member of a Malabar tarwad to recover possession of immovable property alienated by the Karnavathi is governed by Art. 144 and not by Art. 91. The fact that the Karnavathi purported to execute the document not only as Karnavathi, but also as guardian of the minor plaintiffs, will not make either Art. 91 or Art. 44 applicable to the suit. (*Phillips and Venkatasubba Rao, JJ.*). KANNA PANIKKAR *v.* NANCHAN. **78 I.C. 564=19 M.L.W. 395=34 M.L.T. 89= A. I. R. 1924 Mad. 607=46 M.L.J. 340.**

—Art. 91—Minors.

——De facto *guardian.*

Neither Art. 44 nor Art. 91 applies to a suit to set aside alienations by a *de facto* guardian. The suit can be brought within the ordinary period of 12 years. (*Findlay, J.C.*). MAHADEO *v.* SOMAJI. **99 I.C. 1050=A.I.R. 1927 Nag. 145.**

——*Knowledge—Starting point.*

Where plaintiff and his guardian were perfectly aware of facts entitling them to set aside an award plaintiff must prove that he attained majority within 3 years of the suit. Limitation starts from date of the award and not the date when the Court refused to file it. (*Lord Atkinson.*) KIRKWOOD *v.* MAUNG SIN. **89 I.C. 773=30 C.W.N. 529= 5 Rang. 186=52 I.A. 265=6 L.R.P.C. 160= A.I.R. 1925 P.C. 216 (P.C.).**

—Art. 91—" Plaintiff."

——The word " plaintiff " in Art. 91 has to be read with the definition in S. 2 so as to include any person from or through whom a plaintiff derives his right to sue. (*Marten, C.J. and Patkar, J.*). SHANKARBHAI DAJIBHAI *v.* BAI SHIVE. **32 Bom. L.R. 1013=A.I.R. 1930 Bom. 545.**

—Art. 91—Return of purchase money.

——*Starting point.*

Cause of action for declaration by a vendee that the deed of conveyance is either void or voidable at his instance and that he is therefore entitled to the return of the purchase price arises when he comes to know of the alleged defects in his vendor's title. His claim in respect of the relief is statute-barred under Art. 91, if filed more than three years after such knowledge. (*Rupchand, Ag. J.C.*). SORABJI MUNCHERJI BILLIMORIA *v.* TARACHAND GHANSHAMDAS. **126 I.C. 737=A. I. R. 1930 Sind 66.**

—Art. 91—Sale by administrator.

——A suit to set aside a sale by administrator under S. 90, Probate and Administration Act, is governed by Art. 91 of the Limitation Act. (*Heald and Cunliffe, JJ.*). MA KIN *v.* MA BWIN. **103 I. C. 264=5 Rang. 266= A. I. R. 1927 Rang. 186.**

—Art. 91—Starting point.

——The time from which the period begins to run in a suit to cancel an instrument is from the date when the facts entitling the plaintiff to have the instrument cancelled become known to him. (*Stuart, C.J. and Rasa, J.*). TIRBHUWAR DAT *v.* SOMESHWAR DAT. **106 I.C. 903=4 O.W.N. 1116= A.I.R. 1927 Oudh 629.**

——Article 91 of the Indian Limitation Act provides a period of three years from the date when

LIMITATION ACT (1908), Art. 91 — Starting point.

the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him, 28 Mad. 349, *Foll.* (*Kanhaiya Lal and Mukerji, JJ.*). MT. MAULANI *v.* MAULA BAKSH.
78 I.C. 222=46 All. 260=22 A.L.J. 143= 5 L.R.A. Civ. 104=A.I.R. 1924 All. 370.

———*Where knowledge is on the date of the deed.*

Where the plaintiff transferred certain properties to a person whom he described as being his adopted son and subsequently brought a suit against that person for a declaration that the deed is void on the ground that there was no adoption at all,

Held, that Art. 91 applied, that the essential fact which entitled the plaintiff to have the instrument cancelled was the fact that no adoption took place, that this fact was known to the plaintiff on the date of the deed itself, and that time ran against plaintiff from the date of the deed. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. **69 I. C. 971=20 A. L. J. 945= 45 All. 169=A.I.R. 1923 All. 58.**

—Art. 91—Suit for declaration and possession.

———*Document void.*

Article 91 applies to a suit to cancel or set aside an instrument not otherwise provided for. It does not apply to a suit for possession and a declaration that an instrument under which the defendant claims is void. (*Das and Adami, JJ.*). MT. BIBI KANI ZAINAB *v.* SYED MOBARAK HOSSAIN. **72 I.C. 748=A.I.R. 1924 Pat. 284.**

———*Document void—Article does not apply—If voidable, article applies.*

Where a suit is brought for a declaration that certain instrument is absolutely void and inoperative as having been obtained by fraud and that plaintiff is entitled to the properties covered by the deed, the relief as to the declaration of the deed as void, is superfluous and Art. 95 does not apply to the suit, but Art. 120 applies.

Per *Richardson, J.*—If a plaintiff comes into Court to have a particular written instrument set aside or cancelled, then, *prima facie* Art. 91 is applicable whether the ground on which the claim is made is fraud or some other ground. 15 C. 58 (P.C.) and 25 Bom. 337 (P.C.), *Foll.*

A distinction however can be drawn between void and voidable instruments. Article 91 does not apply to instruments which are void *ab initio* so as not to require setting aside. When the instrument is voidable it is presumably valid, and binding on the plaintiff, until it is set aside, and any further relief which may be sought depends on the removal of the instrument from the plaintiff's path. In such a case Art. 91 applies. But if the facts alleged by the plaintiff raise a case that the instrument, whether executed by the plaintiff himself or by some third party through whom he claims, is null and void *ab initio*, then Art. 91 ceases to be applicable and the circumstances may entitle the plaintiff to the benefit of the longer period of limitation allowed by some other article such as Art. 120 or Art. 144.

Where the plaintiff raises the plea known to English lawyers as *non est factum*, if he should succeed in establishing that plea, then the instrument in question would be altogether void. It would not require setting aside and the prayer to set it aside would be merely superfluous, so that Art. 91 would be inapplicable. (*Sanderson, C.J. and Richardson, J.*). SARAT CHUNDER *v.* KANAI LAL. **70 I. C. 525=26 C.W.N. 479= A.I.R. 1921 Cal. 786.**

LIMITATION ACT (1908), Art. 91—Void deed.

———Article 91 has no application to a case of this description, where a suit is brought for possession and partition upon declaration that an instrumen under which the defendant claims is void. *Case-law referred.* 17 Bom. 341 (P.C.), *Foll.* (*Mookerji and Panton, JJ.*). NIBARAN CHANDRA *v.* NIRUPANNA DEBI. **69 I. C. 476=34 C.L.J. 563= 26 C.W.N. 517=A.I.R. 1921 Cal. 131.**

—Art. 91—Undue influence.

———*Starting point.*

Where a suit is brought to get a deed cancelled on the ground of fraud and undue influence, the fact must be considered to have been known to the executant from the date of the deed and if brought more than three years from that date the suit cannot be maintained. 15 Cal. 58 (P.C.), *Foll.* (*Gokaran Nath Misra, J.*). RAM SUMRAN *v.* SARJOO PRASHAD. **114 I.C. 806=5 O.W.N. 1062= 10 L.R.A. Rev 230=4 Luck 270= A.I.R. 1929 Oudh 67.**

———A deed of gift obtained by undue influence is not void but only voidable. Cause of action to set aside the deed does not arise only on the cessation of the undue influence, and the period begins when the facts entitling the plaintiff to set aside the gift becomes known to him. (*Sadasiva Aiyar and Spencer, JJ.*). SETHUPATHI AVERGAL *v.* KUPPUSWAMI AIYAR. **68 I.C. 352=1921 M.W.N. 722= A.I.R. 1921 Mad. 394=41 M.L.J. 474.**

—Art. 91—Void deed.

———Where a mortgagee under a power of sale, sells the property to one who is benami for himself the sale is void as there was really no two persons for the contract. Article 91 does not apply to the case as the sale neednot be set aside. (*Fawcett, J.*). VALLABHDAS MULJI *v.* PRANSHANKAR NARBHESHANKAR. **113 I.C. 313=30 Bom. L.R. 1519= A.I.R. 1929 Bom. 24.**

———*Misrepresentation.*

Where it is established that the plaintiff or his transferor was induced by defendant's misrepresentation to execute a deed of gift of the property in question and he executed the same believing it to be a document of a different kind altogether, the transaction is void and not voidable only and Art. 91 has no application to plaintiff's application for recovery of the property. 23 C. W. N. 93; 35 Cal. 551, *Foll.*; 42 Bom. 638, *Ref.*; 39 Cal. 257, *Dist.* (*Cuming and Pearson, JJ.*). BRINDABAN MISSRI *v.* DHRUBACHARAN ROY. **121 I.C. 404= 49 C.L.J. 540=A.I.R. 1929 Cal. 606.**

———*Sham transaction.*

(*Obiter.*) Where a deed is null and void, there is no necessity for the party to come to Court promptly and have the deed actually cancelled or set aside. Where, however, a deed is good but is voidable and can be avoided at the option of the party aggrieved, he must come to Court within three years to have it set aside. (*Sulaiman and Kendall, JJ.*). MOHAMMAD NAZIR *v.* MT. ZULAIKHA. **109 I.C. 54=50 All. 510=26 A.L.J. 289= A.I.R. 1928 All. 267.**

———*Muhammadan Law—Gift without possession —Starting point.*

Where a deed of gift is executed by a person governed by the Muhammedan law and the possession of the property comprised in the gift has not been delivered the gift would be void *ab initio* and no question of limitation will arise in such circumstances. The right of the plaintiff to impeach such

LIMITATION ACT (1908), Art. 91—Will.

a gift can only accrue from the moment when by receipt of possession the gift becomes operative by law. 6 All. 207, *Foll.* (*Kanhaiya Lal and Mukerji, JJ.*). MT. MULANI *v.* MAULA BAKSH.
78 I C. 222=46 All. 260=22 A.L.J. 149=
3 L.R.A. Civ. 104=A. I. R. 1924 All. 370.

—Art. 91—Will.

——A suit for cancellation of Will is governed by Art. 120 and not Art. 91. 23 Cal. 1 (P. C.), *Foll.*; 82 P.L.R. 1909, *Ref.* (*Harrison and Dilip Singh, JJ.*). FIROZ *v.* SULTAN. 96 I.C. 835=
A.I.R. 1926 Lah. 635.

—Art. 92—Applicability.

——*Where the relief cognizable by Civil Court is to set aside document as forged.*

Plaintiff, an ex-proprietary tenant, sued for a declaration that she had an ex-proprietary right in respect of the lands specified and that a registered deed of relinquishment dated the 19th January, 1918 was forged and was null and void and ineffectual as against her. The suit was brought more than three 'years' after 19th January, 1918,

Held, so far as the relief concerning the document was concerned, the suit was one for a declaration that the registered document was forged and as such that relief clearly was barred under Art. 92. Assuming that the relief asking for a declaration that the document was forged was not to such an extent the principal relief in the case that the period of limitation provided for that relief would govern the whole suit, still, so far as the declaration of plaintiff's right was concerned it was clearly a matter which must be determined in the Revenue Court by virtue of S. 167, Agra Tenancy Act. (*Boys and Kendall, JJ.*). MT. MURADAN *v.* RAGHUNANDAN. 102 I. C. 287=
8 L.R.A. Rev. 133=A.I.R. 1927 All. 826.

—Art. 93—Will.

——Mere mention of Will in written statement without anything done to obtain a decision on its binding character is not an attempt to enforce it. (*Abdur Rahim and Oldfield, JJ.*). D. ACHANNA PANTULU *v.* D. SEETHAMMA. 62 I.C. 331=
A.I.R. 1921 Mad. 545=40 M.L J. 343.

—Art. 95—Applicability.

——*Decree jeopardising title for the first time.*

Where title of a person is jeopardised for the first time by a decree in a suit such a person is entitled to institute a suit for declaration that he is not bound by that decree and the article applicable to such a suit is 120 and the time begins to run from the date of the invasion of the title. 5 All. 289 and 11 Bom. 119, *Dist.* (*Sen and Niamatullah, JJ.*). ABDUL AHAD *v.* CHHABI RAM. 123 I. C. 830=
A.I.R. 1930 All. 420.

——Articles 95, 44 and 91 of the first Schedule to the Limitation Act do not apply to a suit to have a decree set aside but the article applicable would be 120. (*Abdul Raoof and Martineau, JJ.*). JITA SINGH *v.* MAN SINGH. 62 I. C. 794=
2 Lah. 165=4 L.L.J. 211=79 P.L.R. 1921=
A.I.R. 1922 Lah. 166.

—Art. 95—Decree, what is.

——*Certificate of sale under Public Demands Recovery Act.*

Where the plaintiff sued to recover possession first in their capacity as executors and secondly as *shebaits* and it appeared that the defendants were in possession under a certificate of sale under the Public Demands Recovery Act to which the plaintiffs were not parties,

Held, that the case being one where there was no decree in the way of the plaintiffs, the suit was governed by Art. 95 of the Limitation Act. (*Suhrawardy and Costello, JJ.*). KALIPRASANNA SINHA *v.* HARIPADA GHOSE. 34 C.W.N. 801.

—Art. 95—Fraud by Officials of Bank.

——*'Other relief' is not* ejusdem generis *with 'decree.'*

Where the allegations of the plaintiff, a bank, clearly amount to an averment of fraud perpetrated by certain persons in collusion with its official duty it was to bring it to the notice of the other officials of the bank that the sums sought to be drawn by them exceeded the amount to the credit of the depositor concerned and who for his own ends concealed that information inducing the other officials of the bank to part with the money which they would not have otherwise paid, the case is governed by Art. 95, the mention of decree in the first part of the article not detracting in any way from the generality of the latter part thereof. 3 Cal. 504, *Expl.* and *Foll.* (*Sen and Niamatullah, JJ.*). BENARES BANK, LTD. *v.* RAM PRASAD. 124 I.C. 180=A.I.R. 1930 All. 573.

—Art. 95—Fraud not proved.

——The plaintiff sued for sale of a mortgaged property on foot of a registered mortgage. The property however, being a cultivatory holding and thus not being liable to sale, in his replication the plaintiff desired a money-decree. There was a further plea of the plaintiff that the defendant had fraudulently represented the property to be alienable property; but no fraud was found to have been proved.

Held, that the suit would have been governed by Art. 95, Sch. 1 of the Limitation Act only if the alleged fraud had been established, the proper Article applicable to the suit was Art. 116, Sch. 1, of the Limitation Act. 13 O. C. 148, 3 O. L. J. 593, *Dist.*; (1907) A. W. N. 103, *Ref.* (*Dalal, A.J.C.*). THAMMAN SINGH *v.* DALCHAND.
67 I.C. 595=9 O.L.J. 171=A.I.R. 1922 Oudh 113.

—Art. 95—Hindu family.

——*Debt due to family, collected by one member after partition.*

Article 62 and not Art. 95 applies where one member of a family which has become divided collects a debt due to the family and keeps the amount and another member files a suit to recover his share. 6 Mad. 402; 25 M.L.J. 531; 32 Mad. 191 and 37 Mad. 381, *Foll.* (*Spencer and Ramesam, JJ.*). RAMALAGU SERVAI *v.* SOLAI SERVAI.
69 I.C. 274=1921 M.W.N. 539=
A.I.R. 1921 Mad. 283=41 M.L.J. 274.

—Art. 95—Sale under Tenancy Act.

——*Applicability—Chota Nagpur Tenancy Act, S.* 231.

A suit for possession of land and the right to ask for a declaration that a sale under the Chota Nagpur Tenancy Act has been fraudulently confirmed is clearly not a suit under the Chota Nagpur Tenancy Act. It is governed by Limitation Act, Art. 95. It is true that the Act in some cases takes away the right to sue for setting aside a sale, but it nowhere grants that right although to some extent it limits it. (*Dawson Miller, C.J. and Foster, J.*). RAMESHWAR NARAIN SINGH *v.* MAHABIR PRASAD. 96 I.C. 529=5 Pat. 789=3 P.L.T. 124=
1926 P.H.C.C. 225=A.I.R. 1926 Pat. 401.

—Art. 95—Starting point.

——Where a suit is brought to get a deed cancelled on the ground of fraud and undue influence, the fact must be considered to have been known to the executant from the date of the deed and it

LIMITATION ACT (1908), Art. 95 — Starting point.

brought more than three years from that date the suit cannot be maintained. 15 Cal. 58 (P. C.), *Foll.* (*Gokaran Nath Misra, J.*). RAM SUMARAN *v.* SARJOO PERSHAD. **114 I.C. 806=4 Luck. 270=5 O.W.N. 1062=10 L.R.A. Rev. 230=A.I.R. 1929 Oudh 67.**

———Onus *of proof.*

When a plaintiff sues to cancel or set aside an instrument setting out the facts which entitle him to have that instrument cancelled or set aside and alleging that those facts became known to him at a certain time, it is incumbent on a defendant who pleads that the suit is barred by time to allege and prove a knowledge prior to the period from which time begins to run. 2 N.L.R. 98, *Foll.* (*Kinkhede, A.J.C.*). GUNABAI *v.* MOTILAL. **89 I.C. 625=A.I.R. 1925 Nag. 398.**

—Art. 95—Suit by heirs.

———Per *Das, J.*—Ordinarily a decree obtained against a person binds the heirs and if the decree was obtained by fraud, the heirs must sue within the period prescribed by Art. 95 of the Limitation Act. (*Dawson-Miller, C. J., on difference between Das and Foster, JJ.*). HITENDRA SINGH *v.* RAMESWAR SINGH. **88 I.C. 141=87 I. C. 849=4 Pat. 510=6 P.L.T. 634=A.I.R. 1925 Pat. 625.**

—Art. 96—Hundi presented to wrong person.

———Presentment of hundi to wrong person who accepted by mistake—Drawee discovering mistake long afterwards—Notice to holder delayed beyond reasonable time—Drawee is disentitled to sue. (*Macleod, C.J. and Coyajee, J.*). RAGHUNATH *v.* IMPERIAL BANK. **91 I.C. 342=50 Bom. 49=27 Bom. L.R. 1229=A.I.R. 1926 Bom. 66.**

—Art. 96—Mistake in partition.

———*Applicability.*

Where plaintiffs were allotted an area at a partition which fell short of what the plaintiffs were entitled to and the plaintiffs sued for a possession of an area equal to such shortage from a field which was omitted from the partition,

Held that no relief on the ground of mistake such as is contemplated by Art. 96 is claimed and hence the Article does not apply. Article 96 is intended to apply to those cases in which the Courts are asked to relieve parties from the consequences of mistakes committed by them in the course of contractual transactions, and it is doubtful whether a suit for possession of immovable property or for a declaratory decree with respect to such property comes within the article. (*Shadi Lal, C. J. and Abdul Qadir, J.*). SHER *v.* PIARA RAM. **69 I.C. 501=A.I.R. 1924 Lah. 324.**

———*Applicability—Starting point.*

Where in a partition a mortgage supposed by mistake by the parties to be alive and valid was assigned to plaintiff: and plaintiff sued on the mortgage but both the Trial Court and the appellate Court held that the money had already been paid off,

Held, that Art. 96 applied to plaintiff's suit for recovering the loss. (1883) P.J. 227 and 21 Bom. 333, *Ref.*

But time began to run from the decree of the Trial Court and not that of the appellate Court. 46 Cal. 670 (P.C.), *Foll.*; 11 All. 47 (P.C.), *Dist.* (*Macleod, C.J. and Fawcett, J.*). MARTAND MAHADEV *v.* DHONDO MORESHWAR. **61 I.C. 34=45 Bom. 582=23 Bom. L.R. 69=A.I.R. 1921 Bom. 184.**

LIMITATION ACT (1908), Art. 96—Money paid under mistake.

—Art. 96—Mistake of fact.

———*Pre-emption money—Payment by mistake to one of several vendees—Suit for recovery—Starting point.*

The plaintiff impleaded in the pre-emption suit one of the vendees, who realised the entire pre-emption money, under a mistake of fact that he alone was the vendee, and the pre-emptor's claim for mutation after formal possession was resisted by the rest of the vendees on the ground that they were not impleaded in the pre emption suit; on the suit of the pre-emptor for the possession of the property released in favour of the vendees not impleaded in the pre-emption suit or in the alternative for the proportionate refund of the consideration,

Held, the cause of action arose when the pre-emptor's claim for mutation was resisted, *i.e.*, when the consideration failed or when the mistake of fact was discovered. 24 Mad. 27, *Ref.* (*Kanhaiya Lal, J.*). RAM BALI SINGH *v.* SHIAM SUNDER MISIR. **A.I.R. 1922 All. 475.**

—Art. 96—Mistake of law.

———Where a mistake is a pure mistake of law in British India and not a mistake bearing upon the private or special right of the person and where such mistake results in the payment by one person to another making it inequitable that the payee should retain the money, such a mistake is no ground of relief within S. 72, Contract Act, or Limitation Act, Art. 96: (1867) 2 H. L. 149; (1896) 2 Ch. 369; (1889) 59 L. T. 636; (1910) 101 L. T. 741; (1854) 5 De G. M. and G. 76; (1876) 3 Ch. D. 351, *Cons.*; (1873) 6 H. L. 223 and 21 C.W.N. 404, *Dist.*; (1928) M. W. N. 232, *Expl.* and *Diss. from.* (*Ramesam and Jackson, JJ.*). A. M. APPAVOO CHETTIAR *v.* S. I. RY. CO. **114 I.C. 358=28 M.L.W. 591=1928 M.W.N. 385=A.I.R. 1929 Mad. 177=56 M.L.J. 269.**

—Art. 96—Mistake or concealment of fact.

———*Starting point.*

A sold bales of cloth to *B*. *B* sold the same to *C* and *C* to *D*. *D* found that the bales contained less number of pieces than paid for. Intermediate sellers and purchasers did not know that the contents were short.

Held, that *D's* suit against *C* for price of shortage will be governed by Art. 96 and time began to run when *D* knew the mistake; because in all cases where something turns upon a mistake or concealment of fact by the fraud or deceit of the other side, the time from which limitation must be taken to run is always the time when it was brought to the plaintiff's knowledge that there had been a mistake or a fraud. (*Coutts-Trotter, C. J. and Krishnan, J.*). RAMIAH & CO. *v.* SADASIVA MUDALIAR. **91 I.C. 151=48 Mad. 925=22 M.L.W. 341=1925 M.W.N. 688=A.I.R. 1925 Mad. 1255=49 M.L.J. 228.**

—Art. 96—Money paid under mistake.

———*Starting point.*

Article 96 should be preferred to Art. 62 in a suit to recover money paid by the plaintiff to the defendant by mistake in excess of the amount legally due. In cases where the relief is based on mistake the period of limitation should run from the time when the mistake was first discovered even if some other article in the Limitation Act, should be wide enough to include the cause of action. (*Dawson Miller, C. J. and Foster, J.*). TOFA LAL DAS *v.* SYED MINUDDIN MIRZA. **93 I.C. 129=7 P. L. T. 431=4 Pat. 448=1925 P. H. C. C. 345=A.I.R. 1925 Pat. 765.**

LIMITATION ACT (1908), Art. 96—Money paid under void agreement.

—Art. 96—Money paid under void agreement.

———*Starting point.*

The period of limitation for a suit for refund of advance paid under a void agreement is three years from the date when the agreement is discovered to be void and ordinarily the time from which limitation will start is the date of the agreement in the absence of special circumstances. When the agreement is one forbidden by law, the plaintiff must be deemed to have been aware of the fact when he entered into it. (*Phillips, J.*). AUMANCHI AURYAPRABHAKARA RAU *v.* GUMMUDU SANYASI. 88 I.C. 357=1925 M.W.N. 400= A.I.R. 1925 Mad. 885=48 M.L.J. 598.

—Art. 96—Scope.

———*Mutual mistake.*

Article 96 is limited in its application to cases of mistake committed in transactions arising in the course of relations which are more or less contractual in character and the Article in any event has no application to a case where there is no question of mistake on the part of the plaintiff. (*Greaves and Mukerji, JJ.*). PANNA LAL GHOSE *v.* ADJAI COAL CO. 101 I. C. 82=31 C.W.N. 82= A.I.R. 1927 Cal. 117.

—Art. 97—Agreement to record satisfaction.

———*Suit on failure—Starting point.*

Where mortgagor judgment-debtor paid decretal debt to the co-parceners of decree-holder who represented that on partition the decree fell to their share, and where the decree-holder opposed the application to certify payment and the judgment-debtor paid the amount again to set aside the sale,

Held, that judgment-debtor's cause of action for refund accrued on refusal of Court to record satisfaction. A.I.R. 1923 Mad. 46, *Dist.*; 46 Cal. 670, *Foll.* (*Madhavan Nair, J.*). H. GHALLAPPA *v.* J. CHENNAYYA. 86 I.C. 378=A.I.R. 1925 Mad. 1049.

—Art. 97—Applicability.

———*Mortgage not acted upon—Suit to recover debt.*

Where it appeared that the mortgage-deed had never been given effect to and the mortgagee sued to recover his debt,

Held, that Arts. 116 and 132 applied and limitation commenced from the date of first default,

Held, further that Art. 97 could not be applied to the case so as to compute the period of limitation from the date when the mortgage was declared ineffective by Court. (*Bhide and Currie, JJ.*). SAHIB SINGH *v.* GURDIAL SINGH. A.I R. 1930 Lah. 993.

—Art. 97—Auction-purchaser's suit.

———*Suit to recover purchase-money on setting aside sale.*

Where after an auction sale the judgment-debtor is declared to have no saleable interest in the property sold by a decree of Court, limitation for a suit to recover purchase-money begins from the date of such a decree and not from the date when purchaser was deprived of the possession of property purchased. 40 Cal. 187 and 46 Cal. 676 (P.C.), *Foll.*

Quaere, whether Limitation Act, Art. 97 applies to such a suit. (*Greaves and B.B. Ghose, JJ.*). BIJRAJ BOYED *v.* RAJA BIJOY SINHA DUDHORIA. 91 I.C. 768=30 C.W.N. 79=A.I.R. 1926 Cal. 297.

—Art. 97—Dispossession from part of property.

———Under a compromise which was incorporated in a decree of Court, the plaintiffs were to become the owners of certain parcels of property on payment of a sum of money to the defendant. They

LIMITATION ACT (1908), Art. 97—Mortgage.

paid this money but on the 24th July, 1919, they were dispossessed from part of the property; the plaintiffs sued to recover the money they paid for the property in suit alleging that the existing consideration failed within the meaning of Art. 97 of the Indian Limitation Act,

Held, that the plaintiffs being in possession of some portion of the property transferred to them by the defendant under the compromise, there was no failure of consideration within Art. 97. (*Wazir Hasan, J.C.*). KARIM BUX *v.* ABDUL WAHID KHAN. 80 I.C. 81=11 O.L.J. 323= 27 O.C. 348=A.I.R. 1924 Oudh 377.

—Art. 97—Earnest money.

———Limitation for suit for return of earnest money runs from the dismissal of suit for specific performance of a contract. 25 All. 618; 31 All. 68, *Foll.* (*Lindsay, J.*). MUNNI BABU *v.* KOER KANTA SINGH. 72 I.C. 86=21 A.L.J. 265=45 All. 378= 4 L.R.A. Civ. 176=A.I.R. 1923 All. 321.

—Art. 97—Interpretation.

———It is a reasonable construction of the word "is discovered to be void" in S. 65 to hold that they apply to a case where an agreement which was not *prima facie* void in its entirety, though it might be void in part, is declared by the Courts to be void and any money paid under such an agreement is money paid under an existing consideration which afterwards fails and in such a case time runs only from the date of the failure of the consideration. (*Heald and Rutledge, JJ.*). MAUNG KYI OH *v.* MAUNG KYAW ZAN. 93 I.C. 119= 4 Bur. L.J. 197=A. I. R. 1926 Rang. 7.

—Art. 97—Lease.

———Action for breach of duty declared by S. 108 of Transfer of Property Act, is regulated by Art. 116 and not by Art. 97. (*Das and Scroope, JJ.*). NABINCHANDRA GANGULI *v.* MUNSHI MANDER. 101 I.C. 707=6 Pat. 606=8 P.L.T. 590= A.I.R. 1927 Pat. 248.

—Art. 97—Money paid for releasing debt.

———Where the debtor of an insolvent paid money to the auction-purchaser of the debt and subsequently the Receiver in Insolvency recovered the amount over again from him, and he thereupon brought a suit against the auction-purchaser to whom he had paid the money,

Held, that the suit is governed by either Art. 97 or 120 and not by Art. 29 or 62, Art. 29 not being applicable as there is no wrongful seizure of movable property under legal process. (*Broadway and Wilberforce, JJ.*). BALKISHEN DAS *v.* DEVI SARAN. 62 I. C. 929=4 L.L.J. 164=A.I.R. 1922 Lah. 103.

—Art. 97—Mortgage.

———*Decree and sale—Suit to set aside—Suit to recover consideration.*

In a suit on mortgage, mortgagor, admitted the loan and decree was passed. The property was sold in execution and was ultimately purchased by mortgagee. A suit was then filed by a person claiming the property and alleging that the mortgage was not binding on him. His suit was decreed and the mortgagee was dispossessed. The mortgagee then sued for the amount of consideration.

Held, that cause of action arose on the day the suit challenging the mortgage was decreed and the mortgagee was dispossessed. (*Lord Darling.*) MA HNIT *v.* FATIMA BIBI. 101 I.C. 414= 5 Rang. 283=54 I.A. 148=29 Bom. L. R. 863= 31 C.W.N. 830=4 O.W.N. 817=1927 M.W.N. 489= 26 M.L.W. 429=25 A.L.J. 918=46 C.L.J. 354= 2 P.L.T. 21=A.I.R. 1927 P.C. 99= 52 M.L.J. 579 (P.C.),

LIMITATION ACT (1908), Art. 97—Mortgage.

——Where a house was mortgaged while under attachment, a suit by mortgagee to enforce the personal security is governed by Art. 67, the mortgage being void altogether. Article 97 does not apply to such a case. (*Shadi Lal, J.*). GHULAM MURTAZA *v.* FAZAL ILAHI KHAN.

27 P. L. R. 801=A. I. R. 1927 Lah. 101.

——Even though a mortgage is void, if the mortgagee got possession, it should be held that he had an existing consideration for his mortgage and it would only fail when the mortgagee was finally dispossessed. 8 O.L.J. 81, *Dist.* (*Dalal, J.C.*). RAM HARAKH *v.* SALIK RAM. **89 I.C. 332= A. I. R. 1926 Oudh 19.**

——*Alternative personal relief.*

Where the manager of a Hindu joint family mortgages the family property for purposes not recognised by the law, the mortgage is void *in toto* and *ab initio*. There is no question of the security failing at a subsequent date. Therefore where in a suit on such mortgage the plaintiff prays for an alternative relief that if the property is not liable, he must be given a personal decree against the assets of the mortgagor, Art. 116 and not Art. 97 applies. 27 Cal. 762, *Foll.*; 19 Cal. 123 (P.C.), *Dist.* (*Daniels and Wazir Hasan, A.J.Cs.*). GAJADHAR BAKHSH *v.* GAURI SANKAR. **61 I.C. 205= 8 O.L.J. 81=A.I.R. 1921 Oudh 47.**

—Art. 97—Refund of purchase-money.

——If there is covenant express or implied indemnifying party suffering against loss caused by defect in title of the executant of document Art. 116 applies, otherwise Art. 97. Such covenant may be express or implied. (*Dalal, J.*). BAGESWAR TEWARI *v.* BIKRAMAJIT SINGH.

A.I.R. 1930 All. 785.

——*Contract of sale becoming impossible of performance—Starting point.*

In a certain contract for the sale of property the vendor was to satisfy certain conditions before completion of the contract, but no time was specified for it. The vendor mortgaged the property to another and afterwards it was sold in satisfaction of that mortgage. The purchaser then sued for recovery of deposit money.

Held, that the purchaser need not have sued within a reasonable time. It was Art. 97 and not 60 nor 115, that governed such a case, and time was to be counted since when the property was sold in satisfaction of the mortgage because it was, then that the contract, having become impossible of performance ended. (*Rankin, C.J. and B. B. Ghose, J.*). J. C. GALSTAUN *v.* SAHABZADI MAMOODI. **117 I.C. 700=33 C.W.N. 115= 56 Cal. 455=A.I.R. 1929 Cal. 216.**

——*No title in vendor—Starting point.*

A plaintiff purchased some property. There had been a previous deed of gift but the deed of transfer recited that it was a nullity, which meant that the vendor was able to give a good title, but it turned out that he was not. The plaintiff filed a suit for possession and succeeded in the lower Court but on appeal he lost his suit.

Held, that Art. 97 applied and that the three years' period began to run from the date of the failure of the suit. 19 Cal. 123 (P.C.), *Foll.* (*Walsh and Banerji, JJ.*). MUNNA LAL *v.* MT. NANHI. **103 I.C. 385=A.I.R. 1927 All. 756.**

——*Failure of title in vendor—Starting point.*

When after payment of the purchase money to the vendor, the vendor was unable to give title and the purchaser found himself unable to obtain possession.

LIMITATION ACT (1908), Art. 97—Refund of purchase-money.

Held that from the time when he found himself unable to obtain possession, he had a right to sue for his purchase money upon a failure of consideration and that the case fell within Art. 97 and that in any case it must fall either within Art. 97 or 62. 19 Cal. 123 (P.C.) and 30 All. 402 and 38 Mad. 1171, *Foll.* (*Walsh and Iqbal Ahmad, JJ.*). KUNDAN LAL *v.* BISHESHAR DAYAL. **103 I. C. 165= 25 A.L.J. 841=A.I.R. 1927 All. 734.**

——*Sale set aside on condition of payment—Suit for balance—Starting point.*

Plaintiffs purchased a certain property from a Hindu father and the sale was subsequently cancelled in a suit by the sons to set it aside on their depositing a certain sum in Court. Plaintiffs sued the sons of vendor, for the balance of the purchase money.

Held, that the suit is not barred by the principles of *res judicata* as money paid to the father as consideration for the sale at the time of the sale cannot be regarded as a debt of the father until the sale had been set aside and the right of the vendee to get back the sale consideration from the father has accrued. And that the decree in the son's suit became operative only at the date of deposit and the period of limitation under Art. 97 would run from that date and not from the date of the passing of the decree. 39 All. 485, *Foll.* (*Dalal and Pullan, JJ.*). RAGHUNATH PRASAD *v.* RAM BHAROSE. **100 I.C. 745=A.I.R. 1927 All. 421.**

——Where an alienation was made by a purchaser from a widow pending declaratory suit against the alienation by the reversioners, and in the saledeed the alienor expressly stipulated for refund of purchase-money and damages and the reversioners got the declaration sought for and long afterwards when the widow died, they sued and recovered possession of the properties,

Held, that Art. 97 did not apply and that limitation did not commence to run till the vendees were actually dispossessed and from the date of dispossession the suit was admittedly within time. (*Broadway, Ag.C.J. and Bhide, J.*). MT. GOPAL DAI *v.* DHANNA MAL. **106 I.C. 804=9 L.L.J. 468= A. I. R. 1927 Lah. 570.**

——Where the transferee of a service inam who is dispossessed by the vendor's successor-in-office, sues for recovery of the purchase money, Art. 97 applies to the suit, such transfer not being *ab initio* void but being valid during the continuance in office of the vendor. (*Devadoss, J.*). A. VENKANNA *v.* P. CHINNA APPALU. **86 I.C. 755= 22 M.L.W. 126=1925 M W.N.101= A. I. R. 1925 Mad. 749=48 M.L.J. 217.**

——*Failure of title in vendor—Dispossession—Starting point.*

Where actual possession of the property purchased had been given and been enjoyed for a number of years, and thereafter the sale is set aside by a decree for want of title in the vendor, and the purchaser is dispossessed, the starting point of limitation for a suit for refund of the purchase money must be (at all events in the case of a sale not *ab initio* void but only voidable) the date of dispossession and not the date of the decree. 46 Cal. 670, *Dist.* (*Ayling and Odgers, JJ.*). H.K.V. SANKARA VARIYAR *v.* K. KALATHIL UMMAR.

70 I. C. 787=16 M.L.W. 684= 1922 M.W.N. 634=32 M.L.T. 3=46 Mad. 40= A. I. R. 1923 Mad. 46=43 M.L.J. 721.

LIMITATION ACT (1908), Art. 97—Refund of purchase-money.

———*Vendee subsequently ousted by third party—Applicability—Starting point.*

Plaintiffs bought land under a registered deed and were put in possession. The land was leased to a tenant who subsequently set up his own title to the land and his claim was also embodied in a final decree of the Court. Plaintiffs then filed a suit against their vendor for the recovery of the purchase money, etc.,

Held, that Art. 116 and not 97 applied and time began to run only when the tenant obtained the decree supporting his own title to the land.

A distinction should be made between cases where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property, and other cases where the sale is only voidable on the objection of third parties and possession is taken under the sale. It is only in the first class of cases that the starting point of limitation will be the date of sale. *Case-law discussed.* (*Macleod, C.J. and Fawcett, J.*). MULTANMAL JAYARAM *v.* BUDHUMAL KEVALCHAND. 61 I.C. 70=45 Bom. 955=23 Bom. L.R. 325=A.I.R. 1921 Bom. 252.

———*Starting point.*

A sale-deed contained a clause that if the minor nephew of the vendor on attaining majority raised any objection to the sale of his share the vendor would make over to the vendee an equal area out of his own land. Mutation of the minor's share of the land was refused in 1907; plaintiff sued for declaration that he was owner of the whole land purchased by him. His suit was dismissed, so far as the minor's share was concerned, in 1911. In 1917 the minor, having attained majority mortgaged his share to one *G*, who dispossessed the plaintiff from the land in 1919. Plaintiff brought a suit to enforce the indemnity clause contained in his deed of sale in the alternative for Rs. 1,000 being the value of the minor's share.

As regards the claim for recovery of the purchase-money, it was governed either by Art. 62 or 97 of the Limitation Act. If the claim was governed by Art. 62 it was barred by time inasmuch as limitation began to run from the date of the sale. If the claim was governed by Art. 97, it was equally barred by time, inasmuch as limitation began to run when the plaintiff's title was first denied in 1907 or at the latest when it was declared in 1911 that he had no title. (*Martineau, J.*). TAPAI MAL *v.* JHANDOO. 62 I.C. 953 (Lah.).

—Art. 97—Relinquishment of rights.

———*Failure of deed to take effect—Claim for refund of price.*

The plaintiff paid a sum of money to the defendants for the consideration of the defendant relinquishing certain rights. The deed of relinquishment subsequently failed because the defendants' sons sued for a declaration that the deed was invalid and succeeded. A suit having been brought for recovery of money paid,

Held, that the suit was governed by Art. 62 or 97 and not by Art. 116 of the Limitation Act. (*Dalal, J.*). BAGESHWAR TEWARI *v.* BIKRAMAJIT SINGH. 1930 A.L.J. 1112=A.I.R. 1930 All. 785.

—Art. 97—Sale for debt due.

———*Suit for refund of purchase money.*

Where a person is entitled to sue for specific performance he can also sue for refund of purchase money whether it has been paid in cash or set off against debts due by the seller. The starting point in such cases is from the date of payment or set-off and Art. 97 applies to the case. (*Maung Kin, J.*). MAUNG AUNG BA *v.* MAUNG AUNG PO. 70 I.C. 121==11 L.B.R. 437=1 Bur.L.J. 198=A.I.R. 1923 Rang. 87.

— Art. 97—Starting point.

———*Breach of covenant for title.*

Held, that assuming Art. 97 will apply to a suit by a vendor for recovering damages on the breach of covenant for title, limitation will commence to run from the date of the total failure of consideration, namely, the date on which the plaintiff was actually dispossessed by the third person. (*Sulaiman, J.*). MAHOMED SIDDIQ *v.* MUHAMMAD NUR. 124 I.C. 185=1930 A.L.J. 653=A.I.R. 1930 All. 771.

———*Presentation of appeal.*

Under the Indian Law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal and, therefore, the time from which the period of limitation ought to be counted is the date of the decree of the first Court. A. I. R. 1918 P. C. 151, *Foll.* and 42 Mad. 507, *Dist.* (*Mohiuddin, A.J.C.*). MULI *v.* GANPAT. 109 I.C. 457=A.I.R. 1928 Nag. 134.

Per *Spencer, J*—Lessee or purchaser who gets possession on the strength of a registered contract and is subsequently evicted for want of title in his lessor or vendor has six years from the date of his dispossession under Art. 116 to sue for damages for breach of the title for quiet enjoyment; but if from the inception the vendor had no title to convey and the vendee never gets possession, the starting point of limitation is the date of the sale. Where under a sale-deed the purchaser paid certain sums of money to the secured creditors of the vendor and when the vendor failed to make good title, he sued for recovery of the sums so paid, more than 3 years after payment and after losing possession.

Held, that whether Art. 97 or 62 applied the suit was barred. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. 74 I.C. 416=17 M.L.W. 254=A.I.R. 1923 Mad. 392.

———*Presentation of appeal.*

Where owing to the defective title of the vendor the vendee is dispossessed under a decree, the limitation for suit for damages for breach of covenant begins from the date of the decree, although there is appeal and second appeal from the decree. (*Abdur Rahim, Offg.C.J. and Phillips, J.*). MUHAMMAD ALI SHERIF *v.* BUDHARAJU VENKATAPATI RAJU. 60 I.C. 235=11 M.L.W. 537=27 M.L.T. 304=39 M.L.J. 449.

—Art. 97—Suspension of limitation.

———*Presentation of appeal.*

Per *Spencer and Devadoss, JJ.*—When an appeal to superior Court only results in the decree appealed against being confirmed, in India there is no interruption in running of time calculated from the date of the original decree. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. 74 I.C. 416=17 M.L.W. 254=A.I.R. 1923 Mad. 392.

—Art. 99—Co-sharer paying revenue.

———One co-sharer paying the Government revenue for whole estate in order to save the estate from being sold is entitled to contribution but there is no charge created in his favour over the property of the defaulting co-sharer. Article 99, Limitation Act, and not Art. 132 will consequently be applicable. The case bears no analogy to the

LIMITATION ACT (1908), Art. 99—Joint decree.

"salvage lien" as the very essence of salvage service is that it must be voluntary. (*English and Indian case-law discussed.*) (*Ross and Fazl Ali, JJ.*). BHUBANESHWARI KUER *v.* MANIR KHAN.
111 I.C. 84=7 Pat. 613=9 P.L.T. 573=A.I.R. 1928 Pat. 641.

—Art. 99—Joint decree.

———Where the plaintiff had paid the whole amount of a joint decree against him and the defendant and files a suit for contribution,

Held, that Art. 99, applied. (*Daniels and Neave, JJ.*). MT. LAKHI *v.* MURAT TIWARI.
83 I. C. 875=22 A.L.J. 737=5 L.R.A. Civ. 534=A.I.R. 1924 All. 843.

—Art. 99—Starting point.

———*Payment by one co-judgment-debtor—Suit for contribution.*

Where payment is made by a co-judgment-debtor in Court and the payment is appropriated by Court in full satisfaction of a decree it is deemed to have accepted the payment on behalf of the decree-holder, it being looked upon as his agent or quasi-agent; and, therefore, the limitation for a suit for contribution by such judgment-debtor against the other co-judgment-debtor begins to run from the date of acceptance of deposit in Court.

The criterion must always be whether or not the deposit made in excess of what is due by the person making the deposit, did or did not remain under the control of the person making it. 25 Cal. 814 (P.C.); 3 C.L.R. 480; 4 Cal. 529 and 36 I.C. 392, *Dist.*; 3 U. B. R. 261, *Rel. on.* (*Suhrawardy and Cammiade, JJ.*). GOHAR ALI *v.* ABDUL WAHAB.
114 I. C. 134=56 Cal. 192=32 C.W.N. 1030=49 C.L.J. 5=A.I.R. 1928 Cal. 361.

—Art. 102—Bisardar

———*Bisardar* means a watchman who is paid by a share of crop which he watches. He is an out-door servant and is certainly not an artizan, nor a labourer. A suit by him for his wages therefore, will not fall within Art. 7 but will fall under Art. 102. 18 W. R. 298, *Dist.* (*Dalal, J. C.*). GHASI RAM *v.* UMA DATT. **79 I. C. 576=26 O. C. 327=10 O. L. J. 345=A.I.R. 1924 Oudh 189.**

—Art. 102—Motor driver.

———*A motor-car driver is an artisan for purposes of Art. 7.*

A motor car driver should be included in the category of an artisan. There is also no reason why he should be treated differently from a household servant or labourer and given the benefit of a longer period under Art. 102. (*Maung Ba, J.*). SEWARAM *v.* LACHMINARAYAN. **104 I. C. 520=5 Rang. 477=A.I.R. 1927 Rang. 279.**

—Art. 102—Scope.

———Article 102 applies only to suits for wages as such brought by the person entitled to the wages. A suit brought by persons not entitled to the wages cannot therefore be regarded as a suit for wages as such within the meaning of Art. 102. (*Srivastava, J.*). LACHHMI NARAIN *v.* PUTTI LAL.
A.I.R. 1930 Oudh 420.

—Art. 102—Weighman in shop.

———A weighman employed to work at a shop is not a household servant nor is he an artisan. He cannot be treated as a mere labourer employed to do task work, that is to hold the scales and weigh goods in a shop for a monthly salary. He can be asked to do other work of the shop when free. His work cannot be treated as purely manual labour so as to make Art. 7 of the Act applicable. He may be regarded in fact a shopkeeper's assistan

LIMITATION ACT (1908), Art. 106—Applicability.

and Art. 102 applies to a suit by him to recover his dues from his master. (*Kanhaiya Lal, J.*). MUTSADDI LAL *v.* BHAGWAN DAS. **90 I.C. 120=48 All. 164=23 A.L.J. 1059=6 L.R.A. Civ. 596=A.I.R. 1926 All. 172.**

—Art. 103—Registered deed.

———*Dower debt converted into mortgage debt.*

A registered deed executed by Mahommedan husband long after the marriage, promising to pay dowry then still due from him, on demand and hypothecating certain immovable properties as security for its due payment, converts the dower debt into a mortgage-debt; and to a suit on such deed for the amount of the dowry, six years' rule of limitation is applicable. 6 M.I.A. 211 (P.C.), *Dist.* (*Iqbal Ahmad, J.*). MT. KUBRA BEGAM *v.* FAZAL HUSAIN. **99 I.C. 353=A.I.R. 1927 All. 268.**

———Article 116 applies to suits for recovery of dower debt when there is a registered dower deed, although Arts. 103 and 104 would apply when there is no such registered instrument and time runs from the date of death of the lady. 44 Cal. 759 (P.C.), *Foll.*; 36 C.L.J. 379, *Ref.*; 36 Cal. 184, *Not foll.* (*Mookerjee and Rankin, JJ.*). MAHOMED MOZAHARAL AHMAD *v.* MAHOMAD AZIMADDIN BHUINYA. **73 I.C. 17=37 C.L J. 108=27 C.W.N. 210=A.I.R. 1923 Cal. 507.**

———Articles 103 and 104 are controlled by Art. 116 of the Limitation Act.

Where the dower is payable under a registered instrument executed by the husband in favour of the wife, the suit, whether it is brought by the wife during her lifetime or whether it is brought by her heirs after her death, is a suit for compensation for breach of contract in writing, registered within the meaning of Art. 116. A suit for dower under a registered instrument brought by the heirs within 6 years of the wife's death is within time. (1916) 44 Cal. 759 (P.C.), *Foll.* (*Richardson and Suhrawardy, JJ.*). ASIATULLA *v.* DANISH MAHOMMAD. **70 I.C. 169=36 C.L.J. 379=50 Cal. 253=A.I.R. 1923 Cal. 152.**

—Art. 103—Starting point.

———The existence of a demand on the wife's part and of a refusal to pay on the husband's is the starting point of limitation for a suit by a Mahomedan wife to recover the amount of her prompt dower. (*Wazir Hasan, A.J.C.*). MT. ZOHRA BIBI *v.* GANESH PRASAD. **78 I.C. 106=A.I.R. 1925 Oudh 267.**

—Art. 105—Applicability.

———A suit for surplus profits is a part of the redemption suit and based on the same cause of action and ought to be tried in the redemption suit. An order by the Judge that it should be tried separately does not alter its nature nor that of the cause of action on which it is based, and limitation is governed by Art. 148, and not by Art. 105. (*Hallifax, A.J.C.*). ZAKI-UL-DIN *v.* CHUNNI LAL. **103 I.C. 290=10 N.L.J. 142=A.I R. 1927 Nag. 302.**

———Article 105 of the Limitation Act applies to cases where the mortgagor has not to bring a suit for redemption but has to sue only for recovery of the surplus collections. (*Chatterjee and Newbould, JJ.*). PRASANNA KUMAR MONDAL *v.* NILAMBAR MONDAL. **64 I.C. 75=26 C.W.N. 123=A.I R 1922 Cal. 189.**

—Art. 106—Applicability.

———Article 106 applies only to a dissolved partnership as limitation cannot apply as between partners so long as the partnership continues.

LIMITATION ACT (1908), Art. 106—Death of partner.

(*Mookerjee and Walmsley, JJ.*). HARAMOHAN PODDAR *v.* SUDARSON PODDAR. 66 I.C. 811= 25 C.W.N. 847=A.I.R. 1921 Cal. 538.

—Art. 106—Death of partner.

———*S* and *H*, both Mahomedan ladies, instituted a suit in 1924 for partition and possession of their share in certain immovable properties which *E*, husband of *S* and father of *H*, was said to have died possessed of. The suit properties were included in a partnership business, *E* died in 1898. From that time the properties remained under the management of those who directed the partnership business and treated as partnership property by other members of the firm. In 1917 *G*, the son of *E* also died,

Held, that the suit for partition of property which is partnership property of *E* is incompetent as framed,

Held, further, that even the suit for settlement of accounts of the partnership, dissolved by the death of *E* and subsequently by the death of *G*, is statute-barred. (*Percival, J. C. and Rupchand, A.J.C.*). ISMAIL *v.* TAYABALLI ESSAJI.

A.I.R. 1929 Sind 182.

———*Suit for accounts barred—Another suit for share of assets received by ex-partner.*

A partnership was dissolved in 1910 by the death of one partner and a suit by the plaintiff in 1913 for partnership accounts of profits was dismissed on the ground of being barred by Limitation. A second suit was lodged by the plaintiff for his share of assets alleged to have been received by the defendants as debts due to the old firm,

Held, in all cases where, after the dissolution and complete winding up of a partnership, an asset which had not been taken into account fell in, it ought to be divided between the ex-partners or their representatives according to their shares in the former partnership. If on the other hand no accounts have been taken and there is no contest, that the partners have squared up, then the proper remedy, where such an item falls in, is to have the accounts of the partnership taken; and if it is too late to have recourse to that remedy, then it is also too late to claim a share in an item as part of the partnership assets, and the plaintiff does not prove and cannot prove that upon the due taking of the accounts he would be entitled to that share. 5 H. L. 656, *Ref. to.* (*Lord Phillimore.*) K. GOPAL CHETTY *v.* L. G. VIJAYARAGHAVACHARIAR. 74 I.C. 621=45 Mad. 378= 1922 M.W.N. 386=30 M.L.T. 283= 26 C.W.N. 977=16 M. L. W. 200= 49 I.A. 181=24 Bom.L.R. 1197= 36 C. L. J. 308=20 A. L J. 862= A.I.R. 1922 P.C. 115=43 M.L.J. 305 (P.C).

———*Contract continuing partnership after—Not barred.*

The principle underlying S. 253 (10) of the Contract Act is that where the parties to a contract agree expressly or by necessary implication to continue the partnership as if no dissolution has taken place upon the death of one of the original partners the suit for accounts and dissolution would not be barred under Art. 106 of the Limitation Act, even though brought more than 3 years after the death of the original partner. 101 P. R. 1914, *Foll.* (*Abdul Raoof and Abdul Qadir, JJ.*). HARICHAND *v.* JUGAL KISHORE.

68 I.C. 722=3 L.L.J. 85=A.I.R. 1922 Lah. 359.

LIMITATION ACT (1908), Art. 106—Suit for accounts, what is.

—Art. 106—Dissolution not proved.

———Where according to the agreement the partners have not got the partnership dissolved previously and inasmuch as the partnership is not deemed to be dissolved by the expulsion of a partner and the intention to dissolve cannot be otherwise inferred from the circumstances Art. 120 and not Art. 106 applies and it is for the defendants to show that the partnership was previously dissolved. 11 P.R. 1897 and 49 P.W.R. 1916, *Dist.*; 12 C.W.N. 455; A.I.R. 1921 Cal. 538, *Ref.* (*Johnstone, J.*). DIN MUHAMMAD *v.* KANSHI RAM.

120 I.C. 613=A.I.R. 1930 Lah. 378.

—Art. 106—Previous partnership.

———*Accounts of—Enquiry into.*

No suit can lie for settlement of three different partnerships consisting of different partners. But Limitation offers no bar to a Court instituting an enquiry into the financial relations of the partners *inter se* at the commencement of the partnership which the Court is engaged in winding up and for this purpose, it may be necessary to go into the accounts of a previous partnership between the parties. Thus where a partner is neither seeking any relief against the heirs of a deceased partner, nor does he ask for accounts of partnerships dissolved by their deaths being taken for the purpose or making their heirs liable, but is only asking for dissolution and settlement of accounts of the partnership, the statute of limitation is no bar. *Betjemann* v. *Betjemann*, (1895) 2 Ch. 474 and 3 S. L. R. 108, *Rel. on*; 25 Mad. 26, *Ref.* (*Rupchand, A. J. C.*). MUNSHILAL AMANSING *v.* BISHENLAL DATTARAM. 118 I. C. 741= A.I.R. 1929 Sind 230.

———But nevertheless if the remaining partners continue the business for the purpose of ascertaining what shares those remaining partners brought into the new partnership, an account may have to be taken of the old partnership and there will be no question of limitation at all in such a case as that for the account of the old partnership is taken not for the purpose of enforcing the claim to the money due as profits in that partnership but for the purpose of ascertaining what the capital supplied by the continuing partners was to the new partnership. (*Krishnan, J.*). ABDUL JAFFAR *v.* VENUGOPAL CHETTIAR. 80 I.C. 378= 34 M.L.T. 273=A.I.R. 1924 Mad. 708= 46 M.L.J. 503.

—Art. 106—Starting point.

———The giving of a pro-note cannot be held to be a settlement of partnership affairs, where it is intended merely to prevent a previous pronote from being time-barred. Where a suit is brought within three years from the date of death of one partner, the suit cannot be treated as out of time on the footing that such a pronote was taken from one partner more than three years prior to suit. (*Percival, J. C. and Wild, A.J.C.*). HANSRAJMAL *v.* SOMJIMAL. A.I.R. 1930 Sind 148.

—Art. 106—Suit for accounts, what is.

———The entry in the plaintiff's *bahi* signed by the defendants ran as follows:—"We have struck a debit balance against ourselves of Rs. 4,017-5-0 on account of advances and losses of every kind; interest to pay at the rate of Re. 0-7-6 per cent."

Held, the entry is an account rendered adjusting the relations of the parties and is a promise to pay and the suit therefore falls under Art. 64, the time under which is enlarged to six years by Punjab

LIMITATION ACT (1908), Art. 106 — Suit on account stated.

Limitation Act. Article 106 does not apply to the suit as this suit is not for an account, *i.e.*, an unascertained share of the profits of a dissolved partnership. (*Le Rossignol and Martineau, JJ.*). NAND LAL *v.* PARTAB SINGH. **69 I.C. 502= 3 Lah. 326=A.I.R. 1922 Lah. 425.**

—Art. 106—Suit on account stated.

——An entry in the books of the plaintiff in two columns of debit and credit showing his share of profits and losses and verified by the defendant (who was plaintiff's partner) and certified by him to be correct is an "account stated" within Art. 64. Article 106 does not apply to the case. (*Tek Chand, J.*). JAIRAM SINGH BHAGMAL *v.* SARDARI MAL. **108 I.C. 600=29 P. L. R. 219= A. I. R. 1928 Lah. 459.**

—Art. 109—Application for ascertainment.

——Applications for ascertainment of profits are not suits but proceedings in suit and where mesne profits are decreed, the plaintiff is entitled to mesne profits for 3 years from date of suit. 10 Cal. 785 (P.C.), *Dist.* (*Das and Ross, JJ.*). SURAJ PRASAD PANDE *v.* SOMRA MAHTO. **68 I.C. 903= 2 P. L.T. 648=A. I. R. 1921 Pat. 430.**

—Art. 109—Auction-purchaser.

——A suit brought by an auction-purchaser for recovery of rent against another previous auction-purchaser of the same land and his lessee is governed by Art. 109. Time began to run from the date of receipt of rent and a suit brought nearly 4 years thereafter is barred. (*Neave, J.*). MD. ABBAS ALI KHAN *v.* SAHU GOKUL CHAND. **86 I. C. 398=5 L.R.A. Civ. 688= A. I. R. 1925 All. 52.**

——Where an auction-purchaser of lands at a sale held in execution of a mortgage-decree sues the usufructuary mortgagee *pendente lite* who has collected rents from the tenants for the recovery of the amount so collected.

Held, that Art. 109 applies. The words 'wrongfully received' in Art. 109 include receipt of profits that cannot legally be substantiated. 35 Cal. 996; A.I.R. 1921 Cal. 77, *Dist.* (*Chatterjee and Panton, JJ.*). NAGENDRA NATH PAL *v.* SARAT KAMINI DASI. **66 I. C. 879=26 C. W. N. 386= A.I.R. 1922 Cal. 235.**

—Art. 109—Co-sharers.

——Article 120 and not Art. 62 or 48 or 49 or 109 applies to a suit by one co-sharer against another for a share of the rent collected by the latter, the rent being due in respect of land held by the co-sharers not separately but jointly. (*Sanderson, C.J. and Richardson, J.*). BHUBANESWAR BHATTACHARJEE *v.* DWARAKESWAR BHATTACHARJEE. **66 I.C. 876=34 C.L.J. 508=A.I.R. 1921 Cal. 77.**

—Art. 109—Scope.

——Mesne profits can be claimed only against the person who is in actual possession and limitation for its recovery is three years from the date when the cause of action for its recovery arises. (*Abdul Raoof and Abdul Qadir, JJ.*). RAGHO *v.* DWARKA DAS. **79 I.C. 687=10 P.W.R. 1923= A.I.R. 1924 Lah. 738.**

—Art. 109—Starting point.

——*When dispute pending.*

Even where a claim to mesne profits is in dispute the starting point for a suit for mesne profits would be the date when the profits are received. The limitation cannot start instead from the date of an adjudication of the rights between the parties. In such cases the practice is for the plaintiff to institute a suit for mesne profits before the time expires and let it be stayed pending the disposal of the former litigation. (*Lindsay and Sulaiman, JJ.*). RAM CHARAN SAHU *v.* GUGA. **102 I. C. 96=49 All. 565=25 A.L.J. 425= A.I.R. 1927 All. 446.**

LIMITATION ACT (1908), Art. 111—Compromise in suit.

——Article 109 of the Limitation Act does not admit of any consideration as to when the cause of action may have accrued to the plaintiff, and claims of profits wrongfully received beyond three years before the suit cannot be recovered. (*Walmsley and M. N. Mukerjee, JJ.*). SARAT KAMINI DASI *v.* NAGENDRANATH PAL. **89 I.C. 1000= 29 C.W.N. 973=43 C.L.J. 155=A.I.R. 1926 Cal. 65.**

—Art. 110—Fraud.

——*N* brought a suit for rent against *M* and got an *ex parte* decree. In execution, he purchased the entire holding, subsequently the decree was set aside on the ground that the summons had been fraudulently suppressed. *N* then brought a suit for recovery of rents from *M* since the date of sale. It was contended by *N* that although the claim for rent for more than 3 years before institution of suit was barred by limitation, he could not sue *M* for rent because of his purchase and hence his claim for rent from the date of the purchase onward could not be barred by limitation as cause of action arose after the *ex parte* decree and the sale in *N's* favour were set aside.

Held, that *N* could not take advantage of his own fraud and since the cause of action was not suspended *N's* claim for rent for more than 3 years before institution of suit was barred by limitation. 3 Cal. 817; 23 Cal. 205, *Foll.*; 12 M. I. A. 244; 35 Cal. 209; 59 I. C. 314 and 43 Mad. 185, *Dist.* (*Das and Fazl Ali, JJ.*). NARPAT SINGH *v.* MOHIDHAR GHA. **122 I.C. 241= 8 Pat. 851= A.I.R. 1930 Pat. 54.**

—Art. 110—Jodi and Road cess.

——Article 110 applies to a suit to recover arrear of jodi and road cess claimed by the Zamindar against the defendant who holds the suit land on service inam under him subject to payment of jodi as well. 21 Mad. 243 and 22 Mad. 11, *Foll.* (*Krishnan, J.*). SAMBASADASIVA CHINNA *v.* BANNAR MADDULAPPA. **74 I.C. 968= 1923 M.W.N. 524=A.I.R. 1924 Mad. 73.**

—Art. 110—Starting point.

——*Landlord and tenant the same person.*

When there is no one competent to sue, there can be no cause of action, and consequently limitation cannot run, because there is no one against whom it can run. Although under Art. 110 the time from which period begins to run is "when the arrears become due", that is usually the end of each *Fasli* year, but a quite different time may in certain circumstances be the time from which limitation begins to run.

Where the landlord and tenant were the same person till plaintiff was appointed a Receiver of the landlord's interest, the arrears became due as soon as there was some one to whom they were payable, who was capable of enforcing the obligation by suit. In such a case arrears for more than three years can be had. 12 M. I. A. 244 and 27 Mad. 143, *Foll.* (*Phillips and Devadoss, JJ.*). NATARAJA DESIKAR *v.* GOVINDA RAO. **72 I.C. 5= 46 Mad. 579=17 M.L.W. 344=32 M.L.T.174= 1923 M.W.N. 252=A.I.R. 1923 Mad. 461= 44 M.L.J. 318.**

—Art. 111—Compromise in suit.

——Under a compromise in a suit for partition of joint property in order to adjust the difference

LIMITATION ACT (1908), Art. 111—Undertaking to pay debts.

between the prices of the properties which fell to the share of the two contesting parties a certain sum was to be paid by *D.* to *B.* The amount was to be paid after one month. *B* brought a suit to recover the amount. *D* contended that the suit was the time barred according to Art. 111.

Held, that it was not a case of sale and amount in suit could not be described as purchase-money. Therefore Art. 111 did not apply but the case was governed by Art. 120. (*Jai Lal, J.*). GURDAS MAL *v.* BAIJ NATH. **111 I.C. 29=A.I.R. 1928 Lah. 662.**

—Art. 111—Undertaking to pay debts.

———Some portion of the purchase money was left by the vendor with the vendee to be paid to his (vendor's) creditor. The vendee failed to pay. Thereupon the creditor sued the vendor, attached and purchased this debt due from the vendee. He then sued the vendee to recover the debt from him basing his claim on the debt purchased by him,

Held, that by his purchase of the debt the creditor stepped into the shoes of the vendor and obtained his right to recover the debt on account of breach of contract to pay the same to the creditor as agreed in the sale-deed. His suit therefore would be governed by Art. 116 and not by Art. 111, although he based it on the debt purchased by him. 34 All. 459, *Foll.* (*Bhide, J.*). MEHAR CHAND *v.* SHANTI SARUP. **118 I.C. 448= A.I.R. 1929 Lah. 395.**

———Suit for compensation for breach of contract in writing registered to pay off mortgage is governed by Art. 116 and not Art. 111 or Art. 62. (*Kinkhede, A.J.C.*). VINAYAKRAO *v.* SHRIPATRAO.

97 I.C. 185=9 N.L.J. 107=A.I.R. 1926 Nag. 429.

—Art. 112—Liquidation.

———A member of a company in liquidation is liable to official liquidators in respect of unpaid calls even though as against the company the realization of such calls may have become barred by limitation. 38 All. 347, *Foll.*

Liquidation gives the official liquidators a cause of action which the company may not itself have possessed. Just as a claim, if brought by the company, might be held to be barred by limitation, but not, if brought by the official liquidators, in the same manner a claim which might be held to be barred by the C. P. Code if brought by the company can be preferred by the official liquidators under the provisions of the Companies Act. (*Ashworth, J.*). *In the matter of* PANNA LAL, MUSSORIE ELECTRIC TRAMWAY, CO. DEHRADUN. **113 I.C. 91=50 All. 476=26 A.L.J. 256= A.I.R. 1928 All. 272.**

—Art. 113—Applicability.

———*Second part of the article applies only when the first does not apply.*

If a case ostensibly falls within the contents of Col. 3, Art. 113, Cl. 2 should not be resorted to.

G purchased certain land in auction from Government, and deposited the earnest money. As he had no money to pay the remaining instalments, he sold the land to *D* who was to pay the remaining instalments. *G* agreed that when he would acquire full proprietary rights in the land, he would execute a sale-deed in favour of *D*. *D* also could not pay all the instalments and transferred his rights to *L* and agreed to transfer the land to *L* after *G* transferred the same to him. The remaining instalments were paid by *L*, and *G* got the full proprietary rights on 18th June, 1920 and *L* brought a suit for specific performance on 19th July, 1924,

LIMITATION ACT (1908), Art. 113—Redemption of mortgage.

Held, that under the Punjab Colonization Act *G* did not get full proprietary rights as a matter of course from the payment of the last instalment, and the first portion of Art. 113 had no application. The second portion of Art. 113 therefore applied, and time began to run when *L* had notice that the performance of the agreement had been refused. 41 Mad. 18, *Ref.* (*Tek Chand and Agha Haidar, JJ.*). LAKHA SINGH *v.* GHULAM MAHAMMAD. **A.I.R. 1930 Lah. 1020.**

—Art. 113—Compromise deed.

———A Compromise deed stated that the parties had agreed to exchange certain properties but that the exchange would take place on a future date. The suit was brought to enforce the terms of the compromise,

Held, the suit was therefore for specific performance of a contract to hand over the ownership-rights in the property and not for possession of property in which ownership right had completely passed by the compromise. So the suit was governed by Art. 113 and not by Art. 144. 20 P.R. 1913, *Dist.* (*Campbell, J.*). KHUSHI MUHAMMAD *v.* HAYAT. **72 I.C. 1040=A.I.R. 1923 Lah. 672.**

—Art. 113—Performance depending on two contingencies.

———The first part of Col. 3, Art. 113, does not apply to a loosely worded agreement in which the promisor undertakes to execute a sale-deed, not on the happening of a particular event but after payment of the last instalment in the Government Treasury and after the acquisition of proprietary rights—events which cannot have happened simultaneously. (*Tek Chand and Agha Haidar, JJ.*). WARYAM SINGH *v.* GOPICHAND. **119 I. C. 491=11 Lah. 69=31 P. L. R. 352= A. I. R. 1930 Lah. 34.**

—Art. 113—Possession and specific performance.

———Vendee whose suit for specific performance is barred by Art. 113, cannot recover possession of the property sold because a suit for possession, *i. e.*, to enforce his right under the contract with reference to property is essentially one for specific performance of a contract to which Art. 113 applies. A.I.R. 1922 P. C. 345, *Foll.* (*Kinkhede, A.J.C.*). GAURISHANKAR *v.* IBRAHIM ALI. **116 I. C. 70= A.I.R. 1929 Nag. 298.**

—Art. 113—Purchaser's suit after possession.

———*Quaere*: Where an intended transferee of immovable property has taken possession of the property but the requisite legal documents have not been executed, is the position of the transferee affected by the fact that the period or the time during which the transferee would be entitled to claim specific performance had passed by reason of the provisions of Art. 113, Lim. Act. A.I.R. 1927 Cal. 365, *Ref.* (*Wort and James, JJ.*). RAGHUNATH BHAGAT *v.* SUKAN. **123 I.C. 799= 11 P.L.T. 478=A. I. R. 1930 Pat. 53.**

———Where in pursuance of a contract to sell the vendor gives the vendee possession of the property, limitation against the vendee will only commence to run from the date when the vendee became aware that the vendor refused to complete the contract. (*Pratt, J.*). MG. SHWE H MON *v.* MG. THA BYON. **72 I.C. 6=11 L.B R. 462= A.I.R. 1923 Rang. 125.**

—Art. 113—Redemption of mortgage.

———Where a usufructuary mortgage provided that redemption was to be effected within two years and that on the failure to do so, the mortgagee had the right to take the land out-right,

LIMITATION ACT (1908), Art. 113—Refusal to perform.

Held, that though the clause as to forfeiture should, under the law in force prior to the T. P. Act, be construed strictly and given effect to if the mortgagors failed to redeem yet where the mortgagees prevented redemption in spite of mortgagors' readiness to redeem, that would give the mortgagors a cause of action. Regarded as a suit for specific performance of the covenant to allow redemption in two years, the period of limitation would be three years from the date on which redemption was refused. (*Lentaigne, J.*). MA HIN THA *v.* MA THET SU. 76 I.C. 624= 2 Bur.L.J. 119=A.I.R. 1923 Rang. 232.

—Art. 113—Refusal to perform.

——In order to bring a case in the second part of Col. 3, Art. 113, it is necessary to establish not only that the promisor refused to perform the contract but that the promisee had knowledge of such refusal more than three years prior to the suit for specific performance of a contract. (*Tek Chand and Agha Haidar, JJ.*). WARYAM SINGH *v.* GOPI CHAND. 119 I.C. 491=11 Lah. 69= 31 P.L.R. 352=A.I.R. 1930 Lah. 34.

—Art. 113—Specific performance.

——*Suit for, barred.*

The terms of the contract of 1888 were as follows: "On looking into the accounts the amount found due to the said Saravana Pillai was Rs. 99,568-15-6. Saravana Pillai consented to receive this sum of rupees, etc., and sell the aforesaid villages to Sri Maharajulangaru." The suit for possession by Sri Maharajulangaru was instituted in 1900,

Held, the suit becomes one for the specific performance of a contract which is barred by Art. 113. (*Lord Carson.*) SUBBARAYA PILLAI *v.* VENKATA PERUMAL. 68 I.C. 172=45 Mad. 641= 16 M.L.W. 169=31 M.L.T. 146=49 I A. 335= 27 C.W.N. 403= 21 A.L.J. 297=37 C.L.J. 426= 25 Bom. L.R. 640=A.I.R. 1922 P.C. 345= 44 M.L.J. 749 (P.C.).

—Art. 113—Starting point.

——Where a person sued for specific performance of an agreement to sell under the Punjab Colonisation of Government Lands Act and it appeared that though he had paid the last instalment the conveyance in his favour was subject to the fulfilment of certain other conditions,

Held, that the suit was governed by Cl. 2 of the third column of Art. 113 and not by Cl. 1.

Semble, where a case falls under the first clause of Art. 113 it is not permissible to have resort to the second clause. (*Tek Chand and Agha Haidar, JJ.*). LAKHA SINGH *v.* GHULAM MAHAMMED. 31 P.L.R. 636.

——Where an agreement stated that another lease would be executed, but in the contract no date was fixed for the execution of the second deed,

Held, the three years period of limitation for specific performance began to run against the plaintiff when he first had notice that the defendant refused to execute it. (*Hallifax, A.J.C.*). RAO SAHEB *v.* UMRAO. 102 I.C. 305= A.I R. 1927 Nag. 353.

——Where a date is not fixed for specific performance, time does not commence to run till specific performance has been demanded, and refused. (*Duckworth, J.*). MA MA GYI *v.* MA NYO PO. 79 I.C. 278=1 Bur. L.J. 171= A.I.R. 1923 Rang. 44.

——The defendant through her attorney agreed to convey six of the well sites received for 1902 and three of the well-sites to be received for 1903 and in pursuance of this agreement the defendant conveyed to the plaintiff six specified well-sites of those issued in 1902, but failed to convey three of those received for the year 1903,

Held, if specific performance could properly be sued for the suit would be governed by Art. 113 but time could run from the date on which the plaintiff had notice that performance was refused. (*McColl, A.J.C.*). MAUNG MO HNAUNG *v.* MA SHWE NYE. 4 U.B.R. 41=4 U.B.R. 38=4 U B.R. 35= A.I.R. 1921 U.B. 16.

LIMITATION ACT (1908), Art. 115—Bailment.

—Art. 113—Suit to enforce award.

——Suits to enforce awards are governed by Art. 120 and not by Art. 115 or Art. 113. 33 Cal. 881 and 6 S.L.R. 148, *Rel. on.* (*Percival, C.J. and Aston, A.J.C.*). KHUBCHAND *v.* JETHANAND SANT DAS. 117 I.C. 153=23 S.L.R. 417=A.I.R. 1929 Sind 168.

——Limitation for a suit to enforce an award depends on the nature of the relief sought; if the award is to the effect that the defendants shall hold the land as usufructuary mortgagees for a definite sum, and the plaintiffs sue for redemption, the Article applicable is Art 148 (*Brown, J.C.*). MAUNG NE DUN *v.* MAUNG CHO. 70 I.C. 517= 4 U. B. R. 124=A.I.R. 1923 Rang. 108.

—Art. 115—Action for debts.

——Article 115 applies to an action for debt just as much as Art. 116 does or may do. A.I.R. 1916 P.C. 182 and 37 Bom. 656, *Rel. on.* (*Marten, C.J. and Crump, J.*). MANEKLAL *v.* SURYAPUR MILLS CO. 110 I.C. 33=52 Bom. 477=30 Bom.L.R. 549= A.I.R. 1928 Bom. 253.

—Art. 115—Articles of association.

—— *'Registered.''*

Per *Marten C.J.*—The word "registered" in Arts. 115 and 116 of the Limitation Act includes articles of association registered under the Indian Companies Act and is not confined to registration under the Indian Registration Act. 42 Mad. 33, *Foll.* (*Marten, C.J. and Patkar, J.*). GOVIND NARAYAN *v.* RANGNATH. 54 Bom. 226=32 Bom. L.R. 232.

—Art. 115—Articles supplied and work done.

——*Compensation.*

The word "compensation" in Art. 115 as well as in Art. 116 has the same meaning as it has in S. 73 of the Indian Contract Act, and denotes a sum of money payable to a person on account of the loss or damage caused to him by the breach of a contract. A suit therefore to recover a specified sum of money on a contract is a suit for compensation within Art. 115.

Where the plaint, in a suit for the recovery of a certain sum of money alleged to be due to the plaintiff for material supplied and work done, makes no mention of the price of the materials as distinct from the price of the work, and contains no reference whatsoever to two claims and there is only one indivisible claim, and that is for the balance of the money due to the plaintiff on the basis of a contract,

Held, the claim as laid in the plaint is an indivisible one; it cannot be split up into two portions. It must, therefore, be held that it falls neither under Art. 52 nor under Art. 56 but is governed by Art. 115. (*Shadi Lal, C. J., Chevis and Harrison, JJ.*). MAHOMED GHASITA *v.* SHIRAJUD-DIN. 66 I.C. 490=2 Lah. 376= A.I.R. 1922 Lah. 198 (F.B.).

—Art. 115—Bailment.

——*A* handed over to *B* certain ornaments to be used in religious procession in 1924. The orna-

LIMITATION ACT (1908), Art. 115—Company.

ments were stolen. *B* admitted the liability in 1924, but denied it later on and *A* filed a suit in 1928 for recovery of the ornaments,

Held, that Art. 115 applied to the case and not Art. 49 or Art. 120; that the ornaments had been taken on loan and the transaction was of the nature of the bailment as defined in S. 148, Contract Act; that the ornaments were to be returned within reasonable time according to S. 46, Contract Act, *i.e.*, when the owner demanded them after the ceremony was complete. Time therefore ran from the date when *B* should have returned the articles to *A* and suit by *A* brought three years after that date was barred by time. (*Pullan and Srivastava, JJ.*). CHATURGUN *v.* SHAHZADY.

A.I.R. 1930 Oudh 395.

—Art. 115—Company.

——*Suit against director for misfeasance.*

Article 115 of the Limitation Act will not apply where part of the contract was in writing registered, *i.e.*, contained in the articles of association. Article 115 is not strictly applicable to a misfeasance in the nature of a breach of trust, nor is Art. 116, as "breach of contract" is not the sole liability sued on nor is it the usual nomenclature for a breach of trust whether specific or quasi. (*Marten, C. J. and Patkar, J.*). GOVIND NARAYAN *v.* RANGANATH. **54 Bom. 226=32 Bom. L.R. 232.**

——*Call after forfeiture.*

Article 28 of Table A imposes, on forfeiture, a new obligation or a new debt, and as the share-holder thenceforth ceases to be a member of the company, his liability to pay future calls is gone, and all that is left is this new liability to pay the company "all moneys which at the date of forfeiture were presently payable by him to the company in respect of the shares." Such a person is liable with regard to unpaid calls, not as a contributory, either as a present or a past member of the company, but as a debtor to the company. This gives the company a fresh cause of action and the period of limitation for a suit to enforce this new obligation begins to run from the time the shares are forfeited and the proper article applicable is Art. 115, Limitation Act. (*Marten, C.J. and Crump, J.*). MANIK LAL MANSUKHBHAI *v.* SURYAPUR MILLS CO., LTD. **110 I. C. 33= 30 Bom. L. R. 549=52 Bom. 477= A.I.R. 1928 Bom. 252.**

——*Suit for dividends.*

The relation between the share-holder and the Company on a declaration of a dividend by the Company is not a contractual relation as contemplated by Arts. 115 and 116 in respect of the dividend. 42 Mad. 33, *Overruled.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ*). RAMA SESHAYYA *v.* T. COTTON PRESS. **94 I.C. 515=49 Mad. 468= 1926 M.W.N. 450=24 M.L.W. 102= A.I.R. 1926 Mad 615=50 M.L.J. 520 (F.B.).**

——*Call after forfeiture.*

One of the company articles provided that any member, whose shares might be forfeited would notwithstanding be liable to pay all calls and instalments owing at the time of forfeiture. The defendant a share-holder did not pay calls and therefore his shares were forfeited and the company filed a suit to recover according to the article,

Held, that the article in question embodied a special contract, the cause of action arose when the company forfeited the shares, and, therefore the suit to recover what was due from the defendant on his shares was within time, if filed within 3 years of the date of forfeiture. (*Macleod, C.J.*

LIMITATION ACT (1908), Art. 115—Pledgor and pledgee.

and Coyajee, J.). HABIB ROWJI *v.* STANDARD ALUMINIUM AND BRASS WORKS, LTD. **88 I.C. 96=49 Bom. 715=27 Bom. L.R. 574= A.I.R. 1925 Bom. 321.**

—Art. 115—Compensation and damages.

——*Meaning of.*

The expression compensation is not ordinarily used as an equivalent to damages, although compensation may often have to be measured by the same rule as damages in an action for a breach. The term compensation signifies that which is given in recompense, an equivalent rendered; damages, on the other hand, constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term compensation etymologically suggests the image of balancing one thing against another. Its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. (*Mookerjee and Rankin, JJ.*). MUHAMED MOZAHARAL AHMAD *v.* MAHAMED AZIMADDIN BHUINYA. **73 I.C. 17= 37 C.L.J. 108=27 C.W N. 210= A.I.R. 1923 Cal. 507.**

—Art. 115—Contract for sale.

——*Contract becoming impossible—Limitation Act, Arts.* 60 and 115.

In a certain contract for the sale of property the vendor was to satisfy certain conditions before completion of the contract, but no time was specified for it. The vendor mortgaged the property to another and afterwards it was sold in satisfaction of that mortgage. The purchaser then sued for recovery of deposit money.

Held, that the purchaser need not have sued within a reasonable time. It was Art. 97 and not 60 nor 115, that governed such a case, and time was to be counted since when the property was sold in satisfaction of the mortgage, because it was then that the contract, having become impossible of performance, ended. (*Rankin, C. J. and B. B. Ghose, J.*). J. C. GALSTAUN *v.* SAHEBZADI MAMOODI BEGUM. **117 I.C. 700= 33 C. W. N. 115=56 Cal. 455= A.I.R. 1929 Cal. 216.**

—Art. 115—Debt payable in kind.

——A claim for recovery of a debt payable in kind falls under Art. 65 or 115 and not under Art. 120. (*Chevis and Broadway, JJ.*). MUHAMMAD DIN *v.* SOHAN SINGH. **65 I.C. 691= 4 L.L.J. 268= A.I.R. 1922 Lah. 271.**

—Art. 115—Mutual, open and current account.

——Article 85 and not Art. 115. (*Kulwant Sahay and Macpherson, JJ.*). JOHARMAL MATHARADAS FIRM *v.* HIRA LAL. **107 I.C. 533=7 Pat. 233= A. I.R. 1928 Pat. 221.**

—Art. 115—Pledgor and pledgee.

——*Unauthorised conversion of pledged property.*

Where a pledgee having power to sell for default, takes over in effect, as if upon a sale the pledged property to himself without the pledgor's authority, or giving credit for their full value to him the pledgee is guilty of an unauthorised conversion and the pledgor is entitled to have his property back or its full value but only on payment of debt. A suit brought by the pledgor under the above circumstances within three years from the date of the alleged sale is well within time whether the suit be regarded as one for redemption governed by Art. 145 or as one for damages for breach of contract governed by Art. 115. Article 86 has no

LIMITATION ACT (1908), Art. 115—Price of produce not paid.

application to such a suit. 19 Cal. 322 (P. C.), *Rel. on.* (*Coutts-Trotter, C. J. and Pandalai, J.*). RAMASWAMY CHETTY *v.* PALANIAPPA CHETTIAR. **122 I.C. 37=30 M.L.W. 838=A.I.R. 1930 Mad. 364.**

—Art. 115—Price of produce not paid.

———Suit to recover the amount payable in default of payment of produce is one for compensation for breach of the agreement to pay a share of produce and falls within the purview of Art. 115. (*Scott-Smith and Brasher, JJ.*). WALI *v.* KHUDA BAKHSH. **72 I.C. 480=5 L.L.J. 366=A.I.R. 1924 Lah. 149.**

—Art. 115—Principal and agent.

———A suit by the principal against his agent for accounts is governed by Art. 89 and not Art. 115. (*Dawson-Miller, C. J. and Foster, J.*). JOGINDRA NARAYAN CHAUDHURI *v.* CHINAI MUHAMMAD SIRCAR. **89 I.C. 275=4 Pat. 289=7 P.L.T. 111=A.I.R. 1925 Pat. 494.**

—Art. 115—Recovery of deposits.

———The period of limitation for a suit to recover money deposited by the plaintiff with the defendant on the understanding that it will be returned on the happening of a certain event is three years beginning from the date on which the event happened and the article applicable in such a case is either 62 or 115. 5 Cal. 830; 37 Mad. 175 and 33 M.L.J. 577, *Foll.*; 12 Cal. 113, *Not foll.* (*Tek Chand, J.*). NARINDAS *v.* MUNICIPAL COMMITTEE, DELHI. **108 I.C. 49.**

—Art. 115—Scope.

———Article 115 is a residuary article for actions *ex contractu* and can only be applied when no other article of the Limitation Act Schedule is appropriate.

As long as there is a contract between the parties which is not in writing and which can be covered by Art. 115, Art. 120 cannot be applied. (*Pullan and Srivastava, JJ.*). CHATURGUN *v.* SHAHZADI. **7 O.W.N. 769=A.I.R. 1930 Oudh 395.**

———*Suit to recover damages caused by the breach of contract—Article* 115 *applies.*

Article 115 is a general provision applying to all actions *ex contractu* not specially provided for otherwise. The word "compensation" in that Article as well as in Art. 116 has the same meaning as it has in S. 73, Contract Act, and denotes a sum of money payable to a person on account of loss or damage caused to him by the breach of a contract. A.I.R. 1922 Lah. 198 (F.B.), *Foll.*

A suit to recover one-third of the cost of constructing a shop which the defendant the joint owner of the site had agreed to pay and failed to do so, is governed by Art. 115 and not Art. 61. (*Zafar Ali, J.*). SAUDAGARMAL *v.* BAHADUR CHAND. **107 I.C. 493=A.I.R. 1928 Lah. 442.**

—Art. 115—Starting point.

———*Instalment contract.*

A firm entered into a contract in respect of ten cases of mulls. The terms of the contract were as follows: "We sold to you the goods as below at Karachi godown. . You shall have to take delivery of the goods against payment, on arrival of the railway receipt and invoice at Delhi, afterwards interest and demurrage will be charged from you. . December shipment 3 lots two months' grace.

Held, that the contract was indivisible and due date was on arrival of the last shipment. Claim for damages made within three years of last shipment was in time. The goods were not to be delivered in three instalments. The term "December shipment, three lots, two months grace," did not imply that the contract goods were to be delivered in three instalments but merely that they were to be shipped in three lots commencing December. A.I.R. 1928 Lah. 20, *Foll.* (*Shadi Lal, C.J. and Tapp, J.*). CHHOTE LAL AMBAY PRASHAD, DELHI *v.* NATHU MAL-MIRI MAL, DELHI. **A. I. R. 1930 Lah. 193.**

LIMITATION ACT (1908), Art. 115—Suit for contribution.

———*Contract for several lots.*

Where the contract for the supply of several lots of goods is an entire and not an instalment contract, limitation in respect of all lots would run from the date when the last lot was due to arrive. 43 Cal. 305, *Dist.* (*Martineau and Dalip Singh, JJ.*). AMBA PRASAD GOPI NATH *v.* JAWALA DATT RAMKANWAR. **94 I.C. 629=8 L.L.J. 101=27 P.L.R. 239=A.I.R. 1927 Lah. 92.**

———*Goods of various shipments.*

No cause of action for a suit for non-delivery of goods of various shipments accrues to the plaintiff until the last day of arrival of the last shipment and limitation for such a suit begins from that day. A.I.R. 1925 Lah. 513, *Foll.* (*Addison, J.*). FIRM CHHOTALAL *v.* FIRM BASDEO MAL. **94 I.C. 2=A.I.R. 1926 Lah. 404.**

———*Undertaking to pay off mortgage.*

Where the vendee agreed to pay off a usufructuary mortgage on the property but no time was fixed for the payment of the money,

Held, that the vendee's failure to pay off the mortgage on the date on which the sale deed in his favour was executed, constituted breach of covenant on his part, that the breach took place once and for all and that there was no continuing breach which would give successive causes of action to the plaintiff (the vendor) to sue. 34 All. 429, *Foll.* (*Sulaiman, J.*). RAM NARAIN *v.* NIHAL SINGH. **87 I.C. 804=6 L.R.A. Civ. 222=A.I.R. 1925 All. 488.**

———*When able to perform contract.*

Where *A* agreed to sell to *B*, 3 oil wells out of the 12 oil wells which he expected to get from Government in 1903, and the Government granted him (*A*) 3 wells in 1904 and the rest in 1912,

Held, in a suit by *B*, for breach of contract to sell the 3 oil wells, that limitation began to run from the date when the defendant was in a position to satisfy the bargain in 1904 and could not be in abeyance until the whole of the 12 sites were allotted by Government to the defendant. (*Lord Buckmaster.*) MA SHWE MYA *v.* MAUNG MO HNAUNG. **63 I.C. 914=24 Bom.L.R. 682=30 M.L.T. 28=48 I.A. 214=48 Cal. 832=4 U.B.R. 30=1921 M.W.N. 396=A.I.R. 1922 P.C. 249 (P.C.).**

—Art. 115—Suit for accounts.

———Where there is no question of breach of contract or compensation payable for such breach, but parties were to look into the accounts of each other to equalize the profit, each trading independently of the other, and a suit is brought to take such an account, and ascertain who owes whom, and give a decree for the amount payable,

Held, that the suit cannot be treated as a suit for compensation and it does not fall under Art. 115. The general Art. 120 would therefore apply. 11 C.L.J. 43 and 14 C.W.N. 122, *Not foll.* (*Krishnan and Odgers, JJ.*). BHAVANARAYANA *v.* KOLLA VENKAYYA. **A.I.R. 1927 Mad. 775.**

—Art. 115—Suit for contribution.

———Where one of several co-mortgagors redeems the property and files a suit for contribution and

LIMITATION ACT (1908), Art. 115 — Suit for contribution.

interest against his co-mortgagors he would be allowed interest only for a period of three years. (*Dalal, J. C.*). JAHAN BEGAM *v.* MUNNEY MIRZA. 92 I.C. 559=12 O.L.J. 313= 2 O.W.N. 413=A.I.R. 1925 Oudh 613.

———*Co-defendants.*

Where plaintiff and defendant were jointly interested in redeeming a mortgage and plaintiff himself filed a suit for redemption and redeemed the mortgage and then sued the defendant for his share of the costs of the litigation and the redemption money,

Held, that in the absence of a finding of a contract to pay at the conclusion of a litigation, defendant's liability to pay cannot be postponed till the conclusion of the litigation. The suit for the recovery of a share of costs and money due for the redemption is barred under Art. 61 or 115 if brought more than three years after payment. 3 C. L. J. 93, *Dist.* (*Newbould and Panton, JJ.*). SHAIK JAMAL *v.* SHAIKH CHAND. 70 I.C. 289=A.I.R. 1922 Cal. 79.

—Art. 115—Suit on Hatchita.

———A suit on a Hatchita stamped and signed by the debtor, containing a statement of adjustment of accounts and consisting in itself a distinct and unqualified promise to pay the amount found due on adjustment is governed by Art. 115 and not by Art. 64. In every case where Art. 64 is made applicable there need not be always a reciprocity of demands. (*C. C. Ghose and Panton, JJ.*). SARIFUN MANDALIN *v.* FERADOUL KHALUN. 76 I.C. 603=A.I.R. 1923 Cal. 578.

—Art. 115—Suit to enforce award.

———Suits to enforce awards are governed by Art. 120 and not by Art. 115 or Art. 113. 33 Cal. 881 and 6 S. L. R. 148. *Rel. on.* (*Percival, J. C. and Aston, A. J. C.*). KHUBCHAND BHIKCHAND *v.* JETHANAND SANTDAS. 117 I.C. 153= 23 S.L.R. 417=A.I.R. 1929 Sind 168.

—Art. 115—Trust created by will.

———A will of 1887 provided that certain properties should be given to *B* and his mother by way of maintenance and if those properties were sold, they should receive Rs. 40 in lieu of the income. In 1908, the executors entered into an agreement with the beneficiaries by which the properties were sold and the maintenance amount was agreed to be paid. In 1919 *B*'s mother died and *B* brought the suit for maintenance,

Held, the suit was in time: it was in substance based upon a trust created in his favour by the will and that it was governed by Art. 120 or 123 and not Art. 115. (*Shadi Lal, C.J. and Agha Haidar, J.*). MT. ALI BEGAM *v.* ISMAIL HUSSAIN. 30 P.L.R. 689=A.I.R. 1929 Lah. 834.

—Art. 115—Undertaking to pay debts.

———*Default—Starting point.*

Where the terms of the conditions in the sale-deed were merely that the mortgage was to be paid off, and did not require the vendee to pay it off at some future time or to pay it off whenever he pleased but provided that he was responsible for future interest and was to pay it off before the property was endangered, the presumption is that he was to pay it off immediately or, if not immediately, at any rate as soon as was reasonably possible. The vendee, therefore, broke his contract when he undertook to pay the mortgage, or within a very short but reasonable period therefrom. 34 All. 429; 11 A.L.J. 478 and A.I.R. 1921 All. 133,

LIMITATION ACT (1908), Art. 119—Applicability.

Dist. (*Boys and Kendall, JJ.*). KALLU *v.* RAM DAS. 107 I.C. 679=26 A.L.J. 53= A.I.R. 1929 All. 121.

—Art. 116.

Applicability.
Breach of Contract.
Covenant for Title.
Dower-debt.
Interpretation.
Lease.
Memorandum and articles of Company.
Personal liability of mortgagor.
Suretyship and guarantee.

—Art. 116—Applicability.

———If there is covenant express or implied indemnifying party suffering against loss caused by defect in title of executant of document Art. 116 applies, otherwise Art. 62 or Art. 97. 30 All. 402; 13 A.L.J. 669 and A.I.R. 1929 All. 293, *Ref.* (*Dalal, J.*). BAGESWAR TEWARI *v.* BIKRAMAJIT SINGH. A.I.R. 1930 All. 785.

———*Express covenant.*

A purchased from *B* by an Indenture certain property subject to an incumbrance of Rs. 16,000 by a deed of charge of mortgage in favour of *K*. There was a stipulation that *B* would keep *A* harmless and would indemnify him in respect of any charge save and except the charge in favour of *K*. Eventually after the sale was completed, it was found that the amount due to the mortgagee was Rs. 21,000. This amount *A* had to pay and he sued *B* for the difference between Rs. 16,000 and the sum he actually paid,

Held, that *A* took the property subject to the liability of the mortgage of *K*, that on a construction of the document, he was bound to discharge the incumbrance of *K* entirely and not merely to pay the sum mentioned in it, and in absence of any express covenant to the effect that *B* would be bound to pay any excess due on the mortgage: *A* was not entitled to the amount claimed by him,

Held, further, that it was not a covenant which could be implied from the sale-deed and therefore Art. 116 did not apply. 24 Mad. 233, *Rel. on.* (*B. B. Ghose and Bose, JJ.*). BIDHU BHUSAN PAL CHOWDHURY *v.* UMESH CHANDRA BANERJEE. A.I.R. 1930 Cal. 568.

———*Transfer for maintenance subject to debts.*

Certain lands were transferred, by a registered deed in writing in favour of a person for life in lieu of maintenance and he was made to bear the liability of certain payments,

Held, that the deed of transfer contained an implied acceptance of the transferee to make the payment though it was in a unilateral document and such deed was a complete contract in writing between the transferor and the transferee within the meaning of Art. 116. 19 Mad. 52, 25 Mad. 50; 35 Cal. 683; 20 C.W.N. 408; A.I.R. 1925 Bom. 440, *Rel. on.*; 26 All. 138; 34 All. 464; A.I.R. 1916 P.C. 182; 3 Bom. L.R. 667. *Ref*; *In re New Eberhardt Co*, 43 Ch. D. 118, *Cons.* (*Wasir Hasan, Ag.C.J. and Rasa, J.*). NARSINGH PRATAB *v.* MAMMAN JAN. 118 I.C. 417=6 O.W.N. 431= A.I.R. 1929 Oudh 311.

———*Contract signed by one and accepted by another.*

Article 116 is not limited to agreements signed by both the parties. If there is a valid contract evidenced by a registered document which though signed by only one party is complete because it has been accepted by the other, and breach of that

LIMITATION ACT (1908), Art. 116—Applicability.

contract has been committed, Art. 116 would be equally applicable to such a case. 19 Mad. 62; 25 Mad. 50; 35 Cal. 683 and 20 C.W.N. 408, *Ref.*; 3 Bom.L.R. 637, *Dist.*; A.I.R. 1916 P.C. 182, *Cons.* (*Sulaiman and Kendall, JJ.*). MT. PARBATI *v.* SARUP SINGH. **109 I.C. 409=50 All. 661=26 A.L.J. 426=A.I.R. 1928 All. 313.**

——Article 115 applies to an action for debt just as much as Art. 116 does or may do. A.I.R. 1916 P.C. 182 and 37 Bom. 656, *Rel. on.* (*Marten, C.J. and Crump, J.*). MANIK LAL MANSUKHBHAI *v.* SURYAPUR MILLS CO., LTD. **110 I.C. 33=52 Bom. 477=30 Bom.L.R. 549=A.I.R. 1928 Bom. 252.**

—Art. 116—Breach of contract.

——*Undertaking to pay debt.*

Article 116 applies not only to a suit for a specified sum of money due on a registered bond but also to a suit where the vendee having agreed to apply a portion of the purchase-money to the payment of a previous debt due by the vendor fails to apply it in that way and a suit is brought to recover that amount from him. Such a suit is not barred if it is brought within six years of the breach of contract sued upon. The period of limitation in such a case does not run from the date of the execution of the sale-deed but from the date on which the contract is deemed to have been broken, *viz.*, the date when either there was a repudiation of the liability under it or when the contract had been impossible of performance on account of vendor's debt having been satisfied. 34 All. 429; 6 C.L.J. 398 and A.I.R. 1921 All. 183, *Rel. on*; 3 All. 600 (F.B.); A. I. R. 1916 P. C. 182 and A.I.R. 1923 Cal. 507, *Ref.* (*Das and Fazl Ali, JJ.*). RAM RACHHYA SINGH *v.* RAGHUNATH PRASAD MISSER. **122 I.C. 244=8 Pat. 860=A.I.R. 1930 Pat. 46.**

——*No date fixed for payment.*

Under Art. 116 time begins to run from the date of breach of contract under a registered instrument. Where no time is fixed for payment, it runs from the date of the deed itself and a suit brought more than six years after the date is barred by time. (*Sulaiman and Pullan, JJ.*). RAM SARAN DAS *v.* BHAGWAN SINGH. **A. I. R. 1929 All. 775.**

——*Undertaking to pay debt.*

Some portion of the purchase-money was left by the vendor with the vendee to be paid to his (vendor's) creditor and this provision was entered in registered sale-deed that was executed. The vendee did not pay whereupon the creditor, suing the vendor, attached and purchased this debt due from the vendee. He then sued the vendee to recover the debt from him basing his claim on the debt purchased by him in the execution proceedings.

Held, that by his purchase of the debt the creditor stepped into the shoes of the vendor and obtained his right to recover the debt on account of breach of contract to pay the same to the creditor as stipulated in the registered deed of sale. His suit therefore would be governed by Art. 116 and not by Art. 111 although he based it on the debt purchased by him. 34 All. 459, *Foll.* (*Bhide, J.*) MEHAR CHAND *v.* SHANTI SARUP. **118 I. C. 445=A. I. R. 1929 Lah. 395.**

—— An action for damages for breach of covenant based on a sale-deed which is registered should be brought within a period of six years. (*Ananthakrishna Ayyar, J.*). KRISHNA BHATTA *v.* GOVINDA BHATTA. **A.I.R. 1929 Mad. 775.**

LIMITATION ACT (1908), Art. 116—Covenant for title.

——Article 116 applies to a suit for damages for the breach of a registered contract of sale. (*Curgenven, J.*). PATTRACHARIAR *v.* ALAMELUMANGAI AMMAL. **100 I.C. 40=25 M.L.W. 11=A.I.R. 1927 Mad. 273.**

——Where a registered sale-deed provided that the purchaser should pay the revenue on the land sold, but the vendor paid the revenue on behalf of the purchaser, and sued him for revenue paid,

Held, that Art. 61 should apply and not Art. 116. (*Devadoss, J.*). THONDIYIL PUTHALATTA UKKARAN NAYAR *v.* THONDIYIL PONNIGARI UKKARAN NAYAR. **94 I.C. 1046=1926 M.W.N. 291=A.I.R. 1926 Mad. 633=51 M.L.J. 159.**

——*Undertaking to pay off mortgage.*

The plaintiffs had to satisfy a mortgage. The defendant undertook by writing registered to pay the mortgage amount to the mortgagee and to procure an indemnity or freedom of the mortgaged property from all liability, and the plaintiff sold to him in consideration of that contract and of the promise to pay, a house and kotha The defendant did not fulfil his undertaking and consequently the mortgagee sued for and obtained a preliminary decree. The plaintiff induced the mortgagee to accept a renewal of the mortgage and include in the consideration thereof the decretal debt and thus discharge him from the liability and sued defendant for compensation for breach of the contract,

Held, that the suit was governed by Art. 116 and not Art. 111 or Art. 62. (*Kinkhede, A. J. C.*). VINAYAK RAO *v.* SHRIPAT RAO. **97 I.C 185=9 N.L.J. 107=A.I.R. 1926 Nag. 429.**

——A suit brought more than six years after the sale-deed, for recovery of damages for failure to pay the amount left in the hands of the vendee for cleaning a prior mortgage is barred by time. (*Sulaiman, J.*). RAM NARAIN *v.* NIHAL SINGH. **87 I. C. 804=6 L.R.A. Civ. 222=A.I.R. 1925 All. 488.**

——*Sale by co-sharer.*

A co-sharer sold lands to the plaintiff pending partition proceedings, and agreed in the sale-deed itself that in the event of his not getting the land to his share in the said partition proceedings, he would pay compensation to the plaintiff. The vendor was allotted at the partition a less area than the area sold and the plaintiff sued for compensation.

Held, that Art. 65 along with Art. 116 applied to the case and that time began to run against plaintiff from the date when the vendors were finally allotted a less area. (*Martineau and Brasher, JJ.*). RUKAN DIN *v.* HASSAN DIN. **72 I.C. 897=A.I.R. 1923 Lah. 23.**

——Mortgagee covenanting to pay prior mortgagee—No time limit fixed—Mortgagor's suit for breach of covenant—Cause of action arises only on mortgagor being damnified, *e.g.*, by the property being sold in execution of a decree obtained by the prior mortgagee. (*Tudball and Rafique, JJ.*). ISHRI PRASAD *v.* MUHAMMED SAMI. **60 I.C. 829=19 A.L.J. 81=A.I.R. 1921 All. 133.**

—Art. 116—Covenant for title.

——The provisions of Art. 116 will apply where there is a breach of covenant of indemnity against loss caused by defect in titles. The covenant need not be express. It may be implied as in case of a sale under S. 52 (2), T. P. Act for the refund of

LIMITATION ACT (1908), Art. 116—Covenant for title.

purchase-money. If there is no such covenant Art. 62 or 97, Lim. Act will apply. 30 All. 402; 13 A.L.J. 669 and A.I.R. 1929 All. 293, *Ref.* (*Dalal, J.*). BAGESWAR TEWARI *v.* BIKRAMAJIT SINGH. A.I.R. 1930 All. 785.

——If a statute says that a certain covenant should necessarily be implied in a certain contract and that contract itself is in writing and registered, Art. 116 applies, and if the contract is under S. 55, T. P. Act, and the vendee is put in possession and dispossessed the time begins to run from the date of dispossession. A.I.R. 1928 All. 293, *Rel. on.* (*Cases discussed*). (*Sulaiman and Kendall, JJ.*). MD. SIDDIQ *v.* MD. NUH. A.I.R. 1930 All. 771.

——Claim for damages by a vendee on the ground that his vendor's title is defective is governed by Art. 116. (*Rupchand, Aq.J.C.*). SORABJI MUNCHERJI BILLIMORIA *v.* TARACHAND GHANSHANDAS. A.I.R. 1930 Sind 66.

——Suit for damages based on a clause of indemnity or on a covenant for title and quiet possession contained in a registered sale-deed is governed by Art. 116. A.I.R. 1921 Lah. 260, *Foll.* (*Addison, J.*). MANGLADHA RAM *v.* GANDA MAL. 120 I.C. 425=A.I.R. 1929 Lah. 388.

——*Breach of — Suit for refund of purchase money.*

To a suit for refund of purchase money which is in substance a suit based on a registered document and can be regarded as a suit for compensation for breach of a contract, Art. 116 must apply although such a suit may fall under some other provision of Limitation Act and time begins to run only when it is found that there is no good title. A.I.R. 1921 Bom. 252; 38 Mad. 887; A.I.R. 1916 P.C. 182, *Foll.* (*Das and James, JJ.*). MT. LAKHPAT KUER *v.* DURGA PRASAD. 117 I.C. 654=8 Pat. 432=A.I.R. 1929 Pat. 388.

——*Breach of—No title* ab initio—*Starting point.*

The starting point for limitation in a suit by a vendee to recover damages from his vendor upon breach of covenant for possession is, where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property, the date of the sale-deed or at the latest the date when the vendor first denies vendees right to possession. (*Curgenven, J.*). PATTRACHARIAR *v.* ALAMELUMANGAI AMMAL. 100 I. C. 40=28 M. L. W. 11=A. I. R. 1927 Mad. 273.

——A suit for compensation for breach of express or implied covenant for title and quiet enjoyment in respect of a sale-deed executed after coming into force of the Transfer of Property Act is governed by Art. 116. 38 Mad. 1171, *Foll.* (*Devadoss, J.*). SEGAMANI *v.* MUNIBADRA. 91 I.C. 514=22 M.L.W. 704=A.I.R. 1926 Mad. 255=49 M. L. J. 668.

——An action for damages for breach of a covenant for title contained in a registered instrument is governed by Art. 116. 11 N. L. R. 186, *Foll.* (*Wadegaonkar, A.J.C.*). RAMDHAN *v.* PURUSHOTTAM. 88 I. C. 699=22 N.L.R. 49=A. I. R. 1926 Nag. 109.

——Where the defendant covenanted that he had a good title to the property sold, and in return for the sale-deed received a certain price, but the plaintiff was obstructed in obtaining possession of the property and therefore sued defendant for return of the purchase money,

Held, that the suit was governed by Art. 116 and the cause of action arose on the date of sale. (*Macleod, C.J. and Coyajee, J.*). GANAPPA PUTTA HEGDE *v.* HAMMAD SAIBA. 89 I.C. 59=39 Bom. 596=27 Bom. L.R. 637=A.I.R. 1925 Bom. 440.

——A suit for the refund of the purchase-money may be regarded as a suit for damages for breach of covenant of title. The Article applicable to such a suit, where the conveyance is registered, is Art. 116. If a contract, in the sense of the Article, is in writing, the writing represents the implied as well as the express covenants breach of which is governed by the Article. 19 C.W.N. 102 (1913) *Diss.*; 38 Mad. 1171, *Foll.* (*Sanderson, C.J. and Richardson, J.*). INJAD ALI *v.* MOHINI CHANDRA ADHIKARI. 80 I.C 623=27 C.W.N. 1025=A.I.R. 1924 Cal. 148.

——Where a *jajmani brit* was found to be not saleable,

Held, that a suit for possession of the *brit* or the refund of consideration in the alternative is governed by Art. 116 when the sale-deed of the *brit* was a registered one. (*Ross, J.*). GHINGU OJHA *v.* MEGHANATH PANDEY. 72 I.C. 653=A.I.R. 1924 Pat. 321.

——*Breach of—No title* ab initio—*Starting point.*

Per *Spencer, J.*—Lessee or purchaser who gets possession on the strength of a registered contract and is subsequently evicted for want of title in his lessor or vendor has six years from the date of his dispossession under Art. 116 to sue for damages for breach of the title for quiet enjoyment; but if from the inception the vendor had no title to convey and the vendee never gets possession, the starting point of limitation is the date of the sale. Suit by *A* as vendee of *B* who was himself vendee of *C* against *C* for money paid which *C* was bound to pay to his secured creditors is not one for damages or for return of the purchase-money, as there is no privity of contract between the parties. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. 74 I.C. 416=17 M.L.W. 254=A.I.R. 1923 Mad. 392.

——The provision in a sale-deed by which the vendor undertook, in case of dispute, to settle it out of his own expense and carry out the sale without obstruction, amounts to a covenant for quiet enjoyment or at least a covenant for title and a breach of the covenant gives the plaintiff six years to sue from the date when the covenant is broken. (*Kumaraswami Sastri and Devadoss, JJ.*). SUBBAYA *v.* PITCHANNA. 68 I.C. 190=1922 M.W.N. 420=A. I. R. 1923 Mad. 28=43 M.L.J. 64.

——*Breach of—Subsequent dispossession.*

Plaintiffs brought land under a registered-deed and were put in possession. The land was leased to a tenant who subsequently set up his own title to the land and his claim was also embodied in a final decree of the Court. Plaintiffs then filed a suit against their vendor for the recovery of the purchase money, etc.,

Held, that Art. 116 and not 97 applied and time began to run only when the tenant obtained the decree supporting his own title to the land.

A distinction should be made between cases where from the inception the vendor had no title to convey and the vendee has not been put in possession of the property, and other cases where the sale is only voidable on the objection of third parties and possession is taken under the sale. It is only in the first class of cases that the starting point of limitation will be the date of sale. *Case-*

LIMITATION ACT (1908), Art. 116—Dower-debt.

law discussed. (*Macleod, C. J. and Fawcett, J.*). MULTANMAL JAYARAM *v.* BUDHUMAL KEVALCHAND. **61 I.C. 70=45 Bom. 955=23 Bom. L. R. 325=A. I. R. 1921 Bom. 252.**

—Art. 116—Dower-debt.

———*Converted into mortgage debt.*

A registered deed executed by Mahommedan husband long after the marriage, promising to pay dowry then still due from him, on demand and hypothecating certain immovable properties as security for its due payment, converts the dower debt into a mortgage debt; and to a suit on such deed for the amount of dowry, six years rule of limitation is applicable. 6 M.I.A. 211 (P.C.), *Dist.* (*Iqbal Ahmad, J.*). MT. KUBRA BEGAM *v.* FAZAL HUSAIN. **99 I.C. 553=A I.R. 1927 All. 268.**

———Article 116 applies to suits for recovery of dower debt when there is a registered dower deeds although Arts. 103 and 104 would apply when there is no such registered instrument and time runs from the date of death of the lady. 44 Cal. 759 (P.C.), *Foll.*; 36 C L J. 379, *Ref.*; 36 Cal. 184, *Not foll.* (*Mookerjee and Rankin, JJ.*). MD. MOZAHARAL AHMAD *v.* MD. AZIMADDIN BHUINYA. **73 I.C. 17=27 C.W.N. 210=37 C.L.J. 108=A. I. R. 1923 Cal. 507.**

—Art. 116—Interpretation.

———*'Contract.'*

The word "contract" in Art. 116 includes an implied contract also. A.I.R. 1927 Pat. 248; A.I.R. 1926 Mad. 255; A. I. R. 1925 Bom. 440 and A. I. R. 1924 Cal. 148, *Rel. on.* (*Mukerji and Niamatullah, JJ.*). HANWANT RAI *v.* CHANDI PRASAD. **119 I.C. 243=51 All. 651=1929 A.L.J. 433=A.I.R. 1929 All. 293.**

———*'Compensation.'*

The word "compensation" in Art. 116 need not be restricted to a claim for unliquidated damages, and can be held to include a claim for a sum certain. 44 Cal. 759 (P. C.), *Foll.* (*Macleod, C. J. and Coyajee, J.*). GANAPPA PUTTA HEGDE *v.* HAMMAD SAIBA. **89 I.C. 59=27 Bom. L.R. 637=49 Bom. 596=A.I.R. 1925 Bom. 440.**

———*Words.*

Per *Coyajee, J.*—The words "express or implied" contained in Art. 115 are also intended to be read into Art. 116. 45 Bom. 955, *Ref.* (*Macleod, C. J. and Coyajee, J.*). GANAPPA PUTTA HEGDE *v.* HAMMAD SAIBA. **89 I.C. 59=27 Bom. L. R. 637=49 Bom. 596=A.I.R. 1925 Bom. 440.**

———*'Compensation.'*

The expression compensation is not ordinarily used as an equivalent to damages, although compensation may often have to be measured by the same rule as damages in an action for a breach. The term compensation signifies that which is given in recompense, an equivalent rendered; damages, on the other hand, constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term compensation etymologically suggests the image of balancing one thing against another. Its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. (*Mookerjee and Rankin, JJ.*). MD. MOZAHARAL AHMAD *v.* MD. AZIMADDIN BHUINYA. **73 I.C. 17=37 C.L.J. 108=27 C.W.N. 210=A.I.R. 1923 Cal. 507.**

—Art. 116—Lease.

———A suit by lessee for damages by way of compensation for breach of the term of the lease,

LIMITATION ACT (1908), Art. 116—Memorandum and Articles of Company.

namely, the implied term for quiet possession is governed by Art. 116. 32 I.C. 245 and 44 Cal. 759 (P.C.), *Rel. on.* (*Martineau and Dalip Singh, JJ.*). OBEDUR RAHMAN *v.* DARBARI LAL. **98 I.C. 584=7 Lah. 428=27 P.L.R. 663=A.I.R. 1927 Lah. 1.**

———A suit for recovery of rent by a landlord under the Madras Estates Land Act is governed by the three years' period of limitation prescribed by Art. 8, Sch. A of the Act. It makes no difference whether the landlord is suing on a registered-deed or not. (*Waller, J.*). KATIBA SAHIB *v.* PERIATHAMBIA PILLAI. **100 I.C. 241=A I.R. 1927 Mad. 439.**

———An action for breach of duty declared by S. 108 of the Transfer of Property Act is regulated by Art. 116 of the Limitation Act if the lease is in writing registered, the obligation being deemed to be embodied in the contract, and not by Art. 62 or Art. 97. 19 Cal. 123 and 26 Bom. 750, *Dist.* (*Das and Scroope, JJ.*). NABIN CHANDRA GANGULI *v.* MUNCHI MANDER. **101 I.C. 707=8 P. L. T. 590=6 Pat. 606=A.I.R. 1927 Pat. 248.**

———A registered instrument of lease operates also as an executory contract to deliver possession of the property to the lessee, such contract being deemed to be embodied in the lease; and a suit for damages for breach of such contract is within Art. 116. The question of the date from which limitation runs must be decided by reference to the Article under which the suit would have fallen if the contract had not been registered. 30 All. 400; 25 Mad. 587, *Ref.* (*Baker, J. C.*). SETH LAXMI CHAND *v.* BAJI RAO. **78 I.C. 243=A.I.R. 1924 Nag. 220.**

—Art. 116—Memorandum and Articles of Company.

———*Suit against Director for misfeasance.*

Article 116 of the Limitation Act does not apply to a claim against the Directors of a Company for misfeasance because the whole of the contract governing the relationship of the company and the Directors is not in writing registered but part only that which is contained in the articles of association. When at various times the Director was re-appointed to his office there must have been something in the nature of an offer by him to serve further and an acceptance by the company or *vice versa* either express or implied which circumstance shows that the whole contract is not in the articles. (*Marten, C.J. and Patkar, J.*). GOVIND NARAYAN *v.* RANGANATH. **54 Bom. 226=32 Bom. L.R. 232.**

———*Suit against share-holder.*

The mere fact that the articles of association of a company have to be registered under the Indian Companies Act, an action against a share-holder who becomes a share-holder by accepting the articles is not covered by Art. 116. (*Marten, C. J. and Crump, J.*). MANEKLAL *v.* SURYAPUR MILLS CO. **110 I. C. 33=52 Bom. 477=30 Bom.L.R. 549=A. I. R. 1928 Bom. 252.**

———*Registration.*

The deposit of the memorandum and articles of Association of a Limited Company with the Registrar of Joint Stock Companies under the direction of the Act is not registration as contemplated by Art. 116. 42 Mad. 33, *Overruled.* (*Coutts-Trotter, C.J., Krishnan and Beasley, JJ.*). RAM SESHAYYA *v.* T. COTTON PRESS. **94 I. C. 515=49 Mad. 468=1926 M. W. N. 450=24 M. L. W. 102=A.I.R. 1926 Mad. 615=50 M.L.J. 520 (F.B.),**

LIMITATION ACT (1908), Art. 116—Memorandum and articles of Company.

——*Registration.*

Per *Mukerji, J.*—Registration with the Registrar of Companies is as much a registration within Art. 116 as registration under Act XVI of 1908. (*Walsh and Mukerji, JJ.*). UNION BANK OF ALLAHABAD, *In re.* **88 I. C. 785=47 All. 663=23 A. L. J. 473=6 L. R. A. Civ. 425=A.I.R. 1925 All. 519.**

——*Purchaser of shares.*

Purchaser at Court auction sale of some shares in a Company, whose transfer is not recognised is not a share-holder and therefore he cannot take his stand on the registered contractual relation which is the foundation for any claim to call in aid Art. 116. (*Wallace, J.*). RAMA SESHAYYA *v.* T. COTTON PRESS, BEZWADA. **79 I.C. 947=34 M.L.T. 289=19 M.L.W. 623=A.I.R. 1924 Mad. 721=47 M.L.J. 563.**

—Art. 116—Personal liability of mortgagor—Article applicable.

——The personal remedy can be enforced on the basis of a registered deed within six years under Art. 116, Limitation Act. A. I. R. 1923 All. 1 (F.B.); A.I.R. 1929 Mad. 53 (F.B.) and A.I.R. 1928 Oudh 465, *Ref.*; A.I.R. 1926 P.C. 56,

Held, *to be no direct authority for contrary view.* (*Sulaiman, Ag. C.J., Mukerji and King, JJ.*). (SAHU) RADHA KRISHNA *v.* TEJ SAROP.

128 I. C. 321=1929 A.L.J. 1294=A. I. R. 1930 All. 69 (F.B.).

——In a suit on mortgage the limitation begins to run from the date of the first default and, claim to the relief against the mortgagor is to be brought within six years under Art. 116 although the claim to realization of debt from the property can be brought within 12 years under Art. 132. The mere fact that there is longer period for one relief does not in itself extend the limitation for the other relief.

Where therefore a mortgage suit is brought six years after the first default is made the claim for personal decree is barred. 7 All. 502 (P.C.); 34 All. 246; A.I.R. 1923 All. 1; 20 All. 612 and 34 Cal. 672, *Rel. on*; 25 All. 618; 19 Cal. 123 (P.C.); A.I.R. 1927 Lah. 570; A.I.R. 1925 Oudh 212; A.I.R. 1926 Oudh 19 and A.I.R. 1927 All. 421, *Ref.*; A.I.R. 1925 Mad. 1049 and A.I.R. 1926 Cal. 297, *Dist.* (*Bhide and Currie, JJ.*). SAHIB SINGH *v.* GURDIAL SINGH. **A.I.R. 1930 Lah. 993.**

——A suit by the mortgagee to recover the mortgage money under S. 68 (*b*) of the T. P. Act is governed either by Art. 116 or Art. 120 of the Limitation Act. (*Srivastava, J.*). LALTA SINGH *v.* MUTHUR UPADHIA. **7 O. W. N. 1045.**

——Where a mortgagee seeks for a personal remedy against the mortgagor, the period of limitation applicable to such case should be that provided for in Art. 116 and not in Art. 66, Limitation Act. A.I.R. 1928 Oudh 465, *Foll.*; A.I.R. 1926 P.C. 56, *Expl.*; *See also* A.I.R. 1929 Mad. 58. (*Misra, J.*). SHEO DASS PANDE *v.* KUNJ BEHARI.

114 I.C. 813=5 O.W.N. 1128.

—Art. 116—Personal liability of mortgagor—Inalienable property.

——The plaintiff sued for sale of a mortgaged property on foot of a registered mortgage. The property however, being a cultivatory holding and thus not being liable to sale, in his replication the plaintiff desired a money-decree. There was a further plea of the plaintiff that the defendant had fraudulently represented the property to be alienable property; but no fraud was found to have been proved,

Held, that the suit would have been governed by Art. 95, Sch. I, of the Limitation Act only if the alleged fraud had been established, the proper Article applicable to the suit was Art. 116, Sch. I of the Limitation Act. 13 O.C. 148 and 3 O.L.J. 593, *Dist.*; (1907) A.W.N. 193, *Ref. to. Dalal, A.J.C.*). THAMMAN SINGH *v.* DALCHAND.

67 I.C. 595=9 O.L.J. 171=A.I.R. 1922 Oudh 113.

LIMITATION ACT (1908), Art. 116—Personal liability of mortgagor—Mortgage suit barred.

—Art. 116—Personal liability of mortgagor—Joint family property.

——Where in a suit based upon a registered mortgage executed by the manager of a joint Hindu family, the mortgagee prays for an alternative relief that in case the mortgaged property be not liable for payment of the mortgage debt, he should be given a personal decree, the limitation for such a relief is governed by Art. 116 and not by Art. 66: A.I.R. 1916 P C. 182, *Cons.* and *Rel. on*; (*Case-law discussed*); 7 All. 502 (P.C.) and A.I.R. 1926 P.C. 56, *held not applied.* (*Gokaran Nath Misra and Srivastava, JJ.*). INDRA BAHADUR SINGH *v.* KHAIRATI LAL. **113 I.C 489=4 Luck. 107=3 O.W.N. 836=A.I.R. 1928 Oudh 465.**

——A mortgage by the *Karta* if not made for purposes laid down in the Hindu-Law is void from its inception and creates no charge against the joint family property and even against the interest of the actual mortgagor; the cause of action for a relief by way of a money decree against the executant arises immediately after he breaks his promise which he made for the repayment of the loan, *i.e.*, from the day the money under the agreement becomes due and a suit for such a money decree is governed by Art. 116 and not Art. 97 of the Act. (*Wazir Hasan, A.J.C.*). RAM NARAIN *v.* NAND KUMAR. **69 I.C. 786=25 O.C. 165=10 O.L.J. 180=A.I.R. 1922 Oudh 257.**

——Where the manager of Hindu joint family mortgages the family property for purposes not recognised by the law, the mortgage is void *in toto* and *ab initio*. There is no question of the security failing at a subsequent date. Therefore where in a suit on such mortgage the plaintiff prays for an alternative relief that if the property is not liable, he must be given a personal decree against the assets of the mortgagor, Art. 116 and not Art. 97 applies. 27 Cal. 762, *Foll.*, 19 Cal. 123 (P.C.), *Dist.* (*Daniels and Wazir Hasan, A.J.Cs.*). GAJODHAR BAKSH *v.* GAURI SHANKAR.

61 I.C. 203=3 O.L.J. 81=A. I. R. 1921 Oudh 47.

—Art. 116—Personal liability of mortgagor—Money payable on demand.

——Where a suit is instituted more than six years after the making of the mortgage, and the mortgage money is payable on demand a personal decree is barred. (*Mears, C. J. and Mukerji, J.*). KIJHEN SAHAI *v.* RAGHUNATH SINGH.

116 I.C. 488=51 All. 473=1929 A.L.J. 110=A.I.R. 1929 All. 139.

—Art. 116—Personal liability of mortgagor—Mortgage suit barred.

——The Trial Court relying on a clause in the mortgage deed which entitled the mortgagee to sue for the whole amount of principal and interest, on default of payment of annual interest, held that the claim to enforce the charge was barred by time under Art. 132 of the Limitation Act, but it was however of opinion that the personal remedy based

LIMITATION ACT (1908), Art. 116 — Personal liability of mortgagor — Mortgage void ab initio.

on the bond was not barred. It accordingly granted the plaintiff a simple money-decree. The lower Appellate Court holding that the personal remedy also was barred, dismissed the whole suit,

Held, although the relief for recovery of money otherwise than by enforcing the charge would be governed by another article with a different period fixed, yet as the bond was not a single bond within the meaning of Art. 66, the time began to run against the mortgagee for both the reliefs claimed from the date of the first default, when the money became payable. 19 A. L. J. 406 ; 15 A. L. J. 313 ; 3 All. 600 (F.B.), *Diss.* (*Mears, C.J., Piggott, Walsh, Ryves and Sulaiman, JJ.*). SHIB DAYAL *v.* MAHERBAN.

69 I.C. 981=45 All. 27=4 L.R.A. Civ. 3=20 A.L.J. 819=A. I. R. 1923 All. 1 (F.B.).

—Art. 116—Personal liability of mortgagor—Mortgage void ab initio.

———A mortgage-deed of 1906 provided that in case of default in payment of interest, the mortgagee was to take possession of the property. In 1908, there was a default but the mortgagor refused to give possession. The mortgagee brought a suit in 1917 in which, on the death of the original mortgagors, his sons were brought on record. The sons objected that the property was ancestral and that there was neither legal necessity nor antecedent debt and the suit was consequently dismissed in 1918. The present suit was brought in 1920 by mortgagee to recover his money,

Held, that Art. 116 applied and that the mortgage-deed was invalid and void *ab initio*. The cause of action arose when the mortgagor refused to give possession in 1908 and not in 1918 and the suit was barred by limitation as well as by O. 2, R. 2, C.P. Code, as when he has refused possession, he could sue for possession and also for money under S. 68 (*C*), T. P. Act. 49 I.A. 9, *Foll.* (*Simpson, A.J.C.*). UDAIRAJ SINGH *v.* RAM UDIT TEWARI.

77 I.C. 340=10 O L J. 376=A.I.R. 1924 Oudh 147.

—Art. 116—Personal liability of mortgagor—Personal covenant in deed.

———Where upon a sale of the mortgaged property under a mortgage-decree obtained in a suit on a registered mortgage-deed, there is a deficiency, the period of limitation to recover the same under a personal covenant in the said deed is six years under Art. 116. 26 All. 138 and 34 All. 464, *Not foll.*; 7 All. 502 (P.C.) and A. I. R. 1926 P.C. 56, *Dist.* (*Case-law considered.*). (*Coutts-Trotter, C. J., Kumaraswami Sastri and Walsh, JJ.*). RATNASABAPATHY CHETTIAR *v.* DEVASIGAMONY PILLAI.

116 I.C. 817=52 Mad. 105=29 M.L.W. 143=A.I.R. 1929 Mad. 53=56 M.L.J. 10 (F.B.).

———A suit on a personal covenant in a registered mortgage document is governed by Art. 116 and the six years rule applies to such cases. 34 Cal. 672; 17 C. W. N. 369 ; 11 Mad. 56 ; 21 Mad. 242 ; 13 All. 200; 30 All. 388; 34 All. 246; 38 Bom. 177; 12 Cal. 389; A. I. R. 1916 P.C. 182 and 20 Cal. 79, *Foll.*; 7 All. 502, *Dist.*; A. I. R. 1926 P.C. 56, *Expl.* and *Dist.* (*Case law discussed.*) (*Kumaraswami Sastri and Reilly, JJ.*). CHENGALAMMA *v.* VEERARAGHAVA.

114 I.C. 340=1928 M.W N. 873=28 M.L.W. 624=A.I.R. 1928 Mad. 1124=55 M.L.J. 506.

———A suit on a personal covenant in a mortgage-deed is governed by Art. 116 and not by Art. 66 and the period of limitation is six years and not three years. 12 I. A. 12 ; 5 Pat. 585 (P.C.), *Expl.* and *Dist.*; 44 I. A. 65, *Applied and case-law referred.* (*Kumaraswami Sastri and Reilly, JJ.*). CHENGALANNA GARU *v.* VEERARAGHAVA NAIDU.

28 M.W.N. 873=28 M.L.W. 624=A.I.R. 1928 Mad. 1124=55 M.L.J. 506.

LIMITATION ACT (1908), Art. 116 — Personal liability of mortgagor—Registration at wrong place.

———Article 66 applies to claims based on a single bond. A single bond means a bond merely for payment of a certain sum of money without any condition in or annexed to it. A mortgage-deed which contains a covenant making the mortgagor personally liable cannot be considered to be a single bond within the meaning of Art. 66. Claim based on such a mortgage-deed is governed by Art. 116 and not by Art. 66. 8 O. C. 77 and 29 Cal. 654, *Rel. on.* (*Gokaran Nath Misra and Srivastava, JJ.*). JAI INDRA BAHADUR SINGH *v.* KHAIRAT LAL.

113 I.C. 489=5 O.W.N. 836=4 Luck. 107=A.I.R. 1928 Oudh 465.

———Where in a mortgage-deed, the mortgagor covenanted to pay the debt in six months and failed to pay the same, a suit was instituted nearly ten years after the debt became payable, and a personal decree was passed therein.

Held, that the cause of action in the personal covenant accrued when there was a failure to pay the debt, *i. e.*, six months from the date of the mortgage and that the claim had become barred under Art. 66. (*Mr. Ameer Ali.*) GANESH LAL PANDIT *v.* KHETRA MOHAN MAHAPATRA.

95 I.C. 839=24 A.L.J. 615=28 Bom L.R. 931=53 I.A. 134=43 C.L.J. 545=24 M.L.W. 50=1926 M W.N. 535=3 O.W.N 591=7 P.L.T. 501=26 Pat. 585=31 C.W.N. 25=A.I.R. 1926 P.C. 56=51 M.L.J. 82 (P.C.).

———Time for suit on a personal covenant to repay the debt in a mortgage runs from the expiry of the term fixed for redemption. But where the mortgagee enjoys the usufruct in lieu of interest, time runs from the last year when he enjoys such usufruct. (*Macleod, C.J. and Shah, J.*). VITHOBA MAHIPATI *v.* BALKRISHNA SAKHARAM.

63 I.C. 234=45 Bom. 1206=23 Bom. L.R. 529=A.I.R. 1921 Bom. 437.

———*What is not.*

A stipulation for the recovery of the consideration if the usufructuary mortgagee should fail to get possession or be dispossessed is not a personal covenant in the bond or under S. 68 (*c*) of the Transfer of Property Act by reason of the mortgagor's failure to deliver or secure the possession of the property but is to enforce the charge upon the immovable property under the covenants in the bond itself. Such a suit is governed by Art. 132 of the Limitation Act.

A claim for interest in such a suit is not a claim for damages and Art. 132 and not Art. 116 applies to such a claim. But where the claim is interest at enhanced rate covenanted for in case of dispossession, Art. 116 applies. (*Jwala Prasad and Ross, JJ.*). JAINANDAN PRASHAD *v.* BAIJNATH SARAN.

63 I.C 297=2 P.L.T. 229=A.I.R. 1921 Pat. 403.

—Art. 116—Personal liability of mortgagor—Registration at wrong place.

———Where there are two or more covenants, in a document, the invalidity of one does not affect the validity of the other. Thus though a mortgage deed may be invalid as having been registered in a wrong place and so being in fraud of the registration law, the general personal covenant to re-pay

LIMITATION ACT (1908), Art. 116 — Personal liability of mortgagor — Representative of mortgagor.

contained therein can nevertheless be enforced, and is governed by Art. 116 of the Limitation Act in accordance with the ruling of Privy Council in 29 Cal. 654. (*Phillips and Devadoss, JJ.*). RAMA RAO *v.* VEDAYYA. 73 I.C. 188= 17 M.L.W. 695=32 M.L.T. 222= 1923 M.W.N. 166=46 Mad. 435= A.I.R. 1923 Mad. 447=44 M.L.J. 373.

—Art. 116—Personal liability of mortgagor—Representative of mortgagor.

——*Suit against.*

The claim for a personal decree against the mortgagor is governed by Art. 116 if mortgage is registered. 15 C.P.L.R. 29, *Foll.* Where the mortgagee's remedy against the mortgagor personally is barred, it is also barred against the surety or his representatives. (*Kinkhede, Offg. A.J.C.*). KALOO-SINGH *v.* MT. SUNDERABAI. 95 I.C. 707= A.I.R. 1926 Nag. 449.

—Art. 116—Personal liability of mortgagor—Starting point.

——The period of limitation for a personal relief on a registered deed of mortgage is six years from the date of the accrual of the cause of action on the deed. (*Stuart, Kt., C. J. and Raza, J.*). SURAJ BAKSH *v.* MUNNO BIBI. 6 O. W. N. 974.

——*Whole amount falling due on default of instalment.*

Where in a mortgage-deed the mortgagor promises to pay interest at the end of every month and the deed further provides that in case of default to pay such interest, the mortgagor shall return the principal as well as interest before the expiry of the mortgage period, whenever the creditor would demand the same, the cause of action arises on the day on which default in paying monthly interest is made and time runs from that day and not when the mortgage period expires. A.I.R. 1927 Sind 151, *Not. appr.*; 9 S.L.R. 90, *Expl.*; 1 S.L.R. 252; 8 S.L.R. 63; 37 All. 400 (F.B.); A.I.R. 1921 All. 296; A.I.R. 1923 All. 1 (F.B.); A.I.R. 1925 All. 499; 24 Cal. 281; A.I.R. 1926 Cal. 789; *Hemp* v. *Garland*, (1842) 4 Q.B. 519; *Reeves* v. *Butcher*, (1891) 2 Q.B.D. 509, *Rel. on*; 39 Mad. 931; A.I.R. 1926 Mad. 160, *Not foll.*; A.I.R. 1923 Mad. 705, *Appr.* (*Rupchand, A.J.C.*). NENOMAL JIAMAL *v.* CHANDUMAL ASSANMAL. 116 I. C. 581=A.I.R. 1929 Sind 140.

——*Eviction of mortgagee.*

When a mortgagee is deprived of the security under a decree of a Civil Court, he is entitled to proceed personally against the mortgagor and the time for such a suit runs from the date the mortgagee was evicted from the land. (*Pratt, J.*). MAUNG YAN KWIN *v.* MAUNG PO KA.

39 I. C. 56=3 Rang. 60=A.I.R. 1925 Rang. 223.

—Art. 116—Suretyship and guarantee — Contracts of.

——*Covenant of indemnity.*

Vendee from a pre-emptor is entitled to take benefit of an express covenant to indemnify in a sale-deed and especially the original vendor cannot contend to the contrary. 7 All. 775 (F.B.), *Ref.*

To such a case for a suit for compensation for loss of possession Art. 116, Limitation Act, applies and time runs from date of dispossession. 30 All. 402, *Foll.*; A.I.R. 1927 All. 734, *Expl.*; A.I.R. 1916 P.C. 182, *Appl.* (*Mukerji and Niamatullah, JJ.*). HANWANT RAI *v.* CHANDI PRASAD.

119 I.C. 243=51 All. 651=1929 A.L.J. 433= A.I.R. 1929 All. 293.

LIMITATION ACT (1908), Art. 116 — Setting aside alienation by adoptee.

——Where the surety is liable under registered contract the limitation is six years under Art. 116. 9 Bom. 320 and 9 Bom. 461, *Rel. on.* (*Kinkhede, Offg, A.J.C.*). KALOO SINGH *v.* MT. SUNDARA-BAI. 95 I.C. 707=A.I.R. 1926 Nag. 449.

——A suit for compensation for the breach of a contract to indemnify falls within the purview of Art. 83 and when such a contract is in writing and registered, Art. 116 becomes applicable and by virtue of it the period is extended to six years. (*Obiter*) *in* 16 All. 3, *Diss. from.* (*Broadway and Abdul Qadir, JJ.*). ABDUL AZIZ KHAN *v.* MUHAM-MAD BAKHSH. 64 I.C. 431=2 Lah. 316= 3 L.L.J. 542=104 P.L.R. 1921= A.I.R. 1921 Lah. 260.

——Where a registered contract to indemnify contains a provision for a charge on immovable property, Art. 132 applies and not Art. 83 or Art. 116. (*Wallis, C.J. and Oldfield, J.*) RAMA-SAMI IYENGAR *v.* M. V. KUPPUSAMI IYER. 66 I.C. 554=14 M.L.W. 99=1921 M.W.N. 472= A.I.R. 1921 Mad. 514.

—Art. 118—Applicability.

——Where a claim is not merely for a declaration that the defendant's adoption is invalid, it is not barred by Art. 118. (*Stuart and Sulaiman, JJ*). MT. RADHA DULAIYA *v.* RASHIK LAL. 75 I.C. 14=20 A. L.J. 814=45 All. 1= A.I.R. 1923 All. 28.

—Art. 118—Scope.

——Article 118 governs any suit to obtain a declaration, not merely that an alleged adoption is invalid but also that it never took place. The period of limitation is six years from the date on which the alleged adoption became known to the plaintiff. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. 69 I.C. 971= 20 A. L. J. 945=45 All. 169= A.I.R. 1923 All. 58.

—Art. 118—Setting aside alienation by adoptee.

——A suit for a declaration by reversioners that an alienation by the adoptee of a widow was not binding of them, is substantially a suit to have it declared that a certain adoption was invalid and is governed by Art. 118. A.I.R. 1928 Cal. 670, *Rel. on.* (*Cases discussed*). (*Dalip Singh, J.*). SADHU RAM *v.* BISHAMBAR DIAL. A.I.R. 1929 Lah. 579.

——*A* one of the widows of one *K* deceased, executed a release deed in favour of *B* and *A* and *B* together executed a sale-deed and a mortgagee deed in favour of *C*. The plaintiffs, the reversioners of *K* instituted suits to declare that the release, the mortgage and the sale were not binding upon them. The plea of *B* was that he was adopted son of *K* and that the suits were barred by limitation, as being brought six years after the alleged adoption. It was found that soon after *K*'s death there were disputes between *B* on the one side and the two widows of *K* on the other as to the lands of *K*. The two widows contended that *B* was not the adopted son of their husband and that the pattah should be transferrred to their names and not in the name of *B*. Then orders were issued and *B* was asked to establish his right to the lands within three months from that date as otherwise pattah would be issued to the widows, more than seven years passed ; but no such suit was filed by *B* and pattas were actually issued to the widows of *K*.

Held, that under the circumstances the plaintiffs were justified in absolutely ignoring the position of *B* as the adopted son of *K* and instituting

LIMITATION ACT (1908), Art. 118 — Setting aside gift to adoptee.

suits only for a declaration that the suit transactions were not binding on them, and the failure of the plaintiffs to institute a suit within six years after the adoption of *B* became known to them under Art. 118 of the Limitation Act cannot be a bar to their present suit. L.P.A. (Madras) No. 107 of 1916, *Dist.* (*Waller and Madhavan Nair, JJ.*). SEMBA PARAYAN *v.* MARAL. **102 I.C. 885=25 M.L.W. 802=39 M.L.T. 129=1927 M.W.N. 690=A.I.R. 1927 Mad. 674=52 M.L.J. 711.**

—Art. 118—Setting aside gift to adoptee.

——If the suit for a declaratory decree in respect of the factum of adoption is barred by time, the plaintiff cannot clude the operation of Art. 118 by suing for a declaration that the gift made by the lady in favour of the adopted son should not bind him. 25 Bom. 26, *Ref.* (*Shadi Lal, C.J. and Tapp, J.*). BHOOP SINGH *v.* RAMJI LAL. **121 I.C. 296=31 P.L.R. 222=A.I.R. 1930 Lah. 433.**

——A suit by reversioner that gift to an alleged adopted person does not bind his reversionary interest is not barred by Art. 118. A.I.R. 1924 P.C. 137, *Foll.* Plaintiff in such suit can treat the adoption as nullity and contest only the gift. (*Harrison and Dalip Singh, JJ.*). JHOLI *v.* KHAZANA. **96 I.C. 749=8 Lah. 48=A.I.R. 1926 Lah. 655.**

——Adoption taken place in fact invalid under custom—Suit to set aside barred—Suit for declaration against transaction which is valid because of adoption, is also barred. (*Leslie Jones and Abdul Raoof, JJ.*). KHUSHAL SINGH *v.* KANDA. **5 L.L.J. 63=A.I.R. 1921 Lah. 389.**

—Art. 118—Starting point.

——The nearest reversioner can impeach the invalidity of an adoption on behalf of the whole body of reversioners and time runs from the time the adoption comes to the knowledge of the next reversioner and no fraud or inaction on his part would stop time running against them. 41 Mad. 659 (F.B.), *Foll.* (*John Wallis, C.J. and Seshagiri Aiyar, J.*), POLEPEDDI VENKATA SIVAYYA *v.* POLEPEDDI ADENNA. **60 I.C. 98=12 M.L.W. 499=1920 M.W.N. 783=44 Mad. 218=29 M.L.T. 43=A.I.R. 1921 Mad. 380=39 M.L.J. 621.**

—Art. 118—Suit by aurasa son.

——Cases relating to reversioners are not applicable to the case of a suit by an *aurasa* son contesting the adoption by his father. The mere fact that the father who made the illegal adoption was alive for more than six years after the adoption would not bar right of a son born a year or two after the adoption to question it.

Article 118 would not apply to a case like this for the cause of action begins from the time when the alleged adoption becomes known to the plaintiff. He, being a minor could not be fixed with the knowledge of the adoption from the date of his birth. (*Devadoss, J.*). SIDDA REDDI *v.* DEVA JAYARAM REDDI. **98 I.C. 435=1926 M.W.N. 736=24 M.L.W. 601=A.I.R. 1926 Mad. 1123=51 M.L.J 557.**

—Art. 118—Suit for declaration.

——Where an action is in truth and substance a suit for declaration that a particular adoption was invalid, and it is found that the fact that a claim was being made on the basis of this alleged adoption was known to the plaintiff in the suit more than six years before it was instituted, and that he himself had attained majority nearly nine years before the suit was commenced,

LIMITATION ACT (1908), Art. 118—Suit for possession.

Held, that the suit was barred by Art. 118. (*Lord Blanesburgh.*) LALA JAGMOHAN SARAN *v.* SAHU DEOKI NANDAN. **106 I.C. 488=4 O.W.N. 832=1927 M.W.N. 742=46 C.L.J. 280=29 Bom. L.R. 1386=32 C.W.N. 153=A.I.R. 1927 P.C. 229=53 M.L.J. 301 (P.C.).**

——A suit for a declaration that the adoption of *B* by the widow of *C* under a registered deed was null and invalid and for a further declaration that the plaintiff was a reversioner of *B* is governed by Art. 118, even when the adoption is alleged to be void *ab initio*. Had the plaintiff been suing for possession on the ground that he was the reversioner of *B* and had he further alleged that the adoption of *B* was invalid under the Hindu Law, Art. 118 would not have been applicable and the plaintiff would have had twelve years within which to sue. (*Rafique and Lindsay, JJ.*). RAM LAL RAI *v.* MT. MURTA KUER. **75 I.C. 676=A.I.R. 1923 All. 361.**

—Art. 118—Suit for possession.

——Reversioners suing for possession of property from an alleged adopted son and his transferees are not bound to bring a suit for declaration that the alleged adoption had in fact not taken place. They are entitled to wait till the lady died and then bring a suit for recovery of possession and therefore a suit brought within 12 years of the death of the widow cannot be held to be barred by the six years' rule. (*Sulaiman and Kanhaiya Lal JJ.*). SHIB DEO MISRA *v.* RAM PRASAD. **87 I.C. 938=46 All. 637=22 A.L.J. 690=A.I.R. 1925 All. 79.**

——The particular limitation prescribed in Art. 118 applies to suits falling under Sp. Rel. Act, S. 42, Ill. (*f*). The date from which time begins to run is a subjective or personal date; and the condition of obtaining the particular relief which is sought in a declaratory suit is that the plaintiff should not be guilty of laches, the measure of laches being fixed by the statute as six years. But if a claimant chooses to run the risk that an adoption which he has not attacked will have every presumption made in its favour by reason of its long standing, he can wait till his reversionary right has accrued and even till the limit of 12 years from the accruer has passed. In such case the article applicable is 141 and not 118.

Plaintiff was cousin to the former owner of the suit property by name *D*. *D* married *M*. Plaintiff averred that after *D's* death in the year 1880, *M* adopted *N*, who was her daughter's son; that *N* married *B* and died himself in 1895, that upon his death *B* took the ordinary Hindu woman's estate and died in 1903, and that upon her death, plaintiff's title accrued, and he brought his suit for possession on 1st July, 1912. Defendant admitted some show of adoption of *N* but denied that it was legal or valid; and he set up his own adoption by *M* in 1901,

Held, the adoption of the defendant was void, and the plaintiff was entitled to brush it aside and sue for possession within 12 years from the death of the widow. 24 Bom. 260, *Not appr.*; 33 I.A. 156, *Affirmed*; 30 Mad. 309, *Appr.*; 39 I.A. 19, *Cons*; 37 Bom. 513, *Not appr.*; 34 I.A. 87, *Foll.* (*Lord Phillimore.*) KALYANDAPPA *v.* CHANBASAPPA. **79 I.C. 971=11 O.L.J. 181=28 C.W.N. 666=22 A.L.J. 508=26 Bom. L.R. 509=1924 M.W.N. 414=5 L.R.P.C. 97=20 M.L.W. 109=51 I.A. 220=48 Bom. 411=34 M.L.T. 111=A.I.R. 1924 P.C. 137=46 M.L.J. 598 (P.C.).**

LIMITATION ACT (1908), Art. 118—Suit for possession.

——Article 118 has no application in suit where the relief sought is possession of property and the validity of factum of adoption is incidentally in issue. (*Kotval and Prideaux, A. J. Cs.*). MT. ANNAPURNABAI *v.* RUPRAO. 78 I.C. 284= A.I.R. 1924 Nag. 319.

——A suit for possession is not subject to the limitation prescribed by Arts. 118 and 119 even though the defendant is in possession under an adoption or the plaintiffs' title is based upon an adoption. The articles apply only to a suit for declaratory relief pure and simple and not to a suit for possession. 28 All. 727; 39 Cal. 418, *Rel. on.* (*Hallifax, A.J.C.*). MT. MUNNA *v.* SUKLAL. 78 I.C. 987=A.I.R. 1924 Nag. 142.

——Per *Macleod, C.J. and Fawcett, J.* (*Shah, J.* contra).—In view of the decision of the Privy Council in (1906) 28 All. 727; 33 I.A. 156 (P.C.) the decision in *Shrinivasa* v. *Hanmant* is not good law and suits for possession where the plaintiff cannot succeed except by displacing an alleged adoption are not governed by Art. 118 of the Limitation Act. (*Macleod, C. J., Shah and Fawcett, JJ.*). DODAWA *v.* YELLAWA MALLAPPA BENI. 67 I.C. 134=24 Bom. L.R. 158= 46 Bom. 776=A.I.R. 1922 Bom. 223 (F.B.).

—Art. 119—'Interference.'

——*What amounts to.*

The interference mentioned in Art. 119 is obviously an interference, which must amount to an absolute denial of the status of adoption held by plaintiff and an unconditional exclusion of him from the enjoymont of his rights in virtue of that status. Mere denial of status does not amount to interference. (*Pratt, J.*). MAUNT GYI *v.* MAUNG ON GAING. 74 I.C. 970=1 Rang. 186= A.I.R. 1924 Rang. 34.

—Art. 120.

Accounts.
Applicability.
Avoidance of documents.
Award.
Cancellation of Will.
Claim to office.
Company.
Declaratory suit.
Dissolution of marriage.
Dissolution of partnership.
Injunction.
Misappropriation.
Mortgage.
Movables.
Partition.
Possession.
Pre-emption.
Profits.
Refund.
Reimbursement.
Remote reversioner.
Remuneration for services.
Right to sue.
Scope.
Setting aside decree.
Setting aside Government orders.
Share.
Starting point.
Trusts.

—Art. 120—Accounts.

——Where there is no question of breach of contract or compensation payable for such breach, but parties were to look into the accounts of each other to equalize the profit, each trading independently of other, and a suit is brought to take such an account and ascertain who owes whom, and give a decree for the amount payable,

Held, that the suit cannot be treated as a suit for compensation and it does not fall under Art. 115. The general Art. 120 would, therefore, apply. 11 C.L.J. 43 and 14 C.W.N. 122, *Not foll.* (*Krishnan and Odgers, JJ.*). RAOHAPUDI BHAVNARAYANA *v.* KOLLA VENKAYYA. A.I.R. 1927 Mad. 775.

——*Claim founded on decree.*

Per *Spencer, Offg.C.J.*—Article 120 is the proper article, for suits to enforce obligations, arising out of decrees. But the fact must not be lost sight of that Art. 120 is a residuary article and can only be applied when no other article is found suitable. Hence, where the claim is founded on a decree on a compromise, unless it is shown that Art. 64 will not apply to the claim, as set out in the plaint, the plaintiff cannot get six years, under Art. 120.

Per *Srinivasa Aiyangar, J.*—Though the claim may be for accounts, yet where the claim has merged in a compromise decree, Art. 64 cannot apply because it is an article for the recovery of the money, on accounts stated between the parties and Art. 115 cannot apply, because the suit is not merely on a contract between the parties. In the absence of any other appropriate article to be applied to such a suit the proper article to be applied is Art. 120. 27 Mad. 243, *Foll.* (*Spencer, Offg. C.J. and Srinivasa Ayyangar, J.*). ARUNACHALLAM CHETTI *v.* SETHUPATHI. 91 I.C. 338= 22 M.L.W. 195=A.I.R. 1925 Mad. 1260.

——Article 120 applies to a suit for accounts against a trustee *de son tort*. (*Mukerji and Dalal, JJ.*). BEHARI LAL *v.* SHIV NARAIN. 84 I.C. 631=22 A.L.J. 866=5 L.R.A. Civ. 697= 47 All. 17=A.I.R. 1924 All. 884.

——*Contract Act.*

Under the provisions of S. 201 of the Contract Act, an agency is terminated by either the principal or agent dying, and therefore a suit against the agent for accounts for the period during which he acted as agent under the deceased must be brought within three years of the death as laid down in Art. 89. 43 Cal. 248 and A.I.R. 1916 P.C. 148, *Foll.*

The case does not come under S. 209 of the Contract Act or Art. 120 as there is no question in it of suing the defendant for any act done by him after the death of his late principal which he might have done as a trustee. (*Chatterjee and Panton, JJ.*). SARASHIBALA DASI *v.* OHUNI LAL GHOSH. 65 I.C. 219=26 C.W.N. 320= A.I.R. 1922 Cal. 53.

——*Duty to account incidental to management.*

Article 62 does not apply to transactions, in which the defendant is not under a mere duty to hand over the money which he received, but has other duties as well in respect of it. Where, therefore, under a partition deed it was arranged that the senior co-parcener and the minor should enjoy their share of the property jointly and as manager it was the duty of the senior co-parcener not merely to account for the money received, but to pay the kist and the other expenses as well, as to maintain the minor,

Held, that Art, 62 does not extend to such transaction; the article applicable is Art. 120, 40 Mad. 291, *Foll.* (*Wallis, C. J. and Krishnan, J.*). VENKATA REDDI *v.* KUPPU REDDI. 61 I.C. 762= 13 M.L.W. 260=A.I.R. 1921 Mad. 553.

LIMITATION ACT (1908), Art. 120 — Applicability.

—Art. 120—Applicability.

———*Suit to recover damages for breach of covenant of title.*

Quaere whether Art. 120 would not be the proper article applicable to a suit to recover damages for breach of covenant of title. (*Sulaiman, J.*). MAHOMED SIDDIQ *v.* MUHAMMAD NUH. **124 I.C. 185= 1930 A.L.J. 653=A.I.R. 1930 All. 771.**

———Article 120 should not be invoked if there is any other article in the schedule, which upon reasonable interpretation of the language seems to cover the particular suit with which the Court is dealing. (*Pullan and Srivastava, JJ.*). CHATURGUN *v.* SHAHAZADY. **7 O.W.N. 769= A.I.R. 1930 Oudh 395.**

———*Suit for land in lieu of maintenance.*

A suit by a junior member of a family governed by rule of primogeniture for a plot of land in lieu of maintenance on the strength of family custom is governed either by Art. 120 or 144, the choice between the two provisions of law depending upon the question whether the suit is treated as one for declaration or for possession. Therefore when on the evidence it is proved that the defendant has been giving grain to the plaintiffs by way of maintenance and that the allowance was stopped two years before the suit, the suit is clearly in time.

Articles 129 and 131 do not apply to such a case. (*Shadi Lal, C.J. and Hilton, J.*). PARSHOTTAM SINGH *v.* BALWANT SINGH. **121 I.C. 428= 11 Lah. 99=A.I.R. 1929 Lah. 872.**

———*Encroachment on public road.*

Suit for removing encroachment on a public road and not on the property of any particular person is governed by Art. 120 and not by Art. 32. 124 P.R. 1912; A.I.R. 1921 Lah. 242 and 2 L.L.J. 463, *Foll.*; A.I.R. 1925 Lah. 653, *Dist.* (*Bhide, J.*) GARDIT SINGH *v.* HARI SINGH. **110 I.C. 517= 29 P.L.R. 308=A.I.R. 1928 Lah. 792.**

———*Compromise—Amount due under.*

Under a compromise in a suit for partition of joint property, in order to adjust the difference between the prices of the properties which fell to the share of the two contesting parties, a certain sum was to be paid by *D* to *B*. The amount was to be paid after one month. *B* brought a suit to recover the amount. *D* contended that the suit was time-barred according to Art. 111,

Held, that it was not a case of sale and amount in suit could not be described as purchase money. Therefore Art. 111 did not apply but the case was governed by Art. 120. (*Jai Lal, J.*). GURUDAS MAL *v.* BAIJ NATH. **111 I.C. 29= A.I.R. 1928 Lah. 662.**

———*Principal and agent.*

Where there was no specific contract of agency between the parties Art. 120 should be applied and not Art. 89. A.I.R. 1922 Mad. 150, (F.B.), *Foll.* (*Devadoss and Mackay, JJ.*). N. AYYAKUTTI THEVAN *v.* SIGAPPI ACHI **114 I.C. 364=A.I.R. 1928 Mad. 1236.**

———Article 120 is applicable only when a case cannot fall under any other article of the Act. (*Tek Chand, J.*). NARINDAS *v.* MUNICIPAL COMMITTEE, DELHI. **108 I.C. 49.**

———*Surrender by widow.*

The conveyance of a small portion of the surrendered land for maintenance to the widow is unobjectionable and does not alter the nature of the transaction which remains one of acceleration in favour of the next reversioner; and that being so, Art. 125 cannot apply, but Art. 120 is applicable. A.I.R. 1929 P.C. 75 and A.I.R. 1921 P.C. 107, *Foll.*; 44 Bom. 255, *Not foll.* (*Findlay, J. C.*). PAIKU *v.* BHIWA. **101 I.C. 275=10 N.L.J. 33= A.I.R. 1927 Nag. 193.**

LIMITATION ACT (1908), Art. 120—Avoidance of document.

———Article 120 is a residuary article and applies only when no other specific article governs the case. (*Shadi Lal, C.J. and Le Rossignol, J.*). CHIRANJI LAL *v.* SAIB LAL. **92 C.I. 994= A.I.R. 1926 Lah. 242.**

———*Road Cess—Madras Local Boards Act, S. 73.*

Under S. 73 every landholder is entitled to recover from his intermediate landholder the whole of the road cess, paid in respect of the land, less half the tax assessable on the amount of the poruppu. The period of limitation for this is six years, under Art. 120 of the Limitation Act. 9 M.L.W. 287, *Foll.* (*Spencer and Ramesam, JJ.*). KUPPUSWAMY AIYER *v.* B. RAJA RAJESWARA SETHUPATHI. **90 I.C. 973=22 M. L. W. 258= A.I.R. 1925 Mad. 1282=49 M. L. J. 462.**

———Article 120 should never be invoked if there is any other article in the schedule which upon a reasonable interpretation of its language seems to cover the particular suit with which the Court is dealing. (*Piggott, J.*). MAN SINGH *v.* RAM NATH. **75 I.C. 922=A.I.R. 1924 All. 828.**

———*Suit for enhancement of rent.*

A suit for enhancement brought more than six years after the date of the final publication of the Record of Rights, in which the defendants are entered as raiyats at fixed rates, is not barred by limitation as the Record of Rights does not create any rights. Article 120 does not apply but Art. 131 governs the case. A claim to enhance is a recurring cause of action and limitation runs from the date of refusals. 1 P. L. J. 73; 11 C. W. N. 48, *Dist.*; 2 P.L.J. 124, *Foll.* (*Bucknill, J.*). SHEOPRATAB DUBEY *v.* SHEOGULAM LAL. **72 I. C. 781= A.I.R. 1924 Pat. 193.**

———The provision of Art. 120, by its very terms can come into operation when there is no other article of the schedule that can be invoked as laying down a period of limitation for a particular suit. (*Rafique and Piggott, JJ.*). UDIT NARAIN SINGH *v.* RANDHIR SINGH. **69 I.C. 971= 20 A.L.J. 945=45 All. 169= A.I.R. 1923 All. 58.**

—Art. 120—Avoidance of document.

———*Lease by mortgagor.*

A perpetual lease of the mortgaged property by mortgagor is permanently injurious to the property and it renders the security insufficient within S. 68 and a suit by mortgagee to avoid the lease is governed by Limitation Act, Art. 120, Limitation runs if not from the date of the lease certainly from the date when the mortgagee acquires knowledge of the lease. (*Hasan and King, JJ.*). BANK OF UPPER INDIA LTD. *v.* JAGGAN. **100 I. C. 728=4 O. W. N. 228= A.I.R. 1927 Oudh 148.**

———*Fraudulent transfer—Suit to set aside.*

Per *Venkatasubba Rao, J.*—A suit under S. 58, Transfer of Property Act, to contest an alienation by a debtor is governed by Art. 120 of the Limitation Act and the starting point of limitation is the date on which the plaintiff decides to exercise his option of avoiding the transfer and not the date of transfer. 43 Mad. 760 (F.B.), *Rel. on*; 7 L.W. 280, *Expl.*

Madhavan Nair, J., dissenting,—The starting point for limitation is not the date on which the creditor exercises the option to avoid the transfer

LIMITATION ACT (1908), Art. 120—Award.

nor the date of transfer, but it is the date on which the circumstances entitling the creditor to have the transfer avoided first become known to him. (*Venkatasubba Rao and Madhavan Nair, JJ.*). GUNTUR NARASIMHAM *v.* NYAPATI NARAYAN RAO GARU. 92 I. C. 405=22 M. L. W. 592= A. I. R. 1926 Mad. 66.

—Art. 120—Award.

——It cannot be said that all suits, irrespective of their nature, which are based on an award must be governed by Art. 120. A.I.R. 1921 Bom. 389; A.I.R. 1925 Bom. 519; 33 Cal. 881; A.I.R. 1923 Rang. 108 and A.I.R. 1921 Lah. 71, *Ref.* (*Rutledge, C.J. and Brown, J.*). MA BIBI *v.* ABDUL HAMID KHAN. A.I.R. 1929 Rang. 275.

——Suit to enforce awards are governed by Art. 120 and not by Art. 115 or Art. 113. 33 Cal. 881 and 6 S.L.R. 148, *Rel. on.* (*Percival, C.J. and Aston, A.J.C.*). KHUBCHAND *v.* JETHANAND. 117 I.C. 183=23 S.L.R. 417=A.I.R. 1929 Sind 168.

——A suit to enforce the payment of money directed to be made under an award as payable in instalments and charged by the award on immovable property is in effect, to enforce a payment which the award directs to be made at certain dates and the time from which limitation begins to run is the date of the instalments defaulted and not the date of the award. A.I.R. 1927 P. C. 146, *Rel. on.* (*Fawcett and Mirza, JJ.*). ISHRAM GOVIND *v.* TRIMBAK GANPAT. 111 I.C. 881= 30 Bom. L.R. 675=A.I.R. 1928 Bom. 264.

——A suit to enforce an award comes under Art. 120. (*Macleod, C.J. and Coyajee, J.*). NANALAL LALLUBHAI *v.* CHHOTALAL NARSIDAS. 91 I.C. 1032=49 Bom. 693=A.I.R. 1925 Bom. 519.

——A suit to enforce an award is governed by Art. 120. (*Macleod, C.J. and Fawcett, J.*). RAJMAL GIRDHARILAL *v.* MARUTI SHIVRAM. 89 I. C. 735=45 Bom. 329=A.I.R. 1921 Bom. 389.

—Art. 120—Cancellation of a Will.

——A suit for cancellation of Will is governed by Art. 120 and not Art. 91. 23 Cal. 1 (P.C.), *Foll.* 82 P.L.R. 1909, *Ref.* (*Harrison and Dalip Singh, JJ.*). FIROZ *v.* SULTAN SURKHRU. 96 I.C. 835=A.I.R. 1926 Lah. 635.

—Art. 120—Claim to office.

——*Mutwallishiip.*

The office of Mutwallishiip not being a hereditary one, a suit to oust a person from his office as Mutwalli is regulated by Art. 120 of the Act, and if no suit has been brought to oust him by reason of his having held the office for over six years he would acquire an indefeasible right to hold the office of Mutwalli and would acquire a complete title for the purposes of litigation or anything connected with the endowment. 19 Cal. 776; 26 Mad. 118 and 37 Cal. 263, *Rel. on.* (*Suhrawardy and Mukerji, JJ.*). DABENDRA NATH MITRA *v.* SHEIK SEFATULLA. 99 I.C. 205= 44 C.L.J. 339=31 C. W. N. 184= A.I.R. 1927 Cal. 130.

——*Succession by nomination.*

Where succession to a religious office is by nomination by the holder in office of his successor, it is not a hereditary succession within Art. 124.

The only article applicable to cases of succession after nomination is Art. 120. Article 144 also is not applicable as the claim to possession is also barred if the claim to office is barred under Art. 120. (*Krishnan and Venkatasubba Rao, JJ.*). PARMANAND DAS GOSWAMI *v.* RADHAKRISHNA DAS. 97 I.C. 437=A.I.R. 1926 Mad. 1012=51 M.L.J. 268.

LIMITATION ACT (1908), Art. 120—Declaratory suit—Attached property.

——A claim to an office and property attached to it is governed by Art. 124 if the office is hereditary and by Art. 120 if the office is not hereditary. KASSIM HASSAN *v.* HAZARA BEGUM. 60 I.C. 165=32 C. L. J. 151.

—Art 120—Company.

——*Misfeasance of director.*

Article 120 is the appropriate article for a suit against directors for misapplication of the company's funds in *ultra vires* transactions. Time runs from the earliest date "when the specific injury actually arose" within S. 24 of the Lim. Act,

Held, that in the particular case it commenced from the date on which the balance sheet showing the losses ascertained was laid before the company at its general meeting. GOVIND NARAYAN *v.* RANGNATH. 54 Bom. 226=32 Bom. L.R. 232.

——A right to sue for misfeasance of directors of companies, arises from the date of misfeasance and is governed by Art. 36 or Art. 120. NARASIMHA *v.* OFFICIAL ASSIGNEE. 1930 M.W.N. 966=32 L.W. 555.

——*Suit for dividends.*

A suit by share-holder of a Limited Company for recovery of arrears of dividend is a claim for debt and is governed by Art. 120. It is not a claim arising out of contract within the meaning of Art. 115. 42 Mad, 33, *Overruled.* RAMA SESHAYYA *v.* T. COTTON PRESS. 94 I.C. 515=49 Mad. 468= 1926 M. W. N. 450=24 M.L.W. 102= A.I.R. 1926 Mad. 615=50 M.L.J. 520 (F.B.).

——*Damages against delinquent directors.*

Article 120 is the only article applicable to an application under S. 235 of the Companies Act; and time begins to run only after the appointment of the liquidator. (*Walsh and Mukerji, JJ.*). UNION BANK ALLAHABAD. *In re.* 88 I.C. 785= 23 A.L.J. 473=6 L.R.A. Civ. 425= 47 All. 669=A.I.R. 1926 All. 519.

—Art. 120—Declaratory suit.

Attached property.
Cause of action.
Charge-holder.
Entry in Records.
Landlord and Tenant.
Setting aside alienation.
" " decree.
" " order.
" " sale.
Miscellaneous.

—Art. 120—Declaratory suit — Attached property.

——Where after dispossession of the real owner, the property was attached by the Magistrate under S. 146, Cr. P. Code,

Held, as the property was in legal custody for the benefit of the true owner a suit for recovery of possession was to be treated as one for declaration of title under S. 42 of the Specific Relief Act, and Art. 120, Lim. Act was applicable and not 142. (*Chatterjee and Cuming, JJ.*). PANNA LAL BISWAS *v.* PANCHU RUIDAS. 65 I.C. 200= 49 Cal. 544=26 C.W. N. 432=A.I.R. 1922 Cal. 419.

——Where, however, there is an order in execution for the sale of the attached property, that order proceeds upon the footing that the property is to be considered as attached in execution by virtue of O. 38, R. 11, and a claim put in after that order may properly be regarded as a claim to property attached in execution of a decree within the meaning of Art. 11. Cases not governed by

LIMITATION ACT (1908), Art. 120—Declaratory suit—Cause of action.

Art. 11 must be governed by Art. 120. ARUNACHALAM CHETTY *v.* PERIASAMI SERVAI.
70 I.C 439=44 Mad. 902=14 M.L.W. 645=1921 M W.N. 569=A.I.R. 1921 Mad. 163=41 M.L.J. 252 (F.B.).

—Art. 120—Declaratory suit—Cause of action.

———All occupancy rights sold to landlords—*N* still recorded as occupancy tenant through mistake—Application by landlords to correct records rejected—Later on some landlord recorded as occupancy tenants applying for partition which was ordered—*N* and other landlords being sued for declaration that all occupancy rights were extinguished—Cause of action held to have accrued on rejection of the first application but there being a fresh invasion of rights when partition was ordered limitation began to run from the latter date. (*Fforde and Johnstone, JJ.*). GHULAM RASUL *v.* RAHIM BUKHSH. **122 I.C. 225=11 L.L J. 530=A.I.R. 1930 Lah. 284.**

———*Suit for declaration of title to land—Limitation—Denial of title in the written statement—Effect.*

A suit for declaration must be brought within six years of the cause of action unless there has been a fresh invasion of the plaintiff's right giving him a fresh cause of action. The fact that in the written statement the defendant denies the title of the plaintiff does not give rise to a fresh cause of action. (*Dalal, J.*). KALLU SHAH *v.* MAHOMED EHSANULLAH. **115 I.C. 629 (All.).**

———*Partition.*

For a declaratory suit challenging the title of defendant co sharer under partition, the cause of action arises for the first time, the revenue officer sanctions the mode of partition. The mere fact that the partition proceedings are held up by litigation does not mean that, when the Revenue Officer proceeded finally to carry out what he had decided to carry out there is a fresh cause of action. Nor does the rejection of a fresh application to Revenue Officer give a new cause of action. 79 P. R. 1917, *Foll.* (*Zafar Ali and Dalip Singh, JJ.*). CHANKANDA RAM *v.* HAKAM KHAN.
110 I. C. 866 (Lah.).

———If a plaintiff is in possession or enjoyment of the property in suit he is not obliged to sue for a declaration of title on the first or each succeeding denial of his title by the defendant. He may look upon each denial with complacency or at his option may institute a suit to falsify the assertions of the other side. But when he finds that his rights are being actually jeopardized by the action or assertion of the defendant, then he must take proceedings within six years from the date of such actions or assertions. A.I.R. 1922 Lah. 94; A I.R. 1925 Lah. 391 and 140 P. R. 1907, *Dist.* (*Broadway and Jai Lal, JJ.*). FATEH ALI SHAH *v.* MUHAMMAD BAKHSH. **119 I.C. 258=9 Lah. 428=A.I.R. 1928 Lah. 516.**

———Dispute as to the title of deceased to certain properties—Compromise between plaintiffs and defendants (adverse claimants) allotting a portion to defendants—Application in 1914 for correction of entries. Objection by defendants that the portion allotted under compromise had not been given them—Parties referred to Civil suit—Subsequent notice in ejectment by plaintiffs infructuous—Suit for declaration in 1923 barred. (*Dalip Singh, J.*). HIRA *v.* RAM SINGH. **99 I.C. 988=27 P L.R. 147.**

———Where the defendant, in whose name the entries in question stand, has neither paid any revenue nor received any rent, limitation for declaration of plaintiff's title and correction of revenue entries starts from date of the overt act threatening plaintiff's rights. A.I.R. 1922 Lah. 94, *Foll.* and 79 P.R. 1917, *Dist.* (*Broadway, J.*). MOTI SINGH *v.* RODA. **93 I.C. 358=27 P.L.R. 150.**

———In a suit for declaration of title based on the defendant's denial of the same limitation runs from the date of the first denial. Subsequent denials are merely a reiteration of the earlier denial and do not amount to a fresh invasion giving rise to fresh cause of action. (*Moti Sagar, J.*). JAIMAL SINGH *v.* CHAND SINGH.
91 I.C. 605 (Lah.).

———*Notice of ejectment.*

Defendant issued a notice of ejectment in 1912 to the plaintiff. Plaintiff brought a suit in the Revenue Court to contest the notice but was defeated. Thereupon proceedings in execution of the notice took place; but the proceedings were purely formal, and in fact the plaintiff retained physical possession of the land in suit. A further notice of ejectment was issued against him.

Held, that the fresh notice constituted a fresh invasion of his title, and therefore limitation against him for his suit for declaration of his title began to run from the date of the fresh notice. (*Shadi Lal, C.J. and Le Rossignol, J.*). BELA SINGH *v.* LAKSHMI DAS. **89 I.C. 299=6 Lah. 132=26 P.L.R. 326=A.I.R. 1925 Lah. 391.**

———Where the plaintiffs who are in possession bring a declaratory suit that they have a raiyati right and not under-raiyati rights, either of the events namely a decision of the dispute during the preparation of the Record-of-Rights or the final publication of the Record-of-Rights would give them a cause of action. (*Newbould and Panton, JJ.*). BADARUDDIN MUNSHI *v.* SARAPADDIN BEPARI. **68 I.C. 489=A.I.R. 1923 Cal. 307.**

———*Ejectment order.*

Limitation for a suit for a declaration that the plaintiff is an under-proprietor runs from the ejectment order and not from decree in rent suit against, him, on the ground that he was a tenant, especially when he is in possession in spite of the decree and order. (*Wazir Hasan, A. J. C.*). B. MANOHER LAL *v.* ACHUTANAND.
74 I.C. 340=9 O.L.J. 618=A.I.R. 1923 Oudh 27.

———*Fresh invasion of rights.*

Where the defendant's denial of plaintiff's title in 1895 gave him a cause of action to sue for a declaration, but he remained in joint possession of the undivided portion of the *shamilat* and his enjoyment thereof was not interfered with,

Held, when fresh proceedings for partition began and the defendant again denied plaintiff's title to a share, there was a fresh invasion of the plaintiff's title which gave him a fresh cause of action

The suit of the plaintiff therefore is not barred by limitation under Art. 120 of the Limitation Act. (*Scott-Smith and Harrison, JJ.*). MD. HANIF *v.* RATAN CHAND. **67 I.C. 990=3 Lah. 43=97 P.L.R. 1922=A.I.R. 1922 Lah. 94.**

———*Change of registry refused.*

Where plaintiff's father applied in 1903 for change of Revenue registry to his name and the Settlement Officer ordered that the registry should stand as it did. By asking for this identical relief in 1917, which was denied to his father in 1903, the plaintiff does not acquire a fresh cause of action against the defendants. *Akbar Khan* v. *Turaban*, 21 All. 9, *Foll.* (*Kumaraswami Sastri and Devadoss, JJ.*). ANGATI PARAMBATH

LIMITATION ACT (1908), Art. 120—Declaratory suit—Cause of action.

KANNIYALLI RATHA *v.* THEHEE ILLATH NEELAKHANDAN. 67 I.C. 600=15 M.L.W. 478=1922 M.W.N. 260=30 M.L.T. 266=A.I.R. 1922 Mad. 194=42 M.L.J. 457

——Where two separate and independent attacks are made upon the title of a person who is in possession of the property, time for a suit by the latter for declaration of his title runs from the subsequent attack on his title. 31 All. 9, *Dist.*; 36 All. 492, *Foll.* (*Mears, C. J. and Banerji, J.*). GULZARI LAL *v.* MAQBUL AHMAD. 62 I.C. 695=19 A.L.J. 233=A.I.R. 1921 All. 40.

——*Overt act of interference.*

In a suit for declaration that certain lands were a grave-yard it was found that portions of the land were, from time to time cultivated, that in the settlement of 1904-1905 no part of the land was shown as a grave-yard, a portion being entered as cultivated and the rest as waste. In 1915 there was an active interference when certain masons who entered upon the land in order to repair the old tombs were obstructed,

Held, that the suit was in time, being brought within 6 years after 1915. The plaintiffs might very well have disregarded the fact that parts of the land were cultivated so long as their rights were not actively interfered with. The obstruction of repairs to the tomb was an overt act which interfered with the plaintiff's right of user. Therefore time did not begin to run against the plaintiffs until 1915. (*Scott-Smith, J.*). JAI GOPAL *v.* MAHOMED BAKHSH. 65 I. C. 647=4 U.P.R. Lah. 46.

—Art. 120—Declaratory suit—Charge-holder.

——Where a third party has advanced money to the mortgagor to pay off the mortgage on the understanding that a further mortgage would be executed by the mortgagor, the third party has no legal title to the property and no charge to enforce within the meaning of Art. 132. He is only entitled to a declaration of his right to get a mortgage. His suit is governed by Art. 120. (*Macleod, C.J. and Fawcett, J.*). CHHOTALAL KARSANDAS *v.* VISHNU GANESH GOKHALE. 60 I.C. 903=43 Bom. 597=23 Bom.L.R. 84=A.I.R. 1921 Bom. 182.

—Art. 120—Declaratory suit—Entry in Records.

——*Suit to declare it erroneous.*

A suit for a declaration that the entry in Record-of-Rights that a person is tenure-holder is erroneous and that he should be declared a raiyat is within the proviso to S. 111-A of the Bengal Tenancy Act and the period of limitation applicable to such suits is that provided by Art. 120 and not by S. 104-H. 15 C. W. N. 896, *Appr.* (*Sir Binod Mitter.*) MIDNAPUR ZEMINDARY CO., LTD. *v.* SECY. OF STATE. 120 I.C. 56=30 M. L. W. 600=56 I.A. 388=31 C.L.J. 1=34 C.W.N. 1=32 Bom.L.R. 114=A.I.R. 1929 P. C. 286=57 M L J. 849 (P.C.).

——A mere entry of names in the *khewat* does not debar the person, against whom the entry is made, for all time to come from suing for a declaration, if once six years are allowed to expire. Any fresh act which can amount to a fresh invasion of the owner's right or a fresh attempt to cast a cloud on his title would create a new cause of action in his favour, and his suit for declaration cannot be dismissed on the mere ground that the cause of action first accrued more than six years ago when an adverse entry was made against him. (1898) A.W.N. 215; 10 A.L.J. 418; 11 A.L.J. 877; 36 All. 492 and 17 A.L.J. 588, *Rel. on*; 31 All. 9, *Dist.*

LIMITATION ACT (1908), Art. 120—Declaratory suit—Landlord and Tenant.

(*Sulaiman and Sen, JJ.*). AFTAH ALI KHAN *v.* AKBAR ALI KHAN. 121 I.C. 209=1929 A.L.J. 794=A.I.R. 1929 All. 529.

——Where the owner is in possession of the property, it is not obligatory on him to file a suit for a declaration of his title because of an adverse entry in the *khewat* unless and until his title to the property is denied by the defendant, and the denial has the effect of disturbing the possession or doing him some other injury that is not capable of being remedied otherwise than by a suit for a declaration. A cause of action for such a suit accrues when his right is subsequently denied on the basis of the incorrect entry, and although such a suit is filed after the expiry of six years from the date of knowledge of the adverse entry, it is not barred if it is filed within six years from such denial. 17 A.L.J. 588 and 53 I.C. 1005, *Foll.* (*Iqbal Ahmad, J.*). FANJDAR SINGH *v.* BALDEO SINGH. 102 I.C. 172=A.I.R. 1927 All. 597.

——Where on the strength of a wrong entry in the revenue papers, the defendant sued the plaintiff's tenants for rent and plaintiff brings a suit for his title to the land being declared, more than six years of the wrong entry but within six years of the defendant's instituting the suit,

Held, that the defendant's suit for rent constitutes a fresh invasion of the plaintiff's right and gives him fresh cause of action and that therefore plaintiff's declaratory suit is not barred. (*Iqbal Ahmad, J.*). JAGDISH PRASAD NARAIN SAHI *v.* JANG BAHADUR NAIK. 98 I.C. 811=A.I.R. 1927 All. 148.

——Where in a suit for a declaration of title and confirmation of possession the plaintiff does not allege that his possession has been disturbed or threatened by the defendants and the cause of action was for the declaration that the entry in the Record-of-Rights was erroneous, Art. 120 and not Art. 144 applies. (*Cuming and Page, JJ.*). ABDUL GAFUR *v.* ABDUL JABBOR. 97 I.C. 635=A.I.R 1927 Cal. 30.

——Where a plaintiff's case is that a cloud is thrown upon his title by reason of an entry in the revenue registers made at his own instance and he seeks by a declaratory suit for the removal of that cloud, limitation for such a suit runs from the date on which an entry in the revenue registers was first made. 3 O.L.J. 226, *Foll.*; 23 O.C. 46; 7 O.L.J. 237 and 10 O.L.J. 413, *Dist.*

No fresh cause of action accrues if a subsequent application by the plaintiff for correction of the khewat is rejected by the Revenue Court. 31 All. 9, *Foll.* (*King, J.*). MAHABIR *v.* JAGESHAR. 98 I.C. 750=3 O.W.N. 896=A.I.R. 1927 Oudh 21.

—Art. 120—Declaratory suit — Landlord and Tenant.

——Where the tenants brought a suit seeking for a declaration that certain lands were held by them rent free under the defendant as the defendant landlord had wrongly got these lands recorded in the Record-of-Rights as liable to pay rent and then fraudulently got rent assessed for them under S. 105, Ben. Ten. Act, and also for confirmation of their possession and for an injunction restraining the defendant from executing any decree for rent which he might obtain in certain rent suits which he had brought against them.

Held, that the latter two reliefs being unnecessary and premature respectively the suit was governed by Art. 120,

LIMITATION ACT (1908), Art. 120—Declaratory suit—Landlord and Tenant.

Held, further that as the plaintiffs did not specifically ask for the correction of any entry in the Record-of-Rights the time began to run against them from the date of the institution of the rent suits, by the landlord. 23 C.L.J. 561, *Foll.* 23 C.W.N. 883, *Dist.* (*Cuming and Pearson, JJ.*). PROFULLA CHANDRA *v.* KSHETRA LAL.
120 I.C. 104=49 C.L.J. 281=A.I.R. 1929 Cal. 417.

———Where a defendant asserted a hostile title as a permanent tenant against the plaintiff six years ago and the same was substantiated by the orders of the revenue authorities, the plaintiff's suit for declaratton that defendant was only an annual tenant and not owner as alleged to have been asserted by him is governed by Art. 120 and as such is barred being brought more than six years from Revenue Courts order. 31 All. 9, *Foll.* (*Subhedar, A.J.C.*). IBRAHIM KHAN *v.* NAGOJI.
118 I.C. 62=A.I.R. 1929 Nag. 124.

—Art. 120—Declaratory suit—Setting aside alienation.

———*Vendee never in possession.*

Where a suit was brought by certain Hindus for setting aside a sale-deed executed by their father and where the property was in the possession of the mortgagee even at the time of the institution of the suit and the vendee had never obtained possession, the suit is to be regarded as merely a declaratory suit, and Art. 120 and not 126 applies for alienee did not get possession. A. I. R. 1927 All. 702; 41 Mad. 650; 70 P.R. 1914, *Ref.* (*Sulaiman and Pullan, JJ.*). ANGAD SINGH *v.* BAHADUR SINGH. **119 I.C. 90=1929 A.L.J. 1131=A.I.R. 1929 All. 750.**

———*By grand-mother.*

Daughter's sons are under Hindu Law not entitled to succeed in the lifetime of their mother and, therefore, are not the immediate reversioners of their grand-mother. Their suit for declaration that an alienation by their grandmother is not binding on them is governed by Art. 120. 15 P.R. 1916, *Ref.* (*Tek Chand, J.*). MT. BAL KAUR *v.* MT. HAR KAUR. **108 I.C. 184=A.I.R. 1928 Lah. 242.**

———*Of temple property.*

Where, in a suit for declaration that a mortgage of temple property executed by the defendant representing the property to be his was not binding on the plaintiff, who represented the worshippers of a temple, the plaint alleged a breach of trust which consisted in the defendant dealing with properties, as his own, which really belonged to the temple,

Held, that the suit was governed by Art. 120 and that there was an allegation of fraud and time began to run from the time the plaintiff came to know of the fraud 33 Mad. 31, *Dist.* and 7 L.W. 280, *Rel. on.* (*Phillips and Odgers, JJ.*). VISWANADHAM *v.* NARAYANA DASS.
112 I.C. 22=1928 M.W.N. 415=28 M.L.W. 224=A.I.R. 1928 Mad. 837.

———*Alienee never in possession.*

Article 126 is based upon the principle that a son's knowledge of alienation by his father ordinarily arises when he sees the alienee in possession. In cases where the alienee never gets possession no limitation can arise under Art. 126. In such cases, the right of the son will amount merely to obtaining a declaration that the deed is invalid. The limitation prescribed for such a suit is under Art. 120. 41 Mad. 650, *Rel. on.* (*Ashworth and Iqbal Ahmad, JJ.*). BINDESHRI UPADHYA *v.* SITHAL UPADHYA. **106 I.C. 377=25 A.L.J. 734=A.I.R. 1927 All. 702.**

LIMITATION ACT (1908), Art. 120—Declaratory suit—Setting aside sale.

———*Of temple property.*

The temple lands in possession of the temple servants were recorded in the Sanad under Summary Settlements Act, S. 7 as their private lands (Jat-inam) and one of the servants alienated some portion of the lands in 1903 but the vendee did not take possession till 1916. Plaintiff sued on behalf of the managing Committee of Gaukars for a declaration that the lands belonged to the Devasthan,

Held, the cause of action arose within the meaning of Art. 120 only when the defendant attempted to alienate the lands and not by the mere grant of the Sanad. But the article did not apply in the case as plaintiff claimed possession. (*Shah, Ag. C.J. and Crump, J.*). VITHAL DHONDJI DEVLI *v.* SURYAJI RAMCHANDRA NAIK. **75 I.C. 617=24 Bom. L.R. 902=A.I.R. 1922 Bom. 438.**

—Art. 120—Declaratory suit—Setting aside decree.

———Where title of a person is jeopardized for the first time by a decree in a suit, such a person is entitled to institute a suit for declaration that he is not bound by that decree and the article applicable to such a suit is 120 and the time begins to run from the date of the invasion of the title. 5 All. 289 and 11 Bom. 119, *Dist.* (*Sen and Niamatullah, JJ.*). ABDUL AHAD *v.* CHABI RAM.
123 I. C. 830=A.I.R. 1930 All. 420.

—Art. 120—Declaratory suit—Setting aside order.

Orders passed under Chap. 7 of the Presidency Small Cause Court Act, cannot be regarded as a "decision or order" on the question of title. In a subsequent suit against an order under that chapter, there is no necessity to alter or set aside any such "decision or order." Consequently, Art. 13, Lim. Act, has no application. The article applicable may be Art. 120 or Art. 144: A.I.R. 1927 Mad. 321 and 7 W.R. 199 (F.B.), *Foll.*: *Person* v. *Glaze Brook*, (1868) 3 Ex. 27; 23 All. 313 (P.C.); 10 B.H.C.R. 479 and 11 Bom. 429, *Ref.* (*Coutts Trotter, C.J. and Ananthakrishna Aiyar, J.*). HYDER ALI SAHIB *v.* AMIRUDIN SAHIE.
115 I.C. 504=1929 M.W.N. 174=29 M.L.W. 537=A.I.R. 1929 Mad. 69=56 M.L.J. 199.

———A suit to contest an order on a claim against attachment before judgment followed by execution after decree is governed by Art. 11 and not Art. 120. (*Krishnan and Ramesam, JJ.*). VELLAYAN ASARI *v.* SIVAGNANAM ASARI. **79 I.C. 917=34 M.L.T. 193=A.I.R. 1925 Mad. 49.**

—Art. 120—Declaratory suit—Setting aside sale.

———*By guardian of limited owner.*

A suit brought by the reversionary heirs of one for declaration that a certain sale of the property left by him is not binding on the estate after the death of his daughter comes under Art. 120, and not Art. 125, where the sale was made by certificated guardian of daughter without Court's permission and was not impeached by the daughter within the time. 41 Mad. 659, *Doubted.* (*Rankin and B.B. Ghose, JJ.*). DAS RAM CHOWDHURY *v.* TIRTHA NATH DAS. **81 I.C. 522=51 Cal. 101=A.I.R. 1924 Cal. 481.**

———*By joint family member.*

Article 91 does not apply where the plaintiff is not suing to cancel or set aside a sale-deed of

LIMITATION ACT (1908), Art. 120—Declaratory suit—Setting aside sale.

joint family property, executed by other members of his family but for a declaration that the sale deed is void *ab initio*. The Article applicable is 120 and the period of 6 years begins from the time when the plaintiff came to know of the sale-deed. (*Dalal and Simpson, A. J. Cs.*). DWARAKA PRASAD *v.* MT. RAM DEBI. **77 I.C. 329=10 O.L.J. 360= 27 O.C. 140=A.I.R. 1924 Oudh 120.**

——A suit for a declaration that a sale is fraudulent is governed by Art. 120 of the Act. (*Pratt and Duckworth, JJ.*). MI SON MA KHAING *v.* SHWE BA. **74 I.C. 164=1 Bur. L.J. 106= A.I.R. 1923 Rang. 82.**

——*Bengal Tenancy Act.*

A suit for declaration that a sale held in contravention of S. 158 (*b*) of the B.T. Act, is illegal and inoperative is governed by Art. 120. (*Das, J.*). GHANSHYAM *v.* BASDEB. **60 I.C. 529= 3 U.P.L.R. (Pat.) 27.**

—Art. 120—Declaratory suit—Miscellaneous.

——Article 120 applies to all declaratory suits. 20 All. 35, *Foll.* (*Sulaiman and Sen, JJ.*). AFTAB ALI KHAN *v.* AKBER ALI KHAN. **121 I.C. 209= 1929 A.L.J. 794=A.I.R. 1929 All. 529.**

——A suit for declaration must be brought within six years of the cause of action unless there has been a fresh invasion of the plaintiff's right giving him a fresh cause of action. 31 All. 9; 10 A.L.J. 413; 11 A.L.J. 877 and 36 All. 492, *Foll.* (*Dalal, J.*). KALLU SHAH *v.* MUHAMMAD ESHANULLAH. **115 I.C. 629 (All.).**

——*Right to emerged land.*

This land in suit had emerged out of the river Ganges which lay to the north of the village of Dhanapur of which the defendants were the owners. To the west of it, was a village called Arazi Dayara Dhanapur of which the plaintiffs were the mortgagees. The plaintiffs sued for a declaration that they were the owners of the village Arazi Dayara Dhanapur; that the land in suit had accreted to that village and therefore formed an accession to the village, it was found that the plaintiffs were only mortgagees of village, that in spite of objections by the plaintiffs the village had been settled only with the defendants, by the Revenue authorities, and that the plaintiffs were never in possession of the lands at any time,

Held, that there was no law under which the land could be regarded as an accession to the village Jrazi Dayara and that the suit having been brought more than six years after the cause of action for the declaration arose, was barred by time. (*Banerji and Gokul Prasad, JJ.*). BIJAI SHANKER SELHER *v.* RAM CHARITRA SINGH. **75 I.C. 35=21 A.L.J. 409=45 All. 461= 4 L.R.A. Civ. 206=A. I. R. 1923 All. 500.**

——A suit for declaration of title to immovable property must be brought within six years from the date when the right to sue accrues. (*Ashutosh Mookerjee and Buckland, J.Cs.*). JOY NARAYAN SEN UKIL *v.* SRIKANTA ROY. **63 I.C. 8= 33 C.L.J. 592=26 C.W.N. 206= A. I. R. 1922 Cal. 8.**

—Art. 120—Dissolution of marriage.

——The cause of action or a suit for restitution of conjugal rights is founded on a breach of the contract of marriage and the breach continues so long as the person of the wife is withheld from the husband and he is denied the undoubted legal right of her conjugal society. This view of the cause of action in a suit for restitution of conjugal rights places it within the purview of S. 28,

LIMITATION ACT (1908), Art. 120—Injunction.

Art. 120 of the first Schedule applies to a suit for a dissolution of marriage or for a declaration that a divorce had taken place between the parties. (*Wazir Hasan, A.J.C.*). MD. HAMIDULLAH KHAN *v.* MD. FAKHRIJAHAN BEGAM. **65 I.C. 452= 8 O.L.J. 650=A.I.R. 1922 Oudh 109.**

—Art. 120—Dissolution of partnership.

——A dissolution of a partnership is not a rescission of a contract and as there appears to be no article specifically dealing with a suit for dissolution, Art. 120, Limitation Act would apply. (*Carr and Cunliffe, JJ.*). A. KHORASAMY *v.* C. ACHA. **110 I.C. 349=6 Rang. 198= A. I. R. 1928 Rang. 160.**

—Art. 120—Injunction.

——*A* sued for an injunction to compel *B* to remove a kotha built on a part of the village common land. This kotha was built more than two years before, and less than six years before the institution of the suit.

Held, that the notion that Art. 32 applies only to cases *ex contractu* was not correct; therefore the suit was barred not under Art. 120 which did not apply but under Art. 32. A.I.R. 1925 Lah. 653, *Appr.*; A.I.R. 1928 Lah. 794, *Dist.* (*Johnstone, J.*). BHAGWANA *v.* BHANWANA. **121 I.C. 186= 31 P.L.R. 14=A.I.R. 1930 Lah. 283.**

——In a case where a person discharges water over the land of another a fresh cause of action accrues from day to day and a suit brought more than six years after the construction of parnala by the person is not barred. 2 L L.J. 463, *Foll.* (*Dalip Singh, J.*). HARI RAM *v.* KALIANA RAM. **109 I. C. 638=10 L. L. J. 395= A. I. R. 1929 Lah. 88.**

——*Party wall.*

If one of two neighbouring owners raises a party wall, the other owner giving his consent or acquiescing, then the raised portion must assume the same character as the old party wall on which it stands and therefore neither party can be allowed to commit a trespass on the party wall so *e.g.*, by opening windows therein. A suit for injunction directing the defendant to close the windows so opened is governed by Art. 120 and must be brought within 6 years of the opening of the windows. (*Macleod, C.J., and Coyajee, J.*). IMAMBHAI KAMRUDIN *v.* RAHIMBHAI USMANBHAI. **87 I. C. 977=27 Bom. L.R. 503= 49 Bom. 586=A.I.R. 1925 Bom. 373.**

——*Land reserved for common use.*

Where a suit was instituted for an injunction that the defendants be restrained from cultivating land on the allegation that according to the custom of the village it was reserved for the common use of all the owners in the village, and that no individual owner was entitled to do anything so as to interfere with such common use,

Held, that the suit was governed by Art. 32 and not by Art. 120. 124 P.R. 1912, *Dist.*; 26 Cal. (F.B.), *Foll.* (*Jai Lal, J.*). GHULAM MUHAMMAD *v.* ABDUL SATAR. **89 I.C. 405=A.I.R. 1925 Lah. 653.**

——*Encroachment.*

In a suit for perpetual injunction directing defendants to remove an encroachment made on common land, it is for the plaintiff to prove that the encroachment was made within six years before suit and a mere surmise by the Court that the encroachment was 'recent' is insufficient for holding that it took place within six years. 151 P.L.R. 1912, *Foll.* (*Jai Lal, J.*). CHANDRA *v.* GAJJU. **88 I. C. 176=7 L.L.J. 228= 26 P.L.R. 283=A.I.R. 1925 Lah. 455.**

LIMITATION ACT (1908), Art. 120—Injunction.

———*Construction on occupancy land.*

Where plaintiff sued defendant for demolition of certain constructions made by defendant on his (defendant's) occupancy lands without plaintiff's permission and for injunction and where the plaintiff did not allege in the plaint that he had actual possession of lands or that he had lost possession and where he had not availed himself of his right under the local Tenancy Act to eject the defendant,

Held, that it was not a suit for possession at all and that Art. 144 could not apply and that if the defendant's action had perverted the property to a purpose for which he had no right to use it, the claim fell within Art. 32 but that in any event 120 only applied both as regards the relief for demolition of construction and for injunction. (*Sulaiman, J.*). PIYARE LAL *v.* BED RAM. **78 I.C. 849= A.I.R. 1924 All. 814.**

———*Beams.*

Where defendant put up beams against plaintiff's wall more than 6 years ago a suit for removal of the beams is barred by limitation. (*Gokul Prasad, J.*). MT. KOKLA KUNAR *v.* KALAIN MAL. **76 I.C. 585=A.I.R. 1923 All. 452.**

———*Sheds.*

Where the plaintiffs claiming to be joint owners of a certain courtyard, alleged that the defendants had erected certain *chhappers* or thatched sheds in front of their house and asked for a perpetual injunction to issue to them directing them to remove the said *chhappers* and to restore the courtyard to its former condition,

Held, that the suit was essentially a suit for the issue of an injunction and although the injunction would have had the effect of restoring the courtyard to a state in which the plaintiffs might have been able to have a more extensive use of it than they actually had, the suit would not be covered by Art. 144 but Art. 120 would apply. (*Broadway, J.*). LAL SINGH *v.* HIRA SINGH. **60 I.C. 20= 3 L.L.J. 128=A.I.R. 1921 Lah. 242.**

—Art. 120—Misappropriation.

———*By agent.*

Where one person acts as agent of two principals and uses money belonging to one principal for benefit of the other principal, there is no advancing of loan by one principal, to the other the borrower and the lender being the same person. A suit to recover such money by the principal to whom it belonged is covered by Art. 120 and time begins to run from the time when demand is made by that principal. (*Mukerji, J.*). JAUNPUR SUGAR FACTORY, LTD. *v.* UPPER INDIA RICE MILLS, LTD. **98 I.C. 1010=A.I.R. 1927 All. 173.**

———*By agent.*

Where an agent sells goods entrusted to him by his principal and retains the proceeds which the principal has an equitable right to follow in his hands, the period of limitation applicable will be a period of six years. 10 Cal. 860 (P. C.), *Foll.* (*Stuart, C.J.*). AZAM ALI *v.* SHAMSHER ALI.

106 I.C. 35=1 L. C. 587=A.I.R. 1927 Oudh 574.

—Art. 120—Mortgage.

———*Suit on dower-debt.*

A registered deed executed by Mahommedan husband long after the marriage promising to pay dowry then still due from him, on demand and hypothecating certain immovable properties as security for its due payment, converts the dower debt into a mortgage debt; and to a suit on such deed for the amount of the dowry, six years rule of limitation is applicable. 6 M.I.A. 211 (P. C.), *Dist.*

LIMITATION ACT (1908), Art. 120—Partition.

(*Iqbal Ahmad, J.*). MT. KUBRA BEGAM *v.* FAZAL HUSSAIN. **99 I. C. 553=A. I. R. 1927 All. 268.**

———A suit based on a mortgage for a money decree against the mortgagor brought within 6 years from the date of the deed is not time-barred. (*Dalal, J.C.*). SITLA BAKHSH SHUKLA *v.* JAGATPAL SINGH. **86 I. C. 693=12 O.L.J 114= A.I.R. 1925 Oudh 394.**

———*Personal remedy.*

When a mortgagee is deprived of the security under a decree of a Civil Court, he is entitled to proceed personally against the mortgagor and the time for such a suit runs from the date the mortgagee was evicted from the land. (*Pratt, J.*). MAUNG YAN KWIN *v.* MAUNG PO KA.

89 I. C. 56=3 Rang. 60= A. I. R. 1925 Rang. 223.

———A suit to enforce the hypothecation of property to secure the payment of grain falls under Art. 132 not Art. 120 or Art. 116. 13 C.W.N. 184-*n*; 22 C.W.N. 790; 23 C.W.N. 951; 47 Cal. 125; 29 C.L.J. 369, *Ref. to*; 24 C. L. J. 348, *Not foll.* (*Dhobley, A.J.C.*). SOAMLAL *v.* DHANWA JHABBOOLAL. **65 I.C. 697=5 N.L.J. 224= 18 N.L.R. 111=A.I.R. 1922 Nag. 23.**

—Art. 120—Movables.

———*Deposit of.*

A deposited his jewellery with his friend *B* at the time of *B's* marriage to be used by him for the purpose of the wedding on condition that it would be returned whenever *A* asked for it.

Held, that the transaction was deposited and not a loan and the mere fact that *B* was allowed to use the jewellery did not take the transaction out of the category of deposit as that expression is used in Art. 145 and Art. 120 has no application. (*Broadway and Currie, JJ.*). GURBAKSH SINGH *v.* KHARAITI RAM. **A.I.R. 1930 Lah. 913.**

———*Partition of.*

A suit for partition of movables of a Mohammadan falls under Art. 120 and not 49. (*Mears, C.J. and Banerji, J.*). MT. BASHIR UN-NISSA *v.* ABDUL RAHMAN. **64 I.C. 974=44 All. 244= 20 A.L.J. 71=A.I.R. 1922 All. 525.**

———*Suit for.*

A suit by a Hindu reversioner to recover movable property on the death of a Hindu female is governed by Art. 120 of the Act and time begins to run from the death of the female. In the case of immovable property the Article applicable is 141. (*Mookerjee and Buckland, JJ*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE.

64 I.C. 980=49 Cal. 45=33 C.L.J. 421= 25 C.W.N. 585=A.I.R. 1922 Cal. 321.

———*Debt payable in kind.*

A claim for recovery of a debt payable in kind falls under Art. 65 or 115 and not under Art. 120. (*Chevis and Broadway, JJ.*). MUHAMMAD DIN *v.* SOHAN SINGH. **65 I.C. 691=4 L. L. J. 268= A.I.R. 1922 Lah. 271.**

———*Suit to prevent waste.*

Where a widow, in possession of her deceased husband's estate commits waste of movable property belonging to the corpus of the estate, an action by reversioner to prevent her from doing so is governed by Art. 120. (*Wallis, C.J. and Krishnan, J.*). VENKANNA *v.* NARASIMHAM.

66 I.C. 10=44 Mad. 984=14 M.L.W. 193= 1921 M.W.N. 590=A.I.R. 1921 Mad. 234= 41 M.L.J. 279.

—Art. 120—Partition.

———A Civil Court can enquire into the question as to whether the *khudkasht* or *sir* lands are or are

LIMITATION ACT (1908), Art. 120—Partition.

not the sole property of a person or whether they are joint property ; though it cannot decide whether there should be a partition or not, the question of title may have to be decided for other purposes for partition. Even as regards the question of partition the Civil Courts are not precluded from giving a declaratory decree as to what are the pre-existing titles of the parties, though of course they can give no direction whatever as whether there should be a partition or how a partition should proceed. So far then as a suit is a suit for ascertaining what the titles of the parties respectively are over the lands in the *mahal*, the suit cannot be time-barred merely because the Revenue Officer declined more than six years before the institution of the suit to proceed with a partition until the question of title had been decided in a Civil Court. (*Batten, J.C.*). DONGAR SINGH *v.* VISHWANATH SINGH. 71 I.C. 205= 19 N. L. R. 11=A. I. R. 1923 Nag. 86.

——*By metes and bounds.*

Where the members of a joint Hindu family become divided in status but the properties have not been actually divided and apportioned among them, and subsequently one of them brings a suit for partition by metes and bounds claiming also an account being taken of the movable properties outstanding and collections made by the various members in respect of the properties,

Held, that the proper article to apply is Art. 120. The period of limitation will run from the demand of the share by the plaintiff or refusal by defendant. If the facts be that the rents and profits were received with the consent of all concerned, by the various members in possession pending final settlement by division, each of such persons might be considered as agent for himself and his co-owners. In such a case Art. 89 will apply. (*Schwabe, C. J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadoss, JJ.*). YERUKOLA *v.* YERUKOLA. 71 I.C. 177=45 Mad. 648= 1922 M.W.N. 215=15 M.L.W. 595= 30 M.L.T. 279=A.I.R. 1922 Mad. 150= 42 M.L.J. 507 (F.B.).

—Art. 120—Possession.

——*Suit for—Competing purchasers from guardian.*

Where a guardian sells more immovable property belonging to a minor without the sanction of the Court and subsequently executes a second sale with the permission of the Court the later transferee can sue for possession outright and need not expressly sue to have the first sale set aside. To such a case Art. 120 and not Art. 91 of the Limitation Act applies. (*S. K. Ghose, J.*). NAGENDRA NATH GHOSH *v.* MOHINI MOHAN BOSE. 34 C.W.N. 948.

——*Suit for joint possession.*

A transferee of the undivided interest of one of several co-owners does not get right to immediate possession, but if he wants separate possession of his purchase, he must sue for partition. If co-owners want common enjoyment of such property before partition, they must sue for joint possession and to such suits Art. 120 applies. (*Kinkhede, A. J. C.*). AMARCHAND *v.* RAMJIWAN. 111 I. C. 76=10 N. L. J. 174= A. I. R. 1928 Nag. 96.

——*Suit for.*

Where the suit is on the face of it one for recovery of possession of immovable property who had taken unlawful possession thereof and had planted new trees thereon,

LIMITATION ACT (1908), Art. 120—Profits.

Held, that the suit is governed by Art. 142 of the Limitation Act. A prayer for removal of the recently planted trees is merely ancillary to the claim for possession will not take the case out of Art. 142 and make Art. 120 applicable. (*Daniels, J.C.*). GHAFUR KHAN *v.* PRAG NARAYAN. 66 I.C. 799=9 O.L.J. 17=A.I.R. 1922 Oudh 47.

—Art. 120—Pre-emption.

——Vendee already holding possession as tenant prior to foreclosure under conditional mortgage—Art. 10 does not apply—Case is governed by Art. 120. (*Wazir Hasan, J.*). MATA DIN *v.* MT. MITHANA. 102 I.C. 22=1 L.C. 38= A.I.R. 1927 Oudh 212.

——A suit for pre-emption in respect of a lease must be brought within six years from the date of lease deed and not from the date of its registration. Article 10 does not apply in the case of a lease as this transfer is not a sale. (*Sulaiman and Banerji, JJ.*). GOPAL RAM *v.* LACHMI MISIR. 93 I. C. 138=A.I.R. 1926 All. 549.

——In a pre-emption suit the limitation runs from the date of registration and not from the date of execution of the deed of sale and the article applicable is 120. Section 47 of the Registration Act does not apply to the case. (*Kotval, A.J.C.*). RAGHO *v.* SAKHARAM. 68 I.C 715= A. I. R. 1922 Nag. 200.

——*C. P. Tenancy Act* (1898), *S.* 41.

In a suit for pre-emption under S. 41 (5) where the tenant had merely given notice but had not actually sold his holding,

Held, that Art. 120 applied to the case. 1 N.L.R. 6; 6 C.P.L.R. 67, *Dist.* (*Hallifax, A J.C.*). RAI *v.* SIDAKALI. 65 I.C. 959=A.I.R. 1922 Nag. 14.

——A suit to pre-empt perpetual lease is governed by Art. 120 and not Art. 10. (*Tudball and Rafique, JJ.*). MUKHLAL RAI *v.* HIRANAND SINGH. 62 I.C. 885=19 A.L.J. 442=A.I.R. 1921 All. 155.

——Where the property sold is not in the possession of the vendee but in possession of the trespasser and a pre-emptor files a suit for pre-emption,

Held per *Krishnan, J.*—Limitation commences only when possession is taken, where the second part of third column of Art. 10 does not apply to the case. 20 All. 315 (F. B.), *Ref.*

Per *Napier, J.*—In such a case where possession is not taken due to the property being in the possession of a trespasser and the vendor consequently being unable to give possession to the vendee, Art. 10 does not apply but Art. 120 applies. (*Napier and Krishnan, JJ.*). VELAYUDHAM PILLAI *v.* THINA VELAYUDHAM PILLAI. 62 I. C. 27= 13 M.L.W. 263=1921 M.W.N. 207= A.I.R. 1921 Mad. 554=40 M.L.J. 443.

—Art. 120—Profits.

——*Received by agent.*

In a suit by the principal against agent for rents and profits of the suit poperty, if there was no demand and refusal of accounts, the agent is liable to account for all the amounts received on behalf of the plaintiff. It is immaterial in such a case whether Art. 89 applies on the ground of agency, or Art. 120 applies on the ground of absence of specific contract of agency. (*Devadoss and Mackay JJ.*). NA. AYYAKUTTI THEVAN *v.* SIGAPPI ACHI. 114 I.C. 365=A.I.R. 1928 Mad. 1236.

——*Co-tenants.*

Where a person prevents his co-tenants from obtaining from the field such profits as it is capable of yielding and takes possession of the whole field as his own he is liable to account for the mesne profits. Article applicable to such a

LIMITATION ACT (1908), Art. 120—Profits.

suit is Art. 120 and not Art. 109 32 Cal. 837; A.I.R. 1922 Mad. 150 (F.B.), *Foll.* (*Findlay, J.C.*). BUDHILAL *v.* MOKHAMCHAND. **103 I.C. 777= A.I.R. 1928 Nag. 65.**

——*Co sharer.*

Where a co-sharer who had been given symbolical possession in execution of a decree for joint possession under S. 264 of C.P.Code, 1882, (O. 21, R. 36 of Code of 1908) sued for partition and separate possession,

Held, that he should be allowed mesne profits for a period of six years only prior to the suit. (*Sir John Edge.*) JAG PRASAD RAI *v.* MT. SINGARI. **29 C. W. N. 270= A.I.R. 1925 P.C. 93 (P.C.).**

——*Of intestate's property.*

To a suit for subsequent profits on the share of the claimant which do not form part of the property of the intestate, Art. 109 will not apply but Art. 120 applies. (*Heald and Lentaigne, JJ.*). MAUNG PO KIN *v.* MAUNG SHWE BYA. **76 I.C. 855= 1 Rang. 405= A.I.R. 1924 Rang. 155.**

——*Of business.*

Where the business was wound in 1895 and at least by 1897, the plaintiff knew perfectly well exactly how he stood in the matter,

Held, that Art. 120 applies and the time for suit for the recovery of the balance became barred at the latest after six years from 1897. (*Schwabe, C.J. and Ramesam, JJ.*). KUPPUSWAMI *v.* SINGARAVELU. **75 I.C. 858= 18 M.L.W. 99= 1923 M.W.N. 867= A.I.R. 1923 Mad. 679= 45 M. L. J. 233.**

—Art. 120—Refund.

——*Of subscription.*

Where an association consists of more than 20 persons but it is not registered and the members bring a suit for the return of subscription money paid to the promoter after conversion of the property of the association into cash into which the said money is changed such suit is governed by Art. 120 and not by Art. 62 for such money is not received by the promoter for the use of the members. (*Heald and Otter, JJ.*). U SEN PO *v.* U PHYU. **120 I.C. 902=7 Rang. 540= A.I.R. 1930 Rang. 21.**

——*Of purchase money.*

Plaintiff sued for specific performance of a contract of mortgage with possession in default of redemption within three years. The defendants filed a cross-suit for possession of the land (the mortgage being oral). A decree was passed for possession in defendant's suit and plaintiffs' suit for specific performance was dismissed. The plaintiffs then filed a suit for refund of the money.

Held, that Art. 120 applied and that the cause of action arose after the dismissal of the suit for specific performance. (*Das, J.*). MG. PO KIN *v.* MG. PO OH. **92 I.C. 736=4 Bur. L.J.160= A.I.R. 1925 Rang. 373.**

——*Land attached under Cr. P. Code—Profits withdrawn by one party.*

Certain lands which were the subject of dispute between the owners of contiguous plots of land were attached under S. 146 of the Cr. P. Code and pending suits for establishment of the rights of the parties, the defendants withdrew the profits of the land deposited in Court. The suit was ultimately compromised and plaintiff become entitled thereunder to the land in dispute. A suit for refund of the profits withdrawn by defendants was held to be governed by Art. 120 and not Art. 62. (*Walmsley and Ghose, JJ.*).

LIMITATION ACT (1908), Art. 120—Reimbursement.

ANANTRAM BHATTACHARJEE *v.* HEM CHANDRAKAR. **72 I.C. 1041=50 Cal. 476= A.I.R. 1923 Cal. 379.**

——Suit for refund of the money wrongly recovered under a decree would be governed by Art. 120 of the Limitation Act and the period would run from the date of decree. (*Hallifax, A.J.C.*). LAXMAN *v.* BISHRAM. **71 I.C. 427= A.I.R. 1923 Nag. 94.**

—Art. 120—Reimbursement.

——There was a dispute between *A* and *B*, and *C* was put in charge of the property has a superdar pending the determination of the rights of *A* and *B*. After these rights were determined and *C* had restored possession *C* was sued for their wages by two watchmen whom he had appointed to watch the standing crop. *C* paid up the decrees and instituted a suit against *A* and *B* for recovery of the money he had to pay to the watchmen.

Held, that the suit was governed by Art. 61, or Art. 120 and not by Art. 102, *C* was entitled to be reimbursed by *A* and *B*. The cause of action in favour of *C* arose when he paid up the decrees and suit by him within three years of payment was in time. (*Srivastava, J.*). LACHMI NARAIN *v.* PUTTI LAL. **A.I.R. 1930 Oudh 421.**

——*Sale of patni in a rent-decree—Surplus withdrawn by a creditor of one patnidar—Sale subsequently set aside—Zamindar made to pay whole purchase-money—Suit by zamindar.*

Certain patni was sold for arrears of rent and was purchased by a third party. The zamindars took out their dues from the purchase-money and the balance remained in deposit. A decree-holder against one of the patnidars attached the surplus sale proceeds and realized his dues in full under that attachment. Some of the darpatnidars, subsequently brought a suit to have the patni sale set aside. The suit was decreed and the zamindars had to refund to the auction-purchaser the amount which the auction purchaser had paid for the patni at the putni auction. Thereafter, a suit was brought by the zamindars against the decree-holder to recover with interest Rs. 161 which he had withdrawn by attachment under the money decree,

Held, that the decree-holder was liable to refund the amount and as the decree-holder, when he took the money or the Court when it handed over to him the money, did not intend the money to be for the use of the zamindars, Art. 62 did not apply but the residuary Art. 120 would apply. (*Duval, J.*). SHIBA KUMARI DEBI *v.* MT. DAKSHA BALA DASSI CHOWDHURANI. **110 I.C. 49= 47 C.L.J. 369= A. I. R. 1928 Cal. 296.**

——*Contract of indemnity.*

Defendant agreed in 1907 to indemnify plaintiff by paying off the mortgage within a month but the non-payment to the mortgagee within a month was not accepted by the plaintiff as a breach of the contract and indeed the contract between the parties was treated by both parties as being open and remaining open until the events which culminated in the sale in execution of mortgage-decree in 1919.

Held, the defendant undertook a liability to indemnify the plaintiff against any claim by the mortgagee and the cause of action under that contract of indemnity did not arise until the plaintiff suffered a loss by being ejected from the property.

LIMITATION ACT (1908), Art. 120—Reimbursement.

(*Schwabe, C.J. and Wallace, J.*). VENKATANARAYANIAH *v.* SUBRAMANIA. 74 I.C. 209=17 M.L.W. 453=A.I.R. 1923 Mad. 492.

——*Expenses of litigation.*

Article 120 and not 61 or 59 applies to a suit for contribution for expenses incurred by plaintiff from his co-plaintiff and limitation begins from the time when co-plaintiff got his share of the decretal amount. 45 I.C. 786; 25 C.W.N. 813; 34 I.C. 54, *Foll.* (*Odgers and Devadoss, JJ.*). SUNDARA AIYAR *v.* ANANTHA PADMANABHA AIYAR. 70 I C. 405=1922 M.W.N. 608=16 M.L.W. 231=31 M.L.T. 164=A.I.R. 1923 Mad. 64=43 M.L.J. 271.

——*Fine paid to Government.*

Where the defendant used the plaintiff's land without his permission for non-agricultural purposes and in consequence thereof the plaintiff had to pay fine to Government and the plaintiff sued the defendant for recovery thereof,

Held, that the suit is governed by Art. 120 and not 61. (*Macleod, C.J. and Shah, J.*). PARNAMACHAND CHANDIRAM MARWADI *v.* KASHINATH DEORAM SONARI. A.I.R. 1922 Bom. 257.

——Where the debtor of an insolvent paid money to the auction-purchaser of the debt and subsequently the Receiver in Insolvency recovered the amount over again from him and he thereupon brought a suit against the auction-purchaser to whom he had paid the money.

Held, that the suit is governed by either Art. 97 or 120 and not by Art. 29 or 62, Art. 29 not being applicable as there is no wrongful seizure of movable property under legal process. (*Broadway and Wilberforce, JJ.*). FIRM BALKISHEN DAS *v.* DEVI SARAN. 62 I.C. 929=4 L.L.J. 164=A.I.R. 1922 Lah. 103.

—Art. 120—Remote reversioner.

——Article 120 applies to a suit by a reversioner remoter that the immediately next one. (*Neave, A.J.C.*). ANANAI DIN *v.* RAM SAHAI. 83 I.C. 1035=27 O.C. 173=11 O.L.J. 236=A.I.R. 1924 Oudh 381.

—Art. 120—Remuneration for services.

——*Temple service.*

A suit by the dwaris of a temple for recovery of certain dues claimed by them as payable as remuneration in respect of their services in connexion with the temple is not a suit covered by S. 10. Such a suit is governed by Art. 120 and neither by Art. 102 nor by Art. 131. (*Dawson Miller, C.J. and Foster, J.*). BAIDYANATH JIN *v.* HUR DUT DWARI. 94 I.C. 826=1926 P.H C.C. 1=5 Pat. 249=7 P.L.T. 465=A.I.R. 1926 Pat. 205.

—Art. 120—Right to sue.

——There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. (*Sir Binod Mitter.*) MT. BOLO *v.* MT. KOKLAN. 1930 A.L.J. 1188=32 M. L. W. 338=34 C.W.N. 1169=A.I.R. 1930 P.C. 270 (P.C.).

——*Suit for malikana.*

Article 120 is the relevant article as regards the malikana and there is no right of action at all in respect of such a subject-matter as the malikana unless and until a certificate under the Pensions Act has been obtained. A suit brought within six years from the grant of the certificate is not statute-barred under Art. 120. (*Lord Tomlin.*) MT. JAGGO BAI *v.* UTSAVA LAL. 117 I.C. 498=51 All. 439=1929 A.L.J. 716=33 C.W.N. 809=30 M. L. W. 60=56 I A. 267=31 Bom. L.R. 891=50 C.L.J. 52=6 O.W.N. 589=10 P.L.T. 527=1929 M.W.N. 762=A.I.R. 1929 P.C. 166=57 M.L.J. 160 (P.C.).

LIMITATION ACT (1908), Art. 120—Setting aside decree.

——*Order without jurisdiction.*

Where a Magistrate passes an order under S. 145, Cr. P. Code as to the mode of possession, his order does not give a cause of action for a suit which, if not brought within the statutory period, makes that portion of the order binding between the parties, the order being without jurisdiction. The intention of the law of limitation is that if no suit is brought within the statutory period the remedy is lost and in case of an order of a competent Court it remains binding between the parties. (*Suhrawardy and Graham, JJ.*). RAHIM NANDAN CHOUDHURI *v.* JADUNANDAN CHOUDHURI. 97 I.C. 73=30 C.W.N. 873=A. I. R. 1926 Cal. 1022.

——*Construction of will.*

A suit for construction of a will is governed by Art. 120. The right to sue does not accrue from the death of the testator or the date of the probate of the will. But so long at least as the estate is in the hands of the executor and the administration has not been completed, the right to obtain construction of the will is a continuing right. 20 Cal. 906, *Ref.* (*Mookerjee and Chotzner, JJ.*). RAMKAMAL BANIK SAHA *v.* SYAM SUNDER BANIK SAHA. 75 I.C. 41=37 C.L.J. 482=A.I.R. 1924 Cal. 411.

——A right to sue accrues whenever a person becomes clothed with a legal character entitling him to a relief which a Court of law is competent to grant. (*Doss and Ross, JJ.*). SHAIKH ABDUL RAHIM *v.* MT. BARIRA. 61 I.C. 807=2 P.L.T. 556=6 P.L.J. 273=A.I.R. 1921 Pat. 166.

—Art. 120—Scope.

——A suit for a declaration that the plaintiffs are the Mutawallis of the trust property or a suit for possession of the office of the muttawalli are both governed by Art. 120. (*Sen and Niamatullah, JJ.*). ABDUL ALIN *v.* ABDUL HAMID. A.I.R. 1930 All. 866.

—Art. 120—Setting aside decree.

——*Misconduct of guardian.*

Where in a suit falling under Art. 120, the cause of action is not merely the passing of an adverse decree against the minor, but in addition to it the fact that such a decree was passed by reason of the misconduct or gross negligence of his guardian *ad litem*, limitation should not begin to run the moment the decree was passed, but only when gross negligence of the guardian which alone would entitle the minor to have the decree set aside became known to him. (*Wallace and Sundaram Chetty, JJ.*). M. BASAVAYYA *v.* MAJOTI BAPANA RAO. 120 I.C. 880=30 M.L.W. 911=A.I.R. 1930 Mad. 173=58 M.L.J. 349.

——*Voidable decree.*

A decree which is voidable can only be set aside by a regular suit or by bringing an application for review to the Court that passed the decree. The period prescribed is given by Art. 120; where a decree is voidable it is voidable from the very date on which it is passed and consequently limitation for a suit to set aside such a decree upon the ground that it is voidable begins to run from the date of the decree itself. (*Lindsay and Kanhaiya*

LIMITATION ACT (1908), Art. 120 — Setting aside decree.

Lal, JJ.). MUST. PHULWANTI KUNWAR *v.* FANESHAR DAS. **83 I.C. 782=46 All. 575=22 A.L.J. 521=5 L.R.A. Civ. 785=A. I. R. 1924 All. 625.**

———Articles 95, 44 and 91 of the 1st Schedule to the Limitation Act do not apply to a suit to have a decree set aside but the article applicable would be 120. (*Abdul Raoof and Martineau, JJ.*). JITA SINGH *v.* MAN SINGH. **62 I.C. 794=4 L.L.J. 211=2 Lah. 164=79 P.L.R. 1921=A.I.R. 1922 Lah. 166.**

—Art. 120—Setting aside Government orders.

———Suit for declaration that defendants are not permanent tenants of a field and that the order of Revenue Officer to that effect be held as incorrect is governed by Art. 120 and not by Art. 14.

Before Art. 14 can apply, the order must needs be one which must under law be set aside. 19 C.W.N. 1303 and A.I.R. 1925 Cal. 518, *Rel. on.* (*Findlay, J.C.*). BALA *v.* GIRDHAR. **100 I.C. 4=A.I.R. 1927 Nag. 159.**

———In 1903 the Government Officials marked off the lands in suit and issued to the plaintiff a rough potta, showing the lands to which Government admitted his right to obtain a grant subject to certain conditions. Plaintiff preferred objections to the exclusion from the rough pottah of the land in suit. His objections were definitely rejected in 1905. Thereupon plaintiff brought a suit to set aside the order and to obtain a declaration of his right in 1913,

Held, that Art. 120 applied and the suit was barred. (*Mr. Ameer Ali.*) AMBU NAIR *v.* SECY. OF STATE. **80 I.C. 835=26 Bom.L.R. 639=20 M.L.W. 49=51 I.A. 257=1924 M.W.N. 572=35 M.L.T. 128=47 Mad. 572=29 C.W.N. 365=A.I.R. 1924 P. C. 150=47 M.L.J. 35 (P.C.).**

—Art. 120—Share.

———*Outstandings received by divided brothers.*

When after partition one brother is recovering outstandings originally due to the joint family there must be an implied contract of agency between one brother and the other and a suit by the other brother for rendition of accounts and recovery of his share of the joint outstandings is governed not by Art. 62 or Art. 120, but by Art. 89. 24 All. 27 (P. C.), *Rel. on*; 24 Cal. 309; A. I. R. 1921 Bom. 384; 32 Mad. 191, *Discussed*; A. I. R. 1922 Mad. 150 (F. B.), *Expl.* and *Dist.* (*Shadi Lal, C.J. and Skemp, J.*). BUR CHAND *v.* GANPAT RAI. **116 I.C. 327=30 P.L.R. 275=A.I.R. 1929 Lah. 407.**

———*Suit for—Tenants-in-common.*

Where there has been no division of shares between tenants, they must be regarded as tenants-in-common and where one tenant-in-common sues another tenant in-common for the recovery of money received by him in excess of his share, the suit is governed by Art. 120 and not by Art. 62. S. C. No. 246 and 15 O. C. 397, *Dist.*; 37 All. 318, *Ref.*; 40 Mad. 491; A.I.R. 1922 Mad. 150 (F. B.), *Foll.* (*Wazir Hasan and Pullan, JJ.*). SURAJ NARAIN SINGH *v.* NARBADA PRASAD. **115 I.C. 99=5 O.W.N. 1122=4 Luck. 265=A.I.R. 1929 Oudh 83.**

———*Suit after partition.*

Where after the passing of a decree in a partition suit one member of a joint family recovered the amount of rent and the mortgage-debt on behalf of the family by purchasing certain property,

LIMITATION ACT (1908), Art. 120 — Starting point—Breach of conditions.

Held, that a suit by the other member to recover their share of the property was governed either by Art. 89 or Art. 120 and that in the latter case time would begin to run from the date when an account was demanded and refused. (*Patkar and Baker, JJ.*). GOVIND DAS *v.* GANPAT DAS. **113 I.C. 173=30 Bom. L.R. 912=A.I.R. 1928 Bom. 365.**

———*Of rents collected by co-sharer.*

Article 120 and not Art. 62 or 48 or 49 or 109 applies to a suit by one co-sharer against another for a share of the rent collected by the latter, the rent being due in respect of land held by the co-sharers not separately but jointly. (*Sanderson, C.J. and Richardson, J.*). BHUVANESHWAR BHATTACHARJEE *v.* DWARKESHWAR BHATTACHARJEE. **66 I. C. 876=34 C.L.J. 508=A.I.R. 1921 Cal. 77.**

———*Of mortgage-money received by co-mortgagor.*

A suit by one co-mortgagee against another co-mortgagee to recover his share of the mortgage-money received from the mortgagor is covered by Art. 120 and limitation runs from the date when money was received from the mortgagor. (*Broadway and Devadoss, JJ.*). MAHOMED IBRAHIM *v.* MAHOMED ISMAIL. **79 I.C. 294=5 L L.J. 111=A.I.R. 1921 Lah. 196.**

———*Heir of deceased.*

A suit by a person claiming as heir of a deceased person for a share of his property is governed by Art. 120 of the Act and not by Arts. 49 and 123. (*Fawcett and Raymond, J.Cs.*). RAMDAS *v.* AJHUDIADAS, **63 I.C. 685=14 S.L.R. 137.**

—Art. 120—Starting point—Adverse possession.

———*Quarry.*

Where defendants worked the quarries in all parts of the land openly and not underground without objection or opposition.

Held, the period of adverse possession was not to be counted from the time when different sorts of earth were found at different depths of the quarry, but from the time defendants began to make quarries. A.I.R. 1925 P.C. 42, *Foll.* (*B. B. Ghose and G. N. Roy, JJ.*). RAJESWAR PRASAD BHAKAT *v.* BHUPENDRA NARAYAN SINHA. **106 I.C. 117=55 Cal. 35=46 C.L.J. 307=32 C.W.N. 16=A.I.R. 1927 Cal. 956.**

—Art. 120 — Starting point — Alienation by widow.

———It is obvious that if the widow alienates certain property no fresh cause of action accrues to the reversioners because the alienee in his turn proceeds to alienate the property. The cause of action to the reversioners has accrued when the widow alienated the property. (*Dalip Singh, J.*). SADHU RAM *v.* BISHAMBAR DIAL. **A.I.R. 1929 Lah. 579.**

—Art. 120—Starting point—Avoidance of transfer.

———*Void sale.*

Where the alienation was by a Hindu widow of an unrecognised portion of a bhag and the reversioner sued to set it aside after the life-time of the widow,

Held, that the alienation being void *ab initio*, the starting point for computing limitation under Art. 120 is the date of the sale-deed. (*Marten, C.J. and Patkar, J.*). SHANKARBHAI *v.* BAI SHIR. **32 Bom. L.R. 1013.**

—Art. 120—Starting point—Breach of conditions.

———*Administration bond.*

Where an administration bond contains several conditions, a breach of each one of the

LIMITATION ACT (1908), Art. 120 — Starting point—Contribution.

conditions gives rise to a cause of action and should, therefore be taken to be the starting point of limitation in the case of a suit based on that particular breach. Ordinarily, the administrator's work may be said to be completed when he files his final accounts, showing how he has dealt with the estate, and these accounts have been accepted by the Court; limitation will then begin to run. But it very often happens that there is litigation pending against the administrator and, in such a case the administrator (and consequently his surety or sureties) cannot be absolved until the close of each litigation. 33 All. 414, *Diss.* 8 L.B.R. 99 and 17 M.L.T. 61, *Foll.*; 12 B.L.T. 225, *Expl.* (*Robinson, C.J. and May Oung, J.*). MAUNG SAN U v. MAUNG KYAW MYE. **76 I.C. 802=1 Rang. 463= A.I.R. 1924 Rang. 68.**

—Art. 120—Starting point—Contribution.

——Plaintiffs and defendants were joint owners of a tank in a Municipality. As the tank was in an insanitary condition, the Municipality ordered the tank to be filled up. Plaintiffs filled up the tank,

Held, that the liability of the defendants to contribute did not arise in successive fragments as plaintiffs paid money to the contractor from day to day; the liability arose when the tank was filled up and the contemplated benefit conferred. In such circumstances Art. 120 and not Art. 61 was applicable, and the time ran against the plaintiffs from the date of completion of the work. 25 Cal. 844 (P.C.), *Dist.* (*Mookerjee, A.C.J. and Fletcher, J.*). UPENDRA KRISHNA v. NABA KISHORE. **62 I. C. 615=25 C. W. N. 813= A.I.R. 1921 Cal. 98.**

—Art. 120—Starting point—Declaratory suit.

——*Order cancelling mutation.*

In the revenue papers an entry was made against the plaintiffs, who were sharers in a shamilat, without their knowledge. But notwithstanding the entry they continued in the enjoyment of their rights. Mutation was then effected recognizing the plaintiffs as full owners of the shamilat, whereupon the defendants taking advantage of the previous adverse entry took the matter to the Financial Commissioner and succeeded in having the entry cancelled. Plaintiffs then sued for declaration of their title,

Held, that limitation for the suit will begin not from the previous adverse entry but from the time when mutation in their favour was cancelled. 79 P.R. 1917, *Dist.*; 20 P.R. 1900 and 140 P.R. 1907, *Rel. on.* (*Tek Chand, J.*). BALLO v. GANESHI LAL. **119 I. C. 232=10 L.L.J. 546= 30 P.L.R. 48=A. I. R. 1929 Lah. 379.**

——Denial of plaintiff's title in proceedings in the Revenue Court for correction of entries in the Record-of-Rights gives a fresh cause of action for a suit for a declaration of title to property, based on such entries. 10 A.L.J. 413 and 17 A.L J. 588, *Foll.*; 31 All. 9, *Diss. from.* (*Boys and Kendall, JJ.*). BHIKAM SINGH v. BHARAT INDU. **100 I. C. 45=A.I.R. 1927 All. 296.**

——An application for partition is an act of invasion which gives a new cause of action for a suit for declaration that the defendant is not entitled to demand partition and entries in revenue records showing co-ownership of plaintiff and defendant do not affect limitation. 140 P. R. 1907 and 98 P.R. 1919, *Foll.* (*Broadway and Coldstream, JJ.*). SMAIL v. BAHAB. **100 I. C. 732=8 Lah. 22= 28 P.L.R. 490=A.I.R. 1927 Lah. 119.**

LIMITATION ACT (1908), Art. 120 — Starting point—Fraud.

——*Entry in records.*

A suit for declaration that an entry in the Record-of-Rights that the defendants are ryots with permanent rights of occupancy is wrong is not barred by reason of the fact that the defendants had, in a previous suit more than six years of the institution of the suit for declaration, set up rights of permanent occupancy in the written statement as against the plaintiffs and to their knowledge, the cause of action based on the entry in Record-of-Rights being an independent one from the one based on such denial. 36 Mad. 383, *Rel. on.* (*Sundaram Chetty, J.*). SURYANARAYANA v. BULLAYYA. **101 I. C. 85=25 M.L.W. 367= A.I.R. 1927 Mad. 568=52 M.L.J. 328.**

——The right to sue for a declaratory decree is vested in the whole body of reversioners in existence at the time of alienation jointly and severally and time begins to run simultaneously against them all and no subsequent disability stops it. 22 All. 33 (F.B.), *Dissented*; 21 P.W.R. 1907; 22 P.R. 22 1907; 41 Mad. 659 (F.B.), *Foll.* (*Broadway and Jai Lal, JJ.*). CHIRAGH DIN v. ABDULLAH. **90 I.C. 1022=6 Lah. 405=26 P.L.R. 695= A.I.R. 1925 Lah. 654.**

——*Order refusing mutation.*

Where the Assistant Collector refused mutation on 26th November, 1912, and this order was reversed by the Collector on 3rd February, 1913, which in its turn was reversed by the Commissioner on 3rd May, 1913, and the plaintiffs thereupon brought a suit on 2nd April, 1919, for declaration of their title,

Held, that though the first denial by the defendants of plaintiffs title gave them a cause of action, the order passed by the Commissioner in the matter, which amounted to a fresh invasion of plaintiffs' right gave them a fresh cause of action. The suit being brought within six years of that date is within time. (*Scott-Smith, J.*). TORICHAND v. ALLAH BAKHSH. **65 I.C. 124=6 P.W.R. 1922= 33 P.L. R. 1922=A.I.R. 1922 Lah. 135.**

—Art. 120—Starting point—Decree in original Court.

——For a suit under Art. 120 the starting point of limitation is the date of the first decree and not the date of the appellate decree confirming the same. 46 Cal. 670, *Foll.* (*Phillips and Ramesam, JJ.*). N. PAKURAN v. K. KANDAN KUTTY. **70 I.C. 45=16 M.L.W. 285=1922 M.W.N. 561= 31 M.L.T. 169=A.I.R. 1923 Mad. 23.**

—Art. 120—Starting point—Fraud.

——In cases in which the relief is sought on the ground of fraud, misconduct, mistake, etc., it would appear that limitation is made to commence from the time when the fraud, misconduct or mistake becomes known to the plaintiff. Article 120 being an omnibus one, the general expression employed in Col. 3, is necessitated by a variety of suits not specifically provided for coming within its purview, in some of which there would be fraud, misconduct, or mistake as part of the cause of action, but in the rest that element would be absent. It would thus be in consonance with the scheme of the Act, dealing with suits on a cause of action consisting of fraud, misconduct, etc., if the right to sue should be deemed to accrue under Art. 120, from the time of the plaintiff's knowledge of the same even in respect of suits based on similar grounds coming under that article. 7 L.W. 280; 38 Mad. 67 and A.I.R. 1928 Mad. 897, *Rel. on*; 33 Mad. 31; 38 Mad. 1064, *Dist.* (*Wallace and*

LIMITATION ACT (1908), Art. 120—Fresh cause of action.

Sundaram Chetty, JJ.). M. BASAVAYYA *v.* MAJOTI BAPANNA RAO. **120 I. C. 880=30 M.L.W. 911= A.I.R. 1930 Mad. 173=58 M.L.J. 349.**

—Art. 120—Fresh cause of action.

——*Application for review.*

A petition in appeal of necessity re-opens in a Court of higher jurisdiction matter decided by a Court of lower jurisdiction. An application for review on the other hand does not of necessity, by the mere fact of its being filed, re-open questions settled between the parties by the same Court. The question whether an application for review will give a fresh starting point for limitation or not cannot be decided in the abstract but must depend on the facts of every case. If the application for review is not accepted and the Court refuses to re-open the matter no fresh starting point will be obtained by the applicant for the purposes of limitation. (*Dalal, A.J.C.*). RAJA BHAGWAN BAKHSHA SINGH *v.* MT. MAURAJI KUNWAR. **24 O. C. 280= 8 O. L.J. 399=A.I R. 1922 Oudh 148.**

——No doubt where once time has begun to run no subsequent disability or inability to sue stops it. 35 All. 227 (P.C.), *Foll.*; but where the claim in respect of which time has begun to run is satisfied. time ceases to run and on the annulment of the satisfaction a fresh cause of action arises and the statute begins to run afresh from the date of such annulment. 43 Mad. 845, *Foll.* (*Broadway and Abdul Qadir, JJ.*). KARTAR SINGH *v.* BHAGHAT SINGH. **64 I C. 454=2 Lah. 320= 114 P.L.R. 1921=A. I. R. 1921 Lah. 71**

—Art. 120—Starting point—Knowledge of facts.

——*Entry in records.*

Per *Mukerji and Ashworth, JJ.*—Where no fact has been alleged or proved, which establishes that previous to the filing of the application for partition the fact had been brought to the notice of the plaintiffs that there was a wrong entry in the khewhat, and that advantage of that wrong entry was likely to be taken by the defendants,

Held, that the right to sue on the alleged wrong entry in the khewat accrued to the plaintiffs on the filing of the application for partition and not earlier. (*Sulaiman, Mukerji and Ashworth, JJ.*). FAQIRA *v.* HARDEWA. **114 I.C. 177= 50 All. 559=9 L. R. A. Rev. 49= 26 A.L.J. 217=A.I.R. 1928 All. 172 (F.B.).**

——*Entry in records.*

The mere entry in the village papers would not of itself give the plaintiff a cause of action, and, this entry in the village papers made in the year 1901, not having been brought to the notice of the plaintiff until the month of January 1918, when the verification of the settlement entries was going on in the District, no right to sue can on these facts be deemed to have accrued to the plaintiff in the year 1309. (*Rafique and Lindsay, JJ.*). GOPAL DAS *v.* GANGA BEHARIJI. **66 I.C. 148= 20 A.L.J. 231=A.I.R. 1922 All. 114.**

—Art. 120—Starting point—Publication of Record-of-Rights.

——*Held*, that in respect of a suit filed under S. 111 B (1) (*d*) of the B. T. Act time begins to run from the date of the final publication of the Record-of-Rights and not from the date of the final publication of the certificate. (*Graham and Miller, JJ.*). JOGENDRA NATH JANA *v.* BAIDYA NATH DAS. **34 C.W.N. 621.**

——In a suit for declaration that an entry in the Record-of-Rights is wrong, limitation runs from the date of the final publication of the Record-of-Rights. 23 C. W. N. 883, *Rel. on.* (*Cuming and Page, JJ.*). ABDUL GAFUR *v.* ABDUL JABBAR. **97 I. C. 635=A.I.R. 1927 Cal. 30.**

——In a suit for declaration that a certain tenure held by defendants under plaintiffs is not permanently settled, limitation begins from the date of final publication of the Record-of-Rights and not from the date when the certificate of publication was signed 1 P. L. J. 73; 23 C. W. N. 883; 2 P. L. J. 124, *Ref.* (*Suhrawardy and Duval, JJ.*). PRODOT KUMAR TAGORE *v.* BAL GOBINDA DITCHBIT. **86 I.C. 6=41 C L.J. 31= A.I.R. 1925 Cal. 518.**

—Art. 120—Starting point—Sale in execution.

——For a suit by third party transferee of tenure under Ss. 12 and 13, Ben. Ten. Act, for restraining sale of tenure in execution of decrees not binding upon him, the limitation begins to run when the landlord applies for the sale of the tenure and not when the decree was obtained. (*Sir George Lowndes.*) JITENDRA NATH GHOSE *v.* MONMOHAN GHOSE. **A.I.R. 1930 P.C. 193 (P.C.).**

—Art. 120—Starting point—Setting up of title.

——The suit for a declaration that defendant was a sub-tenant and not a partner should be brought within 6 years from the time defendant sets up that position. (*Simpson, A. J. C.*). KHALIL *v.* MAHOMED ISMAIL. **74 I.C. 195=9 O.L.J. 540= A.I.R. 1923 Oudh 101.**

—Art. 120—Starting point—Suit for accounts.

——Where the cause of action arises before agent's death in a suit against his legal representatives, limitation has no fresh starting point after the agent's death—Articles 89 and 120 apply to such cases. (*Phillips, J.*). PARTHASARATHI APPA RAO *v.* TURLAPATI SUBBA RAO. **84 I.C. 276= 38 M.L.T. 84=1924 M.W.N. 517= A.I.R. 1924 Mad. 840=47 M.L.J. 483.**

—Art. 120—Trusts.

——*Created by will.*

A executed a will in 1887 which provided that income of certain two properties (a khothi and some land) should be given to *B* and his mother by way of allowance. It was further provided that in case the kothi was sold *B* and his mother would receive Rs. 40 in lieu of the income of the two properties. In 1908 there was an agreement between the beneficiaries and the then executor, the result of which was that the kothi could be sold and *B* and his mother were to receive Rs. 40 per mensem as their allowance. *B*'s mother died in 1919 and he brought the present suit for arrears of allowance,

Held, that taken as a whole *B*'s suit in substance and reality was based upon the trust created in his favour under the will of 1887 and therefore the suit did not fall under Art. 115. The case was governed by Art. 120 or Art. 123, and the suit was within time. Under the terms of the will *B* was entitled to sue for the whole amount for his own benefit after the death of the mother and not only for a moiety. (*Shadi Lal, C. J. and Agha Haidar, J.*). MT. ALI BEGAM *v.* ISMAIL HUSAIN. **30 P.L.R. 689= A.I.R. 1929 Lah. 834.**

——Suit by co-trustee against legal representatives of his co-trustee for recovery of trust property is governed by Art. 120. Section 10 does not apply to such a case. (*Kemp, J.*). JAMNADAS GORDAN DAS *v.* DAMODARDAS CHUNILAL. **103 I. C. 225= 29 Bom. L.R. 418=A.I.R. 1927 Bom. 424.**

——A suit to contest alienation by a Mahomedan Mutwalli and for possession must be brought within 6 years from the date of alienation. 8 I.C. 357.

LIMITATION ACT (1908), Art. 121 — Applicability.

Ref. (*Mullick and Ross, JJ.*). MAULAVI MUHAMMAD FATEMAL HAQ *v.* JAGAT BALLAV GHOSH.
74 I. C. 403=2 Pat. 391=4 P.L.T. 675=A. I. R. 1923 Pat. 475.

—Art. 121—Applicability.

——A suit by an auction-purchaser at a revenue sale under S. 80 of Assam Land Regulation to recover possession of the purchased property is governed not by Art. 121 but by Art. 142 or 144, and the fact that symbolical possession was obtained is a good defence so far as any defaulting proprietor was concerned if the suit is brought within 12 years from such possession. 44 Cal. 412, *Appl.* (*Rankin, C.J. and C. C. Ghose, J.*). BAIKUNTHA NATH DAS *v.* SHEIKH AZIDULLA. **115 I.C. 606=32 C.W.N. 778=A.I.R. 1928 Cal. 870.**

—Art. 123—Executor de son tort.

——A suit by an administrator of an intestate person against an executor *de son tort* is governed by Art. 123 and the latter is liable to account for mesne profits for a period of 12 years before suit. A.I.R. 1926 Mad. 681; A.I.R. 1922 Mad. 457 (F.B.); A.I.R. 1925 P.C. 105; A.I.R. 1916 P.C. 145 (P.C.) and 43 Bom. 845, *Rel. on.* (*Fforde and Tek Chand, JJ.*). P. ROBSON *v.* ADMR. GENL., PUNJAB. **30 P.L.R. 503=A. I. R. 1929 Lah. 753.**

——A Hindu died leaving a Will whereby his self-acquired properties were divided equally between his minor grandson, the plaintiff, and his own third son, the defendant. Testator's widow was appointed executrix by the Will. After the death of the testator, when the widow was alive, the defendant took up the management and continued to do so till after widow's death. Plaintiff after attaining majority filed a suit for account and mesne profits against defendant in 1922,

Held, that defendant was in the position of an executor *de son tort* after the death of the testator and Art. 123 applied. A.I.R. 1922 Mad. 457 (F.B.), *Rel. on.* (*Odgers, J.*). GOPALA CHETTY *v.* NARAYANASWAMI CHETTY. **95 I.C. 33=23 M.L.W. 528=A.I.R. 1926 Mad. 681.**

—Art. 123—Heirs of Mahomedan.

——A suit by one of the heirs of a Mahomedan owner to recover possession of his share is not covered by Art. 123 but must fall under Art. 144, limitation running from the date when the defendant's possession became adverse. A.I.R. 1928 All. 467 (F. B.), *Foll.*; A.I.R. 1921 Bom. 56, *Ref.*; A.I.R. 1924 Rang. 155, *Dist.* (*Mya Bu and Bagu-ley, JJ.*). MA BI *v.* MA KHATOON. **121 I.C. 785=7 Rang. 744=A. I. R. 1930 Rang. 72.**

——Plaintiff, Cutchi Khati daughter, sued her brothers for her share in the ancestral property. Defence raised adverse possession as a bar to the suit,

Held, that the case would be governed by Art. 144 and not by Art. 123. 43 Bom. 845, *Dist*; 16 Mad. 61 (F.B.); A.I.R. 1921 Sind 177 and A.I.R. 1928 Rang. 6, *Rel. on.* (*Aston, A.J.C.*). NIAMAT *v.* ABDUL RAHMAN. **A.I.R. 1930 Sind 193.**

——The word "distribution" has a peculiar meaning of distribution of an estate which has vested in an executor or administrator. Article 144 and not Art. 123 therefore applies to a suit to recover a share by a Mahomedan heir from a person in management of the property. A.I.R. 1921 Bom. 56, *Foll.*; A.I.R. 1925 P. C. 105, *Dist.* A.I.R. 1916 P. C. 145 and 43 Bom. 845, *Expl.* (*Patkar and Murphy, JJ.*). BAI JIVI *v.* BAI BIBANBOO. **118 I.C. 765=31 Bom. L.R. 199=A.I.R. 1929 Bom. 161.**

LIMITATION ACT (1908), Art. 123 — Starting point.

——Article 123 applies only when the suit is brought for a share of an estate which it is the legal obligation of the defendant to distribute. Where a Muhammadan dies intestate, his estate vests in his heirs as tenants in common and no one is charged by law with its distribution, and if a suit is brought by one of the heirs to recover his share, Art. 144 and not Art. 123 applies. 31 Mad. 511 and A.I.R. 1928 All. 467 (F.B.), *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). JANO *v.* NARSINGH DAS. **117 I.C. 803=11 Lah. 29=A.I.R. 1929 Lah. 649.**

——A suit by one of the heirs of a Mahomedan to recover possession of his share is not covered by Art. 123 but must fall under Art. 144, limitation running from the date when the defendant's possession became adverse. A.I.R. 1926 All. 748, *Reversed.* (*Sulaiman, Ag. C.J., Mukerji and Boys, JJ.*). RUSTAMI KHAN *v.* MT. JANKI. **111 I.C. 809=51 All. 101=26 A.L.J. 1051=A.I.R. 1928 All. 467 (F.B.).**

——Where the members of a Mahomedan family continue to live as tenants-in common without dividing the estate of a deceased ancestor, limitation will not run from the time of his death, and the article applicable for a suit for distributive share is Art. 144 and not Art. 123. 44 Bom. 942, *Foll.* (*Macleod, C.J. and Fawcett, J.*). NURDIN NAJBUDIN *v.* BU UMRAO. **59 I.C. 780=43 Bom. 519=A.I.R. 1921 Bom. 56.**

—Art. 123—Scope.

——Article 123 applies to every suit in which the plaintiff claims an undistributed share in the estate of a deceased person and not only to suits against persons representing the estate of the deceased such as executors or administrators. 44 Cal. 379 (P.C.) and A.I.R. 1922 Mad. 457 (F.B.), *Foll.*; 19 All. 169 and 37 All. 233, *Not foll.* (*Daniels, J.*). MT. JANKI *v.* RUSTAM KHAN. **97 I.C. 139=A. I. R. 1926 All. 748.**

——Article 123 applies only to cases in which the property sought to be recovered is not only legacy but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is executor of the Will or otherwise represents the estate of testator. (*Greaves and Mukerji, JJ.*). SOURAB BIBI *v.* ABBAS ALI BISWAS. **91 I.C. 725=A.I.R. 1926 Cal. 480.**

—Art. 123—Starting point.

——A suit by husband to recover deceased wife's share in her father's property is barred if brought 12 years after the death of her mother. (*Otter, J.*). MAUNG KYAW ZA *v.* U DE BI. **101 I.C. 634=5 Rang. 125=6 Bur. L. J. 55=A.I.R. 1927 Rang. 143.**

——"*Payable.*"

A similar interpretation must be given to the words "payable" and "deliverable" as used in Art. 123 and a share in the property of an intestate would not be deliverable until the administrator, to whom letters of administration had been granted had in his hands the share to be delivered and, similarly, a legacy or share in a legacy does not become payable until the executor or other person liable to pay it has in his hands money with which it could be paid.

A Hindu widow claimed certain property as the heir of her predeceased natural born son. She bequeathed by will, the income of the property before her death. Her title was disputed by another lady who claimed to be the adoptive mother of the deceased son. The validity of the

LIMITATION ACT (1908), Art. 123 — Starting point.

adoption was challenged by the natural mother and the matter was before the Courts. The estate was under the management of the Court of Wards, and later, of Court Receivers,

Held, that no one could have had in his possession or control any fund representing the income of the estate, which the natural mother (the testatrix) had a right to enjoy for her own use but had not received until it had been finally decided by the Courts that the adoption of the propositus by the rival claimant was invalid, and that therefore, for suits to obtain payment of the legacies under the will, time began to run only from the date of the decision of the Privy Council. (*Sir John Edge.*) APPA RAO *v.* PARTHASARATHY. **87 I.C. 324= 52 I.A 214=1925 M.W.N. 441= 3 Pat.L.R. 208=29 C.W.N. 989=23 A.L.J. 261= 6 L.R.P.C. 82=48 Mad. 312=27 Bom. L.R. 823= A.I.R. 1925 P.C. 105=48 M.L.J. 627 (P.C.).**

———*Burmese Buddhists—Claim for share by sons of first marriage on death of step-mother—Starting point is the date of death of step-mother.*

On the death of his father an *orasa* son is entitled to claim ¼ of the property. But if he does not exercise that right and his mother does not die till more than twelve years after the death of his father, he is not barred by the Law of Limitation from claiming a share of inheritance on the death of his mother. Similarly the failure of the plaintiffs to exercise the right to partition on the death of their father, does not debar them from claiming an entirely separate right on the death of their step-mother who re-married their father and had also children of her first marriage. (*Brown, A.J.C.*). MAUNG LU GALE *v.* MAUNG LU PO. **77 I.C. 53=4 U.B.R. 140= 1 Bur. L.J. 267=A.I.R. 1923 Rang. 110.**

———"*Payable.*"

V, mother of *N*, after his death brought a suit for possession of his property. Pending the suit she died in 1899, but the suit was continued by defendants. By her will she had bequeathed her certain legacies which were to be paid out of the accumulation of the estate. The property was in the possession of a Court of Wards and the income was accumulating. During the pendency of the suit the accumulated income was in 1905 permitted by the Court to be divided among defendants and *P*, who claimed adversely to *F*. They all undertook that the money would be brought in if the Court so ordered. The suit was decreed in favour of *V*, in 1913. Defendants by the decree alone became entitled to the estate. The one-third of the income which had been handed over to *P*, was therefore ordered to be refunded to defendants in 1915 and was refunded in 1917. The legatees within 3 years of this brought a suit against defendants 3 years of this for the payment of legacies, and the defendants contended that the suit was time-barred as it was brought after more than 12 years from 1905.

Held, the defendants did not receive any money which could be considered as available for the legacies until 1915 and, further, as regards that part which they received from *P* and which was to satisfy these claims, they did not receive it until 1917; therefore, time under the statutes of limitation does not begin to run until there are available assets.

Article 123 applies to suits for legacies against any person rightly or wrongly in possession of the estate under such circumstances that he is bound

LIMITATION ACT (1908), Art. 123 — Suit by co-heirs.

to deal with it as the estate of the deceased, Article 62 and Art. 120 are not applicable to the case. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*). ZAMINDAR OF BHADRACHALAM *v.* VENKATADRI. **70 I. C. 689= 46 Mad. 190=16 M L W. 369= 1922 M.W.N. 532=31 M.L.T. 221= A.I.R. 1922 Mad. 457=43 M.L.J. 486.**

—Art. 123—Suit against co-heirs.

———Article 123 applies to a case of a claim to a share against co-heirs in possession of an estate when there was intestacy. But an exception should be made in respect of cases where the whole body of the heirs agree to enjoy jointly the property left by the deceased, without effecting a partition. In such cases Art. 142 or 144 would apply.

There is nothing to prevent the heirs of Karen Christians from taking possession of the estate and agreeing to enjoy it in common. Their title becomes complete when they take possession of the property, and, when thereafter any of them are excluded from enjoyment, the cause of action arises on such exclusion and the article applicable is Art. 142. (*Heald and Chari, JJ.*). MA NAU THU *v.* ME SHWE MA. **88 I.C. 609=4 Bur. L.J. 76= A.I.R. 1925 Rang. 233.**

———The appropriate article for suits against co-heirs for a share the corpus of an inheritance is 123. (*Pratt, J.*). MA TOK *v.* MA YIN. **72 I.C. 489=3 Rang. 77=A.I.R. 1925 Rang. 228.**

———The appropriate article for suits, instituted against co-heirs for a share in the corpus of an inheritance is Art. 123. As Burmese Buddhists are not permitted to make wills, the only portion of Art. 123 which can apply to suits relating to their estates is the provision applicable to the distributive share of the property of an intestate. 6 L.B.R. 170, *Foll.*; 22 Bom.L.R. 1429, *Diss.* (*Heald and Lentaigne, JJ.*). MAUNG PO KIN *v.* MAUNG SHWE BYA. **76 I. C. 855=1 Rang. 405= A.I.R. 1924 Rang. 155.**

—Art 123—Suit against co-legatee.

———One died in 1910 leaving the whole of his property to his two sons *G* and *B* by a will. The two legatees lived at peace with each other until recently and in the year 1919, *G* brought a suit against his elder brother *B*, for his share in the estate, which he said *B* had appropriated in its entirety.

Held, that Art. 123 applied and that the suit was in time. A.I.R. 1922 Mad. 457. *Ref.* (*Harrison and Zafar Ali, JJ.*). GURUBAKSH SINGH *v.* BHAGWAN SINGH. **75 I.C. 934=A.I.R. 1924 Lah. 561.**

—Art. 123—Suit by co-heirs.

———*Suit by co-heirs for a share in the corpus of an inheritance is governed by Art.* 123—*If property is held by one on behalf of all article applicable is* 142 *or* 144.

The appropriate article for suits instituted by co-heirs for a share in the corpus of an inheritance is Art. 123, but if it can be shown that whoever holds the property is holding with the consent, express or implied, of all the heirs on behalf of them all, then Art. 142 or 144 would apply. A.I.R. 1924 Rang. 155; A.I.R. 1916 P.C. 145 and A.I.R. 1925 Rang. 228, *Foll.* (*Brown, J.*). MAUNG SHWE ON *v.* MAUNG TOK PYU. **106 I. C. 828= 5 Rang. 582=A.I.R. 1928 Rang. 6.**

———Where a distributive share in the estate of a deceased is claimed, whether against an Administrator or a co-heir, or a person merely in possession

LIMITATION ACT (1908), Art. 123 — Trust created by will.

the article applicable is Art. 123. Where co-heirs agree to enjoy the property left by the deceased jointly without effecting a partition, Art. 142 or Art. 144 of the Limitation Act will apply. A.I.R. 1924 Rang. 155 and A.I.R. 1925 Rang. 233, *Foll.* (*Heald and Chari, JJ.*). MG. SUN SHIN *v.* MG. MAUNG. **95 I. C. 514=5 Bur. L. J. 4= A.I.R. 1926 Rang. 95.**

—Art. 123—Trust created by will.

——Suit based on trust created by will falls under Art. 120 or Art. 123 and not under Limitation Act, Art. 115. (*Shadi Lal, C. J. and Agha Haidar, J.*). MT. ALI BEGAM *v.* ISMAIL HUSSAIN. **30 P.L.R. 689=A.I.R. 1929 Lah. 834.**

—Art. 124—Applicability.

——The nature of the suit intended to be covered by Art. 124 must be a suit filed by a plaintiff who claims the office from a person who at that time holds the office himself. Where the plaintiff has not alleged that the office is now being held adversely to him by any other person, the suit is only against the trustee of the Devasthanam for the recovery of the emoluments. incidentally it may be for a declaration that his title to the office was denied. Article 124, therefore does not apply. (*Srinivasa Iyengar and Curgenven, JJ.*). THATHACHARIAR *v.* SINGARACHARIAR. **109 I C. 771=A.I.R. 1928 Mad. 377.**

—Art. 124—Hereditary office, what is.

——*Office claimed for first time.*

Where the plaintiff is not a descendant of any of the former holders of the office of Karnam before the villages were re-grouped and is seeking the office for the first time, so to speak, not on the ground of heredity the suit is not one for seeking possession of an hereditary office within the meaning of the Explanation to Art. 124.

The fact that the office will or may become hereditary in the hands of the holder if and when appointed is not material. (*Odgers, J.*). (KARNAM POODI) MUNISWAMI PILLAI *v.* SECY. OF STATE. **99 I.C. 634=A.I.R. 1927 Mad. 148=51 M.L.J. 678.**

——*Succession by nomination of successor is not hereditary.*

Where succession to a religious office is by nomination by the holder in office of his successor it is not a hereditary succession by Art. 124. Hereditary succession is succession by the heir to the deceased under the law the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual. Therefore the only article applicable to cases of succession after nomination is Art. 120, Art. 144 also is not applicable as the claim to possession is also barred if the claim to office is barred under Art. 120. (*Krishnan and Venkatasubba Rao, JJ.*). PARAMANAND DAS GOSWAMI *v.* RADHAKRISHNA DAS. **97 I.C. 437=A.I.R. 1926 Mad. 1012= 51 M.L.J. 258.**

——An hereditary office subject to a temporary incumbency by a person not in the direct line of succession is still an hereditary office. (*Phillips and Ramesam, JJ.*). NARAYANA MUDALIAR *v.* NAGAPPA MUDALIAR. **93 I.C. 923= 22 M.L.W. 870=A.I.R. 1926 Mad. 245.**

—Art. 125—Alienation.

——*Bombay Bhagdari Act (V of 1862), S. 3—Mortgagor selling moiety to mortgagee and other moiety to wife for alleged consideration—Subsequent transfer of her moiety by wife to mortgagee.*

Where a mortgagor sells in reality a moiety of the properties to the mortgagees for an amount due on the mortgage, and the other moiety is ostensibly sold in the name of the wife for an alleged consideration, the transaction amounts to a sale of an unrecognised portion of a bhag, and if subsequently after the death of her husband, the wife sells her moiety to the mortgagee the subsequent deed of sale cannot be upheld as in effect causing a past dismembered bhag to be re-united, and a suit by reversioner to set aside the above alienation is not governed by Arts. 125, 126 and 141. A.I.R. 1930 Bom. 121; 51 I.C. 947; 24 W.R. 86 (*n*); 13 Mad. 390 (P.C.); A.I.R. 1921 Mad. 234 and 57 I.C. 553, *Ref.* (*Marten, C.J. and Patkar, J.*). SHANKARBHAI DAJIBHAI *v.* BAI SHIV. **A.I.R. 1930 Bom. 545.**

——A proprietor of a house which was mortgaged by his predecessor inherited the mortgagee's right also. After his death, his widow allowed the property to be redeemed by persons who were not reversioners,

Held, that the transaction effected by the widow must be treated as an alienation for the purpose of Art. 125. (*Shadi Lal, C.J. and Johnstone, J.*). KANSHI RAM *v.* MT. CHIT KUAR. **111 I.C. 203= 29 P.L.R. 584=10 Lah. 237=A.I.R. 1928 Lah. 932.**

—Art. 125—Collusive mortgage.

——A suit by a reversioner on the allegation that the widow executed a sham mortgage to defeat the reversioner's rights and got the property sold in a collusive suit is governed by Art. 125 of the Limitation Act and the reversioner need not sue to set aside the mortgage. (*Spencer, Offg. C.J.*). POOCHAMMAL *v.* SUNDARAMMAL. **80 I.C. 554= 19 M.L.W. 564=34 M.L.T. 281= 1924 M.W.N. 322=A.I.R. 1924 Mad. 617.**

—Art. 125—House.

——A widow executed a gift of land and a house belonging to her deceased husband to one of her daughters. Plaintiff, the other daughter, brought the present suit for a declaration that the gift should not affect her reversionary rights and was given a decree both as regards the house and the land. The Appellate Court upheld the decree of the First Court in regard to the land but held that Art. 125 did not apply as regards the house,

Held, Art. 125 applies to the suit so far as it relates to the house also. (*Scott-Smith and Abdul Raoof, JJ.*). MT. AMIR BEGUM *v.* MT. HUSSAIN BIBI. **2 Lah. 5=A.I.R. 1922 Lah. 98.**

—Art. 125—Joint tenant.

——A suit by a purchaser from a female heir against a prior purchaser from her co-tenant, to recover possession of the property on the ground that the sale being without legal necessity was binding during her life-time only, is barred if not brought within twelve years of the death of the latter. (*Mookerjee and Cuming, JJ.*). JAGABANDHU SAH *v.* HARIS CHANDRA SIL. **76 I.C. 915= 36 C.L.J. 92=A.I.R. 1923 Cal. 459.**

—Art. 125—Mortgage.

——*Starting point.*

For the purpose of Art. 125, land must be taken to include interest in land. Suits referred to in Art. 125 also include suits in respect of mortgages. A mere decree for sale of the mortgaged property cannot be an alienation. In the absence of fraud, limitation against a suit under Art. 125, commences from the date of the alienation and not from the date when the plaintiffs came to know of it. If a

LIMITATION ACT (1908), Art. 125 — Remote reversioner.

suit for declaration as is referred to in Art. 125 in respect of a mortgage is barred, the Court cannot grant a declaration in respect of the decree obtained on the mortgage. (*Kotval, A. J. C.*). TUKABAI *v.* LALASAO. **63 I.C. 417=18 N.L.R. 42= A.I.R. 1922 Nag. 197.**

—Art. 125—Remote reversioner.

———Article 125 does not apply to a suit by a remoter reversioner than the immediately next reversioner. (*Neave, A. J. C.*). ANANAI DIN *v.* RAM SAHAI. **83 I. C. 1055=27 O. C. 173= 11 O. L. J. 236=A.I.R. 1924 Oudh 381.**

—Art. 125—Scope.

———Article 125 applies to every case where the female making the alienation is a Hindu or a Mahomedan and the immediate reversioners, who bring the suit, also profess the same faith. It is not necessary that the female making the alienation should be actually governed by the Hindu or the Mahomedan Law. (*Shadi Lal, C. J. and Agha Haidar, J.*). MT. NANDAN *v.* WAZIRA. **100 I. C. 84=8 Lah. 215=28 P.L.R. 341= A.I.R. 1927 Lah. 198.**

—Art. 125—Starting point.

———The reversioner of a Hindu widow sued for a declaration that a mortgage by the widow and a Court sale in execution of a decree on the mortgage were not operative after the death of the widow so as to be binding on the reversioner,

Held, that limitation ran from the date of the mortgage and not that of the Court sale,

Held, also that to say that the suit is barred or not according as the prayer is for a declaration that the mortgage or sale is not binding is to allow a quibble with words.

Obiter.—But in some cases the widow may do something in the course of the suit itself, whereby it may be possible to say the decree only amounted to an alienation and not the previous mortgage. (*Ramesam and Odgers, JJ.*). KAMAKSHI AMMAL *v.* POOCHAMMAL. **88 I. C. 578=21 M.L.W. 277= A.I.R. 1925 Mad. 567.**

———*Gift made in pursuance of will.*

A suit by the reversioner for a declaration that the gift made by the widow is not binding on him is not barred, merely because he does not sue to have an alleged will declared to be void and the time runs from the date of the gift and not of the will, according to directions in which, it is alleged the gift is made. (*Broadway and Brasher, JJ.*). CHHAJJU MAL *v.* KUNDAL MAL. **70 I.C. 833= A.I.R. 1923 Lah. 53.**

—Art. 125—Successive transfers.

———Three Hindu sisters had inherited the property of their father as daughters; they sold the property to one of themselves on the footing that what was conveyed to the vendee was the absolute right of the vendors. The vendee subsequently sold the property to a stranger. A reversioner of the deceased male owner brought a suit for a declaration that the last sale was not binding on him,

Held, that Art. 125 applied and that the suit if brought more than 12 years after the first sale, was barred by limitation. (*Venkatasubba Rao, J.*). VENKATASUBBAYYA *v.* SUBRAMANIAM. **86 I. C. 1016=A.I.R. 1925 Mad. 941.**

—Art. 126—'Alienation.'

———"Alienation" in Art. 126 includes a mortgage as well as a sale. (*Daniels and Lyle, A. J. Cs.*). CHOKHEN SINGH *v.* HARDEO SINGH. **64 I. C. 757= 8 O L.J. 667=24 O.C. 330=A.I.R. 1921 Oudh 196.**

LIMITATION ACT (1908), Art. 128—Scope.

—Art. 126—Alienee not in possession.

———Article 126 contemplates the case of an alienation where the alienee has taken possession of the property, because limitation only runs from the date when the alienee so takes possession. It is only when such possession has been taken that any cause of action accrues to the plaintiff, so far as Art. 126 is concerned. Son's knowledge of alienation by his father ordinarily arises when he sees the alienee in possession; in case where the alienee never gets possession, no limitation can arise under Art. 126; and in such cases the only right of the son will be to obtain a declaration that the deed is invalid and the limitation prescribed by such a suit is that of six years under Art. 120. A.I.R. 1925 P.C. 33; A.I.R. 1927 All. 702 and 41 Mad. 650, *Rel. on.* (*Fawcett, Ag. C. J. and Mirza, J.*). CHINKAMAN *v.* BHAGVAN. **113 I.C. 378= 30 Bom. L.R. 1035=A.I.R. 1928 Bom. 383.**

———Article 126 is based upon the principle that a son's knowledge of alienation by his father ordinarily arises when he sees the alienee in possession. In cases where the alienee never gets possession no limitation can arise under Art. 126. In such cases, the right of the son will amount merely to obtaining a declaration that the deed is invalid. The limitation prescribed for such a suit is under Art. 120. 41 Mad. 650, *Rel. on.* (*Ashworth and Iqbal Ahmad, JJ.*). BINDESHI UPADHYA *v.* SITAL UPADHYA. **106 I. C. 377=25 A.L.J. 734= A.I.R. 1927 All. 702.**

—Art. 126—Annulment of sale.

———Where the plaintiff sued for the annulment of the sale by his father and in fact obtained a decree for annulment, Art. 126 applies, and the period of limitation is 12 years. The fact that the plaintiff was not given a decree for possession as well as for annulment of the sale does not make Art. 126 inapplicable. (*Martineau and Brasher, JJ.*). GOKHA RAM *v.* SHAM LAL. **77 I.C. 174= 3 Lah. 426=A.I.R. 1923 Lah. 268.**

—Art. 126—Applicability.

———Article 126 applies also to a suit when the alienation was made by the father in conjunction with an uncle. (*King, J.*). DEONANDAN SINGH *v.* MISSAFIR SINGH. **97 I.C. 591=A.I.R. 1927 All. 54.**

—Art. 126—Cause of action.

———*Obiter*, When cause of action for a suit of the nature contemplated by Art. 126, arises in favour of certain persons, the fact that some of them are minors does not affect the question of limitation and the minors can only take advantage of the same cause of action. (*Wazir Hasan, A.J.C.*). MT. KANIZ FIZZA BIBI *v.* DATADIEN. **90 I.C. 184= 2 O.W.N. 650=A. I. R. 1925 Oudh 678.**

—Art. 126—Purchase by usufructuary mortgage.

———Where an usufructuary mortgagee of joint family property, subsequently purchases the same he takes possession as full proprietor from the date of the sale and he no longer remains a mortgagee in possession. A suit, therefore, under Art. 126 must be instituted within 12 years from the date of sale. 32 Cal. 296 (P.C.), *Dist.* (*Stuart, C.J. and Nanavutty, J.*). KAILASH SINGH *v.* BALBHADDAR SINGH. **112 I.C. 151 (Oudh).**

—Art. 126—Scope.

———The language of Art. 91 is almost identical with the description of a suit contemplated by Art. 126 and though the objectives of the suits specified in these Articles are different, the nature of the relief is the same. (*Wazir Hasan, A.J.C.*). MT. KANIZ FIZZA BIBI *v.* DATADIN. **90 I.C. 184= 2 O.W.N. 650=A.I.R. 1925 Oudh 678.**

LIMITATION ACT (1908), Art. 126—Scope.

——Article 126 applies being a special article to a suit by son to set aside alienation by father. On the expiry of 12 years from the date on which the alienee took possession of the property, the right of suit becomes extinguished 64 I.C. 757, *Foll.* (*Mukerji, J.*). SANKAT NARAYAN *v.* RAM BHAROS. **79 I.C. 1010=5 L.R.A. Civ. 423= A. I. R. 1924 All. 677.**

—Art. 126—Separate property.

——Where the grandfather devised property to his son and grandson not jointly but exclusively to each separately, the property acquired by the son and the grandson is not ancestral property and an alienation by the son of the grandson's property is not governed by Art. 126. (*Wallace and Thiruvenkatachariar, JJ.*). RAMASWAMI *v.* GOVINDAMMAL. **118 I.C. 481=29 M.L.W. 169= 1929 M.W.N. 124=A.I.R. 1929 Mad. 313= 56 M.L.J. 332.**

——Where property which belongs to a minor exclusively is sold by his father as guardian and the minor after attaining majority sues to recover the property, Art. 44 applies to the suit. The mere fact that the father joins in the execution of the deed in his personal capacity and also his brother does likewise in order to remove the apprehensions of the vendee does not take away the case from Art. 44. (*Napier and Krishnan, JJ.*). ARUMUGAM PILLAI *v.* PANAYADIAN AMBALAM. **62 I.C. 630= 13 M. L.W. 416=1921 M.W.N. 255= A.I.R. 1921 Mad. 425=40 M.L.J. 475.**

—Art. 126—Son born after transfer.

——A son born after an alienation gets no new cause of action on his birth and no rights under S. 6. Nor can he confer any benefit under S. 7 to his elder brothers. (*Dalal and Wazir Hasan, A.J.Cs.*). RANODIP SINGH *v.* RAMESHAR PRASAD. **66 I. C. 938=9 O. L. J. 43=A.I.R. 1923 Oudh 52.**

——Where, in case of an alienation within Art. 126, some of the sons of a Hindu alienor were in existence at the time of the alienation and some were born subsequently, the after born sons do not acquire a fresh cause of action on their birth to challenge the alienation. (*Daniels and Lyle, A.J. Cs.*). CHOKHEY SINGH *v.* HURDEO SINGH. **64 I.C. 757=24 O.C. 330=8 O.L.J. 667= A.I.R. 1921 Oudh 196.**

—Art. 126—Starting point.

——Ouster from the actual enjoyment of the property is the starting point for limitation under Art. 126. (*Daniels, A. J. C.*). OUDH BEHARI LAL *v.* DAL SINGH. **79 I.C. 666=10 O.L.J. 404= A.I.R. 1924 Oudh 205.**

—Art. 126—Suit for possession and not redemption.

——A redemption suit is one in which the plaintiff, accepting the position of mortgagor or of a person interested in the equity of redemption, asks for possession in accordance with the terms of the mortgage on payment of the amount due under it. But where the plaintiffs the sons of a Hindu do not admit the validity of the mortgage and ask for possession, not in accordance with but contrary to its terms, the suit is not a redemption suit but one of a kind based on the rule of Hindu law that the manager of a joint family is not entitled to alienate joint family property except for certain necessary purposes, and if he does so his act is not binding on the co-parceners whose interests are affected. (*Daniels and Lyle, A. J. Cs.*). CHOKHEY SINGH *v.* HARDEO SINGH. **64 I. C. 757= 24 O.C. 330=8 O.L.J. 667= A.I.R. 1921 Oudh 196.**

LIMITATION ACT (1908), Art. 127—Evidence of exclusion.

—Art. 126—Suit for redemption.

——A suit for redemption by the surviving members of a joint Hindu family is not one to set aside an alienation within Art. 126, its object being to obtain relief under the alienation and not in spite of it. The allegation that a term embodied in the deed of mortgage was *ultra vires* of the mortgagor,—the manager of the joint family—will not change the character of the suit. (*Wazir Hasan, A. J. C.*). MT. KANIZ FIZZA BIBI *v.* DATADIN. **90 I.C. 184=2 O.W.N. 650= A.I.R. 1925 Oudh 678.**

—Art. 127—'Exclusion.'

——There is no definition of the word "exclusion," in the Limitation Act and the question whether a person has been excluded from joint family, must depend upon the facts of the particular case. An intention to exclude is an essential element. It is necessary therefore, for the Court to be satisfied that there was an intention on the part of those in control and possession of the joint family property to exclude the person and that exclusion was to his knowledge.

Member of joint family going to live with his maternal uncle voluntarily with consent of eldest male member—Mere fact that joint family did not subscribe towards the maintenance, education or marriage held not sufficient to prove intention to exclude. (*Sir Lancelot Sanderson.*) RADHOBA BALOBA VAGHA *v.* ABURAO BHAGWANT RAO. **118 I.C. 1=33 C.W.N. 1006= 31 Bom. L.R. 1030=50 C.L.J. 135= 1929 A.L.J. 1031=30 M.L.W. 514= 6 O. W. N. 786=56 I.A. 310=53 Bom. 699= 1929 M.W.N. 852=A.I.R. 1929 P.C. 231= 57 M.L.J. 287 (P.C.).**

—Art. 127—Evidence of exclusion.

——Mutation proceeding is not a judicial proceeding and does not decide title and is no evidence of exclusion from property. (*Lord Atkinson.*) HIRNAM SINGH *v.* RUDRA PARTAB NARAIN SINGH. **98 I.C. 1013=1 Luck. 389=29 O.C. 316= 53 I.A. 220=48 All. 529=25 A.L.J. 25= 28 Bom. L. R. 1409=44 C.L.J. 330= 25 M.L.W. 1=3 O.W.N. 623=1926 M.W.N. 716= 13 M.L.T. 81=A. I.R. 1926 P.C. 100= 51 M.L.J. 836 (P.C.).**

——Where the members have been, for convenience of management, living at different places and managing the property at each particular place, there is no exclusion or ouster of one member, so as to disentitle him to his share of the other portions, however long their enjoyment by others. A suit for his share is governed by Art. 127 of the Limitation Act. (*Broadway and Zafar Ali, JJ.*). BHAGWAN DAS *v.* MT. PARBATI. **72 I. C. 742= 29 P.W.R. 1923=A. I. R. 1923 Lah. 569.**

——If exclusion means mere physical exclusion the receipt of maintenance and holding of land out of the estate must prevent its being held that there was exclusion. But in "exclusion" under Art. 127 of the Act, just as in "possession" there is a mental as well as a physical element. Legal or juridical exclusion from an estate by one co-owner of his co-owners is consistent with their physical admission to it. For such mere physical admission to put an end to exclusion it must be possible to infer that it was accompanied by an intention to abandon the position of a right to exclude. No doubt such intention will be inferred where no legal title to exclude is proved to have been set up and maintained, because there is al-

LIMITATION ACT (1908), Art. 127 — Mahomedans.

ways a presumption in favour of rightful entry and retention. Such presumption is, however, rebuttable. No presumption against indivisibility of possession or title can arise by reason of joint living. (*Ashworth, J.C. and Simpson, A.J.C.*). THAKUR RUDRA PRATAP NARAYAN SINGH *v.* THAKUR NIRMANI PRASAD SINGH. **74 I.C. 225= 9 O.L.J. 552= A. I. R. 1923 Oudh 61.**

—Art. 127—Mahomedans.

———Article 127 does not apply to undivided property of a family governed by Mahomedan Law and not proved to have adopted as a custom the Hindu Law of the joint family. 2 S. D. 582, *Diss. from*; 41 Bom. 588 (F.B.); 13 All. 282 (F.B.); 16 Mad. 61 (F.B.); 22 Cal. 954, *Foll.*; 38 Bom. 449; (1885) P.J. 170; 14 Bom. 70; 16 Bom. 186 and 33 Bom. 719, *Ref.* (*Kincaid, J.C. and Raymond, A.J.C.*). MT. BHAGHARI *v.* MT. KHATMAL.

80 I.C. 118=16 S.L.R. 25=A.I.R. 1921 Sind 177.

—Art. 127—Minor co-parcener.

———A suit by a member to enforce a right to share in joint family property is not barred if brought within 12 years of his attaining majority. At the most it can be held that he became aware of his exclusion from the date of his attaining majority. (*Banerji and King, JJ.*). NIRANJAN PRASAD *v.* BEHARI LAL. **116 I. C. 849= 1929 A.L.J. 324=A.I.R. 1929 All. 302.**

—Art. 127—Sale by co-parcener.

———Where some of the co-parceners sell the joint family property and put the vendees in possession and the surviving co-parcener brings a suit for possession of the alienated property, Art. 144 and not 127 applies. It is not necessary under Art. 144 to prove the exact date when plaintiff became aware that he had been excluded from a right to share in the joint property. The date of limitation beginning to run against the plaintiff must be taken as starting from the date when the vendors ceased to cultivate the property that they had alienated. (*Spencer and Ramesam, JJ.*). LINGA MUNISAMI REDDI *v.* P. S. GOVINDASWAMI NAICKEN. **70 I. C. 317=15 M.L.W. 294= A.I.R. 1922 Mad. 369=42 M.L.J. 364.**

—Art. 127—Scope.

———Article 127 presupposes the existence of a joint family and the exclusion of a co-parcener from his joint family property. 15 O.C. 111 and 24 Cal. 309, *Foll.* (*Sulaiman and Lindsay, JJ.*). HURKESH SINGH *v.* MT. HARDEVI. **102 I.C. 66= 49 All. 763=25 A. L. J. 413= A.I.R. 1927 All. 454.**

—Art. 127—Starting point.

———Although time cannot run against a claim to partition joint family estate unless there has been definite exclusion, yet the fact that when a co-parcener's right to mortgage was challenged 14 years prior to suit and he took no steps, strongly suggests that at that time when evidence might have been more readily available he had no great faith in the value of his claim. (*Lord Buckmaster.*) ANNAMALAI CHETTY *v.* SUBRAMANIAN CHETTY. **113 I.C. 897=49 C.L.J. 93=1929 M.W.N. 39= 29 M.L.W. 91=6 O.W.N. 104=1929 A.L.J. 9= 31 Bom. L. R. 280=33 C. W. N. 435= 10 P.L.T. 283=A.I.R. 1929 P.C. 1= 56 M.L.J. 435 (P.C.).**

—Art. 127—Suit after partition.

———In 1910 *A* and his four sons made a partition of joint family property. In 1911 and 1913, *A* made two gifts of certain of his properties. A suit was filed in 1922 by the sons of *A* for a declaration that the properties allotted to *A* at the partition should go after his lifetime to his sons and that the deeds of gift were invalid,

Held, as the property was not joint family property, Art. 120, Limitation Act, applied instead of Art. 127. A.I.R. 1924 P.C. 150; A.I.R. 1916 P.C. 104 and 15 Bom. 135, *Rel. on.*; 13 All. 282; 23 Bom. 137 (F.B.); 41 Bom. 588; A.I.R. 1922 Mad. 150 (F.B.); 43 Mad. 288 and A.I.R. 1924 Bom. 31, *Ref.* (*Patkar and Wild, JJ.*). KRISHNAJI ANNAJEE BULTE *v.* ANNAJEE DHONDAJEE BULTE. **124 I.C 773=54 Bom. 4= 31 Bom.L.R. 1240=A.I.R. 1930 Bom. 61.**

LIMITATION ACT (1908), Art. 128—Agreement.

———*Onus.*

In a suit by a Hindu for a declaration of his title to a one half share in certain property, it was common ground between the parties that there was no joint family on the date of the suit. It was also admitted by both parties that for the last eight or nine years they had been living and messing separately. According to the plaintiff every joint family property had been divided between them except the property in dispute. Bar of limitation was pleaded in defence.

Held, that the onus lay on the plaintiff to prove the point of time at which the status of the joint family broke and that the alleged partition by which his one half-share to the property was determined did take place within twelve years immediately preceding the institution of the suit. A.I.R. 1925 P. C. 132 and A.I.R. 1926 All. 453, *Expl.* and *Rel. on.* (*Wazir Hasan and Raza, JJ.*). SARJOO PARSHAD *v.* DEO DAT LAL. **105 I.C. 410=4 O.W.N. 958=A.I.R. 1927 Oudh 499.**

———Where certain money bonds remained joint property even after the partition in a Hindu joint family and one of them was realised by the defendants who were some of the separated members, five years before the plaintiffs, the other members filed a suit for their share of the money realised,

Held, that Art. 62 and not Art. 127 applied as the latter does not apply to a family which has separated prior to the suit and that the suit was barred by limitation. (*Kanhaiya Lal, J.*). BHAGWAN DAS *v.* SUKHDEO KORIE. **75 I.C. 953= A.I.R. 1924 All. 812.**

———A suit for the recovery of money realised by one member of the family to the exclusion of another is not governed after separation or partition by Art. 127. The realization in this case had been made while the family was till joint. The suit ought therefore to have been brought within three years from the date of separation or partition. (*Kanhaiya Lal, J.*). JAGAT SINGH *v.* ACHAIBAR SINGH. **77 I.C. 697=26 O.C. 191= A.I.R. 1922 Oudh 15.**

—Art. 127—Tenants-in-common.

———A suit for partition by the heir of one tenant-in-common against the heir of the other tenant-in-common is governed by Art. 144 and not by Art. 127 of the Limitation Act. If on the death of one of tenants-in-common his heir obtains exclusive possession of the whole property asserting an absolute and exclusive title in the deceased, the possession of the heir is adverse to surviving tenants-in-common. (*Wallis, C. J. and Sadasiva Aiyar, J.*). RAJA KEESARA VENKATAPPAYYA *v.* RAJA NAYANI VENKATA RANGA RAO. **59 I. C. 978=43 Mad. 288=38 M.L.J. 140.**

—Art. 128—Agreement.

———A suit for arrears of maintenance by a widow against her husband's brother, fixed by a mutual agreement is allowed only for the arrears of three

LIMITATION ACT (1908), Art. 128—Scope.

years. (*Prideaux, A. J. C.*). BHONAJEE *v.* MT. SARASWATI. 75 I.C. 833=A.I.R. 1924 Nag. 176.

—Art. 128—Scope.

——In a joint family, a widow is entitled to claim arrears of maintenance even for 8 years and the Court will not disallow the claim, unless abandonment or waiver is expressed or can be implied from the circumstances. (*Phillips, Offg, C.J. and Reilly, J.*). V. KRISHNAMACHARIAR *v.* CHELLAMMAL. 107 I.C. 641=A.I.R. 1928 Mad. 561.

—Art. 129—Land in lieu of maintenance.

——A suit by a junior member of a family governed by rule of primogeniture for a plot of land in lieu of maintenance on the strength of family custom is governed either by Art. 120 or 144, the choice between the two provisions of law depending upon the question whether the suit is treated as one for declaration or for possession. Therefore when on the evidence it is proved that the defendant has been giving grain to the plaintiffs by way of maintenance and that the allowance was stopped two years before the suit, the suit is clearly in time.

Articles 129 and 131 do not apply to such a case as Art. 129 is restricted in its operation to a suit for maintenance in which the right is based on Hindu Law and not upon custom and Art. 131 is confined to a suit in which the plaintiff seeks simply to establish his right to maintenance and does not ask for a consequential relief. 83 P.R. 1906, *Foll.* (*Shadi Lal, C.J. and Hilton, J.*). PARSHOTAM SINGH *v.* BALWANT SINGH. 121 I.C. 428=11 Lah. 99=A.I.R. 1929 Lah. 872.

—Art. 129—Starting point.

——The cause of action for maintenance accrues from time to time according to the want and exigencies of the person entitled. 3 Bom. 415 (P. C.); 29 Cal. 557, *Foll.* Even where suit is barred, the right is not extinguished and a defence of a right to maintenance can prevail. (*Mookerjee and Cholsner, JJ.*). GOPAL CHANDRA PAL *v.* KADAMBINI DASI. 73 I.C. 235=A.I.R. 1924 Cal. 364.

—Art. 130—Resumption of life Jagir.

——Under Art. 130 a suit for the resumption of a life jagir must be brought within twelve years of the death of the grantee. (*Dawson-Miller, C.J. and B. K. Mullick, J.*). MAHADEO ASRAM PRASAD SAHI *v.* MT. JAGATRAJ KUER. 71 I.C. 929=A.I.R. 1924 Pat. 298.

—Art 130—Suit for assessment.

——If the tenant is in adverse possession of the absolute interest for over twelve years, the landlord's right is completely extinguished. If the tenant is in adverse possession for such a period in respect only of a limited interest as tenant, then whatever may be the effect of it on the question of the landlord's right to *khas* possession a claim for assessment of rent will not be barred unless as provided for in Art. 130 or Art. 131. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. 95 I.C. 622=43 C.L.J. 387=A.I.R. 1926 Cal. 883.

——Suits for assessment of rent-free lands are governed by Art. 130 and have to be instituted within twelve years from the time when the right to assess the land first arises and this right may arise upon a distinct notice of the tenant's claim to hold it rent-free. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. 95 I.C. 622=43 C.L.J. 387=A.I.R. 1926 Cal. 883.

——Article 130 can have no application unless and until the land is found to be rent free; the mere non-payment of rent for a period does not bar

LIMITATION ACT (1908), Art. 131—Deshmukhi rights.

the landlord's right to have the rent assessed and to recover the rent from his tenant. The right to levy assessment upon rent free lands is governed by Art. 130 and is consequently extinguished under S. 28, if no suit to enforce the right is instituted within the time allowed. On the other hand under Art. 131, the right to levy assessment would, as recurring right, accrue when there has been a demand and refusal, only in those cases where the relationship of landlord and tenant or landlord and occupant had ever existed. Once that right is established then the non-payment of rent or assessment would not be sufficient to enable the tenant to begin to set up a title by adverse possession. There must be some overt act such as a refusal to pay the rent or assessment before the time begins to run. This is in harmony with the view that where a tenant claimed land rent free to the knowledge of the plaintiff and no suit for resumption or assessment was brought till after the expiry of 12 years; the suit was barred by limitation under Art. 130. (*Mookerjee and Chotzner, JJ.*). AKBAR SARCAR *v.* RAMESH CHANDRA MAITRA. 72 I.C. 329=38 C.L.J. 207=A.I.R. 1923 Cal. 392.

——A right to levy assessment on rent free land is governed by Art. 130 and under S. 28 is extinguished if no suit to enforce the right is brought within the time. 5 Cal. 949, *Foll.* (*Shah and Crump, JJ.*). SUKHARAM GOVIND *v.* TRIMBEKRAO RAMCHANDRA. 61 I. C. 40=45 Bom. 694=23 Bom. L.R. 314=A.I.R. 1921 Bom. 303.

—Art. 131—Applicability.

——Where the relation of landlord and tenant or superior holder and occupant is not established, the article does not apply. A suit to recover assessment by *Inamdar* who claims to have purchased his rights is not governed by Art. 131. (*Macleod, C. J. and Fawcett, J.*). BHIMABAI PADAPPA *v.* SWAMIRAO SHRINIVAS. 60 I.C. 892=45 Bom. 638=23 Bom. L.R. 100=A.I.R. 1921 Bom. 175.

—Art. 131—Assessment of rent.

——*Denial of right.*

If an Inamdar continues to receive per annum certain fixed rent from his tenants for a particular survey number and has made no demand for the actual assessment in excess of amount which the tenants have to pay, that fact would not debar him from claiming assessment if he chose to do so, but once he claims assessment and the right to claim assessment is denied by the tenant limitation begins to run against the Inamdar, and the fact that a fresh survey rate is introduced subsequently would not create a new right in the inamdar to recover that particular rate of assessment from the tenant. (*Macleod, C. J. and Coyajee, J.*). SHRI BALA MAHARAJ *v.* SAKHARAM. 95 I.C. 851=28 Bom. L.R. 633=A.I.R. 1926 Bom. 345.

——*Demand and refusal.*

A suit to establish a right to assessment of rent is governed by Art. 131. Limitation under the article does not run until there has been a proper demand and a refusal, and mere exclusion from enjoyment does not cause time to run unless there has been refusal as a result of a demand properly made. (*Suhrawardy and Mukerji, JJ.*). DEVENDRA NARAYAN *v.* JHUMUR PRAMANIK. 95 I.C. 622=43 C.L.J. 387=A.I.R. 1926 Cal. 883.

—Art. 131—Deshmukhi rights.

——The right to receive a certain amount for Deshmukhi is a recurring right and, therefore,

LIMITATION ACT (1908), Art. 131—Enhancement of rent.

Art. 131 will apply to such a case. (*Ghulam Mohiuddin, J.*). NAZAR ALI *v.* AKAJI.
109 I.C. 85=11 N.L.J. 62.

—Art. 131—Enhancement of rent.

———A claim to enhance rent is a recurring cause of action and limitation runs from date of refusal. A suit for enhancement brought more than six years after the date of the final publication of the Record of Rights, in which the defendants are entered as raiyats at fixed rates, is not barred by limitation, as such Record-of-Rights does not create or extinguish any rights. Article 120 does not apply but Art. 131 governs the case. 1 P.L.J. 73: 11 C.W.N. 48. *Dist.*; 2 P. L. J. 124, *Foll.* (*Bucknill, J.*). SHEOPRATAP DUBEY *v.* SHEOGULAM LAL.
72 I.C. 781=A.I.R. 1924 Pat. 193.

—Art. 131—Maintenance.

———A suit by a junior member of a family governed by rule of primogeniture for a plot of land in lieu of maintenance on the strength of family custom is governed either by Art. 120 or 144.

Articles 129 and 131 do not apply to such a case as Art. 129 is restricted in its operation to a suit for maintenance in which the right is based on Hindu Law and not upon custom and Art. 131 is confined to a suit in which the plaintiff seeks simply to establish his right to maintenance and does not ask for a consequential relief. 83 P.R. 1906, *Foll.* (*Shadi Lal, C.J. and Hilton, J.*). PARSHOTAM SINGH *v.* BALWANT SINGH. **121 I. C. 428=11 Lah. 99=A I.R. 1929 Lah. 872.**

———*Recurring right—Right to maintenance and a right to recover maintenance—Distinction.*

A right of maintenance is a right which accrues on the happening of a certain event and is not a recurring right but a constant right till the happening of some other event which determines it. No doubt the right to recover maintenance is a recurring right unless maintenance is fixed by the parties at one consolidated sum, but there is a great difference between a suit to establish maintenance and a suit to recover arrears of maintenance, and even if it be held that Art. 131 would govern a suit to establish a right of maintenance, it cannot be held applicable to a suit to recover arrears of maintenance. (*Chevis and Le Rossignol, JJ.*). CHARANJIT SINGH *v.* AMIR ALI.
64 I.C. 892=2 Lah. 243=A. I. R. 1921 Lah. 121.

—Art. 132.

Applicability.
Default clause in mortgage.
Interest.
Loan in kind.
Malikana.
Redemption suit.
Security and indemnity bonds.
Starting point.
Subrogation.
Suit for contribution.
Taxes on property.
Third party paying mortgage.
Usufructuary mortgage.
Miscellaneous.

—Art. 132—Applicability.

———*Hypothecation lien.*

Article 132 is the article applicable to a relief asking for enforcement of a hypothecation lien. (*Boys and Kendall, JJ.*). KALLU *v.* RAM DAS.
107 I.C. 679=26 A.L.J. 53=A.I.R. 1929 All. 121.

———*Personal covenant.*

Where upon a sale of the mortgaged property under a mortgage-decree obtained in a suit on a registered mortgage deed there is a deficiency the period of limitation to recover the same under a personal covenant in the said deed is six years under Art. 116. 26 All. 138 and 34 All. 464, *Not foll*; 7 All. 502 (P C.) and A.I.R. 1926 P.C. 56, *Dist.* (*Case-law considered.*) (*Coutts-Trotter, C. J. Kumaraswami Sastri and Walsh, JJ.*). R. RATNASABAPATHY CHETTIAR *v.* V. DEVASIGAMANY PILLAI. **116 I. C. 817=29 M.L.W. 143=52 Mad. 105=A.I.R. 1929 Mad. 53=56 M.L.J. 10 (F.B.).**

LIMITATION ACT (1908), Art. 132—Applicability.

———*Dower debt.*

Execution of a deed which stipulates payment of dowry on demand and secures its payment by a mortgage of immovable property—Such execution converts a dower debt into a mortgage debt—Six years' rule applies to a suit on such deed after its registration. (*Iqbal Ahmad, J.*). MT. KUBRA BEGAM *v.* FAZAL HUSAIN. **99 I.C. 553=A.I.R. 1927 All. 268.**

———*Purchaser of mortgaged property changing the form of the property—Liability of property in its changed form.*

Even if the purchaser of the mortgaged property pulled down the house and utilized the materials for other building or otherwise dealt with them they cannot escape their liability as vendees of the mortgaged property. The mere fact that mortgaged property exists in different shape from that in which it was at the time of mortgage would not extinguish the mortgagee's right against the property in its converted state and if the person who has converted it has appropriated it to his own uses either in the shape of money or in the shape of materials he would still be liable as a mortgagor and the period of limitation in such cases is the usual period of limitation applicable to the case of a mortgage. (*Devadoss, J.*). PUNNAYYA *v.* CHILAKALAPUDI VENKATAPPA RAO. **91 I. C. 754=A.I.R. 1926 Mad. 343.**

———*Charge.*

The mere fact that the charge does not come within the meaning of S. 100 of the Transfer of Property Act does not necessarily imply that it is not a charge within the meaning of Art. 132. 42 Mad. 114 and 43 Mad. 786, *Expl.* (*Phillips, J.*). NAGALA KOTTAYYA *v.* KOGANTI KOTTAPPA.
90 I.C. 551=1925 M.W.N. 722=23 M. L. W. 178=A.I.R. 1926 Mad. 141=49 M.L.J. 117.

———*Pro-note—Subsequent hypothecation.*

If a pro-note is first passed for a certain debt and subsequently immovable property is hypothecated for the same debt, the proper article governing the period of limitation for a suit to recover the loan is Art. 132, and though, the creditor's remedy for enforcing the personal obligation of the debtor in respect of the loan is barred, the debt is not extinguished thereby, if the remedy for enforcing the charge on immovable property subsists. (*Wazir Hasan, J.C.*). BEHARI LAL *v.* LALA BENI MADHO. **79 I.C. 942=27 O C. 268=A.I.R. 1925 Oudh 92.**

———*Purchase-money.*

Suit to enforce statutory charge for unpaid purchase-money should be brought within 12 years of the sale unless parties have by proper instrument clearly expressed their intention to extend the period. (*Devadoss, J.*). AUTHINARAYANA AIYAR *v.* KRISHNASWAMY AIYAR. **82 I.C. 481=20 M.L.W. 484=1924 M.W.N. 755=A.I.R. 1924 Mad. 854.**

———When in a suit by a mortgagee a defendant claims adverse possession against the mortgagor by

LIMITATION ACT (1908), Art. 132 — Applicability.

virtue of a title acquired after the date of the mortgage Art. 132 is applicable as against him and not Art.120 nor Art. 134. 36 All. 567, *Foll.* (*Daial and Simpson, A.J.Cs.*). GALSTAUN *v.* MIRZA ABID HUSSAIN. **73 I.C. 428=10 O.L.J. 263= A.I.R. 1924 Oudh 19.**

——*Compensation to vendee.*

Article 132 is restricted to cases in which payment or compensation is sought to be enforced out of the property on which it is charged, and not where the plaintiff is only seeking a personal remedy. Thus where the vendee was to receive compensation from the vendor if on partition less area fell to the share of the vendor, a suit by the vendee is not governed by Art. 132. (*Martineau and Brasher, JJ.*). RUKANH DIN *v.* HASSAN DIN. **72 I.C. 897=A.I.R. 1923 Lah. 23.**

——*Mortgage security converted into money.*

Where property which represented the security for a mortgage has been converted into money the article applicable to a suit upon the mortgage is Art. 132 under which the plaintiff has 12 years to follow up the proceeds in the hands of the defendants. 33 Cal. 92, *Foll.* (*Schwabe, C. J.*). ABDUL KADIR *v.* SAM SUNDARAM. **70 I.C. 648= 45 Mad. 827=16 M.L.W. 485=31 M.L.T. 441= A.I.R. 1923 Mad. 76=43 M.L.J. 467.**

——Article 132 of the Lim. Act is wide enough to apply to all cases where there is an effective and binding charge upon immovable property whether created under the T. P. Act, or otherwise. (*Scott-Smith and Harrison, JJ.*). ABDUL SAMAD *v.* MUNICIPAL COMMITTEE, DELHI. **67 I.C. 939 (Lah.).**

——Where a bond hypothecates property to secure payment of grain, the suit brought upon that bond is a suit to enforce payment of "money" charged upon immovable property, and consequently Art. 132 of the Limitation Act (1908) would be applicable, and the suit, being brought within 12 years after the accrual of cause of action, would not be barred. Neither Art. 116 nor 120 of the Act applies to such a case. 13 C.W.N. 184-*n*; 22 C.W.N. 790; 23 C.W.N. 951; 47 Cal. 125; 29 C.L.J. 368, *Ref. to*; 24 C.L.J. 318, *Not foll.* (*Dhobley, A. J. C.*). SOAMLAL *v.* DHANWA JHABBOOLAL. **63 I.C. 697=5 N.L.J. 224= 18 N.L.R. 111=A.I.R. 1922 Nag. 23.**

——Where a decree makes a certain sum of money a charge on immovable property, a suit for that money is within the purview of Art. 132. (*Leslie Jones and Moti Sagar, JJ.*). NARAIN SINGH *v.* NARANJAN. **4 L.L.J. 398= A.I.R. 1921 Lah. 292.**

—Art. 132—Default clause in mortgage.

——*Time from first default.*

A mortgage-deed made the amount payable by annual instalments and provided that on failure to pay any one instalment for one year after it became due the whole amount was to become exigible at once. On failure of such one instalment the mortgagee sued to recover his mortgage amount but the suit was brought twelve years after the day on which the whole mortgage amount became exigible,

Held, that the suit was barred by limitation under Art. 132. A.I.R. 1923 Bom. 201; 37 All. 400; A.I.R. 1921 All. 192; A.I.R. 1922 All. 37; A.I.R. 1923 All. 1 and 24 Cal. 281, *Rel. on*; 39 Mad. 981 and A.I.R. 1926 P.C. 85, *Dist.* (*Madgavkar, J.*). GANPATI BALA DHOBALE *v.* BHIKU SAKHARAM GHODKE. **32 Bom. L. R. 683= A. I. R. 1930 Bom. 297.**

LIMITATION ACT (1908), Art. 132 — Default clause in mortgage.

——*Time from first default.*

In a suit on mortgage the limitation begins to run from the date of first default, and the claim to personal relief against the mortgagor is to be brought within six years under Art. 116 although the claim to realization of debt from the property can be brought within 12 years under Art. 132. The mere fact that there is longer period for one relief does not in itself extend the limitation for the other relief. Where therefore a mortgage suit is brought six years after the first default is made the claim for personal decree is barred. (*Case-law discussed.*) (*Bhide and Currie, JJ.*). SAHIB SINGH *v.* GURDIAL SINGH. **A I.R. 1930 Lah. 993.**

——Where a mortgage bond contains default clause, the question arising under O. 2, R. 2 C.P.Code, as to when mortgagee becomes entitled to sue, and the question arising under Art. 132, Limitation Act, as to when the money becomes due both involve the same principle and are indistinguishable. A.I.R. 1928 Mad. 705, *Not appr.* (*Ramesam and Venkatasubba Rao, JJ.*). J. P. REGO *v.* PHILLIA TAURO. **120 I.C. 853=29 M.L.W. 400= 1929 M.W.N. 208=A.I.R. 1929 Mad. 371= 56 M.L.J. 580.**

——*Time from first default.*

The words "when the money sued for becomes due" refer to the earliest date on which it becomes due. Money sued for by a mortgagee must be considered to have become due at the earliest date when it is possible for the mortgagee to enforce payment of it. Where the interest is to be paid annually and there is a stipulation that in case of breach of contract the mortgagee would be entitled to recover the whole mortgage money the starting point for limitation is the date of the first default in payment of interest: 37 All. 400; A.I.R. 1923 All. 1; A.I.R. 1925 Oudh 502; A.I.R. 1927 Oudh 539 and A.I.R. 1928 Oudh 289, *Rel. on*; 39 Mad. 981; 11 C.W.N. 903; A I.R. 1925 Pat. 557 and A.I.R. 1926 P.C. 85, *Dist.* (*Wazir Hasan and Srivastava, JJ.*). LASADIN *v.* MT. GULAB KUNWAR. **6 O.W.N. 925=A.I.R. 1929 Oudh 536.**

——*Time from exercise of option.*

Where a mortgage bond contained a provision entitling mortgagee to recover the whole principal and interest "when required" in case of default irrespective of due date of payment,

Held, that the stipulation in question gave only an option to the mortgagee to call in at once the principal amount and interest due on the mortgage bond without reference to the period stipulated for payment, if there was default. It is open to him to exercise it or not as he chooses; and the time will not run against him unless he exercises the option. 9 L.W. 479; 39 Mad. 981 and 22 Mad. 20, *Rel. on.* (*Wallace and Thiruvenkatachariar, JJ.*). A. RANGASWAMI PILLAI *v.* C. R. P. KUPPUSWAMY DEEKSHATAR. **107 I. C. 650=A. I. R. 1928 Mad. 637.**

——*Quaere*:—Whether a provision in a mortgage bond making amount payable before fixed term, on default of debtor in payment of an instalment makes limitation run against the mortgagee; view in 37 All. 400 (F.B.) and A.I.R. 1923 All. 1 (F.B.) that it does even against the mortgagee's desire referred to but not discussed. (*Lord Blanesburgh.*) PANCHAM *v.* ANSAR HUSSAIN. **97 I.C. 650= 48 All. 457=53 I A. 187=24 A.L.J. 736= 1926 M.W.N. 520=24 M.L.W. 241= 31 C.W.N. 324=A.I.R. 1926 P.C. 83 (P.C.).**

LIMITATION ACT (1908), Art. 132 — Default clause in mortgage.

——*Time from first default.*

A mortgage-deed provided for the payment of the mortgage money with interest hereon within seven years, and further contained a stipulation that the interest accruing due for the half-year shall, if not paid up, be added to the principal amount. and that if interest for any six months remained unpaid, the mortgagee shall have power either to bring a suit in respect of the entire mortgage-money and interest without waiting for the expiry of the stipulated period or to wait for the payment of the principal and interest and compound interest till the expiry of the term fixed. It further stated that both the conditions were left entirely to the choice or option of the mortgagee, that the mortgagee had liberty to act in accordance with either of those conditions, that is to say, either to bring a suit in respect of the entire mortgage :money and interest without waiting for the expiry of the stipulated period, or to waive the default and wait for the payment of the principal and interest and compound interest agreed till the expiry of the term fixed. The mortgagor further agreed that if at the stipulated time the money remained unpaid, the mortgage deed shall be treated as a sale-deed, and the mortgage-money as the sale consideration.

Held, that Art. 132 applied and that, despite the authority given by the contract, the operation of the clause which gave an option to the mortgagee for his own benefit could not be waived so as to prevent or postpone the starting of limitation against him. A.I.R. 1923 All. 1 (F.B.); 30 Mad. 426 (P.C.) and 14 Cal. 730, *Foll.* (*Walsh and Kanhaiya Lal, JJ.*). SHEORAM SINGH *v.* BABU SINGH.

94 I.C. 849=48 All. 302=24 A.L.J. 295= A.I.R. 1926 All. 493.

——*Time from exercise of option.*

Under the article it is open to the obligee to waive the benefit of the provision to recover the amount in the case of first default. Each case is to be governed by the article applicable to it. 15 A.L.J. 313, *Appl.* (*Sulaiman, J.*). SHIAM LAL *v.* JOTIA. **89 I.C. 383=23 A.L.J. 896= 6 L.R.A. Civ. 532=A.I.R. 1926 All. 142.**

——*Time from exercise of option.*

Where there was a clause in the mortgage-deed that in default of payment of interest, the whole amount, principal and interest, up to that date should become due and where on a construction of the language of the document it was clear that the option was reserved with the mortgagee to enforce or not the default clause, at his pleasure.

Held, that the period of limitation started to run not on the date of default but on the date when the money became due, under the terms of the contract, under Art. 132 of the Limitation Act. 9 L.W. 479; (1918) M.W.N. 586; (1921) M.W.N. 384; A.I.R. 1925 Mad. 150, *Foll.*; A.I.R. 1922 P.C. 412; A.I.R. 1922 P.C. 23; 37 All. 400 and 43 All. 671, *Not foll.* (*Phillips and Krishnan, JJ.*). MUTHIA CHETTIAR *v.* VENKATASUBBARAYULU NAIDU. **90 I.C. 1033=49 Mad. 403=22 M.L.W. 67= A.I.R. 1926 Mad. 160=49 M.L.J. 394.**

——*Waiver.*

Article 132 does not provide for cases of waiver, and there is no case directly deciding that the principle of waiver would apply to mortgage bonds payable by instalments. But the principle indicated in Art. 75 may be applied in determining when the money sued for becomes due within the meaning of Art. 132 and so acceptance of overdue instal-

LIMITATION ACT (1908), Art. 132 — Default clause in mortgage.

ments gives fresh period of limitation. (*Chatterjee and Cuming, JJ.*). SURENDRANATH ALIAS KARTICK CHANDRA GHOSE *v.* RAJA RESHEE CASE-LAW. **79 I.C. 271=27 C.W N. 893= A.I.R. 1924 Cal. 139.**

——*Separate causes of action.*

The covenant in the mortgage-deed as to repayments was to the effect that the mortgage money with interest would be paid by monthly instalments of not less than Rs. 20 plus interest, the payment being made on the 1st day of November, 1899, and on the first day of every succeeding month, provided that the entire advance together with interest thereon would be fully liquidated within the ten years from the date of the mortgage. It was also agreed that defaults in payment of monthly instalments and interest as agreed should constitute separate causes of action,

Held, by providing that default in the payment of each monthly instalment should constitute a separate cause of action the parties clearly intended that prompt payments should be made and that the period of limitation should run from the date of default unless the payee waived the benefit of the provisions of prompt payment in case of default. Mere forbearance to sue would not stop limitation from beginning to run. (*Martineau and Moti Sagar, JJ.*). NANAKCHAND *v.* MIR NOHAMAD KHAN. **75 I.C. 1048= A.I.R. 1924 Lah. 702.**

——*Time from first default.*

The mortgage-deed provided, "in case of non-payment of interest from year to year, the creditor has the option to add the interest to the principal and to charge interest thereon at the aforesaid rate or to recover through Court principal and interest from me and hypothecated property and also from my other movable or immovable property and from my person within the stipulated period. The period fixed shall not bar the claim. In case of non-payment within the stipulated period, the creditor shall have the power to recover the money, principal and interest together with compound interest from me, mortgaged property or other movable or immovable property of mine,"

Held, that as soon as the first default was made a right accrued to the mortgagee to sue for the whole sum with interest. On default having been made the money certainly did become due at once; and the mere circumstance that the creditor had the option of not calling in the money cannot wipe out the fact that the money had in fact become due and that the first default having occurred more than twelve years before the suit, money sued for became due then and the claim for the enforcement of the charge is barred by time under Art. 132, (1842) 4 Q B. 519; 37 All. 400 (F.B.), *Foll.* (*Mears, C.J., Piggott, Walsh, Ryves and Sulaiman, JJ.*). SHIB DAYAL *v.* MAHERBAN. **69 I.C. 981= 20 A.L.J. 819=45 All. 27=4 L.R.A. Civ. 3= A.I.R. 1923 All. 1 (F.B.).**

——*Time from default.*

The mortgagor by a mortgage deed of 17th July, 1901, covenanted to pay the interest year by year and the principal within three years of the date of execution, and in case of default of the payment of the annual interest, he empowered the mortgagee without waiting for the expiration of the period fixed for the payment of the principal, to realise the amount due for the principal and interest from the hypothecated property.

LIMITATION ACT (1908), Art. 132 — Default clause in mortgage.

Held, the deed means that the privilege of deferring payment of the principal to the 17th July, 1904 was conditional on the punctual payment of the annual interest. No interest was paid at all, so the cause of action arose, on the 17th July, 1902. In these circumstances, the suit which was instituted on the 23rd February, 1916, was time-barred in the absence of acknowledgment. (*Lindsay and Stuart, JJ.*). RAMDAS *v.* MUHAMMAD SAID. **67 I.C. 160= 20 A.L.J. 346=A.I.R. 1922 All. 524.**

——*Time from first default.*

Under a mortgage bond it was provided that the loan was to be re-paid within a certain period. It was further provided that each year the mortgagor must pay a certain sum which was a little over the annual interest. The excess over the annual interest was to be credited towards the principal. If in any year the interest was not paid, the interest might be treated as principal and would carry interest at a certain rate. If there was any default in payment of the sum stipulated to be paid annually, the mortgagee was to have power without waiting for the expiry of the stipulated period to set aside all the other stipulations embodied in the document and to bring a suit in Court to realise the entire principal together with interest and costs from the persons of the mortgagors and from the hypothecated property,

Held, that Art. 132 of the Limitation Act clearly applies and time runs from the first default. 37 All. 400 (F.B.), *Foll.* (*Tudball and Sulaiman, JJ.*). PANCHAM *v.* ANSAR HUSAIN. **63 I.C. 451=19 A.L.J. 592=43 All. 596= A.I.R. 1921 All. 296.**

——*Time from first default.*

The bond provided that if the borrower made default in the payment of any instalment of interest the lender could sue for the whole amount, although a period was fixed for re-payment if the borrower re-paid regularly according to the terms of the bond,

Held, that limitation must run from the date of the first default. 37 All. 400, *Foll.*; 19 A.L.J. 406, *Not foll.* (*Walsh and Wallace, JJ.*). NATHI *v.* TURSI. **63 I. C. 886=43 All. 671= 19 A.L.J. 712=A.I.R. 1921 All. 192.**

——*Time from exercise of option.*

Where the creditor was given three options in case of default in the payment of two consecutive instalments of interest, namely, either to sue for the principal and interest, or to let the interest mount up or to sue for interest only,

Held, that if the creditor did not choose to exercise his option of suing for the whole amount due on default, the time did not begin to run from such abstention. 37 All. 400 (F.B.), *Dist.* (*Tudball and Rafique, JJ.*). GIRDHARI LAL *v.* GOBIND RAM. **63 I. C. 25=19 A.L.J. 456= A.I.R. 1921 All. 171.**

——*Time from exercise of option.*

A stipulation in an instalment bond, securing payment of the whole amount due, on failure of any instalment has not the effect of making the whole amount secured by the bond together with interest to fall due as soon as the first default is made.

The cause of action arises from the mortgagee's exercise of his option to demand payment of the whole amount. 36 Mad. 66 and 9 L.W. 479, *Foll.* (*Spencer and Ramesam, JJ.*). KALIAPPA NADAR *v.* SAMI IYER. **62 I. C. 762=1921 M.W.N. 884.**

LIMITATION ACT (1908), Art. 132 — Loan in kind.

—Art. 132—Interest.

——The mortgagors covenanted that they would continue to pay interest yearly and if they failed to pay, it should be added to the principal and bear compound interest. The mortgagees were allowed to bring a suit to recover interest only in the alternative. The mortgagees brought a suit to recover principal plus arrears of interest,

Held, that the mortgagees can recover interest for a period of 12 years only prior to the suit, as limitation began to run against the mortgagee from the date of the first default to pay interest by the mortgagors. A. I. R. 1923 All. 1 (F. B.); 37 All. 400 (F.B.), *Foll.* (*Mears, C.J. and Lindsay, J.*). MENDAI LAL *v.* DULAREY LAL. **95 I. C. 249 (All.).**

——A mortgagee is entitled to treat interest due under a mortgage as a charge upon the mortgaged property in the absence of any contract to the contrary and it is most important that this general rule should not be taken in any partitoular. A.I.R. 1924 P.C. 183, *Foll.*; A.I R 1924 Lah. 273, *Not foll. being considered as overruled by* A.I.R. 1924 P.C. 183. (*Campbell, J.*). LADHA SINGH *v.* SUNDER SINGH. **92 I.C. 762=A.I.R. 1926 Lah. 530.**

——Claim for interest being subsidiary or incidental to the claim for the principal the security annexed to the principal must impliedly be available for the interest also. (*Kotwal, A.J.C.*). KADARMIYA *v.* CHAND MIYA. **A.I.R. 1923 Nag. 181.**

—Art. 132—Loan in kind.

——Where a bond hypothecates property to secure payment of grain, the suit brought upon that bond is a suit to enforce payment of "money' charged upon immovable property and consequently Art. 132 of the Limitation Act (1908) would be applicable, and the suit being, brought within 12 years after the accrual of cause of action would not be barred. Neither Art. 116 nor 120 of the Act applies to such a case. 13 C.W.N. 184-*n*; 22 C. W. N. 790; 23 C.W.N. 951; 47 Cal. 125; 29 C.L.J. 368, *Ref. to*; 24 C.L.J. 348, *Not foll.* (*Dhobley, A.J.C.*). SOAMLAL *v.* DHANWA ZABOO LAL. **65 I.C. 697=5 N. L.J. 224= 18 N.L.R. 111=A.I.R 1922 Nag. 23.**

——The word "money" is comprehensive enough to include also money which has or will become due on account of non-performance of an agreement that might give rise to a pecuniary liability. A suit to recover the value of paddy charged upon immovable property is a suit to enforce payment of money charged upon immovable property within the meaning of Art. 132. (*Mukerjee, A.C.J., Fletcher, Chatterjee, Teunon and Richardson, JJ.*). RAM CHAND SUR *v.* ISWARCHANDRA GIRI. **61 I.C. 539=48 Cal. 625=25 C.W.N. 57= A. I. R. 1921 Cal. 172 (F.B.).**

——A suit to recover the value of paddy charged upon immovable property by sale of the latter is governed by Art. 132 of the Limitation Act. 48 Cal. 625, *Foll.* (*Newbould and Suhrawardy, JJ.*). GNANENDRA NATH GHOSE *v.* PANCHKOURI NARAIN. **64 I.C. 310 (Cal.).**

——Where there is a loan of a certain quantity of paddy with a provision for payment of an additional quantity of paddy as interest, and both the principal and interest are secured on immovable property a suit to enforce the security is governed by Art. 132 of the Limitation Act. 25 C.W.N. 57 (F.B.), *Foll.* (*Teunon and Richardson, JJ.*). JOY NARAIN GOLE *v.* MANGOBINDA BERA. **64 I.C. 210 (Cal.).**

LIMITATION ACT (1908), Art. 132 — Loan in kind.

———A debtor borrowed a quantity of paddy on a mortgage of his property, agreeing to re-pay with interest within a certain time and entitling the mortgagee to realise the money, in case of default by sale of the mortgaged property. On a default by the debtor the mortgagee sued within 12 years of the date of payment for recovery of the money.

Held, the suit was within time. (*N. R. Chatterjee and Panton, JJ.*). DINA BANDHU MAITI *v.* BISHNU BEWA. **60 I.C. 715=32 C.L.J. 221.**

—Art. 132—Malikana.

———A suit to recover malikana though coupled with an ancillary relief of declaration of right to receive malikana, is governed by Art. 132. (*Ross and Kulwant Sahay, JJ.*). MIDNAPORE ZAMINDARI Co., LTD. *v.* MUKTAKESHI PATRANI.

96 I.C. 188=6 Pat. 51=
1926 P. H. C. C. 199=A.I.R. 1926 Pat. 340.

———The explanation to Art. 132 does not merely refer to malikana as contemplated by the Bengal Regulations, but it also covers malikana claimable by a sardar ghatwal under a settlement between the Ghatwals and Zamindars.

A share of bastu rent payable to taraf sardar is malikana where the land is not settled with the taraf sardar but direct with the village sardar. (*Ross and Kulwant Sahay, JJ.*). MIDNAPUR ZAMINDARI CO., LTD. *v.* MUKTAKESHI PATRANI.

96 I.C. 188=6 Pat. 51=1926 P.H.C.C. 199=
A.I.R. 1926 Pat. 340.

—Art. 132—Redemption suit.

———*By puisne mortgagee.*

Where the puisne mortgagee has already obtained a decree for sale on his mortgagee without making prior mortgagee a party, he is entitled to redeem a prior mortgagee in a subsequent suit and the subsequent suit is governed by Art. 148 and not by Art. 132. 14 C. W. N. 439, *Expl.* and *held rightly decided on its facts. Case-law referred.* (*Rankin, C. J., C. C. Ghose, Buckland, B. B. Ghose and Mukerji, JJ.*). SAYAMALI MOLLA *v.* ANISUDDIN MOLLA. **119 I.C. 135=**
33 C.W.N. 1067=50 C.L.J. 152=
A.I.R. 1929 Cal. 609 (F.B.).

———*By co-mortgagor.*

The limitation, which governs a suit brought by a co-mortgagor to redeem the property from the hands of the other co-mortgagor, who had redeemed the entire property mortgaged, is 12 years, and this period is to be reckoned from the date, when the redeeming co-mortgagor sets up his adverse possession. 9 O. C. 91; A. I. R. 1927 Oudh 347 and A.I.R. 1927 Oudh 552, *Foll.* (*Misra, J.*). NAKKOO DAS *v.* RAB SARAN SINGH. **117 I.C. 409=**
6 O.W.N. 305=A.I.R. 1929 Oudh 290.

———*By puisne mortgagee.*

Where a prior mortgagee obtains a decree on his mortgage without impleading puisne mortgagee, purchases the property in execution and enters into possession, a suit by puisne mortgagee who also purchases the property under his decree, obtained without impleading prior mortgagee for redemption and possession against prior mortgagee is governed by Art. 132 and not Art. 148. 14 C.W.N. 439, *Foll.*: A.I.R. 1923 All. 271, *Dist.* (*Newbould and Graham, JJ.*). NIL MADHAB *v.* JOY GOPAL MAHANTI.

91 I.C. 719=A.I.R. 1926 Cal. 560.

——— *By second mortgagee.*

The second mortgagee's right of redemption cannot be considered to be a right to enforce payment of money charged upon immovable property. The second mortgagee in a suit for redemption

LIMITATION ACT (1908), Art. 132—Starting point.

does not seek to recover the money due to him upon his second mortgage and so Art. 132 does not apply, but under Art. 148 he has 60 years period. 14 C.W.N. 439; A.I.R. 1925 Mad. 150; A.I.R. 1925 Mad. 76, *Not foll.*; 2 L.L.J. 419; A.I.R. 1923 All. 271; and 32 Cal. 891, *Foll.* (*Mullick and Kulwant Sahay, JJ.*). RAMJHARI KOER *v.* KASHI NATH SAHAI. **94 I.C. 284=5 Pat. 513=**
7 P. L. T. 768=1926 P.H.C.C. 310=
A. I. R. 1926 Pat. 337.

———*By puisne mortgagee.*

Puisne mortgagee cannot redeem prior mortgagee beyond the period fixed by Art. 132. (*Krishnan, J.*). R. APPAYYA *v.* VENKATARAMAYYA.

82 I.C. 864=20 M.L.W. 620=
A. I. R. 1925 Mad. 150.

———*By puisne mortgagee.*

The right of puisne mortgagee to redeem is only ancillary to right to work out his remedy against the mortgaged estate. He is only permitted to redeem for the purpose of working out his own security. The right of a puisne mortgagee to redeem the prior mortgagee in a case where he had not been joined in a suit on the first mortgage, is a right to redeem that mortgagee, *i. e.*, first mortgagee with a view of enforcing his own mortgage. His right to redeem the first mortgage must be considered to be only a means of securing the object of enforcing his own claim by sale. The proper article of the limitation Act applicable to the case is Art. 132. 14 C.W.N. 439, *Foll.* (*Madhavan Nair, J.*). LAKSHMANAN CHETTYAR *v.* MUTHU NAICKER. **84 I.C. 301=**
1924 M.W.N. 508=A.I.R. 1925 Mad. 76=
47 M. L. J. 602.

—Art. 132—Security and indemnity bonds.

———A suit against the surety on a simple money bond for the payment of a mortgage-debt is not a suit for payment of money charged upon immovable property and therefore Art. 132 does not apply. (*Wallace, J.*). P. C. MUTHU CHETTIAR *v.* RANGAPPA NAIDU. **105 I C. 168=39 M L.T. 408=**
A.I.R. 1927 Mad. 945=53 M.L.J. 453.

———Art. 132 applies to a suit by *shebait* of a *Thakur* against the *Tahsildar* of the *debutter* properties of *Thakur*, for accounts based on a security bond executed by the latter in favour of the predecessor of the plaintiff. (*N. R. Chatterjee and Newbould, JJ.*). DASARATHI CHATTERJEE *v.* ASIT MOHAN GHOSH. **59 I.C. 126=24 C.W.N. 879.**

———Where a registered contract to indemnify contains a provision for a charge on immovable property, Art. 132 applies and not Art. 83 or Art. 116. (*Wallis, C. J. and Oldfield, J.*). RAMASAMI IYENGAR *v.* M. V. KUPPUSAMI IYER.

66 I.C. 554=14 M.L.W. 99=1921 M.W.N. 472=
A.I.R. 1921 Mad. 514.

—Art. 132—Starting point.

——— *Express covenant for peaceful possession—Breach before expiry of term fixed.*

Where the mortgage bond stipulates for peaceful possession for a particular period and the mortgagee is dispossessed from the property, although the mortgagee may be entitled to sue for the mortgage-money at the end of the term fixed, the cause of action for the suit arises on the date of dispossession and cannot be suspended till the date under the mortgage bond. (*Guha and M.C. Ghose, JJ.*). AFIRUDDI *v.* JOY CHAND NAHA.

A.I.R. 1930 Cal. 703.

———*Successive mortgages payable together—Redemption of one—Suit on the second.*

LIMITATION ACT (1908), Art. 132 — Starting point.

A mortgagor executed two successive mortgage-deeds in favour of the mortgagee, and it was intended that both the debts should be paid together. Mortgagor sued for redemption on the first deed only. Mortgagee contended that the redemption should not be granted until the debt on the other deed also was paid. The Court held that the two mortgages had not been consolidated and decreed the redemption. In his suit on second deed the mortgagee contended that time accrued for his second deed only when redemption money on first deed was paid,

Held, that as regards the other mortgage-deed time began to run only when the debt became payable according to the terms of the deed and not when money was paid in the redemption suit on the first deed. (*Stuart, C.J. and Raza, J.*). SHEO BAHADUR SINGH *v.* NAUBAT SINGH.

121 I.C. 286=A.I.R. 1929 Oudh 214.

——*Mortgage payable in three years—Provision for acceleration in case of transfer — Transfer — Limitation.*

A mortgage bond executed on 1st of May, 1909 was payable in three years, but it was provided in it that if the mortgagor should transfer the hypothecated property the creditors shall, even before the expiry of the term, be at liberty to institute a suit for recovery of the amount of the bond with full interest. On 8th March, 1911, the mortgagor executed an hypothecation bond and hypothecated a portion of the mortgaged property. The mortgagees brought a suit on the mortgage in March, 1924, *i.e.*, within 12 years of the date fixed for payment but after 12 years from the date of subsequent hypothecation,

Held, that the suit was within time. A. I. R. 1923 All. 1 and A. I. R. 1926 P. C. 85, *Dist.*; A. I. R. 1921 All. 296; A.I.R. 1921 All. 104; A.I.R. 1921 All. 192; A.I.R. 1921 All. 171; 37 All. 400 and A. I. R. 1922 All. 524, *Ref.* (*Mears. C. J. and Sen, J.*). ASHIQ HUSAIN *v.* CHATURBHUJ.

108 I.C. 152=50 All. 328=26 A.L.J. 41=A.I.R. 1928 All. 189.

——*Deed of further charge providing for payment of the amount on redemption of original mortgage.*

Where a deed of further charge provides that should the mortgagor fail to pay the amount within the stipulated period of one year that amount should be paid at the time of redemption of the original mortgage, the period of limitation for a suit to recover the amount of the further charge cannot commence before redemption is claimed by the mortgagor. A. I. R. 1923 All. 1 (F. B.) and A.I.R. 1925 Oudh 502, *Dist.* (*Raza and Nanavutty, JJ.*). GANGA DAYAL *v.* B. MATHURA PRASAD.

111 I.C. 106=A.I.R. 1928 Oudh 393.

——*Condition in the mortgage-deed to the effect that the mortgagor shall not be entitled to redeem and the mortgagee to bring the mortgage property to sale till a certain date.*

A mortgage-deed dated 1911 provided *inter alia* that only in 1920 (and not till then) the mortgagor should satisfy his full liability by payment of the principal. It also provided that the mortgagee was not to bring the property to sale on account of a default until June 1920. It further provided that, although the mortgagor was not in any circumstances entitled to pay up the principal and redeem the mortgage before June 1920, the mortgagee might recover at his wish either by mutual settlement or through a suit in Court, the entire principal with interest, compound-interest and

LIMITATION ACT (1908), Art. 132 — Starting point.

interest on interest in accordance with the conditions of the deed even before June 1920. The mortgagee brought the suit to recover his money in May 1926,

Held, that a suit to enforce payment of money charged upon immovable property in this suit could not have been instituted until June 1920, for the money, the payment of which was charged upon immovable property, did not become due till June 1920, and in these circumstances the suit was within time. A. I. R. 1923 All. 1 (F.B.), *Foll.* (*Stuart, C.J., Wazir Hasan and Gokaran Nath Misra, JJ.*). RAM KOER *v.* PATRAJ KOER.

112 I.C. 130=3 Luck. 439=5 O.W.N. 385=A.I.R. 1928 Oudh 289 (F.B.).

——*Mortgage-money payable on demand—Suit by mortgagee against purchaser of equity of redemption.*

In a suit on a mortgage, the purchaser of the equity of redemption was not impleaded as a party. The mortgagee obtained a decree and purchased the property in execution. The purchaser of the equity of redemption filed a suit against the auction-purchaser (*i.e.*, mortgagee) and got a decree. More than twelve years from the date of mortgage, the auction-purchaser filed a suit against the purchaser of the equity of redemption for sale of the property in default of redemption,

Held, the mortgage-deed providing that the money was repayable on demand, limitation began to run from the date of the deed and that the suit was barred. (*Rutledge, C.J. and Brown, J.*). T.C. BOSE *v.* OBEDUR RAHMAN CHOWDHURY.

111 I. C. 132=6 Rang. 297=A. I. R. 1928 Rang. 189.

——*Payable on demand.*

Limitation in the case of mortgage payable on demand runs from the time when the loan is made and not from the date of the demand. No actual demand is necessary. 21 Mad. 139, *Foll.* (*Rutledge, C.J. and Brown, J.*). T.C. BOSE *v.* OBEDUR RAHMAN.

111 I.C. 132=6 Rang. 297=A.I.R. 1928 Rang. 189.

——*Payable at any time.*

Where the mortgagor is at liberty to pay the mortgage-money at any time and the mortgagee is also equally at liberty to foreclose at any time, his limitation under Art. 132 begins to run at once. (*Harrison and Zafar Ali, JJ.*). ZIADA *v.* GURDAS RAM. **92 I.C. 656=A.I.R. 1926 Lah. 225.**

——*Security for rent.*

Where properties were hypothecated to secure the payment of the rent reserved by a lease, time for enforcing the hypothecation runs from the date of the decree for rent that is obtained. (*Tudball and Rafique, JJ.*). MAHADEO RAI *v.* BALDEO RAI.

63 I.C. 504=19 A.L.J. 478=43 All. 639=A. I. R. 1921 All. 301.

——*Renewal.*

A mortgage was executed in renewal of a prior mortgage and in consideration of a fresh sum to be advanced. But this sum was not advanced in fact,

Held, that Art. 132 applies to a suit to enforce the later mortgage and time runs from the date the money became payable under the 2nd mortgage. (*Scott-Smith and Leslie-Jones, JJ.*). UDHO RAM *v.* GOBIND LAL. **5 L.L.J. 478=A.I.R. 1921 Lah. 223.**

——Where a mortgage in plaintiff's favour provided that the mortgagors would pay off the amount on the security of the lands covered by the deed as well as on the security of certain other

LIMITATION ACT (1908), Art. 132—Subrogation.

lands "after discharging" the mortgage thereon to a third party,

Held, that the words 'after discharging", etc., were not intended to postpone the date on which the cause of action for the enforcement of the plaintiff's mortgage was to arise. (*Sadasiva Aiyar and Spencer, JJ.*). SANYASIAH *v.* ATCHANNA NAIDU. **70 I.C. 759=15 M.L.W. 289= A.I.R. 1921 Mad. 624=42 M.L.J. 339.**

—Art. 132—Subrogation.

———The right to enforce priority on the ground of subrogation cannot be exercised after 12 years have elapsed since the cause of action under the prior mortgage accrues. 39 Cal. 527 (P. C.); 13 N.L.R. 217, *Rel. on.* (*Munje, A. J. C.*). SHEOJI *v.* BHASKAR. **A.I.R. 1930 Nag. 166.**

———Article 132 applies to a suit by puisne mortgagee to enforce his rights acquired by him under S. 74, T. P. Act, the period of limitation being 12 years from the date the money became due. The money decreed can be said to have become due to the plaintiff and the right to foreclose in default of its payment to have arisen in his favour only when he made the payment and became entitled under the provisions of S. 74 to the rights created by the decree. A. I. R. 1925 Mad. 61, *Foll.*; 13 N. L. R. 217, *Overruled.* (*Kotwal, A. J. C.*). SURYABHAN *v.* RENUKA. **92 I.C. 118=8 N.L.J. 232= A.I.R. 1926 Nag. 84.**

———Subrogee to the rights of a prior mortgagee must sue within 12 years from the date on which the amount of the prior mortgage falls due. (*Kinkhede, A. J. C.*). NARAYAN *v.* SYED HAFIZ. **87 I.C. 264=A.I.R. 1925 Nag. 21.**

———If the right to enforce the security in the hands of the creditor is barred by limitation an assignee of the security does not stand on any better footing. It may be that the right to enforce the security in his own name arises on the date of the assignment; but the limitation has already commenced to run and will not cease to operate just because the creditor has assigned the security to another person. For an action by a subsequent mortgagee to enforce the security of the prior mortgagee as against the original mortgagor, limitation starts from the date when the cause of action of the prior mortgagee arises against the mortgagor for the mortgage-debt and not from the date when the subsequent mortgagee pays off the prior mortgagee. For a simple action however, for reimbursement of the amount paid off the time will run from the date of payment. 39 Cal. 527 (P. C.), *Foll.*; A. I. R. 1922 All. 153, *Doubted.* (*Coutts and Das, JJ.*). SIBANAND MISRA *v.* JAGMOHAN LAL. **68 I.C. 707=3 Pat. L. T. 533=1 Pat. 780= 1922 P.H.C.C. 331=A. I. R. 1922 Pat. 499.**

—Art. 132—Suit for contribution.

———*Co-mortgagor.*

A claim to enforce the co-mortgagor's charge is governed by Art. 132. The starting point for limitation is the time when the money sued for becomes due, that is, when payment was actually made to the mortgagee. (*Wazir Hasan and Srivastava, JJ.*). MUHAMMAD MIAN *v.* BARAT SINGH. **7 O.W.N. 401=A.I.R. 1930 Oudh 260.**

———The right to enforce a charge created in favour of a co-mortgagor by virtue of his satisfying the mortgage arises on payment and under Art. 132, he has 12 years within which to enforce the charge. (*Mears, C. J. and Mukerji, J.*). AZIZ AHMAD *v.* CHOTELAL. **109 I.C. 38= 30 All. 569=26 A.L.J. 298= A.I.R. 1928 All. 241.**

LIMITATION ACT (1908), Art. 132—Taxes on property.

———*Co-sharer paying Government Revenue.*

One co-sharer paying the Government revenue for whole estate in order to save the estate from being sold is entitled to contribution but there is no charge created in his favour over the property of the defaulting co-sharer. Article 99, Limitation Act, and not Art. 132 will consequently be applicable. The case bears no analogy to the "salvage lien" as the very essence of salvage service is that it must be voluntary. 14 All. 273 (F.B.); 14 Cal. 809 (F.B.); (1855) S.D.A. 44; (1856) S.D.A. 867; (1859) S.D.A. 515; 8 Cal. 402 and 26 Bom. 437, *Foll.*; 26 Mad. 686 (F.B.); 14 B.L.R. 155; 6 Cal. 549; 9 Cal. 377; 11 Bom. 313 and 11 Mad. 452, *Not foll.*; 11 M.I.A. 241; *Falcke* v. *Scottish Imperial Insurance Co.*, (1886) 34 Ch. D. 234; *Leslie Re. Leslie* v. *French*, (1883) 23 Ch. D. 552; *Leigh* v. *Dickson*, (1884) 15 Q.B.D. 60, *Ref.* (*Ross and Fazl Ali, JJ.*). RANI BHUBANESHWARI KUER *v.* MANIR KHAN. **111 I.C. 84= 7 Pat. 613=9 P.L.T. 573=A. I. R. 1928 Pat. 641.**

———*Co-mortgagor.*

The money paid by a co-mortgagor in redeeming the entire property mortgaged cannot be considered to have become due before it has been actually paid by the said co-mortgagor, and the period of limitation should be considered to commence from the date when he actually makes the payment and not from any earlier period. A.I.R. 1925 Oudh 613, *Foll*; 31 All. 166, *Dist.*; A.I.R. 1921 Cal. 166, *Diss. from*; (*Stuart, C.J. and Gokaran Nath Misra, J.*). RAMESHWAR *v.* MT. SHEO RANI. **95 I.C. 302=4 O.W.N. 783=A.I.R. 1927 Oudh 552.**

———*Co-sharer paying Government Revenue.*

Where one of two or more co-sharers owning an estate subject to the payment of revenue to Government pays the whole revenue in order to save the estate, he is by the operation of law entitled to a charge upon the share of each of his co-sharers for the realisation of the latter's share of revenue and therefore a suit by him brought more than three years after the payment is not barred by limitation as it is a suit to enforce a charge and comes within the scope of Art. 132 of the Limitation Act, even where the case is governed by the Madras Estates Land Act. 26 Mad. 686 (F.B.), *Foll.* (*Phillips, J.*). NAGALA KOTAYYA *v.* KOGANTI KOTAPPA. **90 I. C. 551=1925 M.W.N. 722=23 M.L.W. 178= A.I.R. 1926 Mad. 141=49 M.L.J. 117.**

———*Co-mortgagor.*

One of several mortgagors paying off the amount of arrears of *guzara* charged upon immovable property and decreed by Court has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expense properly incurred in thus redeeming the property and obtaining possession. 28 A. 743 (P.C.) and 26 A. 407, *Foll.*

The limitation to enforce such a charge against co-mortgagors begins to run from the date of payment to the mortgagee and not from the date of the mortgage because he is not subrogated to the rights of mortgagee. 9 O. C. 91, *Dist.*; 26 All. 407, *Ref.* Such a charge cannot however be enforced as against the auction-purchaser where he is a *bona fide* purchaser for value without notice. 1 O.L.J. 43, *Foll.* (*Dalal, J.C.*). JAHAN BEGAM *v.* MUNNEY MIRZA. **92 I.C. 559=12 O.L.J. 313= 2 O.W.N. 413=A.I.R. 1925 Oudh 613.**

—Art. 132—Taxes on property.

———A suit for the recovery of a sum of money due on account of house-tax and water-tax under U.P. Municipality Act is a suit to enforce payment

LIMITATION ACT (1908), Art. 132—Third party paying mortgagee.

of money charged upon immovable property within the meaning of Art. 132, Limitation Act. 42 Cal. 625, *Rel. on.* (*King, J.*). MD. ISHAQ *v.* MUNL. BOARD, CAWNPORE. **123 I.C. 379= A. I. R. 1930 All. 330.**

—Art. 132—Third party paying mortgagee.

———*L* purchased an oil-well subject to a mortgage in favour of *B* and right of pre-emption in favour of *N*. He made payments to the mortgagee *B* in part satisfaction of the mortgage-decree on the oil-well, such payments being necessary to save the oil-well,

Held, that *L* had a charge for the amounts paid, as against *N* who exercised his right of pre-emption as well as against persons claiming through *N*,

Held, further that Art. 132 applied. (*Pratt and MacGregor, JJ.*). MA LON *v.* MA NYO. **79 I. C. 766=1 Rang. 714=A.I.R. 1924 Rang. 204.**

———When one person pays off a debt which another is bound to pay, the ordinary relief that the Courts can give is a personal decree, against the defendant for money had and received as S. 69 of the Contract Act does not provide any higher remedy. If that remedy is barred owing to the plaintiff's delay, he cannot extend the period of limitation by asking for an enlarged relief by way of a charge upon the defendant's property. (*Spencer and Devadoss, JJ.*). GOPALA IYENGAR *v.* MUMMACHI REDDIAR. **74 I.C. 416= 17 M.L.W. 254=A.I.R. 1923 Mad. 392.**

———Where a third party has advanced money to the mortgagor to pay off the mortgage on the understanding that a further mortgage would be executed by the mortgagor, the third party has no legal title to the property, and no charge to enforce within the meaning of Art. 132. He is only entitled to a declaration of his right to have a mortgage executed in his favour. His suit is therefore governed by Art. 120. (*Macleod, C.J. and Fawcett, J.*). CHHOTALAL KARSANDAS *v.* VISHNU GANESH. **60 I.C. 903=45 Bom. 597=23 Bom. L.R. 84= A.I.R 1921 Bom. 182.**

—Art. 132—Usufructuary mortgage.

———*Mortgagee entitled but not bound to enter into possession of mortgaged property—Mortgagee permitting mortgagor to receive rent and profits—Cause of action.*

Where a mortgagee is not bound by the terms of the mortgage to enter into possession of the mortgaged property and to apply the rents and profits thereof towards the payment of the debts though he has power to do so, the mere fact that the mortgagee permits the mortgagor to receive the rents and profits from a certain year does not give rise to a cause of action. No specific time having been fixed for the payment of the debt the money does not become due and the cause of action does not arise until demand for the payment of the mortgage debt is made by the mortgagee and is refused by the mortgagor. (*Sir Lancelot Sanderson.*) NILKANTH BALWANT NATH *v.* VIDYA NARASINH BHARATHI SWAMI. **A.I.R. 1930 P.C. 188 (P.C.).**

———Where a usufructuary mortgagee who is dispossessed of the mortgaged property owing to sale for arrears of revenue afterwards sues for mortgage money or in the alternative for possession, his suit is governed by 12 years' rule of limitation and not by six years' rule. (*Das and Adami, JJ.*). KASHI LAL *v.* NURUL HUQ. **8 Pat. 569= A.I.R. 1929 Pat. 209.**

LIMITATION ACT (1908), Art. 132—Usufructuary mortgage.

———*Simple mortgage usufructuary.*

Where the mortgage is a combination of usufructuary with simple mortgage, a suit to recover mortgage money from lands brought after 12 years of the execution of the mortgage-deed is barred by Art. 132. A.I.R. 1929 P.C. 139, *Rel. on.* (*Barlee, J.C. and Kalumal, A.J.C.*). PARUMAL *v.* ABDUL RAUF. **120 I.C. 91=A. I. R. 1929 Sind 235.**

———Where under a usufructuary mortgage the mortgagee was to retain possession of the land until repayment of the mortgage money and to appropriate the usufruct in lieu of interest and he continued in possession but was dispossessed by defendant mortgagor,

Held, that limitation for mortgagee's suit for possession or mortgage money began from the date of dispossession. (*Kulwant Sahay and Macpherson, JJ.*). MT. JUGESRI KUER *v.* AFTAH CHAND. **112 I.C. 655=8 Pat. 68=10 P.L.T. 41= A.I.R. 1928 Pat. 582.**

———Where a mortgagor covenanted to deliver possession over the mortgaged property, but the mortgagee did not obtain possession, a suit to recover money is governed by Art. 132. (*Kanhaiya Lal and Ashworth, JJ.*). KHAN SAHAI *v.* MAHURMUN. **95 I.C. 100=A.I.R. 1926 All. 551.**

———*Dispossession on different dates.*

The plaintiff took usufructuary mortgage knowing that some of the villages were already mortgaged. The villages, subject to the prior mortgage, whose possession he had never obtained were sold in execution of a decree of the first mortgagee. He however was content to have the remaining villages as his security. Subsequently he was dispossessed of the remaining villages upon which he depended for security and therefore instituted a suit for mortgage money,

Held, the suit was not barred by limitation. The plaintiff's cause of action arose only when he was dispossessed of the remaining villages which he has accepted as a sufficient security on his mortgage. (*Mears, C.J. and Banerji, J.*). MD. HANIE *v.* ISHARI PRASAD. **64 I.C. 768=44 All. 77= 19 A. L. J. 827=A.I.R. 1922 All. 197.**

———Where there is no covenant to pay, on the part of the mortgagor, the right of the mortgagee to sue under S. 68 (*c*) of the Transfer of Property Act arises when the mortgagor fails to deliver possession of property to the plaintiff. 41 Mad. 259 (F.B.), *Foll.* (*Abdur Rahim and Oldfield, JJ.*). KUNHIMAI KUTTY BEARI *v.* HALE KOTE AISABI. **62 I.C. 723=13 M.L.W. 434= A.I.R. 1921 Mad. 636.**

———Where a usufructuary mortgage provides that if the mortgagee is dispossessed, he should be entitled to recover the amount advanced by him, and where the mortgagee does not obtain possession of the property, he is entitled to recover the mortgage-money with interest as stipulated in the bond. Such claim is not with respect to a personal covenant but is to enforce the charge upon the immovable property under the covenants in the bond itself. Such a suit is governed by Art. 132 of the Limitation Act.

A claim for interest in such a suit is not a claim for damages and Art. 132 and not Art. 116 applies to such a claim. But where the claim is interest at enhanced rate covenanted for in case of dispossession, Art. 116 applies. (*Jwala Prasad and Ross, JJ.*). JAINANDAN PRASHAD *v.* BAIJNATH SARAN. **62 I.C. 297=2 P.L.T. 229= A. I. R. 1921 Pat. 403**

LIMITATION ACT (1908), Art. 132—Miscellaneous.

—Art. 132—Miscellaneous.

——English Limitation Act or decisions thereunder do not apply to words of the article (*obiter.*). (*Lord Blanesburgh.*) PANCHAM *v.* ONSAR HUSSAIN. **99 I.C. 650=48 All. 457=53 I.A. 187=24 A.L.J. 736=1926 M.W.N. 520=24 M.L.W. 241=31 C.W.N. 324=A.I.R. 1926 P.C. 85 (P.C.).**

——*Recurring liability.*

A suit for recovery of a recurring liability arising every year is not barred by mere failure to sue for the money for any particular year for more than 12 years. (*Cuming and Chakravarty, JJ.*). MANOHAR DAS *v.* BROJENDRA LAL. **91 I.C. 411=A.I.R. 1926 Cal. 552.**

—Art. 133—Applicability.

——Where the property transferred is claimed in the suit by a Mahant who alleges that it belongs to a religious institution, the rule of limitation governing the suit depends upon the nature of the property. The absence of finding as to whether the property belongs to the religious institution or is the private property of the alienor makes judgment of lower Court defective and case should be sent back for retrial. (*Shadi Lal, C.J. and Tapp, J.*). HUNS DAS *v.* MADHO SINGH. **A.I.R. 1930 Lah. 191.**

—Art. 133—Pledge by trustee.

——Where an executor pledges trust property with a Bank and the beneficiary sues the Bank for recovery thereof.

Held, that Art. 133 does not apply as it does not include a case of pledge or mortgage. (*Macleod, C.J. and Shah, J.*). BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. **67 I. C. 761=24 Bom. L.R. 513=A.I.R. 1923 Bom. 155.**

—Art. 134.

Applicability.
Auction-purchaser.
Mutt and temple property.
Scope.
Starting point.
Transfer by mortgagee as owner.
Wakf property.
Want of good faith.

—Art. 134—Applicability.

——The transfer of property mortgaged contemplated by Art. 134 is something other than an express transfer of the original mortgage. Article 134 contemplates a transfer by a mortgagee purporting to transfer a larger interest than that given by the mortgagee or at any rate an interest unencumbered by a mortgage. (*Lord Atkin.*) SKINNER *v.* NANNI LAL SINGH. **117 I.C. 22=51 All. 367=1929 A.L.J. 566=56 I.A. 192=33 C.W.N. 761=31 Bom. L. R. 854=30 M. L. W. 76=50 C. L. J. 74=1929 M. W. N. 676=A.I.R. 1929 P. C. 158 (P.C.).**

——What has to be determined in a case where Art. 134 is relied on by one of the parties is whether any title adverse to that of the original mortgagor has been set up by the deed of transfer concerned, and Art. 134 does not apply where the mortgagee only transfers his mortgagee right to a third person. (*Walsh and Kendall, JJ.*). PUTTU LAL *v.* RAM CHANDAR. **103 I.C. 255=A.I.R. 1927 All. 689.**

——*"Transfer" implies transfer with possession.*

"Transfer" in Art. 134 implies that the transfer must be a transfer with possession, and unless the transferee has been in possession for twelve years a suit against him would not be barred under Art. 134. If the transferee did not obtain possession in pursuance of the transfer, Art. 134 would not apply at all. 40 Mad. 104 (F.B.), *Foll.* (*Hasan and Misra, JJ.*). ACHCHE MIRZA *v.* AHMAD SHAH. **97 I. C. 922=1 Luck. 529=3 O. W. N. 693=A. I. R. 1926 Oudh 594.**

LIMITATION ACT (1908), Art. 134—Mutt and temple property.

——Article 134 applies only to cases where there is a transfer of possession, and the transferee can claim the benefit of the law of limitation only when he has enjoyed twelve years' possession. 23 Bom. 614; 29 All. 471, *Foll.*; 40 Mad. 1040 (F.B.), *Disc.* (*Rutledge and Brown, JJ.*). A. T. A. R. M. M. CHETTY *v.* MD. KASIM. **90 I.C. 1011=3 Rang. 367=A.I.R. 1925 Rang. 377.**

——Article 134 applies only to cases where there has been a transfer of possession and the transferee can claim the benefit of the law of limitation only when he has enjoyed twelve years' possession. (*Rutledge and Brown, JJ.*). A. T. A. R. M. M. CHETTY *v.* MD. KASIM. **90 I. C. 1011=3 Rang. 367=A.I.R. 1925 Rang. 377.**

—Art. 134—Auction purchaser.

——Article 134 does not apply to auction-purchasers in execution of a decree for sale on simple mortgage. (*Iqbal Ahmad and Kendall, JJ.*). ISHRI *v.* HET RAM. **102 I.C. 891=A.I.R. 1927 All. 619.**

——Article 134, Limitation Act, cannot possibly apply to a transfer in *invitum* or by operation of law or *in* execution. (*Srinivasa Ayyangar, J.*). THIRUVIKRAMA AYYAR *v.* VAYAPURI NAICKEN. **A. I. R. 1927 Mad. 1028.**

——Article 134 does not apply to auction purchaser of mortgagor's interest, in a decree against mortgagee. (*Raymond and Madgavkar, A. J. Cs.*). MAHOMED MOOSA *v.* KAZI FATEH ULLAH. **79 I. C. 466=19 S.L.R. 268=A.I.R. 1925 Sind 167.**

——Where, pending a suit for a declaration of a certain property being subject to a trust, the same was sold in execution of a decree and the auction purchaser entered into possession,

Held, that the adverse nature of the possession of the auction-purchaser is not affected by the subsequent declaration of trust made in the suit. (*Lord Buckmaster.*) A. S. S. SUBBAIYA PANDARAM *v.* MOHAMAD MUSTAFA MARACAYAR. **74 I.C. 492=18 M.L.W. 903=40 C.L.J 20=2 Pat.L.R. 104=21 A.L.J. 730=50 I A. 295=25 Bom. L.R. 1275=28 C.W.N. 493=46 Mad. 751=33 M.L.T. 285=4 L.R.P.C. 180=1924 M.W.N. 26=A.I.R. 1923 P.C. 175=45 M.L.J. 588 (P.C.).**

——Article 134 does not apply to execution sales. (*Mookerjee and Cuming, JJ.*). CHARU CHANDRA PRAMANICK *v.* NAHUSH CHANDRA KUNDU. **74 I.C. 630=50 Cal. 49=36 C.L.J 35=A.I.R. 1923 Cal. 1.**

—Art. 134—Mutt and temple property.

——Where property belonging to the idol is transferred and the rent reserved in favour of the idol of the temple is only eight annas, such rent is not valuable consideration within the meaning of Art. 134. A.I.R. 1922 P.C. 123, *Rel. on.* (*Ramesam and Jackson, JJ.*). SUBBA RAO *v.* VEERANJANEYASWAMI. **A.I.R. 1930 Mad. 298.**

——*Adverse possession—Starting point.*

In the case of lease of property belonging to a temple, the possession is adverse from the time when the lease is created if the lessee and his successor consistently and unanimously took their stand on the lease and prescribed under it. A.I.R. 1922 P.C. 123, *Dist.*

LIMITATION ACT (1908), Art. 134—Mutt and temple property.

If it is a case of out and-out transfer of property whether it is a voluntary sale or a sale in execution, the suit is barred if beyond 12 years from the date of transfer; it is immaterial whether Art. 134 or Art. 144 applies. In the case of temples it does not matter which article is applied; as Art. 144 is only a residuary article one would be right and proper in applying Art. 134, but if Art. 134 does not apply, Art. 144 would apply. In the case of lease of temple property the trustee having beneficial interest he may be still called a trustee and Art. 134 will apply, but if it is a case of a mutt Art. 134 cannot apply and there will certainly be no adverse possession from the date of the lease. Whether there is adverse possession after the death of the lessor would be a matter dependent on the particular facts of each case and no general observation can be laid down. (*Phillips and Ramesam, JJ.*). VADLAMUDI SASTRULU *v.* VENKATASESHAYYA. **110 I.C. 894=A.I.R. 1928 Mad. 614.**

———*Suit by trustee to set aside alienation by prior trustee.*

Ordinarily trust property belonging to Hindu religious institutions is not vested in the so-called trustee who is not in the position of an express trustee as understood in English Law and, therefore, a suit by trustee to set aside alienation of trust property by previous trustee is not governed by Art. 134 and even if Art. 144 applies, the period of limitation runs not from the date of alienation but from the date of the accession of the plaintiff trustee to his office. 13 Mad. 277, *Foll.*; A.I.R. 1922 Pat. 243, *Not foll.* (*Phillips, J.*). GOVINDA ROW *v.* CHINNATHURAI PILLAI.

91 I. C. 377=1925 M.W.N. 871=24 M.L.W. 329=A.I.R. 1926 Mad. 193=49 M.L.J. 640.

———*Suit by trustee to set aside alienation by prior trustee.*

Article 134 does not apply to a suit. by a Pujari or trustee of a temple as the trustee of temple properties, to recover possession of temple properties sold by a preceding Pujari. A.I.R. 1922 P.C. 123, *Appl.* (*Madhavan Nair, J.*). RANGA DASAN *v.* LATCHUMA DASAN. **86 I.C. 231=21 M.L.W. 13=A.I.R. 1925 Mad. 822=48 M.L.J. 114.**

———*Lease without necessity.*

The language of S. 10 of the Limitation Act gives the clue to the meaning and the applicability of Art. 134. It clearly shows that the article refers to cases of specific trust, and relates to property "conveyed in trust." Neither under the Hindu Law nor in the Mahomedan system is any property "conveyed," to or vested in a *shebait* or *mutwali*, in the case of a dedication. Therefore alienation made by either cannot be treated as an alienation made by a trustee under S. 10. A lease without justification granted by the head of the *mutt* is valid for his life, and if adopted by his successor would endure during his term of office; but neither the original alienation nor the subsequent adoption would create a bar by adverse possession. Possession of the lessee becomes adverse to the successor only on his accession to the office. (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA SWAMIGAL *v.* BALUSWAMI AYYAR. **65 I.C. 161=15 M. L.W. 78=3 Pat. L. T. 245=26 C.W.N. 837=20 A.L.J. 497=24 Bom. L.R. 629=30 M.L.T. 66=48 I.A. 302=44 Mad. 831=1921 M.W.N. 449=A.I.R. 1922 P.C. 123=41 M.L.J. 346 (P.C.).**

LIMITATION ACT (1908), Art. 134—Scope.

———The endowments of a Hindu Math are not "conveyed in trust" nor is the head of the Math a "trustee" with regard to them, save as to any specific property proved to have vested in the head for a specific and definite object; and that consequently Art. 134 of the Limitation Act does not apply where the head of a Math has alienated the properties not proved to be subject to a specific trust. *Vidya Varuthi* v. *Balusami*, 44 Mad. 831, *Foll.* (*Das and Bucknill, JJ.*). MAHANTH RAMRUPJIR *v.* LAL CHAND MARWARI. **67 I.C. 401=3 Pat. L.T. 352=1 Pat. 475=A.I.R. 1922 Pat. 243.**

———The limitation for a suit for possesion of endowed property by a successor-in-office of a Mahant who alienated the endowed property runs from the date of the latter's death, as the Mahanth had a life-estate in the endowed properties and time did not begin to run until his death. (*Jwala Prasad, A. C. J. and Das, J.*). RAM PADARATH SINGH *v.* MAHANTH BASDEO DAS.

63 I.C. 231=3 Pat. L.T. 264=1922 P.H.C.C 188=A.I.R. 1922 Pat. 178.

—Art. 134—Scope.

———*Purchaser by private treaty from auction-purchaser.*

A purchaser by private treaty from an auction-purchaser of the rights of a mortgagee is entitled to the protection afforded by Art. 134 if he purchased in the *bona fide* belief that he was purchasing an absolute proprietary title and the limitation begins to run from the date of purchase by private treaty. 13 A.L.J. 877, *Foll.*; A.I.R. 1926 Mad. 81 and A.I.R. 1921 All. 389, *Ref.* (*Dalal, J.*). ABDUL AZIZ *v.* MUNNI LAL. **A.I.R. 1930 All. 417.**

———The sections have no retrospective application. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAMCHARAN DAS. **11 P.L.T. 403=A.I.R. 1930 Pat. 455.**

———Article 134 applies even to transfers by trustees and mortgagees and there is no distinction between transfers by these two classes. A. I. R. 1926 Mad. 81, *Rel. on.* (*Jackson, A.J.C.*). DAULAT *v.* BALIRAM. **118 I.C. 682=A.I.R. 1929 Nag. 267.**

———*Successive transferees.*

Article 134 is limited to cases where the property mortgaged has been transferred by the mortgagee for a valuable consideration. That article applies only to cases where a transferee for value from a mortgagee, takes that which is *de facto* a mortgage, upon a representation made to him and in the full belief that it is not a mortgage but an absolute title. The article cannot protect persons who are not transferees from the mortgagees, but are transferees from persons other than the mortgagees or their heirs, *e.g.*, transferees from mortgagee's transferees. 20 O. C. 164, *Rel. on.*

Any person who seeks the protection of Art. 134 must strictly bring his case within that article. (*Iqbal Ahmad, J.*). MUNAWAR ALI *v.* JAGMILAN RAM. **99 I. C. 280=A. I. R. 1927 All. 177.**

———Article 134 controls both Arts. 140 and 148. (*Lindsay and Kanhaiya Lal, JJ.*). NAUNILAL SINGH *v.* A. G. SKINNER. **92 I. C. 63=47 All. 803=23 A.L.J. 691=A.I.R. 1925 All. 707.**

———A suit for redemption of a usufructuary mortgage from the original mortgagee cannot be a suit within the meaning of Art. 134 of the Act. The article can be applicable only when the suit in question is being brought against the subsequent transferee from the original mortgagee. (*Rutledge and Brown, JJ.*). A. T. A. R. M. M. CHETTY *v.* MD. KASIM. **90 I.C. 1011=3 Rang. 367=A.I.R. 1925 Rang. 377.**

LIMITATION ACT (1908), Art. 134—Scope.

———*Sub-mortgagee.*

As against a sub-mortgagee, as such, the article of the Limitation Act which applies is Art. 148 and not Art. 134. (*Duckworth and Godfrey, JJ.*). MA MYAT GYI *v.* MA MA NYAN. **84 I.C. 984= 2 Rang. 561=A.I.R. 1925 Rang. 140.**

———*Purchaser from mortgagor's vendee.*

Article 134 protects a purchaser of the rights of the mortgagor's ostensible vendee from a claim by the mortgagor unless the claim is brought within 12 years from the date of the transfer. (*Kanhaiya Lal, J.C.*). MOHAMMAD ABBAS *v.* SHAHMAT HUSSAIN. **79 I.C. 274=26 O.C. 64= A.I.R. 1923 Oudh 246.**

—Art. 134—Starting point.

———Under Art. 134 there must be a valid transfer between the transferor and the transferee though it might not be operative as against a trust or any other person, and the time runs only from the date of the transfer. (*Ramesam and Jackson, JJ.*). SUBBA RAO *v.* VEERANJANEYASWAMI. **A.I.R. 1930 Mad. 298.**

———Article 134 ought to be applied, as stated in Limitation Act, from the date of transfer and not from the date of possession. (*Bennet, J.*). BEHARI LAL *v.* BABU RAM. **118 I.C. 659 (All.).**

———Limitation under Art. 134 runs only from the date of the transfer by the trustee or mortgagee and not from the preliminary conveyance, bequest or mortgage. (*Pratt and Fawcett, JJ.*). BAI REVA *v.* VALLIMAHOMED MIYAMAHOMED. **70 I.C. 912=24 Bom. L.R. 720=46 Bom. 1009= A.I.R. 1922 Bom. 211.**

—Art. 134—Transfer by mortgagee as owner.

———Article 134 does apply even where the mortgagee has ceased to be a mortgagee by getting the equity of redemption and has obtained possession not under the mortgage but under the purchase of the equity. It is immaterial that the mortgagee should have thought that he was absolute owner if in fact he was mortgagee. It is also immaterial whether he gets possession before, under or after the mortgage if in fact he purported to transfer the property to the transferee. (*Lord Atkin.*) SKINNER *v.* NAUNI LAL SINGH. **117 I.C. 22=51 All. 367= 1929 A.L.J. 566=56 I.A. 192=33 C.W.N. 761= 31 Bom. L.R. 854=30 M.L.W. 76=50 C.L.J. 74= 1929 M.W.N. 676=A.I.R. 1929 P.C. 158 (P.C.).**

———If a purchaser from a mortgagee honestly and after due care, believed that his transferor was the full owner, it may be presumed that what he intended to acquire was full ownership and therefore Art. 134 would govern his case. 34 M. L. J. 431, *Rel. on.* (*Venkatasubba Rao and Walsh, JJ.*). MARIYUMMA *v.* ANDU. **115 I.C. 149= A.I.R. 1929 Mad. 145.**

———A transferee for value from a mortgagee, who has taken that which is *de facto* a mortgage upon a representation made to him, and in the full belief that it is not a mortgage, but an absolute title, is entitled to the benefit of Art. 134, though the suit is a suit for redemption of the mortgage. (*Iqbal Ahmad, J.*). LAKHMI DAS *v.* MT. BADLA. **102 I.C. 135=A. I. R. 1927 All. 807.**

———Where a person believing that his vendor had an absolute interest in a certain property of which he was only the mortgagee, purchases the same for valuable consideration, the suit brought by the heirs of original mortgagor to redeem the property from such purchaser, if brought more than 12 years after the date of sale, will be barred by limitation. A.I.R. 1922 Oudh 7, *Foll.* In such cases mere constructive notice without actual

LIMITATION ACT (1908), Art. 134—Transfer by mortgagee as owner.

knowledge is not sufficient to deprive the purchaser of the benefit of Art. 134 and the purchaser who bought what purported to be and what he believed to be full proprietary right cannot be deprived of the benefit of Art. 134 by failure to make inquiries as to the true state of the title. (*Raza, J.*). HONAMAN SINGH *v.* SARDARI UMRAO KUAR. **95 I.C. 143=A.I.R. 1926 Oudh 492.**

———Article 134 presupposes a transfer with possession. The transferor-mortgagee must have been in possession of the mortgaged property at the time he made the transfer. But the possession which the transferor has at the time of the transfer need not necessarily be acquired under the mortgage originally made in his favour. Even if the mortgage was a simple mortgage and if the mortgagee subsequently gets possession of the mortgage property otherwise, as for example, by purchase in execution of a simple money decree obtained by another creditor, the article will still apply if it is established that at the time the transfer is made the mortgagee was in possession no matter under what title. The article is designed for the protection of a transferee who has been led by a mortgagee to believe that he is acquiring not merely mortgagee rights but a full proprietary title. (*Lindsay and Kanhaiya Lal, JJ.*). NAUNI LAL SINGH *v.* A. G. SKINNER. **92 I.C. 68= 47 All. 803=23 A. L. J. 691= A. I. R. 1925 All. 707.**

———Where a mortgagee sold the property to another as if he was the owner thereof but the transferee, notwithstanding the fact that he took the sale-deed, admitted the right of the mortgagor, dealt with him on the footing that he was the mortgagor landlord, acknowledged his title, paid him rent and constituted himself mortgagee-tenant and throughout assumed his possession to be that of a tenant,

Held, that the transferee could not rely on Art. 134 in an action against him by the mortgagor,

Held, also that a person claiming from the transferee would not be in a better position than himself. (*Venkatasubba Rao, J.*). VETTIPARAMPIL AHAMMAD *v.* C. C. MANAKKAL KARNAVAN. **87 I.C. 578=A. I. R. 1925 Mad. 1127.**

———*Purchasers from mortgagee.*

A suit against purchasers from the mortgagee of the whole property and not merely the mortgagee's rights is covered by Art. 134 and the purchaser would be entitled to retain the property if no suit was brought to set aside the sale within twelve years of the transfer. (*Macleod, C.J. and Shah, J.*). KRISHANJI SONAJI *v.* SADANAND MADHAO. **80 I.C. 763=26 Bom. L. R. 341= A. I. R. 1924 Bom. 417.**

———*Subsequent knowledge of transferee immaterial.*

Defendant No. 1 with whom plaintiff's predecessor-in-title mortgaged certain lands, sold as owner the land to defendant No. 2 who was a purchaser for value without notice and gave him possession. Defendant No. 2 came subsequently to know that defendant No. 1 was only a mortgagee and not the owner of the land. In plaintiff's suit, after 12 years of the transfer, for redemption,

Held, it was barred under Art. 134 of the Indian Limitation Act. Unless direct possession is made in the Act, that on the acquisition of such knowledge the time which had previously begun to run against the mortgagor should stop it is difficult to say that

LIMITATION ACT (1908), Art. 134—Transfer by mortgagee as owner.

the later knowledge on the part of the transferee would prevent time running in his favour. (*Macleod, C. J. and Coyajee, J.*). KESHAV RAGHUNATH JOSHI *v.* GAFURKHAN DAIMKHAN BULERE.

67 I.C. 308=24 Bom.L.R. 319=46 Bom. 903=
A. I. R. 1922 Bom. 234.

———*Mortgagee with possession making simple mortgage—Suit by original mortgagor.*

Where a mortgagee with possession makes a simple mortgage of the proprietary interest which he believes and professes or pretends to hold in the property and the mortgagee of such interest purchases it in execution of a decree obtained by him on the mortgage of the so-called proprietary interest of his mortgagor, Art. 134 does not apply to a suit by the original mortgagor for possession but Art. 144 applies to such suit. 25 Mad. 99; 9 All. 97 and 2 A. L. J. 234, *Ref.* (*Mears, C.J. and Kanhaiya Lal, J.*). MT. RAM PIARI *v.* BUDH SEN.

61 I.C. 546=43 All. 164=A.I.R. 1921 All. 389.

———Where a person mortgaged certain properties and the mortgagee treating it as his own, mortgaged it to a third person and that person purchases it in Court sale, in execution of his mortgage decree, and passes title to his vendee, and where a person who buys the equity of redemption from the original mortgagor, brings a suit for redemption against the vendee the suit is governed by Art. 134 or Art. 144 of the Limitation Act, and not by Art. 148. (*Tudball, J.*). GURDIAL *v.* MANNA LAL. 61 I. C. 627=2 U.P.L.R. (All.) 410.

———Article 141 covers only those cases in which the cause of action is simply the death of the female. Where the cause of action includes a mortgage by the last male holder and a transfer by the mortgagee, Art. 134 will apply.

A Hindu mortgaged his properties in 1866 and thereafter died leaving daughters. The mortgagee sold the properties to the defendant in 1900 and gave him possession. The last surviving daughter died in 1906 and in 1914 her sons brought a suit for redemption and possession,

Held, that the suit was barred under Art. 134. (*Spencer and Ramesam, JJ.*). NARAYANASWAMY NAICKER *v.* PERIASAMY ODAYAR. 68 I.C. 734=
44 Mad. 951=14 M.L.W. 116=
1921 M.W.N. 465=A.I.R. 1921 Mad. 272=
41 M. L. J. 163.

—Art. 134—Wakf property.

———*Adverse possession—Starting point.*

There is no difference between a permanent lease and a sale of *wakf* property and where a sale by the mutwalli of such property is valid during his lifetime, adverse possession against the mosque commences not from the date of sale but from the date of the death of the mutwalli. A.I.R. 1922 P.C. 123; A.I.R, 1925 Mad. 822; A.I.R. 1927 Mad. 1163; A.I.R. 1926 Pat. 239, *Foll.*; A.I.R. 1922 Pat. 243; A.I.R. 1926 P.C. 9; A.I.R. 1923 P.C. 44, *Ref.* (*Wallace and Ananthakrishna Ayyar, JJ.*). PIRATLA PEDA VENKATASUBBARAYUDU *v.* SILAR SAHIB.

31 M.L.W. 396=A.I.R. 1930 Mad. 682=
58 M. L. J. 624.

———A permanent lease of properties set apart for a family religious trust cannot be considered as a transfer for consideration contemplated under Art. 134. Article 144 only applies to the case. A.I.R. 1922 P.C. 123 and A.I.R. 1922 P.C. 365, *Foll.* (*Madhavan Nair, J.*). LASHMINARAYANA *v.* RAJAMMA.

95 I.C. 1002=21 M.L.W. 256=
A. I. R. 1925 Mad. 796.

LIMITATION ACT (1908), Art. 134—Want of good faith.

———Article 134 does not apply to a *wakf*. (*Lord Sumner.*) ABDUR RAHIM *v.* NARAYAN DAS.

71 I.C. 646=17 M.L.W. 509=50 I.A. 84=
32 M.L.T. 153=28 Bom. L. R. 670=
1923 M.W.N. 441=50 Cal. 329=38 C.L.J. 242=
28 C.W.N. 121=A.I.R. 1923 P.C. 44=
44 M.L.J. 624 (P.C.).

———Article 144 and not Art. 134 governs a suit to set aside an alienation by a Mutawali of ordinary *waqf* property gifted for general, pious or religious purposes. Section 10 controls Art. 134 of the Limitation Act of 1908. It clearly shows that the Article refers to cases of specific trust and relates to property "conveyed in trust." There is under Hindu and Muhammadan Law, a distinction between a specific trust and a trust for general, religious or charitable purposes. (*Scott-Smith, J.*). DIWAN SINGH *v.* SHAM DAS.

65 I. C. 722=A.I.R. 1922 Lah. 271.

———Article 134 of the Limitation Act, applies to a suit to recover, on behalf of a trust properties alienated by a mutwalli and the period of limitation commences to run from the date of the alienation. (*Teunon and Newbould, JJ.*). MD. KAZIMUDDIN CHOWDHURY *v.* SREEMUTTY SOBHA KHATUN. 60 I. C. 689 (Cal.).

—Art. 134—Want of good faith.

———*Transferee with notice—Article not applicable.*

A suit for redemption by a purchaser of the interest of a mortgagor against the transferee of the rights of the mortgagee with notice of the right of the mortgagee is not governed by Art. 134 since the article is designed for the protection of the transferee who has been made to believe by the mortgagee that he was transferring the full proprietary title in the property. 24 Cal. 281; A.I.R. 1925 Bom. 417; 19 Bom. 140, *Foll.*; A.I.R. 1925 All. 707; A.I.R. 1929 P.C. 158, *Rel. on*; A.I.R. 1926 Mad. 81, *Dist.* (*Madgaonkar, J.*). SHIVAJI SHESAGIR KULKARNI *v.* CHANAVA KAM BASANGAVDA. 32 Bom.L.R. 687=
A.I.R. 1930 Bom. 292.

———*Transferee with notice—Article applicable.*

Article 134 would apply both to transferees from trustees as from mortgagees provided the transfer was for valuable consideration and of absolute title. The question of *bona fide* on the part of the transferee is immaterial.

Per *Costello, J.*—Whether actual knowledge on the part of the transferee is immaterial is perhaps a question on which there remains some little doubt. (*Suhrawardy and Costello, JJ.*). BAIKUNTHANATH ROY *v.* MOULVI AHMED ULLA.

34 C.W.N. 961.

———*Transferee with notice—Article not applicable.*

The omission of the words "good faith" from Art. 134 does not entitle a person, who purchases with full knowledge that his vendor's title is merely that of the mortgagee, to the benefit of that article. 37 All. 660, *Foll.*; A.I.R 1925 All. 707; 18 A.L.J. 995, *Expl.* and *Not appl.* (*Bennet, J.*). BEHARI LAL *v.* BABU RAM. 118 I.C. 659 (All.).

———The fact that there was no reason on record for the vendee to believe that his vendor had absolute title to the property which he could transfer, other than the bare assurance of the vendor that he had such title does not necessarily prove that he did not believe that his vendor had such title nor is it a sufficient reason for holding that he bargained for a transfer of a right that did

LIMITATION ACT (1908), Art. 134—Want of good faith.

not exist. (*Waller and Jackson, JJ.*). ROMAN CATHOLIC MISSION, TINNEVELLY DIST. *v.* THIRUMALAIYAPPA MUDALIAR. **119 I.C. 154= A.I.R. 1929 Mad. 417.**

———Good faith is immaterial and Art. 134 applies even if the transferee knows that the transferor was only a mortgagee. A. I. R. 1922 Bom. 234; 40 Mad. 745 and A.I.R. 1926 Mad. 81, *Foll.* (*Jackson, A.J.C.*). DAULAT *v.* BALIRAM. **118 I.C. 682= A.I.R. 1929 Nag. 267.**

———*Transferee with notice—Article applicable.*

In the Limitation Act of 1877 as in the Act of 1908 the expressions "*bona fide*" and "good faith" which found a place in the Acts of 1859 and 1871 have been deliberately deleted from the article. This indicates that the section applies not only to cases of purchase and transfer *bona fide* or in good faith but also to cases where there are transfers of property either by the trustee or by the mortgagee, whether *bona fide* or not. (*Srinivasa Ayyangar, J.*). THIRUVIKRAMA AYYAR *v.* VYAPURI NAICKEN. **A.I.R. 1927 Mad. 1028.**

———*Absolute transfer necessary.*

Before Art. 134 can be held applicable to a case, there must be a real transfer and that the transfer must be an absolute transfer of the property itself and not a mere assignment of the mortgage. Where, therefore, the transferee, in spite of the fact that he knew or had reason to believe that the transferor was only a mortgagee still stipulated for an absolute transfer of the land and obtained it, the mere fact that the transferee knew or had reason to believe that the transferor was merely a mortgagee or a limited owner cannot really affect the question of the applicability of this article. (*Srinivasa Ayyangar, J.*). THIRUVIKRAMA AYYAR *v.* VYAPURI NAICKEN. **A.I.R. 1927 Mad. 1028.**

———A purchaser from a mortgagee with conditional sale who does not enquire as to whether the mortgagee had acquired full proprietary rights by proceeding under Bengal Land Redemption and Foreclosure Regulation is not *bona fide* purchaser. (*Jai Lal, J.*). ZAMAN ALI SHAH *v.* RURA. **96 I. C. 886= A.I.R. 1926 Lah. 676.**

———Article 134 applies only to *bona fide* purchasers and to other purchasers Art. 148 applies. A.I.R. 1924 Lah. 468, *Foll.* (*Jai Lal, J.*). ZAMAN ALI *v.* RURA. **96 I.C. 886= A.I.R. 1926 Lah. 676.**

———*Transferee with notice.*

Where both the transferor and the transferee knew that the transferor was unable to confer a higher right than that of a sub-mortgagee on the transferee, and neither the transferor nor the transferee honestly believed that the full ownership was being passed, the mere insertion of some words in the document, which might be construed as if they were the words of a person, capable of passing a title of full owner to his transferee, do not confer full ownership on the transferee. 34 M.L.J. 431, *Rel. on.* The question whether the transferee from a mortgageee took an absolute interest or only a mortgage interest is a question of intention. (*Spencer and Odgers, JJ.*). LAKSHMANA AIYAR *v.* SANKARAPANDIAN PILLAI. **93 I.C. 276=23 M.L.W. 63=1926 M.W.N. 152= A.I.R. 1926 Mad. 311=51 M.L.J. 451.**

———*Transferee with notice—Article applicable.*

Article 134 applies even where a deed of transfer is a sale-deed and what was bargained by the transferee is also an absolute sale though he knew that the transferor has only a mortgagee's interest. A.I.R. 1923 P.C. 175, *Foll.* The omission of the words "in good faith" which appeared in the corresponding articles of the Limitation Acts of 1859 and 1871 is not without any significance and the onus is not on a purchaser of the full interest from a mortgagee to prove that he acted in good faith before he can plead limitation. (*Spencer and Ramesam, JJ.*). VENKA SHETTITHI *v.* RAMACHANDRAYYA. **92 I.C. 342=49 Mad. 29= 1925 M.W.N. 866=22 M.L.W. 885= A. I. R. 1926 Mad. 81= 49 M.L.J. 634.**

———*Transferee with notice—Article applicable.*

A suit by mortgagor to recover property from a transferee of absolute title from mortgagee, is governed by Art. 134 and not by Art. 148. 44 Bom. 614, *Not foll.*

Under Art. 134 the transferee without notice and the transferee with notice are on the same footing. 47 Cal. 866 and A.I.R. 1922 Bom. 234, *Foll.* (*Hasan, Raza and Kendall, JJ.*). SRI RAM *v.* NAJIBULLAH. **97 I.C. 874=1 Luck. 423=29 O.C. 353= 3 O.W.N. 674=A.I.R. 1926 Oudh 547 (F.B.).**

———*Transferee with notice—Article applicable.*

Article 134 is not restricted in its application to the purchaser in the good faith, but applies equally to an alienee from a trustee for value, even when he takes the property with full knowledge, that the alienor is acting in excess of his power. 127 P.R. 1908 (F.B.), *Foll.*; 37 All. 630, *Not foll.* (*Broadway and Fforde, JJ.*). NARAIN DAS *v.* SARDUL SINGH. **95 I. C. 699 (Lah.).**

———*Transferee with notice—Article not applicable.*

Article 134 does not apply to a suit by a mortgagor to recover possession of the mortgaged property from an alienee of the mortgagee who has taken with notice of the mortgage. Such a suit is governed by Art. 148. A. I. R. 1925 Bom. 417, *Ref.* (*Raymond, A. J. C.*). SULLEMAN AUSHIM *v.* ESSO. **91 I.C. 87=20 S.L.R. 277= A.I.R. 1926 Sind 145.**

———*Transferee with notice—Article inapplicable.*

Article 134 does not apply to a suit by a mortgagor to recover possession of the mortgaged property from an alienee of the mortgagee who had even constructive notice of the mortgage. Such a suit is governed by Art. 148 of the Act. 44 Bom. 614, *Foll.* (*Macleod, C. J. and Coyajee, J.*). VISHVANATH BHIVA *v.* TUKARAM VITHU. **89 I.C. 189=27 Bom.L.R. 661= A.I.R. 1925 Bom. 417.**

———*Transferee with notice—Article not applicable.*

Article 134 applies only against a transferee with a *bona fide* belief at the time of the alienation while as against other transferees a suit for redemption is governed by Art. 148. 9 Bom. 475; 15 Bom. 583; 45 I. C. 975; 68 I. C. 734, *Not foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). WAZIR CHAND *v.* NATHU RAM. **80 I.C. 321=6 L.L.J. 151= A.I.R. 1924 Lah. 468.**

———*Transferee without notice.*

A transfer by a mortgagee does not stand on the same footing as a transfer by a trustee, where the transfer is made by a trustee for a valuable consideration, the question of good faith becomes practically immaterial for, if the transferee has acquired the property from a trustee in good faith for a valuable consideration without having a notice of the trust, he acquires an immediate title to the property under S. 64 of the Indian Trusts Act; but if he has not acted in good faith and go paid valuable consideration, he acquires a odhas title after the lapse of the period necessary for

LIMITATION ACT (1908), Art. 134—Want of good faith.

extinguishing the right of the beneficiary to follow the trust property in his hands. Where the transferee purchases in good faith and for valuable consideration without having any notice that the transferor had no higher interest than that of a mortgagee. Article 134 protects him from a claim by the mortgagor, unless the mortgagor enforces his rights as against such transferee within 12 years from the date of the transfer. 37 All. 660 and 23 O.C. 125, *Foll.*; 38 I.C. 194 and 40 Mad. 745, *Dist.* (*Kanhaiya Lal, J. C.*). GOMTI MISRA *v.* DEOTA DIN SINGH. **77 I.C. 737=26 O.C. 197=A.I.R. 1924 Oudh 44.**

———*Transferee with notice—Article not applicable.*

Article 134 could be availed of by a transferee from a mortgagee to resist the suit for possession of the property transferred to him but it has nowhere been laid down that the transfer itself conveyed a valid title to the transferee. If it can be shown that the transferee from a mortgagee knew that the title of his transferor was not free from doubt and such transferee took no steps whatever to clear up that doubt, he can hardly claim the benefit of Art. 134. The omission of the words "in good faith" from Art. 134 does not entitle a person who purchases with full knowledge that his vendor's title is merely that of mortgagee, to the benefit of that article. 37 All. 660, *Ref.* (*Broadway, J.*). SRI RAM *v.* MALWALA RAM. **71 I.C. 577=A. I. R. 1923 Lah. 219.**

———*Purchaser without notice.*

A person who purchases a right which he honestly believes to be a full proprietary right and which is so described in the deed of sale can claim the the benefit of the Art. 134, Limitation Act, even though by the exercise of diligence he might have discovered that his transferor was only a mortgagee. 37 All. 660; 23 O. C. 125; 14 M. I. A. 1 (P.C.); 19 Bom. 140, *Ref. to.*

Burden of proving knowledge of the transferee lies on the person who asserts that a transaction was something different from what, on the face of it purports to be. (*Daniels and Lyle, A. J. Cs.*). BIJAI PARTAB SINGH *v.* RAGHURAJ SINGH. **67 I.C. 572=9 O.L.J. 173=25 O.C. 115=A.I.R. 1922 Oudh 7.**

—Art. 135—Default clause in mortgage.

———A person mortgaged his land with a stipulation that he would be in possession and be paying annual interest failing which the mortgagee would be entitled either to recover interest independently or to add it to the principal sum and obtain possession of land by suit,

Held, that although the mortgagee had option of choosing between two different remedies, as he could pursue them on the happening of a single event namely a given default, the mortgagor's right to possession had determined at the first default date and mortgagee's suit 12 years subsequent to default was barred. 6 O. L. J. 248, *Dist.*; 28 P. R 1897 and 63 I.C. 579, *Rel. on.* (*Tek Chand and Hilton, JJ.*). ATRA RAM *v.* SHADI KHAN. **121 I.C. 190=A.I.R. 1930 Lah. 327.**

———A mortgage-deed contained a clause to the effect that the mortgage-money would be paid by annual instalments, and that on the happening of a default in the payment of any instalment the mortgagee would be entitled to take possession of the property. No instalment was paid. In a suit by the mortgagee for possession of the mortgaged property more than twelve years after the date of the first default,

Held, that the suit was barred under Art. 135 of the Limitation Act. (*Abdul Raoof and Harrison, JJ.*). ISHAR DASS *v.* SHAHAB-UD-DIN. **63 I.C. 579 (Lah.).**

—Art. 135—Mortgagor not in possession.

———There is no reason why a puisne mortgagee should be compelled to file a suit for possession within twelve years from the date of his mortgage, when the property is not in the possession of the mortgagor, but is in the possession of a third party or a prior mortgagee. (*Shadi Lal, C.J. and Moti Sagar, J.*). INDAR SINGH *v.* BASANTA. **63 I.C. 679=4 L.L.J. 13=A.I.R. 1922 Lah. 91.**

—Art. 135—Scope.

———Article 135 applies not only where the suit is filed against the mortgagor but also against a person deriving title from the mortgagor under a prior mortgage. (*Daniels, J.C.*). GOKUL PRASAD *v.* SUKRU. **81 I.C. 581=11 O.L.J. 269=A.I.R. 1924 Oudh 374.**

—Art. 135—Submersion of land.

———In a suit brought more than 12 years after the mortgage by mortgagee for possession of mortgaged property which was submerged under water after the execution of the mortgage,

Held, that as the time began to run from the date of the mortgage, the subsequent submersion of the land under water cannot have the effect of stopping it and, therefore, the suit was barred. (*Zafar Ali, J.*). BARKAT *v.* RELU MAL. **92 I.C. 178=7 L.L.J. 509=26 P.L.R. 729=A.I.R. 1925 Lah. 627.**

—Art. 136—Starting point.

———Under Art. 136 a person in his capacity of a private purchaser has 12 years' limitation to sue for possession of immovable property sold to him by his vendor when out of possession at the date of sale, the starting point of limitation being the date when the vendor was first entitled to possession; and the mere circumstance that the purchaser takes five years to complete his title against his vendor cannot give him a fresh starting point of limitation as he can only sue in the right of his vendor. 2 N.L.R. 32, *Rel. on.* (*Kinkhede, A.J.C.*). GAURISHANKAR *v.* IBRAHIM ALI. **116 I.C. 70=A. I. R. 1929 Nag. 298.**

—Art. 137—Mortgage decree.

———Article 137 does not apply to purchasers at sale held in execution of mortgage-decrees. (*Ayling and Venkatasubba Rao, JJ.*). SUNDARAM AYER *v.* THIYAGARAJA PILLAI. **99 I.C. 831=A.I.R. 1923 Mad. 160=50 M.L.J. 183.**

—Art. 137—Mortgagor and mortgagee.

———Adverse possession against a mortgagee is generally ineffectual against the mortgagor, especially when it begins at a time when the mortgagee is in possession of the mortgaged property and asserts a title which is hostile not only to the mortgagee but which also assails the title of the mortgagor and the mortgagor allows 12 years to elapse, the title of the trespasser will become indefeasible not only against the mortgagee but also against the mortgagor. 6 P.R. 1898 and A. I. R. 1925 Bom. 465, *Dist.* *Marquis of Chalmondeley* v. *Lord Clinton*, 22 R.R. 84, *Foll.*; 86 C. W. N. 601, *Ref. to.* (*Tek Chand, J.*). HANSA *v.* RAMLOK. **107 I.C. 612=A.I.R. 1928 Lah. 157.**

—Art. 137—Rent decree.

———*Purchaser in execution of.*

Plaintiffs were owners of a miras tenure and under them was a *darmiras* tenure held by the de-

LIMITATION ACT (1908), Art. 138—Adverse possession.

fendants. This under-tenure was sold in execution of a rent decree and purchased by a stranger who never obtained possession. In execution of a rent decree obtained against the stranger the under-tenure was again sold more than twelve years after and purchased by the plaintiffs who sued for possession,

Held, Per *Walmsley, J.* (*Woodroffe and Suhrawardy, JJ.* contra).—Article 137 applied to the case and the suit was barred.

Per *Suhrawardy, J.*—Article 140 or Art. 144 applied to the case.

Per *Woodroffe, J.*—None of the articles of the Limitation Act applied to the case but the suit was barred under S. 167 of the Bengal Tenancy Act. (*Woodroffe, J., on difference between Walmsley and Suhrawardy, JJ.*). JNANENDRA MOHAN DUTT *v.* UMESH CHANDRA GUHA. **26 C.W.N. 985= A.I.R. 1922 Cal. 544.**

—Art. 138—Adverse possession.

———The auction-purchaser must institute a suit for possession of the property purchased by him in execution of a decree within 12 years from the date when the sale becomes absolute and any question of adverse possession in favour of person holding against him is irrelevant. (*King, J.*). BHAGMAL *v.* SITARAM. **96 I.C. 173 (All.).**

—Art. 138—Mortgage pending attachment.

———Where property is usufructuarily mortgaged during pendency of an attachment and it is subsequently sold, the purchaser must sue for possession within 12 years from the date when he took symbolical possession. Nor could he ever sue for redemption. (*Devadoss and Waller, JJ.*). SRINIVASA AIYANGAR *v.* VELLAYAN AMBALAM. **97 I.C. 718=24 M.L.W. 263= A.I.R. 1926 Mad. 966=51 M.L.J. 143.**

—Art. 138—Scope.

———The expression "purchaser at a sale in execution of a decree" in Art. 138 does not cover the case of a judgment-creditor who purchases the property in execution of his own decree. (*Devadoss and Sundaram Chetty, JJ.*). MATHONKANDI KANNAN *v.* THAYYIL PUKKUTTI AVVULLA HAJI. **99 I. C. 677=50 Mad. 403=25 M,L.W. 61= 1927 M.W.N. 8=38 M.L.T. 156= A.I.R. 1927 Mad. 288=52 M.L.J. 1.**

———Article 138 must be read along with the provisions of the C.P. Code. (*Devadoss and Sundaram Chetty, JJ.*). MATHONKANDI KANNAN *v.* THAYYIL PUKKUTTI AVVULLA HAJI. **99 I.C. 677= 50 Mad. 403=25 M.L.W. 61=1927 M.W.N. 8= 38 M.L.T. 156=A.I.R. 1927 Mad. 288= 52 M.L.J. 1.**

———Article 138 of Limitation Act cannot override the provisions of S. 47 of C. P. Code. (*Chatterjee Ag. C.J., Walmsley, Cuming, Page and Chakravarti, JJ.*). KAILASH CHANDRA *v.* GOPAL CHANDRA. **95 I.C. 494=53 Cal. 781= 43 C.L.J. 345=30 C.W.N. 649= A.I.R. 1926 Cal. 798 (F.B.).**

—Art. 138—Suit against judgment-debtor's co-tenant.

———When a purchaser at Court sale sues the co-tenants of the judgment-debtor, Art. 138 will not apply for that Article applies only against judgment-debtor and persons claiming through him. The suit will be governed by Art. 144. (*Rankin, C.J. and Mukerji, J.*). BISWANATH CHAKRAVARTI *v.* RABIJA KHATUN. **117 I.C. 593=33 C.W.N. 46= 56 Cal. 616=A. I. R. 1929 Cal. 280.**

LIMITATION ACT (1908), Art. 139 — Purchaser in rent decree.

—Art. 138—Suit against trespasser.

———Article 138 has no application to suit for possession by a Court auction-purchaser against a person who claims title independent of the judgment-debtor. The article applicable is Art. 144 and under Art. 144 a trespasser cannot tack on his possession with that of previous trespasser.

Where the defendant claims through the judgment-debtor, Art. 138 would apply but when symbolical possession has been given to the auction-purchaser it will be equivalent to actual possession against the defendant and thereupon Art. 142 will apply to the case. (*Richardson and Suhrawardy, JJ.*). JANAKINATH SAHA *v.* BAIKUNTHA NATH CHOLLAK. **70 I.C. 602=27 C.W.N. 259= 36 C. L. J. 140=A.I.R. 1922 Cal. 176.**

—Art. 139—Applicability.

———*Lessees claiming permanent right.*

The *mukarrari istimrari* granted to the original *Mukarraridars* conveyed only a life-interest. But it was claimed by their representatives that the interest which the *mukarrari istimrari* lease conveyed was of a permanent character. Such interest was expressly asserted in the sale-deed executed by the *mukarraridars* at the time. The defendants expressly claimed throughout to hold under the sale-deed as permanent *mukarraridars*,

Held, that the suit was not governed by Art. 139, but by Art. 144 as the defendants had made a definite assertion of an adverse right more than twelve years before the suit. (*Jwala Prasad, A.C.J. and Macpherson, J.*). RAM RACHHYA SINGH *v.* KAMAKHYA NARAIN SINGH. **84 I.C. 586= 1924 P.H.C.C. 313=6 P.L.T. 12= 4 Pat. 139=A. I. R. 1925 Pat. 216.**

———*Vendor holding over—Purchaser from—Suit against.*

Where the plaintiff purchased half of a field but the vendor remained in possession under a rent-note for one year executed on the same day, the vendor held over and afterwards sold the entire field to defendant and gave up possession in his favour, in a suit by plaintiff for possession of the moiety sold to him,

Held, that the suit was governed by Art. 144 and not by Art. 139. (*Macleod. C.J. and Fawcett, J.*). ICHALAL JAGMOHANDAS *v.* NAGO SINA. **60 I.C. 589=23 Bom. L.R. 60= A.I.R. 1921 Bom. 462.**

—Art. 139—Encroachment and erection of buildings.

———Encroachment and putting up of new buildings by tenants more than 12 years before suit—Plaintiff is not entitled to claim demolition thereof but only to a declaration of his rights of property in the sites. (*Lindsay, J.*). MT. DULARI KOER *v.* SALIG RAM. **66 I.C. 603= A.I.R. 1922 All. 210.**

—Art. 139—Non-occupancy tenant.

———Article 1 (*a*) of Schedule III of the Bengal Tenancy Act, 1885, does not apply to suits to eject persons, who were not in law non-occupancy *raiyats* of the land. Article 139 of the Limitation Act applies to such suits. (*Sir John Edge.*) MAHANTH JAGANNATH DAS *v.* JANKI SINGH. **66 I.C. 337= 35 C. L. J. 506=3 Pat L.T. 197= 1922 M.W.N. 410=26 C.W.N. 833= 1 Pat. 340=49 I.A. 81=31 M.L.T. 231= A.I.R. 1922 P.C. 142=43 M.L.J. 55 (P.C.).**

—Art. 139—Purchaser in rent decree.

———Per *Woodroffe, J.*—Article 139 of the Limitation Act is applicable only where the purchaser

LIMITATION ACT (1908), Art. 139 — Suit against tenant's representative.

acquires the right, title and interest of the judgment-debtor. But the rights of a purchaser at a sale under a decree for rent must be governed by the Bengal Tenancy Act. Where a rent-decree has been properly obtained the tenure itself passes to the purchaser and not the right, title and interest of the judgment-debtor only. The rights of the purchaser must be determined by the provisions of the B.T. Act under S. 158-B and S. 159. (*Woodroffe, C.J., on difference between Walmsley and Suhrawardy, JJ.*). JNANENDRA MOHAN DUTT *v.* UMESH CHANDRA GUHA. 26 C.W.N. 985= A.I.R. 1922 Cal. 545.

—Art. 139—Suit against tenant's representative.

——Article 139 and not Art. 144 applies to suits brought against the representatives of the original tenant after the determination of the tenancy to recover the property leased. (*Venkatasubba Rao, J.*). SUDALAIMUTHU *v.* SAPPANI THEVAR. 86 I. C. 933=1925 M. W. N. 589= A.I.R. 1925 Mad. 446=48 M.L.J. 185.

—Art. 139—Tenant holding over.

——Where a tenant for fixed period continues to hold over on the expiry of the term of lease, he continues as a tenant at sufferance and time will not in such a case begin to run until the tenancy at sufferance thus coming into existence, terminates. (*Sen and Niamatullah, JJ.*). ONKAR PRASAD *v.* DHANI RAM. 122 I.C. 865=1930 A.L.J. 594= A.I.R. 1930 All. 177.

——A tenant is estopped from denying the title of his landlord during the continuance of the tenancy, but when there is a particular term fixed by the Kirayanama and after the expiry of that term the tenart continues to hold the leased premises without payment of any rent, he does so in the capacity of a tenant by sufferance, and his position is practically that of a trespasser, and time against the landlord begins to run from the moment that the term fixed by the Kirayanama expires, under Art. 139. A.I.R. 1922 All. 318 and 31 All. 514, *Foll.* It follows, therefore, that if no rent was paid within 12 years prior to the institution of the suit, the suit is time-barred. (*Iqbal Ahmad, J.*). TAITGAD ALI *v.* MAHOMED BAKHSH. 102 I.C. 231=A.I.R. 1927 All. 321.

——Landlord's remedy to recover possession of his property from his tenant becomes barred by limitation where such tenant continues in possession of such property after the termination of the lease for the full term of the statutory period without payment of rent and without any express or implied agreement between him and the landlord that the tenancy was to continue. 18 Bom. 256 *treated as overruled*; A.I.R. 1922 P.C. 184; 22 Bom. 893; 24 Bom. 504 and 28 Bom. L.R. 1357, *Foll.* (*Marten, C. J. and Crump, J.*). PURUSHOTTAM YESHWANT *v.* VISHNU GORATHO. 105 I.C. 859=29 Bom. L.R. 1332= A.I.R. 1927 Bom. 650.

——A tenant who holds on to the land after the expiry of term of the lease cannot be said to be holding 'adversely' to the landlord. So long as he is in possession, he cannot deny that it was from the lessor that he got the land. But where the tenant holds on after the expiry of the lease, time begins to run against the landlord from the date of the expiry of the lease, under Art. 139 of the Limitation Act. After the expiry of 12 years, the title of the landlord must cease by the application of S. 28 of the Limitation Act. With the cessation of the right to recover the land his right to the property is also extinguished. Article 144 of the Limitation Act has nothing to do with the case. A.I.R. 1922 All. 31, *Ref.* (*Mukerji, J.*). DALMIR SINGH *v.* JOTI PRASAD. 85 I.C. 550= 6 L.R.A. Civ. 254=A.I.R. 1925 All. 698.

LIMITATION ACT (1908), Art. 140 — Adverse possession against life-tenant.

——Neither Art. 139 nor Art. 144 contemplates that lessee or a tenant-at-will or a tenant at sufferance should give up possession of his property before the period of limitation commences to run. (*Rupchand Bilaram, A.J.C.*). MAHOMED FARUQ *v.* SIDIK. 79 I.C. 59=A.I.R. 1925 Sind 36.

——A tenant by sufferance is in by laches of the landlord and is entitled to the benefit of the law of limitation. Where the heirs of the grantees are in uninterrupted possession without paying rent to the landlord a suit beyond 12 years for their ejectment is barred. 18 Bom. 256, *Diss.* (*Das and Ross, JJ.*). HARI GIR *v.* KUMAR KAMAKHYA NARAYAN SINGH. 78 I.C. 511=3 Pat. 534= 1924 P. H.C.C. 158=A.I.R. 1924 Pat. 572.

——Per *Mullick, J.*—Article 139 only applies where the tenancy has been determined.

Per *Jwala Prasad, J.*—Where persons were holding over as tenants under S. 116, T.P. Act and were not trespassers, Art. 139 is not applicable. (*Mullick and Jwala Prasad, JJ.*). TAKAIT HARNARAYAN SINGH *v.* DARSHAN DEO. 83 I.C. 741= 3 Pat. 403=6 P. L. T. 315=A.I.R. 1924 Pat. 560.

——A tenancy by sufferance would not by itself make the possession of the holder rightful, so as to prevent limitation from running. But the proposition is subject to one important qualification and that is that if the landlord or the person entitled to resume the tenancy does anything to indicate his assent to the continuance of the tenancy, that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year. (*Das and Bucknill, JJ.*). RAM LOCHAN BAID *v.* KUMAR KAMAKHYA NARAIN SINGH. 71 I. C. 570=4 P.L.T. 123=1923 P.H.C.C. 54= A.I.R. 1923 Pat. 201.

——The transferee as also landlord who cannot convey to his transferee a better title than he himself has, must sue for ejectment of the tenant holding over, within twelve years after the termination of the tenancy, the article of Limitation Act applicable to the suit being 139. (*Ryves and Stuart, JJ.*). DERI PRASAD *v.* MT. GUJAR. 68 I. C. 750=20 A.L.J. 696=A.I.R. 1922 All. 423.

——When a tenancy at sufferance has existed for twelve years the landlord's right of entry is barred by statute, and the tenant becomes the absolute and complete owner of the property.

Per *Stuart, J.*—The defendants cannot be permitted to deny the plaintiff's title. The plaintiff is undoubtedly the landlord and the defendants are tenants by sufferance, but once having recognised that the tenants are so estopped, the fact still remains that the suit has been instituted beyond the period of limitation, and is therefore barred. (*Ryves and Stuart, JJ.*). BISHESHAR NATH *v.* KUNDAN. 75 I.C. 454=44 All. 583= 20 A.L.J. 593=A.I.R. 1922 All. 318.

—Art. 140—Adverse possession against life-tenant.

——No adverse possession can run against a person till he becomes entitled to the possession of the property. An adverse possession for any length of time against a tenant for life is similarly ineffectual against the reversioner or remainderman whose right to possession only accrues on the

LIMITATION ACT (1908), Art. 140—Possessory title.

death of the tenant for life. (*Lindsay and Kanhaiya Lal, JJ.*). NANNI LAL SINGH *v.* ALICE GEORGINA SKINNER. **92 I. C. 63=47 All. 803=23 A. L. J. 691=A. I. R. 1925 All. 707.**

—Art. 140—Possessory title.

———A plaintiff who relies solely on his possessory title and cannot prove his title to succeed to the last holder of the estate cannot invoke the aid of Art. 140 or 141. (*Dawson-Miller, C. J., Mullick and Foster, JJ.*). HARIHAR PRASAD *v.* KESHO PRASAD. **93 I. C. 454=5 P. L. T. (Sup.) 1=A. I. R. 1925 Pat. 68 (F.B.).**

—Art. 140—Property of absconder.

———*Land sold under Ss.* 81, 87, 88, *Cr. P. Code—Suit for possession—Time runs from date of absconder's death.*

If an absconder's land is sold by order of the Magistrate under Ss. 87 and 88 of the Cr. P. Code a suit for its possession is governed by Art. 140 of the Limitation Act, under which the starting point is from the time when the estate falls into possession, which means from the date of absconder's death. If the plaintiff is not able to show that his suit is brought within 12 years of the absconder's death the suit must fail. (*Broadway and Abdul Qadir, JJ.*). HIRA SINGH *v.* LAL SINGH. **66 I.C. 1=4 L.L.J. 59=A.I.R. 1922 Lah. 124.**

—Art. 140—Remainderman, who is.

———A person claiming only an equity of redemption does come within the meaning of remainderman. (*Lord Atkin.*) SKINNER *v.* NANNI LAL SINGH. **117 I.C. 22=51 All. 367=1929 A.L.J. 566=56 I.A. 192=33 C.W.N. 761=31 Bom. L.R 854=30 M.L.W. 76=50 C.L.J. 74=1929 M.W.N. 676=A.I.R. 1929 P.C. 158 (P.C.).**

—Art. 140—'Reversioner.'

———The terms "reversioner", etc. in Art. 140 are used in the technical sense of the English Real Property Law. A reversion arises where the grantor grants a particular estate to a person and does not dispose of the remainder. That which is not disposed of resides in the grantor and is called a reversion. It is the interest in land undisposed of which reverts to the grantor after exhaustion of the particular estate; if the fee simple granted is "conditional" or "determinable" what is left in the grantor is not a reversion but "a possibility of reverter". The case of "a possibility of reverter" is clearly not comprehended within the terms of Art. 140. See Halsbury's "Laws of England", Vol. 24, p. 212. See Halsbury Vol. 24; p. 213 at P. 237, *Ref.* (*Das and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I.C. 812=3 Pat. 880=5 P.L.T. 513=A.I.R. 1924 Pat. 721.**

—Art. 140—Scope.

———Article 134 controls both Arts. 140 and 148. (*Lindsay and Kanhaiya Lal, JJ.*). NANNI LAL SINGH *v.* ALICE GEORGINA SKINNER. **92 I.C. 63=47 All. 803=23 A.L.J. 691=A.I.R. 1925 All. 707.**

———Where the plaintiff became entitled to possession only after the determination of the limited or particular estate held by her mother-in-law, whatever its precise nature might have been, and that estate did not fall into possession until her death, which took place within 12 years before the suit.

LIMITATION ACT (1908), Art. 141—Adverse possession against widow.

Held, that Art. 142 cannot apply as the plaintiff was never in fact dispossessed; nor can Art. 144, as possession of a trespasser cannot be deemed adverse against a person not entitled to be in possession at that time. There was thus no bar to the application of Art. 140. 34 C.L.J. 129, *Foll.* (*Mookerjee and Buckland, JJ.*). SECY. OF STATE *v.* WAZED ALI. **65 I.C. 866=34 C.L.J. 141=A. I. R. 1921 Cal. 687.**

———Article 140 of the Act contemplates a suit by a remainderman or reversioner for possession of immovable property when his estate falls into possession. (*Mittra and Caspersz, JJ.*). PROMOTHA NATH *v.* DINAMANI. **65 I.C. 826=34 C.L.J. 129.**

—Art. 140—Starting point.

———The reversioner's right to sue accrues due from the time of the death of the widow and possession for 12 years as a gift from the widow during her lifetime does not bar the suit. (*Gokul Prasad, J.*). RAMJAS *v.* MT. SARTAJI. **70 I.C. 635=A I.R. 1922 All. 401.**

———Even where the remainderman is in possession on behalf of the holder of a life-interest, limitation begins only when the holder of the life-interest dies. (*Macleod, C.J. and Coyajee, J.*). CHIKKO BHAGWANT NADGIR *v.* CHIKKO NILKANTHA NADGIR. **A.I.R. 1922 Bom. 337.**

—Art. 141—Adverse possession against widow.

———A suit for possession by the reversioner is governed by Art. 141 and adverse possession against one female heir in not effective and binding on the reversioner. A. I. R. 1928 All. 561 (F. B.), *Rel. on.* (*Dalal, J.*). KALI PRATAP MISIR *v.* AMLA PAT TIWARI. **120 I. C. 447=A.I.R. 1930 All. 307.**

———Adverse possession against a Hindu widow cannot be tacked to the adverse possession against a person or his predecessor-in-title through whom he claims, when the predecessor-in-title has inherited the disputed property not from the Hindu widow but from her husband whose reversionary heir he was. 23 Bom. 725 (P. C.), *Rel. on*; A.I.R. 1925 P. C. 249, *Expl.*; A. I. R. 1928 Cal. 670, *Not foll.*; 9 W. R. 505; 21 Cal. 8 (P.C.) and 23 All. 448, *Ref.* (*Jack and Mitter, JJ.*). ABINASH CHANDRA GHOSH *v.* NARHARI MEHTA. **123 I. C. 444=50 C. L. J. 260=57 Cal. 289=A.I.R. 1930 Cal. 165.**

———Adverse possession against a woman holding a widow's or a daughter's estate is binding against the reversionary heir.

Per *Curiam.*—The state of the law created by the case in *Vaithilinga* v. *Sirangath Anni*, 52 I. A. 322 is unsatisfactory. (*Page and Mallik, JJ.*). RADHA KRISHNA KULAL *v.* NIL KAMAL KULAL. **51 C. L. J. 23.**

———*Bengal Tenancy Act* (*VIII of* 1885), *Sch.* 3, *Art.* 3.

Article 3, Sch. 3, Ben. Ten. Act, does not in any way control the provisions of Art. 141, Limitation Act, and consequently where a Hindu widow who is in possession of her husband's estate which comprised a holding is dispossessed therefrom by the landlord, that dispossession cannot avail against the reversioner, so as to bar his right to the suit for recovery of possession by Art. 3 if such suit is not brought within two years from the date of the dispossession of the widow. A. I. R. 1929 P. C. 166 (P. C.) and 23 Bom. 725 (P. C.), *Rel. on*; 63 I. C. 211 and A. I. R. 1925 P. C. 249 (P. C.), *Ref.* (*Kulwant Sahay and Macpherson, JJ.*). MUNI LAL JHA *v.* NATH SAHDY SINGH. **9 Pat. 634=11 P.L.T. 714=A.I.R. 1930 Pat. 573.**

LIMITATION ACT (1908), Art. 141—Adverse possession against widow.

——Adverse possession for over 12 years against the widow does not affect the right of the reversioner and the reversioner is, therefore, entitled to twelve years from the widow's death for a suit to recover possession of immovable property where there has been no decree againt the Hindu widow or other act in the law in the widow's lifetime depriving the reversioner of the right to possession on the widow's death. 51 I.A. 439 (P.C.), *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). MUNI LAL JHA *v.* NATH SAHAY SINGH. **9 Pat. 634= 11 P.L.T. 714=A.I.R. 1930 Pat. 573.**

——*No decree or other act depriving widow's right by adverse possession—Title barred in widow's lifetime—Heir can still rely, on widow's death, on Art.* 141.

Where there has been no decree against widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled after the widow's death, to rely upon Art. 141 for the purpose of the determination of the question whether the title is barred by lapse of time. 23 Bom. 725 (P.C.), *Foll.*; A.I.R. 1925 P.C. 249, *Dist.* (*Lord Tomlin.*) MT. JAGGO BAI *v.* UTSAVA LAL. **117 I.C. 498=51 All. 439=1929 A.L.J. 716= 33 C.W.N. 809=30 M.L.W. 60=56 I.A. 267= 31 Bom. L.R. 891=50 C L.J. 52= 6 O.W.N. 589=10 P.L.T. 527=1929 M.W.N. 762= A.I.R. 1929 P.C. 166=57 M.L.J. 160 (P.C.).**

——Possession adverse to a Hindu widow is not adverse to the reversioners, and therefore a suit brought by the reversioners within 12 years of the widow's death is not barred by limitation. A.I.R. 1925 P.C. 249, *Expl.*; A.I.R. 1928 All. 561 (F.B.); A.I.R. 1929 Cal. 93. *Appr.* and *Foll.* (*Further case-law discussed.*) (*Phillips and Thiruvenkatachariar, JJ.*). AYYASWAMI AYYAR *v.* MAHADEVA AYYAR. **119 I.C. 57=29 M.L.W. 590= 1929 M.W.N. 314=A.I.R. 1929 Mad. 421= 56 M.L.J. 441.**

——Per *Full Bench.*—Where a widow has entered into possession as a Hindu widow and has either voluntarily parted with possession or been dispossessed against her consent, a suit by the reversioner brought for possession after her death is governed by Art. 141 and not by Art. 144 and a suit brought within 12 years of the death of the widow is not barred by limitation. 9 W.R. 505; 2 I.A. 113 (P.C.); and 22 Cal. 445 (P.C.), *Dist.*; 14 All. 156, *Affirmed*: 23 Bom. 725 (P.C.), *Foll.*; 20 All. 42; A.I.R. 1925 P.C. 249 and 9 M.I.A. 539 (P.C.), *Expl.* (*Sulaiman, Ag.C.J., Mukerji and Boys, JJ., and afterwards Boys and Sen, JJ.*). BANKEY LAL *v.* RAGHUNATH SAHAI. **112 I.C. 801= 51 All. 188=26 A.L.J. 1049= A.I.R. 1928 All. 561 (F.B.).**

——Article 141 will not give the reversioners a right to sue when the period of adverse possession in the lifetime of the propositus added to the period of adverse possession since the death of the widow exceeds 12 years. 21 Cal. 8, *Ref. to.* (*Ashworth, A.J.C.*). RAM NARAYAN *v.* BARKANDI.

86 I.C. 725=12 O.L.J. 77=A.I.R. 1925 Oudh 400.

——Under Art. 141, limitation begins to run from the death of the widow; consequently dealings with the property by the female or by her alienees during her lifetime do not affect her husband's heirs whose title comes into existence only on the death of the female. (*Wasir Hasan and Neave, A.J.Cs.*). MT. RAJ DULARI *v.* MT. CHANDESAR DEI. **78 I.C. 65=A.I.R. 1925 Oudh 164.**

LIMITATION ACT (1908), Art. 141—Applicability.

——Where it is not shown that adverse possession began in the lifetime of the deceased (the original owner of the property) a suit by his reversioners on the death of the widow of the deceased to recover possession from a person in occupation would be governed by Art. 141. (*Chevis, J.*). CHANAN SINGH *v.* SALIG RAM. **68 I.C. 177= 36 P. L. R. 1922=A.I.R. 1923 Lah. 106.**

——*Time once begun to run.*

The father of plaintiff filed a suit during the lifetime of the widow to set aside alienations by her. The suit was held to be not maintainable as he was held not to be the nearest heir, but another *B*. After the widow's death *B* brought a suit to recover possession of the properties. But he was found not to be a reversioner at all. Then plaintiff filed another suit for possession of the properties more than 12 years after the death of the widow,

Held, that limitation when it once begins to run cannot stop running except in the particular exception mentioned in S. 9 of the Limitation Act that the time began to run from the date of the death of the widow and that the suit was barred. (*Phillips and Ramesam, JJ.*). V. RANGANATHA *v.* RAMA PANDITHAR. **70 I.C. 546= 16 M. L.W. 529=A.I.R. 1923 Mad. 108= 44 M.L.J. 87.**

——Limitation does not bar a suit by the reversioners within 12 years of the death of the last surviving widow to set aside an alienation by which the widows were conferred occupancy rights or to challenge the title acquired by adverse possession by any person against the widows. (*Scott-Smith and Dundas, JJ.*). NAND SINGH *v.* MT. DHAN KAUR. **68 I.C. 299=2 L.L.J. 573.**

—Art. 141—Alienation by widow and mother.

——Where mother and the widow both hold property of the deceased jointly without proprietary rights in the same but with rights of survivorship, a suit by reversioner impeaching alienations made by the survivor of the two on the death of the survivor is governed by Art. 141. 23 Bom. 725 (P.C.) and A.I.R. 1929 P.C. 166, *Ref.* (*Wasir Hasan, Ag. C.J. and Pullan, J.*). CHANDI SINGH *v.* GUR PRASAD SINGH. **A.I.R. 1930 Oudh 339.**

—Art. 141—Alienation of bhag.

——*Bombay Bhagdari Act* (*V of* 1862), *S.* 3—*Mortgagor selling moiety to mortgagee and other moiety to wife for alleged consideration—Subsequent transfer of her moiety by wife to mortgagee.*

Where a mortgagor sells in reality a moiety of the properties to the mortgagees for an amount due on the mortgage, and the other moiety is ostensibly sold in the name of the wife for an alleged consideration, the transaction amounts to a sale of an unrecognized portion of a bhag, and if subsequently after the death of her husband, the wife sells her moiety to the mortgagee the subsequent deed of sale cannot be upheld as in effect causing a past dismembered bhag to be re united, and a suit by reversioner to set aside the above alienation is not governed by Arts. 125, 126 and 141. A.I.R. 1930 Bom. 121; 51 I.C. 947; 24 W.R. 86-*n*; 19 Mad. 390 (P.C.); A.I.R. 1921 Mad. 234 and 57 I.C. 559, *Ref.* (*Marten, C. J. and Patkar, J.*). SHANKARBHAI DAJIBHAI *v.* BAI SHIV. **A.I.R. 1930 Bom. 345.**

—Art. 141—Applicability.

——*Widow lawfully in possession.*

Where a widow is found to have been lawfully holding her husband's estate for life, whether under a will or under the provisions of S. 22, Oudh.

LIMITATION ACT (1908), Art. 141—Applicability.

Estate Act, no question of adverse possession arises and the suit for possession by a reversioner is governed by Art. 141, Lim. Act. 23 Bom. 725 (P.C.) and A.I.R. 1929 P.C. 166, *Foll.* (*Wazir Hasan, C.J. and Pullan, J.*). ABADI BEGAM *v.* MD. KHALIL. **A. I. R. 1930 Oudh 481.**

———Article 141 is restricted to suits by plaintiff whose title and right as the heir of the last full owner to sue for possession accrues upon the death of a female holding a woman's qualified estate under the Hindu or Muhammadan Law. To claim the benefit of the article the plaintiff must prove first that there was a qualified estate in the Hindu female and secondly that he was entitled to possession after the death of the female as the heir of the last male holder and further it must be shown that having regard to the existing law the plaintiff was entitled to the possession of the properties in dispute at the date of the suit. Art. 141 cannot be construed as altering the law of the land. The words "entitled to the possession of immovable properties" refer to the then existing law. (*Dass and Ross, JJ.*). HON'BLE MAHARAJA BAHADUR KESHO PRASAD SINGH *v.* MADHO PRASAD SINGH. **83 I. C. 812=3 Pat. 880=5 P.L.T.513=A. I. R. 1924 Pat. 721.**

———Article 141 is inapplicable when time has once commenced to run against the last full owner as in such a case, it continues to run and is not suspended or in any way affected by the mere circumstance that the owner is succeeded by a female entitled to a woman's qualified estate after the statutory period has run out, all persons claiming through the owner are barred. (See Rustomji's Limitation Act, 2nd Edition, p. 449). The article makes it clear that the reversioner has 12 years after the death of a Hindu or Mohammadan female to establish his right as heir to the last full owner and it lies upon the party in possession to prove that he has got a better title. (*Macleod, C.J. and Crump, J.*). PANDURANG WASUDEO *v.* BASAPPA BIN. SHIDDAPPA. **77 I.C. 479=A.I.R. 1923 Bom. 364.**

———Article 141 applies only where the last full owner was in possession at the time of his death. Where time has begun to run against it would not be arrested by the fact that on his death he was succeeded by a limited owner. (*Kumaraswami Sastri and Devadoss, JJ.*). VENNAM RAMIAH *v.* KUSRU KOTAMMA. **67 I.C. 246=45 Mad. 370=1922 M.W.N. 132=30 M.L.T. 143=A.I.R. 1922 Mad. 59=42 M.L.J. 319.**

—Art. 141—Attachment.

———If during the attachment, the seisin or legal possession is in the true owner the attachment does not amount to either dispossession of the owner or the discontinuance of his possession. A. I. R. 1921 Cal. 584, *Rel. on*; A.I.R. 1924 Cal. 769, *Dist. Case-law discussed.* (*Dawson Miller, C.J. and Mullick, J.*). BISHESHWAR PRATAP NARAYAN SAHI *v.* CHANDRESHWAR PRASAD. **108 I.C. 89=7 Pat. 319=A.I.R. 1928 Pat. 260.**

—Art. 141—Females holding as full owner.

———Article 141 does not apply where the Hindu or Muhammadan female has been in possession of a full estate. 18 O.C. 289 and 21 O.C. 1, *Foll.* (*Kanhaiya Lal and Dalal, A. J. Cs.*). ZARIF-UN-NISA *v.* SHAFIQ-UZ-ZAMAN. **75 I.C. 626=26 O.C. 133=10 O.L.J. 535=A.I.R. 1923 Oudh 185.**

LIMITATION ACT (1908), Art. 141 — Remote reversioner.

—Art. 141—Interpretation.

———"*Entitled.*"

Per *Sulaiman, Ag. C. J.*—The arguments that the word "entitled" in Art. 141 necessarily means "entitled under the law and not extinguished by limitation," and that the article applies only to a suit brought by the first Hindu entitled to possession on the death of the first female heir are not supportable. (*Sulaiman, Ag. C. J., Mukerjee and Boys, JJ. and afterwards Boys and Sen, JJ.*). BANKEY LALL *v.* RAGHUNATH SAHAY. **112 I.C. 801=51 All. 188=26 A.L.J. 1049=A.I.R. 1928 All. 561 (F.B.).**

———Article 141, though it uses the word "female" in the singular, clearly covers a case where the Hindu reversioner is entitled to the property on the deaths of more than one female heir inheriting jointly. And when the last column speaks of "when the female dies" it clearly means in such a case "after the deaths of all the female co-heirs". (*Sadasiva Iyer and Napier, JJ.*). MUTHIALA CHENGAPPA *v.* BUDRAGUNTA. **60 I.C. 135=1921 M.W.N. 29=A.I.R. 1921 Mad. 246.**

—Art. 141—Mortgage by full owner.

———Article 141 covers only those cases in which the cause of action is simply the death of the female and the only obstacle to the reversioner seeking to obtain possession is either an act of the female or her inaction.

Where the cause of action includes a mortgage by the last male holder and a transfer by the mortgagee, Art. 134 will apply. (*Spencer and Ramesam, JJ.*). NARAYANASAMY NAICKER *v.* PERIASAMY ODAYAR. **68 I.C. 734=44 Mad 951=14 M.L.W. 116=1921 M.W.N. 465=A.I.R. 1921 Mad. 272=41 M.L.J. 163.**

—Art. 141—Mortgagor and mortgagee.

———Adverse possession against a mortgagee is generally ineffectual against the mortgagor, especially when it begins at a time when the mortgagee is in possession of the mortgaged property and asserts a title which is hostile not only to the mortgagee but which also assails the title of the mortgagor and the mortgagee allows 12 years to elapse, the title of the trespasser will become indefeasible not only against the mortgagee but also against the mortgagor. 6 P.R. 1898 and A.I.R. 1925 Bom. 465, *Dist.*; *Marquis of Chalmondeley* v. *Lord Clinton*, 22 R.R. 84, *Foll.*; 6 C.W.N. 601, *Ref. to.* (*Tek Chand, J.*). HANSA *v.* RAMLOK. **107 I.C. 612=A.I.R. 1928 Lah. 147.**

—Art. 141—Movables.

———Article 141 does not apply to movable property. (*Page, J.*). AURABINDO NATH *v.* MONORAMA DEBI. **112 I.C. 496=55 Cal. 903=32 C. W. N. 913=A.I.R. 1928 Cal. 670.**

———A suit by a Hindu reversioner to recover movable property on the death of a Hindu female is governed by Art. 120 of the Act and time begins to run from the death of the female. In the case of immovable property the Article applicable is 141. (*Mookerjee and Buckland, JJ.*). PRAMATHA NATH BOSE *v.* BHUBAN MOHAN BOSE. **64 I. C. 980=49 Cal. 45=33 C.L.J. 421=25 C.W.N. 585=A.I.R. 1922 Cal. 321.**

—Art. 141—Remote reversioner.

———Possession of alienee from a widow becomes adverse on her death to all the reversioners whether next or remote. The remote reversioner cannot contend that the possession of an alienee became adverse only after expiry of twelve years from the death of the widow. It would be absurd

LIMITATION ACT (1908), Art. 141—Reversioner added as party after limitation.

to hold that a remote reversioner should have twelve years for a suit for possession, such period commencing to run after expiry of twelve years from the death of the widow. A.I.R. 1922 Lah. 380, *Rel. on.* (*Shadi Lal, C.J. and Tapp, J.*). AMAR NATH *v.* MT. RALLI. 121 I.C. 70= A.I.R. 1930 Lah. 211.

—Art. 141—Reversioner added as party after limitation.

——Though a suit by one reversioner to recover possession of his share from the alienee from a Hindu widow would be barred under S.28 read with Art. 141 as being beyond twelve years from the death of the widow, yet when a suit is brought within the proper period of limitation by another reversioner and the other reversioner is made defendant in it and he in his written statement claimed possession of his share, such a claim would not be barred by limitation in spite of the fact that the written statement itself was presented after the lapse of 12 years. 34 Bom. 91, *Foll.*; 26 M.L.J. 494; A.I.R. 1921 Bom. 303; 21 Bom. 509, *Dist.*; 35 Cal. 1065, *Ref.* (*Baker, J.*). RAYEGAUDA HANMANTRAYA *v.* RAMLINGAPPA SHIDGAVDAPPA. 119 I.C. 656=53 Bom. 472= 31 Bom. L.R. 647=A.I.R. 1929 Bom. 345.

—Art. 141—Share in partnership.

——Article 141 is the correct article to apply to a suit for declaration and possession of a share in the partnership assets consisting of immovable property, where the plaintiff becomes entitled thereto on the death of a Hindu female. The plaintiff has a period of twelve years from the date of death of the prior female owner to bring the suit. Article 120 does not apply. (*Mukerji and Bennet, JJ.*). MT. BASANTI BIBI *v.* BABU LAL PODDAR. 125 I. C. 19.

—Art. 141—Starting point.

——*Widow's alienation—Subsequent adoption—Death of adopted son as minor—Succession by widow—Suit by reversioner after widow's death.*

In 1899 a Hindu widow sold certain property left by her husband and in 1905 she adopted a minor boy. The latter died in 1909 while still a minor and the adoptive mother who succeeded him died in 1921 without disputing her previous alienation. A reversioner having instituted a suit in 1923 to recover possession of the property sold,

Held, that the suit was not barred by limitation because time commenced to run neither from the date of the adoption nor from the death of the adopted boy but from the death of the widow. 32 C. 669 (P.C.), *Rel. on.* (*Beasley. C.J.*). VENKATANARASIMHAYYA *v.* RAJAYA LAKSHMAMMA. 1930 M.W.N. 811.

——Where an alienation was made by the daughter of the properties of the last male owner during the lifetime of the widow and after the death of the last female holder, the reversioner sues for possession of the properties,

Held, that time ran from the death of the last female owner. (*Spencer and Devadoss, JJ.*). JOGA YERRAYYA *v.* SALLEYYA PATRUDU. 69 I. C. 389= 16 M. L. W. 752=A.I.R. 1923 Mad. 168.

——Time begins to run against the transferee from the death of the widow and not from the date of transfer by widow. (*Dawson-Miller, C. J. and Mullick, J.*). SHEIKH ABDUR RAHMAN *v.* SHEIKH WADI MOHAMAD. 68 I.C. 601= 1922 P.H.C.C. 313=2 Pat. 75=4 P.L.T. 267= A. I. R. 1923 Pat. 72.

LIMITATION ACT (1908), Art. 142—Applicability.

—Art. 141—Suit alleging wrongful possession.

——*Punjab Limitation (Custom) Act (1920), Art. 2.*

Where in a suit for possession, the reversioners do not, in the plaint, admit or seek to set aside any alienation made by the deceased Mahomedan widow in favour of the alienee, but simply allege wrongful possession by him, Art. 2 of the Schedule annexed to the Punjab Limitation (Custom) Act (1920) does not govern limitation. The general rule of limitation contained in Limitation Act, Art. 141, applies. (*Bhide, J.*). LEHNA *v.* NUR AHMAD. 11 L.L.J. 465=1930 Cr. C. 95= A.I.R. 1930 Lah. 111.

—Art. 141—Suit by adopted son.

——The cause of action in the case of an adopted son accrues only from the date of his adoption; when therefore a suit is brought by an adopted son within 12 years of the date of the accrual of the cause of action in his favour, the suit cannot be considered to be barred by limitation. So far as a Hindu widow is concerned she cannot for the purposes of limitation be considered to represent the entire estate, so as to bar a suit of a reversioner when her own suit happens to be barred. This rule would be applicable not only in the case of a Hindu entitled to the possession of the estate after the death of a female, but also to the case of a Mahomedan occupying a similar position. The wording of Art. 141, Act XV, 1877 and of the present Act IX of 1908 make this amply clear. (*Case-law discussed.*) (*Gokaran Nath Misra, J.*). ABDUL HALIM KHAN *v.* SAODAT ALI KHAN. 108 I. C. 817=1 L.C. 733=A.I.R. 1928 Oudh 155.

—Art. 141—Suit by co-widow.

——In a suit by co-widow to set aside a gift of husband's property by her co-widow, the limitation begins to run from the date of co-widow's death. Article 1 of the second schedule of the C.P. Tenancy Act does not apply. (*Findlay, J.C.*). DEORAM GUJAR *v.* BUJU GUJAR. 101 I.C. 822= 10 N.L.J. 90=A.I.R. 1927 Nag. 226.

—Art. 142.

See also (1) ADVERSE POSSESSION.
(2) LIMITATION ACT, ART. 144.

Applicability.
Auction-purchasers and decree-holders.
Burden of proof.
Constructive possession.
Co-owners.
Discontinuation of possession.
Dispossession.
Landlord and tenant.
Possession following title.
Starting point.
Submergence.
Suits after limitation.
Waste land.
Miscellaneous.

—Art. 142—Applicability.

——*Applies to—Suit to recover* wakf *property wrongfully alienated.*

A suit by a succeeding mutawalli to recover possession of *wakf* property wrongfully alienated will be governed by Art. 142 of the Limitation Act. (*Mukerji and Guha, JJ.*). DEBENDRA NATH SADHUKHAN *v.* NOHARMAL JALAN. 34 C.W.N. 498=51 C.L.J. 547.

——*Frame of suit determines the article applicable as also facts proved.*

No doubt whether Art. 144 or 142, Lim. Act, applies depends directly on the frame of the suit.

LIMITATION ACT (1908), Art. 142—Applicability.

But the plaintiff has to justify the frame of the suit and he cannot merely by framing his suit in a particular manner refuse to allege dispossession when the facts of the case show that there was dispossession and thereby shift the onus on to the defendant. (*Dalip Singh, J.*). JUMMAN *v.* NIHAL CHAND. **A.I.R. 1930 Lah. 330.**

———*Article* 142 *applies only to suits on possessory title* (*i.e.*), *possession and subsequent dispossession.*

Article 142 is restricted to cases in which the relief for possession sought by the plaintiff is based on what may be styled as possessory title and the burden of proving the fact that the plaintiff was in possession and was dispossessed within 12 years of the date of the suit lies on the plaintiff and on proving these facts, the plaintiff is entitled to a decree unless the defendant establishes that he is the true owner of the property in dispute. (*Bennet and Iqbal Ahmad, JJ.*). KANHAIYA LAL *v.* GIRWAR. **119 I.C. 6=1929 A.L.J. 1106=51 All. 1042=A.I.R. 1929 All. 753.**

———*Usufructuary mortgagee dispossessed—Suit for possession or mortgage money.*

Where a usufructuary mortgagee who is dispossessed of the mortgaged property owing to sale for arrears of revenue afterwards sues for mortgage money or in the alternative for possession, his suit is governed by 12 years' rule of limitation and not by six years' rule. (*Das and Adami, JJ.*). KASHI LAL *v.* NURUL HUQ. **8 Pat. 569=A.I.R. 1929 Pat. 209.**

———*Difference between Arts.* 142 *and* 144 *explained.*

If the suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed or has gone out of possession, then he must show possession within 12 years. But in every other case in which a plaintiff claims possession of immovable property, it must be a case under Art. 144 because it is a case not otherwise specially provided, and in such a case limitation only begins to run where the defendant's possession becomes adverse. The result of that is that the onus lies on the defendant to plead and prove that his possession became adverse and continued adverse for more than 12 years before the suit. 41 All. 669 and A.I.R. 1916 P.C. 21, *Foll.* (*Walsh and Ashworth, JJ.*). RAM SURAT SINGH *v.* BADRI NARAIN SINGH. **102 I. C. 814=25 A.L.J. 802=A.I.R. 1927 All. 799.**

———*Difference between Arts.* 142 *and* 144.

Where the plaintiff alleges that he was dispossessed or discontinued possession or where it is proved that the plaintiff had been dispossessed or had discontinued his possession, Art. 142 applies. But in the absence of either allegation by the plaintiff or proof that he was dispossessed or discontinued possession, Art. 144 shall govern. (*Martineau, J.*). KANSHI RAM *v.* TAJA. **100 I.C. 477=A.I.R. 1927 Lah. 236.**

———A suit for redemption of a usufructuary mortgage is in substance a suit for possession of immovable property, but the period of limitation for such a suit is that provided for by Art. 148. (*Iqbal Ahmad, J.*). MAHA MANGAL RAI *v.* KISHUN KANDU. **100 I.C. 346=A.I.R. 1927 All. 311.**

———Where the plaintiff alleges that he was dispossessed or discontinued possession or where it is proved that the plaintiff had been dispossessed or had discontinued his possession, Art. 142 applies. But in the absence of either allegation by the plaintiff or proof that he was dispossessed or discontinued possession, Art. 144 shall govern. (*Martineau, J.*). KANSHI RAM *v.* TAJA. **100 I.C. 477=A.I.R. 1927 Lah. 236.**

———Suit for possession—Ancillary prayer for the removal of the trees—Suit is governed by Art. 142. A. I. R. 1922 Oudh 47; Select Case 213, *Foll.* (*Raza, J.*). SUCHIT *v.* MOHAMMAD HABIBULLAH. **99 I.C. 199=A I.R. 1927 Oudh 89.**

———Where the defendant admits dispossession of the plaintiff in a suit for recovery of possession, the suit is governed by Art. 142. (*Cuming and B.B. Ghose, JJ.*). WASIF ALI MEERZA KHAN *v.* AMALENDU NARAYAN ROY. **96 I.C. 568 (Cal.).**

———*Suit based on dispossession is governed by Art.* 142.

A suit for possession on the ground that the plaintiff has been in possession by using the site up to two years before suit when the defendant built a wall and ousted her, is governed by Art. 142 and not 144 : 16 Cal. 743 (P.C.), *Foll.*; 41 All. 669; 39 M. 617; A.I.R 1922 P.C. 181, *Dist.* (*Addison, J.*). MT. JAUNAT BIBI *v.* MT. SARIRAN. **93 I.C. 1004 (Lah.).**

———*Suit for possession by vendee alleging dispossession of his vendor—Article applies.*

Article 142 applies to a suit for recovering possession by plaintiff alleging title by purchase and that his vendor was dispossessed by defendant. There is nothing in that article to show that it applies only to suits based on possessory title and that it does not apply to suits for possession based on title. *Case-law discussed.* (*Phillips, J.*). KUPPUSWAMI MUDALI *v.* CHOKALINGA MUDALIAR. **91 I.C. 454=1926 M.W.N. 34=23 M.L.W. 175=A.I.R. 1926 Mad. 181=49 M.L.J. 788.**

———When a sale is made not by a guardian but by a wholly unauthorised person, (in this case by a Mahomedan step-mother) Art. 144 is inapplicable but Art. 142 applies and a suit brought within 12 years from date of sale is within time. (*Campbell, J.*). SADULLAH *v.* SULEMAN. **84 I. C. 923=6 L.L.J. 516=A.I.R. 1925 Lah. 239.**

———Article 142 has no application to claims which neither in terms nor in substance are claims to possession made necessary, by reason of dispossession or discontinuance of possession. (*Madhavan Nair, J.*). GOVINDA RAMANIYA *v.* MAHOMED ESOOF. **87 I. C. 386=21 M.L.W. 398=A. I. R. 1925 Mad. 834.**

———*Plaintiff alleging possession—Art.* 142 *and not* 144 *applies.*

Every suit for possession of immovable property in which the plaintiff alleges that he has had possession, must fall under Art. 142. It is only where the plaintiff does not allege that he had ever been in possession that the case would fall under Art. 144. 41 All. 669 and 12 Cal. 38, *Dist.*; 39 Bom. 335 ; 14 N L.R. 82; 16 Cal. 473 (P.C.) and A.I.R. 1922 Cal. 557, *Foll.* (*Baker, J. C.*). SINGUJI *v.* GAMBHIRJI. **87 I. C. 1023=A. I. R. 1925 Nag. 370.**

———*Obiter*—To a suit for possession involving the question as to whether possession of certain property by a Hindu widow is in lieu of her maintenance or is adverse, the article applicable is Art. 144 and not Art. 142. (*Dalal, J.C.*). LAL BAHADUR SINGH *v.* MATHURA SINGH. **87 I.C. 164=A.I.R. 1925 Oudh 669.**

———Where defendant bases his possession on a deed of gift which he fails to prove, the conclusion

LIMITATION ACT (1908), Art. 142—Applicability.

is not that his possession is permissive but that it is that of a trespasser. Such a suit is governed by Art. 142. (*Ross, J.*). GAYANI SAHU *v.* BALCHAND SAHU. **73 I.C. 41=A.I.R. 1924 Pat. 341.**

——Article 142 cannot be interpreted to include within its scope a case where a simple mortgage was executed and the mortgagor continued in possession as before. (*Mukerjee and Cuming, JJ.*). CHARU CHANDRA PRAMANIK *v.* NAHUSH CHANDRA KUNDU. **74 I.C. 630=50 Cal. 49=36 C. L.J. 35=A.I.R. 1923 Cal. 1.**

——Where plaintiff, in a suit for possession never had actual possession but rested his case on constructive possession,

Held, that Art. 142 cannot apply. (*Prideaux, A.J.C.*). SUKHARAM *v.* DEOBA. **68 I.C. 320=A.I.R. 1923 Nag. 2.**

——Where the defendant claims through the judgment-debtor, Art. 138 would apply, but when symbolical possession has been given to the auction-purchaser it will be equivalent to actual possession against the defendant and thereupon Art. 142 will apply to the case. (*Richardson and Suhrawardy, JJ.*). JANAKINATH SAHA *v.* BAIKUNTHA NATH CHOOLAK. **70 I.C 602=27 C.W.N. 259=36 C.L.J. 140=A.I.R. 1922 Cal. 176.**

——Where the suit is on the face of it one for recovery of possession of immovable property who had taken unlawful possession thereof and had planted new trees thereon,

Held, that the suit is governed by Art. 142 of the Limitation Act. A prayer for removal of the recently planted trees is merely ancillary to the claim for possession will not take the case out of Art. 142 and make Art. 120 applicable. (*Daniels, J.C.*). GHAFUR KHAN *v.* PRAG NARAYAN.

66 I.C. 799= 9 O.L.J. 17=A.I.R. 1922 Oudh 47.

——Where the plaintiffs have not proved their possession and dispossession within 12 years and defendants have proved adverse possession, Art. 142 applies to a case of this description. (*Wilberforce, J.*). MAHOMED *v.* UDE BHAN.

59 I.C. 891=3 L.L.J. 72=A.I.R. 1921 Lah. 202.

—Art. 142 — Auction purchasers and decree-holders.

——A decree-holder who obtained formal possession under O. 21, R. 96, C. P. Code must obtain partition or establish his right in some other manner within 12 years therefrom. The delivery of formal possession gave him only a fresh start for the computation of limitation but did not make him owner in possession. (*Dalal, J.*). NIRANJAN LAL *v.* JHAMMAN LAL. **124 I.C. 767 (All.).**

——A decree holder auction-purchaser sold the property before obtaining possession from the judgment-debtor who was alleged to have remained in possession as licensee of the decree-holder. The purchaser from decree-holder sued for possession,

Held, that if the judgment-debtor was in possession as licensee as alleged then the suit would be governed by Art. 142. 31 All. 82 (F.B.), *Dist.*; 28 Mad. 87, *Rel. on.* and A.I.R. 1926 Cal. 798 (F.B.), *Ref.* (*S. K. Ghose, J.*). JADAV CHANDRA KARMARKAR *v.* AKRUR CHANDRA KARMARKAR.

A.I.R. 1930 Cal. 686.

——*Delivery of properties given to judgment creditor through Court—Limitation runs from such delivery.*

Even if the judgment-debtors continue to be in the possession of the properties in spite of the

LIMITATION ACT (1908), Art. 142 — Auction-purchasers and decree-holders.

delivery of the properties made through Court, yet, as against the judgment-debtors to the suit and persons represented by them, the effect of such delivery should be taken to be that the decree-holder is in possession; and consequently a fresh cause of action arises against the judgment-debtors, and limitation begins to run only from the date of the delivery made through Court. 27 Mad. 262 and A. I. R. 1917 P. C. 197, *Rel. on*; 5 Cal. 584 and 17 M.L.J. 598 and A. I. R. 1927 Mad. 819, *Ref.* (*Ananthakrishna Ayyar, J.*). SETHURATNAM IYER *v.* CHINNA SOLAN. **122 I.C. 165=A.I.R. 1930 Mad. 206.**

——*Decree for possession.*

Though a decree for possession has become incapable of execution on account of failure to apply for execution within limitation. the right established by the decree remains. 35 Bom. 79, *Foll.*

But the right cannot be the basis of a subsequent suit, and the plaintiff, who has neglected to execute the decree till it is time-barred, cannot any the more on that account bring another suit for possession whether founded on the decree or on the continued occupation of the property by the defendant. 5 Bom. 382, *Foll.*; 33 Cal. 679 and 41 Mad. 641, *Ref.* (*Patkar and Baker, JJ.*). BALRAM GULABCHAND MARWADI *v.* JIGAN LAL PATIL. **114 I.C. 269=30 Bom. L. R. 1583.**

——Assam Land and Revenue Regn. (I of 1886) S. 80—Purchaser and revenue sale suing for possession—Suit within 12 years from symbolical possession—Defendants defaulting proprietors—Suit is governed by Art. 142 or 144 and not by Art. 121 and is within time. 44 Cal. 412, *Appl.* (*Rankin, C.J. and C. C. Ghose, J.*). BAIKUNTH NATH DAS *v.* SHEIKH AZIDULLA. **113 I.C. 606=32 C. W. N. 778=A.I.R. 1928 Cal. 870.**

——*Possession delivered under decree—Suit for possession within 12 years is not barred.*

Where a decree-holder has been granted possession by ousting those who were already in possession, his possession is not sham or symbolical and a suit by him for possession within 12 years of such delivery is not barred as the persons in possession must be deemed to be dispossessed on the date of delivery. (*Wallace, J.*). RANGASWAMI NAICKER *v.* VENKITACHALA NAICKER. **105 I.C. 170=A. I. R. 1928 Mad. 144.**

——*Formal delivery to judgment-debtor—Effect of.*

Although the formal delivery of possession under O. 21, R. 95, C. P. Code, may have the effect of actual possession as against the judgment-debtor himself, such formal delivery of possession cannot take effect as actual possession as against a purchaser of the rights of the judgment-debtor who has previously obtained actual possession. A.I.R. 1928 Oudh 251 (F.B.); 21 All. 269 and 4 O.L.J. 481, *Rel. on*; 18 O.C. 369, *Dist.* (*Gokaran Nath Misra and Nanavutty, JJ.*). ATAULLAH KHAN *v.* HANS RAJ KUNWAR. **111 I.C. 362=5 O.W.N. 616=3 Luck. 668=A.I.R. 1928 Oudh 391.**

——*Time begins to run from the date of formal delivery.*

Where the auction-purchaser of only a share in a certain property, who has obtained under O. 21, R. 95 possession by beat of drum, sues for recovery of possession on the ground that he has not obtained actual possession the suit is governed by Art. 142 and not Art. 144; and the possession of the judgment-debtor who has remained in actual possession in spite of the formal delivery of possession through Court, should be deemed to have

LIMITATION ACT (1908), Art. 142 — Auction-purchasers and decree holders.

become adverse only from the date of such formal delivery. (*Stuart, C.J., Wazir Hasan and Gokaran Nath Misra, JJ.*). GULAB KHAN *v.* ATAULLAH.
110 I.C. 70=3 Luck. 506=5 O.W.N. 372=A.I.R. 1928 Oudh 231 (F.B.).

——*Time runs from date of formal delivery.*

One *R* left a widow *P* and two daughters *J* & *K*. *P* made a gift of the estates of *R* to *K*. *J*. sued for her half share and got formal possession. *J*'s legal representatives brought a suit for possession,

Held, that limitation began against her from the date of her taking formal possession. (*Mears, C.J. and Banerji, J.*). MT. PURNA KUAR *v.* MANGAT RAI. **70 I.C. 488=A.I.R. 1922 All. 55.**

——*Suit in ejectment—Dispossession within twelve years—Possession of open sites—Possession will presumably follow possession of property to which they adjoin—Presumption of possession following title.*

The plaintiff, who purchased at a Court sale a shop and two open pieces of land in front of it and was placed in possession, sued to eject from the land the defendant who claimed to be a subsequent purchaser from the judgment-debtor,

Held, if the plaintiff established his title over the property he can rely upon the presumption that possession went with the title in absence of satisfactory evidence in rebuttal. As under Art. 142 time begins to run from the date of the dispossession; if the plaintiff alleges his dispossession within twelve years of the suit, then the question must arise according to the circumstances of each case how far the plaintiff has correctly fixed the date of dispossession and how far the onus lies on the defendant to show that that date was wrong. In a suit for ejectment it is for the plaintiff to prove possession prior to the dispossession which he alleges. On the question of evidence however, the initial fact of the plaintiff's title comes to his aid. Possession of open sites goes naturally with the possession of the property to which they adjoin. If the defendant asserts his rights, he must show, that he has been in possession adversely against the owner of the property. (*Macleod, C J. and Coyajee, J.*). MAHAMEDSAHEB IBRAHIMSAHEB *v.* TILOKCHAND ABHEERCHAND MARWADI.
66 I.C. 764=46 Bom. 920=24 Bom. L R. 373=A.I.R. 1922 Bom. 243.

——*Suit by auction-purchaser against trespasser—Art. 138 does not apply—Independent trespassers cannot tack on their possessions—When Art. 142 applies.*

Article 138 has no application to a suit for possession by a Court auction-purchaser against a person who claims title independent of judgment-debtor. The article applicable is Art. 144 and under Art. 144 a trespasser cannot tack on his possession with that of previous trespasser.

Where the defendant claims through the judgment-debtor, Art. 138 would apply but when symbolical possession has been given to the auction-purchaser it will be equivalent to actual possession against the defendant and thereupon Art. 142 will apply to the case. (*Richardson and Suhrawardy, JJ.*). JANAKINATH SAHA *v.* BAIKUNTHA NATH CHOLLAK. **70 I.C. 602=27 C.W.N. 259=36 C.L.J. 140=A.I.R. 1922 Cal. 176.**

—Art. 142—Burden of proof—Adverse possession.

——The onus of establishing title to property by reason of possession for a certain requisite period lies upon the person asserting such possession. A.I.R. 1916 P. C. 21, *Foll.* (*Broadway and Zafar Ali, JJ.*). DULLAH *v.* SARDARANI. **100 I.C. 336=9 L L.J. 9=28 P.L.R. 55=A.I.R. 1927 Lah. 777.**

—Art. 142—Burden of proof—Dispossession of defendant within 12 years.

——Where the plaintiffs have not been in possession, for more than 12 years, of land beyond the boundary line in dispute, determined by order of Revenue Officers 12 years back, unless they can show that they had since that date dispossessed defendants, their suit is barred by limitation with respect to this land. (*Coutts and Ross, JJ.*). BALGOBIND KUMAR *v.* RAI BEHARI LAL MITTER. **66 I.C. 471=1922 P. H. C. C 114=3 P. L. T. 617=A.I.R. 1923 Pat. 96.**

—Art. 142—Burden of proof—Extent.

——*Proof of possession within 12 years and dispossession by defendant, is sufficient—Actual date of dispossession need not be proved.*

In a suit for possession under Art. 142 what has to be shown is possession and dispossession within twelve years, and to do so it is sufficient to prove possession within twelve years, which can usually be done by the revenue records, if unrebutted, and further, the absence of possession or rather the possession of the defendant on date of suit. The actual date of dispossession need not be proved. (*Harrison and Dalip Singh, JJ.*). DAIM *v.* KHANU. **109 I. C. 266=8 Lah. 655=29 P. L. R. 77=A.I.R. 1928 Lah. 98.**

—Art. 142—Burden of proof—Land incapable of possession.

——*Plaintiff must prove possession within 12 years—When land is incapable of possession plaintiff must prove his title as well, and show that no one else was in possession.*

In an action for ejectment under Art. 142 the plaintiff has always to show that he was in possession within 12 years of suit. But in the case of land which cannot be availed of at all, such as jungle land, the plaintiff may show that he was in possession before 12 years and make a case by showing as an additional fact either that the land in question was incapable of possession by any one or that in fact no one was interfering with his right during the 12 years before suit. It is possession, not user, that has to be shown. A.I.R. 1924 Cal. 855 and A I.R. 1922 Cal. 557, *Ref.* (*Rankin, C.J., Suhrawardy and Majumdar, JJ.*). GOPAL CHANDRA *v.* MONMOHINI DASSI. **105 I.C. 309=31 C.W.N. 806=A.I.R. 1928 Cal. 118.**

—Art. 142—Burden of proof—On whom lies.

——In suit under Art. 142 burden of proof lies on plaintiff and in suit under Art. 144 it lies on defendants—Suit for possession of land—But defendants proved to be owner at one time—Plaintiff in possession for last 15 or 20 years—Plaintiff claiming that defendant obtained possession from him—Suit falls under Art. 142 and so if defendant's possession is not proved to be permissive, plaintiff must prove that he was in possession within twelve years of suit. 16 Cal. 473 (P.C.), *Rel. on.* (*Brown, J.*). U MAUNG GYI *v.* MAUNG ON BWIN. **117 I.C. 591=7 Rang. 85=A.I.R. 1929 Rang. 153.**

——Suit for possession alleging possession and dispossession by the defendant—Plaintiff must prove his possession within 12 years, and not that defendant should prove adverse possession for over 12 years. 41 All. 669 and A.I.R. 1926 Lah. 13, *Dist.* (*Dalip Singh, J.*). DAULAT RAM *v.* BALLU. **108 I.C. 374=A.I.R. 1928 Lah. 704.**

LIMITATION ACT (1908), Art. 142—Burden of proof—Possession within 12 years.

—Art. 142—Burden of proof—Possession within 12 years.

———*Claimant must prove his possession within* 12 *years—Inquiry into question of adverse possession is irrelevant.*

In cases falling under Art. 142 the claimant must prove his possession within 12 years next preceding the date of the institution of the suit and in cases of that nature an inquiry into the question of adverse possession is irrelevant. It is not enough for the claimants to show an anterior title. The burden of proof is on him to prove possession at some time within 12 years next preceding the suit and this would shift the burden on to the defence to show that they were entitled to retain possession. 16 Cal. 473 (P.C.) and 17 Cal. 137 (P.C.), *Rel. on*; 41 All. 669, *Ref.*; 27 Cal. 943 (P.C.); A.I.R. 1916 P.C. 21 and A.I.R. 1922 P.C. 181, *Dist.* (*Wazir Hasan, J.*). MAHABIR SINGH *v* CHITTA SINGH.

121 I. C. 84=6 O.W.N. 908=
A. I. R. 1930 Oudh 46.

———In a suit for possession instituted on the allegation of possession and subsequent dispossession it is incumbent on the plaintiffs to establish that they had been in possession within 12 years before the institution of the suit, and proof of an anterior title cannot relieve the plaintiffs from showing their possession at some time within the statutory period of 12 years. (*Mallick, J.*). SATTAR DIWAN *v.* SAJED ALI. **108 I.C. 732 (Cal.)**

———Plaintiff sued for possession on the ground that he was the owner of a house which, he alleged, was lent to the defendant for temporary use. The latter denied the fact and the plaintiff was unable to prove it.

Held, that the plaintiff ought to have proved possession within 12 years of the suit and the onus was not on the defendant to prove adverse possession. 18 and 116 P.R. 1889 and A.I.R. 1922 Lah. 482, *Rel. on*; 41 All 669, *Not foll.*; A. I. R. 1916 P.C. 21, *Dist.* (*Martineau, J.*). GHULAM MUHAMMAD *v.* FATEH KHAN. **115 I.C. 535=**
A.I.R. 1928 Lah. 896.

———*Suit to eject defendants—Plaintiff to prove possession within* 12 *years of suit.*

Where in a case for possession by ejectment of the defendants who, it was alleged, had taken forcible possession of the lands two years before the institution of the suit, it was expressly stated in the plaint that the defendants had no right whatsoever to dispossess the plaintiffs,

Held, that the burden of proving possession by the plaintiffs within 12 years of the institution of the suit was on them. (*Jai Lal, J.*). RAHELLA *v.* WAZIRA. **109 I.C. 320=9 L.L.J. 334=**
A.I.R. 1928 Lah. 32.

———*Encroachment by defendant — Plaintiff to prove possession within* 12 *years—Plaintiff's title—Effect of.*

In a case of encroachment it is undoubtedly for the plaintiff to establish that his possession was within 12 years but that in the question of evidence the initial fact of the plaintiff's title comes to his aid, with greater or less force according to the circumstances established in evidence. 16 Cal. 473 (P.C.) and 8 Bom. L.R. 400 (P.C.), *Foll.* (*Addison, J.*). BALASA *v.* PIRU MAL. **115 I.C. 420=**
10 L. L. J. 517.

———*Burden of proof is on plaintiff.*

Where the plaintiffs allege possession and dispossession the onus of proving that they had been in possession within 12 years before suit is on them: and the fact that the land remained uncultivated for some harvests does not show that defendants were not in possession for that period. (*Zafar Ali, J.*). NUR KHAN *v.* FAGIR ABDULLAH.
107 I. C. 779 (Lah.).

LIMITATION ACT (1908), Art. 142 — Burden of proof—Possession within 12 years.

———*Plaintiff must prove dispossession within* 12 *years before suit.*

The onus is not on defendants to prove that dispossession of the plaintiffs by defendants took place further back than 12 years from the beginning of the suit but it is for the plaintiffs to prove dispossession within that period. (*Dawson Miller, C.J. and Ross, J.*). CHANDRA DIP RAI *v.* RAMANAND THAKUR. **110 I.C. 623=**
A.I.R. 1928 Pat. 653.

———Plaintiff, a zamindar, sued for possession of a house. It was known definitely that it was occupied at one time by a person who was not a tenant or raiyat of the zamindar. Furthermore, it was known that at no time the plaintiff had actual possession of it. At no time had the defendant or his predecessors acknowledged the title of the zamindar or paid any rent,

Held, that the suit could not succeed unless plaintiff proved possession within the statutory period. (*Sulaiman and Daniels, JJ.*). KOMIL PRASAD *v.* BHARAT INDI. **89 I.C. 466=**
23 A. L. J. 874=6 L R.A. Civ. 501=
A.I.R. 1926 All. 82.

———Suit for possession and dispossession—Plaintiff must prove his possession within 12 years Ejectment. (*Chatterjea, Ag.C.J., Walmsley and Page, JJ.*). LAKHAN CHANDRA MALO *v.* GOPAL SHEIKH,
98 I.C. 912=31 C.W.N. 60.

———*Burden of proof is on plaintiff—Declaratory decree in favour of plaintiff is not possession.*

Plaintiffs, owners of a one-third share in the land in suit, instituted a declaratory suit in respect of that share, founding their cause of action on a denial of their title in partition proceedings. The suit was decreed. Plaintiffs subsequently instituted the suit for the possession of their one-third share. It was alleged in the plaint that after the previous suit had been decreed the plaintiffs had been receiving their share of the produce of the property till about a year before the date of the present suit. The plea of the defendants was adverse possession for more than twelve years.

Held, that in order to succeed it was necessary for the plaintiffs to prove that they have been in possession of the property in suit at some time within 12 years from the institution thereof and that the mere fact that they had obtained a declaratory decree was not sufficient if they had not followed the declaratory decree by any action to make their title perfect by obtaining possession. 45 P.R. 1914 and A.I.R. 1923 P. C. 175, *Foll.* (*Jai Lal, J.*). ALLAH BAKHSH *v.* SHADI.
99 I.C. 956=8 L. L.J. 872=28 P.L.R. 48.

———Claimant must prove possession within 12 years of suit—Enquiry as to adverse possession is irrelevant. A.I.R. 1925 Oudh 42, *Foll.* (*Rasa, J.*). SHEO DAYAL *v.* MT. ZOHRA. **98 I.C. 1061 (Oudh).**

———Suit for ejectment—Plaintiff must show that he was in possession within 12 years of suit. 5 P. L. J. 592, *Expl.* (*Adami and Das, JJ.*). GHURU RAJ *v.* HARIHAR PRASAD SINHA.
97 I.C. 267 (Pat.).

———*Entry of defendants' name as a tenant-at-will in Revenue Records—If plaintiff entitled to succeed.*

Where a plaintiff sues for possession alleging in the plaint dispossession he must prove that the

LIMITATION ACT (1908), Art. 142 — Burden of proof—Possession within 12 years.

dispossession took place within 12 years of suit. The entry of the defendant as tenant-at-will in the Revenue Records does not entitle the plaintiff to a decree on the ground, his possession cannot be adverse. (*Scott-Smith and Martineau, JJ.*). MIAN MOHAMMAD *v.* SARAF SHAH. **89 I.C. 687 (Lah.).**

———Onus of proof of possession is on plaintiff—Question of adverse possession is irrelevant. 16 Cal. 473; 17 Cal. 137, *Foll.* (*Wazir Hasan and Neave, A.J.Cs.*). GUR SAHAI KANDU *v.* CHHEDI.
79 I.C. 964=27 O.C. 130=11 O.L.J. 251=A.I.R. 1925 Oudh 42.

———*Presumption of possession following title—When arises.*

Where the plaintiff sued for possession on the allegation of dispossession,

Held, that Art. 142 is applicable and he is bound to prove possession within 12 years before suit. In order to prove this, he may rely on the presumption that possession of the lawful owner continues as long as the land is incapable of actual possession. But if he relies on this presumption he must prove that the land was incapable of actual possession within twelve years before suit. (*Newbould, B. B. Ghose and Page, JJ.*). SURESH CHANDRA *v.* SHITI KANTA. **78 I.C. 679=51 Cal. 663=28 C.W.N. 637=A.I.R. 1924 Cal. 855.**

———*Possession within 12 years must be proved.*

In a suit by plaintiff for possession of land on the declaration of plaintiff's title to the same, plaintiff must show his possession with 12 years even assuming that the title is with him. (*N. R. Chatterjee and Panton, JJ.*). RAM RATAN MANDAL *v.* NILMONY CHOUDHURY. **66 I.C. 914=A.I.R. 1923 Cal. 286.**

———Plaintiff must prove possession within 12 years. (*Kotwal, A.J.C.*). RAGHURAJ *v.* D. B. VALLABDAS. **69 I.C. 883=A.I.R. 1923 Nag. 95.**

———Where the plaintiff has been dispossessed and the suit is one for recovery of possession, the onus is upon the plaintiff to prove that he was in possession within 12 years of the suit. 7 C.L.R. 364; A.I.R. 1916 P.C. 21, *Expl.* (*Chatterjee and Panton, JJ.*). RAKHAL CHANDRA GHOSE *v.* DURGADAS SAMANTA. **67 I.C. 673=26 C.W.N. 724=A.I.R. 1922 Cal. 557.**

———Plaintiff to succeed has to prove that he has a subsisting title at the date of the suit and not only that he is entitled to possession, *i.e.*, he has to prove that he had been dispossessed had discontinued his possession, within a period of 12 years. (*Broadway and Abdul Qadir, JJ.*). DUNI *v.* MALRI. **69 I.C. 171=4 L.L.J. 382=A. I. R. 1922 Lah. 432.**

———In a suit for possession after dispossession, the plaintiff must show possession within the statutory period of 12 years. (*Coutts and Ross, JJ.*). NEKARI BALL *v.* LAKHIMI KANTHA ROY. **A. I. R. 1922 Pat. 33.**

———In a case for ejectment, the plaintiff where the defendant is proved to be in possession, must in addition to proving his title, make out that the dispossession took place within 12 years of the suit, that is to say, that he was in possession and dispossessed within that period. (*Dawson Miller, C. J. and Mullick, J.*). INDER LAL *v.* RAM SURAT KUER. **2 P.L.T. 55=1921 P.H.C.C. 118=A.I.R. 1921 Pat. 158.**

—Art. 142—Constructive possession.

———*Possession through tenants—Actual realising of rents must be proved,*

LIMITATION ACT (1908), Art. 142—Co-owners.

Before a defendant can be called upon to show that he was in possession, it is for the plaintiff to prove his possession within 12 years before the suit.

Where a person alleges his possession over a certain land through tenants, he must prove realization of rents from them. (*Mukerji and Bose, JJ.*). HARDUTT RAY *v.* UJIR SHAIKH.
117 I.C. 606=48 C.L.J. 364=A.I.R. 1928 Cal. 765.

———Suit for ejectment on actual possession and dispossession—Whether plaintiff can subsequently put forward a case of constructive possession depends on circumstances—Discretion of Court. (*Rankin, C.J., Suhrawardy and Mazumdar, JJ.*). GOPAL CHANDRA MAITI *v.* SM. MONMOHNI DASI.
105 I.C. 369=31 C.W.N. 806=A.I.R. 1928 Cal. 118.

———*"Possession" includes constructive possession.*

Per *Wazir Hasan, J.*—The word "possession" used in Art. 142 should not be read to connote "occupation" or "detention" merely. It will certainly include constructive possession. *Lake* v. *Dean*, 28 Beav. 207, *Rel. on.* (*Stuart, C.J., Wazir Hasan and Gokaran Nath Misra, JJ.*). GULAB KHAN *v.* ALAULLAH. **110 I.C. 70=3 Luck. 506=5 O.W.N. 372=A.I.R. 1928 Oudh 251.**

———Plaintiff having title will be presumed to be in constructive possession—Dispossession within 12 years of suit—Plaintiff will succeed. 96 I.C. 225, *Overruled.* (*Stuart, C.J. and Raza, J.*) BARJOR SINGH *v.* SIDH NATH. **98 I.C. 704=1 Luck. 441=29 O. C. 395=3 O.W.N. 891=A.I.R. 1927 Oudh 141.**

———*Trespasser—No constructive possession.*

There can be no constructive possession of a wrong-doer during the time that he is not actually in possession and the possession of a true owner no matter how that possession is obtained, must be considered as rightful possession in law and the period during which the true owner is in possession will enure to his benefit and not to that of the trespasser. 13 App. Cases 793, *Foll.* (*Mukerjee, J.*). GIRISH CHANDRA PAL *v.* BAIKUNTHA NATH SINGHA. **81 I.C. 270=A.I.R. 1925 Cal. 270.**

———*Possession before submersion is possession during submersion of submerged land.*

Possession is not necessarily the same thing as actual user. The nature of the possession to be looked for, and the evidence of its continuance must depend upon the character and condition of the land in dispute. Where the land is incapable of actual enjoyment as in the case of diluvion by a river, if the plaintiff shows his possession down to the time of the diluvion, his possession is presumed to continue so long as the lands continue to be submerged. No such presumption however arises in the case of a wrong-doer. (*Chatterjee and Panton, JJ.*). RAKHAL CHANDRA GHOSE *v.* DURGADAS SAMANTA.
67 I.C. 673=26 C.W.N. 724=A.I.R. 1922 Cal. 557.

—Art. 142—Co owners.

———*Dispossession of, or discontinuance of possession by, co owner—Suit for possession must be within 12 years.*

Where an occupancy holding was owned jointly by two persons *A* and *B*, and *A*, left the village and settled elsewhere, and *B* and his heirs continued in possession of the holding thereafter, and *A*'s heirs brought a suit for joint possession of the holding 12 years after the date when *A* left the village,

LIMITATION ACT (1908), Art. 142—Co owners.

Held, that the suit was governed by Art. 142 of the Limitation Act and was barred as the plaintiff had either been dispossessed or has discontinued possession since the date when *A* left the village. (*Sen, J.*). BALDEO *v.* MULOO. **119 I.C. 8 (All.).**

———*Heir of absentee—Co-sharer—Starting point of limitation for possession.*

An absentee co-sharer can recover possession on his return and the limitation period allowed to an immediate heir of an absentee is 12 years from the date of the absentee's death. 109 P.R. 1892; 85 P.R. 1909 and 29 P.R. 1910, *Not foll.* (*Johnstone, J.*). BUTA SHAH *v.* MURAD ALI.

116 I.C. 310=A.I.R. 1929 Lah. 276.

———*In case of parti land possession follows title.*

In the case of parti land the presumption of law is that possession must follow title. Where, therefore, certain co-sharer got title after partition possession is presumed to have passed to him and suit for possession brought by him long after partition is not barred. (*Misra, J.*). CHATTERPAL SINGH *v.* RAGHUBIR SINGH. **118 I.C. 431= A.I.R. 1929 Oudh 489.**

———Where person proves title to parti land, his possession will be presumed. It will be for the opposite party to prove his possession for twelve years prior to the suit. (*Jwala Prasad and Rowland, JJ.*). GOPAL SAHU *v.* GHANSHYAM DAS. **A.I.R. 1929 Pat. 529.**

———*Formal delivery of possession of an undivided share in the joint property under O. 21, R. 96—Limitation begins to run from the date of such delivery.*

Joint owners by delaying to sue together for ejectment of a trespasser in wrongful possession of a portion of the joint property, or by delaying to have partition in order to assert their separate rights to actual possession in accordance with their shares, cannot stop the running of time in favour of the trespasser. 39 All. 460 and A.I.R. 1921 All. 9, *Rel. on.*

In execution of his decree *A* brought to sale and purchased *B*'s undivided 1/3rd share of a house in 1900, and *A* in 1903 was given formal possession over his 1/3rd joint share. *B*, notwithstanding this, continued in actual physical possession of the house along with other co-owners. In 1916 *A* brought a suit for partition against the other co-owners and obtained a decree of the separation of his 1/3rd share, and in 1917 he applied to be placed in actual possession of his separated share. This application was opposed by *B* on the ground that he was in actual possession and was not bound by the partition decree to which he was not a party. The objection was sustained. Therefore *A* brought a suit in 1921 claiming actual physical possession of the 1/3rd share,

Held, that the suit was time-barred, as *A* failed to prove possession and dispossession within a period of 12 years prior to the suit and limitation began to run in 1903 when *A* was given formal possession over his 1/3rd joint share. (*Mears, C.J. and Lindsay, J.*). SITA RAM DUBE *v.* RAM SUNDER PRASAD. **115 I.C. 791=60 All. 813= 26 A.L.J. 873=A.I.R. 1928 All. 412.**

———*Fallow land—Adverse possession among co-sharers.*

Where the land in dispute was lying fallow from the 15th November, 1912 to the 15th November, 1913 and before the 15th November, 1912 was shamilat land in possession of the defendant on behalf of all the co-sharers and after 15th November, 1913 the defendant was again in possession but

LIMITATION ACT (1908), Art. 142—Co-owners.

in the meantime about July, 1913 exclusive title of the land had accrued to the plaintiffs by partition,

Held, that the plaintiffs were in possession upto the 15th November, 1913 by the partition in July, 1913 and as the land was fallow upto the 15th November, 1913 the suit which was brought on 9th November, 1925 was within time because the adverse possession of the defendant commenced only from 15th November, 1913. (*Addison, J.*). SMAIL *v.* GAJJAN. **106 I. C. 130 (Lah.).**

———*Co-heirs—Arts. 123 and 142—Applicability of.*

The appropriate article for suits instituted by co-heirs for a share in the corpus of an inheritance is Art. 123, but if it can be shown that whoever holds the property is holding with the consent, express or implied, of all the heirs on behalf of them all, then Art. 142 or 144 would apply. A. I. R. 1924 Rang. 155; A.I.R. 1916 P.C. 145 and A.I.R. 1925 Rang. 228. *Foll.* (*Brown, J.*). MAUNG SHWE AN *v.* MAUNG TOK PYU. **106 I. C. 828=5 Rang. 582= A.I.R. 1928 Rang. 6.**

———*Co-heirs—Arts. 123 and 142—Applicability of.*

Where a distributive share in the estate of a deceased is claimed, whether against an Administrator or a co-heir, or a person merely in possession, the article applicable is Art. 123. Where co-heirs agree to enjoy the property left by the deceased jointly without effecting a partition, Art. 142 or Art. 144 of the Limitation Act will apply. A.I.R 1924 Rang. 155 and A.I.R 1925 Rang. 233, *Foll.* (*Heald and Chari, JJ.*). MG. SAN SHIN *v.* MG. MAUNG. **93 I. C. 514=5 Bur. L.J. 4= A.I.R. 1926 Rang. 95.**

———*Co-heirs in common enjoyment of property—Subsequent exclusion of some—Article 142 or 144 and not Art. 123 applies.*

Article 123 applies to a case of a claim to a share against co-heirs in possession of an estate when there was intestacy. But an exception should be made in respect of cases where the whole body of the heirs agrees to enjoy jointly the property left by the deceased, without effecting a partition. In such cases Art. 142 or 144 would apply. (*Heald and Chari, JJ.*). MA NAN THU *v.* MA SHWE MI. **88 I.C. 609=4 Bur. L. J. 76= A.I.R. 1926 Rang. 233.**

———Co-owners in separate possession—Time of dispossession not shown—Suit for possession is not maintainable where plaintiff does not prove possession within 12 years. 39 Mad. 17 (P.C.) and 41 All. 669, *Dist.*; 16 Cal. 473 (P.C.), *Foll.* (*Daniels, J.*). JHARAP RAI *v.* JAINT RAI. **71 I.C. 1033= A.I.R. 1923 All. 418.**

———Possession after partition by one co-sharer of property allotted to another at partition is adverse to the latter.

Subsequent abandonment thereof beyond twelve years would not revive his title. (*Broadway and Zafar Ali, JJ.*). DAULATA RAM *v.* NANAK CHAND. **76 I. C. 742=A.I.R. 1923 Lah. 362.**

———*Possession of one is possession of all—There can be no ouster without the knowledge of the person ousted.*

The principle is that the possession of one co-owner is the possession of all for the purpose of limitation. No doubt, the sole possession of one co-owner for a very long period may, having regard to other circumstances, show exclusion or ouster. 11 Cal. 680, *Dist.*; 43 Mad. 244; 46 I.A. 285, *Dist.* There can be no dispossession by one joint tenant in the absence of an assertion of hostile title by him to the knowledge of the others sought to be excluded. And if no notice is given to

LIMITATION ACT (1903), Art. 142—Discontinuation of possession.

the co-sharer of the denial of his right the occupant must make his possession so visibly hostile and notorious and so apparently exclusive and adverse as to justify inference of knowledge on the part of the person excluded. (*Chatterjee and Pearson, JJ.*). JOGENDRA NATH MUKERJEE *v.* RAJENDRA NATH BHATTACHARJEE. **68 I.C. 200=26 C.W.N. 890=A.I.R. 1922 Cal. 54.**

—Art. 142—Discontinuation of possession.

———Where the circumstances showed that the possession of the plaintiffs was discontinued when the defendant entered into the possession of the house in suit,

Held, that Art. 142 and not Art. 144 applied. (*Wazir Hasan and Neave, A.J.Cs.*). GUR SAHAI KANDU *v.* CHHEDI. **79 I.C. 964=27 O.C. 130=11 O.L.J. 251=A.I.R. 1925 Oudh 42.**

———*Suit in ejectment by person dispossessed—Plaintiff must show his possession within 12 years—Possession of independent trespassers without interval will bar true owner's title—Any interval, however, will cause restoration of true owner's title—Adverse possession.*

Discontinuance of possession takes place where the person in possession goes out and is followed into possession by another person. In all cases, where the person, who was in possession at one time and discontinued possession or was dispossessed, seeks to eject a person in possession, he has to show that he was in possession within 12 years before the suit. 21 C.L.J. 157, *Ref. to*; 29 Cal. 518; 13 A.C. 793, *Dist.*

In order that the title of the true owner may be barred by the adverse possession of a trespasser or a series of trespassers the possession by them must be continued, and so long as it is continuous it is immaterial whether they claim through one another or independently; but if a period of time should elapse, however short, after the abandonment of one trespasser who has not been in for the full statutory period and the entry of another, the title of the true owner is, as from the time of such abandonment, restored to him without any entry or act done on his part, for the statute does not apply to a case of want of possession by true owner but only to the cases where the owner is out of possession and another is in possession for the prescribed time. (*Kumaraswami Sastri and Devadoss, JJ.*). VENNAM RAMIAH *v.* KUSRU KOTAMMA. **67 I.C. 246=1922 M.W.N. 132=45 Mad. 370=30 M.L.T. 143=A.I.R. 1922 Mad. 59=42 M.L.J. 319.**

———If the plaintiff, in a suit for possession on a declaration of title, fails to prove that he ever exercised possession within 12 years before suit, and there is nothing to show that the land was not capable of ordinary occupation or cultivation, his suit is barred and the defendant need not prove adverse possession for 12 years. (*Walmsley and Greaves, JJ.*). UDAY MANDAL *v.* RAM DURLABH SARKAR. **62 I.C. 707 (Cal.).**

———*Mere cessation of possession is not enough—It must be followed by possession by another.*

Discontinuance implies the abandonment of possession followed by the actual possession of another person and so dispossession implies an ouster from possession followed by the possession of another person. *McDonnel* v. *McKinty.* (1847) 10 Irish Law Rep. 514, *Foll.* The owner must be considered in point of law as always in possession so long as there is no intrusion. *Smith* v. *Lloyd*, (1854) 23 L.J. Ex. 194; *Trustees and Agency Co.* v. *Short*, (1888) 13 A.C. 793 and 29 Cal. 518 (P.C.), *Ref.* (*Coutts and Das, JJ.*). MADAN MOHAN SINGH *v.* BRAJ BEHARI LAL. **1921 P.H.C.C. 29=A.I.R. 1921 Pat. 36.**

LIMITATION ACT (1908), Art. 142 — Dispossession.

—Art. 142—Dispossession.

———"*Dispossession*"—*Meaning of.*

Dispossession contemplated in Art. 142 refers to actual physical dispossession, such as, when a person comes in and drives out the other from possession and not when the person in possession is resisted in his attempts to possess separately his share in the property. (*Cuming and Mallik, JJ.*). GAYA PRASAD *v.* BAKYA MANI DASSI. **119 I.C. 289=56 Cal. 914=33 C.W.N. 277=A. I. R. 1929 Cal. 297.**

———There is no dispossession or discontinuance of possession unless one person's possession terminates and is followed up by somebody else's possession. (*Rankin, C. J. and Mitter, J.*). MOHESH CHANDRA *v.* HEMENDRANATH. **107 I.C. 95=46 C.L.J. 575=A.I.R. 1928 Cal. 104.**

———Mere paper dispossession does not amount to dispossession within the meaning of Art. 144 or 142. The *terminus a quo* is the actual physical dispossession. (*Shadi Lal, C.J. and Le Rossignol, J.*). MUNNA LAL *v.* HAMID ALI. **79 I.C. 39=A.I.R. 1925 Lah. 53.**

———*Dispossession and discontinuance of possession, difference between.*

'Dispossession' implies the coming in of a person and the driving out of another from possession. 'Discontinuance' implies the going out of the person in possession and his being followed into possession by another. (*Madhavan Nair, J.*). GOVINDA RAMANIYA *v.* MAHOMED ESOOF. **87 I.C. 386=21 M.L.W. 398=A.I.R. 1925 Mad. 834.**

———"Dispossession" implies ouster, and the essence of ouster is that person ousting is in actual occupation of the land. (*Das and Adami, JJ.*). BAHADUR ALI KHAN *v.* SECY. OF STATE. **61 I.C. 78=2 P.L.T. 133=A.I.R. 1921 Pat. 277.**

———An adverse decision under S. 41 of the Bengal Survey Act amounts to dispossession within the meaning of Art. 142. (*Das and Adami, JJ.*). BAHADUR ALI KHAN *v.* SECY. OF STATE. **61 I.C. 78=2 P.L.T. 133=A.I.R. 1921 Pat. 277.**

———The order of the Collector under S. 41, Bengal Survey Act (V of 1875) operates as a decree of a Civil Court and it cannot be reversed or modified without any limitation of time. Article 142 of the Limitation Act must apply, when it is sought to reverse ormodify the order of the Collector, the date of dispossession being the date of the order of the Collector. (*Das and Adami, JJ.*). MAHANTH PARBHU CHARAN BHARTHI *v.* SECY. OF STATE. **61 I.C. 46=2 P.L.T. 118=6 P.L.J. 51=A.I.R. 1921 Pat. 31.**

———*Waste land—Ouster from.*

Where with the intention of taking possession of a strip of waste land belonging to the plaintiff defendant deposits earth excavated from a tank and cuts the trees thereon and plaintiff sued more than 12 years afterwards to recover possession,

Held, that the acts of defendant amounted to ouster of plaintiff whose suit having been brought more than 12 years afterwards, was barred by limitation. (*Teunon and Newbould, JJ.*). MAHARAJ BAHADUR SINGH *v.* PULIN MAL. **60 I.C. 386 (Cal.).**

LIMITATION ACT (1908), Art. 142 — Landlord and tenant,

—Art. 142—Landlord and tenant.

——Where a minor sued after attaining majority to set aside a void lease,

Held, that Art. 142 and not Art. 44 or Art. 91 applied to the case. (*S. K. Ghose, J.*). KRISHNADHAN LAHA *v.* BROJENDRA NATH.

34 C. W. N. 652.

——*Plea of adverse possession—Defendant must prove.*

In a case where the suit is resisted on ground of acquisition of title by adverse possession, it is not for the plaintiff to prove his possession within 12 years. The paramount question is of title and if the title vests in the plaintiff he is entitled to succeed, even if he fails to establish any alleged tenancy or license by the defendant, unless the defendant is able to establish his adverse possession undert Art. 144. A. I. R. 1927 Lah. 32; A.I.R. 1927 Lah. 70 and A.1.R. 1916 P.C. 21, *Foll.* (*Tek Chand, J.*). HIRA LAL *v.* LALJI. **117 I.C. 384 (Lah.).**

——*Suit for possession based upon title—Art. 144 applies—Difference between Arts. 142 and 144.*

The original tenant of a certain grove died leaving no heir. Under the law of the province and village custom, a tenant's grove escheats to the landlord if the tenant has no heir. The plaintiff being a village landlord sued for a declaration that he was the owner and possessor of that grove. The trial Court, regarding the suit as one only for possession, held that the suit fell under Art. 142 and threw the suit on the ground that the plaintiff had not proved possession within twelve years,

Held, that this was not a suit to which Art. 142, Limitation Act, applies, but that the article more strictly applicable was Art. 144. The essential difference between these two articles is that in the first case the owner bases his claim from the date of his dispossession, and in the second he bases his claim on his title without regard to his possession or dispossession, and time begins to run from the date that the defendant's possession becomes adverse to the plaintiff. (*Pullan, J.*). FAQIR BAKSH SINGH *v.* PRAG SINGH. **108 I.C. 103= 5 O.W.N. 121=A.I.R. 1928 Oudh 243.**

——Suit by tenants who have been dispossessed of their land for declaration of their title and possession, as occupancy raiyats—Art. 142 applies. (*Das and James, JJ.*). DEONANDAN PANDE *v.* ANHACH KAHAR. **105 I.C. 561=9 Pat. 340= A.I.R. 1928 Pat. 128.**

——Plaintiff setting up tenancy as basis of defendant's possession—Defendants setting up adverse possession—Plaintiff need not prove possession within 12 years—Defendant must prove adverse possession—Suit is governed by Art. 144.

Article 142 is applicable only to cases where the plaintiff alleges possession and dispossession in his plaint. (*Devadoss and Wallace, JJ.*). RAMANUJACHARIAR *v.* SUNDARACHARIAR. **99 I.C. 312= 25 M.L.W. 127=A.I.R. 1927 Mad. 287.**

——*Encroachment by a tenant under a claim adverse to a limited extent—Article applies.*

If the possession by the tenant is under a claim which is adverse to the landlord though only to a limited extent, then the purpose of the right which the tenant is claiming, the possession of the tenant is no longer the possession of the landlord and it must be treated as dispossession of the landlord within Art. 142.

Where the tenants had encroached on certain tanks belonging to the landlord under a claim to the tanks forming part of their tenancy,

LIMITATION ACT (1908), Art. 142 — Possession following title.

Held, that the case fell under Art. 142 and the landlords having been out of possession for more than 12 years, the tenants could not be deprived of their possession of the tanks. (*Rankin and Ghose, JJ.*). GOLAM NAZAR *v.* ABBAS MOLLA.

84 I.C. 637=40 C.L.J. 160= A.I.R. 1925 Cal. 193.

——Sale of groves—Subsequent relinquishment to landlord by vendor—Landlord's suit against vendees—Art. 144 and not 142 applies—Times runs from relinquishment. The reason for this is that the landlord, on relinquishment by the grove-holder claims in his own right to re-enter and not under a derivative title through the grove-holder. The sale by the grove-holder can be treated by the landlord as abandonment, in which case time will run from the sale. But the landlord is not compelled to treat it as abandonment by the grove-holder. (*Wazir Hasan, A.J.C.*). MAHABIR PRASAD *v.* RAM KUMAR. **84 I.C. 237=27 O.C. 301= A. I. R. 1925 Oudh 307.**

——*Evidence Act, S. 101—Title with plaintiff—Onus is on defendant to prove adverse possession—Kabuliyats and applications to Municipality are good evidence of possession.*

In a case where the suit is resisted on the ground of acquisition of title by prescription it is not for the plaintiff to prove his title within 12 years. It is for the defendants to prove his adverse proprietary title. 39 Mad. 670; 17 A. L. J. 84, *Foll.*

Kabuliats and application to the Municipality may not be sufficient to prove possession but *prima facie* counterparts of leases executed by tenants and applications for permission to build, put in the Municipal Board are the best possible evidence of possession. They would at least tend to show which were the persons who were in actual possession and on whose behalf they held that possession. The application would show also that a certain party alleged himself to be in possession of the property in dispute. (*Gokul Prasad, J.*). L. RAGHA MAL *v.* ABDUS SATTAR. **74 I. C. 879= A.I.R. 1923 All. 563.**

—Art. 142—Possession following title.

——*Suit on title—Article does not apply.*

A certain property was gifted and the deed showed that the donee had got possession. The donee instituted a declaratory suit based on title though the plaint contained also a prayer for possession of property on the alternative,

Held, that the ordinary presumption is that possession goes with title, and the suit does not fall under Art. 142. (*Rasa, J.*). SANT BAKHSH *v.* RAM NATH. **111 I.C. 376 (Oudh).**

——*Presumption of possession following title—When arises.*

There are only two exceptions to the well established principle of law that in a suit in ejectment on the allegation of possession and dispossession, it is for the plaintiff to make out satisfactorily that he was in possession within 12 years before suit and that the dispossession was within that period. The first exception is where the plaintiff is not able to prove effective possession, as in the case of an open site on which anybody could walk or throw rubbish or stack temporarily firewood, etc., the Court would be justified where the defendant does not adduce satisfactory evidence as to possession in relying upon the presumption of law as to possession following title and giving a decree to the plaintiff on proof of his title. The second

LIMITATION ACT (1908), Art. 142—Possession following title.

exception is where the plaintiff proves his title but cannot prove effective possession as in the case of forest lands or vast wastes and the evidence is not satisfactory on both sides, the Court not being in a position on the evidence to come to a conclusion as to possession, would be justified in relying upon the presumption of law as to possession and giving a decree to the plaintiff. 6 Pat. L. J. 478 (F.B.), *Foll.*; A.I.R. 1922 Bom. 243 and S.A. 1421 of 1924. *Expl.* (*Devadoss, J.*). VENKATA SOMAYAJULU *v.* SURYANARAYANA **101 I.C. 813=25 M.L.W. 603=38 M. L. T. 366=A. I. R. 1927 Mad. 509.**

———*Presumption of possessing following title—Has operation in future.*

The law presumes that possession follows title and does not favour forcible entry into possession by trespassers. Further, the presumption is prospective rather than retrospective in operation. The presumption of continuity has an operation in the future, because if it be shown that a particular state of things was existing at a particular time, that state of things will be presumed to continue in the absence of anything to the contrary.

Where in an ejectment suit the plaintiff alleges dispossession by defendant within 12 years, the onus of proving plaintiff's possession prior to his dispossession lies upon him, but in the absence of any proof of defendant's possession for the full statutory period the initial fact of the appellant's title comes to his aid and with greater or less force according to the circumstances established in evidence. 16 M. L. J. 272 (P. C.), *Foll.* (*Kinkhede, A.J.C.*). TUKARAM BAJI RAO *v.* TUKARAM YESHWANT. **97 I.C. 1006=A I.R. 1927 Nag. 37.**

———*Plaintiff proving title—Onus is on defendant to prove plaintiff's dispossession within* 12 *years.*

Where there is no satisfactory evidence in rebuttal the presumption that possession goes with title must be given effect to and it is only in cases where it is clearly proved that the plaintiff has either been dispossessed or that he has discontinued possession that Art. 142 would apply. In cases where the plaintiff has succeeded in proving a clear title the burden lies on the defendants to prove adverse possession for the statutory period, and if he fails to do so, the plaintiff must succeed simply on the strength of his *prima facie* title as owner. 41 All. 669 and A.I.R. 1923 Nag. 2, *Rel. on.* (*Moti Sagar, J.*). ISMAIL *v.* IBRAHIM. **89 I.C. 995=A.I.R. 1926 Lah. 13.**

———Suit for recovery of possession—Plaintiff can invoke the presumption that possession follows title, if he proves ownership up to the time immediately preceding 12 years where manifest acts of enjoyment cannot be proved.

The question, therefore, in every case is (1) whether a plaintiff has proved ownership up to the point of time immediately preceding the 12 years' period; (2) whether all the circumstances were such as to render it natural for the plaintiff to exercise manifest acts of enjoyment of the land during the twelve years preceding suit. If the plaintiff merely proves title at a remote date, he cannot ask the Court to presume that his title continued up to the point of time in question because he may have lost title by adverse possession. A I. R. 1922 Cal. 557; 2 P. L. T. 487 and 8 M.I.A. 199 (P.C.), *Foll.* (*Ashworth, J.*). SIDH NATH *v.* BARJOR SINGH. **96 I. C. 225=A.I.R. 1926 Oudh 528.**

LIMITATION ACT (1908), Art. 142—Starting point.

———*Possession goes with title applies where land actually vacant—Otherwise presumption exists in favour of person in actual possession.*

Where land is admittedly vacant there is no doubt that possession may be presumed to go with title but before possession can be presumed to go with title it must be clearly proved that the land has been lying vacant. Where it is not so proved the presumption is that possession has been with the person in actual possession although he may be holding under an invalid sale. (*Chevis, J.*). SAMPAT RAM *v.* GANGA DATT. **69 I.C. 427=A.I.R. 1924 Lah. 276.**

———*Title with plaintiff, but possession with defendant—Plaintiff to prove dispossession within* 12 *years.*

There is no absolute presumption that possession always follows the paper title. When the plaintiff comes to prove his possession under Art. 142 his paper title comes to his aid with greater or less force according to the circumstances established in evidence. As far as the paper titles went, it appeared that the plaintiff on the one hand and the defendants on the other hand were to divide survey No. 58 into equal moieties of 12 acres and 5 gunthas each. But in 1915 when a survey party came to measure the fields it was found that the defendants were in actual possession of more than half of the land namely about one acre and 10 gunthas in excess of the moiety shown under the paper title.

Held, that there being no evidence at all to show at what period the discrepancy in area between the title deeds and the actual occupation crept, in plaintiff must prove that the discrepancy arose within the last 12 years. (*Marten and Fawcett, JJ.*). KASHINATH GYANOBA *v.* GANESH SITARAM. **77 I. C. 506=A.I.R. 1923 Bom. 361.**

———*When land is not capable of actual enjoyment in the usual modes previous possession of plaintiff will be presumed to continue till contrary is proved.*

Per *Dawson Miller, C.J.*—Possession, however, is not necessarily the same thing as user and if the land is of such a nature as to render it unfit for actual enjoyment in the usual modes it may properly be presumed that the previous possession of the plaintiff continued until the contrary is proved. This presumption is a presumption of fact. It is by no means conclusive and whether it should be applied or not must depend upon the facts of each particular case. 9 Cal. 744 (F.B.), *Rel. on.*

Per *Mullick, J.*—In every case the Court may draw a presumption as to possession from title. It is a presumption of fact which the Evidence Act expressly warrants by S. 114. Section 4 of that Act enacts that the Court may regard the fact as proved unless and until it is disproved or may call for proof of it. The discretion of the Court is to be exercised with due regard to the nature of the land and the evidence in the case. 1 P. L. J. 146, *Expl.* (*Dawson-Miller, C.J. and Mullick, J.*). INDER LAL *v.* RAM SURAT KUER. **1921 P.H.C.C. 118=2 P.L.T. 55=A.I.R. 1921 Pat. 158.**

—Art. 142—Starting point.

———Each succeeding mutwalll does not get fresh starting point for the purpose of Art. 142.

The introduction of a fiction as to an idol being under a perpetual tutelage and also of a theory of suspension of cause of action during such tutelage will be an encroachment upon the

LIMITATION ACT (1908), Art. 142 — Starting point.

statute of limitation without legislative sanction and will revolutionize all known principles of law and procedure. A.I.R. 1926 Mad. 769; 23 Mad. 271 (P.C.); 37 Cal. 885 (P.C.); A.I.R. 1922 P.C. 123 and A.I.R. 1926 Cal. 913, *Ref.* (*Mukerji and Guha, JJ.*). DEBENDRA NATH SADHUKHAN *v.* NAHARMAL JALAN. **A.I.R. 1930 Cal. 673.**

——*Purchaser from trespasser is entitled to tack his possession to that of the trespasser.*

A trespasser cannot tack his own possession to possession of the previous trespasser for purposes of limitation. But where a trespasser sells his claim to possession to a purchaser that purchaser is entitled to tack the previous possession to his own possession for purposes of limitation and each subsequent purchaser of the claim or right to possession would have the similar right to tack the previous periods of his predecessors-in-title. Rustomji's Law of Limitation, Third Edition, 1922, page 634, *Ref.* (*Lentaigne, J.*). MA MI *v.* HADJI MAHOMAD. **75 I.C. 31=1 Rang. 176= A.I.R. 1923 Rang. 261.**

——Where the owner actually has received the rents and profits of the property up to within 12 years prior to suit, his suit for ejectment of a cosharer of the disputed property is not barred either under Art. 142 or Art. 144 of the Limitation Act. (*Lord Atkinson.*). ARAB ALI KHAN *v.* MAHAMMUD ALI KHAN. **67 I. C. 444=20 A.L.J. 545= 35 C.L.J. 554=24 Bom. L. R. 951= 31 M.L.T. 94=A.I.R. 1922 P.C. 84= 43 M.L.J. 104 (P.C).**

——*Suit by reversioner for possession from trespassers against widow—Articles do not apply.*

Where during the life-time of a Hindu widow the defendants trespassed on the lands and remained in possession for over 12 years and after the widow's death the reversioners sued for possession,

Held, that the suit was not barred under Arts. 142 and 144 as the plaintiff was not dispossessed and as the possession of the defendants did not become adverse to the plaintiffs until the widow's death. (*Mittra and Caspersz, JJ.*). PROMOTHA NATH *v.* DINAMANI. **65 I.C. 826=34 C. L. J. 129.**

—Art. 142—Submergence.

——Submergence does not amount to discontinuance of possession. (*Sir George Lowndes.*) RAMPATI CHATTERJI *v.* RAMANI MOHAN SEN.

34 C.W.N. 772=A.I.R. 1930 P.C. 198 (P.C.).

——Diluviated land—Possession will be deemed to be with plaintiff during the period of submergence only if at its beginning plaintiff had possession or subsisting title.

Where plaintiff sues in ejectment and his case in his plaint is one of possession and dispossession, Art. 142 applies, and to succeed he must first of all prove that he had possession within the statutory parlod. Cases of diluviated land or jungle or waste lands are no exception to the general rule. A.I.R. 1922 Cal. 557 and 16 M.L.J. 272 (P.C.), *Foll.* 29 Cal. 518 (P.C.), *Foll.* (*Greaves and Cuming, JJ.*). PANCHANAN SARKAR *v.* BASANTA KUMARI DASI. **88 I.C. 367=30 C.W.N. 497= A. I. R. 1925 Cal. 1230.**

—Art. 142—Suits after limitation.

——Where there is a clear finding that the plaintiffs were either dispossessed or had discontinued possession of a holding for more than 12 years before suit, the claim of the plaintiffs is clearly time-barred under Art. 142. (*Sen, J.*). BALDEO *v.* MULOO. **119 I. C. 8 (All.).**

LIMITATION ACT (1908), Art. 142—Waste land.

——Grant for maintenance—Grantor obtaining decree for resuming possession of property granted but, possession remaining with grantee even thereafter for more than 12 years—Suit by grantor for possession is barred. A.I. R. 1924 Pat. 721, *Affirmed.* (*Lord Shaw.*) KESHEO PRASAD *v.* MADHO PRASAD. **109 I.C. 818=9 Pat. L.T. 483= 48 C.L.J. 104=28 M.L W. 24=13 Bom. L.R. 1372= A.I.R. 1928 P.C. 165=55 M.L.J. 251 (P.C.).**

——Adopted son not in possession of his deceased father's estate for more than 12 years after the father's death, except for an unauthorised and forcible entry for a short time after 12 years—Son's suit to recover possession after 12 years is time-barred. (*Stuart, C.J. and Wasir Hasan, J.*). BALBHADDAR SINGH *v* KUSEHAR DAS. **110 I.C. 180= 5 O.W.N. 515=A.I.R. 1928 Oudh 348.**

——Where there is no reliable proof of unequivocal acts of ownership, the case must be decided on the proof of possession. Having regard therefore to the definite findings that the plaintiffs were dispossessed by the defendants, and that the defendants have been in possession for a period of 16 years before the suit, the suit must be held to be barred by limitation. (*Chatterjee and Pearson, JJ.*). BEHARI LAL NANDI *v.* NRITYANANDA GHOSE. **67 I.C. 1005=27 C.W.N. 350= A.I.R. 1922 Cal. 224.**

—Art. 142—Waste land.

——*Plaintiff to prove adverse possession—Nature of possession.*

In a suit by the plaintiff to establish a right by adverse possession to a Bela (a chur or an island of waste ground), the onus is on him to establish affirmatively his adverse possession for 12 years preceding the suit. The possession which he is required to prove must be adequate in continuity in publicity, and in extent, to show that it is possession adverse to the competitor; and though there may be special difficulty in establishing this in the case of waste or uncultivated jungle land, the onus nevertheless lies upon the plaintiff to prove affirmatively his exclusive possession of the Bela for the requisite period of 12 years.

Held, that, having regard to the revenue entries in which possession was throughout shown as being with the defendants, and the other evidence on the record, the plaintiff had failed to discharge the onus that lay upon him. (1900) L R. 27 I.A. 196 at p. 140; 27 Cal. 943 (P.C.) and 48 I.A. 395 at p. 402; 44 Mad. 883; 41 M.L.J. 650 (P.C.), *Ref. to.* (*Sir George Lowndes.*) JAHANDAD KHAN *v.* KHAN BAHADUR ABDUL GHAFUR KHAN.

34 C.W.N. 1101=32 M.L.W. 385= A.I.R. 1930 P.C. 281=59 M.L.J. 399 (P.C.).

——*Title to waste land would not avail, if plaintiff is shown not to be in possession within 12 years.*

Though title of waste land is an element to be taken into consideration in weighing evidence as to possession of the plaintiffs within twelve years, it can be of no avail when there is clear evidence on behalf of the defendant showing that the plaintiffs were not in possession or exercising any right as owners within twelve years. A.I.R. 1922 Cal. 557; A.I.R. 1925 Cal. 1230 and A.I.R. 1924 Cal. 855, *Ref.* (*Addison, J.*). NAND LAL *v.* LAHRI. **111 I.C. 533=A.I.R. 1929 Lah. 34.**

——Waste land—Possession presumed to follow title—No dispossession beyond twelve years of suit—No question of limitation arises. (*Rankin, C.J. and Mitter, J.*). MOHESH CHANDRA *v.* HEMENDRA NATH. **107 I.C. 95=46 C.L.J. 575= A.I.R. 1928 Cal. 104.**

LIMITATION ACT (1908), Art. 142—Waste land.

———Waste land presumed to be in owner's possession—Encroachment on waste land—Trespassing defendant has to prove encroachment—Article 144 applies; not Art. 142. (*Zafar Ali, J.*). GANGA RAM *v.* HASAN SHAH. 100 I.C. 51= A.I.R. 1927 Lah. 230.

———*Presumption of possessing going with title—When does not apply.*

In cases in which the property sued for has been lying waste throughout, the proposition that possession follows title and it is for the defendant to prove adverse possession is generally correct, but it does not apply in case where the land has been occupied adversely by the defendant. (*Wilberforce, J.*). MAHMUD *v.* UDE BHAN. 59 I.C. 891= 3 L.L.J. 72=A.I.R. 1921 Lah. 202.

—Art. 142—Miscellaneous.

———*Defendant to have opportunity of proving title superior to plaintiff's.*

Where a plaintiff intends to rely on the mere fact of his having been in lawful possession of the property and alleges that such lawful possession he was deprived of by the wrongful act of the defendant, he must afford an opportunity to the defendant, if so advised, to set up a title to the property superior to the one set up by the plaintiff himself. (*Srinivasa Aiyangar, J.*). MARUTHAPPAN ASARI *v.* MARIMUTHI ASARI. 1927 M.W.N. 753= A.I.R. 1927 Mad. 1185.

———*Public Demands Recovery Act* (1895), *New Act* (1913), *S.* 10.

The provisions of the new statute (Public Demands Act) have no retrospective operation so as to extinguish or modify causes of action which might have already accrued by reason of failure to serve the notice issued under S. 10 of the Public Demands Recovery Act, for S. 36 must be read along with S. 3 (1). The plaintiff is entitled to relief on the footing that the sale which was held without service of the notice on the plaintiff under S. 10 has not affected his title. *Colonial Sugar Refining Co.* v. *Irvine*, (1905) App. Cas. 369; 40 I.A. 74, *Ref.* (*Mookerjee and Chotzner, JJ.*). LALIT MOHAN SEN *v.* MONORANJAN GHOSE CHOUDHURY. 72 I. C. 698=36 C. L J. 208= A.I.R. 1923 Cal. 13.

—Art. 143—Forfeiture by re-marriage.

———*Re-marriage must be valid.*

To succeed under Art. 143 on plea of forfeiture by re-marriage it must be established that there was a valid remarriage, a marriage recognized by custom amongst the people of the caste to which the widow and her second husband belonged. (*Rankin, C.J. and Mukerji, J.*). TILOTTAMA DASI *v.* MADHU SUDAN GIRI. 117 I.C. 703= A I.R. 1928 Cal. 714.

—Art. 143—Scope.

———Relationship of landlord and tenant not existing—Art. 143 does not apply. (*Jack and Mitter, JJ.*). ABINASH CHANDRA GHOSH *v.* NARHARI MEHTAR. 123 I.C. 444=50 C.L.J. 260= 57 Cal. 289=A.I.R. 1930 Cal. 165.

—Art. 143—Starting point.

———Claim based upon forfeiture of lease, by reason of alienation—Article 143 applies and time runs from date of alienation. 38 M.L.J. 275; A.I.R 1922 Mad. 274 (F.B.) and 15 Mad. 128; 24 C.W.N. 1064, *Rel. on*; (1917) M. W. N. 419, *Ref.*; A. I. R. 1926 Mad. 849, *Reversed.* (*Beasley, C. J. and Cornish, J.*). K. V. AYYASWAMI PATHAR *v.* M. R. RY. MANAVIKRAMA ZAMORIN RAJAH. 30 M.L.W. 960=A.I.R. 1930 Mad. 430= 58 M.L.J. 89.

LIMITATION ACT (1908), Art. 144—Acquisition of title.

———*Starting point is the forfeiture itself and not the date of the knowledge of the landlord.*

The article makes the forfeiture itself, the starting point; there is nothing in it about the lessor's knowledge. The fact that there were previous alienations which the landlord could have but did not take advantage of is not material, for it was open to him to waive such forfeitures. (*Ayling and Krishnan, JJ.*). ZAMORIN RAJA *v.* SAMU NAIR. 15 M.L.W. 164=A.I.R. 1922 Mad. 290.

———*Right of re-entry if lessee alienated land demised—Time runs from date of alienation.*

Under a lease the lessee was to enjoy the land from generation to generation for purposes of residence without power of alienation and in the event of such alienation the lessor would be entitled to *khas* possession. The lessee sold the land and the lessor sued to recover possession.

Held, that Art. 143 was applicable and the period of limitation was 12 years and began to run from the date of alienation and not from the date when the lessee surrendered possession to the transferee. (*Mookerjee, C.J. and Fletcher, J.*). MOTI LAL PAL CHOWDHURY *v.* CHANDRA KUMAR SEN. 60 I.C. 312=24 C.W.N. 1064.

—Art. 144.

See also LIMITATION ACT, ART. 142.

Acquisition of title.
Adverse possession.
Applicability.
Burden of proof.
Constructive possession.
Co-owners.
Debuttar property.
Declaration of title.
Immovable property.
Invalid alienation.
Mortgagor and mortgagee.
Office and emoluments.
Partition suit.
Presumption.
Reversioner.
Starting point.
Suit on title.
Tacking.
Miscellaneous.

—Art. 144—Acquisition of title.

———*Void lease—Possession under—Lessee's rights can be acquired by adverse possession*—See *Bombay Bhaqdari Act* (1862), *S.* 3.

Where a person goes into possession of an unrecognised sub-division of a bhag under a void lease and remains in possession for upwards of twelve years, he acquires title by prescription to the limited interest under the lease and cannot be evicted during the period of the lease. 30 Bom. L. R. 980, *Foll.* (*Shingne, J.*). CHHAGANBHAI *v.* TULSHIBHAI. 32 Bom. L.R. 930= A.I.R. 1930 Bom. 449.

———*Lease for term—Tenant continuing in possession without paying rent—Adverse possession if interrupted by paper decree.*

The original owner of certain property leased it for eleven months on 16th July, 1899. In 1905 the property was partitioned between the sons of the lessor. In 1912 one of them filed a suit for rent and obtained a decree but did not execute the same. On September 12, 1925, the other brother sued to recover possession of his share of the property.

Held, that the possession of the lessee became adverse from 1900, that adverse possession was not interrupted by the decree obtained by the other

LIMITATION ACT (1908), Art. 144—Acquisition of title.

brother in 1912, and that the suit was barred by limitation. (*Madgavkar, J.*). MULCHAND *v.* HIRABAI. 32 Bom. L.R. 695=A.I.R. 1930 Bom. 400.

——Possession of a joint estate is adverse to any claim to such an estate as a separate one and possession by a joint family may by lapse of time become adverse to a separate estate. 24 M. 387, *Foll.* (*Murphy and Broomfield, JJ.*). BABAJI *v.* JIVAJI. 32 Bom. L.R. 314=A.I.R. 1930 Bom. 333.

——Malikana qabza *remaining in possession of* shamilat *plots—Landlard's title not acknowledged—Title by adverse possession.*

Where the plaintiffs were shown to be *malikan qabza* in the village who were not entitled to any share in the *shamilat* but who managed to take possession of portions of the *shamilat* before 1880 and it was proved that they continued in possession without acknowledging the defendants as landlords,

Held, that the plaintiffs had acquired title by adverse possession. (*Tek Chand and Agha Haidar, JJ.*). MARYAM *v.* NAGINA. 12 L. L.J. 161.

——*Adverse possession against District Board through Collector—Collector also President of District Board—Effect of.*

Where Government enjoyed an exclusive right of fishery for over twelve years adversely as against a chatram and the District Board which managed the chatram did not sue to recover possession within that period and when a suit was filed later it was sought to be argued that the Collector who prescribed for the Government was also the President of the District Board and that consequently there was no adverse possession,

Held, that the District Board not having exercised its right of suit apart from the President, the character of the Government's enjoyment remained affected in spite of the Collector holding dual capacities,

Held, also, that there was not a suspense of the right of action which the District Board had because of the position occupied by the Collector. (*Sundaram Chetty, J.*). SECRETARY OF STATE *v.* THE DISTRICT BOARD OF TANJORE. 31 L.W. 508=1930 M.W.N. 328=A.I.R. 1930 Mad. 679.

——*Limited interest—Acquisition by adverse possession.*

A limited interest in property can be acquired by adverse possession as well as absolute interest and the quantum of interest acquired depends upon the *animus* with which possession is held by the person in actual possession of the property. Consequently, where it is found that there was an agreement to execute a usufructuary mortgage and that it was under that agreement that the mortgagee came into possession, then, though the usufructuary mortgage contemplated had not been executed, it must be taken that the mortgagee had been in possession only as a usufructuary mortgagee for the amount of the loan advanced. (*Ananthakrishna Iyer, J.*). SAYYAPUREDDI ABBAYYA DHORA *v.* BAYAM APPANNA DHORA. 123 I.C. 195 (Mad.).

——*Possession under unregistered document—Nature of right acquired.*

Where a person got into possession of properties under an unregistered agreement to the effect that he would be entitled to remain in possession on condition he kept the properties in proper repairs and remained in possession for more than 12 years, held that he acquired title as per the terms of the agreement by adverse possession. (*Niamatullah, J.*). RAJAI *v.* BEHARI LAL. 115 I.C. 141 (All.).

LIMITATION ACT (1908), Art. 144—Acquisition of title.

——*Defendant not a tenant—Suit against him beyond 12 years is barred.*

In 1865 certain villages were leased by plaintiff's predecessor to defendant's predecessor on "Mukarrari istemrari" at an annual rent of Rs. 344. In 1879 the original lessee assigned his interest in the villages. The original lessee died about 1891 and afterwards his assignee remained in possession of the village who, it appeared, had paid rent to a mortgagee of the lessor up to 1898, but no rent was paid to the original lessor or his successors. Notices to quit were served in 1915 and again on 20th August, 1919, but the defendants remained in possession, and accordingly, the suit for ejectment was brought in 1920.

About the year 1903, the assignee from lessee apparently was willing to pay rent to the plaintiff's predecessor-in-title, provided that his name was entered as the holder of the mukarrari interest and that he was given receipts made out in his own name. The plaintiff's predecessor-in-title refused to do this, but expressed his willingness to receive rent and give marfatdari receipts. The assignee refused to accept marfatdari receipts, and consequently no rent was paid by him to the original lessor,

Held, that the payment of the rent to the mortgagee was not sufficient to create a tenancy between the mortgagor and the assignee and, after the termination of the lease for lives, there was no recognition by the plaintiff or his predecessor-in-title so as to constitute the defendants or their predecessors-in-title, tenants. That the plaintiff failed to prove that the relationship of landlord and tenant was in existence within 12 years prior to the institution of the suit, and that, therefore, the plaintiff's suit for possession was barred by the Limitation Act. A.I.R. 1925 Pat. 357, *Affirmed.* (*Sir Lancelot Sanderson*). KAMAKYA NARAIN SINGH *v.* RAM RAKSHA SINGH. 109 I.C. 663=7 Pat. 649=55 I.A. 212=48 C.L.J. 69=32 C.W.N. 897=28 M.L.W. 41=9 P.L.T. 501=30 Bom. L.R. 1361=A.I.R. 1928 P.C. 146=55 M.L.J. 882 (P.C.).

——Auction-purchaser obtaining possession of whole property—Only a portion belonging to judgment-debtor, possession of balance becomes adverse—Suit after 12 years is barred—Adverse possession. (*Daniels and King, JJ.*). SAJJAD HUSSAIN *v.* QURBAN ALI BEG. 96 I.C. 687=A.I.R. 1926 All. 637.

——*Lessee from Government for a term of years—After the term his possession is adverse.*

When a zamindar of a thok allowed his revevue to fall into arrears, the areas were taken under the direct management of the Collector and were subsequently made over to a co-sharer of the mahal in which the thok was situated for certain years on his payment or agreement to pay the arrears of revenue to Government,

Held, the co-sharer's possession was that of a lessee of the particular area from Government and when he held over at the end of those years his possession became adverse. A suit to recover possession instituted beyond 12 years from the expiry of the lease is barred. (*Kanhaiya Lal and Ashworth, JJ.*). KANHAIYALAL *v.* NANAG RAM. 93 I.C. 103=A.I.R. 1926 All. 534.

——*Acquisition of right to fishery—Period is 12 years.*

The right of fishery is an interest in land and the period of limitation for getting title by adverse

LIMITATION ACT (1908), Art. 144 — Adverse possession.

possession is 12 years under Art. 144 and consequently user for 20 years which is required under S. 26 of the Act is not necessary for getting absolute title. (*Mullick and Ross, JJ.*). HENRY HILL AND CO. *v.* SHEORAJ RAI. **64 I.C. 346= 3 Pat. L.T. 53=1922 P.H.C.C. 195= A.I.R. 1922 Pat. 9.**

—Art. 144—Adverse possession.

——*Definite assertion of adverse possession if always, necessary—Enjoyment of property as owner.*

It is not necessary in every case that there should be a definite assertion of adverse possession by the party who pleads a presoriptive title. His conduct as an owner can be looked into. Where a co-sharer who had no interest left in a shamilat on partition, but was under an impression that he had such interest was in cultivating possession of land in shamilat and there was nothing to show that the co sharer consented to such possession,

Held, that the possession was adverse as to ripen into ownership by cultivation for more than twelve years. (*Mukerji and Bennet, JJ.*). NIRANJAN SINGH *v.* MAHABIR SINGH. **A.I.R. 1930 All. 845.**

——*Submersion of lands, interrupts trespasser's adverse possession.*

Adverse possession should rest on *de facto* use and occupation; where the possession of the trespasser has been interrupted either continuously or periodically by the submersion of the lands under water, it prevents the perfection of his title by adverse possession. 29 Cal. 518 (P.C.), 44 Cal. 858 (P.C.), *Foll.* (*Sulaiman and Kendall, JJ.*). RAM KISHAN DAS *v.* MUL CHAND. **123 I. C. 817 (All.).**

——*Guardian—Adverse possession against minor.*

The possession of a *de facto* guardian or of his mortgagee as a derivative owner cannot be legally deemed to be adverse to the minor, but when the *de facto* guardian effects a sale of the minor's property, the possession of purchasers would become adverse since the date they got into possession. 35 Bom. 79 and 30 Mad. 145, *Rel. on.* (*Sundaram Chetty, J.*). SORIMUTHU THONDAMAN *v.* PERUMAL AMMAL. **A.I.R. 1930 Mad. 708.**

——Defendant in possession of plaintiff's property from 1897 for management—Defendant asserting hostile title in 1915—Plaintiff suing in 1922 for recovery of possession—Plaintiff's suit was held not time-barred as his title was not extinguished by the defendant's adverse acts. The article applicable in the case was 144, and not 142 or 143. (*Mallik and Garlick, JJ.*). MONMOTHA NATH *v.* BEPIN BEHARY. **117 I.C. 532= A.I.R. 1928 Cal. 582.**

——An admission of another's title by a person claiming land adversely cancels the effect of any overt act that he has committed and it cannot be inferred or presumed that that admission carries with it an assertion of adverse title. (*Harrison and Tek Chand, JJ.*). MUHAMMAD BAKHSH *v.* NATHU. **106 I.C. 814=A.I.R. 1928 Lah. 317.**

——*Father's possession for the joint benefit of co-owners who are his children is not adverse.*

A Buddhist father on his re-marriage made over the land in suit to his four children by the first wife by a registered deed towards their mother's share of inheritance in full satisfaction. He continued to be in possession but managed the land for the joint benefit of the co-owners. The husband of one of his daughters sued for his share and

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mesne profits after more than 12 years of the execution of the deed,

Held, that the deed constituted an outright transfer and the father was holding the property for the joint benefit of all and that the suit was not barred by limitation as limitation does not begin to run until possession becomes adverse to the plaintiff. (*Brown, J.*). MAUNG AUNG TUN *v.* MAUNG SAN NYUN. **105 I. C. 598=5 Rang. 576= A.I.R. 1928 Rang. 13.**

——To defeat plaintiff's right to succeed, on the ground of adverse possession, it must be affirmatively proved that the possession was held adversely to plaintiff by somebody for the statutory period. (*Phillips and Ramesam, JJ.*). NARAYANA MUDALIAR *v.* NAGAPPA MUDALIAR. **93 I. C. 923=22 M. L. W. 870= A. I. R. 1926 Mad. 245.**

——*Mortgagee in possession—Adverse possession of equity of redemption—Overt act.*

Possession by a man of the equity of redemption, while the property is in the actual possession of the mortgagee should be deemed to become adverse when he signifies his assertion of his rights by an overt act. Paying off mortgagee and taking possession of the mortgage lands was held to be such overt act. (*Shah, Ag. C. J. and Fawcett, J.*). HANAMGOWDA SHIDGOWDA PATIL *v.* IRGOWDA SHIDGOWDA PATIL. **84 I.C. 374=48 Bom. 654= 26 Bom. L.R. 829=A. I. R. 1926 Bom. 9.**

——*Purchaser from Government—Adverse possession against.*

Where a purchaser of land from Government sued to recover possession within sixty years or but more than 12 years from the commencement of adverse possession but within 12 years of purchase,

Held, that the suit was barred. Article 144 applied and there was only 12 years' limitation. Under S. 2 (8) the period runs as against plaintiff's predecessor-in-title, *viz.*, the government in this case, should be reckoned against plaintiff. (*Walmsley and Buckland, JJ.*). ANNADA MOHON ROY CHOWDHURY *v.* KINA DAS. **81 I.C. 675= 28 C.W N. 66=A.I.R. 1924 Cal. 394.**

——*Adverse possession must be adequate, continuous and exclusive—Acts of possession by owner though not continuous will destroy adverse possession.*

Adverse possession, contemplated by Art. 144 must be adequated in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. Standing a title in *A*, the alleged adverse possession of *B* must have all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession. The *onus* of establishing these things is upon the adverse possessor. Accordingly when the holder of title proves that he too has been exercising, during the currency of his title, various acts of possession, then the quality of these acts, even though they might have failed to constitute adverse possession as against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging by possession the title which he holds. (*Lord Shaw.*) KUTHALI MOOTHAVAR *v.* PERINGATI KUNHARAN KUTTY. **66 I.C. 451=26 C.W.N. 666=24 Bom. L.R. 669= 30 M.L.T. 42=48 I.A. 396= 44 Mad. 883=14 M L.W. 721= 1921 M.W.N. 847=A.I.R. 1922 P.C. 181= 41 M.L.J. 660 (P.C.).**

LIMITATION ACT (1908), Art. 144—Adverse possession.

——Planting of trees on another person's land is active trespass—Suit by owner for possession—Article 144 applies. 10 All. 634, *Doubted*, (*Walsh, J.*). MD. SHAFI *v.* BINDESHARI SINGH.
70 I.C. 483=A.I.R. 1922 All. 50.

——*Temporary user, without objection by owner is not adverse possession.*

The owner of a vacant plot not requiring it for his present use, it was used by his neighbour for more than twelve years without objection,

Held, that mere user of land for temporary purposes without objection would not amount to an assertion of ownership so as to give title by adverse possession. (*Broadway, J.*). CHANDAN *v.* BHADUR. 68 I.C. 263=4 L.L.J. 168=
35 P. W. R. 1922=62 P. L. R. 1922=
A.I.R. 1922 Lah. 82.

——*Reversioners—Adverse possession against.*

Though the possession of defendants was adverse to their uncles from 1890 or 1891, still inasmuch as the plaintiff's right to sue for possession was not derived from or through them, the possession of the defendants could not be adverse to them until after the dying out of intermediate reversioners, when their right to possession accrued. 106 P.R. 1906, *Diss. from*; 76 PR. 1919. *Dist.* (*Scott-Smith, J.*). HASTI *v.* HIRA. 77 I.C. 222=
4 L.L.J. 201=A. I. R. 1922 Lah. 37.

——*Adverse possession of lunatic's property—Lunacy does not prevent limitation running but only gives Lunatic right to sue within 3 years of the ceasing of the disability.*

Lunacy would not by itself prevent limitation from running against a lunatic. Where a person entering into possession of a lunatic's property was in no fiduciary relationship to the lunatic but entered into possession for his own benefit and in assertion of a title hostile to the lunatic, limitation would begin to run from the date when he so took possession though the lunatic would be entitled to sue for recovery of the property within 3 years from the date when his disability ceases, if he dies a lunatic leaving his widow as legal representative, then she could sue within three years of his death; but if the widow fails to sue within the said period for recovery of the property, the reversioners to the estate of the lunatic, would also be barred and they cannot reckon limitation from the death of the widow. (*Kumaraswami Sastri and Devadoss, JJ.*). KALIDINDI SEETARAMARAJU *v.* VEGESANA SUBBARAJU. 70 I.C. 678=
1922 M. W. N. 136=15 M. L. W. 382=
45 Mad. 361=30 M. L. T. 128=
A. I. R. 1922 Mad. 12=42 M.L.J. 262.

—Art. 144—Applicability—Auction-purchaser.

——When a purchaser at Court sale sues the co-tenants of the judgment-debtor, Art. 138 will not apply for that Article applies only against judgment debtor and persons claiming through him. The suit will be governed by Art. 144. (*Rankin, C.J. and Mukerji, J.*). BISWANATH CHAKRAVARTI *v.* RABIJA KHATUN. 117 I. C. 593=
33 C.W.N. 46=56 Cal. 616=A. I. R. 1929 Cal. 230.

——*Formal possession under O. 21, R. 95, C. P. Code—Suit for possession is governed by Art. 142.*

Where the auction-purchaser of only a share in a certain property, who has obtained under O. 21, R. 95 possession by beat of drum, sues for recovery of possession on the ground that he has not obtained actual possession the suit is governed by Art. 142 and not Art. 144; and the possession of the judgment-debtor who has remained in actual possession in spite of the formal delivery of possession through Court, should be deemed to have become adverse only from the date of such formal delivery. (*Stuart, C. J., Wazir Hasan and Gokaran Nath Misra, JJ.*). GULAB KHAN *v.* ATAULLAH.
110 I.C. 70=5 O.W.N. 372=3 Luck. 506=
A.I.R. 1928 Oudh 251 (F.B.).

LIMITATION ACT (1908), Art. 144—Applicability—Injunction.

—Art. 144—Applicability—Co-mortgagor.

——*Suit for possession by co-mortgagor, is governed not by Art. 148 but by Art. 144.*

Article 148 provides for a suit against a mortgagee to redeem or to recover possession of immovable property mortgaged. But a suit by a mortgagor against a co-mortgagor to recover possession of his share of the mortgaged property is not a suit for redemption nor a suit for possession of immovable property mortgaged. This suit must be governed by Art. 144 and not by Art. 148. (*Jwala Prasad, C.J. and Das, J.*). RAM NARAYAN RAI *v.* RAM DENI RAI. 63 I. C. 282=
1922 P.H.C. C. 129=6 P.L.J. 680=
A.I.R. 1923 Pat. 98.

—Art. 144—Applicability—Declaration against Government.

——Art. 144 does not apply to a suit for declaration against Government, that plaintiff has acquired ownership by prescription—Such suit is governed by Art. 149. (*Le Rossignol and Martineau, JJ.*). ABDUL WAHAB *v.* SECY. OF STATE. 96 I.C. 447=7 Lah. 210=
8 L.L.J. 309=27 P.L.R. 749=A.I.R. 1926 Lah. 437.

—Art. 144—Applicability—Declaration and injunction.

——Suit for declaration that a pathway is public and for injunction to remove obstruction—Article 144 applies. (*Panton, J.*). HARISH CHANDRA *v.* PRAN NATH. 69 I.C. 910=26 C W.N. 587=
A.I.R. 1921 Cal. 405.

—Art. 144—Applicability—Declaratory suit.

——If a suit is not for possession but is one for declaration, to such a suit Art. 144 does not apply. 20 All. 35, *Rel. on.* (*Patkar and Wild, JJ.*). KRISHNAJI ANNAJI *v.* ANNAJI DHONDAJI.
31 Bom.L.R.1240=54 Bom. 4=
A.I.R. 1930 Bom. 61.

—Art. 144—Applicability—Ejectment.

——Suit for ejectment—Question as to possession and dispossession not involved—Suit is governed by Art. 144. (*Harrison and Fforde, JJ.*). MT. NAWAZBAI ARDESHIR COOPER *v.* GHULAM MOHIUDDIN. 98 I. C. 878=A.I.R. 1927 Lah. 70.

——In a suit for ejectment where the plaintiff does not set up dispossession, Art. 144 is applicable and not Art. 142. (*Dawson-Miller, C. J. and Foster, J.*). MT. DHARICHNA KUAR *v.* KESHAVA PRASAD SINGH. 97 I.C. 135=8 P.L.T. 129.

—Art. 144—Applicability—Fishery.

——A suit for possession of an exclusive right of fishery is governed by Art. 144 of the Limitation Act. (*Sundaram Chetty, J.*). SECY. OF STATE *v.* THE DISTRICT BOARD OF TANJORE.
31 M.L.W. 508=1930 M.W.N. 323=
A.I.R. 1930 Mad. 679.

—Art. 144—Applicability—Injunction.

——*Suit for injunction to remove chhappar erected by defendant on plaintiff's land—Art. 120 applies.*

Where the plaintiffs claiming to be joint owners of a certain courtyard, alleged that the defendants had erected certain *chappars* or thatched sheds in front of their house and asked for a perpetual injunction to issue to them directing them to remove

LIMITATION ACT (1908), Art. 144 — Applicability—Landlord and tenant.

the said *chappars* and restore the courtyard to its former condition.

Held, that the suit was essentially a suit for the issue of an injunction and although the injunction would have had the effect of restoring the courtyard to a state in which the plaintiffs might have been able to have a more extensive use of it than they actually had, the suit would not be covered by Art. 144 but Art. 120 would apply. (*Broadway, J.*). LAL SINGH *v.* HIRA SINGH.

60 I.C. 20=3 L.L.J. 128=A. I. R. 1921 Lah. 242.

—Art. 144—Applicability—Landlord and tenant.

——*Suit against tenants—Defendants' claiming to be tenants under third party—Third party's title found against—Article applies.*

The findings in a suit for declaration of title and fixation of rent against the tenants were that the defendants held the land as tenants. They never claimed title in themselves. Instead of saying that they were the plaintiff's tenants they set up a third party. But they never claimed any higher right than that of a tenant.

Held, that if the defendants did not occupy the land as included within their holding, it should be assumed that they were encroaching upon the land of their landlord when the land in suit is found to be the plaintiffs' and not of the third parties as alleged by the defendants. In a case like this, Art. 144 applies. A.I.R. 1921 Cal. 355 and 14 I.C. 212, *Ref.* (*Suhrawardy and Jack, JJ.*). MUKTAKESHI DASI *v.* MANILAL JANA.

57 Cal. 371=A.I.R. 1930 Cal. 579.

——*Mere planting of trees on another's land does not amount to dispossession unless there is denial of right of owner.*

The mere planting of trees on another persons land does not amount to dispossession. In such cases a person who plants trees has either right of ownership or no right at all. Where therefore a person had planted trees on the landlord's land without permission and after doing so had asserted no possession either by using the trees or by using the land and he had no right to continue to enjoy the trees after the landlord has asserted his ownership over the land on which the trees were situated. The landlord is entitled to the possession of the land. Article 144 applied to the case not Arts. 32 and 142. 8 O.C. 177, *Rel. on*; A.I.R. 1922 Oudh 47, *Dist.* (*Pullan, J.*). ABDUL RAHIM *v.* WAZIR ALI.

7 O.W.N. 509=A.I.R. 1930 Oudh 304.

——Plaintiff setting up tenancy as basis of defendant's possession—Defendants setting up adverse possession—Plaintiff need not prove possession within 12 years—Defendant must prove adverse possession—Suit is governed by Art. 144. (*Devadoss and Wallace, JJ.*). RAMANUJACHARIAR *v.* SUNDARACHARIAR.

99 I. C. 312=25 M. L. W. 127=A. I. R. 1927 Mad. 287.

——*Tenant holding on after expiry of term—Article 139 and not Art. 144 applies.*

A tenant who holds on to the land after the expiry of term of the lease cannot be said to be holding 'adversely' to the landlord. So long as he is in possession, he cannot deny that it was from the lessor that he got the land. But where the tenant holds on after the expiry of the lease, time begins to run against the landlord from the date of the expiry of the lease, under Art. 139 of the Limitation Act. After the expiry of 12 years, the title of the landlord must cease by the application of S. 28 of the Limitation Act. With the cessation

LIMITATION ACT (1908), Art. 144—Applicability—Redemption.

of the right to recover the land his right to the property is also extinguished. Article 144 of the Limitation Act has nothing to do with the case, A.I.R. 1922 All. 318, *Ref.* (*Mukerji, J.*). DALMIR SINGH *v.* JOTI PRASAD.

85 I.C. 550=6 L.R.A. Civ. 254=A. I. R. 1925 All. 698.

——Article 139 and not Art. 144 applies to suits brought against the representatives of the original tenant after the determination of the tenancy to recover the property leased. (*Venkatasubba Rao, J.*). SUDALAIMUTHU THEVAN (DEAD) *v.* SAPPANI THEVAR.

86 I.C. 933=1925 M.W.N. 589=A. I. R. 1925 Mad. 446=48 M. L. J. 185.

——*Article 144 and not Art. 139 governs suit by landlord against* Mukarraridars *claiming permanent interest while lease granted only life interest.*

The *mukarrari istimrari* granted to the original *mukarraridars* conveyed only a life-interest. But it was claimed by their representatives that the interest which the *mukarrari istimrari* lease conveyed was of a permanent character. Such interest was expressly asserted in the sale-deed executed by the *mukarraridars* at the time. The defendants expressly claimed throughout to hold under the sale deed as permanent *mukarraridars*.

Held, that the suit was not governed by Art. 139, but by Art. 144 as the defendants had made a definite assertion of an adverse right more than twelve years before the suit. (*Jwala Prasad, A.C.J. and Macpherson, J.*). RAM RACHHYA SINGH *v.* KAMAKHYA NARAIN.

84 I.C. 586=4 Pat. 139=6 P. L. T. 12=1924 P.H.C.C. 313=A.I.R. 1925 Pat. 216.

——*Article 144 applies to suit by* patnidar *to recover possession of chaukidari chakran lands, which have been resumed and settled with the zemindar, by the Government.*

The *patnidar's* right under the patni grant to the chaukidari chakran lands are not disturbed, on resumption of chaukidari chakran lands by the Government and settlement of the same with the zemindar. A suit by the *patnidar* for the recovery of possession of these lands against the zemindar is not barred by limitation, unless for more than 12 years prior to the date of the institution of the suit, the possession of the zemindar had become adverse to the plaintiff. The possession of the zemindar may become adverse to the *patnidar* in a variety of ways, *e.g.*, when the lands are settled by the zemindar with tenants or when the *patnidar* after being invited to give and take the land does nothing and the zemindar thereafter makes other arrangements either for holding the lands in *khas* or for setting the same with ijardars or the like. In each case, the facts have got to be investigated having regard to the language of Art. 144 of the Limitation Act. (*C. C. Ghose and Panton, JJ.*). NAGENDRABALA CHAUDHRANI *v.* BEJOY CHAND MAHATAB.

74 I. C. 153=50 Cal. 577=28 C.W.N. 114=A.I.R. 1923 Cal. 734.

—Art. 144—Applicability—Redemption.

——Article 148 and not Art. 144 governs a suit for redemption against an auction-purchaser who purchases the right, title and the interest of the mortgagee under a mistake that the mortgagee was the full owner of the mortgaged property. (*Raymond and Madgavkar, A, J.Cs.*). MAHOMED MOOSA *v.* KAZI FATEHULLAH.

79 I.C. 466=19 S.L.R. 268=A.I.R. 1925 Sind 167.

——Article 148 does not apply to a suit to recover property on payment of a charge created by Transfer of Property Act, S. 95. Article 144 applies to such

LIMITATION ACT (1908), Art. 144—Applicability—Setting aside execution sale.

suit. (*Krishnan and Odgers, JJ.*). SINNANAN CHETTY *v.* SIVAKAMI AMMAL.
A.I.R. 1921 Mad. 326=41 M.L.J. 501.

—Art. 144—Applicability—Setting aside execution sale.

——*Suit by third party to set aside a Court sale—Art. 144 applies.*

Where the plaintiff in a suit for possession of property sold in execution of a decree was the original owner of the property and was not a party to the decree under which the sale took place nor a representative of any of the parties and was consequently in a position to ignore the sale altogether

Held, Art. 12 has no application and the suit falls under Art. 144. Article 91 also is not applicable, as it provides for the cancellation or setting of an instrument not otherwise provided for, and it binds only the parties to the instrument and not strangers. 15 P. R. 1912. (*Scott-Smith, J.*). AZIM KHAN *v.* KARIM. 71 I.C. 822=
A.I.R. 1924 Lah. 396.

——*Stranger to execution proceedings—Art. 144 applies.*

In execution proceedings against a minor son of the judgment-debtor the application for the appointment of a guardian of the minor was not accompanied with an affidavit and the guardian did not appear and act for the minor and certain property of the minor was sold. After attaining majority the minor brought a suit to set aside the execution sale,

Held, as the application for the appointment of guardian was not made in accordance with O. 32, R. 3 (3), the minor was no party to the execution proceedings and hence the suit to set aside the sale is governed by Art. 144 and not by Art. 12. (*Harrison, J.*). ALAM DIN *v.* 'ALLAH DAD.
67 I. C. 547=3 L. L. J. 44=
A. I. R. 1922 Lah. 447.

—Art. 144—Applicability—Suit by co-heir.

——*One Mahomedan co-heir suing another co-heir for possession—Article 144 applies.*

When a Mahomedan owner dies leaving several heirs, they all become co-owners and tenants-in-common. A joint owner is legally entitled to retain possession of joint property. Even if he is in exclusive possession of such joint property his possession is ordinarily to be referred to his legal title. The other co owners are accordingly in constructive possession of the property. If therefore, the co-owner in actual possession dispossesses any one of the other co-owners, the suit that is brought for recovery of possession is not a suit for a distributive share of the property of an intestate but is a suit to recover possession of the defined, though undivided, share of the co owner in the possession of the other co-owners. Such a suit is not covered by Art 123 at all and must fall under the general Art. 144, limitation running from the date when the defendant's possession became adverse. A.I.R. 1928 All. 467. (F.B.) *Foll.*; A.I.R. 1921 Bom. 56, *Ref.*; A.I.R. 1924 Rang. 155, *Dist. (Mya Bu and Baguley, JJ.)*. MA BI *v.* MA KHATOON.
121 I.C. 785=7 Rang. 745=A.I.R. 1930 Rang. 72.

——Plaintiff, Cutchi Khati daughter, sued her brothers for her share in the ancestral property. Defence raised adverse possession as a bar to the suit.

Held, that the case would be governed by Art. 144 and not by Art. 123. 43 Bom. 845, *Dist.*; 16 Mad. 61 (F.B.); A.I.R. 1921 Sind 177 and A.I.R. 1928 Rang. 6, *Rel. on.* (*Aston, A. J. C.*). NIAMAT *v.* ABDUL RAHMAN. A.I.R. 1930 Sind 193.

LIMITATION ACT (1908), Art. 144 — Applicability—Suit for possession.

——*Suit by Mahomedan heir against manager for possession—Art. 144 applies.*

The word "distribution" has a peculiar meaning of distribution of an estate which has vested in an executor or administrator. Article 144 and not Art. 123 therefore applies to a suit to recover a share by a Mahomedan heir from a person in management of the property : A.I.R. 1921 Bom. 56 *Foll.*; A.I.R. 1925 P.C. 105, *Dist.*, A.I.R. 1916 P.C. 145 and 43 Bom. 845, *Expl.* (*Patkar and Murphy, JJ.*). BAI JIVI *v.* BAI BIBANBOO. 118 I.C. 785=
31 Bom. L. R. 199=A.I.R. 1929 Bom. 141.

——*Suit by Muhammadan co heir for possession of his legal share is not governed by Art. 123, but by 144.*

Article 123 applies only when the suit is brought for a share of an estate which it is the legal obligation of the defendant to distribute. Where a Muhammadan dies intestate, his estate vests in his heirs as tenants-in-common and no one is charged by law with its distribution, and if a suit is brought by one of the heirs to recover his share, Art. 144 and not Art. 123 applies. 34 Mad. 511 and A.I.R. 1928 All. 467 (F.B.), *Foll.* (*Shadi Lal, C.J. and Agha Haidar, J.*). JANO *v.* NARSING DAS. 117 I.C. 803=11 Lah. 29=
A.I.R. 1929 Lah. 549.

——Where a distributive share in the estate of a deceased is claimed, whether against an Administrator or a co-heir, or a person merely in possession, the article applicable is Art. 123. Where co-heirs agree to enjoy the property left by the deceased jointly without effecting a partition, Art. 142 or Art. 144 of the Limitation Act will apply. A.I.R. 1924 Rang. 155 and A.I.R. 1925 Rang. 233, *Foll.* (*Heald and Chari, JJ.*). MG. SAN SHIN *v.* MG. MAUNG. 93 I.C. 514=3 Bur. L.J. 4=
A.I.R. 1926 Rang. 93.

——*Co-heirs living as tenants-in-common — Art. 144 applies.*

Where the members of a Mahomedan family continue to live as tenants-in-common without dividing the estate of a deceased ancestor, limitation will not run from the time of his death, and the article applicable for a suit for distributive share is Art. 144 and not Art. 123. 44 Bom. 942, *Foll.* (*Macleod, C.J. and Fawcett, J.*). MURDIN NIJBUDDIN *v.* BU UMRAO. 59 I. C. 780=
45 Bom. 519=A.I.R. 1921 Bom. 56.

—Art. 144—Applicability—Suit for possession.

——A suit for recovery of possession on declaration of title impeaching the transfer (lease) by a person other than natural guardian of the minor, the transaction not being for legal necessity or benefit of the minor is not barred by limitation if brought within 12 years of the transfer. (*S.K. Ghose, J.*). KRISHNADHAN LAHA *v.* BROJENDRA NATH DAS. A.I.R. 1930 Cal. 748.

——*Suit for plot of land in lieu of maintenance on strength of family custom is governed by either Art. 120 or 144 and Arts. 129 and 131 do not apply to such case.*

A suit by a junior member of a family governed by rule of primogeniture for a plot of land in lieu of maintenance on the strength of family custom is governed either by Art. 120 or 144 the choice between the two provisions of law depending upon the question whether the suit is treated as one for declaration or for possession. Therefore when on

LIMITATION ACT (1908), Art. 144—Applicability—Suit for possession.

the evidence it is proved that the defendant has been giving grain to the plaintiffs by way of maintenance and that the allowance was stopped two years before the suit the suit is clearly in time.

Articles 129 and 131 do not apply to such a case as Art. 129 is restricted in its operation to a suit for maintenance in which the right is based on Hindu Law and not upon custom and Art. 131 is confined to a suit in which the plaintiff seeks simply to establish his right to maintenance and does not ask for a consequential relief. 83 P.R. 1906, *Foll.* (*Shadi Lal, C.J. and Hilton, J.*). PARSHOTAM SINGH *v.* BALWANT SINGH. **121 I.C. 428= 11 Lah. 93=A. I. R. 1929 Lah. 872.**

———*Suit for possession—Trespasser allowed to remove the building constructed on the land trespassed on—Suit not changed into one for injunction.*

Suit is by an owner for possession of his wall which has been deliberately encroached upon and built upon by the defendants.

Held, that the suit was essentially one for possession and that incidental fact that under the law applicable to such a case in this country it is usual to give to the defendants an opportunity of removing the building, they have constructed on the land encroached upon, in no way makes the suit one for injunction. The defendants, if they so choose, need not remove the construction in question and if so it will fall to the owner of the wall to deal with it. The suit is clearly one for possession to which limitation of 12 years applies. (*Findlay, J.C.*). NARAYAN *v.* LAXMAN RAO. **105 I.C. 286=A. I. R. 1927 Nag. 400.**

———*Plaintiff alleging possession—Article* 142 *and not* 144 *applies.*

Every suit for possession of immovable property in which the plaintiff alleges that he has had possession, must fall under Art. 142. It is only where the plaintiff does not allege that he had ever been in possession that the case would fall under Art. 144. 41 All. 669 and 12 Cal. 38, *Dist.*; 39 Bom. 335; 14 N.L.R. 82; 16 Cal. 473 (P.C.) and A I. R. 1922 Cal. 557. *Foll.* (*Baker, J.C.*). SINGUJI *v.* GAMBHIRJI. **87 I.C. 1023=A.I.R. 1925 Nag. 370.**

———Article 118 has no application in a suit where the relief sought is possession of property and the validity of factum of adoption is incidentally in issue. (*Kotval and Prideaux, A.J.Cs.*). MT. ANNAPURNABAI *v.* RUPRAO. **78 I.C. 284= A.I.R. 1924 Nag. 319.**

———Plaintiff purchasing half field—Vendor remaining in possession under rent note—Vendor holding over and selling entire field to defendant—Plaintiff's suit for joint possession is governed by Art. 144, and not by Art. 139. (*Macleod, C.J. and Fawcett, J.*). ICHALAL JAGMOHANDAS *v.* NAGO SINA PATIM. **60 I.C. 589=23 Bom. L.R. 60= A.I.R. 1921 Bom. 462.**

———*Application under S.* 41 *of Act XV of* 1882 *dismissed—Suit on title for possession subsequently—Articles* 120 *or* 144 *applies.*

Orders passed under Chap. 7 cannot be regarded as a "decision or order" on the question of title. In a subsequent suit against an order under that chapter, there is no necessity to alter or set aside any such "decision or order." Consequently, Art. 13, Limitation Act, has no application. The article applicable may be Art. 120 or Art. 144. A.I.R. 1927 Mad. 321 and 7 W.R. 199 (F.B), *Foll.*; *Person* v. *Glaze Brook*, (1868) 3 Ex. 27; 23 All. 313 (P.C.); 10 B.H.C.R. 479; and 11 Bom. 429,

LIMITATION ACT (1908), Art. 144—Burden of proof.

Ref. (*Coutts Trotter, C.J. and Ananthakrishna Aiyar, J.*). HYDER ALI SAHIB *v.* AMIRUDIN SAHIB. **115 I.C. 504=29 M L.W. 537=1929 M.W.N. 174= A. I. R. 1929 Mad. 69=56 M.L.J. 199.**

———Where the title of the plaintiff is not denied and the land is shown to have been under water till within twelve years of the suit the burden of proof is on the defence to show that they have been in possession for 12 years before suit. To such a case Art. 144 and not Art. 142 applies. 9 Cal. 744, *Rel. on.* (*Ross and Chatterji, JJ.*). PARBU PANDEY *v.* RAMESHWAR. **117 I. C. 202=10 Pat. L.T. 122.**

———Suit against alleged lessee—Plaintiff's title proved—But lease not proved—Article 144 applies and not Art. 142. Though lease is found against plaintiff can rely upon his title. (*Madhavan Nair, J.*). GOVINDA RAMANIYA *v.* MAHOMED ESOOF. **87 I.C. 386=21 M.L.W 398=A.I.R. 1925 Mad. 834.**

—Art. 144—Applicability—Void transfer.

———*Article* 144 *and not Art.* 44 *applies in case of transfer of minor's property by unauthorised person.*

Where the property of a minor has been transferred by wholly unauthorised person, the transaction is void *ab initio* and it is not necessary for the minor in order to recover possession of property transferred to have the transfer set aside. In such cases Art. 44 will have no application and the suit will be governed by Art. 144. 20 C. W. N. 1016; 30 Mad. 393; 44 Bom. 742; A. I. R. 1925 Lah. 619 and A. I. R. 1928 Lah. 115, *Ref.*; 32 All. 392, *Dist.* (*Bennet and Iqbal Ahmad, JJ.*). DIPCHAND *v.* MUNNI LAL. **1929 A L.J. 1248= A.I.R. 1929 All. 879.**

—Art. 144—Applicability—Miscellaneous.

———Suit to recover possession from Hindu widow who pleaded adverse possession—Art. 144 applies, not Art. 142. (*Dalal, J. C.*). LAL BABAHUR SINGH *v.* MATHURA SINGH. **87 I.C. 164= A.I.R. 1925 Oudh 669.**

—Art. 144—Burden of proof.

———*Plaintiff basing claim on title—Onus is on defendant to prove adverse possession.*

The rule that the onus is upon plaintiffs to prove their possession prior to the time when they were admittedly dispossessed applies only to the case of a plaintiff basing his claim on dispossession. Consequently, where plaintiff bases his claim on title it is for the defendant to establish his adverse possession over a period of twelve years. 16 Cal. 437 (P. C.). *Dist.*; 41 All. 669, *Foll.* (*Shadi Lal, C. J. and Broadway, J.*). DAULU MAL *v.* RAWAL BAKSH. **122 I.C. 81=31 P.L.R. 231= A.I.R. 1930 Lah. 608.**

———Suit for possession based on title—Suit is governed by Art. 144 and if defendant sets up adverse possession, burden is on him to make out his case, not for plaintiff to make out possession, within limitation. (*Srivastava, J.*). YAQUBKHAN *v.* SHEO DULAREY. **7 O.W.N. 504= A.I.R. 1930 Oudh 310.**

———*Suit on title—Defendant to prove adverse possession.*

Plaintiffs were the owners of the land in suit and the defendants were in possession. Plaintiffs filed a suit for possession. The defendants contended that they held land in their own rights by adverse possession for more than 40 years. It was found that the land remained uncultivated from the year 1907 to 1919 and the suit was brought on 31st August, 1921. All along in the Jamabandi the plaintiffs had been described as owners and defendants as in possession,

LIMITATION ACT (1908), Art. 144 — Burden of proof.

Held, that the onus of proving adverse possession lay on the defendants and the suit was governed by Art. 144, and not by Art. 142. A. I. R. 1916 P. C. 21. *Foll.* (*Tek Chand and Agha Haidar, JJ.*). MD. YAR *v.* MD. YAR. **A.I.R. 1929 Lah. 596.**

——Onus of proving adverse possession is on person asserting. A. I. R. 1916 P. C. 21, *Foll.* (*Broadway and Zafar Ali, JJ.*). DULLAH *v.* MT. SARADA RANI. **100 I.C. 336=9 L.L.J. 9=28 P.L.R. 55=A.I.R. 1927 Lah. 777.**

——Where plaintiff claims as heir to a life-holder who is not heard of since over 7 years and defendants are in possession for over 12 years. Art. 144 applies and plaintiff must prove date of death within 12 years of suit. 12 M. I. A. 342; 5 Cal. 36, *Appr.* (*Lord Blanesburgh.*) LALCHAND MARWARI *v.* MAHANT RAMRUPGIR.

93 I.C. 280=5 Pat. 312=53 I. A. 24=24 A.L.J. 105=1926 M.W.N. 203=7 P.L.T. 163=3 O.W.N. 335=43 C.L.J. 249=28 Bom. L. R. 855=30 C.W.N. 721=A.I.R. 1926 P.C. 9=50 M.L.J. 289. (P.C.).

——*Title of plaintiff proved or admitted—Defendant must prove adverse possession for* 12 *years.*

Where a plaintiff sues on the strength of his title without any reference to prior possession or dispossession, in such a case it would seem that on the proper construction of Art. 144, the plaintiff would be entitled to succeed on proof of his title, unless the defendant is able to displace it by proof of adverse possession by himself or his predecessor-in-title for the whole statutory period. In a suit falling within Art. 144 the initial onus on plaintiff is to establish his title and he is not under an obligation to prove his possession within 12 years of the suit. On the contrary, when the plaintiff's title has been proved or is admitted, the burden is on defendant to establish that he, or persons through whom he claims, has or have been in possession adverse to the plaintiff for over 12 years before the suit. The defendant must also prove when his possession became adverse. It is settled law that the onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. 39 Mad. 617 (P.C.), *Foll.* (*Rasa, J.*). SUKHDEO *v.* MT. RAM DULARI. **92 I.C. 825=29 O.C. 131=13 O.L.J. 400=A.I.R. 1926 Oudh 313.**

——Plaintiff proving title—Defendant must prove adverse possession for 12 years. A.I.R. 1924 Oudh 266 and 39 Mad. 617 (P.C.), *Foll.* (*Rasa, J.*). AHMADULLAH *v.* BASHIR AHMAD.

94 I.C. 855 (Oudh).

——Where in a case under Art. 144 plaintiff's title is proved, the burden of proving adverse possession is on the defendant. (*Dawson-Miller, C.J. and Foster, J.*). MT. DHARICHUA KUAR *v.* KESHAVA PRASAD SINGH. **97 I.C. 135=8 P.L.T. 129.**

——*Plaintiff need prove only title—Onus is on defendant to prove adverse possession for* 12 *years.*

In cases falling under Art. 144, where the defence is one of title acquired by adverse possession for more than 12 years it is not necessary for the plaintiff to prove his possession within 12 years from the commencement of the suit. So far as the onus on the claimant in such a case lies, it is satisfied by proof of title, and it is then for the defendant to establish his plea of adverse possession before the suit can be dismissed as barred by limitation. 39 Mad. 617 and 41 All. 669, *Foll.*

LIMITATION ACT (1908), Art. 144 — Constructive possession.

(*Wazir Hasan and Neave, A. J. Cs.*). GUR SAHAI KANDU *v.* CHEDDI. **79 I.C. 964=27 O.C. 130=11 O.L.J. 251=A.I.R. 1925 Oudh 42.**

——Where the title was shown to be with the plaintiffs.

Held, it was for the defendants to prove their adverse possession. (*Neave, J.*). SHIN PRASAD SINGH *v.* MUNESHWAR DUBE.

5 L.R.A. Civ. 354=A.I.R. 1924 All. 924.

——When the dispossession by defendants is within 12 years of the suit the onus of proving adverse possession is on the defendants. (*Suhrawardy and Chotzner, JJ.*). KALIPRASANNA BAHADURI *v.* RANI HEMANTA KUMARI DEBI. **73 I. C. 1038=A.I.R. 1924 Cal. 977.**

——Title of plaintiff proved—Onus is on defendant to prove adverse possession—Possession to be adverse must have all the qualities of adequacy, continuity and exclusiveness. (*Mukerjee and Chotzner, JJ.*). JOBEDA KHATUN *v.* TULSI CHARAN DAS. **77 I. C. 564=36 C. L. J. 472=A. I. R. 1923 Cal. 82.**

——Suit for possession—Plaintiff not in possession 12 years back—He cannot succeed unless he proves dispossession of defendants since that date. (*Coutts and Ross, JJ.*). BALGOBIND KUMAR *v.* RAI BEHARI LAL MITTER. **66 I.C. 471=1922 P.H.C.C. 114=3 P.L.T. 617=A. I. R. 1923 Pat. 96.**

——*Plaintiff proving title—Defendant to prove adverse possession.*

In a suit by an inam certificate-holder to recover possession of lands alienated by the predecessor, defendant admitted the title of the plaintiff's predecessors, but sought to show that title was extinguished by adverse possession,

Held, that Art. 144 of the Limitation Act is applicable and it was for defendant to show when his alleged possession under the article became adverse. (*Hallifax, A. J. C.*). MAHOMED SIRAJ-UD-DIN *v.* FAYAZUD-DIN. **59 I.C. 473 (Nag.).**

—Art. 144—Constructive possession.

——If a person is in constructive possession of certain property up to the date of a gift of that property, a suit by his donee within 12 years from such date is within time. (*Tek Chand, J.*). MEHRAR *v.* RAHIMI. **102 I.C. 426=28 P.L.R. 181=A.I.R. 1927 Lah. 426.**

——*Submerged land—Title of rightful owner is revived during submersion.*

Where land becomes submerged it becomes constructively in the possession of its lawful owner. Where a trespasser had been in possession of the lands which, at intervals of 4 or 5 years became submerged, there is an interruption of the possession of the trespasser and a revival of the possession of the true owner during the period of submersion. Consequently the trespasser's possession is not continuous and he cannot acquire a title by adverse possession. (*Gokul Prasad and Sulaiman, JJ.*). RAM NARAIN MISIR *v.* DEOKI MISIR.

69 I. C. 912=20 A. L. J. 756=A. I. R. 1923 All. 75.

——*Possession follows title—Onus is on defendant to show statutory possession.*

Constructive possession always follows the true title. In cases under Art. 144 it is not incumbent on the plaintiff to establish possession within 12 years of suit. He has to prove title and it then rests on the defendants to show, that he and those under whom the claims have been in possession for over

LIMITATION ACT (1908), Art. 144 — Constructive possession.

12 years before suit. (*Prideaux, A.J.C.*). SAKHARAM *v.* DEOBA. **68 I. C. 320=A.I.R. 1923 Nag. 2.**

———Where the owner actually has received the rents and profits of the property up to within 12 years prior to suit, his suit for ejectment of a co-sharer of the disputed property is not barred either under Art. 142 or Art. 144 of the Limitation Act. (*Lord Atkinson.*) ARAB ALI KHAN *v.* MAHOMED ALI KHAN. **67 I.C. 444=20 A.L.J. 545=35 C.L.J. 554=31 M.L.T. 94=24 Bom. L.R. 951=A.I R. 1922 P.C. 84 (P.C.)=43 M.L.J. 104.**

—Art. 144—Co-owners—Alienee from.

———The rule as to adverse possession among co-owners laid down in *Corea* v. *Apphuhamy*, (1912) A.C. 230 and followed in latter cases is applicable to a transferee from a co-owner as well. *Case-law Discussed.* (*Bisheshwar Nath and Nanavutty, JJ.*). HALIM SHAH *v.* RAHIM BUX. **125 I. C. 833=7 O. W. N. 642=A.I.R. 1930 Oudh 675.**

———*Ouster—Proof of.*

Mere exclusive possession without more by a co-sharer of joint land and the receipt of rents and profits are not sufficient to constitute an ouster. On this point there is no distinction between exclusive possession by a co-sharer and possession by a stranger transferee of such co-sharers where the interest of a co-sharer is purchased by a third party such purchaser becomes a tenant-in-common with the other co-tenants and his possession cannot in the absence of clear proof to the contrary be adverse to such purchaser. (*Mitter, J.*). KUDU KOOH *v.* MADAN GOPAL AGARWALA. **51 C.L.J. 424.**

———*One co-owner selling the entire property—Alienee treating it as his own—Adverse possession starts from the date of sale.*

Where one of the co-owners purported to sell the entire property and the purchaser dealt with the property as his exclusive property since the date of the purchase and it appeared that the other co-owners were aware of the sale,

Held, that the purchaser must be deemed to have repudiated the title of the other co-owners from the date of the purchase and that adverse possession commenced from the date of the sale. (*Venkatasubba Rao, J.*). THIAGARAJA PILLAI *v.* APPAVOO PILLAI. **1930 M.W.N. 246.**

———*Auction-purchaser obstructed in obtaining possession—Time starts only from obstruction.*

Per *Rankin, C.J.* and *Mukerji, J.*—If *A* and *B* together own property of which *A* is in actual possession, and *B* sells his moiety to *C* the possession of *A* immediately becomes the possession of *C* also.

A purchaser at Court-sale of a co-tenant's share got his sale confirmed, but when he tried to obtain actual possession of the share he was obstructed by other co-tenants. He brought a suit for possession after twelve years from the date of sale or its confirmation but before twelve years from obstruction to possession.

Held, that other co-tenants' possession from the time of sale to the time of obstruction to possession was on behalf of and not adverse to the purchaser. The period of twelve years under Art. 144 would run not from the sale or its confirmation but from the time when possession was actually obstructed. The suit was within time. (*Mitter, J.* contra). 4 Cal. 327; 16 Bom. 722 and 23 Bom. 137 (F.B.), *Dist.* (*Rankin, C.J. and Mukerji, J.*). BISWANATH CHAKRAVARTI *v.* RABIYA KHATUN. **117 I.C. 593=33 C.W.N. 46=56 Cal. 616=A. I. R. 1929 Cal. 250.**

LIMITATION ACT (1908), Art. 144—Co-owners—Ouster.

———*Suit by transferee from a co-sharer for possession against other co-sharers—Article applies—Limitation runs from date of transfer.*

In the case of co-sharers the possession of one co-sharer is the possession of all and if one of them sets up a prescriptive title against the others he must prove that this possession was openly hostile and it could not be lawfully referred to a legal title as co-sharer; but a transferee or an assignee cannot by the mere fact of transfer or assignment, become a co-sharer if his rights as such are denied by the other co-sharers and a suit by him therefore for possession against his assignor's co-sharers must be brought within 12 years from the date of transfer. (*Moti Sagar, J.*). UDI *v.* MARU MAL. **78 I.C. 159=6 L.L.J. 567=A.I.R. 1924 Lah. 682.**

—Art. 144—Co-owners—Burden of proof.

———Suit for possession by one co-sharer against another co-sharer—Defendant must prove adverse possession for 12 years—Art. 144 applies. (*Wazir Hasan, J.*). MT. SUGHRA BEGAM *v.* NUR ALI. **98 I.C. 80=13 O.L.J. 824=3 O.W.N. 796=A.I.R. 1927 Oudh 6.**

—Art. 144—Co-owners—Ouster.

———*Knowledge on the part of person ousted is necessary—Constructive notice.*

In order to establish adverse possession among co-sharers proof of ouster is necessary. Exclusion or ouster involves not merely the act of the person ousting but the state of the mind of the person ousted. Knowledge on the part of the latter therefore is essential. Such knowledge may be proved directly or inferentially. On the principle of constructive notice it may also be proved by showing that the co-sharer against whom the possession was exercised had sufficient notice of facts or sufficient information which would put a reasonable person on enquiry and on receipt of which a reasonably attentive man could not but realise that he was ousted. (*Mukerji and Jack, JJ.*). MOULVI ABDUL WAHED *v.* MOHAN BASHI SAHA. **34 C.W.N. 246=A.I.R. 1930 Cal. 466.**

———*Non-participation in the fruits is not ouster.*

If the plaintiff is a co-owner with the defendants in any holding in dispute, the mere fact of the non-participation of the plaintiff in the cultivation of the holding for more than 12 years will not enable the defendants to prescribe a title by adverse possession, unless it is proved that there was an ouster of the plaintiff coupled with the denial of his title to the holding in dispute. (*Iqbal Ahmad, J.*). MEWA RAM *v.* LAL SAHAI. **100 I.C. 650=A.I.R. 1927 All. 410.**

———*Ouster is necessary for adverse possession against a co-owner.*

The possession of one co-sharer is the possession of all the co-sharers and in the absence of an ouster or overt act amounting to ouster, time does not run against the co-sharer who is not in actual possession of his share. In order to establish his adverse possession the co-sharer in possession must explicitly deny and repudiate the title of the other co-sharers to their knowledge, and at least 12 years must expire from the date of the denial and repudiation before his possession matures into ownership. (*Shadi Lal, C.J. and Zafar Ali, J.*). JAM BUDHA *v.* DASU RAM. **106 I.C. 488=9 L.L.J. 545=29 P.L.R. 131=A.I.R. 1927 Lah. 886.**

———Property owned jointly by two Mahomedan brothers—One going away as trader, but periodically coming and staying with another brother—

LIMITATION ACT (1908), Art. 144—Co-owners—Ouster.

He is entitled to a share in the properties even after twelve years as there is no adverse possession against him to his knowledge. (*Devadoss, J.*). DADA SAHIB *v.* AZI MOHIDEEN SAHEB. **84 I.C. 896=20 M. L.W. 670=A.I.R. 1925 Mad. 287.**

——*There can be no ouster without the knowledge of the person ousted.*

The principle is that the possession of one co-owner is the possession of all for the purpose of limitation. No doubt, the sole possession of one co-owner for a very long period may, having regard to other circumstances, show exclusion or ouster. 11 Cal. 680, *Dist.*; 43 Mad. 244; 46 I. A. 285, *Dist.* There can be no dispossession by one joint tenant in the absence of an assertion of hostile title by him to the knowledge of the others sought to be excluded. And if no notice is given to the co-sharer of the denial of his right the occupant must make his possession so visibly hostile and notorious and so apparently exclusive and adverse as to justify inference of knowledge on the part of the person excluded. (*Chatterjee and Pearson, JJ.*). JOGENDRA NATH MUKERJEE *v.* RAJENDRA NATH BHATTACHARJEE. **68 I.C. 200=26 C.W.N. 890=A. I. R. 1922 Cal. 54.**

——*Co-tenants—Ouster—Evidence of.*

In the absence of proof of ouster, possession of one joint tenant is not adverse to other joint tenants. An assertion of exclusive title in mutation proceedings may be evidence of ouster but not the institution of a suit by one joint tenant in his or her own name. (*Stuart, J.*). JAGRANI MISRANI *v.* MUST. SHEO DULARI SHUK-LAIN. **64 I. C. 462 (All.).**

—Art. 144—Co-owners—Possession of.

——Where land is declared to be in joint ownership of the persons in possession and certain others the possession of the former cannot be adverse to the latter. (*Tapp, J.*). HANWANT RAM *v.* MUGHLI. **31 P.L.R. 659.**

—Art. 144—Co-owners—Presumption.

——*No adverse possession amongst co-owners.*

A co-tenant out of possession starts with a presumption in his favour that the possession of the other co-tenant is not adverse but lawful. Where the defendants were all along in possession on behalf of one co-sharer and limitation was applied for in that capacity and the heirs of another co-sharer who was absent for a long time and who was subsequently found to be dead sued to establish their title,

Held, that the plaintiffs were entitled to succeed as there was no question of adverse possession among co-sharers under those circumstances. (*Hasan, A.C.J. and Pullan, J.*). ALI SHER *v.* WAJID ALI.

4 Luck. 339=A.I.R. 1930 Oudh 177 (F.B.).

——Muhamedan co-heirs are presumably co-tenants until ousted. *Corea* v. *Appuhamy*, (1912) A.C. 230; A.I.R. 1929 Lah. 195, *Foll.*; 89 P.R. 1888; 84 P.R. 1916; A.I.R. 1923 Lah. 519; A.I.R. 1927 Lah. 790; 97 P.R. 1890, *held overruled, Cases ref.* (*Zafar Ali and Addison, JJ.*). MD. BAKSH *v.* FATEH MUHAMMAD. **118 I.C. 905=10 Lah. 849=31 P.L.R. 179=A.I.R. 1929 Lah. 464.**

——Heirs of a Mahomedan are co-sharers and unless express ouster is proved to the knowledge of the other party no limitation starts against the other party. (*Lindsay and Kanhaiya Lal, JJ.*). MUBARAK-UN-NISSA *v.* MUHAMMAD RAZA KHAN. **79 I.C. 174=46 All. 377=22 A.L.J. 307=5 L.R.A. Civ. 257=A.I.R. 1924 All. 336.**

LIMITATION ACT (1908), Art. 144—Co-owners—Starting point.

—Art. 144—Co-owners—Removal of obstruction.

——*Muhammadan Law—Co-heir in possession dispossessing another co-heir—Latter's suit for possession is governed by Art.* 144 *and not Art.* 123.

When a Mahomedan owner dies leaving several heirs they all become co-owners and tenants-in-common. A joint owner is legally entitled to retain possession of joint property. Even if he is in exclusive possession of such joint property, his possession is ordinarily to be referred to his legal title. The presumption therefore is that his possession is lawful and therefore on behalf of all the co-owners. The other co-owners are accordingly in constructive possession of the property. As distinct shares have devolved on them, they all are presumed to have taken their legal shares although possession still remains joint. If therefore the co-owner in actual possession dispossesses any one of the other co-owners, the suit that is brought for recovery of possession is not a suit for a distributive share of the property of an intestate, but is a suit to recover possession of the defined, though undivided, share of the co-owner in the possession of the other co-owners. Such a suit is not covered by Art. 123 at all, and must fall under the general Art. 144, limitation running from the date when the defendant's possession became adverse. A.I.R. 1916 P.C. 145, *Expl.*; A.I.R. 1926 All. 748, *Reversed. Other cases considered.* (*Sulaiman, Ag.C.J., Mukerji and Boys, JJ.*). RUSTUM KHAN *v.* MT. JANKI. **111 I.C. 809=51 All. 101=26 A.L.J. 1041=A.I.R. 1928 All. 467 (F.B.).**

——A suit by one co-owner against another for the removal of the actual existing obstructions constructed by the other, on land, which by long usage and by agreement between the parties is reserved for use as a common passage is governed by Art. 144. 6 Cal. 394 (P.C.), *Ref.* Further the wrong is a continuing wrong within S. 23 of the Limitation Act. (*Richardson and Suhrawardy, JJ.*). DWARKANATH SEN *v.* TARAPRASSANNO SEN. **76 I.C. 328=A. I. R. 1923 Cal. 356.**

——Article 144 governs a suit by a co-sharer for removal of obstruction on land reserved by usage and agreement for common use. Under the article the burden is on the defendants to prove facts which would entitle them to say that the plaintiff had lost his rights by reason of something in the nature of adverse possession for the prescribed period. (*Richardson and Suhrawardy, JJ.*). DWARKA NATH SEN *v.* TARAPRASANNA SEN. **76 I.C. 328=A. I. R. 1923 Cal. 356.**

—Art. 144—Co-owners—Self-acquisition.

——One co-sharer recovering property from trespasser on his own behalf—His possession is adverse to other co-sharers—Art. 144 applies. (*Le Rossignol, J.*). ZULPHI *v.* ASGHAR. **3 L.L.J. 451=A.I.R. 1921 Lah. 163.**

—Art. 144—Co-owners—Starting point.

——*Assertion of exclusive right by one co-sharer against the other Art.* 144 *applies.*

Where two co-parceners have separated but before the property is divided by metes and bounds, one of them asserts an exclusive right of the whole property in himself, a suit by a usufructuary mortgagee from the other for possession would be barred if brought after 12 years, limitation commencing from the date of assertion of adverse title. Article 144 applies and not Art. 127. (*Harrison and Dalip Singh, JJ.*). TARA SINGH *v.* RAM SARAN. **110 I.C. 18=A.I.R. 1928 Lah. 499.**

LIMITATION ACT (1908), Art. 144—Co-owners —Starting point.

——*Co-heir alienating common property without other's consent—Time runs from date of alienation.*

An alienating co-heir is to be regarded as an agent of the other co-heirs so that an alienation by him of common property without the consent of the rest is adverse to their interest and limitation runs from the date of alienation and not from the date of suit for partition of common property. A.I.R. 1925 Rang. 40 and (1893-1900), L.B.R. 132, *Foll.* (*Doyle, J.*). MAUNG TUN U *v.* MAUNG TUN AUNG. **101 I.C. 691=5 Rang. 93= A.I.R. 1927 Rang. 158.**

——*Co-heirs in common enjoyment of property—Subsequent exclusion of some—Article 142 or 144 and not Art. 123 applies—Karen Christians are within this rule—Limitation Act, Art. 142.*

Article 123 applies to a case of a claim to a share against co-heirs in possession of an estate when there was intestacy. But an exception should be made in respect of cases where the whole body of the heirs agree to enjoy jointly the property left by the deceased, without effecting a partition. In such cases Art. 142 or 144 would apply.

There is nothing to prevent the heirs of Karen Christians from taking possession of the estate and agreeing to enjoy it in common. Their title becomes complete when they take possession of the property, and when thereafter any of them are excluded from enjoyment, the cause of action arises on such exclusion and the article applicable is Art. 142. (*Heald and Chari, JJ.*). MA NAN THU *v.* MA SHWE MI. **88 I.C. 609=4 Bur.L.J. 76= A.I.R. 1925 Rang. 233.**

——*Joint property—Sale by co-parcener—Suit by others for possession—Art. 144 applies and starting point is date on which vendor ceased to be in possession.*

Where some of the co-parceners sell the joint family property and put the vendees in possession and the surviving co-parcener brings a suit for possession of the alienated property, Art. 144 and not 127 applies. It is not necessary under Art. 144 to prove the exact date when plaintiff became aware that he had been excluded from a right to share in the joint property. The date of limitation beginning to run against the plaintiff must be taken as starting from the date when the vendors ceased to cultivate the property that they had alienated. (*Spencer and Ramesam, JJ.*). LINGA MUNISAMI REDDI *v.* P. S. GOVINDASWAMI NAICKER. **70 I.C. 317=15 M.L.W. 294= A.I.R. 1922 Mad. 369=42 M.L.J. 364.**

—Art. 144—Debuttar property.

——Where wakf property was the subject-matter of alienation,

Held, that adverse possession commenced from date of sale and that the suit to recover possession was governed by Art. 144 of the Limitation Act. (*Mukerji and Guha, JJ.*). DEBENDRA NATH SADHUKHAN *v.* NOHARMAL JALAN. **34 C.W N. 498=51 C.L.J. 547= A.I.R. 1930 Cal. 673.**

——*Suit to set aside alienation by succeeding Mahant is governed by Art. 144 and time begins to run from date of alienation.*

Where the properties are endowed properties belonging to a math or idol, the possession of same by a purchaser under a sale deed executed by the Mahant becomes adverse to the math or idol as also the succeeding Mahant from the date of possession after purchase under Art. 144 and if further such a sale deed follows, a *mukarari* lease in favour of a member of the joint Mitakshara family of whom purchaser is one; setting aside *mukarari* lease would not entitle the succeeding Mahant to step into shoes of *mukarari* and keep possession subject to payment of rent when suit to set aside purchase is barred under Art. 144. (*Wort and Fazl Ali, JJ.*). NAURANGI LAL *v.* RAMACHARANDAS. **11 P.L.T. 403=A.I.R. 1930 Pat 455.**

LIMITATION ACT (1908), Art. 144 — Debuttar property.

——Uncle and nephew creating trust at partition between them and managing by rotation—Will by uncle authorising his sons and nephew or his sons after him, to manage—Nephew dying after will, and uncle becoming sole trustee—Will takes effect after uncle's death and his sons can claim management under it—Suit for establishing such right would be governed by Art 144. (*Waller and Madhavan Nair, JJ.*). DURAI *v.* DURAISWAMI PILLAI. **105 I.C. 194=39 M.L.T. 214= A.I.R. 1927 Mad. 948.**

——Religious Endowment — Alienation by manager--Successor can challenge—Time runs from the time latter assumes office. A.I.R. 1926 Mad. 769, *Foll.*; A. I. R. 1923 P. C. 123, *Expl.* (*Odgers, J.*). VELLACHAMI NAICKER *v.* ALAGARASAMI NAICKER. **104 I.C. 355=A.I.R 1927 Mad. 1163.**

——*Possession adverse against mahant is adverse against the idol—Limitation begins to run from the date of taking possession by alienee—Succeeding mahant does not get fresh start.*

Such a manager, shebait or mahant would represent the idol or the institution for the time being completely, and possession, if adverse, against the mahant for the time being must be deemed to be adverse against the idol or the institution, unless the character of the alienation under which possession was taken could be deemed to enure only for the lifetime of a particular manager, shebait or mahant. The adverse possession in such a case begins to run from the date the alienee takes possession of the property alienated, and each succeeding manager, shebait or mahant cannot get a fresh start so far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager, the reason being that the succeeding managers, shebaits or mahants form a continuing representation of the idol or the institution to which the endowed property has been dedicated. A.I.R. 1922 P.C. 123, *Dist.*; 23 O.C. 536; A.I.R. 1922 Oudh 24; 23 Mad. 271 (P.C.); 37 Cal. 885 (P.C.); 36 Cal. 1003; 38 Cal. 526 (P.C.); A.I.R. 1923 P.C. 175 and A.I.R. 1926 Pat. 239, *Foll.* (*Gokaran Nath Misra and Raza, JJ.*). PARAS DAS *v.* JANAKI BALLABHA SARAN. **95 I.C. 27= 2 Luck. 239=3 O.W.N. (Sup) 1= A.I.R. 1926 Oudh 444.**

——*Lease by Mathadipathi without justification—Valid only for grantor's life—Adverse possession—Starts from succeeding Mathadipathi's date of succession.*

The language of S. 10 of the Limitation Act gives the clue to the meaning and the applicability of Art. 134. It clearly shows that the article refers to cases of specific trust, and relates to property "conveyed in trust." Neither under the Hindu Law nor in the Mahomedan system is any property "Conveyed," to or vested in a *shebait* or *mutwali*, in the case of a dedication. Therefore alienation made by either cannot be treated as an alienation made by a trustee under S. 10. A lease without justification granted by the head of the *mutt* is valid for his life, and if adopted by his successor would endure during his term of office; but neither the original alienation nor the subsequent adop-

LIMITATION ACT (1908), Art. 144 — Debuttar property.

tion would create a bar by adverse possession. Possession of the lessee becomes adverse to the successor only on his accession to the office. (*Mr. Ameer Ali.*) VIDYA VARUTHI THIRTHA SWAMIGAL *v.* BALUSWAMI AYYAR. 65 I.C. 161= 15 M.L.W. 78=3 Pat. L. T. 245= 26 C. W. N. 537=20 A. L.J. 497= 24 Bom. L.R. 629=30 M.L.T. 66= 43 I.A. 302=44 Mad. 831=1921 M.W.N. 449= 41 M.L.J. 346=A.I.R. 1922 P.C. 123 (P.C.).

——Trustee alienating waqf property given for general religious purposes—Suit for setting aside alienation and for possession is governed by Art. 144 and not Art. 134. Section 10 controls Art. 134 of the Limitation Act of 1908. It clearly shows that the Article refers to cases of specific trust and relates to property "conveyed in trust." There is under Hindu and Muhammadan Law, a distinction between a specific trust and a trust for general, religious or charitable purposes. (*Scott-Smith, J.*). DIWAN SINGH *v.* SHAM DAS. 65 I.C. 722=A.I.R. 1922 Lah. 271.

——*Property vested in mahant—Alienation by mahant—Suit by successor against alienee—Time runs from death of alienor or when he is presumed to have died—Property vested in idol—Suit must be brought within* 12 *years of alienation.*

Where the property is vested in the juridical person, and the Mahant is only the representative and manager of the idol, the act of alienation is a direct challenge upon the title of the idol, and the idol or the manager of the idol on behalf of the idol must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant of the Shebait the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to the purposes of the endowment; and there is no adverse possession so long as the person making the alienation is alive and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation. Where there can be no doubt whatever that though the property is endowed property in the sense that its income has to be appropriated to the purposes of the endowment, still the title is in the successive Mahants, time is to run from the date of the death of alienor who alienated the properties in dispute. If the alienor has not been heard of for 7 years by those who would naturally have heard of him, if he had been alive, it can be presumed that he is dead. The suits are not barred as the time begins to run from the date of the presumption. *Damoddar Das* v. *Lakshan Das*, 37 Cal. 885, *Ref.*; *Vaidya Varuthi* v. *Balusami*, 44 Mad. 831, *Foll.* (*Das and Bucknill, JJ.*). MAHANTH RAMRUPJIR *v.* LAL CHAND MARWARI. 67 I.C. 401=3 Pat. L.T. 352=1 Pat. 475= A.I.R. 1922 Pat. 243.

—Art. 144—Declaration of title.

——Where there is assertion of adverse title and ouster of a party, declaratory decree obtained by him does not prevent limitation from running. 45 P.R. 1914 and 68 I.C. 881, *Ref.* (*Shadi Lal, C.J. and Agha Haidar, J.*). MUHAMMAD IBRAHIM *v.* SHAIDA MUHAMMAD. 120 I.C. 486=11 L.L.J. 553= A.I.R. 1930 Lah. 297.

——*Possession of under-raiyat for life—When becomes adverse to landlord.*

LIMITATION ACT (1908), Art. 144—Immovable property.

An under-raiyat holding occupancy rights for his life was ejected by the landlord. The under-raiyat brought a suit under S. 9, Specific Relief Act, asserting that he held permanent heritable occupancy rights. The Court, though it decreed the suit was not concerned with the exact status of the parties. The landlord did not thereupon bring a suit for declaration under S. 42, Specific Relief Act.

Held, that the landlord was not bound to bring a declaration suit under S. 42, and the possession of the under-raiyat was not adverse against him since the decision of the suit under S. 9, Specific Relief Act, as the question whether the occupancy rights held by the under-raiyat were heritable or not, did not really arise in that suit. (*James and Chatterji, JJ.*). MUCHI RAM BAGAL *v.* BALARAM BHUMJI. A.I.R. 1930 Pat. 562.

——Suit for declaration of title and confirmation of possession—No allegation as to disturbance of possession by defendants—Cause of action being erroneous entry in Record-of-Rights—Suit is governed by Art. 120 and not Art. 144. (*Cuming and Page, JJ.*). ABDUL GAFUR *v.* ABDUL JABBAR MIA. 97 I.C. 635=A.I.R. 1927 Cal. 30.

——A suit which is in essence one for declaration of title and recovery of possession is not governed by Art. 148 but by Art. 144. (*Suhrawardy and Mukerjee, JJ.*). KESHAB LAL *v.* BHOLANATH. 94 I.C. 242=A.I.R. 1926 Cal. 910.

——*Land not belonging to estate allocated to one of the members on partition—Rightful owner can sue within* 12 *years.*

If property which did not fall in any way within the estate which was being partitioned was allocated to one of the persons, who was a party to the partition proceedings, it seems incredible to suggest that the person, to whom that property so allocated rightly belonged, could not within 12 years from the date when his right of action accrued, bring a suit for a declaration of his title and if necessary for recovery of possession of that land in question. Further it matters not whether such claimant was an outsider; that is to say, a person who was not a party to the partition proceedings, or a person who was a party to the partition proceedings. In such a case there is no act or order of an officer of Government in the official capacity which could be regarded as bringing the period of limitation within the purview of Art. 14. (*Adami and Bucknill, JJ.*). AJODHYA PRASAD *v.* RAMKHELAWANT SINGH. 96 I.C. 632= 6 Pat. 73=7 P.L.T. 779=1926 P.H.C.C. 236= A.I.R. 1926 Pat. 421.

—Art. 144—Immovable property.

——*Exclusive right of fishery—Acquisition of, by adverse possession.*

An exclusive right of fishery in a locality in the sense that even lawful owner is excluded from its enjoyment is not a mere "profit *a prendre*" but is a heritable and transferable interest in immovable property which can be acquired by 12 years' adverse possession as against the lawful owner, Art. 144, Lim. Act, being applicable to such a case. 1 Pat. 674 and 14 C.L.J. 572, *Foll.* (*Sundaram Chetty, J.*). SECY. OF STATE *v.* DIST. BOARD OF TANJORE. 1930 M.W.N. 328=31 M.L.W. 503= A.I.R. 1930 Mad. 679.

——Gift of mukarrari rent—Suit to set aside, is governed by Art. 144. (*Adami and Macpherson,*

LIMITATION ACT (1908), Art. 144—Immovable property.

JJ.). GOPALCHARJYA GOSWAMI *v.* BHIM KALI CHAUDHARY. **97 I.C. 637=8 P.L.T. 87= A.I.R. 1927 Pat. 49.**

——*Fishery—Exclusive right of, is an interest in immovable property and it can be acquired by adverse possession.*

If it is an exclusive right of fishery it is an interest in immovable property and can be acquired by 12 years' adverse possession involving an ouster of the rightful owner. Such a right contains all the essential elements of property and even if it may properly be described as a profit *a prendre*, it has also the distinctive features of an interest in immovable property. Even if S. 26 of the Act should be applicable, this would not bar the operation of Art. 144 and S. 28 if the right came under both descriptions. 2 P.L.J. 283, *Foll.*; 5 Cal. 945; 12 Bom. 221; 18 Cal. 80, *Ref.* (*Dawson-Miller, C.J. and Mullick, J.*). HENRY HILL & CO. *v.* SHEORAJ RAI. **67 I.C. 954=1 Pat. 674= 3 P.L.T. 477=1 Pat. L.R. 34= A.I.R. 1923 Pat. 58.**

—Art. 144—Invalid alienation.

——Alienation by mother and guardian of two minor sons—One of them not repudiating sale—Other son repudiating transaction.

Held, that the suit was governed by Art. 144 of the Limitation Act and time began to run from the date when the ward attained majority. (*Mukerji and Bennet, JJ.*). SHEONANDAN PRASAD *v.* TAHIRAN BIBI. **1930 A.L.J. 852.**

——*Sale valid during mutwali's life-time—Adverse possession begins from his death.*

There is no difference between a permanent lease and a sale of *wakf* property and where a sale by the mutwalli of such property is valid during his lifetime, adverse possession against the mosque commences not from the date of sale but from the date of the death of the mutwalli. A.I.R. 1922 P.C. 123; A.I.R. 1925 Mad. 822; A. I. R. 1927 Mad. 1163; A.I.R. 1926 Pat. 239. *Foll.*; A.I.R. 1922 Pat. 243; A.I.R. 1926 P.C. 9; A.I.R. 1923 P. C. 44, *Ref.* (*Wallace and Ananthakrishna Ayyar, JJ.*). PIRATLA PEDA VENKATASUBBARAYUDU *v.* HAJI SILAR SAHIB. **31 M.L.W. 396= A.I.R. 1930 Mad. 582=58 M.L.J. 524.**

——Where the alienation complained of is by the eldest managing member of a co-parcenary of the joint family property and not of the property belonging to the minor by his guardian, such a case is governed by Art. 144. 12 N.L.R. 12, *Foll.* (*Kinkhede, A.J.C.*). WAMAN *v.* VISHNU. **107 I.C. 516=A. I. R. 1928 Nag. 151.**

——Transferee *pendente lite* cannot prescribe title by adverse possession against mortgagee-auction-purchaser till he is entitled to actual possession, in execution of his decree. (*Iqbal Ahmad, J.*). SAMI NATH SINGH *v.* THAKUR PRASAD RAI. **100 I.C. 294=A.I.R. 1927 All. 309.**

——A suit to recover possession of land from assignees of Adimayavana right on the ground that the right was not alienable is governed by Art. 144 and the limitation begins when the first period for which the right was created expired. Article 143 does not apply to such a case. (*Phillips, J.*). ZAMORIN OF CALICUT *v.* VENKATAGIRI PATTAR. **92 I. C. 245=23 M. L. W. 58= A. I. R. 1926 Mad. 849.**

——*Trespassers—Tacking possession.*

One trespasser succeeding another can tack his possesssion on to the former's even in case of an invalid transfer: especially so where the second trespasser stepped into the shoes of the first with the latter's consent. 31 All. 156, *Dist.*; 35 All. 380, *Foll.* (*Daniels and Dalal, JJ.*). BAIJNATH *v.* RAM BILAS. **80 I.C. 12=5 L.R.A. Civ. 386= A.I.R. 1924 All. 738.**

LIMITATION ACT (1908), Art. 144—Invalid alienation.

——Suit by other members to recover tarwad property alienated by Karnavan not only as Karnavan but also as guardian of minor members is governed by Art. 144 and not by Arts. 91 or 44—Limitation Act, Art. 44—Limitation Act, Art. 91. (*Phillips and Venkatasubba Rao, JJ.*). KANNA PANIKAR *v.* NANACHAN. **78 I.C. 564= 19 M.L.W. 395=34 M.L.T. 89= A.I.R. 1924 Mad. 607=46 M. L. J. 340.**

——*Punjab Limitation Act (I of 1900)—Alienation by male proprietor—Starting point of limitation.*

Where the transactions were alienations of ancestral land by a male proprietor and as alienations whether they be regarded as mortgages or as sales, time begins to run from the date of the attestation of the alienations. Even if Art. 144 were held to apply, the suits would still be barred as time would begin to run from the date when the alienees came into possession as owners and under S. 9 of the Limitation Act would continue to run not only as against the original alienors but against all the world. 18 P. R. 1919, *Foll.* (*Broadway and Campbell, JJ.*). SHEOLAL *v.* MOTI. **A.I.R. 1923 Lah. 133.**

——Joint Hindu family—Suit to set aside an alienation by a manager—Art. 144 applies not Arts. 44 or 97. 13 A.L.J. 94; 12 N. L. R. 12, *Foll.* (*Abdul Raoof and Abdul Qadir, JJ.*). SUNDER *v.* SHIAMAN. **68 I.C. 731=A.I.R. 1922 Lah. 386.**

——If no declaratory decree has been obtained in respect of an alienation, the period of twelve years for a suit for possession is to be counted from the date of the mutation, from the date of the alienee obtaining possession, etc., as the case may be; and it is by no means a rare thing that a suit for possession is barred by limitation though the right to sue for possession has not yet accrued. It would be absurd that each successive reversioner should have twelve years for a suit for possession from the date of the death of the preceding reversioner. (*Shadi Lal, C.J. and Harrison, J.*). RULDU SINGH *v.* SANWAL SINGH. **67 I.C. 388=3 Lah. 188= A.I.R. 1922 Lah. 380.**

——*Mutawalli alienating* wakf *property—Article 144 applies.*

Article 144 and not Art. 134, governs a suit to set aside an alienation by a Mutawali of ordinary *wakf* property gifted for general, pious or religious purposes. Section 10 controls Art. 134 of the Limitation Act of 1908. It clearly shows that the article refers to cases of specific trust and relates to property "conveyed in trust." There is under Hindu and Muhammadan Law, a distinction between a specific trust and a trust for general religious or charitable purposes. (*Scott-Smith, J.*). DIWAN SINGH *v.* SHAM DAS. **65 I.C. 722= A. I. R. 1922 Lah. 271.**

——In the case of an alienation by an authorised guardian the minor must sue within three years of his coming of age. 32 All. 392, *Diss.* (*Case-law Referred to.*) (*Wilberforce, J.*). TARACHAND *v.* MURLI DHAR. **61 I.C. 384=3 L.L.J. 280= A.I.R. 1921 Lah. 25.**

——*Suit by co-sharer for declaration that lease by Lambardar is invalid—12 years rule applies.*

The position of a Lambardar with reference to his co-sharer in the matter of letting out vacant

LIMITATION ACT (1908), Art. 144—Mortgagor and mortgagee.

land cannot well be put higher than that of a manager of the joint property of a Hindu family, and therefore a suit by a co-sharer for a declaration that a lease granted by a Lambardar is invalid against him is within time, if brought within 12 years of the date on which the execution of the lease became known to the co-sharer, on the principle that a suit for declaration of a right cannot be held to be barred so long as the right to the property in respect of which declaration is sought is a subsisting right. (*Drake-Brockman, J. C.*). KUNJ LAL *v.* CHANDAR SINGH. 64 I.C. 775= 17 N.L.R. 169=A. I. R. 1921 Nag. 74.

—Art. 144—Mortgagor and mortgagee.

——Part of mortgage property sold to mortgagee in possession and whole mortgage satisfied—Mortgagee still continuing in possession—Mortgagee's possession becomes adverse. 34 All. 261, *Dist.* (*Mallik, J.*). KESHAB LAL *v.* BHOLA NATH. 34 C.W.N. 646=A.I.R. 1930 Cal. 402.

——Adverse possession against mortgagor commencing after mortgage does not affect right of mortgagee. This rule does not apply if it had begun before the mortgage which was effected when the mortgagor was not in possession. (*C. C. Ghose and Suhrawardy, JJ.*). SURENDRA NATH *v.* BARISAL LOAN CO., LTD. 50 C.L.J. 317= 34 C.W.N. 519=A.I.R. 1930 Cal. 313.

——*Possession of mortgagee—If adverse to mortgagor.*

A mortgagee in possession cannot, by getting himself recorded in the revenue papers as owner, defeat the right of the mortgagor to redeem. (*Tek Chand and Johnstone, JJ.*). GODAR *v.* NIZAM DIN. 120 I.C. 789 (Lah.).

——Possessory mortgage—Possession of trespasser is not adverse to mortgagor, but may be adverse to mortgagee. A.I.R. 1925 Bom. 465, *Foll.*; 26 Cal. 460, *Expl.* and *Dist.* (*Das and James, JJ.*). DUBRAJ MAHTO *v.* LALJI SAHAI. A.I.R. 1929 Pat. 639.

——Usufructuary mortgagee purchasing mortgaged property by unregistered document—Mortgagee's possession becomes adverse from date of sale—*Corea* v. *Appuhamy*, (1912) A.C. 230; 32 Cal. 296 (P.C.), *Expl.* and *Dist.*; 17 A. L. J. 737; A. I. R. 1921 Oudh 124 and 39 All 423, *Rel. on.* (*Sulaiman Ag. C.J., Mukerji and Kendall, JJ.*). SOHAN LAL *v.* MOHAN LAL. 118 I.C. 177=50 All. 986= 26 A.L.J. 1084=A.I.R. 1928 All. 726 (F.B.).

——Unauthorized transferee from mortgagee's transferee, holding possession for more than 12 years—Suit for redemption against such transferee is barred under Art. 144. 48 All. 164, *Foll.* (*Iqbal Ahmad, J.*). MUNAWAR ALI *v.* JAGMILAN RAM. 99 I.C. 280=A.I.R. 1927 All. 177.

——*Mortgagee suing for possession—Defendants pleading adverse possession against mortgagor—Defendant to prove such possession.*

Where a suit for possession of the mortgaged property by the mortgagee resolves itself, so far as limitation was concerned, into an assertion on the one side, that the mortgagor was the owner of the property and on the other, the pleas on the part of co-defendants to the suit, alleging title to the mortgaged property by adverse possession, that the property never belonged to the mortgagor but that if title was found to be originally with the mortgagor it had been lost by adverse possession of the co-defendants,

Held, that Art. 144 was applicable to the case and that the onus of proving a prescriptive title against the mortgagor was rightly placed on the co-defendants, alleging such title. (*Coldstream, J.*). FAKIR MAHOMED *v.* RAMZAN. 99 I.C. 642= A.I.R. 1927 Lah. 171.

LIMITATION ACT (1908), Art. 144—Office and emoluments.

——*Suit by co-mortgagor to recover his share from redeeming co-mortgagor—Article* 144 *applies and not Art.* 148.

A co-mortgagor redeeming the whole mortgage does not become a mortgagee of a portion redeemed belonging to the other co-owners, but becomes merely a charge holder and therefore, a suit by one of the co-owners to recover his share of the property on payment of his share of the charge cannot be considered to be governed by Art. 148; in such a case Art. 144 must be applicable. 9 O.C. 91 and 6 O.L.J. 364, *Foll.*; A.I.R. 1922 All. 410; 14 All. 1 (F.B.); 38 All. 540; 40 All. 683, *Not foll. View of the High Courts indicated.* (*Gokaran Nath Misra, J.*). WAJIHUDDIN ASHRAF *v.* AHMAD ASHRAF. 104 I. C. 400=2 Luck. 618= 4 O.W.N. 713= A.I.R. 1927 Oudh 347.

——*Exclusive possession by mortgagee—Mortgagor's right to decree, if barred.*

As between mortgagor and mortgagee neither exclusive possession by the mortgagee for any length of time short of the statutory period of sixty years nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption will be a bar or defence to a suit for redemption if the parties are otherwise entitled to redemption. 32 All. 296 (P C.), *Foll.* (*Hasan and Misra, JJ.*). ACHCHE MIRZA *v.* AHMAD SHAH. 97 I.C. 922=1 Luck. 529=3 O.W.N. 693= A.I.R. 1926 Oudh 594.

——*Denial by mortgagee of title of mortgagor does not curtail period for redemption.*

It is not open to a mortgagee by denying the existence of a mortgage to curtail the period of limitation provided for a suit for redemption. Once a mortgage comes into existence it continues to subsist as a mortgage until the period for its redemption expires despite any attempt made by the mortgagee to deny the existence of that mortgage or to set up an adverse title in himself. Article 144 of the Limitation Act (IX of 1908) is only a residuary article and does not apply so long as Art. 148 of that Act is applicable. (*Kanhaiya Lal, J.*). RAGHUNATH SINGH *v.* JETTO SINGH. 74 I.C. 830=A.I.R. 1923 All. 613.

——Possessory charge created by award—Time for redemption is 12 years, and not 60, as in the case of a mortgage. (*Lindsay and Kanhaiya Lal, JJ.*). SURAT SINGH *v.* UMRAO SINGH. 77 I.C. 113=20 A.L.J. 611=A.I.R. 1922 All. 410.

——*Redemption by one of several co-mortgagors—Suit by another for possession—Article* 144 *applies.*

Where one of several mortgagors redeems the whole mortgage and obtains possession, a suit against him by another co-mortgagor to recover his share on payment of his share of the money, is not one for redemption but one to recover possession of property on payment of a charge. Therefore it is governed by Art. 144 and not by Art. 148 of the Act. (*Krishnan and Odgers, JJ.*). SINNANAN CHETTY *v.* SIVAKAMI AMMAL. 69 I.C. 1004= 41 M. L. J. 501.

—Art. 144—Office and emoluments.

——*Succession to religious office after nomination—Article* 144 *does not apply but Art.* 120 *applies.*

Where succession to a religious office is by nomination by the holder in office of his successor it is not a hereditary succession within Art. 124.

LIMITATION ACT (1908), Art. 144—Office and emoluments.

Hereditary succession is succession by the heir to the deceased under the law the office must be transmitted to the successor according to some definite rule of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual. Therefore the only article applicable to cases of succession after nomination is Art. 120. Article 144 also is not applicable as the claim to possession is also barred if the claim to office is barred under Art. 120. (*Krishnan and Venkatasubba Rao, JJ.*). PARAMANAND DAS GOSWAMI *v.* RADHAKRISHNA DAS. **97 I.C. 437=A.I.R. 1926 Mad. 1012=51 M.L.J. 258.**

——Meikkavalgar in possession of *manibham* lands for 12 years after his dismissal from office—Suit for possession by his successor is barred. When on the death of the plaintiff his successor continued the suit,

Held, his right was also extinguished by adverse possession. (*Ayling, Offg.C.J. and Odgers, J.*). MADURA DEVASTHANAM *v.* SAMIA PILLAI.
70 I. C. 369=15 M. L. W. 33=1921 M. W. N. 870=A.I.R. 1922 Mad. 406=42 M. L. J. 1.

——*Lands attached to office of karnam—Adverse possession.*

A person in adverse possession of lands annexed to the office of *karnam* for over 12 years acquires a prescriptive title to the lands as against the holder of the office and his successors. 42 Cal. 214 (P.C.), *Dist.* (*Abdur Rahim and Ayling, JJ.*). IDARA PALLI DHANUSHKOTIRAYADU *v.* VENKATARATNAM. **59 I.C. 65=11 L.W. 453=38 M.L.J. 320.**

—Art. 144—Partition suit.

——*Suit for partition by auction-purchaser of a share in joint property—Time is 12 years from date of symbolical possession.*

An auction-purchaser purchasing judgment-debtor's share in a joint property obtains a perfect title thereto not from the date when sale is confirmed but from the date of his obtaining symbolical possession following such sale. And a suit by such an auction purchaser for partition and possession of his share is competent if brought within 12 years from the date of his obtaining symbolical possession. If in such a suit the co-sharers joint with the judgment-debtor set up title in them by adverse possession for statutory period, the burden is on them to prove conversion of their possession as co-sharers into adverse possession by some overt act. (*Jai Lal, J.*). RAM CHAND *v.* GOPAL SINGH.
A.I.R. 1930 Lah. 914

——*Joint property—Suit for partition is not barred as there is no adverse possession.*

In a suit by a Mohammadan for partition and possession of property that had devolved on him and the defendants jointly some 50 years prior to the suit it was found as a fact that they were joint.

Held, that the suit was within time and cannot be barred by adverse possession. (*Broadway, J.*). HASEAM ALI *v.* UMAR HAYAT. **77 I.C. 257=4 L. L.J. 57=A.I.R. 1922 Lah. 193.**

——*Suit for partition of zamindari adversely held—Article 144 applies.*

The possession of the Zemindari Estate by the daughter from the date of her succession, is exclusive and adverse to the claims of the other branches, within the meaning of Art. 144 of the Act and consequently a suit for partition of the

LIMITATION ACT (1908), Art. 144—Reversioner.

estate is governed by Art. 144, Art. 127 has no application to such a case. (*Wallis, C.J. and Sadasiva Aiyar, J.*). KEESARA VENKATAPPAIYYA *v.* NAYANI VENKATARANGA RAO. **59 I.C. 978=43 Mad. 288=38 M.L.J. 149.**

—Art. 144—Presumption.

——Possession may either be lawful or unlawful, in the absence of evidence it must be assumed to be the former. (*Mitter, J.*). KUDA KOCH *v.* MADAN GOPAL AGARWALLA. **51 C.L.J. 424.**

——Waste land presumed to be in owner's possession—Encroachment on waste land—Trespassing defendant has to prove encroachment—Article 144 applies not Art. 142. (*Zafar Ali, J.*). GANGA RAM *v.* HASAN SHAH. **100 I.C. 51=A.I.R. 1927 Lah. 230.**

——*Presumption is possession goes with title.*

Where there was no allegation of dispossession of plaintiff by the defendant and the plaintiff was found to have title and the defendant was unable to prove his possession for 12 years,

Held, that Art. 144 applied and in the absence of evidence that any third party was in possession, the law will presume that the plaintiff had possession. (*Devadoss, J.*). KUNHI MOIDIN *v.* PAKKAR KUTTY. **99 I.C. 971=38 M. L. T. 137=A.I.R. 1927 Mad. 1094.**

——*Trespasser abandoning possession—Possession vests back in rightful owner.*

If a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. There is no positive enactment or any principle of law which requires him to do any act or issue any notice or to perform any ceremony in order to rehabilitate himself. 13 A.C. 793 at 798, *Foll.* (*Pratt, J.*). P. KALI MUTU ASARI *v.* MEERA HUSSEIN.
77 I.C. 905=11 L.B.R. 381=1 Bur. L.J. 251=A.I.R. 1923 Rang. 23.

—Art. 144—Reversioner.

——One reversioner suing to recover possession from widow's alienee within 12 years from widow's death and impleading other reversioner as defendant—Latter submitting written statement after 12 years claiming his share—Latter's claim is not barred by Art. 144 read with Limitation Act, S. 28, though a suit by a reversioner to recover his share would be barred under S. 28 and Art. 141 if brought 12 years after widow's death. 34 Bom. 91, *Foll.*; 26 M.L.J. 494; A.I.R. 1921 Bom. 303; 21 Bom. 509, *Dist.*; 35 Cal. 1065, *Ref.* (*Baker, J.*). RAYEGAVDA HANMANTRAYA *v.* RAMALINGAPPA SHIDGAVDAPPA. **119 I.C. 656=53 Bom. 472=31 Bom. L.R. 647=A.I.R. 1929 Bom. 345.**

——*Adverse possession against Hindu widow—Suit by reversioner after her death—Article 141 applies and not Art. 144.*

Per *Full Bench.*—Where a widow has entered into possession as a Hindu widow and has either voluntarily parted with possession or been dispossessed against her consent, a suit by the reversioner brought for possession after her death is governed by Art. 141 and not by Art. 144 and a suit brought within 12 years of the death of the widow is not barred by limitation. 9 W.R. 505; 2 I.A. 113 (P.C.) and 22 Cal. 445 (P.C.), *Dist.*; 14 All. 156, *Affirmed*; 23 Bom. 725 (P.C.), *Foll.*; 20 All. 42; A.I.R. 1925 P.C. 249 and 9 M.I.A. 539 (P.C.), *Expl.*

LIMITATION ACT (1908), Art. 144—Reversioner.

Per *Boys, J.*—The question whether a reversioner is barred by adverse possession against the widow on the basis that she represented the estate is a question to be decided, as in the case of a decree, on the facts of the particular case. A.I.R. 1928 Cal. 670, *Appr.* (*Sulaiman, Ag. C.J., Mukerji and Boys, JJ., afterwards Boys and Sen, JJ.*). BANKI LAL *v.* RAGHUNATH SAHAI. **112 I.C. 801=51 All. 188=26 A. L. J. 1049=A.I.R. 1928 All. 561 (F.B.).**

——*Suit by reversioners for possession against alleged adopted son within twelve years of Hindu widow's death is in time.*

Reversioners suing for possession of property from an alleged adopted son and his transferees are not bound to bring a suit for declaration that the alleged adoption had in fact not taken place. They are entitled to wait till the lady died and then bring a suit for recovery of possession and therefore a suit brought within 12 years of the death of the widow cannot be held to be barred by the six years' rule. (*Sulaiman and Kanhaiya Lal, JJ.*). SHIB DEO MISRA *v.* RAM PRASAD. **87 I. C. 938=46 All. 637=22 A.L.J. 690=A.I.R. 1925 All. 79.**

——If the plaintiff's title to the property commences from the death of the previous full owner, limitation begins to run against him from that date notwithstanding the estate may be in the possession of the last full owner's widow under a will which he had no power to make. (*Dawson-Miller, C.J., Mullick and Foster, JJ.*). HARIHAR PRASAD SINGH *v.* MAHARAJ KESHO PRASAD SINGH. **93 I.C. 454=5 P.L.T. Sup. 1=A.I.R. 1925 Pat. 68 (F.B.).**

—Art. 144—Starting point—Assertion of hostile title.

——Limitation with regard to suits for the recovery of immovable property runs from the date on which an open assertion of hostile title to such property is made. (*Cammiade, J.*). MACHANUDDI *v.* ASIMADDI. **100 I.C. 607=A.I.R. 1927 Cal. 417.**

—Art. 144—Starting point—Auction-purchaser.

——*Formal delivery to auction-purchaser—No fresh starting point of limitation.*

Where upon an execution sale possession has been delivered in accordance with the provisions of the law, that is, in accordance with S. 318 or 319 of the old Code as the case may be, having regard to the nature of the property, or under O. 21, R. 95 or R. 96, the auction-purchaser gets a fresh start for the computation of limitation. But where such possession has not been delivered, the mere fact of formal delivery of possession does not save limitation. (*Banerji, Rafique and Lindsay, JJ.*). JANG BAHADUR SINGH *v.* HANWANT SINGH. **63 I.C. 212=43 All. 320=19 A.L.J. 469=A.I.R. 1921 All. 9 (F.B.).**

—Art. 144—Starting point—Conditional transfer.

——Where plaintiff who was under a sentence of transportation for life, gifted property to another on condition that if he returned from Port Blair the donee was to return it and where the donee sold the property more than 12 years before his return.

Held, that for a suit by plaintiff against vendee, limitation began only on return from Port Blair. (*Krishnan and Venkatasubba Rao, JJ.*). VENKATARAMA AIYAR *v.* AIYASAMI AIYAR. **69 I.C. 673=1922 M.W.N. 657=16 M.L.W. 552=31 M.L.T. 465=A.I.R. 1923 Mad. 67=43 M.L.J. 340.**

LIMITATION ACT (1908), Art. 144—Starting point—Revenue sale.

—Art. 144—Starting point—Death of last owner.

——On the death of a Mahomedan, each of his heirs becomes entitled to claim his or her share at once and limitation begins to run against each under Art. 144, Limitation Act. A. I. R. 1923 Lah. 519, *Foll.*; A. I. R. 1922 All. 433 and A. I. R. 1924 All. 920, *Ref.* (*Addison, J.*). ALLAH JAWAI *v.* MD. BAKHSH. **100 I. C. 145=A. I. R. 1927 Lah. 790.**

—Art. 144—Starting point—Fresh cause of action.

——Formal possession of property in previous suit duly given—Fresh denial of his title to that property gives him a fresh cause of action to establish such right. (*Jai Lal, J.*). PIARA RAM *v.* SOHAWA. **109 I.C. 561=A.I.R. 1928 Lah. 910.**

—Art. 144—Starting point—Landlord and tenant.

——Tenant holding possession after expiry of term—Tenant's possession becomes adverse from the date on which term expires and limitation begins from that date, in the absence of proof of fresh tenancy. 22 Bom. 893 and 24 Bom. 504, *Foll.* (*Marten, C. J. and Percival, J.*). S. S. PATIL *v.* FATU VALAD SAYDU MUSALMAN. **98 I. C. 911=28 Bom. L. R. 1357.**

——Suit for ejectment—Defendants claiming title, and denying liability to ejectment—Adverse possession begins to run from that date. (*Scott-Smith, J.*). FAZAL *v.* MIHAN KHAN. **64 I.C. 352=15 P.L.R. 1922=A.I.R. 1922 Lah. 70.**

——Possession taken during a lease cannot be adverse as against the lessor until the termination of the lease, the lessor being unable to sue for possession while the lease is still current. 4 Cal. 327 and 27 All. 395, *Foll.*; (1912) M. W. N. 669, *Dist.* (*Chevis, J.*). GIRDHARI LAL *v.* MT. UMDAJAN. **63 I.C. 717=3 L.L.J. 215=A.I.R. 1921 Lah. 17.**

—Art. 144—Starting point—Physical dispossession.

——Mere paper dispossession does not amount to dispossession within the meaning of Art. 144 or Art. 142—The *terminus a quo* is the actual physical dispossession. (*Shadi Lal, C. J. and Le Rossignol, J.*). MANNA LAL *v.* HAMID ALI. **79 I.C. 39=A.I.R. 1925 Lah. 53.**

—Art. 144—Starting point—Quarries.

——Where defendants worked quarries without objection, the period of adverse possession is not to be counted from the time when different sorts of earth were found, at different depths, but from the time they began to make quarries. A. I. R. 1925 P.C. 43, *Foll.* (*B. B. Ghose and G. N. Roy, JJ.*). RAJESWAR PRASAD *v.* BHUPENDRA NARAYAN. **106 I.C. 117=53 Cal. 35=46 C.L.J. 307=32 C.W.N. 16=A.I.R. 1927 Cal. 956.**

—Art. 144—Starting point—Revenue sale.

——*Bengal Revenue Sale Law (Act XI of 1859)—Adverse possession against purchaser commences from sale.*

In a sale held under Act XI of 1859 what is sold is not the interest of the defaulting owner which is determined on the failure to pay the Government assessment but the interest of the Crown subject to the payment of the Government assessment and therefore the period of limitation for adverse possession against the purchaser at such a sale only commences to run from the date of the sale.

LIMITATION ACT (1908), Art. 144 — Starting point—Symbolical possession.

20 C.L.J. 563 (P.C.) and 15 C.L.J. 436, *Ref.* (*Mookerjee and Buckland, JJ.*). SECY. OF STATE *v.* WAJED ALI KHAN. **65 I.C. 866= 34 C.L.J. 141=A.I.R. 1921 Cal. 687.**

—Art. 144—Starting point—Symbolical possession.

———*Symbolic possession in execution of decree—It has same effect as actual possession against judgment-debtor and mortgagee* pendente lite—Lis pendens.

Where in execution of a decree on a mortgage symbolic possession is delivered of immovable property to the person entitled to possession thereof and such person brings a suit for recovery of actual possession; the symbolic possession is deemed equivalent to actual possession as against the judgment-debtor or his representatives and the suit is brought in time if it is brought within twelve years from the date of the said symbolic possession. And further if during the pendency of suit on such mortgage another mortgage is executed by the mortgagor in favour of third persons they are bound by the decree in execution of which symbolic possession was delivered. They are affected by the doctrine of *lis pendens* and the symbolic possession as against them would be equivalent to actual possession and in this respect their possession is not different from that of the judgment-debtor of that mortgage decree. (*Jack and Mitter, JJ.*). HARASIT GOLDER *v.* JALADHAR BISWAS. **121 I. C. 407=56 Cal. 1130= 33 C.W.N. 963=A.I.R. 1930 Cal. 15.**

———Delivery of formal possession gives fresh starting point. (*Daniels and King, JJ.*). BAIJNATH *v.* SRI BHAGWAN. **96 I.C. 591= A.I.R. 1926 All. 691.**

———*When amounts to actual possession.*

In a suit for possession when the plaintiff has been given symbolical possession in execution of a decree if the defendant is bound by the decree, the symbolical possession delivered against him amounts to eviction. If the defendant is not bound by the decree he is to show that his right by adverse possession has been perfected as against the plaintiff under Art. 144 of the Limitation Act. In either case, the plaintiff is entitled to base his cause of action from the date of the delivery of symbolical possession to him. A.I.R. 1922 Cal. 176 and 5 Cal. 584 (P.C.), *Rel. on.* (*Suhrawardy and Page, JJ.*). JOGENDRA KRISHNA *v.* JOY SHIB CHAUDHRY. **96 I.C. 481=A.I.R. 1926 Cal. 1172.**

———Symbolical possession will give fresh starting point—Possession. (*Ryves and Gokul Prasad, JJ.*). RAM LALAN SINGH *v.* HARAKH NARAIN. **73 I.C. 920=20 A.L.J. 641=A.I.R. 1922 All. 463.**

———One *R* left a widow *P* and two daughters *J* and *K*. *P* made a gift of the estate of *R* to *K*. *J* sued for her half share and got formal possession. *J*'s legal representatives brought a suit for possession.

Held, that limitation began against her from the date of her taking formal possession. (*Mears. C.J. and Banerji, J.*). MT. PURNA KUAR *v.* MANGAT RAI. **70 I.C. 488=A.I.R. 1922 All. 55.**

———*Symbolical possession—Gives a fresh cause of action for possession.*

Symbolical possession is as effective as actual possession against the judgment-debtors; and if the judgment-debtors continued in possession even after symbolical possession is delivered to the auction-purchaser, their possession becomes adverse against such purchaser from that very day. The purchaser therefore has a fresh cause of action for instituting the suit for possession against the judgment-debtor; and such a suit would not be one governed by Art. 138, which evidently refers to a case where the purchaser has not obtained delivery of possession, but Art. 144 would apply, and in such a case the period during which an application to set aside sale continued cannot be exoluded. 35 Cal. 209; 25 C.W.N. 376 and 12 M.I.A. 244 (P.C.), *Dist.* (*Chatterjee and Panton, JJ.*). BROJENDRA KUMAR ROY CHOUDHRI *v.* ASHUTOSH ROY. **70 I.C. 420=26 C.W.N. 364=A. I. R. 1921 Cal. 385.**

LIMITATION ACT (1908), Art. 144 — Suit on title.

—Art. 144—Starting point—Trespass.

———Planting of trees on land belonging to another is an act of active trespass, and the owner of the land can sue for removal of the trees so planted and for recovery of possession of the land at any time within twelve years. 10 All. 634, *Dist.* (*Banerji, Ag. C. J. and Piggott, J.*). MAHOMED SHAFI *v.* BINDESRI SARAN SINGH. **75 I.C. 266= 46 All. 52=A.I.R. 1924 All. 443.**

—Art. 144—Starting point—Watan lands.

———The possession by a vendee of watan lands becomes adverse from the date of the death of the alienor and a suit to set it aside will be barred if not brought within twelve years from that date by the next wataudar or subsequent watandars claiming under the previous holder. 9 Bom. 198 (F.B.), *Foll.*; 30 I.A. 255, *Dist.* (*Patkar and Shingne, JJ.*). TUKA *v.* GANU. **32 Bom.L.R. 1398.**

—Art. 144—Suit on title.

———*Plaintiff's title declared—Suit for possession within* 12 *years of such declaration is not barred.*

S in 1908 sued *K* for possession and mesne profits of lands in the suit which were always subject of submergence. Possession and mesne profits were refused, *K* having been held not to be in possession, but *S*'s title was declared. Subsequently *S* brought a suit against *K*, in 1917 for possession of the same plot,

Held, it was unnecessary for *S* to prove actual possession in the sense of occupation after the submergence as his possession in law continued until he was dispossessed nor was evidence necessary to show that *K* had taken possession between 1908, the date of the earlier suit, and 1917, the date of the present suit, as it was expressly admitted in the written statement that *K* was in possession in June, 1917, when the present suit was filed. *S* having established his title in the previous suit and not being barred by limitation was entitled to a decree. (*Sir John Wallis.*) SATISH CHANDRA *v.* BIRENDRA NATH ROY. **118 I. C. 259=33 C. W. N. 1016= 56 I. A. 305=31 Bom. L. R. 1376= 30 M. L. W. 840=1929 M. W. N. 905= A. I. R. 1929 P.C. 225=57 M.L.J. 602 (P.C.).**

———*Article* 144 *applies.*

The article applicable to a suit in which the plaintiff sues for possession of immovable property on the basis of his title is Art. 144 and if in such a suit the plaintiff proves his title, he is entitled to a decree, unless the defendant succeeds in establishing his adverse possession for a period of more than 12 years. A.I.R. 1928 All. 412; A.I R. 1928 P.C. 146. *Disc.* and *Dist.*; A. I. R. 1916 P. C. 21; 41 All. 669; A.I.R. 1925 All. 454, *Rel. on.* (*Bennet and Iqbal Ahmad, JJ.*). KANHAIYA LAL *v.* GIRWAR. **119 I. C. 6=1929 A.L.J. 1106=51 All. 1042= A. I. R. 1929 All. 753.**

LIMITATION ACT (1908), Art. 144 — Suit on title.

———Tenant of grove dying without heir—Custom that in such a case grove passes to landlord—Landlord bringing declaratory suit.

Held, that this was not a suit to which Art. 142, Lim. Act, applies but that the article more strictly applicable was Art. 144. The essential difference between these two articles is that in the first case the owner bases his claim from the date of his dispossession, and in the second he bases his claim on his title without regard to his possession or dispossession, and time begins to run from the date that the defendant's possession becomes adverse to the plaintiff. (*Pullan, J.*). FAKIR BAKHSH SINGH *v.* PRAG SINGH.
108 I.C. 109=5 O.W.N. 121=A.I.R. 1928 Oudh 246.

———*Plaintiff's title proved—No dispossession alleged or proved—Article 144 applies.*

The plaintiff proved that he had acquired the lands in a certain year. Subsequently the plaintiff's name disappeared from the settlement record and the defendant's name continued from the last settlement. The plaintiff did not plead dispossession. It was not found that he was actually dispossessed on a certain date.

Held, that the plaintiff having proved that he got the lands in suit in a certain year, that fact should be taken as the basis of decision, and that Art. 144 would apply and the Court should consider whether the defendants had completed a title in themselves by being in adverse possession for twelve years. 39 Mad. 617 and 41 All. 669. *Foll.* (*Ryves and Mukerji, JJ.*). ALI HAMMAD *v.* GHURPATTRE SINGH. **85 I.C. 578=47 All. 389=23 AL.J. 244=6 L.R.A. Civ. 184=A.I.R. 1925 All. 454.**

—Art. 144—Tacking.

———*Independent trespassers—Tacking not allowed.*

In a case where Art. 144 applies it is not open to the second independent trespasser, in order to prove his adverse title by possession, to tack on the period during which the previous independent trespasser was in adverse possession. 153 P. W. R. 1918; A.I.R. 1921 Bom. 48; 49 I.C. 751; 33 All. 224 and A.I.R. 1921 All. 389, *Foll.* (*Addison, J.*). ABDUL GHANI *v.* BHAGAT RAM. **31 P.L.R 569=A.I.R. 1930 Lah. 809.**

———Suit by auction-purchaser against trespasser—Article 138 does not apply—Article 144 applies and independent trespassers cannot tack on their possessions—Delivery of possession will interrupt adverse possession. (*Richardson and Suhrawardy, JJ.*). JANAKINATH SAHA *v.* BAIKUNTHA NATH CHOLLAK. **70 I.C. 602=27 C.W.N. 259=36 C.L.J. 140=A.I.R. 1922 Cal. 176.**

———*Person claiming through trespasser can tack on trespasser's adverse possession.*

A person who is in possession of land without title has, while he continues in possession and before the statutory period has elapsed, a transmissible and inheritable interest in the property, but that interest is liable at any moment to be defeated by the entry of the rightful owner; and if such person is succeeded in possession by one claiming through him who holds till the expiration of the statutory period, such a successor has then as good a right to the possession as if he himself had occupied for the whole period, 3 A.L.J. 424, *Ref.* (*Mears, C.J. and Kanhaiya Lal, JJ.*). MT. RAM PIARI *v.* BUDH SEN.
61 I.C. 546=43 All. 165=A.I.R. 1921 All. 389.

LIMITATION ACT (1908), Art. 144—Miscellaneous.

—Art. 144—Miscellaneous.

———The mortgagee by a mortgagor does not stop running of time against him or any one claiming through him. (*C. C. Ghose and Suhrawardy, JJ.*). SURENDRA NATH *v.* BARISAL LOAN CO., LTD.
50 C.L.J. 317=34 C.W.N. 519=A.I.R. 1930 Cal. 318.

———*Suit for title to trees—Plaintiff's possession within 12 years of suit and entry in Record-of-Rights—Previous suit for same trees decided in plaintiff's favour—It is not necessary that map in previous suit should be relayed on the map in subsequent suit.*

Plaintiff brought a suit for declaration of his title to grow lac on certain trees. Previous to this suit there was a dispute with regard to same trees and against the same defendants when the claim of the plaintiff was denied. In the present suit the entries in Record-of-Rights and other documentary evidence was in plaintiff's favour, and the plaintiff was proved to be in possession within 12 years of suit. But the commissioner appointed to prepare map of disputed jungle could not correctly relay the map of the previous suit upon the map prepared by him.

Held, that provided the map was correct the plaintiff's title was established and it was not necessary that it should be practicable to relay on it. (*Kulwant Sahay, J.*). DHARAM SINGH *v.* SONARAM. **A.I.R. 1929 Pat. 552.**

———*Possession—Nature of property and capability for direct possession to be considered.*

In considering the question of possession the Court will have to consider the nature of the property. How far the property is capable of being possessed directly will have to be considered. If for instance, the property is a land covered all over with wood, water, etc., even if the man in possession proved that he has been in possession in a clearer manner than the man with the title the adverse possessor may not succeed. 44 Mad. 883 (P.C.), *Foll.* (*Ryves and Mukerji, JJ.*). ALI HAMMAD *v.* GHURPATTAR SINGH.
85 I.C. 578=47 All. 389=23 A.L.J. 244=6 L.R.A. Civ. 184=A.I.R. 1925 All. 454.

———Sale of groves—Subsequent relinquishment to landlord by vendor—Landlord's suit against vendees—Article 144 and not 142 applies—Time runs from relinquishment.

The reason for this is that the landlord, on relinquishment by the grove-holder claims in his own right to re-enter and not under a derivative title through the grove-holder. The sale by the grove-holder can be treated by the landlord as abandonment, in which case time will run from the sale. But the landlord is not compelled to treat it as abondonment by the grove-holder. (*Wasir Hasan, A.J.C.*). MAHABIR PRASAD *v.* RAM KUMAR. **84 I.C. 237=27 O.C. 301=A.I.R. 1925 Oduh 307.**

———Execution sale pending suit for declaration as to property being subject to trust—Subsequent declaration does not affect adverse possession of auction-purchaser under the execution sale. (*Lord Buckmaster.*) A. S. S. SUBBAIYA PANDARAM *v.* MOHAMAD MUSTAFA MARACAYAR. **74 I.C. 492=18 M.L.W. 903=40 C.L.J. 20=21 A.L.J. 730=28 C.W.N. 493=50 I.A. 295=25 Bom.L.R. 1275=46 Mad. 751=33 M.L.T. 285=2 Pat. L.R. 104=1924 M.W.N. 65=4 L.R.P.C. 180=A.I.R. 1923 P. C. 175=65 M.L.J. 566 (P.C.).**

LIMITATION ACT (1908), Art. 145 — Alienation by pawnee.

—Art. 145—Alienation by pawnee.

———*Suit to recover damages by pledgor, for pledgee's unauthorised conclusion of pledged article is either governed by Art.* 145 *or Art.* 115—*Article* 36 *has no application.*

A suit brought by the pledgor for wrongful conversion by the pledgee of pledged article within three years from the date of the alleged sale amounting to conversion, is well within time whether the suit be regarded as one for redemption governed by Art. 145 or as one for damages for breach of contract governed by Art. 115. Article 36 has no application to such a suit. 19 Cal. 322 (P.C.), *Rel. on.* (*Coutts-Trotter, C.J. and Pandalai, J.*). RAMASWAMY CHETTY *v.* PALANIAPPA CHETTIAR. **122 I.C. 37=30 M.L.W. 898= A.I.R. 1930 Mad. 364.**

—Art. 145—Deposit and loan.

———*Deposit of jewellery—Article* 145 *applies.*

A deposited his jewellery with his friend *B* at the time of *B's* marriage to be used by him for the purpose of the wedding on condition that it would be returned whenever *A* asked for it,

Held, that the transaction was deposit and not a loan and the mere fact that *B* was allowed to use the jewellery did not take the transaction out of the category of deposit as that expression is used in Art. 145. (*Broadway and Currie, JJ.*). GURBAKSH SINGH *v.* KHARAITI RAM. **A.I.R. 1930 Lah. 913.**

———*Article does not apply to loan.*

The word "deposit" does not cover a transaction of the nature of a loan.

Where *A* lent some ornaments to *B* used by the latter in a religious procession,

Held, that the transaction was a loan and not a deposit and Art. 145 did not apply. 37 Mad. 175 and A.I.R. 1923 Mad. 578, *Ref.* (*Pullan and Srivastava, JJ.*). CHATURGUN *v.* SHAHZADY. **A. I. R. 1930 Oudh 395.**

—Art. 145—Refusal to return by pawnee.

———When goods are deposited. the article applicable is Art. 145 ; and the mere fact that the depositor demands the thing and the depositee refuses to return the same does not make Article 49 applicable to the case. Art. 145 is not governed by Art. 49. 26 Bom. 430 ; 33 Mad. 56, *Foll.*; 31 Cal. 519 and A.I.R. 1923 Mad. 578, *Rel. on.* (*Das and Doyle, JJ.*). MA SHWE ON *v.* MA SAW. **116 I.C. 468=6 Rang. 547= A.I.R. 1928 Rang. 309.**

———*Suit to recover deposit refused to be delivered on demand—Article* 145 *applies.*

All actions for the recovery of a deposit of movable property are comprised within Art. 145 and no exception is made as regards deposits where demand and refusal make the continuance of possession unlawful. Further a deposit is one of the species of bailments, and bailments are of two kinds voluntary and involuntary. Where the depository dies and the deposit passes into the hands of his widow or son the latter becomes an involuntary bailee and a suit to recover the deposit from such involuntary bailee is governed by Art. 145. The fact of the possession by the depository after demand being wrongful does not make Art. 49 applicable. 33 Mad. 56, *Rel. on.* (*C. C. Ghose, J.*). PROMOTHO NATH *v.* PRODYMNO KUMAR. **69 I.C. 900=26 C.W.N. 772= A. I. R. 1921 Cal. 416.**

LIMITATION ACT (1908), Art. 146-A — Street encroached upon.

—Art. 145—Scope.

———Article 145 covers a case of deposit more than the *depositum* of Roman Law. (*Schwabe, C.J. and Wallace, J.*). KISHTAPPA *v.* LAKSHMI AMMAL. **72 I.C. 842=17 M.L.W. 467= 32 M.L.T. 217=1923 M.W.N. 284= A.I.R. 1923 Mad. 578=44 M.L.J. 431.**

—Art. 145—Suit against person in possession.

———Article 145 and not Art. 48 governs a suit for the recovery of jewels deposited with the deceased son of the defendant and alleged to be with the defendant after the son's death. (*Devadoss, J.*). KRISHNASWAMI AIYANGAR *v.* V. S. GOPALACHARIAR. **84 I.C. 1026=20 M.L.W. 758= 1925 M.W.N. 143=A.I.R. 1925 Mad. 185.**

—Art. 145—Suit for price of article.

———*Suit for recovery of gold deposited or its value —Article applies even though property is not recovered in species.*

The plaintiff sued for refund of certain gold and silver kept in the custody of the defendant or in lieu of the price thereof. His case was that he handed over two tolas of gold and some silver ornaments to the defendant for making some ornaments but the defendant never made the ornaments and refused to return the gold and silver. The defendant pleaded limitation,

Held, that Art. 145 applied and the suit was not barred as Art. 145 merely applies even when property is not recovered in species,

Held further, that the mere fact of possession by the depository after demand becoming wrongful does not take the case out of Art. 145. 7 C.W.N. 476; 23 C.L.J. 145 and A.I.R. 1921 Cal. 416, *Foll.* (*Duval, J.*). AJNESWAR KARMARKAR *v.* KAILASH CHANDRA. **107 I.C. 473=A.I.R. 1929 Cal. 143.**

—Art. 145—Supratdar of property attached.

———When the Court orders a *supratdar* to deliver the property attached to the objector holding that it belonged to the objector, the *supratdar* becomes depository for the objector on the date of the order and Art. 145 governs the suit by the objector. (*Hallifax, A. J. C.*). LAXMI CHANDA *v.* DULICHAND. **75 I. C. 787= A. I. R. 1924 Nag. 12.**

—Art. 146-A—Interpretation.

———"*Road*" *used in Art.* 146-*A—Meaning of.*

The expression "road" or "highway" has been considered in many cases in England and it seems that the interpretation put there, is not confined to the portion actually used by the public but it extends also to side lands. A too narrow meaning cannot be put on the expression "public street" or "road" in Art. 146-A, as it is intended to safeguard the interest of public bodies which are not expected to be as vigilant over their rights as private individuals. "Road" in that article includes the portion which is used as road as also the lands kept on two sides as parts of the road for the purposes of the road. *Rex* v. *Robert Wright*, (1832) 3 B. & A. 681 and *Turner* v. *Ringwood Highway Board*, (1870) 9 Eq. Cas. 418, *Ref.* (*Chotzner and Gregory, JJ.*). S. MUKHERJEE *v.* HARUM TAR MAHOMED & CO. **113 I. C. 24= 32 C.W.N. 396=A.I.R. 1928 Cal. 485.**

—Art. 146-A—Street encroached upon.

———*Encroachment on public street for* 30 *years— Municipality's rights barred.*

The plaintiff who encroached upon a portion of a public street by building upon it, was called upon by the defendant Municipality to remove the obstuction, after 30 years under S. 122

LIMITATION ACT (1908). Art. 147 — English mortgage.

of the Bombay District Municipal Act. In the suit by the plaintiff to restrain the Municipality from removing the obstruction,

Held, that the defendant Municipality could take no action under S. 122 of the Act after 30 years to remove the encroachment, it having been barred from filing a suit for the possession of the site encroached upon, the site was no longer a part of the public street but belonged to the plaintiff *Tayaballi* v. *Dohad Municipality*, 22 Bom. L.R. 951, *Foll.* (*Macleod, C.J. and Shah, J.*). ABAJI RAGHO MHALAS *v.* MUNICIPALITY OF JALGAON.

64 I.C. 202=46 Bom. 335=
23 Bom. L. R. 1028=A.I.R. 1922 Bom. 111.

—Art. 147—English mortgage.

———The period of limitation for a suit for foreclosure or sale, or for the redemption of an English mortgage is 60 years under Arts. 147 and 148 respectively. (*Kumaraswami Sastri, J.*). CAMPBELL *v.* AUDIKESAVALU NAYADU.

82 I. C. 399=20 M. L. W. 153=
A.I.R. 1924 Mad. 736.

—Art. 147—Scope.

———Article 147 is only applicable to a suit on an English mortgage, that is to say, a suit in which the plaintiff is entitled to claim either foreclosure or sale. 30 Mad. 426 (P. C.), *Foll.* (*Kanhaiya Lal and Ashworth, JJ.*). KHAN SAHAI *v.* MAHURMUN.

93 I.C. 100=A.I.R. 1926 All. 551.

———Article applies to English mortgages only as defined in Transfer of Property Act, S. 58. 30 Mad. 426 (P.C.). *Foll.* (*Walsh and Kanhaiya Lal, JJ.*). SHEORAM SINGH *v.* BABU SINGH.

94 I.C. 849=48 All. 302=
24 A.L.J. 295=A.I.R. 1926 All. 493.

—Art. 148—Acknowledgment after limitation.

———*Period of limitation not extended by such acknowledgment.*

A mortgagor sued to redeem and recover possession of plaint property alleged to have been mortgaged by his ancestor in 1799. The mortgagor relying on an acknowledgment of 1865, brought the present suit on 12th August. 1924,

Held, that the mortgagor's right to sue for redemption of the mortgage was barred on 1st January, 1862, and the acknowledgment dated 8th September, 1865, would not extend the period of limitation as the acknowledgment ought to have been made in writing within 60 years from the date of the mortgage. The remedy and the right of the mortgagor having been extinguished, nothing contained in the subsequent Limitation Act would affect the operation of the previous enactments. (*Patkar and Wild, JJ.*). DHONDI SHIVAJI *v.* LAXAMAN MHASKUJI. 122 I.C. 862=
31 Bom. L.R. 1287=A.I.R. 1930 Bom. 55.

———*Period of limitation not extended by such acknowledgment.*

In 1916 a suit was filed by plaintiff to redeem and recover possession of property said to have been mortgaged by a mortgage deed of June 8, 1761. The plaintiffs relied upon an acknowledgment said to have been made by the descendants of the mortgagee in 1858 in order to save his right from the bar of limitation,

Held, that the acknowledgment, assuming there was one in 1858, having been given more than sixty years after the date of the mortgage did not save limitation and the plaintiff's suit was barred under Limitation Act IX of 1871 which applied to the case. 27 Cal. 1004, *Rel. on.* (*Macleod, C.J. and Crump, J.*). INDURAI BHAURAI DESAI *v.* SHIVLAL NABHUBHAI. 87 I.C. 699=
27 Bom. L.R. 467=A.I.R. 1926 Bom. 339.

LIMITATION ACT (1908), Art. 148 — Mahua grove.

—Art. 148—Acknowledgment by co-heir.

———An acknowledgment made by one of the heirs of the mortgagee who have divided the mortgage property among themselves without the consent of the mortgagor is binding on him or his heir so far as regards the property in his possession though it may not be binding on the co-heirs of the mortgagee. (*Marten, C. J., Mirza and Broomfield, JJ.*). MOTILAL JADEV *v.* SAMAL BECHAR.

32 Bom. L.R. 1096=A.I.R. 1930 Bom. 466 (F.B.).

—Art. 148—Applicability.

———A suit which is in essence one for declaration of title and recovery of possession is not governed by Art. 148 but by Art. 144. (*Suhrawardy and Mukerji, JJ.*). KESHAB LAL GOSWAMY *v.* BHOLANATH GANGAPADHYA. 94 I.C. 342=
A.I.R. 1926 Cal. 910.

———*Mortgagee not entitled to possession holding adversely—Time for redemption cannot be availed of.*

Where the mortgage as such confers upon the mortgagee no right of possession over the mortgaged land and the possession ever since its inception has been that of a full propietor, the plaintiff cannot avail himself of the longer period of limitation provided for suits for redemption, for that period applies only if the defendant has no better title than that of a mortgagee. (*Shadi Lal, C. J. and Le Rossignol, J.*). MUNNA LAL *v.* HAMID ALI. 79 I.C. 39=A.I.R. 1925 Lah. 53.

—Art. 148—Auction-purchaser of mortgagee's rights.

———Article 148 and not Art. 144, governs a suit for redemption against an auction-purchaser who purchases the right, title and the interest of the mortgagee under a mistake that the mortgagee was the full owner of the mortgaged property. (*Raymond and Madgavkar, A. J.Cs.*). MD. MOOSA *v.* KAZI FATEHULLAH. 79 I.C. 466=
19 S.L.R. 268=A. I. R. 1925 Sind 167.

—Art. 148—Charge on property.

———Transfer of Property Act, S. 95—Charge created by—Suit to recover property by paying charge—Art. 144 and not 148 applies. (*Krishnan and Odgers, JJ.*). SINNANAN CHETTY *v.* SIVAGAMI AMMAL. A.I.R. 1921 Mad. 326=
41 M. L. J. 501.

—Art. 148—Fresh suit.

———When under a compromise arrived at in a redemption suit the parties did not agree that plaintiff's right to redeem would be extinguished absolutely, he is not prevented from bringing a second suit for redemption. The mortgagee is still a mortgagee and does not become the absolute proprietor of the property. A.I.R. 1922 All. 377 and A.I.R. 1925 Lah. 31, *Ref.* (*Sulaiman and Daniels, JJ.*). MOHAMALD BEGAM *v.* TUFAIL HASAN.

92 I.C. 260=48 All. 17=23 A.L.J. 888=
A.I.R. 1926 All. 20.

—Art. 148—Lekha-mukhi mortgage.

———Article 148 applies to mortgages of the lekha-mukhi variety and time begins to run from the date of the mortgage. 1 Lah. 21, *Foll.* (*Shadi Lal, C.J. and Broadway, J.*). DITTU MAL *v.* ILAHI BAKHSH. 101 I.C. 549=28 P.L.R. 123=
9 L.L.J. 63=A.I.R. 1927 Lah. 828.

—Art. 148—Mahua grove.

———Mahua grove is not timber but is immoveable property and therefore it is governed by

LIMITATION ACT (1908), Art. 148—Mortgage before act.

Art. 148 for the purposes of mortgage and a suit for redemption. (*Wazir Hasan, A. J. C.*). CHANDI *v.* SAT NARAIN. **81 I.C. 650=A.I.R. 1925 Oudh 108.**

—Art. 148—Mortgage before act.

——Where at the time the mortgage was entered into, there was no law of limitation existing, the right to redeem cannot be lost by lapse of time. (*Martineau and Zafar Ali, JJ.*). SHAHADAT *v.* GANESH DAS. **78 I.C. 368= A. I. R. 1925 Lah. 105.**

—Art. 148—Recovery of possession of family property.

——The cause of action for a Hindu to set aside an alienation of ancestral property by his father is a single cause of action and accrues under Art. 126, when the alienee takes possession. Art. 148 does not apply. (*Daniels and Lyle, A.J.Cs.*). CHOKHEY SINGH *v.* HARDEO SINGH. **64 I.C. 757= 24 O. C. 330=8 O.L.J. 667=A.I.R. 1921 Oudh 196.**

—Art. 148—Restrictions under Oudh Estates Act.

——*Conditions necessary for taking advantage of S.* 6, *Act I of* 1869, *explained.*

In order to take advantage of S. 6, Lim. Act (I of 1869) the mortgage must have been executed on or after 13th February, 1844 and then too the advantage is available in two cases only namely, in mortgages which fixed no term within which the property comprised might be redeemed or mortgages which fixed the term within which the property comprised might be redeemed if such term had not expired before 13th February, 1856. (*Stuart, C. J. and Raza, J.*). RUGHA SINGH *v.* DEPUTY COMMR. **122 I.C. 769= 7 O.W.N. 209=A.I.R. 1930 Oudh 270.**

—Art. 148—Scope.

——Art. 134 controls both Arts. 140 and 148. (*Lindsay and Kanhaiya Lal, JJ.*). NAUNIHAL SINGH *v.* ALICE GEORGINA SKINNER. **92 I.C. 63=23 A.L.J. 691=47 All. 803= A.I.R. 1925 All. 707.**

—Art. 148—Setting aside mortgage.

——*Minor setting aside alienation by guardian—Art.* 44 *applies.*

A suit by a *quondam* minor to set aside an alienation of his property by his guardian is governed by Art. 44 and if he cannot establish his right to possession without first setting aside the alienation, the suit for possession is also governed by that article, and not by Art. 148. 44 Bom. 742 and 25 Bom. 337 (P.C.), *Foll.* (*Shadi Lal, C. J. and Harrison, J.*). LABHA MAL *v.* MALAK RAM. **89 I.C. 240=A.I.R. 1925 Lah. 619.**

—Art. 148—Sub-mortgagee.

——As against a sub-mortgagee, as such, the article of the Limitation Act which applies is Art. 148 and not Art. 134. (*Duckworth and Godfrey, JJ.*). MA MYAT GYI *v.* MA MA NYAN. **84 I.C. 984= 2 Rang. 561=A.I.R. 1925 Rang. 140.**

——*Acknowledgment—Must point with certainty the disputed liability.*

Where in a rent note of 1878 given by the sub-mortgagee to the mortgagee, the property was described as "the property mortgaged to you."

Held, that the sub-mortgagee's signature on the rent note cannot mean an acknowledgment of liability to be redeemed by the original mortgagor. (*Macleod, C.J. and Coyajee, J.*). BHAGWAN GANPAT *v.* MADHAV SHANKAR. **70 I.C. 906= 24 Bom. L.R. 713=46 Bom. 1000= A.I.R. 1922 Bom. 356.**

LIMITATION ACT (1908), Art. 148 — Suit against redeeming mortgagor.

—Art. 143—Suit against person in adverse possession.

——*Adverse possession—Is possible against mortgagor even when mortgage is with possession.*

Where the land was mortgaged with possession to a certain person, and that person was ousted from possession by another who remained in possession of the said land and dealt with it as his own for more than 12 years.

Held, a suit for redemption brought by the mortgagor or his legal heirs, would not fall under Art. 148, but would be governed by Art. 144 of the Limitation Act, and would fail if the person in possession succeeded in proving that his possession was adverse to the mortgagor for more than 12 years prior to the suit. 18 Bom. 51, *Foll.* (*Dalal, Wazir Hasan and Simpson, A.J.Cs.*). JAI GOBIND SINGH *v.* ABHAIRAJ SINGH. **77 I. C. 125= 26 O.C. 308=10 O.L.J. 216=A.I.R. 1924 Oudh 40.**

—Art. 148—Suit against redeeming co-mortgagor.

——*Suit by co-mortgagor to recover his share from redeeming co-mortgagor—Article* 144 *applies and not Art.* 148.

A co-mortgagor redeeming the whole mortgage does not become a mortgagee of a portion redeemed belonging to the other co-owners, but becomes merely a charge-holder and therefore, a suit by one of the co-owners to recover his share of the property on payment of his share of the charge cannot be considered to be governed by Art. 148; in such a case Art. 144 must be applicable. 9 O.C. 91 and 6 O. L. J. 364, *Foll.*; A. I. R. 1922 All. 410; 14 All. 1 (F.B.); 38 All. 540; 40 All. 683. *Not foll. View of the High Courts indicated.* (*Gokaran Nath Misra, J.*). WAJI AHUDDIN ASHRAF *v.* AHMAD ASHRAF. **104 I.C. 400=4 O. W.N. 713= 2 Luck. 618=A.I.R. 1927 Oudh 347.**

——A co-mortgagor redeeming the whole mortgage does not become a mortgagee of the portion redeemed belonging to other co-owners; but becomes merely a charge-holder, and Art. 148 of the Limitation Act refers only to a suit against a mortgagee and has no application to a suit against a charge-holder. (*Case-law discussed*). (*Campbell, J.*). WAZIR *v.* GIRDHARI. **71 I.C. 847= A.I.R. 1923 Lah. 311.**

——*Suit for possession by co-mortgagor is governed not by Art.* 148 *but by Art.* 144.

Article 148 provides for a suit against a mortgagee to redeem or to recover possession of immovable property mortgaged. But a suit by a mortgagor against a co-mortgagor to recover possession of his share of the mortgaged property is not a suit for redemption nor a suit for possession of immovable property mortgaged. This suit must be governed by Art. 144 and not by Art. 148. (*Jwala Prasad, C.J. and Das, J.*). RAM NARAYAN RAI *v.* RAM DENI RAI. **63 I.C. 282= 1922 P.H.C.C. 129=6 P.L.J. 680= A.I.R. 1923 Pat. 98.**

——Mortgage—Redemption by a co-mortgagor —Other co-mortgagors can sue to redeem him within 60 years. (*Lindsay and Kanhaiya Lal, JJ.*). SURAT SINGH *v.* UMRAO SINGH. **77 I.C. 113= 20 A.L.J. 611=A.I.R. 1922 All. 410.**

—Art. 148—Suit against redeeming mortgagor.

——*Redeeming mortgagor becomes a mortgagee as regards co-mortgagor's share—Article applies.*

A redemption decree was obtained by all the mortgagors, but the redemption money was paid by only some of them. The mortgagors making

LIMITATION ACT (1908), Art. 148 — Suit against redeeming mortgagor.

the payment were recorded as mortgagee in revenue records in respect of a portion of the mortgaged property and in respect of the remaining as proprietors. Representatives of the mortgagors not making the deposit sued for recovery of their shares on proportionate payment within sixty years from the original mortgage.

Held, that the position of those mortgagors who did not pay the mortgage-money remained that of mortgagors, while that of those who paid the share of others became, of mortgagees and the sixty years' rule was not cut down by the mere fact that some of the mortgagors had effected a redemption. The suit therefore, was not barred by limitation. 14 All. 1 (F.B.), *Rel. on.* (*Mukerji, J.*). SHIAM LAL *v.* MT. HUKUM KUAR. **113 I.C. 832= A.I.R. 1929 All. 100.**

——Co-mortgagor who redeems the whole mortgage does not become a mortgagee of the shares of the co-owners, but merely has a charge on the property. 26 Bom. 500 and 55 I.C. 450, *Foll.* (*Martineau, J.*). NARAIN DAS *v.* SARAJ DIN. **92 I. C. 980=27 P. L. R. 65= A.I.R. 1926 Lah. 238.**

—Art. 148—Suit against unauthorised redeemer.

——*Article does not apply—Redeemer's possession is adverse to mortgagor.*

Where two suits were brought by A, auction-purchaser from *B*, for redemption of two properties mortgaged by *B* and in the compromise that followed, *A* agreed to pay in addition to half the moneys due on the two mortgages also half the amount due on a third mortgage made by *B*, and *A* eventually got possession of all the three properties and *B* sued to redeem the third property from *A*.

Held, that *A* did not get the rights and liabilities of the mortgagee by having paid the amount as he had no right of redemption but that he had usurped *B's* rights and so had been in adverse possession and so Art. 148 did not apply to the case so that *A's* right was perfected on the lapse of the ordinary period of limitation. (*Mukerji, J.*). BIJAI BAHADUR *v.* PARAMESHWARI RAM. **78 I.C. 1026=A.I.R. 1926 All. 834.**

—Art. 148—Suit by subsequent mortgagee.

——Puisne mortgagee getting decree for sale without joining prior mortgagee—Subsequent suit by him to redeem prior mortgagee is governed by Art. 148 and not by Limitation Act, Art. 132. 14 C.W.N. 439, *Expl.* and *held rightly decided on its facts. Case-law referred.* (*Rankin, C.J., C.C. Ghose, Buckland, B.B. Ghose and Mukerji, JJ.*). SAYAMALI MULLA *v.* AZIZUDDIN MOLLA. **119 I.C. 135=33 C.W.N. 1067= 50 C.L.J. 152=A.I.R. 1929 Cal. 609 (F.B.).**

——Where a prior mortgagee obtains a decree on his mortgage without impleading puisne mortgagee purchases the property in execution and enters into possession, a suit by puisne mortgagee who also purchases the property under his decree, obtained without impleading prior mortgagee for redemption and possession against prior mortgagee is governed by Art. 132 and not Art. 148. 14 C.W.N. 439, *Foll.*; A.I.R. 1923 All. 271, *Dist.* (*Newbould and Graham, JJ.*). NIL MADHAB MAHAPATRA *v.* JOY GOPAL MAHANTI. **91 I.C. 719=A.I.R. 1929 Cal. 560.**

——*Suit for redemption of prior mortgage is not governed by Art, 132 but by Art. 148.*

The second mortgagee's right of redemption cannot be considered to be a right to enforce payment of money charged upon immovable property. The

LIMITATION ACT (1908), Art. 148 — Usufructuary mortgage.

second mortgagee in a suit for redemption does not seek to recover the money due to him upon his second mortgagee and so Art. 132 does not apply, but under Art, 148 he has 60 years period. 14 C.W.N. 429; A.I.R. 1925 Mad. 150; A.I.R. 1925 Mad. 76, *Not foll.*; 2 L.L.J. 419; A.I.R. 1923 All. 271 and 32 Cal. 891, *Foll.* (*Mullick and Kulwant Sahay, JJ.*). RAMJHARI KOER *v.* KASHINATH SAHAI. **94 I. C. 284=5 Pat. 513= 1926 P.H.C.C. 310=7 P.L.T. 788= A.I.R. 1926 Pat. 337.**

—Art. 148—Term for redemption not fixed.

——Where there was no term fixed for redemption in the mortgage of 1849 and if there was any such term fixed it had not expired before the 13th day of February, 1856.

Held, that the provisions of S. 48, Oudh Courts Act, 1925, were inapplicable and that the provisions of Art. 148, Limitation Act, 1908, were applicable. (*Wazir Hasan and Gokaran Nath Misra, JJ.*). SURAJ BAKSHA *v.* GANGA BAKHSHA. **105 I.C. 93= 4 O.W.N. 882=A.I.R. 1927 Oudh 457.**

—Art. 148—Transferee from mortgagee.

——Article 134 applies only to *bona fide* purchasers, and to other purchasers Art. 148 applies. A.I.R. 1924 Lah. 468, *Foll.* (*Jai Lal, J.*). ZAMAN ALI SHAH *v.* RURA. **96 I.C. 886= A.I.R. 1926 Lah. 676.**

——Suit to recover property from mortgagee's transferee—Article 134 applies and not Art. 148. 44 Bom. 614, *Not foll.*

Under Art. 134 the transferee without notice and the transferee with notice are on the same footing. 47 Cal. 866 and A.I.R. 1922 Bom. 234, *Foll.* (*Wazir Hasan, Raza and Kendall, JJ.*). SRI RAM *v.* NAJIBULLAH. **97 I.C. 874=1 Luck. 423= 3 O. W. N. 674=29 O. C. 353= A.I.R. 1926 Oudh 547 (F.B.).**

——Article 134 does not apply to a suit by a mortgagor to recover possession of the mortgaged property from an alienee of the mortgagee who has taken with notice of the mortgage. Such a suit is governed by Art. 148. A.I.R. 1925 Bom. 417, *Ref.* (*Raymond, A.J.C.*). SULAIMAN HUSHIM *v.* USSO. **91 I.C. 87= 20 S.L.R. 277= A.I.R. 1926 Sind 145.**

——Article 134 does not apply to a suit by a mortgagor to recover possession of the mortgaged property from an alienee of the mortgagee who had even constructive notice of the mortgagee. Such a suit is governed by Art. 148 of the Act. 44 Bom. 614, *Foll.* (*Macleod, C.J. and Coyajee, J.*). VISHVANATH BHIVA RAUL *v.* TUKARAM NITHU. **89 I.C. 189= 27 Bom. L.R. 661=A.I.R. 1925 Bom. 417.**

——Only *bona fide* transferee is protected under Art. 134 otherwise Art. 148 applies. 9 Bom. 475. 15 Bom. 583; 45 I.C. 975; 68 I.C. 734, *Not foll.* (*Shadi Lal, C. J. and Le Rossignol, J.*). WAZIR CHAND *v.* NATHU RAM. **80 I.C. 321=6 L.L.J. 151= A.I.R. 1924 Lah. 468.**

——Mortgagee with possession, professing to transfer proprietary interest to transferee in good faith for valuable consideration—Transfer is not of mortgagee's interest so as to attract Art. 148. (*Mears, C. J. and Kanhaiya Lal, J.*). MT. RAM PIARI *v.* BUDH SEN. **61 I.C. 546=43 All. 164= A.I.R. 1921 All. 389.**

—Art. 148—Usufructuary mortgage.

——*Receipt of profits gives no fresh start to a suit for redemption.*

Receipt of profits by the usufructuary mortgagee does not entitle the mortgagor to the benefit

LIMITATION ACT (1908), Art. 148 — Usufructuary mortgage.

of S. 20 as to give him a fresh start to bring a suit for redemption of a mortgagee which must be brought within sixty years. If that were not so there would never be any limitation in a suit for redemption of a usufructuary mortgage. 26 All. 167, *Foll.* (*Sulaiman, Ag. C. J. and Weir, J.*). MAR KUNDAY *v.* MAHABIR PANDEY. **110 I.C. 560 (All.).**

———A suit for redemption of a usufructuary mortgage is in substance a suit for possession of immovable property, but the period of limitation for such a suit is that provided for by Art. 148. (*Iqbal Ahmad, J.*). MAHA MANGAL RAI *v*, KISHUN KANDU. **100 I.C. 346=A.I.R. 1927 All. 311.**

———*Suit for surplus profits—Art.* 148 *and not Art.* 105 *applies.*

A suit for surplus profits is a part of the redemption suit and based on the same cause of action and ought to be tried in the redemption suit. An order by the Judge that it should be tried separately does not alter its nature nor that of the cause of action on which it is based, and limitation is governed by Art. 148, and not by Art. 105. (*Hallifax A.J.C.*). ZAKIUL DIN *v.* CHUNNI LAL. **103 I.C. 290= 10 N.L.J. 142=A.I.R. 1927 Nag. 302.**

———Sale with option to vendor to have property re-conveyed on payment of principal within a certain. period Article applies and time for redemption runs from the date fixed for making the payment. (*Walmsley and B. B. Ghose, JJ.*). MOHINI MOHAN MISRA *v.* SRIMATI SARAT SUNDARI DEBI. **86 I.C. 353=A.I.R. 1925 Cal. 862.**

———Where a usufructuary mortgage provides that the mortgagor can redeem in payment of the money after the mortgagee gets possession, time runs under Art. 148 only after possession is given to the mortgagee. (*Cuming and Chakravarti, JJ.*). MAHAMMED ISMAIL *v.* SHARFATULLAH. **90 I. C. 763 (Cal.).**

———Claim by the mortgagor for surplus profits received by usufructuary mortgagee, is part of a suit for redemption for which Art. 148 will apply. (*Chatterjee and Newbould, JJ.*). PRASUNNA KUMAR MANDAL *v.* NILAMBAR MANDAL. **64 I.C. 75=26 C.W.N. 123=A.I.R. 1922 Cal. 189.**

—Art. 148—Whether time is of essence.

———*English principle that in mortgages time is not of the essence does not apply in India.*

The doctrine of equity recognised by the English Courts that the time stipulated in a mortgage-deed is not of the essence of the contract has no application in India, in the absence of statutory law or any established practice to that effect and therefore on the breach of the condition of re-payment, the contract executes itself, and the transaction is closed and becomes one of absolute sale without any further act of the parties or accountability between them. 1 Mad. 1 (P. C.), *Foll.*

Even in Sind the Court would not permit the mortgagor to re-open the transaction entered into before the extension of the Transfer of Property Act to Sind and redeem the property if the time for payment was passed. 1 S.S D. 301 and 1 S. L. R. 96, *Ref.* (*Kennedy and Rupchand Bilaram, A.J.Cs.*). RAMSING JABALSINGH *v.* PARSRAM. **97 I.C. 725=A.I.R. 1927 Sind 46.**

—Art. 149—Applicability.

———Specific Relief Act, S. 9—Suit under or otherwise, by Government is governed by Limitation Act, Art. 149 and not Art. 3. (*Rupchand Bilaram A. J. C.*). SECRETARY OF STATE *v.* DINSHAW NAVROJI. **87 I. C. 1002= A.I.R. 1925 Sind 275.**

LIMITATION ACT (1908), Art. 151—Transferee from Government.

—Art. 149—Suit against Government.

———Art. 144 does not apply to a suit for declaration against Government, that plaintiff has acquired ownership by prescription—Art. 149 applies. Consequently it must fail unless the plaintiff is able to show that he has been in adverse possession for more than 60 years. (*Le Rossignol and Martineau, JJ.*). ABDUL WAHAB *v.* SECY. OF STATE. **96 I.C. 447=7 Lah. 210=8 L.L.J. 309= 27 P.L.R. 749=A.I.R. 1926 Lah. 437.**

———*Possession for* 60 *years must be proved.*

A *Jagirdar* claimed to recover possession of certain forests from the Government on the ground and they formed part of his *Jagir*. In support of his title he proved his possession from 1872 down to date (1914).

Held that as the original title must be deemed to have been in the Crown, plaintiff's possession for 60 years under Art. 149 must be proved to extinguish the title of Government. 39 Mad. 617 (P.C.), *Rel. on.* (*Phillips and Odgers, JJ.*) SECY. OF STATE *v.* SREERAMAMURTHI. **22 M.L.W 546= 91 I.C. 179=A.I.R. 1926 Mad. 125.**

———Plaintiff in possession of land—Government showing that under general law it is owner—Plaintiff must prove better title or adverse possession for 60 years—*Case-law referred.* (*Macleod, C.J. and Fawcett, J.*). VASTA BALWANT *v.* SECY. OF STATE **61 I.C. 440=45 Bom. 789= 23 Bom. L.R. 238=A.I.R. 1921 Bom. 177.**

—Art. 149—"Suit" what is.

———Bengal Resumption of Revenue Regulation (11 of 1819)—Application under, is not a suit—Limitation Act, Art. 149 does not apply. (*Newbould and Graham, JJ.*). MAHABANNESSA BIBI *v.* SECY. OF STATE. **98 I.C. 334=53 Cal. 561= A.I.R. 1926 Cal. 1064.**

—Art. 149—Transferee from Government.

———*The period for acquiring title is only* 12 *years, not* 60 *as is against Government.*

Where a person has been in adverse possession for 12 years of lands belonging to Government and the lands are granted by Government to a third person, the grantee can successfully be met with a plea of adverse possession, although it would have been open to Government to resume the lands. 60 years adverse possession not having been completed as against the Government. Whether 12 years' possession as against the grantee was completed before the grant or afterwards is immaterial. A. I. R. 1924 Mad. 783. *Diss. from*; 30 Mad. 245 and A.I.R. 1924 Cal. 394, *Rel. on. Case-law discussed.* (*Phillips and Ramesam, JJ.*). VENKATA SURYANARAYANA *v.* M. VENKU NAIDU. **97 I.C. 253=A.I.R. 1926 Mad. 1155.**

———*Purchaser from Government—Adverse possession against.*

Where a purchaser of land from Government sued to recover possession within sixty years or but more than 12 years from the commencement of adverse possession but within 12 years of purchase,

Held, that the suit was barred. Article 144 applied and there was only 12 years' limitation. Under S. 2 (8) the period run. as against plaintiff's predecessor-in-title, *viz.*, the Government in this case, should be reckoned against plaintiff. (*Walmsley and Buckland, JJ.*). ANNADA MOHAN ROY CHOWDHURY *v.* KINA DAS. **81 I.C. 675= 28 C.W.N. 66=A.I.R. 1924 Cal. 394.**

LIMITATION ACT (1908). Art. 151 — Appeal from original side.

—Art. 151—Appeal from original side.

——The period of limitation for an appeal from a judgment of the original side under Cl. 13 of the Letters Patent is 20 days from the date of the judgment. (*Heald and Chari, JJ.*). J. N. SURTY *v.* T.S. CHETTIAR FIRM. 98 I.C. 417=4 Rang. 265= 5 Bur. L.J. 187= A.I.R. 1927 Rang. 20.

—Art. 151—Computing time.

——The right to file a requisition for drawing up a decree in the High Court on the original side is primarily plaintiff's and where he has filed the requisition within four days, the period required by the plaintiff for drawing up the decree should be excluded in favour of the defendant in computing the period of limitation for his appeal against the decree, when he has been otherwise diligent. A.I.R. 1928 P.C. 103, *Ref.* (*Rankin, C.J. and Mukerji, J.*). SAMBHU NATH *v.* GOPILAL SEAL. 121 I.C. 307=56 Cal. 709=A.I.R. 1929 Cal. 734.

—Art. 151—Interpretation.

——*'Decree or order' include and cover 'judgment' as used in Letters Patent (Rang.), Cl. 13.*

The words "decree or order" as used in Art. 151 are wide enough to cover a "judgment" in the sense in which that word is used in Letters Patent, Cl. 13 and therefore the period of Limitation for an appeal under Cl. 13 of the Letters Patent from a judgment of the High Court on its original side is 20 days from the date of the judgment. (*Heald and Chari, JJ.*). M. H. ARIFF *v.* PERUMAL. 98 I.C. 689=5 Bur. L.J. 75= A.I.R. 1926 Rang. 143.

—Art. 152—Starting point.

——Judgment not pronounced according to law, but written and intimated to plaintiff's counsel—Limitation runs not from date of judgment but from date of receipt of intimation by party's pleader. 27 P. R. 1919 and A. I. R. 1923 Pat. 129, *Foll.* (*Shadi Lal, C.J. and Broadway, J.*). SEWA RAM *v.* MASSU. 100 I.C. 909=28 P. L. R. 132= A.I.R. 1927 Lah 839.

——*Date of decree is date of judgment though signed later.*

The third column of Art. 152 of the schedule to the Limitation Act gives the date of the decree appealed from as the time from which the period begins to run in the case of an appeal under the C. P. Code to the Court of a District Judge. The decree must be deemed to come into existence on the day the judgment is pronounced. For a decree is a decree before it is signed according to Rr. 7 to 8. (*Kotval, A.J.C.*). NARAYAN *v.* RAMDULARI. 66 I.C. 7=A.I.R. 1922 Nag. 113.

—Art. 154—Applicability.

——*Petition to Court to make a complaint under Ss. 476-A and 476-B—Appeal against order on—Article 154 applies.*

The scheme of the Ss. 476-A and 476-B is that, if the Subordinate Court has neither made a complaint under S. 476 nor rejected an application for the making of a complaint then the Superior Court may take action and make a complaint. But where the Subordinate Court has rejected the application for the making of such complaint, then the procedure, which is contemplated by the Code is by way of an appeal to the Superior Court. Appeal Judge should consider whether the appeal is filed within the time specified in Art. 154. (*Sanderson, C.J. and Panton, J.*). CHUNDER KUMAR SEN *v.* MATHURIYA DEBYA. 90 I.C. 529= 52 Cal. 1009=26 Cr. L.J. 1569=42 C. L. J. 120= 29 C. W. N. 1035=A.I.R. 1925 Cal. 1228.

LIMITATION ACT (1908). Art. 156—Appeals under Guardians and Wards Act.

——An application to a higher Court under S. 195 (6) of the Cr. P. Code though akin to an appeal and though treated as an appeal is not an appeal for the purposes of Limitation Act and an application to the appellate Court cannot be time-barred under the Limitation Act. (*Wilberforce, J.*). PUNNA LAL *v.* JAMITU MAL. 60 I.C. 33=1 Lah. 602= 22 Cr. L. J. 177.

—Art. 154—Extension of time.

——The delay caused by the fact that an appellant's not knowing that a complaint under S. 476, Cr. P. Code, has been filed till after the thirty days prescribed by Art. 154 have expired, can be excused by the appellate Court under S. 5. (*Fawcett and Mirza, JJ.*). DAGA DEVJI PATIL *v.* EMPEROR. 108 I.C. 26=30 Bom.L.R. 76= 29 Cr. L. J. 315=9 A. I. Cr. R. 435= A.I.R. 1928 Bom. 64.

—Art. 154—Starting point.

——Limitation for an appeal under S. 476-B, Cr.P.Code, begins to run for the purposes of Art. 154, Limitation Act from the date when the finding under S. 476, Cr. P. Code, is completed or supplemented by an actual complaint, A.I.R. 1927 Lah. 54, *Foll.* (*Fawcett and Mirza, JJ.*). DAGA DEVJI PATIL *v.* EMPEROR. 108 I.C. 26= 30 Bom. L.R. 76=52 Bom. 164= 29 Cr.L.J. 315=9 A.I.Cr.R. 435= A.I.R. 1928 Bom. 64.

—Art. 155—Application for determining status of convict.

——An appeal to the High Court in the words of S. 449 read with S. 443 is governed by Art. 155 which is not limited only to appeals to the High Court from the Sessions Courts in the mofussil, or from other Courts from which appeals to the High Court lie direct.

An application presented after 60 days from date of conviction for the determination of the status of the prisoner under S. 449 read with S. 443 is out of time. (*C. C. Ghose and Duval, JJ.*). TOMAS *v.* EMPEROR. 98 I.C. 248=53 Cal. 746= 27 Cr.L.J. 1304=A.I.R. 1926 Cal. 1203.

—Art. 155—Leave to appeal to Privy Council.

——Cr. P. Code, S. 449 (1) (c)—Application for leave to appeal comes within Art. 155. (*Sanderson, C.J. and Panton, J.*). GALLAGHER *v.* EMPEROR. 101 I.C. 657=54 Cal. 52=28 Cr.L.J. 481= A.I.R. 1927 Cal. 307.

—Art. 155—Order under S. 476-B, Cr. P. Code.

——Cr. P. Code, S. 476-B—Appeal under, to High Court—Limitation Act, Art. 155, applies. A.I.R. 1925 Cal. 1228, *Appl.* (*Suhrawardy and Cammiade, JJ.*). RAJANI KANT KAYAL *v.* BISTOO MONI DASSI. 104 I. C. 456=46 C.L.J. 40= 8 A. I. Cr. R. 433=28 Cr. L. J. 840= A.I.R. 1927 Cal. 718.

——The limitation for an appeal under S. 476-B against an order refusing to file a complaint under S. 195 is the one provided by Art. 155 and not Art. 156. (*Daniels, J.*). SHEO PRASAD *v.* SHEO BANS RAI. 93 I.C. 831=24 A.L.J. 368= 7 L.R.A.Cr. 80=A.I.R. 1926 All. 211.

—Art. 156—Appeals under Guardians and Wards Act.

——*Guardians and Wards Act (VIII of 1890) S. 47—Appeal under—Art. 156 applies.*

Though it is true that in an appeal filed under S. 47, Guardians and Wards Act, the Act appears to be silent both as regards the procedure to be followed in respect of appeals and the period of limitation for the same, still as the general

LIMITATION ACT (1908), Art. 156 — Appeal without copy of judgment.

provisions of the C. P. Code as regards procedure are applicable to cases under the Guardians and Wards Act, the procedure in respect of appeals undsr S. 47, Guardians and Wards Act must be taken to be governed by the provisions of the C. P. Code, and the period of limitation in respect of the appeal under S. 47, Guardians and Wards Act, would therefore seem to be 90 days from the date of the order under appeal. 7 P.R. 1898 and 43 Mad. 51, *Foll.* (*Bhide, J.*). MT. PANA BIBI *v.* MAHLA.
110 I. C. 374=A.I.R. 1928 Lah. 488.

—Art. 156—Appeal without copy of judgment.

———*Memo. without copy of judgment—Time is not saved.*

It being required by rules of Patna High Court that where several appellants appeal from the same judgment, each memo. of appeal must be accompanied by a copy of the judgment appealed from, the mere presentation of memo. of appeal does not save time though one of the memos. is accompanied by a copy of judgment and there is a request that in other cases the copy of judgment be dispensed with. (*Dawson-Miller, C.J. and Coutts, J.*). RIJAN THAKUR *v.* CHARITAR THAKUR. **69 I. C. 686=1 Pat. 670=4 P. L. T. 290=A.I.R. 1922 Pat. 580.**

—Art. 156—Starting point.

———Decree amended in material particular forming subject-matter of appeal. Time for appeal runs from date of amendment. 32 Cal. 908, *Rel. on.* (*Fazl Ali and Chatterji, JJ.*). MT. GOPI BIBI *v.* CHANU PRASAD SINGH.
117 I. C. 187=A. I. R. 1930 Pat. 142.

———Where a decree was signed the next day the judgment was pronounced, the time for filing an appeal runs from the day the judgment was pronounced. A.I.R. 1924 Nag. 271, *Expl.* (*Hallifax, A.J.C.*). DINDAYAL *v.* ANOPI. **97 I. C. 307=22 N. L. R. 60=A.I.R. 1926 Nag. 349.**

—Art. 158—Award filed before amendment.

———Amending Act (XVIII of 1919—Objection to award filed before coming into force of Act, but decided after—Amending Act applies. (*Tudball, J.*). SHEO PRAKASH *v.* SRI RAM MAHADEO.
63 I.C. 399=19 A.L.J. 404=A.I.R. 1921 All. 63.

—Art. 158—Decree before limitation.

———The Court has no power to pass a decree before the expiry of the 10 days allowed by Art. 158 of the Limitation Act, in the case of an award. (*Odgers, J.*). T. L. RANGIAH CHETTY *v.* T. GOVINDASAMI CHETTY. **71 I. C. 266=15 M.L.W 160=45 Mad. 466=1921 M. W. N. 793=A. I. R. 1922 Mad. 179.**

———Where an award is filed without notice to the defendant and a decree is passed on the award before the expiry of the time allowed by Art. 158, Limitation Act, for filing objections, the procedure is illegal and the decree must be set aside. 21 M.L.J. 444, *Foll.* (*Kanhaiya Lal, J.C.*). MANI RAM *v.* RAM ASRAY. **64 I.C. 90=24 O.C 234=8 O.L.J. 626=A.I.R. 1921 Oudh 148.**

—Art. 158—Extention of limitation.

———Court has power to extend the time allowed under Art. 158, Lim. Act, for supplying Court fee stamp on an application to set aside an award. (*Percival, J.C. and Rupchand Bilaram, A.J.C.*). ADAMALI *v.* ABDULALI. **107 I. C. 223=23 S.L.R. 91=A.I.R. 1928 Sind 87.**

———Section 5 does not apply to applications under Art. 158. (*Addison, J.*). DEVI DITTA *v.* BABU RAM. **100 I.C. 955=8 Lah. 274=28 P.L.R. 441=A.I.R. 1927 Lah. 273.**

LIMITATION ACT (1908), Art. 163 — Extension of time.

———Objections to the award must be taken within ten days and this time cannot be extended by the Court. 18 C.W.N. 626, *Foll.* (*Addison, J.*). DEVI DITTA *v.* BABU RAM. **100 I.C. 955=8 Lah. 274=28 P. L. R. 441=A.I.R. 1927 Lah. 273.**

—Art. 158—Filing of award.

———To say that no application could be said to have been made within the meaning of Art. 158 until either a notice of motion had been given or a rule *nisi* had been obtained, is taking too technical a view of what is required by Sch. 2, R. 15, of C. P. Code. (*Macleod, C. J. and Shah, J.*). GOPALJI KALLIANJI *v.* CHHAGANLAL VITHALJI. **63 I.C. 929=45 Bom. 1071=23 Bom. L.R. 614=A.I.R. 1921 Bom. 419.**

—Art. 158—Insolvency proceedings.

———Limitation Act, Arts. 158-183, are not intended to apply to applications made under the Insolvency Acts, because those Acts are intended to be complete Codes of the insolvency law, and to prescribe their own periods of limitation. (*Heald and Cunliffe, JJ.*). JHAN BAHADUR SINGH *v.* BAILIFF OF THE DISTRICT COURT.
104 I.C. 816=5 Rang. 384=A.I.R. 1927 Rang. 263.

—Art. 158—Notice.

———"*Parties*"—*Meaning—Notice given to pleader—Sufficiency.*

"Parties" in Art. 158 of the Limitation Act cannot be confined to parties personally but includes pleaders and other persons specially authorised by the parties to take notice,

Held, that a notice given to a duly authorised pleader to file objections was sufficient. (*Sen and Niamatullah, JJ.*). GAYAN SINGH *v.* HARBILAS.
1930 A L.J. 995=A.I.R. 1930 All. 711.

———The direction to issue a notice is not equivalent either to the issue of the notice or of giving of the notice to the parties concerned. (*Sen and Niamatullah, JJ.*). TASHIN KHAN *v.* BASANT RAI. **A.I.R. 1930 All. 477.**

———Whether the word "given" in Col. 3, Art. 158, Limitation Act, is to be interpreted as actually received by the party for whom the notice was intended or is to be treated merely as the issue of the notice. (*Sen and Niamatullah, JJ.*). TAHSIN KHAN *v.* BASANT RAI. **A.I.R. 1930 All. 477.**

—Art. 158—Starting point.

———When arbitrator states special case, award is completed when Court expresses its opinion and period of limitation begins only thence. (*Shah, Ag. C.J. and Fawcett, J.*). LAKSMAN BABURAO SONUR *v.* RAMACHANDRA RAJARAM SONUR.
84 I.C. 378=48 Bom. 663=26 Bom. L.R. 836=A.I.R. 1925 Bom. 22.

—Art. 162—Insolvency proceedings.

———An application to a High Court for a review of a judgment passed by it in its insolvency jurisdiction is not governed by Art. 162. (*Ormistone, J.*). *In the matter of* L. W. NASSE. **118 I.C. 615=7 Rang. 201=A.I.R. 1929 Rang. 229.**

—Art. 162—Scope.

———Review of judgment in Art. 162 refers to review under C. P. Code, O. 47, R. 1. (*Ormistone, J.*). *In the matter of* L. W. NASSE.
118 I.C. 615=7 Rang. 201=A. I. R. 1929 Rang. 229.

—Art. 163—Extension of time.

———Where in an application under O. 9, R. 9, the Court granted an extension of time not known to law,

LIMITATION ACT (1908), Art. 164 — Burden of proof.

Held, that the order was illegal and must be set aside in revision. (*Panckridge, J.*). MADHAVA RAM GAONBURA *v.* MT. TUPOO RUBHANI.
52 C.L.J. 23.

—Art. 164—Burden of proof.

——*Ex parte* decree—Application to set aside—Burden of proof is on applicant to show want of knowledge within thirty days. 146 P. W. R. 1918; A. I. R. 1924 Lah. 603 and A. I. R. 1926 Lah. 379, *Foll.* A. I. R. 1924 Lah. 233, *Not foll.* (*Johnstone, J.*). TOTA *v.* BADRI PERSHAD.
A.I.R. 1930 Lah. 192.

——In case of an application to have an *ex-parte* decree set aside the onus is on the applicant to prove that he became aware of the decree within 30 days before the application. (*Zafar Ali, J.*). MT. RAJO *v.* ALI. 107 I.C. 284 (Lah.).

——*Ex parte* decree—Setting aside after 30 days—Onus is on defendant to show absence of knowledge within limitation. The onus lies upon him more heavily when it is found that he was perfectly well aware of the progress of the suit. (*Campbell, J.*). PIROJ SHAH *v.* QARIB SHAH.
93 I.C. 124=7 Lah. 161=8 L.L.J. 267=
27 P.L.R. 321=A.I.R. 1926 Lah. 379.

—Art. 164—" Decree " what is.

——C.P. Code, O. 21, R. 50 (2) Order permitting execution of decree against partner under O. 21, R. 50 (2), is not decree within meaning of Art. 164. (*Rangnekar, J.*). KANJI SHIVJI *v.* VASANJI SHIVJI & CO. 120 I.C. 833=31 Bom. L.R. 995=
53 Bom. 839=A.I.R. 1929 Bom. 386.

—Art. 164—Due service.

——*Substituted service under O. 5, R. 20, is due service.*

If substituted service is effected under O. 5, R. 20, C. P. Code, such service is as effectual as if it is made on the defendant personally and must be deemed to be due service within the meaning of Art. 164, Limitation. A.I.R. 1927 Mad. 507 and A.I.R. 1927 Mad. 487, *Foll.*; A.I.R. 1928 Mad. 655, *Diss. from.* (*Phillips and Madhavan Nair, JJ.*). SHARIBA BEEBY *v.* ABDUL SALAM.
110 I.C. 490=1928 M.W.N. 49=28 M.L.W. 513=
51 Mad. 860=A.I.R. 1928 Mad. 815=
55 M.L.J. 665.

——Substituted service is not due service within Art. 164. A.I.R. 1927 Mad. 487, *Diss. from*; Mad. C.M.A. 348 of 1925, *Dist.* (*Srinivasa Ayyangar, J.*). VITTA VENKATACHALAM *v.* SIVAPURAM SUBBAYYA. 108 I. C. 839=A.I.R. 1928 Mad. 655=
54 M.L.J. 448.

——It is only when the summons was not duly served that ignorance of the decree saves limitation, as due service imports knowledge. A. I. R. 1926 Mad. 31, *Not foll.*; (*Wallace and Madhavan Nair, JJ.*). SUBRAMANIA AYYAR *v.* N. KRISHNASWAMI NAIDU. 108 I. C. 753 (Mad.).

——The word "duly" in O. 9, R. 13 and Art. 164 of the Limitation Act, is not equivalent to "personally." (*Wallace, J.*). DORAISWAMI AYYAR *v.* BALASUNDARAM AYYAR, 102 I.C. 243=
38 M. L. T. 275=A.I.R. 1927 Mad. 507=
52 M L. J. 477.

——*Substituted service is due service.*

In the case of substituted service effected under the provisions of O. 5, R. 20, the summons is "duly served" on the defendant within the meaning of Art. 164 even though it does not in fact come to the defendant's knowledge and time for an application to set aside the decree runs from the date of the decree. A.I.R. 1925 Lah. 639, *Rel. on.*

LIMITATION ACT (1908), Art. 164—Interpretation.

(*Madhavan Nair, J.*). NARSIMHA CHETTIAR *v.* BALAKRISHNA CHETTY. 101 I.C. 651=
38 M.L.T. 359=A.I.R. 1927 Mad. 487=
52 M. L. J. 512.

——An application to set aside an *ex parte* decree must be made within thirty days of the date of the decree and not of the date on which the applicant comes to know of the decree, when he is proved to have been served with the summons. (*Macleod, C.J. and Coyajee, J.*). GANSHIRAM BALURAM *v.* MISRI LAL CHUNILAL. 89 I.C. 223=
27 Bom. L.R. 690=A.I.R. 1925 Bom. 444.

—Art. 164—Extension of limitation.

——*Limitation Act, S. 5 made applicable by rule under S. 122, to application under O. 9, R. 9—Rule is intra vires and retrospective.*

The extension of the provisions of S. 5, Limitation Act, to an application under C. P. Code, O. 9, R. 9, is not an enactment of a new period of limitation. Section 5 is not in any way amended or repealed. The change effected by the rule under C. P. Code, S. 122, relates to the procedure governing applications to restore suits, dismissed for default, to the file. The application was governed by Limitation Act, Art. 164, and it continued to be governed by the same article. The rule, therefore extending S. 5, Limitation Act, to O. 9, R. 9 is *intra vires* and is restrospective. A.I.R. 1925 Mad. 14 (F.B.); 35 All. 227 (P.C.), *Rel. on.*; *Case-law-discussed.* (*Patkar and Murphy, JJ.*). PANDARINATH KIKALAL *v.* THAKOREDAS SHANKARDAS VANI. 53 Bom. 453=31 Bom. L.R. 484=
A.I.R. 1929 Bom. 262.

——Section 5 does not apply to application under Art. 164. (*Addison, J.*). PAL SINGH *v.* HARNAM SINGH. 100 I.C. 936=A.I.R. 1927 Lah. 342.

——The Court has no descretion to enlarge the thirty days allowed by Art. 164 within which the defendant can apply to set aside the *ex-parte* decree and in entertaining the application after the expiry of Limitation, the Court assumed illegally a jurisdiction which it did not possess. A.I.R. 1926 Lah. 379, *Foll.* (*Addison, J.*). PAL SINGH *v.* HARNAM SINGH. 100 I.C. 936=
A.I.R. 1927 Lah. 342.

—Art. 164—Fraud.

——The fraud which can be relevant to be considered for the purpose of Art. 164 is not only a fraud with reference to the service of notice but it covers any fraud and S. 18 can be applied. 16 C.W.N. 923, *Dist.* (*Findlay, Offg. J.C.*). M. B. KINKHEDE *v.* MOHANYA. 94 I.C. 56=
A. I.R. 1926 Nag. 388.

—Art. 164—Fresh application.

——Application to set aside *ex parte* decree dismissed for default—Application made to set aside the dismissal of first application—Such second application cannot be treated as an original application to set aside the *ex parte* decree. A.I.R. 1925 All. 773 and 1 Lah. 339, *Foll.* (*Addison, J.*). HUKUM CHAND *v.* JOWALA SINGH.
100 I.C. 313=A.I.R. 1927 Lah. 204.

—Art. 164—Interpretation.

——*'Summons" has reference to notice of first hearing.*

The words in Art. 164 "when the summons was not duly served" refer to the summons given for the first hearing of the suit and that where there has been due service of such summons the mere fact that the defendant has not received notice of an adjourned hearing will not cause limitation to run from the date on which the defendant becomes

LIMITATION ACT (1908), Art. 164—Knowledge contemplated.

aware of the decree having been passed. 57 I. C. 15, *Ref.* (*Moti Sagar, J.*). SURJIT SINGH *v.* LIEUT. CAPT. C. J. TORRIE. **76 I. C. 14= A.I.R. 1924 Lah. 666.**

—Art. 164—Knowledge contemplated.

——*Knowledge of the decree within* 30 *days is material and not knowledge of suit.*

The fact that a party had the knowledge of the suit on a particular date is a wholly immaterial circumstance for the purposes of computing limitation under Art. 164. The second part of that article comes into operation only where the application is made more than 30 days after the passing of the decree and the applicant pleads that he had not been duly served and had knowledge of the decree within 30 days from the day on which he made the application. (*Tek Chand, J.*). MIR AHMED *v.* PIR BAKHSH. **A.I.R. 1930 Lah. 397.**

——It is necessary for the Court setting aside an *ex parte* decree to find definitely that in cases in which the summons was not duly served the applicant did not have knowledge of the decree more than 30 days before the application was made. The *terminus a quo* is not the commencement of the execution proceedings but the date of the application. (*Tek Chand, J.*). CHARAN DAS *v.* PURAN LAL GOBIND PERSHAD. **116 I.C 620= A.I.R. 1929 Lah 235.**

——Where all that the defendant was told was that some unknown plaintiff had obtained some sort of a decree against him in a suit, of which he was given no detail,

Held, that defendant cannot be said to have knowledge of the decree against him, and there was no obligation on his part to enquire further. The duty rather was on the plaintiff of giving him full information as to the litigation and the nature of the decree. (*Waller, J.*). T. S. P. L. PALANIAPPA CHETTIAR *v.* A. S. VEDACHALA MUDALIAR. **99 I.C. 621=A I.R.1927 Mad. 331.**

——*Specific knowledge is necessary.*

The words of the Article mean something more than mere knowledge that a decree had been passed in some suit, in some Court against the applicant. It means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed against him in a particular Court in favour of a particular man for a particular sum. (*Macleod, C.J. and Crump, J.*). BAPURAO SAKHARAM KARMARKAR *v.* SADHU BHIVRA GHOLAP. 72 **I.C. 130=25 Bom.L.R. 74= 47 Bom. 485=A.I.R. 1923 Bom. 193.**

—Art. 164—Scope.

——*Applies to proceedings other than suits.*

Article 161 is not necessarily restricted to applications to set aside a decree passed in a suit. It applies to applications under O. 9, R. 13 read with S. 144 in proceedings other than suits, *e.g.*, to petitions for filing an award under the Arbitration Act. (*Rupchand Bilaram, A.J.C.*). MESSRS. FLEMING SHAW AND CO. *v.* MANGAL CHAND DWARKADAS. 75 **I.C. 1035= A. I. R. 1924 Sind 56.**

—Art. 164—Substituted service.

——*In case of substituted service* terminus a quo *is date of decree.*

In the case of substituted service, if the summons was duly served the *terminus a quo* under Art. 164 is the date of the decree and not the date when it first comes to the knowledge of the defendant. A.I.R. 1928 Mad. 815, *Rel. on.*; **A.I.R. 1928 Mad. 655,** *Diss. from.* (*Venkatasubba Rao, J.*). KRISHNA PADAYACHI *v.* VINAYAKASWAMIAR. **122 I.C. 35=A.I.R. 1930 Mad. 222.**

LIMITATION ACT (1908), Art. 165—Scope.

——Order of substituted service rightly made and properly effected—Knowledge of defendant is immaterial—Time runs from date of decree. A.I.R. 1927 Mad. 487; A.I.R. 1928 Mad. 815 and A.I.R. 1924 Lah. 191, *Rel. on.*

Where, however, an order for substituted service is improperly obtained, as being made on insufficient material contained in an application supported by affidavit the summons cannot be said to have been duly served within meaning of Art. 164, and the time accordingly runs not from the date of the decree but from the date when it first came to the knowledge of the defendant. (*Venkatasubba Rao, J.*). KRISHNA PADAYACHI *v.* VINAYAKASWAMIAR. **122 I.C. 35=A.I.R. 1930 Mad. 222.**

——Substituted service—Summons is duly served even if it does not come to the knowledge of defendant.—As time runs from the date of the decree, the application for setting aside an *ex-parte* decree made after the expiry of 30 days from the date of the decree is clearly barred by time. (*Shadi Lal, C.J.*). DITTU RAM *v.* NAWAB. **92 I.C. 272= 7 L.L.J. 448=26 P.L.R. 704=A.I.R. 1925 Lah. 639.**

——Where the defendant proved that a summons was never sent to be served on him and there was no rebuttal, and his application to set aside *ex parte* decree was made on the 37th day after the decree was passed,

Held, under the circumstances, the onus was upon plaintiff to show that defendant had knowledge of the decree more than 30 days before date of his application. (*Scott-Smith, J.*). NIHALA *v.* KAZAN SINGH. **73 I.C. 34=A.I.R. 1924 Lah. 233.**

——*Time runs from date of decree and not from date of knowledge.*

In an application to set aside a final decree passed *ex parte*, after substituted service had been taken out to the defendant,

Held, that the matter of the time at which defendant first had knowledge of the decree only becomes relevant after he has proved that substituted service ought not to have been ordered or was not duly carried out. Unless he can do one of these things his application is barred by time. The notice of the application for final decree being as effectual as if it had been served on him personally, the limitation for his application to set aside the *ex parte* decree runs from the date of the decree. 9 N.L.R. 35, *Foll.* (*Batten, C. J. and Hallifax, A. J. C.*). PUNJAB RAO *v.* BALIRAM. **69 I.C. 849=A.I.R. 1923 Nag. 13.**

—Art. 165—Objection petition

——*Objections to execution proceedings—Art.* 165 *does not apply.*

Article 165, Limitation Act, does not govern the cases of those applications which are filed by the parties to the suit as objections to the execution proceedings under S. 47, C. P. Code. The only article applicable in those cases is Art. 181. 38 All. 389; 42 Mad. 753 (F.B.); A.I.R. 1922 Bom. 271 and 1 L.L.J. 230 *Foll.*; 17 O. C. 94; 6 O. C. 44; 21 Mad. 494 and 25 All. 343, *Diss. from.* (*Gokaran Nath Misra and Pullan, JJ.*). MT. JILAI *v.* ABDUL RAHMAN. **115 I.C. 444=5 O W.N. 1053= 4 Luck. 209= A.I.R. 1929 Oudh 76.**

—Art. 165—Scope.

——Applies only to applications under O. 21, R. 100, C. P. Code. (*Greaves and Ghose, JJ.*). BAHIR DAS PAL *v.* GIRISH CHANDRA PAL. **67 I. C. 663=A.I.R. 1923 Cal. 287.**

LIMITATION ACT (1908), Art. 165—Scope.

——The wording of Art. 165 of the Limitation Schedule makes it absolutely clear that it was intended to apply to an application provided for by O. 21, R. 100 of the C. P. Code. and no other and therefore, where the applicant is a judgment-debtor who has no remedy by a suit, the proper article which applies is Art. 181 and not Art. 165. 38 All. 389 and 42 Mad. 753, *Foll.* (*Macleod, C.J. and Shah, J.*). RASUL MALIK PINJAR *v.* AMINA HANIF. 68 I.C. 349=46 Bom. 1031=24 Bom. L.R. 771=A.I.R. 1922 Bom. 271.

—Art. 166—Application after one month.

——*Application to set aside sale beyond one month of sale—Whether barred.*

An application to set aside sale assuming it to be under S. 47, C.P. Code, if made beyond one month after sale is barred under Art. 166, Art. 181 does not apply. 27 M. L. J. 605 (1919) M.W.N. 897; 46 Cal. 975, 38 Mad. 1076, *Foll.*; 43 Bom. 235; (1919) P H.C.C. 386, *Dist.* (*Spencer and Krishnan, JJ.*). K. KAMAYYA *v.* RAMAMMA. 74 I.C. 458=1922 M.W.N. 176=16 M.L.W. 934=A.I.R. 1922 Mad. 95.

—Art. 166—Application under S. 47, C. P. Code.

——Application under S. 47, C. P. Code—Setting aside sale, asked for—Article 181, and not Art. 166 applies. (*B. B. Ghose and N. K. Bose, JJ.*). HAFEZ AZIR ALI *v.* NASEMANESSA BIBI. 116 I.C. 634=A.I.R. 1928 Cal. 865.

——Article 181 and not Art. 166 applies where sale being void, relief is claimed under S. 47, C. P. Code. (*Schwabe, C.J., Ramesam and Waller, JJ.*). RAJAGOPALA AIYAR *v.* RAMANUJACHARIAR. 80 I.C. 92=47 Mad. 288=19 M.L.W. 179=34 M.L.T. 37=1924 M. W. N. 182=A.I.R. 1924 Mad. 431=46 M. L. J. 104 (F.B.).

——Scope—C. P. Code, S. 47—Petition under—Art. 166 applies. (*Oldfield and Venkatasubba Rao, JJ.*). C. GANPATHI MUDALIAR *v.* N. KRISHNAMACHARI. 70 I.C. 743=16 M.L.W. 178=1922 M.W.N. 514=31 M.L.T. 135=A.I.R. 1922 Mad. 417=43 M.L.J. 184.

—Art. 166—Defect in judgment-debtor's title.

——Decree-holder auction-purchaser failing to get possession for defect in judgment debtor's title after satisfaction of decree recorded—He cannot proceed with fresh execution without getting sale set aside within 30 days.

He cannot get round the limitation of 30 days under Art. 166, Limitation Act, merely by putting in a fresh execution application. A.I.R. 1927 Mad. 394, *Foll.*; A.I.R. 1924 Pat, 278, *Diss.*; 28 All. 651 and 21 C.W.N. 571, *Dist.* (*Odgers and Curgenven, JJ.*). JAGANNADHA RAO *v.* RACHAPUDI BASAVAYYA. 104 I.C. 614=26 M.L.W. 212=1927 M.W.N. 224=39 M.L.T. 121=A.I.R. 1927 Mad. 835=53 M.L.J. 235.

—Art. 166—Extension of limitation.

——The period prescribed under Art. 166 cannot be enlarged under the provisions of S. 5 of the Limitation Act or otherwise, but presumably it can be enlarged under S. 18 of the Limitation Act. (*Campbell, J.*). UMRAO SINGH *v.* BENI PRASHAD MEHR CHAND. 92 I.C. 839.

—Art. 166—Fraud and collusion.

——Where the sale is sought to be set aside on the ground of fraud, Art. 166 applies. (*Jackson, J.*). ALLIAR ROWTHER *v.* NARAYANA KUDUMBAN. 81 I.C. 854=20 M.L.W. 252=A.I.R. 1924 Mad. 817.

——Where an execution sale is alleged to be fraudulent and collusive, the period of taking proceedings to set aside the sale, in the case of fraud would be three years from the time when the sale took place or when the plaintiffs knew of the fraud. (*Miller, C.J. and Adami, J.*). BALDEO SINGH *v.* MEGHU SINGH. 74 I.C. 202=1919 P.H.C.C. 386 (Pat.).

—Art. 166—Sale contrary to directions in decree.

——Sale contrary to decree—Application to set aside Art. 166 applies—*View of Oldfield, J.*, in 27 M.L.J. 605, *Foll.*; A.I.R. 1924 Mad. 431, *Cons.* (*Wallace and Madhavan Nair, JJ.*). AMMAKUTTI ACHI *v.* DORAISWAMI AYYAR. 106 I.C. 242=A.I.R. 1928 Mad. 140.

—Art. 166—Sale in insolvency.

——The provisions of O. 21 of the C. P. Code, are applicable to insolvency proceedings, and the limitation applicable to a petition for setting aside a sale in an insolvency proceeding must be thirty days as laid down in S. 21 read with Art. 166. A. I. R. 1921 Nag. 25, *Foll.* (*Findlay, J. C.*). BALAJI *v.* GOPAL MALO. 102 I.C. 543=A.I.R. 1927 Nag. 262.

—Art. 166—Sale on original side.

——*Sale by Registrar on original side—Art. 166 does not apply.*

An application to set aside a sale held by the Registrar of the original side under mortgage decree under the rules of the High Court in Chap. 27 under certain conditions which prescribe certain conditions as to the title which the purchaser should be entitled to require before he is compelled to complete is neither governed by Art. 166 nor by the rule which requires that the sale should be excepted to within 14 days. (*Rankin, C. J. and C.C. Ghose, J.*). SATENDRA NARAIN *v.* CHUNILAL JAMADAR. 103 I.C. 621=54 Cal. 493=47 C.L.J. 75=A.I.R. 1927 Cal. 815.

—Art. 166—Sale under Tenancy Act.

——*Governs application under S. 173, B. T. Act.*

Article 166 of the Limitation Act governs an application under S. 173 of the B. T. Act, because the application is cognizable under S. 47 of the C. P. Code. Article 166 is quite general in its terms and all applications for setting aside an execution sale come under its scope. (*Pearson and Graham, JJ.*). HARI PADA HALDAR *v.* BARADA PROSAD ROY CHOWDHURY. 82 I. C. 322=51 Cal. 1014=A.I.R. 1925 Cal. 351.

—Art. 166—Scope.

——*Applies to every application to set aside a sale whether for illegality or for irregularity.*

The wording of the article includes all applications made under the Code to set aside a sale and not only applications specifically provided for by the Code, under Rr. 89, 90 or 91. Whether the ground for seeking to set aside a sale is the commission of an irregularity or illegality and whether S. 47 or O. 21, R. 90 is the appropriate provision of Law, to be entered at the head of the petition, an application under the Code of Civil Procedure to set aside a sale in execution of a decree falls within the definition in Art. 166. 11 L. W. 59; 16 L. W. 934; 38 Mad. 1076; 1 L. W. 969; 16 L. W. 178; 46 Cal. 975 and 61 I.C. 823 (Pat.), *Foll.* (*Spencer and Devadoss, JJ.*). PARAMSIVA THEVAR *v.* PULUKKUPPA THEVAR. 77 I.C. 631=18 M.L.W. 780=1924 M.W.N. 27=33 M.L.T. 137=47 Mad. 523=A.I.R. 1925 Mad. 137=45 M.L.J. 829.

——*Application to set aside sale are all governed by Art. 166.*

An application for setting aside a sale in execution of a decree under the C. P. Code is

LIMITATION ACT (1908), Art. 166—Scope.

governed by Art. 166, even though the ground for setting aside should be fraud or any other reason. The effect, however, of Art. 166 of the Limitation Act cannot be evaded merely by stating in the application itself that it is brought under S. 47 as well as under O. 21, R. 90. (*Dawson-Miller, C.J. and Mullick, J.*). RAMDHURI CHOWDHURI *v.* DEONANDHAN PRASAD SINGH.
77 I.C. 957=3 Pat. L.T. 501=1922 P.H.C.C. 269=2 Pat. 65=1 Pat. L.R. 18=A.I.R. 1922 Pat. 507.

———*All sorts of applications for setting aside sale are governed.*

Article 166 does not apply only to an application under O. 21, Rr. 88 to 90, but it is a general one and governs all applications based upon whatever grounds, to have an execution sale set aside. Therefore an application for setting aside a sale on the ground of irregularity in serving notice under O. 21, R. 22, is governed by Art. 166. 46 Cal. 975 and 38 Mad. 1076, *Rel. on.* (*Jwala Prasad and Adami, JJ.*). DAS NARAYAN SINGH *v.* MIR. MAHOMED YUSUF. **61 I.C. 823=2 P.L.T. 401=6 P.L.J. 319=1921 P.H.C.C. 181=A.I.R. 1921 Pat. 145.**

—Art. 166—Starting point.

———*Date of sale is the date on which property is put up for sale.*

An application under R. 89 to set aside the sale after making the necessary payment into Court must be made within thirty days from the date of the sale, and the date of the sale is when the property is put up for sale and knocked down to the highest bidder within Limitation Act, Art. 166. (*Macleod, C.J. and Coyajee, J.*). VANAKUSHAL *v.* RATI LAL BHAIDAS. **95 I.C. 549=28 Bom. L.R. 510=A. I. R. 1926 Bom. 335.**

———*Personal covenant in mortgage—Cause of action on.*

Where in a mortgage-deed, the mortgagor covenanted to pay the debt in six months and on failure to pay the same, a suit was instituted nearly ten years after the debt became payable and a personal decree was passed therein,

Held, that the cause of action on the personal covenant accrued when there was a failure to pay the debt, *i.e.*, six months from the date of the mortgage and that the claim had become barred under Art. 66. (*Mr. Ameer Ali.*) GANESH LAL PANDIT *v.* KHETRAMOHEN MAHAPATRA.
51 M.L.J. 82.

———An application to set aside a sale in execution of a decree must be presented within thirty days from the date of the sale and not from the date or confirmation of the sale or from the date of deposit under O. 21, R. 81, C.P. Code. (*Prideaux, A.J.C.*). SITARAM *v.* ASARAM. **78 I.C. 47=19 N.L.R. 162=A.I.R. 1924 Nag. 108.**

—Art. 166—Voidable sale.

———Court sale voidable—Application to set aside must be made within 30 days under the Article. (*Spencer and Ramesam, JJ.*). V. I. S. NAMBUDI *v.* V. K. V. KAMMATHI. **69 I.C. 1001=16 M.L.W. 319=1922 M.W.N. 707=31 M.L.T. 363=A.I.R. 1923 Mad. 48=43 M.L.J. 477.**

—Art. 166—Void sale.

———Where the contention is that the Court sale in execution proceedings in a nullity, Art. 166 does not apply and the objections against such a sale, even when taken after the lapse of a month, are within time. 47 Mad. 288 (F. B.,) *Foll.* (*Dalip Singh, J.*). LAKSHMI CHAND *v.* PHUL CHAND.
11 L.L.J. 457=A.I.R. 1930 Lah. 17.

LIMITATION ACT (1908), Art. 168—Improper dismissal.

—Art. 166—Want of attachment.

———Setting aside sale on any ground comes under this article. (*Lentaigne, J.*). MA PWA *v.* MD. THAMBI. **77 I.C. 368=1 Rang. 533=A.I.R. 1924 Rang. 124.**

—Art. 166—Want of notice.

———*C. P. Code, S. 65—Notice required by O. 21, R. 22 not given; sale becomes void—To set aside such sale—Article 181 applies.*

Where notice required by O. 21, R. 22 is not given but the sale or excess sale takes place such a sale is void. Being void the sale need not be set aside and as such sale need not be set aside the period of limitation (comparatively shorter) prescribed by Art. 166 would not apply, so that in cases where sales are held to be void, appropriate relief could be obtained by parties to the suit by proceedings under S. 47, the period of limitation being not the period prescribed for the setting aside of sales but general period of three years prescribed by Art. 181. A.I.R. 1924 Mad. 431 (F.B.); A.I.R. 1924 Mad, 859, *Expl.* and *Dist.*; A.I.R. 1926 Pat. 397, *Expl.*; 43 Mad. 313, *Ref.* (*Anantha-krishna Ayyar, J.*) CHENGALRAYA REDDY *v.* KOLLAPURI REDDI. **123 I.C. 24=1929 M.W.N. 811=A.I.R. 1930 Mad. 12.**

———An application for declaring that a sale in execution is void for non-compliance with C. P. Code, O. 21, R. 22 (1), not being an application to set aside the sale, is governed by Art. 181 and not Art. 166. 27 C.L.J. 528 and A.I.R. 1924 Mad. 431 (F.B.), *Foll.* (*Page and Graham, JJ.*). MANMATHA NATH GHOSE *v.* MT. LACHMI DEBI.
105 I.C. 65=46 C.L.J. 579=55 Cal. 96=A.I.R. 1928 Cal. 60.

———Application to set aside execution sale on the ground of want of notice under O. 21, R. 22, is governed by three years' rule of limitation under Art. 180. (*Das and Adami, JJ.*). BIHARI LAL MITTER *v.* TANUK LAL MANDAR. **97 I.C. 798=8 P.L.T. 28=A.I.R. 1926 Pat. 397.**

—Art. 167—Acquiescence.

———An application for removal of a second obstruction made more than thirty days after acquiescence in a previous obstruction is not barred by Art. 167. Such acquiescence does not deprive the person entitled to possession, of any further right to obtain it in execution. (*Oldfield and Ramesam, JJ.*). MEYAPPA CHETTY *v.* MEYAPPAN SERVAI. **66 I.C. 722=1921 M.W.N. 698=A.I.R. 1921 Mad 559.**

—Art. 168—Applicability.

———Article applies to application for re-admission under O. 41, R. 19, C. P. Code as it is outside Limitation Act, S. 6. (*Shah and Crump, JJ.*). SONUBAI BABURAO *v.* SHIVAJI RAO KRISHNA RAO. **60 I.C. 919=45 Bom. 648=23 Bom. L R. 110=A.I.R. 1921 Bom. 20.**

—Art. 168—Improper dismissal.

———*Appeal—Dismissal of* ultra vires—*Article does not apply.*

Where no date is fixed for the hearing of an appeal and no notice is given to the parties of any date on which the hearing of the appeal would be taken up, an order dismissing the appeal for default is without jurisdiction. In such case the limitation of thirty days for setting aside the dismissal does not apply, especially when the record does not show that the appellants were informed of the dismissal. If the order of dismissal were made under circumstances which would render such

LIMITATION ACT (1908), Art. 168 — Non-payment of process.

action *ultra vires* of the Court, the 30 days' limitation under Art. 168 ought not to apply. (*Scott-Smith, J.*). ATA MUHAMMAD *v.* SHANKAR DAS.
69 I.C. 618=A.I.R. 1924 Lah. 279.

—Art. 168—Non-payment of process.

——*Appeal dismissed for want of prosecution—Article* 168 *applies for application for restoration.*

There is no distinction in principle or substance between an appeal dismissed on the day fixed for the hearing for default in payment of process fee under O. 41, R. 18, and an appeal dismissed before the hearing for default in payment of process fee or of the costs of preparing the paper book. They stand upon the same footing and cannot be differentiated and an application to restore an appeal in the one case is *ejusdem generis* with similar applications in the other cases. In each instance the appeal is dismissed for want of prosecution and to an application to restore any such appeals Art. 168, Limitation Act, applies. *Case-law referred.* (*Page, C.J., Carr and Cunliffe, JJ.*). (SHAKOOR) ABDUL GANNY *v.* MRS. I.M. RUSSELL.
A.I.R. 1930 Rang. 228. (F.B.).

—Art. 168—Rangoon rules.

——Rule 9 (2), Appellate Side Rules of Procedure of the Rangoon High Court is *ultra vires* in so far as it prescribes a period of limitation less than that prescribed in Art. 168, Limitation Act. 6 Rang. 302, *Diss. from. Case-law referred.* (*Page, C.J., Carr and Cunliffe, JJ.*). ABDUL GANI *v.* I.M. RUSSELL. A.I.R. 1930 Rang. 228.

—Art. 170—Cross-objection.

——The limitation of 30 days from the date of the decree does not apply to applications for leave to file cross-objections in *forma pauperis*. 12 C.L.J. 173, *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). MT. CHANDER KALA KUER *v.* DULHIN RAJA KUER. 119 I.C 900=7 Pat. 827=
10 P.L.T. 387=A.I.R. 1929 Pat. 31.

—Art. 171—Application by assignee of decree.

——An application made by an assignee of the preliminary decree for the preparation of the final decree is not governed by Arts. 171 and 176. (*Boys and Young, JJ.*). MITHAN LAL *v.* MAYA DEVI.
121 I.C. 689=1929 A.L.J. 921=A.I.R. 1929 All. 444.

—Art. 171—Failure to bring representatives on record.

——Where the plaintiff failed to bring on record the legal representative of the defendant, though with smallest diligence he would have discovered that the defendant had died,

Held, the abatement could not be lightly set aside, the plaintiffs had to satisfy the Court that there was sufficient cause for not applying in time. (*Sanderson, C. J. and Richardson, J.*). SARAT CHANDRA SARKAR *v.* MAIHAR STONE AND LIME CO., LTD. 67 I.C. 917=49 Cal. 62=
A.I.R. 1922 Cal. 335.

—Art. 173—Knowledge after limitation.

——Under Art. 173, 90 days time is allowed to the petitioners for review, from the date of their knowledge, but the contention that where the knowledge is after that period, there is no period prescribed by the Limitation Act, or Art. 181, Sch. 2, Limitation Act at most applies, is wrong. (*Banerji and King, JJ.*). DEBI DAYAL *v.* AMBIKA PRASAD. 119 I. C. 99=
A. I. R. 1929 All. 545.

——*Application for review of order is barred if not filed within* 90 *days of that order.*

An application for review of an order is barred by limitation under Art. 173 if it is not filed within 90 days from the date of the order sought to be reviewed. The fact that the judgment-debtor had no knowledge of the order makes no difference. It is open to the judgment-debtor in such a case to apply under S. 5, Limitation Act, for an extension of the period of limitation if in fact he could prove that he had no knowledge. (*Boys and Young, JJ.*). BALDEO PRASAD *v.* SUKHDEO PRASAD.
121 I.C. 552=A.I.R. 1929 All. 485.

—Art. 173—Scope.

——Article 173 is restricted to applications for review under C. P. Code. (*Ormistone, J.*). *In the matter of* L.W. NASSE. 118 I.C. 615=
7 Rang. 201=A.I.R. 1929 Rang. 229.

—Art. 174—Application by decree-holder.

——*Application by decree-holder to record payment made to him out of Court—Article* 181 *applies not Art.* 174.

Where a decree-holder in execution of his decree sought to escape the bar of limitation under Art. 182 by reference to a payment made by the judgment-debtor out of Court,

Held, that he was entitled to plead the payment that Art. 174 of the Limitation Act is not applicable to a case under sub-R. 1 of R. 2 of O. 21, but is applicable only to a case under O. 21, R. 2, sub-R. (2) and that under Art. 181 the decree-holder can certify the payment within 3 years of the date of payment.

There is no period of limitation for an application by decree-holder, who has received payment from the judgment-debtor out of Court, to record the payment. Therefore the only article applicable is 181 of the Limitation Schedule which provides that an application, for which no period of limitation is provided elsewhere in this schedule, shall be made within three years from the time when the right to apply accrues. (*Mookerjee and Panton, JJ.*). BALI MAHAMMAD SAHI *v.* AJANMAI.
68 I.C. 780=26 C. W. N. 529=
35 C.L.J. 71=A.I.R. 1922 Cal. 30.

—Art. 174—Application contemplated, what is not.

——Application by the judgment-debtor made six months after a payment, applying for deposit of balance and attaching a receipt for the previous payment and containing an endorsement of the subsequent payment by the decree-holder's pleader is not an application for recording and certifying the previous payment under O. 21, R. 2 (2).

Even if it can be so regarded it is barred by limitation under Lim. Act, Art. 174. (*Sen, J.*). FRANK COOWBS *v.* MUFASSIL BANK, LTD., GORAKHPUR. 115 I.C. 139=A. I. R. 1929 All. 674.

—Art. 174—Extension of limitation.

——*Omission of decree-holder to certify adjustment—Time is not extended.*

Mere omission on the part of the decree-holder to certify the fact of adjustment of the decree does not entitle the judgment-debtor to override the period of limitation provided in Art. 174 of the Limitation Act, for an application under O. 21, R. 2, Cl. (2), and to secure an investigation of the very same matter and an extension of time by invoking the terms of S. 47 of the C.P. Code. A.I.R. 1923 Cal. 942, *Foll.* (*Baker, J.C.*). MAROTI *v.* NARAYAN. 88 I.C. 48=A.I.R. 1925 Nag. 374.

——*Fraud under S.* 18—*Keeping the judgment-debtor from knowledge of his right to apply for certifying adjustment of decree.*

Where a settlement had been come to, to satisfy the respective decrees in two suits and the decree-

LIMITATION ACT (1908), Art. 175—Extension by consent.

holders represented to the judgment-debtors that this was the case, and on the strength of such representation judgment-debtors signed it, and thought that, as it was filed, the two decrees were adjusted,

Held, such conduct could be said to keep the judgment-debtors from the knowledge of the right of applying to the Court for the adjustment of the decree to be certified. (*Rutledge, J.*). P. R. P. L. CHETTY FIRM *v.* G. LON POW.

70 I.C. 859=1 Bur. L.J. 43=A.I.R. 1922 L.B. 31.

—Art. 175—Extension by consent.

———Application made beyond six months for payment by instalments—Parties agreeing to it—Court passing order—Order is good. 200 P.R. 1889 and 26 P.R. 1894, *Rel. on.* (*Shadi Lal, C.J. and Fforde, J.*). BANARSI DAS *v.* RAMZAN.

73 I.C. 671=A.I.R. 1923 Lah. 381.

—Art. 176—Application under Tenancy Act.

———Application under Chota Nag. Ten. Act, to substitute L. Rs. of plaintiff is within the article. (*Das and Adami, JJ.*). LAL NILMONY NATH SAHI DEO *v.* MAHARAJ PRATAP UDAI NATH SAHIDEO. **69 I.C. 613=1922 P.H.C.C. 363=1 Pat. L.R. 55=2 Pat. 243=4 P.L.T. 367=A.I.R. 1923 Pat. 29.**

—Art. 176—Assignment of decree.

———An application made by an assignee of the preliminary decree for the preparation of the final decree is not governed by Arts. 171 and 176. (*Boys and Young, JJ.*). MITHAN LAL v. MAYA DEVI. **121 I.C. 689=1929 A. L. J. 921=A.I.R. 1929 All. 444.**

—Art. 176—Death before amendment of article.

———*Application made after time under O. 22, R. 3, C. P. Code, should be amended into one under O. 22, R. 9.*

Plaintiff died on August 30, 1920. On January 1, 1921, Act XXVI of 1920, came into force which reduced the period of limitation for putting the legal representatives on the record to three months. The application on behalf of the minor was not made until February, 28,

Held, that the Court should have amended the application so as to make it one under O. 22, R. 9, and should not have rejected the application as being made under O. 22, R. 3 and so beyond time; that the minor should not be prejudiced by the fact that the proper remedy was not suggested to him by the Court, and therefore the abatement of the suit should be set aside. (*Macleod, C.J. and Shah, J.*). VIJAYASING DATTAJIRAO THORAT *v.* SHIVAJIRAO NARAYANRAO THORAT. **80 I.C. 761=26 Bom. L.R. 378=A.I.R. 1924 Bom. 416.**

—Art. 176—Effect of amendment.

———*New rules of limitation apply to causes of action already arisen*

New rules of limitation, which are regarded merely as matters of procedure, apply to causes of action which arose before the enactment of the rules.

An appellant died on 31-7-20. At that time the period of limitation for bringing on record his legal representatives was six months. Early in September, 1920, by an amendment of the Limitation Act, the period was reduced to 90 days. But the coming into force of the amendment was postponed to the 1st of January, 1921.

Held, that the amendment operated retrospectively and that an application to bring the legal representatives on record filed after the 1st January, 1921 was time barred although within 6 months from the date of the appellant's death, 39 Mad. 645, *Dist.* (*Wallis, C. J. and Oldfield, J.*). VAITHINATHA AYYAR *v.* GOVINDASWAMI ODAYAR. **62 I. C. 795=13 M. L. W. 522=1921 M.W.N. 338=A.I.R. 1921 Mad. 650=41 M. L. J. 65.**

LIMITATION ACT (1908), Art. 177—Application after limitation.

—Art. 176—Execution proceedings.

———Application for execution against surety is governed by Art. 182 and not by Art. 176 after the death of the principal debtor and execution can be had even though the legal representatives have not been brought on record. (*Prideaux, A.J.C.*). HASHAMALI *v.* V. BHAGWANT. **66 I.C. 176=A.I.R. 1922 Nag. 112.**

—Art. 176—Extension of limitation.

———Death of plaintiff—Legal representative living in different province, presenting application to be made party, on knowing of death—Ordinary period of limitation can be extended. (*Zafar Ali and Jai Lal, JJ.*). RAGHUNATH RAI *v.* RADHA KISHAN PANNALAL. **119 I.C. 759=A.I.R. 1929 Lah. 634.**

—Art. 176—Rival claimants.

———The right to be brought on the record vests in the one or the other rival claimant from the date of the death of the deceased party. The limitation therefore begins to run against both the rival claimants and each would get barred by time at the expiry of the limitation prescribed by Art. 176. Therefore one rival claimant, who has not applied to be brought on the record within the limitation period, cannot continue a suit revived by his rival's application in time. A.I.R. 1923 Nag. 101, *Dist.* (*Kinkhede, A.J.C.*). AMRITABAI *v.* RATAN LAL. **104 I.C. 398=A.I.R. 1927 Nag. 343.**

—Art. 176—Scope.

———C. P. Code., O. 30, R. 4. (2) (*a*)—Application under—Article 176 applies. (*Mookerjee and Panton, JJ.*) PULIN BIHARI *v.* MAHENDRACHANDRA. **67 I. C. 10=34 C.L.J. 405=A.I.R. 1921 Cal. 722.**

—Art. 176—Suit by trustee.

———C.P. Code, O. 1, R. 11 and O. 22, R. 3—Suit by trustee impleading co-trustee as a party defendant—Plaintiff dying during suit—Co-trustee can conduct suit—Article 181 applies, and not Art. 176 for such transposition. (*Abdul Rahim and Sadasiva Aiyar, JJ.*). SAMINATHA PILLAI *v.* RAJAGOPALA MUDALIAR. **62 I. C. 360=1921 M.W.N. 108=13 M.L.W. 148=A.I.R. 1921 Mad. 124=40 M.L.J. 208.**

—Art. 177—Application after limitation.

———*Abatement—Setting aside—Absence of knowledge 3 months before application, to be proved.*

Where no application for substitution of legal representative is made within the period of limitation unless the plaintiff can satisfy the Court that he had no knowledge of the death of the defendant till within three months of the date on which he applies for substitution of the legal representative of the deceased defendant, the application is beyond time and there can be no ground for setting aside the abatement. (*Sulaiman and King, JJ.*). ANMOL SINGH *v.* HARI SHANKAR LAL. **A.I.R. 1930 All. 779.**

———*Ignorance of change in land—Application after three months—Delay may be excused.*

The error that the defendant's heirs were brought on the record more than three months after the death of the original defendant without formally

LIMITATION ACT (1908), Art. 177 — Death before Amending Act.

setting aside the abatement of the suit which resulted in consequence of the lapse of three months from the date of the defendant's death, was rightly excused as the application was made within six months, which was the period allowed by the Act of 1908, and the change in the period of limitation effected by Act XXVI of 1920 may not have been and probably was not known to the parties, and the omission to set aside the abatement was a formal defect not affecting the merits of the order. (*Shah, Ag. C. J. and Crump, J.*). LAKSHMIBAI JAGANNATH JOSHI *v.* YESHWANT VITHAL BAGKAR.

76 I.C. 283=47 Bom. 92=24 Bom.L.R. 909= A.I.R. 1922 Bom. 449.

—Art. 177—Death before Amending Act.

——*Ignorance of the amendment—Time can be extended.*

The Limitation Act was amended so as to reduce the period of limitation for application under Art. 177 from six months to 90 days between the death of a defendant on 30th September, 1920 after the passing of the preliminary decree in a suit for dissolution of partnership and his son applying on the 6th January, 1921, to be brought on the record,

Held, that in the circumstances of the case it was in the interests of justice necessary for all parties interested to be added under O. 1, R. 10, C. P. Code. (*Spencer, J.*). V. R. M. RAMASWAMI CHETTIAR *v.* ADAPPA CHETTIAR.

78 I.C. 168=A.I.R. 1925 Mad. 347.

—Art. 177—Effect of amending act.

——Limitation for an application for substitution under Art. 177 was six months and not ninety days under Limitation Act till it was again amended so as to reduce the period specifically to ninety days. (*Adami and Bucknill, JJ.*). RAI BRINANDAN PRASAD *v.* MAHABIR PRASAD.

97 I. C. 316=A.I.R. 1927 Pat. 142.

——The period of limitation under Art. 177 remained at six months even after the amending Act (Act XXVI of 1920). A. I. R. 1923 Bom. 299, *Dist.*; A. I. R. 1924 Lah. 65; A. I. R. 1925 All. 77, *Foll.* (*Phillips, J.*). SUBRAMANIA AIYAR *v.* SHANMUGAM CHETTIAR. **92 I.C. 566= 22 M.L.W. 538=A.I.R. 1926 Mad. 65= 49 M.L.J. 363.**

——The amending Act XXVI of 1920 did not touch Art. 177. Therefore, after the Amending Act was passed the period in the column, according to law, opposite Art. 177, was still six months notwithstanding the use of the word "ditto." Subsequently in 1923, by Act XI of 1923, the period has been altered to 90 days. (*Walsh, Ag. C. J. and Ryves, J.*). A. G. SKINNER *v.* K. MUKARRAM ALI KHAN. **92 I.C. 330=5 L.R.A. Civ. 607= A.I.R. 1925 All. 77.**

——*Amending Act (XXVI of 1920) has not altered the period.*

The words "six months" opposite Art. 177 in the Limitation Act have not been altered by anything contained in the Amending Act of 1920 and the period of limitation for making an application to implead the legal representatives of a deceased defendant or of a deceased respondent is still six months. A.I.R. 1924 Lah. 65, *Foll.* (*Moti Sagar, J.*). ARJAN DAS *v.* NANAK CHAND. **76 I.C. 771= A.I.R. 1925 Lah. 98.**

——*Amending Act of 1920—Period of limitation is still 6 months.*

The words "six months" that occur opposite Art. 177 in the authenticated text of the Limitation Act, have not been altered by anything contained in the amending Act of 1920, and that the period of limitation for making an application to implead the legal representatives of a deceased defendant or of a deceased respondent is still 6 months. (*Shadi Lal, C.J. and Martineau, J.*). (BHAGAT) GOVIND DAS *v.* RUP KISHORE.

77 I.C. 409=4 Lah. 367=6 L.L.J. 25= A.I.R. 1924 Lah. 65.

LIMITATION ACT (1908), Art. 179 — Time for obtaining copies.

——The period of limitation under Art. 177 is now 90 days and does not continue to be six months. (*Macleod, C. J. and Crump, J.*). HUSENUDDI NURDDIN *v.* DULAKSHIDAS KESHAV LAL. **77 I.C. 474=A.I.R. 1923 Bom. 299.**

——The new amending Act XXVI of 1920 passed by the Governor-General does not reduce the period of Limitation of Art. 177 as prescribed by Act IX of 1908, as no mention of Art. 177 is made in the body of new Act although there may be mention of this in the statement of objects and reasons. (*Harrison, J.*). RUP KISHORE *v.* BHAGAT GOVIND DAS. **69 I C. 748= A.I.R. 1922 Lah. 211.**

—Art. 177—Forma pauperis.

——An application for bringing on the record the legal representative of a deceased opponent in an application for permission to sue in *forma pauperis* is not governed by the provisions of Art. 177. 7 Bom. 373, *Rel. on.* (*Rupchand, A.J.C.*). KHATIJANBAI *v.* NUR MAHOMED. **116 I.C. 111= A.I.R. 1929 Sind 136.**

—Art. 177—Scope.

——An application for bringing on record the legal representatives of a deceased person who was not a defendant or respondent on the date of his death is governed by Art. 181 and not by Art. 177. (*Campbell, J.*). WAHID BAKSH *v.* LALTA PRASAD. **73 I.C. 387=A.I.R. 1924 Lah. 316.**

—Art. 178—Award not filed in time.

——Award not made rule of Court within limitation period—Award does not become invalid. 4 O.L.J. 487, *Rel. on.* (*Pullan, J.*). THAKUR DIN SINGH *v.* BHAGWANDIN SINGH.

11 L.R.A. Rev. 32=A.I.R. 1930 Oudh 51.

—Art. 179—Criminal case.

——*Quaere*:—Seeing that Art. 179 mentioned only civil cases, is the general rule of limitation of three years contained in Art. 181 to hold good in criminal cases? (*Mookerjee and Chatterjee, JJ.*). PHILLIP E. BILLINGHURST *v.* EMPEROR.

82 I.C. 763=38 C.L.J. 406=25 Cr. L.J. 1371= A.I.R. 1924 Cal. 338.

—Art. 179—Starting point.

——Where the original decree is incapable of execution, time runs from the date when a proper decree capable of execution has been drawn up. (*Mookerjee and Panton, JJ.*). SANATAN SANT *v.* DINABHANDHU GIRI. **64 I.C. 622= 34 C.L.J. 397=A.I.R. 1921 Cal. 89.**

—Art. 179—Time for obtaining copies.

——Application for leave to appeal to P. C.—Time for obtaining copies should be excluded.

Such petition after 90 days is not barred, if in support of exclusion of copying time, the copy of decree is filed by applicant. (*Findlay, J.C. and Kinkhede, A.J.C.*). GULABCHANDJI *v.* RAO GULAB SINGH. **105 I.C. 852=10 N.L.J. 242= 24 N.L.R. 97=A.I.R. 1928 Nag. 63.**

——*Application for leave to appeal to His Majesty-in-Council—Time taken for obtaining copies of decree and judgment, can be excluded.*

In computing the period of limitation under Art. 179 of the Limitation Act, the applicant is

LIMITATION ACT (1908), Art. 179—Time taken for review.

entitled under S. 12, Cl. 2 to exclude the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree. S. 12, sub-S. 2 of the Limitation Act is general in its terms and applied to all applications for leave to appeal including an application for leave to appeal to His Majesty-in-Council. Under sub-S. 3 of S. 12 the time requisite for obtaining a copy of the judgment ought also to be deducted in cases of application for leave to appeal to His Majesty-in-Council. The provisions of sub-S. 3 are meant to apply generally to cases covered by sub-S. 2 and the reason seems to be this that if the appeal in question is from a decree then it is generally necessary that the judgment on which that decree is based should also be obtained. (*Dawson Miller, C.J. and Ross, J.*). MAHABIR PRASAD TEWARI *v.* JAMUNA SINGH.

66 I.C. 88=3 P.L.T. 289=1922 P.H.C.C. 193=1 Pat. 429=A.I.R. 1922 Pat. 255.

—Art. 179—Time taken for review.

——In computing the period of limitation for an application for leave to appeal to Privy Council, the time taken up for review of the judgment sought to be appealed against should be excluded. (*Shah, A.C.J. and Kincaid, J.*). NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL.

85 I.C. 191=49 Bom. 149=26 Bom.L.R. 1261=A.I.R. 1925 Bom. 137.

—Art. 180—Application after limitation.

—— After an auction-purchase possession cannot be granted more than three years after its confirmation. Defect as to limitation is not a formal one. (*Pullan, A. J. C.*). MAHMOOD HASAN *v.* NATIONAL BANK OF UPPER INDIA.

79 I.C. 691=A.I.R. 1925 Oudh 106.

—Art. 180—Extension of limitation.

——Article 180 applies to application by purchaser for delivery of possession and not Art. 181. There is no warrant for extending the period of limitation by applying Art. 181 to a case where, owing to the auctionp urchaser's default, dellvery could not be effected. *Opinion of Oldfield, J.*, in (1918) M.W.N. 214, *Foll.* and that of *Abdul Rahim, J. Diss.* (*Devadoss and Waller, JJ.*). VISWASUNDARA RAO *v.* PAIDI GODU. 91 I.C. 488=23 M.L.W. 472=A.I.R. 1926 Mad. 385=50 M.L.J. 72.

—Art. 180—Petition of compromise.

——*Petition of compromise filed before Court executing decree — Judgment-debtor entering into arrangement for instalments with decree-holder—Executing Court directing case be disposed of according to petition of compromise—Compromise acted on and certain payments under it credited by decree-holder—Fresh application for execution beyond three years of passing of decree—Effect could be given to compromise so as to save limitation.*

A decree for Rs. 4,087-6-0 with costs and interest at 6 per cent. was passed on 11th April, 1923. A petition of adjustment was filed on 19th September, 1924, before the executing Court and the Court directed that the terms should be noted and the case disposed of in terms of the petition of compromise. The compromise provided that the decree-holder should get Rs. 4,000 in full payment of his decree, that the judgment-debtor should pay Rs. 1,000 forthwith and the balance in monthly instalments of Rs. 150 from October, 1924, and in default of payment of four instalments the decree-holder would realize the whole of the decretal amount with interest at 9 per cent. The last clause

LIMITATION ACT (1908), Art. 180—Proceedings disputing validity.

of the agreement was that the house belonging to the judgment-debtor should remain charged for the decretal amount and that the decree-holder should in default of payment realize the same by sale of the house with interest at 9 per cent. by calculating from the date of default of any payment. Rs. 1,000 were paid and also the first two instalments and thereafter payment ceased. On 10th December, 1928, an application for execution of the decree was made. It was argued that more than three years had elapsed after the last step-in-aid of execution on 13th September, 1924, and that the parties could not by agreement enlarge the time of limitation. Alternatively it was argued that if effect could be given to the compromise, then under the terms the whole debt became due in April, 1925, and that application was more than three years after that date,

Held, that as the compromise had been acted upon and payments made under it which were credited by the decree-holder, effect could be given to the compromise,

Held, further that when all the clauses of the agreement were read together, the intention of the parties was to leave at the option of the decree-holder either to enforce the payment of the whole of the decretal amount at once or to continue to abide by the instalments and that he was entitled to recover the instalments which were due for three years before the application. 18 W. R. 497 and 21 W.R. 310, *Appl.*; 13 W.R. 44 (F.B.) and 3 All. 585, *Not appl.*; 5 All. 492; 11 All. 228: 5 Cal. 27; 13 I.C. 81; 15 Bom. L.R. 383 and A.I.R. 1925 Pat. 557, *Rel. on.* (*Ross and Rowland, JJ.*). GANGA BISHUN MARWARI *v.* RAGHUNATH PRASAD.

A.I.R. 1930 Pat. 615.

—Art. 180—Proceedings disputing validity.

——*Order confirming sale is valid so long as it is not set aside.*

If for some reason or other, that is by operation of S. 18, Limitation Act, or for some other reason, the judgment-debtor prays for time for making an application for setting aside the sale being extended, the order confirming the sale which is already made cannot be said to be ineffective. That order should be considered to be effective so long as it is not set aside. 43 Mad. 185, *Foll.* (*Oldfield, J.*). (*B.B. Ghose and Bose, JJ.*). NECKBAR *v.* PRAKASH NAG CHOWDHARI. 120 I.C. 107=56 Cal. 608=A.I.R. 1930 Cal. 86.

——When there are proceedings disputing the validity of the decree and the validity of the sale held thereunder the sale could not be held to have become absolute till those proceedings are disposed of and final orders passed in them; and time begins to run under Art. 180 from that date only. 43 Mad. 185 (F. B.), *Foll.* (*Krishnan, J.*). THAYYAMUTH *v.* ODAYAPPAN. 99 I.C. 632=25 M.L.W. 108=1927 M.W.N. 60=A.I.R. 1927 Mad. 391.

——*Application to set aside sale dismissed—Suit to set aside sale filed—Time during which the suit is pending cannot be deducted, in favour of an auction-purchaser.*

In computing period of limitation under Art. 180 time during which an application under O. 21, R. 90, for setting aside the sale is pending will be deducted as the sale will be deemed to be absolute when such application is rejected, but the time during which a suit to set aside the sale, on rejection of an application under O. 21, R. 90, is pending cannot be deducted. There is no provi-

LIMITATION ACT (1908), Art. 180—Revival.

sion of law for excluding in favour of the auction-purchaser the period of the pendency of a suit filed by the judgment-debtor to set aside a Court sale. (*Phillips and Madhavan Nair, JJ.*) SORNAM v. THIRUVAZHIPERUMAL PILLAI. 96 I.C. 657= 23. M.L.W. 744=1926 M.W.N. 563= A.I.R. 1926 Mad. 857=51 M.L.J. 126.

—Art. 180—Revival.

——In the case of application for delivery the revival theory does not apply. The only question is when the right to apply accrued. (*Ramesam, J.*). LALUMIA v. MAZUR HUNNISSA. 95 I C. 718=1926 M. W. N. 317= A.I.R. 1926 Mad. 698.

—Art. 180—Starting point.

——Period of three years under Art. 180 governing the application of the auction purchaser for delivery of possession of property purchased is to be reckoned from the date of the confirmation of sale under O. 21, R. 92 and not from that of the final disposal of the application of judgment-debtor under O. 21, R. 90. 12 M.I.A. 244 (P.C.) and 23 Cal. 775 (P.C.), *Dist.*; 43 Mad. 185 (F.B.), *Dist.* (*B. B. Ghose and Bose, JJ.*). NECKBAR v. PRAKASH NAG CHAUDHARI. 120 I.C. 107= 56 Cal. 608=A.I.R. 1930 Cal. 86.

—Art. 181.

Applicability.
Application.
Application within time.
Execution of decree.
Execution sale.
Insolvency proceedings.
Interpretation.
Mesne profits.
Mortgage decree.
Restitution.
Revival of execution.
Starting point.
Time-barred application.

—Art. 181—Applicability.

——Decree for possession passed on condition that plaintiff should pay for improvements to defendant. Amounts to be decided later, on commissioner's report—Article 181 applies and time to apply for execution accrued from date on which amounts were finally fixed by Court. 51 I.C. 576 and 24 All. 300, *Dist.* (*Reilly and Ananthakrishna Aiyar, JJ.*). (SRIMATHI) DEIVASIKAMANI ANNAMALAI DESIKAR, PANDARA SANNADHI v. RAJU PILLAI. 1930 M.W.N. 979=A.I.R. 1930 Mad. 995= 59 M.L.J. 579.

——Application in pending case—Article 181 does not apply nor any rule of limitation. (1915) M.W.N. 725, *Appr.*; 42 Mad. 52; A.I.R. 1922 Mad. 65; (1918) M.W.N. 867; A.I.R. 1925 Cal. 834 (F.B.); A.I.R. 1924 Mad. 695; A.I.R. 1925 Mad. 981; A.I.R. 1921 Mad. 124; and 1 Lah. 187, *Dist.* (*Curgenven, J.*). RAMANATHAN CHETTY v. ALAGAPPA CHETTY. 53 Mad. 378=A.I.R. 1930 Mad. 528.

——Article 181, Limitation Act, does not apply to application in revision—No time limit is placed on High Court's power of revision.

These powers are exercised by High Court quite irrespective of any right on the part of the aggrieved party to move the Court. 43 Cal. 1029, *Ref.* (*Pullan, J.*). SHAH NAIM ATA v. EMPEROR. A.I.R. 1930 Oudh 401.

——Application for the preparation of a final decree is not an application for the execution of a decree but an application which is governed by

LIMITATION ACT (1908), Art. 181 — Applicability.

Art. 181. (*Sulaiman and Pullan, JJ.*). MAQBUL AHMAD v. PATESHRI PARTAB NARAIN SINGH. 118 I.C. 670=1929 A.L.J. 976= A.I.R. 1929 All. 677.

——*Article* 181 *applies only when Art.* 182 *cannot apply.*

Article 182 is the article framed for an application for execution of a decree. Article 181 could be brought into play only when there are definite circumstances which would make Art. 182 inapplicable.

A decree-holder made an application for execution. Before the date fixed for sale the decree-holder made another application to the Court stating that he had given the judgment-debtor six months' time, that his application may be struck off and the judgment-debtor saddled with costs. He was not taken on his word and the Court directed that the judgment-debtor should appear in order to verify the application. On the day fixed for appearance the judgment-debtor did not appear and Court struck off the application. More than three years after this an application for execution was again made. It was attempted to prove the oral agreement granting six months' time to bring the case within the purview of Art. 181,

Held, that the only article that could apply to the subsequent application was Art. 182 and not 181. A. I. R. 1927 All. 16; A.I.R. 1927 All. 165, *Dist.* (*Mukerjee, J.*). MOHAMMAD ISHAQ v. BALDEO PRASAD. 114 I.C. 894=A.I.R. 1929 All. 606.

——After preliminary decree in partition suit, application for final decree is proper course and fresh suit for absolute partition does not lie—Article 181, does not apply to such application, —Such application, however, affects properties then in suit and not new properties.

There is no limitation to an application made in partition suit after the passing of a preliminary decree. 23 O.C. 281, *Rel. on.* and 13 All. 390, *Dist.* (*Stuart, C. J. and Rasa, J.*). LALTA PRASAD v. BRAHMA DIN. 121 I C. 280=6 O.W.N. 804= A.I.R. 1929 Oudh 456.

——The application for making absolute a preliminary decree for partition is governed by Art. 181. (*Misra and Rasa, JJ.*). BISHESHWAR GIR v. SATISH CHANDRA. 112 I.C. 205= A.I.R. 1929 Oudh 117.

——*Objections to execution proceedings—Article applies.*

Article 165, Limitation Act, does not govern the cases of those applications which are filed by the parties to the suit as objections to the execution proceedings under S. 47, C. P. Code. The only article applicable in those cases is Art. 181. 38 All. 339; 42 Mad. 753 (F.B.); A.I.R. 1922 Bom. 271 and 1 L.L.J. 230, *Foll.*; 17 O C. 94; 6 O.C. 44; 21 Mad. 494, and 25 All. 343; *Diss. from.* (*Gokaran Nath Misra and Pullan, JJ.*). MT. JILAI v. ABDUL RAHMAN. 115 I.C. 445=4 Luck. 209= 5 O.W.N. 1053=A.I.R. 1929 Oudh 76.

——The procedure laid down in Rr. 3, 4 and 11 for substitution of legal representative of appellant or respondent is not exhaustive. Such application can be made at any time within period prescribed by Art. 181, Lim. Act. (*Das, Kulwant Sahay and Macpherson, JJ.*). HAKEEM SYED MD. TAQI v. FATEH BAHADUR SINGH. 10 P.L.T. 763= A.I.R. 1929 Pat. 365 (F.B.).

——Article 181 governs the limitation of every application made to a Court under any Act except those for which different periods are prescribed in

LIMITATION ACT (1908), Art. 181 — Applicability.

the Acts itself under which they are made. (*Hallifax and Kinkhede, A.J.Cs.*). SHEKH KANDU *v.* BERAR GINNING CO., LTD. 109 I C. 559= 24 N.L.R. 100=11 N L.J. 65=11 N.L.J. 200= A.I.R. 1928 Nag. 194.

———The article applicable for applications under S. 47 of the Code is Art. 181 which gives three years from the date when the right to apply accrues. (*Duval and Mitter, JJ*). UMALPATI MUKERJI *v.* SHEIKH SOLEMAN. 103 I. C. 233=54 Cal. 419= A.I.R. 1927 Cal. 614.

———Application under S. 47 must be governed by the residuary article. (*Greaves and Mukerji, JJ.*). ABDUL KADER *v.* AMBICA CHARAN. 97 I. C. 697= A.I.R. 1927 Cal. 57.

———*Article* 180 *applies to application by purchaser for delivery of possession and not Art.* 181.

Article 180 is applicable to an application by the purchaser of immovable property of a sale in execution of a decree for delivery of possession and not Art. 181. There is no warrant for extending the period of limitation by applying Art. 181 to a case where, owing to the auction-purchaser's default, delivery could not be effected. *Opinion of Oldfield, J.*, in (1918) M.W.N. 214, *Foll.*; and that *of Abdul Rahim, J. Diss.* (*Devadoss and Waller, JJ.*). VISWASUNDARA RAO BAHADUR *v.* VANNAM PAIDIGADU. 91 I. C. 485=23 M.L.W. 472= A.I.R. 1926 Mad. 385=50 M.L.J. 72

———As it is not laid down that the mortgagor before paying money is to make any application to Court, the provisions of Art. 181 would not apply to the payment of money after the date fixed for payment. (*Dalal, A. J C*). BHAWANI PRASAD SINGH *v.* RAM RATI KUNWAR. 90 I. C. 418= 28 O.C. 261= A.I.R. 1925 Oudh 649.

———Article 181 of the Limitation Act applies to an application under O. 34, R. 8 (4). (*Wazir Hasan, A.J.C.*). MD. BAQAR KHAN *v.* JAGAT NARAIN LAL. 80 I. C. 706=28 O. C. 46= A.I.R. 1925 Oudh 255.

———An application for bringing on record the legal representatives of a deceased person who was not a defendant or respondent on the date of his death is governed by Art. 181 and not by Art. 177. (*Campbell, J.*). WAHID BAKHSH *v.* LALTA PERSHAD. 73 I.C. 387= A.I.R. 1924 Lah. 316.

———An application for final decree is a proceeding in a suit and not in execution. Only one such application is permissible and it must be filed within three years of the preliminary decree. (*Wallace and Jackson, JJ.*). ATHAMSA ROWTHER *v.* GANESAN. 85 I.C. 808=35 M.L.T. 131= 1924 M.W.N. 884=20 M.L.W. 954= A.I.R. 1924 Mad. 890=47 M.L.J. 641.

———Article 181 applies to application to set aside sale in execution. (*Jackson, J.*). K. PALLAYA *v.* K. BHIMARAJU. 84 I.C. 970=20 M.L.W. 606= 1924 M.W.N. 759=35 M.L.T. 96= A.I.R. 1924 Mad. 859=47 M.L.J. 535.

———Article 181 and not Art. 166 applies where sale being void, relief is claimed under S. 47, C. P. Code. (*Schwabe, C.J., Ramesam and Waller, JJ.*). RAJAGOPALA AIYAR *v.* RAMANUJACHARIYAR. 80 I.C. 92=47 Mad. 288= 19 M.L.W. 179=34 M.L.T. 37= 1924 M.W.N. 182=A.I.R. 1924 Mad. 431= 46 M.L.J. 104 (F.B.).

———The period of limitation to bring on record the legal representatives of respondents who have died during pendency of Privy Council Appeal for purposes of execution is 8 years from the date of

LIMITATION ACT (1908), Art. 181 — Application.

the decree. 5 P.L.J. 314, *Foll.* (*Phillips and Odgers, JJ.*). KALYANI PILLAI *v.* THIRUVENKATASWAMY AIYANGAR. 80 I.C. 85= 20 M.L.W. 99=1924 M.W.N. 439= 47 Mad. 618=35 M.L T. 50= A.I.R. 1924 Mad. 695=45 M.L J. 154.

———*Judgment-debtor's application for restoration of excess property—Article* 181 *applies.*

The wording of Art. 165 of the limitation schedule makes it absolutely clear that it was intended to apply to an application provided for by O. 21, R. 100 of the C. P. Code and no other and therefore, where the applicant is a judgment debtor who has no remedy by a suit, the proper article which applies is Art. 181 and not Art. 165. 38 All. 389 and 42 Mad. 753, *Foll.* (*Macleod, C.J. and Shah, J.*). RASUL MALIK PINJAR *v.* AMINA HANIF. 68 I.C. 349=24 Bom. L R. 771= 46 Bom. 1031=A.I.R. 1922 Bom. 271.

———Where a suit is brought on behalf of a trust by a trustee impleading his co-trustee as a party defendant, and where the plaintiff dies, the suit can be continued by the latter. Order 22. R. 3, does not apply. Article 181 and not Art. 176 applies to a petition for such transposition. (*Abdur Rahim and Sadasiva Aiyar, JJ*). SAMINATHA PILLAI *v.* RAJAGOPALA MUDALIAR. 62 I.C. 360=13 M.L.W. 148=1921 M.W.N. 108= A.I.R. 1921 Mad. 124=40 M L J. 208.

———As a preliminary decree in a partition suit, is not capable of execution, an application to effect partition and to prepare a final decree is not one for execution, coming under Art 181. Such an application is one in the suit to which the law of limitation does not apply. (*Lindsay, J.C.*). TAJA MUL *v.* BUNDE RAJA. 60 I.C. 433= 7 O.L.J. 538=23 O.C. 281.

—Art. 181—Application.

———Striking off on statistical or administrative ground an application for judicial relief, does not amount to judicial disposal of it. For the purposes of limitation an application so struck off must be regarded as pending (*Pandalai, J.*). SUBRAMANIA CHETTIAR *v.* ANGAPPA ASARI. 118 I.C. 769= A.I.R. 1930 Mad. 328.

———Where under the terms of a preliminary decree for partition the Court has to appoint a commissioner and get the partition effected through him, an application reminding the Court in the matter cannot be treated as an application falling within the purview of Art. 181. 4 Mad. 172, *Rel. on.* (*Subhedar, A.J.C.*). MT. LAXMIBAI *v.* TUKARAM. 122 I.C. 441=13 N.L.J. 83= 26 N.L.R. 166= A.I.R. 1930 Nag. 206.

———The mere certification by the decree-holder of a payment to him out of Court by the judgment-debtor under R. 2 (1) is not an application within the meaning of Art. 181, Limitation Act. (*Sir Lancelot Sanderson.*) RAJA SHRI PRAKASH SINGH *v.* THE ALLAHABAD BANK LTD. 114 I.C. 581= 3 Luck. 684=56 I.A. 30=29 M.L.W 161= 33 C.W.N. 267=1929 A.L.J 33=6 O W.N. 29= 31 Bom. L.R. 289=A. I. R. 1929 P.C. 19= 56 M.L.J. 233 (P.C.).

———"*Application*"—*Meaning of.*

The mere fact that the document purporting to be made under O. 21, R. 2 (1) was called "an application," and was in the form of a petition cannot alter the real nature of the procedure and convert what was really no more than a certificate of certain payments into an "application," within

LIMITATION ACT (1908), Art. 181 — Application.

the meaning of Art. 181. (*Sir Lancelot Sanderson.*) RAJA SHRI PRAKASH SINGH *v.* THE ALLAHABAD BANK, LTD. 114 I.C. 581=3 Luck. 684=56 I.A. 30=29 M. L. W. 161=33 C.W.N. 267=1929 A.L.J. 33=6 O.W. N. 29=31 Bom. L.R. 289=A.I.R. 1929 P.C. 19=56 M.L.J. 233 (P.C.).

——Per *Mukerji, J.*—The substance of an application and not the form of it is to be looked to, to determine its nature. (*Walsh, A.C.J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHATTAR SINGH *v.* KAMAL SINGH. 100 I.C. 692=49 All. 276=25 A.L.J. 201=A.I.R. 1927 All. 16 (F.B.).

——*Application in execution, when can be treated as continuation of a previous application.*

In order that an application for execution may be treated as an application in continuation of the previous application; the previous application must have been dismissed without any default on the part of the decree-holder, and the scope and character of the two applications must be the same.

Where in an application the first condition was fulfilled; but as regards the second some new properties have been added in the fresh application, but this amendment as to adding properties was made within a reasonable time from the date when amendment became necessary,

Held, that the application ought to be treated as an application in continuation of the previous execution. (*Ross and Kulwant Sahay, JJ.*). BISHUNDEO SAHAY SAHU *v.* MAHADEO PRASAD SAHU. 102 I.C. 895=6 Pat. 274=8 P.L.T. 771=A. I. R. 1927 Pat. 223.

——*Certification by decree-holder is not application.*

The word "application," when used in Art. 181 means an application "*ejusdem generis*" in other words an application on which the Court has to decide judicially; and as certification by a decree-holder under O. 21, R. 2 (1) does not raise any point on which a Court has to decide judicially, a certification is not in any circumstances an application within the meaning of Art. 181. (*Case-law discussed.*) (*Stuart, C.J. and Raza, J.*). PRAKASH SINGH *v.* ALLAHABAD BANK, LTD., LUCKNOW BRANCH. 98 I.C. 353=1 Luck. 428=29 O.C. 358=30.W.N. 829=A.I.R. 1927 Oudh 7.

——Application made under S. 39 for the transfer of the execution of the decree is not an application for execution within the meaning of O. 21, R. 10, but an application to take a step-in-aid of execution, governed by the residuary Art. 181. (*Kanhaiya Lal and Ashworth, JJ.*). MT. SAHODRA *v.* BHAGWAN DAS. 94 I.C. 482=A.I.R. 1926 All. 473.

——*Execution application recorded for statistical purposes—Application remains pending.*

The Court passed an order on an execution application as follows. "The 3rd item was delivered to the petitioners and the petition was recorded." There were some proceedings in Court relating to item 2 and a temporary injunction prevented its delivery. Subsequent to the removal of the temporary injunction, an execution application was put in,

Held, that the original application should not be regarded as dismissed. It was still pending and the latter application was only intended to call the attention of the execution Court to the fact that the execution application had to be proceeded with. Hence there was no bar to the original execution application being proceeded with.

LIMITATION ACT (1908), Art. 181 — Execution of decree.

(*Case-law-discussed.*) (*Devadoss and Waller, JJ.*). PATTANAYYA *v.* PATTAYYA. 92 I.C. 782=1926 M. W.N. 262=A.I.R. 1926 Mad. 433=50 M.L.J. 215.

—Art. 181—Application within time.

——*See also* ART. 181—MORTGAGE DECREE.

——Redemption suit—Application for final decree within three years from decree in second appeal from preliminary decree, held to be within time. 18 Mad. 314; 22 Mad. 293; A.I.R. 1921 Mad. 414 and 39 Cal. 925, *Rel. on*; A.I.R. 1926 P.C. 93 and A.I.R. 1927 P.C. 25, *Ref.*; A.I.R. 1918 P.C. 151 and A.I R. 1928 Cal. 646, *Dist.* (*Wallace, J.*). D. VENKATARAMA *v.* DODDACHARIAR. 31 M.L.W. 207=1930 M.W.N. 104=A.I.R. 1930 Mad. 353=58 M.L.J. 207.

——Preliminary decree passed by the Trial Court merges in the decree of the Court of appeal and the latter is the only decree which can be made final. Application for final decree is accordingly within time under Art. 181 if made within 3 years of the appellate decree. (*Broadway and Campbell, JJ.*). FITZHOLMES *v.* BANK OF UPPER INDIA, LTD. 81 I.C. 649=5 Lah. 237=A. I. R. 1924 Lah. 582.

——Preliminary decree affirmed on appeal—Time for applying for final decree is 3 years from the date of affirmance. 39 All. 641; 40 All. 203; 40 Mad. 714, *Foll.* (*Mookerjee and Chotzner, JJ.*). UMA CHARAN CHAKRAVERTY *v.* NIBARAN CHANDRA CHAKRAVERTY. 75 I.C. 2=37 C.L.J. 452=A. I. R. 1923 Cal. 389.

—Art. 181—Execution of decree.

——Preliminary mortgage-decree for certain amount, against Hindu father—Sons, not parties to suit, subsequently obtaining declaration that smaller amount was binding on family—Final decree passed for the smaller amount but silent as to balance—Plaintiff applying under R. 6 for recovery of balance after three years after declaratory decree obtained by sons,

Held, that the effect of the declaratory decree obtained by the sons was to confine the charge on the family property to smaller amount only, and that the balance of the amount ceased to be a mortgage-debt and hence the plaintiff had under O. 34, R. 6, C. P. Code, no right to recover the balance of the amount.

Held further, that the right of plaintiff to recover the balance must be by execution of the decree for the balance, treating it as a simple money decree.

Held, also that since the right to recover the balance personally from mortgagor accrued to plaintiff when the declaratory decree in favour of the sons was passed, on that date, it must be deemed to have been settled, that his remedy for the balance was against the mortgagor personally.

The application which was made more than three years after the date of the declaratory decree in favour of the sons, date for execution of the personal decree was barred under Art. 181, Limitation Act. (*Sulaiman, Ag. C.J. and Weir, J.*). CHOTEY LAL *v.* LAIQ SINGH. 111 I.C. 221=26 A.L.J. 1374=A.I.R. 1929 All. 15.

——*Compromise instalment decree—On default of two successive instalments whole amount to be due—Application for recovering instalments—Article* 182 (7) *applies—Application for balance of decretal amount—Article* 181 *applies.*

Where a compromise decree directed payment by instalments on named dates, and further directed

LIMITATION ACT (1908), Art. 181 — Execution of decree.

the judgment-debtor to pay the entire balance due if he made default as to any two successive instalments.

Held, (Per *Full Bench*).—That if the application for execution is an application to recover certain instalments already overdue, Art. 182 (7) applies and limitation will run in respect of each instalment from the date on which it became payable,

Held, further, that if the application for execution is an application to recover the balance of the decretal amount remaining unpaid, Art. 181 applies and limitation will run as to the whole balance unpaid, from the date of the later of the last two successive instalments unpaid, the decree-holder being entitled to a decree for the whole balance if his application is within three years of that date less the amount of any individual instalments, which regarded as individual instalments, are not already barred by limitation.

Per *Mukerji, J.*—The provision in the decree, which makes the whole of the decretal amount payable, in case of one or more defaults, is only an ancillary clause and can have no independent existence. It is, therefore, not right to say that, there being no clause in Art. 182 which would directly apply. Article 181 should apply to it. (*Sulaiman, Ag.C.J., Mukerji and Boys, JJ.*). JOTI PRASAD *v.* SRICHAND. **112 I.C. 73=26 A. L. J. 966= 51 All. 237=A.I.R. 1928 All. 629 (F.B.).**

———*Certification of payment by decree-holder.*

It is not incumbent upon the decree-holder to certify payment by making an application for the purpose, and therefore Art. 181 does not apply. But the certification cannot be postponed indefinitely, for it must be made within three years before execution is applied for to save the decree from limitation under S. 20, Indian Limitation Act, or on the ground of waiver. A.I.R. 1922 Cal. 30, *Diss.*; 45 Bom. 91, *Appr.* (*Suhrawardy and Cuming, JJ.*). JALIM CHAND *v.* YUSUFALI CHOUDHURI. **86 I.C. 1051=30 C.W.N. 945=54 Cal. 143= A.I.R. 1925 Cal. 1012.**

———*Application by decree-holder to record payment made to him out of Court—Article* 181 *applies.*

Where a decree-holder in execution of his decree sought to escape the bar of limitation under Art. 182 by reference to a payment made by the judgment-debtor out of Court.

Held, that he was entitled to plead the payment that Art. 174 of the Limitation Act is not applicable to a case under sub-R. 1 of R. 2, of O. 21, but is applicable only to a case under O. 21, R. 2, sub-R. (2) and that under Art. 181 the decree-holder can certify the payment within 3 years of the date of payment.

There is no period of limitation for an application by decree-holder, who has received payment from the judgment-debtor out of Court, to record the payment. Therefore the only article applicable is 181 of the Limitation Schedule which provides that an application, for which no period of limitation is provided elsewhere in this schedule shall be made within three years from the time when the right to apply accrues. (*Mukerjee and Panton, JJ.*). BALI MAHAMMAD SAHI *v.* AJANMALI. **68 I.C. 780=26 C.W.N. 529=35 C.L.J. 71= A.I.R. 1922 Cal. 30.**

———Where the execution Court suspended the execution proceedings and ordered that it would not proceed with the execution unless an application was made.

LIMITATION ACT (1908), Art. 181—Execution sale.

Held, the application would be governed by Art. 181. (*Piggott and Walsh, JJ.*). MADHO PRASAD *v.* DURUPADI BIBI. **61 I.C. 417=43 All. 383= 19 A.L.J. 174=A.I.R. 1921 All. 99.**

———*Suit under O.* 21, *R.* 63, *decided in favour of decree-holder—Fresh attachment if necessary—Limitation therefor.*

A claimant's objection to attachment of property on the ground of title succeeded, but subsequently the decree holder's regular suit was finally decided against the objector,

Held, the final decision of the suit in favour of the decree-holder operated to revive the original application for attachment no question of limitation arose. But if the decree-holder's successes did not operate to revive the original application for attachment and the decree-holder had to make a fresh application the fresh application is governed by Art. 181 and not by Art. 182 of the Limitation Act. (*Wilberforce, J.*). SHIB DAS *v.* RAM NATH. **61 I.C. 817 (Lah.).**

—Art. 181—Execution sale.

———*Setting aside—Void sale—Article* 181 *applies.*

Where notice required by O. 21, R. 22, is not given but the sale or excess sale takes place such a sale is void. Being void the sale need not be set aside and as such sale need not be set aside the period of limitation (comparatively shorter) prescribed by Art. 166 would not apply, so that in cases where sales are held to be void, appropriate relief could be obtained by parties to the suit by proceedings under S. 47, the period of limitation being not the period prescribed for the setting aside of sales but general period of three years prescribed by Art. 131. A.I.R. 1924 Mad. 431 (F.B.) 7, *Foll.*; A.I.R. 1924 Mad. 859, *Expl.* and *Dist.*; A.I.R. 1926 Pat. 397, *Expl.*; 43 Mad. 313, *Ref.* (*Ananthakrishna Ayyar, J.*). CHENGALRAYA REDDY *v.* KOLLAPURI REDDI. **128 I.C. 24= 1929 M.W.N. 811=A.I.R. 1930 Mad. 12.**

———Petition for review of order confirming auction sale is application under S. 47 and governed by Art. 181. A.I.R. 1928 Cal. 60, *Rel. on.* (*Kinkhede, A.J.C.*). SUNDERABAI *v.* BAPUNA. **116 I.C. 65=A.I.R 1929 Nag. 305.**

———An application under S. 47 falls within Art. 181, Limitation Act and not under Art. 166 of the Act, although in the result the applicant asked for setting aside the sale. (*B. B. Ghose and N. K. Bose, JJ.*). HAFEZ UZIR ALI *v.* NASIMANNESSA BIBI. **116 I.C. 634=A.I.R. 1928 Cal. 865.**

———Application to declare void a sale in contravention of O. 21, R. 22 (1), C. P. Code is governed by Art. 181 and not by 166. 27 C.L.J. 528 and A.I.R. 1924 Mad. 431, (F.B.), *Foll.* (*Page and Grahman, JJ.*). MANMOTHA NATH *v.* MT. LUTCHMI DEVI. **105 I.C. 65=55 Cal. 96= 46 C.L.J. 579=A.I.R. 1928 Cal. 60.**

———The right to apply to recover property wrongly sold in execution accrues at the date of sale. (*Duval and Mitter, JJ.*). UMAPATI MUKERJEE *v.* SHEIKH SOLEMAN. **103 I.C. 233= 54 Cal. 419=A.I.R. 1927 Cal. 614.**

———Orissa Tenancy Act (B. and O. Act II of 1913) S. 227 (3)—Application under, for setting aside sale in execution is not under C.P. Code, S. 47, and is governed by Art. 181 and not by Art. 166. 38 I.C. 209, *Foll.*; A.I.R. 1925 Cal. 351, *Diss. from.* (*Kulwant Sahay and Macpherson, JJ.*). ANANTACHARAN PADHAN *v.* NIMAI BAHUBALENDRA. **101 I.C. 864=6 Pat. 366= 8 P.L.T. 186=A.I.R. 1927 Pat. 177.**

LIMITATION ACT (1908), Art. 181—Execution sale.

——Application to set aside execution sale on the ground of want of notice under O. 21, R. 22, is governed by three years' rule of limitation under Art. 181. (*Das and Adami, JJ.*). BIHARI LAL MITTER *v.* TANUK LAL MANDER.
97 I. C. 798=8 P. L. T. 28=
A. I. R. 1926 Pat. 397.

—Art. 181—Insolvency proceedings.

——Article 181 does not govern an application under S. 36 of the Provincial Insolvency Act by the Official Receiver to set aside an alienation by the Insolvent. (*Oldfield and Devadoss, JJ.*). P. RAMASWAMIAH *v.* SUBRAMANIA AIYAR.
79 I.C. 443=A.I.R. 1925 Mad. 172.

——The Court can take action under S. 53 at any time during the pendency of the proceedings when a transfer open to objection under the said section is brought to its notice, by an application made to it by a creditor of the Insolvent, Art. 181 has no application to this case. (*Moti Sagar, J.*). DARYAI SINGH *v.* KUNJ LAL. 75 I.C. 995=
A. I. R. 1924 Lah. 553.

——*Provincial Insolvency Act* (1907), *S.* 37—*Applications under, by a Receiver are not governed by Art.* 181 *of Limitation Act.*

An application under S. 37 of Act III of 1907 is not governed by Art. 181 of the Limitation Act. According to the wording of S. 37, if the High Court chooses to take action itself under that section it is not bound by any period of limitation. Therefore the fact that the Court was moved to take action by the Receiver makes no difference. The Court, if it so desires can take action under S. 37, at any time during the pendency of the proceedings when a transfer open to objection under the said section is brought to its notice and therefore there is no reason why the Receiver should be restricted by Art. 181 of the Limitation Act in moving the Court to take action. *Obiter*: even assuming Art. 181 to be applicable the right to move in the matter accrued to Receiver from day to day as long as the proceedings continued. (*Le-Rossignol and Abdul Qadir, JJ.*). PIRTHI NATH *v.* BASHESHAR NATH. 69 I. C. 403=
A.I.R. 1924 Lah. 331.

——An application under S. 36 of the Prov. Ins. Act by the Official Receiver for having a transfer made by the insolvency avoided is not governed by Art. 181 of the Limitation Act. That article applies only to applications made under C.P. Code. (*Ayling and Krishnan, JJ.*). DURAIYA SOLAGAN *v.* VENKATARAMA NAYAKER. 60 I. C. 123=
12 M.L.W. 535.

—Art. 181—Interpretation.

——Article 181 must be construed as referring to *ejusdem generis* applications with those in preceding articles, *viz.*, C.P. Code ones. (*Findlay, J.C.*). BALAJ *v.* GOPAL MALI. 102 I.C. 543=
A.I.R. 1927 Nag. 262.

——*Mesne profits—Ascertainment of.*

Under the old Code there was divergence of opinion between the High Courts upon the point of limitation of applications for ascertainment of mesne profits and the present code has tried to solve it by making the ascertaiment of mesne profits a part of the suit and in continuation thereof. No longer is such a proceeding a separate proceeding and an application for ascertainment of mesne profits is no longer an application in execution (*Jwala Prasad, A. C. J. and Kulwant Sahay, J.*). HARAKHPAN MISSIR *v.* JAGDU MISSIR. 84 I. C. 272=4 Pat. 57=6 P.L.T. 626=
1924 P.H. C.C. 265=3 Pat. L.R. Civ. 32=
A.I.R. 1924 Pat. 781.

LIMITATION ACT (1908), Art. 181 — Mortgage decree.

—Art. 181—Mesne profits.

——Article 181 applies to applications specifically provided by the C.P. Code, and therefore, it does not apply to an application for the ascertainment of mesne profits. A.I.R. 1923 Bom. 268, *Foll.*; 7 Bom. 213 and 17 Mad. 179, *Ref.* (*Patkar and Baker, JJ.*). SHANKER *v.* GANGARAM.
109 I.C. 734=52 Bom. 360=
30 Bom.L.R. 503=A.I.R. 1928 Bom. 236.

——Application for determination of mesne profits is one within the scope of Art. 181. (*Srinivasa Ayyangar and Jackson, JJ.*). ALLURI TIMMARAJU *v.* ALLURI NARASIMHA RAJU. 109 I.C. 528=
1928 M.W.N. 222=28 M.L.W. 152=
A.I.R. 1928 Mad. 522=54 M.L.J. 665.

——Pending appeal by the defendants, properties were delivered to the plaintiff in execution of the decree. Defendants succeeded in their appeal and also in the High Court. They got back their properties and then applied for mesne profits by way of restitution,

Held, that the article applicable to an application for restitution was Art. 181, Limitation Act. A.I.R. 1925 Pat. 1 (F.B.), *Foll.*; and that the time was to be computed from the date of the final decree which was the decree of the High Court and not that of the first appellate Court. 39 All. 641 and A.I.R. 1926 P.C. 93, *Foll.* (*Kulwant Sahay and Macpherson, JJ.*). RAMBU JHAWAN THAKUR *v.* BANKEY THAKUR. 114 I.C. 476=
7 Pat. 794=10 Pat.L.T. 49=A.I.R. 1928 Pat. 598.

——The right to apply for ascertainment of mesne profits will arise either when the delivery of possession is actually given or three years expire from the date of the preliminary decree. (*Jwala Prasad, A.C.J. and Kulwant Sahay, J.*). HARAKHPAN MISSIR *v.* JAGDEE MISSIR.
84 I.C. 272=4 Pat. 57=6 P.L.T. 626=
1924 P.H.C.C. 265=3 Pat.L.R. Civ. 32=
A.I.R. 1924 Pat. 781.

——*Application to ascertain mesne profits—Article does not apply.*

The Limitation Act does not apply to all applications. The applications specifically described in the 3rd division of the first schedule of the Indian Limitation Act are all the applications under the C. P. Code and under those Art. 181 must be so limited. An application to ascertain mense profits in inquiry under O. XX, R. 12 (1) (c) is not governed by Art. 181 of the Act. (*Pratt and Marten, JJ.*). THEMA ZALALJI *v.* DHANA JAWHARJI. 77 I.C. 497=A.I.R. 1923 Bom. 268.

—Art. 181—Mortgage decree.

——*Limitation for final decree runs from date of appellate decree.*

Where there has been an appeal from a preliminary mortgage decree, the period of three years within which, under Art. 181, an application for a final decree must be made runs from the date of the decree of the appellate Court and not from the expiry of the time for payment fixed by the preliminary decree. (*Case-law discussed*). (*Ananthakrishna Ayyar, J.*). DUKSHINAMOORTHI *v.* KRISHNASAMI. 123 I.C. 193=
A.I.R. 1930 Mad. 356.

LIMITATION ACT (1908), Art. 181 — Mortgage decree.

——— *Preliminary decree appealed from—Time for applying for final decree runs from appellate decree.*

Where there has been an appeal from a preliminary mortgage-decree and the appellate Court has not extended the time for payment, the period of three years within which, under Art. 181 an application for a final decree under O. 34, R. 5, Sub-R. 2, must be made, runs from the date of the decree of the appellate Court, not from the expiry of the time for payment, fixed by the preliminary decree, even when the appellate Court has confirmed the decree of the lower Court.

Where before the date of the appellate Court's decision the three years and six months had passed and therefore it was contended that decree was dead before the appellate Court gave its decision and could not be revived.

Held, that when an appellant appeals, unless there is some rule dismissing the appeal by appellate Court for want of time or an order is procured dismissing it, his appeal stands till it is heard. A. I. R. 1926 P.C. 93, *Rel. on.* (*Lord Phillimore.*) FITZHOLMES *v.* BANK OF UPPER INDIA. **100 I.C. 22=8 Lah. 253=54 I.A. 52=25 A.L.J. 78=1927 M W N. 87=38 M.L.T. 46=4 O.W.N. 181=28 P.L.R. 117=31 C. W. N. 444=45 C L.J. 297=25 M.L.W. 722=29 Bom. L.R. 782=8 P.L.T. 377=A.I.R. 1927 P.C. 25=52 M.L.J. 366 (P.C.).**

———Sale set aside—Sale proceeds refunded to purchaser by mortgagee—Mortgagee can apply under R. 6—Time runs from date of refund. 29 All. 260, *Not foll.*; 26 All. 25, *Foll.* (*Dalal and Pullan, JJ.*). BADAL SINGH *v.* DEBI SARAN DHAR. **100 I.C. 775=25 A.L.J. 485=49 All. 506=A.I.R. 1927 All. 395.**

———During the three years fixed by Art. 181 of the Limitation Act for applying for a final decree, the suit for redemption continues, and during that period rights of the mortgagor and the mortgagee are governed by the preliminary decree (*Iqbal Ahmad, J.*). ABDUL KARIM *v.* DURGA PRASAD. **100 I.C. 324= A.I.R. 1927 All. 305.**

———Appeal filed against preliminary decree—Time for applying for final decree runs from appellate decree. 36 All. 350 (P.C.), *Ref.*; 39 All. 641 (F.B.), *Affirmed*; 38 All. 21, *Overruled.* (*Viscount Dunedin.*) SAIYID JOWAD HUSSAIN *v.* GENDAN SINGH. **98 I.C. 499=6 Pat. 24=53 I.A. 197=24 A.L.J. 765=7 P.L.T. 575=1926 M.W.N. 591=44 C.L.J. 63=3 O.W.N. 690=24 M L.W 394=28 Bom. L.R. 1395=31 C.W.N. 58=A I.R. 1926 P.C. 93=51 M.L.J. 781 (P.C.).**

———*C. P. Code, O. 34, Rr. 3, 5 and 6—Distinction.*

There is a distinction between Rr. 3 and 5 and R. 6 of O. 34. Rule 6 requires no application and therefore escapes the operation of Art. 181 of the Limitation Act. Both Rr. 3 and 5 make it incumbent that the decree-holder must present an application and where an application is to be presented the period of limitation provided for such an application by Art. 181 must apply. 42 Cal. 294. *Diss.*; 42 Cal. 776 (P.C.), *Foll.* (*Dalal, C.J.*). RUDRA PARTAB SINGH *v.* MT. SURAJ KUAR. **91 I.C. 617=2 A.W.N. 842=A. I. R. 1926 Oudh 12.**

———*Limitation for an application for final decree starts from the date of appellate decree.*

Against a preliminary decree for sale in a mortgage suit against the executant and his sons, an appeal had been preferred by the sons only, on behalf of and in the interest of the whole family on the ground that the entire family property was to be exempted from the decree. An application for making the decree final was made within three years from the date of the appellate decree,

Held, that the appeal was preferred on behalf of the whole family though in the name of the sons only and the decree passed in appeal was a decree in which the first Court's decree merged and that limitation for the application for making the decree final, would run from the date of such decree and the application was within time. 39 All. 641, *Rel. on.* (*Sulaiman and Boys, JJ.*). TULA RAM *v.* BHUP SINGH. **89 I. C. 214=47 All. 913=23 A. L. J. 867=6 L. R. A. Civ. 485=A.I.R. 1925 All. 691.**

———*Article 181 applies to application under C.P. Code, O. 34, R. 5.*

An application for final decree under O. 34, R. 5 is governed by the residuary Art. 181. After the period of limitation has expired, the application by one of the defendants to set aside the preliminary decree does not revive the plaintiff's right to apply for the final decree. 33 All. 264 (P.C.), *Dist.* (*Suhrawardy and Cuming, JJ.*). MAHAMAD KAMEL *v.* AHMAD ALI. **87 I.C. 746=A.I.R. 1925 Cal. 1030.**

———*Application under C. P. Code, O. 34, R. 6—Article 181 and not 183 applies.*

An application under O. 34, R. 6 is an application for a new decree in the suit and it cannot be said to be an application for enforcing a judgment or decree within the meaning of Art. 183, and consequently Art. 183 is not applicable to an application under O. 34, R. 6. Article 181 of the Limitation Act applies to such an application and the case of 42 Cal. 294 in so far as it decided that Art. 181 does not apply to such an application, was not rightly decided. 42 Cal 294, *Overruled*; 40 All. 551, *Foll.* (*Sanderson, C.J., Walmsley, Rankin, Buckland and Mukerji, JJ.*). FRANCIS HIGGIN PELL *v.* MINNIE GREGORY. **89 I.C. 1=29 C.W.N. 678=52 Cal. 828=A.I.R. 1925 Cal. 834 (F.B.).**

———Applies to application for final decree—Limitation in case of preliminary mortgage decree is not suspended by another decree holding the property not to be the mortgagor's.

There is no suspension of the Limitation till such decree is set aside by an Appellate Court. (*Devadoss and Jackson, JJ.*). AMMATHAYI AMMAL *v.* SIVARAMA PILLAI. **85 I.C. 272=20 M.L.W. 987=A.I.R. 1925 Mad. 334=48 M.L.J. 74.**

———*Application for final decree—Date fixed for payment postponed at defendant's request—Fresh application is not necessary—Limitation Act, Art. 181 does not apply.*

The words "the day fixed" in O. 34, R. 3 refer to the day fixed under the preceding rule.

Postponement of the day fixed for payment at defendant's request does not amount to a dismissal of the application of the plaintiff to have a final decree passed. The application must be deemed to have remained pending for final orders and the Court to have postponed the passing of such orders. No further application for a final decree is necessary and any subsequent application if made in that behalf is only for the purpose of continuing the proceeding on the original application which had been suspended. Such an application is not governed by Art. 181 and there-

LIMITATION ACT (1908), Art. 181 — Mortgage decree.

is no limitation in respect of it. (*Kotval, A.J.C.*). CHIMNAJI RAIBHANJI *v.* SONAJI. **88 I.C. 901= 21 N. L. R. 47=A.I.R. 1925 Nag. 291.**

——Where only a part of the preliminary decree is appealed against, and the appeal is directed against some defendants only, those defendants who are made respondents cannot be heard to say that the time to apply for final decree runs from the date of the decree of the first Court. 40 All. 203, *Foll.* (*Ryves and Daniels, JJ.*). MAHABIR PRASAD *v.* KANHAIYA LAL. **74 I.C. 372=21 A.L.J. 526= 4 L.R.A. Civ. 278=A. I. R. 1924 All. 99.**

——*Conditional decree to be made absolute—Article* 181 *applies.*

An application for making a conditional decree passed by consent, absolute would be governed by the general Art. 181 which applies to all applications for which no period of limitation is provided elsewhere in the Limitation Act or by S. 48, C. P. Code. Even where there is a condition in the decree that until one judgment-debtor's share is found to be insufficient no steps are to be taken against the other judgment-debtor, the right to apply against both accrues at the same time. The right to apply for order absolute is one thing and the determination of the question as to which property should be sold first is another. (*Stuart and Sulaiman, JJ.*). BALDEO DAS *v.* PITAMBAR. **70 I.C. 840= A.I.R. 1923 All. 29.**

——*Mortgage-decree—Possession deliverable on plaintiff depositing Rs.* 55 *in any* Chaitra *month—Time does not begin to run until deposit is made.*

The decree was, "The plaintiff do pay to the defendants Rs. 55 in respect of the debt on mortgage in *Chaitra* of any year and the plaintiff do obtain possession of the lands in suit considering the same to have been redeemed. The plaintiff is not entitled to take possession of the lands in dispute in any other month except *Chaitra.*" The plaintiff was now seeking to execute the decree and was met by the contention that execution was barred,

Held, that the relationship of the mortgagor and mortgagee still continued to exist between the parties. It was really a preliminary decree. 43 Bom. 334, 477, *Cons.*; 23 Bom. 592, *Diss.* Under Art. 181, until he paid the money he was not entitled to possession and until possession was asked for and refused he had no right to apply to the Court. (*Macleod, C.J. and Crump, J.*). HANMANT *v.* SHIDU SAMBHU GATADA. **72 I.C. 556= 25 Bom.L R. 358=47 Bom. 692= A.I.R. 1923 Bom. 300.**

——An application for the preparation of the final decree, must be made within three years from the time "when the right to apply accrues", *i.e.*, the day fixed by the preliminary decree for payment of mortgage money. The mere fact that by a clerical error a wrong sum has been entered, does not affect the case, as there was no alteration in the decree. (*Ryves and Stuart, JJ.*). RAMCHANDAR *v.* JAIMAL. **69 I. C. 199=20 A.L.J. 640= A.I.R. 1923 All. 22.**

——The application for a final decree in a mortgage suit more than 3 years after the date fixed for payment under the preliminary decree, is barred by limitation under Art. 181 of the Limitation Act. 7 L.W. 488, *Foll.* (*Krishnan and Ramesam, JJ.*). MUMMADI VENKATIAH *v.* BOGANATHAM VENKATA SUBBIAH. **69 I.C 366= 1922 M.W.N. 11=16 M.L.W. 198=30 M.L.T. 228= A.I.R. 1922 Mad. 65=42 M.L.J. 51.**

LIMITATION ACT (1908), Art. 181—Restitution!

——Preliminary decree appealed against—Right to apply for final decree accrues from date of appellate decree. 39 All. 641, *Foll.* A.I.R. 1914 P.C. 66, *Ref. to.* (*Das and Adami, JJ.*). SAIYID JOWAD HUSSAIN *v.* GENDAN SINGH. **66 I.C. 790=1922 P.H.C.C. 164= 3 P.L.T. 329=1 Pat. 444= A.I.R. 1922 Pat. 205.**

——The starting point for limitation to applications for final decree, to which Limitation Act, Art. 181 applies, is the date of the preliminary decree of the appellate Court and not that of the original, whether the appellate decree varies or affirms the original decree. (*Wallis, C.J. and Oldfield, J.*). JAYANTI VENKAYYA *v.* DAMISETTI SATHIRAJU. **64 I.C. 470=44 Mad. 714=14 M.L.W. 180= A.I.R. 1921 Mad. 414=41 M.L.J. 117.**

——Subsequent to the date fixed for payment in the preliminary decree obtained by a third mortgagee a second mortgagee obtained a decree on his mortgage in which the Court expressed the opinion that the third mortgagee could not sell the property before he had paid off the second mortgage,

Held, that the period from the date of the judgment which contained that opinion to the date when the third mortgagee paid the sum due to the second mortgagee, should be deducted in calculating the time-limit for an application for decree absolute by the third mortgagee, assuming Art. 181 applied. (*Mookerjee, A.C.J. and Fletcher, J.*). HEMENDRA MOHAN *v.* DHARANINATH CHANDRA. **62 I.C. 418=33 C.L.J. 260= 25 C.W.N. 376=A.I.R. 1921 Cal. 381.**

——An application for a personal decree against the mortgagor or his surety after exhausting the hypothecated properties is governed by Art. 181. Even if Art. 182 applies any application for execution against the mortgagor would save limitation against the surety under Art. 182. Explanation I. (*Swinhoe, A.J.C.*). YINKE SUPAYA *v.* MAUNG KIN. **60 I.C. 23=(1920) 3 U.B.R. 261.**

—Art. 181—Restitution.

——An application under S. 144 is an application for execution of a decree passed in appeal when that decree varies or reverses the decree of the Court of first instance, it being in substance an application made for seeking the aid of the Court in working out the final decree. Where an appellate Court has ordered restitution to a person who has been dispossessed under a decree and an appeal against that order has been dismissed by the High Court the period of limitation under Art. 181 for an application for assessment of mesne profits begins to run from the date of the order of the High Court. (*Rasa and Bisheshwar Nath, JJ.*). CHANDIKA SINGH *v.* BITHAL DAS. **7 O.W.N. 1153.**

——Where a trial Court's decree is reversed in first appeal which, in its turn, is affirmed in second appeal but the trial Court's decree is executed during pendency of first appeal, the limitation for an application for restitution begins from the date of the decree in first appeal and not that in second appeal. 7 Bom. L.R. 704; 27 C.L.J. 451; and A.I.R. 1926 Cal. 981, *Dist from.* (*Rankin, C. J., C. C. Ghose and Buckland, JJ.*). HARI MOHAN *v.* PARAMESHWUR SAHA. **56 Cal. 61=117 I.C. 543= 32 C.W.N. 971=A.I.R. 1928 Cal. 646.**

——The period of limitation is three years for an application for restitution. 24 C. L. J. 469, *Foll.* (*Newbould and B. B. Ghose, JJ.*). FAZAHAR RAHAMAN *v.* ABDUL SAMAD. **92 I.C. 960= A.I.R. 1926 Cal. 981.**

LIMITATION ACT (1908), Art. 181—Restitution.

——An application for restitution under S. 144 is not an application for execution but a miscellaneous application, and Art. 181 governs it. 67 P. R. 1918. *Foll.* (*Coldstream, J.*). GUJAR MAL *v.* NARAIN SINGH. **96 I.C. 804= A. I. R. 1926 Lah. 685.**

——*C. P. Code, S. 144—Application under—If governed by Art.* 181 *or* 182.

Per *Das and Kulwant Sahay, JJ.*—An application for restitution is governed by Art. 181 and not Art. 182.

Per *Ross, J.*—There is no reason in principle why an application for restitution should not be treated as an application for execution, and therefore such an application is governed by Art. 182. 24 C. L. J. 467 (1916); 28 Cal. 113 (1900); 16 I. C. 238; (1912) 11 C.L.J. 541 (1910), *Foll.* (*Das, Ross and Kulwant Sahay, JJ.*). BALMUKUND MARWARI *v.* BASANTA KUMARI DASI. **78 I.C. 200=3 Pat. 371= 1924 P.H.C.C. 33=3 P.L.T. 145= A. I. R. 1925 Pat. 1 (F.B.).**

——The application for restitution is not an application for execution of a decree and therefore limitation cannot be governed by Art. 181, Limitation Act. (*Hallifax, A.J.C.*). LAXMAN *v.* BISHRAM. **71 I.C. 42=A.I.R. 1923 Nag. 94.**

——C. P. Code, S. 144—Application for restitution—Article 181 applies. (*Drake Brockman, J.C.*). MT. RADHA *v.* MT. SAKHU. **17 N.L.R. 62=A.I.R. 1921 Nag. 112.**

—Art. 181—Revival of execution.

——Application for reviving execution proceeding is governed by Art. 181 unless decree-holder is prevented from taking action in pursuance of his rights. Properties of the judgment-debtor were sold in execution of the decree when a third person became the auction-purchaser. The judgment-debtor having objected, the sale was set aside on 5th July, 1923. The auction-purchaser appealed against the order which was confirmed on appeal. The decree-holder filed a fresh application for execution of the decree on 15th December, 1926,

Held, that the time for reviving the execution proceedings accrued on 5th July, 1923 when the execution proceedings were at an end, the sale being set aside. The present application being made on 15th December, 1926 more than three years after the right to apply accrued, was barred. The decree holder could not take advantage of the appeal by the auction purchaser and count the period from the date of order of appellate Court. The appeal by a third party could not prevent the decree-holder from making a fresh application for execution of his decree. 12 M.I.A. 244 (P.C.); A. I. R. 1921 P.C. 31; 38 All. 21, *Ref.*; 27 All. 334 (P.C.) and A.I.R. 1921 Cal. 594, *Dist.* (*B.B. Ghose and S. K. Ghose, JJ.*). AKSHOY KUMAR *v.* ABDUL KADER. **34 C.W.N. 102=A.I.R. 1930 Cal. 329.**

——Revival of execution proceedings—Application for, must be made within 3 years from suspension. A. I. R. 1927 All. 16 (F. B.), *Foll.*; A. I. R. 1922 All. 145, *Dist.* (*Iqbal Ahmad, J.*). MT. BASANTI *v.* SIRDHAR MAL HARDIT RAI. **100 I.C. 790=A.I.R. 1927 All. 802.**

——*Application for revival of pending execution is distinct from fresh application for execution—Article* 181 *applies.*

Per *Sulaiman, J.*—The question of exclusion of time can only arise when a fresh application for execution is made, whereas it is only a previous application which has not been properly and finally disposed of which can be revived. The

LIMITATION ACT (1908), Art. 181—Revival of execution.

application for revival is not a fresh application for execution. The principle is based on equity and justice, and the decree-holder is merely to request the Court to take up and continue the proceedings which have not finally terminated, but which have remained in abeyance for some reason or other beyond his control. It is not correct to say that the amendment of S. 15 was intended to sweep away and replace the old doctrine of revival. The two principles are not co-extensive or identical. The application for revival not being a fresh application for execution cannot be governed by Art. 182. The proper article is Art. 181. 42 All. 564. *Foll.* (*Walsh, A. C. J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHATTAR SINGH *v.* KAMAL SINGH. **100 I.C. 692=49 All. 276= 25 A.L.J. 201=A.I.R. 1927 All. 16 (F.B.).**

——*Execution stayed by injunction through Court—Application for revival is governed by Art.* 181 *and time runs when obstacle to its execution is removed.*

A final decree for sale was made on the 7th June, 1913. An application for execution was made on 4th January, 1916. The decree was sent to the Collector for execution. While the execution was still pending before the Collector certain people filed a suit on 13th November, 1916 to obtain a declaration that the property ordered to be sold was not liable to be sold in execution of the decree-holder's decree. On the same day the Court seized of the suit, enjoined the decree-holders from proceeding with the same. The suit was finally dismissed by the High Court on 6th July, 1920,

Held, that the obstacle to the execution of the decree was removed on 6th July, 1920 and therefore an application for revival of the execution proceedings filed within three years of this date was within time. (*Walsh, Ag. C. J., Lindsay, Sulaiman Mukerjee and Banerjee, JJ.*). CHATTAR SINGH *v.* KAMAL SINGH. **100 I.C. 692= 49 All. 276=25 A.L.J. 201=A.I.R. 1927 All. 16.**

——Execution stayed by an injunction—Right to execute revives on injunction coming to an end—Decree-holder must apply for revival within three years from accrual of right. (*Dawson Miller, C.J. and Mullick, J.*). BIBI HAJO *v.* HAR SAHAY LAL. **89 I.C. 992=7 P.L.T. 39=A.I.R. 1926 Pat. 62.**

——*Application for execution—Further progress barred by act of Court—Application to revive is governed by Art.* 181—*Application kept on pending list need not be revived.*

It may be that where a bar to the further progress of execution proceedings has been created by an order of a Court of competent jurisdiction such proceedings may only be revived by an application under Art. 181 after the removal of the bar, but in a case where the Court intended to and did, as a matter of fact, maintain an application for execution on its pending file, and stopped proceedings for the time being and did not finally dispose of the application, an application made to the Court for the sole object of drawing its attention to the pending file, so that it may proceed with it, is not governed by any Article of the Limitation Act. An application contemplated by Art. 181 must be an application required by law to be made, and there is no provision of law which requires a decree-holder to make an application where the sole object is the continuation of proceedings in a pending case. (*Dalal, J. C. and Wasir Hasan, A. J. C.*). IQBAL NARAIN *v.* MT. JAGRANI. **85 I.C. 450= 28 O. C. 158=A.I.R. 1925 Oudh 552.**

LIMITATION ACT (1908), Art. 181—Revival of execution.

——*Article* 181 *applies.*

When an execution application is brought and properties are attached in execution of that application if any obstacle is placed in the way of the properties being sold and assets realised for the purpose of meeting the decree debt by the action of a third party putting in a claim petition and it becomes necessary for the decree-holder either to dispute the claim proceedings or to bring a suit to have the matter decided whether the properties are those of the judgment-debtor, his subsequent application to sell those properties is not governed by Art. 182 of the Limitation Act, but is in the nature of a revival of the original execution application and Art. 181 of Limitation Act will apply. This principle will apply even in the case of an attachment before judgment though it had not been followed by an application for execution of the decree after the decree was passed. (1907) 31 Mad. 71; (1919) 40 M. L. J. 1, *Foll.* (*Krishnan and Odgers, JJ.*). M. SURAYYA *v.* S. VENKATRATNAM.

79 I. C. 779=47 Mad. 176=19 M.L.W. 20=A.I.R. 1924 Mad. 210=45 M.L.J. 822.

——Application for revival of execution application dismissed for no fault of decree-holder is good by Art. 181 and S. 6 extends starting point in case of minors. (*Kanhaiya Lal, J.C.*). AKHTAR HUSAIN *v.* KUDRAT ALI. **80 I.C. 775=26 O.C. 208=11 O.L.J. 133=A.I.R. 1924 Oudh 31.**

——*Litigation by stranger setting aside sale in execution revives execution proceedings.*

Where the effect of the decree in favour of a stranger, was to set aside the sale and the decree-holder and the judgment-debtor were both parties to the suit.

Held, that by reason of the litigation which took place after the sale and by reason of the decree in favour of the stranger the execution proceedings can be said to have been revived and the subsequent execution case may be regarded as a continuation of the former execution proceedings. (*Mullick and Bucknill, JJ.*). RADHA KISHUN LAL *v.* KASHI LAL. **76 I.C. 927=2 Pat. 829=1 Pat.L.R. 358=1923 P.H.C.C. 342=6 P.L.T. 343=A.I.R. 1924 Pat. 273.**

——On the amendment of the preliminary decree in a mortgage suit by the mortgagee, the decree-holder's right to obtain a final decree which is barred by limitation is not revived and the decree-holder does not become entitled to a final decree on the basis of the amended decree. (*Drake-Brockman, J. C.*). NANHELAL *v.* GULSHANRAI.

68 I. C. 919=18 N.L.R. 58=A.I.R. 1922 Nag. 217.

——Previous application suspended by objection afterwards found groundless—Subsequent application may be treated as continuation of previous application. 37 Cal. 796, *Foll.*; 27 All. 334 (P.C.); A.I.R. 1921 P.C. 31, *Rel. on.* (*Mookerjee and Panton, JJ.*). AJODHYA NATH PAHARY *v.* SRINATH CHANDRA PAHARY. **68 I.C. 207=35 C.L.J. 84=26 C.W.N. 338=A.I.R. 1921 Cal. 472.**

—Art. 181—Starting point.

——As soon as right of possession to land is disturbed, right to apply accrues under Art. 181.

So long as he is in possession it does not matter to him what orders of excess sales or excess deliveries are passed behind his back. (*Anantha-krishna Ayyar, J.*). CHENGALRAYA *v.* KOLLAPURI.

123 I.C. 24=1929 M.W.N. 811=A.I.R. 1930 Mad. 12.

——An application falling within Art. 181 must be made within three years commencing from the date when the right to apply accrues, that is from the date on which the relief which the applicant seeks in available to him. A.I.R.1928 Cal. 646 (S.B.), *Rel. on.* (*Rupchand, A.J.C.*). VASHINJI GOVERDHANDAS *v.* VASSUMAL WADHUMAL.

122 I.C. 392=24 S.L.R. 132=A.I.R. 1930 Sind 180.

LIMITATION ACT (1908), Art. 181—Starting point.

——Application for execution made beyond time. Application to be regarded as application for extension of time governed by Art. 181.

The period of limitation begins to run at the latest on the last date fixed in the original decree for payment. 43 Bom. 689, *Foll.* (*Brown, J.*). MAUNG SAW *v.* MA SHIN. **A.I.R. 1929 Rang. 304.**

——Preliminary decree for redemption passed—Mortgagor not paying amount within six months—Mortgagee not applying for final decree—Court extending time for payment by mortgagor and accepting payment of after six months—Limitation for final decree begins from the date for payment so extended.

Per Shah, J.—Where the time is extended and the payment is made within that extended time the mortgagor must be taken to have paid into Court the amount declared due on the day fixed within the meaning of this rule; and it is possible that the Legislature intended that where the payment was made by the mortgagor, the application for making the decree final was necessarily implied, and that, therefore, the words as to application to be found in sub-R (2) were not considered necessary in sub-R. (1). (*Shah and Percival, JJ.*). MORU NARUSET *v.* GANGABAI RAMACHANDRA.

93 I.C. 953=53 Bom. 730=23 Bom.L.R. 1325=A. I. R. 1927 Bom. 33.

——Application to certify payments made within three years of decree may be made within three years from such payments and decree-holder will have fresh start for limitation from such application—Limitation Act, Art. 182. (*Godfrey, J.*). MAUNG LAW SAN *v.* MAUNG PO THEIN.

84 I.C. 369=84 .I. C. 473=3 Bur. L.J. 235=2 Rang. 393=A.I.R. 1925 Rang. 26.

——*Date of decree means the date when the decree becomes executable.*

A compromise decree provided that the money should be payable without interest within six months and that if no such payment was made, the decree-holder should be entitled to recover his money with interest at Re. 1 per mensem from the date of decree.

Held, that the decree did not become capable of execution till a default had been made by the judgment-debtor to pay the decretal money within the period allowed and whether Art. 181 or 182 (7) was applied, the time would not commence to run till after the expiry of that period. The amount to which the decree-holder became entitled became then determinable and recoverable. 19 A.L.J. 26 (P.C.) and 40 Mad. 989, *Foll.* (*Kanhaiya Lal, J.*). SURAJMAN CHAUBE *v.* ANJORE SHUKUL.

79 I.C. 605=46 All. 73=21 A.L.J. 861=4 L.R.A. Civ. 591=A.I.R. 1925 All. 263.

——After passing a preliminary decree in a mortgage suit the Court appointed a Receiver to sell the mortgaged properties. The proceedings of the Receiver were slow and the deed of conveyances were not executed till long after the settlement of the terms of the sale in favour of the mortgagee decree-holder,

Held, application for balance was not barred by Art. 181. Time did not begin to run till the deed

LIMITATION ACT (1908), Art. 181 — Starting point.

of conveyance had been executed. The appointment of Receiver though unusual is perfectly legal. (*Piggott and Walsh, JJ.*). RAJ NARAIN MAL *v.* SANTI LAL. **79 I.C. 85=21 A.L.J. 37=4 L.R.A. Civ. 73=A. I. R. 1923 All. 203.**

——Decree *nisi* for foreclosure—Receiver appointed—Starting point of limitation for application for making decree final runs from the date when the decree-holder was given liberty to apply for final decree. The decree-holder is incompetent to make such an application so long as the Receiver is in possession of the mortgaged properties. (*Das and Adami, JJ.*). CHOTTEY NARAIN SINGH *v.* KEDAR NATH SINGH. **66 I.C. 97=3 P. L. T. 565=1 Pat. 435=1922 P.H.C.C. 342=A.I.R. 1922 Pat. 201.**

—Art. 181—Time-barred applications.

——Execution against property specified in execution application failing for no fault of decree-holder's—Subsequent application to proceed against other properties, though beyond three years of decree is not barred.

When on an application for execution made in accordance with law, execution cannot be successfully taken against the property specified, by reason of causes for which the decree-holder is in no way responsible, he should not be confined to the properties first specified. It is open to him to ask the Court to proceed against other properties specified in his supplementary list and his application to so proceed though beyond time is not barred. (*Odgers and Wallace, JJ.*). MANGAMMA NAYAKURALU *v.* RAMADASAPPA. **88 I.C. 204=A. I. R. 1925 Mad. 981=48 M.L.J. 563.**

——Mortgage-decree not made final—Previous applications for final decree will not save limitation for later applications therefor. (*Macleod, C.J. and Crump, J.*). HARJIWAN DEORAJ *v.* GAJANAN KASHINATH. **73 I.C. 187=25 Bom. L.R. 459=A. I. R. 1923 Bom. 420.**

—Art. 182.

Amendment decree (Cl. 4).
Appellate decree (Cl. 2).
Applicability.
Applications.
Applications within time.
Construction.
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Date of decree (Cl. 1).
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Interpretation.
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Keeping alive.
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Revival of execution.
Saving of time.
Step-in-aid (Cl. 5).
Sureties (Expln. 1).

—Art. 182—Amended decree (Cl. 4).

——Application for amendment made within time—Action of Court in delaying amendment beyond time does not prejudice decree-holder's right in respect of decree. A. I. R. 1929 Cal. 650, *Foll.*; A.I.R. 1924 Lah. 329; A.I.R. 1921 Cal. 89; A.I.R. 1921 P.C. 31; 59 I.C. 186; 2 P.L.J. 286; 36 Mad. 135; 18 C.W.N. 266 and 25 Cal. 258, *Dist.* (*Wort and Kulwant Sahay, JJ.*). MT. BHAGWATI KUER *v.* NARSINGH NARAYAN SINGH. **11 P.L.T. 181=A.I.R. 1930 Pat. 286.**

LIMITATION ACT (1908), Art. 182 — Amended decree (Cl. 4).

——If there has been an amendment of a decree which was incapable of execution, the period shall run from the date of the amendment, otherwise it must date back to the date of the original decree. (*Dalal, J.*). MT. MAHARANI *v.* DEBI DAS. **115 I.C. 118=1929 A.L.J. 427=A. I. R. 1929 All. 253.**

——*Appeal from amended decree postpones execution.*

Upon strict construction of Art. 182 or in principle, case of an appeal from amended decree is in no way different from case of an appeal from any other decree and as in the other case, appeal from an amended decree postpones the date from which limitation runs for execution purposes. A.I.R. 1928 Cal. 646, (S.B.), *Dist.* (*Rankin, C.J. and B.B. Ghose, J.*). NAGENDRA NATH *v.* AMBICA CHARAN. **50 C.L.J. 12=33 C.W.N. 958=A.I.R. 1929 Cal. 676.**

——Decree amended—Limitation for execution runs from date of amendment—Executing Court cannot question propriety of the amendment. (*B.B. Ghose and S.K. Bose, JJ.*). DURGA PRASAD *v.* KEDARNATH NAYIK. **A.I.R. 1929 Cal. 650.**

——A decree-holder made an application for execution claiming the correct amount as due to him. In the sale proclamation, however, by some clerical mistake, a lesser amount was put down. The sale proceeded but the decree remained unsatisfied as to a certain amount. Long after 3 years from first application but within 3 years from intermediate application the decree-holder again executed the decree and claimed the correct amount due to him. The Court held that the decree-holder having failed within three years' time to have the figure corrected is debarred from executing the decree in respect of the correct amount. In no instance, however, did the decree-holder claim anything less than what was actually due to him under the decree,

Held, that the decree-holder was not precluded from claiming the correct amount due to him,

Held, further, that the matter might have been different if he had allowed an order to be passed that the decree had been fully satisfied, on receiving a lesser amount. (*B. B. Ghose and Bose, JJ.*). RAKHAL CHANDR DE *v.* CHAYEN MONDAL. **111 I. C. 698.**

——Application for execution filed within three years of a modified decree is in time. (*Zafar Ali, J.*). PAREM CHAND *v.* BUDHA. **100 I.C. 164=A. I. R. 1927 Lah. 719.**

——The "date of amendment" in Art. 182 (4) means the date of the order for amendment and not the date on which the decree is actually amended. (*Phillips and Madhavan Nair, JJ.*). VENKATASWAMI NAIDU *v.* VENKATASUBBA NAIDU. **95 I.C. 196=49 Mad. 807=23 M.L.W. 692=A.I.R. 1926 Mad. 747=50 M.L.J. 554.**

——*Amendment after period of limitation—Decree not revived.*

Where a decree is quite capable of execution as it stands, its amendment cannot entitle the decree-holder to a fresh period of limitation under Art. 182, Cl. (4). A decree which is capable of execution and is not executed within three years from its date becomes dead and cannot be revived by a subsequent application for amendment.

LIMITATION ACT (1908), Art. 182—Appellate decree (Cl. 2).

32 I.C. 744; 59 I.C. 186, *Foll.* (*Abdul Raoof and Moti Sagar, JJ.*). JHAMMAN LAL *v.* DAULAT RAM.
73 I.C. 461=5 L.L.J. 398=A.I.R. 1924 Lah. 329.

—Art. 182—Appellate decree (Cl. 2).

——The second clause of Art. 182 is not intended to cover an appeal from an order refusing to set aside a decree. (*Rankin, C.J. and C. C. Ghose, J.*). PROFULLA KUMAR BASU *v.* SEROJBALA.
35 C.W.N. 155.

——*Appeal against other defendants in which decree against some defendants not challenged and has become final—Time begins to run from date of decree of trial Court and not from date of decree in appeal.*

The expression 'final decree' clearly implies that the appeal should be from the decree which is sought to be executed; or at any rate, in the appeal that decree should be impugned, so that the order passed by the appellate Court should finally incorporate the decree of the first Court. In cases where the first Court's decree becomes merged in the appellate Court's decree, time, of course, begins to run from the date of the appellate Court's decree. Article 182 does not mean that, even if an appeal has been preferred against other defendants in which the decree against some defendants who are not parties to the appeal is not challenged in any way and has, in fact, become final the time can still be enlarged by reason of the appeal. 13 All. 1 (F.B.) and A.I.R. 1921 All. 56, *Rel. on*; 26 Mad. 91 (F.B.) and 47 Cal. 813, *Not foll.* (*Sulaiman and Niamatullah, JJ.*). JADU NANDAN RAM *v.* PARSOTAM GINNING CO., LTD.
1930 A.L.J. 941=A.I.R. 1930 All. 636.

——Where once an appellate decree is passed, whether it confirms, varies, or reverses the decree of the Original Court, or it is the only decree capable of execution for it has been substituted for that of the Original Court and technically a fresh application for execution is necessary. 18 Bom. 203; 19 Bom. 258; 39 Bom. 175; 39 All. 641; 11 All. 267; A.I.R. 1925 Bom. 270; 8 Cal. 218; 23 All. 152 (P.C.) and A.I.R. 1924 Cal. 686. *Rel. on.* (*Murphy and Broomfield, JJ.*). HARILAL DALSUKHRAM SAHEBA *v.* MULCHAND ASHARAM.
32 Bom. L.R. 300=A.I.R. 1930 Bom. 225.

——Decree amended long after judgment—Appeal preferred from amended decree—Amended decree modified—Second appeal preferred to High Court dismissed—Correct date for determining time for execution is date of dismissal of second appeal. (*Rankin, C.J., and B. B. Ghose, J.*). NAGENDRA NATH *v.* AMBICA CHARAN. **30 C.L.J. 12=33 C.W.N. 958=A. I. R. 1929 Cal. 676.**

——Decree prepared by Subordinate Court according to directions in the appellate judgment is the decree of appellate Court and not of the Subordinate Court.

And an application for execution within three years of the passing of the appellate judgment is within time. (*Wazir Hasan, J.*). JAI LAL *v.* MAHOMED HAROON. **108 I.C. 112=5 O.W.N. 157=A.I.R. 1928 Oudh 228.**

——Preliminary mortgage-decree—Final decree passed during pendency of appeal from the former—Test to determine the starting point is whether appellate decree imperils decree under execution. (*Dawson-Miller, C.J. and Mullick, J.*). SOMAR SINGH *v.* DEVANANDAN PRASAD SINGH.
110 I.C. 483=A.I.R. 1928 Pat. 581.

——An application for execution was presented more than three years after an *ex parte* decree was passed, and it was sought to be proved to be within time on the ground that limitation ran from the date of the appellate decree passed on an application of judgment-debtor who applied to set aside the *ex-parte* decree,

Held, that an application to set aside an *ex-parte* decree does not keep the decree open, and is not to be regarded as an appeal from the *ex-parte* decree itself. 8 Cal. 218, *held wrongly decided.* 16 Bom. 123; 21 Cal. 387; 3 P.L.J. 119, *Foll.* (*Page and Graham, JJ.*). FAKIR CHAND *v.* DAIBA CHARAN. **104 I.C. 466=54 Cal. 1052=A.I.R. 1927 Cal. 904.**

——*R* obtaining decree against *G* on 29th March, 1922, —*G* appealing—*R* dying during pendency of appeal — No substitution in his place— Appeal declared to have abated on 21st May, 1925—Time will begin to run from 21st May, 1925, and not from 29th March, 1922. (*Case-law considered.*) (*Mukerji and G.N. Roy, JJ.*). GOUR BEPARI *v.* RAM KRISHNA. **104 I.C. 566=46 C.L.J. 111=A.I.R. 1927 Cal. 760.**

——*Time for applying for execution runs from date of appellate decree even when the appeal is against a portion of the decree.*

When a decree is appealed against even though the appellant appeals against only a portion of the decree, the whole decree of the first Court is superseded by or becomes merged in the decree of the appellate Court, and there is no part of the first Court's decree that remains to be executed. There is only one decree to be executed and that is the decree of the appellate Court. Hence time for applying for execution runs from the date of the appellate Court's decree. 25 Cal. 594 (F. B.), *Foll.*; 2 C. L. R. 471; 14 Cal. 26; 19 C. W. N. 287 and 20 C.W.N. 686, *Diss. from.* (*Cuming and Page, JJ.*). ABDUL ALIM *v.* ABDUL HAFEZ.
97 I.C. 838=53 Cal. 901=44 C. L. J. 554=31 C.W.N. 262=A.I.R. 1927 Cal. 89.

——Final decree passed during pendency of appeal from preliminary decree—Appeal dismissed—Application for execution—Time runs from date of dismissal of appeal.

The intention of the Legislature in making this provision, *i.e.*, Art. 182, Cl. (2), was that if an appeal in any way imperils the decree sought to be executed, then the date of the final disposal of the appeal should be the date from which the period of limitation ought to be computed. 33 All. 264, *Ref. to*; 3 P.L.J. 119, *Dist.*; 19 C.W.N. 287, *Not foll.* (*Ross and Kulwant Sahay, JJ.*). SOMAR SINGH *v.* DEONANDAN PRASAD SINGH.
102 I.C. 811=8 P.L.T. 379=6 Pat. 780=A.I.R. 1927 Pat. 215.

——Final decree for partition, ordering one defendant to pay costs to another—Plaintiff appealing—All defendants made parties—Appeal dismissed—Time for recovering costs awarded to the one defendant as against the other runs from dismissal of appeal. (*Lindsay and Kanhaiya Lal, JJ.*). KASHI PRASAD *v.* MATHURA PRASAD.
89 I.C. 268=48 All. 6=23 A.L.J. 878=6 L. R. A. Civ. 516=A.I.R. 1926 All. 145.

——Where an appeal is filed but withdrawn an application to execute within three years of withdrawal is not time-barred. (*Mears, C. J. and Lindsay, J.*). RAM CHANDRA NAIK KALIA *v.* NAZER ALI. **94 I. C. 390=25 A.L.J. 554.**

——*Appeal by some—Appellate decree is the final decree for all.*

LIMITATION ACT (1908), Art. 182 — Appellate decree (Cl. 2).

Where some of the parties to a decree appealed against it, the decree in appeal is the final decree for the purpose of the execution with respect to all the parties. Where the appeal by the judgment-debtor abated against some decree-holders, even those decree-holders are entitled to treat the appellate decree as the final decree. 5 P.L.J. 731, *Not foll.*; 33 Bom. 39, *Foll.* (*Das and Ross, JJ.*). HIA LAL KUMAR *v.* GANU MAHTO. **91 I.C. 308= 7 P.L.T. 209=4 Pat. 844=1925 P.H.C.C. 224= A.I.R. 1925 Pat. 585.**

——Appeal from part, and by some parties, brings article into operation. (*Case-law discussed*). (*Jwala Prasad and Kulwant Sahay, JJ.*). SOMAR SINGH *v.* MT. PREMDEI KUER. **79 I.C. 794= 3 Pat. 327=5 P.L.T. 21=1924 P.H.C.C. 105= A.I.R. 1925 Pat. 40.**

——Time begins to run from the date of appellate decree where decree is appealed against. (*Chatterjea and Panton, JJ.*). KRISHNA LAL BURMAN *v.* SATYA BALA DEBI. **81 I.C. 569= 51 Cal. 342=A.I.R. 1924 Cal. 686.**

——*Dismissal after hearing of an appeal for want of proper Court-fee is not absence of appeal.*

Where appeal was admitted and was heard by the Court and a decree was pronounced dismissing the appeal upon the ground that it was incompetent as the appeal was not valued and proper Court-fees had not been paid,

Held, that, it cannot be said that there was no appeal within the provisions of Art. 182 (2). The word appeal cannot be read to mean *bona fide* appeal. 6 All. 438, *Dist.* (*Walmsley and Ghose, JJ.*). BASANTAKUMAR ROY *v.* MANJURI DASI. **74 I.C. 679=A.I.R 1924 Cal. 349.**

—— Where the preparation of the final decree was purely a ministerial act to enable the order of His Majesty-in-Council to be enforced,

Held, it could not be contended that the execution proceedings were not taken in order to enforce the order of His Majesty-in-Council. 8 Cal. 218 F.B.; 20 Cal. 551, *Foll.* (*Adami and Bucknill, JJ.*). MT. BHAGWAT KUER *v.* ZAMIR AHMAD KHAN. **78 I.C. 766=3 Pat. 596=5 P.L.T. 451= 1924 P.H.C.C. 221=2 Pat. L.R. Civ. 249= A.I.R. 1924 Pat. 576.**

——"Where there has been an appeal"—Appeal means appeal from decree or order sought to be executed.

They do not include an appeal from an order dismissing an application to set aside an *ex parte* decree. (*Prideaux, A.J.C.*). JABARKAN *v.* RAHIM KHAN. **68 I.C. 728=18 N.L.R. 190= A.I.R. 1922 Nag. 197.**

——*Appeal against only one defendant—Time for execution against other defendant is also from date of appellate decree.*

Plaintiff, sued *A* and *B*, upon a hand note. The suit against *A* was decreed, but against *B*, it was dismissed. Plaintiff appealed against the decree dismissing his suit and did not implead *A*, as a party. His appeal was dismissed, and within three years of the date of the appellate decree he applied for execution against *A* and the question was whether the application was barred by limitation,

Held, that the application was not barred, as time ran from the date of the appellate decree finally dismissing the suit against *B*. (*Teunon and Beachcroft, JJ.*). SATISH CHANDRA *v.* GIRISH CHANDRA CHAKRAVARTY. **60 I.C. 915=47 Cal. 813.**

——The starting point for limitation is the date of the appellate decree. (*Oldfield and Seshagiri Aiyar, JJ.*). VISWANTHA SASTRI *v.* SITALAKSHMI AMMAL. **61 I.C. 979=13 M.L.W. 37= 1921 M.W.N. 181=A.I.R. 1921 Mad. 126.**

LIMITATION ACT (1908), Art. 182—Applicability.

——*Order returning memorandum of appeal to be presented to proper Court—If appellate decree.*

An order directing the return of the memo. of appeal for presenting to the proper Court is not a 'final order' nor is the Court an 'Appellate Court' within Art. 182 (2) and the time for executing the decree does not run from the date of such order. (*Oldfield and Seshagiri Ayyar, JJ.*). MAHOMED ABDUL KHADIR *v.* SAMI PANDIA. **60 I.C. 267= 43 Mad. 835=12 M.L.W. 304=1920 M.W.N. 587= 39 M.L.J. 431.**

——An order by which an appeal abates is not the final decree or order contemplated by the clause. (*Coutts and Sultan Ahmed, J.*). TEKAIT KRISHNA PRASAD SINGH *v.* WAZIR NARAIN SINGH. **2 P.L.T. 49=A.I.R. 1921 Pat. 280.**

——*Inexecutable order may also be "order" within the meaning of Art.* 182.

Where there has been an appeal and where that appeal has been properly presented and is within time any order of the High Court dismissing the appeal or putting an end to the appeal in any way is either a decree or order within the meaning of the present Art. 182 (2), although it may be that in many cases such an order is not an order of which execution could be sought. 36 All. 350 (P.C.) and 36 All. 284 (P.C.). *Dist.* (*Dawson Miller, C.J. and Ross, J.*). RAGHU PRASAD SINGH *v.* JADUNANDAN PRASAD. **59 I.C. 896= 6 P.L.J. 27=2 P.L.T. 28=1921 P.H.C.C. 34= A.I.R. 1921 Pat 6.**

——Appeal not lying but appeal *bona fide* presented to Court which would have jurisdiction—Time should be excluded under Art. 182.

Per *Madgavkar, A.J.C.*—It is well settled that at least where the appeal imperils the whole decree, the words "where there has been an appeal" must be construed in their plain sense and that the Courts cannot add to these words provisions such as "where an appeal lies" or "by the judgment-debtor proceeded against." 33 All. 264; 9 Cal. 100 and 20 C.W.N. 178, *Foll.* (*Kennedy, J.C. and Madgavkar, A.J.C.*). DONALD GRAHAM *v.* KEWALRAM. **79 I.C. 477= 16 S.L.R. 245=A.I.R. 1921 Sind 132.**

—Art. 182—Applicability.

——*Giving time by the decree-holder to the judgment-debtor does not take an execution application out of Art.* 182.

Article 182 is the article framed for an application for execution of a decree. Article 181 could be brought into play only when there are definite circumstances which would make Art. 182 inapplicable. Those circumstances should not and cannot include an alleged fact that the judgment-debtor had been given time out of Court without any record of that fact being placed in the proceedings.

A decree-holder made an application for execution. Before the date fixed for sale, the decree-holder made another application to the Court stating that he had given the judgment-debtor six month's time, that his application may be struck off and the judgment-debtor saddled with costs. He was not taken on his word and the Court directed that the judgment-debtor should appear in order to verify the application. On the day fixed for appearance the judgment-debtor did not appear and Court struck off the application.

LIMITATION ACT (1908), Art. 182 — Applicability.

More than three years after this an application for execution was again made. It was attempted to prove the oral agreement granting six months' time to bring the case within the purview of Art. 181,

Held, that the only article that could apply to the subsequent application was Art. 182 and not 181. A.I.R. 1927 All. 16; A.I.R. 1927 All. 165, *Dist.* (*Mukerji, J.*). MAHAMMAD ISHAQ *v.* BALDEO PRASAD. **114 I.C. 894=A.I.R. 1929 All. 606.**

——*Decree not directing sale of mortgaged property in case of default by mortgagor to pay—Decree should be treated as under S.* 375, *Act XIV of* 1882, *and not under S.* 92, *Transfer of Property Act and Art.* 182 *will apply.*

Certain persons instituted a suit for redemption of a certain mortgage against *A* and *S*. At that time, the procedure in respect of mortgage suits was governed by the provisions of certain sections of the Transfer of Property Act. The parties entered into an amicable arrangement and a decree was passed giving effect to the terms of that arrangement. The decree stated that if the plaintiffs, who represented the mortgagors paid a certain sum at any time to the defendants, the representatives of the mortgagees, the defendants, were to restore to them the possession of the mortgaged property. *A* was then a minor. He was not a party to the compromise. The same *A* claiming that he was the representative of one of the mortgagors in 1926, applied to pay the money into Court and to redeem the property as against *S*.

Held, that the decree as it failed to give the mortgagee authority to sell the property was not a decree under S. 92, T.P. Act, and therefore, must be treated as a decree under S. 375, Act XIV, 1882, and so it was governed for the purpose of limitation by Art. 182. (*Stuart, C.J. and Raza, J.*). IRSHAD AHMAD *v.* MT. SAIDUNNISSA.

110 I.C. 77=3 Luck. 578=5 O.W.N. 364=A.I.R. 1928 Oudh 286.

——*Decree of Chief Court executed by High Court—Limitation for execution is governed not by Art.* 183 *but by Art.* 182.

The object of S. 26, Burma Courts Act (II of 1912) is simply and solely to provide for the execution of decrees of the Chief Court by the High Court, which succeeded it. It was not intended that a decree of the Chief Court should come under a different law of limitation simply because it was executed by the High Court. The article applicable therefore to such decrees is Art. 182 and not Art. 183. (*Pratt, Offg.C.J. and Cunliffe, J.*). ALIBHAI MOHAMMAD *v.* MAHOMED NOORMAHOMED. **114 I.C. 674=6 Rang. 566=A.I.R. 1928 Rang. 317.**

——Applications for enforcing final decree for sale in mortgage suits are applications for execution and are governed by Art. 182 and not by Art. 181. 42 All. 564, *Dist.* (*Ross and Kulwant Sahay, JJ.*). SONEAR SINGH *v.* DEONANDAN PRASAD. **102 I.C. 811=6 Pat. 780=8 P.L.T. 379=A.I.R. 1927 Pat. 215.**

——*C. P. Code, O.* 21, *R.* 95—*Decree-holder, auction-purchaser—Application under the rule is governed by Art.* 182.

An order on an application under O. 21, R. 95, by an auction-purchaser who is also decree-holder, is an order under S. 47, C.P.Code. The application is governed by the limitation laid down in Art. 182 and not by Art. 180.

Where the auction-purchaser is the decree-holder himself and he presents an application or possession, he occupies therein, in reality, a dual position. He is, from one point of view the auction-purchaser applying to be put in possession of his property, while from another point of view he is the decree-holder claiming to have his decree fully satisfied by having, so to speak, the proceeds of the decree made over to him. A.I.R. 1926 Cal. 798 (F.B.); 41 All. 479; 35 Bom. 452; 28 Mad. 87 and 31 Cal. 737, *Foll.* (*Findlay, J.C.*). BALAJI KASHINATH *v.* R.B. ANAND RAO. **103 I.C. 335=A.I.R. 1927 Nag. 294.**

LIMITATION ACT (1908), Art. 182—Application.

——That the making of an order of contribution is not controlled by any rule of limitation does not lead to the conclusion that the enforcement of the same order is equally not so controlled. Steps taken for the enforcement of the order are controlled by the general law of limitation. (*Wazir Hasan and Raza, JJ.*). PEOPLE'S INDUSTRIAL BANK, LTD., ALLAHABAD *v.* MAHESH CHARAN SINHA. **93 I.C. 631=1 Luck. 153=13 O.L.J. 43=3 O.W.N. 237=A.I.R. 1926 Oudh 289.**

——*Execution struck off as claim being satisfied—Further execution is governed by Art.* 182.

Where the case is not one of execution proceedings being obstructed or delayed by suits being brought to elucidate the rights of the objector or for other matters asked and the case is not struck off merely because the decree-holder was not by reason of litigation in a position to proceed at once, but on the footing that his claim has been satisfied,

Held, the application for execution against other properties on the footing that the decree is wholly unsatisfied is governed by Art. 182 and not by Art. 181. (*Rankin and B.B. Ghose, JJ.*). BILODEV SARMA KHANUD *v.* SOUTI BORDALOI. **84 I.C. 983=40 C.L.J. 246=A.I.R. 1925 Cal. 207.**

——*Non-payment within time being not penalized ordinary limitation applies.*

A decree was silent as to the effect of non-payment of the decretal amount within the time limited,

Held, the decree-holder is entitled to enforce his decree at any time within the period of limitation prescribed for execution of decree in Art. 182 of Sch. I to the Limitation Act notwithstanding the fact that the amount was deposited after the fixed time. 19 I.C. 856; 14 All. 350, *Foll.* (*Moti Sagar, J.*). MAHABIR PERSHAD *v.* KARTAR SINGH. **76 I.C. 144=A. I. R. 1924 Lah. 636.**

—Art. 182—Application.

——"*In accordance with law*"—*Meaning of.*

An application for execution which does not contain any description of the property and other particulars required by O. 21, R. 13 of the C.P. Code, cannot be deemed to be 'an application in accordance with law' for the purpose of saving limitation under Art. 182. (*Murphy, J.*). SAKKARGANDA *v.* BHIMAPPA. **32 Bom. L.R. 1368.**

——Application for revival of previous execution proceedings containing additional prayer for arrest of judgment-debtor is not fresh application. 27 All. 334, *Rel. on*; A.I.R. 1923 Pat. 488, *Dist.* and *Diss. from.* (*Tapp, J.*). MUHAMMD RAFFI AND SONS *v.* KOTAH STATE, PROPRIETOR OF KOTAH STATE GLASS FACTORY. **A.I.R. 1930 Lah. 753.**

——Execution of decree conditional on payment of certain amount to judgment-debtor—Still application for execution without payment is valid. The fact that the application is dismissed for non-fulfilment of the condition is for purpose of limitation immaterial. 34 Bom. 189, *Rel. on.* (*Subhedar, A.J.C.*). MT. BHURIBI *v.* RAHMATBI. **122 I.C. 438=13 N.L.J. 79=A.I.R. 1930 Nag. 241.**

LIMITATION ACT (1908), Art. 182—Application.

———Application under C. P.Code, O. 21, R. 50 (2) is not one for execution within Art. 182. A. I. R. 1921 P.C. 31, *Ref.* (*Rupchand, A.J.C.*). VASHINJI GOVERDHANDAS *v.* VASSUMAL WADHUMAL.
122 I.C. 392=24 S. L. R. 132=
A.I.R. 1930 Sind 180.

———Per *Thiruvenkatachariar, J.*—When an application for execution of the decree is returned for amendment on the ground that it does not comply with the requirements of R. 11, O. 21, but the application is not amended and represented to the Court within the time fixed by it, the question whether it was in accordance with law will depend upon whether the defects were material or only trivial and such as could not mislead either the Court or the judgment-debtor. A mere non-compliance with the order of the Court directing amendment cannot have the effect of making the application to be not in accordance with law. (*Wallace and Thiruvenkatachariar, JJ.*). ABDUL KARIM SAHIB *v.* LAKSHMANASWAMI.
112 I. C 36=27 M L W. 475=
A.I.R. 1928 Mad. 440.

———An execution application, though not stamped does not become necessarily invalid, especially when action has been taken thereon without objection. (*Madhavan Nair and Curgenven, JJ.*). KRISHNAYYA *v.* SRIRAMULU. **106 I.C. 485=**
A.I.R. 1928 Mad. 142.

———The circumstance that a man does not really wish to obtain the execution for which he has asked, is not a *mala fide* act which renders an application made in accordance with law unlawful. A.I.R. 1926 All. 95, Appr. (*Stuart, C. J., and Raza, J.*). MT. RA RUAYA BIBI *v.* PRAG TEWARI.
110 I.C. 704=3 Luck. 580=5 O.W.N. 353=
A.I.R. 1928 Oudh 337.

———Execution application filed after limitation —Warrant of arrest ordered—Costs not deposited —Subsequent application for execution though filed within time from prior one is not within time, first application being infructuous. 8 Cal. 51 (P.C.), *Expl.* and *Dist.*; 22 Bom. 83, *Foll.* (*Pratt, Offg. C. J. and Cunliffe, J.*). ALIBHAI MOHAMED *v.* MOHOMED NOOR MOHAMED. **114 I. C. 674=**
6 Rang. 566= A. I. R. 1928 Rang. 317.

———Application barred by limitation—Mention of payment made by judgment-debtor in the application does not save limitation—Application for certification must be prior to execution application. A.I.R. 1924 All. 706, *Foll.* (*Boys and Kendall, JJ.*). JEWALA SAHAI *v.* BHIM SINGH.
100 I.C. 574= A.I.R. 1927 All. 827.

———Direction to consign papers to record room, is not a final disposal of execution application. A. I. R. 1927 All. 16 (F. B.), *Appr.* and *Foll.* (*Walsh, A.C.J., Lindsay, Dalal, Mukerji, Ashworth, Kendall and Pullan, JJ.*). BAIJ NATH *v.* RAM BHAROS. **104 I.C. 116=49 All. 509=**
25 A.L.J. 249= A.I.R. 1927 All. 165 (F.B.).

———There is nothing in the section which would justify the conclusion that an application which is not strictly necessary, is an application which is not in accordance with law. (*Stuart, C. J. and Raza, J.*). RAMLAL *v.* UDIT NARAIN SINGH.
100 I.C. 308=2 Luck. 419=4 O.W.N. 175=
A.I.R. 1927 Oudh 134.

———*Application—"In accordance with law"—What are.*

If an application for execution returned for amendment and not re-filed within the time allowed by the Court under O. 21, R. 17, C. P. Code, is in substantial compliance with the provisions of the Code, being defective merely in omitting immaterial particulars, it should be taken as an application in accordance with law within the meaning of Art, 182 (5) of the Limitation Act. 25 Cal. 594 (F.B.) and A.I.R. 1924 Pat. 23, *Foll* (*Suhrawardy and Page, JJ.*). PITAMBAR JANA *v.* DAMODAR GACHAIT. **98 I.C. 166=**
53 Cal. 664=30 C.W.N. 918=45 C.L.J. 86=
A.I.R. 1926 Cal. 1077.

———*Application for execution of decree against wrong person if comes under Art.* 182.

Where the suit was instituted against three persons whose names were mentioned in the plaint in a certain order and the Court, when writing its judgment, altered the serial numbers of the defendants and although apparently it intended to pass a decree, against *D*, the decree was passed against *B*, and where applications for execution were filed against *B*,

Held, that the applications for execution which were filed were wrong on the face of the decree, the only applications which could have been made, and therefore they must be deemed to have been made in accordance with law under Art. 182. (*Sulaiman, J.*). DEBI BAKHSH *v* SHAMBU DIAL.
94 I.C. 877=48 All. 281=24 A.L.J. 266=
A.I.R. 1926 All. 384.

———Application for certificate of transfer is not application for execution. Therefore subsequent application for execution cannot be deemed to be a continuation of it. (*Lindsay and Sulaiman, JJ.*). MT. BEGAM SULTAN *v.* SARVI BEGAM.
90 I.C. 274=48 All. 121=23 A.L.J. 977=
6 L.R.A. Civ. 582=A.I.R. 1926 All. 93.

———A *bona fide* application to execute a decree against a particular judgment-debtor is in accordance with law, and the parties who contend that it is not, are bound to prove it. (*Wallace, J.*). PARAKKAT DEVASWOM *v.* VENKATACHALAM.
92 I.C. 709=23 M.L.W. 22=
A.I.R. 1926 Mad. 321=50 M.L.J. 153.

———An application praying for a relief which perhaps the Court would not have granted is still treated as an application in accordance with law for the purposes of Art. 182. 37 Bom. 42, *Foll.* (*Krishnan, J.*). SUBRAMANIAN CHETTY *v.* RAMASWAMI CHETTY. **91 I.C. 11=22 M.L.W. 744=**
49 M.L.J. 753.
1926 M.W.N. 27=A.I.R. 1926 Mad. 179.

———An application may be in accordance with law and yet the applicant may not be entitled to any relief on account of circumstances other than there being any defect in the application itself. (*Mullick, A.C.J. and Kulwant Shay, J.*). JAGENDRA PRASAD NARAYAN SINHA *v.* MANGAL PRASAD SHAU. **90 I.C. 847=7 P.L.T. 330=**
1925 P.H.C.C. 315=A.I.R. 1926 Pat. 160.

———Application to certify payments made within three years of decree may be made within three years from such payments and decree-holder will have fresh start for limitation from such application. (*Godfrey, J.*). MAUNG LAW SAN *v.* MAUNG PO THEIN. **84 I.C. 369=84 I.C. 473=**
2 Rang. 393=3 Bur. L.J. 235=
A.I.R. 1925 Rang. 26.

———Application against defendants who were declared insolvents is inoperative against them as well as others. 31 All. 309; 27 Bom. 42, *Cons.* (*Shah and Coyajee, JJ.*). GHANASHAM DAS BALKRISHNA DAS GUJAR *v.* MOTICHAND HARAKCHAND GUJARATHI. **77 I.C. 747=25 Bom. L.R. 1237=**
A.I.R. 1924 Bom. 180.

LIMITATION ACT (1908), Art. 182—Application.

——*Disposal of—What amounts to.*

Disposal of a petition is not always to be taken literally and absolutely terminating the proceedings. It can be taken in the wide sense, which has received general recognition, of mere termination for administrative and statistical purposes amounting only to a suspension of proceedings until some obstacle has been removed or stage, fixed by the Court and parties, has been reached. Court's intention is to be found out. (*Oldfield and Devadoss, JJ.*). AISSA KAMMA *v.* PUTHIA PURAYIL KANNACHAM KANDI.

76 I.C. 126=1923 M.W.N. 670=1924 M.W.N. 636=19 M.L.W. 613=A.I.R. 1924 Mad. 178.

——The right to apply for ascertainment of mesne profits will arise either when the delivery of possession is actually given or three years expiry from the date of the preliminary decree. (*Jwala Prasad, A.C.J. and Kulwant Sahay, J.*). HARAKHPAN MISSIR *v.* JAGDEE MISSIR.

84 I. C. 272=4 Pat. 57=5 P.L.T. 626=1924 P.H.C.C. 265=3 Pat. L.R. Civ. 32=A. I. R. 1924 Pat. 781.

——"*In accordance with law*"—*What is.*

The words "in accordance with law" should not be pressed too far in favour of a judgment-debtor who has not paid his debt; and certainly an application does not become contrary to law merely because it has been dismissed.

Where the decree-holder came before the Court with a perfectly honest and *bona fide* application properly expressed for execution of a decree, but while pointing out the fact that he was unable to execute the decree against the judgment-debtor individually, he asked the Court to allow joint execution whereas such joint execution was not permissible in view of an order passed,

Held, it cannot be said that decree-holder when making his application, can be reasonably considered to have known that he was making an application which the Court was incompetent to grant and his application may be considered to be in accordance with law. (*Pullan, A.J.C.*). RUDRA PRATAB SINGH *v.* SHEO PRASAD. **79 I. C. 880=11 O.L.J. 604=A.I.R. 1925 Oudh 77.**

——*Application conforming with O. 21, Rr. 11 to 14 but returned for some other reason is not invalid.*

Order 21, Rr. 11 to 14 give the particulars which the law requires to be stated in an application for execution. If the application conforms with those rules and is presented upon a properly stamped paper it must be taken to have been properly presented in accordance with law. If not, the Court is empowered either to reject the application or to allow the defect to be remedied within a time to be fixed by it. It may therefore be inferred from this that where the application is returned on the ground that the requirements of the rule have not been complied with and is not amended within the time fixed, it cannot be regarded as having been presented in accordance with law; but it is nowhere stated, that where the application conforms with the prescribed requirements and is returned for some other reasons shall not be deemed to have been presented in accordance with law. 23 Cal. 217, *Not foll.* (*Dawson Miller, C.J. and Kulwant Sahay, J.*). BHAGWAT PROSAD SINGH *v.* DWARKA PRASHAD SINGH. **74 I.C. 174=2 Pat. 809=4 P.L.T. 513=1923 P.H.C.C. 229=1 Pat. L.R. (Civ.) 453=A.I.R. 1924 Pat. 28.**

LIMITATION ACT (1908), Art. 182—Application within time.

——*Application not mentioning previous application is not in accordance with law and will not save limitation.*

An application for execution failed to mention costs and the previous application and the Court returned it for amendment. The amended application was not signed and verified and it was filed,

Held, the omission to mention the amount of costs is a defect of immaterial character but the omission to mention, as required by O. 21, R. 11 (*b*), the previous application was such a material defect as to render the application not in accordance with law, as it did not show whether the application was within the period of limitation. "In accordance with law" is a phrase adjectival not only to the words "the proper Court for execution" but also to the words "to take some step in execution." If a fresh application is not made, after such an irregular application, within three years of the application before the irregular one, it is barred. (1906) 33 Cal. 867; (1896) 22 Bom. 83, *Foll.* (*Kennedy, J. C. and Raymond, A.J.C.*). SAHIJRAM TAHILRAM *v.* TOWER. **65 I.C. 14=15 S.L.R. 156=A.I.R. 1922 Sind 29.**

——A mere mistake in calculating interest or even deliberately calculating more interest than was due, does not make an application for execution one not in accordance with law. If more interest than was due is charged it may be considered as a mere surplusage and be struck out. 12 All. 64; 27 All. 619 and (1890) A. W. N. 93, *Dist.*; 9 C.L.J. 443, *Ref.* (*Walsh and Ryves, JJ.*). JAMILUNNISSA BIBI *v.* MATHURA PRASAD.

63 I.C. 362=43 All. 550=19 A.L.J. 509=A.I.R. 1921 All. 208.

——Order that application by one of two or more plaintiffs is incompetent means that application is not "in accordance with law." (*Fawcett, J.C. and Raymond, A.J.C.*). IBRAHIM *v.* FIRM OF GULAM HUSSAN. **62 I. C. 507=15 S.L.R. 11=A.I.R. 1921 Sind 13.**

——An application for the ascertainment of mesne profits is one in execution and is not a proceeding in continuation of the suit, and therefore comes under Art. 182, 37 Mad. 186; 24 Bom. 149. *Foll.*; 19 Cal. 132 (F.B.); 25 All. 385; 26 All. 623 and 40 All. 211, *Not foll.* (*Macleod, C.J. and Shah, J.*). GANGADHAR MANIKA *v.* BALAKRISHNA SAIROBA.

61 I.C. 448=45 Bom. 819=23 Bom. L.R. 263=A.I.R. 1921 Bom. 404.

—Art. 182—Applications within time.

——*Moneys awarded under preliminary decree—Execution for—Can be made in 3 years of final decree.*

The preliminary decree provided *inter alia* that the plaintiffs were entitled to recover from the defendants a certain sum as their costs and also another amount per year for subsequent profits and that a commissioner should be appointed to divide the plaint property into three equal shares so as to fix the two-thirds share of the plaintiffs. A final decree was passed later on, under which certain plots marked in the commissioner's plan were directed to be given to the plaintiffs for their two-thirds share and this decree further provided that the defendants should pay to the plaintiff Rs. 7 for equalisation of the value of the trees and Rs. 14 towards the costs incurred subsequent to the passing of the preliminary decree,

Held, that the first decree was not by itself executable and an execution petition presented after three years from the date of the preliminary

LIMITATION ACT (1908), Art. 182—Applications within time.

decree but within 3 years of the final decree was not barred by limitation, even so far as regards the prayer therein for the realization of the amounts awarded under the preliminary decree. 36 Mad. 104, *Foll.* (*Reilly, J.*). ANNAMALAI CHETTIAR *v.* RAJAPPIER. **109 I.C. 829 (Mad.).**

——An application made by a legal representative, for execution more than three years after the decree-holder's death is not time-barred when it is within three years of an application made previously by other representatives. (*Stuart, C.J. and Raza, J.*). MIRZA MD. SADIK ALI *v.* SAJJAD MIRZA. **105 I.C. 611=3 Luck. 126=4 O.W.N. 1025=A.I.R. 1928 Oudh 30.**

——Where under a compromise decree plaintiff was to get possession and management of trust properties for two years and the defendant for two years thereafter and so on alternatively, an application for execution was made though beyond three years of the previous application for execution but within three years of the period of two years when he was entitled to possession and management,

Held, the application was in time. (*Phillips and Odgers, JJ.*). KOTHANDARAMASWAMI NAIDU *v.* PAPAMMAL. **79 I. C. 891=A.I.R. 1925 Mad. 218.**

——*Suspension of execution proceedings—Application just after suspension is over revives former application.*

Where execution proceedings are suspended at the instance of a stranger having filed a suit in respect of the property, which is the subject-matter of the execution proceedings, an application made just after the close of that suit, is not time-barred though it is filed more than three years after the date of suspension. The application is in effect one to revive the old one and not a new application at all. 27 All. 337, (P.C.), *Foll.* (*Walsh and Kanhaiya Lal, JJ.*). MAHAMED HAJI *v.* DEBI PRASAD. **77 I.C. 871=A.I.R. 1923 All. 600.**

——Application outside 3 years of decree—Order recording payment within 3 years—Application is in time. (*Hallifax, A.J.C.*). NARAYAN RAO *v.* BALKRISHNA. **67 I.C. 899=A.I.R. 1923 Nag. 11.**

—Art. 182—Construction.

——Certificate of payment is not an application within the meaning of Art. 182. A.I.R. 1928 All. 629, *Foll.* (*Dalal, J.*). BANS GOPAL *v.* MEWA RAM. **A. I. R. 1930 All. 461.**

——Provided the application for execution is made in accordance with law the question of the decree-holder's intention in applying for execution being *bona fide*, or otherwise is immaterial. A.I.R. 1929 All. 625 (F.B.), *Foll.*; A.I.R. 1926 All. 95, *Not foll.* (*Sen and Niamatullah, JJ.*). DHARAMDEO RAI *v.* JWALA PRASAD. **122 I. C. 179=1930 A.L.J. 474=A.I.R. 1930 All. 188.**

——The amendment will not disturb vested rights and so subject to this limitation an application made after the1 st January, 1928 will necessarily be governed by the amended Act. (*Ross and Scroope, JJ.*). SAPANI PATRA *v.* DAMODAR KAR. **A.I.R. 1930 Pat. 207.**

——*As amended by Act IX of* 1927.

Article 182 is plain in its meaning. The time limited is three years from the date of final orders passed or an application made in accordance with law to the proper Court for execution or to take some step-in-aid of execution of the decree or order. (*Ross and Scroope, JJ.*). SAPANI PATRA *v.* DAMODAR KAR. **A.I.R. 1930 Pat. 207.**

LIMITATION ACT (1908), Art. 182—Construction.

——*Appeal does not operate as stay of execution but only postpones the time of limitation.*

In execution purposes an appeal by itself never operates as a stay. There is the right to execute the moment the decree is passed; but if there is an appeal the time of limitation is postponed and does not run until the decree determining the appeal is made. So the broad principle in India as regards execution matters is that time is not computed from the date when the right to apply accrues but is postponed in cases where there is an appeal. (*Rankin, C. J. and B. B. Ghose, J.*). NAGENDRA NATH *v.* AMBICA CHARAN. **50 C.L.J. 12=33 C. W. N. 958=A.I.R. 1929 Cal. 676.**

——Word "appeal" refers to appeal from decree and not from order rejecting application to set aside *ex parte* decree. 8 Cal. 248, *held not good law* (*Bhide, J.*) MULKH RAJ *v.* GURUDITTA SHAH HARI CHAND. **120 I.C. 179=11 L. L. J, 61=30 P. L. R. 283=A. I. R. 1929 Lah. 283.**

——Words "application in accordance with law to the proper Court for execution" do not refer to anything more than what they state.

In placing a construction on the words of Art. 182, a Court should look at the words themselves and nothing else and not endeavour to introduce extraneous considerations. (*Stuart, C. J. and Raza, J.*). MT. RURAYA BIBI *v.* PRAG TEWARI. **110 I.C 704=3 Luck. 580=5 O.W.N. 353=A.I.R. 1928 Oudh 337.**

——*Order directing applications to be struck off without notice to the decree-holder is not a judicial order.*

Per *Walsh, Ag.C.J.*—An order made by a Judge upon an application which is still pending that it be "struck off" or "sent to the record room" made either without notice to decree-holder or without giving him an opportunity of being heard is a ministerial order and cannot be regarded, speaking generally, as a judicial disposal of the application on merits, though special circumstances may appear which make it so.

Per *Lindsay, J.*—An order directing an execution application to be struck off is not an order sanctioned by any rule. A.I.R. 1926 All. 409, *Foll.* (*Walsh, A.C.J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHATTAR SINGH *v.* KAMAL SINGH. **100 I.C. 692=49 All. 276=25 A.L.J. 201=A.I.R. 1927 All. 16 (F.B.).**

——Per *Walsh, Ag. C J. and Mukerji. J.*—Whether an application is in substance a fresh application or an attempt to revive a former one is, as a general rule, a question of fact to be decided with reference to all the circumstances of the case. (*Walsh, Ag. C.J., Lindsay, Sulaiman, Mukerji and Banerji, JJ.*). CHATTAR SINGH *v.* KAMAL SINGH. **100 I.C. 692=49 All. 276=25 A. L. J. 201=A.I.R. 1927 All. 16 (F.B.).**

——*The article should be liberally construed in favour of the decree holder.*

Article 182 should receive a fair and liberal and not too technical a construction so as to enable the decree-holder to obtain the fruits of his decree. The language of the article ought not to be strained in the judgment-debtor's favour. 39 Mad. 923, *Foll.* (*Kinkhede, A.J.C.*). RAMACHANDRA *v.* UKA. **103 I.C. 279=A.I.R. 1927 Nag. 308.**

——"In accordance with law"—Application to a Court having no jurisdiction is not one.

"Applying in accordance with law" means applying to the Court to do something which by law

LIMITATION ACT (1908), Art. 182—Construction.

that Court is competent to do and not to do something which the decree-holder presumes that the Court is competent to do. (*Sulaiman, J.*). RAMRAJ *v.* MT. UMRAJI. 93 I.C. 292=A.I.R. 1926 All. 345.

———Execution petition praying for rateable distribution—Petition is in accordance with law if decree is for recovery of money. (*Stuart, C. J. and Wasir Hasan, J.*). GOBARDHAN DASS *v.* JANG BAHADUR. 98 I.C. 33=1 Luck. 569= 3 O.W.N. 749=A.I.R. 1926 Oudh 616.

———"In accordance with law"—Rejection of relief prayed for does not render the petition one not in accordance with law, whether the petition be "for execution" or to take some step-in-aid of execution." (*Stuart, C.J. and Wazir Hasan, J.*). GOBARDHAN DASS *v.* JANG BAHADUR.

98 I.C. 33=1 Luck. 569=3 O.W.N. 749= A.I.R. 1926 Oudh 616.

———Rules 11-14 of O. 21 complied with—Application is in accordance with law. A.I.R. 1924 Pat. 23, *Foll.* (*Mullick, A.C.J. and Kulwant Sahay, J.*). JOGENDRA PRASAD NARAYAN SINHA *v.* MANGAL PRASAD SAHU. 90 I.C. 847= 7 P.L.T. 330=1925 P.H.C.C. 315= A.I.R. 1926 Pat. 160.

———*Defective application—Defect not serious—Defect cured by leave of Court—Date of original filing is date on which execution must be held to be taken.*

One of the previous applications for execution was filed on the 24th June, 1920, a date within 3 years of the next previous application. The requirements of O. 21, Rr. 11 to 24 had not been complied with. The Court did not reject the application but returned the application for the defect to be remedied under R. 17 within a certain time fixed by the Court. The time fixed was 15 days and the defect was remedied on 4th July, 1920.

Held, there was no necessity for the return of the application and the Court ought to have kept the application. The time fixed for the curing of the defect may be exoluded by the Court under S. 148 of the C. P. Code. As the Court after the defect was cured started proceedings in sale it must be presumed that the Court extended the time under the authority vested in it under S. 148. Under these circumstances, the application of 24th June, 1920 was a legal one and not defective and must be taken to be the one on which the execution proceedings were taken by the Court. Hence the date of filing the application must be taken to be 24th June, 1920 and not 14th July, 1920, 26 Mad. 101 and 40 Mad. 949, *Considered.* (*Dalal, J.C.*). DURGA PRASAD SINGH *v.* JOKHU RAM. 86 I.C. 591=12 O.L.J. 109=2 O. W. N. 70= 28 O.C. 382=A.I.R. 1925 Oudh 399.

———Issue of notice does not save limitation under Art. 182 (6), Sub-Cl. (6) has to be read with sub-Cl. (5). The words 'applied for' mean 'applied for as provided in sub-Cl. (5).' (*Campbell, J.*). FIRM SHERU MAL CHINA MAL *v.* FIRM HIRA LAL ANANT RAM. 78 I.C. 251= A.I.R. 1925 Lah. 233.

———*Mere non-compliance with a condition of decree—Application is proper.*

The plaintiff got a decree under which he was to produce in the Court within 18th March, 1916, for payment to defendant No. 1 Rs. 1,000—He took out a Darkhast No. 115 of 1919 but it was struck off as the 1,000 rupees were not paid into Court,

Held, that it cannot be said that that Darkhast was not in accordance with law merely because the party did not comply with the conditions of the decree. (*Macleod, C. J. and Crump, J.*). MAHOMAD SHIDIK *v.* MAHOMAD HASSAN.

LIMITATION ACT (1908), Art. 182—Continuation of proceedings.

A.I.R. 1925 Bom. 64.

———It has never been held necessary that an execution application in order to save limitation should be directed to the same property or even indeed the same person. (*Daniels, J.*). GOPI NATH SHUKUL *v.* SAT NARIAN SHUKUL. 74 I.C. 1014= A.I.R. 1923 All. 384.

———Application for execution defective—Defect ordered to be amended—Default in making amendment—Dismissal of application for such default—Application cannot be held to have been made at all. In such case the question of the triviality of the defect in the application does not arise at all. (*Hallifax, A.J.C.*). MEGHRAJ *v.* ABDUL MAJID KHAN. 63 I.C. 971=17 N.L.R. 179= 4 N.L.J. 71=A.I.R. 1921 Nag. 28.

—Art. 182—Continuation of proceedings.

———Order recording execution petition with permission to decree-holder to renew, is improper but if passed, subsequent execution becomes continuation of previous one. A.I.R. 1925 Mad. 152; A.I.R. 1926 Mad. 453, *Ref.* (*Wallace and Walsh, JJ.*). GANAPATHI MUDALI *v.* MEERA SAHIB. 121 I.C. 845=A.I.R. 1930 Mad. 303.

———Execution application in continuation of previous application—Scope of both applications must be the same. (*Adami and Kulwant Sahay, JJ.*). IBRAHIM HUSSAIN KHAN *v.* SHEOPRATAP-NARAIN. 89 I.C. 886= A.I.R. 1926 Pat. 129.

———Where the properties sought to be attached in two applications are different, the latter is not the continuation of the former, nor where the former application has been dismissed for default of the decree-holder. (*Das and Ross, JJ.*). MT. RESHMA KUARI *v.* RAMESHWAR OJHA. 79 I.C. 897=A.I.R. 1925 Pat. 197.

———*Continuation of previous application should be determined from character and scope of the latter application.*

In order to entitle a decree-holder to claim that an application should be regarded as a continuation of the previous application, two conditions must be satisfied; first that the previous application was dismissed for no fault or default on his part, and secondly that the latter application is similar in scope and character to the previous application and in order to determine whether an application may be considered as similar in scope and character to a previous application, a fair test to apply would be to see if the decree-holder could have got the relief in the previous application which he claims in the subsequent application; supposing his previous application had not been struck off. (*Das and Adami, JJ.*). DHAROHAR SINGH *v.* RAM PRASAD NARAYAN-SAHAI. 72 I. C. 862= 1 Pat. L. R. 139=A.I.R. 1924 Pat. 367.

———*Prior application for sale of properties—Later application for arrest—Latter cannot be regarded as continuation of former.*

An application can only be considered as a continuation of the previous application, when it is similar in scope and character to the former application. Where the former application asked the Court, in form and in substance, to sell the properties of the judgment-debtor other than those which were comprised in the mortgage bond, and the next application in form and in substance,

LIMITATION ACT (1908), Art. 182 — Continuation of proceedings.

asked the Court to realise the money from the judgment-debtor by his arrest and detention in prison.

Held, that it is quite impossible to regard the second application as a continuation of the previous application. The fact that the decree obtained was a mortgage decree makes no difference. 2 P.L.T. 22, *Foll.* (*Das and Adami, JJ.*). RAMASHIVENDRA *v.* AWADH BEHARI SARAN.
71 I. C. 332=4 P.L.T. 393=A.I.R. 1923 Pat. 488.

———Previous application suspended by objection afterwards found groundless—Subsequent application may be treated as continuation of previous application. 37 Cal. 796, *Foll.*; 27 All. 334 P.C.; A. I. R. 1921 P. C. 31, *Rel. on.* (*Mookerjee and Panton, JJ.*). AJODHYA NATH *v.* SRINATH CHANDRA.
68 I.C. 207=35 C.L.J. 84=26 C.W.N. 338=A.I.R. 1921 Cal. 472.

———Previous proceedings stopped due to death of decree-holder—Application for execution by representative within 3 years of closure of previous application is not barred. (*Dhobley, A.J.C.*). BHAURAO *v.* LAHANO.
64 I.C. 855=A. I.R. 1921 Nag. 64.

—Art. 182—Date of decree (Cl. 1).

———*Time runs only from final decree though preliminary decree is executable.*

Where a compromise decree was passed in a mortgage suit which was itself executable but the decree-holder applied subsequently for a final decree which was passed without any objection by the judgment-debtor,

Held, that limitation for an application for execution commenced to run only from the date of the final decree and not from the date of the compromise decree. (*Sulaiman, A. C. J. and Sen, J.*). ABBAS ALI *v.* GULAB RAI.
121 I.C. 818 (All.).

———*Words "the date of decree" mean the date of effectiveness of the decree*—(*Obiter*).

Where a mortgage-decree stated that the property mortgaged by *H* should be put up to sale first, and if the sale of that property was not sufficient to satisfy the decretal money, the sale of the property mortgaged by *F* should follow forthwith,

Held, that an application to proceed against *F's* property would be in time if it was made within three years of the period since the decree-holder became entitled to proceed against that property. (*Stuart, C. J. and Raza, J.*). MT. FATIMA BEGAM *v.* RANJIT KHAN.
105 I.C. 545=1 L. C. 543=A.I.R. 1927 Oudh 488.

———Limitation runs from that order alone which has finality as a decree.

Prior orders, if any, in the same suit, though they may have decided some rights of the parties, cannot give a starting point for limitation. (*Das and Adami, J.*). GOPAL SARAN NARAYAN SINGH *v.* DEONANDAN MAHTON.
102 I.C. 106=8 P.L.T. 141=A.I.R. 1927 Pat. 171.

———*Partition decree—Date of decree is the date of judgment.*

The date of the decree under the article is the day on which judgment is pronounced and limitation begins to run from that date although no formal decree can be drawn up in a partition suit until paper bearing a proper stamp under Art. 45 of Stamp Act is supplied to the Court. (*Sanderson, C.J. and Richardson, J.*). KISHORI MOHAN PAL *v.* PROVASH CHANDRA MONDAL.
72 I. C. 646=A.I.R. 1924 Cal. 351.

———*List of properties cannot be supplemented out of limitation.*

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Time must begin to run from the date of the final decree, however informally it is expressed. A subsequent application made after the expiry of the period of limitation for execution of the decree, to add other properties to the list given in original application which is within the period of limitation should not be allowed. (*Walmsley and B. B. Ghose, JJ.*). HAYATUNESSA CHOWDHURANI *v.* ACHIA KHATUN.
74 I. C. 1017=50 Cal. 743=A.I.R. 1924 Cal. 131.

———*Execution of* ex parte *decree—Time taken in attempting to set aside the decree cannot be excluded.*

An application for execution of an *ex parte* decree against which no appeal is preferred is governed by Art. 182, Cl. (1) and the time taken by the defendant in prosecuting his application for setting aside the *ex parte* decree cannot be deducted nor does the limitation begin from the date of the dismissal of the application. (*Prideaux, A. J. C.*). JABARKHAN *v.* RAHIM KHAN.
68 I.C. 728=18 N.L.R. 190=A.I.R. 1922 Nag. 197.

———Where the original decree is incapable of execution, time runs from the date when a proper decree capable of execution has been drawn up. (*Mookerjee and Panton, JJ.*). SANATAN SANT *v.* DINABHANDU GIRI.
64 I. C. 622=34 C. L. J. 397=A.I.R. 1921 Cal. 89.

———*Decree for perpetual injunction—Application within 3 years of breach is proper.*

When a perpetual injunction has been granted on each successive breach of it the decree may be enforced by an application made within 3 years of such breach. 29 M. 314; 28 A. 300; 23 A. 465, *Ref.* Cultivation of land is an infrigement of the right of grazing and every successive season in which the land has been cultivated is the occasion of a fresh breach of the injunction. (*Chevis, J.*). UDMI *v.* SOHAN LAL.
66 I. C. 166 (Lah.).

—Art. 182—Execution proceedings.

———*Execution of decree made conditional—Condition not fulfilled—Application for execution—If in accordance with law.*

Obiter.—If execution of a decree is conditional on prior payment by the decree-holder of Court-fees, or of the mortgage debt in a redemption suit or on discharge by the decree-holder of an incumbrance or anything else, an application by the decree-holder for execution without fulfilling such a condition is nevertheless one in accordance with law, it being open to the Court, on such application, to order execution on previous compliance by the decree-holder of the condition imposed by the decree. (*Subhedar, A.J.C.*). MT. BHURIBI *v.* RAHMATI.
122 I.C. 438 (Nag.).

———*C. P. Code, O. 21, R. 95—Application under, by auction-purchaser who is also decree-holder for recovery of possession, is not a proceeding in execution and is not a step-in-aid of execution.*

Broadly speaking, the fact that the decree-holder and auction-purchaser are one and the same person can have no bearing on the rights and liabilities attaching to a decree-holder as such, and the rights and liabilities attaching to an auction-purchaser as such. In a case, therefore, where the decree-holder is himself an auction-purchaser and the sale has been confirmed and a sale-certificate granted, the decree-holder must be taken to have received from himself, as auction-purchaser, the sale-price, and it is as auction-purchaser and as auction-purchaser alone that he can proceed to make an application, if necessary, under O. 21, R. 95, and there-

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fore the application under O. 21, R. 95, by an auction-purchaser to recover possession is not a proceeding in execution and not a step-in-aid of execution even when such application is made by the decree-holder, who is also the auction-purchaser. 31 All. 182 (F.B.). *Foll.*; 19 All. 477 and 41 All. 479, *Cons.* and *Not foll.* (*Boys and Iqbal Ahmad, JJ.*). MOBSIN RAZA KHAN *v.* HAIDAR BAKHSH. 115 I.C. 869=50 All. 670=26 A.L.J. 498=A.I.R. 1928 All. 368.

——Assignment of plaintiff's rights pending suit —Application by assignee for execution is not legal —He must follow procedure laid down in C. P. Code. O. 22, R. 10, or O. 21, R. 16. (*Case-law reviewed.*) (*Fawcett and Madgavkar, JJ.*). GENARAM *v.* HANMANTRAM. 93 I.C. 833=28 Bom.L.R. 761=A.I.R. 1926 Bom. 406.

——Right to apply for continuance is not barred till 3 years from date of their ceasing to be pending—Proceedings are not closed by Court merely recording them. 31 Mad. 71 and 36 Mad. 553, *Foll.* (*Jackson, J.*). P. KRISHNAYYA SHANBAGA *v.* PUTTANAYYA. 84 I.C. 897=1925 M.W.N. 298=35 M.L.T. 107=20 M.L.W. 565=A.I.R. 1925 Mad. 152=47 M.L.J. 608.

——Time-barred application allowed and proceedings continuing thereunder—Proceedings provide a fresh starting point of limitation. 8 I.A. 123 and 44 Bom. 227, *Foll.* (*Macleod, C. J. and Fawcett, J.*). PRABULINGAPPA *v.* GURUNATH BALAJI. 89 I.C. 747=45 Bom. 453=A.I.R. 1921 Bom. 256.

—Art. 182—Final order (Cl. 5).

——*Three years period—Starting point.*

Under Art. 182 (5) of the Limitation Act as amended the three years' time is to be calculated from the date when the previous application is filed but from the date when the final order on such application is passed. (*Mallik, J.*). KANAI LALL SABUI *v.* PURNA CHANDRA CHATTERJI. 34 C.W.N. 733.

——*Application more than three years from last application excluding period of injunction restraining execution is barred.*

On 7th July, 1917, the execution of a mortgage decree for a sale of a house was first taken out. On September 12th, 1917, injunction was granted restraining the sale of half the house. On 19th November, 1917, an application was made to take a step-in-aid of execution with respect to the other half of the house. That half of the house was sold, The injunction was dissolved on 8th November, 1918. Application for execution with respect to the other half was made on January 10th, 1922.

Held, that the last application was made on 19th November, 1917, and limitation began to run from that date. The only period which the decree-holder was entitled to exclude on account of the injunction was from 19th November, 1917, the date on which limitation began to run, to 8th November, 1918, the date on which the injunction was dissolved. Therefore, the application made on 10th January, 1922, having been made more than 3 years after the date of the last application, after deducting the period covered by the injunction the application was time-barred. (*Das and Ross, JJ.*). LAL PASI *v.* RAMSARAN LAL CHOWDHURY. 78 I.C. 478=A.I.R. 1925 Pat. 298.

——Where a Court passes an order dismissing an application "for the time being," that is in no sense a final order so as to make application filed

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beyond three years of the date of that order out of time. 27 All. 334, *Foll.* (*Lindsay, J.*). AMJAD ALI *v.* MOHAMMAD USMAN. 71 I.C. 963=A. I. R. 1923 All. 471.

——Non-payment of printing costs—Appeal dismissed—Order is "final." (*Dawson-Miller, C.J. and Ross, J.*). RAGHU PRASAD SINGH *v.* JADUNANDAN PRASAD. 59 I.C. 896=6 P.L.J. 27=2 P. L. T. 28=1921 P.H.C.C. 34=A.I.R. 1921 Pat. 6.

—Art. 182—Instalment decree (Cl. 7).

——Where a compromise decree directed payment by instalments on named dates, and further directed the judgment-debtor to pay the entire balance due if he made default as to any two successive instalments,

Held, (Per *Full Bench*).—That if the application for execution is an application to recover certain instalments already overdue, Art. 182 (7) applies and limitation will run in respect of each instalment from the date on which it became payable.

Per *Mukerji, J.*—The provision in the decree which makes the whole of the decretal amount payable, in case of one or more defaults, is only an ancillary clause and can have no independent existence. It is, therefore, not right to say that, there being no clause in Art. 182 which would directly apply. Article 181 should apply to it. (*Sulaiman, Ag. C. J., Mukerji and Boys, JJ.*). JOTI PRASAD *v.* SRICHAND. 112 I.C. 73=51 All. 237=26 A.L.J. 966=A.I.R. 1928 All. 629 (F.B.).

——*Default in instalment—Entire decree amount becoming payable—On default execution need not be for entire amount.*

In the case of a decree for money payable by instalments with proviso that in case of default of payment of any instalment judgment-debtor would be liable to pay amount in lump sum, the decree-holder is entitled to execute his decree for any instalments not barred by limitation and is not bound to apply for full execution within three years from the date of first default 100 P.R. 1902; 6 P.R. 1913 ; 8 P.R. 1917 ; and A.I.R. 1921 Lah. 42, *Foll.*; 42 Bom. 728 ; 38 All. 204 ; and A.I.R. 1926 Cal. 212, *Diss. from.* (*Addison, J.*). RAJA *v.* HAZARI. 109 I.C. 272=10 L.L.J. 382.

——*Decree directing payment of annuity and in default, delivery of certain property to decree-holder —Each instalment of annuity is a claim under decree and each default gives rise to right to recover property.*

The respondent, on the 30th September, 1916, obtained a decree by which certain properties were to be left in possession of the appellant, who was to pay to the respondent annually a sum of Rs. 2,000 in the month Kason, or in default of payment of the same (Rs. 2,000 annually) the said property would be made over to the respondent. On the 8th October, 1924, the respondent filed an application for execution of the decree against the appellant in default of payment of two instalments of Rs. 2,000 each, for the years 1923 and 1924 respectively and claimed, as the judgment-debtor failed to pay according to the decree, that the Court might direct the delivery of the lands by the judgment-debtor to the decree-holder. It was pleaded that execution was time-barred.

Held, that each instalment as it became due was a claim originating under the decree from the date when such claim arose, that the provisions of Cl. 7 of Art. 182 applied and that therefore execution

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to recover the two instalments was not barred, nor was the claim of respondent for delivery of property was barred either, as on the occasion of a default in each payment the right of the respondent to have the said property made over to her arose. (*Lord Carson.*) MAUNG SIN *v.* MA TOK.

101 I. C. 736=5 Rang. 422=1927 M.W.N. 442=54 I.A. 272=29 Bom. L.R. 1014=1 L C. 192=46 C.L J. 123=39 M.L.T. 144=32 C.W.N. 1=26 M.L.W. 751=A.I.R. 1927 P. C. 146=53 M.L.J. 22 (P.C.).

——Instalment decree entitling decree-holder to realize entire amount on default in any instalment—Time runs from default—Payment and acceptance of overdue instalment is waiver so as to save limitation—But merely not attempting to realize entire amount on defauft of one instalment is not waiver—Waiver cannot be in respect of future instalments.

But this waiver cannot have the effect of modifying the terms of the decree or operate as a waiver in respect of future instalments. 27 Bom. 1, *Ref.*; 21 Cal. 542; 31 Cal. 297 and 36 Cal. 394, *Foll.* (*Suhrawardy and Duval, JJ.*). KALICHARAN *v.* MOHESH CHANDRA. **85 I.C. 784=A.I.R. 1926 Cal. 212.**

——*Instalments become payable after date of appellate decree—Dekkhan Agriculturists' Relief Act, S. 15-B.*

The time fixed for the payment of the instalments under an instalment decree which is confirmed by the appellate Court should be allowed from the date of the confirmation of the decree. Limitation for an application under S. 15-B of the D. A. R. Act with reference to each instalment should be counted from the date when it is payable under the above calculation. (*Shah, Ag. C.J. and Kincaid, J.*). DARUBHAI MITHABHAI *v.* BECHAR DESAI. **86 I.C. 894=49 Bom. 305=27 Bom L.R. 196=A.I.R. 1925 Bom. 270.**

——Default in payment of instalment under decree waived by decree-holder—Limitation runs from date of default. (*Suhrawardy and Cuming, JJ.*). JALIM CHAND *v.* YUSUF ALI CHOWDHURI. **86 I.C. 1051=30 C.W.N. 945=54 Cal. 143=A.I.R. 1925 Cal. 1012.**

——Instalment, non-payment of—Subsequent payments of other instalments—Appropriation—Earlier instalments must be deemed to have been paid off. (*Macleod, C.J. and Coyajee, J.*). HANMANT TIMAJI DESAI *v.* RAGHAVENDRA RAO GURURAO DESAI. **67 I.C. 847=24 Bom. L.R. 410=46 Bom. 848=A.I.R. 1922 Bom. 237.**

——Darkhast presented in Court passing decree—Proceedings transferred to another Court—Instalments ordered to be paid and recovered—Decree-holder need not institute fresh proceedings. 22 Bom. 340, *Ref.* (*Macleod, C.J. and Fawcett, J.*) PRABHULINGAM APPA *v.* GURUNATH BALAJI. **59 I. C. 747=45 Bom. 453=A.I.R. 1921 Bom. 256.**

——On default, judgment-debtor to put decree-holder in possession of certain land—Decree-holder is not bound to apply for possession on first default but may do so on any subseqent default. 8 P.R. 1917, *Dist. from*; 16 All. 371 and 16 All. 237, *Foll.* (*Le Rossignol and Martineau, JJ.*). HAR GOPAL *v.* RAM RACHHPAL. **63 I. C. 664=2 Lah. 155=80 P.L.R. 1921=A.I.R. 1921 Lah. 42.**

—Art. 182—Interpretation.

——Article 182 ought to be read as "for the execution of a decree or order not provided for as regards dismissal by Art. 183 and by S. 48, C. P. Code." In the same way Art. 181 should be read as application for which no period of limitation for the purpose of dismissal is provided elsewhere in the schedule or by S. 48, C. P. Code. (*Reilly and Ananthakrishna Aiyar, JJ.*). DEIVASIKAMANI ANNAMALAI DESIKER, PANDARA SANNADHI *v.* RAJU PILLAI. **1930 M.W.N. 979=A.I.R. 1930 Mad. 935=59 M.L.J. 579.**

LIMITATION ACT (1908), Art. 182 — Joint decree (Expln. 1).

—Art. 182—Joint decree (Expln. 1).

——Application for execution against some judgment-debtors, keeps decree alive against all—Joint liability is not affected though decree differentiates between the judgment-debtors as regards mode of execution. (*Iqbal Ahmad, J.*). MOTI LAL *v.* CHAMPA LAL. **118 I.C. 237=A.I.R. 1929 All. 795.**

——Application against one judgment-debtor saves time against all joint judgment-debtors. (*Srinivasa Aiyangar, J.*). KOTIGADU *v.* SUBBAYYA. **106 I.C. 391=39 M.L.T. 336=A.I.R. 1927 Mad. 1103.**

——Decree joint and several—Application against one judgment-debtor is step against all. (*Mullick, Ag. C. J. and Wort, J.*). RAMASRAY CHAUDHARI *v.* LACHHMI NARAYAN OJHA. **103 I.C. 867=A.I.R. 1927 Pat. 416.**

——Decree partly passed jointly and partly severally—First part of the explanation applies to latter and second part to former. 30 Mad. 268, *Dissented from.* Where, therefore, a step was taken against one judgment-debtor in respect of decree passed severally, it does not save limitation against another. (*Dalal and Boys, JJ.*). SAHU NANDLAL *v.* SAHU DHARAM KIRTI. **94 I.C. 961=48 All. 377=24 A. L. J. 465=A.I.R. 1926 All. 440.**

——If a decree is passed against *A* and *B* under which their liabilities are separate and several, and execution is taken against *A*, any step taken in such execution will not keep alive the decree against *B*, and simply mentioning *B's* name in the application for execution does not affect the question. (*Suhrawardy and Duval, JJ.*). BIRENDRA CHANDRA *v.* TULASI CHARAN. **85 I.C. 657=A.I.R. 1926 Cal. 267.**

——One judgment-debtor ceasing to have interest in the property—Failure to serve him with notice does not render proceedings invalid. (*Suhrawardy and Duval, JJ.*). TARA PRASANNA SINHA *v.* JNANENDRA NARAYAN BAGCHI. **88 I.C. 1039=A.I.R. 1926 Cal. 86.**

——Joint decree, meaning of—Any one relief being joint, decree is joint though other reliefs are given separately. (*Devadoss and Waller, JJ.*). PATTANAYYA *v.* PATTAYA. **92 I.C. 782=1926 M.W.N. 262=A.I.R. 1926 Mad. 453=50 M.L.J. 215.**

——*Application against one judgment-debtor takes effect against all.*

Where a decree had been passed jointly against defendants 9 and 10, regarding recovery of possession and against defendants 1 to 8 jointly, regarding certain sums, and against 9th defendant severally in respect of certain sums,

Held, that it is a decree passed jointly against more persons than one; and the application against any one of them shall take effect against them all. 30 Mad. 268, *Foll.* (*Jackson, J.*). P. KRISHNAYYA SHANBAGA *v.* PUTTANNAYYA. **84 I.C. 897=1925 M.W.N. 298=35 M.L.T. 107=20 M.L.W. 585=A.I.R. 1925 Mad. 152=47 M.L.J. 608.**

LIMITATION ACT (1908), Art. 182 — Joint decree (Expln. 1).

———*Applies to decrees comprising two or more several decrees—Decree providing two interdependent sources of realisation—Explanation does not apply.*

The decree was as follows:—"The defendants will pay the entire decretal money within six months. In case of non-payment of the same the mortgaged property will be sold. No person of the defendants is liable under the decree.....The plaintiff will get Rs. 715-3-6 from Abhoy Kumar out of the money of *S*." The first application for the sale of *D* was made on the 14th December, 1918, and the execution proceeded to the 1st December, 1919. The second application for execution in respect of the minor relief granted in the mortgage decree namely for realization of Rs. 715-3-6 from Abhoy Kumar was filed more than three years after the date of the decree though it was in time as reckoned from the 1st application,

Held, that the main relief, the realization of the mortgage dues, being the one governing note of the decree, makes the two sources of realisation interdependent, that the mortgagee was entitled to proceed against one of his securities at a time, if he thought it to be sufficient for realization, and that the second application was not time-barred. A.I.R. 1922 All. 388, *Foll.*

Held, further that the latter part of *Expl.* 1 to Art. 182 of the Limitation Act has no application to the case, and it can apply only to a decree which comprises two or more "several" decrees. (*Foster and Bucknill, JJ.*). BISHUN CHAND *v.* ABHOY KUMAR CHAND. **76 I.C. 452=5 P.L.T. 276= A.I.R. 1924 Pat. 700.**

———Partition decree—Application by one sharer enures for benefit of others also. (*Oldfield and Venkatasubba Rao, JJ.*). M. VASUDEVA MUTHU SHASTRI *v.* M. VITTAL SHASTRI. **70 I.C. 296= 16 M.L.W. 292=1922 M.W.N. 518=31 M.L.T. 311= A.I.R. 1922 Mad. 456=43 M.L.J. 379.**

———*Joint decree—Partition decree—Application by one of the parties for delivery to him of his share—Limitation as regards others will be saved.*

A partition decree passed under C. P. Code, (1882) awarded to plaintiff and each of the 5 defendants one share in the suit property, to be ascertained. On plaintiff's application the six shares were ascertained: but no allotment or delivery was made except to the plaintiff of his share. Later 4th defendant on application obtained an order for delivery to him of his share. On the 3rd defendant's application within 3 years to obtain his share,

Held, the decree was a joint decree within the meaning of Explanation 1 of Art. 182 and the application was in time as it was filed within 3 years from the 4th defendant's application. (*Oldfield and Ramesam, JJ.*). RAMASAMI AIYANGAR *v.* NARAYANA IYENGAR. **65 I.C. 990=30 M.L.T. 312= 14 M.L.W. 498=A.I.R. 1922 Mad. 327=42 M.L.J. 94.**

———Explanation I—Decree obtained by one person—Subsequent transfer of a part of it to another—The portion of decree transferred kept alive by steps taken by transferee—Whole decree is kept alive. It is not permissible to restrict the provisions of sub-Cl. (5) of Article 182 of the Limitation Act, which are intended for the benefit of decree-holders, by extending the words of the 1st sentence of Explanation 1 to the same Article to cases not falling within its exact language. 14 Mad. 252, *Ref. to.* (*Sadasiva Iyer and Spencer, JJ.*). PUSARAPU VENKATA REDDAYYA *v.* THORAM YARAKAYYA. **69 I.C. 277=15 M.L.W. 157= 45 Mad. 35=30 M.L.T. 69=A.I.R. 1922 Mad. 129.**

LIMITATION ACT (1908), Art. 182—Limitation.

———*Execution against manager—Saves time as regards other co-parceners.*

Where a decree was obtained against the eldest brother of a joint Hindu family carrying on a business and several applications for execution were ordered against him and after his death against his legal representatives, the previous applications for execution save limitation for an execution application against the other members of the family. (*Chevis, J.*). KIDAR NATH *v.* RADHA KISHEN. **67 I.C. 56 (Lah.).**

———*Decree passed in favour of one but afterwards owned by several—First sentence in Explanation 1 is not applicable.*

It is not permissible to restriot the provisions of sub-Cl. (5) which are intended for the benefit of decree-holders by extending the words of the 1st sentence of explanation (1) to cases not falling within its exaot language, *e.g.*, to cases where the decree though passed only in favour of one person was afterwards owned by more persons than one in severalty owing to the conduct of the original single decree-holder or otherwise. (*Sadasiva Aiyar and Spencer, JJ.*). P. VENKATA REDDAYAR *v.* T. YARAKAYYU. **A.I.R. 1921 Mad. 415= 41 M.L.J. 312.**

———Where execution against one of several joint judgment-debtors is stayed, limitation is suspended against the others also. (*Abdur Rahim and Odgers. JJ.*). (CHINNA) VELLAYYAN CHETTY *v.* MUTHAYYA CHETTY. **61 I.C. 901= 1921 M.W.N. 188=13 M.L.W. 59= A.I.R. 1921 Mad. 116.**

—Art. 182—Keeping alive.

———*Award—Liability of one of the parties limited—Proceedings again saves—Saves time against all.*

Where an award is against several persons jointly, although the liability of one of them is limited on account of adjustment, nevertheless that does not entirely separate his interest from that of others, and it still remains an award against all the persons jointly and, therefore any proceedings taken against any of them to keep the award sufficiently alive would keep it in time against all. (*Kennedy, J. C. and Madgavkar, A.J.C.*). DONALD GRAHAM & CO. *v.* KEWALRAM. **79 I.C. 477=16 S.L.R. 245=A.I.R. 1921 Sind 132.**

—Art. 182—Limitation.

———When a decree for possession is passed on condition of payment of a certain sum by the decree-holder, the starting point for limitation for execution of the decree is the date of the decree and not the date of payment by the decree-holder. The decree-holder cannot obtain extension of limitation by deferring payment. Limitation runs from the date of the decree, whether any time for payment is fixed or not. The only effect of fixing a time for payment is that payment cannot be made after the date fixed. If no time is fixed, payment may be made under the terms of the decree at any time within the period of limitation, *i.e.*, within three years of the date of the decree. Such a case, therefore, is governed by Art. 182 and not by Art. 181. 40 M.L.J. 1 (P.C.); 12 Bom. 23; 2 Lah. 155, *Dist.*; 24 All. 300, *Diss.*; 26 Mad. 780; 23 Bom. 592, *Foll.* (*Staples, A.J.C.*). DADA *v.* GANPATRAO. **26 N.L.R. 383.**

———Decree for confirmation of possession of certain property and costs—Decree joint as regards costs but not as regards possession—Separate appeals filed—Appeals dismissed—Separate second appeals, one dismissed for default, others dismissed in due course—Limitation for execution of one

LIMITATION ACT (1908), Art. 182—Limitation.

dismissed for default runs from date of dismissal for default and not date of dismissal of other appeals. 20 C.W.N. 118 and A.I.R. 1914 P.C. 65, *Dist.*; 25 Cal. 594, *Appr.* (*Das and James, JJ.*). GIRWAL RAUT *v.* BIGU RAUT. **123 I.C. 415= A.I.R. 1930 Pat. 146.**

——Major judgment-debtor though described as minor, is party to execution proceedings—Issue of notice to him gives fresh starting point, to decree-holder. (*Iqbal Ahmad, J.*). MOTI LAL *v.* CHAMPA LAL. **118 I.C. 237= A.I.R. 1929 All. 795.**

——When a decree is made for possession, that portion of the decree is final; and when a decree is made for mesne profits in a suit ti is only preliminary, because the final decree for mesne profits cannot be made unless the amount due is found upon further enquiry. In such a suit, although one decree is made, it is partly preliminary and partly final. The final part of the decree can be executed apart from the preliminary part and it falls within the provision of Art. 182, Limitation Act. Time for execution of the decree for possession runs at the latest from the date of the final decree of the appellate Court and not from the time when the decree ascertaining the mesne profits was passed. (*B. B. Ghose and Panton, JJ.*). SATISH CHANDRA CHAKRAVARTI *v.* SARAT KAMINI DEVI. **118 I.C. 852= A.I.R. 1929 Cal. 383.**

——Where an application is made by a decree-holder to appoint a Receiver during the pendency of prior execution proceedings, no question of limitation arises with regard to such application for step-in-aid. 36 Mad. 553 and 106 P. R. 1894, *Ref.* (*Jai Lal, J.*). GHANAYA LAL & CO. *v.* JASSA RAM HIRA NAND. **113 I.C. 909=10 L.L.J. 505= A.I.R. 1929 Lah. 57.**

——A surety for satisfaction of decree is not a joint judgment-debtor within the meaning of Art. 182 and the events from which the period of limitation runs in the case of a judgment-debtor do not avail the decree-holder against the surety. The time begins to run against the surety from the period at which the surety becomes liable to decree-holder. 31 Bom. 50, *Foll.* (*Das and Wort, JJ.*). RAGHU-NANDAN PRASAD *v.* KIRTYANAND. **120 I.C. 309= 8 Pat. 310= A.I.R. 1929 Pat. 595.**

——Sale set aside—Auction-purchaser realising purchase money from decree-holder in execution of the decree obtained against him. Then the original decree-holder applied to execute the original decree on the ground that it was not satisfied and sought to attach and sell other properties of the original judgment-debtor,

Held, that the starting point for this application in execution would be the date when in execution of the decree the decree-holder was compelled to pay the amount and not the date of decree,

Held, further that the fresh application was not a continuation of the previous application. A.I.R. 1927 Mad. 394 and 835, *Rel. on.* (*Kumaraswami Sastri and Wallace, JJ.*). BOROJO CHARCHI *v.* BASUDEO DOSS. **107 I.C. 653=1928 M.W.N. 83= A.I.R. 1928 Mad. 152.**

——C.P. Code 21, R. 2 (3)—Period of limitation is to be computed from the date not of payment but of certification. To do otherwise would be recognising, to some extent, an uncertified payment. When then a decree-holder applies for execution he can only invoke a payment certified before execution became time-barred. (*Mukerji and Ashworth, JJ.*). PEARE MOHAN PRASAD *v.* RAGHUNATH LAL. **107 I. C. 40= 25 A.L.J. 933=50 All. 259= A.I.R. 1928 All. 55.**

LIMITATION ACT (1908), Art. 182 — Proper Court (Expln. 2).

——Where a decree-holder puchases a property execution but loses possession of the same in a separate suit by a third party, his fresh application for execution or for revival of execution, if one is maintainable, must be filed within three years of the trial Court's decree. (*Sulaiman and Banerji, JJ*). SALIG RAM *v.* LACMANDAS. **107 I.C. 42= 25 A.L.J. 937=50 All. 211= A.I.R. 1928 All. 46.**

——Uncertified payment does not give fresh start for limitation. 46 Cal. 22 and 43 Cal. 207, *Doubted and Dist.* (*Cuming and B. B. Ghose, JJ.*). REBATI MOHAN *v.* ALAUDDIN AHMED. **98 I. C. 825= 44 C.L J. 248= A.I.R. 1927 Cal. 29.**

——Execution stayed until decision in another suit—Suit decided — Decree-holder must apply within 3 years from the decision, though judgment-debtor might have in the meanwhile preferred an appeal. 19 All. 71 and 26 All. 156, *Foll.*; 43 All. 383. *Dist.* (*Mears, C.J. and Lindsay, J.*). SAT NARAIN LAL *v.* GANGAJAL. **94 I.C. 1005= A.I.R. 1926 All. 409.**

——The plea that a previous application for execution was barred by limitation and hence the subsequent application was not valid should be raised at the earliest possible opportunity. A.I.R. 1924 Mad. 673, *Rel. on.* (*Jackson, J.*). BHADRAYYA *v.* JAGGARAJU. **91 I.C. 1017= 22 M. L. W. 747=1926 M.W.N. 33= A.I.R. 1926 Mad. 177.**

——A judgment-debtor who was not a party to a previous application for execution of a decree or to any order made upon it is not precluded from showing that the said application was barred by limitation and that therefore it was not in accordance with law. (*Cuming and Panton, JJ.*). SITA-NATH DAS *v.* KANAK PROBHA DEBI. **67 I. C. 879= A.I.R. 1923 Cal. 322.**

——In order to make the provisions of the Limitation Act apply, the decree sought to be enforced must be in such a form as to render it capable, in the circumstances, of being enforced. 27 All. 334 (P.C.), *Foll.* (*Lord Phillimore.*) RAMESHWAR SINGH *v.* HOMESHWAR SINGH. **59 I.C. 636= 48 I. A. 17=19 A.L.J. 26=23 Bom. L.R. 721= 33 C. L. J. 109=25 C. W. N. 337= 13 M. L. W. 546=30 M.L.T. 189= 1921 M.W.N. 21=6 P.L. J. 132=1 P.L.T. 731= A.I.R. 1921 P.C. 31=40 M.L.J. 1 (P C.).**

—Art. 182—Proper Court (Expln. 2).

——Transferee Court returning decree to parent Court according to R. 161 (*a*) of the Madras High Court Civil Rules of Practice after six months—Application made to transferee Court after return, is not made to "proper Court" and does not save limitation. Remarks of *Seshagiri Iyer, J.*, in 39 Mad. 485, *Disappr.* (*Ramesam, J.*). MIR MD. NOORULLA *v.* HASARATH KIBULAI. **98 I.C 455= A.I.R. 1926 Mad. 1209= 51 M. L. J. 554.**

——*Court in Native State if "proper Court."*

When a decree is passed by a Court in a Native State as to which action has been taken by the Government under C. P. Code, S. 44, and is transferred to a Court in British India for execution, execution proceedings pending before the Court in the Native State would save limitation under Art. 182 (5). 40 Bom. 504, *Dist.* (*Macleod, C.J. and Fawcett, J.*). PRABHULING APPA *v.* GURUNATH BALAJI. **59 I.C. 747=45 Bom 453= A.I.R. 1921 Bom. 266.**

LIMITATION ACT (1908), Art. 182 — Refund (Cl. 6).

—Art. 182—Refund (Cl. 6).

——*Defendant to elect—No time fixed for election —Plaintiff's application putting defendant to election must be within 3 years.*

Where in a partition suit the decree gave a choice to an alienee to insist on full or half payment before delivering up properties proportionally and did not fix any time within which the plaintiff should put the alienee to the election.

Held, that Art. 182 applied and the application by the plaintiff putting the alienee to the election filed more than three years after an order dismissing a previous defective application, was barred (*Murphy and Broomfield, JJ.*). NANA MANSARAM *v.* SRIDHAR. **32 Bom. L.R. 427= A.I.R. 1930 Bom. 503.**

——*Article applicable for execution of adjusted decree is Art.* 182 (4) *and under Cl.* (6) *three years would be allowed for payment.*

——After recording compromise in execution the decree is adjusted and the decree to be executed is the adjusted decree. The limitation applicable in such a case is that contained under Art. 182, Cl. (4) and under Cl. (6) of the same article there would be a period of three years allowed for the issue of the notice to the judgment-debtor to pay under the decree. (*Prideaux, A.J.C.*). RAMPRASAD *v.* HARIDAS. **97 I.C. 768=A.I.R. 1927 Nag. 31.**

—Art. 182—Res judicata.

——A judgment-debtor who did not appeal against a previous order for execution of a portion of the decree and who did not dispute the validity of such order cannot in the matter of a subsequent application for execution of the remaining portion of the decree contend that the first application was not "in accordance with law." 15 B. 242, *Foll.* (*Macleod, C.J.*). BABAGOWDA MALGOWDA *v.* TANIBAI BHRATAR RAMGAUDA.

76 I.C. 1041=A.I.R. 1924 Bom. 112.

——*Previous application and order erroneously made but not appealed from—At next application defendant cannot plead previous application was not in accordance with law.*

A decree in a partition suit was passed on the 10th January, 1910; the plaintiff being under the impression that the decree in a partition suit was a preliminary decree and required a further decree to make it final, applied to the Court, on 23rd October, 1912, to have the decree made final, and the decree was made final on the 10th of February, 1913, erroneously.

Held, that an application for execution presented on 8th October, 1913, was within time. The defendant not having appealed from the order of th 10th February, 1913; it was not open to the defendant to contend that the application for final decree and the order made on that application were not made in accordance with law. 8 Cal. 51 (P.C.); 15 Bom. 242 and 44 Bom. 227, *Foll.*

Per *Macleod, C. J.*—The application to make a preliminary decree final is not a step-in-execution. (*Macleod, C.J. and Fawcett, J.*). DAYABHAI CHUNI LAL *v.* BAI UJAM. **61 I.C. 159=45 Bom. 952= 23 Bom. L.R. 308=A.I.R. 1921 Bom. 260.**

—Art. 182—Restitution (Cl. 6).

——Plaintiff successful in first Court—Remand by appellate Court—Defendants successful in decision on remand—Application for restitution—Starting point is date of latter decision and not of the order of remand. (*Macnair, A. J. C.*). SONBA *v.* PARSHRAM. **76 I.C. 255=43 N.L.R. 200= A.I.R. 1923 Nag. 101.**

LIMITATION ACT (1908), Art. 182—Revival of execution.

——An application for restitution is an application for execution under the present C. P. Code, just as it was under the old Procedure Code, and Art. 182 of the Limitation Act applies to such applications. (*Dawson-Miller, C.J. and Jwala Prasad, J.*). BASANTA KUMARI *v.* BALMAKUND.

72 I. C. 912=1923 P.H.C.C. 1=2 Pat. 277= 1 Pat.L.R. 338=A.I.R. 1923 Pat. 371.

——*Application for—Limitation—Article applies.*

On an appeal to the Privy Council the parties were directed to pay their own costs. An application by the appellant to recover the costs paid by him in pursuance of the decree of the High Court was held to be an application to enforce an order of His Majesty-in-Council although it fell within S. 144 of the C.P. Code, and as to limitation, was governed by Art. 182 of the Limitation Act. (*Stuart, J.*). MADHUSUDAN DAS *v.* BIRAJ LAL.

61 I. C. 806 (All.).

——Article 182 applies to application for restitution under C. P. Code, S. 144.

An application for restitution cannot be treated as anything else than an application for execution of the decree of the appellate Court. (*Macleod, C.J. and Shah, J.*). HAMIDALLI KADAMALLI *v.* AHMADALLI MHIBUBALLI. **62 I.C. 233= 45 Bom. 1137=23 Bom L.R. 480= A.I.R. 1921 Bom. 67.**

—Art. 182—Review decision (Cl. 3).

——Application for review of decree rejected—Appeal against, will not stop limitation, running against decree-holder. (*Greavss and Ghose, JJ.*). RAM RATAN CHOWDHURY *v.* UPENDRA CHANDRA DAS. **68 I. C. 727=A.I. R. 1923 Cal. 288.**

—Art. 182—Revival of execution.

——Decree-holder applying for sale of properties in a particular way—Execution Court not allowing the prayer, and dismissing application pending appeal by decree-holder against order disallowing execution as prayed for by him—Appeal allowed—Second application by decree-holder is in revival of the first.

If there has been some bar imposed upon the continuation of the proceedings under an application for execution which is subsequently removed by an order of an appellate Court or by any other order lawfully made, then any fresh application for execution is to be treated merely as a continuation of the proceedings which were suspended. (*Dawson Miller, C.J. and Foster, J.*). JAGAT PRASAD SINGH *v.* SUJOO LAL. **99 I.C. 865= 1926 P.H.C.C. 353=8 P.L.T. 287= A. I. R. 1927 Pat. 114.**

——*Proceedings under O.* 21, *R.* 95 *stayed—Application after vacation of stay—No question of limitation.*

Where proceedings in an application under O. 21, R. 95, C. P. Code, are stopped by injunction before any order could be passed to give possession to the purchaser, a second application filed by the purchaser after the removal of the injunction, must be taken to be an application intended to bring to the notice of the Court the existence of the previous application, and to get proper orders passed thereon. In such a case no question of limitation regarding the second application really arises. (*Krishnan, J.*). THAYYAMUTHU *v.* ODAYYAPPAN. **99 I.C. 632=25 M.L.W. 108= 1927 M.W.N. 60=A.I.R. 1927 Mad. 391.**

——*Application for execution ordered to be simply "filed"—Fresh application is to be treated as if for revival.*

LIMITATION ACT (1908), Art. 182 — Revival of execution.

The decree-holder applied in 1918 on the basis of assignment of decree which however by oversight did not refer to the decree in question but his application was filed and not dismissed. He applied in 1921 and in 1924, January. Both these applications were struck off owing to default of the decree-holder. He then filed a fresh application in 1924 May.

Held, the application in 1918 for execution having been ordered to be simply "filed" and not having been struck off, owing to default of the decree-holder, must be deemed to have been still pending when the application was filed in 1921. Although this application of 1921 purported to be a fresh application for execution it should be treated for the purpose of limitation as an application for revival. 27 All. 334 (P.C.), *Foll.* (*Sulaiman, J.*). MT. BETTEE *v.* KANHAIYALAL.
94 I. C. 869=A.I.R. 1926 All. 510.

———Where later application for execution prays for reliefs different from those in the earlier one, it cannot be considered as a revival of the earlier one. (*Ramesam, J.*). LALUMIA *v.* MAZAR HANMISA. **95 I.C. 718=1926 M.W.N. 317=A.I.R. 1926 Mad. 698.**

———Unless there is any injunction stopping execution, any intermediate suit by a claimant and not by the decree-holder will not cause suspension of the execution proceedings. Unless there was a suspension without any default on decree-holder's part, the principle of revival of a former execution petition cannot be utilized in favour of the decree-holder. (*Ramesam, J.*). LALUMIA *v.* MAZUR HANNISSA. **95 I.C. 718=1926 M.W.N. 317=A.I.R. 1926 Mad. 698.**

———*Setting aside of sale under O. 21, R. 90, C. P. Code—Subsequent application for execution is in continuation of the first.*

A landlord decree-holder applied for execution of a rent-decree when the Executing Court held that the execution should proceed as on the basis of a money-decree and not as a rent-decree. It proceeded in that way and the sale of certain property of the judgment-debtor was actually confirmed and the case was dismissed on full satisfaction. On the same day, the judgment-debtor put in a petition to set aside the sale under the provisions of O. 21, R. 90, and eventually the sale was set aside; the decree-holders then applied once more to execute their decree as a rent-decree,

Held, that the second application should be treated as a continuation of the preceding application inasmuch as the prayers in both were to execute the decree as rent-decree and further that the decree-holder's right to execute the decree revived on the day the sale was set aside. (*Bucknill and Ross, JJ.*). DEONARAYAN SINGH *v.* RAM PRASAD.
92 I.C. 799=7 P.L.T. 410=A.I.R. 1926 Pat. 143.

———Execution stayed by an injunction—Right to execute revives on injunction coming to an end —Decree-holder must apply for revival within three years from accrual of right. (*Dawson Miller, C. J. and Mullick, J.*). BIBI HAJO *v.* HAR SAHAY LAL. **89 I.C. 992=7 P.L.T. 39=A.I.R. 1926 Pat. 62.**

———Sale set aside—A second application in execution is an application for revival of the earlier one and no question of limitation arises. (*Mookerjee and Panton, JJ.*). JIRA BIBI *v.* MAJIRUDDIN CHOWDHURY. **64 I.C. 849=35 C.L.J. 135=A.I.R. 1921 Cal. 894.**

LIMITATION ACT (1908), Art. 182 — Saving of time.

———*Execution of decree—Barred—Revival.*

Where an application for the execution of a decree is barred by limitation it cannot be revived by a subsequent application for amendment. (*N. R. Chatterjee and Panton, JJ.*). RABIUDDIN *v.* RAM KANAI SEN. **59 I.C. 186 (Cal.).**

—Art. 182—Saving of time.

———The holder of a rent-decree is always a secured creditor. The mere fact that the judgment-debtor was declared insolvent prior to the passing of decree does not save limitation and the application for execution made after 3 years is time-barred. (*Wazir Hasan and Gokaran Nath Misra, JJ.*). SIRI RAM KUAR *v.* RAM PRASAD GHOSH. **113 I.C. 86=4 Luck. 241=5 O. W. N. 1134=A.I.R. 1929 Oudh 71.**

———*Time saved by execution applications made though not in writing.*

An application in execution was made on 25th January, 1923, the second application was not made until 18th September, 1926. But during the first execution proceedings on the 21st July and 3rd December applications were made for arrest of the judgment-debtor and attachment of his property, the latter of which was granted but could not be effected,

Held, that the application dated 18th September, 1926 was within time as further applications in execution which need not have been necessarily in writing were made, and that limitation was thereby saved. 10 L. B. R. 34, *Rel. on.* (*Brown, J.*). SOMASUNDARAM CHETTYAR *v.* MA SHWE THIT.
117 I.C. 578=7 Rang. 132=A.I.R. 1929 Rang. 152.

———Where a decree-holder is restrained by injunction from executing the decree or where his decree has ceased to exist having been set aside in a separate suit, the time of injunction or the period for which the decree ceased to exist should be excluded. (*Dawson Miller, C.J. and Ross, J.*). RAMGULAM SINGH *v.* RAJ KUMAR RAI.
102 I.C. 327=6 Pat. 635=8 P.L.T. 770=A.I.R. 1928 Pat. 86.

———A bogus application merely for the purpose of saving limitation and with little care so proceed therewith is an abuse of the process of the Court, and, therefore, cannot be considered one in accordance with law. A defective application unless admitted by Court does not save limitation. (*Dalal, J.*). B. RAM BAHADUR *v.* RAHAT ALI.
93 I.C. 369=A I.R. 1926 All. 376.

———Execution proceedings dismissed for Court's convenience and, therefore, order of dismissal not final—Objection against execution also, dismissed—Remand on appeal from order dismissing objection—Objections re-heard and dismissed and also appeal from second order on objections dismissed—Time up to final order in appeal, should be deducted. (*Suhrawardy and Cuming, JJ.*). MADHUSHUDAN KOWAR *v.* GIRINDRA NARAYAN SINGHA. **87 I.C. 561=A.I.R. 1925 Cal. 1185.**

———*Decree-holder consenting to postponement of execution pending judgment-debtor's suit—Period must be excluded.*

There were pending an application for execution by attachment on behalf of the decree-holder, and an application under O. 21, R. 29, on behalf of the judgment-debtors. Both parties were present. The decree-holder consented to the case being filed till the determination of the judgment-debtor's suit,

Held, that the interruption was not attributable to the decree-holder, and the period covered by it

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must be excluded. (*Kendall, A.J.C.*). MIR ZAMIN ALI *v.* SHAFI ULLAH. 84 I.C. 1027= A.I.R. 1925 Oudh 315.

——*Certificate of payment saves limitation.*

If the part payment of a decree amount is entered in an execution petition presented within three years from the date of such alleged payment, it amounts, if the fact of payment is proved, to a certificate of payment under O. 21, R. 2, and will operate to save limitation under S. 20 of the Limitation Act. 43 Cal. 207, *Ref.* and *Foll.* (*Moti Sagar, J.*). FATTU *v.* NANAK CHAND.

73 I.C. 1029=A.I.R. 1924 Lah. 676

——A letter by judgment-debtor to decree-holder acknowledging his liability to pay the decretal amount is an acknowledgment within S. 19 and saves limitation for execution. (*Kinkhede, A.J.C.*). DAJI MAHAR *v.* MAHADEV KUNBI.

73 I.C. 66=A.I.R. 1924 Nag. 147.

——*Mere filing of* Talbana *does not save limitation.*

Where the *talbana* was filed in pursuance of an order passed by the Court requiring the decree-holder to file the same,

Held, that the payment of the *talbana* was a compliance with that order and not an application to take a step-in-aid of execution which could extend the period of limitation. (*Kanhaiya Lal, J. C.*). MOHAMMAD ALAM *v.* BACHCHU.

73 I.C. 211=A.I.R. 1924 Oudh 231.

——It has never been held necessary that an execution application in order to save limitation should be directed to the same property or even indeed the same person. (*Daniels, J.*). GOPI NATH SHUKUL *v.* SAT NARAIN SHUKUL.

74 I. C. 1014=A.I.R. 1923 All. 384.

——The decree-holder is entitled to deduct the period during which the execution of his decree, was stayed by an Order of the Court. (*Richardson and Ghose, JJ.*). CHARU CHANDRA MAZUMDAR *v.* FANINDRA NARAIN CHOWDHURY.

68 I.C. 897=A.I.R. 1923 Cal. 310.

——*Application against judgment-debtor alone, saves limitation against sureties also.*

An application for execution against the judgment-debtor and the surety is not barred, if made within three years of the application against the judgment-debtor alone where the surety binds himself to pay the amount of the decree, if the judgment-debtor does not pay. The question depends on the application of the provisions of S. 145, C. P. Code to Art. 182. If the effect of S. 145, C.P. Code, is to make the decree equivalent to a decree passed jointly against the surety and the judgment-debtor then the case is covered by Explanation (1) to Art. 182, if not Cl. 5 of Art. 182, applies. (*Piggott and Sulaiman, JJ.*). BADRUDDIN *v.* MD. HAFIZ. 77 I.C. 129= 44 All. 743=20 A.L.J. 726= A. I. R. 1922 All. 481.

——Decree drawn up as mortgage decree for part of claim against *X* and *Y* and as money decree for balance against *X*—Application for final decree as to former will save time as to latter also. (*Ryves and Gokul Prasad, JJ.*). RAM BRICHH RAI *v.* DEO TEWARI. 65 I.C. 358=44 All. 166= 19 A.L.J. 962=A.I.R. 1922 All. 388.

——*Application for execution containing names of surety and judgment-debtor but asking relief only against latter does not save time against surety.*

Although a decree is not passed against a surety, it may still be executed against him by reason of

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S. 145, C. P. Code, and the limitation for an application for execution of a decree against him is that laid down by Art. 182, Limitation Act and the decree-holder cannot brisk away from that Article.

In an application for execution by the decree-holder names of both, the judgment-debtor and the surety were given in column 9, the column showing the persons against whom the decree was to be executed. But in column 10, the column showing the mode of execution sought, he prayed only for the attachment of the judgment-debtor's property. Notice was issued to the judgment-debtor only,

Held, although the name of the surety was shown in column 9 in the proceedings of 1917, no steps can be said to have been asked for against the surety in those proceedings; those proceedings therefore do not save limitation so far as the surety is concerned. (*Chevis, J.*). WAZIR BAKSH *v.* HARI RAM. 60 I.C. 265=4 L.L.J. 85= A.I.R. 1922 Lah. 208.

——Application for execution against surety is governed by Art. 182 and not by Art. 176 after the death of the principal debtor and execution can be had even though the legal representatives have not been brought on record. (*Prideaux, A. J. C.*). HASHAMALI *v.* V. BAGAWANT. 66 I.C. 176= A.I.R. 1922 Nag. 112.

——*Period during which execution is virtually stayed should be excluded.*

The decree-holder was asked by the executing Court to produce the judgment in a certain suit before a certain date before the decree could be transferred to the Collector for execution. The judgment in that suit was passed at a much later date. Upon the decree-holder's failure to produce the judgment before the required date, the Court dismissed the application for execution. In calculating the limitation for a subsequent execution application by decree-holder,

Held, that the time during which the suit, the judgment in which was required to be produced, continued should be excluded. (*Gokul Prasad and Lindsay, JJ.*). BALDEO SINGH *v.* RAMSARUP. 65 I.C. 398=19 A.L.J. 905= A. I. R. 1921 All. 174.

——Where the execution of a decree has been suspended through no act or default of the decree-holder, the latter has a right to ask the Court to revive and carry through the execution proceedings which have been thus suspended. (*Piggott and Walsh, JJ.*). MADHO PRASAD *v.* DARUPADI BIBI. 61 I.C. 417=43 All. 383=19 A.L.J. 174= A.I.R. 1921 All. 99.

—Art. 182—Step-in-aid (Cl. 5).
Application.
Continuation of proceedings.
Defective application.
Filing of.
Infructuous application.
Limitation.
Oral application.
Process application.
Proper Court.
Representation.
Scope of.
Starting point.
Test of.
Transfer proceedings.
What is.
What is not.

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Application.

—Art. 182—Step-in-aid—Application.

——*Application for extension of time to file inventory under O. 21, R. 12, C. P. Code, is a st-epin-aid.*

The judgment-creditor obtained a decree on 4th April, 1918, against the deceased father of the respondent who was a member of a joint Hindu family. The sons were brought upon the record in the darkhast. On 7th November, 1922, the Court ordered notices to issue and on 17th November, the notices were issued returnable on 23rd January, 1923. On 23rd January, 1923, the appellant gave an application to meet the objections of two of the sons who had refused to accept service on the ground that their names were not properly described in the notice. On the same day the judgment-creditor applied for further time to put in the list of movables which he had been ordered by the Court to put in under O. 21, R. 12. C.P. Code. That application was rejected and the darkhast was dismissed. The notices ordered on the application of that date were never issued. On 22nd January, 1926, the judgment-creditor filed the present darkhast.

Held, that an inventory was not nacessary and that the darkhast was a step-in-aid of execution and so was the application of 23rd January, 1923. 37 Bom. 42 and A. I. R. 1922 Pat. 597, *Rel. on*; 37 All. 527, *Dist.*, A. I. R. 1925 Bom. 193 *Ref.* (*Madgavkar, J.*) GOPAL RAO KRISHNA RAO *v.* HARI LAXAMAN. **122 I.C. 856=31 Bom.L.R. 1291= A. I. R. 1930 Bom. 65.**

——*Plaint—Treatment of, as application.*

The word "application" in Cl. (5) means a "document containing a request."

A plaint in a suit by a decree-holder to obtain a declaration that the property attached by him belongs to his judgment-debtor and is liable to be sold in execution of his decree, instituted in the same Court in which the decree under execution was passed, can be treated as an application to take a step-in-aid of execution of the decree within the meaning of Cl. (5), Art. 182. A.I.R. 1930 Oudh 9, *Rel. on*; 22 All. 376; A.I.R 1921 All. 174 and 29 All. 348, *Foll.*; 37 Bom. 559, *Expl.*; 17 Cal. 268, *Dist.* (*Wazir Hasan, C.J. and Pullan, J.*). HASAN SHAH *v.* MOHD. AMIR MIRZA.

7 O.W.N. 887=A.I.R. 1930 Oudh 468.

——Application to appoint Receiver is step-in-aid. (*Jai Lal, J.*). GHANNAYA LAL AND CO. *v.* JASSA RAM HIRANAND. **113 I.C. 909= 10 L.L.J. 505= A.I.R. 1929 Lah. 57.**

——*Step-in-aid may be taken even when no execution proceeding at the instance of the decree-holder is pending.*

It is not necessary that an application to take some step-in-aid of execution must be made during the pendency of an application by that particular decree-holder in accordance with law to the proper Court for execution of the decree; such an application can be made when no execution proceeding at the instance of the decree-holder who makes it is pending in Court. The words "where the application next hereinafter mentioned has been made" in Cl. 5, Art. 182 apply both to an application for execution and an application to take some step-in-aid of execution and both the applications are mentioned independently of each other in the clause, with the result that each is sufficient to save limitation and the second kind of application is not dependent on the first. Any action taken by a decree-holder to realize the money decreed in his favour whether such an action is taken in a pending application for execution or otherwise is a step-in aid of execution. A. I. R. 1922 Mad. 247, *Foll.* (*Jai Lal, J.*). GHANNAYA LAL *v.* PUNJAB NATIONAL BANK, LTD. **111 I.C. 259=A.I.R. 1928 Lah. 7.**

——*Applications for hastening realization of decree amount are steps-in-aid.*

Where the decree holder by applying for a final decree was endeavouring to get an order which he thought at the time was necessary before executing his decree, but afterwards, due to better advice he gave up that attempt and applied for the execution of the decree without getting a final decree as that was unnecessary,

Held, that such applications were steps-in-aid of execution, for he was asking the Court to make an order which was thought necessary before taking out actual execution of the decree and as the ultimate object of these petitions was to hasten the actual realization of the decree amount. (*Waller and Madhavan Nair, JJ.*). KUNHAMMAD HAJI *v.* PARKAM KOZHUVAMMAL. **106 I.C. 395=A.I.R. 1928 Mad. 38.**

——An application, in order to be a step-in-aid of execution need not be made in a pending execution application. 45 Mad. 466, *Dist.* and *Ayling, J.*, in A.I.R. 1922 Mad. 79, *Diss. from*; 5 Mad. 141; A.I.R. 1922 Mad. 247 and 38 Mad. 695, *Rel. on.* (*Devadoss and Sundaram Chetty, JJ.*). MATHONKANDI KANNAN *v.* THAYYIL PUKKUTTI AVVULLA HAJI. **99 I. C. 677=50 Mad. 403= 25 M.L.W. 61=1927 M.W.N. 8=38 M. L. T. 156= A. I. R. 1927 Mad. 288=52 M.L.J. 1.**

——Joint application by decree-holder and assignee of decree-holder under unregistered assignment for proclamation and holding sale is a step-in aid—Assignee can avail of such application after his assignment is registered. (*Spencer, J.*). LAKSHMAN PATTAR *v.* SUPPAYYA PANDARAM. **A.I.R. 1927 Mad. 264.**

——*Application against wrong person under a* bona fide *mistake is a step-in-aid.*

An application for execution made against a wrong person under a *bona fide* belief that that person was the legal representative of the deceased judgment-debtor is a good application, and even if it cannot properly be regarded as an application under S. 234 of the old Code of Civil Procedure, by reason of mistake, it would still be an application to take a step-in-aid of execution. 20 Cal. 388; 35 Cal. 1047 and 9 C. L. J. 443, *Foll.* (*Ross and Kulwant Sahay, J.*). GANESHWAR SINGH *v.* THAU MAL. **99 I.C. 501=1926 P.H.C.C. 342= 8 P.L.T. 217=A.I.R. 1927 Pat. 92.**

——Incorrectness or superfluity as to the reliefs asked for does not render an application not a st-epin aid. (*Mullick and Bucknill, JJ.*). KISHORE MAL *v.* JAGDISH NARAIN SINGH. **75 I.C. 312=3 Pat. 42=A.I.R. 1924 Pat. 471.**

——*Application against deceased judgment-debtor due to* bona fide *mistake is a step-in-aid.*

If an application for execution of a decree be made under the influence of *bona fide* mistake against a dead person, though that application cannot be acted upon, still it is an application in aid of execution within the meaning of Art. 179 (4) of the Limitation Act (XV of 1877) which saves the execution of the decree from being time-barred. (*Mullick and Kulwant Sahay, JJ.*). PURAN MALL *v.* MT. DILWA. **72 I.C. 1003=4 P.L.T. 54= A. I. R. 1924 Pat. 333.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Application.

——Application for summoning witnesses to resist objection to execution constitutes a step-in-aid. 5 All. 344 and 5 I. C. 292, *Foll.* (*Banerji and Gokul Prasad, JJ.*). MD. SIDDIK KHAN *v.* LALA MISRI LAL. **64 I.C. 524=19 A.L J. 843= A.I.R. 1922 All. 432.**

——*Applications for final decree in mortgage suit if steps-in-aid.*

In 1904 a decree was passed in a mortgage suit. Within three years an application for order for sale of property was made, but was dismissed. Within three years of the latter application, similar application was made but was dismissed as no final decree was made as required by the new C. P. Code. Within three years an application for final decree was made which was dismissed for non-payment of process fees. A similar application for final decree was made in time but was withdrawn,

Held, that the applications for final decree were steps-in-aid of execution because they were accepted by the Court as being within time though really out of time, such acceptance gives a fresh start for limitation.

Per *Shah, J.*—An adjudication by Court that a certain application is in time cannot be re-considered when a question that it is out of time is raised at a later stage of execution proceedings. (*Macleod, C. J. and Shah, J.*). GULAPPA RUDRAPPA *v.* ERAVA BASANGOWDA. **63 I.C. 844= 46 Bom. 269=23 Bom. L. R. 1013= A.I.R. 1922 Bom. 118.**

——An application to issue notice to the judgment-debtor is not an application "in accordance with the law" for execution or to take some step-in-aid of execution. (*Chatterjee and Newbould, JJ.*). HAZARI LAL *v.* BAIDYA NATH SAHA. **63 I. C. 116=26 C. W. N. 292=A.I.R. 1922 Cal. 3.**

—Art. 182—Step-in-aid—Continuation of proceedings.

——Application for rateable share in execution proceedings in another decree by another decree-holder in 1920—Application consigned to record room along with execution proceedings which were compromised—Application for arrest of judgment-debtor in 1925—Prayer and relief being different, the latter application is not a continuation of the former. 27 All. 334; 2 Pat. L.J. 115 and 36 Mad. 558, *Dist.* (*Jai Lal, J.*). MADHO PARSHAD *v.* GHANAYA LAL. **116 I. C. 24= 30 P.L.R. 419=A.I.R. 1929 Lah. 529.**

——If execution proceedings are consigned to the record room behind the back of the decree-holder without any default on his part and without any decision, a further application though in the form of a new application for execution is really a continuance of the older application. 37 All. 518, *Relied upon.* (*Walsh and Ryves, JJ.*). RAM LAKHAN SINGH *v.* LALA MEWA LAL. **65 I.C. 78=A.I.R. 1922 All. 433.**

——C. P. Code, O. 21, Rr. 90—95—Application under against one judgment-debtor only dismissed—Later application against all is not continuation of the first application.

If the first application for execution is *ab initio* a bad application the subsequent application cannot be an application made in continuation. Where the question is whether an application by a decree-holder auction-purchaser for delivery of possession is a step-in-aid of execution the answer must be in the negative.

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Defective application.

Order 21, R. 95 applies to an application made by the purchaser and an application made by the purchaser cannot possibly be read as an application by a decree-holder to take some step-in-aid of execution, whether the purchaser be the decree-holder or an outsider. (*Coutts and Das, JJ.*). KAMAL NAIN SINGH *v.* MAHARAJ BAHADUR KESHO PRASAD SINGH. **68 I.C. 638=1 Pat. 701= 4 P. L. T. 226=A.I.R. 1922 Pat. 310.**

—Art. 182—Step-in-aid—Defective application.

——*Application against judgment-debtor will not save limitation against his surety.*

A decree passed against a judgment-debtor is not a decree against his sureties jointly simply because it can be executed against the sureties as well as against the Judgment-debtor. Therefore, an application for execution against the principal debtor would not save limitation as against the sureties, 31 Bom. 50, *Foll.*

During the pendency of a suit a debt due to the defendant was attached before Judgment and the attachment was removed on security for the due performance of the decree being given. More than three years from the date of the decree the plaintiff sought to execute the decree against the surety. He claimed that limitation was saved by a previous application for execution against the defendant,

Held, that the decree could not be regarded as having been passed jointly against the judgment-debtor and the surety, and that therefore an application of execution against the defendant did not save limitation as against the surety. 31 Bom. 50, *Foll.* (*Heald and Maung Ba, JJ.*) K. S. E. MOHAMED CASSIM *v.* M. T. JANILA BEE BEE. **111 I.C. 479=6 Rang. 334= A.I.R. 1928 Rang. 282.**

——*Defective application for execution keeps decree alive.*

The number of the suits given the execution application being wrong the Court passed an order that the application should be returned for amendment. The application was never taken back but remained upon the record,

Held, that the application was step-in-aid of execution sufficient to keep the decree alive. (*Case-law discussed*). (*Addison, J.*). LEKH RAM *v.* GURDIAL. **88 I.C. 266=27 P.L.R. 393= A. I. R. 1926 Lah. 535.**

——*Application against judgment-debtor alone—Time against sureties not saved.*

——An application for the ascertainment of mesne profits awarded by a decree, prior as well as subsequent to its date, is not a proceeding in the suit but a proceeding in execution and comes within Article 182 and therefore such an application made against the judgment-debtor alone, without joining the sureties would not save limitation against the sureties. 45 Bom. 819, *Foll.* (*Macleod, C.J. and Crump, J.*). SAYAD YUSUF ALLI *v.* SAYAD AMIN. **73 I. C. 233= 25 Bom. L.R. 810=47 Bom. 775= A.I.R. 1923 Bom. 366.**

——*Defective application to take a step-in-aid of—Is a step-in-aid.*

An application to take a step-in-aid of execution, in order that it may be in accordance with law, within the meaning of Art. 182 of the schedule to the Limitation Act must be one praying for some relief which the Court is competent to grant.

An application even though it be deemed so defective as not to be an application for execution,

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Defective application.

must still be regarded as an application made to the proper Court in accordance with the law to take some steps-in-aid of execution. 10 C. L. J. 19; 17 M. L. J. 475, *Foll.* (*Mukerjee and Panton, JJ.*). SADAYA CHANDRA JANA *v.* PARES NATH GHOSE.
64 I.C. 571=35 C.L.J. 82=A. I. R. 1922 Cal. 44.

——Defective application under R. 15 and notice thereon, under R. 22, will both save limitation. (*Coutts and Das, JJ.*). GOBARDHAN DAS DWARKA PRASAD *v.* SATIS CHANDRA RAI. **69 I.C. 668=1 Pat. 609=4 P.L.T. 263=A.I.R. 1922 Pat. 597.**

——An execution application which does not contain particulars as to the amount of the decree and costs awarded is not in accordance with law and is not a step-in-aid of execution. 23 Cal. 217; 18 C.L.J. 538, *Foll.* (*Adami, J.*). GURU MAHADEVA ASHRAM PRASAD SAHIB BAHADUR *v.* MAHABIR SUKUL. **65 I.C. 120 (Pat.).**

—Art. 182—Step-in-aid—Filing list of witnesses.

——Any step taken by the decree-holder to remove an obstacle thrown by the judgment-debtor in the way of execution of the decree is a step-in-aid of execution which can give a fresh start for limitation. Article 182, Cl. (5) does not require that the application to take step-in-aid of execution of a decree should be made only in the course of execution proceedings under S. 47. The step-in-aid of execution may be taken in connexion with any other proceedings which may not, strictly speaking, be proceeding in execution of the decree, but which affects the execution of the decree.

Judgment-debtor applied under R. 90, O. 21, for setting aside sale. The decree-holder filed a hazari, or list of witnesses in attendance, but the application was dismissed and the judgment-debtor applied for review of the order. In the course of the trial of this review application, the decree-holder filed a list of witnesses and a petition of objection to the review.

Held, that the filing of the list of witnesses and the petition of objection are such steps-in-aid of execution as can give a fresh start for limitation any step in any proceeding which obstructs execution being a step-in-aid. A.I.R. 1921 Pat. 107, *Not appr.*; A.I.R. 1925 Pat. 459; A.I.R. 1926 Pat. 459; and A.I.R. 1923 Pat. 22; *Rel. on.* (*Kulwant Sahay and Macpherson, JJ.*). JAGDEO NARAIN SINGH *v.* BHUBANESHWARI KUER. **113 I.C. 582=7 Pat. 708=9 P.L.T. 817=A.I.R. 1928 Pat. 612.**

—Art. 182—Step-in-aid—Filing of affidavit.

——Decree-holder ordered to file written processes and identifier's affidavit—Filing only identifier's affidavits is not a step-in-aid of execution. 24 C.W.N. 55, *Foll.*; 4 P.L.J. 521 and 21 C.W.N. 423, *Dist.* (*Adami and Scroope, JJ.*). FATEH BAHADUR SINGH *v.* PARMESHWAR PRASAD. **108 I.C. 430=6 Pat. 694=9 P.L.T. 838=A.I.R. 1928 Pat. 145.**

—Art. 182—Step-in-aid—Filing of receipt for costs.

——Mere filing of receipts by a decree-holder for costs on account of maintenance of judgment-debtor in jail, does not amount to a step-in-aid. 23 Cal. 196; 22 Cal. 827, *Rel. on.* (*Addison, J.*). DAS RAM *v.* MALIK CHHABBAR SINGH, **101 I.C. 691=A.I.R. 1928 Lah. 443.**

—Art. 182—Step-in-aid—Filing without succession certificate.

——An execution application is in accordance with law within Art. 182 (5) if the particulars required by Rr. 11-14, O. 21, are mentioned in the application. Where, therefore, an application contains these particulars, the fact that it was presented without a succession certificate makes no difference, as an application without a succession certificate is perfectly in order; only no relief can be granted until the succession certificate is produced. A.I.R. 1926 Pat. 160 and 20 Cal. 735, *Rel. on.* (*Das and Adami, JJ.*). MT. BIBI AISHA *v.* MAHABIR PRASAD. **104 I.C. 218=6 Pat. 440=8 P.L.T. 671=A.I.R. 1927 Pat. 324.**

—Art. 182—Step-in-aid—Infructuous application.

——Where a decree-holder's previous application for execution was dismissed for default, and even if he states that it was filed merely with the intention of saving limitation and not with the intention of securing execution such application will extend time. A.I.R. 1929 All. 625 (F.B.), *held applicable.* (*Boys, J.*). RAM NATH *v.* RAM SAHAI. **A.I.R. 1930 All. 814.**

—Art. 182—Step-in-aid—Limitation.

——Application by only one of several joint decree-holders is also covered by Cl. (5)—Application not in accordance with law—Issue of notice under O. 21, R. 22, gives fresh start for limitation—A.I.R. 1926 Pat. 160, *Rel. on.* (*Addison, J.*). AMINCHAND *v.* KHIALI. **100 I.C. 475=9 L.L.J. 76=28 P.L.R. 93=A.I.R. 1927 Lah. 106.**

——The date of applying to the Court asking it to take some step-in aid of execution of the decree or order is to be taken as the date from which the period of limitation should be computed and not the date of the petitioners taking some step-in-aid of execution. (*Phillips and Madhavan Nair, JJ.*). KRISHNA PATTAR *v.* SEETHARAMA PATTAR. **98 I.C. 156=50 Mad. 49=24 M.L.W. 488=A.I.R. 1926 Mad. 1178=51 M.L.J. 480.**

——The payment of maintenance charges for the judgment-debtor in jail cannot by itself suffice to give a fresh starting point under Art. 182 (5) as that article requires an application to take a step-in-aid of execution. It cannot be presumed that an application would have been made, when the decree-holder paid such charges. (*Krishnan, J.*). RAMUDU CHETTY *v.* VARADARAJA CHARIAR. **62 I.C. 480=13 M.L.W. 289=A.I.R. 1921 Mad. 532.**

—Art. 182—Step-in-aid—Oral application.

——A verbal application for amendment of the petition for execution which was already in proper form cannot be said to be a step-in aid of execution. (*B. B. Ghose and Bose, JJ.*). HATIMULLA *v.* SUKHAMOY CHAUDHARY. **A. I. R. 1930 Cal. 304.**

——*Oral application to proper Court asking to issue warrant of attachment is a step-in-aid.*

In considering the meaning of the fifth clause of Art. 182 a Court should look very closely at the words used in the clause and should be loath to look at anything else. An oral application made to proper Court asking it to issue a warrant of attachment and sale of certain property in order that the decretal amount might be satisfied from the sale proceeds is a step-in-aid of execution. (*Stuart, C.J. and Raza, J.*). RAMLAL *v.* UDITNARAIN SINGH. **100 I.C. 308=2 Luck. 419=4 O.W.N. 175=A.I.R. 1927 Oudh 134.**

——Oral application to pay money lying in Court is a step-in-aid. 22 Bom. 340, *Foll.* (*Macleod, C.J. and Coyajee, J.*). MULCHAND MANAJI MARWADI *v.* JAMANBI ABDUL KABIR SAHEB KAJI. **89 I.C. 228=27 Bom. L.R. 671=A. I. R. 1925 Bom. 443.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Oral application.

——*Court forgetting to determine application for arrest of judgment-debtor—Fresh oral application is 'step-in-aid.'*

Where there has been a written application by the decree-holder for execution by the arrest of the judgment-debtor and subsequently the decree-holder appears in the Court and merely presses his former application the subsequent proceeding cannot be said to be a step-in-aid of execution. But if in the course of the same proceedings, the decree-holder makes a fresh application, though it might be an oral one and such fresh application is necessary, because, for instance, the Court has forgotten that it has to decide the question whether the judgment-debtor is to be arrested or not, the latter application will be a step-in-aid. S.C. No. 185; 20 O. C. 332; 14 O.C. 124 and 25 Bom. 639, *Dist.* (*Dalal, J. C. and Wazir Hasan, A.J.C.*). PRITHI NATH *v.* RAM SARAN.
88 I.C. 232=12 O.L.J. 302=A.I.R. 1925 Oudh 453.

——Order by Court to attach on the date fixed for the showing of cause by J. D. in absence of J. D. is no step-in-aid by defendant. No oral application to attach should be presented where it is superfluous in view of the written application. (*Oldfield and Devadoss, JJ.*). D. LAKSHMI NARASA RAJU *v.* Y. GANGANNA. **76 I.C. 769= 1923 M.W.N. 660=A. I. R. 1924 Mad. 186= 45 M.L.J. 680.**

—Art. 182—Step-in-aid—Process application.

——*Filing bhatta memorandum is step-in-aid.*

On 3rd July, 1922 the decree-holder applied for the arrest of the judgment-debtor. The arrest was ordered on 10th July, 1922. Then, in accordance with R. 166, Civil Rules of Practice the decree holder brought into Court the necessary fees with the bhatta memorandum which contained in columns 1 and 5 the statement "bhatta for arrest."

Held, that this bhatta memorandum is a direct application that the Court shall receive the fee and an implied application that it shall issue process and thus it is a step-in-aid. 28 Mad. 399, *Rel. on.* (*Jackson, J.*) RAMAN CHETTY *v.* RAMASWAMI PILLAI. **110 I.C. 205=1928 M.W.N. 699= 29 M.L.W. 327=A.I.R. 1928 Mad. 563= 56 M.L.J. 64.**

——*Application for issue of process to witness is not step-in-aid.*

Application for issue of process to a witness does not fall within Art. 182 (5). The words "step-in-aid of execution" cannot cover a subsidiary and incidental application in the course of an already pending proceeding. The words "step-in-aid of execution" must be construed as meaning some step which is not of an incidental nature, but which of itself gives an independent and fresh start to, or marks a new and effective stage in, the execution proceedings. (*Findley, Offg.J.C.*). SHRINIVAS *v.* JAGANNATH. **91 I.C. 1049=A.I.R. 1926 Nag. 250**

——Mere payment of process-fee is not a step-in-aid of execution. (*Wasir Hasan and Rasa, JJ.*). PEOPLE'S INDUSTRIAL BANK, ALLAHABAD *v.* MAHESH CHARAN SINHA. **93 I.C. 631= 1 Luck. 183=13 O.L.J. 49=3 O.W.N. 237= A.I.R. 1926 Oudh 289.**

——The payment of process fees for the issue of attachment in execution of a decree is neither an application for execution nor an application to take a step-in-aid of execution within the meaning of Art. 182 (5). 22 All. 358 and 30 All. 179, *Foll.* (*Lindsay, J.*). JAIDEO PRASAD *v.* GHASI. **87 I.C. 745=A.I.R. 1925 All. 646.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Scope of.

——*Process application indicating applicant's prayer for attachment is step in-aid.*

A *batta* application was termed "process Application" and it was seen from it that the *batta* was paid "to attach the properties in the house of the defendants" and "it was is requested that Re. 1 might be received for the above purpose." In the left hand margin of the application the words "Order for attachment of the movables under O. 21, R. 43" were found,

Held, that there were sufficient indications in the process application to show that the applicant in effect asked for attachment and that it was a step-in-aid of execution. A.I.R. 1924 Mad. 906, *Dist.* 28 Mad. 399, *Foll.*; 3 L.W. 34, *Ref.* (*Madhavan Nair, J.*). GOVINDASWAMI PILLAI *v.* GOVINDA PADAYACHI. **89 I.C. 894=21 M. L. W. 684= 1925 M. W. N. 591=A.I.R. 1925 Mad. 880= 48 M.L.J. 678.**

——Batta memo. not applying for issue of process along with payment of process fees for issue of warrant is no step-in-aid. 9 Cal. 644; 23 Cal. 374; 18 I.C. 455, *Diss.* (*Wallace, J.*) ARUNACHALAM CHETTIAR *v.* LATCHUMANAN CHETTIAR. **82 I. A. 497=20 M.L.W. 713=35 M.L.T. 97= 1924 M.W.N. 840=A. I. R. 1924 Mad 906. 47 M. L. J. 537.**

—Art. 182—Step-in-aid—Proper Court.

——Application to Court of Native State having agreement with British Government to execute each other's decrees is a step-in-aid. 42 Bom. 420, *Rel. on*; 12 Bom. 230, *Ref.*; 40 Mad. 1069 (F. B.), *Not foll.* (*Madgavkar, J.*) FATECHAND RAMPRATAP *v.* JITMAL RUPCHAND. **31 Bom. L.R. 1105=53 Bom. 844= A.I.R. 1929 Bom 418.**

——Appeal to Higher Court which dismissed it, is no step-in-aid of execution to the proper Court. The expression "proper Court" as defined in Explanation II to Art. 182 does not apply to such a case. (*Mookerjee and Panton, JJ.*). RAJANI BANDHU CHATTERJEE *v.* KALI PRASANNA CHATTERJEE. **74 I.C. 279=A.I.R 1924 Cal 419.**

—Art. 182—Step-in-aid—Representation.

——Application to bring judgment-debtor's heirs on record is step-in-aid—Such application will save limitation as against all legal representatives. 3 All. 517 and A.I.R. 1925 Pat. 551, *Foll.* (*Dalal, J.*). MANMOHAN DAS *v.* RASHIDUDDIN. **103 I.C. 254=A.I.R. 1927 All. 698.**

—Art. 182—Step-in-aid—Scope of.

——Decree against estate of deceased in the hand of judgment-debtors—Order 21, R. 12, C. P. Code, does not apply—Application for execution need not be accompanied by an inventory to make it step-in-aid of execution. (*Fawcett and Madgavkar, JJ.*). BIRDINCHAND DHONDIRAM *v.* BADESAHEB BAHAMIYA. **98 I.C. 951=28 Bom. L.R. 1322= A.I.R. 1927 Bom. 52.**

——*Words 'for execution' and 'step-in-aid' explained.*

The words "for execution" in Act 182 (5) mean "for the purpose of obtaining execution" and the words "step-in-aid of execution" mean "step taken for the purpose of obtaining execution." (*Boys and Banerji, JJ.*). SHEO PRASAD *v.* MT. NARAINI BAI. **90 I. C. 986=48 All. 468= 24 A.L.J. 137=A.I.R. 1926 All. 95.**

——*Application to send for records may amount to step-in-aid.*

Although every application to send for a record made by a decree-holder may not necessarily

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Scope of.

amount to a step-in-aid, if the Court before whom the application is made considers it necessary in order to get rid of the objections raised by the judgment-debtor, such an application may amount to a step-in-aid. 38 Mad. 695, *Rel. on.* (*Sulaiman and Boys, JJ.*). RAGHUNATH PRASAD *v.* LACHMI NARAIN. **88 I.C. 271=47 All. 667=23 A.L.J. 422=6 L.R.A. Civ. 339=A.I.R. 1925 All. 394.**

——Foreign decree—Execution in British India—Valid step in-aid of execution taken in foreign Court—Must be accepted as such in British Indian Court. 40 Mad. 1069 (F.B.), *Dist.*; 42 Bom. 420, *Appr.*

Per *Schwabe, C. J.*—The law to be considered is that of the place where the application is made which will generally also be the place of origin of the decree and Cl. 5 of the Art. 182, of the Indian Limitation Act must be read to mean "to take some step which, according to the law of the place where the application therein referred to has to be made, is a step-in-aid of execution."

Per *Wallace, J.*—When we have to consider the interpretation of Art. 182 with reference to execution of a foreign decree, we have to consider not whether the application would have been a step-in-aid in British India with reference to the execution of a British Indian decree, but whether the application having reference to a foreign decree and having been brought in the proper foreign Court, was a step-in-aid under the law of that Court and if it was, such a step-in-aid, it satisfies Art. 182. When a foreign Court has laid down that an application such as the present to transmit the documents to British India was at the time it was made, a proper step-in-aid of execution, it would be wrong for the British Indian Court to hold, when called on to execute that foreign decree that that application was not at the time it was made, a perfectly legal step-in-aid within the meaning of Art. 182 of the Indian Limitation Act. (*Schwabe, C.J. and Wallace, J.*). SRINIVAS IYENGAR *v.* NARAYANA RAO. **69 I.C. 932=43 Mad. 1014=1922 M.W.N. 647=16 M.L.W. 735=A.I.R. 1923 Mad 72=43 M.L.J. 700.**

——*Application for execution rejected wrongly, as not being in accordance with law—No appeal preferred—Application cannot save limitation!*

Though an order of rejection was a wrong one nevertheless the Munsif had jurisdiction to decide that the application was not according to law; and that the applicant not having appealed the order was final and could not be questioned in subsequent execution proceedings and therefore the application can be of no avail to save limitation for further application,

Held, further that the fact that the order of the Munsif was passed against the decree-holder without any notice having been issued to the judgment-debtor was immaterial. (*Batten, J. C.*). BEHARI LAL *v.* JAGANNATH. **72 I.C. 473=8 N.L.J. 91=A.I.R. 1923 Nag. 236.**

—Art. 182—Step-in-aid—Starting point.

——Time begins to run not from opening of execution proceedings, but from applications or steps-in-aid of execution. (*Brown, J.*). SOMASUNDARAM CHETTYAR *v.* MA SHWE THIT. **117 I.C. 578=7 Rang. 132=A.I.R. 1929 Rang. 152.**

——An execution application returned for amendment but not represented in time may yet give a fresh starting point for limitation. R. 17 (2)

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Test of.

is merely an enabling one. 4 L.W. 103, *Foll.*; 5 Cal. 594 (F.B.); A.I.R. 1921 Lah. 535, *Ref.* (*Wallace and Thiruvenkatachariar, JJ.*). ABDUL KHARIM SAHIB *v.* LAKSHMANASWAMI. **112 I. C. 36=27 M. L. W. 475=A.I.R. 1928 Mad. 440.**

——It is not the application for execution alone which saves limitation. Any other application which may be taken to be a step in-aid of execution will also start a fresh period of limitation so long as the execution is not barred under S. 48. (*Dalal, A.J.C.*). MATHURA SINGH *v.* KANDHAI PATTAK. **74 I. C. 816=A.I.R. 1924 Oudh 177.**

——Time runs from application not from date of order on the application. 10 C.L.J. 479; 13 C.L.J. 26, *Foll.* (*Adami and Bucknill, JJ.*). MT. BHAGWAT KUER *v.* DEWAN ZAMIR AHAMAD KHAN. **78 I.C. 766=3 Pat. 596=5 P.L.T. 451=1924 P.H.C.C. 221=2 Pat. L.R. Civ. 249=A. I. R. 1924 Pat. 576.**

——*Application to receive jail-batta is a step-in-aid of execution.*

A written application to the Court, to receive the railway fare and the cost of meals for sending the judgment-debtor to the Civil Jail is a step-in-aid and gives a fresh starting point for limitation. 28 Mad. 399, *Ref. to.*

If an application written or oral has been made asking the Court to take some step-in-aid of execution, it forms a starting point under the article. (*Krishnan, J.*). SEKHARIPURAM GRAMOM KRISHNAN AIYAR *v.* NAMIASSAN VEETIL MAYYANKURTI. **70 I.C. 80=15 M. L. W. 14=A. I. R. 1922 Mad. 30.**

—Art. 182—Step-in-aid—Test of.

——Where a decree-holder's previous application for execution is dismissed for default, and even if he states that it was filed merely with the intention of saving limitation and not with the intention of securing execution, such application will extend time. A. I. R. 1929 All. 625 (F. B.), *held applicable*. (*Boys, J.*). RAM NATH *v.* RAM SAHAI. **A.I.R. 1930 All. 814.**

——*Quaere.*—Whether an application for mere leave to bid at the auction is a step in aid of execution within the meaning of Art. 182 (5). (*Venkatasubba Rao and Madhavan Nair, JJ.*). VAPPA ROWTHER *v.* SIVAKATAKSHAM PILLAI. **123 I. C. 577=53 Mad. 390=1930 M.W.N. 208=A.I.R. 1930 Mad. 588=58 M. L. J. 406.**

——\pplication in accordance with law to proper Court is sufficient—*Bona fide* intention to execute need not be shown. It is wrong to read in Cl. 5, Art. 182, requirements of good faith and due diligence. (1890) A.W.N. 77 and (1891) A.W.N. 148, *Appl.*; A.I.R. 1926 All. 95, *Expl.* and *Dist.*; A I.R. 1928 Oudh 337, *Appr.* (*Case-law referred*). (*Sulaiman, Banerji, King, Niamatullah and Sen, JJ.*). KAYASTHA CO., LTD. *v.* SITA RAM. **118 I. C. 17=1929 A.L.J. 983=A. I. R. 1929 All. 625 (F.B.).**

——*Application whether necessary for realising decretal amount is the test—Application made to point out official mistake in not calculating interest due under decree is step-in-aid of execution.*

The determination of the question whether an application amounts to a step-in-aid of execution depends not, on the stage at which the application is made by the decree-holder, but it depends upon the nature of the application and the relief claimed therein. One main test in such case is whether

LIMITATION ACT (1908), Art. 182 — Step-in-aid—Test of.

it was necessary for the decree-holder to make the application in order to realize the money awarded to him under the decree and in accordance with the decree.

An application made to point out that the official had omitted to include interest granted under the decree payable to him and to correct the mistake by addition of interest after calculation, is necessitated by a mistake of an official of the Court and is a step-in-aid of execution. It is a judicial act and not a ministerial one. A.I.R. 1927 P.C. 73, *Dist.*; 103 P.R. 1908, *Cons.*; 155 P.R. 1912, *Ref.* (*Jai Lal, J.*) NANAK CHAND RAMA NAND *v.* JAI GOPAL GOKAL CHAND.
114 I. C. 55=A.I.R. 1929 Lah. 103.

———An execution petition cannot be a step-in-aid of itself.

Per *Thiruvenkatachariar, J.*—Apart from a few exceptions, an application to take a step-in-aid of execution necessarily presupposes a pending application for execution and no application for execution of a decree can be held to the pending if the application is not admitted, be rejected on the ground of non-compliance with the requirements of R. 11. A.I.R. 1922 Mad. 729, *Ref.* (*Wallace and Thiruvenkatachariar, JJ.*). ABDUL KHARIM SAHEB *v.* LAKSHMANASWAMI. **112 I.C. 36=27 M.L.W. 475=A.I.R. 1928 Mad. 450.**

———*Court should be asked to take some step in furtherance of execution.*

An application to amount to a step-in-aid of execution within the meaning of Art. 182, Cl. (5), should be one asking the Court to take some step in furtherance of the execution of the decree. A, I. R. 1922 Mad. 79, *Appl.*; 38 Mad. 695, *Not foll.*

An application by the decree-holder for extension of time to file an encumbrance certificate cannot be said to be a step-in-aid of execution. (*Madhavan Nair and Curgenven, JJ.*). RAMASWAMI *v.* VEERANNA. **106 I.C. 648=26 M.L.W. 725=1927 M.W.N. 792=A.I.R. 1928 Mad. 143=53 M.L.J. 766.**

———Bona fides—*Necessity of.*

The *bona fides* or *mala fides* of the earlier application is an important ingredient in determining whether that application is effective to save limitation for the later application, though the *bona fides* or *mala fides* of the later application cannot be judged at the time that it is presented from anything that has gone before and therefore cannot at the time of presentation be entered into. (*Boys and Banerji, JJ.*). SHEO PRASAD *v.* MT. NARAINI BAI. **90 I.C. 938=48 All. 468=24 A.L.J. 137=A.I.R. 1926 All. 95.**

———An application to be a step-in-aid of execution must be one in furtherance of execution proceedings. (*Phillips and Madhavan Nair, JJ.*). KRISHNA PATTAR *v.* SEETHARAMA PATTAR. **93 I. C. 156=50 Mad. 49=24 M.L.W. 588=A.I.R. 1926 Mad. 1178=51 M.L.J. 480.**

—Art. 182—Step-in-aid—Transfer proceedings.

———The sending of the decree for execution to another Court is not by itself an execution of the decree, though an application for such a transmission may amount to taking step-in-aid of such execution. (*Sulaiman and Sen, JJ.*). ATHEITON & Co. *v.* HABIB BAKHSH. **115 I.C. 865=1929 A.L.J. 353=A.I.R. 1929 All. 390.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is.

———*Application for transfer of decree for execution is a step-in-aid.*

An application for a certificate is a step in-aid of execution and it is a step which is always necessary where the decree-holder desires to obtain execution against property situate outside the territorial limits of the jurisdiction of the Court which made the decree. (*Miller, C. J. and Jwala Prasad, J.*). RAMCHANDRA MARWARI *v.* KRISHNA LAL MARWARI. **65 I.C. 332=3 Pat. L.T. 298=1 Pat. 328=A.I.R. 1922 Pat. 301.**

———Application for transfer of decree will be a step-in-aid only when it is in accordance with law. The expression 'applying in accordance with the law' means applying to the Court, to do something in execution, which, by law, the Court is competent to do. It cannot mean applying to the Court to do something which either to the decree-holder's direct knowledge in fact or from the presumed knowledge of the law, he must have known the Court was incompetent to do. (*Jwala Prasad and Bucknill, JJ.*). AMRIT LAL *v.* MURLIDHAR. **67 I.C. 538=1 Pat. 651=3 P.L.T. 422=1922 P.H.C.C. 229=A.I.R. 1922 Pat. 188.**

———When a Court which has passed a decree sends it for execution to another Court, then the first Court ceases to be the proper Court within the meaning of Sch. I, Art. 182 (5). (*Macleod, C. J. and Shah, J.*). RANGASWAMI SHETTI *v.* SHESHAPPA MANJAPPA SHIMPI. **68 I.C. 506=24 Bom.L.R. 798=47 Bom. 56=A.I.R. 1922 Bom. 359.**

—Art. 182—Step-in-aid—What is.

———Judgment-debtor informing adjustment—Decree-holder contesting application—Act is step-in-aid of execution. (*B. B. Ghose and Bose, JJ.*). HATIMULLAH *v.* SUKHAMOY CHAUDHURY. **A.I.R. 1930 Cal. 304.**

———Where decree is passed in favour of plaintiff for recovery of property subject to payment by him of certain amount for improvement to defendant, application by plaintiff for extension of time to enable him to raise money is not step-in-aid of execution. 45 Mad. 202, *Doubted* and *Dist.*; 38 Mad. 690, *Not appr.*; 41 Mad. 251 and 53 M.L.J. 766, *Rel. on.*; 36 Bom. 638; 37 Bom. 317; 17 A.L.J. 841 and 24 All. 300, *Dist.* (*Reilly and Ananthakrishna Iyer, JJ.*). SRIMATH DEIVASIKAMONI ANNAMALAI DESIKAR *v.* RAJU PILLAI. **1930 M.W.N. 979=A.I.R. 1930 Mad. 995=59 M.L.J. 579.**

———Application under C. P. Code, O. 21, R. 72 coupled with request to set off purchase money against decretal amount is step-in-aid.

That is because the request to the Court to set off the purchase money against the decretal amount is one for furthering the execution of the decree. 12 C.W.N. 621, *Foll.*; 30 Cal. 761; 10 C.W.N. 209; 16 M.L.T. 103; A.I.R. 1922 Mad. 79; A.I.R. 1926 Mad. 1178 and A.I.R. 1926 Mad. 1197; 13 All. 211; 22 All. 399; 21 Bom. 331, *Ref.* (*Venkatasubba Rao and Madhavan Nair, JJ.*). VAPPU ROWTHER *v.* SIVAKATAKSHAM PILLAI. **123 I.C. 577=53 Mad. 390=1930 M.W.N. 208=A. I. R. 1930 Mad. 388=58 M.L.J. 406.**

———Decree-holder's application to refute judgment-debtor's objections and for extension of time are steps-in-aid.

The decree-holder though not right in asking the Court to appoint a local commissioner in such

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is.

an application, cannot be said to be acting not *bona fide*. 40 All. 668; A.I.R. 1925 Pat. 459; A.I.R. 1928 Pat. 612, *Foll.* (*Bhide, J.*). RAM CHAND *v.* DYAL SINGH. **119 I.C. 228=11 L.L.J. 503= A.I.R. 1929 Lah. 335.**

——It is doubtful whether an application by a decree-holder for permission to bid at an auction sale amounts to step-in-aid. 88 P R. 1884, *Doubted.* (*Jai Lal, J.*). GHANNAYA LAL & CO. *v.* JASSA RAM HIRA NAND. **113 I.C. 909=10 L.L.J. 505= A. I. R. 1929 Lah. 57.**

——An Additional District Munsif's Court was directed not to receive plaints or applications except those specifically transferred to it. A suit was transferred and disposed of but execution applications therein were prohibited to be taken by the Additional District Munsif. In pursuance of this order a decree-holder filed successive applications for execution, within the period of limitation, in the Principal District Munsif's Court. Finally he filed an execution application in the Additional District Munsif's Court,

Held, that the applications filed before the Principal District Munsif's Court were fresh starting point under the Limitation Act. (*Coutts-Trotter, C.J. and Ananthakrishna Ayyar, J.*). GOVINDA RAO *v.* P.C. JAGANNADHAM. **119 I. C. 398=30 M.L.W. 381= A.I.R. 1929 Mad. 787=57 M.L.J. 234.**

—— An application for delivery of property by a decree-holder who has purchased the property in execution of his own decree is a step-in-aid of execution within the meaning of the expression. In Art. 182, Cl. 5 of the Limitation Act even though the application was dismissed for non-payment of batta. (*Madhavan Nair, J.*). APPATHURAI AYYAR *v.* PANAYAPPAN. **1929 M.W.N. 573=30 M.L.W. 683=57 M.L.J. 468.**

——Decree-holder applying to Court which passed decree to issue notice to judgment-debtor who was then outside that Court's jurisdiction—Application made *bona fide* for executing decree—Application is to proper Court and legal—It is step-in-aid of execution. A. I. R. 1926 All. 95: A.I.R. 1922 Cal. 44 and 25 Cal. 594, *Rel. on.* (*Pratt and Otter, JJ.*). C.K.R.M. KATHIRASAN CHETTIAR *v.* MA HDA. **116 I. C. 474= A.I.R. 1929 Rang. 95.**

——*An application for substitution of names in execution proceedings is a step-in-aid.*

An application for substitution of names in place of the original decree-holder and for continuation of execution proceedings gives warning to the judgment-debtors that the decree-holder died and that his heirs-in-law desire subsequently to take proceedings in execution and is therefore a step-in-aid of execution. 29 All. 301 and 31 Mad. 234, *Appl.* (*Dalal, J.*). MOHAN SINGH *v.* JAGAT SINGH. **109 I.C. 412=50 All. 621=26 A.L.J. 417= A.I.R. 1928 All. 299.**

——Order for issue of warrant—Inference that Court acted on some application of a decree-holder can be drawn—Such application is a step-in-aid.

The filing of an affidavit of service which is the same thing as proving service of notice on the judgment-debtors is a step in-aid of execution. (*C. C. Ghose and Buckland, JJ.*). MOHAN LAL *v.* KASIMUDDIN SHEIKH. **109 I.C. 588= 47 C.L.J. 362= A.I.R. 1928 Cal. 302.**

——Decree transferred for execution—Application to parent Court to re-transfer it to a third Court is proper and is step-in-aid. A.I.R. 1916 P.C. 16 and 37 Mad. 231, *Expl.*; A.I.R. 1926 Lah. 118, *Appr.*; A.I.R. 1922 Bom. 359, *Diss. from*; A.I.R. 1926 Bom. 271, *Ref.* (*Ramesam and Jackson, JJ.*). MAHADUM BEG SAHIB *v.* MD. MEERA SAHIB. **110 I.C. 829= A.I.R. 1928 Mad. 493.**

——Application to summon witnesses to resist judgment-debtor's objection is a step-in-aid.

In order that an application by the decree-holder should serve as a step-in-aid, it is not necessary that it should be made in a pending execution application. A.I.R. 1922 All. 432; 22 C. W. N. 1027; and A.I.R. 1927 Mad. 288; *Foll.*; A.I.R. 4925 Pat. 459; 26 C. L. J. 115 and 2 Pat. L. J. 5, *Ref.* (*Addison, J.*). UMAR DIN *v.* GHULAM MAHOMED. **103 I.C. 712= A.I.R. 1927 Lah. 653.**

——Application under C. P. Code, O. 21, R. 95, by decree-holder purchasing property in execution of his own decree is a step-in-aid. 21 Mad. 185 and 6 M. H. C. R. 304. *Expl.*; 48 M. L. J. 506, *Cons.*; 45 Mad. 466, *Dist.* (*Devadoss and Sundaram Chetty, JJ.*). MATHONKANDI KANNAN *v.* THAYYIL PAKKUTHI AVVULLA HAJI. **99 I.C. 677= 50 Mad. 403=25 M.L.W. 61= 1927 M.W.N. 8=38 M.L.T. 156= A.I.R. 1927 Mad. 288=52 M.L.J. 1.**

——*Application to substitute legal representatives of judgment-debtor is a step-in-aid.*

——A step of substituting the legal representative of the deceased judgment-debtor taken by an application is a step which must be treated as one in accordance with the spirit as well as the letter of the law, for it must ultimately assist in the realization of the decree and facilitate the actual execution of the decree when it is taken out. It is therefore a step-in-aid of execution within Art. 182. 2 C.L.J. 544, *Foll.* (*Kinkhede, A.J.C.*). RAMCHANDRA *v.* UKA. **103 I. C. 279= A. I. R. 1927 Nag. 308.**

——Service of notice under O. 21, R. 22, C. P. Code, and attachment of judgment-debtor's properties are step-in-aid. 8 Cal. 51 (P. C.) and 35 Cal. 1060, *Expl.* (*Ross and Kulwant Sahay, JJ.*). RAJA BISWAMBHAR NATH SAHI *v* MAHESH SAHI. **103 I.C. 39=6 Pat. 277=8 P.L.T. 652= A. I. R. 1927 Pat. 218.**

——Application for transfer of decree for execution is step-in-aid. (*Sulaiman, J.*). SAKLU CHOWDHURI *v.* HARBANS DEO. **95 I.C. 26= A.I.R. 1926 All. 660.**

——Permission to execute decree where party on record is dead, is a step-in-aid, but enures only for the then party to the proceedings. (*Suhrawardy and Duval, JJ.*). BIRENDRA CHANDRA *v.* TULSI CHARAN. **85 I.C. 657= A.I.R. 1926 Cal. 267.**

——Name of legal representative incorrectly given—Still execution application is a step-in-aid. 35 Cal. 1047, *Foll.* (*Abdul Raoof and Fforde, JJ.*). MT. BEGAM BIBI *v.* BULAQI SHAH. **90 I.C. 1050= 26 P.L.R. 740= A.I.R. 1926 Lah. 34.**

——An application by assignee decree-holder the transferee Court praying for return of records to the parent Court for further conducting the proceedings, *i.e.*, for his recognition as assignee, is a step-in-aid; 13 C.W.N. 533, *Ref*, (*Devadoss, J.*). AYYARU PILLAI *v.* VARADARAJU PILLAI. **92 I.C. 770= A.I.R. 1926 Mad. 431= 50 M.L.J. 116.**

——Issue of notice under O. 21, R. 22, is step-in-aid though the application is not in accordance with law. 25 Cal. 594 (F.B.) and 15 All. 84 (F.B.), *Rel. on.* (*Mullick, A. C. J. and Kulwant Sahay, J.*).

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is.

JAGENDRA PRASAD NARAYAN SINHA *v.* MANGAL PRASAD SAHU. 90 I.C. 847=7 P.L.T. 330= 1925 P.H.C.C. 315=A.I.R. 1926 Pat. 160.

——*Property passing into another Court's jurisdiction—Application to Original Court is a step-in-aid.*

A decree was being executed in the Court of S-J., at Dhulia against two defendants both of whom had properties within the jurisdiction of the Court. During the pendency of the execution proceedings, the property of defendant No. 2 passed under the jurisdiction of the Jalgaon Court,

Held, on the question of limitation for an execution application made to the Jalgaon Court that the original application to the Dhulia Court was a step-in-aid of execution but the proper order for the Dhulia Court to make was to transfer the decree or a certified copy thereof so far as it concerned the defendant No. 2 to the Jalgaon Court. 42 Mad. 821 (F.B.), *Foll.* (*Macleod, C.J. and Coyajee, J.*). JAGANNATH NATHU *v.* ICHHARAM NAROBA.

89 I.C. 87= 27 Bom. L. R. 649= A.I.R. 1925 Bom. 414.

——*Execution application represented in time but dismissed on ground of too great delay—Application is step-in-aid.*

Where the decree-holder upon his presenting an execution application was asked to explain how the application was not time-barred, which he explained accordingly and re-presented the application in time but somehow the application was dismissed on the ground that the delay in representation was too great,

Held, that the application was a step-in-aid. 1915 M.W.N. 865, 12 L.W. 1207 and 2 L.W, 540, *Foll.* (*Jackson, J.*). BASWAN *v.* RANGASWAMI.

88 I.C. 88=21 M.L.W. 548=A.I.R. 1925 Mad. 714.

——An application by the transferee of a decree to substitute his name for that of the decree-holder is a step-in-aid of execution. 29 All. 301, *Foll.* (*Baker, J.C.*). JAGANNATH *v.* SHRINIVAS.

88 I.C. 112=A.I.R. 1925 Nag. 362.

——An application for substitution of heirs of a deceased judgment-debtor is a step-in-aid of execution. (*Pullan, A. J. C.*). RUDRA PRATAB SINGH *v.* SHEO PRASAD. 79 I. C. 880= 11 O.L.J. 604=A.I.R. 1925 Oudh 77,

——The decree-holders examined a certain witness in order to resist an objection filed by the judgment-debtor to the execution of the decree,

Held, that the action on behalf of the decree-holders was a step-in-aid of execution as contemplated by Art. 182. 21 C. W. N. 868; 22 C.W.N. 1027, and 2 P.L.J. 5, *Foll.*; (*Jwala Prasad and Kulwant Sahay, JJ.*). SHEO SAHAY *v.* JAMUNA PRASAD. 88 I. C. 807=4 Pat. 202=6 P.L.T. 777= A. I. R. 1925 Pat. 459.

——An application to certify payment is a step-in-aid of execution. (*Godfrey, J.*) MAUNG LAW SEN *v.* MAUNG PO THIN. 84 I.C. 369=84 I.C. 473= 3 Bur. L.J. 235=2 Rang. 393= A.I.R. 1925 Rang. 26.

——*Instalment decree—Application to make decree final may be a step-in-aid.*

A decree was payable by yearly instalments the first of which was payable on the 31st March, 1914. On failure to pay any one instalment in time the decree allowed sale of the mortgage property or a sufficient portion thereof to recover the amount of the instalment overdue. The creditors sought to make the decree final on default instead of applying for sale. On the 30th October, 1919 the creditors applied to make the decree final as regards the instalment due on 31st March, 1917. The application was rejected,

Held that an application to make a decree final may in one case be considered as a step-in-aid although it may in other cases be not so and that the application on 30th October, 1919 was a step-in-aid which started a new period of limitation running. A.I.R. 1922 Bom. 118, *Ref.* (*Macleod, C.J. and Crump, J.*). BINDU GOVIND *v.* HANMANTA GOVIND. 79 I. C. 407=A. I. R. 1924 Bom. 71.

——Application for recognising assignment of decree and for execution is a step-in-aid. 12 M.L.J. 348, *Foll.* (*Phillips and Odgers, JJ.*). RAJITHAGIRIPATHY *v.* BHAVANI SANKARAN.

80 I.C. 103=19 M.L.W. 650=1924 M.W.N. 527= 47 Mad. 641=A.I.R. 1924 Mad. 673=47 M.L.J. 4.

——*Application to summon a necessary witness is a step-in-aid.*

An application to summon the *Patwari*, to take evidence for rectification of the area of the property to be sold was held to be a step-in-aid as without such an application the Court would not have summoned the *Patwari* and there would have been no means to rectify the area of the property to be sold as required by the Collector. A.I.R. 1922 All. 432, *Foll.* (*Dalal, A. J. C.*). MATHURA SINGH *v.* KANDHARI PATHAK. 74 I.C. 816= A.I.R. 1924 Oudh 177.

——Assignee's application for substitution is step-in-aid. 29 All. 301; A.I.R. 1923 Oudh 9, *Foll.* (*Simpson, A. J. C.*). MT. MARIAM BEGUM *v.* MOHAMMAD MEAHADI. 74 I.C. 40= A.I.R. 1924 Oudh 172.

——Application to summon witnesses in an objection case, is a step-in-aid. A.I.R. 1922 All. 432, *Foll.* (*Gokul Prasad, J.*). ABDUL QUDDUS *v.* SAYED AHMAD. 79 I.C. 511=A.I.R. 1923 All. 415.

——*Claim suit by decree-holder—Institution of, is a step-in-aid of execution.*

Where the decree-holder files a suit for a declaration that a sale by the judgment-debtor is fraudulent and that the properties are liable to be attached in execution of his decree *held*, that the institution of the suit is a step-in-aid of execution of his decree.

The expression "in accordance with law" means " in accordance with the whole body of law applicable, and not merely the law relating to the execution of decrees."

The word 'application' means a 'document containing a request'. A plaint can for the purposes of the section be treated as an application.

'Proper Court' means the Court whose primary duty is to execute its own decree. (*Wasir Hasan, A.J.C.*). SHEO RAM *v.* RAM BHAROSEY.

69 I.C. 660=9 O.L.J. 444=26 O.C. 71= A.I.R. 1923 Oudh 9.

——Application for issue of notice to judgment-debtor is step-in-aid. (*Jwala Prasad and Bucknill, JJ.*). GOUR CHANDRA RAY *v.* JANARDAN PRASAD THAKUR. 68 I. C. 337=4 P.L.T. 204= A.I.R. 1923 Pat. 180.

——*Application for recovery of one of several instalments due under the decree is step-in-aid with regard to whole decree.*

An application for partial execution of a decree would be a step-in-aid with regard to the whole decree. There is a considerable difference between a decree which directs several things to be done by the defendant without specifying any particular date or dates for their performance,

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and a decree which directs instalments to be paid on particular dates; but a Darkhast, which asks for the assistance of the Court for the recovery of one of several instalments at the date of Darkhast, should be considered as a step-in-aid so as to start a new period of limitation with regard to all the instalments then due. (*Macleod, C.J. and Shah, J.*). SITABAI ZUKAPPA MHETRE *v.* KESHARAO PARVATRAO KATE. **67 I.C. 169= 24 Bom. L.R. 284=46 Bom. 719= A.I.R. 1922 Bom. 194.**

——Decree providing both for redemption and sale—Application for extension of time by mortgagor is a step-in-aid.

A step is a step-in-aid of execution if it aids the decree-holder in some portion of the execution. (*Spencer and Ramesam, JJ.*). SANKARA NAINAR PILLAI *v.* PUTHIYA VEETIL THANGAMMA. **70 I.C. 333=45 Mad. 202=30 M.L.T. 252= 1921 M.W.N. 391=A.I.R. 1922 Mad. 247= 41 M.L.J. 374.**

——*Payment to decree-holder—Application for recording, is a step-in-aid of execution.*

It is not what the decree-holder does that is a step-in-aid of execution but what he asks the Court to do, and the date from which the period of limitation starts is the date on which he asks for that step to be taken, not that on which it is taken. The application to record the payment is an application to the Court to take a step-in-aid of execution of the decree. (*Hallifax, A.J.C.*). LACHMAN *v.* GAHRESWAR. **65 I.C. 681= 18 N. L.R. 62=A. I. R. 1922 Nag. 166.**

——*Application to execute entire decree by arrest of surety is "step-in-aid."*

An application, asking the proper Court to execute the entire decree by the arrest of the person of a surety who has made himself liable for the satisfaction of the decree, amounts to asking the execution Court to take a step-in-aid of the execution of the decree as against the principal whose liability the surety had taken upon himself and the decree-holders are entitled to the benefit of Cl. (5) of the Article. 31 Bom. 50, *Dist.* (*Piggott and Gokul Prasad, JJ.*). MD. HAFIZ *v.* MD. IBRAHIM. **43 All. 152=A.I.R. 1921 All. 291.**

——Mortgage suit—Decree for sale—Appealing against a decree declaring another entitled to a prior charge on the property mortgaged is step-in-aid. (*Gokul Prasad and Lindsay, JJ.*). BALDEO SINGH *v.* RAMSARUP. **64 I.C. 598 = 19 A.L.J. 905=A.I.R. 1921 All. 174.**

——Application to reject certain objections to execution is step-in-aid. 40 All. 668, *Foll.* (*Walsh and Kanhaiya Lal, JJ.*). ISHRI RAI *v.* RAGHUPAT NARAIN RAI. **63 I. C. 907=19 A.L.J. 641= A.I.R. 1921 All. 119.**

——An application made by the decree-holder for time, to enable him to obtain information regarding the defendant's share in certain property, which was attached, is step-in-aid of execution. (*Shah, J.*). VISHWANATH PARSHARAM *v.* NARSU TULSIDAS. **60 I.C. 916=23 Bom. L.R. 107= A.I.R. 1921 Bom. 33.**

——An application for the revival of previous proceedings for execution is a step-in-aid of execution. 27 Cal. 285, *Rel.* (*Richardson and Beachcroft, J.*) CHANDRA KUMAR DHAR *v.* RAMDIN DHAR. **64 I.C. 727 (Cal.).**

—Art. 182—Step-in-aid—What is not.

——Decree passed for recovery of property subject to payment for improvements to defendant—

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is not.

Application by plaintiff for extension of time to make payment, is not step-in-aid of execution. A.I.R. 1923 Mad. 247, *Doubted* and *Dist.*; 38 Mad. 695, *Not Appr.*; 41 Mad. 251 and A.I.R. 1928 Mad. 143, *Rel. on.*; 36 Bom. 638; 37 Bom. 317; 17 A.L.J. 841 and 24 All. 300, *Dist.* (*Reilly and Ananthakrishna Iyer, JJ.*). (SRIMATHI) DEIVASIKAMANI ANNAMALAI DESIKAR PANDARA SANNADHI *v.* RAJU PILLAI. **A. I. R. 1930 Mad. 995.**

——An application for extension of time to pay the amount ascertained as compensation which was made a condition for the delivery of possession to the plaintiff is not a step-in-aid within the meaning of Art. 182. 45 Mad. 202; 38 Mad. 695, *Diss. from*; 41 M. 251; 53 M.L.J. 766, *Ref. to*; 36 Bom. 638; 37 Bom. 317; 29 All. 301; 38 All. 690; 47 All. 667, *Diss.* (*Reilly and Ananthakrishna Ayyar, JJ.*). DEIVASIKAMANI ANNAMALAI DESIKAR *v.* RAJU PILLAI. **1930 M.W.N 979=59 M.L.J. 579.**

——Certification of part payment cannot help the decree-holder if it is made after the period of limitation for execution has expired. 24 I.C. 215, *Foll.* in A.I.R. 1924 Oudh 332 and 50 I.C. 242, *Ref.* (*Raza, J.*). SANT DASS *v.* RAM PRASAD. **A.I.R. 1930 Oudh 504.**

——*C. P. Code, O. 21, R. 2 (1).*

Certification under O. 21, R. 2 (1), not being an application within the meaning of Art. 181 cannot be an application for the purposes of Art. 182 (5) and is not a step-in aid of execution. A.I.R. 1929 P.C. 19, *Rel. on.* A.I.R. 1925 Rang. 26, *Not Foll.* (*Maung Ba and Brown, JJ.*). MAUNG TUN HLAING *v.* U AUNG GYAW. **A.I.R. 1930 Rang. 64.**

——Mere opposition to application by judgment-debtor to set aside sale, is not step-in-aid of execution. (*Jai Lal, J.*). MADHO PARSHAD *v.* GHANAYA LAL. **115 I.C. 24=30 P.L. R. 419= A.I.R. 1929 Lah. 529.**

——(*Obiter*) Per *Cuming, J.*—A certification of payment by a judgment-debtor is not an application to the Court to take some step-in-aid of execution. It is merely a statement of the Court that something had been done and not an application to the Court to do something. (*Cuming and B. B. Ghose, JJ.*). REBALI MOHUN *v.* ALAUDDIN AHMED. **98 I.C. 825=44 C.L.J. 248= A.I.R. 1927 Cal. 29.**

——Mere order by Court to take necessary steps, in the absence of evidence of an application, is no step-in-aid. Oral application by decree-holder cannot be presumed. (*Ross and Kulwant Sahay, JJ.*). KARA PASI *v.* RAM NATH SINGH. **103 I.C. 37=8 P.L.T. 670=A.I.R. 1927 Pat. 323.**

——Mere appearance of decree-holder in proceeding under O. 21, R. 90, C. P. Code, dismissed for default is not step-in-aid. (*Ross and Kulwant Sahay, JJ.*). BALDEO SHATHWARI KONHORAI *v.* LACHMAN LAH PATHAK. **99 I.C. 869=1926 P.H.C.C. 381= 6 Pat. 280=8 P.L.T. 356=A.I.R. 1927 Pat. 113.**

——Application to recover costs incidental to execution, is not step-in-aid. 24 Mad. 672, *Rel. on.* (*Dalal and Boys, JJ.*). SAHU NANDLAL *v.* SAHU DHARAM KIRTI. **94 I.C. 961= 48 All. 377=24 A.L.J. 465=A.I.R. 1926 All. 440.**

——A colourable application intended to save limitation and with that intention only, without any intention to prosecute the same, is of no avail in saving limitation as step-in-aid. (*Boys and Banerji, JJ.*). SHEO PRASAD *v.* MT. NARAINI BAI. **90 I.C. 938=48 All. 468=24 A.L.J. 137= A.I.R. 1926 All. 95.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is not.

——Application to attach property beyond executing Court's jurisdiction is not step-in-aid as the Court is not competent to grant the prayer. 12 All. 64; 27 All. 619; 28 All. 387 and 43 All. 550, *Foll.*; 6 Mad. 250, *Not foll.* (*Boys and Banerji, JJ.*). SHEO PRASAD *v.* MT. NARAINI BAI. **90 I.C. 938= 48 All. 468=24 A.L.J. 137=A.I.R. 1926 All. 95.**

——*Swearing of affidavit proving notice under O. 21, R. 66, C. P. Code, unaccompanied by any application is not step-in aid—Nor issue of notice under C. P. Code, O. 21, R. 66.*

Notice under R. 66 to be given to the judgment-debtor, in order that he might be present to assist the Court in drawing up the sale proclamation, cannot of itself be described as an application made in accordance with law to the proper Court for execution or to take some step-in aid of execution because the notice is issued not on the application of the decree-holder but by the Court itself on its own motion. So also the swearing of an affidavit proving service of notice merely filed by the decree-holder's identifier, unaccompanied by any application oral or written, does not give a fresh start to limitation. 21 C.W.N. 423, *Dist.*; 24 C.W.N. 55, *Foll.* (*Cuming and B.B. Ghose, JJ.*).; JADU NATH *v.* KRISHNA RANJINI. **94 I.C. 44= A.I.R. 1926 Cal. 879.**

——Request for extension of time for filing necessary papers is not a step-in-aid. A.I.R. 1922 Mad. 79, *Foll.* (*Phillips and Madhavan Nair, JJ.*). KATIFI MD. HAMIDUDIN *v.* MD. GHOSE. **98 I C. 163=24 M.L.W. 498= A.I.R. 1926 Mad. 1197=51 M.L.J. 489.**

——A statement by the decree-holder objecting to the judgment-debtor's application to record satisfaction of the decree is not a step-in-aid of execution. A.I.R. 1922 Mad. 79, *Foll.*; 37 Bom. 317, *Diss. from*; (*Case-law considered*). (*Phillips and Madhavan Nair, JJ.*). KRISHNA PATTAR *v.* SEETHARAM PATTAR. **98 I.C. 156= 50 Mad. 49=24 M.L.W. 488= A.I.R. 1926 Mad. 1178=51 M.L.J. 480.**

——Application not indicating how the Court is to assist decree-holder is not a step-in-aid. (*Suhrawardy and Graham, JJ.*). MAHARAJ BAHADUR SINGH DUGAR *v.* BASIRUDDIN AHMMAD. **93 I.C. 364=41 C.L.J. 607=A.I.R. 1925 Cal. 1135.**

——An application made after transfer of decree to another Court for execution to the Court passing the decree for certificate of part satisfaction of the decree is not an application for execution or to take a step-in-aid of execution. (*Campbell, J.*). FIRM SHERU MAL CHINA MAL *v.* FIRM HIRA LAL ANANT RAM. **78 I.C. 241= A.I.R. 1925 Lah. 233.**

——*Application for payment out of money in Court—When, is not step-in-aid.*

An application for payment out of money in Court by a decree-holder is a step-in-aid of execution if the money in Court was realised in execution of the decree. But where the amount of money is in Court to the credit of a suit and such amount has not been the proceeds of execution, an application for payment but cannot be said to be an execution application or an application in aid of execution. 2 Mad. 174; 16 Mad. 452; 17 Mad. 165, 22 Bom. 340, *Foll.*; 35 M.L.J. 375, *Dist.*; 22 Mad. 448, *Ref. to.* (*Devadoss and Wallace, JJ.*). BALAGURUSWAMI NAICKEN *v.* GURUSWAMI NAICKEN. **87 I.C. 989= A.I.R. 1925 Mad. 703=48 M.L.J. 506.**

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is not.

——A payment out of Court cannot be considered a step-in-aid. The petition for certifying such payments is a step-in-aid. (*Jackson, J.*). NARAYANA NAIR *v.* K. RAMAN NAIR. **82 I. C. 743= 20 M.L.W. 190=1925 M.W.N. 674= A.I.R. 1925 Mad. 131.**

——An application made by both the parties to the Court to postpone the application in the Darkhast, with a view to a compromise being arrived at between the parties is not a step-in-aid of execution. 38 Mad. 695, *Foll.* (*Macleod, C.J.*). VISHNU NAGAPPA *v.* NARASINHA PANDURANG. **73 I.C. 1011=25 Bom.L.R. 490= A.I.R. 1923 Bom. 461.**

——*Prosecution of appeal from order in execution is not a step-in-aid.*

The prosecution of an appeal from an order made in the course of a proceeding in execution of a decree cannot be looked upon as an application in accordance with law to the proper Court for execution or take some step-in-aid of execution. 26 All. 608, *Foll.* (*Macleod, C.J. and Crump, J.*). GOVINDDAS RAJARAM *v.* GANPAT DAS NAROTTAM DAS. **73 I.C. 1030=25 Bom. L.R. 518= 47 Bom. 783=A.I.R. 1923 Bom. 431.**

——*Stay order is not* (*Marten, J., doubting*).

Marten, J. (*Quaere*)—Whether a stay of proceedings granted at the instance of the plaintiff can be said to be step-in-aid of execution. A mere adjournment has been held not to be such a step-in-aid of execution, although an application for adjournment in order to obtain further evidence has been held to be a step-in-aid. 27 Cal. 285, *Ref.*

Pratt, J.—The application for stay is not a step-in-aid of execution. 1 All. 5801 (F.B.), *Ref.* (*Marten and Pratt, JJ.*). PANDEY DAGADU *v.* JAMNADAS CHOTU MAL. **76 I.C. 317= A.I.R. 1923 Bom. 218.**

——*Application for citing witnesses is not a step-in-aid of execution.*

In an execution matter, a claim was put in by a judgment-debtor which was registered under S. 47, C. P. Code. On 28th April, 1917, the decree-holder applied for time to file written statement in answer to the claim and to cite witnesses: but as a matter of fact did not prosecute the petition thereafter,

Held, the application of 28th April, did not constitute a step-in-aid of execution. Although an application to the Court to issue summons or do some other act necessary for proceeding with the execution case or for removing a bar to the execution proceedings would be step-in-aid of execution, an application for time to cite witnesses irrespective of whether the decree-holder does so or not, is not a step-in-aid of execution. The question whether an application is or is not a step-in-aid of execution, must depend upon the circumstances of each case. *Case-law discussed.* (*Chatterji and Cuming, JJ.*) RAJENDRA LAL SHA *v.* ABDUL KARIM. **76 I. C. 455=27 C.W.N. 505= 37 C .L. J. 292=A.I R. 1923 Cal. 572.**

——A warrant of arrest issued at the instance of the decree-holder had been returned, the judgment-debtor not having been found. Thereupon the Court passed an order in the following terms:—"Fresh steps, if any, by 10th May, 1917."

Held, that neither this order nor the application, which must have been made in connection with it, is a step-in-aid of execution; it could not be said that limitation began to run from the 10th May, when the application for execution was finally dismissed. 31 Mad. 71 and 8 Cal. 420, *Dist.*

LIMITATION ACT (1908), Art. 182 — Step-in-aid—What is not.

(*Oldfield, J.*). PARTHASARATHI *v.* ABDUL RAHIMAN. **75 I. C. 489=18 M. L. W. 109=1923 M. W. N. 871=A.I.R. 1923 Mad. 686.**

——After a decree is transferred by one Court to another for execution, any application made to the former Court cannot be a step-in-aid. 39 Mad. 640 (P.C.), *Foll.* (*Adami and Das, JJ.*). JNANENDRA NATH GHOSH *v.* KUMAR JOGENDRA NARAIN SINHA. **74 I. C. 608=2 Pat. 247=1924 P.H.C.C. 362=A.I.R. 1923 Pat. 384.**

——Neither an application for confirmation of sale nor an application by a decree-holder to be put in possession of the property is an application to take some step-in-aid of execution. (*Das and Adami, JJ.*). TRILOKENATH JHA *v.* BAVSMAN JHA. **72 I.C. 938=1 Pat.L.R. 6=2 Pat. 243=1923 P.H.C.C. 300=5 P.L.T. 30=A.I.R. 1923 Pat. 22.**

——*Applications which are not steps-in aid.*

Any application which, if successful, would facilitate execution or prevent an obstacle being raised to the execution of a decree, whether an application for execution is pending or not cannot on that ground be treated as a 'step-in-aid of execution' 17 Cal. 268, *Foll.*

In some cases the Courts in their anxiety to prevent decree-holders being deprived of the fruits of their decree by the "technical plea of limitation have stretched the article to such a point, that it has become difficult for the most exprienced lawyer (to say nothing of layman) to say when many decrees will become time-barred. In matters like limitation certainty is the first desideratum. An application made at a time, when no execution petition is pending cannot be a step-in-aid of execution. A man cannot be said to take some step-in-aid of a petition which has not been initiated. 39 Bom. 20, *Ref. to*; A. I. R. 1922 Mad. 247, *Dist.*

Similarly an application by both parties and the presentation of a plaint with respect to another property of the judgment-debtor cannot be treated as 'steps-in-aid of execution'. A.I.R. 1916 P.C. 96, *Ref. to.* (*Ayling and Venkatasubba Rao, JJ.*). KUPPUSWAMI CHETTIAR *v.* RAJAGOPALA IYER. **70 I.C. 324=45 Mad. 466=1922 M.W.N. 113=15 M.L.W. 348=32 M.L.T. 27=A.I.R. 1922 Mad. 79=42 M.L.J. 303.**

——An application for a copy of the decree to be executed is not an application to the Court, to take some step-in-aid of execution and time will not be computed from the date of such an application. (*Ayling and Krishnan, JJ.*). PUTHIA VEETIL MOIDU *v.* IRAKKAT KARNAVAN RAMAN NAYAR. **60 I. C. 117=1920 M.W.N. 700=12 M.L.W. 534=39 M.L.J. 572.**

—Art. 182—Sureties (Expln. 1).

——A surety is not a joint judgment-debtor within the meaning of Art. 182. A.I.R. 1921 All. 291; A.I.R. 1922 All. 481; A.I.R. 1926 Cal. 267, *Ref.*; A.I.R. 1929 Pat. 595, *Foll.*; A.I.R. 1922 Lah. 457, *Dist.* (*Kulwant Sahay and Macpherson, JJ.*). KIRTYANAND *v.* PIRTHICHAND. **120 I.C. 315=A.I.R. 1929 Pat. 597.**

——*Sureties are not co-judgment-debtors within the meaning of the article.*

Where the sureties have made themselves liable only for a part of the decretal amount and the execution is taken only against them, the sureties not being co-judgment-debtors with the principal debtors the execution against them does not save limitation against the principal debtors.

LIMITATION ACT (1908), Art. 183 — Applicability.

23 Bom. 478, *Foll.*; 43 All. 152 and 31 Bom. 50, *Appr.* (*Suhrawardy and Duval, JJ.*). BIRENDRA CHANDRA *v.* TULSI CHARAN GHOSE. **85 I.C. 657=A.I.R. 1926 Cal. 267.**

——*Decree against principal and surety but surety liable on default of principal—Execution against principal saves time against surety.*

A decree was passed both against principal and surety, but it directed realisation from surety only on the default of principal. Execution was taken out against the principal but the principal was adjudged insolvent. After 3 years from the date of decree but within 2 years from the date of first application for execution, another execution was applied for against the surety.

Held, the second application was not barred according to Expln. 1 of Art. 182 inasmuch as the principal and surety are not made liable under the decree for different portions of the subject-matter thereof but each is made liable for the whole of the decretal amount. The decree is passed 'jointly' against both the judgment-debtors notwithstanding the fact that it is to be executed against the surety only in case the decree-holders fail to realize it from the principal debtors. (*Martineau, J.*). HONDA RAM *v.* FIRM SETH KANWAR BHAN-SUKH NAND. **67 I.C. 301=74 P.L.R. 1922=38 P.W.R. 1922=A.I.R. 1922 Lah. 457.**

—Art. 183—Applicability.

——*Application for restitution in pursuance of order of Privy Council is governed by Art.* 183.

Per *Mukerji, J.*—Where an application is made to obtain restitution as the necessary result of the order of His Majesty-in-Council, that application is to be taken as one to "enforce" an order in Council and must be governed by Art. 183 and not by the general and omnibus Art. 181. A.I.R. 1922 All. 238, *Foll.*

Per *Sen, J.*—Such an application is one under O. 45, R. 15 and Art. 183 applies. (*Mukerji and Sen, JJ.*). SOHAN BIBI *v.* BAIJANATH DAS. **112 I.C. 876=50 All. 767=26 A.L.J. 587=A. I. R. 1928 All. 293.**

——Burma Courts Act (XI of 1912), S. 26—Decree of Chief Court executed by High Court—Limitation for execution is governed not by Art. 183 but by Art. 182. (*Pratt, Offg. C. J. and Canliffe, J.*). ALIBHAI MOHAMED *v.* MAHOMAD NOOR MAHOMAD. **114 I.C. 674=6 Rang. 566=A.I.R. 1928 Rang. 317.**

——*Award filed in Court—Is executable as decree of that Court.*

Where an award has been filed in the Court properly, it is not only to be enforceable as if it were a decree in general, but, having been filed in a particular Court, it is to be enforceable as if it were a decree of that Court and, therefore, shall for purposes of limitation be governed by Art. 182 or 183 according to as it is filed in a Chartered High Court or not. A.I.R. 1924 Lah. 544, *Rel. on*; *In re A, Bankruptcy Notice*, (1907) 1 K. B. 478, *Ref.* (*Rankin, C. J. and Mitter, J.*). BELVEDERE JUTE MILLS, LTD. *v.* HARDWARIMULL & CO. **104 I.C. 808=31 C.W.N. 1097=A.I.R. 1927 Cal. 858.**

——*Application under C. P. Code, O. 34, R. 6—Article* 181 *and not* 183 *applies.*

An application under O. 34, R. 6 is an application for a new decree in the suit and it cannot be said to be an application for enforcing a judgment

LIMITATION ACT (1908), Art. 183—Applicability.

or decree within the meaning of Art. 183, and consequently Art. 183 is not applicable to an application under O. 34, R. 6. Article 181 of the Limitation Act applies to such an application and the case of 42 Cal. 294 in so far as it decided that Art. 181 does not apply to such an application, was not rightly decided. 42 Cal. 294, *overruled*; 40 All. 551, *Foll.* (*Sanderson, C. J., Walmsley, Rankin, Buckland and Mukerji, JJ.*). FRANCIS HIGGINS PELL *v.* MINNIE GREGORY.

89 I.C. 1=52 Cal. 828=29 C.W.N. 678=A.I.R. 1925 Cal. 834 (F.B.).

———Per *Walsh, J.*—The expression used in Art. 183 of the Limitation Act are clearly capable of being read so as to cover an application for restitution on reversal of the decree of the High Court by the Privy Council, which is in substance to enforce a decree of the Privy Council which restored the parties to the position they were in before the High Court interfered; and Art. 183 of the Limitation Act applies to such applications.

Per *Ryves, J.*—The language of Art. 183 is different to that of Art. 182. Article 183 provides for 'the execution of a decree or order of any Civil Court,' Art. 183 is 'to enforce' a judgment decree or order.....of His Majesty-in-Council. The words "to enforce" there are wider in meaning than the words "to execute," in Art. 182 and should be interpreted as equivalent " to give full effect to" which is synonymous with "to enforce." (*Walsh and Ryves, JJ.*). BIRJ LAL *v.* DAMODARA DAS.

66 I.C. 545=44 All. 556=20 A.L.J. 436=A.I.R. 1922 All. 238.

—Art. 183—Application.

———Filing tabular statement under O. 21, R. 11, is making application.

The making of an application does not imply an application on which an order has been made. 30 Cal. 979 and A. I. R. 1925 Cal. 668, *Expl.* (*Costello, J.*). ATARMONI DASI *v.* BEPIN BEHARI.

115 I. C. 83=55 Cal. 1341=A.I.R. 1929 Cal. 193.

—Art. 183—Application within time.

———Death of decree-holder without drawing out money paid into Court—Administrator-General applying for having such payment made—Order for payment made—Application for execution made within 12 years from the date of such order,

Held, that it was a proper application by the Administrator-General though, previous to that application, he had not brought himself on the record in the place of the deceased decree-holder. No such process is contemplated by the procedure laid down either in the C. P. Code, or in the rules on the original side and all that is necessary is that the person who becomes by operation of law entitled to have execution is required only to make an application for execution. Under the article the decree-holder has twelve years not only from the date on which he becomes entitled to enforce the decree but also twelve years from the date on which some part of the principal money secured thereby, or some interest on such money has been paid. (*Coutts-Trotter, C. J. and Srinivasa Aiyangar, J.*). A. PRABAPPA CHETTI *v.* K. DESIKACHARI. **90 I.C. 1028=22 M.L.W. 78=1925 M. W. N. 554=1925 M.W.N. 705=A.I.R. 1925 Mad. 1131=49 M.L.J. 101.**

—Art. 183—Construction.

———Words " capable of releasing the right" exclude persons who are legally incapacitated such as infants and lunatics and therefore the words

LIMITATION ACT (1908), Art. 183—Revivor.

of Art. 183 are not governed by S. 6, 7 and 8. *Hornsey Local Board* v. *Monarch Investment Building Society*, 24 Q.B.D. 1, *Ref.* (*Das and James, JJ.*). MUSAHAR SAHU *v.* KISHUN NARAYAN PRASAD. **123 I.C. 411=A.I.R. 1930 Pat. 141.**

—Art. 183—Limitation.

———Even if an application is made to a Court which passed the decree to execute it in respect of property outside its territorial limits the Court will not have jurisdiction to carry on such execution. Where however the limits of the jurisdiction of the old Court were altered and an application was made to the Court which passed the decree for execution,

Held, that the decree should be forwarded to the proper Court but that it had the effect of saving limitation. (*Mukerji and Mitter, JJ.*). SREENATH CHAKRAVARTI *v.* PRIYANATH BANDOPADHYA. **35 C.W.N. 77.**

———A mortgage-decree determining the rights of prior and puisne mortgagees and allowing each mortgagee to enforce his mortgage does not entitle the puisne mortgagee to claim that his right to execute accrued only after prior mortgagee had exhausted his remedies. Execution applications by prior mortgagees will not amount to a revivor of the right of the puisne mortgage. (*Richardson and Page, JJ.*). NARAIN DAS DUTT *v.* BANKU BEHARI CHATTOPADHAYA. **78 I.C. 1001=A. I. R. 1925 Cal. 213.**

———An application to enforce an order absolute made by the High Court in a suit to enforce the mortgage security, must be made within 12 years from the date when the order absolute for sale was made. (*Mookerjee and Fletcher, JJ.*). APULARBA KRISHNA SETH *v.* RASH BEHARI DUTT. **60 I.C. 850=47 Cal. 746.**

—Art. 183—Revivor.

———An *ex parte* decree was obtained on the original side on 18th March, 1912, against a firm of which one *S* was a partner. An application for execution was made on 21st March, 1924. *S* appeared through his solicitor and obtained an adjournment for moving to set aside the decree. No affidavit or any written objection as contemplated by O. 21, R. 16, was filed. On 13th June, 1922, *S* obtained a rule on motion calling upon the decree-holder to show cause why the decree should not be set aside. It was ordered that an issue be tried as to whether *S* was partner in the defendant's firm and that all further proceedings in execution of the decree should be stayed until the trial of the issue. The issue was determined against *S* on 29th May, 1924. An execution application was filed on 3rd September, 1926. It was contended that the order of 29th May, 1924, was by implication a determination that the decree was still capable of execution,

Held, that no question of right to execute the decree was before the Court. The order was confined to the simple question whether *S* was a partner. Such an order could not be regarded as an order determining the question whether decree-holder had a subsisting right to execute the decree and did not constitute a revivor. (*Rankin, C.J. and Mitter, J.*). MUTHIAN CHETTIAR *v.* CHIDAMBARAM CHETTY. **110 I.C. 405=55 Cal. 573=32 C.W.N. 386=A.I.R. 1928 Cal. 686.**

———An application for transmission of a decree from the High Court to the District Court is not by itself a revival of the decree within the meaning of the Act inasmuch as it is a mere ministerial act of an officer of the Court and not the judicial act of a Judge. 49 Cal. 903 (F.B.), *Appr.*; A. I. R. 1925

LIMITATION ACT (1908), Art. 183—Revivor.

Cal. 213, *Affir.* (*Lord Phillimore.*) BANKU BEHARI CHATTERJEE *v.* NARAIN DAS DUTT.
101 I. C. 24=54 Cal. 500=54 I.A. 129=31 C. W. N. 589=1927 M. W. N. 336=4 O. W. N. 474=29 Bom. L. R. 850=38 M.L.T. 90=45 C.L.J. 507=26 M.L.W. 180=A.I.R. 1927 P.C. 73=52 M.L.J. 565 (P.C.).

——Transfer of decree—Notice under C. P. Code, O. 21, R. 22—Dismissal of execution case for want of prosecution—None of these is "revivor."

To constitute a revivor of the decree, there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it. 43 Cal. 903; 14 C.W.N. 35 and 22 Cal. 921, *Foll.* (*Suhrawardy and Cuming, JJ.*). AMULYA RATAN BANERJEE *v.* BANKU BEHARI CHATTERJEE.
87 I.C. 61=41 C.L.J. 159=A.I.R. 1925 Cal. 668.

——A notice issued under O. 21, R. 16 does not operate as a revivor to extend the period of limitation under Art. 183 nor is the application for transfer of a decree an application in execution. 43 Cal. 903 (F. B.), *Foll.* (*Newbould and B. B. Ghose, JJ.*). KHAJEH SALARUDDIN *v.* AFZAL BEGUM. **84 I. C. 68=28 C.W.N. 963=39 C.L.J. 590=A.I.R. 1925 Cal. 23.**

—Art. 183—Scope.

——Under Art. 183 payment is not required to be made either by the debtor or by some person acting on his behalf for the purpose of saving limitation. Payment for judgment-debtor or to his account is sufficient. 41 M.L.J. 423, *Dist.* (*Coutts-Trotter, C.J. and Srinivasa Aiyangar, J.*). A. PRABAPPA CHETTI *v.* K. DESIKACHARI.
90 I.C. 1028=22 M.L.W. 78=1925 M.W.N. 554=1925 M.W.N. 705=A.I.R. 1925 Mad. 1131=49 M.L.J. 101.

—Art. 183—Starting point.

——Transfer of decree to another Court for execution does not give a fresh start of limitation. A.I.R. 1927 P.C. 73, *Foll.* (*Coutts-Trotter, C.J. and Walsh, J.*). PALANIAPPA CHETTIAR *v.* VALLIAMMAI ACHI. **118 I. C. 775=52 Mad. 590=29 M.L.W. 203=1929 M.W.N. 78=A. I. R. 1929 Mad. 252=56 M.L.J. 555.**

——*Even payment by Court out of auction proceeds gives a fresh starting point.*

No doubt a person cannot by his own volition defer receiving payment and thus keep the decree alive for his benefit But Art. 183 refers to payment only and where the Court orders payment to the decree-holder out of the auction proceeds, a fresh starting point is given to the decree-holder for execution from the actual date of payment. (*Kumarswami Sastri, J.*). SABAPATHY CHETTY *v.* SHANMUGAPPA CHETTY. **78 I.C. 832=34 M.L.T. 285=19M.L.W. 582=A.I.R. 1924 Mad. 638=46 M.L.J. 453.**

LIMITATION REGULATION (1805) — Adverse possession.

LIMITATION AND CODE OF CIVIL PROCEDURE (AMENDMENT) ACT (XXVI of 1920).

—Applicability.

——The amendment of the Act is not meant to apply only to cases where the deaths have occurred after the 1st Jan. 1921. The result of applying the new period to all applications filed after the Act came into force is only this, that in cases of all deaths occurring within three months before the coming into force of the Act, the period would be reduced to 3 months and in those occurring between three months and 6 months before the coming into force of the Act the period would be up to the date of the Act coming into force *i.e.*, the 1st Jan. In every one of such cases there would be sufficient notice of the change in the period of limitation, 20 M.L.J. 347, *Ref.* (*Kotwal, A.J.C.*). NIMBA *v.* MT. JANKI. **71 I.C. 176=A.I.R. 1923 Nag. 166.**

—Extension of time.

——High Court has no power to extend time for furnishing security for more than 60 days. (*Oldfield and Ramesam, JJ.*). KACHI REDDI NAGIREDDI *v.* SAKI REDDI. **74 I.C. 703=18 M L.W. 29=1923 M.W.N. 510=A.I R. 1924 Mad. 44.**

LIMITATION REGULATION (BENGAL REGULATION II of 1805).

—Adverse possession.

——Limitation Act (1859), S. 28—Under Regulation 3 of 1793 read with Regulation 2 of 1805 and under Act XIV of 1859, adverse possession not only bars remedy but confers title. (1854) 1 *Boul Rep.* 70; 11 M.I.A. 345 (P.C.); (1869) 12 W.R. 192; 20 W.R. 104; 1 M.I.A. 446 (P.C.) and 3 Cal. 224, *Foll.* (*Mukerji and Bose, JJ.*). KHANTAMOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE. **118 I.C. 566=48 C.L.J. 489=A.I.R. 1929 Cal. 149.**

—S. 3 (1,2,3)—Adverse possession.

——12 years' rule would not apply only if acquisition is by means of "violence, fraud, or any other unjust or dishonest means whatever."

Under Regulation 2 of 1805, the intention of the legislature was to look to the means by which the acquisition took place and not the merits of the acquisition itself. (*Mukerji and Bose, JJ.*). KHANTAMOYEE DEBI *v.* HRIDAYANANDA BHATTACHARJEE. **118 I.C. 566=48 C.L.J. 489=A.I.R. 1929 Cal. 149.**

LIMITED COMPANY.
See (1) COMPANIES ACT.
(2) COMPANY.

LIMITED INTEREST.
See ADVERSE POSSESSION.

LIMITED OWNER.
See (1) ADVERSE POSSESSION.
(2) HINDU LAW, LIMITED OWNER.

LIS PENDENS.
See T. P. ACT, S. 52.

LOCAL INQUIRY OR INVESTIGATION.
See CR. P. CODE, S. 556.

LOCAL INSPECTION.
See C. P. CODE, O. 18, R. 18.

LOCAL INVESTIGATION.
See (1) C. P. CODE, O. 26.
(2) CR. P. CODE, S. 202.

LONG POSSESSION.
See ADVERSE POSSESSION.

LOTTERY.
See CONTRACT ACT, S. 30.

LOWER BURMA.
See BURMA (LOWER).

LUNACY ACT (1912), S. 3 (5)—Procedure.

LUNACY.

See HINDU LAW—SUCCESSION.

LUNACY ACT (IV of 1912).

—S. 3 (5)—Procedure.

———*Duty of Court—Inability to manage affairs should be bound—Reliance not to be placed on opinion of relations.*

In assuming jurisdiction under the Lunacy Act the Court must keep in view the distinction between mere weakness of intellect and "lunacy" as understood in the Act. It is only with lunatics as defined in S. 3 (5) that the Act is concerned. It is therefore duty of the Court before proceeding further to determine judicially whether the person alleged to be incapable of managing himself or his affairs is really a "lunatic" in this sense. The finding has got very far-reaching consequences and must be given after very great care and deliberation. The elaborate procedure laid down by the legislature for conducting an enquiry into the matter must be strictly followed. The Court should not consider itself relieved of its responsibility by the mere circumstance that some or all of the relatives of the person concerned have declared that he is a lunatic. The Court ought to form its own independent judgment on the point. (*Tek Chand, J.*). MT. TEKA DEVI *v.* GOPAL DAS.

122 I. C. 570=31 P.L.R. 98=
A.I.R. 1930 Lah. 289.

—Part. II—(Ss. 4 to 36)—Procedure.

———*Orders by District Magistrate—Executive and judicial—Executive orders not subject to revision by High Court.*

The Act deals specifically and under separate headings with two branches of proceedings executive and judicial. Any person considering himself aggrieved by an executive order passed by the Dt. Magistrate may apply under Part III for a regular inquisition conducted by a judicial Officer. The result of such inquisition is conclusive and overrides and overrules any order which may have been passed summarily by the executive authority. Under this Act the orders passed by the District Magistrate under Part II are purely executive and cannot form the subject-matter of a revision application to the High Court. (*Abdul Raoof and Harrison, JJ.*). DONALD *v.* THE CROWN.

73 I.C. 696=4 Lah. 1=24 Cr. L.J. 664=
A.I.R. 1924 Lah. 55.

—Ss. 37 and 62—Powers of District Court.

———*High Court's jurisdiction excludes District Courts, through the person resides in latter's jurisdiction.*

Before a District Court can institute inquisition as to a person possessed of property and alleged to be a lunatic, it must be established not merely that such person is residing within the jurisdiction of that Court but also that he is not subject to the jurisdiction of any of the High Courts mentioned in S. 37. Consequently, in a case where an alleged lunatic is subject to the jurisdiction of a High Court under S. 37, the District Court had no jurisdiction under S. 62, even though the person may reside within the local limits of the jurisdictions of the District Court, *i.e.*, the jurisdictions of the High Court and the District Court are not concurrent, but the jurisdiction of the High Court excludes that of the District Court; on the other hand, if the alleged lunatic resides in two Districts the jurisdictions of the two Courts are concurrent and not mutually exclusive. (*Mookerjee, A.C.J.,*

LUNACY ACT (1912), S. 62—Court's duty.

Fletcher and Richardson, JJ.). ANILABALA CHOUDHURANI *v.* DHIRENDRA NATH.

65 I.C. 57=48 Cal. 577=25 C.W.N. 178=
A.I.R. 1921 Cal. 309.

—S. 38 (1)—Jurisdiction.

———*Alleged lunatic having two residences, one in Calcutta and the other in mofussil—High Court at Calcutta has jurisdiction over him though he may have gone to the mofussil place—Nature of jurisdiction over insane persons.*

Section 38 does not define the test to be applied to determine whether a person is or is not subject to the jurisdiction of the High Court for the purpose of judicial inquisition as to lunacy. But the proceedings are directed primarily against the person and only secondarily against his property. The right of the Court to learn judicially whether a person is or is not of unsound mind is inferred from the right to his care and custody provided he is insane. Such authority over the person may unless otherwise directed by statute, be ordinarily exercised in the case of residents within the local limits of the jurisdiction of the Court. It may also be exercised over non-residents, if there is statutory provision to that effect.

One may have two places of residence, in one of which he resides during one portion of the year, in the other during the remaining portion; what may be said to be the place of personal residence during one portion of the year thus becomes the place of legal residence during the reminder of the year and *vice versa*. In such a case the term "reside" may be applied to either place.

Residence should be interpreted to import in such a case not *intelligent* residence but bodily presence. (*Case-law fully discussed.*) (*Mookerjee, A.C.J., Fletcher and Richardson, JJ.*).[1] ANILABALA CHOUDHURANI *v.* DHIRENDRA NATH. **65 I.C. 57=48 Cal. 577=25 C.W.N. 178=A.I.R. 1921 Cal. 309.**

—S. 40—Notice.

———*Notice must be issued after an order for inquisition is made—No general notice is to be issued.*

The notice contemplated by S. 40 is a notice to be drawn up after there has been an order directing an inquisition. It is notice of such order and of the time and place at which the inquisition is to be held. It is not a notice of the petition. There is nothing in the Lunacy Act about general notices. (*Rankin, C.J. and Majumdar, J.*). SARAJ BASIN DEBI *v.* MAHENDRA NATH. **103 I.C. 725=54 Cal. 836=31 C.W.N. 838=46 C.L.J. 197=A.I.R. 1927 Cal. 636.**

—S. 42—Scope.

———Section 42 in terms refers only to the attendance and examination of the lunatic in Court but the principle contained in S. 42 would apply equally to her attendance and examination before a doctor. (*Srivastava and Pullan, JJ.*). SHAJIUDDIN AHMAD *v.* PRAG TEWARI. **7 O.W.N. 483=A.I.R. 1930 Oudh 301.**

—S. 62—Court's Duty.

———Factum of lunacy being contested, Court should not base its conclusion on personal observation alone but follow the procedure in S. 62. (*Jai Lal, J.*). JAN MUHAMMAD *v.* NIZAM DIN.

96 I. C. 333=8 L L.J. 391=27 P. L. R. 649=
A.I.R. 1926 Lah. 886.

———*Inquisition—When Court is to order.*

An inquisition under S. 62 or S. 38 of the Lunacy Act into the state of health, the state of mind, the state of property and general capacity of a person is a thing which affects the person so prejudicially

LUNACY ACT (1912), S. 62—Medical certificate.

that it ought not to be taken except upon a careful consideration of evidence. (*Rankin and Page, JJ.*). MUNWAR SULTAN *v.* SHAMSUNNESSA BEGUM.
80 I. C. 798=51 Cal. 480=
28 C.W.N. 513=A.I.R. 1924 Cal. 658.

—S. 62—Medical certificate.

———Applicants in cases under S. 62 should come to Court fortified with a valid medical certificate of insanity. 42 All. 504, *Foll.* (*Walsh and Pullan, JJ.*). TAWASSUL HUSAIN *v.* ABRAR HUSAIN.
96 I. C. 778=49 All. 3=24 A.L.J. 906=
A.I.R. 1927 All. 225.

—S. 62—Powers of District Court.

———District Court, within whose jurisdiction lunatic is permanent resident, has jurisdiction to direct inquisition under S. 62, notwithstanding that he temporarily resides in mental hospital outside that district. (*B. B. Ghose and Panton, JJ.*). RADHARANI DEBI *v.* NIBARAN CHANDRA.
A. I. R. 1929 Cal. 512.

—S. 62—Procedure.

———*Inquisition—Ordering of by Court—Evidence at inquisition—Nature of—Orders after inquisition.*

The first thing which has to be done upon an application for directing an inquisition under R. 62 is that the Judge either with notice to the lunatic or without notice should carefully consider whether the case is one which calls for an order directing an inquisition. If he considers that it calls for an order directing an inquisition then it is his obvious duty to record an order directing an inquisition. When he has once done that, he is then, by the combined operation of S. 62 with Ss. 40, 41 and 42 of the Act, to take certain steps with regard to notice.

It is only a preliminary investigation which is required to justify an order directing an inquisition. Then, an order having been duly made directing an inquisition, the date having arrived and proper notices having been given, the inquisition itself proceeds. Without an order directing an inquisition the inquisition itself is without jurisdiction.

The evidence taken at the inquisition is evidence to be given by people in the ordinary way coming as witnesses before the Court. When that inquisition terminates it terminates in a judgment which finds or does not find that the person is of unsound mind, and upon that finding the jurisdiction arises to give orders as to the custody of the lunatic and to the management of the estate. (*Rankin, C.J. and Majumdar, J.*). SARAJ BASINI DEBI *v.* MOHINDRA NATH. 103 I.C. 725=
54 Cal. 836=31 C.W.N. 838=46 C.L.J. 197=
A.I.R. 1927 Cal. 636.

———*Lunatic served with notice—Subsequent proceedings may be* ex parte.

Once service has been effected on the alleged lunatic in the manner provided by S. 40, subsequent proceedings may be *ex parte* and the attendance of the alleged lunatic is not a condition precedent to the disposal of inquisition proceedings under the Act. It is not therefore open to a District Court to reject an application made under Ss. 62 and 63 of the Lunacy Act merely on the ground that there is no trace of the alleged lunatic. (*Kincaid, J. C. and Lobo, A.J.C.*). NUR MAHOMED *v.* MAHOMED HASIM. 96 I.C. 956=
A.I.R. 1926 Sind 223.

—S. 65—Person of unsound mind.

———*Unsoundness of mind—What constitutes.*

A person whose mental condition has been affected by the stroke of paralysis from which he suffered and both owing to this and owing to his age his memory has been seriously affected and he is unable to recognize his relations, but he is able to answer questions with regard to his estate with a certain amount of intelligence, and also questions with regard to his family, cannot be said to be of unsound mind and incapable of managing himself and his affairs. (*Greaves and Cuming, JJ.*). UPENDRA MOHAN ROY *v.* NARENDRA MOHAN ROY. 90 I.C. 878=30 C.W.N. 180=
A.I.R. 1926 Cal. 155.

—S. 67—Powers of Judge.

———*Judge cannot delegate his functian to arbitrator.*

In an enquiry as to the insanity of any person no Judge has any right, or any jurisdiction, to delegate his function to a third person except person appointed to assist or advise a Judge. But such a person is no more than a witness and the Judge must retain the judicial function in his own person. 42 All. 504, *Ref.* (*Walsh and Ryves, JJ.*). MURLIDHAR PANDE *v.* LACHMI PANDE.
62 I.C. 430=43 All. 459=19 A.L.J. 324=
A.I.R. 1921 All. 160.

—S. 71—Appointment of manager.

———*Hindu co-parcener becoming lunatic—Manager can be appointed as to his share—Hindu law.*

If a member of a joint Hindu family under the Mitakshara law be a lunatic, where it is shown that his property is being wasted the Civil Courts have power to appoint a manager of the lunatic's share under the Lunacy Act, although no doubt a strong case must be made out for the appointment of a manager. 6 Cal. 539 and 12 O. C. 209, *Foll. Case-law discussed.* (*Findlay, J.C. and Staples, A.J.C.*). DADA *v.* CHANDRBAHAGABAI.
116 I.C. 663=25 N.L.R. 61=12 N.L.J. 44=
A.I.R. 1929 Nag. 93.

—S. 71—Court's duty.

———*Inquisition—When Court can order—Benefit of the lunatic is the paramount consideration.*

Where an application is made to ascertain whether certain persons are of unsound mind by an inquisition, the Judge should form his independent Judgment upon the point. After examining the parties it may reject the petition *in limine* if it thinks that no *prima facie* case for enquiry is disclosed. Or it may after examining the pleadings of the parties or as a result of its own personal interview with the alleged lunatic come to the conclusion that there are grounds for supposing that the mental condition is such as to bring him within the Lunacy Act. In that case it must order an "inquisition" and proceed in the manner prescribed. After the inquisition has been completed, it must record a judicial finding on points mentioned in S. 65 (*a*) on the materials before it. It is only when these findings have been arrived at as a result of the inquisition that the jurisdiction of the Court to proceed further with the case arises. In determining these questions the paramount consideration is the benefit of the lunatic. A.I.R. 1927 Cal. 636, *Rel. on.* (*Tek Chand, J.*). MT. TEKA DEVI *v.* GOPAL DAS. 122 I.C. 570=31 P.L.R. 98=
A.I.R. 1930 Lah. 289.

—S. 72—Applicability.

———The provisions of S. 72 imposing a restriction to the appointment of legal heir of a lunatic to be a guardian of his person cannot be attended to in a case where near relations only can be

LUNACY ACT (1912), S. 82 — Declaration of soundness.

appointed guardians of the person of the lunatic. (*Dalal, J. C.*). BABBIR *v.* CHEDI LAL.
85 I.C. 276=A.I.R. 1925 Oudh 642.

—S. 82—Declaration of soundness.

——*Judge must make an order for such declaration without regard to other proceedings pending in his Court.*

An application was made to the District Judge alleging that the unsoundness of mind of the lunatic had ceased and praying that enquiry be made whether he is still of unsound mind and incapable of managing himself and his affairs, and that on the material placed before the District Judge there was very good reason to believe that the unsoundness of the lunatic had ceased,

Held, it was the duty of the Judge to have proceeded with the application without regard to the effect of enquiry on the matter in other proceedings pending in the Court. It would be most unfair to keep the lunatic's property under management or his person under guardianship if it could be established that he was no longer of unsound mind. (*Jai Lal, J.*). PARBATI *v.* EMPEROR.
88 I.C. 580=26 P.L.R. 593=A.I.R. 1925 Lah. 533.

—S. 83—Who can appeal.

——Where a person has been adjudged lunatic upon inquisition held in irregular and improper proceedings, any person, who is a relative and has a right to see that the alleged lunatic's estate and liberty are dealt with according to law, has a right of appeal. (*Rankin, C.J. and Majumdar, J.*). SURAJ BASINI DEBI *v.* MOHENDRA NATH.
103 I.C. 725=54 Cal. 836=31 C.W.N. 838=46 C.L.J. 197=A.I.R. 1927 Cal. 636.

LUNACY ACT (1912), S. 88—Maintenance.

—S. 88—Maintenance.

——Lunacy Rules, R. 18—Hindu Father-in-law is liable to pay costs of maintenance of his joint son's lunatic wife under R. 18 (2). A.I.R. 1927 Bom. 91, *Rel. on.* (*Marten, C.J. and Patkar, J.*). RAMACHANDRA GANPAT AGARWALA *v.* CANTONMENT MAG., POONA.
124 I.C. 813=32 Bom. L.R. 606=A.I.R. 1930 Bom. 319=

——*Father as manager—Liability to maintain lunatic son—Not dependent on source of property.*

If the father, as a manager of the joint family, is liable to maintain his son as a member of the family, he is a person legally bound to maintain the lunatic within the meaning of the section. It does not matter for the purposes of S. 88, whether under the Hindu Law his liability to maintain is limited to the extent of the joint family property in his hands. The word "means" in the expression "means to maintain" has no relation to the source of property.

Rule 18 (ii), which prescribes the fees for maintenance, is not *ultra vires* in any way. (*Shah and Fawcett, JJ.*). CHANVIRGAUDA SHIVANGAUDA *v.* DISTRICT MAGISTRATE, DHARWAR.
100 I.C. 575=51 Bom. 120=29 Bom. L.R. 52=A.I.R. 1927 Bom. 91.

LUNATIC.

See (1) C. P. CODE, O. 32.
(2) CR. P. CODE, Ss. 464 to 475.
(3) CONTRACT ACT, S. 12.
(4) LIMITATION ACT, S. 6.
(5) PENAL CODE, Ss. 84—85.

LURKING HOUSE TRESPASS.

See PENAL CODE, Ss. 453 to 460.

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